TITLE: FEDERAL REGISTER.

REEL NO: 8 of 9

VOLUME: 55 issues: 230 - 245
pages: 49,497 - 52,264

DATE: NOVEMBER 29 - DECEMBER 20, 1990

PUBLICATION NO: 2575.00

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VOL
55

ISS
230

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29

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UMI

11-29-90
Vol. 55 No. 230

# federal register

Thursday
November 29, 1990

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VOL
55
ISS
230
NO
29
1990
UMI

11-29-90
Vol. 55 No. 230
Pages 49497-49602

# federal register

Thursday
November 29, 1990

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# Presidential Documents

Title 3—

The President

**Presidential Determination No. 90-37 of August 28, 1990**

## Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

**Memorandum for the Secretary of State**

Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), in order to meet unexpected urgent refugee and migration needs around the world, I hereby determine that it is important to the national interest that $18,350,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund (Emergency Fund) to meet unexpected urgent needs of refugees and conflict victims in Africa, Asia and the Near East/South Asia. Of this $18,350,000, $6,050,000 will be contributed to the United Nations High Commissioner for Refugees (UNHCR); $6,500,000 will be contributed to the International Committee of the Red Cross (ICRC); $800,000 will be contributed to the League of Red Cross and Red Crescent Societies; and $3,000,000 will be contributed to the United Nations Border Relief Operation (UNBRO). A portion of the funds authorized to support UNHCR efforts in Africa may be used to finance directly assistance provided through private voluntary organizations or other international organizations as required to meet specific needs.

You are directed to inform the appropriate committees of the Congress of this Determination and the obligation of funds under this authority. This Determination shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE
*Washington, August 28, 1990.*

[FR Doc. 90-28222
Filed 11-27-90; 2:53 pm]
Billing code 3195-01-M

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## Presidential Documents

**Presidential Determination No. 91-8 of November 7, 1990**

### Presidential Determination Waiving Worker Rights Criteria With Respect to Nicaragua Pursuant to Section 212(b) of the Caribbean Basin Economic Recovery Act

**Memorandum for the Secretary of State**

By virtue of the authority vested in me by the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2701 *et seq.*) (hereinafter "the Act"), I hereby determine, pursuant to section 212(b) of the Act (19 U.S.C. 2702(b)), that the designation of Nicaragua as a beneficiary country under the Act will be in the national security interest of the United States. Accordingly, I waive the application of paragraph (7) of section 212(b) of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

THE WHITE HQUSE
*Washington, November 7, 1990.*

[FR Doc. 90-28223
Filed 11-27-90; 2:54 pm]
Billing code 3195-01-M

**Editorial note:** For the President's letter to the Speaker of the House and the President of the Senate, dated Nov. 7, on the determination, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 45). For the Presidential proclamation and statement by Press Secretary Fitzwater on the determination, both dated Nov. 8, see the same issue.

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

**[Docket No. 90-221]**

## Citrus Canker Regulations; Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the citrus canker regulations by adding an area in Highlands County, Florida, to the list of areas quarantined because of citrus canker. This action is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. This action imposes certain restrictions on the interstate movement of regulated articles from this area.

**DATES:** Interim rule effective November 21, 1990. Consideration will be given only to comments received on or before January 28, 1991.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-221. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 436-8365.

**SUPPLEMENTARY INFORMATION:**

### Background

Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of infected plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. The aggressive A (Asiatic) strain of *Xanthomonas campstris* pv. *citri* can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

In the United States, Florida is the only State where citrus canker exists. Regulations to prevent the interstate spread of citrus canker from Florida are contained in 7 CFR 301.75 *et seq.*, "Subpart—Citrus Canker" (referred to below as the regulations). The most recent revisions to the regulations are contained in a final rule published in the **Federal Register** on September 11, 1990 (55 FR 37442-37453, Docket Number 90-114), and effective September 18, 1990.

The regulations designate certain areas in Florida as quarantined areas and impose restrictions on the interstate movement of regulated articles from the through quarantined areas. The regulations also designate survey areas, which surround the quarantined areas. Survey areas undergo close monitoring for citrus canker and serve as containment or buffer zones against the disease.

The regulations in § 301.75-4(e) state that any State or portion of a State where an infestation is detected will be designated as a quarantined area and will remain so until the area has been without infestation for 2 years.

The regulations in § 301.75-4(d) state that less than an entire State will be designated as a quarantined area only if certain conditions are met. The conditions include the establishment of a survey area surrounding the quarantined area and, with certain exceptions, the periodic inspection of regulated plants and trees within the survey area. Additionally, the State must—with certain specified exceptions—enforce restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined area.

Prior to the publication of this document, a portion of Manatee County was the only area in Florida designated as a quarantined area. We have determined that an additional area in Florida, in Highlands County, is infested with citrus canker. Additionally, we have determined that the State of Florida is enforcing restrictions on the intrastate movement of regulated articles from the infested areas in Manatee County and Highlands County, and that the restrictions are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined areas.

Accordingly, we are amending the regulations by designating a portion of Highlands County, Florida, as a quarantined area, and by designating an area surrounding the quarantined area as a survey area. The exact description of the newly quarantined area and the survey area can be found in this rule portion of this document.

### Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent citrus canker from spreading into noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

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**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

As a result of this rule, an additional area in Florida, in Highlands County, is designated as a quarantined area, and restrictions are being imposed on the interstate movement of regulated articles from the quarantined area. The entities in the quarantined area affected by this action are three citrus grove owners, only one of whom would be considered a small entity. This small entity owns one fruit-producing grove, and a grove consisting of citrus plantings. Of the other two entities, one owns a grove of citrus plantings and a fruit-producing grove, and the other owns a grove of citrus plantings where the citrus canker was found. In the grove where citrus canker was found, all infected trees—as well as suspect trees in the vicinity of the infected trees—have been destroyed. The trees represent a loss of approximately $14,000 to the owner.

We estimate that the regulations will require all three grove owners to spend approximately $25 per acre, per year—until the quarantine is lifted—for sanitizing vehicles, equipment, and personnel leaving their groves. These costs represent a very small percentage of their overall production expenses.

The owners of the two fruit-producing groves should be able to continue marketing fruit from these two groves at or near the same level of profit they realized prior to the introduction of the regulations. The regulations allow regulated fruit to be shipped interstate, under certain conditions, from a quarantined area into any area of the United States except commercial citrus-producing areas. Also, the regulations do not prohibit the owners from moving their fruit intrastate, provided the fruit is not intended for the fresh fruit market, and provided certain other conditions are met.

The effect of the regulations on the owners of the two fruit-producing groves is further muted by the fact that they also own groves outside the quarantined area. Their quarantined groves represent only a portion of the total acreage they own.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 *et seq.*].

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Paragraph (a) of § 301.75–4 is amended by adding a description of the quarantined area for "Highlands County," Florida, immediately after the entry for "Manatee County," to read as follows:

**§ 301.75–4 Quarantined areas.**

(a) * * *

*Florida*

* * * * * *

*Highlands County.* That portion of Highlands County consisting of T. 37 S., R. 29 E., secs. 25, 26, 27, 28, and 29, secs. 32, 33, 34, 35, and 36; and T. 38 S., R. 29 E., secs. 1, 2, 3, 4, and 5, secs. 8, 9, 10, 11, and 12, secs. 13, 14, 15, 16, and 17, and secs. 20, 21, 22, 23, and 24.

* * * * *

3. Paragraph (d)(1) of § 301.75–4 is amended by adding a description of the new survey area immediately after the description that begins, "Hillsborough County . . .", to read as follows:

**§ 301.75–4 Quarantined areas.**

* * * * *

(d) * * *

(1) * * *

*Florida*

* * * * * *

T. 37 S., R. 28 E., secs. 22, 23, 24, 25, 26, and 27, and secs. 34, 35, and 36; R. 29 E., secs. 19, 20, 21, 22, 23, and 24, and secs. 30 and 31; R. 30 E., those portions of secs. 17, 19, 20, 28, and 29 situated west of U.S. Highway 27, and all of secs. 18, 31, 32, and 33. T. 36 S., R. 28 E., secs. 1, 2, and 3, secs. 10, 11, 12, 13, 14, and 15, secs. 22, 23, 24, 25, 26, and 27, and secs. 34, 35, and 36; R. 29 E., secs. 6, 7, 18, and 19, and secs. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; R. 30 E., secs. 3, 4, 5, 6, 7, 8, 9, and 10, secs. 15, 16, 17, 18, 19, 20, 21, and 22, and secs. 27, 28, 29, 30, 31, 32, 33, and 34. T. 39 S., R. 28 E., secs. 1, 2, and 3; R. 29 E., secs. 1, 2, 3, 4, 5, and 6; R. 30 E., secs. 3, 4, 5, and 6.

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Done in Washington, DC, this 21st day of November 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-28015 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-34-M

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**7 CFR Part 301**

**[Docket No. 90-223]**

**Peach Fruit Fly**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are quarantining an area in Orange County, California, because of the peach fruit fly, and restricting the interstate movement of regulated articles from the quarantined area. This emergency action is necessary to prevent the spread of the peach fruit fly to noninfested areas of the United States.

**DATES:** Interim rule effective November 21, 1990. Consideration will be given only to comments received on or before January 28, 1991.

**ADDRESSES:** To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-223. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.



**FOR FURTHER INFORMATION CONTACT:** Michael B. Stefan, Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

**SUPPLEMENTARY INFORMATION:**

**Background**

We are amending the "Domestic Quarantine Notices" in 7 CFR part 301 by adding a new subpart 301.96, "Peach Fruit Fly" (referred to below as the regulations). These regulations quarantine a portion of Orange County, California, because of the peach fruit fly, and restrict the interstate movement of regulated articles from the quarantined area.

The peach fruit fly, *Bactrocera zonatus* (Saunders), is a very destructive pest of tropical and subtropical fruits, including mangos, guavas, tomatoes, apples, peaches, and loquats. This pest can cause serious economic losses by lowering the yield and quality of these fruits. Heavy infestations can result in complete loss of these crops.

Recent insect trapping surveys near the Fountain Valley area of Orange County, California have established that a portion of Orange County is infested with the peach fruit fly. The peach fruit fly is not known to occur anywhere else in the United States.

In cooperation with the Animal and Plant Health Inspection Service (APHIS), a unit within the U.S. Department of Agriculture (USDA), officials of State agencies of California have begun an intensive peach fruit fly survey and eradication program in the infested area. Also, as explained below, California has restricted the intrastate movement of certain articles from the quarantined area to prevent the spread of the peach fruit fly within California. However, Federal regulations are also necessary to restrict the interstate movement of certain articles from the quarantined area to prevent the spread of the peach fruit fly to noninfested areas in other States. This interim rule establishes those Federal regulations, which are described below.

*Section 301.96 Restrictions on Interstate Movement of Regulated Articles*

This section prohibits any person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the regulations. For informational purposes, a footnote (number 1) has been added to reference the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

*Section 301.96–1 Definitions*

This section contains, for informational purposes, definitions of the following terms: "Administrator," "Certificate," "Compliance agreement," "Infestation," "Inspector," "Interstate," "Limited permit," "Moved," "Peach fruit fly," "Person," "Quarantined area," "Regulated article," and "State."

*Section 301.96–2 Regulated Articles*

Certain articles present a significant risk of spreading the peach fruit fly if they are moved from quarantined areas without restriction. We call these articles regulated articles. This section designates as regulated articles a number of fruits, nuts, vegetables, and berries, and soil within the drip line of plants that produce the fruit, nuts, vegetables, and berries.

In addition, this section allows designation of any other product, article, or means of conveyance as a regulated article, if an inspector determines that it presents a risk of spread of the peach fruit fly and notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations. This provision for "any other product, article, or means of conveyance" allows an inspector who discovers a risk of spreading peach fruit fly (e.g., a truck with peach fruit fly pupae in cracks in the floorboards) to regulate the product, article, or means of conveyance immediately, by informing the person in possession of the product, article, or means of conveyance that it is being regulated.

Fruits, nuts, vegetables, or berries that are canned, or dried, or frozen below −17.8 °C (0 °F) are not included as regulated articles, since the peach fruit fly could not survive under those conditions.

*Section 301.96–3 Quarantined Areas*

This section states that it is necessary to quarantine areas in which the peach fruit fly has been found by an inspector, areas in which the Administrator has reason to believe the peach fruit fly is present, and areas the Administrator considers necessary to quarantine because of their proximity to the peach fruit fly or their inseparability for quarantine enforcement purposes from localities where peach fruit flies have been found.

This section also provides that less than an entire State will be designated as a quarantined area only if the Administrator determines that (1) the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by our regulations with respect to the interstate movement of these articles; and (2) quarantining less than the entire State will prevent the interstate spread of the peach fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

In accordance with these criteria, we are designating as a quarantined area an area in Orange County in California. This area is as follows:

*Orange County:* That portion of Orange County in the Fountain Valley area bounded by a line drawn as follows: Beginning at the point where Springdale Street intersects with State Highway 22; then easterly along this highway to its intersection with Garden Grove Boulevard; then easterly along this boulevard to its intersection with State Highway 22; then northeasterly along this highway to its intersection with Main Street; then southerly along this street to its intersection with State Highway 55; then southwesterly along this highway to its intersection with Newport Boulevard; then southwesterly along this boulevard to its intersection with 17th Street, then westerly along this street to its intersection with Superior Avenue; then southwesterly along this avenue to its intersection with State Highway 1; then northwesterly along this highway to its intersection with Golden West Street, then northeasterly and northerly along this street to its intersection with Slater Avenue; then westerly along this avenue to its intersection with Springdale Street; then northerly along this street to the point of the beginning.

It is necessary to designate this portion of Orange County as a quarantined area because it is an area in which the peach fruit fly has been found, or in which the Administrator has reason to believe the peach fruit fly is present, or an area necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where the peach fruit fly has been found.

There does not appear to be any reason to designate any other quarantined areas in California other than those areas specified above.

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California has adopted and is enforcing regulations imposing restrictions on the interstate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Section 301.96–3 also provides that the Administrator or an inspector may temporarily quarantine an area without publication in the Federal Register if there is a basis for listing the area as a quarantined area under this section and if the owner or person in possession of the area to be quarantined is given written notice of this action. This is necessary in order to prevent the spread of the peach fruit fly before restrictions can be published in the Federal Register concerning the interstate movement of regulated articles from the designated area.

*Section 96–4 Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas*

Section 301.96–4(a) requires regulated article moved interstate from quarantined areas to be accompanied by a certificate or limited permit issued and attached as prescribed by §§ 301.96–5 and 301.96–6, unless moved as prescribed in § 301.96–4(b)

Section 301.96–4(b) allows a regulated articles to move interstate without a certificate or limited permit if the article originates outside of a quarantined area, it is moved through the quarantined area without stopping except for refueling or for traffic conditions such as traffic lights and stop signs, if it is shipped in an enclosed vehicle or is completely covered so as to prevent access by peach fruit flies, if the point of origin is indicated on the waybill, and if the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

Also, § 301.96–4(c) allows the Department to move regulated articles interstate without a certificate or limited permit for experimental or scientific purposes. However, the regulated articles must be moved in accordance with a permit issued by the Administrator, under conditions that prevent the spread of peach fruit fly.

Section 301.96–4 contains a footnote (number 2) to remind persons of other applicable domestic plant quarantine and regulation requirements that need to be met for interstate movement.

*Section 301.96–5 Issuance and Cancellation of Certificates and Limited Permits*

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of the peach fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate can be moved interstate without further restrictions being imposed. Limited permits are issued for regulated articles when an inspector determines that, because of a possible pest risk, the article may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.96–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.96–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of peach fruit fly, has been treated under the direction of an inspector in accordance with § 301.96–10, or comes from a premises of origin that is free of peach fruit fly and has not been exposed to peach fruit fly; (2) will be moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by peach fruit fly; (3) the regulated article will be moved interstate in compliance with any additional emergency conditions deemed necessary to prevent the spread of peach fruit fly under section 105 of the Plant Quarantine Act (7 U.S.C. 150dd); and (4) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 3) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote (number 4) that explains that the Secretary of Agriculture may, under 7 U.S.C. 150dd, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administrator has reason to believe are infested or infected by or contain plant pests.

Section 301.96–5(b) provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of peach fruit fly.

Section 301.96–5(c) allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.96–5 (a) or (b).

Also, § 301.96–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

*Section 301.96–6 Compliance Agreement and Cancellation*

This section provides for the issuance and cancellation of compliance agreements. Compliance agreements can be entered into by any person engaged in growing, handling, or moving regulated articles who agrees in writing to comply with the provisions of subpart 301.96. Compliance agreements are provided for the convenience of persons who are involved in shipments of regulated articles from quarantined areas; they are written to ensure that persons issuing certificates or limited permits are knowledgeable with respect to the requirements of subpart 301.96 and have agreed to comply with them.

A footnote (number 7) explains how compliance agreements may be arranged.

Section 301.96–6 also provides that an inspector supervising enforcement of a compliance agreement may cancel the agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact.

*Section 301.96–7 Assembly and Inspection of Regulated Articles*

This section provides that any person who desires a certificate or limited permit to move regulated articles must, as far in advance of movement as possible but no less than 48 hours before the desired movement, request that an inspector issue a certificate or limited permit. This provision ensures that persons desiring inspection services can obtain them before the intended movement date. A footnote (number 8) is added for informational purposes to indicate how to contact the inspectors for inspection or how to obtain additional information from offices of the Animal and Plant Health Inspection Service.



*Section 301.96–8 Attachment and Inspection of Regulated Articles*

Section 301.96–8 requires the certificate or limited permit issued for the movement of the regulated article to be attached to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill during the interstate movement. This provision is necessary for enforcement purposes.

*Section 301.96–9 Costs and Charges*

Section 301.96–9 explains the APHIS policy that services of an inspector that are needed to comply with the provisions of the regulations in subpart 301.96 are provided without cost during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays), but that we will not be responsible for any other costs or charges.

*Section 301.96–10 Treatments*

Section 301.96–10 sets forth a treatment schedule that qualifies soil for the issuance of a certificate as provided in § 301.93–5. Research has determined that this treatment would destroy the peach fruit fly.

The treatment schedule for soil in § 301.96–10 is as follows:

Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.96–2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

**Emergency Action**

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the peach fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The regulation affects the interstate movement of regulated articles from a portion of Orange County, California. Within the regulated area there are approximately 330 entities that may be affected, including retail outlets, wholesalers, a processor, a packing house, fruit stands, swap meets, mobile vendors, a farmers market, nurseries, and a commercial grower of cucumbers. Those entities affected comprise less than one half of one percent of the total of similar enterprises operating in the State of California. These are small entities; they sell regulated articles primarily for local intrastate, not interstate, movement. The effect on those few persons who do move regulated articles interstate is minimized by the availability of a treatment that in most cases will permit the interstate movement of regulated articles with very little additional cost. Also many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Peach fruit flies, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, 7 CFR part 301 is amended to read as follows:

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Peach Fruit Fly" to read as follows:

**Subpart—Peach Fruit Fly**

Sec.

301.96 Restrictions on interstate movement of regulated articles.
301.96–1 Definitions.
301.96–2 Regulated articles.
301.96–3 Quarantined areas.
301.96–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.96–5 Issuance and cancellation of certificates and limited permits.
301.96–6 Compliance agreement and cancellation.
301.96–7 Assembly and inspection of regulated articles.
301.96–8 Attachment and disposition of certificates and limited permits.
301.96–9 Costs and charges.
301.96–10 Treatments.

**Subpart—Peach Fruit Fly**

**§ 301.96 Restrictions on interstate movement of regulated articles.**

No person shall move interstate from any quarantined area any regulated

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article except in accordance with this subpart.[1]

**§ 301.96–1 Definitions.**

In this subpart the following definitions apply:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of peach fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to it.

*Infestation.* The presence of peach fruit fly or the existence of circumstances that make it reasonable to believe that the peach fruit fly is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.96–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (Move, Movement).* Shipped, offered for shipment, received for transportation, transported, carried, moved, or allowed to be moved by any means.

*Peach fruit fly.* The insect known as peach fruit fly (*Bactrocera zonatus* (Saunders)) in any stage of development.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.96–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.96–3(b) of this subpart.

*Regulated article.* Any article listed in § 301.96–2(a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.96–2(c) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

**§ 301.96–2 Regulated articles.**

The following are regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Apple, Crabapple (*Malus sylvestris*)
Avocado (*Persea americana*)
Bael (*Aegle marmelos*)
Balsam pear, Bitter cucumber (*Momordica charantia*)
Bell pepper (*Capsicum annuum*)
Ber, Chinese date, Jujube (*Zizyphus spp.*)
Bottle gourd, Calabash gourd (*Lagenaria siceraria*)
Cantaloupe, Honeydew, Casaba melon (*Cucumis melo*)
Chinese hibiscus, China rose, Rose-of-China (*Hibiscus rosa-sinensis*)
Citrus (*Citrus spp.*) (except smooth-skinned lemon of commerce that is cleaned and waxed)
Common guava (*Psidium guajava*)
Custard apple (*Annona reticulata*)
Custard apple, Sugar apple (*Annona squamosa*)
Date palm (*Phoenix dactylifera*)
Eggplant (*Solanum melongena*)
Fig (*Ficus carica*)
Grape (*Vitis vinifera*)
Ivy gourd (*Coccinea grandis*)
Kumquat (*Fortunella japonica*)
Long melon (*Cucumis utilissimus*)
Loquat (*Eriobotrya japonica*)
Ma-kok-nam (*Elaeocarpus madopetalus*)
Mahua (*Madhuca latifolia*)
Mango (*Mangifera indica*)
Okra (*Abelmoschus esculentus*)
Papaya (*Carica papaya*)
Peach, plum, cherry, nectarine, apricot, almond, cherry laurel (*Prunus spp.*)
Pear (*Pyrus communis*)
Persimmon (*Diospyros spp.*)
Phalso (*Grewia asiatica*)
Pomegranate (*Punica granatum*)
Quince (*Cydonia oblonga*)
Sand pear, Japanese pear (*Pyrus pyrifolia*)
Sapodilla (*Manilkara zapota*)
Sapote, Mamey colorado (*Pouteria sapota*)
Tabasco pepper (*Capsicum frutescens*)
Tomato (*Lycopersicon esculentum*)
Tropical almond (*Terminalia catappa*)
Walnut (*Juglans spp.*)
Watermelon (*Citrullus lanatus*)
Wild olive (*Putranjiva roxburghii*)
*Careya arborea*
*Eugenia spp.*
*Luffa spp.*

Fruits, nuts, vegetables, or berries that are canned, or dried, or frozen below −17.8 °C (0 °F) are not included as regulated articles, since the peach fruit fly could not survive under those conditions.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance not covered by paragraph (a) or (b) of this section, that presents a risk of spread of the peach fruit fly and an inspector notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

**§ 301.96–3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the peach fruit fly has been found by an inspector, in which the Administrator has reason to believe that the peach fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the peach fruit fly or its inseparability for quarantine enforcement purposes from localities in which the peach fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the peach fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a written notice of this temporary designation, to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The area described below is designated as a quarantined area:

**California**

*Orange County*

That portion of Orange County in the Fountain Valley area bounded by a line drawn as follows: Beginning at the point where Springdale Street intersects with State Highway 22; then easterly along this highway to its intersection with Garden Grove Boulevard; then easterly along this boulevard to its intersection with State Highway 22; then northeasterly along this highway to its intersection with Main Street; then southerly along this street to its intersection with State Highway 55; then southwesterly along this highway to its intersection with Newport Boulevard; then southwesterly along this boulevard to its intersection with 17th Street, then westerly along this street to its intersection with Superior Avenue; then southwesterly along this avenue to its intersection with State Highway 1; then northwesterly along this highway to its intersection with Golden West Street, then northeasterly and northerly along this street to its intersection with Slater Avenue; then westerly along this avenue to its intersection with Springdale Street; then northerly along this street to the point of beginning.

**§ 301.96–4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area[2] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.96–5 and 301.96–6 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by peach fruit fly (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area, and

(2) The point of origin of the regulated article is indicated on the waybill and the enclosed vehicle or the enclosure which contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of peach fruit fly; and,

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

**§ 301.96–5 Issuance and cancellation of certificates and limited permits.**

(a) An inspector[3] will issue a certificate for the interstate movement of a regulated article if the inspector determines that:

(1) (i) The regulated article has been treated under the direction of an inspector in accordance with § 301.96–10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from peach fruit flies; or

(iii) Based on inspection of the regulated article, that it is free of the peach fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by peach fruit fly; and

(3) The regulated article will be moved interstate in compliance with any additional emergency conditions the Administrator may impose under section 105 of the Plant Quarantine Act (7 U.S.C. 150dd) to prevent the spread of the peach fruit fly;[4] and

(4) The regulated article is eligible for unrestricted interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector[3] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the peach fruit fly because life stages of the peach fruit fly will be destroyed by the specified handling, utilization, or processing;

(2) The regulated article is to be moved interstate in compliance with any additional emergency conditions the Administrator may impose under section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd),[4] to prevent the spread of the peach fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits used for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when the inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision, in writing, within ten days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow the Administrator will grant or deny the appeal, in writing,

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

[3] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Administrator, c/o Domestic and Emergency Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides that the Secretary of Agriculture may, under certain conditions, seize, quarantine, treat, destroy, or apply other remedial measures to articles that the Administration has reason to believe are infested or infected by or contain plant pests.

[5] See footnote 3 to § 301.96–5(a).

[6] See footnote 4 to § 301.96–5(a)(3).

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stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.96–6 Compliance agreement and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement when an inspector determines that the person understands this subpart.[7]

(b) Any compliance agreement may be cancelled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart or with conditions imposed pursuant to this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.96–7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.96–5(c) of this subpart) who desires to move interstate a regulated article accompanied by a certificate or limited permit must notify an inspector,[8] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

[7] Compliance agreement forms are available without charge from the Administrator, c/o Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

[8] See footnote 3 to § 301.96–5(a).

**§ 301.96–8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article, attached to the regulated article itself if it is not in a container, or attached to the consignee's copy of the accompanying waybill: Provided however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate, limited permit, or waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

**§ 301.96–9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The United States Department of Agriculture will not be responsible for any other costs or charges.

**§ 301.96–10 Treatments.**

Treatment for soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, and berries listed in § 301.96–2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are acceptable.

Done in Washington, DC, this 21st day of November 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90–28016 Filed 11–28–90; 8:45 am]

BILLING CODE 3410–34–M

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## Agricultural Marketing Service

## 7 CFR Parts 907 and 908

**[FV–88–115 FR]**

## Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revised Nomination Procedures for Membership on the Navel and Valencia Orange Administrative Committees

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Agriculture (Department) is adopting as a final rule, with appropriate corrections, the provisions of an interim final rule which established revised nomination procedures for membership on the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of their respective marketing orders. An interim final rule published in the September 2, 1988, issue of the **Federal Register** (53 FR 34022) allowed the Department to conduct nominations for both committees using the interim nomination procedures described in that rule. A second interim final rule, which revised those procedures in order to clarify and improve this operation, was published in the November 30, 1989, issue of the **Federal Register** (54 FR 49261). This final rule adopts, with appropriate corrections, the interim final rule published on November 30, 1989.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administrative Branch, F&V, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small



entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders and approximately 4,070 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders were amended, effective September 2, 1988 (53 FR 34028), to change the committee's structure and the basis for industry representation on the committees. The amendments were intended to provide a more flexible framework for apportioning committee membership among segments of the industries.

A September 2, 1988, interim final rule (53 FR 34022) revised sections 907.102 and 908.102 of the marketing orders' rules and regulations to provide interim nomination procedures for membership on the committees and allow the Department to conduct initial nominations for both committees. These interim procedures were used to select a new Navel Orange Administrative Committee (NOAC) on November 8, 1988, and a new Valencia Orange Administrative Committee (VOAC) on March 7, 1989.

In addition, comments on this interim final rule were invited from interested persons until November 1, 1988. One comment was received from Mr. James A. Moody, counsel for Sequoia Orange Co., Inc.

A second interim final rule, which revised those procedures in order to clarify and improve nominations of the committee's members and, which discussed Mr. Moody's comment, was published in the November 30, 1989, issue of the **Federal Register** (54 FR 49261). The nomination procedures in that interim final were used to select a new VOAC on March 21, 1990, and a new NOAC by October 1, 1990. This final rule adopts that interim final rule, with appropriate corrections.

The amended orders and this final rule provide for nomination procedures involving three nominating entities. Nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year in which nominations are made. Nominating entity 2 groups are composed of individual handlers or groups of handlers not affiliated with nominating entity 1 who declare themselves to be nominating entities. These groups or coalitions may be made up solely of cooperative handlers, a combination of cooperative and independent handlers, or solely independent handlers. Nominating entity 3 is comprised of growers not affiliated with handlers in nominating entities 1 or 2.

The September 2, 1988, interim final rule revised §§ 907.102(a)(1) and 908.102(a)(1) of the marketing orders' rules and regulations to state that the Secretary will notify all handlers of their percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made.

The November 30, 1989, interim final rule clarified this so that only individual handlers not affiliated with nominating entity 1 will be notified of their percentages of total orange dispositions. Handlers affiliated with nominating entity 1 do not need to know their individual percentage of dispositions since they are already committed to nominations through their cooperative marketing organization. The cooperative marketing organization which qualifies as nominating entity 1 will be notified of the total percentage of dispositions of all of its handlers at the same time that nominating entities 2 and 3 are notified of dispositions.

In addition, §§ 907.102(a)(1) and 908.102(a)(1) were revised to provide that designated employees of the committees will inform all handlers not affiliated with nominating entity 1 of their percentage of total orange dispositions in the current fiscal (navel oranges) or marketing (Valencia oranges) year and the minimum percentages required to be allocated grower and/or handler members on the committees. The September 2, 1988, interim final rule had provided that the Secretary would inform all handlers of the percentage of total dispositions. However, this method proved inefficient and time consuming. Designated employees of the committees have this information readily available. Therefore, designated employees of the committees, rather than the Secretary, shall inform handlers not affiliated with nominating entity 1 of their percentages of total dispositions.

Sections 907.102(a)(1) and 908.102(a)(1) were further revised in the November 30, 1989, interim final rule in order to clarify to whom the notice of coalition formation was to be sent. This revision implied but did not specifically require nominating entity 2 groups to notify the committees of their formation. However, the Secretary needs such information in order to notify the nominating entities of their percents of total disposition and the number of handler and grower members they are allowed. Therefore, this final rule changes the November 30, 1989, interim final rule to provide that nominating entity 2 groups shall notify the Secretary of their formation.

In addition, the November 30, 1989, interim final rule provided that each handler of record be provided with a list of the names and addresses of all navel or Valencia orange handlers. This should be changed to reflect that only navel or Valencia orange handlers not affiliated with nominating entity 1 be provided with a list of the names and addresses of all navel or Valencia orange handlers not affiliated with nominating entity 1. Handlers affiliated with nominating entity 1 do not need to know the names and addresses of, or be known to, other navel or Valencia orange handlers since they are already committed to nominations through their cooperative marketing organization. Therefore, this final rule changes the November 30, 1989, interim final rule to provide that navel or Valencia orange handlers of record not affiliated with nominating entity 1 be provided with a list of the names and addresses of all navel or Valencia orange handlers not affiliated with nominating entity 1.

The November 30, 1989, interim final rule revised §§ 907.102(a)(1) and 908.102(a)(1) to require employees of each handler or individual designated by the handler as its representative in a nominating entity 2 group to submit a signed statement indicating the handler's willingness to participate in the nominating entity for the purpose of nominating members to the committees. This information is necessary to insure that the handler in fact belongs to that nominating entity 2 group.

The interim final rule also revised §§ 907.102(a)(1) and 908.102(a)(1) to require designated employees of the committees to submit grower lists for all nominating entities to the Department, upon request, even if the entity nominates its slate of candidates through action of its board of directors. This is necessary to insure that no grower votes more than once in the nomination process.

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The September 2, 1988, interim final rule required nominating entity 2 handlers to submit grower lists to the Department. During the nominations, however, the Department encountered difficulty in receiving timely responses from nominating entity 2 handlers. Therefore, the November 30, 1989, interim final rule provided that, in the future, the Department would obtain grower lists for nominating entity 2 handlers from designated employees of the committees. This helps expedite the nomination process. In the event that the committees' employees are not able to provide grower lists in a timely manner, individual handlers will then be required to submit their grower lists to the Department.

The September 2, 1988, interim final rule required the Department to hold candidate selection meetings for nominating entity 3 growers in all districts of the production area. A slate of grower candidates would be developed at such meetings. Provision was also made for growers to propose candidates for nomination without attending the candidate selection meetings by submitting candidates names on an approved form. In practice, the Department found that few growers attended the recent navel and Valencia orange nomination meetings. Instead, growers, for the most part, chose to propose candidates for nomination by submitting nominations on the approved forms without attending the candidate selection meetings. Therefore, under the November 30, 1989, interim final rule, candidate selection meetings are no longer required for nominating entity 3 growers. Growers propose candidates by submitting the names on an approved form to the AMS's California marketing field office. Such forms must be signed by at least 10 eligible growers. Thus, paragraphs (3) of §§ 907.102(a) and 908.102(a) were revised accordingly.

The November 30, 1989, interim final rule further revised §§ 907.102(a) and 908.102(a). The September 2, 1988, interim final rule required growers of nominating entity 3 to submit the names of proposed candidates on a form approved by the Secretary to the AMS California marketing field office. Such submission, if mailed, had to be postmarked at least 10 days prior to a date established by the Secretary and, if hand delivered, had to be received at least five days prior to such date. In practice, in the nomination process, the Department found such time frames to be too restrictive and lacking in flexibility. Therefore, the forms, whether posted or hand delivered, now are required to be received prior to or on a date established by the Secretary.

The interim final rule published in the November 30, 1989, issue of the Federal Register (54 FR 49281) requested comments from interested persons until January 2, 1990. One comment was received from Mr. James A. Moody and is discussed herein. Most of the issues raised in this comment were also raised in his comment on the September 2, 1988, interim final rule.

In his comments, Mr. Moody reiterated an issue in his previous comment that small growers and handlers suffer a severe disadvantage under the interim procedures because they are not notified of the market share of Sunkist Growers, Inc. (Sunkist), the market share for each handler, and the names and addresses of growers eligible to vote. He further alleges that Sunkist knows its own and other handlers' percentages of total disposition (market shares), as do members of the committees.

Sections 907.73(d) and 908.73(d) of the navel and Valencia orange marketing orders, respectively, prohibit the release of confidential or financial information submitted by a handler which include individual navel or Valencia orange handler's total dispositions. These sections state that all reports and information submitted by handlers shall be received by and at all times be in the custody of one or more designated employees of the committees. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received. Therefore, the market share or percentage of total dispositions of an individual handler may not be released to other handlers.

It is true that Sunkist should know the market share of each handler affiliated with Sunkist, as it is to be expected that a cooperative marketing organization would know the market share of those handlers whom it represents. Sunkist would not know the market share of handlers not affiliated with the organization. The nominating procedures provide that all nominating entities are notified of their percentage of total dispositions of navel or Valencia oranges at the same time.

Mr. Moody's comments state that members of the committees have been provided with individual navel or Valencia orange handlers' market share. However, current procedures provide, in accordance with §§ 907.73(d) and 908.73(d), that committee members not receive this information in their capacity as committee members. Members of the committees are provided with handlers' market shares in the aggregate. In the course of the nominating procedures, navel and Valencia orange handlers are advised only of their own percentages of total navel or Valencia orange dispositions, and nominating entity 2, (which was Sunkist during both of the most recent committee nominations) was advised of its aggregate market share, and not the individual market share of its affiliated handlers. The market share, or percentages of total navel or Valencia orange dispositions, for any handler have not been disclosed to any other individual handler or to Sunkist.

Mr. Moody also states that small growers and handlers suffer a severe disadvantage because they are not notified of names and addresses of growers eligible to vote. As stated in the November 30, 1989, interim final rule, there is no demonstrated need for growers and handlers to be notified of the names and addresses of growers. Growers do not form coalitions under the nomination procedures, handlers do. In addition, within a voting coalition, handlers are aware of the names and addresses of the growers who deliver fruit to them.

In his earlier comment, Mr. Moody stated that the AMS's consideration of the economic impact of the September 2, 1988, interim final rule was deficient as the Administrator of the AMS did not "certify" that the interim final rules would not have a substantial economic impact on small entities. In addition, Mr. Moody now states that Sunkist, which has over 50 percent of the market share in navel oranges and 50 handlers, is not a small entity.

The entities regulated pursuant to the marketing orders are handlers of oranges. The majority of the approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges are small entities as that term is defined by the Small Business Administration. The Department and the AMS have adhered to the requirements of the navel and Valencia orange marketing orders, the Act, the RFA, the Paperwork Reduction Act, the Administrative Procedure Act, and the Department's Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders in this rulemaking proceeding. In both the September 2, 1988, and November 30, 1989, interim final rules, the Administrator of the AMS determined that issuance of the interim final rules will not have a significant economic impact on a substantial number of small entities. In addition, in answer to Mr. Moody's comment regarding Sunkist, Sunkist is a cooperative marketing organization, not a handler.



In the third issue of his comment, Mr. Moody stated that Sunkist enjoyed simplified nominating procedures. The recent amendment of the navel and Valencia orange marketing orders changed the provisions of the marketing orders concerning the structure of the committees. These amendments were approved by navel and Valencia orange producers in a referendum and the Final Order Amending the Orders was published in the September 2, 1988, issue of the Federal Register (53 FR 34026). The amendments provided for three nominating entities of which nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year. Sunkist was the cooperative marketing organization which disposed of the largest percentage of the total volume of navel and Valencia oranges and qualified as nominating entity 1 for nomination purposes for both committees. As a cooperative marketing organization, Sunkist may decide to nominate members through its Board of Directors, an option open to any cooperative marketing organization in nominating entity 1 and 2. Therefore, the simplification of nominating procedures rises from the organization and nature of the cooperative marketing organization, and not from the identity of that organization.

For the reasons stated above, Mr. Moody's exceptions to the interim final rule are denied.

After consideration of all available information, including the amendatory proceedings relative to these orders, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the additional information collection provisions that are required by this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581-0116 (navel oranges) and 0581-0121 (Valencia oranges). It is estimated that these changes will require 0.083 of an hour response time per handler every two years.

List of Subjects

*7 CFR Part 907*

Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

*7 CFR Part 908*

Marketing agreements and orders, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows: (These sections will appear in the Code of Federal Regulations.)

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Subpart—Rules and Regulations

2. The interim final rule amending the provisions of § 907.102 which was published in the November 30, 1989, issue of the Federal Register (54 FR 49263) is adopted as a final rule except that paragraph (a)(1) of § 907.102 is revised to read as follows:

**§ 907.102 Nomination procedures.**

(a) * * *

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of navel oranges disposed by all handlers in all outlets during the marketing year in which nominations are made: *Provided*, That concurrent with such notification, such employees shall provide each handler of record not affiliated with nominating entity 1 with a list of the names and addresses of all Valencia orange handlers not affiliated with nominating entity 1. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities to the Secretary of their formation: *Provided*, That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: *Provided further*, That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

* * * * *

## PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Subpart—Rules and Regulations

3. The interim final rule amending the provisions of § 908.102 which was published in the November 30, 1989, issue of the Federal Register (54 FR 49264) is adopted as a final rule except that paragraph (a)(1) of § 908.102 is revised to read as follows:

**§ 908.102 Nomination procedures.**

(a) * * *

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of navel oranges disposed by all handlers in all outlets during the marketing year in which nominations are made: *Provided*, That concurrent with such notification, such employees shall provide each handler of record not affiliated with nominating entity 1 with a list of the names and addresses of all Valencia orange handlers not affiliated with nominating entity 1. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities to the Secretary of their formation: *Provided*, That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: *Provided further*, That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

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Dated: November 23, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-27972 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 971**

**[Docket No. FV-90-210]**

## South Texas Lettuce; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 971 for the 1990-91 fiscal period. Authorization of this budget will allow the South Texas Lettuce Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program will be derived from assessments on handlers.

**EFFECTIVE DATE:** August 1, 1990, through July 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 144 and Marketing Order No. 971 [7 CFR part 971], regulating the handling of lettuce grown in the Lower Rio Grande Valley of South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers and 20 producers of South Texas lettuce covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990-91 fiscal year was prepared by the South Texas Lettuce Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of lettuce. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

Budget and production estimates are lower this season than a year ago because a freeze damaged the South Texas lettuce crop during the 1989-90 season. As a result, some producers have cut back on production for the 1990-91 season to avoid losses similar to last year.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of lettuce. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on October 4, 1990, and unanimously recommended a 1990-91 budget of $25,864. Last season's budget was $31,531.49. Major decreases in expenses include staff salaries, rent, equipment, travel, and marketing development and production research projects.

The committee also unanimously recommended an assessment rate of $0.05 per carton, the same rate as last season's. This would yield $25,800 in assessment revenue, based on anticipated shipments of 516,000 cartons of lettuce. This amount, when added to $64 from the reserve fund, would be adequate to cover budgeted expenses.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on November 1, 1990 (55 FR 46072). That document contained a proposal to add § 971.230 to authorize expenses for the committee, and provided that interested persons could file comments through November 13, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990-91 fiscal period began in August, and the marketing order requires that the rate of assessment apply to all assessable lettuce handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

**List of Subjects in 7 CFR Part 971**

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 971 is amended as follows:

**PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS**

1. The authority citation for 7 CFR part 971 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 971.230 is added to read as follows:

**Note:** This section will not be published in the Code of Federal Regulations.

**§ 971.230 Expenses and assessment rate.**

Expenses of $25,864 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of lettuce is established for the fiscal period ending July 31, 1991.



Unexpended funds may be carried over as a reserve.

Dated: November 23, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-27971 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 985**

**[FV-89-107 FR]**

## Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for "Class 1" Scotch and "Class 3" Native Spearmint Oil for the 1990-91 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which increased the quantity of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1990-91 marketing year which began on June 1, 1990. This action is taken under the marketing order for spearmint oil produced in the Far West to avoid extreme fluctuations in supplies and prices and, thus, help maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. Young, Marketing Specialist, F&V, AMS, USDA, room 2524-S, P.O. Box 96456, Washington, DC, 20090-6456; telephone: (202) 475-5992.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 [7 CFR part 985], as amended, regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agricultural (Department) in accordance with Departmental regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil annually.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" oil (Scotch) allotment base and 136 producers hold "Class 3" oil (Native) allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The initial salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1990-91 marketing year were unanimously recommended by the Committee at its September 20, 1989, meeting. The committee recommended salable quantities of 678,800 pounds and 806,466 pounds for Scotch and Native oils, respectively, and allotment percentages of 40 percent and 43 percent for Scotch and Native oils, respectively. The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil. A proposed rule incorporating the Committee's recommendations was published in the November 14, 1989, issue of the **Federal Register** (54 FR 47386). Written comments were invited from interested persons until December 14, 1989. One comment was received in the form of a recommendation from the Committee.

This recommendation from the Committee was to increase the salable quantity for Scotch oil from 678,800 to 882,440 pounds and the allotment percentage from 40 to 52 percent. On January 8, 1990, the Committee also made a recommendation to the Secretary to increase the salable quantity for Native oil from 806,466 to 937,789 pounds and the allotment percentage from 43 percent to 50 percent.

Accordingly, based upon analysis of available information, these recommendations were adopted in an interim final rule in the Federal Register on March 9, 1990 (55 FR 8905). One comment was received from the Committee to increase, again, the salable quantity for Native oil from 937,789 to 1,125,347 pounds and the allotment percentage from 50 to 60 percent. Upon analysis of available information, this revision was then reflected in another interim final rule published in the **Federal Register** on May 22, 1990 (55 FR 21006). No comments were received. Therefore, on July 25, 1990, a final rule was published in the **Federal Register** (55 FR 30194). This established the salable quantities for Scotch and Native oils at 882,440 and 1,125,347 pounds, respectively, and established allotment percentages at 52 and 60 percent for Scotch and Native oils, respectively.

At its July 19, 1990, teleconference meeting, the Committee unanimously voted to recommend that the Secretary make more Scotch and Native spearmint oils available to the market by further increasing the 1990-91 salable quantities and allotment percentages. The Committee reported that the last two and a half years have shown record demand levels for Far West Scotch and Native spearmint oils. This began with the Midwest drought in 1988 and has continued with what has been reported as a marked increase in consumption of spearmint products both domestically and abroad. The result of this increase in demand has been the depletion of Scotch oil reserves, a large reduction of Native oil reserves, and an effort on the

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part of producers to produce enough oil to meet this increased demand. The spearmint oil industry is experiencing near record production levels, and input from all handlers indicates that there will again be a record year of sales and that the need for the oil is immediate.

As a result, the Department issued an interim final rule which was published in the **Federal Register** on September 6, 1990 (55 FR 36605) which increased the Scotch spearmint oil allotment percentage from 52 to 90 percent, resulting in an increase in the salable quantity from 882,440 to 1,526,848 pounds. However, the Committee stated that most producers will not produce 90 percent of their individual base. This action, then, made available only 1,100,000 pounds, the estimated trade demand, of Scotch oil.

The following table summarizes the computations used in arriving at the Committee's recommendation for Scotch oil which was the basis for the September 6 interim final rule.

| | Recommendation November 28, 1989 | Recommendation July 19, 1990 |
|---|---|---|
| (1) Carryin | 0 | 20,000 |
| (2) Total supply available | 882,440 | [1] 1,100,000 |
| (3) Desirable carryout | 0 | 0 |
| (4) Total allotment base for Scotch oil | 1,697,000 | 1,696,498 |
| (5) Allotment percentage | 52 | 90 |
| (6) Salable quantity | 882,440 | 1,526,848 |

[1] This figure is the estimated trade demand and represents the anticipated production of Scotch oil.

The September 6 interim final rule also increased the Native spearmint oil allotment percentage from 60 to 66 percent, resulting in an increase in the salable quantity from 1,125,347 to 1,237,872 pounds. By increasing the allotment percentage to 68 percent, this made available a salable quantity of 1,125,872 pounds of Native oil.

The following table summarizes the computations used in arriving at the Committee's recommendation for Native oil which was the basis for the September 6 interim final rule.

| | Recommendation March 7, 1990 | Recommendation July 19, 1990 |
|---|---|---|
| (1) Carryin | 20,000 | 48,176 |
| (2) Total supply available | 1,145,347 | 1,296,048 |
| (3) Desirable carryout | 0 | 0 |
| (4) Total allotment base for Native oil | 1,875,577 | 1,875,563 |
| (5) Allotment percentage | 60 | 66 |
| (6) Salable quantity | 1,125,347 | 1,237,872 |

The interim final rule was issued on August 30, 1990, and published in the **Federal Register** on September 6 (55 FR 36605). That rule provided that interested persons could file written comments through October 9. No comments were received. Accordingly, salable quantities and allotment percentages for Scotch and Native spearmint oils as established by that interim final rule are adopted as a final rule without change.

Thus, based upon analysis of available information, the Department has determined that allotment percentages of 90 percent and 66 percent are adopted without change for Scotch and Native spearmint oils, respectively, for the 1990–91 marketing year. These increased percentages provide salable quantities of 1,526,848 pounds and 1,237,872 pounds of Scotch and Native spearmint oils, respectively.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the prior interim and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1990–91 marketing year, the Committee's recommendation and other available information, it is found that to revise § 985.210 (55 FR 30194) so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils as set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts without change the provisions of the interim final rule which increased the quantities of Scotch and Native oils that may be marketed; (2) handlers need no additional time to comply with this action; and (3) no comments were received concerning the establishment of a salable quantity and allotment percentage for either Scotch or Native spearmint oils in the September 6, 1990, interim final rule.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule revising paragraphs (a) and (b) of § 985.210, which was published in 55 FR 36607 on September 6, 1990, is adopted as a final rule without change.

Dated: November 23, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-27973 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 4

[T.D. 90-89]

### Coastwise Transportation of Certain Articles by Vessels of the Marshall Islands

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding the Republic of the Marshall Islands to the list of nations whose vessels may transport empty cargo vans, empty lift vans, and empty shipping tanks between points embraced within the coastwise laws of the United States. Based upon evidence supplied by the Department of State that the Marshall Islands places no restrictions on transportation of certain articles by vessels of the U.S., this amendment recognizes U.S. granting of reciprocal privileges.

**DATES:** The reciprocal privileges for vessels registered in the Republic of the Marshall Islands became effective on June 15, 1990. This amendment is effective November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Whalen, Carrier Rulings Branch (202–566–5706).



**SUPPLEMENTARY INFORMATION:**

**Background**

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, states that, upon a finding by the Secretary of the Treasury (pursuant to information obtained and furnished by the Secretary of State) that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On June 15, 1990, the Department of State advised the Chief, Carrier Rulings Branch, Customs Service Headquarters, that the Republic of the Marshall Islands places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in that country.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

**Finding**

On the basis of the information received from the Department of State, it has been found that the Republic of the Marshall Islands places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in the Republic of the Marshall Islands as of June 15, 1990.

**Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12291**

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, and accordingly, a regulatory impact analysis is not required.

**Drafting Information**

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

**Amendment to the Regulations**

To reflect the reciprocal privileges granted to vessels registered in the Republic of the Marshall Islands, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for part 4 is amended in part by revising the authority citation for § 4.93 to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

§ 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * *

**§ 4.93 [Amended]**

2. Section 4.93(b)(1) is amended by adding "Marshall Islands Republic of the in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Dated: November 15, 1990.

**Kathryn C. Peterson,**

*Chief, Regulations and Disclosure Law Branch.*

[FR Doc. 90-27642 Filed 11-28-90; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF STATE

### Bureau of Finance and Management Policy

### 22 CFR Part 139

[Public Notice 1295]

### Collection of Debts by Federal Tax Refund Offset

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State amends its regulations by adding part 139 to establish a procedure whereby delinquent debts owed to the Department of State will be referred to the Internal Revenue Service for collection by offset against Federal Income Tax refunds. These regulations are being issued pursuant to 31 U.S.C. 3720A, which authorizes Federal agencies to notify the Internal Revenue Service of a past-due legally enforceable debt for the purpose of offsetting the debtor's tax refund. These regulations affect taxpayers who made an overpayment of taxes and who owe a past-due legally enforceable debt to the Department of State resulting from erroneous benefit or loans made under statutes administered by the Department of State. These regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1988, and on or before January 10, 1994.

**EFFECTIVE DATE:** These regulations are effective November 29, 1990 and expire January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Bruce Crippin, Department of State, P.O. Box 9467, Rosslyn Station, Arlington, VA 22209, (703) 875–6755.

**SUPPLEMENTARY INFORMATION:** Title 31 U.S.C. 3720A authorizes the Internal Revenue Service to reduce a refund of a taxpayer's overpayment of tax by the amount of any legally enforceable debt which is owed to a Federal Agency and is at least three months overdue. Section 3720A also requires the agency to give taxpayer-debtors at least 60 days notice of the agency's intention to use the provisions of this section. Under this authority, the Department of State may refer to the Internal Revenue Service for collection by tax refund offset from refunds otherwise payable, past-due legally enforceable debts owed to the Department of State if: (i) The debts are eligible for offset pursuant to 31 U.S.C. 3720A, section 6402(d) of the Internal Revenue Code, 26 CFR 301.6402T, and the agreement between the Department of State, the Internal Revenue Service,

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and the Financial Management Service, and (ii) the Department of State provides the information required by the agreement for each debt. This temporary rule and the agreement set forth terms under which the Department of State is identified by the Commissioner of Internal Revenue as eligible to participate in the tax refund offset program for each calendar year.

In order to participate in the Federal Tax Refund Offset Program in calendar year 1990, the Department of State must promulgate regulations that are effective upon publication.

The Department of State has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

**List of Subjects in 22 CFR Part 139**

Administrative practice and procedure, income tax.

For the reasons set out in the preamble, title 22, chapter I, subchapter N of the Code of Federal Regulations, is amended by adding thereto a new part 139 to read as follows (This regulation will expire January 10, 1994):

## PART 139—COLLECTION OF DEBTS BY FEDERAL TAX REFUND OFFSET

Sec.

139.1 Notification to Internal Revenue Service.
139.2 Past-due legally enforceable debt.
139.3 Reasonable attempt to notify.
139.4 Notification to debtor.
139.5 Consideration of evidence.
139.6 Change in notification to Internal Revenue Service.
139.7 Sunset provision.

Authority: 22 U.S.C. 2658; 31 U.S.C. 3720A.

### 139.1 Notification to Internal Revenue Service.

Upon entering into an agreement with the Internal Revenue Service and the Financial Management Service with regard to its participation in the tax refund offset program the Department of State may notify the Internal Revenue Service, pursuant to the terms of such agreement of past-due legally enforceable debts owed to the Department of State that are to be collected by tax refund offset. The Department of State's notification to the Internal Revenue Service will be as prescribed by the Internal Revenue Service in regard to information included and format, and will be made by such dates as prescribed by the Internal Revenue Service. The Department of State will provide the Internal Revenue Service with a toll-free or collect telephone number which the Internal Revenue Service may furnish to individuals whose refunds have been offset for use in obtaining information from the Department of State concerning the offset.

### 139.2 Past-due legally enforceable debt.

A past-due legally enforceable debt which may be referred to the Internal Revenue Service is a debt:

(a) Which resulted from erroneous benefit or loan made under statutes administered by the Department of State;

(b) Which is an obligation of a debtor who is a natural person;

(c) Which except in the case of a judgment debt, has been delinquent at least three months but not more than ten years at the time the offset is made;

(d) Which is at least $25.00;

(e) With respect to which either:

(1) The Department of State's records do not contain evidence that the person owing the debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; or

(2) The Department of State can clearly establish at the time of the referral that the automatic stay under section 362 of the Bankruptcy Code has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding;

(f) Which cannot currently be collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(g) Which is not eligible for administrative offset under 31 U.S.C. 3716(a) by the Department of State against amounts payable to the debtor by the Department of State;

(h) With respect to which the Department of State has notified, or has made a reasonable attempt to notify, the individual that the debt is past due, and that unless the debtor repays the debt within 60 days, will be referred to the Internal Revenue Service for offset against any overpayment of tax; and

(i) With respect to which the Department of State has given the debtor at least 60 days from the date of the notification required in paragraph (h) of this section to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence, if any, presented by such individual, and has determined that an amount of such debt is past due and legally enforceable.

### 139.3 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor the Department of State must have used a mailing address for the debtor obtained from the Internal Revenue Service pursuant to section 6103 (m)(2) or (m)(4) of the Internal Revenue Code within a period of one year preceding the attempt to notify the debtor, whether or not the Department of State has used any other address maintained by the Department of State for the debtor.

### 139.4 Notification to debtor.

The notification provided by the Department of State to the debtor will inform the debtor how he or she may present evidence to the Department of State that all or part of the debt is not past due or legally enforceable.

### 139.5 Consideration of evidence.

Evidence submitted by the debtor will be considered only by officials or employees of the Department of State and a determination that an amount of such debt is past-due and legally enforceable will be made only by such officials or employees.

### 139.6 Change in notification to Internal Revenue Service.

If, after submitting to the Internal Revenue Service notification of liability for a debt, the Department of State:

(a) Determines that an error has been made with respect to the information contained in the notification;

(b) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to the Internal Revenue Service for offset, or

(c) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged, the Department of State will promptly notify the Internal Revenue Service. However, the Department of State will make no notification to the Internal Revenue Service to increase the amount of a debt owed by a debtor named in the Department of State's original notification to the Internal Revenue Service. If the amount of a debt is reduced after referral by the Department of State and offset by the Internal Revenue Service, the Department of State will refund to the debtor any excess amount and will promptly notify the Internal Revenue Service of any refund made by the Department of State.

### 139.7 Sunset provision.

This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1988, and on or before January 10, 1994.

Dated: January 12, 1990.

**Jill E. Kent,**

*Chief Financial Officer.*

[FR Doc. 90-27864 Filed 11-28-90; 8:45 am]
BILLING CODE 4710-27-M



## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CCGD7-90-102]**

## Safety Zone Regulations: Charleston Harbor, Charleston, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a safety zone for an annual fireworks display to be held December 1, 1990. The fireworks will be discharged from the new city park adjacent to the James Island Yacht Club at Lat. 32–45.3N, Long. 79–55.1W. The safety zone will extend approximately 1000 feet offshore from the launch site. The zone is needed to protect spectators and vessels from hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, South Carolina.

**EFFECTIVE DATES:** This regulation becomes effective at 5:45 p.m. EST, December 1, 1990. It terminates at the conclusion of the event, approximately 7 p.m. EST, December 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** LT Steven J. Boyle, Port Operations Officer, U.S. Coast Guard Marine Safety Office, 196 Tradd Street, Charleston, S.C. 29401–1899, (803) 724–7689.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to the potential hazard to any spectators and vessels in the area of the event.

*Drafting Information*

The drafters of this notice are LT Steven J. Boyle, project officer, U.S. Coast Guard Marine Safety Office, Charleston, SC, and LT Genelle Tanos, project attorney, Seventh Coast Guard District Legal Office.

*Discussion of Regulation*

The circumstances requiring this regulation will occur on December 1, 1990 when the organizers of the fireworks display will sponsor this annual event as part of the celebration of Christmas. A safety zone is needed to prevent damage to vessels or injury to personnel from hazards associated with a fireworks display. The safety zone will be box shaped and extend approximately 1000 feet from the discharge area of the fireworks (Lat. 32–45.3N, Long. 79–55.1W). The safety zone will extend west 1000 feet along the shore to Lat. 32–45.3N, Long. 79–55.3W. It will then extend north into the harbor to Lat. 32–45.5N, Long. 79–55.3W, thence east to Lat. 32–45.5N, Long. 79–54.9W, and thence south back to shore at Lat. 32–45.3N, Long. 79–54.9W. The safety zone will be in effect from 5:45 p.m. EST, December 1, 1990, until the end of the event, approximately 7:00 p.m. EST, December 1, 1990. Coast Guard vessels will patrol and enforce the safety zone.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

*Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rule making does not have sufficient FEDERALISM implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Vessels, Waterways.

*Regulation*

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T07102 is added to read as follows:

### § 165.T07102 Safety Zone: Establishment of Temporary Safety Zone, Charleston Harbor, Charleston, South Carolina

(a) *Location.* The following area is a safety zone: An area extending at least 1000 feet from the launch area of the fireworks (Lat. 32–45.3N, Long. 79–55.1W). The safety zone will extend west along the shore to Lat. 32–45.3N, Long. 79–55.3W. It will then extend north into the harbor to Lat. 32–45.5N, Long. 79–55.3W, thence east to Lat. 32–45.5N, Long. 79–54.9W, and thence south to shore at Lat. 32–45.3N, Long. 79–54.9W.

(b) *Effective Date.* This regulation becomes effective on December 1, 1990, at 5:45 p.m. EST. It terminates on December 1, 1990, at the conclusion of the event, approximately 7 p.m. EST.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, South Carolina.

Dated: November 9, 1990.

**R.L. Storch, Jr.,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston, SC.*

[FR Doc. 90-28062 Filed 11-28-90; 8:45 am]
BILLING CODE 4910-14-M

### 33 CFR Part 165

**[COTP Tampa, FL. Regulation 07-90-102]**

## Safety Zone Regulations; Old Tampa Bay, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The U.S. Coast Guard has designated the area with a 200 yard radius centered on the main span of the Howard Franklin Bridge, Old Tampa Bay, Florida as a slow minimum wake zone. Construction of the new span to the Howard Franklin Bridge has placed construction personnel and equipment in and around the navigation channel thus necessitating this regulation.

**EFFECTIVE DATE:** This regulation becomes effective on 1 November 1990. It terminates on 28 February 1991 or when construction is complete whichever is earlier.

**FOR FURTHER INFORMATION CONTACT:** Lt. P.J. MacDonald, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to prevent damage to construction equipment and transiting vessels and to prevent injury to construction personnel.

*Drafting Information*

The drafters of this regulation are Lt. P.J. Mac Donald, project officer for the

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Captain of the Port and Lt. G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

*Discussion of Regulation*

This regulation is necessary due to the construction of a new span to the Howard Franklin Bridge. Construction equipment and workers will be in around the navigation channel at the main bridge span between the hours of 6 a.m. and 7:30 p.m. seven days a week until the project is complete. Concern that vessels transiting the area may damage construction equipment or injure personnel or be damaged themselves makes immediate action necessary.

*Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule making does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

*Economic Assessment and Certification*

The regulation should have no economic impact because traffic is not being stopped or diverted.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

*Regulation*

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T07–90–103 is added to read as follows:

**§ 165.T07–90–103 Slow Minimum Zone: Old Tampa Bay, Florida.**

(a) *Location:* The following is a slow minimum wake zone: The area with a 200 yard radius centered on the main span of the Howard Franklin Bridge in Old Tampa Bay, Florida.

(b) *Effective date:* This regulation becomes effective on 1 November 1990. It terminates on 28 February 1991 or when construction is complete whichever is earlier.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part: Vessels transiting Old Tampa Bay are required to proceed at a slow minimum wake speed while within the area within a 200 yard radius centered on the main span of the Howard Franklin Bridge.

Dated: November 1, 1990.

M.J. Schiro,

*Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.*

[FR Doc. 90-28027 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 1**

RIN 2900–AE34

### Department of Veterans Affairs Official Seal and Distinguishing Flag

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations specifying the description and authorized use of its official seal and distinguishing flag. These amendments describe how the VA Official Seal and Distinguishing Flag are used and displayed.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Priscilla B. Carey, Director, Office of Administration (03), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–2672).

**SUPPLEMENTARY INFORMATION:** On March 15, 1989, the Veterans Administration became an Executive Department pursuant to the Department of Veterans Affairs Act, Pub. L. 100–527 (38 U.S.C. 201 Note). The VA official seal shall be noticed judicially (38 U.S.C. 202). The Secretary is adopting a new Department seal, which shall also be displayed on the Department's distinguishing flag and is amending 38 CFR 1.9 to describe the seal and flag, and provide for their use and display.

VA finds that good cause exists for making these regulations final without previous publication of a notice of proposed rulemaking. The changes contained in these regulations are statements of policy or rules of VA procedure or practice. Public participation in this rulemaking is therefore unnecessary (5 U.S.C. 553(b)(A), (B) and 38 CFR 1.12).

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2); the changes are therefore not subject to the requirements of that Act. Nevertheless, these amendments concern primarily internal VA matters and will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulations do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs and prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic or export markets.

**List of Subjects in 38 CFR part 1**

Administrative practice and procedure, Flags, Seals and insignia.

Approved: November 6, 1990.

Edward J. Derwinski,

*Secretary of Veterans Affairs.*

38 CFR part 1, General Provisions is amended to read as follows:

**PART 1—[AMENDED]**

1. The undesignation center heading preceding § 1.9 is revised to read as follows: "Department of Veterans Affairs Official Seal and Distinguishing Flag".

2. § 1.9 is revised to read as follows:

**§ 1.9 Description, use, and display of VA Seal and Flag.**

(a) *General.* This section describes the official seal and distinguishing flag of the of the Department of Veterans Affairs, and prescribes the rules for their custody and use.

(b) *Definitions.*

(1) *VA* means all organizational units of the Department of Veterans Affairs.

(2) *Embossed seal* means an image of the official seal made on paper or other medium by using an embosser with a negative and positive die to create a raised impression.

(3) *Official seal* means the original(s) of the VA seal showing the exact form, content, and colors thereof.

(4) *Replica* means a copy of the official seal displaying the identical form, content, and colors thereof.

(5) *Reproduction* means a copy of the official seal displaying the identical form and content, reproduced in only one color.

(6) *Secretary* means the Secretary of Veterans Affairs.

(7) *Deputy Secretary* means the Deputy Secretary of Veterans Affairs.



(c) *Custody of official seal and distinguishing flags.* The Secretary or designee shall:

(1) Have custody of:

(i) The official seal and prototypes thereof, and masters, molds, dies, and other means of producing replicas, reproductions, and embossing seals and

(ii) Production, inventory, and loan records relating to items specified in paragraph (c)(1)(i) of this section, and

(2) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.

(d) *Official Seal.*

(1) Description of official seal. The Department of Veterans Affairs prescribes as its official seal, of which judicial notice shall be taken pursuant to 38 U.S.C. 202, the imprint illustrated below:




(i) The official seal includes an American eagle clutching a cord in its talons. The cord binds a 13-star U.S. flag and a 50-star U.S. flag. In the field over the eagle is a pentagon formation of stars, with one point down. The words Department of Veterans Affairs and United States of America surround the eagle, stars, and flags. A rope motif makes up the outermost ring of the seal.

(ii) The eagle represents the eternal vigilance of all our nation's veterans. The stars represent the five branches of military service. The crossed flags represent our nation's history. The gold cord that binds the two flags, which is shown clutched in the eagle's talons is symbolic of those who have fallen in the defense of liberty. Each of the various individual items placed together in the seal is a salute to the past, present, and future.

(iii) The colors used in the configuration are gold, brown, blue, white, silver, yellow, black, and red.

(iv) The colors are derived from the American flag and from nature. By invoking this symbolism, the color scheme represents the Nation's commitment to its veterans.

(2) Use of the official seal, replicas, reproductions, and embossing seals.

(i) The Secretary or designees are authorized to affix replicas, reproductions, and embossed seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(ii) Replicas may be used only for:

(A) Display in or adjacent to VA facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.

(B) Offices of senior officials.

(C) Official VA distinguishing flags, adopted and utilized pursuant to paragraph (e)(2) of this section.

(D) Official awards, certificates, medals, and plaques.

(E) Motion picture film, video tape, and other audiovisual media prepared by or for VA and attributed thereto.

(F) Official prestige publications which represent the achievements or mission of VA.

(G) For other similar official purposes.

(H) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iii) Reproductions may be used only on:

(A) VA letterhead stationery.

(B) Official VA identification cards and security credentials.

(C) Business cards for VA employees.

(D) Official VA signs.

(E) Official publications or graphics issued by and attributed to VA, or joint statements of VA with one or more Federal agencies, State or local governments, or foreign governments.

(F) Official awards, certificates, and medals.

(G) Motion picture film, video tape, and other audiovisual media prepared by and for VA and attributed thereto.

(H) For other similar official purposes.

(I) For such other purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Secretary or Deputy Secretary.

(iv) Use of the official seal and embossed seals:

(A) Embossed seals may be used only on VA legal documents, including interagency or intergovernmental agreements with States, foreign patent applications, and similar official documents.

(B) The official seal may be used only for those purposes related to the conduct of Departmental affairs in furtherance of the VA mission.

(e) *Distinguishing flag.*

(1) Description of distinguishing flag.

(i) The base or field of the flag shall be blue and a replica of the official seal shall appear on both sides thereof.

(ii) A Class 1 flag shall be of nylon banner, measure 4'4" on the hoist by 5'6" on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½" wide.

(iii) A Class 2 flag shall be of nylon banner, measure 3' on the hoist by 5' on the fly, exclusive of heading and hems, and be fringed on three edges with nylon fringe, 2½" wide.

(iv) Each flag shall be manufactured in accordance with Department of Veterans Affairs Specification X–497G. The replica of the official seal shall be screen printed or embroidered on both sides.

(2) Use of distinguishing flag.

(i) VA distinguishing flags may be used only:

(A) In the offices of the Secretary, Deputy Secretary, Assistant Secretaries, Deputy Assistant Secretaries and heads of field locations designated below:

(*1*) Regional Offices.

(*2*) Medical Centers and Outpatient Clinics.

(*3*) Domiciliaries.

(*4*) Marketing Centers and Supply Depots.

(*5*) Data Processing Centers.

(*6*) National Cemetery Offices.

(*7*) Other locations as designated by the Deputy Assistant Secretary for Administration.

(B) At official VA ceremonies.

(C) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-VA facilities in connection with events or displays sponsored by VA, and public appearances of VA officials.

(D) On or in front of VA installation buildings.

(E) Other such official VA purposes or purposes as will tend to advance the aims, purposes and mission of the Department of Veterans Affairs as determined by the Deputy Assistant Secretary for Administration.

(f) *Unauthorized uses of the seal and flag.*

(1) The official seal, replicas, reproductions, embossed seals, and the distinguished flag shall not be used, except as authorized by the Secretary or Deputy Secretary, in connection with:

(i) Contractor-operated facilities.

(ii) Souvenir or novelty items.

(iii) Toys or commercial gifts or premiums.

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(iv) Letterhead design, except on official Department(s) stationery.

(v) Matchbook covers, calendars and similar items.

(vi) Civilian clothing or equipment.

(vii) Any article which may disparage the seal or flag or reflect unfavorably upon VA.

(viii) Any manner which implies Departmental endorsement of commercial products or services, or of the commercial user's policies or activities.

(2) Penalties for unauthorized use. Any person who uses the distinguishing flag, or the official seal, replicas, reproductions or embossed seals in a manner inconsistent with this section shall be subject to the penalty provisions of 18 U.S.C. 506, 701, or 1017, providing penalties for their wrongful use, as applicable.

(Authority: 38 U.S.C. 202, 38 U.S.C. 210(c))

[FR Doc. 90-27877 Filed 11-28-90; 8:45 am]

BILLING CODE 8320-01-M

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**38 CFR Part 3**

RIN 2900-AEH

**Failure to Report for VA Examination**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning failure to report for VA examinations. These changes are necessary to clarify current rules and due process procedures. The effects of these amendments are to clarify the requirement that individuals must report for VA examinations and to require that VA issue an advance notice before taking adverse action because of failure to report.

**EFFECTIVE DATE:** These amendments are effective December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** On pages 4199-4201 of the Federal Register of February 7, 1990, VA published a proposal to amend §§ 3.326, 3.327 and 3.655, and to remove § 3.329. Interested persons were invited to submit comments, suggestions, or objections by March 9, 1990. Two comments were received.

One commenter objected to using examples of "good cause" in § 3.655(a), stating they should be confined to policy or procedural manuals, but that in the event they are retained in the regulation, commenter suggested the term "illness" be changed to "incapacitating illness."

VA does not concur. We find no sound basis for excluding examples from the regulation. The decision as to whether or not a claimant fails to report for good cause is a judgment matter for the adjudicator, and it is appropriate that the regulation contain guidelines for adjudicators to follow in their deliberations. For the sake of consistency, we are retaining the language used in the proposed rule because it is identical to that used in the recently amended § 3.105(h)(2), as published in the Federal Register on April 11, 1990.

The same commenter suggested that the term "pretermination" be replaced by "predetermination" wherever it appears in the proposed § 3.655(c) because "pretermination" implies that VA has already decided to reduce or terminate the benefit being paid.

The commenter is correct in his assessment of the meaning of the term "pretermination." When a pretermination notice is issued, VA has determined that benefits should be reduced or terminated. We are retaining the language used in the proposed rule because such notice is sent to satisfy the advance notice requirement of § 3.109(b)(2), as published in the Federal Register of April 11, 1990.

The other commenter stated that the current regulations provide that reexamination can be required only if there is some basis, at the time of the rating decision, for anticipating that the condition may improve. Commenter applauded VA's intent to incorporate due process procedures, but strongly opposed VA's intent to give blanket authority to compel reexaminations without providing any regulatory guidelines. Commenter further stated that under current regulations, VA cannot arbitrarily schedule a punitive examination when a claimant expresses views contrary to those of VA, but that under the proposed regulation, a claimant could be scheduled for examination after examination, as punishment.

VA does not concur. This amendment contains no substantive change to the current regulation regarding reexaminations. As set forth in the preamble to the proposed amendments, § 3.327 is being amended to reorganize the material in a more logical manner. The current paragraph (d), which provides authority to request examinations as necessary, as well as the current § 3.328, which provides that claimants are required to report for examinations when requested, are being incorporated in the amended paragraph (a). Contrary to the commenter's assertion of providing no regulatory guidelines, amended paragraph (a) expressly refers to the general guidelines for requesting reexaminations set forth in paragraphs (b) and (c). Moreover, neither the current regulation nor this amendment authorizes the scheduling of a reexamination for punitive reasons. Such an improper practice is not VA policy and would not be in the best interest of the Government.

The same commenter also stated that the current rule makes no provision for reexamination when there is a basis for anticipating a condition will worsen. The commenter is correct. Generally, we would have no basis for such an anticipation. Claimants are encouraged to file claims for increased benefits if they believe a condition has become more disabling. When a claimant presents evidence indicating a reasonable probability that a condition has worsened, VA will conduct an examination to determine whether an increased evaluation is warranted.

That commenter stated that VA and claimant are bound by an appellate period commencing with promulgation of a decision and that where the law (38 U.S.C. 4006) contemplates some final resolution of claims, the proposal substitutes impermanency. Although the cited law limits administrative appeals by VA to the Board of Veterans' Appeals to one year, § 4006, in fact, is unrelated to the issues dealt with by the proposed amendments. Except in limited circumstances, the statutory scheme governing VA compensation does not contemplate final, permanent establishment of the degree of a veteran's disability. Rather, implicit in the scheme is recognition of the possibility that a disability may improve or worsen. The scheme contemplates adjustments in the amount of benefits paid based upon the veteran's current degree of disability. The only exception would be the protection of ratings explicitly authorized by 38 U.S.C. 110.

The same commenter asked how the proposed regulations will affect veterans who have protected ratings and those who are hearing-impaired. Generally, examinations will not be requested for disabilities protected under 38 U.S.C. 110 and 38 CFR 3.951. However, the provisions of that law and regulation do not apply upon a showing that a rating was based on fraud, and



examinations may be requested in such cases. As to hearing-impaired veterans, reexaminations, when deemed necessary by VA, will be requested in accordance with the same guidelines provided in amended § 3.327 as for veterans with any other service-connected disability.

That commenter stated that review of treatment records should suffice in those few cases in which medical advances warrant reevaluation. VA does not concur. Treatment records are generally not sufficient for rating purposes because they do not contain the detailed findings and observations which a disability examination is designed to elicit.

Without explanation or rationale, the same commenter also stated that due process would appear to require that VA advise veterans as to whether or not reexamination is anticipated. VA does not concur. The core concept of procedural due process is the government's duty to give notice and an opportunity to be heard to an individual whose life, liberty or property is adversely affected by governmental action. Establishing a future control for examination on a rating decision does not necessarily mean that an examination will be requested when the control matures. Accordingly, matters such as establishing future controls to determine whether reexaminations are to be scheduled simply do not involve a life, liberty or property interest and invoke no due process protection.

We appreciate the comments and suggestions of those who responded to publication of the proposed regulations. The proposed regulations are adopted without change, except for the deletion of the second sentence of the proposed § 3.655(b), as it appeared in the Federal Register of February 7, 1990, which was printed erroneously, and the deletion of the words "as to running awards" from the last sentence of the proposed § 3.655(c)(4).

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

Approved: November 8, 1990.

Edward J. Derwinski,

*Secretary of Veterans Affairs.*

38 CFR part 3, Adjudication, is amended as follows:

**PART 3—[AMENDED]**

1. In § 3.326 in paragraphs (a) and (d) remove the words "widow, widower" wherever they appear and insert in their place the words, "surviving spouse".

2. In § 3.328 introductory text is added, a sentence is added at the end of paragraph (a) and a cross-reference is added after paragraph (d) to read as follows:

**§ 3.326 Examinations.**

For purposes of this section, the term examination includes periods of hospital observation when required by VA.

(a) * * * Individuals for whom examinations have been authorized and scheduled are required to report for such examinations.

* * * * *

Cross reference: Failure to report for VA examination. See § 3.655.

3. In § 3.327 paragraph (a) is revised, in paragraph (b)(2) the first sentence and the text preceding the colon are revised, paragraph (c) is revised, a cross reference is added and paragraph (d) is removed as follows:

**§ 3.327 Reexaminations.**

(a) *General.* Reexaminations, including periods of hospital observation, will be requested whenever VA determines there is a need to verify either the continued existence or the current severity of a disability. Generally, reexaminations will be required if it is likely that a disability has improved, or if evidence indicates there has been a material change in a disability or that the current rating may be incorrect. Individuals for whom reexaminations have been authorized and scheduled are required to report for such reexaminations. Paragraphs (b) and (c) of this section provide general guidelines for requesting reexaminations, but shall not be construed as limiting VA's authority to request reexaminations, or periods of hospital observation, at any time in order to ensure that a disability is accurately rated.

(Authority: 38 U.S.C. 210(c))

* * * * *

(b) *Compensation cases.* * * *

(2) No periodic future examinations will be requested. In service-connected cases, no periodic reexamination will be scheduled:

* * * * *

(c) *Pension cases.* In nonservice-connected cases in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not generally be requested. In other cases further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case. In the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.

Cross reference: Failure to report for VA examination. See § 3.655.

**§ 3.329 [Removed]**

3a. Section 3.329 is removed.

4. § 3.655 is revised in its entirety as follows:

**§ 3.655 Failure to report for Department of Veterans Affairs examination.**

(a) *General.* When entitlement or continued entitlement to a benefit cannot be established or confirmed without a current VA examination or reexamination and a claimant, without good cause, fails to report for such examination, or reexamination, action shall be taken in accordance with paragraph (b) or (c) of this section as appropriate. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc. For purposes of this section, the terms "examination" and "reexamination" include periods of hospital observation when required by VA.

(b) *Original or reopened claim, or claim for increase.* When a claimant fails to report for an examination scheduled in conjunction with an original compensation claim, the claim

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shall be rated based on the evidence of record. When the elimination was scheduled in conjunction with any other original claim, a reopened claim for a benefit which was previously disallowed, or a claim for increase, the claim shall be denied.

(c) *Running award.* (1) When a claimant fails to report for a reexamination and the issue is continuing entitlement, VA shall issue a pretermination notice advising the payee that payment for the disability or disabilities for which the reexamination was scheduled will be discontinued or, if a minimum evaluation is established in part 4 of this title or there is an evaluation protected under § 3.951 of this part, reduced to the lower evaluation. Such notice shall also include the prospective date of discontinuance or reduction, the reason therefor and a statement of the claimant's procedural and appellate rights. The claimant shall be allowed 60 days to indicate his or her willingness to report for a reexamination or to present evidence that payment for the disability or disabilities for which the reexamination was scheduled should not be discontinued or reduced.

(2) If there is no response within 60 days, or if the evidence submitted does not establish continued entitlement, payment for such disability or disabilities shall be discontinued or reduced as of the date indicated in the pretermination notice or the date of last payment, whichever is later.

(3) If notice is received that the claimant is willing to report for a reexamination before payment has been discontinued or reduced, action to adjust payment shall be deferred. The reexamination shall be rescheduled and the claimant notified that failure to report for the rescheduled examination shall be cause for immediate discontinuance or reduction of payment. When a claimant fails to report for such rescheduled examination, payment shall be reduced or discontinued as of the date of last payment and shall not be further adjusted until a VA examination has been conducted and the report reviewed.

(4) If within 30 days of a pretermination notice issued under paragraph (c)(1) of this section the claimant requests a hearing, action to adjust payment shall be deferred as set forth in § 3.105(h)(1) of this part. If a hearing is requested more than 30 days after such pretermination notice but before the proposed date of discontinuance or reduction, a hearing shall be scheduled, but payment shall nevertheless be discontinued or reduced as of the date proposed in the pretermination notice or date of last payment, whichever is later, unless information is presented which warrants a different determination. When the claimant has also expressed willingness to report for an examination, however, the provisions of paragraph (c)(3) of this section shall apply.

Cross references:

| | |
|---|---|
| Procedural due process and appellate rights. | See § 3.103. |
| Examinations | See § 3.326. |
| Reexaminations | See § 3.327. |
| Resumption of rating when veteran subsequently reports for VA examination. | See § 3.330. |

(Authority: 38 U.S.C. 210(c))

[FR Doc. 90-27978 Filed 11-28-90; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6817

[CA-940-4214-10; CACA-26006]

### Partial Revocation of the Secretarial Order dated October 16, 1931; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes the Secretarial Order dated October 16, 1931, insofar as it affects a 0.45 acre parcel of public land withdrawn for the Bureau of Reclamation's Colorado River Storage Project. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Viola Andrade, BLM California State Office, room E-2845, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 16, 1931, which withdrew land as part of the Bureau of Reclamation's Colorado River Storage Project is hereby revoked as to the following described land:

San Bernardino Meridian

T. 9 N., R. 22 E.,
Sec. 13, lot 7.

The area described contains 0.45 acre in San Bernardino County.

2. At 10 a.m. on December 31, 1990, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 31, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on December 31, 1990, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 20, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-27961 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-40-M

### 43 CFR Public Land Order 6818

[NV-930-91-4214-10; N-50507]

### Withdrawal of Public Land for Administrative Site; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 5 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect an Administrative Site in Nye County. The land has been and remains open to mineral leasing.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mining leasing laws, to protect the Bureau of Land Management's Tonopah Administrative Site:

Mount Diablo Meridian

T. 2 N., R. 42 E.,
Sec. 1, W½NW¼SE¼SW¼.

The area described contains 5 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 20, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-27963 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-HC-M



### 43 CFR Public Land Order 6819

[CA-940-4214-10; CACA 17620]

### Withdrawal of Public Land for the Protection of the Calico Early Man Site; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 662.50 acres of public land from surface entry and mining for a period of 20 years for the protection of the Calico Early Man Site, an area of archaeological, historical, geological, and recreational significance.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), for the protection of the Calico Early Man Site:

San Bernardino Meridian

T. 10 N., R. 2 E.,
Sec. 15, S½S½SW¼NW¼, S½SW¼SE¼NW¼, W½NE¼SW¼, W½SW¼, and W½SE¼SW¼;
Sec. 22, SW¼NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, NW¼, and N½S½;
Sec. 23, SW¼SW¼NW¼NW¼, W½SW¼NW¼, SW¼SE¼SW¼NW¼, W½NW¼SW¼, and W½E½NW¼SW¼.

The area described contains 662.50 acres of public land in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 20, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-27962 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-40-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 90-439; RM-6805]

### Radio Broadcasting Services; Ozark, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 280C3 for Channel 280A at Ozark, Alabama, and modifies the license of Sunrise Broadcasting Corp. for Station WNER(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. *See* 54 FR 41467, October 10, 1989. Coordinates used for Channel 280C3 at Ozark are 31-23-46 and 85-30-01. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-439, adopted October 31, 1990, and released November 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Alabama, is amended by removing Channel 280A and adding Channel 280C3 at Ozark.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28049 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 90-228; RM-7293]

### Radio Broadcasting Services; Healdsburg, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 240A to Healdsburg, California, as that community's second local FM broadcast service, in response to a petition for rule making filed on behalf of E & E Communications. *See* 55 FR 21402, May 24, 1990. Coordinates used for Channel 240A at Healdsburg are 38-37-47 and 122-56-04. (*See* Supplementary Information, *infra.*) With this action, the proceeding is terminated.

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**DATES:** Effective January 10, 1991, the window period for filing applications on Channel 240A at Healdsburg, California, will open on January 11, 1991, and close on February 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–228, adopted October 30, 1990, and released November 26, 1990. The full text of this Commission decisions available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making in this proceeding was filed after October 2, 1989, and, therefore, applications for Channel 240A at Healdsburg must conform with the minimum distance separation requirements set forth in § 73.207(b) of the Commission's Rules.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 240A at Healdsburg.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–28050 Filed 11–28–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 90–12; RM–7087]**

**Radio Broadcasting Services; Thousand Palms, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 234A to Thousand Palms, California, as that community's first local FM broadcast service, in response to a petition for rule making filed on behalf of Jeffrey Rochlis. *See* 55 FR 4208, February 7, 1990. Additionally, since Thousand Palms is located within 320 kilometers (199 miles) of the United States-Mexico border, Mexican concurrence in the proposal was obtained. Coordinates used for Channel 234A at Thousand Palms are 33–49–20 and 116–21–57, with a site restriction of 3 km (1.9 miles) east to avoid a short-spacing to Station KTWV–FM, Channel 234B, Los Angeles, California. (*See* Supplementary Information *infra.*) With this action, the proceeding is terminated.

**DATES:** Effective January 10, 1991, the window period for filing applications on Channel 234A at Thousand Palms, California, will open on January 11, 1991, and close on February 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–12, adopted November 8, 1990, and released November 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making in this proceeding was filed prior to October 2, 1989. Therefore, applicants for Channel 234A at Thousand Palms may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. *See* 47 CFR 73.213(c).

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under California by adding Channel 234A at Thousand Palms.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–28051 Filed 11–28–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 90–203; RM–7228]**

**Radio Broadcasting Services; Plymouth, IN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 232B1 for Channel 232A at Plymouth, Indiana, and modifies the license of Community Service Broadcasters, Inc., for Station WNZE(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. *See* 55 FR 15248, April 23, 1990. Coordinates used for Channel 232B1 at Plymouth are 41–30–18 and 86–17–55. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–203, adopted October 30, 1990, and released November 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Indiana, is amended by removing Channel 232A and adding Channel 232B1 at Plymouth.



Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–28053 Filed 11–28–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–404; RM–6895; RM–7133]**

**Radio Broadcasting Services; Greenwood, SC; Gibson, GA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of United Community Enterprises, Inc., substitutes Channel 278C3 for Channel 278A at Greenwood, South Carolina, and modifies its license for Station WMTY–FM to specify operation on the higher powered channel. *See* 54 FR 40138, August 29, 1989. At the request of Heart of Dixie Broadcasting, Inc., the Commission also allots Channel 234A to Gibson, Georgia, as the community's first local FM service. Channel 278C3 can be allotted to Greenwood with a site restriction of 4.8 kilometers (3.0 miles) southeast to avoid a short-spacing to Station WRIX–FM, Channel 276A, Honea Path, South Carolina, and to Channel 277A at Greer, South Carolina, which is unoccupied but applied for. The coordinates for Channel 278C3 at Greenwood are North Latitude 34–04–28 and West Longitude 82–07–42. Channel 234A can be allotted to Gibson in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.4 kilometers (5.2 miles) northwest to avoid a short-spacing to Station WBYZ, Channel 233C, Baxley, Georgia, Station WAAW, Channel 234A, Williston, South Carolina, and the proposed allotment of Channel 235C3 to Millen, Georgia. The coordinates for Channel 234A at Gibson are North Latitude 33–15–41 and West Longitude 82–40–47.

The Commission also notifies the licensee of Station WAAW, Williston, South Carolina, that it will be required to amend its spending application (BMPH–8910021IK) to specify a transmitter site which does not conflict with the Gibson allotment. With this action, this proceeding is terminated.

**DATES:** Effective January 10, 1991. The window period for filing applications for Channel 234A at Gibson, Georgia, will open on January 11, 1991, and close on February 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89–404, adopted November 8, 1990, and released November 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), that FM Table of Allotments under Georgia, is amended by adding Channel 234A at Gibson, and under South Carolina by removing Channel 278A and adding Channel 278C3 at Greenwood.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–28052 Filed 11–28–90; 8:45 am]

BILLING CODE 6712–01–M

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# Proposed Rules

Federal Register
Vol. 55, No. 230
Thursday, November 29, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

[DA-90-006]

### Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Revision of United States Standards for Grades of Bulk American Cheese for Manufacturing

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes revisions in the United States Standards for Grades of Bulk American Cheese for Manufacturing. This proposal would make a number of changes in the standards to improve the grading criteria for bulk American cheese. These changes would be the first major revision of the standards since 1971.

The proposed revisions would expand the quality factor categories, reflect changes in production technology and marketing practices, and allow the use of antimycotics, as recently authorized by the Food and Drug Administration (FDA). The Agency believes this proposal would provide improved accuracy in grading and better assurance in obtaining the desired quality of cheese for government and commercial purchasers.

**DATES:** Comments must be received on or before January 28, 1991.

**ADDRESSES:** Comments should be sent to: Director, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Diane D. Lewis, Dairy Products Marketing Specialist, Dairy Standardization Section, USDA/AMS/Dairy Division, room 2750, P.O. box 96456, Washington, DC, 20090–6456, (202) 447–7473.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

The proposed rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and the revisions would not increase costs to those utilizing the standards.

This document proposes the following changes in the grade standards:

*1. Provide Criteria for Evaluating the Potential Suitability of the Cheese for the Intended Period of Storage*

Bulk American cheese refers to a single piece of American cheese weighing more than 100 pounds (usually packed in 500- to 640-pound containers). Under the present grade standards, bulk cheese has three grade levels—Extra, Standard and Commercial. Extra grade bulk cheese is often placed in storage for extended periods of time. However, due to poor storability, excessive amounts of cheese have been subsequently downgraded. This proposed revision would give the grader more guidance in identifying cheese that has the best keeping-quality characteristics for long-term storage. The Extra grade classification would be separated into two subparts—short-hold and long-hold. Extra grade short-hold cheese should be processed within 4 months of the time of grading. Extra grade long-hold cheese is considered suitable to be held longer than 4 months before use. Long-hold cheese possesses characteristics which should allow it to maintain its quality longer than short-hold cheese. It is still possible that some cheese designated as long-hold cheese may not maintain the Extra Grade quality throughout the curing process.

*2. Permit the Use of Safe and Suitable Antimycotics on the Surface of Bulk Forms of Cheese During Curing and Storage, as Sanctioned by FDA*

The FDA recently amended the standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging (21 CFR part 133). The National Cheese Institute, a trade association representing U.S. cheese manufacturers, had petitioned FDA to permit the broader use of safe and suitable antimycotics. Previously, use was permitted only on cuts and slices in consumer-size packages for a number of standardized cheeses.

Bulk American-type cheeses are often packaged in large barrels and the packaging methods used result in the cheese curd being loosely filled into the container. The loosely packed curd increases the exposed surface area of the curd, thus increasing the opportunity for mold growth. Provision for the use of antimycotics will be beneficial in preventing or inhibiting mold development on bulk cheese.

*3. Add the Quality Factors "Finish and Appearance" in Determining Final Grade*

When the bulk grade standard was first developed, bulk cheese was usually stored for only short periods of time before further processing. Consequently, exterior characteristics such as rough surface and whey and moisture droplets on the cheese surface were not considered significant defects during the grading process. More recently, government practice is to store the product for much longer periods of time as large purchases are made. Finish and appearance characteristics thus are more significant in determining the final grade of cheese intended to be aged.

*4. Redefine Packaging Requirements*

Presently, the construction designs of acceptable secondary containers vary significantly. The general-type packaging requirements outlined in this proposed revision will provide considerable latitude for new developments in packaging technology.

*5. Add "Flat" and "Rancid" Flavors to the List of Flavor Characteristics*

When off-flavors not referenced in the grade standards are encountered during grading activities, the cheese is classified "Below U.S. grade requirements." Flat and rancid flavors are not encountered often; however, the standards should make provision for them and for the appropriate corresponding grade. The revised standards would more accurately evaluate these off-flavor characteristics.

*6. Change the Title of These U.S. Grade Standards*

The current title is "United States Standards for Grades of Bulk American Cheese for Manufacturing." The proposed title is "United States Standards for Grades of Bulk American Cheese. The revisions would change the title of the standard and the definition of the product to accurately describe the cheeses identified within these standards.

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When bulk cheese is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require that fees and charges be assessed for grading services provided by USDA. The Agency believes this proposal would provide improved accuracy in grading and better assurance in obtaining the desired quality of cheese for government and commercial purchasers.

All written submissions made pursuant to this notice will be made available for public inspection at the Diary Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2750 South Building, Washington, DC, during regular business hours.

**List of Subjects in 7 CFR Part 58**

Dairy products, food grades and standards, food labeling, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

**PART 58—[AMENDED]**

1. The authority citation for 7 CFR part 58 continues to read as follows:



**Authority:** Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Subpart H—United States Standards for Grades of Bulk American Cheese for Manufacturing is revised to read as follows:

**Subpart H—United States Standards for Grades of Bulk American Cheese**

**Definitions**

Sec.
58.2455 Bulk American cheese.
58.2456 American cheese.
58.2457 Packaging.
58.2458 Degree of curing.
58.2459 Length of hold.

**U.S. Grades**

58.2460 Nomenclature of U.S. grades.
58.2461 Basis for determination of U.S. grades.
58.2462 Specifications for U.S. grades.
58.2463 U.S. grade not assignable.

**Explanation of Terms**

58.2464 Explanation of terms.

## Subpart H—United States Standards for Grades of Bulk American Cheese [1]

### Definitions

**§ 58.2455 Bulk American cheese.**

*Bulk American cheese* is American cheese which is packaged in bulk form. No single piece of cheese, whatever its shape, shall weigh less than 100 pounds.

**§ 58.2456 American cheese.**

American cheese includes the following varieties of cheese:

(a) Cheddar cheese and cheddar cheese for manufacturing shall conform to the provisions of 21 CFR 133.113 and 133.114, respectively, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

(b) Washed curd cheese (soaked curd cheese) and washed curd cheese for manufacturing shall conform to the provisions of 21 CFR 133.136 and 133.137, respectively, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

(c) Granular cheese (stirred curd cheese) and granular cheese for manufacturing shall conform to the provisions of 21 CFR 133.144 and 133.145, respectively, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

(d) Colby cheese and colby cheese for manufacturing shall conform to the provisions of 21 CFR 133.118 and 133.119, respectively, "Cheeses and Related Cheese Products," as issued by the Food and Drug Administration.

**§ 58.2457 Packaging.**

(a) The primary container (liner) shall be new, in good condition, unbroken, fully protective of all surfaces of the cheese, and properly closed or sealed so as to protect the cheese from damage, contamination or excessive desiccation. If the cheese is handled and stored in only a primary container after cooling, there shall be a satisfactory system for cooling the cheese, retaining the desired shape, and providing reasonable protection of the cheese during transportation, storage, and handling.

(b) The secondary container, when used, shall be in good condition and shall satisfactorily protect the cheese. If the secondary container is made of material such as fiberboard, it shall be of such construction and be filled to a sufficient level so as not to cause handling, stacking, or storage problems

(c) If antimycotics are used, they shall be used in accordance with the provisions of Food and Drug Administration regulations (21 CFR part 133).

**§ 58.2458 Degree of curing.**

(a) *Fresh (Current)*—Cheese which is in the early stages of the curing process, usually 10 to about 90 days old.

(b) *Cured (Aged)*—Cheese which has the more fully developed flavor and body attributes which are characteristic of the curing process, generally over 90 days old. (The rapidity of the curing process is also influenced by moisture content, pH, temperature of storage, etc.)

**§ 58.2459 Length of hold.**

(a) *Short-hold.* The cheese quality indicates it should be used within 4 months from the date of grading.

(b) *Long-hold.* The cheese has storability characteristics and the potential to maintain its U.S. Extra Grade quality longer than 4 months from the date of grading.

### U.S. Grades

**§ 58.2460 Nomenclature of U.S. grades.**

The nomenclature of U.S. grades is as follows:

(a) U.S. Extra Grade.
(1) Long-hold.
(2) Short-hold.
(b) U.S. Standard Grade.
(c) U.S. Commercial Grade.

**§ 58.2461 Basis for determination of U.S. grades.**

(a) The determination of U.S. grades of bulk American cheese shall be based

[1] Compliance with these standards does not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act.

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on the rating of the following quality factors:

(1) Flavor.

(2) Body and Texture.

(3) Finish and Appearance (as determined by examination of at least the filling end).

(b) The rating of each quality factor shall be established on the basis of characteristics present in a randomly selected sample representing a vat of cheese. If the cheese in a container is derived from more than one vat, the container labeling shall so indicate by showing both vat numbers, and the grade shall be determined on the basis of the lowest grade of either vat. The cheese shall be graded no sooner than 10 days after being placed into the primary container.

(c) The final U.S. grade shall be established on the basis of the lowest rating of any one of the quality factors.

**§ 58.2462 Specifications for U.S. grades.**

(a) *U.S. Extra Grade.* U.S. Extra Grade shall conform to the following requirements (also see tables I, II, and III of this section):

(1) *Flavor:* Shall be pleasing and characteristic of the variety and type of cheese. For detailed specifications and classification of flavor characteristics according to length of hold, see table I.

(2) *Body and Texture:* A sample drawn from the cheese shall be firm and sufficiently compact to draw a plug for examination. For detailed specifications and classification of body and texture characteristics according to length of hold, see table II.

(3) *Finish and Appearance:* For detailed specifications and classification of finish and appearance characteristics according to length of hold, see table III.

(b) *U.S. Standard Grade.* U.S. Standard Grade shall conform to the following requirements (also see table I, II, and III of this section):

(1) *Flavor:* Shall be pleasing but may possess certain flavor defects to a limited degree. For detailed specifications and classification of flavor characteristics, see table I.

(2) *Body and Texture:* The cheese shall be sufficiently compact to draw a plug for examination; however, it may have large and connecting mechanical openings. In addition to four sweet holes, the plug sample may have scattered yeast holes and other scattered gas holes. For additional detailed specifications and classification of body and texture characteristics, see table II.

(3) *Finish and Appearance:* For detailed specifications and classification of finish and appearance characteristics, see table III.

(c) *U.S. Commercial Grade.* U.S. Commercial Grade shall conform to the following requirements (also see tables I, II, and III of this section):

(1) *Flavor:* May possess certain flavor defects to specified degrees. For detailed specifications and classification of flavor characteristics, see table I.

(2) *Body and Texture:* A plug drawn from the cheese may appear loosely knit with large and connecting mechanical openings. For detailed specifications and classification of body texture characteristics, see table II.

(3) *Finish and Appearance:* For detailed specifications and classification of finish and appearance characteristics, see table III.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

| Flavor characteristics | U.S. grade designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | Cured or Aged | | | |
| | Extra | Standard | Commercial | Extra | Standard | Commercial | |
| | [1] LH | SH | | | | | |
| Acid | VS | S | D | P | S | D | P |
| Barny | — | — | S | D | — | S | D |
| Bitter | — | VS | S | D | VS | S | D |
| Feed | S | S | D | P | S | D | P |
| Flat | — | — | S | D | — | S | D |
| Fruity | — | — | S | D | VS | S | D |
| Malty | — | — | S | D | — | S | D |
| Metallic | — | — | S | VS | — | — | VS |
| Old Milk | — | — | S | D | — | S | D |
| Onion | — | — | VS | S | — | VS | S |
| Rancid | — | — | S | D | — | S | D |
| Sour | — | — | — | VS | — | — | VS |
| Sulfide | — | — | S | D | VS | S | D |
| Utensil | — | — | S | D | — | S | D |
| Weedy | — | — | S | D | — | S | D |
| Whey Taint (Whey) | — | — | S | D | VS | S | D |
| Yeasty | — | — | S | D | — | S | D |

(—)—Not permitted; VS—Very Slight; S—Slight; D—Definite; P—Pronounced.
[1]—Long-hold—(LH); —Short-hold—(SH).

TABLE II.—CLASSIFICATION OF BODY AND TEXTURE WITH CORRESPONDING U.S. GRADE

| Body and texture characteristics | U.S. Grade Designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | Cured or Aged | | | |
| | Extra | Standard | Commercial | Extra | Standard | Commercial | |
| Coarse | S | D | P | P | S | P | P |
| Corky | — | — | D | P | — | D | P |
| Crumbly | — | — | VS | S | — | VS | S |
| Curdy | S | S | D | P | S | D | P |
| Gassy | D | D | P | P | D | P | P |
| Mealy | — | — | S | D | — | S | D |
| Weak | S | S | D | P | S | D | P |

(—)—Not permitted; VS—Very Slight; S—Slight; D—Definite; P—Pronounced.
[1]—Not applicable for Colby cheese.
[2]—Long-hold—(LH); —Short-hold—(SH).

TABLE III.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE (AS DETERMINED BY EXAMINATION OF AT LEAST THE FILLING END)

| Finish and appearance characteristics | U.S. grade designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | Cured or Aged | | | |
| | Extra | Standard | Commercial | Extra | Standard | Commercial | |
| | [1] LH | SH | | | | | |
| Free Whey | S | S | D | P | — | S | D |
| Mold | — | S | D | D | S | D | P |
| Rough Surface | S | S | D | P | S | D | P |
| Rough Surface | D | D | P | P | D | P | P |
| Soiled Surface | S | S | D | P | S | D | P |

(—)—Not permitted; S—Slight; D—Definite; P—Pronounced.
[1]—Long-hold—(LH); —Short-hold—(SH).
[2]—Unsealed primary container.
[3]—Sealed primary container or cheese surface treated with antimycotics.

**§ 58.2463 U.S. grade not assignable.**

Bulk American cheese shall not be assigned a U.S. grade for one or more of the following reasons:

(a) Fails to meet the requirements for U.S. Commercial grade.

(b) Produced in a plant which is rated ineligible for USDA grading service.

(c) Produced in a plant which is not USDA-approved.

**Explanation of Terms**

**§ 58.2464 Explanation of terms.**

(a) With respect to flavor:

(1) *Very slight.*—Detected only upon very critical examination.

(2) *Slight.*—Detected only upon critical examination.

(3) *Definite.*—Not intense but detectable.

(4) *Pronounced.*—So intense as to be easily identified.

(5) *Undesirable.*—Identifiable flavors in excess of the intensity permitted, or those flavors not listed.

(6) *Acid.*—Sharp and puckery to the taste, characteristic of lactic acid.

(7) *Barny.*—A flavor characteristic of the odor of a cow barn.

(8) *Bitter.*—Distasteful, similar to the taste of quinine.

(9) *Feed.*—Feed flavors (such as alfalfa, sweet clover, silage, or similar feed) in milk carried through into the cheese.

(10) *Flat.*—Insipid, practically devoid of any characteristic cheese flavor.

(11) *Fruity.*—A fermented fruit-like flavor resembling apples.

(12) *Malty.*—A distinctive, harsh flavor suggestive of malt.

(13) *Metallic.*—A flavor having qualities suggestive of metal, imparting a puckery sensation.

(14) *Old Milk.*—Lacks freshness.

(15) *Onion.*—This flavor is recognized by the peculiar taste and aroma suggestive of its name. Present in milk or cheese when cows have eaten onions, garlic, or leeks.

(16) *Rancid.*—A flavor suggestive of rancidity or butyric acid, sometimes associated with bitterness.

(17) *Sour.*—An acidly pungent flavor resembling vinegar.

(18) *Sulfide.*—A flavor of hydrogen sulfide, similar to the flavor of water with a high sulfur content.

(19) *Utensil.*—A flavor that is suggestive of improper or inadequate washing and sterilization of milking machines, utensils, or factory equipment.

(20) *Weedy.*—A flavor present in cheese when cows have eaten weedy hay or grazed on weed-infested pasture.

(21) *Whey-Taint (Whey).*—A slightly acid flavor and odor characteristic of fermented whey caused by too slow explusion of whey from the curd.

(22) *Yeasty.*—A flavor indicating yeasty fermentation.

(b) With respect to body and texture:

(1) *Very Slight.*—An attribute which is detected only upon very critical examination and present only to a minute degree.

(2) *Slight.*—An attribute which is barely identifiable and present only to a small degree.

(3) *Definite.*—An attribute which is readily identifiable and present to a substantial degree.

(4) *Pronounced.*—An attribute which is markedly identifiable and present to a large degree.

(5) *Curdy.*—Smooth but firm; when worked between the fingers is rubbery and not waxy or broken down.

(6) *Coarse.*—Feels rough, dry, and sandy.

(7) *Corky.*—Hard, tough, over-firm cheese which does not readily break down when rubbed between the thumb and fingers.

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(8) *Crumbly.*—Tends to fall apart when rubbed between the thumb and fingers.

(9) *Gassy.*—Gas holes of various sizes, which may be scattered.

(10) *Mealy.*—Short body, does not mold well; looks and feels like corn meal when rubbed between the thumb and fingers.

(11) *Open.*—Mechanical openings that are irregular in shape and are caused by workmanship and not by gas fermentation.

(12) *Pasty.*—Usually weak body; when the cheese is rubbed between the thumb and fingers it becomes sticky and smeary.

(13) *Pinny.*—Numerous very small gas holes.

(14) *Short.*—No elasticity in the cheese plug; when rubbed between the thumb and fingers, it tends toward mealiness.

(15) *Slitty.*—Narrow elongated slits generally associated with a cheese that is gassy or yeasty. Sometimes referred to as "Fish-eyes."

(16) *Sweet holes.*—Spherical gas holes, glossy in appearance; usually about the size of BB shots; also known as shot holes.

(17) *Weak.*—Requires little pressure to crush, is soft but is not necessarily sticky like a pasty cheese.

(c) With respect to finish and appearance:

(1) *Free whey.*—Whey or moisture which comes from the cheese or has not been incorporated into the curd. The intensity is described as slight when droplets are detected on the cheese or liner upon critical examination; definite when the droplets are easily identifiable; and pronounced when the droplets run together and pool.

(2) *Mold.*—Mold spots or areas that have formed on the surface of the cheese. The intensity is described as very slight when the total top surface area covered with mold is not greater than a dime; slight when the area covered is not greater than ten dimes; definite when the area is more than slight, but not greater than one-fourth of the top surface area; and pronounced when greater than one-fourth of the top surface area.

(3) *Rough surface.*—Lacks smoothness. The intensity is described as slight when the defect is easily detected; definite when readily detected; and pronounced when obvious.

(4) *Soiled surface.*—Discoloration on the surface of the cheese due to poor production or handling practices. The intensity is described as slight when the defect is detected upon critical examination; definite when easily detectable; and pronounced when easily identified and covers more than one-half of the surface.

Signed at Washington, DC on: November 23, 1990.

**D.M. Holbrook,**

*Acting Administrator.*

[FR Doc. 90-27962 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-02-M

## Agriculture Marketing Service

### 7 CFR Parts 907 and 908

**[FV-91-214PR]**

### Expenses and Assessment Rates for the 1990-91 Fiscal Year for California-Arizona Navel and Valencia Oranges and Increased Expenses for the 1989-90 Fiscal Year for Navel Oranges

**AGENCY:** Agricultural Marketing Service.

**ACTION:** Proposed Rule with request for comments.

**SUMMARY:** This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 907 and 908 for California-Arizona navel and Valencia oranges, respectively, for the 1990-91 fiscal years established for each order. This action would also authorize increased expenditures for the 1989-90 fiscal year for the navel orange marketing order. Funds to administer these programs are derived from assessments on handlers. This action is needed in order for the Navel and Valencia Orange Administrative Committees, which are responsible for local administration of the respective orders, to have sufficient funds to meet the expenses of operating the programs. Expenses are incurred on a continuous basis.

**DATES:** Comments must be received by December 10, 1990.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC, 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. Young, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-5992.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order Nos. 907 (7 CFR part 907) and 908 (7 CFR part 908), both as amended, regulating the handling of California Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the navel and Valencia orange marketing orders. There are approximately 4,070 producers of navel oranges and 3,500 producers of Valencia oranges in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. An annual budget of expenses is prepared by the Naval Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the Department for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the



NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on October 16, 1990, and unanimously recommended 1990-91 fiscal year expenditures of $1,525,075 and an assessment rate of $0.0298 per carton of navel oranges. In comparison, 1989-90 fiscal year budgeted expenditures were $1,377,425 and the assessment rate was $0.027 per carton. Major expenditure categories in the 1990-91 budget are $405,590 for program administration, $239,410 for compliance activities, $698,570 for the field department, $178,000 for direct expenses, and $3,505 for a salary reserve. This compares to $367,525, $188,805, $646,350, $171,300, and $3,445, respectively, for the 1989-90 fiscal year. Expenditures for the 1990-91 fiscal year are greater than for 1989-90 because of increases in salary and benefits for the NOAC's personnel, the hiring of additional personnel for the compliance department, and office relocation expenses. Assessment income for 1990-91 is expected to total $1,391,200, based on shipments of 47 million cartons of oranges. Interest and incidental income is estimated at $58,500. The NOAC may expend operational reserve funds of $75,375 to meet budgeted expenses. The increase in the assessment rate was recommended to minimize the expected shortfall in income. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The VOAC also met on October 16, 1990, and unanimously recommended 1990-91 fiscal year expenditures of $743,215 and an assessment rate of $0.032 per carton of Valencia oranges. In comprison, 1989-90 fiscal year budgeted expenditures were $709,730 and the assessment rate was $0.028 per carton. Major expenditure categories in the 1990-91 budget are $172,590 for program administration, $101,870 for compliance activities, $297,280 for the field department, $170,000 for direct expenses, and $1,495 for a salary reserve. This compares to $166,050, $85,300, $292,025, $164,800, and $1,555, respectively, for the 1989-90 fiscal year. Assessment income for 1990-91 is expected to total $640,000 based on shipments of 20 million cartons of oranges. Interest and miscellaneous income is estimated at $28,000. The VOAC may expend operational reserve funds of $75,215 to meet budgeted expenses. The increase in the assessment rate was recommended to offset the expected shortfall in income. Additional reserve funds may be used to meet any unanticipated deficit in assessment income.

At the October 16, 1990, meeting, the NOAC unanimously to increase its 1989-90 budgeted expenditures from $1,377,425 to $1,524,780—a $147,355 increase. The 1989-90 expenditures of $1,377,425 were established by a final rule published in the **Federal Register** on January 10, 1990 [55 FR 841]. The increase is needed due to costs associated with relocation of the NOAC office and increased expenses by its field and compliance departments.

During the 1989-90 fiscal year, actual income was $1,558,375, $252,375 more that the $1,306,000 estimate included in the January 10 final rule. The higher 1989-90 income was due to increased shipments of navel oranges. Thus, funds are available to meet the higher expenses as proposed by this rule. An increase in the $0.027 rate of assessment established by the January 10 final rule for the 1989-90 fiscal year is not needed.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for these programs need to be expedited. The NOAC and VOAC need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

### List of Subjects

*7 CFR Part 907*

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

*7 CFR Part 908*

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 907 and 7 CFR part 908 be amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

### PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.228 is added to read as follows:

**§ 907.228 Expenses and assessment rate.**

Expenses of $1,525,075 by the Navel Orange Administrative Committee are authorized and an assessment rate of $0.0298 per carton of navel oranges is established for the fiscal year ending on October 31, 1991. Unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

**§ 907.227 [Amended]**

3. Section 907.227 is amended by changing "$1,377,425" to "$1,524,780."

### PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

4. A new § 908.230 is added to read as follows:

**§ 908.230 Expenses and assessment rate.**

Expenses of $743,215 by the Valencia Orange Administrative Committee are authorized and an assessment rate of $0.032 per carton of Valencia oranges is established for the fiscal year ending on October 31, 1991. Unexpended funds from the 1990-91 fiscal year may be carried over as a reserve.

Dated: November 23, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-27975 Filed 11-28-90; 8:45 am]

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**Agricultural Marketing Service**

**7 CFR Part 920**

**[Docket No. AO-89-A1; FV-90-100 PD]**

**Kiwifruit Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments of Marketing Agreement and Order No. 920**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This recommended decision proposes amendments to the marketing agreement and order which cover kiwifruit grown in California. The proposed amendments were submitted by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order program. The proposed changes would reduce the terms of office from 2 years to 1 year for certain committee members, clarify the way in which grower membership is allocated, revise committee tenure requirements, authorize committee nominations to be conducted by mail, authorize a change in the terms of office which now begin August 1, and authorize a late payment charge on delinquent handler assessments. These changes are being recommended to improve the administration, operation and functioning of the marketing order program.

**DATES:** Written exceptions to this recommended decision must be received by December 31, 1990.

**ADDRESSES:** Four copies of written exceptions should be sent to the Hearing Clerk, room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours. Exceptions should reference the docket numbers and the date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020; or Gary D. Olson, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102-B, Fresno, California 93721, telephone (209) 487-5901.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing—Issued December 6, 1989, and published in the **Federal Register** on December 11, 1989 (54 FR 50785).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

**Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments of the marketing agreement and order regulating the handling of kiwifruit grown in California.

This recommended decision and opportunity to file written exceptions is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments of the marketing agreement and order (hereinafter referred to collectively as the order) were formulated on the record of a public hearing held in Fresno, California on January 19, 1990. Notice of the hearing was published in the December 11, 1989, issue of the **Federal Register**. The notice set forth proposed amendments of the order submitted by the Kiwifruit Administrative Committee (committee) on behalf of kiwifruit growers in California. Additionally, the notice included a proposal by the U.S. Department of Agriculture that it be authorized to make any necessary conforming changes.

**Small Business Considerations**

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

The record indicates that there are approximately 100 handlers and 1,200 growers of California kiwifruit. While there is a variance in the size of individual growing and handling operations, the record indicates that the majority of the kiwifruit growers and 30 to 40 percent of the handlers would be classified as small businesses under the SBA's definitions.

This recommended decision proposes several amendments to the order pertaining to committee member appointments and nominations. Also proposed is adding authority to establish late payment charges on delinquent handler assessments. The record indicates that these changes would improve the administration and operation of the program to the benefit of all kiwifruit growers and handlers.

One recommendation is to change the terms of office of three grower members of the committee from 2 years to 1 year. The order currently provides that the committee consist of 11 growers and 1 public member, each with an alternate. One grower is selected to represent each of the eight established geographic districts, and the three districts with the highest levels of production are each entitled to a second grower member position. All members now serve 2-year terms of office. However, a determination is made each year as to which three districts are entitled to a second grower member position, and the three additional grower member seats are allocated annually. The record supports continuing the annual allocation of grower membership so that the frequent shifts in kiwifruit volumes are promptly reflected in committee representation. Although this change could result in more frequent nominations, the costs to the committee and to the growers who participate in the nomination process would be minimal. This change would facilitate equitable allocation of committee membership. Accordingly, it would benefit all kiwifruit growers and handlers. This benefit should outweigh any additional costs relating to additional nominations.

This recommended decision also proposes clarifying the way in which grower membership is allocated among the districts. The record indicates that



the districts with the highest levels of shipments in the previous fiscal year should be allocated a second grower member position to reflect current procedures, rather than those with the greatest production during that year. The record indicates that the committee currently collects and compiles shipment data by district, which accurately reflect the relative volumes of kiwifruit grown in the various districts. This change would impose no additional costs on growers or handlers, but would merely clarify the way in which the committee currently determines grower member allocation among the districts.

This recommended decision also proposes revising tenure requirements so that a committee member who has served for six consecutive years on the committee could then serve as an alternate member. The record indicates that this amendment would enable growers who have become knowledgeable of the marketing order and committee operations to continue participating in committee deliberations. Tenure requirements would still apply to voting member positions to promote participation by a larger number of California kiwifruit growers in administering the order. No additional costs would be imposed as a result of this change.

Currently, the order provides that nominations for grower members be conducted at grower meetings held in each of the order's eight geographic districts. The record indicates that adding authority to conduct nominations by mail would increase grower participation in the nomination process. This proposed change would also reduce the administrative costs associated with conducting nomination meetings, as well as the costs incurred by individual growers in travelling to and attending the meetings. This change should therefore have a positive impact on both large and small kiwifruit growers and handlers.

Currently, committee members serve terms of office which begin August 1. The record indicates that since complete shipment data may not be available until July or August in some years, the mail nomination process may not be completed prior to August 1. Therefore, the record supports adding authority to change the terms of office. To the extent that this change would facilitate the nomination process, it would have a positive impact on growers and handlers. No additional costs would be imposed as a result of this change.

Finally, it is being proposed that authority be added to the order to provide for the establishment of a late charge on delinquent handler assessments. This would provide handlers with an incentive to make assessment payments in a timely manner. This change would not impose additional costs on those handlers who remit their assessments on time.

Each of the proposed changes set forth in this document is designed to enhance the administration, operation and functioning of the order, and would not have a significant economic impact on the effected small entities. Further, the proposed amendment would have no significant impact on the reporting and recordkeeping requirements imposed on small businesses. Of the proposed amendments, that pertaining to mail nominations could result in additional reporting by growers. However, participation would be voluntary, and the record indicates that the cost of completing a ballot would be substantially less than that to attend a nomination meeting. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (144 U.S.C. chapter 35), any reporting and recordkeeping provisions that are included in the proposed order would be submitted to OMB for approval. The proposed amendment include authority for mail nominations. There are approximately 1,200 growers who would be affected by mail nominations, if implemented. Further, regulations would be promulgated to implement this provision. Accordingly, any information collected or recordkeeping requirements that may result from these amendment would be submitted to the OMB for approval and would not become effective prior to OMB approval.

**Material Issues**

The material issues presented on the record of the hearing are as follows:

(1) Whether the terms of office of certain committee members should be reduced from 2 years to 1 year;

(2) Whether the basis for allocating grower membership among districts should be clarified to more accurately reflect current procedures;

(3) Whether tenure requirements should be revised;

(4) Whether to authorize nominations for grower members of the committee to be conducted by mail;

(5) Whether authority should be added to revise the date on which committee members' terms of office begin; and

(6) Whether to authorize late payment charges on past due handler assessments.

**Findings and Conclusions**

The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Section 920.21 of the order should be amended to reduce the terms of office of certain committee members from 2 years to 1 year.

Under the terms of the order, a committee consisting of 11 grower members and 1 public member is established to locally administer the program. Each member has an alternate, who serves as member in the absence of the member for which such alternate is appointed to the committee. One grower member is selected to represent each of the eight established geographic districts that comprise the production area. An additional grower member is selected from each of the three districts with the greatest levels of production in the prior fiscal period. All committee members serve 2-year terms of office.

The record indicates that kiwifruit is a relatively new crop in California. Acreage and production have increased in recent years, and continued growth is projected. In 1985, 37.1 million pounds of fruit were grown on 3,122 acres. By 1989, production had risen to 63.0 million pounds and acreage totalled 3,932 acres. It is projected that production in 1995 will reach 107.1 million pounds, grown on 4,539 acres.

Due to the fact acreage and production levels are not stable, and that weather, soil and water conditions which affect production vary among the districts, the record indicates that kiwifruit production in each of the districts differs from year to year. Additionally, the percentage of the total production accounted for each district varies frequently. For example, in the 1985-86 season, District 8 was the largest producer with 20.4 percent of the total, followed by District 7 with 18.6 percent and District 3 with 15.1 percent. During the 1986-87 season, District 3 was first with 19.8 percent of the total, following by District 7 (18.1 percent) and District 6 (15.4 percent). In 1987-88, District 7 ranked number 1, followed by District 2 and District 3, which accounted for, respectively, 18.3, 17.9 and 15.2 percent of the total volume of kiwifruit. The largest producing district changed in each of these three seasons. Only Districts 3 and 7 were entitled to a second grower member position in all three years, while the third additional grower member position was allocated to District 8 following the 1985-86 season, District 6 following the 1986-87 season, and District 2 following the 1987-88 season.

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The record indicates that the order should continue to provide that an annual determination be made as to which of the districts are entitled to the three additional grower member positions, given the frequent shifts in the relative volumes of kiwifruits accounted for by the various districts. Committee membership should promptly reflect these changes to provide the most equitable grower representation on the committee.

Witnesses testified that this annual reallocation of committee membership would be facilitated by providing that the three additional grower members serve 1-year terms of office rather than 2-year terms. The record supports reducing the terms of office for the three additional grower members to 1-year terms in order to facilitate the nomination and selection process.

(2) Section 920.20 of the order should be amended to clarify the manner in which it is determined which three districts are entitled to two grower members on the committee.

The order currently provides that the three districts with the highest production in the previous fiscal year are entitled to be represented on the committee by two grower members.

Under the provisions of the order, handlers are required to report to the committee the volume of kiwifruit they ship each month for all uses. This includes fruit shipped to fresh commercial markets as well as to other outlets (e.g. processors). The data is used by the committee for billing and statistical purposes. The information supplied by handlers is easily compiled on a district-by-district basis. The record indicates that the level of shipments from a district is an accurate indicator of the relative percentage of production in that district. That is, the percentage of production in each district that is actually shipped is fairly constant, and the three districts with the largest shipment totals will therefore also be the three largest producing districts. For this reason, the shipment totals for each fiscal year are used to determine which three districts are entitled to two grower member positions on the committee.

Since the shipment totals are reflective of actual production and shipment data are readily available, the record indicates that this should be the basis for allocation of committee membership. The revision in § 920.20 would more accurately describe the basis upon which grower membership of the committee is now determined.

(3) Section 920.21 of the order should be amended to revise the current tenure requirements applicable to committee members and their alternates.

Currently, the order provides that committee members and alternates may serve up to three consecutive 2-year terms on the committee. Any person who has served for three consecutive terms in either a member or alternate member position may not be selected to serve as a member or as an alternate for the next term.

Given the proposed change in the order to provide that certain grower members serve 1-year terms of office, the record supports revising the tenure requirements to provide that members may serve as members of the committee and alternate members may serve as alternate members of the committee for up to three consecutive 2-year terms, six consecutive 1-year terms, or a combination of 1- and 2-year terms not to exceed six consecutive years. The record also supports revising the current tenure requirements to enable a committee member who has served as a member for six consecutive years to then be eligible to serve as an alternate member. Likewise, a person who has served six consecutive years as an alternate member of the committee would be able to then serve as a member of the committee.

The record indicates that there is a significant difference between a committee member position and an alternate member position. Alternate members are not able to vote at committee meetings, unless their respective members are not in attendance. In addition, alternate members may not serve as committee officers or as subcommittee chairmen, in accordance with the committee's by-laws. Alternates are encouraged to attend all committee meetings so that they become knowledgeable about the marketing order and its operation. While alternates can participate in committee discussions, they are unable to vote on committee actions.

Witnesses testified that since alternate members gain expertise during their tenure as alternates, but are unable to vote on issues before the committee, they should be precluded from serving as full members after serving six years as an alternate member. Likewise, the record supports allowing members who have served six consecutive years to then serve as alternates. The experience and expertise of these members would be beneficial to the committee as a whole in that they could continue to provide insight and assistance to committee deliberations as alternate members.

In addition, the record indicates that there is a limited number of kiwifruit growers who are willing or able to take the time away from their own businesses to attend committee meetings. Witnesses supported allowing those growers who are willing to serve to remain on the committee in some capacity if nominated by their peers. The record supports this amendment as a way in which to encourage an increase in the number of growers who serve as voting members of the committee, while recognizing that there is a limited number of California kiwifruit growers who are interested and willing to fill the 22 grower member and alternate positions on the committee.

(4) Section 920.22 should be amended to add authority to conduct grower member and alternate grower member nominations by a mail balloting procedure.

Currently, the order requires the committee to hold at least one grower meeting in each of the districts in which a position is to be filled for the purpose of nominations. The record indicates that kiwifruit is grown throughout the State of California, which encompasses a large geographic area. Some of the individual districts are also quite large. For example, it takes approximately 4 hours to drive from the north border to the south border of District 8. This makes it difficult to select a nomination meeting location which is readily accessible to all growers in a district. Depending on the location selected, for example, one grower may have a 10-minute round trip to the meeting, while another could have to travel a total of 8 hours. Besides the differences in travel time and expenses, the timing of the nomination meetings may not be convenient for individual growers. The record indicates that the cost and inconvenience of attending nomination meetings has resulted in low grower participation in the nomination process. Witnesses indicated that less than 10 percent of the eligible growers participate in nominating members to serve on the committee.

In addition to the costs incurred by growers to attend the meetings, the committee incurs administrative costs in holding these meetings. Since all administrative costs are funded by handler assessments, the cost of conducting these meetings is borne by the industry. The committee staff must arrange for a location, time and date for each meeting, and notices must then be mailed to all growers to inform them of the scheduled meetings. Finally, a member of the committee staff must travel throughout the State of California to attend the meetings. The record indicates that the average cost to the committee staff to conduct these district meetings is $334 per meeting.



The record supports a mail balloting procedure as a means of reducing costs and increasing grower participation. Costs to individual growers would be reduced in that they would not have to travel to attend meetings, but would merely have to complete and mail a ballot at their convenience. By not having to attend a meeting, growers would be provided with more opportunity to participate in the process. The cost to the committee staff to conduct a mail balloting procedure is estimated to be less than $200 per district, which would represent a reduction in administrative costs. For these reasons, the record supports authorizing grower member nominations to be conducted by mail. The public member and alternate are now nominated by the grower members on the committee and would continue to be so nominated. Paragraph (e) of § 920.22 would be changed to reflect that procedure.

The record indicates that the committee should have the authority to recommend, for the Secretary's approval, the procedures to be followed in such a proceeding. This would provide maximum flexibility in implementing the authority to conduct nominations by mail. However, witnesses did suggest possible procedures that could be used to conduct mail nominations.

As discussed by witnesses at the hearing, a nomination request letter would be mailed to all eligible growers in a district in which there were positions to be filled. The letter would request names of growers to be included on the nomination ballot, and a postage-paid envelope would be provided to facilitate the return of such names. An election subcommittee, appointed by the committee chairman, would determine whether those persons whose names were submitted are eligible to serve as grower members of the committee. All eligible growers would then be listed on the nomination ballot, and the ballot would be mailed to all growers, again with a return envelope. Growers would be given about two weeks in which to cast a vote, and would be entitled to cast one vote for each position to be filled. The committee staff would then review the returned ballots to assure that only eligible voters participated and tally the results. The names of the persons with the greatest number of votes for each position would be submitted to the AMS for appointment to the committee. In the event of a tie, a run-off ballot would be mailed.

While this procedure is, in general, the method envisioned by the committee, the record does not support incorporating these procedures into the order. As experience with the mail nomination process is gained, it may be necessary to make changes not contemplated at this time. Therefore, the order should provide maximum flexibility by authorizing implementing rules to be promulgated through informal rulemaking procedures.

(5) Section 920.21 of the order should be revised to authorize a change in the beginning date of committee members' terms of office.

At the hearing, testimony was received to further modify § 920.21 of the order. Currently, committee members serve terms of office beginning August 1, and nomination meetings must be held no later than July 15. The record indicates that, due to the amount of time a mail nomination process may take, it could be necessary to have the terms of office begin later in the year.

According to the record evidence, kiwifruit harvest in California typically begins in late September or early October. Light shipments begin in October, and the industry is shipping in significant volumes by the first of November. Most of the crop is marketed by late April or early May, although in some years, light shipments continue through June and even into early July.

As previously discussed, grower membership on the committee should be apportioned among the districts on the basis of the prior fiscal year's shipments. Typically, final shipment figures for a season are available in June. However, if the shipping season extends past early May, those figures may not be available until July or August. The record indicates that since the shipping season appears to be lengthening, and since the mail nomination process may take more time than current nomination procedures, the order should be amended to authorize the Secretary, upon committee recommendation, to establish a term of office other than the currently established Auguts 1 to July 31 period. Since the committee typically meets in January, April and July each year to plan for the season which begins the following September or October, beginning the terms later in the year to provide additional time for nominations should not materially affect committee operations. Beginning the terms of office later would also benefit the industry because grower membership on the committee would be allocated based on the most recent data available.

A conforming change should be made in paragraph (a) of § 920.22 which currently requires that nomination meetings be held no later than July 15 of each year. If the committee members' terms of office are changed to begin later in the year to enable the committee to use the most complete data possible in allocating the three additional grower member positions, a later nomination meeting date would be necessary for the same reason. The order should therefore be amended to authorize the Secretary to specify a date other than July 15 as the date by which nomination meetings must be held. Any date specified should be at least 15 days prior to the beginning of the terms of office as is now the case. However, the Secretary should be able to specify an earlier date if necessary to provide sufficient time between the nomination meetings and the beginning of the terms of office to ensure that committee members are appointed prior to the time their terms of office begin.

(6) Section 920.41 of the order should be amended to authorize the establishment of late charges on delinquent handler assessment.

The order authorizes the committee to incur expenses necessary to administer the program, and provides that those costs be covered by handler assessments. The order now authorizes the establishment of an interest charge on delinquent handler assessments, but not a late payment charge.

The record indicates that a late payment charge would provide more incentive for handlers to pay their assessments on time. Overdue assessments have increased over the years, from 0.5 percent of total billings in 1986 to 3.6 percent in 1989. Testimony indicated that a late charge could assist in reversing this trend.

Any late charge recommended by the committee should require the approval of the Secretary. Such a charge would be established through informal rulemaking procedures.

**Rulings on Briefs of Interested Persons**

At the conclusion of the hearing, the Administrative Law Judge fixed February 3, 1990, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing. None were filed.

**General Findings**

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary to, and in addition to, the previous findings and determination

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which were made in connection with the issuance of the marketing agreement and order. Except insofar as such findings and determinations may be in conflict with the findings and determinations herein, they are hereby ratified and affirmed:

(2) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of kiwifruit grown in the production area in the same manner as, and are applicable to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held:

(4) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order, as hereby proposed to be amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of kiwifruit grown in the production area; and

(6) All handling of kiwifruit grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

**List of Subjects in 7 CFR Part 920**

Kiwifruit, Marketing agreements, Reporting and recordkeeping.

**Recommended Amendment of the Marketing Agreement and Order**

The following amendment of the marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out:

**PART 920—KIWIFRUIT GROWN IN CALIFORNIA**

The authority citation for 7 CFR part 920 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

1. Section 920.21 is revised to read as follows:

**§ 920.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected; except that the term of office of the three additional grower members and their alternates selected from the three districts shipping the greatest volumes of kiwifruit in the prior fiscal period shall be for one year. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms or six consecutive 1-year terms on the committee or a combination thereof not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms or six consecutive 1-year terms or a combination thereof not to exceed 6 consecutive years as alternate members.

2. Section 920.22 is revised to read as follows:

**§ 920.22 Nomination.**

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

23. Section 920.41 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 920.41 Assessments.**

(a) * * * If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

* * * * *

Kenneth C. Clayton,
*Acting Administrator.*

[FR Doc. 90–27974 Filed 11–28–90; 8:45 am]

BILLING CODE 3410–02–M

## 7 CFR Parts 1106, 1120, 1126, 1132, and 1138

**[Docket Nos. AO–335–A34, et al; DA–89–033]**

## Milk in the Rio Grande Valley and Certain Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

| 7 CFR Parts | Marketing Area | Docket Nos. |
|---|---|---|
| 1106 | Rio Grande Valley | AO–335–A34 |
| 1106 | Southwest Plains | AO–210–A50 |
| 1120 | Lubbock-Plainview, Texas | AO–328–A28 |
| 1126 | Texas | AO–231–A58 |
| 1132 | Texas Panhandle | AO–362–A26 |

**AGENCY:** Agricultural Marketing Services, USDA.

**ACTION:** Extension of time for filing exceptions to proposed rule.

**SUMMARY:** This notice extends the time for filing exceptions to a recommended decision issued October 22,1990, concerning proposed amendments to the Rio Grande Valley and certain other milk marketing orders. Counsel for a regulated handler requested the additional time to complete exceptions to the recommended decision.

**DATES:** Exceptions now are due on or before December 17, 1990.

**ADDRESSES:** Exceptions (four copies) should be filed with the Hearing Clerk, room 1061, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090–6456 (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** Prior documents in the proceeding:

Notice of Hearing: Issued November 21, 1989; published November 27, 1989 (54 FR 48753).

Recommended Decisions: Issued October 22, 1990; published October 29, 1990 (55 FR 43345).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Rio Grande Valley and certain other marketing areas which was issued on October 22, 1990, is hereby extended to December 17, 1990.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

**List of Subjects in 7 CFR Parts 1106, 1120, 1126, 1132 and 1138**

Milk marketing orders.

The authority citation for 7 CFR parts 1106, 1120, 1126, 1132 and 1138 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: November 23, 1990.

Kenneth C. Clayton,
*Acting Administrator.*

[FR Doc. 90–27976 Filed 11–28–90; 8:45 am]

BILLING CODE 3410–02–M



## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Part 165**

**[CGD11–90–07]**

## Regulated Navigation Area: San Diego Bay, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering the establishment of a regulated navigation area in San Diego Bay, California, consisting of the water area adjacent to the Naval Submarine Base at Ballast Point and extending eastward across the channel to the shore at the North Island Naval Air Station. This regulated navigation area is necessary to protect U.S. Naval vessels and personnel during submarine docking/undocking operations at the Ballast Point location. If this regulation is adopted, entry into the regulated navigation area will be permitted during these operations, but vessels must travel at a speed such that they will not produce a wake. The Coast Guard has been enforcing a no-wake restriction in this area for submarine docking/undocking operations since December 1985. This has been done by establishing a temporary safety zone for each operation. However, since it is the intention of the Coast Guard to regulate transit through the area rather than to limit entry into this area, a Regulated Navigation Area is considered a more appropriate regulatory tool than a safety zone. In addition, establishing a permanent regulated navigation area will reduce recurring administrative workload and clarify the Coast Guard's intentions for the public.

**DATES:** Comments must be received on or before January 14, 1991.

**ADDRESSES:** Comments should be mailed to Commander(oan), Eleventh Coast Guard District, 400 Oceangate, Long Beach, California 90822–5399. The comments and other materials referenced in this notice will be available for inspection and copying at 400 Oceangate, suite 702, Long Beach, CA. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Edward Sinclair, Eleventh Coast Guard District Office, Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822–5399, telephone (213) 499–5410.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11–90–07) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are Lieutenant Pat Keane, Project Officer, Marine Safety Office San Diego, and Lieutenant Commander J. J. Jaskot, Project Attorney, Eleventh Coast Guard District Legal Office.

**Discussion of Proposed Regulations**

These proposed regulations are intended to address the ongoing need for safety precautions during U.S. Naval submarine docking and undocking operations at Ballast Point. Past operations have been hazarded, and serious damage has occurred, due to the wake of passing vessels. Notices to Mariners had been published for those operations, but a number of vessels ignored these advisories and transited the area at speeds which caused damaging wakes. As a result, since December 1985, temporary safety zones have been established to eliminate wakes during docking/undocking operations. However, the regulatory intent of safety zones is generally to limit access to an area rather than to regulate transit through it. Since the intention of this regulation is to eliminate wakes and not to limit entry, use of a regulated navigation area is considered more appropriate than a safety zone and will help to reduce confusion on the part of the public.

The intent of this proposed regulation is to slow vessels down and reduce the hazard to Naval vessels and personnel involved in submarine docking/undocking operations. If adopted, the regulated area will be in effect only during actual docking/undocking operations. These operations occur approximately four times per month. The actual time will vary depending on the operation; however, the large majority take place early in the morning or early in the afternoon. Public notification of the operations will be made by marine broadcasts and, time permitting, Local Notice to Mariners.

**Regulatory Evaluation**

This proposed regulation is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulated navigation area will only be in effect during actual docking/undocking evolutions, and the impacts on routine navigation are expected to be minimal. The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements.

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**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

**List of Subjects**

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. Section 165.1108 is added to read as follows:

**§ 165.1108 Regulated Navigation Area: San Diego Bay, California.**

(a) *Location.* The area encompassed by the following geographic coordinates is a regulated navigation area:

| | |
|---|---|
| 32°41'24.6" N | 117°14'21.9" W |
| 32°41'34.2" N | 117°13'58.8" W |
| 32°41'34.2" N | 117°13'37.2" W |

Thence south along the shoreline to

| | |
|---|---|
| 32°41'11.2" N | 117°13'31.3" W |
| 32°41'11.2" N | 117°13'58.8" W |

Thence north along the shoreline to the point of origin.

Datum: NAD 1983.

(b) *Regulations.* (1) During submarine docking/undocking operations at the U.S. Naval Submarine Base on Ballast Point, San Diego Bay, California, mariners transiting within the regulated navigation area shall proceed at a speed that generates no wake from their vessel.

(2) The Coast Guard will issue a Broadcast Notice to Mariners, and if time permits a Local Notice to Mariners, to inform the maritime community of the dates and times of the submarine docking/undocking operations covered by paragraph (b)(1).

(3) The master and/or operator of a vessel within the regulated navigation area shall comply with any other orders or directions issued by the Coast Guard as required for the safety of the submarine docking/undocking operations covered by paragraph (b)(1).

Dated: September 26, 1990.

**M.E. Gilbert,**

*Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.*

[FR Doc. 90–28029 Filed 11–28–90; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD2–90–04]**

**Regulated Navigation Area; Arkansas River, Mile 118.2 to 125.4, Vicinity of Little Rock, AR**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) on the Arkansas River from mile 118.2 to 125.4 in the vicinity of Little Rock, Arkansas. This action will impose mandatory operating requirements during high flow periods in order to ensure the safety of vessels transiting the area. This action has the potential to reduce the likelihood of a marine casualty, thus preventing loss of life and property, and harm to navigable waters, existing structures and the environment.

**DATES:** Comments must be received on or before January 14, 1991.

**ADDRESSES:** Comments should be mailed to Commander(dl), Second Coast Guard District, Robert A. Young Federal Building, 1222 Spruce Street, Room 2.102E, St. Louis, Missouri 63103–2832, Attention: Docket CGD2–90–04. The comments and other materials referenced in this notice will be available for inspection and copying at the mailing address. Normal business hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Commander John D. Koski, Project Officer, at commercial telephone number (314) 539–2655 or FTS telephone number 282–2655.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their name and address, identify this notice [CGD2–90–04] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if the comment requests acknowledgement.

The proposed regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if sufficient written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this notice are Commander John D. Koski, Project Officer, Commander(m), Second Coast Guard District, Robert A. Young Federal Building, 1222 Spruce Street, Room 2.102G, St. Louis, Missouri 63103–2832; Lieutenant R. B. Litterell, Coast Guard Marine Safety Office, Suite 1301, 200 Jefferson Avenue, Memphis, Tennessee 38101–2300; and, Lieutenant Michael A. Suire, Project Attorney, Commander(dl), Second Coast Guard District, Robert A. Young Federal Building, 1222 Spruce Street, Room 2.102E, St. Louis, Missouri 63103–2832.

**Discussion of Proposed Regulations**

This proposal would impose mandatory operating restrictions on towboats transiting the Arkansas River between miles 118.2 and 125.4 during periods when the flow rate, as determined by the Army Corps of Engineers, reaches or exceeds 70,000 cubic feet per second at the Murray Lock and Dam at mile 125.4 of the McClellan-Kerr Arkansas River Navigation System. Since 1982, 70,000 cubic feet per second at Murray Lock and Dam has been the benchmark for implementing a voluntary Vessel Management System (VMS) for the area for which a regulated navigation area is now being proposed. The VMS as it is currently implemented, however, is more properly a regulated navigation area, as defined in 33 Code of Federal Regulations section 165, subpart B. Accordingly, this action proposes conversion of the VMS to a regulated navigation area with identical activation parameters and operating restrictions. Apart from the fact that the VMS is a voluntary program whereas the regulated navigation area will impose mandatory restrictions, vessel operators will experience no difference between the two approaches. The VMS was established in cooperation with commercial interests due to the difficulties encountered by downbound towboats while navigating through the Baring Cross bridge at mile 119.6, the Junction bridge at mile 118.7, and the Rock Island railroad bridge at mile 118.2. Specifically, there are no tie-off areas above or between these bridges and insufficient room for maneuvering or turning about between the bridges. Once a downbound vessel is committed to a transit of the Little Rock Harbor and these bridges, the vessel cannot stop. While developing the regulations for the proposed regulated navigation area, the following organizations were contacted: Little Rock Corps of Engineers, Little Rock Port Commission, Jantran Inc., Arkansas River Co., Magnolia Marine Co., and Brent Transportation Inc. All parties contacted thus far expressed no objection to the basic proposal and confirmed the need for operational requirements during high flow conditions.



**Economic Assessment and Certification**

The proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these regulations are considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of these regulations is expected to be minimal. The above conclusions follow from the fact that this action will simply codify the voluntary vessel management system used successfully since 1982 by the majority of towboat owners and operators transiting the proposed regulated area. There is no reason to believe that codifying the existing operating limitations will significantly change the impact on the owners and operators. Whatever impacts which may have occurred have been mollified by eight years of voluntary participation. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

**Environmental Assessment and Certification**

This action is being reviewed by the Coast Guard. Preliminary analysis indicates this action will qualify for a Finding of No Significant Impact in accordance with paragraph 2.B.5 of the NEPA Implementing Procedures, COMDTINST M16475.1B. Interested persons are nonetheless invited to participate in this rulemaking by submitting written views, data, or arguments in accordance with the procedures outlined earlier in this preamble. Copies of all documents being reviewed will be available on the docket for public review.

**Federalism Assessment and Certification**

This action is being analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and it is expected that the proposed action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, this rulemaking simply codifies an existing, eight-year-old, voluntary vessel management system.

**List of Subjects in 33 CFR Part 165**

Harbors, Marines safety, Navigation (waters), Security measures, Vessels, Waterways.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 will continue to read as follows:

Authority: 33 U.S.C. § 1225 and § 1231; 50 U.S.C. § 191; 49 CFR § 1.46 and 33 CFR §§ 1.05–1(g), 6.04–6, and 160.5.

2. Section 165.203 is added to read as follows:

**§ 165.203 Arkansas River, Mile 118.2 to 125.4, Little Rock Arkansas—regulated navigation area.**

(a) The following is a regulated navigation area (RNA): The waters of the Arkansas River between mile 118.2 and mile 125.4.

(b) Transit of the RNA is limited during periods of high velocity flow, defined as the flow rate of 70,000 cubic feet per second or more at the Murray Lock and Dam, mile 125.4. The flow rate at this location is calculated by the U.S. Army Corps of Engineers on a regular and routine basis. This information will be distributed by one or more of the following forms of communication;

(1) Announcements by Coast Guard Marine Information Broadcasts;

(2) Publication in Coast Guard Local Notice to Mariners; and/or,

(3) Telephone or radio contact with the drawtenders at Baring Cross, Junction, or Rock Island railroad bridges, or the Lockmaster at Murray Lock and Dam.

(c) Transit of the RNA during periods of high velocity flow may only occur under the following conditions:

(1) Vessels may not meet or pass in the RNA.

(2) No vessel shall anchor, stop, remain or drift without power at any time in the RNA.

(3) All vessels shall continually monitor VHF–FM channel 13 on their radiotelephone while in or approaching the RNA.

(4) Downbound vessels shall contact the drawtenders on VHF–FM channel 13 before departing Murray Lock and Dam or the mooring cells at mile 121.5 to ensure that the Baring Cross bridge at mile 119.6, the Junction bridge at mile 118.7, and the Rock Island railroad bridge at mile 118.2 are in the open position and will remain in the open position until the vessel has passed through each bridge.

(5) Prior to transiting the RNA, downbound vessels shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated time of departure from Murray Lock and Dam or the mooring cells at mile 121.5 to ensure there are no upbound vessels within the RNA. If there is upbound traffic within the RNA, the downbound vessel shall not depart until the upbound vessel has passed through the RNA. After departing, vessels will proceed through the RNA, including all three bridges, without delay.

(6) When upbound vessels reach mile 119, they shall make a broadcast in the blind on VHF–FM channel 13 announcing their estimated arrival time at the Rock Island railroad bridge, mile 118.2.

(7) When a downbound vessel is already in the RNA, an upbound vessel shall adjust her speed so as to avoid a meeting situation in the RNA.

(d) Pursuant to this regulation, drawtenders at the Baring Cross, Junction, and Rock Island railroad bridges will:

(1) Maintain an alert communication watch on VHF–FM channel 13.

(2) Accept radiotelephone and/or telephone calls from vessels or lock masters.

(3) Raise lift spans as required and furnish information regarding lift span positions.

(4) Advise vessels contacting them if the lift span cannot be raised and furnish estimated time when it can be safely raised.

(5) Immediately make a broadcast in the blind on VHF–FM channel 13 if the lift span malfunctions while being raised or lowered. Upon restoration of services, the drawtender will make a broadcast

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on VHF–FM channel 13 advising vessels the bridge is back in operation.

Dated: November 21, 1990.

**W. J. Ecker,**

*Rear Admiral (Lower Half), United States Coast Guard Commander, Second Coast Guard District.*

[FR Doc. 90–28028 Filed 11–28–90; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

**[FRL–3885–3]**

### Ocean Dumping; Proposed Site Modification

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposed to modify the designation of an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Charleston, South Carolina. This proposed modification is the alteration of the restrictions for the Charleston Harbor Deepening Project ODMDS. This proposed action is necessary to provide an environmentally acceptable ocean disposal site for projects other than the Charleston Harbor Deepening Project.

**DATES:** Comments must be received on or before December 31, 1990.

**ADDRESSES:** Send comments to: Wesley B. Crum, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** Gary W. Collins, 404/347–2126 or FTS 257–2126.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, 228.11) state that use of disposal sites may be modified.

The Charleston Harbor Deepening Project site was designated on August 3, 1987 along with the smaller Charleston ODMDS. A decision to designate a small site for permanent use at Charleston was based on projected future disposal volumes and the ease of monitoring. The larger Harbor Deepening Project site, which was the interim site, was designated for a seven-year period and restricted to use for Harbor Deepening material only. The smaller, permanent Charleston ODMDS lies within the boundaries of, and completely in the western portion of, the larger Charleston Harbor Deepening Project ODMDS. The sites are defined by the following coordinates:

Charleston Harbor Deepening Project ODMDS:

| | |
|---|---|
| 32°35'09" N, | 79°41'57" W; |
| 32°40'45" N, | 79°47'30" W; |
| 32°38'04" N, | 79°48'21" W; |
| 32°30'28" N, | 79°43'49" W. |

Charleston ODMDS;

| | |
|---|---|
| 32°40'27" N, | 79°47'22" W; |
| 32°39'04" N, | 79°44'25" W; |
| 32°38'07" N, | 79°45'03" W; |
| 32°29'30" N, | 79°48'00" W. |

Recent on-site investigations have revealed the presence of significant live bottom resources within and around both Charleston ODMDSs. These resources are located primarily in the western half of the smaller site and along the southern boundary of the larger site. While the effects of burial by dredged material disposal are apparent, the effects of nearby disposal (particularly of fine material) on these resources is yet to be determined. Ongoing studies are being conducted to determine whether recently disposed fine materials are impacting these resources. Until these studies are complete, further disposal of all fine material will be limited to the eastern portion of the Charleston Harbor Deepening Project ODMDS to prevent interference with these studies and to minimize further potential impacts.

The need to limit disposal of fines to the eastern half of the Charleston Harbor Deepening Project ODMDS and the restrictions on use of this area (only Harbor Deepening Project material) have effectively eliminated the only ocean disposal alternative to all other dredging projects in the Charleston area. Modification of its designation would make the Charleston Harbor Deepening Project ODMDS available for use by these other entities.

#### EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites [35 FR 16186 (May 7, 19710)]. The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The type and nature of material that does come and could come from the Harbor Deepening Project is not significantly different from other types of dredged material that may come from the Charleston area. The primary difference between Harbor Deepening Project material and all other material from the Charleston area is the authorization and resources allocated to the respective projects.

EPA believes this difference does not warrant the preparation of an Environmental Impact Statement (EIS).

Once studies are complete, EPA will dedesignate the smaller Charleston ODMDS and redefine the boundaries of the Charleston Harbor Deepening Project ODMDS through further rulemaking. Such measures would remove all disposal activities from the immediate vicinity of the significant resources and reduce the potential for adverse impacts. However, taking such measures before all studies are complete is considered by EPA to be premature and ill-advised. EPA's major concern at this time is to provide an environmentally feasible ocean disposal site for all dredging parties.

#### Proposed Site Modification

The proposed site modification for the Charleston Harbor Deepening Project ODMDS is the alteration of the restriction on site use. The present restriction on site use is the limitation on disposal to dredged material from the Charleston Harbor Deepening Project. EPA proposes to change the restriction to disposal of dredged material from the greater Charleston area and to limit, for the time being, the geographic area within which fine materials can be disposed. Once the studies on the resources are complete, additional areas within the larger site may be available for disposal of certain types of dredged material.

#### Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material from non-Harbor Deepening projects. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.



Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirements subject to office of management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

#### List of Subjects in 40 CFR Part 228

Water pollution control.

Approved by:

**Joe R. Franzmathes,**

*Acting Regional Administrator.*

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as set forth below.

### PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. In § 228.12 paragraph (b)(34) "Restriction" is revised to read as follows:

**§ 228.12 Delegation of management authority for interim ocean dumping sites.**

* * * * *

(b) * * *

(34) * * *

Restriction: Disposal shall be limited to dredged material from the Charleston Harbor Area. Disposal of fine materials shall be limited to that part of the site east of the line between coordinates 32°39'04" N, 79°44'25" W and 32°37'24" N, 79°45'30" W.

* * * * *

[FR Doc. 90–28019 Filed 11–28–90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Federal Insurance Administration

### 44 CFR Part 67

**[Docket No. FEMA–6997]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects a Notice of Proposed Modified Determinations of base (100-year) flood elevations previously published at 55 FR 34294 on August 22, 1990. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Township of Hope, Warren County, New Jersey.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Modified Determinations of base (100-year) flood elevations for selected locations in the Township of Hope, previously published at 55 FR 34294 on August 22, 1990, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.

#### List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

On page 34294, in the August 22, 1990 issue of the **Federal Register**, the entries under Hope (Township), Warren County, are corrected to read as follows:

| Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD0) | |
|---|---|---|---|
| | | Existing | Modified |
| Beaver Brook | Downstream corporate limits | None | *359 |
| | Downstream of Interstate 80 | None | *424 |

Issued: November 20, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90–28012 Filed 11–28–90; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 90–563; RM–7444]**

### Radio Broadcasting Services; Thomasville, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of WJDB Radio, Inc., licensee of Station WJDB(FM), Channel 237A, Thomasville, Alabama, seeking the substitution of FM Channel 238C3 for Channel 237A and modification of its license accordingly. Coordinates for this proposal are 31–46–07 and 87–45–53.

**DATES:** Comments must be filed on or before January 14, 1991 and reply comments on or before January 29, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jeffrey D. Southmayd, Esq., Southmayd, Simpson & Miller, P.C., 1233—20th St., NW., Suite 205, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–563 adopted October 30, 1990, and released November 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28054 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-362; RM-6894; RM-6983]**

**Radio Broadcasting Services; Thomasville and Monroeville, Al**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of proposals.

**SUMMARY:** This document dismisses two inter-related petitions for rule making. The first petition, filed on behalf of WJDB Radio, Inc., licensee of Station WJDB(FM), Channel 237A, Thomasville, Alabama, proposed the substitution of Channel 244C2 for Channel 237A and modification of its license accordingly (RM-6894). The proposal is dismissed based upon a technical deficiency with respect to Channel 243C, Fort Walton Beach, Florida. The second petition, filed on behalf of Hub City Broadcasting Corporation, proposed the allotment of Channel 237C3 to Monroeville, Alabama, as that community's second local FM service, contingent upon the relinquishment of Channel 237A at Thomasville (RM-6983). *See* 54 Fed. Reg. 35356, August 25, 1989. The proposal is dismissed based upon the petitioner's withdrawl of interest. With this action, the proceeding is terminated.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-362, adopted October 30, 1990, and released November 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28055 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-560; RM-7803]**

**Radio Broadcasting Services; Dorrington, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Matthew J. Cullen seeking the allotment of FM Channel 291A to Dorrington, California, as that community's first local broadcast service. Coordinates for this proposal are 38-16-05 and 120-16-34.

**DATES:** Comments must be filed on or before January 17, 1991, and reply comments on or before February 1, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Matthew J. Cullen, P.O. Box 2177, Arnold, CA 95223.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-560 adopted November 8, 1990, and released November 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street , NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts:

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28056 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-565; RM-7536]**

**Radio Broadcasting Services; Deer River, MN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Radio Ingstad Minnesota, Inc., requesting the substitution of Channel 288C1 for Channel 288A at Deer River, Minnesota, and modification of the construction permit for Station KXGP to specify the higher class channel. Canadian concurrence will be requested at coordinates 47-23-00 and 93-24-10.

**DATES:** Comments must be filed on or before January 14, 1991, and reply comments on or before January 29, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, David D. Oxenford, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.



**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-565, adopted October 31, 1990, and released November 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28057 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-562; RM-7525]**

**Radio Broadcasting Services; Ballston Spa and Saratoga Springs, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Saratoga Radio Corporation seeking the reallotment of Channel 272A from Saratoga Springs to Ballston Spa, New York, and the modification of its license for Station WQQY(FM) to specify Ballston Spa as its community of license. The allotment of Channel 272A to Ballston Spa could provide that community with its first local FM service. Channel 272A can be allotted to Ballston Spa in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.8 miles) south of the community to avoid a short-spacing to Stations WJIV, Channel 270B, Cherry Falls, New York, and WEQX (FM), Channel 274B, Manchester, Vermont, as well as to accommodate petitioner's desired transmitter site. The coordinates for Channel 272A are North Latitude 42-52-44 and West Longitude 73-51-47. Canadian concurrence is required since Ballston Spa is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 272A at Ballston Spa or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before January 14, 1991, and reply comments on or before January 29, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard R. Zaragoza, Esq., John Joseph McVeigh, Esq., Fisher, Wayland, Cooper and Leader, 1255—23rd Street, NW., Suite 800, Washington, DC 20037-1125 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-562, adopted October 30, 1990, and released November 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28058 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-564; RM-7489]**

**Radio Broadcasting Services; Waynesboro, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Pioneer Radio FM, Inc., seeking the substitution of Channel 235C3 for Channel 235A at Waynesboro, Tennessee, and the modification of Station WTNR-FM's construction permit to specify operation on the higher powered channel. Channel 235C3 can be allotted to Waynesboro in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station WTNR-FM's outstanding construction permit. The coordinates for Channel 235C3 are North Latitude 35-14-04 and West Longitude 87-42-50. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 235C3 at Waynesboro or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before January 14, 1991, and reply comments on or before January 29, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eugene F. Mullin, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Fawn Wilderson, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-564, adopted October 31, 1990, and released November 23, 1990. The full text of this Commission decision is

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available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28089 Filed 11-28-90; 8:45 am]

BILLING CODE 6712-01-M

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1103**

**[Ex Parte No. 55 (Sub-No. 70)]**

**Practitioners; Licensing**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to change its policies and procedures regarding the licensing of nonattorney ICC practitioners' to ensure that the practitioners' examination is conducted as cost-effectively as possible. The Commission requests comments on the proposal enumerated below, which is intended to provide the Commission with greater flexibility in administering this examination and to streamline the examination process.

**DATES:** Comments must be received by December 19, 1990.

**ADDRESSES:** An original and 15 copies of comments (and any replies) should be sent to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

Janie A. McCutchen, Office of Vice Chairman Phillips, (202) 275-7535.
Kathleen King, Assistant Secretary, (202) 275-7429, [TDD for hearing impaired (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** The number of applicants for the annual practitioner's examination [see 49 CFR 1103.3) has decreased dramatically in recent years. In 1980, for example, there were only eight applicants for this year's examination, compared to 204 in 1980. Because the preparation, administration, and grading of the examination require the use of substantial Commission resources at a time when Commission resources are becoming increasingly scarce, the Commission seeks to make certain that the practitioner's examination is conducted in the most cost-effective manner possible while, at the same time, ensuring that the quality of the examination is not compromised.

In December 1988, the Commission issued an Advance Notice of Proposed Rulemaking (ANPR) presenting several alternatives to address this situation. (53 FR 53029, December 30, 1988) Specifically, the ANPR solicited comments on the following proposals:

1. Continuing to offer an examination each year, but reducing the expenditure of Commission resources associated with it;
2. Amending the Commission's present regulations to allow the annual examination to be cancelled when the demand for the examination is insufficient to justify the staff resources involved;
3. Allowing the examination to be administered by the ICC practitioners bar, rather than the Commission;
4. Eliminating the examination requirement for practitioners and instead requiring general standards of fitness; and
5. Discontinuing the licensing of new nonattorney practitioners.

Comments were received from the Association of Transportation Practitioners and the Transportation Lawyers Association, jointly, and 22 other parties. The primary focus of the comments was that the Commission should do its utmost to preserve the integrity and credibility of its practitioners. Reflecting this view, a majority of the comments did not support eliminating the examination and instead requiring general standards of fitness because it would be difficult to determine appropriate standards that would guarantee an applicant's knowledge of the law. In addition, most of the comments did not support eliminating the licensing of new nonattorney practitioners. Recognizing the Commission's budgetary constraints, a majority of the comments supported reducing Commission resources used to administer the examination and allowing the annual examination to be cancelled when the demand for it is too low to justify the costs. Most comments also supported allowing the examination to be administered by the ICC practitioners bar. Due to the risk of possible lawsuits, however, the Association of Transportation Practitioners and the Transportation Lawyers Association stated that they would not be able to administer the examination, but offered to assist the Commission in the preparation of the examination and to allow their facilities to be used as alternative locations for the examination. The American Society of Transportation and Logistics, Inc. offered to prepare and administer the examination for a fee.

After review of the comments received in response to the ANPR, the Commission has determined that the licensing of new nonattorney practitioners and the examination requirement should be retained. Further, the Commission will continue to administer the examination, rather than shifting this responsibility to a party outside the agency. Whenever possible, however, without adversely affecting the quality of the examination, the Commission will seek to reduce the expenditure of Commission resources associated with the examination. As part of this effort, the Commission will undertake certain internal procedural modifications to streamline further the examination process.

The Commission proposes two modifications to the regulations at 49 CFR 1103.3 concerning nonattorney practitioners:

1. The Commission will amend the regulations to allow the annual examination to be canceled when the demand is insufficient to justify the staff resources involved. The Commission would take such action only in extreme circumstances where the cost of administering the examination for so few applicants was exceptionally high. The examination would be offered in the year immediately following a year in which the examination was cancelled.
2. The Commission will retain the July examination date currently in the regulations. To allow more time for preparation and review of the examination within the Commission, however, the regulations will be



amended to change the May 15 registration deadline to May 1. Should the Commission determine that the examination will be cancelled in a given year, the Commission will notify any applicants by June 15 of that year and refund their application fees at that time.

**Environmental and Energy Considerations**

We conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Regulatory Flexibility Analysis**

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of the proposed action on small business and small organizations. We conclude that this decision will not have a significant impact on a substantial number of small entities.

**List of subjects in 49 CFR Part 1103**

Administrative practice and procedure, Lawyers.

Decided: November 23, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1103 of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 1103—PRACTITIONERS**

1. The authority citation for part 1103 continues to read as follows:

**Authority: 49 U.S.C. 10300 and 10321; 5 U.S.C. 559; 21 U.S.C. 853a.**

2. Section 1103.3 is amended in paragraph (c)(1) by revising the date "May 15" to read "May 1"; redesignating paragraphs (i) through (o) as paragraphs (j) through (p) and adding a new paragraph (i) to read as follows:

**§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.**

* * * * *

(i) *Cancellation of examination.* If the Commission determines that there is an insufficient number of applicants to warrant conducting the examination, the Commission will cancel the examination for that year. Notice of the cancellation will be mailed to applicants on or before June 15 and the application fee will be refunded. The Commission will conduct the examination the next year following the cancellation of the examination.

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[FR Doc. 90-28039 Filed 11-28-90; 8:45 am]

BILLING CODE 7035-01-M

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# Notices

Federal Register
Vol. 55, No. 230
Thursday, November 29, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 1990 Crop Soybeans

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of Determinations with respect to 1990-Crop Soybeans.

**SUMMARY:** The purpose of this notice is to affirm the announcement that the level of price support for the 1990 soybean crop is $4.50 per bushel. This announcement is made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act"). In accordance with section 1009 of the Food Security Act of 1985, as amended, any determinations with respect to implementation of cost reduction options will be made at a later date.

**EFFECTIVE DATE:** September 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Orville I. Overbos, Agricultural Economist, Commodity Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202)447–4417. An impact analysis has been prepared and is available from the above named individual.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under Department of Agriculture procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Section 1017 of the Food Security Act of 1985 provides that the Secretary of Agriculture shall determine the rate of loans, payments and purchases under a program established under the 1949 Act for any of the 1986 through 1990 crops without regard to the requirements for notice and public participation. Accordingly, public comments are not requested with respect to the level of loans and purchases under the price support program for the 1990 crop of soybeans.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(C) provides that the support price for each of the 1988 through 1990 crops shall be established at a level equal to 75 percent of the simple average price received by producers for soybeans in the preceding 5 marketing years excluding the years with highest and lowest prices, except that the level of support may not be reduced by more than 5 percent in any year and in no event below $4.50 per bushel. Calculation of 75 percent of the simple average market price received by producers for soybeans for the 5 marketing years preceding the 1990 marketing year, excluding the years with the highest and lowest prices, yields a price of $4.32 per bushel. Since this price is below the minimum level permitted by law, the level of support for the 1990 crop of soybeans is $4.50 per bushel.

If the Secretary of Agriculture determines in accordance with section 201(i)(2) that the price support level for soybeans computed for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the price support level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction in the price support level for soybeans made in accordance with section 201(i)(2) is not considered in determining the price support level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement is applicable. Since the level of support computed under section 201(i)(1)(C) was the same whether preliminary or final information and statistics were used, the preliminary and final levels of price support for the 1990 crop of soybeans are both established at $4.50 per bushel.

Section 201(i)(3) of the 1949 Act provides that, if the Secretary determines that such action will assist in maintaining the competitive relationship of soybeans in domestic and export markets after taking into consideration the cost of producing soybeans, supply and demand conditions, and world prices for soybeans, the Secretary may permit a producer to repay a loan for a crop at a level that is the lesser of (1) The announced loan level determined for such crop or (2) the prevailing world market price for soybeans, as determined by the Secretary. If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) A formula to define the prevailing world market price for soybeans and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for soybeans. No marketing loan program is being offered for 1990-crop soybeans since it has been determined that such action will not affect the competitive position of soybeans.



Section 1009(a) of the Food Security Act of 1985 provides that whenever the Secretary determines that an action authorized by Section 1009 (c), (d) or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small and medium sized producers participating in such programs, the Secretary shall take such action with respect to that commodity program. These actions include: (1) The commercial purchase of commodities by the Secretary; (2) the settlement of nonrecourse loans at an amount less than the total of the principal amount, if such action will result in: (A) Receipt of a portion rather than none of the accumulated interest, (B) avoidance of default, or (C) elimination of storage, handling and carrying charges on the forfeited loan collateral; and (3) the reopening of a production control or loan program established for a crop at any time prior to harvest of such crop for the purpose of accepting bids from producers for the conversion of acreage planted to a program crop to diverted acreage in return for in-kind payments if the Secretary has determined that: (1) Changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for the crop and (2) without action to further adjust production, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments are not subject to the maximum payment limitation provision of section 1001 of the Food Security Act of 1985 but are limited to $20,000 per year producer for any one commodity.

Any determinations with respect to implementation of cost reduction options in accordance with section 1009 of the Food Security Act of 1985 will be made at a later date.

A press release was issued on August 28, 1990, which made an announcement of the loan and purchase level of $4.50 per bushel for the 1990 crop of soybeans. Since the level of support has not been changed, this $4.50 per bushel support price constitutes the preliminary and final loan and purchase level for the 1990 crop of soybeans. The purpose of this notice is to affirm that determination.

### Determinations

#### *A. Loan and Purchase Level*

The announcement with respect to the loan and purchase level for the 1990 crop of soybeans is that it shall be $4.50 per bushel.

#### *B. Cost Reduction Options*

The decision to implement any cost reductions will be made at a later date.

**Authority:** Section 201 of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446(i)).

Signed at Washington, DC on November 19, 1990.

John A. Stevenson,
*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 90–28045 Filed 11–28–90; 8:45 am]

BILLING CODE 3410–05–M

## Forest Service

### Rocky Mountain Region; Exemption of Fire Recovery Projects From Appeal; Black Hills National Forest, SD

**AGENCY:** Forest Service, USDA.

**ACTION:** Notification that certain rehabilitation decisions related to the sale of dead, dying and intermixed green trees within the Cicero Recovery Project area are exempt from appeals under provisions of 36 CFR part 217.

**SUMMARY:** This is a notification that certain rehabilitation decisions pertaining to recovery from the Swedlund Fire on the Black Hills National Forest are exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, page 3342.

**EFFECTIVE DATE:** Effective on issuance.

**FOR FURTHER INFORMATION CONTACT:** Darrel Kenops, Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730. (605) 673–2251.

**SUPPLEMENTARY INFORMATION:** National Forest resources affected by devastating wildfires require urgent rehabilitative attention. The loss of timber and vegetation presents an immediate threat of flooding and damage to water quality from stream siltation in many areas. Additionally, fires result in substantial losses of fish and wildlife habitat and of other facilities.

The Forest Service has an obligation to rehabilitate National Forest System lands and resources damaged by wildfires. With full consideration given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

1. Allow regeneration of burned-over areas to ensure watershed and soil quality and to provide for future timber needs;
2. Protect watershed and soil values;
3. Restore wildlife and fisheries habitat;
4. Salvage burned timber; and
5. Remove bark beetle infested trees and those trees highly susceptible to bark beetle attack which were associated with the fire.

The accomplishment of these objectives can involve not only harvest of the timber but also road construction and reconstruction; reconstruction of physical facilities installed for wildlife and fisheries habitat, and range management; and other nonstructural wildlife habitat improvements. Environmental analysis of proposed actions related to the rehabilitation are currently underway. Pursuant to 40 CFR 1501.7, scoping is now in progress. Scoping is being conducted by the Custer District Ranger to determine the issues to be addressed in the environmental analysis.

The Custer Ranger District is expected to complete the environmental analysis and documentation by December 1990. Decisions are also expected at that time. The environmental documents will be available for public review at the Supervisor's Office located at Highway 385 North, Custer, SD 57730, and at the Custer Ranger District Office, 330 Mt. Rushmore Road, Custer, SD 57730.

### Background

In September 1990, the Swedlund Fire burned approximately 9,700 acres on the Black Hills National Forest. Within that area about 3,000 acres were subject to high intensity burns which caused severe damage to vegetation, soil and water resources, and to visual quality. Habitat essential to bison, elk, deer, and turkey was also damaged. Much of the burned area is adjacent to, or visible from, the Mount Coolidge Lookout in Custer State Park and from state and Federal highways. This area receives heavy visitation by tourists and the local public.

The area within which rehabilitation activities would occur is located in Custer County, approximately four miles southeast of the City of Custer, South Dakota, and is within the Flynn and Glen Erin Diversity Units. The area, which according to the Forest Plan is to be managed primarily for timber production and for elk, has been intensively managed for many years. Large investments in commercial and precommercial thinnings and other commercial harvests created a situation where the timbered stands were nearly at regulation. There have also been investments made to manage the elk

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that exist in this area, including identification of preferred old growth and cover areas, investments in water developments, and imposition of travel management restrictions. The fire has changed the area considerably.

**Planned Actions**

The Custer Ranger District interdisciplinary team surveyed the burned area and concluded that a substantial loss of timber values would occur if the timber was not removed soon. In addition, the risk of insect and disease infestations in both the short- and long-term was found possible. Because of the extensive damage to the timber resources here, there is need to commence salvage harvesting as quickly as possible. Some of the fire damaged trees have already deteriorated to the point where they have little commercial value, and it is anticipated that much of the remaining commercial value will be completely lost within the next 12 to 18 months. The total estimated volume of dead, dying, and green timber to be offered for sale or modified within existing contracts by January 1991 is between 10 to 30 million board feet (MMBF) on approximately 9,700 acres of National Forest System land.

If salvage operations are not completed before summer of 1991, insects will attack both the damaged and the healthy trees within the area. Salvage harvest of useable wood fiber, following guidelines set forth in the goals, policies, and direction found in the Forest Plan will help prevent a catastrophic insect infestation while at the same time providing funds and opportunities to accomplish additional Plan objectives, such as aspen regeneration. Avoiding an insect infestation will serve to facilitate the long-term goals provided for in the Forest Plan.

A detailed inventory of the timber has not been completed to date; however, all of the trees to be salvaged are ponderosa pine with an average diameter of 12 inches. Volume losses currently are less than 5 percent. Volume loss due to rot, insects, and drying weather will accelerate beginning in May 1991, and by September 1991, it is expected that salvage would no longer be practical. Without salvage there would be no money available from timber sale collections to move the area toward the desired future condition specified in the Forest Plan.

Also, standing dead timber is currently located with falling distance of numerous existing roads. These roads are used by the public for recreation and access to private land. A delay in removing this timber will create a hazardous situation.

Further, in order to reduce any adverse impacts on the elk population within the rehabilitation area, certain connected actions, such as mitigation measures, resource developments, and other actions need to be implemented concurrently with salvage operations whenever feasible. Implementing these activities concurrently will reduce the number and duration of human entries into the area and will result in less disturbance to elk populations.

Therefore, rehabilitation salvage sales which are designed to reduce the potential for catastrophic insect infestation, to reduce hazardous situations and to offer salvage timber for sale must be undertaken as quickly as possible. Therefore, I am exempting those sales and attendant actions, including road construction and reconstruction, from appeal under provisions of 36 CFR part 217 if, through environmental analysis, it is found these actions are feasible.

The salvage sales and attendant actions to which this exemption applies will be identified in any documentation as part of the Cicero Recovery Project.

Dated: November 20, 1990.

**Gary E. Cargill,**

*Regional Forester.*

[FR Doc. 90-27958 Filed 11-28-90; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[A-28-90]

### Foreign-Trade Zone 151—Findlay, Ohio; Request for Manufacturing for Findlex Corporation; Extension of Public Comment Period

The extended public comment period for the above case (55 FR 26225, 6/17/90; 55 FR 35160, 8/28/90), involving a request on behalf of Findlex Corporation (subsidiary of Nissin Kogyo of Japan and Honda of America Manufacturing, Inc.) for manufacturing authority under zone procedures for the production of vehicle brakes within FTZ 151 at the Tall Timbers Industrial Park, Findlay, Ohio, closed on October 31, 1990. On the last day of the extended period, a comment was received from an interested party in opposition to the Findlex proposal, which requested a further extension of the public comment period. The request referred to information which has just recently been made public in regard to an investigation being conducted by the Federal Trade Commission at the request of the House Judiciary Committee, which includes consideration of the relationship between Japanese auto and auto parts manufacturers, and the effect on the auto parts industry of the United States.

Consequently, in order to allow interested parties to submit additional information, the comment period is extended to December 31, 1990 for comments and for another 15 days thereafter for comments on the material submitted the first 30 days.

Comments in writing are invited during these periods. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 21, 1990.

**John J. De Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 90-28003 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[A-570-806]

### Initiation of Antidumping Duty Investigation: Chrome-Plated Lug Nuts From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of chrome-plated lug nuts from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of chrome-plated lug nuts from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 17, 1990. If that determination is affirmative, we will make our preliminary determination on or before April 10, 1991.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kristal Eldredge, Gary Bettger, or Ross Cotjanle, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0631, (202) 377-2239, or (202) 377-3534, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 1, 1990, we received a petition filed in proper form by Consolidated International Automotive, Inc. on behalf of the U.S. industry producing chrome-plated lug nuts. The petition was supplemented on November 14, 1990, November 15, 1990, and November 16, 1990. In compliance with the filing requirements of § 353.12 of the Department's regulations (19 CFR 353.12 (1990)), petitioner alleges that imports of chrome-plated lug nuts from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meeting of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that they have standing to file the petition because they were an interested party, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for import Administration.

**United States Price and Foreign Market Value**

Petition's estimate of United States price (USP) is based on invoices from a company in the PRC for sales of one-piece chrome-plated lug nuts to the United States. These sales were made on a C.I.F. Los Angeles basis. From the C.I.F. price, petitioner deducted estimated freight and insurance.

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value (FMV) on constructed value (CV). CV was calculated using factors of production developed for the PRC. These factors were primarily valued based on a country at a stage of economic development comparable to the PRC and which is a significant producer of comparable merchandise (i.e., India). When values in India were not available, petitioner valued factors at world commodity prices. To calculate an estimated CV for the subject merchandise, petitioner included raw materials (steel and chemicals), packing, electricity, labor, other operating costs, and depreciation costs. Petitioner added the statutory minimums of ten percent for SG&A and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act.

Petitioner's methodology resulted in a margin of 154 percent for one-piece chrome-plated lug nuts. The Department determined in its review of the petition that petitioner had incorrectly calculated the alleged margin. The correct calculation results in an estimated dumping margin of 156.05 percent.

**Initiation of Investigation**

Under section 732(c) of the Act, the Department must determine, within 20 days after a position is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on chrome-plated lug nuts from the PRC and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of chrome-plated lug nuts from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 10, 1991. In approximately thirty days, we intend to provide a questionnaire soliciting the information necessary to make that determination to the Embassy of the People's Republic of China.

**Scope of Investigation**

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Chrome-plated locknuts are not subject to this investigation. Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 17, 1990, whether there is a reasonable indication that imports of chrome-plated lug nuts from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act (19 CFR 353.13).

Dated: November 21, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28001 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-810]

### Initiation of Antidumping Duty Investigation: Chrome-Plated Lug Nuts From Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper from with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of chrome-plated lug nuts from Taiwan are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 17, 1990. If that determination is affirmative, we will

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make our preliminary determination on or before April 10, 1991.

**EFFECTIVE DATES:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kristal Eldredge, Gary Bettger, or Ross Cotjanie, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0631, (202) 377–2336, or (202) 377–3534, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 1, 1990, we received a petition filed in proper from by Consolidated International Automotive, Inc. on behalf of the U.S. industry producing chrome-plated lug nuts. The petition was supplemented on November 14, 1990, November 15, 1990, and November 16, 1990. In compliance with the filing requirements of § 353.12 of the Department's regulations (19 CFR 353.12 (1990)), petitioner alleges that imports of chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that they have standing to file the petition because they are an interested party, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations (19 CFR 353.14 (1990)).

**United States Price and Foreign Market Value**

Petitioner's estimate of the United States price (USP) is based on price quotes from a trading company in Taiwan offering to sell one-piece and two-piece chrome-plated lug nuts to the United States. These offers were made on a C.I.F. Los Angeles basis. From the C.I.F. price, petitioner deducted estimated freight and insurance. For these deductions, petitioner differentiated between the one-piece and two-piece chrome-plated lug nuts.

Petitioner alleges that chrome-plated lug nuts are not sold in Taiwan or to markets other than the United States. Accordingly, petitioners based foreign market value (FMV) on constructed value (CV). CV was calculated using petitioner's 1989 production costs, adjusted for known differences in Taiwan. Petitioner added the statutory minimums of ten percent for SG&A and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act.

Petitioner's methodology resulted in margins of 91 and 73 percent, for one-piece and two-piece chrome-plated lug nuts, respectively. The Department determined in its review of the petition that petitioner had incorrectly calculated the alleged margins. The correct calculation results in estimated dumping margins of 83.69 percent and 66.84 percent for one-piece and two-piece chrome-plated lug nuts, respectively.

**Initiation of Investigation**

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on chrome-plated lug nuts from Taiwan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of chrome-plated lug nuts from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 10, 1991.

**Scope of Investigation**

The merchandise covered by this investigation is one-piece and two-piece chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Chrome-plated locknuts are not subject to this investigation. Chrome-plated locknuts are not subject to this investigation. Chrome-plated lug nuts are currently provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 17, 1990, whether there is a reasonable indication that imports of chrome-plated lug nuts from Taiwan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act (19 CFR 353.13).

Dated: November 21, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28002 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–DS–M

**[A–475–059]**

## Pressure Sensitive Plastic Tape From Italy; Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of amendment to final results of antidumping duty administrative review in accordance with decision upon remand.

**SUMMARY:** As a result of a remand from the Court of International Trade (the Court), the Department of Commerce (the Department) is amending its final results of the fourth administrative review of the antidumping finding on pressure sensitive plastic tape from Italy, published in the **Federal Register** on May 9, 1988. In accordance with the instruction of the Court, the Department has redetermined the dumping margin for entries of pressure sensitive plastic tape sold by N.A.R., S.p.A. (NAR) to the United States during the period October 1, 1985 through September 30, 1986. The original margin was 6.39 percent and the recalculated margin is 3.70 percent.



**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Simone Altfeld or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 9, 1988, the Department published in the **Federal Register** (53 FR 16444) the final results of its administrative review of the antidumping finding on pressure sensitive plastic tape from Italy.

On June 26, 1990, the Court remanded the case to the Department to redetermine its difference-in-merchandise adjustment for NAR. The Court ordered the Department: (1) To explain its reasons for using the difference-n-merchandise adjustment for printed tape of another manufacturer (Manuli) as best information available (BIA), pursuant to 19 U.S.C. 1677e, when the tape at issue is not a printed tape, (2) to determine the basis for Manuli's cost differences between its home market tape and its U.S. tape, and (3) to use another tape's cost differences as BIA if the Department determines that the printed tape's cost differences were greater than they would have been if there were no printing cost differences associated with producing the printed tape.

The Department submitted its remand determination to the Court on September 27, 1990. The Department explained that it originally chose Manuli's highest reported difference-in-merchandise adjustment, one based on printed tape, as BIA for NAR because it was impossible to tell which of Manuli's reported adjustment amounts properly applied to NAR's tape. Further, the Department explained that the record did not provide a sufficiently detailed breakdown of the costs reported, to account for Manuli's claimed adjustment for difference-in-merchandise. Nevertheless, the Department did conclude that printing costs created greater cost differences than there would have been if there were no printing involved. Therefore, pursuant to the order of the Court, the Department used another tape's cost data, an unprinted tape, as BIA.

**Results of Remand**

As instructed by the Court, the Department recalculated the dumping margin for NAR using as BIA Manuli's difference-in-merchandise adjustment for an unprinted tape. As a result of this recalculation, NAR's margin has changed from 6.39 percent to 3.70 percent for the period October 1, 1985 through September 30, 1986.

If this decision is not appealed to the Court of Appeals for the Federal Circuit, or if it is appealed and affirmed, the Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

This amendment to the final results of the antidumping duty administrative review is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22 (1989)).

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28000 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–DS–M

**[A–122–007]**

## Sheet Piling From Canada; Final Results of Antidumping Duty Administrative Review and Cancellation of Suspension Agreement

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review and cancellation of suspension agreement.

**SUMMARY:** On August 8, 1990, the Department of Commerce published the preliminary results of its administrative review and invitation for comment on the antidumping duty suspension agreement on sheet piling from Canada. The review covers Casteel, Inc., a manufacturer and exporter accounting for substantially all Canadian sheet piling shipped to the United States, and the period September 1, 1985 through August 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. At the request of two interested parties, L.B. Foster and Casteel, Inc., we held a hearing on September 21, 1990. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results. Because we found sales at less than fair value during the period of review, we determine that Casteel is in violation of the suspension agreement. Therefore, we are cancelling the suspension agreement and resuming the investigation.

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes or Lisa Boykin, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1131/5346.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 8, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 32280) the preliminary results of its administrative review and invitation to comment on the antidumping duty suspension agreement (47 FR 40683, September 15, 1982) on sheet piling from Canada. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

**Scope of the Review**

Imports covered by this review are shipments of sheet piling from Canada. During the review period this merchandise was classifiable under item numbers 609.9600 and 609.9800 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under item 7301.10.00 of the Harmonized Tariff Schedule ("HTS"). Item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Casteel, Inc., a manufacturer/exporter accounting for substantially all Canadian sheet piling shipped to the United States, and its U.S. subsidiary, Casteel U.S.A., Inc. The review period is from September 1, 1985 through August 31, 1986.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. At the request of L.B. Foster, a domestic interested party, and the respondent, Casteel, Inc., we

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held a public hearing on September 21, 1990. We received comments from L.B. Foster and Casteel, Inc.

*Comment 1:* Foster argues that Casteel's sales promotion and entertainment expenses are indirect selling expenses and therefore should not be eligible for an adjustment to FMV.

*Department's position:* We disagree. We verified that Casteel's promotion and entertainment expenses, which include the cost of catalogs and entertainment, are directed to the end users of sheet piling. The end users are the construction companies to which Casteel sells directly. Therefore, we consider such expenses to be directly related to sales of sheet piling and have allowed an adjustment to FMV. Unlike consumer products, which often involve many levels in the sales chain between producer and consumer and therefore require a close analysis of whether sales promotion is directed at the ultimate user or at middlemen, industrial products such as sheet piling often involve only one level in the sales chain. During the review period, there was only one level.

*Comment 2:* Foster argues that the Department should not allocate expenses incurred at Casteel U.S.A. over both rental and sales revenue of sheet piling, but rather over only sales revenue.

*Department's position:* We disagree. The SG&A expenses in question were incurred with respect to both rentals and sales of sheet piling. Therefore, the appropriate allocation is over both rental and sales revenue.

*Comment 3:* Foster contends that the Department should not make an adjustment for "bend test" (which measures the strength of steel) expenses in its calculation of foreign market value because such tests are performed in both the Canadian and U.S. markets. Foster alleges that Casteel has claimed an adjustment for bend test expenses on the basis that these tests are required on sales in the Canadian market but are not necessary in the U.S. market; however, Foster argues that both markets incur these costs.

*Department's position:* We agree with Foster that no allowance for the bend test should be made to foreign market value as a circumstance of sale adjustment because Casteel could not substantiate its claim that this expense is incurred in only the Canadian market.

*Comment 4:* Foster contends that difference in merchandise adjustments should be made when the Department compares similar merchandise. Foster believes that the Department neglected to make adjustments for differences in coil costs, differences in coated vs. noncoated piling, and differences in other physical characteristics (such as height, length and width).

*Department's position:* We disagree with Foster. Except for fabrication costs (*see* Comment 9), there is no discernible difference in cost per ton in the merchandise even though the physical characteristics of the sheet piling are different. The Department's regulations provide that, "in calculating foreign market value, the Secretary will make a reasonable allowance for differences in the physical characteristics of merchandise compared to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference." 19 CFR 353.57. Since there is no difference in cost (other than fabrication costs) due to physical differences, we are not satisfied that any price difference is due to physical differences in the merchandise.

*Comment 5:* Foster contends that the Department should not allow the averaging of duty and brokerage expenses because such averaging can mask actual dumping margins. Foster recommends that the Department use sales-specific data.

*Department's position:* We disagree. We are satisfied that the average duty and brokerage expenses reported by Casteel are an accurate measure of the actual expenses incurred on each transaction. At verification, we examined individual invoices and actual duty/brokerage expenses for four months in the review period and found that the expenses, on a per ton basis, did not vary greatly from month to month or from sale to sale.

*Comment 6:* Casteel argues that the Department should not have included an interest charge on a loan from Casteel's parent when computing the internal interest rate for the company's U.S. credit expenses. Casteel further argues that since the Department deducted credit expenses from USP, it should also deduct credit expenses from FMV.

*Department's position:* We disagree. At the U.S. verification, we found that interest had accrued on various loans, including the loan from Casteel's parent. We therefore included the interest incurred on this loan in our calculations of Casteel's credit expenses. Since Casteel did not claim any credit expenses in its home market, we made no credit adjustment to FMV.

*Comment 7:* Casteel argues that the Department erred in eliminating all sales to one customer in the home market based on pricing irregularities concerning only one sale. Casteel claims that there is no justification for eliminating any sales to this customer because the sale price on the one sale was verified and the circumstances concerning that purchase were fully explained.

*Department's position:* We disagree. At verification, we selected one sale to this particular customer for examination. Because we found that Casteel failed to report a repurchase agreement on sheet piling sales to this one customer, we have disregarded all sales to this customer.

*Comment 8:* Casteel argues that the Department did not include an amount corresponding to U.S. commissions in the ESP indirect selling expense "cap."

*Department's position:* We agree and have adjusted our calculations to include an amount corresponding to U.S. commissions in the ESP indirect selling expense cap.

*Comment 9:* Casteel argues that in making adjustments to USP for state sales tax expenses, the Department failed to incorporate new information submitted in the supplemental questionnaire response and instead used the highest U.S. sales tax rate found at verification. Casteel also alleges that the Department used the highest fabrication charges found at verification as the best information available for threading and cornering charges, when the information submitted in the supplemental response should have been used.

*Department's position:* We agree and have recalculated both the tax adjustment and the fabrication charges. For the fabrication adjustment, we allocated an average cost to all sales, using information from Casteel's supplemental response, and added this amount to FMV as a difference-in-merchandise adjustment. Regarding the sales tax expenses, even when we recalculate the adjustment using the lowest possible tax rate on all sales, which results in a *lower* overall tax liability than that reported by Casteel in its supplemental response, we still find sales at less than fair value.

*Comment 10:* Casteel claims that the Department has made a number of data entry errors with respect to U.S. freight charges and total Canadian sales.

*Department's position:* We agree and have corrected the errors.

*Comment 11:* Casteel claims that the Department changed its methodology in calculating margins for this review from the method used at the time of the 1982 suspension agreement. Although Casteel recognizes the Department's right to change methodologies at any time, the Department failed in its obligation to inform Casteel of the changes, as provided by the implicit terms of the suspension agreement. Furthermore, Casteel claims that since the method used in calculating margins is now different in at least two respects from that agreed upon on October 28, 1982, when Casteel was informed of the methodology that the Department would use in administering the suspension agreement, the preliminary results of review are in error and cannot be used as the foundation for a finding that Casteel is in violation of the suspension agreement. Casteel states that during the fair value investigation the Department compared sales prices on the basis of weight only, *i.e.*, the price of a short ton of sheet piling sold in the United States was compared with the price of a short ton of sheet piling sold in Canada without regard to form or shape (profile) of the piling. In the preliminary results of this review, the Department made comparisons on a profile basis. Additionally, the Department used transaction-specific FMVs in the fair value investigation rather than the monthly weighted average FMVs used in the preliminary results of this review. Casteel claims the current methodology is not in accordance with the intent of the agreement, is in error, and must be changed to the methodology in force at the time that the agreement was signed.

*Department's position:* We agree with Casteel that the suspension agreement may have implied that we would inform Casteel of any changes in our methodology prior to implementation. Therefore, we have revised our calculation of foreign market value using the methodologies employed during the fair value investigation, as stated by Casteel. Even after making these adjustments, we continue to find a margin of 1.64 percent.

*Comment 12:* Foster submitted several comments regarding Casteel's cost of production information and urges the Department to review its analysis of Casteel's costs to determine whether Casteel made any sales below cost during the review period.

*Department's position:* Because we have determined that Casteel made sales at less than fair value during the review period based on a price-to-price comparison and because this determination requires us to suspend liquidation at the rate found in the preliminary determination and resume the investigation, we determine that any issues related to cost are moot.

**Final Results of Review and Cancellation of Suspension Agreement**

Based on our analysis of the comments received and certain adjustments resulting from those comments, we determine the dumping margin for Casteel to be 1.64 percent for the period September 1, 1985 through August 31, 1986. Based on the presence of sales at less than fair value, we determine that Casteel has violated the terms of the suspension agreement. Therefore, we are cancelling the suspension agreement and will resume the investigation of sales at less than fair value as set forth in section 734(i) of the Tariff Act.

This cancellation is effective on the date of publication of this notice in the Federal Register. In accordance with section 734(i), we will instruct the Customs Service to suspend liquidation on all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of this notice. The rate at which such merchandise will be suspended is 2.07 percent, the rate found in the preliminary determination of sales at less than fair value (47 FR 27861, June 28, 1982).

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this notice or 45 days after our final determination.

This administrative review, cancellation of suspension agreement, and resumption of investigation are in accordance with sections 751(a)(1) and 734(i) of the Tariff Act (19 U.S.C. 1675(a)(1) and 1673c(i)) and §§ 353.22 and 353.19 of the Commerce Regulations (19 CFR 353.22 and 353.19).

Dated: November 21, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-27989 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-DS-M



**International Trade Administration**

**Short-Supply Determination: Certain Cold Heading Quality Billets**

**AGENCY:** Import Administration/International Trade Administration, Commerce.

**ACTION:** Notice of Short-Supply Determination on certain cold heading quality steel billets.

**Short-Supply Review Number: 28.**

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby denies a request for a short-supply allowance of 15,500 net tons of certain cold heading quality steel billets for the first quarter of 1991 under the U.S.-Australia steel arrangement.

**EFFECTIVE DATE:** November 21, 1990.

**FOR FURTHER INFORMATION CONTACT:** Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4037 or (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** On October 22, 1990, the Secretary received an adequate short-supply petition from American Steel and Wire Corporation ("ASW") requesting a short-supply allowance for 15,500 net tons of certain cold heading quality steel billets. The request was for material during the first quarter of 1991 under Article 8 of the Arrangement Between the Government of Australia and the Government of the United States of America Concerning Trade in Certain Steel Products. ASW is requesting a short-supply allowance because its qualified domestic supplier has expressed an unwillingness to meet ASW's needs for the subject material during this period and its qualified foreign supplier has no regular export licenses available. The Secretary conducted this review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

*Dimensions* (and tolerances): 130 mm square (± 2 mm) x 9.4-10.3 meters (no shorts);

*Surface condition:* Seams, laps, and other linear defects shall not exceed 6.35mm as a general guideline. Harmful scabs, slivers and other point defects must be kept to an absolute minimum;

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*Twist:* 5 degree max/length of billets;
*Straightness:* 13 mm max out-of-straight in any 1.5 meters, max 76 mm out-of-straight over full billet length, no hooked ends;
*Squareness:* Rhomboid sections with uneven diagonals more than 8 mm are unacceptable;
*Ends:* Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Detachable saw burrs, fins, or shear lips must be minimized. Mushroomed ends must not exceed 6 mm/side, no open or split ends;
*Grades:* 1005 AK, 1010 AK, 1022 MOD CG, 10B24 FG, 1038 CG, 1541H FG;
Rolled billets can be produced from ingots or bloom cast, and include controlled and certified product chemical analyses. All grades have a copper residual limit of 0.10 max.

**Action**

On October 22, 1990, the Secretary established an official record on this short-supply request (Case Number 28) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, at the above address. On June 5, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than November 7, 1990, and interested parties were invited to file replies to any comments not later than five days after that date. In order to determine whether this product could be supplied to ASW during the first quarter of 1991, the Secretary sent questionnaires to Inland Steel Industries ("Inland"), Republic Engineered Steels ("Republic"), USX Corporation ("USX"), The Timken Company ("Timken"), Raritan River Steel Company ("Raritan"), Bethlehem Steel Corporation ("Bethlehem"), Copperweld Steel Company ("Copperweld"), Georgetown Steel Company ("Georgetown"), and North Star Steel Texas, Inc. ("North Star"). The Secretary received questionnaire responses from seven of the parties to which questionnaires were sent and four comments to the **Federal Register** notice.

USX forwarded its questionnaire to USS/Kobe Steel Company ("USS/Kobe"), which is the former USS-Lorain works that produces bars and billets. USX felt this facility might be able to produce the billets included in ASW's request.

**Questionnaire Responses**

Inland and Copperweld indicated that they do not have the capability to manufacture the types of billets included in this request. USX stated it currently does not produce billets. Georgetown noted that it could not meet ASW's cross-sectional specification. USS/Kobe noted that it routinely sells the requested product to ASW but it cannot currently guarantee its ability to supply the requested tonnage until a labor contract settlement is reached. Republic and Timken stated that with some exceptions to the specifications, they could produce the requested product and supply it to ASW. Bethlehem offered to supply the entire request within three to four weeks of order placement. North Star and Raritan did not respond to the questionnaire.

On November 9, 1990, the Department contacted ASW to get further clarification on certain points. Specifically, ASW was asked whether or not it has attempted to qualify Bethlehem and if not, why? The Department also requested that ASW justify its extremely stringent specifications and indicate exactly how much of the requested tonnage will be used to make wire rod for the specific customers supporting this request.

On November 12, 1990, ASW provided the Department with information on the amount of the requested product needed by each of the customers supporting this request.

On November 9, 1990, the Department received comments from Bethlehem indicating that it either was selling or had sold cold heading quality rod rolled from its own billets to several of the ASW customers supporting the petition and that this implicitly qualified Bethlehem as a billet supplier to ASW.

On November 12, 1990, ASW submitted comments to Bethlehem's questionnaire response. ASW states that it must purchase its CHQ grades only from Basic Oxygen Furnace (BOF) steel producers who use either an ingot cast bottom poured or a bloom cast method of billet production. ASW cites Bethlehem's lack of BOF and direct casting capability as reasons why Bethlehem would not be a viable supplier. In addition, ASW states that Bethlehem is not one of its qualified suppliers. ASW did note, however, that Bethlehem is supplying CHQ grade material to the fastener industry.

**Analysis**

ASW's arguments for rejecting the offer to supply the requested material by Timken and Republic is based on exceptions to its specifications, and its argument for rejecting Bethlehem is based on qualification and specifications.

Regarding Timken and Republic, ASW notes that the specification exceptions requested will present specific problems in its own internal processing of the steel and in the processing of the steel by its customers. These problems were not refuted by either Timken or Republic. Therefore, the Secretary must conclude that ASW cannot take exception to these specifications, and Timken and Republic cannot be recognized as potential suppliers at this time.

Regarding Bethlehem and qualification, ASW states that Bethlehem is not a qualified supplier of the billets and is not recognized as being qualified to ASW's customers as a source of steel. ASW notes that BHP and USS/Kobe both are qualified suppliers of the CHQ billets. ASW provided a detailed description of its billet supplier qualification process and states "[o]ur customers expect and demand that we purchase from a qualified supplier." However, the ASW customer letters in support of the petition do not explicitly state that only BHP and USS/Kobe are qualified suppliers. Rather, they merely indicate that "American Steel & Wire has supplied our C.H.Q. wire rod from rerolled billets from B.H.P. of Australia or from USS/Kobe Steel."

This raises questions on the issue of qualification. This implies that qualification is an issue to ASW rather than its customers. ASW provided no information on efforts to qualify Bethlehem even though Bethlehem is a recognized CHQ rod producer. In fact, Bethlehem has been producing billets for a significant period of time and ASW has made no effort to purchase this product from it. The Secretary cannot conclude that a product is not available domestically when it has not been requested of a potential supplier.

Regarding Bethlehem and specifications, ASW states that Bethlehem does not produce billets made from the BOF process, and it cannot either bottom pour its ingots or bloom cast the required billets. ASW is seeking BOF steel because it generally has lower residuals than that available from an electric furnace, and ASW's desire for bottom poured ingots or bloom cast steel is attributed to the quality of the product produced by these methods. However, the specifications provided in the petition state only that the billets can either be ingot or bloom cast, and no reference is made to the type of steelmaking furnace that must be used by a supplier. Bethlehem has indicated it can produce and supply all grades of the billets by the ingot cast method during the first quarter of 1991, and it can meet ASW's total requirements with no exceptions to the specifications. In fact, it states it is supplying or has supplied CHQ rod to most of the same customers listed by ASW. The Secretary can only conclude that Bethlehem can meet ASW's needs with an acceptable product.

**Conclusion**

A potential domestic supplier of cold heading quality steel billets has stated that it able and willing to meet ASW's total tonnage requirements of CHQ billets during the first quarter of 1991, with no exception to its specifications. Therefore, the Secretary determines that short-supply does not exist with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the Secretary denies a short-supply allowance for 15,500 net tons of the requested billets for the first quarter of 1991.

Dated: November 21, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28004 Filed 11-28-90; 8:45 am]

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## Duke University, et al., Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90-100. *Applicant:* Duke University, Durham, NC 27710. *Instrument:* Electron Microscope, Model JEM-1200EXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 55 FR 30952, July 30, 1990. ORDER DATE: February 23, 1990.

*Docket Number:* 90-103. *Applicant:* South Dakota School of Mines and technology, Rapid City, SD 57701. *Instrument:* Electron Microscope and EDK System, Model H-7000FA. *Manufacturer:* Hitachi, Ltd., Japan. *Intended Use:* See notice at 55 FR 30952, July 30, 1990. ORDER DATE: March 13, 1990.

*Docket Number:* 90-106. *Applicant:* University of Maryland at College Park, College Park, MD 20742. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 55 FR 30952, July 30, 1990. *Application Received By Commissioner of Customs:* June 21, 1990.

*Docket Number:* 90-108. *Applicant:* Michigan Technological University, Houghton, MI 49931. *Instrument:* Electron Microscope, Model JEM-4000 FX/TEMSCAN. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 30952, July 30, 1990. *Order Date:* January 30, 1990.

*Docket Number:* 90-113. *Applicant:* Loyola University Medical Center, Maywood, IL 60153. *Instrument:* Electron Microscope, Model EM 900. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 30953, July 30, 1990. *Order Date:* March 21, 1990.

*Docket Number:* 90-114. *Applicant:* The Children's Memorial Hospital, Chicago, IL 60614. *Instrument:* Electron Microscope, Model EM 900 PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 30953, July 30, 1990. *Order Date:* March 8, 1990.

*Docket Number:* 90-118. *Applicant:* Research Foundation of the State University of New York, Stony Brook, NY 11794. *Instrument:* Electron Microscope, Model JEM-1200 EXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 55 FR 32675, August 10, 1990. *Order Date:* April 27, 1990.

*Docket Number:* 90-121. *Applicant:* House Ear Institute, Los Angeles, CA 90057. *Instrument:* Electron Microscope, Model EM 902 PC/ST. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 32675, August 10, 1990. *Order Date:* March 21, 1990.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

*Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 90-28005 Filed 11-28-90; 8:45am]

BILLING CODE 3510-DS-M

## University of Michigan, et al., Consolidated Decision on Applications for Duty-Free Entry of Election Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90-129. *Applicant:* University of Michigan, Ann Arbor, MI 48109-2136. *Instrument:* Electron Microscope (used), Model EM 420. *Manufacturer:* N.V. Philips Electronics, The Netherlands. *Intended Use:* See notice at 55 FR 32676, August 10, 1990. *Order Date:* December 18, 1989.

*Docket Number:* 90-133. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Electron Microscope, Model JEM 1200 EXII. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 32676, August 10, 1990. *Order Date:* June 15, 1990.

*Docket Number:* 90-135. *Applicant:* Sloan-Kettering Institute for Cancer Research, New York, NY 10021. *Instrument:* Electron Microscope, Model JEM 1200EX/SEG/DP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 32677, August 10, 1990. *Order Date:* May 24, 1990.

*Docket Number:* 90-136. *Applicant:* University of North Carolina at Chapel Hill, Chapel Hill, NC 27599. *Instrument:* Electron Microscope, Model EM 900 with Accessories. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 55 FR 35161, August 28, 1990. *Order Date:* May 30, 1990.

*Docket Number:* 90-141. *Applicant:* Colorado State University, Fort Collins, CO 80523. *Instrument:* Electron Microscope, Model JEM 2000EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 55 FR 35161, August 28, 1990. *Order Date:* March 21, 1990.

*Docket Number:* 90-145. *Applicant:* Presbyterian-University Hospital, Pitsburgh, PA 15203. *Instrument:* Electron Microscope, CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 55 FR 35162, August 28, 1990. *Order Date:* January 22, 1990.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these

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instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

*Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 90-28006 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-DS-M

## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90-194. *Applicant:* University of Vermont, College of Medicine, Department of Physiology and Biophysics, Burlington, VT 05405. *Instrument:* Muscle Mechanic System. *Manufacturer:* Scientific Instruments GmbH, West Germany. *Intended Use:* The instrument will be used to examine both mechanical and chemical properties of cardiac muscle, including muscle force, length and sarcomere length. Investigations will include intracellular free calcium of intact muscles and ATPase activity and degree of calcium binding in skinned muscle. The overall objective of these studies is to further the understanding of the fundamental mechanisms of force development in cardiac muscle. *Application Received by Commissioner of Customs:* October 30, 1990.

*Docket Number:* 90-195. *Applicant:* University of Georgia, Athens, GSA 30602. *Instrument:* Mass Spectrometer, Model Tracermass. *Manufacturer:* Europa Scientific, United Kingdom. *Intended Use:* The instrument will be used for the investigation of the ratio of carbon 12 to carbon 13 and the ratio of nitrogen 14 to nitrogen 15 in samples of plant material, soil material, and in animal materials which can be used as a non-radioactive tracer of the flows of carbon and nitrogen through ecosystems. *Application Received by Commissioner of Customs:* October 30, 1990.

*Docket Number:* 90-196. *Applicant:* Mount Sinai School of Medicine, One Gustave L. Levy Place, New York, NY 10029. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for the investigation of subcellular structure of cells, with particular attention to organelles and to the cytoskeleton. The structure of tissues will also be investigated, with particular attention to the nervous system. This research is intended to elucidate fundamental biological mechanisms and the nature of human diseases that are caused by defects in the mechanisms. In addition, the instrument will be used to train graduate students in the fundamentals of electron microscopy. *Application Received by Commissioner of Customs:* October 30, 1990.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 90-28007 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

### Business Development Center Applications: Los Angeles, CA

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to the availability of funds. The cost of performance for the first 12 months is $622,000 in Federal funds and a minimum of $109,765 in non-Federal contributions for the budget period April 1, 1991 to March 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Los Angeles, California geographic service area.

The I.D. number for this project will be 09-10-91002-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduct of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration): the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.



*Closing Date:* The closing date for applications is December 19, 1990. Applications must be postmarked on or before December 19, 1990.

Proposals are to be mailed to the following address:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, November 29, 1990 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 2, 1990.

**Xavier Mena,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 90-27959 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-21-M

## Business Development Center Applications: San Diego, CA

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $276,250 in Federal funds and a minimum of $48,750 in non-Federal contributions for the budget period April 1, 1991 to March 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the San Diego, California Geographic service area.

The I. D. number for this project will be 09-10-91003-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

*Closing Date:* The closing date for applications is December 19, 1990. Applications must be postmarked on or before December 19, 1990.

Proposals are to be mailed to the following address:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, November 29, 1990 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable

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regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 28. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 2, 1990.

**Xavier Mena,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 90–27980 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–21–M

## National Institute of Standards and Technology

### Malcolm Baldrige National Quality Award's Board of Overseers

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a meeting of the Board of Overseers of the Macolm Baldrige National Quality Award on Wednesday, December 12, 1990, from 8 a.m. to 4 p.m. The Board of Overseers is composed of seven members appointed by the Secretary of Commerce. The purpose of this meeting is to review the activities of the Malcolm Baldrige National Quality Award Program in order to assist the Board of Overseers in reporting to the Secretary of Commerce and Director of the National Institute of Standards and Technology as required by law. The discussion on Award applicant data scheduled to begin at 3 p.m. on December 12, 1990, will be closed.

**DATES:** The meeting will convene December 12, 1990, at 8 a.m. and adjourn at approximately 4 p.m. on December 12, 1990. The open part of the meeting will commence at 8 a.m. and adjourn at 3 p.m. on December 12, 1990.

**ADDRESSES:** The meeting will be held in room 6029, Department of Commerce, Herbert Hoover Building, 14th Street and Constitution Avenue, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990 that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: November 26, 1990.

**John Lyons,**

*Director.*

[FR Doc. 90–28042 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–13–M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management; Federal Consistency Appeal by Chevron U.S.A. Inc. from an Objection by the California Coastal Commission

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notice of secretary's decision in the Chevron U.S.A. Inc. consistency appeal.

On October 29, 1990, the Secretary of Commerce issued a decision in the consistency appeal of Chevron U.S.A. Inc. (Chevron). Chevron had applied to the Minerals Management Service (MMS) of the Department of the Interior for a Plan of Exploration (POE) permit for drilling for oil and gas on Lease OCS–P–0525 offshore California. Pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA) 16 U.S.C. 1451 *et seq.*, the California Coastal Commission objected barring issuance of the permit. The decision finds that there are several reasonable alternatives available to Chevron that would permit it to carry out its proposed project in a manner consistent with the California Coastal Management Program and therefore Chevron's proposed project does not meet the regulatory criteria to be found consistent with the objectives or purposes of the Coastal Zone Management Act. The decision also held that there will be no significant impairment of a national defense or national security interest if Chevron's project is not allowed to go forward as proposed. Under the implementing regulations of the CZMA, this decision prohibits MMS from issuing the POE permit to Chevron necessary for it to proceed with its oil exploration activities.

**FOR FURTHER INFORMATION CONTACT:** Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., room 603, Washington, DC 20235, (202) 673–5200.

Dated: November 26, 1990.

[Federal Domestic Assistance Catalogue No. 11.419 Coastal Zone Management Program Assistance]

**Thomas A. Campbell,**

*General Counsel, National Oceanic and Atmospheric Administration.*

[FR Doc. 90–28041 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–08–M

### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of the Texas Habitat Protection Advisory Panel on December 12, 1990, at the Ramada Inn Hobby Airport—East, 9005 Airport Boulevard, Houston, TX. The meeting will begin at 9 a.m. and will adjourn at 5 p.m.

The Council will discuss: (1) A progress report on the Corps of Engineers and Environmental Protection Agency (EPA) Memorandum of Agreement for Mitigation; (2) the channel into East Matagorda Bay and reasons for EPA's denial; (3) a report on a recent study for the mouth of the Colorado River project; and (4) an update on the Playa del Rio and Bahia Grande projects.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: November 23, 1990.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–27984 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–22–M

### Mid-Atlantic Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Committees will hold public meetings on December 11–13, 1990, at the Dunes Manor Hotel, 29th Street and the Ocean, Ocean City, MD (telephone: 1–800–523–2888). The Council will begin its meeting on December 12 at 8:30 a.m., and is scheduled to adjourn on December 13 at approximately 1 p.m.

The Council will discuss overfishing definitions for *Lologo* and *Illex* squid, and butterfish. The Council also will hear a report on activities of the International Commission for the Conservation of Atlantic Tuna and a report on the National Marine Fisheries Service (NMFS) Shark Fishery Management Plan. As necessary, other fishery management issues also will be discussed. The Council also may meet in a closed session (not open to the public), to discuss personnel and/or national security matters.

On December 11 at approximately 9 a.m., the Council's Squid/Mackerel/Butterfish, Information and Education, Shark, Scallop and Pelagic Committees will hold public meetings.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 23, 1990.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–27985 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–22–M

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will hold a public meeting on December 3–7, 1990, at the Hilton Hotel in Anchorage, Alaska. The meeting will begin on December 3 at 8 a.m.

The Council will consider the following agenda items: (1) Reports by the Alaska Department of Fish and Game, National Marine Fisheries Service, and the U.S. Coast Guard, and reports on current legislation and international fisheries, and foreign permit applications; (2) status report on ongoing analyses for the inshore-offshore allocation issue; (3) a NMFS report on the groundfish overfishing definition and its potential impact on the setting of acceptable biological catch and quota levels; (4) set the acceptable biological catch and quota allocations for the groundfish fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands; (5) consider an incentive program for 1991 to reduce prohibited species bycatch rates in the groundfish fisheries off Alaska; (6) allocate bycatch limits among fisheries and gear types as appropriate; (8) review a regulatory amendment which would require that groundfish pots be fished on a single line, and consider emergency action to implement the amendment in early 1991, if necessary, (9) approve the memberships of the Advisory Panel, the Scientific and Statistical Committee, and plan teams; (10) continue discussion of insurance coverage for observers on fishing vessels and the concept of pooling vessels for the purpose of sharing observer coverage and costs; (11) review and approve a regulatory amendment modifying the definition of a groundfish pot; and (12) consider a regulatory amendment to change the sablefish season in the Gulf of Alaska.

On December 1 the Council's Advisory Panel and the Scientific and Statistical Committee will begin meeting at 10:30 a.m. The Advisory Panel will meet at the Hilton Hotel in Anchorage; the Scientific and Statistical Committee will meet in the Federal Building at 605 W. 4th Avenue, 3rd floor, in Anchorage. The following day, it will move to the Hilton Hotel. Also scheduled to meet that week, on December 2, is the Council's Ad Hoc Bycatch Committee. Other meetings of workgroups and committees may be called on short notice during the meeting week. All meetings will be held at the Hilton, unless otherwise noted, and are open to the public, except Council executive sessions and the meeting of the Advisory Panel Nominating Committee.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: November 23, 1990.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–27986 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–22–M

### South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce

The South Atlantic Fishery Management Council will hold a public meeting of the Shrimp Committee and the Shrimp Advisory Panel, on December 11, 1990, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC. The meeting will begin at 1 p.m., and adjourn at 5 p.m. The Shrimp Committee and the Advisory Panel will develop options for a Shrimp Fishery Management Plan (FMP).

Some options that members will address are: (1) A definition of overfishing for shrimp, (2) allowing states to request closures of Federal waters to shrimping when state waters are closed; (3) turtle excluder devices regulations; and (4) finfish as bycatch in the shrimp industry.

For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: November 25, 1990.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–27987 Filed 11–28–90; 8:45 am]

BILLING CODE 3510–22–M

### Western Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a public meeting on December 5, 1990, from 2 p.m., until adjournment at 8 p.m., and on December 6, from 8 a.m., until adjournment at 11:30 a.m. The meeting will be held at the Dole Cannery—Wahiawa Ballroom, 735 Iwilei Road,

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Honolulu, HI. The Council will meet to discuss issues concerning the entry of new longliners to the Western Pacific pelagic fisheries. In particular, the Council will discuss: (1) Action on a recommendation from its pelagics Plan Monitoring Team (PMT) that a three-year moratorium on new entry into the Hawaii longline fishery be imposed, and (2) implementation of control dates for the pelagic fisheries of American Samoa and Guam, which could be used to restrict participation in the fisheries in the future should the Council develop limited effort plans for those areas.

The Council will also review a process proposed by the PMT and the Advisory Panel to develop management measures designed to reduce gear conflicts in the pelagic fisheries of Hawaii. The meeting is open to the public and an opportunity for public comment will be provided.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368; fax: (808) 526-0024.

Dated: November 23, 1990.

**Alan Dean Parsons,**

*Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-27988 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-22-M

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**[Permit No. 560 (P135B)]**

**Endangered Marine Mammals**

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Request for Modification to Scientific Research.

**SUMMARY:** Notice is hereby given that Dr. James Hain, Associated Scientists at Woods Hole, Inc., P.O. Box 721, Woods Hole, MA 02543, has requested a modification to Permit No. 560 pursuant to the provisions of § 216.33(d) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 220.24 of the Regulations Governing Endangered Species (50 CFR parts 217-222).

Permit No. 560, issued July 1, 1988 (51 FR 24737), authorized the Permit Holder to conduct surveys on an unspecified number of cetaceans and pinnipeds (except walrus), and to take an unspecified number of floating dead marine mammals, or parts thereof, during the course of the research.

This proposed modification would allow the Permit Holder to conduct research activities in all waters of the United States, including east coast, west coast, and the Gulf of Mexico. Additionally, the Permit Holder requests authorization to conduct aerial survey activities at altitudes lower than 500 feet.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Commission of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular proposal would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this proposed modification are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries.

Documents submitted in connection with the above are available for review by interested persons in the following offices:

Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Administrator, Western Pacific Program Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822-2396.

Dated: November 23, 1990.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 90-27989 Filed 11-28-90; 8:45 am]

BILLING CODE 3510-22-M

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## COMMODITY FUTURES TRADING COMMISSION

**Chicago Board of Trade Proposed Option Contracts**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity option contracts.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on three year interest rate SWAP futures and options on five year interest rate SWAP futures. For the proposed futures option contracts, the CBT's applications also contain a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interest persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before December 3, 1990.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT option on three year interest rate SWAP futures or the option on five year interest rate SWAP futures.

**FOR FURTHER INFORMATION CONTACT:** Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7227.

**SUPPLEMENTARY INFORMATION:** In addition to requesting comment on the terms and conditions of the proposed option contracts, the Division also is requesting comment on the merits of petitions filed by the CBT pursuant to § 33.11 of the Commission's rules. The petitions request exemptive relief from the trading volume tests set forth in Commission Rule 33.4(a)(5)(iii). As discussed in more detail in previous **Federal Register** notices (see for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that a petition for exemption from the trading volume tests may be granted if the underlying cash market for the commodity exhibits a high level of liquidity evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads; the terms of the futures contract ensure the opportunity for arbitrage between the cash and futures markets; and there is a reliable price series representative of values of the commodity underlying the futures contract.

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts or the related petitions, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC, 20581, by the specified date.

Issued in Washington, DC on November 21, 1990.

**Gerald Gay,**

*Director.*

[FR Doc. 90-27957 Filed 11-28-90; 8:45 am]

BILLING CODE 6351-01-M



## DEPARTMENT OF DEFENSE

### Department of the Army

**Army Historical Advisory Committee, DOD; Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting.

**NAME OF COMMITTEE:** Department of the Army Historical Advisory Committee.

**DATE:** 7 December 1990.

**PLACE:** Hill Conference Center, National War College Building, Fort McNair, Washington, DC 20319-6000.

**TIME:** 0800-1600 hours.

**PROPOSED AGENDA:** Review and discussion of the status of historical activities in the U.S. Army.

**PURPOSE OF THE MEETING:** The committee will review the past 3 years historical activities based on reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, U.S. Army, and the Secretary of the Army for advancing history in the U.S. Army.

Meetings of the Advisory Committee are open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing, at least five days prior to the meeting of their intention to attend the 7 December meeting.

Any members of the public may file a written statement with the Committee before, during or after the meeting. To the extent that time permits the Committee Chairman may allow public presentations of oral statements at the meeting.

**FOR FURTHER INFORMATION CONTACT:** All communications regarding this Advisory Committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, Washington, DC 20374-5088.

**Kenneth L. Denton,**

*Alternate Army Liaison Officer With the Federal Register.*

[FR Doc. 90-28062 Filed 11-28-90; 8:45 am]

BILLING CODE 3710-08-M

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**Army Science Board; Open Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* 16 December 1990.

*Time:* 1100-1300.

*Place:* International Club, Wash., DC.

*Agenda:* The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet to review the Terms of Reference, prepare an agenda and a proposed timetable for the meetings. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 90-28010 Filed 11-28-90; 8:45 am]

BILLING CODE 3710-08-M

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## DEPARTMENT OF EDUCATION

**[CFDA No. 84.087]**

**Indian Fellowship Program**

**AGENCY:** Department of Education.

**ACTION:** Notice extending the closing date for new awards under the Indian Fellowship Program for fiscal year (FY) 1991.

**SUMMARY:** On November 6, 1990, the Department published a notice in the **Federal Register** inviting applications under the Indian Fellowship Program for FY 1991 (55 FR 46711). Detailed information concerning this competition was included in that notice. This is an official notice that the Office of Indian Education has extended the closing date for transmittal of OIE fellowship applications from January 11, 1991 to January 18, 1991. The extension will allow applicants sufficient time to prepare their applications.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Dr. John Derby, Branch Chief, Indian Education Fellowship Program, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue SW., room 2171, Washington, DC 20202. Telephone (202) 401-1902.

**Program Authority:** 20 U.S.C. 2023.

Dated: November 20, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90-27906 Filed 11-28-90; 8:45 am]

BILLING CODE 4000-01-M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. FA89-9-001]

### Williston Basin Interstate Pipeline Co., Pipeline Rates: Hearing, Accounting; Order Establishing Hearing Procedures

Issued November 23, 1990.

On October 1, 1990, the Chief Accountant issued a contested audit report [1] under delegated authority noting Williston Basin Interstate Pipeline Company's (Williston) disagreement with an item contained in the staff's audit report of Williston's books and records. The report noted Williston's disagreement with the staff regarding Compliance Exception No. 1 on Schedule No. 2 concerning the procedures for computing carrying charges related to purchased gas costs. Williston was requested to advise whether it would agree to the disposition of the issues under the shortened procedures provided for by part 158 of the Commission's Regulations. 18 CFR 158.1, *et seq.*

On October 30, 1990, Williston responded that it did not consent to the shortened procedures. Section 158.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Natural Gas Act, particularly sections 4, 5 and 8 thereof, and pursuant to the Commission's Rules of Practice and Procedure (18 CFR chapter I), a public hearing shall be held concerning the appropriateness of Williston's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be promptly published in the Federal Register.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-27977 Filed 11-28-90; 8:45 am]

BILLING CODE 6717-01-M

[1] 51 FERC ¶ 61,035.

## Office of Fossil Energy

[FE Docket No. 90-84-NG]

### Clajon Marketing, L.P., Application To Export Natural Gas to Mexico

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 26, 1990, of an application filed by Clajon Marketing, L.P. (Clajon), requesting blanket authorization to export from the United States to Mexico up to 365 Bcf of natural gas over a two-year period commencing with the date of first delivery. Clajon intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported gas. Clajon states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 31, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4708

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

**SUPPLEMENTARY INFORMATION:** Clajon is a Delaware limited partnership with its principal place of business in San Antonio, Texas. Clajon is an indirect subsidiary of PSI Inc., which in turn, is a wholly owned subsidiary of UtiliCorp United, Inc.

Clajon is actively engaged in the business of purchasing and reselling natural gas in the spot market, as the marketing affiliate of Clajon Gas Company, L.P. As a marketer of natural gas, Clajon also acts as agent on behalf of both producers and purchasers in securing transportation arrangements for such gas when necessary. Clajon requests authority to export up to 500,000 Mcf per day of domestic natural gas to Mexico in order to participate in short-term or spot sales to Mexican customers. The applicant states that the requested authority is necessary to participate in the rapidly changing conditions in the U.S. and Mexican natural gas markets.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

A'l parties should be aware that if this blanket export application is granted, the authorization may permit the export of the gas at any point of exit on the international border where existing pipeline facilities are located and that a total term volume may be designated,



rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Clajon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28046 Filed 11-28-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-95-NG]

### The Montana Power Co., Application to Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 7, 1990, of an application filed by The Montana Power Company (MPC) requesting blanket authorization to import up to 10 Bcf of Canadian natural gas for a two-year period beginning on February 7, 1991, the day after MPC's existing authorization expires, through February 6, 1993. MPC intends to use existing facilities in the United States and states that it will notify the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 31, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4523

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** MPC, a Montana corporation with its principal place of business in Butte, Montana, is a utility company serving natural gas customers within the state. MPC currently is authorized to import Canadian natural gas under a two-year blanket authorization granted by the Economic Regulatory Administration (ERA) in DOE/ERA Opinion and Order No. 87, 1 ERA Para. 70,694 (April 30, 1987), in DOE/ERA Docket No. 87–03–NG. Under the instant proposal, MPC requests to extend its authority to import Canadian natural gas on a short-term basis from Canadian producers and exporters to serve its system supply requirements. The gas would be obtained from gas reserves in Alberta, Canada. Price, volume, transportation, and all other transaction terms will result from individual negotiations in response to market conditions. The applicant asserts gas will be purchased only if it is price competitive and therefore needed, and anticipates that many of the transactions will have terms of one to two months.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions.

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**NEPA Compliance**

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.516.

A copy of MPC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28047 Filed 11-29-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3864-5]**

**Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action to grant case-by-case extension.

**SUMMARY:** EPA is granting final approval to Celanese Engineering Resins, Inc., in Bishop, Texas, for a three month extension of the November 8, 1990, effective date of the hazardous waste injection restrictions applicable to injected wastewaters with the hazardous waste codes: U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U191, U188, U228, D001, and F039. This action responds to a petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. The Agency proposed action on this request in a October 15, 1990, Federal Register notice. See 55 FR 41762 (FRL-3852-4). By granting approval to this case-by-case petition, Celanese Engineering Resins, Inc., can continue to inject the wastestream described above at the Bishop facility until February 8, 1991, but not later than this date without being subject to the prohibitions applicable to such wastes.

**DATES:** This action is effective November 16, 1990.

**ADDRESSES:** The docket for this action is located at EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733, and is available during normal business hours from 8 a.m.-4 p.m., Monday through Friday. The public can review all docket materials by visiting the EPA Library.

**FOR FURTHER INFORMATION CONTACT:** For information contact Oscar Cabra, Jr. at (214) 655-7110 or Ronnie Crossland at (214) 655-7160.

**Petition**

*A. Facility Summary*

Celanese Engineering Resins, Inc., in Bishop, Texas, petitioned EPA to grant them a three month extension of the effective date of the hazardous waste injection restrictions on September 24, 1990.

The specific hazardous liquid wastes for which this case-by-case extension of the November 8, 1990 injection ban date is being granted include: U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U228, D001, and F039.

EPA is granting an extension of the effective date of the applicable restrictions for three months from the hazardous waste injection restrictions effective date of November 8, 1990 for this facility.

*B. Description of Petitioning Facility*

Celanese Engineering Resins, Inc., is a chemical manufacturing company which operates three hazardous waste injection wells in Bishop, Texas. Celanese manufactures industrial organic chemicals by the conversion of methane to methanol and further reacting the methanol and other aliphatic organics to produce formaldehyde, methylal, esters (n-butyl, n-propyl and ethyl acetates), petaerythritol, trimethylolpropane, paraformaldehyde, Formcel formaldehyde, alcohols, aldehydes and glycols. Additionally, Celanese produces Celcon, Nylon, and Celanex engineering resins and bulk pharmaceuticals.

*C. Case-by-Case Extension Petition Demonstrations*

Celanese Engineering Resins, Inc.'s application for an extension of the effective date included the following demonstrations:

40 CFR 268.5(a)(1) Celanese-Bishop has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective date of the applicable restrictions.

40 CFR 268.5(a)(2) Celanese—Bishop has entered into a binding contractural commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Celanese—Bishop has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Celanese—Bishop has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Celanese—Bishop has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Celanese—Bishop has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) The surface impoundments or landfills used by Celanese—Bishop to manage the waste during the extension period will meet the requirements of 40 CFR 268.5(h)(2).

**EPA's Action**

For the reasons discussed above, the Agency believes that Celanese—Bishop's demonstration have satisfied all the requirements for a case-by-case extension of the effective date of the hazardous waste injection restrictions applicable to U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U228, D001, and F039. Therefore, EPA is granting an extension of the November 8, 1990, effective date of the restrictions on U001, U002, U019, U031, U056, U072, U080, U112, U115, U122, U123, U133, U134, U140, U154, U159, U161, U188, U228, D001, and F039 for Celanese—Bishop. The extension allows these wastes to be injected over a three month period, starting from the effective date of this action, but not later than February 8, 1991.

Celanese must submit a progress report every two weeks after the effective date that this extension is granted, addressing the progress being made to obtain alternative disposal capacity. The agency must be notified of any change in the conditions specified in the petition. The extension will remain in effect unless Celanese—Bishop fails to make a good faith effort to meet the schedule for completion, the agency denies or revokes any required permit, conditions certified in the application change or if Celanese—Bishop violates any law or regulations implemented by EPA. (sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Dated: November 16, 1990.

**Myron O. Knudson,**

*P.E., Director, Water Management Division (6W), EPA Region 6.*

[FR Doc. 90-27811 Filed 11-28-90; 8:45 am]

BILLING CODE 6560-50-M



**[FRL-3865-4]**

**Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by Superfund Amendments and Reauthorization Act (SARA), notice is hereby given that a proposed administrative (CERCLA) cost recovery settlement concerning the Hoag Fertilizer Site in Gage County, Beatrice, Nebraska was issued by the Agency on October 10, 1990. The settlement resolves an EPA claim under "section 107 of CERCLA" for a section 122(h)(1) agreement; against Phillips 66 Company. The settlement requires the settling party to pay $66,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the agency will receive written comments relating to the settlement. The agency's response to any comments received will be available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101.

**DATES:** Comments must be submitted on or before December 31, 1990.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7477. Comments should reference the Hoag Fertilizer Site, Gage County, Beatrice Nebraska and EPA Docket No. VII-91-F-0002 and should be addressed to Linda McKenzie, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Ceil Price, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 551-7451.

Dated: October 25, 1990.

**Alan L. Wehmeyer**

*Acting Director, Waste Management Division.*

[FR Doc. 90-28017 Filed 11-28-90; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-51755; FRL 3840-1]**

**Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 143 such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

P 90-1425, September 1, 1990.
P 90-1857, November 20, 1990.
P 90-1939, December 10, 1990.
P 90-1940, October 2, 1990.
P 90-1941, 90-1942, 90-1943, 90-1944, 90-1945, 90-1946, 90-1947, 90-1948, 90-1949, 90-1950, 90-1951, 90-1952, 90-1953, 90-1954, December 11, 1990.
P 90-1955, 90-1956, 90-1957, December 12, 1990.
P 90-1958, 90-1959, December 15, 1990.
P 90-1960, 90-1961, 90-1962, 90-1963, 90-1964, 90-1965, 90-1966, 90-1967, 90-1968, 90-1969, 90-1970, 90-1971, 90-1972, 90-1973, 90-1974, 90-1975, 90-1976, 90-1977, 90-1978, December 16, 1990.
P 90-1979, 90-1980, 90-1981, December 17, 1990.
P 90-1982, November 16, 1990.
P 90-1983, December 17, 1990.
P 90-1984, 90-1985, 90-1986, December 18, 1990.
P 90-1987, December 19, 1990.
P 90-1988, December 22, 1990.
P 90-1989, December 23, 1990.
P 90-1990, 90-1991, 90-1992, 90-1993, 90-1994, 90-1995, 90-1996, 90-1997, 90-1998, December 25, 1990.
P 90-1999, 90-2000, 90-2001, 90-2002, 90-2003, December 26, 1990.

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P 91-1, December 29, 1990.
P 91-2, 91-3, 91-4, 91-5, 91-6, 91-7, 91-8, 91-9, 91-10, 91-11, 91-12, 91-13, 91-14, December 30, 1990.
P 91-15, 91-16, 91-17, 91-18, December 31, 1990.
P 91-19, 91-20, 91-21, 91-22, January 1, 1991.
P 91-25, 91-26, 91-27, January 6, 1991.
P 91-28, 91-29, 91-30, 91-32, 91-33, 91-34, 91-35, 91-36, 91-37, 91-38, 91-39, 91-40, January 7, 1991.
P 91-41, 91-42, January 8, 1991.
P 91-43, January 7, 1991.
P 91-44, 91-45, January 8, 1991.
P 91-46, January 7, 1991.
P 91-47, 91-48, January 9, 1991.
P 91-49, January 12, 1991.
P 91-50, January 13, 1991.
P 91-51, 91-52, 91-54, 91-55, 91-56, January 12, 1991.
P 91-57, January 15, 1991.
P 91-58, 91-59, 91-60, 91-61, 91-62, 91-63, 91-64, 91-65, 91-66, January 13, 1991.
P 91-67, January 14, 1991.
P 91-68, 91-69, 91-70, 91-71, 91-72, 91-73, 91-74, 91-75, 91-76, January 16, 1991.
P 91-77, January 14, 1991.
P 91-78, 91-79, 91-80, January 19, 1991.

Written comments by:

P 90-1425, August 2, 1990.
P 90-1857, October 21, 1990.
P 90-1939, November 10, 1990.
P 90-1940, September 2, 1990.
P 90-1941, 90-1942, 90-1943, 90-1944, 90-1945, 90-1946, 90-1947, 90-1948, 90-1949, 90-1950, 90-1951, 90-1952, 90-1953, 90-1954, November 11, 1990.
P 90-1955, 90-1956, 90-1957, November 12, 1990.
P 90-1958, 90-1959, November 15, 1990.
P 90-1960, 90-1961, 90-1962, 90-1963, 90-1964, 90-1965, 90-1966, 90-1967, 90-1968, 90-1969, 90-1970, 90-1971, 90-1972, 90-1973, 90-1974, 90-1975, 90-1976, 90-1977, 90-1978, November 16, 1990.
P 90-1979, 90-1980, 90-1981, November 17, 1990.
P 90-1982, October 17, 1990.
P 90-1983, November 17, 1990.
P 90-1984, 90-1985, 90-1986, November 18, 1990.
P 90-1987, November 19, 1990.
P 90-1988, November 22, 1990.
P 90-1989, November 23, 1990.
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P 91-57, December 16, 1990.
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P 91-78, 91-79, 91-80, December 20, 1990.

**ADDRESSES:** Written comments, identified by the document control number '(OPTS-51755)' and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC, 20460, (202) 382-3532.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon, and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 90-1425**
*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic polymer.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

**P 90-1857**
*Manufacturer.* Confidential.
*Chemical.* (S) Substituted carboxylic acid ester.
*Use/Production.* (S) Intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit).

**P 90-1939**
*Importer.* Confidential.
*Chemical.* (G) Modified styrene copolymer.
*Use/Import.* (G) Toner additive. Import range: Confidential.
*Toxicity Data.* Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

**P 90-1940**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified diphenylmethane diisocyanate.
*Use/Production.* (G) Adhesive. Prod. range: confidential.

**P 90-1941**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protection treatment for nylon fiber. Prod. range: Confidential.

**P 90-1942**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective for treatment for nylon fiber. Prod. range: Confidential.

**P 90-1943**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1944**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1945**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1946**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1947**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.



*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1948**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1949**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1950**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1951**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1952**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Protective treatment for nylon fiber. Prod. range: Confidential.

**P 90-1953**
*Manufacturer.* Confidential.
*Chemical.* (G) Bisphenol A, epichlorohydrin resin, reaction products with cyclic amines.
*Use/Production.* (G) Resin for coatings. Prod. range: Confidential.

**P 90-1954**
*Importer.* Confidential.
*Chemical.* (G) Blocked polyisocyanate of glycol-modified HDI trimer.
*Use/Import.* (G) Hardener for epoxy coating. Import range: Confidential.

**P 90-1955**
*Manufacturer.* Products Research & Chemical Corporation.
*Chemical.* (G) Organo silane phenolic resin adduct.
*Use/Production.* (S) Intermediate for sealant primer. Prod. range: 200 kg/yr.

**P 90-1956**
*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic solution resin.
*Use/Production.* (S) Industrial baking finishing. Prod. range: Confidential.

**P 90-1957**
*Manufacturer.* Confidential.
*Chemical.* (G) Styrenated, acrylate, methacrylate polymer.
*Use/Production.* (G) Dispersively applied coating. Prod. range: 140,000 kg/yr.

**P 90-1958**
*Manufacturer.* Confidential.
*Chemical.* (S) Dicesium dodecahydrododecaborate (2-).
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 90-1959**
*Manufacturer.* Confidential.
*Chemical.* (S) Disodium dodecahydrododecaborate (2-).
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

**P 90-1960**
*Manufacturer.* Confidential.
*Chemical.* (G) Anhydride copolymer-acrylate half ester.
*Use/Production.* (S) Electronic photoresist/electronic soldermask. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1961**
*Manufacturer.* Confidential.
*Chemical.* (G) Methacrylated chain extended maleated polybutadiene.
*Use/Production.* (S) Graphic arts printing plate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 5 g/kg species (Rat). Acute dermal toxicity: LD50 2 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1962**
*Manufacturer.* Confidential.
*Chemical.* (G) Methacrylated chain extended maleated polybutadiene.
*Use/Production.* (S) Graphic arts printing plate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 5 g/kg species (Rat). Acute dermal toxicity: LD50 2 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1963**
*Manufacturer.* Confidential.
*Chemical.* (G) Methacrylated chain extended maleated polybutadiene.
*Use/Production.* (S) Graphic arts printing plate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 5 g/kg species (Rat). Acute dermal toxicity: LD50 2 g/kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1964**
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted polyolefin phenol.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 90-1965**
*Importer.* Henkel Corporation, Functional Products.
*Chemical.* (G) Alkyl ester.
*Use/Import.* (S) Oil based drilling fluid. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 kg/yr species (Rat). Static acute toxicity: time LC50 > 10,000 ppm species (Brown Shrimp). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

**P 90-1966**
*Manufacturer.* DowElanco.
*Chemical.* (G) Arylmagnesium chloride.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 90-1967**
*Manufacturer.* DowElanco.
*Chemical.* (G) Arylmagnesium salt.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 90-1968**
*Manufacturer.* DowElanco.
*Chemical.* (G) Phenyl alcohol.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 0.5 ml/kg species (Rat). Acute dermal toxicity: LD50 > 1.0 ml/kg species (Rabbit). Eye irritation: strong species (Rabbit). Mutagenicity: negative. Skin irritation: moderate species (Rabbit).

**P 90-1969**
*Manufacturer.* DowElanco.
*Chemical.* (G) Substituted quinazolinone.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 609 mg/kg species (Mouse). Acute dermal toxicity: LD50 > 1.0 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

**P 90-1970**
*Manufacturer.* DowElanco.
*Chemical.* (G) Halogenated quinazoline.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 90-1971**
*Manufacturer.* DowElanco.

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*Chemical.* (G) Halogenated quinazoline.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 90-1972**
*Manufacturer.* DowElanco.
*Chemical.* (G) Substituted quinazoline salt.
*Use/Production.* (S) Can lubricant. Prod. range: Confidential.

**P 90-1973**
*Manufacturer.* Mazer Chemicals.
*Chemical.* (G) Alkoxylated aliphatic alcohol, monostearate.
*Use/Production.* (S) Can lubricant. Prod. range: Confidential.

**P 90-1974**
*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidential.

**P 90-1975**
*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Paint. Prod. range: Confidetial.

**P 90-1976**
*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic polymer.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 90-1977**
*Manufacturer.* Neste Resins Corporation.
*Chemical.* (S) Crosslinked phenol-formaldehyde polymer.
*Use/Production.* (S) Composite and panel adhesive. Prod. range: Confidential.

**P 90-1978**
*Importer.* Confidential.
*Chemical.* (G) Carboxylated styrene acrylate copolymer.
*Use/Import.* (G) Sizing. Import range: Confidential.

**P 90-1979**
*Manufacturer.* Minnesota Mining & Manufacturing (3M).
*Chemical.* (G) Acrylated polysiloxane.
*Use/Production.* (G) Polymeric coating. Prod. range: Confidential.

**P 90-1980**
*Manufacturer.* Minnesota Mining & Manufacturing (3M).
*Chemical.* (G) Acrylated polysiloxane.
*Use/Production.* (G) Polymeric coating. Prod. range: Confidebtial.

**P 90-1981**
*Manufacturer.* Minnesota Mining & Manufacturing (3M).
*Chemical.* (S) Polymer of ethyl acrylate, methyl methacrylate, & N-vinyl pyrrolidinone.
*Use/Production.* (G) Coating. Prod. range: Confidential.

**P 90-1982**
*Manufacturer.* Confidential.
*Chemical.* (G) Organic salt.
*Use/Production.* (G) Polymer intermediate. Prod. range: Confidential.

**P 90-1983**
*Manufacturer.* Confidential.
*Chemical.* (G) Copolyamide.
*Use/Production.* (G) Synthetic fibers. Prod. range: Confidential.

**P 90-1984**
*Manufacturer.* Confidential.
*Chemical.* (G) Fatty acid polyamine condensate, phosphate ester salt.
*Use/Production.* (G) Steel corrosion inhibitor. Prod. range: Confidential.

**P 90-1985**
*Manufacturer.* Confidential.
*Chemical.* (G) Fatty acid polyamine condensate, phosphoric acid ester salt.
*Use/Production.* (G) Steel corrosion inhibitor. Prod. range: Confidential.

**P 90-1986**
*Manufacturer.* Confidential.
*Chemical.* (G) Hydroxylamine derivative.
*Use/Production.* (G) Stabilizer of developing agent in a color paper developer. Prod. range: Confidential.

**P 90-1987**
*Manufacturer.* GE Plastics.
*Chemical.* (G) Substituted alkene-imide copolymer.
*Use/Production.* (G) Polymer for use in molding, extrusion or other methods to produce usable parts structure. Prod. range: 7,000–70,000 kg/yr.

**P 90-1988**
*Manufacturer.* Confidential.
*Chemical.* (G) Urethane acrylic dispersion in water.
*Use/Production.* (G) Coating component. Prod. range: 2,000–4,000 kg/yr.

**P 90-1989**
*Manufacturer.* Anchor Continental, Inc.
*Chemical.* (G) Biphenol glycidyl amino poly oxirane ether.
*Use/Production.* (S) Pressure-sensitive adhesive. Prod. range: 50,000–300,000 kg/yr.
*Toxicity Data.* Acute oral toxicity: LD50 11.4 g/kg species (Rat). Acute dermal toxicity: LD50 > 20 ml/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: moderate species (Rabbit).

**P 90-1990**
*Importer.* Confidential.
*Chemical.* (G) Modified silane.
*Use/Import.* (S) Stabilizer for intermoplactics. Import range: 250–1,500 kg/yr.

**P 90-1991**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant. Prod. range: Confidential.
*Toxicity Data.* Static acute toxicity: time LC50 48H155 ppm species (d. pulex).

**P 90-1992**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant. Prod. range: Confidential.
*Toxicity Data.* Static acute toxicity: time LC50 48H155 ppm species (d. pulex).

**P 90-1993**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant. Prod. range: Confidential.
*Toxicity Data.* Static acute toxicity: time LC50 48H155 ppm species (d. pulex).

**P 90-1994**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant/lubricant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1995**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant/lubricant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation. slight species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1996**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant/lubricant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).



*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1997**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant/lubricant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1998**
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Butylene oxide/ethylene oxide copolymer.
*Use/Production.* (S) Surfactant/lubricant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-1999**
*Manufacturer.* Confidential.
*Chemical.* (G) Carboxylated acrylic copolymer.
*Use/Production.* (G) Pressure sensitive adhesive. Prod. range: Confidential.

**P 90-2000**
*Manufacturer.* Sloss Industries Corporation.
*Chemical.* (S) 4,4'-Methylene bis-(2,6-dimethylaniline).
*Use/Production.* (S) A reaction in the manufacture of epoxy resin. Prod. range: 500,000 kg/yr.

**P 90-2001**
*Manufacturer.* EMS-American Grilon, Inc.
*Chemical.* (S) Copolyamide of caproiactum (A), adipic acid (B), sebaicic acid (D), and hexamethylenediamine.
*Use/Production.* (S) Adhesive for apparel/textile application. Prod. range: Confidential.

**P 90-2002**
*Importer.* Confidential.
*Chemical.* (G) Dimethylpolysiloxane, modified with acryl functional polyester urethane.
*Use/Import.* (G) Paint and plastic additive. Import range: Confdidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 6000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 90-2003**
*Manufacturer.* Minnesota Mining & Manufacturing Co., (3M).
*Chemical.* (G) Substituted perfluoroalkylsulfonamide.
*Use/Production.* (G) Isolated intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-1**
*Manufacturer.* Estron Chemical, Inc.
*Chemical.* (G) Acrylic resin.
*Use/Production.* (S) Thermosetting polymer for powder coating. Prod. range: Confidential.

**P 91-2**
*Manufacturer.* Avery Chemical Division.
*Chemical.* (G) Nonvolatile acrylate copolymer.
*Use/Production.* (S) Pressure sensitive adhesive. Prod. range: Confidential.

**P 91-3**
*Manufacturer.* Lonza Inc.
*Chemical.* (G) Fatty acids, mixed esters with polyglycerol.
*Use/Production.* (G) Polymer additive. Prod. range: Confidential.

**P 91-4**
*Manufacturer.* Hitachi Chemical Company America, Ltd.
*Chemical.* (G) Brominated epoxy resin oligomer.
*Use/Production.* (S) Flame retardant for thermoplastic resin. Prod. range: 20,000–600,000 kg/yr.
*Toxicity Data.* Mutagenicity: negative.

**P 91-5**
*Importer.* Confidential.
*Chemical.* (G) Alkylated diphenyl ether.
*Use/Import.* (G) Oil. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 ml/kg. Skin irritation: slight species (Rabbit).

**P 91-6**
*Importer.* Confidential.
*Chemical.* (G) Alkylated diphenyl ether.
*Use/Import.* (G) Oil. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 ml/kg species (Rat). Eye irritation: slight species (Rabbit).

**P 91-7**
*Importer.* Confidential.
*Chemical.* (G) Alkylated diphenyl ether.
*Use/Import.* (G) Oil. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 ml/kg species (Rat). Skin irritation: slight species (Rabbit).

**P 91-8**
*Importer.* Confidential.
*Chemical.* (G) Alkylated diphenyl ether.
*Use/Import.* (G) Oil. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 ml/kg species (Rat). Skin irritation: slight species (Rabbit).

**P 91-10**
*Importer.* Confidential.
*Chemical.* (G) Partially crosslinked saturated polyether with nucmolecular numbers average molecular weight.
*Use/Import.* (G) Coating. Import range: Confidential.

**P 91-11**
*Importer.* Confidential.
*Chemical.* (G) Urethane acrylate.
*Use/Import.* (G) Coating. Import range: Confidential.

**P 91-12**
*Manufacturer.* Engelhard Corporation.
*Chemical.* (G) Alkali or alkaline earth containing hydrous titanium aluminosilicate molecular sieve.
*Use/Production.* (S) Removal of lead from potable and waste water. Prod. range: Confidential.
*Toxicity Data.* Static acute toxicity: time LC50 48H> 500 mg/l species (idus idus melanotos).

**P 91-13**
*Manufacturer.* Confidential.
*Chemical.* (G) Isophorone diisocyanate; (dipropyl glycol); (adipic acid); (phthalic anhydride); 2-hydroxyethyl acrylate; (diethylene glycol).
*Use/Production.* (S) Polymer for paper coating. Prod. range: 8,800–1,700 kg/yr.

**P 91-14**
*Importer.* Ausimont USA, Inc.
*Chemical.* (G) Hexafluoropropene, oxidized, polymerized.
*Use/Import.* (S) Heat transfer fluid. Import range: Confidential.

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P 91-15
*Manufacturer.* Confidential.
*Chemical.* (S) Phosphinic acid, phenyl-, compound with 1,6, hexanediamine (2:1).
*Use/Production.* (S) Nylon polymer additive. Prod. range: Confidential.

P 91-16
*Importer.* Confidential.
*Chemical.* (G) Polyurethane.
*Use/Import.* (S) Optical brightener for photographic paper. Import range: 3,500–4,500 kg/yr.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,500 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91-17
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidential.

P 91-18
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidential.

P 91-19
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidential.

P 91-20
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidential.

P 91-21
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidential.

P 91-22
*Manufacturer.* Confidential.
*Chemical.* (G) Crosslinked polymer.
*Use/Production.* (S) Adhesives and sealants. Prod. range: Confidnetial.

P 91-23
*Manufacturer.* Confidential.
*Chemical.* (G) Blocked polyisocyanate.
*Use/Production.* (S) Fiber reactive dye for cellulose and nylon. Prod. range: 2,500–7,500 kg/yr.

P 91-24
*Manufacturer.* Confidential.
*Chemical.* (G) Reaction product of formic acid, substituted anilines, sodium carbonate, aniline, and sulfur.
*Use/Production.* (S) Site-limited intermediate for use in maufacture of leuco sulfur. Prod. range: Confidential.

P 91-27
*Manufacturer.* Confidential.
*Chemical.* (G) Epoxy curing agent.
*Use/Production.* (G) Crosslinker. Prod. range: Confidential.

P 91-28
*Importer.* Hoechst Celanese Corporation.
*Chemical.* (G) Modified acrylate.
*Use/Import.* (S) Binder for prints. Import range: 2,500–10,000 kg/yr.

P 91-29
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Disubstituted naphthlene carboxlic acid.
*Use/Production.* (S) Fiber reactive dye for cellulose and nylon. Prod. range: 2,500–7,500 kg/yr.

P 91-30
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Disubstituted naphthalene carboxylic acid salt.
*Use/Production.* (S) Fiber reactive dye for cellulose and nylon. Prod. range: 2,500–7,500 kg/yr.

P 91-32
*Manufacturer.* Confidential.
*Chemical.* (G) A polymer of acrylic acid esters, methacrylic acid esters, acrylic acid and another vinyl monomer, sodium salt.
*Use/Production.* (G) Textile resin size. Prod. range: Confidential.

P 91-33
*Manufacturer.* E.I. Dupont De Nemours & Co., Inc.
*Chemical.* (G) Hydroxy functional acrylic.
*Use/Production.* (G) Highly dispersive use. Prod. range: Confidential.

P 91-34
*Manufacturer.* Confidential.
*Chemical.* (G) Starch, 2-(Bis(substituted methyl amino)ethyl ether, sodium salt 2-hydroxy-3-trimethylammoniopropyl ether, chloride.
*Use/Production.* (G) Binder and wet end retentive aid for paper. Prod. range: Confidential.
*Toxicity Data.* Static acute toxicity: time LC50 > 1,000 mg/l species (Fathead Minnow). Eye irritation: none species (Rabbit).

P 91-35
*Manufacturer.* Confidential.
*Chemical.* (G) Starch, 2-(bis(substutited methyl amino)ethyl ether sodium salt 2-hydroxy-3-trimethylammoniopropyl ester, chloride.
*Use/Production.* (G) Binder and wet end retentive aid for paper. Prod. range: Confidential.

*Toxicity Data.* Static acute toxicity: time LC50 > 1,000 mg/l species (Fathead Minnow). Eye irritation: none species (Rabbit).

P 91-36
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Aromatic substituted pyrazalone.
*Use/Production.* (S) Site-limited intermediate. Prod. range: 50,000 kg/yr.

P 91-37
*Importer.* Ciba-Geigy Corp.
*Chemical.* (G) Aliphatic polycarboxylic acid.
*Use/Import.* (S) Matting agent in powder coatings. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 91-38
*Importer.* Polyaryl, Inc.
*Chemical.* (G) Polymethacrylate copolymer.
*Use/Import.* (S) Emulsion paints/adhesives. Import range: Confidential.

P 91-39
*Manufacturer.* Confidential.
*Chemical.* (G) Superglycerinated mono glycerides.
*Use/Production.* (S) Chemical intermediate emulsify agent. Prod. range: 5,000–15,000 kg/yr.

P 91-40
*Manufacturer.* Confidential.
*Chemical.* (G) Hydrogenated (high or low erucic) rape oil.
*Use/Production.* (S) Raw material for commercial intermediate and lubricant additives. Prod. range: 5,000–15,000 kg/yr.

P 91-41
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted acetophenone.
*Use/Production.* (G) Site limited chemical intermediate. Prod. range: Confidential.

P 91-42
*Manufacturer.* Confidential.
*Chemical.* (G) Phenyl substituted pyridine.
*Use/Production.* (G) Minor component in paper coating. Prod. range: Confidential.

P 91-43
*Importer.* 3M.
*Chemical.* (G) Aromatic amine.



*Use/Import.* (G) Adhesive. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5.0 g/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

P 91-44
*Importer.* Ciba-Geigy Corporation.
*Chemical.* (G) Monoazo diammonium salt.
*Use/Import.* (G) Open, nondispersive. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative.

P 91-45
*Importer.* Ciba-Geigy Corporation.
*Chemical.* (S) 3-Amino-2-chlorophenol.
*Use/Import.* (S) Chemical intermediate. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Inhalation toxicity: LC50 > 2,800 mg/m3 species (Rat). Static acute toxicity: time LC50 25 mg/l species (Rainbow Trout). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: positive. Skin sensitization: positive.

P 91-46
*Manufacturer.* Kenrich Petrochemical, Inc.
*Chemical.* (S) Zirconium IV tetrakis 2,2-(bis-2-propenolatomethyl)butanalato, adduct with 2 moles of ditridecyl, hydrogen phosphate.
*Use/Production.* (S) Process aid/bonding agent. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (Rat). Mutagenicity: negative.

P 91-47
*Manufacturer.* Hach Company.
*Chemical.* (G) DPD salt, i.e., salt of N,N-diethyl-P-phenylenedia mine.
*Use/Production.* (S) Included in powder and liquid formulation to be used as analytical regents for determination of halogens in water. Prod. range: Confidential.

P 91-48
*Importer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Flurooelefin copolymer.
*Use/Import.* (S) Resin for exterior coatings. Import range: Confidential.

P 91-49
*Manufacturer.* Confidential.

*Chemical.* (G) Fatty acids, reaction products with a polyethylenepolyamino.
*Use/Production.* (G) Epoxy terminated polymer of polyether amine and bis phenol A. Prod. range: 1,000 kg/yr.

P 91-50
*Manufacturer.* Dexter Adhesives and Structural Div.
*Chemical.* (G) Epoxy terminated polymer of polyetheramine and bisphenol A.
*Use/Production.* (G) Epoxy terminated polymer of polyether amine and bisphenol A. Prod. range: 1,000 kg/yr.

P 91-51
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted alkanolamine.
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

P 91-52
*Manufacturer.* Confidential.
*Chemical.* (G) Polyolefin amino ester salt.
*Use/Production.* (G) Destructive use. Prod. range: Confidential.

P 91-54
*Importer.* Nof America Corporation.
*Chemical.* (G) Acryl acrylate.
*Use/Import.* (G) Open, nondispersive use (solid). Import range: Confidential.

P 91-55
*Manufacturer.* Confidential.
*Chemical.* (G) Butylated amide.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

P 91-56
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-bvutylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners, lubricant, and surfactant in manmade fibers finishes. Prod. range: Confidential.

P 91-57
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners, lubricant, and surfactant in manmade fibers finishes. Prod. range: Confidential.

P 91-58
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners, lubricant, and surfactant in manmade fibers finishes. Prod. range: Confidential.

P 91-59
*Manufacturer.* Dow Chemical U.S.A.

*Chemical.* (G) Ethylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fibers finishes. Prod. range: Confidential.

P 91-60
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-propylene oxide-butyleneoxide copolymer.
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fiber finishes. Prod. range: Confidential.

P 91-61
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-propylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fiber finishes. Proo. range: Confidential.

P 91-62
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-propylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fiber finishes. Prod. range: Confidential.

P 91-63
*Manufacturer.* Dow Chemical U.S.A.
*Chemical.* (G) Ethylene oxide-propylene oxide-butylene oxide copolymer.
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fiber finishes. Prod. range: Confidential.

P 91-64
*Manufacturer.* Confidential.
*Chemical.* (G) N-((2-Chloroethyl) iminobis (methylene )bis substituted acid).
*Use/Production.* (S) Surfactant for cleaners lubricant and surfactant in manmade fiber finishes. Prod. range: Confidential.

P 91-65
*Manufacturer.* GE Specilty Chemicals.
*Chemical.* (S) 3,9-bis(2,4,6-tri-t-butyiphenoxy)-2,4,8,10-tetroxa-3,9-diphosphaspiro(5.5)undecane.
*Use/Production.* (S) Antioxidant/stabilizer in polymer. Prod. range: Confidential.

P 91-66
*Manufacturer.* Ranber Technology Inc.

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*Chemical.* (G) Vinyl toluenated high solids alkyd resin.
*Use/Production.* (S) Component of a coating to be applied to various articles of commerce. Prod. range: 255,000–500,000 kg/yr.

P 91–67
*Manufacturer.* Confidential.
*Chemical.* (G) Methylenediisocyanate polyester prepolymer.
*Use/Production.* (S) Adhesive. Prod. range: Confidential.

P 91–68
*Manufacturer.* Confidential.
*Chemical.* (S) Fatty acids, C18-unsaturated, dimers, hydrogenated, methyl esters.
*Use/Production.* (S) Lubricant in foaming aluminum cans. Prod. range: Confidential.

P 91–69
*Manufacturer.* Confidential.
*Chemical.* (G) Alkyl substitited pheno.
*Use/Production.* (G) Open, nondispersive. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit). Static acute toxicity: time LC50 > 1.0 mg/l species (Bluegill). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 91–70
*Manufacturer.* Confidential.
*Chemical.* (G) 4-Methyl benzene sulfonic acid, salt with substituted alkyl amine.
*Use/Production.* (G) Paint additive. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 4,500 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 91–71
*Manufacturer.* Bedoukian Research, Inc.
*Chemical.* (S) 13-Octadecen-1-ol, acetate, (Z)-.
*Use/Production.* (S) Sole active ingredient in traps to achieve pest control and sole active in monitoring traps. Prod. range: Confidential.

P 91–72
*Manufacturer.* Confidential.
*Chemical.* (G) Silane treated silica.
*Use/Production.* (G) A reinforcing filler for polyurethanes. Prod. range: Confidential.

P 91–73
*Manufacturer.* Confidential.
*Chemical.* (S) Carboxylic acid, C7-C9 branched.
*Use/Production.* (G) Reactant. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2 g/kg species (Rat). Acute dermal toxicity: LD50 > 3.16 g/kg species (Rabbit). Static acute toxicity: time LC50 48H > 3,000 mg/m3 species (Daphnia).

P 91–74
*Manufacturer.* Confidential.
*Chemical.* (G) Propenoate-terminated alkyl substituted silyl ester.
*Use/Production.* (G) A site-limited chemical intermediate for descriptive use. Prod. range: Confidential.

P 91–75
*Manufacturer.* Confidential.
*Chemical.* (G) Cyclic amine modified urethane.
*Use/Production.* (G) Coating with dispersive use. Prod. range: 250,000–300,000 kg/yr.

P 91–76
*Importer.* Kennedy & Klim Inc.
*Chemical.* (S) 1,1-Dimethyl-1-(2-hydroxypropyl)amine methacrylimide.
*Use/Import.* (S) Adhesive monomer. Import range: 5,000–10,000 kg/yr.

P 91–77
*Manufacturer.* Kenrich Petrochemicals, Inc.
*Chemical.* (S) Zirconium IV 2,2(bis-2-propenolatomethyl) butanolato, tris 2-methyl-2-propenoato-O.
*Use/Production.* (S) Process aid/bonding aid. Prod. range: 5,000–25,000 kg/yr.

P 91–78
*Manufacturer.* Monsanto Company.
*Chemical.* (G) Mixed alkyl and oxyalkyl esther of styrene-maleic anhydride copolymer.
*Use/Production.* (G) Photoresistent binder. Prod. range: Confidential.

P 91–79
*Manufacturer.* Confidential.
*Chemical.* (G) Fatty acids, C18-unsaturated,dimers,polymers with etylenediamine, diamines, & dicarboxylic acid and a monocarboxylic acid.
*Use/Production.* (S) Hot melt adhesive. Prod. range: Confidential.

P 91–80
*Manufacturer.* Confidential.
*Chemical.* (S) Poly(2,5 dicumyl 4 nonyl phenol).
*Use/Production.* (S) Epoxy diluent resin antioxidant. Prod. range: 60,000–150,000 kg/yr.

Dated: November 21, 1990.
**Steven Newburg-Rinn,**
*Acting Director, Information Management Division, Office of Toxic Substances.*
[FR Doc. 90–28024, Filed 11–28–90; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 23, 1990.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

*OMB Number:* 3060–0018.
*Title:* Application for Renewal of License for FM Translator, TV Translator or Low Power Television Broadcast Station.
*Form Number:* FCC Form 348.
*Action:* Revision.
*Respondents:* State or local governments and businesses (including small businesses).
*Frequency of Response:* Every 5 years for TV; every 7 years for FM.
*Estimated Annual Burden:* 956 responses; 642 hours total annual burden; 0.67 hours average burden per response.
*Needs and Uses:* FCC Form 348 is required to be filed for renewal of station licenses for TV and FM translators and low power television broadcast stations. The data is used by FCC staff to assure that necessary forms connected with renewal applications have been filed and that licensee continues to meet basic statutory requirements to remain a licensee.

Federal Communications Commission.
**Donna R. Searcy,**
*Secretary.*
[FR Doc. 90–28060 Filed 11–28–90; 8:45 am]
BILLING CODE 6712–01–M



### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 21, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

*OMB Number:* 3060–0397.
*Title:* Section 15.7(a), Special Temporary Authority.
*Action:* Extension.
*Respondents:* Businesses or other for-profit (including small businesses).
*Frequency of Response:* Recordkeeping requirement.
*Estimated Annual Burden:* 2 responses; 6 hours average burden per response; 12 hours total annual burden.
*Needs and Uses:* For exceptional situations, the Commission will consider an individual application for a special temporary authorization to operate a device not conforming to the provisions of part 15 of the Rules. Consideration will be given to an applicant who can demonstrate that the proposed operation would be in the public interest, that it is for a unique type of station or for a type of operation which is incapable of being established as a regular service, and that the proposed operation cannot feasibly be conducted under the part 15 rules.

Federal Communications Commission.
**Donna R. Searcy,**
*Secretary.*
[FR Doc. 90–28061 Filed 11–28–90; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Fee Charge System for Flood Maps

**AGENCY:** Federal Emergency Management Agency.
**ACTION:** Notice of intent.

**SUMMARY:** This notice of intent advises that the Federal Insurance Administration intends to make more inclusive the entities who will be charged a fee for flood maps distributed beginning October 1, 1992. This is a continuing effort contributing toward making the National Flood Insurance Program self-supporting while helping into reduce the Federal budget deficit.

**DATES:** Comments must be received on or before February 1, 1991.
**ADDRESSES:** Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472.
**FOR FURTHER INFORMATION CONTACT:** John Matticks, Telephone (202) 646–2767.
**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program was enacted in 1968 making flood insurance available to participating communities nationwide. Flood maps delineating flood hazard areas have been prepared for individual flood-prone communities by the Federal Insurance Administration. These maps are used by Federal, State and local governments and the private sector. Private sector users consist primarily of insurance agents, lenders, appraisers, real estate agents, engineers, builders, developers and individuals.

Since April 1, 1988, the Federal Insurance Administration has charged a fee to those organizations and individuals not directly involved with implementation of the National Flood Insurance Program. Under that arrangement, all entities except Federal, State and local governments, lending institutions, insurance agents, insurance brokers, and Write-Your-Own companies, were charged for the maps. The monies collected from map fees were deposited into the National Flood Insurance Fund which was the source of funding supporting the flood map distribution operation.

The purpose of this notice is to inform map users that the Federal Insurance Administration will begin charging more entities including lenders and insurance entities, and exempting only Federal Agencies, Federal Instrumentalities, and State and local governments. This latest decision charge lenders and insurance entities was prompted by the 101st Congress in its recent deliberations to develop a budget plan that reduces the Federal budget deficit.

The fee structure that is currently in effect will continue to be used. The fee reiterated is $5.00 per map order up to and including 10 panels and $0.60 for each additional map panel over 10 panels. This fee includes printing, distribution and postage costs.

The fee payments will continue to be required in advance of shipments. The pay mechanisms are cash account, prepayment by check or money order or use of Visa or Master Card credit card.

Anyone who has an interest in this notice should provide their comments in accordance with the date and address listed above.

Issued: November 20, 1990.
**C.M. "Bud" Schauerte,**
*Administrator, Federal Insurance Administration.*
[FR Doc. 90–28013 Filed 11–28–90; 8:45 am]
BILLING CODE 6718–03–M

## FEDERAL RESERVE SYSTEM

### Citizens Financial Acquisition Corp., et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 19, 1990.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

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1. *Citizens Financial Acquisition Corporation*, Greensboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Union Bank, Greensboro, Georgia.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Liberty Bancorporation*, Durant, Iowa; to acquire 100 percent of the voting shares of Bennett Bancshares, Inc., Bennett, Iowa, and thereby indirectly acquire Bennett State Bank, Bennett, Iowa.

2. *Southwestern Wisconsin Bancshares, Inc.*, Highland, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Highland State Bank, Highland, Wisconsin.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *RCB Holding Co.*, Roseville, Minnesota; to become a bank holding company by acquiring at least 92.90 percent of the voting shares of Roseville Community Bank, N.A., Roseville, Minnesota.

2. *Rice Lake Bancorp, Inc.*, Rice Lake, Wisconsin; to merge with Prairie Farm Bank Shares, Inc., Prairie, Wisconsin, and thereby indirectly acquire First State Bank of Prairie Farm, Prairie, Wisconsin.

Board of Governors of the Federal Reserve System, November 23, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-27992 Filed 11-28-90; 8:45 am]

BILLING CODE 6210-01-M

### The First National Bankshares, Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1990.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *The First National Bankshares, Inc.*, Tucumcari, New Mexico; to engage *de novo* through its subsidiary, First Security Trust Company, Tucumcari, New Mexico, in the activities of a trust company of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 23, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-27993 Filed 11-28-90; 8:45 am]

BILLING CODE 6210-01-M

### The Sanwa Bank, Ltd, Osaka, Japan; Application To Engage de Novo in Leasing Activities

The Sanwa Bank, Limited, Osaka, Japan ("Sanwa"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo*, directly or indirectly, through its existing subsidiary, Sanwa Business Credit Corporation, Chicago, Illinois ("SBCC"), in certain leasing activities involving the leasing of personal property, and/or acting as agent, broker, or advisor in leasing such property, pursuant to the Board's Regulation Y (12 CFR 225.25(b)(5)). These activities will be conducted throughout the United States and in foreign countries.

In this application, Sanwa proposes to expand its leasing activities to include leasing transactions that comply with all of the conditions of Regulation Y except as set out below. Sanwa is requesting the Board's prior approval to engage in leasing transactions the terms of which will allow SBCC to rely for its compensation on the estimated residual value of the property at the expiration of the initial term of the lease up to 100 percent of the acquisition cost of the property ("higher residual value leasing"). Sanwa has stated that it will limit such leases with estimated residual values in excess of 25 percent of acquisition cost to no more than 10 percent of Sanwa's total worldwide consolidated assets. Sanwa will also limit leases with estimated residual values in excess of 70 percent of acquisition cost to no more than the lesser of (i) 0.5 percent of Sanwa's total worldwide consolidated assets, or (ii) 10 percent of Sanwa's total consolidated shareholders' equity. Regulation Y currently limits residual value reliance to no more than 20 percent of the acquisition cost of the property to the lessor. 12 CFR 225.25(b)(5)(iv)(C).

Sanwa has committed to conform SBCC's leasing activities to any future Board rulemaking regarding leasing.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that higher residual value leasing is closely related to banking for purposes of section 4(c)(8).

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Sanwa contends that SBCC's conduct of the proposed activities will result in significant public benefits that will outweigh possible adverse effects. Sanwa states that such public benefits will take the form of increased competition in the leasing industry and improved services to leasing customers.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 28, 1990.

Board of Governors of the Federal Reserve System, November 23, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-27994 Filed 11-28-90; 8:45 am]

BILLING CODE 6210-01-M



### Swea City Bancorporation, Inc., et al; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 19, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Swea City Bancorporation, Inc.*, Swea City, Iowa; to acquire Tietie Insurance Services, Inc., Armstrong, Iowa, and the insurance agencies of Swea City State Bank, Swea City, Iowa, and thereby engage in general insurance activities pursuant to §§ 225.25 (b)(8)(iii) and (b)(8)(vi) of the Board's Regulation Y.

2. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Great American Savings Bank, FSB, Milwaukee, Wisconsin, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. Subsequent to the acquisition, the savings association will be emerged with Valley Bank Thiensville Mequon, Thiensville, Wisconsin, a wholly owned subsidiary bank.

Board of Governors of the Federal Reserve System, November 23, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-27995 Filed 11-28-90; 8:45 am]

BILLING CODE 6210-01-M

### James H. Wright, et al.; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *James H. Wright* and Paul C. Young; to each acquire 27 percent of the voting shares of Preston Bancshares, Inc., Preston, Iowa, for a total of 54 percent, and thereby indirectly acquire Farmers Savings Bank, Preston, Iowa.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Pat S. Bolin*, Dallas, Texas, to acquire an additional 29.8 percent for a total of 35.01 percent; D. Phil Bolin, Wichita Falls, Texas, to acquire 14.9 percent for a total of 18.91 percent; Dan H. Bolin, M.D., Wichita Falls, Texas, to acquire 7.45 percent for a total of 8.43 percent; Warren T. Ayers, Wichita Falls, Texas, to acquire 7.45 percent for a total of 8.90 percent; and Eagle I, Wichita Falls, Texas, to retain 0.07 percent of the voting shares of Fidelity Resources Company, Dallas, Texas, and thereby indirectly acquire Fidelity National Bank, Dallas, Texas.

2. *Luther May, Jr.*, Big Springs, Texas; to acquire 63 percent of the voting shares of First Coleman Bancshares, Inc., Coleman, Texas, and thereby indirectly acquire First Coleman National Bank, Coleman, Texas.

Board of Governors of the Federal Reserve System, November 23, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-27996 Filed 11-28-90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 90N-0293]**

### Drug Export; OncoTICE™ BCG Vaccine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Organon Teknika, Corp. has filed an application requesting approval for the export of the biological product OncoTICE™ BCG Vaccine to The Netherlands and Switzerland.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD

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20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8181.

**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(2)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Organon Teknika Corp., 100 Akzo Ave., Durham, NC 27704, has filed an application requesting approval for the export of the biological product OncoTICE™ BCG Vaccine to The Netherlands and Switzerland. OncoTICE™ BCG Vaccine is used as an adjuvant to transurethal resection (TUR) of primary superficial urothelial cell carcinoma of the bladder (viz. capillary carcinoma stage $T_a$, or $T_1$, grade 1, 2 or 3, and flat carcinoma in situ ($T_{is}$)), or recidives of these carcinomas. The application was received and filed in the Center for Biologics Evaluation and Research on October 29, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 10, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.64.

Dated: November 8, 1990.

**Thomas S. Bozzo,**

*Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 90-27900 Filed 11-28-90; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket Nos. 90F-0285 and 90P-0289]**

## Glenn Scott; Filing of Food Additive Petition and Citizen Petition to Prohibit Uses of Butylated Hydroxyanisole (BHA)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Glenn Scott, M.D., has filed a submission proposing that the food additive regulations, the generally recognized as safe (GRAS) regulations, and the prior sanction regulations be amended to prohibit the use of butylated hydroxyanisole (BHA) in food. To the extent that it requests the revocation of the food additive uses of BHA, the submission is being filed by FDA as a food additive petition; to the extent that it requests the revocation of the GRAS and prior-sanctioned uses of BHA, the submission is being treated by the agency as a citizen petition under 21 CFR 10.30.

**DATES:** Comments by January 28, 1991.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the receipt of a submission from Glenn Scott, M.D., P.O. Box 533, Cooperstown, NY 13326, requesting that all current uses of BHA be banned. Dr. Scott has designated his submission as a food additive petition. This submission requests that FDA promulgate a regulation under 21 CFR part 189, prohibiting the use of BHA in food.

The agency has considered the Scott submission and has concluded that, to the extent the submission requests the revocation of the food additive uses of BHA, the submission will be filed by FDA as a food additive petition (FAP 0A4216). Accordingly, under section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(b)(5)), notice is given that Dr. Scott has submitted, and FDA has accepted for filing, a food additive petition requesting the revocation of the uses of BHA as prescribed by food additive regulations 21 CFR 172.110, 172.515, 172.615, 173.340, 175.105, and 178.3570.

In addition, FDA has considered that portion of the Scott submission that requests the revocation of the GRAS regulation for BHA (21 CFR 182.3169) and the prior sanction regulation for BHA (21 CFR 181.24). Because the act exempts GRAS substances and prior-sanctioned materials from the definition of a food additive (21 U.S.C. 321(s)), the agency has concluded that, to the extent the Scott submission requests the revocation of the GRAS and prior-sanctioned uses of BHA, the submission will be treated as a citizen petition under 21 CFR 10.30.

Although FDA is presently treating the Scott submission as both a food additive petition and a citizen petition, the agency may, for reasons of administrative efficiency and consistency, ultimately address all aspects of the submission under the procedures established in section 409 of the act (21 U.S.C. 348) and regulations promulgated under that section of the act.

The Scott submission identifies a number of animal studies to support the request that BHA be prohibited from use in food. FDA is interested in receiving comments on the potential human carcinogenicity of BHA, the animal studies contained in the Scott submission, and comments on the following conclusions based on these animal studies that are set out in the submission:

(1) BHA causes papillomas and squamous cell carcinomas of the forestomach in F344 rats;

(2) BHA causes forestomach papillomas and carcinomas in Syria golden hamsters;

(3) BHA causes forestomach papillomas in B6C3F1 mice;

(4) BHA causes liver changes and a increase in the mitotic index of esophageal epithelium in cynomolgus monkeys;

(5) BHA causes proliferative changes in the esophagus in pigs;



(6) BHA causes adenomatous hyperplasia of the lung in Japanese house musk shrews.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dr. Scott's submission states that alternatives to BHA are available. The submission also includes several labels from food to show that fresh food can be supplied without using BHA or other preservatives. The agency is interested in receiving comments on these aspects of the submission (including the potential economic effects if BHA is prohibited from use as requested by the submission).

Because the forestomach is not present in higher mammals, including man, the relevance of the observations with BHA in rats, mice, and hamsters presents a scientific issue which may require peer review. Once FDA completes its review of the Scott submission, the comments received in response to this notice, and all other relevant information, the agency will consider whether, and to what extent, the issues raised by the Scott submission should be subject to review by a group of qualified experts from outside FDA. Accordingly, the agency specifically requests comments on the appropriateness and form of such peer review.

Any person who is interested in providing comments on the issues identified above or any other scientific or legal issues raised by the submission involving BHA, may at any time on or before January 28, 1991, file with the Dockets Management Branch (address above) written comments. Three copies of all comments and/or documents shall be submitted and shall be identified with the docket numbers found in brackets in the heading of this document. Any comments received in response to the notice may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1990.

**Frank K. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-27989 Filed 11-28-90; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 90P-0364]**

## Eggnog Deviating From Identity Standard; Temporary Permit For Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Robinson Dairy, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 27, 1991.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0349.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Robinson Dairy, Inc., 646 Bryant St., Denver, CO 80204.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 20,000 gallons (75,704 liters) of the test product. The product will be manufactured at Robinson Dairy, Inc., 2401 West Sixth Ave., Denver, CO 80204, and distributed in Colorado.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 27, 1991.

Dated: November 15, 1990.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28064 Filed 11-28-90; 8:45 am]

BILLING CODE 4160-01-M

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## National Institutes of Health

## Meeting; Advisory Committee to Director

Notice of meeting of the Advisory Committee to the Director, NIH. Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH, on December 18, 1990, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8 a.m. to 5 p.m. in building 31, C-Wing, conference room 10. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Report of the Task Force on Medical Rehabilitation Research" and "The NIH Financial Management Plan."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, Bethesda, Maryland 20892, (301) 496-3152, will furnish the meeting agenda, rosters of Committee members and consultants and substantive program information.

Dated: November 21, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90-27983 Filed 11-28-90; 8:45 am]

BILLING CODE 4140-01-M

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**National Cancer Institute; Meeting of Cancer Center Support Review Committee**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, November 29, 1990, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public from 8:30 a.m. to 9 a.m. to review administrative details and other cancer center support review issues. Attendance will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John L. Meyer, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, room 838, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7721) will furnish substantive program information.

Dated: November 23, 1990.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 90-28141 Filed 11-27-90; 11:16 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N-90-3172]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 21, 1990.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

### Submission of Proposed Information Collection to OMB

*Proposal:* Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped 24 CFR parts 243.

*Office:* Housing.

*Description of the Need for the Information and its Proposed Use:* Section 227 of the Housing and Urban-Rural Recovery Act of 1983 provides that no owner or manager of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.

*Form Number:* None.

*Respondents:* Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Notice to Tenants | 6,000 | | 1 | | 0.167 | | 1,002 |
| Registration of Pets | 20,000 | | 1 | | .25 | | 5,000 |
| Consultation | 500 | | 1 | | 1.53 | | 815 |
| Violation/Removals | 2,000 | | 1 | | .167 | | 334 |

*Total Estimated Burden Hours:* 7,151.

*Status:* Extension.

*Contact:* Brenda Kay Gronewald, HUD, (202) 708-4162, Scott Jacobs, OMB, (202) 395-6880.

Dated: November 21, 1990.

[FR Doc. 90-27967 Filed 11-28-90; 8:45 am]

BILLING CODE 4210-01-M



### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

**[Docket No. D-90-837; FR-2672-D-01]**

### Redelegation of Authority To Approve the Reservation of Funds for the Extension of Existing Grants Under the Congregate Housing Services Program

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of redelegation of authority.

**SUMMARY:** This notice redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs and to the Director, Office of Elderly and Assisted Housing, the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner to approve the reservation of funds for the extension of existing grants under the Congregate Housing Services Program authorized by title IV of the Housing and Community Development Amendments of 1978.

**EFFECTIVE DATE:** November 21, 1990.

**FOR FURTHER INFORMATION CONTACT:** Margaret Milner, Deputy Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 6130, Washington, DC 20410. Telephone (202) 708-0720 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:** By delegation published in the **Federal Register** on May 22, 1969, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing—Federal Housing Commissioner the power and authority of the Secretary to administer the programs authorized under Title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001, *et seq.*). The Congregate Housing Services Program created under that statute authorizes the Department to enter into three to five year contracts with eligible Public Housing Agencies and section 202 sponsors for the provision of meals and nonmedical supportive services to their elderly and nonelderly handicapped residents. This notice redelegates authority to the Deputy Assistant Secretary for Multifamily Housing Programs and to the Director, Office of Elderly and Assisted Housing, the power and authority of the Assistant Secretary for Housing—Federal Housing Commissioner to approve the reservation of funds for the extension of existing grants under the Congregate Housing Services Program.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates as follows:

Section: Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs and to the Director, Office of Elderly and Assisted Housing, the authority to approve the reservation of funds for the extension of existing grants under the Congregate Housing Services Program authorized by title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001 *et seq.*).

**Authority:** Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 21, 1990.

**Arthur J. Hill,**

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 90-27997 Filed 11-28-90; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Finding of No Significant Impact and Final Environmental Assessment on Comprehensive Management Plan, Memorandum of Agreement, and Agreement With The Nature Conservancy for Matagorda Island, TX

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** This notice advises the public that the Finding of No Significant Impact and the Final Environmental Assessment (EA) on the following agreements and plan are available for review:

Memorandum of Agreement Between the United States Department of the Interior, U.S. Fish and Wildlife Service; and The State of Texas General Land Office; and Texas Parks and Wildlife Department,

Cooperative Agreement Between the Fish and Wildlife Service and The Nature Conservancy, and

Matagorda Island National Wildlife Refuge and State Natural Area Comprehensive Management Plan.

**DATES:** Written comments are requested by December 31, 1990.

**ADDRESSES:** Comments should be addressed to: Regional Director, ATTN: Refuge Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103-1306.

**FOR FURTHER INFORMATION CONTACT:**

Joseph P. Mazzoni, Assistant Regional Director for Refuges & Wildlife, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103-1306, 505-766-1829.

Minda Stillings, Refuge Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103-1306, 505-766-3041.

Individuals wishing copies of this EA for review should immediately contact Minda Stillings. Copies have been sent to all parties who requested copies of the final EA.

**SUPPLEMENTARY INFORMATION:** This EA was prepared jointly by the Fish and Wildlife Service, Texas General Land Office, and Texas Parks and Wildlife Department. The Fish and Wildlife Service (FWS), Department of Interior, prepared this EA on its proposal to implement an agreement between the State of Texas and FWS for cooperative management of Matagorda Island, Texas, as well as a comprehensive management plan and an agreement with The Nature Conservancy providing management guidelines for Matagorda Island.

This action is designed to efficiently manage Matagorda Island's Federal and State lands to achieve the purposes for which the State Natural Area/Refuge was established.

This action will result in benefits to the Island's endangered and threatened species, especially the whooping crane, and to migratory birds. The major alternatives that were analyzed and evaluated during planning for this Island involved different management schemes involving the two State and one Federal agencies which own lands on the Island:

*No Action/Status Quo:* Texas Parks and Wildlife Department (TPWD) would manage lands on the north end of the Island as a state park and wildlife management area; FWS would manage lands on the south end of the Island. All lands would remain part of the National Wildlife Refuge System (NWRS) and subject to the laws and regulations affecting the NRWS. This would maintain fragmented, inefficient management of the island.

*Total State Management:* The entire Island would be managed by the State of Texas; all lands would remain part of the NWRS. This would consolidate management, allowing for more

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efficiency; however, it would allow the State to manage lands acquired with Federal funds.

*Total Federal Management:* The entire Island would be managed by FWS; all lands would remain part of the NWRS. This would consolidate management, allowing for more efficiency; however, it would allow FWS to manage lands belonging to the State of Texas.

*Separate State/Federal Management Based on Ownership:* Texas would manage lands owned by them on the north end of the Island and in Port O'Connor, FWS would manage lands owned by the Federal Government on the sound end of the Island; all lands would remain part of the NWRS. This would also create fragmented, inefficient management of the Island.

*Proposed Action, Cooperative Management of the Entire Island:* Texas would have the lead responsibility for managing public use and FWS would have the lead responsibility for managing wildlife throughout the entire Island; all lands would remain part of the NWRS. This is the only alternative which offers the benefits that would result from integrated cooperative management of the Island.

Other Government agencies, as well as members of the general public, contributed to the planning and revision of the plan and agreements. Two public meetings and a written comment period allowed extensive involvement. The public meetings were held June 20, 1990, in Port Lavaca, Texas, and June 21, 1990, in Austin, Texas. Extensive comments were received at the meetings, in addition to 106 written comments. Approximately 500 agencies, organizations, and individuals requested to remain on the mailing list for the Matagorda planning effort.

Dated: November 23, 1990.

**Michael J. Spear,**

*Regional Director.*

[FR Doc. 90-28014 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Information Collection for Subpart N—Remedies and Penalties, of 30 CFR Part 250

The collection of information contained in this rule has been submitted to the Office of Management and Budget (OMB) as required by 44 U.S.C. chapter 3501 *et seq.* Copies of the proposed information collection may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be made directly to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817 and the Office of Management and Budget; Paperwork Reduction Project 1010-0038; Washington DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817. Information collection requirements contained in existing rules and approved under existing number 1010-0038 will be collected until approval of collection under this amended rule has been approved.

*Title:* Remedies and Penalties, 30 CFR part 250, subpart N.

*OMB approval number:* 1010-0038.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, provides to the Secretary of Interior (Secretary) the responsibility for ensuring the safety and environmental protection for oil and gas and sulphur operations in the OCS. To carry out these responsibilities, the Secretary has authorized the Director of the Minerals Management Service (MMS) to issue regulations governing OCS oil and gas and sulphur lease operations. To ensure that applicable requirements are followed by operators, the rules include provisions for assessment of civil penalties. The information collection provisions under Subpart N provide the lessee with the opportunity to present information to the Reviewing Officer. The information provided is analyzed and evaluated by MMS's Reviewing Officer assigned to a particular civil penalty case.

*Bureau form number:* None.

*Frequency:* On occasion.

*Description of respondents:* Oil and gas lessees and operators.

*Estimated completion time:* 80 hours.

*Annual responses:* 15.5.

*Annual burden hours:* 1,240.

*Bureau Clearance Officer:* Dorothy Christopher, (703) 787-1239.

Dated: October 24, 1990.

**Albert Modiano,**

*Deputy Director, Minerals Management Service.*

[FR Doc. 90-27964 Filed 11-28-90; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[No. 40473]**

### Armored Car Delivery and Pickup of Interstate Shipments in Delaware—Petition for Declaratory Order

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of institution of proceeding.

**SUMMARY:** In response to a request by three armored car motor carriers, the Commission has instituted this declaratory order proceeding under 5 U.S.C. 554(e) to determine whether requirements imposed by the State of Delaware on interstate armored car operations constitute undue burdens on interstate commerce and whether those requirements are preempted or precluded by the Interstate Commerce Act. An opportunity to participate in the proceeding is provided interested persons and their comments are invited.

**DATES:** Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by December 14, 1990. A copy of the notice should be sent to petitioners' representative. A service list of the parties will then be issued. Petitioners will have 10 days after service of this list to provide each party with a copy of the petition and any additional material which they may file with the Commission in support of their position. Initial written comments (an original and 10 copies) must be filed within 30 days after service of the list. All parties will have 50 days after service of the list to reply. In addition, a copy of all comments and replies must be sent to each party of record.

**ADDRESSES:** Send written notices of intent to participate to:

Office of the Secretary, Case Control Branch, room 1324, Attn: Docket No. 40473, Interstate Commerce Commission, Washington, DC 20423,

and

Herbert Alan Dubin, 1010 Wayne Avenue, suite 1460, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Richard Hartley (202) 275-7786

or

Richard Felder (202) 275-7291. [TDD for hearing impaired: (202) 275-1721.]

**SUPPLEMENTARY INFORMATION:** Armored Motor Service Corporation, Trenton, NJ; Armored Motor Service of America, Inc., East Rochester, NY; and Vets International Armored Car Inc., d/b/a Armored Transport of New York, Brooklyn, NY, (petitioners) requested the Commission to issue a declaratory order finding that the requirements imposed by the Delaware Transportation of Money and Valuables Act (Chapter 32, title 5, of the Delaware Code) on interstate armored car operations constitute undue burdens on interstate or foreign commerce and are preempted or precluded by the Interstate Commerce Act. Petitioners contend that the Delaware Act mandates an elaborate regulatory scheme which involves an extensive application, a sizeable application fee, a sizeable surety bond, and an accounting audit of the armored car carrier's books and records, with the expense of the audit by a certified public accounting firm selected by Delaware imposed upon the armored car carrier. Petitioners further contend that the Delaware Act has been applied to their operations even though they do not perform any intrastate operations in Delaware. By decision the Commission has determined that the petition presents a controversy sufficient to warrant the institution of a proceeding under 5 U.S.C. 554(e).

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: November 20, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90-28060 Filed 11-28-90; 8:45 am]

BILLING CODE 7035-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-277 and 50-278]**

### Philadelphia Electric Co., et al. (Peach Bottom Atomic Power Station, Units 2 and 3); Exemption

I.

The Philadelphia Electric Company, et. al. (the licensee), is the holder of Operating License Nos. DPR-44 and DPR-56 which authorizes operation of the Peach Bottom Atomic Power Station, Units 2 and 3, at steady state reactor core power levels not in excess of 3293 megawatts thermal. The licenses provide, among other things, that the Peach Bottom Atomic Power Station, Units 2 and 3 are subject to the rules, regulations, and orders of the Commission now or hereafter in effect.

The plants are direct cycle boiling water reactors located at the licensee's site in York County, Pennsylvania.

II.

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements to appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section II.H.1 of appendix J to 10 CFR part 50 requires that Type C Local Leak Rate Tests (LLRTs), defined as tests intended to measure containment isolation value leakage rates, include containment isolation valves that provide a direct connection between the inside and outside atmospheres of the primary reactor containment under normal operation, such as purge and ventilation, vacuum relief, and instrument valves. Section II.H.4 of appendix J requires that Type C LLRTs include containment isolation valves that are in main steam and feedwater piping and other systems which penetrate containment of direct-cycle boiling water power reactors.

Section III.C.1 of appendix J to 10 CFR part 50 requires that Type C LLRTs shall be performed by local pressurization, Section III.C.2 of appendix J requires that Type C LLRTs for valves, unless pressurized with fluid from a seal system, shall be performed at a test pressure of Pa, the calculated peak containment internal pressure related to the design basis accident. Section III.C.3 of appendix J requires that the combined leakage rate for all penetrations and valves subject to Type B and C LLRTs shall be less than 0.60 of La, the maximum allowable leakage rate at pressure Pa.

III.

The licensee requested exemptions from the requirements of appendix J, sections II.H.4 and III.C.2 for local leakage rate testing of the main steam isolation values (MSIVs). Sections II.H.4 and III.C.2 require leak rate testing of the MSIVs at the peak calculated containment pressure related to the design basis accident. The licensee requested that leak testing of the MSIVs be conducted at reduced pressure.



The main steam system design in most operating BWR plants, including Peach Bottom, necessitates leak testing of the MSIVs by pressurizing the pipes between the inboard and outboard valves resulting in test pressure acting on the inboard valve in the direction opposite to accident pressure. The MSIVs are angled in the main steam lines in the direction of flow to afford better sealing upon closure. Consideration of this feature was included at the design stage of the facility when the original test pressure of 25 psig was established. A test pressure of Pa acting on the inboard valve in the opposite direction is sufficient to lift the valve disc off its seat and results in excessive leakage into the reactor vessel. That would be a meaningless test. The licensee proposed to test the MSIVs at a test pressure of 25 psig (about one-half of the peak post-accident pressure) to avoid lifting the inboard valve disc. The total observed leakage through both the inboard and outboard valves is then conservatively assigned to the penetration. Based on a review of the licensee's submittals, the staff concludes that testing of the MSIVs at a reduced pressure of 25 psig will result in a conservative determination of the leakage rate through the MSIVs. The staff concludes that testing the MSIVs at 25 psig is acceptable due to the unique design of the valves.

The measured leakage rate for any one main steam line through the MSIVs is limited to a maximum pathway leakage of 11.5 standard cubic feet per hour (SCFH) as specified in the facility Technical Specifications (TS). As stated above, the MSIVs in some boiling water reactor (BWR) plants are angled in the main steam lines in order to afford better sealing in the direction of accident pressure. This condition was considered when the test pressure of 25 psig was initially established for the MSIVs of many BWRs. Subsequently, industry experience in testing these valves at a pressure of 25 psig and with an acceptable criterion of 11.5 SCFH has been shown to be effective in determining the condition of these valves.

The licensee requested an exemption from the requirements of appendix J, sections II.H.1 and III.C for Type C testing on the Traversing In-Core Probe (TIP) system shear valves. The licensee proposed to exclude the TIP shear valves from Type C testing requirements.

Each of the five TIP guide tubes is equipped with two isolation valves, a ball valve that provides the primary means of containment isolation, and a

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shear valve that cuts the cable and isolates the guide tube in the event that isolation is required and the drive cable can not be withdrawn. The shear valve is an explosive-type valve, direct current-operated, with monitoring of each actuating circuit provided. The ball valve is Type C tested in accordance with appendix J. It is impractical to test the shear valves since they require testing to destruction. In lieu of leak testing and ultimate destruction of the shear valves, the licensee committed to the following actions to ensure the shear valves will perform their intended function:

(1) Verification of the continuity of the explosive charge circuit which is monitored by an alarm in the control room.

(2) Initiation of one explosive squib charge at least once per operating cycle. The replacement charge for the explosive valve shall be from the same manufactured batch as the one fired or from another batch that has been certified by having one of that batch successfully fired.

(3) Replacement of all explosive charges in accordance with the manufacturer's recommended lifetime.

Based on the above justification, the staff finds that the proposed exemption for the shear valves from Type C testing will not increase radioactive leakage from the penetration because the use of the valves will be necessary only when the TIP cable fails to withdraw or the ball valve fails to close. Further, the functional capability of the TIP shear valve will be periodically checked as described above. Therefore, the proposed exemption from appendix J Type C testing for the TIP shear valves is justified.

The staff's Safety Evaluation issued concurrently with this exemption, provides additional details and bases supporting the requested exemptions.

IV.

The underlying purpose of the requirements of sections II.H.4 and III.C.2 of appendix J to 10 CFR part 50 is to ensure the integrity of the primary containment and its penetrations. The underlying purpose is achieved and served by testing at the reduced test pressure of 25 psig subject to the TS acceptance criterion of 11.5 SCFH per MSIV which allows for a meaningful test of the MSIVs. Thus, an equivalent level of protection is provided.

Therefore, the Commission's staff finds there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

The underlying purpose of the requirements of sections II.H.1 and III. C of appendix J to 10 CFR part 50 is to demonstrate by periodic testing that the primary reactor containment will be able to perform its function of providing a leak tight barrier against the uncontrolled release of radioactivity to the environment. The underlying purpose is achieved and served by the licensee's proposed surveillance provisions of the TIP shear valves. Thus, an equivalent level of protection is provided.

Therefore, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

V.

Based on the above evaluation, the staff considers the licensee's reduced test pressure for Type C testing of MSIVs to be justified. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely, that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Accordingly, the Commission hereby grants the following exemption:

Philadelphia Electric Company is exempt from sections II.H.4 and III.C.2 of appendix J to 10 CFR part 50 to allow the licensee to conduct Type C LLRTs of the MSIVs at a reduced pressure of 25 psig.

The Commission further considers that the licensee's alternate surveillance provisions for the TIP shear valves to be equivalent to that achieved by conformance to appendix J to 10 CFR part 50. Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has also determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) are present, justifying the exemption; namely that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Accordingly, the Commission hereby grants the following exemption:

Philadelphia Electric Company is exempt from sections II.H.1 and III.C of appendix J to 10 CFR part 50 to exclude the TIP shear valves from Type C testing requirements.

Pursuant to 10 CFR 501.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (53 FR 48710).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 21st day of November 1990.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28008 Filed 11-28-90; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-346]**

## Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating license No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio.

The amendment would change the expiration date for the Davis-Besse Nuclear Power Station, Unit No. 1 (DBNPS) Operating License from March 24, 2011 to April 22, 2017; the latter date is 40 years from the date of issuance of the Operating License. The license currently expires March 24, 2011, which is 40 years from issuance of the construction permit. The Technical Specifications for the plant would not be affected.

Prior to the issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 31, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration.

The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC, 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated May 31, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room, University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 23rd day of November 1990.

For the Nuclear Regulatory Commission.

**M.D. Lynch,**

*Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28009 Filed 11-28-90; 8:45 am]

BILLING CODE 7590-01-M

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## OVERSIGHT BOARD

### National Advisory Board; Meeting

**AGENCY:** Oversight Board.

**ACTION:** Meeting postponement.

**SUMMARY:** The National Advisory board meeting scheduled for Wednesday, December 5, 1990, from 1 to 4 pm, as published in the **Federal Register**, November 21, 1990, page 48714, has been postponed. Further details on the new date and location for the meeting will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW, Washington, DC 20232, 202/786-9575.

Dated: November 16, 1990.

**Jill Nevius,**

*Committee Management Officer, Oversight Board, Advisory Board Affairs.*

[FR Doc. 90-28200 Filed 11-28-90; 8:45 am]

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## PEACE CORPS

### Information Collection Request Under OMB Review

**AGENCY:** United States Peace Corps.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3502 et seq.), this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Mr. Guy Branch, Office of Recruitment, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Branch may be called at 202-606-3387. Comments on this information collection should be addressed to Mr. Marshall Mills, Desk Officer, Office of Management and Budget, Washington, DC 20503.

**INFORMATION COLLECTION ABSTRACT:**

*Title:* Survey of Possible Peace Corps Volunteers and Returned Volunteers

Need for and use of the information: Peace Corps needs this information in order to evaluate the effectiveness of its recruitment techniques and make adjustments as necessary.

*Respondents:* Possible Peace Corps Volunteers and Returned Volunteers

Burden on the public:

a. *Annual reporting burden:* 700 hours

b. *Annual recordkeeping burden:* 0 hours

c. *Estimated average burden per response:* 30 minutes

d. *Frequency of response:* one time survey

e. *Estimated number of likely respondents:* 1,400

This notice is issued in Washington, DC on November 25, 1990.

**Collins Reynolds,**

*Associate Director for Management.*

[FR Doc. 90-27991 Filed 11-28-90; 8:45 am]

BILLING CODE 6051-01-M

## PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS

### Proposed Recommendations; Availability and Request for Comments

**AGENCY:** President's Commission on the Federal Appointment Process.

**ACTION:** Availability and request for public comment.

**SUMMARY:** The Commission is requesting anyone interested in addressing issues related to the appointment process to review the Commission's proposed recommendations and share his or her thoughts in writing with members of the Commission. The recommendations can be obtained by contacting the executive director of the Commission at the address and number listed in **ADDRESSES.**

**DATES:** Comments due December 5, 1990.

**ADDRESSES:** Comments should be sent to room, 502, the Old Executive Office Building, 17th and Pennsylvania Avenue, Washington, DC 20500, or faxed to (202) 456-2330.

**FOR FURTHER INFORMATION CONTACT:** Alvin S. Felzenberg, Executive Director, President's Commission on the Federal Appointment Process, room 502, Old Executive Office Building, Washington, DC 20500, (202) 456-6490.

**SUPPLEMENTARY INFORMATION:** The Commission was established by Executive Order 12719 to advise the President on the best means of simplifying the Presidential appointment process through reducing the number and complexity of forms to be completed by Presidential nominees. The Commission's mandate is to give special attention to achieving coordination between forms required in the executive branch clearance process and forms required by Senate Committees for confirmation hearings.

**Alvin S. Felzenberg,**

*Executive Director.*

[FR Doc. 90-28044 Filed 11-28-90; 8:45 am]

BILLING CODE 3610-17-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended November 16, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 47251
*Date filed:* November 13, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 436 (General Increase in Fares from Japan)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47252
*Date filed:* November 13, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 435 (Amend Mileage Manual-Reso Olla)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47253
*Date filed:* November 13, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 438 (Experimental Fares from Japan to Hong Kong)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47257
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 437 (Increase in Cargo Rates from Japan)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47258
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 441 (Increase in Cargo Rates from Germany)
*Proposed Effective Date:* December 10, 1990

*Docket Number:* 47259
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 443 (Increase in TC1 Fares from Venezuela)
*Proposed Effective Date:* December 10, 1990

*Docket Number:* 47260
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mid Atlantic-Europe Resolutions R-1 To R-18
*Proposed Effective Date:* January 1, 1991

*Docket Number:* 47261
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Europe-Africa Expedited Reso R-1 To R-7
*Proposed Effective Date:* December 10, 1990

*Docket Number:* 47262
*Date filed:* November 14, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Europe-Japan/Korea Expedited Resos R-1 To R-3
Europe-Japan/Korea Expedited Resos R-4 To R-6
Europe-Japan/Korea Expedited Resos R-1 To R-25
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47266
*Date filed:* November 16, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 442 (Circle Pacific-Standard Revalidation)
*Proposed Effective Date:* April 1, 1991

*Docket Number:* 47267
*Date filed:* November 16, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Europe-Africa Expedited Resos R-1 To R-22
*Proposed Effective Date:* January 1, 1991
*Subject:* Within Africa Expedited Resos R-23 To R-29
*Proposed Effective Date:* December 10, 1990

*Docket Number:* 47268
*Date filed:* November 16, 1990
*Parties:* Members of the International Air Transport Association
*Subject:*
Mail Vote 444-(Increase in fares from Zimbabwe)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47269
*Date filed:* November 16, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 440-(APEX fares from Japan to Canada/Mexico/USA, except Alaska/Hawaii)
*Proposed Effective Date:* December 1, 1990

**Phyllis T. Kaylor**

*Chief, Documentary Services Division.*

[FR Doc. 90-27978 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 16, 1990

The following applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 47263.
*Date filed:* November 14, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 26, 1990.
*Description:* Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide nonstop air transportation between the coterminals of Miami and Tampa, on the one hand, and Toronto, on the other hand.

*Docket Number:* 47264.
*Date filed:* November 16, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 14, 1990.
*Description:* Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide scheduled air transportation of persons, property and mail between Atlanta, Georgia and Copenhagen, Denmark via London (Gatwick), England.

*Docket Number:* 47270.
*Date filed:* November 16, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 26, 1990.
*Description:* Application of American Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize scheduled foreign air transportation of persons, property, and mail between the co-terminal points Miami and Tampa, Florida, and the terminal point Toronto, Ontario, Canada.

*Docket Number:* 47272.
*Date filed:* November 16, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 26, 1990.
*Description:* Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity to enable it to provide scheduled, nonstop service between Tampa and Miami, Florida, and Toronto, Ontario, Canada.

*Docket Number:* 46828.
*Date filed:* November 16, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* November 26, 1990.
*Description:* Application of USAir, Inc., in response to Order 90-10-32, applies for issuance of a new or amended certificates of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation of persons, property and mail on a nonstop basis between Miami and Tampa, Florida, on the one hand, and Toronto, Ontario, Canada, on the other hand.

*Docket Number:* 46804.
*Date filed:* November 16, 1990.
*Due Date for answers, Conforming Applications, or Motion to Modify Scope:* November 26, 1990.
*Description:* First Amendment to Application of Pan American World Airways, inc., pursuant to Order 90-10-32, amends its application to apply for certificate authority "between Miami and Tampa, Florida, on the one hand, and Toronto, Ontario, Canada, on the other hand." The effect of this amendment is to add Tampa-Toronto authority to the application and to conform fully to the scope of the Miami/Tampa-Toronto Service Investigation instituted in Docket 47234.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 90-27979 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-62-M

[Order 90-11-35, Docket 47237]

### Order Setting Procedural Schedule; Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc. for Certificate Transfer

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Joint application of United Air Lines, Inc. and Pan American World Airways, Inc. for certificate transfer.

**SUMMARY:** On November 1, 1990, United Air Lines, Inc. and Pan American World Airways, Inc. filed a joint application seeking approval of the transfer to United, under section 410(h) of the Federal Aviation Act of 1958, as amended, of the following:

(a) Pan American's present certificate authority to serve points in the United Kingdom (except Manchester), on the one hand, and points in the United States (except Detroit and Miami), on the other hand, including the right to serve London through Heathrow Airport;

(b) Pan American's local traffic rights between the United Kingdom and third countries;

(c) Pan American's right to operate U.S. Route 2 (combination round-the world service) under the Bermuda II Agreement;

(d) Pan American's present route authority to operate between certain U.S. gateways (Washington-Baltimore, Chicago, Los Angeles, San Francisco-Oakland-San Jose and Seattle), on the one hand, and points outside the U.S. (except points in Bermuda, the Bahamas, Central and South America, Mexico, and the Caribbean, and between Washington and Frankfurt), on the other hand.

By notice filed November 14, 1990, the Department required the joint applicants to file additional evidence and information. On November 16, 1990, the joint applicants completed their application.

The Department has established a procedural schedule for the receipt of answers and replies to answers.

**DATES:** Answers to the application should be filed by December 14, 1990. Replies to answers should be filed by December 21, 1990.

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**ADDRESSES:** Answers and replies to answers should be filed in Docket 47287, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590 and should be served on all parties in Docket 47237.

Dated: November 23, 1990.

**Jeffrey N. Shane,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 90-27980 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-62-M

## Coast Guard

**[CGD8 90-25]**

### Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 3, 1991 at West Gulf Maritime Association 1717 East Loop, suite 200, Houston, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 Noon. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander, E. N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: October 30, 1990.

**J.M. Loy,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 90-28031 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

**[CGD8 90-26]**

### Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 3, 1991 at West Gulf Maritime Association, 1717 East Loop, suite 200, Houston, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: October 30, 1990.

**J.M. Loy,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 90-28032 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

**[CGD8 90-27]**

### Houston/Galveston Navigation Safety Advisor Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of the twenty-fifth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, January 24, 1991 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Lieutenant Commander E.N. Funk, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: October 30, 1990.

**J.M. Loy,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 90-28033 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

**[CGD 90-066]**

### National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice hereby is given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on Thursday, February 21, 1991, in room 2415, U.S. Coast Guard Headquarters. The meeting is scheduled to run from 10 a.m. to 3 p.m. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports
   (a) Subchapter W
   (b) Vessel Tonnage
   (c) MODU Code Revision
   (d) Drug Testing
   (e) Ocean Tow of Jack-up Drilling Units
   (f) Revisions to Regulations on Outer Continental Shelf Activities
2. Other Issues to be Discussed

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than February 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jo Pensivy, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 2414, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1408.

Dated: November 23, 1990.

**D.H. Whitten,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90-28034 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M



**[CGD 90-065]**

### Loran-C Mid-Continent Expansion Project New Chain Data

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the transmitter antenna position survey data and coding delays for the Loran-C Mid-Continent Expansion Project.

**FOR FURTHER INFORMATION CONTACT:** LTJG Roger Barnett, U.S. Coast Guard Headquarters, Loran-C Management Branch at telephone (202) 267-0299, (FTS) 267-0299.

**SUPPLEMENTARY INFORMATION:** The Loran-C Mid-Continent Expansion Project is a joint USCG/FAA project that closes the present gap in Loran-C coverage in the mid-continental area of the United States. This project will meet the FAA's requirements for aviation use of Loran-C in the National Airspace System.

To close the gap in Loran-C coverage, the U.S. Coast Guard is expanding the Great Lakes Loran-C chain and creating two new Loran-C chains.

The two new Loran-C chains will be the South Central U.S. and the North Central U.S. chains. The South Central U.S. Chain (Rate 9610) is expected to be operational in December 1990. This date does not include the Las Cruces, NM, station which is expected to be operational in April 1991. The North Central U.S. Chain (Rate 8290) is expected to be operational in April 1991. The Great Lakes Chain (Rate 8970) is expected to begin providing expanded Loran-C coverage in April 1991.

The coordinates of the transmitter antennas and the chain coding delays are as follows:

| Station | Position | | Coding delay |
|---|---|---|---|
| | Latitude | Longitude | |
| South Central U.S. Loran-C Chain, Rate 9610 | | | |
| M Boise City | 36°30'20.763"N | 102°59'59.467"W | N/A |
| V Gillette | 44°00'11.305"N | 105°37'23.886"W | 11000 |
| W Searchlight | 35°19'16.305"N | 114°48'16.881"W | 25000 |
| X Las Cruces | 32°04'16.130"N | 106°52'04.386"W | 40000 |
| Y Raymondville | 26°31'55.141"N | 97°49'59.539"W | 52000 |
| Z Grangeville | 30°43'33.149"N | 90°48'43.046"W | 65000 |
| North Central U.S. Chain, Rate 8290 | | | |
| M Havre | 48°44'36.589"N | 109°56'53.613"W | N/A |
| W Baudette | 48°39'48.947"N | 94°33'17.918"W | 11000 |
| X Gillette | 44°00'11.305"N | 105°37'23.886"W | 27000 |
| Y Williams Lake | 51°57'56.876"N | 122°22'01.686"W | 42000 |
| Great Lakes Chain, Rate 8970 (Expanded) | | | |
| M Dana | 39°51'07.658"N | 87°29'11.586"W | N/A |
| W Malone | 30°59'36.870"N | 85°10'06.751"W | 11000 |
| X Seneca | 42°42'50.718"N | 76°49'33.306"W | 28000 |
| Y Baudette | 48°39'48.947"N | 94°33'17.918"W | 44000 |
| Z Boise City | 36°30'20.763"N | 102°52'59.467"W | 66000 |

The surveys were performed by the U.S. Defense Mapping Agency, and are in the World Geodetic System 1984 at an achieved accuracy of 1 meter.

Dated: November 21, 1990.

**J. W. Lockwood,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 90-28030 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-14-M

## Office of Hearings

**[Docket 47148]**

### U.S.-U.S.S.R. North Atlantic Combination Service Case; Hearing

Notice is hereby given that the hearing in the above-entitled matter will begin at 9:30 a.m. on Tuesday, December 4, 1990, and run for the necessary days thereafter to complete the hearing. The hearing site is in room 5332, U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Questions concerning this proceeding that require a telephonic discussion should be telephoned to (202) 366-2141.

Civic parties will present their direct cases first, commencing with the Georgia/Atlanta Parties and proceeding seriatim in alphabetical order, and the intervenor associations (American Latvian Association, Lithuanian American Parties, and the Ukrainian National Association) will present their direct cases at the end of the civic parties' presentations. Then the airline applicants shall present their direct cases, followed by Public Counsel.

If certain parties wish to reverse the order of their presentation, and there is good cause for doing so, I may allow

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that change. However, as provided in appendix A of my September 28, 1990 Prehearing Order, I expect that, once a party begins its direct case, it will complete its presentation and that individual witnesses will not be taken out of order, or in the middle of another party's case unless good cause, as defined in my September 28 order, is shown. Accommodating the business schedule of a witness normally does not constitute good cause.

Cross-examination shall proceed per aligned parties as provided in my November 15, 1990 Order Clarifying Alignment. Aligned parties normally should designate one attorney to cross a particular witness, but, if good reasons are shown, I will allow more than one counsel per aligned parties to cross-examine. Also, if requested prior to beginning cross-examination of a witness, and if a carrier has civic parties aligned with it, I may not restrict the set of aligned parties to fifteen minutes of cross-examination. However, aligned parties shall not be allowed to cross-examine each other's witnesses. Since even with alignment there are twelve possible cross-examinations per witness, counsel should attempt to avoid duplicative cross-examination.

Any outstanding motions not resolved prior to the hearing will be heard at the outset of the hearing before commencing with the testimony.

Dated: November 23, 1990.

Robert L. Barton, Jr.,

*Administrative Law Judge.*

[FR Doc. 90-28037 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-62-M

## Research and Special Programs Administration

### International Standards on the Transport of Dangerous Goods; Public Meeting

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to report the results of the sixteenth session of the United Nations Committee of Experts on the Transport of Dangerous Goods.

**DATES:** December 20, 1990 at 9:30 a.m.

**ADDRESSES:** Room 6244, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Frits Wybenga, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590; (202) 366-0656.

**SUPPLEMENTARY INFORMATION:** This meeting will be used (1) to review the decisions made by the sixteenth session of the Committee of Experts on the Transport of Dangerous Goods and (2) to begin preparation for U.S. participation in meetings of the Committee of experts on the Transport of Dangerous Goods and its Sub-committee during the Committee's 1991-92 biennium. Topics to be covered include classification and grouping criteria for self-reactive substances; application of performance packaging test requirements to minor variations of previously tested combination packages; requirements for infectious substances; classification and grouping criteria for gases; amendments to the requirements for explosives and other amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

Documents that will be discussed may be obtained for a nominal fee from HMAC, suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; (202) 728-1460.

Issued in Washington, DC on November 26, 1990.

Alan I. Roberts,

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 90-28036 Filed 11-28-90; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

November 23, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Bureau of Alcohol, Tobacco and Firearms

*OMB Number:* New.

*Form Number:* ATF F 5300.26, ATF REC 5300/26.

*Type of Review:* New collection.

*Title:* Federal Firearms and Ammunition Excise Tax Return.

*Description:* Excise tax return is completed by those owing Federal excise tax on the manufacture or importation of firearms and/or ammunition. The return is prescribed by statute for the collection of these taxes. ATF uses the form to identify the taxpayer, the taxpayer's liability and adjustments affecting the amount paid.

*Respondents:* Businesses or other for-profit, small businesses or organizations.

*Estimated Number of Respondents:* 1,012.

*Estimated Burden Hours Per Response/Recordkeeping:* 6 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Recordkeeping/ Reporting Burden:* 24,289 hours.

*OMB Number:* New.

*Form Number:* ATF F 5300.29.

*Type of Review:* New collection.

*Title:* Application for Extension of Time for Payment of Tax.

*Description:* Under 26 U.S.C. 6161, provisions are made for ATF to grant extensions of time to pay taxes to those who are experiencing undue hardship. This application is used to implement this provision.

*Respondents:* Businesses or other for-profit, small businesses or organizations.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Per Response/Recordkeeping:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping/ Reporting Burden:* 13 hours.

*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 90-27970 Filed 11-28-90; 8:45 am]

BILLING CODE 4810-31-M



## Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 31-90]**

### Treasury Notes, Series D-2000

Washington, November 8, 1990.

The Secretary announced on November 7, 1990, that the interest rate on the notes designated Series D-2000, described in Department Circular—Public Debt Series—No. 31-90 dated November 1, 1990, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 90-28063 Filed 11-28-90; 8:45 am]

BILLING CODE 4810-40-M

**[Supplement to Department Circular—Public Debt Series—No. 30-90]**

### Treasury Notes, Series V-1993

Washington, November 7, 1990.

The Secretary announced on November 6, 1990, that the interest rate on the notes designated Series V-1993, described in Department Circular—Public Debt Series—No. 30-90 dated November 1, 1990, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 90-28062 Filed 11-28-90; 8:45 am]

BILLING CODE 4810-40-M

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# Sunshine Act Meetings

Federal Register
Vol. 55, No. 230
Thursday, November 29, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, December 4, 1990, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** The meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, December 6, 1990, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be open to the public

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Advisory Opinion 1990-14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

**Dolores Harris,**
*Administrative Assistant, Office of the Secretariat.*

[FR Doc. 90-28218 Filed 11-27-90; 2:38 pm]
BILLING CODE 6715-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Thursday, November 29, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550, 17th Street, NW., Washington, DC.:

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would ensure that limits are placed on the amount of purchased mortgage servicing rights that State nonmember banks and savings associations can recognize for regulatory capital purposes.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: November 27, 1990.
Federal Deposit Insurance Corporation.
**Hoyle L. Robinson,**
*Executive Secretary.*

[FR Doc. 90-28173 Filed 11-27-90; 1:08 pm]
BILLING CODE 6714-01-M

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10 a.m., December 4, 1990.

**PLACE:** Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573-0001.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:**

1. Modifications to the Asia North America Eastbound Rate Agreement (202-010776-050) and the Transpacific Westbound Rate Agreement (202-010869-038).
2. Royal Caribbean Cruises Ltd.—Proposed Order of Investigation.
3. Docket No. 87-14—*Banfi Products Corporation—Possible Violations of Section 16, Initial Paragraph, Shipping Act, 1916, and Section 10(a)(1) of the Shipping Act of 1984*—Production of documents.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 90-28172 Filed 11-27-90; 1:05 pm]
BILLING CODE 6735-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 55 FR 48321, November 20, 1990.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 11:00 a.m., Monday, November 26, 1990.

**CHANGES IN THE MEETING:** Addition of the following closed item(s) to the meeting:

Issues regarding participation in the Federal Reserve System's Benefits Plans.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: November 26, 1990.
**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR. Doc. 90-28127 Filed 11-27-90; 10:56 am]
BILLING CODE 6210-01-M

**UNITED STATES PAROLE COMMISSION**

Time and date for the open meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction.

**ACTION:** Notice of correction of time and date.

**SUMMARY:** This notice corrects the time and date previously published in the **Federal Register** November 26, 1990 [55 FR 49199] for an open meeting of the Commission to be held in Chevy Chase, Maryland. The time and date for the open meeting is 9:00 a.m., Tuesday, December 4, 1990.

Dated: November 26, 1990.
**Michael A. Stover,**
*General Counsel, U.S. Parole Commission.*

[FR Doc. 90-28176 Filed 11-27-90; 1:07 pm]
BILLING CODE 4410-01-M

**UNITED STATES PAROLE COMMISSION**

Time and date for the closed meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction.

**ACTION:** Notice of correction of time and date.

**SUMMARY:** This notice corrects the time and date previously published in the **Federal Register** November 26, 1990 [55 FR 49199] for a closed meeting of the Commission to be held in Chevy Chase, Maryland. The time and date for the closed meeting is 9:00 a.m., Wednesday, December 5, 1990.

Dated: November 26, 1990.
**Michael A. Stover,**
*General Counsel, U.S. Parole Commission.*

[FR Doc. 90-28175 Filed 11-27-90; 1:07 pm]
BILLING CODE 4410-01-M

**NATIONAL MEDIATION BOARD**

**TIME AND DATE:** 2:00 p.m., Wednesday, December 5, 1990.



**PLACE:** Board Hearing Room 8th Floor, 1425 K. Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during the month of November, 1990.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: November 16, 1990.
**William A. Gill, Jr.,**
*Executive Director, National Mediation Board.*

[FR Doc. 90-28140 Filed 11-27-90; 10:57 am]
BILLING CODE 7550-01-M

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# Corrections

Federal Register
Vol. 55, No. 230
Thursday, November 29, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**9 CFR Part 85**

**[Docket No. 89-211]**

**Pseudorabies**

*Correction*

In rule document 90-10611 beginning on page 19245 in the issue of Wednesday, May 9, 1990, make the following corrections:

**§ 85.1 [Corrected]**

1. On page 19252, in the first column, in § 85.1(b)(4)(iv)(B), in the eighth line, "his" should read "this".

2. On page 19253, in the first column, in the eighth amendatory statement, in the paragraph designated (a), "second" should read "section".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**49 CFR Part 531**

**[Docket No. 89-19; Notice 03]**

**Intent To Prepare Environmental Impact Statement for Fuel Economy Program; Announcement of Public Scoping Meeting**

*Correction*

In proposed rule document 90-27248 beginning on page 48137 in the issue of Monday, November 19, 1990, make the following corrections:

1. On page 48138, in the third column, in the first full paragraph, in the third line "MHTSA" should read "NHTSA".

2. In the next paragraph, third sentence, remove the words "analysis and their relative significance so that the detail of".

BILLING CODE 1505-01-D

federal register

Thursday
November 29, 1990

Part II

# Department of Education

**34 CFR Parts 201 and 222**

**Migrant Education Program, and Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Rule**

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## DEPARTMENT OF EDUCATION

### 34 CFR Parts 201 and 222

RIN 1810-AA43 and 1810-AA49

### Chapter 1—Migrant Education Program; and Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

**AGENCY:** Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends 34 CFR parts 201 and 222 to display and codify the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements contained in the regulations and to correct previous codifications by removing erroneous control numbers. The Department must display and codify the control numbers to comply with applicable statutory and regulatory requirements. Publication of these control numbers informs the public that OMB has approved the information collection requirements and that they have taken effect.

**EFFECTIVE DATES:** Sections 201.11, 201.16, 201.17, 201.25, 201.35, 201.44, 201.47, 201.55, and this amendment are effective November 29, 1990. Sections 222.25 and 222.40 were effective on November 9, 1989, when the correct OMB control numbers were published (54 FR 47076).

**FOR FURTHER INFORMATION CONTACT:** For the Chapter 1—Migrant Education Program, contact Ms. Marie Strahan, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., room 2145 FOB-6, Washington, DC 20202-6135. Telephone: (202) 401-0744. For the Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education program, contact Mr. Charles E. Hansen, Director, Impact Aid Programs, U.S. Department of Education, 400 Maryland Avenue SW., room 2077 FOB-6, Washington, DC 20202-6244. Telephone: (202) 401-3637.

**SUPPLEMENTARY INFORMATION:** Final regulations for the Chapter 1—Migrant Education Program were published in the **Federal Register** on October 23, 1989 (54 FR 43220). Final regulations governing eligibility, entitlement, and payment determinations under section 3(d)(2)(B) of the Impact Aid Program were published in the **Federal Register** as amendments to 34 CFR part 222 on September 7, 1989 (54 FR 37250). At the time of publication of the regulations, it was noted that certain sections of the regulations contained information collection requirements requiring review by the Office of Management and Budget (OMB), and those sections would become effective after approval by OMB under the Paperwork Reduction Act of 1980, as amended.

OMB has approved the information collection requirements in §§ 201.11, 201.16, 201.17, 201.25, 201.35, 201.44, 201.47, and 201.55 of the Chapter 1—Migrant Education Program regulations, and those sections of the regulations are now effective.

OMB approved the information collection requirements for the amendments to 34 CFR part 222, the Impact Aid Program regulations, and assigned controls numbers to be displayed with the appropriate amended sections to inform the public that the necessary approval had been given. Those control numbers were published in the **Federal Register** on November 9, 1989 (54 FR 47076). For two of the sections, however, §§ 222.25 and 222.40, the old control number also was retained when the regulations were codified. This document corrects this error by removing the incorrect control number and leaving intact the new control number published on November 9.

### Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these regulations contain only technical amendments and would not have a significant impact on any entities.

### List of Subjects

*34 CFR Part 201*

Children, Education, Grant programs—education, Identification and recruitment, Local educational agencies, Migratory children, Special educational needs, State educational agencies.

*34 CFR Part 222*

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing.

(Catalog of Federal Domestic Assistance Number 84.011, Migrant Education Basic State Formula Grant Program; and Catalog of Federal Domestic Assistance Number 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: November 21, 1990.

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary amends parts 201 and 222 of title 34 of the Code of Federal Regulations as follows:

## PART 201—CHAPTER 1—MIGRANT EDUCATION PROGRAM

1. The authority citation for part 201 continues to read as follows:

**Authority:** 20 U.S.C. 2781-2762, unless otherwise noted.

**§ 201.11 [Amended]**

2. Section 201.11 is amended by removing the second parenthetical "(Approved by the Office of Management and Budget under control number 1810-0519)" at the end of the section.

**§ 201.16 [Amended]**

3. Section 201.16 is amended by removing the existing OMB control number and adding, in its place, "1810-0029".

**§§ 201.17, 201.25, 201.35, and 201.47 [Amended]**

4. Sections 201.17, 201.25, 201.35, and 201.47 are amended by adding "(Approved by the Office of Management and Budget under control number 1810-0029)" following each section.

**§ 201.44 [Amended]**

5. Section 201.44 is amended by adding "(Approved by the Office of Management and Budget under control number 1810-0548)" following the section.



**§ 201.55 [Amended]**

6. Section 201.55 is amended by adding "(Approved by the Office of Management and Budget under control number 1810-0519)" following the section.

## PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

7. The authority citation for part 222 continues to read as follows:

**Authority:** 20 U.S.C. 236-241-1 and 242-244, unless otherwise noted.

**§ 222.25 and 222.40 [Amended]**

8. Sections 222.25 and 222.40 are amended by removing the first parenthetical "(Approved by the Office of Management and Budget under control number 1880-0036)" at the end of each section.

[FR Doc. 90-27965 Filed 11-28-90; 8:45 am]

BILLING CODE 4000-01-M

VOL
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ISS
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NO
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federal register

Thursday
November 29, 1990

Part III

# Department of Education

Office of Special Education and Rehabilitative Services

## Invitation To Comment on Special Education for Children With Attention Deficit Disorder; Notice of Inquiry

VOL
55
ISS
230
NO
29
1990
UMI



**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**Invitation to Comment on Special Education for Children With Attention Deficit Disorder**

**AGENCY:** Department of Education.

**ACTION:** Notice of inquiry.

**SUMMARY:** In accordance with section 102(a) of the Education of the Handicapped Act Amendments of 1990 (1990 Amendments), Public Law 101-476 (October 30, 1990), the Secretary of Education publishes this Notice of Inquiry (Notice). This Notice solicits from all interested parties written comments on special education under part B of the Individuals with Disabilities Education Act (part B) for children with attention deficit disorder. These comments are intended to provide Congress with the widest possible range of advice on this issue, including guidance on the appropriate components of an operational definition of the term "attention deficit disorder."

**INQUIRIES FOR PUBLIC COMMENT:** The Secretary specifically requests public comment on the following issues:

(a) Are children with attention deficit disorder, who by reason thereof require special education and related services, currently being excluded from special education programs conducted under part B? If so, what is the extent of and what are the reasons for such exclusion?

(b) To what extent are children with attention deficit disorder, who by reason thereof require special education and related services, currently being identified within the existing disability categories in part B, such as "other health impaired," "seriously emotionally disturbed," or "specific learning disability?"

(c) Do children with attention deficit disorder have unique characteristics that are not reflected in the existing disability categories in part B? If so, to what extent do these unique characteristics require separate evaluation criteria, special preparation for instructional and support personnel, and distinct educational programs and services?

(d) What educational programs and/or services are school districts currently providing to children diagnosed as having attention deficit disorder, either in special education programs conducted under part B or in general education programs?

(e) How should attention deficit disorder be described operationally for purposes of qualifying a child for special education and related services under part B?

(f) What criteria should be included in the definition to qualify children with attention deficit disorder whose disability is comparable in severity to other children with disabilities currently determined to be eligible for special education and related services under part B?

(g) What specific manifestations of attention deficit disorder, if any, should be included in the definition?

(h) Should the definition include references to characteristics or circumstances that produce transient inattentive behaviors that, in and of themselves, would not make a child eligible for special education and related services under the definition of attention deficit disorder?

(i) Should the definition address the concurrence of attention deficit disorder with other disabilities, such as specific learning disabilities or serious emotional disturbance, and if so addressed, how should this be accomplished?

(j) Should guidelines be provided to State and local educational agencies regarding their obligation to conduct an evaluation of a child suspected of having attention deficit disorder? If so, how should these guidelines be described?

(k) Who should be authorized to conduct an assessment of a child having or suspected of having attention deficit disorder, and should the assessment be conducted by more than one individual (such as a teacher and a psychologist)?

(l) What provisions should be included in the definition, and what additional steps, if any, not currently required by the regulations implementing part B, should be included to ensure that children who are from racial, ethnic, and linguistic minorities are not misclassified under this definition?

**ADDITIONAL INFORMATION:** Section 102(c) of the 1990 Amendments requires the Secretary to transmit a summary of the comments received in response to this Notice and copies of such comments, in usable form, to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives not later than 30 days after the close of this comment period.

To facilitate the transmittal of an accurate summary, the Secretary requests that commenters identify the specific issue(s) that each comment is addressing by including a reference to the letter(s) of the issue(s) to which the comment relates prior to each specific comment.

**DATES:** All comments must be received on or before March 29, 1991.

**ADDRESSES:** Written comments should be addressed to Ms. Lucille Sleger, Program Administration Branch, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3615, Washington, DC 20202-2720.

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Tyrrell, Division of Assistance to States, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3611, Washington, DC 20202-2720. Telephone: (202) 732-1025; individuals who are deaf or hearing-impaired may call (202) 732-1169 for TDD services.

Dated: November 26, 1990.

Lauro F. Cavazos,

*Secretary of Education.*

[FR Doc. 90-28043 Filed 11-28-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

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November 29, 1990

Part IV

# Environmental Protection Agency

**Premanufacture Notices; Monthly Status Report for May 1990; Notice**

VOL 55 ISS 230 NO 29 1990 UMI



**ENVIRONMENTAL PROTECTION AGENCY**

**[OPTS-53131; FRL-3841-9]**

## Premanufacture Notices; Monthly Status Report for May 1990

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for MAY 1990.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE–G004 at the address below between 8 a.m. and noon, and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**ADDRESSES:** Written comments, identified with the document control number "(OPTS–53131)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Rm. L–100, Washington, DC 20460, (202) 382–3532.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The monthly status report published in the Federal Register as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during MAY; (b) PMNs received previously and still under review at the end of MAY; (c) PMNs for which the notice review period has ended during MAY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during MAY; and (e) PMNs for which the review period has been suspended. Therefore, the MAY 1990 PMN Status Report is being published.

Dated: November 21, 1990.

**Steven Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

### Premanufacture Notice Monthly Status Report for May 1990

I. 144 Premanufacture notices and exemption requests received during the month:

PMN No.

| | | | |
|---|---|---|---|
| P 90-1291 | P 90-1292 | P 90-1293 | P 90-1294 |
| P 90-1295 | P 90-1296 | P 90-1297 | P 90-1298 |
| P 90-1299 | P 90-1300 | P 90-1301 | P 90-1302 |
| P 90-1303 | P 90-1304 | P 90-1305 | P 90-1306 |
| P 90-1307 | P 90-1308 | P 90-1309 | P 90-1310 |
| P 90-1311 | P 90-1312 | P 90-1313 | P 90-1314 |
| P 90-1315 | P 90-1316 | P 90-1317 | P 90-1318 |
| P 90-1319 | P 90-1320 | P 90-1321 | P 90-1322 |
| P 90-1323 | P 90-1324 | P 90-1325 | P 90-1326 |
| P 90-1327 | P 90-1328 | P 90-1329 | P 90-1330 |
| P 90-1331 | P 90-1332 | P 90-1333 | P 90-1334 |
| P 90-1335 | P 90-1336 | P 90-1337 | P 90-1338 |
| P 90-1339 | P 90-1340 | P 90-1341 | P 90-1342 |
| P 90-1343 | P 90-1344 | P 90-1345 | P 90-1346 |
| P 90-1347 | P 90-1348 | P 90-1349 | P 90-1350 |
| P 90-1351 | P 90-1352 | P 90-1353 | P 90-1354 |
| P 90-1355 | P 90-1356 | P 90-1357 | P 90-1358 |
| P 90-1359 | P 90-1360 | P 90-1361 | P 90-1362 |
| P 90-1363 | P 90-1364 | P 90-1365 | P 90-1366 |
| P 90-1367 | P 90-1368 | P 90-1369 | P 90-1370 |
| P 90-1371 | P 90-1372 | P 90-1373 | P 90-1374 |
| P 90-1377 | P 90-1378 | P 90-1379 | P 90-1380 |
| P 90-1381 | P 90-1382 | P 90-1383 | P 90-1384 |
| P 90-1385 | P 90-1387 | P 90-1386 | P 90-1388 |
| P 90-1390 | P 90-1391 | P 90-1392 | P 90-1393 |
| P 90-1394 | P 90-1395 | P 90-1396 | P 90-1397 |
| P 90-1398 | P 90-1399 | P 90-1400 | P 90-1401 |
| P 90-1402 | P 90-1403 | P 90-1405 | P 90-1406 |
| P 90-1407 | P 90-1408 | P 90-1409 | P 90-1410 |
| P 90-1411 | P 90-1412 | P 90-1413 | P 90-1414 |
| P 90-1415 | P 90-1666 | Y 90-0208 | Y 90-0208 |
| Y 90-0209 | Y 90-0210 | Y 90-0211 | Y 90-0212 |
| Y 90-0213 | Y 90-0214 | Y 90-0215 | Y 90-0216 |
| Y 90-0217 | Y 90-0218 | Y 90-0219 | Y 90-0220 |
| Y 90-0221 | Y 90-0222 | Y 90-0223 | Y 90-0224 |
| Y 90-0225 | Y 90-0226 | Y 90-0227 | Y 90-0228 |

II. 178 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

| | | | |
|---|---|---|---|
| P 84-0660 | P 85-0433 | P 85-0619 | P 85-1602 |
| P 86-1007 | P 86-1771 | P 87-0105 | P 87-0323 |
| P 87-0723 | P 87-1555 | P 87-1760 | P 87-1872 |
| P 87-1881 | P 87-1882 | P 88-0082 | P 88-0217 |
| P 88-0319 | P 88-0320 | P 88-0358 | P 88-0468 |
| P 88-0515 | P 88-0576 | P 88-0836 | P 88-0894 |
| P 88-0916 | P 88-1020 | P 88-1021 | P 88-1035 |
| P 88-1211 | P 88-1212 | P 88-1473 | P 88-1557 |
| P 88-1566 | P 88-1618 | P 88-1619 | P 88-1620 |
| P 88-1621 | P 88-1622 | P 88-1630 | P 88-1631 |
| P 88-1632 | P 88-1690 | P 88-1761 | P 88-1763 |
| P 88-1782 | P 88-1807 | P 88-1809 | P 88-1811 |
| P 88-1937 | P 88-1938 | P 88-1960 | P 88-1962 |
| P 88-1984 | P 88-1985 | P 88-1995 | P 88-1999 |
| P 88-2000 | P 88-2001 | P 88-2100 | P 88-2168 |
| P 88-2177 | P 88-2179 | P 88-2180 | P 88-2181 |
| P 88-2185 | P 88-2196 | P 88-2210 | P 88-2212 |
| P 88-2213 | P 88-2228 | P 88-2229 | P 88-2230 |
| P 88-2231 | P 88-2236 | P 88-2237 | P 88-2469 |
| P 88-2473 | P 88-2484 | P 88-2518 | P 88-2529 |
| P 88-2530 | P 88-2566 | P 89-0089 | P 89-0090 |
| P 89-0091 | P 89-0225 | P 89-0254 | P 89-0279 |
| P 89-0292 | P 89-0321 | P 89-0325 | P 89-0385 |
| P 89-0386 | P 89-0387 | P 89-0538 | P 89-0539 |
| P 89-0589 | P 89-0721 | P 89-0764 | P 89-0775 |
| P 89-0844 | P 89-0867 | P 89-0870 | P 89-0924 |
| P 89-0942 | P 89-0957 | P 89-0958 | P 89-0959 |
| P 89-0965 | P 89-0977 | P 89-0978 | P 89-0979 |
| P 89-0980 | P 89-1010 | P 89-1038 | P 89-1056 |
| P 89-1093 | P 89-1104 | P 89-1125 | P 89-1146 |
| P 90-0002 | P 90-0009 | P 90-0013 | P 90-0142 |
| P 90-0145 | P 90-0156 | P 90-0159 | P 90-0187 |
| P 90-0211 | P 90-0220 | P 90-0226 | P 90-0231 |
| P 90-0237 | P 90-0248 | P 90-0249 | P 90-0260 |
| P 90-0261 | P 90-0262 | P 90-0263 | P 90-0319 |
| P 90-0321 | P 90-0331 | P 90-0333 | P 90-0335 |
| P 90-0347 | P 90-0360 | P 90-0384 | P 90-0372 |
| P 90-0383 | P 90-0384 | P 90-0404 | P 90-0405 |
| P 90-0406 | P 90-0440 | P 90-0441 | P 90-0456 |
| P 90-0480 | P 90-0489 | P 90-0512 | P 90-0550 |
| P 90-0558 | P 90-0559 | P 90-0560 | P 90-0564 |
| P 90-0578 | P 90-0581 | P 90-0584 | P 90-0594 |
| P 90-0603 | P 90-0606 | P 90-0643 | P 90-0657 |
| P 90-0667 | P 90-0665 | P 90-0669 | P 90-0707 |
| P 90-1280 | P 90-1285 | | |

III. 143 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration or the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

| | | | |
|---|---|---|---|
| P 88-0522 | P 88-0588 | P 88-0689 | P 88-0690 |
| P 88-0699 | P 88-2249 | P 89-0810 | P 89-0998 |
| P 89-1081 | P 90-0058 | P 90-0113 | P 90-0124 |
| P 90-0146 | P 90-0168 | P 90-0384 | P 90-0412 |
| P 90-0413 | P 90-0414 | P 90-0415 | P 90-0416 |
| P 90-0417 | P 90-0418 | P 90-0419 | P 90-0420 |
| P 90-0421 | P 90-0422 | P 90-0423 | P 90-0424 |
| P 90-0425 | P 90-0426 | P 90-0427 | P 90-0428 |
| P 90-0429 | P 90-0430 | P 90-0431 | P 90-0433 |
| P 90-0434 | P 90-0435 | P 90-0436 | P 90-0437 |
| P 90-0438 | P 90-0439 | P 90-0442 | P 90-0443 |
| P 90-0444 | P 90-0445 | P 90-0446 | P 90-0447 |
| P 90-0448 | P 90-0449 | P 90-0450 | P 90-0451 |
| P 90-0452 | P 90-0453 | P 90-0454 | P 90-0455 |
| P 90-0456 | P 90-0457 | P 90-0458 | P 90-0459 |
| P 90-0460 | P 90-0461 | P 90-0462 | P 90-0463 |
| P 90-0464 | P 90-0465 | P 90-0466 | P 90-0467 |
| P 90-0468 | P 90-0469 | P 90-0470 | P 90-0471 |
| P 90-0472 | P 90-0473 | P 90-0474 | P 90-0475 |
| P 90-0476 | P 90-0477 | P 90-0478 | P 90-0479 |
| P 90-0482 | P 90-0483 | P 90-0484 | P 90-0485 |
| P 90-0486 | P 90-0487 | P 90-0488 | P 90-0489 |
| P 90-0490 | P 90-0491 | P 90-0492 | P 90-0493 |
| P 90-0494 | P 90-0495 | P 90-0497 | P 90-0499 |
| P 90-0500 | P 90-0501 | P 90-0502 | P 90-0503 |
| P 90-0504 | P 90-0505 | P 90-0506 | P 90-0507 |
| P 90-0508 | P 90-0509 | P 90-0510 | P 90-0511 |
| P 90-0513 | P 90-0514 | P 90-0515 | P 90-0516 |
| P 90-0517 | P 90-0518 | P 90-0519 | P 90-0520 |
| P 90-0521 | P 90-0522 | P 90-0523 | P 90-0524 |
| P 90-0525 | P 90-0526 | P 90-0527 | Y 90-0191 |
| Y 90-0192 | Y 90-0193 | Y 90-0194 | Y 90-0195 |
| Y 90-0196 | Y 90-0197 | Y 90-0198 | Y 90-0199 |
| Y 90-0200 | Y 90-0201 | Y 90-0202 | Y 90-0203 |
| Y 90-0204 | Y 90-0205 | Y 90-0206 | Y 90-0207 |
| Y 90-0208 | Y 90-0209 | Y 90-0210 | |



IV. 47 Chemical substances for which EPA has received notices of commencement to manufacture

| PMN No. | Identity/Generic Name | Date of Commencement |
|---|---|---|
| P 82-0573 | G Pentasubstituted pentanamide salt | April 18, 1988. |
| P 85-0764 | G 4-(Trans-4-*n*-alkylcyclohexyl)-*n*-alkylbenzene | March 22, 1990. |
| P 85-0772 | G 4-*n*-Alkyl-4'(4-trans-*n*-alkyl')cyclohexyl biphenyl | March 30, 1990. |
| P 85-0929 | G Alkylated aromatic diamine | November 11, 1989. |
| P 86-0303 | Silica, ((dimethylhydro-gensilyl)oxy)-modified | April 26, 1990. |
| P 86-0501 | G Aromatic diamine | August 7, 1989. |
| P 86-0502 | G Tetraglycidylamine | May 7, 1989. |
| P 86-0503 | G Aromatic diamine | April 12, 1989. |
| P 87-0016 | G Alkylated hydroquinone | April 10, 1990. |
| P 87-0104 | 2-*N*-Butoxyethyl, 4-(dimethylamino)benzoate | January 30, 1987 |
| P 88-0217 | Tetrachloroethylene (solvent) | May 26, 1988. |
| P 88-0602 | G Azo-substituted-naphthalenedisulfonic acid | April 25, 1990. |
| P 88-0606 | G Trisubstituted-naphthalenedisulfonic acid | April 25, 1990. |
| P 88-1136 | G Alkene-substituted aromatic amine | May 11, 1990. |
| P 88-2195 | G Polyurethane resin | February 23, 1989. |
| P 88-2574 | 2,2'-(2,2-Dimethyl-1,3-propanediyl)bis(bis)bis(5,5-dimethyl-1-1,3,2-dioxaborinane) | April 5, 1990. |
| P 89-0234 | G Oligomeric phosphate ester | October 25, 1989. |
| P 89-0577 | G Metal salt of a complex inorganic oxyacid | April 18, 1990. |
| P 89-0665 | G Polyurethane based on polyisocyanates, polyols and polyamines | October 10, 1989. |
| P 89-0689 | 1,1-Dimethylethyl-3-oxobutanoate | February 4, 1990. |
| P 89-0700 | Isobutoxy methanol or methanol, 2-methylopropoxy | April 17, 1990. |
| P 89-0807 | G (Aromaticamine)substitutednitroheterocyclic halide | March 26, 1990. |
| P 89-0919 | Polymer of isophorone diisocyanate, 2-hydroxyethyl acrylate, and silicone surfactant | April 9, 1990. |
| P 89-0920 | G Modified bisphenol A polycarbonate | April 26, 1990. |
| P 89-0978 | G Acrylate/methacrylate polymer with methyl methecrylate | April 19, 1990. |
| P 89-1000 | G Polyamide | April 25, 1990. |
| P 89-1092 | G Acrylic resin | May 9, 1990. |
| P 89-1134 | G Sulfonated crude naphthalene oil, condensed with formaldehyde | April 11, 1990. |
| P 90-0096 | G Modified maleated rosin salts | May 17, 1990. |
| P 90-0110 | G Fluorochemical epoxide | April 25, 1990. |
| P 90-0197 | G Nickel isononanoate | April 27, 1990. |
| P 90-0250 | Aqua ammonia 26 baume; acrylic resin | May 17, 1990. |
| P 90-0266 | G Aromatic glycol | April 27, 1990. |
| P 90-0267 | G Polyurethane elastomer | May 5, 1990. |
| P 90-0278 | G Naphthoquinone sulfonyl ester of a phenolic | April 6, 1990. |
| P 90-0280 | G Perfluoroalkylacrylate copolymer | April 26, 1990. |
| P 90-0338 | G Elastomeric tetramonomeric polymer | April 30, 1990. |
| P 90-0355 | *N,N,N,N*-Tetrakis(stearamidoethyl)urea | April 16, 1990. |
| P 90-0356 | Tall oil fatty ester of ethoxylated-alpha-nonyl-phenyl-omega-hydroxy-polymer with formaldehyde | April 16, 1990. |
| P 90-0357 | Coconut fatty acid ester of ethoxylated-alpha-nonylphenyl-omega-hydroxy polymer with formaldehyde | April 16, 1990. |
| P 90-0362 | Lanolin fatty oil ester of ethoxylated-alpha-nonylphenyl-omega-polymer with formaldehyde | April 16, 1990. |
| P 90-0363 | Ammonium salt of polyoxypropylene polyoxyethylene omega-(1-phenol-2-hydroxyethyl)ether | April 16, 1990. |
| P 90-0366 | G Polyurethane-urea | April 19, 1990. |
| P 90-0425 | G Acrylic polymer | May 14, 1990. |
| P 90-0444 | Polymer of: Dimer fatty acids; acetic acid; 2-methylpentamethylene-diamine; ethylenediamine; 1,2-propanediamine; methyl-ethanalamine | May 9, 1990. |
| Y 90-0011 | Partial sodium salt of an acrylic polymer | May 8, 1990. |
| Y 90-0101 | G Polyester | March 13, 1990. |

V. 20 Premanufacture notices for which the period has been suspended:

PMN No.

| | | | |
|---|---|---|---|
| P 88-2196 | P 89-1125 | P 90-0169 | P 90-0440 |
| P 90-0441 | P 90-0473 | P 90-0474 | P 90-0475 |
| P 90-0476 | P 90-0477 | P 90-0480 | P 90-0498 |
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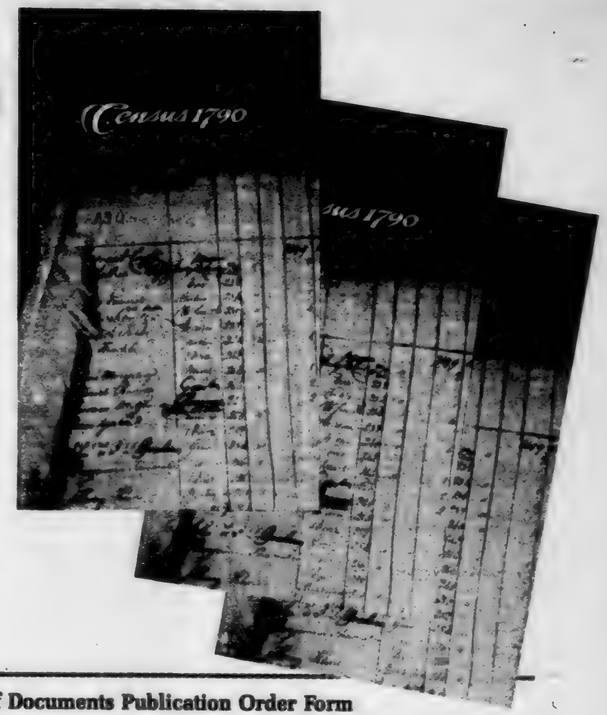
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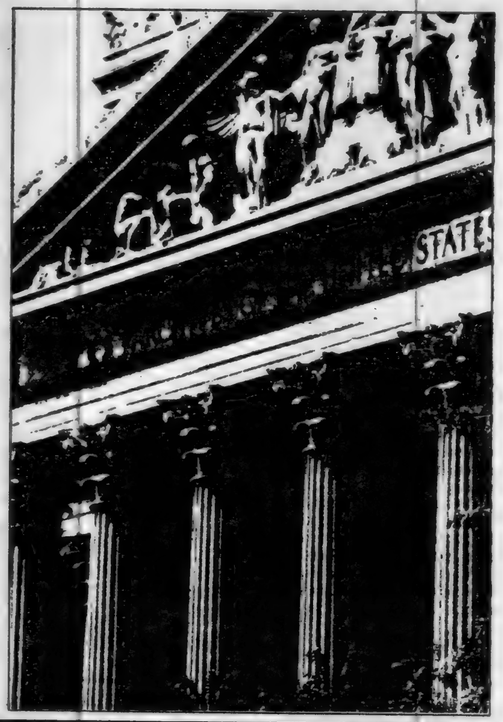
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# Presidential Documents

Title 3—

The President

## Memorandum of November 16, 1990

## Delegation of Authority Regarding Egyptian Military Debt

**Memorandum for the Secretary of the Treasury and the Secretary of Defense**

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 592 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513) (the "Act"), and section 301 of title 3 of the United States Code, I hereby:

(1) delegate to the Secretary of the Treasury the functions vested in me by section 592(c)(1) of the Act; and

(2) delegate to the Secretary of Defense the functions vested in me by section 592(c)(2) of the Act, except that those under subparagraph (C) thereof shall be subject to the concurrence of the Secretary of the Treasury.

The Secretary of the Treasury is authorized and directed to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
*Washington, November 16, 1990.*

[FR Doc. 90-28342
Filed 11-26-90; 4:22 pm]
Billing code 3195-01-M

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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 25

**[Docket No. NM-47; Special Conditions No. 25-ANM-35]**

### Special Conditions: Modified Boeing Model 727-100 Series Airplane: Lightning and High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing Model 727-100 series airplane modified by The Dee Howard Company in San Antonio, Texas. This airplane is equipped with high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions performed by these systems are maintained when the airplane is exposed to lightning and HIRF.

**DATES:** The effective date of these special conditions is November 20, 1990. Comments must be received on or before January 14, 1991.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-47, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-47.

Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Gregory J. Holt, FAA, Standardization Branch, ANM-113, Transport Standards Staff, Transport Airplane Directorate Aircraft Certification Service, Renton, Washington 98055-4056, telephone: (206) 227-2140.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-47." The postcard will be date/time stamped, and returned to the commentor.

#### Background

On February 2, 1990, The Dee Howard Company applied for a Supplemental Type Certificate to modify the Boeing Model 727-100 series airplanes. The proposed modification incorporates a number of novel or unusual design features, such as digital avionics consisting of dual electronic flight instrument system (EFIS) and a Dual Air Data Computer (ADC) which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

#### Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C of the FAR, The Dee Howard Company must show that the altered Boeing Model 727-100 series meets the applicable requirements as specified in § 21.101 (a) and (b); unless (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.101 (a) and (b); and (3) Special conditions are prescribed by the Administrator.

The requirements specified in § 21.101(a) are the regulations incorporated by reference in Type Certificate No. A3WE for the Boeing 727-100 series. Those are: Part 4b of the Civil Aviation Regulations (CAR) as amended by Amendments 4b-1 through 4b-11; Special CAR SR-422B; Special Conditions set forth in FAA letter to Boeing dated February 2, 1967, as revised by FAA letters to Boeing dated June 20, 1967, and September 1 and 13, 1967; and those sections of part 25 of the Federal Aviation Regulations (FAR) as amended by Amendment 25-15.

Based on the provisions of § 21.101(b), The Dee Howard Company will have to show compliance with the following additional sections, as amended through the amendment shown. These additional requirements are necessary to provide an acceptable level of safety equal to that established by the regulations incorporated in Type Certificate No. A3WE:

| | |
|---|---|
| § 25.561 (c) and (d) | Amendment 25-64 |
| § 25.561 (a) and (b) (systems only) | Amendment 25-23 |
| § 25.603 | Amendment 25-46 |
| § 25.613 (c) and (e) | Amendment 25-46 |
| § 25.1303 (a), (b), and (c) | Amendment 25-38 |
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| § 25.1321 (a) thru (e) | Amendment 25-41 |
| § 25.1322 (a) thru (d) | Amendment 25-38 |
| § 25.1323 (a), (c), and (d) | Amendment 25-47 |
| § 25.1325 | Amendment 25-41 |
| § 25.1331 (a) and (b) | Amendment 25-41 |
| § 25.1333 | Amendment 25-41 |
| § 25.1355 (a) and (c) | Amendment 25-38 |
| § 25.1359 (a) and (d) | Amendment 25-32 |
| § 25.1431 (a), (b), and (c) | Amendment 25-32 |
| § 25.1525 | Amendment 25-32 |
| § 25.1529 | Amendment 25-54 |
| § 25.1541 | Amendment 25-21 |

These special conditions are an additional part of the type certification basis.

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If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the modified Boeing Model 727-100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to the established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.115(a).

**Discussion**

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS) and Dual Air Data Computer (ADC) be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

**Lightning**

To provide a means of compliance with these special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronics systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

*1. First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

*2. Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation. And,

*3. Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_0 (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and



| | Severe strike (comp A) | Restrike (comp D) | Multiple stroke (½ comp D) | Mult. burst (comp H) |
|---|---|---|---|---|
| $I_0$, amp | =218,810 | 109,405 | 54,703 | 10,572 |
| a, $sec^{-1}$ | =11,354, | 22,708 | 22,708 | 187,191 |
| b, $sec^{-1}$ | =647,265 | 1,294,530 | 1,294,530 | 19,105,100 |
| This equation produces the following characteristics; | | | | |
| $I_{peak}$ | =200 KA | 100 KA | 50 KA | 10KA |
| and, | | | | |
| $(di/dt)_{max}$ (amp/sec) | =$1.4\times10^{11}$ @t=0+sec | $1.4\times10^{11}$ @t=0+sec | $0.7\times10^{11}$ @t=0+sec | $2.0\times10^{11}$ @t=0+sec |
| di/dt, (amp/sec) | =$1.0\times10^{11}$ @t=.5μs | $1.0\times10^{11}$ @t=.25μs | $1.0\times10^{11}$ @t=.25μs | |
| Action integral ($amp^2$ sec) | =$2.0\times10^6$ | $0.25\times10^6$ | $0.625\times10^6$ | |

**High-Intensity Radiated Fields (HIRF)**

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and ADC to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, and adequate level of protection exists when compliance with HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter average electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

| Frequency | Peak (V/M) | Average (V/M) |
|---|---|---|
| 10 KHz-500 KHz | 60 | 60 |
| 500 KHz- 2 MHz | 60 | 60 |
| 2 MHz- 30 MHz | 200 | 200 |
| 30 MHz-100 MHz | 33 | 33 |
| 100 MHz-200 MHz | 33 | 33 |
| 200 MHz-400 MHz | 150 | 33 |
| 400 MHz- 1 GHz | 8,300 | 2,000 |
| 1 GHz- 2 GHz | 9,000 | 1,500 |
| 2 GHz- 4 GHz | 17,000 | 1,200 |
| 4 GHz- 6 GHz | 14,500 | 800 |
| 6 GHz- 8 GHz | 4,000 | 666 |
| 8 GHz- 12 GHz | 9,000 | 2,000 |
| 12 GHz- 20 GHz | 4,000 | 509 |
| 20 GHz- 40 GHz | 4,000 | 1,000 |

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

**Conclusion**

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances. For this reason and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without notice. Therefore, special conditions are being issued without substantive changes for this airplane and made effective upon issuance.

**List of Subjects in 14 CFR Parts 21 and 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

**The Final Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Boeing Model 727-100 series airplane:

*1. Lightning Protection*

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronics systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

*2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)*

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

*3. The following definitions apply with respect to these special conditions:*

*Critical Function*

Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

*Essential Functions*

Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on November 20, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28120 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-159-AD; Amdt. 39-6820]

**Airworthiness Directives; Aerospatiale Caravelle SE 210 Model I, III, and VIR Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Model I, III, and VIR series airplanes, which requires an eddy current rototest inspection to detect cracks in the rear spar upper cap at Rib 49, and repair, if necessary. This amendment is prompted by in-service experience which has identified cracks in the rear spar upper cap. This condition, if not corrected, could result in reduced structural integrity of the wings.

**EFFECTIVE DATE:** January 7, 1991.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Aerospatiale Caravelle SE 210 Model I, III, and VIR series airplanes, which requires an eddy current rototest inspection to detect cracks in the rear spar upper cap at Rib 49, and repair, if necessary, was published in the Federal Register on September 10, 1990 (55 FR 37246).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,080.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the nation government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Aerospatiale (Formerly Sud Aviation/Sud-Service):** Applies to all Caravelle SE 210 Model I, III, and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the rear spar upper cap at Rib 49 and to prevent reduced structural integrity of the wings, accomplish the following:

A. Prior to the accumulation of 25,000 landings, or within 120 days after the effective date of this AD, whichever occurs later, perform an eddy current rototest inspection of hole No. 1 (left and right wings) at the level of the rear spar upper cap (angle extrusion) and the splice under Rib 49, in accordance with Aerospatiale Service Bulletin 57-69, dated March 12, 1990. If no crack is detected in hole No. 1, the airplane may be returned to service.

B. If a crack is detected in the angle extrusion for hole No. 1, accomplish the following in accordance with Aerospatiale Service Bulletin 57-69, dated March 12, 1990:

1. Prior to further flight, repair the crack and perform an eddy current rototest inspection of holes No. 2 and 3 (left and right wings), in accordance with the service bulletin.

2. If no crack is found in holes No. 2 and 3, the airplane may be returned to service. Repeat the eddy current rototest inspection of hole No. 2 at intervals not to exceed 1,500 landings in accordance with the service bulletin.

3. If a crack is detected in holes No. 2 or 3, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

This amendment becomes effective January 7, 1991.

Issued in Renton, Washington, on November 20, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28115 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M



14 CFR Part 39

[Docket No. 90-NM-119-AD; Amdt. 39-6821]

**Airworthiness Directives; Boeing Model 737 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires an inspection of the crew oxygen system tubing, the auxiliary power unit (APU) power feeder wire bundle, and the horizontal stabilizer trim control cables to determine the clearance between them. If insufficient clearance exists, repair or replacement of the oxygen tubing is necessary. This amendment is prompted by a report that certain airplanes may have been delivered with insufficient clearances between these components in the area below the control cabin floor. This condition, if not corrected, could result in an oxygen fed fire due to chafing and subsequent electrical arcing between the power feeder bundle and the crew oxygen system tubing.

**EFFECTIVE DATE:** January 7, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737 series airplanes, which requires inspection of the clearance between the crew oxygen tubing and electrical wiring and, where insufficient clearance exists, replacement of oxygen system tubing or installation of floating loop clamps and spacers to obtain adequate clearance, was published in the Federal Register on July 19, 1990 (55 FR 29379).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter proposed that the compliance period be revised from the proposed 3,000 hours time-in-service; to 3,000 hours time-in-service or 15 months; whichever occurs later to allow compliance during scheduled maintenance. A second commenter concurred with the proposed 3,000-hour compliance period for inspection, but requested that the rule be revised so that, if no damage was found during this inspection, an additional 1,000 hours time-in-service would be provided to make the modifications. (The AD, as proposed, requires that both the inspection and modifications, if necessary, be performed within 3,000 hours time-in-service.) The FAA does not concur with the operators' requests that additional time beyond the 3,000-hour compliance be provided for inspections and/or modifications. Such an extension would allow added exposure to an airworthiness hazard which is not justified for the convenience of maintenance scheduling. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable wherein the inspection/modification could be reasonably accomplished and an acceptable level of safety could be maintained.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 603 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 334 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $106,880.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 737 series airplanes, listed in Boeing Service Bulletin 737-35-1033, dated March 15, 1990, certificated in any category. Compliance required within 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent fire caused by the chafing of wire bundles on crew oxygen system tubing, accomplish the following:

A. Inspect the clearances between the crew oxygen system tubing, the auxiliary power unit (APU) power feeder wire bundle, and the horizontal stabilizer trim control cables, located below the control cabin floor, in accordance with Boeing Service Bulletin 737-35-1033, dated March 15, 1990.

1. If there is inadequate clearance or damage has occurred, prior to further flight, repair the damage, replace the oxygen system tubing with modified tubing, and perform a leak check, in accordance with the Service Bulletin.

2. If clearance is inadequate between the crew oxygen tubing and the wire bundle only, and no damage has occurred, install floating loop clamps and spacers to obtain sufficient clearance between the tubing and the wire bundle, in accordance with the Service Bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a

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copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 7, 1991.

Issued in Renton, Washington, on November 20, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28116 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-NM-145-AD; Amdt. 39-6822]

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the area of the inboard elevator control rods, inboard elevator power control package (PCP) input rods, and elevator aft quadrant tube; and replacement, if necessary. This action requires more detailed and frequent inspections than those required by the existing AD. This amount is prompted by a structural review of this airplane model and a subsequent determination that additional inspections are necessary in order to ensure the continued structural integrity of aging Model 747 series airplanes. This condition, if not corrected, could result in loss of redundancy in the elevator control.

**EFFECTIVE DATE:** January 7, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Satish K. Pahuja, Seattle Aircraft Certificate Office, Airframe, Branch, ANM-120S; telephone (206) 227-2781. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 85-13-01, Amendment 39-5084 [50 FR 25545, June 20, 1985], applicable to Boeing Model 747 series airplanes, to require inspection for cracks in the area of the inboard elevator control rods, inboard elevator power control package (PCP) input rods, and elevator aft quadrant, was published in the Federal Register on August 15, 1990 [55 FR 33322].

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, on behalf of its members, had no objections to the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 835 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $34,800.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-5084 [50 FR 25545, June 20, 1985], AD 85-13-01, with the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, line numbers 001 through 635, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of redundancy in the elevator control, accomplish the following:

A. For airplanes identified as Group 1 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections, in accordance with the service bulletin:

1. Prior to the accumulation of 8 total years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the inboard elevator power control package (PCP) input rods, inboard elevator control rods, and elevator aft quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph A.1. of this AD, internally borescope inspect the inboard elevator PCP input rods, inboard elevator control rods, and elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

B. For airplanes identified as Group 2 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections in accordance with the service bulletin:

1. Prior to the accumulation of 8 total years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the inboard elevator control rods and elevator aft quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph B.1. of this AD, internally borescope inspect the inboard elevator control rods and elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

C. For airplanes identified as Group 3 in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the following inspections in accordance with the service bulletin:

1. Prior to the accumulation of 8 total years time-in-service, or within the next 6 months after the effective date of this AD, whichever occurs later, visually inspect the elevator aft quadrant tube for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 15 months.

2. Within 15 months after the visual inspection required by paragraph C.1. of this AD, internally borescope inspect the elevator aft quadrant for corrosion, cracking, and deformation; and repeat thereafter at intervals not to exceed 30 months.

D. If corrosion is found as a result of the inspections required by paragraphs A., B., or C. of this AD, prior to further flight, accomplish the following:

1. If corrosion is found to be in excess of the allowable limits specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, accomplish the terminating modification for the affected component specified in paragraph F. of this AD.

2. If corrosion is found to be within the allowable limits specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, refinish in accordance with the service bulletin.

E. If cracks or deformations are found as a result of the inspections required by paragraphs A., B., or C. of this AD, prior to further flight, accomplish the terminating modification for the affected component specified in paragraph F. of this AD.

F. Accomplishment of the terminating modification for all affected components, as specified in Boeing Alert Service Bulletin 747-27A2253, Revision 4, dated January 25, 1990, constitutes termination for the inspections required by paragraphs A., B., and C. of this AD.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-5084, AD 85-13-01.

This amendment becomes effective January 7, 1991.

Issued in Renton, Washington, on November 20, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28117 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-ANE-03; Amdt. 39-6819]

## Airworthiness Directives; General Electric Co. (GE) CF6-80C2 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that supersedes an AD, applicable to GE CF6-80C2 series engines, which currently requires the retirement of affected fuel manifolds prior to exceeding the present established life limit. This AD requires the installation of improved fuel manifold systems. This AD is prompted by a fuel manifold found cracked in service within the present established life limit. This condition, if not corrected, could result in engine fire and potentially significant aircraft damage.

**DATES:** Effective December 20, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of December 20, 1990.

**ADDRESSES:** The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7096.

**SUPPLEMENTARY INFORMATION:** On April 10, 1989, the FAA issued AD 89-03-52, Amendment 39-6139 [54 FR 22883, May 30, 1989], to require the retirement of affected fuel manifolds prior to exceeding an established life limit. That action was prompted by six fuel manifolds found cracked.

Since issuance of that AD, a cracked fuel manifold has been found in service substantially below the life limit established by AD 89-03-52. Fuel leaking from the cracked manifold fed a nacelle compartment fire which was eventually extinguished by the engine fire bottles. Also, since the issuance of AD 89-03-52, improved fuel manifold systems have been introduced which have no life restrictions.

The FAA has reviewed and approved GE CF6-80C2 Series Service Bulletin (SB) 73-053, Revision 3, dated April 3, 1990, which describes procedures for installing the new fuel manifold systems.

Since this condition is likely to exist or develop on other engines of the same type design, this AD supersedes AD 89-03-52 to require the installation of improved fuel manifold systems, in accordance with the SB previously described.

Since this condition could result in engine fire and potentially significant aircraft damage, there is a need to minimize the exposure of revenue service aircraft to this failure mode. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to install improved fuel manifold systems as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is

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impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6199 (54 FR 22883, May 30, 1989), AD 89-03-52, with the following new airworthiness directive:

**General Electric Co.:** Applies to General Electric Company (GE) CF6-80C2 series turbofan engines installed on, but not limited to, Airbus A300 and A310 and Boeing 747 and 767 series aircraft.

Compliance is required within 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent engine fire and potentially significant aircraft damage, accomplish the following:

(a) Replace fuel manifold systems, Part Numbers (P/N) 1303M31G04 and 1303M32G04, with fuel manifold systems, P/N 1303M31G06 and 1303M32G06, in accordance with the Accomplishment Instructions of GE CF6-80C2 Series Service Bulletin 73-053, Revision 3, dated April 3, 1990.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through a FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

The installation of the improved fuel manifold systems shall be accomplished in accordance with the following GE document:

| Document No. | Page numbers | Issue/Rev. | Date |
|---|---|---|---|
| SB 73-053 | 4-14, 18-25, 27, 29-42 | Revision 2 | 08/23/88 |
| SB 73-053 | 1-3, 15-17, 26, 28, 43-45 | Revision 3 | 04/03/90 |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC 20591.

This amendment supersedes Amendment 39-6199, AD 89-03-52.

This amendment becomes effective December 20, 1990.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 90-28118 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-229-AD; Amdt. 39-6819]**

## Airworthiness Directives; McDonnell Douglas Models DC-9-80 Series Airplanes and Model MD-88 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Models DC-9-80 series airplanes and Model MD-88 airplanes, which requires deactivation of the in-flight spoiler lockout mechanism until completion of an inspection of mounting brackets and their replacement, if necessary. This amendment is prompted by a report that, during final assembly, the manufacturer discovered that a version of the mounting brackets made of incorrect material had been installed. This condition, if not corrected, could lead to failure of the brackets, which could result in loss of the ground spoilers and possible uncommanded retraction of the flaps/slats.

**EFFECTIVE DATE:** December 17, 1990.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ali Bahrami, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5236.

**SUPPLEMENTARY INFORMATION:** In September 1990, McDonnell Douglas Corporation reported that, during final assembly, it had discovered an aluminum version of bracket, Part Number (P/N) 3962598-INC, was used to mount the in-flight spoiler lockout mechanism to the airplane, and that these brackets may have been installed on certain other airplanes. Subsequent to initial installation, the design of the part had been changed from aluminum to stainless steel to provide sufficient strength. There are four of these parts



used for each installation. The in-flight spoiler lockout mechanism is located directly below the cockpit pedestal. The aluminum brackets could fail during landing, resulting in the loss of the ground spoilers and possible uncommanded retraction of the flaps/slats.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 27-312, dated February 28, 1990, which describes procedures to deactivate the in-flight spoiler lockout mechanism.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires deactivation of the in-flight spoiler lockout mechanism in accordance with the service bulletin previously described, until an inspection of the mounting brackets and replacement with the correct steel parts, if necessary, is accomplished.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to Model DC-9-80 series airplanes and Model MD-88 airplanes; Fuselage Numbers 1608, 1630, 1632, 1634, 1638, 1662, 1665, 1686, 1687, 1715, 1716, 1732, 1761, and 1763 through 1768; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of spoilers in the speed brake mode and flap/slat control, accomplish the following:

A. Within 30 days after the effective date of this AD, deactivate the in-flight spoiler lockout mechanism, in accordance with McDonnell Douglas Service Bulletin 27-312, dated February 28, 1990.

B. Prior to reactivating the in-flight spoiler lockout mechanism, conduct an inspection of the mounting brackets to determine the type and part number (P/N) of the brackets installed.

1. If mounting brackets, P/N 3962598-1A (stainless steel), are installed no further action is required and the in-flight spoiler lockout mechanism may be reactivated, in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

2. If mounting brackets, P/N 3962598-1NC (aluminum), are installed, replace them with P/N 3962598-1A brackets prior to reactivating the in-flight spoiler lockout mechanism.

Note: The aluminum bracket has a primer finish. The stainless steel bracket is plated.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 17, 1990.

Issued in Renton, Washington, on November 20, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28119 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**Bureau of the Census**

**15 CFR Part 30**

**[Docket No. 900113-0295]**

**RIN 0607-AA13**

## Foreign Trade Statistics; Amendment to the Foreign Trade Statistics Regulations

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** Effective with the statistics for January 1990, the United States is substituting Canadian import statistics for U.S. export statistics under the terms of a Memorandum of Understanding signed on July 27, 1987 by the Census Bureau, U.S. Customs Service, Canadian Customs, and Statistics Canada. With this data exchange there is no statistical reason to collect Shipper's Export Declarations (SEDs) for such shipments. This rule amends the Foreign Trade Statistics Regulations (FTSR) to eliminate the requirements for SEDs for most direct exports originating in the United States where the country of ultimate destination is Canada. However, the Harbor Maintenance Fee still applies to shipments by vessel exempt from SED requirements by virtue of being destined to Canada. To allow continued enforcement of the Export Administration Act and the export regulations of other agencies, SED requirements remain in effect for shipments: (1) Requiring a Department of Commerce validated export license,

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(2) requiring a Department of State, Office of Defense Trade Controls export license under the International Traffic in Arms Regulations (ITAR–22 CFR parts 121–130), (3) subject to the ITAR but exempt from license requirements, or (4) requiring a Department of Justice, Drug Enforcement Administration, export declaration (21 CFR part 1313). Furthermore, the Census Bureau reserves the right to reinstate SED requirements in specific instances where statistical accuracy is in question. Also, if merchandise is exported to Canada merely for storage and is ultimately destined for another country, then the statistical information must be reported directly to the Census Bureau on an existing SED form (7525–M, 7525–V, or 7525–V–Alt.) or in an automated format. In any case, the information required will not entail any more information than currently reported on SEDs.

Because many exporters do not have information as to the U.S. Customs port of exportation or the method of transportation by which the merchandise departed from the United States, we are adding these items to those that are the exporting carriers responsibility. Additionally, since Canadian importers do not have such information, we are requiring for shipments to Canada, which are exempt from SED requirements, that the carriers enter the port of exportation and method of transportation on the bill of lading, air waybill, or other documents they prepare.

As a separate issue, because of the recent changes in the political status of the Trust Territories under U.S. Administration, we are removing any specific reference to them.

**EFFECTIVE DATE:** December 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Blyweiss, Chief, Regulations Branch, Foreign Trade Division, Bureau of the Census, (301) 763–5310.

**SUPPLEMENTARY INFORMATION:** The Notice of Proposed Rulemaking published in the **Federal Register** on July 11, 1990 (55 FR 28404) proposed amending the FTSR to: (1) Eliminate SED requirements for most shipments to Canada, (2) require, for shipments to Canada, that exporting carriers report the U.S. Customs port of exportation and the method of transportation on bills of lading, air waybills, or other documents, and (3) delete any reference to the Trust Territories under U.S. Administration. Because this amendment affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (July 11, 1990 to September 10, 1990) to submit their comments regarding the notice.

**Discussion of Major Comments**

The Census Bureau received seven written comments all generally supportive of the amendment. Two commenters raised concerns relating to the quality of the statistics resulting from the U.S.-Canada data exchange, particularly with respect to trade in particleboard, medium-density fiberboard, waferboard and oriented strand board. All agencies involved in the data exchange are aware of this problem and are working toward a solution. Also, we are adding to paragraph 30.58(c) a parenthetical note reserving the right to reinstate SED requirements where statistical accuracy is in question. One commenter questioned the inclusion of the Department of Commerce licenses other than Individual Validated Licenses as types of shipments excluded from the general exemption (§ 30.58(b)(1)) from SED requirements for shipments to Canada since such licenses may not apply to Canada. After discussion with the Bureau of Export Administration, we decided to remove all references to the types of licenses and limit the reference to shipments requiring a Department of Commerce validated export license. The U.S. Customs Service and the U.S. Army Corps of Engineers requested that we add a statement to the regulation itself notifying exporters that the Harbor Maintenance Fee (HMF) still applies to shipments by vessel destined to Canada even though the shipment is exempt from SED requirements. Accordingly, we are adding appropriate language as a separate paragraph in § 30.58. Questions relating to the HMF should be directed to the User Fee Task Force, U.S. Customs Service, Washington, DC, 20229, (202) 566–8648. At the request of the Drug Enforcement Administration we are correcting § 30.58(b)(4) to read "* * * export declaration (21 CFR part 1313). Although not in written form, some reading the proposal were confused regarding the exporting carriers responsibilities (§ 30.22(b)). To clarify, we are requiring that all exporting carriers be responsible for the accuracy of the U.S. Customs port of exportation and method of transportation from the United States as reported on SEDs. Only in the case of shipments exempt from SED requirements because they are destined to Canada are carriers required to put such information on bills of lading, air waybills, or other documents they prepare.

Since this rule becomes effective upon publication, exporters, freight forwarders, and carriers utilizing the automated export reporting program may continue to report exempt shipments until such time as they can make changes to their systems.

**Regulatory Impact Analysis and Information Collection**

This amendment does not meet the criteria of a major rule as set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. Pursuant to the Provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that this amendment will not have a significant economic effect on a substantial number of small entities because it contains a new exemption thereby reducing the reporting requirements of smaller entities.

This rule imposes no additional burden on the public thus satisfying the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

This rule contains a collection of information requirements subject to the Paperwork Reduction Act. The collection has current Office of Management and Budget approval under control numbers 0607–0018 and 0607–0152. The public reporting burden for this collection of information is estimated to average 11 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Associate Director for Management Services, Bureau of the Census, Washington, DC 20033; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This Final Rule is being made effective upon publication in the **Federal Register**. A delayed effective date is unnecessary because the rule contains a new exemption from SED requirements thereby reducing the reporting burden by over 2 million SEDs annually. Therefore, the Census Bureau finds good cause to dispense with the Administrative Procedure Act delayed effective date requirement (5 U.S.C. 553(d)).



**List of Subjects in 15 CFR Part 30**

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

The Foreign Trade Statistics Regulations (15 CFR part 30) are amended as set forth below:

**PART 30—[AMENDED]**

1. The authority citation for part 30 continues to read as follows:

**Authority:** Title 13, United States Code, sections 301–307; and title 5, United States Code, section 301; Reorganization Plan No. 5 of 1950; Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.

2. Section 30.1 is amended by revising the introductory text of paragraph (a)(1) to read as follows:

**§ 30.1 General statement of requirement for Shipper's Export Declarations.**

(a) * * *

(1) To foreign countries or areas, including Foreign Trade Zones located therein, (see § 30.58 for exemptions for shipments from the United States to Canada) from any of the following:

* * * * *

3. Section 30.5 is amended by revising paragraph (a)(2) to read as follows:

**§ 30.5 Number of copies of Shipper's Export Declaration required.**

(a) * * *

(2) One copy only for shipments to Canada (see § 30.58 for exemption for shipments from the United States to Canada) and non-foreign areas.

* * * * *

4. Section 30.22 is amended by revising paragraph (b) to read as follows:

**§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.**

* * * * *

(b) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: Name of carrier (including flag if vessel carrier), U.S. Customs port of exportation, method of transportation from the United States, foreign port of unloading, the bill of lading or air waybill number, and whether or not containerized. For shipments to Canada exempt from Shipper's Export Declaration filing requirements (See § 30.58), the exporting carrier shall enter the U.S. Customs port of exportation and method of transportation from the United States on the bill of lading, air waybill, or other documents that they prepare.

* * * * *

**§ 30.35 [Removed and Reserved]**

5. Section 30.35 is removed and reserved for future use.

6. Section 30.39 is amended by adding paragraph (e) to read as follows:

**§ 30.39 Authorization for reporting statistical information other than by means of individual Shipper's Export Declarations filed for each shipment.**

* * * * *

(e) Exporters (or their agents) of merchandise for storage in Canada but ultimately destined for third countries, the specific country of destination being unknown at the time of exportation to Canada, must report statistical information directly to the Bureau of the Census in lieu of filing individual Shipper's Export Declarations for each shipment. The information must be submitted in a format and on a time schedule approved by the Bureau of the Census. The information required will be no more detailed than that which would be reported on a Shipper's Export Declaration.

7. Section 30.55 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 30.55 Miscellaneous exemptions.**

* * * * *

(c) Shipments from one point in the United States to another thereof by routes passing through Mexico.

(d) Shipments from one point in Mexico to another point thereof by routes through the United States.

* * * * *

8. Section 30.58 is added to read as follows:

**§ 30.58 Exemption for shipments from the United States to Canada.**

(a) Except as noted in paragraph (c) of this section, shipments originating in the United States where the country of ultimate destination (see § 30.7(i)) is Canada are exempt from the Shipper's Export Declaration requirements of this part. This exemption also applies to shipments from one point in the United States or Canada to another point thereof by routes passing through the other country.

(b) The Harbor Maintenance Fee applies to shipments by vessel exempt from Shipper's Export Declaration requirements by virtue of being destined to Canada.

(c) This exemption does not apply to the following shipments: (The Bureau of the Census also reserves the right to reinstate the Shipper's Export Declaration requirements of this part in specific instances for the purpose of ensuring statistical accuracy.)

(1) Requiring a Department of Commerce validated export license.

(2) Requiring a Department of State, Office of Defense Trade Controls, export license under the International Traffic in Arms Regulations (ITAR–22 CFR parts 121–130).

(3) Subject to the ITAR but exempt from license requirements.

(4) Requiring a Department of Justice, Drug Enforcement Administration, export declaration (21 CFR part 1313).

(5) For storage in Canada but ultimately destined for third countries, the specific country of destination being unknown at the time of export to Canada (see § 30.39 for reporting requirements).

**Barbara Everitt Bryant,**
*Director, Bureau of the Census.*
**John P. Simpson,**
*Acting Assistant Secretary for Enforcement, Department of the Treasury.*

[FR Doc. 90–28288 Filed 11–29–90; 8:45 am]
BILLING CODE 3510–07–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs For Use in Animal Feeds; Maduramicin Ammonium (CYGRO) With Roxarsone or Bacitracin Methylene Disalicylate**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of two new animal drug applications (NADA's) held by American Cyanamid Co. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's at the request of the sponsor.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Lehmann, Center for Veterinary Medicine (HFV–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3134.

**SUPPLEMENTARY INFORMATION:** FDA is withdrawing approval of the following NADA's held by American Cyanamid Co., Agricultural Research Division, Box 400, Princeton, NJ 08540.

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NADA 140-821 for the combination of CYGRO (maduramicin ammonium, 4.54 to 5.45 grams per ton (g/ton)) and roxarsone (22.7 to 45.4 g/ton) for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati*; and for increased rate of weight gain and improved feed efficiency in broiler chickens.

NADA 140-833 for the combination of CYGRO (maduramicin ammonium, 4.54 to 5.45 g/ton) and bacitracin methylene disalicylate (4 to 50 g/ton) for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix,* and *E. mivati*; and for increased rate of weight gain and improved feed efficiency in broiler chickens.

This document amends 21 CFR 558.340 by removing paragraphs (c)(3) and (c)(4) to reflect withdrawal of approval of these NADA's.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

**§ 558.340 [Amended]**

2. Section 558.340 *Maduramicin ammonium* is amended by removing paragraphs (c)(3) and (c)(4).

Dated: November 21, 1990.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 90-28214 Filed 11-29-90; 8:45 am]

BILLING CODE 4160-01-M

## COPYRIGHT ROYALTY TRIBUNAL

**37 CFR Part 304**

**Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities**

**AGENCY:** Copyright Royalty Tribunal.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Tribunal announces a cost of living adjustment of 6.3% in the royalty rates to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by 37 CFR 304.10(b) of the Tribunal's rules.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Robert Cassler General Counsel Copyright Royalty Tribunal, 1111 20th Street NW., suite 450, Washington, DC 20036, (202) 653-5175.

**SUPPLEMENTARY INFORMATION:** On December 29, 1987, the Copyright Royalty Tribunal published in the **Federal Register** the rates and terms for the copyright compulsory license applicable to the use by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. 52 FR 49010. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index from the last index published prior to December 1, 1989 to the last index published prior to December 1, 1990 was 6.3% (1990's figure was 133.5; 1989's figure was 125.6, based on 1982–1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to use of musical compositions in the repertory of ASCAP and BMI of $184, each, and $44 for the use of musical compositions in the repertory of SESAC.

**List of Subjects in 37 CFR Part 304**

Copyrights, Music, Radio, Television.

**PART 304—[AMENDED]**

1. The authority citation for part 304 continues to read as follows:

**Authority:** 17 U.S.C. 118 and 801 (1976).

2. 37 CFR 304.5(c) is amended by revising paragraphs (c)(1) through (c)(4).

**§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP annually: $184.

(2) For all such compositions in the repertory of BMI annually: $184.

(3) For all such compositions in the repertory of SESAC annually: $44.

(4) For the performances of any other such composition: $1.

* * * * *

Dated: November 20, 1990.

**J.C. Argetsinger,**

*Chairman.*

[FR Doc. 90-27751 Filed 11-29-90; 8:45 am]

BILLING CODE 1410-09-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

[FRL-3863-4]

**Approval and Promulgation of Implementation Plans Attainment Status Designations: Wisconsin**

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** USEPA is approving a proposed site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision modifies Wisconsin's Volatile Organic Compound (VOC) emission control requirements in the Natural Resources (NR) § 422.15(2)(b) of the Wisconsin Administrative Code (WAC) for the Gehl Company (Gehl) in West Bend, Wisconsin. This action is taken in response to a November 6, 1986, submission from the State of Wisconsin, as modified by further submissions on May 22, 1990, and September 5, 1990.

On July 13, 1989 (54 FR 29555), USEPA disapproved the original November 6, 1986, version of the revision for Gehl, because the State failed to demonstrate that its approval would not jeopardize the attainment and maintenance of the ozone standard in the Milwaukee area. Subsequent to this disapproval, Wisconsin submitted modifications to the original revision and additional clarifications. Based on the proposed revision as modified, USEPA is today approving the revised submittal because: (1) The Gehl Company facility is located in an area designated as attainment for ozone, (2) approval of the proposed revision will not affect the attainment and maintenance of the ozone standard, and (3) the proposed revision is otherwise consistent with the Clean Air Act (CAA).



**DATES:** This action will be effective January 29, 1991, unless notice is received by January 29, 1991 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

**ADDRESSES:** Copies of the revision to the Wisconsin SIP are available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Edward Doty at (312) 886-6057, before visiting the USEPA, Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

Comments on this rulemaking should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6057.

**SUPPLEMENTARY INFORMATION:** Gehl operates miscellaneous metal parts coating lines consisting of spray booths, a dip tank, and associated air drying areas. The application of coatings on these lines is subject to the Volatile Organic Compound (VOC) emission control requirements of section NR 422.15(2)(b) of the WAC, which limits the VOC content of coatings used to not more than 3.5 pounds of VOC per gallon of coating, excluding water, after December 31, 1985. USEPA approved NR 422.15(2)(b), among other rules, on January 11, 1980, (45 FR 2319) and June 21, 1982, (47 FR 26822) as meeting the Reasonably Available Control Technology (RACT) requirements of the CAA.

An air dried coating is applied in the dip tank at Gehl which presently achieves a VOC content level of only 4.8 pounds of VOC per gallon of coating, excluding water. Gehl maintains that it is technically and economically infeasible for it to meet the 3.5 pounds of VOC per gallon of coating, excluding water, VOC content limit of NR 422.15(2)(b) for the dip tank. Therefore, Gehl requested that the Wisconsin Department of Natural Resources (WDNR) give it an alternative limit equal to the VOC content level currently achieved in the dip tank, *i.e.*, 4.8 pounds of VOC per gallon of coating, excluding water. WDNR approved this VOC content limit through a source variance/permit revision, but noted that the variance would not become effective until the USEPA had approved it as a site-specific SIP revision. Wisconsin submitted this revised limit for Gehl as a revision to the Wisconsin SIP on November 6, 1986.

On July 13, 1989, (54 FR 29555), USEPA disapproved the Gehl site-specific SIP revision based on the State's failure to demonstrate that the SIP revision would not jeopardize the attainment and maintenance of the ozone standard in the Milwaukee area. Although Washington County, where the Gehl facility is located, is designated as attainment for ozone under section 107(d) of the CAA, the State of Wisconsin has included it as part of the "Milwaukee ozone demonstration area".[1] USEPA approved Wisconsin's "1982 Ozone SIP" for the area on March 9, 1984, (48 FR 8920). Nevertheless, the area has in the past experienced ozone standard violations and continues to do so.[2] The State has not as of yet submitted a revised plan to assure the ultimate attainment and maintenance of the ozone NAAQS in the Milwaukee area.

On August 7, 1989, Gehl filed a Motion for Reconsideration of the July 13, 1989, rulemaking action. On September 11, 1989, Gehl filed a petition for review of the action in the United States Court of Appeals for the Seventh Circuit under section 307(b) of the CAA, 42 U.S.C. 7607(b). See *Gehl v. USEPA*, No. 89-2921.

Thereafter, Gehl, WDNR, and USEPA met and had additional discussions to determine what changes could be made to the State's variance to make it acceptable under section 110 of the CAA. Based on these discussions, Wisconsin submitted a revised plan for Gehl. *Gehl v. USEPA* has been held in abeyance pending the outcome of the rulemaking on this submittal.

**Summary of the Revised GEHL Plan**

On May 22, 1990, WDNR submitted additional source and recordkeeping requirements to supplement the November 6, 1986, source variance. WDNR requested that USEPA consider the May 22, 1990, submittal collectively with the November 6, 1986, submittal as its proposed site-specific SIP revision for Gehl. A September 5, 1990, letter from WDNR to the USEPA contained additional clarifications of the source emission controls and recordkeeping requirements of proposed SIP revision. These three submittals are collectively being considered in USEPA's rulemaking discussed here.

The submittals result in the following emission controls and recordkeeping requirements for Gehl as a proposed site-specific SIP revision:

1. The annual VOC emissions from the dip tank coating line shall not exceed 12.82 tons per year.[3]

2. The VOC content of the dip tank coatings shall not exceed 4.8 pounds of VOC per gallon of coating applied, excluding water.

3. Gehl shall maintain records for the dip tank which shall be available to WDNR upon request and which shall include the following data:

a. The unreduced coating density of each dip tank paint, in pounds of coating per gallon of coating.

b. The unreduced solvent density of each dip tank coating, in pounds of solvent per gallon of solvent,

c. The percent solids by volume, percent solvent by volume, and percent water by volume of each unreduced dip tank coating,

d. The solvent density of each nonexempt[4] reducing solvent, in pounds of solvent per gallon of solvent,

e. Daily volume in gallons of each unreduced coating and each nonexempt reducing solvent added to the dip tank, and

f. Monthly dip tank VOC emissions, in pounds of VOC per month.

[1] The ozone demonstration area includes counties containing significant ozone precursor (VOC and oxides of nitrogen) emission sources as well as counties with monitored ozone standard violations. The State of Wisconsin includes Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha Counties in its Milwaukee ozone demonstration area.

[2] On May 26, 1988, the USEPA notified the Governor of Wisconsin that the ozone SIP for the Milwaukee area is inadequate to provide for attainment and maintenance of the ozone standard.

[3] If Gehl or the WDNR determines during any year that the annual VOC emission limit will be exceeded, Gehl must implement the following fail-safe strategy:

a. Gehl must eliminate its dip tank operation and spray all parts with compliant coatings (VOC content limit of 3.5 pounds per gallon of coating applied, excluding water), and

b. It must scale down production at the facility so as to stay below a 10 ton/year VOC emission limit.

[4] The exempt, non-reactive solvents are defined in section NR 400.02 of the WAC.

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In compliance with section NR 439.08(3) of the WAC, Gehl and its paint suppliers must use Method 24 or Method 24A, specified at 40 CFR part 60, appendix A, to determine the organic solvent content, the volume of solids, the weight of solids, the water content, and the density of each of the coatings. These test procedures also apply to Conditions 4 and 7 below.

4. Gehl shall submit quarterly reports to WDNR documenting the previous quarter's monthly dip tank VOC emissions and the running annual dip tank VOC emissions. These quarterly reports must be submitted within 15 days after the end of each quarter.

5. WDNR reserves the right to further modify or rescind the variance approval because of failure of the Gehl Company to comply fully with the conditions of the variance approval or other reasons which justify modification or recision of the approval. Based on section NR 436.05(5) of the WAC, any modification of the variance has to be submitted to and approved by the USEPA as a SIP revision before the variance modification becomes effective.

6. Gehl shall not add more than 20.39 gallons of reduced coating per day to the dip tank. The addition of photochemically reactive solvents as make-up solvents to the dip tank [6] must be included in the calculation and recordkeeping of the reduced coating added to the dip tank each day. Such recordkeeping requirements and volume use restrictions do not apply to non-reactive solvents.

7. Gehl shall maintain records of all coatings added to the dip tank on a daily basis. The records shall include the dates and times of coating additions, temperature of the air in degrees Fahrenheit at the times of coating addition, the types and amounts of coating added, and the VOC contents of the coatings added in pounds of VOC per gallon of coating, excluding water. The recorded volumes of added coating shall be in the units of gallons. The purpose of this recordkeeping, as well as the recordkeeping and data reporting requirements of Conditions 3 and 4 above, is to allow WDNR to ascertain the compliance status of Gehl's dip tank emission control efforts.

8. Gehl shall be responsible for the accuracy of all of the information required under Conditions 3, 4, and 7.

9. Gehl shall keep the dip tank covered at all times when the dip tank is not in use.

**Evaluation**

Although Washington County is designated as an attainment area for ozone, the State assumes VOC emissions from Washington County contribute to ozone standard violations in the Milwaukee area, as evidenced by the inclusion of Washington County in the Milwaukee ozone demonstration area.[8] Because of this inclusion, proposed SIP revisions for Washington County sources must be judged using the same air quality impact policies (but not RACT requirements) which apply to site specific SIP revisions in ozone nonattainment areas.[7]

In general, this policy requires the State to have a current, acceptable ozone attainment demonstration and current emissions data through which the air quality impact of the variance can be assessed. Wisconsin lacks a current, acceptable ozone attainment demonstration for the Milwaukee area,[8] as well as a current VOC emissions inventory.

Despite this, the USEPA views the Gehl variance to be an acceptable site-specific SIP revision, because Wisconsin has shown that the Gehl variance will not result in any increase in emissions relative to those allowed to Gehl in Wisconsin's 1982 ozone plan. Conditions 1, 2, and 6 of the variance are sufficient to assure (1) That the annual dip tank VOC emissions will not exceed the 12.82 tons per year allowable emissions for this source as specified in the 1982 ozone attainment demonstration, and (2) the peak daily VOC emissions from the dip tank operation will not exceed the 44.4 kilograms/day post-control level indicated in Wisconsin's 1982 ozone plan. This means that the variance does not constitute a "relaxation" from the SIP's emission control strategy. Notwithstanding today's approval, Wisconsin may ultimately have to impose tighter emission limits on Gehl in the future as one portion of Wisconsin's plan to ultimately assure the attainment and maintenance of the ozone NAAQS in the Milwaukee area.

Because USEPA's review of its action on Gehl shows it to be noncontroversial and routine, USEPA is approving it today without prior proposal. The action will become effective on 60 days from the date of this notice. However, if we receive notice by 30 days from the date of this notice that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws this action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6,1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 2222) section 3 of the Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (*See* 46 FR 8709).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from the date of this publication. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Hydrocarbon, Incorporation by reference, Intergovernmental relations, Ozone.

Note—Incorporation by reference of the SIP for the State of Wisconsin was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 21, 1990.

**Ralph Bauer,**

*Acting Regional Administrator.*

[6] Solvents are occasionally added to the dip tank to maintain coating viscosity within tolerable levels.

[7] The CAA does not require RACT level emission limits in counties designated attainment, e.g., Washington County, and USEPA is not reviewing the Gehl variance on a RACT basis.

[8] This policy is found in a July 29, 1983, memorandum from Sheldon Meyers, former Director of USEPA's Office of Air Quality Planning and Standards. This memorandum states:

For a State to secure USEPA approval of a relaxation and continue overall approval status (of its SIP), however, the State would need to show that the SIP as a whole despite the relaxation would continue to "provide for" attainment by the end of 1982 in the case of nonextension areas or as expeditiously as practicable, but no later than 1987 in extension areas. For VOC this generally will require a data base and modelling demonstration consistent with that applied in extension areas.

[9] As noted before, on May 26, 1988, the USEPA notified the Governor of Wisconsin that the ozone SIP for the Milwaukee area, including Washington County, was inadequate to provide for attainment and maintenance of the ozone standard by the 1987 deadline or a fixed near-term date thereafter.



**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

**Subpart YY—Wisconsin**

Title 40 of the Code of the Federal Regulations, chapter I, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding paragraph (c)(59) to read as follows:

**§ 52.2570 Identification of plan.**

* * * * *

(c) * * *

(59) On November 6, 1986, WDNR submitted a variance from NR 422.15(2)(b), subject to certain conditions, for the VOC emissions from Gehl Company's dip tank coating operation in West Bend, Wisconsin. On May 22, 1990, WDNR added four additional conditions to the revised plan, and on September 5, 1990, it submitted clarifications to the plan.

(i) *Incorporation by reference.* (A) A November 6, 1986, letter from Lyman Wible, P.E., Administrator, Division of Environmental Standards, WDNR to Mr. Michael J. Mulcahy, Vice-President, Secretary and General Counsel, Gehl Company.

(B) A May 10, 1990, letter from Lyman Wible, P.E., Administrator, Division of Environmental Standards, WDNR to Mr. Michael J. Mulcahy, Vice-President, Secretary and General Counsel, Gehl Company.

(ii) *Additional information.* (A) A September 5, 1990, letter from Thomas F. Steidl, Attorney, WDNR to Louise C. Gross, Associated Regional Counsel, USEPA.

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[FR Doc. 90-28018 Filed 11-29-90; 8:45 am]

BILLING CODE 6560-50-M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 571 and 575**

**[Docket No. 90-04; Notice 2]**

**RIN 2127-AD21**

**Federal Motor Vehicle Safety Standards; New Pneumatic Tires for Passenger Cars—CT Tires**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice amends Standard No. 109, *New Pneumatic Tires*, to permit passenger car tires with a maximum inflation pressure of 290, 330, 350, or 390 kPa, in response to a petition to allow the "CT" tire and rim (an inverted flange tire and rim system). The tire has run-flat capability. After evaluating the petition and comments to the proposal, NHTSA has concluded that the CT tire has the potential for increased safety, especially in the deflated condition, and may result in incidental benefits such as increased fuel efficiency. Conforming amendments have been made throughout Standard No. 109 and the Uniform Tire Quality Grading Standards to establish criteria suitable for tires with the new pressures.

**DATES:** Effective date: The final rule is effective on December 31, 1990.

Petitions for reconsideration: Any petitions for reconsideration must be received by NHTSA December 31, 1990.

**ADDRESSES:** Petitions for reconsideration should refer to Docket No. 90–04; Notice 2 and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket Room hours 9:30 a.m. to 4 p.m., Monday through Friday. It is requested that 10 copies of the petition be submitted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590. Telephone: (202) 366–4803.

**SUPPLEMENTARY INFORMATION:**

**Background**

Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, (49 CFR 571.109) specifies tire dimensions and laboratory test requirements for bead unseating resistance, tire strength, tire endurance, and high speed performance; defines tire load ratings; and specifies labeling requirements for new pneumatic tires used on passenger cars.

Until the effective date of the amendments adopted in this rule, Standard No. 109 requires passenger car tires to have a maximum inflation pressure of either 32, 36, 40, or 60 psi (pounds per square inch), or 240, 280, 300, or 340 kPa (kiloPascals). These maximum inflation pressures are incorporated in Table I–C "Radial Ply Tires" and Table II, "Test Inflation Pressures," which are in Appendix A. In addition, Figure 1 specifies wheel sizes for tires relative to the tubeless tire bead unseating resistance tests in section S5.2.1. The Uniform Tire Quality Grading Standards ("UTQGS" at 49 CFR 575.104) sets forth similar requirements for maximum permissible inflation pressures for the testing procedures in Table 1, Table 2, and Table 2A.

A new pneumatic passenger car tire must comply with requirements for bead unseating, tire strength, tire endurance, and high speed endurance at a maximum permissible inflation pressure specified in Standard 109. The agency specifies a limited number of permissible maximum inflation pressures (or wheel sizes, in the case of the bead unseating test) to facilitate compliance testing.

On March 8, 1989, Continental AG, Daimler-Benz, and General Tire Inc. petitioned the agency to amend Standard No. 109 and the UTQGS to permit the use of a new tire and rim concept known as the "CT" tire. With this tire, the rim flanges point radially inward and the tire fits on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire. The amendments were necessary because the CT tire is usable only at maximum inflation pressures that were not specified in Standard No. 109. Accordingly, the petitioners requested the agency to amend the standard to include four new maximum inflation pressures—290, 330, 350, and 390 kPa. The petitioners stated that amending Standard No. 109 to permit the CT tire would result in an increased level of safety compared to conventional radial tires in cases of flats, significant under-inflation from gradual air loss, or blowouts from sudden air loss. They stated that unlike a conventional tire, a CT tire with a flat may still be driven safely at normal highway speeds for up to 200 miles. A driver therefore could travel to a service station instead of changing the flat tire in a dangerous or inconvenient setting. They also stated that unlike a conventional tire, a CT tire that is under-inflated or experiences sudden air loss would not result in any appreciable loss of control because the tire would not leave the rim. The petitioners stated that the requested amendment would result in incidental benefits, including allowing a vehicle to have larger brake, suspension, and anti-lock brake systems, shorter stopping distances, greater resistance to hydroplaning, better distribution of the tire footprint pressure, and increased fuel savings by reducing the overall vehicle weight. The petitioners' test and other data on the performance of the CT tire indicated that the tire, when properly inflated, would comply with

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Standard No. 109's performance requirements. They also tested the CT tire while in its deflated stage to determine whether the tire would leave the rim or come apart when driven through various maneuvers.

On February 14, 1990, the agency issued a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 109 to include additional maximum inflation pressures for pneumatic tires on passenger cars. (55 FR 5237). The NPRM summarized previous rulemakings in which the agency amended Standard No. 109 to permit additional maximum inflation pressures. (*See* 53 FR 17950, May 19, 1988, 53 FR 936, January 14, 1988; and 43 FR 8570, March 2, 1978; 43 FR 24310, June 5, 1978). In those earlier rulemakings, the agency determined that amending the standard's specifications for the maximum permissible inflation pressure was necessary to permit a new tire technology to carry a load comparable to that carried by tires already in compliance with the standard.

NHTSA decided to propose amending Standard No. 109 to permit tires with maximum inflation pressures of 290, 330, 350, or 390 kPa, after tentatively concluding that the CT tire had the potential for increased safety, especially in the deflated condition. The agency also tentatively concluded that allowing the CT tire might result in incidental benefits such as increased fuel efficiency. The notice proposed conforming amendments to Standard No. 109 and the Uniform Tire Quality Grading Standards (49 CFR 575.104) to establish test criteria suitable for tires with the new maximum inflation pressures.

NHTSA received comments from ETRTO, the Rubber Manufacturers Association (RMA), and five tire or motor vehicle manufacturers. All commenters favored the proposal. The agency therefore is adopting the proposed amendments for the reasons set forth in the NPRM.

In response to technical comments, the agency is modifying certain provisions in its UTQGS regulations relative to the inclusion of CT tires. NHTSA agrees with the petitioner's comment that the proposal's headings in Tables 1 and 2 of 49 CFR 575.104 do not best reflect temperature resistance testing under the UTQGS. The final rule therefore adopts more appropriate wording suggested in the petitioner's comments. The final rule also includes certain treadwear and traction testing multipliers to Table 2, which were inadvertently omitted in the NPRM.

The agency agrees with RMA's comment that the agency should not include the phrase "equivalent" to § 575.104(e)(2)(i) given that the tires on any one vehicle should be of the same size designation and that the additional phrase would have added imprecision to UTQGS.

The agency has decided not to adopt RMA's request to amend § 575.104(f)(2)(B) (sic) rather than (f)(2)(D)(viii) (sic) because the CT tire inflation pressures are for candidate tires subject to § 575.104(f)(2)(viii); while (f)(2)(i)(B) refers to standard test tires.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. The agency has concluded that there is "good cause" not to provide the full 180 day lead-in period given that this amendment will facilitate the introduction of certain tires without imposing any mandatory requirement on manufacturers. In addition, the public interest will be served by not delaying the introduction of tires that can provide better performance without having any negative impact on safety. Therefore, the agency has determined that there is good cause to set an effective date 30 days after publication of the final rule.

**Regulatory Impacts**

The agency has analyzed the rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not impose new requirements for current tires but instead permit a new category of tire. Selection of this option is at the discretion of the vehicle manufacturer or purchaser and is not a mandatory safety requirement. The performance requirements applicable to the new category of tire do not differ from those applicable to existing categories. A full regulatory evaluation is not required because this rule will have minimal economic impacts.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effect of this action on small entities. I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The agency notes that few, if any, tire manufacturers qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by being permitted to produce this new type of tire. Small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles with these tires. These small entities may benefit to a small extent if they purchase vehicles with these new tires. The cost of a vehicle equipped with these tires is not expected to be significantly different from that of a vehicle equipped with existing tires.

NHTSA has analyzed this action under the principles and criteria of Executive Order 12612, and has determined that this rule will not have sufficient Federalism implications to warrant preparing a Federalism Assessment.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that the rule will not have a significant impact on the quality of the human environment.

**List of Subjects in 49 CFR Parts 571 and 575**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR parts 571 and 575 are amended as follows:

**PART 571—[AMENDED]**

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.109, S3 is amended by adding the following definition "CT" in alphabetical order to read as follows:

**§ 571.109 Standard No. 109; New pneumatic tires.**

* * * * *

S3. *Definitions.*

* * * * *

*CT* means a pneumatic tire with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire.

* * * * *

**§ 571.109 [Amended]**

3. In § 571.109, S4.2.1(b) is revised to read as follows:

S4.2.1 *General.*

* * * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, 340, kPa. For a CT tire the maximum permissible inflation pressure shall be either 290, 330, 350, or 390 kPa.

* * * * *

**§ 571.109 [Amended]**

4. In § 571.109, S4.2.2.2 is amended by designating paragraphs (1) and (2) as (a) and (b) and by revising newly designated paragraph (b) to read as follows:

S4.2.2.2 *Physical dimensions.*

* * * * *



(b) (For tires with a maximum permissible inflation pressure of 60 psi, or 240, 280, 290, 300, 330, 340, 350, or 390 kPa) 7 percent or 0.4 inch, whichever is larger.

* * * * *

**§ 571.109 [Amended]**

5. In § 571.109, S4.3.4 is revised to read as follows:

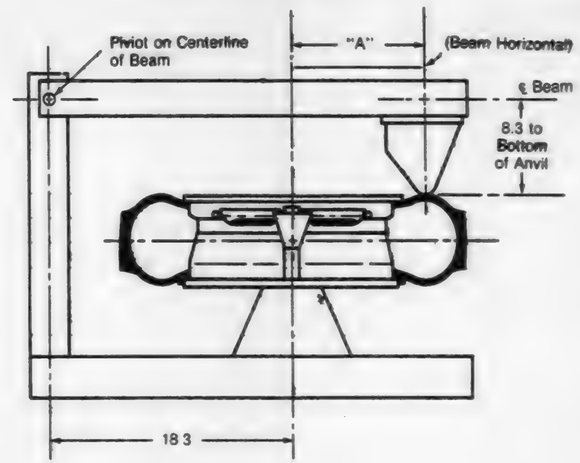
S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 290, 300, 330, 340, 350, or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

**§ 571.109 [Amended]**

6. In § 571.109, Figure 1 is revised to read as follows:




| Wheel Size | Dimension "A" for tires with maximum inflation pressure | |
|---|---|---|
| | Other than 60 lbs/in² | 60 lbs/in² |
| 17 | 12.00 | |
| 16 | 11.50 | 9.9 |
| 15 | 11.00 | 9.4 |
| 14 | 10.50 | 8.9 |
| 13 | 10.00 | 8.4 |
| 12 | 9.50 | |
| 11 | 9.00 | |
| 10 | 8.50 | |
| 320 | 8.50 | |
| 340 | 9.00 | |
| 345 | 9.25 | |
| 365 | 9.75 | |
| 370 | 10.00 | |
| 390 | 11.00 | |
| 415 | 11.50 | |
| 400 (1) | 10.25 | |
| 425 (1) | 10.75 | |
| 450 (1) | 11.25 | |
| 475 (1) | 11.75 | |

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| Wheel Size | Dimension "A" for tires with maximun inflation pressure | |
|---|---|---|
| | Other than 60 lbs/in ² | 60 lbs/in ² |
| 800 (1) | 12.25 | |

(1) for CT tires only.

Figure 1.—Bead Unseating Fixture—Dimensions in Inches

**§ 571.109 [Amended]**

7. In § 571.109, Table I–C appendix A is revised to read as follows:

TABLE I–C.—FOR RADIAL PLY TIRES

| Size designation | Maximum permissible inflation | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 32 lbs/in ² | 36 lbs/in ² | 40 lbs/in ² | 240 kPa | 280 kPa | 300 kPa | 340 kPa | (1) 290 kPa | (1) 330 kPa | (1) 350 kPa | (1) 390 kPa |
| Below 180 mm (in-lbs) | 1,950 | 2,925 | 3,900 | 1,950 | 3,900 | 1,950 | 3,900 | 1,950 | 3,900 | 1,950 | 3,900 |
| 180 mm or above (in-lbs) | 2,600 | 3,900 | 5,200 | 2,600 | 5,200 | 2,600 | 5,200 | 2,600 | 5,200 | 2,600 | 5,200 |

(1) For CT tires only.

**§ 571.109 [Amended]**

8. In § 571.109, Table II of appendix A is revised to read as follows:

TABLE II.—TEST INFLATION PRESSURES

| Test Type | Maximum permissible inflation pressure to be used for the following test: | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | lbs/in ² | | | | kPa | | | | kPa (1) | | | |
| | 32 | 36 | 40 | 60 | 240 | 280 | 300 | 340 | 290 | 330 | 350 | 390 |
| Physical dimensions, bead unseating, tire strength, and tire endurance | 24 | 28 | 32 | 52 | 160 | 220 | 150 | 220 | 230 | 270 | 230 | 270 |
| High speed performance | 30 | 34 | 38 | 68 | 220 | 250 | 270 | 260 | 270 | 310 | 270 | 310 |

(1) For CT tires only.

**PART 575—[AMENDED]**

9. The authority citation for part 575 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1407, 1421, and 1423; delegation of authority at 49 CFR 1.50

10. A new sentence is added to § 575.104(f)(2)(viii) immediately after the first sentence. The first sentence is being republished for the convenience of the reader.

**§ 575.104 Uniform tire quality grading standards.**

* * * * *

(f) * * *

(2) * * *

(viii) Prepare two candidate tires of the same construction type, manufacturer, line, and size designation in accordance with paragraph (f)(2)(i) of this section, mount them on the test apparatus, and test one of them according to the procedures of paragraph (f)(2) (ii) through (v) of this section, except load each tire to 85 percent of the test load specified in § 575.104(h). For CT tires, the test inflation of candidate tires shall be 230 kPa. * * *

* * * * *

**§ 575.104 [Amended]**

11. In § 575.104, Table 1 is revised to read as follows:

TABLE 1.—TEST INFLATION PRESSURES

| Test Type | Maximum permissible inflation pressure for the following test: | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | lbs/in ² | | | | kPa | | | | kPa (1) | | | |
| | 32 | 36 | 40 | 60 | 240 | 280 | 300 | 340 | 290 | 330 | 350 | 390 |
| Treadwear test | 24 | 28 | 32 | 52 | 160 | 220 | 160 | 220 | 230 | 270 | 230 | 270 |
| Temperature resistant test | 30 | 34 | 38 | 68 | 220 | 260 | 220 | 260 | 270 | 310 | 270 | 310 |

(1) For CT tires only.



**§ 575.104 [Amended]**

12. Also, in § 575.104, Table 2 is revised to read as follows:

TABLE 2 [1]

| Maximum inflation pressure | Multiplier to be used for treadwear testing | Multiplier to be used for traction testing |
|---|---|---|
| 32 lbs/in ² | .651 | .851 |
| 36 lbs/in ² | .670 | .797 |
| 40 lbs/in ² | .683 | .753 |
| 240 kPa | .666 | .866 |
| 280 kPa | .667 | .804 |
| 300 kPa | .666 | .866 |
| 340 kPa | .667 | .804 |
| 290 kPa (1) | .666 | .866 |
| 330 kPa (1) | .667 | .804 |
| 350 kPa (1) | .666 | .866 |
| 390 kPa (1) | .667 | .804 |

(1) For CT tires only.

[1] Prior to July 1, 1984, the multipliers in the above table are not to be used in determining loads for the tire size designations listed below in Table 2A. For those designations, the load specifications in that table shall be used in UTQG testing during that period. These loads are the actual loads at which testing shall be conducted and should not be multiplied be the 85 percent factors specified for treadwear and traction testing.

Issued on: November 9, 1990.

**Jeffrey R. Miller,**

*Deputy Administrator.*

FR Doc. 90–27489 Filed 11–29–90; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AB41**

### Endangered and Threatened Wildlife and Plants; Listing of the Sacramento River Winter-run Chinook Salmon as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service is adding the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) to the List of Endangered and Threatened Wildlife. This measure, required by the Endangered Species Act of 1973 corresponds with a final determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the winter-run chinook salmon.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph Morgenweck, Assistant Director for Fish and Wildlife Enhancement Conservation, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240 (703/343–4646).

**SUPPLEMENTARY INFORMATION:** Under the Endangered Species Act (16 U.S.C. 1531 et seq.), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Sacramento River winter-run Chinook salmon. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

In the November 4, 1990 issue of the **Federal Register** (55 FR 46515), NMFS is publishing its determination of threatened status for the Sacramento River winter-run Chinook salmon. Accordingly, the FWS is concurrently adding the Sacramento River winter-run Chinook salmon as a threatened species to the List of Endangered and Threatened Wildlife. Because this FWS action is nondiscretionary and the species is already listed under an emergency rule (55 FR 12191), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

**National Environmental Policy Act**

The FWS also has determined that an Environmental Assessment under the National Environmental Policy Act of 1969 does not need to be prepared in regard to regulations adopted under section 4(a) of the Act. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1985 (48 FR 49244).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

**§ 17.11 [Amended]**

2. Section 17.11 (h) is amended by revising the "When listed" column entry for "Salmon, chinook" in the List of Endangered and Threatened Wildlife under "FISHES" to read: "383E, 407".

Dated: November 26, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90–28163 Filed 11–29–90; 8:45 am]

BILLING CODE 4310–55–M

VOL 55 ISS 231 NO 30 1990 UMI



# Proposed Rules

Federal Register
Vol. 55, No. 231
Friday, November 30, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## GENERAL ACCOUNTING OFFICE

**4 CFR Parts 91, 92, and 93**

**Standards for Waiver of Claims for Erroneous Payments of Pay and Allowances**

**AGENCY:** General Accounting Office.

**ACTION:** Proposed Rule.

**SUMMARY:** The General Accounting Office is proposing to update our waiver regulations at 4 CFR parts 91–93 to: (1) Bring these regulations into conformance with existing administrative practices of the General Accounting Office; and (2) implement the provisions of Public Laws 99–224 and 100–702.

Public Law 99–224 amended three waiver statutes, 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, to extend the existing equitable waiver authority for pay and allowances to also include erroneous payments of travel, transportation, and relocation expenses and allowances made to or on behalf of civilian employees or members of the uniformed services. By Circular Letter B–197290, February 24, 1986, we advised federal agencies that the expanded waiver authority granted by Public Law 99–224 was in effect as of December 28, 1985.

Public Law 100–702, extended the amended waiver authority to employees of the judicial branch. This statute authorizes the Director, Administrative Office of the United States Courts, to waive collection of erroneous payments of not more than $10,000 made to employees of that Office, the Federal Judicial Center, and the federal courts.

**DATES:** Comments must be received no later than January 29, 1991.

**ADDRESSES:** Comments should be addressed to: Robert L. Higgins, Associate General Counsel, U.S. General Accounting Office, 441 C Street NW., Washington, DC 20548.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Higgins, Association General Counsel, (202) 275–6410.

**SUPPLEMENTARY INFORMATION:**

**General**

The first major substantive change in these proposed regulations is to implement the extended statutory authority to waive erroneous payments of travel, transportation and relocation expenses and allowances enacted by Pub. Law 99–224, 99 Stat. 1741, December 28, 1985.

Prior to enactment of Public Law 99–224, the three waiver statutes authorized the waiver of debts owed to the United States only if they arose out of overpayments of pay and allowances. Those debts arising out of overpayments of travel, transportation and relocation expenses were expressly excluded. In removing the exclusion, the new law recognized the increased scope and diversity of government travel and relocation entitlements and the hardship often caused by requiring civilian employees and military personnel to make substantial repayments to the government as a result of erroneous payments.

The other major substantive change reflects the amendment to 5 U.S.C. 5584 made by Public Law 100–702, 102 Stat. 4667, Nov. 19, 1988, to authorize the Director of the Administrative Office of the United States Courts to waive a claim of the United States aggregating not more than $10,000 against an employee of the Administrative Office, the Federal Judicial Center, or any of the federal courts set forth in section 610 of title 28, United States Code. The amendment defines the "Director" as "head of an agency" for purposes of wavier.

We also note two minor terminology differences which have no substantive effect. The amendments made by Public Law 99–224 to the civilian employee waiver statute, 5 U.S.C. 5584, use the term "travel, transportation and relocation expenses and allowances", while the amendments to the two waiver statutes for members of the uniformed services, 10 U.S.C. 2774 and 32 U.S.C. 716, use the term "travel and transportation allowances." Although the terminology differs, no difference in the scope of the coverage was intended. Since the proposed regulation covers both civilian employees and military members, we have used the broader term in the text when we refer to both groups.

The other terminology difference is that the title of each of the waiver statutes, 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, refers to "overpayments" but the text of the statutes refer to "erroneous payments." For the sake of consistency, these proposed regulations use the term "erroneous payments," as do the existing regulations. We note, however, that the two terms are virtually synonymous.

Immediately following is a section-by-section analysis of the proposed amendments. Following that is the text of the proposed new waiver regulations.

**Part 91**

(1) The proposed § 91.1 is substantially the same as the existing § 91.1, and it also incorporates existing § 93.3.

(2) The proposed definitions in § 91.2 do not itemize every travel, transportation or relocation expense and allowance, or every statute which authorizes payments for such items. Instead, the definitions of "travel, transportation or relocation expenses and allowances" for employees in proposed § 91.2(f)(3) and "travel and transportation allowances" for members in proposed § 91.2(h)(3) specifically refer only to the most commonly relied upon statutes. The phrase "other comparable provisions" is intended to compass all other travel, transportation or relocation entitlements.

(3) Proposed § 91.2(a) is amended to include the judicial branch agencies listed in Public Law 100–702.

(4) Both proposed § 91.2 (g)(3) and (i)(3) make it clear that Public Law 99–224 is not retroactive. Only travel, transportation or relocation expenses and allowances paid on or after December 28, 1985, may be considered for waiver. *See* Public Law 99–224, section 4.

(5) Existing § 91.3(c) is omitted because of the statutory amendment made by Public Law 100–702 to include judicial branch employees.

(6) Proposed § 91.4(b) reflects the authority given by Public Law 100–702 to the Director, Administrative Office of the United States Courts, to waive debt claims against judicial branch employees aggregating not more that $10,000, as contrasted with other agency heads who are limited to $500. *See also* § 91.4(c)(2).



(7) Existing § 91.4(b) provides that when an agency denies an application for waiver in an amount aggregating more than $500, the applicant must be advised of the right to appeal the denial to GAO. The proposed § 91.4(c)(2) provides that the applicant must be advised of the right to appeal the agency's denial of waiver of any amount.

(8) The proposed § 91.4(d) reflects the principles established in our decisions concerning the treatment of travel advances. We have held that waiver consideration is appropriate to the extent that a travel advance was made to cover the expenses erroneously authorized and the employee or member actually spent the advance in reliance on the duly authorized, albeit erroneous, travel orders. *See Rajindar N. Khanna*, 67 Comp. Gen. 493 (1988); *Major Kenneth M. Dieter*, 67 Comp. Gen. 496 (1988). As a general rule, we presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. However, under certain circumstances we believe it would be inappropriate to assume detrimental reliance. For example, in a case where a member was overadvanced funds for mileage based on an inaccurate distance calculation, we could not say that the member relied on this error to his detriment since he had to drive the same distance regardless of the specific mileage allowed. *Major Kenneth M. Dieter, supra.*

(9) Moreover, the government's payment to a commercial carrier for a household goods shipment under a government bill of lading where the payment results in a debt owed by the employee or member for excess weight charges or unauthorized services generally is not considered to be an "erroneous payment." Thus, collection of the resulting debt is not subject to waiver consideration unless there is evidence of some government error, such as erroneous travel orders. *Transportation Debt Waivers*, 67 Comp. Gen. 484 (1988).

(10) The existing regulations, at § 91.5(a), incorporate the various effective dates and filing periods for applications for waiver which are contained in 5 U.S.C. 5584. These dates range from July 1, 1960, through July 25, 1977. The dates are still controlling but have been omitted from these proposed regulations because, as a practical matter, it is unlikely that such early dates would be relevant to an application for waiver pending today. Instead, proposed § 91.5(a)(1) refers to the standard 3-year period from the date of discovery rule and provides that, in the case of applications received prior to July 25, 1977, the reader should refer directly to the provisions of 5 U.S.C. 5584(b).

(11) Because the statutory period for receipt of an application for waiver runs from the date of discovery of the error, proposed § 91.5(a)(2) requires agencies and departments to give prompt notice to the employee, member, or other person of the discovery of an erroneous payment. In addition, proposed § 91.5(a)(2) incorporates the principle, already stated in subsection 103.5 of Title 4 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies, the doubts as to the date of discovery are to be resolved in favor of the applicant for waiver.

(12) The existing regulations, at § 91.5(c), provide that waiver is ordinarily precluded where a person receives "any significant unexplained increase" and fails to make inquiries and bring the matter to the attention of the appropriate official. This standard for denial of waiver is correct as far as it goes, but it does not apply to all cases.

Accordingly, proposed § 91.5(b) adds a phrase providing that waiver is also ordinarily precluded where the person "knew, or reasonably should have known" that an erroneous payment has occurred and fails to make inquiries and bring the matter to the attention of the appropriate official. This "knew or reasonably should have known" standard reflects existing case law and may be applied in all cases, including those involving travel, transportation and relocation expenses and allowances.

(13) The proposed § 91.6 is substantially the same as the existing §§ 93.1 and 93.2.

**Part 92**

(1) Unless otherwise noted, the changes to proposed Part 92 were made for editorial reasons or to more accurately and fully reflect existing practices.

(2) Proposed § 92.2 was added to make it clear that agencies may on a case-by-case basis consider the cost of processing an application for waiver and, if there are no countervailing Government policies, terminate collection where the costs of processing a waiver application are likely to exceed the amount recoverable on the claim. For a discussion of the concept of countervailing Government policies, see 65 Comp. Gen. 893 (1986).

(3) A provision has been added in proposed § 92.4(a)(1) which requires that agencies provide the names and mailing addresses of the employees, members or other persons from whom collection is sought, or a statement that they cannot reasonably be located.

(4) The proposed § 92.5(b) requires the agency or department to give notice to the employee, member, or other person from whom collection is sought that waiver has been granted or denied, or that the matter has been referred to GAO. Sometimes employees, members, or other persons have complained that they did not know a matter had been referred to GAO. No particular form of notice is required and notice could be easily accomplished by providing the applicant with a copy of the report to GAO. Similarly, no particular form is required for notice that waiver has been granted or denied by the agency. Agencies may provide such notice by providing copies of relevant documents, or by whatever other means appear administratively feasible.

(5) The proposed § 92.6(b) was added to make it clear that actions by the Claims Group granting or denying waiver in whole or in part may be appealed to the Comptroller General, either by the employing agency or department, or by the employee, member, or other person from whom collection is sought. Some questions have arisen concerning whether an agency may appeal a Claims Group determination granting waiver. Inasmuch as there is nothing in the waiver statutes which would preclude such an appeal, we believe agencies should be allowed to appeal a grant or a denial of waiver. Such review is similar to that afforded agencies under our regulations at 4 CFR part 32 for review of claims settlements made pursuant to 31 U.S.C. 3702.

(6) Proposed § 92.7 changes the existing § 92.5 which provides that where an erroneous payment has been repaid, and is subsequently waived, a refund of the amount repaid may be made provided an application for refund is made within 2 years of the date of the waiver. Under that provision agencies are required to notify the affected persons of their right to request a refund and the affected persons are then required to apply for a refund. The proposed § 92.7 eliminates the need for a separate application. It construes the waiver application as an application for a refund so that agencies shall pay the refund upon notification of the grant of waiver. In keeping with the statutory requirement, however, no refund may be paid where the person entitled to a refund cannot be located within 2 years of the date of waiver. This change is intended to reduce the administrative burden and cost of processing refunds.

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List of Subjects

*4 CFR Part 91*

Accounting, Claims, Government employees, Military personnel, Relocation expenses, Travel and transportation expenses, Wages.

*4 CFR Part 92*

Accounting, Administrative practice and procedure, Claims, Government employees, Investigations, Military personnel, Wages.

*4 CFR Part 93*

Accounting, Claims, Government employees, Military personnel, Wages.

For the reasons set out in the preamble, parts 91, 92, and 93 of Title 4, chapter I, subchapter G, Code of Federal Regulations, are proposed to be amended as follows:

1. The title of subchapter G is revised to read as follows:

**SUBCHAPTER G—STANDARDS FOR WAIVER OF CLAIMS FOR ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES, AND OF TRAVEL TRANSPORTATION, AND RELOCATION EXPENSES AND ALLOWANCES**

2. Parts 91 and 92 are revised to read as follows:

## PART 91—STANDARDS FOR WAIVER

Sec.

91.1 Purpose and scope of subchapter.
91.2 Definitions.
91.3 Exclusions.
91.4 Authority to waive.
91.5 Conditions for waiver.
91.6 Effect of waiver.

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741–1742, December 28, 1985, and by Pub. L. 100–702, Title X, section 1009(a), 102 Stat. 4667, Nov. 19, 1988.

**§ 91.1 Purpose and scope of subchapter.**

This subchapter implements 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716. It prescribes the effect of and the standards and procedures for waiver of claims of the United States arising out of erroneous payments of pay and allowances, and erroneous payments of travel, transportation, and relocation expenses and allowances, made to or on behalf of employees of an agency or members of the uniformed services, including the National Guard, the collection of which would be against equity and good conscience and not in the best interests of the United States. These regulations do not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

**§ 91.2 Definitions.**

(a) *Agency* means—

(1) An executive agency as defined in 5 U.S.C. 105, including the General Accounting Office,

(2) The Government Printing Office,

(3) The Library of Congress,

(4) The Office of the Architect of the Capitol,

(5) The Botanic Garden, and

(6) The Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28, U.S. Code. Section 610 defines "courts" to include the courts of appeals and district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the United States Claims Court and the Court of International Trade.

(b) *Secretary concerned* shall have the same meaning as it does in section 101(5) of Title 37, United States Code.

(c) *Head of an agency* means the head of each agency listed in paragraphs (a)(1) through (5) of this section and the Director, Administrative Office of the United States Courts, for the agencies and courts listed in paragraph (a)(6) of this section.

(d) *Uniformed services* means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

(e) *National Guard* means the Army National Guard, the Air National Guard, the Army National Guard of the United States, and Air National Guard of the United States.

(f) *Employee* means an officer or employee as defined in 5 U.S.C. 2104 and 2105 who is or was employed in a civilian capacity by an agency.

(g) As it relates to employees, the term—

(1) *Pay* means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes but is not limited to overtime pay; night, standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay.

(2) *Allowances* includes but is not limited to payments for quarters, uniforms, and overseas cost of living expenses.

(3) *Travel, transportation or relocation expenses and allowances* includes but is not limited to items referred to in 5 U.S.C. 5724, 5724a, 5724b and 5724c, 22 U.S.C. 4081, and other comparable provisions, payment of which is made on or after December 28, 1985.

(h) *Member* means a member or former member of the uniformed services, or member or former member of the National Guard.

(i) As it relates to members, the term—

(1) *Pay* includes but is not limited to base and longevity pay, basic pay, training duty pay, special and incentive pays, readjustment pay, severance pay, mustering-out pay, retainer pay, retired pay, retirement pay, lump-sum leave pay, and equivalent pay.

(2) *Allowances* includes but is not limited to payments in lieu of subsistence, quarters, uniforms, clothing, personal money allowance, family separation allowance, and overseas station allowance.

(3) *Travel and transportation allowances* includes but is not limited to items referred to in 37 U.S.C. 404 and other comparable provisions, payment of which is made on or after December 28, 1985.

(j) *Aggregate amount* means the gross amount of the claim against the employee, member, or other person from whom collection is sought.

**§ 91.3 Exclusions.**

This part does not apply to:

(a) Employees of the District of Columbia Government,

(b) Employees of the legislative branch of the government, except employees of the Architect of the Capitol, the Government Printing Office, the Library of Congress, the United States Botanic Garden, and the General Accounting Office.

**§ 91.4 Authority to waive.**

(a) The Comptroller General of the United States, or his designee, may grant waiver in whole or in part of a claim of the United States in any amount arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or an erroneous payment of travel, transportation or relocation expenses or allowances made on or after December 28, 1985, to an employee or member, when all of the requirements for waiver are met. Claims referred to the Attorney General for litigation will not be considered for waiver by the Comptroller General of the United States without first having obtained permission from the Attorney General.

(b) The Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $10,000 arising out of an erroneous payment of pay or allowances or an erroneous payment of travel, transportation or relocation expenses or allowances to an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts listed in § 91.2(a)(6) of this part. This authority applies with respect to any claim arising before November 19, 1988, which was pending on that date and to any claim which arose on or after that date.

(c) The head of an agency or the Secretary concerned, or his designee—

(1) May grant waiver in whole or in part of a claim of the United States in an amount aggregating not more than $500 when all of the requirements for waiver are met, except that the Director of the Administrative Office of the United States Courts may grant waiver in whole or in part of a claim in an amount aggregating not more than $10,000;

(2) May deny waiver of a claim in any amount, provided that the employee, member, or other person from whom collection is sought must be advised of the right to appeal the denial to the General Accounting Office pursuant to the procedures set forth in part 92 of this subchapter; and

(3) May not grant waiver of any claim which is the subject of an exception made by the Comptroller General in the amount of any accountable officer, or which has been referred to the General Accounting Office or to the Attorney General.

(d) The government's claim against an employee or member for repayment of an advance of funds for travel or relocation expenses may be considered for waiver if—

(1) The advance was made to cover expenses erroneously authorized;

(2) The employee or member actually spent the advance in reliance on the erroneous travel authorization; and

(3) The employee or member is indebted to the government for repayment of all or part of the amounts advanced after the advance is applied against any legitimate expenses incurred by the employee or member.

**§ 91.5 Conditions for waiver.**

(a) *Three-year application period.* (1) An application for waiver must be received in the General Accounting Office or in the agency or department which made the erroneous payment within 3 years immediately following the date on which the erroneous payment was discovered, or in the case of certain applications received prior to July 25, 1977, as provided in 5 U.S.C. 5584(b).

(2) The employee, member, or other person from whom collection is sought shall be promptly notified of the discovery of an erroneous payment. In determining the date of discovery of an erroneous payment, all doubts are to be resolved in favor of the applicant.

(b) Waiver may be granted only when collection would be against equity and good conscience and not in the best interests of the United States. Generally, these criteria will be met by a finding that the erroneous payment occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other person having an interest in obtaining a waiver of the claim. Generally, waiver is precluded when an employee, member, or other person having an interest in obtaining waiver receives a significant unexplained increase in pay or allowances, or otherwise knew, or reasonably should have known, that an erroneous payment has occurred, and fails to make inquiries or bring the matter to the attention of the appropriate officials. Waiver under this standard must necessarily depend upon the facts existing in the particular case. The facts upon which waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of part 92 of this subchapter.

**§ 91.6 Effect of waiver.**

(a) In the audit and settlement of the accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived.

(b) An erroneous payment, the collection of which is waived pursuant to this subchapter, is deemed a valid payment for all purposes.

## PART 92—PROCEDURE

Sec.

92.1 Who may apply for waiver.
92.2 Costs of processing an application.
92.3 Where to apply.
92.4 Report of the agency or department.
92.5 Action by the agency or department.
92.6 Initial action by the General Accounting Office and Appeals to the Comptroller General.
92.7 Refund of amounts repaid and waived.
92.8 Written record.
92.9 Register of waivers and report.
92.10 Referral of claims for collection or litigation.

Authority: 31 U.S.C. 711. Interpret or apply 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, as amended by Pub. L. 99–224, 99 Stat. 1741–1742, December 28, 1985, and by Pub. L. 100–702, Title X, section 1009(a), 102 Stat. 4667, November 19, 1988.



**§ 92.1 Who may apply for waiver.**

An application for waiver may be initiated by an employee, member, or other person from whom collection is sought, or by an unauthorized official of the agency or department which made the erroneous payment, or by the Comptroller General of the United States.

**§ 92.2 Costs of processing an application.**

An application for waiver may be suspended and collection efforts terminated pursuant to the Federal Claims Collection Standards, part 104 of this title, when the cost of processing the application for waiver is likely to exceed the amount recoverable on the claim and there are no countervailing Government policies. Actions taken pursuant to this section should be recorded as a termination of collection efforts and do not constitute a grant of waiver.

**§ 92.3 Where to apply.**

(a) An application for waiver filed by an employee, member, or other person from whom collection is sought shall be submitted to the agency or department which made the erroneous payment.

(b) After the agency or department has taken the actions required by §§ 92.4 and 92.5, the employee, member, or other person from whom collection is sought may request the agency or department to submit the matter to the General Accounting Office.

(c) The agency or department shall submit all waiver applications and appeals for consideration by the General Accounting Office to: Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

The submission shall include all of the information required by §§ 92.4 and 92.5, and any written comments on the matter submitted by the employee, member, or other person from whom collection is sought.

**§ 92.4 Report of the agency or department.**

(a) Except as provided in paragraph (b) of this section, upon initiation of an application for waiver, the agency or department shall prepare a written report containing a chronological summary of the facts and circumstances including:

(1) The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located;

(2) The aggregate amount of the claim;

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(3) The date the erroneous payment was discovered;

(4) The date the employee, member, or other person from whom collection is sought was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice;

(5) A statement as to the circumstances under which the erroneous payment was made, the applicant's knowledge of the erroneous payment and the steps the applicant took, if any, to bring the matter to the attention of the appropriate official;

(6) A determination as to whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, member, or other interested person and the factual basis for such a determination;

(7) A statement as to whether or not the erroneous payment is the subject of an exception made by the Comptroller General of the United States;

(8) Legible copies or the originals of supporting documents such as leave and earnings statements, travel authorizations and vouchers, and military orders;

(9) Statements of the employee, member, or other interested person;

(10) A statement as to the reason the agency or department believes the erroneous payment occurred and the corrective action taken to prevent the occurrence of similar erroneous payments;

(11) A statement as to what action, if any, has been taken to obtain repayment of the claim, and whether or not the employee, member, or other person from whom collection may be sought has made any repayment.

(b) No written report is required where the amount involved is $100 or less and there is no indication of fraud, misrepresentation, fault, or lack of good faith.

**§ 92.5 Action by the agency or department.**

Upon completion of the report, the agency or department,

(a) Shall grant or deny waiver if authorized by §§ 91.4(c) and 91.5 of this subchapter, or refer the matter to the General Accounting Office in accordance with § 92.3(c) of this part, and

(b) Shall provide written notice as to whether the application for waiver has been granted, denied, or referred to the General Accounting Office, to the employee, member, or other person from whom collection is sought provided the person can reasonably be located. Where waiver has been denied, the notice shall state that, upon request, the agency or department will forward an appeal to the General Accounting Office pursuant to § 92.3 of this part.

**§ 92.6 Initial action by the General Accounting Office and appeals to the Comptroller General.**

(a) The Claims Group will issue a letter to the agency or department granting or denying waiver in whole or in part. In every case where waiver is denied in whole or in part, the Claims Group will send a copy of the letter to the employee, member, or other person from whom collection is sought.

(b) Letters issued by the Claims Group granting or denying waiver may be appealed to the Comptroller General upon written request by the agency or department, or by the employee, member, or other person from whom collection is sought. The request should fully explain the errors alleged and the basis of the appeal and should be addressed to: Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

(c) The Comptroller General will issue a decision on the appeal and will send a copy of the decision to the agency or department, and to the employee, member, or other person from whom collection is sought.

**§ 92.7 Refund of amounts repaid and waived.**

(a) Where an employee, member, or other person from whom collection is sought has repaid all or part of a claim to the United States and all or part of the claim is subsequently waived, the application for waiver shall be construed as an application for a refund and the agency or department shall, to the extent of the waiver, refund the amount paid. However, no refund shall be paid where the employee, member, or other person from whom collection is sought cannot reasonably be located within 2 years after the effective date of the waiver. Refunds shall be charged to the appropriation from which the erroneous payment was made.

(b) When no refund is made to an otherwise eligible person, the written record should include information as to the attempts made to locate that person and other pertinent information.

**§ 92.8 Written record.**

(a) The report of the agency or department, any written comments submitted by the employee, member or other person from whom collection is sought, an account of the waiver action taken and the reasons therefor, and other pertinent information such as the action taken to refund amounts repaid shall constitute the written record in each case.

(b) The written record shall be retained for review by the General Accounting Office.

(c) Upon request by an employee, member, or other person against whom collection is sought, the agency or department shall make the written record of the waiver application which pertains to them available for inspection.

**§ 92.9 Register of waivers and report.**

(a) The agency or department shall maintain a register for each of the categories listed in paragraph (c) of this section showing the disposition of each application for waiver considered pursuant to this subchapter. These registers shall be retained for review by the General Accounting office.

(b) Within 60 days after the close of each fiscal year, the agency or department shall furnish a report to the Claims Group, General Accounting Office, showing the following information for each of the categories listed in paragraph (c) of this section with respect to matters considered pursuant to this subchapter:

(1) The total amount waived by the agency or department;

(2) The number and dollar amount of waiver applications granted in full;

(3) The number of waiver applications granted in part and denied in part and the dollar amount of each;

(4) The number and dollar amount of waiver applications denied in their entirety;

(5) The number of waiver applications referred to the General Accounting Office for action;

(6) The dollar amount refunded as a result of waiver action by the agency or department; and

(7) The dollar amount refunded as a result of waiver action by the General Accounting Office.

**§ 92.10 Referral of claims for collection or litigation.**

(a) If the agency or department has considered waiver and has denied waiver in whole or in part, the General Accounting Office shall be so advised when any claim is referred to it.

(b) No claim for the recovery of an erroneous payment which is under consideration for waiver shall be referred to the Attorney General unless the time remaining for suit within the applicable limitation does not permit such waiver consideration prior to referral.



**PART 93—[REMOVED]**

3. Part 93 is removed.

Charles A. Bowsher,
*Comptroller General of the United States.*

[FR Doc. 90-28157 Filed 11-29-90; 8:45 am]
BILLING CODE 7610-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 51

**[Docket No. FV-89-213]**

### Table Grapes (European or Vinifera Type); Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed action would revise the United States Standards for Grades of Table Grapes (European or Vinifera Type). The proposal would allow small bunches of grapes between two and five ounces to be certified to a U.S. grade. The California Grape and Tree Fruit League, a trade association representing major table grape growers and packers, has requested the USDA to add an additional grade, U.S. No. 1 Institutional, to the U.S. grade standards. In the proponents judgement, this change would improve marketing information and communication between shippers and receivers of small bunch, institutional pack type table grapes. The Agricultural Marketing Service (AMS), has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

**DATES:** Comments must be postmarked or courier dated on or before January 29, 1991.

**ADDRESSES:** Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Thomas G. Gambill, at the above address or call (202) 447-5024.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Table Grapes (European or Vinifera Type) will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Table Grapes (European or Vinifera Type) were last revised in June 1987. The standards are covered under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Industry representatives have requested that the standards be revised to add a new grade, U.S. No. 1 Institutional.

In recent years, new marketing and packaging techniques have developed small, consumer size servings of grapes. Under the present grade requirements these grapes cannot meet any U.S. grade due to bunch size requirements.

The growers and shippers represented by the California Grape and Tree Fruit League requested a revision because the present standards do not, in their judgement, reflect current marketing practices. They believe that this proposed revision would give the industry grade standards that would reflect today's modern marketing and packaging methods. This would be accomplished by creating a new grade.

Specifically, the proposed revision would create a new section following U.S. No. 1 Table entitled "U.S. No. 1 Institutional." This new grade would have all the requirements of the present U.S. No. 1 Table grade except for a smaller bunch size and added marking requirements. The tolerance sections also would be reworded to provide for this smaller bunch size. The U.S. No. 1 Table grade requires the minimum bunch size to be not less than one-fourth pound. The proposed additional grade, U.S. No. 1 Institutional, would provide that the bunch size be no less than 2 ounces and no greater than 5 ounces in weight. The U.S. No. 1 Table grade provides a tolerance of 8 percent at shipping point and 12 percent en route or at destination for undersize bunches and for bunches and berries failing to meet the remaining requirements of the grade. Remaining requirements are those requirements exclusive of bunch color requirements, stem color requirements and minimum diameter of berries. Since the proposed grade includes an upper size limit (5 ounces), the proposal would include oversize bunches in this tolerance. Therefore, the word offsize would be used instead of undersize in § 51.886 (currently § 51.885) Tables I and II Section (D). This proposal would allow shipments of table grapes in this size range to be certified to a U.S. grade. In addition, a marking requirement would be added to this grade to distinguish the U.S. No. 1 Institutional grade from the U.S. No. 1 Table grade. This grade would require that not less than 95% of the shipping containers in a lot be legibly marked "Institutional Pack."

**List of Subjects in 7 CFR Part 51**

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

**PART 51—[AMENDED]**

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

**Authority:** Sections 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type), §§ 51.885 through 51.912 are redesignated §§ 51.886 through 51.913 and the appropriate cross references within the part are changed.

3. The table of contents for the subpart is revised to read as follows:

**Subpart—United States Standards for Grades of Table Grapes (European or Vinifera Type)**

**Grades**

Sec.
51.880 U.S. Extra Fancy Table.
51.881 U.S. Extra Fancy Export.
51.882 U.S. Fancy Table.
51.883 U.S. Fancy Export.
51.884 U.S. No. 1 Table.
51.885 U.S. No. 1 Institutional.

**Tolerances**

51.886 Tolerances.

**Application of Tolerances**

51.887 Application of Tolerances.

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Sec.
**Maturity Requirements**
51.886 Maturity Requirements.
**Definitions**
51.889 Well developed grapes.
51.890 One variety.
51.891 Uniform in appearance.
51.892 Color terms.
51.893 Firm.
51.894 Weak.
51.895 Shriveled at capstem.
51.896 Shattered.
51.897 Wet.
51.898 Decay.
51.899 Waterberry.
51.900 Sunburn.
51.901 Damage.
Sec.
51.902 Fairly well filled.
51.903 Excessively tight.
51.904 Shot berries.
51.905 Dried berries.
51.906 Well developed and strong.
51.907 Diameter.
51.908 Serious damage.
51.909 Materially shriveled at capstem.
51.910 Straggly.
51.911 Container.
51.912 Export.
**Metric Conversion Table**
51.913 Metric conversion table.

4. Proposed new § 51.885 reads as follows:

TABLE I.—TOLERANCES AT SHIPPING POINT [1]

[Percent]

| Factor | U.S. extra fancy table | U.S. fancy table | U.S. no. 1 table |
|---|---|---|---|
| (A) For bunches failing to meet color requirements | 10 | 10 | 10 |
| (B) For bunches failing to meet requirements for minimum diameter of berries | 10 | 10 | 10 |
| (C) For bunches failing to meet stem color requirements | 10 | | |
| (D) For offsize bunches and for bunches and berries failing to meet the remaining requirements for the grade | 5 | 8 | 8 |
| Including in (D): | | | |
| (a) For serious damage | 2 | 2 | 2 |
| And, including in (a): | | | |
| (i) For decay | ½ of 1 | ½ of 1 | ½ of 1 |

TABLE II.—TOLERANCES EN ROUTE OR AT DESTINATION

| | | | |
|---|---|---|---|
| (A) For bunches failing to meet color requirements | 10 | 10 | 10 |
| (B) For bunches failing to meet requirements for minimum diameter of berries | 10 | 10 | 10 |
| (C) For bunches failing to meet stem color requirements | 10 | | |
| (D) For offsize bunches and for bunches and berries failing to meet the remaining requirements of the grade | 12 | 12 | 12 |
| Including in (D): | | | |
| (a) For permanent defects | 8 | 8 | 8 |
| (b) For serious damage | 4 | 4 | 4 |
| And, including in (b): | | | |
| (i) For serious damage by permanent defects | 2 | 2 | 2 |
| (ii) For decay | 1 | 1 | 1 |

[1] Shipping Point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

**§ 51.885 U.S. No. 1 Institutional.**

*U.S. No. 1 institutional* consists of grapes which meet the requirements for U.S. No. 1 Table except that bunches shall weigh not less than two ounces and not more than five ounces. Additionally, not less than 95% of the containers in the lot must be legibly marked Institutional Pack.

5. Newly redesignated 51.886 is amended by revising the tables to read as follows:

**§ 51.886 Tolerances.**

* * * * *

Dated: November 23, 1990

**D. Michael Holbrook,**

*Acting Administrator.*

[FR Doc. 90-28143 Filed 11-29-90; 8:45 am]

BILLING CODE 3410-02-M

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**Food and Nutrition Service**

**7 CFR Part 273**

**[Amendment No. 326]**

**Food Stamp Program: Treatment of Foster Care Individuals and Foster Care Payments**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to amend Food Stamp Program (FSP) regulations governing the treatment of certain individuals receiving foster care payments when determining the eligibility and benefit level of households caring for such individuals. This action is the result of several recent court suits and two appeals court decisions in Minnesota (*Murray* v. *USDA*, August 16, 1988) and Vermont (*Foster* v. *USDA*, June 24, 1988). The appeals courts have concluded that the foster children involved in the court cases are boarders and cannot be required to be considered members of the households caring for such children and that foster care maintenance payments are not to be considered countable income to such households when determining the households' food stamp eligibility and benefit levels. This action adopts the decision reached by the courts for foster children and extends the policy to include like household situations containing foster care adults.

**DATES:** Comments must be received on or before January 29, 1991 to be assured of consideration.

**ADDRESSES:** Comments should be submitted to Joseph H. Pinto, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, room 711, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments shall be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, room 706, Alexandria, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Rulemaking Section at the above address or by telephone at (703) 756-3496.



**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291*

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The Department has classified this action as nonmajor. The effects of this action on the economy will be less than $100 million. This action will have little, if any, effect on cost or prices. Competition, employment, investment, productivity, and innovation will remain unaffected.

There will be no effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rules and related Notices to 7 CFR part 3015, subpart V, this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that the provisions described in this action reflect new or different policy from that which the agencies are currently operating under.

*Paperwork Reduction Act*

This rulemaking does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

**Background**

Current regulations at 7 CFR 273.1(a)(2)(i)(B) provide that, under no circumstances, can children under 18 years of age who are under the parental control of an adult household member be considered separate for food stamp benefits from the person providing the parental control. This parental control provision includes foster children. Current regulations at 7 CFR 273.9(c) further prohibit granting boarder status to children under parental control. Lastly, current regulations at 7 CFR 273.9(b)(2)(i) provide that foster care payments are unearned income and counted in their entirety when determining the eligibility and benefit level of the household caring for the foster individual.

The treatment of foster care individuals and payments as discussed above has been significantly changed as a result of several court suits and, in particular, by two courts of appeals decisions which cover 10 States. *See Murray* v. *Lyng*, 854 F.2d 303 (8th Cir. 1988) and *Foster* v. *Celani*, 849 F.2d 91 (2nd Cir. 1988). Both appeals courts concluded that foster children are "boarders" under the Food Stamp Act of 1977, as amended, and cannot be required to be considered members of the provider household caring for such children under the specific household composition provisions of 7 CFR 273.1(a). The *Foster* decision expressly adopted the reasoning of the district court, and reference to that opinion is necessary for a complete understanding of the Second Circuit's rationale. *Foster*, 849 F.2d at 92; *Foster* v. *Celani*, 683 F. Supp. 84 (D. Vt. 1987). It is the Department's view that the decisions of the appeals courts set a precedent for treating all foster individuals (children and adults) as boarders.

The Department was concerned that a delay in establishing a nationwide policy to address the decision of the appeals courts regarding the treatment of foster care individuals and payments would lead to additional legal action against the Department and/or other State welfare agencies and would create a situation where like households are being treated differently across the nation. Therefore, the Food and Nutrition Service Regional Offices were informed to instruct State agencies to implement the decision of the courts prior to the publication of a formal rulemaking. State agencies under the jurisdiction of the circuit courts were required to implement the policy change within the timeframes specified by the courts' final orders. All other State agencies were subject to the FNS directive which provided that State agencies implement the policy change by February 1, 1989, for households with foster care children or adults.

This action proposes to codify (formally incorporate into the Code of Federal Regulations) the decision of the appeals courts.

Accordingly, this action proposes to amend the regulations to provide that the current prohibitions against granting separate household status (7 CFR 273.1(a)) or granting boarder status (7 CFR 273.2(c)) to children under parental control of an adult household member and other adults (regardless of relationship) are not applicable to foster care individual placed in the homes of relatives or other individuals or families.

The *Murray* decision recognizes the fact that current regulations governing the treatment of boarders and boarder income at 7 CFR 273.1(b), 273.11(b)(1)(i) and 273.1(b)(1)(ii) provide that any direct payment to the household from a boarder would be considered self-employment income to the household, excluding costs for lodging and meals as a cost-of-doing business expense. The court concluded that, pursuant to current regulations, a household caring for foster care boarders would not realize a "net gain" under the category of self-employment income received from foster care boarders. *Murray*, 854 F.2d at 306-07. In other words, it is the court's view that the household receives a direct payment from the foster care boarder equal to the amount the household could claim as an excludable cost-of-doing business expense. In light of the court's conclusion, and for administrative ease, the Department has determined that it is not necessary for State agencies to compute "net" self-employment income from foster care boarders pursuant to 7 CFR 273.11(b)(1)(i) and (ii). Accordingly, this action proposes to amend 7 CFR 273.11(b)(1) to exempt foster care payments from the computation of self-employment income from boarders.

It is important to note that current regulations at 7 CFR 273.1(c) allow a household that provides boarder services has the option to request that the boarder be considered a member of the household. In cases where such requests are made, the boarder's income would be counted in its entirety to the household providing the boarder service like any other household member. The courts recognized that this policy exists and did not dispute the continuation of the policy with respect to foster care individuals and foster care payments. *Murray*, 854 F.2d at 305; *Foster*, 683 F. Supp. at 87. This action proposes that households continue to have the right to utilize this option for foster care individuals and that the entire foster care payment would be considered as unearned income to the household providing the foster care under this option.

Accordingly, this action proposes to amend 7 CFR 273.1(c) to add a new paragraph (c)(6) which provides that foster care individuals who have been placed in the homes of relatives or other individuals or families are boarders, and that Federal, State or local governmental

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or court-ordered foster care payments for these individuals shall not be considered as earned/unearned income to the provider household under 7 CFR 273.1(b). In addition, the new paragraph (c)(8) would provide that such payments are exempt from the provisions of 7 CFR 273.11(b) governing the computation of net self-employment income received from boarders. Conforming amendments are also made to 7 CFR 273.9 (b)(1)(ii), (b)(2)(ii) and (c) and 7 CFR 273.11(b)(1).

**Implementation**

The Department has determined that it is necessary to establish, by regulation, a specific effective date for the final regulatory action which will codify the change in policy relative to the treatment of foster care individuals. A specified effective date is necessary in order to determine from what point in time State agencies would be held responsible for delayed implementation of the policy change once they were notified by the FNS Regional Office to implement and from what point in time households would be entitled to restored benefits as a result of delayed implementation. As stated earlier in this preamble, State agencies were instructed, through an agency directive, to implement the policy change on the treatment of foster care individuals no later than February 1, 1990. To be consistent with the agency directive, the Department proposes that the effective date of the subsequent final rulemaking on the provisions of this proposed action be retroactive to February 1, 1990.

The Department also proposes that the final rulemaking provide for restored benefits to affected households in cases where a State agency failed to implement the agency directive by February 1, 1990. Such restored benefits would be provided back to February 1, 1990 or the date of the household's initial application for benefits, whichever occurred later.

**List of Subjects in 7 CFR Part 273**

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation for part 273 continue to read as follows:

Authority: 7 U.S.C. 2011–2029.

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

2. In § 273.1, a new paragraph (c)(8) is added to read as follows:

**§ 273.1 Household concept.**

* * * * *

(c) *Boarders.* * * *

(8) Notwithstanding the provisions of paragraphs (c) (1), (2) and (4) of this section, foster care individuals placed in the home of relatives or other individuals or families by a Federal, State or local foster care program, shall be considered boarders. The Federal, State, or local governmental, or court ordered, foster care payments received by the household for such foster care boarder shall not be considered as available income to the household and such payment is exempt from the computation of net self-employment income from boarders under the provisions § 273.11(b). Foster care boarders may participate in the Program as members of the household providing the boarder services to them, at such household's request. If the household chooses this option, foster care payments received by the household shall be considered unearned income to the household and counted in their entirety in determining the household's income eligibility and benefit level. The provisions of this paragraph do not apply to individuals qualified to participate in the Program under paragraph (e) of this section.

* * * * *

**§ 273.9 [Amended]**

3. In § 273.9:

a. The last sentence of paragraph (b)(1)(ii) is amended by adding the words", except foster care boarders," after the word "boarder".

b. Paragraph (b)(2)(ii) is amended by adding the words "who are considered members of the household" after the words "foster care payment for children or adults", and a new paragraph (c)(15) is added to read as follows:

**§ 273.9 Income and deductions.**

* * * * *

(c) *Income exclusions.* * * *

(15) Foster care payments received by households with foster care individuals who are considered to be boarders in accordance with § 273.1(c).

* * * * *

**§ 273.11 [Amended]**

4. In § 273.11, the third sentence of paragraph (b)(1) is amended by adding the words ", except foster care boarders," after the word "boarder".

Dated: November 20, 1990.

George A. Braley,

*Acting Administrator.*

[FR Doc. 90-28139 Filed 11-29-90; 8:45 am]

BILLING CODE 3410-30-M

**Agricultural Marketing Service**

**7 CFR Parts 916 and 917**

**[Docket No. FV-90-308]**

**Nectarines, Pears, Plums and Peaches Grown in California; Order Directing That Referenda Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referenda Agents To Conduct the Referenda**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Order for referenda.

**SUMMARY:** This document directs that referenda be conducted among eligible growers of nectarines, pears, plums and peaches grown in California to determine whether they favor continuance of the marketing orders regulating the handling of those fruits.

**DATES:** The representative production period is from January 1, 1990, through December 31, 1990. The referendum will be conducted from January 7 through February 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kurt J. Kimmel of the Agriculture Marketing Service (AMS), Fruit and Vegetable Division's Fresno, California, Marketing Field Office, 2202 Monterey St., suite 102–B, Fresno, California 93721, telephone (209) 487–5901, or, George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3919.

**SUPPLEMENTARY INFORMATION:** This order directs that referenda be conducted among eligible growers to determine whether they favor continuance of Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines, pears, plums and peaches grown in California. The marketing orders are effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. The referenda are to be conducted among the growers who, during the period January 1, 1990, through December 31, 1990 (which is hereby determined to be the representative period for purposes of conducting the referenda), were engaged, in the State of California, in the production of nectarines, pears, plums and peaches covered by the two marketing orders. The referenda will be conducted during the period January 7 through February 6, 1991.



Section 916.64(e) of the order regulating the handling of nectarines and § 917.61(e) of the order regulating the handling of pears, plums and peaches provide that the Secretary shall conduct continuance referenda every fourth year. The last such referenda were conducted during January and February, 1987.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of an order with respect to one or more of the regulated fruits if less than two-thirds of the growers of such fruit voting in the referenda and growers of less than two-thirds of the volume of such fruit represented in the referenda, favor continuance. The outcome of the referendum on each fruit covered under Marketing Order 917 is not dependent on the results of the referenda relative to the other fruit covered under that marketing order. In evaluating the merits of continuance versus termination, the Secretary would consider the results of the continuance referenda, other relevant information concerning the operation of the orders, and the relative benefits and disadvantages to growers, handlers, and consumers. Through such analysis, the Secretary would determine whether continued operation of the orders would tend to effectuate the declared policy of the Act.

In any event section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and that majority produced for market more than 50 percent of the commodity covered by the order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referenda herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581–0089. It has been estimated that it will take an average of 20 minutes to read and complete the ballot for each of the approximately 1,800 growers who elect to participate in the voluntary referenda balloting.

The procedure applicable to the referenda is the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*).

Gary D. Olson and Kurt J. Kimmel of the AMS, Fruit and Vegetable Division's Fresno, California, Marketing Field Office are hereby designated as referenda agents of the Secretary of Agriculture to conduct the referenda. Ballots may be obtained from the referenda agents, or from their appointees, at 2202 Monterey St., suite 102–B, Fresno, California 93721, telephone (209) 487–5901. Copies of the texts of Marketing Order Nos. 916 and 917 may be examined in the office of the referenda agents and are also available for examination at the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, 14th and Independence Avenue SW., room 2525–S, Washington, DC 20250.

**List of Subjects in 7 CFR Parts 916 and 917**

Marketing agreements, Nectarines, Pears, plums and peaches, Reporting and recordkeeping requirements.

Authority: Agricultural Marketing Agreement Act of 1937, as amended; Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 23, 1990.

**John E. Frydenlund,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 90-28142 Filed 11-29-90; 8:45 am]

BILLING CODE 3410-02-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90-NM-239-AD]**

**Air Worthiness Directives; Boeing Model 727-200 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing 727–200 series airplanes, which currently requires a one-time visual inspection to detect cracks and/or corrosion of the fuselage skin adjacent to stringer (S)–28L and S–28R from body station (BS) 700 to BS 720 and repair, if necessary. This action would require similar repetitive visual inspections and would provide an optional terminating modification. This proposal is prompted by the possibility of corrosion and/or cracking developing after the initial inspection and the development of a modification that will reduce the possibilities of corrosion developing in the affected area. This condition, if not corrected, could result in rapid decompression of the airplane.

**DATES:** Comments must be received no later than January 23, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103 Attention: Airworthiness Rules Docket No. 90–NM–239–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. Shardul R. Panchal, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2780. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–239–AD." The post card will be date/time stamped and returned to the commenter.

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**Discussion**

On October 28, 1988, the FAA issued AD 88-23-12, Amendment 39-6388 (54 FR 46366, November 3, 1989), to require a one-time visual inspection to detect cracks and/or corrosion of the fuselage skin adjacent to stringer (S) 28L and S-28R from body station (BS) 700 to BS 720 and repair, if necessary. That action was prompted by a report of a 48-inch crack in the fuselage skin adjacent to S-28 and the failure of an adjacent frame. This condition, if not corrected, could result in rapid decompression of the airplane.

Since issuance of that AD, the FAA has determined that repetitive visual inspections to detect corrosion and cracks are warranted, based on the nature of corrosion and consequent cracking, as well as reports of these discrepancies in the subject area. Additionally, the manufacturer has developed a preventative modification which, if installed, will reduce the probability of corrosion occurring in the affected area of the fuselage skin.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-53A0203, Revision 1, dated April 26, 1990, which describes procedures for repetitive visual inspections to detect corrosion and cracking, and installation of a preventative modification of the fuselage skin.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-23-13 to require repetitive visual inspections of the fuselage skin adjacent to S-28L and S-28R from BS 700 to BS 720, and repair, if necessary, in accordance with the service bulletin previously described. The proposal provides for an optional preventative modification which, if accomplished, would constitute terminating action for the repetitive inspections.

There are approximately 1,028 Model 727-200 series airplanes of the affected design in the worldwide fleet. It is estimated that 671 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $161,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6388 (54 FR 46366, November 3, 1989), AD 88-23-13, with the following new airworthiness directive:

**Boeing:** Applies to Model 727-200 series airplanes, except line number 001 through 765 which are currently subject to the inspection requirements of AD 78-13-01 [inspections adjacent to stringer (S) 28L and S-28R from body station (BS) 700 to BS 720], certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within 15 days after November 20, 1990 (the effective date of Amendment 39-6388, AD 88-23-13), conduct an external detailed visual inspection for cracks and corrosion of the fuselage skin adjacent to stringer (S) 28L and S-28R from body station (BS) 700 to BS 720, in accordance with Boeing Alert Service Bulletin 727-53A0203, dated October 20, 1988, or Revision 1, dated April 26, 1990. Any cracks or corrosion must be repaired prior to further flight, in accordance with the service bulletin.

B. Within 12 months after the initial inspection required by paragraph A. of this AD, or 6 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12 months, repeat the inspection required by paragraph A. of this AD.

C. Modification in accordance with paragraph I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0203, Revision 1, dated April 26, 1990, constitutes terminating action for the inspections required by paragraph B. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Issued in Renton, Washington, on November 20, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28121 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-165-AD]**

**Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-8 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions if not corrected, could result in a degradation of the structural capabilities of the affected airplanes.

**DATES:** Comments must be received no later than January 28, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-165-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certificate Office, 3229 East Spring Street, Long Beach California.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Cecil, Airframe Branch, ANM-120L; Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California, telephone (213) 988-5322.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-165-AD." The post card will be date/time stamped and returned to the commenter.



**Discussion**

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from aircraft operators, manufacturers, regulatory authorities, and other aviation representatives was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) Select service bulletins, applicable to each airplane model in the transport fleet to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Inspection Documents (SID), and (5) assess repair quality..

The Working Group assigned to review the McDonnell Douglas Model DC-8 series airplanes completed its work on Item (1), above, in June 1989. The Working Group's proposal is contained in McDonnell Douglas Document Number MDC K1579, "DC-8 Aging Aircraft Service Action Requirements Document." On June 4, 1990, the FAA issued AD 90-16-05, Amendment 39-6614 (55 FR 31818, August 6, 1990), which mandates the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the McDonnell Douglas Model DC-8 fleet. This program is contained in McDonnell Douglas Document Number MDC K4606, "DC-8 Corrosion Prevention and Control Document," dated April 1990, which the FAA has reviewed and approved.

Section 1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 2 of the Document provides guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 3 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model DC-8 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Age, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, which ever is less. Finally, this section establishes a minimum implementation rate of one airplane per year for each task.

Section 4 of the Document identifies the specific airplane areas that are subject to the program, and describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program, along with the implementation age and repeat interval for each area, and other information necessary to carry out the program for each area. The task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where

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NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 5 establishes the procedures for reporting the results of the inspections required by the corrosion prevention and control program.

Section 6 provides for periodic review and update of the data contained in the Document.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the McDonnell Douglas Document previously described.

Paragraph A. of the proposed rule would require a revision to the operators' FAA-approved maintenance programs to include the McDonnell Douglas Document Number MDC K4608, "DC-8 Corrosion Prevention and Control Document" dated April 1990, in its entirety. A note states that any cracks or corrosion found must be addressed in accordance with FAR part 43. A second note states that, to the extent that there are differences between the terms of the Document and the terms of the AD, the terms of the AD are controlling. Further, a note pertaining to non-destructive inspection (NDI) methods states that NDI's done in accordance with section 4 of the Document, must be performed in accordance with methods that are acceptable to the Administrator in accordance with FAR 43.13.

Paragraph B. would require that within 7 days after determining the existence of Level 3 corrosion, an operator must either inspect the same area on the remainder of its fleet, or submit to the FAA either a plan for expediting those inspections or data substantiating that no such scheduling adjustments are necessary. To ensure that Level 3 corrosion is detected in a timely manner, the FAA may, upon reviewing these submissions, require additional data or adjustments beyond those that were submitted by the operator. A note clarifies that for the purposes of this paragraph, Level 3 corrosion includes isolated occurrences which, in accordance with the McDonnell Douglas document, might otherwise be downgraded to Level 1. Finally, once approved, this revision inspection schedule would be required to be incorporated into the operator's maintenance program prior to the compliance time specified for the first task required under the FAA-approved adjusted schedule.

Paragraph C. would include the cognizant FAA Principal Inspector in the coordination/review process for extension to the inspection intervals. In addressing unanticipated scheduling requirements, it is not the intent of the FAA to include the initial inspection requirements for Level 1 corrosion since these time frames would have already been established by the baseline program.

Paragraph D. would require that all Level 2 corrosion reports and follow-up reports for Level 3 corrosion be submitted at least quarterly to McDonnell Douglas. It should be noted that although the Document prescribes a 30-day reporting requirement, this AD would require quarterly reporting submissions. Furthermore, this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that transferred airplanes are inspected in accordance with the baseline program on the same basis as if there were continuity in ownership, and that scheduling of the inspections for each airplane is not delayed or postponed due to a transfer of ownership. Airplanes that have previously been subject to an FAA-approved maintenance program would have to be inspected in accordance with either the previous operator's or the new operator's inspection schedule, whichever occurs first. Other airplanes would have to be inspected before an operator could begin operating them or in accordance with a schedule approved by the FAA.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, review their program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to level 1 or better, an operator must submit a proposal for such corrective action for the FAA's approval within 60 days after the finding of corrosion. Within 30 days after approval, operators are required to incorporate these corrective actions into their FAA-approved maintenance program.

It should be noted that, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on pervious findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 337 Model DC-8 series airplanes of the affected design in the worldwide fleet. It is estimated that 222 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,922 manhours per airplane to accomplish the required actions. For an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $76,880. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $17,067,360.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to all Model DC-8 series airplanes, certified in any category. Compliance required as indicated, unless previously accomplished.

**Note:** This AD references McDonnell Douglas Document Number MDC K4608, "DC-8 Corrosion Prevention and Control Document," dated April 1990, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in McDonnell Douglas Document Number MDC K4608, "DC-8 Corrosion Prevention and Control Document," dated April 1990 (hereinafter referred to as "the Document").

**Note:** All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

**Note:** Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A. of this AD Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of the findings of any Level 3 corrosion to the Manager of the Los Angeles Aircraft Certification Office (ACO) and inspect the affected area on all Model DC-8 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Los Angeles ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on the remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

**Note:** Notwithstanding the provision of section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

**Note:** As used throughout this AD, where documents are to be submitted to the Manager of the Los Angeles ACO, the document should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO. The Los Angeles ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

**Note:** The reporting requirements of this paragraph and of paragraph D. of this AD do not relieve operators from reporting corrosion as required by FAR section 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

**Note:** Except as provided in this paragraph, notwithstanding section 2.1, paragraph 14. of the Document, all extensions to any compliance time must be approved by the Manager of the Los Angeles ACO.

D. Reports of Level 2 corrosion and follow-up reports for Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in section 4 of the Document, they may not be increased without specific approval from the Manager of the Los Angeles ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Los Angeles ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Los Angeles ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los

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Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on November 5, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28122 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-166-AD]**

## Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series and Model MD-88 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88, airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation of the structural capabilities of the affected airplanes.

**DATES:** Comments must be received no later than January 28, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-166-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Cerification Office, 3229 East Spring Street, Long Beach California.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Y.J. Hsu, Airframe Branch, ANM-120L; Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California, telephone (213) 988-5323.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-166-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes where taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from aircraft operators, manufacturers, regulatory authorities, and other aviation representatives was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to: (1) Select service bulletins, applicable to each airplane model in the transport fleet to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Inspection Documents (SID), and (5) assess repair quality.

The Working Group assigned to review the McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes completed its work on Item (1), above, in June 1989. The Working Group's proposal is contained in McDonnell Douglas Report No. MDC-K1572, "DC-9/MD-80 Aging Aircraft Service Action Requirements Document." On August 6, 1990, the FAA issued AD 90-18-03, Amdt 39-6701 (55 FR 34704, August 24, 1990), which mandates the installation



of the modifications and inspections identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the fleet of McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes. This program is contained in McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," dated April 1990, which the FAA has reviewed and approved.

Section I of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain allowable limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 2 of the Document provides guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 3 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Age, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, this section establishes a minimum implementation rate of one airplane per year for each task.

Section 4 of the Document identifies the specific airplane areas that are subject to the program, and describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program, along with the implementation age and repeat interval for each area, and other information necessary to carry out the program for each area. The task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 5 establishes the procedures for reporting the results of the inspections required by the corrosion prevention and control program.

Section 6 provides for periodic review and update of the data contained in the Document.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the McDonnell Douglas Document previously described.

Paragraph A. of the proposed rule would require a revision to the operators' FAA-approved maintenance programs to include the McDonnell Douglas Document Number MDC K4606, "DC-9/MD-80 Corrosion Prevention and Control Document," dated April 1990, in its entirety. A note states that any cracks or corrosion found must be addressed in accordance with FAR part 43. A second note states that to the extent that there are differences between the terms of the Document and the terms of the AD, the terms of the AD are controlling. Further, a note pertaining to non-destructive inspection (NDI) methods states that NDI's done in accordance with section 4 of the Document, must be performed in accordance with methods that are acceptable to the Administrator in accordance with FAR 43.13.

Paragraph B. would require that within 7 days after determining the existence of Level 3 corrosion, an operator must either inspect the same area on the remainder of its fleet, or submit to the FAA either a plan for expediting those inspectors or data substantiating that no such scheduling adjustments are necessary. To ensure that Level 3 corrosion is detected in a timely manner, the FAA may, upon reviewing these submissions, require additional data or adjustments beyond those that were submitted by the operator. A note clarifies that for the purposes of this paragraph, Level 3 corrosion includes isolated occurrences which, in accordance with the McDonnell Douglas document, might otherwise be downgraded to Level 1. Finally, once approved, this revised inspection schedule would be required to be incorporated into the operator's maintenance program prior to the compliance time specified for the first task required under the FAA-approved adjusted schedule.

Paragraph C. would include the cognizant FAA Principal Inspector in the coordination/review process for extension to the inspection intervals. In addressing unanticipated scheduling requirements, it is not the intent of the FAA to include the initial inspection requirements for Level 1 corrosion since these time frames would have already been established by the baseline program.

Paragraph D. would require that all Level 2 corrosion reports and follow-up reports for Level 3 corrosion be submitted at least quarterly to McDonnell Douglas. It should be noted that although the Document prescribes a 30-day reporting requirement, this AD would require quarterly reporting submissions. Furthermore, this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.703, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that transferred airplanes are inspected in accordance with the baseline program on the same basis as if there were continuity in ownership, and that scheduling of the inspections for each airplane is not delayed or postponed due to a transfer of ownership. Airplanes that have previously been subject to an FAA-approved maintenance program would have to be inspected in accordance with either the previous operator's or the new operator's inspection schedule, whichever occurs first. Other airplanes would have to be inspected before an operator could begin operating them or in accordance with a schedule approved by the FAA.

Paragraph G. would require that operators, upon finding corrosion

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exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for such corrective action for the FAA's approval within 60 days after the finding of corrosion. Within 30 days after approval, operators are required to incorporate these adjusted inspection schedules into their FAA-approved maintenance program.

It should be noted that, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion if attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, not additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operator's corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have assigned OMB Control Number 2120-0056.

There are approximately 1,655 Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, of the affected design in the worldwide fleet. It is estimated that 1,016 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 99 areas called out in the McDonnell Douglas document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $63,360. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $64,373,760.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

**Note:** This AD references McDonnell Douglas Document Number MDC K4608, "DC-9/MD-80 Corrosion Prevention and Control Document," dated April 1990, for inspection procedures, compliance times, and reporting requirements.

In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in McDonnel Douglas Document Number MDC K4608, "DC-9/MD-80 Corrosion Prevention and Control Document," dated April 1990 (hereinafter referred to as "the Document").

**Note:** All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

**Note:** Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A. of this AD, Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Los Angeles Aircraft Certification Office (ACO) and inspect the affected area on all Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, in the operator's fleet; or

b. Submit for approval to the Manager of the Los Angeles ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on the remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

**Note:** Notwithstanding the provision of Section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

**Note:** As used throughout this AD, where documents are to be submitted to the Manager of the Los Angeles ACO, the document should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO. The Los Angeles ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program is to include those adjustments.

**Note:** The reporting requirements of this paragraph and of paragraph D. of this AD do not relieve operators from reporting corrosion as required by FAR § 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

**Note:** Except as provided in this paragraph, notwithstanding § 2.1, paragraph 14, of this Document, all extensions to any compliance time must be approved by the Manager of the Los Angeles ACO.

D. Reports of Level 2 corrosion and follow-up reports for Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas.

E. If the repeat inspections or task intervals of an operator's existing corrosion program are shorter than the corresponding intervals in section 4 of the Document, they may not be increased without specific approval from the Manager of the Los Angeles ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operators's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Los Angeles ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Los Angeles ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. As an alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California.

Issued in Renton, Washington, on November 5, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28123 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-167-AD]**

## Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes, which would require the implementation of a corrosion control program. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes. these incidents have jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation of the structural capabilities of the affected airplanes.

**DATES:** Comments must be received no later than January 28, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-167-AD, 1601 Lind Avenue SW., Renton Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California.

**FOR FURTHER INFORMATION CONTACT:** Ms. Dorenda D. Baker, Airframe Branch, ANM-120L; Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California, telephone (213) 988-5231.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this

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proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-187-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from aircraft operators, manufacturers, regulatory authorities, and other aviation representatives was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to: (1) Select service bulletins, applicable to each airplane model in the transport fleet to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Inspection Documents (SID), and (5) assess repair quality.

The Working Group assigned to review the McDonnell Douglas Model DC-10 series airplanes completed its work on Item (1), above, in August 1988. The Working Group's proposal is contained in McDonnell Douglas Document Number MDC K1571, "DC-10/KC-10 Aging Aircraft Service Action Requirements Document." On June 4, 1990, the FAA issued AD 90-16-04, Amendment 39-6613 (55 FR 31616, August 6, 1990), which mandates the installation of the modifications identified in that Document.

The Working Group has now completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the McDonnell Douglas Model DC-10 fleet. This program is contained in McDonnell Douglas Document Number MDC K4607, "DC-10/KC-10 Corrosion Prevention and Control Document," dated April 1990, which the FAA has reviewed and approved.

Section 1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 2 of the Document provides guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 3 of the Document sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane area is assigned an "Implementation Age" and a "Repeat Interval." The program is applicable in each area to all Model DC-10 airplanes whose age has reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repeat Interval for that area. For airplanes that have already exceeded the applicable Implementation Age, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repeat Interval for that area, whichever is less. Finally, this section establishes a minimum implementation rate of one airplane per year for each task.

Section 4 of the Document identifies the specific airplane areas that are subject to the program, and describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program, along with the implementation age and repeat interval for each area, and other information necessary to carry out the program for each area. The task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found as a result of these inspections must be repaired.

Section 5 establishes the procedures for reporting the results of the inspections required by the corrosion prevention and control program.

Section 6 provides for periodic review and update of the data contained in the Document.

Since corrosion is likely to exist or develop on airplanes of this type design, and AD is proposed which would require adoption of a corrosion prevention control program that is equivalent to or better than the program specified in the McDonnell Douglas Document previously described.

Paragraph A. of the proposed rule would require a revision to the operators' FAA-approved maintenance programs to include the McDonnell Douglas Document Number MDC K4607, "DC-10/KC-10 Corrosion Prevention and Control Document," dated April 1990, in its entirety. A note states that any cracks or corrosion found must be addressed in accordance with FAR part 43. A second note states that to the extent that there are differences between the terms of the Document and the terms of the AD, the terms of the AD are controlling. Further, a note pertaining to non-destructive inspection (NDI) methods states that NDI's done in accordance with section 4 of the Document, must be performed in accordance with methods that are acceptable to the Administrator in accordance with FAR 43.13.

Paragraph B. would require that within 7 days after determining the existence of Level 3 corrosion, an operator must either inspect the same area on the remainder of its fleet, or submit to the FAA either a plan for expediting those inspections or data substantiating that no such scheduling adjustments are necessary. To ensure that Level 3 corrosion is detected in a timely manner, the FAA may, upon reviewing these submissions, require additional data or adjustments beyond those that were submitted by the operator. A note clarifies that for the purposes of this paragraph, Level 3 corrosion includes isolated occurrences which, in accordance with the McDonnell Douglas document, might otherwise be downgraded to Level 1. Finally, once approved, this revised inspection schedule would be required to be incorporated into the operator's maintenance program prior to the compliance time specified for the first task required under the FAA-approved adjusted schedule.



Paragraph C. would include the cognizant FAA Principal Inspector in the coordination/review process for extension to the inspection intervals. In addressing unanticipated scheduling requirements, it is not the intent of the FAA to include the initial inspection requirements for Level 1 corrosion since these time frames would have already been established by the baseline program.

Paragraph D. would require that all Level 2 corrosion reports and follow-up reports for Level 3 corrosion be submitted at least quarterly to McDonnell Douglas. It should be noted that although the Document prescribes a 30-day reporting requirement, this AD would require quarterly reporting submissions. Furthermore, this reporting requirement would be in addition to the existing reporting requirements of FAR § 121.708, which requires reporting of "corrosion of aircraft structures, if more than the maximum acceptable to the manufacturer or the FAA."

Paragraph E. would preclude operators whose corrosion inspection programs currently provide for more frequent inspections than those specified in the Document from extending the intervals for those inspections without approval by the FAA. This is to ensure that existing inspection programs are not degraded as a result of this AD.

Paragraph F. would require that operators ensure that transferred airplanes are inspected in accordance with the baseline program on the same basis as if there were continuity in ownership, and that scheduling of the inspections for each airplane is not delayed or postponed due to a transfer of ownership. Airplanes that have previously been subject to an FAA-approved maintenance program would have to be inspected in accordance with either the previous operator's or the new operator's inspection schedule, whichever occurs first. Other airplanes would have to be inspected before an operator could begin operating them or in accordance with a schedule approved by the FAA.

Paragraph G. would require that operators, upon finding corrosion exceeding Level 1 during a repetitive inspection, adjust their program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for such corrective action for the FAA's approval within 60 days after the finding of corrosion. Within 30 days after approval, operators are required to incorporate these adjusted inspection schedules into their FAA-approved maintenance program.

It should be noted that, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph H. would permit operators to request that inspection intervals and thresholds be increased if data is provided to substantiate that during previous inspections of the area, no significant corrosion was found, and that the requested increase will continue to provide an acceptable level of safety. Without such data, or without the FAA's first-hand experience, there would be no basis to justify such an increase. The FAA intends to initiate a program wherein FAA engineers will gain experience as to the affected operators' corrosion problems. This program will be beneficial to the FAA when assessing requests for increases in inspection intervals.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 244 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per area to accomplish the required actions. There are 50 areas called out in the McDonnell Douglas document, and for an average labor cost of $40 per manhour, the total cost to inspect each airplane would be $37,760. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $9,213,440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

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**McDonnell Douglas:** Applies to all Model DC-10 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

**Note:** This AD references McDonnell Douglas Document Number MDC K4607, "DC-10/KC-10 Corrosion Prevention and Control Document," dated April 1990, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in McDonnell Douglas Document Number MDC K4607, "DC-10/KC-10 Corrosion Prevention and Control Document," dated April 1990 (hereinafter referred to as "the Document").

**Note:** All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

**Note:** Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A. of this AD Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Los Angeles Aircraft Certification office (ACO) and inspect the affected area on all Model DC-10 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Los Angeles ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on the remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

**Note:** Notwithstanding the provision of section 1 of the Document which would permit corrosion which otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it " can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph require that data substantiating any such finding be submitted to the FAA for approval.

**Note:** As used throughout this AD, where documents are to be submitted to the Manager of the Los Angeles ACO, the document should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO. The Los Angeles ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

**Note:** The reporting requirements of this paragraph and of paragraph D. of this AD do not relieve operators from reporting corrosion as required by FAR § 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

**Note:** Except as provided in this paragraph, notwithstanding section 2.1, paragraph 14, of the Document, all extensions to any compliance time must be approved by the manager of the Los Angeles ACO.

D. Reports of Level 2 corrosion and follow-up reports for Level 3 corrosion must be submitted at least quarterly to McDonnell Douglas.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in section 4 of the Document, they may not be increased without specific approval from the Manager of the Los Angeles ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be preformed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Los Angeles ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Los Angeles ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach California.

Issued in Renton, Washington, on November 5, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28124 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 820

**[Docket No. 90N-0172]**

### Medical Devices; Current Good Manufacturing Practices (CGMP) Regulations Document; Suggested Changes; Availability

**AGENCY:** Food and Drug Administration, HHS.



**ACTION:** Advance notice of proposed rulemaking; availability of document.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of an information document created to facilitate the development of changes to the medical devices current good manufacturing practices (CGMP) regulations. The information document is intended to facilitate discussion of suggested changes and to generate comments for consideration by the agency when drafting the language for changing the CGMP regulations.

**DATES:** Written comments by January 29, 1991.

**ADDRESSES:** Submit written requests for single copies to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the division in processing your requests. Submit written comments on the information document to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

The information document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** W. Fred Hooten, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of June 15, 1990 (55 FR 24544), FDA published an advance notice of proposed rulemaking. In this notice, the agency announced that it was considering whether changes would be made in the current good manufacturing practices (CGMP) regulations for medical devices (21 CFR part 820). On June 19 and 20, 1990, FDA presented proposed revisions during an open public meeting of the Device GMP Advisory Committee (the Advisory Committee). At this meeting, FDA promised to seek comments from interested persons in the development of the proposed changes.

The information document made available by this notice is one mechanism the agency is using to meet the commitment made during the Advisory Committee meeting. It is intended to facilitate discussion of suggested changes and to generate comments for consideration by the agency when drafting the language for changing the CGMP regulations. The draft language developed from the comments will then be offered as a proposed rule for comment.

Dated: November 23, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-28218 Filed 11-29-90; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 6 and 8

**RIN 2900-AE79**

### Settlement Interest

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rules.

**SUMMARY:** The Department of Veterans Affairs proposes to establish regulations to authorize the payment of settlement interest on the proceeds of participating National Service Life Insurance (NSLI), Veterans Special Life Insurance (VSLI) and Veterans Reopened Life Insurance (VRI), and all United States Government Life Insurance (USGLI) policies. The payment of such interest is administratively and actuarially sound and should be made in order to comply with the relevant statutory authority.

**DATES:** Comments must be received on or before December 31, 1990. Comments will be available for public inspection until January 10, 1991. This amendment is proposed to be effective 30 days after publication of the final rule.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul F. Koons, Assistant Director for Insurance, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 951-5360.

**SUPPLEMENTARY INFORMATION:** Sections 728 and 783 of title 38 of the United States Code, authorize the Secretary of Veterans Affairs to pay settlement interest on the proceeds of participating NSLI, VSLI and VRI policies, and all USGLI policies provided the Secretary determines that the payment of such interest is administratively and actuarially sound for the settlement option involved. The proposed regulations will allow settlement interest to be paid under all settlement options in all those programs. Based on a determination by the Chief of the Insurance Service's Actuarial Staff, the payment of settlement interest is the affected programs is consistent with the Contribution Principle and the Source of Earnings Method of distributing surplus earnings on investments as recommended by the American Academy of Actuaries and, therefore, is administratively and actuarially sound.

Pursuant to sections 728 and 783 any settlement interest paid would be paid at the rate that is established by the Secretary for dividends held on credit or deposit in policyholders' accounts under the insurance program involved. Interest calculations for Option 1, lump sum, would be based upon the entire net amount of all of the proceeds due to that beneficiary or policyholder. The interest calculation for Options 2, 3, 4 or 5, monthly installment options, would be based upon the entire net amount of the initial payment due to that beneficiary or policyholder as determined by the number of installments due from the date of policy maturity until the date of payment. Subsequent monthly installment payments would not include settlement interest since interest is already included in the tables used to calculate these payments. Settlement interest would be paid only on policies that mature on or after the effective date of this rule.

The Secretary of Veterans Affairs hereby certifies that these proposed regulations, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations will affect only certain Government life insurance policyholders and beneficiaries. They will, therefore,

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have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

VA has determined that these proposed regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. These regulations will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not, otherwise have any significant adverse economic effects.

(The Catalog of Federal Domestic Assistance Program number for these proposed regulations is 64.103.)

**List of Subjects**

*38 CFR Part 6*

United States Government Life Insurance.

*38 CFR Part 8*

National Service Life Insurance.

Approved: November 8, 1990.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR part 6, United States Government Life Insurance, and part 8, National Service Life Insurance, are proposed to be amended as follows:

**PART 6—[AMENDED]**

1. Section 6.71 is added to read as follows:

**§ 6.71 Settlement interest.**

Subject to the provisions of section 763 of title 38, United States Code, settlement interest shall be paid on the proceeds of a United States Government Life Insurance policy that matures on or after [the effective date of this rule].

(Authority 38 U.S.C. 763)

**PART 8—[AMENDED]**

2. Section 8.83 is added to read as follows:

**§ 8.83 Settlement interest.**

Subject to the provisions of section 728 of title 38, United States Code, settlement interest shall be paid on the proceeds of a participating National Service Life Insurance, Veterans' Special Life Insurance and Veterans' Reopened Insurance policy that matures on or after [the effective date of this rule.]

(Authority 38 U.S.C. 763).

[FR Doc. 90-28087 Filed 11-29-90; 8:45 am]
BILLING CODE 8325-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[PP 9E3778/P518; FRL-3837-8]**

**Pesticide Tolerance for 2-(2-Chlorophenyl)Methyl-4,4-Dimethyl-3-Isoxazolidinone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone, also referred to as clomazone, in or on the raw agricultural commodity pepper. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [PP 9E3778/P518], must be received on or before December 31, 1990.

**ADDRESSES:** By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 9E3778 to EPA on behalf of the IR-4 Project, and the Agricultural Experiment Stations of North Carolina, Florida, New Jersey, Puerto Rico, Kentucky, Maryland, Georgia, and Arkansas.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone in or on the raw agricultural commodity pepper at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A rat developmental toxicity study with a maternal no-observed-effect level (NOEL) of 100 milligrams (mg)/kilogram (kg)/day and a fetotoxic NOEL of 100 mg/kg/day. No developmental effects were observed at the highest level tested (600 mg/kg/day).

2. A rabbit developmental toxicity study with a developmental NOEL of 700 mg/kg/day, a maternal NOEL of 240 mg/kg/day, and a fetotoxicity NOEL of 240 mg/kg/day.

3. A 1-year dog feeding study with a NOEL of 500 ppm (equivalent to 12.5 mg/kg/day) and a lowest effect level (LEL) of 2,500 ppm (equivalent to 62.5 mg/kg/day), based on increased absolute and relative liver weights in male and female dogs.

4. A 2-year rat feeding study with a NOEL of 100 ppm (equivalent to 4.3 mg/kg/day) for systemic effects, and an LEL of 500 ppm (equivalent to 21.5 mg/kg/day), based on increased cholesterol and increased liver weight. No carcinogenic effects were observed under the conditions of the study at any of the dose levels tested (20, 100, 500, 1,000, and 2,000 ppm).

5. A 2-year mouse feeding study with a NOEL of 100 ppm (equivalent to 15 mg/kg/day) for systemic effects and negative for carcinogenic effects under the conditions of the study at all dose levels tested (20, 100, 500, 1,000, and 2,000 ppm).

6. Mutagenic studies: including an unscheduled DNA synthesis test, negative for mutagenicity; reverse mutation tests (two studies) (*Salmonella*) both negative with/without activation; a point mutation test (CHO/HGPT), weakly positive without activation; and an *in vivo* cytogenetic (chromosomal aberrations) test, negative for mutagenicity.

The reference dose (RfD), based on the 2-year rat feeding study (NOEL of 4.30 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.043 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) from existing tolerances is calculated to be 0.000028 mg/kg/day; the current action will increase the TMRC by 0.000002 mg/kg/day. Published tolerances and the proposed tolerance for pepper utilize less than 1.0 percent of the RfD.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography using a nitrogen/phosphorus detector, is available for enforcement purposes. Because of the long lead time for establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, the analytical methodology is available upon request from: Calvin Furlow, Public Information Branch, Field Operations Division (H7505C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

There is no expectation of secondary residues in meat and milk since pepper is not considered an animal feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.425 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3778/P518]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 15, 1990.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.425 is amended by adding, and alphabetically inserting, the the raw agricultural commodity pepper, to read as follows:

**§ 180.425 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone; tolerances for residues.**

* * * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Pepper | 0.05 |
| * * * * * | |

[FR Doc. 90-28021 Filed 11-29-90; 8:45 am]
BILLING CODE 6560-50-F



**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 90-581, RM-7521]**

**Radio Broadcasting Services; Volga, SD**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by CD Broadcasting Corporation of Brookings seeking the substitution of Channel 272C3 for Channel 272A at Volga, South Dakota, and the modification of its license for Station KKQQ-FM to specify operation on the higher powered channel. Channel 272C3 can be allotted to Volga in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) south of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 272C3 are North Latitude 44-15-21 and West Longitude 96-57-22. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 272C3 at Volga or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before January 17, 1991, and reply comments on or before February 1, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follow: CD Broadcasting Corporation of Brookings, 308 Edina Executive Plaza, 5200 Willson Road, Edina, Minnesota 55424 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-581, adopted November 8, 1990, and released November 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800,

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2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28211 Filed 11-29-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 48 CFR Part 5243 and 5252

### Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Proposed rule; extension of date for receipt of post hearing comments.

**SUMMARY:** The Department of the Navy promulgated proposed regulations on part 5243, subpart 5243.70 of Navy Acquisition Procedures Supplement (NAPS) to restrict contract price adjustments under shipbuilding contracts, thus implementing by regulation the requirements of 10 U.S.C. 2405. The Department also promulgated proposed amendments to part 5252 to add the text of a solicitation provision and a contract clause. The proposed regulation was published on June 29, 1990 at 55 FR 26708. That proposed regulation amended earlier proposed rules, and among other things, established August 23, 1990 as the date for a public hearing and September 6, 1990 as the date for receipt of post hearing comments. By notice of August 16, 1990 at 55 FR 33541, the date of the public hearing was changed to September 24, 1990 and the date for receipt of post hearing comments was changed to October 8, 1990. By further notice of October 26, 1990 at 55 FR 43150, the date of the public hearing was changed to November 9, 1990 and the date for receipt of post hearing comments was changed to December 7, 1990. The date for receipt of post hearing comments is being amended as set forth below.

**DATES:** Post hearing comments may be submitted until 5 p.m., e.s.t. January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Moye, (703) 602-2807.

Dated: November 19, 1990.

**Wayne T. Bauchno,**

*LT, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 90-28061 Filed 11-29-90; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Part 266

**[FRA Docket No. SR-1979-1, Notice No. 2]**

**RIN 2130-AA90**

### Local Rail Freight Assistance to States

**AGENCY:** Federal Railroad Administration ("FRA"), Department of Transportation ("DOT").

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA is revising the procedures and requirements for the receipt of financial assistance contained in part 266. These changes establish deadlines for submission of project applications for those seeking federal funding to provide local rail freight assistance and impose consequences for failure to expend approved funding. The new deadline for submission of project applications for entitlement and discretionary funding will be October 1 and January 1 of each year, respectively. FRA also is requesting comments on ways to improve the effectiveness of the program while complying with the recent statutory changes concerning administration of the program.

**DATES:** Comments must be submitted on or before December 31, 1990.

**ADDRESSES:** Written comments should identify the notice number and be submitted (preferably in triplicate) to the Docket Clerk, Federal Railroad Administration, Office of Chief Counsel, room 8201, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified of receipt of their comments by FRA should submit a stamped, self addressed postcard with their comments. Written comments will be available for inspection, both before and after the closing date for comments during regular business hours in room 8201 of the Nassif building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Laurence Fitzgerald, Program Analyst, State Programs Division, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (telephone: (202) 366-1677).

**SUPPLEMENTARY INFORMATION:** Section 5 of the Department of Transportation Act (49 U.S.C. 1654 *et. seq.*) establishes a program of federal grants to fund the operation of local rail freight assistance. The regulation implementing section 5 of the Act is contained in 49 CFR part 266 and was initially published on August 30, 1979 (44 FR 51129).

Part 266 contains the procedural requirements that must be adhered to by State agencies seeking to obtain grants for the acquisition of rail lines, track rehabilitation and rail facility construction. This rule revises part 266 to reflect the amendment of section 5 by the Local Rail Service Reauthorizing Act, Public Law No. 101-213 (Dec. 11, 1989), ("Reauthorizing Act"). Current government-wide grant application and management requirements are also incorporated.

The most significant change made by the Reauthorizing Act is the establishment of deadlines for submission of project applications. Project applications for entitlement and discretionary funding are due October 1 and January 1 of each year, respectively.

The Reauthorizing Act also provides an annual entitlement of $36,000 to each eligible state and requires that it be obligated by the state within three months after the end of the fiscal year for which the funds were made available. Entitlement funds not applied for by October 1 of the fiscal year for which they are appropriated or obligated by December 31 following the end of the fiscal year in which they were granted become available to FRA for discretionary allocation.

Another important change is the statutory reduction of the allowable Federal share of acquisition and rail facility construction projects to 50 percent. The Federal share of rehabilitation projects remains at 70 percent.

Finally, the Reauthorizing Act amended eligibility requirements for rehabilitation and rail facility construction projects to include lines of railroad which annually carry less than 5 million gross ton miles of freight per mile, provided that the rail carrier certifies that the line carried more than 20 carloads per mile during the most recent year of operation; in a case where the railroad is no longer in existence, the state shall provide the required information. In addition, all projects must not have a benefit-cost ratio greater than 1 as calculated in accordance with the standard methodology established by FRA in July 1990 and distributed to individual states. The methodology is availabe upon request. Such requests should be directed to Mr. Laurence Fitzgerald, whose address and telephone number appear earlier in this notice.

All applications for financial assistance must comply with the requirements of section 5 of the Act as amended by the Reauthorizing Act. FRA's existing procedural requirements, contained in part 266, do not accurately reflect these recent statutory changes. In order to assure that future applications comply with the new provisions of section 5 of the Act and to alert applicants to the new criteria for administering this program, FRA is amending 49 CFR part 266. The regulatory changes made pursuant to this notice reflect the necessary adjustments to FRA's procedures to bring them into conformity with the Reauthorizing Act. No substantive changes to part 266 have been made other than those dictated by the Reauthorizing Act. Interested parties are invited to submit their views or comments on these changes or others that may be desired concerning the administration of the program by writing to the Docket Clerk.

**Section-by-Section Analysis**

FRA is publishing with this notice the full text of the revised regulation, which includes the changes made to comport with the Reauthorizing Act as well as some non-substantive changes, which have been suggested over the last ten years, to improve the clarity of the regulation. Publication herein of the full, amended text of part 266 is being done to aid those charged with submitting applications for funding. The following sections have been substantively revised to comport with the Reauthorizing Act:

*Section 266.5 Rail Freight Assistance Program*

This section, originally § 266.3 and titled "Rail Service Assistance Program," has been revised to include the new statutory limitations that no more than 15 percent of the discretionary funds provided in any fiscal year may be granted to a state and no more than 20 percent may be provided for any one project. This section has also been revised to reflect the amount of entitlement currently available to a state.

*Section 266.9 Project Eligibility*

This section, originally § 266.7, has been modified to make lines annually carrying less than 5 million gross ton miles of freight per mile eligible for rehabilitation or improvement assistance and rail facility construction assistance. Additionally, two new eligibility requirements are imposed on all projects, including a certification by the railroad that the line has carried more than 20 carloads per mile during the most recent year of operation and that the project must have a benefit-cost ratio greater than 1.0. In a case where the railroad is no longer in existence, the state shall provide the certification.

*Section 266.11 Federal/State Share*

This section, originally § 266.9, has been changed to reflect the requirement that the Federal share of rehabilitation or improvement assistance projects shall be 70 percent and acquisition and rail facility construction assistance projects shall be 50 percent.

*Section 266.15 Distribution of Funds*

This section, originally § 266.13, has been revised to reflect the statutory deadlines of October 1 for entitlement applications and January 1 for discretionary applications.

*Section 266.17 Requirements for State Rail Plan*

This section, originally § 266.15, has been modified to require that the FRA standard methodology be used for calculating the benefits-costs ratio for proposed projects.

*Section 266.19 Applications*

This section, originally § 266.17, has been revised to require the inclusion of the following statutorily mandated information with all project applications:

(1) The percentage of lines identified to the Interstate Commerce Commission by the rail carrier for abandonment or potential abandonment within a state;

(2) The likelihood of future abandonments within the State;

(3) The ratio of benefits to costs for a proposed project calculated in accordance with the FRA standard methodology;

(4) The likelihood that the line will continue operating with rail freight assistance; and

(5) The impact of rail bankruptcies, rail restructuring, and rail mergers on the State applying for assistance.

The following sections have been revised substantially, but not substantively, to reflect suggested improvements to the program over the last ten years:

*Section 266.17 Requirements for the State Rail Plan.*

This section, which was § 266.15, has been revised to eliminate the reporting of data which reflected incremental steps in the analytical process. In addition, the required number of State Rail Plan copies has been reduced from five to two.

*Section 266.19 Applications.*

This section, originally § 266.17, has been changed to allow certain assurances to be submitted once and subsequently referenced. It has also been restructured so that the specific requirements for each type of application are more readily identifiable.

*Section 266.21 Environmental Impact.*

This section, which was § 266.19, has been changed to include additional classes of action which FRA has documented as being categorically excluded from the requirement for completion of an environmental assessment.

**Regulatory Impact**

This rule has been evaluated in accordance with existing policies and procedures. The rule is considered to be non-major under Executive Order 12291 and non-significant under the Department's policies and procedures (44 FR 11034, February 26, 1979).

The rule is procedural in nature and will not have any economic impact on any entity. The rule does not impose any additional recordkeeping and information collection requirements; will have no impact on Federalism under Executive Order 12612; and does not itself constitute a major FRA action requiring environmental assessment.

**List of Subjects in 49 CFR Part 266**

Grant Programs-Transportation; Railroads; Railroad freight financial assistance; State grant programs.

**The Proposed Rule**

In consideration of the foregoing, 49 CFR part 266 is proposed to be revised to read as set forth below:

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## PART 266—LOCAL RAIL FREIGHT ASSISTANCE TO STATES UNDER SECTION 5 OF THE DEPARTMENT OF TRANSPORTATION ACT

Sec.
266.1 Applicability.
266.3 Definitions.
266.5 Rail Freight Assistance Program.
266.7 State Eligibility.
266.9 Project Eligibility.
266.11 Federal/State Share.
266.13 Allowable Costs.
266.15 Distribution of Funds.
266.17 Requirements for State Rail Plan.
266.19 Applications.
266.21 Environmental Impact.
266.23 Grant Agreement and Disbursement.
266.25 Record, Audit, and Examination.
266.27 Waivers and Modifications.

Authority: Section 5 of the Department of Transportation Act (49 U.S.C. 1654, *et. seq.*).

### § 266.1 Applicability.

This part prescribes the procedures governing applications for financial assistance pursuant to section 5 of the Department of Transportation Act.

### § 266.3 Definitions.

As used in this part:

*Acquisition assistance* means funds granted to a State under section 5(b)(1) of the Department of Transportation Act (49 U.S.C. 1654(b)(1)) to cover the cost of acquiring by purchase, lease, or in such other manner as the State considers appropriate, a line of railroad or other rail properties, or any interest therein for existing or future rail freight service.

*Act* means the Department of Transportation Act (49 U.S.C. 1650 *et. seq.*).

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

*Benefit-Cost Methodology* means the methodology to be used for calculating the ratio of benefits to costs of projects considered for financial assistance hereunder, established by the Administrator on July 1, 1990 pursuant to section 5(a) of the Act. Copies are available on request from FRA's Office of Passenger and Freight Services.

*Commission* means the Interstate Commerce Commission or any successor Federal agency to the relevant activity.

*Common Rule* means 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

*Designated State Agency* means the State agency designated under section 5(a) of the Act.

*Discretionary* means the amount of assistance available for distribution by the Administrator under section 5(g) of the Act.

*Entitlement* means the assistance which a state is eligible to receive annually under section 5(g) of the Act.

*Equipment* means railroad rolling stock of the kind generally used by rail carriers in revenue freight service.

*Facilities* means track, ties, roadbed and related structures including terminals, team tracks and appurtenances, bridges and tunnels, and other structures used or usable for rail service operations.

*Federal Share* means that portion of allowable costs of an approved project to be funded pursuant to section 5(e) of the Act.

*FRA* means the Federal Railroad Administration.

*Gross ton miles per mile* means the combined weight of locomotives and all trailing cars and their contents used in revenue freight trains multiplied by the number of route miles traveled and divided by the number of route miles of the line.

*Line* means a line of railroad.

*Maintenance* means inspection and light repairs, emergency repairs and a planned program of periodic maintenance which is necessary to keep a line at its existing condition or to comply with FRA Class 1 Safety Standards.

*Planning assistance* means funds granted to a State under section 5(g) of the Act to meet the cost of establishing (including developing a planning application), implementing, revising, and updating the State Rail Plan required by section 5(a)(1) of the Act.

*Planning Work Program* means that portion of a state's planning application which outlines the state's plan for establishing, implementing, revising, or updating a State Rail Plan that meets the requirements of section 5(a) of the Act.

*Program operations assistance* means funds granted to a State to cover those administrative costs allowable under Office of Budget and Management Circular A–87 (copies available from FRA's Office of Passenger and Freight Services).

*Rail carrier* means a person providing railroad transportation for compensation who is subject to the jurisdiction of the commission under subchapter I of chapter 105 of title 49 of the United States Code.

*Rail facility construction assistance* means funds granted to a State under section 5(b)(3) of the Act to cover the cost of constructing rail or rail related facilities (including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines) for the purpose of improving the quality and efficiency of rail freight service.

*Rail Freight Assistance Program* means the FRA program through which funds are provided to each State pursuant to section 5 of the Act.

*Rehabilitation or improvement assistance* means funds granted to a State under section 5(b)(2) of the Act to cover the cost of replacing or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a line.

*State* means any State in which a rail carrier maintains any line of railroad.

*State Rail Plan* means the current plan, including all updates, revisions, and amendments required by section 5(a)(3) of the Act.

*State Share* means the portion of allowable costs of an approved project not included in the Federal Share.

### § 266.5 Rail Freight Assistance Program.

(a) Scope of the program.

Financial assistance may be provided to States under the Rail Freight Assistance Program for the following purposes:

(1) Acquisition assistance;

(2) Rehabilitation or improvement assistance;

(3) Rail facility construction assistance;

(4) Planning assistance; and

(5) Program operations assistance.

(b) Special limitations.

(1) A State is eligible to receive up to 5 percent of the total amount of funds granted to it each fiscal year under paragraph (a)(1), (2) and (3) of this section as program operations assistance.

(2) No more than 15 percent of the funds appropriated in any fiscal year for the purposes described in paragraphs (a)(1), (2) and (3) of this section may be provided to any one state.

(3) No more than 20 percent of the funds appropriated in any fiscal year for the purposes described in paragraphs (a)(1), (2) and (3) of this section may be provided for any one project.

### § 266.7 State Eligibility.

A State is eligible for financial assistance if:

(a) The state has certified, pursuant to section 5(a)(4) of the Act, that it has or will adopt and maintain adequate procedures for financial control, accounting and performance evaluation in order to assure proper use of Federal funds; and

(b) (1) The State has established an adequate plan for rail services in the State which

(i) Meets the requirements of § 266.17 of this part;



(ii) Is part of an overall planning process for all transportation services in the State;

(iii) Includes a suitable procedure for updating, revising, and amending such plan; and

(iv) As updated, revised, or amended has been approved by the Administrator;

(2) Such State Rail Plan:

(i) Is administered or coordinated by a designated State agency;

(ii) Provides for the equitable distribution of resources; and

(iii) Uses the Benefit-Cost Methodology for determining the ratio of benefits to costs of projects for which acquisition assistance, rehabilitation or improvement assistance, and rail facility construction assistance is sought;

(3) The State agency:

(i) Has authority and administrative jurisdiction to develop, promote, supervise, and support safe, adequate, and efficient rail transportation services;

(ii) Employs or will employ, directly or indirectly, sufficient trained and qualified personnel;

(iii) Maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation; and

(iv) Is designated and directed solely or in cooperation with other State agencies to take all practicable steps to improve rail transportation safety and to reduce transportation-related energy utilization and pollution; and

(4) The State undertakes to immediately notify the Administrator of any change in conditions which might affect its compliance with this section.

### § 266.9 Project Eligibility.

(a) A project is eligible for financial assistance only if:

(1) The line of railroad related to that project has been certified by the rail carrier as having carried more than 20 carloads per mile during the most recent year of operation (If the rail carrier is no longer in existence, the applicant shall provide the required certification. The Administrator may waive the 20 carload requirement if the Administrator determines that the line is contractually guaranteed at least 40 carloads per mile for each of the first 2 years of operation if the proposed project is carried out, and the Administrator finds that there is reasonable expectation that such contractual guarantee will be fulfilled.); and

(2) The project has a ratio of benefits to costs calculated in accordance with the Benefit-Cost Methodology greater than 1.0.

(b) A project is eligible for assistance under section 266.3(a)(1) of this part, if the Commission has authorized, or exempted from the requirement of authorization, the abandonment, or the discontinuance, of rail service on the line related to the project.

(c) A project is eligible for assistance under § 266.3(a) (2) and (3) of this part if the line related to the project is certified by the rail carrier as having carried five million gross ton miles per mile or less during the prior year.

### § 266.11 Federal/State Share.

(a) The Federal Share of projects shall be 50 percent, with the exception that the Federal Share of rehabilitation or improvement projects shall be 70 percent.

(b) The State Share of projects shall be provided either in cash or through approved in-kind benefits which would not otherwise have been provided. When more than the required State Share is provided, the amount in excess of the required State Share may be carried forward to subsequent fiscal years. The State Share may not be satisfied directly or indirectly by any Federal funds, unless the funds are provided through a Federal program which specifically authorized the use of such funds to satisfy the non-Federal share of a Federally subsidized program.

(1) The following are eligible in-kind benefits when provided for projects eligible under § 266.9 of this part (whether, or not, Federal financial assistance has been requested for the project):

(i) The value of forgiven taxes, such as those portions of gross receipts or revenue taxes which are applicable to an approved project or property taxes on project related property, shall be the amount which would otherwise have been levied by the taxing authority. Forgiveness may be through exemption or remission;

(ii) The value of trackage rights secured by a State for a railroad shall be the amount paid by rail carriers for comparable rights on comparable rail freight properties;

(iii) The value of State salaries for State public employees working in the State Rail Freight Assistance Program, which shall be consistent with rates paid for similar work by State public employees working in comparable State programs but shall not include overhead or general administrative costs;

(iv) The value of donations by the State, or by a third party on behalf of the State, of real property or tangible personal property of the kind necessary for safe and efficient operation of rail freight service, such as State or locally owned or leased buildings used in rail freight operations or equipment or materials. The value of such donations shall be determined as follows:

(A) State personal property—the actual cost of State tangible personal property in accordance with Office of Management and Budget Circular A–87;[1]

(B) Donated tangible personal property—shall be determined in accordance with the applicable provisions of the Common Rule;

(C) State real property—the State's actual cost in accordance with Office of Management and Budget Circular A–87, if at least one independent appraisal, based on the results of a title search, was performed when the property was purchased by the State; otherwise the fair market value as established by at least one independent appraisal based on the results of a title search at the time the State proposes to make the property available as an in-kind benefit; and

(D) Donated real property—the fair market value, at the time of donation to the State, as established by at least one independent appraisal based on the results of a title search.

(2) To be applied toward the State share, in-kind benefits must:

(i) Be verifiable from the State's records;

(ii) Be necessary and reasonable for proper and efficient accomplishment of the objectives of the Rail Freight Assistance Program;

(iii) Be provided for in the approved grant budget;

(iv) Be approved under paragraph (b)(3) of this section; and

(v) Be supported by such information as the Administrator may request to verify the value;

(3) In-kind benefits must be approved by the Administrator. A request for approval shall include the following:

(i) Full name and principal business address of the contributor, if other than the applicant;

(ii) Detailed documentation of the in-kind benefits including in-kind benefits as well as their estimated value. When in-kind benefits are to be provided by a third party, a copy of the executed agreement between the State and the third-party; and

(iii) Certification by the State that the contribution will be used solely for the approved purposes.

### § 266.13 Allowable Costs.

Allowable costs include only costs incurred by a State after the execution

[1] Copies available on request from FRA's Office of Passenger and Freight Services.

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of a grant agreement, which are properly allocable to the work performed as part of the project approved by such agreement, and planning and program operation costs as permitted by Office of Management and Budget Circular A–87. Costs incurred by a State prior to the execution of a grant agreement will not be allowable unless, based on the State's demonstration of a compelling need to incur the costs, the Administrator has authorized in writing the incurrence of such costs prior to the execution of a grant agreement.

**§ 266.15 Distribution of Funds.**

(a) *Entitlement.* (1) On the first day of the Federal fiscal year, each State shall be entitled to an amount specifically designated under section 5(g) of the Act. Such funds may be used during the Federal fiscal year to meet the cost of establishing, implementing, revising, and updating the State Rail Plan, or for acquisition assistance, rehabilitation or improvement assistance, or rail facility construction assistance.

(2) Each State must apply for entitlement funds on or before the first day of the Federal fiscal year, except in Federal fiscal years in which authorizations of appropriations have not been enacted as of the first day of the Federal fiscal year, in which case application must be made within 60 days after the date of enactment of legislation authorizing appropriations for that Federal fiscal year. Applications shall be submitted in accordance with § 266.19 of this part.

(3) Entitlement funds not applied for in accordance with the preceding paragraph, or remaining unobligated 3 months beyond the close of the Federal fiscal year in which such funds were granted, shall be made available to FRA in accordance with section 5(g) of the Act for distribution under section 5(f) of the Act.

(b) *Discretionary.* A State seeking discretionary funds for acquisition assistance, rehabilitation or improvement assistance, and rail facility construction assistance shall apply by January 1 of the fiscal year for which the funds have been appropriated, except in fiscal years in which the authorizations of appropriations have not been enacted as of the first day of the fiscal year, in which case application must be made within 90 days after the date of enactment of legislation authorizing appropriations for that fiscal year.

(c) *Interstate sharing of allocated funds.* Where not in violation of State law, two or more States, which are eligible to receive assistance under the Rail Freight Assistance Program pursuant to § 266.9 of this part may combine any portion of their entitlements for purposes of conducting any eligible project of mutual benefit provided that they enter into an agreement for this purpose.

**§ 266.17 Requirements for State Rail Plan.**

(a) State planning process. The State Rail Plan shall be based on a comprehensive, coordinated and continuing planning process for all transportation services within the State and shall be developed with an opportunity for participation by persons interested in rail activity in the State and adjacent States, where appropriate. At a minimum, the State shall hold a public hearing if, on the basis of reasonable public notice appearing in the press, there is sufficient public interest to justify a hearing. Public notice shall be given, in accordance with applicable State law and practice concerning comparable matters, that a draft of the State Rail Plan is available for public inspection at a reasonable time in advance of the hearing. The State shall enable local and regional governmental bodies to review and comment on appropriate elements of the State Rail Plan. Provisions shall also be made for updating, revising, and amending the State Rail Plan.

(b) Format of the State Rail Plan. Each item submitted in response to a requirement of this section shall reference that requirement by subsection, paragraph, and subparagraph.

(c) Contents of the State Rail Plan. Each State Rail Plan shall:

(1) Specify the objectives of the State's Rail Freight Assistance Program and explain how the implementation of the State Rail Plan will accomplish these objectives and explain relevant data sources, assumptions, analytical methodology, legal constraints and special problems or conditions which will aid the public in understanding the State Rail Plan;

(2) Contain an illustration of the State's entire rail system on suitable scale maps of the State highway system (such as a reduction of county highway planning maps), designating with respect to each line listed under paragraph (c)(3) of this section, including all lines connecting to them:

(i) Operating carrier or carriers;

(ii) Freight traffic density; and

(iii) Written description of the service provided on each line;

(3) Identify the following classes of rail service within the State:

(i) Rail lines in the State which are eligible for assistance under § 266.9 of this part other than those included in paragraph (c)(3)(ii) of this section;

(ii) Rail lines in the State which a rail carrier has identified on its system diagram map submitted under 49 CFR 1152.10 as potentially subject to abandonment and rail lines which are anticipated to be the subject of an abandonment or discontinuance application within three years following the date of submission;

(iii) Rail lines in the State for which abandonment or discontinuance applications are pending; and

(iv) Rail projects for which the State plans to request Federal assistance or approval as in-kind benefits;

(4) Establish and describe screening criteria to be used in selecting the eligible rail lines which the State analyzes in detail, identify these lines, and explain how the application of the screening criteria resulted in their selection;

(5) Apply the Benefit-Cost Methodology to each rail line the State has selected to analyze in detail;

(6) Describe the planning process participation of local and regional governmental bodies, rail carriers, railroad labor, rail service users, and the public in general; and

(7) Describe the overall planning process for all transportation services in the State.

(d) Updates, revisions, and amendments of the State Rail Plan shall include the following:

(1) An update of information in previous submittals which is no longer accurate as a result of plan implementation, action by a governmental entity or railroad, or changed conditions;

(2) An update of the maps and descriptions required under paragraph (c)(2) of this section;

(3) Analysis of any new projects developed by the State in accordance with paragraphs (c)(4) and (5) of this section;

(4) An explanation of how the State Rail Plan will be related to the overall planning process for transportation within the State. This explanation shall concentrate on the expectations of the State for the future of local rail freight services and consider such factors as likelihood of profitability of existing rail lines, State acquisition of rail lines, use of alternate modes of transportation in lieu of rail freight service, and other long-term alternatives;

(5) A description of the methods by which the State will involve local and regional governmental bodies and the public generally in its rail planning process, including its methods of providing for equitable distribution of resources;



(6) Changes in agency responsibilities and authority including ability to provide the non-Federal share; and

(7) Revisions in the State's policies, objectives or long-range expectations.

(e) Adoption and submission of State Rail Plan and Updates. An original and two copies of the State Rail Plan, and any amendments, revisions, or updates shall be submitted to FRA for review and approval with a certification by the Governor, or by the Governor's delegate, that the submission constitutes the State Rail Plan established by the State as provided in section 5(a) of the Act. The State Rail Plan and all amendments, revisions, and updates shall be subject to intergovernmental review in accordance with Executive Order 12372 and 49 CFR part 17.

(f) Review of the State Rail Plan and Updates. The State Rail Plan and all amendments, revisions, and updates shall include, and analyze in accordance with this section, all projects for which the State anticipates requesting rail service assistance, other than planning assistance, during the fiscal year. A project for which funds are requested must have been addressed in a previously approved State Rail Plan or update. If the Administrator determines that the State Rail Plan or update does not comply with this part, the Administrator will notify the State in writing setting forth the Administrator's reasons for such a determination.

**§ 266.19 Applications.**

(a) Applications for acquisition assistance, rehabilitation or improvement assistance, or rail facility construction assistance shall include the following:

(1) The percentage of rail lines identified to the Interstate Commerce Commission by rail carriers for abandonment or potential abandonment within a State;

(2) The likelihood of future abandonments within the State;

(3) The ratio of benefits to costs for a proposed project calculated in accordance with the Benefit-Cost Methodology;

(4) The likelihood that the line will continue operating with rail freight assistance;

(5) The impact of rail bankruptcies, rail restructuring, and rail mergers on the State applying for assistance, and

(6) An assurance by the chief executive officer of the applicant that:

(i) Repaid loan funds and interest accumulated with respect to such funds will not be loaned or granted without the prior written approval of the Administrator;

(ii) The Federal share of repaid loan funds will be placed in an interest-bearing account or, with the prior written approval of the Administrator, will be deposited by the borrower, for the benefit and use of the State, in a bank which has been designated by the Secretary of the Treasury in accordance with 12 U.S.C. 265; and

(iii) If the rehabilitated or improved facilities are not used for rail freight service during the useful life of the improvement, the Federal Share of the fair market value of the improvement or facility will be placed in an interest-bearing account or, with the prior written approval of the Administrator, will be deposited by the owner of the rail properties, for the benefit and use of the State, in a bank which has been designated by the Secretary of the Treasury in accordance with 12 U.S.C. 265.

(b) Applications for acquisition assistance, rehabilitation or improvement assistance, rail facility construction assistance, planning assistance, or program operations assistance shall be submitted by the designated State agency using the Standard Forms 424 (revised 4/88) and 424A & B (revised 4/88). Each item submitted in response to a requirement of this section shall reference that requirement by subsection, paragraph and subparagraph. Such submission shall include:

(1) Full name and principal business address of the applicant;

(2) Name, title, address and phone number of the person to whom correspondence regarding the application should be addressed;

(3) Budget estimates for the total amount of assistance;

(4) Applicant's proposed means of furnishing its share of the total costs of the projects, as well as copies of executed agreements between the agency and any third party which may be providing the non-Federal share or a portion thereof;

(5) Assurance by the chief executive officer of the applicant that the Federal funds provided under the Act will be used solely for the purpose for which the assistance will be provided and in conformity with limitations on expenditures under the Act and applicable regulations;

(6) Assurance that the applicant has established in accordance with the Common Rule, adequate procedures for financial control, accounting and performance evaluation in order to assure proper use of the Federal funds;

(7) Assurance by applicant's chief executive officer that the timing of all advances by the applicant will comply with the Department of Treasury advance financing regulations (31 CFR part 205). In the event that a previously submitted assurance is still accurate, the assurance may be referenced by source, location and date of submission;

(8) Statement as to whether the applicant prefers to receive disbursement of Federal funds by advance payment or reimbursement. In the event that a previously submitted statement is still accurate, the statement may be referenced by source, location and date of submission;

(9) Opinion of applicant's legal counsel showing that counsel is familiar with the corporate or other organizational powers of the applicant, that the applicant is authorized to make the application, that the applicant is eligible to participate in the Rail Freight Assistance Program in accordance with the provisions of the Act and this part, and that the applicant has the requisite authority to carry out actions proposed in the application and to assume the responsibilities and obligations created thereby;

(10) Assurances that the applicant will comply with, and that the program will be conducted in accordance with, the following Federal laws, policies, regulations and pertinent directives. In the event that a previously submitted assurance is still accurate, it may be referenced by source, location and date of submission:

(i) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and 49 CFR part 21;

(ii) The Rehabilitation Act of 1973, 29 U.S.C. 794 and 49 CFR part 27, relating to non-discrimination on the basis of handicap; and

(iii) The State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*,

(11) A copy of the Affirmative Action Program required under 49 CFR part 265;

(12) When two or more States desire to combine their entitlements or any portion of them for the purpose of funding a project, certification of the Governor or the Governor's delegate, of each State that it is a party to an interstate agreement as required under section 5(j) of the Act. Such certification shall include the amount of money to be used from each State's entitlement and which State is to enter into a grant agreement for the project, pursuant to § 266.21 of this part; and

(13) Assurance that the agency submitting the application has the statutory authority and administrative jurisdiction to develop, promote, supervise and support safe, adequate, and efficient rail transportation services;

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that it employs or will employ, directly or indirectly, sufficient trained and qualified personnel; that it maintains or will maintain adequate programs of investigation, research, promotion, and development with provision for public participation; and that it is designated and directed solely, or in cooperation with other State agencies, to take all practicable steps to improve rail transportation safety and to reduce transportation related energy utilization and pollution.

(c) Applications for planning assistance shall include a Planning Work Program which, together with such other information the State may choose to submit, demonstrates to the satisfaction of the Administrator that the State's proposed use of planning assistance will produce a State Rail Plan, or an update, amendment or revision which meets the requirements of § 266.17 of this part. The Planning Work Program shall include the following information:

(1) An identification of the data to be obtained on the rail network and rail services in the State, the sources of this data, and the methodology to be employed in the collection of the data; and

(2) A brief description of discrete tasks or activities to be accomplished, including a work schedule and a task budget.

(d) Applications for acquisition assistance shall include the following:

(1) Copies of the results of a title search, and the basis for the proposed acquisition price including an independent valuation appraisal by a qualified appraiser. Such appraisal shall be performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and shall be based on the results of a title search and comparable sales and shall take cognizance of all easements, encumbrances and restrictions that may affect the value of the property. Such appraisals shall be reviewed by a State Review appraiser to establish just compensation;

(2) Written assurance that the acquisition is being undertaken in accordance with 49 CFR 24.102, 24.103, 24.104, and 24.105 to the greatest extent practicable under State law;

(3) Written assurance that the owner of the property to be acquired has been advised of the requirements of 49 CFR 24.102 or will be advised of such requirements prior to the consummation of the acquisition;

(4) A description of the necessary steps, and timing for completion of the acquisition;

(5) When acquisition for future rail freight service is involved, evidence that the properties for which assistance is requested have service potential, such as plans for agricultural development or existence of fossil fuel reserves, the State's anticipated timetable for returning the line to service, and its proposed use of the property while it is out of service including its maintenance plans; and

(6) Evidence that the anticipated benefits and costs of the proposed acquisition have been analyzed in accordance with the Benefit-Cost Methodology.

(e) Applications for rehabilitation or improvement assistance and rail facility construction assistance shall include the following:

(1) A detailed estimate of the materials and labor directly related to the work, the total estimated cost of the work, the estimated numbers and kinds of ties and other material, a map displaying the milepost termini involved, and a schedule for completion of the work;

(2) Evidence that the anticipated benefits and costs of the proposed project have been analyzed in accordance with the Benefit-Cost Methodology.

(3) Assurance by the chief executive officer of the applicant that rehabilitated or improved facilities or newly constructed facilities will be maintained to prevent deterioration below the speed at which the rail line related to the project could be operated upon completion of the project during the period of time established as the payback period in the benefit-cost analysis of the projects;

(4) An indication of which of the following methods will be used to complete the work:

(i) On an actual cost basis by the operator or the applicant;

(ii) By contracting for the work in accordance with the applicable provisions of the Common Rule;

(iii) Under an existing continuing contract between the operator and another firm provided that the applicant can demonstrate the costs are comparable to those under paragraphs (e)(4)(i) and (ii) this section; and

(5) A description of the plans for inspection of the work including identification and qualifications of staff to be responsible for the inspection and a proposed schedule of inspections.

(f) Execution and filing of applications.

(1) Each original application shall bear the date of execution and be signed by the chief executive officer of the agency submitting the application.

(2) Each application and two (2) copies thereof, shall be filed with the Administrator.

**§ 266.21 Environmental impact.**

(a) The Administrator has determined that planning assistance, acquisition assistance, and rehabilitation or improvement assistance for a project consisting of work which does not change the existing character of the facility, (including work to overcome normal periodic maintenance that had been deferred) are not major actions significantly affecting the quality of the human environment.

(b) The Administrator has determined that rail facility construction assistance for the following projects is not a major actions significantly affecting the quality of the human environment:

(1) Modernization of existing facilities which does not include significant land acquisition and is consistent with local zoning;

(2) Construction of minor sections of new track; including side tracks, passing tracks, crossovers, short connections between existing rail lines and new tracks within or adjacent to rail yards, when the project is consistent with local zoning, does not include acquisition of a significant amount of land and does not significantly alter the traffic density characteristics of the existing rail lines or rail facilities; and

(3) Construction of minor loading and unloading facilities, when the project is consistent with local zoning, does not involve the acquisition of a significant amount of land, and does not significantly alter the traffic density characteristics of existing rail or highway facilities, provided that the project satisfies the following criteria:

(i) The action is not likely to be environmentally controversial from the point of view of people living within the environment affected by the action or controversial with respect to the availability of adequate relocation housing;

(ii) The action is not inconsistent with any Federal, State, or local law, regulation, ordinance, or judicial or administrative determination relating to environmental protection;

(iii) The action will not have any significant adverse impact in any natural, cultural, recreational, or scenic environment(s) in which the action takes place, or on the air or water quality or ambient noise levels of such environment(s);

(iv) The action will not: Use 4(f) protected properties; adversely affect properties under section 106 of the National Historic Preservation Act;



involve new construction location in a wetlands area; or affect a base floodplain;

(v) The action will not cause a significant short- or long-term increase in traffic congestion, or other significant adverse environmental impact on any mode of transportation;

(vi) The action is not an integral part of a program of actions which, when considered separately, would not be classified as major FRA actions, but when considered together would be so classified; and

(vii) Environmental assessment or documentation is not required by any Federal law, regulation, guideline, order, or judicial or administrative determination other than this part.

(c) Applications for rehabilitation or improvement assistance or rail facility construction assistance for projects not exempt under paragraphs (a) or (b) of this section, shall include an environmental assessment to determine whether the future use of the property will significantly affect the quality of the human environment.

(1) Prior to submitting an application, FRA recommends that the applicant seek the Administrator's advice as to form and substance of the assessment for the project under consideration. The environmental assessment shall utilize an interdisciplinary approach in identifying the type, degree of effect, and probability of occurrence of primary, secondary and cumulative potential environmental impacts (positive and negative) of the proposed action and of alternative courses of action. The depth of coverage shall be consistent with the magnitude of the project and its expected environmental effects.

(2) Environmental impact statement. A draft environmental impact statement (EIS) shall be submitted with each application when the environmental assessment concludes that the future use significantly affects the quality of the human environment. FRA recommends that prior to submitting the application, the applicant seek the Administrator's advice as to the form and substance of the EIS for the project under consideration.

(3) Finding of no significant impact. A draft finding of no significant impact declaration shall be submitted with each application when the applicant's environmental assessment concludes that the future use does not significantly affect the quality of the human environment. The finding of no significant impact shall include a description of the project, and sufficient data and environmental findings to support the conclusions as to the impact upon the quality of the human environment. FRA recommends that prior to submitting the application, the applicant seek the Administrator's advice as to the form and substance of this finding for the project under consideration.

(4) Section 4(f) determination. For projects involving the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site of national, State or local significance as determined by the Federal, State, or local officials having jurisdiction thereon, information to support a determination pursuant to section 4(f) of the Act shall be submitted together with the application. The section 4(f) determination shall document that:

(i) There is no feasible and prudent alternative to the use of such land; and

(ii) The project includes all planning to minimize harm resulting from such use.

(5) Historic preservation. For projects involving the use of historic, cultural or archeological resources listed or eligible for listing in the National Register of Historic Places, information which documents that the Advisory Council on Historic Preservation has been afforded an opportunity for review and comment on the proposed project in accordance with 16 U.S.C. 470 and 36 CFR part 800 shall be submitted with the application.

**§ 266.23 Grant Agreement and Disbursement.**

(a) Upon the approval of an application, a grant agreement will be executed by the Administrator and the applicant (hereafter referred to as "grantee"). The grant agreement will identify the amount of the Federal Share and the State Share. The State Share (except approved in-kind benefits) shall be expended on a pro-rata basis with the Federal Share.

(b) The Federal Share shall be provided either in advance or by reimbursement in accordance with the applicable provisions of the Common Rule.

(1) Prior to receipt of advance payments, the grantee must have demonstrated to the satisfaction of the Administrator that it is in compliance with the applicable provisions of the Common Rule, including procedures that will minimize the time elapsing between the receipt of funds by the grantee and their disbursement.

(2) If the grantee is not eligible for advance payments or does not desire them, the grantee will be reimbursed for eligible expenditures at the end of each fiscal quarter upon submission of request for reimbursement.

(3) Before disbursement of Federal funds can be made to a grantee for payment to third parties, the grantee must have executed an agreement with the third party and have submitted a copy of such agreement to FRA.

(4) Before disbursement of funds for acquisition assistance, rehabilitation or improvement assistance, or rail facility construction assistance, the grantee shall retain a contingent interest (redeemable preference shares) for the Federal Share of funds in the rail line related to the project which gives the grantee the right to collect its share of the funds in the event that an application for abandonment of such line is filed under chapter 109 of title 49, United States Code, or such line is abandoned, discontinued, sold, or disposed of in any way after it has received financial assistance hereunder.

(5) Acquisition assistance will be disbursed only after the following have been approved by the Administrator:

(i) A title opinion of the chief legal officer of the grantee explaining the type of title being acquired (if a general warranty deed is not being acquired, an explanation of the reason), the need for use of the State's eminent domain powers to assure adequate title, and the possible effects of any defects identified on the marketability of the property;

(ii) A written determination that the property acquired is limited to the land and facilities that are necessary for the rail freight services which would have been curtailed or abandoned but for the acquisition; and

(iii) A written determination that the purchase price is consistent with the value of the property interest being acquired, and the evidence upon which the determination is based.

(c) In the event that an audit reveals that allowable costs under the grant agreement are less than the amount of the grant, all amounts in excess of the allowable costs shall be refunded to FRA at the end of the fiscal year in which the audit was conducted unless such amounts have been incorporated into another executed grant agreement. Upon termination of a State's participation in the Rail Freight Assistance Program, the State shall repay to FRA the Federal Share of any unused financial assistance provided by FRA and any accumulated interest thereon.

**§ 266.25 Record, audit, and examination.**

(a) Retention and custodial requirements for financial records, supporting documents, statistical records, and all other records pertinent to the financial assistance provided

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under this part shall be governed by the applicable provisions of the Common Rule.

(b) The Administrator and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after submission to the Administrator of the applicant's final accounting of all program funds, and for any longer period necessary to resolve audit findings, have access for the purpose of audit and examination to any books, documents, papers, and records which in the opinion of the Administrator or the Comptroller General of the United States may be related or pertinent to the grant agreement, contracts, or other arrangements arising out of, or in any way connected with the financial assistance provided herein.

**§ 268.27 Waivers and modifications.**

The Administrator may, with respect to individual requests, upon good cause shown, waive or modify any provision of this part not otherwise required by law and may impose any additional requirements the Administrator deems necessary. Requests for waiver or modification of any provision contained herein must be submitted, and will be considered, pursuant to the previsions of 49 CFR part 211.

Issued in Washington, DC, on August 31, 1990.

Perry A. Rirkind,

*Deputy Administrator.*

[FR Doc. 90-27897 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-62-M

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; Notice of Finding on a Petition to Delist the Gray Wolf (Canis lupus)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of finding on petition.

**SUMMARY:** The Service announces a 90-day finding for a petition to amend the Lists of Endangered and Threatened Wildlife and Plants. A finding has been made for the gray wolf (*Canis lupus*) that substantial information has not been presented to indicate that delisting the species is warranted.

**DATES:** The finding announced in this notice was made in October 1990. Comments and information may be submitted until further notice.

**ADDRESSES:** Information, comments, or questions regarding this petition may be submitted to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111. The petition, finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** William F. Harrison (612/725-3276 or FTS 725-3276) at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding for a petition to list a species is positive, the Service is also required to promptly commence a review of the status of the involved species.

The Service has received and made a finding on a petition to delist the gray wolf (*Canis lupus*). The petition, dated July 11, 1990, was submitted by the Farm Bureau Federations of Wyoming, Montana, and Idaho, and was received by the Service on July 16, 1990.

The petition presents the contention that gray wolves are hybridizing with other canids, especially coyotes. The petition states that this hybridization is current, frequent, and widespread. The petition includes a list of literature references to support the discussion of wolf hybridization.

The Service's interpretation of the discussion within the petition is that the following two issues are put forth as the consequences of hybridization:

1. The gray wolf is not a species, and thus is not eligible for listing and protection under the Endangered Species Act;

2. The Service is unable to distinguish "pure" wolves from hybrid wolves so it is impossible to effectively carry out a program designed for the eventual recovery of the gray wolf.

The Service has reviewed the petition, the literature cited in the petition, other available literature and data, and consulted with wolf experts and molecular genetic analysis researchers. After evaluating all the information at our disposal, the Service finds that the petition does not present substantial information indicating that the requested action may be warranted. The following points summarize the reasons for this finding:

1. Neither the submitted data, nor other available data, provide substantial support for the occurrence of widespread hybridization between United States gray wolves and other wild canids.

The petition provides twenty literature references, with the petition text including information from additional publications that are not referenced. The Service has reviewed the references, along with other data, to determine their content, significance, and relevance to the petitioned action. With one exception [Anonymous 1990, discussed below] the Service views the data presented in the petition as subjective, circumstantial, and anecdotal. Some of the references contain old data (Anonymous 1927; Audubon and Bachman 1851; Gier 1975; Murie 1940; Weaver 1978) that are not relevant to the current situation. Several are from studies conducted outside of the United States (Stansfield 1970) or beyond the current U.S. range of the gray wolf (Henshaw 1982) and are of limited value in evaluating the status of gray wolves listed as threatened and endangered in the United States. Several present data dealing with hybridization in other canids (Freeman 1976; Mech 1970) or between canids in captivity (Nowak 1979; Theberge 1981). Such data represent only speculation and provide no hard data useful in evaluating hybridization in wild populations of gray wolves. The remaining references (Anonymous 1986; Anonymous 1988; Chiarelli 1975; Fuller 1989; Mayr 1970; Robinson 1989; Seal 1975; U.S. Fish and Wildlife Service 1987) deal only with background information (e.g. wolf pack behavior, molecular genetic analytical methodology, hybridization theory) and do not address wolf-coyote hybridization.

In contrast to these references, several studies and unpublished data from the many gray wolves captured in research and depredation control programs contain no evidence of wolf-coyote hybridization in Rocky Mountain wolves or in the U.S. Great Lakes wolf population in recent decades. These researchers, without exception, have reported populations of U.S. gray wolves that do not exhibit hybrid characteristics and are phenotypically pure wolves (Fritts, U.S. Fish and Wildlife Service, pers. comm.; Fritts and Mech 1981; Fuller 1989; Mech, U.S. Fish and Wildlife Service, pers. comm.; Mech and Frenzel 1971; Nowak, U.S. Fish and Wildlife Service, pers. comm.; Van Ballenberghe 1977; Van Ballenberghe et al. 1975).

2. The petition misinterprets recent mitochondrial DNA (mtDNA) data by considering mtDNA to be equivalent to nuclear DNA.

The petition contains a single reference (Anonymous 1990) that bears directly hybridization in the existing U.S. wolf population and contains recent and quantitative data. That reference is to a three-sentence article that appeared in the February 1990 Endangered Species Technical Bulletin (incorrectly cited in the petition as the April 1990 issue). That article reported that coyote mtDNA was found in more than 50 percent of 72 gray wolves sampled from Minnesota. The petition quotes the all three sentences and adds several pages of discussion of the presumed biological implications of this finding. The petition clearly, but erroneously, equates mtDNA with nuclear DNA (the DNA found in the nucleus of cells) and bases its conclusions upon that error. Mitochondrial DNA differs substantially from nuclear DNA in both its function and in its method of inheritance.

Mitochondrial DNA does not occur in the cell nucleus and does not function in the production of observable traits. It codes only for proteins made and used within the mitochondria of individual cells. It does not code for the inherited physical and behavioral characteristics of the organism upon which natural selection can act. It is solely nuclear DNA that carries the genetic codes for the physical and behavioral traits of the offspring.

Mitochondrial and nuclear DNA are inherited differently because mtDNA is not located in the cell nucleus. Male sperm are essentially mobile nuclei carrying half of the male's genetic code in the nuclear DNA; sperm carry no mtDNA. Female eggs are complete female cells, including mtDNA outside the nucleus, and with nuclei containing half of the female's genetic code in the nuclear DNA. At fertilization the hybridization of mtDNA cannot occur because the sperm lacks mtDNA to join with the mtDNA of the egg.

These differences between mtDNA and nuclear DNA have several very significant implications. First, a developing embryo contains only its mother's mtDNA; none is inherited from its father. In contrast, nuclear DNA is passed on by both parents, and the nuclear DNA carried by an embryo originates equally from both parents. Second, once new mtDNA is introduced into a population, it (or possibly a mutated version of it) will persist indefinitely as long as that matriline (i.e., an unbroken series of female descendants) exists. The action of natural selection will modify the frequency of organisms having particular physical and behavioral traits; this also will change the frequency of the causative nuclear DNA in a population by changing the frequency of carriers of that nuclear DNA. However, mtDNA is not phenotypically expressed and is largely unaffected by natural selection. It can persist in a population despite the total elimination of nuclear DNA that originally came from the same source.

Nuclear and mitochondrial DNA differences mean that mtDNA data cannot be treated like nuclear DNA data when one is studying hybridization. For example, over a number of generations the frequencies of particular types of mtDNA in a population have no reliable correlation with the number of hybridization events, their frequency, or their timing. Further, the existence of a type of mtDNA in a population cannot be used to predict the presence or frequency of nuclear DNA that may have come from the same source.

The cited mtDNA data resulted from a recent study (Lehman, et al, in press) of the occurrence of coyote mtDNA in gray wolves throughout much of North America. The study used recently developed techniques and is the first to look at mtDNA in wild gray wolves, so the results of the study may be subject to future reinterpretation. Thus, the findings should not be viewed as conclusive until the data are expanded and replicated in additional studies. However, a reasonable interpretation of the mtDNA data, as it related to this petition, is as follows:

(a) In certain areas of North America, male wolves have mated with female coyotes in the past, leading to exchange of nuclear and mtDNA. Within the U.S., the data indicate that two wolf-coyote hybridizations have occurred in Great Lakes area wolves, and no hybridizations in Rocky Mountain wolves. The Lehman, et al, study shows that a larger number of hybridization events (at least an additional four) have occurred in southern Ontario wolf populations, and there is no mtDNA evidence that wolf-coyote hybridization has occurred in Canadian wolves west of Lake of the Woods, Ontario.

(b) Due to the maternal inheritance of mtDNA, coyote-type mtDNA passed on in wolves from these hybridization events is not "bred out," or diluted, over time in the recipient wolf population. It is passed on from a mother to her offspring in its entirety (subject to normal mutation), and its frequency depends solely upon the survival and spread of the matriline in the population. In contrast, any nuclear DNA received from coyotes can be "bred out" by natural selective pressures over succeeding generations, and this appears to have happened in the recipient U.S. wolf populations. There are no data showing phenotypic (morphological) expression of coyote traits in U.S. gray wolf populations. The study suggests that the female offspring from past hybridizations backcrossed with pure male wolves, and their offspring did the same. These backcrossings would produce rapidly decreasing proportions of coyote nuclear DNA in individual wolves, while maintaining the entire mtDNA complement. Thus, coyote traits from the coyote nuclear DNA would rapidly disappear from the wolf population, even though the mtDNA persisted.

(c) The coyote-type mtDNA found in Minnesota and Michigan wolves has diverged, via mutations, from the presumed coyote-type from which it originated. The extent of divergence, coupled with the chronology of coyote range expansion, indicates the two U.S. hybridization events occurred at least 100 years ago (Lehman, et al, in press) significantly earlier than the southeastern Ontario hybridizations, where the coyote-type mtDNA in wolves remains identical to mtDNA found in sympatric coyotes. This agrees with the existing phenotypic data which show possible coyote traits (i.e., smaller size in the "Tweed type") in southeastern Ontario and Quebec wolves, but no evidence of coyote traits in U.S. wolves.

In summary, the mtDNA study (Lehman, et al. in press) referenced in the petition supports the hypothesis of very infrequent past hybridizations between U.S. wolves and coyotes in the Great Lakes area. The mtDNA data also show a complete absence of hybridization between wolves and coyotes west of the 95th meridian (roughly where the Manitoba-Ontario border meets the U.S. border) even where coyotes are abundant in wolf range. The data do not provide any evidence of the current presence of coyote nuclear DNA in U.S. wolves, and the study provides a likely scenario for the rapid elimination of coyote nuclear DNA following a hybridization occurrence. The study does not provide any evidence of coyote phenotypic traits persisting in U.S. wolves.

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3. The Service is not permitted to consider the probability of successfully recovering a species when making a decision to list or delist a species.

The petition presents the argument that if the Service is unable to distinguish "pure" wolves from hybrid wolves an effective recovery program cannot be carried out for the species. In contrast, section 4(a)(1) of the Endangered Species Act specifies the criteria to be used in designating a species as threatened or endangered. The probability of achieving successful recovery of a species is not a factor the Service can consider when making a listing or delisting decision. Thus, the potential difficulty the Service might encounter in trying to distinguish "pure" wolves from possible hybrids is not a relevant factor in any decision to list or delist the gray wolf.

4. The best scientific and commercial data available support continued listing for the gray wolf.

The Service is required to use the best scientific and commercial data available when making a listing/delisting decision. As discussed above, the scientific data supporting hybridization in U.S. wolves currently came from a single study. That study suggests past, infrequent hybridizations, but provides no support for current and/or widespread hybridization in U.S. Great Lakes wolf populations. If provides strong support for the absence of wolf-coyote hybridization in Rocky Mountain wolves in the U.S. and Canada. The remainder of the relevant scientific data show that current U.S. wolves lack coyote phenotypic traits.

Reasonable caution, an understanding of the classic scientific method, and the Endangered Species Act itself all argue for a cautious approach in applying new data and methodologies to the delisting of endangered and threatened species. The Lehman, et al., study raises important questions that should stimulate further investigation but should not be considered strongly supportive of a significant change in listing and protection for an endangered and threatened species.

It is incumbent upon the Service to avoid a possibly premature and unwarranted removal or relaxation of protection for a listed species. Given the current "state of the art" of DNA analysis and interpretation in wild canids, the Service must adopt a conservative approach in the absence of other substantial data supporting delisting of a gray wolf.

On the basis of the best scientific and commercial information available, the Service finds that this petition does not present substantial information indicating that the action requested may be warranted. The Service recognizes the possibility of wolf hybridization with other canids in certain geographic localities and will continue to encourage scientific research in this area. In addition, the Service recognizes that recent advances in molecular genetics have made it difficult to interpret such data in light of the classic biological species concept. However, several different species concepts, including a revised biological species concept, are now dominating taxonomic thinking. These alternative concepts incorporate the idea of limited genetic interchange with other recognized species if there are clear selective pressures working against the persistence of intermediate types. The Service is currently reviewing and evaluating possible alternate species concepts, with possible ramifications for the Service's approach to protection of endangered and threatened species when infrequent interbreeding occurs with other taxa.

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**Author**

This notice was prepared by Ronald L. Refsnider, Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Ft. Snelling, Twin Cities, Minnesota 55111 (612/725–3276 or FTS 725–3276.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: November 23, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90-28104 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-55-M



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 640**

**Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Comments from the public are requested.

**DATES:** Written comments must be received on or before January 24, 1991.

**ADDRESSES:** Copies of Amendment 3 are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609–2486.

Comments should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3722.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comment in determining approvability of the document.

On July 24, 1990, NOAA published at 54 FR 30826, revised guidelines interpreting the Magnuson Act's national standards for fishery management plans. In compliance with the revised guidelines, Amendment 3 proposes to add to the FMP a scientifically measurable definition of overfishing and an action plan to arrest overfishing should it occur. In addition, Amendment 3 proposes authority for NOAA to charge a fee to recover the administrative costs of issuing commercial and tail-separation permits and revision of the financial eligibility requirements for a corporate-owned vessel to obtain a Federal commercial spiny lobster permit.

Proposed regulations to implement Amendment 3 are scheduled to be published within 15 days.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 26, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28065 Filed 11-29-90; 2:45 pm]

BILLING CODE 3510-22-M

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# Notices

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Vol. 55, No. 231
Friday, November 30, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988; Correction Notice**

**AGENCY:** Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

**ACTION:** Correction notice.

**SUMMARY:** This notice makes a fourth correction to Document No. 89–27518 published on November 24, 1989, in Volume 54 FR, Pages 48659–48664.

**EFFECTIVE DATE:** April 28, 1989.

**FOR FURTHER INFORMATION CONTACT:** Regarding land transferred to the U.S. Forest Service, contact Bob Larkin, Officer, Land Management and Planning, U.S. Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431. Regarding land transferred to the Bureau of Land Management, contact Bob Stewart, Chief, Pubic Affairs Staff, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

**SUPPLEMENTARY INFORMATION:** The following corrections are made to Document No. 89–27518 published on November 24, 1989, in 54 FR 48659–48664:

1. Page 48659, third column, line 43 add ", N½NE¼NW¼NW¼" at the end of the sec. 36 description.

2. Page 48664, third column, line 32: The acres should read "704,408.09".

3. Page 48664, third column, line 35: The acres should read "289,932.488".

**Fred Wolf,**
*Acting State Director, Nevada Bureau of Land Management.*
**R.M. (Jim) Nelson,**
*Supervisor, Toiyabe National Forest, U.S. Forest Service.*
[FR Doc. 90–27582 Filed 11–29–90; 8:45 am]
BILLING CODE 4310-HC-M

**Food and Nutrition Service**

**Food Stamp Program: Electronic Benefit Transfer Alternative Issuance Demonstration Project**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Amended general notice.

**SUMMARY:** The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend project operations through June 30, 1992. The continuing project is being conducted under the research, demonstration and evaluation authority of section 17 of the 1977 Food Stamp Act, as amended. Pennsylvania is currently pursuing the development of an Enhanced EBT demonstration project designed to replace the current Reading system with a system designed to further improve the operating efficiency and cost effectiveness of benefit delivery.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Cohen, Supervisor, Demonstration Projects Section, Program Design Branch, Program Development Division; Food Stamp Program; Food and Nutrition Service, USDA; Alexandria, Virginia 22302. Telephone (703) 756–3517.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

This Notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The notice will affect the economy by less than $100 million a year. The notice will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore the Department has classified the notice as "not major."

**Executive Order 12372**

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Regulatory Flexibility Act**

This Notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The Commonwealth of Pennsylvania and its local welfare agencies will be affected to the extent that they are involved in administering this alternative system. Food retailers and banks within the demonstration project area will be affected to the extent that they agree to participate. Individuals participating in the Food Stamp Program and living within the Reading, Pennsylvania demonstration project area in Berks County will be affected to the extent that they will continue using an alternative benefit issuance instrument and continue to be subject to the alternative issuance procedures.

**Paperwork Reduction Act**

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

**Comments**

This Notice provides for a further extension through June 30, 1992 of a current operating system without any significant changes to the demonstration's operating procedures. Consequently, comments are not being requested and the provisions of this Notice will be effective upon publication.

**Background**

On July 6, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (49 FR 33152) which provided additional details on the operational procedures of the project.

**The Original Demonstration Project**

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in February 1985. USDA contracted with Planning Research Corporation (PRC) of McLean, Virginia for the administration of EBT system operations through December 1985.

Reaction to the system by the different groups participating in the demonstration was favorable. Recipients had few problems using the system. Retailers and banks expressed their pleasure regarding the time and effort saved by not having to process coupons. While there were some system problems during early stages of the test which raised concern by all parties, system improvements were implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients. The final evaluation report for the initial period of EBT operations was published in May 1987 and is available for inspection at FNS Headquarters in Alexandria, Virginia.

**The Extended Demonstration Project**

In consultation with the Commonwealth of Pennsylvania, the Department decided in 1985 to extend demonstration project operations. The purpose of the extended EBT demonstration project evaluation was to obtain data to provide recommendations for management of the EBT system and guide other State and Federal EBT initiatives. Included in the more specific objectives were collection and assessment of data in five major areas: The costs to the government in operating a redesigned EBT system, the vulnerability of the EBT system to loss or misuse of program benefits, the costs retailers incur to participate in the EBT system, the effects of the EBT system or recipients themselves and the costs and effects of the EBT system upon participating financial institutions.

On December 30, 1985, the Department published an Amended General Notice in the **Federal Register** (50 FR 53170) to extend the project for 15 additional months. During this extension, the operating procedures remained as published in the August 1984 Amended General Notice except that the EBT Center was operational 24 hours per day instead of the 18 hours stated in the Notice. The State's operation of the EBT Demonstration Project is governed by an amendment to the State Plan of Operation. In this amendment the State agreed to maintain the EBT system performance at a level which met or exceeded the pre-existing acceptable levels of performance, with no degradation of system operations or performance, and to include a back-up system which provided continuous processing to minimize system down-time and manual processing.

For the first three months of the extended demonstration, PRC continued to operate the EBT system under contract with the Pennsylvania State agency. Subsequent to this period, Pennsylvania assumed responsibility for operating the EBT system and moved the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During this second phase, all operations were coordinated by State personnel in Harrisburg.

With the publication of an Amended General Notice on April 14, 1987 (52 FR 12041), the third phase of the Extended Demonstration Project began. Upon receiving FNS approval, the State proceeded to convert to a redesigned EBT system. FNS approval was based on the State's demonstration of system readiness through the documentation provided by the State and by FNS' satisfaction with the acceptance tests being conducted. The State transferred operations to the new system on June 22, 1987. The primary difference between the State's and PRC's systems is in the utilization of system equipment. Functionally the two systems are equivalent. However, the PRC system computers were totally dedicated to EBT operations. The State's system is fully integrated into the existing Pennsylvania Department of Public Welfare (PDPW) production environment and shares processing resources with other programs. System enhancements which accompanied this phase were for the most part transparent to users. The changes improved internal systems accountability and cost performance. The Department also permitted a small expansion of the project to include approximately 500 households that were customers of retailers already participating in the project.

The EBT demonstration project has been extended by Amended General Notices dated July 12, 1988 (53 FR 26292), and December 15, 1989 (54 FR 51436). An evaluation of the EBT demonstration continued through the extension periods. A report of those evaluation results was issued in February 1990 and is now available to the public. In brief, participant groups continue to prefer the EBT system to coupons, and EBT administrative costs were substantially reduced from approximately $27.00 per case month to approximately $9.00 per case month. However, EBT costs are still about three times higher than the costs of a coupon system.

In part to address this cost issue, PDPW has initiated action to substantially modify, enhance, and expand its EBT system. The proposed system modification is expected to include the disbursement of Aid to Families with Dependent Children (AFDC) payments, both at point-of-sale and through automated teller machines (ATMs). The proposal also calls for system expansion into the remainder of Berks County, and in four western Pennsylvania counties. If approved and implemented we expect these changes will reduce the case-month cost of the system and bring it closer to the cost of a coupon system.

The extension of the current EBT project announced by this Notice is designed to enable the State agency to continue the pursuit of modifications without disrupting the current EBT system. However, approval of proposed system revisions and an evaluation plan must be obtained by PDPW from FNS prior to implementation of any revisions.

**Current Action**

This extension will allow the extended EBT demonstration to continue to operate under demonstration project authority through June 30, 1992. During this time, the PDPW will continue actions started during the previous extension seeking waiver authority from USDA to modify, enhance, and expand its EBT system.

Dated: November 16, 1990.

**Betty Jo Nelsen,**
Administrator.
[FR Doc. 90–28150 Filed 11–29–90; 8:45 am]
BILLING CODE 3410-30-M

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## CIVIL RIGHTS COMMISSION

### West Virginia Advisory Committee to the United States Commission on Civil Rights Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 2 p.m. and adjourn at 4 p.m. on December 12, 1990, at the Governor's Press Conference room, State Capitol Building, Charleston, WV 25305. The purpose of the meeting is to (1) to orient new committee members; (2) to discuss the status of the Commission; (3) to hear a report on Civil Rights progress and/or problems in the State; and (4) to discuss Civil Rights Day activities in West Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Marcia Pops, (304/294–7254) or Bobby Doctor, CCR staff at 202/523–5264:) or TDD (202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 26, 1990.

Wilfredo J. Gonzalez,
*Staff Director.*

[FR Doc. 90–28181 Filed 11–29–90; 8:45 am]
BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 46–90]

### Foreign-Trade Zone 72—Indianapolis, IN, Application for Subzone, Toyota Forklift Truck Plant, Columbus, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the forklift truck manufacturing plant of Toyota Industrial Equipment Manufacturing, Inc. (Toyota Industrial Equipment) (subsidiary of Toyota Automatic Loom Works, Ltd.), located in Columbus, Indiana, some 50 miles south of Indianapolis. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 20, 1990.

The new Toyota Industrial Equipment plant (80 acres, 280,000 sq. ft.) is located at 5555 Inwood Drive in Columbus, Indiana. Plant construction has just been completed, and full production is slated to begin by mid-1991. The facility will produce gasoline and diesel-powered industrial forklift trucks, like those the parent company is currently exporting from Japan. Initially, the majority of the parts and materials will be sourced aboard, such as engines, transmissions, hydraulic equipment, gears, hoses, bearings, gaskets, valves, clamps, fittings, fasteners, springs, chain, glass, instruments, and electrical components. Components purchased from domestic sources will include steel mill products, metal parts, wheels, tires, counterweights, frames, bodies, seats, knobs, and batteries.

Zone procedures would exempt Toyota Industrial Equipment from Customs duty payment on the foreign material contained in its exports. On domestic sales, the company would be able to choose the duty rate on finished industrial forklifts (duty free). The duty rate for foreign-sourced components averages 3 percent. The application indicates that zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, North Central Region, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel David E. Peixotto, District Engineer, U.S. Army Engineer District Louisville, P.O. box 59, Louisville, Kentucky 40201–0059.

Comments concerning the proposed foreign-trade subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 18, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, One North Capital, suite 520, Indianapolis, Indiana 46204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: November 21, 1990.

John J. De Ponte, Jr.,
*Executive Secretary.*

[FR Doc. 90–28304 Filed 11–29–90; 8:45 am]
BILLING CODE 3510–DS–M

## International Trade Administration

[A–588–816]

### Initiation of Antidumping Duty Investigation; Personal Word Processors from Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of personal word processors from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the International Trade Commission (ITC) of this action so that it may determine whether imports of personal word processors from Japan are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 21, 1990. If that determination is affirmative, we will make our preliminary determination on or before April 15, 1991.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8830 or (202) 377–1766, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On November 6, 1990, we received a petition filed in proper form by Smith Corona Corporation, on behalf of the U.S. industry producing personal word processors. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of personal word processors from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

#### United States Price and Foreign Market Value

Petitioner provided nine methodologies comparing United States price to foreign market value (FMV) that indicate sales at less than fair value: (1) FMV based on actual home market prices compared to U.S. transaction prices to related subsidiaries in the United States; (2) FMV based on model-specific average unit revenues on sales in the home market compared to average unit revenues on sales to related subsidiaries in the United States; (3) FMV based on model-specific average unit revenues for sales to Canada compared to average unit revenues on sales to related subsidiaries in the United States; (4) FMV based on actual Canadian prices compared to actual U.S. prices; (5) FMV based on constructed value (CV) (with selling, general, and administrative expenses (SG&A) estimated from public version disclosure worksheets for a producer of portable electric typewriters in connection with an administrative review of the antidumping duty order on *Portable Electric Typewriters from Japan*) compared to actual U.S. prices derived from call reports; (6) FMV based on CV with SG&A estimated from the same disclosure worksheets compared to U.S. prices derived from retail advertisements; (7) FMV based on CV (with SG&A derived from actual, company-specific financial statements and adjusted for selling expenses obtained from the disclosure worksheet identified in (5) above) compared to actual U.S. prices based on call reports; (8) FMV based on CV (with SG&A derived from actual, company-specific financial statements and adjusted for company-specific selling expenses obtained from a market research report contained in the petition) compared to actual U.S. prices based on retail advertisements; and (9) FMV based on model-specific average unit revenue on sales in the home market compared to actual U.S. prices based on retail advertisements.

The Department is initiating this investigation on the basis of methodologies (8) and (9) described above. The first compares FMV, based on model-specific average unit revenue obtained from a market research report for home sales in 1990, to adjusted 1990 company-specific U.S. prices obtained from retail advertisements. Given that petitioner indicates that sales in the United States are generally exporter's sales price transactions (ESP), home market selling expenses were deducted from FMV. U.S. prices were adjusted downwards for a dealer mark-up, an advertising allowance, selling expenses, and a trading company mark-up. The Department did not accept comparisons submitted by petitioner for one Japanese company, Brother, because different products were compared with no adjustment for differences in merchandise. In addition, the Department did not accept comparisons submitted by petitioner for one model produced by Matsushita because there was no support in the petition for the average unit revenue for sales of this model in the home market. Our rejection of this methodology as it pertains to Brother and Matsushita does not preclude us from initiating an investigation against those companies. The statute does not require less than fair value allegations to be company-specific.

The second methodology on which the Department is initiating this investigation compares FMV based on CV to adjusted 1990 U.S. prices obtained from retail advertisements. CV was adjusted to update all prices of components and materials to 1990 prices. Again, given that petitioner indicates that sales in the United States are generally ESP, home market selling expenses were deducted from CV. U.S. prices were adjusted downward for a dealer mark-up, an advertising allowance, selling expenses, and a trading company mark-up. The Department did not accept CV for one Matsushita model because no support for that CV was provided in the petition. Again, for the reasons stated above, the rejection of this methodology as it pertains to Matsushita does not preclude us from initiating an investigation against this company.

We do not consider methodologies (1) through (7) appropriate for purposes of initiation for the following reasons. Methodologies (1) through (3) base U.S price on sales to related parties. Methodology (4) compares U.S. and Canadian prices which are more than one year apart. Methodologies (5) through (7) base CV in whole or in part on selling expenses of a different class or kind of merchandise (*i.e.*, portable electric typewriters).

Based on a comparison of United States price and FMV, we calculated dumping margins ranging from 0.00 percent to 32.27 percent. The dumping margins alleged in the petition range from 0.00 percent to 335.3 percent.

#### Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on personal word processors from Japan and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of personal word processors from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

#### Scope of Investigation

The merchandise covered by this investigation consists of integrated personal word processing systems and major finished units thereof ("word processors"), which are defined as devices designed principally for the composition and correction of text. All word processors within the scope of the investigation have the following essential features: (1) A customized operating system designed exclusively for a manufacturer's word processor product line which is unable to run commercially available software and which is permanently installed by the manufacturer before or after importation; (2) a word-processing software/firmware program which is designed exclusively for the word processor product line and which is permanently installed by the

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manufacturer before or after importation; and (3) internal memory (both read-only memory (ROM) and read-write random access memory (RAM)) for word processing.

In addition, word processors may include one or more of the following features: (1) An auxiliary memory storage device, whether internal (*e.g.*, RAM storage) and/or external (*e.g.*, which accepts floppy diskettes, RAM cards, or other nonvolatile media); (2) software/firmware designed or modified for us exclusively on a line of word processors (*e.g.*, a spreadsheet of word processing-assist program); (3) an interface permiting the transfer of information to other word processors, telecommunication links, computers, and the like; and (4) a type mode, which permits the word processor to function as a typewriter by typing characters directly onto paper. However, the inclusion or exclusion of these features from a word processor is not dispositive as to whether merchandise is within the scope of this investigation.

All word processors included within the scope of this investigation contain the following three units: (1) A keyboard for the entry of characters, numerals and symbols; (2) a video display; and (3) a chassis or frame containing the essential word processing features listed above. These units may either be integrated into one word processing system or be combined by the user into one working system. Word processors may include, as a fourth unit, a printer with a platen (or equivalent text-to-paper transfer system) and printing mechanism (whether a daisy wheel, ink jet, dot-matrix, laser, or other printing mechanism) to permit the printing of text on paper. However, word processors which do not include a printer as one of the major units are also included within the scope of the investigation.

Word processors may be imported as integrated systems, or the major finished units may be imported separately. Only the major finished units listed above are covered by this investigation. Keyboards and chassis/frames are included in this investigation if they are designed for use in word processors. Printers and video displays are included in this investigation only if they are dedicated exclusively for use in word processors.

Major finished units are distinguished from parts or subassemblies in that they do not require any additional manufacturing before functioning as a complete unit of a word processor. Neither parts nor subassemblies are included in the scope of this investigation.

Word processing devices which meet all of the following criteria are excluded from the scope of this investigation: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software. (*See also, Final Scope Ruling: Portable Electric Typewriters from Japan* (55 FR 47358, November 13, 1990).)

Also excluded from the scope of this investigation are personal computers (PCs), including those PCs which are capable of word processing. PCs are a class of automatic data processing machines. Unlike automatic data processing machines, word processors cannot take the logical decision during processing to modify the execution of a program, *i.e.*, the user of a word processor cannot use the word processor to create new software or modify the program code of existing computer programs. PCs are also distinguished from the word processors subject to this investigation by operating systems which are capable of running a variety of "off-the-shelf" software programs installed by the purchaser. In addition, PCs generally have significantly higher memory storage capacities and often contain major finished units which are interchangeable with units manufactured by several procedures.

Word processors are provided for in subheading 8469.10.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

### ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

### Preliminary Determinations

The ITC will determine by December 21, 1990, whether there is a reasonable indication that imports of personal word processors from Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. Otherwise, the Department will make its preliminary determination on or before April 15, 1991.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Importation Administration.*

[FR Doc. 90-28205 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DS-M

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[A-559-805]

## Initiation of Antidumping Duty Investigation: Personal Word Processors from Singapore

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of personal word processors from Singapore are being, or are likely to be, sold in the United States at less than fair value. We are notifying the International Trade Commission (ITC) of this action so that it may determine whether imports of personal word processors from Singapore are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 21, 1990. If that determination is affirmative, we will make our preliminary determination on or before April 15, 1991.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitutional Avenue, NW., Washington, DC 20230; telephone (202) 377-0630 or (202) 377-1766, respectively.



**SUPPLEMENTARY INFORMATION:**

### The Petition

On November 6, 1990, we received a petition filed in proper form by Smith Corona Corporation, on behalf of the U.S. industry producing personal word processors. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that imports of personal word processors from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer of reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

### United States Price and Foreign Market Value

Petitioner's estimate of United States price is based on advertised retail prices of personal word processors. Petitioner deducted a dealer mark-up, U.S. customs duties, and movement expenses. In addition, given that petitioner indicates that U.S. sales are generally exporter's sales price transactions, selling expenses were also deducted. Petitioner's estimate of foreign market value (FMV) is based on a 1990 home market price. Petitioner deducted selling expenses from FMV.

Based on a comparison of United States price and FMV, petitioner alleges dumping margins ranging from 3.16 percent to 17.72 percent.

### Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on personal word processors from Singapore and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of personal word processors from Singapore are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

### Scope of Investigation

The merchandise covered by this investigation consists of integrated personal work processing systems and major finished units thereof ("word processors"), which are defined as devices designed principally for the composition and correction of text. All word processors within the scope of the investigation have the following essential features: (1) A customized operating system designed exclusively for a manufacturer's word processor product line which is unable to run commercially available software and which is permanently installed by the manufacturer before or after importation; (2) a word-processing software/firmware program which is designed exclusively for the word processor product line and which is permanently installed by the manufacturer before or after importation; and (3) internal memory (both read-only memory (ROM) and read-write random access memory (RAM)) for word processing.

In addition, word processors may include one or more of the following features: (1) An auxiliary memory storage device, whether internal (*e.g.*, RAM storage) and/or external (*e.g.*, which accepts floppy diskettes, RAM cards or other nonvolatile media); (2) software/firmware designed or modified for use exclusively on a line of word processors (*e.g.*, a spreadsheet or word processing-assist program); (3) an interface permitting the transfer of information to other word processors, telecommunication links, computers, and the like; and (4) a type mode, which permits the word processor to function as a typewriter by typing characters directly onto paper. However, the inclusion or exclusion of these features from a word processor is not dispositive as to whether merchandise is within the scope of this investigation.

All word processors included within the scope of this investigation contain the following three units: (1) A keyboard for the entry of characters, numerals and symbols; (2) a video display; and (3) a chassis or frame containing the essential word processing features listed above. These units may either be integrated into one word processing system or be combined by the user into one working system. Word processors may include, as a fourth unit, a printer with a platen (or equivalent text-to-paper transfer system) and printing mechanism (whether a daisy wheel, ink jet, dot-matrix, laser, or other printing mechanism) to permit the printing of text on paper. However, word processors which do not include a printer as one of the major units are also included within the scope of the investigation.

Word processors may be imported as integrated systems, or the major finished units may be imported separately. Only the major finished units listed above are covered by this investigation. Keyboards and chassis/frames are included in this investigation if they are designed for use in word processors. Printers and video displays are included in this investigation only if they are dedicated exclusively for use in word processors.

Major finished units are distinguished from parts or subassemblies in that they do not require any additional manufacturing before functioning as a complete unit of a word processor. Neither parts nor subassemblies are included in the scope of this investigation.

Word processing devices which meet all of the following criteria are excluded from the scope of this investigation: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software. (*See also, Final Scope Ruling: Portable Electric Typewriters from Japan* (55 FR 47358, November 13, 1990).)

Also excluded from the scope of this investigation are personal computers (PCs), including those PCs which are capable of word processing. PCs are a class of automatic data processing machines. Unlike automatic data processing machines, word processors

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cannot take the logical decision during processing to modify the execution of a program, *i.e.*, the user of a word processor cannot use the word processor to create new software or modify the program code of existing computer programs. PCs are also distinguished from the word processors subject to this investigation by operating systems which are capable of running a variety of "off-the-shelf" software programs installed by the purchaser. In addition, PCs generally have significantly higher memory storage capacities and often contain major finished units which are interchangeable with units manufactured by several producers.

Word processors are provided for in subheading 8469.10.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determinations**

The ITC will determine by December 21, 1990, whether there is a reasonable indication that imports of personal word processors from Singapore are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. Otherwise, the Department will make its preliminary determination on or before April 15, 1991.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: November 28, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28208 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-814]

**Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From Japan**

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that polyethylene terephthalate film, sheet, and strip (PET film) from Japan is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of PET film from Japan, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 6, 1991.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288, respectively.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We preliminarily determine that PET film from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation on May 24, 1990 (55 FR 21415), the following events have occurred. On June 11, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of PET film from Japan (55 FR 25161, June 20, 1990).

On June 28, 1990, the Department presented its questionnaire to Teijin Ltd. (Teijin) and Toray Industries, Inc. (Toray).

On August 14 and September 24, 1990, petitioners requested that the preliminary determination be postponed. On September 27, 1990, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until November 23, 1990 (55 FR 40902, October 5, 1990).

In July and August, 1990 we received replies to the questionnaire from Teijin and Toray. A number of supplemental deficiency questionnaires were issued subsequent to the issuance of the original questionnaires. Supplemental and deficiency responses were received from the respondents prior to the date of this preliminary determination.

In the petition and in subsequent submissions, petitioners alleged that Teijin and Toray were selling PET film in the home market at prices below the cost of production. On November 2, 1990, the Department determined that petitioners' cost allegations against Teijin and Toray were insufficient for initiating a cost of production investigation.

**Scope of the Investigation**

The product covered by this investigation is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. Films excluded from the scope of this investigation are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) sub-heading 3920.62.00.00. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

**Period of Investigation**

The period of investigation (POI) is November 1, 1989 through April 30, 1990.

**Such or Similar Comparisons**

In our notice of initiation (55 FR 21415, May 24, 1990), we treated the subject merchandise as one "class or kind of merchandise" and one "such or similar" category of merchandise. Subsequent to initiation, we received numerous comments from petitioners, respondents, and other interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After consideration of all views expressed, and based upon our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on June 22, 1990, in which we determined that the subject merchandise constitutes a single class or kind, and one such or similar category of merchandise.



**Alternative Reporting Requirements**

We determined that there are a large number of physical criteria, and different combinations thereof, that describe the many variations of PET film. Therefore, given the complexity of identifying most similar merchandise, we have attempted to simplify and reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 11, 1990, we advised respondents: (1) To report full product information for all identical product matches; (2) to report limited product and sales information for non-identical U.S. home market sales; and (3) to provide product specification sheets for each unique product control number. We determined that, for purposes of classifying identical merchandise, the width and length of PET film were not relevant for determining product matches.

**Fair Value Comparisons**

To determine whether sales of PET film from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. For both respondents, we compared U.S. sales of PET film to identical home market sales of PET film.

**United States Price**

For both Teijin and Toray, we based United States price on purchase price, in accordance with section 772(b) of the Act, as all U.S. sales were made to unrelated parties prior to importation into the United States.

*A. Teijin*

For Teijin, we calculated purchase price based on f.o.b. Japanese port, c & f, c.i.f. or delivered prices. We made deductions, where appropriate, for rebates and price adjustments, foreign inland freight, transport insurance, foreign brokerage and handling, ocean freight, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight, in accordance with section 772(d)(2) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to the United States price, net of price adjustments, the amount of Japanese consumption tax which would have been rebated, or not collected, by reason of exportation of the merchandise.

*B. Toray*

For Toray, we calculated purchase price based on f.o.b. Japanese port or delivered U.S. customer prices. We made deductions, where appropriate, for price adjustments, foreign inland freight and insurance, foreign brokerage and handling, ocean freight, marine insurance, U.S. duty, harbor and U.S. Customs user fees, U.S. brokerage and handling, and U.S. inland freight and insurance, in accordance with section 772(d)(2) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to the United States price, net of price adjustments, the amount of Japanese consumption tax which would have been rebated, or not collected, by reason of exportation of the merchandise.

**Foreign Market Value**

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1) of the Act. Both respondents had viable home markets with respect to sales of PET film made during the POI.

*A. Teijin*

For Teijin, we calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for rebates, inland freight and inland insurance. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in post-sale warehousing, expenses, credit expenses, and credit insurance fees.

We have not made an adjustment for claimed home market pre-sale warehousing expenses because Teijin has not demonstrated that these expenses are directly related to home market sales. However, we will examine the claim further at verification.

We recalculated Teijin's reported inputed credit expenses on home market sales and certain U.S. sales as Teijin improperly deducted rebates from the base price in its calculations.

We added U.S. commissions and subtracted the weighted-average home market indirect selling expenses, up to the amount of the commission, from the foreign market value, where appropriate, in accordance with 19 CFR 353.56(b)(1). As Teijin did not respond to our request to calculate the home market indirect selling expenses based on the POI, we recalculated the claimed expenses to estimate the portion of the expenses incurred during the POI.

Finally, we made circumstance of sale adjustments for commodity tax differences where appropriate.

*b. Toray*

For Toray, we calculated FMV based on delivered prices to unrelated and related customers in the home market. We used the related party sales because the prices to the related party were determined to be at arm's-length, in accordance with 19 CFR 353.45(a). We made deductions, where appropriate, for discounts, rebates, and inland freight and insurance. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments, where appropriate, for differences in advertising expenses, claim compensation expenses, consignment expenses, post-sale warehousing expenses, credit expenses, and credit interest revenue.

We have not made a deduction for claimed pre-sale warehousing expenses because Toray has not demonstrated that these sales are directly related to home market sales. However, we will examine this claim further at verification.

We recalculated Toray's imputed credit claim on home market sales as Toray improperly deducted rebates from the base price, and incorrectly calculated the credit period, in reporting its credit expense.

Finally, we made circumstance of sale adjustments for commodity tax differences where appropriate.

**Verification**

As provided in section 776(b) of the Act, we will verify all information used in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of PET film from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

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| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Teijin Limited | 2.59 |
| Toray Industries, Inc | 14.90 |
| All others | 8.35 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than January 14, 1991, and rebuttal briefs no later than January 22, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on January 24, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f) and 19 CFR 353.15.

Dated: November 23, 1990.

**Francis J. Sailer,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28207 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-580-807]**

**Preliminary Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea**

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminary determine that polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of PET film from the Republic of Korea, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by February 6, 1991.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mark Wells or Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3003, or 377-4087, respectively.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We preliminarily determine that PET film from the Republic of Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation on May 24, 1990 (55 FR 21417), the following events have occurred: On June 11, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of PET film from the Republic of Korea (55 FR 25181, June 20, 1990).

On June 28, 1990, the Department presented its questionnaire to SKC Limited and SKC America, Inc. (SKC) and Cheil Synthetics, Inc. (Cheil).

On August 14 and September 24, 1990, petitioners requested that the preliminary determination be postponed. On September 27, 1990, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination until November 23, 1990 (55 FR 40902, October 5, 1990).

In July and August 1990 we received replies to the questionnaire from SKC and Cheil. A number of supplemental deficiency questionnaires were issued subsequent to the issuance of the original questionnaires. Supplemental and deficiency responses were received from the respondents prior to the date of this preliminary determination.

In the petition and in subsequent submissions, petitioners alleged that SKC and Cheil were selling PET film in the home market at prices below the cost of production. On November 2, 1990, the Department accepted petitioners' cost allegations against SKC and Cheil as sufficient for purposes of initiating a cost of production investigation. The Department issued the Cost of Production and Constructed Value Questionnaire to SKC and Cheil on November 5, 1990.

**Scope of the Investigation**

The product covered by this investigation is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. Films excluded from the scope of this investigation are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

**Period of Investigation**

The period of investigation (POI) is November 1, 1989 through April 30, 1990.

**Such or Similar Comparisons**

In our notice of initiation (55 FR 21417, May 24, 1990), we treated the subject merchandise as one "class or kind of merchandise" and one "such or similar" category of merchandise. Subsequent to initiation, we received numerous comments from petitioners, respondents, and interested parties in these investigations on whether the subject merchandise constitutes one or more classes or kinds of merchandise. After consideration of all views expressed, and based upon our discussions with product experts at the U.S. Customs Service, the ITC, and within the Department, we issued a decision memorandum on June 22, 1990, in which we determined that the subject merchandise constitutes a single class or kind, and one such or similar category of merchandise.

**Alternative Reporting Requirements**

We determined that there are a large number of physical criteria, and different combinations thereof, that describe the many variations of PET film. Given the complexity of identifying most similar merchandise, we have attempted to reduce the reporting requirements for respondents while maintaining a reasonable basis for our analysis. Accordingly, on July 11, 1990, we advised respondents: (1) To report full product information for all identical product matches; (2) to report limited product and sales information for non-identical U.S. and home market sales; and (3) to provide product specification sheets for each unique product control number.

For certain products, respondents did not report full product information. However, we are treating these products as identical for purposes of this determination. We determined that, for purposes of classifying identical merchandise, the width and length of PET film were not relevant for determining product matches.

**Fair Value Comparisons**

To determine whether sales of PET film from the Republic of Korea to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

For both respondents, we compared U.S. sales of PET film to identical home market sales of PET film. SKC reported that they sold a small quantity of the subject merchandise to the United States that was further manufactured into non-subject merchandise during the POI. Because of the small volume involved and the added burden on the respondent and the Department, we did not require SKC to report these sales.

**United States Price**

For SKC, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. In accordance with section 772(c) of the Act, where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP). For Cheil, we based United States price on purchase price because all sales were made directly to unrelated parties prior to importation into the United States.

*A. SKC*

For SKC, we calculated purchase price based on c.i.f. U.S. port, or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, foreign inland insurance, wharfage, containerization expense, ocean freight, marine insurance, U.S. duties, U.S. inland freight, and U.S. brokerage and handling. We added duty drawback pursuant to section 772(d)(1)(B) of the Act.

We calculated ESP based on delivered prices or freight collect to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, wharfage, ocean freight, marine insurance, U.S. duties, U.S. inland freight, U.S. brokerage and handling, credit expenses, bank charges, warranty expenses, and indirect selling expenses, including inventory carrying expenses.

We recalculated the inventory carrying expenses reported by SKC on ESP sales in order to account for the average time the merchandise was in the Republic of Korea, in ocean transit, and in the United States.

For certain ESP sales, SKC calculated credit expense using an average collection period, rather than calculating credit based on actual shipment and payment dates. For these sales we recalculated the credit expense to impute credit from the date of shipment to the date of payment.

In accordance with section 772(d)(1)(C) of the Act, for both purchase price and ESP sales, we added to United States price, net of price adjustments, the amount of value-added tax (VAT) that would have been rebated, or not collected, by reason of exportation of the merchandise.

*B. Cheil*

For Cheil, we calculated purchase price based on f.o.b. Korean port, c.i.f. U.S. port, or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign brokerage and handling, foreign inland freight, containerization expenses, wharfage, ocean freight, marine insurance, U.S. duties, U.S. inland freight, and U.S. brokerage and handling. We added duty drawback pursuant to section 772(d)(1)(B) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to United States price, net of price adjustments, the amount of VAT that would have been rebated, or not collected, by reason of exportation of the merchandise.

**Foreign Market Value**

In order to determine whether there were sufficient sales of PET film in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of PET film to the volume of third country sales of PET film, in accordance with section 773(a)(1) of the Act. Both respondents had viable home markets with respect to sales of PET film made during the POI.

*A. SKC*

For SKC, we calculated FMV based on delivered prices to unrelated customers in the home market. For both purchase price and ESP sales we made deductions, where appropriate, for inland freight. We added a duty adjustment where the price reported did not include import duties. We deducted home market packing costs and added U.S. packing costs.

For comparisons to purchase price sales, pursuant to 19 CFR 353.56, we made circumstances of sale adjustments, where appropriate, for bank charges and credit expenses. We recalculated credit expense on all home market and purchase price sales because (1) SKC reported credit expense based on an average collection period; and (2) because SKC calculated credit expense on purchase price sales using their U.S. interest rate. For home market and purchase price sales we recalculated credit expense based on an average collection period, where actual shipment and payment dates were not reported, because respondent's calculations were incorrect. Where actual shipment dates and payment dates were reported for home market and purchase price sales, we recalculated credit expense to impute

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credit from the date of shipment to the date of payment. For purchase price sales we recalculated credit expense to impute credit using SKC's home market interest rate.

For ESP sales, we also deducted indirect selling expenses, including inventory carrying expenses. We subtracted the weighted-average home market indirect selling expenses, up to the amount of the U.S. indirect selling expenses, from the foreign market value, where appropriate, in accordance with 19 CFR 353.56(b)(2).

Finally, we made circumstance of sale adjustment for commodity tax differences, where appropriate.

*E. Cheil*

For Cheil, we calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts, loading charges, and inland freight. We deducted home market packing costs and added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstances of sale adjustments, where appropriate, for post-sale warehousing expenses, bank charges, slitting costs, and credit expenses.

For those sales involving discounts, we recalculated Cheil's credit expense by deducting discounts from the gross price before imputing credit.

Finally, we made circumstance of sale adjustments for commodity tax differences, where appropriate.

**Verification**

As provided in section 776(b) of the Act, we will verify all information used in making our final determination.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of PET film from the Republic of Korea, except for those of Cheil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| SKC Limited and SKC America | 7.79 |
| Cheil Synthetics, Inc | 0.21 (de minimis) |
| All others | 7.79 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than January 14, 1991, and rebuttal briefs no later than January 22, 1991. In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on agruments raised in case or rebuttal briefs. The hearing will be held on January 24, 1991, at 2:00 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: November 23, 1990.

**Francis J. Sailer,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28208 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-475-059]**

**Final Results of Antidumping Duty Administrative Review; Pressure Sensitive Plastic Tape From Italy**

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On October 10, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on pressure sensitive plastic tape (PSPT) from Italy. The review covers two manufacturers/exporters of this merchandise to the United States, Manuli S.p.A. and NAR S.p.A., and the period October 1, 1988, through September 30, 1989. The final margins assigned to Manuli S.p.A. and NAR S.p.A. are 0.00 percent and 4.76 percent, respectively.

**EFFECTIVE DATES:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** James R. Terpstra or James P. Maeder, Jr., Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3965 or (202) 377-4929, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 10, 1990, the Department published in the **Federal Register** (55 FR 41263, October 10, 1990) the preliminary results of its administrative review of the antidumping duty finding on PSPT from Italy (42 FR 56110, October 21, 1977). The Department has now completed the administrative review, in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of Review**

Imports covered by this review are shipments of PSPT measuring over 1⅝ inches in width and not exceeding 4 mils in thickness. During this review period, such merchandise was provided for under items 790.5530, 790.5545, and



790.5555 in the *Tariff Schedules of the United States Annotated* (TSUSA) and under 3919.90.20 and 3919.90.50 of the Harmonized Tariff System (HTS). The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers two manufacturers/exporters of Italian PSPT of the United States, NAR S.p.A. and Manuli S.p.A., and the period October 1, 1988, through September 30, 1989.

**Use of Best Information Available**

We have determined, in accordance with section 776(c) of the Act and § 353.37 of the Department's regulations, that the use of best information available is appropriate for entries of the subject merchandise from NAR S.p.A. in this review.

In deciding whether to use best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refused to provide requested information. In this case, NAR S.p.A. attempted to cooperate and provide the requested information.

However, it failed to do so in a complete, accurate, and timely manner. In such instances, as best information available, the Department may assign the affected company the highest margin assigned that company in any previous review.

Because NAR S.p.A. attempted to cooperate, but failed to provide an adequate questionnaire response in a timely manner, we used, for the preliminary results, the highest calculated margin for that firm from all past reviews, which in this case was the 6.39 percent margin found in the 1985-1986 review. In our preliminary results, we noted, however, that the calculated margin for the 1985-1986 review was subject to change, pending approval by the Court of International Trade (CIT) of the Department's remand results. On October 30, 1990, the CIT affirmed the remand results for this review (*NAR S.p.A. v. United States*, Court No. 88-06-00401) which resulted in a lowering of the margin from 6.39 percent to 3.70 percent. Therefore, for purposes of the final results, we have assigned to NAR S.p.A. what is now the highest margin for the firm from all past reviews, *i.e.*, the 4.76 percent margin found in the 1979-1980 review.

**Interested Party Comments**

We received timely comments from the petitioner only. The petitioner concurred with the Department's decisions to use best information available with regard to the response of NAR S.p.A. and, as best information available, to use the highest calculated margin for NAR S.p.A. from all past reviews.

**Final Results of the Review**

Based on the comments received, we are assigning the highest dumping margin NAR S.p.A. received in any prior review. Therefore, we determine the margins to be:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| NAR S.p.A. | 10/1/88-9/30/89 | 4.76 |
| Manuli S.p.A. | 10/1/88-9/30/89 | [1] 0 |

[1] No shipments during the period; margin is from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties at those rates on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on entries of this merchandise from NAR S.p.A. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue at the rate published in the final results of the last administrative review for these firms. For any entries of this merchandise from a new exporter, whose first shipments occurred after September 30, 1989, and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of PSPT from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations.

Dated: November 28, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28300 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DS-M

**Minority Business Development Agency**

**Business Development Center Applications: Charlotte, NC**

November 16, 1990.

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 03/1/91 to 02/29/92. The MBDC will operate in the Charlotte, North Carolina, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

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An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or inprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contractors, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

**CLOSING DATE:** The closing date for applications is January 15, 1991. Applications must be postmarked on or before January 15, 1991. The anticipated processing time is 60 days.

**ADDRESSES:** Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, suite 505, 401 West Peachtree St., NW., room 1930, 404/730–3300.

**FOR FURTHER INFORMATION CONTACT:** Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

**Note:** A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, December 19, 1991, at 9 a.m.

Dated: November 20, 1990.

**Carlton L. Eccles,**

*Regional Director, Atlanta Regional Office.*

[FR Doc. 90–28158 Filed 11–29–90; 8:45 am]

BILLING CODE 3510–21–M

## Business Development Center Applications: Kansas City, Missouri, Kansas

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $184,260 in Federal funds and a minimum of $32,516 in non-federal contributions for the budget period March 1, 1991 to February 28, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Kansas City geographic service area. The award number of this MBDC will be 07–10–91004–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is January 7, 1991. Applications must be postmarked on or before January 7, 1991.

**ADDRESSES:** Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois 60603, 312/353–0182.

**FOR FURTHER INFORMATION CONTACT:** David Vega, Regional Director, Chicago Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 26, 1990.

**David Vega,**

*Regional Director, Chicago Regional Office.*

[FR Doc. 90–28159 Filed 11–29–90; 8:45 am]

BILLING CODE 3510–21–M



## Business Development Center Applications: Detroit, Michigan

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $322,500 in Federal funds and a minimum of $56,912 in non-federal contributions for the budget period March 1, 1991 to February 28, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Detroit, Michigan geographic service area. The award number of this MBDC will be 05–10–91003–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDC funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is January 7, 1991. Applications must be postmarked on or before January 7, 1991.

**ADDRESSES:** Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

**FOR FURTHER INFORMATION CONTACT:** David Vega, Regional Director, Chicago Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 26, 1990.

**David Vega,**

*Regional Director, Chicago Regional Office.*

[FR Doc. 90–28160 Filed 11–29–90; 8:45 am]

BILLING CODE 3510–21–M

## National Oceanic and Atmospheric Administration

## Bearing Sea/Aleutian Islands King and Tanner Crab Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery Management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 1 of the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries and the Bering Sea/Aleutian Islands for Secretarial review and is requesting comments from the public. Copies of Amendment 1 and the environmental assessment may be obtained from the address listed below.

**DATES:** Comments on Amendment 1 are invited through January 28, 1991.

**ADDRESSES:** Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. Copies of the amendment and the environmental assessment are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510. Comments are particularly requested on the environmental assessment.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Baglin (National Marine Fisheries Service, Alaska Region) 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) amendment is prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP amendment, immediately publish a notice that the amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve, disapprove, or partially disapprove the amendment.

The first national standard of the Magnuson Act (16 U.S.C. 1851(a)(1)) requires that conservation and management measures prevent overfishing. However, it does not define overfishing. A comprehensive overfishing concept is set forth in revised guidelines (50 CFR part 602; 54 FR 30826, July 24, 1989), based on the national standards, which were established by the National Oceanic and Atmospheric Administration (NOAA) to assist in the development and review of FMPs. The NOAA guidelines require that each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by an FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

The Commercial King and Tanner Crab Fisheries in the Bering Sea/

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Aleutian Islands FMP only contains a qualitative definition of overfishing. Since the FMP contains no objective or measurable criteria for implementing a definition, the FMP must be amended. Amendment 1 examines the following four alternative means of defining overfishing for 17 crab stocks in the Bearing Sea/Aleutian Islands: (1) The status quo, (2) constant fishing mortality rate with a threshold, (3) constant fishing mortality rate (the preferred alternative by the North Pacific Fishery Management Council), and (4) variable fishing mortality rate.

The North Pacific Fishery Management Council has adopted a constant fishing mortality rate as its preferred alternative and has defined overfishing as any rate of fishing mortality in excess of $F_{max}$ for King and Tanner crab stocks in the Bering Sea/Aleutian Islands management area.

No Federal regulatory action is necessary to implement this amendment.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 27, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28191 Filed 11-27-90; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 26, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** November 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6628. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 26, 1990.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on November 26, 1990 you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted 12 month limit [1] |
|---|---|
| Levels not in a group | |
| 218 | 9,914,059 square meters. |
| 219 | 1,703,654 square meters. |
| 226 | 9,633,231 square meters. |
| 300/301 | 2,655,565 kilograms. |
| 313 | 37,342,305 square meters. |
| 315 | 148,958,473 square meters. |
| 317/326 | 16,875,149 square meters of which not more than 3,228,548 square meters shall be in Category 326. |
| 333 | 45,345 dozen. |
| 335 | 349,642 dozen. |
| 336/339 | 2,260,535 dozen of which not more than 1,688,809 dozen shall be in Categories 336-S/339-S.[2] |
| 341 | 595,253 dozen of which not more than 358,533 dozen shall be in Category 341-Y.[3] |
| 345 | 121,561 dozen. |
| 350 | 126,198 dozen. |
| 359-V [4] | 731,352 kilograms. |
| 360 | 6,914,193 numbers of which not more than 4,222,282 numbers shall be in Category 360-P.[5] |
| 369-H [6] | 4,147,875 kilograms. |
| 369-L [7] | 2,700,482 kilograms. |
| 410 | 1,400,933 square meters of which not more than 1,523,801 square meters shall be in Category 410-A [8] and not more than 1,523,801 square meters shall be in Category 410-B.[9] |
| 433 | 22,370 dozen. |
| 434 | 12,745 dozen. |
| 435 | 23,411 dozen. |
| 436 | 14,586 dozen. |
| 438 | 25,491 dozen. |
| 440 | 36,418 dozen of which not more than 20,810 dozen shall be in Category 440-M.[10] |
| 442 | 40,579 dozen. |
| 443 | 131,103 numbers. |
| 444 | 114,905 numbers. |
| 447 | 75,764 dozen. |
| 448 | 21,297 dozen. |
| 607 | 2,509,928 kilograms. |
| 615 | 19,785,355 square meters. |
| 617 | 13,450,418 square meters. |
| 634 | 530,205 dozen. |
| 635 | 569,206 dozen. |
| 636 | 427,772 dozen. |
| 649 | 749,094 dozen. |
| 652 | 2,147,993 dozen. |
| 659-C [11] | 270,839 kilograms. |
| 659-H [12] | 2,464,296 kilograms. |
| 669-P [13] | 1,543,983 kilograms. |
| 670-L [14] | 13,648,845 kilograms. |
| 831 | 355,774 dozen pairs. |
| 833 | 22,617 dozen. |
| 835 | 71,720 dozen. |
| 840 | 328,214 dozen. |
| 842 | 146,178 dozen. |
| 846 | 77,453 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 336-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339-S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[5] Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[6] Category 369-H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[7] Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[8] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6001, 5111.30.6001, 5111.90.3000, 5111.90.7000, 5212.11.4010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[9] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[10] Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[11] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060.

[13] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[14] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28072 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DR-M

### Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 26, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.



[9] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[10] Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[11] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060.

[13] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[14] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6498. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia establishes limits for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

November 26, 1990.

Commissioner of Customs,
*Department of the Treasury, Washington, D.C. 20229.*

Dear Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| 218, 219, 220, 225-227, 313-315, 317, 326, 613/614/615/617, as a group. | 50,708,874 square meters. |
| Subdevels within the group | |
| 218 | 4,481,295 square meters. |
| 219 | 21,709,335 square meters. |
| 220 | 21,709,335 square meters. |
| 225 | 21,709,335 square meters. |
| 226 | 21,709,335 square meters. |
| 227 | 21,709,335 square meters. |
| 313 | 25,691,956 square meters. |
| 314 | 27,883,550 square meters. |
| 315 | 21,709,335 square meters. |
| 317 | 21,709,335 square meters. |
| 326 | 2,987,529 square meters. |
| 613/614/615/617 | 21,709,335 square meters. |
| Other Specific Limits | |
| 200 | 186,974 kilograms. |
| 237 | 254,260 dozen. |
| 300/301 | 2,004,275 kilograms. |
| 331/631 | 1,376,106 dozen pairs. |
| 333/334/335/835 | 157,610 dozen of which not more than 78,905 dozen shall be in Category 333, not more than 78,905 dozen shall be in Category 334, not more than 78,905 dozen shall be in Category 335 and not more than 78,905 dozen shall be in Category 835. |
| 336/636 | 291,801 dozen. |
| 338/339 | 723,445 dozen. |
| 340/640 | 864,807 dozen. |
| 341/641 | 1,146,742 dozen of which not more than 409,101 dozen shall be in Category 341. |
| 342/642/842 | 274,670 dozen. |
| 345 | 105,325 dozen. |
| 347/348 | 296,258 dozen. |
| 351/651 | 170,434 dozen. |
| 363 | 5,049,906 numbers. |
| 369-S [1] | 546,915 kilograms. |
| 435 | 14,287 dozen. |
| 438-W [2] | 11,678 dozen. |
| 442 | 17,358 dozen. |
| 445/446 | 27,600 dozen. |
| 604 | 578,630 kilograms. |
| 634/635 | 535,218 dozen of which not more than 233,558 dozen shall be in Category 635. |
| 638/639 | 315,295 dozen. |
| 645/646 | 241,149 dozen. |
| 647/648 | 1,134,816 dozen of which not more than 794,371 dozen shall be in Category 647-K [3] and not more than 794,371 dozen shall be in Category 648-K [4]. |

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| Category | 12-mo restraint limit |
|---|---|
| Group II | |
| 201, 222–224, 226, 238, 300, 332, 340, 350, 352–354, 359–362, 369–O [4], 400–434, 435, 436–O [5], 438, 440, 443, 444, 447, 448, 458, 464–469, 600–603, 606, 607, 611, 618–622, 624–630, 632, 633, 643, 644, 649, 650, 652–654, 659, 665–670, 831–834, 836, 838, 839, 840 and 843–859, as a group. | 26,185,897 square meters equivalent. |

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2046, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.2020, 6106.90.3020, 6109.90.1540, 6110.10.2060, 6110.30.1560, 6110.90.0074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.49.1550, 6103.49.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6111.20.1060 and 6113.00.0045.

[4] Category 648–K: only HTS numbers 6104.23.0002, 6104.23.0034, 6104.29.1040, 6104.29.2038, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2930, 6104.69.2060, 6104.69.3028, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050 and 6117.90.0046.

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[6] Category 436–C: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0024.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D.Tantillo,

*Chairman, Committee for the Implementation Textile Agreements.*

[FR Doc. 90-28070 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

November 26, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of December 28, 1989 between the Governments of the United States and the Union of Soviet Socialist Republics establishes an import limit for cotton sheeting and cotton printcloth in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

November 26, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of December 28, 1989, between the Governments of the United States and the Union of Soviet Socialist Republics; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton sheeting and cotton printcloth in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of 24,000,000 square meters of which not more than 4,000,000 square meters shall be in Category 315.

The level set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of December 28, 1989 between the Governments of the United States and the Union of Soviet Socialist Republics.

Imports charged to this category limit for the period January 1, 1990 through December 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28071 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment of Export Visa and Certification Requirements Under the Special Access Program for Certain Products From Costa Rica

November 21, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending export visa and certification requirements.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

**SUPPLEMENTARY INFORMATION:**

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended [7 U.S.C. 1854].

The Governments of the United States and Costa Rica reached agreement, effected by exchange of letters dated September 18, 1990 and September 28, 1990, to amend the existing visa and certification requirements under the Special Access Program to extend coverage to include garment dyeing. Also included will be knit apparel which has been processed by means of bleaching, permapressing or garment dyeing following assembly.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 21047, published on May 22, 1990.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

November 21, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 15, 1990 by the Chairman, Committee for the Implementation of Textile Agreements, establishing visa and certification requirements for certain cotton and man-made fiber textile products, produced or manufactured in Costa Rica.

Effective on January 1, 1991, under the Special Access Program, you are directed to permit entry of woven garments which have been subjected to garment dyeing after assembly. You are directed further to permit entry of knit garments which have been subjected to bleaching, permapressing or garment dyeing after assembly. These products must be re-exported from Costa Rica to the United States on or after January 1, 1991.

These products shall be entered under the Special Access Program, even though they may not be classified under HTS number 9802.00.8019 of the Harmonized Tariff Schedule.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28168 Filed 11-29-90; 8:45 am]

BILLING CODE 3510-DR-M



## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** December 31, 1990.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On October 5, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 40906) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to the Procurement List:

Food Service Attendant
Kirtland Air Force Base, New Mexico

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

H.G. Fischer,

*Associate Director for Facility Operations.*

[FR Doc. 90-28166 Filed 11-29-90; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities to be produced and a service to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 31, 1990.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703)557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to the Procurement List:

*Commodities*

Mast Section

5985–01–072–8068

Patient Utility Kit

6530–01–166–3429

Overalls

8415–01–228–1323
8415–01–228–1324
8415–01–228–1325
8415–01–228–1326
8415–01–228–1327
8415–01–228–1328
8415–01–228–1329
8415–01–228–1330
8415–01–228–1331
8415–01–228–1332

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(Remaining 60 percent of the Government's Requirement)

*Service*

Janitorial/Custodial, U.S. Courthouse, 312 North Spring Street, Los Angeles, California

H.G. Fischer,

*Associate Director of Facility Operations.*

[FR Doc. 90-28167 Filed 11-29-90; 8:45 am]

BILLING CODE 6820-33-M

## Proposed Additions to the Procurement List—Extension of Comment Period

The period for submitting comments on the proposed additions to the Procurement List appearing on page 49101 of FR Doc. 90-27703 in the issue of Monday, November 26, 1990, is extended until December 26, 1990.

H.G. Fischer,

*Associate Director for Facility Operations.*

[FR Doc. 90-28163 Filed 11-29-90; 8:45 am]

BILLING CODE 6820-33-M

## Additions to the Procurement List—Extension of Effective Date

The effective date of the additions to the Procurement List appearing on page 49101 of FR Doc. 90-27704 in the issue of Monday, November 26, 1990, is extended until December 26, 1990.

H.G. Fischer,

*Associate Director for Facility Operations.*

[FR Doc. 90-28169 Filed 11-29-90; 8:45 am]

BILLING CODE 6820-33-M

## Procurement List Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** December 31, 1990.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145

**SUPPLEMENTARY INFORMATION:** On September 7, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 36847) of proposed addition to the Procurement List.

Comments on the proposed addition to the Procurement List were received from one of the current contractors and from a prior contractor. The current contractor alleged that the currently proposed addition to the Procurement List and a 1988 addition had a serious cumulative adverse impact on its sales. However, the 1988 addition had no impact on this contractor as it was not the current or most recent contractor for the items added at that time. The small portion of the alleged impact which concerns the currently proposed addition does not constitute serious adverse impact.

The prior contractor objected to the loss of the opportunity to bid on the item if it is added to the Procurement List. In a competitive procurement, there is no guarantee that any one bidder will receive a contract. Accordingly, the Committee does not consider loss of the opportunity to bid to constitute serious adverse impact on a bidder who is not the current or most recent contractor for the item proposed for addition to the Procurement List.

The prior contractor also objected to the amount of the Federal paper pad business set aside for provision by nonprofit agencies employing persons who are blind or have other severe disabilities. Because the Federal market constitutes an extremely small portion of the total private and public paper pad market, private firms making paper pads have ample opportunity to compete in other markets and remain viable.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 52-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List.

Pad, Writing Paper
7530-01-124-5660
(GSA Region 2)
7530-01-124-7632
(GSA Regions 8 and 9)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

H.G. Fischer,

*Associate Director for Facility Operations.*

[FR Doc. 90-28170 Filed 11-29-90; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

## Department of Defense Selection Criteria for Closing and Realigning Military Installations Inside the United States

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed selection criteria and request for comments.

**SUMMARY:** The Secretary of Defense, in accordance with section 2903(b), title XXIX, part A of the FY 1991 National Defense Authorization Act, is required to publish the proposed selection criteria to be used by the Department in making recommendations for the closure or realignment of military installations inside the United States.

**DATES:** Comments should be submitted to the Department of Defense at the address shown below by December 31, 1990 to be considered in the formulation of the final criteria.

**ADDRESSES:** Interested parties should submit written comments to: the Office of the Assistant Secretary of Defense (Production and Logistics), ATTN: Mr. Douglas B. Hansen, Director, Base Closure and Utilization, OASD (P&L) 1/BCU, room 3D-814, The Pentagon, Washington, DC 20301-8000. Please cite this Federal Register announcement in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Whittaker or Ms. Patricia Walker, Base Closure and Utilization, OASD (P&L), (703) 614-5356.

**SUPPLEMENTARY INFORMATION:**

A. Background

Title XXIX, part A of the National Defense Authorization Act for Fiscal Year 1991 establishes the exclusive procedures under which the Secretary of Defense may pursue military installations for closure and realignment within the United States. Section 2903(b) of the Act requires the Secretary of Defense to publish the proposed base closure and realignment selection criteria by December 31, 1990. Section 2903(b)(2)(A) requires the Secretary of Defense, following a 30 day public comment period in the Federal Register, to publish the final selection criteria no later than February 15, 1991. The final selection criteria are subject to Congressional disapproval by joint resolution until March 15, 1991.

B. Relationship to Previous Criteria

The proposed DoD selection criteria closely mirror the criteria established for the 1988 Defense Secretary's Commission on Base Realignment and Closure. Those criteria were developed jointly by the Department of Defense and the Congress, and were incorporated, by reference, into Public Law 100-526.

The proposed DoD selection criteria differ in two ways from the 1988 criteria. In both instances, the changes are a direct result of the 1988 Commission's recommendations regarding criteria and their application.

First, the Commission stated (page 10 of its report) that "Significant to its decisions was the selection of military value as preeminent among the criteria governing nomination of bases for closure or realignment." The proposed DoD selection criteria reflect this same preeminence of military value.

Second, the Commission stated (page 32 of its report) that "The six-year payback used in the Commission's evaluation is too limiting." The proposed DoD selection criteria include payback as a criterion, but do not limit it to six years.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) does not apply.

*Proposed Selection Criteria*

It is proposed that the following criteria be used by the Department of Defense in determining military installations inside the United States to be closed or realigned:

- In selecting military installations for closure or realignment, the Department of Defense will, giving priority consideration to military value (criteria 1-4 below), consider:

1. The current and future mission requirements and the impact on operational readiness of the Department of Defense



2. The availability and condition of land and facilities at both the existing and potential receiving locations.

3. The potential to accommodate contingency, mobilization, and future force requirements at receiving locations.

4. The cost and manpower implications.

5. The extent and timing of potential cost savings, including whether the total cost savings realized from the closure or realignment of the base will, beginning with the date of the completion of the closure or realignment of the base, exceed the amount expended to close or realign the base.

6. The economic impact on the community in which the base to be closed or realigned is located.

7. The community support at the receiving locations.

8. The environmental impact.

9. The implementation process involved.

Dated: November 28, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28102 Filed 11-29-90; 8:45 am]

BILLING CODE 3810-01-M

## Corps of Engineers, Department of the Army

## Intent To Prepare Draft Supplemental Environmental Impact Statement (SEIS), Wisconsin River at Portage, Wisconsin, Flood Damage Reduction Project

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of intent to prepare a draft supplemental environmental impact statement (draft SEIS).

**SUMMARY:** The St. Paul district, Corps of Engineers, proposes to reduce flood damages in the city of Portage, Wisconsin, on the Wisconsin River, by structural means while safeguarding the environment. A final Environmental Impact Statement (FEIS) was prepared for the project in December 1983. A supplemental EIS (SEIS) will be prepared to address modifications to the selected plan.

**FOR FURTHER INFORMATION:** Questions concerning the proposed action and the Draft SEIS can be directed to: Mr. Robert J. Whiting, Environmental Resources Branch, U.S. Army Corps of Engineers, 1421 U.S. Post Office and Custom House, St. Paul, Minnesota 55101-1479 (telephone 612-220-0284).

**SUPPLEMENTARY INFORMATION:** The modifications to the selected plan consist of changes in levee alignment, new levee segments, borrow areas for levee material, and closing the entrance to the Portage Canal. Various alternatives were investigated including no action, floodwalls, levees, rehabilitation of the Portage Canal lock, various levee alignments, and nonstructural measures.

The public involvement program originated in 1989 with various meetings with the city of Portage, local interest groups, State and Federal agencies, and the public to obtain views of local interests on problems, needs, and significant issues in the area. The scoping process has been initiated through these meetings.

Significant issues identified to date for discussion in the Draft SEIS are as follows:

1. Flood damage reduction for the city of Portage.

2. Levee encroachment into the Wisconsin River, wetlands, and woodlands, and the potential need for mitigation.

3. Impacts on the recreation and aesthetic qualities of the area.

4. Closing the entrance to the Portage Canal and potential impacts to this National Register site.

5. Impacts of levee construction on residential properties.

Additional issues of significance will be identified through public and agency meetings. Anyone interested in participating in the scoping process and the development of the Draft SEIS is invited to contact the St. Paul District, Corps of Engineers, as soon as possible.

Our review of the project will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act, Council on Environmental Quality regulations, and applicable Corps of Engineers regulations and guidance.

We estimate that the Draft SEIS will be available to the public during the third quarter of Fiscal Year 1991 [April-June 1991].

Dated: October 25, 1990.

Roger L. Baldwin,

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 90-28093 Filed 11-29-90; 8:45 am]

BILLING CODE 3710-CV-M

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DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

[Docket No. QF89-126-001]

**AES Cedar Bay, Inc.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility**

November 23, 1990.

On November 19, 1990, AES Cedar Bay, Inc., c/o Jeffrey V. Swain, Vice President, 1001 N. 19th Street, suite 2000, Arlington, Virginia 22209, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Jacksonville, Florida. The facility will consist of three coal-fired circulating fluidized bed boilers and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by Seminole Kraft Corporation in paper making processes. The original certification was issued on March 21, 1989, 46 FERC ¶ 62,284. The instant recertification is due to a change in design and configuration, and an increase in the net electric power production capacity from 249 MW to 269 MW. Installation of the facility is expected to commence in March 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28094 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-461-012, et al.]

**Kansas Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

**1. Kansas Gas and Electric Company**

[Docket No. ER85-461-012]

November 20, 1990.

Take notice that on November 16, 1990 Kansas Gas and Electric Company ("KG&E") tendered for filing revisions to its earlier filing of October 18, 1990 to correct inadvertent errors on the rate schedule and the amendment to the City of Burlington contract.

*Comment date:* November 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

**2. The Kansas Power and Light Co.**

[Docket No. ES91-6-000]

November 21, 1990.

Take notice that on November 14, 1990, The Kansas Power and Light Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue not more than $215 million of short-term unsecured promissory notes and commercial paper on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

*Comment date:* December 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

**3. Washington Water Power Co.**

[Docket Nos. ER91-3-000, ER91-4-000, ER91-5-000, and ER91-6-000]

November 21, 1990.

Take notice that on November 19, 1990, Washington Water Power Company ("WWP") tendered for filing an amendment to each of its filings in these four unconsolidated dockets. In the November 19, 1990 filing WWP provided additional information concerning its system capabilities, energy costs associated with certain firm purchases and exchanges, and costs of generation.

*Comment date:* December 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

**4. UtiliCorp United Inc.**

[Docket No. ES91-7-000]

November 21, 1990.

Take notice that on November 15, 1990, UtiliCorp United Inc. (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue up to and including 400,000 shares of Treasury Stock, par value $1.00 per share. Applicant would use the shares to acquire the shares of Green Securities Inc. and thereafter to merge that company with UtiliCorp.

*Comment date:* December 14, 1990, in accordance with Standard Paragraph E end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28085 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-151-001]

**Yuba City Cogeneration Partners, L.P., a California Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility**

November 23, 1990.

On November 5, 1990, Yuba City Cogeneration Partners, L.P., a California Limited Partnership, of 1818 11th Street, suite 4, Sacramento, California 95814, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Yuba City, California. The facility will consist of a combustion turbine generator and a heat recovery boiler equipped with supplementary firing. Thermal energy recovered from the facility will be used by the Sunsweet Growers, Inc. for processing prunes, apricots, raisins, etc. The maximum net electric power production capacity of the facility will be 49,762 kW. The primary source of energy will be natural gas. Construction of the facility began in July 1990.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28095 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M



[Docket Nos. CP91-433-000, et al.]

**Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Tennessee Gas Pipeline Company**

[Docket No. CP91-433-000]

November 23, 1990.

Take notice that on November 14, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-433-000 an application pursuant to section 7 (b) and (c) of the Natural Gas Act for permission and approval to abandon approximately 22.33 miles of various size pipeline and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 8.08 miles of 8-inch replacement pipeline on its Torrington and Winsted lines located in Hartford and Litchfield Counties, Connecticut and in Hampden County, Massachusetts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to: (1) Replace approximately 7.43 miles of 4.5-inch pipeline on its Torrington Lateral in Litchfield County, Connecticut with 8-inch pipeline; (2) replace approximately 0.00 mile of 8-inch pipeline on its Torrington Lateral, Farmington River Crossing in Litchfield County, Connecticut with 8-inch pipeline; (3) replace approximately 0.56 mile of 3.5-inch pipeline on its Winsted Delivery Line, Litchfield County, Connecticut with 8-inch pipeline; and (4) abandon in place approximately 14.25 miles of 4.5-inch pipeline on its Torrington Lateral in Hampden County, Massachusetts and Hartford and Litchfield Counties, Connecticut. Tennessee states that it has determined that it is economically more efficient to install 8-inch pipeline than to simply replace with like diameter pipeline. Also, Tennessee states it does not seek authorization to increase service to any of its customers due to the resultant increase in capacity on the Torrington and Winsted line. Further, Tennessee is not requesting any increase in metering facilities nor an increase in the mainline capacity feeding the laterals. Tennessee indicates that it desires to commence construction of the facilities in June 1991, with an anticipated in-service date of September 1, 1991.

Tennessee states that in April 1989, a 4.5-inch steel, high pressure, lap-welded transmission line on the Torrington Lateral ruptured as a result of a circumferential crack that had occurred on the Torrington Lateral which most likely was the result of a third party's backhoe bucket striking the pipeline. Another circumferential rupture occurred in February 1990, presumably related to damage incurred during original installation of the pipeline, Tennessee stated. In addition, during hydrostatic testing in August 1990, another circumferential rupture occurred on the lateral at a previously damaged spot on the pipeline. As a result of the initial two ruptures, Tennessee reviewed it's system and decided to replace certain segments of the lap-welded pipe in service in New England and committed to the State of Connecticut to hydrotest and subsequently replace the Torrington and Winsted lines. In order to ensure the continued safety and integrity of it's system, Tennessee states it is necessary to replace these facilities. The estimated cost of construction is $7,587,000 with abandonment cost estimated at $293,000. The cost will be initially financed by Tennessee by funds on hand, funds generated internally, borrowing under revolving credit agreements or short term financing which will be rolled into permanent financing.

*Comment date:* December 14, 1990, in accordance with Standard Paragraph F at the end of this notice.

**Natural Gas Pipeline Company of America**

**2. El Paso Natural Gas Company**

[Docket Nos. CP91-432-000, CP91-433-000]

November 23, 1990.

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, and El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-582-000 and Docket No. CP86-433-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

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| Docket Number (Date Filed) | Shipper Name (Type) | Peak Day, Average Day, Annual MMBtu | Receipt points | Delivery points | Contract Date, Rate Schedule, Service Type | Related Docket, Start Up Date |
|---|---|---|---|---|---|---|
| CP91-458-000 (11-19-90) | Kaiser Energy Management, Inc. (Marketer) | 200,000<br>80,000<br>18,250,000 | Various | Various | ITS Interruptible | ST91-360 9-12-90 |
| CP91-459-000 (11-19-90) | V.H.C. Gas Systems, L.P. (Shipper) | 515,000<br>515,000<br>187,975,000 | Various | Various | T-1 Interruptible | ST91-1714 9-27-90 |

**3. Lone Star Gas Company, a Division of Enserch Corporation, ONEOK, Inc. and Arkla Energy Resources**

[Docket No. CP90-2287-000]

November 23, 1990.

Take notice that on September 25, 1990, as supplemented on October 30, 1990, Lone Star Gas Company, a Division of Enserch Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, ONEOK, Inc. (ONEOK), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma, and Arkla Energy Resources (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, collectively referred to as Applicants, filed in Docket No. CP90-2287-000 a joint application pursuant to sections 7(c) and 7(b) of the Commission's Regulations under the Natural Gas Act for: (1) Permission and approval for the abandonment by sale by Lone Star of certain facilities utilized in the transportation of natural gas in interstate commerce; (2) permission and approval for the abandonment of the transportation service performed on the aforesaid facilities by Lone Star for Coastal States Gas Transmission Company (Coastal); [2] (3) permission and approval to abandon an exchange currently performed on the facilities by Lone Star with Arkla; [3] (4) permission and approval to abandon an exchange previously performed on the facilities by Lone Star with Arkla; [4] and (5) authorization for ONEOK to acquire and operate the subject facilities from Lone Star and to perform the transportation and exchange services formerly performed on the facilities by Lone Star, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Lone Star proposes to abandon by sale and ONEOK proposes to acquire certain pipeline facilities and appurtenances heretofore owned and operated by Lone Star in interstate commerce and which include all of Lone Star's facilities in the State of Oklahoma as well as Lone Star's lines extending southward across the Red River to specified points of demarcation in Hardeman, Wilbarger, Wichita, Clay, Lamar, Cooke, Red River and Grayson Counties, Texas. Lone Star states that the purchase price to be paid by ONEOK to Lone Star for the interstate facilities and related nonjurisdictional facilities shall be an amount equal to $34,000,000 plus the remainder (whether positive or negative) of the estimated aggregate net book value of the assets as of the closing date minus $24,880,000 (the aggregate net book value of the assets as of October 31, 1989). Lone Star states that ONEOK, which currently owns no interstate pipeline facilities, would become a "natural gas company" within the meaning of the Natural Gas Act upon issuance of the authorization requested herein.[5]

Lone Star states that upon issuance of the authorization requested herein, gas from sources committed and dedicated to interstate commerce within the meaning of the Natural Gas Act flowing into the facilities to be abandoned by sale to ONEOK would be purchased by a division of ONEOK.

Lone Star states that it has agreed to an assignment of certain of its rights and obligations under its gas transportation agreement with Coastal to ONEOK on facilities to be sold to ONEOK. Therefore, ONEOK requests authorizations to continue the transportation for Coastal on the facilities to be acquired.

Lone Star states that it currently engages in an exchange of natural gas with Arkla through certain of the facilities to be abandoned by sale to ONEOK and that it has executed an assignment of its rights and obligations under its gas exchange agreement with Arkla to ONEOK. ONEOK requests authorization to continue the exchange with Arkla through the facilities to be acquired from Lone Star.

Lone Star states that it is currently authorized to engage in an additional exchange with Arkla through certain of the facilities to be abandoned by sale to ONEOK. Under this exchange, Arkla received for Lone Star's account gas purchased by Lone Star from Rogers Lacy, et al. (Lacy) in Panola County, Texas, and redelivered thermally equivalent volumes of gas to Lone Star at an interconnection in McClain County, Oklahoma. Lone Star subsequently assigned its right to purchase the Lacy gas to Natural Gas Pipeline Company of America (Natural) until the volume purchased by Natural reaches 6 Bcf when the right to purchase the Lacy gas would then revert back to Lone Star. Lone Star explains that since the likelihood that Natural's purchases from Lacy will not reach 6 Bcf, there is no reason for this exchange authorization to remain in effect. Therefore, Lone Star and Arkla request authorization to abandon the exchange.

Applicants state that the abandonment of the subject facilities and services by sale to ONEOK will result in better utilization and greater flexibility in the operation of the facilities because of the added ability to economically perform open access transportation between the Texas and Oklahoma markets.

*Comment date:* December 14, 1990, in accordance with Standard Paragraph F at the end of this notice.

**4. Southern Natural Gas Company**

[Docket Nos. CP91-467-000, CP91-468-000]

November 23, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

[6] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket Number (Date Filed) | Shipper Name (Type) | Peak Day, Average Day, Annual | Receipt Points | Delivery Points | Contract Date, Rate Schedule, Service Type | Related Docket, Start Up Date |
|---|---|---|---|---|---|---|
| CP91-467-000 (11-19-90) | Rangeline Corporation (Marketer) | [1] 30,000<br>30,000<br>10,950,000 | OTX, OLA, TX, LA, MS, AL | LA | 9-20-90 IT Interruptible | ST91-2330 10-16-90 |
| CP91-468-000 (11-19-90) | City of Warner Robins, Georgia (LDC) | [2] 6,061<br>6,061<br>2,212,265 | OTX, OLA, TX, LA, MS, AL | GA | 11-16-90 FT Firm | ST91-2335 9-20-90 |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Units measured in MMBtu equivalent.
[3] Units measured in Mcf.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-28086 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-432-000, et al.]

**Tennessee Gas Pipeline Co, et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Tennessee Gas Pipeline Company**

[Docket No. CP91-432-000]

November 19, 1990.

Take notice that on November 14, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP91-432-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public c .venience and necessity to increase its firm sales service to East Tennessee Natural Gas Company (East Tennessee) under Tennessee's Rate Schedule CD-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it proposes to increase its firm sales service for East Tennessee under Rate Schedule CD-1 to allow for a change in East Tennessee's maximum daily quantity from 364,968 dt equivalent of natural gas to 408,968 dt equivalent of natural gas and to allow for a change in East Tennessee's annual quantity limitation from 106,293,491 dt equivalent of natural gas to 121,645,915 dt equivalent of natural gas. Tennessee indicates that no new facilities are required to implement the service.

It is indicated that East Tennessee has requested and Tennessee has agreed to seek an in-service date of November 1, 1991, or such later date as the Commission authorizes East Tennessee in Docket No. CP90-1111-000 to revise its gas sales contracts with its customers for increased gas sales service. It is also indicated that Tennessee has provided that in the event a gas inventory charge (GIC) has not been approved by the Commission by November 1, 1991, in a manner acceptable to Tennessee, then either party has the right to terminate the contract between Tennessee and East Tennessee. Tennessee states that if it elects to terminate the contract for the reasons set forth above, then East Tennessee shall be entitled to request

[2] Authorization granted in Docket No. CP87-193-000, 39 FERC ¶ 61,380 (1987).

[3] Authorization granted in Docket Nos. CP77-273 and CP77-238, 5 FERC ¶ 61,079 (1979).

[4] Authorization granted in Docket Nos. CP78-88 and CP78-89, 7 FERC ¶ 61,061 (1979).

[5] ONEOK and its wholly owned subsidiary, OkTex Pipeline Company (OkTex), have filed a joint application in Docket No. CP90-2286-000 in which, among other things, ONEOK would abandon the facilities acquired from Lone Star into intrastate commerce, except for those facilities which cross the Oklahoma-Texas state line. ONEOK Services, Inc., a wholly owned subsidiary of ONEOK, an intrastate pipeline in Oklahoma, would acquire and operate the intrastate facilities. OkTex would acquire and operate in interstate commerce those facilities crossing the Oklahoma-Texas state line.

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the instant volumetric increase as a transportation service. Tennessee indicates that it anticipates filing for a GIC in the near future.

*Comment date:* December 10, 1990, in accordance with Standard Paragraph F at the end of this notice.

**2. Columbia Gas Transmission Corp. and Alabama-Tennessee Natural Gas Co.**

[Docket Nos. CP91-439-000, CP91-440-000, CP91-441-000, CP91-442-000, CP91-443-000, and CP91-444-000, and CP91-445-000]

November 19, 1990.

Take notice that Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, and Alabama-Tennessee Natural Gas Company, P.O. Box 918, Florence, Alabama 35631, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-240-000 and Docket No. CP89-2201-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §§ 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 3, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Shipper name (type) | Peak day average day annual MMBtu | Receipt points | Delivery points | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-439-000 (11-15-90). | Direct Gas Supply Corporation (Marketer). | 25,000<br>20,000<br>9,125,000 | Various | NY, OH | [1] 4-16-90, ITS, Interruptible. | ST90-4931-000 9-5-90. |
| CP91-440-000 (11-15-90). | Catamount Natural Gas, Inc. (Marketer). | 30,000<br>24,000<br>10,950,000 | Various | NC | 9-30-90, ITS, Interruptible. | ST90-4932-000 9-2-90. |
| CP91-441-000 (11-15-90). | AGF Direct Gas Sales, Inc. (Marketer). | 9,000<br>8,400<br>2,920,000 | OH, KY | MD, VA | 9-12-90, ITS, Interruptible. | ST90-5160-000 9-14-90. |
| CP91-442-000 (11-15-90). | Clinton Gas Marketing, Inc. (Marketer). | 5,500<br>4,400<br>2,007,500 | Various | WV | 9-6-90, ITS, Interruptible. | ST90-5159-000 9-14-90. |
| CP91-443-000 (11-15-90). | Ashland Exploration, Inc. (Producer). | 30,000<br>24,000<br>10,950,000 | Various | Various | 9-15-90, ITS, Interruptible. | ST90-4682-000 8-10-90. |
| CP91-444-000 (11-15-90). | Grandview Hospital (End-user). | 400<br>320<br>146,000 | Various | OH | 8-31-90, ITS, Interruptible. | ST90-5296-000 9-2-90. |
| CP91-445-000 (11-16-90). | Polaris Pipeline Corporation (Marketer). | 100,000<br>100,000<br>[2] 36,000,000 | Various | Various | 9-12-90, IT, Interruptible. | ST90-1712-000 9-26-90. |

[1] As amended July 27, 1990.
[2] Alabama-Tennessee's quantities are in dekatherms.

**3. United Gas Pipe Line Co.**

[Docket Nos. CP91-407-000, CP91-408-000, CP91-409-000, CP91-410-000]

November 20, 1990.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.



| Docket number (date filed) | Shipper name (type shipper) | Peak day [1] avg., annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related dockets [2] |
|---|---|---|---|---|---|---|
| CP91-407-000 (11-19-90) | V.H.C. Gas Systems, L.P. (Marketer). | 205,000<br>205,000<br>75,180,000 | LA, TX, AL | LA, TX, AL, FL, MS | 09-17-90, ITS | ST91-568-000. |
| CP91-408-000 (11-19-90) | Prior Intrastate Corporation (Intrastate P/L). | 515,000<br>515,000<br>187,975,000 | LA, TX, MS, AL | LA, TX, MS, AL, FL | 10-04-90, ITS | ST91-566-000. |
| CP91-409-000 (11-19-90) | Oxy USA Inc. (Producer) | 10,815<br>10,815<br>3,947,475 | OK | OK, LA | 09-21-90, ITS | ST91-569-000. |
| CP91-410-000 (11-19-90) | Enermark Gas Gathering Corporation (Marketer). | 103,000<br>103,000<br>37,595,000 | LA, TX, MS, AL | LA, MS, AL, TX | 10-04-90, ITS | ST91-1018-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an St docket is shown, 120-day transportation service was reported in it.

**4. El Paso Natural Gas Co.**

[Docket No. CP91-434-000]

November 20, 1990.

Take notice that on November 15, 1990, El Paso Natural Gas company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission pursuant to §§ 157.205 the Commission's Regulations under the Natural Gas Act (NGA), to construct and operate a sales tap for the delivery of gas to Southwest Gas Corporation (Southwest) in Greenlee County, Arizona, under El Paso's blanket certificate issued in Docket No. CP88-433-000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes to construct and operate the tap, to be known as the Loma Linda Sales Tap for deliveries to Southwest for resale to the Loma Linda and Verde Lee Communities in Greenlee County. It is stated that El Paso is selling gas to Southwest pursuant to a service agreement between El Paso and Southwest dated October 15, 1970. El Paso states that the tap would consist of one 1" tap and valve assembly with appurtenances to be constructed on El Paso's existing Morenci Laterals at a cost of $10,637.

*Comment date:* January 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

**5. United Gas Pipe Line Co.**

[Docket Nos. CP91-411-000,[3] CP91-412-000, CP91-413-000, and CP91-414-000]

November 20, 1990.

Take notice that on November 13, 1990, United Gas Pipe Line Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* January 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket number (date filed) | Applicant | Shipper name | Peak day[1] avg. annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| CP91-411-000 (11-13-90) | United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478. | Gulf South Pipeline Co | 309,000<br>309,000<br>112,785,000 | TX, LA, Off LA, MS, Off TX. | AL, TX, LA, Off TX, MS. | 10-10-90, ITS | CP88-6-000 ST91-1019-000. |
| CP91-412-000 (11-13-90) | United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478. | Capital Gas Company | 4,120<br>4,120<br>1,503,800 | LA | LA | 10-4-90, ITS | CP88-6-000 ST91-1020-000. |
| CP91-413-000 (11-13-90) | United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478. | Quivira Gas Company | 206,000<br>206,000<br>75,190,000 | MS, LA, TX | LA, MS, AL | 10-19-90, ITS | CP88-6-000 ST91-1763-000. |
| CP91-414-000 (11-13-90) | United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478. | Laser Marketing Company | 616,000<br>616,000<br>225,570,000 | LA, TX, Off LA | MS, TX, FL, LA, Off LA, MS, AL, Off TX. | 10-10-90, ITS | CP88-6-000 ST91-1021-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

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**6. American Central Gas Co., Inc.**

[Docket No. CP91-360-000]

November 20, 1990.

Take notice that on November 7, 1990, American Central Gas Companies, Inc. (American), One Warren Place, 6100 South Yale Avenue, suite 1700, Tulsa, Oklahoma 74136, filed in Docket No. CP91-360-000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the Commission disclaim jurisdiction over certain certificated facilities comprising the Sealy Smith and Santa Rosa Systems, principally located in Pecos and Ward Counties, Texas [4] currently owned by El Paso Natural Gas Company (El Paso), which El Paso is concurrently seeking to abandon by conveyance to American. American requests that once such facilities are abandoned by El Paso and acquired and operated by American, the Commission determine that they will constitute non-jurisdictional gathering and processing facilities under section 1(b) of the Natural Gas Act (NGA).

American states that it is currently engaged in the gathering, processing and marketing of natural gas, and owns gathering and processing facilities in the states of Oklahoma, Texas, Louisiana and Mississippi. American further states that it has received an unlimited blanket certificate from the Commission to make sales for resale in interstate commerce, with pregranted abandonment authorization, 42 FERC ¶ 61,394 (1988).

In an effort to expand its operations, American states that it has recently contracted to purchase from El Paso certain natural gas gathering, compression and treating facilities in West Texas known as the Sealy Smith and Santa Rosa gathering systems, including the Sealy Smith dehydration plant and the Santa Rosa compressor station.[5] Because these facilities were originally certificated by the Commission during the 1940's to the early 1960's, American states that El Paso has requested permission and approval to abandon such facilities by conveyance to American in Docket No. CP91-359-000, and American is seeking the instant declaratory order.

According to American, the certificated facilities in question are operationally interdependent, connected gathering systems, stretching from El Paso's Upton County Line southward approximately 60 miles, with one set of east-west gathering lines at the Santa Rosa Plant, and a network of lateral lines behind the Sealy Smith Plant, resulting in an overall network configuration. American states that the system generally flows toward the center, as follows. Starting from the north, the flow of gas in the system runs generally southward to the Sealy Smith Plant, where the gas is initially dehydrated, then south to the Santa Rosa Plant where it is processed along with gas flowing north and west on the Santa Rosa gathering lines. It is stated that the entire commingled stream then moves southwest along the Rojo Caballo line to an interconnection with El Paso upstream of El Paso's Waha Plant, near Mobil's Coyanosa processing plant.[6]

American states that the facilities subject to its petition include (1) The Sealy Smith gathering system, consisting of a 12¾-inch lateral line extending approximately 12 miles north of the Sealy Smith Plant (part of the Pecos County Line) and a series of small well tie-in lines, ranging in diameter from 4½ to 6⅝-inches, which feed into the lateral line, and a lateral line extending eastward from the Sealy Smith Plant approximately three miles, consisting of pipe ranging from 10¾ to 16 inches in diameter; (2) the Santa Rosa gathering system, consisting of approximately 17 miles of lateral lines ranging in diameter from 4 to 8⅝ inches located behind the Santa Rosa Plant; (3) a lateral line consisting of approximately 21 miles of 10¾-inch pipeline extending from the Santa Rosa Compressor Station south (the Fort Stockton Line); (4) the Pecos County Line, consisting of approximately 28 miles of 8⅝-inch pipeline extending from the Santa Rosa Compressor Station north to the Sealy Smith Plant; (5) the Pecos County Loop Line, consisting of approximately 28 miles of 8⅝-inch pipeline extending from the Sealy Smith Plant south to the Santa Rosa Compressor Station; (6) the Rojo Caballo Line, consisting of approximately 9.5 miles of 8⅝-inch pipeline extending in southwesterly direction from the Santa Rosa processing plant to an interconnection with El Paso near Mobil's Coyanosa processing plant; (7) the Santa Rosa Compressor Station, consisting of three compressor units totalling 450 horsepower (hp); (8) the Payton Compressor Station, adjacent to the Santa Rosa processing plant, consisting of 2 compressor units totalling 1,210 hp; and (9) the Sealy Smith Field Plant consisting of 4 compressor units totalling 4,400 hp and a package dehydration unit.

American states that by agreement dated July 10, 1990, it contracted to purchase the above described facilities from El Paso with the intention of owning and operating such facilities as non-jurisdictional gathering facilities. American submits that its purchase from El Paso also includes gathering facilities which make up parts of the Santa Rosa and Sealy Smith Systems but which were never certificated.

American submits that an examination of the Santa Rosa and Sealy Smith Systems discloses that their primary function is to gather and process natural gas, a non-jurisdictional activity under the Natural Gas Act. Further, American states that, as El Paso indicates in its application to abandon the facilities, the throughput of these systems is no longer primarily dedicated to El Paso's system supply, but is instead sold to others. American states that only 16 percent of the supply behind these systems is currently dedicated to El Paso, while the remaining 84 percent is owned by others. Thus, according to American, the utilization of the facilities has changed dramatically since their construction. It is stated that these systems can no longer be viewed simply as an extension of interstate pipeline supply facilities into a production area. Rather, American states that they are more appropriately characterized as localized gathering and processing systems which can provide residue gas to markets extending beyond the traditional reach of the El Paso system.

Following the abandonment of these facilities by El Paso, American states that it intends to operate the Santa Rosa and Sealy Smith Systems as an integrated gathering and processing systems much like the facilities American currently owns and operates in other producing regions. American states it will provide gathering and processing services for El Paso's remaining system gas supplies behind these systems and for the 13 field customers, which El Paso will continue to serve. Additionally, American states that it has contacted producers in the area and is actively engaged in negotiating contracts for gathering and processing services.

It is stated that producers and shippers alike will benefit from American's ownership of the facilities by having an additional non-jurisdictional competitor offering gathering and processing services for their production. Including American's services, it is stated that producers and end-users will have at least three different processing plants, four interstate pipelines (including El Paso) and five intrastate pipelines to choose from for gathering, processing and transmission services. American states that there are existing or potential interconnections with other pipelines on the Rojo Caballo Line, the lateral line north of the Sealy Smith Plant and the Ft. Stockton Line. Further, it is stated that from the Rojo Caballo Line gas can be delivered to El Paso and transported approximately 10 miles to El Paso's Waha Plant, where there are interconnections with seven pipelines. According to American, the existing competition will help ensure that the rates charged for gathering and processing services in the area will be competitive. American states that it will also be motivated to increase throughput on these systems to maximize the return on its investment, and that it, not jurisdictional ratepayers will be at risk for underutilization of the facilities once they are acquired from El Paso.

American states that it hereby commits to make the Sealy Smith and Santa Rosa Systems available to all interested producers on a first-come, first-served basis, with no undue preference being given to any party with respect to access to these systems. It further states that the rates charged will be negotiated with producers on an individual basis, but American will give no undue preference to any similarly situated parties with respect to the rates charged for service.

*Comment date:* December 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[4] El Paso states that the facilities are predominantly located in Pecos and Ward Counties, Texas; however, minor facilities extend into Crane, Ector and Winkler Counties, Texas.

[5] American states that it has also purchased the non-jurisdictional Santa Rosa Plant and related facilities located in Pecos County, Texas from Pecos Company and Meridian Oil Hydrocarbons, Inc. Inasmuch as these facilities have never been deemed jurisdictional, American avers that their status is not part of the petition for declaratory order, and references to the Santa Rosa Plant herein should be considered purely for explanatory purposes.

[6] American states that a small volume of gas is moved from the Santa Rosa Plant north along the Pecos County Line to serve 13 field sales customers and to supply fuel to the Sealy Smith Plant.



**7. El Paso Natural Gas Co.**

[Docket No. CP91-359-000]

November 20, 1990.

Take notice that on November 7, 1990, El Paso Natural Gas Compnay (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-359-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon from interstate service by sale to American Central Gas Companies, Inc. (American), certain certificated facilities including compression, treating plant and pipeline facilities (which include transmission, field feeder and gathering pipelines), with appurtenances, principally located in Pecos and Ward Counties, Texas [7] and hereinafter referred to as the "Sealy Smith and Santa Rosa Systems", and the related service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that as its pipeline system and service requirements grew in the late 1940's and early 1950's, it continued its search for additional supplies of gas to connect to its interstate system. As a result of such efforts, El Paso states that it was authorized in Docket No. G-1051, *et al.*, 7 FPC 908 (1948), to construct and operate certain facilities to transport (i) An additional 100,000 Mcf per day (Mcfd) of natural gas from supply sources situated in the Permian Basin to the Arizona-California border near Blythe, California; and (ii) an additional 80,000 Mcfd of natural gas from supply sources situated in the Permian Basin to delivery points in the States of Arizona, New Mexico and Texas. According to El Paso, the supply sources in the Permian Basin included new natural gas volumes received from the Sealy Smith and Santa Rosa Fields.

In order to facilitate the receipt of the new gas volumes from the Sealy Smith and Yarbrough Allen Fields, El Paso states that it constructed the Sealy Smith System in 1950. El Paso states that the system initially consisted of a small gathering system, three natural gas compressors, one purification and dehydration plant and one gasoline absorption plant. Subsequent to the approval of the application in Docket No. G-1051, El Paso states that it sought authorizations from the Commission, from time to time, to construct and operate additional compression and pipeline facilities at the Sealy Smith Field Plant and in the Sealy Smith System so El Paso could receive, process and compress additional volumes of natural gas to satisfy its growing system requirements. El Paso states that the expansions to the Sealy Smith System also included the construction of certain minor, non-jurisdictional gathering pipeline additions.

El Paso avers that with the development of the Payton and Pecos Valley Fields, it received authorization to construct and operate the Santa Rosa Field Compressor Station at the Pecos Company's (successor-in-interest to Slick Oil Company) Santa Rosa Gasoline Plant, 9 FPC 493 (1950). The Santa Rosa Field Compressor Station consisted of three 150 horsepower (hp) compressor units that were used in conjunction with Pecos's Company's natural gas processing facilities at that site. To permit the receipt of additional supplies made available subsequent to the construction of the Santa Rosa Field Compressor Station, El Paso states that is constructed certain minor, nonjurisdictional gathering system facilities, which additions now constitute the Santa Rosa System. Finally, due to pressure declines in the Payton Field located in Pecos and Ward Counties, Texas, as well as El Paso's contractual obligations to deliver gas to the Pecos Company's Santa Rosa Gasoline Plant, El Paso states that it constructed and operated the Payton Compressor station, which was comprised of one 660 hp compressor unit. El Paso states that an additional 550 hp unit was constructed in 1973. El Paso states that it abandoned the processing facilities at the Sealy Smith Field Plant in 1978, 4 FERC ¶ 61,169, because the amount and content of the gas volumes delivered to that plant for processing had declined to the point that such gas could be processed at Pecos Company's Santa Rosa Gasoline Plant.

According to El Paso, natural gas received from the Sealy Smith and Yarbrough Allen gathering systems is collected, treated and compressed first at El Paso's Sealy Smith Field Compressor Station, and thereafter transported through El Paso's Pecos County Loop Line to its Santa Rosa Field Compressor Station. At the Santa Rosa Field Compressor Station, natural gas received from the Santa Rosa gathering system joins natural gas received from the Sealy Smith Field Compressor Station for ultimate transportation through El Paso's Rojo Caballo Line to its Mobil-Coyanosa Plant to its Waha Plant Line for delivery to El Paso's Waha Plant. El Paso further states that a small volume of natural gas

[7] El Paso states that the facilities are predominantly located in Pecos and Ward Counties, Texas; however, minor facilities extend into Crane, Ector and Winkler Counties, Texas.

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(approximately 400 Mcfd) is transported from the Santa Rosa Plant to the Sealy Smith Field Compressor Station through a segment of El Paso's Pecos County Line to serve 13 sales taps along that line and to supply plant fuel to the Sealy Smith Field Compressor Station. El Paso avers that it will continue to render sales for resale service to Southern Union Gas Company, Union Gas Company, Warpec Pipe Line Inc. and the City of Grandfalls, Texas.

El Paso states that it is continuing its transition from being primarily a merchant to being a major gas transporter.

Similarly, El Paso states that many of the producers with gas attached to the Sealy Smith and Santa Rosa Systems no longer make their sales to El Paso and now sell directly to others with El Paso providing the gathering and transportation services. According to El Paso, currently only 1,900 Mcfd, or approximately 16 percent of the residue gas available from the Sealy Smith and Santa Rosa Systems, is dedicated to its purchases for system supply. El Paso states that the remaining 9,900 Mcfd, or about 84 percent of such residue gas, is owned by others and is transported by El Paso to various delivery points on its system.

Due to the precipitous decline in gas from the fields behind the systems, El Paso states that the unit cost for gathering and processing its system supply gas through the Sealy Smith and Santa Rosa Systems has increased dramatically.

According to El Paso, it no longer requires the assured access to the remaining gas supply provided by the system due to the present and projected low demand for its system supply gas. Moreover, El Paso states that it's market environment no longer justifies retention of the Sealy Smith and Santa Rosa Systems. Considering these conditions, El Paso believes that its continued operation of these gathering systems would frustrate its goal of optimizing system operations. Accordingly, El Paso decided to sell the Sealy Smith and Santa Rosa Systems to American pursuant to an Agreement of Sale Concerning the Sealy Smith Plant, the Santa Rosa Compressor Site and the Sealy Smith and Santa Rosa Gathering Systems dated July 10, 1990.

It is stated that American intends to operate the Sealy Smith and Santa Rosa Systems as integrated non-jurisdictional gathering and processing systems. The operation of the facilities as such will, according to El Paso, greatly benefit producers in the production area of the Sealy Smith/Yarbrough and Santa Rosa/Payton Fields (hereinafter referred to as the Sealy Smith Field), and El Paso's transportation customers for the gas produced from the area. Producers in the area will benefit by having an additional non-jurisdictional competitor offering gathering and processing services for their production. Including American's services, El Paso states that producers in the Sealy Smith Field will have at least three different processing plants, four interstate pipelines (El Paso, Transwestern Pipeline Company, Natural Gas Pipeline Company of America and Northern Natural Gas Company) and five intrastate pipelines (Lone Star Gas Company, Oasis Pipe Line Company, Red River Pipeline Company, Valero Transmission Corporation and Westar Transmission Company) to choose from for gathering, processing and transmission services. El Paso states that is mainline transportation customers will benefit from the increased competition for alternative gathering and processing services and from greater supply diversity.

After abandonment of the systems, El Paso states that it will have minor purchase obligations of approximately 1,900 Mcfd remaining for gas located in the production area. This total includes company owned production (from one well) of 108 Mcfd of natural gas subject to the Natural Gas Act (NGA). El Paso states that the related gas purchase contracts have various expiration dates, ranging from July 1990 to December 1994. El Paso anticipates a significant decline in the quantity of gas dedicated to its system supply from the Sealy Smith and Santa Rosa Systems. According to El Paso, the sale of the system will not prevent it from honoring its remaining contractual obligations in the area because American has agreed to provide gathering and processing services for El Paso's remaining gas in the production area. El Paso states that American also is endeavoring to enter into contracts for gathering and processing services to all other producers in the production area.

Following the transfer of facilities, El Paso states that American will deliver gas to it from the Sealy Smith and Santa Rosa Plants at a meter to be constructed at the intersection of the Rojo Caballo Line and the Mobil-Coyanosa Plant to El Paso's Waha Plant Line.[8] El Paso proposes to use its Mobil-Coyanosa Plant to Waha Plant Line to transport pipeline quality gas from the Sealy Smith and Santa Rosa Systems to its Waha Compressor Station or to its California Mainlines.

El Paso states that it will abandon no gas supply as a result of the abandonment of the Sealy Smith and Santa Rosa Systems; therefore, its ability to render existing sales for resale service to its customers will not be impaired. Furthermore, El Paso states that open access obligations for transportation service will not be affected by the proposed transfer of facilities. Additionally, it is stated that the abandonment will require no changes in El Paso's FERC Gas Tariff and no significant change in its rates will result therefrom. El Paso states that the sale will result in a book loss to Applicant and a minor reduction in rate base included in future general rate case proceedings.

El Paso states that there will be no adverse environmental effects from the proposed abandonment. Accordingly, El Paso states that it believes the proposed action does not constitute a major federal action significantly effecting the quality of the human environment and thus not subject to the requirements of the National Environmental Policy Act of 1969. In El Paso's judgement, an environmental analysis for the instant proposal is not necessary.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph F at the end of this notice.

**8. Algonquin Gas Transmission Co.**

[Docket No. CP91-401-000]

November 20, 1990.

Take notice that on November 14, 1990,[9] Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-401-000 a request pursuant to §§ 157.205, 157.211, and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 284.223) for authorization to operate a sales meter station and to perform a transportation service for Ocean State Power (Ocean State), under Algonquin's blanket certificate issued in Docket Nos. CP87-317-000 and CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Algonquin requests authority to operate a meter station originally constructed under section 311 of the Natural Gas Policy Act of 1978 as a facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act. It is indicated that the facilities include three 12-inch meter runs, pipeline taps located off Algonquin's mainline and loop, associated data acquisition equipment, and two buildings to houls metering and data acquisition equipment, and cost approximately $700,000. Algonquin also proposes to transport up to 100,000 million Btu of natural gas on an interruptible basis for Ocean State. It is indicated that Algonquin would receive the gas at specified points located in New Jersey and Massachusetts and redeliver the gas, less fuel and unaccounted for line loss, to Ocean State at an existing point located at Burrillville, Rhode Island. Algonquin estimates peak day, average day and annual volumes of 100,000 million Btu, 10,000 million Btu, and 3,650,000 million Btu, respectively.

Algonquin states that it would charge rates and abide by the terms and conditions of its Rate Schedule AIT-1.

*Comment date:* January 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

**9. Tennessee Gas Pipeline Co.**

[Docket No. CP91-350-000]

November 21, 1990.

Take notice that on November 7, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed an abbreviated application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to authorize a firm transportation service to Colonial Gas Company (Colonial) of 10,000 dekatherms per day and the abandonment of certain sales service to Colonial under Tennessee's Rate Schedule CD-6, effective November 1, 1991, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Pursuant to a November 1, 1989 Gas Sales Agreement, Colonial may elect to convert up to 20 percent of its original sales entitlement. The conversion option is subject to Tennessee's receipt of authority to abandon the sales service and to provide firm transportation service. Tennessee's request to render a firm transportation service for Colonial herein includes rates for that service that generate revenues at least equal to the revenues produced by the non-gas demand and commodity charges under Tennessee's Rate Schedule CD-6. No new facilities need be constructed to implement the proposed transportation service.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph F at the end of this notice.

**10. Stingray Pipeline Co.**

[Docket No. CP91-392-000]

November 21, 1990.

Take notice that on November 13, 1990, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-392-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Stingray states that by Opinion No. 693 issued May 6, 1974 in Docket No. CP73-27, 51 FPC 1446, the Commission authorized Stingray to transport 200,000 Mcf of natural gas per day under Rate Schedule T-2 on a firm basis for United Gas Pipe Line Company (United). Stingray further explains that by orders issued July 25, 1984 in Docket No. RP84-57, 28 FERC ¶61,111 and June 6, 1989 in Docket No. CP89-1108, 47 FERC ¶62,229, it was authorized to reduce the contract quantity level to 56,000 Mcf of natural gas per day. Stingray explains that the gas is transported from the offshore West and East Cameron areas and redelivered to a terminus near Holly Beach in Cameron Parish, Louisiana.

Stingray states that by letter dated March 30, 1990, United informed Stingray of its election to reduce the contract quantity to zero, effective April 1, 1991. Therefore, Stingray requests permission and approval to abandon service to United under Rate Schedule T-2, effective April 1, 1991.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph F at the end of this notice.

**11. Williams Natural Gas Co.**

Docket Nos. [CP91-430-000, and CP91-431-000]

November 21, 1990.

Take notice that on November 15, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Dockets [CP91-430-000, and CP91-431-000],[10] requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide transportation for Universal Resources Corp. d/b/a Questar Energy Company (Universal) and MacKellar Oil Company (MacKellar) under WNG's blanket certificate issued in Docket No. CP86-631-000, all as more fully set forth in the requests on file with the Commission and open to public inspection.

WNG states that it would transport on an interruptible bases, up to maximum of 2,000 dth of natural gas per day for MacKellar from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's system located in Oklahoma. WNG anticipates transporting 2,000 dth on an average day and 730,000 dth on an annual basis.

WNG states that it would transport on an interruptible basis up to maximum of 5,000 dth of natural gas per day for Universal from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming to various delivery points on WNG's system located in Kansas, Missouri and Texas. WNG anticipates transporting 2,000 dth on an average day and 730,000 dth on an annual basis for MacKellar; and 5,000 dth and 1,825,000 dth on an annual basis for Universal. WNG indicates that services commenced for both Universal and Mackellar October 1, 1990, as reported in Docket Nos. ST91-2924 and ST91-2925 respectively, pursuant to § 284.223 of the Regulations.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**12. Frontier Gas Storage Co.**

[Docket No. CP85-221-003]

November 21, 1990.

Take notice that on November 9, 1990, Frontier Gas Storage Company (Frontier), in compliance with the provisions of the Commission's Order of February 13, 1985, in *Williston Basin Interstate Pipeline* (Williston), Docket No. CP82-487-000, *et al.*, filed an executed Service Agreement under Rate Schedule LVS-1 providing for the possible sale of certain of Frontier's gas storage inventory on an "as metered" basis, all as more fully set forth in the application which is open to public inspection.

Under Subpart (b) of Ordering Paragraph (5) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making

[8] El Paso states that it will construct the meter station under its blanket construction authorization in Docket No. CP82-435-000, pursuant to § 157.208(a) of the Commission's Regulations.

[9] The request was tendered for filing on November 13, 1990; however, the fee required by § 381.208 of the Commission's Rules (18 CFR 381.207) was not paid until November 14, 1990. § 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[10] These dockets are not consolidated.

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such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

The Service Agreement, dated October 29, 1990, contemplates the sale of gas between Frontier "seller" and Interenergy Corporation (Interenergy) "buyer" under Frontier's Rate Schedule LVS–1. Interenergy agrees to purchase a daily quantity of gas of up to 10,000 MMBtu which is currently stored in Williston's Baker and Elk Basin storage fields. The Service Agreement also stipulates that Williston and Interenergy will enter into an agreement under Williston's Rate Schedule IT–1, for the interruptible transportation and delivery of the gas that is sold by Frontier to Interenergy at five existing delivery points on Williston's system, as more specifically defined in Exhibit A of the Service Agreement. Interenergy has agreed to pay frontier a rate of no less than $1.75 per MMBtu plus applicable interruptible transportation charges under Williston's IT–1 Rate Schedule. This agreement shall continue in force and effect for a term expiring on November 15, 1991.

Any person desiring to be heard or to make any protest with reference to this filing should, within ten days of the publication of this notice in the Federal Register.

**13. ANR Pipeline Co.**

[Docket No. CP91–453–000]

November 21, 1990.

Take notice that on November 16, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91–453–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Xebex Gas Company, a marketer, under the blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that, pursuant to an agreement dated, under its Rate Schedule ITS, it proposes to transport up to 84,854 Dt per day equivalent of natural gas. ANR indicates that the gas would be received in various receipt points on its system, transported and redelivered to various delivery points. ANR further indicates that it would transport 84,501 Dt on an average day and 30,842,865 Dt annually.

ANR advises that service under § 284.223(a) commenced September 21, 1990, as reported in Docket No. ST91–882.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**14. Questar Pipeline Co., et al.**

[Docket Nos. CP91–435–000, CP91–437–000, and CP91–438–000]

November 21, 1990.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[11]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached Appendix B.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[11] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91–435–000 (11–15–90) | Universal Resources Corporation [1]. | 14,000<br>14,000<br>2,968,000 | UT, WY, CO | UT, WY, CO | 10–30–90, T–1, Firm. | ST91–3146, 11–1–90 |
| CP91–437–000 (11–15–90) | USX Corporation | 10,000<br>10,000<br>2,045,000 | PA | PA | 5–2–90, FTS, Firm | ST91–2857, 11–1–90 |
| CP91–438–000 (11–15–90) | Enron Gas Marketing, Inc. | 350<br>350<br>127,750 | CO, KS, MO, OK, TX, WY. | MO | 10–1–90, FTS–2, Firm. | ST91–2926 10–1–90 |

[1] The application states that Universal Resources Corporation is doing business as Questar Energy Company.

| Applicant's address | Blanket docket |
|---|---|
| Equitrans, Inc., 3500 Park Lane, Pittsburgh, Pennsylvania 15275. | CP86–553–000 |
| Questar Pipeline Company, 79 South State Street, Salt Lake City, Utah 84111. | CP86–650–000 |
| Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101. | CP86–631–000 |

**15. Viking Gas Transmission Co.**

[Docket Nos. CP91–397–000 CP91–398–000 CP91–399–000 CP91–400–000]

November 21, 1990.

Take notice that on November 13, 1990, Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90–273–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[12]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under 284.223 of the Commission's Regulations is provided in the attached appendix.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[12] These prior notice requests are not consolidated.



| Docket No. (date filed) | Applicant | Shipper name | Peak day,[1] average annual | Points of Receipt | Points of Delivery | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| CP91–397–000 (11–13–90) | Viking Gas Transmission Company. | Tennessee Corporation. | 480,000<br>480,000<br>175,200,000 | MN, ND, WI | MN, ND, WI | 10–1–90, IT–2 | CP90–273–000, ST91–2350–000. |
| CP91–398–000 (11–13–90) | Viking Gas Transmission Company. | LEDCO, Inc | 300,000<br>300,000<br>109,500,000 | MN, ND, WI | MN, ND, WI | 10–1–90, IT–2 | CP90–273–000, ST91–2356–000. |
| CP91–399–000 (11–13–90) | Viking Gas Transmission Company. | NGC Transportation, Inc. | 363,542<br>363,542<br>132,692,000 | MN, ND, WI | MN, ND, WI | 10–1–90, IT–2 | CP90–273–000, ST91–2360–000. |
| CP91–400–000 (11–13–90) | Viking Gas Transmission Company. | Tarpon Gas Marketing, Ltd. | 150,000<br>150,000<br>54,750,000 | MN, ND, WI | MN, ND, WI | 10–1–90, IT–2 | CP90–273–000, ST91–2348–000. |

[1] Quantities are shown in Dekatherms unless otherwise indicated.
[2] The RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120–day transportation service was reported in it.

**16. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP91–348–000]

November 21, 1990.

Take notice that on November 6, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91–348–000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act proposing to construct and operate facilities under the authorization issued in Docket No. CP82–426–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Transco proposes to complete the construction of and to operate (1) Approximately 6.17 miles of 16-inch pipeline extending from South Marsh Island Block 130 to the South Marsh Island Block 146/147, (2) a dual 10-inch meter and regulation station at South Marsh Island 146/147, and (3) an underwater tap valve assembly in the vicinity of the South Marsh Island Block 130 platform, all offshore Louisiana.

Transco states that the proposed facilities are required to attach gas.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**17. Tennessee Gas Pipeline Co.**

[Docket No. CP91–436–000]

November 21, 1990.

Take notice that on November 14, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91–436–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, to construct an additional point which will be bi-directional for both receipt and delivery of natural gas on an interruptible basis for V.H.C. Systems, L.P. (V>H>C>), a marketer, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to establish the bi-directional point at its M.P. 708–1+9.1 mile in Panola County, Texas, at an interconnection with Valero Transmission. The volumes estimated to be transported is 100,000 dth of natural gas per day; the service will be provided to V.H.C. under Tennessee's Rate Schedule IT.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**18. El Paso Natural Gas Co.**

[Docket No. CP91–456–000]

November 21, 1990.

Take notice that on November 19, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed a request with the Commission pursuant to § 157.205 the Commission's Regulations under the Natural Gas Act (NGA), to upgrade an existing meter station in order to permit additional deliveries to Southern Union Gas Company (SUG) for resale to the community of Sedona, Arizona, under El Paso's blanket certificate issued in Docket No. CP88–433–000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes to replace the two existing 2-inch meter runs at the Sedona Meter Station with one 4-inch meter run with appurtenances. It is stated El Paso was requested by SUG to upgrade the meter station in a written request dated September 25, 1990. It is explained that the additional gas would be used to serve the residential and commercial requirements of Sedona, Arizona, and environs. It is asserted that peak day deliveries at the subject delivery point would total 3,900 Mcf of natural gas and 453,989 Mcf on an annual basis. The cost of the proposed upgrading is estimated at $36,001. It is stated that the additional deliveries would have a negligible effect on El Paso's total peak day and annual deliveries.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of the notice.

**19. Williams Natural Gas Co.**

[Docket No. CP91–452–000]

November 21, 1990.

Take notice that on November 16, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP91–452–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for permission and approval to abandon its natural gas sale to Mid-West Gas Company (Mid-West) in Osage and Pawnee Counties, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

WNG states that Mid-West requested WNG to terminate their existing natural gas sales contract authorized in Docket No. CP85–194 (33 FPC 998), because Mid-West has sold its facilities to LeAnn Gas Company (LeAnn). These facilities would remain in place to allow

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LeAnn access to natural gas for transportation.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**20. Williston Basin Interstate Pipeline Co.**

[Docket Nos. CP91-447-000, CP91-448-000, CP91-449-000, CP91-450-000, CP91-451-000]

November 21, 1990.

Take notice that on November 9, 1990, Williston Basin Interstate Pipeline Company (Applicant), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-1118-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[13]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[13] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name | Peak day,[2] [3] average, annual | Points of— Receipt | Points of— Delivery | Start up date, rate schedule, service type | Related [14] docket, contract date |
|---|---|---|---|---|---|---|
| CP91-447-000 (11-16-90) | Koch Hydrocarbon Company. | 183,365<br>79,275<br>66,926,225 | MT, ND, SD, WY | MT, ND, SD, WY | 10-1-90, IT-1, Interruptible. | ST91-2723-000, 10-1-90 [5] |
| CP91-448-000 (11-16-90) | Merillat Industries, Inc. | 1,500<br>500<br>547,500 | MT, ND, SD, WY | SD | 10-1-90, IT-1, Interruptible. | ST91-2721-000, 7-16-90 |
| CP91-449-000 (11-16-90) | Pacific Enterprises Oil Company (USA). | 15,000<br>10,000<br>5,475,000 | WY | WY | 10-4-90, IT-1, Interruptible. | ST91-2727-000, 10-1-90 |
| CP91-450-000 (11-16-90) | Rainbow Gas Company | 189,812<br>4,100<br>89,281,380 | MT, ND, SD, WY | MT, ND, SD, WY | 10-1-90, IT-1, Interruptible. | ST91-2722-000, 8-24-90 [6] |
| CP91-451-000 (11-16-90) | Texaco Gas Marketing, Inc. | 87,000<br>80,000<br>31,755,000 | MT, ND, WY | ND, SD, WY | 10-1-90, IT-1, Interruptible. | ST91-2726-000, 9-21-90 [7] |

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Dekatherms.
[3] Amended 10-9-90.
[4] If an ST docket is shown, 120-day transportation service was reported in it.
[5] Quantities are shown in Dekatherms.
[6] Amended 10-29-90.
[7] Amended 10-3-90.

**21. United Gas Pipe Line Co.**

[Docket Nos. CP-91-478-000, CP91-479-000, CP91-480-000, CP91-481-000, CP91-482-000, CP91-483-000]

November 21, 1990.

Take notice that on November 20, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[14]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by United and is summarized in the attached appendix.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

[14] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day average day annual MMBtu | Receipt points | Delivery points | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-478-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 79<br>79<br>28,835 | TX | TX | 10-4-90,[1] FTS, Firm. | ST91-2645-000, 10-4-90. |
| CP91-479-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 56<br>56<br>20,440 | TX | TX | 10-4-90,[2] FTS, Firm. | ST91-2644-000, 10-4-90. |



| Docket No. (date filed) | Shipper name (type) | Peak day average day annual MMBtu | Receipt points | Delivery points | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-480-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 162<br>162<br>59,130 | TX | TX | 10-4-90,[3] FTS, Firm. | ST91-2646-000, 10-4-90. |
| CP91-481-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 83<br>83<br>30,295 | TX | TX | 10-4-90,[4] FTS, Firm. | ST91-2647-000, 10-4-90. |
| CP91-482-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 79<br>79<br>28,835 | TX | TX | 10-4-90,[5] FTS, Firm. | ST91-2648-000, 10-4-90.6 |
| CP91-483-000 (11-20-90) | Phoenix Gas Pipeline Company (Intrastate PL). | 437<br>437<br>159,505 | TX | TX | 10-4-90,[6] FTS, Firm. | ST91-2649-000, 10-4-90. |

[1] Contract No. 6460.
[2] Contract No. 6462.
[3] Contract No. 6463.
[4] Contract No. 6461.
[5] Contract No. 6459.
[6] Contract No. 6458.

**22. United Gas Pipe Line Co.**

[Docket No. CP91-429-000]

November 21, 1990.

Take notice that on November 14, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed an application with the Commission in Docket No. CP91-429-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a one-inch farm tap and related facilities for the delivery of natural gas to the town of Citronelle, Mobile County, Alabama, Utility Board under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

United states that South Alabama Utilities would reimburse it for installing the one-inch farm tap on United's 12-inch Lirette-Mobile main line at an estimated cost of $4,002. United also proposes natural gas deliveries of 12 Mcf on peak days and 4,380 Mcf annually via the proposed farm tap to the town of Citronelle Utility Board for residential use. United states that these deliveries would not result in an increase in the town of Citronelle's aggregate base requirements or contractual Maximum Daily Quantity. United states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

*Comment date:* January 7, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28087 Filed 11-29-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP73-184-007 and CI73-485-006]

**Colorado Interstate Gas Co.**

**Report of Refunds**

November 23, 1990.

Take notice that Colorado Interstate Gas Company on October 15, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made in accordance with ordering paragraph (C) of the Commission's Order Approving Settlement with Modifications issued on August 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)). All such protests should be filed on or before November 30, 1990. Protests

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will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28088 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-31-000]

**Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff**

November 23, 1990.

Take notice that on November 20, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective December 9, 1990:

Original Sheet No. 182
Original Sheet No. 183
Original Sheet No. 184
Original Sheet No. 185
Sheet Nos. 186 through 189

Natural states that the purposes of this filing are: (1) To reflect a revised allocation procedure, as required by Commission Order No. 528, for the flow-through by Natural of transition costs assessed to it by Natural's upstream suppliers; (2) to track Colorado Interstate Gas Company's (CIG) recovery of interest on take-of-pay buyout, buydown, or other contract reformation costs (Transition costs) allocated to natural at Docket No. RP90-95-000; (3) to track CIG's recovery of interest on Northwest Pipeline Corporation (Northwest) Transition Costs that were passed through to Natural from CIG; and (4) to reflect accrued interest for the months of June 1990 through November 1990 for Natural's amortization of CIG and Northwest Transition Costs in accordance with semiannual interest adjustment provision of its FERC Gas Tariff. This filing will supersede and subsume the filing to track interest made November 1, 1990 in Docket No TM91-2-26-000.

Natural requests any waivers of the Commission's Regulations which may be necessary to permit the tendered tariff sheets to take effective December 9, 1990. Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers interested state regulatory agencies, and all parties set out on the official service list at Docket Nos. RP89-131-000, *et al.* and RP89-188-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 30, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28086 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-28-000]

**Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff**

November 23, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on November 19, 1990 tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on the appendix attached to the filing.

These revised tariff sheets reflect changes to Rate Schedules TS-2 and TS-6 of Panhandle's FERC Gas Tariff, Original Volume No. 2 to reflect (1) ANR Pipeline Company's (ANR) effective transportation charges in ANR's Docket Nos. RP86-169-000, *et al.*, RP89-161-000, *et al.*, CP89-2210-001, TA90-1-48-001, RP86-105 and RP87-25, (2) ANR's effective take-or-pay surcharges in ANR's Docket Nos. RP89-45-007, RP89-127-003, RP89-193-003, TM89-2-48-000, RP90-18-000, RP89-161-000, RP90-48-000, TM90-3-48-000, and CP89-2210-004, and (3) Panhandle's and ANR's approved Annual Charge Adjustments (ACA) effective October 1, 1987, October 1, 1988, October 1, 1989, October 1, 1990, and November 1, 1990.

Panhandle proposes that the tariff sheets listed on the Appendix become effective October 1, 1987, March 1, 1988, July 1, 1988, October 1, 1988, May 1, 1989, July 10, 1989, October 1, 1989, November 1, 1989, November 25, 1989, December 27, 1989, February 1, 1990, May 1, 1990, October 1, 1990, and November 1, 1990, respectively. Panhandle requests waiver of Section 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to ANR, to the various Panhandle storage customers under Rate Schedules TS-2 and TS-6, and to the respective state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 30, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28089 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-55-014 and RP85-157-068]

**Sea Robin Pipeline Co., Filing of Pipeline Refund Report**

November 23, 1990.

Take notice that Sea Robin Pipeline Company (Sea Robin) on November 9, 1990 tendered for filing its proposal to (1) Reverse refunds, with interest, previously paid for the period June 1, 1980 through June 30, 1985 and (2) impose charges to collect the difference between rates established by Commission Opinion Nos. 227-A and 227-B and the restated rates previously developed and approved in Docket No. RP85-167-000 for the period July 1, 1985 through June 30, 1988. Sea Robin states its proposal is in compliance with the Commission's Order Granting Rehearing issued September 21, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 30, 1990. Protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28092 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP88-67-040, et al.]

**Texas Eastern Transmission Corp.; Filing of Pipeline Refund Report**

November 23, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 14, 1990 submitted for filing a Refund Report for the period September 1, 1988 through August 31, 1990 in compliance with the Commission's Order on Contested Offer of Settlement issued February 23, 1990 and Order Granting Rehearing issued April 25, 1990 in the subject proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 30, 1990. Protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28091 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-4-001]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

November 23, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 19, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets;

Sub Third Revised Sheet No. 439
Original Sheet No. 439A
Sub Fifth Revised Sheet No. 467
Sub Original Sheet No. 467A
Sub Original Sheet No. 467B

Texas Eastern states that on October 31, 1990 the Federal Energy Regulatory Commission issued its Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Consolidating Dockets for Hearing in Docket No. RP91-4-000, *et al.* In that order the Commission requires Texas Eastern to revise its no-bump procedures and to clarify certain aspects of its "no-bump" filing. Texas Eastern submits that the filing letter which clarifies certain aspects of its original "no bump" filing and the revised tariff sheets are in compliance with the Commission's October 31, 1990 order.

The proposed effective date of the tariff sheets listed above is November 1, 1990.

Texas Eastern states that copies of the filing were serve on Texas Eastern's jurisdictional customers, interested state commissions, all customers under Rate Schedules FT-1 and IT-1 and all parties in Docket No. RP91-4-000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 30, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28090 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-487-033, et al. (Phase II)]

**Williston Basin Interstate Pipeline Co.; Filing of Pipeline Refund Report**

November 23, 1990.

Take notice that Williston Basin Pipeline Company (Williston) on October 18, 1990 submitted for filing a Refund Report and supporting workpapers for the locked-in period January 1, 1985 through May 1, 1986, in compliance with the Commission's Order Accepting Compliance Filing issued October 3, 1990 in the subject proceedings. Williston filed the tariff sheets which form the basis for the refund on June 11, 1990 and August 14, 1990 in Docket Nos. CP82-487-031 and CP82-487-032, respectively. The sheets were accepted by Letter Order issued August 1, 1990 and by the above referenced October 3, 1990 Order, respectively.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before November 30, 1990. Protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

FR Doc. 90-28093 Filed 11-29-90; 8:45 am]

BILLING CODE 6717-01-M

**Office of Fossil Energy**

[FE Docket No. 90-79-NG]

**Corpus Christi Gas Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas**

**AGENCY:** Department of Energy; Office of Fossil Energy.

**ACTION:** Notice of an order granting blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Corpus Christi Gas Marketing, Inc. blanket authorization to export up to a total of 145 Bcf of natural gas over a two-year period beginning on the date of the first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. the docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28195 Filed 11-29-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-91-NG]

**Fuel Services Group, Inc.; Application to Import Natural Gas from Canada**

**AGENCY:** Department of Energy, Office of Fossil Energy.

BEST COPY AVAILABLE

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**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 23, 1990, of an application filed by Fuel Services Group, Inc. (FSG), for blanket authority to import up to 14.6 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery. FSG intends to utilize existing pipeline facilities for the transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 31, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

**SUPPLEMENTARY INFORMATION:** FSG is a Ohio corporation with its principal place of business in Worthington, Ohio. FSG maintains that the blanket authorization requested would allow it to import competitively priced natural gas from a variety of Canadian suppliers for resale to U.S. consumers, primarily in the states of Michigan, Minnesota, Wisconsin, Illinois and Ohio. FSG asserts that purchases generally will be made on a month-to-month basis under 30-day spot market supply contracts, and will not exceed a period of more than two years. Also, the specific terms of each import transaction would be negotiated by the parties and will be subject to any restrictions imposed by the Canadian National Energy Board and DOE.

In support of its application, FSG states that any transaction negotiated under the authority requested would be competitive with domestic gas supply alternatives, and would be sufficiently flexible to remain competitive over the term of the transaction.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that any authorization granted would be conditioned on the filing of quarterly reports indicating the details of each sales transaction.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of FSG's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–28198 Filed 11–29–90; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 89–77–LNG]**

**Pan National Gas Sales, Inc.; Order Granting Authorization to Import Liquified Natural Gas From Algeria**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice for an order granting authorization to import liquefied natural gas from algeria.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pan National Gas Sales, Inc. (Pan National), a 15-year authorization to import up to 30,400,000 MMBtu per year, plus an additional 40,000 MMBtu per day during the first five years, of Algerian liquified natural gas (LNG) to be imported at Lake Charles, Louisiana. Pan National will sell the LNG to Citrus Trading Corp. which will resell the LNG to Florida Power and Light Company for use in electric generation.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC, November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–28197 Filed 11–29–90; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 90–71–NG]**

**Petro-Canada Hydrocarbons Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of order granting blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Petro-Canada Hydrocarbons Inc. (PCH) blanket authorization in FE Docket No. 90–71–NG to import up to 150 Bcf of Canadian natural gas for short-term and spot market sales over a two-year period beginning on March 4, 1991, through March 3, 1993.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–28198 Filed 11–29–90; 8:45 am]

BILLING CODE 6450–01–M



## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–3665–7]**

### Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed November 19, 1990 through November 23, 1990 pursuant to 40 CFR 1506.9.

EIS No. 900425, DRAFT EIS, SCS, WV, Lower Mud River Watershed Protection and Flood Plan, Implementation, Section 404 Permit, City of Milton, Cabell, Lincoln and Putnam, WV. Due: January 14, 1991, Contact: Rollin N. Swank (304) 291–4151.

EIS No. 900426, DRAFT EIS, FHW, UT, US–89/Logan Canyon Highway, Improvements, Right Fork 9 miles East of Logan to Garden City, Funding, 404 Permit and Special Use Permit, Wesatch-Cache National Forest, Cache and Rich Counties, UT, Due January 14, 1991, Contact: Duncan Silver (801) 524–5143.

EIS No. 900427, FINAL EIS, COE, NY, Limestone Creek Flood Damage Reduction Plan, Implementation, Manlius, Onondaga County, NY, Due: December 31, 1990, Contact: Tod Smith (716) 876–5454.

EIS No. 900428, DRAFT SUPPLEMENT, AFS, Rocky Mountain Regional Guide/Plan, Silvicultural Standards and Guidelines, for Land and Resource Management Planning, CO, SD, WY, NB, AND KS, Due: February 28, 1991, Contact: David A. Anderson (303) 236–9555.

EIS No. 900429, FINAL EIS, COE, NY, Limestone Creek Local Flood Protection, Implementation, Fayetteville, Onondaga County, NY, Due: December 31, 1990, Contact: Tod Smith (716) 829–4173.

EIS No. 900430, DRAFT EIS, COE, PR, Upper Rio Grande De Loiza Basin Flood Control Plan, Implementation, PR, Due: January 14, 1991, Contact: Dr. Jonathan D. Moulding (904) 791–2286.

EIS No. 900431, DRAFT SUPPLEMENT, USA, UT, Dugway Proving Ground Biological Aerosol Test Facility (BATF) New Alernative, Consolidated Life Sciences Test Facility Construction and Operation (LSTF), Baker Laboratory, Tooele County, UT, Due: January 24, 1991, Contact: Lewis D. Walker (703) 695–7824.

EIS No. 900432, DRAFT EIS, AFS, AK, Shelter Cove and George Inlet Areas Timber Sale, Implementation, Tongass National Forest, Ketchikan Ranger District, AK, Due: January 21, 1991, Contact: Steven J. Segovia (907) 225–2148.

Dated: November 27, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90–28201 Filed 11–29–90; 8:45 am]

BILLING CODE 6560–50–M

**[ER–FRL–3665–8]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 12, 1990 through November 16, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949)

**Draft EISs**

*ERP No. D–AFS–L65135–ID*

Rating LO, Stanley Basin Cattle and Horse Allotment Management Plan, Implementation, Sawtooth and Challis National Forests, Custer County, ID.

*Summary.* EPA has no objections to the proposed project.

**Final EISs**

*ERP No. F–FHW–K40169–HI*

Kahekili Highway/US–83 Widening, Likelike Highway/US–83 to Kamehameha Highway and Interchange Construction at Likelike Highway/US–63, Funding, Island of Oahu, City and County of Honolulu, HI.

*Summary.* Review of the final EIS has been completed and the project found to be satisfactory.

Dated: November 27, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90–28202 Filed 11–29–90; 8:45 am]

BILLING CODE 6560–50–M

**[OPP–30000/20E; FRL 3840–3]**

### Cadmium Chloride: Proposed Decision to Terminate Special Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed decision to terminate Special Review.

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**SUMMARY:** On August 1, 1990 EPA published a section 6(f) Notice announcing its receipt of W.A. Cleary's request to voluntarily cancel Caddy Liquid Cadmium Turf Fungicide, the last remaining cadmium chloride product registration. Cancellation became effective on August 11, 1990. Because all other registrations of cadmium chloride have been previously cancelled, this voluntary cancellation leaves no other cadmium chloride registration. The Agency, therefore does not find it necessary to continue the Special Review of this pesticide. This Notice proposes to terminate the Cadmium Chloride Special Review.

**DATE:** Comments must be received on or before December 31, 1990.

**ADDRESSES:** Written comments should bear the identifying notation "OPP-30000/20E." Submit comments by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Deliver comments in person to: Rm 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Lou Kerestesy, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg. 2805 Jefferson Davis Highway, Arlington, VA, (703) 308-8032.

**SUPPLEMENTARY INFORMATION:** This Notice proposes to terminate the Cadmium Chloride Special Review.

## I. Introduction

Cadmium compounds were registered for fungicidal use on ornamental turf, professional turf, and home lawns. On golf course tees and greens, cadmium chloride was used primarily to control gray snow mold, red thread, dollar spot, and copper spot.

On October 28, 1977, EPA initiated a Special Review pursuant to 40 CrR 154.7(a) for all pesticides containing cadmium compounds (42 FR 56574). The Agency had determined that all cadmium chloride uses met or exceeded chronic carcinogenic and mutagenic risk criteria, and that certain uses also met or exceeded developmental and fetotoxic criteria.

On October 10, 1986, the Agency issued its Preliminary Determination to Cancel (PD 2/3) all pesticide products containing cadmium compounds (51 FR 36524). The Agency proposed to cancel all cadmium uses based on the determination that such use would result in unreasonable adverse effects to applicators. Although it was determined that the data did not support risk concerns for mutagenicity, fetotoxicity, or developmental effects, the risk concern for carcinogenicity remained and a risk concern for kidney effects was added.

The Agency was made aware by public comments, received in response to the PD 2/3, that its exposure assessment of cadmium chloride use on golf course tees and greens had been based on an incorrect assumption about the application method. Commenters stated that cadmium chloride was applied to the majority of golf course tees and greens by cart-drawn boom spray equipment (mini-booms), not by hand-held spray guns, as the Agency had assumed. EPA concluded that it could not adequately assess applicator exposure by mini-boom sprayers with the data in its surrogate data base, and a Data Call-in Notice was issued in July 1987 requiring an applicator exposure study for mini-boom sprayers.

On August 19, 1987, EPA issued a Final Determination (PD 4) and Notice of Intent to Cancel (NOIC) announcing its decision to cancel all products containing cadmium compounds registered for use on home lawns and golf course fairways (52 FR 31076). Based on the weight-of-evidence, the Agency concluded that the risks associated with cadmium compounds used on home lawns and golf course fairways outweighed the minor benefits. Given the number of available, effective alternatives, and the small economic impact expected to result from cancellation, the Agency determined that cancellation was the appropriate action.

The PD 4 and the NOIC stated that EPA would allow continued use of cadmium chloride on golf course tees and greens provided that labels were amended to classify cadmium chloride as a "Restricted Use" pesticide, to restrict the application method to mini-booms only, and to require that protective clothing be worn during mixing, loading, and application. Cadmium chloride was the only cadmium compound registered on this site. The Agency also stated that further regulatory action would be taken if results from the mini-boom study showed that applicator risk remained unreasonable. The cancellation and restrictions went into effect on September 18, 1987, by operation of law, because no registrant requested a hearing.

The mini-boom applicator exposure study was submitted in May 1989, (Ref. 1). This study measured dermal and inhalation exposure to a mixer/loader/applicator wearing the label-required long sleeve shirt, long pants, and chemical-resistant gloves, who mixed, loaded, and applied cadmium compounds at a rate of 1.0 fluid ounce per 1000 square feet (the maximum label application rate). EPA reviewed the study and found that, although exposure from mini-boom sprayers was less than exposure from hand-held spray guns, the risk to applicators remained unacceptable.

On June 13, 1990, EPA met with the representatives of the W.A. Cleary Chemical Corporation to discuss EPA's review of the mini-boom study, its risk/benefit analysis, and the company's cadmium chloride reregistration activities (Ref. 2). EPA stated its concerns regarding applicator risk, noting that kidney risks remained unacceptable. EPA and the registrant also discussed the registrant's responsibilities to fulfill reregistration requirements, the Agency's plans for proceeding with the Special Review, and the possibility of voluntary cancellation. The registrant, in connection with pursuing a voluntary cancellation, sought an existing stocks provision to accommodate their 2- to 3-year product supply; however, this was considered unacceptable to EPA. Although an existing stocks provision was not agreed to at the meeting, a variety of provisions were discussed.

On July 9, 1990, EPA received W.A. Cleary's formal request for voluntary cancellation of its last remaining cadmium chloride product registration, Caddy Liquid Cadmium Turf Fungicide (EPA No. 1001-10). In its request, W.A. Cleary sought the following existing stocks provisions:

1. That W.A. Cleary be permitted to sell its product to distributors or release it for shipment until July 31, 1991.
2. That distributors or retailers be permitted to sell or distribute the product to golf courses until December 31, 1991.
3. That use on golf courses be permitted until the supply of product in the possession of the golf course is exhausted.

On August 1, 1990, EPA published a notice in the **Federal Register**, under section 6(f), which announced the Agency's receipt of W.A. Cleary's request for voluntary cancellation, and which specified the existing stocks provisions governing the cancellation of cadmium chloride (55 FR 31227). EPA accepted W.A. Cleary's request for voluntary cancellation and granted its proposed existing stocks provisions because, had the Special Review continued and the product not been voluntarily cancelled, cadmium chloride products would have been on the market for a period of time longer than that provided for by the existing stocks provision. EPA had determined that the use of cadmium chloride for the additional use season permitted under the existing stocks provision would not pose an unreasonable risk to applicators. On August 11, 1990, after a 10-day public comment period, the voluntary cancellation became effective.



## II. Legal Background

In order to obtain a registration for a pesticide under FIFRA, an applicant must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," (FIFRA section 3(5)(C)). The term "unreasonable adverse effect on the environment" refers to "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide," (FIFRA section 2(bb)). This standard requires a finding that the benefits of each use of the pesticide outweigh the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may cancel the registration of a pesticide or require modification of the terms and conditions of a registration if he determines that the pesticide product causes unreasonable adverse effects to man or the environment. EPA created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal public procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review may be initiated if a pesticide meets or exceeds the risk criteria set out in the regulations at 40 CFR part 154. EPA announces that a Special Review is initiated by issuing a notice in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut EPA's conclusions by showing that EPA's initial determination was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting rebuttal evidence, commenters may submit relevant information to aid in the determination of whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks. After reviewing the comments received and other relevant material obtained during the Special Review process, EPA makes a decision on the future status of registrations of the pesticide.

The Special Review process may be concluded in various ways depending upon the outcome of EPA's risk/benefit assessment. If EPA concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, EPA will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than the benefits, EPA considers possible changes to the terms and conditions of registration which can reduce risks and the impacts of such modifications on the benefits of use. If EPA determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, EPA may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If EPA makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, EPA must issue a Notice of Intent to Cancel the registration. If the Notice of Intent to Cancel requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes set forth in the Notice, if possible. Adversely affected persons may also request a hearing on the suspension or cancellation of a specified registration and use. If they do so in a legally effective manner, that registration and use will be continued pending a decision at the close of an administrative hearing, unless the registration is suspended pending the outcome of the cancellation hearing. Similarly, adversely affected applicants for registration or interested persons with the concurrence of the applicant may request a hearing to contest denial of the application.

As stated above, the sole registrant of products containing cadmium chloride, W.A. Cleary Chemical Corporation, has voluntarily cancelled its last registered cadmium chloride product. Voluntary cancellation was chosen by the registrant for economic considerations and in light of the Agency's concern over risks revealed in an exposure study submitted in May 1989. EPA published the registrant's request for voluntary cancellation on August 1, 1990, and final cancellation of this product became effective on August 11, 1990.

## III. Summary of Risk Determinations

EPA has evaluated both animal laboratory and human epidemiological studies to determine cadmium's potential toxicity, and has determined that cadmium compounds have been shown to be carcinogenic and cause kidney effects. Full discussion of the basis for these determinations was provided in the PD 2/3, issued on October 10, 1986 (51 FR 36524). The following is a summary of the risk assessments for carcinogenic and kidney effects.

### *A. Carcinogenicity*

EPA evaluated numerous studies in which various cadmium compounds were administered by inhalation, oral, and parenteral dosing to laboratory animal species. Human epidemiological studies of factory workers chronically exposed by inhalation and dermal routes were also reviewed. Key animal studies showed a lowest-observed-effect-level (LOEL) of 12.5 μg cadmium chloride/$m^3$ for lung tumors in a chronic inhalation rat study (Ref. 3). A rat chronic injection study showed a LOEL of 3.6 mg/kg cadmium for testicular and pancreatic islet tumors (Ref. 4). Epidemiological studies of factory workers chronically exposed to cadmium oxide and cadmium dust have shown statistically significant dose related increases in the incidence of lung tumors (Ref. 5). Based on these findings, the Agency has classified cadmium as a Group B1 (probable human) carcinogen by the inhalation route.

An applicator exposure study submitted by the W. A. Cleary Chemical Corporation in May 1989, was used by the Agency in its exposure assessment. This study measured dermal and inhalation exposure to a mixer/loader/applicator (MLA) wearing the label-required long sleeve shirt, long pants, and chemical-resistant gloves, who mixed, loaded, and applied cadmium compounds using a mini-boom sprayer at a rate of 1.0 fluid ounce per 1000

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square feet. Dermal exposure was estimated to be 6.1 μg/kg/day, and inhalation exposure 0.42 μg/kg/day, for persons applying one cadmium treatment to four acres of tees and greens (Ref. 6).

The carcinogenic risk to cadmium applicators was based exclusively on inhalation exposure, because data from toxicological studies indicate the formation of lung tumors following inhalation only. It was assumed that inhalation absorption was 40 percent. Risks were calculated for a 70 kg applicator with a respiratory rate of 12 L/min; exposure was assumed to occur for 35 years of a 70 year lifetime. The Thun et al. study (1985) of cadmium smelter workers was used to develop the human cancer potency factor, or $Q_1^*$ of 6.1 $(mg/kg/day)^{-1}$. Assuming 10 applications/yr, EPA calculated the carcinogenic risk to applicators to be $1 \times 10^{-4}$.

*B. Kidney Effects*

The kidney effects of cadmium have been studied in both experimental laboratory animals and occupationally-exposed humans. Acute effects observed in experimental animals exposed to cadmium include formation of fatty bodies and degeneration of renal tubules. Chronic human study effects observed include proteinuria (excess protein in the urine), glucosuria (excess glucose in the urine), and decreased renal function (Ref. 7). Data from a large number of animal studies, and from autopsies and biopsies of 50 persons exposed to cadmium provided evidence of irreversible, morphological changes in the kidney (Ref. 8). Based on these data, Friberg, et al. estimated a lowest-observed-effect-level (LOEL) at an ambient air concentration of 2 $\mu g/m^3$, which EPA converted to $2 \times 10^{-6}$ mg/L in order to calculate the level at which toxicity is observed. By factoring in exposure, body weight, and respiratory rate, an inhalation LOEL of 0.18 mg/kg/yr was calculated.

EPA calculated an inhalation Effect Ratio (ER) of 43 and a dermal ER of 120 based on a quantitative assessment of kidney effects, the 1974 Friberg et al. study (Ref. 8), and an assumption of 10 applications/year. (EPA usually uses a Margin of Exposure to represent the ratio of the No-Observed-Effect-Level (NOEL) to exposure. When a NOEL is not available, as with cadmium chloride, EPA generally uses the Lowest-Observed-Effect-Level (LOEL). The ratio of the LOEL to exposure is called an Effect Ratio.) Because both dermal and inhalation exposures lead to the same kidney effects, it is more appropriate to combine these exposures when calculating an ER than it is to calculate them separately. A combined ER of 32 was calculated, therefore, using both routes of exposure (Ref. 9). EPA also considered cadmium's persistence in the body as a qualitative factor in its risk assessment. Because cadmium chloride has a half-life in the body of 10–33 years, and because it is usually applied by professionals rather than by temporary employees, the body burden of applicators continually exposed to cadmium chloride will increase yearly. Even though initial exposure levels may be below threshold levels, continuous exposure may eventually reach the point at which toxic effects could occur.

## IV. Agency's Decision Regarding Special Review

The only registrant of a cadmium chloride pesticide product has voluntarily cancelled its registration. Since there are no remaining registrations for cadmium chloride compounds, and the sale of existing stocks has been limited, the Agency feels that under these conditions, the continuation of the Cadmium Chloride Special Review is not necessary. With this Notice, the Agency is proposing to terminate the Special Review of cadmium chloride.

## V. Public Comment Opportunity

The Agency is providing a 30–day period to comment on this Notice. Comments must be submitted by December 31, 1990. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS. The comments and information should bear the identifying notation, "OPP–30000/20E"

## VI. Availability of Public Docket

The Agency has established a public docket for the termination of the Cadmium Chloride Special Review. This public docket will include this Notice; any other Notices pertinent to the Cadmium Chloride Special Review, and to the Agency's decision regarding the termination of the Cadmium Chloride Special Review; documents not considered Confidential Business Information; and copies of written comments or other materials submitted to the Agency in response to the initiation of Special Review; and a current index of materials in the public docket.

## VII. References

The references in this Federal Register Notice are as follows:

(1) Exposure of Mixer/Loader/Applicators to Caddy Liquid Cadmium Turf Fungicide Applied to Golf Course Turf by Groundboom Equipment. May 10, 1989. Test conducted by Orius Associates Inc., for the W.A. Cleary Chemical Corporation. Public Docket No. D–12157.

(2) Meeting between W.A. Cleary and EPA on June 13, 1990, to discuss EPA's activities regarding W.A. Cleary's reregistration of cadmium chloride. Public Docket No. D–11566A.

(3) Takenaka, S., H. Oldiges, H. Konig, D. Hochrainer, G. Oberdoerster. 1983. Carcinogenicity of Cadmium Aerosols in Winstar Rats. *Journal of the National Cancer Institute*, 70:367–373.

(4) Poirer, L.A., K.S. Kasprzak, L.K. Hoover, M.L. Wenk. 1983. Effects of Calcium and Magnesium Acetates on the Carcinogenicity of Cadmium Chloride in Winstar Rats. *Cancer Research*, 43:4575–4581.

(5) Thun, M. J., T. M. Schnorr, A.B. Smith, W.E. Halperin. 1985. Mortality Among a Cohort of U.S. Cadmium Production Workers: An Update. *Journal of the National Cancer Institute*. 74(2):325–333.

(6) Lunchick, Curt. Cadmium Chloride Exposure Assessment Revision. HED/OPP/USEPA. Project # 9–1910, Public Docket No. D–12157.

(7) National Institute for Occupational Safety and Health. August 1976. Criteria for a Recommended Standard on Occupational Exposure to Cadmium. HEW Publication (NIOSH) 76–92. U.S. Department of Health, Education, and Welfare. pp. 75–192.

(8) Friberg, L., M. Piscator, G.F. Nordberg, T. Kjellstrom, 1974. Cadmium in the Environment, 2d ed. CRC Press Inc., Boca Raton, Florida, Public Docket No. D–05783, Att. 23.

(9) Kutney, Linda. Revised Oncogenic Risk Assessment and Effect Ratios for Kidney Effects Due to Cadmium Chloride Exposure. HED/OPP/USEPA. Public Docket No. D–12157.

All references with Public Docket numbers are available for inspection in Rm. 246, CM # 2, 1921 Jefferson-Davis Highway, Arlington, VA. 22202, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Dated: November 16,1990.

**Linda J. Fisher,**

*Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 90–28023 Filed 11–29–90; 8:45 am]

BILLING CODE 6560–50–F

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**[FP OG3657/T800; FRL 3798–5]**

## Establishment of an Exemption from Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established an exemption from the requirement of a tolerance for residues of the insecticide volatile floral attractants: cinnamaldehyde, 3 phenyl propanol, cinnamyl alcohol, 4 methoxypheny ethanol, indole, 4 methoxy cinnamaldehyde and 1,2,4 trimethoxy benzene and for the kairomone, *Cucurbita foetidissima* root powder in or on the raw agricultural commodity field corn for control of adult corn rootworms.

**DATES:** This temporary exemption from the requirement of a tolerance expires September 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H–7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2690).

**SUPPLEMENTARY INFORMATION:** BioControl Limited, 719 Second Street, Suite 12, Davis, CA 95616, has requested in pesticide petition PP OG3867 the establishment of an exemption from the requirement of a tolerance for residues of the insecticide volatile floral attractants: cinnamaldehyde, 3 phenyl propanol, cinnamyl alcohol, 4 methoxyphenyl ethanol, indole, 4 methoxy cinnamaldehyde and 1,2,4 trimethoxy benzene and for the kairomone, *Cucurbita foetidissima* root powder in or on the raw agricultural commodity field corn for control of adult corn rootworms.

This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 53575–EUP–2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA], as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticides be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredients to be use must not exceed the quantity authorized by the experimental use permit.

2. BioControl must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires September 1, 1991. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticides are legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: October 2, 1990.

**Anne E. Lindsay,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 90–28022 Filed 11–29–90; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–42066; FRL–3864–6]**

## Cheyenne River Sioux Tribe; Intent to Approve the Tribal Plans for the Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to approve Tribal Plan.

**SUMMARY:** The Chairman of the Cheyenne River Sioux Tribe has submitted to EPA through the Department of Interior a plan for the certification of applicators of restricted use pesticides. Notice is given of the intention of the Regional Administrator, EPA, Region VIII, to approve this plan. A summary of the plan appears below. Interested persons are invited to comment.

**DATES:** Written comments must be submitted on or before December 31, 1990.

**ADDRESSES:** Address comments identified by the docket control number OPP–42066 to: Dallas Miller, Air and Toxics Division (8AT–TS), Region VIII, Environmental Protection Agency, 999 18th St., Suite 500, Denver, CO 80202–2405.

See the **SUPPLEMENTARY INFORMATION** unit for addresses where the plan and comments are available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Dallas Miller (303–293–1743).

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b) and 40 CFR part 171, the Chairman of the Cheyenne River Sioux Tribe has submitted a Tribal plan for the certification of applicators of restricted use pesticides to EPA through the Department of Interior for approval.

### I. Summary of Plan

The Chairman of the Cheyenne River Sioux Tribe has designated the Cheyenne River Land and Natural Committee as the lead agency for the administration of the pesticide applicator certification program.

Legal authority for the certification program is contained in the Cheyenne River Tribal Pesticides Code. A copy of the Code is attached to the Plan.

The Plan lists the personnel available to carry out the certification program. Also, the plan lists the South Dakota Department of Agriculture and the South Dakota Cooperative Extension Service as Cooperating Agencies. Funding to operate the certification plan will be provided by the Cheyenne River Sioux Tribe and through Cooperative Agreement Awards from EPA.

The Land and Natural Resources Committee will submit an annual report to EPA by October 30 of each year and other reports requested by the Administrator of EPA. The annual report will cover the period from October 1 through September 30.

The Cheyenne River Sioux Tribe's plan utilizes the South Dakota State Certification program to determine applicator competence. Applicators who have obtained a pesticide applicator credential through the South Dakota Department of Agriculture will be eligible to receive a Cheyenne River Sioux Tribal applicator certification.

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The Cheyenne River certification document will list the category(ies) and expiration date that appears on the South Dakota certification credential. It is estimated that 400 private applicators and 40 commercial applicators will require Cheyenne River certification.

The commercial applicator categories listed in the plan are the same as those listed in the South Dakota plan. Cheyenne River's categories are:

1. Agriculture Plant Pest Control.
   a. Insecticides (including Miticides and Nematocides).
   b. Herbicides.
   c. Fungicides.
2. Agriculture Animal Pest Control.
3. Forest Pest Control.
4. Ornamental and Turf Pest Control.
5. Seed Treatment.
6. Aquatic Pest Control.
7. Right-of-Way Pest Control.
8. Industrial, Institutional, Structural and Health Related Pest Control.
9. Public Health Pest Control.
10. Regulatory Pest Control.
11. Demonstration and Research Pest Control.
12. Rodent and Bird Pest Control.
13. Predator Pest Control.
14. Grain Fumigation Pest Control.
15. Wood Preservative Pest Control.

The general standards of competency will be the same as those listed in 40 CFR 171.4(b) and 171.6. The specific standards of competency for each category or subcategory are the same as the standards listed in 40 CFR 171.4(c).

The recertification period for commercial applicators will be every 2 years and every 4 years for private applicators. These recertification periods are the same as those listed in the South Dakota State Applicator Certification Plan. Cheyenne River will revoke the tribal certification of any individual whose South Dakota State certification is revoked. Since the Cheyenne River plan utilizes the South Dakota State certification procedures, the Tribe will not offer reciprocity to out-of-state applicators.

The Tribe will coordinate certification activities with the South Dakota Department of Agriculture. Tribal applicator training needs will be coordinated with the South Dakota State Extension Service. Enforcement pesticide samples will be analyzed by Station Biochemistry Laboratories in Brookings, South Dakota.

**II. Public Comments**

Copies of the Plan, the Tribal Pesticides Code, and all written comments are available for review at the following locations during normal business hours.

1. Cheyenne River Sioux Tribe, Pesticide Enforcement Office, P.O. Box 590, Eagle Butte, SD 57625, Telephone: (605) 964-6558.
2. Toxic Substances Branch, Air and Toxics Division, Region VIII, Environmental Protection Agency, 999 - 18th St., Suite 500, Denver, CO 80202, Telephone: (303) 293-1730.
3. Field Operations Division (H7506C), Office of Pesticide Programs, Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557-3262.

Interested persons are invited to submit written comments on the proposed Tribal plan.

Dated: November 16, 1990.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 90-28155; Filed 11-29-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-42065; FRL-3664-5]

## Rosebud Sioux Tribe; Intent to Approve the Tribal Plans for the Certification of Pesticide Applicators

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to approve Tribal Plan.

**SUMMARY:** The President of the Rosebud Sioux Tribe has submitted to EPA through the Department of Interior a plan for the certification of applicators of restricted use pesticides. Notice is given of the intention of the Regional Administrator, EPA, Region VIII, to approve this plan. A summary of the plan appears below. Interested persons are invited to comment.

**DATES:** Written comments must be submitted on or before December 31, 1990.

**ADDRESSES:** Address comments identified by the docket control number OPP-42065 to: Dallas Miller, Air and Toxics Division (8AT-TS), Region VIII, Environmental Protection Agency, 999 18th St., Suite 500, Denver, CO 80202-2405.

See the **SUPPLEMENTARY INFORMATION** unit for addresses where the plan and comments are available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Dallas Miller (303-293-1743).

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136b) and 40 CFR part 171, the President of the Rosebud Sioux Tribe has submitted a Tribal plan for the certification of applicators of restricted use pesticides to EPA through the Department of Interior for approval.

**I. Summary of Plan**

The President of the Rosebud Sioux Tribe has designated the Rosebud Land and Natural Resources Committee as the lead agency for the administration of the pesticide applicator certification program.

Legal authority for the certification program is contained in the Rosebud Tribal Pesticides Code. A copy of the Code is attached to the Plan.

The Plan lists the personnel available to carry out the certification program. Also, the plan lists the South Dakota Department of Agriculture and the South Dakota Cooperative Extension Service as Cooperating Agencies. Funding to operate the certification plan will be provided by the Rosebud Sioux Tribe and through Cooperative Agreement Awards from EPA.

The Land and Natural Resources Committee will submit an annual report to EPA by October 30 of each year and other reports requested by the Administrator of EPA. The annual report will cover the period from October 1 through September 30.

The Rosebud Sioux Tribe's plan utilizes the South Dakota State Certification program to determine applicator competence. Applicators who have obtained a pesticide applicator credential through the South Dakota Department of Agriculture will be eligible to receive a Rosebud Sioux Tribal applicator certification. The Rosebud certification document will list the category(ies) and expiration date that appear on the South Dakota certification credential. It is estimated that between 1,000 and 2,000 private applicators and between 100 and 200 commercial applicators will require Rosebud Certification.

The commercial applicator categories listed in the plan are the same as those listed in the South Dakota plan. Rosebud's categories are:

1. Agriculture Plant Pest Control.
   a. Insecticides (including Miticides and Nematocides).
   b. Herbicides.
   c. Fungicides.
2. Agriculture Animal Pest Control.
3. Forest Pest Control.
4. Ornamental and Turf Pest Control.
5. Seed Treatment.
6. Aquatic Pest Control.
7. Right-of-Way Pest Control.
8. Industrial, Institutional, Structural, and Health Related Pest Control.
9. Public Health Pest Control.
10. Regulatory Pest Control.
11. Demonstration and Research Pest Control.
12. Rodent and Bird Pest Control.
13. Predator Pest Control.
14. Grain Fumigation Pest Control.
15. Wood Preservative Pest Control.

The general standards of competency will be the same as those listed in 40 CFR 171.4(b) and 171.6. The specific standards of competency for each category or subcategory are the same as the standards listed in 40 CFR 171.4(c).

The recertification period for commercial applicators will be every 2 years and every 4 years for private applicators. These recertification periods are the same as those listed in the South Dakota State Applicator Certification Plan. Rosebud will revoke the tribal certification of any individual whose South Dakota State certification is revoked. Since the Rosebud plan utilizes the South Dakota State certification procedures, the Tribe will not offer reciprocity to out-of-state applicators.

The Tribe will coordinate certification activities with the South Dakota Department of Agriculture. Tribal applicator training needs will be coordinated with the South Dakota State Extension Service. Enforcement pesticide samples will be analyzed by Station Biochemistry Laboratories in Brookings, South Dakota.

**II. Public Comments**

Copies of the Plan, the Tribal Pesticides Code, and all written comments are available for review at the following locations during normal business hours.

1. Rosebud Sioux Tribe, Department of Natural Resources, Rosebud, SD 57570, Telephone: (605) 747-2559.
2. Toxic Substances Branch, Air and Toxics Division, Region VIII, Environmental Protection Agency, 999 - 18th St., Suite 500, Denver, CO 80202, Telephone: (303) 293-1730.
3. Field Operations Division (H7506C), Office of Pesticide Programs, Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557-3262.

Interested persons are invited to submit written comments on the proposed Tribal plan.

Dated: November 16, 1990.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 90-28155 Filed 11-29-90; 8:45 am]

BILLING CODE 6560-50-F



## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 23, 1990

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0176.

Title: Section 73.150, Experimental Authorizations.

Action: Extension.

Respondents: Business or other for-profit.

Frequency of Response: On occasion (including small businesses).

Estimated Annual Burden: 18 responses; 3.1 hours average burden per response; 56 hours total annual burden.

Needs and Uses: Section 73.1510 requires that a licensee of an AM, FM and TV broadcast station file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation. The data is used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation will not cause interference to other stations.

OMB Number: 3060-0178.

Title: Section 73.1560, Operating Power and Model Tolerances.

Action: Extension.

Respondents: Business on other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 247 responses; 1 hour average burden per response; 247 hours total annual burden.

Needs and Uses: Section 73.1560(d) require that licenses of AM, FM or TV stations file a notification with the FCC in Washington, DC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal written request must be made for any additional time as may be necessary to restore normal operations. The data will be used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90-28212 Filed 11-29-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-011241-008.

*Title:* USA-North Europe Rate Agreement.

*Parties:*

Atlantic Container Line AB, P&O Container Limited, Sea-Land Service, Inc.,
Compagnie Generale Maritime (CGM), Hapag Lloyd AG, Nedlloyd Lijnen BV, A.P. Moller-Maersk Line.

*Synopsis:* The proposed modification would eliminate a unanimous voting requirement for the assignment of certain Conference/Rate Agreement officials or employees to participate in

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service contract negotiations. It would also make other nonsubstantive changes.

*Agreement No.:* 202-011242-010.
*Title:* North Europe-USA Rate Agreement.
*Parties:*
Atlantic Container Line AB, P&O Containers Limited, Sea-Land Service, Inc., A.P. Moller-Maersk Line, Compagnie Generale Maritime (CGM), Hapag Lloyd AG, Nedlloyd Lijnen, BV.

*Synopsis:* The proposed modification would eliminate a unanimous voting requirement for the assignment of certain Conference/Rate Agreement officials or employees to participate in service contract negotiations. It would also make other nonsubstantive changes.

Dated: November 26, 1990.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
*Secretary.*
[FR Doc. 90-28112 Filed 11-29-90; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Apple Bancorp, Inc., et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 20, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Apple Bancorp, Inc.*, New York, New York; to engage *de novo* in making commercial loans pursuant to section 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, Old Republic Bancorp, Inc., and its subsidiary, Old Republic Savings Bank, Inc., an organizing thrift institutions, both of Rocky Mount, North Carolina, in owning and operating a state-chartered savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of North Carolina.

Board of Governors of the Federal Reserve System, November 28, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28128 Filed 11-29-90; 8:45 am]
BILLING CODE 6210-01-M

### Barclays PLC and Barclays Bank PLC, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4 (c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application of the offices of the Board of Governors not later than December 20, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC and Barclays Bank PLC*, London, England; to acquire Interpayment Services Ltd., Poole, Dorset, England, and thereby acquire certain assets of BA Cheque Corporation, San Francisco, California, and thereby engage in the business of issuing and selling travelers cheques pursuant to § 225.25(b)(12) of the Board's Regulation Y.

2. *Citicorp*, New York, New York; to acquire Brookfield Bancshares Corporation and its subsidiary, Brookfield Federal Bank for Savings, both of Brookfield, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and the sale of credit-related life and disability insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *BB&T Financial Corporation*, Wilson, North Carolina; to acquire Home Savings and Loan Association, Inc., Durham, North Carolina, and thereby engage in the traditional deposit taking and loan making activities of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 26, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28129 Filed 11-29-90; 8:45 am]
BILLING CODE 6210-01-M



### Charles D. Campbell, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 1990.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Charles D. Campbell*, Yellville, Arkansas, and Karen K. Campbell, Yellville, Arkansas; to acquire an additional 21 percent of the voting shares of Mountain Bancshares, Inc., Yellville, Arkansas, for a total of 33.36 percent, and thereby indirectly acquire Bank of Yellville, Yellville, Arkansas.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *O.R. Brancel Revocable Trust*, and the sale of Faith Bank Holding Company, Inc., Pierre, South Dakota.

Board of Governors of the Federal Reserve System, November 26, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28130 Filed 11-29-90; 8:45 am]
BILLING CODE 6210-01-M

### Kislak Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 20, 1990.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Kislak Financial Corporation*, Miami Lakes, Florida; to become a bank holding company by acquiring 99.7 percent of the voting shares of Kislak National Bank, North Miami, Florida.

Board of Governors of the Federal Reserve System, November 26, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28131 Filed 11-30-90; 8:45 am]
BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### American Cyanamid Co.; Withdrawal of Approval of NADA's

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by American Cyanamid Co. The withdrawals are at the request of the sponsor.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Lehmann, Center for Veterinary Medicine (HFV-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3134.

**SUPPLEMENTARY INFORMATION:** American Cyanamid Co., Agricultural Research Division, Box 400, Princeton, NJ 08540, has requested that the following approved NADA's be withdrawn:

NADA 140-821 for the combination of CYGRO (maduramicin ammonium, 4.54 to 5.45 grams per ton (g/ton)) and roxarsone (22.7 to 45.4 g/ton) for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella, E. brunetti, E. maxima, E. necatrix*, and *E. mivati*; and for increased rate of weight gain and improved feed efficiency in broiler chicken.

NADA 140-823 for the combination of CYGRO (maduramicin ammonium, 4.54 to 5.45 g/ton) and bacitracin methylene disalicylate (4 to 50 g/ton) for the prevention of coccidiosis caused by *Eimeria acervulina, E. tenella*, E. brunetti, *E. maxima, E. necatrix*, and *E. mivati*; and for increased rate of weight gain and improved feed efficiency in broiler chicken.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with 21 CFR 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 140-821 and 140-823 and all supplements and amendments thereto is hereby withdrawn, effective December 31, 1990.

Under provision of 21 CFR 514.115(e), applications providing for the manufacture of animal feeds bearing or containing the combination of CYGRO with roxarsone or bacitracin methylene disalicylate and approved pursuant to section 512(m)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(m)(2)) are deemed withdrawn on the effective date of withdrawal of the NADA's.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.340 by removing paragraphs (c)(3) and (c)(4) to reflect withdrawals of approval of these NADA's.

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Dated: November 21, 1990.
**Gerald B. Guest,**
*Director, Center for Veterinary Medicine.*
[FR Doc. 90-28216 Filed 11-29-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90P-0374]

## Eggnog Deviating from Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Turner Dairies, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identify for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0349.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Turner Dairies, Inc., Route 4, box 292, Covington, TN 38019.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identify for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 2 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the cosumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "1/3 less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 215,000 quarts (203,454 liters) of the test product. The product will be manufactured at Turner Dairies, Inc., Route 4, box 292, Covington, TN 38019, and distributed in Arkansas, Illinois, Kentucky, Mississippi, Missouri, and Tennessee.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 28, 1991.

Dated: November 23, 1990.
Douglas L. Archer,
*Acting Director, Center for Food Safety and Applied Nutrition.*
[FR Doc. 90-28132 Filed 11-29-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90P-0368]

## Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Land-O-Sun Dairies, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0106.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Land-O-Sun Dairies, Inc., 2900 Bristol Highway, Johnson City, TN 37662.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 2 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 6 percent of the U.S. Recommended Daily Allowance for vitamin A, and (3) the test product will contain aspartame rather than nutritive carbohydrate sweeteners. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "60% fewer calories" and "⅔ less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 225,000 quarts (212,918 liters) of the test product. The product will be manufactured at Land-O-Sun Dairies, Inc., 5700 22d St. North, St. Petersburg, FL 33714; Land-O-Sun Dairies, Inc., 3774 Interstate Rd., Riviera, Fl 33404; Atlanta Dairies, Inc., 777 Memorial Dr. SE., Atlanta, GA 30316; Land-O-Sun Dairies, Inc., Albany Ave. Ext., Waycross, GA 31501; Land-O-Sun Dairies, Inc., 3300 The Plaza, Charlotte, NC 28205; Land-O-Sun Dairies, Inc., Konnarock Rd.; Kingsport, TN 37662; Land-O-Sun Dairies, Inc., 2320 Turnpike Rd., Portsmouth, VA 23705; and Land-O-Sun Dairies, Inc., 610 East State St., O'Fallon, IL 62269; and distributed in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Missouri, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 28, 1991.

Dated: November 21, 1990.
Douglas L. Archer,
*Acting Director, Center for Food Safety and Applied Nutrition.*
[FR Doc. 90-28217 Filed 11-29-90; 8:45 am]
BILLING CODE 4160-01-M



[Docket No. 90P-0375]

## Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Mayfield Dairy Farms, Inc., to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introducing or caused to be introduced into interstate commerce, but not later than February 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Mayfield Dairy Farms, Inc., 813 East Madison Ave., P.O. Box 310, Athens, TN 37303.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon (28.35-gram) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "½ less fat of regular sour cream".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 330,000 pounds (149,686 kilograms) of the test product. The product will be manufactured at Mayfield Dairy Farms, Inc., 806 East Madison Ave., Athens, TN 37303, and distributed in Georgia and Tennessee.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 28, 1991.

Dated: November 21, 1990.
Douglas L. Archer,
*Acting Director, Center for Food Safety and Applied Nutrition.*
[FR Doc. 90-28133 Filed 11-29-90; 8:45 am]
BILLING CODE 4160-01-M

## Health Resources and Services Administration

## Filing Of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Law Library, HHS North Building, room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Contran Lamberty, Dr. Ph.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 9-08, Parklawn Building, 5600 Fishers lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Dated: November 28, 1990.
**Jackie E. Baum,**
*Advisory Committee Management officer, HRSA.*
[FR Doc. 90-28134 Filed 11-29-90; 8:45 am]
BILLING CODE 4160-15-M

## Office of Human Development Services

## Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX—Block Grants to States for Social Services; Promulgation for Fiscal Year 1992

**AGENCY:** Office of Human Development Services (HDS) Department of Health and Human Services (HHS).

**ACTION:** Notification of State allotments under Title XX—Block Grants to States for Social Services for Fiscal Year 1992.

**SUMMARY:** This issuance sets forth the individual allotments to States for Fiscal Year 1992, pursuant to title XX of the Social Security Act (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003 of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

**FOR FURTHER INFORMATION CONTACT:** HDS Regional Administrators.

**SUPPLEMENTARY INFORMATION:** Section 2003 of the Act authorizes $2.8 billion for Fiscal Year 1992 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana

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Islands each receives an amount which bears the same ratio to $2.8 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.8 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 1992, the allotments are based upon the Bureau of Census population statistics contained in its publications "Current Population Reports" (Series P–25, No. 1058 issued March 1990) and "Estimates of the Population of Puerto Rico and the Outlying Areas: 1980 to 1988" (Series P–25, No. 1049 issued October 1989), which is the most recent satisfactory data available from the Department of Commerce at this time as to the population of each State and each Territory.

**EFFECTIVE DATE:** The allotments shall be effective October 1, 1991.

**Fiscal Year 1992 Federal Allotments to States for Title XX**

| | |
|---|---|
| Total | $2,800,000,000 |
| Alabama | 46,187,930 |
| Alaska | 5,910,509 |
| American Samoa | 179,896 |
| Arizona | 39,864,476 |
| Arkansas | 26,985,954 |
| California | 325,073,728 |
| Colorado | 37,192,612 |
| Connecticut | 36,326,972 |
| Delaware | 7,546,440 |
| Dist. of Col. | 6,774,529 |
| Florida | 142,119,296 |
| Georgia | 72,188,867 |
| Guam | 482,759 |
| Hawaii | 12,472,311 |
| Idaho | 11,373,133 |
| Illinois | 130,757,380 |
| Indiana | 62,731,688 |
| Iowa | 31,853,745 |
| Kansas | 28,186,078 |
| Kentucky | 41,802,432 |
| Louisiana | 48,148,582 |
| Maine | 13,708,083 |
| Maryland | 52,648,408 |
| Massachusetts | 66,309,627 |
| Michigan | 104,006,964 |
| Minnesota | 48,823,715 |
| Mississippi | 28,397,417 |
| Missouri | 57,803,896 |
| Montana | 9,040,183 |
| Nebraska | 18,069,149 |
| Nevada | 12,461,095 |
| New Hampshire | 12,416,231 |
| New Jersey | 86,767,807 |
| New Mexico | 17,138,212 |
| New York | 201,329,127 |
| North Carolina | 73,689,825 |
| North Dakota | 7,402,631 |
| No. Mariana Islands | 96,552 |
| Ohio | 122,334,083 |
| Oklahoma | 36,160,730 |
| Oregon | 31,629,423 |
| Pennsylvania | 135,041,933 |
| Puerto Rico | 14,482,759 |
| Rhode Island | 11,193,675 |
| South Carolina | 39,390,969 |
| South Dakota | 8,019,517 |
| Tennessee | 55,407,570 |
| Texas | 190,561,664 |
| Utah | 19,145,895 |
| Vermont | 6,359,533 |
| Virgin Islands | 482,759 |
| Virginia | 68,395,823 |
| Washington | 53,399,887 |
| West Virginia | 20,828,311 |
| Wisconsin | 54,588,795 |
| Wyoming | 5,327,651 |

Dated: November 26, 1990.

**William A. Schambra,**

*Director, Office of Policy, Planning and Legislation.*

Approved: November 26, 1990.

**Donna N. Givens,**

*Deputy Assistant Secretary for Human Development Services.*

[FR Doc. 90–28153 Filed 11–29–90; 8:45 am]

BILLING CODE 4130–01–M

## Public Health Service

### Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H (Public Health Service) chapter HG, Indian Health Service, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (51 FR 47053–46, December 11, 1987, as most recently amended at 55 FR 34784–86, August 24, 1990) is further amended to establish a new Division of Supply Management and to abolish selected functions in the Division of Administrative Services within the office of Administration and Management, Office of the Director, Indian Health Service (IHS).

**Indian Health Service**

Chapter HG, section HG–20, Functions, is amended as follows:

Under the heading *Office of Administration and Management (HGA2)*, after the statement for the *Division of Contracts and Grants Policy (HGA250*, add the following title and statement:

*Division of Supply Management (HGA27).* (1) Administers and operates Agency Supply Service Centers as required to support Indian Health Service (IHS) health facilities; (2) interprets regulation and develops policy and guidelines for all IHS supply organizations; (3) manages all Service Supply Fund financial operations mandated under Public Law 79–124, Federal Security Appropriations Act; (4) provides technical guidance and training to all levels in the IHS supply system; (5) monitors the supply system performance; (6) provides internal control and security for all categories of controlled substances handled under the license and control of the Drug Enforcement Agency; (7) conducts on-site reviews at all IHS supply operations and ensures deficiency corrections for compliance with existing regulations, supply policies, and effective supply practices; (8) ensures that health facilities receive the best supply support at the lowest cost; (9) represents IHS on government and non-government committees, task forces, and other work groups associated with Agency-wide supply and procurement; and (10) determines requirements for Agency-wide procurement supply contracts.

Under the heading *Division of Administrative Services (HGA22)* delete item (1) and insert the following:

"(1) Plans, develops and coordinates office services, records and other administrative services, to support the IHS Headquarters and field programs."

Dated: October 23, 1990.

**Everett R. Rhoades,**

*Assistant Surgeon General, Director, Indian Health Service.*

[FR Doc. 90–28135 Filed 11–29–90; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2934–N–01]

### Federal Property Suitable as Facilities To Assist Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**EFFECTIVE DATE:** November 30, 1990.

**ADDRESSES:** For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on weekly a basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: November 21, 1990.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 90–27966 Filed 11–29–90; 8:45 am]

BILLING CODE 4210–29–M



## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

### Environmental Impact Statement (EIS) for Proposed Lease to Construct a Hazardous Waste Incinerator and Landfill on Kaw Tribal Lands, Formerly Part of Chilocco School Reserve, Kay County, OK

**AGENCY:** Bureau of Indian Affairs (BIA), Interior.

**ACTION:** Notice of public scoping meetings; correction.

**SUMMARY:** This notice corrects dates given for public scoping meetings in the **Federal Register** Volume 55, No. 223, Monday, November 19, 1990, page 48210, column 1 under "**DATES.**" This action is necessary to correct dates of scoping meetings.

**DATES:** The date for the November 28, 1990 meeting in New Kirk, Oklahoma is corrected to read December 17, 1990.

The date for the November 29, 1990 meeting in Arkansas City, Kansas is corrected to read December 18, 1990.

The sites and hours of these meetings remain unchanged.

**FOR FURTHER INFORMATION CONTACT:** Mike Reed, Environmental Coordinator, Bureau of Indian Affairs, Anadarko Area Office, P.O. Box 368, Anadarko, Oklahoma 73005, telephone (405) 247–5573.

Dated: November 27, 1990.

**Perry J. Baker,**

*Acting Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development).*

[FR Doc. 90–28192 Filed 11–29–90; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

[AK–967–4230–15, AA 803784]

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sections 12(c), 14(h)(8), and 22(f) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1611(c), 1613(h)(8), 1621(f) and the 1982 CNI Settlement Agreement of January 10, 1983, entered into pursuant to ANCSA and sections 1302(h) and 1430(a) of the Alaska National Interest Lands Conservation Act of December 2, 1980, Public Law 96–487, 94 Stat. 2371, 2475, 2531, will be issued to Chugach Alaska Corporation for approximately 14,779 acres. The lands involved are in the vicinity of Tps 2 and 3 S., R 1 E., Copper River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Valdez Vanguard. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5080).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until December 31, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 90–28097 Filed 11–29–90; 8:45 am]

BILLING CODE 4310–JA–M

### California: Area Closure, Palm Springs-South Coast Resource Area, California Desert District

**AGENCY:** Bureau of Land Management, California Desert District Office, Interior.

**ACTION:** Emergency area closure on public lands.

**SUMMARY:** Notice is hereby given that all public lands in the S½, N½, of section 20. and the SW¼, NE¼, NW¼ S½, of section 22. and all of section 28. T.3S., R.4E., SBB&M Will be closed to all unauthorized entry including all vehicles, hiking, hunting and fishing activities. This closure shall become effective from the date of publication, and remain in effect until further notice.

This area is located approximately three (3) miles north of Palm Springs California.

The purpose of this closure is to prevent public access to the percolation ponds and wind parks on these lands, which I have determined poses a significant threat to public safety. Authority of this closure is 43 CFR 8364.4(a).

**FOR FURTHER INFORMATION CONTACT:** Russell L. Kaldenberg, Palm Springs-South Coast Resource Area Manager, 400 South Farrell Dr., Palm Springs, CA 92262.

Dated: November 14, 1990.

**Russell L. Kaldenberg,**

*Area Manager.*

[FR Doc. 90–28177 Filed 11–29–90; 8:45 am]

BILLING CODE 4310–40–M

[NV–050–91–4333–12]

### Temporary Closure of Public Lands in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure of Public Lands in Clark County, Nevada.

**SUMMARY:** Notice is hereby given, under the authority of 43 CFR subpart 8364, that certain Public Lands in Nevada that were used previously as courses and starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas (B–V) Motorcycle Race, will be closed from November 21 through December 2, 1990 to all vehicle use. This closure begins on Public Lands at Stateline, Nevada in the Whiskey Pete's Casino vicinity. From this location the closure will cover Roach Dry Lake, Beer Bottle Pass, Sheep Mountain and Jean Dry Lake areas. Order: Effective at 0001 hours (12:01 a.m., PST), Wednesday, November 21,

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1990 through 2400 hours (Midnight, PST), Sunday, December 2, 1990, all Public Lands used for course routes, starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the course route and finish areas affected by this closure are as follows: All sections within T. 27 S., R. 59 E.; T. 26 S., R. 59 E.; T. 25 S., R. 59 E.; T. 26 S., R. 60 E.; T. 25 S., R. 60 E. A map is on file depicting this closure at the Las Vegas District Office located at 4765 Vegas Drive, Las Vegas, Nevada.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within the closure area. Exemptions to this order are granted to employees of valid right-of-way holders in the course of normal duties associated with maintenance of the right-of-way. All other exemptions to this order are by written authorization of the Las Vegas District Manager.

**Background**

The purpose of this temporary closure is to protect all Public Land resources on or adjacent to the Barstow to Las Vegas race courses and associated areas from the impacts of unauthorized vehicle use. Resources most critical to these areas are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this closure action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

**EFFECTIVE DATE:** This closure will be in effect from 0001 hours (12:01 a.m., PST), Wednesday, November 21, 1990 through 2400 hours (Midnight, PST), Sunday, December 2, 1990.

Dated: November 20, 1990.

**Ben Collins,**

*District Manager, Las Vegas, Nevada.*

[FR Doc. 90-28098 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-HC-M

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**[ID-010-00-4130-04-241A]**

**Boise District Advisory Council; Meeting**

**AGENCY:** Boise District, Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Boise District Advisory Council will meet December 13 to discuss regional water quality issues and their implications for public land management in southwest Idaho. The meeting is open to the public and a comment period will be held at 1 p.m.

**DATES:** The meeting will begin at 8:30 a.m. on Thursday, December 13 in the downstairs conference room of the Boise District office.

**ADDRESSES:** The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, Boise District, BLM, 208-384-3393.

Dated: November 20, 1990.

**Barry G. Cushing,**

*Acting District Manager.*

[FR Doc. 90-28099 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-GG-M

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**[ES-970-01-4120-11-241A; MSES 25447-A]**

**Proposed Reinstatement of Terminated Oil and Gas Lease; Mississippi**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Reinstatement of terminated oil and gas lease MSES 25477-A.

**SUMMARY:** Terminated oil and gas lease MSES 25447-A located in Smith County, Mississippi, containing 40.00 acres more or less.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Collazo on (703) 461-1507.

**SUPPLEMENTARY INFORMATION:** Federal oil and gas lease MSES 25447-A terminated automatically by operation of law on June 1, 1990 (30 U.S.C. 188). A petition for reinstatement of this lease was filed by Mr. Robert Newman (lessee) under section 31D of the Minerals Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all of the following requirements for reinstatement of the subject lease:

| | | |
|---|---|---|
| (a) | $500 | Reimbursement of Departmental Administrative Costs. |
| (b) | 200 | Back Rental Payments. |
| (c) | 125 | Publication Costs. |

The proposed reinstatement of this lease would be under the same terms and conditions as the original lease, except the rental will be increased to $5.00 per acre per year, and royalty increased to 16⅔ percent beginning the effective date of the above-mentioned lease.

**Carson W. Culp, Jr.,**

*Acting State Director.*

[FR Doc. 90-28080 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-84-M

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**[ID-010-01-4212-13; IDI-27025]**

**Realty Actions; Sales, Leases, Etc.; Idaho**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action IDI-27025; exchange of public and private lands in Ada County, Idaho.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

**Boise Meridian, Idaho**

T. 2 N., R. 3 E.,
SEC. 34: S½SE¼.
Containing 80 acres, more or less.

In exchange for the above described public lands, the BLM proposes to acquire the following described private lands from Dennis Baker:

**Boise Meridian, Idaho**

T. 2 N., R. 4 E.,
SEC. 8: NE¼NW¼, W½W¼, SE¼SW¼, SW¼SE¼.
Containing 280 acres, more or less.

The purpose of this exchange is to dispose of a scattered and isolated parcel of public land that possesses very little resource value and that is difficult and uneconomic to manage in exchange for a larger parcel of private land that contains crucial big game winter range. The public interest will be well served by the completion of this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

**DATES:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the address shown below.

**ADDRESSES:** Comments should be sent to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** John Sullivan, Bureau Resource Area Realty Specialist at (208) 384-3336. The Environmental Assessment/Land Report is available for review at the above address.

**SUPPLEMENTARY INFORMATION:** Publication of this notice in the **Federal Register** segregates the public lands form operation of the public land laws and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of this publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. Excepting and Reserving to the United States a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. Subject to those rights for grazing purposes granted to Arlen DeMeyer by Slater Flat Grazing Permit No. 111618 pursuant to section 3 of the Act of June 28, 1934 (43 U.S.C. 315, et seq.). The rights of Arlen DeMeyer to graze domestic livestock on the real estate according to the conditions and terms of the grazing permit shall cease on December 31, 1992.

Dated: November 19, 1990.

**Barry G. Cushing,**

*Acting District Manager.*

[FR Doc. 90-28100 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-GG-M

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**[OR-943-01-4212-11; GP1-045; OR-21956]**

**Proposed Continuation of Withdrawal; Oregon**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Interior, Bureau of Reclamation, proposes that the land withdrawal for the Owyhee project continue for an additional 50 years and requests that the lands involved remain closed to surface entry and mining.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965 Portland, Oregon 97208, 503-280-7171.

The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order dated March 17, 1916, as amended by the Secretarial Order dated November 5, 1919, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The 584.40 acres involved are located in Secs. 34 and 35, T. 21 S., R. 45 E., and Secs. 3, 4, and 10, T. 22 S., R. 45 E., W.M., in Malheur County, approximately 11 miles southwest of Adrian.

The purpose of the withdrawal is to protect the Owyhee dam and reservoir project. The withdrawal currently segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 14, 1990.

**Robert E. Mollohan,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 90-28101 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-33-M

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**Bureau of Reclamation**

**[INT-DES-90-30]**

**Shasta Outflow Temperature Control**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability and notice of public hearings on planning report/draft environmental impact statement (PR/DEIS)

**SUMMARY:** Pursuant to section 101(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior, Bureau of Reclamation (Reclamation) has prepared a planning report/draft environmental impact statement on the Shasta Outflow Temperature Control investigation. The PR/DEIS describes and presents the environmental effects of three alternatives, including no action, for utilizing the cold water resources of Shasta Lake to improve temperatures in the upper Sacramento River. Improved water temperatures would benefit chinook salmon, particularly the winter run.

**DATES:** A 90-day public review period commences with the publication of this notice. Within the review period, written comments on the PR/DEIS may be submitted to the Regional Director, Mid-Pacific Region, Bureau of Reclamation at the address provided below.

Public hearings on the PR/DEIS will be held on the following dates at the locations indicated.

*Hearing 1:* Tuesday, January 15, 1991, 1 p.m. to 5 p.m., the Ambassador Room, Executive Lodge, 2030 Arden Way, Sacramento, California

*Hearing 2:* Wednesday, January 16, 1991, 7 p.m. to 10 p.m., the Executive Room, Red Lion Inn, 1830 Hilltop Drive, Redding, California.

**ADDRESSES:** Copies of the PR/DEIS may be requested at the following addresses:

Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-750, Sacramento, CA 95825-1898; telephone: (916) 208-4662.

Denver Office Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver, CO 80225; telephone: (303) 236-6963.

**Libraries**

California State University, 2000 Jed Smith Dr., Sacramento, CA 95819.

Sacramento County Public Library, 536 Downtown Plaza, Sacramento, CA 95814.

Shasta County Public Library, 1855 Shasta, Redding, CA 96001.

Tehama County Public Library, 645 Madison, Red Bluff, CA 96075.

University of California, Water Resources Center, Berkeley Archives Collection, Berkeley, CA 94704.

**FOR FURTHER INFORMATION CONTACT:** Douglas Kleinsmith (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978-5121; or Dr. Wayne Deason (Manager, Environmental Services Staff,

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Bureau of Reclamation, Denver Federal Center), (303) 236-6336.

SUPPLEMENTARY INFORMATION: The upper Sacramento River is the largest and most important salmonid stream in California providing more spawning habitat for chinook salmon than any other river in California.

The spawning population of chinook salmon and steelhead trout in the upper Sacramento River has declined steadily since the 1960's.

The most precipitous decline in salmon populations has been recorded in the winter-run chinook salmon. Since counts were initiated in 1967, the annual winter run has declined from a high of 117,808 in 1969 to approximately 2,000 in 1987 and 1988. The California Department of Fish and Game has estimated the winter run in 1989 to be about 500 fish. As a result, in May 1989, the Sacramento River basin winter-run chinook salmon was designated as a "threatened species" under the Federal Endangered Species Act and classified as "endangered" by the State of California.

One of the major factors in limiting winter-run population levels is inadequate water temperatures to sustain egg survival below Shasta Dam. Especially in drought years, or after a series of "dry" years, there has not been enough cool water available from existing reservoir outlets to sustain appropriate temperatures throughout the egg incubation period. Since 1967, Reclamation has bypassed water through low-level outlets around its power turbines to provide cool water, thus resulting in about $9 million of replacement energy costs.

The PR/DEIS analyzes two alternatives which would provide a permanent solution to the temperature control problem in the upper Sacramento River. One alternative is a conventional multilevel intake (shutter) device that allows selective withdrawal of water. This shutter device provides for releases through the powerplant while accommodating temperature, water-quality, and water-supply requirements. Construction of the device would allow for withdrawals from various reservoir depths, either singly or in combination, to control the temperature, turbidity, and/or dissolved oxygen content of the releases. The second alternative is bypassing the Shasta powerplant which would be an operational scheme designed to optimize the use of the cold water resource in Shasta Lake without any structural changes. Significantly more releases would be made from the river outlet works than are presently being made with the interim bypass operation. More power would also be forgone than at present.

The no action alternative identifies the impacts of continuing current operations.

### Hearing Process Information

Organizations and individuals wishing to present statements at the hearings should contact Reclamation's Mid-Pacific Regional Office at the above address to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on January 10, 1991, and may also be made at each hearing. Requests should indicate at which hearing the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which requests were received. Advance requests will be called before requests made at the hearings. Oral comments will be limited to 10 minutes per individual. Speakers not present when called will lose their position in the scheduled order and will be recalled at the end of the schedule. Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearings should be received by Reclamation's Mid-Pacific Regional Office at the above address by March 1, 1991. All comments received during the 90-day public comment period will be addressed in the planning report/final environmental impact statement.

Dated: November 27, 1990.

Joe D. Hall,

*Deputy Commissioner.*

[FR Doc. 90-28171 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-09-M

## National Park Service

### Environmental Statements: Walker and Catoosa Counties, GA

**AGENCY:** National Park Service, U.S. Department of the Interior.

**ACTION:** Record of decision for the final Environmental Impact Statement for the Relocation of U.S. 27, Walker and Catoosa Counties, Georgia.

### Introduction

Public Law 100-211 authorized and directed the National Park Service (NPS) to assist the State of Georgia in relocating a highway affecting the Chickamauga and Chattanooga National Military Park (CHCH) in Georgia to a location mostly outside the western boundary of the park. As a result of the legislative mandate, the NPS and the Georgia Department of Transportation, as joint lead agencies, began preparation of a Draft Environmental Impact Statement (DEIS) to implement the legislation.

Scoping meetings were held to identify issues and alternatives to be evaluated in the DEIS. The DEIS was made available to the public and a public hearing was held. After evaluation of comments, Alternative A-4 was identified as the preferred alternative and a Final Environmental Impact Statement (FEIS) was sent to those who had received copies of the DEIS and to all who requested copies of the FEIS.

The purposes of this Record of Decision are to document the selection of Alternative A-4 for the relocation of U.S. 27 in the area covered by the legislation affecting CHCH in Georgia, identify all alternatives considered, and commit to mitigation of adverse environmental impacts.

### Alternatives Considered

Three construction alternatives and a No-Build alternative were considered in the DEIS and the FEIS.

*Alternative A-4 (Selected Alternatives)*

The selected alternative is Alternative A-4 which consists of the relocation of U.S. 27 on the west side of the CHCH in Walker and Catoosa Counties, Georgia. The preferred alternative would begin just north of the intersection with County Road (CR) 144 and would extend northwestward on new location for a distance of approximately 5.1 miles. The alignment would extend on new location and cross Tubb Road/CR 342 at-grade. The alignment would continue northwestwardly crossing Wilder Road/CR 710 near the intersection of Wilder and Osburn Road/CR 442. From this point, the alignment would remain in a northwestward direction, intersecting at-grade with Lytle Road/CR 255 and then Davis Road.

At Davis Road, the alignment would shift to a northward direction and would continue northward to just past Long Hollow Road. The proposed intersection with Long Hollow Road would be at-grade. From the intersection of Long Hollow Road, the preferred alternative would continue directly northward crossing the Central of Georgia Railroad and would extend within the park along the western boundary for approximately 4,200 feet. At that point, the preferred alternative would turn northwestward through the park crossing McFarland Gap Road, CR 298 and CR 280.

The preferred alternative would intersect most local streets at-grade. Overpasses are proposed at the two



crossings of the Central of Georgia Railroad and at the crossing of Old State Route (SR) 2 (McFarland Gap Road). Access would be provided to McFarland Gap Road via an access road. Additionally, a short relocation of Long Hollow Road is proposed to provide a more efficient intersection with the proposed project. On the preferred alternative, a portion of Dewberry Road would be relocated. A ramp overpass will be constructed to maintain existing traffic patterns. Also, Little Road/CR 297 would be relocated to pass under the bypass to avoid redirecting current traffic patterns, both vehicular and pedestrian, and to preserve community continuity. Lastly, a short segment of Park City Drive would be relocated approximately 1,200 feet to the east of the current intersection with SR 2 to provide adequate clearance for the interchange and ramps of the proposed project and SR 2.

The proposed bypass typical section would be four 12-foot travel lanes, two in each direction, separated by a 44-foot wide grassed median. A minimum of 200 feet of right-of-way would be required for any of the alternatives. Topography will control the right-of-way width. Additionally, SR 2 would be widened one lane in each direction from the proposed interchange to the existing intersection with U.S. 27. Also, the existing U.S. 27/SR 2 intersection would be upgraded to provide required turn lanes from SR 2 eastbound to U.S. 27 northbound.

Also included in the proposed project are improvements to McFarland Gap Road to meet current safety standards. These improvements include upgrading McFarland Gap Road to two 12-foot travel lanes from the park boundary through the intersection of the proposed bypass. McFarland Gap Road already has 24 feet of pavement through the park. A minimum of 8-foot shoulders would be provided where cut sections are not required. Timber-faced guardrail would be used in areas where 10-foot shoulders cannot be accommodated. To improve sight distance at curves, selective tree removal would be done. An east bound center turn lane and a west bound right turn lane would be added on McFarland Gap Road at the intersection of Park City Drive. The culvert nearest the west park boundary on

McFarland Gap Road would be extended on the north side to provide for adequate shoulder width. Signs would be posted near the intersection of the project and McFarland Gap Road indicating the direction to the Fort Oglethorpe business district via McFarland Gap Road. No improvements to McFarland Gap Road would be necessary within the Fort Oglethorpe Historic District boundary.

*Alternative A-5*

Alternative A-5 is common in alignment with Alternative A-4 from existing U.S. 27 to a point approximately 150 feet north of the proposed crossing of Long Hollow Road. Leaving the common section, Alternative A-5 would continue directly northward crossing the Central of Georgia Railroad and would be extended outside and adjacent to the western park boundary for approximately 4,200 feet. At that point, Alternative A-5 would turn northeastward extending through the park along the same alignment as Alternative A-4 to join SR 2.

*Alternative A-6*

Alternative A-6 is common in alignment with Alternatives A-4 and A-5 from existing U.S. 27 to a point approximately 150 feet north of the proposed crossing of Long Hollow Road. Following the common section, Alternative A-6 would be common with Alternative A-5 following just outside and adjacent to the western park boundary but would continue directly northward to just north of the western corner of the park. At that point, Alternative A-6 would turn northeastward and would cross McFarland Gap Road. Prior to joining SR 2, Alternative A-6 would again be common with Alternative A-5.

*No Build Alternative*

The No Build Alternative would not require any displacement of businesses or residences, and would not adversely impact the economics of businesses located just north of the park on U.S. 27, south of SR 2. However, the park would continue to be adversely impacted by through traffic. Long range economic benefits to the community should be beneficial.

*Other Alternatives Considered and Rejected*

A summary of these alternatives is located in section II.C. of the FEIS. Detailed analyses of these alternatives were discussed in the DEIS for the proposed project which was approved November 21, 1979, by the Federal Highway Administration (FHA) but never finalized. During present project development (under the congressional mandate) several alternatives were analyzed and have been eliminated. Discussion of these alternatives and the reasons for their elimination is also in section II.C. of the FEIS.

### Environmental Impacts and Mitigation

The proposal will impact CHCH. However, it is the opinion of the NPS that the benefits of removing the existing U.S. 27 from the center of the park, thus reducing traffic in the most historic part of the park to a fraction of what it presently is, is compensation for the loss of park land. Also, taking park land will significantly reduce community disruption by reducing the number of displacement of residences and businesses in the community.

The park is listed on the National Register of Historic Places and a Memorandum of Agreement has been signed by all parties concerned. All steps to mitigate adverse impacts included in this memorandum will be implemented.

There are disproportionate adverse impacts on the minority population within the project area. However, the project is in compliance with title VI of the Civil Rights Act of 1964 and related regulations. The selected alternative has the highest percent of minorities, but this is because the alignment utilizes park land and has the lowest overall displacements. The number of minorities displaced by the selected Alternative is equal to or less than Alternatives A-5 and A-6.

On Alternative A-4, 36 owner occupied residential units and 3 tenant occupied residential units would be displaced. On Alternative A-5, 67 owner occupied single family residences and 3 tenant occupied residences would be displaced. On Alternative A-6, 80 owner occupied single family residences and 2 tenant occupied residences would be displaced. Relocation assistance will be provided under the provisions of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970, Public Law 91-646. The program offers prompt and equitable assistance to those who would be displaced as a result of the project.

The business community in Fort Oglethorpe on the bypassed portion contends that severe economic effects to the businesses and to Catoosa County would result from the project terminating at SR 2 rather than at McFarland Gap Road and U.S. 27. To minimize effects to the business community, improvements will be made to McFarland Gap Road and the bypass will be signed directing traffic to the business district via McFarland Gap Road. In addition, the NPS is committed to assisting the community to assure that the economic benefits of tourism to the park are fully realized by the community.

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During the year of construction, 28 residences would be impacted by substantial increases in traffic noise. Abatement measures were considered for the sites predicted to be impacted but none was found to be reasonable and feasible.

Dated: October 31, 1990.

Robert M. Baker,

*Regional Director, Southeast Region.*

[FR Doc. 90-28068 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 17, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 17, 1990.

Carol D. Shull,

*Chief of Registration, National Register.*

ARKANSAS

Pulaski County

*Hillcrest Historic District*, Bonded by Woodrow, Jackson & Markham Sts. & M. Lookout Rd., Little Rock, 90001920

*Matthews, Justin, Jr., House*, 257 Skyline Dr., North Little Rock, 90001933

CONNECTICUT

Litchfield County

*Coffing, John C., House*, US 44 W of Lime Rock Rd., Salisbury, 90001922

New London County

*Montauk Avenue Historic District*, Roughly bounded by Ocean, Willets & Riverview Aves. & Faire Harbor, New London, 90001910

Tolland County

*Willington Common Historic District*, Properties around Willington Common & E on Tolland Tnpk. past Old Farms Rd., Willington, 90001911

INDIANA

Clay County

*Poland Presbyterian Church and Cemetery*, IN 42 near Co. Rd. 36S, Poland, 90001932

Fulton County

*Utter—Gerig Round Barn*, Nes jct. of Co. Rds. 825 E. & 100 N., Akron vicinity, 90001927

Monroe County

*Courthouse Square Historic District*, Roughly bounded by 7th, Walnut & 4th Sts. & College Ave., Bloomington, 90001931

St. Joseph County

*Ellis—Schindler House*, 900 Lincolnway W., Mishawaka, 90001928

Vanderburgh County

*Igleheart, Edgar A., House*, 3800 Lincoln Ave., Evansville, 90001930

Wabash County

*Manchester College Historic District*, 604 College Ave., North Manchester, 90001929

MAINE

Kennebec County

*Dutton—Small House*, Hog Rd. W of Taber Hill Rd., Vassalboro vicinity, 90001907

*Quimby, Dr. Samuel, House*, North Rd. E of jct. with Church Rd., Mount Vernon vicinity, 90001908

Knox County

*Tillson Farm Barn*, Warrenton Rd. SE of jct. with Commercial St., Glen Cove vicinity, 90001902

Penobscot County

*Cushman, Abial, Store*, Main St. E of ME 166, Lee, 90001906

Sagadahoc County

*Carr, Robert P., House*, Main St., Bowdoinham, 90001904

York County

*Grist Mill Bridge*, Little River Rd. across the Little R., Lebanon vicinity, 90001905

MARYLAND

Caroline County

*Main Archeological Survey Site 53-36*, Address Restricted, Winslow vicinity, 90001901

NEW MEXICO

Santa Fe County

*Wheelwright Museum of the American Indian*, 704 Camino Lejo, Santa Fe, 90001917

NORTH CAROLINA

Buncombe County

*Grove Park Historic District (Boundary Increase)*, Roughly, Kimberly Ave. from Maywood St. to N of Evelyn Pl., including Grove Park Inn Country Club, Asheville, 90001918

Macon County

*Highlands Inn*, Jct. of Main & Fourth Sts., Highlands, 90001916

Randolph County

*Marley House*, N side of US 64 .1 mi. W of jct. with SR 2475, Staley vicinity, 90001919

OHIO

Franklin County

*Ohio State Office Building*, 65 S Front St., Columbus, 90001908

Ottawa County

*Green Island Light (Light Stations of Ohio MPS)*, Green Island in Lake Erie, Put-in-Bay vicinity, 90001909

PENNSYLVANIA

Chester County

*Hockley Mill Farm*, Warwick Furnace Rd., SE of Knauertown (Warwick Township), Glen Moore, 90001921

TEXAS

Bell County

*Austin, F.K. and Mary, House (Belton MPS)*, 702 M. Penelope St., Belton, 90001891

*Baggett, Ele, House (Belton MPS)*, 1019 N. Main St., Belton, 90001862

*Baggett, Silas and Ellen, House (Belton MPS)*, 1018 N. Main St., Belton, 90001861

*Baylor Female College Historic District (Belton MPS)*, Bounded by King, College & W. Ninth Sts., Belton, 90001899

*Beamer, William, House (Belton MPS)*, 1202 S. Beal St., Belton, 90001875

*Belton Academy (Belton MPS)*, 404 E. Ninth St., Belton, 90001937

*Belton Commercial Historic District (Belton MPS)*, Roughly bounded by Nolan Valley Rd., Penelope St. & Molan Cr., Belton, 90001868

*Belton Farmers' Gin Coop (Belton MPS)*, 219 S. East Ave., Building 4, Belton, 90001870

*Belton Standpipe (Belton MPS)*, NW of jct. of TX 317 & I-35, Belton, 90001900

*Belton Yarn Mill (Belton MPS)*, 805 E. Fourth St., Belton 90001899

*Birdwell, T. Hamp and Beulah, House (Belton MPS)*, 503 N. Wall, Belton, 90001896

*Burford, R.F. and Lena, House (Belton MPS)*, 920 N. Penelope St., Belton, 90001893

*Cornelison House (Belton MPS)*, 1102 N. Pearl St., Belton, 90001886

*Elliott, Joel, House (Belton MPS)*, 716 N. College St., Belton, 90001876

*Farr, Dr. R.S., House (Belton MPS)*, 801 E. Central Ave., Belton, 90001935

*Ferguson, James A., House (Belton MPS)*, 1123 N. Beal St., Belton, 90001874

*Ferguson, James E. and Miriam, House (Belton MPS)*, 604 N. Penelope St., Belton, 90001889

*First Christian Church Parsonage (Belton MPS)*, 608 N. Penelope St., Belton, 90001890

*Frazier, Dr. Jacob Moore, House (Belton MPS)*, 618 N. Wall, Belton, 90001897

*Gray Rental Houses (Belton MPS)*, 702—708 N. Pearl St., Belton, 90001934

*Hammersmith, John, P., House (Belton MPS)*, 520 S. Main St., Belton, 90001883

*Harris, Capt. Andrew Jackson, House (Belton MPS)*, 1001 W. Tenth St., Belton, 90001871

*House at 402 N. East St. (Belton MPS)*, 402 N. East St., Belton, 90001878

*House at 730 M. Beal St. (Belton MPS)*, 730 N. Beal St., Belton, 90001936

*Hudson, Dr. Taylor, House (Belton MPS)*, 324 N. Main St., Belton, 90001879

*James House (Belton MPS)*, 605 N. Beal St., Belton, 90001873

*Kinchion, L. B., House (Belton MPS)*, 702 S. Pearl St., Belton, 90001857

*Lee, Walter J., House (Belton MPS)*, 804 N. College St., Belton, 90001877

*McWhirter, George and Martha, House (Belton MPS)*, 400 N. Pearl St., Belton, 90001884

*Means, V. R., House (Belton MPS)*, 609 E. 14th St., Belton, 90001898



*Miller, J. Z., House (Belton MPS)*, 804 N. Penelope St., Belton, 90001892

*Missouri, Kansas & Texas Railroad Bridge at the Leon River (Belton MPS)*, Across the Leon R. at Taylor's Valley Rd., Belton, 90001898

*Morey House (Belton MPS)*, 328 N. Main St., Belton, 90001880

*Mount Zion United Methodist Church (Belton MPS)*, 216 Alexander St., Belton, 90001872

*Naismith, Robert, House (Belton MPS)*, 440 N. Penelope St., Belton, 90001888

*Potts, Arthur, House (Belton MPS)*, 445 N. Wall, Belton, 90001895

*Venable, W. J., House (Belton MPS)*, 428 N. Wall, Belton, 90001894

*Ware, H. A. and Helena, House (Belton MPS)*, 401 N. Pearl St., Belton, 90001885

VIRGINA

Frederick County

*Willow Shade*, Jct. of Frederick Co. Rd. & US 50, Winchester vicinity, 90001925

Hanover County

*Trinity Church*, Jct. of VA 738 & VA 658, Beaverdan vicinity, 90001923

Powhatan County

*Emmanuel Episcopal Church*, Emmanual Church Rd. S of US 60, Powhatan vicinity, 90001924

WASHINGTON

Chelan County

*Chelan Butte Lookout (USDA Forest Service Fire Lookouts on Wenatchee NF MPS)*, Summit of Chelan Butte, Chelan vicinity, 90001912

*Sugarloaf Peak Lookout (USDA Forest Service Fire Lookouts on Wenatchee NF MPS)*, Summit of Sugarloaf Peak, Leavenworth vicinity, 90001914

*Tyee Mountain Lookout (USDA Forest Service Fire Lookouts on Wenatchee NF MPS)*, Summit of Tyee Mountain, Entiat vicinity, 90001913

Douglas County

*Badger Mountain Lookout (USDA Forest Service Fire Lookouts on Wenatchee NF MPS)*, Near summit of Badger Mountain, East Wenatchee vicinity, 90001915

[FR Doc. 90-28069 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0047), Washington, DC 20503, telephone 202-395-7340.

*Title:* Permanent Program Performance Standards—Surface Mining Activities, 30 CFR part 816.

*OMB approval number:* 1029-0047.

*Abstract:* Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

*Bureau form number:* None.

*Frequency:* On occasion, quarterly, and annually.

*Description of respondents:* Surface coal mining operators.

*Estimated completion time:* 29 hours.

*Annual responses:* 43,074.

*Annual burden hours:* 1,286,217.

*Bureau clearance officer:* Richard L. Wolfe, 202-343-5143.

John P. Mocesso,

*Chief, Division of Technical Services.*

[FR Doc. 90-28076 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-05-M

### Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0048), Washington, DC 20503, telephone 202-395-7340.

*Title:* Permanent Program Performance Standards—Underground Mining Activities, 30 CFR part 817.

*OMB approval number:* 1029-0048.

*Abstract:* Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting underground coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting underground coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

*Bureau form number:* None.

*Frequency:* On occasion, quarterly, and annually.

*Description of respondents:* Underground coal mining operators.

*Estimated completion time:* 24.8 hours.

*Annual responses:* 10,807.

*Annual burden hours:* 263,580.

*Bureau clearance officer:* Richard L. Wolfe, 202-343-5143.

Dated: November 22, 1990.

John P. Mocesso,

*Chief, Division of Technical Services.*

[FR Doc. 90-28077 Filed 11-29-90; 8:45 am]

BILLING CODE 4310-05-M

## INTERSTATE COMMERCE COMMISSION

### Release of Waybill Data for Use By David A. Reitz for The Port of Thunder Bay, Ontario

The Commission has received a request from David A. Reitz for permission to use certain data from the Commission's 1989 ICC Waybill Sample for a study of the viability of general cargo service on the Great Lakes.

A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-28180 Filed 11-29-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Settlement Stipulation

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on November 2, 1990, a proposed Stipulation and

BEST COPY AVAILABLE

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Agreement to Settle in *In re: Argo Petroleum Corp.*, was lodged with the Bankruptcy Court for the Central District of California. The settlement is in connection with claims of the Environmental Protection Agency in Argo Petroleum's chapter 11 bankruptcy proceedings.

The proposed settlement stipulation resolves civil claims of the United States regarding the liability of Argo Petroleum for disposal of hazardous substances at the Operating Industries, Inc. landfill, located in Monterey Park, California. The settlement provides that Agro Petroleum will pay the United States $240,000 in settlement for potential past and future civil claims, excluding claims for damages to, injury to or destruction of natural resources, regarding the Operating Industries, Inc. site.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: Argo Petroleum Corp.*, D.J. Ref. 90-11-2-156A.

The proposed settlement stipulation may be examined at the office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012, and at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed settlement stipulation may also be examined at the Environmental Enforcement Section Document Center 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed settlement stipulation may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 for copying costs ($0.25 per page) payable to "Consent Decree Library."

**George W. Van Cleve,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-28073 Filed 11-29-90; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 14, 1990, a proposed Consent Decree in *United States* v. *City of Portsmouth*, Civil No. 89-234-D, was lodged with the United States District Court for the District of New Hampshire resolving the matter. The proposed Consent Decree concerns the failure of the City to comply with its National Pollutant Discharge Elimination System permit and failure to implement a plan to monitor combined sewer overflows in violation of the Clean Water Act.

Under the terms of the Consent Decree, the defendant will complete construction of an upgraded and expanded primary treatment plant and achieve compliance with the limits in its National Pollutant Discharge Elimination System permit. The City also will pay a civil penalty of $100,000 and take action to eliminate combined sewer overflows.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. City of Portsmouth, D.J. Ref. 90-5-1-1-3331.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044, (202)347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

**Richard B. Stewart,**

*Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-28074 Filed 11-29-90; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of November 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*



APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petion number | Articles produced |
|---|---|---|---|---|---|
| A.C. Nielsen Co. (Workers) | El Paso, TX | 11/19/90 | 11/06/90 | 25,086 | Coupon Redemption. |
| Brockway Inc.-NY (Workers) | Montgomery, AL | 11/19/90 | 11/03/90 | 25,087 | Glass Containers. |
| Checker Motors Co. LP (Workers) | Kalamazoo, MI | 11/19/90 | 11/07/90 | 25,088 | Tailgates. |
| Chrysler Corp. (Workers) | Warren MI | 11/19/90 | 11/18/90 | 25,089 | Auto Parts. |
| Eagle Pass Processing (Workers) | Eagle Pass, TX | 11/19/90 | 11/09/90 | 25,090 | Jeans. |
| EPC Ind. (Workers) | Muskegon, MI | 11/19/90 | 11/08/90 | 25,091 | Painted Parts. |
| Foamex Lt. (Reticel Foam Prod.) (Workers) | Leroy, NY | 11/19/90 | 11/01/90 | 25,092 | Auto Parts. |
| General Tire, Inc. (URW) | Waco, TX | 11/19/90 | 11/07/90 | 25,093 | Rubber. |
| Irving Tanning Co. (Workers) | Hartland, ME | 11/19/90 | 11/09/90 | 25,094 | Leather. |
| Key Hollow Corp. (Workers) | W. Bridgewater, MA | 11/19/90 | 11/06/90 | 25,095 | Sportswear. |
| Lee Company (Workers) | Hartville, MO | 11/19/90 | 11/05/90 | 25,096 | Jeans. |
| LL Bean Inc. (Workers) | Lisbon Falls, ME | 11/19/90 | 11/25/90 | 25,097 | Shoes & Slippers. |
| LL Bean Inc. (Workers) | Brunswick, ME | 11/19/90 | 11/25/90 | 25,098 | Shoes. |
| National-Standard Co. (Workers) | Rome, NY | 11/19/90 | 11/06/90 | 25,099 | Cables. |
| Northern Continental (Workers) | Pittsburgh, PA | 11/19/90 | 11/04/90 | 25,100 | Coal. |
| Philips Components, Prod. Div. (Workers) | Slatersville, RI | 11/19/90 | 11/05/90 | 25,101 | Electronics. |
| Pine State Knitwear Co. (Workers) | Bluefield, W.Va | 11/19/90 | 10/22/90 | 25,102 | Sweaters. |
| Port of Galveston (Workers) | Galveston, TX | 11/19/90 | 10/30/90 | 25,103 | Moving Equip. |
| St. Paul Sportswear Co. (Workers) | St. Paul, VA | 11/19/90 | 10/22/90 | 25,104 | Shirts. |
| Straits Forest Prod., Inc. (Workers) | Pt. Angeles, WA | 11/19/90 | 11/02/90 | 25,105 | Lumber. |
| Teledyne Monarch Rub. (Div. of Ind. (Workers) | Hartville, OH | 11/19/90 | 11/05/90 | 25,106 | Auto Parts. |
| Windfall Lumber Co. (Workers) | Pt. Angeles, WA | 11/19/90 | 11/05/90 | 25,107 | Cedar Fencing. |
| Wright & McGill, Co. (Workers) | Denver, CO | 11/19/90 | 10/27/90 | 25,108 | Fish Hooks. |
| ZRM Industries (ACTWU) | Pottsville, PA | 11/19/90 | 11/06/90 | 25,109 | Lighting. |

[FR Doc. 90-28161 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,566]

### Halstead Industries, Inc. Zelienople, PA; Negative Determination on Reconsideration

On November 6, 1990, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Halstead Industries, Inc., Zelienople, Pennsylvania. This notice wil soon be published in the **Federal Register**.

Local No. 7032 of the United Steelworkers Union claimed that a foreign firm is importing copper tubing at a plant in North Carolina which it operates jointly with Halstead Industries and selling the tubing to Halstead's customers.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of copper and brass declined absolutely in quantity in 1988 compared to 1987 and in 1989 compared to 1988. The Zelienople plant closed in September 1990 mainly because of a deteriorating market caused by a slowdown in housing starts. All production was transferred to other domestic corporate facilities.

Findings on reconsideration show that Halstead uses part of its Pine Hall plant in North Carolina in a joint venture with a foreign firm to produce tubing for refrigeration—"level wound coils" which have an enhanced internal surface for fast cooling. The coils are not for water tubing; the product produced at Zelienople but for tubing which carries gas—freon. Neither the supply stock "mother tube" nor the finished product "level wound coils" were ever produced at Zelienople. Other findings on reconsideration show that Kobe Copper cannot manufacture copper water tubing nor has Kobe Copper ever sold copper water tubing.

Other findings on reconsideration show that Kobe Copper has never supplied copper products to former customers of Zelienople.

#### Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of Halstead Industries, Inc., Zelienople, Pennsylvania.

Signed at Washington, DC this 20th day of November 1990.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 90-28162 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,576]

### Lafarge Cement Corp., Metaline Falls, WA; Affirmative Determination Regarding Application for Reconsideration

By a letter dated September 12, 1990 and supplemented later with additional material, the Washington State Labor Council, AFL-CIO, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Lafarge Cement Corporation, Metaline Falls, Washington. The Negative Determination was issued on August 16, 1990 and published in the **Federal Register** on August 29, 1990 (55 FR 35378).

The union submitted material indicating that the Lafarge Cement Corporation in Metaline Falls is importing cement from Canada. The Metaline Falls facility closed in June 1990.

#### Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of November, 1990.

**Barbara Ann Farmer,**

*Director, office of Program Management, UIS.*

[FR Doc. 90-28163 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,576]

### Lafarge Cement Corp., Metaline Falls, WA; Revised Determination on Reconsideration

On November 20, 1990, the Department issued an Affirmative

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Determination Regarding Application for Reconsideration for former workers of Lafarge Corporation, Metaline Falls, Washington. The affirmed notice will soon be published in the Federal Register.

The Metaline Falls plant produced several types of masonry and gray portland cements. Lafarge Corporation announced on March 28, 1990, that it would close its Metaline Falls plant. The Metaline Falls plant ceased operations on June 23, 1990.

Findings on reconsideration show that the Lafarge Corporation is importing cement from its wholly owned Canadian subsidiary, Lafarge Canada, Inc., Exshaw, Alberta. Company imports of cement increased in 1990 compared to 1989.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the cement produced at Lafarge Corporation, Metaline Falls, Washington contributed importantly to the decline in sales or production and to the total or partial separation of workers at Lafarge Corporation, Metaline Falls, Washington. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Lafarge Corporation, Metaline Falls, Washington, who became totally or partially separated from employment on or after January 1, 1990, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of November 1990.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 90-28184 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,799; Medford Corp., Medord OR*

*TA-W-24,764; Avery Corp., Soabar Products Group, Philadelphia, PA*

*TA-W-24,768; American Fibrit, Inc, Armstrong Rd Plant, Battle Creek, MI*

*TA-W-24,811; Agnew Lumber Co., Centralia, WA*

*TA-W-24,668; Libbey Owens Ford, Rossford, OH*

*TA-W-24,770; American Fibrit, Inc., Wayne Rd Plant, Battle Creek, MI*

*TA-W-24,747; Inland Tool & Manufacturing, Detroit, MI*

*TA-W-24,833; New Brunswick Scientific Co., Inc., Edison, NJ*

*TA-W-24,756; Midwest Foundry Co., Coldwater, MO*

*TA-W-24,775; Dico, Inc., Dresden, TN*

*TA-W-24,741; Grand Haven, Brass Foundry, Grand Haven, MI*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA-W-24,847; Future Logging Co., Springfield, OR*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974. Separations at the firm.

*TA-W-24,826; General Motors Corp., CPC Lakewood, Lakewood, GA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,819; First Wisconsin Computer Center, Clintonville, WI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,808; Wamco Lab, Casper, WY*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,845; We Cut It Cedar, Aberdeen, WA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,880; Pincock Allen & Holt, Inc., Lakewood, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,846; Erico Fastening Systems, Moorestown, NJ*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-24,733; Concurrent Computer Corp., Oceanport, NJ*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-24,733A; Concurrent Computer Corp., Tinton Falls, NJ*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

**Affirmative Determinations**

*TA-W-24,711; FR Knitting Mills, Inc., Fall River, MA*

A certification was issued covering all workers separated on or after August 2, 1989.

*TA-W-24,830; Lori Charles Sportswear, Luzerne, PA*

A certification was issued covering all workers separated on or after August 31, 1989.

*TA-W-24,841; Taylor Drilling, Inc., Chehalis, WA*

A certification was issued covering all workers separated on or after August 27, 1989.

*TA-W-24,793; Cemco Products, Inc., (AKA American Bath corp.), Horizon City, TX*

A certification was issued covering all workers separated on or after August 22, 1989.

*TA-W-24,820; Foster Grant Corp., Leominster, MA*



A certification was issued covering all workers separated on or after August 30, 1989.

*TA-W-24,821; Foster Grant Corp., Tucson, AZ*

A certification was issued covering all workers separated on or after August 30, 1989.

*TA-W-24,792; Boutique Knit Mills, Woodside, NY*

A certification was issued covering all workers separated on or after August 23, 1989.

*TA-W-24,827; Howe Richardson, Inc., Clifton, NJ*

A certification was issued covering all workers separated on or after August 24, 1989.

*TA-W-24,729; American Trim Products, New York, NY*

A certification was issued covering all workers separated on or after July 12, 1989.

*TA-W-24,729A; American Trim Products, Great Neck, NY*

A certification was issued covering all workers separated on or after July 12, 1989.

*TA-W-24,804; Simonds Industries, Inc., Newcomerstown, OH*

A certification was issued covering all workers separated on or after July 24, 1989.

*TA-W-24,816; Carlingswitch, Inc., Brownsville, TX*

A certification was issued covering all workers separated on or after August 31, 1989.

*TA-W-24,782; Lexington Sportswear Co., Lexington, SC*

A certification was issued covering all workers separated on or after August 14, 1989.

*TA-W-24,774; Deeville Blouse Co., Inc., Danielsville, PA*

A certification was issued covering all workers separated on or after August 16, 1989.

*TA-W-24,921; Rheem Manufacturing Co., Chicago, IL*

A certification was issued covering all workers separated on or after January 1, 1990.

*TA-W-24,865; Sherwood Medical Co.,San Diego, CA*

A certification was issued covering all workers separated on or after September 1, 1990.

*TA-W-24,765; Tredegar Molded Products, Bedford Heights, OH*

A certification was issued covering all workers separated on or after August 20, 1989.

*TA-W-24,853; Koret of California, Plant #9, San Francisco, CA*

A certification was issued covering all workers separated on or after September 5, 1989.

*TA-W-24,854 and TA-W-24,855; Koret of California, Plant #10 and Howard Plant, San Francisco, CA*

A certification was issued covering all workers separated on or after September 5, 1989.

*TA-W-24,861; Petren Drilling Corp., Headquartered in Englewood, CO*

A certification was issued covering all workers separated on or after August 30, 1989 and before November 1, 1990.

*TA-W-24,862; Petren Drilling Corp., Canadian, TX*

A certification was issued covering all workers separated on or after August 30, 1989 and before November 1, 1990.

*TA-W-24,862A; Petren Drilling Corp., Covering Various Other Locations in The State of Texas*

A certification was issued covering all workers separated on or after August 30, 1989 and before November 1, 1990.

*TA-W-24,724; Tri-Con Industries, Cape Girardeau, MO*

A certification was issued covering all workers separated on or after July 30, 1989.

I hereby certify that the aforementioned determinations were issued during the month of November 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 21, 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance*

[FR Doc. 90-28185 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-30-M

## Wage and Hour Division, Employment Standards Administration

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by

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contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

**New General Wage Determination Decisions**

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

*Volume I*

North Carolina:
NC90-33 ..... p. 640a, p. 640b.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

District of Columbia:
DC90-1 (Jan. 5, 1990) ..... p. 79, pp. 80, 84, 86.
Maryland:
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WA90-1 (Jan. 5, 1990) ..... p. 369, pp. 373-374.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23d day of November 1990.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 90-27922 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-27-M

## Mine Safety and Health Administration

**[Docket No. M-90-171-C]**

**Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the applicaton of 30 CFR 75.511 (low-, medium-, or high-voltage distribution circuits and equipment repair) to its Arkwright No. 1 Mine (I.D. No.46-01452); its Humphrey No. 7 Mine (I.D. No. 46-01453); its Osage No. 3 Mine (I.D. 46-01455); its Blacksville No. 1 Mine (I.D. 46-01867) and its Blacksville No. 2 Mine (I.D. 46-01968) all located in Monongalia County, West Virginia; and its Loveridge No. 22 Mine (I.D. 46-01433) and its Robinson Run No. 95 Mine (I.D. 46-01318) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that electrical work be performed on low-, medium-, or high-voltage distribution circuits or equipment, by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person.

2. If a non-electrically qualified person were to have a blown fuse on a haulage vehicle while traveling, he would be forced to abandon the vehicle or wait on the track with the disabled vehicle until another vehicle arrives, thus exposing the individual to hazards.

3. As an alternate method, petitioner states that if a certified electrician is present he will be responsible for changing the fuse; if a certified electrician is not present a person trained to change fuses will do so.

4. In support of this request, petitioner states that all persons who are trained to operate mobile track-mounted equipment or other D.C. equipment will be trained in changing a fuse with specific procedures as outlined in the petition.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard, while compliance with the standard will result in a diminution of safety to the miners affected.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1990. Copies of the petition are available for inspection at that address.



Dated: November 21, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-28187 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-90-172-C]**

**Consolidation Coal Co., Petition for Modification of Application of Mandatory Safety Standard**

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Arkwright No. 1 Mine (I.D. No. 46-01452) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. The affected return aircourses and bleeder entries are impassable due to several large roof falls, hooving of the bottom and accumulations of water. To require an examiner to make weekly examinations would pose unnecessary hazards.

3. As an alternate method, petitioner proposes that—

(a) Checkpoints would be established at specific locations where the air would be monitored;

(b) All monitoring stations and the approaches to such stations would, at all times, be maintained in a safe condition;

(c) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(d) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for miners affected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1990. Copies of the petition are available for inspection at that address.

Dated: November 21, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-28188 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-90-170-C]**

**Deerpath Corp.; Petition for Modification of Application of Mandatory Safety Standard**

Deerpath Corporation, P.O. Box 759, Jellico, Tennessee 37762, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16956) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1990. Copies of the petition are available for inspection at that address.

Dated: November 21, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-28189 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-43-M

**[Docket No. M-90-157-C]**

**West End Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

West End Coal Company, R.D. No. 1, Box 315A, Ashland, Pennsylvania 17921 had filed a petition to modify the application of 30 CFR 75.301 (air quantity, quality and velocity) to its last Chance Slope (I.D. No. 36-07859) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monixide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

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4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 31, 1990. Copies of the petition are available for inspection at that address.

Dated: November 21, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-28190 Filed 11-29-90; 8:45 am]

BILLING CODE 4510-43-M

## Occupational Safety and Health Administration

### Supplement to Wyoming State Plan; Request for Public Comment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for comment: Wyoming State Standards Supplement.

**SUMMARY:** This notice invites comment on Wyoming's changes to its Oil and Gas Well Drilling Standard. This Wyoming Standard is an independent State standard for which there is no Federal OSHA equivalent. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether the changes to the Wyoming standard meet the above requirements.

**DATES:** Written comments should be submitted by December 31, 1990.

**ADDRESSES:** Written comments should be submitted in quadruplicate to the Director, Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to existing standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming State plan and the adoption of subpart BB to part 1952 containing the decision. The Wyoming State plan provides for the adoption of State standards in the following manner.

The Wyoming Division of Occupational Health and Safety either proposes to adopt Federal standards or drafts such standards as it considers necessary after agency review and research and consultation with other persons knowledgeable in the specific field for which the standards are being formulated. The standards are submitted to the Wyoming Occupational Health and Safety Commission for its approval. The Wyoming plan provides for adoption of a standard as a State standard after public notice and hearing are published in accord with the Wyoming Administrative Procedure Act, and the Secretary's rules on rulemaking.

Wyoming submitted a State-initiated plan change by letter, with attachments, which incorporated this standard as part of its occupational health and safety plan. By letter of May 1, 1990, changes to the oil and gas well drilling standard were submitted by Stephen R. Foster, OSHA Program Manager, Division of Employment Affairs—OSHA, to Byron R. Chadwick, OSHA Regional Administrator. The subject standard establishes rules and regulations applicable to the oil and gas well drilling industries in the State of Wyoming. After the normal open period for public review and comments, the Commission adopted these changes and they became effective May 15, 1989.

The Wyoming Oil and Gas Well Drilling Standard was initially approved by OSHA on December 14, 1987, after providing an opportunity for public comment. OSHA received comments from three associates representing the oil and gas well industry. All three associates were in favor of the standard and recommended its approval. The State's standard section on Safety Procedures for Drill Stem Tests was subsequently revised on May 15, 1989. The change provides additional requirements for drill stem tests in areas containing $H_2S$.

OSHA does not have specific standards for oil and gas well drilling. It currently uses 29 CFR Part 1910 General Industry Standards and Instruction STD 1-12-28. Wyoming's changes to the standard were compared to OSHA's general standards requirements and enforcement policy set out in OSHA Instruction STD 1-12-28, which prescribes alternative abatement methods.



### B. Issues for determination

The Wyoming changes in question are now under review by the Assistant Secretary to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

1. "At least as effective" requirement. There are no equivalent Federal standards applicable to the oil and gas well industries. Therefore, OSHA has evaluated the State's requirements in comparison to OSHA's general standards requirements and to enforcement policy and has preliminarily determined that the State standards in question meet the "at least as effective" criterion on section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on this issue is solicited for OSHA's consideration in its final decision on whether or not to approve changes to the Wyoming standard.

2. Product clause requirement. OSHA is also seeking through this notice public comment as to whether changes to the Wyoming Standards:

(a) Are applicable to products which are distributed or used in interstate commerce;

(b) If so whether they are required by compelling local conditions; and

(c) Unduly burden interstate commerce.

### C. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to the issues described above. These comments must be postmarked on or before December 31, 1990, and submitted in quadruplicate to the Director, Federal-State Operations, Room N3700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments, and requests submitted concerning these standards and will thereafter publish notice of the decision approving or disapproving them.

### D. Location of Supplement for Inspection and Copying

A copy of Wyoming's changes applicable to the oil and gas well industries, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, Federal Office Building, Room 1576, 1961 Stout Street, Denver, Colorado 80294; Division of Employment Affairs, Wyoming Department of Employment, Herschler Building, 2nd Floor East, 122 West 25th Street, Cheyenne, Wyoming 82002; Office of the Director, Federal-State Operations, OSHA, U.S. Department of Labor, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902, Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed the 21st day of November, 1990, in Washington, DC.

**Gerard F. Scannell,**

*Assistant Secretary.*

[FR Doc. 90-28213 Filed 11-29-90; 8:45 am]

BILLING CODE

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-101)]

### Advisory Committee on the Future of the U.S. Space Program; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Advisory Committee on the Future of the U.S. Space Program (hereafter referred to as the "Advisory Committee").

**DATE:** December 3, 1990, 8 a.m. to 10 a.m.

**ADDRESSES:** National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. James D. Bain, Code ADA-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2408.

**SUPPLEMENTARY INFORMATION:** The Vice President, in his capacity as head of the National Space Council, has determined that it is appropriate for the National Aeronautics and Space Administration to establish the Advisory Committee to look into the future of the U.S. space program. The advisory Committee will report to the Vice President and the NASA Administrator on the future of the U.S. space program, to include various projects, objectives, and methods to implement those projects and objectives for the coming decades. The Advisory Committee is chaired by Mr. Norman R. Augustine and is composed of 12 members, selected from a cross section of qualified individuals with an extensive knowledge of space activities and broad technical and managerial expertise.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Advisory Committee members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Interested members of the public are encouraged to send written comments regarding the work of the Advisory Committee to Mr. Norman R. Augustine, Chairman and Chief Executive Officer, Martin Marietta Corporation, 6801 Rockledge Drive, Bethesda, MD 20817.

**TYPE OF MEETING:** Open.

**AGENDA:**

Monday, December 3, 1990

8 a.m.—Introductory Remarks.

8:10 a.m.—Receive Perspectives of National Experts and Review Implications of Selected Studies on Major Space Programs.

10 a.m.—Adjourn.

Dated: November 26, 1990.

**John W. Gaff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 90-28136 Filed 11-29-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice (90-102)]

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee Informal Executive Subcommittee.

**DATES:** December 14, 1990, 9 a.m. to 4 p.m.

**ADDRESSES:** NFIB Staff Room, 600 Maryland Avenue, SW., suite 700, Washington, DC 20024.

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**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Informal Executive Subcommittee will meet to formulate plans for the next meeting of the full Committee and discuss the Office of Space Science and Applications (OSSA) Program Status. The Committee is chaired by Dr. Berrien Moore and is composed of 11 members. The meeting will be open to the public up to the capacity of the room (approximately 20 people including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**TYPE OF MEETING:** Open.

**AGENDA:**

Friday, December 14

9 a.m.—Planning for January 30 Committee Meeting.

10:30 a.m.—Planning for 1991 Woods Hole Workshop.

1 p.m.—Discussion of Membership Vacancies.

2:30 p.m.—Follow-up on SSAAC November 1990 Discussion of Structural Issues in OSSA.

4 p.m.—Adjourn.

Dated: November 26, 1990.

**John W. Gaff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 90-28137 Filed 11-29-90; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

### Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On October 12 and 18, 1990, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on November 26, 1990: Lowell E. Starr, Rennie S. Holt, Mark D. Kurz.

**Charles E. Myers,**

*Permit Office, Division of Polar Programs.*

[FR Doc. 90-28199 Filed 11-29-90; 8:45 am]

BILLING CODE 7555-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301-72]**

### Termination of Section 302 Investigation Regarding Thailand's Restrictions on Access to Its Cigarette Market

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of termination of investigation initiated under section 302 of the Trade Act of 1974, as amended, 19 U.S.C. 2414 (the "Trade Act").

**SUMMARY:** The United States Trade Representative (USTR) has determined that rights to which the United States is entitled under a trade agreement were violated by Thailand's restrictions on imports of cigarettes. However, in light of subsequent actions and commitments of the Royal Thai Government, the USTR has decided to terminate the investigation initiated under section 302 of the Trade Act with respect to policies and practices maintained by the Royal Thai Government affecting access to the Thai cigarette market. The USTRA will monitor under section 306(a) of the Trade Act Thai implementation of the measures that are the basis for resolving this dispute.

**DATES:** This investigation was terminated effective November 23, 1990.

**FOR FURTHER INFORMATION CONTACT:** Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432.

**SUPPLEMENTARY INFORMATION:** On April 10, 1989, the United States Cigarette Export Association (CEA) filed a petition under section 302(a) of the Trade Act, 19 U.S.C. 2412(a), alleging that the Royal Thai Government and its instrumentality, the Thailand Tobacco Monopoly (TTM), engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden and restrict U.S. commerce. The Thai government maintained an effective ban on the importation of foreign cigarettes and prohibits foreign investment in cigarette manufacture. The petitioner alleged that these bans on importation and investment, combined with high tariffs, discriminatory domestic taxes and TTM distribution practices, deny U.S. firms fair and equitable market opportunities. Finally, the CEA alleged that Thai government restrictions on cigarette advertising are intended to put foreign cigarette brands at a competitive disadvantage.

On May 25, 1989, the USTR initiated an investigation of the Thai government's policies and practices affecting fair and equitable access to the Thai cigarette market (54 FR 23724, June 2, 1989). On April 3, 1990, the GATT Council of Representatives ("GATT Council") authorized establishment of a dispute settlement panel, under GATT Article XXIII:2, to examine the United States' complaint regarding the effective ban on importation and discriminatory domestic taxes maintained by the Thai government.

On September 21, 1990, the GATT dispute settlement panel issued a report concluding that Thailand's import restrictions on cigarettes are contrary to the provisions of GATT article XI:1 and are not justified by article XI:2(c)(i), article XX(b), or paragraph 1(b) of Thailand's Protocol of Accession. The panel also noted that the Thai government has recently issued ministerial regulations amending its tax policy with respect to cigarettes and that these regulations are consistent with Article III of the GATT. The panel recommended that the GATT Contracting Parties request Thailand to bring its import restrictions into conformity with its obligations under the GATT. On November 7, 1990, the GATT Council adopted this report.

On October 15, 1990, the USTR invited public comments, pursuant to section 304(b)(1)(A) of the Trade Act, on a proposed USTR determination that, in light of the GATT panel report on this matter, rights to which the United States is entitled under a trade agreement were violated by Thailand's restrictions on imports of cigarettes and that other policies and practices of the Thai government adversely affecting access to the Thai cigarette market are unreasonable and constitute a burden or restriction on U.S. commerce (55 FR 41761).

The Royal Thai Government has announced that it will no longer ban imports of cigarettes. In addition, the United States and Thailand held consultations aimed at reaching a mutually satisfactory solution of the matter. As a result, the Royal Thai Government will take measures that are intended to allow foreign cigarettes to be sold in Thailand on the basis of nondiscrimination, national treatment, and normal commercial practices and considerations.

In light of the GATT panel report on this matter, the USTR has determined pursuant to section 304(a)(1)(A) of the Trade Act that rights to which the United States is entitled under a trade agreement were violated by Thailand's restrictions on imports of cigarettes. In view of subsequent actions by the Royal Thai Government to grant the rights of the United States under the GATT, as well as the Thai government's other commitments regarding market access for cigarettes, the USTR has determined pursuant to section 304(a)(1)(B) of the Trade Act that the appropriate action at this time is to terminate the investigation of this matter.

The USTR will monitor under section 306(a) of the Trade Act the Royal Thai Government's implementation of the measures undertaken to provide access to the Thai cigarette market to ensure that access based on nondiscrimination, national treatment and normal commercial practices and considerations is achieved.

**Catherine R. Field,**

*Acting Chairman, Section 301 Committee.*

[FR Doc. 90-28178 Filed 11-29-90; 8:45 am]

BILLING CODE 3190-01-M

### Agreement on Trade Relations Between the Government of the United States of America and the Czech and Slovak Federative Republic: Entry Into Force

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of entry into force of the Agreement on Trade Relations Between the Government of the United States of America and the Czech and Slovak Federative Republic.

**SUMMARY:** The United States Trade Representative gives notice of the entry into force of the provisions of the Agreement on Trade Relations Between the Government of the United States of American and the Czech and Slovak Federative Republic, including the extension of nondiscriminatory treatment to the products of the Czech and Slovak Federal Republic.

**DATES:** The Agreement has entered into force, and Proclamation 6175 of September 6, 1990, has become effective, as of November 17, 1990.



**FOR FURTHER INFORMATION CONTACT:** Kathleen Doering, Director for Central Europe, (202) 395-3211, or Ivan Dubovsky, Attorney-Adviser, (202) 395-6890.

**SUPPLEMENTARY INFORMATION:** On Saturday, November 17, 1990, the United States and the Czech and Slovak Federal Republic exchanged written notices of acceptance in accordance with Article XVII of the Agreement on Trade Relations Between the United States of America and the Czech and Slovak Federative Republic ("Agreement"), signed on April 12, 1990. Pursuant to section (1) of Proclamation 6175 of September 6, 1990, the Agreement, including the exchanges of letters which form an integral part thereof, has entered into force and nondiscriminatory treatment has been extended to the products of the Czech and Slovak Federal Republic as of November 17, 1990. Pursuant to section (2) of Proclamation 6175, effective with respect to articles entered, or withdrawn from warehouse for consumption, into the customs territory of the United States on or after November 17, 1990, general note 3(b) of the Harmonized Tariff Schedule of the United States, enumerating those countries whose products are subject to duty at the rates set forth in rate duty column 2 of the tariff schedule, is modified by striking out "Czechoslovakia".

**Joshua B. Bolten,**

*General Counsel.*

[FR Doc. 90-28179 Filed 11-29-90; 8:45 am]

BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. 34-28642; File No. SR-DTC-90-11]**

### Self-Regulatory Organizations; Depository Trust Co.; Order Approving Proposed Rule Change Relating to Amendment to Its Rules Providing for Disposal of Worthless Warrants, Rights, and Put Options

#### I. Introduction

The Depository Trust Company ("DTC") on September 6, 1990, filed a proposed rule change (File No. SR-DTC-90-11) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 3, 1990, to solicit comments from interested persons.[2] One comment was received.[3] As discussed below, this order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

#### II. Description of the Proposal

DTC's proposal amends its rules to establish a procedure for the disposal of warrants,[4] rights,[5] and put options[6] ("Securities") whose expiration dates have passed thereby rendering the Securities worthless. Under the proposal, worthless Securities would be disposed of only after DTC takes certain steps to ensure that the Securities are, in fact, worthless and that DTC participants ("Participants") are given adequate notice of their proposed disposition.

In the first step towards the disposal of worthless Securities, DTC will contact the issuer of the Securities or its transfer agent after their expiration date to verify that they have, in fact, expired and that the certificates representing the rights are worthless. DTC will then obtain written confirmation from such issuer or transfer agent of the expiration and the fact that the certificates representing such rights are worthless.

After DTC has confirmed that the Securities are worthless, it will then notify Participants that: (1) Per the issuer or transfer agent, the Securities have expired; (2) such Securities will be deleted from Participants' positions on or after the thirtieth day following the date of the notice; and (3) DTC may then destroy the physical certificates. On or after the date that is thirty days after such notice ("Notice"), DTC will delete the Securities from Participants' positions and, at DTC's discretion, destroy the physical certificates. DTC will retain copies of the destroyed Securities for a period of seven years.

[2] Securities Exchange Act Release No. 28472 (September 26, 1990), 55 FR 40498.

[3] On September 12, 1990, the Securities Industry Association transmitted to the Commission a letter supporting the proposed procedure for disposing of worthless securities. Letter from James P. Maloney, President, Securities Industry Association, Securities Operations Division, to Jonathan G. Katz, Secretary, Securities and Exchange Commission.

[4] A warrant generally represents the right of the holder to acquire common stock of an issuer at some future date at a specified price.

[5] A right generally represents an opportunity for stockholders to buy new securities issued by a corporation in proportion to the number of shares they own before the new shares are offered to the public.

[6] DTC is limiting the proposal's applicability to certain put options issued by financial institutions which permit the purchaser of a municipal bond to sell, after giving required notice, a specified amount of securities from a specified issue to the financial institution on a predetermined future date.

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**III. DTC's Rationale for the Proposal**

DTC believes the proposed rule change is consistent with section 17A(b)(3)(A) of the Act [7] because the proposed rule change promotes efficiencies in the clearance and settlement of securities transactions.

**IV. Discussion**

The Commission believes that DTC's proposed rule change is consistent with the Act and, in particular, with section 17A. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The Commission believes that the proposal is consistent with section 17A(b)(3)(A) of the Act. Such Section provides, among other things, that a registered clearing agency must safeguard securities and funds in its custody or control. While the proposal entails the destruction rather than active safeguarding of worthless Securities, the Commission believes that it will allow DTC to appropriate more of its resources to the task of safeguarding securities remaining in its custody or control after worthless Securities are destroyed.

Along similar lines, the Commission believes that DTC's proposal is consistent with section 17A(a)(1)(B) of the Act [8] because it provides a more efficient, effective, and less expensive means of providing depository services. Such Section evidences Congress' belief that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors. The purpose of DTC's proposal is to eliminate costs it considers unnecessarily incurred in connection with the safekeeping of worthless Securities. DTC currently has in its custody large numbers of certificates representing worthless Securities. As discussed above, the Commission concurs with DTC's estimation that should the proposal be approved, expenses incurred for safekeeping worthless Securities will be eliminated thus rendering DTC's custodial services more efficient.

Finally, section 17(a) of the Act [9] and rule 17(a)(1) promulgated thereunder [10] provide, among other things, that a registered clearing agency must keep certain records for a period of five years. The Commission believes that the records pertaining to worthless Securities represent records that are subject to these rules. The Commission also believes that the proposal is consistent with the provisions of such rules because DTC will retain copies of all destroyed Securities for a period of seven years, which period exceeds the stated five year retention requirement.

**V. Conclusion**

For the reasons stated above, the Commission finds that DTC's proposal is consistent with section 17A of the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, [11] that DTC's proposed rule change (SR–DTC–90–11) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28103 Filed 11–29–90; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.A. 78q–1(b)(3)(A).
[8] 15 U.S.C. 78q–1(a)(1)(B).
[9] 15 U.S.C. 78q–(a).
[10] 17 CFR 240.17(a)(1).

[11] 15 U.S.C. 78s(b)(2).

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**[Rel. No. 34–28828; File No. SR–MSTC–90–08]**

**Self-Regulatory Organization; Midwest Securities Trust Co.; Proposed Rule Change To Implement Pilot Program for Same-Day Funds Settlement Service**

November 19, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1990, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

MSTC filed the proposed rule change to establish a pilot program for a Same-Day Funds Settlement ("SDFS") service. Under the proposed SDFS service, same-day settlement funds would be immediately available for redelivery on the day of receipt. The proposed rule change would also implement procedures for processing commercial paper ("CP") through the SDFS pilot program.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to establish a pilot program for MSTC's SDFS service. The proposed SDFS service would provide depository and settlement services for certain securities that settle in same-day funds. Same-day funds are funds which would immediately be available for redelivery on the day of receipt.

Under the proposed rule change, MSTC will offer SDFS through an SDFS omnibus account maintained at The Depository Trust Company ("DTC") for the benefit of MSTC participants. Because this is a pilot program, MSTC will restrict the number of participants in the SDFS program to five and the number of transactions that may be processed for those participants to seventy-five, aggregate, per day. Future expansion of the pilot program is dependent, among other things, upon MSTC's operational capabilities.

MSTC also proposed to implement procedures for the processing of commercial paper through the SDFS service (hereinafter referred to as the "CP Program").

1. SDFS Program

Under the proposed SDFS service, MSTC will accept deposits of SDFS securities for safekeeping and provide a full range of depository services, including deposits, delivery orders, withdrawals, pledges, Institutional Delivery System trade confirmation/affirmation and underwriting distributions. Participants will provide SDFS instructions directly to MSTC via telecopier transmissions. MSTC will then enter the SDFS transactions, provided the participant maintains sufficient collateral, through a direct link between MSTC and DTC on DTC's Participant Terminal Service ("PTS").



The proposed rule change includes new rules and procedures applicable to the SDFS service for account maintenance, transaction processing, risk management, money settlement, and loss allocation. MSTC will process SDFS transactions separately from next-day funds settlement ("NDFS") securities and will require collateralization of each SDFS transaction. MSTC will impose a net debit cap on each participant and will add a new component, the SDFS fund, to its participant's fund to protect against risks associated with handling SDFS securities and related transactions. Net money settlement will occur between MSTC and participants (and at a later date in the SDFS pilot, through MSTC and settling banks), and MSTC will settle with DTC on net basis through the Federal Reserve System's Fedwire.

Under the proposed rule change, MSTC will require each participant to maintain sufficient collateral on all SDFS transactions to cover the participant's projected settlement obligations. On each transaction, MSTC will "haircut" (*i.e.*, discount the value) SDFS securities coming into a participant's account. A receiving participant must have sufficient collateral to cover the diffference between the value paid for the SDFS securities and their discounted value. Before MSTC will process a participant's instructions and enter transactions through DTC on the PTS, it will verify through DTC that: (1) The participant will have sufficient collateral in its account after the transaction is accepted to cover any projected net settlement debit in the account; (2) the participant on the other side of the transaction ("contra-participant") will have sufficient collateral in its account immediately after the transaction to cover any projected debit balance; and (3) both the particpant and the contra-participant will not have a resulting net debit settlement amount that exceeds their respective "net debit caps," as described below. MSTC will track continuously the value of each participant's collateral (through DTC on a real time, on-line basis) to ensure that it is equal to or greater than the participant's current net settlement debit. If a participant does not have sufficient collateral to cover the resulting net settlement debit from a proposed transaction, it may pledge more collateral to enable MSTC to act on the transaction instructions. However, MSTC reserves the right to limit transactions, in its sole discretion, if it determines that it does not have the operational capability to process such transactions or that the transactions might result in financial loss to participants generally or to MSTC.

Acceptable forms of collateral include: (1) The participant's mandatory deposits to the SDFS funds (cash and U.S. government securities); (2) the participant's voluntary deposits to the SDFS fund; (3) SDFS U.S. government securities in the participant's account at the beginning of the processing day which are classified as collateral by the participant; (4) net additions of SDFS U.S. government securities to the participant's account during the processing day which are the subject of delivery versus payment transactions from other participants and which are reflected as incomplete transactions; (5) net additions to the participant's account during the processing day from unvalued transactions in SDFS securities (*e.g.*, deposits), that are not classified as customer U.S. government securities by the participant; and (6) net additions of customer SDFS U.S. government securities (*e.g.*, margin securities) classified as collateral by the participant during the processing day.

Each participant in the SDFS service must make a required deposit, consisting of cash and securities, into the SDFS fund. The minimum SDFS deposit is $20,000 in cash. MSTC will calculate required deposits monthly based upon a formula of 5% of each participant's average daily gross SDFS debits and credits during the prior month. Qualifying brokers' brokers' required deposits will be based on 2% of average daily gross SDFS debits for the prior month. Required deposits, in excess of the minimum deposit may be made in cash or securities of the same type that qualify for deposit in the NDFS system fund (*e.g.*, U.S. government securities). Subject to any restrictions MSTC may place on the account, a participant may also make voluntary deposits into the SDFS fund to increase its collateral.

MSTC will impose a net debit cap on each SDFS participant. Each SDFS participant will be limited throughout the processing day to a net debit that is no higher than the lesser of: (1) A multiple of the participant's actual deposits to the SDFS fund; (2) a percentage of MSTC's line of credit lenders; (3) the amount, if any, determined by the settling bank (as defined below) of the participant; or (4) any other amount as determined by MSTC. A participant may wire funds to MSTC at any time during the day and, thereby, may increase the value of transactions that can be processed without exceeding its net debit cap (subject to any limits on activity imposed by MSTC).

Money settlement will occur daily in Federal funds through Fedwire transfers to and from MSTC's account at the Federal Reserve Bank of Chicago ("FRB-Chicago"). Participants may also wire intraday settlement progress payments directly to DTC's account at the Federal Reserve Bank of New York. Each participant, however, must make arrangements directly with MSTC. (At a later stage in the pilot, MSTC may require participants to settle with a SDFS bank participant ("settling bank") and have the settling bank settle payment obligations on its behalf with MSTC. The settling bank will be required to have on-line access to MSTC and Fedwire.)

Throughout the processing day, MSTC will provide, through telecopier transmissions, each participant with a report of its net credit or debit positions. At the end of the processing day, MSTC will provide each participant with a net settlement amount, which will be the aggregate of the end-of-the-day net debits and net credits in the participant's account. If at the end of the processing day the participant has a net debit amount, it must pay that amount no later than 3 p.m. by Fedwire transfer to MSTC's account at FRB-Chicago. MSTC will then pay, through similar means at approximately 4 p.m., each participant with a settlement credit.

2. CP Program

Under the proposed rule change, CP issues made SDFS-eligible will be distributed through DTC in book-entry-only ("BEO") form by the issuer's issuing agent bank which, paralleling the SDFS medium-term note program, sends CP issuance instructions electronically. The issuer's paying agent bank, acting as custodian, will hold master CP certificates for MSTC participants through DTC.

Because SDFS-eligible CP is BEO and CP issuances are initiated electronically, participant operating procedures for deposits, withdrawals, and underwriting distributions do not apply to CP. Because CP settles on the same day it is issued, traded, or used in a financing transaction (typically, a repurchase agreement), user operating procedures for institutional delivery system confirmations of CP trades will apply for record-keeping purposes, but institutional delivery procedures for affirmations and settlement will not apply to CP.

As is the case in the general SDFS program, MSTC will offer the CP program to a limited number of MSTC

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participants on a pilot basis, and transactions in the CP program are limited to MSTC's operational capabilities. Those participating in the CP program will number no more than the five participants of the SDFS service, and CP transactions in the CP program will be included with SDFS transactions for purposes of the seventy-five aggregate transactions per day limit.

The fundamental risk in the SDFS system is a failure of an SDFS participant to settle with MSTC money settlements owed to other participants. Controls, through DTC, are built into the system to keep this risk within manageable limits. The controls include: (1) Collateralization; (2) SDFS fund; (3) net debit caps; (4) receiver-authorized deliveries; (5) net and net-net settlement; and (6 ) resales and credit reductions. All would be applicable to transactions in CP.

Collateralization requires a participant to have in its account at all times during the processing day collateral at least equal in value to the participant's net settlement debit. The principal source of this collateral is the securities delivered versus payment by other participants that created the net settlement debit. Additional protection is provided by general SDFS failure-to-settle procedures under which MSTC may, among other things, return to deliverer-participants securities not paid for by the defaulting receiver-participant.

The collateralization control assumes that the market values of collateral securities will not suddenly and drastically decline. The failure-to-settle procedures assumed that securities returned to deliverer-participants will not have market values so far below their settlement values as possibly to cause the deliveries in turn to fail to settle with MSTC. These assumptions are not valid when a failure-to-settle is caused by a CP issuer's bankruptcy. On a day of heavy issuance and/or maturity activity or sales from the dealer's inventory in the issuer's CP, bankruptcy would cause the issuer's CP collateralizing SDFS net settlement debits to instantly become worthless and could cause one or more participants to fail to settle with MSTC. These are the unique risks of a CP program to MSTC.

MSTC seeks to insulate itself against these unique risks in order to avoid losses to itself, its participants in the CP program, and other participants that do not use the CP program by: (1) Making SDFS-eligible only highly-rated CP (MSTC's eligibility criteria will be the same as DTC's since in the pilot program all CP will be held at DTC); (2) admitting only well-capitalized CP dealers and issuing and paying agents to the SDFS system and/or requiring guarantees from their parents (CP dealers and agents will not be direct participants of MSTC during the pilot stage of MSTC's CP program); (3) establishing a CP component of the SDFS fund and limiting CP risks to those who use the CP program; (4) devaluing to zero all of an issuer's CP in MSTC's system (through DTC) promptly after learning of the potential or actual downgrading of CP below the rating for MSTC eligibility, the refusal of the issuer's paying agent to pay maturity proceeds, or the issuer's bankruptcy; (5) prohibiting "free" (unvalued) transactions in CP received versus payment until settlement is completed; (6) borrowing, under certain circumstances on the day of an issuer's default, from participants that initiated deliveries of that issuer's CP to a participant who fails to settle with MSTC that day or borrowing, on an emergency basis, from all other SDFS participants even though they did not initiate deliveries of that issuer's CP to a participant that failed to settle; and (7) applying a 2% haircut to the market value of CP when calculating its value as collateral.

The primary purpose of the proposed revisions to MSTC's rules is to provide for the SDFS service and CP program. Additionally, certain revisions are intended to clarify the following MSTC procedures relating to a participant's failure to settle in MSTC's next-day funds settlement (NDFS) system: (1) MSTC's ability to accept as a pledge to the participants' fund securities delivered to a receiver-participant for which the receiver-participant is unable to pay for; (2) MSTC's ability to return securities to deliverer-participant although MSTC does not cease to act for the receiver-participant; and (3) MSTC's ability to return to a deliverer-participant, where necessary, less than the entire amount of securities that were the subject of the delivery not paid for by the receiver-participant and to clear the deliverer's settlement account only for the securities returned.

3. Loss Recovery

The proposed rule change provides specific steps MSTC would take if an SDFS participant fails to pay a net debit balance. First, MSTC would use the defaulting participant's mandatory and voluntary cash contributions to the SDFS fund. Second, MSTC would pledge to lenders the defaulting participant's securities deposits to the SDFS fund for a loan to apply to the default. Third, MSTC would pledge to lenders other collateral of the defaulting participant including securities classified as net additions (*e.g.*, securities credited to the defaulting participant that day that have not been paid for ("incomplete deliveries")). MSTC may re-allocate the preceding sequence in its sole discretion.

If the foregoing procedures are insufficient to cover the default, MSTC would be authorized to take the following emergency steps. To the extent possible, MSTC could reduce *pro rata* net credits of participants who delivered SDFS securities to the defaulting participant on the day of default. Those reductions would be limited to the amount of the net credit balance of each participant resulting from transactions with the defaulting participant. As an alternative, MSTC also may resell to delivering participants SDFS securities that those participants sold to the defaulting participant on the day of default. Finally, if the preceding steps do not cover the default or if MSTC cannot reduce credits or resell securities to any participants that delivered SDFS securities to the defaulting participant, MSTC would be authorized to: (1) Make *pro rata* net credit reductions on an emergency basis for all SDFS participants with net credit balances, including those participants that did not make deliveries to the defaulting participant; or (2) pledge or resell any or all net additions of such participants (even though initially converted to effective transactions) on an emergency basis. Such borrowings will be secured by the pledge to lending participants of those incoming securities of the defaulting participants where payment has not been received for such defaulting participant.

If the defaulting participant is solvent and pays its debit balance in same-day funds by 9 a.m. (CST) on the day after the default, MSTC generally would reverse the procedures followed on the day of default. MSTC would repay lenders and restore pledged securities. MSTC also would repay with interest any participants whose net credits had been reduced. MSTC would collect appropriate interest charges from the defaulting participant. MSTC also would be authorized to assess failure-to-settle fees against the defaulting participant.

If the defaulting participant does not cure the default (*e.g.*, is insolvent), the proposed rule change is designed to initially allocate any loss to participants that made deliveries to the defaulting participant (particularly in the case where deliveries are made by non-defaulting MSTC participants).



However, MSTC, in its discretion, may allocate losses to all SDFS participants, including those that did not initiate deliveries to the defaulting participant. If it is necessary for MSTC to assess on an emergency basis all participants with net credit balances on the day of default, MSTC would repay those participants that did not make deliveries versus payment to the defaulting participant and assess *pro rata* those participants that had made deliveries to the defaulting participant. As a last resort, MSTC would assess *pro rata* all SDFS Participants.

The proposed rule change also provides that MSTC may also make good a loss from: (1) The mandatory (and, if necessary, voluntary) SDFS contributions and SDFS fund deposits of non-defaulting participants; (2) MSTC's contingency reserve fund; or (3) MSTC's existing undivided profits and retained earnings, at the election of MSTC.

If the defaulting participant also is a settling bank, MSTC would first apply the participant's collateral to the default and follow the procedures outlined above. In addition, MSTC would be authorized to recover any interest loss *pro rata* from participants who were represented by the defaulting settling bank and who had net credit balances on the day of the default. Participants with net debit balances represented by the settling bank would remain obligated only to the extent of the settling bank's net-net debit.

MSTC believes that the proposed rule change is consistent with section 17A of the Act in that the rule change provides for the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR-MSTC-90-08 and should be submitted by December 21, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28104 Filed 11-29-90; 8:45 am]

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[Rel. No. 34-28634; File No. SR-MSE-90-12]

**Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on the Financial Times-Stock Exchange 100 Index**

On July 10, 1990, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder, [2] a proposed rule change which will allow the MSE to list warrants based on the Financial Times-Stock Exchange 100 Index ("Index" or "FT-SE 100").

The proposed rule change was published in Securities Exchange Act Release No. 28294 (August 1, 1990), 55 FR 32342 (August 8, 1990). No comments were received on the proposal.

The proposed rule change will allow the MSE to list index warrants based on the FT-SE 100, an internationally recognized, capitalization weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"). [3] The Index is updated each minute from 9 a.m. to 5 p.m. (London time). [4]

The MSE submitted its proposal to trade FT-SE 100 warrants pursuant to the requirements of a Commission approval order ("Index Warrant Approval Order") that permits the MSE to list index warrants based on established market indexes, both domestic and foreign. [5] The Commission previously have approved the listing of FT-SE 100 Index warrants on the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange and the Pacific Stock Exchange. [6]

[1] 15 U.S.C. 78s(b)(1) (1964).

[2] 17 CFR 240.19b-4 (1989).

[3] The Index is composed of stocks of companies from 29 different industry groups, no one of which dominates the Index, and the percentage weighing of the five largest issues, as of October 31, 1989, accounted for approximately 21.38% of the Index's value. The total capitalization of the Index, as of October 30, 1989, was $521.6 billion. In addition, over the period January 1989 through June 1989, the average daily trading volume of each component stock was above 100,000 shares. The Index is administered by the FT-SE 100 Index Steering Committee, a committee composed of representatives from various U.K. financial institutions. The Steering Committee is responsible for, among other things, establishing rules to determine, review, and modify the composition of the Index, as well as how the Index is calculated.

[4] The Index is calculated by taking the summation of the multiple of the market price for each stock in the Index times the number of shares of that stock outstanding. This sum total is then divided by another number, termed the "divisor," to produce the Index value. The market price for each constituent stock is calculated by taking the mid-point between the highest bid and lowest offer for each stock. The divisor of the Index is continuously adjusted to reflect changes in market capitalization. The Index is published daily in the Financial Times and is available real-time on Reuters, Telerate and other market information systems which disseminate information on a minute-by-minute basis. For additional information regarding the calculation and composition of the Index, see letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, Commodity Futures Trading Commission ("CFTC"), dated January 8, 1990 (FT-SE 100 letter"), at 4-5.

[5] *See* Securities Exchange Act Rel. No. 28133 (June 19, 1990), 55 FR 28319 (order approving File No. SR-MSE-90-4).

[6] *See* Securities Exchange Act Rel. Nos. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR-AMEX-90-3), 28627 (November 19, 1990)

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The MSE represents that the FT–SE 100 warrant issues will conform to the MSE listing guidelines approved in the Index Warrant Approval Order and set forth in Exchange Rule 8, Article XXVIII, which provides that: (1) The issuer of index warrants shall have assets in excess of $100,000,000 and shall substantially exceed the size and earnings requirements specified in Exchange Rule 7, Article XXVIII; (2) the term of the warrants must be for a period of at least one year from the date of issuance; (3) the minimum public distribution of such issues must be 1,000,000 warrants together with a minimum of 400 public holders, and the minimum aggregate market value of such issues shall be $4,000,000; and (4) the index warrants will be cash-settled in U.S. dollars.

The FT–SE 100 Index warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a put option will receive payment in U.S. dollars to the extent that the FT–SE 100 has declined below a pre-stated cash-settlement value. Conversely, holders of a warrant structured as a call option will, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the FT–SE 100 has increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants will expire worthless.

Consistent with the guidelines set forth in the Index Warrant Approval Order, trading in FT–SE 100 warrants will be subject to safeguards designed to ensure investor protection: (i) The Exchange's options suitability standard will be applicable to recommendations regarding index warrants and (ii) a branch office manager or other Registered Options Principal ("ROP") will be required to approve and initial a discretionary order in index warrants on the day the order is entered. The Exchange also recommends that FT–SE 100 warrants be sold only to options-approved accounts. In addition, prior to the commencement of trading in FT–SE warrants, the MSE will distribute a circular to its membership calling attention to the specific risks associated with warrants on the FT–SE 100 Index.

In the Index Warrant Approval Order, the Commission noted that, with respect to warrants based on foreign indexes, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks. In this regard, the MSE has entered into a Memorandum of Understanding ("Memorandum") with the Securities Association ("TSA"), the self-regulatory organization responsible for regulating the U.K. equity securities market.[7] The Memorandum of Understanding will allow the MSE to obtain trading data from the U.K. regarding component securities of the FT–SE 100 Index.[8] The Exchange believes that this Memorandum is an appropriate and sufficient information sharing agreement for the purpose of accommodating FT–SE 100 warrant trading on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[9] Specifically, the Commission believes, as it did when approving the MSE's framework for index warrants, that index warrants, such as the FT–SE 100 warrants, are an innovative financing technique that will benefit U.S. investors by allowing them to hedge their exposure in the British markets or take a position in the U.K. market.[10]

The Commission also believes that the FT–SE 100 warrants are consistent with the guidelines set forth in the Index Warrant Approval Order. Because the FT–SE 100 is a broad-based index of actively traded, well-capitalized stocks, the trading of cash-settled warrants on the FT–SE 100 on the MSE does not raise unique regulatory concerns.[11] The Commission notes that the MSE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the FT–SE 100 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the MSE has addressed adequately potential public customer problems that could arise from the derivative nature of FT–SE 100 warrants. Moreover, the MSE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the FT–SE 100 and, pursuant to the MSE listing guidelines, only substantial companies capable of meeting their warrants obligations will be eligible to issue FT–SE 100 warrants.

In light of the fact that the FT–SE 100 is a foreign index, the Commission believes adequate surveillance sharing agreements between the MSE and TSA is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the MSE entered into a Memorandum of Understanding with TSA on July 16, 1990, that is broad enough to include the sharing of market information related to the trading of FT–SE 100 warrants on the MSE.[12] Accordingly, the Commission believes the Memorandum of Understanding between the MSE and TSA is adequate to provide an oversight framework regarding potential manipulation or other trading abuses between the markets with respect to the trading of FT–SE 100 warrants.

Finally, the Commission believes that trading in the FT–SE 100 warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes the FT–SE 100 warrants will benefit U.S. investors by affording them an opportunity to better hedge against stock market fluctuations in the United Kingdom.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–MSE–90–12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Dated: November 20, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28105 Filed 11-29-90; 8:45 am]

BILLING CODE 8010-01-M

(order approving SR–CBOE–90–17), 28388 (August 30, 1990), 55 FR 37300 (order approving SR–NYSE–90–37), 28108 (June 12, 1990), 55 FR 24805 (order approving File No. SR–PSE–90–15).

[7] TSA came into existence as a result of an agreement between the ISE and the International Securities Regulatory Organization ("ISRO"). Under the terms of the agreement, the ISE was established as a recognized investment exchange with rights and obligations analogous to the NASD, and ISRO was reorganized as the TSA. Currently, the TSA is the self-regulatory organization responsible for regulating the U.K. equity securities market. Although all ISE members must be members of TSA, TSA also consists of members which may not be active on the ISE. Thus, the Memorandum of Understanding entered into between the MSE and TSA will allow the MSE to obtain trading data from more U.K. equity securities market participants, whose activity may affect the FT–SE 100 warrants, than would an agreement between the MSE and the ISE.

[8] *See infra* note 12.

[9] 15 U.S.C. 78f(b)(5) (1934).

[10] Of course, if the FT–SE 100 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment.

[11] The Commission previously has examined the FT–SE 100 in the context of an application by the London International Financial Futures Exchange for certification that its futures contract meets CFTC requirements to permit the contract's offer and sale to U.S. citizens. At that time, the Commission found that the FT–SE 100 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the weighted value of the Index's component stocks, and the substantial capitalization and trading volume of component stocks. *See* FT–SE 100 letter, *supra*, note 4, at 5–7.

[12] *See* Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the MSE and TSA dated July 16, 1990. The Memorandum of Understanding relates to the provision of information relating to members of TSA and the MSE, and to any security traded through the facilities of the MSE, any security underlying a derivative instrument traded through the facilities of the MSE and any derivative instrument based upon or including a security traded through the facilities of the MSE. Accordingly, the Memorandum sufficiently allows for the provision of information relating to the FT–SE 100 warrants or any securities underlying the FT–SE 100 warrants.



[Rel. No. 34-28638; File No. SR-MSE-90-07]

## Self-Regulatory Organizations; Midwest Stock Exchange; Order Approving Proposed Rule Change Relating to Clearing the Post With Orders Received on Exchange Floor

On April 23, 1990, the Midwest Stock Exchange ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change consisting of a proposed Notice to Floor Members ("Notice"), which would expand the Exchange's current policy of requiring floor brokers and market makers to "clear the post" with any order received or originated on the MSE floor prior to entering an order into the Intermarket Trading System ("ITS") for another market. The proposed rule change was published for comment in Securities Exchange Act Release No. 27970 (May 1, 1990), 55 FR 19401 (May 9, 1990). No comments were received on the proposal.

The MSE's current "clearing the post" policy requires, for orders received or originated on the MSE floor, that: (1) A floor broker request a market quote from the specialist prior to entering a commitment into the ITS system for another market; and (2) a market maker,[3] request the specialist's market quote and then make a bid or offer at the post for the price and size of his or her intended interest prior to entering a commitment into ITS.[4] This policy derives from a floor broker's fiduciary responsibility to seek the best price execution for his or her order and from the responsibilities of floor brokers and market makers to adhere to traditional agency/auction market principles on the floor.[5] Under the MSE's current policy, failure to properly clear the post may result in a violation of MSE article VIII, rule 7, Just and Equitable Trade Principles, and/or article XXXIV, rule 1, Registered Market-Makers—Equity Floor, General Responsibilities, and subsequent disciplinary action.

The MSE's new proposal would extend the existing policy to require that a broker or market maker clear the post before inputting an order received by a floor broker, or originated by a market maker, on the Exchange floor to another market, not only through ITS, but by any alternate means. With the recent proliferation on the Exchange floor of alternate means, other than ITS, for efficiently gaining access to other markets, the Exchange wants to ensure that floor brokers clear the post on the floor before routing orders directly from the floor to other markets.[6] In particular, the Exchange cites concerns that the MSE floor is being turned into an "order routing room" where orders received at the trading booth are immediately sent to other markets for execution, without ever being exposed to the MSE floor. The Exchange emphasizes that a true auction market cannot exist on the Exchange floor if all orders are not integrated and exposed to all other orders which may be in existence at a given moment in time.

The proposed Notice states that floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price execution for such orders. This responsibility includes clearing the MSE post prior to entry to another market so that other buying and selling interests at the post can be checked for a potential execution which may be as good as or better than available in another market.

Furthermore, market makers have a responsibility to provide, among other things, depth and liquidity to the MSE market. In addition, MSE Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.[7] The proposed Notice states that transactions by MSE market makers on other exchanges that fail to clear the MSE post cannot be deemed to constitute such a course of dealings.

In addition to extending the "clear the post" requirement to inputting orders by means other than ITS, the Exchange's current proposal would allow the Exchange to grant exceptions to the policy on a case-by-case basis at the specific request of a customer, *e.g.*, a customer must specifically direct that his or her order be executed in another market.[8] The Exchange notes that customer directives to route elsewhere all orders in a particular stock or all stocks would not be considered exceptions under the policy. In addition, the Exchange would require any exceptions to the "clear the post" requirement to be documented and reported to the Exchange. The exceptions only would apply to orders transmitted to other markets using means other than ITS; the proposed Notice reiterates that the post must always be cleared before any other market is accessed via ITS.

Finally, the proposed Notice would clarify that the use of Exchange facilities

[1] 15 U.S.C. 78s(b)(2) (1934).

[2] 17 CFR 200.30-3(a)(12) (1989).

[3] 15 U.S.C. 78c(a)(1) (1982).

[4] 17 CFR 240.19b-4 (1989).

[5] A market maker on the MSE is required, at the request of a floor broker, to make a bid or offer in any security to which he or she is assigned or in which he or she is then trading such that a transaction effected thereon will contribute to the maintenance of a fair and orderly market. MSE article XXXIV, rules 5–17.

[6] *See* Securities Exchange Act Rel. No. 17768 (May 4, 1981), 46 FR 25745 (May 8, 1981) (File Nos. SR–MSE–81–3 and SR–MSE–81–5).

[7] The Exchange believes that failure to clear the post may result in a "trade-through" of the MSE market quotation. A trade-through occurs whenever a floor broker or market maker on the Exchange initiates the purchase in another market at a price which is higher than the price at which the security is being offered (or initiates the sale on another market of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) on the Exchange as reflected by the offer (bid) then being displayed on the Exchange. *See* MSE article XX, rule 40. When a trade-through occurs, a customer order executed on another market may not receive the best execution as another market may not receive the best execution because the order was never exposed to the buying and selling interests on the MSE market, which represented the best price for the customer's order.

[8] The Exchange cites an increase on the MSE floor of electronic terminals capable of direct interface with systems on other markets, thereby allowing direct access to other markets from the Exchange floor. These terminals allow MSE members that also are members of another exchange to have direct access to other markets from the Exchange floor. For example, MSE members who also are members of the New York Stock Exchange ("NYSE") have direct access to the Designated Order Turnaround System ("DOT" or "SuperDot"), the NYSE's network of electronic order processing and post-trade systems, and can route orders through DOT or SuperDot, directly to the NYSE market.

[9] MSE article XXXIV, rule 1.

[10] The Exchange's existing "clearing the post" policy does not expressly provide for any exceptions.

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for receiving orders is governed by Exchange rules.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(5) of the Act.[9] The Commission believes that the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to facilitate transactions in securities, and to perfect the mechanism of a free and open market in exchange-listed securities.

The Commission believes that the Exchange's "clearing the post" requirement serves to protect investors and the public interest by helping to ensure that public customers obtain the best possible executions of their securities orders. While an order sent to an exchange may not necessarily be exposed to trading interest represented on other exchanges, by the very nature of an exchange auction-type market, that order will be exposed to buying and selling interests on that exchange. Most importantly, it will be exposed to buying and selling interests represented by persons dealing at arms length with the agent holding the order. In addition, by avoiding trade-throughs of the MSE market, a customer order would be exposed to the buying and selling interests on the MSE market and could receive a better execution price.

The Commission further believes that the MSE's current proposal to extend its present clear the post requirement to include sending orders via means other than ITS raises to new regulatory issues. The MSE's extension simply makes the Exchange's existing policy applicable to other means of transferring orders, whether electronically or via future systems more advanced than current technology. The Commission notes also that the MSE proposal requires only that orders sent to the MSE floor be exposed to any buying or selling interest on the floor; it places no prohibition on the ability of exchange members to effect transactions, as principal or as agent, in any marketplace other than the MSE. Moreover, the MSE's proposal would be applicable only to orders routed to the Exchange floor; it places no prohibition on the ability of a firm's "upstairs" order room to route an order to another marketplace.

The Commission notes that the Philadelphia Stock Exchange ("Phlx") currently requires all Phlx floor members to clear the post, by requesting a market quote from the specialist, for a security on the Phlx floor before directly inputting an order into ITS.[10]

With regard to the MSE's proposed exceptions to its new clearing the post policy, the Commission is satisfied that the Exchange has articulated clearly the standards it will apply in granting exceptions. Under the new policy, the Exchange would grant exceptions only in situations where a customer specifically requests that a particular order be handled in a certain market. The Exchange emphasizes that exceptions would be granted only in situations where a customer specifically requests execution of a certain order in a particular market. In addition, exceptions would only apply to orders being sent via means other than ITS.[11] The MSE post always must be cleared for all orders sent via ITS—no exceptions to this policy will be granted. The Commission believes that this narrow exception to the Exchange's policy is appropriate in that it will allow a broker to fulfill the desires of customers with regard to particular orders and will not impinge on the benefits of the Exchange's clear the post requirement.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28106 Filed 11-29-90; 8:45 am]

BILLING CODE 8010-01-M

[9] 15 U.S.C. 78f (1982).

[10] *See* Securities Exchange Act Rel. No. 20331 (October 27, 1983), 48 FR 50840 (November 2, 1983) (approving File No. SR-Phlx-83-11).

[11] *See, supra* note 6.

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30-3(a)(12) (1990).

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**[Rel. No. 34-28836; File No. SR-NASD-90-51]**

## Self Regulatory Organizations; Order Approving Proposed Rule Change and Filing and Order Granting Accelerated Approval of Amendment to Proposed Rule Change of the National Association of Securities Dealers, Inc., Relating to Enhancements to the NASD's Order Confirmation Transaction System

### I. Introduction

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on September 26, 1990, a proposed rule change to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act") [1] and rule 19b-4 [2] thereunder, and Amendment No. 1 thereto on November 14, 1990, to implement enhancements designed to increase the speed and efficiency of executing orders through the NASD's Order Confirmation Transaction System ("OCT" or "SelectNet").

Notice of the original filing and the terms of substance of the proposed rule change was given in Securities Exchange Act Release No. 28526 (October 10, 1990) and by publication in the **Federal Register** (55 FR 42120, October 17, 1990). No comment letters were received on the original filing. Amendment No. 1, which renames OCT to SelectNet, proposes, for a 6 month pilot period, further modifications of the OCT system that are intended to prevent attempted abuse of the automated routing in the system to the detriment of market maker participation and liquidity. This order approves SR-NASD-90-51 as originally proposed and grants accelerated approval to Amendment No. 1 for a 6 month period.

### II. SelectNet Enhancements

The OCT service, implemented in January 1988, originally was approved by the Commission as an auxiliary system to process orders during market extremes by providing an alternative method of negotiating trades when traditional telephone negotiation was difficult or infeasible.[3] Utilizing the present system, order entry participants with clearing arrangements may direct an agency or principal order to a single market maker of choice through OCT. After receiving the order of the NASDAQ screen, the market maker must either accept the order as is, decline it, or counter with a different size and/or price. Each order or counter-offer stays in force for three minutes. By contract, the enhancements will reduce the limitations of the system by enabling an order entry firm to preference a specific market maker, as in current OCT, but also will permit showing the order to all market makers in the security. Additionally, the enhancements will provide system flexibility in that the order entry firm can: (1) Increase the time the order or counter-offer is in force up to 99 minutes; (2) specify a day order; or (3)

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1989)

[3] *See* Securities Exchange Act Rel. No. 25263 (January 11, 1988), 53 FR 1430 (January 19, 1988), approving File No. SR-NASD-87-54.



indicate whether price and/or size are negotiable or whether a specific minimum quantity is acceptable. As a result, the recipient is provided a maximum amount of information with which to formulate a response.

Moreover, the ability to respond to counter-offers will be enhanced. Presently a market maker may counter an order entry once, and the order entry firm can enter and order and counter-offer only once. The enhancements will enable a market maker to accept, counter or decline a SelectNet order. If a market maker counters, negotiations are considered in progress and all other counters enter a queue to be sent to the order entry firm on a first in/first out basis. Negotiations may be conducted between the two parties by exchanging counter-offers until an agreement is reached. Consequently, the traders are no longer limited by the system's current one counter-offer restriction.

One of the most important proposed enhancements is the use of menus and function keys to limit the keystrokes necessary to interact with OCT. Specifically, functions have been pre-programmed to reduce the amount of manual labor necessary to access the system. Using the available menus on the NASDAQ Workstation, the user can, after targeting the order/counter in the new OCT area: (1) Retrieve order entry and negotiation masks or screens; (2) accept an order; (3) cancel an order or counter-offer; (4) decline and order or counter-offer; or (5) insert a pre-formatted message in the memo area or an order to counter-offer.

To further faciliate SelectNet usage by market participants, a scan capability is available to participants to view executed trades, unexpired counters, open orders and expired orders. Cancellation of orders and counters, as well as acceptance of orders, can be made through the scan function. The system user also can increase information available by registering specific securities in a watch file. This allows interested participants to view incoming orders for those securities in which they are interested.

Finally, in order to increase efficiency and reduce risk, executed trades will be processed through the Automated Confirmation Transaction service for Risk Management calculations and for submission to the National Securities Clearing Corporation. The purpose of this enhancement is to ensure that SelectNet trades are added into Risk Management daily thresholds, and are reported both for trade reporting and clearance purposes.

The NASD has completed all necessary stress testing of the processing equipment to be used for the SelectNet enhancements, and has represented to the Commission that the system has the capacity to implement the changes approved in this order.

### III. Amendment No. 1

The NASD filed Amendment No. 1 due to concerns that market participants may attempt to abuse the automated routing in the SelectNet system to the detriment of market maker participation and liquidity. The following is a description of proposed modifications to the NASD's SelectNet system contained in Amendment No. 1:

- SelectNet will be available only for agency or principal orders that are greater than the NASDAQ Small Order Execution System ("SOES") tier size.
- Market makers receiving orders through SelectNet will not be required to execute partial orders but may elect to execute partials at their discretion.
- In the event of an emergency or during extraordinary market conditions, either one or both of the aforementioned conditions may be eliminated pursuant to the authority granted to the Board of Governors and its designees in article VII, section 3 of the NASD By-Laws.

The NASD is proposing these modifications to the operations of SelectNet because the Association is concerned that, with the Commission's approval of an NASD rule requiring market makers to display size in their quotations at least equal to the applicable SOES tier size,[4] market participants may attempt to abuse the automated routing in the system to the detriment of market maker participation and liquidity. Specifically, the NASD is troubled by the possibility of misuse of SelectNet in a manner similar to past abuse of SOES.[5]

SOES was designed to create a level playing field for agency orders, to provide customers immediate executions and to dispel the notion that customer orders were afforded lesser quality executions in comparison with institutions. Despite the articulated purposes of SOES, however, sophisticated market professionals have found ways to use the automated nature of the system by, example, sending in orders for automatic execution against the last market maker to update a quotation in an issue. When SOES became mandatory for National Market System issues, and tier sizes of 200, 500, or 1,000 were developed, SOES use was exacerbated by professional trading. The NASD has taken measures to eliminate misuse of SOES, and is proposing to prevent the same type of misuse of SelectNet with Amendment No. 1. The Amendment requires SelectNet orders to be above SOES tier size and does not require market maker execution of partial orders. This will allow the Association, for a 6 month period, to monitor the enhancements to SelectNet in conjunction with the mandatory display of size ordered in SR-NASD-89-12, while simultaneously preventing the potential misuse of OCT in the same manner that has been experienced with SOES in the past.

### IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, the requirements of sections 11A(a)(1) (B) and (C)(i), and 15A(b)(6) and the rules and regulations thereunder. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Section 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques.

The Commission believes the enhancements to SelectNet will facilitate the ability of broker-dealers to efficiently execute customer orders by providing participants with another vehicle to negotiate, execute, and compare transactions. In particular, the various enhancements will improve the operational efficiency of the system by providing market makers and order entry firms greater flexibility in the use of an automated support system, thereby encouraging usage of the system. The Commission also believes that it is reasonable to limit usage of SelectNet during its first 6 months of operation to ensure that participants

[4] Under current practice, NASDAQ market makers are not obligated to display quotations in excess of the normal unit of trading, 100 shares. Beginning on December 3, 1990, the approved NASD rule change will require NASDAQ market makers to display quotation size equal to the maximum order size displayed in SOES; *i.e.*, 1,000, 500 or 200 shares, depending upon the trading characteristics of the particular security. *See* Securities Exchange Act Rel. No. 28490 (September 14, 1990), 55 FR 38221 (September 25, 1990), approving File No. SR-NASD-89-12.

[5] *See* Securities Exchange Act Rel. No. 28045 (August 31, 1990), 53 FR 34656 (September 8, 1988), approving File No. SR-NASD-88-57 and Rel. No. 25651 (December 15, 1988), 53 FR 51065 (December 22, 1988), approving File No. SR-NASD-88-48.

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become familiar with the system and have an opportunity to assimilate their internal procedures to the mandatory display of size requirement. The Commission expects, however, that during the six month period the NASD will carefully consider a direct response to the potential for abuse of SelectNet by a small number of active professional traders, as a replacement to the present limitations imposed on SelectNet participants.

The Commission finds good cause for approving Amendment No. 1 for a 6 month period prior to the 30th day after the date of publication of the amendment in the **Federal Register.** This will allow the NASD to retain market maker support of the system and assess the impact of mandatory display of size on the SelectNet enhancements while preventing potential misuse of the system.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 21, 1990.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that File No. SR–NASD–90–51, be, and hereby is, approved, and that Amendment No. 1 thereto hereby is approved for a period of six months from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28108 Filed 11–29–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28835; File No. SR–NASD–89–9]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating To Limit Order Capabilities for Small Order Execution System**

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission") on February 24, 1989, and amended on December 18, 1989, and June 28, 1990, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder. [2] The proposal requests permanent approval of the limit order processing capability for the Association's Small Order Execution System ("SOES").

The purpose of SOES is to improve the efficiency of executing customer agency transactions in NASDAQ securities through the use of data processing and communication techniques. The addition of a limit order [3] storage and execution capability increases the efficiency and ability of the system to achieve this end. The SOES limit order processing capability serves the purpose of providing members, and in particular members not having proprietary systems with such capability, with the ability to enter and store limit orders.

The limit order capability initially was approved by the Commission on a pilot basis.[4] In that approval order, the Commission expressed concern that the limit order file did not permit the crossing of limit orders that are entered between the spread; and that serious questions were raised under sections 11A and 15A of the Act by the NASD institutionalizing a system whereby customers are precluded from interacting with one another.[5] Since requesting permanent approval for the SOES limit order capability, the NASD has proposed enhancements to the system which have addressed the Commission's earlier concerns. Specifically, the limit order file as approved will have the following capabilities:

**1. Alert**

The proposed alert will bring to the SOES market maker's attention those limit orders that are priced within the inside market (*i.e.,* within the best bid and offer available at that moment) and that potentially match another order already pending on the limit order file. For example, if an order is entered which cannot be executed (because it is away from the inside market), but whose price is equal to or better than the price of a previously entered order on the other side, an alert message will be displayed on the market marker's screen to indicate a potential match.

**2. Take-out**

The limit order file take-out function will be a new feature added to SOES which will allow market makers to execute limit orders at a specific price without changing their quotes. Any active SOES market maker who has an open quota and available exposure [6] in an issue may take out shares in that issue.

Market makers will be able to review a summary of limit orders in the system for each security, and enter orders to take-out, specifying the side of the market (buy/sell), the number of shares to be taken out, and the price at which the market maker is willing to execute.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] A limit order is an order to buy or sell a security at a specific price or better. The broker will execute the trade only within the price restriction. For example, a customer places a limit order to buy XYZ Corporation at $30 when the stock is selling for $32. Even if the stock reaches 30⅛ the broker will not execute the trade. Similarly, if the client places a limit order to sell XYZ Corporation at $33 when the price is $31, the trade will not be executed until the stock price reaches $33.

[4] Securities Exchange Act Rel. No. 26476 (January 19, 1989), 54 FR 3861 (January 26, 1989). The pilot program extends through December 31, 1990. *See* Securities Exchange Act Rel. No. 28165 (June 29, 1990), 55 FR 28120 (July 9, 1990).

[5] Section 15A(b)(6) of the Act provides in part that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Section 11A of the Act sets forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communication techniques. Additionally, section 11A(a)(1)(C)(v) states, in part, that it is in the public interest and appropriate for the protection of investors to assure an opportunity for investors' orders to be executed without the participation of a dealer. *See* letter to T. Grant Callery, Vice President and Deputy General Counsel, NASD, from Kathryn V. Natale, Assistant Director, Division of Market Regulation, SEC, dated January 24, 1990; and letter to Joseph R. Hardiman, President, NASD, from Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 11, 1990.

[6] The NASD Rules of Practice and Procedures for SOES require NASDAQ market makers that are also SOES market makers to execute orders through SOES in sizes up to the maximum SOES order size, *i.e.,* 1,000, 500 or 200 shares, depending upon the trading characteristics of the particular security. A market maker's exposure limit in a security is equal to five times the maximum order size for that security. *See NASD Securities Dealers Manual,* CCH ¶2451.



The system will receive or accept the take-out order, screen it for accuracy, and execute orders from the file at the take-out price. Orders will be executed on a price/time priority—first in/first out, on a full or partial basis, at the take-out price.

Take-outs will not interfere with the regular processing of SOES limit orders. Orders will continue to be executed against the inside market, as long as there is available size in the market maker's exposure limit, while the take-out is being processed.

**3. Matching**

If, after five minutes, none of the matched orders have been executed, either as a result of a change to the inside, or because a market maker has entered a take-out, the orders on the file will be matched and executed. Matches will include partial execution of orders that match or improve price, but do not match in size. Trades that are the result of a system order match will have a special identifier on the participants' computer screens, which have viewing access to their respective SOES executions; and the indicator will also be incorporated in the execution report on the NASDAQ screen.

The NASD intends for the limit order enhancement to be operative on December 10, 1990. As of the date of this order, however, the Association had not completed its stress testing of the enhanced capability, which is necessary to ensure that the processing equipment being used for the limit order system has the capacity to implement the changes approved in this order. Although the Commission, by this order, has approved the proposed rule change, the NASD is not permitted to implement the enhancements to the limit order capability unless and until it (1) successfully completes its stress tests and (2) has provided the Commission staff with representations regarding the effective completion of those tests.

Furthermore, it is noted that the limit order capability as approved does not impose priorities for execution of customer limit orders vis-a-vis members' proprietary transactions. NASD members are therefore cautioned to ensure that customer limit orders are handled in a manner consistent with members' fiduciary obligations to their customers.[7]

Notice of the proposed rule change together with the terms of substance of the proposal as amended was provided by the issuance of Commission releases (Securities Exchange Act Re. Nos. 27638, (January 19, 1990) and 28210 (July 16, 1990), and by publication in the **Federal Register** (55 FR 2723, January 26, 1990 and 55 FR 30055, July 24, 1990). The Commission received one comment letter in opposition to the proposal from the Security Traders Association ("STA").[8] While the STA supported the introduction of the limit order enhancement as originally proposed, it expressed a number of concerns with the proposal as amended to contain the matching function. The STA maintains that, as approved, the enhancement would not result in the economically efficient execution of securities transactions as mandated by section 11A(a)(1)(C)(i) of the Act. Specifically, the STA believes that market maker negotiation is the cornerstone of the NASDAQ market place; it facilitates the expectation of profit for the market participants on both sides of a securities transaction, thus providing incentive for market makers to continue to risk their capital to make markets. The crossing of public orders without the participation of a market maker would, in the STA's view, materially reduce this incentive, resulting in reduced market making in some securities. This, concludes the STA, would not foster the liquid and orderly markets as envisioned by Congress with the implementation of Section 11A.

The NASD, in response to the concerns of the STA and those of the trading community, developed the take-out function described above, and submitted as part of the second amendment to SR–NASD–89–9. The Commission believes that, on balance, the proposed rule change, as amended, adequately addresses the concerns of the STA. Moreover, the Association believes that the proposed enhancements to the SOES limit order file will improve the system's ability to execute effectively customer limit orders by permitting matching of orders entered between the spread, with an opportunity for market maker interaction.

Further, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the association, and in particular the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. In particular, the limit order system facilitates a number of Congressional goals set forth in the Act. Section 11(a)(1) (B) and (C)(i) of the Act [9] state the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing communication techniques; and section 17A(a)(1) (B) and (C) of the Act [10] articulate the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The limit order enhancements will provide customer orders with increased opportunities to interact without the intervention of a dealer and assures locked-in executions, thereby increasing the efficient processing of SOES transactions. Although the Commission is approving the NASD's proposal, we wish to emphasize that the five minute time delay prior to matching buy and sell limit orders at the same price is of continuing concern. While further assessment and revision by the NASD may be warranted after the permanent implementation of the system, the Commission believes that it is an important first step toward providing improved investor access to the NASDAQ market and improving market liquidity.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved, with implementation of the proposed rule change conditioned on the NASD (1) Successfully completing the stress tests and (2) providing the Commission staff with representations regarding the effective completion of those tests.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28107 Filed 11–29–90; 8:45 am]

BILLING CODE 8010–01–M

[7] *See In Re E.F. Hutton, Co., Inc.* Securities Exchange Act Re. No. 25887 (July 6, 1988).

[8] *See* letter from John L. Watson, III, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated February 22, 1990; referencing April 5, 1989 Position Paper of Security Traders Association on SR–NASD–89–9.

[9] 15 U.S.C. 78k–1.

[10] 15 U.S.C. 78q–1.

[11] 17 CFR 200.30–3(a)(12).

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[Rel. No. 34-28630; File No. SR-NYSE-90-52]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the New York Stock Exchange's Closing-Price Session of Its Off-Hours Trading Facility**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

(a) The NYSE proposes to extend its trading hours beyond the close of the 9:30 a.m.–4 p.m. trading session to establish a trading session known as "Crossing Session I," which will permit the execution of (i) Single-stock, single-sided closing-price orders; and (ii) crosses of single-stock, closing-price buy and sell orders.[1] The proposed rule change consists of changes to existing NYSE rules to accommodate the Exchange's "Off-Hours Trading" session and the adoption of a new "900 series" of rules that apply solely to the Off-Hours Trading session ("Rules for Off-Hours Trading Facility").[2]

(b) While the proposed rule change does not have a direct effect or a significant indirect effect on any other current rule of the NYSE in its current application, the proposed rule change applies a number of the NYSE's equity trading rules to Off-Hours Trading and excludes certain other existing NYSE equity trading rules from application to Off-Hours Trading. In some cases, the proposed rule change substitutes new terms for existing terms to cause an incorporated existing rule to properly apply in the Off-Hours Trading context. Proposed Rule 900 governs the interplay between the proposed Off-Hours Trading rules and the NYSE's existing stock trading rules.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of the proposed rule change is to establish rules to enable the NYSE to operate a trading session after the close of its 9:30 a.m.–4 p.m. trading session.

The Off-Hours Trading Session responds to the significant increase in overseas trading of listed stocks due to the export of orders from the United States resulting from structural and regulatory factors. The inability of traditional exchange markets to accommodate certain types of trading strategies, as well as advances in communications technology (and concomitant decreases in communications costs), the application of prophylactic regulations, such as the short sale rule,[3] and the desire of United States broker-dealers (and that of their customers) to avoid disclosing their trading activity, have caused them to export orders for execution outside the United States and, therefore, outside of the jurisdiction of the Commission and the regulatory oversight of the Exchange.

The NYSE has been searching for ways to meet this demand, while minimizing the effect on its auction-pricing mechanism. The NYSE's revisions to its rules relating to market-on-close orders, which the Commission approved on a pilot basis in June, 1990,[4] took a first step by permitting the entry of crosses in single stocks for paired execution as part of the closing trade.

The NYSE now proposes to offer an Off-Hours Trading session as an additional step in its effort to accommodate transactions that are not well suited to the continuous auction market it operates prior to 4 p.m.

Description of off-hours trading.[5] Commencing at 4 p.m. on each day that the market is open, the NYSE will complete its normal procedures for the close of auction trading in each stock. However, rather than being a terminal event, the close will now become a transitional event to the Exchange's Off-Hours Trading session.

Commencing a few minutes after 4 p.m., a closing-price session, or Crossing Session I, will enable entry of single-stock, single-sided orders ("closing-price single-sided orders") for execution at 5 p.m. against one another at the last price at which the stock traded during the 9:30 a.m.–4 p.m. session.[6] Certain limit orders migrated from the 9:30 a.m.–4 p.m. session will participate as well. In addition, the Session will allow entry after 4 p.m. of coupled single-stock closing-price buy and sell orders for execution at 5:00 p.m. at the closing price ("closing-price coupled orders").

*Order entry.* After 4 p.m., a member or member organization may enter via SuperDOT [7] a closing-price single-sided order (round lots only) or closing-price coupled order (odd lots and partial round lots permitted) for any SuperDOT-eligible issue (including rights, warrants, and American Depository Receipts) other than an issue that remained halted as of the close of the regular trading session.

Round-lot orders of up to 99,900 shares will be eligible. All closing-price orders will be held until 5 p.m. without any executions taking place.

Member organizations also may designate unconditioned round-lot and partial round-lot and limit orders entered during the 9:30 a.m.–4 p.m. session as "GTX" ("good 'til cancelled, executable through crossing session") to enable the orders to execute against closing-price single-sided orders during the Off-Hours Trading session.[8] Upon receipt of the Exchange's closing trade's price in a security, SuperDOT will "sweep" the specialists' limit order books for GTX orders that are at or better than the closing price. The "migrated" GTX orders will retain their priority as among themselves, and will have priority over all closing-price single-sided orders.

A member or member organization may enter closing-price orders and cancel closing-price orders and GTX orders until their 5:00 p.m. execution. However, if, between 4 and 5 p.m., news or other events cause the NYSE to determine that the closing-price facility should not be available for a specific stock, the NYSE will disseminate a notice to that effect over the low speed "ticker" line, cancel all closing-price orders, and return the GTX orders to the book (maintaining their priority).

Closing-price single-sided orders and GTX orders will be matched on a first-in, first-out ("FIFO") basis (with GTX orders deemed "first-in"). At 5 p.m., a clearing execution will take place. Any closing-price single-sided orders not executed will be returned; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders will be returned to the book, maintaining their priority; therefore, they will participate in the next day's opening, unless cancelled prior to the opening by the entering broker.

Closing-price coupled orders also will be independently executed at 5 p.m. Closing-price coupled orders will be entered without possibility of break-up and can only be executed in full.

The NYSE proposes to implement trade reporting for the closing-price session by reporting closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of the Consolidated Tape Association ("CTA") Plan and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print will include the closing price and aggregate volume of each stock. The prints created from execution of coupled orders will be accompanied by an indicator that so identifies them.

*Summary of off-hours trading rules.* Below the NYSE describes, on a rule-by-rule basis, the changes and additions to its rules necessary to accommodate the Off-Hours Trading session.[9] The changes and additions reflect the following approach:

(a) The NYSE has amended several existing NYSE rules to accommodate the Off-Hours Trading session or to limit the application of their provisions to the 9:30 a.m. to 4 p.m. trading session.

(b) The NYSE has proposed a new "900 series" of rules ("Rules for Off-Hours Trading Facility") that apply solely to the Off-Hours Trading session.

(c) The NYSE has applied all existing NYSE rules to the Off-Hours Trading session, except those rules specifically excluded from such application. (*See* paragraph (b) of proposed Rule 900 (Off-Hours Trading: Applicability and Definitions)).

(d) The NYSE has substituted terms to cause an incorporated existing rule to apply properly in the Off-Hours Trading context. (*See* paragraph (c) of proposed Rule 900).

*Rule-by-rule analysis—Rule 13 (definitions of orders).* Rule 13's definition of "day order" is amended to clarify that the day order expires at the end of the 9:30 a.m. to 4:00 p.m. trading session. It does not participate in Off-Hours Trading.

Rule 13's definition of "good 'til cancelled order" is amended to add a new designation for that type of order. If the order: (1) Is designated "Off-Hours eligible"; (2) is not a stop limit order; and (3) is executable at the closing price, it migrates to Off-Hours Trading after the close of the 9:30 a.m. to 4 p.m. trading session.

*Rule 36 (communications between exchange and members' offices).* Rule 36 is amended to limit the applicability of its "give-up" time requirement to transactions during the 9:30 a.m. to 4 p.m. trading session.

*Rule 51 (hours for business).* Rule 51 is amended to accommodate Off-Hours Trading, as well as the traditional 9:30 a.m. to 4 p.m. session.

*Rule 52 (dealings of floor—hours).* Rule 52, which limits the hours during which members may enter into transactions on the NYSE, is genericized by deleting references to Floor trading, thereby allowing the Off-Hours Trading rules to incorporate it.

*Rule 80B (Trading halts due to extraordinary market volatility).* Supplementary Material .30 of Rule 80B is amended to limit the provisions regarding the imposition of trading halts for a day to the 9:30 a.m. to 4 p.m. trading session only, and not to trading during the Off-Hours session.

*Rule 104* (dealings by specialists). Supplementary Material .11C of rule 104 is added and Supplementary Material .12 is amended to make clarifying references to the Off-Hours Trading rules.

*Guidelines for Specialists' Specialty Stock Option Transactions Pursuant to Exchange Rule 105.* A new guideline (k) is added to the rule 105 guidelines to make a clarifying reference to the Off-Hours Trading rules.

*Rule 107A* (registered competitive market-makers). Supplementary Material .70A of rule 107A is added to make a clarifying reference to the Off-Hours Trading rules.

*Rule 112* (restrictions on competitive traders). Supplementary material .50A of Rule 112 is added to make a clarifying reference to the Off-Hours Trading rules.

*Rule 118* (orders to be reduced and increased on ex-date). Supplementary Material .40 of rule 118 is added to make a clarifying reference to the Off-Hours Trading rules.

*Rule 121* (records of specialists). Rule 121 is amended to require specialists to retain for at least three years NYSE-provided reports relating to the migration to and from the Off-Hours Trading Facility, and the execution through that facility, of specialty stock orders left with him or her.

*Rule 410* (records of orders). Rule 410 is amended to require members and member organizations to preserve for at least three years a record of every Off-Hours Trading order entered by the member or member organization and of any cancellation of any such order.

*Rule 900* (off-hours trading: applicability and definitions). Rule 900 performs five primary functions:

(1) *Nonapplicable stock rules.* Rule 900 excludes certain existing stock rules from application to Off-Hours Trading. It does so for one of two reasons: either a new 900-Series Rule replaces it with a

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[1] Contemporaneously with this rule filing, the NYSE filed SR-NYSE-90-53, which proposes an aggregate-price session to be introduced after the close of the 9:30 a.m.–4 p.m. trading session as part of the herein proposed off-hours trading session. SR-NYSE-90-53 deals with the introduction of off-hours trading in coupled, aggregate-price orders for groups of 15 or more NYSE-listed stocks having an aggregate value in excess of $5 million.

[2] The exact text of the proposed rule change was attached to the rule filing as Exhibit A and is available at the NYSE and the Commission at the address noted in Item IV below.

[3] *See* Rule 10a–1 under the Act, 17 CFR 240.10a–1 (1989), and Exchange Rule 440B.

[4] *See* Securities Exchange Act Rel. No. 28107 (June 29, 1990), 55 FR 28117 (July 9, 1990).

[5] In addition to filing with the Commission rules for its proposed Off-Hours Trading sessions, the NYSE also has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with the proposal. Specifically, the NYSE seeks exemptive relief from the requirements of rule 11Aa3–1, which deals with trade reporting requirements, and rule 10a–1, the Commission short sale rule, for transactions effected during the closing-price session of its Off-Hours Trading facility. In addition, the NYSE requests that the Commission undertake rulemaking procedures to adopt a new rule that would exempt transaction in the Off-Hours Trading sessions from section 31 fees. For a discussion of these issues, see letter from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990. In the above letter, the NYSE also requests exemptive relief from the requirements of rules 11Aa3–2 and 10a–1, as well as other sections of the Act and rules thereunder, with respect to transactions effected on its proposed aggregate-price crossing session as described in SR–NYSE–90–53.

[6] The availability of NYSE systems for entry of closing-price orders will be delayed until the systems can "shift gears" from the continuous auction to the Off-Hours Trading session. The NYSE will use its existing systems to operate its Off-Hours Trading session. This use will not adversely affect their capacity or operation in respect of the 9:30–4 session.

[7] The NYSE's Designated Order Turnaround System, or SuperDOT, is the Exchange's network of electronic order processing and post-trade systems.

[8] If GTX if appended to (i) Any market, stop, or stop limit order, (ii) any odd-lot order (GTX may be appended to partial round-lot orders), or (iii) any order entered during the Off-Hours Trading session, Common Message Switch ("CMS") will reject it. Specialists will not know of limit orders' "GTX" status.

[9] As previously discussed, in connection with this proposal, the NYSE also has requested exemptive relief from a number of sections of the Act and its rules with regard to short sales, transaction reporting and other issues. *See supra* note 5.

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modified version adapted to the Off-Hours Trading context or the Rule pertains to a concept that does not apply to Off-Hours Trading.

(2) *Incorporated stock rules.* Any NYSE Rule that rule 900 does not specifically exclude from application does apply to Off-Hours Trading and to members and member organizations that participate. [So, for instance, the rules governing "operation of member organizations" (rules 325 through 465) apply to the operation of member organizations in their Off-Hours Trading activity because Rule 900 does not specifically exclude those Rules). This approach is reversed in respect of certain of the Rules governing dealings on the NYSE (rules 45 through 128B): Rule 900 lists such of those Rules as do apply to Off-Hours Trading. Those of rules 45 through 128B that are not listed do not apply.

(3) *Modifications to existing rules.* Paragraph (c) of Rule 900 substitutes terms to cause an incorporated existing rule to properly apply in the Off-Hours Trading context.

(4) *Interaction among off-hours trading rules and existing rules.* Paragraph (d) of rule 900 establishes five rules that deal with the impact of Off-Hours Trading rules on rules regulating Floor trading and *vice versa*:

a. For the purposes of Supplementary Material .40 of Rule 36 (Communications between Exchange and Members' Offices), a member or member organization executing an Off-Hours transaction for another member or member organization in respect of a customer order must report the transaction to the member of member organization carrying the customer's account within 15 minutes of the close of Off-Hours Trading.

b. Notwithstanding the tick restrictions of Supplementary Material .12 of rule 104, a specialist may assign to an investment account any specialty stock acquired through the Off-Hours Trading Facility and may purchase stock through that facility to cover a short position in his or her dealer account.

c. The tick restrictions that rules 104, 107A, and 112 apply to transactions of Specialists, Registered Competitive Market-Makers and Competitive Traders do not apply to transactions effected through the Off-Hours Trading Facility. However, the member must include his or her Off-Hours Trading activity in any calculation of his or her aggregate position in a stock.

d. A specialist may not effect a proprietary trade through the Off-Hours Trading Facility if the trade would require the specialist to liquidate an options position pursuant to Guidelines (c) of rule 105.

e. For rule 118 purposes, a security will not become quoted ex-dividend, ex-distribution, ex-rights, or ex-interest until after the close of Off-Hours Trading.

(5) *Defined terms.* Paragraph (e) of rule 900 defines several terms for use throughout the Off-Hours Trading rules.

*Rule 901* (securities to be traded). Rule 901 limits Off-Hours Trading to such equity securities as the NYSE may specify. The securities must be listed on the NYSE, or otherwise admitted to dealings.

*Rule 902 (off-hours trading orders).* Rule 902 authorizes the entry of two different types of orders into Off-Hours Trading:

(1) Single-sided orders for a security at its closing price; and

(2) Two-sided orders for a security at its closing price for execution against each other, so long as the orders are not proprietary to two member or member firms.

Rule 902 also specifies also that good 'til canceled orders on the specialist's limit order book that have been designated as "Off-Hours eligible" and that are not proprietary to the specialist shall migrate to the Off-Hours Trading Facility if executable at the closing price or better. It specifies that two-sided orders may be for delivery in accordance with the desires of the parties entering the orders, but that one-sided orders must be for "regular way" delivery.

Rule 902 cancels any closing-price orders not executed during an Off-Hours Trading session, allows a member or member organization to cancel prior to execution any of his or its orders, and returns to the specialist's limit order book migrated good 'til canceled orders that do not get executed in the Off-Hours Trading Facility.

Finally, rule 902 requires that orders to sell short be marked "short exempt." It allows partial round lots in the case of orders that migrate to the Off-Hours Trading Facility and both odd lots and partial round lots in the case of coupled closing-price orders. However, only round-lot single-sided closing-price orders may be entered.

*Rule 903* (off-hours transactions). Rule 903 specifies that single-sided and coupled closing-price orders and migrated orders get executed according to their priority at the end of the Off-Hours Trading session and that Off-Hours transactions bind members and member organizations.

Rule 904 (priority of off-hours trading orders). Rule 904 provides for priority as follows: Orders that migrated to the Off-Hours Trading Facility from the specialist's limit order book retain the same priority among themselves as they had on the specialist's book and have priority over closing-price orders entered directly into the facility. Closing-price orders have priority based on their time of entry into the facility.

*Rule 905* (off-hours trading reports and recordkeeping). Rule 905 requires members to report NYSE-specified information to the NYSE and to maintain and preserve relevant records.

*Rule 906* (impact of trading halts on off-hours trading). Rule 906 prohibits the entry of single-sided or coupled closing-price orders for a security into the Off-Hours Trading Facility if trading in the security has halted as of 4 p.m. Similarly, good 'til cancelled orders for a security do not migrate to the facility if trading in the security has so halted.

Off-Hours Trading of migrated orders and single-sided and coupled closing-price orders for a security is not available if the NYSE announces a corporate development in respect of the security's issuer during an Off-Hours Trading session. In that event, unexecuted good 'til cancelled orders return to the specialists's book, unexecuted single-sided or coupled closing price orders get cancelled, and no new single-sided or coupled closing price orders may be entered.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited or received.

**III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:



(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. There are several issues raised by the NYSE proposal that the Commission would be particularly interested in receiving comment on. (1) While granting priority to GTX orders that have "migrated" from the specialists' limit order books, the rules for the Exchange's proposed off-hours closing-price session provide that closing-price single-sided orders have priority based on the time of entry into the Off-Hours Trading Facility. Under this strict time priority system, there is not requirement that firm proprietary orders yield to customer orders. Is the lack of customer preference necessary or appropriate for the closing-price session?; and (2) In the proposed closing-price session, there is no dissemination of order imbalances between closing-price, single-sided orders. Would such dissemination be helpful or confusing, especially considering that trades in the closing-price session have to be effected at the closing NYSE price?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-52 and should be submitted by December 21, 1990.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 21, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-28109 Filed 11-29-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28648; File No. SR-NYSE-90-52]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the New York Stock Exchange's Aggregate-Price Session of Its Off-Hours Trading Facility**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

(a) The NYSE proposes to introduce into its rules "Crossing Session II," that is, the execution of crosses of multiple-stock aggregate-price buy and sell orders through the NYSE's proposed Off-Hours Trading Facility.[1] For that purpose, the proposed rule change consists of changes to (i) The Exchange's proposed new "900 series" of rules that the Exchange is filing with the Commission (in SR-NYSE-90-52) contemporaneously with the instant proposed rule change[2] and (ii) existing NYSE rules as the NYSE has proposed to modify those rules pursuant to SR-NYSE-90-52. For the purposes of Crossing Session II, the NYSE does not seek unlisted trading privileges ("UTP") in respect of over-the-counter ("OTC") stocks, but does seek such privileges in respect of certain stocks listed on the American Stock Exchange ("Amex").[3]

[1] Contemporaneously with this rule filing, the NYSE filed SR-NYSE-90-52, which proposes that a closing-price trading session be established after the close of the 9:30 a.m.–4 p.m. trading session as part of the Exchange's Off-Hours Trading Facility. The closing-price session proposed by the Exchange in SR-NYSE-90-52 would permit the execution of single-stock, single-sided closing-price orders as well as crosses of single-stock, closing price buy and sell orders.

[2] In SR-NYSE-90-52, the NYSE proposes the adoption of a new 900 series of rules that apply solely to the Off-Hours Trading session.

[3] The exact text of the proposed rule change was attached to the rule filing as Exhibit A and is available at the NYSE and the Commission at the address noted in Item IV below.

(b) While the proposed rule change does not have a direct effect or a significant indirect effect on either the current rules of the NYSE or the proposed closing-price Off-Hours Trading rules described in SR-NYSE-90-52, the proposed rule change "piggybacks" on the proposed rules used to establish the closing-price session (or "Crossing Session I"), and adopts the drafting techniques described in SR-NYSE-90-52.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of the proposed rule change is to establish rules to enable members and member organizations to participate in Crossing Session II after the NYSE's 9:30 a.m.–4 p.m. trading session.

As the NYSE describes more fully in SR-NYSE-90-52, the Exchange is trying to respond to the significant increase in overseas trading of listed stocks due to the export of orders from the United States resulting from structural and regulatory factors. In particular, the development of trading strategies involving the contemporaneous execution of multiple stocks at a single, aggregate price, often in conjunction with index options and futures, has resulted in a demand for a means for their execution that will supplement the single-stock execution facilities traditionally offered by the NYSE. This proposed rule change, like the proposed Off-Hours closing-price session described in SR-NYSE-90-52, attempts to accommodate these types of orders in light of advances in communications technology and today's regulatory environment.

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*Description of off-hours aggregate-price crossing.*[4] The NYSE will permit members and member organizations to enter aggregate-price crosses into the Off-Hours Trading Facility on virtually the same basis as it proposes to permit them to enter closing-price orders, described in SR–NYSE–90–52. Like closing-price single-sided orders and closing-price coupled orders, aggregate-price coupled orders cannot be entered until after the close of the 9:30 a.m.–4 p.m. session. Members and member organizations will transmit summary data regarding aggregate-price coupled orders to the Exchange via facsimile.

The facsimiles will be immediately time-stamped and confirmed back to the entering brokers, thereby effecting continuous executions of these orders.

The NYSE proposes to implement trade reporting for the aggregate-price session by aggregating the total number of shares and the total market value of the aggregate-price trades into two reports: one for NYSE-listed stocks, and a second for stocks admitted to UTP. (The NYSE does not seek UTP in respect of OTC stocks, but does seek UTP in respect of certain stocks listed on the Amex).[5] After 5:15 p.m., the NYSE will transmit the two reports over the high speed line as administrative messages.[6]

Neither pre-4 p.m. trading halts in one ore more individual stocks nor the unavailability of the Off-Hours closing-price market in one or more individual stocks due to post-4 p.m. news will affect the execution of aggregate-price coupled orders. However, a market-wide halt pursuant to Rule 80B that is still in effect at 4 p.m. will halt aggregate-price crossing.

*Summary of aggregate-price off-hours trading rules.* Below the NYSE describes, on a rule-by-rule basis, the changes and additions to its rules necessary to accommodate the Off-Hours Trading sessions.[7] The changes and additions reflect the approach adopted in respect of the Off-Hours closing-price rules that the NYSE proposed in SR–NYSE–90–52:

*Rule-by-rule analysis—Rule 92 (limitations on members' trading because of customers' orders).* Supplementary Material .20 of rule 92 is amended to add a clarifying reference to the Off-Hours Trading rules.

*Rule 104 (dealings by specialists).* Supplementary Material .11C of rule 104 is amended to conform a cross reference to the Off-Hours Trading rules.

*Guidelines for specialists' specialty stock option transactions pursuant to Rule 105.* Proposed Guideline (k) to Rule 105 is amended to conform a cross reference to the Off-Hours Trading rules.

*Rule 107A (registered competitive market-makers).* Supplementary Material .70A of rule 107A is amended to conform a cross reference to the Off-Hours Trading rules.

*Rule 112 (restrictions on competitive traders).* Supplementary Material .50A of rule 112 is amended to conform a cross reference to the Off-Hours Trading rules.

*Rule 118 (orders to be reduced and increased on ex-date).* Supplementary Material .40 of rule 118 is amended to conform a cross reference to the Off-Hours Trading rules.

*Rule 900 (off-hours trading: applicability and definitions).* A new subparagraph (ii) is added to paragraph (d) of Rule 900 to establish that, notwithstanding rule 92, a member or member organization may enter into the Off-Hours Trading Facility aggregate-price coupled orders even if he or it holds an unexecuted closing-price order.

In addition, a new subparagraph (i) is added to paragraph (e) of rule 900 to define "aggregate-price order" as an order to buy or sell a group of securities, which group includes no fewer than 15 NYSE-listed securities having a total market value of $1 million or more.

*Rule 901 (securities to be traded).* Rule 901 is amended to permit stocks not listed on the NYSE, but that have otherwise been admitted to dealings on the NYSE, to participate in aggregate-price crosses.

*Rule 902 (off-hours trading orders).* A new subparagraph (iii) is added to paragraph (a) of rule 902 in order to authorize the entry of coupled, aggregate-price orders into the Off-Hours Trading Facility.

Paragraph (c) of rule 902 is amended to clarify that aggregate-price orders may be for delivery at such times as the parties may agree.

Finally, paragraph (g) of rule 902 is amended to clarify that an aggregate-price order may be for an odd-lot or a partial round lot.

*Rule 903 (off-hours transactions).* Paragraph (b) of rule 903 is amended to specify that aggregate-price orders get executed against the other side without regard to the priority of other orders.

Paragraph (d) of rule 903 is amended to specify that coupled aggregate-price orders are executed upon entry. *Rule 906 (impact of trading halts on off-hours trading).* Supplementary Material .10 is added to rule 906 to clarify that aggregate-price orders may be entered notwithstanding any corporate development or trading halt (other than a trading halt pursuant to rule 80B).

(2) Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited or received.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–53 and should be submitted by December 21, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1990.

**Jonathan G. Katz,**
*Secretary.*

**Margaret H. McFarland,**
*Deputy Secretary.*

[FR Doc. 90–28110 Filed 11–29–90; 8:45 a.m.]
BILLING CODE 8010–01–M

[4] In addition to filing with the Commission rules for its proposed Off-Hours Trading sessions, the NYSE also has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with the proposal. Specifically, the NYSE seeks exemptive relief from the requirements of rule 11Aa3–1, which deals with trade reporting requirements, and rule 10a-1, the Commission short sale rule, for transactions effected during Crossing Session II. The NYSE further requests exemptive relief from rules 10b-6, 10b-7, and 10b-8, which relate to certain fraudulent and manipulative practices, and rules 15c1–5, and 15c1–6, which deal with disclosure requirements, for aggregate-price coupled orders effected during Crossing Session II. In addition, the Exchange seeks no-action relief from section 12(f) of the Act and requests UTP in stocks listed on the Amex to accommodate the trading of aggregate-price coupled orders in Crossing Session II. Finally, the NYSE requests that the Commission undertake rulemaking procedures to adopt proposed rule 12a-7 in a modified form to exempt certain portfolio transactions that would be effected during Crossing Session II from registration under section 12(a) and a new rule that would exempt transactions in the Off-Hours Trading sessions from section 31 fees. For a discussion of these issues, *see* letter from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990.

[5] The NYSE originally filed a proposed rule change, SR–NYSE–90–42, in which it proposed two sessions that are nearly identical to the two trading sessions proposed in the instant rule filing. In the original rule filing (SR–NYSE–90–42), which was withdrawn by the NYSE and replaced with two new rule filings (SR–NYSE–90–52 and SR–NYSE–90–53), the NYSE had requested UTP in OTC stocks for orders in the aggregate-price crossing session. *See* letter from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990. In the instant rule filing, however, the NYSE withdrew its previous request for UTP in OTC stocks for its proposed aggregate-price crossing session. The NYSE still requests UTP in Amex-listed stocks for orders in the aggregate-price crossing session.

[6] The Commission notes that the procedures proposed by the NYSE for reporting aggregate-price trades is comparable to the reporting procedures for the trading of standardized market baskets. *See* Securities Exchange Act Rel. No. 27380 (October 20, 1989), 54 FR 45079.

[7] As previously discussed, in connection with this proposal, the NYSE also has requested exemptive relief from a number of sections of the Act and its rules with regard to UTP, short sales, transaction reporting and other issues. *See supra* note 4.



[Rel. No. 34–28637; File No. SR–Phlx–90–01]

**Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Exchange Arbitration Procedures**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 1, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to delete and to replace current Exchange rule 950, which governs arbitration, in its entirety. The proposed new rule 950 is based upon the Securities Industry Conference on Arbitration Uniform Code of Arbitration ("Uniform Code") as adopted by the National Association of Securities Dealers ("NASD"). In addition, the Phlx proposes to amend By-Law Article X, section 10–8, which governs its Arbitration Committee, in order to accommodate the Uniform Code.

The text of the proposed rule change is available for inspection and copying at the Commission's Public Reference Section and at the Phlx.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange believes that the proposed rule change will greatly benefit Phlx members and public customers by increasing the efficiency of the Phlx arbitration system and enhancing the neutrality of the forum. In proposing the new rule 950, the Exchange essentially is adopting the Uniform Code, along with its most recent amendments regarding the public availability of public customer arbitration decisions.[1] The proposed new rule 950 is based upon the NASD's arbitration rules, aside from certain modifications thereto that would make the arbitration rules better serve the Phlx. The Exchange proposes amendments to Phlx By-Law Article X, section 10–8, in part, to accommodate the change to the Uniform Code. The Exchange felt that it would be more expedient simply to adopt a version of the Uniform Code, rather than to make piecemeal amendments to its existing rule 950 in order to ultimately comply with the Uniform Code. Another reason for this wholesale adoption is that new rule 950 is meant to apply to both public customer and member-member controversies, because current rule 950 does not apply to the latter.

The Exchange's member-member controversies currently are arbitrated before a quorum of the Phlx Arbitration Committee, pursuant to By-Law section 10–8. Experience has proven this to be a cumbersome and problematic procedure, both in scheduling and conducting hearings, and in deliberating the merits of each case. Accordingly, the Exchange has proposed to amend By-Law section 10–8 in order to authorize the implementation of a panel system for arbitration of member-member controversies. This measure will greatly assist in making arbitration the expeditious process that it was intended to be by allowing several arbitrations to be scheduled concurrently.

Other significant amendments to By-Law section 10–8 include the assertion of jurisdiction over associated persons in their capacity as such. This is merely a codification of the Exchange's interpretation of section 10–8. Also included is the requirement that a dispute subject to arbitration arise in connection with the securities business of such member, member organization and/or associated person. These amendments are intended to clarify the Exchange's arbitration jurisdiction.

The Exchange proposes to add subsection (c) to section 10–8, to enable

[1] *See* Securities Exchange Act Rel. No. 28065 (May 10, 1990), 54 FR 21144 (May 16, 1990) by which the Commission approved several amendments to the arbitration rules of certain self-regulatory organizations ("SROs") which administer arbitration programs (File Nos. SR–NYSE–88–28; SR–NYSE–88–8; SR–NASD–88–29; SR–NASD–88–31; SR–NASD–88–19; SR–AMEX–88–29).

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the Exchange's Business Conduct Committee to penalize persons for noncompliance with their obligations under the Arbitration Code. This is accomplished by allowing such noncompliance to be deemed conduct inconsistent with just and equitable principles of trade. This measure is intended to strengthen the Exchange's ability to bind its members to its arbitration process.

The Exchange also proposes to delete its current rule 950 and adopt a new rule 950, thereby changing the Exchange's arbitration procedures. In order to expedite the arbitration process, to make it a more efficient vehicle, and to align the facility with those of the other SROs, it was decided to change the Exchange's arbitration procedures to conform with the current Uniform Code. This also would include the recent amendments thereto, regarding the public availability of arbitration awards.[2]

The Exchange's current rule 950 contains provisions similar to the Uniform Code, but is lacking in several areas. The most significant problem is the fact that its procedural provisions only relate to public customer controversies, which leaves a procedural void for member-member arbitrations. Further, upon modifying the rule to apply to member-member controversies, it becomes necessary to implement a panel system for the above mentioned reasons.

Rather than undergo the difficult process of amending rule 950 in a piecemeal fashion to conform to the Uniform Code, it was decided to adopt wholly a new code of arbitration procedure. The NASD's Code of Arbitration Procedure was used as a model for the revised rule 950.

The proposed rule change is consistent with section 6 of the Act, particularly section 6(b)(5). By making the arbitration process a more efficient, expeditious and inexpensive forum for dispute resolution, the proposed rule change will promote just and equitable principles of trade and otherwise protect investors and promote the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The proposed amendments were approved by the Board of Governors ("Board") on July 16, 1990 and September 26, 1990. The Exchange notified its membership of the proposal and received no written comments on the proposed amendment to its By-Laws.[3]

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-90-03 and should be submitted by December 21, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28111 Filed 11-29-90; 8:45 am]

BILLING CODE 8010-01-M

[2] *See supra* note 1 and accompanying text.

[3] Article XXII, section 22-2 of the Phlx By-Laws provides that any amendment to the By-Laws which originates with the Board of Governors shall be printed and posted for 10 days and distributed to Exchange members. If within the 10 day period, a written request of not less than 17 members is filed with the Secretary of the Exchange, the Chairman of the Board shall call a meeting at which each member may vote on the amendment. In the absence of a request for a special meeting, the Board, after the expiration of the 10 day period, may consider the proposed amendment, and, if the proposed amendment is adopted by a vote of 15 Board members, the amendment becomes a part of the By-Laws.

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**[Release No. 35-25192]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

November 23, 1990.

Notice is hereby given that the following filing(s) has/have been made with the commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 17, 1990 to the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**CSW Credit, Inc., et al. (70-7113 and 70-7218)**

Central and South West Corporation ("CSW"), a registered holding company, and CSW Credit, Inc. ("Credit"), its nonutility subsidiary company, both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment to their application-declaration under sections



6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By orders dated July 19, 1985, July 31, 1986, February 8, 1988, December 27, 1989 and August 30, 1990 (HCAR Nos. 23767, 24157, 24575, 25009 and 25138, respectively), CSW was authorized to form Credit for the purpose of factoring the accounts receivable of CSW's operating subsidiaries and nonassociate utility companies through December 31, 1990, and to have Credit's ratio of debt to equity be maintained at approximately 95% debt to 5% equity. CSW and Credit now propose to extend to December 31, 1991, the time within which Credit is authorized to factor accounts receivable.

**The Southern Company, et al. (70-7150)**

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned, electric public-utility subsidiary company, Southern Electric International, Inc. ("SEI"), 100 Ashford Center North, suite 400, Atlanta, Georgia 30338, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By orders dated November 18, 1985 and April 22, 1988 (HCAR Nos. 23911 and 24825, respectively) ("Orders"), the Commission authorized SEI to meet its working capital requirements by issuing and selling unsecured notes ("Notes"), under an exception from competitive bidding, maturing no later than December 31, 2000, in an aggregate principal amount not to exceed $30 million, through December 31, 1990. The Commission reserved jurisdiction over the issuance of an additional up to $45 million aggregate principal amount of notes and over whether the notes could be acquired by non-affiliate lenders. Any notes issued to a lender, other than Southern, would be guaranteed by Southern. SEI now proposes to extend to December 31, 1995 the time during which the transactions authorized by the Orders may occur.

**Entergy Corporation, et al. (70-7561)**

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its subsidiaries, System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, Arkansas Power & Light Company ("AP&L"), 425 West Capitol Street, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("LP&L"); 317 Baronne Street, New Orleans, Louisiana 70112, Mississippi Power & Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201 and New Orleans Public Service Inc. ("NOPSI") 317 Baronne Street, New Orleans, Louisiana 70112 (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under Sections 6(a), 7 and 12(b) of the Act Rules 45 and 50 thereunder.

By order dated December 23, 1988 (HCAR No. 24791), in connection with the equity funding of the sale and leaseback of Grand Gulf Nuclear Generating Station, Unit I ("Grand Gulf I") ("Lease"), consummated by SERI on December 28, 1988, the Applicants were authorized, among other things, to obtain financial support in the form of a letter of credit ("LOC"), which was provided by the Fuji Bank, Limited ("LOC Bank"), to secure the payment to the owner-lessor ("Owner") of the Net Casualty Value, as defined in the Lease, which might be payable from time-to-time by SERI under the Lease. Upon the occurrence of certain events, the Owner would be entitled to draw on the LOC in amounts equal to amounts owed by SERI under the Lease for the Net Casualty Value. Pursuant to a Reimbursement Agreement, dated as of December 1, 1988 ("Reimbursement Agreement"), SERI was also authorized to reimburse the LOC Bank at its prime rate, certificate of deposit rate or the LIBOR, at SERI's option, for amounts drawn under the LOC. SERI was further authorized to assign, for the benefit of the LOC Bank, an administrating bank ("Administrating Bank") and the participating banks ("Participating Banks"), its rights under: (1) An Availability Agreement, dated as of June 21, 1974 ("Availability Agreement"), among itself, AP&L, LP&L, MP&L and NOPSI, consented to and joined in by AP&L, LP&L, MP&L and NOPSI; and (2) a Capital Funds Agreement, dated as of June 21, 1974, ("Capital Funds Agreement"), between itself and Entergy, consented to and joined in by Entergy.

The LOC is scheduled to terminate on December 28, 1991. SERI now proposes to alter certain terms and conditions contained in the LOC and the Reimbursement Agreement. In this regard, and because a participation agreement ("Participation Agreement") requires the LOC to be in place for a term of at least three years, the Applicants now propose to extend the LOC for a period slightly in excess of three years, commencing on the expected date of closing, December 20, 1990, and ending January 15, 1994, subject to the terms and conditions of a proposed First Amendment to the Reimbursement Agreement to be entered into among SERI, a LOC bank to be designated ("New LOC Bank"), the Administrating Bank and the Participating Banks ("Amended Reimbursement Agreement"). It is proposed that the maximum amount of the Net Casualty Value under the Lease be increased from $128,126,450 to $145,751,800 for the new term of the LOC.

The Applicants also propose to effect certain amendments and modifications to the existing Reimbursement Agreement, as follows: (1) Changes in the amounts of annual fees payable to the New LOC Bank, the Participating Banks and the Administrating Bank; (2) modifications to certain of the representations and warranties SERI may be required to make in order to extend its reimbursement obligation in respect of the LOC from five days to 90 days; (3) providing that neither the New LOC Bank nor any Participating Bank may seek capital adequacy yield compensation; (4) clarifying provisions regarding cross-acceleration to other debt of SERI is excess of $10 million; and (5) reducing SERI's consolidated equity ratio requirement from 35% to 33% of consolidated capitalization, plus short-term debt in excess of 10% of consolidated capitalization.

SERI further proposes to enter into assignments, for the benefit of the LOC Bank, the Administrating Bank and the Participating Banks, of its rights under the Availability Agreement and the Capital Funds Agreement, and obtain the related consents.

The Participation Agreement requires SERI to maintain the LOC throughout the initial term of the Lease, which ends July 15, 2015 ("Basic Lease Term"), with such LOC to have (A) an amount available to be drawn as of any date at least equal to the Net Casualty Value at such date, and (B) a maximum amount as of any date not less than the highest Net Casualty Value (as adjusted from time-to-time) payable as of any date during the shorter of the next three years or the remaining term of the LOC. The maximum Net Casualty Value of any LOC during the Basic Lease Term is $200,576,150.

The Applicants further propose to extend, increase the amount of, and/or change the pricing terms of subsequent LOCs during the Basic Lease Term, subject to further Commission authorization, as follows: (1) To increase the LOC to an amount not in excess of $200,576,150; (2) to pay fronting the annual fees to the New LOC Bank and the Participating Banks in any amount provided however that such amount shall not exceed in the aggregate

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1.4375% per annum; (3) to change the identity of the Administrating Bank, the New LOC Bank and any Participating Bank; (4) to extend the LOC in any increment to time or times and the Amended Reimbursement Agreement to July 15, 2015; (5) to enter into one or more additional assignments, for the benefit of the New LOC Bank, the Administrating Bank and the Participating Banks of SERI's rights under the Availability Agreement and the Capital Funds Agreement, including the relevant consents, substantially in the form of previous agreements; and (6) to pay, in connection with any such extension or increase in amount, an arrangement fee(s), not exceeding 2-½% of the highest amount of the revised LOC.

**OLS Energy-Chino, et al. (70-7725)**

OLS Energy-Chino ("Chino"), OLS Energy-Berkeley ("Berkeley") and OLS Energy-Camarillo ("Camarillo"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, indirect subsidiaries of General Public Utilities Corporation ("GPU"), a registered holding company, have filed a post-effective amendment to their declaration under section 6(a) and 7 of the Act.

By order dated August 1, 1989 (HCAR No. 24931), Energy Initiatives, Inc., a wholly-owned indirect subsidiary of GPU, was authorized to acquire through a newly-formed, wholly owned subsidiary, Camchino Energy Corporation, general and limited partnership interests, aggregating a 50% interest, in OLS Power Limited Partnership ("Partnership") and, by the Partnership, all of the outstanding common stock ("Common Stock") of Chino, Berkeley and Camarillo. Chino, Berkeley and Camarillo ("Lessees") are all lessees of operating cogeneration facilities ("Facilities") located in California. Each Facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978. Prior to the acquisition, each of the Lessees had entered into a revolving credit agreement ("Credit Agreement") with General Electric Capital Corporation ("GECC"), the owner of the Facilities, to provide short-term working capital requirements for each Facility.

By order dated February 9, 1990 (HCAR No. 25038) ("February Order") Berkeley, Chino and Camarillo were authorized to amend their Credit Agreements with GECC to: (a) Increase the aggregate principal amounts which may be outstanding from time-to-time thereunder from $1 million to $1.25 million; (b) reduce the annual interest rate payable on all outstanding borrowings from 5% above Morgan Guaranty Trust Company's prime rate, as in effect from time-to-time, to 3% above such rate; and (c) extend to December 31, 1990 the time during which they may borrow under their respective Credit Agreements. The February Order also authorized Chino and Camarillo to provide for the issuance of letters of credit ("LOCs") by GECC as security for their respective obligations to pay for natural gas supplied to their Facilities. GECC has issued LOCs in the amount of $800,000 for Camarillo and $700,000 for Chino, and the maximum amounts of borrowings which Chino and Camarillo may make under their Credit Agreements have been reduced by the respective face amount of the LOCs.

Chino, Camarillo and Berkeley now seek to extend to December 31, 1992 the time during which they may make borrowings under their respective Credit Agreements, as amended, and, in the cases of Chino and Camarillo, the time during which LOCs may be outstanding under their respective Credit Agreements.

The Lessees will use the proceeds from such borrowings for working capital and general corporate purposes or, in the cases of Chino and Camarillo, to repay GECC amounts paid by it under the LOCs.

**Consolidated Natural Gas Company, et al. (70-7761)**

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its gas public-utility subsidiary company, CNG Energy Company ("CNG Energy"), both at CNG Tower, Pittsburgh, Pennsylvania 15222-3199, have filed an application-declaration under sections 6(a), 6(b), 9(a), 9(c)(3), 10 and 12(b) of the Act and Rule 43 thereunder.

CNG Energy proposes to establish a new, wholly-owned, limited purpose subsidiary company, to be named CNG Technologies, Inc. ("CNGT"), to pursue and support the development of new gas related technologies. CNGT will have authorized capitalization consisting of 250 shares of common stock, $10,000 par value per share, to be issued to CNG Energy. CNG Energy also proposes to acquire, for $2 million, a limited partnership interest in EnerTek Partners, L.P. ("EnerTek" or the "Partnership"), and to assign its interest in EnerTek to CNGT.

EnerTek is a gas industry fund that will invest in smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. The term of the Partnership is to be ten years, subject to further extension by mutual agreement of the partners. EnerTek's general partner is Scientific Advances, Inc. ("SAI"), a wholly owned subsidiary of Battelle Memorial Institute ("Battelle"), a nonprofit institution serving industry and government in the generation, application and commercialization of technology. SAI manages Battelle's venture capital activities.

The initial capitalization of EnerTek is estimated to be from $10 million to $20 million, which may be increased to a maximum of $50 million. CNG Energy states that its proposed $2 million investment in EnerTek would consist of an initial cash contribution of $100 at the time the partnership is formed, and additional capital contributions to EnerTek over a four year period. Any further contributions to EnerTek by CNG Energy or CNGT will be subject to further Commission authorization.

CNG Energy states that CNGT's proposed acquisition may account for as much as 20% of the limited partnership interest, which interest is nonvoting. CNG Energy requests that the Commission find, pursuant to section 2(a)(8) of the Act, that EnerTek will not be deemed an indirect or direct subsidiary of Consolidated in that the management and policies of EnerTek are not subject to a controlling influence directly or indirectly by Consolidated.

Under the Partnership agreement, distributions from EnerTek to the limited partners can be made in cash or freely transferable securities, which CNGT states it will hold as a passive investment to be sold as soon as market conditions permit. If any voting securities are received as a distribution from EnerTek, CNGT will not vote those securities, without further Commission authorization, if it owns five percent or more of such outstanding voting securities.

CNGT proposes, from time-to-time through December 31, 1993, to issue and sell its common stock to, and/or obtain long-term loans from, CNG Energy, or any combination thereof, in an aggregate outstanding amount not to exceed $2 million. CNG Energy, in turn, proposes, from time-to-time through December 31, 1993, to issue and sell its common stock $1,000 par value per share, to Consolidated and/or obtain long-term loans from Consolidated, or any combination thereof, in an aggregate outstanding amount not to exceed $2 million. Consolidated will purchase common stock from, and/or make loans to, CNG Energy with funds acquired from internal cash generation, issuances of long-term debt securities, borrowings under credit agreements or through other authorizations by the Commission.



Loans to CNGT and CNG Energy will be evidenced by the issuance of long-term non-negotiable notes ("Notes") maturing over a period not to exceed 30 years, with interest predicated to and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financing. In the event that Consolidated does not issue long-term during the period July 19, 1990 through December 31, 1993, the long-term borrowing rates will be tied to the Solomon Brothers indicative rate for comparable debt issuances published in Solomon Brothers Inc. Bond Market Roundup on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if it subsequently issued long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve month period, the indicative rate at the time of takedown will be used for the life of the Notes.

**Columbia Gas System, Inc. (70-7763)**

Columbia Gas System, Inc. ("Columbia"), a registered holding company, located at 20 Montchain Road, Wilmington, Delaware 19807-0020, has filed an application-declaration under sections 6(a), 6(b), 9(a), 9(c)(3), 10 and 12(b) of the Act and Rule 43 thereunder.

Columbia proposes to establish and capitalize a new Delaware limited purpose subsidiary, to be named TriStar Capital Corporation ("TCC"), to pursue and support the development of new gas related technologies. TCC will have authorized capitalization consisting of 400,000 shares of common stock, $15 par value per share. It is proposed that TCC form separate subsidiary corporations for each area of its investments.

TCC seeks authority to form and capitalize a new subsidiary, TriStar Gas Technologies, Inc. ("TGT"), which will acquire, for $2 million, a limited partnership interest in EnerTek Partners, L.P. ("EnerTek" or the "Partnership"). EnterTek is a gas industry fund that will invest in smaller companies developing new technologies to enhance the supply, transportation and utilization of natural gas. The term of the Partnership is to be ten years, subject to further extension by mutual agreement of the partners. EnerTek's general partner is Scientific Advances, Inc. ("SAI"), a wholly owned subsidiary of Battelle Memorial Institute ("Battelle"), a nonprofit institution serving industry and government in the generation, application and commercialization of technology. SAI manages Battelle's venture capital activities.

The initial maximum capitalization for the Partnership is estimated to be from $10,000,000 to $20,000,000, which may be increased to a maximum of $50 million. Columbia states that TGT's proposed $2 million investment in the Partnership may account for as much as 20% of the limited partnership interest, which interest is nonvoting. Columbia requests that the Commission find, pursuant to section 2(a)(8) of the Act, that EnerTek should not be deemed an indirect or direct subsidiary of Columbia in that the management and policies of EnerTek are not subject to a controlling influence directly or indirectly by Columbia.

Under the Partnership agreement, EnerTek will make distributions to TGT, and the other limited partners, in cash or freely tradeable securities, which TGT will hold as passive investments and subsequently dispose of such securities through a sale at such time as favorable market conditions permit. Columbia states that, if TGT receives as part of any distribution voting securities which constitute five percent or more of the outstanding voting securities of the issuer, TGT will not vote the securities without prior Commission authorization.

It is further proposed that, prior to December 31, 1993: (1) TCC obtain financing of up to $2 million by issuing and selling up to 40,000 shares of its common stock, $25 par value, and issuing up to $1 million of installment promissory notes, to Columbia; and (2) TGT obtain financing of up to $2 million by issuing and selling up to 40,000 shares of its common stock, $25 par value, and issuing up to $1 million of installment promissory notes, to TCC.

The Notes issued by TCC or TGT to evidence their respective borrowings will be unsecured, dated the date of their issue, and bear interest at a rate equal to the effective cost of money to Columbia with respect to its most recent issuance of long term debt. The principal amount of the Notes will be repaid over a term not exceeding thirty years, which will approximate the term of Columbia's last issued long-term debt instrument.

**Holyoke Water Power Company (70-7779)**

Holyoke Water Power Company ("Holyoke"), One Canal Street, Holyoke, Massachusetts 01040, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Holyoke proposes to borrow the proceeds from pollution control revenue bonds ("Bonds") to be issued by the Massachusetts Industrial Finance Agency ("MIFA") in the principal amount of not more than $15.3 million in order to finance certain pollution control facilities at its Mt. Tom Station, located in Holyoke, Massachusetts. The Bonds will be issued under an Indenture between MIFA and a trustee ("Trustee"). The proceeds of the Bonds will be loaned to Holyoke under a Loan Agreement ("Loan Agreement") entered into by MIFA and Holyoke. Holyoke will issue a note ("Note") in a principal amount of up to $15.3 million to evidence its borrowings.

The Bonds will be issued with variable interest rates for each seven-day interest period ("Weekly Rate") as floating rate demand bonds and will mature in approximately 25 to 30 years. At Holyoke's option, the Weekly Rate may be converted to a term rate for (i) a period of one year or any multiple thereof, or (ii) a period equal to the time remaining until the maturity of the Bonds ("Term Rate"). In no event will the interest rate exceed 15% per annum.

The Bonds will be initially marketed and sold under a bond purchase agreement to be entered into by Holyoke, MIFA and an underwriter, which will purchase the Bonds from MIFA and then sell the Bonds to the public. Holyoke will pay an underwriting fee of up to 1% of the principal amount of the Bonds to be purchased, reimburse the underwriter for certain expenses and pay the remarketing agent an annual fee of up to 0.125% per annum of the principal amount of Bonds outstanding during the year in which such fee is due.

Under the Loan Agreement, Holyoke is obligated to make payments to the Trustee corresponding to the amounts needed to pay the principal, premium, if any, and interest on the Bonds as they come due. Loan payment obligations shall be satisfied by drawings under irrevocable letter of credit ("LOC") to be issued by a bank to be selected ("Bank"). Under an agreement between Holyoke and the Bank ("Reimbursement Agreement"), Holyoke would be obligated to reimburse the Bank for all amounts drawn under the LOC and to pay interest, at the Bank's prime rate plus 1%, on amounts so drawn until reimbursed. While the LOC remains outstanding, Holyoke will be obligated to pay the Bank an annual commission of 0.55% per annum on the amount available to be drawn under the LOC, together with certain other fees.

While the Bonds bear interest at the Weekly Rate, the Bondholders will have the right at predetermined dates to tender their Bonds for purchase, at 100% of the principal amount plus accrued interest, to the Trustee, which may draw

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on the LOC for the required funds. Under the Reimbursement Agreement, tendered Bonds that are not remarketed would be pledged to the Bank as security for Holyoke's obligations to reimburse the Bank for LOC draws made to purchase such Bonds. Following conversion to Term Rate, Bondholders would have the right to tender their Bonds for purchase only upon expiration of the period for which the Term Rate applies, subject to certain conditions. The Bonds will be subject to optional and mandatory redemption provisions, in whole or in part, and in some cases at a premium; Holyoke's loan is subject to corresponding optional and mandatory prepayment provisions.

Holyoke has requested an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder and proposes to cause the Bonds to be offered through a negotiated public offering. Holyoke further requests authorization to begin negotiations with underwriters for the placement of the Bonds. It may do so.

**Mississippi Power Company (70-7808)**

Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, a wholly owned public-utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

By order dated September 1, 1987 (HCAR No. 24453), Mississippi Power was authorized to purchase the capital stock of, and/or make capital contributions or cash advances to, its wholly-owned nonutility subsidiary company, Electric City Merchandise Company, Inc. ("Electric City"), in an aggregate amount of up to $17 million and to guarantee the credit of Electric City up to $10 million.

Mississippi Power now proposes to provide, through December 31, 1992, up to an additional $13.5 million in capital contributions and up to an additional $25 million in guarantees of loans to Electric City's accounts receivable and will bear interest at a rate not to exceed the prime rate plus 1½%. Funds from the loans and capital contributions will be used to finance Electric City's working capital requirements, including repayment of short-term debt.

**Entergy Corporation (70-7812)**

Entergy Corporation ("Entergy"), a registered holding company, 225 Baronne Street, New Orleans, Louisiana 70112, has filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Entergy proposes to guarantee up to a maximum aggregate amount of $17.2 million, pursuant to the lease obligations of Energy Services, Inc. ("Services"), its services subsidiary company, under a lease arrangement with Comdisco, Inc., a nonassociate company, with respect to a substantial portion of the computer equipment used by Services at its data processing center in Gretna, Louisiana.

**Yankee Atomic Electric Company (70-7814)**

Yankee Atomic Electric Company (Yankee Atomic), 580 Main Street, Boston, Massachusetts 01740, a subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application-declaration under sections 6(a), 7, 9(a), and 10 of the Act and Rule 50(a)(5) thereunder.

By order dated December 16, 1988 (HCAR No. 24777), Yankee Atomic was authorized to effect short-term borrowings through December 31, 1990 through the issuance of notes to banks ("Notes") and the issuance and sale of commercial paper ("Paper") to dealers in the aggregate principal amount outstanding at any one time of $25 million. Yankee Atomic expects to have approximately $5 million of short-term debt outstanding on December 31, 1990. Yankee Atomic now proposes to extend to December 31, 1992 the time during which it may issue Notes and issue and sell Paper up to the aggregate principal amount of $25 million, including amounts outstanding at December 31, 1990.

The Notes will mature in less than one year from the date of issuance and will be repaid or refinanced from time-to-time. Borrowings from banks will be made in any one of the following manners: (a) Yankee Atomic may maintain funds in the banks which represent compensating balances or may pay fees to the banks equivalent to such compensating balance requirements, with the effective interest cost of such borrowings not to exceed the effective interest cost of borrowings at that bank's base or prime lending rate with compensating balance requirements of 10% of the line of credit; (b) Yankee Atomic may negotiate borrowings without compensating balances or the payment of fees at an effective interest cost equivalent to the effective cost of borrowings made under arrangements calling for compensating balances or the payment of fees, with the effective interest cost to Yankee Atomic not to exceed the limit on the effective interest cost in (a), above; and/or (c) at fixed rates which will not exceed the limit on the effective interest cost under (a), above, and, if at fixed rates, may not be prepayable.

Yankee Atomic further proposes to issue and sell Paper directly to Merrill Lynch Money Markets, Inc., Shearson Lehman Commercial Paper, and/or First Boston Corp. (collectively, "Dealers"), in the form of unsecured promissory notes having varying maturities not in excess of 270 days, which will not be payable prior to maturity. Actual maturities will be determined by market conditions, the effective interest cost to Yankee Atomic, and Yankee Atomic's cash requirements at the time of issuance. The Paper will be purchased from Yankee Atomic at a discount not in excess of the discount rate prevailing at the date of issuance for prime commercial paper of comparable quality and maturity sold by public utility issuers to commercial paper dealers. The Dealers will initially reoffer the Paper at a discount rate of not more than ⅛ of 1% per annum less than the prevailing discount rate to Yankee Atomic. The effective interest cost to Yankee Atomic on Paper will not exceed the effective interest cost at which Yankee Atomic could borrow from banks at the time of issuance, except that, in order to obtain maximum flexibility, Paper may be issued with a maturity of not more than 90 days from the date of issue with a higher effective cost.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28162 Filed 11-29-90; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

### Office of the Secretary

**[Public Notice 1297]**

### Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), the use of the United States passport for travel to, in, or through Libya was restricted. These restrictions have subsequently been extended on November 29, 1982 (47 FR 54888), November 29, 1983 (48 FR 55529), November 29, 1984 (49 FR 47585), November 25, 1985 (50 FR 49809), December 9, 1986 (51 FR 44855), December 10, 1987 (52 FR 46876), December 8, 1988 (53 FR 49633), and December 7, 1989 (54 FR 50568). These actions were required by the unsettled relations between the United States and the Government of Libya and the threats of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: November 23, 1990.

**Robert M. Kimmitt,**

*Acting Secretary of State.*

[FR Doc. 90-28138 Filed 11-29-90; 8:45 am]

BILLING CODE 4710-08-M



**[Public Notice No. 1294]**

### Advisory Committee on Oceans and International Environmental and Scientific Affairs; Partially Closed Meeting

Department of State officials responsible for coordinating the U.S. Government's policy and preparations for the 1992 UN Conference on Environment and Development will be present at 10:30 a.m. Monday, December 17, in room 1107 of the Department of State, 2201 C Street, NW., Washington, DC, to discuss key issues and problems concerning the preparatory process for that conference. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairman. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Cooperative Science and Technology Programs (SCT) by contacting William McPherson, telephone (202) 647-4708. All attendees must use the C street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 8:30 a.m. on Monday, December 17 in a session which will not be open to the public. The purpose of these discussions will be to elicit views and discuss issues relating to nuclear non-proliferation, missile technology, global climate change, and oceans and space policy issues. This session will include discussion of material exempt from disclosure under 5 U.S.C. 552b (c)(1) and (c)(9). The disclosure of classified material and revelation of considerations which go into development of negotiating positions could adversely affect the ability of the United States to achieve its foreign policy objectives.

Requests for further information should be directed to William McPherson of the Office of SCT, of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. He may be reached at telephone (202) 647-4708.

**E.U. Curtis Bohlen,**

*Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.*

[FR Doc. 90-28079 Filed 11-29-90; 8:45 am]

BILLING CODE 4710-08-M

**[Public Notice No. 1296]**

### Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Standards of Training and Watchkeeping; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on December 14, 1990, at 9:30 a.m. in room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting will be a general review of the agenda items for the 22nd session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping, scheduled for January 21-25, 1991, in London. Items of principal interest on the agenda for this session are:

1. Training of radio personnel for the Global Maritime Distress and Safety System (GMDSS);
2. Training and qualifications of VTS operators;
3. Officer of the navigational watch acting as sole lookout;
4. Fatigue factor in manning and safety, including results of the 8th session of the Joint IMO/ILO Committee on training which focused on fatigue;
5. Preparation of amendments to the 1977 Torremolinos International Convention and matters relating to training and certification requirements for crews of fishing vessels;
6. Special training requirements for personnel on tankers;
7. Training in cargo stowage and securing;
8. Review of training for Masters and Chief Mates of large ships and of ships with unusual maneuvering characteristics;
9. The human element in maritime casualties; and
10. Review of the adequacy of IMO instruments in preventing and mitigating pollution incidents.

Members of the public may attend up to the seating capacity of the room.

For further information contact: Captain F. J. Grady, U.S. Coast Guard Headquarters (G-MVP/12), 2100 Second Street, SW., Washington, DC 20593, or call telephone number (202) 267-0214.

Dated: November 15, 1990.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 90-28078 Filed 11-29-90; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings, Agreements Filed During the Week Ended November 23, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 47274
*Date filed:* November 21, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Mail Vote 439 (Japan-to Europe experimental APEX fares)
*Proposed Effective Date:* December 1, 1990

*Docket Number:* 47275
*Date filed:* November 21, 1990

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*Parties:* Members of the International Air Transport Association
*Subject:* Composite Resolution 003m
*Proposed Effective Date:* December 10, 1990
*Docket Number:* 47276
*Date filed:* November 21, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Composite Resolution 003mm
*Proposed Effective Date:* December 10, 1990
*Docket Number:* 47277
*Date filed:* November 21, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Within Africa Expedited Resolutions—R-1 to R-10
*Proposed Effective Date:* January 1, 1991
*Docket Number:* 47278
*Date filed:* November 21, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Europe-Southeast Asia Expedited Resos—R-1 to R-2 Africa-TC3 Expedited Resos—R-3 To R-13
*Proposed Effective Date:* December 10, 1990
*Docket Number:* 47279
*Date filed:* November 21, 1990
*Parties:* Members of the International Air Transport Association
*Subject:* Europe-Southwest Pacific Expedited Reso—R-1 Europe-Southwest Pacific Expedited Resos—R-2 To R-3
*Proposed Effective Date:* December 15 and January 1, 1991

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 90-28193 Filed 11-29-90; 8:45 am]
BILLING CODE 4910-62-M

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 23, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 *et seq.*). The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 47034.
*Date filed:* November 20, 1990.
*Due Date for Answers, Conforming Applications, or Motions To Modify Scope:* January 17, 1990.
*Description:* Motion of American Trans Air, Inc., requests amendment of its Application to include Kiev, Ukraine, as a coterminal point with Riga, Latvia. The Proposed Form of Authority, as described in Paragraph 7 of the application, should be amended to read as follows: Between Philadelphia, Pennsylvania and the coterminal points Riga, Latvian S.S.R. and Kiev, Ukrainian S.S.R., via the intermediate point Shannon, Republic of Ireland.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 90-28194 Filed 11-29-90; 8:45 am]
BILLING CODE 4910-62-M

## Federal Aviation Administration

**[Summary Notice No. PE-90-50]**

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 20, 1990.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 26, 1990.

**Denise Donohue Hall,**
*Manager, Program Management Staff, Office of the Chief Counsel.*

### Petitions for Exemption

*Docket No.:* 22690.
*Petitioner:* Boeing Commercial Airplane Company.
*Sections of the FAR affected:* 14 CFR 61.57(c).
*Description of relief sought:* To extend Exemption No. 4779, as amended, which permits certain pilots employed by the petitioner to satisfy the general recent flight experience requirements of § 61.57(c) by alternate means. Exemption No. 4779, as amended, will expire on April 30, 1991.

*Docket No.:* 25648.
*Petitioner:* United Express on behalf of WestAir Commuter Airlines, Inc.
*Sections of the FAR affected:* 14 CFR 121.371(a) and 121.378.
*Description of relief sought:* To extend Exemption No. 5027, which allows WestAir to use certain vendors that are original equipment manufacturers of the airframes, engines, and components of its British Aerospace BAe-146-200A aircraft in order to support the maintenance requirements of those aircraft. Exemption No. 5027 will expire on March 29, 1991.

*Docket No.:* 26314.
*Petitioner:* Lineas Aereas Del Caribe, S.A.
*Sections of the FAR affected:* 14 CFR 91.505.
*Description of relief sought:* To allow petitioner to operate a one-way nonrevenue flight with a DC-8-33 aircraft (N59AJ), S/N 45272) that does not meet the operating noise limits established in part 36.

*Docket No.:* 26325.
*Petitioner:* Grumman Melbourne Systems.
*Sections of the FAR affected:* 14 CFR 145.37(b).
*Description of relief sought:* To allow petitioner to perform maintenance on two Boeing 707 aircraft in an outdoor environment, climatic conditions permitting.

*Docket No.:* 26349.
*Petitioner:* Vocational Industrial Clubs of America, Inc.,
*Sections of the FAR affected:* 14 CFR 147.21.
*Description of relief sought:* To allow students from part 147 schools to compete in skills competitions during school hours, and allow these hours to be credited toward school time.

*Docket No.:* 26361.
*Petitioner:* Mr. Kevin P. Croy.
*Sections of the FAR affected:* 14 CFR 91.805.
*Description of relief sought:* To allow the one-time flight of a Boeing 720 (registration number N7229L, S/N 18159) out of the country from Brown Airfield in San Diego, California, without complying with current noise regulations.

[FR Doc. 90-28125 Filed 11-29-90; 8:45 am]
BILLING CODE 4910-13-M



## Research, Engineering, and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering, and Development (R,E&D) Advisory Committee to be held Tuesday, December 18, 1990, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken Room, on the tenth floor.

The agenda for this meeting will include: (1) A review and discussion of the FAA's "Concepts and Description of the Future Air Traffic Management System for the United States;" (2) an overview of Air Traffic's focus on R,E&D; (3) a review of the subcommittee structure; (4) a report on the status of activities from the Transport Aircraft Safety Subcommittee, the Noise Abatement Technology Subcommittee, and the newly established R&D Technical Subcommittee; and (5) the date, location, and agenda for the next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. Martin T. Pozesky, Executive Director, Research, Engineering, and Development Advisory Committee, ASD-1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8183.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on November 26, 1990.

**Martin T. Pozesky,**
*Executive Director, Research, Engineering, and Development Advisory Committee.*

[FR Doc. 90-28165 Filed 11-29-90; 8:45 am]
BILLING CODE 4910-13-M

## Federal Highway Administration

## Environmental Impact Statement: Fairbanks, AK

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Fairbanks, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Steven Moreno, Field Operations Engineer, Federal Highway Administration, P.O. box 21648, Juneau, Alaska 99802-1648, Telephone: (907) 586-7428; and Steven Sisk, P.E. Director, Alaska Department of Transportation and Public Facilities, Division of Design and Construction, Northern Region, 2301 Peger Road, Fairbanks, Alaska 99709-5316, Telephone (907) 451-2214.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT & PF), will prepare an Environmental Impact Statement (EIS) on a proposal to improve Third Street, an urban collector in Fairbanks, Alaska (Project No. M-0870(1). The proposed improvement would involve reconstruction and widening about 2100 feet of Third Street between the Old Steese Highway and Hamilton Avenue.

The proposal includes upgrading the facility from the existing three 12-foot lanes (two through lanes and left-turning pockets) to four through-lanes and dedicated turning-lanes. Intersections would be upgraded to accommodate future traffic forecasts and turning movements in coordination with other projects. The proposed project is recommended in the Fairbanks Area Metropolitan Transportation Study.

Alternatives under consideration include: (1) No action, (2) transportation systems management, and (3) the build alternative. The latter includes widening the existing 80 foot facility to 89 and 100 feet, incorporated into and studied with the build alternative will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments and information will be sent to appropriate federal, state and local agencies, private businesses and land owners, and organizations and citizens who have expressed or are known to have an interest in this proposal. No formal scoping meeting for agencies is planned at this time. An open house will be held to present the preliminary information to interested businesses owners and citizens. A public hearing will be held after the Draft Environmental Impact Statement has been completed and made available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the Draft EIS should be directed to the Alaska Department of Transportation and Public Facilities at the address noted above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: November 21, 1990.

**Robert Ruby,**
*Division Administrator, FHWA, Region X, Alaska District.*

[FR Doc. 90-28084 Filed 11-29-90; 8:45 am]
BILLING CODE 4910-22-M

## Environmental Impact Statement: Montgomery County and the Town of Blacksburg, VA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Montgomery County and the Town of Blacksburg, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Welton, District Engineer,

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Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone (804) 771-2682.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane divided facility to serve as a link between I-81 (east terminus) and Route 460 in the vicinity of Blacksburg, Virginia (west terminus).

Alternatives under consideration include: (1) Taking no action (no build); (2) traffic system management; and (3) various build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed an interest in this proposal. No formal scoping meeting is planned at this time. The Draft EIS will be available for public and agency review and comment. Following publication of the Draft EIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on: November 20, 1990.

**Robert B. Welton,**

*District Engineer, Richmond, Virginia.*

[FR Doc. 90-28075 Filed 11-29-90; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 90-90]**

### Revocation of Corporate Broker License No. 11501 Zuniga Freight Services, Inc.

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that on October 6, 1990, since they had been without a licensed corporate officer since June 8, 1990, the corporate license (no. 11501) for Zuniga Freight Services, Inc., to conduct Customs business was revoked by action of law, pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)).

Dated: November 20, 1990.

**Victor G. Weeren,**

*Director, Office of Trade Operations.*

[FR Doc. 90-28151 Filed 11-29-90; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by December 31, 1990.

Dated: November 26, 1990.

By direction of the Secretary:

**Frank E. Lalley,**

*Director, Office of Information Resources Polices.*

**Reinstatement**

1. Veterans Benefits Administration
2. Claim for Monthly Payments United States Government Life Insurance (USGLI)
3. VA Form 29-4125K
4. The form is completed by beneficiaries applying for the proceeds of Government Insurance policies. The information is used to process the beneficiary's claim for payment of the insurance proceeds.
5. On occasion
6. Individuals and households
7. 50 responses
8. ¼ hour
9. Not applicable

[FR Doc. 90-28139 Filed 11-29-90; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 231
Friday, November 30, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**AFRICAN DEVELOPMENT FOUNDATION**

Board of Directors Meeting

**TIME:** 11:00 a.m.-1:00 p.m.

**PLACE:** African Development Foundation.

**DATE:** Friday, 07 December 1990.

**STATUS:** Open.

**Agenda**

1. Chairman's Report.
2. President's Report.
3. Other Business.

**CONTACT PERSON FOR MORE INFORMATION:** Ms. Janis McCollim, 673-3916.

**Leonard H. Robinson, Jr.,**

*President.*

[FR Doc. 90-28263 Filed 11-28-90; 9:46 am]

BILLING CODE 6116-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, December 5, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 28, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-28285 Filed 11-28-90; 10:13 am]

BILLING CODE 6210-01-M

**PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION**

Board of Directors' Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

**DATE:** The meeting will be held on Wednesday, December 5, 1990, at 10:00 a.m.

**ADDRESS:** The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: November 19, 1990.

**M. J. Brodie,**

*Executive Director.*

[FR Doc. 90-28279 Filed 11-28-90; 1:45 pm]

BILLING CODE 7630-01-M

**POSTAL SERVICE**

Board of Governors; Amendment to Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 55 FR 48943, November 23, 1990.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** December 4, 1990.

**CHANGE:** Add the following item to the open meting agenda:

8 b. Capital Investments.
Boston, MA, Northwest Center Mail Processing Facility. (Mr. Smith)

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268-4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 90-28322 Filed 11-28-90; 3:06 pm]

BILLING CODE 7710-12-M

**RESOLUTION TRUST CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, December 4, 1990, the Resolution Trust Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the board of Directors requests that an item be moved to the discussion agenda.

Recommendations regarding the resolution of failed thrift institutions.

[Exemptions (c)(8), (c)(9)(A)(ii), and (c)(9)(B)]

**Note:** Some matters within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

*Discussion Agenda*

Recommendations regarding the 1988 FSLIC Assistance Agreements.

[Exemptions (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)]

Review of subsidized lease/sale agreements of RTC-owned properties.

[Exemptions (c)(9)(B) and (c)(10)]

The meeting will be held in the Board Room on the sixth floor of the Federal Deposit Insurance Corporation Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary, RTC, at (202) 416-7282.

Dated: November 27, 1990.

Resolution Trust Corporation.

**William J. Tricarico,**

*Assistant Executive Secretary.*

[FR Doc. 90-28280 Filed 11-27-90; 4:57 pm]

BILLING CODE 6714-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 3, 1990.

Closed meetings will be held on Tuesday, December 4, 1990, at 2:30 p.m. and on Thursday, December 6, 1990, following the 10:00 a.m. and 2:00 p.m. open meeting. Open meetings will be held on Thursday, December 6, 1990, at 10:00 a.m. and 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries

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will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 4, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.

Authorize the institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Settlement of injunctive action.

The subject matter of the open meeting scheduled for Thursday, December 6, 1990, at 10:00 a.m., will be:

Oral argument on an appeal by the Division of Investment Management from the decision of an administrative law judge in the Matter of CSW Credits Inc. and Central and South West Corporation. For further information, please contact Herbert V. Efron at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, December 6, 1990, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, December 6, 1990, at 2:00 p.m., will be:

Oral argument on cross-appeals by William L. Kicklighter, Jr., a salesman for the former brokerage firm of Hereth, Orr & Jones, Inc. and the Division of Enforcement from an administrative law judge's initial decision. For further information, please contact Richard E. Connor at (202) 272-3661.

The subject matter of the closed meeting scheduled for Thursday, December 6, 1990, following the 2:00 p.m., open meeting, will be:

Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Young at (202) 272-2000.

Dated: November 27, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28335 Filed 11-28-90; 4:06 pm]

BILLING CODE 8010-01-M



# Corrections

Federal Register

Vol. 55, No. 231

Friday, November 30, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**7 CFR Part 301**

**[Docket No. 90-114]**

**RIN 0579-AA29**

**Citrus Canker**

*Correction*

In the correction to rule document 90-21351 appearing on page 48208 in the issue of Monday, November 19, 1990, the CFR line in the heading should read as set forth above.

BILLING CODE 1505-01-D

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-461 (Final)]**

**Gray Portland Cement and Cement Clinker From Japan**

*Correction*

In notice document 90-27936 beginning on page 49435 in the issue of Wednesday, November 28, 1990, make the following correction:

At the end of the document, on page 49437, in the first column, the signature and title lines were omitted and should appear as follows:

Kenneth R. Mason,

*Secretary.*

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 71**

**[Airspace Docket No. 90-AGL-18]**

**Proposed Alteration to Transition Area; Staples, MN**

*Correction*

In proposed rule document 90-25587 beginning on page 45613 in the issue of Tuesday, October 30, 1990, in the first column, under SUMMARY, in the third line "NAB" should read "NDB".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[No. 90-2022]**

**Regulatory Review Procedures**

*Correction*

In notice document 90-27750 beginning on page 49370 in the issue of Tuesday, November 27, 1990, make the following correction:

On page 49370, in the third column, the EFFECTIVE DATE should read "November 20, 1990".

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federal register

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Part II

# Environmental Protection Agency

**Asbestos-Containing Materials in Schools; EPA-Approved Courses; Notice**

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62097; FRL-3829-4]

## Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 206(c)(3) of the Toxic Substances Control Act (TSCA) directs the EPA Administrator to publish (and revise as necessary) a list of EPA-approved asbestos courses and tests which are consistent with the Agency's Model Accreditation Plan required under section 206(b) of TSCA. Also required is a list of those courses and tests which had qualified for equivalency treatment for interim accreditation during the time period established by Congress in AHERA. Effective July 1990, that time period has expired in all States. All courses approved for interim accreditation have therefore been included in this list for information purposes only.

Section 206(f) of TSCA Title II requires the Administrator to publish quarterly in the **Federal Register**, beginning August 31, 1988, and ending August 31, 1991, a list of EPA-approved asbestos training courses. Accordingly, this **Federal Register** notice presents the thirteenth cumulative listing of EPA-approved courses and also includes a list of State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3949, TDD: (204) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Accreditation Plan by April 20, 1987. The Plan was issued on April 20, 1987, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as Appendix C to subpart E, 40 CFR part 763. Persons must receive accreditation in order to inspect school buildings for asbestos, develop school asbestos management plans, and design or conduct school asbestos response actions. Such persons can be accredited by States which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR part 763, subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A through E.

In Section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of EPA-approved asbestos courses and tests which the Administrator has determined are consistent with the Model Plan and which qualify a contractor for accreditation.

This quarterly notice formerly included a list of laboratories accredited by the National Institute of Standards and Technology (NIST) for the polarized light microscopy (PLM) analysis of bulk materials for asbestos. The EPA is no longer publishing this laboratory list because it is now available from the NIST National Voluntary Laboratory Accreditation Program (NVLAP). Persons wishing to obtain current information on the accreditation of asbestos laboratories in general or the accreditation status of any particular laboratory should contact NIST directly for this information by: (1) Writing to: Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, Room A124, Gaithersburg, MD 20899 (please include a self-addressed mailing label); (2) computer-to- computer communication with the NVLAP electronic bulletin board on 301-948-2058; (3) Fax on 301-975-3839; or (4) calling NVLAP on 301-975-4016. EPA interim approval for laboratories ended October 30, 1989, and since that date laboratory asbestos accreditation has been administered by NIST through the NVLAP.

The **Federal Register** notice of October 30, 1987, included EPA's initial list of course approvals. In addition, the initial list also included those State accreditation programs that EPA had approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), the fourth **Federal Register** notice of August 31, 1988 (53 FR 33574), the fifth **Federal Register** notice of November 30, 1988 (53 FR 48424), the sixth **Federal Register** notice of February 28, 1989 (54 FR 8438), the seventh **Federal Register** notice of May 31, 1989 (54 FR 23392), the eighth **Federal Register** notice of August 31, 1989 (54 FR 36166), the ninth **Federal Register** notice of November 29, 1989 (54 FR 49190), the tenth **Federal Register** notice of February 28, 1990 (55 FR 7202), the eleventh **Federal Register** notice of May 31, 1990 (55 FR 22176), and the twelfth **Federal Register** notice of August 31, 1990 (55 FR 35760) were subsequent listings of cumulative EPA course approvals and EPA-approved State accreditation programs.

This **Federal Register** notice is divided into four units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses the AHERA-imposed deadline for persons with interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of October 11, 1990. Subsequent **Federal Register** notices will add other State programs as they are approved.



As announced in the **Federal Register** of September 20, 1989, EPA is no longer accepting for review and contingent approval training courses for AHERA accreditation after October 15, 1989. However, a course's status may change after that cut- off date. For example, a contingently approved course may become fully approved and a course with full approval may become disapproved. As mentioned in the September 1989 **Federal Register** notice, EPA has said it would continue to conduct full approval audits of courses that already have received contingent approval and review for contingent approval and subsequent full approval, courses received by EPA which had been postmarked on or before October 15, 1989. EPA may reach agreements with States that do not currently have an accreditation program, to turn over responsibility for auditing courses with contingent and full approval, as these States develop accreditation programs.

### I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA may approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately, rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, Alaska, Arkansas, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Colorado, Illinois, Indiana, Iowa, Massachusetts, Michigan, Montana, Nebraska, North Dakota, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA- approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for the discipline. Current lists of training courses approved by Alaska, Arkansas, Colorado, Delaware, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin are listed under Unit IV. Indiana and Kansas do not have separate provider listings since these States have not independently approved any additional courses.

Each State accreditation program may have different requirements for State accreditation. For example, New Jersey requires participants of its courses to take the State exam. Therefore, those New Jersey-approved course sponsors who want to provide training in another State must develop their own examination. They must also submit for EPA approval to the Regional Asbestos Coordinator in their Region, a detailed statement about the development of the course examination as required by the Model Plan.

### II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is included under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. As noted in Unit III, interim accreditation is no longer in effect as of July 1990. Each course that had been approved for interim accreditation will show inclusive dates of this approval. EPA's deadlines for interim accreditation are discussed further in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet or exceed the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

Thus far, EPA has taken formal action to revoke or suspend course approvals in two instances. EPA revoked approval from Living Word College's inspector and management planner training courses offered after May 6, 1988. Living Word College is located in EPA Region VII. In addition, EPA has suspended approval from the Safety Management Institute's training courses and refresher courses for workers, inspectors/management planners, and contractors/supervisors. The effective date for the course suspensions is the first week of October 1989. Safety Management Institute is located in EPA Region III. Certain EPA- approved State programs have also taken actions to suspend or revoke courses within their jurisdictions.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

State accreditation programs may have more stringent accreditation requirements than the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being approved. It should be noted that the persons who have successfully completed these courses are fully accredited; they are not only accredited on an interim basis.

### III. Phase out of Interim Accreditation

TSCA Title II enabled EPA to permit persons to be accredited on an interim

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basis if they had attended EPA-approved asbestos training before the effective date of the AHERA regulation and passed an asbestos exam. As a result, the Agency approved, on an interim basis, a number of training courses which had been offered prior to the effective date of the AHERA regulation. Only those persons who had taken training courses equivalent to the Model Plan's requirements between January 1, 1985, and December 14, 1987, were considered accredited under these interim provisions. Equivalent means that the courses had to be essentially similar in length and content to the curriculum found in the Model Plan. In addition, an examination had to be essentially equivalent to the examination requirements found in the Model Plan. If no examination was offered at the time, course providers seeking interim approval needed to provide an examination.

Persons who took one of the EPA-approved courses for interim accreditation, and could produce evidence that they had successfully completed the course by passing an examination, were accredited on an interim basis. This accreditation was interim since the person was considered accredited for only 1 year after the date on which the State where the person was employed was required to have established an accreditation program at least as stringent as the EPA Model Plan. TSCA Title II requires States to adopt a contractor accreditation program at least as stringent as the Model Plan within 180 days after the first regular session of the State's legislature convened following the date EPA issued the Model Plan.

The deadline for all States to establish a complete accreditation program was July 1989. In fact, most States were required to have developed a program by July 1988. As a result, after July 1989, the period of interim accreditation expired for persons in all States but Arkansas, Montana, Nevada, North Carolina, Oregon, Pennsylvania, and Texas. In these seven States, the legislatures meet on a bi-annual basis and last met in January 1989; therefore, persons with interim accreditation did not lose their interim status in these States until July 1990. Because interim accreditation has now expired in all States, anyone who had previously received interim accreditation is no longer eligible to perform AHERA work unless he or she has subsequently acquired AHERA accreditation by completing an approved course. To receive accreditation, such persons, if they have not already done so, must complete an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan. For example, a person who had interim accreditation as a supervisor would have to take a 4-day supervisor's course approved by EPA or an EPA-approved State program to become fully accredited.

## IV. List of EPA-Approved State Accreditation Programs and Training Courses

The thirteenth cumulative listing of EPA-approved State accreditation programs and training courses follows. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent **Federal Register** notices. The closing date for the acceptance of submissions to EPA for inclusion in this thirteenth notice was October 11, 1990. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes).

As of October 11, 1990, a total of 597 training providers are offering 1,172 EPA-approved training courses for accreditation under TSCA Title II. There are 507 asbestos abatement worker courses, 394 contractor/supervisor courses, 208 inspector/management planner courses, 18 inspector-only courses, and 45 project designer courses. In addition, EPA has approved 765 refresher courses. Twenty-two States have EPA-approved State accreditation programs in one or more disciplines.

An EPA-funded model course for inspectors and management planners is available for use by training providers. In addition, an earlier EPA-developed course for asbestos abatement contractors and supervisors has now been revised and is also available. EPA is also announcing that its newly developed model worker course is now available as well. A fee for each course will be charged to cover the reproduction and shipping costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468-1916.

**The following is the cumulative list of EPA-approved State accreditation programs and training courses:**

### Approved State Accreditation Programs

### Alaska

(1)(a) *State Agency:* Department of Labor, Address: P.O. Box 1149, Juneau, AK 99802, Contact: Richard Arab, Phone: (907) 465-4856.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 10/1/85).
Abatement Worker (full from 1/29/90).
Contractor/Supervisor (interim from 10/1/85).
Contractor/Supervisor (full from 1/29/90).

(i)(a) *Training Provider:* Alaska Laborers Training School.

Address: 13500 Old Seward Highway, Anchorage, AK 99515, Contact: Leslie Lauinger, Phone: (902) 345-3853.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/89).
Contractor/Supervisor (Certified 11/1/89).

(ii)(a) *Training Provider:* Alaska Quality Control & Technical Service, Ltd.

Address: 907 E. Dowling Rd., Suite 18, Anchorage, AK 99518, Contact: Gracita O. Torrijos, Phone: (907) 561-2400.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/90).
Contractor/Supervisor (Certified 5/1/90).

(iii)(a) *Training Provider:* Arctic Slope Consulting Group, Inc.

Address: 6700 Arctic Spur Rd., Anchorage, AK 99518-1550, Contact: Tom Tessier, Phone: (907) 349-5148.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).
Contractor/Supervisor (Certified 12/1/89).

(iv)(a) *Training Provider:* Asbestos Removal Specialists of Alaska.

Address: 1898 Marika Rd., Unit No. 3, Fairbanks, AK 99709, Contact: J.J. Middleton, Phone: (907) 451-8555.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(v)(a) *Training Provider:* Central & Southeastern Alaska District Council of Carpenters.



Address: 407 Denali St., Anchorage, AK 99501, Contact: William Matthews, Phone: (907) 561-4568.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/89).
Contractor/Supervisor (Certified 2/1/89).

(vi)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth D. Johnson, Phone: (907) 272-8056.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(vii)(a) *Training Provider:* Environmental Science & Engineer, Inc.

Address: 1205 E. International Airport Rd., Suite 100, Anchorage, AK 99518-1409, Contact: Robert Morgan, Phone: (907) 561-3055.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/90).
Contractor/Supervisor (Certified 6/1/90).

(viii)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers.

Address: 407 Denali St., Anchorage, AK 99501, Contact: Dan Middaugh, Phone: (907) 272-8224.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/89).
Contractor/Supervisor (Certified 8/1/89).

(ix)(a) *Training Provider:* Martech Construction Co.

Address: 300 E. 54th Ave., Anchorage, AK 99518, Contact: Gary Lawley, Phone: (907) 561-1970.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/89).
Contractor/Supervisor (Certified 9/1/89).

(x)(a) *Training Provider:* Sheet Metal Worker Int'l. Association Local 23.

Address: 1818 W. Northern Lights Blvd. No. 100, Anchorage, AK 99517, Contact: Randall E. Pysher, Phone: (907) 277-5313.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/90).
Contractor/Supervisor (Certified 1/1/90).

(xi)(a) *Training Provider:* University of Alaska Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/89).
Contractor/Supervisor (Certified 4/1/89).

### Arkansas

(2)(a) *State Agency:* Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

(i)(a) *Training Provider:* American Specialty Contractors.

Address: P.O. Box 66375, Baton Rouge, LA 70896, Contact: Daniel L. Anderson, Phone: (504) 926-9624.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/90).
Contractor/Supervisor (Certified 2/13/90).

(ii)(a) *Training Provider:* Arkansas Laborers Training Fund.

Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(iii)(a) *Training Provider:* Asbestos Training & Employment, Inc.

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iv)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88).
Contractor/Supervisor (Certified 9/12/88).

(v)(a) *Training Provider:* Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(vi)(a) *Training Provider:* Environmental Technologies.

Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569-3518.

(b) *Approved Courses:*

Abatement Worker (Certified 3/10/88).
Abatement Worker Annual Review (Certified 3/30/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/30/89).

(vii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2361.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).

(viii)(a) *Training Provider:* Labor Education Program, University of Arkansas.

Address: 2801 S. University Ave., Little Rock, AR 72204, Contact: Bernica Tackett, Phone: (501) 562-7444.

(b) *Approved Course:*

Abatement Worker (Certified 12/12/89).

(ix)(a) *Training Provider:* Meta Inc.

Address: P.O. Box 786, Lawrence, KS 66044, Contact: Karen P. Wilson, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/27/90).
Contractor/Supervisor (Certified 3/27/90).
Contractor/Supervisor Annual Review (Certified 3/27/90).

(x)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.

Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0221.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 3/30/90).
Contractor/Supervisor Annual Review (Certified 3/30/90).

(xi)(a) *Training Provider:* Professional Asbestos Training Service.

Address: P.O. Box 19092, Little Rock, AR 72219, Contact: Harold Lewis, Phone: (501) 562-1519.

(b) *Approved Courses:*

Abatement Worker (Certified 4/18/88).
Abatement Worker Annual Review (Certified 1/4/90).
Contractor/Supervisor (Certified 4/18/88).
Contractor/Supervisor Annual Review (Certified 1/4/90).

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(xii)(a) *Training Provider:* University of Arkansas.
Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.
(b) *Approved Course:*
Abatement Worker (Certified 10/7/89).

**Colorado**

(3)(a) *State Agency:* Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 320-8333.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).
(i)(a) *Training Provider:* Air Technology & Associates.
Address: 724 Oil Hill Rd., P.O. Box 23, El Dorado, KS 67042, Contact: Richard Green, Phone: (913) 841-1193.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(ii)(a) *Training Provider:* Haz - Cure International.
Address: 1355 Simms St., Lakewood, CO 80215, Contact: Edmund C. Garthe, Phone: (303) 232-3174.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iii)(a) *Training Provider:* Precision Safety and Services Inc.
Address: 1245 Windemaker Lane, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-9500.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iv)(a) *Training Provider:* QA Training & Inspection Services.
Address: 1405 Krameria St., Suite 4-D, Denver, CO 80220, Contact: Garrett Fleming, Phone: (303) 388-7388.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(v)(a) *Training Provider:* The Environmental Training Center.
Address: 2761 West Oxford Ave. Unit No.7, Englewood, CO 80110, Contact: Harvey Lindenberg, Phone: (303) 781-0422.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
Inspector/Management Planner (Certification Pending).
Inspector/Management Planner Annual Review (Certification Pending).
(vi)(a) *Training Provider:* U.S. Army Environmental Hygiene Activity - West.
Address: Fitzsimons Army Medical Center, Aurora, CO 80045-5001, Contact: Wendell C. King, Phone: (303) 361-6861.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

**Delaware**

(4)(a) *State Agency:* Delaware Dept. of Administrative Services, Address: O'Neill Building, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 736-5644.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).
(i)(a) *Training Provider:* Delaware Technical & Community College, Stanton Campus.
Address: Churchman Center, Churchman's Rd., New Castle, DE 19804, Contact: Fritz Kin, Phone: (302) 323-9602.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(ii)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus.
Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(iii)(a) *Training Provider:* Local Union No. 42 Heat - Pipe & Frost Union.
Address: 1188 River Rd., New Castle, DE 19720, Contact: Robert Holden, Phone: (302) 328-4203.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/87).
Abatement Worker Annual Review (Certified 3/5/87).
Contractor/Supervisor (Certified 3/5/87).
Contractor/Supervisor Annual Review (Certified 3/5/87).
(iv)(a) *Training Provider:* Local Union No. 626 United Brotherhood of Carpenters and Joiners of America.
Address: 626 Wilmington Road, New Castle, DE 19720, Contact: Robert A. McCullough, Phone: (302) 328-9430 Ext. 9439.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/90).
Abatement Worker Annual Review (Certified 8/8/90).
Contractor/Supervisor (Certified 8/8/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).

**Illinois**

(5)(a) *State Agency:* Illinois Department of Public Health Division of Environmental Health, Address: 535 West Jefferson St, Springfield, IL 62761, Contact: R. Cook, Phone: (217) 782-3517.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 3/13/90).
Contractor/Supervisor (full from 3/13/90).
Inspector (full from 3/13/90).
Inspector/Management Planner (full from 3/13/90).
Project Designer (full from 3/13/90).
(i)(a) *Training Provider:* Environmental Group Service LTD (EGSL).
Address: 215 West Huron, Chicago, IL 60610, Contact: Vahooman Mirkaef, Phone: (312) 642-8434.



(b) *Approved Courses:*
Abatement Worker (Certified 5/14/90).
Abatement Worker Annual Review (Certified 5/14/90).
Contractor/Supervisor (Certified 5/14/90).
Contractor/Supervisor Annual Review (Certified 5/14/90).
(ii)(a) *Training Provider:* Ideal & Associate Environmental Engineer Services, Inc.
Address: 1102 South Main St., Bloomington, IL 61702, Contact: James S. Langan, Phone: (309) 828-4259.
(b) *Approved Courses:*
Abatement Worker (Certified 6/15/90).
Abatement Worker Annual Review (Certified 6/15/90).
Contractor/Supervisor (Certified 6/15/90).
Contractor/Supervisor Annual Review (Certified 6/15/90).
(iii)(a) *Training Provider:* Moraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
(iv)(a) *Training Provider:* The American Center for Educational Developement.
Address: 316 South Wabash Ave., Chicago, IL 60604, Contact: Francine F. Rossi, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).
(v)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/2/90).
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

**Indiana**

(6)(a) *State Agency:* Indiana Department of Environmental Management, Office of Air Management, Address: 105 South Meridian St., P.O. Box 6015, Indianapolis, IN 46206-6015, Contact: Debra Dubenetzky, Phone: (317) 232-8373.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

**Iowa**

(7)(a) *State Agency:* Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).
(i)(a) *Training Provider:* Ames Environmental, Inc.
Address: 3910 Lincoln Way, Ames, IA 50010, Contact: Ann Fairchild, Phone: (515) 292-3400.
(b) *Approved Courses:*
Abatement Worker (Certified 1/18/90).
Abatement Worker Annual Review (Certified 1/18/90).
Inspector Annual Review (Certified 12/8/89).
(ii)(a) *Training Provider:* Iowa Electric Light & Power.
Address: Duane Arnold Nuclear Energy Center, 3363 DEAC Rd., Palo, IA 52324, Contact: Robert Tucker, Phone: (319) 851-7574.
(b) *Approved Course:*
Contractor/Supervisor (Certified 10/1/89).
(iii)(a) *Training Provider:* Iowa Environmental Services, Inc.
Address: 820 First St., Suite 200, West Des Moines, IA 50265, Contact: Glenn Soyer, Phone: (515) 279-8042.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/89).
Contractor/Supervisor (Certified 10/1/89).
(iv)(a) *Training Provider:* Iowa Illinois Thermal Insulation Inc.
Address: P.O. Box 931, Davenport, IA 52805-0931, Contact: Richard H. Knauss, Phone: (319) 324-0685.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/89).
(v)(a) *Training Provider:* M & W Environmental Consultants, Inc.
Address: RR No. 1 Wells Dr., Canton, IA 61520, Contact: Vahooman Mirkhaef, Phone: (800) 445-8745.
(b) *Approved Course:*
Inspector/Management Planner (Certified 10/1/89).

**Kansas**

(8)(a) *State Agency:* Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Gary Miller, Phone: (913) 296-1547.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 11/6/86).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

**Massachusetts**

(9)(a) *State Agency:* Massachusetts Dept. of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).
(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).
Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).
(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.

* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

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Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mahon, Phone: (609) 892-0883.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/89 to 4/28/89 only).
Contractor/Supervisor (Certified 4/25/88 to 4/28/89 only).
Inspector/Management Planner (Certified 4/28/88 to 4/28/89 only).
Project Designer (Certified 4/28/88 to 4/28/89 only).

(iii)(a) *Training Provider:* Asbestos Workers Union Local 43.

Address: 1053 Barts Pit Rd., Northampton, MA 01000, Contact: John Charest, Jr., Phone: (413) 584-0028.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 4/27/90).
Contractor/Supervisor Annual Review (Certified 4/27/90).

(iv)(a) *Training Provider:* Asbestos Workers Union Local No. 6.

Address: 1725 Revere Beach Pkwy., Everett, MA 02149, Contact: James P. McCourt, Phone: (617) 387-2679.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/89).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/89).
Contractor/Supervisor Annual Review (Certified 4/25/89).

(v)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.

(b) *Approved Course:*

Abatement Worker (Certified 4/8/88 to 4/8/89 only).

(vi)(a) *Training Provider:* Astral Environmental Assoc.

Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.

(b) *Approved Courses:*

Abatement Worker (Certified 6/5/89).
Abatement Worker Annual Review (Certified 7/13/89).
Contractor/Supervisor (Certified 7/13/89).
Contractor/Supervisor Annual Review (Certified 7/13/89).

(vii)(a) *Training Provider:* BCM Engineering.

Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/89).
Inspector/Management Planner (Certified 4/28/89).
Project Designer (Certified 4/28/89).

(viii)(a) *Training Provider:* Balsm Environmental Consultants.

Address: 59 Stiles Rd., Salem, NH 03079, Contact: Douglas Lawson, Phone: (603) 893-0615.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 3/1/90).
Inspector/Management Planner Annual Review (Certified 3/1/90).
Project Designer (Certified 3/1/90).
Project Designer Annual Review (Certified 3/1/90).

(ix)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/88).
Abatement Worker Annual Review (Certified 9/26/88).
Contractor/Supervisor (Certified 9/26/88).
Contractor/Supervisor Annual Review (Certified 9/26/88).
Inspector/Management Planner (Certified 9/26/88).
Inspector/Management Planner Annual Review (Certified 9/26/88).
Project Designer (Certified 9/26/88).

(x)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Pike, Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7060.

(b) *Approved Courses:*

Contractor/Supervisor Annual Review (Certified 2/3/90).
Inspector/Management Planner Annual Review (Certified 8/3/89).

(xi)(a) *Training Provider:* Con-Test, Inc.

Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 2/25/88).

(xii)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 933-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Planner Annual Review (Certified 4/8/89).

(xiii)(a) *Training Provider:* ESTRI.

Address: 55 Ferncraft Rd., Suite 201, Danvers, MA 01923, Contact: Martin Leavitt, Phone: (508) 777-8788.

(b) *Approved Courses:*

Abatement Worker (Certified 7/17/89).
Abatement Worker Annual Review (Certified 7/17/89).
Contractor/Supervisor (Certified 7/17/89).
Contractor/Supervisor Annual Review (Certified 7/17/89).
Inspector/Management Planner (Certified 9/12/89).
Inspector/Management Planner Annual Review (Certified 9/12/89).

(xiv)(a) *Training Provider:* EcoSystems, Inc.

Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Contractor/Supervisor (Certified 6/13/89).

(xv)(a) *Training Provider:* Enviromed Services.

Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).
Contractor/Supervisor Annual Review (Certified 10/16/89).

(xvi)(a) *Training Provider:* Environmental Training Corp.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.

(b) *Approved Courses:*

Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).



(xvii)(a) *Training Provider:* Environmental Training Services.

Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Courses:*

Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).
Project Designer Annual Review (Certified 4/8/89).

(xviii)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).

(xix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 348-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/88).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/88).
Inspector/Management Planner (Certified 4/25/88).
Inspector/Management Planner Annual Review (Certified 4/25/88).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/88).

(xx)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgess, Phone: (617) 732-1171.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xxi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Dr. David Kaplan, Phone: (617) 890-4999.

(b) *Approved Courses:*

Abatement Worker (Certified 8/5/88).
Contractor/Supervisor (Certified 8/5/88).
Inspector/Management Planner (Certified 3/23/90).
Inspector/Management Planner Annual Review (Certified 3/23/90).
Project Designer (Certified 8/5/88).

(xxii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/89).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Inspector/Management Planner Annual Review (Certified 2/25/89).

(xxiii)(a) *Training Provider:* Institute for Environmental Education.

Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Martin Wood, Phone: (617) 935-0664.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/26/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/26/89).
Inspector/Management Planner (Certified 4/28/88).
Inspector/Management Planner Annual Review (Certified 5/26/89).
Project Designer (Certified 4/28/88).
Project Designer Annual Review (Certified 4/28/88).

(xxiv)(a) *Training Provider:* JF Walton & Co.

Address: 201 Marginal St., P.O. Box 6120, Chelsea, MA 02150, Contact: James O'Connor, Phone: (617) 884-0350.

(b) *Approved Courses:*

Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xxv)(a) *Training Provider:* Kaselaan & D'Angelo Associates.

Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: Paul Hefferman, Phone: (617) 472-1330.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(xxvi)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8603.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/89).
Abatement Worker Annual Review (Certified 2/2/90).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Inspector/Management Planner (Certified 2/2/90).
Inspector/Management Planner Annual Review (Certified 2/2/90).

(xxvii)(a) *Training Provider:* National Asbestos Training Center of Kansas.

Address: 6600 College Blvd., Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxviii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xxix)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748-2899, Contact: James Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).

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Contractor/Supervisor Annual Review (Certified 8/8/89).

(xxx)(a) *Training Provider:* Northern Asbestos Abatement Co.

Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 3/18/89 to 4/15/89 only).

Abatement Worker Annual Review (Certified 3/18/89 to 4/15/89 only).

Contractor/Supervisor (Certified 3/18/89 to 4/15/89 only).

Contractor/Supervisor Annual Review (Certified 3/18/89 to 4/15/89 only).

(xxxi)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 11/7/88).

Project Designer (Certified 11/7/88).

(xxxii)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/6/88).

Abatement Worker Annual Review (Certified 5/16/89).

Contractor/Supervisor (Certified 5/6/88).

Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxxiii)(a) *Training Provider:* Safety Council of Western Massachusetts.

Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7906.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/88).

Abatement Worker Annual Review (Certified 6/21/89).

(xxxiv)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2000.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/28/88).

Contractor/Supervisor Annual Review (Certified 10/28/88).

Inspector/Management Planner (Certified 10/28/88).

Project Designer (Certified 10/28/88).

(xxxv)(a) *Training Provider:* Tufts University Asbestos Information Center.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).

Abatement Worker Annual Review (Certified 3/16/89).

Contractor/Supervisor (Certified 3/16/88).

Contractor/Supervisor Annual Review (Certified 3/16/89).

Inspector/Management Planner (Certified 3/16/88).

Inspector/Management Planner Annual Review (Certified 3/16/89).

Project Designer (Certified 3/16/88).

Project Designer Annual Review (Certified 3/16/89).

(xxxvi)(a) *Training Provider:* University of Massachusetts Environmental Health & Safety.

Address: N 414 Morrill Science Center, Amherst, MA 01003, Contact: Al Soreuseu, Phone: (413) 545-2682.

(b) *Approved Course:*

Abatement Worker Annual Review (Certified 10/3/89).

(xxxvii)(a) *Training Provider:* Weston-Atc, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/25/89).

Contractor/Supervisor Annual Review (Certified 5/25/89).

Inspector/Management Planner (Certified 5/25/89).

Inspector/Management Planner Annual Review (Certified 5/25/89).

Project Designer (Certified 5/25/89).

Project Designer Annual Review (Certified 5/25/89).

(xxxviii)(a) *Training Provider:* Young Sales Corp.

Address: 1054 Central Industrial Drive, St. Louis, MO 63110, Contact: W. Todd McCane, Phone: (314) 771-3080.

(b) *Approved Course:*

Abatement Worker (Certified 6/13/89).

**Michigan**

(10)(a) *State Agency:* State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335-8186.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/13/89).

Contractor/Supervisor (full from 4/13/89).

Inspector (full from 4/13/89).

Inspector/Management Planner (full from 4/13/89).

Project Designer (full from 4/13/89).

(i)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 3 Miles Rd., NW., Grand Rapids, MI 49504, Contact: David Lutheuhoff, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (Certified 11/28/89).

Abatement Worker Annual Review (Certified 11/28/89).

Contractor/Supervisor (Certified 11/28/89).

Contractor/Supervisor Annual Review (Certified 11/28/89).

(ii)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 S. Huron Rd., New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-5135.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).

Abatement Worker Annual Review (Certified 12/20/89).

Contractor/Supervisor (Certified 12/20/89).

Contractor/Supervisor Annual Review (Certified 12/20/89).

Inspector/Management Planner (Certified 12/20/89).

Inspector/Management Planner Annual Review (Certified 12/20/89).

(iii)(a) *Training Provider:* Asbestos Services Inc.

Address: 9028 Hills Rd., Baroda, MI 49101, Contact: Dennis W Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/90).

Abatement Worker Annual Review (Certified 1/11/90).

Contractor/Supervisor (Certified 1/11/90).

Contractor/Supervisor Annual Review (Certified 1/11/90).

(iv)(a) *Training Provider:* Asbestos Workers Local 25.

Address: 29200 Vasser, Livonia, MI 48152, Contact: Dan A. Somenauer, Phone: (313) 471-1007.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).

Abatement Worker Annual Review (Certified 4/25/90).

Contractor/Supervisor (Certified 7/12/90).

Contractor/Supervisor Annual Review (Certified 7/12/90).

(v)(a) *Training Provider:* Asbestos Workers Local 47.

Address: 125 S. Michigan Ave., Room 217, Coldwater, MI 49036, Contact: LaVern Max Bowman, Phone: (517) 279-8054.

(b) *Approved Courses:*

Abatement Worker (Certified 3/20/90).

Abatement Worker Annual Review (Certified 3/20/90).



(vi)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 6105 Valleywood Ln., Portage, MI 49002, Contact: Brent Bassett, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/89).

Abatement Worker Annual Review (Certified 11/13/89).

Contractor/Supervisor (Certified 11/13/89).

Contractor/Supervisor Annual Review (Certified 11/13/89).

Inspector/Management Planner (Certified 12/14/89).

Inspector/Management Planner Annual Review (Certified 4/24/90).

(vii)(a) *Training Provider:* Barton Associates.

Address: 1265 Westport Rd., Ann Arbor, MI 48103, Contact: Sara Bassett, Phone: (313) 665-3681.

(b) *Approved Courses:*

Abatement Worker (Certified 1/19/90).

Abatement Worker Annual Review (Certified 4/5/90).

Contractor/Supervisor (Certified 9/18/89).

Contractor/Supervisor Annual Review (Certified 4/5/90).

(viii)(a) *Training Provider:* Bierlein Demolition.

Address: 2903 S. Graham Rd., Saginaw, MI 48603, Contact: Ramond E. Passeno, Phone: (517) 781-1810.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 11/20/89).

Contractor/Supervisor Annual Review (Certified 11/20/90).

(ix)(a) *Training Provider:* Clayton Environmental Consit.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Charlotte Heideman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 2/9/90).

Inspector/Management Planner Annual Review (Certified 1/9/90).

(x)(a) *Training Provider:* Clean Air Management, Inc.

Address: 39319 Plymouth Rd., Livonia, MI 48150, Contact: James Kukalis, Phone: (313) 462-0600.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).

Contractor/Supervisor (Certified 5/29/90).

(xi)(a) *Training Provider:* DeLisle Associates, LTD.

Address: 8225 Moorsbridge Rd., Portage, MI 49002, Contact: Mark DeLisle, Phone: (616) 385-1018.

(b) *Approved Courses:*

Abatement Worker (Certified 12/12/89).

Abatement Worker Annual Review (Certified 12/12/89).

Contractor/Supervisor (Certified 12/12/89).

Contractor/Supervisor Annual Review (Certified 12/12/89).

Inspector/Management Planner (Certified 12/12/89).

Inspector/Management Planner Annual Review (Certified 12/12/89).

(xii)(a) *Training Provider:* Dore & Associates Contracting.

Address: P.O. Box 148, Bay City, MI 48707, Contact: Joseph P. Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*

Abatement Worker (Certified 5/16/90).

Abatement Worker Annual Review (Certified 4/26/90).

Contractor/Supervisor (Certified 5/16/90).

Contractor/Supervisor Annual Review (Certified 4/26/90).

(xiii)(a) *Training Provider:* EMU Corporate Services.

Address: 3075 Washtenaw Ave., Ypsilanti, MI 48197, Contact: Bertrand Ramsay, Phone: (313) 487-2259.

(b) *Approved Courses:*

Abatement Worker (Certified 1/5/90).

Abatement Worker Annual Review (Certified 11/1/89).

Contractor/Supervisor (Certified 1/5/90).

Contractor/Supervisor Annual Review (Certified 1/5/90).

Inspector/Management Planner (Certified 1/5/90).

Inspector/Management Planner Annual Review (Certified 1/5/90).

(xiv)(a) *Training Provider:* ENTELA Engineering Service.

Address: 4020 W. River Dr., Comstock Park, MI 49321, Contact: Bruce H. Connell, Phone: (616) 784-7774.

(b) *Approved Courses:*

Abatement Worker (Certified 9/28/89).

Abatement Worker Annual Review (Certified 12/14/89).

Contractor/Supervisor (Certified 9/28/89).

Contractor/Supervisor Annual Review (Certified 12/14/89).

(xv)(a) *Training Provider:* Environmental & Occupational, Consulting & Training.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 385-8055.

(b) *Approved Courses:*

Abatement Worker (Certified 11/14/89).

Abatement Worker Annual Review (Certified 11/14/89).

Contractor/Supervisor (Certified 11/14/89).

Contractor/Supervisor Annual Review (Certified 11/14/89).

(xvi)(a) *Training Provider:* Environmental Abatement System.

Address: 6416 Ellsworth Rd., Detroit, MI 48236, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).

Abatement Worker Annual Review (Certified 4/25/90).

Contractor/Supervisor (Certified 4/25/90).

Contractor/Supervisor Annual Review (Certified 4/25/90).

(xvii)(a) *Training Provider:* Environmental Diversified Service.

Address: 24356 Sherwood, Centerline, MI 48015, Contact: John Rempel, Phone: (313) 757-4800.

(b) *Approved Course:*

Abatement Worker (Certified 6/13/90).

(xviii)(a) *Training Provider:* Fibertec Inc.

Address: 700 Abbott Rd., East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/4/89).

(xix)(a) *Training Provider:* G & H Contracting Assoc.

Address: 300 Acron St., Plainwell, MI 49080, Contact: Gregory G. Moe, Phone: (616) 685-1600.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).

Contractor/Supervisor (Certified 12/20/89).

(xx)(a) *Training Provider:* Hall-Kimbrell Environ Services.

Address: 4840 W. 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (800) 346-2550.

(b) *Approved Courses:*

Abatement Worker (Certified 4/2/90).

Abatement Worker Annual Review (Certified 4/2/90).

Contractor/Supervisor (Certified 4/2/90).

Contractor/Supervisor Annual Review (Certified 4/2/90).

(xxi)(a) *Training Provider:* Howard Abatement Inc.

Address: 25415 Glendale Ave., Redford, MI 48239, Contact: William R. Wyler, Phone: (313) 537-4974.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).

Contractor/Supervisor (Certified 5/29/90).

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(xxii)(a) *Training Provider:* Industrial Environmental Consulting.
Address: 2875 Northwind, E. Lansing, MI 48823, Contact: Michael Tillotson, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (Certified 1/2/90).
Abatement Worker Annual Review (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 1/2/90).
Inspector/Management Planner Annual Review (Certified 1/2/90).

(xxiii)(a) *Training Provider:* Jensen Environmental & Training.
Address: 651 Fisher Rd., Grosse Pointe, MI 48230, Contact: Leonard L. Jensen, Phone: (313) 882-2021.
(b) *Approved Courses:*
Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 8/25/89).
Contractor/Supervisor (Certified 5/7/90).
Contractor/Supervisor Annual Review (Certified 8/25/89).
Inspector/Management Planner Annual Review (Certified 8/25/90).

(xxiv)(a) *Training Provider:* Kemron Environmental Services.
Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Henry D. Baier, Phone: (313) 626-2426.
(b) *Approved Courses:*
Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 1/22/90).
Inspector (Certified 3/15/90).
Inspector Annual Review (Certified 3/15/90).

(xxv)(a) *Training Provider:* Manage Right Asbestos.
Address: 314 W. Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.
(b) *Approved Courses:*
Abatement Worker (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).

(xxvi)(a) *Training Provider:* Michigan Laborers' Training.
Address: 11155 S. Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.
(b) *Approved Courses:*
Abatement Worker (Certified 9/21/90).
Abatement Worker Annual Review (Certified 9/21/90).
Contractor/Supervisor (Certified 9/21/90).
Contractor/Supervisor Annual Review (Certified 9/21/90).

(xxvii)(a) *Training Provider:* NTH Consultants, Ltd.
Address: 38955 Hills Tech Drive, Farmington Hills, MI 48331, Contact: Vickie Jo Armstrong, Phone: (313) 553-6300.
(b) *Approved Courses:*
Abatement Worker (Certified 9/14/90).
Abatement Worker Annual Review (Certified 8/6/90).

(xxviii)(a) *Training Provider:* National Asbestos Abatement.
Address: 3080 N Center Rd., Flint, MI 48506, Contact: James Sheaffer, Phone: (313) 736-7911.
(b) *Approved Courses:*
Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).
Contractor/Supervisor (Certified 3/20/90).
Contractor/Supervisor Annual Review (Certified 3/20/90).

(xxix)(a) *Training Provider:* National Training Fund/Workers Institute.
Address: 1126 Sixteenth St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (Certified 6/21/90).
Abatement Worker Annual Review (Certified 6/21/90).
Contractor/Supervisor (Certified 6/21/90).
Contractor/Supervisor Annual Review (Certified 6/21/90).

(xxx)(a) *Training Provider:* Northern Safety Consultants.
Address: 1408 Lincoln Ave., Marquette, MI 49855, Contact: Christopher Baker, Phone: (906) 228-5161.
(b) *Approved Courses:*
Abatement Worker (Certified 3/14/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 3/14/90).
Contractor/Supervisor Annual Review (Certified 3/14/90).
Project Designer (Certified 3/14/90).
Project Designer Annual Review (Certified 3/14/90).

(xxxi)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/13/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 12/14/89).

(xxxii)(a) *Training Provider:* Onikepo Inc.
Address: 3843 W. Outer Dr., Detroit, MI 48221, Contact: Constance S. Molette, Phone: (313) 862-9321.
(b) *Approved Courses:*
Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 5/7/90).
Contractor/Supervisor (Certified 5/7/90).

(xxxiii)(a) *Training Provider:* SE MI Coalition on Occ Safety.
Address: 2727 Second Ave., Detroit, MI 48201, Contact: Barbara Boylan, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).

(xxxiv)(a) *Training Provider:* Sierra Analytical & Consulting.
Address: 307 N. First St., Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 662-1155.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 12/18/89).
Contractor/Supervisor Annual Review (Certified 3/14/90).
Inspector (Certified 6/25/90).

(xxxv)(a) *Training Provider:* Summit Abatement Contracting.
Address: 7255 Tower Rd., Battle Creek, MI 49017, Contact: William Morris, Phone: (616) 968-4242.
(b) *Approved Courses:*
Abatement Worker (Certified 11/22/89).
Abatement Worker Annual Review (Certified 11/22/89).
Contractor/Supervisor (Certified 11/22/89).
Contractor/Supervisor Annual Review (Certified 11/22/89).

(xxxvi)(a) *Training Provider:* Testing Engineers & Consultants.
Address: 1333 Rochester Rd., Troy, MI 48099, Contact: Karen Brunch, Phone: (313) 588-6200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/13/90).
Contractor/Supervisor (Certified 12/1/89).
Contractor/Supervisor Annual Review (Certified 6/28/90).



Inspector/Management Planner (Certified 11/13/89).
Inspector/Management Planner Annual Review (Certified 11/13/89).

(xxxvii)(a) *Training Provider:* The Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 6/27/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).

(xxxviii)(a) *Training Provider:* The Environmental Management.
Address: 314 S. State Ave., Indianapolis, IN 46201, Contact: Joseph Parker, Phone: (317) 269-3618.
(b) *Approved Courses:*
Abatement Worker (Certified 5/16/90).
Abatement Worker Annual Review (Certified 5/16/90).

(xxxix)(a) *Training Provider:* Thermico Inc.
Address: 3405 Centennial Dr., Midland, MI 48640, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xl)(a) *Training Provider:* Trust Thermal Systems.
Address: 13109 Schavey Rd., Suite 2 Dewitt, Dewitt, MI 48820, Contact: Thomas J. Lowe, Phone: (517) 669-8534.
(b) *Approved Courses:*
Abatement Worker (Certified 1/8/90).
Abatement Worker Annual Review (Certified 1/8/90).
Contractor/Supervisor (Certified 1/8/90).
Contractor/Supervisor Annual Review (Certified 1/8/90).

(xli)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo, Kalamaoo, MI 49008, Contact: Michael Pinto, Phone: (616) 382-4154.
(b) *Approved Courses:*
Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).
Inspector/Management Planner (Certified 11/20/89).
Inspector/Management Planner Annual Review (Certified 11/20/89).

**Minnesota**

(11)(a) *State Agency:* Minnesota Dept. of Health, Division of Environmental Health, Section of Occupational Health, Address: 925 Southeast Delaware St., P.O. Box 59040, Minneapolis, MN 55459-0040, Contact: William A. Fetzner, Phone: (612) 627-5097.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/3/88).
Contractor/Supervisor (full from 10/3/88).

(i)(a) *Training Provider:* Applied Environmental Sciences, Inc. (AES).
Address: Minneapolis Business & Tec. Center, Box 220, 511 11th Ave. South, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.
(b) *Approved Courses:*
Abatement Worker (Certified 1/16/90).
Abatement Worker Annual Review (Certified 12/11/89).
Contractor/Supervisor (Certified 1/16/90).
Contractor/Supervisor Annual Review (Certified 12/11/89).

(ii)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 840 Hampden Ave., Suite 110, St. Paul, MN 55114, Contact: James Risimini, Phone: (612) 649-0043.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/29/89).
Contractor/Supervisor Annual Review (Certified 12/29/89).

(iii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Alice M. Hartz, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 1/12/90).
Abatement Worker Annual Review (Certified 1/12/90).
Contractor/Supervisor (Certified 1/12/90).
Contractor/Supervisor Annual Review (Certified 1/12/90).

(iv)(a) *Training Provider:* Ilse Engineering Inc.
Address: 205 Board of Trade Building, Duluth, MN 55802, Contact: John F. Ilse, Phone: (218) 720-3528.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(v)(a) *Training Provider:* Institute for Environmental Assessment, Inc.
Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (612) 323-9770.
(b) *Approved Courses:*
Abatement Worker (Certified 11/12/89).
Abatement Worker Annual Review (Certified 11/12/89).
Contractor/Supervisor (Certified 11/12/89).
Contractor/Supervisor Annual Review (Certified 11/12/89).

(vi)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No. 34.
Address: 706 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (Certified 11/2/89).
Abatement Worker Annual Review (Certified 6/27/89).
Contractor/Supervisor (Certified 11/2/89).
Contractor/Supervisor Annual Review (Certified 6/27/89).

(vii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew/Betty Fenstemaker, Phone: (800) 444-6382.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/90).
Abatement Worker Annual Review (Certified 3/5/90).
Contractor/Supervisor (Certified 3/5/90).
Contractor/Supervisor Annual Review (Certified 3/5/90).

(viii)(a) *Training Provider:* McNeil Environmental, Inc.
Address: 755 East Cliff Rd., Burnsville, MN 55337, Contact: Philip Allmon, Phone: (612) 890-3452.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/22/89).
Contractor/Supervisor Annual Review (Certified 10/22/89).

(ix)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.
Address: 640 Jackson St., St. Paul, MN 55101, Contact: Jeanne F. Ayers, Phone: (612) 221-3992.
(b) *Approved Courses:*
Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 11/14/89).

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(x)(a) *Training Provider:* Midwest Consultants, Inc.
Address: 219 23rd St. North, Box 1706, Fargo, ND 58102, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
(xi)(a) *Training Provider:* Nova Environmental Services, Inc.
Address: Suite 420, Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.
(b) *Approved Courses:*
Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).
(xii)(a) *Training Provider:* Southwest Technical College.
Address: Continuing Education, SW State University, FT 103, Marshall, MN 56103, Contact: Carole Treadway, Phone: (507) 537-7386.
(b) *Approved Courses:*
Abatement Worker (Certified 4/27/89).
Abatement Worker Annual Review (Certified 7/24/89).
Contractor/Supervisor (Certified 4/27/89).
Contractor/Supervisor Annual Review (Certified 7/24/89).
(xiii)(a) *Training Provider:* The Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/30/90).
Contractor/Supervisor Annual Review (Certified 5/30/90).
(xiv)(a) *Training Provider:* Twin City Area Carpenter's Joint Apprenticeship Committee/United Brotherhood of Carpenters & Joiners.
Address: 2203 County Rd. C2, Roseville, MN 55113, Contact: Gerald W. Setterholm, Phone: (612) 633-8066.
(b) *Approved Courses:*
Abatement Worker (Certified 6/14/89).
Abatement Worker Annual Review (Certified 3/19/90).
Contractor/Supervisor (Certified 6/14/89).
Contractor/Supervisor Annual Review (Certified 3/19/90).

**Montana**

(12)(a) *State Agency:* Department of Health & Environmental Sciences,
Address: Cogswell Building, Helena, MT 59620, Contact: Adrian C. Howe, Phone: (406) 444-3671.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 5/16/90).
Contractor/Supervisor (full from 5/16/90).
Inspector/Management Planner (full from 5/16/90).
Project Designer (full from 5/16/90).
(i)(a) *Training Provider:* Bison Engineering.
Address: 30 5 Ewing, Helena, MT 59601, Contact: Don Hurst, Phone: (406) 442-5788.
(b) *Approved Courses:*
Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
(ii)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: P.O. Box 216, Sturgis, SD 57785, Contact: Randy Morris, Phone: (605) 347-4467.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/90).
Contractor/Supervisor (Certified 10/5/90).
(iii)(a) *Training Provider:* Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores Lott, Phone: (708) 298-1200.
(b) *Approved Course:*
Abatement Worker (Certified 1/19/90).
(iv)(a) *Training Provider:* Chen-Northern, Inc.
Address: 600 South 25th St., Billings, MT 59601, Contact: Kathy Smit, Phone: (406) 248-9161.
(b) *Approved Courses:*
Abatement Worker (Certified 1/24/90).
Abatement Worker Annual Review (Certified 2/5/90).
Contractor/Supervisor (Certified 1/24/90).
Contractor/Supervisor Annual Review (Certified 2/5/90).
(v)(a) *Training Provider:* Georgia Tech Research Institute.
Address: Georgia Institute of Technology, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3078,
(b) *Approved Courses:*
Contractor/Supervisor (Certified 10/5/90).
Contractor/Supervisor Annual Review (Certified 10/5/90).
(vi)(a) *Training Provider:* Hall-Kimbrell.
Address: 3333 Quebec St., Suite 460, Denver, CO 80207, Contact: Perry Ford, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
Inspector/Management Planner (Certified 10/1/90).
Inspector/Management Planner Annual Review (Certified 2/21/90).
Project Designer (Certified 4/28/90).
Project Designer Annual Review (Certified 2/21/90).
(vii)(a) *Training Provider:* Laborer's AGC, Training Program of Montana.
Address: RR2, Box 221-D, Helena, MT 59601, Contact: Dan Holland, Phone: (406) 442-9864.
(b) *Approved Courses:*
Abatement Worker (Certified 1/17/90).
Abatement Worker Annual Review (Certified 1/17/90).
(viii)(a) *Training Provider:* Montana State Council of Carpenters.
Address: P.O. Box 821, Helena, MT 59624, Contact: Bruce Morris, Phone: (406) 442-5256.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/90).
Abatement Worker Annual Review (Certified 3/1/90).
(ix)(a) *Training Provider:* Rocky Mountain Center.
Address: University of Utah, Bldg. 512, Salt Lake City, UT 84112, Contact: Jeff Lee, Phone: (801) 581-5710.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 6/19/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).
Inspector/Management Planner (Certified 7/27/90).
Inspector/Management Planner Annual Review (Certified 7/27/90).

**Nebraska**

(13)(a) *State Agency:* Department of Health Division of Asbestos Control, Address: 301 Centennial Mall South, P.O. Box 95007, Lincoln, NE 68509-5007, Contact: Jacqueline M. Fiedler, Phone: (402) 471-2541.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 5/9/89).



Contractor/Supervisor (full from 5/9/89).
Inspector (full from 5/9/89).
Inspector/Management Planner (full from 5/9/89).
Project Designer (full from 5/9/89).
(i)(a) *Training Provider:* Environmental Salvage, LTD.
Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn Knudtson, Phone: (402) 733-2595.
(b) *Approved Courses:*
Abatement Worker (Certified 3/14/89).
Abatement Worker Annual Review (Certified 8/3/89).
Contractor/Supervisor (Certified 3/14/89).
Contractor/Supervisor Annual Review (Certified 8/3/89).
(ii)(a) *Training Provider:* Institute for Environmental Assessment.
Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (800) 233-9513.
(b) *Approved Course:*
Contractor/Supervisor Annual Review (Certified 12/19/89).
(iii)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.
Address: Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.
(b) *Approved Courses:*
Abatement Worker (Certified 5/22/89).
Abatement Worker Annual Review (Certified 4/12/90).
Contractor/Supervisor (Certified 5/22/89).
Contractor/Supervisor Annual Review (Certified 11/27/89).
(iv)(a) *Training Provider:* National Asbestos Council.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tina Smith, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/90).
Abatement Worker Annual Review (Certified 12/15/89).

**New Jersey**

(14)(a) *State Agency:* State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).
(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Robert Bradshaw/Robyn Brunson, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (Certified 5/20/85).
Contractor/Supervisor (Certified 5/20/85).
(ii)(a) *Training Provider:* Alternative Ways, Inc.
Address: 53 Haddonfield Road, Suite 316, Cherry Hill, NJ 08002, Contact: James Mitchell/Linda Pardi, Phone: (609) 482-1311.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/85).
Abatement Worker Annual Review (Certified 3/15/90).
Contractor/Supervisor (Certified 4/25/85).
Contractor/Supervisor Annual Review (Certified 3/15/90).
(iii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Carol Pacquin, Phone: (703) 684-2924.
(b) *Approved Courses:*
Abatement Worker (Certified 6/17/87 to 9/28/89 only).
Contractor/Supervisor (Certified 6/17/87 to 9/28/89 only).
(iv)(a) *Training Provider:* Asbestos Training Academy, Inc. - NJ.
Address: 216 Cooper Center, Pennsauken, NJ 08109, Contact: Joseph Bower, Phone: (609) 488-9200.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/85).
Abatement Worker Annual Review (Certified 6/6/90).
Contractor/Supervisor (Certified 5/1/85).
Contractor/Supervisor Annual Review (Certified 6/6/90).
(v)(a) *Training Provider:* Asbestos Training Academy, Inc. - NY.
Address: 315 West 36th St., 9th Fl., New York, NY 10018, Contact: Richard Green/Charlotte Hicks, Phone: (212) 971-0370.
(b) *Approved Courses:*
Abatement Worker (Certified 9/20/88 to 9/19/90 only).
Contractor/Supervisor (Certified 9/20/88 to 9/19/90 only).
(vi)(a) *Training Provider:* Asbestos Training Institute, Inc.
Address: 345 Hudson St., New York, NY 10014, Contact: Jean Bodman/Ron Rominski, Phone: (212) 620-8556.
(b) *Approved Courses:*
Abatement Worker (Approval Suspended 4/30/90).
Abatement Worker Annual Review (Certified 5/30/90).
Contractor/Supervisor (Approval Suspended 4/30/90).
Contractor/Supervisor Annual Review (Certified 5/30/90).
(vii)(a) *Training Provider:* BCM Eastern, Inc.
Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: R. Ferguson or C. Sterchak, Phone: (215) 825-3800.
(b) *Approved Courses:*
Abatement Worker (Certified 6/7/87 to 12/13/89 only).
Contractor/Supervisor (Certified 6/7/87 to 12/13/89 only).
(viii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.
Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi/Pat Collura, Phone: (201) 521-0200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/19/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 7/19/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).
(ix)(a) *Training Provider:* Drexel University, Office of Continuing Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert T. Ross/Rita Karmiol, Phone: (215) 895-2156.
(b) *Approved Courses:*
Abatement Worker (Certified 4/13/88).
Contractor/Supervisor (Certified 4/13/88).
(x)(a) *Training Provider:* E.I. DuPont DeNemours & Co.
Address: Chamber Works, Deepwater, NJ 08023, Contact: Charles Battle/Jane Layne, Phone: (609) 540-2434.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/86).
Abatement Worker Annual Review (Certified 6/12/89).
Contractor/Supervisor (Certified 5/1/86).
Contractor/Supervisor Annual Review (Certified 6/12/89).
(xi)(a) *Training Provider:* Hazard Management Division of Curtin Management Consultants, Inc.
Address: 47 Midland Ave., Elmwood Park, NJ 07407, Contact: Daniel Curtin/Denise Timmerman, Phone: (201) 796-9589.
(b) *Approved Courses:*
Abatement Worker (Certified 6/3/87).
Contractor/Supervisor (Certified 6/3/87).

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(xii)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: c/o Carpenters Union-No. 455, 1931 Route 22 West, Bound Brook, NJ 08805-1519, Contact: Jack Caravanos/Joseph Marino, Phone: (201) 528-1116.
(b) *Approved Courses:*
Abatement Worker (Certified 8/31/90).
Contractor/Supervisor (Certified 8/31/90).

(xiii)(a) *Training Provider:* IT Corporation.
Address: 17461 Derian Ave., Suite 190, Irvine, CA 92714, Contact: Keith Soesbe, Phone: (714) 261-6441.
(b) *Approved Courses:*
Abatement Worker (Certified 8/29/85 to 9/13/90 only).
Contractor/Supervisor (Certified 8/29/85 to 9/13/90 only).

(xiv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.
Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Jim Capritti/Patricia Cancglin, Phone: (609) 547-5500.
(b) *Approved Courses:*
Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).

(xv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NY.
Address: 220 5th Ave; 17th Floor, New York, NY 10001, Contact: L. Fredericks/M. Cox-Abdalla, Phone: (212) 216-6340.
(b) *Approved Courses:*
Abatement Worker (Certified 8/28/89).
Contractor/Supervisor (Certified 8/28/89).

(xvi)(a) *Training Provider:* Local Union No. 14.
Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens/Lewis Fitzgerald, Phone: (215) 533-0395.
(b) *Approved Courses:*
Abatement Worker (Certified 8/9/85).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 8/9/85).
Contractor/Supervisor Annual Review (Certified 11/1/89).

(xvii)(a) *Training Provider:* Local Union No. 32.
Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini/John Dwyer, Phone: (201) 485-3826.
(b) *Approved Courses:*
Abatement Worker (Certified 5/8/87).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/8/87).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xviii)(a) *Training Provider:* Local Union No. 42.
Address: 1188 River Rd., New Castle, DE 19720, Contact: Joseph Noble, Phone: (302) 328-4203.
(b) *Approved Courses:*
Abatement Worker (Certified 10/30/85).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 10/30/85).
Contractor/Supervisor Annual Review (Certified 8/23/90).

(xix)(a) *Training Provider:* Local Union No. 89.
Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo/John DaBronzo, Phone: (609) 587-0092.
(b) *Approved Courses:*
Abatement Worker (Certified 5/13/86).
Abatement Worker Annual Review (Certified 11/27/89).
Contractor/Supervisor (Certified 5/13/86).
Contractor/Supervisor Annual Review (Certified 11/27/89).

(xx)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.
Address: 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen/Doris Daneluk, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 1/17/90).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 1/17/90).

(xxi)(a) *Training Provider:* NDI Training Institute.
Address: 7112 Airport Highway, Pennsauken, NJ 08109, Contact: J. Rodney Walton/John O'Brien, Phone: (609) 663-5042.
(b) *Approved Courses:*
Abatement Worker (Certified 9/13/88).
Contractor/Supervisor (Certified 9/13/88).

(xxii)(a) *Training Provider:* National Asbestos Council Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2022.
(b) *Approved Courses:*
Abatement Worker (Certified 1/13/87 to 10/3/90 only).
Contractor/Supervisor (Certified 1/13/87 to 10/3/90 only).

(xxiii)(a) *Training Provider:* National Asbestos Training Institute.
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler/Lisa Criscuolo, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker (Certified 5/3/85).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/3/85).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xxiv)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (800) 422-2836.
(b) *Approved Courses:*
Abatement Worker (Certified 1/16/88 to 10/24/89 only).
Contractor/Supervisor (Certified 1/16/88 to 10/24/89 only).

(xxv)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider/Matthew Gillen, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).

(xxvi)(a) *Training Provider:* Northeastern Analytical Corporation.
Address: 4 Stow Rd., Marlton, NJ 08053, Contact: R. Holwitt/M. Dutkiewicz, Phone: (609) 985-8000.
(b) *Approved Courses:*
Abatement Worker (Certified 5/20/85).
Abatement Worker Annual Review (Certified 8/30/89).
Contractor/Supervisor (Certified 5/20/85).
Contractor/Supervisor Annual Review (Certified 8/30/89).

(xxvii)(a) *Training Provider:* Princeton Testing Laboratory.
Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3108, Contact: Charles Schneekloth, Phone: (609) 452-9050.
(b) *Approved Courses:*
Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 6/14/89).
Contractor/Supervisor (Certified 5/8/85).



Contractor/Supervisor Annual Review (Certified 6/14/89).

(xxviii)(a) *Training Provider:* Temple University.
Address: CECSA, 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Denarde/Diane Dymski, Phone: (215) 787-6394.
(b) *Approved Courses:*
Abatement Worker (Certified 11/24/87).
Contractor/Supervisor (Certified 11/24/87).

(xxix)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Nelson Helu/Barbara Zeluck, Phone: (212) 619-2270.
(b) *Approved Courses:*
Abatement Worker (Certified 9/21/88 to 12/21/89 only).
Contractor/Supervisor (Certified 9/20/88 to 12/21/89 only).

(xxx)(a) *Training Provider:* White Lung Association of NJ.
Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley/Gregory Camacho, Phone: (201) 824-2823.
(b) *Approved Courses:*
Abatement Worker (Certified 5/21/85).
Contractor/Supervisor (Certified 5/21/85).

**North Dakota**

(15)(a) *State Agency:* State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 224-2348.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 4/21/89).
Contractor/Supervisor (full from 4/21/89).
Inspector (full from 4/21/89).
Inspector/Management Planner (full from 4/21/89).
Project Designer (full from 4/21/89).

(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.
Address: Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (Certified 6/30/89).
Abatement Worker Annual Review (Certified 7/31/89).

(ii)(a) *Training Provider:* Survey Management and Design.
Address: 2605 35th Ave. SW#No., Fargo, ND 58104, Contact: Peter L. Mehl, Phone: (701) 234-9536.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 1/5/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 6/10/89).
Inspector/Management Planner (Certified 6/24/89).
Inspector/Management Planner Annual Review (Certified 3/26/90).

(iii)(a) *Training Provider:* University of North Dakota.
Address: University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 3/28/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 3/28/90).

**Oregon**

(16)(a) *State Agency:* State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204-1390, Contact: Bruce E. Arnold, Phone: (503) 229-5506.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 9/23/88).
Contractor/Supervisor (full from 9/23/88).

(i)(a) *Training Provider:* Asbestos Training Project Workplace Resources.
Address: 1906 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(ii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 5319 Southwest Westgate, Suite 230, Portland, OR 97221, Contact: Kelly Champion, Phone: (503) 292-9406.
(b) *Approved Courses:*
Abatement Worker (Certified 12/28/88).
Contractor/Supervisor (Certified 9/7/89).

(iii)(a) *Training Provider:* Hazcon, Inc.
Address: 9600 Southwest Barbur, Portland, OR 97219, Contact: Randi Olson, Phone: (503) 244-9045.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.
Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.
Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 286-2950.
(b) *Approved Course:*
Abatement Worker (Certified 12/3/88 to 9/16/89 only).

(vi)(a) *Training Provider:* NAC Corporation.
Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.
(b) *Approved Courses:*
Abatement Worker (Certified 3/23/90).
Contractor/Supervisor (Certified 4/1/90).

(vii)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: P.O. Box 4638, Vancouver, WA 98662, Contact: Debbie Dunn, Phone: (206) 696-4015.
(b) *Approved Courses:*
Abatement Worker (Certified 12/14/88).
Contractor/Supervisor (Certified 12/14/88).

**Rhode Island**

(17)(a) *State Agency:* State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., Three Capitol Hill, Providence, RI 02908, Contact: William Dundulis, Jr., Phone: (401) 277-3601.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 2/4/88).
Contractor/Supervisor (full from 2/4/88).
Inspector/Management Planner (full from 8/3/89).
Project Designer (full from 8/3/89).

(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1200.
(b) *Approved Course:*
Contractor/Supervisor (Certified 3/31/89).

(ii)(a) *Training Provider:* Analytical Testing Services, Inc.
Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

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(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/10/86).
Contractor/Supervisor Annual Review (Certified 12/10/86).

(iii)(a) *Training Provider:* Applied Occupational Health Systems.
Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: H. Charles Claridge II, Phone: (603) 228-3610.
(b) *Approved Courses:*
Abatement Worker (Certified 6/11/90).
Contractor/Supervisor (Certified 6/11/90).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 Northwest Sixth Ave., Fort Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.
(b) *Approved Course:*
Abatement Worker (Certified 11/21/89).

(v)(a) *Training Provider:* Center for Environmental Management-Tufts University.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(vi)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.
(b) *Approved Courses:*
Abatement Worker (Certified 8/22/89).
Abatement Worker Annual Review (Certified 8/22/89).
Contractor/Supervisor (Certified 8/22/89).
Contractor/Supervisor Annual Review (Certified 8/22/89).

(vii)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7166.
(b) *Approved Courses:*
Abatement Worker (Certified 11/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(viii)(a) *Training Provider:* Con-Test Educational Center.
Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/88).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(ix)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Lion, Phone: (617) 932-9400.
(b) *Approved Courses:*
Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(x)(a) *Training Provider:* Environmed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Jr., Phone: (203) 786-5580.
(b) *Approved Courses:*
Abatement Worker (Certified 9/28/89).
Contractor/Supervisor (Certified 9/28/89).

(xi)(a) *Training Provider:* Environmental Training Services.
Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.
(b) *Approved Courses:*
Abatement Worker (Certified 1/23/90).
Abatement Worker Annual Review (Certified 1/23/90).
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(xii)(a) *Training Provider:* Georgia Institute of Technology/GTRI.
Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.
(b) *Approved Courses:*
Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(xiii)(a) *Training Provider:* Harvard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(xiv)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.
Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6866.
(b) *Approved Courses:*
Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xv)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 3/6/90).
Contractor/Supervisor (Certified 12/7/89).
Contractor/Supervisor Annual Review (Certified 3/6/90).

(xvi)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.
(b) *Approved Courses:*
Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xvii)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xviii)(a) *Training Provider:* Mystic Air Quality Consultants.
Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(xix)(a) *Training Provider:* NAACO.



Address: 790 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-8711.
(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor Annual Review (Certified 4/3/89).

(xx)(a) *Training Provider:* National Asbestos Council (NAC), Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.
(b) *Approved Course:*
Abatement Worker (Certified 9/5/86).

(xxi)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1128 16th St., NW., Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xxii)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor Annual Review (Certified 2/15/89).

(xxiii)(a) *Training Provider:* Quality Control Services, Inc.
Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.
(b) *Approved Courses:*
Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

(xxiv)(a) *Training Provider:* Safe Environment Corp.
Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

**South Dakota**

(18)(a) *State Agency:* Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Tammy LeBeau, Phone: (605) 773-3153.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/89).

(i)(a) *Training Provider:* ATC Environmental.
Address: 1515 East 10th St., Sioux Falls, SD 57701, Contact: Jim Stout, Phone: (605) 338-0555.
(b) *Approved Courses:*
Abatement Worker (Certified 2/6/90).
Contractor/Supervisor (Certified 2/6/90).
Inspector/Management Planner (Certified 2/6/90).

(ii)(a) *Training Provider:* Asbestos Consulting and Training Systems.
Address: 903 NW. 6th Ave., Fort Lauderdale, FL 33311, Contact: Mari Knick, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (Certified 6/20/90).
Abatement Worker Annual Review (Certified 6/20/90).
Contractor/Supervisor (Certified 6/20/90).
Contractor/Supervisor Annual Review (Certified 6/20/90).

(iii)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: Box 218, Sturgis, SD 57784, Contact: Steve Miller, Phone: (605) 347-4467.
(b) *Approved Courses:*
Abatement Worker (Certified 3/22/89).
Abatement Worker Annual Review (Certified 8/9/88).
Contractor/Supervisor (Certified 3/22/89).
Contractor/Supervisor Annual Review (Certified 8/9/88).
Inspector/Management Planner (Certified 3/22/89).
Inspector/Management Planner Annual Review (Certified 2/26/90).

(iv)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: 1400 Harrison Avenue, P.O. Box 14643, Cleveland, OH 45214.
Contact: Eugene B. Rose, Phone: (513) 921-1160.
(b) *Approved Courses:*
Abatement Worker (Certified 9/10/90).
Abatement Worker Annual Review (Certified 9/10/90).

(v)(a) *Training Provider:* Enviro-safe Inc.
Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.
(b) *Approved Courses:*
Abatement Worker (Certified 2/26/89 to 1/1/90 only).
Contractor/Supervisor (Certified 2/26/89 to 1/1/90 only).
Inspector/Management Planner (Certified 2/26/89 to 1/1/90 only).

(vi)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.
Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4981.
(b) *Approved Courses:*
Abatement Worker (Certified 4/20/89).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/20/89).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(vii)(a) *Training Provider:* Fox & Fox, Inc.
Address: 1904 Willow Creek Rd., Casper, WY 82604, Contact: David Fox, Phone: (307) 234-0084.
(b) *Approved Courses:*
Abatement Worker (Certified 1/29/90).
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/29/90).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(viii)(a) *Training Provider:* Iowa Laborers Training Fund.
Address: 5606 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-6665.
(b) *Approved Course:*
Abatement Worker (Certified 3/22/88).

(ix)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0161.
(b) *Approved Courses:*
Abatement Worker (Certified 4/3/90).
Abatement Worker Annual Review (Certified 4/3/90).

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Contractor/Supervisor (Certified 4/3/90).
Contractor/Supervisor Annual Review (Certified 4/3/90).
Inspector/Management Planner Annual Review (Certified 4/3/90).

(x)(a) *Training Provider:* Pickering Environmental.
Address: 1750 Madison Ave., Memphis, TN 38104, Contact: David Wright, Phone: (901) 726-0810.
(b) *Approved Course:*
Inspector/Management Planner (Certified 2/8/89).

(xi)(a) *Training Provider:* South Dakota State University, College of Engineering.
Address: P.O. Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4107.
(b) *Approved Courses:*
Abatement Worker (Certified 5/18/88).
Abatement Worker Annual Review (Certified 9/8/88).
Contractor/Supervisor (Certified 5/18/88).
Contractor/Supervisor Annual Review (Certified 9/8/88).
Inspector/Management Planner (Certified 5/18/88).
Inspector/Management Planner Annual Review (Certified 9/8/88).

**Utah**

(19)(a) *State Agency:* Utah Dept. of Health Bureau of Air Quality, Address: 288 North 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 538-6108.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

(i)(a) *Training Provider:* Asbestos Training Associates (ATA).
Address: 10256 S. Flanders Road, Sandy, UT 84092, Contact: Joseph B Liqori, Phone: (801) 571-4116.
(b) *Approved Course:*
Contractor/Supervisor (Certified 4/5/90).

(ii)(a) *Training Provider:* JKL Asbestos, Inc.
Address: P.O. Box 408, Lehi, UT 84043, Contact: James K. Libberton, Phone: (801) 768-4231.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

(iii)(a) *Training Provider:* R.S. Christiansen Asbestos Consultants, Inc.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.
(b) *Approved Course:*
Abatement Worker Annual Review (Certified 7/28/89).

(iv)(a) *Training Provider:* Utah Carpenters Joint Apprenticeship & Training Committee.
Address: 2261 S. Redwood Rd., Suite J, Salt Lake City, UT 84119, Contact: Ken Mayne, Phone: (801) 972-5147.
(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).

(v)(a) *Training Provider:* Utah Correctional Industries.
Address: P.O. Box 850, Draper, UT 84020-850, Contact: Vic Middleton, Phone: (801) 571-9264.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 9/25/89).
Contractor/Supervisor Annual Review (Certified 4/5/90).

**Virginia**

(20)(a) *State Agency:* Commonwealth of Virginia Dept. of Commerce, Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Peggy J. Wood, Phone: (804) 367-8595.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).

(i)(a) *Training Provider:* Aerosol Monitoring & Analysis.
Address: The Commons Corporate Center, 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (800) 221-1745.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/18/89).
Contractor/Supervisor (Certified 10/31/89).
Contractor/Supervisor Annual Review (Certified 10/18/89).
Inspector/Management Planner (Certified 10/18/89).

(ii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 7th St., SE., 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (Certified 3/2/88).
Abatement Worker Annual Review (Certified 1/1/89).
Contractor/Supervisor (Certified 3/2/88).
Contractor/Supervisor Annual Review (Certified 1/1/89).
Inspector/Management Planner (Certified 3/2/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(iii)(a) *Training Provider:* Asbestos Analytical Association.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 397-0695.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 7/27/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).
Inspector/Management Planner (Certified 7/27/88).
Inspector/Management Planner Annual Review (Certified 6/1/89).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 Northwest Sixth Ave., Ft. Lauderdale, FL 33311, Contact: Mark Knick, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (Certified 10/6/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/6/89).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(v)(a) *Training Provider:* Asbestos Removal Corp. of Maryland.
Address: 521-D Pulaski Highway, Joppa, MD 21085, Contact: John Therappas, Phone: (301) 679-6062.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vi)(a) *Training Provider:* Atlantic Environmental Resources.
Address: 10111-B Bacon Dr., Beltsville, MD 20705, Contact: John Profitt, Phone: (301) 595-1737.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vii)(a) *Training Provider:* BCM Engineers, Inc.



Address: 108 St. Anthony St., Mobile, AL 36602, Contact: H. Conrad Freeman, Phone: (205) 433-3981.
(b) *Approved Courses:*
Inspector/Management Planner Annual Review (Certified 9/1/89).
Project Designer Annual Review (Certified 9/1/89).

(viii)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 369-3900.
(b) *Approved Courses:*
Abatement Worker (Certified 9/13/88).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 9/13/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 9/13/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(ix)(a) *Training Provider:* Briggs Assoc. Inc.
Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Roos Voorhees, Phone: (301) 381-4434.
(b) *Approved Course:*
Abatement Worker (Certification Pending).

(x)(a) *Training Provider:* Critical Environmental.
Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Ronald F. Dodson, Phone: (713) 921-8921.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).

(xi)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.
Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.
(b) *Approved Courses:*
Abatement Worker (Certified 5/11/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 5/11/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xii)(a) *Training Provider:* EME, Inc.
Address: P.O. Box 8843, Greensboro, NC 27409, Contact: Russ Luther, Phone: (919) 855-5752.
(b) *Approved Course:*
Abatement Worker (Certified 4/1/90).

(xiii)(a) *Training Provider:* Environmental Specialties, Inc.
Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 452-1212.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xiv)(a) *Training Provider:* Fluor Daniel.
Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2166.
(b) *Approved Courses:*
Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).

(xv)(a) *Training Provider:* GST Company.
Address: 1341 Old Freedom Rd., Suite 3B, Mars, PA 16046, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Courses:*
Abatement Worker (Certified 6/1/89).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor (Certified 6/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xvi)(a) *Training Provider:* Georgia Tech Research Group.
Address: Georgia Tech Institute of Technology, Atlanta, GA 30332, Contact: Vicki H. Ainslie, Phone: (404) 895-3505.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 4/1/89).

(xvii)(a) *Training Provider:* Global Waste System Inc.
Address: Smith Reynolds Airport Hangar 14, Winston Salem, NC 27105, Contact: Carl Reid, Phone: (919) 744-9382.
(b) *Approved Courses:*
Abatement Worker (Certified 3/2/90).
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor (Certified 3/2/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xviii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.
(b) *Approved Courses:*
Abatement Worker (Certified 5/23/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/23/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).
Inspector/Management Planner Annual Review (Certified 2/1/90).

(xix)(a) *Training Provider:* Harman Engineering Associates, Inc.
Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Schrimsher, Phone: (205) 821-9250.
(b) *Approved Course:*
Abatement Worker (Certified 9/21/89).

(xx)(a) *Training Provider:* Hazard Abatement Consultants.
Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/89).

(xxi)(a) *Training Provider:* Ind-Tra-Co., Ltd.
Address: 511 W. Grace St., Richmond, VA 23220, Contact: Ernest Drew, Phone: (804) 648-7836.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Abatement Worker Annual Review (Certified 3/1/89).
Contractor/Supervisor (Certified 3/7/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 3/7/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(xxii)(a) *Training Provider:* Industrial Training & Support Services.
Address: P.O. Box 496, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.
(b) *Approved Courses:*
Abatement Worker (Certified 10/22/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxiii)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Pk., Woburn, MA 01801, Contact: Lisa Stammer, Phone: (617) 935-0664.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certification Pending).

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Contractor/Supervisor Annual Review (Certified 12/1/89).
Inspector (Certification Pending).

(xxiv)(a) *Training Provider:* Jenkins Professionals Inc.
Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.
(b) *Approved Courses:*
Abatement Worker (Certified 12/27/89).
Contractor/Supervisor (Certified 12/27/89).

(xxv)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund.
Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-8148.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/88).
Abatement Worker Annual Review (Certified 8/1/89).

(xxvi)(a) *Training Provider:* META.
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xxvii)(a) *Training Provider:* Marcus Environmental.
Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1855.
(b) *Approved Courses:*
Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).

(xxviii)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.
Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.
(b) *Approved Courses:*
Abatement Worker (Certified 5/19/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/19/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxix)(a) *Training Provider:* Medical College of Virginia, Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-0765.
(b) *Approved Courses:*
Abatement Worker (Certified 12/8/87).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 3/8/87).
Contractor/Supervisor Annual Review (Certified 11/1/88).
Inspector/Management Planner (Certified 12/8/87).
Inspector/Management Planner Annual Review (Certified 1/1/89).
Project Designer (Certified 8/25/88).

(xxx)(a) *Training Provider:* Metropolitan Laboratories.
Address: P.O. Box 8921, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.
(b) *Approved Courses:*
Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).

(xxxi)(a) *Training Provider:* National Asbestos Council, Inc.
Address: 1777 Northeast Expressway, Route 150, Atlanta, GA 30329, Contact: Cynthia Clavon, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xxxii)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.
Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2980.
(b) *Approved Courses:*
Abatement Worker (Certified 6/15/88).
Abatement Worker Annual Review (Certified 7/1/89).

(xxxiii)(a) *Training Provider:* OMC.
Address: 4451 Parliament Place, Lanham, MD 20706, Contact: Ellen J. Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor (Certified 8/25/89).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(xxxiv)(a) *Training Provider:* Old Dominion University.
Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 683-4256.
(b) *Approved Courses:*
Abatement Worker (Certified 6/8/88).
Abatement Worker Annual Review (Certified 5/1/89).
Contractor/Supervisor (Certified 6/9/88).
Contractor/Supervisor Annual Review (Certified 5/1/89).
Inspector/Management Planner (Certified 6/8/88).
Inspector/Management Planner Annual Review (Certified 4/1/89).

(xxxv)(a) *Training Provider:* Quality Specialties, Inc.
Address: One Westover Park, 501 Westover Ave., Hopewell, VA 23860, Contact: Bowen Hyatt, Phone: (804) 748-9637.
(b) *Approved Course:*
Abatement Worker Annual Review (Certified 7/20/90).

(xxxvi)(a) *Training Provider:* Retra Services.
Address: 200 Oxford Blvd., Allison Park, PA 15101, Contact: David Sarvadi, Phone: (800) 229-8724.
(b) *Approved Courses:*
Abatement Worker (Certified 8/18/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(xxxvii)(a) *Training Provider:* Roy F. Weston, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Michael Skotnick, Phone: (205) 826-6100.
(b) *Approved Course:*
Inspector/Management Planner (Certified 12/27/89).

(xxxviii)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.
(b) *Approved Courses:*
Abatement Worker (Certified 8/10/88).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xxxix)(a) *Training Provider:* State Council of Carpenters of Virginia.
Address: 3801 Jefferson Davis Hwy., Richmond, VA 23234, Contact: Frank Hollis, Phone: (804) 275-0701.
(b) *Approved Courses:*
Abatement Worker (Certified 8/31/89).
Contractor/Supervisor (Certified 8/31/89).

(xl)(a) *Training Provider:* The Environmental Institute.
Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.
(b) *Approved Course:*
Contractor/Supervisor Annual Review (Certified 12/1/89).

(xli)(a) *Training Provider:* The Francis L. Greenfield Institute.



Address: Route 6344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.
(b) *Approved Courses:*
Abatement Worker (Certified 10/10/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xlii)(a) *Training Provider:* The Glaser Company.
Address: 200 Kanawha Terrace, St. Albans, WV 25177, Contact: Gina Silbaugh, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 6/1/90).
Contractor/Supervisor Annual Review (Certified 6/1/90).

(xliii)(a) *Training Provider:* Tidewater Community College.
Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7196.
(b) *Approved Course:*
Abatement Worker (Certified 3/21/89).

(xliv)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.
Address: 106 Midmont Lake, Charlottesville, VA 22903, Contact: Gregory Pels, Phone: (804) 924-7114.
(b) *Approved Course:*
Abatement Worker (Certified 3/7/88).

(xlv)(a) *Training Provider:* Waco, Inc.
Address: 4407 Theodore Green Blvd., White Plains, MD 20695-0740, Contact: Wayne Cooper, Phone: (301) 870-3323.
(b) *Approved Courses:*
Abatement Worker (Certified 10/31/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 10/31/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).

(xlvi)(a) *Training Provider:* White Lung Association.
Address: 1901 St. Paul St., Baltimore, MD 21202, Contact: James Fite, Phone: (301) 727-0029.
(b) *Approved Courses:*
Inspector/Management Planner (Certified 7/11/88).
Inspector/Management Planner Annual Review (Certified 2/1/90).

**Washington**

(21)(a) *State Agency:* Washington Department of Labor and Industries, Division of Industrial Safety and Health, Address: 300 West Harrison St., Seattle, WA 98119, Contact: James Catalano, Phone: (206) 281-5325.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 12/28/87).
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (interim from 12/28/87).
Contractor/Supervisor (full from 11/10/89).

(i)(a) *Training Provider:* Asbestos Training Project/Workplace Resources.
Address: 1906 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).

(ii)(a) *Training Provider:* Bison Engineering/Research.
Address: 1020 S. 344th No. 204, Federal Way, WA 98003, Contact: Don Hurst, Phone: (206) 838-7261.
(b) *Approved Course:*
Abatement Worker (Certified 5/12/87 to 5/12/89 only).

(iii)(a) *Training Provider:* Carpenters-Employers Apprenticeship & Training Trust Fund of Western Washington.
Address: 1709 Hickox Rd., Mt. Vernon, WA 98273, Contact: Emil Lippert, Phone: (206) 428-2933.
(b) *Approved Courses:*
Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.
Address: 600 South 25th St., P.O. Box 30615, Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9282.
(b) *Approved Course:*
Abatement Worker (Certified 12/22/88 to 12/22/89 only).

(v)(a) *Training Provider:* Enviro-tec, Inc.
Address: 2825 - 152nd Ave. NE., Redmond, WA 98052, Contact: Lawrence Short, Phone: (206) 867-5111.
(b) *Approved Course:*
Abatement Worker (Certified 6/22/88 to 6/22/89 only).

(vi)(a) *Training Provider:* Environmental Health Sciences, Inc.
Address: 9 Lake Bellevue Bldg., Suite 104, Bellevue, WA 98005, Contact: Robert Gilmore, Phone: (206) 455-2959.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 3/1/88).

(vii)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8056.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/89 to 1/10/90 only).

(viii)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 383, Wauna, WA 98395, Contact: Ray Donahue, Phone: (206) 857-3222.
(b) *Approved Course:*
Abatement Worker (Certified 1/10/89 to 1/10/90 only).

(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc.
Address: 5319 SW. Westgate, No. 239, Portland, OR 97221, Contact: Peter Clark, Phone: (503) 292-9406.
(b) *Approved Courses:*
Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/89).

(x)(a) *Training Provider:* Hazcon, Inc.
Address: 9500 SW. Barbur Blvd., Suite 100, Portland, OR 97219, Contact: Harvey McGill, Phone: (503) 244-8045.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 11/1/89).

(xi)(a) *Training Provider:* Hazcon, Inc.
Address: 5950 Sixth Ave. S., No. 200, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763-7364.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 3/1/86).
Contractor/Supervisor (Certified 11/1/89).

(xii)(a) *Training Provider:* Heavey Engineers, Inc.
Address: P.O. Box 832, Stevenson, WA 98648, Contact: Bernard Heavey, Phone: (509) 427-8936.
(b) *Approved Courses:*
Abatement Worker (Certified 11/7/87 to 8/1/89 only).
Abatement Worker Annual Review (Certified 7/1/88 to 8/1/89 only).

(xiii)(a) *Training Provider:* Long Services.
Address: 8025 10th Ave. S., P.O. Box C 81435, Seattle, WA 98018-4498, Contact: Michael Cole, Phone: (206) 763-8422.
(b) *Approved Course:*
Abatement Worker (Certified 8/5/85).

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(xiv)(a) *Training Provider:* M & M Environmental, Inc.
Address: 3902 N. 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 759-3443.
(b) *Approved Courses:*
Abatement Worker (Certified 9/1/88 to 2/4/90 only).
Abatement Worker Annual Review (Certified 1/1/89 to 2/4/90 only).

(xv)(a) *Training Provider:* NW Envirocon, Inc.
Address: 285 SW. 41St., Renton, WA 98055, Contact: Matt Johnson, Phone: (206) 251-6033.
(b) *Approved Courses:*
Abatement Worker (Certified 2/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvi)(a) *Training Provider:* NW Envirocon, Inc.
Address: P.O. Box 189, Washoughal, WA 98671, Contact: Ed Hemsley, Phone: (206) 835-8578.
(b) *Approved Courses:*
Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvii)(a) *Training Provider:* NW Laborers - Employers Training Trust Fund.
Address: 27055 Ohio Ave., Kingston, WA 98346, Contact: Harold Avery, Phone: (206) 297-3035.
(b) *Approved Courses:*
Abatement Worker (Certified 9/1/85).
Abatement Worker Annual Review (Certified 9/1/85).

(xviii)(a) *Training Provider:* NW Washington Painting, Drywall Joint Appreaticeship Committee.
Address: 6770 E. Marginal Way S., Seattle, WA 98108, Contact: Paul Norling, Phone: (206) 762-8332.
(b) *Approved Courses:*
Abatement Worker (Certified 5/25/88 to 6/30/89 only).
Abatement Worker Annual Review (Certified 5/25/88 to 6/30/89 only).

(xix)(a) *Training Provider:* Oregon, Southern Idaho, Wyoming, SW Washington Apprenticeship.
Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Larry Porter, Phone: (503) 745-5513.
(b) *Approved Courses:*
Abatement Worker (Certified 9/1/85).
Abatement Worker Annual Review (Certified 9/1/85).

(xx)(a) *Training Provider:* Prezant Associates, Inc.
Address: 711 6th Ave. N., Suite 200, Seattle, WA 98108, Contact: Sue Nelson, Phone: (206) 281-9656.
(b) *Approved Courses:*
Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).
Contractor/Supervisor (Certified 9/1/89).

(xxi)(a) *Training Provider:* Seattle Area Roofers Joint Apprenticeship Committee.
Address: 2800 1st Ave., Rm. 318, Seattle, WA 98121, Contact: Pat Gilliland, Phone: (206) 728-2777.
(b) *Approved Course:*
Abatement Worker (Certified 1/26/90).

**Wisconsin**

(22)(a) *State Agency:* Department of Health & Social Services Division of Health, Address: 1414 East Washington, Ave., Rm. 117, Madison, WI 53703, Contact: Regina Cowell, Phone: (608) 267-2280.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Aerostat Environmental Engineering.
Address: P.O. Box 3096, 2817 Atchison Ave., Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.
(b) *Approved Course:*
Project Designer (Certified 4/9/90).

(ii)(a) *Training Provider:* Biological & Environmental Control Laboratories Inc.
Address: 615 Front St., Toledo, OH 43605, Contact: James Burk, Phone: (419) 693-5307.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 4/11/90).
Inspector/Management Planner (Certified 3/26/90).

(iii)(a) *Training Provider:* Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Ann Lot, Phone: (708) 298-1200.
(b) *Approved Course:*
Abatement Worker (Certified 5/8/90).

(iv)(a) *Training Provider:* Daniel J. Hartwig & Associates.
Address: P.O. Box 80, Oregon, WI 53575, Contact: Barb Ellis, Phone: (608) 835-5781.
(b) *Approved Courses:*
Abatement Worker (Certified 6/14/90).
Abatement Worker Annual Review (Certified 3/2/90).
Contractor/Supervisor (Certified 6/14/90).
Contractor/Supervisor Annual Review (Certified 3/2/90).
Inspector/Management Planner (Certified 6/27/90).
Inspector/Management Planner Annual Review (Certified 2/26/90).

(v)(a) *Training Provider:* Environmental Rehab. Inc.
Address: 1030 Parkview Rd., Greenbay, WI 54304, Contact: Randy Lacrosse, Phone: (414) 337-0650.
(b) *Approved Courses:*
Abatement Worker (Certified 4/9/90).
Abatement Worker Annual Review (Certified 4/9/90).

(vi)(a) *Training Provider:* Good Armstrong and Associates.
Address: 7709 West Beloit Rd., Milwaukee, WI 53219, Contact: Bonnie Good, Phone: (414) 541-8740.
(b) *Approved Courses:*
Abatement Worker (Certified 3/29/90).
Abatement Worker Annual Review (Certified 6/1/90).
Contractor/Supervisor (Certified 3/29/90).
Contractor/Supervisor Annual Review (Certified 6/1/90).

(vii)(a) *Training Provider:* Hall-Kimbrell.
Address: 72 Executive Dr., Suite 434, Aurora, IL 60504-8137, Contact: Greg Corder, Phone: (708) 898-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).

(viii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).
Address: 901 Kentucky, Suite 305, P.O. Box 786, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (800) 448-6381.
(b) *Approved Courses:*
Abatement Worker (Certified 5/17/90).
Abatement Worker Annual Review (Certified 5/17/90).
Contractor/Supervisor (Certified 5/17/90).
Contractor/Supervisor Annual Review (Certified 5/20/90).

(ix)(a) *Training Provider:* Milwaukee Asbestos Information Center (MAIC).
Address: 2224 Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (414) 747-6700.
(b) *Approved Courses:*



Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 4/26/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 4/26/90).
Project Designer (Certified 6/27/90).
Project Designer Annual Review (Certified 6/27/90).

(x)(a) *Training Provider:* National Asbestos Council (NAC).
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Thomas Laubenthal, Phone: (404) 633-7522.
(b) *Approved Courses:*
Abatement Worker (Certified 5/9/90).
Abatement Worker Annual Review (Certified 5/9/90).

(xi)(a) *Training Provider:* Northland Environmental Services Inc.
Address: 15 Park Ridge Dr., Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9690.
(b) *Approved Courses:*
Abatement Worker (Certified 7/11/90).
Abatement Worker Annual Review (Certified 7/11/90).
Contractor/Supervisor (Certified 7/11/90).
Contractor/Supervisor Annual Review (Certified 7/11/90).

(xii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc. (WAAT).
Address: North 9420 Lakeshore Dr., Van Dyne, WI 54979, Contact: Jerry Martin, Phone: (414) 922-8110.
(b) *Approved Courses:*
Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).
Contractor/Supervisor (Certified 4/6/90).
Contractor/Supervisor Annual Review (Certified 4/9/90).

(xiii)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Route 1, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 3/20/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

**EPA-Approved Training Courses**

**REGION I -- Boston, MA**

T3Acting Regional Asbestos Coordinator: T1Greg Rosecoe, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Applied Occupational Health Systems.
Address: P.O. Box 894, Concord, NH 03301, Contact: Karen Long, Phone: (603) 226-3610.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/13/90).
Abatement Worker Refresher Course (contingent from 7/20/90).
Contractor/Supervisor (contingent from 3/13/90).
Contractor/Supervisor Refresher Course (contingent from 7/20/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 7/19/90).

(2)(a) *Training Provider:* Brooks Safe & Sound, Inc.
Address: 44 Codfish Ln., Weston, CT 06883, Contact: Keith Brooks, Phone: (203) 226-6970.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/27/89).
Abatement Worker Refresher Course (contingent from 11/27/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor Refresher Course (contingent from 11/27/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(3)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).

(4)(a) *Training Provider:* Ecosystems, Inc.
Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/5/87).

(5)(a) *Training Provider:* Enviromed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5560.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker (full from 1/12/90).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor (full from 1/12/90).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 6/19/89).

(6)(a) *Training Provider:* Environmental Training Services Inc.
Address: 62-H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.
(b) *Approved Course:*
Abatement Worker (contingent from 4/22/88).

(7)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Mary Beth Carver, Phone: (617) 723-4664.
(b) *Approved Course:*
Inspector (contingent from 10/2/87).

(8)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.
Address: 915 Bridgeport Ave., Shelton, CT 06484, Contact: Angela D. Rath, Phone: (203) 929-1131.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).

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Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(9)(a) *Training Provider:* Institute for Environmental Education.
Address: 208 West Cummings Park, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/28/89).
Project Designer (full from 6/7/90).
Project Designer Refresher Course (contingent from 8/8/89).
Project Designer Refresher Course (full from 4/5/90).

(10)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.
Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 265-3547.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 7/27/88).

(11)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box V, Augusta, ME 04332-1042, Contact: Diana White, Phone: (207) 622-7823.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/87).
Abatement Worker (full from 3/22/90).
Abatement Worker Refresher Course (contingent from 10/17/88).
Abatement Worker Refresher Course (full from 5/25/90).
Contractor/Supervisor (contingent from 5/18/87).
Contractor/Supervisor (full from 3/2/90).
Contractor/Supervisor Refresher Course (full from 3/28/88).

(12)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: Route 97 & Murdock Rd., P.O. Box 77, Pomfret Center, CT 06259, Contact: Gennaro Lepore, Phone: (203) 974-1455.

(b) *Approved Course:*
Abatement Worker (contingent from 5/25/89).

(13)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748-2899, Contact: Jim Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).

(14)(a) *Training Provider:* Radiation Safety Associates, Inc.
Address: P.O. Box 107, 10 Pendleton Dr., Hebron, CT 06248, Contact: K. Paul Steinmeyer, Phone: (203) 228-0487.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).

(15)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

**REGION II -- Edison, NJ**

T3Acting Regional Asbestos Coordinator: T1Albert Kramer, EPA, Region II, 2890 Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6793, (FTS) 340-6793.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAC Contracting, Inc.
Address: 243 Paul Rd., Rochester, NY 14624, Contact: Kevin T. Cannan, Phone: (716) 328-7010.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/8/89).
Abatement Worker (full from 1/25/90).

(2)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10010, Contact: David V. Chambers, Phone: (212) 353-8200.

(b) *Approved Courses:*
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).
Inspector/Management Planner (full from 3/6/89).

(3)(a) *Training Provider:* Abatement Safety Training Institute.
Address: 323 West 39th St., New York, NY 10018, Contact: Rosemarie Bascianilli, Phone: (212) 629-8400.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/88).
Abatement Worker (full from 12/11/89).
Contractor/Supervisor (contingent from 10/25/88).
Contractor/Supervisor (full from 2/9/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(4)(a) *Training Provider:* Adelaide Environmental Health Associates.
Address: 61 Front St., Binghamton, NY 13905-4705, Contact: William S. Carter, Phone: (607) 722-8839.

(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).

(5)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).
Address: P.O. Box 1346, Schenectady, NY 12301, Contact: Kevin Pilgrim, Phone: (518) 374-4801.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/8/89).

(6)(a) *Training Provider:* Allegheny Council on Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.

(b) *Approved Course:*
Abatement Worker (contingent from 7/26/89).

(7)(a) *Training Provider:* Allwash of Syracuse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul D. Watson, Phone: (315) 454-4476.

(b) *Approved Courses:*



Abatement Worker (contingent from 12/16/87).
Abatement Worker (full from 12/7/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/30/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).

(8)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.
Address: Barclay Pavilion E, Suite 222, Route 70, Cherry Hill, NJ 08034, Contact: Linda A. Pardi, Phone: (609) 795-1991.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/88).
Abatement Worker (full from 12/1/89).
Contractor/Supervisor (contingent from 4/11/88).
Contractor/Supervisor (full from 12/1/89).
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/28/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 2/14/90).

(9)(a) *Training Provider:* Anderson International.
Address: RD 2, North Main Street Extension, Jamestown, NY 14701, Contact: Sally L. Gould, Phone: (716) 664-4026.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 9/23/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/24/90).

(10)(a) *Training Provider:* Applied Respiratory Technology.
Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Paul M. Madigan, Phone: (914) 265-4330.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(11)(a) *Training Provider:* Asbestos Control Management, Inc.
Address: 128 South Third St., Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.

(b) *Approved Course:*
Abatement Worker (contingent from 5/5/89).

(12)(a) *Training Provider:* Asbestos Training Academy, Inc.
Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: S.J. Sieracki, Phone: (609) 488-9200.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 11/7/88).
Inspector (contingent from 4/27/89).
Inspector (full from 1/24/90).

(13)(a) *Training Provider:* Asteco, Inc.
Address: 140 Telegraph Rd., P.O. Box 179, Middleport, NY 14105, Contact: Claudine R. Larocque, Phone: (716) 735-3894.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker (full from 4/13/88).
Abatement Worker Refresher Course (contingent from 12/20/88).

(14)(a) *Training Provider:* Astoria Industries, Inc.
Address: 536 Stewart Ave., Brooklyn, NY 11222, Contact: Gary DiPaolo, Jr., Phone: (718) 387-0011.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (contingent from 9/20/89).
Contractor/Supervisor (full from 1/4/90).
Inspector (contingent from 1/18/89).

(15)(a) *Training Provider:* BOCES-Albany-Schoharie-Schenectady Counties.
Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/20/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 7/31/89).
Contractor/Supervisor (contingent from 7/20/89).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(16)(a) *Training Provider:* BOCES-Cayuga-Onondaga Counties.
Address: 234 South St. Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*
Abatement Worker (contingent from 6/17/88).

(17)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.
Address: 431 Philo Road, Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/89).
Abatement Worker Refresher Course (contingent from 6/1/89).
Abatement Worker Refresher Course (full from 7/31/90).
Contractor/Supervisor (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (full from 7/31/90).
Inspector/Management Planner Refresher Course (contingent from 6/1/89).
Inspector/Management Planner Refresher Course (full from 4/18/90).

(18)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.
Address: 807 Deer Park Rd., Dix Hills, NY 11746, Contact: Ciro Aiello, Phone: (516) 667-6000 Ext. 300.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/6/89).
Abatement Worker (full from 11/27/89).
Contractor/Supervisor (contingent from 2/6/89).

(19)(a) *Training Provider:* Board of Cooperative Educational Services of Rensselaer, Columbia & Green Counties of New York.
Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Paul D. Bowler, Phone: (518) 732-7266.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 3/22/90).
Inspector/Management Planner (contingent from 4/10/89).

(20)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing Ed.
Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Edward J. Milliken, Phone: (516) 563-6159.

(b) *Approved Courses:*

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Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 5/17/90).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor (full from 5/9/90).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(21)(a) *Training Provider:* Branch Services, Inc.
Address: 1255 Lakeland Ave., Bohemia, NY 11716, Contact: Luis Sanders, Phone: (516) 563-7300.
(b) *Approved Course:*
Abatement Worker (contingent from 6/1/89).

(22)(a) *Training Provider:* Buffalo Laborers Training Fund.
Address: 1370 Seneca St., Buffalo, NY 14210-1647, Contact: Victor J. Sansanese, Phone: (716) 825-0883.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 3/9/90).
Abatement Worker Refresher Course (contingent from 8/8/89).

(23)(a) *Training Provider:* Building Laborers Local Union No. 17.
Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562-1121.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(24)(a) *Training Provider:* Calibrations, Inc.
Address: 802 Watervliet - Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 3/6/89).
Abatement Worker Refresher Course (full from 9/6/90).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 3/6/89).
Inspector/Management Planner (contingent from 9/28/88).
Inspector/Management Planner (full from 1/28/90).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
Inspector/Management Planner Refresher Course (full from 5/2/90).
Project Designer (full from 5/23/88).
Project Designer Refresher Course (contingent from 3/6/89).

(25)(a) *Training Provider:* Comprehensive Analytical Group.
Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: Susan Richardson, Phone: (315) 432-1332.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 2/16/90).
Abatement Worker Refresher Course (contingent from 4/25/89).
Abatement Worker Refresher Course (full from 3/27/90).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 2/16/90).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 3/27/90).
Inspector (contingent from 10/27/89).

(26)(a) *Training Provider:* Ecology & Environment, Inc.
Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 4/7/89).

(27)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.
Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-8001.
(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/20/88).
Abatement Worker Refresher Course (full from 10/22/88).

(28)(a) *Training Provider:* Edward O. Watts & Associates.
Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4827.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 1/20/90).
Abatement Worker Refresher Course (contingent from 3/3/89).
Contractor/Supervisor (contingent from 7/12/89).
Contractor/Supervisor (full from 1/20/90).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).

(29)(a) *Training Provider:* General Bldg. Laborer's Local Union No. 66.
Address: 288 Middle Island Rd., Medford, NY 11763, Contact: Peter Purrazzella, Phone: (516) 698-2280.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 12/1/89).

(30)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.
Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).

(31)(a) *Training Provider:* Hudson Asbestos Training Institute.
Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2856.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 3/13/89).
Contractor/Supervisor (contingent from 1/30/89).

(32)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.
(b) *Approved Courses:*
Abatement Worker (full from 7/1/88).
Abatement Worker Refresher Course (contingent from 6/20/89).
Contractor/Supervisor (full from 7/1/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/89).
Inspector/Management Planner (contingent from 12/21/89).

(33)(a) *Training Provider:* Hygeia Research & Training.
Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/88).
Abatement Worker (full from 5/8/88).
Abatement Worker Refresher Course (contingent from 12/12/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 1/28/89).
Contractor/Supervisor (full from 3/8/90).



Contractor/Supervisor Refresher Course (contingent from 12/20/88).
Contractor/Supervisor Refresher Course (full from 1/17/90).

(34)(a) *Training Provider:* Institute of Asbestos Awareness.
Address: 2 Heitz Pl., Suite 1000, Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.
(b) *Approved Courses:*
Abatement Worker (full from 10/24/88 to 10/12/90 only).
Abatement Worker Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Contractor/Supervisor (full from 10/24/88 to 10/12/90 only).
Contractor/Supervisor Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Inspector/Management Planner (contingent from 9/28/88 to 10/12/90 only).
Inspector/Management Planner (full from 3/2/89 to 10/12/90 only).
Inspector/Management Planner Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Project Designer (contingent from 9/28/89 to 10/12/90 only).

(35)(a) *Training Provider:* Institute of Asbestos Technology Corp.
Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 12/20/88).
Abatement Worker Refresher Course (full from 6/15/90).
Contractor/Supervisor (contingent from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 10/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/27/89).

(36)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.
Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/15/89).
Abatement Worker (full from 3/16/90).
Contractor/Supervisor (contingent from 3/27/89).
Inspector/Management Planner (contingent from 2/12/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (full from 4/27/89).

(37)(a) *Training Provider:* Korean Asbestos Training Center.
Address: 46-12 Queens Blvd, Long Island City, NY 11104, Contact: Tchang S. Bahrk, Phone: (718) 361-6464.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/11/89).
Abatement Worker (full from 4/25/90).
Abatement Worker Refresher Course (contingent from 5/22/89).
Abatement Worker Refresher Course (full from 4/19/90).
Contractor/Supervisor (contingent from 5/11/89).
Contractor/Supervisor (full from 5/19/90).
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(38)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.
Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 2/15/89).
Contractor/Supervisor (contingent from 10/7/89).

(39)(a) *Training Provider:* Lozier Architects/Engineers.
Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Coyne, Phone: (716) 223-7610.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/12/89).
Abatement Worker Refresher Course (contingent from 7/12/89).

(40)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.
Address: 444 Park Ave. South, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/15/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 8/25/89).
Contractor/Supervisor (contingent from 10/18/88).
Contractor/Supervisor (full from 12/5/88).

(41)(a) *Training Provider:* Monroe Community College of Rochester, New York.
Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 272-9839.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 4/28/89).

(42)(a) *Training Provider:* National Asbestos Training Institute (NATI).
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/1/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 12/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Contractor/Supervisor Refresher Course (full from 1/31/90).
Inspector/Management Planner (contingent from 6/13/88).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 5/25/89).
Inspector/Management Planner Refresher Course (full from 1/31/90).
Project Designer (contingent from 11/3/89).
Project Designer (full from 2/7/90).
Project Designer Refresher Course (contingent from 10/20/89).
Project Designer Refresher Course (full from 7/13/90).

(43)(a) *Training Provider:* National Institute on Abatement Science & Technology (NIAST).
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2836.
(b) *Approved Courses:*
Inspector (contingent from 3/8/88).
Inspector (full from 4/11/88).

(44)(a) *Training Provider:* New York University School of Continuing Education.
Address: 11 West 42nd St., New York, NY 10036, Contact: Charles Schwartz, Phone: (212) 790-1647.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/89).
Abatement Worker (full from 11/17/89).

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Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 11/17/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 6/8/89).
Inspector/Management Planner Refresher Course (full from 3/27/90).
Project Designer (contingent from 5/16/89).
Project Designer (full from 1/10/90).
Project Designer Refresher Course (contingent from 6/8/89).

(45)(a) *Training Provider:* Niagara County Community College.
Address: Corporate Training Center, P.O. Box 70, Lockport, NY 14095, Contact: Eugene Zinni, Phone: (716) 433-1650.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 9/14/90).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor (full from 2/19/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 5/16/88).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).

(46)(a) *Training Provider:* Northeastern Analytical Corporation.
Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Robert Howlitt, Phone: (809) 985-6000.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/89).
Abatement Worker Refresher Course (contingent from 6/17/89).
Contractor/Supervisor (contingent from 6/17/89).
Contractor/Supervisor Refresher Course (contingent from 6/17/89).

(47)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: 5000 Brittonfield Pkwy., P.O. Box 4873, Syracuse, NY 13221, Contact: Michael P. Quirk, Phone: (315) 433-6102.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/19/88).
Abatement Worker (full from 4/10/89).
Abatement Worker Refresher Course (contingent from 9/21/89).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 4/10/89).
Contractor/Supervisor Refresher Course (contingent from 9/21/89).
Inspector/Management Planner (full from 10/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (full from 1/17/90).

(48)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.
Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/16/90).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/16/90).

(49)(a) *Training Provider:* P.A. Environmental Corp.
Address: 4240-24F Hutchinson River Pkwy. E., Bronx, NY 10475, Contact: Pichai Arjarasumpun, Phone: (212) 379-6715.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/31/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(50)(a) *Training Provider:* Paradigm Environmental Services, Inc.
Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Marsha R. Cummings, Phone: (716) 647-2530.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/89).
Abatement Worker Refresher Course (contingent from 10/3/89).
Contractor/Supervisor (contingent from 12/23/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(51)(a) *Training Provider:* Princeton Testing Laboratory, Inc.
Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Charles Schneekloth, Phone: (609) 452-9050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/21/88).

(52)(a) *Training Provider:* Puerto Rico Environmental Consultants and Training Center, Inc.
Address: Cond. Banco Cooperativo Plaza Office, 302-B, Hato Rey, PR 00917, Contact: Roberto Berberena, Phone: (809) 250-8052.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Abatement Worker Refresher Course (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 11/20/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/20/89).

(53)(a) *Training Provider:* R. J. Fletcher, Inc.
Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-6141.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).

(54)(a) *Training Provider:* SUNY College of Technology at Farmingdale.
Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: Charles Erlanger, Phone: (516) 420-2000.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner (full from 4/27/90).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).

(55)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 1767, Williamsville, NY 14231, Contact: L.J. Beenau or Cronan Long, Phone: (716) 632-0707.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/4/88).
Abatement Worker Refresher Course (contingent from 3/2/89).



Contractor/Supervisor (contingent from 3/8/88).
Contractor/Supervisor (full from 4/4/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(56)(a) *Training Provider:* Safety Training, Inc.
Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.
(b) *Approved Course:*
Abatement Worker (contingent from 4/25/88).

(57)(a) *Training Provider:* State University of New York at Buffalo Toxicology Research Center.
Address: 111 Farber Hall, Buffalo, NY 14214, Contact: Paul J. Kostyniak/J. Syracuse, Phone: (716) 831-2125.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/89).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 10/19/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(58)(a) *Training Provider:* State of New Jersey Dept. of Health.
Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(59)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.
Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436-4114.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/15/88).
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 6/20/89).

(60)(a) *Training Provider:* Tri-Cities Laborers Training Program.
Address: 866 Wemple Road, Box 100, Glenmont, NY 12077, Contact: Joseph A. Zappone, Phone: (518) 370-3463.
(b) *Approved Courses:*
Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/28/88).
Abatement Worker Refresher Course (full from 2/2/89).

(61)(a) *Training Provider:* Union Occupational Health Center.
Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/17/89).

(62)(a) *Training Provider:* Univ. Med. & Dentistry of N.J. Robert Wood Med. School, Mid-Atlantic Asbestos Training Center.
Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (interim from 7/28/88 to 10/17/89).
Abatement Worker (full from 10/17/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (interim from 7/28/88 to 10/17/89).
Contractor/Supervisor (full from 10/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (full from 11/16/88).
Project Designer (contingent from 11/20/89).
Project Designer Refresher Course (contingent from 10/17/89).

(63)(a) *Training Provider:* Utilicom Corp.
Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Jackie Aab, Phone: (716) 381-8710.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 4/21/89).

(64)(a) *Training Provider:* Warren Mae Associates.
Address: RD 3, Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-8386.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).
Abatement Worker Refresher Course (full from 3/20/90).

(65)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker (full from 1/24/88).

(66)(a) *Training Provider:* Wetlands & Environmental Technologies, Inc.
Address: 88 Willow Ave., Hackensack, NJ 07601, Contact: John J. Borris, Phone: (201) 361-4799.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/8/89).
Inspector/Management Planner (contingent from 11/8/89).
Project Designer (contingent from 11/8/89).

(67)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manasia, Phone: (212) 619-2270.
(b) *Approved Course:*
Inspector (contingent from 2/23/89).

(68)(a) *Training Provider:* White Lung Association of New Jersey.
Address: 901 Broad St., Newark, NJ 07102, Contact: Antonio Legorreta, Phone: (201) 824-2623.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner (full from 5/18/90).

(69)(a) *Training Provider:* Zola Sookias Associates Environmental Consultants.
Address: 545 Eighth Ave., Suite 401, New York, NY 10018, Contact: Zola Sookias, Phone: (212) 330-0914.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/6/89).
Contractor/Supervisor (contingent from 10/6/89).

**REGION III -- Philadelphia, PA**

*Regional Asbestos Coordinator:* Carole Dougherty, EPA, Region III (3AM-32), 601 Arch St., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.

*List of Approved Courses:* The following training courses have been

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approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anna Marie Sossong, Phone: (717) 257-1360.

(b) *Approved Courses:*

Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Advance Analytical Laboratories Inc.

Address: 30th & North Church Sts., Hazleton, PA 18201, Contact: Steven L. Hahn, Phone: (717) 788-4155.

(b) *Approved Courses:*

Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(3)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.

Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (301) 684-3327.

(b) *Approved Courses:*

Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 9/1/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 9/1/89).
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 3/31/88).

(4)(a) *Training Provider:* Alcam, Inc.

Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2791.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/28/89).
Contractor/Supervisor (contingent from 1/28/89).

(5)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.

Address: 410 7th St., SE., 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/16/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 2/22/90).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (full from 2/22/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(6)(a) *Training Provider:* American Asbestos Training Institute, Inc.

Address: 2133 Arch St., Philadelphia, PA 19103, Contact: Linda McNeil, Phone: (215) 988-5710.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(7)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.

Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 7/21/89).

(8)(a) *Training Provider:* Apex Environmental, Inc.

Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(9)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (full from 6/17/87).
Contractor/Supervisor (full from 6/17/87).

(10)(a) *Training Provider:* Asbestos Analytical Association, Inc.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0695.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(11)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.

Address: P.O. Box 28, Timonium, MD 21093, Contact: David George, Phone: (301) 584-1490.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(12)(a) *Training Provider:* Asbestos Removal Co.

Address: 521 D Pulaski Hwy., Joppa, MD 21085, Contact: Nick Thrappas, Phone: (301) 679-6062.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(13)(a) *Training Provider:* Asbestos Training Center.

Address: 628 Spring St., Fairmont, WV 26554, Contact: Theodore Jackson, Phone: (304) 363-3803.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 6/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/20/90).
Inspector Refresher Course (contingent from 6/20/90).

(14)(a) *Training Provider:* Asbestos Workers Local Union No. 24.

Address: 6713 Ammendale Rd., Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937-7636.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(15)(a) *Training Provider:* Associated Thermal Services.

Address: 121 Edgewood Ave., Pittsburgh, PA 15218, Contact: Renee Yahasz, Phone: (412) 247-4000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/88).
Abatement Worker Refresher Course (contingent from 6/20/90).



Contractor/Supervisor (contingent from 12/11/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/90).
Inspector/Management Planner (contingent from 12/11/88).
Inspector/Management Planner Refresher Course (contingent from 6/20/90).
Project Designer (contingent from 12/11/88).
Project Designer Refresher Course (contingent from 6/20/90).

(16)(a) *Training Provider:* Atlantic Environmental Resources Inc.

Address: 10111-B Bacon Dr., Beltsville, MD 20705, Contact: John E Kee, Phone: (301) 595-1014.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(17)(a) *Training Provider:* BARCO Enterprises, Inc.

Address: 2439 North Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(18)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.

(b) *Approved Courses:*

Abatement Worker (full from 10/1/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Abatement Worker Refresher Course (full from 10/31/88).
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (full from 10/31/88).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner (full from 8/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(19)(a) *Training Provider:* Briggs Associates, Inc.

Address: 8309 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 361-4434.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 1/26/90).
Contractor/Supervisor (full from 1/12/90).

(20)(a) *Training Provider:* Brujos Scientific, Inc.

Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.

(b) *Approved Courses:*

Abatement Worker (full from 11/21/88).
Contractor/Supervisor (contingent from 9/29/88).

(21)(a) *Training Provider:* Business Industrial Safety Supplies.

Address: 118 East Patapsco Ave., Baltimore, MD 21225, Contact: Ronald Mace, Phone: (301) 354-2477.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/20/89).

(22)(a) *Training Provider:* Calvert Asbestos Training Services Inc.

Address: P.O. Box 799, Huntingtown, MD 20639, Contact: Carol F. Newhouse, Phone: (301) 535-0980.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/90).
Contractor/Supervisor (contingent from 8/1/90).
Inspector/Management Planner (contingent from 8/1/90).
Project Designer (contingent from 8/1/90).

(23)(a) *Training Provider:* Camtech, Inc.

Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 10/13/89).

(24)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.

Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 10/6/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor (full from 11/27/89).
Contractor/Supervisor Refresher Course (full from 11/27/89).

(25)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.

Address: 814 East Pittsburgh Plaza, Pittsburgh, PA 15112, Contact: David Ginsburg, Phone: (412) 823-1002.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 12/8/88).
Abatement Worker Refresher Course (full from 1/19/89).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 12/8/88).
Contractor/Supervisor Refresher Course (full from 1/19/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/1/89).
Project Designer (contingent from 6/29/89).
Project Designer (full from 12/21/89).
Project Designer Refresher Course (contingent from 12/13/89).

(26)(a) *Training Provider:* Center for Hazardous Materials Research.

Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/28/88).
Contractor/Supervisor (contingent from 11/28/88).

(27)(a) *Training Provider:* Charles County Community College.

Address: Mitchell Rd., Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(28)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus/Stanton Campus.

Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 454-3860.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).
Abatement Worker Refresher Course (contingent from 3/1/88).

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Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 3/1/88).

(29)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2156.
(b) *Approved Courses:*
Abatement Worker (interim from 9/1/86 to 11/11/87).
Abatement Worker (full from 11/12/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 9/1/86 to 11/11/87).
Contractor/Supervisor (full from 11/12/87).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/8/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/19/90).
Project Designer (contingent from 11/27/89).

(30)(a) *Training Provider:* Dynamac Corp.
Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 9/1/88).
Inspector/Management Planner Refresher Course (contingent from 6/26/89).

(31)(a) *Training Provider:* E.I. Dupont De Nemours & Co. Spruance Plant.
Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).

(32)(a) *Training Provider:* Eagle Industrial Hygiene Association Inc.
Address: 359 Dresher Rd., Horsham, PA 19044, Contact: Stephen R. Bell, Phone: (215) 657-2261.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Abatement Worker (full from 7/14/89).
Abatement Worker Refresher Course (contingent from 10/30/89).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor (full from 7/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/30/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner Refresher Course (contingent from 7/20/89).
Project Designer (contingent from 12/11/89).

(33)(a) *Training Provider:* Environmental Education Associates.
Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).

(34)(a) *Training Provider:* Environmental Training & Consultants, Inc.
Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Abatement Worker Refresher Course (contingent from 1/13/90).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor Refresher Course (contingent from 1/13/90).
Inspector/Management Planner (contingent from 4/6/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/90).

(35)(a) *Training Provider:* Environmental Training, Inc.
Address: 10 Industrial Hwy., Building N, Tinicum Industrial Park, Philadelphia, PA 19113, Contact: Gary D. Hyrne, Phone: (215) 521-5469.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).

(36)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 7/21/89).
Abatement Worker Refresher Course (full from 10/5/89).
Contractor/Supervisor (full from 10/18/88).
Contractor/Supervisor Refresher Course (contingent from 7/21/89).
Contractor/Supervisor Refresher Course (full from 10/5/89).

(37)(a) *Training Provider:* GA Environmental Services, Inc.
Address: Pier 5 Penn's Landing, Philadelphia, PA 19106, Contact: Frank E. Cona, Phone: (215) 351-4045.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/7/89).
Project Designer (contingent from 8/17/89).
Project Designer Refresher Course (contingent from 12/13/89).

(38)(a) *Training Provider:* GST Co.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 1/30/89).
Contractor/Supervisor (contingent from 11/14/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/12/89).

(39)(a) *Training Provider:* Galson Technical Services, Inc.
Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.
(b) *Approved Course:*



Inspector/Management Planner (contingent from 6/17/88).

(40)(a) *Training Provider:* General Physics Corp.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(41)(a) *Training Provider:* Genty Associates.
Address: 6060 Woodland Ave., Philadelphia, PA 19143, Contact: Frank Genty, Phone: (215) 727-4420.
(b) *Approved Course:*
Abatement Worker (contingent from 9/14/89).

(42)(a) *Training Provider:* Gerald T. Fenton, Inc.
Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).

(43)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0830.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 4/12/88).

(44)(a) *Training Provider:* Hazardous Materials Management.
Address: 932 West Patipso Ave., Baltimore, MD 21230, Contact: Anthony Bizzari, Phone: (301) 355-0586.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(45)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.
Address: P.O. Box 595, Moon-Clinton Rd., Clinton, PA 15026, Contact: Terry Larkin, Phone: (412) 695-2883.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 10/27/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 8/28/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (full from 8/3/89).

(46)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.
Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Joe Klocek, Phone: (717) 504-7563.
(b) *Approved Course:*
Abatement Worker (contingent from 10/20/88).

(47)(a) *Training Provider:* Ind. Tra. Co. Ltd.
Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (full from 9/16/88).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(48)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.
Address: 315 - 317 North Washington St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 3/20/90).
Abatement Worker Refresher Course (contingent from 6/6/90).

(49)(a) *Training Provider:* JMR Associates.
Address: P.O. Box 9895, Philadelphia, PA 19140, Contact: Joseph Faulk, III, Phone: (215) 227-3035.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/24/89).
Abatement Worker (full from 9/15/89).
Contractor/Supervisor (contingent from 8/24/89).
Contractor/Supervisor (full from 9/15/89).

(50)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 8022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 11/1/89).

(51)(a) *Training Provider:* John H. Lange Associates.
Address: 4623 Northridge Dr., Pittsburgh, PA 15235-3512, Contact: John H. Lange, Phone: (412) 733-1448.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/9/90).
Abatement Worker Refresher Course (contingent from 10/15/89).
Contractor/Supervisor (contingent from 7/9/90).
Contractor/Supervisor Refresher Course (contingent from 10/15/89).
Inspector/Management Planner (contingent from 7/9/90).
Inspector/Management Planner Refresher Course (contingent from 10/15/89).
Project Designer (contingent from 7/9/90).
Project Designer Refresher Course (contingent from 10/15/89).

(52)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.
Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1800.
(b) *Approved Course:*
Abatement Worker (contingent from 4/10/89).

(53)(a) *Training Provider:* Laborers District Council of Eastern Pennsylvania.
Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 1/30/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 3/20/90).

(54)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.
Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-6533.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).

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Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).

(55)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836-1175.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
Contractor/Supervisor (contingent from 4/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(56)(a) *Training Provider:* Marcus Environmental.
Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1855.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(57)(a) *Training Provider:* Maryland Department of the Environment.
Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/16/89).
Contractor/Supervisor (contingent from 11/16/89).
Inspector/Management Planner (contingent from 4/14/89).

(58)(a) *Training Provider:* Maryland Industrial Safety Training Services.
Address: 668 Shore Dr., Joppa, MD 21085, Contact: Brain Stewart, Phone: (301) 679-9362.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(59)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(60)(a) *Training Provider:* National Association of Minority Contractors.
Address: 806 15th St., NW., Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).

(61)(a) *Training Provider:* National Training Fund for the Sheet Metal and Air Conditioning Industry.
Address: 601 North Fairfax St., Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 739-7200.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/28/88).

(62)(a) *Training Provider:* Occupational Medical Center.
Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 9/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(63)(a) *Training Provider:* Old Dominion University, Office of Continuing Education, College of Health Services.
Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/89).
Abatement Worker (full from 7/27/88).

(64)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/89).
Abatement Worker Refresher Course (contingent from 10/12/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor Refresher Course (contingent from 10/12/89).
Inspector (contingent from 3/14/88).

(65)(a) *Training Provider:* Paskal Environmental Services.
Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/88).

(66)(a) *Training Provider:* Pennsylvania Dept. of Welfare.
Address: Capitol Associates Bldg., Room 103 P.O. Box 2675, Harrisburg, PA 17105, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 12/14/89).

(67)(a) *Training Provider:* Philadelphia Electric Co.
Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewiez, Phone: (215) 270-8600.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/19/88).
Abatement Worker (full from 7/28/89).
Abatement Worker Refresher Course (contingent from 2/24/89).
Abatement Worker Refresher Course (full from 11/15/89).

(68)(a) *Training Provider:* Phoenix Safety Associates, Ltd.
Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).

(69)(a) *Training Provider:* Quality Specialities, Inc.



Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5855.
(b) *Approved Course:*
Abatement Worker (contingent from 8/8/88).

(70)(a) *Training Provider:* RCW Environmental Consulting & Training.
Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/89).
Contractor/Supervisor (contingent from 8/1/89).
Inspector/Management Planner (contingent from 11/1/89).

(71)(a) *Training Provider:* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.
Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).

(72)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.
(b) *Approved Course:*
Abatement Worker (contingent from 7/12/88).

(73)(a) *Training Provider:* SE Technologies., Inc. (SET).
Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(74)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/30/89).

(75)(a) *Training Provider:* STIC Corporation.
Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 4/7/89).

(76)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.
(b) *Approved Courses:*
Abatement Worker (Approval Suspended 10/2/89).
Abatement Worker Refresher Course (Approval Suspended 10/2/89).
Contractor/Supervisor (Approval Suspended 10/2/89).
Contractor/Supervisor Refresher Course (Approval Suspended 10/2/89).
Inspector/Management Planner (Approval Suspended 10/2/89).
Inspector/Management Planner Refresher Course (Approval Suspended 10/2/89).

(77)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.
Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.
(b) *Approved Courses:*
Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).

(78)(a) *Training Provider:* Tetra Services, Inc.
Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/89).

(79)(a) *Training Provider:* The Glaser Co.
Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(80)(a) *Training Provider:* The J.O.B.S. Company.
Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0048.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/28/89).
Abatement Worker (full from 2/14/90).
Contractor/Supervisor (contingent from 5/25/89).

(81)(a) *Training Provider:* Tracor Jitco, Inc.
Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).

(82)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners of America.
Address: 101 Constitution Ave. NW., Washington, DC 20001, Contact: Joseph L Durst, Jr., Phone: (202) 546-6206.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 3/21/90).
Contractor/Supervisor (contingent from 12/11/89).
Contractor/Supervisor Refresher Course (contingent from 3/21/90).

(83)(a) *Training Provider:* United Environmental Systems, Inc.
Address: 104-106 Arch St., Philadelphia, PA 19106, Contact: Holly Tate, Phone: (215) 829-9454.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 9/25/89).
Abatement Worker Refresher Course (contingent from 1/30/90).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).

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(84)(a) *Training Provider:* University of Pittsburgh, Graduate School of Public Health.
Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
(85)(a) *Training Provider:* University of Scranton Technology Centér.
Address: Scranton, PA 18510-2192, Contact: Jerome P. De Santo, Phone: (717) 961-4050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/28/89).
(86)(a) *Training Provider:* Volz Environmental Services, Inc.
Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 11/21/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 11/21/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner (full from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 12/18/89).
Project Designer (contingent from 9/1/88).
Project Designer (full from 12/8/89).
Project Designer Refresher Course (contingent from 12/13/89).
(87)(a) *Training Provider:* W.S. Keyes Associates.
Address: 55 Frazer Rd., Bech 232, Malvern, PA 19355, Contact: W. Scot Keyes, Phone: (215) 647-2276.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/25/90).
Contractor/Supervisor (contingent from 1/25/90).
Inspector/Management Planner (contingent from 1/25/90).
(88)(a) *Training Provider:* Waco, Inc.
Address: Highway 925, N., P.O. Box 740, White Plains, MD 20695, Contact: Wayne Cooper, Phone: (301) 843-2488.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 6/12/88).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).
(89)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.
Address: One Monongalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346-0581.
(b) *Approved Course:*
Abatement Worker (contingent from 8/29/88).
(90)(a) *Training Provider:* West Virginia University Extension Service.
Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4015.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker Refresher Course (contingent from 11/2/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/2/89).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 4/28/89).
(91)(a) *Training Provider:* White Lung Association.
Address: 1601 St. Paul St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-6029.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
(92)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5830.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 11/7/89).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/7/87).

**REGION IV – Atlanta, GA**

*Regional Asbestos Coordinator: T1Larinda Gronner, EPA, Region IV, 345 Courtland St., NE, Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.*

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certificatin indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A.S.C. Consultants, Inc.
Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.
(b) *Approved Course:*
Abatement Worker (contingent from 6/22/89).
(2)(a) *Training Provider:* AHP Research, Inc.
Address: 1505 Johnson's Ferry Rd., Marietta, GA 30062, Contact: Dwight Brown, Phone: (404) 565-0061.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/9/89).
Inspector/Management Planner (interim from 5/26/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).
(3)(a) *Training Provider:* ARI Institute.



Address: P.O. Box 60599, Nashville, TN 37206, Contact: Mike Carver, Phone: (615) 228-3820.
(b) *Approved Course:*
Abatement Worker (contingent from 12/6/89).
(4)(a) *Training Provider:* ASC Asbestos Training Center.
Address: P.O. Box 291569, Nashville, TN 37229-1569, Contact: Don Hoffman, Phone: (615) 399-2221.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
(5)(a) *Training Provider:* ATEC Associates, Inc.
Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/14/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 4/14/89).
(6)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5308.
(b) *Approved Courses:*
Abatement Worker (full from 1/12/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (full from 1/12/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
(7)(a) *Training Provider:* All Gulf Contractors, Inc.
Address: 3654 Halls Mill Rd., Mobile, AL 36693, Contact: Robert Pettie, Phone: (205) 665-5199.
(b) *Approved Course:*
Abatement Worker (contingent from 2/22/89).
(8)(a) *Training Provider:* American Environmental Safety Institute.
Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 771-7463.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/29/89).
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 12/16/88).
Abatement Worker Refresher Course (full from 6/12/90).
Contractor/Supervisor (full from 10/17/88).
Contractor/Supervisor Refresher Course (contingent from 12/16/88).
Contractor/Supervisor Refresher Course (full from 6/13/90).
Inspector/Management Planner (full from 2/8/89).
(9)(a) *Training Provider:* Asbestos Abatement Associates, Inc.
Address: P.O. Box 6176, Spartanburg, SC 29305, Contact: John McNamara, Phone: (803) 582-1222.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 6/26/89).
Abatement Worker Refresher Course (contingent from 5/1/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (contingent from 3/7/89).
Contractor/Supervisor (full from 7/19/89).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (full from 7/19/89).
Inspector/Management Planner Refresher Course (contingent from 5/1/89).
Inspector/Management Planner Refresher Course (full from 7/31/89).
Project Designer (contingent from 11/14/89).
Project Designer (full from 1/12/90).
Project Designer Refresher Course (contingent from 10/16/89).
Project Designer Refresher Course (full from 11/21/89).
(10)(a) *Training Provider:* Asbestos Consultants, Inc.
Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/9/88).
(11)(a) *Training Provider:* Asbestos Disease Association.
Address: 800 West Platt St., Tampa, FL 33606, Contact: John D. Householter, Phone: (813) 254-0003.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 12/11/89).
Inspector/Management Planner (contingent from 12/11/89).
(12)(a) *Training Provider:* Asbestos Technical Resource Center, Inc.
Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/2/89).
Abatement Worker Refresher Course (full from 6/7/89).
Contractor/Supervisor (contingent from 6/2/89).
Contractor/Supervisor (full from 8/10/89).
Contractor/Supervisor Refresher Course (full from 6/7/89).
(13)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.
Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.
(b) *Approved Course:*
Abatement Worker (contingent from 8/11/88).
(14)(a) *Training Provider:* BCM Engineers, Inc.
Address: 104 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Conrad Freeman, Phone: (205) 433-3981.
(b) *Approved Courses:*
Inspector/Management Planner (full from 11/11/87).
Inspector/Management Planner Refresher Course (contingent from 11/10/88).
Project Designer (full from 12/8/87).
Project Designer Refresher Course (contingent from 5/4/89).
(15)(a) *Training Provider:* Betchel Construction, Inc.
Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slover, Phone: (305) 246-6565.
(b) *Approved Course:*
Abatement Worker (contingent from 3/13/89).
(16)(a) *Training Provider:* Big Bend Abatement, Inc.
Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-0130.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/89).
(17)(a) *Training Provider:* Briggs Associates Int'l. Inc.
Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.
(b) *Approved Course:*
Abatement Worker (contingent from 5/4/89).

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(18)(a) *Training Provider:* CRU Incorporated.
Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-8944.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 5/28/89).
(19)(a) *Training Provider:* Chemalytics.
Address: 33 East 7th St., Covington, KY 41011, Contact: Kenneth Reed, Phone: (606) 431-6224.
(b) *Approved Course:*
Abatement Worker (contingent from 1/17/90).
(20)(a) *Training Provider:* DPC General Contractors, Inc.
Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/88).
Abatement Worker (full from 5/9/88).
(21)(a) *Training Provider:* Diversified Industries, Inc.
Address: P.O. Box 10452, 7316 Market St., Wilmington, NC 28405, Contact: Greg Hale, Phone: (919) 686-1738.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/90).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 1/23/90).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
(22)(a) *Training Provider:* EEC, Inc.
Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimanker, Phone: (919) 672-9910.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/7/89).
Abatement Worker (full from 11/16/88).
Abatement Worker Refresher Course (contingent from 5/3/89).
Abatement Worker Refresher Course (full from 5/1/90).
Contractor/Supervisor (contingent from 7/14/89).
Contractor/Supervisor (full from 5/3/90).
Contractor/Supervisor Refresher Course (contingent from 9/28/89).
Contractor/Supervisor Refresher Course (full from 5/2/90).
(23)(a) *Training Provider:* ELB & Associates, Inc.
Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.
(b) *Approved Course:*
Abatement Worker (contingent from 6/30/88).
(24)(a) *Training Provider:* Eagle Environmental Laboratory.
Address: 1119 Ellard Rd., Fultondale, AL 35068, Contact: Mark Cambron, Phone: (205) 841-7663.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/89).
(25)(a) *Training Provider:* Energy Support Services, Inc.
Address: P.O. Box 6068, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8868.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/8/89).
Contractor/Supervisor (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (contingent from 11/8/89).
Inspector/Management Planner (contingent from 3/5/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).
(26)(a) *Training Provider:* Enpuricon Asbestos Management.
Address: 3200 Glen Royal Rd., No. 110, Raleigh, NC 27612-7404, Contact: Terry E. Slate, Phone: (919) 781-0886.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/11/89).
Contractor/Supervisor (contingent from 2/6/89).
(27)(a) *Training Provider:* Enviro Science, Inc.
Address: P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew Schauder, Phone: (803) 585-4900.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/15/89).
(28)(a) *Training Provider:* Enviro-Tech.
Address: 550 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/89 to 7/6/90 only).
Contractor/Supervisor (contingent from 7/11/89 to 7/6/90 only).
(29)(a) *Training Provider:* Environmental Aspecs, Inc.
Address: 1527 North Dale Mabry Hwy., Suite 105, Lutz, FL 33549-3010, Contact: Dennis L. Mast, Phone: (813) 948-1387.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/18/89).
Abatement Worker Refresher Course (full from 3/29/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 7/7/89).
Inspector/Management Planner Refresher Course (contingent from 10/20/89).
(30)(a) *Training Provider:* Environmental Control Systems Training Institute.
Address: 377 Harrods Woods Rd., Frankfurt, KY 40601, Contact: William A. Sadler, Phone: (502) 896-1245.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 8/10/89).
Inspector/Management Planner (contingent from 11/6/89).
(31)(a) *Training Provider:* Environmental Engineering Co., Inc.
Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7846.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 9/22/89).
Abatement Worker Refresher Course (contingent from 9/28/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 2/17/89).
Contractor/Supervisor (full from 9/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/89).
Contractor/Supervisor Refresher Course (full from 2/1/90).
(32)(a) *Training Provider:* Environmental Resources Group.
Address: 3845 Viscount, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).
(33)(a) *Training Provider:* Environmental Training Corporation.
Address: 2252 Rocky Ridge Rd., Suite 105, Birmingham, AL 35216, Contact: William E. Hicks, Phone: (800) 999-1655.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Contractor/Supervisor (contingent from 11/1/89).
Project Designer (contingent from 10/31/89).
(34)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.
Address: 2631 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 858-7458.
(b) *Approved Course:*
Abatement Worker (contingent from 1/31/89).
(35)(a) *Training Provider:* Fayetteville Technical Community College.
Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
(36)(a) *Training Provider:* Georgia Tech. Institute.
Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3806.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Inspector/Management Planner Refresher Course (full from 11/29/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 3/22/89).
(37)(a) *Training Provider:* Great Barrier Insulation Co.
Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 4/4/89).
Abatement Worker Refresher Course (contingent from 3/30/89).
(38)(a) *Training Provider:* Harmon Engineering Associates.
Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Roger W. Thompson, Phone: (205) 821-9250.
(b) *Approved Course:*
Abatement Worker (contingent from 1/4/89).
(39)(a) *Training Provider:* Harrison Contracting, Inc.
Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 10/12/88).
(40)(a) *Training Provider:* Howard L. Henson Training Institute.
Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.
(b) *Approved Course:*
Abatement Worker (full from 2/16/88).
(41)(a) *Training Provider:* International Association Heat & Frost Insulators & Asbestos Workers Local Union No. 13.
Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 355-4881.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 7/27/90).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 6/14/90).
Contractor/Supervisor (contingent from 1/23/89).
Contractor/Supervisor (full from 4/24/89).
Contractor/Supervisor Refresher Course (contingent from 1/23/89).
Contractor/Supervisor Refresher Course (full from 6/15/90).
(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.
Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.
(b) *Approved Courses:*
Abatement Worker (full from 10/11/88).
Abatement Worker Refresher Course (contingent from 8/16/89).
Abatement Worker Refresher Course (full from 11/8/89).
Contractor/Supervisor (full from 1/9/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/89).
Contractor/Supervisor Refresher Course (full from 11/9/89).
(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.
Address: 7815 Old Morrow Rd., Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 478-1393.
(b) *Approved Courses:*
Abatement Worker (full from 5/4/88).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (full from 11/2/88).
Inspector (contingent from 9/28/88).
Inspector (full from 9/28/88).
(44)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.
Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-0979.
(b) *Approved Courses:*
Abatement Worker (full from 11/15/88).
Contractor/Supervisor (full from 12/12/88).
(45)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.
Address: 7930 U.S. Hwy. 301 N., Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985-3067.
(b) *Approved Courses:*
Abatement Worker (full from 8/23/88).
Abatement Worker Refresher Course (contingent from 11/15/89).
Abatement Worker Refresher Course (full from 11/29/89).
Contractor/Supervisor (full from 11/29/88).
Contractor/Supervisor Refresher Course (contingent from 11/15/89).
Contractor/Supervisor Refresher Course (full from 11/28/89).
(46)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.
Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.
(b) *Approved Course:*
Abatement Worker (full from 8/10/88).
(47)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.



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Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-4640.

(b) *Approved Courses:*

Abatement Worker (full from 10/25/88).
Contractor/Supervisor (contingent from 12/6/89).
Contractor/Supervisor Refresher Course (full from 5/17/89).

(48)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.

Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.

(b) *Approved Courses:*

Abatement Worker (full from 7/10/89).
Contractor/Supervisor (full from 7/10/89).

(49)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.

Address: P.O. Box 623, Pooler, GA 31322-0623, Contact: Kem Dugger, Phone: (912) 748-8282.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (full from 8/17/89).
Contractor/Supervisor (full from 9/13/89).
Contractor/Supervisor Refresher Course (full from 8/17/89).

(50)(a) *Training Provider:* Kentucky Laborers Training Trust Fund.

Address: US 127 Bypass South, P.O. Box 208, Lawrenceburg, KY 40342, Contact: David Vinson, Phone: (502) 839-3155.

(b) *Approved Course:*

Abatement Worker (contingent from 1/10/89).

(51)(a) *Training Provider:* LCI Training Institute.

Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8881.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/88).
Contractor/Supervisor (contingent from 6/9/88).

(52)(a) *Training Provider:* Laborers District Council of Southeast Florida.

Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2659.

(b) *Approved Course:*

Abatement Worker (full from 3/15/88).

(53)(a) *Training Provider:* Laborers Local Union No. 517 North & Central Florida Education & Training Fund.

Address: 4625 Old Wintergarden Rd., Bldg. A-6, Orlando, FL 32811, Contact: Patrick O' Donnell, Phone: (407) 298-3446.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/22/89).

(54)(a) *Training Provider:* Lang Engineering of Florida, Inc.

Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-9311.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).
Abatement Worker (full from 4/2/90).
Abatement Worker Refresher Course (contingent from 8/9/89).

(55)(a) *Training Provider:* Laseter & Associates, Inc.

Address: P.O. Box 176, Collierville, TN 38017, Contact: Kenneth M. Laseter, Phone: (800) 456-8617.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/7/89).
Contractor/Supervisor (contingent from 11/7/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).

(56)(a) *Training Provider:* Law Engineering, Inc.

Address: 7616 Southland Blvd., Suite 110, Orlando, FL 32809, Contact: Diana Rigdon, Phone: (407) 855-8740.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/89).
Contractor/Supervisor (contingent from 9/1/89).

(57)(a) *Training Provider:* Mississippi State University, Dept. of Continuing Education.

Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Billy G. Smith, Phone: (601) 325-3473.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 3/22/90).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor (full from 6/29/89).
Contractor/Supervisor Refresher Course (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (full from 3/19/90).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 5/26/89).
Project Designer (contingent from 12/15/88).
Project Designer Refresher Course (contingent from 5/26/89).

(58)(a) *Training Provider:* Mobile Asbestos Resource Services, Inc.

Address: 10 Airport Lane, Archer, FL 32618, Contact: Walter Heope, Phone: (904) 495-9214.

(b) *Approved Course:*

Abatement Worker (contingent from 12/6/89).

(59)(a) *Training Provider:* Mur-Shel, Inc. Asbestos Abatement.

Address: 1038 Grace Ave., Panama City, FL 32401, Contact: Lois Shelton, Phone: (904) 763-2010.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 9/1/89).

(60)(a) *Training Provider:* Napri/Cisco.

Address: 4545 St. Augustine Rd., Jacksonville, FL 32207, Contact: Otey C. Reynolds, Phone: (904) 730-2222.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/16/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/16/89).
Inspector/Management Planner (contingent from 10/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/16/89).

(61)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
Abatement Worker Refresher Course (contingent from 2/8/89).
Abatement Worker Refresher Course (full from 9/17/90).

(62)(a) *Training Provider:* National Monitoring Labs, Inc.



Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Bakshi, Phone: (800) 347-3414.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 5/23/89).
Inspector/Management Planner (contingent from 4/14/89).
Inspector/Management Planner (full from 1/19/90).
Inspector/Management Planner Refresher Course (contingent from 5/23/89).

(63)(a) *Training Provider:* Occupational Training Academy, Inc.

Address: 8409 Laurel Fair Circle, Suite 102, Tampa, FL 33610, Contact: John Burke, Phone: (813) 621-5586.

(b) *Approved Course:*

Abatement Worker (contingent from 1/17/90).

(64)(a) *Training Provider:* PDR Engineers, Inc.

Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298-2065.

(b) *Approved Course:*

Inspector (contingent from 9/15/88).

(65)(a) *Training Provider:* Practical Environmental Training Institute.

Address: 230 S. Tryon St., Suite 910, Charlotte, NC 28221-6308, Contact: Dianne Christenbery, Phone: (704) 375-9382.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 6/18/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor (full from 3/20/89).
Contractor/Supervisor Refresher Course (contingent from 6/18/89).
Contractor/Supervisor Refresher Course (full from 2/6/90).

(66)(a) *Training Provider:* Republic Industries, Inc.

Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2664.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 1/24/90).
Abatement Worker Refresher Course (contingent from 5/5/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 4/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/5/89).

(67)(a) *Training Provider:* Retra Services, Inc.

Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Peroff, Phone: (800) 548-5848.

(b) *Approved Courses:*

Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 1/24/89).

(68)(a) *Training Provider:* Seagull Environmental Management Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7206.

(b) *Approved Courses:*

Abatement Worker (full from 5/8/88).
Abatement Worker Refresher Course (contingent from 9/22/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/22/89).
Inspector/Management Planner (contingent from 10/30/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(69)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.

Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 246-9000.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/16/89).

(70)(a) *Training Provider:* Technical Abatement Service, Inc.

Address: 807 East Lemon St., Bartow, FL 33830, Contact: John W. Pevy, Phone: (813) 533-0585.

(b) *Approved Course:*

Abatement Worker (contingent from 6/21/89).

(71)(a) *Training Provider:* Technical Education Resources, Inc.

Address: 2212 Swann Ave., Suite D, Tampa, FL 33606, Contact: Robert Greene, Phone: (813) 251-1096.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/16/89).
Abatement Worker Refresher Course (contingent from 11/14/89).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor Refresher Course (contingent from 11/14/89).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner Refresher Course (contingent from 11/14/89).

(72)(a) *Training Provider:* Technical Environmental Service Training Institute (T.E.S.T).

Address: Box 28210, Raleigh, NC 27611-8210, Contact: Dennis Mast, Phone: (800) 868-7246.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/16/89).
Abatement Worker Refresher Course (full from 3/29/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 7/7/89).
Inspector/Management Planner Refresher Course (contingent from 10/20/89).

(73)(a) *Training Provider:* Technical Training Institute.

Address: P.O. Box 3156, Anderson, SC 29622, Contact: Bill Martin, Phone: (803) 228-2453.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/13/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor (full from 9/7/90).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (contingent from 11/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/17/89).
Project Designer (contingent from 11/13/89).
Project Designer Refresher Course (contingent from 10/17/89).

(74)(a) *Training Provider:* Tennessee Environmental Services.

Address: 1804 Williamson Ct., Brentwood, TN 37027, Contact: Gary J. Lang, Phone: (615) 373-8792.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/28/89).

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Abatement Worker (full from 8/15/90).
Abatement Worker Refresher Course (contingent from 11/1/89).
Abatement Worker Refresher Course (full from 8/17/90).
Contractor/Supervisor (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 8/16/90).

(75)(a) *Training Provider:* Testwell Craig Labs of Florida, Inc.
Address: 7104 North 51st St., Miami, FL 33166, Contact: George W. Stowell, Phone: (305) 593-0561.
(b) *Approved Course:*
Abatement Worker (contingent from 9/8/89).

(76)(a) *Training Provider:* The Environmental Institute.
Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/10/87).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 12/10/87).
Contractor/Supervisor (full from 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (full from 11/3/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
Project Designer Refresher Course (contingent from 4/17/89).
Project Designer Refresher Course (full from 4/19/89).

(77)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies.
Address: P.O. Box 870388, Tuscaloosa, AL 35486-0388, Contact: William Weems, Phone: (800) 452-5923.
(b) *Approved Courses:*
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/13/89).
Contractor/Supervisor (full from 12/14/87).
Contractor/Supervisor Refresher Course (contingent from 11/13/89).
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 11/13/89).

(78)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.
Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (full from 7/30/90).

(79)(a) *Training Provider:* University of Florida TREEO Center.
Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Peggy Cook, Phone: (904) 392-9570.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/24/89).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(80)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.
Address: CRMS Building, Room 320, Lexington, KY 40506-0108, Contact: Liz Haden, Phone: (606) 257-3972.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Inspector Refresher Course (contingent from 3/3/89).
Inspector/Management Planner (full from 2/15/88).

(81)(a) *Training Provider:* University of North Carolina, Occupational Safety & Health Educational Resource Center.
Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Larry Hyde, Phone: (919) 962-2101.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 6/7/89).
Inspector/Management Planner (contingent from 11/9/87).
Inspector/Management Planner (full from 11/9/87).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 5/2/89).
Project Designer Refresher Course (contingent from 6/22/89).

(82)(a) *Training Provider:* University of North Florida, Division of Continuing Education & Extension Environmental Ed. & Safety Institute.
Address: 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216, Contact: Elaine Puri, Phone: (904) 646-2690.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/89).
Abatement Worker (full from 5/16/90).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 5/16/90).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (full from 5/17/90).
Inspector/Management Planner (contingent from 9/1/89).

(83)(a) *Training Provider:* University of South Carolina Medical MUSC) Dept. of Environmental Health.
Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.
(b) *Approved Courses:*
Abatement Worker (full from 12/19/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (full from 3/8/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/89).
Inspector/Management Planner (full from 3/1/88).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).
Inspector/Management Planner Refresher Course (full from 5/2/89).

(84)(a) *Training Provider:* University of South Carolina, School of Public Health, c/o Azimuth Inc.



Address: 386 St. Andrews Rd., Columbia, SC 29210, Contact: Donald Cobb, Phone: (803) 798-2343.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/9/89).
Abatement Worker (full from 12/7/89).
Contractor/Supervisor (contingent from 5/5/89).
Contractor/Supervisor (full from 8/21/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Contractor/Supervisor Refresher Course (full from 9/20/89).

(85)(a) *Training Provider:* Westinghouse Environmental & Geotechnical Services, Inc.
Address: 3980 Dekalb Technology Parkway, Suite 700, Atlanta, GA 30340, Contact: Russell Dukes, Phone: (404) 452-1911.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/89).
Contractor/Supervisor (contingent from 7/18/89).
Inspector/Management Planner (contingent from 1/3/90).

(86)(a) *Training Provider:* Weston, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: David Whittington, Phone: (205) 826-6100.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Contractor/Supervisor (contingent from 10/13/88).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 1/31/89).
Contractor/Supervisor Refresher Course (full from 9/25/89).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner (full from 9/27/89).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (full from 3/17/89).
Project Designer (contingent from 8/23/88).
Project Designer (full from 3/8/90).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 9/26/89).

(87)(a) *Training Provider:* Williams & Associates, Inc., Environmental Training Center.
Address: 460 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-9030.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Abatement Worker Refresher Course (contingent from 5/1/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 4/18/88).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).

**REGION V – Chicago, IL**

*Regional Asbestos Coordinator:* Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.
Address: P.O. Box 26835, Columbus, OH 43226-0835, Contact: Steven Ritchie, Phone: (614) 267-0906.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.
Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.
Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/14/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 5/30/89).

(4)(a) *Training Provider:* Alderink & Associates, Inc.
Address: 3221 Three Mile Rd., NW., Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).
Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbestos Council).
Address: Box 7477, Springfield, IL 62791, Contact: Donald G. Handy, Phone: (217) 523-6747.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 6/14/89).
Abatement Worker Refresher Course (contingent from 6/31/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 6/14/89).
Contractor/Supervisor Refresher Course (contingent from 9/11/89).
Inspector/Management Planner (contingent from 3/29/89).
Inspector/Management Planner Refresher Course (contingent from 9/11/89).
Project Designer Refresher Course (contingent from 9/19/89).

(6)(a) *Training Provider:* American Environmental Institute.
Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Inspector/Management Planner (contingent from 11/14/88).

(7)(a) *Training Provider:* American Industrial Hygiene Association.

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Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1067, Contact: Mary Christ, Phone: (216) 762-7294.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 2/23/89).

(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology, Center, 511 11th Ave. S., Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).

Abatement Worker Refresher Course (contingent from 3/16/89).

Contractor/Supervisor (contingent from 2/7/89).

Contractor/Supervisor Refresher Course (contingent from 3/16/89).

Inspector/Management Planner (contingent from 10/17/89).

Inspector/Management Planner Refresher Course (contingent from 10/16/89).

(9)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).

Abatement Worker Refresher Course (contingent from 1/16/89).

(10)(a) *Training Provider:* Asbestech, Inc.

Address: 326 Front St., Marietta, OH 45750, Contact: Phillip Lee, Phone: (614) 373-0714.

(b) *Approved Course:*

Abatement Worker (contingent from 11/9/89).

(11)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.

(b) *Approved Course:*

Abatement Worker (contingent from 7/6/88).

(12)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1670.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/12/88).

Inspector/Management Planner (contingent from 10/14/88).

(13)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 1/4/89).

Contractor/Supervisor (contingent from 8/18/87).

Inspector/Management Planner (contingent from 1/26/88).

Inspector/Management Planner (full from 2/1/88).

Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(14)(a) *Training Provider:* Asbestos Professional Services, Inc.

Address: 501 North Second St., Breese, IL 62230, Contact: Donald T. Anderson, Phone: (618) 526-2742.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).

Abatement Worker Refresher Course (contingent from 10/9/89).

Contractor/Supervisor (contingent from 10/13/89).

Contractor/Supervisor Refresher Course (contingent from 10/9/89).

(15)(a) *Training Provider:* Asbestos Removal Inc.

Address: Waterworks Rd., P.O. Box 522, Wabash, IN 46992, Contact: Karen S. Eckman, Phone: (219) 563-2407.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/18/89).

Abatement Worker Refresher Course (contingent from 12/20/89).

(16)(a) *Training Provider:* Asbestos Roofing Technology, Inc.

Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refleuna, Phone: (312) 352-0400.

(b) *Approved Course:*

Abatement Worker (contingent from 4/13/89).

(17)(a) *Training Provider:* Asbestos Services, Inc.

Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).

Abatement Worker Refresher Course (contingent from 3/17/89).

Contractor/Supervisor (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (contingent from 3/17/89).

(18)(a) *Training Provider:* Asbestos Technology & Training, Inc.

Address: 1186 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).

Abatement Worker Refresher Course (contingent from 2/7/89).

Contractor/Supervisor (contingent from 7/27/88).

Contractor/Supervisor Refresher Course (contingent from 2/7/89).

Inspector/Management Planner (contingent from 2/7/89).

Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(19)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/15/88).

Abatement Worker (full from 5/18/88).

Abatement Worker Refresher Course (contingent from 12/11/88).

Contractor/Supervisor (contingent from 1/19/88).

Contractor/Supervisor (full from 6/20/88).

Contractor/Supervisor Refresher Course (contingent from 12/11/88).

Inspector/Management Planner (contingent from 5/13/88).

Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(20)(a) *Training Provider:* Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5969.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(21)(a) *Training Provider:* Astesco Laboratory, Inc.

Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.

(b) *Approved Courses:*

Abatement Worker (full from 10/31/88).

Abatement Worker Refresher Course (contingent from 2/7/89).

Contractor/Supervisor (contingent from 2/23/89).

Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(22)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.



(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).

Contractor/Supervisor (contingent from 10/1/87).

Contractor/Supervisor Refresher Course (contingent from 9/15/88).

Inspector/Management Planner (contingent from 1/15/88).

Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider:* Baker Midwest, Maple Grove, Minnesota.

Address: 10650 State Highway 152, Suite 112, Maple Grove, MN 55369, Contact: Joseph Reeves, Phone: (612) 493-2595.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/15/89).

Contractor/Supervisor (contingent from 6/15/89).

(24)(a) *Training Provider:* Ball State University.

Address: College of Sciences & Humanities, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5780.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/30/89).

(25)(a) *Training Provider:* Bems Engineering, Inc.

Address: 18600 Northville Rd., Suite 200, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor Refresher Course (contingent from 12/29/88).

Inspector (contingent from 1/18/89).

Inspector/Management Planner Refresher Course (contingent from 1/4/89).

Project Designer (contingent from 3/2/89).

(26)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.

Address: 2903 South Graham Rd., Saginaw, MI 48608-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).

Contractor/Supervisor (contingent from 2/7/89).

(27)(a) *Training Provider:* Boelter Associates, Inc.

Address: 6700 West Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.

(b) *Approved Course:*

Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(28)(a) *Training Provider:* Bonne Terre Training Services.

Address: P.O. Box 673, Tiffin, OH 44883, Contact: Timothy E. Blott, Phone: (419) 447-5091.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).

Abatement Worker Refresher Course (contingent from 10/12/89).

(29)(a) *Training Provider:* Bowling Green State University Environmental Health Program.

Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.

(b) *Approved Course:*

Abatement Worker (contingent from 4/21/89).

(30)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.

Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4456.

(b) *Approved Course:*

Abatement Worker (full from 2/29/88).

(31)(a) *Training Provider:* Centin Corp.

Address: 6601 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.

(b) *Approved Course:*

Abatement Worker (contingent from 3/30/89).

(32)(a) *Training Provider:* Charles J. Ogg and Associates.

Address: P.O. Box 615, Newburgh, IN 47629-0615, Contact: Charles J. Ogg, Phone: (812) 853-7607.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).

Contractor/Supervisor (contingent from 5/1/89).

(33)(a) *Training Provider:* Clayton Environmental Consultants, Inc.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 1/26/88).

Inspector/Management Planner (full from 2/16/88).

Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(34)(a) *Training Provider:* Cleveland Environmental Services, Inc.

Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).

Contractor/Supervisor (contingent from 4/21/89).

(35)(a) *Training Provider:* Cleveland Wrecking Co.

Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/3/89).

Abatement Worker Refresher Course (contingent from 8/3/89).

Contractor/Supervisor (contingent from 8/3/89).

Contractor/Supervisor Refresher Course (contingent from 8/3/89).

(36)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.

Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/4/88).

Inspector/Management Planner (full from 4/11/88).

Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(37)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.

Address: 4N250 Old Gary Ave., Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 653-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).

Abatement Worker (full from 1/23/89).

Abatement Worker Refresher Course (contingent from 12/1/88).

Abatement Worker Refresher Course (full from 12/12/89).

Contractor/Supervisor (contingent from 9/22/89).

Contractor/Supervisor (full from 3/23/90).

(38)(a) *Training Provider:* Construction Laborer Local Union No. 496.

Address: 5945 North Ridge Rd., P.O. Box 190, Madison, OH 44057, Contact: Floyd Conrad, Phone: (216) 428-7177.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/25/89).

Abatement Worker Refresher Course (contingent from 12/1/89).

Contractor/Supervisor (contingent from 10/25/89).

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Contractor/Supervisor Refresher Course (contingent from 12/1/89).
Inspector (contingent from 10/25/89).
Inspector Refresher Course (contingent from 12/1/89).

(39)(a) *Training Provider:* D/E 3.
Address: 19701 South Miles Pkwy., N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1500.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/10/89).

(40)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.
(b) *Approved Courses:*
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/25/89).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(41)(a) *Training Provider:* Darla Environmental, Inc.
Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(42)(a) *Training Provider:* DeLisle Associates, Ltd.
Address: 0946 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(43)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., P.O. Box 148, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684-8358.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(44)(a) *Training Provider:* Ecological Services, Inc.
Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 3/7/89).

(45)(a) *Training Provider:* Emscoa-Emergency Medical Service Consultants of America.
Address: 12125 South 90th Ave., Palos Park, IL 60464, Contact: Fred Debow, Phone: (708) 448-7500.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(46)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.
Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/89).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.
Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 3/7/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 3/7/89).

(48)(a) *Training Provider:* Environmental Abatement Systems, Inc.
Address: 6416 Ellsworth, Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(49)(a) *Training Provider:* Environmental Diversified Services, Inc.
Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/14/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(50)(a) *Training Provider:* Environmental Management Consultants, Inc.
Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/13/89).
Abatement Worker (full from 12/13/89).
Contractor/Supervisor (contingent from 3/9/89).
Contractor/Supervisor (full from 12/13/89).

(51)(a) *Training Provider:* Environmental Professionals, Inc.
Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(52)(a) *Training Provider:* Environmental Rehab, Inc.
Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).



Abatement Worker (full from 3/29/89).
Abatement Worker Refresher Course (contingent from 10/13/89).

(53)(a) *Training Provider:* Environmental Response Systems, Inc.
Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 12/29/88).

(54)(a) *Training Provider:* Environmental Safety Training Services, Inc.
Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (217) 525-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 1/17/89).

(55)(a) *Training Provider:* Environmental Science & Engineering, Inc.
Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Phillip G. Zerwer, Phone: (309) 692-4422.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/30/89).
Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(56)(a) *Training Provider:* Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).
Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.
(b) *Approved Course:*
Abatement Worker (contingent from 3/17/89).

(57)(a) *Training Provider:* Environmental Training Institute.
Address: 4708 Angold Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/10/89).
Abatement Worker Refresher Course (contingent from 10/5/89).

(58)(a) *Training Provider:* Envirplus, Inc.
Address: 600 Hartrey Ave., Suite 203 A, Evanston, IL 60202, Contact: Salvadar Garcia, Phone: (312) 475-0022.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/31/89).

(59)(a) *Training Provider:* Escor, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(60)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 2400 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7191.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/4/88).
Contractor/Supervisor Refresher Course (contingent from 1/4/89).

(61)(a) *Training Provider:* G & H Contracting Associates, Ltd.
Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 4/21/89).

(62)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.
(b) *Approved Courses:*
Abatement Worker (full from 1/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/1/88).
Contractor/Supervisor (full from 8/29/88).
Contractor/Supervisor Refresher Course (contingent from 7/28/89).
Inspector/Management Planner (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (contingent from 8/2/89).

(63)(a) *Training Provider:* Hazard Management Group, Inc.
Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).

(64)(a) *Training Provider:* Hazardous Materials Institute, Inc.
Address: 1550 Old Henderson Rd., Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).

(65)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Abatement Worker Refresher Course (full from 1/9/90).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(66)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.
Address: 706 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/6/88).

(67)(a) *Training Provider:* Helix Environmental, Inc.
Address: 416 Triangle, Dayton, OH 45419, Contact: Ralph Froehlich, Phone: (513) 298-2990.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 12/19/89).

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Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 12/20/89).

(68)(a) *Training Provider:* I.P.C. of Chicago.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(69)(a) *Training Provider:* Illinois Environmental Institute.
Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 2/9/90).

(70)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.
Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.
(b) *Approved Courses:*
Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 12/13/89).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/90).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).

(71)(a) *Training Provider:* Ilse Engineering, Inc.
Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-8858.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(72)(a) *Training Provider:* Indiana Laborers Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).
Contractor/Supervisor Refresher Course (contingent from 6/14/89).

(73)(a) *Training Provider:* Indianapolis Center for Advanced Research, Inc.
Address: 611 North Capitol Ave., Indianapolis, IN 46204, Contact: William Berenek, Jr., Phone: (317) 262-5027.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/13/88).
Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(74)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).

(75)(a) *Training Provider:* Institute for Environmental Assessment.
Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(76)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.
Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 1/26/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(77)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(78)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.
Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5973.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).

(79)(a) *Training Provider:* JWP Enterprises, Ltd.
Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/6/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor (full from 12/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(80)(a) *Training Provider:* Kemron Environmental Services, Inc.
Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 5/13/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(81)(a) *Training Provider:* Keter Environmental Ltd.
Address: 699 Edgewood Ave., Elmhurst, IL 60126, Contact: Philip Pekron, Phone: (312) 941-0201.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(82)(a) *Training Provider:* Lakeland Contractors, Inc.
Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/4/89).
Abatement Worker Refresher Course (contingent from 4/11/89).

(83)(a) *Training Provider:* Lepi Enterprises, Inc.
Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1182.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 4/25/89).

(84)(a) *Training Provider:* Lyle Training Institute.
Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8822.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/21/88).
Contractor/Supervisor (contingent from 3/7/89).
Inspector/Management Planner (contingent from 6/30/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(85)(a) *Training Provider:* M.K. Moore & Sons, Inc.
Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/31/89).
Abatement Worker (full from 5/3/90).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(86)(a) *Training Provider:* MacNeil Environmental, Inc.
Address: 799 Roosevelt Rd., Building 6, Glen Ellyn, IL 60137, Contact: James E. Viskocil, Phone: (312) 858-2092.
(b) *Approved Courses:*
Contractor/Supervisor Refresher Course (contingent from 7/6/89).
Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(87)(a) *Training Provider:* Manage Right Asbestos Consultants.
Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/24/89).
Abatement Worker Refresher Course (contingent from 4/27/89).
Contractor/Supervisor (contingent from 4/7/89).

(88)(a) *Training Provider:* Mark A. Kriesemint, Ltd.
Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).

(89)(a) *Training Provider:* McDowell Business Training Center.
Address: 1313 S. Michigan Ave., 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2586.
(b) *Approved Course:*
Abatement Worker (contingent from 10/6/89).

(90)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.
Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1008.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(91)(a) *Training Provider:* Michigan Laborers Training Institute.
Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(92)(a) *Training Provider:* Mid-Central Illinois District Council of Carpenters.
Address: 910 Brenkman Dr., Pekin, IL 61554, Contact: Mr. Burnett, Phone: (309) 353-4232.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).

(93)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.
Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/89).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(94)(a) *Training Provider:* Midwest Health Training.
Address: 3820 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 6/15/88).
Contractor/Supervisor (contingent from 2/23/89).

(95)(a) *Training Provider:* Milwaukee Asbestos Information Center.
Contractor/Supervisor (contingent from 8/12/88).

(96)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(97)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(98)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(99)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(100)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(101)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(102)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(103)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(104)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(105)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(106)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(107)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(108)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(109)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(110)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(111)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(112)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(113)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(114)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(115)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(116)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(117)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(118)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(119)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(120)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(121)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(122)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(123)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(124)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(125)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(126)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(127)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(128)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(129)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(130)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(131)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(132)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(133)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(134)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(135)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(136)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(137)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(138)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(139)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(140)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(141)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(142)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(143)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(144)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(145)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(146)(a) *Training Provider:* Mobile Training Unit.
Address: 1200 Commerce Dr., Pittsburgh, PA 15275, Contact: Ronald Kovach, Phone: (412) 788-1260.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/3/89).
Abatement Worker Refresher Course (

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Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-5100.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Project Designer (contingent from 9/22/89).
Project Designer Refresher Course (contingent from 10/16/89).

(96)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor (full from 5/7/90).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Contractor/Supervisor Refresher Course (full from 5/1/90).
Inspector/Management Planner (full from 2/9/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).
Inspector/Management Planner Refresher Course (full from 4/30/90).

(97)(a) *Training Provider:* National Asbestos Abatement Corp.

Address: 1198 Robert T. Longway Blvd., Flint, MI 48503, Contact: James S. Sheaffer, Phone: (313) 232-7100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 4/18/89).

(98)(a) *Training Provider:* National Institute for Abatement Education.

Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271-7281.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).
Contractor/Supervisor (contingent from 7/15/88).

(99)(a) *Training Provider:* Northern Safety Consultants, Inc.

Address: 1408 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.

(b) *Approved Courses:*

Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(100)(a) *Training Provider:* Northland Environmental Services, Inc.

Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9899.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(101)(a) *Training Provider:* Nova Environmental Services.

Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 4/13/89).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(102)(a) *Training Provider:* Nova Environmental, Inc.

Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105. Contact: Kary S. Amin, Phone: (313) 930-0995.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 3/27/89).
Contractor/Supervisor (contingent from 10/7/88).
Contractor/Supervisor (full from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(103)(a) *Training Provider:* Occupational Safety Training, Inc.

Address: 237 Dino Dr., Suite A, Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 426-3300.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/17/89).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).

(104)(a) *Training Provider:* Ohio Asbestos Workers Council.

Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5969.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/17/88).
Contractor/Supervisor (full from 5/12/88).

(105)(a) *Training Provider:* Ohio Laborers' Training & Upgrading Trust Fund.

Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.

(b) *Approved Courses:*

Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 2/8/90).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).
Contractor/Supervisor Refresher Course (full from 2/9/90).

(106)(a) *Training Provider:* Olive - Harvey College Skill Center.

Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.

(b) *Approved Course:*

Abatement Worker (contingent from 3/6/89).

(107)(a) *Training Provider:* Peoria Public Schools.

Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.

(b) *Approved Course:*

Abatement Worker Refresher Course (contingent from 11/14/88).

(108)(a) *Training Provider:* Professional Asbestos Control Company Inc.

Address: 5739 West Howard St., Niles, IL 60648, Contact: William Foss, Phone: (312) 647-0077.

(b) *Approved Courses:*



Abatement Worker (contingent from 11/2/89).
Contractor/Supervisor (contingent from 11/2/89).

(109)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.

Address: 2955 W 5th Ave., Gary, IN 46404-1201, Contact: George Bradley, Phone: (219) 883-8541.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/5/88).

(110)(a) *Training Provider:* Professional Service Industries, Inc.

Address: 510 East 22nd St., Lombard, IL 60148, Contact: W.K. Swartzendruber, Phone: (312) 691-1490.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/89).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner (full from 4/27/89).
Inspector/Management Planner Refresher Course (contingent from 10/11/89).

(111)(a) *Training Provider:* Rend Lake College.

Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 10/10/89).

(112)(a) *Training Provider:* Risk Services, Inc.

Address: 28384 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/89).
Abatement Worker Refresher Course (contingent from 4/11/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(113)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.

Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S.Z. Mansdorf, Phone: (216) 928-5434.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 2/12/88).
Contractor/Supervisor Refresher Course (contingent from 1/19/89).
Inspector/Management Planner (contingent from 6/24/88).
Inspector/Management Planner (full from 3/23/90).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(114)(a) *Training Provider:* SEMCOSH.

Address: 2727 2nd Ave., Detroit, MI 48201-2854, Contact: Barbara Boylan, Phone: (313) 961-3345.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(115)(a) *Training Provider:* Safer Foundation.

Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 11/3/89).

(116)(a) *Training Provider:* Safety Dynamics.

Address: 124 Massachussetts Ave., Poland, OH 44514, Contact: Ronald G. Zikmund, Phone: (216) 757-3899.

(b) *Approved Course:*

Abatement Worker (contingent from 8/18/89).

(117)(a) *Training Provider:* Safety Training of Illinois.

Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.

(b) *Approved Courses:*

Abatement Worker (full from 12/18/87).
Abatement Worker Refresher Course (contingent from 11/14/88).

(118)(a) *Training Provider:* Sear Corp.

Address: 6802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 7/7/89).

(119)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.

Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 11/15/89).

(120)(a) *Training Provider:* Testing Engineers & Consultants, Inc.

Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/22/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).

(121)(a) *Training Provider:* The American Center for Educational Development, Inc.

Address: 316 S. Wabash, 2nd Floor, Chicago, IL 60604, Contact: Ron Broom, Phone: (312) 322-2233.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/13/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 1/19/90).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).

(122)(a) *Training Provider:* The Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 5/1/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 7/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(123)(a) *Training Provider:* The Clear Consortium.

Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.

(b) *Approved Course:*

Abatement Worker (contingent from 7/18/89).

(124)(a) *Training Provider:* The Environmental Institute.

Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.

(b) *Approved Course:*

Abatement Worker Refresher Course (contingent from 12/22/88).

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(125)(a) *Training Provider:* Thermico, Inc.
Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Course:*
Abatement Worker (contingent from 4/7/89).
(126)(a) *Training Provider:* Tillotson Consulting & Training, Inc.
Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).
(127)(a) *Training Provider:* Trust Thermal Systems.
Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).
(128)(a) *Training Provider:* United Science Industries, Inc.
Address: 621 Ninth St., P.O. Box 21, Carlyle, IL 62231, Contact: Mr. Koch, Phone: (618) 594-8670.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/4/89).
Abatement Worker (full from 5/17/90).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 12/4/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).
(129)(a) *Training Provider:* University of Cincinnati, Medical Center Department of Environmental Health Kettering Laborstory.
Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1730.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 7/11/89).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/4/89).
Inspector/Management Planner (full from 11/18/87).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).
Project Designer (contingent from 10/26/89).
(130)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C.
Address: 1440 West Washington, Chicago, IL 60607, Contact: Dick Lyons, Phone: (312) 829-1277.
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (full from 6/1/86).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).
Inspector/Management Planner Refresher Course (full from 2/17/89).
Project Designer (contingent from 7/7/89).
(131)(a) *Training Provider:* University of Wisconsin.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).
(132)(a) *Training Provider:* William E. Fink & Associates.
Address: 25 South State St., Girard, OH 44420, Contact: William Fink, Phone: (216) 545-1222.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/18/89).
(133)(a) *Training Provider:* William E. Fink & Associates, Inc.
Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6299.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/89).
Contractor/Supervisor (contingent from 8/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/13/89).
(134)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/87).
Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).
(135)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

**REGION VI – Dallas, TX**

*Regional Asbestos Coordinator:* John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAR, Inc.
Address: P.O. Box 742848, Houston, TX 77274-2848, Contact: Edwin C. Heikkila, Jr., Phone: (713) 777-9205.
(b) *Approved Course:*
Abatement Worker (contingent from 1/26/89).
(2)(a) *Training Provider:* AC & C Systems Corp.
Address: 5909 Northwest Expressway, Suite 310, Oklahoma City, OK 73132, Contact: Turner Stallings, Phone: (405) 728-0444.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/26/88).
(3)(a) *Training Provider:* AEGIS Associates, Inc.
Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-8320.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/14/89 to 4/16/90 only).
Contractor/Supervisor (contingent from 5/25/89 to 4/16/90 only).
Inspector Refresher Course (contingent from 4/4/89 to 4/16/90 only).
(4)(a) *Training Provider:* ASCTC Asbestos Training Center.
Address: P.O. Box 1419, Albany, LA 70711, Contact: Alphia Ross, Phone: (800) 999-7986.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
Project Designer Refresher Course (contingent from 2/5/90).
(5)(a) *Training Provider:* Abateco, Inc.
Address: 10696 Haddington, Suite 100, Houston, TX 77043, Contact: E.H. Zansler, Phone: (713) 461-0692.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/14/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 3/17/89).
Abatement Worker Refresher Course (full from 8/21/90).
Contractor/Supervisor (contingent from 8/14/89).
Contractor/Supervisor (full from 3/9/90).
Contractor/Supervisor Refresher Course (full from 8/22/90).
(6)(a) *Training Provider:* Ahera Training Institute.
Address: 12116A Jekel Circle, Austin, TX 78727, Contact: Richard J. Thompson, Phone: (512) 335-3724.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/10/89).
Abatement Worker (full from 5/9/90).
Abatement Worker Refresher Course (contingent from 12/15/89).
Contractor/Supervisor (contingent from 1/11/88).
Contractor/Supervisor (full from 3/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/89).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (contingent from 10/2/89).
(7)(a) *Training Provider:* Allied Training Systems.
Address: 4004 Tiffany, College Station, TX 77840, Contact: Dan Sheppard, Phone: (409) 690-0240.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/30/89).
Abatement Worker Refresher Course (contingent from 10/26/89).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).
(8)(a) *Training Provider:* Allison Sheridan Environmental Training Services.
Address: P.O. Box 6101, Katy, TX 77492, Contact: Don Rawlings, Phone: (713) 492-2309.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/90).
Contractor/Supervisor (contingent from 1/8/90).
(9)(a) *Training Provider:* American Specialty Contractors, Inc.
Address: 8181 West Darryl Pkwy., Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 928-9624.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).
(10)(a) *Training Provider:* Analytical Labs Training Center.
Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1254.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 2/7/90).
Contractor/Supervisor (contingent from 4/21/89).
Contractor/Supervisor (full from 2/9/90).
(11)(a) *Training Provider:* Asbestos Consulting Services, Inc. (A.C.S.I.).
Address: 13523 Ridgeview Dr., Baton Rouge, LA 70817, Contact: Ken Talbot, Phone: (504) 756-9180.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/10/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/11/90).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).
(12)(a) *Training Provider:* Asbestos Education Services.
Address: 11609 Barchetta Dr., Austin, TX 78758, Contact: Rick Orr, Phone: (512) 832-5298.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Project Designer Refresher Course (contingent from 11/28/89).
(13)(a) *Training Provider:* Asbestos Surveys & Training, Inc.
Address: 5959 Central Crest, Houston, TX 77092, Contact: J.T. Stoneburger, Phone: (713) 681-2639.
(b) *Approved Course:*
Abatement Worker (full from 10/22/87 to 5/1/89 only).

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(14)(a) *Training Provider:* Ashley Environmental Services.
Address: 5959 Central Crest, Houston, TX 77092, Contact: Jesse Ashley, Phone: (713) 683-6311.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/89).
Abatement Worker (full from 9/13/90).
Contractor/Supervisor (contingent from 9/29/89).
(15)(a) *Training Provider:* Beaumont Business Incubator.
Address: 1090 South Fourth St., Beaumont, TX 77701, Contact: Jerry Plaia, Phone: (409) 835-1554.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/29/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).
(16)(a) *Training Provider:* Carpenters Apprenticeship Training School.
Address: 8505 Glen Vista, Houston, TX 77061, Contact: S.C. Strunk, Jr., Phone: (713) 641-1011.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).
(17)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/88).
(18)(a) *Training Provider:* El Paso Community College, Transmountain Campus.
Address: P.O. Box 20500, El Paso, TX 79998, Contact: Jim Rath, Phone: (915) 757-5053.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/28/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).
(19)(a) *Training Provider:* Enviro-Con Services, Inc.
Address: 4916 Highway 6 North, Houston, TX 77084, Contact: Douglas S. Shotwell, Phone: (713) 855-9877.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/22/89).
Abatement Worker (full from 3/28/90).
Abatement Worker Refresher Course (contingent from 10/2/89).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 3/29/90).
Contractor/Supervisor Refresher Course (contingent from 10/2/89).
(20)(a) *Training Provider:* Environmental Consultant Service.
Address: P.O. Box 596422, Dallas, TX 75258, Contact: Thomas Armstrong, Phone: (214) 638-3589.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 4/20/89).
(21)(a) *Training Provider:* Environmental Monitoring Service, Inc. [EMS].
Address: 12731 Research Blvd., Building A, Austin, TX 78759, Contact: Rick Pruett, Phone: (512) 335-9116.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 1/15/90).
Contractor/Supervisor (contingent from 2/5/90).
Contractor/Supervisor Refresher Course (contingent from 2/5/90).
Inspector/Management Planner (contingent from 4/19/89).
(22)(a) *Training Provider:* Environmental Specialists, Inc.
Address: 320 Broadway SE., Albuquerque, NM 87102, Contact: Fernando E.C Debaca, Phone: (505) 243-2499.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/25/90).
Contractor/Supervisor (contingent from 6/28/90).
Inspector/Management Planner (contingent from 7/27/90).
(23)(a) *Training Provider:* Field Sciences Institute.
Address: 2309 Renard Pl. SE., Suite 104, Albuquerque, NM 87106, Contact: Robert L. Edgar, Phone: (505) 764-9251.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (full from 8/1/89).
Inspector Refresher Course (full from 8/1/89).
Inspector/Management Planner (contingent from 4/22/88).
(24)(a) *Training Provider:* Fort Worth Independent School District.
Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H.D. Duncan, Phone: (817) 336-8311.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).
(25)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 1501 Norwood, Suite 142, Hurst, TX 76054-3638, Contact: Ed Kirch, Phone: (817) 268-4006.
(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 3/18/88).
Abatement Worker Refresher Course (full from 7/5/89).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (full from 7/28/89).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (full from 6/16/89).
(26)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.
Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/14/88).
Abatement Worker (full from 4/12/89).
(27)(a) *Training Provider:* Houston Independent School District.
Address: 228 McCarty Dr., Houston, TX 77029, Contact: Bennie Jenkins, Phone: (713) 676-2222 Ext. 396.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/10/89).



Abatement Worker Refresher Course (contingent from 10/12/89).
(28)(a) *Training Provider:* IMPACT Inc.
Address: 5330 Griggs Rd., Houston, TX 77021, Contact: Edgar Harvey, Phone: (713) 845-2416.
(b) *Approved Course:*
Abatement Worker (contingent from 8/17/89).
(29)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.
Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 10/4/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (full from 6/27/88).
(30)(a) *Training Provider:* K & T Safety Service, Inc.
Address: 9883 Bisconnett, Houston, TX 77036, Contact: Kevin Clothier, Phone: (713) 988-9021.
(b) *Approved Course:*
Abatement Worker (contingent from 3/28/89).
(31)(a) *Training Provider:* Keers Environmental, Inc.
Address: P.O. Box 6846, Albuquerque, NM 89197, Contact: Robert W. Keers, Phone: (505) 888-9525.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 3/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).
(32)(a) *Training Provider:* Kiser Engineering, Inc.
Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 8/24/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (contingent from 8/24/89).
(33)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.
Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 887-3740.
(b) *Approved Course:*
Abatement Worker (contingent from 7/21/88).
Contractor/Supervisor (contingent from 7/21/88).
(34)(a) *Training Provider:* Lamar University, Hazardous Materials Program.
Address: P.O. Box 10003, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2309.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker (full from 4/26/89).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).
Inspector/Management Planner (contingent from 1/15/90).
(35)(a) *Training Provider:* Law Engineering.
Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/14/89).
Contractor/Supervisor (contingent from 2/26/90).
(36)(a) *Training Provider:* Little-Tex Insulation Co., Inc.
Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8094.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).
(37)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.
Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
(38)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.
Address: 161 Pleasant Hall, Baton Rouge, LA 70803-1520, Contact: Marcia L. Gilman, Phone: (504) 388-5591.
(b) *Approved Courses:*
Abatement Worker (full from 1/1/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Abatement Worker Refresher Course (full from 3/6/89).
Contractor/Supervisor (contingent from 10/6/87).
Contractor/Supervisor (full from 4/7/88).
Contractor/Supervisor Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (full from 3/6/89).
Inspector/Management Planner (full from 1/18/88).
Inspector/Management Planner Refresher Course (full from 3/7/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/13/89).
(39)(a) *Training Provider:* MARTECH International, Inc.
Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3880.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/17/89).
Contractor/Supervisor (contingent from 1/17/89).
(40)(a) *Training Provider:* Maxim Engineers Inc.
Address: 2342 Fabens, Dallas, TX 75229, Contact: Gregory J. Indelicato, Phone: (214) 247-7575.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/6/89).
Abatement Worker (full from 6/9/89).
Inspector (contingent from 12/11/89).
Inspector (full from 6/9/90).
(41)(a) *Training Provider:* McClelland Management Services in Conjunction with the University of Houston.
Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: David WindBurne, Phone: (713) 995-9000.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/90).
Abatement Worker Refresher Course (contingent from 1/5/90).
Contractor/Supervisor (contingent from 1/5/90).
Contractor/Supervisor (full from 9/21/90).
Contractor/Supervisor Refresher Course (contingent from 1/5/90).
Inspector/Management Planner (contingent from 1/5/90).
Inspector/Management Planner Refresher Course (contingent from 1/5/90).
Project Designer (contingent from 1/5/90).
Project Designer Refresher Course (contingent from 1/5/90).
(42)(a) *Training Provider:* Meador-Wright & Associates, Inc.

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Address: 6211 W. Northwest Hwy., Suite C260, Dallas, TX 75225, Contact: Carl Teel, Phone: (214) 691-3485.

(b) *Approved Course:*

Inspector/Management Planner (full from 10/12/89).

(43)(a) *Training Provider:* Micro Analysis Laboratory, Inc.

Address: 8499 Greenville Ave., Dallas, TX 75231, Contact: Carolyn Jones, Phone: (214) 340-0890.

(b) *Approved Course:*

Abatement Worker (contingent from 9/8/89).

(44)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701 12th Ave. NW., Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364-7032.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).
Abatement Worker Refresher Course (contingent from 5/19/89).
Abatement Worker Refresher Course (full from 12/14/89).
Contractor/Supervisor (full from 12/14/89).
Contractor/Supervisor Refresher Course (contingent from 12/14/89).
Contractor/Supervisor Refresher Course (full from 12/14/89).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 5/19/89).

(45)(a) *Training Provider:* NATEC of Texas, Inc.

Address: 6801 Kirby Dr, Suite III, Houston, TX 77005, Contact: Paul Speck, Phone: (713) 524-9444.

(b) *Approved Course:*

Abatement Worker (contingent from 11/22/89).

(46)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3278.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* O'Connor McMahon, Inc.

Address: 1505 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: James M. Walley, Phone: (214) 245-3300.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(48)(a) *Training Provider:* Occupational Safety Health Consultants of Louisiana.

Address: 1034 Willow Brook Ave., Denham Springs, LA 70726, Contact: Clayton Joe Mitchell, Phone: (504) 664-0288.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/22/89).
Abatement Worker Refresher Course (contingent from 8/22/89).
Contractor/Supervisor (contingent from 8/22/89).
Contractor/Supervisor Refresher Course (contingent from 8/22/89).

(49)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 9/15/88).

(50)(a) *Training Provider:* PAN AM World Services Inc.

Address: P. O. Box 58938, Houston, TX 77258, Contact: Audrey Hall, Phone: (713) 483-7951.

(b) *Approved Course:*

Abatement Worker (contingent from 8/23/89).

(51)(a) *Training Provider:* Phoenix Services.

Address: 1813 Harvard, Richardson, TX 75081, Contact: Alcee Chriss, Phone: (214) 437-0150.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 11/29/89).
Contractor/Supervisor (contingent from 11/29/89).
Contractor/Supervisor Refresher Course (contingent from 11/29/89).

(52)(a) *Training Provider:* Protechnics Environmental Services.

Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Fabian Limon, Phone: (713) 496-9674.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/89).
Abatement Worker (full from 6/30/89).
Contractor/Supervisor (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(53)(a) *Training Provider:* R & H Associates, Inc.

Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 1/12/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(54)(a) *Training Provider:* Raba-Kistner Training Institute.

Address: 12821 West Golden Ln., San Antonio, TX 78249, Contact: Donald Fetzer, Phone: (512) 699-9090.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 12/13/89).
Inspector/Management Planner Refresher Course (contingent from 12/13/89).

(55)(a) *Training Provider:* Region 6 Environmental Training.

Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Charlotte Ramzel, Phone: (512) 837-9296.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 10/10/89).
Inspector/Management Planner Refresher Course (contingent from 10/10/89).

(56)(a) *Training Provider:* Regional Environmental Training Center.



Address: 9024 Garland Rd., Dallas, TX 75218, Contact: Lisa Adams, Phone: (214) 328-2928.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/89).
Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(57)(a) *Training Provider:* Safety & Health Research Institute.

Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/12/88 to 1/1/89 only).
Contractor/Supervisor (contingent from 9/12/88 to 1/1/89 only).
Inspector/Management Planner (contingent from 9/12/88).

(58)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.

Address: U.A.M. - Willard Hall, P.O. Box 3507, Monticello, AR 71655, Contact: Lloyd Crossley, Phone: (501) 367-6848.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(59)(a) *Training Provider:* Southwest Environmental Institute.

Address: P.O. Box 295, Abilene, TX 79605, Contact: Tom Dye, Phone: (915) 691-0189.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).
Inspector/Management Planner (contingent from 8/24/89).

(60)(a) *Training Provider:* Specialized Environmental Services Inc.

Address: 6614 John Ralston Rd., Houston, TX 77049, Contact: James Hommings, Phone: (713) 458-7274.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/29/89).
Abatement Worker (full from 4/19/90).
Abatement Worker Refresher Course (contingent from 11/29/89).

(61)(a) *Training Provider:* Specialized Environmental Training.

Address: P.O. Box 7001, Pasadena, TX 77508-7001, Contact: Sue Ann Williams, Phone: (713) 487-4415.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/90).
Contractor/Supervisor (contingent from 1/12/90).

(62)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.

Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Tom Garner, Phone: (409) 845-6682.

(b) *Approved Courses:*

Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/88 to 9/13/67).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(63)(a) *Training Provider:* Texas State Conference of Painters & Allied Trades.

Address: P.O. Box 130441, Houston, TX 77223-0441, Contact: John S. Doiney, Phone: (713) 527-0152.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/7/89).

(64)(a) *Training Provider:* Texas Tech University.

Address: P.O. Box 4369, Lubbock, TX 79409, Contact: Paul Cotter, Phone: (806) 742-3876.

(b) *Approved Courses:*

Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 11/7/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor (full from 6/6/90).
Contractor/Supervisor Refresher Course (contingent from 11/7/89).

(65)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept of Environmental Health Sciences.

Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.

(b) *Approved Courses:*

Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 8/1/89).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner Refresher Course (contingent from 8/1/89).

(66)(a) *Training Provider:* U.S. Analytical, Inc.

Address: P.O. Box 801, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3223.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/13/89).
Abatement Worker Refresher Course (contingent from 1/5/89).
Contractor/Supervisor (contingent from 2/13/89).

(67)(a) *Training Provider:* U.S. Environmental Services.

Address: 3801 Hulen St., Suite 105, Ft. Worth, TX 76107, Contact: Steve Salmon, Phone: (817) 429-6400.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/90).
Abatement Worker Refresher Course (contingent from 1/8/90).

(68)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.

Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 6/18/89).
Inspector/Management Planner (full from 6/15/90).
Inspector/Management Planner Refresher Course (contingent from 6/20/89).

(69)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.

Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-8463.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(70)(a) *Training Provider:* University of New Mexico, The Environmental Training Center Division of Continuing Education.

Address: 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Ed Rodriguez, Phone: (505) 277-9060.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/4/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
Contractor/Supervisor (contingent from 6/16/85).

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Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(71)(a) *Training Provider:* University of Texas Health Center at TYLER.
Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-7877.
(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(72)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.
Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.
(b) *Approved Courses:*
Contractor/Supervisor (full from 7/14/88).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(73)(a) *Training Provider:* Veltmann Engineering.
Address: Midland Air Park, P.O. Box 50741, Midland, TX 79710, Contact: Clyde Veltmann, Phone: (915) 683-1574.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).

(74)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.
Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372-4329.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

**REGION VII -- Kansas City, KS**

*Regional Asbestos Coordinator:* Wolfgang Brandner, EPA, Region VII, (ARTX), 726 Minnesota Ave., Kansas City, KS 66101. (913) 551-7381, (FTS) 551-7381.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AEROSTAT Environmental Engineering Corporation.
Address: Box 3096, Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.
(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 3/3/89).
Abatement Worker Refresher Course (full from 3/16/89).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(2)(a) *Training Provider:* Abatement Project Training.
Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 788-3440.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor (full from 4/28/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).
Contractor/Supervisor Refresher Course (full from 1/8/90).

(3)(a) *Training Provider:* Accredited Project Design Environmental Management.
Address: 1532 S.W. Clontarf, Topeka, KS 66611, Contact: Richard H. Pointer, Phone: (913) 256-2003.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/13/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 2/21/90).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/15/90).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner (full from 1/22/90).
Inspector/Management Planner Refresher Course (contingent from 2/16/90).

(4)(a) *Training Provider:* American Asbestos Training Center, Ltd.
Address: 121 East Grand, Monticello, IA 52310, Contact: Steve Inflekofer, Phone: (319) 465-5786.
(b) *Approved Courses:*
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 6/26/89).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/26/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).
Inspector/Management Planner Refresher Course (contingent from 11/10/89).
Inspector/Management Planner Refresher Course (full from 11/16/89).

(5)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.
(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(6)(a) *Training Provider:* Baird Scientific, Inc.
Address: 221 West Fourth St., P.O. Box 842, Carthage, MO 64836, Contact: Mackie Redd, Phone: (417) 358-5567.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/26/89).



Abatement Worker (full from 10/19/89).
Abatement Worker Refresher Course (contingent from 7/3/90).
Contractor/Supervisor (contingent from 9/26/89).
Contractor/Supervisor (full from 10/19/89).
Contractor/Supervisor Refresher Course (contingent from 7/31/90).

(7)(a) *Training Provider:* CHART Services, Ltd.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.
(b) *Approved Courses:*
Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (full from 11/28/88).

(8)(a) *Training Provider:* Construction Industry Laborers' Training Institute for Eastern Missouri.
Address: Route 1, Box 79 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2391.
(b) *Approved Courses:*
Abatement Worker (full from 1/19/88).
Abatement Worker Refresher Course (contingent from 5/18/89).
Abatement Worker Refresher Course (full from 5/31/89).

(9)(a) *Training Provider:* Construction Laborers Building Corp.
Address: Box 34549, Omaha, NE 68134, Contact: Leonard Schaffer, Sr., Phone: (402) 572-1470.
(b) *Approved Course:*
Abatement Worker (full from 11/2/87).

(10)(a) *Training Provider:* Educational Innovations.
Address: 23 West 3rd St., Lee's Summit, MO 64063, Contact: JoAnn Onwiler, Phone: (816) 525-6911.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker (full from 5/2/89).
Abatement Worker Refresher Course (contingent from 3/29/89).
Abatement Worker Refresher Course (full from 8/2/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor (full from 5/2/89).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (full from 8/2/89).
Project Designer Refresher Course (contingent from 6/21/89).
Project Designer Refresher Course (full from 7/31/89).

(11)(a) *Training Provider:* Enviro-Impact Inspections, Inc.
Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: (314) 428-0067.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Contractor/Supervisor (contingent from 3/8/88).

(12)(a) *Training Provider:* Environmental Salvage, Ltd.
Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn A. Kundtson, Phone: (402) 733-2595.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/89).
Abatement Worker (full from 2/16/89).
Abatement Worker Refresher Course (contingent from 6/22/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor (full from 2/16/89).
Contractor/Supervisor Refresher Course (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (full from 8/1/89).

(13)(a) *Training Provider:* Environmental Technology, Inc. (ETI).
Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Bouska, Phone: (913) 236-5040.
(b) *Approved Courses:*
Abatement Worker (full from 2/29/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 7/18/89).

(14)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.
Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.
(b) *Approved Course:*
Abatement Worker (full from 3/7/88).

(15)(a) *Training Provider:* General Services Administration (GSA)- Region 6 Safety & Environmental Management Div.
Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.
(b) *Approved Courses:*
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 7/18/89).
Inspector/Management Planner Refresher Course (full from 8/29/89).

(16)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.
Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(17)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc. a Division of Professional Service Industries.
Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Alice Hart, Phone: (800) 346-2960.
(b) *Approved Courses:*
Abatement Worker (full from 6/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/19/88).
Contractor/Supervisor (full from 6/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 6/17/87).
Inspector/Management Planner Refresher Course (full from 9/19/88).
Project Designer (full from 6/17/87).
Project Designer Refresher Course (contingent from 9/19/88).
Project Designer Refresher Course (full from 12/20/88).

(18)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.
Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: (000) 000-0000.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/88 to 12/7/88 only).
Contractor/Supervisor (contingem from 10/19/88 to 12/7/88 only).

(19)(a) *Training Provider:* Hazardous Materials Training & Research Institute.
Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Barkdoll, Phone: (319) 322-5015.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).

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Abatement Worker (full from 4/13/89).
Contractor/Supervisor (contingent from 5/8/89).
Contractor/Supervisor (full from 7/21/89).

(20)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (full from 6/28/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
Abatement Worker Refresher Course (full from 4/24/89).
Contractor/Supervisor (full from 6/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/4/89).
Contractor/Supervisor Refresher Course (full from 4/24/89).

(21)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No.1.

Address: 3325 Hollenberg Dr., St. Louis, MO 63044, Contact: James M. Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 6/28/89).
Abatement Worker Refresher Course (full from 8/30/89).
Contractor/Supervisor (full from 9/16/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).
Contractor/Supervisor Refresher Course (full from 3/12/89).

(22)(a) *Training Provider:* Iowa Dept. of Education.

Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/4/88).

(23)(a) *Training Provider:* Iowa Laborers District Council Training Fund.

Address: 5806 Meredith Dr., Suite B, Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-0985.

(b) *Approved Courses:*

Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 11/10/89).
Abatement Worker Refresher Course (full from 11/14/89).
Contractor/Supervisor (contingent from 10/14/88).
Contractor/Supervisor (full from 12/8/89).

(24)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.

Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 267-0140.

(b) *Approved Courses:*

Abatement Worker (full from 1/5/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(25)(a) *Training Provider:* Kansas State University.

Address: Division of Facilities Management, Dykstra Hall, Manhattan, KS 66506, Contact: Robert D. Williams, Phone: (913) 532-6369.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/7/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 1/3/90).
Abatement Worker Refresher Course (full from 2/8/90).

(26)(a) *Training Provider:* Living Word College.

Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.

(b) *Approved Course:*

Inspector/Management Planner (Approval Revoked 5/8/88).

(27)(a) *Training Provider:* MI-TON, Inc.

Address: 205 W. Walnut, Springfield, MO 65806, Contact: Barry Mills, Phone: (417) 831-4847.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 4/16/90).
Abatement Worker Refresher Course (full from 5/18/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 5/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/17/90).
Contractor/Supervisor Refresher Course (full from 5/11/90).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Inspector/Management Planner Refresher Course (full from 4/3/89).

(28)(a) *Training Provider:* Maple Woods Community College.

Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-6500.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (full from 1/13/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (full from 1/13/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/89).
Inspector/Management Planner Refresher Course (full from 7/28/89).

(29)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew/Betty Fenstemaker, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (full from 10/20/87).
Abatement Worker Refresher Course (full from 11/14/88).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (full from 11/14/88).
Inspector/Management Planner (full from 6/8/88).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(30)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.

Address: 635 Southwest 2nd St., Box 1029, Lee's Summit, MO 64063, Contact: Steve Minshall, Phone: (816) 525-6681.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88 to 6/5/89 only).
Abatement Worker Refresher Course (contingent from 4/28/89 to 6/5/89 only).
Contractor/Supervisor (full from 5/9/88 to 6/5/89 only).
Contractor/Supervisor Refresher Course (contingent from 4/28/89 to 6/5/89 only).

(31)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.

Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.



(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/5/88).
Abatement Worker Refresher Course (full from 9/26/89).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/87).
Contractor/Supervisor Refresher Course (contingent from 10/5/88).
Contractor/Supervisor Refresher Course (full from 10/11/88).
Inspector/Management Planner (full from 10/26/87).
Inspector/Management Planner Refresher Course (contingent from 10/5/88).
Inspector/Management Planner Refresher Course (full from 10/10/88).

(32)(a) *Training Provider:* Occu-Tec, Inc.

Address: 6501 East Commerce Ave., Suite 208, Kansas City, MO 64120, Contact: Duncan Heydon, Phone: (816) 231-5580.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/90).
Abatement Worker (full from 7/26/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Abatement Worker Refresher Course (full from 4/2/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor (full from 7/26/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (full from 4/2/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (full from 4/2/90).

(33)(a) *Training Provider:* PS&H Inc.

Address: 1810 Craig Rd., Suite 114, St. Louis, MO 63146, Contact: Carol E. Hoag, Phone: (314) 275-7733.

(b) *Approved Courses:*

Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 9/14/89).
Abatement Worker Refresher Course (full from 11/2/89).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/14/89).
Contractor/Supervisor Refresher Course (full from 11/2/89).
Inspector/Management Planner (full from 6/23/88).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 3/2/89).

(34)(a) *Training Provider:* Performance Abatement Services, Inc.

Address: 14801 West 99th St., P.O. Box 19328, Lenexa, KS 66215, Contact: Tony Chiaverini, Phone: (913) 888-2423.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/6/89).
Contractor/Supervisor (full from 7/27/89).

(35)(a) *Training Provider:* Ramsey - Schilling Consulting Group, Inc.

Address: 503 Main, Belton, MO 64012, Contact: George McDowell, Phone: (816) 331-0002.

(b) *Approved Course:*

Inspector (contingent from 1/30/90).

(36)(a) *Training Provider:* Roth Asbestos Consultants, Inc.

Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 3/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Abatement Worker Refresher Course (full from 7/24/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 7/20/89).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 7/24/89).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 1/23/89).

(37)(a) *Training Provider:* Ryckman's Emergency Action & Consulting Team (REACT).

Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: Nicolaus P. Neuman, Phone: (800) 325-1398.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 8/3/89).
Contractor/Supervisor (full from 7/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/26/89).
Contractor/Supervisor Refresher Course (full from 8/4/89).

(38)(a) *Training Provider:* University of Missouri-Columbia Environmental Health and Safety.

Address: Research Park Development Bldg., Columbia, MO 65211, Contact: Brent S. Mattox, Phone: (314) 882-7018.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 8/8/90).
Contractor/Supervisor (full from 8/23/90).

**REGION VIII -- Denver, CO**

*Regional Asbestos Coordinator:* David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1442, (FTS) 330-1442.

*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.

Address: 9101 Pearl St., Suite 307, Thornton, CO 80229, Contact: Eugene Aragon, Phone: (303) 450-5028.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/28/89).
Abatement Worker (full from 11/22/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 7/26/89).
Contractor/Supervisor (full from 11/22/89).

(2)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/2/89).
Abatement Worker (full from 5/4/90).

(3)(a) *Training Provider:* Chen-Northern, Inc.

Address: P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-6161.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 2/16/89).

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Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 1/11/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.
Address: 4290 Holly St., Denver, CO 80216, Contact: Manuel Rodriquez, Jr., Phone: (303) 393-6060.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).

(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.
Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/89).
Abatement Worker (full from 2/16/89).

(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences.
Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491-7240.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/23/88).
Abatement Worker (full from 9/22/90).
Abatement Worker Refresher Course (contingent from 12/9/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/22/90).
Contractor/Supervisor Refresher Course (contingent from 12/9/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 1/17/89).

(7)(a) *Training Provider:* Colorado Training Institute.
Address: 1210 East Colfax, Suite 306, Denver, CO 80218, Contact: Carlos M. Guerra, Phone: (303) 860-0574.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Abatement Worker (full from 9/19/90).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 9/20/90).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).
Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88 to 6/1/90 only).
Abatement Worker (full from 6/22/88 to 6/1/90 only).

(9)(a) *Training Provider:* Engineering Extension College of Engineering South Dakota State University.
Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/16/88).

(10)(a) *Training Provider:* Envir-o-Tech.
Address: 300 Moore Ln., Billings, MT 59102, Contact: Leonard Cranford, Phone: (406) 252-7538.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 7/6/88).

(11)(a) *Training Provider:* Front Range Community College.
Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 7/27/90).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 1/28/90).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).

(12)(a) *Training Provider:* HWS Technologies, Inc.
Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-6868.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Abatement Worker Refresher Course (full from 6/29/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 6/29/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (full from 6/29/89).

(13)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 5930 McIntire St., P.O. Box 4012, Golden, CO 80403, Contact: Charles Metzger & D. Robinson, Phone: (303) 278-3400.
(b) *Approved Courses:*
Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 4/28/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (full from 12/6/89).

(14)(a) *Training Provider:* Industrial Health, Inc. (IHI).
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 11/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Contractor/Supervisor (contingent from 4/22/88).



Contractor/Supervisor (full from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 4/24/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/8/89).
Project Designer Refresher Course (contingent from 4/24/89).

(15)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.
Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham/Pat Pfeifer, Phone: (303) 778-8502.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/28/89).
Abatement Worker Refresher Course (full from 7/21/89).

(16)(a) *Training Provider:* Laborers AGC Training Program for Montana.
Address: 3100 Horseshoe Bend Rd., Helena, MT 59601, Contact: Eugene Fenderson, Phone: (406) 442-1441.
(b) *Approved Course:*
Abatement Worker (contingent from 9/19/88).

(17)(a) *Training Provider:* Major Environmental & Training Services, Inc.
Address: 100 Garfield St., Suite 100, Denver, CO 80206, Contact: Tom Major, Sr., Phone: (303) 322-9490.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/28/88).
Abatement Worker (full from 9/15/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/14/88).
Contractor/Supervisor (full from 9/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 1/2/88).
Inspector/Management Planner (full from 3/27/89).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/12/90).
Project Designer (contingent from 1/28/88).
Project Designer Refresher Course (contingent from 1/18/89).

(18)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).
Address: 219 23rd St. North, Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/11/88).
Abatement Worker (full from 5/23/89).
Abatement Worker Refresher Course (contingent from 7/31/89).

(19)(a) *Training Provider:* Misers Inspection & Training, Inc.
Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-0367.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Abatement Worker Refresher Course (full from 1/27/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).
Contractor/Supervisor Refresher Course (full from 1/27/89).

(20)(a) *Training Provider:* NATEC International, Inc.
Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Lester Ablin, Phone: (303) 761-0422.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/15/88 to 6/1/90 only).
Inspector/Management Planner (contingent from 6/2/89 to 6/1/90 only).

(21)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 S., West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 6/22/89).
Abatement Worker Refresher Course (contingent from 5/22/89).
Contractor/Supervisor (contingent from 5/22/89).
Contractor/Supervisor (full from 6/22/89).
Contractor/Supervisor Refresher Course (full from 7/3/90).

(22)(a) *Training Provider:* Power Master, Inc.
Address: 13205 Minuteman Drive, Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.
(b) *Approved Course:*
Abatement Worker (contingent from 6/13/88 to 6/22/90 only).

(23)(a) *Training Provider:* Precision Safety & Services, Inc.
Address: 1045 W. Garden of Gods Rd., Unit T, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8595.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/11/88).
Abatement Worker (full from 11/2/88).

(24)(a) *Training Provider:* R.S. Christiansen Asbestos Consultant.
Address: 4960 Holladay Blvd., Salt Lake City, UT 84117, Contact: R.S. Christiansen, Phone: (801) 277-2323.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/29/88).
Abatement Worker (full from 12/7/88).

(25)(a) *Training Provider:* Survey Management & Design (SMD).
Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: David A. Sohm, Phone: (701) 234-9556.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/2/89).
Inspector/Management Planner (contingent from 9/14/89).
Inspector/Management Planner (full from 10/15/89).

(26)(a) *Training Provider:* The Environmental Training Center.
Address: 2761 W. Oxford Ave., No. 7, Englewood, CO 80110, Contact: Les Ablin, Phone: (303) 761-0422.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/21/89).
Abatement Worker (full from 4/27/90).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 4/27/90).

(27)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.
Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/88).
Abatement Worker (full from 9/27/88).
Contractor/Supervisor (contingent from 6/1/87).

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Contractor/Supervisor (full from 6/1/87).
Contractor/Supervisor Refresher Course (contingent from 6/7/88).
Contractor/Supervisor Refresher Course (full from 11/13/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

**REGION IX -- San Francisco, CA**

*Regional Asbestos Coordinator:* Jo Ann Semones, (A-4-4), EPA, Region IX, 1235 Mission St., San Francisco, CA 94103. (415) 556-5408, (FTS) 556-5408.

*List of Asbestos Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Ahearn & Associates, Inc.
Address: 4015 44th St., Phoenix, AZ 85018, Contact: Robert L Hutzel, Phone: (602) 840-9446.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(2)(a) *Training Provider:* Arizona Carpenters Joint Apprenticeship & Training Committee.
Address: 2825 W. Holly, Phoenix, AZ 85009, Contact: Thomas E. Quine, Phone: (602) 272-6547.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/18/89).

(3)(a) *Training Provider:* Arizona Laborers' Joint Training Center.
Address: P.O. Box 565, Chino Valley, AZ 86323, Contact: Bill Hadley, Phone: (602) 636-2532.
(b) *Approved Course:*
Abatement Worker (contingent from 10/18/89).

(4)(a) *Training Provider:* Asbestos C.T.I.
Address: P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Ed Leonard, Phone: (209) 286-1472.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/31/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).
Inspector (contingent from 3/21/89).
Inspector Refresher Course (contingent from 10/31/89).

(5)(a) *Training Provider:* Asbestos Consulting and Seminars.
Address: 3445 32nd St., San Diego, CA 92104, Contact: Mary Lacey, Phone: (619) 282-2364.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(6)(a) *Training Provider:* Asbestos Training Institute.
Address: 210 S. La Fayette Park Pl., Suite 205, Los Angeles, CA 90057, Contact: Kayode Akinrele, Phone: (213) 252-0166.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(7)(a) *Training Provider:* California State University Sacramento.
Address: 650 University Ave., Suite 101A, Sacramento, CA 95825, Contact: Jackie Branch, Phone: (916) 923-0282.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(8)(a) *Training Provider:* Carpenters No. 46 Northern California Counties J.A.T.C. & T.B.
Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(9)(a) *Training Provider:* Center for Accelerated Learning.
Address: P.O. Box 6327, Vacaville, CA 95696-6327, Contact: David Esparzza, Phone: (707) 446-7996.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 12/7/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(10)(a) *Training Provider:* DWC Consulting Co., Inc.
Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/3/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 4/3/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(11)(a) *Training Provider:* Dan Napier & Associates.
Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 3/27/89).



Contractor/Supervisor Refresher Course (contingent from 1/18/88).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
Project Designer Refresher Course (contingent from 3/30/89).

(12)(a) *Training Provider:* Design for Health.
Address: 1516 W. Redwood St., Suite 104, San Diego, CA 92101, Contact: Virginia Shefa, Phone: (619) 291-1777.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/30/89).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 11/30/89).

(13)(a) *Training Provider:* Eagle Environmental.
Address: 8840-A Elder Creek Rd., Sacramento, CA 95828, Contact: Larry West, Phone: (916) 381-5448.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(14)(a) *Training Provider:* EnviroMD, Inc.
Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Lee Allen, Phone: (602) 881-1000.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/15/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 11/14/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(15)(a) *Training Provider:* Environmental Control Industries.
Address: 2700 Teagarden St., San Leandro, CA 94577, Contact: Carlos Aleman, Phone: (415) 655-5865.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(16)(a) *Training Provider:* Environmental Sciences, Inc.
Address: 105 E. Speedway, Tucson, AZ 85705, Contact: Paula Keyes, Phone: (602) 792-0097.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/5/87).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(17)(a) *Training Provider:* Excel Environmental, Inc.
Address: 739 Allston Way, Berkeley, CA 94710, Contact: Dave Stover, Phone: (415) 548-4300.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(18)(a) *Training Provider:* Hawaii Laborers Training School.
Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 488-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/27/88).
Abatement Worker Refresher Course (contingent from 10/18/89).

(19)(a) *Training Provider:* Herring & Herring Enterprises.
Address: No. 9 Grits Court, Sacramento, CA 95823, Contact: Leslie Herring, Phone: (916) 421-6260.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/2/90).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/2/90).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(20)(a) *Training Provider:* INFOTOX.
Address: 8531 Mission Blvd. Suite 24, Riverside, CA 92509, Contact: Jim Maclum, Phone: (714) 685-5053.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(21)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Asbestos Training Fund.
Address: 2033 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2295.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 10/31/89).

(22)(a) *Training Provider:* International Technology Corp.
Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9831.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 3/29/89).
Contractor/Supervisor (contingent from 4/15/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(23)(a) *Training Provider:* Joint Apprenticeship Trust Asbestos Workers Local 5.
Address: 520 So. La Fayette Park Pl., Suite 300, Los Angeles, CA 90057, Contact: Tom L. Gutierrez, Phone: (213) 383-8010.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(24)(a) *Training Provider:* KELLCO Training Institute.
Address: 44804 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 651-7401.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).

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Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
Inspector/Management Planner (contingent from 3/21/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(25)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(26)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306-0076, Contact: Don Sanders, Phone: (714) 763-4341.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 12/8/89).

(27)(a) *Training Provider:* Lehr Training Institute, Inc.
Address: 4125 East La Palma Ave. Suite 300, Anaheim, CA 92807, Contact: Susan Patnode, Phone: (714) 572-0110.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/16/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(28)(a) *Training Provider:* Los Angeles District Council of Carpenters and Vicinity.
Address: 4665 Mercury St., Suite 203, San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 495-1850.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Contractor/Supervisor (contingent from 10/31/88).

(29)(a) *Training Provider:* National Asbestos Technology Education Center (NATEC).
Address: 11552 Knott St., Suite 8, Garden Grove, CA 92641, Contact: Rodger D. Sandlin. Phone: (714) 894-7577.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/30/87).
Abatement Worker Refresher Course (contingent from 11/8/88).
Contractor/Supervisor (contingent from 12/30/87).
Contractor/Supervisor Refresher Course (contingent from 11/8/88).

(30)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.
Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.
(b) *Approved Courses:*
Abatement Worker (full from 12/24/87).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/24/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 11/4/88).

(31)(a) *Training Provider:* Naval Civil Engineering Laboratory.
Address: Code L-15, Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-1136.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector (contingent from 4/6/89).

(32)(a) *Training Provider:* Occupational Training Institute, Inc.
Address: 5 Civic Plaza, Suite 310, Newport Beach, CA 92660, Contact: Charles Goeshall, Phone: (714) 721-9575.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/21/89).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/21/89).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 3/18/89).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(33)(a) *Training Provider:* Painters District Council No. 36.
Address: 3601 W. Alameda Ave., Suite 200, Burbank, CA 91505, Contact: William Sauerwald, Phone: (818) 941-1366.
(b) *Approved Course:*
Abatement Worker (contingent from 10/15/89).

(34)(a) *Training Provider:* Programs in Environmental Hazard Management (PEHM) (Formerly Pacific Asbestos Information Center).
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Kathleen Vork, Phone: (415) 643-7143.
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).
Project Designer (contingent from 10/31/89).

(35)(a) *Training Provider:* Robert Harvey Griese.
Address: 5933 Telegraph Rd., City of Commerce, CA 90040, Contact: Robert H. Griese, Phone: (213) 720-1805.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).
Inspector/Management Planner (contingent from 12/6/89).

(36)(a) *Training Provider:* Salem Kroeger, Inc.
Address: 106 Church St., Roseville, CA 95678, Contact: Owen C. Tilley, Phone: (916) 784-7222.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/3/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(37)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.
Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 283-8941.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/21/89).



Abatement Worker Refresher Course (contingent from 10/18/89).

(38)(a) *Training Provider:* Spectrum Environmental Training.
Address: 6245 Bristol Pkwy., Suite 305, Culver City, CA 90230, Contact: James H. Mondy, Phone: (213) 322-2332.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).

(39)(a) *Training Provider:* The Asbestos Institute.
Address: 2701 East Camelback, Suite 361, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 381-0899.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(40)(a) *Training Provider:* The Environmental Institute.
Address: 41 East Foothill Blvd., Suite 104, Arcadia, CA 91006, Contact: Alan M. Lamson, Phone: (818) 447-5216.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).
Project Designer Refresher Course (contingent from 10/18/89).

(41)(a) *Training Provider:* University Associates.
Address: 3791 N. Camino de Oeste, Tucson, AZ 85745, Contact: John D. Repko, Phone: (602) 624-9366.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 12/1/88).

(42)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.
Address: 927 W. 35th Pl., Room 102, Los Angeles, CA 90089-0021, Contact: James O. Pierce, Phone: (213) 740-3990.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner (full from 2/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

**REGION X – Seattle, WA**

T3Regional Asbestos Coordinator: T1Matt Wilkening, EPA, Region X, 1200 Sixth Ave. (8T-083), Seattle, WA 98101. (206) 442-8282 (FTS) 399-8282
*List of Approved Courses:* The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Arctic Slope Consulting Group.
Address: 3801 South Cushman, Fairbanks, AK 99701-7529, Contact: Robert A.Perkins/Clark Milne, Phone: (907) 451-6009.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/25/89).

(2)(a) *Training Provider:* Asbestos Removal Technologies.
Address: P.O. Box 4782, Vancouver, WA 98662, Contact: Skip Gaultier, Phone: (800) 321-4121.
(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 10/25/89).
Inspector/Management Planner Refresher Course (full from 12/26/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 12/26/89).

(3)(a) *Training Provider:* Asbestos Services International, Inc.
Address: 12360 Southwest Butner Rd., Portland, OR 97225-5818, Contact: Jim Jones, Phone: (503) 644-0246.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).
Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(4)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.
(b) *Approved Course:*
Inspector (contingent from 3/25/88).

(5)(a) *Training Provider:* Engineering Continuing Education University of Washington.
Address: GG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88 to 6/1/90 only).
Inspector/Management Planner (full from 2/8/88 to 6/1/90 only).

(6)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE., Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.
(b) *Approved Courses:*
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).
Project Designer (contingent from 12/11/89).

(7)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Debra Chrisman/Gordon Randall, Phone: (907) 272-8056.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/16/88).

(8)(a) *Training Provider:* Hazcon, Inc.
Address: 4636 Marqiael Way S., Suite 215, Seattle, WA 98134, Contact: Mike Krause, Phone: (206) 763-7364.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(9)(a) *Training Provider:* Heavey Engineers, Inc.

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Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648-0832, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).

Inspector/Management Planner (full from 5/2/88).

Inspector/Management Planner Refresher Course (contingent from 1/13/89).

Inspector/Management Planner Refresher Course (full from 3/10/89).

(10)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).

Inspector/Management Planner Refresher Course (full from 7/24/89).

(11)(a) *Training Provider:* Northwet Envirocon, Inc.

Address: P.O. Box 189, Washougal, WA 98671, Contact: Debbie Stevison, Phone: (503) 659-8699.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).

Inspector/Management Planner (full from 5/2/88).

(12)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.

Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Kelly Strother, Phone: (503) 248-1939.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/4/88).

Inspector/Management Planner (full from 3/14/88).

Inspector/Management Planner Refresher Course (contingent from 3/14/89).

Inspector/Management Planner Refresher Course (full from 6/30/89).

Project Designer (contingent from 6/9/89).

Project Designer (full from 6/19/89).

Project Designer Refresher Course (contingent from 10/25/89).

Project Designer Refresher Course (full from 9/21/90).

(13)(a) *Training Provider:* South East Regional Resource Center, Inc.

Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/18/89).

Inspector/Management Planner Refresher Course (full from 6/1/90).

(14)(a) *Training Provider:* Specialized Environmental Consulting, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 3/7/89).

Inspector/Management Planner Refresher Course (full from 3/20/89).

(15)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/18/88).

Inspector/Management Planner (full from 4/11/88).

Inspector/Management Planner Refresher Course (contingent from 1/14/89).

(16)(a) *Training Provider:* Valley Research Corporation.

Address: 1299 E. 2400 St., Hagerman, ID 83332, Contact: Leon Urie, Phone: (208) 837-6437.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/20/89).

Contractor/Supervisor (full from 6/8/90).

(17)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.

Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Celia MacRae, Phone: (206) 455-6054.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).

Inspector/Management Planner Refresher Course (full from 7/24/89).

Dated: November 16, 1990.

Joseph A. Carra,

*Acting Director, Office of Toxic Substances.*

[FR Doc. 90-27821 Filed 11-29-90; 8:45 am]

BILLING CODE 6560-50-F

federal register

Friday
November 30, 1990

Part III

# Department of Agriculture

**Food Safety and Inspection Service**

**9 CFR Parts 317 and 381**

**Net Weight Labeling of Meat and Poultry Products; Final Rule**

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**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Parts 317 and 381**

**[Docket No. 87-025F]**

**RIN No. 0583-AA69**

## Net Weight Labeling of Meat and Poultry Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The rule amends the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements, including reasonable variations for label statements of net weight contents of containers of meat and poultry products. The rule incorporates by reference the National Bureau of Standards (NBS) Handbook 133, "Checking the Net Contents of Packaged Goods", Third Edition, September 1988, for compliance testing of net weight contents statements on packaged meat and poultry products. The rule also incorporates by reference the National Institute of Science and Technology (NIST) Handbook 44, "Specifications, Tolerances and other Technical Requirements for Measuring Devices", 1990 Edition, September 1989. The rule establishes objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the Third Edition of NBS Handbook 133. The rule is designed to enhance the ability of Federal, State and local agencies to enhance the industry-wide use of strict net weight standards at the packing, warehouse and retail level, and will establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration (FDA) for other types of foods.

The Food Safety and Inspection Service (FSIS) received 38 comments to the proposed rule. The analysis of the comments showed that the majority were generally supportive of the proposal. Of the total of 38 letters, 76 percent generally supported the rule, and 24 percent opposed it. FSIS has concluded that the proposed rule should be promulgated into a final rule with minor revisions as explained elsewhere in this document.

**EFFECTIVE DATE:** May 29, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of: May 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dr. Karen Wesson, Acting Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

The Administrator, FSIS, has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule will standardize weights and measures practices for the Federal government and State and local governments for federally inspected meat and poultry products.

The rule will not create a significant economic or administrative burden upon these regulatory agencies or upon the industry. The changes standardize similar Federal, State and local government net weight compliance procedures. Federal, State and local weights and measures officials will be spending the same amount of time conducting their compliance activities as before.

Moreover, the changes will not significantly alter the prices of products or practices of the meat and poultry industry. Industry will not need to spend much, if any, additional time or money to adjust to these procedures. One new requirement imposed by this rule is having their weighing devices tested and certified annually. However, this only makes explicit a common practice of most firms. Moreover, many State and local governments already annually test and certify weighing devices in the federally inspected meat and poultry establishments for free. In some cases, weighing devices which do not meet NIST Handbook 44 specifications will need to be replaced. The total replacement costs of these weighing devices will be less than $1 million.

### Effect on Small Entities

The Administrator of FSIS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601). The changes will not significantly alter the prices of products or practices of the meat and poultry industry. Small firms will not be at a competitive disadvantage because the changes, as noted above, standardize weights and measures practices. Small firms, like large firms, may benefit by reducing the amount of time and effort they spend on adjusting their weights and measurement practices to suit different jurisdictions.

### Paperwork Reduction Act

The rule does not appreciably increase the burden of recordkeeping on meat and poultry plants. All in-plant weighing devices will need to display proof that the device's accuracy has been annually validated. This will merely incorporate into the regulations a requirement that is currently being adhered to by the majority of the meat and poultry industry and, therefore, will not have a substantial effect on the industry.

Many meat and poultry plants have FSIS approved net weight quality control programs in which tare and net weight data are automatically collected and maintained by production lot. In this way producers can properly monitor that they are neither under packing nor over packing. Those plants without an FSIS approved quality control program may want to get one, or collect and maintain net weight and tare measurements on production lots in order to controvert a potential finding made outside of the plant. This rule will not require the industry to obtain new label approvals; it will only require compliance with what is already on the label.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0583-0064), Washington, DC 20503.



### Effective Date

The Agency has determined that the regulation will become effective 6 months from the date of publication in the Federal Register. This is to provide the Agency with sufficient time to train its inspection personnel to properly implement the revised regulation.

### Background

On March 6, 1989, FSIS published a proposed rule in the Federal Register (54 FR 9370) to amend various provisions of the Federal meat and poultry products inspection regulations to permit the Agency to implement a new net weight regulation.

A revised regulation will serve several purposes. It will: (1) Create standards that will assure that the net weight statement is as accurate as can be reasonably required for the consumer; (2) enable Federal, State and local regulatory agencies to enforce uniform net weight standards at retail and other locations within their jurisdictions where meat and poultry products are sold; (3) provide clear and uniform notice to packers, wholesalers and retailers of net weight compliance procedures and requirements.

### Comments and Responses

A total of 38 comments were received during the comment period. For purposes of analyzing the comments, they were divided into eight groups.

One Federal Department, the Department of Commerce, has responded. The Department of Commerce has the primary Federal leadership role for setting standards and procedures for determining net weight and acceptable weighing devices. The greatest number of comments came from State governments, 13, or 35 percent. They included four responses from States that use "wet tare" net weight determinations. Of the 13, two came from the same State. Ten of the responses came from the States' Departments of Agriculture, and one each from the States' Departments of Consumer Protection, Labor and Justice.

There were four responses from local governments, three of which were from the same State. The rule greatly expands the role the State and local governments may play in net weight compliance with Federal meat and poultry products.

The second largest number of comments came from the trade associations representing meat and poultry producers and processors. The six responses, representing 16 percent of the total, are all from national organizations. Two of the organizations represent only the meat industry, two only the poultry, and two combined meat and poultry concerns.

Four private companies responded. Two are very large national firms producing both meat and poultry products. The other two are medium sized regional meat firms.

Three comments came from professional organizations representing the State and local government weights and measures community. Two came from the leadership of the same national organization, which represents about 2,100 members, most of which are State and local weights and measures officials from almost every State. This organization provides a national forum for the resolution of questions related to weights and measures issues. The third letter came from an organization representing a State's county weights and measures officials.

There were three comments from consumer groups, all from the same State. Two of the groups were Statewide and one local. Finally, there were three comments from private individuals. Two came from the same State.

### General Tenor of Comments

Of the 38 comments, 76 percent generally supported the rule, and 24 percent opposed it. However, of the commenters who supported the proposal, some expressed reservations regarding certain specifics of the proposal; the reservations are addressed in the response to the comments. The greatest support is with the State governments, with 12 out of 13 supportive comments, or 92 percent acceptance.

The majority of trade associations and private companies who commented favored the change as well. Only one poultry trade association opposed the proposed rule. This was mainly because they feel that it did not yet go far enough in one area, which is discussed in the comments. Also, only one company, a medium sized regional meat processor, objected to the rule.

The professional organizations generally supported the rule. One of the organizations sent a letter focusing their comments to just one point in the rule but did not indicate their support or opposition. However, the same organization also sent a very positive endorsement of the rule in a separate letter.

The opposition to the rule came from three consumer groups from the same State. Two individuals from this same State also objected to the rule. Their opposition was based on the belief that the rule would weaken their State's enforcement ability.

### The Major Issues

FSIS analyzed the comments and identified 22 separate issues addressed by the commenters. The following is a discussion of the comments according to the issues raised, and the Agency's responses to the comments.

*NBS Handbook 133 Issues*

*Comment 1:* There were four comments favoring the publication of significant parts of NBS Handbook 133 within the net weight regulation as opposed to incorporating NBS Handbook 133 by reference. These commenters also wanted FSIS to create its own book. One comment was from a trade association and three were from companies. The commenters feared that adoption of a document, which would be incorporated by reference, would make USDA dependent on another organization, The National Conference on Weights and Measures (NCWM), for its net weight policy.

*Response:* The information that will be incorporated by reference from the NBS Handbook 133 is essentially instructions to inspection personnel on the procedures and methods to do their net weight compliance tasks. It includes such things as how to select a lot and how to select a random sample.

Furthermore, FSIS is looking towards the NCWM to provide the expertise in the net weight area. NBS Handbook 133 is comprehensive and is the standard in the commercial world. By incorporating by reference the relevant portions of NBS Handbook 133, FSIS is acknowledging NIST as the government's standard-bearer in these matters, and accentuates the need for harmony throughout Federal, State, and local jurisdictions. However, FSIS will retain its authority to take exception to provisions in these handbooks and exclude them from our regulation, as is being done. FSIS is excluding a number of chapters that are not relevant to the meat and poultry industry practices and procedures. FSIS will announce in the Federal Register the exceptions and other changes to each new edition. If the changes are significant an opportunity will be provided to the public to comment on the proposed changes.

*Comment 2:* There were six comments—two from the States, two from local governments, and two from professional associations—favoring continually using the latest edition of NBS Handbook 133 instead of a specific edition.

*Response:* FSIS has decided to incorporate by reference the Third Edition of NBS Handbook 133, as was

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stated in the proposed rule. However, FSIS intends to adopt the latest editions as they occur by making an announcement in the **Federal Register** and if the changes are significant, providing an opportunity for public comment. FSIS values the expertise of NCWM for its net weight policies and procedures.

*NIST Handbook 44 Issues*

*Comment 3:* There were three comments favoring FSIS adopting its own version of NIST (formerly NBS) Handbook 44 instead of relying on someone else's. Two came from trade associations and one from a company. Similar to the concerns from industry to NBS Handbook 133, these commenters wanted FSIS to incorporate the necessary portions of NIST Handbook 44 into the regulation. They said this would avoid the confusion that might result from the latest edition of NIST Handbook 44 not being in total harmony with FSIS procedures.

*Response:* As with the FSIS position on NBS Handbook 133, FSIS disagrees with this position. NIST Handbook 44 is generally revised on an annual or biannual basis. The changes are usually minimal. Moreover, this handbook is already officially used by most State and local government officials. By adopting this handbook, FSIS is making it easier for the standardization of policies and procedures for weighing devices. Also, FSIS expects that State and local weights and measures officials would be doing, as they now do, the vast majority of the scale testing and accuracy certifications in federal inspected meat and poultry establishments, as well as wholesale and retail operations.

*Comment 4:* There were seven comments favoring FSIS continually adopting the latest edition of NIST Handbook 44 instead of relying on a specific edition. Three comments came from the States, two from local governments, and two from professional organizations. This would permit FSIS regulations to automatically track NIST Handbook 44 revisions as they occur.

*Response:* FSIS has decided to incorporate by reference the 1990 edition of NIST Handbook 44, instead of the 1989 one stated in the proposed rule. FSIS intends to adopt the latest editions as they occur by making an announcement in the **Federal Register**. If there are any significant changes in the latest editions, the public will be provided an opportunity to comment on the changes. Since there are no significant differences between the 1989 and 1990 editions, FSIS is adopting the latest edition in the rule. This approach will enable FSIS to benefit from the latest advances in this area.

*Comment 5:* There were four comments stating that compliance with the requirements of NIST Handbook 44 would be very costly to industry. Two comments came from trade associations and two from companies. One commenter said that compliance with NIST Handbook 44 would cost about $100,000 per plant.

*Response:* FSIS does not agree with this estimate. While some scales might need to be replaced due to the rule, they would represent a very small portion of the scales in service. In fact, the vast majority of scales used for weighing the vast majority of product sold would meet NIST Handbook 44 specifications now.

*Comment 6:* There were six comments supporting the idea that State certified repair persons should be allowed to inspect and test repaired scales to see that they meet NIST Handbook 44 requirements and grant permission to use them in commerce. Two comments came from the States, two from local governments and two from professional associations.

*Response:* FSIS agrees with this position and has changed the final rule to reflect that State certified repair persons be allowed to test, validate accuracy of weight, and place scales back into service. However, if a "Retain" tag has been put on a scale, indicating some problem such as inaccuracy, only an FSIS official can remove the tag. As long as the tag is on the scale it may not be used.

*Sampling Issues*

*Comment 7:* There were two comments favoring the use of 100 percent sampling on small lots as an alternative to Sampling Plan A by State and local weights and measures officials. One came from a State and the other from a professional association. The State commenter said many local agencies conduct 100 percent tests in lieu of Sampling Plan A when testing small retail lots because checking the few additional packages available for inspection is no more trouble than doing the additional calculations called for in Sampling Plan A. Furthermore, the commenter indicated that the results when conducting a 100 percent test are not different from the results obtained when conducting a Sampling Plan A test.

*Response:* FSIS agrees with this comment. Sampling the whole lot may be the most efficient approach with small retail samples. There was no intention in the proposal to exclude the use of 100 percent sampling on small lots. NBS Handbook 133, Third Edition discusses the use of 100 percent sampling on page I–6, which is part of the handbook to be incorporated by reference.

*Comment 8:* There were two comments favoring State and local government officials being allowed to use a sampling plan which is equivalent to Sampling Plan A when this plan is part of a research and development program to improve the sampling plans. One came from a State and one from a local government.

*Response:* FSIS will permit alternative State and local government testing approaches. However, these test results cannot be used for compliance decisions. For compliance purposes, only the use of the procedures specified in this rule are acceptable in making determinations to pass or reject a lot.

*Comment 9:* There were four comments that favored using Sampling Plan A instead of Sampling Plan B in the in-plant testing program because Sampling Plan B has no maximum allowable variations (MAV's) for individual packages. Two comments came from trade associations and two from companies.

*Response:* FSIS has conducted computer simulations tests to assess the statistical comparability of its current sampling plan for in-plant tests with NBS Sampling Plans A and B. FSIS found that its current in-plant sampling plan is statistically equivalent to NBS Sampling Plan B. Both are much more stringent than Sampling Plan A. Sampling Plan A is intended to be applied at the retail level and is thus more lenient than the in-plant or wholesale test, which is supposed to be the major barrier to ferret short weight products. FSIS intends to use Sampling Plan B because it is equivalent to its current test.

*Comment 10:* There were four comments favoring the increase of an MAV for Sampling Plan B. Three of these comments came from trade associations and one from a company.

*Response:* FSIS disagrees with this idea for two reasons. By adding an MAV, FSIS would be making Sampling Plan B into a less stringent test. Moreover, FSIS would no longer have an approach that was uniform with NBS Handbook 133.

*Maximum Allowable Variations (MAV's) Issues*

*Comment 11:* One trade association and two private companies suggested that group 5, the over 10 pounds category, should be changed to a 1 percent allowance from the current 2 or 4 ounces. The lower limit for individual weights for groups 5 is a fixed amount—2 ounces—if the plant has a 2- or 4-ounce scale graduation. It is 2 or 4 ounces if the product is 11 pounds, 55 pounds or 111 pounds. Many packers have complained that this allowance is much too restrictive, especially for products over 50 pounds.

*Response:* FSIS has conducted a study on this issue and has decided to replace the current over 10 pounds MAV with an allowance of 1 percent of the total net weight of the product.[1] The study found that the over 10 pounds category of using either 2 or 4 ounces as an allowance for shortweight for an individual package is too restrictive.

The trend of MAV's from under 2 ounces and above is a downward percentage going from 10 percent for 2 ounces, 2.34 percent for 4 pounds, 1.88 percent for 5 pounds, 1.24 percent for 10.1 pounds (using 2 ounce graduation), 0.625 percent for 20 pounds (using a 2 ounce graduation), 0.25 percent for 50 pounds, and 0.125 percent for 100 pounds. This is much too restrictive for these higher weights. A 1 percent over 10 pounds allowance appears to be the most practical and fair alternative.

Also, the graduated and ungraduated difference is not necessary since practically all the scales are graduated to 2 ounces or where 2 ounces is sufficiently easy to estimate on a 4 ounce scale.

The NBS Handbook 133 will be changed accordingly.

*Comment 12:* Three trade associations and two companies suggested that group 5, the over 10 pounds category, should be changed to a 2 percent allowance from over 10 to 25 pounds and 1 percent over 25 pounds (2 percent/1 percent alternative).

*Response:* After careful consideration, FSIS decided to use the 1 percent suggested from comment 12, because the 2 percent from over 10 pounds to 25 pounds would be increasing actual percentage allowance from a trend that is declining. While the current approach may be considered too restrictive, FSIS considers the 2 percent/1 percent alternative to be too generous.

*Gray Area Allowance Issues*

*Comment 13:* There were eight comments supporting the gray area concept—one from the Federal Government, the Department of Commerce; three from the States; one from a local government; and three from trade associations. They all believed that the gray area concept in the rule would strengthen the ability of officials to enforce net weight regulations.

There were three comments opposing the gray area concept. One came from a State, one from a local government and one from a company. The State official claimed that the impact of the gray area would have the consumers paying for water instead of usable product. The company said gray area testing is an unnecessary and complicated procedure.

*Response:* FSIS agrees with those favoring the gray area concept, such as NIST and the National Conference on Weights and measures (NCWM). FSIS believes that the gray area concept will strengthen net weight enforcement. Moreover, there is no conclusive evidence that the consumer is paying for water, as is often claimed. On the contrary, economic theory and all the data available to FSIS suggest that competitive market forces push producers to price meat and poultry products as competively as possible.

*Comment 14:* There were five comments supporting more gray area product determinations. Also, the commenters indicated that these determinations should be subject to change from future research findings. One of the comments came from a State, one from a local government, two from trade associations, and one from a producer. One trade association said it wanted the proposal withdrawn until more gray areas have been determined. The other trade association noted that it does not regard gray areas as fixed numbers and believes provisions should be made for them to be restudied at any time to be certain they are in keeping with new products, processes and delivery systems.

*Response:* FSIS agrees with these comments for more gray area products. As noted earlier, FSIS has formally submitted a request to NCWM to work on five new gray area products or product classes over the next 2 years. In addition, FSIS has committed resources necessary to conduct the product testing and analysis. The addition of these five products will provide gray area product determinations on the vast majority of products that experience moisture loss. Also, these determinations must be restudied on a timely basis. The percentage allowance must be changed to reflect new market products and market conditions.

*Comment 15:* There were three comments supporting no "0" (zero) gray area product determinations. Two of the comments came from trade associations and one from a producer company.

*Response:* FSIS disagrees with this position. Usually when moisture loss occurs, it comes soon after packaging, and quickly reaches a maximum for its shelf life.

The gray areas for bacon, luncheon meats and fresh sausage are zero. There are no data to support gray areas for moisture loss after packaging in bacon, luncheon meats and fresh sausage at this time. Until such time as the data are presented to and considered by the NCWM to support gray areas for these products, FSIS will allow zero variation. Besides, gray areas were established for use only with the "wet tare" determinations. Products subject to moisture loss after packaging may be added to the list of gray area products, with sufficient documentation. Requests may be made at any time in the future to the NCWM for inclusion as gray area products.

*Other Issues*

*Comment 16:* There were seven comments supporting use of separate tare and net weight declarations in poultry products where the meat and stuffing or gravy are separately wrapped. Three of these comments came from the States, two from local governments and two from professional associations.

*Response:* FSIS believes this proposed change would set a new precedent in the direction of labeling products by the percentage of components or contents. Labeling each component in a product has major implications for the regulators, the public, and the industry. Any change in the current FSIS policy on component labeling would warrant a comprehensive evaluation extending beyond the scope of this rulemaking.

*Comment 17:* There were six comments urging FSIS to delete from the preamble its recommendation for State and local governments to use "unused tare" (dry tare) compliance testing instead of "used tare" testing, which includes wet tare and dried used tare testing.

*Response:* FSIS agrees with this comment and has deleted that sentence from the preamble in the final rule. Both "used tare" and "unused tare" compliance testing are acceptable and viable approaches. While FSIS prefers "unused tare," States and local governments can choose which approach they wish to use.

*Comment 18:* There were three comments saying that FSIS must reassert Federal preemption over State and local government laws and practices with regard to federally inspected meat and poultry products.

[1] "Bulk Pack MAV's," Washington DC: USDA/FSIS/ST/PPID, July 1990. Free copies are available at PPIL/ST, FSIS, USDA, Washington DC 20250.

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One came from a trade association and two from private companies. They feared that the new rule might mean the loss of Federal preemption over State and local meat and poultry regulations.

*Response:* While the rule emphasizes concurrent jurisdiction with State and local authorities which is encouraged in the Federal Meat Inspection Act of 1967 and the Poultry Products Inspection Act of 1968, Federal law prevails. Participating State and local officials must use only Federal law and rules.

*Comment 19:* There was one comment from a private company objecting to State and local inspectors' entry into the federally inspected establishments. The commenter opposed having an additional and potentially conflicting authority in the plants.

*Response:* FSIS does not agree. The authority of the non-Federal inspector is limited to testing, certifying, and repairing scales following the Federal regulations.

*Comment 20:* There were two comments, one from a State and one from a private company, that said that the State and local role in weighing federally inspected meat and poultry products is unnecessary. The commenters said that the implementation of the rule would be too time consuming and unsatisfactory for local officials to pursue.

*Response:* FSIS disagrees with this assessment. The participation of the State and local governments is essential to the effectiveness of the rule. The rule provides for a true partnership, in which the State and local officials will have new enforcement powers.

*Comment 21:* There were four comments, all from within the same State, fearing that the rule would weaken its State's strong enforcement program. The comments came from a State official, a local government official, a consumer group and an individual.

*Response:* FSIS disagrees with this comment. FSIS believes the adoption of this rule will strengthen, not weaken the level of compliance and will support enforcement. By using the new rule, which provides greater specificity and uniformity for net weight compliance testing, FSIS believes that the compliance levels will increase for the nation.

**The Key Characteristics of the Rule**

1. *Establishing definitions of tare and alternative methods of compliance testing.* FSIS is adopting the definitions of "tare," "unused tare," and "used tare" that are given in the National Bureau of Standards (NBS) Handbook 133, "Checking the Net Contents of Packaged Goods," Third Edition, Washington, DC, U.S. Government Printing Office, September 1988. The "tare weight" is "the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight". With regard to the liquids absorbed by the packaging material and free flowing liquid (free liquid), FSIS allows, under certain conditions, the use of two alternative tests, "unused tare" and "used tare."

"Unused tare" (or dry tare) is the weight of "all packaging materials (including glue, labels, ties, etc.) that contain or enclose a product, including prizes, gifts, coupons, or decorations that are not part of the product." The free-flowing liquid and moisture in the packaging materials is assumed to be product except for those few products which are packed in substances which are normally discarded before consumer preparation and/or serving such as vienna sausage packed in a gelatin and canned chorizos packed in lard. "Unused tare" is weighed before the product is introduced into the container. "Unused tare" measurement is used for all compliance testing within the federally inspected establishment.

"Used tare," is the weight of "all packaging materials that can be separated from the product, either readily (*e.g.* by shaking) or by washing, scraping, ambient air drying, or by other techniques involving more than normal household recovery procedures, but not including laboratory procedures such as oven drying." There are two types of used tare: wet tare and dried used tare.

"Wet tare" is the same as used tare "when no effort is made to reconstruct unused tare weight by drying out the absorbent portion (if any) of the tare. Free flowing liquid is part of the wet tare for meat and poultry products from federally inspectee" establishments. FSIS does not allow "used tare" testing in the federally inspected establishment. "Wet tare" testing uses "gray areas", defined below for applicable products, in net weight determinations. This testing takes place outside the federally inspected establishment.

"Dried used tare refers to used tare that has been air dried, dried in a microwave oven, over a heating element, or in some other manner, to simulate the unused tare weight." Dried used tare testing uses the same testing procedures as unused tare (dry tare).

"Gray area" is the allowable variation or reasonable variation below the labeled net weight within which no determination of net weight compliance can be made by net weight alone. The >gray area> is used only with >wet tare> compliance testing procedures outside the federally inspected establishment.

If a product's net weight falls below the product's gray area percentage, the product fails the compliance test. If a product's net weight is at or above its labeled net weight, the product passes the compliance test. However, if the product's net weight falls within the gray area or >no decision area,> further information is sought before a determination is made.

The data on specific lots may well substantiate compliance with net weight requirements. On the other hand, if no such data exists, then the State or local weights and measures authority as well as Federal authorities could take appropriate regulatory enforcement actions. This process appears to be the best means to use effectively the concurrent jurisdiction available to both the Federal government and state and local authorities and to meet the Federal standard of reasonable variation caused by unavoidable deviations in good manufacturing and distribution practices.

2. *Defining the currently permitted "reasonable variations" due to loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices through numerical variations which appear to be reasonable when determined by specific procedures in the National Bureau of Standards (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Third Edition, Washington, DC, U.S. Government Printing Office, September 1988.* These variations would be used and enforced at the time of production, during distribution, and at retail sale by Federal, State and local regulatory officials within their respective authorities. There are two basic types of reasonable variations in the rule. The first type is the gray area percentages for products in conducting wet tare compliance testing. The second type is the Maximum Allowable Variations (MAV's) that individual packages can vary from the labeled weight.

The rule provides for specific "gray areas" by product type to define the product "reasonable variation," for purposes of determining net weight compliance. There are five meat and poultry products that have been assigned gray area percentages. These are bacon, fresh sausage, and luncheon meats with a gray area of 0 (zero) percent, vacuum-packed frankfurters with 2 ½ percent and fresh poultry with 3 percent. These products with gray areas are listed in NBS Handbook 133, Third Edition, 1988, section 3.18.2., "Meat and Poultry from Federally-Inspected Plants: Types of Products."



The regulations incorporate FSIS's current average and individual net weight requirements. That is, the average net weight of the lot must meet or exceed the labeled weight of the product, while individual reasonable variations are permitted for individual packages in accordance with Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for Individual Packages", NBS Handbook 133, Third Edition,1988, page B–15. The table provides limits for two classes of product, "Homogenous fluid when filled" and "All other products." "Homogenous fluid when filled" products are those which are of uniform consistency throughout. Baby food is homogenous; beef stew is not. "Fluid" at time of filling refers to liquid and solid products (like shortening) which are heated and filled as a liquid.

In Table 2–12 the MAV's for individual package net weights from the labeled net weight generally becomes a decreasing percentage as the product's net weight increases. For example, a package with a labeled net weight of under 3 ounces in Group A has an MAV of 10 percent. That is, the package's net weight must be accurate to within 10 percent of the labeled weight.

For the other groups, 1–5, the lower limits for a group are a specific amount for the whole range. For example, in Group 1 the lower limit is either 7.1 grams, 0.25 ounce, 9/32ounce, 5/16 ounce, 3/10 ounce, 3/8 ounce, or ¼ ounce. The selection of the particular scale graduation depends on the characteristics of the packer's scale. Therefore, a Group 1, 3-ounce package with an allowance of 0.25, using a digital scale, would have a percentage allowance of 8.3 percent, while a 16-ounce package with an allowance of 0.25 would have a percentage allowance of 1.6 percent.

The maximum allowable variation from the labeled net weight on a meat or poultry product over 10 pounds is 1.0 percent of the labeled net weight of the package.[1]

3. *Using NCWM to determine gray area percentages for meat and poultry products.* In the first five product determinations described above, cooperating industry and trade groups worked together with FSIS and State and local weights and measures officials to gather data on moisture loss characteristics of these products. The Laws and Regulations Committee of NCWM, composed of NCWM members as well as associated members such as FSIS, FDA, the American Meat Institute, the National Broiler Council, consumer representatives, and others developed and agreed for each product a percentage allowance which best captured the results of the data in the pilot study called "Report of the Task Force on Commodity Requirements to the Executive Committee." This report is appendix E of the *National Conference on Weights and Measures: Program and Committee Reports for the 73rd Annual Meeting,* U.S. Department of Commerce: National Bureau of Standards, NCWM Publication 16, 1988. The report's recommendations were submitted to the NCWM's national conference for approval. The NCWM's recommendations were then sent to the NIST, formerly the National Bureau of Standards, for their incorporation in the Third Edition of NBS Handbook 133. FSIS believes that this same procedure should be followed for the next gray area determinations.

Industry or trade groups are encouraged by FSIS to request product gray area determinations by NCWM's Laws and Regulations Committee. The committee's address is: NCWM, Office of Weights and Measures, National Institute of Science and Technology, Gaithersburg, MD 20899.

FSIS has already made a written request for additional gray area product determinations to the NCWM. On March 17, 1989, the Administrator of FSIS said in a letter to the Executive Secretary of the NCWM that FSIS would like to see NCWM determine, approve and publish five additional gray area product percentages within the next 2 years. The five products or product classes nominated were:

—Ice packed bulk poultry,
—Cured pork products (hams, shoulders, and loins),
—Cured beef products (corned beef, corned beef brisket, and tongues),
—Raw meat products (chopped beef, ground beef, hamburger, and beef patties),
—Ham patties, chopped ham, pressed ham, spiced ham and similar products.

The addition of these five products or product classes should go a long way into making the use of wet tare testing a viable alternative to those State and local governments that wish to use it. (Wet tare may only be used outside the federally inspected establishment.)

4. *Providing new regulations on weighing and measuring devices in federally inspected establishments which are described in the NIST Handbook 44, "Specifications, Tolerances and other Technical Requirements for Measuring Devices", 1990 Edition, Washington, DC, U.S. Government Printing Office, September 1989.* FSIS officials and others who may test or certify the accuracy of the weighing and measuring devices, such as State and local weights and measures officials, will be using the same set of procedures. This NIST handbook is already widely known and used by many State and local enforcement officials. The proposed rule cited the 1989 Edition for incorporation. Since the proposed rule was published, a new edition, the 1990 Edition of NIST Handbook 44, has been published. Because there are no significant differences between the two editions that impact the meat and poultry industry, the final rule is incorporating the latest edition, the 1990 Edition of NIST Handbook 44.

5. *Establishing specific sampling procedures to assure consistent weight measurement and compliance determinations by Federal, State and local regulatory personnel.* All testing within the federally inspected establishment shall be conducted according to Sampling Plan B, but outside the establishment Sampling Plan A shall be used. Sampling Plan B is the more stringent plan because it is at the point of packing, the first point in the distribution system. Sampling Plan A is at the point of sale at the retail level, to make sure the last line of enforcement before the consumer's purchase is working properly. In such dual-testing situations the latter test is less stringent.

Both plans are described in NBS Handbook 133, Third Edition, 1988. The current FSIS plan and the proposed one for in-plant compliance testing are statistically equivalent in terms of stringency. That is, they each afford the same degree of protection. In conducting net weight compliance activities, lots will be sampled according to Sampling Plan B of NBS Handbook 133, Third Edition, 1988. In general, for up to and including 250 units or packages, the sample size would be 10. For over 250, the sample size would be 30. This method for determining sample sizes is very similar to current FSIS practice. For lots of 30 packages and under, 100 percent sampling may be done in lieu of selecting a random sample as specified in Sampling Plan A. Many States and localities are already familiar with Sampling Plan A.

6. *Establishing consistent limited labeling exemptions for meat and poultry products which meet the criteria for "small packages" and individual "random weight packages."* It has been the practice of FSIS to require that the net weight labeling of these products be applied to the bulk package shipped from the official establishments. Many

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retailers prefer to have individual "random weight packages" weighed at the retail level on their own weighing equipment. This rule change enables random weight packages, weighed at the retail store, to be exempt from the type size, dual declaration and placement requirements of product weighed in the federally inspected establishment.

**Changes to the March 1989 Proposal**

There are a number of changes in the final rule from the March 6, 1989, proposed rule. These changes are a result of FSIS's analysis of the comments received. First the changes in the meat inspection regulations, 9 CFR part 317, are discussed then the changes in the poultry inspection regulations, 9 CFR part 381, are discussed.

*Meat Regulations: Part 317*

The changes to part 317 cover a variety of items including exempting random weight packages from certain labeling requirements; delimiting the scales and other weighing devices covered in the regulation; incorporating by reference the 1990 edition of NIST Handbook 44; enabling State registered or licensed repair firms to inspect, test and place scales back in service; enabling State licensed or registered firms to provide valid certification of a scale's accuracy; deleting NBS Handbook 133 references to previous USDA regulations.

*Random weight packages exemptions and requirements.* Two sentences were added to § 317.2(h)(9)(i) to continue to require that the net weight declarations for random weight packages weighed at the retail level be applied directly to such packages prior to retail sale and display. Provisions were also added to these sections to continue to exempt such net weight statements from the type size, dual declaration, and placement requirements of the regulations.

The additional sentences are: "The net weight also shall be applied directly to random weight consumer size packages prior to retail display and sale. The net weight statement on random weight consumer size packages for retail sale shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (h), if an accurate statement of net weight is shown conspicuously on the principal display panel of the package."

*Only certain scales covered.* Section 317.20(a) limited the types of scales and weighing devices covered by the regulation. The scales and other weighing devices covered by this rule are *only* those used for weighing products used in the distribution and sale of meat and poultry products. This change narrows the focus of inspection activity to scales used in net weight determinations for commerce.

The first sentence of the section has been changed to reflect this limitation. The sentence in the proposal reads: "All scales used in federally inspected meat establishments used for weighing of meat and poultry products shall be installed, maintained and operated to insure accurate weights." It has been replaced in the final rule by: "All scales used to weigh meat products sold or otherwise distributed in commerce in federally inspected meat establishments shall be installed, maintained and operated to insure accurate weights."

*The 1990 Edition of NIST Handbook 44 is adopted.* The second sentence of § 317.20(a) has been changed to reflect that the "1990 Edition issued September 1989" of NIST Handbook 44 is incorporated by reference instead of the "1989 Edition issued September 1988" stated in the proposal. The new edition is not significantly different from the old one.

*State and local role in inspecting, testing and placing scales back in service.* Section 317.20(c) has been changed so State weights and measures officials and State licensed or registered scale repair firms or persons as well as USDA officials can inspect and test a scale that has been taken out of service because it is inaccurate or it has had repairs, adjustments or replacements made to it, and place it back in service unless it has had a "Retain" tag placed by a USDA inspector. Only a USDA inspector can remove this tag.

In the second sentence of this paragraph, after the phrase "has been inspected by and tested by a USDA official" the following phrase has been added to the sentence: ", or a State or local government weights and measures official, or State registered or licensed scale repair firm or person,".

*State licensed or State registered repair firms or persons role.* Section 317.21(b) has been changed to enable State licensed or State registered repair firms or persons to be able to provide a valid certification of a scale's accuracy as well as State and local weights and measures and USDA officials.

The following phrase has been added to the sentence after the phrase "State or local government's weights and measures authority": "or from a State registered or licensed scale repair firm or person,".

*Deleting reference to previous USDA regulations on net weight.* Section 317.19(b) adds "D.1.2. U.S. Department of Agriculture." This new rule replaces this section.

*Poultry Regulations: Part 381.*

The changes to part 381 cover a variety of items including exempting random weight packages from certain labeling requirements; delimiting the scales and other weighing devices covered in the regulation; incorporating by reference the 1990 edition of NIST Handbook 44; enabling State registered or licensed repair firms to inspect, test and place scales back in service; enabling State licensed or registered firms to provide valid certification of a scales accuracy; deleting NBS Handbook 133 reference to previous USDA regulations.

*Random weight packages exemptions and requirements.* Two sentences were added to § 381.121(c)(9)(i) to continue to require that the net weight declarations for random weight packages weighed at the retail level be applied directly to such packages prior to retail sale and display. Provisions were also added to these sections to continue to exempt such net weight statements from the type size, dual declaration, and placement requirements of the regulations.

The additional sentences are: "The net weight also shall be applied directly to random weight consumer size packages prior to retail display and sale. The net weight statement on random weight consumer size packages for retail sale shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (c), if an accurate statement of net weight is shown conspicuously on the principal display panel of the package."

*Only certain scales covered.* Section 381.121c(a) limited the types of scales and weighing devices covered by the regulation. The scales and other weighing devices covered by this rule are *only* those used for weighing products used in the distribution and sale of meat and poultry products. This change narrows the focus of inspection activity to scales used in net weight determinations for commerce.

The first sentence of the section has been changed to reflect this limitation. The sentence in the proposal reads: "All scales used in federally inspected poultry plants used for weighing of meat and poultry products shall be installed, maintained and operated to insure accurate weights." It has been replaced in the final rule by: "All scales used to weigh poultry products sold or otherwise distributed in commerce in federally inspected poultry plants shall be installed, maintained and operated to insure accurate weights."

*The 1990 Edition of NIST Handbook 44 is adopted.* The second sentence of § 381.121c(a) has been changed to reflect that the "1990 Edition issued September 1989" of NIST Handbook 44 is incorporated by reference instead of the "1989 Edition issued September 1988" stated in the proposal. The new edition is not significantly different from the old one.

*State and local role in inspecting, testing and placing scales back in service.* Section 381.121d(b) has been changed so State weights and measures officials and State licensed or registered scale repair firms or persons as well as USDA officials can inspect and test a scale that has been taken out of service because it is inaccurate or it has had repairs, adjustments or replacements made to it, and place it back in service unless it has had a "Retain" tag placed by a USDA inspector. Only a USDA inspector can remove this tag.

In the second sentence of this paragraph, after the phrase "has been inspected by and tested by a USDA official" the following phrase has been added to the sentence:", or a State or local government weights and measures official, or State registered or licensed scale repair firm or person,".

*State licensed or State registered repair firms or persons role.* Section 381.121c(c) has been changed to enable State licensed or State registered repair firms or persons to be able to provide a valid certification of a scale's accuracy as well as State and local weights and measures and USDA officials.

The following phrase has been added to the sentence after the phrase "* * * State or local government's weights and measures authority": "or from a State registered or licensed scale repair firm or person,".

*Deleting reference to previous USDA regulations on net weight.* Section 381.121b(b) adds "D.1.2. U.S. Department of Agriculture." This new rule replaces this section.

**Final Rule**

**List of Subjects**

*9 CFR Part 317*

Incorporation by reference, Meat inspection, Net weight.

*9 CFR Part 381*

Incorporation by reference, Poultry products inspection, Net weight.

For reasons set out in the preamble, title 9, parts 317 and 381 of the Federal meat and poultry products inspection regulations are revised as follows:

**PART 317—[AMENDED]**

1. The authority citation for part 317 continues to read as follows:



**Authority:** 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 317.2 (9 CFR 317.2) is amended by revising paragraphs (h)(1) and (h)(2), adding a new sentence to the end of paragraph (h)(5), revising paragraph (h)(9) (i) and (ii), redesignating (h)(9) (iii) and (iv) as (h)(9) (iv) and (v), respectively, adding a new (h)(9)(iii) and revising (h)(11) to read as follows:

**§ 317.2 Labels: Definition; required features.**

* * * * *

(h)(1) The statement of net quantity of contents shall appear on the principal display panel of all containers to be sold at retail intact, in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph.

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices will be recognized. Variations from stated quantity of contents shall be as provided in § 317.19. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance.

* * * * * *

(5) * * * Paragraph (h)(9) of this section permits certain exceptions from the provisions of this paragraph for margarine packages, random weight consumer size packages, and packages of less than ½ ounce net weight. Pargraph (h)(12) of this section permits certain exceptions from the provision of this paragraph for multi-unit packages.

* * * * * *

(9) * * * (i) Individually wrapped, random weight consumer size packages shipped in bulk containers (as specified in paragraph (h)(11) of this section) and meat products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined under § 317.19 need not bear a net weight statement when shipped from an official establishment, provided that a net weight shipping statement which meets the requirements of paragraph (h)(2) of this section is applied to their shipping container prior to shipping it from the official establishment. Net weight statements so applied to the shipping container are exempt from the type size, dual declaration, and placement requirements of this paragraph, if an accurate statement of net weight is shown conspicuously on the principal display panel of the shipping container. The net weight also shall be applied directly to random weight consumer size packages prior to retail display and sale. The net weight statement on random weight consumer size packages for retail sale shall be exempt from the type size, dual declaration, and placement requirements of this paragraph, if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

(ii) Individually wrapped and labeled packages of less than ½ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph is they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of paragraph (h)(2) of this section;

(iii) Individually wrapped and labeled packages of less than ½ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph, if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

* * * * * *

(11) As used in this section, a "random weight consumer size package" is one which is one of a lot, shipment or delivery of packages of the same product with varying weights and with no fixed weight pattern.

* * * * * *

**§§ 317.23 and 317.24 [Redesignated from 317.19 and 317.20]**

3. Sections 317.19 and 317.20 (9 CFR 317.19 and 317.20) are redesignated as §§ 317.23 and 317.24 respectively (9 CFR 317.23 and 317.24), new §§ 317.18 through 317.22 (9 CFR 317.18 through 317.22) are added to part 317, and the Table of Contents is amended accordingly, to read as follows:

Sec.

* * * * * *

317.18 Quantity of contents labeling.
317.19 Definitions and procedures for determining net weight compliance.
317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.
317.21 Scales: testing of.

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Sec.
• • • • •
317.22 Handling of failed product.
317.23 Jar closure requirements.
317.24 Packaging materials.

**§ 317.19 Quantity of contents labeling.**

Sections 317.18 through 317.22 of this part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 317.2(b) of this part.

**§ 317.19 Definitions and procedures for determining net weight compliance.**

(a) For the purpose of §§ 317.18 through 317.22 of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards' (NBS) Handbook 133, "Checking the Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, Third Edition, September 1988, which is incorporated by reference, with the exception of the NBS Handbook 133 requirements listed in paragraph (b) of this section. Those provisions incorporated by reference herein, are considered mandatory requirements. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited herein will be published in the Federal Register. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, room 8401, 1100 L Street NW., Washington, DC 20408.

(b) The following NBS Handbook 133 requirements are not incorporated by reference.

**Chapter 2 General Considerations**
2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch

**Chapter 3 Methods of Test for Packages Labeled by Weight**
3.11. Aerosol Packages
3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour

**Chapter 4 Methods of Test for Packages Labeled by Volume**
4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties

**Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities**
5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware

**Appendix D: Package Net Contents Regulations**
D.1.1. U.S. Department of Health and Human Services, Food and Drug Administration
D.1.2. Department of Agriculture, Food Safety and Inspection Service
D.1.3. Federal Trade Commission
D.1.4. Environmental Protection Agency
D.1.5. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms

**§ 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.**

(a) All scales used to weigh meat products sold or otherwise distributed in commerce in federally inspected meat establishments shall be installed, maintained and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Institute of Science and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," Washington, DC: U.S. Government Printing Office, 1990 Edition, September 1989, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C.. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, room 8401, 1100 L Street NW., Washington, DC 20408.

(b) All scales used to weigh meat products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh meat products unless it has been found upon test and inspection, as specified in NIST Handbook 44, to provide accurate weight. If a scale is reinspected or retested and found to be inaccurate, or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested by a USDA official, or a State or local government weights and measures official, or State registered or licensed scale repair firm or person, and it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a retain tag on a scale it can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

**§ 317.21 Scales: Testing of.**

(a) The operator of each official establishment that weighs meat food products shall cause such scales to be tested for accuracy, in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have an FSIS approved net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 318.4 of this subchapter.

**§ 317.22 Handling of failed product.**

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 317.19 shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section and be reinspected, in accordance with the requirements of this Part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.



**PART 381—[AMENDED]**

4. The authority citation for part 381 continues to read as follows:

Authority: 21 U.S.C. 451 *et. seq.*; 7 U.S.C. 450 *et. seq.*

5. Section 381.121 (9 CFR 381.121) is amended by revising the first sentence of paragraph (a), revising paragraph (b), adding a new sentence to the end of paragraph (c)(1), adding a new sentence to the end of paragraph (c)(5), and revising paragraphs (c)(6) and (c)(9), and adding new paragraph (c)(10) to read as follows:

**§ 381.121 Quantity of contents.**

(a) The label shall bear a statement of the quantity of contents in terms of weight or measures as provided in paragraph (c)(5) of this section. • • •

(b) When a poultry product and a nonpoultry product are separately wrapped and are placed in a single immediate container bearing the same name of both products, the net weight on such immediate container may be the total net weight of the products, or such immediate container may show the net weights of the poultry product and the nonpoultry product separately. Notwithstanding the other provisions of this paragraph, the label on consumer size retail packages of stuffed poultry and other stuffed poultry products must show the total net weight of the poultry product, and in close proximity thereto, a statement specifying the minimum weight of the poultry in the product.

(c)(1) • • • An unused tare weight, as defined in section 381.121b of this subchapter, may be printed adjacent to the statement of net quantity of contents when the product is packaged totally with impervious packaging material and is packed with a usable medium.

• • • • • •

(5) • • • Paragraphs (c) (8) and (9) of this section permit certain exceptions to this paragraph for multi-unit packages, and random weight consumer size and small packages (less than ½ ounce), respectively.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices will be recognized. Variations from stated quantity of contents shall be as provided in section 381.121b of this subchapter. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance except as provided in paragraph (b) of this section.

• • • • • •

(9) The following exemptions from the requirements contained in this section are hereby established:

(i) Individually wrapped, random weight consumer size packages of poultry products (as specified in paragraph (c)(10) of this section) and poultry products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined in NBS handbook 133, section 3.18.2, need not bear a net weight statement when shipped from an official establishment provided a net weight shipping statement which meets the requirements of paragraph (c)(6) of this section is applied to the shipping container prior to shipping it from the official establishment. Net weight statements so applied to the shipping container are exempt from the type size, dual declaration, and placement requirements of this paragraph if an accurate statement of net weight is shown conspicuously on the principal display panel of the shipping container. The net weight also shall be applied directly to random weight consumer size packages prior to retail display and sale. The net weight statement of random weight consumer size packages for retail sale shall be exempt from the type size, dual declaration, and placement requirements of this paragraph if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

(ii) Individually wrapped and labeled packages of less than ⅛ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph if they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of paragraph (c)(6) of this section;

(iii) Individually wrapped and labeled packages of less than ⅛ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

(10) As used in this section a "random weight consumer size package" is one of a lot, shipment or delivery of packages of the same product, with varying weights and with no fixed weight pattern.

6. New §§ 381.121a–381.121f (9 CFR 381.121a–381.121f) are added to part 381, and the Table of Contents is amended accordingly, to read as follows:

Sec.
• • • • •
381.121a Quantity of contents labeling.
381.121b Definitions and procedures for determining net weight compliance.
381.121c Scale requirements for accurate weights, repairs, adjustments and replacement after inspection.
381.121d Scales: testing of.
381.121e Handling of failed product.
• • • • •

**§ 381.121a Quantity of contents labeling.**

Sections 381.121a through 381.121e of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 381.121 of this part.

**§ 381.121b Definitions and procedures for determining net weight compliance.**

(a) For the purpose of § 381.121b of this part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards (NBS) Handbook 133, "Checking the Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, Third Edition, September 1988, which is incorporation by reference, with the exception of the NBS Handbook 133 requirements listed in paragraph (b) of this section. Those provisions, incorporated by reference herein, are considered mandatory requirements. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, room 8401, 1100 L Street NW., Washington, DC 20408.

(b) The following NBS Handbook 133 requirements are not incorporated by reference.

**Chapter 2—General Considerations**
2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch

**Chapter 3—Methods of Test for Packages Labeled by Weight**
3.11. Aerosol Packages

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3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour

**Chapter 4—Methods of Test for Packages Labeled by Volume**

4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties

**Chapter 5—Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities**

5.4. Polyethlene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware

**Appendix D: Package Net Contents Regulations**

D.1.1 U.S. Department of Health and Human Services, Food and Drug Administration
D.1.2 U.S. Department of Agriculture, Food Safety and Inspection Service
D.1.3 Federal Trade Commission
D.1.4 Environmental Protection Agency
D.1.5 U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms

**§ 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.**

(a) All scales used to weight poultry products sold or otherwise distributed in commerce in federally inspected poultry plants shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Institute of Science and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1990 Edition, Washington, DC: U.S. Government Printing Office, September 1989, which is incorporated by reference. This incorporation was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. (These materials are incorporated as they exist on the date of approval.) A notice of any change in the Handbook cited herein will be published in the **Federal Register**. Copies may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, room 8401, 1100 L Street NW., Washington, DC 20408.

(b) All scales used to weigh poultry products sold or otherwise distributed in commerce or in State designated under section 5(c) of the Poultry Products Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh poultry products unless it has been found upon test and inspection as specified in NIST Handbook 44 to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been reinspected and retested by a USDA official, or a State or local government weights and measures official, or a State registered or licensed scale repair firm or person, and it must meet all accuracy requirements as specified in NIST Handbook 44. If a USDA inspector has put a "Retain" tag on a scale it can only be removed by a USDA inspector. As long as the tag is on the scale, it shall not be used.

**§ 381.121d Scales; Testing of.**

(a) The operator of each official establishment that weighs poultry food products shall cause such scales to be tested for accuracy in accordance with the technical requirements of NIST Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more fequent tests may be required and monitored by an authorized USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's weights and measures authority or from a State registered or licensed scale repair firm or person, or shall have an FSIS approval net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 381.145 of this subchapter.

**§ 381.121e Handling of failed product.**

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 381.121b of this subchapter shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section, and be reinspected in accordance with the requirements of this part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done at Washington, DC, on: November 26, 1990.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 90-28126 Filed 11-29-90; 8:45 am]
BILLING CODE 3410-DM-M

federal register

Friday,
November 30, 1990

Part IV

# Department of the Treasury

**Office of the Comptroller of the Currency**

**12 CFR Parts 5, 8, 11, and 16**
**Assessments and Other Fees; Final Rule**

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 5, 8, 11, and 16**

**[Docket No. 90-20]**

**RIN 1557-AA99**

**Assessments and Other Fees**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending 12 CFR parts 5, 8, 11 and 16 to increase assessments by 11 percent and to set other fees for national banks. The revised schedule replaces the current schedule for assessments due on or before January 31, 1991. New fees will be implemented on January 1, 1991, for processing certain securities-related filings by national banks. Also, this final rule imposes an annual fee due on January 31 of each year on national banks with municipal and/or government securities dealer departments for which the OCC is the primary regulator. The OCC will address its long-term funding options in a subsequent rulemaking. This final rule affects national banks, District of Columbia banks supervised by the OCC, and federally licensed branches and agencies of foreign banks.

This final rule is necessary to address a near-term revenue shortfall which results from decreased revenue growth coupled with expanded supervisory requirements. These expanded requirements reflect the increased complexity of the financial services industry, changes in the asset quality of many national banks, and new statutory mandates. This final rule enables the OCC to continue meeting its supervisory and regulatory responsibilities.

**EFFECTIVE DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Janice A. Booker, Director, Customer and Industry Affairs Division, (202) 287-4169; Roy C. Madsen, Associate Director, Financial Management Division, (202) 447-0958; or Ferne Fishman Rubin, Attorney, Legal Advisory Services Division, (202) 447-1882, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC is responsible for supervising national banks and ensuring that they comply with applicable law. Pursuant to 12 U.S.C. 482, the OCC recovers its expenses by assessing national banks "in proportion to their assets or resources." The current assessment schedule, found at 12 CFR part 8, fulfills this statutory requirement. The OCC last revised its part 8 semiannual assessment schedule on December 1, 1988 (53 FR 48624).

**Notice of Proposed Rulemaking**

On July 6, 1990, the OCC published a notice of proposed rulemaking (Docket No. 90-12) in the **Federal Register** (55 FR 27964) concerning revisions to the assessment schedule and implementation of new fees. In that proposal, the OCC solicited comments on several long-term funding options.

The OCC proposed to increase national bank assessments beginning with assessments due by January 31, 1991. The amount of future year revenues will vary, based on the growth of banking assets, the size distribution of banks, and the rate of inflation. The OCC also proposed new fees for processing certain securities-related filings by national banks and an annual fee on national banks with municipal and/or government securities dealer departments for which the OCC is primary regulator.

A copy of the proposal was sent to the chief executive officer of each national bank (Banking Bulletin No. 90-22, July 10, 1990). The banking bulletin ensured that each national bank received direct and timely notice of the proposed fee changes and provided the opportunity to comment on both the short-term funding proposals and the long-term funding options.

**Final Rule**

This final rule is intended to meet the OCC's short-term funding needs. The OCC is increasing assessments by 11 percent and implementing certain new fees. This final rule is not intended to meet the OCC's long-term funding requirements.

The 11 percent assessment increase exceeds the eight percent increase proposed. Bank asset growth, and hence, the OCC's revenue growth, have fallen when compared to both the anticipated and actual growth for the same period in 1989. In addition, the condition in the banking industry has changed at a faster rate than anticipated when the original proposal was formulated. As a result, resource requirements have increased beyond earlier expectations. The OCC is increasing its supervisory activities by placing more examiners on a continuous basis at various institutions.

Other factors mentioned in the proposal that have boosted the OCC's operating costs include the need for closer OCC supervision of an increased number of troubled institutions; the increased complexity of the financial services industry; and the OCC's additional regulatory and supervisory responsibilities under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183.

The costs for these activities are also projected to exceed those anticipated when the Notice of Rulemaking was published. For these reasons, the originally proposed assessment increase of eight percent is insufficient to allow the OCC to recover its costs as contemplated in 12 U.S.C. 482.

An 11 percent assessment increase does not, on an individual bank basis, represent a substantial dollar increase in assessments over the original proposal of eight percent. For example, on an annualized basis, national banks with assets of $20 million, $100 million, $1 billion, and $100 billion will pay approximately $285, $820, $4,233, and $178,889 more respectively than they would have paid with an eight percent increase.

The OCC expects to address its long-term funding needs in a subsequent rulemaking. Further, the OCC is pursuing certain legislative changes to expand its long-term funding options. The OCC will consider comments received in response to the July 6, 1990, Notice of Proposed Rulemaking in the development of any future proposal regarding long-term funding options. The OCC intends to continue to use the seven criteria discussed in the Notice of Proposed Rulemaking to evaluate the various long-term funding options.

The OCC is aware of the limitations of using an asset-based assessment schedule as its primary means of meeting future funding needs. The OCC will continue to evaluate the various long-term funding options available but has made no final determination.

**Reasons for the Actions**

The OCC expects the new fees and the changes to the assessment schedule to provide sufficient revenue to supervise the national banking system adequately for approximately two years. Without additional revenue, the OCC will operate at a significant deficit in 1991 and 1992 because the increasing supervisory demands of the changing banking environment have outpaced the OCC's ability to fund those demands.

**Supervisory Environment**

The financial services industry is changing rapidly. Differing financial services and new and amended statutory responsibilities affect the OCC's supervision of national banks. In addition, the OCC has faced new challenges and resource pressures from:

- An increased number of troubled institutions, requiring closer supervision;
- Additional areas of risk, such as real estate lending, requiring additional resources;
- The increased complexity of the financial services industry and more sophisticated products, compelling the OCC to devise ways to examine and incorporate new procedures into the supervisory process; and
- More regulatory and supervisory responsibilities mandated by Congress, such as those contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 (FIRREA).

**Uncertain Asset Growth**

The OCC's ability to adequately fund supervision is dependent upon the growth of national bank assets. Currently, asset-based assessments are the OCC's primary source of revenue. National bank assets have not grown as they had in the past. In the early 1980s, national bank assets grew at annual rates of 7.0 percent or more. In 1986, the annual growth rate fell to 6.6 percent, and by 1987 was less than 2.0 percent, the lowest rate since 1948. Although in 1989 the growth rate rose to 7.0 percent, national bank asset growth declined to 0.7 percent in 1990. Excluding the acquisition of thrift assets, national bank assets declined substantially in 1990.

Asset growth will continue to be uncertain in the 1990s. One reason for the uncertainty is the unknown effect of the new risk-based capital requirements upon asset growth. Furthermore, if the consolidation of smaller institutions into larger ones continues, the OCC's future assessment revenues will be reduced. This reduction occurs because under the OCC's regressive assessment schedule, the average assessment per dollar of assets decreases as asset size increases.

**Comments Received**

The OCC received 42 comments in response to the proposal. The commenters were national banks, their directors, officers, and employees, and trade associations. Several commenters opposed the assessment increase. The commenters' concerns fall into three major categories: That the OCC should contain costs and increase efficiency; that healthy banks should not subsidize problem banks; and that regulation is overly burdensome.



*OCC Costs and Efficiency*

Several commenters questioned whether the OCC has been sufficiently diligent in controlling costs. The OCC agrees it must continue to contain costs and maximize efficiency and is continuing to work on these important goals. However, the bank supervisory environment demands greater resources and these increased supervisory resource demands exceed the OCC's cost cutting efforts.

Bank supervision is labor intensive and employee salaries and benefits make up the largest portion of OCC expenditures. In 1990, they comprised approximately 72 percent of the OCC's costs, up from 66 percent in 1985. Numerous factors, including the supervisory environment and compensation, benefits, facilities and travel costs contribute to this trend. The supervisory environment requires better-trained and additional staff. The agency has added the equivalent of 405 full-time employees to its workforce since 1985.

Under FIRREA, OCC compensation must be comparable to that of the other financial regulatory agencies. The OCC is studying compensation and, with an interim increase in most employees' compensation, has moved toward general comparability with the other regulators.

As with other employers, the OCC's benefit costs increased steeply in the 1980s. In 1980, the OCC's benefits cost approximately 11 percent of payroll, compared with 21 percent in 1990. These costs are anticipated to continue to increase. The OCC is constraining these costs through negotiating with the benefit providers and requiring its employees to pay some of these increased costs.

In addition, retirement plans have become more expensive. The Federal Employee Retirement System (FERS) is significantly more costly to the OCC than the Civil Service Retirement Plan. The proportion of FERS employees will rise over time as employees retire and are replaced by new employees who are in FERS. The OCC faces other increasing costs. For example, as a result of an expiring lease and the need for more efficient utilization of space, the OCC will move its Washington headquarters office in 1991. Although the relocation reduces office space costs over the long term, it causes the OCC's expenses to increase slightly in the short term. Additionally, space costs for other district, field and duty station offices are expected to increase as leases expire and are renegotiated.

Finally, bank supervision requires extensive travel by examiners. In recent years, Federal travel allowances have increased as travel costs have escalated. Travel costs associated with bank supervision are expected to continue to rise due to increased lodging rates, common carrier fares and mileage rates. For most examination activities, OCC examiners drive their own cars to the banks and mileage rates encourage car pooling. When traveling by air, OCC examiners fly coach and they stay in reasonably-priced hotel rooms. They do not have expense accounts and are reimbursed only for reasonable travel-related expenses.

*Cost Control*

The OCC controls and cuts costs where possible and is committed to a tight and balanced budget. The OCC has adopted strategies designed to use its resources with maximum efficiency and to improve its ability to achieve its mission. It has controlled costs while adopting procedures that provide more effective bank supervision. To supplement its examination activities, the OCC uses ongoing, off-site monitoring of bank performance, which leverages resources by allowing them to be concentrated on the parts of the system that present the greatest risk.

In order to achieve longer-term savings, the OCC expanded its field office facilities and improved its automated systems capabilities to support off-site supervisory activities. As a result of these leveraging efforts, the OCC is realizing some staff and travel savings. Without leveraging resources, the current supervisory conditions would require a staff greater than the current 3,246 employees, and expenditures greater than 1990's projected $263.8 million.

The OCC's cost containment efforts are countered by the increased resource demands of the current bank supervisory environment. The OCC staff and costs have increased over the past several years, yet from 1985 to 1990, the annual rate of increase in the cost to supervise $1 billion of bank assets has been only 4.7 percent. This is consistent with an inflation rate averaging 4.4 percent. These cost containment efforts are further demonstrated by the trend in the OCC's overhead rate—which measures the relationship of support to bank supervision costs. That rate consistently has fallen since 1987, because the OCC has directed a greater proportion of its resources toward direct bank supervision.

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*Well-managed Banks Should Not Subsidize Troubled Banks*

Most commenters observed that the current assessment methodology requires well-managed banks to pay some of the costs of special supervisory attention given to troubled banks. The commenters strongly suggested that a troubled bank be assessed higher fees due to the greater level of OCC resources devoted to supervising that bank.

Well-run banks do subsidize troubled banks. However, 12 U.S.C. 482 currently does not allow the OCC to charge higher assessments to those banks that receive disproportionate attention from the OCC. This suggestion, as well as various other commenter suggestions, will be addressed in a long-term funding alternative after required statutory changes have been obtained.

*Regulations are Overly Burdensome*

Several commenters expressed concern about increasing regulatory burden. Commenters stated that the commercial banking industry is faced with increasing costs as a result of compliance and regulatory reporting. They stated that the competitive banking environment limits the banker's ability to increase fees to recover these extra costs. Consequently, they commented that these actions adversely affect bank profits.

The OCC recognizes that bank profits are affected directly by compliance with various statutory and regulatory requirements. In this respect, the banks and the OCC are in a similar situation. The resources of each are affected by statutory and regulatory requirements intended to promote a fair and durable financial services industry. The OCC is committed to continuing to devise a system of regulation which minimizes the burden on the industry while meeting statutory requirements.

**OCC Action**

The OCC must act promptly to prevent a revenue shortfall in 1991 and beyond. To meet its revenue requirements, the OCC is issuing this final rule to revise the assessment schedule and implement other fees.

*11 Percent Increase*

The OCC is increasing by 11 percent the marginal assessment rate of each of the ten brackets in the assessment schedule. The increase should raise about $13.4 million per semiannual assessment, or $26.8 million per year. The revised assessment schedule, like the present one, maintains marginal assessment rates which decline as bank assets increase. The asset brackets are still indexed annually to changes in the general price level.

The revised assessment schedule reflected in 12 CFR 8.2 is effective for the semiannual assessment period January 1, 1991, and beyond. The first semiannual assessment payment under the new schedule is due by January 31, 1991.

The assessment increase is necessary to avoid deficits which may deter the OCC's ability to fulfill its statutory, regulatory and supervisory responsibilities. The increase is the minimum amount necessary to support the OCC's increasing and evolving supervisory responsibilities. The increase from the eight percent proposed in the proposed rule to the 11 percent implemented with this rule reflects this minimum amount. The revision is consistent with the requirements of 12 U.S.C. 482, because the new assessment schedule treats banks of similar asset size in the same manner, and is necessary for the OCC to recover its costs.

*Fees for Securities-Related Filings*

The new fees for securities-related filings are based on two principles. First, the OCC should recover the costs associated with processing securities-related filings. Second, the OCC should require parties making securities-related filings to bear the cost of processing them.

This final rule, to the extent practicable, places the cost on those directly benefiting from the OCC's processing. This has been the OCC's long-standing policy in prior fee rulemakings, as well as this final rule. *See 50* FR 1439 (January 11, 1985); 49 FR 38954 (October 2, 1984); 46 FR 18656 (March 13, 1981); 45 FR 85042 (December 24, 1980).

Beginning on January 1, 1991, the OCC will impose fees associated with:

- Filings made pursuant to the Securities Exchange Act of 1934 and 12 CFR part 11;
- Filings of proxy and information statements in conformance with the requirements of subpart E of part 11 pursuant to 12 CFR 5.33; and
- Filings of offering circulars and documents relating to the offer and sale of a bank's securities pursuant to 12 CFR part 16.

These fees will recover a portion of the OCC's cost of reviewing and processing those filings. National banks that have applied, pursuant to § 5.33, for OCC approval of a merger, consolidation or purchase and assumption transaction (merger transaction) must file proxy materials or information statements with the OCC as required by subpart E or part 11. The OCC uses this material to determine the adequacy of disclosure to shareholders, one of six factors considered in acting on merger applications.

The OCC also is amending § 5.33 and § 11.501 to clarify the existing requirement that banks adequately inform shareholders of all aspects of merger transactions. Section 5.33 clarifies that banks must provide proxy statements or information statements in conformance with subpart E of part 11.

In evaluating a merger application, the Comptroller considers many factors, including "the adequacy of disclosure of the terms of the merger." See 12 CFR 5.33(b)(2)(vi). In evaluating the adequacy of disclosure, the Comptroller looks to the determination by the OCC's Securities & Corporate Practices Division of banks' compliance with the requirements of part 11. See §§ 20.1 and 21.1, *Comptroller's Manual for Corporate Activities*. Consequently, § 5.33, as amended, does not impose an additional filing burden on banks.

The OCC will charge the same fees for securities filings as those paid by corporations to the SEC for similar filings. Those fees will not fully recover the aggregate cost of reviewing proxy material, information statements filed by banks pursuant to § 5.33 and offering circulars and other documents filed under part 16. The OCC will publish a fee schedule as part of its Notice of Comptroller of the Currency Fees. The following table lists the expected amounts of the new securities-related filing fees.

| Part 11 filings | Fee (A) |
|---|---|
| Form F-1 | $250 |
| Form F-2 | $250 |
| Form F-3 | No fee |
| Form F-4 | No fee |
| Form F-5 | Note: (B)(1), (2), and (3) |
| Form F-6 | Note: (B)(2) |
| Form F-7 | No fee |
| Form F-8 | No fee |
| Form F-10 | $250 |
| Form F-11 | $100 |
| Form F-11A | $100 |
| Form F-12 | No fee |
| Form F-13 | Note: (C) |
| Form F-20 | No fee |
| **Part 16 Filings** | |
| Offering circulars and documents filed pursuant to 12 CFR 16.3, 16.4(e), 16.4(f) and 16.7. | $100 minimum (D) |

*Notes*

(A) General considerations:

(1) Fees are not refundable.



(2) Filing fees calculated on a percentage basis should be accompanied by a letter of transmittal stating the amount of the filing fee and how it was determined.

(3) In determining fees calculated on a percentage basis, the market value of securities shall be established by either the average high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the bank has an accumulated capital deficit, in which case one-third of the par value of the securities shall be used.

(B) Proxy and Information Statements:

(1) Preliminary proxy material or information statements involving merger, consolidation, purchase and assumption transactions: a fee of one-fiftieth of one percent of the proposed cash payment or the value of the securities and other property to be transferred to security holders. The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based on the market value of the transferred securities. See note (A)(3) above for the calculation of market value.

(2) Preliminary proxy material where a contest as set forth in 12 CFR 11.511 exists: a fee of $500 from each participant who files a Form F-8.

(3) Other preliminary proxy material that solicits proxies, or information statements concerning business for which a shareholder vote is necessary: A fee of $125.

(C) A fee of one-fiftieth of one percent of the value of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based on the market value of the securities to be received by the bidder. See note (A)(3) above for the calculation of market value.

(D) A fee of one-fortieth of one percent of the maximum aggregate price at which the securities are to be offered or $100, whichever is greater.

*Franchise Fee for Bank Securities Dealers*

As of January 1, 1991, the OCC is imposing an annual franchise fee of $1,500 on every national bank or department or division of a bank that is registered or on file as either a municipal or a government securities dealer. Two fees will be paid if a bank engages in both types of securities dealer activity. The OCC will adjust this fee annually based upon the cost of supervising these activities. National bank subsidiaries or affiliates that are registered or on file as municipal or government securities dealers are not subject to OCC franchise fees because these entities already pay a fee to the National Association of Securities Dealers.

Because these costs are now being paid from assessments on all national banks, banks that are not securities dealers are subsidizing the supervision of those that are. The new fee will allocate the cost of supervision to those institutions that perform the activity.

The amount of the fee could change based on the data available when the fees are calculated. The OCC's Notice of Comptroller of the Currency Fees will include the annual franchise fees for securities dealer activities. The fees will be due on January 31 of each year.

*Notice of Comptroller of the Currency Fees*

Currently, 12 CFR 8.8 provides that the OCC shall publish a "Notice of Comptroller of the Currency Fees" no later than the first business day in December for all fees to be charged in the upcoming year. During the course of a year, statutes and regulations are amended and may impose new supervisory responsibilities on the OCC. Furthermore, new types of applications and filings may become necessary. These situations may require that the OCC impose new types of fees before the beginning of a new year.

Consequently, the OCC is amending § 8.8 to permit interim changes to the Notice of Comptroller of the Currency Fees. In addition, the OCC is amending § 5.5 for clarification purposes, by adding a reference to § 8.8. The OCC will provide 30 days notice of any fee change.

*Technical Changes*

The OCC also is amending §§ 5.33 and 11.501 to clarify the existing requirement that banks adequately inform shareholders of all aspects of merger transactions. Revised § 5.33 clarifies that banks are required to provide proxy statements or information statements in conformance with subpart E of part 11. In addition, the OCC is removing unnecessary sentences pertaining to 1985 fees throughout part 8. Finally, the OCC is updating the authority citation and OMB control number reference in § 16.1.

**Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is certified that this final rule will not have a substantial economic impact on a significant number of small entities. While this final rule will have some impact on all national banks, it will not have a significant or disparate impact on small banks. The across-the-board assessment increase proposed will increase costs somewhat for banks of all sizes. Additionally, the small-bank subsidy included in large bank assessments will continue. The new fees will increase costs slightly for banks that file securities-related forms or reports. However, even when the effects of the various fees are combined, the increase will not be significant.

**Executive Order 12291**

The OCC has determined that this final rule is not a "major rule" and therefore does not require a Regulatory Impact Analysis. While this final rule will have some impact on national banks regardless of size, that impact will not result in (1) and annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The new fees and rates will increase costs slightly for all banks; however the increase will not be significant.

**List of Subjects**

*12 CFR Part 5*

Administrative practice and procedure, Corporate filings, Fees, National banks, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 8*

Assessments, Banks and banking, Fees, National banks.

*12 CFR Part 11*

Confidential business information, Fees, National banks, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 16*

Fees, National banks, Offering circulars, Reporting and recordkeeping requirements, Securities.

**Authority and Issuance**

For the reasons set forth in the preamble, parts 5, 8, 11 and 16 of chapter I of title 12 of the Code of Federal Regulations are amended as set forth below:

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**PART 5—[AMENDED]**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

2. In § 5.5, paragraph (b) is revised to read as follows:

**§ 5.5 Fees.**

* * * * *

(b) Each year, the Office will prepare a report on the determination of the projected average processing costs and the new filing fee schedule. The Office will make the report available to interested parties upon request. The new filing fee schedule will be published in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter.

* * * * *

3. In § 5.33, paragraphs (b)(6) and (d) are revised to read as follows:

**§ 5.33 Merger, consolidation, purchase and assumption.**

* * * * *

(b) * * *

(6) *Other factors.* (i) In addition to the factors listed elsewhere in this section, the Office considers banking factors and will normally not approve a merger if it will result in a bank which has inadequate capital, unsatisfactory management or poor earnings prospects.

(ii) It is required that all shareholders be adequately informed of all aspects of the transaction. In this regard, banks are required to file with the Office proxy material or information statements in conformance with subpart E of part 11 of this chapter.

* * * * *

(d) *Place of filing.* (1) Applications should be submitted for filing with the Director for Analysis in the appropriate district office or with the Director for Multinational and Regional Bank Supervision.

(2) Proxy material or information statements should be submitted for filing with the Director, Securities & Corporate Practices Division.

* * * * *

**PART 8—[AMENDED]**

4. The authority citation for part 8 is revised to read as follows:

**Authority:** 12 U.S.C. 93a, 481, 482 and 3102; 15 U.S.C. 78 c and l; and 26 D.C. Code 102.

5. Section 8.1 is revised to read as follows:

**§ 8.1 Scope and application.**

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 93A, 481, 482 and 3102; 15 U.S.C. 78 c and l; and 26 D.C. Code 102.

6. In § 8.2, the table and the first undesignated paragraph following the table are revised and paragraph (c) is removed to read as follows:

**§ 8.2 Semiannual assessment.**

(a) * * *

| If the bank's total assets (consolidated domestic and foreign subsidiaries) are: | | The semiannual assessment is: | | |
|---|---|---|---|---|
| Over— | But not over— | This amount— | Plus | Of excess over— |
| Column A | Column B | Column C | Column D | Column E |
| Million | Million | | | Million |
| 0 | $BX_1$ | 0 | .001265400 | 0 |
| $BX_1$ | $X_9$ | $BY_1$ | .000158175 | $BX_1$ |
| $X_9$ | $X_8$ | $Y_9$ | .000126540 | $X_9$ |
| $X_8$ | $X_7$ | $Y_8$ | .000082251 | $X_8$ |
| $X_7$ | $X_6$ | $Y_7$ | .000069597 | $X_7$ |
| $X_6$ | $X_5$ | $Y_6$ | .000056943 | $X_6$ |
| $X_5$ | $X_4$ | $X_6$ | .000050616 | $X_5$ |
| $X_4$ | $X_3$ | $X_5$ | .000043986 | $X_4$ |
| $X_3$ | $X_2$ | $X_4$ | .000040515 | $X_3$ |
| $X_2$ | $X_1$ | $X_3$ | .000026529 | $X_2$ |

Every national bank falls into one of the ten asset-size brackets denoted by columns A and B. The lower (column A) and upper (column B) endpoints of each bracket will be indexed each year to reflect changes in the GNP implicit price deflator. The percent change in the level of prices, as measured by the deflator, will be calcuated for each June-to-June period and used to revise the bracket endpoints. The bracket endpoints will be rounded to the nearest $5 million (with the exception of the smallest asset-size bracket, which will be rounded to the nearest $100 thousand.)

* * * * *

(b) * * *

7. Section 8.8 is revised to read as follows:

**§ 8.8 Notice of Comptroller of the Currency fees.**

(a) *December notice of fees.* A "Notice of Comptroller of the Currency Fees" shall be published no later than the first business day in December of each year for fees to be charged by the Office during the upcoming year. These fees will be effective January 1 of that upcoming year.

(b) *Interim notice of comptroller of the Currency fees.* The Office may issue an "Interim Notice of Comptroller of the Currency Fees" or issue an amended "Notice of Comptroller of the Currency Fees" from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

8. A new § 8.15 is added to read as follows:

**§ 8.15 Annual franchise fees.**

(a) *Fees.* National banks that are registered or on file as municipal and/or government securities dealers shall pay by January 31 an annual franchise fee covering each dealer activity. The Office will set the franchise fees for those activities at an amount designed to allocate supervisory costs to banks engaging in dealer activities.

(b) *Notice of Comptroller of the Currency Fees.* The OCC publishes the franchise fee schedule in the Notice of Comptroller of the Currency Fees described in § 8.8.

(c) *Exception.* The requirements of this section do not apply to a national bank subsidiary or affiliate that is registered or on file as either a municipal or government securities dealer.



**PART 11—[AMENDED]**

9. The authority citation for part 11 is revised to read as follows:

**Authority:** 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, and 78w.

10. In § 11.101, paragraph (a) is revised to read as follows:

**§ 11.101 Scope of part.**

(a) This part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 93a, section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78) (the "Act") and applies to all securities subject to registration pursuant to section 12(b) or section 12(g) of the Act by a national bank or a bank operating under the Code of Law for the District of Columbia ("bank"). Subpart E of this part also applies to proxy statements and information statements filed pursuant to § 5.33 of this chapter.

* * * * *

11. In § 11.103, the section heading is revised, the existing text is designated as paragraph (a) and a heading is added at the beginning of the paragraph, and a new paragraph (b) is added to read as follows:

**§ 11.103 Filing of material with the Comptroller of the Currency and fees.**

(a) *Filing of material.* * * *

(b) *Fees.* Fees must accompany certain filings before they will be accepted by the Office as specified in the Notice of Comptroller of the Currency Fees.

(1) The OCC publishes filing fees in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter.

(2) Fees must be paid by check payable to the Comptroller of the Currency.

**PART 16—[AMENDED]**

12. The authority citation for part 16 is revised to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.* and 93a.

13. Section 16.1 is revised to read as follows:

**§ 16.1 Authority and OMB control number.**

(a) *Authority.* This part is issued under the general authority of the national banking laws, R.S. 324 *et seq.* and OCC's general rulemaking authority in 12 U.S.C. 93a, and contains rules applicable to the offering of securities.

(b) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557-0120.

14. In § 16.3, the section heading is revised and a new paragraph (h) is added to read as follows:

**§ 16.3 Offering circular requirements, filing, effective date and fees**

* * * * *

(h) Fees must accompany offering circulars and offering documents filed pursuant to this paragraph, § 16.4 (e) and (f) and § 16.7 before they will be accepted by the Office. The OCC publishes filing fees in the Notice of Comptroller of the Currency Fees described in § 8.8 of this chapter. Fees must be paid by check payable to the Comptroller of the Currency.

Dated: November 26, 1990.

**Robert L. Clarke,**

*Comptroller of the Currency.*

[FR Doc. 90-28114 Filed 11-29-90; 8:45 am]

BILLING CODE 4810-33-M

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federal register

Friday
November 30, 1990

Part V

# Department of Labor

Employment and Training Administration

**Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application**

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of invitation to submit preapplications and funding applications for migrant and seasonal farmworker training and employment programs.

**SUMMARY:** The Department of Labor (DOL) announces preapplication and funding application instructions for Program Year (PY) 1991 (July 1, 1991 through June 30, 1992) Migrant and Seasonal Farmworker Programs pursuant to section 402 of the Job Training Partnership Act (JTPA). Applicants selected for funding will be designated and funded as grantees for PY 1991. In addition, such applicants will not have to recompete for funding for PY 1992 (July 1, 1992 through June 30, 1993) if applicable regulatory and other requirements are met, an acceptable training plan is submitted, and funds are available.

Because some applicants misunderstood the filing deadlines in prior year notices, the language describing those deadlines has been clarified in the notice for this designation cycle. The clarifications do not reflect any change in policy but simply amplify existing requirements.

**DATES:** No exceptions to the mailing and hand-delivery conditions set forth in this notice for pre-applications and applications to the DOL will be granted. Pre-applications and applications submitted late to the DOL will not be accepted.

Preapplications submitted by mail to the DOL must be posted by certified or registered mail, return receipt requested, and postmarked no later than December 20, 1990. Preapplications submitted by hand-delivery to the DOL will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on December 20, 1990.

Applications submitted by mail to the DOL must be posted by certified or registered mail, return receipt requested, and postmarked no later than January 14, 1991. Applications submitted by hand-delivery to the DOL will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on January 14, 1991.

**ADDRESSES:** Preapplications and applications to the DOL must be mailed or hand-delivered to James DeLuca, Grant Officer, ETA, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Charles C. Kane, Chief, Division of Seasonal Farmworker Programs, Room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 535-0500.

**SUPPLEMENTARY INFORMATION:** This notice consists of: Part I—Introduction, Part II—Preapplication for Federal Assistance, and Part III—Solicitation for Grant Application (SGA). Parts II and III constitute invitations from the Department of Labor for public agencies, and private nonprofit organizations authorized by their Charters or Articles of Incorporation to provide training and employment, and other services described in this notice, to submit Preapplications for Federal Assistance and funding applications for PY 1991 JTPA Title IV, section 402, Migrant and Seasonal Farmworker Programs.

**Part I—Introduction**

The DOL announces preapplication and funding application instructions for PY 1991 (July 1, 1991 through June 30, 1992) Migrant and Seasonal Farmworker Programs pursuant to section 402 of the JTPA. Applicants selected for funding will be designated and funded as grantees for PY 1991. In addition, such applicants will not have to recompete for funding for PY 1992 (July 1, 1992 through June 30, 1993) if applicable regulatory and other requirements are met, an acceptable training plan is submitted, and funds are available.

*Background*

The JTPA establishes programs to prepare youth and unskilled adults for entry into the labor force, and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment. In accordance with 29 U.S.C. 1501 et seq., regulations promulgated by DOL to implement JTPA are set forth at parts 626 through 638 and 684 of title 20, Code of Federal Regulations (CFR).

As stated at 20 CFR 633.102, it is the purpose of section 402 of JTPA, 29 U.S.C. 1672, to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and underemployment in the agriculture industry. These conditions have been substantially aggravated by continual advancements in technology and mechanization resulting in displacement and contribute significantly to the Nation's rural employment problem. Because these factors substantially affect the entire national economy, farmworker employment and training problem are centrally administered at the national level. Programs and activities supported under this section shall, in accordance with section 402(c)(3) of JTPA:

(1) Enable farmworkers and their dependents to obtain or retain employment;

(2) Allow participation in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment;

(3) Allow activities leading to stabilization in agricultural employment; and

(4) Include related assistance and supportive services.

Regulations promulgated by DOL to implement the provisions of title IV, section 402, of JTPA are set forth in 20 CFR part 633 and part 636. These parts contain all the regulations under JTPA applicable to migrant and other seasonally employed farmworker programs. 20 CFR 633.103(a). Should the regulations at parts 633 and 636 conflict with regulations elsewhere in 20 CFR, the regulations at parts 633 and 636 shall prevail with respect to programs and activities governed by these parts. 20 CFR 633.103(b). Further, should any instructions in this notice conflict with JTPA regulations, the JTPA regulations shall prevail. Applicants should consult and be familiar with 20 CFR part 633 in its entirety.

The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 29 CFR part 97 are applicable to State and local governments and Indian and Native American entities. Nonprofit organizations continue to fall under Public Contracts and Property Management; Federal Standards for Federally Funded Grants and Agreements at 41 CFR 29-70.

Pursuant to 20 CFR 633.201, the DOL will not consider any funding application when fraud or criminal activity has been proven to exist within the applicant organization, or when efforts by the DOL to recover debts established by final agency action have been unsuccessful. Prior to the final selection of an applicant as a potential grantee, the DOL, as provided for in 20 CFR 633.204, will conduct a Responsibility Review of the available records to establish an organization's overall responsibility to administer Federal funds. Any applicant which does not have its application considered or is not selected as a potential grantee because of these provisions shall be advised of its appeal rights.



*Comments from the States*

Executive Order 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR part 17, are applicable to this program. Pursuant to these requirements, in States which have established a consultation process expressly covering this program, applicants shall submit their applications to the State for comment. Since States may also participate as competitors for this program, applications shall be submitted to the State upon the deadline for submission to the DOL. 20 CFR 633.202(d). Failure to comply with Federal-State consultation requirements may result in disqualification.

To strengthen the implementation of E.O. 12372, DOL specifies the following timeframe for its treatment of comments from the State's Single Point of Contact (SPOC) on JTPA section 402 applications:

1. As required by 29 CFR 17.8(a)(2), the SPOC must submit comments, if any, to the DOL no later than 60 days after the deadline date for applications;

2. The DOL will forward those comments to the applicant within 10 days of their receipt from the SPOC;

3. The applicant must submit its response to the SPOC's comments, if any, to the DOL no later than 10 days after the date of receipt from the DOL; and

4. The DOL will notify the SPOC of its decision regarding the comments and response, but will not implement that decision for at least 10 days after the SPOC has been notified.

*State Planning Estimates*

State planning estimates are provided in an Appendix to this notice solely for the purpose of developing the funding applications. These estimates are the same as the PY 1990 allocations. Final allocation levels for PY 1991 will be published at a later date.

*Recommendation from the Governor*

Following the 1986 review of JTPA section 402 grantee selection procedures, the DOL decided to award five extra rating points in the competition to the one application for each State that receives a recommendation from the Governor. This practice is consistent with the requirement of JTPA section 402(d) that the DOL consult with State and local officials in the administration of section 402 programs. The recommendation must be in writing, and will only be accepted if submitted as part of the application package to the Grant Officer. The application deadline date is announced elsewhere in this notice.

**Part II—Preapplication for Federal Assistance**

All States and the Commonwealth of Puerto Rico are open for competition for section 402 funds for PY 1991. Regulations at 20 CFR 633.105(b)(2) reserve for the DOL the right not to allocate any funds for use in a State whose funding allocation, to be determined by formula at a later date, is less than $120,000.

Applications for Statewide programs are strongly encouraged. Applicants applying for grants shall submit a preapplication consisting of:

(1) A Standard Form 424 Facesheet found in OMB Circular No. A-102;

(2) An attachment identifying, by State or counties, the target area to be served;

(3) For a private nonprofit organization, a recent (within the last six months) certification from a Certified Public Accountant that its financial management system is capable of properly accounting for and safeguarding Federal funds; and

(4) For a public agency, a recent (within the last six months) certification by the Chief Fiscal Officer attesting to the adequacy of the agency's accounting system to properly account for and safeguard Federal funds.

Two copies of the Preapplication for Federal Assistance shall be submitted either by mail or hand-delivery, along with two copies of the following:

(a) A statement indicating the legally constituted authority under which the organization functions;

(b) An employer identification number from the Internal Revenue Service and, for nonprofit applicants, proof of the organization's tax-exempt status.

As noted earlier in this announcement, *see supra*, **"DATES"**, para. 2, preapplications mailed to the DOL must be posted by registered or certified mail, return receipt requested, and postmarked no later than December 20, 1990. All preapplications hand-delivered to the DOL will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A receipt will be provided bearing the time and date of delivery. No hand deliveries will be accepted after 4:45 p.m., Eastern Time on December 20, 1990. No exceptions to these mailing and hand-delivery conditions for preapplications to the DOL will be granted. Preapplications not meeting these conditions will not be accepted.

Preapplications for Federal Assistance must be mailed or hand delivered to: James DeLuca, Grant Officer, ETA, room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210.

**Part III—Solicitating for Grant Application**

The DOL is soliciting applications for grants under the provisions of JTPA Title IV, section 402, to provide training, employment opportunities, and other services to migrant and seasonal farmworkers.

*Review of Funding Applications*

Applications will be reviewed and rated by a competitive review panel, using the specific review standards cited at 20 CFR part 633.203. Panel results are advisory in nature and are not binding on the Grant Officer. In addition, prior to the final selection of an applicant as a potential grantee, the DOL will conduct a Responsibility Review of the available records pursuant to 20 CFR 633.204. This review is intended to establish overall responsibility to administer Federal funds and is independent of the competitive process. Applicants failing to meet the requirements of this section of the regulations will not be selected as potential grantees irrespective of their standing in the competition.

*Specific Rating Criteria*

The rating criteria and the weights assigned to each are described below:

(i) An understanding of the problems of migrant and seasonal farmworkers. Range 0 to 25 points. This factor rates the applicant's analysis of the nature and extent of needs of the target group, and the proposed program's potential to address those needs. Ratings will be based on a clear and concise narrative demonstrating this understanding.

(ii) A strategic service plan for the area to be served. Range 0 to 25 points. This factor rates the applicant's knowledge of the socioeconomic characteristics of the target population; the resources of the target area; the appropriateness of the proposed type and mix of training and supportive services to be implemented to meet the identified needs; and the proposed linkages and coordination; i.e., plans for involving appropriate human resource agencies and programs in the design and delivery of training and other services

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proposed to meet the needs of participants. Ratings will be based on a clear and concise narrative demonstrating this familiarity, and documented programmatic ties to appropriate area agencies and programs.

(iii) A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers. Range 0 to 18 points. This factor rates program experience, and capability of meeting or exceeding planned goals. Ratings will be based on the successful past operation of a comprehensive multiactivity training and employment program for farmworkers, and on documentation that planned performance goals were either met or exceeded during the period of performance.

(iv) General administrative and financial management capability. Range 0 to 17 points. This factor rates the applicant's managerial experience, and the potential for efficient and effective administration of the proposed program. Ratings will be based on consideration of the administrative expertise of present and proposed managerial and decision-making staff, and the extent to which the management plan demonstrates the ability to capably operate a multiactivity delivery system.

(v) Designated Skills Criterion. Range 0 to 15 points. With this factor, the Department announces the addition of a Designated Skills criterion worth 15 points. This factor will measure a proposal in terms of the activities incorporated into the applicant's program for literacy/numeracy training, agricultural upgrade training, and youth training.

*Content and Format of Funding Application*

Exclusive of charts or graphs and letters of support and commitment, the funding application should not exceed 75 pages of double-spaced unreduced type. Detailed budgets and planning estimates are not to be a part of the funding application. These will be negotiated later with applicants selected for grant awards.

The application format must be followed and contain the sections listed below. The sections correspond to the rating criteria listed in the preceding subpart of this notice, so that information pertinent to rating criterion item (i) is contained in Section I; information pertinent to rating criterion item (ii) is contained in section II, etc.

*Section I—Program Approach*

This section should describe the applicant's approach to fulfilling the intent of JTPA section 402. Elements to be included are:

(a) A description of the nature and extent of the needs and problems of migrant and seasonal farmworkers in the target area which must be resolved in order for them to obtain productive employment. Include a list of barriers which must be removed;

(b) A description of the socioeconomic characteristics of the farmworker population to be served, i.e. number of farmworkers, family and racial composition, migrant or seasonal status, educational profile. Identify whether the applicant's program will have an individual or family focus.

*Section II—Strategic Service Plan*

This section should describe and demonstrate the applicant's understanding of the job market and environmental factors affecting farmworker employment and training programs, including the type and mix of services to be provided, current and proposed programmatic ties to appropriate State and local agencies, private nonprofit organizations, and other groups, particularly JTPA/Service Delivery Area entities, providing resources and services to farmworkers. This section should also describe the method of delivering a program to resolve the problems identified in section I. Elements to be included are:

(a) A detailed description of each major activity and component of the program proposed to meet the identified needs, including a discussion of outreach and recruitment, eligibility verification, and participant assessment;

(b) The rationale for the program mix of training, employability development, and supportive services activities;

(c) A description of linkages to agencies, organizations and institutions within the target area that will result in the coordinated delivery of services to the disadvantaged migrant and seasonal farmworker population. This section should demonstrate the applicant's capacity to leverage other resources—both public and private—and to mobilize these community resources to assure that the strategic service plan relates to problems identified in section I. Letters of commitment documenting appropriate programmatic ties should be attached to the application;

(d) A description of the proposed delivery system, including a list of field/regional office locations and any other delivery agents, and the services to be provided by each;

(e) A labor market assessment with projections for employment growth and specific job opportunities available in the target area;

(f) A description of the applicant's capacity to develop training and employment opportunities both in and out of agriculture;

(g) A description of the extent to which the applicant has worked specifically with agricultural employers to develop career ladders; and

(h) An analysis of the extent to which the proposed employment and training program, including linkages and delivery system, is consistent with the labor market assessment.

*Section III—Program Experience*

This section should describe the applicant's experience in capably administering employment and training programs for migrant and seasonal farmworkers. Elements to be included are:

(a) The type of programs operated, including the contract, grant or agreement number, the name of the funding agency, the amount of funding and the period of performance;

(b) The nature of the training, employability development, and supportive services activities which were provided;

(c) The actual versus planned numbers of participants and placements into unsubsidized employment for each program activity; and

(d) Performance standards results.

*Section IV—Administration and Staff*

This section should describe the applicant's organizational and staffing characteristics. Elements to be included are:

(a) The number of people presently involved in the administration of the organization and the number of people who will be involved in the administration of the proposed program, including job titles. Position descriptions of managerial and decision-making positions should be attached;

(b) A description of the management and administration plan including:

(1) Organizational structure;

(2) Personnel management procedures;

(3) Fiscal accounting system, including a plan for maintaining cash on hand at a reasonable level, not to exceed an average daily need; the allowance payment system, if applicable; and fiscal reporting procedures;

(4) Participant tracking and reporting system;

(5) Internal monitoring system;

(6) Program evaluation system;

(7) Property management system;

(8) Participant grievance procedures; and

(9) Equal Employment Opportunity policy.



For nonprofit applicants, include a description of the manner and extent to which the applicant's governing body, such as the board of directors and executive committee, represents the proposed service delivery area and contributes to the organization's strategic planning.

*Section V—Designated Skills*

This section should describe the applicant's training program efforts with regard to three types of training which the DOL intends to encourage through this revision of the selection process. Elements to be included are a description of:

(a) Literacy/Numeracy training. Encouragement of this type of training is a response to the national crisis of illiteracy. Lack of fundamental skills in reading, writing, and arithmetic is viewed by the DOL as a deficiency which directly diminishes an individual's employability. Likewise, the absence of literacy and numeracy skills reduces the competitiveness of the Nation's workforce at a time when the economy is demanding more cognitive and less manual labor skills;

(b) Agricultural Upgrade training. Section 402(c)(3) of the JTPA directs the Secretary, among other things, to initiate training activities leading to stabilization in agricultural employment. The DOL believes that this is best accomplished through the provision of agricultural upgrade training to individuals who wish to remain in agricultural occupations. Such training will lead either to a higher wage or to permanent year-round employment or both; and

(c) Youth training leading to positive termination. Section 402(c)(3) of the JTPA similarly directs the Secretary to carry out programs enabling farmworkers and their dependents to obtain or retain employment. The DOL believes that with regard to farmworker dependents and in particular farmworker youth, training activities leading to (1) attainment of academic credentials—elementary school certificate, high school diploma or General Educational Development (G.E.D.) certificate; or (2) enrollment in Job Corps, or similar vocational education program, comports well with legislative intent.

Potential grant designees will be evaluated on the extent and nature of their commitment to the designated skills training goals in addition to the usual activities leading to unsubsidized employment. The points will be awarded only when programmatic activities incorporating literacy/numeracy, or agricultural upgrade, or youth training, or a combination of the three designated skills components are clearly demonstrated. The three components will be considered separately. Therefore, up to 15 points, five for each component, may be awarded to successful applications.

Applicants should be aware that at this time, while current performance standards are under review, no changes to them or the methodology used in calculating them have been finalized. However, because a potential designee's implementation of designated skills training could affect its ability to meet such performance standards, no sanctions will be imposed upon a grantee which fails to meet its standards by virtue of participation in designated skills training activities.

Following the first designation cycle after implementation of this criterion, ETA will review the results of program performance and assess the overall impact of the designated skills component in preparation for subsequent rounds or grant competition.

*Submission of Funding Application*

Three copies of the funding applications shall be submitted either by mail or hand-delivery. As noted earlier in this announcement, *see supra*, **"DATES"**, para. 3, applications mailed to the DOL must be posted by registered or certified mail, return receipt requested, no later than January 14, 1991. All applications hand-delivered to DOL will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A receipt will be provided bearing the time and date of delivery. No hand-deliveries will be accepted after 4:45 p.m., Eastern Time, on January 14, 1991. No exceptions to these mailing and hand-delivery conditions for applications to the DOL will be granted. Applications submitted late to DOL will not be accepted.

Funding appplications must be mailed or hand-delivered to: James DeLuca, Grant Officer, ETA, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210.

*Notification of Selection*

The following conditions are applicable, pursuant to 20 CFR 633.205:

(a) Respondents to this SGA which are selected as potential grantees will be notified by the DOL. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant, will establish a reasonable time and place for the negotiation, and will indicate the State or area to be covered by the grant. Grants will be awarded for the performance period July 1, 1991 through June 30, 1992. Applicants selected will not have to recompete for funding for PY 1992 (July 1, 1992 through June 30, 1993) if applicable regulatory and other requirements are met, an acceptable training plan is submitted, and funds are available;

(b) In the event that no grant applications are received for a specific State or area or those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the DOL may give the Governor first right to submit an acceptable application pursuant to the Precondition for Grant Application and Responsibility Review tests at 20 CFR 633.201 and 633.206, respectively. Should the Governor not accept the offer within 15 days after being notified, the Department may then: (1) Designate another organization or organizations, (2) reopen the area for competitive bidding, or (3) use the funds for national account activities;

(c) An applicant whose grant application is not selected by the DOL to receive JTPA section 402 funs will be notified in writing;

(d) Applicants who submit grant applications which have been rejected may not resubmit a new grant application for the State(s) or area(s) in which they are interested in providing services until the jurisdiction is announced by DOL as reopened for competition;

(e) Any applicant whose grant application is denied in whole or part by the DOL will be advised of its appeal rights.

Signed at Washington, DC, this 9th day of November 1990.

**Paul A. Mayrand,**

*Director, Office of Special Targeted Programs.*

**Charles C. Kane,**

*Chief, Division of Seasonal Farmworker Programs.*

**James DeLuca,**

*Grant Officer, Division of Acquisition and Assistance.*

**Robert T. Jones,**

*Assistant Secretary of Labor.*

APPENDIX—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 MSFW ALLOTMENT TO STATES

| State | Dollar allotment |
|---|---|
| Alabama | 88,818 |
| Alaska | 0 |
| Arizona | 1,366,383 |
| Arkansas | 1,311,695 |
| California | 11,544,029 |
| Colorado | 857,239 |
| Connecticut | 212,529 |

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APPENDIX—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 MSFW ALLOTMENT TO STATES—Continued

| State | Dollar allotment |
|---|---|
| Delaware | 129,619 |
| District of Columbia | 0 |
| Florida | 4,397,910 |
| Georgia | 1,804,016 |
| Hawaii | 278,876 |
| Idaho | 944,459 |
| Illinois | 1,329,974 |
| Indiana | 575,629 |
| Iowa | 1,481,617 |
| Kansas | 767,429 |
| Kentucky | 1,534,344 |
| Louisiana | 896,585 |
| Maine | 370,445 |
| Maryland | 321,938 |
| Massachusetts | 358,358 |
| Michigan | 968,883 |
| Minnesota | 1,442,180 |
| Mississippi | 1,543,641 |

APPENDIX—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 MSFW ALLOTMENT TO STATES—Continued

| State | Dollar allotment |
|---|---|
| Missouri | 1,237,716 |
| Montana | 756,934 |
| Nebraska | 865,511 |
| Nevada | 168,461 |
| New Hampshire | 127,664 |
| New Jersey | 334,513 |
| New Mexico | 576,290 |
| New York | 1,743,300 |
| North Carolina | 3,298,331 |
| North Dakota | 531,773 |
| Ohio | 1,019,369 |
| Oklahoma | 661,123 |
| Oregon | 1,062,501 |
| Pennsylvania | 1,343,813 |
| Rhode Island | 0 |
| South Carolina | 1,209,936 |
| South Dakota | 788,754 |
| Tennessee | 1,079,137 |

APPENDIX—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 MSFW ALLOTMENT TO STATES—Continued

| State | Dollar allotment |
|---|---|
| Texas | 5,672,002 |
| Utah | 252,941 |
| Vermont | 241,980 |
| Virginia | 1,115,211 |
| Washington | 1,726,236 |
| West Virginia | 247,399 |
| Wisconsin | 1,386,070 |
| Wyoming | 226,922 |
| Puerto Rico | 3,302,448 |
| Formula grant total | 66,695,039 |
| TA/housing | 2,351,967 |
| Grand total | 69,047,000 |

[FR Doc. 90-28188 Filed 11-29-90; 8:45 am]
BILLING CODE 4510-30-M

federal register

Friday
November 30, 1990

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 3 and 52
Federal Acquisition Regulation (FAR); Procurement Integrity; Interim Rule

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 3 and 52**

**[Federal Acquisition Circular 90-2]**

**RIN 9000-AD01**

**Federal Acquisition Regulation (FAR); Procurement Integrity**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Amendment to interim rule with request for comment.

**SUMMARY:** On November 5, 1990, section 27 of the OFPP Act was further amended by section 815 of the FY 1991 DoD Authorization Act, Pub. L. 101-510. The post-employment restrictions contained in subsection 27(f) of the Act are suspended during the period beginning December 1, 1990, and ending May 31, 1991. Section 815 also provides that contractors need only obtain one certification required by subsection 27(e)(1)(B) from individuals required to certify under the subsection and that this certification be obtained at the earliest possible date after the beginning of the individual's employment or association with that contractor. The Conference Report accompanying the amended Act states, "If a company decides to rely on certification executed prior to the suspension of section 27, it should take appropriate action to ensure that its employees are advised that section 27 has been reinstated." (See 136 CONG. REC. H 12199 (daily ed. October 23, 1990).) This amendment to the interim rule implements section 815.

**DATES:** *Effective Date:* December 30, 1990.

*Comment Date:* Comments on this amendment to the interim rule, published in FAC 84-60 (55 FR 36782) September 6, 1990, should be submitted to the FAR Secretariat at the address shown below on or before December 31, 1990, to be considered in the formulation of a final rule. The comment period for the interim ruled published in 55 FR 36782 is hereby extended to that date. Please provide comments on both FAC 84-60 and FAC 90-2 in the same submission.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405

Please cite FAC 90-2 and FAC 84-60 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501-3221. Please cite FAC 90-2.

**SUPPLEMENTARY INFORMATION:**

**A. Determination to Amend an Interim Rule**

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in FAC 90-2 as an amendment to the interim rule in FAC 84-60 (55 FR 36782). This action is necessary to implement revisions to section 27 of the OFPP Act. Pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this amendment and the interim rule will be considered in formulating a final rule.

**B. Regulatory Flexibility Act**

This amendment to the interim rule in FAC 84-60 is not expected to have a significant economic impact on a substantial number of small entities because only minor revisions to contractor responsibilities have been made. However, because the interim rule (FAC 84-60, 55 FR 36782) may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. 5 U.S.C. 601, et seq., an Initial Regulatory Flexibility Analysis (IRFA) was prepared and was sent to the Chief Counsel for Advocacy of the Small Business Administration upon issuance of that rule. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited on both the interim rule and this amendment. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR Case 90-610 (FAC 90-2) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this amendment to the interim rule does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 3 and 52**

Government procurement.

Dated: November 26, 1990.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition Policy.*

**Federal Acquisition Circular**

[Number 90-2]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-2 is effective November 30, 1990.

**Eleanor Spector,**

*Deputy Assistant Secretary of Defense for Procurement, DoD.*

**Richard H. Hopf, III,**

*Associate Administrator for Acquisition Policy, GSA.*

**S.J. Evans,**

*Assistant Administrator for Procurement, NASA.*

The Administrator of the Office of Federal Procurement Policy, Office of Management and Budget, and the Director, Office of Government Ethics concur.

**Allan V. Burman,**

*Administrator, Office of Federal Procurement Policy.*

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Federal Acquisition Circular (FAC) 90-2 amends the Federal Acquisition Regulation as specified below:

**Item-Procurement Integrity**

On November 5, 1990, section 27 of the OFPP Act was further amended by section 815 of the FY 1991 DoD Authorization Act, Pub. L. 101-510. The post-employment restrictions contained in subsection 27(f) of the Act are suspended during the period beginning December 1, 1990 and ending May 31, 1991. Section 815 also provides that contractors need only obtain one certification required by subsection 27(e)(1)(B) from individuals required to certify under that subsection and that this certification be obtained at the earliest possible date after the beginning of the individual's employment or association with that contractor. The Conference Report accompanying the amended Act states, "If a company decides to rely on certification executed prior to the suspension of section 27, it should take appropriate action to ensure that its employees are advised that section 27 has been reinstated." (See 136 CONG. REC. H 12199 (daily ed. October 23, 1990).) This amendment to the interim rule implements section 815.



Therefore, 48 CFR parts 3 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

**PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTERESTS**

2. Section 3.104-1 is amended by revising the first sentence of paragraph (a) to read as follows:

**3.104-1 General.**

(a) Section 3.104 implements section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Pub. L. 101-189, and section 815 of the 1991 National Defense Authorization Act, Pub. L. 101-510 (hereinafter, section 27 is referred to as "the Act" or "the law as amended."). * * *

* * * * *

3. Section 3.104-2 is revised to read as follows:

**3.104-2 Applicability.**

(a) *Conduct and procurement activities during the period July 16, 1989, through November 30, 1989*—(1) *Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) Participation in a procurement during the period July 16, 1989, through November 30, 1989, whether as a procurement official, competing contractor or through access to information, subjects the participant, during that period, to the prohibitions contained in section 27 as originally enacted.

(ii) If a particular procurement which was begun during the period July 16, 1989, through November 30, 1989, has not been completed by November 30, 1990, then on or after December 1, 1990:

(A) Any person who was subject to the prohibitions on disclosing proprietary or source selection information contained in subsection 27(c) of the law as originally enacted is subject to the disclosure prohibitions of subsection 27(d) of the law as amended;

(B) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a procurement official who was subject to the prohibitions on gratuities, employment discussions, and disclosing proprietary or source selection information contained in subsection 27(b) of the law as originally enacted is subject to the prohibitions under subsection 27(b) of the law as amended, if the activities performed by the procurement official prior to December 1, 1989, would also make him or her a procurement official under subsection 27(b) of the law as amended; and

(C) Except as provided in subdivision (a)(1)(ii)(A) of this subsection, a competing contractor who was subject to the prohibitions on gratuities, employment discussions, and soliciting or obtaining proprietary or source selection information contained in subsection 27(a) of the law as originally enacted is subject to the prohibitions under subsection 27(a) of the law as amended if it is still a competing contractor for that procurement on or after December 1, 1990.

(2) *Post-employment restrictions.* (i) Current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, are subject, during that period, to the post-employment restrictions contained in section 27 as originally enacted.

(ii) On or after June 1, 1991, current and former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989, become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended, if:

(A) The activities performed by the procurement official during the period July 16, 1989, through November 30, 1989, would also make him or her a procurement official under section 27, of the law as amended; and

(B) The 2-year period of any post-employment restriction that attached during the period July 16, 1989, through November 30, 1989, has not expired.

(b) *Conduct and procurement activities during the period December 1, 1989, through November 30, 1990*—(1) *Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) The prohibitions on gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information contained in section 27 were suspended during the period December 1, 1989, through November 30, 1990. Neither the prohibitions contained in section 27 as originally enacted nor as amended apply during the suspension period. Participation in a procurement solely during the suspension period does not subject any person to any of these prohibitions on or after December 1, 1990.

(2) *Post-employment restrictions.* (i) The post-employment restrictions contained in section 27 were suspended during the period December 1, 1989, through November 30, 1990. Neither the post-employment restrictions contained in section 27 as originally enacted nor as amended apply to any person during the suspension period. In addition, these post-employment restrictions do not apply on or after December 1, 1990, to any current or former Government employee whose only participation in a procurement occurred during the period from December 1, 1989, through November 30, 1990.

(ii) The suspension of the post-employment restrictions during the period December 1, 1989, through November 30, 1990, does not interrupt the running of the 2-year period of any post-employment restriction that attached to a Government employee who was a procurement official during the period July 16, 1989, through November 30, 1989.

(c) *Conduct and procurement activities on or after December 1, 1990.—(1) Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) The prohibitions contained in section 27, of the law as amended, apply on or after December 1, 1990, to persons who participate in a procurement on or after that date, whether as a procurement official, a competing contractor, or through access to information.

(ii) As provided in subdivision (a)(1)(ii) of this subsection, the prohibitions contained in section 27, of the law as amended, may also apply to procurement officials, competing contractors, and other persons who, during the period July 16, 1989, through November 30, 1989, were subject to the prohibitions of section 27 as originally enacted.

(2) *Post-employment restrictions.* (i) Public Law 101-510 continues the suspension of the post-employment restrictions contained in subsection 27(f) of the law as amended through May 31, 1991. Government employees who perform procurement official activities solely during the period December 1, 1990, through May 31, 1991, do not become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended either during or after the suspension period.

(ii) The post-employment restrictions of subsection 27(f) of the law as amended are effective June 1, 1991. Government employees who perform procurement official activities on or after June 1, 1991, are subject to those restrictions.

(iii) As provided in subdivision (a)(2)(ii) of this subsection, the post-employment restrictions contained in

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subsection 27(f) of the law as amended may also apply, on or after June 1, 1991, to current or former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989.

(iv) The continued suspension of the post-employment restrictions does not interrupt the running of the 2-year period of any post-employment restriction that attached to a procurement official during the period July 16, 1989, through November 30, 1989.

4. Section 3.104–3 is amended by revising the introductory text of paragraph (d) to read as follows:

* * * * *

(d) *Post-employment Restrictions resulting from procurement activities of Government officers or employees who are or were procurement officials (subsection 27(f) of the Act; not effective until June 1, 1991).*

* * * * *

**3.104–4 [Amended]**

5. Section 3.104–4 is amended in paragraph (a) by removing the reference "5 CFR 2638.201" the second time it appears and inserting in its place "5 CFR 2638.204".

6. Section 3.104–7 is amended in paragraphs (b) and (c) by removing in the first sentences the word "prohibits" and inserting in their place the word "restricts"; by adding a sentence at the end of both paragraphs (b) and (c); by revising paragraph (d)(5); and in paragraph (d)(6) by removing the date "November 30, 1990" and inserting in its place "May 31, 1991" to read as follows:

**3.104–7 Post-employment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.**

* * * * *

(b) * * * This restriction is not effective until June 1, 1991.

(c) * * * This restriction is not effective until June 1, 1991.

(d) * * *

(5) An individual who has been granted a waiver by the President in accordance with subsection 27(f)(3) of the Act. Waivers under that subsection may be granted only to a civilian officer or employee of the Executive branch other than an officer and employee in the Executive Office of the President who, after his or her Federal Government employment is terminated, is or will be engaged in activities at a Government-owned, contractor-operated entity at which he or she served as an officer or employee immediately before his or her Federal Government employment began. Subsection 27(f)(3) is not effective until June 1, 1991.

* * * * *

7. Section 3.104–9 is amended in paragraph (c)(2) by revising the asterisked paragraph of the CONTRACTING OFFICER CERTIFICATE OF PROCUREMENT INTEGRITY to read as follows:

**3.104–9 Certification requirements.**

* * * * *

(c) * * *

(2) * * *

* * * * *

* Subsections 27 (a), (b), and (d), are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991. THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

* * * * *

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.203–8 is amended by removing in the title of the provision the date "(SEP 1990)" and inserting in its place "(NOV 1990)"; by adding in paragraph (b)(2) of the provision in the CERTIFICATE OF PROCUREMENT INTEGRITY following the words "possible violation of" the words "subsections 27 (a), (b), (d), or (f) of"; by revising in paragraph (b) of the provision in the CERTIFICATE OF PROCUREMENT INTEGRITY the asterisked paragraph; and by revising paragraph (f) of the provision to read as follows:

**52.203–8 Requirement for Certificate of Procurement Integrity.**

* * * * *

(b) * * *

* Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

* * * * *

(f) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

* * * * *

9. Section 52.203–9 is amended by removing in the title of the clause the date "(SEP 1990)" and inserting in its place "(NOV 1990)"; by removing in paragraph (c) of the clause in the CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION the date ("SEP 1990)" and inserting in its place "(NOV 1990)"; by revising in paragraph (c)(3) of the clause in the CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION the asterisked paragraph; and by revising paragraph (d) of the clause to read as follows:

**52.203–9 Requirement for Certificate of Procurement Integrity-Modification.**

* * * * *

(c) * * *

(3) * * *

* Subsections 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

* * * * *

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

* * * * *

[FR Doc. 90–28113 Filed 11–29–90; 8:45 am]

BILLING CODE 6820–34–M

federal register

Friday
November 30, 1990

Part VII

# Department of the Treasury

**Office of Foreign Assets Control**

**31 CFR Part 570**

**Kuwaiti Assets Control Regulations; Final Rule**

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**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**31 CFR Part 570**

**Kuwaiti Assets Control Regulations**

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** On August 2, 1990, upon Iraq's invasion of Kuwait, the President issued Executive Order No. 12722. In that order he declared a national emergency with respect to Iraq, involving the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), ordered specified sanctions against Iraq, and authorized the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, as might be necessary to carry out the purposes of the Order. Pursuant to this declaration of national emergency, the President also issued Executive Order No. 12723, at the request of the recognized Government of Kuwait, blocking all property and interests in property of the Government of Kuwait as a protective measure. On August 9, 1990, the President issued Executive Orders No. 12724 and No. 12725, imposing additional sanctions on Iraq, consistent with Resolution 661, dated August 6, 1990, of the United Nations Security Council, and imposing similar sanctions on Kuwait to ensure that no benefit from the United States flowed to the Government of Iraq in militarily-occupied Kuwait. In implementation of those Orders, the Treasury Department is issuing the Kuwaiti Assets Control Regulations ("Regulations").

The Regulations block all property and interests in property of the Government of Kuwait or any person purporting to be the Government of Kuwait, its agencies instrumentalities, and controlled entities, including the Central Bank of Kuwait, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. The Regulations also generally prohibit: (a) Imports into the United States of goods or services from Kuwait; (b) exports from the United States of goods, technology or services to Kuwait or entities operated from Kuwait; (c) any dealing by any U.S. person in Kuwait-origin goods or any other goods from Kuwait or intended for Kuwait; (d) transactions by U.S. persons relating to travel by U.S. citizens and permanent resident aliens to Kuwait, including their activities within Kuwait; (e) transactions by U.S. persons relating to transportation to or from Kuwait; transportation services to or from the United States by Kuwaiti persons, vessels, or aircraft; or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Kuwait; (f) performance by U.S. persons of contracts in support of industrial, commercial, public utility, or governmental projects in Kuwait; and (g) any transfer of funds by U.S. persons to the Government of Kuwait or any person in Kuwait.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** William B. Hoffman, Chief Counsel, Tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 535–9446, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

**SUPPLEMENTARY INFORMATION:** All General Licenses issued by the Office of Foreign Assets Control prior to November 30, 1990, may continue to be relied on to validate actions prior to this date during the period of their validity. Specific licenses issued prior to this date continue in effect according to their terms unless modified by the Office of Foreign Assets Control.

Authorizations contained in General Licenses issued prior to publication of these regulations can now be found in the following sections:

| Issuance date | License No. | Regulation Section |
|---|---|---|
| 8/02/90 | General License No. 1 | Amended |
| 8/15/90 | General License No. 1, amended. | Section 570.504 |
| 8/08/90 | General License No. 2 | Section 570.508 |
| 8/08/90 | General License No. 3 | Amended |
| 10/15/90 | General License No. 3, amended. | Section 570.512 |
| 8/08/90 | General License No. 4 | Revoked 10/2/90 |
| 8/13/90 | General License No. 5 | Section 570.504 |
| 8/15/90 | General License No. 5 | Section 570.513 |
| 8/15/90 | General License No. 7 | Amended |
| 10/16/90 | General License No. 7, amended | Section 570.510 |
| 8/23/90 | General License No. 8 | Section 570.514 |
| 8/27/90 | General License No. 9 | Section 570.517 |
| 8/30/90 | General License No. 10 | Section 570.505 |
| 9/01/90 | General License No. 11 | Section 570.508 |
| 9/26/90 | General License No. 12 | Section 570.520 |

Transactions otherwise prohibited under this part may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 570.801 of subpart H.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. Because the Regulations are issued with respect to foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in these regulations are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505–****), Washington, DC 20503, with copies of the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220. Any such comments should be submitted not later than January 29, 1991. Notice of OMB action on these requests will be published in the **Federal Register**.

The collections of information in these regulations are contained in §§570.503, 570.509–570.512, 570.515, 570.517, 570.518, 570.520, 570.521, subpart F, and §§570.703, and 570.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and recordkeepers are individuals and business organizations.

*Estimated total annual reporting and/or recordkeeping burden:* 2000 hours.

The estimated annual burden per respondent/recordkeeper varies from 30 minutes to 10 hours, depending on individual circumstances, with an estimated average of 2 hours.

*Estimated number of respondents and/or recordkeepers:* 1000.

*Estimated annual frequency of responses:* 1–12.



**List of Subjects in 31 CFR Part 570**

Iraq, Kuwait, Banks banking, finance, Blocking of assets, Imports, Exports, Loan programs, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 570 is added to chapter V as follows:

## PART 570—KUWAITI ASSETS CONTROL REGULATIONS

**Authority:** 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12723, 55 FR 31805 (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

### Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

570.101 *Relation of this part to other laws and regulations.*

### Subpart B—Prohibitions

570.201 *Prohibited transactions involving property in which the Government of Kuwait has an interest; transactions with respect to securities.*
570.202 *Effect of transfers violating the provisions of this part.*
570.203 *Holding of certain types of blocked property in interest-bearing accounts.*
570.204 *Prohibited importation of goods or services from Kuwait.*
570.205 *Prohibited exportation and exportation of goods, technology, or services to Kuwait.*
570.206 *Prohibited dealing in property.*
570.207 *Prohibited transactions relating to travel to Kuwait or to activities within Kuwait.*
570.208 *Prohibited transportation-related transactions involving Kuwait.*
570.209 *Prohibited performance of contracts.*
570.210 *Prohibited transfers of funds to the Government of Kuwait or any person in Kuwait.*
570.211 *Evasions; attempts; conspiracies.*
570.212 *Effective date.*

### Subpart C—General Definitions

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570.304 *Entity of the Government of Kuwait; Kuwaiti government entity.*
570.305 *General license.*
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570.307 *Government of Kuwait.*
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570.314 *Person.*
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570.316 *Specific license.*
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570.318 *UNSC Resolution 661.*
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570.409 *Transshipments through the United States prohibited.*
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570.501 *Effect of license or authorization.*
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570.503 *Payments and transfers to blocked accounts in U.S. financial institutions.*
570.504 *Completion of certain foreign exchange, securities, and commodities transactions.*
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570.506 *Payment by the Government of Kuwait of obligations to persons within the United States authorized.*
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### Subpart I—Paperwork Reduction Act

570.901 [Reserved].

### Appendix A to Part 570—Kuwaiti Governmental Entities

### Subpart A—Relation of This Part To Other Laws and Regulations

**§ 570.101 Relation of this part to other laws and regulations.**

(a) This part is separate from, and independent of, the other parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

### Subpart B—Prohibitions

**§ 570.201 Prohibited transactions involving property in which the Government of Kuwait has an interest; transactions with respect to securities.**

(a) Except as authorized by regulations, rulings, instructions,

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licenses, or otherwise, no property or interests in property of Government of Kuwait that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

(b) Unless otherwise authorized by this part or by a specific license expressly referring to this section, the transfer (including the transfer on the books of any issuer or agent thereof), the endorsement or guaranty of signatures on, or any other dealing in any security (or evidence thereof) registered or inscribed in the name of the Government of Kuwait and held within the possession or control of a U.S. person is prohibited, irrespective of the fact that at any time either at or subsequent to the effective date the registered or inscribed owner thereof may have, or appears to have, assigned, transferred, or otherwise disposed of any such security.

(c) A transfer of property to or from the Government of Kuwait and not involving a U.S. person shall be recognized for purposes of this section if the transfer complied with all applicable United Nations Security Council resolutions as implemented in the country of transfer as to the property transferred, and was otherwise lawful in the country of transfer.

(d) *Example:* If a U.S. person acquires a security which had been sold on August 9, 1990, by the Government of Kuwait to a citizen of the United Kingdom, the security would not be considered property in which the Government of Kuwait has an interest if the August 9 transfer was lawful in the United Kingdom. The United Kingdom implemented UNSC Resolution 661 prior to August 9, 1990, with respect to transfers of securities to and from the Government of Kuwait.

**§ 570.202 Effect of transfers violating the provisions of this part.**

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, ruling, instruction, license, or other direction or authorization hereunder and involves any property in which the Government of Kuwait has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property in which the Government of Kuwait has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Power Act, the United Nations Participation Act, and this part, and any ruling, order, regulation, direction, or instruction issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not present a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) Promptly upon discovery that

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other direction or authorization hereunder, or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control, or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained;

the person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer. The filing of a report in accordance with the provisions of this paragraph shall not be deemed evidence that the terms of paragraphs (d) (1) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property in which, on or since the effective date, there existed an interest of the Government of Kuwait.

**§ 570.203 Holding of certain types of blocked property in interest-bearing accounts.**

(a) Any person, including a U.S. financial institution, currently holding property subject to § 570.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest-bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control, must transfer such property to, or hold such property or cause such property to be held in, an interest-bearing account or interest-bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control. This requirement shall apply to currency and any other financial assets, bank deposits, accounts, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest-bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the blocked Government of Kuwaiti entity having an interest in the accounts.

(b) For purposes of this section, the term "interest-bearing account" means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days, unless such investments are readily marketable and are purchased at the direction of the Government of Kuwait.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.



**§ 570.204 Prohibited importation of goods or services from Kuwait.**

Except as otherwise authorized, no goods or services of Kuwaiti origin may be imported into the United States, nor may any U.S. person engage in any activity that promotes or is intended to promote such importation.

**§ 570.205 Prohibited exportation and reexportation of goods, technology, or services to Kuwait.**

Except as otherwise authorized, no goods, technology (including technical data or other information), or services may be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country to Kuwait, to any entity owned or controlled by the Government of Kuwait, or to any entity operated from Kuwait, except donated foodstuffs in humanitarian circumstances, and donated supplies intended strictly for medical purposes, the exportation of which has been specifically licensed pursuant to §§ 570.507, 570.519, 570.520 or 570.521.

**§ 570.206 Prohibited dealing in property.**

Except as otherwise authorized, no U.S. person may deal in property of Kuwaiti origin exported from Kuwait or Iraq after August 6, 1990, property intended for exportation to Kuwait, or property intended for exportation from Kuwait to any other country, nor may any U.S. person engage in any activity that promotes or is intended to promote such dealing.

**§ 570.207 Prohibited transactions relating to travel to Kuwait or to activities within Kuwait.**

Except as otherwise authorized, no U.S. person may engage in any transaction relating to travel by any U.S. citizen or permanent resident alien to Kuwait, or to activities by any U.S. citizen or permanent resident alien within Kuwait, or to activities by any U.S. citizen or permanent resident alien within Kuwait, after the effective date, other than transactions:

(a) Necessary to effect the departure of a U.S. citizen or permanent resident alien from Kuwait or Iraq;

(b) Relating to travel and activities for the conduct of the official business of the United States Government or the United Nations; or

(c) Relating to journalistic activity by persons regularly employed in such capacity by a newsgathering organization.

This section prohibits the unauthorized payment by a U.S. person of his or her own travel or living expenses to or within Kuwait.

**§ 570.208 Prohibited transportation-related transactions involving Kuwait.**

Except as otherwise authorized, the following are prohibited:

(a) Any transaction by a U.S. person relating to transportation to or from Kuwait;

(b) The provision of transportation to or from the United States by any Kuwaiti person or any vessel or aircraft of Kuwaiti registration; or

(c) The sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Kuwait.

(d) *Example:* Unless licensed or exempted, no U.S. person may insure, or provide ticketing, ground, port, refueling, bunkering, clearance, or freight forwarding services, with respect to any sea, ground, or air transportation the destination of which is Kuwait, or which is intended to make a stop in Kuwait.

**§ 570.209 Prohibited performance of contracts.**

Except as otherwise authorized, no U.S. person may perform any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Kuwait.

**§ 570.210 Prohibited transfer of funds to the Government of Kuwait or any person in Kuwait.**

Except as otherwise authorized, no U.S. person may commit or transfer, directly or indirectly, funds or other financial or economic resources to the Government of Kuwait or any person in Kuwait.

**§ 570.211 Evasions; attempts; conspiracies.**

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this subpart, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

**§ 570.212 Effective date.**

The effective dates of the prohibitions and directives contained in this subpart B are as follows:

(a) With respect to §§ 570.201, 574.202, and 570.211, 5 a.m., Eastern Daylight Time ("EDT"), August 2, 1990;

(b) With respect to §§ 570.204, 570.205, 570.206, 570.207, 570.208, 570.209, and 570.210, 8:55 p.m. EDT, August 9, 1990; and

(c) With respect to § 570.203, November 30, 1990.

### Subpart C—General Definitions

**§ 570.301 Blocked account; blocked property.**

The terms *blocked account* and *blocked property* shall mean any account or property in which the Government of Kuwait has an interest, with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license authorizing such action.

**§ 570.302 Effective date.**

The term *effective date* refers to the effective date of the applicable prohibition, as identified in § 570.212.

**§ 570.303 Entity.**

The term *entity* includes a corporation, partnership, association, or other organization.

**§ 570.304 Entity of the Government of Kuwait; Kuwaiti Government entity.**

The term *entity of the Government of Kuwait* or *Kuwaiti Government entity* includes:

(a) Any corporation, partnership, association, or other entity in which the Government of Kuwait owns a majority or controlling interest, any entity managed or funded by that government, or any entity which is otherwise controlled by that government;

(b) Any agency or instrumentality of the Government of Kuwait, including the Central Bank of Kuwait.

**§ 570.305 General license.**

The term *general license* means any license or authorization the terms of which are set forth in this part.

**§ 570.306 Government of Iraq.**

The term *Government of Iraq* includes:

(a) The state and the Government of Iraq, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iraq;

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(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

**§ 570.307 Government of Kuwait.**

The term *Government of Kuwait* includes:

(a) The state and the Government of Kuwait and any entity purporting to be the Government of Kuwait, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Kuwait;

(b) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(c) Any person to the extent that such person is or has been, or to the extent that there is reasonable cause to believe that such person is or has been, since the effective date, acting or purporting to act directly or indirectly on behalf of any of the foregoing; and

(d) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section.

**§ 570.308 Interest.**

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g.*, "an interest in property") means an interest of any nature whatsoever, direct or indirect.

**§ 570.309 Iraq; Iraqi.**

The term *Iraq* means the country of Iraq and any territory under the jurisdiction or authority thereof, legal or illegal. The term "Iraqi" means pertaining to Iraq as defined in this section.

**§ 570.310 Kuwait; Kuwaiti.**

The term *Kuwait* means the country of Kuwait and any territory under the jurisdiction or authority thereof. The term "Kuwaiti" means pertaining to Kuwait as defined in this section.

**§ 570.311 Kuwaiti origin.**

The term *goods or services of Kuwaiti origin* includes:

(a) Goods produced, manufactured, grown, or processed within Kuwait;

(b) Goods which have entered into Kuwaiti commerce;

(c) Services performed in Kuwait or by a Kuwaiti national who is acting as an agent, employee, or contractor of the Government of Kuwait, or of a business entity located in Kuwait. Services of Kuwaiti origin are not imported into the United States when such services are provided in the United States by a Kuwaiti national employed in the United States.

**§ 570.312 Kuwaiti person.**

The term *Kuwaiti* person means any Kuwaiti citizen, any person organized under the laws of Kuwait, or any person owned or controlled, directly or indirectly, by a Kuwaiti national or the Government of Kuwait.

**§ 570.313 License.**

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

**§ 570.314 Person.**

The term *person* means an individual, partnership, association, corporation, or other organization.

**§ 570.315 Property; property interest.**

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, debentures, stocks, bonds, coupons, any other financial instruments, banker's acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendor's sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks, or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

**§ 570.316 Specific license.**

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part in response to an application.

**§ 570.317 Transfer.**

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or the levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition, the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

**§ 570.318 UNSC Resolution 661.**

The term *UNSC Resolution 661* means United Nations Security Council Resolution No. 661, adopted August 6, 1990, prohibiting certain transactions with respect to Iraq and Kuwait.

**§ 570.319 United States.**

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

**§ 570.320 U.S. financial institution.**

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including, but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies,



employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

**§ 570.321 United States person; U.S. person.**

The term *United States person* or *U.S. person* means any United States citizen; permanent resident alien; juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States.

## Subpart D—Interpretations

**§ 570.401 Reference to amended sections.**

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

**§ 570.402 Effect of amendment.**

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

**§ 570.403 Termination and acquisition of an interest of the Government of Kuwait.**

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) from the Government of Kuwait, such property shall no longer be deemed to be property in which the Government of Kuwait has or has had an interest unless there exists in the property another such interest, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Kuwait, such property shall be deemed to be property in which there exists an interest of the Government of Kuwait.

**§ 570.404 Payments from blocked accounts to U.S. exporters and for other obligations prohibited.**

No debits may be made to a blocked account to pay obligations to U.S. persons or other persons, including payment for goods, technology or services exported prior to the effective date, except as authorized pursuant to this part.

**§ 570.405 Acquisition of instruments including bankers acceptances.**

No U.S. person may acquire or deal in any obligation, including bankers acceptances, where the documents evidencing the obligation indicate, or the U.S. person has actual knowledge, that the underlying transaction is in violation of §§ 570.201, 570.204, or 570.205. This interpretation does not apply to obligations arising from an underlying transaction licensed or otherwise authorized pursuant to this part.

**§ 570.406 Extensions of credits or loans to Kuwait.**

(a) The prohibition in § 570.210 applies to the unlicensed renewal of credits or loans in existence on the effective date, whether by affirmative action or operation of law.

(b) The prohibition in § 570.210 applies to credits or loans extended in any currency.

**§ 570.407 Payments in connection with certain authorized transactions.**

Payments are authorized in connection with transactions authorized in or pursuant to Subpart E.

**§ 570.408 Offshore transactions.**

(a) The prohibitions contained in §§ 570.201 and 570.206 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, that the Government of Kuwait has or has had an interest since the effective date.

(b) Prohibited transactions include, but are not limited to, importation into locations outside the United States of, or dealings within such locations in, goods or services of Kuwaiti origin.

(c) *Examples:* (1) A U.S. person may not, within the United States or abroad, purchase, sell, finance, insure, transport, act as a broker for the sale or transport of, or otherwise deal in, Kuwaiti crude oil or petroleum products refined in Kuwait.

(2) A U.S. person may not, within the United States or abroad, conduct transactions of any nature whatsoever with an entity that he knows or has reason to know is a Kuwaiti Government entity unless the entity is licensed by the Office of Foreign Assets Control to conduct such transactions with U.S. persons.

**§ 570.409 Transshipments through the United States prohibited.**

(a) The prohibitions in § 570.206 apply to the importation into the United States, for transshipment or transit, of goods which are intended or destined for Kuwait, or an entity operated from Kuwait.

(b) The prohibitions in § 570.204 apply to the importation into the United States, for transshipment or transit, of goods of Kuwaiti origin which are intended or destined for third countries.

(c) Goods in which the Government of Kuwait has an interest which are imported into or transshipped through the United States are blocked pursuant to § 570.201.

**§ 570.410 Imports of Kuwaiti goods from third countries.**

(a) Importation into the United States from third countries of goods, including refined petroleum products, containing raw materials or components of Kuwaiti origin is prohibited unless those raw minerals or components were exported from Iraq or Kuwait prior to the effective date. In light of the universal prohibition in UNSC Resolution 661 on the importation of goods exported from Iraq or Kuwait after August 6, 1990, substantial transformation of Kuwaiti-origin goods in a third country does not exempt the third-country products from the prohibitions contained in this part.

(b) Importation into the United States of goods of Kuwaiti origin which were exported from Kuwait or Iraq on or after the effective date is prohibited pursuant to § 570.204.

**§ 570.411 Exports to third countries.**

(a) Exportation of goods or technology (including technical data and other information) from the United States to third countries is prohibited if the exporter knows, or has reason to know, that the goods or technology are intended for transshipment to Kuwait (including passage through, or storage in, intermediate destinations) without coming to rest in the third country and without being substantially transformed or incorporated into manufactured products in a third country. The exportation of goods and technology intended specifically for incorporation or substantial transformation into a third-country product is also prohibited if the particular product is to be used in Kuwait, is being specifically

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manufactured to fill a Kuwaiti order, or if the manufacturer's sales of the particular product are predominantly to Kuwait.

(b) Exportation of goods or technology from the United States to third countries is not prohibited where the exporter has reasonable cause to believe that:

(1) The goods will come to rest in a third country for purposes other than reexportation to Kuwait; or

(2) The technology will come to rest in a third country for purposes other than reexport to Kuwait.

**§ 570.412 Release of Kuwaiti goods from bonded warehouse or foreign trade zone.**

Section 570.204 does not prohibit the release from a bonded warehouse or a foreign trade zone of goods of Kuwaiti origin imported into a bonded warehouse or a foreign trade zone either prior to the effective date or in a transaction authorized pursuant to this part after the effective date.

**Note:** Pursuant to § 570.201, property in which the Government of Kuwait has an interest may not be released unless authorized or licensed by the Office of Foreign Assets Control.

**§ 570.413 Goods intended for export to Kuwait.**

The prohibitions contained in § 570.201 do not apply to goods manufactured, consigned, or destined for export to Kuwait and not subject to § 575.518, if the Government of Kuwait has never held or received title to such goods on or after the effective date, and if any payment received from the Government of Kuwait with respect to such goods is placed in a blocked account in a U.S. financial institution pursuant to § 575.503.

**§ 570.414 Imports of Kuwait goods and purchases of goods from Kuwait.**

The prohibitions contained in § 570.201 shall not apply to the importation of Kuwaiti-origin goods and services described in § 570.204 if the importation of such goods is permitted by an authorization or license issued pursuant to this part. However, any payments in connection with such importation are subject to the prohibitions contained in §§ 570.201 and 570.210.

**§ 570.415 Setoffs prohibited.**

A setoff against a blocked account, whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 570.201 if effected after the effective date.

**§ 570.416 Travel transactions for journalistic activity in Kuwait.**

(a) Section 570.207 does not prohibit travel transactions in Kuwait by persons regularly employed in journalistic activity by recognized newsgathering organizations.

(b) For purposes of this part:

(1) A person is considered regularly employed as a journalist if he or she is employed in a constant or regular manner by a recognized newsgathering organization. Free-lance journalists should have an assignment from a recognized newsgathering organization requiring travel to Kuwait, or be able to demonstrate that publication by a recognized newsgathering organization of a work requiring such travel is likely. The latter may be demonstrated by providing a resume listing previously-published free-lance works or copies of previously-published works.

(2) "Recognized newsgathering organizations" include those entities regularly and principally engaged in collecting news for publication in the public press, transmission by wire services, or broadcast by radio or television.

(c) Authorized travel transactions are limited to those incident to travel for the purpose of collecting and disseminating information for a recognized newsgathering organization, and do not include travel transactions related to any other activity in Kuwait.

**§ 570.417 Transactions among licensed entities.**

If two U.S. persons controlled by the Government of Kuwait have been granted specific licenses pursuant to this part authorizing them to engage in transactions with U.S. persons, they may also engage in transactions with each other. If an entity owned or controlled by the Government of Kuwait, but which is not a U.S. person, has been granted a specific license authorizing the entity to engage in transactions with a U.S. person, that entity may engage in transactions with a U.S. person controlled by the Government of Kuwait which has been licensed to operate, provided such transactions come within the scope of authorized transactions included in the U.S. person's operating license.

**§ 570.418 Transactions incidental to a licensed transaction.**

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, blocked person or involving an unlicensed debit to a blocked account.

(b) *Example:* A license authorizing the Government of Kuwait to complete a securities sale also authorizes all activities by other parties required to complete the sale, including transactions by the buyer, brokers, transfer agents, banks, etc.

## Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

**§ 570.501 Effect of license or authorization**

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in subpart B from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

**§ 570.502 Exclusion from licenses an authorizations.**

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.



**§ 570.503 Payments and transfers to blocked accounts in U.S. financial institutions.**

(a) Any payment of funds or transfer of credit or other assets, including any payment or transfer by any U.S. person outside the United States, to a blocked account in a U.S. financial institution in the name of the Government of Kuwait is hereby authorized, including incidental foreign exchange transactions, provided that such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of any interest of the Government of Kuwait to any other country or person.

(b) This section does not authorize any payment or transfer to any blocked account held in a name other than that of the Government of Kuwait where such government is the ultimate beneficiary of such payment or transfer.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities or other assets, held in a blocked account or a sub-account thereof, or the income derived from such securities or assets, to a blocked account or sub-account, under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such securities or assets were or are held.

(e) This section does not authorize any payment or transfer from a blocked account in a U.S. financial institution to a blocked account held under any name or designation which differs from the name or designation of the specified blocked account or sub-account from which the payment or transfer is made.

(f) The authorization in paragraph (a) of this section is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Office of Foreign Assets Control, Blocked Assets Section, within 10 business days from the date of payment or transfer. This notification shall confirm that the payment or transfer has been deposited in a blocked account under the regulations in this part, and shall provide the account number, the name and address of the Government of Kuwait entity in whose name the account is held, the name and address of the transferee U.S. financial institution, and the amount of the payment or transfer.

(g) This section authorizes transfer of the funds of a blocked demand deposit account to a blocked interest-bearing account under the same name or designation as was the demand deposit account, as required pursuant to § 570.203 or at the instruction of the depositor, at any time. If such transfer is to a blocked account in a different U.S. financial institution, the transferee financial institution must furnish, within 10 business days of the date of transfer, the notification described in paragraph (f) of this section to the Office of Foreign Assets Control, Blocked Assets Section.

(h) This section authorizes the transfer of assets between blocked accounts in U.S. financial institutions at the instruction of the depositor for purposes of investment and reinvestment of assets in which the Government of Kuwait has an interest, as authorized in § 570.512. If such transfer is to a blocked account in a different U.S. financial institution, the transferee financial institution must furnish, within 10 business days of the date of transfer, the notification described in paragraph (f) of this section to the Office of Foreign Assets Control, Blocked Assets Section.

**§ 570.504 Completion of certain foreign exchange, securities, and commodities transactions.**

(a) U.S. financial institutions are authorized to perform and complete in accordance with its terms or, in agreement with the Government of Kuwait, to close out, offset, or liquidate, individually or on a net basis with subcontracts or other contracts, any contract with or on behalf of the Government of Kuwait, except as otherwise noted in paragraph (d) below, for foreign exchange, securities, currency, and interest rate transactions (including, without limitation, spot, forward, option, swap, and futures transactions), and commodity option, swap, and futures transactions (including the posting or payment of margin or settlement variation with respect to transactions described above), provided the contract was entered into prior to the effective date and any of the following requirements is met:

(1) Any funds, currency, securities, or other assets to be paid or delivered to the Government of Kuwait are credited to a blocked account in the name of the entity of the Government of Kuwait with which, or on whose behalf, the transaction was executed; or

(2) Any funds, currency, securities, or other assets to be paid or delivered to the Government of Kuwait are credited to a blocked account in the name of the entity of the Government of Kuwait and in the financial institution and location designated in the original payment instructions or terms of settlement or delivery for that contract; provided that the country in which payment, settlement, or delivery occurs has in place an arrangement satisfactory to the Office of Foreign Assets Control for ensuring that Government of Kuwait assets in such accounts are blocked or restricted; or

(3) All funds, currency, securities, or other assets due to the Government of Kuwait in connection with such transaction were paid or delivered to the Government of Kuwait prior to the effective date.

(b) All transactions by U.S. persons incidental to the transactions authorized in paragraph (a) are also authorized.

(c) This section does not authorize the crediting of the funds, currency, securities, or other assets received by, or for the benefit of, the Government of Kuwait in a transaction authorized in paragraph (a) to a blocked account or sub-account for the Government of Kuwait under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which the assets utilized by, or on behalf of, the Government of Kuwait in such transaction, were originally held.

**§ 570.505 Completion of certain transactions related to bankers acceptances authorized.**

(a) Persons other than the Government of Kuwait are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving an interest of the Government of Kuwait as long as the bankers acceptances were created or the deferred payment undertakings were incurred prior to the effective date.

(b) Persons other than the Government of Kuwait are authorized to buy, sell, and satisfy obligations with respect to bankers acceptances, and to pay under deferred payment undertakings, involving the importation or exportation of goods to or from Kuwait that do not involve an interest of the Government of Kuwait as long as the bankers acceptances or the deferred payment undertakings were accepted prior to the effective date.

(c) Nothing in this section shall authorize or permit a debit to a blocked account. Specific licenses for the debiting of a blocked account may be issued on a case-by-case basis.

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**§ 570.506 Payment by the Government of Kuwait of obligations to persons within the United States authorized.**

(a) The transfer of funds after the effective date by, through, or to any U.S. financial institution or other U.S. person solely for the purpose of payment of obligations of the Government of Kuwait to persons or accounts within the United States is authorized, provided that the obligation arose prior to the effective date, and the payment requires no debit to a blocked account. Property is not blocked by virtue of being transferred or received pursuant to this section.

(b) A person receiving payment under this section may distribute all or part of that payment to any person, provided that any such payment to the Government of Kuwait must be to a blocked account in a U.S. financial institution.

**§ 570.507 Certain exports to Kuwait authorized.**

(a) All transactions ordinarily incident to the exportation of any item, commodity, or product from the United States to or destined for Kuwait are authorized if:

(1) Such exports would ordinarily be authorized under one of the following regulations administered by the Department of Commerce: 15 CFR 371.6—General license BAGGAGE (accompanied and unaccompanied baggage); 15 CFR 371.13—General license GUS (shipments to personnel and agencies of the U.S. Government); or,

(2) Such exports are for the official use of the United Nations, its personnel and agencies (excluding its relief or developmental agencies).

(b) All transactions related to exportation or reexportation not otherwise authorized in this part are prohibited unless licensed pursuant to the procedures described in § 570.801 by the Office of Foreign Assets Control.

**§ 570.508 Import of household and personal effects from Kuwait authorized.**

The importation of household and personal effects of Kuwaiti origin, including baggage and articles for family use, of persons arriving in the United States directly or indirectly from Kuwait is authorized. Articles included in such effects may be imported without limitation provided they were actually used by such persons or their family members abroad, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

**§ 570.509 Payments and transfers authorized for shipments of oil under contract and en route to the United States prior to the effective date.**

(a) Oil of Kuwaiti origin or oil in which the Government of Kuwait has an interest may be imported into the United States only if:

(1) Prior to the effective date, the oil was loaded for ultimate delivery to the United States on board a vessel in Iraq, Kuwait, or a third country;

(2) The oil was imported into the United States before 11:59 p.m. Eastern Daylight Time, October 1, 1990; and

(3) The bill of lading accompanying the oil was issued prior to the effective date.

(b) Any payment owed or balance not paid to or for the benefit of the Government of Kuwait prior to the effective date for oil imported pursuant to paragraph (a) must be paid into a blocked account in a U.S. financial institution.

(c) Transactions conducted pursuant to this section must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section, no later than 10 days after the date of importation.

Note.—Transactions authorized by this provision have been completed prior to November 30, 1990. The text of this section is included for the convenience of the user.

**§ 570.510 Payments and transfers authorized for goods and services exported to Kuwait prior to the effective date.**

(a) Specific licenses may be issued on a case-by-case basis to permit payment under a financing arrangement requiring payment by a U.S. financial institution, from a blocked account or otherwise, of amounts owed to or for the benefit of a person with respect to goods or services exported prior to the effective date directly or indirectly to Kuwait, or to third countries for an entity operated from Kuwait, or for the benefit of the Government of Kuwait, where the license application presents evidence satisfactory to the Office of Foreign Assets Control that:

(1) The exportation occurred prior to the effective date (such evidence may include, e.g., the bill of lading, the air waybill, the purchaser's written confirmation of completed services, customs documents, and insurance documents); and

(2) If delivery or performance occurred after the effective date, due diligence was exercised to divert delivery of the goods for Kuwait and to effect final delivery of the goods to a non-prohibited destination, or to prevent performance of the services.

(b) This section does not authorize exportation or the performance of services after the effective date pursuant to a contract entered into or partially performed prior the effective date.

(c) Transactions conducted under specific licenses granted pursuant to this section must be reported in writing to the Office of Foreign Assets Control, Blocked Assets Section, no later than 10 days after the date of payment.

(d) Separate criteria may be applied to the issuance of licenses authorizing payment from an account of or held by a blocked U.S. bank owned or controlled by the Government of Kuwait.

**§ 570.511 Extensions and renewals authorized.**

(a) The extension or renewal, at the request of the account party, of a letter of credit or a standby letter of credit issued or confirmed by a U.S. financial institution is authorized.

(b) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Section, within 10 days after completion of the transaction.

**§ 570.512 Investment and reinvestment of Government of Kuwait funds held in blocked accounts.**

(a) U.S. financial institutions are hereby authorized to invest and reinvest assets held in blocked accounts in the name of the Government of Kuwait, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub-account which is in the name of the Government of Kuwait and which is located in the United States or within the possession or control of a U.S. person;

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub-account under any name or designation which differs from the name or designation of the specific blocked account or sub-account in which such funds or securities were held; and

(3) No immediate financial or economic benefit accrues to the Government of Iraq, or a person in Kuwait.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Section, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Section, within 10 days after completion of the transaction.

**§ 570.513 Transactions related to telecommunications authorized.**

All transactions of U.S. common carriers with respect to the receipt and transmission of telecommunications involving Kuwait are authorized, provided that any payment owed to the Government of Kuwait or persons in Kuwait is paid into a blocked account in a U.S. financial institution.

**§ 570.514 Transactions related to mail authorized.**

All transactions by U.S. persons, including payment and transfers to common carriers, incident to the receipt or transmission of mail between the United States and Kuwait are authorized, provided that mail is limited to items not exceeding 12 ounces.

**§ 570.515 Fees for professional services authorized.**

Specific licenses may be issued on a case-by-case basis to permit payment to U.S. persons providing professional services to the Government of Kuwait including, but not limited to, legal, accounting, and investment advisory services.

**§ 570.516 Certain transactions with respect to patents, trademarks, and copyrights authorized.**

Transactions related to the registration and renewal in the United States Patent and Trademark Office or the United States Copyright Office of patents, trademarks, and copyrights in which the Government of Kuwait or a person in Kuwait has an interest are authorized.

**§ 570.517 Procedures established for export transactions initiated prior to effective date.**

(a) Goods awaiting exportation to Kuwait on the effective date and seized or detained by the U.S. Customs Service on the effective date or thereafter may be released to the exporter, provided the following documents are filed with Customs officials at the port where such goods are located:

(1) A copy of the contract governing the exportation (sale or other transfer) of the goods to Kuwait or, if no contract exists, a written explanation of the circumstances of exportation, including in either case a description of the manner and terms of payment received or to be received by the exporter (or other person) for, or by reason of, the exportation of the goods;

(2) An invoice, bill of lading, or other documentation fully describing the goods; and

(3) A statement by the exporter substantially in the following form:

Any amount received from or on behalf of the Government of Kuwait by reason of the attempted exportation of the goods released to [name of exporter] by the U.S. Customs Service on [date], and fully described in the attached documents, has been or will be placed into a blocked account in a U.S. bank and the Office of Foreign Assets Control, Blocked Assets Section, will be immediately notified. [Name of exporter] agrees to fully indemnify the U.S. Government for any amount ultimately determined by a court of competent jurisdiction to be due or payable to or for the benefit of any person by reason of the failure of [name of exporter] to properly pay into a blocked account any amount received for the goods from or on behalf of the Government of Kuwait. [Name of exporter] also agrees to waive all claims (1) against any payments received and placed into a blocked account, except as may be later authorized by law, regulations, or license, and (2) against the U.S. Government with regard to the disposition of amounts placed into a blocked account. The statement should be dated and signed by the exporter or by a person authorized to sign on the exporter's behalf. The Customs Service may release the goods to the exporter upon receipt of the documentation and statement described above, provided it is satisfied that all customs laws and regulations have been complied with, including the execution of such hold harmless assurances as it shall determine to be appropriate. The documentation and statement received by Customs will be forwarded to the Office of Foreign Assets Control for review and appropriate action.

**§ 570.518 Certain standby letters of credit and performance bonds.**

(a)(1) Notwithstanding any other provision of law, payment into a blocked account in a U.S. financial institution by an issuing or confirming bank under a standby letter of credit in favor of a Kuwaiti beneficiary is prohibited by § 570.201 and not authorized, notwithstanding the provisions of § 570.503, if:

(i) A specific license has been issued pursuant to the provisions of paragraph (b) of this section, or

(ii) 10 business days have not expired after notice to the account party pursuant to paragraph (b) of this section.

(2) Nothing in this section shall affect the obligation of an issuing or confirming bank to make payment into a blocked account on behalf of an entity owned or controlled by the Government of Kuwait pursuant to a standby letter of credit if such entity is:

(i) Licensed by the Office of Foreign Assets Control to transact business with U.S. persons, or

(ii) Listed in appendix A to this part as "Not Controlled/Not Restricted" or "Controlled/Licensed to Operate."

(b) Whenever an issuing or confirming bank shall receive such demand for payment under such a standby letter of credit, it shall promptly notify the account party. The account party may then apply within five business days for a specific license authorizing the account party to establish a blocked account on its books in the name of the Kuwaiti beneficiary in the amount payable under the credit, in lieu of payment by the issuing or confirming bank into a blocked account and reimbursement therefor by the account party. Nothing in this section relieves any such bank or such account party from giving any notice of defense against payment or reimbursement that is required by applicable law.

(c) Where there is outstanding a demand for payment under a standby letter of credit, and the issuing or confirming bank has been enjoined from making payment, upon removal of the injunction, the account party may apply for a specific license for the same purpose and in the same manner as that set forth in paragraph (b) of this section. The issuing or confirming bank shall not make payment under the standby letter of credit unless:

(1) 10 business days have expired since the bank has received notice of the removal of the injunction and

(2) A specific license issued to the account party pursuant to the provisions of this paragraph has not been presented to the bank.

(d) If necessary to assure the availability of the funds blocked, the Director of the Office of Foreign Assets Control may at any time require the payment of the amounts due under any letter of credit described in paragraph (a) of this section into a blocked account in a U.S. financial institution or the supplying of any form of security deemed necessary.

(e) Nothing in this section precludes the account party on any standby letter of credit or any other person from at any time contesting the legality of the demand from a Kuwaiti beneficiary or from raising any other legal defense to payment under the standby letter of credit.

(f) This section does not affect the obligation of the various parties to the instruments covered by this section if

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the instruments and payments thereunder are subsequently unblocked.

(g) The section does not authorize any U.S. person to reimburse a non-U.S. bank for payment to a Kuwaiti beneficiary under a standby letter of credit, except by payments into a blocked account in accordance with § 570.503 or paragraph (b) or (c) of this section.

(h) A person receiving a specific license under paragraph (b) or (c) of this section shall certify to the Office of Foreign Assets Control within 5 business days after receipt of that license that it has established the blocked account on its books as provided in those paragraphs. However, in appropriate cases, this time period may be extended upon application to the Office of Foreign Assets Control when the account party has filed a petition with an appropriate court seeking a judicial order barring payment by the issuing or confirming bank.

(i) For the purposes of this section,

(1) The term "standby letter of credit" shall mean a letter of credit securing performance of, or repayment of any advance payments or deposits under, a contract, or any similar obligation in the nature of a performance bond;

(2) The term "account party" shall mean the person for whose account the standby letter of credit is opened; and

(3) The term "Kuwaiti beneficiary" shall mean a beneficiary that is

(i) A person in Kuwait,

(ii) An entity operated from Kuwait, or

(iii) The Government of Kuwait.

**§ 570.519 Certain imports for diplomatic or official personnel authorized.**

All transactions ordinarily incident to the importation of any goods or services into the United States destined for official or personal use by diplomatic and support personnel employed by the recognized Government of Kuwait are authorized, unless the importation is otherwise prohibited by law.

**§ 570.520 Donations of food to relieve human suffering authorized.**

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to Kuwait of donated food intended to relieve human suffering.

(b) In general, specific licenses will only be granted for donations of food to be provided through the United Nations in accordance with United Nations Security Council Resolutions 661 and 666 and in cooperation with the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under United Nations Security Council Resolution 666 and any other applicable Security Council resolutions, in order to ensure that such donations reach the intended beneficiaries.

(c) Applications for specific licenses pursuant to paragraph (a) shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the donated food; and

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of foodstuffs under applicable United Nations Security Council resolutions, including Resolutions 661 and 666.

**§ 570.521 Certain exportations of medical supplies authorized.**

(a) Specific licenses may be issued on a case-by-case basis to permit exportation to Kuwait of supplies intended strictly for medical purposes, in accordance with the provisions of United Nations Security Council Resolutions 661 and 666, and other applicable Security Council resolutions.

(b) In general, specific licenses will only be granted for the exportation of medical supplies through the International Committee of the Red Cross or other appropriate humanitarian agencies for distribution by them or under their supervision, or in such other manner as may be approved under applicable Security Council resolutions, in order to ensure that such supplies reach the intended recipient.

(c) Applications for specific licenses pursuant to paragraph (a) shall be made in advance of the proposed exportation, and provide the following information:

(1) The nature, quantity, value, and intended use of the medical supplies;

(2) The terms and conditions of distribution, including the intended method of compliance with such terms and conditions of distribution as may have been adopted by the United Nations Security Council or a duly authorized body subordinate thereto to govern the shipment of medical supplies under applicable Security Council resolutions.

## Subpart F—Reports

**§ 570.601 Required records.**

Every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each such transaction in which that person engages, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 2 years after the date of such transaction.

**§ 570.602 Reports to be furnished on demand.**

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

**§ 570.603 Report on certain correspondent bank accounts.**

(a) U.S. financial institutions are required to file a monthly report concerning any bank account held by them in the name of a bank in which the Government of Kuwait holds an equity interest of 10% or more (*i.e.*, a correspondent bank account).

(b) The report, consisting of a copy of a monthly bank statement for the account, must:

(1) Include a summary of the average balance in the account for the period covered by the report,

(2) List the actual date on which account statements are made available to account holders, and

(3) State the exact location at which documents showing debits from and credits to the account may be reviewed and the name and telephone number of a person responsible for the content of the report.

(The report should not include copies of documents showing debits and credits.)

(c) A report filed pursuant to this section must arrive at the Office of Foreign Assets Control, Compliance Section, no later than the last business day of the month following the activity summarized in the report. The report may be sent by facsimile to (202) 377–7222 or mailed to the following address:

Compliance Unit—603, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—2131 Annex, Washington, DC 20220.



## Subpart G—Penalties

**§ 570.701 Penalties.**

(a) Section 586E of the Iraq Sanctions Act of 1990, contained in the Foreign Operations Authorization and Appropriation Act of 1990, dated November 5, 1990, 104 Stat. 1979, provides that notwithstanding section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) and section 5(b) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(b))—

(1) A civil penalty of not to exceed $250,000 may be imposed on any person who, after the enactment of this Act, violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, 12725, or any license, order, or regulation issued under such Executive Order;

(2) Whoever after the date of enactment of the Iraq Sanctions Act willfully violates or evades or attempts to violate or evade Executive Order Number 12722, 12723, 12724, or 12725 or any license, order, or regulation issued under any such Executive Order—

(i) Shall, upon conviction, be fined not more than $1,000,000 if a person other than a natural person; or

(ii) If a natural person, shall upon conviction, be fined not more than $1,000,000 be imprisoned for not more than 12 years, or both.

Any officer, director, or agent of any corporation who knowingly participates in a violation, evasion, or attempt described in paragraph (a)(2) of this section may be punished by imposition of the fine, imprisonment (or both) specified in paragraph (a)(2)(ii) of this section.

(b) Attention is directed to 18 U.S.C. 1001, which provides:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) Violations of this part may also be subject to relevant provisions of the Customs laws and other applicable laws.

**§ 570.702 Prepenalty notice.**

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice shall be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents.*

(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make a written presentation within 30 days of mailing of the notice as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

**§ 570.703 Presentation responding to prepenalty notice.**

(a) *Time within which to respond.* The named person shall have 30 days from the date of mailing of the prepenalty notice to make a written presentation to the Director.

(b) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should contain responses to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

**§ 570.704 Penalty notice.**

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice and any relevant facts, the Director determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation.* If, after considering any presentations made in response to the prepenalty notice, the Director determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of the imposition of the monetary penalty to that person.

**§ 570.705 Referral to United States Department of Justice.**

In the event that the person named does not pay the penalty imposed pursuant to this subpart or make payment arrangements acceptable to the Director within 30 days of the mailing of the written notice of the imposition of the penalty, the matter shall be referred to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

## Subpart H—Procedures

**§ 570.801 Licensing.**

(a) *General licenses.* General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in subpart B of this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses.*

(1) *General course of procedure.* Transactions subject to the prohibitions contained in subpart B of this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter or on an application form with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is

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required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any specifically designated person, agency, or instrumentality.

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address:

Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220.

**§ 570.802 Decisions.**

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

**§ 570.803 Amendment, modification, or revocation.**

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

**§ 570.804 Rulemaking.**

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

**§ 570.805 Delegation by the Secretary of the Treasury.**

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order No. 12723 and Executive Order No. 12725 may be taken by the Director, Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

**§ 570.806 Rules governing availability of information.**

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as part 1 of this title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with the Kuwaiti Assets Control Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Annex, Washington, DC 20220, or by calling (202) 566–2701.

## Subpart I—Paperwork Reduction Act

**§ 570.901 [Reserved].**

## Appendix A to Part 570—Kuwaiti Governmental Entities

The Treasury Department has been asked about the status of various entities in which the Government of Kuwait or Kuwaiti nationals may have an interest for purposes of Executive Order Nos. 12722–12725. Based on information available to the Office of Foreign Assets Control, the following lists have been compiled.

The entities listed as "Controlled/Blocked" have been determined to be controlled by the Government of Kuwait and/or the Government of Iraq and should be regarded as blocked entities. This means U.S. persons are prohibited from engaging in transactions with these entities and all assets under U.S. jurisdiction owned or controlled by those entities are blocked. U.S. persons are not prohibited, however, from paying funds owed to these entities into blocked accounts held in U.S. financial institutions.

The entities listed as "Controlled/Licensed to Operate" should also be regarded as controlled by the Government of Kuwait, but as licensed to operate. This means the Office of Foreign Assets Control has determined that the entities are under the effective control of the recognized Government of Kuwait and U.S. persons are authorized to engage in transactions with them. These authorized transactions include entering into contracts, making and receiving payments, and conducting other commercial or financial transactions. If questions arise, U.S. persons should request from the entities concerned to see copies of the operating licenses.

The entities listed as "Not Controlled/No Restrictions" are not regarded by the Office of Foreign Assets Control as controlled by the Government of Kuwait. The names of these entities appear on the list solely for the purpose of clarification because requests regarding their status have been received. Some of the entities on this list may be subject to special Treasury Department licensing or reporting requirements.

*Warning:* These lists are subject to revision should new information become available, and are not inclusive. Additions to the lists are anticipated. The absence of a particular entity from any of the lists should not be regarded as indicative of whether the entity is owned or controlled by the Government of Kuwait or the Government of Iraq.



*Controlled/Blocked*

AlAhli Bank of Kuwait
AlAhli Insurance Company
Arab Fund for Economic and Social Development
Arab Trust Company
Bahrain Arab International Bank
Bank of Kuwait & Middle East
Burgan Bank
Central Bank of Kuwait
Commercial Bank of Kuwait
Commercial Facilities Company
The Gulf Bank
Gulf Insurance Company
Industrial Bank of Kuwait
International Financial Advisor
KREIC Singapore
Kuwait Cement Company
Kuwait Clearing Company
Kuwait Finance House
Kuwait Hotels Company
Kuwait Metal Pipe Industries Company
Kuwait Real Estate Bank
Kuwait Real Estate Investment Consortium (KREIC)
Kuwait Reinsurance Company
Kuwait Supply Company
Kuwait United Poultry Company
Mobile Telephone Systems
Mubarakiah Poultry and Feed Company
National Industries Company K.S.C.
National Real Estate Company
Public Warehousing Company
Rawdatain Water Bottling Company
Refrigeration Industries Company
Savings and Credit Bank
Securities Group Company
Securities House Company
United Fisheries of Kuwait
United Realty Company
Univest Invest Company
Warba Insurance Company

*Controlled/Licensed To Operate*

Credit des Bergues
Georgetown Industries, Inc. (including subsidiaries)
KFIC, Inc. (including subsidiaries)
Kuwait Airways Corporation
Kuwait Asia Bank
Kuwait Investment Office (including controlled entities)
Kuwait Investment Authority
Kuwait Maritime Transport Company
Kuwait & Middle East Financial Investment Company
Kuwait Petroleum Corporation (London) (including licensed affiliates)
Kuwait Petroleum—North Sea Holdings Ltd. (including subsidiaries)
Santa Fe International Corporation (including subsidiaries and affiliates)
Warfra Intervest Corporation (Cayman) (including subsidiaries and affiliates)

*Not Controlled/No Restrictions*

[Some of these entities may be subject to special Treasury Department licensing/reporting requirements.]

Alexandria Kuwait International Bank
Arab African International Bank
Arab Banking Corporation
Arab Financial Services Company
Arab Hellenic Bank
Arab Insurance Group
Arab Maritime Petroleum Transport
Arab Mining Company
Arab Petroleum Investments Corporation
Arab Turkish Bank
Bahrain Islamic Bank
Bahrain Islamic Investment Company
Bahrain Middle East Bank
Banco Arabe Espanol
Banco Atlantico
Bank of Bahrain and Kuwait
Bank of Oman, Bahrain & Kuwait
CHEMI
Dao Heng Bank
FRAB Bank International
Gulf International Bank
Gulf Investment Corporation
Independent Petroleum Group
International Contracting Group
Jordan Fertilizer Industry
Jordan Kuwait Bank
Korea Kuwait Banking Corporation
Kuwait French Bank
Kuwait Investment Projects Company
Kuwait Lebanon Bank
Kuwait National Cinema Company
National Bank of Kuwait
National Investment Company
Oman Housing Bank
Pearl Holding Company
Swiss Kuwaiti Bank
The Arab Investment Company
UBAF Arab American Bank
United Arab Shipping Company
United Bank of Kuwait
United Gulf Bank
Yemen Kuwait Bank

Dated: November 21, 1990.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: November 27, 1990.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 90–28319 Filed 11–28–90; 4:34 pm]

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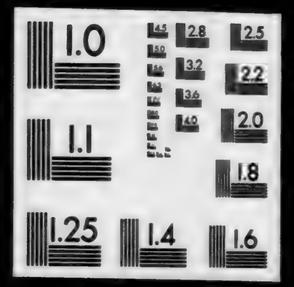
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12-3-90
Vol. 55 No. 232

# federal register

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55
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Vol. 55 No. 232
Pages 49871-49978

# federal register

Monday
December 3, 1990

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# Rules and Regulations

Federal Register
Vol. 55, No. 232
Monday, December 3, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 425**

**[Amdt. No. 2; Doc. No. 5116S]**

## Peanut Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Peanut Crop Insurance Regulations (7 CFR part 425), effective for the 1991 and succeeding crop years by extending the contract change date. The intended effect of this rule is to provide time for FCIC to review and revise the actuarial data with respect to the Peanut crop insurance program.

**DATES:** This rule is effective November 30, 1990. Written comments on this proposed rule must be submitted not later than February 1, 1991, to be sure of consideration.

**ADDRESSES:** Written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989. These regulations are scheduled for review as to their need, currency, clarity, and effectiveness under Departmental Regulation 1512–1 and a new sunset review date will be established within 30 days.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith changes the date outlined in the Peanut Crop Insurance Regulations (7 CFR part 425), by which contract changes are available in the agent's office, in order to provide sufficient time to review the actuarial data associated with the peanut program. FCIC has determined that there may be a problem in the present actuarial material which requires changes in these regulations to bring about actuarial sufficiency and to correct the inequities. A notice of proposed rulemaking, with the appropriate public comment period, is under consideration for issuance shortly.

David W. Gabriel, Acting Manager, FCIC, has determined that an emergency situation exists requiring immediate steps be taken to prevent possible program abuse and protect the integrity of the peanut program. The Federal Crop Insurance Act, as amended, requires that the program be operated in an actuarially sound manner. The actuarial review to be undertaken is to assure that the statutory mandate is followed. Therefore, notwithstanding the provisions of 5 U.S.C. 553, with respect to public notice and comment, and in view of the reasons set forth herein, good cause is shown for making this rule effective upon publication in the **Federal Register.**

This rule will be scheduled for review so that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible. FCIC is soliciting written comments on this rule for 60 days following publication in the **Federal Register.** Written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this rule will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

**List of Subjects in 7 CFR Part 425**

Crop insurance, Peanuts.

**Interim Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peanut Crop Insurance Regulations (7 CFR part 425), effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 425 is revised to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR 425.7(d)16 is revised to read as follows:

**§ 425.7 The application and policy.**

* * * * *

(d) * * *

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18. *Contract Changes.*

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with a April 15 cancellation date (March 1, 1991 for the 1991 crop year only) and by November 30 preceding the cancellation date for all other counties (March 1, 1991 for the 1991 crop year only for all other counties except those counties with a February 15 cancellation date which shall have a January 31 contract change date for the 1991 crop year only).

Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

Done in Washington, DC, on November 28, 1990.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28323 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-08-M

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**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Regulation 715]**

## Navel Oranges Grown in Arizona and Designated Part of California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 30 through December 6, 1990. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

**EFFECTIVE DATE:** Regulation 715 [7 CFR part 907] is effective for the period from November 30 through December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. box 96456, Washington, DC 20090-6456; telephone: (202) 447-5139.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 907 [7 CFR part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,070 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 89 percent of the total production in 1989-90. District 2 is located in the southern coastal area of California and represented 9 percent of 1989-90 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 1 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's estimate of 1990-91 production is 79,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 89,000 cars during the 1989-90 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee estimates that about 65 percent of the 1990-91 crop of 79,350 cars will be utilized in fresh domestic channels (51,250 cars), with the remainder being exported fresh (12 percent), processed (21 percent), or designated for other uses (2 percent). This compares with the 1989-90 total of 54,000 cars shipped to fresh domestic markets, about 61 percent of that year's crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to producers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.



The Committee adopted its marketing policy for the 1990-91 season on July 10, 1990. The Committee revised its marketing policy at district meetings as follows: (1) Districts 1 and 4 on September 25, 1990, in Visalia, California; (2) District 3 on October 2, 1990, in Tempe, Arizona; and (3) District 2 on October 9, 1990, in Redlands, California. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 27, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with eight members voting in favor, two opposing, and one abstaining, that 1,700,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990-91 marketing policy. The recommended amount of 1,700,000 cartons is 200,000 cartons below that specified for all districts in the Committee's October 9 revised shipping schedule. Of the 1,700,000 cartons, 1,624,000 cartons are allotted for District 1 and 76,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 are not regulated as they have not yet begun to ship.

During the week ending on November 22, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,271,000 cartons compared with 1,284,000 cartons shipped during the week ending on November 23, 1989. Export shipments totaled 166,000 cartons compared with 221,000 cartons shipped during the week ending on November 23, 1989. Processing and other uses accounted for 286,000 cartons compared with 315,000 cartons shipped during the week ending on November 23, 1989.

Fresh domestic shipments to date this season total 3,909,000 cartons compared with 5,153,000 cartons shipped by this time last season. Export shipments total 364,000 cartons compared with 788,000 cartons shipped by this time last season. Processing and other use shipments total 785,000 cartons compared with 1,395,000 cartons shipped by this time last season.

Regulated shipments for the current week, the first week of general maturity allotment (November 23 through November 29, 1990), are estimated at 1,610,000 cartons on an adjusted allotment of 1,500,000 cartons. Thus, overshipments of 110,000 cartons could be carried forward into the week ending on December 6, 1990.

The average f.o.b. shipping point price for the week ending on November 22, 1990, was $9.83 per carton based on a reported sales volume of 818,000 cartons compared with last week's average of $10.20 per carton on a reported sales volume of 1,104,000 cartons. The season average f.o.b. shipping point price to date is $10.08 per carton. The average f.o.b. shipping point prices for the week ending on November 23, 1989, was $7.89 per carton; the season average f.o.b. shipping point price at this time last year was $8.47.

The Department's Market News Service reported that, as of November 27, demand for California-Arizona navel oranges was "fairly good" for choice fruit and moderate for all other grades and sizes. The market for all grades and sizes was reported as "steady."

At the meeting, Committee members reported that maturity of the navel orange crop remains quite variable throughout the producing districts. The Committee indicated that demand for navel oranges was good but that the retail market was slow. Some Committee members commented that, despite the continued problems with maturity, enough quality fruit could be found to warrant recommending the 1,900,000 cartons scheduled for shipment. However, the majority of Committee members were concerned that such a high allotment could potentially cause a market glut and depress prices during the pre-Christmas weeks, a critical period in the navel orange season. Committee members discussed the pros and cons of implementing volume regulation at this time. Two Committee members favored a higher allotment level while the majority of Committee members favored recommending an allotment level of 1,700,000 cartons.

According to the National Agricultural Statistics Service, the 1989-90 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 64 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990-91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990-91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 30 through December 6, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990-91 season was published in the September 6, 1990, issue of the **Federal Register** [55 FR 36853]. That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990-91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations.

Nevertheless, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information become available upon which this regulation is based and the effective

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date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 27, 1990, and this action needs to be effective for the regulatory week which begins on November 30, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

**List of Subjects in 7 CFR Part 907**

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1015 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 907.1015 Navel Orange Regulation 715.**

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 30 through December 6, 1990, is established as follows:

| District 1 cartons/% (000) | District 2 cartons/% (000) | District 3 cartons/% (000) | District 4 cartons/% (000) | Total cartons (000) |
|---|---|---|---|---|
| 1,624.0/95.5 | ..... | 76.0/4.5 | ..... | 1,700 |

Dated: November 28, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–28330 Filed 11–30–90; 8:45 am]

BILLING CODE 3410–02–M

**7 CFR Part 910**

**[Lemon Regulation 748]**

## Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from December 2 through December 8, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

**EFFECTIVE DATE:** Regulation 748 [7 CFR part 910] is effective for the period from December 2 through December 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,156 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.



Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 27, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 300,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 41,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on November 24, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 266,000 cartons compared with 250,000 cartons shipped during the week ending on November 25, 1989. Export shipments totaled 147,000 cartons compared with 157,000 cartons shipped during the week ending on November 25, 1989. Processing and other uses accounted for 282,000 cartons compared with 299,000 cartons shipped during the week ending on November 25, 1989.

Fresh domestic shipments to date for the 1990–91 season total 5,140,000 cartons compared with 4,934,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,538,000 cartons compared with 2,668,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 4,494,000 cartons compared with 3,127,000 cartons shipped by this time during 1989–90.

For the week ending on November 24, 1990, regulated shipments of lemons to the fresh domestic market were 286,000 cartons on an adjusted allotment of 286,000 cartons. Regulated shipments for the current week (November 25 through December 1, 1990) are estimated at 290,000 cartons on an adjusted allotment of 290,000 cartons.

The average f.o.b. shipping point price for the week ending on November 24, 1990, was $10.29 per carton based on a reported sales volume of 289,000 cartons compared with last week's average of $10.30 per carton on a reported sales volume of 284,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.53 per carton. The average f.o.b. shipping point price for the week ending on November 25, 1989, was $12.69 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.24 per carton.

The Department's Market News Service reported that, as of November 27, the demand for lemons is "moderate" and the market for lemons is "steady." At the meeting, a Committee member indicated that "business" has been good. However, that member also commented on the inventory buildup of second grade fruit in sizes 115, 165, and 200 and on first grade fruit ranging in size from 165 to 200. An observer stated that it is very important to sustain orderly marketing conditions and favored volume regulation. The Committee unanimously recommended volume regulation for the week ending December 8, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1990–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 2 through December 8, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 27, 1990, and this action needs to be effective for the regulatory week which begins on December 2, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

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**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

2. Section 910.1046 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 910.1046 Lemon Regulation 746.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 2 through December 8, 1990, is established at 300,000 cartons.

Dated: November 28, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-28331 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 261**

**[Docket No. R-0713]**

**Rules Regarding Availability of Information; Freedom of Information Reform Act**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") hereby amends its Rules Regarding Availability of Information to reflect changes in the direct costs to the Board to conduct searches, review documents, and copy documents in response to requests made under the Freedom of Information Act by adding an "appendix A" to § 261.10—Freedom of Information Fee Schedule. The new "appendix A" amends the Board's current fee schedule (52 FR 15299, April 28, 1987).

**DATES:** *Effective date:* January 2, 1991. Comments must be received on or before January 2, 1991.

**ADDRESSES:** Interested parties are invited to submit written comments to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.). Written comments should refer to Docket No. R–0713. Comments received may be inspected in room B–1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Attorney, Legal Division (202/452–2418); or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452–3684); or for the hearing impaired *only*, Telecommunications Devise for the Deaf ("TDD"), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. No. 99–570) ("FOI Reform Act") requires each federal agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests * * *" under the Freedom of Information Act ("FOIA"). These regulations must conform to guidelines issued by the Office of Management and Budget ("OMB") (52 FR 10018, March 27, 1987). The FOI Reform Act requires that the fees charged provide only for the recovery of the direct costs of search, review, and duplication. (5 U.S.C. 552(a)(4)(A)(iv)).

The Board's current fee schedule was established in May 1987 following enactment of the FOI Reform Act. (52 FR 15299, April 28, 1987.) Since that time, the Board's direct costs for search, review, and duplication have increased. Therefore, the Board proposes to increase its fees for those services by adding an appendix A to its Rules Regarding Availability of Information. These fees reflect changes in the Board's direct costs, due primarily to changes in the salaries of the employees who perform services in connection with requests filed under FOIA. This amendment makes no change in the definition of services or direct and actual costs, or in the treatment of various categories of requesters.

A comparison of the current fee schedule and the fee schedule established by the interim rule is set forth below:

| FOIA Service | Current | Interim Rule |
|---|---|---|
| Duplication: | | |
| Photocopy, per standard page | $0.08 | $0.10 |
| Paper copies of microfiche, per frame | 0.07 | 0.10 |
| Duplicate microfiche, per microfiche | 0.10 | 0.30 |
| Search and review: | | |
| Clerical/Technical, hourly rate | 8.50 | 17.00 |
| Professional/Supervisory hourly rate | 12.80 | 32.00 |
| Manager/Senior Professional [1], hourly rate | 25.90 | 53.00 |
| Computer Search and production: | | |
| Operator search time, hourly rate | ([2]) | 25.00 |
| Cassette tapes | ([2]) | 5.00 |
| PC computer output, per minute | ([2]) | 0.10 |

[1] Currently, the three categories of personnel are clerical; technical; and management/professional.
[2] Case by case.

The Board is issuing this rule as an interim rule, with provision for subsequent public comment and revision if appropriate, so that the revised fee schedules may take effect on January 2, 1991, which is at the beginning of the Board's fiscal year. Issuance of a proposed rather than an interim rule would make it impossible to implement the rule prior to January 1, 1992, in light of programming and other administrative requirements associated with implementation of the new fee schedule. Since the change is supported by a detailed cost analysis and leaves undisturbed substantive provisions of the Rules Regarding Availability of Information regarding the treatment of various classes of requesters, and since as more fully explained below, the Board has determined that the public interest is adequately served by allowing comment following publication of the interim rule, the Board has concluded that publication of a proposed rule for comment would be impractical, unnecessary, and contrary to the public interest. Therefore, the Board finds that under 5 U.S.C. 553(b)(B) it has good cause to dispense with the general requirement that notice of proposed rules be given. The Board also finds that it has good cause to dispense with the requirement of 5 U.S.C. 553(d) that after notice and comment, a final rule be published thirty days prior to its effective date. The Board notes, however, that the interim rule will be effective January 2, 1991, following the close of the comment period, rather than immediately.

Publication of a proposed rule, and deferral of the effective date of the final rule until 30 days following issuance of a final rule following completion of the comment period, would make it difficult and costly for the Board to implement a change in fees prior to January 1, 1992. The Board must make any changes in FOIA fees effective on January 2 to avoid the considerable expense associated with extraordinary midyear programming and administrative changes outside the context of the Board's calendar year budget cycle. Postponing the effective date until January 1, 1992, would prevent the Board from recovering its direct costs during the interim. Such a postponement should not be necessary, in the Board's view, since the changes are based on a detailed recently completed staff study of direct costs, and seem clearly warranted under the standards of the FOI Reform Act, and since the Board believes it must proceed to recover costs that may lawfully be recovered in the interest of sound fiscal management.

The FOIA makes clear that fee schedules may be changed to reflect changes in direct costs and that, subject to standards and exceptions not modified by this interim rule, requesters must bear the actual costs of document search, review, and duplication. Thus, as the cost to the government of performing these functions increases, requesters would expect their fees to increase correspondingly. All information necessary to issue the interim rule is in the possession of the Board, and no outside factual input is required to assist the Board in determining its actual direct costs.

Consistent with the spirit of 5 U.S.C. 553(d), this interim rule will become effective on January 2, 1991. Public comments may be submitted until January 2, 1991. Those comments will be given due consideration, and changes in the interim rule will be made if appropriate based on those comments.

*Regulatory Flexibility Act Analysis.* Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendment is a change in agency fees applicable to FOIA requests that would not have a substantial effect on particular small entities.

**List of Subjects in 12 CFR Part 261**

Confidential business information, Federal Reserve System, Freedom of Information.

For the reasons set forth in this document, and pursuant to the Board's authority under the Freedom of Information Reform Act of 1986, Public Law No. 99–570, (5 U.S.C. 552(a)(4)(A)(i)), to promulgate rules implementing the FOI Reform Act, the Board amends 12 CFR part 261 as follows:

**PART 261—RULES REGARDING AVAILABILITY OF INFORMATION**

1. The authority citation for part 261 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 248(k), 321, and 1844.

?. Appendix A is added at the end of § 261.10 to read as follows:

**§ 261.10 Fee schedules; waiver of fees.**

* * * * *

**Appendix A to § 261.10—Freedom of Information Fee Schedule**

| | |
|---|---|
| Duplication: | |
| Photocopy, per standard page | $0.10 |
| Paper copies of microfiche, per frame | 0.10 |
| Duplicate microfiche, per microfiche | 0.30 |
| Search and Review: | |
| Clerical/Technical, hourly rate | 17.00 |
| Professional/Supervisory, hourly rate | 32.00 |
| Manager/Senior Professional, hourly rate | 53.00 |
| Computer search and production: | |
| Operator search time, hourly rate | 25.00 |
| Cassette tapes | 5.00 |
| PC computer output, per minute | 0.10 |
| Mainframe computer output | ([1]) |

[1] Actual cost.

*Special Services*

The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters.

*Fee Waivers*

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media, the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests, no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than $8.

The Secretary of the Board or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, and applicants for employment who request records for use in prosecuting a grievance or complaint against the Board.

By order of the Board of Governors of the Federal Reserve System, November 27, 1990.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 90-28282 Filed 11-30-90; 8:45 am]

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## DEPARTMENT OF COMMERCE

**Bureau of Economic Analysis**

**15 CFR Part 806**

**[Docket No. 900786–0276]**

**RIN 0691–AA16**

**Change in Reporting Requirements for the Annual Survey of U.S. Direct Investment Abroad (BE–11)**

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** These final rules amend 15 CFR 806.14 to change the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The survey collects information on the financial structure and operations of nonbank U.S. parent companies and their nonbank foreign affiliates. It is conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under authority of the International Investment and Trade in Services Survey Act. The final rules:

(1) Raise the overall exemption level of the survey, and the exemption level for reporting individual nonbank foreign affiliates on Forms BE–11B and BE–11C, from $10 million to $15 million. This change will reduce the number of U.S. parent companies and foreign affiliates that must be reported, thus reducing the reporting burden on respondents.

(2) For fiscal year 1992 only require filing of Form BE–11C for nonbank foreign affiliates owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter (*i.e.*, U.S. parent company), but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which total assets, sales, or net income exceeds $100 million. In other years, reporting on Form BE–11C is required only if the affiliate is owned 20 percent or more by all U.S. Reporters combined. For at least

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1 year between benchmark surveys, reporting for the largest affiliates owned between 10 and 20 percent is needed in order to maintain reliable estimates of data for the universe of foreign affiliates (which is defined by law to include all foreign business enterprises owned 10 percent or more by a U.S. person).

**EFFECTIVE DATE:** These rules will be effective January 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

**SUPPLEMENTARY INFORMATION:** In the August 16, 1990 Federal Register, Volume 55, No. 159, 55 FR 33537, the Bureau of Economic Analysis published a notice of proposed rulemaking amending 15 CFR 806.14 to change the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. No comments on the proposed rulemaking were received. Thus, these final rules are the same as the proposed rules.

The BE-11 is a mandatory survey, conducted pursuant to the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573). It collects data on the financial structure and operations of a sample of nonbank U.S. parent companies and their nonbank foreign affiliates, with emphasis on the affiliate data. The sample data are used to generate universe estimates of data for parents and affiliates for years in which benchmark surveys, or censuses, of U.S. direct investment abroad are not conducted. The data are needed to monitor current developments in U.S. direct investment abroad and to analyze the impact of such investment on the U.S. and foreign economies. They are also needed to support important U.S. policy initiatives on international investment and trade in services.

The BE-11 survey contains three forms—the BE-11A, which covers the U.S. Reporter (*i.e.*, U.S. parent company); the BE-11B, which covers majority-owned foreign affiliates; and the BE-11C, which covers minority-owned foreign affiliates.

A Form BE-11A must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B or BE-11C. Under these final rules, the exemption level for reporting individual foreign affiliates on Form BE-11B or BE-11C—and, thus, for determining whether a U.S. person has to file Form BE-11A—is raised from $10 million to $15 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income (either positive or negative) below which a BE-11B or BE-11C report is not required. Raising the exemption level reduces the number of U.S. parent companies and foreign affiliates for which reports must be filed, thus reducing the reporting burden on respondents. The exemption level of $15 million is the same as was used in the related BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1989, to determine whether a long form or short form had to be filed for the affiliate.

In addition to raising the exemption level, these final rules require filing, for fiscal year 1992 only, a Form BE-11C for each nonbank foreign affiliate owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed $100 million. In all other years, reporting on Form BE-11C is required only if the affiliate is owned 20 percent or more by all U.S. Reporters combined; primarily to reduce the reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA's periodic benchmark surveys of U.S. direct investment abroad cover all foreign affiliates owned 10 percent or more. The most recent benchmark survey covers the year 1989; the next survey will cover 1994. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least 1 year between benchmark surveys. Under these final rules, reporting of the largest affiliates is required for fiscal year 1992.

These rules will be implemented with the survey covering fiscal year 1990. The 1990 forms will be mailed out in March 1991 and will be due May 31, 1991. The last BE-11 survey covered the year 1988. (It should be noted that a BE-11 survey is not conducted in a year, such as 1989, when a BE-10 benchmark survey is conducted).

The public reporting burden for this collection of information is estimated to vary from 4 to 3,000 hours per response, with an average of 71 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608-0053.

**Executive Order 12291**

BEA has determined that these final rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Executive Order 12612**

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

**Paperwork Reduction Act**

The collection of information requirement in these final rules has been approved by the Office of Management and Budget (OMB No. 0608-0053).

**Regulatory Flexibility Act**

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities because few, if any, small businesses are subject to the reporting requirements of the BE-11 survey. The exemption level of $15 million is set in terms of the size of a U.S. company's foreign affiliates. Only if the affiliate's assets, sales, or net income exceeds $15 million must it be reported. Usually, the parent company (the one required to file the report) is many times larger.

In addition, by raising the exemption level from $10 million to $15 million, U.S. parent companies will no longer have to report for affiliates between $10 and $15 million. This change should reduce the reporting burden on smaller U.S. businesses that own these affiliates. Therefore, a regulatory flexibility analysis was not prepared.



**List of Subjects in 15 CFR Part 806**

Economic statistics, U.S. investments abroad, Reporting and recordkeeping requirements.

Dated: November 26, 1990.

**Allan H. Young,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, 15 CFR part 806 is amended as follows:

**PART 806—DIRECT INVESTMENT SURVEYS**

1. The authority citation for 15 CFR part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301, 22 U.S.C. 3101-3108, and E.O. 11961, as amended.

2. Section 806.14(f)(3)(ii) is amended by removing "$10,000,000" and inserting in its place "$15,000,000."

3. Sections 806.14(f)(3)(iii) and 806.14(f)(3)(iv) (A), (B) and (C) are revised as follows:

**§ 806.14 U.S. direct investment abroad.**

* * * * *

(f) * * *

(3) * * *

(iii) A Form BE-11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the exemption level items exceeds $15 million. In addition, for the report covering fiscal year 1992 only, a Form BE-11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the exemption level items exceeds $100 million.

(iv) * * *

(A) None of its exemption level items is above $15 million.

(B) For fiscal year 1992 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of its exemption level items exceeds $100 million.

(C) For fiscal years other than 1992, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

* * * * *

[FR Doc. 90-28284 Filed 11-30-90; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 111, 113, 142, 143, and 159**

**[T.D. 90-92]**

**RIN 1515-AA79**

**Electronic Entry Filing**

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It also provides general eligibility criteria for participation in the ABI system. This action reflects Customs' significant advances in the automation of the entry filing process and its continuing commitment to increase the scope of electronic processing of imported merchandise and to reduce reliance on paper documentation, thereby resulting in lowered costs, increased efficiency and the expedited release of cargo.

**EFFECTIVE DATE:** January 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** William Nolle, Office of Automated Commercial Systems, (202) 566-7907 (ACS aspects). Byron Kissane, Office of Trade Operations, (202)-535-4408 (operational aspects).

**SUPPLEMENTARY INFORMATION:**

**Background**

For over five years, Customs has been developing the Automated Commercial System (ACS), the objective of which is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has also developed, as an integral module of the ACS, an Automated Broker Interface (ABI), fully operational nationwide since 1984, which allows the electronic interchange of import data between Customs and the trade community. ABI allows filers to transmit entry data electronically, directly to ACS. The required information is thus immediately available to Customs without the need for keying the data. This results in faster processing of cargo, with the reduction or total elimination of paperwork. Until now, however, all such electronic transmissions have been followed by submissions of paper documentation.

With the growth of international trade, it has been determined that the Customs Service and the international trade community must take steps to increase the scope of electronic processing and reduce reliance on paper documentation. Since ABI transmissions currently account for over 80 percent of all entry summary transactions, it is for the mutual benefit of both Customs and the trade community to begin to rely totally on electronic transmissions and abandon the dependence on paper, thereby resulting in reduced costs, increased efficiency, and the expedited release of cargo.

Accordingly, Customs published a notice in the **Federal Register** (55 FR 2528) on January 25, 1990, soliciting public comment on proposed amendments to the Customs Regulations which, in principal part, would set forth the specific requirements and procedures for processing the entry of imported merchandise electronically through the Automated Broker Interface (ABI) module of the Automated Commercial System (ACS), together with the eligibility criteria governing participation in electronic entry processing.

As an additional matter, to correct a problem on the Northern Border, it was proposed to add a requirement to the Customs Regulations clarifying that entry documents must include the identity of the party in the U.S., or if this is unknown at the time of entry or release, the premises in the U.S., to which the imported merchandise would be delivered. The latter would apply whether the entry data are filed electronically or manually. By notice published in the **Federal Register** on March 29, 1990 (55 FR 11611), a typographical error in the original notice was corrected, and the public comment period was extended to April 25, 1990.

Twenty-one comments were received in response to the notice of proposed rulemaking. An analysis of these comments is set forth below. Also, on June 12, 1990, the Commissioner of Customs held an ex parte meeting with the National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA), in which various aspects of the proposed rulemaking were discussed (see NCBFAA Bulletin No. 90-6, dated June 25, 1990).

**Analysis of Comments**

*ABI Participation*

*Comment:* One commenter suggested that language be added to proposed

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§ 143.1(b) to require that participants in ABI be residents of the United States and thus subject to Government jurisdiction.

*Response:* Customs disagrees. Under Customs Regulations, a nonresident may qualify as an importer of record provided certain conditions are met. It is believed that adoption of this proposal would unnecessarily prohibit participation by nonresidents who otherwise qualify as importers of record.

*Comment:* Three commenters suggested that the definition of "service bureau" in proposed § 143.1(c) be revised to more clearly indicate that a service bureau performs a clerical function and cannot act as a Customs broker.

*Response:* Customs agrees with this suggestion. In the final rule, § 143.1(c) states expressly that service bureaus will not engage in the conduct of Customs business as defined in § 111.1(c), Customs Regulations.

*Comment:* Two commenters objected to the requirement contained in Customs Publication 540, ABI Interface Requirements, for reporting the ultimate consignee, the FIRMS (Facilities Information Resources Management System) code, as well as the MID (Manufacturer's Identification), stating that these are required for no specified purpose.

*Response:* Customs disagrees. These data elements are critical in order to conduct adequate risk analysis and develop historical records. Also, the subject Customs Publication which is referenced in § 143.5 has been renumbered and renamed as Customs Publication 552, Customs and Trade Automated Interface Requirements (CATAIR), and § 143.5 is amended to this effect.

*Comment:* Three commenters objected to the vagueness of the phrase "maintain a high level of quality" which is used in the introductory text of proposed § 143.6 as well as in paragraph (a) thereof, establishing criteria for initiating disciplinary action against an ABI participant.

*Response:* In order to clarify this phrase, it is modified by including after it in the introductory text the additional language, "as defined in Customs Publication 552 (CATAIR) and Customs directives and policy statements", and by including the language "as described above" following this phrase in paragraph (a).

*Comment:* Many commenters were concerned about the proposals contained in §§ 143.6–143.8 with respect to putting ABI participants on probation, or suspending or revoking their participation altogether, due to failure to comply with the performance requirements or operational standards for the system.

Specifically, eight commenters stated that suspension or revocation of ABI status renders the broker noncompetitive, and that it is tantamount to suspension or revocation of his license or permit. Three commenters questioned the accuracy of the ACS reports which are used to evaluate a broker's performance and to determine that a participant will be placed on probation, and suggested that a limit on the probationary period be specified. It was generally proposed that procedural safeguards similar to those in subpart D, part 111, Customs Regulations (19 CFR part 111, subpart D), be included to satisfy due process requirements. To this end, one commenter asserted that procedural due process would be flouted by proposed § 143.8, which states that revocation will take effect notwithstanding that the participant may appeal to the Assistant Commissioner. In addition, one commenter advocated as an alternative to suspension or revocation of ABI status that the monetary penalty authority in 19 U.S.C. 1641 be employed to discourage substandard performance by ABI brokers.

*Response:* Although Customs agrees that the suspension or revocation of a broker's ABI status may affect the broker's competitiveness, it is clearly not the same as suspending or revoking his license or permit, because the broker could continue to conduct Customs business after the loss of ABI status, albeit in a manual mode. These provisions were intended to protect the integrity and functioning of the system and contemplated that Customs would work with those in probationary status to correct deficiencies as quickly as possible.

Nevertheless, Customs is generally sympathetic to the concerns raised, and has determined to make a number of changes to §§ 143.6–143.8. The probationary period may, in the discretion of the Director, ACS, be extended up to a maximum of ninety days, if the participant's performance remains below standard, but, with the exception of immediate revocation as prescribed in § 143.7, a participant will not be removed from operational status until the probationary period has lasted a minimum of thirty days. It is noted that the original notice did not specify the length of the probationary period. During this period, the participant's performance will be closely monitored, which, as already stated, will include working with the participant and providing any necessary guidance to assist the participant in bringing his performance up to standard.

Customs also acknowledges that there are certain types of entries which cannot be processed through ABI and, as a result, can cause a participant, through no fault of his own, to fail to meet the 90 percent standard for entries filed through ABI. Therefore, a participant will be given advance notice of intent to place him on probation and be afforded 15 days from the date of such notice to show cause why he should not be placed on probation. No such procedure was contained in the original proposal. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, ACS, that the probationary period should not take effect, the Director will notify the participant of the effective date of the probationary period. Section 143.6(a) incorporates these provisions, as well as the length of the period.

Customs also agrees that a review process akin to that called for in license or permit suspension/revocation actions is advisable here as well. To this end, § 143.6(b) is amended to include the right to appeal a notice of suspension to the Assistant Commissioner, Commercial Operations, within ten days of the date of the written notice of suspension, as provided in § 143.8 which has also been revised accordingly. In addition, § 143.6(c) concerning the reinstatement of a participant's operational status following suspension has been rephrased for the sake of clarity.

Furthermore, § 143.7 is amended to provide that a decision on immediate revocation be made by the Director, Trade Operations, instead of the Director, ACS, when participation was obtained through fraud or the misstatement of a material fact. However, the Director, ACS, will exercise authority for immediate revocation when continued participation would pose a risk of significant harm to the integrity and functioning of the system. In any event, the participant will be notified, both electronically and in writing, of any action to revoke participation. Also, § 143.7 is further revised to include the right to appeal the revocation of participation to the Assistant Commissioner, Commercial Operations, within ten days of the date of the notice of revocation.

Consequently, as already indicated, § 143.8 concerning the right to appeal a suspension or revocation is amended to provide that such an appeal may be made to the Assistant Commissioner, Commercial Operations, within ten days following the date of the written notice of suspension or revocation, rather than ten days following the receipt of the electronic or written notice, as initially proposed. Furthermore, § 143.8 is amended to include a provision stating that action to suspend or revoke participation will not take effect until the appeal is decided, except in those cases where the Director, Trade Operations, finds that participation was obtained through fraud or misstatement of material fact, or the Director, ACS, finds that continued participation would pose a risk of significant harm to the integrity and functioning of the system. Section 143.8 is further amended to allow for an extension of the period within which to decide the appeal, with due notice being given to the participant. Customs anticipates that immediate revocation should be occasioned only rarely.



*Electronic Entry Filing*

*Comment:* One commenter questioned whether Customs has the legislative authority to accept electronic entries.

*Response:* Customs believes that electronic entry filing and related procedures, as adopted herein, are within the scope of existing law, broadly interpreted. Legislation which would more clearly provide for the electronic processing of entries, however, is under consideration in Congress.

*Comment:* One commenter remarked that the statement in proposed § 143.31 that Customs does not contemplate that non-electronic filings will be delayed should be strengthened.

*Response:* This language is sufficient to indicate Customs commitment to process non-electronic entries of imported merchandise as expeditiously as possible, although an editorial change is made for clarity.

*Comment:* One commenter believed that the term "data" in proposed § 143.32(f) should be defined in a manner which prevents local data requirements from being imposed.

*Response:* Since the inception of ABI, Customs has taken the position that local Customs offices could not impose additional data requirements on filers. Section 143.32(f) is amended to reflect this.

*Comment:* Some commenters pointed out with respect to proposed § 143.32(j) that a CF 3461 alt can also function as an "entry".

*Response:* Section 143.32(j) provides for this, as well as the use of CF 7501.

*Comment:* One commenter was concerned that the definition of "filer" in proposed § 143.32(1) could include importers, rather than importers of record. It was also recommended that language be added to acknowledge that an electronic filer, whether a broker or an importer, is still subject to the same requirements for electronic entry filing.

*Response:* The last sentence of § 143.32(1) is changed to reflect that a filer may be a broker or an importer of record filing his own entries through ABI without the use of a broker.

*Comment:* A number of commenters questioned the need for those participants in electronic entry filing to also be operational on ABI statement processing, as set forth in proposed § 143.33.

*Response:* Customs believes it is essential to keep this requirement for those filing entry summaries electronically, without a follow-up paper summary. The ABI Statement will be the only mechanism for Customs to determine which entry summaries are being paid under this procedure, as well as furnishing Customs with necessary audit trails and internal controls. Without statement processing, there is no method for Customs to collect on the entry summaries due for payment, and no method to accept duty-free entry summaries. Accordingly, while filers who choose not to become operational on ABI Statement Processing (see § 24.25, Customs Regulations) may nevertheless submit entry summaries electronically through ABI, they will have to continue to follow the electronic submission with the submission of an entry summary in paper form, as has heretofore been the case. Section 143.33 is revised to reflect this requirement.

*Comment:* Several commenters expressed confusion over the phrase "* * * and the entry summary will be scheduled for liquidation upon payment of the statement", appearing in proposed § 143.35.

*Response:* The entry summaries will not be liquidated at the time the filer receives the preliminary statement. Rather, the ACS will place them in a status in which they can be liquidated through system action on the scheduled date of liquidation, with accompanying printing of the bulletin notice of liquidation and any required electronic notifications once any payment due is received. A cross reference to § 24.25, Customs Regulations, concerning statement processing, is added to § 143.35 for the sake of clarity in this connection.

*Comment:* One commenter requested that the terms "equivalent" and "satisfactory" as used in proposed § 143.36(a) be clarified.

*Response:* The term "equivalent" in respect to invoice data that would be acceptable for Customs purposes meant the paper invoice, ALI, EDIFACT or an invoice description submitted through ABI in select cases determined by Customs. In order to clarify this, a cross reference to paragraph (c) relating to invoice requirements has been included in § 143.36(a) in place of "equivalent". The term "satisfactory" means that there are no negative criteria on file in the selectivity systems (entry or summary) that would remove the transaction from electronic processing as indicated in §§ 143.34 and 143.35, and, to this end, § 143.36(a) is amended by adding the language "under §§ 143.34 and 143.35" after the term "satisfactory".

*Comment:* Many commenters opposed the standard of accountability for the accuracy of data transmitted, as contained in proposed § 143.36(b).

*Response:* The filer should make every effort to ensure that the documentation and information provided by the importer is accurate. However, Customs recognizes that an electronic filer can only certify to the accuracy of the information contained on the invoice as it is presented to him. For example, a Customs broker, acting as filer on behalf of an importer, will not always be aware of all details to the transaction. Section 143.36(b) is amended by adding "to the best of his knowledge" in the first sentence after "electronic filer". Also, § 143.36 (a) and (b) is further clarified in this regard by including a cross reference to § 111.32, Customs Regulations.

*Comment:* Several commenters expressed concern over what they considered the vague language concerning invoice requirements in proposed § 143.36(c) and indicated that they were unclear on whether an invoice was required to be presented with the entry summary.

*Response:* Customs agrees that this matter requires clarification. Accordingly, § 143.36(c) is being revised by:

1. Removing proposed § 143.36(c)(3) which allowed for the presentation of an "invoice description submitted through ABI in select cases determined by Customs"; and

2. Adding a new paragraph (c)(3) to allow the requirement for presentation of an invoice to be satisfied in appropriate cases where a party has obtained a preclassification/binding ruling number covering the merchandise being entered, or is a participant in a pre-approval program, and information is electronically transmitted which is adequate for the examination of the merchandise and the determination of duties, and for verifying the information required for statistical purposes by § 141.61(e), Customs Regulations.

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With the removal of "invoice description through ABI in select cases determined by Customs" from this provision, as noted above, there is thus no need for the definition of "invoice description", and § 143.32 is amended by removing this provision, with the subsequent provisions thereof being redesignated accordingly. The purpose of § 143.36(c) is to establish flexibility while still meeting the general requirement for presentation of invoice data with the entry summary.

*Comment:* Many commenters addressed issues relating to the retention, maintenance and production of required records, involving proposed § 113.62(j), §§ 111.22 and 111.23 and particularly proposed §§ 143.37 and 143.38. Virtually all those commenters addressing the matter responded favorably to the proposal to extend centralized recordkeeping to ABI brokers for all records, both accounting or financial as well as those pertaining to import transactions. One commenter suggested that centralized recordkeeping should be available to all brokers, not just those on ABI. Several commenters advocated a reduction of the record retention period from five years to either two or three years, and opposed the requirement that records be maintained in the condition as originally received. A number of commenters urged that provision be made for the storage of data that is itself received electronically by the filer.

Some commenters advocated elimination of the special ledger set forth in § 111.22(d) for electronic transmissions. Two commenters suggested that the language of proposed § 113.62(j)(2) be revised similar to that in proposed § 143.38, to allow for the retention of true copies or graphic reproductions with a letter of explanation, in the event the original documentation is lost, damaged or destroyed. One commenter suggested that proposed § 113.62(j)(2) also be revised to remove the word "or" from the "and/or" phrase, inasmuch as the documents would always be available in either paper or electronic form.

*Response:* Customs believes that centralized storage for all records, both accounting and those relating to import transactions filed electronically, should be available to ABI brokers in any district where they have a currently valid permit, following applicable notification to Customs. For centralized accounting records, notification would be given to the appropriate regional commissioner pursuant to § 111.23(e), Customs Regulations. For records of import transactions, notification would be given to the Assistant Commissioner, Commercial Operations, pursuant to § 143.37(c), Customs Regulations.

Conducting business electronically consists of computer mainframes in communication with one another. For multiple port brokers, these computers are not in the same locations as the release sites. Customs agrees that it would be unnecessary to require that these brokers transfer such records to the district where the import transaction occurred. As noted, these retention rules apply to electronic filings and to documentation in support thereof. Customs will continue to study the possibility of further extending centralized recordkeeping.

Customs has concluded, however, that the current five-year record retention period referenced in § 143.37(a) must be maintained, for enforcement purposes. This period, authorized by 19 U.S.C. 1508, coincides with the statute of limitations in 19 U.S.C. 1621, within which actions must be commenced to recover penalties for violations of the Customs laws: generally, five years from the date the alleged offense was discovered, or, most importantly, in the case of actions for negligence or gross negligence under 19 U.S.C. 1592, five years from the date of commission.

Furthermore, the retention of information in the condition as originally received is critical to preserve evidence, especially in cases of material omissions or false information, where Customs would need to document who provided the false information. In this regard, §§ 143.37(d) and 143.38 are changed to permit data that is itself received electronically to be maintained in its condition as originally received and stored. Customs, as noted in § 143.37(d), may grant permission, where prudent, to store such documentation by other means.

Customs also agrees that a separate ledger (prescribed format) need not be maintained for electronic transmissions, as long as brokers are able to provide Customs with the information shown on the prescribed format, Section 111.22(d) is changed accordingly.

Section 113.62(j)(2) is also amended to allow for the maintenance of true copies or graphic reproductions of the relevant records with a letter of explanation, where the original records are lost, damaged or destroyed, inasmuch as this recognizes legitimate business exigencies. However, documents for a single transaction could exist in more than one medium, that is, both paper and electronic records could exist to cover the different aspects of a single importation, so the "and/or" appearing in this regard in § 113.62(j) is retained.

*Comment:* One commenter noted that the reference in proposed § 143.39 to § 113.62(i) should be instead to § 113.62(k) (as redesignated from current § 113.62(j)).

*Response:* This commenter is correct and the reference has been changed.

*Comment:* Several commenters were concerned with eliminating the bulletin notice of liquidation provided in § 159.9(c), Customs Regulations (19 CFR 159.9(c)), as it is the mechanism used to advise the importer, who may not be an electronic filer, of the liquidation date.

*Response:* Customs has determined that it is necessary to retain the bulletin notice of liquidation for electronic entries, a decision justified by case law, see *Tropicana Products, Inc.* v. *United States*, Appeal No. 89-1605 (Fed. Cir. July 20, 1990), 24 Cust. Bull. and Dec. No. 32, 3 (August 8, 1990).

The bulletin notice of liquidation will continue to act as the official notification of the liquidation of the entry summaries. The inability of an importer who is not an electronic filer or of another party-in-interest, such as a consignee or surety, to determine the date of liquidation through public posting would prejudice such party's ability to request post-liquidation relief. The date of liquidation will thus be the date of posting of the bulletin notice. Electronic notification and courtesy notices will continue to be provided, although they will not be considered legal notification.

In this connection, however, in recognition of the prevailing electronic environment, it has been decided to eliminate the physical stamping of entries as "Liquidated," with the date of liquidation provided for in § 159.9(c)(1). The bulletin posting will constitute the sole legal evidence of liquidation. Eliminating physical stamping frees Customs from an administrative burden, while imposing no corresponding hardship or inconvenience on the trade. On the contrary, it precludes the confusion which can arise when the posting and the stamping mistakenly set forth different dates (*see Tropicana, supra*, at 5-6). Moreover, the exclusive legal notification of liquidation is the posted bulletin notice, with the date of posting appearing thereon being the correct and lawful date of liquidation. Any date represented on the entry as being the date of liquidation has, by itself, no force or effect whatever (*ibid.*).

*Ultimate Consignee*

*Comment:* Many commenters expressed concern over the definition of the term "ultimate consignee" as set forth in proposed § 142.3(a)(6), as well as over the seven examples included in the background of the notice of proposed rulemaking. In particular, several commenters opposed the requirement for name, street address, and appropriate identification number of the premises where merchandise will be delivered in the U.S., in the absence of a known buyer.

*Response:* Customs capability to identify fully all parties to an electronic transaction is essential to support investigative efficiency. The information concerning the premises in the U.S. to which merchandise is destined, in the absence of a known buyer, is necessary in order to complete the ultimate consignee field on the entry documents (CF 3461, 3461 ALT.), so that the entry can be properly processed through the ACS Selectivity Module. It should be emphasized that the definition of ultimate consignee was written to allow for more alternatives than would be permitted on a CF 7501, so Customs could accommodate the needs of the trade for the rapid release of cargo.

Customs agrees that the examples given caused confusion. Examples meeting the needs of both Customs and the trade will be developed and issued separately.

*Comment:* Several commenters have expressed concern that during certain times of the day, especially outside the normal business hours, they will be unable to obtain the appropriate identification number. Under these circumstances they will not be able to meet the requirement to provide this number. These commenters have requested that they be provided with a capability to query the ACS system with ultimate consignee name and address, and that the system return the identification number of the importer if the name and address is on file. However, owing to the Privacy Act, Customs is not permitted to release IRS numbers or Social Security numbers, which Customs uses as identification numbers.

*Response:* Customs will postpone enforcement of this requirement until such time as ACS has developed a method for electronic filers to query ACS with name and address. If the information is on file the ACS response to the query will be on encrypted identification number. The encrypted number will be referenced against the actual importer number during ACS processing.

**Conclusion**

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments with the modifications discussed above should be adopted. In addition, a number of editorial changes have been made including: changing "obtains permission" in the introductory text of § 113.62(j)(2) to "is qualified"; in § 143.1 noting that one of the purposes of ABI is to enhance enforcement of Customs and related laws; changing "Assistant Commissioner, Commercial Operations" to "Assistant Commissioner, Information Management" in §§ 143.2 and 143.3 dealing with action on applications to participate in ABI; rephrasing § 143.4 to make clear that service bureaus must maintain the confidentiality of the data they transmit in the same manner as provided for brokers (§ 111.24, Customs Regulations); in § 143.5 recognizing that the publication containing the ABI performance requirements and standards has been renumbered and renamed (Publication 552, Customs and Trade Automated Interface Requirements (CATAIR)); revising the definitions of "selectivity criteria" and "statement processing" in § 143.32 (o) and (p) for clarity; in § 143.35 adding the words "and review of data" after "selectivity criteria" in the third sentence so as to parallel § 143.34, and removing the last sentence to make clear that it is the "importer of record" who remains liable for the payment of duties; changing "Filers" to "Brokers" in § 143.37(a) and adding a cross reference to § 143.4. Furthermore, "ACS Operations" is changed to "ACS", this being the current designation of that office.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

**Paperwork Reduction Act**

The collection of information contained in this final regulation is in §§ 143.2 and 143.33-143.37. The collection of information contained in this regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1515-0174. The estimated average burden associated with this collection of information is 6.25 hours per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, Washington, DC 20229, or the Office of Management and Budget, Paperwork Reduction Project (1515-0174), Washington, DC 20503.

**Drafting Information**

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 111*

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

*19 CFR Part 113*

Customs bonds.

*19 CFR Part 142*

Customs duties and inspection, Imports.

*19 CFR Part 143*

Automated broker interface, Customs duties and inspection, Electronic entry filing, Imports.

*19 CFR Part 159*

Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action.

**Amendments to the Regulations**

For the reasons set forth in the preamble, parts 111, 113, 142, 143 and 159, Customs Regulations (19 CFR parts 111, 113, 142, 143 and 159) are amended as set forth below.

**PART 111—CUSTOMS BROKERS**

1. The authority citation for part 111 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, 1641; unless otherwise noted.

2. Section 111.22 is amended by adding two sentences to the end of paragraph (d), and by revising paragraph (e) to read as follows:

**§ 111.22 Additional record of transactions.**

* * * * *

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(d) *Prescribed format.* * * * For those transactions filed electronically, brokers must be able to provide Customs with the information shown on the prescribed format. However, a separate ledger need not be maintained for these transactions.

(e) *Authorization.* The regional commissioner for the region where a broker has given notification to maintain records of financial transactions on a centralized system basis, as set forth in § 111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section.

3. Section 111.23 is amended by revising paragraphs (a)(1) and (e), removing current paragraph (f), and by redesignating paragraph (g) as (f), and revising it, to read as follows:

**§ 111.23 Retention of records.**

(a) *Place and period of retention*—(1) *Place.* The records, as defined in § 111.1(f), and required by §§ 111.21 and 111.22 to be kept by the broker, shall be retained within the Customs district to which they relate, unless notification of centralized accounting records is given under paragraph (e) of this section, or notification is provided by electronic entry filers under part 143, subpart D, of this chapter.

* * * * *

(e) *Notification*—(1) *Applicability.* The procedure to maintain financial records on a centralized system basis is generally available to brokers who have been granted permits to do business in more than one district.

(2) *Form and content.* If centralized storage is desired by the broker, he must submit a written notice addressed to the regional commissioner responsible for the region in which the centralized records are to be maintained. The written notice shall include:

(i) The address at which the broker intends to maintain the centralized accounting records. This location must be within a district where the broker has been granted a permit;

(ii) A detailed statement describing all the records of financial transactions to be maintained at the centralized location, the methodology of record maintenance, a description of any automated data processing to be applied, and a list of all the broker's customs business activity locations; and

(iii) An agreement that there will be no change in the records, the manner of recordkeeping, or the location at which they will be maintained, unless Customs is first notified.

(3) *Action.* If the notification involves records from districts not within the jurisdiction of the regional commissioner of the region where the notification was filed, the regional commissioner shall inform the other affected regional commissioners of the centralized storage.

(f) *Reproduction of centralized accounting records.* The regional commissioner for the region in which a broker has given notification pursuant to paragraph (e) of this section, is responsible for approving requests for the reproduction of centralized financial records provided under paragraphs (b) and (d) of this section.

## PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.62 is amended by redesignating paragraph (j) as (k), and by adding a new paragraph (j), to read as follows:

**§ 113.62 Basic importation and entry bond conditions.**

* * * * *

(j) *Agreement to comply with electronic entry filing requirements.* If the principal is qualified to utilize electronic entry filing as provided for in part 143, subpart D, of this chapter, the principal agrees to:

(1) Comply with all conditions set forth therein;

(2) Retain all supporting documents, supporting data and/or any electronic transmissions, as required, or, in the event that such documentation is lost, damaged or destroyed, to retain true copies or graphic reproductions thereof;

(3) Produce them on demand, with a letter of explanation if they are true copies or graphic reproductions under paragraph (j)(2) of this section; and

(4) Send and accept electronic transmissions without the necessity of paper copies.

## PART 142—ENTRY PROCESS

1. The authority citation for Part 142 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 142.3 is amended to add a new paragraph (a)(6) thereto, to read as follows:

**§ 142.3 Entry documentation.**

(a) * * *

(6) *Identification.* When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person, as provided in § 24.5 of this chapter, shall be shown on the entry documents (CF 3461, 3461 ALT, 7501). When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

* * * * *

## PART 143—SPECIAL ENTRY PROCEDURES

1. The title of part 143 is revised to read as set forth above.

2. The authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

3. Section 143.0 is amended by revising the first sentence to read as follows:

**§ 143.0 Scope.**

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI) and for the clearance of imported merchandise under appraisement and informal entries as well as under electronic entry filing, which are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. * * *

4. Part 143 is amended by revising the heading of subpart A and adding §§ 143.1 through 143.8 to read as follows:

**Subpart A—Automated Broker Interface**

Sec.
143.1 Eligibility.
143.2 Application.
143.3 Action on application.
143.4 Confidentiality of data.
143.5 System performance requirements.
143.6 Failure to maintain performance standards.
143.7 Revocation of ABI participation.
143.8 Appeal of suspension or revocation.

### Subpart A—Automated Broker Interface

**§ 143.1 Eligibility.**

The Automated Broker Interface (ABI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to Customs through ABI and to receive transmissions through ACS. Its purposes are to improve administrative efficiency, enhance enforcement of Customs and related laws, lower costs and expedite the release of cargo. Participants in ABI may be:



(a) Customs brokers as defined in § 111.1(b) of this chapter;

(b) Importers as defined in § 101.1(l) of this chapter; and

(c) ABI service bureaus, that is, an individual, partnership, association or corporation which provides communications facilities and data processing services for brokers and importers, but which does not engage in the conduct of customs business as defined in § 111.1(c) of this chapter.

**§ 143.2 Application.**

A prospective participant in ABI shall submit a letter of intent to the district director closest to his principal office, with a copy to the Assistant Commissioner, Information Management, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ABI system in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent must also contain the following, as applicable:

(a) A description of the computer hardware, communications and entry processing systems to be used and the estimated completion date of the programming;

(b) If the participant has offices in more than one location, the location of each office and the estimated start-up date for each office listed;

(c) The name(s) of the participant's principal management and contact person(s) regarding the system;

(d) If the system is being developed or supported by a data processing company, the data processing company's name and the contact person;

(e) The software vendor's name and the contact person; and

(f) The participant's entry filer cost and average monthly volume.

**§ 143.3 Action on application.**

(a) *Approval.* Permission to use ABI will be granted by the Assistant Commissioner, Information Management, or his designee, only to those applicants who are not delinquent or otherwise remiss in their transactions with Customs and are in compliance with the ABI system performance procedures and standards as described in § 143.5 of this subpart. If there is any cause to question the qualifications or fitness of the applicant to participate in ABI, the application may be referred for investigation and report. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant;

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation; and

(4) The character and reputation of the software vendor.

(b) *Denial.* If permission to use ABI is denied to an applicant by the Assistant Commissioner, Information Management, or his designee, written notice, including the grounds for the denial, will be given to him and to the district director. The applicant may appeal the denial in the manner prescribed in § 143.8 of this subpart and those procedures for handling an appeal shall apply.

**§ 143.4 Confidentiality of data.**

The electronic data received and exchanged by a service bureau shall be considered confidential, and the service bureau shall maintain the accuracy of data received in the process of formatting and transmitting such data on behalf of a filer, and shall not disclose this data or any information connected therewith to any persons other than the filer or Customs (see § 111.24 of this chapter).

**§ 143.5 System performance requirements.**

The performance requirements and operational standards for electronic data filing are detailed in Customs Publication 552, Customs And Trade Automated Interface Requirements (CATAIR), which is updated periodically. The Office of Automated Commercial Systems, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication. Each prospective participant must demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Publication 552.

**§ 143.6 Failure to maintain performance standards.**

ABI participants must adhere to the performance requirements and operational standards of the ABI system and maintain a high level of quality in the transmission of data, as defined in Customs Publication 552 (CATAIR) and Customs directives and policy statements, in order to participate in ABI.

(a) *Probational status.* A participant who does not adhere to the requirements and standards of the ABI system or maintain a high level of quality as described above may be placed on probational status. The participant will be notified, electronically and in writing, by the Director, ACS, of any action to place the participant on probation. The notice will specifically set forth the grounds for the proposed probation, and advise the participant that he will have 15 days from the date of the notice to show cause why the probationary period should not take effect. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, ACS, that the probationary period should not take effect, the Director will notify the participant of the effective date of the probationary period. The length of the probationary period may, in the discretion of the Director, ACS, be extended up to a maximum of 90 days, if the participant's performance remains below standard, but, except for immediate revocation under § 143.7, participation will not be suspended or revoked until the probationary period has lasted a minimum of 30 days. The participant's performance will be closely monitored during this time, which will include working with the participant and providing any necessary guidance to assist the participant in bringing his performance back to standard.

(b) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant will be suspended from operational status. The participant will be notified, electronically and in writing, by the Director, ACS, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension, and the right to appeal the suspension to the Assistant Commissioner, Commercial Operations, within 10 days following the date of the written notice of suspension (see § 143.8).

(c) *Reinstatement following suspension.* To obtain reinstatement to operational status, a suspended participant must submit a letter to the Director, ACS, stating that the deficiencies for which the suspension was invoked have been corrected. If, after the participant has demonstrated compliance with the system performance requirements and operational standards specified in § 143.5 of this part, if required, the Director is satisfied that the deficiencies have been corrected, the participant will be reinstated.

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**§ 143.7 Revocation of ABI participation.**

(a) *Fraud or misstatement of material fact.* If it is determined at any time that participation in the system was obtained through fraud or the misstatement of a material fact, the Director, Trade Operations, will immediately revoke ABI participation.

(b) *Risk of significant harm to system.* If the participant's continued use of ABI would pose a potential risk of significant harm to the integrity and functioning of the system, the Director, ACS, will immediately revoke ABI participation.

(c) *Notification to participant.* The participant will be notified, electronically and in writing, by the applicable Director, of the revocation. The notice will specifically set forth the grounds and effective date of revocation, and the right to appeal the revocation to the Assistant Commissioner, Commercial Operations, within 10 days following the date of the written notice of revocation.

**§ 143.8 Appeal of suspension or revocation.**

If the participant files a written appeal with the Assistant Commissioner, Commercial Operations, within 10 days following the date of the written notice of action to suspend or revoke participation as provided in §§ 143.6 and 143.7, the suspension or revocation of participation shall not take effect until the appeal is decided, except in those cases where the Director, Trade Operations, or the Director, ACS, respectively, determines that participation was obtained through fraud or the misstatement of a material fact, or that continued participation would pose a potential risk of significant harm to the integrity and functioning of the system. The Customs officer who receives the appeal shall stamp the date of receipt of the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner shall inform the participant of the date of receipt and the date that a response is due under this paragraph. The Assistant Commissioner shall render his decision to the participant, in writing, stating his reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the participant.

5. Part 143 is further amended by adding a new subpart D thereto, to read as follows:

**Subpart D—Electronic Entry Filing**

Sec.
143.31 Applicability.
143.32 Definitions.
143.33 Eligibility criteria for participation.
143.34 Procedure for electronic immediate delivery or entry.
143.35 Procedure for electronic entry summary.
143.36 Form of immediate delivery, entry and entry summary.
143.37 Retention of records.
143.38 Retrievability of records.
143.39 Penalties.

**Subpart D—Electronic Entry Filing**

**§ 143.31 Applicability.**

This subpart sets forth general requirements for the entry of imported merchandise processed electronically through the Customs Automated Commercial System (ACS). Entries processed electronically are subject to the documentation, document retention and document retrievability requirements of this chapter as well as the general entry requirements of Parts 141 and 142. Use of this system is voluntary and optional on behalf of the filer. Customs does not contemplate that processing of non-electronic filings shall be delayed.

**§ 143.32 Definitions.**

The following are definitions for purposes of this subpart D:

(a) *ACS.* "ACS" means the Automated Commercial System and refers to Customs integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

(b) *ABI.* "ABI" means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to Customs through ACS and to receive transmissions from ACS.

(c) *AII.* "AII" means Automated Invoice Interface and is a method of transmitting detailed invoice data through ABI.

(d) *Broker.* "Broker" means a Customs broker licensed under Part 111 of this chapter.

(e) *Certification.* "Certification" means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data is referred to as "certified".

(f) *Data.* "Data" when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR and/or Customs Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation.* "Documentation" when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the Customs Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT.* "EDIFACT" means the electronic Data Interchange for Administration, Commerce and Transport which provides an electronic capability to transmit detailed CF 3461, CF 7501 and invoice data.

(i) *Electronic immediate delivery.* "Electronic immediate delivery" means the electronic transmission of CF 3461 or CF 3461 alternate (CF 3461 ALT) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(j) *Electronic entry.* "Electronic entry" means the electronic transmission of CF 3461, CF 3461 ALT, or CF 7501 data utilizing ACS in order to obtain the release of merchandise from Customs custody.

(k) *Electronic entry summary.* "Electronic entry summary" means the electronic transmission of CF 7501 data utilizing ACS for the purpose of duty assessment and the collection of statistical data.

(l) *Filer.* "Filer" means the party certifying the electronic filing of the application for immediate delivery, entry or entry summary. Filer may be a broker or an importer of record filing his own entries through ABI without the use of a broker.

(m) *Preclassification/binding ruling number.* "Preclassification/binding ruling number" means the system by which classifications are approved and assigned a unique identifying number. This number may be transmitted as part of the ABI data.

(n) *Records.* "Records" means the records as defined in § 162.1a(a) of this chapter, which are required to be maintained pursuant to this chapter.

(o) *Selectivity criteria.* "Selectivity criteria" means the categories of information which guide Customs judgment in evaluating and assessing the risk of an immediate delivery, entry or entry summary transaction. Based upon these criteria, immediate delivery or entry transactions will be subject to either general examination, general examination with document review, or intensive examination. Entry summary transactions will be subject to either system review or summary document review. General examination (entry/immediate delivery) and system review (entry summary) procedures will constitute electronic processing provided all conditions necessary for electronic processing contained in this part are met.

(p) *Statement processing.* "Statement processing" means the method of collection and accounting within ACS which allows a filer to pay for more than one entry summary with one payment. ACS/ABI generates the statement, which is transmitted electronically to the filer, consisting of a list of entry summaries and the amount of duties, taxes or fees, if any, due for payment. Upon payment and collection of the statement, those entry summaries designated as electronic will be scheduled for liquidation (see § 24.25 of this chapter).



**§ 143.33 Eligibility criteria for participation.**

To be eligible for electronic immediate delivery, electronic entry and electronic entry summary, the filer must be qualified to use the ABI feature of ACS, as prescribed in § 143.5. To be eligible for electronic entry summary processing, filers must be authorized to use the ABI statement processing system. Filers not so authorized would have to follow the electronic entry summary with the submission of an entry summary in paper form along with any duties, taxes or fees accruing.

**§ 143.34 Procedure for electronic immediate delivery or entry.**

To file immediate delivery or entry electronically, the filer will submit certified immediate delivery or entry data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is not required to be physically submitted in paper form, merchandise will be released and Customs will electronically notify the filer.

**§ 143.35 Procedure for electronic entry summary.**

In order to obtain entry summary processing electronically, the filer will submit certified entry summary data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is not required to be physically filed in paper form, Customs will so notify the filer. The entry summary will be scheduled for liquidation once payment is made under statement processing (see § 24.25 of this chapter).

**§ 143.36 Form of immediate delivery, entry and entry summary.**

(a) *Electronic form of data.* If Customs determines that the immediate delivery, entry or entry summary data, in its electronic state including invoice data as provided in paragraph (c) of this section, is satisfactory under §§ 143.34 and 143.35, the electronic form of the immediate delivery, entry or entry summary through ABI shall be deemed to satisfy all filing requirements under this part. Further, the filer will not be required to produce or physically submit any official Customs forms of immediate delivery, entry or entry summary. The filer is responsible for the accuracy of the data submitted electronically to the same extent as if the documents were produced, signed and physically submitted by the filer (see § 111.32 of this chapter).

(b) *Accuracy of data.* Participation constitutes declaration by the electronic filer that, to the best of his knowledge, all transactions filed electronically fully disclose prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties, which are true and correct, and that all goods or services provided either free or at a reduced cost to the seller of the merchandise are fully disclosed (see § 111.32 of this chapter).

(c) *Submission of invoice.* In order to satisfy the statutory requirement for presentation of invoice, invoice data must be submitted in one of the following forms:

(1) Paper form;

(2) AII or EDIFACT format.

(3) In appropriate cases where a party has obtained a preclassification/binding ruling number covering the merchandise being entered, or is a participant in a pre-approval program, and information is electronically transmitted which is adequate for the examination of the merchandise and the determination of duties, and for verifying the information required for statistical purposes by § 141.61(e) of this chapter, such information will satisfy the invoice requirement of this part and part 141 of this chapter.

**§ 143.37 Retention of records.**

(a) *Period of retention—(1) Brokers.* Pursuant to § 111.23(a)(2) of this chapter, all records received or generated by the broker must be retained for a period of at least 5 years from the date of the entry or the date the merchandise was entered for consumption, unless maintenance of records is required for another time period (see § 143.4 of this part).

(2) *Importer.* Pursuant to 19 U.S.C. 1508(b), all records received by the importer must be retained for a period of at least 5 years from the date of the consumption entry or the date the merchandise was entered for consumption (see § 162.1c of this chapter).

(b) *Termination of broker's responsibility.* If the broker is discharged by the importer, he shall retain the documentation for those deliveries, entries or entry summaries filed by him prior to such discharge. Documentation in possession of a broker at the time of permanent termination of the brokerage business shall be accounted for pursuant to § 111.30(e) of this chapter.

(c) *Location of records.* Filers may store records and electronic data in centralized locations. If a centralized storage is desired by the filer, he must submit a written notice addressed to the Assistant Commissioner, Commercial Operations, U.S. Customs Service, Washington, DC, stating the location of the immediate delivery, entry or entry summary records.

(d) *Condition of records received.* Documentation supporting electronic immediate delivery, entry and entry summary must be retained in the condition as received by the filer or importer, unless the Assistant Commissioner, Commercial Operations, grants written permission to store such documentation by other means (including optical disk storage), in which case the originals need not be retained. If the supporting documentation is received electronically, unless the Assistant Commissioner, Commercial Operations, grants permission to store such documentation by other means, it must also be retained in the condition as received and stored, with the ability to generate paper reproductions of the documentation.

**§ 143.38 Retrievability of records.**

Pursuant to §§ 111.25 and 162.1a–162.1i of this chapter, Customs may request to see invoices or other documentation supporting electronic immediate delivery, entry or entry summary retained by the filer or importer. The filer or importer must produce these documents within a reasonable time and upon reasonable notice. The filer or importer may submit a certified copy of such supporting documentation, including those cases where the documentation is received and stored electronically. In the event the original supporting documentation is

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lost, damaged or destroyed, the filer or importer may submit true copies or graphic reproductions thereof with a letter of explanation.

**§ 143.39 Penalties.**

(a) *Brokers.* Brokers unable to produce documents requested by Customs within a reasonable time will be subject to penalties pursuant to § 111.91 of this chapter and 19 U.S.C. 1641.

(b) *Importers.* Importers unable to produce documents requested by Customs within a reasonable time will be subject to penalties pursuant to § 113.62(k) of this chapter.

**PART 159—LIQUIDATION OF DUTIES**

1. The authority citation for part 159 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 5151. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

2. Section 159.9 is amended by removing the second sentence from paragraph (c)(1), by revising its third sentence, and by adding two new sentences to the end of this paragraph as follows:

**§ 159.9 Notice of liquidation and date of liquidation for formal entries.**

* * * * *

(c) *Date of liquidation*—(1) *Generally.* * * * This posting or lodging shall be deemed the legal evidence of liquidation. For electronic entry summaries, the date of liquidation will be the date of posting of the bulletin notice of liquidation. Customs will endeavor to provide the filer with electronic notification of this date as an informal, courtesy notice of liquidation.

Carol Hallett,
*Commissioner of Customs.*

Approved: November 28, 1990.

Peter K. Nunez,
*Assistant Secretary for Enforcement.*

[FR Doc. 90-28284 Filed 11-30-90; 8:45 am]
BILLING CODE 4820-02-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 520**

**Animal Drugs, Feeds, and Related Products; Milbemycin Oxime Tablets; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a document that amended the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ciba-Geigy Corp. that appeared in the Federal Register of June 21, 1990 (55 FR 25300). The NADA provides for the use of milbemycin oxime tablets for prevention of heartworm disease and control of hookworm infections in dogs. This document removes a portion of the text in the "Limitations" section of the entry for milbemycin oxime tablets that was inadvertently codified.

**EFFECTIVE DATE:** June 21, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Griffith, Center for Veterinary Medicine (HFV-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1963.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 21, 1990 (55 FR 25300), FDA published a document amending the animal drug regulations to reflect approval of NADA 140-915 filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300. The NADA provides for the use of Milbemycin oxime tablets for prevention of heartworm caused by *Dirofilaria immitis* and control of hookworm infestions caused by *Ancylostoma caninum* in dogs. As published, 21 CFR 520.1445(c)(3) provided that "prior to initiation of treatment, dogs over 8 months of age should be tested for existing heartworm infection. If positive, dogs should be converted to a negative status prior to use of (the) drug." The approved labeling for this drug contains similar information, but agency policy does not require codification of the information. The information was inadvertently codified, and is therefore removed from the regulation.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is corrected as follows:

**PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**520.1445 [Corrected]**

2. Section 520.1445 *Milbemycin oxime tablets* is corrected in paragraph (c)(3) by removing the statement, "Prior to initiation of treatment, dogs over 8 months of age should be tested for existing heartworm infection. If positive, dogs should be converted to a negative status prior to use of drug."

Dated: November 26, 1990.

Robert Furrow,
*Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 90-28286 Filed 11-30-90; 8:45 am]
BILLING CODE 4160-01-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 382**

**[DoD Directive 5134.1]**

**Under Secretary of Defense (Acquisition)**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** As a part of the DoD effort to streamline and reduce the number of DoD-level acquisition related issuances, DoD Directive 5100.34, "Delegation of Authority with Respect to Contracts for Procurement of Public Utility Services" has been canceled and combined with DoD Directive 5134.1, "Under Secretary of Defense (Acquisition)" (32 CFR part 382). This document revises 32 CFR part 382.

**EFFECTIVE DATE:** August 8, 1989.

**ADDRESSES:** Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Kennedy, telephone (703) 697-1142.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 382**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 382 is revised as follows:

**PART 382—UNDER SECRETARY OF DEFENSE (ACQUISITION)**

Sec.
382.1 Purpose.
382.2 Definitions.
382.3 Responsibilities.
382.4 Functions.
382.5 Authorities and relationships.



Appendix to part 382—Delegations of Authority.

**Authority:** 10 U.S.C. 133.

**§ 382.1 Purpose.**

This part, pursuant to 10 U.S.C., assigns responsibilities, functions, relationships, and authorities as prescribed herein, to the Under Secretary of Defense (Acquisition) (USD(A)). This part also strengthens the ability of the USD(A) to improve the efficiency and effectiveness of DoD acquisition.

**§ 382.2 Definitions.**

(a) *Department of Defense Acquisition System.* A single uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system encompasses establishing and enforcing policies and practices that govern acquisitions, to include documenting mission needs and establishing performance goals and baselines; determining and prioritizing resource requirements for acquisition programs; planning and executing acquisition programs; directing and controlling the acquisition review process; developing and assessing logistics implications; contracting; monitoring the execution status of approved programs; and reporting to Congress.

(b) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Joint Chiefs of Staff (JCS); the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies, to include the Strategic Defense Initiative Organization (SDIO); and DoD Field Activities.

**§ 382.3 Responsibilities.**

The Under Secretary of Defense for Acquisition (USD(A)) is the principal staff assistant and advisor to the Secretary of Defense for all matters relating to the DoD Acquisition System; research and development; production; logistics; command, control, communications, and intelligence activities related to acquisition; military construction; and procurement.

(a) The USD(A) shall:

(1) Serve as the Defense Acquisition Executive (DAE) with full responsibility for supervising the performance of the DoD Acquisition System and enforcing the policies and practices contained in DoD Directive 5000.1,[1] DoD Instruction 5000.2,[2] OMB Circular No. A-109.[3]

(2) Chair the Defense Acquisition Board (DAB), supported by an integrated structure of acquisition-related committees, and, pursuant to § 382.5(c) of this part, serve as signatory authority on Acquisition Decision Memoranda documenting Milestone reviews by the DAB.

(3) Serve as the DoD Procurement Executive, with responsibilities as prescribed in E.O. 12352 of March 17, 1982 (3 CFR, 1982 Comp., p. 137) and 41 U.S.C. 401-424.

(4) Chair the DoD Ethics Council, with responsibilities as prescribed in DoD Directive 5120.47[4].

(5) Serve as the National Armaments Director and Secretary of Defense representative to the Four Power Conference.

(6) Establish and publish policies and procedures governing the operations of the DoD Acquisition System and the administrative oversight of defense contractors.

(7) Prescribe policies, in coordination with the IG, DoD, and the Comptroller of the Department of Defense (C, DoD), to ensure that audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication by different elements of the Department. The exercise of this responsibility shall not affect the authority of the IG under the Inspector General Act of 1978.

(8) Coordinate research and development programs DoD-wide to eliminate duplication of effort and ensure that available resources are used to maximum advantage.

(9) Establish policies and programs that strengthen DoD Component technology development programs, encourage technical competition and technology-driven prototyping that promise increased military capabilities, and exploit the cost-reduction potential of innovative or commercially developed technologies.

(10) Develop acquisition plans, strategies, guidance, and assessments, including affordability assessments and investment area analyses, in support of the acquisition Milestone review and Planning, Programming, and Budgeting System (PPBS) processes.

(11) Administer the Defense Acquisition Executive Summary (DAES) and Cost/Schedule Control System Criteria (C/SCSC) systems.

(12) Designate major defense acquisition programs as either DAB or Component programs, sign congressional certifications and reports to include Milestone authorization breaches, administer the Selected Acquisition Report (SAR) and Unit Cost Report (UCR) systems, and exercise the other specific authorities provided for in the delegations of authority contains in Appendix to this part.

(13) Develop, in coordination with the Under Secretary of Defense for Policy (USD(P)), memoranda of agreements and memoranda of understandings with friendly and Allied Nations relating to acquisition matters.

(14) Establish policies for maintenance of the defense industrial base.

(15) Supervise the management and performance of the Strategic and Critical Defense Materials Program pursuant to E.O. 12626 of February 25, 1988 (3 CFR, 1988 Comp., p. 552).

(16) Establish policies, in coordination with the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), for the training and career development of acquisition personnel.

(17) Advise the Secretary of Defense and the Deputy Secretary of Defense on technical and programmatic issues arising in Defense Planning and Resources Boards matters.

(b) For each assigned area identified in § 382.4, the USD(A) shall:

(1) Direct planning and analyses activities to assess the technical, economic, and military worth of specific acquisition programs and investment areas.

(2) Establish policies, systems, and standards that promote more effective and efficient administration and management of acquisition resources, and monitor the execution of approved programs to ensure available resources are being applied in accordance with established policies and standards.

(3) Review and evaluate DoD Component plans, programs, and budget submissions to ensure adherence to established priorities, policies and procedures, standards, and resource guidance; and, as appropriate, develop recommended alternatives for Secretary and Deputy Secretary of Defense consideration during all phases of the PPBS process.

(4) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense.

[1] Copies may be obtained, at cost, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 382.3(a)(1).

[3] Copies may be obtained by written request to: EOP Publications, 725 Seventeenth Street NW., Washington, DC 20503.

[4] See footnote 1 to § 382.3(a)(1).

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(5) Serve as primary focal point and principal spokesman for the Department of Defense; serve on boards, committees, and other groups pertaining to assigned functional areas; and represent the Secretary of Defense and the Deputy Secretary of Defense on USD(A) matters outside the Department of Defense.

(6) Establish and maintain management information and reporting systems.

(7) Perform such other duties as the Secretary or Deputy Secretary of Defense may prescribe.

**§ 382.4 Functions.**

The USD(A) shall carry out the responsibilities described in § 382.3, for the following functional areas:

(a) Acquisition management.

(b) Basic and applied research and the defense technology base.

(c) Design and engineering, and the development of weapon systems.

(d) Command, control, communications, and intelligence programs, systems, and activities related to acquisition.

(e) Logistics acquisition and management, to include supply systems, spares program management, weapons systems logistics elements, items standardization, transportation, energy, warehousing, distribution, and related activities.

(f) Procurement activities.

(g) Scientific and technical information.

(h) Production and manufacturing.

(i) Industrial base resources and productivity.

(j) Force modernization and sustainability and the availability of fielded major weapons systems.

(k) Developmental test and evaluation, as defined in DoD Directive 5000.3,[5] and, to the extent permitted by law, review and approval of the Test and Evaluation Master Plan.

(l) Environmental policy, services, and related actions.

(m) Assignment and reassignment of research and engineering and acquisition responsibility for programs, systems, and activities.

(n) Codevelopment, coproduction, coprocurement, logistics support, wartime host-nation support, and research interchange with friendly and Allied Nations, in coordination with the USD(P).

(o) Installation management and base closures.

(p) Construction, including construction funded by host-nations under the North Atlantic Treaty Organization (NATO) Infrastructure program and similar programs with other Allied countries.

(q) Strategic and critical defense materials, to include the acquisition, retention, and disposal of stocks and the conservation and development of sources of materials.

(r) Unique acquisition matters in support of special operations and low-intensity conflict programs, systems, and activities related to acquisition, in coordination with the Under Secretary of Defense for Policy.

**§ 382.5 Authorities and relationships.**

(a) The USD(A) shall take precedence in the Department of Defense on acquisition matters after the Secretary and Deputy Secretary of Defense. On all other matters, the USD(A) shall take precedence after the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments.

(b) The USD(A) is hereby granted the authority to direct the Secretaries of the Military Departments and Heads of all other DoD Components with respect to matters for which the USD(A) has responsibility. In this regard, the USD(A) shall strictly enforce the minimum established requirements in DoD Directive 5000.1 and the documentation requirements and procedures in DoD Instruction 5000.2. The authority of the USD(A) to direct the Secretaries of the Military Departments may not be delegated by the USD(A).

(c) The USD(A) shall decide upon the appropriate implementing actions to be taken as a result of DAB reviews, to include the establishment of specific exit criteria that must be satisfactorily demonstrated before an effect or program can progress to the next Milestone decision point. The USD(A)'s decisions shall be reflected in an Acquisition Decision Memorandum (ADM) issued by the USD(A) for implementation by the Heads of DoD Components. The authority of the USD(A) under this paragraph may not be delegated by the USD(A).

(d) The USD(A) may direct the C, DoD to withhold the release of funds to a program at the time of a DAB Milestone review of the program, when the USD(A) determines that such direction is necessary to ensure that the program meets the criteria established by DoD Directives for existing the Milestone and all additional exist criteria for the program established by the Secretary, Deputy Secretary or Under Secretary for Acquisition. USD(A) may not delegate the authority granted by this paragraph to anyone other than the Deputy USD(A).

(e) In the performance of assigned functions, the USD(A) shall:

(1) Exercise direction, authority, and control over the following activities and organizations that constitute the USD(A) organization (The reporting relationships of these activities and organizations with regard to the USD(A), e.g., direct or indirect, shall be at the discretion of the USD(A)):

(i) The Director of Defense Research and Engineering.

(ii) The Assistant Secretary of Defense (Production and Logistics).

(iii) Acquisition-related activities of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(iv) The Assistant to the Secretary of Defense (Atomic Energy).

(v) The Deputy Under Secretary (Industrial and International Programs).

(vi) The Director of Small and Disadvantaged Business Utilization.

(vii) The Director, Program Integration.

(viii) The Defense Advanced Research Projects Agency, the Defense Communications Agency, the Defense Logistics Agency, the Defense Mapping Agency, the Defense Nuclear Agency, the Defense Contract Management Agency, the Defense Systems Management College, and the On-Site Inspection Agency.

(2) Provide technical guidance for utilization of the Electromagnetic Compatibility Analysis Center.

(3) Provide policy guidance, goal setting, and management supervision for assigned Management Support Activities, and utilization of Federally Funded Research and Development Centers (FFRDCs).

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(f) The USD(A) shall also:

(1) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1M,[6] that implement acquisition policies and procedures for the functions assigned to the USD(A). Instructions to Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (CJCS).

(2) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5,[7] as necessary in carrying out assigned functions.

[5] See footnote 1 to § 382.3(a)(1).

[6] See footnote 1 to § 382.3(a)(1).

[7] See footnote 1 to § 382.3(a)(1).



(3) Communicate directly with the Heads of DoD Components. Communications to Commanders of the Unified and Specified Commands shall be through the CJCS.

(4) Establish arrangements for DoD participation in non-defense governmental programs for which the USD(A) is assigned primary DoD cognizance.

(5) Communicate with other Government Agencies, representatives of legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(6) Coordinate with and exchange information with other OSD and DoD officials exercising collateral or related responsibilities.

(7) Exercise the delegations of authority contained in appendix to this part.

(8) Work directly with the Service Acquisition Executives.

(g) Other OSD officials and Heads of Components shall coordinate with the USD(A) on all matters related to authorities, responsibilities, and functions assigned in this part.

(h) In the absence or disability of the USD(A), the Acting USD(A) may exercise all authorities of the USD(A).

(i) Nothing in this part or the Delegations of Authority to the USD(A) limits or otherwise affects delegations of authority by the Secretary of Defense to the Deputy Secretary of Defense.

**Appendix to Part 382—Delegations of Authority**

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives, and Instructions, the USD(A) is hereby delegated authority to exercise, within his assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, Executive order, authority of the Secretary of Defense derived from statute, Executive order, and interagency agreement, except where specifically limited by statute or Executive order to the Secretary of Defense, to include but not limited to:.

1. Exercise all authorities delegated to the Secretary of Defense by the Department of Commerce DPAS Del. No. 1, as amended (DoD Directive 4405.6 [1]).

2. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Public Law 85–804—an Act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, and Part 50 of the Federal Acquisition Regulation.

3. Make Secretarial determinations, justifications, and approvals on behalf of the Defense Advanced Research Projects Agency (DARPA), Defense Communications Agency (DCA), Defense Contract Management Agency (DCMA), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA) under Title 10, United States Code, with authority to redelegate to the Directors of those Agencies, as appropriate.

4. Act for the Secretary of Defense in the establishment and granting of waivers under the Buy American Act (41 U.S.C. 10a–10b).

5. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waiver the prohibition against procurement from certain countries, pursuant to title 3, Public Law 96–39, Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.), and E.O. 12260, July 26, 1979.

6. Act for the Secretary of Defense in exercise of authority delegated by the Administrator of General Services to dispose of surplus personal property and to waive prescribed demilitarization requirements under DoD Directive 4160.21.[2]

7. Make determinations with respect to the donation of surplus personal property to educational activities of special interest to the Armed Forces of the United States as prescribed in DoD Directive 4160.25.[3]

8. Act for, and exercise the powers of, the Secretary of Defense concerning requests for waiver of the navigation and vessel inspection laws of the United States under Public Law 891, 81st Congress, 2nd Session, December 27, 1950 (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army.

9. Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 3, 1953, as amended by E.O. 12038, February 3, 1978.

10. Act for the Secretary of Defense in the field of transportation and traffic management under section 201(a), title 11, of the Federal Property and Administrative Services Act of 1949, as amended (50 U.S.C. 481(a)) (DoD Directive 5128.9 [4]).

11. Act for the Secretary of Defense as the DoD claimant to other designated Executive Departments and Agencies for petroleum requirements and allocations in an emergency (DoD Directive 4140.25 [5]).

12. Exercise all responsibilities and authorities of the Secretary of Defense under title 10, United States Code, section 2404, with respect to the acquisition of petroleum.

13. Act for the Secretary of Defense in the implementation of OMB Circular No. A-109, "Major System Acquisitions," April 5, 1976.

14. Make the determination required by title 50, United States Code, section 1512(1), concerning transportation or testing of any lethal chemical or any biological warfare agent.

15. Act for the Secretary of Defense for ensuring compliance with Public Law 92–463, the Federal Advisory Committee Act (5 U.S.C. appendix), and make written determinations for conduct of all closed meetings of Federal Advisory Committees under his cognizance as prescribed by section 10(d) of the Act (5 U.S.C. appendix, 10(d)).

16. Act for the Secretary of Defense as the primary OSD interface with the Defense Policy Advisory Committee on Trade.

17. Act for the Secretary to make appropriate supporting determinations and execute leases under title 10, United States Code, section 2667.

18. Act for the Secretary of Defense in the implementation of OMB Circular A–76,[6] "Performance of Commercial Activities," as revised, August 4, 1983.

19. With the exception of the determination of highly sensitive classified programs, which is retained by the Secretary of Defense, exercise the responsibilities and authorities of the Secretary of Defense to designate major defense acquisition programs, as defined in title 10, United States Code, section 2430.

20. Act for the Secretary of Defense in preparing and revising an acquisition strategy plan for a major program throughout the period from the beginning of Full-Scale Development through the end of production under section 2438, subsection (a) of title 10, United States Code, and in making the prescribed congressional submissions. This delegation of authority may not be redelegated.

21. Act for the Secretary of Defense in making determinations and waivers, and in submitting waivers of requirements for competitive alternate sources with respect to Full-Scale Development and with respect to production for major programs under section 2438, subsection (c) of title 10, United States Code. This delegation of authority may not be redelegated.

22. Act for the Secretary of Defense in providing to the Committees on Appropriations, before funds are expended for Full-Scale Development, a plan for the development of two or more sources in production or a certification that the system or subsystem being developed will be procured in quantities insufficient to justify two or more sources under section 8057 of Public Law 100–202, section 8047 of Public Law 100–463, and identical provisions in subsequent statutes making appropriations to the Department of Defense. This delegation of authority may not be redelegated.

23. Act for the Secretary of Defense in making certifications, providing reports, and approving waivers for major defense acquisition programs required by title 10, United States Code. This authority includes, but is not limited to, the following:

[1] Copies may be obtained, at cost, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to paragraph 1. of this appendix.

[3] See footnote 1 to paragraph 1. of this appendix.

[4] See footnote 1 to paragraph 1. of this appendix.

[5] See footnote 1 to paragraph 1. of this appendix.

[6] Copies may be obtained by written request to: EOP Publications, 725 Seventeenth Street NW., Washington, DC 20503.

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a. Submission of notification and report that a competitive prototype strategy is not practicable (Section 2365).

b. Make waivers and notify Congress of each waiver for the acquisition of defense equipment under cooperative projects and report on the award of cooperative contracts (Section 2407). This authority may not be redelegated.

c. Submit Selected Acquisition Reports (Section 2432).

d. Make and submit certifications required for Unit Cost Reports (Section 2433).

e. Submit Manpower Estimate Reports (Section 2434).

f. Provide the notifications for program deviations for milestone-authorized programs (Section 2437).

24. Exercise all authorities delegated to the Secretary of Defense by E.O. 12580, January 23, 1987, concerning responses to releases of hazardous substances for Department of Defense facilities and vessels under Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, *et seq.*) as amended by the Superfund Amendments and Reauthorization Act (Pub. L. 99-499, October 17, 1986).

25. Exercise all responsibilities and authority of the Secretary of Defense under 10 U.S.C. 2701-2707 and 10 U.S.C. 2810 with respect to conduct of the Defense Environmental Restoration Program.

26. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2354 for the DoD Components other than the Military Departments.

27. Serve on and attend meetings of the Federal Acquisition Regulatory Council, established by section 25 of the Office of Federal Procurement Policy Act, as amended. The Deputy Under Secretary of Defense for Acquisition shall serve in the absence of the USD(A). This authority may not be redelegated.

28. Perform the functions and responsibilities set out at section 25(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 421). The authority to review and approve or disapprove regulations relating to procurement under subsection 25(d)(1) may not be delegated to any person outside the office of the USD(A).

29. Exercise the authority of the Secretary of Defense under 10 U.S.C. 2407 with respect to NATO Cooperative Projects as defined in section 27 of the Arms Export Control Act (AECA). The authority to grant waivers as authorized in section 2407(c) may not be redelegated.

30. Exercise all responsibilities of the Secretary of Defense under Public Law 93-155, Defense Industrial Reserve Act of 1973 (50 U.S.C. 451-455) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned plants and industrial plant equipment is maintained to meet the needs of the Armed Forces in time of a national emergency or in anticipation thereof.

31. Act for the Secretary of Defense to establish and administer an Industrial Preparedness Program in furtherance of E.O. 12656, section 501, paragraphs (2), (11), (13), and (14), February 23, 1988, and Defense Mobilization Order VII-7 (Revised), in accordance with DoD Directive 4005.1.[7]

32. Act for the Secretary of Defense in the exercise of authority under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.) (in accordance with E.O. 12626, February 25, 1988.

33. Act for the Secretary of Defense, under the authority of Federal Property Management Regulations, Temporary Regulation F-227, July 30, 1974, or under any other Delegation of Authority that may hereafter be made by the Administrator of General Services, to enter into contracts for public utility services for a period not to exceed 10 years.

a. This authority is hereby further delegated to the Secretaries of the Army, Navy, and Air Force with authority to redelegate, as appropriate. Exercise of this authority is subject to the direction, supervision and control of the USD(A).

b. This authority is also further delegated to the Director of the Defense Communications Agency in connection with the leasing of communications facilities, and to the Directors of the Defense Logistics Agency and Defense Nuclear Agency in connection with the leasing of local telecommunications facilities and services. This authority may be redelegated as appropriate. Exercise of this authority is subject to the direction, supervision and control of the USD(A).

The USD(A) may redelegate these authorities, as appropriate, except as otherwise specifically indicated above or prohibited by law, directive or regulation.

Dated: November 27, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28292 Filed 11-30-90; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3864-6]

### Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** USEPA is approving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Navistar International Transportation Corporation (Navistar) in Springfield, Ohio. The revision consists of variances for Navistar's individual miscellaneous metal parts and products coating lines. The variances exempt these lines from the requirements of Ohio Administrative Code (OAC) Rule 3745-21-09(U)—(a 3.5 pounds of volatile organic compounds per gallon of coating, excluding water, limitation) and allow the source to meet control requirements by using an alternative emission control program (bubble) at its facility. USEPA is approving this revision because the bubble reflects a decrease in emissions from the level allowed in the SIP, and meets USEPA's Emission Trading Policy Statement requirements.

**EFFECTIVE DATE:** This final rulemaking becomes effective January 2, 1991.

**ADDRESSES:** Copies of the SIP revision request, public comments, and USEPA's analysis are available at the following addresses for review. (It is recommended that you telephone Maggie Greene at (312) 886-6088 before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revision to the Ohio State Implementation is available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

Maggie Greene, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

**SUPPLEMENTARY INFORMATION:** On February 28, 1989, the Ohio Environmental Protection Agency (OEPA) submitted a revision to its ozone SIP for the Navistar International Transportation Corporation (Navistar). Navistar is located in Clark County, which is designated as a nonattainment area for ozone. The requested revision consists of variances which exempt individual miscellaneous metal parts and products surface coating lines from the requirements contained in Ohio Administrative Code (OAC) Rule 3745-21-09(U), and which allow the sources to meet control requirements using an alternative emissions control program (bubble). The Ohio variances become effective at the State level upon USEPA's approval and expire 3 years from that date. On March 30, 1990, OEPA modified this request slightly by deleting two lines from its original bubble request.

### Summary of the Proposed Revision

Navistar has in operation nine miscellaneous metal parts and products

[7] See footnote 1 to paragraph 1, of this appendix.



coating lines at its assembly plant and body plant in Springfield, Ohio. The lines are identified as P001 (Line 57), P002 (Line 58), K010 (Line 59), K011 (Line 61), K012 (Line 64), K013 (Line 77/78), K014 (Line 28), K016 (Chassis Line #1) and K017 (Chassis Line #2) at the assembly plant and K001 (cab primer line) at the body plant. These lines are subject to OAC Rule 3745-21-09(U)(1)(a)(iii) which limits the VOC content of coatings used to 3.5 lbs/gallon of coating, less water. In order to address four noncomplying lines, Ohio originally proposed to use credits generated by the shutdown of lines K001, P002, K010, K011, and K012, to offset excess emissions from lines K009, K013, K016, and K017.[1]

On February 2, 1990, (55 FR 3606), USEPA proposed to disapprove the requested SIP revision because the State of Ohio did not correctly determine the baseline VOC emissions for the coating lines included in the proposed bubble. Navistar used 3 years (1984 through 1986) of production and emissions data to calculate the average baseline emissions levels. This, however, is in violation of USEPA's Emission Trading Policy Statement (ETSP) (December 4, 1986, 51 FR 43813), which states that the average of production and emissions data over the 2 years prior to the source's application for a bubble must be used to calculate the baseline level. No documentation was provided by Navistar or the State to justify the use of a 3-year average rather than the required 2 years average. (See the proposed rulemaking for a more detailed discussion of USEPA's rationale for proposing to disapprove the revision request.)

Both OEPA and Navistar submitted comments on the February 2, 1990, proposed rulemaking. The response to those comments is reflected in this final rulemaking and its divergence from USEPA's proposed disapproval. First, Navistar eliminated USEPA's single objection to the bubble as originally proposed by basing the baseline emission estimates on 1985 and 1986 production levels, the 2 years prior to Navistar's initial application for a bubble.

Next, the State and Navistar noted that subsequent to Navistar's application for the bubble, Navistar had brought two more coating lines (K016 and K017) into compliance with OAC Rule 3745-21-09(U)(1)(a)(iii). The State noted that it had inspected these lines, and it certified compliance with the rule. Thus, the State withdrew lines K016 and K017 from its original bubble request. The modified bubble baseline and post-bubble actual and allowable VOC emissions are shown in the following table:

VOC BUBBLE AS REVISED VOC EMISSIONS

[In tons per year]

| Coating Line | 1985/1986 before bubble | | After bubble actual/allowable |
|---|---|---|---|
| | Actual | Allowable | |
| K001 | 127.28 | 89.37 | 0 |
| K009 | 81.89 | 59.84 | 73.87 |
| K002 | 109.95 | 47.96 | 0 |
| K010 | 15.62 | 6.73 | 0 |
| K011 | 17.04 | 9.00 | 0 |
| K012 | 47.16 | 24.87 | 0 |
| K013 | 14.11 | 11.97 | 14.11 |
| K021 | 0 | 0 | 25.40 |
| K022 | 0 | 0 | 25.40 |
| K026 | 0 | 0 | 46.90 |
| K028 | 0 | 0 | 29.13 |
| Total | 413.05 | 249.74 | 214.81 |

### Analysis of the Appropriate Criteria To Use for Reviewing the Bubble

Guidance contained in the ETPS states that bubbles for sources located in areas requiring new ozone demonstrations of attainment (including areas with current SIP-calls) must produce substantial net reduction in actual emissions (*i.e.*, a reduction of at least 20 percent in the emissions from the baseline level is required). The requirement for a 20 percent reduction from the baseline may be waived for proposed bubbles pending before the USEPA prior to the date of the publication of the ETPS (before December 4, 1986). In addition, guidance given in a May 25, 1988, policy summary, titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987, **Federal Register**," states that the 20 percent reduction from the baseline may be waived for any bubble approved by a State prior to the date of a current SIP-call.

At the time the original Navistar bubble proposal was submitted to the USEPA, February 1989, the Springfield, Ohio area was not subject to an ozone SIP-call. An ozone SIP-call was issued by the USEPA for the Dayton area, which includes the Springfield, Ohio area, on November 8, 1989. Thus, the original bubble is clearly exempted from the 20 percent reduction from the emission baseline requirement.

The revision of the bubble to eliminate the two complying lines was submitted by Navistar to its local air agency, the Regional Air Pollution Control Agency, on December 22, 1989, and was forwarded to the OEPA on February 23, 1990. If this revision in the bubble is considered to transform the original bubble into a new bubble, the bubble would be subject to the requirement for a 20 percent emission reduction from the baseline.

USEPA considered whether or not the removal of complying lines K016 and K017 affects the balance of emission reduction credits applied through the bubble in judging whether or not the revised bubble should be treated as a new bubble. Because the coatings used in Lines K016 and K017 comply with Ohio's VOC content rule for miscellaneous metal coatings and because Navistar is not claiming excess emission control for these lines, the baseline emissions must equal the post-bubble emissions for these lines. Therefore, the inclusion or removal of these lines in or from the bubble cannot affect the balance of emission reduction credits in the bubble. Further, from an emission reduction standpoint, the revised bubble is equivalent to the original bubble. It is concluded on this basis that the revised bubble should not be treated as a new bubble and is not, therefore, subject to the 20 percent emission baseline reduction requirement. This means the proposed bubble meets USEPA's tests for acceptable bubbles.

### Final Action

USEPA is today approving this Navistar bubble as a revision to the Ohio SIP, because the revision now meets USEPA's Emission Trading Policy Statement requirements, and the bubble reflects a decrease in emissions from the level allowed by the SIP.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225).

On January 6, 1989, the Office of Management and Budget waived Tables Two and Three SIP revisions (54 FR

[1] On March 30, 1990, Ohio withdrew its revision request for lines K016 and K017 because Ohio stated that these two lines have come into compliance with the 3.5 pound of VOC per gallon of coating, excluding water, requirement of OAC rule 3745-21-09(U). It left in place its original request for revised emission limits for lines K009 and K013.

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2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 1991. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

**Note:** Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 9, 1990.

**Robert Springer,**

*Acting Regional Administrator.*

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

### Ohio—Subpart KK

2. Section 52.1870 is amended by adding new paragraph (c)(89) to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(c) * * *

(89) On February 28, 1990, the Ohio Environmental Protection Agency (OEPA) submitted a revision request to Ohio's ozone SIP for the Navistar International Transportation Corporation in Springfield, Ohio. It modified this request on March 30, 1990. The revision is in the form of variances for miscellaneous metal parts and products coating lines and exempts them from the requirements contained in Ohio Administrative Code (OAC) Rule 3745–21–09(U). These variances expire on January 4, 1994.

(i) Incorporation by reference.

(A) Condition Number 8 (which references Special Terms and Conditions Number 1 through 11) within both of the "State of Ohio Environmental Protection Agency Variances to Operate An Air Contaminant Source", Application Numbers 0812760220K009 and 0812760220K013 for Navistar International Transportation Corporation. The Date of Issuance is February 28, 1989.

[FR Doc. 90-27898 Filed 11-30-90; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

## 41 CFR Parts 301–1, 301–9, 301–10, 301–11, and 301–15

**[FTR Amdt. 12]**

### Federal Travel Regulation; Travel and Transportation Expense Payment System; Automated-Teller-Machine (ATM) Services

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Travel Regulation to provide for the use of automated-teller-machine (ATM) services by authorized Federal employees traveling on official business. An enhancement to the contractor-issued charge card program of the General Services Administration Travel and Transportation Expense Payment System allows cash withdrawals from ATM's by individual cardholders who are specifically authorized by their agencies to use ATM services. This rule implements the ATM services enhancement, thus offering agencies another method for providing travel advances to Federal employees on official business.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Louise Jernigan, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial (703) 557–1261.

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**List of Subjects in 41 CFR Parts 301–1, 301–9, 301–10, 301–11, and 301–15**

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR parts 301–1, 301–9, 301–10, 301–11, and 301–15 are amended as set forth below.

## 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 continues to read as follows:

**Authority:** 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301–1.1 is revised to read as follows:

**§ 301–1.1 Authority.**

This chapter is issued under the authority of 5 U.S.C. 5701–5709 and 40 U.S.C. 486(c).

## PART 301–9—MISCELLANEOUS EXPENSES

3. The authority citation for part 301–9 continues to read as follows:

**Authority:** 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

4. Section 301–9.1 is amended by revising paragraph (c) to read as follows:

**§ 301–9.1 Expenses allowable.**

* * * * *

(c) *Travelers checks, money orders, certified checks, or automated-teller-machine (ATM) services.* Reimbursement for the cost of travelers checks, money orders, or certified checks purchased in connection with official travel, as well as transaction fees for authorized ATM withdrawals, may be allowed. The amount of the checks, money orders, or ATM cash withdrawals may not exceed the amount of funds authorized to be advanced in accordance with the provisions of § 301–10.3.

* * * * *

## PART 301–10—SOURCES OF FUNDS

5. The authority citation for part 301–10 continues to read as follows:

**Authority:** 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

6. Section 301–10.1 is amended by revising the second sentence of paragraph (a) to read as follows:

**§ 301–10.1 General policy.**

(a) * * * However, Federal employees should not have to pay official travel expenses entirely from personal funds unless the employee has elected not to use alternative resources made available by the Government; i.e., contractor-issued charge cards, travelers checks, or contractor-provided automated-teller-machine (ATM) services. * * *

* * * * *

**§ 301–10.2 [Amended]**

7. Section 301–10.2(b)(2)(ii) is amended by adding in the second sentence the word "card" immediately after the phrase "other credit".

8. Section 301–10.3 is amended by revising the last sentence of paragraph (a) and paragraph (c)(4), by removing paragraph (d), by redesignating paragraph (e) as paragraph (d), and by revising the introductory text of paragraph (d) to read as follows:

**§ 301–10.3 Advance of funds.**

(a) * * * Agencies shall issue advances in the form of travelers checks or authorized ATM cash withdrawals when those methods are determined to be in the best interest of the Government.

* * * * *

(c) * * *

(4) *Exception precluded.* This exception authority may not be exercised in situations where the employee has elected not to use alternative funding resources made available by the Government; i.e., Government contractor-issued charge cards, travelers checks, or contractor-provided ATM services. This exception authority may not be exercised for travelers whose Government charge cards have been suspended or revoked because of delinquent payments.

(d) *Control and recovery of advances.* Agencies shall establish internal financial controls for assuring that travelers with outstanding travel advances are notified of any delinquencies in filing vouchers and repaying outstanding advance balances, and that travelers are promptly paid amounts owed to them by the agency. These controls should include procedures for reviewing outstanding travel advances prior to an employee's separation, and for settling all outstanding amounts.

* * * * *

## PART 301–11—CLAIMS FOR REIMBURSEMENT

9. The authority citation for part 301–11 continues to read as follows:

**Authority:** 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

10. Section 301–11.6 is amended by revising paragraph (b)(21) to read as follows:

**§ 301–11.6 Administrative approvals.**

* * * * *

(b) * * *

(21) Travelers checks, money orders, certified checks, or contractor-provided automated-teller-machine (ATM) services. (See § 301–9.1(c).)

* * * * *

## PART 301–15—TRAVEL MANAGEMENT PROGRAMS

11. The authority citation for part 301–15 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

12. The table of contents of part 301–15, subpart C and the heading of subpart C are revised to read as follows:

### Subpart C—Travel and Transportation Expense Payment System: Contractor-Issued Charge Cards, Centrally Billed Accounts, Travelers Checks, and Automated-Teller-Machine (ATM) Services

Sec.

301–15.40 Scope of subpart.
301–15.41 Applicability.
301–15.42 Definitions.
301–15.43 Agency participation.
301–15.44 Individual employee charge cards.
301–15.45 Centrally billed accounts.
301–15.46 Travelers checks.
301–15.47 ATM services.
301–15.48 Additional agency guidance and information.

13. Section 301–15.40 is amended by revising the introductory text and paragraphs (b) and (c), and by adding a new paragraph (d), to read as follows:

**§ 301–15.40 Scope of subpart.**

This subpart prescribes policies and procedures governing the use of the General Services Administration (GSA) travel and transportation expense payment system. GSA has contracted for the issuance and maintenance of individual contractor-issued charge cards, the establishment of centrally billed accounts, the issuance of travelers checks, and the provision of automated-teller-machine (ATM) services. The GSA travel and transportation expense program includes provisions for the following:

* * * * *

(b) Centrally billed accounts used by designated agency offices primarily for the purchase of passenger transportation services (see § 301–15.45);

(c) Travelers checks (or cash) used for other expenses; i.e., laundry, parking, local transportation, or tips (see § 301–15.46); and

(d) ATM access at locations throughout the United States and worldwide (see § 301–15.47).

14. Section 301–15.41 is revised to read as follows:

**§ 301–15.41 Applicability.**

This subpart applies to Federal agencies and departments that participate in GSA's travel and transportation expense payment system providing for contractor-issued charge cards, centrally billed accounts, travelers checks, and ATM services.

15. Section 301–15.42 is revised to read as follows:

**§ 301–15.42 Definitions.**

For the purposes of this subpart the following definitions apply:

(a) *Automated-teller-machine (ATM) services* are contractor-provided ATM services which allow cash withdrawals from participating ATM's to be charged to a contractor-issued charge card (see paragraph (c) of this section).

(b) *Centrally billed* means a Government Travel System account established by the charge card contractor at the request of a participating agency.

(c) *Charge card* means a contractor-issued charge card to be used by travelers of a participating agency to pay for passenger transportation services, subsistence expenses, and other allowable travel and transportation expenses incurred in connection with official travel.

(d) *Federal Travel Directory (FTD)* means a monthly publication issued by GSA and the Department of Defense to provide up-to-date information on charge cards, contract fares, lodging rates, car rental, per diem rates, travel management centers, and other travel and transportation matters. Federal agencies and employees should order copies of the FTD through their appropriate headquarters administrative offices. The FTD also is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The publication stock number is 722–006–00000–3.

(e) *Participating agency* means an agency or department that participates in GSA's travel and transportation expense payment system.

(f) *Travel Management Center (TMC)* means a commercial travel firm under contract to GSA that provides reservations, ticketing, and related travel management services for official travelers.

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(g) *Travelers checks* are contractor-issued travelers checks.

16. Section 301–15.43 is amended by revising paragraph (b) to read as follows:

**§ 301–15.43 Agency participation.**

* * * * *

(b) The agency headquarters office must approve participation in the program. Interested offices within the participating agency shall contact their local administrative or travel office to arrange initiation into this program.

(1) The charge card contractor will issue charge cards and establish centrally billed accounts only upon the request of authorized representatives of participating agencies.

(2) The charge card contractor will provide ATM services to cardholders who are specifically authorized by their agencies to use ATM services. To participate in the ATM program, agencies must perform a cost benefit analysis, determine whether the program will be advantageous, and develop program controls. Agencies must provide the GSA contracting officer a copy of the cost benefit analysis and a certification signed by the head of the agency or his/her designee stating that the ATM program is expected to be advantageous to the agency.

17. Section 301–15.44 is amended by revising paragraphs (a), (c), (e)(1), (e)(3), and (h) to read as follows:

**§ 301–15.44 Individual employee charge cards.**

(a) *Authority.* Under 41 CFR 101–41.203, Federal agencies historically used a U.S. Government Transportation Request (GTR), SF 1169, to purchase passenger transportation services directly from a common carrier or through a commercial travel agent under contract to GSA (see subpart A of this part). Authority to deviate from 41 CFR 101–41.203 was granted by the Administrator of General Services on August 4, 1983, thus allowing eligible individuals to participate in the charge card program.

* * * * *

(c) *Use of charge cards.* (1) The employee shall use the charge card issued under this program only to charge expenses incurred in conjunction with official travel or to obtain authorized ATM cash withdrawals (see § 301–15.47). The employee shall use the charge card to pay for official travel expenses to the maximum extent possible. There is no preset limit on the expenses which can be charged to the charge cards; however, ATM withdrawals are limited to the amounts stated in the ATM cardmember agreement and the employee's travel authorization. Although the employee is liable for payment of all charges incurred, including those for ATM withdrawals, the employee shall be reimbursed by his/her agency for all authorized and allowable travel and transportation expenses. However, employees are cautioned that charges in excess of authorized and allowable travel and transportation expenses (i.e., lodging and meal costs which exceed authorized amounts) are the financial responsibility of the employee and are not reimbursable. Use of the charge card (including use of the card to obtain an ATM cash withdrawal) does not relieve the employee of the responsibility to employ prudent travel practices and to observe rules and regulations governing official travel as set forth in this subtitle and implementing agency regulations.

(2) The charge card may be used to pay for passenger transportation services (including those services offered by carriers under contract to CSA) at the transportation carrier's ticket counter, TMC, or agency travel office, as appropriate, under the participating agency's policies and procedures. Agencies may elect to prohibit employees from using the charge card to purchase services directly from a carrier. The charge card shall not be used to procure travel and transportation services from commercial travel agencies that are not under contract to the Government to provide such services to the Government traveler.

* * * * *

(e) *Travel voucher claims*—(1) *Preparing and submitting travel vouchers.* Upon completing official travel, the employee must prepare and submit a travel voucher in the usual manner, together with any required receipts, to the appropriate finance or paying office. The employee is reimbursed for travel and transportation expenses authorized and allowable under this subtitle and agency policies and procedures. Participating agencies shall process travel vouchers within the time limits prescribed in § 301–10.1(b)(3).

* * * * *

(3) *Transportation charges and assignment of rights.* Use of charge cards for purchase of passenger transportation services is considered to be a cash purchase. Travel vouchers submitted for reimbursement of transportation purchased with charge cards must include a statement which assigns to the United States all rights which the traveler has in connection with recovery of overcharges from the carrier(s). This statement is preprinted on the SF 1012, and must be initialed by the employee when claiming reimbursement for transportation expenses. Employees using agency travel vouchers under approved exceptions to the SF 1012 must add this statement (see § 301–11.5(c)(3) for statement) if it is not preprinted on the voucher.

* * * * *

(h) *Financial obligations/liability.* Except for charges accrued against promptly reported lost or stolen cards, employees with charge cards are liable for all billed charges. (See paragraphs (c) and (g) of this section.) Government employees must pay their just financial debts under section 206 of Executive Order 11222 (May 8, 1965) and Office of Personnel Management Regulations, 5 CFR 735.207. At the request of the contractor, Federal agencies and departments, without Government liability, may assist in collecting delinquent employee accounts after 60 calendar days. The Government assumes no liability for charges incurred on employee charge cards (including charges relating to ATM withdrawals), nor is the Government liable for lost or stolen charge cards.

18. Section 301–15.45 is amended by revising paragraph (a) to read as follows:

**§ 301–15.45 Centrally billed accounts.**

(a) *Establishment.* Participating agencies may establish centrally billed accounts with the contractor for one or more designated offices within the agency primarily to purchase transportation services for groups or for infrequent travelers; i.e., employees not designated to receive individual cards. Agencies shall ensure that only authorized personnel use the accounts and that all tickets purchased are authorized. Charge cards are not issued for centrally billed accounts.

* * * * *

19. Section 301–15.47 is redesignated as § 301–15.48 and amended by revising paragraphs (a)(2) and (d), and a new § 301–15.47 is added, to read as follows:

**§ 301–15.47 ATM services.**

(a) *Enrollment in the ATM program.* Participating agencies shall determine which employees may enroll in the ATM program. Enrollment in the program is limited to employees whose charge card accounts are in a current status. The employees will be requested to complete an enrollment form for agency approval and submission to the contractor. Each employee will receive a personal identification number (PIN) which will be valid approximately ten days after the mailing of the PIN by the contractor.

(b) *Use of ATM services.* When authorized, the charge card may be used to obtain cash travel advances at ATM's worldwide. The employee must be enrolled in the ATM program and have received a PIN in order to obtain an advance. The charge card contractor will bill the amount of the withdrawal and the applicable transaction charge to the employee. An employee may not withdraw any amount unless authorized to do so. Furthermore, withdrawals may not exceed any limitations on advances stated on the employee's travel authorization. The use of cash withdrawn from an ATM is subject to all applicable regulations of the participating agency with respect to travel advances.

(c) *Cancellation and suspension of ATM privileges.* An employee's ATM privileges may be canceled by the employee, the participating agency, or the charge card contractor. Cancellation by an employee or participating agency may be accomplished by telephone notification with subsequent written confirmation to the charge card contractor. The contractor may cancel an employee's privileges only upon notifying and obtaining the concurrence of the participating agency. The charge card contractor will automatically suspend an employee's ATM privileges when the contractor's statement has not been paid in full within 60 calendar days of the billing date on the billing statement. Additionally, the contractor may suspend or cancel an employee's card if (after contacting the participating agency) the contractor reasonably believes that the employee has made an unauthorized withdrawal or withdrawals. Finally, an employee's ATM privileges are automatically canceled upon the cancellation of his or her card.

**§ 301–15.48 Additional agency guidance and information.**

(a) * * *

(2) A portion of the charge card application form is to be used to record the standard Federal organization code(s) contained in the Department of Commerce/National Institute of Standards and Technology publication, Codes for the Identification of Federal and Federally Assisted Organizations (FIPS PUB 95). Specific details concerning this requirement will be communicated by the charge card contractor directly to each participating agency.

* * * * *

(d) *Employee training.* Participating agencies shall ensure that each of their eligible employees is adequately trained in the use of the contractor-issued charge card, centrally billed account, or ATM services before allowing them to use these services.

Dated: October 17, 1990

**Richard G. Austin,**

*Administrator of General Services.*

[FR Doc. 90-28178; Filed 11-30-90]

BILLING CODE 6820-34-D



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6821

[MT–930–4214–10; MTM 072057]

### Partial Revocation of Public Land Order No. 4484; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes a public land order insofar as it affects 40 acres of National Forest System land withdrawn for the United States Army Corps of Engineers Libby Dam Project within the Kootenai National Forest. The land is no longer needed for this purpose. The revocation is needed to permit consummation of an exchange. This action will open the land to operation of the general land laws and mining. The land has been and remains open to mineral leasing.

**EFFECTIVE DATE:** January 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4484, which withdrew National Forest System lands for protection of facilities of the Libby Dam Project, is hereby revoked insofar as it affects the following described land:

**Principal Meridian, Montana**

*Kootenai National Forest*

T. 36 N., R. 28 W.,
Sec. 12, SW¼SW¼.

The area described contains 40.00 acres of land in Lincoln County.

At 9 a.m. on January 2, 1991, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws, prior to the date and time of restoration, is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: November 26, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90–28280 Filed 11–30–90; 8:45 am]

BILLING CODE 4310–DN–M

### 43 CFR Public Land Order 6822

[WY–930–4214–10; WYW 28542]

### Amendment of Public Land Order No. 6397, Partial Revocation of Reclamation Withdrawal; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order will amend Public Land Order No. 6397, which partially revoked the Executive Order of May 14, 1915, as it affected 25,402.56 acres of public land withdrawn by the Bureau of Reclamation for the Colorado River Project (Flaming Gorge Unit). The land descriptions, comprising a total of 1,215 acres, were inadvertently omitted from Public Land Order No. 6397; however, the acreage of the lands, described below, were included in the total acreage of the land revoked by Public Land Order No. 6397.

**EFFECTIVE DATE:** December 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Tamara J. Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 6397, which revoked the Executive Order of May 14,

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1915, is hereby amended for the following described lands:

a. This land is located within the Flaming Gorge National Recreation Area and is subject to an oil shale withdrawal.

Sixth Principal Meridian, Wyoming

T. 17 N., R. 108 W.,
Sec. 4, NW¼SW¼.

The area described contains 40 acres in Sweetwater County.

b. These lands are subject to a coal withdrawal created by the Executive Order of July 13, 1910.

T. 12 N., R. 109 W.,
Sec. 14;
Sec. 15, lots 1 to 4, inclusive, and lots 7 to 11, inclusive, E½NE¼, NW¼NE¼, and NE¼NW¼;
Sec. 22, lots 6, 7, W½of lot 10, lot 11, NE¼NW¼, SW¼NW¼, and W½SE¼NW¼.

The areas described aggregate 1,175.49 acres in Sweetwater County.

2. The land described in paragraph 1a is located within the Flaming Gorge National Recreation Area, and will therefore remain closed to the operation of the public land laws, including the mining laws. The land has been and will continue to be open to mineral leasing for oil and gas and sodium in some circumstances. The land is administered by the U.S. Forest Service.

3. The land described in paragraph 1b is located within a coal withdrawal, and will not be opened to the operation of the public land laws nor to nonmetalliferous mineral location. The land has been and will continue to be open to metalliferous mineral location and mineral leasing.

Dated: November 28, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-28281 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-22-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89-157]**

### Radio Broadcasting Services; Show Low, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document, issued on the Commission's own motion, substitutes Channel 228C3 for Channel 228A at Show Low, Arizona, and modifies the Class A license issued to Dorothy Litchfield Woodworth for Station KVWM-FM to specify operation on the higher powered channel. *See* 54 FR 26220, June 22, 1989. Coordinates for Channel 228C3 at Show Low are 34-13-14 and 110-01-49. With this action, the proceeding is terminated.

**DATES:** Effective January 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-157, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Arizona, is amended by removing Channel 228A and adding Channel 228C3 at Show Low.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28269 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-498; RM-6916]**

### Radio Broadcasting Services; Bethany Beach, DE

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 278A to Bethany Beach, Delaware, at the request of Alfred R. Campagnone. See 54 FR 48283, November 22, 1989. Channel 278A can be allotted to the Bethany Beach in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 38-32-22 and West Longitude 75-03-20. With this action, this proceeding is terminated.

**DATES:** Effective January 11, 1991. The window period for filing applications will open on January 14, 1991, and close on February 13, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-498, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Delaware, is amended by adding Channel 278A at Bethany Beach.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28267 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-579; RM-7065]**

### Radio Broadcasting Services; Big Rapids and Whitehall, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 272C3 for Channel 272A at Big Rapids, Michigan, and modifies the license for Station WAAQ(FM) to specify operation on the higher class channel, in response to a petition filed by West Michigan Radio, Inc. *See* 54 FR 53657 December 29, 1989. The coordinates for Channel 272C3 are 43-43-20 and 85-36-30. To accommodate the upgrade at Big Rapids, we will substitute Channel 248A for Channel 273A at Whitehall, Michigan. The construction permit for Channel 273A at Whitehall will be amended to specify operation on Channel 248A. Pyramid Broadcasting, Inc., is the permittee of Channel 273A. The coordinates for Channel 248A at Whitehall are 43-23-04 and 86-19-30. Canadian concurrence has been obtained for these allotments.

**EFFECTIVE DATE:** January 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-579, adopted November 8, 1990, and released November 28, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 272A and adding Channel 272C3 at Big Rapids and by removing Channel 272A and adding Channel 248A at Whitehall.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28268 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 819 and 852

**RIN 2900-AE90**

### VA Acquisition Regulation; Expansion of Procurement Preference Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to expand the existing Vietnam Era and Disabled Veteran-Owned Small Business Outreach Program to include all veteran-owned businesses. The existing Procurement Preference Program Goals Report is also being codified. This amendment will implement the initiative recently approved by the Deputy Secretary of Veterans Affairs and will enable contracting activities to solicit offers from a larger category of veterans on a preferred basis.

**EFFECTIVE DATE:** These interim rules are in effect December 3, 1990. Comments must be received on or before January 2, 1991. Comments will be available for public inspection until January 14, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Barbara Danzig, Chief, Acquisition Policy Staff (93P), Office of Acquisition and Material Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2394.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On September 9, 1983, the Department of Veterans Affairs directed all VA contracting activities to take affirmative action to solicit Vietnam era and disabled veteran-owned small businesses and assist them in participating in VA contracting opportunities. On December 27, 1984, the VAAR was changed to include this program. Since October 1, 1988, VA contracting activities have established annual Vietnam era and disabled veteran-owned business procurement goals. On April 5, 1990, the Deputy Secretary approved an initiative to expand the Vietnam era and disabled veteran-owned small business program to include all veteran-owned businesses and has mandated the inclusion of all small veteran-owned businesses in the VA Socioeconomic Procurement Program. The VAAR is being changed accordingly.

**II. Executive Order 12291**

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291.

**III. Regulatory Flexibility Act (RFA)**

Since a notice of proposed rule making is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2) and are, therefore, not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

**IV. Paperwork Reduction Act**

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Parts 819 and 852**

Government procurement.

Approved: November 23, 1990.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

48 CFR Chapter 8, Department of Veterans Affairs, is amended as set forth below:

**PART 819—[AMENDED]**

1. The authority citation for part 819 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

**Subpart 819.2—[Amended]**

2. In subpart 819.2, section 819.201, paragraph (a) and the first sentence in paragraph (d) are revised to read as follows:

**819.201 General policy.**

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU) (005SB) is responsible for the overall supervision of the Department of Veterans Affairs Small and Disadvantaged Business Utilization program and will assist administrations and key staff officials in developing their respective small business programs.

* * * * *

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(d) The Director, National Cemetery System, Chief Benefits Director, Deputy Assistant Secretary for Facilities, Deputy Assistant Secretary for Administration, Director, VA Marketing Center and Directors of Department of Veterans Affairs field facilities with Acquisition and Materiel Management Service activities will designate an employee of their respective organizations to serve as a small and small disadvantaged business specialist.

* * *

3. In subpart 819.2, section 819.202–5, paragraphs (a) through (h) are added to read as follows:

**819.202–5 Data collection and reporting requirements.**

* * * * *

(a) Each VA acquisition activity shall establish goals for expenditure of funds with preferred businesses within their projected annual budget. The preference programs supported by VA are listed in paragraph (c) of this section. OSDBU is responsible for Department-wide goals and accomplishments and will approve or adjust each acquisition activity's goals.

(b) A Procurement Preference Program Goals Report (Report Control Symbol 00–0427) shall be submitted annually by each acquisition activity to reach OSDBU by November 1. Each report shall contain total expenditure estimates and goals for the current fiscal year and explanations of the methods utilized to arrive at each proposed goal.

(c) All acquisition activities shall submit information and procurement preference goals as identified in paragraphs (c)(1) through (c)(9) of this section. In addition, the Office of Acquisition and Materiel Management, the VA Marketing Center and the Office of Facilities shall submit the information identified in paragraphs (c)(1) through (c)(12) of this section. Goals shall be expressed in dollars and rounded to the nearest thousand.

(1) Estimate of total procurement dollar expenditures. (Excluding delivery orders against General Services Administration (GSA) FSS contracts.)

(2) Small business awards.

(3) Minority business direct awards.

(4) SBA 8(a) awards.

(5) Women-owned business awards.

(6) Labor surplus area awards.

(7) Veteran-owned business awards.

(8) Vietnam era veteran-owned business awards (including disabled Vietnam era veterans).

(9) Disabled veteran-owned business awards (other than Vietnam era disabled veterans).

(10) Estimate of total dollar value of subcontracts to be awarded by reporting prime contractors.

(11) Subcontracts to be awarded to small business concerns by prime contractors.

(12) Subcontracts to be awarded to small disadvantaged business concerns by prime contractors.

(d) Anticipated problems in the attainment of the proposed goal in any category shall also be identified. This information will be used in negotiating the Department goals with SBA.

(e) As an addendum to the report, each procuring activity shall provide a narrative explaining the reason(s) for any shortfall(s) in the achievement of any previous fiscal year goal category. This explanation shall be specific and will be used by OSDBU to justify Department shortfalls.

(f) Upon review by OSDBU of the proposed goals, each acquisition activity will be notified of the acceptance of goals as submitted, or of any deficiencies. If the goals are not acceptable, the acquisition activity will be requested to submit further written justification for the goal submitted. Based on documents submitted, OSDBU will make a final determination on the goal assignment.

(g) Accomplishment of goals identified in paragraphs (c)(1) through (c)(12) of this section will be determined by OSDBU from data reported by acquisition activities into the Federal Procurement Data System (FPDS).

(h) Achievement in subcontracting shall be reported by Office of Facilities, Office of Acquisition and Materiel Management, and VA Marketing Center on a semiannual basis to be received by OSDBU not later than October 31 for the period ending September 30, and April 30 for the period ending March 31.

4. In subpart 819.2, section 819.202–70, paragraphs (a), (d), (m) and (n) are revised to read as follows:

**819.202–70 Additional responsibilities.**

* * * * *

(a) Develop a plan of operation to increase the share of contracts and purchase orders awarded to small business, including veteran, Vietnam era and disabled veteran-owned, and LSA concerns.

* * * * *

(d) Make maximum utilization of the SBA small business source list (i.e., Procurement Automated Source System) when considering the disposition of all procurement requirements. As part of each procurement action involving other than small purchase procedures, VA acquisition personnel shall periodically request from SBA a PASS listing of veteran-owned, including Vietnam era and disabled, and women-owned contractors capable of meeting known requirements. Acquisition personnel will utilize PASS as a primary source file. Firms identified on the PASS list shall be included in the contract file. Small business source lists are available through the SBA Regional Offices.

* * * * *

(m) If the acquisition activity is assigned an SBA Procurement Center Representative (PCR), assure that the representative is provided logistical support, cooperation, and access to all reasonably obtainable contract information directly pertinent to PCR's official duties.

(n) Encourage technical and requirements personnel to identify veteran-owned and women-owned small business sources.

* * * * *

**Subpart 819.70—[Amended]**

5. In subpart 819.70, remove the word "Business" in the subpart heading and add, in its place, the word "Businesses".

6. In subpart 819.70, section 819.7001, the last sentence in paragraph (a), and paragraph (b) are revised to read as follows:

**819.7001 Policy.**

(a) * * * Consistent with and in furtherance of that statute, it is the policy of the Department of Veterans Affairs to encourage participation by veteran-owned and operated small businesses, including Vietnam era and disabled, in VA acquisitions.

(b) All VA facilities having procurement requirements for which veteran-owned small businesses are known sources, will take affirmative action to solicit these firms and assist them in participating in VA acquisition opportunities.

7. In subpart 819.70, section 819.7002, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, a new paragraph (a) is added, and the first sentence of the introductory text to section 819.7002, and newly redesignated paragraph (c) are revised to read as follows:

**819.7002 Definition.**

A veteran-owned small business is a small business that is at least 51 percent owned by a veteran who also controls and operates the business. * * *

(a) Veterans who served in the U.S. Armed Forces and were discharged or released under conditions other than dishonorable.

* * * * *

(c) Disabled veterans with a minimum compensable disability of 30 percent, or a veteran who was discharged for disability.

8. In subpart 819.70, section 819.7003 is revised to read as follows:

**819.7003 Procedure.**

(a) To obtain information on business development for veteran-owned businesses and further identify veteran-owned small businesses, contracting officers shall contact the veterans affairs officers at the local SBA district office. When counselling small businesses, contracting officers shall determine if the business is veteran-owned and operated and ensure that SF 129s are completed properly to identify veteran-owned business.

(b) The veteran-owned business representation in 852.219–70 shall be included in all solicitations.

9. In subpart 819.70, section 819.7004, the section heading and the first two sentences in section 819.7004 are revised to read as follows:



**819.7004 Waiver of the use of veteran-owned firms.**

It is the policy of the Department of Veterans Affairs to provide veteran-owned firms every opportunity to participate in the acquisition process. A contracting office wishing to waive this policy for a particular procurement involving other than small purchase procedures must first process a VA Form 90–2268. * * *

**PART 852—[AMENDED]**

10. The authority citation for part 852 continues to read as follows:

**Authority:** 38 U.S.C. 210 and 40 U.S.C. 486(c).

**Subpart 852.2—[Amended]**

11. In subpart 852.2, section 852.219–70, the paragraph designation for a paragraph (a) is removed, paragraph (b) is removed, and the certification following the undesignated introductory text to the section is revised to read as follows:

**852.219–70 Veteran-owned small business.**

* * * * *

**Veteran-Owned Small Business**

The offeror represents that the firm submitting this offer ( ) is ( ) is not, a veteran-owned small business, ( ) is ( ) is not, a Vietnam era veteran-owned small business, and ( ) is ( ) is not, a disabled veteran-owned small business. A veteran-owned small business is defined as a small business, at least 51 percent of which is owned by a veteran who also controls and operates the business. Control in this context means exercising the power to make policy decisions. Operate in this context means actively involved in day-to-day management. For the purpose of this definition, eligible veterans include:

(a) A person who served in the U.S. Armed Forces and who was discharged or released under conditions other than dishonorable.

(b) Vietnam era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged under conditions other than dishonorable.

(c) Disabled veterans with a minimum compensable disability of 30 percent, or a veteran who was discharged for disability.

Failure to execute this representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award (see FAR 14.405).

(End of Provision)

[FR Doc. 90–28220 Filed 11–30–90; 8:45 am]

BILLING CODE 8320–01–M

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# Proposed Rules

Federal Register
Vol. 55, No. 232
Monday, December 3, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Parts 140 and 646

[FHWA Docket No. 90-15]

RIN 2125-AC54

### Reimbursement for Railroad Work and Railroad-Highway Insurance Protection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA proposes to revise its regulations on reimbursement for railroad work to add an optional method of determining eligibility of reimbursable self-insurance costs and raise the reimbursable limits for railroad protective insurance. These changes should ease the administrative burden of determining appropriate self-insurance rates for worker compensation insurance and public liability and property damage insurance, and bring the reimbursable railroad protective liability insurance limits into line with the loss exposure increases over the last 10 years.

**DATES:** Comments must be received on or before February 1, 1991.

**ADDRESSES:** Submit written signed comments, to the Federal Highway Administration, HCC–10, FHWA Docket No. 91–15, room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Poston, Office of Engineering, 202–366–0450; or Michael J. Laska, Office of Chief Counsel, 202–366–1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

### Background

The FHWA's current regulation dealing with reimbursement for worker compensation insurance and public liability and property damage insurance for railroad force account work performed on Federal-aid highway projects is contained in 23 CFR part 140, subpart I. Under existing § 140.906(b), the costs of this insurance are eligible for reimbursement. Costs may be developed by one of the following three means: (1) Actual costs to the railroad of the insurance premiums; (2) a labor additive rate based on historical premiums cost data; or (3) if a railroad is a self-insurer, at experience rates properly developed from actual costs, not to exceed the rates of a regular insurance company.

Several railroads are self-insurers. The Liability Insurance Committee of the Railroad Insurance Management Association claims that railroads have experienced considerable difficulty in getting self-insurance rates approved. It has suggested as an alternative that a reimbursable fixed national force account self-insurance rate of 8 percent, to cover both worker compensation insurance and public liability and property damage insurance, be included in the regulation.

Prior to a 1982 regulatory change, 23 CFR part 140, subpart I contained a provision allowing use of a fixed percentage labor surcharge to cover the insurance costs. The percentages were 3 percent for worker compensation insurance and 1 percent for public liability and property damage insurance. However, due to difficulties in establishing reasonable and universally applicable national rates, these fixed rates for insurance costs along with several other fixed labor surcharge rates were dropped from the regulation.

The FHWA agrees that problems are occurring in determining equitable self-insurance rates. To ease the administrative burden of determining appropriate self-insurance rates, the FHWA is proposing to amend its regulation to allow the alternative of a fixed rate to cover both worker compensation insurance and public liability and property damage insurance. The FHWA is proposing to use an 8-percent rate as suggested by the Railroad Insurance Management Association. Information available to the FHWA indicates the commercial rate for this insurance is in the range of 9 to 14 percent.

The FHWA's current regulation dealing with maximum dollar amounts of coverage for railroad protective liability insurance to be reimbursed from Federal-aid funds is contained in 23 CFR part 646, subpart A. Under existing § 646.111(a), the maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of $2 million per occurrence with an aggregate of $6 million for each annual period with certain exceptions included in 23 CFR 646.111(b).

The above limits have been in effect since 1980. Because of loss exposure increases over the last 10 years and the obvious potential for catastrophic loss involving a train derailment at a rail/highway project site, the Liability Insurance Committee of the Railroad Insurance Management Association has requested that the reimbursable limits be raised to $5 million per occurrence and $10 million aggregate per annual policy period.

The FHWA agrees that there is a need to update its railroad protective liability insurance coverage limits. Accordingly, the FHWA is proposing to amend its regulation to increase the reimbursable coverage to $5 million per occurrence and an aggregate of $10 million per annual period. The FHWA has limited information on the availability and increased cost of insurance for the proposed increased limits. Commenters are invited to submit any information they have on these issues.

### Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also initially determined that the expected impact of this proposed revision will be minimal. Although contractors may be reimbursed for additional insurance coverage, the FHWA believes that such reimbursement would not appreciably impact the contractors, including small entities. Accordingly, a full regulatory evaluation is not required. Under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), and based on information available to FHWA at this time, this section, if promulgated, will not have a significant economic impact on a substantial number of small entities. Commenters are invited to submit any data relevant to this issue.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing, the FHWA proposes to amend part 140, subpart I and part 646, subpart A of chapter 1 of title 23, Code of Federal Regulations, as set forth below.

### List of Subject in 23 CFR Parts 140 and 646

Grant programs—transportation, Highways and roads, Insurance, Railroads.

Issued on: November 23, 1990.

T.D. Larson,
*Administrator.*

The FHWA proposes to amend 23 CFR part 140, subpart I and part 646, subpart A as follows:

## PART 140—REIMBURSEMENT

1. The authority citation for part 140 is revised to read as follows and all other authority citations which appear throughout part 140 are removed:

**Authority:** 23 U.S.C. 101(e), 114(a), 115(b), 120, 121, 122 and note, 315; 49 CFR 1.48(b).

### Subpart I—Reimbursement For Railroad Work [Amended]

2. Part 140, subpart I is amended by revising § 140.906(b)(2) to read as follows:

**§ 140.906 Labor costs.**

* * * * *

(b) * * *

(2) Where the company is a self-insurer there may be reimbursement.

(i) At experience rates properly developed from actual costs, not to exceed the rates of a regular insurance company for the class of employment covered or

(ii) At the option of the Company, a fixed rate of 8-percent for worker compensation, public liability and property damage insurance together.

## PART 646—RAILROADS

3. The authority citation for part 646 continues to read as follows:

**Authority:** 23 U.S.C. 109(e), 120(d), 130, and 315; 49 CFR 1.48(b).

### Subpart A—Railroad-Highway Insurance Protection [Amended]

4. In § 646.111, paragraph (a) is revised to read as follows:

**§ 646.111 Amount of coverage.**

(a) The maximum dollar amounts of coverage to be reimbursed from Federal funds with respect to bodily injury, death and property damage is limited to a combined amount of $5 million per occurrence with an aggregate of $10 million applying separately to each annual period except as provided in paragraph (b) of this section.

* * * * *

[FR Doc. 90–28244 Filed 11–30–90; 8:45 am]

BILLING CODE 4910–22–M

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## 23 CFR Part 625

[FHWA Docket No. 90–13]

RIN 2125–AC22

### Design Standards for Highways; Geometric Design of Highways and Streets

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA is requesting comments on a proposed amendment to the design standards which apply to highway construction and reconstruction projects eligible to receive funding under the Federal-aid highway program. A 1990 revision of the American Association of State Highway and Transportation Officials' (AASHTO) publication entitled "A Policy on Geometric Design of Highways and Streets" has replaced the previous version of this policy published in 1984. If adopted by the FHWA, the new AASHTO publication would constitute FHWA's policy on the geometric design for federally-assisted construction projects.

**DATES:** Comments must be received on or before April 2, 1991.

**ADDRESSES:** Submit written, signed comments in FHWA Docket No. 90–13 Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The current and proposed design standards are on file at the Office of the Federal Register in Washington, DC, and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR part 7, appendix D. Copies of the current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Seppo I. Sillan, Geometric and Roadside Design Branch, Federal-Aid and Design Division, Office of Engineering (202) 366–1327, or Mr. Michael J. Laska, Office of the Chief Counsel (202) 366–1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:** The standards, policies, and standard specifications that have been approved by the FHWA for application on all Federal-aid highway projects are incorporated by reference in 23 CFR part 625.

The American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State Highway and Transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member, and DOT officials participate in various AASHTO activities as non-voting representatives. Among other functions, the AASHTO develops and issues standards,

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specifications, policies, guides, and related materials for use by the States for highway projects. Many of the standards, policies, and standard specifications approved by the FHWA and incorporated in 23 CFR part 625 were developed and issued by the AASHTO. Revisions made to such documents by the AASHTO are independently reviewed and adopted by the FHWA before they are applied to Federal-aid projects.

Recently the AASHTO revised "A Policy on Geometric Design of Highways and Streets" (Policy). The primary reasons for development of the new document were to provide guidance on the design of highways and to update the previous Policy to incorporate the latest design criteria. A more detailed discussion of the changes in the revised Policy is included later in this NPRM.

Although the standards contained in the Policy do apply to the Interstate System, specific guidance applicable to design of highways on the Interstate System is included in another AASHTO publication "A Policy on Design Standards—Interstate System." The latest 1989 edition of that publication is the subject of a separate NPRM (see 54 FR 30095, July 18, 1989.)

**Summary of Changes**

The following paragraphs provide a brief synopsis of the information that is included in each of the ten chapters of the Policy and as appropriate, any significant additions, revisions or deletions made to the currently approved 1984 AASHTO Policy (old) in the 1990 (new) Policy.

*Foreword*

The only change is adding a reference to the Transportation Research Board's (TRB) 1987 publication Special Report 214, entitled "Designing Safer Roads, Practices for Resurfacing, Restoration, and Rehabilitation" for guidance for design of resurfacing restoration or rehabilitation (3R) projects (see 23 CFR 625.5(a)(11)).

*Chapter I—Highway Functions*

The concept of functional classification is presented and the various components considered in detail. This serves as an introduction to functional classification and an explanation of how the concept is employed in the publication. There are no significant changes made in this chapter.

*Chapter II—Design Controls and Criteria*

Those characteristics of vehicles, pedestrians, and traffic that act as criteria for design of various highway and street functional classes are covered in this chapter. Significant changes to the old Policy are the addition of five design vehicles along with their characteristics (page 21). The turning paths for all the design vehicles are revised. The coverage of capacity (page 75) is revised to agree with TRB's 1985 Special Report 209, "Highway Capacity Manual" (see 23 CFR 625.5(a)(8)). Additional information is provided on the elderly driver (page 42) and pedestrian (page 97).

*Chapter III—Elements of Design*

The basic elements of design, such as sight distance requirements, horizontal alinement, including superelevation, widths of turning roadways and vertical alinement, including maximum grades and climbing lanes, are covered in this chapter. Significant revisions to the chapter include the following:

1. Decision sight distances (page 125) are now provided for particular avoidance maneuvers, e.g., decision sight distance for a stop maneuver on a rural road, rather than a range of values only based on speed.

2. A maximum superelevation rate of 0.12 is now included (page 150) in the new Policy and values for design elements related to design speed and horizontal curvature are provided for this rate.

3. The figures showing the maximum and comfortable speed for horizontal curves, the superelevation and minimum length of superelevation runoff for low speed urban streets (page 188) are corrected so that the values provided in the figures agree with the method of their derivation explained in the old Policy.

4. Pavement widths for turning roadways (page 202) and widening for pavements on curves (page 213) necessary to accommodate the larger design vehicles are incorporated into the new Policy.

5. A new figure is added showing speed loss on grades for trucks reflecting the trend in decreased truck weight/horsepower ratio (page 231).

6. The criteria for justifying climbing lanes on two-lane (page 241) and multi-lane highways (page 251) are revised to agree with the 1985 "Highway Capacity Manual."

7. A section describing operational improvements on two-lane highways (page 262), including passing lane sections, three-lane sections, turnouts, shoulder driving and shoulder use, is added.

8. Figures showing design controls for crest (page 267) and sag (page 282) vertical curves based on the lower range of values for stopping sight distance are added.

*Chapter IV—Cross Section Elements*

The elements of a highway, such as pavement cross slope, traffic lanes, shoulders, medians, frontage roads and roadsides, are discussed in this chapter. Significant revisions to the Chapter include the following:

1. Suggested widths for two-way left-turn lanes of 10 to 16 feet are added (page 355).

2. The 1989 AASHTO "Roadside Design Guide" is referenced for guidance on sideslopes, traffic barriers, median barriers, and crash cushions (page 358).

3. Changes are made to the section on "Drainage Channels/Sideslopes" (page 351) and "Traffic Barriers" (page 361) to conform with information in the AASHTO "Roadside Design Guide."

4. A caution is added to consider in the design of a median barrier its effect on sight distance on horizontal curves and also that median widths should allow for the possible installation of a median barrier (page 364).

5. The section on "Noise Control" (page 376) is revised to agree with later information on determining traffic noise impacts.

6. Design of curb cuts (page 399) is revised to agree with Section 4.7 of the "Uniform Federal Accessibility Standards" (UFAS) required by 29 U.S.C. 792 (See 41 CFR 101–19.6, appendix A or 24 CFR part 40, appendix A).

*Chapter V—Local Roads and Streets*

The design guidance applicable to those roads functionally classified as local rural roads and local urban streets is covered in this chapter. There is only one significant change. For bridges of greater than 100 feet total length which are to remain in place, minimum structural capacity and roadway widths are no longer provided. Structures of this length shall be analyzed individually (page 427).

*Chapter VI—Collector Roads and Streets*

The design guidance applicable to those roads functionally classified as rural collector roads and urban collector streets is covered in this chapter. There are only few changes to this chapter. For low-volume rural highways grades may be two percent steeper than shown in Table VI–3 (page 472) rather than one percent, the median width providing space for a separate left turn lane is 10 to 16 feet rather than 10 to 16 feet (page 483), and the maximum dimension for a barrier curb is changed from 8-inches to 9-inches (page 494).



*Chapter VII—Rural and Urban Arterials*

The basis for design of the principal and minor arterial road systems in rural and urban areas is presented in this chapter. The significant changes between the old and the new Policies are as follows:

1. The limits of design speeds for various types of terrain are lowered (page 494). A 40 mph design speed is added whereas the minimum in the old Policy is 50 mph.

2. Appropriate grades are added to Table VII–1 (page 496) for a 40 mph design speed.

3. In Table VII–2 (page 499) widths are added for a 40 mph design speed. Widths are now shown for a Design Hour Volume (DHV) of over 200 rather than a DHV of over 400. In effect this reduces the minimum width of shoulder for DHV's over 400 from 10 feet to 8 feet.

4. A sentence is added indicating that on reconstructed arterials it may be acceptable to retain 11-foot lanes if the alinement and safety experience are satisfactory (page 508).

5. The indication that it is desirable to provide a 10-foot shoulder along 4-lane rural arterials is eliminated. Also, the wording is changed to recommend at least an 8-foot shoulder (page 508).

6. Long bridges are defined as having a length over 200 feet and it is indicated that offsets for these structures shall be at least 4 feet on both the left and right (pages 497 and 534).

7. The paragraph suggesting rural median openings be spaced far apart is omitted. Median widths are revised and those from 50 to 80 feet are discouraged where there are intersections (page 509).

8. A provision is added that when barrier curbs are provided along shoulders, the shoulders should be adequate to accommodate disabled vehicles and be at least 6 feet wide.

9. In the new Policy traffic lanes 11-feet wide and 8-foot shoulders are now permitted (page 515). The minimum widths in the old policy are 12-feet and 10-feet, respectively. Total right-of-way widths are omitted.

*Chapter VIII—Freeways*

The various types of freeways, their design elements, controls, criteria and cross-sectional elements are covered in this chapter. There are no significant changes in this chapter.

*Chapter IX—At-Grade Intersections*

The basic types of intersections and the elements involved in their designs, primarily those concerning the accommodation of turning movements, are described in this chapter. The following are the major changes to this chapter:

1. The practice of constructing short radii horizontal curves in order to achieve a right angle intersection is discouraged (page 686).

2. Edge-of-pavement layouts to accommodate the larger design vehicles are added (page 690).

3. Turning paths (page 706) for the larger WB–62 design vehicle negotiating various curve radii are added.

4. There is a revision in the method for determining sight distance at intersections for Cases III–B and III–C (page 754). The major change is that it is assumed the main line vehicle will slow to 85 percent of the design speed.

5. Superelevation rates of 0.12 may be used for curves at intersections where climatic conditions are favorable (page 776).

6. Turning paths of larger vehicles negotiating median openings with various control radii and designs are added (page 805).

7. A caution on the use of continuous left-turn lanes on highways with more than 4 lanes is added (page 826).

8. Deceleration lengths for auxiliary lanes do not include the length of taper. The taper length is now considered separately (page 828).

9. The method for determining lengths of tapers for auxiliary lanes presented in the "Manual on Uniform Traffic Control Devices for Streets and Highways" (see 23 CFR 655.601) is added (page 830).

10. Information is added addressing horizontal and vertical alinement requirements for highway/railroad crossings (page 842).

*Chapter X—Grade Separation and Interchanges*

The basic types of interchanges and grade separations, along with the design of their features, are discussed in this chapter. The following are the significant changes in this chapter:

1. Figure X–7 (page 882) is corrected to show the minimum horizontal distance required to effect grade separation based on current minimum sight distances.

2. A discussion (page 900) and figure X–22 on the use of the X-pattern ramp configuration are added.

3. The discussion of collector-distributor (C–D) roads in conjunction with cloverleaf interchanges (page 934 and 953) is revised to provide more specific guidance on minimum ramp volumes for consideration of C–D roads (1000 vph).

4. The gore area discussion (page 957) is expanded and figure X–61 is added to illustrate the terms used in defining the gore.

5. The wording regarding the connection of closely spaced entrance and exit terminals with an auxiliary lane (page 968) is revised.

6. The design of acceleration lanes is revised somewhat to include a minimum gap acceptance requirement for design of both two-lane (page 940 and 1000) and single-lane (page 966) entrance ramps. The minimum gap acceptance length of 300 feet to 500 feet may result in a shorter length of contiguous length of acceleration lane adjoining the through lane than the 600 feet required in the old Policy (depending on the length of ramp available for acceleration preceding the nose.)

7. The discussion of major forks and branch connections is revised to some extent (page 967).

8. Design of exit terminals is revised somewhat to permit greater variance in divergence as well as other changes (page 989 and 998).

9. Branch connections are shown with 50:1 to 70:1 tapers rather than only a 70:1 taper (page 1005).

**Review Procedure**

Based on an analysis of public comments and its own independent review, the FHWA will determine if the new Policy is acceptable, in whole or in part, as the basis for design of Federal-aid highways.

**Regulatory Evaluation and Impact**

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The FHWA has also determined that the expected impact of this proposed amendment will be minimal. This determination is based on the fact that although the new Policy contains new material, the basic criteria remain essentially the same. In all practicality, the new Policy reflects the criteria for the most part which have been in use in designing Federal-aid highways for the last several years. Accordingly, a full regulatory evaluation has not been prepared at this time.

Based on the discussion above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that the action will not have a significant economic impact on a substantial number of small entities.

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**Federalism Assessment**

The FHWA has carefully considered the federalism implication of this action in the light of the principles, criteria, and requirements of the Presidents Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

**List of Subjects in 23 CFR Part 625**

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations, part 625 as set forth below.

Issued on: November 23, 1990.

T. D. Larson,

*Administrator.*

The FHWA proposes to amend 23 CFR part 625 as follows:

**PART 625—DESIGN STANDARDS FOR HIGHWAYS**

1. The authority citation for part 625 continues to read as follows:

**Authority:** 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.4, paragraph (a)(1) is revised to read as follows:

**§ 625.4 Standards, policies, and standard specifications.**

* * * * *

(a) * * *

(1) A Policy on Geometric Design of Highways and Streets, AASHTO 1990. [3]

* * * * *

[FR Doc. 90-28245 Filed 11-30-90; 8:45 am]

BILLING CODE 4910-22-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[EE-61-88]**

**RIN 1545-AM05**

**Nondiscrimination Requirements for Qualified Plans**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document amends previously proposed regulations under the nondiscrimination requirements for qualified retirement plans under section 401(a)(4) and the average benefit percentage test under section 410(b)(2)(A)(ii) of the Internal Revenue Code. The amendments delay the effective dates in those proposed regulations. These amendments will provide the pubic with extra time to comply with the regulations and will affect sponsors of and participants in tax-qualified retirement plans.

**DATES:** Wrtitten comments must be delivered by February 1, 1991.

**ADDRESSES:** Send written comments to: Internal Revenue Service, P.O. box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE-61-88), Washington DC 20044. In the alternative, comments may be hand delivered to: Internal Revenue Building, room 4429, 1111 Constitution Ave., NW., Attention: CC:CORP:T:R (EE-61-88), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rebeca Wilson or David Munroe at 202-377-9372 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority**

This document amends previously proposed regulations under sections 401(a)(4) and 410(b) of the Internal Revenue Code. These regulations are propose to be issued under the authority contained in sections 401(a)(4), 410(b), and 7805 of the code.

**Explanation of Provisions**

On May 14 and September 14, 1990, the Treasury Department and the Internal Revenue Service published proposed comprehensive nondiscrimination regulations for qualified retirement plans under section 401(a)(4) and the average benefit percentage test under section 410(b)(2)(A)(ii) (55 FR 19987 and 55 FR 37888). The proposed regulations contain a number of requirements that are satisfied by reasonable, good faith compliance for plan years beginning before 1991. Since publication, the Treasury and the Service have received many comments requesting a delay of the effective data and an extension of the period in which reasonable, good faith compliance is permitted. After studying the issue, the Treasury and the service have decided to delay the effective date of these regulations from plan years beginning on or after January 1, 1991, to plan years beginning on or after January 1, 1992. This extension is limited to the provisions specified in this document and does not apply to other regulations under sections amended or added by the Tax Reform Act of 1986.

In addition, consistent with the change in the effective date for the average benefit percentage test, employers may chose to test employee stock ownership plans separately for purposes of that test for plan years beginning before January 1, 1992, in conformity with § 1.410(b)-7(e) prior to its amendment by the September 14, 1990, proposed regulations. Further, employers that meet the reasonable, good faith requirement of § 1.401(a)(4)-13 for the 1989, 1990, and 1991 plan years by operating their plans in accordance with the proposed regulations as published on May 14, 1990, need not take into account for those years the transitional rules provided for proposed § 1.401(a)(4)-13(c). However, the provisions of § 1.401(a)(4)-13(c) are proposed to be effective for those plans for the first plan year beginning on or after January 1, 1992.

This document is part of a coordinated package of guidance allowing employers an additional period to make amendments for certain requirements of the Tax Reform Act of 1986. It is issued concurrently with Notice 90-73, 1990-51 I.R.B., which (1) extends the expiration date of the remedial amendment period under section 401(b) until the end of the first plan year beginning after December 31, 1991, for certain disqualifying provisions and (2) extends the transitional date for the safe harbors under section 403(b)(12) in Notice 89-23, 1989-1 C.B. 654.

The amendments to the proposed regulations delay the time of required compliance with the proposed regulations. Accordingly, this document amends the sections of the purposed regulations published on may 14 and September 14, 1990, that are listed below, to delay the effective date and extend the reasonable, good faith compliance period for the proposed regulations under section 401(a)(4) and the average benefit percentage test under section section 410(b)(2)(A)(ii).



| Regulation section | Subject |
|---|---|
| 1.401(a)(4), A-1(b)(1) | Optional forms of benefit. |
| 1.401(a)(4)-3 | Nondiscrimination in amount of benefits. |
| 1.401(a)(4)-6 | Defined benefit plans with employee contributions. |
| 1.401(a)(4)-7 | Effect of section 401(l) permitted disparity. |
| 1.401(a)(4)-8 | Conversion of contributions and benefits. |
| 1.401(a)(4)-13 | Effective dates. |
| 1.410(b)-10(d) | Effective dates and transition rules. |
| 1.411(d)-4, A-1(b)(1) | Section 411 protected benefits. |

For plan years in which the amendments made by section 1112f(a) of TRA '86 apply to a plan, but before the proposed effective date, a plan must be operated in accordance with a reasonable, good faith interpretation of the requirements of section 401(a)(4). Whether compliance is reasonable and in good faith will generally be determined on the basis of facts and circumstances, including the extent to which the employer has consistently resolved all unclear issues in its favor. Reasonable, good faith compliance will be deemed to exist, however, if a plan is operated in accordance with the proposed regulations.

**Reliance on These Proposed Regulations**

Taxpayers may rely on these proposed regulations for guidance pending issuance of final regulations. If future regulations are more restrictive, they will be applied without retroactive effect.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

**Written Comments**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

**Drafting Information**

The principal authors of these proposed regulations are Rebecca Wilson and David Munroe of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR 1.401-0 through 1.425-1**

Employee benefit plans, Employee stock ownership plans, Income taxes, Individuals retirement accounts, Pensions, Stock options.

**Proposed Amendments to the Regulations**

The notices of proposed rulemaking (to amend 26 CFR part 1) that were published on May 14, 1990 (55 FR 19987), and September 14, 1990 (55 FR 37888), are amended as follows:

**Income Tax Regulations**

(26 CFR Part 1)

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citations:

**Authority:** 26 U.S.C. 7805, * * * § § 1.401(a)-4, 1.401(a)(3)-3, 1.401(a)(4)-6, 1.401(a)-7, 1.401(a)-8, and 1.401(a)-13 also issued under 26 U.S.C. 401(a)(4). § 1.410(b)-10 also issued under 26 U.S.C. 410(b).

**Par. 1a.** The authority citation for part 1 is further amended by revising the citation for § 1.411(d)-4 as follows:

**Authority:** * * * § 1.411(d)-4 also issued under 26 U.S.C. 411(d)(6);

**Par. 2.** Section 1.401(a)-4 as proposed to be amended on May 14, 1990 (55 FR 19907), is amended by revising the last sentence of A-1(a)(1) to read as follows:

**§ 1.401(a)-4 Optional forms of benefit.**

* * * * *

A-1: (a) *In general*—(1) *Scope.* * * * See § 1.401(a)(4)-4(d) for the definition of an optional form of benefit for plan years beginning after December 31, 1991.

* * * * *

**Par. 3.** Section 1.401(a)(4)-3 as proposed on May 14, 1990 (55 FR 19912), is amended by revising the last sentence of paragraphs (c)(3)(iii) and the last sentence of paragraph (c)(3)(iv)(A) to read as follows:

**§ 1.401(a)(4)-3 Nondiscrimination in amount of benefits.**

* * * * *

(c) *General test for nondiscrimination in amount of benefits provided.* * * *

(3) *Determining accrual rates.* * * *

(iii) *Accrued-to-date method.* * * * This method may, but need not, be applied with respect to benefits accrued and participation in plan years beginning after a selected date no later than December 31, 1991.

(iv) *Projected accrual rate method*—(A) *In general.* * * * This method may, but need not, be applied solely with respect to benefits accrued and participation in plan years beginning after a selected date no later than December 31, 1991.

* * * * *

**Par. 4.** Section 1.401(a)(4)-6 as proposed on May 14, 1990 (55 FR 19920), is amended as follows:

1. Paragraph (b)(3)(iii) is revised to read as set forth below.

2. Paragraph (b)(5) is revised to read as set forth below.

3. Paragraph (c)(4)(iii) is revised to read as set forth below.

**§ 1.401(a)(4)-6 Defined benefit plans with employee contributions.**

* * * * *

(b) *Determination of employer-derived and employee-derived benefits* * * *

(3) *Minimum benefit method* * * *

(ii) *Minimum benefit.* A plan satisfies this paragraph (b)(3)(ii) if it provides that in plan years beginning after December 31, 1991, each employee will accrue a benefit that equals or exceeds the sum of—

(A) The accrued benefit derived from employee contributions made for plan years beginning after December 31, 1991, determined in accordance with section 411(c), and

(B) Fifty percent of the total benefit accrued in plan years beginning after December 31, 1991, as determined under the plan benefit formula without regard to that portion of the formula designed

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to satisfy the minimum benefit requirement of this paragraph (b)(3)(ii).

* * * * *

(5) *Cessation of employee contributions method.* If a plan provides that no employee contributions, other than employee contributions allocated to separate accounts, may be made to the plan for plan years beginning after December 31, 1991, the plan may treat all benefits under the plan (other than benefits attributable to employee contributions allocated to separate accounts) as employer-derived.

(c) *Employee contributions not allocated to separate accounts* * * *

(4) *Grandfather rule for plans in existence on May 14, 1990.* * * *

(iii) For plan years beginning after December 31, 1991, all employees under the plan are permitted to make employee contributions at a uniform rate with respect to all compensation under the plan; and

* * * * *

**Par. 5.** Section 1.401(a)(4)–7 as proposed on May 14, 1990 (55 FR 19921), is amended by revising the first sentence of paragraph (d)(4)(i) to read as follows:

**§ 1.401(a)(4)–7 Effect of section 401(l) permitted disparity.**

* * * * *

(d) *Special rules* * * *

(4) *Transition rules*—(i) *Scope.* This paragraph (d)(4) provides rules that are applicable to a plan that was in existence prior to the first plan year beginning before January 1, 1989, that uses either the accrued-to-date method or the projected method under paragraph (c)(5) (iii) or (iv) of this section to impute disparity, and that applies such methods solely with respect to benefits accrued and participation in plan years beginning after a selected date no later than December 31, 1991. * * *

* * * * *

**Par. 6.** Section 1.401(a)(4)–8 as proposed on May 14, 1990 (55 FR 19924), is amended by revising the last sentence of paragraph (b)(3)(i) to read as follows:

**§ 1.401(a)(4)–8 Conversion of contributions and benefits.**

* * * * *

(b) *Nondiscriminatory benefits under a defined contribution plan* * * *

(3) *Option to use accrued-to-date method*—(i) *In general.* * * * The method provided in this paragraph (b)(3)(i) may, but need not, be applied solely with respect to participation, and adjusted account balances attributable to allocations accrued, in plan years beginning after a selected date no later than December 31, 1991, which date is the same for all employees in the plan.

* * * * *

**Par. 7.** Section 1.401(a)(4)–13 as proposed on May 14, 1990 (55 FR 19930), and amended on September 14, 1990 (55 FR 37899), is amended by revising the first sentence of paragraph (a) and by revising paragraph (c)(6)(ix) to read as follows:

**§ 1.401(a)(4)–13 Effective dates.**

(a) *In general.* Sections 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1992. * * *

* * * * *

(c) *Transitional rules for certain defined benefit plans* * * *

(6) *Definitions* * * *

(ix) *Reconstructed compensation for the freeze year.* The term "reconstructed compensation for the freeze year" means an employee's compensation for the freeze year determined under the following method in the same manner for every employee in the plan: First, select a single plan year beginning after the close of the freeze year but beginning not later than December 31, 1992; second, determine the employee's compensation for the selected plan year under the same compensation definition used to determine the employee's compensation for the current plan year under paragraph (c)(6)(ii)(A)(*3*) of this section; third, multiply the employee's compensation for the selected plan year by a fraction, the numerator of which is the employee's compensation for the freeze year determined under the same compensation definition used to determine the employee's frozen accrued benefit, and the denominator of which is the employee's compensation for the selected plan year determined under the compensation definition used to determine the employee's frozen accrued benefit.

**Par. 8.** Section 1.410(b)–10(d), as proposed on May 14, 1990 (55 FR 19934), is amended by revising the first sentence to read as follows:

**§ 1.410(b)–10 Effective dates and transition rules.**

* * * * *

(d) *Effective date for average benefit percentage test.* Section 1.410(b)–5 applies to plan years beginning on or after January 1, 1992. * * *

**Par. 9.** Section 1.411(d)–4, as proposed to be amended on May 14, 1990 (55 FR 19935), is amended by revising the last sentence of A–1(b)(1) to read as follows:

**§ 1.411(d)–4 Section 411(d)(6) protected benefits.**

* * * * *

A–1: * * *

(b) *Optional forms of benefit*—(1) *In general.* * * * See § 1.401(a)(4)–4(d) for the definition of an optional form of benefit for plan years beginning on or after January 1, 1992.

* * * * *

**John D. Johnson,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 90–28034 Filed 11–30–90; 8:45 am]

BILLING CODE 4830–01–M

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**26 CFR Part 42**

**[PS–98–90]**

**RIN 1545–AP22**

## Fuel Floor Stocks Tax of 1990

**AGENCY:** Internal Revenue Service, Treasury.

**AGENCY:** Notice of proposed rulemaking.

**SUMMARY:** This document contains a notice of proposed rulemaking relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel that are held on December 1, 1990. These rules reflect changes to the law made by the Revenue Reconciliation Act of 1990. The proposed regulations provide guidance relating to the person liable for the tax, exemptions from the tax, and reporting and record keeping responsibilities for the tax.

**DATES:** Written comments and requests for a public hearing must be received by January 2, 1991.

**ADDRESSES:** Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Attn: CC:CORP:T:R (PS–98–90), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS–98–90), Internal Revenue Service, room 4429, 1111 Constitution Ave., NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Frank Boland, (202) 566–4475 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The requirements for the collection of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information requirements should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The requirements for collection of information in this proposed regulation are in § 42.5(b). This information is required by the Internal Revenue Service to verify compliance with sections 11211 and 11213 of the Revenue Reconciliation Act of 1990. This information will be used to determine the amount of floor stocks tax for which a person is liable. The likely respondents/recordkeepers are businesses and other organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information that is available to the Internal Revenue Service. Individual respondents and recordkeepers may require more or less time, depending on their particular circumstances.

*Estimated total annual recordkeeping burden:* 75,000 hours.

*Estimated average annual burden per recordkeeper:* 0.5 hour.

*Estimated number of recordkeepers:* 150,000.

### Explanation and Provisions

#### *Background and Purpose of the Floor Stocks Tax*

The Revenue Reconciliation Act of 1990, Public Law 101–508 (the "Act"), increases the rates of excise taxes on gasoline, diesel fuel, and aviation fuel, effective December 1, 1990. The gasoline tax, under section 4081 of the Internal Revenue Code (the "Code"), increases from 9 cents per gallon to 14.1 cents per gallon; the diesel fuel tax, under section 4091, increases from 15 cents per gallon to 20.1 cents per gallon; and the aviation fuel tax, under section 4091, increases from 14 cents per gallon to 17.6 cents per gallon. These new rates include the 0.1-cent-per-gallon tax that funds the Leaking Underground Storage Tank Trust Fund ("LUST Fund").

The Act also imposes a floor stocks tax, which does not appear in the Code, on these fuels. The floor stocks tax is a one-time tax on fuels that are held at the first moment of December 1, 1990, at a point in the distribution chain where these fuels would not otherwise be subject to the increased tax rates. The rate of floor stocks tax generally is equal to the difference between the old and new tax rates, without regard to the LUST Fund financing rate. Thus, for example, the tax on sales or removals of gasoline after November 30, 1990, is increased by 5.1 cents per gallon but the floor stocks tax on gasoline is only 5 cents per gallon.

#### *General Operation of the Tax*

A floor stocks tax of 5 cents per gallon generally is imposed on previously-taxed gasoline and diesel fuel that is held at the first moment of December 1, 1990. Also, a floor stocks tax of 3.5 cents per gallon generally is imposed on previously-taxed aviation fuel that is held at the first moment of December 1, 1990. A 2.5-cents-per-gallon tax is imposed on diesel fuel that is held at that time for use in trains and was not previously taxed at the Highway Trust Fund financing rate under section 4091. Special rates apply to gasoline or diesel fuel used to produce gasohol or a diesel/fuel alcohol mixture. Exemptions from the tax are allowed for fuel held exclusively for an exempt use, for gasoline and diesel fuel held in the tank of a motor vehicle or motorboat, and gasoline or diesel fuel held by a person if the aggregate amount of such fuel held by that person (or the controlled group of which that person is a member) is not in excess of a specified amount. The person liable for the tax is the person that has title to the fuel at the first moment of December 1, 1990. This person must pay the tax to the Internal Revenue Service on or before May 31, 1991.

### Definitions

Section 42.2 of the regulations provides definitions relating to the floor stocks taxes. The definitions of "aviation fuel" and "diesel fuel" are in substance the same as the existing definitions under Notice 89–17, 1989–1 C.B. 647. Similarly, the definition of "gasoline" is in substance the same as the existing definition under § 48.4081–1(e)(4) of the proposed gasoline tax regulations (52 FR 44141, 44144 (November 18, 1987)) but also includes gasoline blend stocks and additives specified in Rev. Rul. 88–70, 1988–2 C.B. 338. The definition of "train" is similar to the existing definition in section IV(D)(1) of Notice 88–30, 1988–1 C.B. 497, 506, but is clarified to include both freight and passenger trains.

#### *Imposition of Floor Stocks Tax*

Section 42.3 identifies the fuels subject to the floor stocks tax, lists the applicable rates of tax, and identifies the person liable for the tax.

Section 42.3(d) and section 11218 of the Act provide that fuel held in a foreign trade zone at the first moment of December 1, 1990, is subject to the floor stocks tax.

However, this fuel is not taxed if it is otherwise exempt from tax under the rules of § 42.4.

#### *Exemptions From the Floor Stocks Tax*

Section 42.4 provides rules relating to exemptions from the floor stocks tax.

First, under § 42.4(b), the floor stocks tax generally does not apply to fuel held at the first moment of December 1, 1990, exclusively for an exempt use. An "exempt use" is any use of a fuel (other than use in producing gasohol or a diesel fuel/alcohol mixture, or use as fuel in a train) discussed in section 6420, 6421, or 6422 of the Code which entitles the user to a credit or refund of the tax imposed under section 4081 or 4091, as the case may be. The regulations provide that fuel is held exclusively for an exempt use only if: (i) The person holding the fuel at the first moment of December 1, 1990, actually uses the fuel in an exempt use, or (ii) in the case of gasoline, the person holding the fuel at that time is a gasoline wholesale distributor described in section 6416(a)(4) to the extent it actually sells the fuel at a tax-excluded price for a use described in section 6416(b)(2). Accordingly, except in the case of gasoline actually sold at a tax-excluded price by such a gasoline wholesale distributor, fuel is not held exclusively for an exempt use if it is held for resale (including resale to a person who will use the fuel for an exempt use). However, the user of fuel in an exempt use may be entitled to a credit or refund of floor stocks tax pursuant to sections 34, 6416, 6420, and 6427.

Diesel fuel held for use in a train is not treated as held for an exempt use and, therefore, a floor stocks tax of 2.5 cents per gallon applies to such fuel, even if the operator or owner of the train is a State or local government. Although State and local governments generally may obtain a credit or refund of tax paid on diesel fuel used by them for their exclusive use, section 6427(l)(4), as added by the Act, provides that the 2.5-cents-per-gallon tax on diesel fuel used in trains is not refundable.

Second, under § 42.4(c), the floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of December 1, 1990, in the fuel supply tank of a motor vehicle or motorboat. No exemption is provided for fuel held in "dead storage" (*i.e.*, the amount of fuel that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe).

Third, under § 42.4(d), a person is not liable for the floor stocks tax on gasoline if the amount of gasoline held by the person at the first moment of December

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1, 1990, does not exceed 4,000 gallons. In determining whether this threshold is crossed, the amount of gasoline a person holds exclusively for an exempt use and the amount of gasoline held by a person in the fuel supply tank of a motor vehicle or motorboat is not taken into account. If a person holds more than 4,000 gallons of gasoline, then the floor stocks tax is imposed on all gasoline that is held by the person and that is not otherwise exempt.

Members of a controlled group of companies and other organizations must aggregate the gasoline held by all members of the group in determining whether they hold not more than 4,000 gallons of gasoline. If holdings of all members in aggregate exceed 4,000 gallons, then the *de minimis* exemption does not apply to any member of the group. The aggregation rule for controlled groups does not affect the requirement that each separate person liable for floor stocks tax file a return. See §§ 42.3(c) and 42.5(d).

The rules in § 42.4(d) also apply to diesel fuel except that the threshold amount is 2,000 gallons.

*Inventory, Payment, and Return*

Section 42.5 requires that every person liable for tax and certain other specified persons must prepare and retain an inventory of fuel held at the first moment of December 1, 1990 (other than fuel that was not previously subject to tax or that is in the fuel supply tank of a motor vehicle or motorboat). Fuel held for use in a train must also be inventoried.

The tax must be paid by May 31, 1991, using Form 8109, Federal Tax Deposit Coupon. A return on Form 720, Quarterly Federal Tax Return (Revised January 1991), must also be filed by that date. Persons who are also required to report other excise taxes for the first quarter of 1991 must report the floor stocks tax and the other excise taxes on one Form 720. The due date for the return is May 31, 1991, even if returns for the other excise taxes are ordinarily due at an earlier date. This rule does not extend the time for making deposits or payments of the other excise taxes.

**Reliance on These Proposed Regulations**

These regulations are being issued in proposed form to provide timely guidance to taxpayers and to allow interested parties appropriate opportunity to provide comments prior to issuance of final regulations. Although final regulations may include changes made, for example, in response to comments, it is intended that taxpayers may rely on the proposed regulations until final regulations are issued.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Administrator of the Small Business Administration for comment on its impact on small business.

**Comments and Requests for a Public Hearing**

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. If a public hearing is scheduled, notice of the time and place for the hearings will be published in the Federal Register.

**Drafting Information**

The principal author of these proposed regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 42**

Excise taxes, Revenue Reconciliation Act of 1990.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR, ch. 1, is proposed to be amended as follows:

**Paragraph 1.** A new part 42 of the Code of Federal Regulations is added as follows:

## PART 42—FUEL FLOOR STOCKS TAX FOR 1990

Sec.

42.1 Scope of part.
42.2 Definitions relating to the floor stocks tax.
42.3 Imposition of floor stocks tax.
42.4 Exemptions from floor stocks tax.
42.5 Requirements with respect to inventory, payment and return.
42.6 Applicability of other laws.

**Authority:** 26 U.S.C. 7805.

### § 42.1 Scope of part.

The regulations in this part 42 relate to the fuel floor stocks taxes imposed by sections 11211(j) and 11213(b)(5) of the Revenue Reconciliation Act of 1990, Public Law 101–508. The taxes are imposed on previously-taxed gasoline, diesel fuel, and aviation fuel held at the first moment of December 1, 1990, and on diesel fuel held for use in trains on that date. These regulations describe the specific articles subject to tax, the rates of tax, and the persons liable for tax. These regulations also describe exemptions from the tax and requirements for inventory of fuel, payment of tax, and filing a return reporting the tax. These regulations are effective on December 1, 1990.

### § 42.2 Definitions relating to the floor stocks tax.

(a) *Overview.* This section provides definitions for purposes of the regulations in this part.

(b) *Act.* The term "Act" means the Revenue Reconciliation Act of 1990, Public Law 101–508.

(c) *Aviation fuel.* The term "aviation fuel" means any liquid (other than gasoline) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

(d) *Controlled group*—(1) *In general.* The term "controlled group" means—

(i) Any controlled group of corporations (within the meaning of paragraph (d)(2) of this section); and

(ii) Any other group of organizations under common control (within the meaning of paragraph (d)(3) of this section).

(2) *Controlled group of corporations*—(i) *In general.* The term "controlled group of corporations" has the meaning given that term by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein.

(ii) *Excluded members.* For purposes of this part, a controlled group of corporations includes members that are described in section 1563(b) (relating to excluded members).



(iii) *Examples of controlled groups.* Under section 1563(a), controlled groups of corporations include, but are not limited to—

(A) Parent-subsidiary controlled groups as defined in § 1.1563–1(a)(2);

(B) Brother-sister controlled groups as defined in § 1.1563–1(a)(3); and

(C) Combined groups as defined in § 1.1563–1(a)(4).

(3) *Group of organizations under common control.* The term "group of organizations under common control" means any group of organizations (as defined in § 1.52–1(b)) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 if—

(i) The rules of § 1.52–1 were applied without regard to whether an organization conducts a trade or business; and

(ii) The phrase "more than 50 percent" were substituted for "at least 80 percent" each place it appears in § 1.52–1(d)(2).

(e) *Diesel fuel.* The term "diesel fuel" means any liquid (including a diesel fuel/alcohol mixture but not including gasoline) that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle or diesel-powered train.

(f) *Diesel fuel/alcohol mixture.* The term "diesel fuel/alcohol mixture" means any mixture described in section 4091(c)(1)(A).

(g) *Floor stocks tax.* The term "floor stocks tax" means the tax imposed by sections 11211(j) and 11213(b)(5) of the Act on fuel held at the first moment of December 1, 1990.

(h) *Fuel.* The term "fuel" means gasoline, diesel fuel, and aviation fuel.

(i) *Gasohol.* The term "gasohol" means any mixture treated as gasohol for purposes of section 4081(c).

(j) *Gasoline.* The term "gasoline" means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the "motor method"); and

(2) All products that are listed in Revenue Ruling 88–70, 1988–2 Cumulative Bulletin 338, as "gasoline blend stocks" or "products commonly used as additives in gasoline."

(k) *Train.* The term "train" means any equipment or machinery that rides on rails regardless of whether the equipment or machinery transports passengers, freight, or a combination of both passengers and freight. Thus, the term includes a locomotive, work train, switching engine, or track maintenance machine. The term "train" does not include any equipment or machinery that does not ride on rails.

### § 42.3 Imposition of floor stocks tax.

(a) *Overview.* This section identifies the fuels subject to the floor stocks tax, the applicable rates of tax, and the persons liable for the tax.

(b) *Fuels subject to tax and rates of tax*—(1) *Gasoline*—(i) *Imposition of tax.* Section 11211(j)(1)(A) of the Act imposes a floor stocks tax on gasoline (including gasohol)—

(A) On which tax was imposed under section 4081 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Generally applicable rate of tax.* Except as otherwise provided in paragraph (b)(1)(iii) of this section, the rate of floor stocks tax on gasoline is 5 cents per gallon.

(iii) *Rates relating to gasohol.* The rate of floor stocks tax under this paragraph (b)(1) is—

(A) 5 cents per gallon in the case of gasohol;

(B) 6.22 cents per gallon in the case of gasoline that was taxed at a reduced rate under section 4081(c) and is used in producing gasohol that contains ethanol;

(C) 5.56 cents per gallon in the case of gasoline that was taxed at a reduced rate under section 4081(c) and is used in producing gasohol that does not contain ethanol;

(D) .55 cent per gallon in the case of gasoline that was not taxed at a reduced rate under section 4081(c) and is used in producing gasohol that contains ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such gasoline); and

(E) Zero in the case of gasoline that was not taxed at a reduced rate under section 4081(c) and is used in producing gasohol that does not contain ethanol (and .11 cent per gallon is recoverable pursuant to section 6427(f) with respect to such gasoline).

(2) *Diesel fuel*—(i) *Imposition of tax.* Section 11211(j)(1)(A) of the Act imposes of floor stocks tax on diesel fuel (including diesel fuel/alcohol mixtures)—

(A) On which tax was imposed at a Highway Trust Fund financing rate under section 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Generally applicable rate of tax.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, the rate of floor stocks tax on diesel fuel described in paragraph (b)(2)(i) of this section is 5 cents per gallon.

(iii) *Rates relating to diesel fuel/alcohol mixtures.* The rate of floor stocks tax under this paragraph (b)(2) is—

(A) 5 cents per gallon in the case of a diesel fuel/alcohol mixture;

(B) 6.22 cents per gallon in the case of diesel fuel that was taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that contains ethanol;

(C) 5.56 cents per gallon in the case of diesel fuel that was taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that does not contain ethanol;

(D) 1.22 cents per gallon in the case of diesel fuel that was not taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that contains ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such diesel fuel); and

(E) .56 cent per gallon in the case of diesel fuel that was not taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that does not contain ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such diesel fuel).

(3) *Diesel fuel held for use in trains*—(i) *Imposition of tax.* Section 11211(j)(1)(B) of the Act imposes a floor stocks tax on diesel fuel—

(A) On which no tax was imposed at a Highway Trust Fund financing rate under section 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person and is used by that person to propel a train on rails.

(ii) *Rate of tax.* The rate of floor stocks tax under this paragraph (b)(3) is 2.5 cents per gallon.

(4) *Aviation fuel*—(i) *Imposition of tax.* Section 11213(b)(5) of the Act imposes a floor stocks tax on aviation fuel—

(A) On which tax was imposed under section 4041(c)(1) or 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Rate of tax.* The rate of floor stocks tax under this paragraph (b)(4) is 3.5 cents per gallon.

(c) *Person liable for tax*—(1) *In general.* The person liable for the floor stocks tax on any fuel subject to tax is the person that holds the fuel at the first moment of December 1, 1990. For purposes of the floor stocks tax, fuel is

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held at the first moment of December 1, 1990, by the person that has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

(2) *Special rule.* Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax. For example, a chain of retail service stations that has one employer identification number is one person for purposes of the floor stocks tax and a parent corporation and a subsidiary that each have a different employer identification number are two persons for purposes of the floor stocks tax.

(d) *Treatment of fuel in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any fuel that is located in a foreign trade zone at the first moment of December 1, 1990, shall be subject to floor stocks tax, if—

(1) Internal revenue taxes have been determined, or customs duties liquidated, with respect to such fuel before December 1, 1990, pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934; or

(2) Such fuel is held at the first moment of December 1, 1990, under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

**§ 42.4 Exemptions from floor stocks tax.**

(a) *Overview.* This section provides rules for determining exemptions from the floor stocks tax. Generally, tax is not imposed—

(1) On fuel held exclusively for an exempt use;

(2) On gasoline or diesel fuel held in the tank of a motor vehicle or motorboat; or

(3) On gasoline or diesel fuel held by a person if the person does not hold more than a specified amount of that fuel.

(b) *Fuel held for exempt uses*—(1) *Gasoline.* The floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules apply:

(i) The term "exempt use" means, with respect to gasoline, any use of gasoline (other than use in producing gasohol) which is described in sections 6420, 6421 or 6427 and which entitles the user to a credit or refund of the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes, use in an off-highway business use, use in certain intercity, local and school buses, exclusive use by a State or local government or nonprofit educational organization, and use in commerical aircraft.

(ii) Gasoline is held exclusively for an exempt use only if—

(A) The person that holds gasoline at the first moment of December 1, 1990, actually uses the gasoline in an exempt use; or

(B) A gasoline wholesale distributor described in section 6416(a)(4) holds gasoline at the first moment of December 1, 1990, and sells the gasoline at a tax-excluded price for a use described in section 6416(b)(2).

Accordingly, except as provided in this paragraph (b)(1)(ii), gasoline is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station is not exempt from the floor stocks tax under this paragraph (b)(1) if it will be sold to a farmer for use on a farm for farming purposes. However, the farmer would be eligible to claim an income tax credit for the tax under sections 34 and 6420.

(2) *Diesel fuel.* The floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(i) The term "exempt use" means, with respect to diesel fuel, any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) which is described in section 6427 and which entitles the user to a credit or refund of the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel that is not used as fuel in a diesel-powered train include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4)), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the floor stocks tax under this paragraph (b)(2) even if the fuel is held by a State or local government. Similarly, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(1)(4), as added by the Act.

(iii) The floor stocks tax does not apply to diesel fuel held for use in a bus if a credit for, or a refund of, the tax, in whole or in part, is allowable for diesel fuel used in the bus under section 6427(b). Thus, for example, the floor stocks tax does not apply to diesel fuel held for use in an intercity bus if the diesel fuel was previously subject to tax at a reduced rate of 3 cents per gallon or 3.1 cents per gallon.

(iv) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of December 1, 1990, actually uses the diesel fuel in an exempt use.

(v) Accordingly, diesel fuel is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer is not exempt from the floor stocks tax under this paragraph (b)(2) if it will be sold to a construction company for use in the construction company's off-road machinery. However, the construction company would be eligible to claim a credit or refund of the tax under section 6427.

(3) *Aviation fuel.* The floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules apply:

(i) The term "exempt use" means, with respect to aviation fuel, any use of aviation fuel which is described in section 6427 and which entitles the use to a credit or refund of the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)), use on a farm for farming purposes, and exclusive use by a State or local government or nonprofit educational organization.

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of December 1, 1990, actually uses the aviation fuel in an exempt use. Accordingly, aviation fuel is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed base operator is not exempt from the floor stocks tax under this paragraph (b)(3) if it will be sold to an airline for use in commercial aviation. However, the airline would be eligible to claim a credit or refund of the tax under section 6427.

(c) *Exemption for gasoline or diesel fuel held in vehicle tank.* The floor stocks tax does not apply to gasoline or diesel fuel held, at the first moment of December 1, 1990, in the fuel supply tank of a motor vehicle (as defined in § 48.4041–8(c)) or motorboat. Fuel held in the fuel supply tank of a train or an aircraft is not exempt from the floor stocks tax under this paragraph (c).

(d) *Exemption for certain amounts of fuel*—(1) *In general.* The floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of December 1, 1990, if the aggregate amount of gasoline held by that person at that time does not exceed 4,000 gallons; and

(ii) Diesel fuel that a person holds at the first moment of December 1, 1990, if the aggregate amount of diesel fuel held by that person at that time does not exceed 2,000 gallons.

(2) *Additional rules.* The following additional rules apply for purposes of this paragraph (d):

(i) *Aviation fuel.* Aviation fuel is not exempt from the floor stocks tax merely because it is held in *de minimis* amounts at the first moment of December 1, 1990.

(ii) *Coordination with other exemptions.* In determining the aggregate amount of gasoline or diesel fuel held by a person at the first moment of December 1, 1990, there shall be excluded the amount of gasoline or diesel fuel exempt from the floor stocks tax by reason of paragraph (b) of this section (relating to fuel held for exempt uses), or paragraph (c) of this section (relating to gasoline and diesel fuel held in the tank of a vehicle).

(iii) *All amounts held subject to tax if threshold exceeded.* The floor stocks tax applies to all amounts of gasoline (or diesel fuel, as the case may be) held by a person (and not exempt from tax under paragraph (b) or (c) of this section) if the aggregate amount of fuel held by the person at the first moment of December 1, 1990, exceeds 4,000 gallons (2,000 gallons in the case of diesel fuel).

(iv) *Controlled groups.* A member of a controlled group (as defined in § 42.2(d)) holds more than 4,000 gallons of gasoline (2,000 gallons in the case of diesel fuel) if the aggregate amount of all gasoline (or diesel fuel, as the case may be) held by all members of the controlled group exceeds 4,000 gallons of gasoline (2,000 gallons in the case of diesel fuel).

(3) *Examples.* The following examples illustrate the rules of this paragraph (d):

*Example 1.* A holds 10,000 gallons of gasoline on December 1, 1990, 6,000 of which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not subject to the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

*Example 2.* On December 1, 1990, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

*Example 3.* On December 1, 1990, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stock tax of $205 (4,100 × $.05) on that gasoline.

*Example 4.* D, E, and F are members of the same controlled group. On December 1, 1990, D holds 2,000 gallons of gasoline, E holds 2,500 gallons of gasoline, and F holds 500 gallons of gasoline. None of the gasoline is held for an exempt use or in the fuel supply tank of a motor vehicle. Because the aggregate amount held by all members of the group exceeds 4,000 gallons, all gasoline held by each member is subject to the floor stocks tax. Thus, D is liable for tax of $100 (2,000 × $.05), E is liable for tax of $125 (2,500 × $.05) and F is liable for tax of $25 (500 × $.05).

**§ 42.5 Requirements with respect to inventory, payment and return.**

(a) *Overview.* This section sets forth requirements for inventory of fuel, payment of tax and filing a return reporting the tax.

(b) *Inventory.* Every person liable for the floor stocks tax, every person holding gasoline or diesel fuel for resale, and every person holding gasoline or diesel fuel for use as a fuel in a trade or business of providing transportation services by motor vehicles (other than a bus to which section 6421(b) or 6427(b) applies) shall prepare an inventory of all gasoline, diesel fuel and aviation fuel held by that person at the first moment of December 1, 1990 (other than fuel on which no tax under section 4081 or 4091 was imposed before December 1, 1990, and gasoline or diesel fuel held in the fuel supply tank of a motor vehicle or motorboat). In addition every person who, at the first moment of December 1, 1990, holds diesel fuel for use in a train shall prepare an inventory of all such fuel. The inventory shall be determined as of the first moment of December 1, 1990, but work-back and work-forward inventories will be acceptable if supported by adequate commercial records of receipt, use and disposition of the fuel. Persons subject to the inventory requirement of this paragraph (b) must maintain records of the inventory and make the records available for inspection and copying by internal revenue agents and officers. Records of the inventory are not to be filed with the Internal Revenue Service.

(c) *Payment of tax.* The floor stocks tax shall be paid without assessment or notice on or before May 31, 1991. The payment shall be accompanied by Form 8109, *Federal Tax Deposit Coupon,* in accordance with the instructions applicable to that form. The boxes on Form 8109 for "720" and "1st Quarter" shall be marked.

(d) *Filing of returns*—(1) *Form 720.* Every person liable for the floor stocks tax shall make a return of the tax on Form 720, *Quarterly Federal Excise Tax Return,* (Revised January 1991). The return shall be prepared and filed in accordance with the instructions relating to the return. The applicable Form 720 and its separate instructions may be obtained at many local Internal Revenue Service offices or by calling the following toll-free number: 1–800–829–3676.

(2) *Time for filing Form 720.* The Form 720 reporting liability for the floor stocks tax shall be filed on or before May 31, 1991. This Form 720 is for the first calendar quarter of 1991. In the case of a person not otherwise required to file Form 720 for that calendar quarter, the return shall be marked "Final-Floor Stocks" at the top. Only one Form 720 shall be filed for any calendar quarter. If a person is also required to report liability for other excise taxes for the first calendar quarter of 1991 on Form 720 and that Form 720 would otherwise be due on or before a date earlier than May 31, 1991, that person shall report the floor stocks tax and the other taxes on one Form 720 filed on or before May 31, 1991. This rule does not extend the time for making deposits or paying any excise tax.

**§ 42.6 Applicability of other laws.**

(a) *In general.* All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 in the case of gasoline and section 4091 in the case of diesel fuel or aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this part, apply with respect to floor stocks tax to the same extent as if the tax was imposed by section 4081 or section 4091, as the case may be.

(b) *Credits and refunds.* For rules relating to credits and refunds with respect to floor stocks tax paid on gasoline, diesel fuel, or aviation fuel used in an exempt use, see sections 34, 6416, 6420, 6421 and 6427.

(c) *Penalties and interest.* For the application of provisions relating to interest and penalties, see chapters 67 and 68 of subtitle F.

**Fred T. Goldberg, Jr.,**

*Commissioner of Internal Revenue.*

[FR Doc. 90–28303 Filed 11–28–90; 1:54 pm]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 86**

**[FRL: 3864-7]**

**Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Evaporative Emission Regulations for Gasoline-Fueled and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of public workshop and reopening of comment period.

**SUMMARY:** This notice announces the time and place for a public workshop related to EPA's proposed requirements to control evaporative emissions from light-duty vehicles, light-duty trucks, and heavy-duty vehicles.

**DATES:** The workshop will be held on December 19, 1990. It will start at 8:30 a.m. and adjourn at approximately 4:30 p.m. The comment period is being reopened for a limited time to allow comments on information presented at the workshop and to allow attendees to clarify or explain statements made at the workshop. Comments will be accepted until January 22, 1991.

**ADDRESSES:** The workshop will be held at the Ann Arbor Regent Hotel, U.S. Highway 23 at Plymouth Road, Ann Arbor, Michigan. Interested parties may submit written comments (in duplicate if possible) on the revisions being considered by EPA for the evaporative test procedure described in this notice and presented at the workshop to Public Docket No. A–89–18, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–89–18, 401 M Street, Room M–1500 SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip Carlson, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4270.

**SUPPLEMENTARY INFORMATION:** EPA is holding this workshop to provide the public with an opportunity to understand EPA's current position on the revised evaporative test procedure, to ask questions, and to comment on EPA's ideas. This public workshop is not a public hearing as described under section 307(d) of the Clean Air Act. A public hearing was held on March 6, 1990. A court reporter will be present to make a written transcript of the proceedings and a copy will be placed in the docket following the workshop. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter: Philip Liburdi, 20088 Woodside, Harper Woods, Michigan 48225. Telephone: (313) 527–4040.

## I. Introduction

On August 19, 1987 EPA published a notice of proposed rulemaking in the **Federal Register** to control gasoline volatility and vehicle evaporative emissions (52 FR 31274). The proposal included an evaporative canister preconditioning step intended to ensure that evaporative control systems are designed to work effectively and maintain their level of control under in-use operating conditions. However, subsequent EPA analyses showed that the proposed changes were insufficient to ensure effective control of in-use evaporative emissions. EPA subsequently issued proposed changes to the evaporative test procedure on January 19, 1990 (55 FR 1913) which kept the canister loading to breakthrough at the beginning of the test sequence and added two high-temperature diurnal heat builds for the fuel tank. Both of these steps were aimed at eliminating evaporative and running loss emissions in all but a small number of in-use events.

During the time that the Agency's second proposal was undergoing final review, General Motors (GM) introduced an alternative test procedure significantly different from EPA's proposal. The GM test procedure included a canister loading step, a specific test for running loss emissions, a high-temperature hot soak, and two extended 24-hour ambient diurnal heating and cooling cycles. EPA requested comments on both the EPA and GM test procedures, held a public hearing on March 6, 1990, and accepted written comments through June 5, 1990.

Since the end of the comment period, EPA has been analyzing the comments received as well as following the actions of the California Air Resources Board (CARB) to adopt their own revised evaporative test procedure. This notice and the upcoming workshop itself are intended to present EPA's current position on the revised evaporative test procedure and afford the public an opportunity to provide comments and to ask questions.

## II. Key Aspects of Revised Evaporative Test Procedure

EPA's overall goals for the revised evaporative test procedure continue to be the elimination of uncontrolled evaporative and running loss emissions from all but a small number of in-use events while at the same time minimizing the testing burden on industry and government. These goals translate into the following expectations: (1) Fuel tank emissions which can occur from three or more consecutive daily temperature rises (diurnal emissions) representative of in-use operating conditions on high-ozone days will be controlled routinely; (2) evaporative emissions which occur while the vehicle is being operated (running losses) rarely will occur on any vehicle; and (3) vapors purged from the evaporative canister will not increase exhaust emissions.

The January 1990 proposed procedure has been modified by EPA in several ways in order to improve the ability of the test procedure to meet these goals. The key aspects of EPA's revised test procedure, each of which will be discussed in further detail below, are as follows: (1) Revised vehicle preconditioning events; (2) fuel temperature control during the exhaust emissions test; (3) a revised diurnal emissions test; (4) the introduction of a new running loss test; and (5) requirements for high-temperature hot soak and permeation loss tests. Major issues also to be discussed include the sequencing of the diurnal and running loss test segments and the introduction of alternative test provisions in some test segments. Figure 1 contains a flow chart of the sequence EPA is considering for the revised evaporative test procedure.

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REVISED PROPOSED TEST PROCEDURE

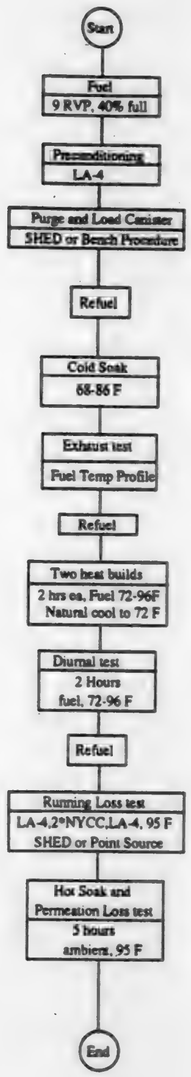



FIGURE 1

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*A. Vehicle Preconditioning*

For the preconditioning of the vehicles, EPA's revised test procedure would begin with an initial refueling followed by one LA–4 driving cycle to load the fuel system with test fuel. These steps would be followed by a canister loading procedure, and a subsequent cold soak, followed by the exhaust test.

This sequence of preconditioning events is different from the sequence contained in EPA's January 1990 proposal, which contained an LA–4 driving cycle after the canister loading and before the exhaust test. EPA now believes that the previously proposed sequence could have led manufacturers to emphasize purging during preconditioning, when exhaust emissions are not measured. Consequently, in-use emissions could have increased, possibly significantly. The revised sequence of events would require manufacturers to design their emission control systems so that a fully loaded canister will quickly recover its capacity without adversely affecting measured exhaust emissions. This revised sequence of preconditioning events is essentially the same procedure CARB recently adopted.

EPA has considered several options in developing the canister loading procedure. These have included whether loading would occur in a SHED (Sealed Housing for Evaporative Determination) or with an alternate, non-SHED procedure, whether the canister would be loaded with butane or gasoline vapors, and to what extent the canister would be loaded. EPA does not believe that these different canister loading methods have a significant effect on the design of evaporative systems, but some alternatives are more facilities-intensive than others. Therefore, in addition to the SHED-based procedure, EPA expects to permit loading with an alternative bench procedure that does not require a SHED.

The bench procedure would load the canister with butane vapors following an initial, specified purge volume; in a manner similar to the provisions contained in the CARB and GM procedures. Also, in order to ensure that the canister is loaded past breakthrough, EPA would load the canister to 1.5 times the working capacity of the charcoal in the canister, the same amount required in the CARB test procedure.

*B. Exhaust Emissions Test*

After the preconditioning events, the next step in the test procedure would be the exhaust emissions test. Although EPA expects to make no fundamental changes to this part of the test procedure, the importance of the exhaust test segment has increased. This is because the canister loading which occurs directly before the exhaust test will require manufacturers to design evaporative control systems with adequate purge so that the canister will be able to handle the three diurnal heat builds which occur directly after the exhaust test.

To ensure that any vapors generated in the tank during this type of on-road driving will be present during the exhaust test and are handled (along with vapors purged from the canister) without harm to exhaust emissions, EPA now expects to require control of the tank temperature to on-road levels. For collection of such on-road data, EPA would provide a specific procedure requiring manufacturers to supply fuel tank temperature data for vehicles being operated outdoors over the exhaust driving schedule under prescribed summertime conditions. The meteorological conditions would include an initial ambient temperature of 80°±6 °F, a sustained wind speed of 10 miles per hour or less, and a road surface temperature at least 25 °F above ambient temperature on average during the test. Then, during an actual exhaust emissions test on the dynamometer, the fuel tank temperature would be controlled in order to assure that the measured in-use fuel tank temperatures are being achieved during the test. As explained later, similar tank temperature collection and controls will be required for the running loss test.

*C. Diurnal Heat Builds*

As in the January 1990 proposal, EPA plans to include repeated diurnal heat builds after the exhaust test to encourage control of emissions when vehicles experience repeated diurnal temperature cycles without being driven. EPA continues to see the repeated diurnal heat builds as a means of generating vapors in the laboratory in an equivalent quantity to those generated in use. To generate an amount of vapors equivalent to three consecutive days of non-operation of a vehicle in use, EPA would expect the test to consist of three 72 °F to 96 °F fuel diurnals, each two hours long and separated by opportunities for the fuel to be cooled down. (EPA's proposed test procedure includes two one-hour fuel heat builds of 72 °F to 96 °F with no cool-down; the GM and CARB test procedures both include extended ambient heating and cooling cycles scheduled for 48 hours or 72 hours, respectively, in a specially designed SHED.)

The length of the time period for the diurnal heat build has been raised as an issue. One concern is that if the canister is loaded in too short a period of time, the charcoal in the canister may be heated uncharacteristically (adsorption is exothermic) and this may lower the capacity of the canister to adsorb vapors. In addition, heating the fuel in a short period of time requires raising the heating blanket temperature well above the maximum diurnal temperature in order to obtain the maximum diurnal temperature inside the fuel tank. This situation may result in "hot-spots" where the fuel is unevenly heated, potentially affecting vapor generation during the diurnal test.

Based on data submitted by Ford and Toyota examining the effects which the length of the diurnal heat build has on vapor generation, it is not conclusive whether the above phenomena have any substantial effect on emissions; it appears that heat builds longer than two hours result in similar loadings. In an effort to accommodate concern over these phenomena while minimizing the facilities impact which a longer heat build would have due to longer SHED occupancy time, EPA now plans to extend the duration of the diurnal heat build from one hour to two hours.

As mentioned above, the three heat builds will be separated by fuel cool-down periods. The inclusion of the cool-down between the heat builds, as compared to the alternative of refueling with fresh fuel, will incorporate the effects of weathering on diurnal emissions as well as any effects of backpurge on evaporative systems. Backpurge is a phenomenon which occurs as fuel tank vapors cool and condense, drawing vapors from the canister back to the fuel tank. Data submitted by GM shows that backpurge can have an effect on evaporative canister loading levels. However, since the cool-down periods will occur outside of the SHED (and therefore should not increase the need for additional facilities significantly) and will incorporate weathering effects, EPA expects to include such cool-down periods.

For current and anticipated future vehicle designs, EPA does not believe that the additional hour for the heat build or the opportunity for backpurge significantly improve the test procedure from a technical standpoint. However, although they add some time to the test procedure, their presence in the test should not be problematic. EPA expects to include these test procedure features to potentially increase the flexibility of manufacturers in future system designs.



As mentioned above, the GM and CARB diurnal test procedures require the vehicle to be placed in a specially designed SHED for a period of 48 or 72 hours, respectively. The modified SHED has been called a variable temperature (VT) SHED and would allow the entire enclosure to be heated and cooled while emissions measurements are taken, as opposed to heating and cooling the fuel tank only. If manufacturers, EPA and other testing organizations continue to perform the same number of tests as they do today, these test provisions would require the addition of a considerable number of new VT SHEDs, as well as modifications to current SHEDs. In an attempt to minimize these facilities impacts, EPA's revised test procedure would increase SHED time by one hour only, since the length of the diurnal heat build would be increased from one to two hours and only the last of the three diurnals would need to be performed in the SHED. (The other two diurnals as well as the cool-down could be performed outside of the SHED.) In addition, EPA's test procedure would retain direct tank heating and thus allow manufacturers to use their current SHEDs. Therefore manufacturers, EPA and others would not be required to modify existing SHEDs or build new VT SHEDs.

For vehicles which have insulated fuel tanks, manufacturers would be required to submit temperature data taken from a side-by-side diurnal exposure of two vehicles of the same model, one with an insulated tank and one with an uninsulated tank of otherwise similar design. During the side-by-side exposure, the fuel temperature rise in the uninsulated tank should approximate the range of 72 °F to 96 °F. The effect of the insulation observed in the fuel temperatures would be used to adjust the high end of the diurnal temperature range, generating an alternative range for all diurnal testing for the vehicle with the insulated fuel tank.

*D. Running Loss Test*

EPA now plans to include a test to measure running losses as part of the revised test procedure similar to the running loss test contained in the GM test procedure. EPA did not originally include a running loss test as part of the January 1990 proposal in an attempt to stay as close as possible to the current test procedure. Nevertheless, the proposed test procedure was designed to ensure that running losses did not occur under most conditions. However, because of the widespread support for including an explicit running loss test raised by vehicle manufacturers in their comments on the proposal, and the benefit of having running loss data, EPA has decided to include an official running loss test procedure.

The running loss test would be preceded by a refueling to counter any effects of fuel weathering during earlier test segments. The test would be conducted at an ambient temperature of 95 °F and would consist of one LA–4 driving cycle, a two-minute idle, two New York City cycles (NYCCs), a two-minute idle, and an additional LA–4 cycle. The NYCC has not been a part of motor vehicle testing regulations before but it is a common, well-established test cycle based on driving patterns in New York City. The NYCCs would add additional low-speed and idle periods to the driving schedule in order to assure that sufficient purging occurs during such operation. A copy of the version of the NYCC which EPA is considering for inclusion in the running loss test is contained in the appendix to today's notice.

While EPA plans to use a SHED-based procedure as the reference test, manufacturers would have the option of performing the running loss test either with a SHED-based procedure or under a "point source" method similar to that described by GM. EPA's test procedures for both the SHED-based method and the "point source" method would be very similar to the methods recently adopted by CARB. Hydrocarbon concentrations would be monitored at the beginning of the running loss test sequence, during each of the idle periods, and at the end of the running loss sequence in order to determine total running loss emissions.

As with the exhaust test, EPA would require manufacturers to supply fuel tank temperature data for vehicles as they are operated over the running loss driving schedules under specified meteorological conditions at an outdoor location. The meteorological conditions would include an initial ambient temperature of 95°±5 °F, a sustained wind speed of 10 miles per hour or less, and a road surface temperature at least 30 °F above ambient temperature on average during the test. EPA would then require control of fuel tank temperatures during a running loss test to match the profile generated by the manufacturer to assure that actual in-use fuel tank temperatures are achieved during the test. Both the CARB and GM procedures require similar fuel tank temperature control for running loss testing.

By requiring vehicles to control running loss emissions over the two different driving cycles, with in-use tank temperatures and under typical ozone-day temperatures, EPA would encourage manufacturers to design vehicles which would assure that running losses will rarely occur, even under high-temperature in-use driving.

*E. Hot Soak and Permeation Loss Tests*

The final steps of the revised procedure are the hot soak test followed by the testing of permeation losses. The hot soak emissions test will be unchanged from the current procedure except that it follows longer, high-temperature driving and the SHED soak temperature will be 95 °F, in order to simulate high-ozone day conditions. The permeation loss test is a new requirement. Permeation losses are fuel vapor emissions which occur at all times, including periods when a vehicle is at rest, but are not attributable to other sources of emissions, such as hot soak losses, refueling emissions or diurnal emissions. Potential sources of permeation losses are from hoses, open bottom evaporative canisters, canister vents and plastic fuel tanks.

Until recently, EPA did not believe that such emissions were significant and did not include a test to measure them. However, recent testing performed by GM shows that significant levels of such emissions occur with some current vehicles at relatively constant levels over time. EPA expects to include a permeation loss test as part of the revised evaporative test procedure. The test would be performed directly after the high-temperature hot soak emissions test and would require the vehicle to continue to soak in a 95 °F SHED for four hours, with emissions measurements taken hourly.

The GM and CARB test procedures do not have a separate test to measure permeation losses. However, because the diurnal tests included in the GM and CARB procedures have 24-hour sampling of emissions, these tests implicitly account for any permeation losses. EPA's permeation loss test is intended to minimize permeation losses without the need for extended diurnal testing. As discussed later under Alternative Test Procedures, the placement of the hot soak and permeation loss tests at the end of the test sequence would allow EPA to truncate this part of the test procedure when circumstances warranted (*e.g.*, when valid data was available on that vehicle from earlier testing).

*F. Sequencing of Diurnal and Running Loss Test Segments*

EPA strongly believes that the sequencing of the events within the test procedure is very important because of



the effects the sequencing can have on

would then be able to repeat the



test in which a partial evaporative EPA would

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the effects the sequencing can have on the design of the evaporative control system. EPA is planning to adopt a sequence in which the exhaust test (which begins with a loaded canister) is followed by three high-temperature diurnal heat builds, the running loss test, the hot soak test and permeation loss test (see Figure 1). By adopting this sequence of events, EPA would be encouraging vehicle manufacturers to design evaporative control systems which can sufficiently purge a loaded canister over the exhaust test without significantly affecting exhaust emissions, handle three subsequent diurnal loadings, and operate at high ambient temperatures without emitting running losses.

The GM and CARB test procedures have included a different sequence of testing events in which the exhaust test is followed by a running loss test, a hot soak test, and then two (for GM) or three (for CARB) extended-time diurnal heat builds. EPA believes this sequence of testing events might not encourage manufacturers to sufficiently purge their evaporative canisters during the exhaust test since they would be able to the distribute the purging of vapors over the additional driving of the running loss test, before the diurnal test of canister capacity.

*C. Alternative Test Procedures*

Because of vehicle modifications which make fuel tank removal difficult, it has become increasingly difficult for EPA to install tank thermocouples on many in-use vehicles. This has made EPA's job of enforcing the emissions standards difficult in many cases. Therefore, EPA is considering alternative procedures for the diurnal, exhaust and running loss segments which would make it possible for EPA to conduct the test procedure without installing tank thermocouples. EPA expects to monitor tank temperature whenever it is convenient and appropriate.

For diurnal testing, manufacturers would be required to specify the length of time a vehicle must soak in a 119 °F SHED with a simple, specified fan configuration in order to achieve a tank temperature rise of 72 °F to 96 °F. EPA would then be able to repeat the process, achieving heat builds without monitoring tank temperatures. For the exhaust and running loss tests, manufacturers would be required to supply EPA with instructions as to how the fuel tank should be heated and/or cooled to follow the in-use tank temperature profile determined by manufacturers. A fan/heater configuration would be specified (probably a constant-speed front-end fan and a proportional-speed underbody fan positioned in front of the vehicle, and a heater/blower positioned in a standard position relative to the midpoint of the fuel tank). Instructions would consist of the on/off actions necessary to control the tank temperature to match the predetermined profile.

EPA is also considering several provisions which would allow EPA to truncate the test procedure if a vehicle has already exceeded the emissions standards part of the way through the test or to reenter the test procedures when one part of the test has been voided. The goal of the reentry provisions are to make it easier for EPA to return to the same point in the test without increasing the overall stringency of the test.

One provision would allow EPA to monitor emissions in a SHED during any of the three diurnal heat builds, not just the final heat build. If the evaporative emissions standard were exceeded during any one of the heat builds, the test could be terminated at EPA's discretion, and the vehicle would be considered as having failed the test.

Another provision would allow EPA to terminate the procedure after the diurnal test. Running loss, hot soak and permeation loss test results submitted by the manufacturers or generated in other EPA testing on that vehicle could be substituted, at EPA's discretion, to determine compliance with the evaporative standard.

EPA also is planning to include provisions which would allow the test procedure to be reentered when one segment of the test procedure has been voided for some reason, such as a violation of test tolerances or following instructions incorrectly. In any vehicle test in which a void occurred, EPA could use the emission results from the portion of the test which occurred prior to the void. As described below, EPA would then conduct an abbreviated sequence which would substitute for the valid portions of the test procedure without remeasuring emissions.

Specifically EPA is considering a special, abbreviated sequence which would begin with the same canister loading procedure, followed immediately by the exhaust test drive (with relaxed speed trace and temperature trace tolerances of ±4 miles per hour and ±4 °F, respectively) without exhaust emissions measurement. When a void occurs during the diurnal test, EPA could either repeat the entire test or run the abbreviated sequence as described above. The remainder of the test would continue as usual starting with the diurnal sequence.

When a void occurs after a valid diurnal measurement, EPA could either rerun the entire sequence or perform a special preconditioning of the canister. In this alternative, the canister would be purged and then loaded to 90% of working capacity. While this canister loading will not exactly replicate the canister loading during the standard sequence, this procedure should yield an accurate indication of running loss performance while considerably shortening the retest. After purging and loading, the remainder of the test would continue as usual, beginning with the running loss test.

**III. Format of Workshop**

The workshop will be conducted informally. EPA will make a presentation highlighting the revisions to the January 1990 proposal described in this notice. After EPA's presentation, attendees will be encouraged to ask questions and make oral presentations. Written comments will be accepted until January 22, 1991. As noted earlier, a court reporter will be present to make a written transcript of the workshop.

Dated: November 20, 1990.

**Michael Shapiro,**

*Acting Assistant Administrator for Air and Radiation.*

APPENDIX—NEW YORK CITY DRIVING SCHEDULE BEING CONSIDERED BY EPA FOR INCLUSION IN RUNNING LOSS TEST

[Speed Versus Time Sequence]

| Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) |
|---|---|---|---|---|---|
| 0 | 0.0 | 1 | 0.0 | 2 | 0.0 |
| 3 | 0.0 | 4 | 0.0 | 5 | 0.0 |
| 6 | 0.0 | 7 | 0.0 | 8 | 0.0 |
| 9 | 0.0 | 10 | 0.0 | 11 | 0.0 |
| 12 | 0.0 | 13 | 0.0 | 14 | 0.0 |



APPENDIX—NEW YORK CITY DRIVING SCHEDULE BEING CONSIDERED BY EPA FOR INCLUSION IN RUNNING LOSS TEST—Continued

[Speed Versus Time Sequence]

| Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) |
|---|---|---|---|---|---|
| 15 | 0.0 | 16 | 0.0 | 17 | 0.0 |
| 18 | 0.0 | 19 | 0.0 | 20 | 0.0 |
| 21 | 0.0 | 22 | 0.0 | 23 | 0.0 |
| 24 | 0.0 | 25 | 0.0 | 26 | 0.0 |
| 27 | 0.0 | 28 | 0.0 | 29 | 0.0 |
| 30 | 0.0 | 31 | 0.0 | 32 | 0.0 |
| 33 | 0.0 | 34 | 0.0 | 35 | 0.0 |
| 36 | 0.0 | 37 | 0.0 | 38 | 0.0 |
| 39 | 0.0 | 40 | 0.0 | 41 | 0.0 |
| 42 | 0.0 | 43 | 0.0 | 44 | 0.0 |
| 45 | 0.0 | 46 | 0.0 | 47 | 0.0 |
| 48 | 0.0 | 49 | 2.80 | 50 | 5.60 |
| 51 | 7.00 | 52 | 7.80 | 53 | 7.60 |
| 54 | 6.20 | 55 | 6.40 | 56 | 7.60 |
| 57 | 9.50 | 58 | 8.90 | 59 | 8.60 |
| 60 | 9.60 | 61 | 12.40 | 62 | 15.00 |
| 63 | 17.80 | 64 | 21.00 | 65 | 22.80 |
| 66 | 21.70 | 67 | 18.20 | 68 | 14.50 |
| 69 | 10.20 | 70 | 5.60 | 71 | 2.50 |
| 72 | 2.10 | 73 | 3.10 | 74 | 5.70 |
| 75 | 9.00 | 76 | 10.80 | 77 | 10.80 |
| 78 | 9.50 | 79 | 8.50 | 80 | 8.90 |
| 81 | 2.60 | 82 | 1.00 | 83 | 0.80 |
| 84 | 0.10 | 85 | 0.0 | 86 | 0.0 |
| 87 | 0.0 | 88 | 0.0 | 89 | 0.0 |
| 90 | 0.0 | 91 | 0.0 | 92 | 0.0 |
| 93 | 0.0 | 94 | 0.0 | 95 | 0.0 |
| 96 | 0.0 | 97 | 2.70 | 98 | 8.20 |
| 99 | 12.40 | 100 | 15.70 | 101 | 17.40 |
| 102 | 17.30 | 103 | 17.20 | 104 | 15.10 |
| 105 | 11.20 | 106 | 8.60 | 107 | 5.90 |
| 108 | 5.40 | 109 | 6.80 | 110 | 8.80 |
| 111 | 4.80 | 112 | 5.70 | 113 | 7.10 |
| 114 | 6.80 | 115 | 5.90 | 116 | 6.00 |
| 117 | 6.00 | 118 | 5.90 | 119 | 5.80 |
| 120 | 5.50 | 121 | 7.20 | 122 | 9.90 |
| 123 | 10.80 | 124 | 11.40 | 125 | 11.90 |
| 126 | 12.10 | 127 | 12.60 | 128 | 12.30 |
| 129 | 10.80 | 130 | 8.90 | 131 | 8.40 |
| 132 | 8.90 | 133 | 7.60 | 134 | 6.10 |
| 135 | 5.00 | 136 | 3.70 | 137 | 2.60 |
| 138 | 1.00 | 139 | 0.80 | 140 | 0.10 |
| 141 | 0.40 | 142 | 0.20 | 143 | 0.0 |
| 144 | 0.0 | 145 | 0.0 | 146 | 1.30 |
| 147 | 5.00 | 148 | 10.20 | 149 | 12.10 |
| 150 | 13.80 | 151 | 15.10 | 152 | 16.20 |
| 153 | 15.90 | 154 | 16.00 | 155 | 16.80 |
| 156 | 17.50 | 157 | 18.00 | 158 | 19.60 |
| 159 | 21.70 | 160 | 23.10 | 161 | 23.70 |
| 162 | 24.10 | 163 | 24.50 | 164 | 25.00 |
| 165 | 25.20 | 166 | 24.60 | 167 | 24.80 |
| 168 | 23.90 | 169 | 22.70 | 170 | 22.10 |
| 171 | 21.60 | 172 | 21.10 | 173 | 20.80 |
| 174 | 19.20 | 175 | 17.00 | 176 | 13.80 |
| 177 | 14.10 | 178 | 14.80 | 179 | 14.60 |
| 180 | 14.50 | 181 | 14.40 | 182 | 14.20 |
| 183 | 14.20 | 184 | 13.20 | 185 | 11.50 |
| 186 | 8.40 | 187 | 5.50 | 188 | 3.70 |
| 189 | 2.90 | 190 | 1.30 | 191 | 0.80 |
| 192 | 0.30 | 193 | 0.10 | 194 | 0.10 |
| 195 | 0.0 | 196 | 1.30 | 197 | 3.90 |
| 198 | 8.9 | 199 | 15.9 | 200 | 19.3 |
| 201 | 20.7 | 202 | 21.4 | 203 | 21.4 |
| 204 | 20.9 | 205 | 19.0 | 206 | 16.7 |
| 207 | 13.1 | 208 | 11.2 | 209 | 14.9 |
| 210 | 19.8 | 211 | 23.8 | 212 | 25.7 |
| 213 | 26.2 | 214 | 26.4 | 215 | 23.3 |
| 216 | 19.8 | 217 | 18.8 | 218 | 19.3 |
| 219 | 19.4 | 220 | 18.5 | 221 | 17.5 |
| 222 | 16.4 | 223 | 15.6 | 224 | 15.6 |
| 225 | 16.0 | 226 | 16.8 | 227 | 17.5 |
| 228 | 18.0 | 229 | 19.6 | 230 | 21.7 |
| 231 | 23.5 | 232 | 24.6 | 233 | 25.0 |
| 234 | 24.9 | 235 | 23.1 | 236 | 20.7 |
| 237 | 17.2 | 238 | 13.5 | 239 | 9.2 |
| 240 | 3.5 | 241 | 0.0 | 242 | 0.0 |
| 243 | 0.0 | 244 | 0.0 | 245 | 0.0 |
| 246 | 0.0 | 247 | 0.0 | 248 | 0.0 |

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APPENDIX—NEW YORK CITY DRIVING SCHEDULE BEING CONSIDERED BY EPA FOR INCLUSION IN RUNNING LOSS TEST—Continued

[Speed Versus Time Sequence]

| Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) |
|---|---|---|---|---|---|
| 249 | 0.0 | 250 | 0.0 | 251 | 0.0 |
| 252 | 0.0 | 253 | 0.0 | 254 | 0.0 |
| 255 | 0.20 | 256 | 2.0 | 257 | 4.5 |
| 258 | 6.4 | 259 | 7.2 | 260 | 7.6 |
| 261 | 7.2 | 262 | 6.6 | 263 | 6.5 |
| 264 | 5.1 | 265 | 4.4 | 266 | 5.5 |
| 267 | 3.0 | 268 | 3.4 | 269 | 3.0 |
| 270 | 2.9 | 271 | 1.3 | 272 | 0.80 |
| 273 | 0.30 | 274 | 0.0 | 275 | 0.0 |
| 276 | 0.30 | 277 | 4.7 | 278 | 9.7 |
| 279 | 13.9 | 280 | 16.7 | 281 | 19.1 |
| 282 | 20.5 | 283 | 20.5 | 284 | 19.7 |
| 285 | 19.9 | 286 | 20.4 | 287 | 20.9 |
| 288 | 21.4 | 289 | 21.9 | 290 | 22.4 |
| 291 | 22.1 | 292 | 21.4 | 293 | 20.8 |
| 294 | 20.3 | 295 | 20.5 | 296 | 19.3 |
| 297 | 17.3 | 298 | 17.1 | 299 | 16.7 |
| 300 | 14.3 | 301 | 11.9 | 302 | 10.7 |
| 303 | 10.2 | 304 | 9.4 | 305 | 10.6 |
| 306 | 12.6 | 307 | 13.7 | 308 | 12.3 |
| 309 | 10.4 | 310 | 8.6 | 311 | 5.5 |
| 312 | 3.2 | 313 | 2.0 | 314 | 0.60 |
| 315 | 0.0 | 316 | 0.0 | 317 | 0.0 |
| 318 | 0.0 | 319 | 0.0 | 320 | 0.0 |
| 321 | 0.0 | 322 | 0.0 | 323 | 0.0 |
| 324 | 2.5 | 325 | 5.1 | 326 | 5.5 |
| 327 | 5.2 | 328 | 5.6 | 329 | 6.1 |
| 330 | 6.1 | 331 | 6.6 | 332 | 6.6 |
| 333 | 6.8 | 334 | 5.9 | 335 | 5.6 |
| 336 | 6.0 | 337 | 7.2 | 338 | 8.4 |
| 339 | 9.3 | 340 | 7.6 | 341 | 5.5 |
| 342 | 2.5 | 343 | 0.10 | 344 | 0.0 |
| 345 | 0.0 | 346 | 0.0 | 347 | 0.0 |
| 348 | 0.0 | 349 | 0.0 | 350 | 0.0 |
| 351 | 0.0 | 352 | 0.0 | 353 | 0.0 |
| 354 | 0.0 | 355 | 0.0 | 356 | 0.0 |
| 357 | 0.0 | 358 | 0.0 | 359 | 0.0 |
| 360 | 0.0 | 361 | 0.0 | 362 | 0.0 |
| 363 | 0.0 | 364 | 0.0 | 365 | 0.0 |
| 366 | 0.0 | 367 | 0.0 | 368 | 0.0 |
| 369 | 0.0 | 370 | 0.0 | 371 | 0.0 |
| 372 | 0.0 | 373 | 0.0 | 374 | 0.0 |
| 375 | 0.0 | 376 | 0.0 | 377 | 0.0 |
| 378 | 0.0 | 379 | 0.0 | 380 | 0.0 |
| 381 | 0.0 | 382 | 0.0 | 383 | 0.0 |
| 384 | 0.0 | 385 | 0.0 | 386 | 0.0 |
| 387 | 0.0 | 388 | 0.0 | 389 | 0.0 |
| 390 | 0.0 | 391 | 0.0 | 392 | 0.0 |
| 393 | 0.0 | 394 | 0.0 | 395 | 0.0 |
| 396 | 0.20 | 397 | 1.8 | 398 | 3.0 |
| 399 | 3.0 | 400 | 2.1 | 401 | 2.3 |
| 402 | 4.5 | 403 | 7.8 | 404 | 9.9 |
| 405 | 10.7 | 406 | 10.2 | 407 | 10.1 |
| 408 | 10.7 | 409 | 10.9 | 410 | 11.4 |
| 411 | 11.1 | 412 | 10.0 | 413 | 8.8 |
| 414 | 8.2 | 415 | 8.6 | 416 | 10.2 |
| 417 | 11.8 | 418 | 13.0 | 419 | 13.3 |
| 420 | 12.8 | 421 | 11.7 | 422 | 11.7 |
| 423 | 12.4 | 424 | 13.7 | 425 | 14.4 |
| 426 | 14.3 | 427 | 14.7 | 428 | 15.1 |
| 429 | 15.2 | 430 | 15.8 | 431 | 14.5 |
| 432 | 12.2 | 433 | 11.1 | 434 | 12.0 |
| 435 | 13.1 | 436 | 12.2 | 437 | 8.9 |
| 438 | 7.7 | 439 | 7.6 | 440 | 8.0 |
| 441 | 8.5 | 442 | 3.2 | 443 | 2.4 |
| 444 | 1.4 | 445 | 0.60 | 446 | 0.0 |
| 447 | 0.0 | 448 | 0.0 | 449 | 0.0 |
| 450 | 0.0 | 451 | 0.0 | 452 | 0.0 |
| 453 | 0.0 | 454 | 0.0 | 455 | 0.0 |
| 456 | 0.0 | 457 | 0.0 | 458 | 0.0 |
| 459 | 0.0 | 460 | 0.0 | 461 | 0.0 |
| 462 | 0.0 | 463 | 0.0 | 464 | 0.0 |
| 465 | 0.0 | 466 | 0.0 | 467 | 0.0 |
| 468 | 0.0 | 469 | 0.0 | 470 | 0.0 |
| 471 | 0.0 | 472 | 0.0 | 473 | 0.0 |
| 474 | 0.0 | 475 | 0.0 | 476 | 0.0 |
| 477 | 0.0 | 478 | 0.0 | 479 | 0.0 |
| 480 | 0.0 | 481 | 0.0 | 482 | 0.0 |



APPENDIX—NEW YORK CITY DRIVING SCHEDULE BEING CONSIDERED BY EPA FOR INCLUSION IN RUNNING LOSS TEST—Continued

[Speed Versus Time Sequence]

| Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) | Time (sec.) | Speed (m.p.h.) |
|---|---|---|---|---|---|
| 483 | 0.0 | 484 | 0.0 | 485 | 0.0 |
| 486 | 0.0 | 487 | 0.0 | 488 | 0.0 |
| 489 | 0.0 | 490 | 0.0 | 491 | 0.0 |
| 492 | 0.0 | 493 | 0.0 | 494 | 0.0 |
| 495 | 0.0 | 496 | 1.0 | 497 | 4.1 |
| 498 | 7.4 | 499 | 10.2 | 500 | 11.9 |
| 501 | 11.8 | 502 | 12.2 | 503 | 14.3 |
| 504 | 16.0 | 505 | 17.8 | 506 | 18.8 |
| 507 | 19.6 | 508 | 20.2 | 509 | 19.9 |
| 510 | 19.7 | 511 | 20.8 | 512 | 21.0 |
| 513 | 18.8 | 514 | 17.6 | 515 | 13.0 |
| 516 | 7.5 | 517 | 2.9 | 518 | 0.80 |
| 519 | 0.0 | 520 | 0.20 | 521 | 0.70 |
| 522 | 1.4 | 523 | 2.3 | 524 | 2.7 |
| 525 | 3.0 | 526 | 2.7 | 527 | 1.2 |
| 528 | 0.10 | 529 | 0.70 | 530 | 1.5 |
| 531 | 3.1 | 532 | 3.9 | 533 | 5.3 |
| 534 | 7.8 | 535 | 9.7 | 536 | 10.3 |
| 537 | 10.2 | 538 | 8.4 | 539 | 7.1 |
| 540 | 6.8 | 541 | 8.9 | 542 | 10.8 |
| 543 | 11.9 | 544 | 15.5 | 545 | 19.6 |
| 546 | 22.8 | 547 | 25.1 | 548 | 25.0 |
| 549 | 26.7 | 550 | 27.3 | 551 | 27.7 |
| 552 | 27.8 | 553 | 27.3 | 554 | 25.7 |
| 555 | 23.3 | 556 | 20.6 | 557 | 17.8 |
| 558 | 14.9 | 559 | 11.3 | 560 | 7.4 |
| 561 | 4.8 | 562 | 1.7 | 563 | 0.70 |
| 564 | 0.0 | 565 | 0.0 | 566 | 0.0 |
| 567 | 0.0 | 568 | 0.0 | 569 | 0.0 |
| 570 | 0.0 | 571 | 0.0 | 572 | 0.0 |
| 573 | 0.0 | 574 | 0.0 | 575 | 0.0 |
| 576 | 0.0 | 577 | 0.0 | 578 | 0.0 |
| 579 | 0.0 | 580 | 0.0 | 581 | 0.0 |
| 582 | 0.0 | 583 | 0.0 | 584 | 0.0 |
| 585 | 0.0 | 586 | 0.0 | 587 | 0.0 |
| 588 | 0.0 | 589 | 0.0 | 590 | 0.0 |
| 591 | 0.0 | 592 | 0.0 | 593 | 0.0 |
| 594 | 0.0 | 595 | 0.0 | 596 | 0.0 |
| 597 | 0.0 | 598 | 0.0 | | |

[FR 90-27810 Filed 11-30-90; 8:45 am]

BILLING CODE 4910-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 90-585, RM-7338]

### Radio Broadcasting Services; St. Marys, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Sunrise Broadcasting Corp. proposing the allotment of FM Channel 275C2 to St. Marys, Kansas, as that community's first local service. There is a site restriction of 24.3 kilometers (15 miles) east of the community. The coordinates for Channel 275C2 are 39-05-47 and 95-48-55.

**DATES:** Comments must be filed on or before January 22, 1991 and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Shelley Sadowsky, Rosenman & Colin, 1300 19th Street, NW., suite 200, Washington, DC 20036, (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-585, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28272 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-576, RM-7393]

**Radio Broadcasting Services; Garrison, KY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by James P. Gray ("petitioner"), seeking the allotment of Channel 252A to Garrison, Kentucky, as that community's first local FM service. The coordinates for the proposal are North Latitude 38-37-00 and West Longitude 83-07-18.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, 10 Trinity Place, Fort Thomas, Kentucky 41075.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-576, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28270 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-574, RM-7534]

**Radio Broadcasting Services; Los Lunas, NM**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Patricia Benns Komorowski seeking the substitution of Channel 292C1 for Channel 292A at Los Lunas, New Mexico, and the modification of her construction permit for a new station on the Class A channel to specify operation on the higher powered channel. Channel 292C1 can be allotted to Los Lunas in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in the outstanding construction permit. The coordinates for Channel 292C1 at Los Lunas are North Latitude 34-49-19 and West Longitude 106-41-16. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 292C1 at Los Lunas or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, Esq., 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-574, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Clerk, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28271 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-586, RM-7532]

**Radio Broadcasting Services; Pamplico, SC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Pamplico Broadcasting Limited Partnership seeking the substitution of Channel 271C2 for Channel 271A at Pamplico, South Carolina, and the modification of its construction permit for Station WMXT to specify operation on the higher powered channel. Channel 271C2 can be allotted to Pamplico in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.5 kilometers (14.0 miles) southwest to avoid a short-spacing to Stations WKZQ-FM, Channel 289C2, Myrtle Beach, South Carolina, and Station WJSK, Channel 272A, Lumberton, South Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 271C2 at Pamplico are North Latitude 33-52-15 and West Longitude 79-45-20. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 271C2 at Pamplico or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frank R. Jazzo, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036-2679 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-586, adopted November 7, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28273 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M



47 CFR Part 73

[MM Docket No. 90-578, RM-7492]

**Radio Broadcasting Services; Mount Vernon, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Pathways Broadcasting ("petitioner"), seeking the allotment of Channel 244A to Mount Vernon, Illinois, as that community's third local FM service. The coordinates for the proposal are North Latitude 38-19-28 and West Longitude 88-55-35.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stanley G. Emert, Jr., Lockridge & Becker, P.C., P.O. Box 107, Knoxville, Tennessee 34401 (Attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-578, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28278 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-587, RM-7479]

**Radio Broadcasting Services; Tusculum, TN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Tusculum Regional Broadcasting Company proposing the allotment of Channel 276A to Tusculum, Tennessee, as the community's first local FM service. The proposed coordinates for Channel 276A at Tusculum are North Latitude 36-10-58 and West Latitude 82-40-14.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., Esquire, 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel to Tusculum Regional Broadcasting Company).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Communication's Notice of Proposed Rule Making, MM Docket No. 90-587, adopted November 7, 1990, and released November 28, 1990. The full text of this Communication decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

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Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28274 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-577, RM-7507]**

**Radio Broadcasting Services; Georgetown, KY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Kentucky Radio Limited Partners ("petitioner"), seeking the substitution of Channel 277A for Channel 276A at Georgetown, Kentucky. Channel 277A can be allotted to Georgetown in compliance with the Commission's minimum distance separation requirements with a site restriction 10.6 kilometers (6.7 miles) south. The coordinates for this allotment are North Latitude 38-06-57 and West Longitude 84-31-19.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda J. Eckard, Mark N. Lipp, Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., suite 500, Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-577, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28277 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-579, RM-7330]**

**Radio Broadcasting Services; Pasco, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Thomas W. Read, d/b/a West Pasco Fine Arts Radio, permittee of Station KUKE(FM), Channel 287A, Pasco, Washington, seeking the substitution of FM Channel 287C3 for Channel 287A and modification of the permit for Station KUKE(FM) accordingly. Pasco is located within 320 kilometers (199 miles) of the United States-Canadian border and, therefore, international coordination of this proposal is required. Coordinates used for requested Channel 287C3 at Pasco are 46-13-16 and 119-11-20.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard J. Barr and Neal J. Friedman, Esqs., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-579, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28275 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-575, RM-7236]**

**Radio Broadcasting Services; Clarksburg, WV**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on the substitution of Channel 223A for Channel 224A at Clarksburg, West Virginia, and the modification of the license for Station WVHF-FM to specify operation on the alternate Class A channel, in response to a petition filed by the Harrison Corporation. Channel 223A can be allotted to Clarksburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.4 kilometers (2.7 miles) west of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 223A at Clarksburg are North Latitude 39-15-48 and West Longitude 80-23-40. Canadian concurrence is required since Clarksburg is located within 320 kilometers of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Esq., Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-575, adopted November 8, 1990, and released November 28, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28276 Filed 11-30-90; 8:45 am]

BILLING CODE 6712-01-M



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# Notices

Federal Register
Vol. 55, No. 232
Monday, December 3, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Public Law No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Monday, December 17, 1990 from 1 p.m. until approximately 5 p.m., and on Tuesday, December 18, 1990 from 9:15 a.m. until approximately 12 noon in the Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC.

The Conference's Plenary Session will begin with a symposium on the history and future of the Administrative Conference. The symposium will conclude at approximately 2:45 p.m., after which the Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Federal Agency Electronic Records Management and Archives;
2. Simplified Proceedings at the Occupational Safety and Health Review Commission;
3. Congressional Demands for Sensitive Agency Information; and
4. Medicaid Rulemaking and Policymaking.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., suite 500, Washington, DC 20037, telephone (202) 254-7020.

Dated: November 29, 1990.

Jeffrey S. Lubbers,
*Research Director.*

[FR Doc. 90-28408 Filed 11-30-90; 8:45 am]
BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the State of Alaska (AK) and the Memphis (TN) Agency

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are the Alaska Department of Natural Resources, Division of Agriculture (Alaska) and the Memphis Grain and Hay Association (Memphis).

**DATE:** Applications must be postmarked on or before January 2, 1991.

**ADDRESSES:** Applications must be submitted to Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Neil E. Porter, telephone 202-447-8262.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 152-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Alaska, located at 915 South Bailey, Palmer, AK, 9645-0949, and Memphis located at 1300 Channel Avenue, Memphis TN, 38113, were designated under the Act on June 1, 1988, as official agencies to provide official inspection services.

The designations of these official agencies terminate on May 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alaska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Alaska, except those export port locations within the State which are serviced by the Service.

The geographic area presently assigned to Memphis, in the States of Arkansas and Tennessee, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Arkansas: Craighead, Crittenden, Cross, Lee, Mississippi, Phillips Poinsett, and St. Francis Counties.

In Tennessee: Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Continental Grain Co., and West Tennessee Soya, both in Tiptonville, and Planters Gin, Ridgely, all in Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s area); and Lockhart-Coleman Grain Company, Augusta, Woodruff County, Arkansas (located inside Little Rock Grain Exchange Trust's area).

Interested parties, including Alaska and Memphis, are hereby given opportunity to apply for official agency designation to provide the official



services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning June 1, 1991, and ending May 31, 1994. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: November 15, 1990.

Neil E. Porter,
*Acting Director, Compliance Division.*

[FR Doc. 90-28146 Filed 11-30-90; 8:45 am]
BILLING CODE 3410-EN-M

### Designation Renewal of the Decatur (IL) Agency and the State of South Carolina (SC)

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation renewal of Decatur Grain Inspection, Inc. (Decatur), and the South Carolina Department of Agriculture (South Carolina), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

**EFFECTIVE DATE:** January 1, 1991.

**ADDRESS:** Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, room 1647, South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** Neil E. Porter, telephone 202-447-8262.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

The Service announced that Decatur's and South Carolina's designations terminate on December 31, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the July 2, 1990, **Federal Register** (55 FR 27277). Applications were to be postmarked by August 1, 1990. Decatur and South Carolina were the only applicants, and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the September 4, 1990, **Federal Register** (55 FR 35912) and requested comments on the applicants for designation. Comments were to be postmarked by October 19, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 8(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Decatur and South Carolina are able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective January 1, 1991, and terminating December 31, 1993, Decatur and South Carolina are designated to provide official inspection services in their specified geographic areas, as previously described in the July 2 **Federal Register.**

Interested persons may obtain official services by contacting Decatur at 217-429-2466, and South Carolina at 803-554-1311.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: November 15, 1990.

Neil E. Porter,
*Acting Director, Compliance Division.*

[FR Doc. 90-28144 Filed 11-30-90; 8:45 am]
BILLING CODE 3410-EN-M

### Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Gibson City (IL) et al.

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and the Wyoming Department of Agriculture (Wyoming).

**DATE:** Comments must be postmarked on or before January 17, 1991.

**ADDRESSES:** Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

SprintMail users may respond to [PMARSDEN/FGIS/USDA].

Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Paul Marsden, telephone (202) 475-3428.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the October 1, 1990, **Federal Register** (55 FR 39995). Applications were to be postmarked by October 31, 1990. Gibson City, Indianapolis, and Wyoming were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: November 15, 1990.

Neil E. Porter,
*Acting Director, Compliance Division.*

[FR Doc. 90-28145 Filed 11-30-90; 8:45 am]
BILLING CODE 3410-EN-M

### Request for Comments on the Designation Applicant in the Geographic Area Currently Assigned to the Springfield (IL) Agency

**AGENCY:** Federal Grain Inspection Service (Service), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice requests comments from interested parties on the applicant for official agency designation

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in the geographic area currently assigned to Glen Wallace dba Springfield Grain Inspection Department.

**DATE:** Comments must be postmarked on or before January 17, 1991.

**ADDRESSES:** Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, room 0628, South Building, P.O. Box 96454, Washington, DC 20090-6454.

SprintMail users may respond to [PMARSDEN/FGIS/USDA].

Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Paul Marsden, telephone (202) 475-3428.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within a specified geographic area in the October 1, 1990, **Federal Register** (55 FR 39996). Applications were to be postmarked by October 31, 1990. Springfield Grain Inspection, Inc. was the only applicant, and applied for the entire geographic area.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: November 15, 1990.

Neil E. Porter,

*Acting Director, Compliance Division.*

[FR Doc. 90-28148 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-EN-M

## Designation of the John R. McCrea Agency, Inc. (IA) Agency

**AGENCY:** Federal Grain Inspection Service (Service), USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the designation of John R. McCrea Agency, Inc. (McCrea), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

**EFFECTIVE DATE:** January 1, 1991.

**ADDRESSES:** Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, room 1647, South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** Neil E. Porter, telephone 202-447-8262.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that John R. Mcrea dba John R. McCree Agency requested the voluntary cancellation of its designation, effective December 31, 1990, and requested applications for official agency designation to provide official services within the specified geographic area in July 2, 1990, **Federal Register** (55 FR 27278).

Applications were to be postmarked by August 1, 1990. McCrea was the only applicant for designation and applied for the entire area.

The Service announced the applicant name in the September 4, 1990, **Federal Register** (55 FR 35813) and requested comments on the applicant for designation. Comments were to be postmarked by October 19, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that McCrea is able to provide official services in the geographic area for which the Service is designating it.

Effective January 1, 1991, and terminating December 31, 1993, McCrea is designated to provide official inspection services in the specified geographic area previously described in the July 2 **Federal Register**.

Interested persons may obtain official services by contacting McCrea at 319-242-2073.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: November 15, 1990.

Neil E. Porter,

*Acting Director, Compliance Division.*

[FR Doc. 90-28147 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-EN-M

## Packers and Stockyards Administration

## Proposed Posting of Stockyards; Hazel Green Horse Auction, et al

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AL-183 Hazel Green Horse Auction, Hazel Green, Alabama

GA-208 Hugh Watson Stockyard, Gainesville, Georgia

GA-209 Cordele Livestock Market, Inc., Cordele, Georgia

MO-268 Bates Co. Sales, Inc., Rich Hill, Missouri

Pursuant to the authority under section 302 of the Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408—South Building, U.S. States Department of Agriculture, Washington, DC 20250 by December 28, 1990.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 28th day of November, 1990.

Harold W. Davis,

*Director, Livestock Marketing Division.*

[FR Doc. 90-28283 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-KD-M



## Soil Conservation Service

## Milton Community Development RC&D Measure, Delaware

**AGENCY:** Soil Conservation Service, Agriculture.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Milton Community Development RC&D Measure, in Sussex County, Delaware.

**FOR FURTHER INFORMATION CONTACT:** Elesa K. Cottrell, State Conservationist, Soil Conservation Service, 9 E. Loockerman Street, Dover, Delaware, 19901, telephone (302) 678-4160.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or natural impacts on the environment. As a result of these findings, Elesa K. Cottrell, State Conservationist, has determined that the preparation and review of an environmental impact statement are not ended for this project..

As a result of these findings, Elesa Cottrell, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan to: (1) Grade and protect approximately 1,500 feet of riverbank which is currently being undercut by the Broadkill River, (2) build an aluminum picket fence between the town's public library and the Broadkill River, (3) replace the deteriorating narrow asphalt walkway with a 10 foot wide brick walkway, (4) replace the guard railing and inadequate overhead lighting system along the Broadkill River and next to the public parking lot, (5) beautify the downtown area by installing two sitting areas and two areas for trees in the public parking lot, (6) install a bronze plaque in one of the sitting areas to honor the five former governors from this community, (7) install a flap-gate on the storm drain in the public parking lot to eliminate a local flooding condition, (8) build a footbridge across the Broadkill River so pedestrians will be able to circle the entire project area, and (9) continue the brick walkway from the public parking lot area to Wagamon's Pond spillway.

The installation of this project will increase the quality of life in this small community.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Elesa K. Cottrell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: November 26, 1990.

Lester E. Stilleon,

*Acting State Conservationist.*

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

### Introduction

The Milton Community Development RC&D Measure is a federally assisted action authorized for planning under section 1528-1538 of the Agriculture and Food Act (Public Law 97-98). An environmental assessment was undertaken in conjunction with the development of the RC&D measure plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 207 Treadway Towers, 9 E. Loockerman Street, Dover, Delaware 19901-7377.

### Recommended Action

The project sponsors plan to: (1) Grade and protect approximately 1,500 feet of shoreline which is currently being undercut by the Broadkill River, (2) build an aluminum fence between the town's public library and the Broadkill River, (3) replace a deteriorating narrow asphalt walkway with a 10 foot wide brick walkway, (4) replace the guard railing and inadequate overhead lighting system, (5) beautify the downtown area by installing two sitting areas and two areas for trees in the public parking lot, (6) install a bronze plaque in one of the sitting areas to honor the five former governors from this community, (7) install a flap-gate on the existing storm drain in the public parking lot to eliminate a local flooding condition, (8) build a footbridge across the Broadkill River so pedestrians will be able to circle the entire project area, and (9) continue the brick walkway from the parking lot area to Wagamon's Pond spillway.

### Effect on Recommended Action

The proposed action will: (1) Eliminate the soil erosion that is occurring from the vertical riverbank and reduce a safety hazard, (2) beautify this small community, (3) honor the five former governors that came from this community, (4) eliminate a local flooding condition, and (5) allow pedestrians to circle the entire project area.

There are no threatened or endangered species of plants or animals that would be affected by the installation of the proposed project. The State Historic Preservation Officer has indicated that the project area is located on a site of no archaeological resources and that no reconnaissance is necessary.

No significant adverse environmental impact will result from the proper installation of the proposed project.

### Alternatives

A. To do nothing would not meet the objectives of the sponsors nor the RC&D Council. The riverbank would continue to erode and trees along the bank would continue falling into the river. The beautification of the downtown area would not be addressed and the five former governors would not be recognized for their outstanding contribution. Further, the quality of life in the greater Milton area would not be improved.

B. The selection of alternate sites would not reduce the erosion that is currently occurring, nor would it address the local flooding problem.

C. Proceed with the proposed plan to correct the erosion problem, eliminate the flooding problem, honor the five former governors, and improve the appearance of the downtown area.

Alternative "C", the selected plan, will meet the needs and objectives of the sponsor and is compatible with the objectives of the first State RC&D Council and the Sussex County RC&D Committee.

### Conclusion

The Environmental Assessment summarized above indicates that this federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined

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that an environmental impact statement for the Milton Community Development Measure is not required.

Dated: November 26, 1990.

Lester E. Stillson,

*Acting State Conservationist.*

[FR Doc. 90-28224 Filed 11-30-90; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-421-060]

### Animal Glue and Inedible Gelatin From the Netherlands; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on animal glue and inedible gelatin from the Netherlands. Interested parties who object to this revocation must submit their comments in writing not later than December 31, 1990.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 1977, the Department of Treasury published an antidumping finding on animal glue and inedible gelatin from the Netherlands (42 FR 64115). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

Not later than December 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 26, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-28308 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-061]

### Animal Glue and Inedible Gelatin From Sweden; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on animal glue and inedible gelatin from Sweden. Interested parties who object to this revocation must submit their comments in writing not later than December 31, 1990.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 1977, the Department of Treasury published an antidumping finding on animal glue and inedible gelatin from Sweden (42 FR 64416). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

Not later than December 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 26, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-28309 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-479-063]

### Animal Glue and Inedible Gelatin From Yugoslavia; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on animal glue and inedible gelatin from Yugoslavia. Interested parties who object to this revocation must submit their comments in writing not later than December 31, 1990.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 1977, the Department of Treasury published an antidumping finding on animal glue and inedible gelatin from Yugoslavia (42 FR 64416). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

Not later than December 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 26, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-28310 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-025]

### Clear Sheet Glass From Italy; Intent To Revoke Antidumping Finding.

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of Intent to Revoke Antidumping Finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on clear sheet glass from Italy. Interested parties who object to this revocation must submit their comments in writing not later than December 31, 1990.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph Fargo or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 9, 1971, the Department of Treasury published an antidumping finding on clear sheet glass from Italy (36 FR 23360). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

Not later than December 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 26, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-28311 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-046]

### Polychloroprene Rubber From Japan; Intent To Revoke Antidumping Finding.

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on polychloroprene rubber from Japan. Interested parties who object to this revocation must submit their comments in writing not later than December 31, 1990.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 9, 1971, the Department of Treasury published an antidumping finding on polychloroprene rubber from Japan (36 FR 23593). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

**Opportunity to Object**

Not later than December 31, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by December 31, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by December 31, 1990, we shall conclude that the finding is no longer of interest to

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interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: November 28, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-28312 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

## Carbon Steel Wire Rod From Saudi Arabia; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration; Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We preliminarily determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 3, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 4206) the final affirmative countervailing duty determination and countervailing duty order on carbon steel wire rod from Saudi Arabia. On February 29, 1988, Georgetown Steel Corporation, Northstar Steel Texas, Inc., Raritan River Steel Company and Atlantic Steel Company, petitioners in this proceeding, requested an administrative review of the order. We published the initiation on March 25, 1988 (53 FR 9788). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

### Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (*HTS*), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under item numbers 607.1400, 607.1710, 607.1720, 607.1730, 607.2200 and 607.2300 of the *Tariff Schedules of the United States Annotated* (TSUSA). Such merchandise is currently classifiable under HTS item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and eight programs. During the review period, there was only one Saudi producer and exporter of the subject merchandise, the Saudi Iron and Steel Company (HADEED).

### Analysis of Programs

*(1) Public Investment Fund Loan to HADEED*

The Public Investment Fund (PIF) was established in 1971 as one of five specialized credit institutions set up by the Government of Saudi Arabia. The other specialized credit institutions are the Saudi Industrial Development Fund (SIDF), the Saudi Agricultural Bank, the Saudi Credit Bank and the Real Estate Development Fund. These specialized credit institutions are funded completely by the Saudi government and were the only sources of long-term financing in Saudi Arabia during the review period.

The PIF was established in 1971 to provide financing to large-scale, commercially productive projects that have some equity participation of the Saudi government. PIF by-laws exclude firms or projects without Saudi government equity from applying to the PIF for financing. From 1973 through the end of the review period, the PIF has provided loans to 18 firms. Of these, 12 (including HADEED) are at least 50 percent-owned by the Saudi Basic Industries Corporation (SABIC). Of the remaining six borrowers, three are 50 percent-owned by PETROMIN, and three are unrelated: Saudia Airlines, a utility company and a real estate investment fund. We verified that firms receiving PIF financing represent less than one-half of all large scale firms, and only a very small portion of all industrial enterprises, in the Kingdom.

Because only firms with some direct or indirect government equity participation are eligible for PIF financing, only a few enterprises have received PIF financing. We therefore preliminarily determine that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to HADEED is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

The PIF loan to HADEED was part of the initial investment package for construction of a direct reduction plant, a steel making plant, and a rolling mill at Jubail. The PIF loan comprised 60 percent of HADEED's total capitalization. The first repayment of loan principal was not due until 1988, five and one-half years after the October 1983 start-up of production at the plant. For the period between start-up and commencement of principal repayment, the loan contract requires that HADEED pay a variable service charge, or interest, on the outstanding balance based on its profitability in a given fiscal year. In January 1990, after resolution of a dispute between the PIF and HADEED regarding the amount of service charge that was due to be paid in August 1987, HADEED paid the PIF a service charge equal to three percent of the outstanding balance as of August 1987, the amount that the PIF had determined was due in 1987. There was no penalty as a result of the delayed payment.

Using the two sources for medium- to long-term industrial financing available in Saudi Arabia, the commercial banks and the SIDF, we have constructed a composite benchmark interest rate to determine whether the PIF loan to HADEED was on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The SIDF loan portion of the benchmark was used because, of all the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what HADEED would otherwise have to pay for long-term loans in Saudi Arabia. We used the two-percent flat rate of interest applied to SIDF loans through 1987. The commercial bank portion of the benchmark was based on the average rate of interest on HADEED's medium-term commercial borrowings during the review period.

In order to determine the value in 1987 of the service charge on HADEED's PIF loan, we discounted the nominal amount of the service charge that HADEED paid by three percent per annum for the period between August 1987 and January 1990. We then compared the amount of the discounted service charge with the amount of interest that would have been due in August 1987 based on our benchmark interest rate. Because the discounted service charge is less than the amount of interest that would have been due had HADEED borrowed at the benchmark rate, we preliminary determine that the amount of the interest savings from the PIF loan provided a counteravailable bounty or grant to HADEED. To calculate the benefit, we divided the interest savings by HADEED's total sales in 1987. On this basis, we preliminarily determine the benefit from the PIF loan to be 0.16 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

*(2) SABIC's Transfer of SULB shares to HADEED*

SABIC was established in 1976 by the Government of Saudi Arabia as an industrial development corporation. SABIC has been the majority shareholder in HADEED since the steel company's inception in 1979. In 1982, SABIC acquired all of the remaining shares in the Steel Rolling Company (SULB), a Saudi producer of steel reinforcing bars of which SABIC had been the majority shareholder since 1979. In December 1982, SABIC decided to transfer its shares in SULB to HADEED in return for new HADEED stock. Through the stock transfer, SULB became a wholly-owned subsidiary of HADEED.



In Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, (51 FR 4206; February 3, 1986), we determined that HADEED was unequityworthy in December 1982 and that the transfer of SABIC's shares in SULB to HADEED in exchange for additional shares in HADEED was inconsistent with commercial considerations.

To determine the benefit to HADEED from the acquisition of SULB, we used our rate of return shortfall methodology. We determined the amount of the equity infusion to be the net book value of SULB's equity at the time of the transfer. As best available information on the national average rate of return on equity in Saudi Arabia, we used the 1987 annual average rate of return on U.S. direct investment in Saudi Arabia. Based on the most recent data available from the U.S. Commerce Department's Bureau of Economic analysis, the 1987 average rate of return on equity was 12.39 percent. We computed the rate of return shortfall by taking the difference between this figure and the 1987 rate of return on equity in HADEED. We multiplied the rate of return shortfall by the net book value of SULB' equity, and divided the resulting figure by the total value of HADEED's and SULB's consolidated sales in 1987. On this basis, we preliminarily determine the benefit from this equity infusion to be 0.14 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

We note that under no circumstances do we countervail in any year an amount greater than that which would result from treating the government's equity infusion as an outright grant. We calculated this "grant cap" by using as our allocation period the average useful life of assets in the steel industry which, according to the "Asset Guideline Classes" of the U.S. Internal Revenue Service, is 15 years. Using the average weighted cost of capital in Saudi Arabia in 1982 as a discount rate, our declining balance grant methodology would yield a benefit in the review period of 0.29 percent *ad valorem*, if the amount of the equity infusion were treated as a grant.

*(3) Preferential Provision of Equipment to HADEED*

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for HADEED two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to HADEED's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Commission transferred custody to HADEED under a lease/purchase agreement.

As originally planned, the bulk ship unloader and conveyor system was built to serve both HADEED and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving HADEED as the sole user of this equipment. The terms of the lease/purchase agreement require that HADEED must repay the equipment and construction costs plus a two-percent fee for the cost of money in 20 annual installments. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

In the *Saudi Wire Rod* (*op. cit.*), we found that the two-percent cost-of-money fee is the Commission's standard charge for recovery of costs on other facilities in the Jubail Industrial Estate. Of the projects examined, a urea berthside handling system built for the exclusive use of another company located in the Estate was the most comparable to HADEED ship unloader and conveyor system. Therefore, we compared the repayment schedule for HADEED's ship unloader and conveyor system to the repayment schedule for a berthside handling system. Although both agreements carried the standard cost-of-money fee, we found that HADEED's end-loaded, stepped repayment schedule was more advantageous than the annuity-style repayment schedule on the berthside handling system. Therefore, we determine that HADEED's ship unloader and conveyer system was provided on preferential terms. Moreover, because the equipment is used exclusively by HADEED, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

To calculate the benefit, we compare the principal and fees being paid in each year by HADEED to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two-percent discount rate. The resulting benefit for 1987 was then divided by the value of HADEED's sales during the review period. On this basis, we preliminarily determine the benefit from the preferential provision of the unloader and conveyor system to be 0.02 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

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*(4) Income Tax Holiday for Joint Venture Projects in Saudi Arabia*

Under Article 7 of the Foreign Capital Investment Code of January 1, 1979, a 10-year income tax holiday may be granted for economic development projects. The following three conditions must be fulfilled to obtain approval by the Saudi Foreign Investment Committee: (1) Saudi participation is not less 25 percent of total capital; (2) the foreign capital shall be invested in nontraditional development projects which, for the purposes of the Foreign Capital Investment Code, do not include petroleum related and/or mineral extraction projects; and (3) the investment shall be accompanied by foreign technical know-how and expertise. This tax holiday applies only to income taxes that are owed by the foreign share of the enterprise.

Companies with foreign capital comprised less than one-fourth of all companies operating in the Kingdom during the review period, of which those companies in nontraditional industries are a further subgroup. Because the application of these criteria limited benefits under this program to a discrete class of beneficiaries and a relatively small number of enterprises, we determine that it is specific and countervailable.

In 1987, HADEED reported a profit for fiscal year 1988. Thus, DEG, HADEED's foreign partner, would have been liable for income tax during the review period had it not still been eligible for the income tax holiday.

At verification, we examined income tax calculations for HADEED and found what DEG's tax liability for 1987 would have been if it had not been entitled to the income tax holiday. To calculate the benefit from the tax holiday, we divided the amount of tax DEG would have paid absent the tax holiday by HADEED's total sales for 1987. On this basis, we preliminarily determine the bounty or grant from the income tax holiday to be 0.11 percent *ad valorem*.

*(5) Other Programs*

We also examined the following programs and preliminarily determine that HADEED did not benefit from them during the review period:

1. SABIC loan guarantees;
2. Preferential provision of services by SABIC;
3. Government procurement preferences; and
4. Issuance of preferential government bonds.

**Preliminary Results of Review**

As a result of the review, we preliminarily determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and exported on or before December 31, 1987.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28313 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

**Marine Mammals; Issuance of Modification: Ms. Nancy Black and Dr. Bernd Wursig (P36A)**

**Modification No. 1 to Permit No. 630**

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research No. 630 issued to Ms. Nancy Black and Dr. Bernd Wursig, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, California 95039, on April 13, 1988, is hereby modified in the following manner:

*A. Number and Kind of Marine Mammals*

Sections A.1., A.1.a. and A.1.b. of Permit No. 630 are deleted and replaced with:

A.1. Up to 500 Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) may be taken annually by inadvertent harassment during photographic studies. Animals may be encountered and photographed more than once; although during any single encounter no more than three attempts may be made to approach a single individual, cow/calf pair, or discrete group of animals within 100 yards.

A.2. Of the animals listed in A.1, up to seven (7) may be tagged as described in the application and modification request.

A.3. During any single encounter, each approach of an animal within a distance less than 100 yards (i.e., each approach of an animal in a manner inconsistent with Southwest Regional Guidelines) shall be counted as a take against the authorized number.

*B. Special Conditions*

Section B.6 and B.8 are changed to read:

B.6 The Holder shall submit a report by December 31 of each year the permit is valid. The report shall include information on the use and effects of radio tagging and marking, specifically:

a. The number of days on the water and the number of vessels operating and number of people involved;
b. The number of animals approached and photographed;
c. The number of times each animal or discrete group of animals was approached, the number of tagging attempts for each animal, and the distance(s) of each approach/tagging attempt;
d. The nature of any and all incidents where the behavior of animals may have changed in response to the research activities, including a description of the animals' behavior before, during, and after the research activities;
e. Whether and how response varied, by time, location, nature of approach, etc;
f. Measures taken to minimize disturbance and the apparent effectiveness thereof; and
g. A description of the objectives, methods, and results of the research.

B.8 This Permit is valid with respect to the taking authorized herein until December 31, 1991.

This modification becomes effective upon publication in the **Federal Register**.

The Permit and modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 23, 1990.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 90-28235 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-22-M



**Marine Mammals; Issuance of Permit: Dr. Susan H. Shane**

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Issuance of Permit: Dr. Susan H. Shane (P127D).

On September 4, 1990, notice was published in the **Federal Register** (55 FR 35924) that an application had been filed by Dr. Susan H. Shane, 250 Cottini Way, Santa Cruz, California 95060, to conduct scientific research which involves the potential take by harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*).

Notice is hereby given that on November 23, 1990, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) the National Marine Fisheries Service issued a Scientific Research Permit for the above taking, subject to certain conditions set forth therein.

The National Marine Fisheries Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve the unnecessary duplication of research. No lethal taking is authorized.

Interested persons may review the Permit and documents submitted in connection with the application by appointment at the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196).

Dated: November 23, 1990.

**Nancy Foster,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 90-28236 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

**Prospective Grant of Exclusive Patent License, Afferon Corp.**

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the national Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Number 4,939,149 entitled "Use of Resininferatoxin and Analogues Thereof to Cause Sensory Afferent C-Fiber and Thermoregulatory Desensitization" and the U.S. Patent Application Serial Number 7-358,073, entitled "New Class of Compounds Having a Variable Spectrum of Activities for Capsaicin-Like Responses, Compositions and Uses Thereof" and the divisional application 7-515,721, to Afferon Corporation, have a place of business at Tucson, AZ. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The licensee is restricted to the field of topical human and veterinary medical uses of resin inferatoxin or like molecules.

The invention of U.S. Patent 4,939,149 relates to a method for desensitizing a subject animal, which comprises administering to the subject animal a therapeutically effective desensitizing amount of resininferatoxin for desensitizing the subject animal to neurogenic inflammation, to chemically and thermally induced pain and to responses involving sensory afferent pathways sensitive to capsaicin and to responses involving the hypothalamic temperature control region, and a pharmaceutically acceptable carrier therefor.

The invention of U.S. Patent Application 7-358,073 relates to a new class of compounds having a variable spectrum of activities for capsaicin-like responses, compositions thereof, processes for preparing the same, and uses thereof. Compounds of the invention are prepared by combining phorbol related diterpenes and homovanillac acid analogs via esterification at the exocyclic hydroxy group of the diterpene. Examples of these compounds include 20-homovanillyl-mezerein and 20-homovanillyl-12-deoxyphrobol-13-phenylacetate.

The availability of the invention for licensing has published in the **Federal Register** of December 8, 1988 (53 FR 49583) and of December 19, 1989 (54 FR 51925). A copy of the instant patent application SN 7-358,073 may be purchased from the NTIS Sales Desk by telephoning 703/487-4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

A copy of the U.S. Patent 4,939,149 may be purchased for $1.50 from the following address:

U.S. Patent and Trademark Office, Box 9, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Center for Utilization of Federal Technology, NTIS, box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

**Douglas J. Campion,**

*Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 90-28225 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-04-M

**Prospective Grant of Exclusive Patent License; Holton Industries, Inc.**

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i)

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that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-398,564, "Grooming and/or Foraging Apparatus for Reduction of Stress in Caged Animals" to Holton Industries, Inc. having a place of business at Frenchtown, N.J. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention provides grooming and/or foraging opportunities for caged animals, specifically to nonhuman primates, in order to enrich the environment thereof, thus to reduce boredom and stress of the animals. By increasing normative behavior, the inventive method and apparatus reduce abnormal behavior and broaden the behavioral repertoire of the animal. The inventive structure includes a hard backing board of Plexiglass, Lexan, metal or other similar materials, covered with a natural or artificial cloth, fur, fleece, carpeting or the like. Food particles of different sizes with rough edges may be rubbed into the cloth material to elicit foraging activities from the animal.

The availability of the invention for licensing was published in the **Federal Register**, Vol. 54, #242, p. 51925 (December 19, 1989).

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephone 1-800-336-4700 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 90-28226 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Arab Republic of Egypt

November 27, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton Textile Agreement of January 16, 1990 between the Governments of the United States and the Arab Republic of Egypt establishes import limits for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 27, 1990.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

November 27, 1990.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done in Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 16, 1990, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Egypt and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following levels of restraint:

| Category | 12-month restraint limit |
|---|---|
| 218-220, 224-227, 313-317 and 326, as a group: | 65,180,002 square meters. |
| Sublevels in the group | |
| 218 | 2,508,000 square meters. |
| 219 | 15,329,523 square meters. |
| 220 | 15,329,523 square meters. |
| 224 | 15,329,523 square meters. |
| 225 | 15,329,523 square meters. |
| 226 | 15,329,523 square meters. |
| 227 | 15,329,523 square meters. |
| 313 | 28,149,399 square meters. |
| 314 | 15,329,523 square meters. |
| 315 | 18,001,597 square meters. |
| 317 | 15,329,523 square meters. |
| 326 | 2,508,000 square meters. |
| Limits not in a group | |
| 300/301 | 5,993,265 kilograms of which not more than 839,057 kilograms shall be in Category 301. |
| 339 | 727,107 dozen. |

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against those levels of restraints to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28305 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DR-M



### Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products from Jamaica

November 27, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica establishes limits and guaranteed access levels for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 27, 1990.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

November 27, 1990.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended, between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following designated levels:

| Category | 12-month restraint level |
|---|---|
| 331/631 | 350,000 dozen pairs. |
| 336/636 | 118,000 dozen. |
| 338/339/638/639 | 827,756 dozen. |
| 340/640 | 367,080 dozen of which not more than 327,529 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340-Y/640-Y—(only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050, 6205.20.2060, 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060). |
| 341/641 | 466,054 dozen. |
| 342/642 | 175,000 dozen. |
| 345/845 | 119,935 dozen. |
| 347/348/647/648 | 823,459 dozen. |
| 352/652 | 800,000 dozen. |
| 445/446 | 46,096 dozen. |
| 447 | 10,000 dozen. |
| 632 | 100,000 dozen pairs. |

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the categories listed below. These products shall be assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991.

| Category | Guaranteed access level |
|---|---|
| 331/631 | 1,320,000 dozen pairs. |
| 336/636 | 125,000 dozen. |
| 338/339/638/639 | 1,500,000 dozen. |
| 340/640 | 300,000 dozen. |
| 341/641 | 375,000 dozen. |
| 342/642 | 200,000 dozen. |
| 345/845 | 50,000 dozen. |
| 347/348/647/648 | 2,000,000 dozen. |
| 352/652 | 3,250,000 dozen. |
| 447 | 20,000 dozen. |
| 632 | 3,300,000 dozen pairs. |

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements

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established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment for entry under the Special Access Program which is found not to qualify for the Special Access Program may be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28306 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 27, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletion boards of each Customs port or call (202) 343-6496. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 27, 1990.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

November 27, 1990.

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 4, 1990, the directive of November 16, 1989 is amended to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Malaysia:

| Category | Adjusted 12-month limit [1] |
|---|---|
| Fabric group 218, 219,220, 225-227, 313-315, 317, 326 and 613/614/615/617, as a group. | 62,157,978 square meters. |
| Group II 201, 222-224, 229, 238, 330, 332, 349, 350, 352-354, 359-362, 369-O,[2] 400-434, 436, 438-O,[3] 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 605, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665-670 831-834, 836, 838, 839, 840 and 843-859, as a group. | 30,959,935 square meters equivalent. |
| Other specific limits 237 | 266,257 dozen. |
| 333/334/335/835 | 160,223 dozen of which not more than 74,439 dozen shall be in Category 333, not more than 74,439 dozen shall be in Category 334, not more than 74,439 dozen shall be in Category 335 and not more than 74,439 dozen shall be in Category 835. |
| 336/636 | 310,492 dozen. |

| Category | Adjusted 12-month limit [1] |
|---|---|
| 338/339 | 718,620 dozen. |
| 340/640 | 865,112 dozen. |
| 342/642/842 | 285,034 dozen. |
| 345 | 99,884 dozen. |
| 347/348 | 303,804 dozen. |
| 351/651 | 168,826 dozen. |
| 634/635 | 545,316 dozen of which not more than 230,338 dozen shall be in Category 635. |
| 647/648 | 1,156,656 dozen of which not more than 749,406 dozen shall be in Category 647-K [4] and not more than 749,406 dozen shall be in Category 648-K. [4] |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[3] Category 438-C: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0024.

[4] Category 647-K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.0045.

[5] Category 648-K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2036, 6104.63.1020, 6104.63.2010, 6104.63.2025, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050 and 6117.90.0048.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28307 Filed 11-30-90; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment, Amendment and Adjustment of Import Limits and Restraint Periods and Amendment of Export Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

November 29, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing, amending, and adjusting limits restraint periods and amending visa requirements.

**EFFECTIVE DATE:** December 3, 1990.



**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of the Philippines reached agreement, effected by a Memorandum of Understanding (MOU) dated November 16, 1990, to amend further the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Product and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended. As a result, the limits for Categories 347/348, 361 and 659-H, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989) Also see 54 FR 47546, published on November 15, 1989; and 52 FR 11308, published on April 8, 1987. Information concerning the 1991 correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 29, 1990.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

November 29, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1989, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactrued in the Philippines and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Also, this directive cancels and supersedes the directives issued to you on September 13, 1990 and September 14, 1990 concerning imports of textile and apparel products in Categories 361 and 847, produced or manufactured in the Philippines and exported during the periods beginning on June 28, 1990, in the case of Category 361, and August 29, 1990, in the case of Category 647, and extending through December 31, 1990.

Effective on December 3, 1990, you are directed to establish a Group I limit for categories not previously in a group. Charges already made to these categories shall be retained and applied to the Group I limit. The restraint period for Categories 361, 363 and 847 in Group II shall be amended to end on June 30, 1990 for Categories 361 and 363 and May 31, 1990 for Category 847. Charges made to Categories 361, 363 and 847 for the periods January 1, 1990 through June 30, 1990 (Categories 361 and 363) and January 1, 1990 through May 31, 1990 (Category 847) shall remain subject to the Group II limit. The limits for certain categories are being adjusted and new sublevels are being established for Categories 359-S/659-S, 361, 363 and 847 in Group I for the periods indicated below.

| Category | 12-month limit [1] (Jan. 1, 1990-Dec. 31, 1990) |
|---|---|
| Group I: 237, 239, 331, 333/334, 335, 336, 338/339, 340/640, 341/641, 342/642, 345, 347/348, 351/651, 352/652, 359-S/659-S [2], 361, 363, 369-S [3], 431, 433, 443, 445/446, 447, 604, 631, 633, 634, 635, 636, 638/639, 643, 645/646, 647/648, 649, 650, 659-H [4] and 847, as a group. | 327, 062, 731 square meters equivalent. |
| Sublevels in Group I: 347/348 | 1,478,432 dozen. |
| 359-S/659-S | 811,250 kilograms. |
| 643 | 523,216 numbers. |
| 645/646 | 373,050 dozen. |
| 647/648 | 851,980 dozen. |
| 659-H | 842,375 kilograms. |
| 7-month limit [5] (June 1, 1990-December 31, 1990): 847 | 328,213 dozen. |
| 6-month limit [6] (July 1, 1990-December 31, 1990): 363 | 5,000,000 numbers. |
| 18-month limit [6] (July 1, 1990-December 31, 1991): 361 | 1,600,000 numbers. |

| Category | 12-month limit [1] (Jan. 1, 1990-Dec. 31, 1990) |
|---|---|
| Group II 12-month limit [1] (January 1, 1990-December 31, 1990): 200-229, 300-326, 330, 332, 349, 350, 353, 354, 359-O [7], 360-363, 369-O [8], 400-414, 432, 434-442, 444, 448, 459, 464-469, 600-602, 604-629, 630, 632, 644, 653, 654, 659-O [9] 665-670, 831-847 and 850-859, as a group. | 95,102,115 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[5] The limit has not been adjusted to account for any imports exported after May 31, 1990.

[6] The limits have not been adjusted to account for any imports exported after June 30, 1990.

[7] Category 359-O: all HTS numbers except 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359-S).

[8] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[9] Category 659-O: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060 (659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6112.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (659-S).

Charges for goods exported prior to June 1, 1990 for Category 847 and prior to July 1, 1990 for Category 361 shall be charged to Group II as follows:

| Category | Amount to be charged |
|---|---|
| 361 | 30,312 numbers. |
| 847 | None. |

You are directed to charge the following amounts to Categories 359-S/659-S, 361, 363 and 847 for the restraint periods indicated. These charges are for goods exported during the periods beginning January 1, 1990 (Categories 359-S/659-S), June 1, 1990 (Category 847) and July 1, 1990 (Categories 361 and 363) and extending through October 31, 1990.

| Category | Amount to be charged | Restraint period |
|---|---|---|
| 359-S | 214,779 kilograms. | Jan. 1, 1990-Dec. 31, 1990. |
| 361 | 531,469 numbers. | July 1, 1990-Dec. 31, 1991 |

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| Category | Amount to be charged | Restraint period |
|---|---|---|
| 363 | 1,612,044 numbers. | July 1, 1990–Dec. 31, 1990. |
| 659–S | 288,254 kilograms. | Jan. 1, 1990–Dec. 31, 1990. |
| 847 | 78,366 dozen | June 1, 1990–Dec. 31, 1990. |

Also, you are directed to deduct 178,346 kilograms for Category 359–O from the charges made to the 1990 Group II limit.

The conversion factors are indicated below:

| Category | Conversion factor |
|---|---|
| 352/352 | 11.3 |
| 659–S/659–S | 11.6 |

Effective on December 3, 1990, you are directed to amend the visa requirements established in the directive of April 3, 1987 to include the coverage of cotton and man-made fiber textile products in newly merged Categories 359–S/659–S, produced or manufactured in the Philippines and exported on and after December 3, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28414 Filed 11–29–90; 2:48 pm]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Dependency Information-Children, Air Force Forms 1865, 1866, and 1867, OMB No. 0701–0110.

*Type of Request:* Revision.

*Average Burden Hours/Minutes Per Response:* .5 Hours.

*Responses Per Respondent* 1.

*Number of Respondents:* 7,887.

*Annual Burden Hours:* 3,943.

*Annual Responses:* 7,887.

*Needs and Uses:* Used to obtain information from the member, retired member, or deceased member to determine dependency for entitlement to basic allowance for quarters with-dependents rate, travel, or Uniformed Services Identification and Privilege Card of illegitimate, adopted/stepchildren and incapacitated children.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain and retain a benefit.

*OMB Desk Officer:* Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: November 28, 1990.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90–28291 Filed 11–30–90; 8:45 am]

BILLING CODE 3810–01–M

## Office of the Secretary

### Committees; Establishment of the Nuclear Fail-Safe and Risk Reduction Advisory Committee

**ACTION:** Establishment of the Nuclear Fail-Safe and Risk Reduction Advisory Committee.

**SUMMARY:** Under the provisions of Public Law 92–463, "Federal Advisory Committee Act," notice is hereby given that the Nuclear Fail-Safe and Risk Reduction Advisory Committee (Fail-Safe Committee) is being established.

The Fail-Safe Committee will advise the Secretary of Defense regarding a full-scale, comprehensive and independent analysis and evaluation of nuclear command and control procedures in the post-cold war period. In making the analysis, the Fail-Safe Committee will consider all aspects of existing and recommended positive measures for safety, security, and control of nuclear weapons, as they relate to assured execution of national policy and the prevention of unauthorized use of these weapons.

The Fail-Safe Committee will be composed of approximately five members appointed directly by the Secretary of Defense. There will be three private sector individuals and two senior DoD official serving as members. The membership will be well-balanced and composed of persons with broad experience in and knowledge of the political, technical, and military issues involved. To further ensure objectivity and balance, the criteria for selection will specify that some members must not be involved currently in the nuclear chain of command.

Dated: November 28, 1990.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90–28289 Filed 11–30–90; 8:45 am]

BILLING CODE 3810–01–M

### Strategic Defense Initiative Advisory Committee; Meeting

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on December 10–11, 1990.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on December 10–11, 1990 the committee will discuss the possible near-term approach for Theater Ballistic Missile Defense vis-a-vis new technological capabilities and new system concepts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 28, 1990.

Linda M. Bynum,

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90–28290 Filed 11–30–90; 8:45 am]

BILLING CODE 3810–01–M



## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP91–477–000, et al.]**

### Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

November 26, 1990.

Take notice that the following filings have been made with the Commission:

**1. Sabine Pipe Line Co.**

[Docket No. CP91–477–000]

Take notice that on November 20, 1990, Sabine Pipe Line Company (Sabine), P.O. Box 4781, Houston, Texas 77210, filed in Docket No. CP91–477–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Exxon Corporation (Exxon), under Sabine's blanket certificate issued in Docket No. CP86–522–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Sabine proposes to transport, on a firm basis, up to 5,000 MMBtu of natural gas per day for Exxon. Sabine states that construction of facilities would not be required to provide the proposed service.

Sabine further states that the maximum day, average day, and annual transportation volumes would be approximately 5,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu respectively.

Sabine advises that service under § 284.223(a) commenced October 1, 1990, as reported in Docket No. ST91–1748–000.

*Comment date:* January 10, 1991, in accordance with Standard paragraph G at the end of this notice.

**2. Northern Natural Gas Co.**

[Docket No. CP91–484–000]

Take notice that on November 20, 1990, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP91–484–000 a request pursuant to §§ 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.2160 for authorization to abandon by sale certain facilities and install and operate a delivery point as a sales facility under its blanket certificate issued in Docket No. CP82–401–000, pursuant to sections 7(b) and (c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to abandon by sale to Peoples Natural Gas Company, Division of Utilicorp, Inc. (Peoples), approximately 2.5 miles of the Omaha "A" 18-inch branch line, easements and twelve farm taps and to install and operate one new delivery point and appurtenant facilities as jurisdictional sales facilities to allow Peoples to make natural gas deliveries to existing farm tap customers in Cass County, Nebraska.

It is indicated that due to a change in the classification of the pipe by the Department of Transportation, the 2.5-mile segment of line had to be rearranged to keep from jeopardizing service to Omaha and various farm tap customers along the line. Northern states that in 1989, a portion of the Omaha "A" branchline was rearranged by (1) the installation of new pipe in a different location which serves as a portion of the high pressure Omaha "A" branchline; (2) installing a regulator on the south end of the 2.5 mile segment of the Omaha "A" branchline to reduce the pressure to 50 pounds per square inch; and (3) cutting/capping the north end of the segment. Northern states that the proposed abandonment and transfer of ownership would not require removal of facilities or termination of any service because the pipeline to be transferred would continue to be operated by Peoples.

Northern states that the purpose of the new delivery point is to maintain service to existing farm tap customers. It is indicated that the delivery of volumes to the new delivery point would not impact Northern's peak day and annual deliveries and that there would not be any firm entitlements assigned to the individual farm tap end-users.

*Comment date:* January 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

**3. Southern Natural Gas Co.**

[Docket No. CP91–486–000]

Take notice that on November 19, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP91–486–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to change the operation of a delivery point for an existing customer under the blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it provides natural gas service to South Georgia Natural Gas Company (South Georgia) at a delivery point on Southern's South Main Lines in Lee County, Alabama. Southern states that it delivers gas to South Georgia at a contract delivery pressure of 750 psig. Southern explains that South Georgia has requested an increase in delivery pressure to increase operational efficiency of South Georgia's system. Southern further explains the delivery point pressure change is permitted by section 3 of the General Terms and Conditions contained in Southern's FERC Gas Tariff, Sixth Revised Volume 1, which provides that a customer may request a change in delivery point pressure.

Southern therefore proposes to increase the contract delivery pressure at the South Georgia delivery point from 750 psig to 850 psig. Southern states that it would not need to construct additional facilities to increase the delivery point pressure.

*Comment date:* January 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

**4. Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation**

[Docket Nos. CP91–492–000, CP91–497–000, CP91–498–000, and CP91–499–000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, and Texas Eastern Transmission Corporation, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP87–115–000 and Docket No. CP88–136–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection [1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by

[1] These prior notice requests are not consolidated.

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Applicants and is summarized in the attached appendix.

*Comment date:* January 10, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Shipper name (type) | Peak day average day annual MMBtu | Receipt points [1] | Delivery points | Contract date rate schedule service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-492-000 (11-20-90) | North Central Oil Corporation (Producer). | 10,000<br>10,000<br>[2] 3,650,000 | OLA | LA, MS | 10-1-90, IT, Interruptible. | ST91-3044-000, 10-12-90. |
| CP91-497-000 (11-21-90) | York Research Corporation (End-user). | 40,000<br>40,000<br>14,600,000 | Various | NY | 10-19-90, IT-1, Interruptible. | ST91-3052-000, 10-25-90. |
| CP91-498-000 (11-21-90) | Williams Gas Marketing Company (Marketer). | 100,000<br>100,000<br>36,500,000 | Various | Various | 8-27-90, IT-1, Interruptible. | ST91-600-000, 10-1-90. |
| CP91-499-000 (11-21-90) | Williams Gas Marketing Company (Marketer). | 600,000<br>600,000<br>219,000,000 | Various | Various | 10-5-90, IT-1, Interruptible. | ST91-3053-000, 10-25-90. |

[1] Offshore Louisiana is shown as OLA.
[2] Tennessee's quantities are in dekatherms.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28236 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

### Application Filed

November 27, 1990.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 3021-032.

c. Date filed: November 21, 1990.

d. Applicant: Allegheny Hydro No. 8, L.P.; Allegheny Hydro No. 9, L.P.

e. Name of Project: Allegheny River Lock and Dam Nos. 8 and 9.

f. Location: On the Allegheny River in Armstrong and Indiana Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: John L. Sacks, Esquire, Karen A. Tomcala, Esquire, Olwine, Connelly, Chase, O'Donnell & Weyher, 1701 Pennsylvania Avenue NW., suite 1000, Washington, DC 20006, (202) 835-0500.

i. FERC Contact: Mary C. Golato (202) 219-2804.

j. Comment Date: December 26, 1990.

k. Description of Project: The Allegheny Hydro No. 8, L.P. and Allegheny Hydro No. 9, L.P. (the Partnership) propose to partially transfer the license for the Allegheny River Lock and Dam No. 8 and 9 Project to include the Connecticut National Bank, solely in its capacity as owner trustee. The Connecticut National Bank would be added as a co-licensee to the license to facilitate permanent financing of the project through a sale-leaseback transaction.

1. This notice also consists of the following standard paragraphs: B & C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28237 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA91-1-45-002]**

### Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

November 26, 1990.

Take notice that on November 19, 1990, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), in compliance with the Commission's Letter Order issued in the above-docket on November 2, 1990, tendered for filing its Second Substitute Alternate Forty-Second Revised Sheet No. 4 for inclusion in its FERC Gas Tariff Original Volume No. 1. The tariff sheet eliminates the $(.0013) per MMBtu surcharge related to reduced corporate income taxes and restates the Eastern Zone current and estimated average



costs of gas to reflect a decrease of $1.3203 per Mcf for demand and $0.0387 per Mcf for commodity.

The Commission's November 2, 1990 Letter Order also required Inter-City to file an explanation supporting the recovery of $27,061 in Eastern Zone gas costs for the October through December 1989 interval requiring prior Commission approval under § 154.306 of the Commission's regulations. Inter-City states that the underrecovery of actual purchased gas costs for the period was the result of delays in contract administration and beyond Inter-City's control. Inter-City states that it acts as a conduit pipeline and its customers negotiate their gas supply agreements directly with their gas suppliers. Delay by one of Inter-City's customers in reporting a change of terms in its supply agreement resulted in the underrecovery of actual gas costs during the October to December 1989 interval.

Inter-City states that copies of the filing were served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 3, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28239 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP91-30-000]**

### Natgas U.S. Inc.; Tariff Changes

November 26, 1990.

Take notice that on November 20, 1990, NATGAS U.S. INC. ("NATGAS"), 500, 707 Eighth Avenue, S.W., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP91-30-000 Second Revised Sheet No. 4 Superceding Second Substitute First Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

NATGAS states that it is submitting Second Revised Sheet No. 4 (1) To reflect a decrease in demand charges during the forthcoming demand charge period (January 1, 1991 through June 30, 1991) for Canadian gas purchased by NATGAS from Northwest Alaskan Pipeline Company ("Northern") under Rate Schedule X-1; and (2) to reflect an upward adjustment in its demand charges to Northern for the December 29, 1989 through August 31, 1990 period, resulting from rate refunds covering that period distributed to NATGAS and Northern by Northern Border Pipeline Company.

NATGAS requests that Second Revised Sheet No. 4 become effective on January 1, 1991.

NATGAS states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice & Procedure. All such petitions or protests should be filed on or before December 3, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28240 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP91-32-000]**

### Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 26, 1990.

Take notice that on November 21, 1990, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Tenth Revised Sheet No. 157
Eighth Revised Sheet No. 158
First Revised Sheet No. 159

With these tariff sheets, Northern Border proposes to (1) revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1 as called for by Northern Border's tariff every six months, (2) revise the form but not the substance of the calculation of the Minimum Revenue Credit as it appears in the tariff, and (3) revise the computation of the debt repayment obligation to be consistent with the new loan financing secured earlier this year.

Tenth Revised Sheet No. 157 and Eighth Revised Sheet No. 158 reflect the revised Maximum Rate and Minimum Revenue Credit effective January 1, 1991 through June 30, 1991 in accordance with Northern Border's tariff provisions under Rate Schedule IT-1. Northern Border proposes to decrease the Maximum Rate from 4.908 cents per 100 Dekatherm-Miles to 4.776 cents per 100 Dekatherm-Miles and decrease the Minimum Revenue Credit from 2.956 cents per 100 Dekatherm-Miles to 2.831 cents per 100 Dekatherm-Miles. These revisions do not produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Eighth Revised Sheet No. 158 has also been changed to correct the presentation of the calculation of the Minimum Revenue Credit as shown in § 3.33. During the conversion of the tariff sheet into ASCII format, certain underscoring meant to designate division, was lost. To avoid this problem in the future, a + symbol will be used in place of the underscore.

First Revised Sheet No. 159 has been changed to reflect a revision in the debt repayment obligation as a result of new debt financing secured earlier this year. Under Northern Border's old loan agreement, the debt repayment obligation was determined by multiplying 65.22857% times the total depreciation and deferred taxes for the month. Under the new loan agreement, Northern Border's debt repayment obligation is calculated by multiplying 65% times the total monthly depreciation and deferred taxes. Section 3.33 has been revised to reflect the change in the percentage.

Northern Border has requested that these revised tariff sheets be effective January 1, 1991. Northern Border states that copies of this filing have sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) All such petitions or protests should be filed on or before December 3, 1990. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

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Copies of this filing are on file with the Commission and are available for public inspection.

**Lois Cashell,**

*Secretary.*

[FR Doc. 90-28241 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ91-3-17-000]**

**Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff**

November 26, 1990

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 20, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies each of the tariff sheets:

Twenty-Fifth Revised Sheet No. 50.1 and 50.2
Eighteenth Revised Sheet No. 50A.1, 50B.1, 50C.1 and 50D.1

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's proposed Out-of-Cycle PGA filing to be effective December 1, 1990 pursuant to Docket No. RM86-14 (Order No. 483).

Texas Eastern states that these revised tariff sheets filed herewith reflect a demand decrease of $0.267/dth., and a commodity increase of $0.1616 per dth, representing the change in Texas Eastern's projected cost of purchased gas from Texas Eastern's last scheduled PGA filing effective November 1, 1990 in Docket No. TQ91-1-17.

The proposed effective date of the above tariff sheets is December 1, 1990.

Texas Eastern states that it anticipates that based upon current spot market indicators it will experience a considerable increase in its market-sensitive producer supplier prices effective December 1, 1990, to a level above those used in its regularly scheduled PGA filing in Docket No. TQ91-1-17, thus necessitating the instant out-of-cycle rate increase. In addition, Texas Eastern has now resolved certain gas purchase contract pricing disputes which have been under litigation. In the instant filing Texas Eastern proposes to reflect the effect of the resolution of these disputes on its projected cost of gas beginning December 1, 1990, which is approximately $0.0500/dth of the total $0.1616/dth increase proposed herein.

Texas Eastern also states that on October 31, 1990 it filed its compliance filing in Docket No. RP90-119-000 and its motion to make those tariff sheets effective December 1, 1990. The tariff sheets submitted herewith reflect the base rates filed on October 31, 1990 in the above aforementioned compliance filing.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 3, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28242 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP89-36-007, CP90-373-004 and CP87-105-009]**

**Viking Gas Transmission Co.; Tariff Filing**

November 26, 1990.

Take notice that on November 19, 1990, Viking Gas Transmission Company (Viking) filed its corrected Second Revised Sheet No. 114 to Original Volume No. 2 of its FERC Gas Tariff, to be effective November 1, 1990. Viking states that the purpose of this filing is to reflect the correct pagination and the correct reduction of fuel and loss percentages as of November 1, 1990.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 3, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28243 Filed 11-30-90; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

**[FE Docket No. 90-83-NG]**

**Chippewa Gas Corp.; Application for Blanket Authorization To Import Natural Gas From Canada**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 24, 1990, of an application by Chippewa Gas Corporation (Chippewa) for blanket authority to import up to 150 Bcf of natural gas from Canada over a two-year term from the date of first delivery. All transactions contemplated under Chippewa's import proposal would utilize existing facilities and would be subject to FE's reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 2, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Chippewa, a Delaware corporation with its principal place of business in Houston, Texas, is engaged in the marketing of natural gas throughout the U.S. Chippewa states that under the blanket authorization requested, it contemplates importing, either on its own behalf or on behalf of others, competitively priced natural gas supplied by a variety of Canadian suppliers for sale to U.S. purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. Chippewa further states that they may also secure arrangements for transportation of Canadian gas in the United States pursuant to agreements with certain customers.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion. A decision on Chippewa's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing facilities are located.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Chippewa's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 27, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28314 Filed 11-30-90; 8:45 am]

BILLING CODE 6450-01-M



**[FE Docket No. 90-67-NG]**

**ICG Utilities (Manitoba) Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of an order granting blanket authorization to import and to export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ICG Utilities (Manitoba) Ltd. (ICG) blanket authorization to import up to 8 Bcf of Canadian natural gas and to export to Canada up to 8 Bcf of natural gas over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28315 Filed 11-30-90; 8:45 am]

BILLING CODE 6450-01-M

**[FE Docket No. 90-77-NG]**

**ICG Energy Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada**

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of an order granting blanket authorization to export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ICG Energy Marketing, Inc. (ICG Energy Marketing) blanket authorization to export to Canada up to 2 Bcf of natural gas over a two-year term beginning on the date of first export.

BEST COPY AVAILABLE

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A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 23, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-28318 Filed 11-30-90; 8:45 am]

BILLING CODE 6450-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Space Charter Agreement Between Naveria Santa, Ltd. and Central America Shippers, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 217–011306.

*Title:* Space Charter Agreement between Naveria Santa, Ltd. and Central America Shippers, Inc.

*Parties:* Empresa Naveria Santa, Ltd., Central America Shippers, Inc.

*Synopsis:* The proposed Agreement would permit the parties to provide vessel capacity for reciprocal space chartering within the trade between Atlantic ports of the United States in South Florida from Key West, Florida to West Palm Beach, Florida, and all inland and coastal points within the United States that can be served by these ports excluding Hawaii and Alaska.

Dated: November 27, 1990.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 28256 Filed 11-30-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-32]

### Filing of Complaint and Assignment; CDM International

Notice is given that a complaint filed by CDM International ("Complainant") against Vencaribe, C.A. ("Respondent") was served November 27, 1990. Complainant alleges that Respondent engaged in violations of section 10(b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(12), by causing unreasonable prejudice and disadvantage to Complainant through failure to timely deliver Complainant's shipment.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by November 27, 1991, and the final decision of the Commission shall be issued by March 27, 1992.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-28259 Filed 11-30-90; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee; Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**DATES:** The following advisory committee meeting is announced:

**Generic Drugs Advisory Committee**

*Date, time, and place.* December 14, 1990, 8 a.m. to 4 p.m., Holiday Inn, Versailles Rm., 8120 Wisconsin Ave., Bethesda, MD.

*Type of meeting and content person.* Open public hearing, 8 a.m. to 9 a.m., unless public participation does not least that long; open committee discussion, 9 a.m. to 4 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Rm. 8B–45, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committee.* The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Secretary, the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

*Agenda—Open public hearing.* Interested persons may present information or views, orally or in writing, on issues related to the agenda of this meeting. Those desiring to make formal presentations should call the contact person before December 12, 1990 and state the general nature of the evidence or arguments they wish to present, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss: (1) An overview of generic drugs at FDA, (2) the generic drug industry and the future of generic drugs, (3) FDA compliance issues, (4) bioequivalence of older drug products, (5) research opportunities, and (6) legal review.

FDA is giving less than 15 days' public notice of this Generic Drugs Advisory Committee meeting because of the need to initiate the work of the newly formed committee in a timely fashion. During this meeting, various topics will be discussed which are relevant to the orientation of the committee members.



The next regular meeting of this committee will be scheduled in the near future. The agency decided that it was in the public interest to hold this scientific and regulatory discussion on December 14, 1990 even if there was not sufficient time for the customary 15-day public notice.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discussion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 28, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-28428 Filed 11-29-90; 3:00 pm]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### North American Wetlands Conservation Council; Meeting

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The North American Wetlands Conservation Council (Council) will meet on December 6 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989.) Upon completion of the Council's review, proposals will be ranked and submitted to the Migratory Bird Conservation Commission with recommendations for funding. The Meeting is open to the public.

**DATES:** December 6, 1990.

**ADDRESSES:** The meeting on December 6 will be held at Bear Island Wildlife Management Area, Route 2, box 207, Green Pond, South Carolina 29446.

**FOR FURTHER INFORMATION CONTACT:** John Frampton, South Carolina Wildlife and Marine Resources Department, Rembert C. Dennis Building, P.O. box 167, Columbia, South Carolina 29202, telephone (803) 734–3887.

**SUPPLEMENTARY INFORMATION:** The North American Wetlands Conservation Council will meet at Bear Island Wildlife Management Area, Green Pond, South Carolina at 8:30 a.m.

The meeting is to review and recommend proposals for funding to the Migratory Bird Conservation Commission pursuant to the North American Wetlands Conservation Act. The Council will also review the project evaluation process and finalize plans for issuing a revised call for proposals early in calendar year 1991.

Dated: November 23, 1990.

**Bruce Blanchard,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 90-28233 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Land Management

[AK-964-4220-15]

### Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(1) and 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), and 1613(h)(7) will be issued to Doyon, Limited. The lands involved are in the Arctic National Wildlife Refuge and fall within the below listed townships:

| Serial No. | Land description | Approximate acreage |
|---|---|---|
| F-22582 | T. 10 S., R. 47 E., Umiat Meridian, Alaska. | 364.94 |
| F-22632 | T. 13 S., R. 39 E., Umiat Meridian, Alaska. | 149.00 |
| F-22635 | T. 13 S., R. 37 E., Umiat Meridian, Alaska. | 80.00 |
| | T. 13 S., R. 38 E., Umiat Meridian, Alaska. | 575.00 |
| | T. 14 S., R. 38 E., Umiat Meridian, Alaska. | 155.60 |
| F-22636 | T. 12 S., R. 35 E., Umiat Meridian, Alaska. | 129.16 |

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the "Fairbanks

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Daily News-Miner." Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until January 2, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Mary M. Bona,**

*Supervisor, Fairbanks Section, Branch of Doyon/Northwest Adjudication.*

[FR Doc. 90-28300 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-JA-M

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**[NV-930-91-4212-11; N-34385]**

## Termination of Recreation and Public Purposes Classification and Order Providing for Opening of Land; Nevada

November 21, 1990.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates Recreation and Public Purposes classification, N-34385 in its entirety. The land will be opened to the public land laws generally, including the mining, mineral leasing and material sales laws.

**EFFECTIVE DATES:** Termination of the classification is effective December 3, 1991. The land will be open to entry at 10 a.m. on January 2, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mary Clark, BLM Nevada State Office, 850 Harvard Way, P.O. box 12000, Reno, NV 89520, 702-785-6530.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by appendix 1 of Bureau of Land Management Manual 1203, dated April 14, 1967, Recreation and Public Purposes classification N-34385 is hereby terminated in its entirety:

**Mount Diablo Meridian, Nevada**

T. 14 N., R. 66 E.,
Sec. 34, E½SE¼SW¼SW¼, S½SE¼SW¼.

The area described contains 25 acres in White Pine County, Nevada. the classification, made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public laws, including the mining, mineral leasing and material sales laws. The land was subsequently leased to the Nevada Department of Transportation for a maintenance station site. Said lease has since expired and a determination has been made that the classification is no longer appropriate.

At 10 a.m. on January 2, 1991, the land will be open to the operation of the public land laws, the mineral leasing and the material sales laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on January 2, 1991, will be considered as simultaneously filed. All other applications received will be considered in the order of filing.

At 10 a.m. on January 2, 1991, the land will also be open to the operation of the mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 30, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. the Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**Fred Wolf,**

*Acting State Director, Nevada.*

[FR Doc. 90-28228 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-HC-M

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**[NV-050-91-4333-12]**

## Proposed Shooting Closure for Certain Public Lands Managed by the Las Vegas District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed classification decision, establishment of recreational and target shooting closure for certain Public Lands administered by the BLM in the Las Vegas District, Las Vegas, Nevada.

**SUMMARY:** All recreational and target shooting will be prohibited on public lands within the Las Vegas Valley, Nellis Dunes, and Red Rock Canyon areas and are described as follows: T. 19 S., R. 59 E., sections 1-36; T. 19 S., R. 60 E., sections 1-36. T. 19 S., R. 61 E., sections 1-36. T. 19 S., R. 62 E., sections 12, E½, 13, 14, 15, and 20-36. T. 19 S., R. 63 E., sections 1-36. T. 19 S., R. 64 E., sections 18, 19, 30, and 31. T. 18 S., R. 63 E., sections 22-30, and 31, E½NW¼, NE¼SW¼, SE¼SW¼, W½SW¼, SW¼, 32, 33, 34, 35, and 36. T. 18 S., R. 64 E., sections 7, S½SW¼, S½SE¼, 18, 19, and 20. T. 17 S., R. 63 E., sections 31, 32, and 33. T. 20 S., R. 59 E., sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, S1/2, 20-36. T. 20 S., R. 60 E., sections 1-36. T. 20 S., R. 61 E., sections 1-36. T. 20 S., R. 62 E., sections 1-36. T. 20 S., R. 63 E., sections 1-34. T. 21 S., R. 58 E., sections 24, 25, E½, and 36, E½. T. 21 S., R. 59 E., sections 1-36. T. 21 S., R. 60 E., sections 1-36. T. 21 S., R. 61 E., sections 1-36. T. 21 S., R. 62 E., sections 1-36. T. 21 S., R. 63 E., sections 3-10, 14, W½, W½SE¼, SW¼NE¼, 15-22, 23, W½, W½ NE¼, W½SE¼, 25-36. T. 22 S., R. 59 E., sections 1-36. T. 22 S., R. 60 E., sections 1-36. T. 22 S., R. 61 E., sections 1-36. T. 22 S., R. 62 E., sections 1-33. T. 22 S., R. 63 E., sections 1-36. T. 23 S., R. 63 E., section 2. T. 22 S., R. 63½ E., sections 1, 12, 13, 24, 25, and 36. T. 23 S., R. 61 E., sections 1-10. T. 23. S., R. 60 E., sections 1-12. T. 23 S., R. 59 E., sections 1-12. T. 23 S., R. 58 E., sections 1, 2, 3, 4, 9, 10, 11, and 12.

This recreational and target shooting closure does not apply to hunting which is permitted during legally established seasons except below six thousand feet on the East slope of the Spring Mountains within the Red Rock Canyon National Conservation Area, southeast slope of the La Madre Mountains, and within one mile of any developed camp, picnic area, road, trail, or site developed for public or private use. Hunting for upland game birds is permitted for licensed hunters during legally established seasons South of Spring Mountain Ranch State park at all elevations, except within 1,000 feet of any road or structure. In addition, shooting located at BLM authorized Recreation & Public Purpose facilities is allowed.

**COMMENT PERIOD:** Until January 2, 1991. Interested parties may submit comments on the proposed Shooting Closure to the District Manager, Las Vegas District Office.

**ADDRESSES:** District Manager, Las Vegas District Office, 4765 W. Vegas Drive, P.O. box 26569, Las Vegas, Nevada 89126.

**SUPPLEMENTARY INFORMATION:** This shooting closure is consistent with BLM policy and is established to assist BLM in protecting its public lands and its resources from damage caused by recreational and target shooting on public lands within the Las Vegas District. Of equal importance is the problem of recreational and target shooting causing conflicts with other users. These forms of shooting are hazardous to the well-being, comfort and safety of others and are not consistent with title 43, Code of Federal Regulations (CFR) for developed recreation areas, sites and facilities on public lands. The objective of this shooting closure is to insure that public lands, including recreation areas, sites and facilities, can be used by the maximum number of people with minimum conflict among users and minimum damage to public lands and resources (43 CFR 8365.0-2). This closure is also consistent with the Clark County Shooting Closure.

Authority for the shooting closure is contained in title 43 CFR, chapter II, part 8360, subpart 8364.1, subpart 8365, subpart 8365.0-1, subpart 8365.0-2, subpart 8365.1-6, and 8365.2-5(a).

Pursuant to 43 CFR 8360.0-7, violations of any regulations in this part by a member of the public, except for the provisions of § 8365.1-7 are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by § 8365.1-6 are punishable in the same manner.

Dated: November 19, 1990.

**Don Collins,**

*District Manager, Las Vegas, Nevada.*

[FR Doc. 90-28227 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-HC-M

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**[ID-040-01-4320-10]**

## Salmon District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

**DATES:** The meeting will be held Thursday, January 3, 1991, at 10 a.m.

**ADDRESSES:** The meeting will be held at the Salmon District Office, Bureau of Land Management Conference Room, South Highway 93, Salmon, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Roy Jackson, District Manager, U.S. Department of Interior, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, ID 83467 (208) 756-5400.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Public Law 92-463. The meeting is open to the public; public comments will be accepted from 1 to 1:30 p.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467 by January 2, 1991. The agenda items include discussion of surplus stores materials, project construction standards, update of Lemhi grazing agreements, new project proposals, and any other issues dealing with grazing management in the Salmon District.

Summary minutes of the meeting will be kept in the Salmon District Office and will be available for public inspection and reproduction during regular business hours (7:45 a.m. to 4:15 p.m.) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy Jackson, District Manager, Bureau of Land Management, Salmon District Office, P.O. Box 430, Salmon, Idaho 83467, phone (208) 756-5400.

Dated: November 20, 1990.

**Robert W. Heideman,**

*Associate District Manager.*

[FR Doc. 90-28258 Filed 11-30-90; 8:45 am]

BILLING CODE 4310-GG-M

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**[AZ-020-4410-08; DEIS-(90-29)]**

## Availability of the Kingman Resource Area's Draft Resource Management Plan and Environmental Impact Statement, Kingman Resource Area, Kingman, AZ

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed Kingman Resource Area Resource Management Plan (RMP). The RMP identifies BLM's proposed management for about 2,500,000 acres of public land in northwestern Arizona. The RMP proposes to designate 14 Areas of Critical Environmental Concern (ACEC) (569,700 acres) in the Preferred Alternative and 20 ACECs (320,226 acres) in Alternative 3. The following is a list of ACECs and the proposed resource use limitations.

**Alternative 2 ACECs**

Joshua Tree Forest—Grand Wash Cliffs (39,065 acres). Close 8510 acres to mineral material disposal, close 5632 acres to mineral entry and limit off-highway vehicle (OHV) use to designated roads, trails, and washes.

Black Mountains (Bighorn Sheep and Special Status Plant Habitat) (219,428 acres). Close 47,160 acres to mineral material disposals, limit OHV use to existing roads, trails, and washes.

Western Bajada Desert Tortoise and Cultural (15,866 acres). Close 8,909 acres to mineral entry, mineral leasing, and mineral material sales. Limit OHV use to designated roads and trails.

Wright-Cottonwood Creeks Riparian and Cultural (27,300 acres). Close 3,925 acres in the riparian zone to mineral entry and mineral material disposals and allow mineral leasing with no surface occupancy (NSO). Limit OHV use to existing roads and trails.

Cherokee Point Antelope Habitat (54,457 acres). Limit OHV use to existing roads, trails, and washes.

Hualapai Mountain Research Natural Area (Threatened and Endangered (T&E) Animal Habitat) (3,300 acres). Close to mineral entry and mineral material disposals and allow mineral leasing with NSO. Limit OHV use to existing roads and trails.

White-Margined Penstemon Reserve (17,493 acres). Allow mineral leasing with stipulations and close to mineral material disposals. Limit OHV use to designated roads and trails.

Carrow-Stephens Ranches (1795 acres). Close to mineral entry and mineral material sales and allow mineral leasing with NSO. Limit OHV use to existing roads and trails.

McCracken Desert Tortoise Habitat (23,720 acres). Close to mineral material disposals and allow mineral leasing with sitpulations. Limit OHV use to existing roads, trails, and washes.

Poachie Desert Tortoise Habitat (44,521 acres). Close to mineral material disposals and allow mineral leasing with sitpulations. Limit OHV use to existing roads and trails.

Aubrey Peak Bighorn Sheep Habitat (10,413 acres). Close to mineral material disposals and allow mineral leasing with stipulations. Limit OHV use to existing roads, trails, and washes.

Burro Creek Riparian and Cultural (37,070 acres). Close 5,825 acres in the riparian zone to mineral entry, mineral material disposals, and allow mineral leasing with NSO and in the rest of the ACEC allow mineral leasing with stipulations. Limit OHV use to designated roads and trails in the

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riparian zone and existing roads, trails, and washes, in the rest of the ACEC.

Clay Hills Research Natural Area (T&S Plants) (1,113 acres). Close to mineral entry, mineral material disposals, and mineral leasing. Limit OHV use to designated roads and trails.

Three Rivers Riparian (47,139 acres). Close 27,678 acres in the riparian zone to mineral entry, mineral material disposals, and allow mineral leasing with NSO and in the rest of the ACEC allow mineral leasing with stipulations. Limit OHV use to designated roads and trails in the riparian zone and existing roads, trails, and washes, in the rest of the ACEC.

**Alternative 3**

Joshua Tree Forest (8510 acres). Proposed resource use limitations are the same as in Alternative 2.

Black Mountains (66, 132 acres). Proposed resource use limitations, same as Alternative 2.

Silver Creek Cultural Resources (601 acres). Acquire non-federal minerals and close to mineral entry, mineral leasing and mineral material disposals. Limit OHV use to designated roads, trails, and washes.

Western Bajada Desert Tortoise—Cultural Resource—same as alternative 1.

Wright Creek (9,236 acres) and Cottonwood Creek (4,924 acres). Proposed resource use limitations—same as for the Wright-Cottonwood Creeks Riparian and Cultural in Alternative 2.

Cottonwood Mountains Cultural Resources (1,278 acres). Acquire non-federal minerals and close to mineral entry. Limit OHV use to designated roads, trails, and washes.

Cherokee Point (54,457 acres), Hualapai Mountain Research Natural Area (3,300 acres), White-Marginal Penstemon Reserve (17,493 acres), Carrow-Stephens Ranches (1,795 acres), McCracken Desert Tortoise Habitat (23,720 acres), Poachie Desert Tortoise habitat (44,521 acres), and Aubrey Peak Bighorn Sheep habitat (10,413 acres). Proposed resource use limitations—same as Alternative 2.

Black Butte Cultural Resources (1,280 acres). Acquire non-federal minerals and close to mineral material disposals. Limit OHV use to designated roads, trails, and washes.

Clay Hills (1,113 acres). Proposed resource use limitations—same as Alternative 2.

Burro Creek Riparian (16,049 acres), Big Sandy Riparian (13,948 acres), Santa Maria Riparian (20,674 acres), and Bill Williams Riparian (10,916 acres). Proposed resource use limitations—same as Three Rivers Riparian Alternative 2.

*ACECs Considered But Dropped*

Mount Wilson, desert bighorn sheep habitat, was dropped because the desert bighorn sheep habitat was not threatened and the Mount Wilson WSA is recommended for wilderness designation in the Arizona Wilderness Bill before Congress.

The Desert Mountain Meadows were dropped because several have communication sites and are within Hualapai Mountain County Park. The other meadow is in the Wabayuma WAS, which is recommended for wilderness designation in the Arizona Wilderness Bill before Congress.

To give the public an opportunity to review and comment on the draft RMP/EIS, BLM has scheduled a ninety (90) day comment period. During the comment period, the public is invited to review the document and provide BLM with comments. The comment period will end ninety (90) days after EPA's notice of availability is published in the **Federal Register**

**SUPPLEMENTARY INFORMATION:** To assist the public in their review of the draft RMP/EIS, BLM has scheduled:

*Public Hearings*

January 15, 1991, 7 p.m., Maricopa Board of Supervisors Auditorium, 205 West Jefferson, Phoenix, Arizona.

January 17, 1991, 7 p.m., Kingman High School Auditorium, 400 Grandview, Kingman, Arizona.

*Public Meetings*

January 22, 1991, 7 p.m., Chamber of Commerce Building, Bullhead City, Arizona.

January 23, 1991, 7 p.m., 6 South Lindahl Road, Bagdad, Arizona.

January 24, 1991, 7 p.m., Dolan Springs Fire Station, Pierce Ferry Road & Ironwood Drive, Dolan Springs, Arizona.

A limited number of copies of the draft RMP/EIS are available upon request from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman Arizona 86401, Telephone (602) 757–3161, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863–4464, and Arizona State Office, 3707 North 7th Street, P.O. box 16563, Phoenix, Arizona, 85011, Telephone (602) 640–5509. Public reading copies are available at these locations.

**ADDRESSES:** Comments should be sent to Bill Carter, Technical Coordinator, Bureau of Land Management, 2475 Beverly Avenue, Kingman, Arizona 86401.

**FOR FURTHER INFORMATION CONTACT:** Bill Carter, Technical Coordinator, at the above address or telephone (602) 757–3161.

Dated: November 27, 1990.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 90–28298 Filed 11–30–90; 8:45 am]

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**[NM–040–01–4410–10]**

## Intent To Prepare a Resource Management Plan, Invitation for Public Involvement, and Notice of Public Meetings; Oklahoma Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, is initiating preparation of a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM-managed Federal lands and minerals throughout the State of Oklahoma. The Code of Federal Regulations, title 43, subpart 1600 (43 CFR part 1600) will be followed in the preparation of this plan. The public is invited to participate in this land use planning effort, beginning with the identification of issues, and planning criteria.

Written comments or suggested issues and planning criteria will be accepted until January 31, 1991. The BLM will hold a series of public scoping meetings at which time oral comments and suggestions will be accepted.

**DATES:** Comments relating to the identification of issues and planning criteria will be accepted until January 31, 1991.

**ADDRESSES:** Comments and requests to be included on the mailing list should be sent to: Paul Tanner, Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 NW, Fifth Street, room 548, Oklahoma City, Oklahoma 73102.

**FOR FURTHER INFORMATION CONTACT:** Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, (405) 231–5491 or FTS 736–5491.

**SUPPLEMENTARY INFORMATION:** The planning area for the Oklahoma RMP will include all BLM-managed Federal surface and mineral estate within Oklahoma.

This includes approximately 90,000 Public Domain (PD) surface acres, 573,000 acres of split estate minerals (private surface over Federal minerals) and approximately 850,000 acres of Federal mineral estate underlying other Federal surface management agencies (SMA's) lands. The anticipated issues to be addressed by this RMP/EIS effort include oil and gas leasing and subsequent development, the identification of areas acceptable for further consideration for coal leasing and the eligibility of segments of the Red River for evaluation under the provisions of the Wild and Scenic Rivers Act.

The issue of leasing the Federal oil and gas resource will include:

1. Determining which areas will be open for leasing and development subject to standard lease terms and conditions.

2. Determining which areas will be open for leasing and development subject to minor constraints such as seasonal restrictions.

3. Determining which areas will be open for leasing and development subject to major constraints such as no surface occupancy (NSO).

4. Determining which areas will be closed to leasing. The Federal coal resource issue to be addressed in the RMP/EIS will be a determination as to which of the Federal coal deposits within Oklahoma will be identified as acceptable for further consideration for leasing. To be identified as acceptable for consideration for leasing, a tract must pass four land use planning screens. The four Federal coal leasing screens include: A determination of coal development potential; application of the required unsuitability criteria contained in 43 CFR part 3461; a determination of multiple land use value conflicts and consultation with surface landowners as outlined in 43 CFR 3420.1–4.

Coal tracts possessing development potential were identified following the Call For Coal Information which was published in the **Federal Register** (Vol. 54, No. 23, page 5668) on February 6, 1989. The remaining three planning screens required for coal leasing determinations will be applied during this land use planning effort. Segments of the Red River will be assessed for eligibility and potential classification as wild, scenic, and/or recreational and a determination will be made regarding the suitability of segments for designation into the National Wild and Scenic Rivers System. The river study follows a three step assessment process.

1. During the first step, determination of eligibility, it must be determined if the Red River is "free flowing" and with it's adjacent land area, possesses one or more "outstandingly remarkable" values.

2. If a river segment is found to be eligible, it must then be classified as either wild, scenic, or recreational. These classifications establish guidelines for interim management until a designation or nondesignation decision is reached.

3. A determination of suitability is the third step in the assessment and evaluation process. Factors to be considered during this process include but are not limited to:

(a) Characteristics which do or do not make the area a worthy addition to the National Wild and Scenic Rivers System.

(b) Current status of land ownership, use in the area, including the amount of private land involved, and associated or conflicting uses.

(c) Reasonably foreseeable potential uses of the land and related waters which would be enhanced, foreclosed or curtailed if the area were included in the National Wild and Scenic Rivers System, and the values which could be foreclosed or diminished if the area is not protected as part of the system.

(d) Public, State, local or Federal interest in designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State, local or other agencies and individuals.

(e) Estimated cost of acquiring necessary lands and interests in lands and of administering the area if it is added to the system.

(f) Ability of the agency to manage the river area or segment as a unit of the Wild and Scenic Rivers System.

(g) Historical or existing rights which would be adversely affected as to foreclose, extinguish, curtail, infringe, or constitute a taking which would entitle the owner to just compensation if the area were included in the National Wild and Scenic Rivers System. In the suitability analysis, adequate consideration will be given to rights held by owners, applicants, lessees or claimants.

(h) Other issues and concerns identified in the land use planning process.

The proposed planning criteria include:

1. All proposed actions must comply with laws, executive orders, and regulations.

2. For each proposed action, the resource outputs must be reasonable and achievable with available technology.

3. All proposed actions must recommend resource allocations which are in accordance with the principles of multiple-use and sustained yield.

4. All proposed actions must evaluate and consider long-term benefits to the public in relation to short-term benefits.

5. All proposed actions must provide for the orderly development of leasable minerals while containing environmental impacts to a minimum.

These proposed planning issues and criteria are presented for public comment and are subject to change based upon such public comment. Comments should be received by January 31, 1991. The planning team will seek public involvement throughout the planning process. Public scoping meetings to gather comments on the preliminary issues and criteria are scheduled for:

January 14, 1991, 3–5 p.m., Best Western Ambassador Inn, U.S. Highway 64 North at 21st Street, Guyman, Oklahoma.

January 15, 1991, 5–7 p.m., Northwest Inn, U.S. Highway 270 South & 1st Street, Woodward, Oklahoma.

January 16, 1991, 3–5 p.m., Hilton Inn West, West U.S. Interstate 40 & Meridian Avenue, Oklahoma City, Oklahoma.

January 22, 1991, 5–7 p.m., Ramada Inn, 601 North 2nd Street, Lawton, Oklahoma.

January 23, 1991, 3–5 p.m., Holiday Inn, U.S. Highway 69 Bypass South, McAlester, Oklahoma.

January 24, 1991, 1–4 p.m., BLM's Tulsa District Office, 9522–H, East 47th Place, Tulsa, Oklahoma.

Complete records of all phases of the planning process will be available for public review at the Oklahoma Resource Area Office, 200 NW. 5th Street, room 548, Oklahoma City, Oklahoma 73102.

Draft and final RMP/EIS documents will be available upon request.

Dated: November 27, 1990.

**Kathy Eaton,**

*Acting State Director.*

[FR Doc. 90–28299 Filed 11–30–90; 8:45 am]

BILLING CODE 4310–FB–M

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## INTERSTATE COMMERCE COMMISSION

[Amendment No. 2 to Service Order No. 1510]

### D&H Corporation [1]/Canadian Pacific Limited Authorized to Operate Tracks of Delaware and Hudson Railway Company, Debtor (Francis P. Dicello, Trustee)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of extension.

**SUMMARY:** Amendment No. 2 to Service Order No. 1510 extends the order's effectiveness for 90 days as requested by Francis P. Dicello, Trustee in reorganization of the Delaware and Hudson Railway Company (D&H), and D&H Corporation/Canadian Pacific Limited (D&H Corp./CP Rail). Amendment No. 1 to Service Order No. 1510, served August 30, 1990, pursuant to 49 U.S.C. 11123(a), authorized D&H Corp./CP Rail to operate without Federal subsidy or other Federal compensation over tracks of the D&H until 11:59 p.m., November 28, 1990. Amendment No. 1 to Service Order No. 1510 is hereby extended for 90 days.

**EFFECTIVE DATE:** This order shall become effective at 11:59 p.m., November 28, 1990, and shall remain in effect until 11:59 p.m., February 26, 1991, unless otherwise modified, amended, or vacated by order of this Commission.

**FOR FURTHER INFORMATION CONTACT:** Bernard Gaillard, (202) 275–7849 or Paul E. Graham, (202) 275–7520. [TDD for hearing impaired: (202) 275–1721.]

**SUPPLEMENTARY INFORMATION:** Upon application by Francis P. DiCello, Trustee in reorganization of the D&H and D&H Corp./CP Rail, and based upon representations of support by The New York State Department of Transportation (NYSDOT) and the U.S. Department of Transportation, Federal Railroad Administration (FRA), Service Order No. 1510 (55 FR 31908) was entered, pursuant to 49 U.S.C. 11123(a), for an initial period of 30 days. Service Order No. 1510 was extended for 90 days in Amendment No. 1 to Service Order No. 1510 (55 FR 35962), served August 30, 1990. That order expires at 11:59 p.m., November 28, 1990.

The Trustee and D&H Corp./CP Rail, by application of November 23, 1990, request that the Commission extend Service Order No. 1510 until consummation of the transactions approved in Finance Docket No. 31700, served October 17, 1990.

During the pendency of Service Order No. 1510, D&H Corp. has demonstrated that with the support of its parent, CP Rail, it has the necessary financial resources and the managerial and operational capability to provide continued rail service on the D&H lines.

The Commission herein certifies that the emergency which prompted entry of the original order in this proceeding continues and extends the authority for D&H Corp./CP Rail to operate D&H lines for an additional 90 days. This will assure D&H shippers of continued essential rail services, without interruption, during the consummation process of the approval granted in Finance Docket No. 31700. It will also ensure that the Trustee and D&H Corp./CP Rail make every effort to consummate the transaction we have authorized as soon as possible. If for some reason it is impossible for the parties to complete the transaction within the additional 90 days provided, they may come back to us with some explanation as to why they have not been able to consummate.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359.

*Decided:* November 27, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett and McDonald.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90–28294 Filed 11–30–90; 8:45 am]

BILLING CODE 7035–01–M

[1] D&H Corporation is a wholly owned subsidiary of Canadian Pacific Limited that was formed to acquire the assets of the Delaware and Hudson Railway Company. That acquisition was approved by the Commission in *Canadian Pacific Ltd.—Pur. & Trackage—D&H Ry. Co.*, 7 I.C.C.2d 95 (1990).

[Finance Docket No. 31698]

### John W. Greene and William T. McCarthy; Continuance in Control Exemption; Montana Western Railway Co., Inc., et al.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the continuance in control of Montana Western Railway Co., Inc., BGM Equipment Co., Inc., and Rarus Railway Company, by John W. Greene and William T. McCarthy, subject to standard labor protective conditions.

**DATES:** This exemption is effective on January 2, 1991. Petitions to reopen must be filed by December 24, 1990.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31698 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's Representative: Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, 1350 New York Avenue, NW., suite 800, Washington, DC 20005–4797.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 21, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90–28293 Filed 11–30–90; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### National Cooperative Research Act of 1984; Industrial Macromolecular Crystallography Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Industrial Macromolecular Crystallography Association ("IMCA") on October 23, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to IMCA, and its general area of planned activity, are given below.

Members of IMCA are:

Abbott Structural Research, Inc., a corporation of Illinois having a principal place of business at One Abbott Park Road, Abbott Park, Illinois 60085–3500;

E.I. Dupont de Nemours and Company, Inc., a corporation of Delaware, having a principal place of business at Wilmington, Delaware 19898;

Eli Lilly and Company, a corporation of Indiana, having a principal place of business at Indianapolis, Indiana 46285;

Merck & Co., Inc., a corporation of New Jersey, having a principal place of business at Rahway, New Jersey 07065;

The Procter and Gamble Distributing Company, a corporation of Ohio, having a principal place of business at 2 Proctor and Gamble Plaza, Cincinnati, Ohio 45202–3314;

E.R. Squibb and Sons, a corporation of Delaware, having a principal place of business at Princeton, New Jersey 08543;

The Upjohn Company, a corporation of Delaware, having a principal place of business at Kalamazoo, Michigan 49001.

The nature of the planned activity is to share the costs of building and operating a synchrotron x-ray beamline for conducting independent, separate, and confidential x-ray crystallography research by individual members on a time sharing basis at the proposed Advanced Photon Source (APS) at Argonne National Laboratory in Lemont, Illinois or at any other suitable facility.

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

[FR Doc. 90–28231 Filed 11–30–90; 8:45 am]

BILLING CODE 4410–01–M



### Lodging of Consent Decree; Conservation Chemical Company of Illinois

In accordance with Departmental policy, notice is hereby given that on November 16, 1990, a proposed Consent Decree in *United States* v. *Conservation Chemical Company of Illinois*, was lodged with the United States District Court for the Northern District of Indiana, Hammond Division. The proposed Consent Decree provides for compliance with closure requirements under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, at defendant's facility in Gary, Indiana, and for payment by defendants of $40,000 into the Closure Trust Fund.

The Department of Justice will receive for a period of thirty(30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530, and should refer to *United States* v. *Conservation Chemical Company of Illinois*, D.J. reference #90–11–2–136.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Indiana, 4th Floor, Federal Building, 507 State Street, Hammond, Indiana 46320, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.00 payable to the Treasurer of the United States.

Richard B. Stewart,

*Environment and Natural Resources Division.*

[FR Doc. 90–28229 Filed 11–30–90; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree; Pinellas County, Florida

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 16, 1990, a proposed revised Consent Decree in *United States* v. *Pinellas County, Florida*, Civil Action No. 88–271–CIV–T–17B, was lodged with the United States District Court for the Middle District of Florida. In that action, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), the United States sought injunctive relief and civil penalties for the County's unpermitted discharges of pollutants into surface waters of the United States from two of its sewage treatment plants, the South Cross Bayou and McKay Creek plants. Under the proposed consent Decree, defendant Pinellas County will pay a civil penalty of $350,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of justice, P.O. box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Pinellas County, Florida*, D.J. Ref. No. 90–5–1–1–2838.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Florida, 500 Zack Street, suite 400, Tampa, Florida (contact Assistant U.S. Attorney Warren Zimmerman); (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia (contact Assistant Regional Counsel Stedman Southall); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, Room 1541, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street NW., Suite 600, Washington, DC 20004, telephone (202) 347–2072. Please provide a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library for a copy of the Decree.

George Van Cleve,

*Acting Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 90–28230 Filed 11–30–90; 8:45 am]

BILLING CODE 4410–01–M

## NATIONAL COMMISSION ON CHILDREN

### Hearing

**Background**

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Meeting of the National Commission on Children to be held in Charleston, South Carolina.

**Meeting**

*Time:* 8 a.m.–6 p.m. Thursday, December 13, 1990. 8 a.m.–6 p.m. Friday, December 14, 1990.



*Place:* The Mills House Hotel, 115

availability of FY 90 funds for the NRC

8. Advanced demographic models or



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*Place:* The Mills House Hotel, 115 Meeting Street, Charleston, South Carolina 29401.
*Status:* Open to the public.
*Agenda:* Commission Meeting.
*Contact:* Jeannine Atalay (202) 254–3600.

Dated: November 26, 1990.
John D. Rockefeller IV,
*Chairman, National Commission on Children.*
[FR Doc. 90-28257 Filed 11-30-90; 8:45 am]
BILLING CODE 6820-37-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Availability of Fiscal Year 91 Funds for Financial Assistance (Grants) To Support Research at Educational Institutions and the Exchange of Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research, announces proposed availability of Fiscal Year (FY) 91 funds to support a limited number of research grants to educational institutions. These funds may also be used to support professional meetings and conferences for the exchange and transfer of research concepts and findings related to the safety of nuclear power production.

The FY 91 ceiling for research grants to educational institutions is approximately $1,000,000. Of this amount, approximately $500,000 will be available for new grants. Because of this limitation, proposed grant budgets should be restricted to about $50,000 per year, with total project funding not exceeding $100,000 over a two-year period. Proposals for new FY 91 research grants should be submitted between the date of this Notice and March 1, 1991. Proposals received after March 1, 1991 will be considered for FY 91 funding to the extent practicable.

**ADDRESSES:** Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Parrott, (301) 492–4297.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 4, 1989 (54 FR 50032), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice that announced the proposed availability of FY 90 funds for the NRC Grant Program. The NRC is revising that notice to provide information on their grant program for FY 91.

### Scope and Purpose of This Announcement

Pursuant to section 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit entities, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas, and concepts directed toward the NRC safety research program. The program includes, but is not limited to, support of professional meetings and conferences. In addition, the NRC has a limited amount for research grants to educational institutions (see topics below). The FY 91 ceiling for these grants is approximately $1,000,000 with approximately $500,000 of this amount available for new grants.

The purpose of this program is to stimulate research to provide a technological base for the safety assessment of system and subsystem technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety. In addition, each grant to an educational institution should contain elements which will potentially benefit the graduate research program of the institution, *e.g.*, graduate student training.

The NRC encourages educational institutions to submit research grant proposals in the following areas:

1. Development of steady state and transient pump models to estimate code applications.
2. Advantages and disadvantages of cooling water addition to a degraded core.
3. Behavior of hot hydrogen while exiting a break in the primary pressure boundary.
4. Modeling and experimentation on two-phase flow, interfacial relations, and heat transfer in reactor coolant systems.
5. Evaluation of severe accident phenomena including: High temperature chemistry of fission product and reactor fuel and structural materials, advanced modeling of the behavior of fluids, combustible gases and molten core materials in reactor primary systems during severe accidents.
6. Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites.
7. Interaction of reactor materials at very high temperature (*e.g.*, core/concrete, core debris/vessel component interactions).
8. Evaluation of the risk reduction effectiveness of human factors requirements in nuclear power plant operations and maintenance.
9. Methods for applying the growing pool of human performance data to nuclear power plant safety requirements.
10. Development of methods for Risk and Reliability Analysis of closed loop control systems, including advanced digital based control system.
11. Develop and codify pragmatic, statistically valid, methods for updating severe accident frequency and consequence analysis to reflect results of new operational, experimental, and calculation data.
12. Develop merit of methods and procedures for establishing the degree to which Probabilistic Risk Assessment (PRA) results compare with operational data and experience.
13. Development of methods to analyze and understand the aging effects, including irradiation damage effects, improved examination and testing methods for determining the condition of structures and components, and methods to assess residual lifetime of structures and components.
14. Development of nondestructive testing methods for in-situ evaluation of material properties and property degradation due to aging, such as fracture toughness and fatigue.
15. Development of methods for assuring component structural reliability and realistic methods to define the probabilities of radioactive release due to earthquakes.
16. Development of methods for assuring integrity of the primary system, *i.e.*, pressure vessels, piping, steam generator tubing, such as advanced nondestructive testing techniques, continuous monitoring techniques and fracture analysis procedures.
17. Development of methods to establish and validate decommissioning criteria and effects of water chemistry on the primary system integrity.
18. Development and/or validation of models to explain the tectonics of the Central and Eastern United States (east of 106 degrees W).
19. Development, and/or validation of models to predict the propagation of seismic ground motions in the Central and Eastern United States or in a shallow soil column.
20. Investigations/studies including field observations of the paleo-seismicity of the Central and Eastern United States.
21. Development of rapid bioassay analysis techniques for application to accidental internal exposure situation.
22. Natural analog studies of long-term stability of waste forms for low- and high-level nuclear waste.
23. Studies of volcanism in the Basin and Range.
24. Simplified modeling of thermohydrologic phenomena in high-level waste geological repositories.
25. Investigations of coupled tectonic-hydrological processes.
26. Development of a continuum approach for modeling unsaturated fractured rock.
27. Development of improved instrumentation or techniques for measuring activities, radiation dose, and dose rates, especially from small radioactive particles.
28. Development of methods for contamination prevention, measurement, and control; and improved radiological air sampling methodology.
29. Investigation of the types, sensitivity, and linearity of various biological effects of radiation that could be used as biological dosimeters.
30. Research on the metabolism of radionuclides and their compounds relative to the calculation of internal dose.
31. Investigation of the efficacy of radioactive protective agents.

### Eligible Applicants

Educational institutions, nonprofit entities, State and local governments, and professional societies are eligible to apply for a grant under this announcement.

### Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, *i.e.*, the public must be the primary beneficiary of the work performed. Surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities will not be funded by a grant. Applicants requesting support for work which has a direct regulatory application should submit their requests as an unsolicited proposal for consideration as a contract rather than a grant.

1. The primary purpose of NRC grants is to support the development of knowledge or understanding of the subject or phenomena under study.
2. The exact course of the work and its outcome are usually not defined precisely, and specific points in time for achievement of significant results need not be specified.
3. The NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.
4. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.
5. Simplicity and economy in execution and administration are mutually desirable.

### Proposal Format

Proposals should be concise and provide a thorough understanding of the proposed project. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102 (Revised), Paragraph 6.c. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated in OMB Circular A–110, (Attachment M).

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

*Title of proposal*—To include the term "research," "study," "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;

Location and Dates for Conferences, Symposium, Workshop, etc.;

Names of Principal Researchers or Participants;

Total Cost of Proposal; (Identify Cost by Fiscal Year)

Period of Proposal;

Organization or Institution and Department;

Required Signatures:

Principal Participants:

Name:
Date:
Address:
Telephone No.:

Required Organization Approval:

Name:
Date:
Address:
Telephone No.:

Organization Financial Officer:

Name:
Date:
Address:
Telephone No.:

2. *Project description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding. Applicants must identify other possible sources of financial support for a particular project, and list those sources from which financial support has been or will be requested.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project descriptions:

(a) *Project goals and objectives.* The project's objectives must be clearly and unambiguously stated. The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) *Project outline.* The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) *Project benefits.* The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) *Project management.* The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) *Project costs.* Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122. Educational institutions shall adhere to the cost principles set forth in OMB Circular A–21, and state and local governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular—

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(1) *Salaries*—in proportion to the time or effort directly related to the project;
(2) Equipment (rental only);
(3) Travel and Per Diem/Subsistence in relation to the project;
(4) Publication Costs;
(5) Other Direct Costs (specify)—*e.g.*, supplies or registration fees;

Note.—Due to organizations, federations or societies, exclusive or registration fees, are not allowed as a charge.

(6) Indirect Costs (attached negotiated agreement/cost allocation plan); and
(7) *Supporting documentation.* The supporting documentation should contain any additional information that will strengthen the proposal.

**Proposal Submission and Deadline**

This notice is valid for Federal Government Fiscal Year 91 (October 1, 1990 to September 30, 1991). Potential grantees are advised, however, that due to the limited funding available for new research grants to educational institutions, such proposals received after March 1, 1991, will be considered for FY 91 funding to the extent practicable.

**Funds**

For Fiscal Year 91, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, anticipates making a total of approximately $1,000,000.00 available for funding research grants to educational institutions. Of this amount, approximately $500,000.00 will be available for new research grants in FY91. Because of this limitation, proposed grant budgets should be restricted to about $50,000 per year, with total project funding not exceeding $100,000 over a period of two years.

**Evaluation Process**

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

**Evaluation Criteria**

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals for research projects will employ the following criteria. No level of importance is implied by the order in which these criteria are listed.

1. Adequacy of the research design.
2. Scientific significance of proposal.
3. Technical adequacy of the investigators and their institutional base.
4. Relevance to a research area(s) described above.
5. Reasonableness of estimated cost in relation to the work to be performed and anticipated result.
6. Potential benefit of the project to the overall benefit of the institution's graduate research program.

Evaluation of proposals for professional meetings, conferences, symposia, etc., will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge.
2. Clarity of statement of objectives, methods, and anticipated results.
3. Range of issues covered by the meeting agenda.
4. Qualifications and experience of project speakers.
5. Reasonableness of estimated cost in relation to anticipated results.

**Disposition of Proposals**

Notification of award will be made by the Grants Officer, and organizations whose proposals are unsuccessful will be so advised.

**Proposal Instructions and Forms**

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to (Grant application packages, Standard Form 424, must be requested in writing): U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Mail Stop P-1042, Office of Administration, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts and Property Management, Office of Administration, Mail Stop P-1042, 7920 Norfolk Avenue, Bethesda, MD 20814.

Note: Upon delivery of the application to the NRC guard desk (at the above address), the guard should be requested to telephone the Division of Contracts and Property Management (Extension 24297) for a pick-up of the application.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Bethesda, MD this 23rd day of November 1990.

For the U.S. Nuclear Regulatory Commission.

**Mary Mace,**

*Grants Officer, Contract Negotiation Branch No. 2, Division of Contracts and Property Management, Office of Administration.*

[FR Doc. 90-28219 Filed 11-30-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

**Philadelphia Electric Co., et al.; Withdrawal of Application for Amendment to Facility Operating License**

In the matter of: Philadelphia Electric, Public Service Electric and Gas, Delmarva Power and Light, and Atlantic City Electric Companies.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company, et al. (the licensee) to withdraw its January 21, 1987 application for proposed amendment to Facility Operating Licenses DPR-44 and DPR-56 for the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendment would have revised the facility Technical Specifications pertaining to the filing of semi-annual effluent reports and a reporting requirement for loss of shutdown margin events. The application requested changes to the reporting requirements of the Peach Bottom technical specifications and requested a related exemption from 10 CFR 50.36a to permit a 30 day extension for the filing of semi-annual effluent reports.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 1, 1987 (52 FR 24556). However, by letter dated October 16, 1990, the licensee withdrew the proposed change. Licensee efforts, subsequent to the filing of the 1987 submittal, resulted in streamlined processes for collecting data, obtaining sample analyses results, and preparing the semi-annual effluent report. The licensee concluded that a 30 day extension to the reporting requirement was no longer necessary.

For further details with respect to this action, see the application for amendment dated January 21, 1987, and the licensee's letter dated October 16, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the State Library of Pennsylvania, Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 21st day of November 1990.

For the Nuclear Regulatory Commission.

**Gene Y. Suh,**

*Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28282 Filed 11-30-90; 8:45 am]

BILLING CODE 7590-01-M



## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

**President's Council of Advisors on Science and Technology**

The President's Council of Advisors on Science and Technology (PCAST) will meet on December 13–14, 1990. The meeting will begin at 9 a.m. in the Conference room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

**Proposed Agenda**

1. Briefing to the Council on the current activities of Office of Science and Technology Policy, and the private sector.
2. Briefing to the Council on current federal activities and policies in science and technology.
3. Discussion of issues and topics for potential working group panels.
4. Discussion of composition of working groups.

Portions of the December 13–14 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

Persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395–3902, prior to 3 p.m. on December 12, 1990. Ms. Sherman is also available to provide specific information regarding time, place and agenda for the open session.

Dated: November 28, 1990.

**Damar W. Hawkins,**

*Executive Assistant, Office of Science and Technology Policy.*

[FR Doc. 90-28295 Filed 11-30-90; 8:45 am]

BILLING CODE 3170-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28641; File No. SR-MCC-90-06 and File No. SR-MSTC-90-06]

**Self-Regulatory Organizations; the Midwest Clearing Corp. and the Midwest Securities Trust Corp.; Order Approving Proposed Rule Changes Relating to Penalty Fees for a Participant's Failure to Provide Requested Financial Information**

**I. Introduction**

On August 24, 1990, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Corporation ("MSTC") filed proposed rule changes (File Nos. SR-MCC-90-06 and SR-MSTC-90-06, respectively) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On September 21, 1990, MCC and MSTC amended their filings to provide for Commission review pursuant to section 19(b)(2) rather than section 19(b)(3)(A) of the Act.[2] Notices of the amended proposals were published in the **Federal Register** on October 11, 1990, to solicit comments from interested persons.[3] No comments were received. As discussed below, this order approves the proposals.

**II. Description of the Proposals**

The proposals establish penalty fees for a participant's failure to provide MCC or MSTC with requested financial information.

Under MCC's and MSTC's participants' agreements and rules, including MCC Article VIII, Rule 1, section 3, and MSTC Article V, Rule 1, section 3, an MCC or MSTC participant is required to provide MCC or MSTC information with respect to the Participant's business and transactions as MCC or MSTC may require. MCC and MSTC have historically interpreted their rules to require broker-dealer participants to provide copies of applicable Form X-17A-5 FOCUS Reports and Annual Audited Reports, and bank Participants to provide copies of Consolidated Reports of Condition and Income (CALL Reports) on a timely basis, as noted below:

| Reports | Date due |
|---|---|
| Form X-17A-5, FOCUS I. | 10 business days after month-end. |
| Form X-17A-5, FOCUS II. | 17 business days after quarter-end. |
| Consolidated Reports of Condition and Income (CALL REPORTS). | 45 calendar days after quarter-end. |
| Form X-17A-5, ANNUAL AUDITED REPORT. | 60 calendar days after fiscal year-end. |

MCC and MSTC will impose the following penalty fees for a participant's failure timely to provide these reports:

| Days late | Amount |
|---|---|
| 1 to 30 | $100 |
| 31 to 60 | 200 |
| 61 to 90 | 400 |

**III. MCC's and MSTC's Rationale for the Proposal**

MCC and MSTC believe the proposed rule change is consistent with section 17A(b)(3)(F) of the Act because the proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities transactions and reduce clearing agency risk by encouraging Participants to provide MCC and MSTC with financial information on a timely basis.

**IV. Discussion**

The Commission believes that MCC's and MSTC's proposed rule changes are consistent with the Act, and in particular, with section 17A. Specifically, the proposals are consistent with section 17A(b)(3) (A) and (F) of the Act,[4] which provide that the clearing agency be organized and its rules be designed to promote, among other things, the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Jeffrey E. Lewis, Associate Counsel, MCC/MSTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated September 20, 1990.

[3] See Securities Exchange Act Release No. 28602 (October 11, 1990) 55 FR 41404 (MCC), and Securities Exchange Act Release No. 28601 (October 11, 1990) 55 FR 41405 (MSTC).

[4] 15 U.S.C. 78q-1(b)(3) (A) and (F).

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The Commission believes that the proposal is designed appropriately to encourage participants to file certain financial reports on a timely basis. This will facilitate MCC and MSTC's ability to monitor the financial condition of their members to minimize the risk of participant defaults consistent with their obligations under sections 17A(b)(3)(A) and 19(g) [5] of the Act. Additionally, the proposals are consistent with section 17A(b)(3)(D) of the Act,[6] which provides that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants, in that the penalties provided for in the proposal are charges imposed equitably, in accordance with how late the reports are filed, and thus encourage prompt filing.

The proposals also are consistent with section 17A(b)(3)(G) of the Act,[7] which provides that the rules of a clearing agency must provide that its participants be appropriately disciplined for violation of any provision of the rules of the clearing agency by, among other things, fine, or any other fitting sanction. The Commission believes that the penalties set forth in the proposals fines are appropriate disciplinary measures for a participant's violation of a reporting rule.

The proposed penalties constitute disciplinary sanctions under the Act and thus must be imposed in a manner consistent with section 17A(b)(3)(H) of the Act,[8] which, (1) requires that a clearing agency provide a "fair procedure" [9] for the disciplining of its participants, and (2) incorporates by reference section 17A(b)(5) of the Act,[10] which requires that a clearing agency grant an accused party specific due process rights, including a statement of charges, notice of the charges, an opportunity for a hearing on the record. While the proposals do not explicitly provide for an opportunity for a hearing on the record, MCC and MSTC Rules expressly provide procedures for review of the decision to impose a penalty and the fairness of that penalty. Specifically, MCC Article X, Rule 3, and MSTC Article VII, Rule 3 provide participants an opportunity for a hearing if the participant, within ten days after an imposition of a sanction, requests that the matter be reviewed by the Board of Directors.[11] In light of these rules, the Commission believes that MCC's and MSTC's appeal process will provide penalized Participants with fair opportunity to be heard.

[5] 15 U.S.C. 78s(g).
[6] 15 U.S.C. 78q-1(b)(3)(D).
[7] 15 U.S.C. 78q-1(b)(3)(G).
[8] 15 U.S.C. 78q-1(b)(3)(H).
[9] The term "fair procedure" as used in section 17A(b)(3)(H) of the Act means that any SRO disciplinary action must be conducted under rules that provide a fair and orderly procedure, including the obligation that an SRO bring specific charges, give notice to the accused, and provide an opportunity for a hearing. See S. REP No. 75, 94th Cong., 1st Sess. 28, 99 & 124 (1975).
[10] 15 U.S.C. 78q-1(b)(5).

### V. Conclusion

For the reasons stated above, the Commission finds that MCC's and MSTC proposal is consistent with the Act and, in particular, section 17A of the Act.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[12] that MCC and MSTC's proposed rule changes (SR-MCC-90-06 and SR-MSTC-90-06) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28247 Filed 11-30-90; 8:45 am]

BILLING CODE 8010-01-M

[11] The penalty will be stayed during the pendency of the review. The Board of Directors will or may hear the appeal and will render a decision. The decision rendered by the Board of Directors will be deemed final and a copy of that decision will be sent to the Commission.
[12] 15 U.S.C. 78s(b)(2).

## Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues and to Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

November 27, 1990.

On November 9, 1990, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges (UTP) pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

| File No. | Symbol | Issuer |
|---|---|---|
| 7-6389 | ACAD | Autodesk Incorporated, No par value. |
| 7-6390 | BORL | Borland International, $.01 par value. |
| 7-6391 | QNIM | Quantum Corporation, $.01 par value. |

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issues:

| File No. | Symbol | Issuer |
|---|---|---|
| 7-6392 | COMM | Cellular Communications, $.01 per value. |
| 7-6393 | CNNR | Conner Peripherals, No par value. |
| 7-6394 | TWRX | Software Toolworks, $.01 par value. |

In the case of Quantum Corporation, a replacement issue is being requested due the listing of Cellular Communications on the Midwest Stock Exchange. In the case of Autodesk Incorporated, a replacement issue is being requested due to its future listing on the New York Stock Exchange, thus rendering it ineligible for continued inclusion in the pilot program. In the case of Borland International, a replacement issue is being requested as a result of extremely low volume.

In addition, upon the approval of this application, the securities will be assigned to a Specialist/Odd Lot Dealer, pursuant to the rules of the Exchange.

### Comments

Interested persons are invited to submit, on or before December 17, 1990, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28250 Filed 11-30-90; 8:45 am]

BILLING CODE 8010-01-M



[Release No. 34-28646; File No. SR-NYSE-90-48]

## Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Restrictions on "Stopping Stock"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 3, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends NYSE Rule 116.30 to permit a specialist, upon request, to grant a stop in a minimum variation market for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, without obtaining prior Floor Official approval. A Floor Official would be able to authorize a greater order size or aggregate share threshold. The NYSE proposes to implement the amendments as a one-year pilot program.[1]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. *Purpose*—Rule 116.30 currently permits a specialist to "stop" stock, *i.e.*, to guarantee that he will buy or sell stock at a specified price, provided that, among other conditions, he is asked to grant a stop, and the quotation spread when the stop is given is at least twice the minimum variation of trading.

The Exchange is proposing to amend Rule 116.30 to permit a specialist, upon request, to grant a stop in a minimum variation market, as to both systematized and manual orders, as to any order of 2,000 shares or less, up to an aggregate of 5,000 shares of all orders that are stopped, without obtaining prior Floor Official approval. A Floor Official would be authorized to approve a specified larger order-size threshold, or a specified larger aggregate size as to all orders that may be stopped in a minimum variation market.

The Exchange does not expect that specialists would routinely grant a stop in a minimum variation market, or that Floor Officials would routinely authorize them to exceed the parameters specified in the proposed rule change. In an appropriate case, however, particularly where there is a large imbalance on one side of the market, it would appear to be beneficial for an order to receive a stop in a minimum variation market.

For example, assume the market in XYZ stock is quoted 30 to 30⅛, with 1,000 shares bid for and 20,000 shares offered. If the specialist receives a market order to buy 2,000 shares he could simply execute the order against the prevailing offer, with the buyer paying a price of 30⅛. In this situation, however, the large imbalance on the offer side of the market suggests that subsequent transactions will be on the bid side of the market. If the entering broker requests a stop, the specialist would be permitted to grant the stop at 30⅛ and add the order to the bid of 30. The customer would be guaranteed a price of no higher than 30⅛, and would have a reasonable opportunity to receive a price of 30. The specialist would be permitted to grant a stop to orders of more than 2,000 shares only if he obtains prior Floor Official approval.

The Exchange intends to implement the proposed rule change as a one-year pilot program. To monitor compliance with the proposed rule change during the pilot, computer programs using existing information from the Exchange's system order database and transaction and quotation files will identify situations where the quotation is the minimum variation and the size of the order(s) stopped exceeds the rule's parameters, *i.e.*, individual orders up to 2,000 shares or an aggregate of 5,000 shares. Floor Official records will then be checked to see that approval was obtained to exceed the limits. Where Floor Officials establish new order size or aggregate share size parameters, subsequent stops will be reviewed against these parameters.

The Exchange also will review executions of stopped orders to determine the percentage of time such orders are executed at the stop price, and the percentage of time such orders receive a price that is better than the stop price.

In addition, the Exchange will develop programs to review market depth in a stock when a stop is granted in a minimum variation market. Such programs will compare the size of the stopped order to the existing quote size and quote size imbalance, if any.

Prior to the expiration of the pilot, the Exchange will report its findings to the Commission. Based on such findings, the Exchange may determine at that time to seek permanent approval of the rule change, or may propose such modifications as appear to be appropriate based on experience during the pilot.

2. *Statutory Basis*—The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The amendments to Rule 116.30 are consistent with these objectives in that they permit specialists to grant stops, subject to appropriate limitations, in minimum variation markets, thereby enabling them to offer the possibility of price improvement to customers whose orders are granted stops.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] The NYSE originally submitted to the Commission certain amendments to Rule 116.30 in File No. SR-NYSE-90-10. *See* Securities Exchange Act Release No. 27939 (April 24, 1990), 55 FR 18207 (May 1, 1990). File No. SR-NYSE-90-10, which consists of a number of proposed amendments to the NYSE's Rules recommended by the NYSE's Market Regulation Review Committee, currently is under review by the Commission. In conjunction with its filing of File No. SR-NYSE-90-48, the NYSE submitted to the Commission Amendment No. 1 to File No. SR-NYSE-90-10 in order to delete its proposed amendments to Rule 116.30 from that file. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Commission, dated October 2, 1990. The Exchange has revised and resubmitted its proposed amendments to Rule 116.30 in File No. SR-NYSE-90-48.

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*C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-48 and should be submitted by December 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 28, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28248 Filed 11-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28643; File No. SR-Phlx-90-34]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Increasing the Number of Issues Eligible for Automatic Execution and the Types of Orders Eligible for Delivery Under AUTOM**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1990, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to increase the number of issues eligible for the automatic execution ("AUTO-EX") feature of the Exchange's Automated Options Market ("AUTOM") system, a pilot program, from twelve (12), plus all multiply traded options, to all Phlx equity options (currently 159). The AUTOM system provides electronic delivery of small options orders to the Phlx trading floor, as well as an automatic execution feature for certain options series. Additionally, the Phlx proposes to permit delivery and manual execution of good until cancelled ("GTC") and cabinet (accommodation transactions) orders directly to the specialist through the Autom system and extend the pilot program until December 31, 1991.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On March 31, 1988, the Commission approved SR-Phlx-88-10, a proposed rule change establishing AUTOM on a pilot basis for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options until June 30, 1988.[1] On June 30, 1988, the Commission approved SR-Phlx-88-22, authorizing an expansion of AUTOM to 37 Phlx equity options and extending the pilot through December 31, 1988.[2] On December 13, 1988, the Commission approved SR-Phlx-88-33 making all orders in all exercise prices and months in 37 options eligible for AUTOM and increasing the eligible order size to ten contracts.[3] At the same time, the Commission approved an extension of the pilot until December 31, 1989. On January 9, 1990, the Commission approved SR-Phlx-89-03, which added the Auto-Ex feature to Autom and extended the pilot program until June 30, 1990.[4] In addition, the eligibility of day orders for delivery through the system was approved. On July 26, 1990, the Commission approved SR-Phlx-90-16, extending the pilot program until December 31, 1990.[5] Most recently, the Commission approved SR-Phlx-90-18, increasing the eligible order size for the order routing feature of AUTOM from ten (10) to one hundred (100) contracts.[6]

The current proposal would increase from 12, plus multiply-traded options, to 159 the number of issues eligible for the automatic execution feature of AUTOM, increase the types of orders eligible for delivery and manual execution to include GTC and cabinet orders and extend the pilot program until December 31, 1991. The Exchange believes that increasing the number of issues eligible for automatic execution and the types of orders eligible for delivery and manual execution will increase overall AUTOM order flow. The Exchange represents that the AUTOM system is capable of processing significantly increased order flows in terms of disc capacity. The Exchange believes that, by increasing the potential for order flow, this proposal will extend AUTOM's benefits to additional firms and customers. The Exchange, thus, believes that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C)(i) of the Act in that the purpose of the development and implementation of AUTOM is to improve the efficiency of the execution of transactions in Phlx equity options through the use of new data processing and communications techniques. The Exchange also believes that the proposal is consistent with section 11A(a)(1)(C)(ii) of the Act in that it fosters fair competition among exchange markets in that other options exchanges currently have in place Commission approved options execution systems on pilot and permanent bases. In addition, the Phlx believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[1] See Securities Exchange Act Release No. 25540, March 31, 1988, 53 FR 11380, April 6, 1988.

[2] See Securities Exchange Act Release No. 25868, June 30, 1988, 53 FR 25580, July 7, 1988.

[3] See Securities Exchange Act Release No. 26354, December 13, 1988, 53 FR 51185, December 20, 1988.

[4] See Securities Exchange Act Release No. 27088, January 9, 1990, 55 FR 1751, January 18, 1990.

[5] See Securities Exchange Act Release No. 28295, July 26, 1990, 55 FR 31276, August 1, 1990.

[6] See Securities Exchange Act Release No. 28518, October 5, 1990, 55 FR 41408, October 11, 1990.



*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will impose no burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: November 26, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28249 Filed 11-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28647; File No. SR-PTC-90-07]

**Self-Regulatory Organizations; Participants Trust Co.; Filing of Proposed Rule Change Relating to the Elimination of Prorated Charges to Participants for Principal and Interest Advances**

November 28, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 23, 1990, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-PTC-90-07) as described in Items I, II, and III below, which items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Article III, rule 2, section 2(f) of the rules of PTC, providing for the proration among benefitted participants of the cost of financing principal and interest advances, is deleted and current section 2(g) is renumbered 2(f). Below is the text of the proposed rule change. (Brackets indicate deletions, italics indicate additions.)

*Article III, Rule 2, Principal and Interest Payments*

Sec. 2. Financing of Payments

(a) If the Corporation, using only its own funds and/or Available Deposits, has made a principal and interest advance, the Corporation shall be entitled to retain the subject principal and interest payment when received from the issuer(s) or paying agent(s) to the extent of the principal and interest advance, applying so much of such payment as is necessary to repay any loans secured by the securities portion of Participants' Mandatory Deposits to the Participants Fund and restore the cash portion of Participants' Mandatory Deposits.

(b) If the Corporation, using only proceeds of a loan or loans made by one or more third-party lenders to the Corporation secured by subject principal and interest payments to fund one or more principal and interest advances (the loan made by each such third-party lender being hereinafter referred to as a "third-party loan"), has made a principal and interest advance, the Corporation shall be entitled to retain, as agent for the sole benefit of such third-party lender(s), the subject principal and interest payments when received from the issuer(s) or paying agent(s) to the extent of the principal and interest advances and interest thereon made with the proceeds of such third-party loan(s).

(c) If the Corporation, using combination of (i) its own funds or Available Deposits and (ii) the proceeds of one or more third-party loans, has made a principal and interest advance, the Corporation shall (A) Until each such third-party loan has been repaid in full, be entitled to retain, as agent for the sole benefit of the third-party lender(s) making such third-party loan(s), the subject principal and interest payment when received from the issuer(s) or paying agent(s) to the extent of the principal and interest advance made with the proceeds of such third-party loan(s) and interest thereon and (B) after each such third-party loan and interest thereon has been repaid in full, be entitled to retain, for the Corporation's own benefit (subject to any obligation to repay any loans secured by the securities portion of Participants' Mandatory Deposits to the Participants Fund and restore the cash portion of Participants' Mandatory Deposits) the subject principal and interest payment when received from the issuer(s) or

[7] 17 CFR 200.30-3(a)(12) (1989).

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paying agent(s) to the extent of the remainder of the principal and interest advance. If the Corporation, using a combination of its own funds or Available Deposits and the proceeds of one or more third-party loan(s), has made principal and interest advances on any Business Day to more than one Participant or Limited Purpose Participant, the principal and interest advance to each Participant or Limited Purpose Participant shall be deemed to have been made pro rata with the Corporation's own funds or Available Deposits and the proceeds of such third-party loan(s), with each Participant or Limited Purpose Participant being deemed to have received a pro rata portion of the proceeds of each third-party loan.

(d) The availability of third-party loans may be conditioned upon Participants' or Limited Purpose Participants' compliance with such conditions as the third-party lender(s) may impose. Without limiting the generality of the foregoing, each Participant and Limited Purpose Participant agrees (i) To make full and prompt payment when due of the principal and interest on all third-party loans to the Corporation, plus all expenses incurred by third-party lender(s) in enforcing such payment obligations, the proceeds of which third-party loans are used, in whole or in part, to fund one or more principal and interest advances to such Participant or Limited Purpose Participant, with the right of recovery against such Participant or Limited Purpose Participant, in connection with principal and interest advances made to such Participant or Limited Purpose Participant on any Business Day, being limited to its pro rata share of (A) Such principal and interest advances made by the Corporation to Participants and Limited Purpose Participants on such Business Day using the proceeds of third-party loans made by third-party lender(s), less (B) the amount of all subject principal and interest payments relating to such principal and interest advances received and retained by such third-party lender(s) plus (C) interest on such third-party loans and all expenses incurred by such third-party lender(s) in enforcing such payment obligations and (ii) to assign to such third-party lender(s), or any agent of such third-party lender(s), all rights of such Participant or Limited Purpose Participant in and to all subject principal and interest payments relating to all principal and interest advances made by the Corporation to such Participant or Limited Purpose Participant using, in whole or in part, the proceeds of third-party loans made by such third-party lender(s). If a Participant or Limited Purpose Participant, or the Corporation on behalf of any Participant or Limited Purpose Participant, has granted or transferred to any other Participant or third party a security interest or other limited interest in any Securities with respect to which a third-party lender has been assigned subject principal and interest payments, any interest such other Participant or third party or the Corporation might otherwise have in the subject principal and interest payments shall be subordinated to any interest in the subject principal and interest payments assigned to such third-party lender. Each Participant and Limited Purpose Participant hereby (i) Irrevocably appoints the Corporation as such Participant's or Limited Purpose Participant's attorney-in-fact, with full authority in the place and stead of such Participant or Limited Purpose Participant and in the name of such Participant or Limited Purpose Participant or otherwise, from time to time in the Corporation's discretion, to take any action and to execute any document required by any third-party lender to effect the payment obligations and assignment(s) referenced in the immediately preceding sentence of this section 2(d), including without limitation, financing statements, and (ii) agrees to be bound by the terms and provisions of any such document as may from time to time be executed by the Corporation, including any such document executed by the Corporation prior to such Participant's or Limited Purpose Participant's becoming a Participant or Limited Purpose Participant.

(e) If the Corporation has made principal and interest advances on any Business Day using the proceeds of more than one third-party loan, each third party lender, as a condition of its loan, must agree that, should it receive repayment of more than its pro rata share of loan proceeds deemed to have been advanced to any Participant or Limited Purpose Participant, plus interest, it will hold such excess payment in trust for the benefit of the other third-party lenders which made third-party loans on such Business Day and surrender such excess payment to such other third-party lenders as their respective interests may appear. Such agreement will be deemed to have been made for the benefit of, and be enforceable by, such other third-party lenders.

(f) [Any financing costs related to principal and interest advances funded with the Corporation's own funds, Available Deposits and/or the proceeds of third-party loans shall be charged to Participants and Limited Purpose Participants in proportion to their Record Date positions in the Securities with respect to which the principal and interest advances were made, as adjusted pursuant to section 1 of this rule 2. As used in this section 2(f), the term "financing costs" shall mean, (i) To the extent the Corporation has borrowed funds from third-party lenders (whether secured by the securities portion of Participants' Mandatory Deposits to the Participants Fund or by subject principal and interest payments), the cost of such borrowing charged by such third-party lenders and (ii) to the extent the Corporation has advanced its own funds, interest at the highest rate that would have been charged to the Corporation by its third-party lenders if they had made a loan under credit agreements with Corporation then in effect. To the extent the corporation has used the cash portion of Participants' or Limited Purpose Participants' Mandatory Deposits to the Participants Fund to fund principal and interest advances, the Corporation shall pay such Participants and Limited Purpose Participants, from interest collected from Participants and Limited Purpose Participants receiving principal and interest advances, interest at the rate specified in section 5 of rule 2 of article V.

(g)] If for any reason the Corporation or a third-party lender, or any agency for a third-party lender, to which a Participant or Limited Purpose Participant has assigned, pursuant to the terms of section 2(d), its rights in and to subject principal and interest payments does not promptly receive the subject principal and interest payments from the issuer(s) or paying agent(s) or is not entitled to retain them when received, such Participant of Limited Purpose Participant agrees that it shall, upon demand by the Corporation or such third-party lender, as the case may be, promptly pay the Corporation or such third-party lender an amount equal to such Participant's or Limited Purpose Participant's pro rata share of the product of (i) The subject principal and interest payments multiplied by (ii) the percentage of the principal and interest advance funded by the Corporation or such third-party lender, as the case may be. In the event the Corporation or such third-party lender is so paid, all rights to the subject principal and interest payments shall revert to the Participant or Limited Purpose Participant.



**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

PTC has determined that the cost of financing principal and interest advances can be adequately covered by investing collected principal and interest payments upon receipt; the purpose of the proposed rule change is to reduce fees and costs to participants.

The basis for this proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PTC does not perceive that the proposed rule change imposes any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-90-07 and should be submitted by December 24, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 90-28286 Filed 11-30-90; 8:45 am]

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**[Rel. No. IC-17870; 812-7575]**

**Axe-Houghton Funds, Inc., et al.; Application**

November 28, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** Axe-Houghton Funds, Inc. ("Axe-Houghton Funds"), Chancellor Funds, Inc. ("Chancellor Funds"), other open-end investment companies which may become members of the USF&G group of investment companies (as defined in Rule 11a-3 under the 1940 Act) (collectively, the "Funds"), and USF&G Investment Services, Inc. ("Investment Services").

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rules 22c-1 and 22d-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting them to assess a contingent deferred sales load ("CDSL") and to waive the CDSL on certain redemptions of shares of the Funds.

**FILING DATE:** The application was filed on August 13, 1990, and amended on November 7, 1990. An additional amendment, the substance of which is set forth in this notice, will be filed during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 275 Commerce Drive, Fort Washington, Pennsylvania 19034.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Axe-Houghton Funds and Chancellor Funds are Maryland corporations and open-end management investment companies registered under the 1940 Act. Axe-Houghton Funds presently offers shares in five separate series: Axe-Houghton Income Fund, Axe-Houghton Fund B, Axe-Houghton Insured Tax-Exempt Fund, Axe Core International ADR Fund, and Axe-Houghton Growth Fund.

Chancellor Funds offers shares in two series: Chancellor Growth and Income Fund and Chancellor Fixed Income Reserve Fund.

2. Investment Services is a registered broker-dealer and a wholly-owned

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subsidiary of USF&G Financial Services Corporation which, in turn, is a wholly-owned subsidiary of USF&G Corporation, a holding company engaged in the insurance business and the sale of financial services through its subsidiaries. Investment Services serves as the distributor of shares of the Funds.

3. Purchases of Fund shares of less than $1 million are generally subject to a front-end sales load which decreases from a maximum amount as the size of a purchase increases. The front-end sales load is waived for the following classes of purchasers regardless of the size of the purchase: (a) Current or retired directors of the Funds, employees or retired employees of USF&G Corporation and its affiliates, (b) registered representatives or full-time employees of financial service firms which have a dealer agreement with Investment Services and certain family members thereof, (c) certain employee benefit plan trusts and custodial accounts and tax-exempt investors (other than an Individual Retirement Account ("IRA")), (d) accounts managed by affiliates of USF&G Corporation, and (e) USF&G Corporation, its affiliated companies and their employee benefit plans.

4. Applicants propose to impose a CDSL on redemptions of Fund shares acquired through purchases of $1 million or more which, but for the amount of the purchase, would have been subject to the front-end sales load. The CDSL would be payable only if such shares are redeemed within 12 months of their purchase, at the rate of 1% of the lesser of the net asset value of the shares redeemed (exclusive of reinvested dividends and capital gains distributions) or the net asset value of such shares at the time of purchase. Shares held for more than 12 months would not be subject to a CDSL.

5. Applicants propose to waive the CDSL for redemptions made for the purpose of paying benefits pursuant to tax-qualified retirement plans. Such payments would include (a) distributions from certain tax-qualified retirement plans due to death, disability, or retirement of a participant, (b) distributions from an Internal Revenue Code ("Code") section 403(b)(7) custodial account or an IRA due to death, disability, or attainment of age 59½, (c) returns of excess contributions to an IRA or a Code section 401(k) plan, and (d) distributions by other employee benefit plans to pay benefits. In accordance with Rule 11a–3 under the 1940 Act, Applicants will not assess a CDSL on Fund shares being exchanged for other Fund shares.

6. Shareholders investing $1 million or more may participate in an automatic withdrawal plan (the "Withdrawal Plan") offered to all shareholders. The Withdrawal Plan allows shareholders to elect to make monthly withdrawals of $50 or more from a shareholder account of at least $5,000.[1] Applicants propose waiving the CDSL on amounts withdrawn pursuant to the Withdrawal Plan that would otherwise be subject to the CDSL (*i.e.*, after the withdrawal has been attributed first to amounts available from dividends, capital gains, increases in per share net asset value, or shares held for more than 12 months). Consequently, no CDSL will be imposed on redemptions made within the confines of the Withdrawal Plan.

### Applicants' Legal Conclusions

7. Applicants believe that the proposed CDSL is fair and fully consistent with the exemptive standards under section 6(c). In addition, Applicants contend that the CDSL waiver on redemptions in connection with withdrawals pursuant to a withdrawal plan is appropriate on fairness considerations. Over time, the aggregate amounts redeemed without charge should not exceed amounts that could have been redeemed directly without charge. Applicants submit that there would be no difference in treatment between shareholders electing to participate in the withdrawal plan and those not participating. Applicants further argue that the waiver on redemptions in connection with distributions from certain tax-qualified retirement plan is appropriate for public policy reasons because it is consistent with provisions granting favored tax treatment to accumulations under such plans and imposing taxes on early distributions.

### Applicants' Condition

If the requested order is granted, Applicants expressly consent to the following condition:

Applicants will comply with the provisions of proposed Rule 6c–10 under the 1940 Act, as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28251 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M

[1] Shares in any of the Funds may be combined to calculate the $5,000 value.

[Rel. No. IC–17872; 811–4730]

## National Growth Fund; Application for Deregistration

November 27, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** National Growth Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on August 2, 1990 and amended on November 19, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 600 Third Avenue, New York, NY 10016.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. Applicant was organized in 1986 to assume the assets and operations of the Growth Series of National Securities Funds, a New York business trust established in 1940.

2. On July 1, 1986, applicant registered under the 1940 Act and filed a registration statement on Form N–1A under the Securities Act of 1933 to register an indefinite number of its shares of beneficial interest. The registration statement became effective on August 29, 1986.

3. On March 9, 1989, applicant's board of trustees authorized a reorganization, pursuant to which all of the assets and liabilities of applicant would be transferred to National Aggressive Growth Fund, Inc. ("Aggressive Growth"), a New York corporation and diversified open-end management investment company. An Agreement and Plan of Reorganization (the "Plan") was entered into as of October 2, 1989. Applicant's shareholders approved the Plan at a special meeting held on November 28, 1989.

4. Pursuant to the Plan, at a closing held on December 1, 1989, applicant transferred to Aggressive Growth all of its assets and liabilities in exchange for shares of Aggressive Growth having an aggregate net asset value equal to the aggregate net asset value of applicant. Applicant distributed pro rata to its shareholders of record as of December 1, 1989 the shares received from Aggressive Growth. No brokerage commissions were paid in connection with the reorganization.

5. Following the reorganization, applicant's registration as a Massachusetts business trust was terminated.

6. All of the expenses incurred in connection with applicant's reorganization and liquidation have been borne by applicant's investment adviser, National Securities & Research Corporation.

7. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. All of applicant's required N–SAR filings have been made.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28252 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M



[Rel. No. IC–17873; 811–6325]

## National Precious Metals Fund, Inc.; Application for Deregistration

November 27, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** National Precious Metals Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on August 2, 1990 and amended on November 19, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 600 Third Avenue, New York, NY 10016.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. On September 5, 1987, applicant registered under the 1940 Act and filed a registration statement on Form N–1A under the Securities Act of 1933 to register an indefinite number of its shares of beneficial interest. The registration statement became effective on December 28, 1987, and an initial public offering was commenced immediately thereafter.

2. On March 9, 1989, applicant's board of trustees authorized a reorganization, pursuant to which all of the assets and liabilities of applicant would be transferred to Blanchard Precious Metals Fund, Inc. ("Blanchard"), a Maryland corporation and non-diversified open-end management investment company. An Agreement and Plan of Reorganization (the "Plan") was entered into as of September 28, 1989. Applicant's shareholders approved the Plan at a special meeting held on February 21, 1990.

3. Pursuant to the Plan, at a closing held on February 27, 1989, applicant transferred to Blanchard all of its assets and liabilities in exchange for shares of Blanchard having an aggregate net asset value equal to the aggregate net asset value of applicant. Applicant distributed pro rata to its shareholders of record as of February 23, 1989 the shares received from Blanchard. No brokerage commissions were paid in connection with the reorganization.

4. Applicant intends to file a certification of dissolution pursuant to Maryland corporation law.

5. All of the expenses incurred in connection with applicant's reorganization and liquidation have been borne by applicant's investment adviser, National Securities & Research Corporation.

6. Applicant was organized in September 1987. Total organizational expenses were $25,000, which expenses were borne by the Fund and amortized on a straight line basis over five years. All unamortized expenses as of the effective date of the reorganization ($14,216) were reimbursed to the applicant.

7. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. All of applicant's required N–SAR filings have been made.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28253 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17874; 811–4729]

## National Preferred Fund; Application for Deregistration

November 27, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

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**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** National Preferred Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on August 2, 1990 and amended on November 19, 1990

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 21, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 600 Third Avenue, New York, NY 10016.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Staff Attorney, at (202) 504–2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. Applicant was organized in 1986 to assume the assets and operations of the Preferred Series of National Securities Funds, a New York business trust established in 1940.

2. On July 1, 1986, applicant registered under the 1940 Act and filed a registration statement on Form N–1A under the Securities Act of 1933 to register an indefinite number of its shares of beneficial interest. The registration statement became effective on August 29, 1986.

3. On September 14, 1988, applicant's board of trustees authorized a reorganization, pursuant to which all of the assets and liabilities of applicant would be transferred to National Total Income Fund ("Total Income"), a Massachusetts business trust and diversified open-end management investment company. An Agreement and Plan of Reorganization (the "Plan") was entered into as of November 1, 1988. Applicant's shareholders approved the Plan at a special meeting held on December 8, 1988.

4. Pursuant to the Plan, at a closing held on December 15, 1988, applicant transferred to Total Income all of its assets and liabilities in exchange for shares of Total Income having an aggregate net asset value equal to the aggregate net asset value of applicant. Applicant distributed pro rata to its shareholders of record as of December 15, 1988 the shares received from Total Income. No brokerage commissions were paid in connection with the reorganization.

5. Following the reorganization, applicant's registration as a Massachusetts business trust was terminated.

6. All of the expenses incurred in connection with applicant's reorganization and liquidation have been borne by applicant's investment adviser, National Securities & Research Corporation.

7. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. All of applicant's required N–SAR filings have been made.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28234 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 17069; International Series Rel. No. 196; 812–7629]**

## The Over-the-Counter Securities Group, Inc.; Application

November 26, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANT:** The Over-the-Counter Securities Group, Inc.

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3–1.

**SUMMARY OF APPLICATION:** Applicant seeks a conditional order permitting it to purchase, on behalf of certain of its series, the securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

**FILING DATE:** The application was filed on November 14, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, suite 228, 275 Commerce Drive, Ft. Washington, PA 19034–1537.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end management series investment company registered under the Act. Applicant seeks relief with respect to two of its series, the European Emerging Companies Fund series ("EEC Fund") and the European Growth Fund series ("EG Fund"), and any additional series that applicant may create in the future.

2. USF&G Review Management Corp. ("Review Management") acts as applicant's investment adviser with respect to the EEC Fund and will begin acting in the same capacity with respect to the EG Fund upon commencement of that fund's operations on or about January 1, 1991. Rockefeller & Co., Inc. acts as sub-investment adviser of the EEC Fund. Asset Managers Advisors of Dresdner Bank-Gesellschaft Fur Vermogensanlageberatung mbH will act as sub-investment adviser of the EG Fund upon commencement of that fund's operations.

3. Applicant seeks to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

4. Applicant seeks relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent permitted in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17098 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicant of equity securities issued by foreign securities companies. Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

### Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." While margin securities are securities that are principally traded in the United States, certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T. Any foreign equity security meeting specified qualification requirements will be eligible as a margin security provided it appears on a list of "foreign margin stocks" to be published quarterly by the Board of Governors of the Federal Reserve System. Until such lists are available, however, most securities issued outside the United States will not be margin securities for purposes of Rule 12d3–1. Accordingly, applicants seek an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion of the list of over-the-counter margin stocks." Investment Company Act Release No. 17098 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

### Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested:

Applicant will comply with the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17098 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)) as they are currently proposed, or as the may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28255 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–17878; 812–7459]**

## Application for Exemption; SEI Liquid Asset Trust, et al.

November 27, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

**APPLICANT:** SEI Liquid Asset Trust, SEI Tax Exempt Trust, SEI Cash+Plus Trust, SEI Index Funds, SEI Institutional Managed Trust, SEI International Trust, The Capitol Mutual Funds, Key Investment Funds, Inc. (the "Trusts"), SEI Financial Management Corporation ("SFM"), SEI Financial Services Company ("SFS"), and all other registered investment companies managed or distributed in the future by SFM, SFS, or their affiliates as defined in section 2(a)(3) of the 1940 Act (collectively, "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Exemption requested pursuant to section 6(c) from sections 18(f), 18(g), and 18(i).

**SUMMARY OF APPLICATION:** Applicants seeks an order amending a prior order (Investment Company Act Release No. 17169, October 17, 1989) permitting the issuance and sale of two classes of shares representing interests in each of several investment portfolios. The amended order would permit the issuance and sale of five classes of shares representing interests in some or all of the Trusts' investment portfolios, which classes would be identical in all respects except for differences related to distribution and class expenses, dividend payments, voting rights, and class designation.

**FILING DATE:** The application was filed on January 12, 1990, and amended on August 2, 1990, October 9, 1990, and October 30, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m on December 21, 1990, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Key Investment Funds, Inc., SFS, or SFM, 680 East Swedesfort Road, Wayne, Pennsylvania 19087; Other Trusts, c/o CT Corporation, 2 Oliver Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. The Trusts are registered investment companies sponsored by SFM, a registered investment adviser, which also serves as each Trust's manager and unitholder servicing agent. In this capacity, SFM receives a management fee from each Trust. Separate fees are paid by each Trust to

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independent investment advisers. Each Trust is authorized to issue multiple classes of units of beneficial interest or shares of stock ("Shares") representing interests in separate investment portfolios.

2. Under a prior exemptive order,[1] Applicants are authorized to issue two classes of Shares as further described below. All Shares currently are offered only to or through financial institutions, such as banks or broker-dealers, for the investment of their own funds or their customer's funds. These financial institutions typically act in a fiduciary, agency, or custodial capacity. A fiduciary account is generally one in which a financial institution has discretionary investment authority, while an agency account permits the financial institution to invest only upon the instruction of another party. The primary role of the financial institution in a custodial account is as the custodian of assets. However, under limited circumstances involving independent investment management services provided by SFM, some officers, trustees and employees of Applicants can purchase Trust Shares directly. Applicants anticipate that the aggregate investments by officers, trustees and employees will constitute less than one percent of the total assets of such class or portfolio. Applicants also may offer Shares of some or all classes to retail investors with a sales load due to the higher distribution costs associated with retail distribution activities. SFS, a registered broker-dealer and an affiliate of SFM, serves as the principal distributor of each Trust.

3. One currently authorized class of Shares of each Trust ("Class A") has adopted or will adopt a rule 12b–1 distribution plan providing for the payment of distribution expenses as approved annually and reviewed quarterly by the board of trustees/directors. These expenses are limited to (a) The cost of preparing, producing and delivering prospectuses, shareholder reports, sales literature, and other materials for distribution to potential shareholders, (b) the costs of complying with state and federal securities laws pertaining to the distribution of Shares, (c) advertising, and (d) expenses incurred in connection with the promotion and sale of the Shares, including SFS's expenses for travel, communication, compensation and benefits of sales personnel (collectively, "Distribution Expenses"). Each Class A rule 12b–1 distribution plan limits the annual distribution budget to .30% of the average daily net assets of that class.

4. The second class of shares authorized by the prior order ("Class B") is identical to Class A, except that each Trust's Class B shareholders have adopted or will adopt a modified Rule 12b–1 distribution plan. The Class B rule 12b–1 plan differs from the Class A rule 12b–1 plan by the imposition of an additional distribution fee of .30% of Class B's average daily net assets. SFS is authorized to pay part or all of these additional fees as service payments ("Service Payments") to financial institutions which enter into servicing agreements with SFS ("Servicing Agreements"). Under the Servicing Agreements, the institution would provide distribution-related services, such as establishing and maintaining customer accounts and records; aggregating and processing purchase and redemption requests from customers; placing net purchase and redemption orders with SFS; automatically investing customer account cash balances; providing periodic statements to customers; arranging bank wires; answering customer inquiries concerning their investments; assisting customers in changing dividend options, account designations, and addresses; performing sub-accounting functions; processing dividend payments from a Trust on behalf of customers; and forwarding shareholder communications from a Trust (such as proxies, shareholder reports, and dividend, distribution, and tax notices) (collectively, "Account Administration Services").

5. Applicants request a modification of the prior order to (a) Add a third class of Shares which would have no rule 12b–1 plan ("Class C"), (b) modify Class B and create two additional classes ("Class D" and "Class E"), each of which would be identical except for differing maximum additional distribution fees for Service Payments to financial institutions and for any incremental expenses allocated on a class basis as described herein; and (c) allocate incremental transfer agency fees directly attributable to a particular class of Shares to such class.[2] Each class will represent interests in the same portfolio and have identical investment objectives, policies, and limitations, and advisory/management fees and related expense caps.

6. The proposed Class C Shares will not be subject to a rule 12b–1 plan. Class C Shares will be offered primarily to institutions satisfying certain minimum investment requirements and/or which act as an investment adviser to the portfolio in which they are investing. Such an arrangement results in few, if any, distribution costs to SFS which may be willing to bear these costs because they would be small in relation to the net assets of the class. While Applicants may impose a front-end sales load on this class, the class would not have any other distribution arrangement, such as a rule 12b–1 plan.

7. The proposed Class B, Class D, and Class E Shares will be identical to Class A Shares, except that each class will adopt a modified rule 12b–1 distribution plan which may provide for the reimbursement of Distribution Expenses and will provide for an additional distribution fee payable to SFS with varying maximum levels. Class B, Class D, and Class E Shares would pay an additional distribution fee not to exceed the following percentages of each class, respective average daily net assets: Class B—.30%, Class D—.50%, and Class E—.75%. SFS would use all or part of such fee for Service Payments or for its own distribution activities under the rule 12b–1 plans.

8. The variations in the maximum Service Payments assessed on Class B, Class D, and Class E Shares result from differing charges by financial institutions for providing Account Administration Services to their customer accounts. These differences are due to a number of factors, including the precise nature of the Account Administrative Services being provided, the relationship between those services and others provided by the institution, the institution's overall pricing structure, and competition in the institutional fund business. By establishing three classes with differing maximum distribution fees, customers will pay a fee more closely related to the actual amount charged by such financial institution. By contrast, if a Trust had only one class under which Service Payments were made, customers of an institution receiving relatively low Service Payments would effectively subsidize larger Service Payments to other institutions.

9. SFM will provide Account Administration Services directly to Class A and Class C shareholders and to institutional shareholders of Class B, Class D, or Class E who invest for their own account. SFM will not directly provide such services to other beneficial owners of Class B, Class D and Class E shares because they will receive Account Administration Services from the financial institution pursuant to the Servicing Agreements.

10. Applicants presently do not plan to implement a sales load, but are contemplating doing so in connection with direct sales of classes of any non-money market portfolio to retail investors. Imposition of contingent deferred sales loads would require additional exemptive relief from the SEC. Applicants presently have no specific plans to implement exchange privileges; but, if implemented, Shares of a class of portfolio would be exchanged only for Shares of the same class of another portfolio.

11. The proposed multiple class structure will enable each portfolio to reflect more precisely the different distribution costs and related administrative expenses incurred in connection with different types of investors. The sale of Class A Shares, for example, is more appropriate for financial institutions investing for their own account or for few large fiduciary, agency, or custodial accounts which do not incur substantial additional costs. In contrast, Class B, Class D, and Class E Shares may be more appropriate for financial institutions which (a) Purchase Shares in their fiduciary, agency, or custodial capacity and/or (b) incur substantial additional costs by providing distribution-related services to many small customer accounts. The proposed class structure allows these customers to pay a distribution fee more closely linked to the actual Service Payment received by financial institutions for their Account Administration Services. Class C Shares are more appropriate for investors that cause SFS to incur few, if any, distribution costs. Furthermore, any future sales of any class to retail investors would, in addition to a sales load, entail higher transfer agency fees, making allocation of such costs to the relevant classes appropriate.

12. Under the proposed arrangement, each Share in a particular portfolio, regardless of class, would represent an equal pro rata interest in such portfolio and would have identical voting, dividend and liquidation rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions, except for (a) Rule 12b–1 fees, related voting rights and dividend differences resulting solely from the different rule 12b–1 fees, (b) the impact of any incremental transfer agency fees directly attributable to a particular class and any other expense attributable to a particular class and specifically approved by the SEC pursuant to an amended exemptive order ("Class Expense"), and (c) exchange privileges, if offered. In addition, each class of Shares will bear pro rata with every other class all portfolio expenses, except Class Expenses and Rule 12b–1 fees, such as fees payable to the manager, investment adviser, trustees, transfer agent, custodian, auditors, legal counsel; taxes; and, registration and other operating expenses. Any limitations on these expenses will apply uniformly to all classes of a portfolio; provided, however, that the additional distribution payments made by Class B, Class D, and Class E shareholders and any incremental transfer agency fees will not be included in determining whether applicable expense limits are met.

13. For each money market portfolio, the rule 12b–1 charges for Class A, Class B, Class D, and Class E will be deducted only from the net income of each respective class and SFS will waive the distribution fee to the extent that it exceeds the net income, thereby maintaining the same net asset value per share between the classes. However, the net asset value per share may vary between the classes in the non-money market portfolios that do not declare dividends on a daily basis. Dividends payable to shareholders in the various classes of any portfolio will reflect differences due to differing distribution fees and Class Expenses. The methodology and procedures used to calculate the net asset value of every class of a portfolio will be identical.

**Applicants' Legal Conclusions**

14. Applicants request an amended exemptive order under section 6(c) to permit the modification of Class B and the issuance and sale of Classes C, D, and E Shares to the extent that such issuance and sale might be deemed to result in a "senior security" within the meaning of section 18(g) of the 1940 Act, be prohibited by section 18(f)(1), and violate the equal voting provisions of section 18(i).

15. Applicants assert that the requested relief does not present the concerns which Section 18 was designed to address nor does it present any legal or policy issues different from those addressed by the prior order. The proposed arrangement does not involve borrowings, affect any Trust's existing assets or reserves, or increase the speculative character of any Shares in a portfolio. The proposed capital structure will not induce any group of shareholders to invest in risky securities to the detriment of any other group of shareholders because the investment risks will be borne equally by all shareholders.

16. Applicants state that mutuality of risk will be preserved with respect to all Shares in a portfolio because (a) All Shares will be redeemable at any time, and (b) no class of Shares will have any distribution or liquidation preferences with respect to particular assets and no class will be protected by any special reserve or other account.

17. Applicants also state that insiders will not be able to manipulate expenses and profits among the classes of Shares because no Trust or portfolio is organized in a pyramid fashion and all classes will have equal voting rights with other classes within the same portfolio, except that Class A, Class B, Class D, and Class E Shares will have exclusive voting rights regarding their respective rule 12b–1 plans. The danger that a complex capital structure may shift control to those without equity or other investment is not present.

18. Applicants argue that the proposed arrangement raises no valuation concerns because all classes of Shares have pro rata interests in the same pool of assets. Moreover, Applicants will implement steps to ensure that the respective performance data of a portfolio's classes are fairly disclosed in the relevant prospectus and shareholder reports.

19. Applicants assert that the proposed arrangement facilitates the distribution of Trust securities and expands the scope and depth of administrative services without assuming excessive organizational, legal, administrative, accounting and bookkeeping costs, or unnecessary investment risks. It also would permit each Trust to save organizational and other continuing costs associated with establishing a separate portfolio for each class of Shares. Moreover, all shareholders, regardless of class, may benefit to the extent that (a) The pro rata operating expenses per Share are lower due to economies of scale and spreading fixed costs over a larger asset base, and (b) a larger pool of assets better enables the investment adviser to achieve investment objectives, including portfolio diversification.

20. Applicants submit that allocation of rule 12b–1 plan expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing Shares in a

[1] Investment Company Act Rel. No. 17169 (Oct. 17, 1989).

[2] Allocation of incremental transfer agency fees is subject to (a) The Trusts' receipt and the continuing effectiveness of a ruling of the Internal Revenue Service to the effect that the assessment of transfer agency fees to a portfolio's classes does not result in dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, or (b) the Trusts' receipt and the continuing availability of an opinion of counsel to the same effect.

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particular class and receiving the services provided under that rule 12b–1 plan would bear the costs associated with those services, but would also enjoy exclusive shareholder voting rights with respect to matters affecting such plan.

**Conditions of Relief**

If the requested relief is granted, Applicants agree to the following conditions:

1. Each class of Shares will represent interests in the same portfolio of investments of a Trust and be identical in all respects, except as set forth below. The only differences between classes of Shares of the same portfolio will relate solely to: (a) The impact of the disproportionate payments under the respective rule 12b–1 plans and related Servicing Agreements, any incremental transfer agency fees directly attributable to a particular class of Shares, and any other Class Expenses, (b) the fact that the classes have exclusive voting rights with respect to their respective rule 12b–1 plans, (c) exchange privileges, if offered, and (d) the designation of each class of Shares.

2. The trustees or directors of the Trusts, including a majority of the independent trustees or directors, will approve the offering of different classes of Shares (the "Multi-Class System"). The minutes of the meetings of the trustees or directors of the Trusts regarding their deliberations with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' or directors' determination that the proposed Multi-Class System is in the best interests of both the Trusts and their shareholders and such minutes will be available for inspection by the SEC and will be preserved for a period of not less than six years, the first two years in an easily accessible place.

3. On an ongoing basis, the trustees or directors of the Trusts, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each portfolio for the existence of any material conflicts between the interests of the various classes of Shares. The trustees or directors, including a majority of the independent trustees or directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The investment advisers and the distributor of the Trusts will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, SFM or SFS, at their own cost, will remedy such conflict up to and including establishing new and separate registered management investment companies or portfolios.

4. The rule 12b–1 plans will be approved and reviewed by the trustees or directors of the Trusts in accordance with the requirements and procedures set forth in rule 12b–1, both currently and as that rule may be amended in the future. Each rule 12b–1 plan to permit the assessment of a rule 12b–1 fee will be submitted to the publish shareholders of that class of Shares for approval at the next meeting of shareholders after the initial issuance of the class of Shares. Such meeting is to be held within one year from the date that Shares of such class are initially issued. Any other portfolio relying in the future on the order granted on the application will hold a meeting of shareholders within one year of the first date that more than one class of Shares is issued and outstanding and will submit its rule 12b–1 plan for the separate approvals of the public holders of each class of Shares at such meeting; provided that the approval of a particular class of shareholders shall not be necessary if the existing rule 12b–1 plan has already been submitted for the approval of the public shareholders of such class.

5. Each Servicing Agreement entered into by SFS pursuant to a rule 12b–1 plan will contain a representation by the financial institution that any compensation payable to the financial institution in connection with its investment of its customers' assets in a portfolio (a) Will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the financial institution.

6. Every Servicing Agreement will provide that, in the event an issue pertaining to the rule 12b–1 plan is submitted for shareholder approval, the financial institution will vote any Shares held for its own account in the same proportion as the vote of those Shares held for its customers' accounts.

7. The trustees or directors will receive quarterly and annual statements concerning the amounts expended under the rule 12b–1 plans and the related Servicing Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify an distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of Shares will not be presented to the trustees or directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees or directors in the exercise of their fiduciary duties.

8. Dividends paid by each Trust with respect to a class of Shares of a portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Trust with respect to each other class of Shares in the same portfolio, except that distribution payments made by a class under its rule 12b–1 Plan, any incremental transfer agency fees directly attributable to a particular class, and any other Class Expenses will be borne exclusively by that class.

9. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trusts that the calculations and allocations are being made properly. The reports of the Experts shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the Expert with respect to such reports, following request by the Trusts (which the Trusts agree to provide) will be available for inspection by the SEC staff upon written request to the Trust for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purposes" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition 9 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 9 above. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

11. The prospectus of a Trust or of each class of a portfolio will include a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing the Shares may receive different compensation with respect to one particular class of Shares over another in the portfolio.

12. The distributor of the Trusts will adopt compliance standards as to when each class of Shares may appropriately be sold to particular investors. Applicants will require all broker-dealers selling Shares of the Trusts to agree to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees or directors of the Trusts with respect to the Multi-Class System will be set forth in guidelines which will be furnished to the trustees or directors.

14. Each Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of Shares in every prospectus, regardless of whether all classes of Shares are offered through each prospectus. Each Trust will disclose the respective expenses and performance data applicable to all classes of Shares in every shareholder report. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of Shares, it will also disclose the respective expenses and/or performance data applicable to all classes of Shares. The information provided by Applicants for publication in any newspaper or similar listing of a Trust's net asset value or public offering price will present each class of Shares separately.

15. Applicants acknowledge that the grant of the requested exemptive order will not imply SEC approval, authorization of or acquiescence in any particular level of payments that the Trusts may make to institutions pursuant to any rule 12b–1 plan in reliance on this exemptive order.

16. Each money market portfolio will have more than one class outstanding only when and for so long as it declares its dividends on a daily basis, accrues its payments under the rule 12b–1 plans and for any Class Expenses daily, and has received undertakings from the persons that are entitled to receive payments under the rule 12b–1 plans and for Class Expenses waiving such portion of any payments to the extent necessary to assure that payments required to be accrued by any class of Shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in such portfolio will remain the same.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28287 Filed 11–30–90; 8:45 am]

BILLING CODE 8010–01–M

## OFFICE OF SPECIAL COUNSEL

### Senior Executive Service; Performance Review Board; Membership

November 26, 1990.

On or before November 26, 1990, the following persons will be added as members of the Performance Review Board:

H. Rae Scott
Ben B. Hayes
Charles R. Gillum
William E. Reukauf

Dated: November 27, 1990.

**Mary F. Wiseman,**

*Special Counsel.*

[FR Doc. 90–28224 Filed 11–30–90; 8:45 am]

BILLING CODE 7405–01–M

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of extension of public comment period for draft sentencing guidelines for organizational defendants.

**SUMMARY:** The Commission is considering amendments to the sentencing guidelines, policy statements, and commentary that would govern the sentencing of organizations in federal courts. The Commission may report the proposed guidelines, policy statements, and commentary published in the Wednesday, November 5, 1990, edition of the Federal Register (Vol. 55, No. 214, pg. 46600) to the Congress on or before May 1, 1991. The deadline for receipt of written comment—originally set for December 10, 1990—is extended until January 10, 1991.

**DATES:** Public comment on the draft guidelines for organizational defendants published in the Wednesday, November 5, 1990, edition of the Federal Register (Vol. 55, No. 214, pg. 46600) should be received by the Commission no later than January 10, 1991.

**ADDRESSES:** Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Ave., NW., suite 1400, Washington, DC 20004. Attn: Communications Director.

**FOR FURTHER INFORMATION CONTACT:** Paul K. Martin, Communications Director, Telephone: (202) 626–8500.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts.

**William W. Wilkins, Jr.,**

*Chairman.*

[FR Doc. 90–28232 Filed 11–30–90; 8:45 am]

BILLING CODE 2210–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if





applicable; (4) a description of the need



## Corrections

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applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required to asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before January 2, 1991.

Dated: November 26, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Extension**

1. Veterans Benefits Administration
2. Application for Release from Personal Liability to the Government on a Home Loan
3. VA Form 26–6381
4. The form is completed by veterans who are selling their VA-guaranteed homes by assumption rather than requiring the purchasers to obtain their own financing to pay off the loan. The information is used by VA to determine assumption approval.
5. On occasion
6. Individuals or households; Businesses or other for-profit
7. 5,000 responses
8. ⅙ hour
9. Not applicable

[FR Doc. 90–28261 Filed 11–30–90; 8:45 am]

BILLING CODE 8320-01-M

## Performance Review Board Members

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of U.S.C. 4314c(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA's) Performance Review Boards which was published in the **Federal Register** (54 FR 49392, dated November 30, 1989).

**EFFECTIVE DATE:** November 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** K. Joyce Edwards, Office of Personnel and Labor Relations (053A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3423.

**VA Performance Review Board (PRB)**

Ronald E. Ray, Assistant Secretary for Human Resources and Administration (Chairperson).
Harold F. Gracey, Chief of Staff, Veterans Benefits Administration.
Edward G. Lewis, Assistant Secretary for Information Resources Management.
Richard Pell, Jr., Director, Operations and Policy Staff.
Chris Sale, Executive Officer to Assistant Secretary for Finance and Planning.
Jo Ann K. Webb, Director, National Cemetery System.
Charles V. Yarbrough, Associate Chief Medical Director for Administration.

**Veterans Benefits Administration PRB**

Harold F. Gracey, Chief of Staff (Chairperson).
Raymond H. Avent, Director, Eastern Area.
Grady W. Horton, Director, Education Service.
Richard Pell, Jr., Director, Operations and Policy Staff.
Rhoda R. Mancher, Assistant Chief Benefits Director for Information Resources Management.

**Veterans Health Services and Research Administration PRB**

Dewey Robbiano, Jr., M.D., Deputy Chief Medical Director (CMD) (Chairperson).
Galen Barbour, M.D., Associate CMD for Quality Management.
Donald E. Burnette, Regional Director, Eastern Region.
Clark R. Doughty, Regional Director, Western Region.
John T. Farrar, M.D., Associate Deputy CMD.
John R. Fears, Associate CMD for Resource Management.
Joseph G. Gray, Associate CMD for External Relations.
C. Wayne Hawkins, Associate CMD for Operations.
Lewis Mantel, M.D., Medical Inspector.
Richard P. Miller, Regional Director, Southern Region.
Richard Pell, Jr., Director, Operations and Policy Staff.
Osualdo Ramiraz, M.D., Chief of Staff, VA Medical Center, Hampton.
Elizabeth Rogers, M.D., Chief of Staff, VA Medical Center, Baltimore.
Leonard C. Rogers, Deputy Associate CMD for Operations.
Dennis H. Smith, Executive Assistant to CMD.
Charles V. Yarbrough, Associate CMD for Administration.
Albert Zamberlan, Regional Director, Central Region.

**Officer of Inspector General PRB**

Milton McDonald, Deputy Assistant Inspector General for Audits, Department of State (Chairperson).
William T. Merriman, Director, Audit Planning and Technical Support, Department of Defense.
H. Rae Scott, Assistant General for Investigations, Department of Transportation.

Dated: November 23, 1990.

**Edward J. Derwinski,**

*Secretary.*

[FR Doc. 90–28221 Filed 11–30–90; 8:45 am]

BILLING CODE 8320-01-M



# Corrections

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Vol. 55, No. 232
Monday, December 3, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Western Pacific Precious Corals

*Correction*

In notice document 90-25918 appearing on page 46236 in the issue of Friday, November 2, 1990, make the following correction:

In the second column, in the third line from the bottom, after "Analysis", insert "nor a Regulatory Flexibility Analysis".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 310

[Docket No. 89N-0525]

### Status of Certain Over-the-Counter Drug Category II and III Active Ingredients

*Correction*

In rule document 90-26287 beginning on page 46014 in the issue of Wednesday, November 7, 1990, make the following corrections:

1. On page 46017, in the second column, in the last paragraph, in the second line, "hearing" should read "heading".

2. On page 46018, in the table in the second column, under category 7, "Alkyl Isoquinolinium" was misspelled.

3. On page 46019, in the table in column one, under category 18, the first entry should read, "Allantoin (wound healing claims only)", and the second, "Sulfur"

§ 310.545 [Corrected]

4. On page 46020, in § 310.545(a)(7), "Povidone-Iodine" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 514

[Docket No. 76N-0358]

### New Animal Drug Applications; Approval of Supplemental Applications

*Correction*

In rule document 90-25830 beginning on page 46045 in the issue of Thursday, November 1, 1990 make the following corrections:

1. On page 46048, in the third column in the sixth and eighth lines "effectiveness" was misspelled. Also, in the paragraph designated "1.", under section IV in the eighth line, "than" should read "that".

§ 514.106 [Corrected]

2. On page 46052, in the third column, in § 514.106(b)(2)(iii), in the first line "does" should read "dose".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 422

RIN 0960-AC34

### Social Security Number Cards

*Correction*

In rule document 90-26134 beginning on page 46661 in the issue of Tuesday, November 6, 1990, make the following corrections:

1. On page 46662, in the second column, in the second *Response* paragraph, in the fourth line, delete "not".

2. On page 46663, in the second column, in the second *Comment* paragraph, in the last line, "expected" should read "excepted".

3. On the same page in the third column, in the fourth *Response* paragraph, in the sixth line "because" was misspelled.

BILLING CODE 1505-01-D

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Part II

# Department of Justice

**Bureau of Prisons**

**28 CFR Part 524**

**Control, Custody, Care, Treatment and Instruction of Inmates; Progress Reports; Final Rule**



DEPARTMENT OF JUSTICE

days old. This procedural change has no to refer to "all prior progress reports" in



Accordingly, pursuant to the

(b) Statutory interim/two-thirds (f) Most recent Parole Commission

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**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 524**

**Control, Custody, Care, Treatment and Instruction of Inmates; Progress Reports**

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its rule on Progress Reports in order to update Bureau procedures and to incorporate references relating to changes in the policies of the U.S. Parole Commission. The intended effect of this amendment is to provide for the continued efficient operation of the Bureau of Prisons.

**EFFECTIVE DATE:** December 3, 1990.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 741, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its rule on Progress Reports. A final rule on this subject was published in the **Federal Register**, January 3, 1984 (49 FR 190). For ease of review, the entire rule is being republished. A summary of the specific changes follows.

In § 524.41, paragraph (a) is revised to specify that a progress report is prepared for an inmate's initial parole hearing. Paragraph (a) previously had specified that a progress report was prepared only if the staff summary (classification report) was more than 90 days old. This procedural change has no adverse impact on inmates. In § 524.41(c), the Pre-Release Record Review is to be prepared for and mailed to the Regional Parole Commissioner at least eight months (instead of six months) prior to the inmate's presumptive parole date. This expedited processing has no adverse impact on inmates. In § 524.41(d), "community treatment center (CTC)" is revised to read "community-based program such as a community corrections center (CCC)" to reflect a nomenclature change.

Section 524.42 is clarified to specify that the most current report is to include a summary of important information from all previous progress reports. In addition, two editorial changes are made in the first sentence: "inmate central file" is revised as "inmate's central file", and "the inmate" is revised as "that inmate". There is no change in the intent of this section.

In § 524.43, paragraph (g) is reworded, but its intent is unchanged. Paragraphs (i) and (j) are revised to include reference to the earning and disallowance of good conduct time. This change is required by the implementation of the Comprehensive Crime Control Act. In paragraph (k), the word "Projected" is used in place of "Tentative"; the intent of this paragraph is unchanged. Paragraph (l) is amended by adding the phrase "(if applicable)" to reflect procedural requirements. Paragraph (n), which required information concerning the inmate's co-defendants, is removed. This change has no adverse impact on inmates. Paragraphs (o) through (r) are redesignated as (n) through (q). Newly redesignated paragraph (n) is amended to refer to "all prior progress reports" in order to reflect newly revised § 524.42. In newly redesignated paragraph (p), paragraph (p)(7) is amended to remove the word "and", paragraph (p)(8) is redesignated as (p)(9), and a new paragraph (p)(8) is added to include reference to the inmate's financial responsibility. In paragraph (q)(2), the acronym "CTCs" is revised as "CCC" to reflect a nomenclature change. Paragraph (s) is removed to reflect Bureau procedure; this change has no adverse impact on inmates.

Because these amendments involve procedural matters and impose no additional restrictions on inmates, the Bureau finds good cause for exemption from the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 524**

Prisoners.

**Patrick R. Kane,**

*Acting Director, Bureau of Prisons.*



Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter B of 28 CFR chapter V is amended as set forth below.

**SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER**

**PART 524—CLASSIFICATION OF INMATES**

1. The authority citation for 28 CFR part 524 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In 28 CFR part 254, subpart E, consisting of §§ 524.40 through 524.44, is revised to read as follows:

**Subpart E—Progress Reports**

Sec.
524.40 Purpose and scope.
524.41 Types of progress reports.
524.42 Retention of reports.
524.43 Content of progress reports.
524.44 Inmate's access to progress reports.

**Subpart E—Progress Reports**

**§ 524.40 Purpose and scope.**

The Bureau of Prisons maintains current information on each inmate through progress reports completed by staff. The progress report summarizes information relating to the inmate's adjustment during confinement, program participation, and readiness for release.

**§ 524.41 Types of progress reports.**

The Bureau of Prisons prepares the following types of progress reports.

(a) Initial hearing—prepared for an inmate's initial parole hearing.

(b) Statutory interim/two-thirds review—prepared for a parole hearing conducted 18 or 24 months following a hearing at which no effective parole date was established, or for a two-thirds review (see 28 CFR 2.53).

(c) Pre-release record review—prepared for and mailed to the Regional Parole Commissioner at least eight months prior to the inmate's presumptive parole date.

(d) Transfer report—prepared on an inmate recommended for transfer to another institution or to a community-based program such as a community corrections center (CCC), and whose progress has not been summarized within the previous three months.

(e) Other—prepared for any reason other than those previously stated in this section. The reason (e.g., court request, clemency review) is specified in the report.

**§ 524.42 Retention of reports.**

Staff shall maintain in the inmate's central file a copy of each progress report prepared on that inmate. The most current report is to include a summary of important information from all previous progress reports.

**§ 524.43 Content of progress reports.**

Staff shall include the following information in each progress report prepared on an inmate:

(a) Committed name;
(b) Registration number;
(c) Age;
(d) Present security and custody level;
(e) Offense(s) for which committed;
(f) Sentence;
(g) Date sentence began;
(h) Time served to date, including jail time credit;
(i) Good conduct time/Extra good time earned;
(j) Good time withheld or forfeited; disallowed good conduct time;
(k) Projected release date;
(l) Most recent Parole Commission action, including any special requests or requirements (if applicable);
(m) Detainers and pending charges on file;
(n) Summary of the most significant information (program achievements, major disciplinary actions, etc.) from all prior progress reports;
(o) Summary of significant new information;
(p) Institutional adjustment; this ordinarily includes information on the inmate's:
(1) Program plan;
(2) Work assignments;
(3) Educational/vocational participation;
(4) Relationship with staff;
(5) Incident reports;
(6) Community program involvement, if any;
(7) Institutional movement;
(8) Financial responsibility; and
(9) Physical and mental health, including any significant mental or physical health problems, and any corrective action taken.
(q) Release planning:
(1) Where appropriate, staff shall request that the inmate provide a specific release plan;
(2) Staff shall identify available release resources (including CCC) and any particular problem that may be present in release planning.

**§ 524.44 Inmate's access to progress reports.**

Upon request, an inmate may read and receive a copy of any progress report prepared on that inmate after October 15, 1974. Staff shall request the inmate sign and date the original. If the inmate refuses to sign the progress report, staff witnessing the refusal shall document this refusal on the original of the form.

[FR Doc. 90–28302 Filed 11–30–90; 8:45 am]
BILLING CODE 4410–05–M

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# Reader Aids

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## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

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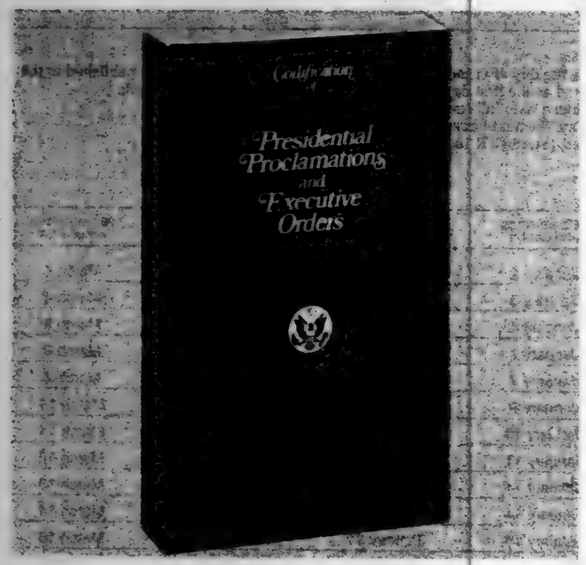
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# Rules and Regulations

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 354

[Docket No. 90-202]

### Commuted Traveltime Periods

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding an additional commuted traveltime allowance for Boston, Massachusetts. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding an additional commuted traveltime allowance for Boston, Massachusetts. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a PPQ employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### Paperwork Reduction Act

The information collection provisions that are included in this document have been approved by the Office of Management and Budget under control number 0579-0055. An addendum will be submitted in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

### List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants, (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 354 is amended as follows:

## PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 354 continues to read as follows:

**Authority:** 7 U.S.C. 2260, 40 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

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2. Section 354.2 is amended by adding in the table, in alphabetical order, the information as shown below:

**§ 354.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Add: | | | |
| Massachusetts: | | | |
| Boston | New Bedford | | 5 |

* * * * *

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-28370 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-34-M

## Agricultural Marketing Service

**7 CFR Part 997**

**[Docket No. FV-90-146FR]**

## Inspection, Disposition and Minimum Quality Requirements Applicable to Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a new part 997 which requires all domestically produced peanuts handled by persons who have not entered into the Peanut Marketing Agreement (Agreement) (7 CFR part 998) to be inspected to the same extent and same manner as is required under the Agreement. This action also requires said peanuts, when destined for human consumption outlets, to meet the same minimum requirements as those specified under the Agreement. Peanut handlers not subject to the Agreement must also comply with reporting and disposition requirements similar to those in effect under the Agreement for peanuts failing to meet minimum edible quality requirements. These requirements for peanuts not handled under the Agreement are established pursuant to section 8b of the Agricultural Marketing Agreement Act of 1937 This action is intended to insure that all peanuts are inspected for size, quality and condition in addition to being chemically tested for aflatoxin to ensure that only wholesome peanuts of good quality enter edible market channels.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patrick A. Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: 202-475-3862.

**SUPPLEMENTARY INFORMATION:** This final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and as further amended December 12, 1989, Pub. L. 101-220, 4, 103 Stat. 1878, hereinafter referred to as the "Act".

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 40 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations contained herein. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $3,500,000. It is estimated that these 40 handlers may be handling up to five percent of the total U.S. crop. U.S. peanut production in 1989 totalled 3,990 million pounds. Five percent of this production would amount to about 200 million pounds of farmers' stock peanuts. The 200 million pounds of farmers' stock peanuts would yield about 150 million pounds of kernels. If this quantity was distributed among the 40 handlers, the average quantity per handler would be about 3.75 million pounds. Based on 1989 market information, the average price of shelled peanuts is about 54 cents per pound. This would bring the average value of peanuts handled annually by each of the 40 handlers to approximately $2.025 million. Thus, most of these handlers would be small entities. There are approximately 46,950 peanut producers in the United States. Most producers doing business with these handlers would also be small entities. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 16 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 95 percent of 1988 crop peanuts were marketed by handlers signatory to the Agreement.

Requirements established pursuant to the Agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee) established under the Agreement. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 8b of the Act to require all peanuts handled by persons who have not entered into the Agreement (non-signers) to be subject to quality and inspection requirements to the same extent and manner as is required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Violation of the requirements promulgated pursuant to Public Law 101-220 may result in a penalty in the form of an assessment by the Secretary



equal to 140 percent of the support price for quota peanuts, as determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445C-2), for the marketing year for the crop with respect to which such violation occurs.

The intent of Public Law 101-220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels. Peanuts are produced in many localities under varying weather conditions and using different cultural practices. This means various qualities of peanuts are delivered by producers, milled by handlers, and offered for human consumption. Some peanuts contain defects, including *Aspergillus Flavus* mold, or other damage which causes them to be of low value, poor taste, or unwholesome. Lots of peanuts with significant amounts of such damage adversely affect demand for peanuts, and their sale is not in the public interest. Further, it is felt that even an isolated quality problem could be detrimental to the entire industry.

Notice of proposed minimum quality regulations, inspection, certification, identification, and disposition requirements, and reporting and recordkeeping requirements deemed necessary to achieve the desired goals of Public Law 101-220 was published in the **Federal Register** on September 10, 1990 (55 FR 37238). Interested persons were invited to submit written comments through October 10, 1990. Thirteen comments were received. One comment in support of the proposed rule was submitted by a manufacturer of peanut products. Ten comments in support of the proposed rule were submitted by peanut handlers who operate under the Agreement and by organizations representing peanut growers and handlers. One comment from a handler who will be subject to regulations implemented by this action requested adjustments in the regulations to ease the burden of the cost of inspection. Another commenter complained of not receiving adequate notice of the proposed requirements and of the cost of acquiring inspection facilities.

Two of the ten supporters of the proposal pointed out that all farmers' stock peanuts including those peanuts delivered by producers directly to retail outlets should be covered by an official inspection certificate to assure that satisfactory quality peanuts are used for human consumption, but questioned whether the proposed regulations would require all non-signers to have all of their farmers' stock peanuts inspected and certified. Another supporter expressed a similar concern.

The intent of the regulations is to regulate the handling of all farmers' stock peanuts intended for use in human consumption outlets whether the peanuts are handled by a producer, sheller or manufacturer. *Handle*, as defined in § 997.14, means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler. Any person handling peanuts, as determined by the definition above, would be required to comply with all applicable requirements of the incoming and outgoing quality regulations. In most cases, the person purchasing the peanuts from the producer and preparing them for market would be the handler responsible for meeting all the applicable requirements. However, if a producer performs the handling functions, the producer would become the handler and be responsible for obtaining the necessary quality inspection. Likewise, if a manufacturer or processor of peanut products purchases farmers' stock peanuts from a producer, the manufacturer or processor becomes the handler and would be responsible for having the peanuts inspected and certified before they were processed. In all three instances, the handler would be required to arrange for inspection and obtain a valid inspection certificate indicating that the peanuts met the applicable requirements before such peanuts could be disposed of in human consumption outlets.

In response to these comments and to clarify the intent of the proposed regulations, a new paragraph (paragraph (j)) is added to § 997.20 Incoming Regulation to specifically require producers who handle their own production and deliver peanuts directly to retail outlets to obtain incoming inspection on such peanuts and comply with the requirements of that section.

One comment was received from a handler located in New Mexico who will be subject to regulations implemented by this action. This commenter requested that adjustments in the regulations be made to ease the burden of the cost of inspection. The handler stated that because of the small volume it handles, especially of shelled peanuts, and because of the distance to the inspection office, its cost per pound for inspection would be too high. Thus, the regulations, as proposed, would cause financial hardships. The handler also cited the low incidence of aflatoxin in New Mexico's farmers' stock peanuts. Based upon these claims, the handler requested that the Department consider random inspections as a possible alternative to mandatory inspection of all peanuts to be disposed of for human consumption. As stated in the proposed rule, the Department realizes the regulations implemented by this action may impose additional costs on a number of handlers. There is no evidence to conclude that the additional costs would have a greater impact on the commenter than they would on other handlers subject to the regulations who are in similar situations. Further, the Act requires inspection of all peanuts to be disposed of for human consumption. No provision is made for random or periodic inspection or exemptions of any kind. Therefore, this comment must be denied.

Another commenter, also a handler who will be subject to the regulations herein, stated that he did not receive adequate notice of the proposed requirements on non-signers. Public Law 101-220 mandating the regulation of peanuts handled outside of the Agreement was enacted on December 12, 1989. On April 12, 1990, the Department issued a national press release announcing the enactment of the law and its intention to issue implementing regulations. Also, a regional press release was issued on September 21, 1990, announcing the September 10, 1990, **Federal Register** publication of the proposed requirements and the opportunity for interested persons to file written comments through October 10. Hence, an effort was made by the Department to inform interested persons of the proposed requirements mandated by Public Law 101-220. This commenter also stated that he could not afford the addition of inspection facilities which would cost a minimum of $30,000. Generally, the Federal or Federal-State Inspection Service (Inspection Service) provides on-site inspection using equipment provided by individual peanut handlers. In the case of outgoing inspection of shelled or cleaned inshell peanuts where handlers do not have the necessary equipment, the Inspection Service will sample the product and perform the inspection at its offices

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where the necessary equipment is available. In the case of incoming inspection of farmers' stock peanuts, handlers who do not have access to sampling and inspection equipment may make arrangements to have inspections performed at buying facilities operated and/or utilized by other handlers. Because the handler could make such arrangements by paying a reasonable fee, this comment is denied.

The requirements of 7 CFR part 997, as hereinafter set forth are the same as those in effect under the Agreement. Whenever the regulations specified in the Agreement are changed, the regulations hereinafter added as 7 CFR part 997 will be revised, as appropriate, to reflect such changes.

This action establishes both incoming and outgoing quality regulations. The incoming regulations specify the quality of farmers' stock peanuts, intended for human consumption, which handlers may purchase from producers. Handlers are required to purchase only good—quality, wholesome peanuts for use in edible products. Peanuts with visible *Aspergillus Flavus* mold are required to be diverted to nonedible uses. The incoming regulations, specifying the quality of peanuts for milling or cleaning into shelled peanuts or cleaned inshell peanuts for human consumption, are necessary to lessen the chances of defective peanuts being commingled with deliveries of sound peanuts. It is difficult and expensive to separate defective peanuts from sound peanuts once they have been commingled. The incoming regulations contain handling procedures and reporting requirements for non-edible peanuts intended for use as seed peanuts or oilstock. These procedures and requirements are designed to prevent such peanuts from being used for human consumption. Hence, the incoming regulations act as a quality control safeguard and could serve as a cost saving mechanism. The outgoing quality regulations require peanuts to meet certain quality specifications and to be inspected before being disposed of in edible outlets to maintain the quality of peanuts for human consumption. Each lot of shelled peanuts to be used for edible purposes must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot will not be allowed to be marketed for edible use. Such lots which are reconditioned (the removal of contaminated kernels) and subsequently retested and found negative as to aflatoxin could be disposed of in edible outlets.

In § 997.30(a) of the proposed regulations, "Negative" aflatoxin content was defined as "having an aflatoxin content of 15 parts per billion (ppb) or less". This definition failed to account for the fact that non-edible quality peanuts to be disposed of for animal feed or other non-human consumption uses may contain as much as 25 ppb. Therefore, changes in the definition of "Negative" are made to include the level for peanuts for human consumption (15 ppb) and for peanuts for non-human consumption (25 ppb). These are the maximum levels at which peanuts handled under the Agreement are certified "negative" with respect to aflatoxin.

The sampling, inspecting, identifying, testing and certifying of lots of peanuts will be performed in accordance with §§ 997.30 and 997.50 as are added hereinafter. Under the regulations, the sampling, inspection, positive lot identification, and certification of peanuts will be performed by the Federal or Federal-State Inspection Service. The chemical analysis will be performed in the same manner and by the same laboratories as prescribed under the Agreement. A list of approved laboratories including addresses and telephone numbers is provided in paragraph (c) of § 997.30. To obtain information on making arrangements for the required inspection and certification, handlers should contact Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Rm. 2056–S, Washington, DC 20250; Telephone (202) 447–5870.

Section 997.40 of the proposed regulations includes provisions to regulate the movement of peanuts for reconditioning and the disposition of peanuts failing to meet quality requirements. The provisions controlling the disposition of peanuts failing to meet the requirements for human consumption are intended to assure that only sound, wholesome peanuts end up in human consumption outlets.

Section 997.40 provides that peanuts failing to meet quality requirements may be moved to or sold to other handlers for reconditioning and/or disposition. Also, certain paragraphs of §§ 997.20 and 997.30 provide for the movement of peanuts between handlers. Because the definition of "Handler" included in § 997.15 of the regulations excludes handlers who are signatory to the Agreement, the regulations would have unnecessarily restricted the movement of peanuts between handlers and signatory handlers. Handlers should be allowed to dispose of peanuts to other handlers who are signatory to the Agreement or use the services of such handlers to recondition peanuts which fail to meet quality requirements. Further, the regulations are intended to ensure that all peanuts meet minimum quality requirements before being disposed of for human consumption, not to restrict the movement of peanuts between handlers. Therefore, the provisions of §§ 997.20, 997.30, and 997.40 are changed to allow acquisition from and movement and disposition to signatory handlers.

There are two categories of inedible peanuts—unrestricted and restricted. Unrestricted peanuts are peanuts which are not edible grade but do not contain aflatoxin. Under the regulations contained herein, like the Agreement, such peanuts could be disposed of for domestic crushing, wildlife feed, bait for rodents, and livestock feed. These have traditionally been the only economically viable outlets for such peanuts. Most unrestricted meal (the byproduct from crushing) is used for livestock feed. Restricted peanuts are peanuts which contain aflatoxin. Such peanuts will only be allowed to be disposed of for restricted domestic crushing. The resulting meal could only be used for fertilizer, unless it were satisfactorily detoxified. When satisfactorily detoxified, the meal could be used for feed. To prevent use of restricted meal for feed, handlers are required to denature it or restrict its sale to licensed or U.S. registered fertilizer manufacturers or firms engaged in exporting which will export such meal for non-feed use or sell it to fertilizer manufacturers.

Unrestricted and restricted peanuts may be exported as inedibles to countries other than Canada and Mexico. Exports of such peanuts are required to be chopped into peanut fragments to assure that they are not used for human consumption. Fragmented raw peanuts cannot be roasted properly for human consumption. They are only satisfactory for crushing.

Export of inedible quality peanuts to Canada and Mexico is not authorized because Canada and Mexico are not viable markets for oil stock peanuts. Therefore, there is a potential that such peanuts could be diverted to human consumption channels. All movement and disposition of unrestricted and restricted peanuts is required to be reported as hereinafter discussed.

Reporting and recordkeeping requirements necessary to ensure and check compliance with quality regulations are also implemented.



Reports regarding acquisition, movement for further processing and disposition of peanuts and other necessary reports are required. It is estimated that each handler will take 27 hours annually to complete the reports. Recordkeeping requirements are also included to require handlers to retain information for at least two years beyond the crop year of applicability. Such reporting and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and have been assigned OMB No. 0581–0163.

For the purposes of checking and verifying reports filed by handlers or the operation of handlers under the regulations hereinafter implemented, provisions are included which allow the Secretary, through duly authorized agents, to have access to any premises where peanuts may be held. Authorized agents, at any time during regular business hours, are permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding or disposition of any peanuts which may be held or which may have been disposed of by that handler.

In addition to the correction of minor typographical errors appearing in the proposal, a modification is made in § 997.53 to add the words "movement" and "processing" to the first sentence of that section. This modification is made to ensure that this section covers all relevant records maintained by handlers, including those relating to the movement and processing of peanuts.

It is the Department's view that this action will help the entire peanut industry provide only good quality, wholesome peanuts for edible use. This is important in maintaining and expanding markets for peanuts and peanut products. It is difficult to estimate the extent of any additional costs since many of the handlers who are not covered by the Agreement are already having their peanuts inspected and tested so that they meet the quality standards required by their buyers. However, the importance of providing safe products to consumers and other benefits expected from the restriction of low quality peanuts from edible markets outweighs any additional costs resulting from these requirements.

Based on available information, the Administrator of the AMS has determined that this final rule may impose some costs on affected handlers, but that the final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information including the comments received, and based upon the Department's interpretation of the Act as amended by Public Law 101–220, it is found that the regulations set forth in this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The regulations contained herein should apply to as much of the 1990 peanut crop as possible. By its legislation, Congress notified all handlers over eleven months ago that these provisions would be in effect for the 1990 crop. Therefore, the industry has had adequate time to prepare for these requirements.

**List of Subjects in 7 CFR Part 997**

Peanuts, Quality regulations, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is added as follows:

**Note:** This part will appear in the annual Code of Federal Regulations.

## PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

**Definitions**

Sec.

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997.2 Fruit and Vegetable Division.
997.3 Act.
997.4 Person.
997.5 Peanuts.
997.6 Loose shelled kernels.
997.7 Fall through.
997.8 Pickouts.
997.9 Fragmented.
997.11 Producer.
997.12 Production areas.
997.13 Area association.
997.14 Handle.
997.15 Handler.
997.16 Crop year.
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**Quality Regulations**

997.20 Incoming regulation.
997.30 Outgoing regulation.
997.40 Reconditioning and disposition of peanuts failing quality requirements.
997.50 Inspection, chemical analysis, certification and identification.

**Reports, Books and Records**

997.52 Reports of acquisitions and shipments.
997.53 Verification of reports.
997.54 Agents.

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; Sec. 4, 100 Stat. 1878, 7 U.S.C. 608b.

**Definitions**

**§ 997.1 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be authorized to act in his stead.

**§ 997.2 Fruit and Vegetable Division.**

*Fruit and Vegetable Division* is synonymous with Division and means the Fruit and Vegetable Division of the Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

**§ 997.3 Act.**

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

**§ 997.4 Person.**

*Person* means an individual, partnership, corporation, association, or any other business unit.

**§ 997.5 Peanuts.**

*Peanuts* means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled peanuts, other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers stock. Farmers stock peanuts* means picked and threshed peanuts which have not been shelled, crushed, cleaned or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers' stock peanuts with visible *Aspergillus flavus*.

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**§ 997.6 Loose shelled kernels.**

*Loose shelled kernels* means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

**§ 997.7 Fall through.**

*Fall through* means sound split and broken kernels and whole kernels which pass through specified screens.

**§ 997.8 Pickouts.**

*Pickouts* means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

**§ 997.9 Fragmented.**

For the purpose of this part, *fragmented* means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{13}/_{64} \times {}^{3}/_{4}$ inch slot; Runner $^{13}/_{64} \times {}^{3}/_{4}$ inch slot; and Virginia $^{13}/_{64} \times 1$ inch slot.)

**§ 997.11 Producer.**

*Producer* means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

**§ 997.12 Production areas.**

*Production areas* mean all States with commerical production of peanuts including:

(a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

**§ 997.13 Area association.**

*Area association* means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

**§ 997.14 Handle.**

*Handle* means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided,* That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s): *And Provided further,* That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

**§ 997.15 Handler.**

*Handler* means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling: *Provided,* That this term does not include handlers signatory to the Peanut Marketing Agreement.

**§ 997.16 Crop year.**

*Crop year* means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

**§ 997.17 Inspection service.**

*Inspection service* means the Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, USDA.

## Quality Regulations

**§ 997.20 Incoming regulation.**

(a) No handler shall receive or acquire peanuts intended for human consumption, either from a producer or other person, unless such peanuts are inspected pursuant to § 997.50 and are determined to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1 and meet the following additional requirements specified in this section: *Provided,* That a handler may—

(1) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from other handlers, a handler as defined in 7 CFR 998.8, or from buyers who have purchased such peanuts from handlers or from the CCC, if the lot has been certified as meeting the requirements of § 997.30(a) and the identity is maintained; and/or

(2) Perform services for an area association pursuant to a peanut receiving and warehouse contract.

(b) *Moisture and foreign material*—(1) *Moisture.* Except as provided under paragraph (e) Seed Peanuts of this section, no handler shall receive or acquire peanuts intended for human consumption containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. For farmers stock peanuts, moisture determinations shall be rounded to the nearest whole number. Moisture determinations on shelled peanuts shall be carried to the hundredths place.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts intended for human consumption containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen" means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Loose shelled kernels.* No handler shall receive or acquire for human consumption farmers' stock peanuts containing more than 14.49 percent loose shelled kernels, except that peanuts having a higher loose shelled kernel content may be received or acquired if they are held separately until milled or shipped directly to a plant for prompt shelling. All percentage determinations shall be rounded to the nearest whole number. Handlers may separate from the loose shelled kernals received with farmers stock peanuts, those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{13}/_{64} \times {}^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64} \times {}^{3}/_{4}$ inch; Virginia—$^{13}/_{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided,* That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in § 997.40. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of.

(e) *Seed peanuts.* Peanuts which are not Segregation 1 peanuts and therefore cannot be acquired for human consumption may be acquired, shelled and delivered for seed purposes. Peanuts intended for seed use which do not meet Segregation 1 requirements shall be stored and shelled separate from peanuts intended for human consumption. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purpose farmer's stock peanuts, and such peanuts shall be exempt from the requirements of this section and, therefore, shall not be required to be inspected and certified as meeting these requirements, and the handler shall report to the Division the weight of each lot of farmers' stock peanuts received on such basis on Form FV–117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling". However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another person shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet the requirements specified in § 997.30(a) may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to § 997.40.

(f) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. Handlers may act as accumulators and acquire, for other handlers; a handler as defined in 7 CFR 998.8 or from other persons, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in § 997.30(d), which failed to meet the requirements for human consumption pursuant to § 997.30(a): *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart and further disposition shall be only as provided in § 997.40(b)(4)(i). Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions to the Division as prescribed on Form FV–117–1 "Handlers Monthly Report of Acquisition of Segregation 3 and/or Segregation 2 Commingled Peanuts". Handlers who acquire grades or sizes of shelled peanuts which fail to meet the requirements for human consumption for disposition to domestic crushing or for fragmenting and subsequent export to countries other than Canada or Mexico shall report such acquisitions on Form FV–117–2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing".

(g) *Shelled peanuts.* Handlers may acquire from other handlers or a handler as defined in 7 CFR 998.8, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors and must be positive lot identified. Transactions made in this manner shall be reported to the Division on Form FV–117–3. "Report of Disposition to and Acquisition from Another Handler—Shelled Peanuts Failing Edible Quality Requirements for Remilling and Further Handling" by both the handler acquiring the peanuts and the handler selling such peanuts. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by § 997.40.

(h) *Inedible quality shelled peanuts for disposition to animal feed.* Handlers may receive or acquire from other handlers or a handler as defined in 7 CFR 998.8, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in § 997.30(a). Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Division on Form FV–117–2 "Acquisitions of Non-Edible Grades of Commercial Shelled Peanuts for Crushing, Fragmenting or Dyeing". Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided in § 997.40(b)(2).

(i) No producer may handle (as defined in § 997.14); process; prepare for sale; or otherwise alter peanuts of his own production from the condition of Farmers Stock, as defined in § 997.5, for disposition in human consumption outlets unless such peanuts are first inspected and certified pursuant to § 997.50 and meet the applicable requirements of this section.

**§ 997.30 Outgoing regulation.**

(a) *Shelled peanuts*—(1) No handler shall ship, sell, or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the requirements specified in the table in this paragraph:

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MINIMUM GRADE REQUIREMENTS—PEANUTS FOR HUMAN CONSUMPTION

[Whole Kernels and Splits]

| Type and grade category | Maximum limitations | | | | | | |
|---|---|---|---|---|---|---|---|
| | Excluding lots of "splits" | | | | | | |
| | Unshelled peanuts and damaged kernels (percent) | Unshelled peanuts, damaged kernels and minor defects (percent) | Fall through | | | Foreign material (percent) | Moisture (percent) |
| | | | Sound split and broken kernels | Sound whole kernels | Total | | |
| Runner | 1.50 | 2.50 | 3.00%; 12/64 inch; round screen. | 3.00%; 16/64×⅝ inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (except No. 2) | 1.50 | 2.50 | 3.00%; 12/64 inch; round screen. | 3.00%; 18/64×1 inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia | 1.50 | 2.50 | 3.00%; 9/64 inch; round screen. | 3.00%; 16/64×⅝ inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |
| No. 2 Virginia | 1.50 | 3.00 | 6.00%; 12/64 inch; round screen. | 6.00%; 18/64×1 inch; slot screen. | 5.00%; both screens. | .20 | 9.00 |
| Lots of "splits" | | | | | | | |
| Runner (not more than 4% sound whole kernels). | 1.50 | 2.50 | 3.00%; 12/64 inch; round screen. | 3.00%; 16/64×⅝ inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Virginia (not more than 90% splits. | 1.50 | 2.50 | 3.00%; 12/64 inch; round screen. | 3.00%; 18/64×1 inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |
| Spanish and Valencia (not more than 4% sound whole kernels. | 1.50 | 2.50 | 3.00%; 9/64 inch; round screen. | 3.00%; 16/64×⅝ inch; slot screen. | 4.00%; both screens. | .20 | 9.00 |

(2) Peanuts meeting the specifications in the table in paragraph (a)(1) of this section must also be certified "negative" as to aflatoxin content prior to shipment. For the current crop year, "Negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements and 25 ppb or less for non-edible quality categories. Prior to shipment, appropriate samples for pretesting shall be drawn, in accordance with paragraph (c) of this section, from each lot of edible quality peanuts. The lot size of edible quality shelled peanuts, in bulk or bags, shall not exceed 200,000 pounds.

(b) *Cleaned inshell peanuts.* No handler shall ship, sell, or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") or a laboratory listed in paragraph (c) of this section and found to be wholesome relative to aflatoxin;

(2) With more than 2.00 percent peanuts with damaged kernels;

(3) With more than 10.00 percent moisture; or

(4) With more than 0.50 percent foreign material.

The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts*—(1) Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1N", "Sample #2N", and "Sample #3N" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service. Sample #1N may be prepared for immediate testing or Sample #1N, Sample #2N, and Sample #3N may be returned to the handler for testing at a later date.

(2) Before shipment of a lot of peanuts to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service, a USDA laboratory or a laboratory listed herein, in a "subsampling mill" approved by the Division. The resultant ground subsample from Sample #1N shall be of a size specified by the Division and shall be designated as "Subsample 1–ABN" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1N. It shall be designated as "Subsample 1–CDN". Subsample 1–CDN may be sent as requested by the handler or buyer, for aflatoxin assay, to a USDA laboratory or other laboratory that can provide analyses results on such samples in 36 hours. The cost of sampling and testing Subsample 1–CDN shall be for the account of the requester. Subsample 1–ABN shall be analyzed only in a USDA laboratory or a laboratory listed herein. Both Subsamples 1–ABN and 1–CDN shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of the such notice covering each lot shall be sent to the Division.

(3) The samples designated as Sample #2N and Sample #3N shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1N are known.

(4) Upon call from the laboratory, handler shall cause Sample #2N to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #2N shall be of a size specified by the Division and it shall be designated as "Subsample #2–ABN". Upon call from the laboratory, the handler shall cause Sample #3N to be ground by the



Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #3N shall be of a size specified by the Division and shall be designated as "Subsample #3–ABN". "Subsamples 2–ABN and 3–ABN" shall be analyzed only in a USDA laboratory or a laboratory listed herein and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Division. The results of each assay shall be reported by the laboratory to the handler and to the Division. All costs involved in the sampling and testing of peanuts required by this regulation shall be for the account of the applicant.

(5) Information on making arrangements for the required inspection and certification, can be obtained by contacting the Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room 2058–S, Washington, DC 20250; Telephone (202) 447–5870.

(i) Laboratories at the following locations are approved to perform the chemical analyses required pursuant to this part. The sampling plan and procedures may be obtained from the Division.

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
1411 Reeves St.
Mail: P.O. Box 1268
Donthan, AL 36301
Tel. (256) 794-5970

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
301 West Pearl St.
Mail: P.O. Box 278
Aulander, NC 27805
Tel. (919) 345-1661

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
2705 Taft St.
Albany, GA 31707
Tel. (912) 430-8460/8491

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
P.O. Box 455
Golden Peanut Company
Ashburn, GA 31714
Tel. (912) 567-3703

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
616 North Main St.
Blakely, GA 31723
Tel. (912) 723-4570

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
548 North Ellis Street
Mail: P.O. Box 548
Alimento Processing
Camilla, GA 31730
Tel. (912) 336-0785

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
P.O. Box 272
Dawson, GA 31742
Tel. (912) 995-2111

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
Golden Peanut Co.
105 South Cliff St.
Mail: P.O. Box 97
Graceville, FL 32440
Tel. 1-800-451-2348

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
107 South 4th St.
Madill, OK 73446
Tel. (405) 795-5615

Commodities Scientific Support Division
Agricultural Marketing Service, USDA
106 Culloden St.
Mail: P.O. Box 1130
Suffolk, VA 23434
Tel. (804) 925-2280

ABC Research
P.O. Box 1557
Gainesville, FL 32602
Tel. (904) 372-8636

Fort Laboratories
P.O. Box 257
Edenton, NC
Tel. (919) 482-4480

Professional Service Industries, Inc.
3 Burwood Lane
San Antonio, TX 78216
Tel. (512) 349-5242

Texas Department of Agriculture
301 West Navarro St.
DeLeon, TX 76444
Tel. (817) 893-2915

Texas Department of Agriculture
400 Lubbock St.
Gorman, TX
Tel. (817) 734-2721

(ii) Handlers should contact the nearest laboratory from the list in paragraph (c)(5)(i) of this section to arrange to have samples chemically analyzed for aflatoxin, or for further information concerning the chemical analyses required pursuant to this part handlers may contact: Dr. Craig Reed, Director, Commodities Scientific Support Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Room. 3084–S, Washington, DC 20090–6456, Tel. (202) 447–5231.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificates to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification, shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bags in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bag the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Federal or Federal-State Inspection Service. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Division has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Division may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by the handler to another of the handler's plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements: *Provided,* That, ownership is retained by the handler; *Provided further,* That, for handlers located within any one of the specific production areas defined in § 997.12 such transfer may be only to points within the same production area. Upon any transferred peanuts being disposed of for human consumption, such peanuts shall meet all the applicable requirements.

(g) *Residuals from seed peanuts.* Handlers who receive and custom shall for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the requirements § 997.20), shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler, a handler as defined in 7 CFR 998.8 or non-handler shall be held and milled separate and apart in the same manner. Residuals that meet requirements of § 997.30(a) may be disposed of by sale to human consumption outlets, to another handler or a handler as defined in 7 CFR 998.8 and any portion in positive identified lots not meeting such requirements shall be handled and disposed of pursuant to

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the provisions of § 997.40 as hereinafter set forth.

**§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.**

(a) *Further processing of shelled peanuts failing quality requirements*—(1) Handlers may remill peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of § 997.30(a) or move positive lot identified shelled peanuts that fail to meet such requirements to a custom remiller or sell such peanuts another handler, or a handler as defined in 7 CFR 998.8, for remilling or further handling. If after remilling, such peanuts meet the requirements of § 997.30(a), they may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they may be blanched as provided in paragraph (a)(2) of this section or disposed of and such disposition reported as provided in paragrah (b) of this section.

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.50 and § 997.30(c) and meet the requirements specified in § 997.30(a). Such peanuts which are blanched and are subsequently inspected and tested, or only inspected for grade requirements if such peanuts are covered by a previous "negative" aflatoxin certificate, as provided in § 997.50 and § 997.30(c) and meet the requirements specified in § 997.30(a) may be disposed of for human consumption. If such peanuts still do not meet the requirements of § 997.30(a) they shall be disposed of and such disposition reported as provided in paragraph (b) of this section.

(3) Lots of peanuts moved under the provisions of paragraphs (a)(1) and (a)(2) of this section must be accompanied by a valid grade inspection certificate and must be positive lot identified. The title of such peanuts shall be retained by the handler until the peanuts have been remilled or blanched and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in § 997.30(a). Movement of peanuts which fail to meet the quality requirements specified in § 997.30 for remilling and/or blanching shall be reported on Form FV–117–4 "Report of Movement to Blancher or Remiller—For Blanching or Custom Remilling"—Peanuts Failing Edible Quality Requirements".

(4) The residual peanuts resulting from remilling shall be bagged and red-tagged and disposed of to domestic crushing by the remiller or returned to the handler for disposition as restricted as provided in paragraph (b)(3) of this section. The residual peanuts, excluding skins and hearts, resulting from blanching, shall be bagged and red tagged and returned to the handler for disposition as provided in paragraph (b)(3) of this section or in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or exported to countries other than Canada or Mexico, provided they meet fragmented requirements and are marked "Non-edible quality".

(b) *Disposition of shelled peanuts failing quality requirements for human consumption*—(1) Handlers may dispose of positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) which fail to meet the requirements for human consumption specified in § 997.30(a) but were determined "negative" as to aflatoxin pursuant to § 997.30(c) as unrestricted:

(i) To domestic crushing or to other handlers, or a handler as defined in 7 CFR 998.8, for crushing or fragmenting and exportation (such disposition shall be reported on Form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor");

(ii) To export to countries other than Canada or Mexico, provided they meet fragmented requirements (such disposition shall be reported on Form FV–117–6 "Handler's Report of Export of Unrestricted Non-Edible Quality Fragmented Peanuts");

(iii) To domestic animal feed use as provided in paragraph (b)(2) of this section or to other handlers, or a handler as defined in 7 CFR 998.8, for such disposition;

(iv) To wildlife feed or rodent bait use in containers labeled as such (such disposition shall be reported on Form FV–117–7 "Handlers Report of Disposition of Non-Edible Quality Peanuts for Wild-Life Feed or Rodent Bait").

(2) Shelled peanuts which fail to meet requirements for disposition to human consumption outlets may be disposed of for use as domestic animal feed: *Provided*, That each lot of peanuts so disposed of is—

(i) Treated with an appropriate coloring or dyeing solution with a minimum of 80 percent of the peanuts showing evidence of the dye or coloring agent;

(ii) Handled and shipped under positive lot identification procedures (except for bulk loads, red tags shall be used and such tags marked, "For Animal Feed—Not for Human Consumption");

(iii) Covered by a valid "negative" aflatoxin certificate; and

(iv) That the handler's bill of lading and his invoice covering the shipment of each such lot include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

Handlers shall report such disposition on Form FV–117–8 "Handler's Disposition Report of Dyed Non-Edible Quality Peanuts to Animal Feed Use (Unrestricted Peanuts Only)".

(3) Positive lot identified shelled peanuts failing to meet the quality requirements for human consumption specified in § 997.30(a) due to testing positive for aflatoxin pursuant to § 997.30(c) may be disposed of for "restricted" domestic crushing and reported on form FV–117–5 "Handlers Report of Dispositions of Non-Edible Quality Shelled Peanuts to Crusher or Fragmenter or Dyeing Processor". Such peanuts may also be exported, as "restricted" to countries other than Canada or Mexico. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts. The "in-land" bill of lading and invoice covering the export of "restricted" peanuts must include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin. Exportation of such restricted peanuts shall be reported on Form FV–117–9 "Handler's Report of Export of Restricted Non-Edible Quality Fragmented Peanuts". Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use and reported as provided in paragraph (b)(2) of this section.

(4)(i) Handlers who have acquired Segregation 2 and 3 farmer's stock peanuts pursuant to § 997.20(f) may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanut may be disposed of to—

(A) Other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing, as "restricted", or

(B) Crushers for crushing as "restricted".

Handlers may shell such peanuts and further disposition of the shelled peanuts shall be as provided in paragraph (b)(3) of this section.

(ii) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to § 997.20(f) and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be disposed of to other handlers, or a handler as defined in 7 CFR 998.8, for shelling, fragmenting, or crushing or to crushers. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and dispose of the shelled peanuts:

(A) To another handler, or a handler as defined in 7 CFR 998.8, for fragmenting or crushing;

(B) To export as "unrestricted"; or

(C) To domestic crushing as "unrestricted".

The meal produced from such peanuts may be disposed of without restriction. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts. If such peanuts are covered by a valid "negative" aflatoxin certificate they may be disposed of as provided in paragraph (b)(1) of this section.

(5) The disposition and reporting requirements applicable to peanuts failing quality requirements for human consumption specified in paragraph (b) of this section shall also apply to loose shelled kernels, fall through and pickouts.

**§ 997.50 Inspection, chemical analysis, certification and identification.**

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this part and shall comply with such identification requirements prescribed by this part or which the Secretary may prescribe. Each handler shall also cause appropriate samples to be drawn and chemically analyzed by a USDA laboratory or laboratory listed in § 997.30 for wholesomeness as provided in § 997.30 of this part. Such handler shall obtain grade and aflatoxin certificates that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the Division. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary and USDA laboratories or those listed in § 997.30 of this part. Each handler shall furnish, or cause the inspection service or the laboratory to furnish to the Division, a copy of the inspection certificate and a copy of the results of the chemical analyses issued to him on each lot of shelled peanuts or cleaned inshell peanuts.

**Reports, Books and Records**

**§ 997.52 Reports of acquisitions and shipments.**

Each handler shall report acquisitions of Segregation 1 farmers' stock peanuts on Form FV–117–10 "Handlers Monthly Report of Acquisitions" and file reports such other reports of acquisitions and shipments of peanuts, as prescribed in this part. Upon the request of the Division, each handler shall furnish such other reports and information as necessary to enable the Division to carry out the provisions of this part. All reports and records furnished or submitted by handlers to the Division which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler shall not be disclosed unless such disclosure is determined necessary by the Secretary to enforce the provisions of this part.

**§ 997.53 Verification of reports.**

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours and shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

**§ 997.54 Agents.**

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

Dated: November 27, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-28249 Filed 12-3-90; 8:45 am]
BILLING CODE 3410-02-M



**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 90-153]**

## Tuberculin Test Requirements for Calves Imported From Canada

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations that require tuberculosis testing of certain cattle from Canada before their importation into the United States, to exempt certain calves from testing if they meet specified requirements, including tuberculosis testing of their dams. This action will remove the requirement for testing certain calves that do not present a risk of spreading tuberculosis.

**EFFECTIVE DATE:** January 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kathleen J. Akin, Import-Export Products, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7830.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases. Section 92.428 of the regulations contains specific provisions concerning

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the importation into the United States of cattle from Canada.

On May 22, 1990, we published in the Federal Register (55 FR 21042–21043, Docket Number 88–034), a document proposing to exempt from the tuberculosis testing requirement certain calves that are not from a tuberculosis-free herd, if their dams have been tested and found free of tuberculosis and certain other conditions are met. We proposed to exempt any calf that was imported with its dam and that had been born after the dam was tested in accordance with the regulations and found free of tuberculosis.

Our proposal invited the submission of written comments, which were required to be received on or before July 23, 1990. We received 2 comments, both in support of the proposed rule.

Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

**Miscellaneous**

In a final rule published in the Federal Register on August 2, 1990 (55 FR 31494–31562, Docket Number 90–023), the regulations in 9 CFR part 92 were reorganized and renumbered. One of the effects of this reorganization is that the regulations concerning tuberculin test requirements for calves imported from Canada are now located in § 92.418, rather than § 92.20. The numbering in this rule has been changed to reflect this reorganization.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Removing the requirement for tuberculosis testing of certain calves will result in a savings to importers, who would otherwise bear the cost of the tests. The cost of testing one calf is approximately $5, and approximately 100 calves have been imported from Canada each year for the past several years. We do not expect this rule to increase the number of calves imported each year. We have reviewed past importations of calves from Canada and have determined that these involve approximately 10 to 20 importers each year, almost all of which are small entities. If all calves imported from Canada qualified for importation without tuberculosis testing, the savings would amount to approximately $500 per year, distributed among approximately 10 to 20 importers. We do not expect that all importers of calves from Canada will be able to arrange for the calves to meet the requirements for importation without tuberculosis testing, so actual savings should be less than this projected maximum. The maximum economic effect on small entities is estimated to be an annual savings of approximately $30 for each of the approximately 10 to 20 small entities expected to import calves.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The regulations in this rule contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 9 CFR Part 92**

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 92.418 [Amended]**

2. Section 92.418(b) is amended by changing the period at the end of paragraph (b)(2)(ii)(B) to read "; or", and by adding a new paragraph (b)(2)(ii)(C) to read as follows:

* * * * *

(b) * * *
(2) * * *
(ii) * * *

(C) For a calf imported with its dam, the date and place the calf's dam was last tested for tuberculosis; that the dam was found negative for tuberculosis on such test; that such test was performed within 60 days preceding the arrival of the calf and dam at the port of entry; and that the calf was born after such test was performed.

* * * * *

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90–28371 Filed 12–3–90; 8:45 am]

BILLING CODE 3410–34–M

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**9 CFR Part 97**

**[Docket No. 90–204]**

## Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding commuted traveltime allowances for Yelm, Washington. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for this location.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Louise R. Lothery, Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.



**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime allowances for Yelm, Washington. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less then $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a VS employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Effective Date**

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Paperwork Reduction Act**

The information collection provisions that are included in this document have been approved by the Office of Management and Budget under control number 0579–0055. An addendum will be submitted in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

**List of Subjects in 9 CFR Part 97**

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR part 97 is amended as follows:

## PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

**Authority:** 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding in the table, in alphabetical order, the information as shown below:

**§ 97.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

| Location covered | Served from | Metropolitan area | |
|---|---|---|---|
| | | Within | Outside |
| Add: | | | |
| Washington: | | | |
| * * * * * | | | |
| Yelm | Olympia | | 1 |
| Yelm | Seattle | | 3 |
| * * * * * | | | |

Done in Washington, DC, this 29th day of November 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90–28369 Filed 12–3–90; 8:45 am]

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**Food Safety and Inspection Service**

**9 CFR Part 318**

**[Docket No. 88–042C]**

**RIN 0583–AA84**

## Use of Certain Binders in Meat and Poultry Products and Transfer of Binders to the Tables of Approved Substances; Correction

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** On August 24, 1990, the Food Safety and Inspection Service (FSIS) published a final rule (55 FR 34678) which amended the Federal meat and poultry products inspection regulations to permit the use of additional binders in various meat and poultry products and to transfer text references for specific binders from the individual product standards to the tables of approved substances. Subsequent to publication of the final rule, it was discovered that a portion of the regulation was inadvertently omitted. This document provides notice of that fact and serves to correct the omission.

**EFFECTIVE DATES:** September 24, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

**SUPPLEMENTARY INFORMATION:** On August 24, 1990, FSIS published a final rule (55 FR 34678) which amended the Federal meat and poultry products inspection regulations to permit the use of wheat gluten, tapioca dextrin, whey

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protein concentrate, and sodium caseinate as binders in various meat and poultry products. The final rule also transferred text references for specific binders from the individual product standards to the tables of approved substances in 9 CFR 318.7(c)(4) and 381.147(f)(4).

It was subsequently discovered that when transferring the text references for the use of binders from 9 CFR 319.281, Bockwurst, FSIS inadvertently omitted the product "Bockwurst" from the chart in 9 CFR 318.7(c)(4) to permit the use of the substance "Isolated soy protein" at the 2 percent level. It was the intent of the final rule to transfer all information relating to the use of binders from the text of the product standards to the charts of substances to consolidate such information and to eliminate unnecessary repetition. Section 318.7(c)(4) of the Federal meat inspection regulations is revised as shown below.

Done at Washington, DC, on November 23, 1990.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

The following correction is made in FR Doc. 90-19965, Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances, published in the Federal Register on August 24, 1990 (55 FR 34678).

**§ 318.7 [Corrected]**

1. On page 34682, under the Products column for the Substance "Isolated soy protein" in the chart of substances in 9 CFR 318.7(c)(4), add the word "Bockwurst" immediately after "Sausage as provided in part 319."

[FR Doc. 90-28267 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-DM-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 204

[Regulation D; Docket No. R-0714]

### Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending 12 CFR part 204 (Regulation D—Reserve Requirements of Depository Institutions) to increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act [12 U.S.C. 461(b)(2)(C)], from $40.4 million to $41.1 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has left at $3.4 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)), and the adjustment is known as the reservable liabilities exemption adjustment. The Board has also increased from $43.4 million to $44.0 million the deposit cutoff level that is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting.

**DATES:** *Effective Date:* December 18, 1990. *Compliance Dates:* For depository institutions that report weekly, the low reserve i.e., transaction accounts within the low reserve requirement tranche adjustment will be effective starting with the reserve computation period beginning Tuesday, December 25, 1990, and with the corresponding reserve maintenance periods beginning Thursday, December 27, 1990, for net transaction accounts, and Thursday, January 24, 1991, for other reservable liabilities. For institutions that report quarterly, the low reserve tranche adjustment will be effective with the computation period beginning Tuesday, December 18, 1990, and with the reserve maintenance period beginning Thursday, January 17, 1991. For all depository institutions, the increase in the deposit cutoff level will be used to screen institutions in the second quarter of 1991 to determine reporting frequency beginning September 1991.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. McDivitt, Attorney (202/452-3818), Legal Division, or June O'Brien, Economist (202/452-3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Section 19(b)(2) of the Federal Reserve Act requires each depository institution to maintain with the Federal Reserve System reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for total transaction accounts of $25 million or less and at 12 percent on total transaction accounts above $25 million for each depository institution. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in total transaction accounts for all depository institutions determined as of June 30 of each year, and the statute requires an adjustment resulting from decreases as well as increases in total transaction accounts.

Currently, the low reserve tranche on transaction accounts is $40.4 million. The increase in the total of net transaction accounts of all depository institutions from June 30, 1989, to June 30, 1990 was 2.2 percent (from $580.6 billion to $593.1 billion). In accordance with section 19(b)(2), the Board is amending Regulation D to increase the low reserve tranche for transaction accounts for 1991 by $0.7 million to $41.1 million.

Section 19(b)(11)(A) of the Federal Reserve Act provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. Total reservable liabilities of all depository institutions from June 30, 1989, to June 30, 1990, declined by 2.8

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act.



percent (from $1,259.7 billion to $1,224.1 billion). Under section 19(b)(11)(B), the Board's Regulation D will not be changed. Consequently, the reserve requirement exemption for 1991 will remain at the 1990 level of $3.4 million. The effect of the application of section 19(b) of the Federal Reserve Act is to increase the low reserve tranche to $41.1 million, to continue to apply a zero percent reserve requirement on the first $3.4 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche. Any portion of this zero percent reserve requirement tranche remaining after the tranche is applied to transaction accounts will be applied to nonpersonal time deposits with maturities of less than 1½ years or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent.

The tranche adjustment for weekly reporting institutions will be effective starting with the reserve computation period beginning Tuesday, December 25, 1990, and with the corresponding reserve maintenance periods beginning Thursday, December 27, 1990, for net transaction accounts, and Thursday, January 24, 1991, for other reservable liabilities. For institutions that report quarterly, the tranche adjustment will be effective with the computation period beginning Tuesday, December 18, 1990, and with the reserve maintenance period beginning Thursday, January 17, 1991. In addition, all entities currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In March of 1985, the Board indexed this reporting cutoff level in an amount equal to 80 percent of the annual rate of increase of total deposits.[2] In July of 1988, in conjunction with approval of the extension of the deposit reporting system, the Board increased the cutoff level base upon which the indexing is to be applied to $40 million. The current reporting cutoff level is $43.4 million.

[2] In November of 1985, the Board amended the definition of "total deposits" as used in determining the cutoff level to include not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

From June 30, 1989, to June 30, 1990, total deposits grew 1.6 percent, from $3,654.3 billion to $3,713.6 billion. This results in an increase of $0.6 million in the deposit cutoff level that determines the frequency of reporting from the current $43.4 million to $44.0 million. Based on the indexation of the reserve requirement exemption, the cutoff level for total deposits above which reports of deposits must be filed will remain at $3.4 million. Institutions with total deposits below $3.4 million are excused from reporting if their deposits can be estimated from other sources. The $44.0 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $3.4 million level threshold for reporting will be used in the second quarter 1991 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1991.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, and all other institutions that have reservable liabilities in excess of the exemption level amount prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the deposit cutoff level are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). Depository institutions that have reservable liabilities in excess of the exemption level, but have total deposits less than the deposit cutoff level, may file the FR 2900 quarterly for the twelve month period starting each September. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) on the same frequency as they file the FR 2900. The deposit cutoff is also used to determine whether an institution with reservable liabilities at or below the exemption level (known as an "exempt institution") must file either the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) or the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Exempt institutions (that is, institutions with total deposits less than the exemption amount) are not required to file a deposits report if their deposits can be estimated from other sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

*Notice and public participation.* The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation are unnecessary and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the amendments relieve a restriction on depository institutions, and for this reason there is good cause to determine, and the Board so determines, that such notice is not necessary.

*Regulatory Flexibility Act analysis.* Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

**List of Subjects in 12 CFR Part 204**

Banks, Banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

## PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 continues to read as follows:

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**Authority:** Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.9 paragraph (a)(1) is revised to read as follows:

**§ 204.9 Reserve requirement ratios.**

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

| Category | Reserve requirement |
|---|---|
| Net transaction accounts: [1] | |
| $0 to $41.1 million | 3 percent of amount. |
| over $41.1 million | $1,233,000 plus 12 percent of amount over $41.1 million. |
| Nonpersonal time deposits by original maturity (or notice period): | |
| Less than 1½ years | 3 percent. |
| 1½ years or more | 0 percent. |
| Eurocurrency liabilities | 3 percent. |

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 28, 1990.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 90-28357 Filed 12-3-90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 942

[Docket No. 90229-0281]

RIN 0648-AB50

### Cordell Bank National Marine Sanctuary Regulations

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Clarification of effective date.

**SUMMARY:** On May 19, 1989, the Under Secretary of Commerce for Oceans and Atmosphere signed the designation document for the Cordell Bank National Marine Sanctuary. The Sanctuary is an area of marine waters encompassing 397.05 square nautical miles surrounding Cordell Bank, which is located approximately 50 nautical miles west-northwest of San Francisco, California. The notice of designation and the final regulations implementing the designation and regulating the conduct of certain activities were published in the **Federal Register** on May 24, 1989 (54 FR 22417–22425).

While the Sanctuary regulations, which became final and took effect on July 31, 1989, did not prohibit oil, gas and mineral activities within the entire Sanctuary, a Congressional joint resolution, which became law and took effect upon its being approved by the President on August 9, 1990, did do so and required the Secretary of Commerce to revise the Sanctuary regulations to conform within 120 days of enactment (Pub. L. No. 101–74). Section 942.6(a)(3) of the Sanctuary regulations was so revised by a rule published in the **Federal Register** on December 21, 1989 (54 FR 52342).

**EFFECTIVE DATE:** The regulations in 15 CFR part 942 which were published on May 24, 1989 (54 FR 22417–22425) became effective July 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Uravitch, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202/673–5122).

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 27, 1990.

John J. Carey,

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 90-28354 Filed 12-3-90; 8:45 am]

BILLING CODE 3570-08-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco, and Firearms

### 27 CFR Part 5

[T.D. ATF-306; Re: Notice Nos. 403, 410, 583]

RIN 1512-AA10

### Alteration of Class and Type: Vodka (80R276P)

**AGENCY:** Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** ATF is adopting maximum levels for use of citric acid and/or sugar in vodka as proposed in Notice No. 583, published in the **Federal Register** of February 19, 1988, at 51 FR 6009. Without altering its eligibility for the designation "vodka," the product may contain citric acid at a level not exceeding 150 milligrams per liter, and/or sugar at a level not exceeding 2 grams per liter. These levels are intended to ensure that distillers may continue to use citric acid and or sugar to adjust the residual alkalinity caused by charcoal treatment or use of certain glass bottles. These levels are also intended to protect the integrity of the standard of identity for vodka, a product which, by definition, may not have any distinctive character, aroma, taste, or color.

**EFFECTIVE DATE:** January 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** David W. Brokaw, Wine and Beer Branch, (202) 566–7626.

**SUPPLEMENTARY INFORMATION:**

### Background

The standard of identity for vodka is defined in 27 CFR 5.22(a)(1) as "neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste or color." Under the provisions of 27 CFR 5.23(a) (2) and (3), up to 2½ percent of harmless coloring, flavoring or blending materials may be added to distilled spirits without altering their class and type, except that such additions are prohibited for neutral spirits which includes vodka. Internal Revenue Ruling 56–98, I.R.C.B. 1956–1, 811, held that the use of sugar, not exceeding two tenths of one percent, and a trace amount of citric acid would not materially affect vodka's taste or alter its basic character. Therefore, the ruling authorizes the use of limited amounts of sugar and citric acid in the production of vodka, and permits its labeling as "vodka." The ruling further states that "if any flavoring ingredients are used, the product must be designated and labeled as 'flavored vodka'."

In 1979, the ATF Laboratory tested samples of vodka produced in accordance with Revenue Ruling 56–98. The laboratory found that these samples contained measurable solids content due to the presence of sugar, and that they also displayed a change in the titratable acidity due to the presence of citric acid. Based on these tests, ATF concluded that vodka treated under Revenue Ruling 56–98 has different chemical characteristics than vodka not treated with sugar or citric acid, and accordingly, did not meet the standard of identity for vodka in § 5.22(a)(1).

In addition, a conflict seemed to exist between the provisions of Revenue Ruling 56–98 authorizing treatment of vodka with sugar and citric acid, and § 5.23(a)(3) which prohibits any addition of harmless coloring, flavoring and blending materials to neutral spirits.



### Notice No. 403

In order to clarify these discrepancies, ATF published an advance notice of proposed rulemaking, Notice No. 403, in the **Federal Register** of January 11, 1982, at 47 FR 1148. This advance notice requested comments on whether ATF should revoke Revenue Ruling 56–98 and prohibit treatment of vodka with sugar and citric acid, or should establish a separate class and type of vodka containing specified quantities of sugar and citric acid. The comment period was extended until July 11, 1982 by notice No. 410, published in the **Federal Register** of April 15, 1982 at 47 FR 16187.

### Comments on Notice No. 403

ATF received 16 comments regarding this advance notice of proposed rulemaking. Respondents were almost equally divided over the use of sugar and citric acid in vodka. Eight respondents including two consumers, the David Sherman Corporation, Potter Distillers, National Distillers, Haas Brothers, the Buckingham Corporation, and the State of Michigan opposed the addition of sugar and citric acid to vodka, and favored revoking Revenue Ruling 56–98. Their reasons, were:

1. The revenue ruling is inconsistent with § 5.23 which prohibits the addition of coloring, flavoring or blending materials to neutral spirits.
2. The public perceives vodka as a pure neutral spirit, without distinctive color, aroma, taste, or character, and without added substances such as sugar or citric acid.
3. There is no purpose served by adding sugar and citric acid to vodka.
4. Authorizing sugar and citric acid to be used in vodka will open a pandora's box, and other substances will then be added to vodka.
5. Foreign products should conform to the long established U.S. standard of identity for vodka.

Seven respondents favored permitting the use of sugar and citric acid in the production of vodka by retaining Revenue Ruling 56–98. These included one consumer, Schenley Industries, the Distilled Spirits Council of the United States, Monsieur Henri, Sojuzplodoimport (a Russian import/export company), the National Association of Beverage Importers, and the Heublein Spirits Group. Their comments are summarized as follows:

1. The standard of identity for vodka should be established on an organoleptic basis rather than on a chemical basis. If the addition of sugar and citric acid does not change the character, color, aroma, or taste, then the product is "vodka," consumers judge vodka by taste, not chemical standards.
2. Prohibiting the use of sugar and citric acid in vodka is not in response to consumer interest or a perceived consumer need. Revenue Ruling 56–98 has been in effect for many years without harm or deception to the consumer, and no consumer benefit would accrue by revoking it.
3. Prohibiting the use of sugar and citric acid in vodka would have an "unmeasurable competitive impact" on some industry members who market vodka made according to Revenue Ruling 56–98, and who would suffer financial harm by its elimination.
4. European vodkas have been made using trace amounts of sugar for many years. Prohibiting the labeling of a product containing sugar or citric acid as "vodka" would preclude some European vodkas from being labeled "vodka" in the United States, and would create a non-tariff trade barrier.

Eight of the 16 respondents objected to the proposed establishment of a new class and type of vodka containing sugar and citric acid. The reasons were:

1. Present labeling requirements in part 5 are adequate. Vodka with sugar and citric acid may already be designated "flavored vodka," or labeled with a fanciful name.
2. The revenue ruling should be retained, allowing the use of sugar and citric acid in vodka; thus there is no reason to establish a separate class and type.
3. Addition of a separate class and type of vodka which does not look, smell, or taste differently than vodka, but which is labeled differently, would be very confusing to consumers.

Joseph E. Seagrams favored the establishment of a new class and type of vodka, "vodka schnappa," with prescribed amounts of sugar and citric acid. They suggested this would fill a void in the standards of identity not provided for by "cordials and liqueurs" or "flavored vodka."

### Discussion

ATF found support in the written comments for the incorporation of Revenue Ruling 56–98 into the regulations. Several respondents noted that the standards of identity for most distilled spirits including whiskey, gin, brandy, rum and some cordials and liqueurs are based on organoleptic factors—aroma, taste and smell. Logically, they suggest that the standard for vodka should also be based on organoleptic factors. Non-organoleptic factors such as titratable acidity or the solids content should not be used in determining whether a vodka meets the standard of identity requirements. Moreover, characteristics detectable only by chemical analysis have little meaning to consumers, and are not a factor in consumer selection of vodka.

A second theme was that the presence of sugar or citric acid in vodka is not an issue of interest to consumers. ATF has received no consumer inquiries or complaints regarding the presence of sugar or citric acid in vodka, and to prohibit their use would be to address a "problem" which does not exist. These substances have been used in at least some domestic vodkas for over 30 years and their use has not raised any health, or safety problems, or resulted in consumer deception.

A third issue is that sugar or citric acid has been used to treat some European vodkas for many years, and that these products have always been accepted and marketed in the United States as "vodka." If ATF revoked Revenue Ruling 56–98 and prohibited their use in vodka, some traditional European vodkas would be denied entry into the United States, or would be required to be labeled "flavored vodka." Many foreign nations would view this as a non-tariff trade barrier.

ATF also finds limited support in the written comments to Notice No. 403 to propose a separate class and type of vodka containing sugar and citric acid. Only one respondent favored a new class and type of vodka. Written comments pointed out that its establishment would create a new type of vodka which is indistinguishable from "regular" vodka by taste, aroma, or color, but which would be labeled separately, and thus would be very confusing to consumers.

### Notice No. 583

As a result of the written comments, ATF proposed incorporating the provisions of Revenue Ruling 56–98 into part 5. In Notice No. 583, published in the **Federal Register** of February 19, 1988, at 51 FR 6009, ATF proposed amending § 5.23(a)(3)(ii) by authorizing the use of up to 2 grams per liter (2,000 parts per million) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka, without changing its designation as vodka. Because neither sugar nor citric acid are essential components of vodka, ATF proposed amending § 5.22 which regulates additions of substances to distilled spirits, rather than § 5.22(a)(1)

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which is the standard of identity for vodka.

Two grams per liter is the same amount of sugar authorized by Revenue Ruling 56–98 (⅓o of 1%), and is the amount of sugar detected in Russian vodkas by the Alcohol and Tobacco Tax (A&TT) Laboratory at the time the ruling was issued. Revenue Ruling 56–98 authorized the use of a trace amount of citric acid in vodka. An examination of the formula which resulted in the ruling reveals that citric acid was present in the vodka in a concentration of 0.0013% or 13 parts per million. In this trace amount, the A&TT Laboratory determined that the addition of citric acid would not materially affect the taste or change the basic character of vodka. Examination of formulas filed with ATF in the years since issuance of the revenue ruling reveals that a "trace amount" of citric acid has varied widely with different formulas, and that there is a need to define the term. Therefore, ATF proposed to define "trace amount" of citric acid as 150 parts per million. ATF believes this concentration of citric acid is sufficient to neutralize residual alkalinity derived from the charcoal treatment of some vodkas, or from the use of certain glass in manufacturing bottles. Under this proposal, vodka made with greater concentrations of sugar or citric acid would be designated "flavored vodka" or labeled with a fanciful name, followed by a truthful and adequate statement of composition under part 5.

**Comments on Notice No. 583**

In Notice No. 583, ATF asked for specific comments as follows: "While ATF has proposed limitations of 2,000 parts per million sugar, and 150 parts per million citric acid in vodka, we seek comment on whether other limits, either higher or lower, should be prescribed. Comments in support of different limitations should specify how different concentrations of sugar or citric acid would accomplish their intended use in vodka." In response to this notice, ATF received 10 new comments, as follows: 5 from distillers, 2 from consumers, 1 each from a retail liquor dealer, a flavor manufacturer, and a State regulatory agency. Five commenters were opposed to allowing citric acid or sugar to be added to vodka, as follows: Grain Processing Corp., David M. Lemons, New Hampshire Liquor Commission, Piscitelli Wine & Liquor Store, and Ed. Phillips and Sons Co. ATF had previously decided to continue to allow the use of sugar and/or citric acid in vodka, based on the comments received in response to Notice No. 403.

One commenter, the National Distillers and Chemical Corporation, had "no objection to authorizing the use of small quantities of sugar and citric acid * * *" provided it, "does not preclude the present practice of formulating the sugar and citric acid use in vodka in such a manner as to qualify for allowance of credit under 26 U.S.C. 5010." Four commenters were opposed to reducing the usage of citric acid to the level of 150 parts per million: LaVecke Corporation (rectifier of distilled spirits), Continental Flavors & Fragrances, Shelley Netherwood (Flavor Chemist), and Glenmore Distilleries. These commenters were all opposed to reducing the limit for use of citric acid because it would reduce or nullify the credit allowed by 26 U.S.C. 5010, when citric acid and sugar are added to vodka in the form of a product on which Non-beverage drawback has been claimed under 26 U.S.C. 5131. These comments are not germane to the purpose of this rulemaking which is to establish the level at which sugar and/or citric acid can be added without imparting a distinctive character, aroma, taste, or color. The LeVecke Corporation's comment included the results of organoleptic tests which showed that the test panelists could consistently detect the presence of citric acid at the level of 400 parts per million. ATF agrees that at 400 parts per million, the presence of citric acid is detectable. However, ATF's laboratory conducted similar tests and found that 150 parts per million is approximately the threshold at which the presence of citric acid can be detected. As a result, any amount higher than 150 parts per million of citric acid is deemed to impart a distinctive character to the vodka, contrary to the provisions of 27 CFR 5.22(a)(1).

**Final Rule**

Based on the reasons set forth above, the proposed rule is adopted unchanged.

**Formula and Label Approvals**

Existing formulas and corresponding labels that are not in compliance with the standards set forth in this T.D. are effectively cancelled March 4, 1991, and where necessary, new formulas and affected labels should be re-submitted to the Product Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, room 6207, 12th & Pennsylvania Ave., NW., Washington, DC 20226.

**Regulatory Flexibility Act**

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) To have significant secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

**Executive Order 12291**

It has been determined that this final rule is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Drafting Information**

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 5**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and Containers.

**Issuance**

**PART 5—[AMENDED]**

**Paragraph 1.** The authority citation for 27 CFR, part 5 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 5.23(a)(3)(ii) is amended to read as follows:

**§ 5.23 Alteration of class and type.**

(a) *Additions.* * * *

* * * * *

(3) * * * (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric acid in an amount not to exceed 150 milligrams per liter; or * * *

* * * * *

Signed: September 17, 1990.

**Stephen E. Higgins,**

*Director.*

Approved: October 4, 1990.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 90–28328 Filed 12–3–90; 8:45 am]

BILLING CODE 4810–31–M



## Office of Foreign Assets Control

**31 CFR Part 500**

**Foreign Assets Control Regulations**

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Final rule, amendments.

**SUMMARY:** This rule amends the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), to increase to $200 per day the expenses for transactions subject to the Regulations authorized for travel-related costs in countries designated by that Part (Vietnam, Cambodia, and North Korea), exclusive of international and intercity transportation and international telecommunication expenses. This revision will enable U.S. persons to pay costs incurred while travelling in these countries.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** William B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** Section 500.563 of the Foreign Assets Control Regulations, 31 CFR Part 500 (the "Regulations"), was amended on August 1, 1990 (55 FR 31178) to place per diem limitation on transactions by individuals ordinarily incident to their own travel in Vietnam, Cambodia, and North Korea (the "designated foreign countries"), including payment for living expenses and goods personally consumed there. This rule amends the Regulations to increase the per diem from $100 to $200 for such travel and maintenance expenses, and to exempt expenses for international and intercity transportation and international telecommunications from this limitation. Limitations established for other authorized transactions remain the same, and persons wishing to carry additional currency for such transactions must still obtain a specific license from the Office of Foreign Assets Control.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**List of Subjects in 31 CFR Part 500**

Cambodia, Currency, North Korea, Travel and transportation expense, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

**PART 500—FOREIGN ASSETS CONTROL REGULATIONS**

1. The authority citation for part 500 continues to read as follows:

**Authority:** 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1948 Comp., p. 748.

**Subpart E—Licenses, Authorizations, and Statements of Licensing Policy**

**§ 500.563 [Amended]**

2. Section 500.563(a)(2) is amended by adding the phrase ", exclusive of expenses for international and intercity transportation and international telecommunications", after the words "such expenses," and by substituting "$200" for "$100."

Dated: November 6, 1990.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: November 27, 1990.

**Peter K. Nunez,**

*Assistant Secretary (Enforcement).*

[FR Doc. 90–28318 Filed 11–29–90; 10:13 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Parts 154, 155, and 156**

**[CGD 86–034]**

**RIN 2115–AC29**

**Hazardous Materials Pollution Prevention; Correction**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The Coast Guard is correcting errors in the final rule entitled "Hazardous Materials Pollution Prevention" which appeared in the Federal Register on Tuesday, September 4, 1990 (55 FR 36248). The corrections are of a non-substantial, editorial nature.

**EFFECTIVE DATE:** October 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary W. Chappell at (202) 267–0491.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in the final rule for Hazardous Materials Pollution Prevention published in the Federal Register on Tuesday, September 4, 1990 (55 FR 36248). In FR Doc. 90–20664, beginning on page 36248 in the issue of Tuesday, September 4, 1990, make the following corrections:

1. On page 36250, column one, numbered paragraph 13, second paragraph, second sentence, remove "nozzel" and add, in its place, the word "nozzle".

**§§ 154.107 and 154.108 [Corrected]**

2. On page 36252, column three, numbered paragraph 11, remove "(a)(3)(iii)" and add, in its place, "(a)(2)(iii)".

3. On page 36254, column three, revise numbered paragraph 34 to read as follows:

**§ 155.710 [Corrected]**

34. In § 155.710, in the introductory text for paragraph (a), by adding the words "or hazardous material" after the word "oil"; in paragraph (a)(1), by removing the word "oil" before the word "transfer" and by adding the words "carried or the cargo" after the word "cargo"; and, in paragraph (a)(2), by adding the words "or the cargo last carried" after the work "carried".

**PART 156—[CORRECTED]**

4. On page 36255, column two, the authority citation for part 156, add a comma after the words "3 CFR".

**§ 156.150 [corrected]**

5. On page 36256, column one, last line, remove the word "dding" and add, in its place, the word "adding".

Dated: November 23, 1990.

**D.H. Whitteo,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90–28383 Filed 12–3–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 161

[CGD 88-042]

RIN 2115-AC39

## Regulations for Required Participation in Vessel Traffic Service New York; Effective Date Change

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule; change in effective date.

**SUMMARY:** On August 27, 1990, the Coast Guard published a final rule in the **Federal Register** (55 FR 34908) amending the Coast Guard's Vessel Traffic Management Rules to include participation in Vessel Traffic Service New York. The effective date of the final rule was December 1, 1990. This document suspends required participation in the New York Vessel Traffic Service until January 16, 1991.

**EFFECTIVE DATES:** This document is effective December 4, 1990. The effective date of 33 CFR 161.501 through 161.580 is January 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Bruce Riley, Project Manager, Commandant (G-NSP) U.S. Coast Guard, 2100 2nd Street SW., Washington, DC 20593-0001, Tel. (202) 267-0412, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** A delay in the operational availability of equipment in the New York Vessel Traffic Center has forced the Coast Guard to postpone implementation of the rules. The New York VTS will begin operations as scheduled, on December 5, 1990, however, participation will be voluntary. The period December 5, 1990 through January 15, 1991 will serve as a familiarization period for the VTS watchstanders and the participants. The familiarization period will end midnight January 15, 1991. Participation by vessels listed in § 161.501(c) of the final rule, will be required beginning January 16, 1991.

**Authority:** 33 U.S.C. 1231; 49 CFR 1.46.

Dated: November 28, 1990.

**R.A. Appelbaum,**

*Rear Admiral, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 90-28363 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-14-M

## LIBRARY OF CONGRESS

### Copyright Office

37 CFR Part 201

[Docket No. RM 89-8]

## Statements of Account and Filing Requirements for Satellite Carrier Statutory License

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Technical amendment to final regulations.

**SUMMARY:** The Copyright Office amends the final regulations for statements of account and filing requirements for section 119 of title 17, United States Code. That section created a new statutory license for certain secondary transmissions made by satellite carriers to satellite home dish owners. The original text appeared in the **Federal Register** on July 3, 1989 (54 FR 27873).

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** The Copyright Office implemented final regulations concerning the filing of statements of account pursuant to enactment of the Satellite Home Viewer Act of 1988, Public Law 100-667, codified in 17 U.S.C. 119, in an announcement published in the **Federal Register** on July 3, 1989 (54 FR 27873). The announcement incorrectly specified January 31 and July 31 as the dates by which statements of account must be filed. The correct dates are January 30 and July 30. The errors are corrected by this technical amendment to the regulations.

### Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since the Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

### List of Subjects in 37 CFR Part 201

Satellite carrier license.

### Final Regulations

For the reasons set out in the preamble in 54 FR 27873, the Copyright Office makes technical amendments to 37 CFR, chapter II as set forth below.

### PART 201—[AMENDED]

1. The authority citation for part 201 continues to read as follows:

**Authority:** Copyright Act, Pub. L. 94-553, 90 Stat. 2541 (17 U.S.C. 702), as amended by Pub. L. 100-667.

**§ 201.11 [Amended]**

2. Section 201.11(c)(3) is revised to read as follows:

* * * * *

(c) * * *

(3) Statements of Account and royalty fees received before the end of the particular accounting period they purport to cover will not be processed by the Copyright Office. Statements of Account and royalty fees received after the filing deadlines of July 30 or January 30, respectively, will be accepted for whatever legal effect they may have, if any.

Dated: November 13, 1990.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*Librarian of Congress.*

[FR Doc. 90-28389 Filed 12-3-90; 8:45 am]

BILLING CODE 1410-09-M

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits:). (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.



37 CFR Part 201

[Docket No. RM 90-4]

## Adjustment of the Syndicated Exclusivity Surcharge

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final regulation.

**SUMMARY:** In response to the regulations adopted by the Federal Communications Commission reinstating its former syndicated exclusivity blackout rules, the Copyright Royalty Tribunal recently amended its rules concerning the syndicated exclusivity surcharge which some cable systems have paid since 1983, under the cable compulsory license, 17 U.S.C. 111. The Tribunal eliminated the surcharge except in the case of a distant commercial VHF station that places its predicted Grade B contour in whole or in part over a cable system. The Copyright Office now amends its cable compulsory license filing procedure regulations to reflect this change.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** On August 16, 1990, the Copyright Royalty Tribunal issued final regulations eliminating the syndicated exclusivity surcharge in certain circumstances. See 55 FR 33604. The Tribunal retained the surcharge, however, for distant commercial VHF stations that place a Grade B contour over a cable system and are not "significantly viewed" or otherwise exempt from the syndicated exclusivity rules in effect on June 24, 1981. The Tribunal reasoned that the surcharge should be retained in this instance to compensate copyright owners who, under the former syndicated exclusivity rules dropped in 1981, enjoyed greater blackout protection than under the current exclusivity rules.

In order to reflect the general elimination of the syndicated exclusivity surcharge and its current application, the Copyright Office amends its regulations governing completion of statement of account forms under the cable compulsory license. The definition of "surcharge," as it appears in § 201.17(h)(1)(ii), is amended to reflect that for accounting periods on or after January 1, 1990, the word refers to the recent Tribunal decision of August 16, 1990. Section 201.17(h)(2)(ii) is amended to reflect that for accounting periods on or after January 1, 1990, the surcharge applies only to those commercial VHF signals that place, in whole or in part, a Grade B contour over the cable system.

Other references to the surcharge in subsections (h)(3) and (h)(7) remain unchanged.

### List of Subjects in 37 CFR Part 201

Cable television, Cable compulsory license, Copyright Office.

### Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II is amended in the manner set forth below.

### PART 201—[AMENDED]

A. The authority citation for part 201 continues to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702.

**§ 201.17 [Amended]**

B. Section 201.17 is amended as follows:

1. Paragraph (h)(1)(ii) is revised to read:

(h) * * *

(1) * * *

(ii) *Surcharge* means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983. For accounting periods beginning on or after January 1, 1990, "surcharge" refers to the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d) in effect on January 1, 1990.

2. Paragraph (h)(2)(ii) is revised to read:

(h) * * *

(2) * * *

(ii) If the 3.75% rate does not apply to certain DSE's in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972. With respect to statements of account covering the filing period beginning January 1, 1990, and subsequent filing periods, the current base rate together with the surcharge shall apply only to those DSE's that represent commercial VHF signals which place a predicted Grade B contour, in whole or in part, over a cable system. The surcharge will not apply if the signal is exempt from the syndicated exclusivity rules in effect on June 24, 1981.

* * * * *

Dated: November 13, 1990.

**Ralph Oman,**

*Register of Copyrights.*

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 90-28388 Filed 12-3-90; 8:45 am]

BILLING CODE 1410-09-M

37 CFR Part 202

[Docket No. RM 90-8]

## Registration of Claims to Copyright; Effective Date of Registration

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final regulation.

**SUMMARY:** This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a new regulation to establish the effective date for registrations made under section 408 of the Copyright Act when the previously required filing fee of $10 is submitted in lieu of the $20 filing fee required by the "Copyright Fees and Technical Amendments Act of 1989" (Pub. L. 101-318, 104 Stat. 287). The regulation will be in effect for claims to copyright received in the Copyright Office from January 3, 1991, through December 31, 1991.

**EFFECTIVE DATE:** January 3, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** The "Copyright Fees and Technical Amendments act of 1989," Public Law 101-318, July 3, 1990, increases the filing fee for registration of claims to copyright made under section 408 of $10 to $20 effective January 3, 1991. The Copyright Office's past experience with fee increases for copyright registration indicates that a substantial number of claims will be submitted to this Office on and after January 3, 1991, with the old fee of $10. The Office expects that it will continue to receive claims with the old fee for some time and estimates that approximately 100,000 claims will be received with an insufficient fee. The public's failure to remit the full fee can be primarily attributed to Copyright Office literature and application forms in the hands of the public that contain old fee information.

The Office considered a number of options for administratively processing the large number of short fees that are expected. Two options were found to require an inordinate amount of staff

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time, which would delay registration of the claims correctly submitted with the $20 fee. The Office estimated that these options would cost 40 to 50 cents for each dollar collected. The Office decided that the additional delay in processing claims and the high cost of assuring receipt of the additional $10 fee before registration made these options unacceptable.

The Office has chosen to implement a third option. The Office will request immediately the payment of the supplementary $10 fee, but will simultaneously process the claim and by this regulation establish the effective date of registration as the date on which the original $10 remittance, application, and copy(s) are received. The Office assumes that the required additional $10 will be received in the Office in most cases by the time the administrative process of registration is completed. If the supplementary fee is not received by the Office, the registration of the claim to copyright will be cancelled with the resultant loss of the effective date of registration. Implementation of this option is less costly than other available options will be less disruptive of Office procedures. The public benefits both from timely processing and cost-effective administration of the registration system.

Under section 410(d) of the Copyright Act, title 17 of the United States Code, the effective date of a copyright registration is "the day on which an application, deposit, and fee, which are later determined by the Register of Copyright or by a court of competent jurisdiction to be acceptable for registration, have all been received in the Copyright Office." Ordinarily, the Copyright Office has required receipt of the full filing fee to establish the effective date of registration. The effective date has significance with respect to the availability of certain remedies. Under section 412, no award of statutory damages or attorney's fees can be made generally for any infringement commenced before the effective date of registration of the work infringed.

The Copyright Act clearly gives the Register of Copyrights discretion to determine the acceptable form of the application, deposit, and fee. The Register decides when the basic requirements for registration have been satisfied, and the effective date is the date on which it is later determined by the Register that the elements received are acceptable for registration. This clearly means that the effective date is designated as an earlier date than the date registration processing is actually completed. Also, it is the Register's determination initially that is controlling. The Register has discretionary authority to determine the acceptability of the application and deposit but the Register's authority is even clearer with respect to fee determinations. Receipt of the proper statutory fee is almost exclusively the interest of the Copyright Office. Congress has decided that a certain portion of the costs of administering the copyright registration system shall be recovered through earned fee services.

To implement the Copyright Fees and Technical Amendments Act of 1989 the Register has decided, after reviewing the costs and benefits of various options, that effective administration of the Copyright Act is better served by processing short fee cases normally, after notification that the full fee must be paid, and then verifying payment of the full fee after registration has been completed. The Register considered and rejected as too costly the option of establishing the effective date after the completion of registration. The Register concluded that it would be unwise to adopt costly effective date procedures with respect to receipt of the proper fee. Since the fee is peculiarly a matter of administrative concern, the Register decided to exercise his rulemaking authority to establish a new effective day policy solely as an interim, emergency policy related to implementation of the new fee structure in calendar year 1991.

Based on past administrative experience, the Register concluded that the administrative problems related to insufficient fees would occur primarily in the first year of the new fee structure. Also one year should be sufficient time to educate the public about the new fee structure. Consequently, this regulation is adopted only for calendar year 1991. In 1992 the Copyright Office will resume its traditional policy of delaying registration of short fee cases until the proper statutory fee is received in the Copyright Office.

The Copyright Office is issuing this regulation to notify the public of the effective date of registration when the old fee of $10 is submitted with claims to copyright deposited during calendar year 1991 and the consequences of not submitting the supplementary fee of $10 in a timely manner. The regulation has no applicability to short fee cases where less than $10 is received. The policy adopted responds strictly to the emergency situation that is created by the administrative problems associated with implementation of a new fee structure.

Moreover, renewal registration requires a special policy, and the Copyright Office will deal separately with renewal registration. Renewal registration costs differ from original registration costs because deposit copies are not processed and examined. Also, registration vests the right. The Office concluded that it is better policy to delay registration of renewal applications until the full fee is received than to register and then cancel if the fee is not received. Renewal registration can be made at any time during the last year of the first term of copyright. In effect, applicants have a year to remit the proper fee, if they apply early in 1991. The Office recognizes that a problem may arise at the end of 1991, if an insufficient fee is received shortly before expiration of the first term. The Office will deal with this problem in a separate proceeding.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that his Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

**List of Subjects in 37 CFR Part 202**

Copyrights; Effective date; Registrations.

In consideration of the foregoing, part 202 of CFR 37 chapter II is amended in the manner set forth below.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.



**PART 202—REGISTRATIONS OF CLAIMS—[AMENDED]**

1. The authority citation for party 202 continues to read as follows:

**Authority:** Section 702, 90 Stat 2451; 17 U.S.C. 702.

2. Section 202.4 is added to read as follows:

**§ 202.4 Effective date of registration.**

The effective date of registration for claims received in the Copyright Office on or after January 3, 1991, and through December 31, 1991, with a short fee of $10 is the date on which the application, deposit, and $10 fee have all been received in the Copyright Office, provided, the claim is later determined to be acceptable for registration by the Register of Copyrights and a supplementary fee of $10 is received in the Copyright Office. If the supplementary fee is not received promptly after notification of the short fee, the Copyright Office will initiate a proceeding to cancel the copyright registration. If the supplementary fee of $10 is not received in the Copyright Office before the cancellation proceeding is completed, the cancellation will become final and will result in the loss of the effective date of registration. After cancellation, registration could be obtained only by submitting a new application, deposit, and filing fee.

Dated: November 19, 1990.

**Ralph Oman,**

*Register of Copyrights.*

**James Billington,**

*The Librarian of Congress.*

[FR Doc. 90–28367 Filed 12–3–90; 8:45 am]

BILLING CODE 1410–07–M

**POSTAL SERVICE**

**39 CFR Part 115**

**Screening of Mail Reasonably Suspected of Being Dangerous to Air Transportation or Postal Employees**

**AGENCY:** Postal Service.

**ACTION:** Finale rule.

**SUMMARY:** This rule, which is a revision of a proposed rule published with an invitation to comment in the **Federal Register** on July 20, 1990, 55 FR 29637, amends the regulation for the handling of mail reasonably suspected of being dangerous to persons or property. The present rule, Domestic Mail Manual (DMM) § 115.4, allows, without a search warrant, the opening of any specific piece of mail which is reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property, and any necessary examination or treatment of the contents of that piece of mail, without compromising the confidentiality of any correspondence inside mail sealed against inspection. The amendment additionally allows, in threatening situations, the examination but not the opening of defined quantities of mail by any means which can ascertain whether one or more mail articles might contain explosives or other dangerous materials, without revealing the contents of correspondence within mail sealed against inspection.

**EFFECTIVE DATE:** December 4, 1990.

**ADDRESSES:** Comments on this rule are welcome and will be considered with a view towards making future changes in postal regulations and in developing possible recommendations of the Postal Service regarding additional mail security legislation. Written comments should be addressed to Manager, Prevention and Countermeasures Branch, Office of Criminal Investigations, Postal Inspection Service, room 3327, 475 L'Enfant Plaza SW., Washington, DC 20260–2186. Copies of all written comments will be available at that address for inspection and copying between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Haynes, (202) 268–4282.

**SUPPLEMENTARY INFORMATION:** The new mail "screening" procedures would be initiated only when the Chief Postal Inspector determines that there is a credible threat that the quantities of mail proposed to be screened may include a piece of mail which contains a bomb, explosives, or other material dangerous to life, limb, or property.

The new screening procedures authorized by the amended rule could be conducted only within the territorial jurisdiction of the United States, where the United States Postal Service is responsible for mail transmission and delivery. The new procedures would be required to be conducted without avoidable delay and to be limited to the least quantity of mail necessary to respond responsibly to the threat. The Department of Defense is responsible for determining whether similar mail screening procedures might be adopted for military mail overseas. The deadline for comments expired on August 20, 1990. The time for comment was extended several times, however, at the request of parties who expressed an interest in providing comments. All comments received after expiration of the time for comment, but before adoption of the final rule, have been considered.

After the proposed rule was published for comment, the Congress held hearings on a bill (H.R. 5732) which contained provisions affecting the same subject matter as the proposed rule. Action on the proposed rule change was accordingly deferred pending Congressional consideration of the bill. Congress did not, however, enact H.R. 5732 or any other bill governing the subject matter of the proposed rule, and instead enacted legislation requiring a study and report to be made of this subject.

The supplementary information section accompanying the invitation for comment discussed the legal and practical constraints applicable to any effort to examine the United States mails for bombs or other dangerous devices. None of the Constitutional, treaty, statutory, or logistical constraints applicable to the examination of mail has changed since that time. Neither the comments received nor the pendency of the study, moreover, provides adequate reasons to defer further action on the proposed rule.

On the basis of the comments received, additional mail security experience, and further consideration, both internally and with other agencies, the Postal Service has decided to adopt the proposed regulation with the changes described below.

**Evaluation of Comments Received**

*Territorial scope.* Several comments criticized the limitation of the proposed rule to mail within the United States, asserting that a greater risk would appear to attach to United States mail originating within the military postal system which operates outside the United States. These comments did not take account of an agreement between the Postal Service and the Department of Defense which, as amended in 1982, makes the Department of Defense responsible for prescribing rules for the security of military mail overseas. On the basis of this agreement, present Postal Service mail security regulations are limited to U.S. mail within the territorial jurisdiction of the United States. There are comparable rules, adopted by the Department of Defense, governing military mail security overseas. These rules acknowledge the territorial limits of the mail security responsibility of the Postal Service. DoD Postal Manual, Vol. 1, Ch. 6–I (June 1984). Under the agreement, the Postal Service is not authorized to adopt rules which alter or amend the Department of Defense mail security rules. The Postal

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Inspection Service, moreover, has jurisdiction to implement the provisions of the rule and to take appropriate action to enforce federal criminal laws pertaining to the mailing of bombs and other dangerous devices only within the territorial limits of the United States. Accordingly, the final rule, like the present rule it amends, is limited to mail within the territorial jurisdiction of the United States where the U.S. Postal Service operates.

*Federal Aviation Administration role.* Several comments urged the Postal Service not to adopt the proposed rule and instead defer to the Federal Aviation Administration with respect to all matters involving the security of mail which is to be transported by air. These comments did not take into account existing statutory law and a 1979 agreement between the Postal Service and the Federal Aviation Administration.

Federal aviation statutes generally divide the responsibility for all aviation security matters between the Department of Transportation (which includes the Federal Aviation Administration) and the Postal Service. The Department of Transportation and the Federal Aviation Administration are generally responsible for regulating aircraft design insofar as it concerns the safety of persons and property aboard aircraft and the security of passengers and cargo, while the Postal Service is responsible for regulating the safe and expeditious transportation of mail by air.[1] Federal postal statutes also make the Postal Service, rather than the Federal Aviation Administration or the Department of Transportation, responsible for regulating the safe and expeditious transportation of mail by air.[2] Both federal aviation and postal statutes require that postal rules for the safe transportation of mail by air be consistent with federal aviation statutes and with rules adopted under them for the economic regulation of air carriers, but neither body of federal law requires that such postal rules also be consistent with Federal Aviation Administration air passenger and air cargo security rules.[3] Because of different legal constraints which attach to cargo and to mail sealed against inspection, postal mail security rules cannot be aligned with Federal Aviation Administration cargo security rules. Virtually all mail transported by air is mail which is "sealed against inspection" and, therefore, entitled by the Constitution and postal statutes to a higher degree of privacy.[4]

Both the Postal Reorganization Act and the Federal Criminal Code give the Postal Service certain authority to make rules and regulations governing the mailing and mailability of articles which postal customers might send by mail, whether it is to be transported by air or otherwise.[5] As a practical matter, postal customers look to the Postal Service to provide one set of uniform rules both to guide their preparation of articles for mailing and to define their reasonable expectations in the security of mail matter from governmental scrutiny.

The previously mentioned 1979 interagency agreement between the Federal Aviation Administration and the Postal Service, although involving some security procedures that have proven ineffective, recognized the division of air parcel security responsibility between the Federal Aviation Administration and the Postal Service. It requires the Federal Aviation Administration to establish an air cargo parcel security program, the Postal Service to establish an air mail parcel security program, and both agencies to coordinate their activities within their respective spheres. This agreement implicitly reflects a high degree of mutual deference by both agencies to each other. It does not exhibit the type of total, unilateral deference of the Postal Service to the Federal Aviation Administration suggested by the comments suggesting that the Postal Service should defer to the Federal Aviation Administration rather than revise its regulations in the light of current requirements.

As previously noted, the Congress has passed legislation requiring a study of mail and cargo security. The Postal Service intends fully to cooperate with the Federal Aviation Administration in acquitting its responsibility to conduct the study. To defer adoption of the screening procedures pending completion of the study, however, seems imprudent. Use of these procedures in a threat situation might result in the identification of potentially dangerous mail.

*"Credible threat" definitions.* Certain comments suggested the rule should identify more specifically what situations would be considered "credible threat situations". This phrase is intentionally stated in general terms. Due to the constantly changing nature of terrorist and other threats, it is not possible to define in advance all kinds of security threat information which would reasonably be considered to be "credible". Moreover, to attempt to do so, and publish the results, could give aid to sophisticated terrorists who might use such information to plan threatening activity, evading previously authorized counter-measures. The Postal Service believes that wide latitude is needed to evaluate relevant information and to decide the degree of credibility to be attached to particular information. Considering the wide latitude necessary, the Postal Service is restricting the authority to be granted by this rule to its highest law enforcement official, the Chief Postal Inspector. The Inspection Service is a federal law enforcement agency with established working relationships with domestic and foreign law enforcement, postal, and intelligence agencies, including the Office of Civil Aviation Security of the Federal Aviation Administration.

*Proposed routine screening.* Several comments questioned the concept of initiating screening only in response to a "credible threat". These comments recommended that mail be X-rayed or otherwise screened routinely. As explained in the invitation for comment, indiscriminate screening of all mail, or even all mail to be tendered to air carriers, is impractical and unwarranted. A decision to screen mail imposes on the public both cost and delay. Given currently available technology and the large quantity of mail to be delivered, indiscriminate mail screening would involve unacceptable delay and substantial increase in the cost of postal service. The results of routine screening would not be as reliable, moreover, as the results of carefully focused screening specially initiated in response to credible threats.

As the Airport Operators Council International stated in their comments on the proposed rule: "While steps should most certainly be in place to make reasonable efforts toward identifying * * * [a package containing a bomb], we are not convinced that sufficient credible threat has been demonstrated in the area of domestic mail to apply more than a regulatory ability to enhance mail screening procedures where necessary on a case-by-case basis."

Several comments recommended expansion of the proposed rule to cover surface as well as air mail. This recommendation has been adopted in the final rule. One comment suggested that the rule apply to mail to be transported by air cargo carriers. The rule, as adopted, is intended to apply to all mail. In addition, clarifying changes have been made where necessary.

[1] Federal Aviation Act of 1958, as amended, sections 310, 405, 1111, 49 U.S.C. app. 1357, 1375, 1511 (1988).

[2] 39 U.S.C. 5401 (1988).

[3] Federal Aviation Act, as amended, section 405, 49 U.S.C. app. 1375 (1988); 39 U.S.C. 401(2), 403, 5401 (1988), as enacted by Postal Reorganization Act, section 2.

[4] *Ex parte Jackson*, 96 U.S. 727, 733–733, 735 (1878) (unanimous decision); *U.S. v. Van Leeuwen*, 397 U.S. 249, 250–251 (1970) (unanimous decision); 39 U.S.C. 3623(d) (1988).

[5] Federal Criminal Code § 1716(b), 18 U.S.C. 1716(b) (1988); 39 U.S.C. 401(2), 403, 3623–3625, 5401 (1988).



**Effective Date**

Because the rule is intended to authorize protective responses to unforeseen and credible threats to life and property, and would not impose any compliance requirements on the general public or any carrier, the Postal Service hereby finds that good cause exists to make the rule immediately effective.

**List of Subjects in 39 CFR Part 111**

Postal service.

In view of the considerations discussed above, the Postal Service adopts the following amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 111.1).

## PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3261, 5001.

## PART 115—MAIL SECURITY

2. In part 115, insert a new subsection 115.41 as follows:

**§ 115.41 Screening of mail reasonably suspected of being dangerous.**

Whenever the Chief Postal Inspector determines that there is a credible threat that certain mail may contain a bomb, explosives, or other material that would endanger life or property, he may, without a search warrant or the consent of the sender or addressee, authorize the screening of such mail by any means which is capable of identifying explosives, or other dangerous contents in the mails, within the limits of this subsection and without opening mail which is sealed against inspection or revealing the contents of correspondence within mail which is sealed against inspection.

a. Screening authorized by this subsection shall be limited to the least quantity of mail necessary responsibly to respond to the threat.

b. Such screening shall be performed in a manner which does not avoidably delay the screened mail.

c. The Chief Postal Inspector may authorize screening of mail by postal employees and by persons not employed by the Postal Service under such instructions as will require compliance with this part and protect the security of the mail. No information obtained as a result of such screening shall be disclosed except as authorized by this part.

d. Mail of insufficient weight to pose a hazard to air or surface transportation and international transit mail shall be excluded from such screening.

e. After screening conducted pursuant to this subsection, mail which is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in § 115.42.

f. After screening, mail sealed against inspection which presents doubts as to whether its contents are hazardous, which cannot be resolved without opening, shall be reported to the Postal Inspection Service. Such mail shall be disposed of in accordance with instructions promptly furnished by the Inspection Service.

3. Renumber present § 115.41 as § 115.42 and add the following caption: "Threatening Pieces of Mail.".

4. Renumber present § 115.42 as § 115.43 and add the following caption: "Reports.".

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

**Stanley F. Mires,**
*Assistant General Counsel, Legislative Division.*

[FR Doc. 90-28320 Filed 12-3-90; 8:45 am]
BILLING CODE 7710-12-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 45 CFR Part 60

### National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Confirmation of Effective Date and Technical Amendments

**AGENCY:** Public Health Service, HHS.

**ACTION:** Confirmation of effective date and technical amendments to final regulations.

**SUMMARY:** This final rule amends the existing regulations governing the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the National Practitioner Data Bank), codified at 45 CFR part 60 to: (1) Revise the introductory text to § 60.5 to confirm the date of September 1, 1990, as the effective date on which the National Practitioner Data Bank became operational and the effective date of the codified regulations, and (2) to revise the parenthetical phrase at the end of the section text in § 60.6 to reflect the approval of the Office of Management and Budget (OMB) for information collection requirements in § 60.6(b), which was approved by OMB on March 28, 1990. (A General Notice announcing the opening of the National Practitioner Data Bank was published in the Federal Register on August 1, 1990 (55 FR 31239)).

**EFFECTIVE DATE:** Part 60 added at 54 FR 42722 (October 17, 1989), as amended by this rule, is effective September 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Daniel D. Cowell, M.D., Director, Division of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration, Room 8-67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301-443-2300.

Accordingly, 45 CFR part 60 is amended as set forth below:

Dated: October 3, 1990.

**James O. Mason,**
*Assistant Secretary for Health.*

Approved: November 16, 1990.

**Louis W. Sullivan,**
*Secretary.*

## PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

**Authority:** Sections 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99-660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100-177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

**§ 60.5 [Amended]**

2. In § 60.5 introductory text, remove the phrase "the effective date of these regulations or the date of the establishment of the Data Bank, whichever is later" and add the phrase "September 1, 1990,".

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§ 60.6 [Amended]

3. The parenthetical phrase at the end of the section text in § 60.6 is revised to read "(Approved by the Office of Management and Budget under control number 0915-0126)."

[FR Doc. 90-28338 Filed 12-3-90; 8:45 am]
BILLING CODE 4160-16-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

[CC Docket No. 88-161; FCC 90-372]

### Revision of Certain Filing Procedures for Mobile Services Division Applications and the Elimination of Form 430

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Further Order on Reconsideration was written in response to several requests for further reconsideration of the Memorandum Opinion and Order (MO&O), 4 FCC Rcd 5654 (1989), released July 20, 1989, 54 FR 31031, July 26, 1989. That MO&O resolved petitions for reconsideration and addressed comments seeking modification of the Report and Order, 3 FCC Rcd 6684 (1988), 53 FR 48909, December 5, 1988, that amended part 22 of the Commission's rules to require the filing of microfiche copies of applications and pleadings filed with the Mobile Services Division. The Further Order on Reconsideration revises and clarifies the adopted rule. The effect of the Order is to increase efficiency in Commission public reference rooms and, therefore, speed service to the public. The Commission did modify the labelling requirements contained on microfiche filings to improve the ease of use of the microfiche.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leila Brown, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Order on Reconsideration in CC Docket No. 88-161, adopted November 5, 1990 and released November 28, 1990. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

1. In this Further Order on Reconsideration the Commission has denied petitions for reconsideration of its Memorandum Opinion and Order (MO&O), 4 FCC Rcd 5654 (1989), which amended the Report and Order, 3 FCC Rcd 6684 (1988) establishing the requirement that various Mobile Services filings be submitted on microfiche. The MO&O amended the Report and Order to permit microfiche copies for opposition and reply pleadings to be submitted within 15 days after the paper copies have been filed and to allow applicants, in emergency situations, to request an extension of time in which to file microfiche copies of filings in limited circumstances. The Commission rejected a petition for reconsideration from Telocator Network of America which argued that the Commission should reconsider its decision that documents filed under part 22 of the rules be filed on microfiche. The Commission also denied a petition for reconsideration from Blooston, Mordkofsky, Jackson & Dickens requesting that the Commission permit microfiche copies of all pleadings, not just oppositions and replies, to be filed 15 days after the paper copies have been submitted. The Commission found no new arguments to justify a change of its decisions in the Report and Order and the MO&O. The Commission did modify the labelling requirements contained on microfiche filings to improve the ease of use of the microfiche.

2. Final Regulatory Flexibility Analysis. The microfiche filing requirement is the best available means of ensuring the integrity of Mobile Services Division files and utilizing scare Commission space, thus enabling the Commission to provide service to the public with greater speed and efficiency.

3. Paperwork Reduction Act Statement. The Proposal contained herein has been analyzed with reapect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

4. Authority for this Rulemaking is contained in sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

5. Wherefore, for the foregoing reasons, part 22 of the Commission's Rules *is hereby amended* as specified in the Rule section appended to this summary. The amendments adopted in this Order for part 22 licensees will become effective February 4, 1991.

List of Subjects in 47 CFR Part 22

Communications common carriers, Microfiche filing requirement.

Federal Communications Commission.
**Donna R. Searcy,**
*Secretary.*

## PART 22—[AMENDED]

Rule Changes

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 22.6 [Revised]

2. Section 22.6(d)(2) is revised to read as follows:

* * * * *

(d) * * *

(2) Non-cellular and Non-Initial Cellular Applications. All non-cellular and non-initial cellular applications and all amendments must have the following information printed on the mailing envelope, the microfiche envelope, and on the title area at the top of the microfiche:

(i) The name of the applicant;

(ii) The city and state of the application;

(iii) The month year of the document;

(iv) Name of the document;

(v) File number and call sign, if assigned (for non-cellular filings); and

(vi) The market number and block (for cellular filings). Each microfiche copy of pleadings shall include:

(A) The month and year of the document;

(B) Name of the document;

(C) Name of the filing party;

(D) File number and call sign, if assigned (for non-cellular filings);

(E) Market number and block (for cellular filings). Abbreviations may be used if they are easily understood.

* * * * *

[FR Doc. 90-28321 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 90-389; RM-7339]

### Radio Broadcasting Services; Monticello, NY

**AGENCY:** Federal Communications Commission.



**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Markey Broadcasting Co., Inc., allots Channel 259A to Monticello, New York, as the community's second local FM service. Channel 259A can be allotted to Monticello with a site restriction of 2.9 kilometers (1.8 miles) west to avoid a short-spacing to Station WWWK, Channel 257A, Ellenville, New York. The coordinates for Channel 259A are North Latitude 41-39-09 and West Longitude 74-43-34. Canadian concurrence has been received since Monticello is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** Effective January 14, 1991. The window period for filing applications will open on January 15, 1991, and close on February 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-389, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 259A at Monticello.

Federal Communications Commission.

**Beverly McKittrick,**
*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28358 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 90-334; RM-7341]

### Radio Broadcasting Services; Sweet Home, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Galaxy Broadcast Partners, substitutes Channel 296C1 for Channel 296C2 at Sweet Home, Oregon, and modifies the construction permit of Station KSKD to specify operation on the higher powered channel. *See* 55 FR 29391, July 19, 1990. Channel 296C1 can be allotted to Sweet Home in accordance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station KSDK's outstanding construction permit. The coordinates for Channel 296C1 at Sweet Home are North Latitude 44-29-02 and West Longitude 122-34-55. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-334, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 296C2 and adding Channel 296C1 at Sweet Home.

Federal Communications Commission.

**Beverly McKittrick,**
*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-28339 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

RIN 1018-AB41

### Endangered and Threatened Wildlife and Plants; Listing of the Steller Sea Lion as a Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The service is making permanent the Steller (northern) sea lion (*Eumetopias jubatus*) to the List of Endangered and Threatened Wildlife which was added as an emergency rule and was due to expire on December 3, 1990. This measure, required by the Endangered Species Act of 1973, corresponds with a determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the Steller sea lion.

**EFFECTIVE DATE:** The amendment to § 17.11(h) published on April 10, 1990 (55 FR 13488) is adopted as a final rule as of December 4, 1990 and continues in effect.

**FOR FURTHER INFORMATION CONTACT:** Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240, (703/358-2171, FTS 921-2171).

**SUPPLEMENTARY INFORMATION:** Responsibility for the Steller sea lion under the Endangered Species Act (Act) lies with the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce. Section 4(a)(2) of the Act provides that NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

The FWS had followed the emergency rule of NMFS that determined the Steller sea lion to be threatened (April 5, 1990; 55 FR 12845) with its own emergency rule adding the species to the list (April 10, 1990; 55 FR 13488). That rule would

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have expired December 3, 1990, if this final rule had not been published.

NMFS published its determination of threatened status for the Steller sea lion on November 26, 1990 (55 FR 48204). Accordingly, the FWS is adding the Steller sea lion as a threatened species to the List of Endangered and Threatened Wildlife. Because this action of the FWS is nondiscretionary and the species is already listed under the above emergency rule, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of Chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

**§ 17.11 [Amended]**

2. The amendment to § 17.11(h) published on April 10, 1990 (55 FR 13488) is adopted as final and continues in effect.

3. Section 17.11(h) is further amended by revising the "When listed" column entry for "Sea-lion, Steller" under MAMMALS in the List of Endangered and Threatened Wildlife to read as "384E, 408".

Dated: November 26, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90-28386 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-55-M



# Proposed Rules

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF AGRICULTURE**

**Food Safety and Inspection Service**

**9 CFR Part 381**

**[Docket No. 90-012P]**

**RIN 0583-AB28.**

## Poultry Products Containing Pork; Trichinae Treatment

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend § 381.147 of the Federal poultry products inspection regulations (9 CFR 381.147) to provide that poultry products containing pork as an ingredient would be subject to the same trichinae treatment requirements as those specified in § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) for meat products consisting of mixtures of pork and other ingredients. The proposal would eliminate inconsistencies which currently exist in the meat and poultry products inspection regulations regarding trichinae treatment measures.

This action is being proposed as a result of a petition from Sara Lee Corporation of Chicago, Illinois.

**DATES:** Comments must be received on or before January 3, 1991.

**ADDRESSES:** Written comments may be mailed to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

**FOR FURTHER INFORMATION CONTACT:** Mr. William Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–3840.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

FSIS has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geograhic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in expert or domestic markets.

**Effects on Small Entities**

The Administrator has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposal would amend § 381.147 of the Federal poultry products inspection regulations to provide that certain pork products, when used as ingredients in poultry products, would not be required under certain specified conditions to receive treatment for the destruction of trichinae as provided in § 381.10 of the Federal meat inspection regulations. The proposal would benefit producers of poultry products containing pork ingredients by providing certain specified exemptions from the trichinae treatment requirements. However, the Agency has determined that the benefits would not be significant, and the number of producers affected would not be substantial.

**Comments**

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to Docket Number 90–012P. Any person desiring opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Smith so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

**Background**

*Trichinella spiralis* or "trichina" is a parasitic worm that causes the disease trichinosis in virtually all warm blooded animals. The most common way for humans to acquire trichinosis is by ingesting undercooked pork or bear meat infected with trichina cysts. Trichinae exist in these meats as larval cysts. If a person or animal eats this infected meat, the larvae leave the digested cysts, mature into adults in the intestinal system of the person or animal, and mate. The females then produce live larvae that travel through the circulatory system, invade the victims' muscles, and form cysts. As encysted larvae, they survive until the cyst becomes calcified or the host dies. People with trichinosis suffer from diarrhea, shortness of breath, fever, and swelling. They can also suffer slight to extremely intense pain and death.

Section 318.10 of the Federal meat inspection regulations (9 CFR 318.10) requires that products containing raw pork must be treated for the destruction of trichinae unless the products will be fully cooked by the consumer or the raw pork has been found to be trichinae free. Treatment is not required unless there is the likelihood the product may not be fully cooked before being eaten. If such likelihood exists, the product must be treated by one of the methods prescribed in paragraph (c) of § 318.10.

On December 10, 1974, FSIS published a rule in the **Federal Register** (39 FR 42900) which amended § 381.147 (d) of the Federal poultry products inspection regulations (9 CFR 381.147(d)) to provide that poultry products containing pork as an ingredient must be treated to destroy possible live trichinae by one of the methods prescribed in § 381.10 (c) of the Federal meat inspection regulations (9 CFR 318.10(c)), or in lieu of such treatment the prok ingredient may be so treated. The regulation was promulgated in response to the growing interest by processors to produce poultry products containing pork as an ingredient.

Generally, poultry products are fully cooked prior to consumption; however, there is the possibility that some, because of their appearance, may not be fully cooked before being eaten. In the latter instance, the possibility of human infection by live trichinae exists if the poultry product contains a pork ingredient, and the product is consumed

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raw, undercooked, or otherwise untreated for the destruction of this parasite.

As indicated in the regulation cited above (9 CFR 381.147(d)), only the treatment methods contained in paragraph (c) of § 318.10 of the Federal meat inspection regulations were made applicable to poultry products containing pork by way of the December 10, 1974, regulation amendment. However, other applicable provisions of § 318.10 of the Federal meat inspection regulations were not included in the poultry products inspection regulations.

On March 5, 1990, FSIS received a petition from Sara Lee Corporation of Chicago, Illinois, to amend § 381.147 (d) of the poultry products inspection regulations to make applicable to poultry products containing pork as an ingredient the applicable provisions of § 318.10 of the Federal meat inspection regulations regarding trichinae treatment. The petitioner contends that the language contained in § 381.147(d) results in inconsistent regulation of comparable meat and poultry products, that poultry products which contain pork as an ingredient are required to be treated as prescribed in § 381.10 (c) of the meat inspection regulations, while similar meat products containing pork as an ingredient have alternatives under the provisions of paragraphs (e) and (f) of § 318.10.

The Agency agrees that the meat and poultry products inspection regulations are inconsistent on this point.

**The Proposal**

FSIS is proposing to amend § 381.147(d) of the poultry products inspection regulations (9 CFR 381.147(d)) to provide that poultry products containing pork would be subject to the same trichinae treatment requirements as those specified in § 318.10 of the Federal meat inspection regulations (9 CFR 318.10) which are applicable to meat products consisting of a mixture of pork and other ingredients and to pork which has been found to be trichinae free. Pork which has been found to be trichinae free under the provisions of § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)) is not required to be treated for the destruction of trichinae. Accordingly, poultry products containing pork which has been found to be trichinae free are not required to be treated. Also, the provision of 9 CFR 318.10(b) applicable to ground meat mixtures containing pork and beef, veal, lamb, mutton, or goat meat and other products consisting of mixtures of pork and other ingredients is included. It is proposed that ground poultry mixtures containing pork muscle tissue which the Administrator determines, at the time the labeling for the product is submitted for approval, or upon subsequent reevaluation of the product, would be prepared in a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be treated for the destruction of trichinae, as prescribed in § 318.10(c).

Therefore, § 381.147(d) of the poultry products inspection regulations (9 CFR 381.147(d)) would be a amended as follows.

**List of Subjects in 9 CFR 381**

Poultry products inspection; Processing requirements; Trichinae treatment.

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450; 21 U.S.C. 451–470; 601–695; 33 U.S.C. 1254; 7 CFR 2.17, 2.55.

2. Section 381.147 would be amended by designating the last sentence of paragraph (d) as paragraph (d)(1) and by adding new paragraphs (d)(2) and (d)(3) to read as follows:

**§ 381.147 Restrictions on the use of substances in poultry products.**

* * * * *

(d) * * *

(2) Pork from carcasses or carcass parts, used as an ingredient in poultry products, that have been found free of trichinae, as described under § 318.10 (a)(2), (e) and (f) of the Federal meat inspection regulations (9 CFR 318.10 (a)(2), (e) and (f)), is not required to be treated for the destruction of trichinae.

(3) Ground poultry mixtures containing pork muscle tissue which the administrator determines at the time the labeling for the product is submitted for approval in accordance with part 381 of the regulations in subchapter C, or upon subsequent reevaluation of the product, would be prepared in such a manner that the product might be eaten rare or without thorough cooking because of the appearance of the finished product or otherwise, shall be effectively heated, refrigerated or cured to destroy any possible live trichinae, as prescribed in § 318.10(c) of the Federal meat inspection regulations (9 CFR 318.10(c)), at the official establishment where such products are prepared.

* * * * *

Done at Washington, DC on: November 13, 1990.

**Lester M. Crawford,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 90-28317 Filed 12-3-90; 8:45 am]

BILLING CODE 3410-DM-M

## NUCLEAR REGULATORY COMMISSION

**10 CFR Parts 19, 20, 21, 30, 36, 40, 51, 70 and 170**

**RIN 3150-AC96**

### Licenses and Radiation Safety Requirements for Large Irradiators

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend its regulations by establishing a new part 36 to specify radiation safety requirements and licensing requirements for the use of licensed radioactive materials in large irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way. The safety requirements would apply to large panoramic irradiators (those in which the material being irradiated is in air in a room that is accessible to personnel when the source is shielded) and certain large underwater irradiators in which the source always remains shielded under water and the product is irradiated underwater. The rule would not cover self-contained dry-source-storage irradiator devices, instrument calibrators, medical uses of sealed sources (such as teletherapy), or nondestructive testing (such as industrial radiography).

**DATES:** Submit comments by March 4, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission can assure consideration only for comments received on or before this date.

A public meeting on the proposed rule will be held on February 12 and 13, 1991, in Rockville, Maryland.

**ADDRESSES:** Submit comments to: The Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Copies of comments received and documents referenced in this proposed rule may be examined at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3787, or Mr. Steven L. Baggett, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–0542.



To obtain further information on and to register for the public meeting contact: Ms. Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3643.

**SUPPLEMENTARY INFORMATION:**

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## I. Large Irradiators

Irradiators use gamma radiation to irradiate products to change their characteristics in some way. Irradiators are used for a variety of purposes in research, industry, and other fields. Irradiators covered by this proposed rule are those large enough to deliver a dose exceeding 500 rads (5 grays) in one hour at a distance of one meter. The proposed rule does not cover self-contained irradiator devices in which the volume being irradiated is totally inaccessible to people.

Irradiators use either radioactive materials or electronic machines (x-ray machines or accelerators) to produce very high radiation dose levels. The NRC and Agreement States regulate irradiators using radioactive byproduct materials. Electronic machine irradiators are regulated by the Occupational Safety and Health Administration (OSHA) and States. The radioactive materials, generally cobalt-60 or cesium-137, are contained in sealed sources or capsules made of stainless steel to prevent the spread of the radioactive materials. Most often the sealed radioactive sources are stored in water pools when not in use, although some irradiators use solid shields in which to store the sources. In order to irradiate products, the sources are usually lifted out of the pool or solid shield into the air. However, in some irradiators the products to be irradiated are lowered into the pool. For large commercial production irradiators, the total activity of the sources typically exceeds 1,000,000 curies ($3.7 \times 10^{16}$ becquerels), and the product to be irradiated moves past the sources on an automated conveyor system.

In 1988, roughly 85 percent of the capacity of large irradiators was used to sterilize disposable medical products and supplies such as disposable rubber gloves and syringes. The past two decades have been a slow but steady growth in the use of disposable medical products. Prior to that time, hospitals had recurring problems with biological cross-contamination (the spread of infection from one patient to another). An important cause of cross-contamination was the incomplete sterilization of certain medical products such as rubber gloves and syringes. The use of disposable products was found to greatly diminish the extent of the problem.

For years, sterilization of medical products was done primarily with heat or the chemical ethylene oxide. Ethylene oxide was used for some products that could not be satisfactorily sterilized with heat because the product would be damaged. In 1978, the EPA declared that ethylene oxide was a mutagen, possibly a carcinogen, and that its use should be carefully reviewed. Ethylene oxide residues on products thus began to be of greater concern. In 1984, OSHA established a new workplace exposure limit for ethylene oxide that lowered the acceptable level from 50 parts per million in air to 1 part per million, making its use more difficult. These changes placed the use of ethylene oxide under regulatory constraint. As a result, sterilization by gamma irradiation became the only viable alternative for sterilizing those products that would be damaged by heat.

In recent years the increasing incidence of Acquired Immune Deficiency Syndrome (AIDS) has increased the demand for disposable medical products. Combined, these factors have led to a gradually increasing use of gamma radiation in the sterilization of medical products.

Most of the remaining irradiation processing capacity is used for chemical processing, primarily the induction of polymerization in plastics. A small amount of irradiator capacity is used for research on the effects of very high doses of radiation, the production of sterile male insects for insect eradication programs, and other specialized uses.

The Food and Drug Administration has approved the use of gamma irradiation for the disinfestation and preservation of foodstuffs (21 CFR 179.26). Any food may be irradiated up to 100,000 rads (1,000 grays) for the purpose of disinfestation, such as to kill insects and parasides. Any fresh food may be irradiated up to 100,000 rads (1,000 grays) to inhibit growth or maturation, which thereby reduces spoilage. Pork may be irradiated up to 100,000 rads (1,000 grays) to kill the organisms that cause trichinosis. Dry and dehydrated foods may be irradiated up to 3,000,000 rads (30,000 grays) for microbial disinfecton. Thus, irradiation is an alternative to chemical preservatives and can reduce the use of pesticides and fumigants to control insect infestation of foods.

Presently there is very little preservation of food by irradiation done in the United States. Congress, however, supports food irradiation and has appropriated money to the Department of Energy (DOE) to support the construction of six food irradiators.

There are other potential uses of irradiation. Irradiation can sterilize biomedical wastes from hospitals. Currently, potentially infectious wastes are usually incinerated. Another potential use is the sterilization of toilet wastes from airplanes and ships that arrive from abroad. Laws require that those wastes must be considered disease-bearing and that they be sterilized. Currently, the wastes are usually sterilized by incineration.

Another potential use is the sterilization of sludge from sewage plants. Sludge could be used as a fertilizer if the pathogens in it were known to be killed and if concentrations of certain heavy metals and toxic chemicals were low enough. Irradiation could kill the pathogenic organisms but would have no effect on heavy metals or toxic chemicals.

With so many different uses and potential uses, irradiator designs are varied to suit specific applications. Therefore, it is desirable to establish basic criteria to ensure a high standard of radiation safety in the design and use of irradiators. However, this should be accomplished in a way that does not unnecessarily restrict the logical use and growth of their applications.

Because of the variety of designs, four general categories of irradiators have been defined by the American National Standards Institute (ANSI). The categories are as follows:

*Category I—Self-contained, Dry-Source-Storage Irradiators*

This type of irradiator is built as a self-contained device. The sealed sources are completely enclosed within a shield constructed of solid materials. Human access to the sealed source and

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the space subject to irradiation is not physically possible. The physical size of the device, the space subject to irradiation, the source strength, or all three are generally not large.

This proposed rule does not cover self-contained dry-source-storage irradiators (Category I) for several reasons. First, they are devices that the licensee usually purchases without playing any part in their design manufacture. Also, because safety features are designed into them, self-contained irradiators present less potential hazard and they are considered to be adequately dealt with by existing requirements. This type of irradiator (Category I) would continue to be licensed under the general requirements of 10 CFR 30.33 using the criteria in Regulatory Guide 10.9, Revision 1, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Irradiators," December 1988, and also "Standard Review Plan for Applications for Licenses by the use of Self-Contained Dry Source-Storage Gamma Irradiators," December 1988.

*Category II—Panoramic, Dry-Source-Storage Irradiators*

This category includes irradiators in which the sealed sources are stored in a shield constructed of solid materials and are fully shielded when not in use. Irradiations occur in air within a room accessible to personnel only while the sources are shielded. This category also includes certain beam type irradiators in which the source remains partially shielded. Irradiators of this type are covered by the proposed rule.

*Category III—Underwater Irradiators*

This category includes irradiators in which the sealed sources are always in a storage pool and are shielded at all times. Human access to the sealed sources and the space subject to irradiation is not physically possible. Irradiators of this type are covered by the proposed rule.

*Category IV—Panoramic, Wet-Source-Storage Irradiators*

This category includes irradiators in which the sealed sources are in a storage pool containing water and are fully shielded when not in use. Irradiations occur in air within a room made inaccessible to personnel by an entry control system while the sources are exposed. Irradiators of this type are covered by the proposed rule.

**II. Need for a Rule**

Large irradiators are currently licensed primarily under: (1) The general provisions of 10 CFR 30.33, which requires that "equipment and facilities are adequate" and that the "applicant is qualified by training and experience;" (2) the general requirements of part 20, for example, does limits and the need for "adequate" surveys; and (3) the specific requirements in 10 CFR 20.203(c)(6) and (7) that deal with access control requirements for panoramic irradiators. There is also a draft regulatory guide FC 403–4, "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators," that was published in January 1985. However, the scope of the guide is limited, and many subjects are not covered or are covered in a way now considered obsolete. On subjects that are not covered in the regulations or guide or for which there are no criteria on what is acceptable, the applicant has no way of knowing what will be accepted. Similarly, the license reviewer may be uncertain about what should be required. If the license reviewer considers the application incomplete or inadequate, he or she sends a "deficiency letter" to the applicant explaining what additional information is needed. Review of the application is not resumed until a written response from the applicant has been received. This can substantially delay issuance of a license.

Thus, although the safety requirements and policies are generally understood and agreed upon, they are contained in regulations, a regulatory guide, and specific licensing conditions. This rule would consolidate, clarify, and standardize the requirements for current and future irradiators.

A rule would also make the NRC's licensing reviews and inspections more efficient. If requirements are clearly stated in a rule, license applications could be shorter because there would be no need for applicants to describe what they would do in areas covered by the rule. The NRC could then issue licenses with fewer license conditions. Inspections would be more efficient because there would be a uniform set of requirements.

At present, aside from the specific requirements in § 20.203 on access control, many requirements are those committed to by the applicant in its license application. The wording of similar requirements can vary slightly from licensee to licensee. This makes the NRC inspector's job more difficult because he or she must determine precisely what each licensee is committed to doing.

There are at this time a number of new large irradiators either under construction or planned. In addition, Congress has appropriated money in support of the construction of six food irradiators. Thus, a significant expansion in irradiator operations is expected. Developers of these new facilities may not be familiar with NRC requirements. A rule would help make NRC's requirements clear to people building new irradiators.

There are also some areas in which either technology is changing (such as computer controllers) or NRC policy is evolving (such as quality assurance). A rule can provide comprehensive and up-to-date requirements in these areas that would be consistently and uniformly applied.

In addition, there were a number of lessons learned from a leaking source accident that occurred at an irradiator operated by Radiation Sterilizers, Inc. in Decatur, Georgia, in 1988. An analysis of the incident and a discussion of the lessons learned appear in the report titled "Leakage of an Irradiator Source—The June 1988 Georgia RSI Incident," NUREG–1392. One lesson learned was a need for detailed emergency plans. The NRC agrees that there is a need for plans to deal with emergencies. The proposed rule contains a detailed list of emergency and abnormal events for which the licensee must have a written emergency procedure ( § 36.53(b)). The procedures must be described in the license application (§ 36.13(c)). Operators must be trained in the procedures (§ 36.51(a)(4) and (g)) and must participate in an emergency drill annually (§ 36.51(d)).

Another lesson learned was the importance of proper training. The NRC believes in the importance of proper training for irradiator operators and the radiation safety officer. The proposed rule contains a detailed description of the training that an operator must receive (§ 36.51). The license application must describe the training program for operators and the qualifications of the radiation safety officer. These would then be evaluated by NRC on a case-by-case basis. The proposed rule also would require drills of the emergency procedures (§ 36.51(d)(6)). Specialized training in decontamination would not be required because decontamination, if extensive, should be done by specialists who are experienced in decontamination work rather than by irradiator personnel. Thus, the proposed rule would require that decontamination be done by a licensee authorized to do that type of work (§ 36.59(d)).



Included in the report was a recommendation for a "Community Relations Plan" to deal with public concerns. The NRC does not believe that a "Community Relations Plan" is necessary in order to protect public health and safety, although such a plan could be useful to a licensee for other reasons. Therefore the rule does not address the issue of the need for such a plan. Th rule does, however, require operating and emergency procedures.

Another lesson learned is that the license application should be received early in the process of building an irradiator. The NRC agrees with a need for early notification. The proposed rule would prohibit the start of construction of an irradiator before a license has been issued (§ 36.15)

An issue raised in the report focused on whether WESF capsules should be used in commercial irradiators because cesium–137 chloride is highly soluble in water. The NRC believes that these questions on the "WESF" capsules cannot be resolved until the cause of the leak is better understood. However, as a practical matter, only two irradiators have used "WESF" model capsules in the frequent air-water cycling mode, and neither of these irradiators now use "WESF" capsules. One irradiator still uses the "WESF" capsules in a cycling mode, but the operation of the irradiator is such that the cycling is presently seldom done.

Also of concern was the detection of contamination on workers before they leave the facility. In the RSI accident, some contamination was carried offsite, although the radiation doses involved were low in comparison with NRC's dose limits. Monitoring of workers after a leak has been detected is important. Thus, the proposed rule would require that the licensee have a written emergency procedure for dealing with a leaking source or contamination (§ 36.53(b)) and that the licensee promptly check personnel for radioactive contamination (§ 36.59(d)). Workers would have to be trained in the procedure (§ 36.51(a)(4)).

Another issue dealt with monitoring irradiated product for contamination. In the RSI accident, there was concern that product that had been irradiated after the leak started could be contaminated. The licensee's record system allowed prompt tracking of all recently irradiated product. One shipment that had been shipped earlier in the day on which the leak was detected was found to be contaminated. It was immediately recalled and disposed of as radioactive waste. The lessons learned report recommended adequate monitoring systems for assuring uncontaminated packages, and it perhaps implied that routine monitoring of packages should be done. The NRC believes that there should be a means of promptly detecting leaking sources. The NRC believes that the most suitable way to accomplish this is with frequent monitoring of pool water, and thus the proposed rule contains that requirement (§ 36.59(c)). The NRC agrees that if a leak is detected, all recently irradiated product must promptly be tracked and monitored for contamination. Thus, the proposed rule contains a requirement to monitor irradiated product for contamination if a leak occurs (§ 36.59(d)).

**II. Review of Operating Experience**

To develop a basis for these proposed safety requirements, the NRC reviewed the operating experience of large irradiators. The information presented in this section is taken, in large part, from "Review of Events at Large, Pool-Type Irradiators," Eugene A. Trager, Jr., NRC Office for Analysis and Evaluation of Operating Data, NRC Report NUREG–1345, 1989. (Copies of NUREG–1345 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.)

*A. Radiation Overexposure*

Serious radiation overexposures involving irradiators occurred in the U.S. in 1974 and 1977. Fatalities were caused by radiation overexposures involving irradiators in Italy in 1975, in Norway in 1982, in El Salvador in 1989, and in Israel in 1990.

In 1974, in New Jersey, an operator at a panoramic irradiator walked into the radiation room containing an exposed source, saw it, and quickly left the room. He received a dose large enough to cause clinically observable symptoms of radiation sickness, but the dose was not large enough to be fatal. The entrance to the room lacked the modern automatic access control systems now used and an alarm system had been turned off. The operator did not follow the proper procedures for entry. It is possible the operator was not sufficiently vigilant because he was working alone at a late point in his shift. The operator made the error on the twelfth hour of the fourth straight day in which he worked 10 to 12 hours.

In 1977, a worker at another irradiator in New Jersey was overexposed to radiator after he entered a radiation room while a 500,000-curie ($1.8 \times 10^{16}$-becquerel) cobalt-60 source was unshielded. The licensee was in the process of modifying the irradiator and was operating the irradiator while the interlocks on the door used to prevent entry into the radiation room were deactivated. In addition, construction activity caused the source-up warning light to be obscured from view. The door to the room was open, and the worker, who assumed the sources were shielded, entered the radiation room. Upon noticing that the sources were in the exposed position, the worker immediately left the room and notified his supervisor. Although not fatal, the worker's dose was calculated by the licensee to be between 150 and 300 rems to the whole body. Subsequent to the accident, the NRC adopted access control requirements (10 CFR 20.203(c)(6)) that required a backup warning system to warn anyone attempting to enter the radiation room while the source is unshielded.

In 1975 an accident occurred in Italy at a 30,000-curie ($1.1 \times 10^{15}$-becquerel dry-source-storage irradiator used to irradiate corn. An operator claimed onto a conveyor belt to make an adjustment and was carried under the source while it was unshielded. When the operator complained of severe pain in his head, his partner attempted to remove him from beneath the unit. However, his partner ran the conveyor forward rather than in reverse and exposed the operator's entire body to the unshielded source. The operator died 12 days later.

In 1982, an accident occurred in Norway. A maintenance man entered the radiation room of a Category IV irradiator while a 65,000-curie ($2.40 \times 10^{15}$-becquerel), cobalt-60 source was unshielded, and received a lethal radiation exposure. The facility had two automatic locks on the door to the room to prevent it from being opened while the source was exposed. However, one lock had been previously disconnected because it was malfunctioning, and the other failed due to a broken microswitch. The facility did not meet the requirements in the NRC's current or proposed rule because: (1) Opening the door would not automatically cause the source to become shielded, (2) there was no backup system to automatically cause the source to become shielded upon entry if the primary door or barrier were passed, and (3) there was no alarm system to alert the person entering that the source was exposed. In addition, several NRC operational requirements

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were not met. In total, at least six levels of protection in NRC's current and proposed requirements were not provided. (The accident is described in more detail in "The Radiation Accident at Institute for Energy Technology, September, 1982, Some Technical Consideration," Leiv Berteig and Jon Flatby, The Journal of Industrial Irradiation Technology, Volume 2, pages 309–319, 1984.)

In 1989, a fatality resulting from an irradiator exposure occurred in El Salvador. A movable rack holding a 18,000-curie ($6.60 \times 10^{14}$-becquerel) cobalt-60 source was jammed in an unshielded position. An operator bypassed safety systems and entered the irradiation chamber, along with two helpers, to free the rack and lower the source back into a storage pool. The three workers were exposed to high doses and developed acute radiation syndrome. Although prompt medical attention was effective in countering the acute effects, the legs of two of the men had to be amputated. Six months after the accident, the operator died as a result of radiation-induced lung damaged which was complicated by a lung injury sustained during treatment (summarized from Croft, J., Zuniga-Bello, P., and A. Kenneke, 1989, "The Radiological Accident in San Salvador," IAEA General Conference: Scientific Programme for Nuclear Safety, September 28, 1989.)

In 1990, a fatality occurred in Israel. Product being irradiated jammed on a conveyor system. The jam also prevented the radiation sources from being lowered to the safe shielded position. To clear the jam, the operator entered the radiation room after bypassing the interlocks designed to prevent entry into the room while the sources were exposed. He received a fatal radiation dose within a minute or two.

*B. Other Operating Problems*

NUREG-1345 identified forty-five events at U.S. irradiators of which forty-four had some actual or potential safety significance. Only two of the events had actual rather than potential impact on the health and safety of the employees or the public. Of the forty-four events, thirty-one involved the failure, malfunction, or degradation in the performance of some irradiator system. These systems include: Access control, source movement mechanism (movement and suspension); source encapsulation; and pool or water cleanup system. An additional ten events stemmed from management deficiencies. Three events involved natural phenomena and other site problems.

1. Access Control

Two radiation overexposures involving access control were discussed in section III.A. and will not be discussed further here. Both events occurred prior to implementation of NRC's current access control regulations in part 20. A third event, reported in 1978, also involved the access control system. It was discovered that failure of two door interlock switches would allow the source to move from the safe storage to the exposed position even if the door to the radiator room was open.

2. Source Movement

There were thirteen events that involved interference with source movement and six other events that involved the source suspension cables.

There were insufficient data to specify a cause for five of the thirteen events in which source movement was impeded. In six of the thirteen events, the product carriers interfered with the movement of the source rack. In one of those, the interference was indirect; a box pusher cylinder created a short in a control circuit resulting in the tripping of a circuit breaker in the control circuit. The source then properly began lowering itself into the shielded position. But loss of the control circuit caused the loss of the source-down position sensor, and so the source cable drum continued to rotate and raised the source to the up position before the motor stalled. The source had to be lowered manually.

There were two source-movement events involving loss of source movement capability that had unique causes. At a research irradiator, interference between an experiment and the source impeded movement of the source. Low temperatures at another irradiator caused freezing that appears to have been responsible for preventing movement of the source.

The thirteen events involving source movement were benign in that no radiation exposures resulted. But two of the events caused fires inside the radiation room. Two events resulted in individual sources coming loose from the source rack. One event resulted in distortion of the source rack.

There were six problems with source suspension cables. In three of the events, the cable broke. In two events, the cable frayed. In one event, the cable came off its pulley. There were no radiation exposures caused by any of these events. In two of the events in which the cable broke, there are indications of some deficiencies in maintenance practices. In one, the cable was known to be frayed; in the other, the cable had not been inspected for at least three years.

3. Source Encapsulation

There have been four events in which the encapsulation of the radioactive sources appears to have failed. As a result, the storage pool was contaminated. In one case, a fire caused by a welder early in the facility life resulted in the discharge of a fire extinguisher into the pool water. Almost immediately afterwards, radioactive contamination of the pool water was detected. The source of the contamination was never established. In a second event, a source was ruptured in 1974 due to mishandling. An excessive contamination level in the pool was not noted until 1982 because the contamination stayed at the bottom of the pool.

Late in 1976, an irradiator licensee determined that the cobalt-60 concentration in the water of a research and development pool was slightly elevated (to 0.0013 microcurie/milliliter or 48 becquerels/milliliter). The licensee stated that the activity level may have been the result of surface contamination from a batch of cobalt-60 sources recently installed in the pool or activity from one source that had a loose cap. Demineralization of the pool water successfully reduced the activity of the pool to normal operational levels. The suspect source was isolated and returned to the supplier.

The previously mentioned 1988 event at RSI involved the leakage of a cesium-137 source. This resulted in the release of about 10 curies ($3.7 \times 10^{11}$ becquerels) of cesium-137 to the pool. The event led to concerns that contaminated products might have been shipped from the plant. Although no contamination was found on products that had been distributed to the public, contamination was found on products that had been shipped to a warehouse and in workers' houses and a car.

4. Pool or Water Cleanup System Integrity

There were three events that involved pool leakage or pool cleanup system leaks. In the case of the leaking pool, the existence of a high rate of water loss from the storage pool was noted by an NRC inspector during an inspection. After discussions with the NRC, the licensee agreed to repair the leak and monitor the rate of pool leakage.

There were two events involving leaks in pool water purification systems. In one event, the piping on the discharge side of the purification system pump



leaked. Contributing factors were that the piping was suitable for cold temperatures while the pool water temperature was 120 °F and that the joints had recently been torqued. The leak developed when the irradiator was shut down for the weekend and there was apparently no low pool level shut-off on the purification pump. In the second event involving a pool purification system leak, a pipe broke. Contaminated water spilled into the facility and some ran out of the building. Small amounts of contamination were later found on the ground outside of the building.

5. Miscellaneous Systems

There were two events that involved miscellaneous systems. The first event involved problems with timers. The second event involved malfunction of pistons used to engage clutches in the product conveyor system.

6. Management Deficiencies

Ten events involved management deficiencies. None of the events caused radiation exposures or radioactive contamination. In one, a dose distribution study that involved the stationary irradiation of paper, a fire resulted from gamma heating of the paper. The most common management deficiency was operating an irradiator without the operable access control interlocks required by 10 CFR 20.203(c). Several events of this type occurred at the same facility.

7. Natural Phenomena

There were three events involving natural phenomena or other site problems. None had any significant impact. One irradiator was struck by a tornado, but the safety of the facility was unaffected. A second irradiator was about 120 km from the epicenter of a series of six earthquakes of about 3.6 magnitude on the Richter scale. The irradiator was inspected by state inspectors and found to be undamaged. In a third event, there was a fire at an irradiator site in a building that was separate from the irradiator building. The building was used to store sawdust. The irradiator suffered no damage.

*C. Inspection History*

A review of inspection records from January 1, 1980, to December 31, 1987, for current NRC licensees indicates roughly the following types and frequencies of violations of the regulations:

**Violations at NRC-Licensed Large Irradiators, 1980–1987**

| | |
|---|---|
| Radiation overexposures | none |
| Recordkeeping and posting violations | 12 |
| Failure to perform tests, inspections, or routine maintenance within required frequency | 10 |
| Operating without fully operable interlocks or alarms | 6 |
| Failure to calibrate radiation instruments | 3 |
| Operator not on authorized list | 3 |
| Survey instruments or personnel dosimeters not used or used improperly | 3 |
| Repairs or operation without proper authorization | 2 |
| Miscellaneous violations | 5 |

The most significant violations are those in which the irradiator was operated without fully operable interlocks or alarms. Interlocks and alarms are an important part of the system of protection used to prevent serious overexposures.

**IV. Radiation Protection Philosophy**

Based on the review of operating experience, the most important radiation protection objective at a large irradiator is preventing anyone from entering the irradiation room while the source is exposed. An unshielded source at a large irradiator could deliver a lethal does in less than a minute.

The NRC believes that its current access control requirements adequately address this problem. Since imposition of the current requirements in 1978, there have been no reported entries of personnel into an irradiator room while the source was exposed. However, this proposed rule would revise the access control requirements to increase their clarity.

The second most important radiation protection objective is avoiding excessive radiation exposure due to radioactive contamination from leaking, damaged, or contaminated sealed sources. An underlying assumption in this rulemaking is that any sealed source could leak. Therefore, the proposed rule would require means of coping with leaks so that radiation overexposures to facility employees and to the public are avoided.

The first step in avoiding readiation exposures due to contamination is to prevent leaking sources. The proposed rule has clear specific requirements on the encapsulation of sealed sources. Experience with sealed sources manufactured to the standards in the proposed rule has been good. While the proposed rule assumes that any source can leak or be damaged, leaks are rare. When leaks have occurred, the proportion of material in the source that has escaped has generally been low with the exception of a few cases in which cutting tools were mistakenly used to cut sources open.

The second step in preventing excessive radiation exposures requires that a means to detect leakage in a timely manner be provided. For pool irradiators, the proposed rule would require radiation monitoring of pool water. The monitoring should allow prompt detection of any leak of significant size. For dry-source-storage irradiators, the rule would require periodic leak tests of very high sensitivity. Although the monitoring is not as frequent as for wet-source-storage sources, the greater sensitivity should allow detection of any problem early enough.

The third step in preventing excessive radiation exposures is to require a stainless steel pool liner on all new source storage pools to act as a barrier to keep water from leaking out of the pool. The proposed rule contains this requirement.

The fourth step is to have procedures for dealing with accidents or abnormal events. The proposed rule requires the licensee to have those procedures.

Since the proposed rule contains these features, the NRC believes that the requirements in the proposed rule are adequate to assure a very low likelihood that anyone inside or outside the facility would be exposed to radiation in excess of NRC's dose limits in 10 CFR part 20.

**V. Reference Documents**

The requirements in the proposed rule are based, in part, on recommendations and requirements in the documents listed below:

1. Draft Regulatory Guide FC 403–4, "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators," January 1985. (Hereafter called the "Irradiator Licensing Guide.") Draft Regulatory Guides may be obtained without cost by writing: Director, Division of Information Support Services, USNRC, Washington, DC 20555.

2. American National Standard N43.10–1984, "Safe Design and Use of Panoramic, Wet Source Storage Gamma Irradiators (Category IV)," National Bureau of Standards Handbook 142, 1984. (Hereafter called the "ANSI Category IV Standard.") This document may be purchased for $8 from: American National Standards Institute, 1430 Broadway, New York, NY 10018.

3. American National Standard N542–1977, "Sealed Radioactive Sources, Classification," National Bureau of Standards Handbook 126, 1978. This document may be purchased from: The

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Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

4. Draft American National Standard N43.12 (dated October 2, 1985), "Safe Design and Use of Panoramic Dry Source Storage Gamma Irradiators," unpublished. (Hereafter called the "ANSI Category II Standard".) To obtain a copy, write to: Ms. Jayne McCausland, Office of Nuclear Regulatory Research, USNRC, Washington, DC 20555.

5. NUREG–1392, "Leakage of an Irradiator Source—The June 1988 Georgia RSI Incident," February 1990. This document may be purchased from: The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**VI. Public Meeting**

Because of the length and complexity of the proposed rule, the NRC will hold a public meeting during the public comment period to discuss the rule. The meeting will be held on February 12 and 13, 1991, in Rockville, Maryland.

The public meeting will provide interested persons an opportunity to question the NRC staff about the meaning, intent, logic, and justification of the proposed rule. The meeting will also allow the NRC staff to question commenters attending the meeting about why they may object to provisions of the proposed rule and how they would suggest improving the rule. Another purpose of these exchanges is to allow commenters to improve their written public comments because, through the meeting, they might gain a better understanding of the meaning, intent, and purpose of the proposed rule. To obtain further information and to register for the public meeting, write or telephone: Ms Jayne McCausland, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3843.

**VII. Summary of the Proposed Requirements and the Rationale for Their Inclusion**

The actual wording of the proposed amendments appears in the text of the proposed part 36. The information presented in this section summarizes the major requirements by section of the regulation. The bases and origins of the major requirements are also explained.

*Subpart A—General Provisions*

*Section 36.1 Purpose and scope*

This section describes the types of irradiators covered in the proposed part 36. The proposed rule covers large panoramic wet-source-storage, dry-source-storage, and underwater irradiators. Large irradiators are those that can deliver a dose of 500 rads (5 grays) or greater in one hour at a distance of 1 meter, either in air or underwater as appropriate for the irradiator type. The dose rate criterion is taken from the access control requirements in the revised 10 CFR 20.3, Definitions, "Very High Radiation Area," under consideration by the Commission. The 1-meter distance effectively excludes self-contained irradiators. A cobalt-60 source of approximately 400 curies ($1.48 \times 10^{13}$ becquerels) would deliver this dose in air if the source were small with little self-absorption. A cesium-137 source would need about 2,000 curies ($7.4 \times 10^{13}$ becquerels) to deliver the same dose. For underwater irradiators, the source activities to deliver a 500-rad (5-gray) dose at 1 meter would be about 10 times larger than if the exposures were performed in air.

*Section 36.2 Definitions*

This section defines terms that are used in the proposed new part 36.

*Subpart B—Specific Licensing Requirements*

*Section 36.11 Application for a specific license*

This section states how to apply for a license and where the application must be sent.

*Section 36.13 Specific licenses for large irradiators*

This section describes information that must be included in a license application if it is to be approved by the Commission.

The applicant's proposed activities must be for a purpose authorized by the Atomic Energy Act of 1954. This is a standard requirement for all types of licenses.

The applicant's proposed equipment and facilities must be adequate to protect the health of workers and the public and minimize danger to life and property. The applicant must be qualified by training and experience to use the radioactive material for the purpose requested and in a manner that protects health and minimizes danger to life and property. These are standard requirements for all NRC licensees.

The application must describe the training program for irradiator operators. Criteria for acceptable training programs are not contained in the regulations so that flexibility can be allowed. For example, the on-the-job training of operators would be different at a new irradiator compared to an existing irradiator. Guidelines for acceptable training programs are contained in the Irradiator Licensing Guide.

The application must contain an outline of the operating and emergency procedures. The NRC prefers to review an outline that describes the operating and emergency procedures in broad terms that specifically state the radiation protection features to be included in the procedures rather than the detailed operating and emergency procedures. A step-by-step review of procedures would generally not be possible for a license reviewer without intimate knowledge of the construction, layout, and operation of the particular irradiator. In addition, if specific procedures were reviewed, then minor changes that the facility might need to make from time to time (for example, due to replaced equipment or improving procedures based on what is learned from operating experience) could require a time consuming and unnecessary license amendment. This could unnecessarily hamper the safety of facility operation. Detailed procedures would be available to inspectors for reference during facility operation, however, and documentation on changes in procedures will have to be retained for inspection by the NRC for three years (§ 36.81(d)).

The application must describe the responsibilities and authorities of the radiation safety officer and other management personnel. The applicant must also describe the qualifications of the radiation safety officer. These are standard requirements used to judge whether the applicant's personnel are qualified to handle radioactive materials safely.

Consideration was given as to whether the proposed rule should contain specific requirements for the qualifications of the radiation safety officer. Requirements could be placed on: The amount of formal radiation safety training, the amount of on-the-job training, the length and type of previous experience, and the amount of formal education. It was decided not to specify minimum qualifications in the rule because there is so much variability in qualifications among people who would be adequate to do the job. Instead, it was decided that guidance on qualifications should be included in a Regulatory Guide and that the NRC license reviewer should make the final determination of adequacy based on the actual qualifications of a specific individual. This would allow the license reviewer the flexibility to consider the strengths and weaknesses of a specific individual in making the determination.

Applications to operate panoramic irradiators must contain logic diagrams of access control systems.

Applications also must contain information on how sealed sources would be tested for leakage and contamination.

The applicant must submit information on loading and unloading sources. If the applicant intends to load and unload sources, the applicant must show that its personnel are qualified to do so safely and that its procedures are adequate to protect health and safety. The applicant may also have the loading and unloading done by another organization that the NRC or an Agreement State has approved. "Approved" means that the qualifications of the organization that would do the loading and unloading have been reviewed by the NRC or an Agreement State as part of a prior licensing action and the organization has been found qualified to safely load and unload sources. If the qualifications of the organization have not been previously reviewed, they would then be reviewed as part of the current license application and, if found qualified, added to the list of organizations approved to load and unload sources.

The applicant must also describe the frequency of the operational inspection and maintenance checks required by § 36.36. Guidelines on the frequency of checks may be included in future NRC licensing guides.

*Section 36.15 Start of construction*

This section prohibits the start of construction of any portion of the permanent facility on the site before a license is issued. The section applies only to new facilities. An applicant is not prevented by this section from seeking a license to operate an irradiator that has been transferred from one owner to another or from converting an existing facility, such as a hot cell, into a irradiator.

*Section 36.19 Request for written statements*

This section codifies a requirement (found in section 182 of the Atomic Energy Act) that the licensee must supply any additional information required by NRC to assure that health and safety will be protected.



*Subpart C—Design and Performance Requirements for the Irradiator*

*Section 36.21 Design and performance criteria for sealed sources*

This section lists the performance criteria for sealed sources used in irradiators.

The performance criteria in the proposed rule are taken from American National Standard N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards in 1978 as NBS Handbook 126. (Available from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.) The NRC has used this standard for many years and generally is satisfied with the performance of the sealed sources that meet the standard. Nonetheless, there is a new requirement that sealed sources installed after the effective date of the rule be doubly encapsulated. Double encapsulation provides additional protection in case one of the welds in the source is defective. The likelihood of two defective welds in one source is less than the likelihood of one weld being defective. Most of the approved sources currently in use are doubly encapsulated.

The proposed rule does not specify any requirements for sealed sources installed prior to the effective date of the rule. Current NRC staff practice is to approve sealed sources on a case-by-case basis, using the criteria in American National Standard N542–1977. Thus, all sources installed prior to that date would have been approved by the staff on a case-by-case basis, using effectively the same criteria as in the proposed rule, with the exception of the requirement for double encapsulation.

*Section 36.23 Access control.*

This section states requirements for systems intended to prevent entry into the radiation room of a panoramic irradiator while the source is exposed.

The proposed requirements were taken largely from the existing 10 CFR 20.203 (c)(6) and (c)(7), but an attempt has been made to simplify the wording of these requirements. In addition, a requirement that the entrance to the radiation room must have a "door or other physical barrier to prevent inadvertent entry" has been added. Although the present regulation in 10 CFR 20.203(c)(6) does not require a door or barrier, the NRC licensing staff has usually required that a door or barrier be provided. The proposed rule explicitly states the requirement. As a part of the final rulemaking on the new part 36, existing 10 CFR 20.203 (c)(6) and (c)(7), which apply only to large irradiators, will be deleted from part 20 to coincide with the effective date of the part 36 requirements.

For panoramic irradiators, the proposed section would require a primary access control system and an independent backup access control system. In addition, operational requirements for preventing a person from being in the radiation room while the source is exposed are contained in § 36.67, "Entry into and exit from the radiation room."

The door or barrier that serves as the primary access control system must have controls that would: (1) Prevent the source from being moved out of its shielded position if the door or barrier were open and (2) cause the source to return to its shielded position if the door or barrier were opened while the source was exposed.

The backup access control system must be able to detect entry while the source is exposed. If entry is detected, the system must: (1) Automatically cause the source to return to its shielded position and (2) activate audible and visible alarms.

In addition, the proposed rule would require a radiation monitor in the radiation room of panoramic irradiators to detect radiation when the source is indicated to be in the fully shielded position. The radiation monitor would have alarms and an interlock on the personnel access door. This is a new requirement not in the existing § 20.203(c)(6). The purpose is to provide an additional level of protection in case of some failure of the source movement mechanism combined with a failure of the operator to make the required radiation survey upon entry into the radiation room.

The phrase currently used in § 20.203(c)(6) concerning reduction of radiation levels upon entry is worded so that an individual could not receive "a dose in excess of 100 mrem in one hour." This requirement has been changed in § 36.23 to state that the time for the sources to return to the shielded position must be less than or equal to the time that it would take a person entering the radiation room to walk to the edge of the pool (wet-source-storage) or into the beam (dry-source-storage). This wording more directly states the intent of the requirement. If necessary, the licensee could use a time-delay mechanism to delay opening the door after unlocking it.

The access control requirements apply to each entrance of the radiation room of a panoramic irradiator whether intended for personnel access or

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intended only for product entrance or exit. Panoramic irradiators with a conveyor system could meet the requirement by providing clearances around the conveyor carriers that are too small to allow someone to pass through. The requirement is that the door or barrier must prevent inadvertent entry. The purpose of this requirement is to prevent a reasonably prudent person from carelessly, inattentively, or accidentally entering the radiation room while the source is exposed.

The access control section would require an independent backup access control system on panoramic irradiators. The backup system could use photoelectric cells in an entrance maze, pressure mats on the floor, or similar means of detecting a person entering the radiation room while the source is exposed. The purpose of the backup system is to provide a redundant means of preventing a person from being accidentally exposed to the source. In case of a failure of the interlocks on the door or barrier combined with a failure to follow operational procedures, the backup system should warn the person entering the radiation room of the danger and automatically cause the sources to return to their shielded position. The system must also alert another person of the entry. That person must be prepared to render or summon assistance. This provision prevents the operation of the panoramic irradiator without a second person being available to render or summon assistance.

The section explicitly states that the irradiator may not operate if the requirements of the section are not met.

This section also contains requirements for underwater irradiators. For example, the pool must be within an area surrounded by a personnel access barrier with an intrusion alarm when the facility is not operating.

*Section 36.25 Shielding*

This section specifies maximum dose rates outside the radiation room of a panoramic irradiator and maximum does rates over pools. The maximum dose rate of 2 millirems (0.00002 sievert) per hour is considered both practical to achieve and low enough to permit continuous occupancy by workers anywhere outside the shielding. The value was previously specified in the Irradiator Licensing Guide. Two millirems (0.00002 sievert) in an hour is the maximum radiation dose allowed by 10 CFR part 20 in an unrestricted area for one-hour time periods.

For measurements to determine compliance with the requirement, the rule specifies 30 cm as the distance from the shield to the detector. This distance is selected because at that distance the dose would be a whole-body-dose and not a dose occurring in a small crevice or opening. The maximum area of 100 square centimeters for averaging dose effectively establishes a maximum detector size.

The section dose not require that the NRC approve the shield design. Instead the regulations contain only a performance requirement on maximum dose rate outside the shield. The requirements apply to the completed shield.

It is possible that, in its first test, some part of the shield might fail to meet the performance requirement. If this occurs, the effect of the regulation is to require that the shielding deficiency must be corrected before operation of the facility can begin.

The section also specifies maximum radiation dose levels outside the shielding of dry-source-storage irradiators. The levels are considered practical and adequate to maintain doses to workers as low as is reasonably achievable. The levels were specified in the ANSI Category II Standard.

*Section 36.27 Fire protection*

The heat generated by irradiation can cause combustible materials to catch fire. The requirements in this section are intended to prevent fires, detect fires if they occur, and allow fires to be extinguished without entry of personnel into the radiation room.

The requirements for fire detection and sprinklers or other systems to extinguish a fire at a panoramic irradiator were taken from the ANSI Category IV Standard. The fire extinguishing system does not have to be automatically activated.

Overall, fires are considered to present relatively little hazard to irradiators. Radiation rooms use little combustible material in their construction, and irradiation of highly flammable and explosive materials is prohibited (by § 36.69) without NRC specific approval. The products being irradiated are likely to be combustible, but there is not likely to be present a sufficient quantity of combustible material to result in prolonged high-temperature fires. Thus, the temperature reached is not likely to be high enough to melt or rupture the stainless steel capsules containing the radioactive sources. Therefore, the NRC would not expect a fire to cause loss of encapsulation even if the fire were not controlled and the sources were not dropped into a source-storage pool.

The fire extinguishing system is required because a fire could disable the access control system or could prevent the source from being shielded, thereby lowering the margin of safety. The fire extinguishing system must be operable without entry into the room. During a fire there would be no means of assuring that the access control systems and source position indicators are operating properly. Also, no one could be sure that the mechanism that returns the source to the shielded position had operated properly.

*Section 36.29 Radiation monitors*

This section requires a radiation monitor to detect radioactive sources on the exiting product. The requirement was taken from 10 CFR 20.203(c)(6)(viii) and from the ANSI Category IV Standard. The purpose of this requirement is to detect sources that have somehow become loose from the source rack and are being carried out with the product and to stop them from being carried out of the radiation room.

This section also requires radiation measurements to detect leaking sources at pool irradiators and a monitor over the pool at underwater irradiators.

*Section 36.31 Control of source movement*

This section contains the requirements for the control of source movement at a panoramic irradiator. Generally, the requirements are taken from the ANSI Category IV Standard.

*Section 36.33 Irradiator pools*

This section contains requirements for irradiator pools.

For facilities licensed for the first time after the effective date of the final rule, the proposed rule would require either: (1) A stainless steel pool liner (or a liner metallurgically compatible with other components in the pool), or (2) construction so there is a low likelihood of substantial leakage, a surface designed to facilitate decontamination, and a means to safely store sources during repairs of pool walls. Back-fitting is not required because modifying an existing pool would be prohibitively expensive and the gain in safety would be only marginal. Older facilities sometimes used concrete pools, sometimes lined with tiles, but usually without stainless steel liners or other ways to reduce the likelihood of leakage. The ANSI Category IV Standard does not require pool liners. However, unlined pools have leaked from time to time. The purpose of the requirement is to reduce the likelihood of pool leakage. It is desirable to control pool leakage in case the pool water becomes contaminated due to a leaking source. If the pool were leaking and a source leaked at the same time, a potential for worker and public exposure would exist, and it could be difficult and expensive to decontaminate the facility.

The NRC considered whether to require that pools have a more sensitive means of detecting water leakage from pools than monitoring water loss. Examples of more sensitive means might be a double lined pool or channels at welds with a means to detect water leaking from the pool. The NRC decided that it would be adequate to monitor pool water loss and unnecessary to have a more sensitive means of detecting leaks. There are two reasons for wanting to avoid leaks. One reason is that a substantial lowering of the pool water level would cause radiation levels at the pool surface to increase. The increased radiation levels are not a safety concern unless large volumes of water are lost. A system to monitor water loss could easily detect leaks before a safety hazard would result. The second reason to avoid leaks is to prevent the escape of radioactive material that might be in the pool water. In normal circumstances a pool leak is not a safety concern because pool water contains little or no radioactive material. If a source leak occurred while the pool had a small undetected leak, some contaminated water could escape from the pool. Experience has shown that pool contamination levels do not get very high so that the escape of a small amount of pool water into the ground is not a significant safety concern. Therefore the NRC does not consider that a pool leak system more sensitive than that required in the proposed rule is necessary.

The proposed rule would require both a means to replenish water that is lost and a low-water level indicator. The means to replenish the water does not have to be automatic. An indicator is needed even if the replenishment is automatic in case the system to replenish the water does not work. The requirement for a cover or railing to prevent workers from falling into the pool is taken from the ANSI Category IV Standard.

The proposed rule requires a water purification system. The purposes of the purification system are to prevent the pool water from becoming cloudy and reducing visibility and from becoming corrosive and thus corroding the stainless steel sealed sources or the source rack. If the water is clear, it should be possible to visually inspect the sources and the source rack. Thus, the sources and the source rack could be inspected for damage, and the location of the sources could be checked to make sure they are in their proper positions.

Requirements on the design of poles and long-handled tools to be used in irradiator pools would be imposed to prevent radiation "streaming." Hollow and low density poles and tools must have either vent holes to allow shielding water to enter or sufficient bends to prevent radiation levels at handling areas of the tools from exceeding 2 millirems (0.00002 sievert) per hour.

*Section 36.35 Source rack protection*

This section would require a barrier to prevent the moving products from hitting the source rack or the mechanism that raises and lowers the sources.

*Section 36.37 Power failures*

This section would require automatic source retraction for loss of power for more than 10 seconds at a panoramic irradiator. The retraction would have to be accomplished without outside power. Backup power is not required as long as loss of power will cause the source to return to its shielded position, for example, if the source would return to the shielded position due to gravity. The requirement is taken from the ANSI Category IV Standard.

*Section 36.39 Design requirements*

This section describes facility design requirements. The purpose of the requirements is to make sure the design is adequate before construction starts.

Included in the section is a requirement that all irradiators must have shielding walls constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. This provides protection against moderate earthquakes, tornadoes, and other hazards.

In addition, irradiators built in seismic areas must have radiation shields designed to retain their integrity in an earthquake. Seismic areas are defined in § 36.2 as any area where the probability of a horizontal acceleration in rock exceeding 0.3 times the acceleration of gravity in 250 years is greater than 10 percent. The value of 0.3 comes from the ANSI Category IV Standard. The 250-year frequency is different from the frequency in the standard, which specifies a 50-year frequency. The NRC selected 250 years to include areas that could have a large earthquake even if large earthquakes would seldom occur.

Maps of the United States showing these seismic areas are published by the U.S. Geological Survey (see S. T. Algermissen, et al., "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States," United States Department of the Interior, Geological Survey, Open-File Report 82-1033, 1982. This report may be purchased for $24.50 from: U.S. Geological Survey, Books and Report Sales, Box 25425, Denver, Colorado 80224. Prepayment is required).

Studies of irradiator shield designs have shown that the shields are inherently able to withstand large earthquakes. ANSI determined that reinforced concrete shields constructed to meet generally accepted building code requirements for reinforced concrete (for example ACI Standard 318-77, "Building Code Requirements for Reinforced Concrete," available for purchase from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219) can withstand an earthquake with an acceleration in rock of 0.3 times the acceleration of gravity plus any multiplication of acceleration that would occur due to soil. Therefore, there are no seismic requirements for irradiators located where accelerations in rock are not likely to exceed 0.3 times the acceleration of gravity.

The proposed rule would intend that shield walls in seismic areas would have to retain their integrity in the event of an earthquake by requiring that they be designed to meet the seismic requirements of local building codes or other appropriate sources. Local building codes in seismic areas are likely to specify requirements for things such as: spacing of reinforcing bars; how to tie reinforcing bars together; preferred arrangements of reinforcing bars; and requirements for joining reinforcing bars to floor slabs. If local building codes do not contain seismic requirements, "other appropriate sources" could include: American Concrete Institute Standard ACI 318, "Building Code Requirements for Reinforced Concrete, Appendix A, Special Provisions for Seismic Design," (available for purchase from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219). The NRC solicits comments, in particular, on this requirement.

The NRC also considered whether there should be design requirements for shield integrity against tornadoes. The NRC decided that there was no need for special design requirements because the shielding by its very nature (about six feet thick reinforced concrete) is inherently resistant to tornadoes.

*Section 36.41 Construction control*

This section describes checks that the licensee must make before sources are

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loaded to be sure the facility was constructed as designed and that alarms, controls, interlocks, and instruments operate properly.

*Subpart D—Operation of the Irradiator*

*Section 36.51 Training*

This section contains safety training requirements for irradiator operators. The emphasis is on practical knowledge directly necessary for the job rather than theoretical principles.

The subjects that an irradiator operator must be trained in are:

(1) The fundamentals of radiation protection as they apply to irradiators. The goal here is to provide the individual with the necessary foundation to perform his or her task safely and to help the individual worker understand the basis for the safety requirements and procedures that will be taught.

(2) The requirements of parts 19 and 36 of NRC regulations. The operator is not expected to be an expert on NRC regulations or to be able to determine whether a given procedure is adequate to meet NRC regulations. Instead, operators should be instructed on NRC requirments that are directly applicable to their responsibilities.

(3) The operation of the irradiator. The objective is not to make the individual an engineer, but to help the person understand the operating and emergency procedures.

(4) Licensee operating and emergency procedures that the individual will perform. This is the most important part of the training because the safe operation of the irradiator depends on the procedures being followed correctly. The objective is that the operator be able to correctly perform the procedures that he will be expected to perform. The training does not have to include procedures that the individual will not perform. For example, if the individual will not perform leak tests, the individual need not be trained in the procedure.

(5) Case histories of accidents and problems involving irradiators similar to those to be used by the individual. The individual should be taught about situations that could lead to trouble. Instruction material on accidents is often difficult to obtain. However, the previously mentioned NRC Report NUREG–1345, "Review of Events at Large Pool-Type Irradiators," should provide some relevant information.

In order to provide flexibility, the proposed rule intentionally does not specify how many hours of classroom training and on-the-job training are necessary to become an irradiator operator. A license applicant would describe the training program in its license application. The Irradiator Licensing Guide suggests 40 hours of classroom training and one month of on-the-job training.

The proposed rule also does not specify the training or qualifications needed by the radiation safety officer. This is also to allow flexibility. The license applicant would describe the minimum training, experience and qualifications of the radiation safety officer in its license application. A review would then be conducted on a case-by-case basis. The Irradiator Licensing guide suggests guidelines for basic radiation protection training and on-the-job training for the radiation safety officer.

The NRC considered whether the proposed regulation should include training requirements for other types of workers such as package handlers and maintenance workers. The NRC concluded that the general training requirements specified in § 19.12, "Instructions to workers," are suitable for other types of workers, and therefore additional or more specific requirements are not necessary.

*Section 36.53 Operating and emergency procedures*

This section lists the specific operating and emergency procedures that a licensee must have. The section also lists requirements for changing these procedures. Operators must be instructed in a changed procedure before it may be put into use. Changes in procedures that do not reduce the safety of the facility and are consistent with the outline submitted in the license application do not have to be approved by NRC nor must changed procedures of this type be reported to NRC. However, documentation on the changes must be retained for inspection by NRC (§ 36.81(d)).

*Section 36.55 Personnel monitoring*

This section contains the personnel monitoring requirements for irradiator operators and other people entering the radiation room of a panoramic irradiator.

It could be argued that this section is not needed because the requirements in § 20.202, "Personnel monitoring," are adequate for irradiators. Section 20.202 requires personnel dosimeters for anyone likely to receive in excess of 25 percent of an applicable dose limit. At irradiators, as currently designed and operated, no operator is likely to exceed 25 percent of a dose limit. Therefore, § 20.202 does not require any use of dosimeters at irradiators. Nevertheless, the NRC wants operators to use dosimeters so that there is a dose measurement in case someone enters the radiation room while the source is exposed, even though entry is not likely. Therefore, NRC considers it desirable to impose dosimeter requirements in excess of those in § 20.202.

Film badges and thermoluminescent dosimeters (TLDs) must be suitable for detecting high energy photons in the normal and accident dose ranges. Paragraph (c) of § 20.202, "Personnel monitoring," requires that film badges and TLDs must be processed by an accredited processor for the types of radiation that would be encountered. For irradiators, the radiation type is high energy photons in both the normal and accident dose ranges. In the "American National Standard for Dosimetry-Personnel Dosimetry Performance—Criteria for Testing," ANSI N13.11–1983, the normal dose range is 0.03 to 10 rems (0.0003 to 0.1 sievert) and the accident dose range is 10 to 500 rads (0.1 to 5 grays).

Pocket dosimeters, which could be worn by people other than operators, need not be calibrated because their purpose is primarily to indicate either no dose or a very large (but not quantitatively measured) dose.

*Section 36.57 Radiation surveys*

This section lists the radiation surveys that must be done and specifies how often they must be done.

An annual survey instrument calibration is in accordance with the recommendations of American National Standard N323–1978, "Radiation Protection Instrumentation Test and Calibration." Modern survey meters are considered reliable and stable, making more frequent calibrations unnecessary.

The accuracy requirement for survey meter calibration is ±20 percent. In the past, the NRC has specified accuracy requirements of ±10 percent for some uses and ±20 percent for other uses. Modern survey meters can fairly easily be calibrated to be accurate to ±percent on all scales over their entire range of dose rates. On the other hand, calibrations to ±10 percent are often difficult to obtain and sometimes require the use of calibration charts for correcting the meter reading. The charts make the survey meter more complicated to use and increase the likelihood of errors in reading the meter. In determining the accuracy requirement for survey meter calibration, the key question, therefore, is when is an accuracy of ±10 percent needed, and when is an accuracy of ±20 percent adequate to accomplish the purposes of the measurement? The discussion below answers this question.



At an irradiator, the most important and frequent use of the radiation survey meter is to confirm that the source is shielded when entry into the radiation room is made. The survey meter is used to determine whether dose rates in the entrance maze are the normally-occurring very low dose rates or are many times higher than normal. For this purpose, a survey meter accurate to ±20 percent is acceptable.

Another use of the survey meter is to verify that the dose rates outside the shielding wall at the restricted area boundary are in compliance with NRC limits. These measurements are done infrequently. The most important purpose of these measurements is to check that the shielding contains no voids or poorly designed penetrations. Another purpose is to verify that limits on dose rates are not exceeded. A quantitative measurement is needed rather than a qualitative yes/no indication to verify that dose rate limits are not exceeded. However, at most facilities it has been found that the actual dose rates outside shield walls and at restricted area boundaries are far below the regulatory limits. Therefore, a highly accurate quantitative measurement is not normally needed. Accuracy of ±20 percent is normally adequate to verify compliance.

It is possible that a measured dose rate might be very close to a limit. In those special situations, the licensee might need a measurement more accurate than ±20 percent. Thus, the accuracy requirement of ±20 percent in the regulations does not mean that the licensee would never need a measurement more accurate than ±20 percent. Rather, the regulation means that the ordinary routine periodic calibration need only be within ±20 percent. Most facilities would never need a more accurate calibration, but others at some time might.

In summary, the NRC position on survey meter calibration is that accuracy of ±20 percent is adequate for most routine measurements around irradiators and, therefore, adequate for routine gamma survey meter calibration. On the other hand, certain special measurements may require more accuracy to demonstrate compliance with regulatory limits. Thus, in special instances at specific parts of the dose rate range and for specific gamma ray energies, more accuracy may be required. Those calibrations would be done specifically for the measurement to be made (dose rate range, gamma energy, and geometry).

Very high range survey meters (those that could measure dose rates in the radiation room while the source is exposed) are not required because the NRC could not see a need for this type of measurement. Normal range survey meters are adequate to determine whether sources are fully shielded. Radiation rooms should not be entered if the sources are known to be exposed.

Section 36.57 also requires that deionizing resins be monitored for radioactivity before release to unrestricted areas. The NRC considered prohibiting the return of deionizing resins to suppliers for recycling. Irradiator sources could have small amounts of radioactive contamination on their surfaces due to manufacturing processes. Some of this contamination could be collected in the resins. Thus, even resins that have no detectable radioactivity could contain small amounts of radioactivity. If mixed with other resins, the dilution would be that much larger. Thus, concentrations in the waste stream from regeneration, if any, would be far below the 10 CFR part 20, appendix B, effluent limits.

An approach to monitoring very low quantities using survey instruments has been used for medical waste (see Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," Appendix R). Calculations of dose rates show that concentrations of radioactivity in resins would have to be below a small fraction of the effluent limits for water in 10 CFR part 20, Appendix B. If the resins were regenerated, the amount of backwash solution that would remove the radioactive material from the resins would dilute the concentration of the material by at least a factor of 20, based on the volumes of water used in regeneration. Thus, the proposed requirement, instead of prohibiting the return of resins, is that resins must be monitored before release in an area with a background radiation level less than 0.05 millirem (0.0005 millisievert) per hour. Radiation levels must not be detectable above background radiation levels. The survey meter must be capable of detecting radiation levels of 0.05 millirem (0.0005 millisievert) per hour. Most G.M. survey meters would be adequate. The Commission considers this approach adequate to protect public health and safety.

*Section 36.59 Detection of leaking or contaminated sources*

This section describes how and when leak testing of sealed sources must be done. There are different requirements for dry-source-storage and wet-source-storage sources.

U.S. Department of Transportation regulations require that all sources, dry-storage and wet-storage, be individually leak tested in order to be shipped. Leak tests are normally done by the manufacturer. The licensee must obtain a certification from the manufacturer indicating that the leak testing has been done.

The requirements for dry-source-storage sources are similar to those contained in the second proposed Revision 1 to Regulatory Guide 10.8, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source—Storage Irradiators."

A level of 0.005 microcurie (185 becquerels) on a dry wipe is the level of contamination considered to indicate a leaking or contaminated source. Traditionally the level for irradiator sources has been 0.05 microcurie (1850 becquerels), and that value is used in the Irradiator Licensing Guide and the ANSI Category IV Standard. The reason for the change is that previous manufacturing processes caused considerable surface contamination and irradiator sources could not be cleaned to below 0.05 microcurie (1850 becquerels). Also, detection of quantities below 0.05 microcurie (1850 becquerels) was difficult. However, source manufacturing techniques have improved so that sources are now cleaner and have less surface contamination, and instruments have improved so it is possible to detect 0.005 microcurie (185 becquerels) of activity. Thus, the NRC believes it is now practical to meet a contamination level of 0.005 microcurie (185 becquerels).

The 0.005-microcurie (185-becquerel) quantity serves to alert the licensee that there might be a problem. Detection of 0.005 microcurie (185 becquerels) shows a need for further evaluation. The quantity is not justified on specific assumptions of risk. It is a sufficiently small quantity that it presents very low levels of risk, but it is measurable. It is not used in the regulatory program or by industry as a limit on allowable leakage rate. If any leakage is discovered, the source should be removed from service. Further, although termed a "leak test," the usual test performed by users of sealed sources is a "contamination test." A positive indication does not necessarily indicate leakage. It could indicate surface contamination deposited during the manufacturing process.

Leak testing of sources used in pools cannot be done by wipe-testing the sources. The proposed rule would require that radioactive contamination

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be monitored each day the irradiator operates either by on-line monitoring of a pool water circulating system or by analysis of pool water. If on-line monitoring is used, detection of above normal radiation would have to automatically cause the water purification system to shut off. The purpose of the shut off is to prevent high radiation dose rates in the water purification system.

The NRC also considered whether water purification systems should be shielded. The NRC believes that high dose rates might be a possibility if flow were not shut off, but does not believe that the normal water purification systems are always appropriate for cleaning up a leak if the leak were large. For a large leak, special equipment might be more suitable. Therefore, the rule requires a shut off of the system if a high radiation level is detected rather than requiring shielding. If emergency procedures allow the normal water purification system to be used, temporary shielding appropriate for the specific situation could be used as specified in the emergency procedures.

Section 36.61(a)(3) requires a check of the operability of the radiation monitor on the pool water purification system with a radiation check source. The monitor is used to detect radiation levels that are above normal rather than to make quantitative measurements of doses. For this purpose simple operability checks are appropriate.

*Section 36.61 Operational inspection and maintenance*

Operational inspection and maintenance includes the items that the licensee must periodically check to assure proper operation of the facility. The frequency of checks is not stated in the regulations because the frequency will be site-specific depending on the design of the facility. The frequency of checks must be described in the license application, as required in § 36.13(h).

The NRC considered whether the frequency of checks on the access control system, probably the most important safety feature of an irradiator, should be specified in the regulations. The NRC concluded that there is too much variation in irradiator design and operation to specify a frequency that would apply in all cases. Therefore the NRC decided that the applicant should propose a frequency in the license application. This approach allows flexibility and at the same time allows the NRC to approve a frequency of checks that it considers adequate for a specific facility. Guidance of criteria for generally applicable frequencies for checks will be offered in a regulatory guide.

*Section 36.63 Pool water purity*

This section would require that the water purification systems in irradiator pools be run each day the irradiator operates or at least monthly during shutdowns. Purification systems do not have to be run continuously and do not have to be run the entire time the irradiator operates, although many licensees may have to run the system continuously to maintain pool water conductivity near 10 microsiemens (micromhos) conductivity. If water conductivity exceeds 10 microsiemens (micromhos) per centimeter, the system must be run until the water conductivity is below 10 microsiemens (micromhos). The purpose of maintaining clean water is to reduce corrosion of the sources and to keep the water clear. Clear water is desirable so that the sources and source rack can be inspected visually to check their condition. The NRC considers conductivity to be the best method of checking the purity of the water in irradiator pools.

With regard to corrosion, the operating environment is as follows: The sealed sources used in irradiators are most commonly clad in 316L stainless steel. Sometimes 321 stainless steel is used. While in the pool, the temperatures of the sources are generally 80 to 90°F. In air the temeprature of the sources can run as high as 300 to 400°F. The sources used with conveyor systems are typically cycled in and out of the water several times a day but sometimes more often. Batch irradiation sources may be cycled several dozen times a day.

Under these circumstances, generalized surface corrosion should be minimal and not of concern. The type of corrosion of potential concern might be chloride-induced stress corrosion cracking. Although inspection of sources that have been used in irradiators for long periods have revealed virtually no chloride-induced stress corrosion cracking, it is desirable as a precaution to operate the sources in a relatively low corrosion environment. Maintaining water conductivity over the long term in the vicinity of 10 microsiemens (micromhos) per centimeter should provide a low corrosion environment, although considerably higher levels could be tolerated for fairly long times with no threat to safety. Comments on this approach to water purity are specifically requested.

*Section 36.65 Attendance during operation*

This section describes how an irradiator must be attended during operation.

*Section 36.67 Entering and leaving the radiation room*

This section describes the requirements for first entering the radiation room of a panoramic irradiator after an irradiation and for leaving the radiation room and locking it up before an irradiation. It also covers entry to the pool area of an underwater irradiator during a power failure.

*Section 36.69 Irradiation of explosive or highly flammable materials*

The proposed rule would prohibit the irradiation of explosive materials or more than traces of highly flammable materials unless the licensee has prior written authorization from the NRC. The reason for these prohibitions is that irradiation can cause chemical reactions that would cause a fire or explosion of highly flammable or explosive materials.

Highly flammable materials are those with a flash point temperature below 140°F. The flash point of 140°F was taken from the ANSI Category IV Standard. The flash point is the lowest temperature at which a substance will volatilize to yield sufficient vapor to form a flammable gaseous mixture with air, demonstrable through the production of a flash on contact with a small open flame. The flash points of common substances are tabulated in various engineering handbooks and manuals, for example, "Accident Prevention Manual for Industrial Operations," National Safety Council, Chicago, 1974, and "Handbook of Laboratory Safety," Second edition, Chemical Rubber Company, 1971. Examples of common flammable materials with a flash point below 140°F are: acetone, benzene, most alcohols, number two fuel oil, gasoline, kerosene, toluene, most alcohols, number two fuel oil, gasoline, kerosene, toluene, turpentine, and any flammable gas.

*Subpart E—Records and Reports*

*Section 36.81 Records and retention periods*

The records that a licensee must maintain and their retention periods are specified in a single section, § 36.81, for ease in implementation. Thus, the licensee has a convenient "check list" to use to make sure that all records required by part 36 are kept.

The purpose of requiring the licensee to maintain an inventory of all sources



possessed is to assure that the licensee is able to account for all sources in its possession. The activity of the sources is the activity when they were received. There is no safety need to correct for radio-active decay. Decay corrections would greatly complicate record keeping without contributing to the objective of the requirement, which is that the licensee be able to account for each of the sources that it received.

*Sections 36.83 , Reports.*

This section lists all reports that are required by part 36. All reports required by part 36 are included in a single section for ease of use by licensees.

Paragraph (a) requires reports on lost or stolen sources, radiation overexposures, excessive levels or concentrations of radiation, and damage to or loss of the activity to operate the facility due to events involving radioactive material. The paragraph references the event reporting requirements of part 20. The NRC is currently considering changes in the part 20 reporting requirements. If part 20 is amended, corresponding changes would be made in the part 36 reporting requirements.

Paragraph (b) requires reports to individuals on radiation exposure as required by part 19. This paragraph likewise places no new or different reporting requirements on licensees.

Paragraph (c) requires reports on leaking sources. The requirement is similar to the requirement now generally imposed under a license condition. The reporting period would be 5 days from the time of discovering the leak of allow for completeness in the reports, especially with regard to corrective actions.

Paragraph (d) requires reports within 5 days of other events with possible safety significance if not reported under paragraphs (a), (b), or (c) even though they may involve no violations of the regulations or license conditions. The purpose of the reports is to make NRC aware of problems that should be reported to other licensees because of their safety significance.

The 5-day reporting period in paragraphs (c) and (d) represents a balance between allowing sufficient time to collect, analyze, and writeup the necessary information and requiring that the report be submitted before recall of events fades.

Reports submitted generally would be subject to public disclosure in accordance with 10 CFR 2.790 and 10 CFR part 9. The NRC was asked at a 1988 public meeting on irradiator safety whether proprietary information could be withheld from public disclosure. The NRC notes that 10 CFR 2.790 allows the NRC to withhold certain proprietary information (information of commercial value or "trade secrets") if, at the time of submittal of the report, the requirements for withholding the information are met (refer to 10 CFR 2.790(b)). Also, there are provisions in 10 CFR part 9 for the NRC to withhold from public disclosure documents such as reports of radiation exposure to individuals and other personal records.

*Subpart F—Enforcement*

*Section 36.91 Violations*

This section is provided to inform licensees and the public that violations of the regulations may result in civil or criminal penalties.

## VIII. Other Considerations

Certain other issues that were considered, including some that did not result in a requirement in the proposed rule, are discussed here.

*A. Siting, Zoning, Land Use, and Building Code Requirements*

The NRC recognizes that most areas have zoning, land use, and building code requirements that would be applicable to irradiators. It is the responsibility of the applicant or licensee to assure that any proposed facility meets the zoning, land use, and building code requirements of the local and State governments having jurisdiction over the intended site. The NRC is not responsible for checking or assuring that State and local requirements have been met. The granting of an NRC license does not negate applicable local zoning, land use, or building requirements.

As a practical matter, this means that in order to meet State and local requirements, irradiators must be built in areas zoned for industrial facilities and not in residential areas. The applicant is advised to consult with the State and local governments before starting construction to assure that the facility would meet all State and local siting, zoning, and land use requirements. The NRC believes that an irradiator meeting the requirements in the new Part 36 would present no greater hazard or nuisance to its neighbors than other industrial facilities, because there is little liklihood of such an irradiator causing radiation exposures offsite in excess of NRC's part 20 limits for unrestricted areas. Therefore, the NRC believes that, in general, irradiators can be located anywhere that local governments would permit an industrial facility to be built.

The NRC considered whether there should be siting requirements dealing with possible flooding of the irradiator or tidal waves. The NRC decided that no siting requirements with respect to possible flooding or tidal waves were necessary because flooding of the facility would not destroy the integrity of the shielding walls. Section 36.39 contains a requirement that shielding walls of panoramic irradiators must be constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. With this type of construction, shielding and sources are well protected from being carried off in a flood or wave or damaged due to a flood or wave. Flooding of the facility would undoubtedly result in the need for a time-consuming and expensive repair of flood damage, but no particular radiation hazard would be involved during repair of flood damage because sources could be safely stored during the repairs. However, the proposed rule does include a requirement to have emergency procedures for coping with natural phenomena such as floods.

The NRC also considered whether seismic zones should be considered in siting requirements. The NRC decided that irradiators could be built in any area of the country, but that irradiators in seismic areas (as defined in § 36.2) would need shielding walls designed to withstand an earthquake.

If an irradiator were subject to a large earthquake, the potential damage of radiological significance would be to the integrity of its concrete shielding. Analyses of reinforced concrete irradiator shields designed to meet generally accepted building code requirements for reinforced concrete have shown they are inherently quite robust and resistant to damage from modern-size earthquakes. To protect against large earthquakes, the NRC decided to include requirements that radiation shields in seismic areas be designed to retain their integrity after a large earthquake. Also, all irradiators must have an emergency procedure for earthquakes.

*B. Use of Cesium Sources*

The two radionuclides generally used in gamma irradiators are cobalt-60 and cesium-137. Cobalt-60 is in the form of solid metal pellets that are relatively insoluble in water. Cesium-137, on the other hand, is generally encapsulated as a salt, cesium chloride, that is fairly soluble in water. Therefore, cesium-137 could be more dispersible than cobalt-60 if the sealed source leaked or was damaged. The question considered is should use of cesium-137 sources be

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permitted at all or permitted only with certain additional restrictions?

In 1988, a cesium-137 source at the RSI irradiator in Decatur, Georgia, leaked. No radiation exposures in excess of NRC's limits occurred, but the leak raised a question about the integrity of cesium-137 sources. As of July 1990, the cause of the leak is not known and is still being actively investigated. The NRC intends to reevaluate whether cesium-137 sources or sealed sources containing readily soluble or dispersible material are suitable for continued, long term use in irradiators. The Commission specifically seeks public comment on this matter.

*C. Seismic Detection and Resistance*

As a related issue to siting, NRC considered requirements for a seismic detector whose activation automatically causes the source to return to its fully shielded position. Such a requirement is contained in the ANSI Category IV Standard and is general practice. However, the detectors and source return mechanism would not improve the safety of large irradiators because shield walls must be designed to provide adequate shielding to protect workers and the general public in the event of a seismic event. Therefore, NRC concluded that such a requirement is not necessary to protect the public health and safety. Public comment is specifically requested on the need for a seismic detector and automatic source return mechanism.

*D. Decommissioning*

The NRC considered whether special design requirements were needed to facilitate decommissioning of the facility. The NRC concluded that the requirements in the proposed rule are adequate to facilitate decommissioning. Normally, decommissioning is relatively simple, because there would be no radioactive contamination present in the facility. However, contamination could be present if leakage of the sources did occur. If leakage from sources did occur the periodic leak tests of dry-storage sources and monitoring of the pool water should allow early detection of the leakage before large amounts of material have leaked out. With early detection of leakage, a leaking source could be identified and isolated and pool cleanup would purify the water, removing contamination from the water. Thus, even if a leak occurred, there is little likelihood that contamination would reach high levels. In addition, the pool walls should prevent contamination from leaking out of the pool if contamination occurred. The pool must also have a liner or a surface relatively easy to decontaminate. Thus, an irradiator designed, licensed, and operated in accordance with the proposed rule should facilitate decontamination.

The subjects of financial assurance and recordkeeping for decommissioning are adequately dealt with in another section of the regulations (10 CFR 30.35) and thus are not included in part 36.

*E. Drop of Source Rack*

The NRC considered whether the drop of a source rack in the pool, caused by cable failure for example, might damage the sealed sources. Cobalt-60 sources are fairly light. Thus, in a drop the source rack would drop relatively slowly through the water and hit the pool bottom with little momentum. Cobalt-60 source racks are also generally designed with plates to slow the rate of descent. Thus, the sources are unlikely to be damaged as a result of a drop. Cesium-137 sources, on the other hand, are relatively heavy so that damage to a source as the result of a drop might be more likely.

However, in either case it was decided that it would be appropriate to analyze the consequences of a source rack drop and design the facility to prevent damage to the sources from a source rack drop. Therefore, the requirements on design include a requirement to analyze source rack drops and to design irradiators to prevent damage to the sealed sources.

*F. Aircraft Crashes*

The NRC considered whether there should be a prohibition from locating irradiators near airports because of risk of an irradiator release associated with an airplane crash. The NRC has concluded that a prohibition is not justified on safety grounds. The radioactive sources in an irradiator would be relatively protected from damage because they are typically contained within six-foot thick reinforced-concrete walls and are encapsulated in steel. However, if a source were demaged as a result of an airplane crash, large quantities of radioactivity are unlikely to be spread from the immediate vicinity of the source rack because the sources are not volatile. Since the radiological consequences of an airplane crash at an irradiator are not likely to be life-threatening, the radio-logical consequences are relatively unimportant compared to loss of life directly due to the crash itself. Thus, the presence of radioactive sources does not substantially change the probable consequences of an airplance crash. Therefore, NRC will allow the construction of an irradiator at any location at which local authorities would allow any type of industrial facility to be placed.

*G. Pool Water Coolers*

The NRC considered whether pool water coolers should be required. Pool water coolers would lower water temperatures, reduce evaporation, and thus reduce humidity in the air of the radiation room. Lower humidities might result in somewhat less potential for corrosion of safety interlocks, product conveyor systems, and source raising and lowering mechanisms.

The NRC has decided not to require pool water coolers because there are many ways to avoid problems with high humidity and many smaller large irradiators do not have humidity problems. In addition, licensees would be required to maintain the facility to ensure compliance with the requirements of § 36.61 regardless of potential problems associated with high humidity.

*H. Noxious Gas Control*

Large irradiators can produce ozone in concentrations exceeding those permitted by regulations of the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.1000, "Air Contaminants." Nitrogen oxides can also be produced although concentrations would not be expected to exceed OSHA's limits. To control these noxious gases, most radiation rooms are equipped with ventilation systems to exhaust the gases before personnel entry.

The NRC notes that OSHA regulates exposure to ozone and other noxious gases. However, if NRC personnel anticipate a problem during licensing or note a problem with ozone at an irradiator during inspection, the NRC will notify OSHA of the problem under the terms of a "Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-Licensed Facilities," (53 FR 43590; October 31, 1988).

*I. Issuance of a Regulatory Guide*

The NRC plans to develop a regulatory guide that will set forth the information that an irradiator license applicant should provide in its license application. Development of the guide will begin after public comments on the proposed rule have been reviewed. NRC intends to issue the guide in draft form for public comment before the final irradiator rule becomes effective. The guide would replace the draft irradiator licensing guide now is use.



**IX. Agreement State Compatibility**

The rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. With regard to basic radiation standards and definitions, as found in 10 CFR part 20, which have been identified as strict matters of compatibility with respect to Agreement State regulations, in this area the Agreement States are expected to adopt essentially an identical standard. However, this rule, while being a matter of compatibility between the NRC and the Agreement States, is assigned a level of compatibility which would allow the Agreement States to adopt additional requirements based on local concerns or experience.

**X. Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed action codifies in a rule the licensing requirements and policies on large irradiators. The proposed action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these irradiators and will not affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from NRC Distribution Section, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**XI. Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of these requirements.

Public reporting burden for this collection of information is estimated to average 750 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150- ), Management and Budget, Washington, DC 20503.

**XII. Regulatory Analysis**

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis compares the costs and benefits of the requirements in the rule with current licensing requirements. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained without charge upon written request from: Distribution Section, Office of Information Resources Management, USNRC, Washington, DC 20555. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

**XIII. Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities.

Currently, there are roughly 70 to 80 irradiators that are large irradiators, as defined by the proposed rule. Of those irradiators, there are currently 39 irradiators in the U.S. with sources greater than 250,000 curies ($9 \times 10^{15}$ becquerels) up to a maximum of 30,000,000 curies ($1.1 \times 10^{18}$ becquerels). Fifteen are licensed by NRC; 24 are licensed by Agreement States. Five additional irradiators are either under construction or proposed for construction in Agreement States. In addition, the NRC licenses 10 irradiators with sources smaller than 250,000 curies ($9.25 \times 10^{15}$ becquerels) that would be subject to the rule. The Agreement States probably have about twice as many of these "smaller" large irradiators. Thus, the total number of facilities that would ultimately be affected by the rule is roughly 70 to 80. All the irradiators use cobalt-60 except for four which use cesium-137. In addition to these irradiators, Congress has appropriated money to the U.S. Department of Energy to support the construction of six irradiators to be used in food processing. The food irradiators would be licensed by NRC or by Agreement States depending on their locations.

The NRC currently defines a small business as a business having less than $3.5 million in annual receipts. Some of the licensees that would be affected by this proposed rule might be small entities. However, the actual financial impacts of the proposed rule would be quite small. A survey of irradiators performed for the previously mentioned Regulatory Analysis indicated that, with minor exceptions, all surveyed licensees are in compliance with most of the requirements of the proposed rule. The proposed rule contains options such that the six licensees found not to be in full compliance with the proposed requirements could limit their incremental costs to $2,000 to $5,000, estimated as part of the previously mentioned Regulatory Analysis. These costs are not considered significant.

Thus, the proposed rule would not impose a significant economic impact on small entities, as defined in the Regulatory Flexibility Act of 1980, because the proposed requirements do not substantially differ from current licensing requirements.

Any small entity affected by this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact, should notify the Commission of this in a comment that indicates the following:

(a) The small entity's size in terms of annual income or revenue and number of employees;

(b) How the proposed regulation would result in a significant economic burden upon the small entity as compared to that on a larger entity;

(c) How the proposed regulations could be modified to take into account the entity's differing needs or capabilities;

(d) The benefits that would be gained or the detriments that would be avoided by the licensee if the proposed regulations were modified as suggested; and

(e) How the regulation, as modified, would still adequately protect the public health and safety.

The comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

**XIV. Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not

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apply to this proposed rule and therefore that a backfit analysis is not required for this proposed rule. The proposed rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109 (a)(1).

**XV. List of Subjects**

*10 CFR Part 19*

Criminal penalty, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

*10 CFR Part 20*

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

*10 CFR Part 30*

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 36*

Byproduct material, Criminal penalty, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

*10 CFR Part 40*

Criminal penalty, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 51*

Administration practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 70*

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 170*

Byproduct material, Non-payment penalty, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

**XVI. Wording of the Proposed Amendments**

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt 10 CFR part 36 and make the conforming amendments to 10 CFR parts 19, 20, 21, 30, 40, 51, 70, and 170.

1. Part 36 is added to 10 CFR chapter I to read as follows:

## PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR LARGE IRRADIATORS

**Subpart A—General Provisions**

Sec.


36.1 Purpose and scope.
36.2 Definitions.
36.5 Interpretations.
36.8 Information collection requirements: OMB approval.

**Subpart B—Specific Licensing Requirements**

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**Subpart C—Design and Performance Requirements for Large Irradiators**

36.21 Design and performance criteria for sealed sources.
36.23 Access control.
36.25 Shielding.
36.27 Fire protection.
36.29 Radiation monitors.
36.31 Control of source movement.
36.33 Irradiator pools.
36.35 Source rack protection.
36.37 Power failures.
36.39 Design requirements.
36.41 Construction control.

**Subpart D—Operation of Large Irradiators**

36.51 Training.
36.53 Operating and emergency procedures.
36.55 Personnel monitoring.
36.57 Radiation surveys.
36.59 Detection of leaking or contaminated sources.
36.61 Operational inspection and maintenance.
36.63 Pool water purity.
36.65 Attendance during operation.
36.67 Entering and leaving the radiation room.
36.69 Irradiation of explosives or highly flammable materials.

**Subpart E—Records and Reports**

36.81 Records and retention periods.
36.83 Reports.

**Subpart F—Enforcement**

36.91 Violations.


**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), all the provisions of this part are issued under Sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)) except the following provisions: 10 CFR 36.5, 36.8, and 36.91.

### Subpart A—General Provisions

**§ 36.1 Purpose and scope.**

(a) This part contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in large irradiators used to irradiate objects or materials. This part also contains radiation safety requirements for operating large irradiators. The requirements of this part are in addition to other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 71, and 170 of this chapter apply to applications and licenses subject to this part.

(b) The regulations in this part apply to large panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to large underwater irradiators in which both the source and the product being irradiated are underwater. Large irradiators covered by the regulations in this part are those where radiation dose rates exceeding 500 rads (5 grays) per hour exist at one meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(c) The regulations in this part do not apply to self-contained dry-source-storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, calibration of radiation detection instruments, or open-field (agricultural) irradiations.

**§ 36.2 Definitions.**

*Annually* means once each calendar year and at intervals not to exceed one year.

*Doubly encapsulated sealed source* means a sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.



*Irradiator* means a facility that uses radioactive sealed sources for the irradiation of objects or materials.

*Irradiator operator* means an individual authorized by the licensee to operate the irradiator.

*Large irradiator* means an irradiator where radiation dose rates exceeding 500 rads (5 grays) per hour exist at one meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

*Panoramic dry-source-storage irradiator* means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term also includes beam-type dry-source-storage irradiators in which the source remains partially shielded during irradiations.

*Panoramic irradiator* means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

*Panoramic wet-source-storage irradiator* means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored underwater in a storage pool.

*Pool irradiator* means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

*Product conveyor system* means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

*Radiation room* means a shielded room in which irradiations take place. Underwater irradiators are not considered to have radiation rooms.

*Radiation safety officer* means an individual with responsibility for the overall radiation safety program at the facility.

*Sealed source* means any byproduct material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

*Seismic area* means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. Geological Survey.

*Underwater irradiator* means an irradiator in which the sources always remain shielded underwater and humans could not access the sealed sources and the space subject to irradiation without entering the pool.

**§ 36.5 Interpretations.**

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

**§ 36.8 Information collection requirements: OMB approval.**

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements contained in this part under control number 3150-_____.

(b) The approved information collection requirements contained in this part appear in §§ 36.11, 36.13, 36.19, 36.21, 31.61, 36.69, 36.81, and 36.83.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 36.11, Form NRC-313 is approved under control number 3150-0120.

### Subpart B—Specific Licensing Requirements

**§ 36.11 Application for a specific license.**

A person, as defined in § 30.4 of this chapter, may file an application for a specific license authorizing the use of sealed sources in a large irradiator on Form NRC 313, "Application for Material License." Each application for a license, other than a license exempted from part 170 of this chapter, must be accompanied by the fee prescribed in § 170.31 of this chapter. The application must be sent to the appropriate NRC Regional Office listed in Appendix D to part 20 of this chapter.

**§ 36.13 Specific licenses for large irradiators.**

The Commission will approve an application for a specific license for the use of licensed material in large irradiators if the applicant meets the requirements contained in this section.

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter and the requirements contained in this part.

(b) The applicant shall describe its training for irradiator operators that specifies the—

(1) Classroom training;

(2) On-the-job training;

(3) Safety reviews;

(4) Means the applicant will use to demonstrate the operator's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) Minimum qualifications of personnel who may provide training.

(c) The applicant shall submit an outline or summary of the written operating and emergency procedures listed in § 36.53. The outline or summary must include the important radiation safety aspects of the procedures.

(d) The applicant shall describe the radiation safety responsibilities and authorities of the radiation safety officer and other management personnel. The applicant shall also describe the qualifications required of the radiation safety officer.

(e) The applicant for a panoramic irradiator shall submit a description of the access control systems required by § 36.23, the radiation monitors required by § 36.29, and a diagram of the facility that shows the position of all required interlocks and radiation monitors.

(f) If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the individual who analyzes the samples.

(g) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization approved by the Commission or an Agreement State to load or unload irradiator sources.

(h) The applicant shall describe the operational inspection and maintenance program, including the frequency of the operational checks required by § 36.61.

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**§ 36.15 Start of construction.**

The applicant shall not begin construction of a new facility prior to the issuance of a license for the facility. As used in this paragraph, the term "construction" includes the construction of any portion of the permanent facility on the site but does not include: Engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse structures, and other similar tasks. Any activities undertaken prior to the issuance of a license must be entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, and orders promulgated pursuant thereto.

**§ 36.17 Applications for exemptions.**

The Commission may, upon application of any interested person or upon its own initiative, grant any exemptions from the requirements in this part that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

**§ 36.19 Request for written statements.**

Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the Commission's request, submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

**Subpart C—Design and Performance Requirements for Large Irradiators**

**§ 36.21 Design and performance criteria for sealed sources.**

(a) The licensee shall assure that sealed sources installed after (effective date of rule) meet the following requirements. A prototype of the sealed source must be leak tested and found leak-free after each of the following tests:

(1) *Temperature.* The test source must be held at −40°C for 20 minutes, 600°C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(2) *Pressure.* The test source must be subjected to an external pressure of 290 pounds per square inch absolute.

(3) *Impact.* A 2 kg steel weight, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(4) *Vibration.* The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 times the acceleration of gravity for 30 minutes.

(5) *Puncture.* A 50 gram weight and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(6) *Bend.* If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source must be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is 10 times the minimum cross-sectional dimension of the source.

(b) Sealed sources installed after (effective date of rule) must be doubly encapsulated and must have a certificate of registration as required by 10 CFR 32.210.

**§ 36.23 Access control.**

(a) Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel while the sources are exposed. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return to their shielded position. The time for the sources to return to the shielded position must be less than or equal to the time that it would take a person starting to enter the radiation room to walk to the edge of the pool or into the beam (as applicable for irradiator type). The primary entry door must have a lock that is operated by the same key used to move the sources. The doors and barriers must not prevent any individual in the radiation room from leaving.

(b) In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed if the primary access control fails. Entry while the sources are exposed must cause the sources to return to their fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on site of the entry. That individual shall be trained and prepared to promptly render or summon assistance.

(c) A radiation monitor must be provided to detect the presence of radiation in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when the monitor detects high radiation levels, malfunctions, or is turned off. The monitor must generate audible and visible alarms if high radiation levels are detected when personnel entry is attempted. The monitor may be located in the entrance (normally referred to as the maze), but not in the direct radiation beam.

(d) Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

(e) Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

(f) Each radiation room of a panoramic irradiator must contain a control that allows the sources to move from the shielded position only if the control has been activated and the door or barrier to the radiation room has been subsequently closed within a preset time.

(g) Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must have a sign bearing the radiation symbol and the words, "Caution (or danger) radioactive material." Panoramic irradiators must also have a sign stating "High radiation area," but the sign may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(h) If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(i) Panoramic irradiators may not operate if the requirements of this section are not met.

(j) Underwater irradiators must have a personnel access barrier around the pool that can be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual (not necessarily onsite) who is prepared to respond or summon assistance.



**§ 36.25 Shielding.**

(a) The radiation dose rate in areas that are accessible during operation of a panoramic irradiator must not exceed 2 millirems (0.00002 sievert) per hour at 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 cm. Areas where the radiation dose rate exceeds 2 millirems (0.00002 sievert) per hour must be locked to prevent access and not entered without written approval of the radiation safety officer.

(b) The radiation dose at 30 centimeters over the pool of a pool irradiator when the source is in the fully shielded position must not exceed 2 millirems (0.00002 sievert) per hour.

(c) The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator must not exceed 2 millirems (0.00002 sievert) per hour and at 5 centimeters from the shield must not exceed 20 millirems (0.0002 sievert) per hour.

**§ 36.27 Fire protection.**

(a) The radiation room at a panoramic irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

(b) The radiation room at a panoramic irradiator must be equipped with a fire suppression or extinguishing system capable of extinguishing a fire without the entry of personnel into the room.

**§ 36.29 Radiation monitors.**

(a) A radiation monitor with an audible alarm must be located to detect loose radiation sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically before radiation from the source could cause any individual to receive a radiation dose exceeding 100 mrem. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed dry tube are exempt from the requirements of this paragraph.

(b) For pool irradiators, the licensee shall provide a means to detect radioactive contamination in pool water each day the irradiator operates. The means may be either an online radiation monitor on a pool water purification system or an analysis of pool water. If the licensee uses an online radiation monitor, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. If a false alarm due to background radiation occurs, the alarm set-point must be increased. Activation of the alarm must automatically cause the water purification system to shut off. However, the licensee may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clean up contamination in the pool as specifically provided in written emergency procedures.

(c) Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

**§ 36.31 Control of source movement.**

(a) The mechanism that moves the sources of a panoramic irradiator must require a key to operate. Only one key may be in use at any time, and only operators or facility management may possess it. The lock must be designed so that the key may not be removed if the source is in an unshielded position. The door to the radiation room must require the same key.

(b) The console of a panoramic irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are exposed.

(c) The control console of a panoramic irradiator must have a control that promptly returns the sources to the shielded position.

(d) Each control for a panoramic irradiator must be clearly labeled as to its function.

(e) Controls for a panoramic irradiator must be color-coded or illuminated as follows: Red represents emergency (stop buttons or lights) or critical information (source in use or malfunction); yellow or orange represents caution (no emergency but some function taking place to be aware of); green or blue represents normal or safe functioning or information (source not in use or function safe).

**§ 36.33 Irradiator pools.**

(a) For licenses initially issued after (effective date of rule) irradiator pools must either: (1) Have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool, or (2) be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In both cases irradiators must include a means of safely storing the sources during repairs of the pool walls.

(b) For licenses initially issued after (effective date of rule) irradiator pools must have no penetrations more than 1 foot below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than 1 foot below the normal low water level must have siphon breakers to prevent the syphoning of pool water lower than 1 foot below the normal low water level.

(c) A means must be provided to replenish water losses from the pool.

(d) An audible and a visible indicator must be provided to indicate if the pool water level falls below the normal low water level.

(e) Irradiator pools must be equipped with a purification system designed to maintain the water, under normal circumstances, at a level of conductance not exceeding 10 microsiemens per centimeter.

(f) A physical barrier, such as a railing or cover, must be used around irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(g) If hollow poles, hollow long-handled tools, or tools with a density less than that of water are used to be used in irradiator pools, they must have vent holes to allow water to enter them readily and fill voids to prevent radiation streaming or they must have sufficient bends so that the radiation levels on the handling areas of the tools do not exceed 2 millirems (0.00002 sievert) per hour.

**§ 36.35 Source rack protection.**

If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a barrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

**§ 36.37 Power failures.**

(a) If electrical power at a panoramic irradiator is lost for longer than 10

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seconds, the sources must automatically return to the shielded position.

(b) The lock on the door of the radiation room of a panoramic irradiator must not be deactivated by a power failure.

(c) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter.

**§ 36.39 Design requirements.**

Irradiators whose construction begins after (effective date of rule) must meet the design requirements of this section. The requirements must be met prior to the start of the construction of the specific component, but do not have to be met prior to submitting a license application.

(a) *Shielding.* For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entranceways to meet the radiation shielding requirements of § 36.25.

(b) *Foundations.* For panoramic irradiators, the licensee shall design the foundation to ensure it is adequate to support the weight of the facility considering soil characteristics.

(c) *Pool integrity.* For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that it has no penetrations that do not meet the requirements of § 36.33(b), and that metal components are metallurgically compatible with other components in the pool.

(d) *Water handling system.* For pool irradiators, the licensee shall design the water purification system to meet the requirements of § 36.33(e).

(e) *Radiation monitors.* For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by § 36.29(a). The licensee shall verify that the product conveyor would stop before a source on the product conveyor could cause a radiation dose to any person to exceed 100 mrem (0.001 sievert). For pool irradiators, the licensee shall verify that the radiation monitor on the water purification system is located near the spot at which the highest radiation levels would be expected.

(f) *Source rack.* For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it without causing radiation overexposures of personnel.

(g) *Access control.* For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of § 36.23.

(h) *Fire protection.* For panoramic irradiators, the licensee shall verify that the design and locations of the smoke and heat detectors and extinguishing system are appropriate to detect and extinguish fires.

(i) *Source return.* For panoramic irradiators, the licensee shall verify that the source rack can be returned to the fully shielded position if offsite power is lost or if a component of the return mechanism fails. The design must allow for accomplishing the return without causing radiation overexposures of personnel.

(j) *Seismic.* For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as ACI Standard 318–77, "Building Code Requirements for Reinforced Concrete," or local building codes, if current.

**§ 36.41 Construction control.**

The requirements of this section must be met for irradiators whose construction begins after (effective date of the rule). The requirements of this section must be met prior to loading sources.

(a) *Shielding.* For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(b) *Foundations.* For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

(c) *Pool integrity.* For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that penetrations and water intakes meet the requirements of § 36.33(b).

(d) *Water handling system.* For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter and the water level alarms operate properly.

(e) *Radiation monitors.* For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on product and the related alarms and interlocks required by § 36.29(a). For pool irradiators, the licensee shall verify the proper operation of the radiation monitor on the water purification system and the related alarms and interlocks required by § 36.29(b). For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required by § 36.29(c).

(f) *Source rack.* For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss-of-power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in § 36.35 are met for protection of the source racks and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves the rack from moving product carriers.

(g) *Access control.* For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(h) *Fire protection.* For panoramic irradiators, the licensee shall verify the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall also verify the operability of the fire suppression or extinguishing system.

(i) *Source return.* For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without offsite power.

(j) *Computer systems.* For panoramic irradiators, if a computer is used to control the access control system, the licensee shall demonstrate that the computer and the access control system operate as planned by attempting to defeat the access control system in as many ways as possible. The computer must have suitable security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.



**Subpart D—Operation of Large Irradiators**

**§ 36.51 Training.**

(a) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must be instructed in:

(1) The fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, NRC dose limits, why large radiation doses must be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to avoid contamination, the use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator;

(2) The requirements of parts 19 and 36 of NRC regulations;

(3) The operation of the irradiator;

(4) Licensee operating and emergency procedures that the individual is responsible for performing; and

(5) Case histories of accidents or problems involving irradiators similar to those to be used by the individual.

(b) Before an individual is permitted to operate an irradiator without a supervisor present, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating and emergency procedures.

(c) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must have received on-the-job training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating and emergency procedures that he or she is to perform.

(d) The licensee shall conduct safety reviews and emergency drills, as described below, for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, each of the following—

(1) Changes in operating and emergency procedures since the last review, if any;

(2) Changes in regulations and license conditions since the last review, if any;

(3) NRC reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(4) Relevant results of inspections of operator safety performance;

(5) Relevant results of the facility's operational quality assurance program; and

(6) A drill to practice an emergency or abnormal event procedure.

(e) The radiation safety officer or other management personnel shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator, and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(f) Individuals who will be permitted unescorted access to the irradiator, but who have not received the training required for operators and the radiation safety officer, shall be trained and tested in precautions they should take to avoid radiation exposure, procedures or parts of procedures in § 36.53 that they are expected to perform or comply with, and their proper response to alarms required in this part. Tests may be oral.

(g) Individuals who must be prepared to respond to alarms required by § 36.23(b), § 36.23(c), § 36.23(j), § 36.27(a), § 36.29(a), § 36.29(b), § 36.29(c), and § 36.33(d) shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

**§ 36.53 Operating and emergency procedures.**

(a) The licensee shall have and follow written operating procedures for—

(1) Operation of the irradiator, including entering and leaving the radiation room;

(2) Use of personnel dosimeters;

(3) Surveying the shielding of panoramic irradiators;

(4) Monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(5) Leak testing of sources;

(6) Operational inspection and maintenance checks required by § 36.61; and

(7) Loading, unloading, and repositioning sources, if the operations will be performed by the licensee.

(b) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for—

(1) Sources stuck in the unshielded position;

(2) Personnel overexposures;

(3) A radiation alarm from the product exit portal monitor or pool monitor;

(4) Detection of leaking sources, pool contamination, or alarm caused by contamination of pool water;

(5) A low water level alarm, an abnormal water loss, or leakage from the source storage pool;

(6) A loss of electrical power;

(7) A fire alarm or explosion in the radiation room;

(8) An alarm indicating unauthorized entry into radiation room, area around pool, or another alarmed area; and

(9) Natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility.

(c) The licensee may revise operating and emergency procedures without Commission approval only if all of the following conditions are met:

(1) The revisions do not reduce the safety of the facility,

(2) The revisions are consistent with the outline or summary of procedures submitted with the license application,

(3) The revisions have been reviewed and approved by the radiation safety officer, and

(4) The users or operators are instructed and tested on the revised procedures before they are put into use.

**§ 36.55 Personnel monitoring.**

(a) Irradiator operators shall wear either a film badge or a thermoluminescent dosimeter (TLD) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge or TLD must be suitable for high energy photons in the normal and accident dose ranges. Each film badge or TLD must be assigned to and worn by only one individual. Film badges must be replaced at least monthly, and TLDs must be replaced at least quarterly. After replacement, each film badge or TLD must be promptly processed.

(b) Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people are required to wear dosimeters.

**§ 36.57 Radiation surveys.**

(a) A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool or pool irradiators must be conducted after the sources are loaded before the facility starts to operate. If the radiation levels specified in § 36.25 are exceeded, the shielding must be repaired to comply with the dose rate requirement in § 36.25 before operation of the facility may start.

(b) An additional radiation survey of the shielding must be performed after new sources are loaded and after any

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modifications that might increase dose rates are made to the radiation room shielding or structure.

(c) Portable radiation survey meters used to meet the requirements of paragraphs (a) and (b) of this section or the requirements of § 36.37(c) or § 36.67(a) must be calibrated at least annually to an accuracy of ±20 percent for the gamma energy of the sources in use. The calibration must be done at two points on each scale.

(d) Water from the irradiator pool or other potentially contaminated liquids must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in 10 CFR part 20, Table II, Column 2 of Appendix B, "Concentrations in Air and Water Above Natural Background." The lower limit of detection for the measurement must be below those concentrations.

(e) Resins to be released for regeneration or an nonradioactive waste must be monitored before release in an area with a background level less than 0.05 millirem (0.0005 millisievert) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter must be capable of detecting radiation levels of 0.05 millirem (0.0005 millisievert) per hour.

**§ 36.59 Detection of leaking or contaminated sources.**

(a) The licensee shall assure that each sealed source received by the licensee after (effective date of rule) has been tested for contamination within the 6 months prior to being shipped to the licensee.

(b) Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed 6 months using a leak test kit or method approved by the Commission or an Agreement State. The analysis must be capable of detecting the presence of 0.005 microcurie (185 becquerels) of radioactive material and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) For pool irradiators, the pool water must be checked for contamination each day the irradiator operates. The check must be done by using an online radiation monitor on a pool water circulating system as described in § 36.29 (b) or by analysis of pool water. If a check for contamination is done by analysis of pool water, the results of the analysis must be available within 24 hours.

(d) If a leaking source is detected, the licensee shall remove the leaking source from service and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the contamination check has been done. If any personnel are contaminated, decontamination must be performed promptly. If contaminated equipment, facilities, or product are found, the licensee shall have them decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall clean the pool until the contamination levels do not exceed the appropriate concentration in table I, column 2, appendix B of part 20 of this chapter.

**§ 36.61 Operational inspection and maintenance.**

(a) The licensee shall establish and implement an adequate operational inspection and maintenance program as described in license application (§ 36.16(h)). This program shall include, as a minimum, inspecting or checking each of the following aspects at the frequency specified in the license or license application:

(1) Operability of each aspect of the access control system required by § 36.23.

(2) Functioning of the source position indicator required by § 36.31(b).

(3) Operability of the radiation monitor on the pool water purification system using a radiation check source if this method is chosen to detect radioactive contamination in pool water (§ 36.29(b)).

(4) Pool conductivity as required by § 36.63(a).

(5) Operability of the product exit monitor required by § 36.29.

(6) Operability of the source return control required by § 36.31(c).

(7) Leak-tightness of the pool purification system (visual inspection).

(8) Operability of the heat and smoke detectors and extinguisher system required by § 36.27.

(9) Operability of the means of pool water replenishment required by § 36.33(c).

(10) Operability of the visible indicator of low pool water level required by § 36.33(d).

(11) Operability of the intrusion alarm required by § 36.23(j), if applicable.

(12) Functioning and wear on the system, mechanisms, and cables used to raise and lower sources.

(13) Condition of the barrier to prevent products from hitting the sources or source mechanism as required by § 36.35.

(14) Amount of water added to the pool to determine if the pool is leaking.

(15) Electrical wiring on required safety systems for radiation damage.

(b) Malfunctions and defects found during operational inspection and maintenance checks must be repaired without undue delay.

**§ 36.63 Pool water purity.**

(a) Pool water purification systems must be run each day the irradiator operates and at least monthly during shutdowns. The purification system must continue running until the conductivity of the pool water drops below 10 microsiemens per centimeter.

(b) The conductivity meter must be calibrated at least annually.

**§ 36.65 Attendance during operation.**

(a) Both an operator and at least one other individual trained and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present on site whenever the irradiator is operated using an automatic product conveyor system.

(b) At a panoramic irradiator at which static irradiations (no movement of the product) are being performed, a person who has received the operator training and testing described in § 36.51 (a) and (b) and the training on how to respond to alarms described in § 36.51(g) must be on site.

(c) At an underwater irradiator, an operator must be present whenever product is moved into or out of the pool. Static irradiations may be performed without a person present at the facility only if the personnel access barrier around the pool is locked to prevent unauthorized entry and all required alarms are operable.

**§ 36.67 Entering and leaving the radiation room.**

(a) Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(b) Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall: (1) Visually inspect the entire radiation



room to verify that no one else is in it and (2) activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(c) During a power failure, the area around the pool of an underwater irradiator shall not be entered without using an operable and calibrated radiation survey meter.

**§ 36.69 Irradiation of explosive or highly flammable materials.**

(a) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate in the license application or application for amendment that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(b) Irradiation of more than traces of highly flammable material (flash point below 140 °F) is prohibited in panoramic irradiators unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate in the license application or application for amendment that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

## Subpart E—Records and Reports

**§ 36.81 Records and retention periods.**

The licensee shall maintain the following records at the irradiator for the periods specified.

(a) A Copy of the license application and the license authorizing the licensee to operate the facility until a new license is issued.

(b) Records of an individual's training, tests, and safety reviews provided to meet the requirements of § 36.51(a), (b), (c), (d), (f), and (g) until 3 years after the individual terminates work.

(c) Records of the annual evaluations of the safety performance of irradiator operators required by § 36.51(e) for 3 years after the evaluation.

(d) An up-to-date copy of the operating and emergency procedures required by § 35.53. Record of changes in procedures as required by § 36.53(c)(3) retained for 3 years from the date of the change.

(e) Film badge and TLD results required by § 36.55 until the Commission terminates the license.

(f) Records of radiation surveys required by § 36.57 for 3 years from the date of the survey.

(g) Records of radiation survey meter calibrations required by § 36.57 until 3 years from the date of calibration.

(h) Records of the results of leak tests required by § 36.59 for 3 years from the date of the leak test.

(i) Records of operational inspection and maintenance checks required by § 36.61 for 3 years.

(j) Records of malfunctions, defects, operating difficulties or irregularities, and operating problems for 3 years after repairs are completed.

(k) An inventory of all licensed sealed sources until the irradiator is decommissioned. The inventory must include for each sealed source: the date received; the person from whom it was received; the model of the source; the serial number of the source, if any; the radionuclide in the source; the activity of the source as supplied by the manufacturer; an up-to-date location of the source; information on leaking or damaged sources and any actions taken to decontaminate or repair those sources; the date source was disposed of, if applicable; and the person to whom the source was transferred, if applicable.

(l) Records on the design checks required by § 36.39 and the construction control checks as required by § 36.41 until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included:

(m) Records of water added to the pool as required by § 36.61(a)(14) for three years.

(n) Records related to decommissioning of the irradiator as required by § 36.35(g).

**§ 36.83 Reports.**

(a) The licensee shall report to the Commission—

(1) The theft or loss of radioactive material as required by 10 CFR 20.402; and

(2) Events involving radioactive material possessed by the licensee that may have caused or threaten to cause radiation overexposures, excessive concentrations or levels of radiation, loss of one day or more of operation of the facility, or property damage in excess of $2000 as required by 10 CFR 20.403 or 20.405.

(b) The licensee shall notify individuals of their exposure to radiation or radioactive material as required by 10 CFR 19.13.

(c) The licensee shall report, in writing, leaking sources, damaged sources, and pool water contaminated in excess of the concentrations in table 1, column 2 of appendix B to 10 CFR part 20 to the appropriate NRC Regional Office listed in appendix D to part 20 of this chapter within 5 days of discovering the contamination. The report must describe the source involved if known, the extent of the leakage or contamination, the cause or circumstances leading to the leak or contamination to the extent that they are known, and corrective actions taken up to the time the report is made.

(d) The licensee shall report within 5 days in writing to the appropriate NRC Regional Office listed in appendix D of 10 CFR part 20 the following events if not reported under paragraphs (a) or (c) of this section:

(1) Sources stuck in an unshielded position.

(2) Fire or explosion in a radiation room.

(3) Damage to source racks.

(4) Failure of the cable or drive mechanism used to move the source racks.

(5) Inoperability of the access control system.

(6) Detection of radiation by the product exit portal monitor.

(7) Abnormal or unusual radioactive contamination.

(8) Structural damage to the pool liner or walls.

(9) Abnormal water loss or leakage from the source storage pool.

(e) Reports must describe the event, what caused it (to the extent known), and corrective actions to prevent recurrence taken up to the time the report is made.

## Subpart F—Enforcement

**§ 36.91 Violations.**

(a) The Commission may obtain an injunction or other court order to prevent a violation of this part.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed for violation of this part.

(c) Any person who willfully violates any provision of this part issued under section 161b., i., or o. of the Atomic Energy Act of 1954, as amended, or the provisions cited in the authority citation at the beginning of this part may be guilty of a crime and, upon conviction, be punished by fine or imprisonment, or both, as provided by law.

## PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

2. The authority citation for part 19 continues to read, in part, a follows:

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Authority: Section 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

**§ 19.2 [Amended]**

3. Section 19.2 is amended by changing "35" to "36."

**§ 19.3 [Amended]**

4. Section 19.3(d) is amended by changing "35" to "36" in the first sentence.

**PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION**

5. The authority citation for part 20 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

**§ 20.2 [Amended]**

6. Section 20.2 is amended by changing "35" to "36."

**§ 20.3 [Amended]**

7. Section 20.3(a)(9) is amended by changing "35" to "36."

**§ 20.203 [Amended]**

8. In § 20.203, paragraphs (c)(6) and (c)(7) are removed.

**PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

9. The authority citation for part 30 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83–703, 68 Stat 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242 as amended (42 U.S.C. 5841)* * *.

**§ 30.4 [Amended]**

10. In § 30.4, the definition of "License", is amended by changing "35" to "36."

**§ 30.5 [Amended]**

11. In § 30.5 is amended by changing "35" to "36."

**§ 30.6 [Amended]**

12. In § 30.6, paragraphs (a) and (b)(1) are amended by changing "35" to "36."

**§ 30.11 [Amended]**

13. In § 30.11, paragraph (a) is amended by changing "35" to "36."

**§ 30.13 [Amended]**

14. Section 30.13 is amended by changing "35" to "36."

**§ 30.14 [Amended]**

15. In § 30.14, paragraph (a) is amended by changing "35" to "36," and paragraph (c) is amended by adding ",36" after "33, 34".

**§ 30.15 [Amended]**

16. In § 30.15, the introductory text of paragraph (a) is amended by changing "35" to "36."

**§ 30.16 [Amended]**

17. Section 30.16 is amended by changing "35" to "36."

**§ 30.18 [Amended]**

18. In § 30.18, paragraph (a) is amended by adding, "36" after "30 through 34."

**§ 30.19 [Amended]**

19. In § 30.19, paragraph (a) is amended by changing "35" to "36."

**§ 30.20 [Amended]**

20. In § 30.20, paragraph (a) is amended by changing "35" to "36."

**§ 30.31 [Amended]**

21. Section 30.31 is amended by changing "35" to "36."

**§ 30.33 [Amended]**

22. Section 30.33, paragraph (a)(4) is amended by changing "35" to "36."

**§ 30.34 [Amended]**

23. Section 30.34, paragraphs (a) and (b) are amended by changing "35" to "36"; paragraph (c) is amended by changing "35" to "36" in the first and the second sentences; paragraphs (d) and (e) are amended by changing "35" to "36."

**§ 30.39 [Amended]**

24. Section 30.39 is amended by changing "35" to "36."

**§ 30.51 [Amended]**

25. In § 30.51, paragraphs (a), (b), (c)(1), and (c)(2) are amended by changing "35" to "36".

**§ 30.53 [Amended]**

26. The introductory text of § 30.53 is amended by changing "35" to "36".

**PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL**

27. The authority citation for part 40 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201, Pub. L. 93–438,88 Stat. 1242 as amended (42 U.S.C. 5841) * * *.

**§ 40.5 [Amended]**

28. In § 40.5, paragraph (b)(1) is amended by changing "35" to "36," in the first sentence.

**PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS**

29. The authority citation for part 51 continues to read, in part, as follows:

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201 as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842) * * *.

**§ 51.22 [Amended]**

30. In § 51.22, paragraphs (c)(3), (c)(10) and (c)(14) are amended by adding "36," after "34, 35."

**§ 51.60 [Amended]**

31. In § 51.60, paragraph (a) is amended by adding "36," after "34, 35."

**§ 51.66 [Amended]**

32. In § 51.66, paragraph (a) is amended by adding "36," after "34, 35."

**§ 51.68 [Amended]**

33. Section 51.68 is amended by adding "36," after "34, 35,".

**PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

34. The authority citation for part 70 continues to read, in part, as follows:

Authority: Section 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); section 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

**§ 70.5 [Amended]**

35. In § 70.5, paragraph (b)(1) is amended by changing "35" to "36."

**§ 70.20a [Amended]**

36. In § 70.20a, paragraph (b) is amended by changing "35" to "36."

**PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED**

37. The authority citation for part 170 continues to read, in part, as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; Sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

**§ 170.2 [Amended]**

38. In § 170.2, paragraph (a) is amended by changing "35" to "36".

Dated at Washington, DC, this 27th day of November 1990.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 90–28285 Filed 12–3–90; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Part 255**

**[Docket No. 46494; Notice No. 90–30]**

**RIN 2105–AB47**

## Computer Reservation System (CRS) Regulations

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department is considering whether to readopt and modify its existing rules governing computer reservations systems (CRSs). The Department initiated this rulemaking because its existing CRS rules (14 CFR part 255) will expire on December 31, 1990, unless extended by the Department. The Department will be unable to complete a rulemaking on whether new CRS rules should be adopted by December 31, 1990. The Department has tentatively determined that the existing rules should be maintained until November 30, 1991, to enable the Department to complete its rulemaking on whether those rules should be renewed for a longer period and, if so, with what changes.

**DATES:** Comments must be submitted on or before December 14, 1990.

**ADDRESSES:** Comments must be filed in Room 4107, Docket 46494, U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20509. Late filed comments will be considered to the extent possible.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 7th St., S.W., Washington, DC 20509, (202) 366–4731 or 366–9305, respectively.

**SUPPLEMENTARY INFORMATION:**

### Introduction

The Department's rules governing computer reservations systems (CRSs) operated in the United States, 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the "Board") in 1984, and by their terms will expire on December 31, 1990, unless renewed by us. (When the Board ceased to exist on December 31, 1984, most of its remaining functions, including responsibility for the rules, transferred to us.)

We began this proceeding to consider whether we should readopt those rules and, if so, whether to modify them, by issuing an Advance Notice of Proposed Rulemaking requesting comments on these issues. Advance Notice of Proposed Rulemaking, Computer Reservations Systems, 54 FR 38870 (September 21, 1989). We have received 27 comments and many reply comments and supplemental comments, representing the views of the Department of Justice, each of the U.S. carriers controlling a system (American, United, Northwest, TWA, Delta, Eastern, and Continental), one of the systems (Covia), seven other U.S. carriers (USAir, Alaska, America West, Midway, Midwest Express, Pan American, and Southwest), the two major travel agency trade associations (American Society of Travel Agents and Association of Retail Travel Agents), a large travel agency (Travel Trust International), nine foreign airlines and aviation groups (Aer Lingus, Air France, British Airways, Iberia Airlines, LTU International, Nigeria Airways, Orient Airlines Association, Scandinavian Airline System, and Varig), two foreign governmental groups (the European Civil Aviation Conference and the European Community), an independent manufacturer of CRS hardware (Megadata), and two rental car companies (Avis and Hertz).

The comments and reply comments have raised a number of issues, some of which involve difficult economic and policy questions. Only one party—Travel Trust—argues that we should have no CRS rules. The two largest vendors, American Airlines and United Air Lines, and Covia, the CRS managed by United, suggest that CRS rules are not necessary, but they would not object if we readopted the existing rules. The other U.S. and foreign airline parties, the Justice Department, the European Community, ECAC, and the two travel agency trade associations argue that CRS rules are essential for preserving airline competition and that the current rules must be strengthened significantly to protect airline competition from the anti-competitive practices of the CRS vendors.

### Need for Extending the Termination Date

We will be unable to complete our rulemaking on whether the rules should be readopted, with or without changes, by December 31, 1990, the date when the rules will expire under § 255.10(b). The number and complexity of the issues raised in the rulemaking have made it impossible for us to issue an NPRM and final rules by the end of this year. Under the circumstances, we propose to maintain the current rules in force until we complete the rulemaking process. We stated in the ANPRM that we had tentatively decided to renew the rules and that some rules could require strengthening, 54 FR at 38873. Our review of the comments filed in response to the ANPRM has not changed our tentative opinion on the need to renew the rules. We also note that the Department of Justice states that we should readopt the current rules (as well as consider additional rules) and that almost all parties in the proceeding believe that at a minimum the current rules should be maintained to protect airline competition against potential competitive abuses.

In addition, a temporary extension of the current rules will preserve the status quo until we determine which rules, if any, should be adopted. Allowing the current rules to expire now would be disruptive, since the vendors, other airlines, and the travel agencies have been conducting their operations in the expectation that each vendor's operations will be consistent with the rules. Vendors, airlines, and travel agencies would be unreasonably burdened if the rules were allowed to expire and if we later determined in the rulemaking that similar rules should be adopted, since they could have changed their business methods in the meantime.

We therefore propose extending the termination date of the current rules. We have tentatively determined to change the rules' termination date to November 30, 1991. We believe that we can complete the rulemaking by that date after providing ample opportunity for parties to file comments and reply comments on a notice of proposed rulemaking.

Comments on this proposed extension of the termination date will be due 10 days after publication of this notice. After considering the comments, we will issue a final rule. We find it necessary to provide only a 10 day period for comments because any rule extending the termination date must be adopted by December 31. The short comment period should not prejudice any party, since parties have already had an opportunity to comment on the need for CRS rules by commenting on the ANPRM and since any extension of the current rules would merely maintain the status quo.

### Regulatory Impact Analysis

Executive Order 12291 requires each executive agency to prepare a regulatory impact analysis for every "major rule". The Order defines a major rule as one likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment,

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productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Our proposal to change the current rules' termination date to November 30, 1991, would keep in force the existing rules on CRS operations. When the Board conducted its rulemaking, it included a tentative regulatory impact analysis in its notice of proposed rulemaking and made that analysis final when it issued its final rule. We believe that analysis remains applicable to our proposal to extend the rules' expiration date and that, as a result, no new regulatory impact statement appears to be necessary. However, we will consider comments from any parties on that analysis before we make our proposal final.

**Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (Pub. L. 96-354) is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

Postponing the rules' termination date to November 30, 1991, will not modify the existing regulation of small businesses. The Board's notice of proposed rulemaking contained an initial regulatory flexibility analysis on the impact of the rules, and the Board discussed the comments on that analysis in its final rule. The Board's analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we will adopt the Board's analysis as our tentative regulatory flexibility statement and will consider any comments filed on that analysis in connection with this proposal.

**Paperwork Reduction Act**

This proposal will not impose any new collection-of-information requirements and so is not subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. chapter 35.]

**Federalism Implications**

The rule proposed in this notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**List of Subjects in 14 CFR Part 255**

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255, Carrier-owned Computer Reservation Systems, as follows:

## PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

1. The authority citation for part 255 continues to read as follows:

**Authority:** Secs. 102, 204, 411, 1102; Pub. L. 85-726 as amended, 72 Stat. 740, 743, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1381, 1502.

2. § 255.10 is revised to read as follows:

**§ 255.10 Review and termination.**

Unless extended, this rule shall terminate on November 30, 1991.

Issued in Washington, DC on: November 26, 1990.

Samuel K. Skinner,

*Secretary of Transportation.*

[FR Doc. 90-28486 Filed 11-30-90; 2:55 pm]

BILLING CODE 4910-62-M

## UNITED STATES INFORMATION AGENCY

**22 CFR Part 514**

**Designation of Consortium, Exchange-Visitor Program**

**AGENCY:** United States Information Agency.

**ACTION:** Advanced notice of proposed rulemaking; notice of extension of time for comments.

**SUMMARY:** The United States Information Agency announces that it is extending the time for response to January 10, 1991 for the advanced notice of proposed rulemaking regarding the designation of consortia as sponsors of Exchange Visitor Programs found at 55 FR 46073 (November 1, 1990).

**DATES:** Comments in response to the notice must be submitted in writing no later than January 10, 1991.

**ADDRESSES:** Comments should be sent to: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

**FOR FURTHER INFORMATION CONTACT:** Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-6829.

**SUPPLEMENTARY INFORMATION:** The United States Information Agency published an advanced notice of proposed rulemaking on designation of consortia at 55 FR 46073, on November 1, 1990. By that announcement, the Agency invited comments from the public which were to be submitted in writing no later than December 3, 1990. However, the Agency believes an additional 37 days is warranted. Accordingly, the deadline for submission of comments to the Agency is extended to January 10, 1991.

Alberto J. Mora,

*General Counsel.*

[FR Doc. 90-28344 Filed 12-3-90; 8:45 am]

BILLING CODE 8230-01-M

## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Part 110**

**[CGD14-90-01]**

**Special Anchorage Area Regulations; Keehi Lagoon, Island of Oahu, HI**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to enlarge the existing special anchorage area at Keehi Lagoon. The State of Hawaii plans to develop and expand Keehi Lagoon Marina which will increase the small boat usage of this area. This rule will increase the special anchorage space available to small boaters in the Keehi Lagoon.

**DATES:** Comments must be received on or before January 18, 1991.

**ADDRESSES:** Comments should be mailed to USCG Office of Aids to Navigation, Prince Jonah Kuhio Kalanianaole Federal Bldg., 300 Ala Moana Blvd., Room 9139, Honolulu, Hawaii 96850-4982. The comments and other materials referenced in this notice will be available for inspection and copying at the Office of Aids to Navigation, PJKK Federal Bldg., Room 9139, Hawaii. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** LT Michael Swegles, telephone (808) 541-2319 or FTS 551-2319.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identifying this notice (CGD14-90-01) and the specific section of the proposal to which the comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

**Drafting Information**

The drafters of this regulation are LT Michael Swegles, project officer, Office of Aids to Navigation, and CDR M.J. Williams Jr., project attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

**Discussion of Proposed Regulations**

The State of Hawaii, Department of Transportation, has requested that Keehi Lagoon special anchorage area be enlarged. Vessels not more than 65 feet in length, when at anchor in any special anchorage area are not required to carry or exhibit the white anchor lights or sound signals required by the Navigation Rules.

A special anchorage area is established for the sole purpose of permitting smaller vessels to anchor without lights or sound signals. A special anchorage area does not affect ownership, control or use of any moorings on submerged lands.

Vessels currently anchor outside the existing special anchorage area. This proposal would allow those vessels to extinguish their anchor lights when located within the enlarged anchorage area.

The State of Hawaii plans to develop and expand the Keehi Lagoon Marina and anticipates increased small boat usage in this area. A Coast Guard decision to enlarge the special anchorage area will neither authorize nor prohibit the planned activities of the State of Hawaii in Keehi Lagoon.

This regulation is issued pursuant to 33 U.S.C. 471, 2030, 2035, and 2071 as set out in the authority citation for all of part 110.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have significant economic impact on a substantial number of small entities.

**Environmental Impact**

The Coast Guard has thoroughly reviewed this rulemaking and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2. of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and is included as part of the rulemaking docket.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 110**

Anchorage regulations.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations, as follows:

## PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Sec. 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.1284 is amended by revising the heading and paragraph (c) to read as follows:

**§ 110.1284 Island of Oahu, Hawaii. (Datum: OHD)**

* * * * *

(c) *Keehi Lagoon.* The waters of Keehi Lagoon bounded by a line connecting the following points:

| *Latitude* | *Longitude* |
|---|---|
| 21°19'26.0" N., | 157°54'06.0" W., |
| 21°19'37.7" N., | 157°53'39.9" W., |
| 21°19'04.4" N., | 157°56'45.9" W., |
| 21°19'00.8" N., | 157°57'44.1" W., |
| 21°19'26.0" N., | 157°57'32.7" W., |
| 21°19'04.0" N., | 157°57'28.0" W., |

and thence to the point of beginning.

* * * * *

Dated: November 9, 1990.

W.C. Donnell,

*Rear Admiral, U.S. Coast Guard Commander 14th Coast Guard District.*

[FR Doc. 90-28551 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A-1-FRL-3866-3]**

**Approval and Promulgation of Air Quality Implementation Plans; Vermont; Nitrogen Dioxide National Ambient Air Quality Standards and Prevention of Significant Deterioration Increments**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision establishes National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide ($NO_2$) and incorporates Prevention of Significant Deterioration (PSD) $NO_2$ increments and related requirements. The intended effect of this action is to propose approval of a program to implement the $NO_2$ increments in the State of Vermont in accordance with 40 CFR 51.166 and to propose approval of the $NO_2$ NAAQS which were adopted in accordance with 40 CFR 50.11. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before January 3, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA, and the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 120

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South Main Street, Waterbury, VT 05676.

**FOR FURTHER INFORMATION CONTACT:** Cherryl A. Aloi, (617) 565–3252; FTS 835–3252.

**SUPPLEMENTARY INFORMATION:** On September 4, 1990, the Vermont Air Pollution Control Division submitted a proposed revision to its SIP. The revision consists of the NAAQS for $NO_2$ and a program to implement the $NO_2$ increments to prevent the significant deterioration of air quality in the State of Vermont.

**Background**

*I. $NO_2$ NAAQS*

Pursuant to section 109 of the Clean Air Act of 1970, EPA developed and promulgated NAAQS for $NO_2$. Primary standards define levels of air quality which protect the public health, and secondary standards define levels which protect the public welfare from any adverse effects of a pollutant. The following NAAQS for $NO_2$, described in 40 CFR 50.11, were published in the **Federal Register** on November 25, 1971 and were last revised on June 19, 1985 (50 FR 25544).

*Primary Standard:* 0.053 ppm annual arithmetic mean

*Secondary Standard:* 0.053 ppm annual arithmetic mean

*II. $NO_2$ Increments*

On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (the Act) to prevent significant deterioration of air quality from emissions of nitrogen oxides ($NO_x$). These regulations establish the maximum allowable increase in the ambient $NO_2$ concentration allowed above the baseline concentration in an area. These maximum allowable increases are called "increments." The increments use $NO_2$ as the numerical measure because $NO_2$ is the pollutant on which the NAAQS for $NO_x$ were based. In addition, $NO_x$ emissions from stationary sources convert to $NO_2$ in the atmosphere. The $NO_2$ increment program has a three-tiered area classification system which was established by Congress in section 163 of the Act for increments of sulfur dioxide and particulate matter. Congress designated Class I areas (including certain national parks and wilderness areas) as areas of special national concern, where the need to prevent the significant deterioration in air quality is the greatest. Therefore, the increment levels in Class I areas are the most stringent. Class II increments allow for a moderate degree of growth. Class III increments allow for higher levels of industrial growth. There are no Class III areas in the country yet. (Originally, all areas not designated as Class I were designated as Class II, unless the State submitted an area to EPA for redesignation as a Class I or III area.)

The $NO_2$ increments for the three areas are the following:

Class I: 2.5 $\mu g/m^3$ annual arithmetic mean
Class II: 25 $\mu g/m^3$ annual arithmetic mean
Class III: 50 $\mu g/m^3$ annual arithmetic mean.

Forty CFR § 51.166 sets forth the minimum federal requirements for the PSD program. State PSD programs must meet all of these requirements. The effective date of the amendments to 40 CFR 51.166 which incorporate the $NO_2$ increments was October 17, 1989.

**Summary of Vermont's SIP Revision**

The Agency of Natural Resources (ANR) has proposed to adopt changes to its regulations which incorporate the primary and secondary NAAQS for $NO_2$, the PSD $NO_2$ increments, and related requirements. On September 4, 1990, EPA received these SIP revisions for parallel-processing.

The State is proposing changes to the "Vermont Air Pollution Control Regulations Approved in SIP." The changes are being made to section 5–104 "Definitions," section 5–301 "Scope of Air Quality Standards," section 5–309 "$NO_2$ Primary and Secondary Standards," and Table 2 "PSD Increments." In addition, the State amended its New Source Review (NSR) SIP narrative entitled "The State of Vermont Air Quality Implementation Plan." Vermont proposed these revisions on the state level and held a public hearing on September 25, 1990.

EPA's review of this material indicates that these revisions are, with the exceptions noted below, equivalent to, or in some instances, more stringent than, the requirements in 40 CFR 51.166. Vermont's program for $NO_2$ standards, PSD increments and EPA's evaluation are detailed in a memorandum dated November 16, 1990, entitled "Technical Support Document—Vermont Prevention of Significant Deterioration (PSD) Nitrogen Dioxide ($NO_2$) Increment Regulations and $NO_2$ National Ambient Air Quality Standards (NAAQS)." Copies of this memorandum are available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this notice.

**Changes Necessary Prior to Final Rulemaking**

The Vermont ANR must make specific changes to its regulations and narrative before final approval of this SIP revision. The ANR must amend the reference method by which compliance with the $NO_2$ standards is measured to make it consistent with that stated in 40 CFR 50.11. The ANR also must amend its NSR narrative to clarify the minor source and major source baseline dates for $NO_2$. This will help explain how increment consumption will be calculated. In addition, the ANR should commit to develop a $NO_x$ emissions inventory and determine increment consumption for the transition period between February 8, 1988, and the effective date of Vermont's regulations. Finally, the ANR must commit to correcting an increment violation within 60 days in accordance with 40 CFR 51.166(a)(3).

EPA is proposing to approve this Vermont SIP revision, submitted on September 4, 1990, which establishes ambient air quality standards for $NO_2$ and PSD increment levels for $NO_2$, provided the ANR addresses the necessary changes listed above. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Vermont and submitted formally to EPA for incorporation into the SIP.

**Proposed Action**

EPA is proposing to approve changes to section 5–104 "Definitions," section 5–301 "Scope of Air Quality Standards," section 5–309 "$NO_2$ Primary and Secondary Standards," and Table 2 "PSD Increments" of the "Vermont Air Pollution Control Regulations." In addition, EPA is proposing to approve the new source review narrative changes to "The State of Vermont Air Quality Implementation Plan."

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7642.
Dated: November 25, 1990.

**Paul Keough,**

*Acting Regional Administrator, Region I.*

[FR Doc. 90–28410 Filed 12–3–90; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 32, 36, 64 and 69

**[CC Docket No. 90–571; FCC 90–376]**

### Telephone Communication by Hearing and Speech Impaired

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) seeks comments on proposed amendments to parts 0 and 64 of the rules of the Federal Communications Commission (FCC). Moreover, as explained in paragraph 19 of NPRM, we ask interested parties to comment on additional changes in the rules which they believe are needed, including parts 32, 36 or 69, and to recommend schedules and procedures for implementing such proposed changes. This proceeding is initiated pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA). The amendments are intended to provide the nation's 28 million hearing and speech impaired with telephone services functionally equivalent to those provided to hearing individuals.

**DATES:** Written comments must be received by the FCC on or before January 15, 1991, and reply comments on or before February 15, 1991. The requirements for filing comments in a proposed rulemaking proceeding are contained in §§ 1.415 and 1.419 of FCC rules. Additionally, questions on how to file comments may be directed to the FCC's Consumer Assistance and Small Business Division, (202) 632–7000.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Abraham A. Leib, Chief, Domestic Services Branch, Common Carrier Bureau, (202) 634–1816.

**SUPPLEMENTARY INFORMATION:** The complete text of the NPRM, and pertinent changes to the Communications Act and proposed changes to FCC rules, is made a part of this notice.

The following collection of information contained in the proposed rules has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from International Transcription Service, 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of comments made should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information, telephone Judy Boley, FCC, (202) 632–7513.

*OMB number:* None.

*Title:* Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

*Action:* New collection.

*Respondents:* State governments, individuals or households.

*Frequency of response:* On occasion.

*Estimated annual burden:* The following estimates pertain to the reporting requirements proposed in the NPRM: 50 responses, 8,000 hours total; 160 hours average burden per response for state certification application; 20 responses; 4,800 hours total; 240 hours average burden per response for complaints.

*Needs and uses:* The proposed rule amendments are designed to implement certain provisions of the ADA, and also to solicit comments on procedures for certifying sate programs and for filing complaints filed. Those affected are states seeking certification of their programs, and any member of the public who wants to file a complaint against a specific carrier or carriers.

**Authority:** Sections 1, 4 (i)–(j) 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i)–(j), 225, 403 and 410; and 5 U.S.C. 553.

The following represents the contents of the NPRM issued by the Commission:

**Notice of Proposed Rulemaking**

**In the Matter of Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990.**
**Adopted November 8, 1990.**
**Released November 16, 1990.**

**I. Introduction**

1. This proceeding is initiated because of the passage of the Americans with Disabilities Act of 1990 (ADA), S. 933, Public Law 101–336, 104 Stat. 327, 366–69 (1990). The ADA's purpose is "to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities." [1] Title IV of the ADA adds new section 225 to the Communications Act of 1934, as amended, 47 U.S.C. 151 *et seq.*, (the Act), and amends existing section 711.[2] Section 225 requires the

[1] S. Rep. No. 116, 101st Cong., 1st Sess. 2 (1989) (S. Rep.); H.R. Rep. No. 485, 101st Cong., 2d Sess. 21 (1990) (H.R. Rep.). See Appendix A.

[2] Section 711 is amended to require that any public service announcement, either partially or wholly funded by the federal government, shall include closed captioning of the verbal content of the announcement. It also states that a television broadcast licensee shall not be required to supply closed captioning for any such announcement that does not include closed captioning. Unless the licensee intentionally fails to transmit the closed caption that was included in the announcement, the licensee shall not be held liable for broadcasting any such announcement without transmitting a

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Commission to promulgate regulations in furtherance of the purposes of the ADA.[3]

2. The Act mandates that communications services be "[made] available, so far as possible, to *all* the people of the United States * * *." 47 U.S.C. section 151 (emphasis added). Many of the nation's 26 million hearing and speech impaired are unable to access fully the nation's telephone system; for them universal service has not been achieved.[4] The intent of title IV of the ADA is to further the Act's goal of universal service by providing to hearing and speech impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals. To accomplish this, new section 225 imposes on all common carriers providing interstate or intrastate telephone service an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals.[5] The ADA requires the Commission to establish functional requirements, guidelines, and operational procedures for relay services, and to establish minimum standards that shall be met in carrying out the requirement that common carriers provide telecommunications relay services. The Commission's regulations are to require that telecommunications relay services operate every day for 24 hours per day, require that users of telecommunications relay services [6] pay rates not greater than rates paid for functionally equivalent voice communications services, prohibit relay operators from refusing telecommunications relay service calls or limiting their length, prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of such conversations beyond the duration of the call, and prohibit relay operators from intentionally altering a relayed conversation. 47 U.S.C. 225(d)(1). In addition, the Commission must ensure that its regulations' use of existing technology does not discourage or impair the development of improved technology. 47 U.S.C. 225(d)(2). The Commission also is charged with prescribing regulations governing the jurisdictional separation of costs for the services provided pursuant to section 225, subject to certain conditions; resolving complaints alleging violation of section 225; and certifying state programs for intrastate telecommunications relay services. 47 U.S.C. 225 (d)(3), (e), (f). The proceeding will culminate in the issuance of regulations that establish functional standards for the provision of telecommunications relay services.

## II. Background

3. The Commission has considered the need for relay services even before passage of the ADA. In CC Docket No. 87–124, the Commission sought public comment concerning the telecommunications needs of the hearing impaired and other disabled persons, to evaluate the need for regulatory measures or legislative initiatives to ensure reasonable access to telecommunications services by those persons.[7] The Commission considered a variety of issues in the Notice, including the Commission's jurisdiction to order an interstate relay system, if it found one is necessary, options on how it should be provided, options for recovering its costs, and other issues such as standardization of the TDD signalling format, the feasibility of developing packet switched services to provide low cost connectivity for TDD users and the need for an advisory committee to address the needs of the disabled.

4. In the subsequent Order Completing Inquiry and Providing Further Notice of Proposed Rulemaking (Further NPRM), 4 FCC Rcd 6214 (1989), the Commission found, *inter alia*, that an interstate TDD relay service is necessary to provide reasonable access to telephone service to the hearing and speech impaired. It proposed for comment two alternative plans designed to accommodate interstate TDD relay service. The first would require interexchange carriers (IXCs) which have more than 0.05 percent of presubscribed lines to separately or jointly provide the service. Under this plan, the carriers would be permitted to recover their costs through charges for other interstate services. The alternative plan called for the National Exchange Carrier Association (NECA) to assume the responsibility for implementation and operation of the system. Funding for this plan would be covered by an assessment on IXCs, *i.e.*, those meeting the 0.05 percent presubscribed line criterion, based on each carrier's number of presubscribed common lines, and adding those costs to the Universal Service Fund costs.[8] In either case, there would have been no additional charge for users of the interstate TDD relay service beyond the normal end-to-end toll charges of the serving carrier.

5. In the Further NPRM, the Commission reached conclusions on several matters raised in the Notice. It concluded, for example, that standardizing the TDD signalling format [9] is unwarranted. It said that the ASCII format "would impose an unnecessary burden on owners of the Baudot devices." Further NPRM at 6225–26. This is particularly so, it noted, in view of the ability of existing relay centers to accept signals in either format, and the common ability of ASCII machines to accept Baudot. The Commission also decided that packet switching for TDD users has not been identified as a technology warranting Commission action. The Further NPRM also concluded that a formal, Commission-sponsored advisory committee is unnecessary to address the needs of the disabled. Further NPRM at 6231.

6. The provisions of the ADA, which was enacted after comments to the Further NPRM were filed with the Commission, have rendered much of the record in CC Docket No. 87–124 inapplicable. Issues raised by the Commission in CC Docket No. 87–124 concerning TDD relay services have been supplanted by the provisions of the ADA. In the sections that follow, the record of CC Docket No. 87–124 will be included to the extent it may be of help in formulating proposals to implement the statutory requirements of the ADA.[10]

## III. Proposed rules

7. Section 225(c) of the ADA requires that carriers providing telephone voice transmission services provide telecommunications relay services (TDD service) within three years of the date of enactment of title IV of the ADA, *i.e.*, July 26, 1993.[11] Carriers are to offer to hearing-impaired and speech-impaired individuals telephone transmission services which are functionally equivalent to telephone services provided to hearing individuals, including providing services within the same geographic radius that they offer to hearing individuals.[12] Carriers may provide such services individually, through designees, through a competitively selected vendor, or in concert with other carriers, but it is carriers that are responsible for compliance. Although carriers are provided considerable discretion as to how they provide the service, there is no provision in the statute for waiver of the requirement.[13]

8. Section 225(a)(1) of the ADA defines common carrier for purposes of telecommunications services for hearing-impaired and speech-impaired individuals as including the definition currently contained in section 3(h) of the Act "and any common carrier engaged in intrastate communication by wire or radio * * *." The commission's jurisdiction under the ADA, therefore, extends to all telephone companies and their compliance with their statutory obligations under section 225(b)(1), to provide to hearing the speech impaired individuals telecommunications services that enable those individuals to communicate with hearing individuals. Although the Commission's jurisdiction is over all common carriers, states may seek to establish that intrastate relay services satisfy federal requirements by applying to the Commission for certification. If a state system is certified by the Commission, a state retains jurisdiction over such intrastate systems. The Commission retains jurisdiction over intrastate systems where a state has not been certified or when certification has been revoked. Interstate carriers, and interstate carriers in states who have not been certified, must comply with the Commission's regulations. Intrastate carriers in states that have been certified must provide intrastate TDD service in compliance with the program certified under section 225(f) for that state. The definitions, jurisdictional statement, and essential service requirements of section 225 are set forth in proposed § 64.605 (a), (b) and (c) of the rules.

9. Section 225(d) of the ADA requires the Commission to prescribe the necessary rules and regulations to carry out the requirements of title IV, within one year of that ADA's enactment. Subsection (d)(1)(A) requires the Commission to establish functional requirements, guidelines, and operational procedures for the provision of telecommunications relay services. One of the requirements of the ADA is that all common carriers subject to the ADA must provide TDD services on a nondiscriminatory basis to all users in their telephone service areas. The Commission is under a mandate to pursue means to meet this goal in the most efficient manner.[14]

10. As an initial matter, we believe it would be premature at this time to prescribe how carriers meet their responsibilities under the ADA. Section 225 provides carriers discretion as to whether service is provided individually, jointly, or through designees, and they must have time to evaluate which approach is best. Moreover, more than 17 state sanctioned systems are in operation, some of which offer an interstate calling capability, and state authorities need time to consider what modifications should be made in view of the ADA. Although the Commission ultimately may need to prescribe a structure, doing so at this time would be inconsistent with the statutory design to permit carriers and states time to determine how to comply with the Commission's rules.

11. In response to the ADA's directives concerning functional requirements, guidelines and operational procedures, we propose that operators of TDD relay systems should be sufficiently trained to meet the specialized communications needs of individuals with hearing and speech impairments, including sufficient skills in typing, grammar and spelling. Additionally, operators should be trained in deaf culture and TDD etiquette, and should be able to interpret typewritten American Sign Language and transliterate it to spoken English, and vice versa. Further, the relay systems should include adequate staffing to provide callers with reasonably efficient access,[15] and on request operators should retry calls that are initially busy. Finally, operators should be prepared to handle emergency calls from disabled callers. Accordingly, we propose § 64.605(d)(1)(i) which will require relay systems to operate with sufficient trained personnel. Interested parties are invited to comment on the language of this proposal, and to offer additional functional requirements, guidelines and operational procedures for telecommunications relay services. Interested parties are also invited to propose analogous standards or amendments to accommodate systems that are automated, *i.e.*, systems that do not require the intervention of an operator to provide translation between audio and video.[16] Parties should explain how such systems are "functionally equivalent" to systems provided to voice users.

12. Section (d)(1)(B) of the ADA requires the Commission to establish minimum federal standards to be met by

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closed caption. *See* H.R. Rep. at 70. The legislation does not instruct the Commission, and we do not believe it necessary, to promulgate rules under this amendment. Any licensee violating section 711 would be subject to enforcement action. *See, e.g.*, 47 U.S.C. 503. Section 711 therefore will not be discussed further herein. In addition to adding section 225 and amending section 711, the ADA makes conforming amendments to sections 2(b) and 221(b).

[3] *See* section 225(d).

[4] H.R. Rep. at 34.

[5] *See* Appendix A, sections 225 (a)(3) and (c).

[6] "Telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. This term includes services that enable communications between the user of a TDD or other nonvoice terminal device and an individual who does not use such a device. The term "TDD" means a telecommunications device for the deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. 47 U.S.C. 225(a) (2), (3).

[7] Notice of Proposed Rulemaking and Further Notice of Inquiry, CC Docket No. 87–124, 3 FCC Rcd 1812 [1988] [Notice].

[8] *See* Third Report and Order in CC Docket No. 78–72, Phase I, 93 FCC 2d 241 (1983); Further NPRM at 6235.

[9] Baudot and ACSII formats are currently used among TDD users. Because the speeds and coding schemes are different, conversion is required to allow a Beudot TDD to "talk to" and ASCII machine, and vice versa.

[10] Parties commenting on issues raised in response to this Notice of Proposed Rulemaking are requested not to rely upon or incorporate by reference submissions filed in CC Docket No. 87–124, but instead to file new, complete pleadings.

[11] The President signed Public Law 101–336 on July 26, 1990. In this order and in the rules the terms telecommunications relay services, TRS, TDD relay service and TDD service are used synonymously because today relay services rely on oral translation of TDD transmissions. *See* note 6, *supra*. The ADA maked clear, however, that the regulations we are adopting are not to impair the development of new technology. 47 U.S.C. 225(d)(2).

[12] Audiotext services, which connect callers to recorded information services, are not intended to benefit from the ADA. *See* H.R. Rep. at 68. Parties are asked to comment on what rules, if any, should be adopted relating to audiotext and other interactive services.

[13] Subpart F of part 64 of the Commission's Rules, Furnishing of Customer-Premises Equipment and Related Services Needed by Persons with Impaired Hearing, Speech, Vision or Mobility, appears the most logical place to put rules implementing the ADA. The proposed rules are attached hereto as appendix B.

[14] S. Rep. at 81.

[15] Some state guidelines for intrastate systems have such requirements. *See, e.g.*, Standards of Service for Telephone Utilities, 83 Ill. Adm. Code part 756. *See also* discussion regarding network blocking and congestion, *infra*, para. 12.

[16] Conversion of computer stored text to human-like speech is called text-to-speech. Although automated systems have the potential of providing relay services in an efficient manner, there is no evidence before us showing such automated systems currently could satisfy the requirements of title IV. For example, the technology to correct errors and abbreviations is imperfect and, according to AT&T, will be several years in development. AT&T Letter To Honorable Edward J. Markey, October 4, 1988. Fon-ex operates a computer system that permits "conservation" between any DTMF (tone dialing) telephone and a TDD. The telephone is used to spell words, with contextual adjustment performed by the intervening computer. Such a system permits an unimpaired individual to communicate with a person using a TDD, though possibly more slowly then through an operator. Speech to text conversion also is under study

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all providers of intrastate and interstate telecommunications relay services including technical standards, quality of service standards, and the standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services. *See also* S. Rep. at 31. The objective is to ensure that telephone service for hearing-impaired and speech-impaired individuals is functionally equivalent to voice service offered to hearing individuals. Factors that we will include in our proposed rule § 64.605 to achieve the goal of section (d)(1)(B) are the requirements that TDD systems transmit messages between the TDD and voice caller in real time, that blockage rates for TDD services be no greater than standard industry blockage,[17] and that users have access to their chosen interexchange carrier to the same extent access is provided to voice users. Appendix B at 64.605(d)(1)(ii). We do not propose to adopt a single signal format. The Commission discussed standardizing TDD signalling format in the Further NPRM, (para. 5, *supra*), but that approach was not supported in the record. Further NPRM at 6225–26. While ASCII offers a higher data transfer rate, not all TDD users have compatible equipment, relying instead on Baudot code equipment. However, Baudot and ASCII formats are the standard signalling formats in use now by TDD users. We will propose, as we did in the Further NPRM, to require that TDD relay systems be capable of communicating with either format.[18] Interested parties are invited to propose other standards that will define functional equivalence between TDD relay services and voice telephone services.

13. Section 225(d)(1)(C) requires that TDD relay services operate every day for 24 hours a day. A similar proposal was offered in the Further NPRM with regard to an interstate TDD relay system and no party expressed opposition. Under the ADA, the requirement for all intrastate TDD relay systems also would reflect the 24 hour, seven days a week availability of service. A small intrastate carrier might consider the costs of operating such a system to be prohibitive if it has few disabled subscribers in its service area. Although the ADA provides no exceptions to its requirement that every voice carrier provide TDD relay service, carriers are free to enter into joint arrangements. In a state that has certified its TDD relay program under section 225(f), the carrier will be subject to the operating and funding requirements of section 225(d) through the state program. It is likely states will consider the variety of carriers under their jurisdiction and will seek to minimize hardships on small carriers in implementing effective, efficient, intrastate relay systems. A carrier in a state that has not certified a TDD relay program with the Commission is still required to comply with the requirements of section 225(d), which include operating standards, but we encourage carriers to consider joint operations so that service can be provided as efficiently as possible. It would be premature at this point to compel small carriers to enter into federally structured joint arrangements, although ultimately some action along that line may be necessary. For now, we leave it up to the carriers to develop effective, efficient relay systems consistent with our rules and the ADA. We only propose that subsection (d)(1)(C) of § 64.605 of the rules require that all TDD relay services operate in accordance with the standard established by section 225(d)(1)(C) of the ADA. We also propose to require that TDD relay systems be designed to permit operation during power outages. Interested parties are asked to comment on this proposal.

14. Subsection (d)(1)(D) of section 225 requires that users of TDD relay services pay rates no greater than the rates paid for functionally equivalent voice communication with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination. As was noted in the Further NPRM, TDD relay calls consist of two primary additional elements: (1) Communications links between the relay center and the caller and called party and (2) the relay center. The Commission stated that requiring relay users to pay the relay center costs would act as a deterrent to use of the service because the full cost of a relay call could be as much as $9.20 for an average call. Further NPRM at p. 6222. The Commission proposed that the added cost of providing interstate relay service be recovered from sources other than relay service users, so that users would pay a charge equal to the tariffed rates of non-relay calls between the same locations of the interexchange carrier providing the communications links for the relay service. Parties commenting in response to this proposal did not oppose the notion of direct call equivalence, *i.e.*, functionally equivalent communication services.[19] Proposed § 64.605(d)(1)(iv) of the rules reiterates the mandate of section 225(d)(1)(D) that carriers' charges for TDD relay service not exceed charges for functionally equivalent voice service between the same end points, without regard to how the call is routed.

15. Section 225(d)(1)(E) prohibits relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use TDD relay services. By this provision relay operators appear required to handle any type of call provided by carriers, *e.g.*, non-coin sent-paid,[20] third party number, calling card and collect calls.[21] Interested parties are asked to submit comments in response to proposed § 64.605(d)(1)(E).

16. Section 225(d)(1)(F) prohibits relay operators from disclosing the content of any relayed conservation and from keeping records of the content of any such conversation beyond the duration of the call. It is noted by the Senate Report that while records have to be made to complete a call no such records of the content of the call should be retained after the call has been terminated.[22] One adjunct to real-time TDD relay operation is "store and forward" service. By this service, if the destination telephone number is busy when the disabled person makes his or her initial call through the TDD relay operator, the operator will deliver the message at a later time when the destination telephone is no longer busy. Under these circumstances, it would seem that a stored and forwarded call is, for purposes of subsection (d)(1)(F), not completed and the prohibition against "keeping records of the content * * * beyond the duration of the call" would not apply until the message is finally delivered.[23] Were delivery not possible, under reasonable criteria established by the relay center, the originating caller would be notified and the message destroyed, typically by deleting it from the relay center's computer memory. Our proposed § 64.605(d)(1)(vi) includes only the language offered by the ADA provision, but parties are invited to offer additional language to clarify the intent of the section as discussed herein.

17. Section 225(d)(1)(G) prohibits relay operators from intentionally altering a relayed conversation. This requirement raises a number of potential problems. First, there may be times when summaries are reasonably necessary and these should not violate the prohibition of subsection (d)(1)(G). For example, the Senate Report recognizes that some recorded messages cannot necessarily be transcribed in full due to speed limitations in the dispatching TDD and the operator's typing ability, in which case the hearing or speech impaired individual should be given the option to have the message summarized.[24] However, should the customer choose not to accept a summarized version of the message, the operator apparently would have to be facile with shorthand or have access to a tape recorder to transmit the message in full. Offering this option, therefore, could impose an unnecessary and unreasonable burden on operators. An alternative would be to permit operators to summarize the content of recorded messages if reasonably necessary by message length or content. We ask interested parties to comment on this matter and to provide anticipated costs and benefits in support of their positions. The purpose of the section is to assure that the relay operator, to the extent reasonably possible, serves as a transparent conduit between two people communicating through disparate modes, and we believe operators must be provided reasonable discretion in meeting that responsibility. A second issue that arises by this process is the responsibility of the relay operator to repeat language or expressions that are either abhorrent to his or her sensibilities or convictions or are otherwise violative of state or federal law, e.g., those that are obscene or involve criminal activity that the operator would wish to report to authorities. Our view is that Congress has mandated that relay operators may not intentionally alter a relayed conversation, no matter what that conversation contains, or reveal its contents. Interested parties are invited to comment on this issue and to submit their views on proposed § 64.605(d)(1)(G), which follows the language of ADA section 225(d)(1)(G).

18. Section 225(d)(2) requires the Commission to ensure that regulations prescribed to implement title IV of the ADA encourage the use of state-of-the-art technology and do not discourage or impair the development of improved technology. As note, *supra*, the Commission considered in the Notice the feasibility of developing packet switched services based on new or existing packet switched networks to provide low costs connectivity to TDD users. Notice at 1988. However, the record in response to this issue was insufficient to reach a conclusion, though one party did describe a service which, it asserted, would permit use of compatible equipment on a circuit switched or packet switched basis through the use of modems and PCs.[25] Other technologies, such as those utilizing text-to-speech and voice recognition concepts, may eventually represent alternatives to relay centers. The Commission will remain receptive to petitions for rulemaking to modify the rules to be adopted in this proceeding that offer technological advancements more efficiently fulfilling the objectives of the ADA. Proposed § 64.605(d)(2) is intended to reflect the intent of section 225(d)(2).

19. Section 225(d)(3)(A) requires the Commission to prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to title IV of the ADA, consistent with the provisions of section 410 of the Act. The legislative history establishes that "No change to the procedures for allocating joint costs between the interstate and intrastate jurisdictions as set forth elsewhere in the Communications Act of 1934 is intended."[26] The Commission, under section 410(c) of the Act, must refer "any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking" to a Federal-State joint Board.[27] Section 410 also authorizes the Commission to "refer any other matter, relating to common carrier communications of joint Federal-State concern" to a joint Board. A joint Board may not be necessary if state relay systems operate independently of an interstate relay system, *i.e.*, under circumstances in which there are no jointly used resources. Conversely, carriers conceivably could elect to enter into a single relay system which provides inter- and intra-state relay service throughout the country. Moreover, the ADA, through section 225(a)(1) and relevant legislative history,[28] expands the range of services and carriers responsible for providing relay services beyond those normally subject to separations procedures. These include resale carriers, cellular radio carriers, and all other carriers which provide voice-band telecommunications services.[29] We ask interested parties to consider the extent to which the ADA, Section 410 of the Act and current accounting and jurisdictional separations regulations apply to the panoply of carriers currently offering voice services, to comment on changes needed in the rules in this regard, if any, including parts 32, 36 or 69, and to recommend schedules and procedures for implementing any proposed changes, considering the time limitations contained in the ADA.[30] Our proposed § 64.605(d)(3)(i) sets forth the basic requirement that appears in the ADA with regard to jurisdictional separations.[31] Parties may comment on

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[17] AT&T, for example, designed its hierarchical network so that the overall probability of a caller encountering a trunk busy was no more than one percent. Now, it measures congestion in its dynamic non-hierarchical network by more complex criteria. We do not propose a specific network congestion criterion, but we will propose a general standard that reflects overall network congestion performance. Following standard performance criterion for intrastate TDD systems, we will also propose a specific standard for TDD system answering, viz., that at least 85% of calls to the TDD system must be answered within ten seconds. *See* AT&T Letter to New Jersey Board of Public Utilities, July 27, 1990. To assure that TDD users are not then simply put on hold, we will require that relay service begin within 30 seconds of answering.

[18] H.R. at 68, appendix But § 64.605(d)(1)(ii).

[19] Generally, transmitting a given message via a TDD relay system will take longer than by normal voice means. This may effectively result in some TDD relay calls taking longer and therefore costing more than an equivalent voice call communicating the same message. However, no reliable calculus has been offered to measure the average disparity in calling times. Moreover, the term "functional equivalence" in section 225(d)(1)(D) normalizes this disparity by definition. The ADA requires TDD relay call rates not to be greater than functionally equivalent voice calls on the basis of call duration, time of day or distance—not message content. However, neither the Commission nor Congress opposed implementation of rate discounts. S. Rep. at 62 (intrastate); Further NPRM at 6222 (interstate).

[20] Non-coin sent-paid calls are generally considered to be calls paid for via credit cards.

[21] There are various ways TDD relay systems might operate. Access to a TDD relay center could be offered via a toll-free telephone number and the charges for the call handled through or by the center. Alternately, the local carrier or IXC could intercept the originating call for credit card verification or other administrative operations, or the carrier could automate call processing operations. A center—or carrier—that checks credit and declines to complete the originator's call on the basis of a declined credit authorization would not appear to violate the call refusal prohibition of section 225(d)(1)(E) because a similar call not using the relay service would not be completed. Commenters are invited to offer their views on this or other anomalous possibilities.

[22] S. Rep. at 62.

[23] We seek comment on this analysis.

[24] S. Rep. at 62.

[25] Further NPRM at 6226. The Commission noted that the service suggested did not differ from current capabilities of modem-equipped PCs to communicate directly with TDDs in the ASCII format. *Id.* at n. 31.

[26] S. Rep. at 62.

[27] 47 U.S.C. 410.

[28] See also discussion in para. 20, *infra*.

[29] We ask interested parties to include such carriers in their analyses of the matters discussed in this section.

[30] We will refer the matter to a joint Board if it appears that changes in our jurisdictional separation rules are necessary or appropriate.

[31] Of course, the rule we finally adopt may be different from our proposal. We are providing notice that we may adopt a final rule that implements our decision with regard to these issues.

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this proposal or offer any other language that supports the intent of the ADA. Such new proposals should be supported with data, where appropriate, and detailed rationale.

20. Section 225(d)(3)(B) states, *inter alia*, that the Commission's "regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service." The ADA contemplates that the Commission's regulations will ensure that all subscribers to every telephone common carriers' interstate service, including private line, public switched network services, and other common carrier services, will contribute to recover the costs incurred in the carrier's provision of interstate relay services.[32] In its further NPRM, the Commission sought comment on two mechanisms for financing an interstate TDD network, one requiring IXCs to recover costs through charges for other interstate services, and the other implemented through NECA which would recover the costs through a line charge to interexchange carriers. *See* para. 4, *supra*.

21. The ADA has fundamentally broadened the relay services addressed earlier to include intrastate services, and instructs that interstate relay services should be supported by subscribers to all interstate services. The record in response to the Further NPRM no longer adequately addresses the matter of funding TDD relay systems. Nevertheless, it remains possible that mechanisms similar to those proposed earlier or one implemented through NECA or another industry organization, could achieve the intent of Congress. We ask interested parties to comment on precisely what additional detail, if any, may be necessary in Commission rules relating to cost recovery. We ask such commenters to analyze the extent to which these or other proposed mechanisms distribute costs as required by the ADA, and to provide anticipated cost figures for the first five years of TDD relay system operation.[33]

[32] H.R. Rep. at 66–68. This language does not preclude joint inter-, intra-state systems. The House Report specifically states the Commission "is granted broad discretion to structure a cost recovery mechanism to determine the most appropriate method of recovery of interstate and intrastate costs."

[33] Interested parties are also asked to provide suggestions on how TDD relay system charges should be distributed among services and how much users should be charged. All such charges, we note, must be accurate and otherwise compliant with the Act. *See, e.g.*, sections 201–05 of the Act.

22. Section 225(d)(3)(B) provides that a state which has a program certified under section 225(f) shall permit its commission to allow a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of title IV. Our proposed § 64.605(d)(3)(ii) requires, *inter alia*, that the costs for TDD relay service provided by interstate carriers will be recovered from all subscribers for every interstate service, and costs caused by intrastate TDD relay services will be recovered from the intrastate jurisdiction. This language follows the approach outlined by the ADA, but, as discussed in the previous paragraph, we ask interested parties to comment on alternatives to cost recovery that are consistent with the ADA and the Act.

23. Section 225(e) addresses the matter of enforcement of the ADA. Section 225(e)(1) requires that the Commission enforce the requirements of the ADA subject to subsections (f) and (g). Subsection (f) refers to the certification of state programs, and subsection (g) provides for Commission resolution of complaints concerning the ADA. The purpose of section 225(e)(1) is to assure that the Commission has adequate enforcement authority to ensure that TDD relay services are provided nationwide and in every state and that certain minimum federal standards are met by all providers of the services. The Commission's enforcement authority over the provision of intrastate TDD relay services is limited in states with programs certified under procedures required to be established under subsection (f). The ADA requires that state commissions permit common carriers to recover the costs incurred in providing intrastate TDD relay services if the carrier meets the requirements of the state's certified program. In states without such a program, the ADA requires state commissions to permit the recovery of costs as long as the carrier complies with the Commission's regulations adopted pursuant to section 225(d). Section 225(e)(2) requires the Commission to resolve a complaint alleging a violation of § 64.605 within 180 days after the complaint is filed. Subsections (e) (1) and (2) are reflected in proposed § 64.605(e). *See* appendix B.

24. Sections 225 (f)(1) and (f)(2) describe the state certification procedure by which states may apply to assert jurisdiction over the provision of intrastate TDD relay services. The Commission may grant certification on a showing that these services comply with the federal guidelines and standards adopted pursuant to section 225(d) of the ADA. A state plan may make service available through the state governments, through designees, through a competitively selected vendor, or through regulation of intrastate carriers. To obtain certification, a state must submit documentation to the Commission that includes procedures and remedies for enforcement. This is to assure that states with certified plans will exercise their responsibility to enforce the provisions of Title IV of the ADA in their jurisdictions.[34] Section 225(f)(3) states that, except as provided by rules promulgated pursuant to Section 225(d) of the ADA, the Commission may not refuse to certify a state program based solely on the method that state chooses to fund implementation of intrastate TDD relay services.[35] Section 225(d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of TDD relay services to pay higher rates than those paid for functionally equivalent voice communications services. *See* ADA sections 225 (d)(1)(D) and (d)(3)(B). We propose certification procedures in appendix B, at proposed § 64.605(f). The House Report notes that TDD relay services are of benefit to all in society and it therefore "would expect that any funding mechanism not be labeled so as to prejudice or offend the public, especially the hearing-impaired and speech-impaired community."[36]

25. By section 225(f)(4), the Commission may suspend or revoke a state's TDD relay service certification if, after notice and opportunity for hearing, it determines that certification is no longer warranted. In a state whose program has been suspended, the Commission is expected to provide a reasonable transition period to ensure continuity of TDD relay service for users and a reasonable opportunity for carriers to meet the requirements of the Commission's regulations after the suspension or revocation. Proposed § 64.605(f) contains the provisions of ADA section 225(f). Interested parties are invited to offer comments on these

[34] H.R. Rep. at 69.

[35] A number of state systems, such as that in Kansas, offer residents an outgoing interstate calling capability. It would be valuable to have analyses of whether cost recovery mechanisms used for these systems are consistent with the ADA or, if not, what modifications would be necessary. *See also* n. 32, *supra*.

[36] *Id.* at 69, 70. It further states:

For example, California's relay service is funded by a surcharge that appears on telephone bills as 'Deaf Trust Fund.' This unfortunate choice of words is offensive and should be precluded.



proposals and to include any additional language they deem appropriate.

26. Section 225(g) states that when a complaint is filed with the Commission alleging a violation of title IV of the ADA with respect to intrastate TDD service within a state that has a certified program under section 225(f) in effect, the Commission must refer the complaint to the state. If the state has not been certified, the Commission will handle the complaint pursuant to sections (e)(1) and (e)(2). Once a complaint has been referred to the state, the Commission will exercise jurisdiction only if the state has not taken final action within 180 days, or shorter period if the state so requires, or if the Commission determines that a state program no longer qualifies for certification under section 225(f). Our proposed § 64.605(g) reflects these provisions. We propose to follow procedures patterned after those in Rule § 68.400.

## IV. Conclusion

27. The regulations we propose in this proceeding are intended to implement the provisions of title IV of the ADA. Interested parties filing comments are invited to offer alternative language, additional provisions or any other suggestions that will foster the intent of Congress to bring functional telecommunications equality to the hearing and speech-impaired of our nation. Many states already have relay systems in operation with various levels of carrier participation. We especially solicit comment from those who have experience with these systems. We hope to avoid problems experienced by others and to benefit from their success. In the final report and order that will follow, the Commission will adopt regulations that it believes best, and most efficiently, achieves the objectives of the ADA.

## V. Initial Regulatory Flexibility Analysis

28. In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. section 601, the Commission issues the following initial regulatory flexibility analysis:

### *A. Action Contemplated and Reason for Action*

29. By this Notice of Proposed Rulemaking, the Commission seeks to elicit comment on a series of proposals to implement title IV of Public Law 101–336, the Americans with Disabilities Act of 1990, which requires all common carriers to provide telecommunications relay services in order to provide hearing and speech impaired persons with greater access to telecommunications services.

### *B. Objective*

30. The objective of this proceeding is to fulfill the mandate of Congress to implement the ADA, thereby assuring that all Americans have reasonable access to telecommunications services and equipment.

### *C. Legal Basis*

31. The legal authority for this action is contained in sections 1, 4(i), 4(j), 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 403 and 410.

### *D. Description, Potential Impact and Number of Small Entities Affected*

32. The proposed rules are applicable only to common carriers, and it is not expected that they will have a significant impact on small entities because small entities may elect to pool requirements and provide service jointly. The overall economic impact of the proposed rules could be significant to carriers because they will be required to provide TDD services. Telephone rates for all subscribers will increase, but probably only by a marginal amount.

### *E. Recording, Recordkeeping, and Other Compliance Requirements*

33. There are about 1,500 telephone companies in the United States. By the legislation, each will be responsible for providing, either individually, through a competitively selected vendor, or in concert with other carriers, TDD relay services. Recordkeeping requirements are limited by statute to those needed to accomplish billing.

### *F. Federal Rules That Overlap, Duplicate or Conflict With These Proposed Rules*

34. None.

### *G. Any Significant Alternatives To Minimize the Impact on Small Entities*

35. None. Although Congress has provided telephone companies with flexibility in how they provide relay services, there is no provision for waiver of the requirement.

### *H. Comments Are Solicited*

36. We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rulemaking, but they must have a separate and distinct heading designating them as responses to this regulatory flexibility analysis. The Secretary shall send a copy of the Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

## VI. Paperwork Reduction Act

37. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

## VII. Ex Parte Presentations

38. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) Releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the certification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1), if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum in duplicate to the Secretary (with a copy to the commission or staff member involved) which summarizes the data and arguments.) Each *ex parte* presentation

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described above must be clearly labeled "ex parte," state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. § 1.1206.

**VIII. Administrative Matters and Ordering Clauses**

39. In accordance with the applicable procedure described in § 1.415 of the Commission's rules, 47 CFR 1.415, interested parties may file comments on or before January 15, 1991, and reply comments on or before February 15, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file and provided that the Commission's reliance on such information is noted in the Report and Order.

40. Interested parties shall file an original and 5 copies of all comments, replies, or other documents. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the public who wish to express their interest by participating informally in the Rule Making proceeding may do so by submitting one copy of their comments, provided that the docket number is specified in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC. For additional information on how to file comments, parties should contact the FCC Consumer Assistance and Information Division at (202) 632-7000.

41. Accordingly, *It is Ordered*, That pursuant to sections 1, 4(i), 4(j), 225, 403 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 225, 403 and 410, and 5 U.S.C. 553, Notice of Proposed Rulemaking is hereby provided to amend 47 CFR parts 0, 32, 36 and 64 as indicated herein.

42. *It is further ordered*, That the Secretary shall cause a copy of this Notice of Proposed Rule Making, including the initial regulatory flexibility analysis, to be sent to (a) The Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603 (a) (1981); and (b) to each State utility commission. The Secretary shall also cause this Notice of Proposed Rulemaking to appear in the **Federal Register**.

**List of Subjects in 47 CFR Parts 0 and 64**

Organization and functions, Communications common carriers, Telephone subscribers.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Appendix A—Telecommunications Relay Services for Hearing-Impaired and Speech-Impaired Individuals**

The following represents the contents of title IV of the Americans with Disabilities Act of 1990.

*Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals*

(a) *Definitions.* As used in this section—

(1) *Common carrier or carrier.* The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

(2) *TDD.* The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) *Telecommunications relay services.* The term "telecommunications relay services" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) *Availability of telecommunications relay services*— (1) *In general.* In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

(2) *Use of general authority and remedies.* For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

(c) *Provision of services.* Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations.

(1) With respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to intrastate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

(2) With respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

(d) *Regulations.*—(1) *In general.* The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

(A) Establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

(B) Establish minimum standards that shall be met in carrying out subsection (c);

(C) Require that telecommunications relay services operate every day for 24 hours per day;

(D) Require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

(E) Prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

(F) Prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

(G) Prohibit relay operators from intentionally altering a relayed conversation.

(2) *Technology.* The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

(3) *Jurisdictional separation of costs)*—(A) *In general.* Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

(B) *Recovering costs.* Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

(e) *Enforcement*—(1) *In general.* Subject to subsections (f) and (g), the Commission shall enforce this section.

(2) *Complaint.* The Commission shall resolve, by final order, a complaint alleging a violation of this section with 180 days after the date such complaint is filed.

(f) *Certification*—(1) *State documentation.* Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

(2) *Requirements for certification.* After review of such documentation, the Commission shall certify the State program if the Commission determines that—

(A) The program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

(B) The program makes available adequate procedures and remedies for enforcing the requirements of the State program.

(3) *Method of funding.* Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

(4) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) Complaint—(1) *Referral of complaint.* If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

(2) *Jurisdiction of Commission.* After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

(A) Final action under such State program has not been taken on such complaint by such State—

(i) Within 180 days after the complaint is filed with such State; or

(ii) Within a shorter period as prescribed by the regulations of such State; or

(B) The Commission determines that such State program is no longer qualified for certification under subsection (f).

(b) For conforming amendments, see Public Law 101–336, July 26, 1990.

*Closed-Captioning of Public Service Announcements*

Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal Government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

(1) Shall not be required to supply closed captioning for any such announcement that fails to include it; and

(2) Shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.

**Appendix B**

A. Part 0 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations, part 0) is proposed to be amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for part 0 is proposed to be revised to read as follows:

Authority: Sec. 5, 48 Stat. 1066, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 0.91 is proposed to be amended by adding new paragraph (m) to read as follows:

**§ 0.91 Functions of the Bureau.**

* * * * *

(m) Acts upon matters involving telecommunications relay service complaints and certification, except for action on complaints raising novel or unusual issues.

B. It is proposed to amend part 64 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations, part 64), as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 is proposed to be revised to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. New § 64.605 is added to read as follows:

**§ 64.605 TDD relay service.**

(a) *Definitions.* As used in this section:

(1) *Common carrier or carrier.* The term "common carrier" or "carrier" includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended, and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Communications Act of 1934, as amended.

(2) *TDD.* The term "TDD" means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

(3) *Telecommunications relay services.* The term "telecommunications relay services," "TDD relay service," or "TDD service" means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

(b) *Jurisdiction.* Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Communications Act of 1934, as amended, by a common carrier engaged in interstate communication.

(c) *Provision of services.* Each common carrier providing telephone voice transmission services shall, not later than July 25, 1993, provide in compliance with the regulations

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prescribed herein, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with these regulations.

(1) With respect to intrastate telecommunications relay services in any state that does not have a certified program under paragraph (f) of this section and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with paragraph (d) of this section; or

(2) With respect to intrastate telecommunications relay services in any state that has a certified program under paragraph (f) of this section for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under paragraph (f) of this section for such state.

(d) *Telecommunications relay service standards.*—(1) *General operating requirements.* (i) Operators used in providing TDD relay service shall be trained to meet the specialized communications needs of individuals with hearing and speech impediments, and shall have sufficient skills in typing (at least 35 words per minute), grammar and spelling. They shall be trained in deaf culture and TDD etiquette, and shall be able to interpret typewritten American Sign Language and transliterate it to spoken English, and vice versa. Relay systems shall include adequate staffing to provide callers with reasonably efficient access under projected calling volumes, so that the probability of a busy response due to operator availability shall be comparable to what a voice caller would experience in attempting to reach a party through the voice telephone network. At a minimum, TDD relay systems shall be designed so that at least 85% of calls will be answered within ten seconds of commencement of ringing and relay service begun within 30 seconds of answer. Users shall have access to their chosen interexchange carrier through the TDD relay system, and to all other operator services, to the same extent that such access is provided voice users. Operators, if requested by the caller, shall attempt to complete calls 3 times consecutively, without delay, when receiving busy signals. TDD relay systems shall have procedures for handling emergency calls and operators shall be trained to handle such calls.

(ii) TDD relay systems shall transmit messages between the TDD and voice caller in real time. Adequate network facilities shall be used in conjunction with the TDD relay systems so that under projected calling volume the probability of a busy response due to loop or trunk congestion shall be comparable to what a voice caller would experience in attempting to reach a party through the telephone network. TDD relay systems shall be capable of communicating with either the ASCII or Baudot format, at any speed generally in use.

(iii) TDD relay services shall operate every day, 24 hours a day. Systems shall have adequate redundancy features, including uninterruptible power for emergency use, to assure continuity of operation. Carriers, through publication in their directories and otherwise, shall assure callers in their service areas are aware of the availability of their relay service and familiar with its use.

(iv) TDD relay service users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(v) TDD relay operators are prohibited from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use TDD relay services. Relay systems shall be capable of handling any type of call normally provided by carriers, such as non-coin sent-paid, third party number, calling card and collect calls, except coin-sent calls.

(vi) TDD relay operators (and any other person having access to the content of a TDD message through his or her position) are prohibited from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of call.

(vii) TDD relay operators are prohibited from intentionally altering a relayed conversation.

(2) *Technology.* No regulation set forth in this section is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications services to the disabled.

(3) *Jurisdictional separation of costs*—(i) *General.* Where appropriate, costs of providing TDD relay services shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to Section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TDD relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate TDD relay services shall be recovered from the intrastate jurisdiction. In a state that has a certified program under paragraph (f) of this section, a state commission shall permit a common carrier to recover the costs incurred in providing intrastate TDD relay services by a method consistent with the requirements of this section.

(e) *Enforcement.* Subject to paragraphs (f) and (g) of this section, the Commission shall resolve any complaint alleging a violation of this section within 180 days after the complaint is filed.

(f) *Certification.* (1) *State documentation.* Any state desiring to establish a state program under this section shall submit documentation to the Commission captioned "TDD Intrastate Relay Service Certification." The documentation shall describe the program of such state for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the state program.

(2) *Requirements for certification.* After review of such documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that

(i) The program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such state in a manner that meets or exceeds the requirements prescribed in paragraph (d) of this section; and

(ii) The program makes available adequate procedures and remedies for enforcing the requirements of the state program.

(3) *Method of funding.* Except as provided in paragraph (d) of this section, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate telecommunications relay services, but funding mechanisms shall not be labeled in a manner that offends the public.

(4) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

(g) *Complaint*—(1) *Referral of complaint.* If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a state and certification of the program of such state under paragraph (f) of this section is in effect, the Commission shall refer such complaint to such state.

(2) Jurisdiction of Commission. After referring a complaint to a state under paragraph (g)(1) of this section, the Commission shall exercise jurisdiction over such complaint only if

(i) Final action under such state program has not been taken on such compliant by such state

(A) Within 180 days after the complaint is filed with such state; or

(B) Within a shorter period as prescribed by the regulations of such state, or

(ii) The Commission determines that such state program is no longer qualified for certification under paragraph (f) of this section.

(3) *Complaint procedures*—(i) *Content.* A complaint shall be in writing and shall contain:

(A) The name and address of the complainant,

(B) The name (and address, if known) of the defendant against whom the complaint is made,

(C) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of Section 64.605 of the Commission's Rules, and

(D) The relief sought.

(ii) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(iii) *Number of copies.* An original and two copies of all complaints and amended complaints shall be filed. An original and one copy of all other pleadings shall be filed.

(iv) *Service.* (A) Except where a complaint is referred to a state pursuant to paragraph (g)(1) of this section, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the complaint in writing within the time specified in said notice of complaint.

(B) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(v) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this part shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(vi) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(vii) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this part may be dismissed.

[FR Doc. 90-28210 Filed 12-3-90; 8:45 am]
BILLING CODE 4712-01-M



## 47 CFR Part 22

[CC Docket No. 90-358; DA 90-1709]

## Establishment of Standards for Conducting Comparative Renewal Proceedings in the Domestic Public Cellular Radio Telecommunications Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rules; extension of time.

**SUMMARY:** The Common Carrier Bureau extended the time period for filing reply comments in this proceeding by two weeks in response to a request by Telocator. The Bureau stated that good cause had been shown for the extension of time and that grant of the extension would not significantly delay the proceeding. The time extension should facilitate the efforts of interested parties to address the proposals contained in the Notice of Proposed Rule Making and thus result in a more helpful record.

**DATES:** Reply comments are due by December 12, 1990.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

**SUPPLEMENTARY INFORMATION:**

Order

Adopted: November 21, 1990; Released: November 23, 1990.

By the Chief, Common Carrier Bureau:

1. On November 16, 1990, Telocator requested an extension of time to December 12, 1990, to file reply comments on the Notice of Proposed Rule Making (Notice) (55 FR 39020; September 24, 1990) in the above-referenced proceeding. Reply comments currently are due on or before November 28, 1990.

2. Telocator asserts that about twenty-five comments were filed in response to the Notice. Telocator also states that even though there may be substantial agreement among many of the commenting parties on the proposals contained in the Notice, there are still areas about which Telocator would like to consult with its members in order to develop a consensus, such as the nature of appropriate comparative criteria to be used during any renewal hearings. Telocator claims that an extension of two weeks will facilitate the efforts of interested parties to address these matters, which should enhance the Commission's consideration of these issues by presenting a more complete record.

3. We find that good cause has been shown for a two-week extension of time, the grant of which will not significantly delay this proceeding. Accordingly, the extension of time request is granted and reply comments on the above-referenced Notice from all parties are due on or before December 12, 1990.

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Federal Communications Commission.
**Richard M. Firestone,**
*Chief, Common Carrier Bureau.*
[FR Doc. 90-28360 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 90-583, RM-7522]**

**Radio Broadcasting Services; Jackpot, NV**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Dale A. Ganske seeking the allotment of Channel 253A to Jackpot, Nevada, as its first local FM service. Channel 253A can be allotted to jackpot in compliance with the commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 253A at Jackpot are North Latitude 41-59-08 and West Longitude 114-40-18. Petitioner is requested to furnish additional information to demonstrate that Jackpot is a community for allotment purposes since it is not listed in the 1980 U.S. Census or incorporated.

**DATES:** Comments must be filed on or before January 22, 1991, and reply comments on or before February 6, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dale A. Ganske, 1819 Mitchell Avenue, Eau Claire, Wisconsin 54701 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-588, adopted November 7, 1990, and released November 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.
**Beverly McKittrick,**
*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*
[FR Doc. 90-28361 Filed 12-3-90; 8:45 am]
BILLING CODE 6712-01-M



# Notices

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Invitation To Serve on Federal Grain Inspection Service Advisory Committee

Under authority of section 20 of the United States Grain Standards Act (Act), the Secretary of Agriculture established the Federal Grain Inspection Service Advisory Committee (Advisory Committee) on September 29, 1981. Public Law 100-518 extended the authority for the Advisory Committee through September 30, 1993. The Advisory Committee was renewed by the Secretary of Agriculture on February 8, 1989, to provide advice to the Administrator of the Federal Grain Inspection Service (FGIS) with respect to the implementation of the Act.

The Advisory Committee presently consists of 15 members, appointed by the Secretary, representing the interests of grain producing, processing, storing, merchandising, consuming, and exporting industries, including scientists with expertise in research related to the policies in section 2 of the Act. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

In accordance with Public Law 100-518, five of the initial 15 members were appointed for terms of 1 year, five were appointed for 2 years, and five were appointed for 3 years. Also alternate members were appointed for the same terms. The appointments of the members serving 20-year terms expire during February 1991. Hereafter appointments will be for 3-year terms except for replacements for those who resign.

Nominations are needed for persons to serve on the Advisory Committee to replace the five members and five alternate members whose terms expire during February 1991.

Persons interested in serving on the Advisory Committee, or persons interested in nominating persons to serve, should contact: John C. Foltz, Administrator, FGIS, room 1094-S, P.O. Box 96454, Washington, DC 20090-6454, in writing, and request a copy of Form AD-755, which must be completed and submitted to the Administrator at the above address not later than February 4, 1991.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

The final selection of committee members and alternates will be made by the Secretary.

Dated: November 28, 1990.
**John C. Foltz,**
*Administrator.*
[FR Doc. 90-28332 Filed 12-3-90; 8:45 am]
BILLING CODE 3410-EN-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Action Affecting Export Privileges; Estela Beatriz Garcia

In the Matter of: Estela Beatriz Garcia, Virvey Del Pino, 1528 Buenos Aires, Argentina, Respondent.

**Order**

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), having determined to initiate an administrative proceeding against Estela Beatriz Garcia (Garcia) pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1990)) (the Act), and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1990)) (the Regulations), based on allegations that:

a. On or about September 8, 1988, Garcia conspired or acted in concert with Daniel Iturri to export from the United States to Argentina two Digital Equipment Corporation Micro Vax II computers without first obtaining the validated export licenses required by § 772.1(b) of the Regulations, thereby violating § 787.3(b) of the Regulations; and

b. On or about September 8, 1988, Garcia attempted to export from the United States to Argentina two Digital Equipment Corporation Micro Vax II computers without first obtaining the validated export licenses required by § 772.1(b) of the Regulations, thereby violating § 787.3(a) of the Regulations;

The Department and Garcia having entered into a Consent Agreement whereby the Department and Garcia have agreed to settle this matter by the Department's denying Garcia's export privileges for a two-year period and by Garcia's agreeing to all of the terms and conditions set forth in the Consent Agreement; and

The terms of the Consent Agreement having been approved by me;

*It is therefore ordered,*

*First,* Estela Beatriz Garcia, Virvey Del Pino, 1528 Buenos Aires, Argentina, shall, for a period of two years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which Garcia appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Garcia's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of

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any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, partnership or business organization with which Garcia is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Garcia or any related person, or whereby Garcia or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Garcia or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

*Second,* that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served upon Garcia and published in the **Federal Register**.

This Order is effective immediately.

**Quincy M. Kreeby,**

*Assistant Secretary for Export Enforcement.*

Entered this 19th day of November, 1990.

[FR Doc. 90-28385 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-DT-M

**Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting**

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held December 17, 1990, 9:30 a.m. in the Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology and Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings of portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: November 28, 1990.

**Betty Anne Ferrell,**

*Director, Technical Advisory Unit Office of Technology and Policy Analysis.*

[FR Doc. 90-28415 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-DT-M

## National Oceanic and Atmospheric Administration

**Stone Crab Fishery of the Gulf of Mexico**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

**DATES:** Written comments must be received on or before January 24, 1991

**ADDRESSES:** Copies of Amendment 4 are available from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609-2486. Comments should be sent to Michael E. Justen, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comments in determining approvability of the document.

On July 24, 1989 (54 FR 30826), NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery management plans. In compliance with the revised guidelines, Amendment 4 proposes to add to the FMP a scientifically measurable definition of overfishing and an action plan to arrest overfishing should it occur. Overfishing exists when the realized egg production per recruit is reduced below 70 percent of potential production. Overfishing will be avoided when there is a minimum claw length that assures survival of the crabs to achieve the 70 percent egg production per recruit potential. Should overfishing occur, the Council and Florida would adjust by regulatory amendment the minimum claw length allowed to be harvested or the fishing mortality rate to increase the egg production potential per recruit to at least 70 percent. Discussion of the proposed definition and action plan are contained in Amendment 4.

In compliance with an amendment to the Magnuson Act (Pub. L. 99-659), Amendment 4 would also add to the FMP a section on vessel safety considerations and revise the section on habitat of significance to the fishery.

No regulatory changes are proposed as a result of Amendment 4.



**Authority:** 16 U.S.C. 1801, *et seq.*

Dated: November 29, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28399 Filed 11-29-90; 2:03 pm]

BILLING CODE 3510-22-M

**Gulf of Mexico Fishery Management Council; Public Hearings**

**AGENCY:** National Marine Fisheries Service, (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearings and request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public hearings on draft Amendment 3 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, which includes changing the target date for rebuilding reef fish stocks to January 1, 2007, and inclusion of speckled hind in the deep-water grouper category.

**DATES:** Public comments will be accepted through January 16, 1991. All hearings will begin at 7 p.m., and adjourn at 10 p.m., and are scheduled as follows:

1. Monday, December 10, 1990, Largo, Florida.
2. Tuesday, December 11, 1990, Mobile, Alabama.
3. Wednesday, December 12, 1990, Thibodaux, Louisiana.
4. Thursday, December 13, 1990, Galveston, Texas.

**ADDRESSES:** Comments may be mailed to Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609. The hearings will be held at the following locations:

1. Pinellas County Cooperative Extension Service Auditorium, 12175 125th Street North, Largo, Florida.
2. Mobile Civic Center, 401 Civic Center Drive, Mobile, Alabama.
3. Powell Auditorium, Nichols State University, Thibodaux, Louisiana.
4. Moody Civic Center, 2102 Seawall Boulevard, Galveston, Texas.

**FOR FURTHER INFORMATION CONTACT:** Douglas Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida, 813-228-2815.

Dated: November 28, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28398 Filed 12-3-90; 8:45 am]

BILLING CODE 3510-22-M

## COMMODITY FUTURES TRADING COMMISSION

**Commodity Exchange, Inc., Proposed Physical Option Contract**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed physical option contract.

**SUMMARY:** The Commodity Exchange, Inc. (COMEX) has applied for designation as a contract market in five-day gold physical options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, as determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before January 3, 1991.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX five-day gold option contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, at (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** The Comex's proposed five-day gold option contract represents a series of options based on the nearest, non-spot-month Comex gold futures "cycle" month and comprising a week-long (five-business-day) expiration cycle. Under the proposed contract terms, Comex will list one put and one call option each business day of the week based on the nearest of the following five gold futures "cycle" months—February, April, June, August, and December—which is not a spot month at the time of listing or expiration of the option. Each new put and call option will be listed at a strike price equal to the settlement price of the underlying futures contract on the preceding business day rounded to the nearest, higher whole-dollar increment. Each option will expire at the close of business five business days after the day preceding the initial listing day.

Five-day gold options that are in the money will be exercised automatically and cash settled at expiration. The options will be non-exercisable by the purchaser. Cash-settlement at expiration will be based on the "terminal value" of the option. As defined by the Comex, the terminal value will be based on the volume-weighted average price of the relevant gold futures contract month over the last fifteen minutes of trading on the expiration day of the five-day gold option. In the case of a call, the terminal value will be the dollar amount of the volume-weighted average settlement price of the underlying futures contract month on the option expiration day less the dollar amount of the strike price of the option (the difference multiplied by one hundred ounces—the contract size). For a put, the terminal value is the dollar amount of the strike price of the option less the dollar amount of the volume-weighted average settlement price of the underlying futures contract month on the option expiration day (the difference multiplied by one hundred ounces).

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or phone at (202) 254-6314.

Other materials submitted by the COMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the COMEX in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 28, 1990.

**Gerald Gay,**

*Director.*

[FR Doc. 90-28407 Filed 12-3-90; 8:45 am]

BILLING CODE 6351-01-M

BEST COPY AVAILABLE

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Ada Board; Meeting

**ACTION:** Notice of Meeting.

**SUMMARY:** A meeting of the Ada Board will be held Friday, December 14, 1990 from 9 a.m. to 5 p.m. at the San Diego Princess Hotel, 1404 West Vacation Road, San Diego, California.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland, 20760, (703) 685–1477.

Dated: November 29, 1990.

L.M. Bynum,

*Office of the Secretary of Defense, Federal Register Liaison Office.*

[FR Doc. 90–28383 Filed 12–3–90; 8:45 am]

BILLING CODE 3810-01-M

## Defense Logistics Agency

### Privacy Act of 1974; Computer Matching Program Between the Department of Housing and Urban Development and the Department of Defense

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Defense (DoD).

**SUMMARY:** The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between HUD and DoD that their records are being matched by computer. The record subjects are HUD delinquent debtors who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by HUD so as to permit HUD to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

**DATES:** This proposed action will become effective January 3, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), HUD and DoD has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by HUD under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal Government so that HUD can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between HUD and DoD is available to the public upon request. Requests should be submitted to the address caption above or to the Systems Accountant, Cash and Credit Management Staff, Room 2118, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 15, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: November 23, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Computer Matching Program Between the Department of Housing and Urban Development and the Department of Defense for Debt Collection

*A. Participating Agencies*

Participants in this computer matching program are the Cash and Credit Management Staff of the Department of Housing and Urban Development (HUD) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). HUD is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

*B. Purpose of the Match*

The purpose of the match is to identify and locate HUD delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts to the United States Government under the following programs administered by HUD so as to permit HUD to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

1. Defaulted loans for mobile homes and home improvements that HUD is a guarantor and payor of last resort to lenders under Title 1, section 2 of the National Housing Act, as amended, 12 U.S.C. 1703.

2. Defaulted single family notes that HUD is a guarantor and payor of last resort to lenders under section 114(a) of the Housing Act of 1959, as amended, (Pub. L. 86–372), 12 U.S.C. 1702 *et seq.*

3. Defaulted individual direct rehabilitation loans that HUD is a guarantor and payor of last resort to lenders under section 312, Housing Act of 1964, as amended, (Pub. L. 88–560), 42 U.S.C. 1452(b).

4. HUD Departmental claim against individuals.

*C. Authority for conducting the match*

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR part 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 24 CFR part 17, Administrative Claims, subpart C 17.80 and 17.125–17.140, Salary Offset Provisions (HUD).

*D. Records to be matched*

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. HUD will records from a system of records identified as HUD/DEPT 2, entitled "Accounting Records", last published in the **Federal Register** at 53 FR 17676 on April 26, 1990.

2. DMDC will use records from a system of records identified as S322.11 DLA–LZ, entitled "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495 on October 7, 1987.

The categories of records in the HUD systems are delinquent debtors. The categories of records in the DoD system consists of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the interchange of the affected personal information between HUD and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

*E. Description of computer matching program*

A magnetic computer tape provided by HUD will contain data elements of the debtor's name, SSN, internal account number and total amount owed on approximately 203,303 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM governmentwide Federal civilian records of current and retired Federal employees. DMDC will match the SSN on the HUD tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

*F. Individual notice and opportunity to contest*

Due process procedures will be provided by HUD to those individuals matched (hits) consisting of HUD's verification of debt; 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek HUD's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to HUD for repayment. Only when all of the steps have been taken will HUD disclose pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies HUD otherwise within 30 days from the date of the notice, HUD will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as acquiescence on the part of the debtor as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

*G. Inclusive dates of the matching program*

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between HUD and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

*H. Address for receipt of public comments or inquiries*

Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 90–27982 Filed 12–3–90; 8:45 am]

BILLING CODE 3810-01-M



## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before January 3, 1991.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell, (202) 708–5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing

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proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: November 28, 1990.

James O'Donnell,

*Acting Director, for Office of Information Resources Management.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Extension.
*Title:* Telecaption 4000 Rebate Offer.
*Frequency:* One time.
*Affected Public:* Individuals or households.

*Reporting Burden:*
*Responses:* 37,500.
*Burden Hours:* 1,238.

*Recordkeeping Burden:*
*Recordkeepers:* 0.
*Burden Hours:* 0.

*Abstract:* This form will be used by consumers to receive a rebate offer for purchasing the telecaption decoder. The National Captioning Institute, (NMCI) funded by the Department will use the information to verify purchase of the decoder in order to mail the rebate to the consumer.

[FR Doc. 90-28343 Filed 12-3-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 10628-000; Virginia]**

### Fairfax County Water Authority; Availability of Environmental Assessment

November 27, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the constructed Occoquan River Hydroelectric Project located on the Occoquan River in Fairfax and Prince William Counties, near Occoquan, Virginia, and has prepared an Environmental Assessment (EA) for the constructed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-28336 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

**[Project No. 10122-002]**

### Carl Liebig; Surrender of Exemption

November 27, 1990.

Take notice that Carl Liebig, exemptee for the Boulder Creek Project No. 10122, has requested that its exemption be terminated because construction of the project is not economically feasible at this time. The exemption was issued April 30, 1987. The project would have been located on Boulder Creek in Lake County, Montana. The exemptee has stated that no ground disturbing activity has taken place; therefore, no conditions are needed concerning the restoration of lands.

The exemptee filed the request on November 1, 1990, and the exemption for Project No. 10122 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-28337 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

### United States Department of Energy—Alaska Power Administration; Filing

**[Docket No. EF91-1011-000]**

November 27, 1990.

Take notice that on November 13, 1990, the Alaska Power Administration tendered its response to a deficiency letter, issued October 31, 1990, by the Acting Director of the Office of Electric Power Regulation in connection with the filing of the Alaska Power Administration in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-28338 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP91-33-000, RP89-45-005, RP89-127-004, RP89-193-004, RP90-18-005, and RP90-46-002]**

### ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 27, 1990.

Take notice that ANR Pipeline Company (ANR) on November 21, 1990 tendered for filing as part of its Original Volume No. 1 FERC Gas Tariff, six copies each of the following tariff sheets which ANR proposes to be effective on December 21, 1990:

Seventh Revised Sheet No. 88
Seventh Revised Sheet No. 89
Seventh Revised Sheet No. 90
Sixth Revised Sheet No. 90A
Third Revised Sheet No. 90A. 1
Fourth Revised Sheet No. 116
Third Revised Sheet No. 117
Third Revised Sheet No. 118
Third Revised Sheet No. 119
Second Revised Sheet No. 120
Second Revised Sheet No. 121
Third Revised Sheet No. 124
Third Revised Sheet No. 125
Second Revised Sheet No. 126
Second Revised Sheet No. 127

The above referenced tariff sheets are being submitted to implement a revised methodology for allocating the fixed monthly charge portion of ANR's buyout buydown costs pursuant to Commission Order No. 528. Specifically, ANR seeks to revise the allocation percentages applicable to the fixed monthly charges which ANR renders to its firm sales customers.



ANR states that copies of the filing were served upon all of its sales customers, interested State Commissions and each person listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 4, 1990, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-28339 Filed 12-3-90; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-00296; FRL-3843-1]**

### State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 10, 1990 and ending on December 11, 1990. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

**DATES:** The SFIREG will meet on Monday, December 10, 1990, from 8:30 a.m. to 5 p.m. and on Tuesday, December 11, 1990, beginning at 8:30 a.m. and adjourning at approximately 1 p.m.

**ADDRESSES:** The meeting will be held at: Hyatt Regency - Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703) 418-1234.

**FOR FURTHER INFORMATION CONTACT:** By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1007, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-2317.

**SUPPLEMENTARY INFORMATION:** The tentative agenda includes the following:

1. Regional reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of the Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Discussion of mesocosm studies.
7. Report from the November 28, 1990 Office of Pesticides and Toxic Substances National Meeting held in Dallas, Texas.
8. Presentation of SFIREG Working Committee Issue Papers including wetlands labeling, use of FIFRA section 2(ee), and use of the term "reregistered" on labeling and advertising.

Dated: November 23, 1990.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

[FR Doc. 90-28411 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

**[OPTS-44559; FRL 3804-7]**

### TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data on *meta*-phenylenediamine (*m*-pda) (CAS No.108-45-2), *ortho*-phenylenediamine (*o*-pda) (CAS No. 95-54-5), *para*-phenylenediamine (*p*-pda) (CAS No. 106-50-3), and tributyl phosphate (TBP) (CAS No. 126-73-8), submitted pursuant to a final test rule.

Data were also received on 1,1,1-trichloroethane (CAS No. 71-55-6), triethylene glycol monomethyl (TGME) (CAS No. 112-35-6) and Triethylene glycol monoethyl ethers (TGEE) (CAS No. 112-50-5), crotonaldehyde (CAS No. 4170-30-3), C. I. disperse blue 79:1 (CAS No. 3618-72-2), and alkyl phthalates: diundecyl (CAS No. 3648-20-2), di(isononyl) (CAS Nos. 28553-12-0 and 68515-48-0), ditridecyl (CAS Nos. 119-06-2 and 68515-47-9), and di(isodecyl) (CAS Nos. 26761-40-0 and 68515-49-1). This data were submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-709), Office of Toxic Substances, Environmental Protection Agency, room E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. The "Receipt of Test Data" notice has not been published in the **Federal Register** since September 11, 1990, because of the delay in approving the FY91 budget. This notice contains all 4(d) final reports EPA has received since September 11th. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

### I. Test Data Submissions

Test data for *m*-pda, *o*-pda and *p*-pda were submitted by E. I. du Pont de Nemours and Co., on behalf of the test sponsors and pursuant to a final test rule at 40 CFR 799.3300. They were received by EPA on September 18 and 21, 1990, and October 23, 1990. The September 18th submission describes the acute oral neurotoxicity studies in rats. The September 21st submission describes indirect photolysis screening tests. The October 23rd submission for *o*-pda and *p*-pda describes the acute toxicity to rainbow trout (*oncorhynchus mykiss*). Neurotoxicity and chemical fate testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

Test data for (TBP) were submitted by Synthetic Organic Chemical Manufacturers Association, on behalf of the test sponsors and pursuant to a final test rule at 40 CFR 799.4360. They were received by EPA on September 27 and 28, 1990, and October 2, 1990. The submissions describe the sediment and soil adsorption isotherm test, the hydrolysis rate test, and the vapor pressure test. Chemical fate testing is required by this test rule. This chemical is used as base stock in the formulation of fire-resistant aircraft hydraulic fluids.

Test data for 1,1,1-trichloroethane were submitted by Halogenated Solvents Industry Alliance, on behalf of the test sponsors and pursuant to a

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consent order at 40 CFR 799.5000. They were received by EPA on September 18 and October 23, 1990. The September 18th submission describes the acute inhalation neurophysiology effects in rats. The October 23rd submission describes the mouse micronucleus test. Neurotoxicity testing is required by this consent order. This chemical is used as a cleaning stabilizer.

Test data for TGME and TGEE were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 3, 1990. The submission describes a 13-week dermal toxicity study in rats, and a 90-day subchronic drinking water inclusion neurotoxicity study in rats. Dermal subchronic toxicity and neurotoxicity testing is required by this test rule. These chemicals are used as chemical intermediates, and as a diluent in brake fluid.

Test data for crotonaldehyde were submitted by Eastman Kodak Company, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 31, 1990. The submissions describe: acute algal, daphnid, fathead minnow, gammarid and rainbow trout studies, and a ready biodegradability study. Acute toxicity testing is required by this test rule. This chemical is used as an intermediate to produce crotonic acid, sorbic acid, 3-methoxybutanol and *n*-butanol.

Test data for C.I. disperse blue 79:1 were submitted by the Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on November 6, 1990. The submission describes the drosophila sex-linked recessive lethal test. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

Test data for alkyl phthalates were submitted by the Chemical Manufacturers Association, on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on October 23 and November 5, 1990. The October 23rd submission describes the analytical characterization of $^{14}C$-labelled phthalate esters for diundecyl, di(isononyl) (mixed isomers), and ditridecyl phthalate (mixed isomers). The November 5th submission describes the analytical characterization of $^{14}C$-labelled phthalate esters for di(isodecyl) phthalate (mixed isomers). Environmental effects and chemical fate testing is required by this consent order. This chemical is use primarily as a plasticizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

**II. Public Record**

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44559). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, room NE-G004, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

Dated: November 23, 1990.

**James E. Willis,**

*Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 90-28412 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

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**[OPTS-59896; FRL 3842-1]**

## Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 6 such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

*Y 91-32,* November 18, 1990.
*Y 91-33,* November 22, 1990.
*Y 91-34,* November 21, 1990.
*Y 91-35, 91-36,* November 26, 1990.
*Y 91-37,* November 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon, and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**Y 91-32**

*Manufacturer.* Confidential.

*Chemical.* (G) Alkanedioic acid, polymer with N<N-dialkylalkanamine, 3-hyroxymethyl-2-alkylpropanoate, alkanediolalkanediamine and 1,1'-methylene bis (4-isocyanatocyclohexane).

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**Y 91-33**

*Importer.* Confidential.

*Chemical.* (G) Aromatic polyurethane resin.

*Use/Import.* (S) Textile coating. Import range: Confidential.

**Y 91-34**

*Manufacturer.* E. I. Du Pont De Nemours & Co., Inc.

*Chemical.* (G) Waterborne poly acrylourethane.

*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**Y 91-35**

*Manufacturer.* The Woodbridge Corporation.

*Chemical.* (G) Polyurethane suspension in polyol.

*Use/Production.* (G) Manufacture of polyurethane form. Prod. range: Confidential.

**Y 91-36**

*Manufacturer.* H.B. Fuller Company.

*Chemical.* (G) Polyamide.

*Use/Production.* (S) Adhesive. Prod. range: Confidential.

**Y 91-37**

*Importer.* Bostik, Inc.

*Chemical.* (G) Waterborne polyurethane.

*Use/Import.* (G) Open, nondispersive use. Import range: Confidential.



Dated: November 21, 1990.

**Steve Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-28413 Filed 12-3-90; 8:45 am]

BILLING CODE 6560-50-F

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## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

| Applicant | File No. | MM Docket No. |
|---|---|---|
| **I** | | |
| A. Gary Sellers; Paintsville, KY. | BPH-891215ML | 90-433 |
| B. Morehead State University; Paintsville, KY. | BPED-891220MD | |
| C. B & G Broadcasting, Inc.; Paintsville, KY. | BPH-891220MH | |
| D. Ray Edmund Preston,II; Paintsville, KY. | BPH-891220MI | |
| *Issue Heading and Applicant* | | |
| 1. Financial, B | | |
| 2. Site Availability, B | | |
| 3. Main Studio, B | | |
| 4. Air Hazard, B, C, D | | |
| 5. Comparative, All applicants | | |
| 6. Ultimate, All applicants | | |
| **II** | | |
| A. The Cromwell Group, Inc.; Wilmore, KY. | BPH-880727MM | 90-432 |
| B. Marianne Warnock; Wilmore, KY. | BPH-880727NE | |
| C. Absolute Broadcasting Company; Wilmore, KY. | BPH-880728MD | |
| *Issue Heading and Applicant* | | |
| 1. Air Hazard, C | | |
| 2. Comparative, A, B, C | | |
| 3. Ultimate, A, B, C | | |
| **III** | | |
| A. American Indian Broadcast Group, Inc.; Vero Beach, FL. | BPH-880523MF | 90-434 |
| B. Sun Coast Broadcasting Company; Vero Beach, FL. | BPH-880523MG | |
| C. Gwendolyn G. Rowland; Vero Beach, FL. | BPH-880523ML | |
| D. WTET Limited Partnership; Vero Beach, FL. | BPH-880523MM | |
| E. Wilson Broadcasting Co., Inc.; Vero Beach, FL. | BPH-880523MO | |
| F. Margarita Bouza Fernandez; Vero Beach, FL. | BPH-880523MP | |
| G. Indian River Broadcasting, Inc.; Vero Beach, FL. | BPH-880523MS | |
| H. Denette Schweikert; Vero Beach, FL. | BPH-880523MT | |
| I. Vero Beach Communications, Inc.; Vero Beach, FL. | BPH-880523MV | |
| J. Orchid Isle Communications, Inc.; Vero Beach, FL. | BPH-880523MW | |
| K. Fisher Broadcasting, Inc.; Vero Beach, FL. | BPH-880523MY | |
| L. Coastal Communications FM Radio Limited Partnership; Vero Beach, FL. | BPH-880523MZ | |
| M. Media VI, a Florida General Partnership; Vero Beach, FL. | BPH-880523NA | |
| N. John D. Earman; Vero Beach, FL. | BPH-880523NF | |
| O. Joann Radakovic; Vero Beach, FL. | BPH-880523MR (Dismissed Herein) | |
| *Issue Heading and Applicants* | | |
| 1. Environmental Impact, C | | |
| 2. City Coverage, C | | |
| 3. Financial, E | | |
| 4. (See Appendix), G | | |
| 5. (See Appendix), G | | |
| 6. (See Appendix), G | | |
| 7. (See Appendix), G | | |
| 8. Site Availability, K | | |
| 9. (See Appendix), N | | |
| 10. Air Hazard, A, B, D, E, F, G, J, M, N | | |
| 11. Comparative, A, B, C, D, E, F, G, H, I, J, K, L, M, N | | |
| 12. Ultimate, A, B, C, D, E, F, G, H, I, J, K, L, M, N | | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division.*

### Appendix (Vero Beach, Florida)

4. To determine whether Sonrise Management Services, Inc. is an undisclosed party to G's (River) application.

5. To determine whether G's (River) organizational structure is a sham.

6. To determine whether G (River) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report that an application in which one or more of its partners has an ownership interest was dismissed with prejudice with an unresolved character issue pending.

7. To determine, from the evidence adduced pursuant to Issues 4 through 6 above, whether G (River) possesses the basic qualifications to be a licensee of the facilities sought herein.

9. To determine with respect to N (Earman) (a) whether the applicant has reasonable assurance that the transmitter site specified is available to it; (b) whether N (Earman) violated § 1.65 of the Commission's Rules and/or lacked candor, by failing to report that his proposed site had been rejected by the State of Florida; and (c) whether, in light of the evidence adduced pursuant to issues (a) and (b) above, whether N (Earman) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-28362 Filed 12-3-90; 8:45 am]

BILLING CODE 6712-01-M

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## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Space Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-011307

*Title:* Space Charter Agreement Between Compagnie Generale Maritime and Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen, B.V.

*Parties:*

P&O Containers Limited
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM).

*Synopsis:* The proposed Agreement would authorize the parties to charter and cross-charter space to each other, rationalize schedules and sailings, lease and interchange equipment, share terminals and undertake additional activities in the trade between North European ports and U.S. North Atlantic Coast ports. Commencing in April, 1992, the Agreement would include ports on the U.S. South Atlantic and Gulf Coasts, and other European ports. The Agreement will be effective for a five-year term.

By Order of the Federal Maritime Commission.

Dated: November 28, 1990.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28345 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 1007 North America Way, Miami, FL 33132.

*Vessel:* Seabreeze I.

Dated: November 28, 1990.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28346 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended.

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Compania de Vapores Seabreeze S.A., 1007 North America Way, Miami, FL 33132.

*Vessel:* SEABREEZE I.

Dated: November 28, 1990.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28347 Filed 12-3-90; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Office of the Assistant Secretary for Health, Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, chapter HD (Public Health Service Regional Offices, HD1-HDX), 44 FR 21711, April 11, 1979, as amended most recently at 52 FR 15391-92, April 28, 1987) is amended to reflect changes in Region III, Philadelphia, Pennsylvania, that retitles the Division of Health Resources Development as the Division of Family Health and Resources Development. There are no organization changes in the remaining nine regional offices.

**Public Health Service Regional Offices**

Under Chapter HD, Public Health Service Regional Offices, following Section HD-00, Mission, delete Section HD-10, Organization, and substitute the following:

*Section HD-10, Organization.* The Public Health Service Regional Offices (HD1-HDX) consist of:

Office of Regional Health Administrator (HD1-HDX)
Office of Engineering Services (HD*E) [1]
Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*V) [2]
Division of Community Health Services (HD*C) [3]
Division of Family Health and Resources Development (HD*R) [4]
Division of Health Resources Development (HD*W) [5]
Division of Federal Employee Occupational Health (HD*H)

Revise the footnotes referenced for the PHS Regional Office organizations to read as follows:

[1] Offices located in Regions II, VI, and X.
[2] Division in all regions except Region IV.
[3] Division in Region IV.
[4] Division in Regions III and IV.
[5] Division in all regions except Regions III and IV.

Under Section HD-20, Functions, Public Health Service (PHS) Regional Offices (HD1-HDX), after the statement for the Division of Health Resources Development (HD*W), revise the footnote to reflect that this Division is in all Regional Offices except Region III and Region IV.

Under the title for the Division of Family Health and Resources Development, change the organizational code to (HD*R) and reference the statement and Footnote [1] to reflect that this Division is in Region III and Region IV.

Dated: November 21, 1990.

Wilford J. Forbush,
*Director, Office of Management.*

[FR Doc. 90-28327 Filed 12-3-90; 8:45 am]

BILLING CODE 4160-17-M



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[G-810-G1-0406-4111-13; NMNM 13277]

### Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of 43 CFR 3108.2-3, Anadarko Petroleum Corporation, et al., petitioned for reinstatement of Oil and Gas Lease NMNM 13277 covering the following described land located in Lea County, New Mexico:

T. 20 S., R. 33 E.,
Sec. 12, SW¼SE¼
Containing 40.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the land. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year, and royalties shall be at the rate of 16⅔ percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee. Reinstatement of the lease will be effective as of the date of termination, March 1, 1990.

Dated: November 23, 1990.

Dolores L. Vigil,
*Chief, Adjudication Section.*

[FR Doc. 90-28326 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-FB-M

### Bureau of Land Management (BLM)

[AZA-24479-ZAHD]

### Arizona; Receipt of Conveyance of Mineral Interest Application

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Little Horse Ranch Limited Partnership has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 5 W.,
Secs. 7, 8, 9, 17, 18.
T. 10 N., R. 6 W.,
Secs. 1, 4, 5, 11, 12, 13, 21, 24, 25, 27, 28, 35.
T. 11 N., R. 6 W.,
Sec. 33.
T. 10 N., R. 7 W.,
Secs. 21, 22, 27, 28.
T. 11 N., R. 7 W.,
Secs. 25, 26, 27, 34, 35.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Lower Gila Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Arizona 85025.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance or a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of application, April 10, 1990, whichever occurs first.

Dated: November 21, 1990.

Henri R. Bisson,
*District Manager.*

[FR Doc. 90-28324 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-01-4214-11; GP1-054; OR-21977, et al.]

### Proposed Continuation of Withdrawals; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved.

**Umpqua National Forest**

1. OR-21277, Secretarial Order dated April 23, 1908. Wolf Creek Administrative Site, 60 acres located in Sec. 9, T. 27 S., R. 2 W., W.M., in Douglas County, approximately 20 miles east of Roseburg.

2. OR-21979, Secretarial Order dated July 29, 1908. South Umpqua Falls Administrative Site, 21.58 acres located in section 2, T. 29 S., R. 1 E., W.M., in Douglas County, approximately 6 miles northeast of Canyonville.

**Mt. Baker—Snoqualmie National Forest**

3. OR-22163(WASH), Secretarial Order dated March 19, 1908, and amended by the Secretarial Order dated July 22, 1914. Clear Creek Administrative Site, 13 acres located in section 31, T. 32 N., R. 10 E., W.M., in Snohomish County, approximately 3 miles east of Darrington.

4. OR-22360(WASH), Secretarial Order dated November 23, 1908, and amended by the Secretarial Order dated June 18, 1908. Marble Creek Administrative Site, 97.2 acres located in section 8, T. 35 N., R. 12 E., W.M., in Snohomish County, approximately 15 miles east of Rockport.

**Olympic National Forest**

5. OR-22150(WASH), Secretarial Order dated June 11, 1908. Willoby Administrative Site, 12.95 acres located in section 19, T. 23 N., R. 9 W., W.M., in Grays Harbor County, approximately 1 mile west of Quinault.

**Wenatchee National Forest**

6. OR-22244(WASH), Public Land Order No. 725 dated June 4, 1951. Swauk Campground Site, 240 acres located in sections 1, 11, 12, T. 21, N., R. 17 E., W.M., in Kittitas County, approximately 18 miles west of Wenatchee.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public laws in general. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in

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writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will continue until such final determination is made.

Dated: November 21, 1990.

Robert E. Mollohan,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 90-28366 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-84-M

## National Park Service

### National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 24, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 19, 1990.

Carol D. Shull,

*Chief of Registration, National Register.*

ARKANSAS

Bradley County

*Martin, Dr. John Wilson, House,* 200 Ash St., Warren, 90001948

Carroll County

*Lake Leatherwood Recreational Facilities (Facilities Constructed by the Civilian Conservation Corps in Arkansas, 1933-1942, MPS),* End of Co. Rd. #61, Eureka Springs vicinity, 90001942

*Leatherwood Dam (Facilities Constructed by the Civilian Conservation Corps in Arkansas, 1933-1942, MPS),* N. End of Lake Leatherwood, Eureka Springs vicinity, 90001943

Miller County

*Wynn-Price House,* Price St., Garland vicinity, 90001950

Nevada County

*Carolina Methodist Church,* Co. Rd. #10 E of jct. with Kirk Rd., Poison Springs SF, Rosston vicinity, 90001947

Union County

*McDonald, D., House,* 800 S. Broadway, Smackover, 90001949

Washington County

*Villa Rosa,* 617 W. Lafayette, Fayetteville, 90001946

CONNECTICUT

New Haven County

*Fulton, Lewis, Memorial Park,* Roughly bounded by Cook, Pine, Fern & Charlotte Sts., Waterbury, 90001951

MARYLAND

Somerset County

*Hayman, Jeptha, House,* Westover—Marion Rd. S of jct. with Charles Barnes Rd., Kingston vicinity, 90001939

Washington County

*Lehman's Mill Historic District,* Lehman's Mill Rd. between Marsh Pike & Marsh Run, Hagerstown vicinity, 90001945

MASSACHUSETTS

Berkshire County

*Pettibone Farm,* Old Cheshire Rd. N of jct. with Nobodys Rd., Lanesborough, 90001944

NORTH CAROLINA

Cabarrus County

*Morrison, Robert Harvey, Farm and Pioneer Mills Gold Mine,* 730 Morrison Rd., Midland vicinity, 90001952

SOUTH CAROLINA

Marlboro County

*Franklinton Depot,* 201 E. Mason St., Franklinton, 90001941

SOUTH DAKOTA

Lyman County

*Fort Lookout IV,* Address Restricted, Oacoma vicinity 90001940

TENNESSEE

Franklin County

*Hundred Oaks,* Oak St. at U.S. 64, Winchester, 75001753

[FR Doc. 90-28349 Filed 12-3-90; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31781]

### Michael R. Boyce, et al.—Control Exemption—Trona Railway Co.

Michael R. Boyce, Mark C. Demetree, Richard J. Donahue, D. George Harris, Richard J. Nick, and Anthony J. Petrocelli (Acquisition Group), noncarrier, individuals, have filed a notice of exemption to acquire control of class III rail carrier Trona Railway Company (TRC), which operates in California.

Acquisition Group currently controls non-connecting class III rail carrier Hutchinson and Northern Railway Company (H&N), which operates in Kansas. Control of H&N is achieved indirectly through Acquisition Group's control of NAMSCO Inc.,[1] which in turn owns subsidiaries North American Salt Company (NAS) and North American Chemical Company (NAC). H&N is, in turn, a wholly owned subsidiary of NAS.

Acquisition Group, through NAC, will acquire indirect control of TRC through an asset purchase of Soda Products Division of Kerr-McGee Chemical Corporation (Kerr-McGee), a noncarrier, which owns 100 percent of the voting stock of TRC. Following consummation of the proposed transaction, Acquisition Group will hold approximately 68 percent of the voting stock of NAC. After the transaction is consummated, Acquisition Group will control two carriers, H&N and TRC.

Acquisition Group indicates that: (1) The properties operated by H&N and TRC will not connect with each other; (2) the acquisition of control is not part of a series of anticipated transactions that would connect the rail carriers with each other; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Paul A. Cunningham, Pepper, Hamilton & Scheetz, 1300 19th Street NW., Washington, DC 20036.

Decided: November 28, 1990.

[1] Acquisition Group owns 35.95 percent of NAMSCO's outstanding voting stock. Individuals comprising the Group constitute a majority of NAMSCO's five-member board of directors and hold all of the major management positions at NAMSCO.



By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-28401 Filed 12-3-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31786]

### Dallas Area Rapid Transit Property Acquisition Corp.—Acquisition and Operation Exemption—Rail Lines of Southern Pacific Transportation Co. et al.

Dallas Area Rapid Transit Property Acquisition Corporation (DARTPAC), a noncarrier, has filed a notice of exemption of acquire by purchase and to operate approximately 56 route miles of railroad in Dallas, Collin, and Tarrant Counties, TX, from Southern Pacific Transportation Company (SPT), St. Louis Southwestern Railway Company (SSW), and Dallas Terminal Railway and Union Depot Company (DTR). The properties consist of: (a) The SSW rail line between Ft. Worth (MP 632.27) and Wylie (MP 578.20); and (b) the SPT and DTR rail lines and yard track between Tower 19 and Oakland Ave. in downtown Dallas.

DARTPAC's corporate parent, Dallas Area Rapid Transit (DART), a rail carrier subject to this Commission's jurisdiction, has concurrently filed a related petition for exemption in Finance Docket No. 31778, *Dallas Area Rapid Transit—Control Exemption—Dallas Area Rapid Transit Property Acquisition Corporation.* In that proceeding, DART seeks an exemption under 49 U.S.C. 10505 from the prior review and approval requirements under 49 U.S.C. 11343 *et seq.* for its continuance in control of DARTPAC.

DARTPAC plans to consummate the purchase transaction on or before December 21, 1990. DARTPAC intends to grant trackage rights: (a) To SSW, to operate over the former SSW rail line between Ft. Worth and Wylie; and (b) to SSW and SPT, to operate over the former SPT and DTR rail lines and yard track between Tower 19 and Oakland Ave. It is anticipated that these trackage rights will become effective on or before December 21, 1990. DARTPAC indicates that SSW and SPT, by a separate filing with the Commission, will give notice of these trackage rights.

Any comments must be filed with the Commission and served on: Lonnie E. Blaydes, Jr., Dallas Area Rapid Transit Property Acquisition Corporation, 601 Pacific Ave., Dallas, TX 75202.

DARTPAC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 28, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-28400 Filed 12-3-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 90-16]

### Robert Park, R.Ph., d/b/a Powell's Riverside Pharmacy, Macon, GA; Hearing

Notice is hereby given that on February 16, 1990, the Drug Enforcement Administration, Department of Justice, issued to Robert Park, R.Ph., d/b/a Powell's Riverside Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP1189225, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on December 12, 1990, commencing at 9:30 a.m., at the U.S. District Court, Richard B. Russell Building, U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia. Room number of courtroom unknown at this time.

Dated: November 27, 1990.

Robert C. Bonner,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 90-28339 Filed 12-3-90; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-24,777]

### Evanite Fiber Corp., Corvallis, OR; Negative Determination Regarding Application for Reconsideration

By an application dated October 31, 1990 the United Paperworkers International Union (UPIU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 19, 1990 and published in the Federal Register on November 6, 1990 (55 FR 46738).

Pursuant 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Corvallis plant produces battery separators (the 10-G type and the all-glass-mat type) which are components of batteries. Also produced at Corvallis is glass paper, a battery separator component which is used internally and sold to outside battery separator producers. Investigation findings show that the workers were not separately identifiable by product.

The union claims that worker separations were the result of battery separator production going to Mexico.

The Department's denial was based on the fact that worker separations were the result of a transfer of production of the 10-G type battery separator in August 1990 to another domestic facility. Also, the Corvallis plant experienced increased sales of glass paper and the all-glass-mat type (AGM) battery separator in fiscal year (FY) 1990 compared to FY 1989.

Other investigation findings show that the major customers of Evanite Fiber changed their purchasing patterns to a different battery separator—a high tech submicro product also produced at Corvallis which has made the 10-G separator obsolete. Accordingly, a domestic transfer and a technological change would not provide a basis for a worker group certification.

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**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of November.

**Mary Ann Wyrsch,**

*Director, Office of Unemployment Insurance Service, UIS.*

[FR Doc. 90-28404 Filed 12-3-90; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panels; Notice of Meetings

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

**SUPPLEMENTARY INFORMATION:** The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

**CONTACT PERSON:** M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: November 28, 1990.

**M. Rebecca Winkler,**

*Committee Management Officer.*

| Committee name | Agenda | Date(s) | Times | Room [1] |
|---|---|---|---|---|
| International Programs Review Panel | JSPS/STA Postdoctoral | Dec. 14, 1990 | 8:30 a.m.-5 p.m. | 1214 |
| Ocean Sciences Review Panel (formerly Advisory Panel for Ocean Sciences Research). | REU Site Meeting | Dec. 18, 1990 | 10 a.m.-5 p.m. | 614 |

[1] At 1800 G Street, NW., Washington, DC.

[FR Doc. 90-28348 Filed 12-3-90; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Amendments to 10 CFR Part 36 on Licenses and Radiation Safety Requirements for Large Irradiators

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The NRC has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision or extension:* New.

2. *Title of the information collection:* "Proposed Amendments to 10 CFR part 36 on Licenses and Radiation Safety Requirements for Large Irradiators".

3. *The form number if applicable:* None.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Large gamma irradiator licensees.

6. *An estimate of the number of responses:* One report per year from each of the 25 irradiator licensees.

7. *An estimate of the total number of hours needed to complete the requirements or requests:* 18,750 hours annually (includes recordkeeping and reporting) by large irradiator licensees.

8. *The average burden per response is:* 750 hours per year.

9. *An indication of whether section 3504(h), Pub. L. 96-511 applies:* No.

10. *Abstract:* The proposed rule would adopt a new 10 CFR part 36 on licenses and radiation safety requirements for large gamma irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way such as sterilization or to promote chemical reactions. The proposed safety requirements are, for the most part, a codification of current licensing policy and practices. The proposed rule includes both facility and equipment design requirements and operational safety requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower-Level), Washington, DC.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150- ), Office of Information and Regulatory Affairs, NEOB-3109, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 27th day of November, 1990.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 90-28380 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Panel for Decontamination of Three Mile Island, Unit 2 Renewal

The United States Nuclear Regulatory Commission (NRC) announces the renewal of the Advisory Panel for Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of the charter for this advisory committee is in the public interest in order for NRC to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damage at Three Mile Island Nuclear Power Station, Unit 2. The charter which continues the Panel through November 28, 1992, has been filed with the appropriate Congressional Committees and the Library of Congress.

**FOR FURTHER INFORMATION CONTACT:** Michael Masnik, Office of Nuclear Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 301-492-2442.



Dated: November 28, 1990.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 90-28381 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

### Consumers Power Co., Palisades Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment from the requirements of appendix R to 10 CFR part 50 to Consumers Power Company (the licensee), for the Palisades Plant, located in Covert Township, Van Buren County, Michigan.

**Environmental Assessment**

*Identification of Proposed Action:* The exemption would grant relief from the requirements of appendix R, section III.G.(2)(d) as these requirements relate to the separation of cables and instrumentation in the Containment Air Room. Section III.G(2)(d) of appendix R would require the subject cables and equipment to be separated by 20 feet, free of intervening combustibles, since these cables and equipment comprise redundant trains of equipment required for post-fire, safe shutdown, of the reactor.

The exemption is in response to the licensee's application for exemption dated October 4, 1985, as supplemented August 8, 1990.

*The Need for the Proposed Action:* The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for the Containment Air Room comprise the most practical method for meeting the intent of appendix R; and, literal compliance would not significantly enhance the fire protection capability.

*Environmental Impacts of the Proposed Action:* The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Based on the amount and type of combustibles, and type of ignition source, a fire in the Containment Air Room is extremely unlikely. If a fire were to occur it would most likely be a small self-extinguishing fire that would generate dense smoke. If a much larger fire were to occur, the licensee has analyzed its effect on safety related instrumentation in the room and shown that sufficient instruments would be operable to safety shut down the plant. The proposed exemption does not include any alternations to the Containment Air Room or its existing fire protection capabilities; consequently, the probability of fires has not been increased and the potential for post-fire radiological releases will not be greater than previously determined. Additionally, the proposed exemption does not otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action:* It has been concluded that there is no measurable impact associated with the proposed exemption and associated license amendment; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

*Alternative Use of Resources:* This action involves no use of resources not previously considered in the Final Environmental Statements for the Palisades Plant.

*Agencies and Persons Consulted:* The NRC staff reviewed the licensee's requests and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 4, 1985, as supplemented August 8, 1990, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC and at the Van Zoeren Library, Hope College, Holland, Michigan.

Dated at Rockville, Maryland, this 23rd day of November 1990.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V, and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28377 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-315]

### Indiana Michigan Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the commission) is considering issuance of an amendment to Facility Operating License No. DPR-58, issued to Indiana Michigan Power Company, (the licensee), for operation of the Donald C. Cook Nuclear Power Plant Unit No. 1, located in Berrien County, Michigan.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TSS) relating to defective steam generator tubes allowing repair of defective steam generator tubes by using approved sleeves.

The proposed action is in accordance with the licensee's application for amendment dated June 27, 1990, as supplemented by a letter dated October 9, 1990.

*The Need for the Proposed Action*

The proposed change to the TS is required in order to provide the licensee the ability to perform repairs on steam generator tubes which are defective. Currently, defective tubes must be plugged and removed from service.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to TS and concludes that the proposed sleeving repairs can be accomplished to produce a sleeved tube of acceptable metallurgical properties, strength and mechanical stability, leak tightness and corrosion resistance. Also, that the pre-service integrity of the sleeves can be assured by implementing the proposed sleeve installation examinations. Thus, the proposed action would not affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Sleeving of defective tubes will be done on an as needed basis where practical. Because of the uncertainty as to the number of tubes

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which may require sleeving, the licensee could not provide an estimate of the total occupational dose for the sleeving activities. However, the licensee did provide information by letter dated November 21, 1990 that the estimated dose would be approximately 95 mrem per sleeve. While this is somewhat higher than the estimated dose for plugging tubes, the alternative repair method currently approved for use at the facility, this compares favorably with industry experience for similar repairs. In addition, it is expected that the dose for the proposed sleeving action would fall within the expected range for annual occupational exposure experienced at nuclear power plants. On this basis, the staff believes that the proposed action will not involve a significant increase in individual or cumulative radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on October 19, 1990 (55 FR 42528). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Donald C. Cook Nuclear Plant Units 1 and 2, dated August 1973.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated June 27, 1990 and a supplement dated October 9, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 27th day of November 1990.

For the Nuclear Regulatory Commission.

**Robert C. Pierson,**

*Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28379 Filed 12-3-90; 845 am]

BILLING CODE 7590-01-M

## Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** SECY 90-318 for comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of SECY 90-318 "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions" (dated September 12, 1990) for public comment. SECY 90-318 is available in the NRC Public Document Room, 2120 L Street, Washington, DC, telephone (202) 634-3273.

**DATES:** The comment period expires January 31, 1991.

**ADDRESSES:** Send written comments to James Kennedy, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** James Kennedy, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492-3401.

**DISCUSSION:** The Nuclear Regulatory Commission (NRC) staff has prepared an analysis of the issues associated with the waste title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) of 1985. The staff's analysis also identifies options for discharging the Commission's responsibilities under the Atomic Energy Act and LLRWPAA. Major issues related to these provisions include States taking possession of commercial low-level radioactive waste (LLW) after 1989 or 1990 in accordance with the LLRWPAA and licensing of such possession (including interim storage of the LLW until disposal facilities are available) by NRC and Agreement States. These issues and staff's recommendations were summarized in SECY 90-318 and discussed in a public meeting of the Commission on October 29, 1990.

During the meeting, the Commission decided to solicit the views of the public on the staff recommendations provided in SECY 90-318. The Commission will consider these views in deciding on an appropriate course of action. In addition to the public's general views on the title transfer and possession provisions of the LLRWPAA, the Commission is particularly interested in comments in response to the following questions:

1. What factors should the Commission consider in deciding whether to authorize on-site storage of LLW (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for periodic transmutor decay) beyond January 1, 1993?

2. What are the potential health and safety and environmental impacts of increased reliance on on-site storage of LLW?

3. Would LLW storage for other than operational needs beyond January 1, 1996, have an adverse impact on the incentive for timely development of permanent disposal capacity?

4. What specific administrative, technical, or legal issues are raised by the requirements for transfer of title?

5. What are the advantages and disadvantages of transfer of title and possession as separate steps?

6. Could any State or local laws interfere with or preclude transfer of title or possession of LLW?

7. What assurances of the availability of safe and sufficient disposal capacity for LLW should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurances?

8. Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of LLW and mixed (radioactive and chemical hazardous) waste?

Dated at Rockville, Maryland, this 28th day of November, 1990.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 90-28362 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M



## Draft Regulatory Guide and NUREG; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft of a new guide planned for its regulatory guide series together with a draft of the associated standard review plan for license renewal. This draft guide and the associated standard review plan are being issued to involve the public in the early stages of the development of regulatory guidance in the area of license renewal.

The draft guide, temporarily identified by its task number, DG-1009 (which should be mentioned in all correspondence concerning this draft guide), is titled, "Standard Format and Content of Technical Information for Applications To Renew Nuclear Power Plant Operating Licenses," and is intended for Division 1, "Power Reactors." The draft regulatory guide establishes a uniform format and content acceptable to the staff for structuring and presenting the technical information to be compiled and submitted by an applicant for a renewed operating license. More specifically, this draft regulatory guide describes (1) the content of technical information to be included in license renewal applications, (2) the criteria for selection of structures, systems and components important to license renewal for which age-related degradation should be assessed and accounted for, (3) guidance for the evaluation of design, operational, and environmental factors that contribute to age-related degradation, (4) the identification of aging mechanisms and specific degradation locations, and (5) the attributes of established effective programs and acceptable actions taken or to be taken to assess and manage age-related degradation. Additionally, detailed guidance for identifying, assessing and managing age-related degradation is contained in Appendix A to this draft regulatory guide.

The NRC is developing the draft "Standard Review Plan for License Renewal," (SRP-LR) for use by the NRC staff when performing safety reviews of applications for the renewal of power reactor licenses. The use of the SRP-LR when reviewing license renewal applications provides a framework for the staff to determine whether or not (1) the application is sufficient to allow the timely renewal provisions of 10 CFR 2.109 to apply, (2) systems, structures, and components important to license renewal have been identified, (3) significant age-related degradation has been identified and its effects evaluated, and (4) programs for age-related degradation management have been or will be implemented such that the current licensing basis will be maintained during the renewal term. The draft SRP-LR has been developed to enable the staff to identify areas and issues requiring review, and provides acceptance criteria to assist the reviewers.

The review criteria in the SRP-LR were developed by the NRC staff with assistance from experienced technical experts at both Pacific Northwest and Idaho National Engineering Laboratories. The criteria represent current knowledge and technical judgments on aging phenomena and age-related degradation management strategies. Although, in many instances, review procedures and acceptance criteria are not specified in detail, general guidance is provided. The staff expects that the SRP-LR will be periodically revised to include additional detail based on our review of the pilot-plant applications and the industry technical reports.

Public comments are being solicited on the draft regulatory guide and the draft standard review plan for license renewal. Comments should be accompanied by supporting data. In particular for the draft SRP-LR, written comments are desired in the following areas:

(1) Are there specific additional review criteria or review procedures for a system, structure, or component? Provide the supporting technical basis for these items.

(2) Are there specific review criteria or review procedures already in the document that should be modified?

**DATES:** The comment period expires March 8, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW. (lower level), Washington, DC.

The draft regulatory guide and the draft SRP-LR are available for inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street NW. (lower level), Washington, DC. Requests for single copies of the draft guide and draft SRP-LR (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides and NUREGs are not copyrighted, and Commission approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the draft regulatory guide contact Mr. Jitendra Vora, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3854. For information regarding the draft SRP-LR contact Mr. John Thoma, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-3148.

Dated at Rockville, Maryland, this 28th day of November, 1990.

For the Nuclear Regulatory Commission.

**Lawrence C. Shao,**

*Director, Division of Engineering, Office of Nuclear Regulatory Research.*

**Dennis M. Crutchfield,**

*Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28378 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-528]

**Arizona Public Service Co., et al.; Palo Verde Nuclear Generating Station, Unit No. 1, Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-41, issued to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power and Southern California Public Power Authority (licensees), for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

The proposed amendment would extend the date for the next regular inspection of steam generator tubes. This amendment was requested by the licensee's letter of November 14, 1990.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis that addressed the above three standards in the amendment application. The NRC staff has reviewed the licensee's analysis as follows:

1. The proposed Technical Specification amendment will not increase the probability or consequences of an accident previously evaluated because the Unit 1 steam generator tubes have been eddy current examined on four previous occasions since 1987. The most recent examination was July 1989, with 100 percent of the tubes being examined. The results of the examination determined that the indications identified are primarily associated with mechanical wear as opposed to chemistry or corrosion problems. The mechanical wear is due to vibration associated with normal plant operation. The overall results of the examination are very good, in that after completion of the second fuel cycle, the total number of degraded and/or defective tubes was minimal (19 tubes being plugged) and no significant wear patterns were observed.

Since the July 1989 eddy current examination, Unit 1 was shutdown until June 1990. During this time there was no mechanical wear that could contribute to tube degradation. Also during this shutdown period, chemistry control was maintained in accordance with plant procedures which dictates strict adherence to prescribed lay-up practices and specifications.

The Unit 1 steam generators entered wet-layup conditions on April 15, 1990. Other than the nitrogen overpressure not being maintained within specifications because of the main steam isolation valve (MSIV) work undertaken and the wet-layup recirculation line out of service for rework, the remaining chemistry control was well maintained with only a few instances when chemistry analyses indicated out of specification conditions. The pH was slightly low (SG #1) at 9.7 (specification is 9.8 to 10.5) on May 5, 1989. Chloride, sulfate, and sodium were well below the 1.0 ppm specification limit during the entire period. Hydrazine ranged from 61 to 178 ppm with an average of 123 ppm (75–200 ppm is the range).

The two occurrences of possible concern were the lack of a nitrogen overpressure while the MSIV work was undertaken and the lack of sampling between September 25, 1989 and November 16, 1989. During wet-layup, steam generator sampling is accomplished via the wet-layup recirculation line. This line was out of service due to repair of a valve in the recirculation system. The first hydrazine analysis after this period showed no appreciable depletion in hydrazine concentration. Subsequent samples taken after restoration of the recirculation system showed a slight change from 155 to 123 ppm. Similar conditions existed for SG #2 during this time period with hydrazine still well within the band of 75 to 200 ppm as prescribed in procedure 74AC-9CY04. And again the sodium, chloride, and sulfate were well within the wet-layup specifications. Both steam generators had hydrazine contents of at least 60 ppm, with chloride, sulfate, and sodium below the 1 ppm limit. Both steam generators had one day where the pH dropped below the specified 9.8.

The concern with the lack of nitrogen overpressure and wet-layup chemistry would be the potential impact of corrosion on the steam generator. In order to evaluate this possibility, an evaluation was undertaken by the steam generator manufacturer.

The materials of construction for the steam generators are grouped in the following categories:

—Alloy 600 is used for the heat transfer steam generator tubes.
—Ferritic stainless steel (type 405 or 409) used for eggcrates, batwings and flow distribution plate.
—Low alloy steels or carbon steel is used for tubesheet stay, shells, baffles, dryers and separators.

In summary, the lack of nitrogen overpressure surveillance when considered in conjunction with the remaining wet-layup chemistry is not expected to have any adverse corrosion effects. Specifically, pitting should not occur in the Alloy 600 tubing. Although the water was exposed to oxygen, the pH was maintained between 9.8 and 10.5, (except for one day where the pH dropped to 9.7) above which should prevent copper chloride ($CuCl_2$) induced pitting of Alloy 600 tubing. Therefore, general corrosion is not a problem with Alloy 600 at these shutdown conditions.

General corrosion is also not a problem with ferritic stainless steels containing at least 11 percent chromium ($Cr$) at these shutdown conditions.

General corrosion is a concern with low alloy and carbon steel surfaces exposed to the vapor phase during wet-layup if sufficient nitrogen overpressure is not maintained. It is assumed that atmospheric air would eventually replace the nitrogen originally present. As such, the presence of oxygen in the vapor space permits the oxidation of the protective magnetite ($Fe_3O_4$) to the less protective hematite ($Fe_2O_3$—rust). At startup, this will add to the amount of material that must be processed and removed. In the immersed section, general corrosion of the carbon and low alloy steels will not occur due to the high pH and the presence of hydrazine.

The presence of oxygen in the vapor space of the steam generators during shutdown should not affect the integrity of the system. Its presence however, is expected to increase the general corrosion to the exposed carbon steel and low alloy steel surfaces and create more sludge.

The accident or event of concern regarding the steam generators would be a steam generator tube rupture (SGTR). The radiological releases calculated for a SGTR event with a loss of offsite power and a fully stuck open atmospheric dump valve (ADV) are well within the guidelines of 10 CFR part 100. The RCS and secondary system pressures are well below 110 percent of the design pressure limits, thus assuring the integrity of these systems.

Additionally, no violation of the fuel thermal limits occurs, since the minimum DNBR remains above the 1.24 value throughout the duration of the event.

Based on the July 1989 100 percent eddy current examination, where no significant wear patterns or corrosion buildup was observed and the fact that chemistry was maintained during wet-layup, the proposed change will not increase the probability of an accident previously evaluated. The proposed change will not increase the consequences of an accident previously evaluated due to the fact that in the event of a steam generator tube rupture the calculated radiological releases are well within the guidelines of part 100.

2. The proposed Technical Specification amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the Chapter 15 analysis assumes that the plant is challenged by a SGTR that includes additional events and failures beyond those postulated by the NRC Standard Review Plan (SRP) 15.6.3. In addition to the conservative assumptions of the SRP (loss of offsite power, iodine spiking, etc.), this analysis postulates that the operators open an ADV on the affected steam generator and that it both runs to the full open position and sticks full open for the duration of the transient. The results of which are well within the guidelines of 10 CFR part 100 for any radiological releases and the RCS and secondary system pressures are well below the design pressure limits. Therefore the proposed Technical Specification amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed Technical Specification amendment does not involve a significant reduction in a margin of safety because no changes are being made to the way the facility is being operated. Thus, no new failure modes are being introduced.

If a SGTR were to occur, diagnosis of the event is facilitated by radiation monitors, which initiate alarms and inform the operator of abnormal levels and that corrective operator action is required. Additional diagnostic information is provided by RCS pressure and pressurizer level response indicating a leak, and by level response in the affected steam generator.

The most limiting SGTR event is for a leak flow equivalent to a double-ended rupture of a U-tube at full power conditions. This event has been analyzed for Palo Verde (UFSAR section 15.6.3) and concludes that the resultant radiological releases are well within 10 CFR 100 guidelines and the RCS and secondary system pressures are well below 110 percent of the design pressure limits and no violation of the fuel thermal limits occurs. Therefore, the proposed Technical Specification amendment will not involve a significant reduction in a margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the request for amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 1991, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to

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show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to James E. Dyer: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Arthur C. Gehr, Esq., Snell and Wilmer, 3100 Valley Center, Phoenix, Arizona 85073, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 27th of November 1990.

For the Nuclear Regulatory Commission.

**James E. Dyer,**

*Acting Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28378 Filed 12-3-90; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee (TPSC); Initiation of a Review To Consider Designation of Czechoslovakia as a Beneficiary Developing Country Under the Generalized System of Preferences (GSP) and Solicitation of Public Comments Relating to the Designation Criteria

On October 23, 1990, Czechoslovakia requested designation as a GSP beneficiary. The TPSC has initiated a review to determine if Czechoslovakia meets the designation criteria of the GSP law and should be designed as a beneficiary. GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in subsections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Czechoslovakia for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

Comments must be submitted in 12 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street NW., Room 414, Washington, DC 20506. Comments must be received no later than 5 p.m. on Wednesday, January 16, 1991.

Information and comments submitted regarding Czechoslovakia will be subject to public inspection by appointment with the staff of the GSP Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twelve copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., room 414, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

**David Weiss,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 90-28405 Filed 12-3-90; 8:45 am]

BILLING CODE 3190-01-M



## RAILROAD RETIREMENT BOARD

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1991, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1991, 33.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: November 27, 1990.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 90-28384 Filed 12-3-90; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 28, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Cambrex Corporation
Common Stock, $.10 Par Value (File No. 7-5418)

Frontier Insurance Group, Inc.
Common Stock, $.01 Par Value (File No. 7-5419)

Gemini II Inc. Income Shares
Preferred Stock, $1 Par Value (File No. 7-5420)

Home Insurance Co.
$2.95 Cumulative Preferred Stock (File No. 7-5421)

Jaclyn, Incorporated
Common Stock, $1 Par Value (File No. 7-5422)

Metro Mobil CTS, Inc.
Class B Common Stock, $.033 Par Value (File No. 7-5423)

Nuveen New York Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-5424)

NWNL Companies, Inc.
Common Stock, No Par Value (File No. 7-5425)

Prime Financial Partners
Class A Units Limited Partnership Interest, No Par Value (File No. 7-5426)

Robertson-Ceco Corporation
Common Stock, 1¢ Par Value (File No. 7-5427)

Midwest Resources, Inc.
Common Stock, No Par Value (File No. 7-5428)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-28373 Filed 12-3-90; 8:45 am]

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### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for a Six Month Period; Correction

In FR Document No. 90-27142 beginning on page 48194 for Monday, November 19, 1990, the release number for File No. SR-NASD-90-55 was incorrectly stated as Release No. 34-28609. The correct number is 34-28699.

Dated: November 28, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-28334 Filed 12-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28694; File No. SR-PSE-90-39; International Series Release No. 195]

### Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Exchange Rules To Provide for the Listing and Trading of Currency Warrants

November 26, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Commission previously approved a regulatory framework to permit the PSE to list and trade warrants based upon foreign and domestic stock market indexes,[1] and the PSE proposes to broaden this regulatory framework to permit the listing and trading of currency warrants on the Exchange. Specifically, the Exchange proposes to amend its Rules 3.2, 9.18(c) and 18(e) for this purpose. The PSE believes that its proposed regulatory framework for currency warrants is based upon, and substantially similar to, a regulatory

[1] *See* Securities Exchange Act Release No. 28084 (May 22, 1990), 55 FR 22001.

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framework previously adopted by the American Stock Exchange ("AMEX") that also includes currency warrants.[2]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On March 27, 1990, the Exchange submitted to the Commission a proposed rule change (SR–PSE–90–11) to establish a regulatory framework to allow the Exchange to list and trade index warrants and the Commission approved this PSE proposal in May 1990.[3] Specifically, this PSE proposal amended PSE Rule 3.2, entitled "Warrants," to provide listing guidelines for index warrants based on established broad-based domestic and foreign stock market indices. this Exchange proposal also amended PSE Rule X, Section 18(c), entitled "Suitability," to apply the options suitability standard to index warrant recommendations made by members and member organizations. Moreover, the Exchange proposal amends PSE Rule X, section 18(e)(1), entitled "Discretionary Accounts," so that a Senior Registered Options Principal ("SROP") or Registered Options Principal ("ROP") is required to approve and initial any discretionary index warrant transaction on the day it is executed.

At this time, the Exchange proposes to extend its regulatory framework for index warrants to include currency warrants. Specifically, the Exchange proposes to amend PSE Rule 3.2, "Warrants", to add "currency warrants" as a type of warrant issue that can be listed and traded on the Exchange. In this regard, the PSE proposes to apply the same minimum listing and trading criteria to currency warrant issues that currently are applicable to index warrant issues. Moreover, the PSE proposes to clarify the minimum by specifying in its Rules (1) that these warrants shall have a term ranging from one to five years and (2) these warrants must be cash-settled.

The Exchange also proposes to amend PSE Rule 9.18(c) ("Suitability") and 8.18(e) ("Discretionary Accounts") in order to apply these provisions to currency warrant transactions.[4] Specifically, as in the case of index warrants, the options suitability standard will apply to currency warrant recommendations made by members and member organizations and the Exchange will recommend that currency warrants only be sold to options-approved accounts. Moreover, as wit index warrants, a SROP or ROP will be required to approve and initial any discretionary currency warrant transaction on the day it is executed.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and section 6(b)(5) in particular, in that it will act to facilitate transactions in securities and innovative financing techniques designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in offering in return for assuming some foreign currency risk. The Exchange believes that purchasers of the proposed currency warrants will be able to use them to hedge against, or speculate on, foreign currency fluctuations.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The PSE believes that the proposed rule change will not impose a burden on competition.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons malign written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 90–28333 Filed 12–3–90; 8:45 am]
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[2] *See* Securities Exchange Act Release No. 28152 (October 3, 1988), 53 FR 39632.

[3] *See supra* note 1.

[4] As part of a PSE proposal to renumber some of its Rules, sections 18(c) and 18(e)(1) of Rule X, that originally applied to index warrant transactions, were renumbered Rules 9.18(c) and 9.18(e), respectively. *See* Securities Exchange Act Release No. 27787 (March 8, 1990), 55 FR 9617.

[5] 17 CFR 200.30–3(a)(12) (1988).

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated**

November 28, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

BJ Services Company
Common Stock, $0.10 Par Value (File No. 7–6412)
Beazer PLC
American Depositary Receipts (10p Par Value) (File No. 7–6413)
Dallas Semiconductor Corporation
Common Stock, $0.02 Par Value (File No. 7–6414)
Latin American Investment Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–6415)
RJR Nabisco Holdings Corp.
Cum. Conv. Pfd Stock, $0.01 Par Value (File No. 7–6416)
Societe Generale Warrants Limited N.V.
Put Warrants on CAC 40 Paris Stock Exchange Index, Expiring November 4, 1992 (File No. 7–6417)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90–28374 Filed 12–3–90; 8:45 am]
BILLING CODE 8010–01–M



[Release No. IC–17885; (813–84)]

**Merrill Lynch MBP, Inc.; Application for Exemption**

November 28, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act")

**APPLICANT:** Merrill Lynch MBP, Inc. ("MBP" or "Applicant"), a Delaware corporation and an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co"), on behalf of limited partnership ("Partnerships") which may be formed by MBP.

**RELEVANT 1940 ACT SECTIONS:** Applicant seeks an order under section 6(b) granting an exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to these sections.

**SUMMARY OF APPLICATION:** Applicant, on behalf of the Partnerships, seeks an order that would grant the Partnerships an exemption from most provisions of the 1940 Act, and would permit certain affiliated and joint transactions. Each Partnership will be an employee's securities company within the meaning of section 2(a)(13) of the 1940 Act.

**FILING DATES:** The application was filed on August 8, 1988, and amended on May 23, 1989, January 19, 1990, and November 26, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, Merrill Lynch World Headquarters, World Financial Center, North Tower/250 Vesey Street, New York, New York 10281–1327.

**FOR FURTHER INFORMATION CONTACT:** Thomas G. Sheehan, Staff Attorney, (202) 272–7324, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. ML&Co is a diversified financial services holding company which, through its subsidiaries, provides investment, financing, insurance and related services. ML&Co and its affiliates are hereinafter collectively referred to as "Merrill Lynch." ML&Co's principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated, is a broker-dealer registered under the Securities Exchange Act of 1934.

2. MBP is a corporation organized under the laws of the State of Delaware and is an indirect wholly-owned subsidiary of ML&Co. MBP, or another direct or indirect wholly-owned subsidiary of ML&Co formed for such purpose, will be the general partner of the Partnerships (the "General Partner").

3. The General Partner proposes to form Partnerships annually to enable key employees of Merrill Lynch ("Eligible Employees") to benefit from certain investment opportunities that come to Merrill Lynch's attention. Each Partnership will be a Delaware limited partnership formed as an "employees' securities company" within the meaning of section 2(a)(13) of the 1940 Act, and will operate as a closed-end, non-diversified, management investment company. The affairs of each Partnership will be governed by a limited Partnership agreement ("Partnership Agreement") executed by the General Partner and each limited partner who will invest in the Partnership ("Limited Partners").

4. The Limited Partners will be highly compensated key employees of ML&Co or its affiliates. Each Limited Partner will be required to have had an annual income of $150,000 in the year prior to the formation of the Partnership, and reasonably expect to have annual income of $150,000 in the first year of the Partnership's operation. The income test for participation in the Partnerships will be revised annually to reflect cost of living increases, if any. No more than 35 Limited Partners will be persons who are not "accredited investors" under subsection (4), (5), or (6) of Rule 501(a) of Regulation D under the Securities Act of 1933.

5. In addition to being experienced professionals in the investment banking and securities business, or in administrative, financial and accounting, legal or operational activities related thereto, the Limited Partners will be sophisticated investors able to fend for themselves without benefit of regulatory safeguards. All Limited Partners will be aware that (a) interests in the Partnerships will be sold in a transaction exempt under section 4(2) of the Securities Act of 1933 (the "1933 Act"), and thus, are offered without registration under the 1933 Act; and (b) although registered under the 1940 Act, the Partnerships will be exempt from most provisions of the 1940 Act.

6. The Partnerships will enable key employees of ML&Co and certain of ML&Co's affiliates to pool their investment resources and to receive the benefit of certain investment opportunities that come to the attention of ML&Co and its affiliates. The

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investment opportunities in which the Partnerships will participate are comprised of companies which are targets of leveraged or management buyouts structured by Merrill Lynch, or with respect to which Merrill Lynch assisted in the consummation, and in which Merrill Lynch has a long-term equity or equity-related investment, and companies which are the subject of other transactions, such as real estate or venture capital transactions, structured by ML&Co's banking group and in which Merrill Lynch has a long-term equity-related investment (collectively the "Merrill Lynch Investments").

7. Each Partnership will enter into an agreement with ML&Co (the "ML&Co Agreement") to ensure that, with limited exceptions, *see* ¶¶12–15, *infra*, each Partnership will be able to acquire an interest in every Merrill Lynch Investment. Under the ML&Co Agreement, unless the Executive Committee of the Board of Directors of ML&Co ("the ML&Co Executive Committee") approves a determination by the General Partner that a partnership not participate in a particular investment, each Partnership will be obligated to purchase from Merrill Lynch, and Merrill Lynch will be obligated to sell to the Partnership, a fixed percentage (determined at the time each Partnership Agreement is executed) of each Merrill Lynch Investment that closes during the calendar year of the Partnership's formation (hereinafter the "Investment Period") or during a period (not in excess of twelve months) subsequent to the end of the Investment Period for the most recently organized Partnership. If Merrill Lynch Investments have closed during the calendar year in which a Partnership is formed but prior to its formation, the Partnership will purchase Portfolio Investments from ML&Co when the Partnership is initially funded ("Initial Portfolio Investments").

8. To assure each Partnership that it will benefit from the continued ownership of an investment for as long as Merrill Lynch retains an interest, each ML&Co Agreement will provide that, except as discussed in this paragraph, a Partnership may not sell any security purchased under the ML&Co Agreement as long as ML&Co or any direct or indirect wholly-owned affiliate of ML&Co has an investment in the same security, absent the consent of the ML&Co Executive Committee. Each Partnership also will be required to participate in any public or private sale by ML&Co and/or any wholly-owned affiliate of securities owned by them or for their benefit which are identical to securities held by the Partnership, unless the ML&Co Executive Committee approves a determination by the General Partner that the Partnership not participate in a particular sale. If Merrill Lynch proposes to sell only a portion of securities held by ML&Co or any direct or indirect wholly-owned affiliate of ML&Co which are identical to securities held by the Partnership, the Partnership will be obligated, unless the ML&Co Executive Committee consents otherwise, to sell such securities in numbers bearing the same percentage relationship to the total number of shares held by the Partnership as the number of shares to be sold by Merrill Lynch bears to the total number of shares held by ML&Co and any direct or indirect wholly-owned affiliates of ML&Co.

9. Although each Partnership will be required to purchase Merrill Lynch Investments where ML&Co, its wholly owned affiliates, or other affiliates (such as other partnerships established by ML&Co) participate in such investments, the policy governing sales of securities will not require Partnership participation in sales by such other affiliates in which ML&Co or its wholly owned affiliates do not participate. The rationale underlying the differing requirements is that while ML&Co has the ability to make all Merrill Lynch Investments available to the Partnerships, ML&Co and its wholly owned affiliates may not have the authority to require that a non-wholly owned affiliate permit a Partnership to participate in its disposition of such investments.

10. ML&Co's Executive Committee will have no involvement in disposition decisions where the Merrill Lynch Investment is held by a Partnership and a non-wholly owned affiliate, but not by ML&Co or a wholly owned affiliate. In such circumstances, the timing of the disposition will be determined by the General Partner in the exercise of its fiduciary responsibilities.

11. Pending investment in a Merrill Lynch Investment, Partnership funds will be temporarily invested in: (a) United States Government obligations with maturities of no more than one year; (b) high grade commercial paper with maturities of no more than six months; (c) interest-bearing deposits in United States or Canadian banks having an unrestricted surplus of at least $250 million, if such deposits mature within one year; or (d) any money market fund distributed and managed by Merrill Lynch (each such investment, a "Temporary Investment"). Temporary Investments will be purchased from, and sold to, ML&Co and its affiliates at market value without the payment of any fee. Consistent with section 12(d)(1)(A)(i) of the 1940 Act, no Partnership will acquire more than 3% of the total outstanding voting stock of any investment company. Also, the General Partner may temporarily invest any portion of Partnership funds attributable to its own capital contributions by making unsecured demand loans to Merrill Lynch for working capital purposes. Such a loan would be made at a return rate equal to the General Partner's Preferred Return (defined *infra*, ¶18).

12. Certain funds managed by Merrill Lynch (the "Designated Funds"), certain investment partnerships controlled by ML&Co for the benefit of ML&Co employees (the "Designated Employee Funds"), and certain investment subsidiaries of ML&Co ("Designated Subsidiaries") will not be obligated under the ML&Co Agreements to sell Merrill Lynch Investments to the Partnerships.

13. The Designated Funds include certain leveraged buyout funds established by ML&Co, the investors of which are limited partners unaffiliated with ML&Co. Because of certain provisions in the documents establishing the Designated Funds, ML&Co lacks the ability to compel the sale of any of their portfolio securities to the Partnerships. However, because ML&Co is required under the terms of such documents to co-invest with the Designated Funds in each buyout portfolio company, and since under the ML&Co Agreement ML&Co will be obligated to sell a portion of those securities to each Partnership, the Partnerships will be able to acquire interests in such investments indirectly.

14. The Designated Employee Funds are comprised of other present and future investment partnerships controlled by ML&Co for the benefit of Merrill Lynch employees, including for example, employees' securities companies managed by KECALP Inc., a subsidiary of ML&Co. Pursuant to the terms under which the Designated Employee Funds were established, ML&Co also lacks the ability to compel such funds to sell securities to the Partnerships. Accordingly, each ML&Co Agreement will except these funds from the obligation to sell Merrill Lynch Investments to the Partnership.

15. The Designated Subsidiaries at present include one ML&Co subsidiary, Merrill Lynch Interfunding Inc. ("Interfunding"). Interfunding invests in a combination of debt and equity, in which the percentage of equity is not meaningful in relationship to the debt. In contrast, the Partnerships will invest virtually all of their capital in equity securities.

16. Each Partnership will acquire Merrill Lynch Investments at a price equal to the lower of: (a) The value of the investment on the date the Partnership acquires such investment, as determined by the board of directors of the General Partner; or (b) the cost to ML&Co to purchase and carry the investment. ML&Co's carrying costs consist of interest charges, compounded semi-annually, computed at the lower of (i) the Prime Rate during the period for which carrying costs are being paid or (ii) the effective cost of borrowing by ML&Co during such period. The effective cost of borrowing by ML&Co is its actual "Average Cost of Funds," which ML&Co calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowing during the period.

17. The General Partner, in addition to performing all management and administrative services necessary for the operation of the Partnerships, will make a substantial investment in each Partnership. Upon the formation of a Partnership, the General Partner will contribute 1.01% of the total cash contributions made by the Limited Partners. Thereafter, at the time of each investment by the Partnership, the General Partner will make an additional capital contribution to the Partnership, essentially in the form of a loan, equal to at least 84.84% of the aggregate amount which the Partnership proposes to invest. The exact percentage that the General Partner will contribute, which will be in aggregate no less than 85%, will be fixed by each Partnership Agreement.

18. Partnership profits (excluding those derived from Temporary Investments) will be allocated as follows: First, to the General Partner in an amount necessary to provide it a cumulative per annum return on its capital contribtions to the Partnership (taking into account profits on Temporary Investments) not exceeding the prime rate plus a maximum of 250 basis points, compounded semi-annually and measured from the date such capital contributions are made through the dates such capital contributions are distributed to the General Partner (the "Preferred Return"); second, to the General Partner and the Limited Partners to offset any previously allocated losses; third, if the Partnership has made any Initial Portfolio Investments, to the Limited Partners pro rata until they have been allocated a Special Distribution Amount (as defined in the Partnership Agreement) which includes amounts to be paid by the Limited Partners for any Federal, state and local income taxes which may arise from the valuation of the Initial Portfolio Investments; and fourth, 90% to the Limited Partners pro rata in proportion to their capital contributions, and 10% to the General Partner.

19. Partnership losses not derived from Temporary Investments will be allocated: First, to the Limited Partners and General Partner to offset any previously allocated profits (other than the Preferred Return); second, 90% to the Limited Partners pro rata in proportion to their contributions to the Partnership and 10% to the General Partner, to the extent that such allocation would not cause the Limited Partners to have deficit balances in their capital accounts; and third, to the General Partner.

20. Profits and losses of a Partnership derived from Temporary Investments of capital contributions will be allocated pro rata to the partners making such contributions.

21. The General Partner maintains that the allocation of profits and losses to it reflects an appropriate return on capital invested, in light of the risks involved, and does not represent compensation for investment advisory services. The General Partner believes that its capital contribution is functionally equivalent to providing loans to the Partnerships. As a result, the terms of the allocations to the General Partner are more favorable to the Limited Partners, and less favorable to it, than equivalent investment opportunities available to the General Partner in public and private marketplaces.

22. The General Partner further believes that its position as to the fairness of the allocations is supported by the risk characteristics of its capital contribution. The General Partner is contributing at least 85% of the capital of the Partnership, and consequently can incur significantly greater losses than the Limited Partners because it has a significantly greater amount of capital at stake. The contribution of the General Partner ensures that the interests of the Limited Partners will be safeguarded when investment decisions are made.

23. All of the General Partner's directors and principal officers will be directors or officers of Merrill Lynch, and a majority of such directors and principal officers will be Eligible Employees. MBP represents that no compensation will be paid to the General Partner, its officers, or directors for providing services to the Partnership. Each Partnership, however, will bear all direct expenses incurred in connection with its organization, business operations, winding up, and liquidation.

24. The General Partner will register as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The General Partner believes that its relationships with the Partnerships will fully comply with the provisions of the Advisers Act.

25. The Limited Partners may remove a General Partner upon the approval of two-thirds of the entire ownership interest of the Limited Partners. The Limited Partners may elect to continue the Partnership following such removal.

26. Except with the consent of the General Partner, all Partnership interests will be non-transferable. To maintain the community of interest among all partners, the General Partner will not consent to transfers other than to members of the transferor's immediate family, other Limited Partners, or the General Partner, except in cases of incompetency, insolvency, incapacity, or bankruptcy. In such cases, a Limited Partner's estate or legal representative would succeed to his interest.

27. If, for any reason except long-term disability, a Limited Partner ceases to be an active, full-time employee of Merrill Lynch (a "Departing Partner") within a time period specified in the Partnership Agreement (not to exceed 5 years from the closing of the offering of Partnership interests), the General Partner will have the option to purchase all or some of the Departing Partner's interest. In connection with this option, each Partnership Agreement will contain a phased vesting provision, designed to reward longer term employees, whereby the maximum percentage of a Departing Partner's interest which may be purchased by the General Partner will decrease with each year following the closing date. If the General Partner exercises this option, the Departing Partner generally will receive an amount equal to the capital contributions paid on the repurchased portion of the interest that have not previously been returned to him, plus interest at the prime rate. Thus, the Departing Partner will lose any interest in undistributed profits of the Partnership with respect to the repurchased portion of his interest. No interest will be paid to a Departing Partner who was terminated for "cause," as defined in the Partnership Agreement.

28. Each Partnership will send audited annual financial statements to the Limited Partners within 90 days of the

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end of the fiscal year, or as soon as practicable thereafter. A report also will be transmitted to each Limited Partner disclosing information concerning his share in the Partnership's taxable income or loss for each year, together with a copy of the Partnership's federal income tax return.

29. Each Partnership also will permanently maintain and preserve such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners. The General Partner will permanently maintain and preserve all accounts, books, and other documents as are necessary or appropriate to record its transactions with the Partnership. All such accounts, books, and other records maintained by the Partnership and/or the General Partner will be subject to examination by the Commission or its staff.

**Applicant's Legal Analysis**

30. On behalf of the Partnerships, Applicant requests exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, the provisions of section 17 except as described below, sections 36 through 53, and the rules and regulations related to these sections. Applicant also requests exemptions from sections 17(a), 17(d), 17(f), 17(g) and 17(j) of the 1940 Act and Rules 17d–1, 17f–1, 17g–1 and 17j–1 thereunder.

31. Applicant requests an exemption from section 17(a) of the 1940 Act to the extent necessary to permit ML&Co or its affiliates to engage in certain transactions as principal with a Partnership. The exemption is requested to permit the Partnerships to purchase Portfolio Investments from ML&Co, or any other affiliated company, partnership, person or other entity (an "Affiliated Entity") on a principal basis. Such relief is requested to avoid the necessity of a Partnership participating as an additional purchaser in complex leveraged buyout negotiations, to permit a Partnership to purchase Initial Portfolio Investments from ML&Co when a Merrill Lynch Investment has closed prior to, but in the same year as, the Partnership's formation, and to permit a Partnership to purchase subsequent Portfolio Investments pursuant to the ML&Co Agreement. The exemption from section 17(a) is also requested to permit the Partnerships to purchase interests or property in a company or other investment vehicle in which ML&Co, or an Affiliated Entity, already owns securities, or where such company or other investment vehicle is otherwise affiliated with ML&Co, or a Partnership; sell, put, or tender, or grant options in securities or interests in a company or other investment vehicle back to such entity, where that entity is affiliated with ML&Co, or an Affiliated Entity; participate as a selling security holder in a public offering that is underwritten by ML&Co or an Affiliated Entity or in which ML&Co or an Affiliated Entity acts as a member of the underwriting or selling group; and make short term temporary investments where such investments will be purchased from, and sold to, ML&Co, or an Affiliated Entity.

32. Applicant also requests an exemption from section 17(d) of and Rule 17d–1 under the 1940 Act to permit the Partnerships to engage in transactions in which affiliated persons of the Partnerships also may be participants. Applicant states that such order is necessary in view of the fact that the Partnerships will be required to invest their capital contributions in Merrill Lynch investments in which ML&Co or an Affiliated Entity will retain an interest.

33. Applicant submits that the exemptions requested pursuant to section 6(b) of the 1940 Act are consistent with the protection of investors. The exemptions are being requested because they are considered necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs of employees of ML&Co. Applicant further submits that the requested relief is consistent with the legislative history relating to employees' securities companies.

In support of these contentions, Applicant cites the nature of the Partnerships as employees' securities companies under the 1940 Act and their intended manner of operation.

34. Applicant further submits that a substantial community of economic and other interests exists among ML&Co and the Limited Partners which obviates the need for protection of investors under the 1940 Act. The Partnerships were conceived and will be organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities. Applicant also submits that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching, and will be consistent with the policy of each registered investment company concerned.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-28375 Filed 12-3-90; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### Senior Executive Service Performance Review Board; List of Members

**AGENCY:** Small Business Administration.

**ACTION:** Listing of personnel serving as members of this agency's senior executive service performance review boards.

**SUMMARY:** Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Johnnie L. Albertson, Deputy to the Associate Deputy Administrator for Special Programs
2. Michael P. Forbes, Assistant Administrator for Congressional and Legislative Affairs
3. Michael Howland, District Director, San Francisco District Office
4. Bernard Kulik, Assistant Administrator for Disaster Assistance
5. Catherine Marschall, Associated Deputy Administrator for Special Programs
6. Sally B. Narey, General Counsel
7. Richard L. Osbourn, Director of Personnel
8. George H. Robinson, Director, Equal Employment Opportunity and Compliance
9. Lawrence R. Rosenbaum, Comptroller
10. John Whitmore, Deputy Associate Administrator for Programs (MSB & COD)
11. Lejuene Wilson, Regional Administrator, Dallas.

Dated: November 27, 1990.

**Susan Engeletter,**

*Administrator.*

[FR Doc. 90-28403 Filed 12-3-90; 8:45 am]

BILLING CODE 8025-01-M



## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket S-474]

### American President Lines, Ltd.; Application for Modification of Section 804 Waiver To Operate Foreign-Flag Feeder Vessels

APL, by letter of November 26, 1990, requests that the section 804 waiver granted on June 3, 1988, and amended October 11, 1989, be further amended. The waiver, among other things, permitted APL to own or charter and operate one 350 FEU foreign-flag vessel between Fujayrah or Khor al Fakkan and the Persian Gulf-Gulf of Oman (Dubai, Ad Dammam, Al Kuwayt, Bahrain, Masqat, and inducement ports). The requested amendment would modify the waiver so as to allow APL to supplement its service to the Persian Gulf-Gulf of Oman service area by calling Damman or other Persian Gulf ports with vessels employed in APL's west coast India service area feeder. The current waiver is effective until June 3, 1993.

APL advises that due to the demands of Operation Desert Shield, it is experiencing capacity constraints on its foreign-flag feeder shuttle between Fujayrah in the United Arab Emirates, Damman in Saudi Arabia, and Bahrain. Weekly sailings are presently performed between those ports by the 350 FEU EAGLE WORLD.

APL states that in the event demand exceeds the capability of the EAGLE WORLD, it plans to supplement its service to the Persian Gulf-Gulf of Oman service area by calling Damman with vessels employed in its west coast India service area feeder. The west coast India feeder, also authorized in the above referenced June 3, 1988, waiver of section 804 of the Merchant Marine Act, 1936, as amended (Act), which permits two 400 FEU ships, is now being performed by the EAGLE NOVA and the EAGLE STAR, sister ships with a capacity of approximately 205 FEU. Each of these vessels sails fortnightly between Fujayrah and Bombay, India. According to APL, there is slack in the vessels' schedule and Damman can be added without disrupting service between Fujayrah and Bombay. The resulting deployment, APL adds, would be Fujayrah-Bombay-Fujayrah-Damman-Fujayrah.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on December 11, 1990. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operation-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 29, 1990.

**James E. Saari,**

*Secretary, Maritime Administration.*

[FR Doc. 90-28397 Filed 12-3-90; 8:45 am]

BILLING CODE 4910-81-M

## DEPARTMENT OF THE TREASURY

### U.S. Customs Service

[T.D. 90-98]

### Cancellation "With Prejudice" of Broker License No. 5616, Keith Kim, d.b.a. Alpha Cargo Service

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the Secretary of the Treasury on November 20, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and parts 111.51(b) and 111.74 of the Customs Regulations, as amended (CFR 111.51(b), 111.74), cancelled "with prejudice" the individual broker license (No. 5616) issued to Mr. Keith Kim.

Dated: November 29, 1990.

**William Laobkart,**

*Deputy Director, Office of Trade Operations.*

[FR Doc. 90-28390 Filed 12-3-90; 8:45 am]

BILLING CODE 4820-02-M

### Fiscal Service

### Bureau of the Public Debt

### Privacy Act of 1974, as Amended; Proposed New System of Records

**AGENCY:** Fiscal Service, Bureau of the Public Debt, Treasury.

**ACTION:** Notice of new system of records: Treasury/BPD .005—Employee Assistance Records.

**SUMMARY:** The purpose of this document is to give notice under the provisions of the Privacy Act of 1974, as amended, that the Bureau of the Public Debt proposes to add a new system of records: Treasury/BPD .005—Employee Assistance Records. Public Debt's systems of records were last published on March 1, 1988, at 53 FR 6252. The new system will contain information on Public Debt employees who are being or have been counseled, either by self-referral or supervisory-referral, for alcohol or drug abuse or for emotional or other personal problems. Where applicable, this system will also contain records of an employee's family members who have utilized the services of the EAP as part of the employee's counseling or treatment process.

**DATES:** Comments must be received no later than January 3, 1991. The new system of records will become effective February 4, 1991 unless comments dictate otherwise.

**ADDRESSES:** Send any comments to D. Louise Bennett, Disclosure Officer, Bureau of the Public Debt, E Street Building, room 353, Washington, DC 20239–0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, room 5030, Main Treasury Building, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** D. Louise Bennett, Disclosure Officer (202) 376–4307.

**SUPPLEMENTARY INFORMATION:** This new system of records contains information pertaining to drug abuse counseling or treatment. In addition, it contains records that pertain to other kinds of counseling; e.g., for alcohol, emotional, or other personal problems. Records pertaining to testing of employees for use of illegal drugs under Executive Order 12564, and related documents are part of the Office of Personnel Management's Governmentwide system OPM/GOVT–10, Employee Medical File System Records. The system will not infringe upon any individual's privacy rights because of the security protections and the disclosure restrictions imposed by the Privacy Act.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Office of Management and Budget (OMB) and Congress pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records

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About Individuals," dated December 12, 1955.

Treasury/BPD .005

SYSTEM NAME:

Employee Assistance Records.

SYSTEM LOCATION:

Bureau of the Public Debt, 300–13th Street, SW., Washington, DC 20239; 200 Third Street, Parkersburg, West Virginia 26106; and Elwood and Race Streets, Ravenswood, West Virginia 26164. This system also covers Public Debt employee assistance records that are maintained by another Federal, State, or local government, or contractor under an agreement with Public Debt to provide the Employee Assistance Program (EAP) functions. The system location of entities under an agreement with Public Debt is available from the system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Debt employees and former employees who will be or have been counseled, either by self-referral or supervisory-referral regarding drug abuse, alcohol, emotional health, or other personal problems. Where applicable, this system also covers family members of these employees when the family member utilizes the services of the EAP as part of the employee's counseling or treatment process.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of each employee and, in some cases family members of the employee, who have utilized the Employee Assistance Program for a drug, alcohol, emotional, or personal problem. Examples of information which may be found in each record are the individual's name, social security number, date of birth, grade, job title, home address, telephone numbers, supervisor's name and telephone number, assessment of problem, and referrals to treatment facilities and outcomes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 7361, 7362, 7904; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be disclosed:

(1) To an entity under contract with Public Debt for the purpose of providing the EAP functions.

(2) To medical personnel to the extent necessary to meet a bona fide medical emergency in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(3) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided individual identifiers are not disclosed in any manner, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(4) To a third party upon authorization by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, in accordance with the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR part 2).

(5) To the Department of Justice or other appropriate Federal agency in defending claims against the United States when the records are not covered by the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

These records are retrieved by the name and social security number of the individual on whom they are maintained.

SAFEGUARDS:

Records are stored in locked safes with combination locks. Only individuals with a need-to-know have access. Automated records are protected by restricted access procedures. Access to records is strictly limited to agency or contractor officials with a bona fide need for the records. These records are always maintained apart from any other system of records.

When Public Debt contracts with an entity for the purpose of providing the EAP functions, the contractor shall be required to maintain Privacy Act safeguards with respect to such records. The contractor will surrender to Public Debt all of these records as well as any new records at the time of contract termination. Also, when the disclosure of records is requested, the contractor will not make the determination about whether the records may be disclosed.

RETENTION AND DISPOSAL:

The retention period is 3 years after termination of counseling or until any litigation is resolved. If an employee is no longer employed by Public Debt, records are retained for 3 years after the official date of termination. Then the records are destroyed.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001.

NOTIFICATION PROCEDURE:

Address inquiries and initial requests for correction of records to: Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001.

RECORD ACCESS PROCEDURES:

Individuals who wish to request access to records relating to them or who wish to request correction of records they believe to be in error should submit such requests pursuant to the procedures set out below in compliance with the applicable regulations (31 CFR part 1 subpart C). Requests which do not comply fully with these procedures may result in noncompliance with the request, but will be answered to the extent possible.

Requests for Access to Records: (1) A request for access to records must be in writing, signed by the individual concerned, identify the system of records, and clearly indicate that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employees; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) The request is to be submitted to the Director, Division of Personnel Management, Bureau of the Public Debt, 300 13th Street, SW., Washington, DC 20239–0001. (3) The request must state whether the requester wishes to be notified that the records exists or desires to inspect or obtain a copy of the record. If a copy of the record is desired, the requester must agree to pay the fees for copying the documents in accordance with 31 CFR part 1 subpart C. (4) Requests for records concerning a deceased or incapacitated individual must be accompanied either by evidence of the requester's appointment as legal representative of the estate or by a notarized statement attesting that no such representative has been appointed and giving the nature of the relationship between the requester and the individual.



Requests for Correction of Records: (1) A request by an individual for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that the request is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) The initial request is to be submitted to the Director, Division of Personnel Management, 300 13th Street, SW, Washington, DC 20239–0001. (3) The request for correction should specify: (a) The dates of records for correction should specify: (a) The dates of records in question, (b) the specific records alleged to be incorrect, (c) the correction requested, and (d) the reasons therefore. (4) The request must include any available evidence in support of the request.

Appeals from an Initial Denial of a Request for Correction of Records: (1) An appeal from an initial denial of a request for correction of records must be in writing, signed by the individual involved, identify the system of records, and clearly state that it is made pursuant to the Privacy Act of 1974. At least two items of identification must be furnished; e.g., date of birth; social security number; dates of employment, if request is by employee; relationship to employee, if request is by family member; or similar information. Public Debt reserves the right to require additional verification of an individual's identity. (2) Appellate determinations will be made by the Commissioner of the Public Debt or the delegate of such officer. Appeals should be addressed as follows: Privacy Act Amendment, Chief Counsel, Bureau of the Public Debt, Department of the Treasury, 999 E. Street, NW., Room 503, Washington, D.C. 20239 (or as otherwise provided for in the applicable appendix to 31 CFR part 1 subpart C), within 35 days of the individual's receipt of the initial denial of the requested correction. (3) An appeal must also specify: (a) The records to which the appeal relates, (b) the date of the initial request made for correction of the records, and (c) the date that the initial denial of the request for correction was received. (4) An appeal must also specify the reasons for the requester's disagreement with that initial denial of correction and must include any applicable supporting evidence.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" and "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, or the Employee Assistance Program staff member who records the counseling session.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 27, 1990.

Linda M. Combs,

*Assistant Secretary of the Treasury (Management).*

[FR Doc. 90-28325-Filed 12-3-90; 8:45 am]

BILLING CODE 4810-40-M

## Office of Thrift Supervision

### Action Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Action Federal Savings Bank, Somers Point, New Jersey on November 15, 1990.

Dated: November 28, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28394 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

### Action Savings Bank, S.L.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Action Savings Bank, S.L.A., Somers Point, New Jersey on November 15, 1990.

Dated: November 28, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc 90-28391 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-55; OTS No. 1529]

### Colonial Federal Savings Bank, Bellefontaine, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on November 9, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Colonial Federal Savings Bank, Bellefontaine, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, 2000 Atrium TWO, 221 East 4th Street, Cincinnati, Ohio 45201–0599.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc 90-28392 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-54; OTS No. 0531]

### Northwestern Savings and Loan Association, Chicago, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on November 13, 1990, the office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the delegated authority, approved the application of Northwestern Savings and Loan Association, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28393 Filed 12-3-90; 8:45 am]

BILLING CODE 6720-01-M





## Sunshine Act Meetings

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[AC-45; OTS No. 5759]

**Thomaston Federal Savings Bank, Thomaston, Georgia; Final Action; Approval of Conversion Application**

Notice is hereby given that on November 5, 1990, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Thomaston Federal Savings Bank, Thomaston, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: November 21, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90–28393 Filed 12–3–90; 8:45 am]

BILLING CODE 6720–01–M

## UNITED STATES INFORMATION AGENCY

**Performance Review Board Members**

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** This Notice is issued to revise the membership of the United States Information (USIA) Performance Review Board.

**DATES:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Johnnie Lindahl (Co-Executive Secretary), Deputy Director, Office of Personnel, Voice of America, U.S. Information Agency, 330 Independence Avenue, SW., Washington, DC 20547, Tel: (202) 619–3763

or

Ms. Patricia Noble (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel: (202) 619–4617

**SUPPLEMENTARY INFORMATION:** In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (54 FR 222, November 20, 1989).

*Chairperson:* Associate Director for Management—Henry E. Hockeimer (Presidential Appointee)

*Deputy Chairperson:* Associate Director for Broadcasting—Richard Carlson (Presidential Appointee)

*Career SES Members*

Eileen K. Binns, Director, Office of Administration

Richard J. Caldwell, Director, Office of Networks and Communications, Television and Film Service

Robert T. Coonrod, Deputy Director, Voice of America

Sidney A. Davis, Director of Programs, Voice of America

James R. Hulen, Deputy for Operations, Office of Engineering and Technical Operations, Voice of America

Philip R. Rogers, Director, Office of Contracts

*Alternate Career SES Members*

Donald J. Cuozzo, Worldnet Production Manager, Television and Film Service

Robert E. Kamosa, Deputy for Projects Management, Office of Engineering and Technical Operations, Voice of America

This supersedes the previous U.S. Information Agency Notice (54 FR 222, November 20, 1989).

**Henry E. Hockeimer,**

*Associate Director for Management, U.S. Information Agency.*

[FR Doc. 90–28402 Filed 12–3–90; 8:45 am]

BILLING CODE 8230–01–M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION**

Meeting

Notice is hereby given in accordance with section 552b of title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, January 10, 1991.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 p.m. at Cumberland Town Hall, 45 Broad Street, Cumberland, Rhode Island for the following reasons:

1. Report of the Chairman
2. Report of the Executive Director
3. Committee Reports
4. Report on the Town of Cumberland
5. Policy Proposals
6. Report of the Narragansett Bay Commission
7. Public Comments

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone (508) 278–9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

**Shirley Cleaves,**

*Executive Director, Blackstone River Valley National Heritage Corridor Commission.*

[FR Doc. 90–28548 Filed 11–30–90; 3:48 pm]

BILLING CODE 4310–70–M

**COMMISSION ON CIVIL RIGHTS**

**DATE AND TIME:** Friday, December 7, 1990, 9:00 a.m.–5:00 p.m.

**PLACE:** 1121 Vermont Avenue, NW., room 512, Washington, DC 20425.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

I. Approval of the Agenda
II. Approval of Minutes of November Meeting
III. Announcements
IV. State Advisory Committee Report: Implementation in Arizona of the Immigration Reform and Control Act
V. State Advisory Committee Appointments
  a. Illinois Appointments
  b. Interim Nevada Appointment
  c. Interim Colorado Appointment
VI. Staff Director's Report
VII. Future Agenda Items

**CONTACT PERSON FOR FURTHER INFORMATION:** Barbara Brooks, Press and Communications Division, (202) 376–8312.

Dated: December 7, 1990.

**Carol McCabe Booker,**

*General Counsel.*

[FR Doc. 90–28544 Filed 11–30–90; 3:48 pm]

BILLING CODE 6335–01–M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:30 a.m., Friday, December 7, 1990.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule Enforcement Review.

**CONTACT PERSON FOR FURTHER INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 90–28481 Filed 11–30–90; 10:58 am]

BILLING CODE 6351–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Thursday, November 29, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding an assistance agreement with a depository institution.
Matters concerning a certain failed depository institution.
Matters relating to the Corporation's supervisory activities.

The Board further determined, by the same majority vote, that no earlier

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Thursday, November 29, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Director Robert L. Clarke (Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would ensure that limits are placed on the amount of purchased mortgage servicing rights that State nonmember banks and savings associations can recognize for regulatory capital purposes.

By the same majority vote, the Board further determined that no notice earlier than November 27, 1990 of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 30, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90–28549 Filed 11–30–90 3:49 pm]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Thursday, November 29, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Director Robert L. Clarke (Comptroller of the Currency), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding an assistance agreement with a depository institution.
Matters concerning a certain failed depository institution.
Matters relating to the Corporation's supervisory activities.

The Board further determined, by the same majority vote, that no earlier

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notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B).

Dated: November 30, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90-28859 Filed 11-30-90 3:49 pm]

BILLING CODE 6714-01-M

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**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Wednesday, December 12, 1990 at 10:30 a.m.

**PLACE:** Room 101, 500 E Street, S.W.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-473 (P) (Certain Electric Fans from the The People's Republic of China)—briefing and vote.
6. Inv. No. 731-TA-474 & 475 (P) (Chrome-Plated Lug Nuts from The People's Republic of China and Taiwan)—briefing and vote.
7. Any items left over from pervious agenda

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: November 23, 1990.

**Kenneth Mason,**

*Secretary.*

[FR Doc. 90-28532 Filed 11-30-90; 3:51 am]

BILLING CODE 7020-02-M

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**LEGAL SERVICES CORPORATION**

Board of Directors Meeting

**TIME AND DATE:** A meeting of the Board of Directors will be held on December 11, 1990. The meeting will commence at 9:00 a.m.

**PLACE:** The Madison Hotel, 15th and M Streets, NW., The Executive Chambers, Washington, DC 20005, 202-862-1600.

**STATUS OF MEETING:** Open [A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR 1622.5 (a), (c), (d), (e), (f), and (h)].

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda.
2. Approval of Minutes.
   —September 23-26, 1990
3. Election of Chairman and Vice-Chairman.
4. Report from Board Members.
5. President's Report.
6. Legislative Report.
7. Report on the Fiscal Year (FY) 1991 Consolidated Operating Budget.
8. Presentation and Discussion of Proposals for FY 1992 Budget Mark.
9. Report on 1991 Application for Funding.
10. Report on the Potential for Self-Help within Legal Services, by William Fry of the National Training Center.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: November 30, 1990.

**Maureen R. Bozell,**

*Corporation Secretary.*

[FR Doc. 90-28851 Filed 11-30-90; 3:50 pm]

BILLING CODE 7050-01-M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of December 3, 10, 17, and 24, 1990.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of December 3**

*Friday, December 7*

10:00 a.m.
Briefing on Level of Design Detail for Part 52 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of December 10—Tentative**

*Thursday, December 13*

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Transmittal of Revised Part 20 (Tentative)

**Week of December 17—Tentative**

*Monday, December 17*

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)

10:00 a.m.
Briefing on EEO Program (Public Meeting)

*Tuesday, December 18*

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

*Wednesday, December 19*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of December 24—Tentative**

There are no meetings scheduled for the Week of December 24.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: November 29, 1990.

**William M. Hill, Jr.,**

*Office of the Secretary.*

[FR Doc. 90-28524 Filed 11-30-90; 2:51 pm]

BILLING CODE 7590-01-M



# Corrections

Federal Register
Vol. 55, No. 233
Tuesday, December 4, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Loan and Purchase Programs: Transportation Assistance Refunds

*Correction*

In notice document 90-26799 appearing on page 47500, in the issue of Wednesday, November 14, 1990, make the following corrections:

1. In the first column, under **SUMMARY:**, in the sixth and seventh lines, "FCC drive" should read "CCC price".

2. In the same column, under **FOR FURTHER INFORMATION CONTACT:**, in the second line, "USDA-SACS," should read "USDA-ASCS,".

3. In the second column, in the 13th line, "Affected" should read "Acquired".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

**7 CFR Part 1944**

### Forms SF 424.1, Application for Federal Assistance (For Non-construction)," and SF 424.2, "Application for Federal Assistance (For Construction)"

*Correction*

In rule document 90-8238 beginning on page 13502, in the issue of Wednesday, April 11, 1990, make the following correction:

On page 13503, in the second column, in amendatory instruction 8(a), in the second line, "§§ 1944.525(d)(2)," should read "§§ 1944.526(d)(2),".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Food and Safety Inspection Service

**9 CFR Parts 317 and 381**

**[Docket No. 87-025F]**

**RIN 0583-AA65**

### New Weight Labeling of Meat and Poultry Products

*Correction*

In rule document 90-26126 beginning on page 49826 in the issue of Friday, November 30, 1990, under **EFFECTIVE DATE,** "May 29, 1990." should read "May 29, 1991." each time it appears.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Family Support Administration

**45 CFR Part 303**

**RIN 0970-AA78**

### Child Support Enforcement Program; Federal Parent Locator Service Fees

*Correction*

In proposed rule document 90-26877 beginning on page 47777, in the issue of Thursday, November 15, 1990, make the following correction:

**§ 303.70 [Corrected]**

On page 47779, in § 303.70(e)(2)(iii), in the third column, in the second line "453(3)(2)" should read "453(e)(2)".

BILLING CODE 1505-01-D

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federal register

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Part II

# Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1991-1992; and Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1992; Notices

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## DEPARTMENT OF EDUCATION

### Final Funding Priorities for the National Institute on Disability and Rehabilitation Research

**AGENCY:** Department of Education.

**ACTION:** Notice of final funding priorities for the National Institute on Disability and Rehabilitation Research for fiscal years 1991–1992.

**SUMMARY:** The Secretary of Education announces final funding priorities for several programs under the National Institute on Disability and Rehabilitation Research (NIDRR) for Fiscal Years 1991–1992. NIDRR intends to propose additional priorities for Fiscal Year 1992 at a later date.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–5316 for TDD services.

**SUPPLEMENTARY INFORMATION:** Authority for the research programs of NIDRR is contained in section 204 of the Rehabilitation Act of 1973, as amended. Under these programs, awards are made to public and private nonprofit and for-profit agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR may make awards for up to 60 months, through grants or cooperative agreements. The awards are for planning and conducting research, demonstrations, and related activities that lead to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

NIDRR regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (*see* 34 CFR 351.32). These priorities were proposed for public comment through publication in the **Federal Register** on July 5, 1990, at 55 FR 27786. NIDRR reviewed the comments received on the priorities and now announces final funding priorities based on the responses to the proposed priorities, available funds, and other Departmental considerations. A synopsis of the comments received and the Secretary's responses to the comments are included in the Appendix to this document. The publication of these final funding priorities does not bind the Department of Education to fund projects under any or all of these priorities, except as otherwise provided by statute. Funding of particular projects depends on the quality of the applications received and the available funds.

The following final funding priorities represent areas in which NIDRR plans to support research and related activities through grants or cooperative agreements in four programs:

- Research and Demonstration projects (R & D);
- Rehabilitation Research and Training Centers (RRTCs);
- Rehabilitation Engineering Centers (RECs); and
- Knowledge Dissemination and Utilization projects (D & U).

### Research and Demonstration Projects

Research and Demonstration projects support research and/or demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, emotional, recreational, economic, and other factors affecting the rehabilitation of individuals with disabilities.

### Final Priorities for Research and Demonstration Projects

*Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation*

Psychosocial rehabilitation, an emerging modality for the rehabilitation of individuals with severe psychiatric disabilities, focuses on assisting people with long-term mental illness to develop their skills at decision-making, self-care, and self-determination while emphasizing normalization, less reliance on professional service providers, and other principles and practices that involve persons with severe psychiatric disability in their own rehabilitation. There is a need to identify proven strategies that involve members of this target population as advocates, planners, administrators, and implementers of service programs and to facilitate their contribution to improving vocational rehabilitation services for all persons with psychiatric disabilities. Partnerships of researchers and consumers are needed to identify effective models and the prerequisite organizational elements, demonstrate operational examples, and document outcomes.

This priority is based, in part, on recommendations from the Rehabilitation Services Administration Interagency Work Group on Psychiatric Rehabilitation, and on reviews of work completed or in progress on consumer advocacy in the broad field of mental health. The principles of psychosocial rehabilitation as well as many models of vocational rehabilitation encourages substantial consumer involvement, and thus require an improved understanding on the part of consumers, advocates, clinicians, and other service providers of methods to most effectively involve consumers in developing and providing services. Further, the best practice study of vocational rehabilitation services to severely mentally ill persons (Policy Studies Associates, 1989) clearly identified the potential contribution of consumer-driven and operated services and recommended their use by vocational rehabilitation agencies.

An absolute priority is announced for a project to:

- Review the current state-of-the-art in involving persons who have experienced severe psychiatric disability in key roles in advocacy, planning, information and referral, peer support, training, program administration, service delivery, evaluation, and related aspects of the provision of vocational rehabilitation services;
- Demonstrate models to effectively involve individuals with severe psychiatric disabilities in the development of their own rehabilitation service plans and/or in the delivery of vocational rehabilitation services, and evaluate the impact of consumers acting as advocates on client outcomes; and
- Develop materials, based on research findings, and provide technical assistance to enhance the capacity of a national cross-section of vocational rehabilitation agencies to facilitate the involvement of consumer-advocates in implementing vocational rehabilitation programs.

*National Job Coach Study*

Supported employment has become an important approach to the vocational rehabilitation of individuals with severe disabilities. A key element of the supported employment approach is the use of the job coach to provide employment-related support. There are indications that rehabilitation administrators need a better understanding of the role, function and status of the job coach (also called an employment training specialist) in transitional and supported employment. In particular, the requirements, characteristics, and functions of job coaching in programs serving individuals with different types of disabilities can be expected to diverge. While persons with mental retardation appear to be the group most commonly served in supported employment at present, there are also supported employment programs focusing on individuals with psychiatric disabilities, traumatic brain injury, sensory disabilities, and other types of disabilities.

A recent study (Rusch, 1988) found that job coaches in Illinois have varied educational backgrounds (34 percent baccalaureate degrees related to disability, 10 percent baccalaureate degrees unrelated to disability, 8 percent associate degrees, 4 percent masters degrees, 34 percent high school diplomas, and 10 percent from unknown backgrounds). The study also found that job coaches are paid relatively low salaries (mean $12,628 per year) and experience a high turnover rate (46.5 percent terminated in one year). Although the total number of supported employment training specialists is unknown, serving individuals with severe disabilities in small, integrated settings, as required by Federal regulations, has been accomplished largely though the use of these job coaches. The need for research on the employment conditions of job coaches was highlighted by the Rehabilitation Services Administration's 1988 Forum on Supported Employment in Williamsburg, and the 1989 Supported Employment Forum in Washington, DC. The President's Committee on Employment of People With Disabilities Supported Employment Forum (May 1988) recommended national action to improve job coaching.

This project will identify key facts about job coaches—pay, working conditions, experience, duties, career opportunities, and methods of coaching that can be used to develop operational guidelines for recruiting, training, and retaining job coaches and to improve job coaching services for individuals with severe disabilities.

An absolute priority is announced for a project to:

- Conduct public participation activities such as forums, workshops, hearings, and institutes involving persons with disabilities, job coaches, parents, employers, rehabilitation administrators, educators, and researchers in order to identify issues, best practices, alternative models, and outcomes for improving the use of job coaches, focusing on at least two types of disabilities commonly served in supported employment;
- Analyze conditions affecting the role, status, and management of job coaches, including such issues as recruitment and hiring, pre-service and in-service training, position descriptions, merit and productivity review criteria, use of coworkers as job coaches, benefits and incentives, career paths and advancement, turnover, coaching resources, technology applications, and mechanisms for professional communication and exchange, using data from supported employment programs and job coaches serving various disability groups, either separately or together, and presenting reliable data on job coaching for more than one disability group;
- Convene a national conference, focusing on two or more different types of disabilities, which has been planned and organized with the substantial involvement of job coaches, consumers, parents, or family members of persons with severe disabilities, administrators, and researchers, to present project recommendations and findings for consideration at local, State, and national levels; and
- Disseminate project findings widely to State agencies, community-based agencies, consumer organizations, policymakers and other appropriate audiences, using a range of dissemination strategies and accessible formats as appropriate.

*National Study of Transition of Individuals With Severe Disabilities Leaving School*

Individuals with severe disabilities of all types leaving school often need additional services to help them enter and maintain adult roles, including employment, independent living, or postsecondary education. Many of these individuals, however, may be unable to access these additional services in a timely manner. A recent analysis of data from the State of Maryland concluded that 11 percent of those leaving school with severe disabilities face uncertain futures due to discrepancies between their continuing service needs and the ability of adult service programs to meet their needs. (Ward, M. and Halloran, W., "Transition to Uncertainty: Status of Many School Leavers with Severe Disabilities," CDEI, 1989.)

Individuals involved in assisting youth to make the transition from school to work and adult life often allude to discrepancies between the needs of individuals leaving school and the availability of services. However, there are no definitive data regarding this alleged service gap, and a national study of this issue is needed to determine the extent to which such a gap exists.

Youth with severe disabilities leaving school often require coordinated services from education agencies, vocational rehabilitation agencies, and community-based service providers. Some States and agencies may have more effective systems than others for assigning priority to youth with severe disabilities in transition, as well as other approaches to eliminate or reduce any gaps in services. A national study of specific policies and practices for coordinating transition services would provide information regarding effective intervention.

The study will include a survey to determine the magnitude of the problem of service gaps, an analysis of existing policies and practices, and case studies of States whose current policies or practices deliver effective transition services for youths with severe disabilities. The project should consider the use of problem-solving techniques that include youth and adults with disabilities who have experienced gaps in services as well as those who have had successful transitions.

An absolute priority is announced for a project to:

- Analyze transition problems of youths with severe disabilities in several States in order to document the magnitude and characteristics of any service gaps that may exist;
- Identify States that have exemplary policies, administrative practices, and funding strategies that facilitate the transition of students with severe disabilities into employment, further education, and related adult outcomes;
- Develop a framework for model State transition policies appropriate for the range of problems facing States; and
- Conduct a variety of appropriate informational exchange activities to encourage States to develop policies that will facilitate timely access to adult services and thus improve transition outcomes for youth with severe disabilities.

*Alcohol and Substance Abuse as Barriers to Job Re-Entry for Persons With Traumatic Brain Injury*

There is a serious problem of substance (alcohol and drug) abuse and addition among persons who have experienced traumatic brain injury (TBI). Individuals who have experienced TBI often have residual functional difficulties in short-term memory, decision-making, social skills, communicating, problem solving, and relating to family members and friends. Consequently, many interventions which have proven effective in assisting people with substance addictions have

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not helped persons with TBI. Treatment and support interventions, particularly for early problem identification and to assist family members of TBI survivors, are needed in order to help individuals with TBI avoid or overcome addictions and continue their rehabilitation programs for return to work.

Alcohol and other substance addictions of persons with TBI were identified as major problems at the November 1987 NIDRR National Invitational Conference on Traumatic Brain Injury and at Beach Conference on Community-Based Employment for Persons with TBI. A recent article in Alcohol Health & Research World (1989) titled "Alcohol Abuse and Traumatic Brain Injury" identified the need for improved case management, research, and education on this problem. Progress reports from NIDRR's Research and Development projects on supported employment for persons with TBI have identified addictive behavior as a major barrier to their return to work. The National Head Injury Foundation has recommended national action on this topic, including the effects on family members of substance abuse by persons who have survived TBI.

An absolute priority is announced for a project to:

- Develop, field test, and evaluate appropriate treatment and support interventions to prevent or ameliorate substance abuse for persons who have experienced traumatic brain injury and their families;
- Prepare program materials for use by rehabilitation counselors, job coaches, teachers, psychologists, employers, family members, and consumers in their efforts to reduce substance abuse among individuals with TBI;
- Develop model referral procedures, guidelines for the use of general alcohol and substance abuse treatment resources by the TBI population, strategies for avoiding second injuries consequent to substance abuse, and measures of program outcomes and effectiveness; and
- Disseminate project findings to rehabilitation and addiction programs, to medical programs in TBI, and to professional and consumer organizations dealing with traumatic brain injury.

*Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability*

"Case management" has frequently been identified as essential for providing outcome-oriented, individualized, continuous assistance to persons with psychiatric disability whose complex needs require the services of a gamut of agencies over long periods of time (Robinson and Bergman, 1989; Gowdy and Rapp, 1989; Rapp and Wintersteen, 1989). "Best practices" in vocational rehabilitation for persons with psychiatric disability incorporate case management features such as specialized caseloads, post-employment services, interagency coordination of vocational rehabilitation with other service systems, and extension of the role of the job coach to accommodate the special needs of persons with severe psychiatric disability (Policy Studies Associates, 1989). Despite the widespread agreement on the value of case management approaches, administrators have few proven case management models and little guidance on their implementation.

Questions frequently asked by managers of mental health rehabilitation programs include the following: How do case management approaches in mental health and vocational rehabilitation compare? What are the mental health case management functions of a job coach? What are the vocational support functions of a mental health case manager? Can peer, family, and co-worker support activities serve case management functions? How do case management needs change after employment? When and how should case management start, stop, or transfer lead responsibility between mental health and vocational rehabilitation agencies? How does the case management model impact on consumer empowerment, or a mutuality between consumer and the service provider in an effort to reach a shared objective?

There is a need for research to examine case management practices in the vocational rehabilitation of persons with psychiatric disability in order to identify feasible, effective models and specify crucial cost, staffing, skills, and administrative components.

An absolute priority is announced for a project to:

- Analyze case management practices and models for vocational rehabilitation of persons with psychiatric disability, including analyses of costs, effectiveness, staffing, interagency coordination, and the roles of peers, co-workers, and family members;
- Compare and contrast case management functions and responsibilities in mental health and vocational rehabilitation (MH/VR) service systems from the time of initial vocational assistance to persons with psychiatric disability through periods of their sustained employment to compile longitudinal data that will assist MH/VR agencies to adapt or adopt appropriate program features that foster greater employment stability among their clients;
- Assess the relationship between the case management approach and endeavors of consumers to manage their own rehabilitation and examine the role of subtle factors such as terminology and approach that effect the achievement of consumer aspirations in program direction; and
- Prepare research monographs, presentations, training materials, and journal articles for dissemination of project findings to MH/VR agencies and other relevant audiences.

*Health Care Policy and Rehabilitation*

The health care system in the United States is undergoing substantial changes, not the least of which are in the mechanisms for delivering and financing medical care. Many of the new developments in the delivery of health care services are based on models for acute care or communicable diseases services and fail to take into account the long-term medical and rehabilitation needs of persons with the most severe disabilities. At present, disabled populations are either ignored or forced into modes of care that may be inappropriate or unresponsive to their needs.

The purpose of this priority is to generate new knowledge to resolve important health care policy issues that have an impact on the delivery of medical rehabilitation/physical restoration services. Issues that require study in this area include: the costs and efficacy of rehabilitation services and specific rehabilitation modalities; the impact of various innovative payment methods on rehabilitation hospitals and regional service delivery systems, *e.g.*, Model Spinal Cord Injury projects; and the development of new and innovative methods of delivering comprehensive medical rehabilitation services that include identification of financial and administrative characteristics.

An absolute priority is announced for a project to:

- Identify innovative models of resource consumption, using established and recognized functional outcome measures, to serve as a basis for prospective and other payment systems in rehabilitation medicine services;
- Demonstrate and evaluate the feasibility of using functionally-based models for payment systems, with emphasis on appropriate classification schemes that include such factors as severity, progress during rehabilitation, and outcome compared to admission status;
- Analyze variations in patterns of resource utilization during acute rehabilitation and identify the variables that influence these changes;
- Determine the relationship between changes in functional status and patterns of resource utilization during acute inpatient rehabilitation; and
- Identify and evaluate factors in various payment models that contribute to the quality of care during acute in-patient medical rehabilitation and the post-rehabilitation health status of individuals with disabilities.



**Rehabilitation Research and Training Centers**

Authority for the Rehabilitation Research and Training Centers program of NIDRR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended. Under the RRTC program, awards are made to institutions of higher education, or to public and private organizations, including Indian tribes and tribal organizations, in collaboration with institutions of higher education.

RRTCs conduct programmatic, multidisciplinary, and synergistic research, training, and information dissemination in designated areas of high priority. NIDRR's regulations authorize the Secretary to establish research priorities by reserving funds to support particular research activities (*see* 34 CFR 352.32). A program of RRTCs has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination training must be accessible to individuals with a range of disabling conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers must also conduct state-of-the-art studies in relevant aspects of their priority areas. Each RRTC must also provide training to individuals with disabilities and their families in managing and coping with disabilities.

NIDRR will conduct, not later than three years after the establishment of any RRTC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

Final Priorities for Rehabilitation Research and Training Centers

*Rehabilitation of Blind and Visually-Impaired Individuals*

The National Health Interview Survey (LaPlante, 1988) indicates that there are approximately 600,000 men and women between the ages of 18 and 69 whose work activities are limited due to visual disabilities, including blindness, glaucoma, cataracts, and other visual impairments. Of this group, about 405,000 individuals are unemployed. A significant number of the remaining 195,000 individuals are underemployed.

A program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. A Center in this area should develop models for the effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing needs of the blind and visually-impaired individuals for career preparation and enhancement, either by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective for the Center is to assist service delivery agencies to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to guide rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by blind and visually-impaired persons in regular use. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible environments for this population through the use of technology, adaptive viewing devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are blind and those with low vision and their advocates in the planning, conduct, and review of Center activities. All instruments, program descriptions, training materials and courses, data bases, and technical assistance materials produced by the Center must be developed in formats that are accessible to individuals with various types of visual impairments. The Center will develop a national data base in this field of activity and serve as a central repository of information on the rehabilitation of persons with blindness and visual impairments.

An absolute priority is announced for an RRTC to:

- Identify and analyze existing career preparation and placement service programs and systems for persons who are blind or visually impaired, and, when needed, develop new and innovative services and service delivery systems for enhancing the rehabilitation of this population;
- Develop research-based models for and conduct training to enhance the capabilities of blind and visually-impaired persons, including those from racial and ethnic minorities and women, to develop their rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;
- Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to assist both visually-impaired persons and their employers in the process of transition from school to work;
- Analyze methods to increase job retention among this population, including strategies such as job-site modification, job restructuring, cooperative efforts with organized labor, and retraining;
- Develop and test technical assistance and training models for rehabilitation agencies, business and employer associations, and consumer groups to promote the employment, retention, and advancement of blind and visually-impaired workers;

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• Analyze the cost-effectiveness and quality of life factors in different rehabilitation delivery systems, including Comprehensive Rehabilitation Centers, for individuals who are blind or visually impaired, including individuals in different age groups, from racial and ethnic minorities, women, and both rural and urban residents;

• Develop and disseminate model curricula for training vendors in the Business Enterprise Program (BEP), model program operation manuals for BEP supervisors, and model BEP marketing programs for people who are blind, for building supervisors, and for rehabilitation service providers, with an emphasis on expanded representation of women and minorities;

• Identify the appropriate use of, and instruction in, Braille, optical devices and technologies that could contribute to the higher literacy level necessary for various types of employment.

• Develop and maintain a national research data base on the career preparation, placement, and advancement of blind and visually-impaired persons, and serve as a Center for current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;

• Provide advanced training at the predoctoral and postdoctoral levels, and for professional practitioners in the rehabilitation of blind and visually-impaired persons, with an emphasis on recruiting blind and visually-impaired persons for that training;

• Provide advanced training in research in fields pertinent to the rehabilitation of blind and visually-impaired individuals, with emphasis on recruiting blind and visually-impaired individuals and individuals from other underrepresented populations for that training;

• Conduct at least one national study of the state-of-the-art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations in order to disseminate Center findings and products on an annual basis.

*Rehabilitation of Deaf and Hard-of-Hearing Individuals*

Individuals with hearing impairment comprise the single largest chronic physical disability group in the United States, numbering an estimated 21 million Americans (National Center for Health Statistics, "Data Reports," No. 160, 1987). The unpublished data from the combined 1979–1980 Health Interview Surveys indicate that over 28 percent of those whose only disability is hearing impairment report themselves to have activity limitations, while those who also have other chronic conditions or impairments are twice as likely to report functional limitations. (Mathematical Policy Research, Digest of Data on Persons With Disabilities, 1984.) This segment of the population presents major challenges to public rehabilitation efforts on their behalf.

An RRTC is announced to address the rehabilitation needs of this population, particularly those individuals who are profoundly deaf or have significant hearing impairments. A pro-program of coordinated, interdisciplinary research and training is needed to develop and disseminate rehabilitation approaches designed to improve services for this population. In particular, an RRTC is needed to develop models for effective delivery of rehabilitation services in the areas of career preparation, placement, and career advancement. The Center will assist rehabilitation service delivery systems to adapt to the changing career preparation and enhancement needs of deaf and hard-of-hearing persons, whether by restructuring service programs, retraining staff, or implementing new service techniques.

An immediate objective is to make better use of the information that is available, including research data, models of career preparation, placement, retraining, and advancement, and standards and guidelines that have been developed to improve rehabilitation efforts for this population. Over the longer term, it is important to develop better rehabilitation service delivery models that are based on field and laboratory research, and tested by deaf and hard-of-hearing persons in regular use, including those from racial and ethnic minorities. One prerequisite to improving rehabilitation services in a comprehensive way is to assist those who design, manage, and provide training, placement, and employment services to become aware of the potential for creating more accessible communication environments for this population through the use of manual, oral, or cued speech interpreters, adaptive listening devices, and related accommodations.

A critical element of any Center to be funded under this priority will be the involvement of individuals who are deaf and those who are hard-of-hearing in the planning, conduct, and review of Center activities. All instruments, descriptions, training materials and courses, data bases, and technical assistance developed by the Center must be provided in formats that are accessible to individuals with various types of hearing impairments. The Center will develop a national data base in this field of activity and serve as a central repository of information on the rehabilitation of persons with severe-to-profound hearing impairments. The Center also is expected to cooperate with the RRTC on Low-Functioning Deaf Individuals, funded in 1990, to share information and findings, and to consider coordinated research studies and training activities. The Center is also expected to cooperate with community agencies and consumer organizations to improve public awareness and the dissemination of information.

An absolute priority is announced for an RRTC to:

• Identify and analyze existing career preparation and placement service programs and systems for persons who are deaf or hard-of-hearing, and, when needed, develop new and innovative services approaches and systems to enhance the rehabilitation of this population;

• Conduct research and training to enhance the capabilities of deaf and hard-of-hearing persons, including those from racial and ethnic minorities and women, to develop rehabilitation plans, select career goals, and match personal abilities and expectations to changing vocational opportunities in the labor market;

• Develop strategies and techniques to enhance coordination and cooperation between secondary and postsecondary educational institutions and vocational rehabilitation agencies to improve the transition from school to work for deaf and hard-of-hearing persons;

• Develop an employment profile of the deaf and hard-of-hearing populations and identify the skills necessary for job entry, advancement, retention, and satisfaction for this population in the year 2000;

• Develop models of technical assistance and training for rehabilitation agencies, business and employer associations, and consumer groups in methods to stimulate the hiring, retention, and advancement of deaf and hard-of-hearing workers;

• Investigate the special problems and needs that professionals, service providers, and families encounter in their efforts to facilitate the independence, and personal, social, cultural, and career adjustment of deaf and hard-of-hearing persons in both urban and rural settings, and develop effective models for the provision of support services;

• Develop and maintain a national research data base on the career preparation, placement, and advancement of deaf and hard-of-hearing persons, and serve as a Center of current information concerning this population and the professional personnel, programs, and related resources available to assist in rehabilitation efforts on their behalf;

• Provide advanced training at the predoctoral and postdoctoral levels, and for professional practitioners in the rehabilitation of deaf and hard-of-hearing persons, with an emphasis on recruiting persons who are hearing-impaired—including individuals who are deaf and those who are hard-of-hearing—for this training;

• Provide advanced training in research in fields pertinent to the rehabilitation of deaf and hard-of-hearing persons, with emphasis on recruiting individuals who are hearing-impaired and individuals from other underrepresented populations for that training;

• Conduct at least one national study of the state of the art to identify current knowledge and recommend future research; and

• Organize and conduct research and training conferences and short-term institutes in cooperation with professional and consumer organizations and community agencies in order to disseminate Center findings and products on an annual basis.

**Rehabilitation Engineering Centers**

Authority for the Rehabilitation Engineering Center (REC) program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended. Under this program, awards are made to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations to conduct coordinated programs of advanced research of an engineering or technological nature. RECs also work to develop systems for the exchange of technical and engineering information and to improve the distribution of assistive devices and equipment to individuals with disabilities. Each REC must be located in a clinical setting and is encouraged to collaborate with institutions of higher education in the conduct of a program of research, scientific evaluation, and training that advances the state-of-the-art in technology or its application. Each Center is expected to contribute substantially to the solution of rehabilitation problems through developing practical applications for their research and through scientific evaluation to validate the findings of their research and that of other Centers. RECs generally conduct both academic and in-service training to disseminate and encourage the use of new rehabilitation engineering knowledge, and to build capacity for engineering research in the rehabilitation field. Each REC must ensure that all training materials developed by the Center are presented in several formats that will be accessible to individuals with various types of sensory and mobility impairments.

NIDRR will conduct, not later than three years after the establishment of any REC, one or more reviews of the activities and achievements of the Center. Continued funding depends at all times on satisfactory performance and accomplishment in accordance with the provisions of 34 CFR 75.253(a).

Final Priority for Rehabilitation Engineering Center

*Technology for Older Persons With Disabilities*

The prevalence of medical, neurological and orthopedic impairments increases with the age of the population. Common conditions in the older population that frequently result in disability include arthritis, stroke, pulmonary disease, hip fractures, Alzheimer's disease, and deficits in vision and hearing. (Breuer, 1982; Haber, 1986). It is estimated that half of all Americans over seventy years of age have one or more disabilities. (Williams 1986). The frequency of multiple disabilities is also much higher in the older population (Breuer, 1982; Williams, 1986).

Technology has been used in rehabilitation to help reduce the adverse effects of impairment and disability. Technology, however, has not been widely used to solve problems in geriatric rehabilitation.

A new REC to be funded in this area will emphasize technological solutions to the special needs of older persons that are a consequence of the aging process as it produces functional limitations similar to those experienced by persons of all ages with disabilities. At the same time, the Center must be concerned with applications of technology to mitigate the effects of the aging process on persons who have disabilities.

The older person often has problems unique to an order population that must be considered in the application of technological solutions. First, many devices or techniques aimed at ameliorating specific disabilities are designed to augment or take advantage of compensatory abilities. However, multiple and gradual changes related to aging may leave older persons without one or more areas of strength with which to compensate for other functional losses. For example, an older person requiring a wheelchair, because of gradual loss of muscle mass, may not have, or may not be able to develop, the requisite arm strength to use the grab bars.

Second, many older persons who experience problems with daily living in their houses or apartments do not consider themselves to be disabled. Because they don't view their problems as disabilities, they neither perceive nor accept the need for adaptive technologies, and are less likely to seek technology-related assistance.

Finally, the development of technological applications to functional limitations of older persons is often focused on the disability as a characteristic of the individual rather than an artifact of the person-environment interaction.

Efforts to develop and disseminate technological aids to older persons with functional limitations must be conducted in the context of using different dissemination media and service systems to reach older persons, and with a sensitivity to the need for accurate prescriptions, appropriate training in the use of the technology that is prescribed, and follow-up to assure that desired outcomes are achieved.

One study of 500 older persons who owned technological aids (Page, Galer, Fitzgerald, and Feeney, 1980) found that about 50 percent of them did not use their aids because the devices had been inaccurately prescribed, did not work, were unsafe or broken, or because the individual regarded the disability as a minor inconvenience that he/she would rather accept than try to overcome.

Other studies have emphasized the need for more sensitive and more selective criteria for assessing the need for assistive technology; a need for assessments for aids to take place in the usual living environment or in a facsimile situation; and a need to understand that the selection of the appropriate aid is critical to the consumer's expectations, that adequate training in the use of an aid is vital, and that followup visits are necessary to ensure that the aids are used and function well in the daily milieu. NIDRR has also identified a need for better-designed assistive technology, more information about assistive technology, and improved methods for the

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maintenance of assistive devices for older persons.

According to Caldwell (1988), the most effective deployment of technology is to prevent the need for assistive devices in the first place. He states that using simple technical aids to prevent serious injuries and the resulting disabilities can be a major factor in maintaining functional independence.

The appropriate infrastructure for delivery of assistive technology to this population has not yet been determined, and the delivery system is one of the most important barriers to optimal use of assistive technology by older persons with disabilities. Users of all ages and experts have expressed difficulties in acquiring new technologies. Evaluation research has identified the communication gap between reimbursement decision-makers unfamiliar with innovative rehabilitation technologies and product designers and developers unfamiliar with the process of how users actually acquire these technologies (Engelhardt and Leifer, 1983).

Research, development, and dissemination of information by the Center must address the needs of older individuals who are typically underserved, including those from ethnic, racial, and linguistic minorities, rural areas, or congregate care settings. Older persons, including older persons with disabilities, must be involved in the planning, conduct, and review of Center activities. Any Center to be funded under this priority must coordinate and share information with NIDRR-funded RRTCs on Rehabilitation and Aging, and with programs funded under the Technology-Related Assistant for Individuals with Disabilities Act of 1988.

An absolute priority is announced for a Center to:

- Examine the relationship between the older individual and the environment to determine strategies to adapt the environment to improve the quality of life for older persons with disabilities;
- Develop and evaluate assistive technologies that are less sophisticated, more easily repairable, easier to use, less expensive, and more appropriate for and more acceptable to older persons;
- Explore various strategies to enhance the use of available assistive devices by using the knowledge, personnel, devices, and information sources available through the rehabilitation field;
- Explore various strategies for strengthening public-private sector partnerships in marketing to, and in the purchase and use of assistive devices by, older individuals with disabilities;
- Develop and disseminate new knowledge about the prevention of disabilities through the appropriate use of assistive devices;
- Develop and deliver training and technical assistance to service providers in both rehabilitation and general services to older persons, and to consumers, on sources and use of assistive devices and other technological applications to problems of functional loss caused or exacerbated by aging; and other institutions, advanced training in research in rehabilitation technology to meet the needs of older persons, with special emphasis on recruiting individuals from underrepresented populations such as individuals with disabilities, minorities, and women, for that training.

**Knowledge Dissemination and Utilization Program (D&U)**

Knowledge Dissemination and Utilization (D&U) projects ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities. The authority for this program is contained in section 202 and 204 (a) and (b)(5) of the Rehabilitation Act of 1973, as amended.

Final Priority for Knowledge Dissemination and Utilization

*Regional Information Exchange*

As part of its effort to disseminate new knowledge on improved rehabilitation practices, NIDRR seeks to promote the widespread use of validated exemplary practices in rehabilitation in order to improve the service delivery system for individuals with disabilities. Many of these exemplary programs were developed at the "grassroots" in communities; others emerged as a result of research sponsored by NIDRR or other agencies. NIDRR proposes to address this objective by establishing one or more Regional Information Exchange.

A Regional Information Exchange (RIE) is intended to facilitate the adoption of exemplary program models that were developed within the locality or region of the adopting agency.

The RIEs must identify and validate exemplary programs within the established priority areas, "market" the model programs to potential adoption agencies, and provide technical assistance in the adoption or adaptation of the model.

Priority areas for RIE diffusion efforts during the periods of this priority include: Emergent issues in supported employment programs, such as the involvement of co-workers, obtaining long-term funding support for individuals, and appropriate family involvement; interagency collaboration and coordination in programs for transition from school to work, including model programs that are exemplary in their use of State school exiting data for program planning; parent-professional collaboration in the integration of individuals with disabilities in education, community living, and employment; strategies for assisted housing for individuals with long-term mental illness; application of rehabilitation principles in generic services to elderly persons with disabilities in order to promote and maintain independence; and model programs for the delivery of rehabilitation engineering services in vocational rehabilitation agencies.

The RIE programs are restricted to the diffusion of carefully validated model programs in two or more of the designated priority areas, and must provide necessary technical assistance to facilitate the successful adoption or adaptation of the exemplary programs. Each RIE will work within its designated region, as defined in the grant application and cooperative agreement, and must demonstrate the appropriateness of the selected region for diffusion of exemplary programs in the specified priority areas.

An absolute priority is announced for a project to:

- Develop a process for identifying exemplary programs, including criteria, a methodology for data collection, and evaluation instruments that include measurements related to the identified criteria;
- Solicit nominations of exemplary programs in the priority area(s) from program operators, consumer organizations, and other relevant parties in the region, giving consideration to the inclusion of demonstration projects funded by NIDRR, the Rehabilitation Services Administration, and other Federal agencies;
- Develop and implement a procedure to validate exemplary programs in the region in the specified priority areas, involving individuals with disabilities and technical experts in the validation process, and document the methodology and findings of the validation process;
- Develop and implement strategies to make the wide audience of rehabilitation service providers and special educators aware of the exemplary programs and stimulate their interest in adoption or adapting similar models, with the assistance of the RIE;
- Develop and maintain a cadre of expert consultants in the RIE's priority areas and in the general area of knowledge transfer who can facilitate the adoption or adaptation of a exemplary programs;
- Facilitate the exchange of technical assistance between the exemplary program and the requesting adopter program through onsite demonstrations, training materials, and direct consultation; and
- Maintain appropriate data on the activities of the RIE to support an evaluation of its effectiveness.

Authority: 29 U.S.C. 760–762.

Dated: November 28, 1990.

(Catalog of Federal Domestic Assistance Nos. 84.133A, 84.133B, 84.133D, and 84.133E, National Institute on Disability and Rehabilitation Research)

**Lauro F. Cavazos,**

*Secretary of Education.*

**Appendix**

The Secretary received 56 letters commenting on various aspects of the proposed priorities. This Appendix contains a synopsis of those comments as well as the Secretary's responses to them. General comments are discussed first, and the remaining comments are discussed in the order of the priorities to which they pertain.

*General*

*Comment:* Several commenters urged that NIDRR focus additional priorities on research and development in technology and assistive devices. A few mentioned specific areas of technology that should become priorities. Many of these commenters expressed concern that the absence of R&D priorities in the technology area signaled a long-term diminution of NIDRR support to these areas.

*Discussion:* There has been no lessening of NIDRR's interest in or commitment to research in assistive technology. This notice includes a priority for a new Rehabilitation Engineering Center for assistive technology for elderly persons with disabilities. In 1990, NIDRR funded two new RECs, as well as 20 Small Business Innovative Research projects in technology, and a number of new field-initiated research and innovation grants in that field. Additionally, in 1990 NIDRR expended nearly $2 million on Projects of National Significance, including research and development and demonstration projects, under the Technology-Related Assistance for Individuals with Disabilities program. This latter program will not supplant the research funds directed to technology research by NIDRR; rather the two programs will be expected to complement each other and the priorities for the engineering research and technology assistance programs must be coordinated. Priorities are the products of a complex selection process. The priorities included in this notice, for example, emerged either from mandated interagency task forces, state-of-the-art conferences, or evaluation studies of NIDRR programs. The fact that technology priorities, other than the one REC, did not emerge from this process does not mean that NIDRR will not continue to fund a substantial body of research and development in this field through other program mechanisms. NIDRR is undertaking a long-range planning process, and will refer the suggestions for additional priorities for further consideration in the planning process.

*Changes:* None.

*Comment:* Several commenters suggested additional priorities in specific problem areas, including technology for vocational evaluations, technology for respirator-dependent individuals, rehabilitation of individuals with autoimmune deficiency disease, community integration for individuals with long-term mental illness, prosthetics and orthotics research, specific learning disabilities, and improved accessibility for health care facilities.

*Discussion:* The Secretary appreciates these thoughtful and worthwhile suggestions. NIDRR will ensure that these suggestions, and the supporting documentation provided by the commenters, are considered in the future planning process. However, the Secretary also reminds commenters that projects in all of these areas are eligible for support under the field-initiated research and innovation grant programs.

*Changes:* None.

*Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation*

*Comment:* A number of commenters suggested that certain additional aspects of self-advocacy and mental illness be added to the scope of the priority, such as evaluation of the impact of self-awareness training, expansion to include other areas of psychosocial rehabilitation, studies of self-help groups, and the development of "decision-aiding systems" to support cognitive processes of individuals with mental illness. One commenter urged that the priority be expanded to include an evaluation of the impact of consumer advocates in long-term support programs.

*Discussion:* The Secretary agrees that the evaluation of the impact of consumer involvement is a key element in this priority and had intended for applicants to include such an evaluation in their demonstration projects. The Secretary agrees to include such an evaluation to further emphasize the importance of acquiring knowledge about the impact of various consumer roles in vocational rehabilitation for individuals with long-term mental illness. However, the Secretary rejects the suggestions to add studies of specific methods of consumer participation, such as consumer-owned business, self-help groups, or cognitive support systems since to do so would prescribe the details of the research approaches. Applicants are free to propose studying any of these modes of consumer involvement as long as they meet the objectives of the priority.

*Changes:* An additional required activity has been included specifying that the recipient of an award must also evaluate the impact on outcomes of consumers as advocates in vocational rehabilitation for this population.

*Comment:* One commenter argued the focus should be on all types of vocational rehabilitation of individuals with psychiatric disabilities, not just vocational rehabilitation using the psychosocial model. A second commenter urged that the priority not be limited to vocational rehabilitation, but be expanded to other psychiatric treatment programs.

*Discussion:* The Secretary agrees that the priority should include studies of consumer advocacy in all types of vocational rehabilitation programs, not only those that employ the psychosocial model. However, the Secretary rejects the suggestion of extending the scope of the priority beyond vocational rehabilitation, since the priority was generated by the Rehabilitation Services Administration Interagency Work Group on Psychiatric Rehabilitation as a response to identified needs in vocational rehabilitation.

*Changes:* References to psychosocial or psychosocial vocational rehabilitation have been deleted from the project requirements, and the priority is clearly applicable to all vocational rehabilitation for individuals with severe psychiatric disabilities.

*National Job Coach Study*

*Comment:* Several commenters stated that job coaching has very different elements for different disability groups. Several commenters were concerned that the study would inevitably focus only on job coaching for individuals with mental retardation—the largest population group in supported employment—and, therefore, the findings may not be generalized to job coaching in programs for individuals with other types of disabilities, such as traumatic brain injury, severe psychiatric disabilities, or physical disabilities. A second commenter recommended that the project include a number of information dissemination strategies in addition to the required national conference in order to reach other audiences.

*Discussion:* The Secretary agrees that job coaching is likely to vary among disability groups, and, therefore, the study needs to obtain information about job coaching for more than one disability group. The Secretary also agrees that the project should include additional means of disseminating its findings.

*Changes:* A statement has been added to the preamble to the priority to indicate that variations in job coaching according to disability group can be expected, and as absolute requirement to address job coaching with at least two disability groups has been added. The priority has also been modified to require that several effective methods of dissemination of findings to appropriate target audiences be included in any project resulting from this priority.

*Comment:* Several commenters suggested that certain required elements be added to the priority. For example, one commenter suggested that the research should focus on "intelligent tutoring systems" for job coaches. One commenter recommended a study of the relationship between factors related to job coaching and client outcomes; a comparison of job coaches in rehabilitation to various counterparts in private industry; and an



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analysis of the barriers to implementation of effective job coaching.

*Discussion:* Most of the suggested additions presuppose a more systematic base of information about job coaching supported employment than now exists. The purpose of the study is to begin to quantify and define some of the experiential knowledge derived from the first few years of job coaching in supported employment. This would be a prerequisite to either a study of the impact of job coaching on client outcomes or to a policy analysis such as the suggested study of barriers to implementation. The Secretary is, therefore, not adding these suggested elements to this priority.

*Changes:* None.

*National Study of Transition of Individuals With Severe Disabilities Leaving School*

*Comment:* Several commenters suggested additional activities be included in this priority. One commenter urged that supported learning in postsecondary education settings be included for students with psychiatric disabilities. A second organization recommended several additions to the priority that would evaluate the effectiveness of States, local governments, and school districts in developing and implementing policy and also fund incentive programs to encourage implementation of effective transition programs.

*Discussion:* The Secretary agrees that transition to adult roles may include transition to postsecondary education, which may be through supported education, for any disability group. The priority is directed to the particular purpose of improving State transition practices; an applicant may propose to approach the objectives of the priority through evaluations of State policysetting processes if the applicant believes this method will meet the requirements of the priority effectively. NIDRR's mission does not extend to implementation of improved education programs (e.g., "incentive programs"); however, NIDRR strives to disseminate findings of research and to encourage the utilization of those findings by service programs.

*Changes:* The Secretary has included a reference to postsecondary education, which could include supported education, as one of the objectives of the transition programs to be studied.

*Comment:* Two commenters mentioned the need to define "youth with severe disabilities" or possibly to expand the coverage of the priority to include all youth with disabilities.

*Discussion:* NIDRR adheres to the provisions of the Rehabilitation Act of 1973, as amended, that specify that NIDRR research shall focus on those with disabilities, "especially those with the most severe disabilities." Severe disabilities are defined in the Act at section 7(15)(A) (29 U.S.C. and in the regulations implementing the Act at 34 CFR 350.4(b).

*Changes:* None.

*Comment:* A final comment concerned the possibility of this priority duplicating studies that might be required under the Education of the Handicapped Act (EHA).

*Discussion:* The priority was developed in conjunction with the Office of Special Education (OSEP), which administers the Education of the Handicapped Act, and any ensuing project will be supported jointly by OSEP and NIDRR. The study was planned to meet some of the requirements of the EHA and there is close coordination between NIDRR and OSEP to avoid unproductive duplication.

*Changes:* None.

*Alcohol and Substance Abuse as Barriers to Job Re-Entry for Persons With Traumatic Brain Injury*

*Comment:* One commenter requested that identification of best practices in supported employment for individuals with TBI be included in that priority. The commenter further requested that applicants be required to demonstrate a relationship with the Head Injury Centers to be funded by the Rehabilitation Services Administration in fiscal year 1990.

*Discussion:* NIDRR has announced priorities and funded several projects over the past few years to address issues of supported employment for individuals with TBI. While an applicant may use this approach to the objectives of the priority, this is not a requirement. The Secretary prefers not to restrict applicants to those that have a prior relationship with a particular set of Centers. While it is clear that the applicant will need a clinical base, there are many other centers for clinical treatment and rehabilitation of individuals with traumatic brain injury, including four RRTCs and five model projects funded by NIDRR, that could provide a clinical population for the study. Any project under this priority is expected to disseminate its findings to major service providers, including Head Injury Centers.

*Changes:* None.

*Comment:* One commenter stated that the priority should not focus on substance abuse, as it is only one of many problems of individuals with TBI.

*Discussion:* NIDRR has funded four RRTCs, five model demonstration projects, four research and demonstration projects, and numerous field-initiated and innovation grant projects in the area of TBI. None of these projects has a focus on substance abuse and TBI, although the Secretary received several letters suggesting that over half of the TBI population has substance abuse problems. This project is intended to document the extent of that one particular problem of the TBI population and the Secretary does not want to dilute that focus.

*Changes:* None.

*Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability*

*Comment:* Two commenters suggested that the priority should include a study of the relationship between case management and consumer empowerment. Several commenters suggested that the term "case management" is itself demeaning, as it implies impersonal manipulation of consumers by managers.

*Discussion:* The Secretary agrees that consumer ability to manage their own rehabilitation is extremely important for individuals with psychiatric disabilities. It is unclear whether case management enhances or diminishes the self-management abilities of the individuals. The priority continues to use the term "case management" because the term is in widespread use in both vocational rehabilitation and psychiatric service agencies. However, part of the purpose of the study will be to devise relationships, definitions, and terminology that are affirming to consumers and to service providers.

*Changes:* The Secretary has modified the priority to include a study of the impact of case management on the goal of enhanced consumer self-management.

*Comment:* One commenter stated that this priority should place particular emphasis on case management for individuals who are dually-diagnosed, presumably referring to individuals who have both mental retardation and long-term mental illness. This suggestion was justified by the fact that those who are "dually-diagnosed" often are not considered the appropriate target population by either mental health or mental retardation service agencies.

*Discussion:* This priority is intended to meet particular needs for service improvements in the vocational rehabilitation system, and is not directed at either the mental health or mental retardation service systems as such. This priority is directed at improving services to individuals with psychiatric disabilities who are clients of the vocational rehabilitation system, regardless of their other disabilities. NIDRR is supporting research and related activities on case management for the broader populations of individuals with psychiatric disabilities and individuals with severe behavior disorders in several of its RRTCs, and the Secretary has decided to focus this priority on improving vocational rehabilitation services for individuals who have psychiatric disabilities and are clients of rehabilitation agencies, regardless of whether or not they have a "dual diagnosis."

*Changes:* None.

*Health Care Policy and Rehabilitation*

*Comment:* Two commenters suggested that the priority be expanded to include some form of study of the impact of payment models on client outcomes. One commenter suggested that the study should include an analysis of the costs and benefits of rehabilitation to society. A third suggestion was that the priority require statistical modeling rather than a demonstration of functionally-based models for payment systems, as it could be too cumbersome to implement a full demonstration.

*Discussion:* The purpose of this priority is to achieve a specific body of applied knowledge about the impact of various health care policies and rehabilitation services. It is not intended to be a comprehensive assessment of the value of rehabilitation to society; such an assessment would dwarf the scope and intent of the original priority. The Secretary does not intend to specify statistical modeling as a substitute for a demonstration. Applicants are not required to mount a new demonstration, but may evaluate existing demonstrations. It will be the responsibility of the applicant to submit the most effective approach to the overall objectives of the priority. The Secretary agrees that it is consistent with the scope of the priority to include an assessment of the impact of various payment systems on client outcomes.

*Changes:* A statement requiring an identification and evaluation of the factors in various payment models that contribute to the quality of care during acute in-patient medical rehabilitation and to the post-rehabilitation health status of individuals with disabilities has been added to the priority.

*Rehabilitation of Blind and Visually-Impaired Individuals*

*Comment:* Two commenters urged that technology to enhance employment be added as a specific requirement for this RRTC. Other commenters suggested that the priority outlines an overly-ambitious research agenda.

*Discussion:* The Secretary believes that this priority does indeed outline a very extensive program of research as needed to solve problems in the rehabilitation of blind individuals. This work is to be conducted over a five-year period. The Secretary believes it would not be practical to require the resulting Center to develop or otherwise address new technology. However, any applicant may choose to conduct studies of the use of technology in their approach to the objectives of the priority.

*Changes:* None.

*Rehabilitation of Deaf and Hearing-Impaired Individuals*

*Comment:* One commenter urged that the title and wording of the priority be changed to refer to "deaf and hard-of-hearing" rather than "deaf or hearing-impaired" individuals on the grounds that the former term is more inclusive of individuals who have disabilities resulting from hearing deficits. The commenter suggested that this change in terminology would be further implemented by changing one of the required activities by noting that interpreters can use manual, oral, or cued speech modalities. The commenter further requested that the resultant Center be expected to cooperate with community agencies and consumer organizations as well as other RRTCs.

*Discussion:* The Secretary agrees that the more inclusive terminology should be employed to ensure that the Center addresses the rehabilitation needs of all individuals who have significant hearing deficits that result in disabilities and handicaps. Concomitantly, the Center should be sensitive to accessibility issues for the broader population of hard-of-hearing individuals. The Center should work with community agencies as well as with other research Centers to develop and disseminate information.

*Changes:* The Secretary has changed the language throughout the priority to refer to "deaf and hard-of-hearing" persons, and has included references to different modes of interpretation. The Center is specifically required to develop cooperative relationships with community agencies.

*Comment:* One commenter suggested that the chronic underemployment of deaf and hard-of-hearing individuals is due to poor learning strategies, communication difficulties, and societal stigma, and urged that the priority concentrate on only these areas.

*Discussion:* The Secretary agrees that these are all serious barriers to employment for this population, but does not believe they should constitute the sole focus of this RRTC. In fiscal year 1990, NIDRR funded an RRTC on the rehabilitation of "low-functioning deaf" individuals that included a major focus on educational deficits for this population. NIDRR is also sponsoring considerable research on improving communications, both through technology and through personal support services, such as interpreters, among deaf individuals as well as between deaf individuals and hearing persons in their environments. The Secretary also believes that these are many additional factors involved in poor employment situations for individuals who are deaf, including poor vocational skills preparation, inadequate employment-related services, inadequate career-search skills, and poor preparation of employers, educators, counselors, and community groups to provide greater access to deaf persons. The Secretary believes that the proposed technical assistance and training activities constitute the proper approach to address issues of stigma or ignorance on the part of a broader population concerning the employment potential of deaf persons.

*Changes:* None.

*Cardiovascular Rehabilitation*

*Comment:* NIDRR received several comments questioning the need for this priority. The sense of the comments was that there is currently a very large Federal and private sector effort directed toward prevention and treatment of cardiovascular disease that includes research on functional assessment, studies of the natural course of coronary artery disease, and professional training and public education. The commenters argued that NIDRR resources could make very little incremental addition to these efforts and the NIDRR resources should be allocated to areas in which there was not such a large effort from other agencies.

*Discussion:* The Secretary agrees that NIDRR resources should be directed toward rehabilitation in areas that clearly are not being addressed substantially by other agencies. While the Secretary reserves judgment as to whether there may be other areas of cardiovascular rehabilitation not addressed adequately by other agencies, he has decided to withdraw this particular priority for further review.

*Changes:* The proposed priority is withdrawn.

*Rehabilitation Engineering Centers*

The Secretary did not receive any comments requesting substantive changes in the priority for this program.

*Regional Information Exchange (RIE)*

*Comment:* One commenter urged that RIEs should be required to conduct replication activities in two or more of the priority areas. Two other commenters argued that the function of an RIE in the area of psychiatric rehabilitation could be conducted only by an agency specializing in that area.

*Discussion:* Implementation of the concept of an RIE requires expertise in knowledge dissemination and utilization and in program assessment. The RIE model requires the RIE to obtain and use experts in various subject matter fields. The purpose of the RIE program is to establish a regional information exchange broker that can assist service providers in a number of specialty areas within the region. Therefore, the Secretary will require that each RIE disseminate exemplary projects in more than one priority area to ensure that brokerage capacity exists.

*Changes:* The priority is changed to read "two or more priority areas."

*Comment:* Two commenters urged that technology in general should be a priority for RIE programs.

*Discussion:* NIDRR is currently funding major efforts in technology services and technology dissemination through the Technology-Related Assistance program and through the Rehabilitation Engineering Center program. NIDRR's recent assessment of the RIE program has raised questions about the suitability of the RIE model for technology dissemination. Therefore, the Secretary elects not to include general technology services. The delivery of rehabilitation engineering services in vocational rehabilitation is one of the priority areas for the RIEs. Some commenters stressed the importance of the use of State planning data, especially school exit data, in transition programs, and suggested that this be a specific focus of the RIEs.

*Changes:* None.

*Comment:* Two commenters suggested that RIEs should be mandated to disseminate promising practices as well as exemplary programs.

*Discussion:* The Secretary believes there are many opportunities for the dissemination of promising practices in rehabilitation and special education, some of them funded by NIDRR. The RIE model, however, is based on the concept of promoting the replication of validated model programs. The RIE concept involves not only dissemination of information, but actual utilization of that information in replications facilitated by intensive technical assistance and expert help. The Secretary believes it is not desirable to promote replication of less than fully validated models, and that it would be a poor use of RIE resources to divert them away from the validation-replication process.

*Changes:* None.

*Comment:* Two commenters urged additional roles for consumers, i.e., individuals with disabilities and their families, in the RIE process, either as sources of information or as target audiences for information and exemplary projects.

*Discussion:* The Secretary agrees that consumers must be included in the process of identifying and validating model programs.

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The priority now states that the RIE project must "Develop and implement a procedure to validate exemplary programs * * * involving individuals with disabilities and technical experts in the validation process." The Secretary believes that since the purpose of the RIEs is to implement program replications, consumer organizations are involved as information targets to the extent they are involved in operating or facilitating program replications. The RIEs are not the primary mechanism for dissemination of rehabilitation information to consumer organizations.

*Changes:* None.

*Comment:* Several commenters urged that the priority focus on assisted housing for individuals with long-term mental illness was too restrictive, and emphasized the need for information in other areas. Some commenters have stressed that appropriate use of State data, especially school exiting data, is a key element in planning for transition programs, and suggested that RIEs focus on this aspect of transition programs.

*Discussion:* Priority areas for RIEs are selected based on both the needs of service delivery agencies and the availability of model projects that potentially could be validated and replicated. Most of the suggested additional priority areas in long-term mental illness are being addressed by the RRTCs, and the RRTCs have a strong mandate to disseminate information. However, the Secretary agrees that RIEs could contribute significantly to the resolution of transition problems by identifying and disseminating model State planning efforts.

*Changes:* The priority includes a specific requirement for the identification of exemplary practices in the use of school exiting data in planning State transition programs.

[FR Doc. 90-28341 Filed 12-3-90; 8:45 am]

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## DEPARTMENT OF EDUCATION

**[CFDA Nos.: 84.133A, 84.133B, 84.133D, and 84.133E]**

### Office of Special Education and Rehabilitative Services

### National Institute on Disability and Rehabilitation Research; Invitation for Applications for New Awards Under Certain Programs for Fiscal Year 1991

**Note to Applicants**

This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. NIDRR published a consolidated application package on August 1, 1990 at 55 FR 31318 for several programs in which there are no priorities. NIDRR also published a closing date notice on August 23, 1990 at 56 FR 34085 for State Grants for Technology-Related Assistance for Individuals with Disabilities under Public Law 100-407. The final priorities for the programs included in this consolidated application package are published in this issue of the **Federal Register**. This consolidated application package includes the closing dates, estimated funding, and application forms necessary to apply for awards under one of these programs. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimates of funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

**Applicable Regulations**

The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

*Research and Demonstration Program* (CFDA No. 84.133A) 34 CFR parts 350 and 351.

*Rehabilitation Research and Training Centers* (CFDA No. 84.133B) 34 CFR parts 350 and 352.

*Knowledge Dissemination and Utilization Program* (CFDA No. 84.133D) 34 CFR parts 350 and 355.

*Rehabilitation Engineering Centers Program* (CFDA No. 84.133E) 34 CFR parts 350 and 353.

PROGRAM TITLE: RESEARCH AND DEMONSTRATION APPLICATION NOTICES FOR FISCAL YEAR 1991

| CFDA No. | Program Title | Funding Priority | Deadline for Transmittal of Applications | Estimated No. of Awards | Estimated Size of Award Per Year | Project Period (Months) |
|---|---|---|---|---|---|---|
| 84.133A | Research and Demonstration | Health Care Policy and Rehabilitation | March 1, 1991 | 1 | $175,000 | 36 |
| | | National Job Coach Study | March 1, 1991 | 1 | 175,000 | 36 |
| | | Involving People With Psychiatric Disabilities as Consumer Advocates in Vocational Rehabilitation. | March 1, 1991 | 1 | 175,000 | 36 |
| | | National Study of Transition of Individuals with Severe Disabilities Leaving School. | March 1, 1991 | 1 | 175,000 | 36 |
| | | Alcohol and Substance Abuse as Barriers to Job Re-entry for Persons With Traumatic Brain Injury. | March 1, 1991 | 1 | 175,000 | 36 |
| | | Case Management in the Vocational Rehabilitation of Persons With Psychiatric Disability. | March 1, 1991 | 1 | 175,000 | 36 |

*Purpose:* Research and Demonstration Projects support research and demonstrations in single project areas on problems encountered by individuals with disabilities in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, psychiatric, psychological, recreational, economic, and other factors to improve the rehabilitation of individuals with disabilities.

*Selection criteria:* The Secretary uses the following selection criteria to evaluate applications under this program:

(a) *Potential impact of outcomes:* Importance of Program (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);



(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential impact of outcomes:* Dissemination/Utilization (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of achieving proposed outcomes; program/project design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research and activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of achieving proposed outcomes:* Key Personnel (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly;

(e) *Probability of achieving proposed outcomes: evaluation plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/project management; plan of operation* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(g) *Program/project management: adequacy of resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/project management: (budget and cost effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the project(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

**Eligible Applicants**

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

**Authority:** 29 U.S.C. 761a and 762.

PROGRAM TITLE: REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1991

| CFDA No. | Program Title | Funding Priority | Deadline for Transmittal of Applications | Estimated No. of Awards | Estimated Size of Awards Per Year | Project Period (Months) |
|---|---|---|---|---|---|---|
| 84.133B | Rehabilitation Research and Training Centers. | Rehabilitation of Blind and Visually-Impaired Individuals. | February 4, 1991 | 1 | $250,000 | 60 |
| | | Rehabilitation of Deaf and Hard-of-Hearing Individuals. | February 4, 1991 | 1 | 250,000 | 60 |

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*Purpose:* Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and inservice training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

*Selection Criteria:* The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program (20 points).* The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design (35 points).* The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program (25 points).* The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management (20 points).* The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

**Eligible Applicants**

Institutions of higher education and agencies collaborating with institutions of higher education, including Indian tribes and tribal organizations, are eligible to apply for awards under this program.

**Authority:** 29 U.S.C. 762.



PROGRAM TITLE: KNOWLEDGE DISSEMINATION AND UTILIZATION APPLICATION NOTICES FOR FISCAL YEAR 1991

| CFDA No. | Program Title | Funding Priority | Deadline for Transmittal of Applications | Estimated No. of Awards | Estimated Size of Award Per Year | Project Period (Months) |
|---|---|---|---|---|---|---|
| 84.133D | Knowledge Dissemination and Utilization. | Regional Information Exchange | January 18, 1991 | 6 | $300,000 | 36 |

*Purpose:* The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by the Institute and other sources is fully utilized to improve the lives of individuals with disabilities.

*Selection criteria:* To evaluate applications under this program, the Secretary uses the same selection criteria as those published above under the Research and Demonstration Program, 84.133A.

*Eligible applicants:* Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

**Authority:** 29 U.S.C. 761(a), 762(a), and 762(b)(5).

PROGRAM TITLE: REHABILITATION ENGINEERING CENTERS APPLICATION NOTICES FOR FISCAL YEAR 1991

| CFDA No. | Program Title | Funding Priority | Deadline for Transmittal of Applications | Estimated No. of Awards | Estimated Size of Award Per Year | Project Period (Months) |
|---|---|---|---|---|---|---|
| 84.133E | Rehabilitation Engineering Centers. | Technology for Older Persons With Disabilities. | February 4, 1991 | 1 | $500,000 | 60 |

*Purpose:* Rehabilitation Engineering Centers (REC) conduct coordinated programs of advanced research of an engineering or technological nature, in order to develop and test new engineering solutions to problems of disability, to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to individuals with disabilities. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

*Selection criteria:* The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (25 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the research design* (25 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected;

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the dissemination and utilization program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

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(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, and researchers, educators, disabled individuals and their families, and others; and

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology.

(d) *Quality of the organization and management* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

**Eligible Applicants**

Parties eligible to apply for grants under this program are public and private nonprofit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

**Authority:** 29 U.S.C. 760, 762(b)(2).

**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Forms and Instructions**

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.
*Part II:* Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.
*Part III:* Application Narrative.
*Part IV:* Public Reporting Burden Estimate.
Assurances—Non-Construction Programs (Standard Form 424B).
Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.)
Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).
Certificate Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**Further Information Contact**

The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732–1141; deaf and hearing impaired-persons may call (202) 732–5373 for TDD services.

**Authority:** 29 U.S.C. 760–762.

Dated: November 28, 1990.

**Robert R. Davila,**

*Assistant Secretary, Office of Special Education and Rehabilitation Services.*

**Appendix**

*Application Forms and Instructions*

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

**Frequent Questions**

*1. Can I Get an Extension of the Due Date*

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the *Federal Register*. However, there are no extensions or exceptions to the due date made for individual applicants.



*2. What Should Be Included in the Application*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

*3. What Format Should Be Used for the Application*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

*4. May I Submit Applications to More Than One Program Competition in NIDRR or More Than One Application to a Program*

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

*5. What is the Allowable Indirect Cost Rate*

The limits on indirect costs vary according to the program and the type of application.

The statutory limit for indirect charges in the Rehabilitation Research and Training Centers program is 15 percent of total project costs.

Applicants in the R&D, D&U, and REC programs should limit indirect charges to the organization's approved rate.

*6. Can Profitmaking Businesses Apply for Grants*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

*7. Can Individuals Apply for Grants*

No. Only organizations are eligible to apply for grants under NIDRR programs.

*8. Is There a Cost-Sharing or Matching Requirement*

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law; and the Knowledge Dissemination and Utilization program. For the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under this program.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

*9. Can NIDRR Staff Advise Me Whether My Project Is of Interest To NIDRR or Likely to be Funded*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

*10. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

*11. How Soon After Submitting My Application Can I Find out if It Will Be Funded*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

*12. Can I Call NIDRR To Find out if My Application Is Being Funded*

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

*13. If My Application Is Successful, Can I Assume I will Get the Requested Budget Amount in Subsequent Years?*

No. Those budget projects are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

*14. Will All Approved Applications Be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

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OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code): |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**



## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

| SECTION C - NON-FEDERAL RESOURCES | | | | | |
|---|---|---|---|---|---|
| (a) Grant Program | | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | | $ | $ | $ | $ |
| 9. | | | | | |
| 10. | | | | | |
| 11. | | | | | |
| 12. TOTALS (sum of lines 8 and 11) | | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | | |
|---|---|---|---|---|---|
| (a) Grant Program | | FUTURE FUNDING PERIODS (Years) | | | |
| | | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | | $ | $ | $ | $ |
| 17. | | | | | |
| 18. | | | | | |
| 19. | | | | | |
| 20. TOTALS (sum of lines 16 -19) | | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary) | | |
|---|---|---|
| 21. Direct Charges: | | 22. Indirect Charges: |
| 23. Remarks | | |

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.)** (continued)

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.





## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

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INSTRUCTIONS FOR COMPLETION OF PART III

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

PROJECT NARRATIVE FOR NEW APPLICATIONS

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviweing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducting this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reducation Project 1820-0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820-0027. Expiration date: September 30, 1992.)

The successful narrative should include the basic information described below and, exluding resumes of key personnel, should be limited to:

* 100 pages for applications for Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers.

* 40 pages for application under the Research and Demdonstrations Projects, Knowledge Dissemination and Utilization Projects.

The narrative for new application may be organized under the major headings in the regulations governing the specific programs. THe applicant must respond to the selection criteria for each program listed below.

Research and Demonstration Project - 34 CFR 351. Selection criteria for this program can be found in 34 CFR 350.34.

Rehabilitation Research and Training Centers - 34 CFR 352.31.

Rehabilitation Engineering Centers - 34 CFR 353.31.

Knowledge Dissemination and Utilization Programs - 34 CFR 355. Selection criteria for this program can be found in 34 CFR 350.34.



OMB Approval No. 0348-0040

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5 Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

SF 424B (4-88) Back



## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace.

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

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Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity; I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013



## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

---

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

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## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter ____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier ____, if known:<br><br>Congressional District, if known: | Congressional District, if known: |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, if applicable: _____ |
| 8. Federal Action Number, if known: | 9. Award Amount, if known:<br>$ |
| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): | b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): |

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

| 11. Amount of Payment (check all that apply): | 13. Type of Payment (check all that apply): |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment (check all that apply):<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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Standard Form - LLL



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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**DISCLOSURE OF LOBBYING ACTIVITIES**
**CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

[FR Doc. 90-28340 Filed 12-3-90; 8:45 am]
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federal register

Tuesday
December 4, 1990

Part III

# Department of the Interior

National Park Service

## Abandoned Shipwreck Act; Final Guidelines; Notice

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**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**Abandoned Shipwreck Act Guidelines**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Final guidelines.

**SUMMARY:** These final advisory guidelines are to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Abandoned Shipwreck Act of 1987. The guidelines provide advice on establishing State and Federal agency shipwreck management programs; funding shipwreck programs and projects; surveying, identifying, documenting, and evaluating shipwrecks; providing for public and private sector recovery of shipwrecks; providing public access to shipwrecks; interpreting shipwreck sites; establishing volunteer programs; and creating and operating underwater parks or preserves. Issuance of these final guidelines fulfills the National Park Service's obligation under the Act to issue such guidelines.

**EFFECTIVE DATE:** These advisory guidelines take effect on December 4, 1990.

**ADDRESSES:** Requests for copies of the final "Abandoned Shipwreck Act Guidelines" should be addressed to Douglas H. Scovill, Acting Departmental Consulting Archeologist, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Single copies of the final guidelines will be sent to persons, organizations, and State and Federal agencies that have previously requested copies or have provided comments on the development or subsequent revision of the guidelines. Those persons, organizations and agencies do not need to request copies of the final guidelines; copies will be distributed when available.

**FOR FURTHER INFORMATION CONTACT:** Michele C. Aubry (Departmental Consulting Archeologist's office) at 202-343-1879 or FTS 343-1879.

**SUPPLEMENTARY INFORMATION:**

**Background**

These final "Abandoned Shipwreck Act Guidelines" are being issued under the authority of the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. 2101-2106). Section 5 of the Act directs the National Park Service to issue guidelines to assist the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act.

The Act says that the guidelines "shall seek to: (1) Maximize the enhancement of cultural resources; (2) foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States; (3) facilitate access and utilization by recreational interests; and (4) recognize the interests of individuals and groups engaged in shipwreck discovery and salvage." The Act also requires that the guidelines be developed after consulting with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

**Preparation of the Guidelines**

The Abandoned Shipwreck Act was signed into law on April 28, 1988, by the President of the United States. By mid-July 1988, the National Park Service had developed and sent to each State a questionnaire that requested information on existing and pending State legislation and regulations about the management of shipwrecks in State waters. The questionnaire also asked for information on the State's activities related to the preservation of shipwrecks, the facilitation of recreational access to shipwrecks, the development and dissemination of interpretive information about shipwrecks, and the regulation of commercial fishing and salvage activities affecting shipwrecks. Forty-seven (or 84 percent) of the 56 States and territories polled provided responses to the questionnaire.

During September and October 1988, the National Park Service held public meetings in Washington, DC; San Francisco, CA; Seattle, WA; Austin, TX; Beaufort, NC; Colchester, VT; Lyndhurst, NJ; Madison, WI; Tampa, FL; New Orleans, LA; and Charleston, SC. The meetings were designed to provide the various public and private sector interests with an opportunity to provide suggestions to the National Park Service on the development of the guidelines.

Approximately 500 people attended the meetings and over 120 people voiced their opinions (or that of their organizations) in verbal statements that were recorded in 769 pages of transcripts. In addition, about 130 people sent letters to the National Park Service to express their opinions or that of the organization they represent.

All questionnaire responses, transcribed verbal statements, and written suggestions were fully considered by the National Park Service prior to developing the proposed "Abandoned Shipwreck Act Guidelines." In fact, many of the suggestions provided by the States, public meeting attendees and other members of the public contributed substantially to the preparation of the guidelines.

As required by the Act, the proposed guidelines were published in the **Federal Register** (54 FR 13642; April 4, 1989). However, knowing that sport divers, professional dive operators, salvors, fishermen, archeologists, and historic preservationists do not routinely have access to or read the **Federal Register**, the National Park Service sent press releases to the editors of numerous national and regional sport diving, maritime, archeological, and historic preservation newsletters, magazines and journals. In addition, over 3,500 copies of the proposed guidelines were distributed to the various interest groups and persons. Finally, in order to provide the public with a sufficient amount of time to obtain, read, digest, discuss, and prepare written comments on the proposed guidelines, the National Park Service elected to issue the proposed guidelines for a six month comment period instead of the more usual one to three months.

Written comments were received from 66 sources, including 30 from individuals, 16 from State agencies, 14 from organizations, and six from Federal agencies. The individuals who provided comments were primarily sport divers. The organizations that provided comments included sport diving associations, maritime societies and museums, avocational research organizations, and charter boat associations.

Comments were addressed to all sections of the proposed guidelines. However, a preponderance of comments were concerned with four specific issues: (1) The definitions for the terms "historic" and "non-historic" shipwrecks, (2) the assurance of recreational access by the public to shipwrecks, and (3) the withholding and the disclosure of locational information about shipwrecks, and (4) the regulation of commercial salvage and souvenir collecting activities at shipwrecks.

All comments were fully considered by the National Park Service when revising the guidelines for issuance as final guidelines. Valid concerns were addressed to the extent of the National Park Service's legal authorities. Some



suggestions were not included because they either were beyond the scope of the guidelines or were inconsistent with the Abandoned Shipwreck Act. Many of the suggestions were incorporated and contributed positively toward improving and clarifying the guidelines.

**Major Changes in Response to Public Comments**

*Introduction*

The introduction to the final "Abandoned Shipwreck Act Guidelines" remains basically the same as it appeared in the proposed guidelines.

Several commenters raised concerns that the National Park Service may make the guidelines a requirement for State historic preservation programs even though the guidelines are supposed to be advisory and, therefore, non-binding. To allay the commenters' concerns, language has been added to emphasize that the guidelines are advisory and non-binding, and are not being used to review State historic preservation programs for compliance with the National Historic Preservation Act and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.

*Part I. Definitions*

Part I contains the definitions for key terms used in the Act and in the final "Abandoned Shipwreck Act Guidelines." Three definitions have been revised, one has been deleted, and seven have been added.

The definition for the term "abandoned" shipwreck has been expanded to provide examples of vessels entitled to sovereign immunity. In addition, it notes that when the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter), title to the wrecked vessel is passed to the party who paid the owner. The definition also notes that under the Rivers and Harbors Act, owners of sunken vessels are required either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers. In the absence of such action by the owner, a shipwreck ordinarily is treated as abandoned after the expiration of 30 days from the sinking.

A number of commenters felt that the definition for the term "historic" shipwreck was too broad and that embedded shipwrecks should not be treated as historic shipwrecks unless they have been evaluated and determined to be historic. The commenters recommended that "historic" shipwrecks be defined according to their historical qualities only, without regard to whether they are embedded. The definition has been revised accordingly.

In the proposed guidelines, the definition for the term "submerged lands" included a reference to the term "lands beneath navigable waters." Several commenters asked for clarification on what "lands beneath navigable waters" means. The Act defines "lands beneath navigable waters" by citing the definition for that term contained in section 2 of the Submerged Lands Act. The Submerged Lands Act provides a clear description of what "lands beneath navigable waters" means. Rather than merely referencing it in the guidelines, it has been added to the definition for the term "submerged lands." Examples also have been added.

The definition for the term "conservation" has been deleted; instead, the decision was made to rely on dictionary definitions.

Several commenters recommended that the term "non-historic" shipwreck be defined. Such a definition has been added.

Finally, definitions for six terms that are defined in the Act have been added to the guidelines. The terms are "embedded," "Indian lands," "Indian tribe," "National Register," "public lands," and "State." The definitions are the same as those contained in the Act.

However, in regard to the term "embedded," several commenters asked for clarification on what is meant by tools of excavation. Tools of excavation are tools used to remove or displace bottom sediments or coralline formations to gain access to embedded shipwrecks. Examples have been provided; they clearly indicate that diving equipment normally worn by recreational divers while exploring or viewing shipwreck sites are not considered to be tools of excavation.

*Part II. Guidelines*

Part II contains ten sets of guidelines for use by the States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. Guidelines to assist the States in establishing shipwreck management programs are in subpart A. Guidelines to assist Federal agencies in establishing shipwreck management programs are in subpart B. Subpart C presents guidelines for funding shipwreck programs and projects. Subpart D presents guidelines for surveying and identifying shipwrecks. Subpart E presents guidelines for documenting and evaluating shipwrecks. Guidelines to assist the States in providing for public and private sector recovery of shipwrecks are in subpart F. Subpart G presents guidelines for providing public access to shipwrecks. Subpart H presents guidelines for interpreting shipwreck sites. Subpart I presents guidelines for establishing volunteer programs. Guidelines to assist States in creating and operating underwater parks or preserves are in subpart J.

*Subpart A.* The guidelines in subpart A have been expanded and rearranged. Final guideline no. 3 has been revised to say the States should assign responsibility for State-owned shipwrecks to appropriate agencies. The guideline notes that while it would be desirable to assign responsibility to a single agency, it often is not practical to do so for several reasons. The guideline identifies several agencies having different expertise that should be assigned various responsibilities for shipwrecks (e.g., an agency experienced in historic preservation matters should have jurisdiction over historic shipwrecks—but not over non-historic shipwrecks—while an agency experienced in recreational resource management and historic site management should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves).

A new guideline no. 4 says the State should establish regulations, policies or procedures for the long-term management of State-owned shipwrecks. A new guideline no. 8 says the States should use the National Register of Historic Places criteria to determine the historical significance of shipwrecks. A new guideline no. 11 says the States should provide legal recourse for persons affected by the State's shipwreck management program, and identifies particular situations where an affected person should be provided with an opportunity to appeal decisions made by the State.

Proposed guideline no. 7 (on accepting donations) has been moved to subpart C, while proposed guideline no. 6 (on confirming the abandonment of shipwrecks) and proposed guideline no. 9 (on treating human remains in shipwrecks) have been moved to subpart D.

*Subpart B.* The guidelines in subpart B are a consolidation of two sets of guidelines that appeared in the proposed

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guidelines; that is, the proposed guidelines for considering and mitigating effects of Federal activities on historic shipwrecks and the proposed guidelines for managing shipwrecks under Federal jurisdiction. The former set of proposed guidelines have been consolidated into a single new guideline no. 4, which says Federal agencies should consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act. The latter set of proposed guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 4 (on treating human remains in shipwrecks) and proposed guideline no. 5 (on confirming the abandonment of shipwrecks) have been moved to subpart D. A new guideline no. 5 says Federal agencies should conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act.

*Subpart C.* The guidelines in subpart C have been rearranged but remain basically the same as they appeared in the proposed guidelines, except as follows. Final guidelines nos. 8 and 10 were moved to this subpart from other sections of the proposed guidelines. A new guideline no. 11 says commercial salvors should be required to post performance bonds so sufficient funds would be available to complete the salvage activity according to the terms of the contract if the salvor is unable to do so.

*Subpart D.* The guidelines in subpart D remain basically the same as they appeared in the proposed guidelines, except as follows. Proposed guideline no. 7 (on preparing a shipwreck inventory) has been moved to subpart E. Final guidelines nos. 7 and 8 were moved to this subpart from other sections of the proposed guidelines.

A new guideline no. 9 says that Act requires that the public be given adequate notice of the location of any shipwreck to which U.S. title is asserted under the Act. The guideline sets forth what information, at a minimum, should be provided. The guideline notes that under certain circumstances, the exact location of a shipwreck may be withheld—this is not a violation of the Freedom of Information Act (5 U.S.C. 552) as some commenters suggested—but, in such cases, locational information of a more general nature should be given. The guideline notes that withholding locational information of a general nature would be inconsistent with the Act and the final "Abandoned Shipwreck Act Guidelines."

One commenter suggested that the requirement in the Act to provide adequate public notice of the location of shipwrecks to which U.S. title is asserted applies only to those shipwrecks that are included in or determined eligible for inclusion in the National Register. That interpretation of Act is not correct; the requirement applies to all three categories of abandoned shipwrecks to which U.S. title is asserted under section 6 of the Act.

*Subpart E.* The guidelines in subpart E are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for evaluation and the proposed guidelines for documentation. In regard to the former set of guidelines, proposed guideline no. 2 (on using non-destructive methods) has been incorporated into final guideline no. 6 in subpart D. Final guideline no. 5 (on preparing a shipwreck inventory) was moved to this subpart from subpart D.

One commenter asked why the States and Federal agencies should nominate historically significant shipwrecks for listing in the National Register of Historic Places or for designation as National Historic Landmarks. The primary reason why the States and Federal agencies should do this is to fulfill their responsibilities under the National Historic Preservation Act to nominate historic properties under their ownership or control to the National Register. Listing a historic property in the National Register makes it eligible to receive Historic Preservation Fund grants for preservation purposes. Being listed (or being eligible for listing) also provides a measure of protection, under section 106 of the National Historic Preservation Act, from the potential adverse effects of proposed Federal projects and programs. Designation as a National Historic Landmark provides additional protection, under section 110(f) of the National Historic Preservation Act, from the potential adverse effects of proposed Federal undertakings. National Historic Landmarks threatened with demolition or impairment also are eligible to receive direct grants for preservation purposes from the Secretary of the Interior.

*Subpart F.* The guidelines in subpart F are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for treatment of non-historic shipwrecks and the proposed guidelines for archeological recovery of historic shipwrecks. Those two sets of proposed guidelines received more public comments than any other set of proposed guidelines. The majority of commenters felt that the guidelines should apply to both historic and non-historic shipwrecks. Commenters also felt that the guidelines were inconsistent with the Act in that they did not provide for appropriate private sector recovery of State-owned historic shipwrecks. As a result, these guidelines have been revised substantially.

Final guideline no. 1 says the States should establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks. The guideline provides advice on the content of such policies, criteria and procedures.

Final guideline no. 2 says the States should authorize only those public and private sector recovery activities at State-owned shipwrecks that are in the public interest. The guideline provides advice on how to determine whether a proposed recovery activity is in the best interests of the public.

Final guideline no. 3 says the States should protect particular State-owned shipwrecks from commercial salvage, treasure hunting, and private collecting activities. The guideline sets forth criteria for the States to use to determine whether a particular shipwreck should be protected.

Final guideline no. 4 says the States should require that any recovery at State-owned historic shipwrecks be done in a professional manner. The guideline sets forth terms and conditions for the States to attach to any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks.

Final guideline no. 5 says the States should allow public and private sector recovery activities at State-owned non-historic shipwrecks without archeological conditions.

Final guideline no. 6 says the States should, as appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties. The guideline provides advice on steps the States should take before transferring title to any artifacts to private parties.

Final guideline no. 7 says the States should disseminate information on public and private sector recovery activities to the public and the scientific community, and identifies numerous methods for doing so.

Final guideline no. 8 says the States should discourage the recovery and display of intact shipwrecks because of the prohibitive expense and the perpetual costs associated with doing so.



*Subpart G.* The guidelines in subpart G have been rearranged but remain basically the same as they appeared in the proposed guidelines. Final guideline no. 5 has been expanded to address regulating public access at shipwrecks entitled to sovereign immunity. The guideline says that, in the absence of specific instructions from the applicable sovereign nation regarding access to its shipwrecks, under customary international law, access by any U.S. national is prohibited. The guideline notes the conditions under which sovereigns generally grant permission.

*Subpart H.* The guidelines in subpart H have been consolidated and rearranged. In addition, two new guidelines have been added. New guideline no. 1 says interpretive efforts should present information on the vessel's history and the shipwreck's various values and uses. New guideline no. 6 says permittees, licensees and contractors should be required to disseminate information about recovery activities at historic shipwrecks.

*Subpart I.* The guidelines in subpart I are a consolidation of two sets of guidelines that appeared in the proposed guidelines; that is, the proposed guidelines for education and the proposed guidelines for volunteer programs. The guidelines have been rearranged but remain basically the same as they appeared in the proposed guidelines. However, proposed guideline no. 5 (on encouraging scientific and educational organizations to participate in shipwreck projects) has been moved to subpart C.

*Subpart J.* The guidelines in subpart J remain basically as they appeared in the proposed guidelines. However, at the suggestion of several commenters, proposed guideline no. 8 (on adding new dive sites to parks and preserves) has been deleted. The commenters felt that parks should be designated to protect existing historic shipwrecks and other submerged resources, not resources that are contrived. In addition, they felt that the State's limited monetary resources should be devoted to protecting existing historic shipwrecks rather than to stripping and sinking non-historic vessels, which is very costly. We agree; accordingly, the guideline has been deleted.

*Part III. Abandoned Shipwreck Act*

A few commenters suggested that certain provisions of the Act be amended (such as retaining the law of finds and the law of salvage for abandoned shipwrecks claimed by the U.S. Government under the Act, and asserting U.S. title to sunken aircraft, trains and automobiles). A few others suggested that the Act be repealed. It is beyond the authority of the National Park Service to enact amendments to or repeal any Federal statute. Such legislative actions are reserved for the U.S. Congress. Thus, the suggestions have not been adopted.

Other commenters suggested that the guidelines be changed in ways that would have been inconsistent with the Act (such as withholding from the public the locations of abandoned shipwrecks claimed by the U.S. Government under the Act, auditing State shipwreck management programs, and penalizing States that do not implement the Act's provisions). Such changes have not been incorporated into the guidelines.

It is important that the States, the appropriate Federal agencies, and other interested parties be fully cognizant of the purpose and content of the Act. Thus, the Act has been reprinted, in its entirety, in a new Part III to the final "Abandoned Shipwreck Act Guidelines."

*Part IV. Shipwrecks in the National Register of Historic Places*

A new Part IV has been added to the final "Abandoned Shipwreck Act Guidelines." It provides information on shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places as of December 4, 1990. Where known, information is presented on the shipwreck's popular name and the vessel's name, if different; type and date of construction; wreck date and location; owner and manager, if different; and level of historical significance.

Publication of this information constitutes notice to the public that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks on the list and has transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public lands and Indian lands. The U.S. Government retains its title to shipwrecks in or on public lands while Indian tribes hold title to those in or on Indian lands.

**Authorship**

Michele C. Aubry (archeologist and program analyst in the National Park Service) is the author of the final "Abandoned Shipwreck Act Guidelines." James P. Delgado (maritime historian and diver in the National Park Service) and Patricia C. Knoll (archeologist and diver on contract to the National Park Service from the National Conference of State Historic Preservation Officers) also contributed material that was incorporated into the guidelines.

Dated: October 5, 1990.

**Herbert S. Cables, Jr.,**

*Acting Director, National Park Service.*

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**Authority:** 43 U.S.C. 2101–2106.

**Introduction**

The Abandoned Shipwreck Act (Pub. L. 100–298; 43 U.S.C. 2101–2106) was signed into law by the President of the United States on April 28, 1988. Under the Act, the U.S. Government asserted title to three categories of abandoned shipwrecks: abandoned shipwrecks embedded in a State's submerged lands; abandoned shipwrecks embedded in coralline formations protected by a State on its submerged lands; and abandoned shipwrecks located on a State's submerged lands and included in or determined eligible for inclusion in the National Register of Historic Places.

Upon asserting title, the U.S. Government transferred its title to the majority of those shipwrecks to the respective States to manage. The United States retained its title to shipwrecks located in or on public lands while Indian tribes hold title to shipwrecks located in or on Indian lands.

The Act directs the National Park Service to prepare the guidelines being issued herewith to assist the States and Federal agencies in developing legislation and regulations to carry out their responsibilities under the Act. In accordance with the Act, the guidelines are intended to maximize the enhancement of cultural resources; foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck

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resources of the States and the United States; facilitate access and utilization by recreational interests; and recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

The "Abandoned Shipwreck Act Guidelines" and the philosophy upon which they are based are the result of three decades of shipwreck management experience within units of the national park system. That experience includes using an interdisciplinary team approach to survey, identify, evaluate, document, interpret, and protect hundreds of shipwrecks located in 59 national park units. It also includes experience conserving, storing, and maintaining artifact and archival collections relating to shipwrecks and other maritime resources. Many of these activities are carried out with the assistance of sport diver and non-diver volunteers and U.S. Department of the Navy dive teams. Some activities are carried out in cooperation with State and foreign governments. This breadth of experience in shipwreck management is reflected in the final "Abandoned Shipwreck Act Guidelines."

The "Guidelines" also reflect many of the comments and suggestions provided by the public, States, Federal agencies, and various interest groups during the course of their development. Sixty-six individuals and organizations provided written comments on the proposed "Abandoned Shipwreck Act Guidelines" (54 FR 13642, April 4, 1989). Over 120 people presented statements at 11 public meetings held during September and October 1989; about 130 people sent letters to express their opinions or that of the organizations or government agencies they represented. In addition, 47 States and territories provided information on their respective shipwreck management programs in effect in mid-1989. All of these comments and suggestions were carefully considered by the National Park Service and, to the extent permissible by law, incorporated into the final "Abandoned Shipwreck Act Guidelines."

The "Abandoned Shipwreck Act Guidelines" provide advice to the States and Federal agencies on how to effectively manage shipwrecks in waters under their ownership or control. The basic components of a shipwreck management program are to:

(a) Locate and identify shipwrecks;

(b) Determine which shipwrecks are abandoned and meet the criteria for assuming title under the Abandoned Shipwreck Act;

(c) Determine which shipwrecks are historic;

(d) Identify recreational and other values that a shipwreck may possess and the shipwreck's current and potential uses;

(e) Provide for the long-term protection of historic shipwrecks;

(f) Protect the rights of owners of non-abandoned shipwrecks;

(g) Consult and maintain a cooperative relationship with the various shipwreck interest groups;

(h) Cooperate with State and Federal agencies and sovereign nations having an interest in shipwreck management;

(i) Provide sport divers with reasonable access to explore shipwrecks;

(j) Provide for public appreciation, understanding, and enjoyment of shipwrecks and maritime history;

(k) Conduct archaeological research on shipwrecks where research will yield information important to understanding the past;

(l) Provide for private sector participation in shipwreck research projects; and

(m) Provide for commercial salvage and other private sector recovery of shipwrecks when such activities are in the public interest.

The "Guidelines" provide advice on how to accomplish the basic components of shipwreck management. However, it is expected that the level of activity under each component (and the specific methods used to accomplish each component) will vary from State to State and from Federal agency to Federal agency. Primary factors influencing how activities under each component are undertaken would include, but not be limited to, the number and nature of shipwrecks under the State or Federal agency's ownership or control, the type and amount of current and potential future uses (like recreational, commercial, and scholarly uses), the type and amount of current and potential future impacts, the availability of monetary and staffing resources, and the applicability of other related statutes and regulations.

The "Abandoned Shipwreck Act Guidelines" are divided into four parts. Part I contains definitions of key terms used in the Act and the "Guidelines." Part II contains guidelines for the management of shipwrecks under State and Federal agency ownership or control. Part III contains the Abandoned Shipwreck Act as passed by the U.S. Congress and signed by the President. Part IV lists the shipwrecks that currently are listed in or are determined eligible for listing in the National Register of Historic Places.

States and Federal agencies should note that the "Abandoned Shipwreck Act Guidelines" are advisory and, therefore, non-binding.[1] States and Federal agencies are encouraged to use the "Abandoned Shipwreck Act Guidelines" and other applicable standards and guidelines to establish, review, revise, and implement programs to manage shipwrecks under their ownership or control. States and Federal agencies are free to adopt the "Abandoned Shipwreck Act Guidelines" in their entirety, make changes to accommodate the diverse and sometimes unique needs of each State or Federal agency, reject parts as inapplicable, or use alternative approaches.

However, it is clear from the legislative history that the U.S. Congress intends for State shipwreck management programs to be consistent with the Abandoned Shipwreck Act and these "Guidelines" and for Federal shipwreck management programs to be consistent with the "Guidelines" to the extent consistent with other applicable Federal law (U.S. House of Representatives Report No. 100-514, Pt. 1, p. 3, and Pt. 2, p. 7).

### Part I. Definitions

As used for purposes of these guidelines:

*Abandoned* shipwreck means any shipwreck to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person. By not taking any action after a wreck incident either to mark and subsequently remove the wrecked vessel and its cargo or to provide legal notice of abandonment to the U.S. Coast Guard and the U.S. Army Corps of Engineers, as is required under provisions in the Rivers and Harbors Act (33 U.S.C. 409), an owner shows intent to give up title. Such shipwrecks ordinarily are treated as being abandoned after the expiration of 30 days from the sinking.

(a) When the owner of a sunken vessel is paid the full value of the vessel (such as receiving payment from an insurance underwriter) the shipwreck is not considered to be abandoned. In such cases, title to the wrecked vessel is passed to the party who paid the owner.

(b) Although a sunken warship or other vessel entitled to sovereign immunity often appears to have been abandoned by the flag nation, regardless of its location, it remains the property of the nation to which it belonged at the time of sinking unless that nation has taken formal action to abandon it or to transfer title to another party. Any cargo aboard a vessel entitled to sovereign immunity also generally remains the property of the flag nation unless the cargo had earlier been unlawfully captured by that nation. In such a situation, title to the cargo remains in the nation from which it had been captured. Shipwrecks entitled to sovereign immunity are wrecks of warships and other vessels (such as privately owned vessels chartered or otherwise appropriated by a sovereign nation for military purposes) used only on government non-commercial service at the time of sinking. Examples of vessels entitled to sovereign immunity would include, but not be limited to, U.S. battleships and German U-boats from World War II, Confederate gunboats and Union ironclads from the Civil War, and British frigates and Colonial privateers from the Revolutionary War.

*Act* means the Abandoned Shipwreck Act (43 U.S.C. 2101–2106).

*Embedded* as defined in the Act means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof. Tools of excavation would include, but not be limited to, hydraulic, pneumatic, or mechanical dredges; explosives; propeller wash deflectors; air lifts; blowtorches; induction equipment; chemicals; and mechanical tools used to remove or displace bottom sediments or coralline formations to gain access to shipwrecks.

*Historic* shipwreck means a shipwreck that is listed in or eligible for listing in the National Register of Historic Places.[2]

*Indian lands* as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470*bb*), meaning lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

*Indian tribe* as defined in the Act has the same meaning given the term in the Archaeological Resources Protection Act (16 U.S.C. 470*bb*), meaning any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

*National Register* as defined in the Act means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470*a*).

*Non-historic* shipwreck means a shipwreck that is not historic. When a question exists as to the historical significance of a shipwreck that is not listed in or determined eligible for the National Register of Historic Places, any person may make a request to the Secretary of the Interior for a written determination of the shipwreck's eligibility for inclusion in the National Register.[3]

*Public lands* as defined in the Act has the same meaning given the term in the Archaeological Resource Protection Act (16 U.S.C. 470*bb*), meaning:

(a) Lands that are owned and administered by the United States as part of the national park system, the national wildlife refuge system, or the national forest system; and

(b) All other lands the fee title to which is held by the United States, except lands on the outer continental shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

*Shipwreck* as defined in the Act means a vessel or wreck, its cargo, and other contents. The vessel or wreck may be intact or broken into pieces scattered on or embedded in the submerged lands or in coralline formations. A vessel or wreck includes, but is not limited to, its hull, apparel, armaments, cargo, and other contents. Isolated artifacts and materials not in association with a wrecked vessel, whether intact or broken and scattered or embedded, do not fit the definition of a shipwreck.

*State* as defined in the Act means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

*Submerged lands* as defined in the Act means the lands that are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301); lands of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749); lands of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and lands of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

(a) Under the Submerged Lands Act, "lands beneath navigable waters" means:

(1) Lands covered by nontidal waters that were navigable at the time the State either became a member of the Union or acquired sovereignty over the lands and waters;

(2) Lands permanently or periodically covered by tidal waters from the mean high tide line seaward to a line three geographical miles from the coastline (except for the Gulf of Mexico where it extends three marine leagues); and

(3) Filled in, made, or reclaimed lands that formerly were defined as lands beneath navigable waters.

(b) Notwithstanding the special rights of Texas, Florida, and Puerto Rico in regard to submerged lands seaward to a line three marine leagues from the coastline, under the Abandoned Shipwreck Act, the United States asserts sovereignty and title only to qualifying abandoned shipwrecks located within, but not beyond, three geographical miles from the coastline. The Committee on Merchant Marine and Fisheries has stated that Texas, Florida, and Puerto Rico are to exercise jurisdiction over abandoned shipwrecks beyond three geographical miles, but within three marine leagues, from the coastline in a manner consistent with international law principles (U.S. House of Representatives Report No. 100-514, Pt. 2, p. 5).

(c) Examples of submerged lands to which the Abandoned Shipwreck Act applies would include, but not be limited to, the bottomlands of navigable inland waters (such as rivers and lakes), tidal and offshore marine waters (such as

[1] Since States may establish shipwreck management programs in offices other than the State's historic preservation office, the "Abandoned Shipwreck Act Guidelines" are not being incorporated into National Park Service Guideline No. 49, "National Register Programs Guideline," which is used to review State historic preservation programs for compliance with the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the terms and conditions of Historic Preservation Fund grant awards. Unless statutorily required, no changes will be made to State historic preservation program requirements without prior consultation with the States.

[2] Under the Abandoned Shipwreck Act, in order for the United States to assert title to any abandoned shipwreck, the shipwreck must be listed in or determined eligible by the Secretary of the Interior for listing in the National Register.

[3] Procedures for requesting determinations of eligibility are contained in regulations at 36 CFR part 63. Criteria for evaluation are found in regulations at 36 CFR part 60. National Register Bulletin No. 15, entitled "Guidelines for Completing National Register of Historic Places Forms," and National Register Bulletin No. 20, entitled "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places," provide advice on preparing National Register forms. Copies of the regulations and bulletins may be obtained by writing to the National Register of Historic Places, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

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sounds, bays, and gulfs) seaward to a line three geographical miles from the coastline, and lands that formerly were navigable but have since been filled in, made or reclaimed (such as former river beds where courses have meandered or been filled in and former harbor areas that have been reclaimed to create non-submerged land). However, abandoned shipwrecks embedded in formerly submerged lands would, under common law, belong to the owner of the land.

**Part II. Guidelines**

*A. Establishing State Shipwreck Management Programs*

Almost every State, including landlocked ones with navigable rivers and lakes, contains shipwrecks in or on its submerged lands. Under the Act, the respective States now clearly hold title to and are responsible for managing a large number of previously abandoned shipwrecks located in state waters. The Act encourages the States to carry out their responsibilities under the Act in a manner that protects natural resources and habitat areas, guarantees recreational exploration of shipwreck sites, and allows for appropriate public and private sector recovery of shipwrecks consistent with the protection of the site's historical values and environmental integrity.

Many States have not yet established programs to carry out the responsibilities they acquired under the Act. The following guidelines are offered to assist those States in developing legislation and promulgating regulations that authorize the establishment of programs to manage State-owned shipwrecks. Many other States have established shipwreck management programs, some of which have been in operation since the 1970's. The following guidelines are offered to assist those States in reviewing and making any necessary amendments to their respective program's authorizing legislation or implementing regulations to assure that the responsibilities they acquired under the Act are fully accommodated.

*Guideline 1: Involve interest groups in shipwreck program development and management activities.* States should cooperate with, meet with, consult, seek comments from, request assistance from, and otherwise involve in an ongoing basis interested persons and groups in the establishment, review, revision, and implementation of legislation, regulations, policies, and procedures on the management of State-owned shipwrecks. Interested persons and groups would include, but not be limited to, sport divers, dive clubs, diving instructors, dive boat operators, dive shops, commercial and recreational fishermen, marina operators, underwater archeologists, maritime historians, nautical conservators, maritime museums, historic preservationists, commercial salvors, and marine biologists. In addition, State and Federal agencies that have related or overlapping program responsibilities or interests should be involved. Such agencies would include, but not be limited to, those responsible for parks, preserves, sanctuaries, wetlands, refuges, marine life, coastal zone management, navigation, harbors, ports, recreation, tourism, museums, submerged lands, natural resources, cultural resources, historic preservation, fishing, and law enforcement.

*Guideline 2: Establish a shipwreck advisory board.* A state shipwreck advisory board should be established to promote and foster a direct and ongoing cooperative partnership among the various interest groups to manage State-owned shipwrecks. As appropriate to the needs of each State, the shipwreck advisory board should consist of private citizens who represent the major fields of interest and government officials who represent applicable State and Federal agencies. The major fields of interest would include, but not be limited to, sport diving and instruction; dive boat and marina operations; commercial and recreational fishing; commercial salvage of shipwrecks; underwater archeology, maritime history, historic preservation, curation, and nautical conservation; and marine biology. Duties of the State shipwreck advisory board should include, but not be limited to, the following:

(a) Making recommendations on enactment or amendment of State law that authorizes the establishment of programs to manage State-owned shipwrecks;

(b) Making recommendations on promulgation or amendment of State shipwreck management program regulations, policies, and procedures;

(c) Providing advice on the protection of natural resources and habitat areas near State-owned shipwrecks;

(d) Providing advice on what constitutes reasonable public access to State-owned shipwrecks and how the State should guarantee recreational exploration of its shipwrecks;

(e) Providing advice on what constitutes appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites;

(f) Reviewing and making recommendations on applications for proposed public and private sector recovery projects;

(g) Making recommendations on the creation of underwater parks or preserves that provide additional protection for State-owned shipwrecks; and

(h) Periodically reviewing, evaluating, and making recommendations for improvement of State shipwreck management program operations.

*Guideline 3: Assign responsibility for State-owned shipwrecks to appropriate agencies.* It would be desirable to assign responsibility for State-owned shipwrecks to a single agency. However, it often is not practical to do so since States have well established organizational structures where different State agencies have responsibilities for submerged lands and resources, the coastal zone, historic sites, parks, museums, and historic preservation matters. In addition, a single agency is unlikely to have available to it the full range of expertise that would be necessary to manage State-owned shipwrecks as multiple-use resources. Thus, it is recommended that:

(a) An agency experienced in the management of submerged lands and resources of the coastal zone should be responsible for the general management of an oversight over State-owned shipwrecks;

(b) An agency experienced in recreational resource management and historic site management (such as the State's park authority) should be responsible for the day to day management and protection of shipwrecks located in State underwater parks or preserves; and

(c) An agency experienced in historic preservation matters (such as the State's historic preservation office or underwater archeology office) should have jurisdiction over State-owned historic shipwrecks. That agency should have review and approval authority over all applications to disturb or remove artifacts or materials from historic shipwreck sites. In addition, that agency should be responsible for the development and implementation of a long-term plan to survey, identify, document, evaluate, study, interpret, protect, and preserve State-owned historic shipwrecks located in State waters.

**Guideline 4: Establish regulations, policies, or procedures for the long-term management of State-owned shipwrecks.** Consistent with the Act and the "Abandoned Shipwreck Act Guidelines," regulations, policies, or procedures should be established that:

(a) Provide for the survey, identification, documentation, and evaluation of State-owned shipwrecks;

(b) Provide for the study, interpretation, protection, and preservation of State-owned historic shipwrecks;

(c) Provide additional protection to State-owned shipwrecks through the creation of underwater parks or preserves;

(d) Protect natural resources and habitat areas near State-owned shipwrecks;

(e) Guarantee sport divers recreational exploration of State-owned shipwrecks and provide reasonable public access to State-owned shipwrecks; and

(f) Allow for appropriate public and private sector recovery of State-owned shipwrecks consistent with the protection of historical values and environmental integrity of the sites.

**Guideline 5: Provide adequate staff, facilities, and equipment.** The agencies responsible for the management of State-owned shipwrecks should have (or have access to) adequate professional staff, office and laboratory facilities, vessels, and diving and underwater survey equipment to carry out assigned responsibilities. The number and occupations of staff and kinds of facilities, vessels, and equipment deemed to be adequate will vary according to the needs and goals of each State. To help determine appropriate staffing and funding levels, States may want to ask themselves the following questions:

(a) How many historic and non-historic shipwrecks are known to be present in State waters? How many are estimated to exist?

(b) How does the State conduct surveys or excavations to identify, evaluate, document, or recover shipwreck sites? Does the State use its own staff underwater archeologists, maritime historians, and marine surveyors, and use its own vessels, equipment, and facilities? Does the State award contracts or issue permits to private parties? Does the State coordinate, oversee, and work with volunteers? Does the State rely on sport divers, commercial salvors, commercial fishermen, marine surveyors, researchers, and other parties to report finds that then are examined by the State's professional staff? Does the State plan to change the way it conducts surveys or excavations?

(c) How does the State store, maintain, conserve, study, exhibit, and interpret artifacts and materials recovered from shipwreck sites? Does the State use its own staff curators, nautical conservators, researchers, and exhibit specialists, and use its own equipment, conservation laboratory, and repository? Does the State award contracts or issue permits to private parties? Does the State loan or give items to sport diver collectors, commercial salvors, researchers, universities, local museums, or other parties? Does the State plan to change the way it carries out these activities?

(d) What kinds of interpretive, publication, and general public awareness programs does the State currently have? What kinds are planned?

(e) What is the amount of sport diving activity at shipwreck sites in State waters? Does the State Currently facilitate recreational sport diving activities? Does the State intend to promote such activities?

(f) How many underwater parks or preserves currently exist? Are they operated by the State or by Federal agencies under agreements with the State? How many underwater parks or preserves are planned? Will the State manage them? What recreational and interpretive facilities currently are available? Does the State intend to develop any such facilities?

(g) What is the amount of scholarly research activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate scholarly research activities?

(h) What is the amount of commercial salvage activity at shipwreck sites in State waters? Does the State currently regulate such activity? If not, does the State intend to regulate commercial salvage activities?

**Guideline 6: Cooperate and consult with State and Federal agencies.** For a State shipwreck management program to be effective, the agencies assigned management responsibility for State-owned shipwrecks should cooperate and consult, on a routine basis, with other State and Federal agencies that have related or overlapping responsibilities. State and Federal agencies that should be consulted, and the primary purposes for the contract, would include, but not be limited to, the:

(a) State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) about the:

(1) Identification, documentation, evaluation, protection, and preservation of State-owned historic shipwrecks;

(2) Nomination of historically significant shipwrecks to the National Register; and

(3) Award of Historic Preservation Fund grants for the study, interpretation, protection, and preservation of historic shipwrecks and properties;

(b) State's museum about the storage, maintenance, conservation, exhibition, interpretation, and study of artifacts and other materials recovered from State-owned shipwrecks;

(c) State's park authority about the:

(1) Creation and operation of State underwater parks or preserves;

(2) Facilitation of sport diver access to State-owned shipwreck sites; and

(3) Development of interpretive, recreational, and public awareness programs about the State's maritime heritage and shipwreck sites;

(d) State's submerged lands, natural resources, wetlands, and marine fisheries agencies about the protection of natural resources and habitat areas near shipwreck sites, particularly coralline formations protected by the State on its submerged lands;

(e) State's coastal zone management office about the:

(1) Incorporation of enforceable shipwreck management regulations, policies and procedures into the State's federally approved coastal zone management program;

(2) Inventory and designation of geographic areas of particular concern that contain historic shipwrecks, such areas being designated in accordance with the State's federally approved coastal zone management program and section 306 of the Coastal Zone Management Act (16 U.S.C. 1455);

(3) Coordination of any necessary Federal consistency determinations required in accordance with the State's federally approved coastal zone management program and section 307 of the Coastal Zone Management Act (16 U.S.C. 1456); and

(4) Award of Coastal Zone Management grants under sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455*a*, and 1456*b*) for State shipwreck management program development, implementation, and related activities;

(f) State's law enforcement agency attorney general's office about the protection of State-owned shipwrecks and the prosecution of persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program;

(g) U.S. Army Corps of Engineers and the U.S. Coast Guard about:

(1) Legal notice of abandonment of wrecked vessels that may have been provided pursuant to the Rivers and Harbors Act (33 U.S.C. 409);

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(2) Evidence of prior dredging, filling, and channel modification that may have damaged or destroyed shipwrecks;

(3) Measures to ensure that survey, inventory, documentation, recovery, and protection activities at State-owned shipwrecks do not pose a hazard to navigation; and

(4) Prompt removal, by the responsible party or Federal agency, of modern sunken vessels that pose a hazard to navigation;

(h) Advisory Council on Historic Preservation and appropriate Federal agencies about coordination of any necessary compliance with sections 106 or 110(f) of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2) related to a Federal, federally assisted, or federally licensed undertaking in State waters that may have an effect on historic shipwrecks or on shipwrecks that are National Historic Landmarks;

(i) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, about the designation of national marine sanctuaries in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within national marine sanctuaries;

(j) National Park Service, U.S. Department of the Interior, about the creation of national park units in State waters and about the management of historic and non-historic shipwrecks, other historic properties, natural resources, and habitat areas in or on a State's submerged lands located within units of the national park system;

(k) Office of the Judge Advocate General, U.S. Department of the Navy, and the General Services Administration about the ownership and protection of sunken U.S. and Confederate warships and other vessels entitled to U.S. sovereignty located in or on a State's submerged lands; and

(l) Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, about the ownership and protection of sunken foreign flag warships and other foreign flag vessels entitled to sovereign immunity located in or on a State's submerged lands.

*Guideline 7: Establish a consultation procedure to comment on State and Federal activities that may adversely affect State-owned shipwrecks.* State and Federal agencies whose activities may disturb, alter, damage, or destroy State-owned shipwrecks should be required, prior to approving the activity, to take into account the effect of the proposed activity on any State-owned shipwreck and to afford the State agencies assigned management responsibility for State-owned shipwrecks a reasonable opportunity to comment on the proposed activity.

(a) When the State's shipwreck management program has been incorporated into the State's historic preservation program, the consultations conducted under sections 106 and 110(f) of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2) should be used to comment on proposed Federal activities that may affect State-owned historic shipwrecks.

(b) When the State's shipwreck management program has been incorporated into the State's federally approved coastal zone management program, the Federal consistency reviews conducted under section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) should be used to comment on proposed Federal activities that may affect State-owned shipwrecks located within the coastal zone.

(c) When State-owned shipwrecks that may be affected are historic, the comments of the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office) should be obtained.

*Guideline 8: Use the National Register of Historic Places criteria.* Section 6(a)(3) of the Act requires that any abandoned shipwreck located on—rather than embedded in—a State's submerged lands must be listed in or determined eligible for listing in the National Register of Historic Places in order for the United States to assert title to it. The Act does not require that any abandoned shipwreck embedded either in the seabed or in coralline formations protected by a State be so listed or determined eligible in order for the United States to assert title to it. Nevertheless, it is recommended that, in the management of State-owned shipwrecks, the historical significance of all shipwrecks be determined using the National Register's eligibility criteria, which appear in regulations at 36 CFR part 60.

*Guideline 9: Use applicable standards and guidelines.* Applicable standards and guidelines should be used in the operation of the State's shipwreck management program. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, which provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing for public and private sector recovery of shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, establishing volunteer programs, and creating and operating underwater parks or preserves;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, survey, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Recording Historic Ships" (September 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(d) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

Copies of the above cited documents may be obtained by writing to the National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

*Guideline 10: Prosecute persons who willfully violate the State's shipwreck management program.* Persons who willfully damage or vandalize State-owned shipwrecks or otherwise willfully violate the State's shipwreck management program should be prosecuted in accordance with State laws and regulations governing State-owned property, and where the shipwreck in question is historic, historic property laws and regulations.

(a) Affected interest groups should be provided with information on the State's shipwreck management program; the importance of protecting State-owned shipwrecks; any restrictions, fines, and penalties for willfully violating the program; and an office to contact for further information. At a minimum, information should be distributed to local dive clubs and dive boat operators, posted at marinas and docking facilities, and posted on or near shipwreck sites.

(b) Criminal fines and civil penalties for persons convicted of willfully violating provisions of the State's management shipwreck program should be commensurate with the nature of the violation, increase with subsequent convictions, and include community service in the management of shipwrecks. Third and subsequent convictions should include confiscation and forfeiture of all equipment and vessels used in the commission of the violation.

(c) Artifacts and other materials recovered illegally from State-owned shipwrecks after enactment of the State's shipwreck statute should be confiscated. When possible, artifacts and materials of historical significance should be conserved and maintained.

(d) Any fines or penalties collected should be used to repair or stabilize damaged shipwreck sites, restore the environment surrounding the sites, conserve and maintain confiscated historically significant artifacts and other materials, further the efforts of shipwreck research and protection, and enhance the public's appreciation of the State's maritime heritage.

*Guideline 11: Provide legal recourse for persons affected by the State's shipwreck management program.* Any affected person or party who believes a State's shipwreck management program is not consistent with the intent of the Act and the "Abandoned Shipwreck Act Guidelines" should be provided with legal recourse under State law. In particular, any affected person should be provided with an opportunity to appeal decisions by the State to:

(a) Withhold public notice of the locations of shipwrecks to which, under the Act, the State holds title;

(b) Deny a person's request for non-destructive recreational exploration of or public access to State-owned shipwrecks;

(c) Deny a person's request for the recovery of State-owned shipwrecks when the person believes the proposed recovery is consistent with the historical values and environmental integrity of the shipwreck and the site; and

(d) Assess a civil penalty against a person who is convicted of willfully violating the State's shipwreck management program.

Any affected person may appeal a State's evaluation of the historical significance of a shipwreck by requesting from the Secretary of the Interior a written determination of the shipwreck's eligibility for listing in the National Register of Historic Places.

*B. Establishing Federal Shipwreck Management Programs*

Federal agencies have been responsible for managing and protecting historic properties (including historic shipwrecks) located on public lands since passage of the Antiquities Act (16 U.S.C. 431–433) in 1906. This responsibility was reaffirmed in 1979 with enactment of the Archaeological Resources Protection Act (16 U.S.C. 470*aa*–*mm*) and expanded upon in 1980 when the National Historic Preservation Act (16 U.S.C. 470 *et seq.*) was amended.

Abandoned shipwrecks located on public lands generally have been treated as Federal property and have been managed according to applicable Federal property, land management, and historic preservation statutes. The Abandoned Shipwreck Act (43 U.S.C. 2101–2106) reaffirms this assertion of U.S. title and management responsibility for abandoned shipwrecks located on public lands. However, the Antiquities Act, the Archaeological Resources Protection Act, and other historic preservation statutes establish more stringent requirements than does the Abandoned Shipwreck Act for managing and protecting federally-owned or controlled historic shipwrecks. Because of these differences, the Committee on Merchant Marine and Fisheries said that "Federal agencies * * * should manage their historic shipwrecks consistent with the (Abandoned Shipwreck Act) guidelines to the extent consistent with other applicable federal law" (U.S. House of Representatives Report No. 100–514, Pt. 2, p. 7).

Under the National Historic Preservation Act, Federal agencies also are responsible for taking into account the effects of their programs and projects on historic properties. Some activities that are undertaken, funded, licensed, or permitted by Federal agencies have the potential to affect historic shipwrecks. Examples of such activities would include, but not be limited to, dredging in rivers and harbors, discharging material into a waterway, constructing bridges and harbor facilities, exploring for and developing mineral resources, removing shipwrecks and drift, commercially salvaging shipwrecks, making wildlife habitat improvements, and making shoreline or channel improvements. These kinds of activities are subject to the provisions of sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h*–2).

In addition, some activities that are directly undertaken, funded, licensed or permitted by Federal agencies have the potential to affect shipwrecks located in the coastal zone. When these activities occur in the coastal zone of a State with a federally approved coastal zone management program, they may be subject to section 307 to the Coastal Zone Management Act (16 U.S.C. 1456).

To fulfill these various statutory requirements, Federal agencies have established programs to survey, identify, document, evaluate, protect, and preserve historic properties that are under their ownership or control or that may be affected by their programs and projects. The following guidelines are offered to assist Federal agencies in reviewing and making any necessary changes to these programs to ensure that shipwrecks under their ownership or control are properly managed and protected and to ensure that the effects of their projects and programs on historic shipwrecks are taken into account prior to project or program approval.

*Guideline 1: Manage historic shipwrecks in accordance with section 110 of the National Historic Preservation Act.* In accordance with section 110 of the National Historic Preservation Act (16 U.S.C. 470*h*–2), when a Federal agency owns or controls submerged lands, the agency must:

(a) Assume responsibility for the preservation of historic shipwrecks sites located on federally-owned or controlled submerged lands;

(b) To the maximum extent feasible, use historic shipwreck sites under its ownership or control for agency purposes (such as studying and interpreting the sites for the public);

(c) In accordance with appropriate professional standards, take steps to preserve historic shipwreck sites under its ownership or control (such as stabilizing and preserving historic shipwrecks in place, or recording and recovering sites when preservation in place is not feasible);

(d) In cooperation with the State's historic preservation office, establish programs to locate, inventory, and nominate historic shipwrecks under its ownership or control for inclusion in the National Register of Historic Places. The State's underwater archeology office (or archeology office, in the absence of an underwater archeology office) also should be consulted about the survey, identification, documentation, and evaluation of historic shipwrecks;

(e) Exercise caution to ensure that historic shipwreck sites under its ownership or control are not inadvertently transferred, sold, destroyed, substantially altered, or allowed to deteriorate significantly;

(f) When a Federal or federally assisted undertaking will destroy or substantially alter an historic shipwreck site, ensure that appropriate records are made of the site and deposited in the Library of Congress or other institution designated by the Secretary of the Interior. The level of recordation should be agreed upon by the Federal agency, the State's historic preservation office, and the Advisory Council on Historic Preservation as a part of the consultation process under section 106

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of the National Historic Preservation Act (16 U.S.C. 470*f*); and

(g) When a Federal undertaking will directly and adversely affect an historic shipwreck designated as a National Historic Landmark, to the maximum extent feasible, take steps to minimize harm to the landmark and afford the Advisory Council on Historic Preservation an opportunity to comment on the undertaking. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for Federal agencies to fulfill this requirement.

*Guideline 2: Issue archeological permits for the recovery of historic shipwrecks in accordance with the Archaeological Resources Protection Act.* Requests for the archeological recovery of historic shipwrecks located on public and Indian lands must be reviewed and approved or denied by Federal land managers in accordance with the permitting requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*), its implementing regulations (43 CFR part 7; 36 CFR part 296; 18 CFR part 1312; 32 CFR part 229), and any other agency specific statutes and regulations. Federal land managers generally issue permits for the excavation or removal of archeological resources (including historic shipwrecks) when the following conditions are met:

(a) The permit applicant is qualified to carry out the activity, meaning that the person has:

(1) A graduate degree in anthropology or archeology, or equivalent training and experience;

(2) Demonstrated the ability to plan, equip, staff, organize, and supervise the type and scope of the proposed activity;

(3) Demonstrated the ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;

(4) Completed at least 18 months of professional experience and/or specialized training in archeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity being proposed; and

(5) Completed at least 12 months of experience in research concerning archeological resources of the pertinent prehistoric or historic period, meaning that applicants proposing to study historic shipwrecks should have one year of experience in historic shipwreck research;

(b) The proposed activity is for the purpose of furthering archeological knowledge in the public interest;

(c) For an activity proposed on public lands, the artifacts and material remains that are recovered from the shipwreck site will remain the property of the United States, and the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(d) For an activity proposed on Indian lands, the Indian landowner and Indian tribe having jurisdiction have consented to the proposed activity and, unless the Indian owner retains custody of the artifacts and material remains, the artifacts, material remains and copies of associated records will be preserved in a suitable repository in accordance with regulations found at 36 CFR part 79;

(e) The proposed activity is fully consistent with any management plan applicable to the submerged lands under the agency's jurisdiction; and

(f) For an activity proposed on public lands at a site that may be of Indian tribal religious or cultural importance, the Federal land manager has notified the appropriate Indian tribe.

*Guideline 3: Issue contracts for the preservation, sale, or collection of wrecked, abandoned, or derelict shipwrecks in accordance with Federal property statutes.* Requests to search for and preserve, sell, or collect any shipwreck that may have been wrecked, abandoned, or become derelict on public lands must be reviewed and approved or denied in accordance with section 310 of title 40 of the U.S. Code and implementing procedures established by the General Services Administration. The General Services Administration generally issues contracts for the preservation, sale, or collection of property (or related proceeds) that may have been wrecked, abandoned, or become derelict on public lands when the following conditions are met:

(a) The applicant pays a nonrefundable service charge of $500 to cover the U.S. Government's administrative costs for processing the contract;

(b) The contract will result in no cost or expense to the U.S. Government, meaning that the contractor agrees to reimburse the U.S. Government for all expenses it may incur in connection with the search and posts a bond to cover any costs that the Federal land manager may incur related to the search;

(c) The Federal land manager gives permission;

(d) The Federal land manager determines that the property that is the object of the search is not of "archeological interest," as defined under the Archaeological Resources Protection Act (16 U.S.C. 470*bb*);

(e) The contract is in compliance with sections 106 and 110 of the National Historic Preservation Act (16 U.S.C. 470*f* and 470*h–2*), the Antiquities Act (16 U.S.C. 431–433), the Archaeological Resources Protection Act (16 U.S.C. 470*aa–mm*), the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*), and any other Federal statutes governing the management of the area to be searched;

(f) The Federal land manager agrees to provide security and protective custody for any property recovered;

(g) The U.S. Government retains any artifacts or other items recovered that it determines are an archeological resource;

(h) The gross value of any property recovered, exclusive of any portion that is determined to be an archeological resource, is shared on a 50–50 basis between the U.S. Government and the parties to the contract, but only after the U.S. Government determines the property's nature, value, and any rights of third parties; and

(i) Any other requirements that the General Services Administration or the Federal land manager may deem to be in the best interests of the Federal Government.

Persons interested in searching for shipwrecks that may have been wrecked, abandoned, or become derelict on public lands should contact the Property Management Division of the Federal Supply Service in the General Services Administration, Washington, DC 20406 and the applicable Federal land manager for further information.

*Guideline 4: Consider the effects of proposed undertakings on historic shipwrecks in accordance with section 106 of the National Historic Preservation Act.* In accordance with section 106 of the National Historic Preservation Act (16 U.S.C. 470*f*), Federal agencies must take into account the effect of any proposed Federal, federally assisted, or federally licensed undertaking on any shipwreck that is included in or eligible for inclusion in the National Register of Historic Places. In addition, agencies must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the proposed undertaking. Agencies must take these actions prior to approving the expenditure of any Federal funds or prior to issuing any license, as the case may be. The Advisory Council on Historic Preservation's regulations (36 CFR part 800) set forth procedures for



Federal agencies to fulfill their section 106 responsibilities.

(a) When historic shipwrecks entitled to U.S. sovereignty may be affected, the applicable U.S. Government agency owner (generally the U.S. Department of the Navy for U.S. vessels and the General Services Administration for Confederate vessels) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(b) When other historic shipwrecks entitled to sovereign immunity may be affected, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted to secure comments from the applicable flag nation.

(c) When other federally-owned historic shipwrecks or State-owned historic shipwrecks may be affected, the applicable Federal or State agency owner (and manager, if different from the owner) should be afforded the opportunity to be a consulting party during the section 106 consultation process.

(d) When other non-abandoned historic shipwrecks may be affected, the person or party who holds title to the shipwrecks should be afforded the opportunity to be a consulting party during the section 106 process.

(e) During the section 106 consultation process, Federal agencies should contact "interested persons" who, as defined in paragraph 800.2(h) of the Advisory Council on Historic Preservation's regulations (36 CFR part 800), are organizations and individuals concerned with the effects of an undertaking on historic properties. "Interested persons" may have information about the presence of historic shipwrecks within the area of potential impact of the proposed undertaking, information about other non-historical values and current uses of those shipwrecks, and information about possible effects that the proposed undertaking may have on the sites. "Interested persons" would include, but not be limited to:

(1) Federal, State, regional, and local governmental agencies, Indian tribes, and private landowners who control or have jurisdiction over the submerged lands or adjacent lands to be affected;

(2) Sport divers, dive boat operators, commercial and recreational fishermen, and commercial salvors who are interested in shipwrecks in the area of potential impact;

(3) Underwater archeologists, maritime historians, maritime curators, and nautical conservators who are interested in historic shipwrecks in the area of potential impact; and

(4) Archeological, historical, and maritime societies, museums, and other organizations that are interested in historic shipwrecks in the area of potential impact.

*Guideline 5: Conduct activities affecting shipwrecks located in the coastal zone in accordance with section 307 of the Coastal Zone Management Act.* Direct Federal and federally funded, licensed and permitted activities affecting shipwrecks located in the coastal zone may be subject to Federal consistency reviews conducted in accordance with section 307 of the Coastal Zone Management Act (16 U.S.C. 1456) and its implementing regulations (15 CFR part 930). Federal agencies whose activities may affect shipwrecks located in the coastal zone should consult and cooperate with the State's coastal zone management office about any necessary compliance with this requirement prior to approving the expenditure of any Federal funds or prior to issuing any license or permit, as the case may be. Federally funded, licensed and permitted activities subject to this requirement must be in compliance with the State's federally approved coastal zone management program, including any enforceable shipwreck management laws, regulations, policies, and procedures that have been incorporated into that program. Direct Federal activities must be conducted, to the maximum extent practicable, in a manner consistent with the State's federally approved coastal zone management program.

*Guideline 6: Use applicable Federal standards and guidelines.* Applicable Federal standards and guidelines should be used by Federal agencies in the management of shipwrecks under their ownership or control. As appropriate, these would include, but not be limited to:

(a) The National Park Service's "Abandoned Shipwreck Act Guidelines" being issued herewith, particularly sections that provide advice on funding shipwreck programs and projects, surveying and identifying shipwrecks, documenting and evaluating shipwrecks, providing public access to shipwrecks, interpreting shipwreck sites, and establishing volunteer programs;

(b) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983), which provide advice on planning, surveying, evaluation, registration, preservation, and documentation of historic properties;

(c) The National Park Service's "Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act" (53 FR 4727; Feb. 17, 1988), which are designed to assist Federal agencies in complying with their responsibilities under section 110 of that Act;

(d) The National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988), which provide advice on preparing measured drawings and photographs of historic ships as well as of substantially intact hulks for which contemporary documentary sources are available; and

(e) The Secretary of the Interior's "Standards for Historic Vessel Preservation Projects, with Guidelines for Applying the Standards" (May 1990), which provide advice on the treatment, acquisition, protection, stabilization, preservation, rehabilitation, and restoration of historic vessels.

*Guideline 7: Protect shipwrecks in or on a State's submerged lands located in units of the national park system and other federally managed areas.* Units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system generally are created either to protect significant cultural, biological, or natural resources or to provide recreational and educational opportunities for the public. While the Federal Government holds fee simple title to most of these areas, some lands are owned by the States. Notwithstanding who holds title to the lands, national parks, national wildlife refuges, national forests, and national marine sanctuaries should be managed in such a manner that the resources they contain (including publicly-owned shipwrecks) are protected and maintained for long-term public use and enjoyment. Where the U.S. Government manages submerged lands of a State located within units of the national park system, the national wildlife refuge system, the national forest system, and the national marine sanctuaries system, the respective Federal land managers and the State should enter into written agreements (or amend existing agreements) for the purpose of specifying how State-owned shipwrecks are to be managed. Agreements should stipulate that the State-owned shipwrecks shall be managed and protected in a manner consistent with how federally-owned shipwrecks are managed and protected. In addition, agreements should specify that souvenir collecting, commercial salvage, treasure hunting, and other damaging activities shall be prohibited at historic shipwrecks.

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*C. Funding Shipwreck Programs and Projects*

Adequate funding is the key to the successful operation of programs for the management of publicly-owned shipwrecks. Without sufficient funding, a State or Federal agency would have difficulty carrying out its responsibilities under the Act and other applicable State and Federal property, land management, and historic preservation statutes and regulations as they relate to shipwrecks. These responsibilities include the survey, identification, documentation, evaluation, and protection of shipwrecks. In addition, it includes the study and preservation of historic shipwrecks and the storage, maintenance, conservation, study, interpretation, and exhibition of artifacts and other materials recovered from historic shipwrecks. It also includes providing public access to shipwrecks for recreational purposes and regulating public and private sector recovery of shipwrecks.

Expenses associated with the management of publicly-owned historic shipwrecks can be exorbitant, particularly costs to conduct scientific research underwater and to maintain and conserve artifacts and materials recovered from an underwater environment. But, the results of research, conservation, interpretation, and exhibition efforts also can generate substantial revenues, sometimes in excess of the costs, primarily through increased tourism.[4]

The following guidelines are offered to assist the States and Federal agencies in securing and allocating funds and in generating revenues to carry out responsibilities to manage publicly-owned shipwrecks under their respective control.

*Guideline 1: Fund shipwreck management programs and projects from annual appropriations.* State and Federal agency shipwreck management programs should be funded from annual appropriations. Separate appropriation requests should be made to conduct studies at a particular shipwreck site or to study an area for possible designation as an underwater park or preserve. Special studies should be undertaken only when a commitment is made to fund the study to completion. This means that when a special request to excavate a historic shipwreck is approved by a State legislature or the U.S. Congress, sufficient monies should be made available not only for the initial excavation, but also for the subsequent laboratory analysis, conservation treatments, storage and maintenance in an appropriate repository, report preparation, and public interpretation. Because studies of shipwreck sites ordinarily are completed over the course of several years, multiyear budget estimates should be prepared and submitted as part of the initial appropriation request for each project.

*Guideline 2: Collaborate with other State and Federal agencies to reduce costs.* Where State and Federal agencies own or control contiguous submerged lands, they should enter into written agreements to coordinate their shipwreck management program activities. Jointly conducting archival research and field surveys that are regional in scope and encompass the submerged lands of all of the respective agencies would reduce overall costs, require fewer staff, eliminate duplication of effort, and result in a more complete and extensive assessment of known and potential shipwrecks in the areas studied. Jointly establishing, operating, and using conservation laboratories and repositories would reduce overall costs associated with storing, maintaining, and conserving artifacts and other materials removed from shipwreck sites.

*Guideline 3: Fund projects from the Historic Preservation Fund.* Section 4(b) of the Act says that funds available to States from historic Preservation (HPF) grants shall be available, in accordance with Title I of the National Historic Preservation Act (16 U.S.C. 470), for the study, interpretation, protection, and preservation of historic shipwrecks and properties. HPF grants to the States are available only after appropriation by the U.S. Congress and thus may or may not be available. When HPF grants are made to the States without restrictions to the contrary, State historic preservation offices should include activities relating to historic shipwrecks within the scope of their program of eligible activities. In particular, historic shipwrecks should be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan. This would enable the State to more effectively identify management needs, set priorities, undertake archival research, survey, identify, document, evaluate, interpret, protect, and preserve historic shipwrecks located in State waters.

*Guideline 4: Fund projects using Coastal Zone Management grants.* The National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management in the U.S. Department of Commerce has identified sections 306, 306A, and 309 of the Coastal Zone Management Act (16 U.S.C. 1455, 1455*a*, and 1456*b*) as potential funding authorities to assist States in developing and implementing State shipwreck management programs and related activities. Coastal Zone Management (CZM) grants would be available only to those States that have federally approved coastal zone management programs. Subject to annual appropriation by the U.S. Congress, without restrictions to the contrary, CZM grants may be made available through a State's coastal zone management office as follows:

(a) Section 306 CZM grants may be used to assist in the development of State shipwreck management programs. To be eligible for implementation grants under sections 306, 306A, and 309, shipwreck management programs must be incorporated into the State's federally approved coastal zone management program.

(b) Section 306A CZM grants may be used for low cost construction, acquisition or education activities associated with the management of shipwrecks in the coastal zone. To be eligible, projects must meet one of the following objectives:

(1) Preservation or restoration of specific areas that are designated under the State's coastal zone management program because of their conservation, recreational, ecological or esthetic values, or because of their national significance;

(2) Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under the State's coastal zone management program as "areas of particular concern;" or

(3) Provide for increased access to public beaches, coastal waters and other coastal areas.

(c) Section 309 CZM grants may be used for projects that address interstate or regional shipwreck management problems and solutions.

CZM grants could be of tremendous value to States as sources of funding for managing State-owned shipwrecks. Specific activities that a State may undertake using CZM grants would include, but not be limited to, designating areas within an underwater park in the coastal zone as "areas of particular concern" because they contain nationally significant historic shipwrecks, rehabilitating piers and replacing pilings to increase public access to and recreational use of State-owned shipwrecks, installing bulkheads to increase public safety when accessing shipwrecks, and developing educational and interpretive materials about shipwreck sites in the coastal zone.

*Guideline 5: Use other appropriate Federal funding authorities.* The National Historic Preservation Act (16 U.S.C. 470 *et seq.*) and the Archeological and Historic Preservation Act (16 U.S.C. 469–469*c*) identify several methods for Federal agencies to ensure that sufficient monies are available to identify, evaluate, document, and recover data from historic shipwreck sites that may be affected by a Federal undertaking or a federally assisted, licensed or permitted project or program. Those methods include, but are not limited to, the following:

(a) For Federal undertakings, Federal agencies may use appropriated project funds to conduct underwater surveys and recover historic shipwrecks that will be impacted by the proposed undertaking. When estimating a project's costs, costs for surveys and shipwreck identification and evaluation efforts should be included in the project's planning budget while costs for documentation and excavation of sites and costs for conservation and preservation of recovered artifacts, materials, and associated records should be included in the project's mitigation budget;

(b) For Federal projects and programs carried out by a State agency on behalf of the Federal agency, Federal agencies may use appropriated funds to reimburse the State agency for costs incurred conducting preservation activities;

(c) For federally assisted projects, Federal agencies may use appropriated funds to reimburse grantees for costs incurred conducting preservation activities as a part of the grant project; and

(d) For federally licensed or permitted projects, Federal agencies may charge reasonable costs for preservation activities to Federal licensees and permittees as a condition to the issuance of the license or permit.

*Guideline 6: Apply for other public and private sector grants.* Subject to annual appropriations by the U.S. Congress for such purposes, other public sector grant monies may be available for shipwreck projects. Federal granting agencies that may have funds available for shipwreck projects would include, but not be limited to, the National Science Foundation, the National Endowment for the Humanities, and the National Trust for Historic Preservation. In addition, private foundations, corporations, and businesses may have grant monies available for shipwreck projects; private sector grants often are contingent upon the grantor receiving exclusive media or advertising rights connected with the project.

*Guideline 7: Encourage other States, Federal agencies, and nations to co-sponsor shipwreck projects.* Another State, Federal agency, or sovereign nation may be interested in co-sponsoring or otherwise participating in projects at shipwrecks to which they have an historical connection. When there is reason to believe that another party may be interested, they should be contacted and encouraged to participate. In addition, prior to conducting any studies of vessels entitled to sovereign immunity, the applicable U.S. Government agency or sovereign nation holding title must be contacted for permission. (Any contact with foreign sovereigns must be via the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State.)

*Guideline 8: Authorize the acceptance of donations and the ability to enter into cooperative agreements.* In order to enable non-government parties to assist in locating, documenting, evaluating, studying, interpreting, and protecting publicly-owned shipwrecks, States and Federal agencies should ensure that they have the authority to:

(a) Accept donations of funds, personal property and services from other parties; and

(b) Enter into cooperative agreements with scientific and educational institutions.

*Guideline 9: Encourage volunteers to participate in shipwreck projects.* Dive clubs, sport divers, and non-divers should be encouraged to volunteer their skills in shipwreck projects. Project activities often of interest to volunteers are assisting in the conduct of archival research, participating in surveys to locate shipwrecks, verifying remote sensing data that indicates the presence of shipwreck sites and anomalies, participating in test excavations, mapping and photographing shipwreck sites, helping evaluate a shipwreck's multiple values and uses, helping prepare nominations for the National Register, and assisting in the conservation of recovered artifacts. In addition, dive shops, dive boat operators, and other maritime and non-maritime corporations and businesses should be encouraged to donate the use of vessels, supplies, and equipment in shipwreck projects. Where shipwreck projects are funded in part by Federal grants, the monetary value of the volunteered and donated services, vessels, supplies, and equipment may be used under certain Federal grant programs as a match for Federal funds.

*Guideline 10: Encourage scientific and educational organizations to participate in shipwreck projects.* Universities, colleges, and other scientific and educational organizations that offer avocational or professional underwater archeology courses should be encouraged to participate in shipwreck research projects; such organizations often are willing to participate and use projects as field schools to train students. In addition, universities and colleges that offer professional underwater archeology degree programs should be encouraged to participate in shipwreck projects; students in degree programs often are willing to participate and use projects as research sites for masters theses and doctoral dissertations.

*Guideline 11: Require commercial salvors to post performance bonds.* Any contracts awarded to commercial salvors for the salvage of shipwrecks should require the salvor to post a performance bond in an amount that would cover costs associated with the activity. The posting of a performance bond should ensure that sufficient funds would be available to complete the salvage activity according to the terms of the contract, should the salvor be unable to do so. The posting of a performance bond would be particularly important where a contract is awarded by a State for the salvage of an historic shipwreck since the costs associated with conserving, maintaining, and storing artifacts and materials recovered from an underwater environment can be high.

*D. Surveying and Identifying Shipwrecks*

Section 6(b) of the Act requires that adequate notice be given to the public of the location of any shipwreck to which title is asserted under the Act. The purpose of providing public notice is to ensure that sport divers, dive boat operators, commercial and recreational fishermen, operators of trawlers and dredgers, and others know which shipwrecks are historically significant. To comply with this requirement, the States and Federal agencies should actively work to develop a detailed understanding of the number, nature, location, and historical significance of shipwrecks in or on their submerged lands. Such an understanding is possible only through a systematic survey of submerged lands and identification of shipwrecks.

[4] The best example is in Sweden, where sufficient public and private funds were made available to document, raise, maintain, conserve, interpret, and exhibit the intact 17th century Swedish warship *Vasa*. Revenues generated annually into the Swedish economy by tourists visiting the *Vasa* are said to be $175 million.

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The following guidelines are offered to assist the States and Federal agencies in surveying for and identifying shipwrecks located in or on submerged lands under their ownership or control.

*Guideline 1: Prepare an archeological assessment for the survey area.* Prior to conducting the field survey, underwater archeologists and maritime historians should assess the potential for and predict the locations of shipwrecks that may be present in the area to be surveyed.

(a) Assessments should be based on available primary and secondary sources about shipwrecks as well as wrecked vessels that were salvaged or refloated. Information about the presence of shipwrecks should be solicited from sport divers, dive clubs, charter boat operators, commercial salvors, fishermen, marine surveyors, local residents, and other knowledgeable individuals. Records of the U.S. Coast Guard and the U.S. Army Corps of Engineers should be examined for evidence of abandoned shipwrecks. Annual reports and records of the U.S. Army Corps of Engineers on ports, harbors, and waterways should be examined for evidence of prior dredging, filling and channel modification that may have damaged or destroyed shipwrecks. Reports (prepared for the Minerals Management Service, U.S. Department of the Interior) about the potential for shipwrecks and other historic properties on the outer continental shelf also should be examined.

(b) Assessments should identify navigational hazards (such as submerged outcrops), climatological factors (such as hurricanes) and historical events (such as naval engagements) that may have caused vessels to founder or wreck. Where individual shipwreck sites are known or suspected, the assessment should summarize the vessel's structural features, the wreck incident, any salvage operations, and any prior archeological surveys or excavations. The approximate or known, verified location of the shipwreck should be plotted on nautical charts to determine areas that should be surveyed.

*Guideline 2: Prioritize surveys.* Initially, surveys should be focused primarily in areas where shipwrecks are known or expected to be found. In addition, priority should be given to areas subject to high visitor use, dredging, dumping, trawling, development, natural degradation, siltation, and other activities that may damage shipwrecks or make them inaccessible. Once these areas are surveyed, future survey work should be focused in areas known to have been used during periods of exploration and colonization, but where there is little historical documentation about shipwrecks. When the archeological assessment indicates that no shipwrecks are known or expected to have occurred in a given area, the area should be assigned a low priority for survey until new information indicates otherwise.

*Guideline 3: Coordinate archival research and field survey efforts with other State and Federal agencies.* To the extent possible, archival research and field surveys should be coordinated and conducted jointly with those being undertaken or authorized by other State and Federal agencies that have responsibilities for contiguous submerged lands. At a minimum, the results of archival research and field surveys should be shared with those State and Federal agencies. In addition, archival research and field surveys should be coordinated with and the results provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that information on historic shipwrecks may be included in the State's inventory of historic properties and the State's comprehensive historic preservation plan.

*Guideline 4: Use scientific methods and techniques to conduct field surveys.* Field surveys to locate shipwreck sites should employ scientific methods and techniques. Magnetometers, side-scan sonar, subbottom profilers, and remotely operated vehicles often can provide cost effective coverage for deep water sites. Surveys should be conducted systematically, with sufficiently close lane spacing to provide accurate, detailed coverage of an area. Surveys should be conducted by a team that includes, at a minimum, persons trained in the conduct of marine surveys, the use of remote sensing equipment, and the examination and analysis of remote sensing readings for the purpose of identifying shipwrecks. All tapes, equipment readings, field notebooks, and logs generated during surveys should be collated and archivally saved for future study. Reports should be prepared and published that describe the areas surveyed, survey methods used and the results.

*Guideline 5: Record shipwreck locations.* Areas surveyed should be recorded using accurate positioning systems to determine wreck locations. The location of each shipwreck located during the survey should be recorded on a map by using a standard coordinate system (such as Universal Transverse Mercator grid, Loran C, latitude and longitude, or compass bearings).

*Guideline 6: Ground-truth shipwrecks and anomalies using non-destructive methods.* All shipwrecks and unverified located during a remote sensing survey should be ground-truthed through sea-bottom inspection—either by remotely operated vehicle or by divers. Shipwrecks should be examined to determine the nature, extent and integrity of the wrecked vessel, surviving cargo, and associated scattered wreckage, and to locate any visible human remains. Shipwrecks should be examined in as non-destructive and non-disturbing a manner as possible. Determinations of a shipwreck's type, age, condition and, when possible, specific identity should be made without test excavations or removal of artifacts or other materials. When test excavations are necessary or artifacts or other materials must be removed (such as when the shipwreck is embedded or encrusted), the amount to be excavated or removed should be as limited as possible to make evaluations, and be done using archeological methods. This is particularly important in cases where historical value is suspected. Any artifacts or other materials recovered from historic shipwrecks should be conserved by a nautical conservator.

*Guideline 7: Provide for the treatment of human remains in shipwrecks.* To the extent possible, human remains in shipwreck should be left in place as burials at sea. However, when remains (whether of known or unknown persons and whether intact or decomposed) are being disturbed by unavoidable or uncontrollable human activity, they should be removed and appropriately disposed of. Where the remains are of known individuals, a reasonable effort should be made to contact relatives of the deceased to discuss the removal and disposition of the remains. Until human remains are removed, activities that would disturb them should be prohibited.

*Guideline 8: Confirm the abandonment of shipwrecks.* When there is reason to believe that a shipwreck may not be abandoned, prior to assuming title or taking any action that would affect the shipwreck, steps should be taken to confirm that the shipwreck is abandoned.

(a) Vessels grounded or sank in navigable waters of the United States are subject to provisions in the Rivers and Harbors Act of 1899 (33 U.S.C. 409). When a shipwreck is thought to have wrecked after enactment of this statute, the U.S. Coast Guard and the U.S. Army Corps of Engineers should be contacted to determine if the owner of the wrecked vessel provided legal notice of abandonment in accordance with that Act.

(b) When a shipwreck is thought to be a U.S. or Confederate warship or other vessel entitled to U.S. sovereignty, the Office of the Judge Advocate General, U.S. Department of the Navy, the General Services Administration should be contacted for assistance in determining proper ownership.

(c) When a shipwreck is thought to be a foreign flag warship or other foreign flag vessel entitled to sovereign immunity, the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, should be contacted for assistance in determining proper ownership. (Under customary international law, any contact with other nations about their sunken warships or other vessels is through the U.S. Department of State.)

(d) When a shipwreck is not abandoned, the title holder should be contacted concerning the management and disposition of the wrecked vessel, its cargo, and other contents.

*Guideline 9: Provide adequate public notice of the locations of shipwreck sites.* The Act requires that the public be given adequate notice of the location of any shipwreck to which little is asserted under section 6 of the Act. At a minimum, the public should be provided with the names and locations of shipwrecks identified during field surveys as well as information on whether the shipwrecks are historic or non-historic. Appropriate methods of giving public notice would include, but not be limited to, publishing notices in local newspapers, diver publications, and the Federal Register; posting notices at marinas and dive shops; marking nautical charts; and placing signs at shipwreck sites. When there is reason to believe that disclosure of the exact location (such as Loran coordinates) of a particular historic shipwreck would lead to vandalism, pilferage, or other damage to the site, locational information of a more general nature should be given for that site. However, under the Act, some locational information must be given. In such situations, the level of specificity of the information given should be determined on a case by case basis and should reduce the likelihood of the anticipated damage to the particular historic shipwreck. To withhold from the public even general locational information on shipwrecks would be inconsistent with the Act and the "Abandoned Shipwreck Act Guidelines."



*E. Documenting and Evaluating Shipwrecks*

Documenting a shipwreck (whether it is historic or non-historic) provides important baseline information for long-term management of the site. Once a shipwreck has been documented, it is then possible to assess changes to it and the surrounding area over time. These changes may result from siltation, water currents, water pollution, dredging, trawling, anchor damage, vandalism, or intensive diver use. Over time, where comparing a shipwreck's current condition to the original documentation shows significant deleterious change or damage and it is determined that the shipwreck should be preserved, then steps can be taken to protect the shipwreck from further damage.

Documenting shipwrecks also aids in evaluation and interpretation efforts. Shipwrecks generally have multiple values and uses that must be taken into consideration for management purposes. The various values and uses shipwrecks may have include, but are not limited to:

(a) Historical values associated with shipwrecks that are eligible for listing in the National Register of Historic Places, like being associated with a significant historical event or personage, possessing distinctive characteristics of a particular vessel type, or containing information important in the nation's history;

(b) Recreational and educational values associated with public use and enjoyment of shipwrecks through such activities as scuba diving, snorkeling, spearfishing, underwater photography, visiting maritime museums, and participating in shipwreck research projects;

(c) Tourism and other monetary values associated with public and private profit making through such activities as operating a dive boat company, salvaging shipwrecks or valuable cargoes, being a commercial fisherman, making movies, and publishing popular books;

(d) Biological values associated with habitat areas and coralline formations that develop in and around shipwreck sites; and

(e) Memorial values attached to warships whose wreck events are associated with the deaths of service personnel, even if human remains are no longer present or visible.

The following guidelines are offered to assist the States and Federal agencies in documenting and evaluating shipwrecks—as they are discovered—that are located in or on submerged lands under their ownership or control.

*Guideline 1: Make a photographic record of shipwrecks.* Where possible, shipwrecks should be photographed using black and white photographic film and color slide film. Photographs of non-embedded shipwrecks should include shots of the wrecked vessel, artifacts, and important features. Embedded shipwrecks should be photographed without removing bottom sediments or encrustations. All photographs should be clearly labeled and, where possible, contain scales and compass points. Where possible, a video survey should be made, particularly of historic shipwrecks. Video surveys should be oriented to a map of the site that shows the passes over and through the shipwreck. Several passes should be made to provide as comprehensive a video tour of the shipwreck as possible. Detailed video footage should be made of noteworthy, fragile or dangerous features. Where possible, video footage should include a scale and an annotated time reference. When the identity of a shipwreck is known, photographs of the wrecked vessel when afloat and of the actual wreck event should be obtained, where they exist.

*Guideline 2: Collect and evaluate information about each shipwreck's history, values, and uses.* When the identity of a shipwreck is known, archival information should be collected about her construction and use history. Information about a shipwreck's recreational and educational values and uses should be collected from underwater archeologists, maritime historians, maritime museums, maritime historical societies, and historic preservation officials. Information about a shipwreck's recreational and educational values and uses should be sought from dive clubs, sport divers, dive boat operators, recreational fishermen, maritime museums, maritime historical societies, and tourism officials. Information on a shipwreck's tourism and other monetary values should be sought from tourism officials, commercial salvors, commercial fishermen, dive boat operators, dive shops, and marina operators. Information on a shipwreck site's biological values should be collected from marine biologists and fisheries officials. Information about a wrecked warship's memorial values should be sought from the U.S. Department of the Navy and the General Services Administration (for U.S. and Confederate warships) and the U.S. Department of State (for warships belonging to a foreign flag nation). Evaluations of a shipwreck's history, values and uses should be made

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available for public review and comment by interested professional, avocational and other interest groups, appropriate State and Federal agencies, and any shipwreck advisory boards.

*Guideline 3: Nominate historically significant shipwrecks to historic registers.* When a shipwreck appears to be historically significant, sufficient information should be gathered to nominate it to the National Register of Historic Places [6] and any State historic registers. Shipwrecks that possess exceptional value as commemorating or illustrating the history of the United States should be nominated for designation as National Historic Landmarks.[6] Nominations should be subject to professional and public review by the various interest groups prior to submission to the State's historic preservation office or to the National Register.

*Guideline 4: Prepare site maps, drawings, and reports of historic shipwrecks.* Archeological site maps should be prepared for historic shipwrecks. Drawings should be made of unique, representative or significant features of historic shipwrecks. When measured drawings are made of substantially intact historic shipwrecks and hulks, they should conform, when possible, to the National Park Service's "Guidelines for Recording Historic Ships" (Sept. 1988). Reports should be prepared about historic shipwrecks. Reports should contain information gathered during archival research, field surveys, any archeological excavations, and any other studies. Reports also should contain recommendations about conducting future studies and about managing the historic shipwreck site. State and Federal agencies are encouraged to use the National Park Service's Submerged Cultural Resources Study series as a model for report preparation.[7] Publications in this series also contain examples of archeological site maps and line drawings that resulted from diving surveys at historic shipwrecks in units of the national park system.

*Guideline 5: Prepare a shipwreck inventory.* An inventory of all known, surveyed shipwreck sites should be prepared and maintained. The shipwreck inventory should contain, but not be limited to, the following information:

(a) Popular name and, when known, the vessel name, if different;

(b) Vessel size, type, and age;

(c) When known, the wreck date and function at the time of the wreck incident;

(d) Location, including whether it is in an underwater park or preserve;

(e) Whether it is intact or broken into scattered pieces;

(f) Whether it is buried or encrusted in coralline formations;

(g) Whether it is listed in or determined eligible for the National Register, or is potentially eligible for listing;

(h) Whether it is listed in a State registry of historic properties; and

(i) Owner and manager, if different.

State and Federal agencies are encouraged to use the National Park Service's National Maritime Initiative Inventory format as a model.[8] Information on historic shipwrecks also should be provided to the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) so that it may be incorporated into the State's inventory of historic properties and the State's comprehensive historic preservation plan.

*Guideline 6: Maintain documentation on shipwreck sites.* Documents such as field notes, historical information, photographs, site maps, drawings, inventory forms, and reports relating to each vessel listed in the shipwreck inventory should be maintained. Documentation for each shipwreck site should remain together and be deposited, when possible, in a central repository that houses similar documentation on other shipwrecks under the State or Federal agency's ownership or control. However, for safety reasons, duplicate copies of documents should be made and retained in separate locations. Maintaining copies of documentation in multiple locations also results in greater accessibility to the information by researchers and other interested parties.

*Guideline 7: Make documentation accessible to interested parties.* Shipwreck documentation should be made accessible to the public for interpretive and educational purposes. Shipwreck documentation (particularly maps and drawings) and information about dangers associated with specific sites should be published. However, prior to releasing maps and associated documentation that contain the exact location of historic shipwrecks, States and Federal agencies should assess the risk of theft, vandalism, or other damage to the sites. Documents that contain precise locational information for historic shipwrecks should be considered confidential only when there is reason to believe that their disclosure would lead to vandalism, pilferage, or other damage to a particular shipwreck site. In such cases, the precise locational information should be replaced with information of a more general nature so that the documents may be made available to the public.

### *F. Providing for Public and Private Sector Recovery of Shipwrecks*

Section 4(a) of the Act says that the U.S. Congress intends for the States to allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites. Public sector recovery activities would include, but not be limited to, studies and excavations of shipwrecks by the States and Federal agencies for management, scientific or mitigation purposes. Private sector recovery activities would include, but not be limited to, the collection of artifacts and other materials from shipwrecks by sport divers who desire personal souvenirs, the salvage of shipwrecks by commercial salvors and treasure hunters for profit-making purposes, and the study and excavation of shipwrecks by scientific and educational institutions for scientific purposes.

Clearly, public and private sector recovery of shipwrecks may affect historical values of shipwrecks and the environmental integrity of shipwreck sites. Recovering an historic shipwreck in an unscientific manner certainly would destroy the site and the historical information it contains. Recovery it using explosives, dredges or propeller wash deflectors also would destroy the environment surrounding the site. Recovering it scientifically and conserving and maintaining the recovered artifacts, other materials, and associated records would mitigate the loss of the site and would preserve the historical information.

Values other than historic and environmental ones also may be affected by public and private sector recovery activities. For example, stripping a shipwreck valued primarily for recreational purposes of its artifacts and other materials would reduce, if not eliminate, those values. A substantial reduction in sport diver activity at the site could, in turn, have an adverse effect on tourism and coal business (like dive boat operators and marina operators). Destroying a shipwreck site valued for surrounding habitat areas or coralline formations would have an adverse effect on biological values associated with the shipwrecks. This could, in turn, have an adverse effect on commercial and recreational fishing.

Under the Act, the States are entrusted to manage State-owned shipwrecks for the benefit of the public. Since any recovery activity (whether it is public or private) at shipwreck sites has the potential to damage and destroy the site, its various values and uses, and the surrounding environment, it is the responsibility of the States to ensure that any public and private sector recovery of State-owned shipwrecks is in the best interests of the public. The following guidelines are offered to assist the States in ensuring that public and private sector recovery activities are in the public interest.[9]

*Guideline 1: Establish policies, criteria and procedures for appropriate public and private sector recovery of State-owned shipwrecks.* Interested persons and groups, appropriate State and Federal agencies, and any State shipwreck advisory board should be consulted about the establishment of policies, criteria and procedures that would allow for appropriate public and private sector recovery of State-owned shipwrecks. At a minimum, the State should establish:

(a) Policies that set forth the circumstances under which the various kinds of public and private sector recovery activities at State-owned shipwrecks would and would not be in the public interest;

(b) Procedures for the public and private sector to apply for permits, licenses or contracts to recover State-owned shipwrecks;

(c) Criteria and procedures for the State to evaluate applications for and issue or deny permits, licenses and contracts to recover State-owned shipwrecks;

(1) The State's historic preservation office and underwater archaeology office (or archeology office, in the absence of an underwater archeology office) should review and approve applications for permits, licenses and contracts to recovery any State-owned shipwreck that is (or may be) historic; and

(2) The issuance of any permit, license or contract should be conditioned with appropriate terms and conditions to ensure that the authorized recovery activity is in the public interest;

(d) Procedures for the State to periodically monitor (both on and off-site) permitted, licenses and contracted recovery work to ensure that it is in compliance with any attached terms and conditions;

(1) State officials who monitor permitted, licensed and contracted work should be given the authority to immediately suspend any permit, license or contract that appears not be in compliance with the terms and conditions of the permit, license or contract;

(2) Once work is suspended, work should not resume until the State has conducted a thorough review and notified the permittee, licensee or contractor of its findings; and

(3) Costs incurred by the State to monitor permitted, licensed and contracted work should be paid with State monies and not be reimbursed by the permittee, licensee or contractor; and

(e) Procedures and criteria that provide, as appropriate, for the transfer of title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to private parties.

*Guideline 2: Authorize only those recovery activities at State-owned shipwrecks that are in the public interest.* Decisions to allow for the recovery of State-owned shipwrecks should be reached on a case by case basis by weighing and balancing the values and uses a particular shipwreck may have, the potential benefits to be derived from the proposed recovery activity, and the potential adverse effects to be caused by the proposed recovery activity. Only those public and private sector recovery activities that are in the best interests of the public should be authorized. To help determine whether a proposed public or private sector recovery activity is in the best interests of the public, the State should consider the following:

(a) Is the subject shipwreck, in fact, State-owned? (The States cannot authorize public or private sector recovery at any shipwreck that is federally-owned, privately-owned, or entitled to sovereign immunity, even though such shipwrecks may lie in State waters.)

(b) What are the shipwreck's current and potential future values and uses? Is the proposed recovery consistent with those values and uses? Will the proposed recovery enhance any of these values and uses? Will it irrevocably damage or destroy any of those values and uses?

(c) Is the shipwreck listed in or determined eligible for inclusion in the National Register of Historic Places? Is it a National Historic Landmark?

(d) Where the shipwreck may be historic, will be the proposed recovery result in a nomination to the Secretary of the Interior to list the shipwreck in the National Register of Historic Places? Will it result in a recommendation to the Secretary of the Interior to designate the shipwreck as a National Historic Landmark?

(e) Where the shipwreck is (or may be) historic:

(1) Have the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office) been provided with an opportunity to comment on the proposed recovery? Do they approve of the proposal? Have they attached any terms and conditions to ensure that preservation of the shipwreck's historical information?

(2) Is the proposed recovery consistent with the State's comprehensive historic preservation plan?

(3) Will the proposed recovery result in the acquisition of new historical information or verify historical documentation?

(4) Will the proposed recovery be conducted in a professional manner to preserve the shipwreck's historical information? (See Guideline No. 4 in this subpart for a discussion on conducting recovery activities in a professional manner.)

(5) Will the proposed recovery result in the private ownership or sale of any of the artifacts and other materials recovered? If so, will those items be properly conserved and studied and be made available for public exhibition and interpretation?

(f) Is the shipwreck located in a State underwater park or preserve? If so, is the proposed recovery consistent with the unit's management plans?

(g) Is the shipwreck located in or on a State's submerged lands located within a unit of the national park system, the national wildlife refuge system, the

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[6] Criteria for evaluation and procedures for nominating historic properties to the National Register are found in regulations at 36 CFR part 60.

[6] Criteria for national significance and procedures for designating National Historic Landmarks are contained in regulations at 36 CFR part 65.

[7] Information on the Submerged Cultural Resources Study series may be obtained by writing to the Submerged Cultural Resources Unit, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior, P.O. Box 728, Santa Fe, NM 87504-0728.

[8] Information on the format of the National Maritime Initiative Inventory may be obtained by writing to the National Maritime Initiative, History Division, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127.

[9] Federal agencies must follow the requirements set forth in the Archaeological Resources Protection Act (16 U.S.C. 470 *cc–ee*), section 310 of title 40 of the U.S. Code, and other applicable statutes and regulations governing public and private recovery of federally-owned and controlled archeological resources and other property (see applicable guidelines contained in subpart B of part II of these "Guidelines").

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national forest system, or the national marine sanctuary system? If so, is the proposed recovery consistent with the unit's management plans, the written agreement between the State and the Federal land manager, and applicable Federal statutes, regulations, policies, and standards?

(h) Is the shipwreck located in any other area (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation? If so, is the proposed recovery consistent with the area's management plans and applicable statutes, orders and regulations?

(i) Is the shipwreck currently being damaged or destroyed by natural processes (such as erosion), by an approved State or Federal undertaking (such as dredging or development) or by other human activity (such as anchor damage)? Is it threatened with imminent and unavoidable damage or destruction by such processes, undertakings or activities?

(j) Where the proposed recovery will damage or destroy the environment surrounding the shipwreck, will the area be restored to its original condition?

(k) Will the proposed recovery impede navigation in existing Federal navigation channels?

(l) Has the applicant obtained other necessary State or Federal permits (such as permits to disturb the bottomlands)?

*Guideline 3: Protect particular State-owned shipwrecks from commercial salvage, treasure hunting and private collecting activities.* Commercial salvage, treasure hunting and personal collecting activities, no matter how they are conditioned and monitored by the State, are conducted for the personal gain of individuals. Shipwrecks that are particularly significant historically or are in protected areas set aside by some formal mechanism should be preserved for the public and generally not be available for commercial salvage, treasure hunting or personal collecting. It is recommended that, at a minimum, any State-owned shipwreck that meets any of the following criteria should not be available for commercial salvage, treasure hunting or personal collecting:

(a) Shipwrecks designated as National Historic Landmarks or, pending a written determination by the Secretary of the Interior, shipwrecks under consideration for designation as National Historic Landmarks;

(b) Shipwrecks located in State underwater parks or preserves;

(c) Shipwrecks located in or on a State's submerged lands located within units of the national park system, the national wildlife refuge system, the national forest system, or the national marine sanctuary system; or

(d) Shipwrecks located in other areas (like habitat areas or coralline formations) protected under Federal or State statute, order or regulation.

*Guideline 4: Require any recovery at State-owned historic shipwrecks to be done in a professional manner.* The study and recovery of historic shipwrecks enables underwater archeologists and maritime historians to collect new data or confirm archival documentation regarding a specific vessel, a type or method of construction, an historical event or period, or a culture. When it is determined to be in the public interest to authorize the recovery of artifacts or materials from historic shipwrecks, the recovery operation (whether it is public or private) should be done in a manner consistent with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716; Sept. 29, 1983) and other applicable historic preservation standards and guidelines. At a minimum, any permit, license or contract authorizing the scientific excavation, commercial salvage or treasure hunting of State-owned historic shipwrecks should contain the following terms and conditions:

(a) The permittee, licensee or contractor has secured any other necessary State or Federal permits;

(b) A professional underwater archeologist is in charge of planning, conducting and supervising the field operations, laboratory analysis, and report preparation;

(c) A conservation laboratory is in place prior to commencement of field operations and a professional nautical conservator is in charge of planning, conducting and supervising the conservation of any artifacts and other materials recovered from the site;

(d) Field operations, laboratory analyses, and conservation treatments use appropriate scientific methods and techniques and are as non-destructive and non-disturbing as possible to the site, the surrounding environment, and any artifacts and other materials recovered from the site;

(e) The shipwreck site is fully documented (i.e., an archeological site map is prepared, measured drawings are made of significant features, and a photographic record is made of the wrecked vessel, significant features, and artifacts);

(f) A professional final report is prepared (and approved by the State) that describes the field operations, excavation methods, laboratory analyses, conservation treatments, scientific findings, and recommendations for any future work;

(g) Copies of all field notes, site maps, measured drawings, photographs, videos, final reports, and other data and records derived from the recovery and analysis are deposited, stored and maintained in the repository named in the permit, license or contract;

(h) Copies of final reports, site maps and other appropriate records are provided to the State's historic preservation office and the underwater archeology office (or archeology office, in the absence of an underwater archeology office);

(i) When the State is maintaining ownership to any artifacts or other materials recovered from the site, those items are deposited, stored and maintained in the repository named in the permit, license or contract;

(j) When the State is transferring ownership to any artifacts or other materials recovered from the site to a commercial salvor or treasure hunter:

(1) The transfer is made only after field operations and laboratory analysis are completed, the recovered items are conserved, and the final report is approved by the State; and

(2) To the extent possible, the items transferred are preserved and maintained as an intact collection and are made available for future study, public interpretation and exhibition;

(k) When a commercial salvor or treasure hunter is undertaking the recovery, the salvor or treasure hunter posts a performance bond to cover costs associated with the recovery (this is to ensure that sufficient funds would be available to the State if the salvor or treasure hunter is unable to complete the recovery according to the terms and conditions of the permit, license or contract); and

(l) Information on the recovery activity and the archeological findings are disseminated to the scientific community and to the public.

*Guideline 5: Allow public and private recovery activities at non-historic shipwrecks without archeological conditions.* When it is determined to be in the public interest to authorize the recovery of artifacts and other materials from State-owned non-historic shipwrecks, the recovery activity should not be conditioned with archeological requirements.

*Guideline 6: As appropriate, transfer title to artifacts and other materials recovered from State-owned shipwrecks by the private sector to parties.* Artifacts and other materials recovered from State-owned shipwrecks are State property and would be subject to State statutes and regulations governing the management and disposition of State property. Items recovered from shipwrecks designated as State historic sites also would be subject to State statutes and regulations governing the management of historic sites. When it is determined to be in the public interest to authorize private parties (like sport divers or commercial salvors) to recover and keep artifacts or other materials from State-owned shipwrecks, title to those items should be transferred in accordance with the applicable State property and historic site statutes and regulations. In general, the States should:

(a) Not transfer title to any items to another party until the authorized recovery activity is completed, the items are properly conserved and analyzed, and any required final report is completed and approved by the State;

(b1) Determine any archeological and commercial values of recovered artifacts and other materials;

(c) Determine what would constitute fair compensation to the private party (for his or her recovery efforts) in terms of a share of items recovered, a percentage (in cash) of the fair market value of the items, or a combination thereof; and

(d) Retain title to items that are unique, exceptionally valuable historically or representative of the items recovered, or are recovered illegally after enactment of the State's shipwreck management statute.

*Guideline 7: Disseminate information on public and private sector recovery activities to the public and to the scientific community.* Information on public and private sector recovery activities and any archeological findings should be disseminated to the public and the scientific community. Appropriate methods to disseminate information to the public would include, but not be limited to, publishing non-technical pamphlets, books, and articles in popular national, regional and specialty magazines; presenting lectures, video tapes and slide shows at local historical society and dive club meetings; developing underwater trails at shipwreck sites; and exhibiting artifacts and other materials in local museums. Appropriate methods to disseminate information to the scientific community would include, but not be limited to, preparing a final report (this always should be done), publishing articles in scientific journals, and presenting papers at professional meetings. Copies of final reports always should be provided to the State's historic preservation office, underwater archeology office (for archeology office, in the absence of an underwater archeology office), and appropriate Federal historic preservation offices so that the data may be incorporated into Federal and State historic preservation plans.

*Guideline 8: Discourage the recovery and display of intact shipwrecks.* The costs to properly raise, conserve, maintain, and exhibit intact shipwrecks are prohibitively expensive and perpetual. Thus, recovering intact shipwrecks should be discouraged unless they are historic and in danger of imminent and unavoidable destruction, and it is determined to be in the best interests of the public. However, no such shipwreck should be recovered unless sufficient public and/or private funds are made available to document and recover it archeologically and to properly conserve, maintain, exhibit, and interpret it for the public.

### *G. Providing Public Access to Shipwrecks*

Section 4(a) of the Act says that the U.S. Congress intends for the States to provide reasonable access by the public to State-owned shipwrecks and to guarantee recreational exploration of shipwreck sites. Access to publicly-owned shipwrecks (whether federally-owned or State-owned) by the public is beneficial for tourism, public enjoyment and appreciation, and preservation, as well as for recreation. However, increased public access also may cause inadvertent damage to shipwrecks.

The following guidelines are offered to assist the States and Federal agencies in determining what constitutes reasonable public access to shipwrecks under their ownership or control while, at the same time, protecting shipwrecks from inadvertent damage.

*Guideline 1: Guarantee recreational exploration of publicly-owned shipwreck sites.* At a minimum, any person should be able to freely and without a license or permit dive on, inspect, study, explore, photograph, measure, record, fish at, or otherwise use and enjoy publicly-owned shipwrecks (including historic shipwrecks and shipwrecks whose historical significance has not yet been evaluated) when the use or activity does not involve disturbing or removing parts or portions of the shipwreck or its immediate environment.

*Guideline 2: Establish lists of shipwrecks having recreational value.* Lists of publicly-owned shipwrecks having recreational value should be prepared in cooperation with sport divers, dive clubs, dive boat operators, recreational fishermen, recreational planners, underwater archeologists, and maritime historians. The lists should note the shipwreck's location (including a chart description and coordinates), depth and general bottom conditions, a general description (including any dangers and the shipwreck's condition and historical significance), and indicate whether a license or permit is needed to collect artifacts or other materials.

*Guideline 3: Facilitate public access to shipwrecks.* Sport diver access to publicly-owned shipwrecks having recreational value should be facilitated through the placement of marker buoys and anchor moorings and through the distribution of information at dive shops and marinas. Underwater parks or preserves should be created in areas containing shipwrecks that are well preserved and valuable for recreational purposes. Public facilities on and off the shore to support diver access and visitor enjoyment and appreciation should be provided, as appropriate, in underwater parks and preserves.

*Guideline 4: Consult with interest groups prior to imposing any restrictions on access.* Prior to imposing any restrictions on public access to shipwrecks, comments should be sought from the various interest groups, the State's historic preservation office and underwater archeology office (or archeology office, in the absence of an underwater archeology office), and appropriate State and Federal agencies about the values and uses of individual shipwrecks (or classes of shipwrecks) and the need to regulate access. When shipwrecks entitled to U.S. sovereignty are involved, the applicable U.S. Government agency should be contacted for instructions on regulating public access to the federally-owned shipwrecks. When other shipwrecks entitled to sovereign immunity are involved, the Bureau of Oceans and International Environmental and Scientific Affairs in the U.S. Department of State should be contacted to secure instructions from the applicable flag nation on regulating public access to the foreign-owned shipwrecks.

*Guideline 5: Regulate access at few, if any, shipwrecks.* Decisions to limit, monitor or prohibit public access to shipwrecks should be made on a case by case basis, be practical, and be fairly administered. In general, public access to shipwrecks in State waters should be regulated only when:

(a) A shipwreck site presents an unacceptable risk to human safety and the visitor does not assume full responsibility for his or her safety;

(b) A shipwreck is extremely fragile and in danger of collapsing;

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(c) A shipwreck is suffering extensive deterioration or attrition due to prior unregulated access;

(d) A permittee, licensee or contractor who is recovering a shipwreck under a valid permit, license or contract requests that access be regulated during the term of the permit, license or contract; or

(e) A shipwreck is entitled to sovereign immunity and the applicable Federal Government agency (for U.S. flag vessels) or foreign nation (for foreign flag vessels) provides instructions on regulating public access to the shipwreck. In the absence of specific instruction from the applicable sovereign, under customary international law, access by any U.S. national to shipwrecks entitled to sovereign immunity is prohibited. When a sovereign grants permission, it generally limits access to named individual for specified purposes. As a matter of policy, permission generally is not given to access (or salvage) sunken warships that contain the remains of deceased service personnel or explosive material.

*Guideline 6: Provide adequate public notice of restrictions.* Once a decision has been made to limit, monitor or prohibit access to a particular shipwreck, the public should be provided adequate notice of the restrictions. Appropriate methods to give public notice would include, but not be limited to, marking restrictions on nautical charts; posting notices on the shipwreck and at marinas and dive shops; notifying dive boat operators; and publishing restrictions in "Notice to Mariners," diver publications and local newspapers. A standard method of giving public notice should be adopted.

*H. Interpreting Shipwreck Sites*

Section 4(b) of the Act says that funds available to the States from HPF grants shall be available for a variety of activities, including interpretation of historic shipwrecks and properties. Whether using HPF grants, other monies, or working in partnership with the various interest groups, providing for the interpretation of publicly-owned shipwrecks helps increase the public's knowledge and understanding of our nation's maritime history and appreciation for shipwrecks and their preservation. Interpreting sites also is the only means to impart to the public the historic information and archeological discoveries that result from public and private sector shipwreck projects.

The following guidelines are offered to assist the States and Federal agencies in providing for the interpretation of shipwrecks under their ownership or control.

*Guideline 1: Present information on the vessel's history and the shipwreck's various values and uses.* Interpretive efforts should strive to present to the public information about a vessel's construction, type, characteristics, age, use history, significance in history (such as participation in historical events or associations with significant individuals—like a designer, a builder or a commanding officer), and whether it is unique or representative of a vessel type. In addition, information on a shipwreck's various current and potential future values and uses should be presented.

*Guideline 2: Disseminate information on shipwreck projects through publications, lectures, exhibits, and professional papers.* The results of shipwreck projects should be presented in professional reports and journals as well as in non-technical, popular publications (such as diver and non-diver magazine articles, adult and children's books, booklets, and pamphlets). Lectures, videos, slide shows, and exhibits on shipwreck projects, maritime history, underwater archeology, and opportunities for sport divers to participate in projects should be made available to dive clubs, dive shops, boat and dive shows, marinas, historical societies, elementary and secondary schools, community colleges, maritime museums, libraries, and other appropriate outlets. Papers on the results of shipwreck projects should be given at professional archeological, historical, and maritime conferences.

*Guideline 3: Build models of vessels.* Models of intact shipwrecks should be made and exhibited to provide detailed, small-scale orientation and interpretation for divers and non-divers. Models would be particularly useful when diving is prohibited (such as at the U.S.S. *Arizona* in Hawaii), is difficult (such as the *Isabella*—in dark water with a fast current—near Astoria, Oregon), or when sufficient public interest in the shipwreck exists (such as at the U.S.S. *Monitor* offshore of North Carolina). The process of building models also can be a popular and successful interpretive activity.

*Guidelines 4: Include interpretive materials in underwater parks and preserves.* The creation of underwater trails at shipwreck sites in underwater parks or preserves can be used to effectively interpret sites for divers. Sites and noteworthy features should be marked with permanent signs. Signs also should be placed on mooring buoys along trails. In addition, a site map and pamphlet (enclosed in mylar and small enough to fit into a buoyancy compensator pocket) should be prepared for individual shipwreck sites. Pamphlets, booklets, books, and exhibits should be prepared for divers and non-divers of all ages.

*Guideline 5: Encourage public and private interest groups to disseminate information on shipwreck activities.* Public and private museums (particularly maritime museums) and visitor centers should be encouraged to provide lectures, slide shows, videos, and exhibits on shipwrecks, maritime history, underwater archeology, underwater photography, diving, and the marine environment surrounding shipwreck sites. When a State's shipwreck management program permits sport divers and others to collect and keep artifacts or other materials from State-owned shipwrecks, those persons should be encouraged to make items legally recovered available for museum exhibits.

*Guideline 6: Require permittees, licensees, and contractors to disseminate information about recovery activities at historic shipwrecks.* When a permit, license or contract is issued for the scientific excavation, commercial salvage or treasure hunting of an historic shipwreck, the permittee, licensee or contractor should be required, as a condition to the issuance of the permit, license or contract, to:

(a) Make presentations on the results of the recovery activity and the archeological findings at professional meetings and in public forums;

(b) Prepare scientific and non-technical, popular publications; and

(c) To the extent possible, make artifacts and other materials recovered from the shipwreck available for future study, public interpretation and exhibition.

*I. Establishing Volunteer Programs*

Using sport diver and non-diver volunteers in shipwreck management activities can be an effective, efficient, and economical means to discover, document, study, recover, and protect publicly-owned shipwrecks. Establishing organized volunteer programs that include sport divers and other interested parties in shipwreck management activities also can enhance and nurture existing partnerships among sport divers, underwater archeologists, maritime historians, States, and Federal agencies.

The following guidelines are offered to assist the States and Federal agencies in establishing volunteer programs.

*Guideline 1: Use volunteers in shipwreck projects.* Dive clubs, dive shops, dive boat operators, and individual sport divers frequently are willing to volunteer their diving skills or donate the use of their vessels or equipment to help State and Federal agencies locate, identify, evaluate, map, photograph, excavate, and protect shipwrecks. Non-divers who have an interest in maritime history and shipwrecks also often are willing to volunteer their skills to help State and Federal agencies conduct archival research and conserve artifacts and other materials recovered from shipwrecks. States and Federal agencies should use such volunteers in carrying out shipwreck projects.



*Guideline 2: Maintain lists of volunteers.* Lists of persons (diver and non-diver), dive clubs, and other associations and organizations that have indicated an interest in volunteering their services and equipment in shipwreck survey, mapping, and research projects should be assembled and maintained. The lists should indicate areas of interest (such as archival research, mapping or photography) and skill, noting whether those persons who are sport divers are certified in SCUBA, have any previous shipwreck project experience, or have completed any standardized diver specialty certification courses (such as advanced SCUBA, wreck diving, research diving, search and recovery, underwater photography, and basic underwater archeological methods). When evaluating a volunteer's skills, avocational experience and training courses completed out-of-State should be recognized.

*Guideline 3: Distribute information on shipwreck projects to interested parties.* Information on proposed shipwreck projects routinely should be distributed to sport divers, dive clubs, dive shops, dive boat operators, maritime historical societies, and other businesses, organizations and persons who may be interested in volunteering their services or donating the use of their vessels or equipment for shipwreck projects. Interested parties should be encouraged to participate.

*Guideline 4: Ensure that volunteers are properly trained and supervised.* At a minimum, sport divers who volunteer to work on shipwreck projects should be certified in SCUBA. Sport diver volunteers should be encouraged to complete standardized diver specialty certification courses (like the ones listed above in Guideline 2). However, completing such course work should not be necessary to participate in shipwreck projects. Diver and non-diver volunteers should be properly supervised by qualified professionals appropriate to the nature of the work being (performed (e.g., underwater archeologists should supervise volunteers who are participating in mapping and excavation projects; nautical conservators should supervise volunteers who are assisting in the conservation of recovered artifacts).

*Guideline 5: Cooperate with the private sector in designing and teaching archeological methods specialty courses for sport divers.* Underwater archeologists, maritime historians, and education professionals should cooperate with professional diving organizations (such as the Professional Association of Diving Instructors and the National Association of Underwater Instructors) and other educational and scientific organizations in designing and teaching standardized diver specialty certificate courses in underwater archeological methods. Such courses should provide basic training in how to research, locate, record, and report shipwrecks. Introductory courses should provide background in archival research, survey methods, site mapping, illustration, photography, diagnostic measurement skills, and standard vessel architecture. In addition, they should teach divers non-destructive, preservation oriented behavior and describe responsibilities under State and Federal laws and international law principles and treaties. Advanced courses should provide training in excavation techniques, artifact identification and conservation, and preparation of nominations of historically significant shipwrecks to the National Register of Historic Places.

*Guideline 6: Rely on private sector SCUBA and diver specialty training programs.* In lieu of developing government operated SCUBA and diver specialty training programs, professional diving, educational and scientific organizations that teach and certify divers in SCUBA, wreck diving, research diving, underwater photography, and basic underwater archeological methods should be relied upon to train sport divers in such techniques. Where such courses currently are not available, those organizations should be encouraged to provide certified instructors to offer such courses. Organizations also should be encouraged to produce manuals, for use by sport divers, that contain information from the specialty courses.

*Guideline 7: Recognize private sector contributions to shipwreck discovery, research and preservation.* Dive clubs, local historical and maritime societies, sport divers, and other organizations and persons who find and report the discovery of previously unknown shipwrecks, who volunteer their skills, supplies or equipment in shipwreck projects should be recognized for their contributions to shipwreck discovery, research and preservation. Forms of recognition should include, but not be limited to:

(a) Naming shipwreck sites after the person who discovers it;

(b) Issuing certificates or plaques to organizations and persons who find and report the discovery of previously unknown shipwreck sites; who volunteer their skills on shipwreck projects; or who donate the use of their vessels, supplies or equipment on shipwreck projects;

(c) Naming discoverers, volunteers and donors in museum exhibits, newspaper and magazine coverage, and publications; and

(d) When a State's shipwreck management program provides for the release of artifacts and other materials removed from State-owned shipwrecks, giving appropriate artifacts or materials to discoverers, volunteers and donors.

*J. Creating and Operating Underwater Parks or Preserves*

Section 4(b) of the Act encourages the States to create underwater parks or areas to provide additional protection for shipwreck sites. The creation of underwater parks or preserves provides many other positive benefits as well, such as increasing the public's awareness of and appreciation for the nation's maritime heritage, providing additional recreational opportunities for sport divers and fishermen, generating tourism revenues, and providing additional protection for natural resources and habitat areas located within the boundaries of the park or area. In addition, underwater parks or preserves could be linked with existing maritime museums, floating historic vessels, lighthouses, and lifesaving stations to provide the public with a broader interpretation of the nation's maritime history.

The following guidelines are offered to assist the States in creating and operating underwater parks or preserves.

*Guideline 1: Consult with the various interest groups.* Public meetings should be held prior to the creation of any underwater park or preserve. Suggestions for creating and operating underwater parks or preserves should be sought from local and regional interest groups, businesses and government agencies (e.g., sport divers,

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dive clubs, dive boat operators, dive shops, recreational fishermen, underwater archeologists, marine biologists, chambers of commerce, recreation and tourism organizations, and applicable State and Federal agencies). Once an underwater park or preserve is created, an association or board of local citizens who represent the various interest groups should be established and consulted periodically on the operation of the park or preserve.

*Guideline 2: Prepare an environmental and economic impact assessment.* Prior to creating an underwater park or preserve, an assessment of the environmental and economic impacts that would result should be prepared. Assessments should include descriptions of known historic and non-historic shipwrecks, other cultural resources, natural resources, and habitat areas located within the proposed boundaries of the park or preserve; current uses and potential impacts to the shipwrecks, other resources and areas; potential recreational, educational, preservation and tourism benefits; potential impacts to businesses (such as commercial fishing); and budget estimates of costs for initial development and subsequent annual operation of the proposed park or preserve. Draft assessments should be made available to the State's shipwreck advisory board, if one exists, and the various interest groups for public review and comment.

*Guideline 3: Specify the unit's purpose, significance, boundaries, and any special conditions and constraints.* Legislation or regulations that authorize the creation of an underwater park or preserve should establish the unit's purpose and significance, specify its boundaries, and identify any special conditions and constraints. When the unit is to be managed by a Federal agency on behalf of a State, the enabling legislation or written management agreement should specify how the unit, its resources and habitat areas are to be managed (see Guideline No. 7 in subpart B, Part II, of these "Guidelines" for a discussion on the Federal management of State-owned resources).

*Guideline 4: Develop a general management plan.* A general management plan should be prepared to guide future planning and actions for each underwater park or preserve. A general management plan should discuss the unit's legislated purpose and significance; identify major issues affecting management and use of the unit and its resources; and identify management objectives, planning needs, and priorities.

*Guideline 5: Develop a resource management plan.* A resource management plan should be prepared for each underwater park or preserve. A resource management plan should discuss the significance and condition of known natural and cultural resources; assess the potential presence of as yet unknown resources; identify survey, identification, documentation, evaluation, interpretation, protection, and long-term preservation needs, priorities, and cost estimates; and discuss impacts to the natural and cultural resources from natural causes, visitor use, park development, and other activities. The plan should be revised periodically to reflect scientific data collected during archival research, field surveys and preservation treatments; changing environmental conditions; effects from visitor use and development; and changing park priorities. The resource management plan should be the basis upon which multiyear programming and action schedules are prepared for each underwater park or preserve.

*Guideline 6: Interpret and facilitate public access to shipwreck sites in underwater parks and preserves.* Shipwreck sites in parks and preserves should be marked with buoys and appear on nautical charts to encourage and promote non-disturbing recreational exploration. Known hazards should be reduced or removed. Information about dangers should be posted in prominent places and included in park brochures. Recognizing that shipwreck sites are of interest to non-divers as well as divers, interpretive materials should be developed for both interest groups. For example, permanent signs could be placed in and around the shipwreck as part of an underwater trail. In addition, pamphlets and other publications describing the unit's shipwrecks and the area's maritime history could be made available. Dock side exhibit areas and a maritime museum could be established in the unit or interpretive materials could be made available to the local community's museum or historical society. Video tapes of shipwreck sites also could be shown in an exhibit area or museum and made available for purchase.

*Guideline 7: Protect shipwreck sites located within underwater parks and preserves.* Moorings should be placed at shipwreck sites located within parks and preserves to protect the sites and surrounding natural resources and habitat areas from inadvertent anchor damage. Alternatively, dive boats should be required to anchor off the site. In addition, activities that would damage or destroy shipwreck sites located within parks and preserves should be prohibited or restricted so that the multiple values and uses of the sites are maintained. For example, souvenir collecting, commercial salvage, and treasure hunting at shipwrecks (whether historic or non-historic) should be prohibited in underwater parks and preserves. In addition, dredging and trawling activities should be limited to those areas of the park or preserve that do not contain shipwreck sites, natural resources and habitat areas. Also, archeological research should be regulated through a permit system.

## Part III. Abandoned Shipwreck Act

On April 28, 1988, the Abandoned Shipwreck Act (Pub. L. 100-298; 102 Stat. 432; 43 U.S.C. 2101-2106) was signed into law by the President of the United States. The Act is reprinted, below, in its entirety.

### An Act

To establish the title of States in certain abandoned shipwrecks, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Section 1. Short Title

This Act may be cited as the "Abandoned Shipwreck Act of 1987."

Section 2. Findings

The Congress finds that—

(a) States have the responsibility for management of a broad range of living and nonliving resources in State waters and submerged lands; and

(b) Included in the range of resources are certain abandoned shipwrecks, which have been deserted and to which the owner has relinquished ownership rights with no retention.

Section 3. Definitions

For Purposes of this Act—

(a) The term "embedded" means firmly affixed in the submerged lands or in coralline formations such that the use of tools of excavation is required in order to move the bottom sediments to gain access to the shipwreck, its cargo, and any part thereof;

(b) The term "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior under section 101 of the National Historic Preservation Act (16 U.S.C. 470a);

(c) The terms "public lands," "Indian lands," and "Indian tribe" have the same meaning given the terms in the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-47011);

(d) The term "shipwreck" means a vessel or wreck, its cargo, and other contents;

(e) The term "State" means a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands; and



(f) The term "submerged lands" means the lands—

(1) That are "lands beneath navigable waters," as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301);

(2) Of Puerto Rico, as described in section 8 of the Act of March 2, 1917, as amended (48 U.S.C. 749);

(3) Of Guam, the Virgin Islands and American Samoa, as described in section 1 of Public Law 93-435 (48 U.S.C. 1705); and

(4) Of the Commonwealth of the Northern Mariana Islands, as described in section 801 of Public Law 94-241 (48 U.S.C. 1681).

Section 4. Rights of Access

(a) Access Rights. In order to—

(1) Clarify that State waters and shipwrecks offer recreational and educational opportunities to sport divers and other interested groups, as well as irreplaceable State resources for tourism, biological sanctuaries, and historical research; and

(2) Provide that reasonable access by the public to such abandoned shipwrecks be permitted by the State holding title to such shipwrecks pursuant to section 6 of this Act, it is the declared policy of the Congress that States carry out their responsibilities under this Act to develop appropriate and consistent policies so as to—

(A) Protect natural resources and habitat areas;

(B) Guarantee recreational exploration of shipwreck sites; and

(C) Allow for appropriate public and private sector recovery of shipwrecks consistent with the protection of historical values and environmental integrity of the shipwrecks and the sites.

(b) Parks and Protected Areas. In managing the resources subject to the provisions of this Act, States are encouraged to create underwater parks or areas to provide additional protection for such resources. Funds available to States from grants from the Historic Preservation Fund shall be available, in accordance with the provisions of title I of the National Historic Preservation Act, for the study, interpretation, protection, and preservation of historic shipwrecks and properties.

Section 5. Preparation of Guidelines

(a) In order to encourage the development of underwater parks and the administrative cooperation necessary for the comprehensive management of underwater resources related to historic shipwrecks, the Secretary of the Interior, acting through the Director of the National Park Service, shall within nine months after the date of enactment of this Act prepare and publish guidelines in the Federal Register which shall seek to:

(1) Maximize the enhancement of cultural resources;

(2) Foster a partnership among sport divers, fishermen, archeologists, salvors, and other interests to manage shipwreck resources of the States and the United States;

(3) Facilitate access and utilization by recreational interests;

(4) Recognize the interests of individuals and groups engaged in shipwreck discovery and salvage.

(b) Such guidelines shall be developed after consultation with appropriate public and private sector interests (including the Secretary of Commerce, the Advisory Council on Historic Preservation, sport divers, State Historic Preservation Officers, professional dive operators, salvors, archeologists, historic preservationists, and fishermen).

(c) Such guidelines shall be available to assist States and the appropriate Federal agencies in developing legislation and regulations to carry out their responsibilities under this Act.

Section 6. Rights of Ownership

(a) United States Title. The United States asserts title to any abandoned shipwreck that is—

(1) Embedded in submerged lands of a State;

(2) Embedded in coralline formations protected by a State on submerged lands of a State; or

(3) On submerged lands of a State and is included in or determined eligible for inclusion in the National Register.

(b) The public shall be given adequate notice of the location of any shipwreck to which title is asserted under this section. The Secretary of the Interior, after consultation with the appropriate State Historic Preservation Officer, shall make a written determination that an abandoned shipwreck meets the criteria for eligibility for inclusion in the National Register of Historic Places under clause (a)(3).

(c) Transfer of Title to States. The title of the United States to any abandoned shipwreck asserted under subsection (a) of this section is transferred to the State in or on whose submerged lands the shipwreck is located.

(d) Exception. Any abandoned shipwreck in or on the public lands of the United States is the property of the United States Government. Any abandoned shipwreck in or on any Indian lands is the property of the Indian tribe owning such lands.

(e) Reservation of Rights. This section does not affect any right reserved by the United States or by any State (including any right reserved with respect to Indian lands) under—

(1) Section 3, 5, or 6 of the Submerged Lands Act (43 U.S.C. 1311, 1313, and 1314); or

(2) Section 18 or 20 of the Act of March 3, 1899 (33 U.S.C. 414 and 415).

Section 7. Relation ship to Other Laws

(a) Law of Salvage and the Law of Finds. The law of salvage and the law of finds shall not apply to abandoned shipwrecks to which section 6 of this Act applies.

(b) Laws of the United States. This Act shall not change the laws of the United States relating to shipwrecks, other than those to which this Act applies.

(c) Effective Date. This Act shall not affect any legal proceeding brought prior to the date of enactment of this Act.

Approved April 28, 1988

## Part IV. Shipwrecks in the National Register of Historic Places

As of December 4, 1990, there were 142 shipwrecks (and hulks) listed in or determined eligible for listing in the National Register of Historic Places. Where known, the popular name; vessel name, if different from the popular name; type of vessel; date of construction; wreck date and location; owner; manager, if different from the owner; and level of historical significance of these shipwrecks are listed below. As required by section 6(b) of the Act, the public is hereby given notice that, under the Act, the U.S. Government has asserted title to the abandoned shipwrecks listed below and transferred its title to the respective States in or on whose submerged lands the shipwrecks are located, except for shipwrecks in or on public and Indian lands. The U.S. Government retains its title to shipwrecks in or on the public lands of the United States while Indian tribes hold title to those in or on Indian lands.

*Alaska*

*Lieut. C.V. Dowaldson.* The hulk of this wooden hulled steamer lies on the shoreline at Belmont Point near Nome. Built in 1907, she was laid up in 1955. Privately owned. Listed in the National Register as nationally significant.

*Alabama*

*U.S.S. Tecumseh.* This iron hulled Union monitor, built in 1863 and sunk in 1864, is entitled to sovereign immunity. The intact wreck is buried in 29 feet of water in Mobile Bay near Mobile. Owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

*Arizona*

*Charles H. Spencer.* This wooden hulled stern-wheel steamer, built in 1911, lies in 20 feet of water near the shoreline of the Colorado River near Lees Ferry, within Glen Canyon National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as regionally significant.

*California*

*City of Rio de Janeiro.* This iron hulled steamer, built in 1878, was wrecked in 1901 off Point Diablo near San Francisco. The intact wreck lies in 320 feet of water just off the Golden Gate. Owned by the State of California, State Lands Commission. Listed in the National Register as nationally significant.

*King Philip.* The remains of this wooden hulled clipper, built in 1856, is buried on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service.

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Listed in the National Register as nationally significant.

*King Street Ship.*-This wooden hulled whaler named *Lydia*, built in 1840, was laid by in 1907. Remains of this shipwreck are buried at the foot of King Street in San Francisco. Owned by the city and county of San Francisco. Listed in the National Register as nationally significant.

*Reporter.* The scattered remains of this wooden hulled schooner, built in 1876, are intermingled with the remains of *King Philip* and are buried in 5 feet of water on Ocean Beach in San Francisco, within Golden Gate National Recreation Area. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Stamboul.* The remains of this wooden hulled whaler, built in 1843, are buried in 6 feet of water at the foot of 12th Street in Benicia, within Matthew Turner Shipyard Park. Owned by the city of Benicia. Listed in the National Register as nationally significant.

*Tennessee.* The scattered remains of this wooden hulled side-wheel steamer, built in 1848 and wrecked in 1853, are buried in 10 feet of water in the Tennessee Cove near Marin City, within Golden Gate National Recreation Area. Owned jointly by the U.S. Government, National Park Service, and the State of California, State Lands Commission. Listed in the National Register as nationally significant.

*William Gray.* This wooden hulled packet ship, built in 1827, was sunk in 1852 for use as a wharf. The hulk is buried beneath Battery and Greenwich Streets in San Francisco. Privately owned. Listed in the National Register as nationally significant.

*Winfield Scott.* The scattered remains of this wooden hulled side-wheel steamer, built in 1850 and wrecked off Anacapa Island, are buried in 25 feet of water in Channel Islands National Park and National Marine Sanctuary. Owned by the State of California, State Lands Commission. Managed jointly by the U.S. Government, National Park Service and National Oceanic and Atmospheric Administration. Listed in the National Register as nationally significant.

*Connecticut*

*Berkshire No. 7.* The intact remains of this steel and wooden canal barge, built in 1935, lie in 20 feet of water in Bridgeport Harbor, Privately owned. Listed in the National Register as nationally significant.

*Elmer S. Dailey.* The intact remains of this wooden Erie Canal barge, built in 1915, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

*Priscilla Dailey.* The intact remains of this wooden Champlain Canal barge, built in 1929, lie in 20 feet of water in Bridgeport Harbor. Privately owned. Listed in the National Register as nationally significant.

*Delaware*

*State of Pennsylvania.* This steel hulled passenger steamship was built in 1923. Her intact hulk lies in 5 feet of water on the shore of the Christina River near Wilmington. Privately owned. Listed in the National Register as locally significant.

*Florida*

*Barge Site.* Remains of this wooden barge are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

*Boiler Site.* This wooden vessel, named *St. Lucie*, was built in 1888 and wrecked in 1906. Remains of this shipwreck are scattered on the bottomlands of Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

*Hubbard.* Scattered remains of this wooden Colonial merchant vessel, wrecked in 1772, lie in 20 feet of water in Elliot Key in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Jordan's Ballast Showing Site.* Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

*Keel Showing Site.* Remains of this wooden vessel are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, level of historical significance of this wreck is undetermined.

*Legare Anchorage Shipwreck.* This wooden British merchant vessel, named H.M.S. *Fowey*, wrecked in 1748. Her scattered remains are buried in Biscayne National Park. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Pillar Dollar Wreck.* Scattered remains of this wooden vessel are buried in 20 feet of water in Biscayne National Park near Homestead. Owned by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Georgia*

*C.S.S. Chattahoochee.* The scattered remains of this Confederate States Navy wooden gunboat, built and sunk in 1863, are buried in 15 feet of water in an area encompassed by the Confederate Navy Museum in Columbus; the excavated stern is deposited in the museum. This wreck is entitled to sovereign immunity Owned jointly by the U.S. Government, General Services Administration (which owns the unexcavated remains), and the city of Columbus (which owns the excavated stern). Managed by the city of Columbus. Listed in the National Register as nationally significant.

*C.S.S. Georgia.* The scattered remains of this Confederate States Navy ironclad battery are buried in 28 feet of water in the Savannah River near Savannah. Built in 1862 and sunk in 1864, this wreck is entitled to sovereign immunity Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, Army Corps of Engineers. Listed in the National Register as nationally significant.

*C.S.S. Jackson.* This Confederate States Navy ironclad gunboat (ex-*Muscogee*), built in 1863 and sunk in 1865, has been completely excavated; the excavated remains are deposited in the Confederate Naval Museum in Columbus. Owned by the city of Columbus. Listed in the National Register as nationally significant.

*Guam*

*Aratama Maru.* The scattered remains of this steel hulled freighter lie in 50 feet of water in Talofofo Bay. Built in 1938, this vessel was being used by the Japanese Navy as a transport when it sank in 1944, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

*S.M.S. Cormoran.* This intact steel hulled steamer (ex-*Rajasan*) lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1909, this ship was being used as a German commerce raider when it was scuttled by its crew in 1917 to avoid capture, giving it sovereign immunity. Owned by the German Government. Listed in the National Register as regionally significant.

*Tokai Maru.* This intact steel hulled passenger and cargo ship lies in 120 feet of water in outer Apra Harbor near Piti, within the waters of the U.S. naval station. Built in 1930, this ship was being used by the Japanese Navy when it sank in 1943, giving it sovereign immunity. Owned by the Japanese Government. Listed in the National Register as nationally significant.

*Hawaii*

*U.S.S. Arizona.* This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel lies in the U.S.S. *Arizona* Memorial in 38 feet of water. Owned by the U.S. Government, Department of the Navy. Managed by the U.S. Government, National Park Service. Listed in the National Register as a National Historic Landmark.

*U.S.S. Utah.* This U.S. battleship, which is entitled to sovereign immunity, was sunk on December 7, 1941, in Pearl Harbor. The intact vessel is in 25 to 50 feet of water near Honolulu. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as a National Historic Landmark.

*Indiana*

*Muskegon.* The remains of this wooden hulled side-wheel steamer (ex-*Peerless*) lie in 30 feet of water in Lake Michigan near Michigan City. She was built in 1872 and wrecked in 1941. Owned by the State of Indiana. Listed in the National Register as regional significant.

*Maine*

*Cora F. Cressy.* The intact hulk of this wooden hulled schooner lies on the shoreline of Keene Narrows near Bremen. Built in 1902, she was sunk as a breakwater. Privately owned. Listed in the National Register as nationally significant.

*Defence.* The remains of this wooden hulled Revolutionary War period brigantine lie buried in 23 feet of water in Stockton Springs Harbor. Built in 1778 and sunk in 1779 while privateering, this wreck is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

*Hesper.* At high tide, the intact hulk of this wooden hulled schooner lies in 6 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1918 and laid up in 1936. Privately owned. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Luther Little.* The intact hulk of this wooden hulled freight schooner lies in 8 feet of water off the waterfront of Water Street in Wiscasset. She was built in 1917 and laid up in 1936. Privately owned. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Michigan*

*Algoma.* The scattered remains of this steel hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1883 and wrecked in 1885. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*America.* This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1896 and wrecked in 1928. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Chester A. Congdon.* This intact steel hulled freighter lies in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. The vessel (ex-*Salt Lake City*) was built in 1907 and wrecked in 1918. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Cumberland.* The scattered remains of this wooden hulled side-wheel freighter lie in 20 to 150 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1871 and wrecked in 1877. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Emperor.* This intact, steel hulled freighter lies in 50 to 170 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1910 and wrecked in 1947. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*George M. Cox.* The scattered remains of this steel hulled freighter (ex-*Puritan*) lie in 90 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1901 and wrecked in 1933. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Glenlyon.* The scattered remains of this steel hulled freighter (ex-*William H. Gratwick*) lie in 60 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1893 and wrecked in 1924. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Henry Chisholm.* The scattered remains of this wooden hulled freighter lie in 50 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. Built in 1880 and wrecked in 1898. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Indiana.* This intact, wooden hulled freighter lies in 125 feet of water near Paradise in Lake Superior, within Thunder Bay Bottomland Preserve. She was built in 1848 and wrecked in 1858. Owned by the State of Michigan, Department of Natural Resources. Determined eligible for the National Register as nationally significant.

*Kamloops.* This intact, steel hulled freighter lies in 180 to 280 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1924 and wrecked in 1927. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Monarch.* The scattered remains of this wooden hulled freighter lie in 20 to 70 feet of water near Isle Royale in Lake Superior, within Isle Royale National Park. She was built in 1880 and wrecked in 1906. Owned by the U.S. Government, National Park Service. Listed in the National Register as nationally significant.

*Mississippi*

*Star of the West.* This wooden hulled side-wheel steamer, built in 1852, was used by the Confederate States Navy. Renamed the C.S.S. *Philip*, the vessel was sunk in the Tallahatchie River near Greenwood in 1862 to create an obstacle to navigation against the Union. This shipwreck, which is entitled to sovereign immunity, is owned by the U.S. Government, General Services Administration. Listed in the National Register as nationally significant.

*North Carolina*

*A.P. Hurt.* The intact remains of this iron hulled stern-wheel riverboat lie in 15 feet of water in the Cape Fear River near Wilmington. She was built in 1860 and wrecked in 1924. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Arabian.* The intact remains of this wooden hulled side-wheel steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1851, she

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wrecked in 1863 while being used as a blockade runner. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Argonauta.* Built in 1876, this iron hulled tugboat is laid up on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Argonauta Barge.* The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #1.* The remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #2.* The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #3.* The intact remains of this wooden hopper barge are on the shore of the Cape Fear River near Wilmington, having been sunk to serve as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Barge #4.* The scattered remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bendigo.* The remains of this iron hulled side-wheel blockade runner (ex-*Millie*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. She was built in 1863 and wrecked in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bulkhead Barge.* The remains of this wooden hulled barge lie submerged near the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Bulkhead Tugboat.* The remains of this wooden hulled vessel are on the shore of the Cape Fear River near Wilmington, serving as a bulkhead. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Carolina Beach Inlet Recent.* The remains of this iron hulled side-wheel blockade runner are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Carolina Beach Inlet South Site.* The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Cherokee.* The remains of the wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Condor.* The remains of this iron hulled side-wheel blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*C.S.S. Raleigh.* The scattered remains of this Confederate States Navy ironclad gunboat are buried in 20 feet of water off Fort Fisher at Kure Beach. She was built and sunk in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, General Services Administration. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Dolphin.* The intact remains of this wooden hulled tugboat, built in 1896, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Duoro.* The remains of this iron hulled blockade runner, sunk in 1863, are buried in 10 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Launch.* The remains of this wooden hulled launch are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Other Skiff.* The intact remains of this wooden hulled skiff are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally signficiant.

*Eagles Island Side-wheel Steamer.* The remains of this wooden hulled side-wheel steamer, named *Sylvan Grove*, are buried on the shore of Eagles Island in the Cape Fear River near Wilmington. She was built in 1858 and wrecked in 1891. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Eagles Island Skiff No. 1.* The remains of this wooden hulled skiff are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Elizabeth.* The scattered remains of this wooden hulled side-wheel steamer (ex-*Atlantic*) are buried on the shore of Lockwood's Folly Inlet near Wilmington. Built in 1852, she sank in 1863 while blockade running. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Ella.* The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 15 feet of water at the mouth of the Cape Fear River near Bald Head Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*General Beauregard.* The remains of this iron hulled side-wheel blockade runner (ex-*Havelock*) are buried in 15 feet of water in the Atlantic Ocean near Carolina Beach. Built in 1858 and sunk in 1863. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Government Barge.* The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*H.G. Wright.* The remains of this wooden hulled stern-wheel boat, built in 1882, are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Hebe.* The remains of this iron hulled blockade runner, built and sunk in 1863, are buried in 22 feet of water in the Atlantic Ocean near Carolina Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Iron Rudder Wreck.* The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*John Knox.* The remains of this wooden riverboat, built in 1919, lie in 10 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Last One Wreck.* The remains of this wooden vessel lie in 2 feet of water near the shoreline of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Minnesota.* The hulk of this wooden tugboat, built in 1910, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Modern Greece.* The remains of this iron hulled blockade runner are buried in 15 feet of water off Fort Fisher at Kure Beach. Built in 1859 and sunk in 1862. Owned by the State of North Carolina. Listed in the National Register as part of an archeoleogical district, this wreck is nationally significant.

*Moorefield Site.* The remains of this iron hulled vessel are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Orange Street Wreck.* The remains of this steel hulled yacht are buried in 15 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Phantom.* The remains of this steel hulled blockade runner, built and sunk in 1863, are buried in 15 feet of water in Topsail Inlet near Topsail Island. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Ranger Site.* The remains of this iron hulled side-wheel blockade runner, named *Ranger*, are buried in Lockwood's Folly Inlet near Wilmington. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Rich Inlet Wreck.* The remains of this iron hulled side-wheel blockade runner, named *Wild Dayrell*, are buried in 10 feet of water in Rich Inlet near Figure 8 Island. Built in 1863 and sunk in 1864. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Sanded Barge.* The remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Skinner's Dock Wreck.* The remains of this wooden vessel are buried in 25 feet of water in the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Splayed Wreck.* The scattered remains of this wooden vessel are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Steam Crane Barge #1.* The intact remains of this wooden crane barge lie on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #3.* The hulk of this wooden tugboat (ex-*Isabella*), built in 1905, is on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #4.* The remains of this wooden tugboat, built in 1915, are buried on the shore of the Cape River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #5.* The intact remains of this wooden tugboat (ex-*Sadie E. Culver*), built in 1898, are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stone #6.* The intact remains of this wooden tugboat (ex-*Atlantic City*), built in 1890, are on the shore of the Cape Fear River near Wilmington. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Stormy Petrel.* The remains of this iron hulled side-wheel blockade runner, built and sunk in 1864, are buried in 20 feet of water off Fort Fisher at Kure Beach. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*The Little Barge.* The remains of this wooden barge are buried on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Aster.* The remains of this wooden tugboat, sunk in 1864 while in use by the Union Navy as a gunboat, are buried in 20 feet of water off Fort Fisher at Kure Beach. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Iron Age.* The remains of this wooden side-wheel gunboat are buried in 12 feet of water in Lockwood's Folly Inlet near Wilmington. Built in 1862, she sank in 1864 while in use as a Union Navy gunboat. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*U.S.S. Louisiana.* The remains of this iron hulled steamer are buried in 20 feet of water off Fort Fisher at Kure Beach. Built in 1860, she sank in 1864 while in use as a Union Navy powder vessel. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

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*U.S.S. Monitor.* The intact remains of this ironclad turret monitor lie in 230 feet of water on the outer continental shelf, in the U.S.S. *Monitor* National Marine Sanctuary. She was built in 1861 and sunk in 1862. Owned by the U.S. Government, General Services Administration. Managed by the U.S. Government, National Oceanic and Atmospheric Administration. Listed in the National Register as a National Historic Landmark.

*U.S.S. Peterhoff.* The remains of this iron hulled side-wheel steamer are buried in 30 feet of water off Fort Fisher at Kure Beach. She sank in 1864 while in use as a Union Navy gunboat, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register as nationally significant.

*Wright Barge.* The intact remains of this wooden barge are on the shore of the Cape Fear River near Wilmington. Owned by the State of North Carolina. Listed in the National Register as part of an archeological district, this wreck is nationally significant.

*Nebraska*

*Bertrand.* The remains of this wooden stern-wheel steamboat lie in 15 feet of water at De Soto Bend in the Missouri River, near Blair, in the De Soto Wildlife Refuge. She was built in 1864 and sunk in 1865. Owned by the U.S. Government, Fish and Wildlife Service.

*New Jersey*

*Alexander Hamilton.* The hulk of this steel hulled side-wheel steamer lies in 10 feet of water in New York Harbor near Earle. Built in 1924, she was laid up in 1977 in the Hudson River. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

*Archeological Site #1.* The remains of this wooden hulled vessel are buried in 5 feet of water in Barges Creek near Hamilton Township. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

*Bead Wreck.* The scattered remains of this wooden vessel are buried in 12 feet of water in the Mullica River near Chestnut Neck. Owned by the State of New Jersey. Listed in the National Register as nationally significant.

*New York*

*Bessie M. Dustin.* The remains of this wooden schooner are on the shore of Shooter's Island in New York Harbor. Built in 1916, this vessel was laid up in 1936. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*H.M.S. Culloden.* The intact remains of this wooden British man-of-war lie on the bottomlands of Fort Pond Bay. Built in 1776 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register, level of historical significance is undetermined.

*Hoffmans.* The hulk of this wooden covered barge, built in 1907, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Jacob A. Decker.* The hulk of this wooden barge, built in 1930, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Keating.* The hulk of this wooden barge, built in 1912, lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Minerva.* The hulk of this wooden, side-wheel steamer (ex-Jane *Moseley*) lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Built in 1873, this vessel was laid up and dismantled in 1932. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 28.* The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 30.* The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 34.* The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 37.* The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 41.* The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 43.* The hulk of this wooden, covered barge lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 48.* The hulk of this wooden tugboat lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 53.* The hulk of this wooden, side-wheel steamer lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 54.* The hulk of this wooden package freighter lies in 10 feet of water near the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 59.* The hulk of this wooden schooner lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Vessel 84.* The hulk of this wooden sailing lighter lies on the shore of Shooter's Island in New York Harbor. Owned by the State of New York. Determined eligible for the National Register as nationally significant.

*Oregon*

*Isabella.* The remains of this wooden brig are buried in 40 feet of water off Cape Disappointment at the mouth of the Columbia River, near Astoria. Built in 1825, this vessel wrecked in 1830 while in use as a Hudson Bay Company supply ship. Owned by the State of Oregon, Division of State Lands. Listed in the National Register as part of an archeological district of national significance.

*Rhode Island*

*H.M.S. Orpheus.* The remains of this wooden British frigate are buried in Narragansett Bay near Middletown. Built in 1773 for the Royal Navy, this vessel was scuttled in 1778. This vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as nationally significant.

*South Carolina*

*Brown's Ferry Wreck.* The remains of this wooden sailing vessel are buried on the shore of the Black River near Georgetown. This vessel wrecked in 1740 while in use as a cargo vessel.



Owned by the State of South Carolina, Institute of Archaeology and Anthropology. Listed in the National Register as nationally significant.

*Texas*

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *San Esteban,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore, Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *Santa Maria de Yciar,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore. Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*Mansfield Cut Wrecks.* The scattered remains of this wooden vessel, named *Espiritu Santo,* are buried off Padre Island near Port Mansfield. This vessel, which wrecked in 1554 when part of a treasure flota, lies within the Padre Island National Seashore, Owned by the State of Texas, Texas Antiquities Committee. Managed by the U.S. Government, National Park Service. Listed in the National Register as part of an archeological district of national significance.

*U.S.S. Hatteras.* The remains of this iron hulled, side-wheel schooner (ex-*St. Mary's*) are buried in 55 feet of water on the outer continental shelf off the coast of Galveston. Built in 1861, this vessel was in use by the Union Navy when it sank in 1863, giving her sovereign immunity. Owned by the U.S. Government, Department of the Navy. Listed in the National Register, level of historical significance is undetermined.

*Virginia*

*Cornwallis Cave Wreck.* The remains of this wooden Royal Navy transport and supply vessel are buried in 12 feet of water in the York River near Yorktown. This vessel, which was scuttled in 1781, is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

*C.S.S. Florida.* The remains of this wooden Confederate States Navy cruiser are buried in 63 feet of water in the James River near Newport News. Built in 1863, this vessel was in the possession of the Union Navy as a prize of war when she sank in 1864. This vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

*H.M.S. Charon.* The remains of this wooden Royal Navy fifth-rate warship lie in 15 feet of water in the York River off Gloucester Point. Built in 1778 and sunk in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of regional significance.

*U.S.S. Cumberland.* The scattered remains of this wooden Union Navy frigate are buried in 40 feet of water in the James River off Pier C at Newport News. Built in 1842 and sunk in 1862, this vessel is entitled to sovereign immunity. Owned by the U.S. Government, Department of the Navy. Determined eligible for the National Register as nationally significant.

*Yorktown Fleet #1.* The remains of this wooden Royal Navy transport are buried in 15 feet of water in the York River off Gloucester Point. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #2.* The remains of this wooden Royal Navy transport are buried in 60 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #3.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #4.* The remains of this wooden Royal Navy transport are buried in 30 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #5.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Fleet #6.* The remains of this wooden Royal Navy transport are buried in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Yorktown Wreck.* The remains of this wooden merchant vessel, used as a Royal Navy transport and supply ship, lie in 20 feet of water in the York River near Yorktown. Scuttled in 1781, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as part of an archeological district of national significance.

*Virgin Islands*

*H.M.S. Santa Monica.* The remains of this wooden Royal Navy frigate lie in 24 feet of water in Round Bay near Coral Bay. Wrecked in 1782 while on patrol, this vessel is entitled to sovereign immunity. Owned by the British Government. Listed in the National Register as locally significant.

*Washington*

*La Merced.* The hulk of this wooden schooner lies on the shore of the Guemes Channel in Puget Sound near Anacortes. Built in 1917, this vessel was laid up to form a breakwater. Privately owned. Listed in the National Register as nationally significant.

[FR Doc. 90-28350 Filed 12-3-90; 8:45 am]
BILLING CODE 4310-70-M

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federal register

Tuesday
December 4, 1990

Part IV

## Department of Labor

Employment Standards Administration, Wage and Hour Division
Office of the Secretary

29 CFR Parts 1 and 5
Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts; Final Rule

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**DEPARTMENT OF LABOR**

**Employment Standards Administration, Wage and Hour Division**

**Office of the Secretary**

**29 CFR Parts 1 and 5**

**Procedures for Predetermination of Wage Rates; Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction and to Certain Nonconstruction Contracts**

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Establishment of effective date.

**SUMMARY:** This document provides the effective date for amended Regulations, 29 CFR parts 1 and 5, governing the use of semi-skilled "helpers" on federally-financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA). This final rule was previously published in the Federal Register (54 FR 4234) on January 27, 1989. The implementation of an earlier version of this rule was enjoined by the U.S. District Court for the District of Columbia on July 22, 1982. Following promulgation of the revised final regulation, that injunction was vacated on September 24, 1990.

**EFFECTIVE DATE:** February 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8305. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION**

**Background**

The Department of Labor (DOL) attempted to implement helper rules in May 1982. (See 47 FR 23644, 23658 (May 28, 1982); 47 FR 32070 (July 20, 1982).) Among other provisions, lower paid helpers would have been allowed on DBRA projects under a broad definition of duties and in a maximum ratio of two helpers for three journeymen whenever the helper classification was "identifiable" in an area. The rules were enjoined by the U.S. District Court for the District of Columbia in a lawsuit brought by the Building and Construction Trades Department, AFL–CIO, and a number of individual unions (*Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 543 F. Supp. 1282, 553 F. Supp. 352).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld DOL's authority to allow an expanded use of helpers and approved the regulatory definition of a helper's duties (*Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 712 F.2d 611). However, that ruling required that the regulations be modified to require that DOL first find the use of a particular helper classification prevailing in an area (rather than identifiable) before it may be used. The court concluded that allowing a lower paid helper classification to be used on DBRA work when that classification was only "identifiable" would result in payment of less than prevailing wages for some work, which is prohibited by the DBRA. The court did not rule on the remaining helper provisions. *Certiorari* was denied by the Supreme Court (464 U.S. 1069).

The District Court subsequently issued an order which lifted the injunction on the definition of helper but continued the injunction against all the other helper provisions, and stated that DOL could "submit to this court reissued regulations governing the use of helpers, and if these regulations conform to the decision of the court of appeals, they will be approved." (*Building and Construction Trades Department, AFL–CIO, et al.* v. *Donovan, et al.*, 102 CCH Labor Cases para. 34,648 (December 21, 1984)).

DOL reexamined the enjoined provisions to the extent required by the court rulings and on August 19, 1987, issued a new proposal with necessary revisions (52 FR 31366).

Comments were invited on several alternatives for determining if the use of a helper classification prevailed.

The Department published a final rule on January 27, 1989 (54 FR 4234), stating therein that once the injunction against implementation of some provisions was lifted, the Department would publish a notice providing for an effective date 60 days thereafter. The Department submitted the revised rules to the District Court in accordance with the court's decision of December 21, 1984. The court vacated the injunction on September 24, 1990. (*Building and Construction Trades Department, AFL–CIO, et al.* v. *Dole, et al.*, Civil Action No. 82–1631).

**Summary of Rule**

To determine whether a helper classification prevails, the Department has adopted a scheme patterned after the codified regulatory standards for determining the prevailing wage for a given classification. Section 1.7(d) provides a decision that proceeds in two steps:

(1) If the prevailing journeylevel wage is set by the "majority rule" (29 CFR 1.2(a)(1); more than 50 percent of the journeymen are paid the same rate), then the practice followed by those contractors whose rates prevail for the journeymen is also deemed the prevailing practice for determining whether a helper classification prevails, or,

(2) If no majority journeylevel rate exists and the prevailing wage is set by the "weighted average rule" (29 CFR 1.2(a)(1); the average of the wages paid to the journeymen, weighted by the total journeymen in the classification), then the total number of workers in the classification employed by contractors using helpers (journeymen plus apprentices, trainees and helpers) will be compared to the total number of workers in the classification employed by contractors not using helpers (journeymen plus apprentices and trainees); the practice covering the larger number of workers will decide whether a helper classification prevails.

The notice of proposed rulemaking made no changes to the helper definition at § 5.2(n)(4) promulgated in 1982. It was repeated in the preamble of the 1987 proposal for informational purposes only, and is implemented herein. The rule defines a helper as a semi-skilled worker who works under the direction of and assists a journeyman. Helpers are able to perform a broad range of duties under a journeyman's supervision; the duties vary according to area practice.

Section 5.5(a)(1)(ii)(A) sets forth special criteria under which helper classifications and wage rates can be "conformed" (i.e., added after the wage determination has been issued) if a particular wage determination does not contain a helper classification. This section provides, as did the rule promulgated in 1982, that helper rates can be conformed without regard to the longstanding requirement, applicable to all other conformance actions, that the work of a proposed classification to be conformed not be performed by another classification already listed in the wage determination. In addition, a provision was added as a result of the court of appeals decision to require that helper classifications may be conformed only where they prevail in the area covered by the wage determination.

The enjoined 1982 regulations contained a numerical limitation on the use of helpers: Two helpers for every three journeymen, or not more than 40 percent of the total number of helpers and journeymen, in the contractors' work force on the job site. (A one-helper-to-five-journeymen ratio was originally proposed, but was raised to 2:3 in the final rule in response to public comments that 1:5 was too restrictive and would not reflect the actual number of helpers used in the industry.)

Helpers employed in excess of this ratio would be required to be paid the applicable journeymen (or laborer's where appropriate) wage rate for the work actually performed. To insure that this ratio does not disrupt existing established local practices in areas where DBRA wage determinations currently contained helper classifications without any limitation on the number permitted, DOL will consider requests for variances from the ratio limitation prior to bid opening on a contract, if supported by a showing that the DBRA wage determination for the type of construction in effect in the area before the effective date of the final helper regulations contained a helper classification, and that there was a practice in the area of utilizing such helpers in the classification on DBRA projects in excess of the two-to-three ratio.

The ratio and variance provisions were not open for additional comment in the 1987 proposed rulemaking and are implemented herein.

**Paperwork Reduction Act**

The information collection requirements contained in § 5.5(a)(1)(ii) of part 5 were previously approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned OMB Control number 1215–0140.

**Dates of Applicability**

This regulation shall be effective February 4, 1991.

The revisions to § 1.7(d) of part 1 shall be applicable only as to wage determinations issued based on wage surveys completed on or after the effective date of this revised rule. A wage survey will be deemed to be completed as of the cut-off date established for submission of wage data.

The revisions to §§ 5.2 and 5.5 of part 5 shall be applicable only as to contracts entered into pursuant to invitations for bids issued or negotiations concluded on or after the effective date of this revised rule. None of the revisions herein shall be applicable to any contract entered into prior to such date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.



**List of Subjects**

*29 CFR Part 1*

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Wages.

*29 CFR Part 5*

Administrative practice and procedures, Government contracts, Labor, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC on this 28th day of November, 1990.

**Roderick A. DeArment,**

*Acting Secretary of Labor.*

**William G. Brooks,**

*Assistant Secretary for Employment Standards.*

**Samuel D. Walker,**

*Acting Administrator, Wage and Hour Division.*

Accordingly, an effective date of February 4, 1991 is established for 29 CFR parts 1 and 5, which were published in the Federal Register of January 27, 1989 (54 FR 4234).

For the convenience of the public, the rules are hereby republished as set forth below:

**PART 1—PROCEDURES FOR PREDETERMINATION OF WAGE RATES**

2. The authority citation for part 1 continues to read as follows:

**Authority:** 5 U.S.C. 301; R.S. 161,64 Stat. 1267; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 29 U.S.C. 259; 40 U.S.C. 276c–276c–7; 40 U.S.C. 276c; and the laws listed in Appendix A of this Part.

2. Section 1.7 is amended by adding a new paragraph (d) to read as follows:

**§ 1.7 Scope of consideration.**

* * * * *

(d) The use of *helpers, apprentices* and *trainees* is permitted in accordance with part 5 of this subtitle. Wage rates for semi-skilled classifications of helpers will be issued when the classifications are prevailing in the area. In determining whether use of a particular helper classification prevails in the area, the Administrator will follow the criteria set forth in paragraphs (d)(1) and (d)(2) of this section.

(1) If the prevailing wage for a particular journeyman classification is a wage that is paid to the majority of the journeymen in the classification as defined in § 1.2(a)(1) of this part, then the practice followed by those contractors whose rates are adopted as prevailing for the journeymen shall also be deemed the prevailing practice in determining whether to issue a helper classification. Any ambiguity with regard to such practice, will be resolved by following the rule in paragraph (d)(2) of this section with respect to those contractors.

(2) If the prevailing wage for a particular journeyman classification is the average of the wages paid to the journeymen, weighted by the total number of journeymen in the classification as defined in § 1.2(a)(1) of this part, then the total number of workers in the classification employed by contractors utilizing helpers (journeymen plus apprentices, trainees, and helpers as defined in § 5.2(n)(4) of this chapter) on reported projects will be compared to the total number of workers in the classification employed by contractors not utilizing helpers (journeymen plus apprentices and trainees as defined in § 5.2(n)(4) of this chapter), and the practice which covers the majority of such workers shall be deemed the prevailing practice in determining whether to issue a helper classification.

**PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)**

**Subpart A—Davis-Bacon and Related Acts Provisions and Procedures**

3. The authority citation for part 5 continues to read as follows:

**Authority:** 40 U.S.C. 276a–276a–7; 40 U.S.C. 276c; 40 U.S.C. 327–332; Reorganization Plan No. 14 of 1950, 5 U.S.C. Appendix; 5 U.S.C. 301; 29 U.S.C. 259; and the statutes listed in § 5.1(a) of this part.

4. Section 5.2 is amended by revising paragraph (n) introductory text and by adding paragraph (n)(4) to read as follows:

**§ 5.2 Definitions.**

* * * * *

(n) The terms apprentice, trainee, and helper are defined as follows:

* * * * *

(4) A *helper* is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and

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supervision, the helper performs a variety of duties to assist the journeyman such as preparing, carrying and furnishing materials, tools, equipment, and supplies and maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related, semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper vary according to area practice.

* * * * *

5. Section 5.5 is amended by revising paragraph (a)(1)(ii)(A) and adding a new paragraph (a)(4)(iv), to read as follows:

**§ 5.5 Contract provisions and related matters.**

(a) * * *

(1) * * *

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(*1*) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is utilized in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(*4*) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

* * * * *

(4) * * *

(iv) *Helpers.* Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedure set forth in § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

* * * * *

[FR Doc. 90-28297 Filed 12-3-90; 8:45 am]
BILLING CODE 4810-27-M

federal register

Tuesday
December 4, 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9
Federal Acquisition Regulation (FAR); Debarment, Suspension, and Ineligibility; Proposed Rule

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 9**

**Federal Acquisition Regulation (FAR); Debarment, Suspension, and Ineligibility**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the FAR to provide examples as to remedial measures or mitigating factors that should be considered when evaluating whether a contractor's debarment is warranted. The inclusion of this coverage will assist industry and Government officials involved in debarment actions by formalizing the types of considerations presently being utilized in determining whether a contractor should be debarred.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before February 4, 1991, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90-58 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4547.

**SUPPLEMENTARY INFORMATION:**

**A. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to contracting officers, and imposes no requirement of any kind upon small entities. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90-610 (FAR Case 90-58) in correspondence.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 9**

Government procurement.

Dated: November 20, 1990.

**Albert A. Vicchiolla,**

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

## PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.406-1 is amended by revising paragraph (a) to read as follows:

**9.406-1 General.**

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406-2, using the procedures in 9.406-3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of alleged wrongdoing.

(2) Whether the contractor brought the wrongdoing to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstance within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

* * * * *

[FR Doc. 90-28433 Filed 12-3-90; 8:45 am]

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**H.R. 987/Pub. L. 101–626**
Tongass Timber Reform Act. (Nov. 28, 1990; 104 Stat. 4426; 13 pages) Price: $1.00

**H.R. 3061/Pub. L. 101–627**
Fishery Conservation Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4436; 33 pages) Price: $1.25

**H.R. 2570/Pub. L. 101–628**
To provide for the designation of certain public lands as wilderness in the State of Arizona. (Nov. 28, 1990; 104 Stat. 4469; 42 pages) Price: $1.25

**H.R. 3095/Pub. L. 101–629**
Safe Medical Devices Act of 1990. (Nov. 28, 1990; 104 Stat. 4511; 20 pages) Price: $1.00

**H.R. 3703/Pub. L. 101–630**
To authorize the Ramsey Indian Rancheria to convey a certain parcel of land. (Nov. 28, 1990; 104 Stat. 4531; 28 pages) Price: $1.25

**H.R. 4567/Pub. L. 101–631**
To authorize an exchange of lands in South Dakota and Colorado. (Nov. 28, 1990; 104 Stat. 4559; 6 pages) Price: $1.00

**H.R. 4834/Pub. L. 101–632**
To provide for a visitor center at Salem Maritime National Historic Site in the Commonwealth of Massachusetts. (Nov. 28, 1990; 104 Stat. 4575; 2 pages) Price: $1.00

**H.R. 5426/Pub. L. 101–633**
Illinois Wilderness Act of 1990. (Nov. 28, 1990; 104 Stat. 4577; 3 pages) Price: $1.00

**S. 318/Pub. L. 101–634**
Salt Lake City Watershed Improvement Act of 1990. (Nov. 28, 1990; 104 Stat. 4580; 3 pages) Price: $1.00

**S. 645/Pub. L. 101–635**
Food and Drug Administration Revitalization Act. (Nov. 28, 1990; 104 Stat. 4583; 3 pages) Price: $1.00

**S. 1859/Pub. L. 101–636**
To restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of the Filene Center in Wolf Trap Farm Park in Fairfax County, Virginia, and for other purposes. (Nov. 28, 1990; 104 Stat. 4586; 3 pages) Price: $1.00

**S. 1693/Pub. L. 101–637**
Asbestos School Hazard Abatement Reauthorization Act of 1990. (Nov. 28, 1990; 104 Stat. 4589; 10 pages) Price: $1.00

**S. 1939/Pub. L. 101–638**
To extend the authorization of appropriations for the Taft Institute. (Nov. 28, 1990; 104 Stat. 4599; 1 page) Price: $1.00

**S. 2628/Pub. L. 101–639**
Mental Health Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4600; 4 pages) Price: $1.00

**S. 2740/Pub. L. 101–640**
Water Resources Development Act of 1990. (Nov. 28, 1990; 104 Stat. 4604; 50 pages) Price: $1.50

**S. 3012/Pub. L. 101–641**
Independent Safety Board Act Amendments of 1990. (Nov. 28, 1990; 104 Stat. 4654; 5 pages) Price: $1.00

**S.J. Res. 329/Pub. L. 101–642**
To designate the week of November 3, 1990, to November 10, 1990, as "National Week to Commemorate the Victims of the Famine in the Ukraine, 1932-1933", and to commemorate the Ukrainian famine of 1932-1933 and the policies of Russification to suppress Ukrainian identity. (Nov. 28, 1990; 104 Stat. 4659; 2 pages) Price: $1.00

**S.J. Res. 364/Pub. L. 101–643**
To designate the third week of February 1991 as "National Parents and Teachers Association Week". (Nov. 28, 1990; 104 Stat. 4661; 1 page) Price: $1.00

**H.R. 2006/Pub. L. 101–644**
To expand the powers of the Indian Arts and Crafts Board, and for other purposes. (Nov. 29, 1990; 104 Stat. 4662; 11 pages) Price: $1.00

**H.R. 3789/Pub. L. 101–645**
Stewart B. McKinney Homeless Assistance Amendments Act of 1990. (Nov. 29, 1990; 104 Stat. 4673; 88 pages) Price: $2.50

**H.R. 5390/Pub. L. 101–646**
To prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes. (Nov. 29, 1990; 104 Stat. 4761; 28 pages) Price: $1.00

**S. 3266/Pub. L. 101–647**
Crime Control Act of 1990. (Nov. 29, 1990; 104 Stat. 4789; 180 pages) Price: $5.00

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# Rules and Regulations

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Retirement; Law Enforcement Officers and Firefighters

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Personnel Management (OPM) is amending its regulations governing the special retirement provisions for law enforcement officers and firefighters employed under the Civil Service Retirement System (CSRS). The regulatory change will clarify the definition of qualifying duties, bringing the regulatory definition into conformance with a parallel definition in Federal Employees Retirement System (FERS) regulations.

**EFFECTIVE DATE:** December 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Roderick T. Meader, (202) 606–0777, extension 207.

**SUPPLEMENTARY INFORMATION:** On February 26, 1990, OPM published a proposed regulation (55 FR 6646) to revise regulations governing the special retirement provisions for law enforcement officers and firefighters employed under the CSRS. Specifically, we proposed to clarify the definition of "primary duties," bringing the regulatory definition into conformance with a parallel definition in Federal Employees Retirement System (FERS) regulations. We received comments from one agency, one employee organization, and eight individuals. All of the commenters appear to have misunderstood the purpose of our proposed amendment to the "primary duties" definition. The commenters apparently believe that the regulatory change would establish a requirement tha' to meet the "primary duties" definition, law enforcement officer or firefighter duties must in all cases occupy at least 50 percent of an employee's time. This is not the case. The 50-percent standard is merely an optional substitute standard. It does not supplant the regular definitional requirements. It simply means that those requirements generally can be deemed by OPM to be met if the 50-percent-of-the-time standard is satisfied. In other words, duties which occupy 50 percent of an employee's time are generally deemed to be his or her primary (paramount) duties without the need for further evidence or support. In our experience, a position that does not meet the 50-percent standard will almost always fail to satisfy the paramount duties standard. However, there may be rare instances where special circumstances allow a position to meet the paramount duties standard even though it does not meet the 50-percent standard.

Several commenters asked if it were possible that the 50-percent standard could be met if 50 percent of an employee's time was spent performing duties which are either law enforcement officer or firefighter duties. The law does expressly allow years of qualifying law enforcement officer and firefighter service to be combined for purposes of meeting the 20-year minimum service requirement under 5 U.S.C. 8336(c); however, it does not address the idea of granting special retirement coverage for employees in hybrid positions combining both law enforcement officer and firefighter duties. At present, we are not aware of any position not already qualifying solely as a law enforcement officer or firefighter position that would be qualifying as a hybrid position. It should be noted that the regulations exclude from the definition of "primary duties" any duties that are of an emergency, incidental, or temporary nature; such duties do not constitute part of the basic reason for the existence of the position and thus do not enter into a determination regarding special retirement coverage. For example, a position that does not qualify as a law enforcement officer position because law enforcement duties are not the primary duties would still not qualify even if the incumbent spent additional time on a temporary or emergency basis to assist in extinguishing fires.

Several commenters argued that the revised definition of "primary duties" incorporating the 50-percent standard should be applied only on a prospective basis. As we explained in the supplementary information of the proposed rule, the 50-percent standard has been applied under CSRS for many years. Furthermore, since the 50-percent standard is not an absolute requirement but merely a shortcut approach to establishing that the paramount duties standard is satisfied, no employee will be harmed by applying the revised regulatory definition of "primary duties" to claims for past service credit.

Accordingly, we adopt the proposed rule without change.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and retirees only.

### List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
**Constance Berry Newman,**
*Director.*

Accordingly, OPM is amending 5 CFR part 831 as follows:

## PART 831—RETIREMENT

### Subpart I—Law Enforcement Officers and Firefighters

1. The authority citation for subpart I continues to read as follows:

**Authority:** 5 U.S.C. 8347.

2. In § 831.902, the definition of "primary duties" is revised to read as follows:

**§ 831.902 Definitions.**

* * * * *

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*Primary duties* means those duties of a position that—

(a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(c) Are assigned on a regular and recurring basis.

Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion. In general, if an employee spends as average of at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties.

* * * * *

[FR Doc. 90-28400 Filed 12-4-90; 8:45 am]
BILLING CODE 6325-01-M

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**DEPARTMENT OF AGRICULTURE**

**Federal Grain Inspection Service**

**7 CFR Part 68**

**RIN 0580-AA16**

## Fees for Federal Aflatoxin Test and Failing Number Determination Services

**AGENCY:** Federal Grain Inspection Service, USDA. [1]

**ACTION:** Final rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is establishing a laboratory fee for any aflatoxin test (other than the TLC or Minicolumn method) and separate hourly rate for certain test services provided at an applicant's facility when performed under the Agricultural Marketing Act (AMA) of 1946, as amended. In addition, FGIS is establishing a unit fee for the use of an aflatoxin test kit. This unit fee will be assessed, in addition to the applicable hourly rate, when the test is performed at the applicant's facility. The laboratory fee, assessed when the test is performed at the FGIS Commodity Test Laboratory in Beltsville, Maryland, or for tests when not performed at the applicant's facility, is being established to cover the costs of the test and the aflatoxin test kit. Further, FGIS is establishing a separate hourly rate for failing number determination services provided at the applicant's facility.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5)

These fees are intended to cover, as nearly as practicable, projected operating costs, which include related supervisory and administrative costs, and to maintain reasonable operating reserves.

**EFFECTIVE DATE:** December 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Paul D. Marsden, Resources Management Division, USDA, FGIS, Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

### Regulatory Flexibility Act Certification

Mr. John C. Foltz, Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official aflatoxin test and falling number determination services do not meet the requirements for small entities.

### Information Collection and Record Keeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub.L. 96-511) and section 3504 (h) of the Act, the previously approved information collection and record keeping requirements concerning applications for inspection services including aflatoxin test and falling number determination test services have been approved by OMB under control number 0580-0012.

### Background

FGIS provides laboratory tests on grain and processed commodities under the authority of the AMA. These tests have historically been performed at the FGIS Commodity Test Laboratory in Beltsville, Maryland. Aflatoxin tests on corn and other products, and falling number determination on wheat, are two of the many tests performed by FGIS in Beltsville.

The fees charged for aflatoxin and falling number determination tests appear in title 7 § 68.90 of the Code of Federal Regulations (7 CFR 68.90). Currently, when these tests are performed at the applicant's facility, described as the point of service in the proposal, the applicable hourly rates that appear in § 68.90, Table 1, apply. When these tests are not performed at the applicant's facility, fees are charged according to Table 3, Laboratory Fees.

In 1977, FGIS established aflatoxin laboratories at the applicant's facility. Since then, FGIS has relied on the Holaday-Velasco (HV) minicolumn method as a screening test and the ThinLayer Chromatography (TLC) method for quantitative tests. The HV minicolumn method tests samples against a standard of 20 parts per billion and the TLC method measures the actual level of aflatoxin.

In the September 29, 1989, **Federal Register** (54 FR 40151), FGIS announced the use of six FGIS-approved aflatoxin tests kits at field locations effective October 1, 1989. FGIS also announced that it would discontinue using the HV minicolumn and TLC test methods at field locations as of April 1, 1990. However, HV minicolumn and TLC test methods will continue to be available for all commodities at the FGIS Beltsville Laboratory. Since that time, it has been determined that the TLC method will continue to be available at some field locations for the unit fee of $44.00 per test. Information concerning these locations may be obtained by contacting FGIS field locations. Further, the proposal of March 30, 1990, indicated that the HV minicolumn test would be available at field locations other than the applicants facility. However, this test is not available at field locations.

Test services that are performed at the Beltsville Laboratory are being charged at a unit rate of $18.90 per HV minicolumn aflatoxin test, and $44.00 per TLC aflatoxin test. In addition, other approved aflatoxin tests performed at the Beltsville Laboratory are charged under the other laboratory test category based upon the noncontract rate listed in Table 1 § 68.90.

An additional test service, falling number determination, was implemented at applicant's facilities on September 25, 1989, with the publication of Program Directive 918.38, entitled Falling Number Determination. This test determines the falling number reading of wheat flour and meal, indirectly measuring the alpha-amylase activity in a manner that simulates some of the changes flour or meal undergo during baking. Test services that are performed at the Beltsville Laboratory or at field locations other than at the applicant's facility are being charged a unit rate of $6.30 per falling number test.



Foreign buyers are increasingly requesting aflatoxin and falling number determination test services. They are also requesting that test results be determined at the applicant's facility, thereby eliminating any delays caused by mailing samples to the Beltsville Laboratory.

The shift to routinely providing aflatoxin and falling number tests at the applicant's facility has caused FGIS to examine the fees for providing these services. When these tests are provided by FGIS employees at the applicant's facility, FGIS charges an hourly rate. The current hourly rate is $18.40 per hour, contract, regular workday (Monday–Saturday), $21.00 per hour, nonregular workday (Sunday and Holiday), $22.40 per hour, noncontract, regular workday (Monday–Saturday), or $25.40 per hour, noncontract, nonregular workday (Sunday and Holiday).

This hourly rate is also charged at all locations (including an applicant's facility) where processed commodities are sampled and inspected. It is based on operating costs prior to FGIS employees performing the aflatoxin and falling number determination tests at the applicant's facility. Currently, costs are not being recovered by applying the above referenced hourly rates.

### Comments

In the March 30, 1990, **Federal Register** (55 FR 12140) FGIS proposed to establish a laboratory fee of $22.10 for any aflatoxin test (other than the TLC) and separate hourly rates for certain aflatoxin and falling number determination test services provided at applicant's facility when performed under the AMA, as amended. The hourly fees, as proposed, were: Contract, regular workday (Monday–Saturday) $28.40 per hour; nonregular workday (Sunday and Holiday) $38.80 per hour; noncontract, regular workday (Monday–Saturday) $29.20 per hour; nonregular workday (Sunday and Holiday) $39.80 per hour. Further, FGIS proposed to establish a unit fee of $7.50 for the use of each aflatoxin test kit in addition to the hourly rate for each test performed. The proposal requested interested persons to submit written comments by April 30, 1990.

Five comments were received regarding the proposal. The commenters represent both association and operational interests of grain handlers and processors providing export and domestic services in the grain industry.

The commenters recognize the need to establish a separate hourly rate for aflatoxin test and falling number determination services but view the proposed rate as more than required for FGIS to recover its costs and provide quality inspection service. However, further analysis by FGIS of the actual and projected program costs and revenue has determined that the proposed contract, regular workday (Monday–Saturday) hourly rate of $28.40 per hour and the contract nonregular workday (Sunday and Holiday) of $38.80 per hour can be reduced to $24.10 and $32.90 per hour respectively, but confirms that the noncontract hourly rate as proposed should not be changed. Accordingly, these fees, as made final herein, are reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

The commenters also recognize the need for a unit fee to cover the cost of each aflatoxin test kit but view the unit fee as excessive and designed to recover revenue losses in the short term. The unit fee for each aflatoxin test kit includes a number of costs. These include the cost of the kit itself, required hazardous chemical disposal, periodic medical examinations for employees conducting the tests, protective clothing and equipment, and additional equipment and supplies required to conduct the tests. Hence, FGIS disagrees with this view and concludes that the unit fee as proposed and made final herein is reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

One commenter objected to the amount of the proposed laboratory fee for the aflatoxin test at the FGIS Commodity Test Laboratory in Beltsville, Maryland. This proposed laboratory fee is calculated by adding the cost of a test kit as previously discussed, to the average labor cost for performing the test at the noncontract hourly rate. Therefore, FGIS disagrees with this comment and concludes that the laboratory fee as proposed and made final herein is reasonable and necessary to cover, as nearly as practicable, costs, including related supervisory and administrative costs, and to maintain reasonable operating reserves.

### Final Action

Section 203 of the AMA, as amended (7 U.S.C. 1622) provides for the collection of fees that are reasonable, and as nearly as practicable, to cover the costs of the services rendered. These fees include covering the FGIS administrative and supervisory costs for the performance of official services. FGIS costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies and equipment.

The current $44.00 fee for the TLC method aflatoxin test is not changed under this rule and continues to be available at some field locations. Additionally, the TLC and HV minicolumn methods will continue to be available for all commodities at the FGIS Beltsville Laboratory. The proposed rule deleted the existing laboratory fee of $18.90 for the HV minicolumn method of aflatoxin testing. However, this fee is included in this final rule as it was not intended that the laboratory fee for the aflatoxin HV minicolumn test be $22.10. Accordingly, this final rule retains the existing $18.90 laboratory fee for the aflatoxin HV minicolumn test and makes necessary conforming changes.

Further, the term "points of service," which was used in the proposal, is changed for clarity and consistency to read "at the applicant's facility." This terminology is more specific and conveys a clearer definition of where inspection services are performed. Table 1, footnote 2, and Table 2, footnote 1 are revised accordingly.

The $22.10 laboratory fee for aflatoxin tests (other than TLC or minicolumn method) includes the costs of the aflatoxin test and any aflatoxin test kit used. In addition, new hourly rates for official aflatoxin tests and falling number determination services which are performed at the applicant's facility appear in the new Table 3. These new fees are: contract, regular workday (Monday–Saturday) $24.10 per hour, nonregular workday (Sunday and Holiday) $32.90 per hour, noncontract regular workday (Monday–Saturday) $29.20 per hour, nonregular workday (Sunday and Holiday) $39.80 per hour. Furthermore, a unit fee of $7.50 per aflatoxin test kit is assessed in addition to the hourly rate for each aflatoxin test performed.

This rule redesignates in Table 1, Hourly Rates, the existing footnote 1 as footnote 2 and adds a new footnote 1 to indicate that hourly rates for aflatoxin tests and falling number determination appear in a new Table 3. The existing Table 3 is redesignated as Table 3A. Also, the undesignated heading that appears before the table is updated and revised for clarity to read "Fees for Inspection of Commodities Other Than Rice".

Several changes are made to the tables as proposed. A new undesignated heading, Fees for Laboratory Test Services, is inserted by this final actio

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just before the new Table 3A. This heading is added for clarity and consistency to distinguish between Table 3, Hourly Rates, and Table 3A, Laboratory Fees.

Further, a footnote number 3 is being added by this final action to Table 3 for clarity and consistency. Adding the footnote to the table provides applicants for the aflatoxin test service a means to determine under which schedule charges will be assessed for services.

The title for Table 3 was proposed to be Hourly Rates for Aflatoxin Test and Falling Number Determination. However, for clarity and consistency, the title has been revised to read: Table 3—Hourly Rates.

FGIS monitors its program costs, revenue, and operating reserve levels to assure that there are sufficient resources for its operations. Operating costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. While demand for test services may fluctuate, several of these costs remain constant in order to provide quality service on demand. Nonetheless, the AMA, as amended (7 U.S.C. 1622), authorizes FGIS to charge and collect fees that are reasonable and as nearly as practicable cover the cost for performing official inspection services including the related administrative and supervisory costs.

Therefore, FGIS is revising § 68.90 of the regulations to establish: (1) A laboratory fee for any aflatoxin test (other than TLC or Minicolumn method), (2) a separate hourly rate for aflatoxin test service when the test is performed at the applicant's facility, (3) a unit fee for each aflatoxin test kit used when test is performed at the applicant's facility, and (4) a separate hourly rate for falling number determination services when performed at the applicants facility.

Pursuant to the Administrative Procedures Act (5 U.S.C. 553), it is found that good cause exists for not postponing the effective date of this final action until 30 days after publication in the **Federal Register** and for making this final rule effective upon publication in the **Federal Register** because the Official Aflatoxin Test (other than the TLC and Minicolumn method) and Falling Number Determination Programs are not recovering costs and the applicable operating reserves have been, and continue to be reduced rapidly. Accordingly, these fees should be implemented as soon as possible.

**List of Subjects in 7 CFR Part 68:**

Administrative practice and procedure, Agricultural commodities.

For the reasons set out in the preamble, 7 CFR part 68 is revised as follows:

## PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

1. The authority citation for part 68 continues to read as follows:

**Authority:** Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

2. Section 68.90 is amended to read as follows:

### Fees

**§ 68.90 Fees for certain Federal inspection services.**

The following fees apply to Federal inspection services specified below.

### Fees for Inspection of Commodities Other Than Rice

TABLE 1.—HOURLY RATES [1]

| Service [2] | Regular Workday (Monday—Saturday) | Nonregular Workday (Sunday & Holiday) |
|---|---|---|
| Contract (per hour per Service representative) | $18.40 | $21.00 |
| Noncontract (per hour per Service representative) | 22.40 | 25.40 |

[1] Hourly rates for aflatoxin tests and falling number determination appear in Table 3.
[2] Original and appeal inspection services include: grading, sampling, factor analysis, checkweighing, checkloading, condition examination, demonstration of grading, and other services requested by the applicant when performed at the applicant's facility.

TABLE 2.—UNIT RATES

| Service [1] | Bean, Peas and Lentil | Hops | Nongraded, Nonprocessed Commodities |
|---|---|---|---|
| Lot or sample (per lot or sample) | $— | $22.40 | $— |
| Field run (per lot or sample) | 15.00 | — | — |
| Other than field run (per lot or sample) | 11.20 | — | — |
| Factor analysis (per factor) | 3.75 | — | 3.75 |
| Extra copies of certificates (per copy) | 3.00 | 3.00 | 3.00 |

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than at an applicant's facility.

### Fees for Official Aflatoxin Test Services and Falling Number Determination

TABLE 3.—HOURLY RATES

| Service [1] [2] | Regular Workday (Monday—Saturday) | Nonregular Workday (Sunday & Holiday) |
|---|---|---|
| Contract (per hour per Service representative) | $24.10 | $32.90 |
| Noncontract (per hour per Service representative) | 29.20 | 39.80 |

[1] Service includes sampling, grinding, tests, and certificationwhen performed at an applicant's facility.
[2] In addition to the hourly rate, $7.50 per test lot will be assessed for each aflatoxin test performed.
[3] When the service is not performed at an applicant's facility, the applicable laboratory fee from Table 3A will be charged.



### Fees for Official Laboratory Test Services Performed at the FGIS Commodity Test Laboratory at Beltsville, Maryland, for Processed Agricultural Products

TABLE 3A.—LABORATORY FEES [1]

| | Fees |
|---|---|
| Laboratory report | $ 3.00 |
| Laboratory testing: | |
| (a) In addition to the fees if any, for sampling or other requested service a fee will be assessed for each laboratory test (original, retest, or appeal) as follows: | |
| (1) Acidity Greek | 6.30 |
| (2) Acid value-oil | 6.30 |
| (3) Aflatoxin test (other than TLC or Minicolumn method) | 22.10 |
| (4) Aflatoxin (TLC) | 44.00 |
| (5) Aflatoxin (Minicolumn method) | 18.90 |
| (6) Appearance, flavor and odor-oils | 3.15 |
| (7) Arachidic acid | 12.10 |
| (8) Ash | 7.60 |
| (9) Bacteria count | 7.90 |
| (10) Baking test Bread | 18.90 |
| (11) Baking test-cake | 26.50 |
| (12) Baking test-cookies | 23.60 |
| (13) Baume | 6.30 |
| (14) Bostwick (cooked) | 12.60 |
| (15) Bostwick (uncooked) | 6.30 |
| (16) Calcium (AOAC) | 7.90 |
| (17) Calcium enrichment | 7.90 |
| (18) Carotenoid color | 9.45 |
| (19) Checked and broken macaroni units | 6.30 |
| (20) Clarity of oil involving heating | 6.30 |
| (21) Cold test-oil | 6.30 |
| (22) Coliform | 16.90 |
| (23) Color-bleached | 9.45 |
| (24) Color-gardner | 3.15 |
| (25) Color-lovibond | 3.15 |
| (26) Color-oil and shortening | 3.15 |
| (27) Congeal point | 15.10 |
| (28) Cooking test | 6.30 |
| (29) Crude fat | 6.30 |
| (30) Crude fiber | 10.10 |
| (31) Density | 6.30 |
| (32) Dextrose equivalent | 18.00 |
| (33) Diastatic activity of flour | 18.90 |
| (34) Enrichment-quick test | 3.15 |
| (35) Falling number | 6.30 |
| (36) Farinograph characteristics | 23.60 |
| (37) Fat-acid hydrolysis | 12.60 |
| (38) Fat acidity | 9.45 |
| (39) Fat stability-AOM | 12.60 |
| (40) Filth-heavy | 15.60 |
| (41) Filth-light | 18.90 |
| (42) Flash point-open and close cup | 9.45 |
| (43) Foam test | 18.90 |
| (44) Foots-heated and/or chilled | 6.30 |
| (45) Foreign material-processed grain products | 9.45 |
| (46) Free fatty acids | 6.30 |
| (47) Heating test-oil and shortening | 6.30 |
| (48) Hydrogen ion activity pH | 9.45 |
| (49) Insoluble bromides | 6.30 |
| (50) Insoluble impurities-oil and shortening | 6.30 |
| (51) Iodine number or value | 9.45 |
| (52) Iron enrichment | 12.60 |
| (53) Linolenic acid (fatty acid profile) | 12.10 |
| (54) Lipid phosphorous | 47.00 |
| (55) Loaf volume | 18.90 |
| (56) Lysine from fortification | 23.10 |
| (57) Lysine from hydrolysis of protein | 12.10 |
| (58) Maltose value-flour | 18.90 |
| (59) Marine oil in vegetable oil-qualitative | 6.30 |
| (60) Melting point-Wiley | 12.60 |
| (61) Moisture-distillation | 9.45 |
| (62) Moisture-oven | 4.40 |
| (63) Moisture and volatile matter-oil and shortening | 6.30 |
| (64) Neutral oil loss | 18.90 |
| (65) Nitrogen solubility index | 15.70 |
| (66) Oven leak test-oil can | 9.45 |
| (67) Oil content-oilseed | 9.45 |
| (68) Particle size-flour | 14.90 |
| (69) Performance test-prepared bakery mix | 21.70 |
| (70) Peroxide value | 6.30 |
| (71) Phosphorous | 12.60 |
| (72) Popping value-popcorn | 18.90 |
| (73) Potassium bromate-qualitative | 3.15 |
| (74) Potassium bromate-quantitative | 9.45 |
| (75) Protein dispersibility index | 15.70 |
| (76) Protein, Kjeldahl | 7.30 |
| (77) Purity-Monosodium glutamate | 25.20 |
| (78) Reducing sugars | 18.90 |
| (79) Refractive index | 9.45 |
| (80) Riboflavin | 25.20 |
| (81) Rope spore count | 31.50 |
| (82) Salmonella | 37.00 |
| (83) Salt content | 9.45 |
| (84) Saponification number | 9.45 |
| (85) Sedimentation | 15.70 |
| (86) Sieve test | 4.40 |
| (87) Smoke point | 9.45 |
| (88) Softening point | 12.60 |
| (89) Solid fat index | 21.80 |
| (90) Specific baking volume-cake mix | 21.80 |
| (91) Specific gravity-oils | 12.60 |
| (92) Starch damage-flour | 14.90 |
| (93) Staphylococcus aureus | 24.50 |
| (94) Sucrose | 18.90 |
| (95) Test weight per bushel-other than grain | 2.60 |
| (96) Tilletia controversa Kuhn (TCK) | 25.20 |
| (97) Unsaponifiable matter | 12.60 |
| (98) Urease activity | 9.45 |
| (99) Viscosity | 12.60 |
| (100) Water soluble protein | 15.70 |
| (101) Xanthydrol test for rodent urine | 12.60 |
| (102) Other laboratory tests | ([2]) |

(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.

[1] When laboratory test service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.
[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

Dated: November 28, 1990.

**John C. Foltz,**

*Administrator.*

[FR Doc. 90-28368 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-EN-F

## Agricultural Marketing Service

### 7 CFR Part 907

**[Docket No. FV-90-174FR]**

### Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulation for the 1990–91 Season

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the weekly shipping schedule and percentage allocation between districts of California-Arizona navel oranges for the 1990–91 season. Consistent with program objectives, such action is expected to be needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges during the 1990–91 season and to enhance producer returns. This action is based on a marketing policy which was adopted by the Navel Orange Administrative Committee (Committee) on July 10, 1990, and subsequently revised at open meetings held throughout the production area and on comments received from interested persons. The Committee locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

**EFFECTIVE DATE:** December 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order

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12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

Like many citrus types, mature navel oranges can be stored on the tree to be marketed at a later time. Usually a high proportion of the crop is mature early in the season and could be marketed; but markets may be insufficient to absorb that quantity of fruit in a short period of time. The on-tree storage characteristic of the navel orange permits the effective use of the flow-to-market (volume regulation) provisions of the order. Thus, volume regulations can be a valuable tool in achieving the goal of market stabilization for navel oranges.

The major reason for the use of volume regulations under the navel orange marketing order is to establish and maintain orderly marketing conditions for navel oranges and thereby benefit producers through higher returns. Such regulation can at the same time benefit consumers by maintaining adequate supplies of navel oranges in the marketplace.

The navel orange marketing order also contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established by the Secretary for a given week, the Committee calculates the quantity of oranges (allotment) which may be handled by each handler. The provisions of the order allow handlers to ship navel oranges in excess of their allotments, within specified limits, in response to marketing opportunities. The order includes provisions for: (1) Marketing incentive allotments; (2) shipment of oranges in excess of a handler's allotment (overshipments); (3) shipment of oranges in quantities less than a handler's allotment (undershipments); and (4) allotment loans. Marketing incentive allotments provide handlers additional allotment (up to 10 percent of each handler's weekly allotment for a specified number of weeks) for market development programs and allow handlers to take advantage of special marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 37.5 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the next two succeeding weeks. Finally, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotment.

In addition, the order includes provisions that exempt the handling of certain navel oranges from volume regulation. Oranges which are used for the following purposes are exempt from volume regulation: (1) Charitable institutions or relief organizations for distribution by such agencies; (2) commercial processors for processing into products, including juice; (3) export markets; and (4) parcel post and express shipments. The Committee may also recommend for approval by the Secretary the exemption of minimum quantities of oranges from order provisions.

Pursuant to § 907.50 of the marketing order, the Committee is required to submit a marketing policy to the Secretary prior to recommending volume regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of California-Arizona navel oranges to markets in the continental United States and Canada. The marketing order does not authorize regulation of export shipments of navel oranges or navel oranges utilized in the production of processed orange products.

The Committee adopted its marketing policy for the 1990–91 season at its July 10, 1990, meeting in Los Angeles, California. The Committee presented its policy at district meetings for further discussion and review as follows: (1) Districts 1 and 4 on September 25, 1990, in Visalia, California; (2) District 3 on October 2, 1990, in Tempe, Arizona; and (3) District 2 on October 9, 1990, in Redlands, California.

The Committee estimates the 1990–91 navel orange crop to be 79,350 cars. This compares to last year's total production of nearly 89,000 cars. The 79,350 car estimate is a revision of the Committee's initial estimate of 68,650 cars and was adopted by the Committee at its September 25 district meeting.

The Committee estimates District 1, Central California, 1990–91 production at 70,000 cars compared to 79,300 cars produced in 1989–90. In District 2, Southern California, the crop is expected to be 8,000 cars compared to 8,400 cars produced last year. In District 3, the California-Arizona Desert Valley, the Committee estimates a production of 800 cars compared to 650 cars produced last year. In District 4, Northern California, the crop is expected to be 550 cars compared to 600 cars produced last year. The Committee's production estimates are revisions of the Committee's initial estimates of 59,200 cars for District 1, 8,100 cars for District 2, 850 cars for District 3, and 500 cars for District 4. These revised estimates were adopted by the Committee at its September 25 district meeting. The Committee's production estimates are expected to be modified as the season progresses.

At each district meeting, the Committee reviewed current crop conditions. At the September 25 meeting (Districts 1 and 4), the average orange size for District 1 was reported as 87 per carton, 7 percent larger than last year. It was also reported that there were 104,560 acres of navel orange groves producing in District 1, a 10 percent increase since 1982. In addition, crop quality, maturity and condition were reported as widely variable at that time. At the October 2 meeting (District 3), the average orange size for District 3 was



projected to be 5 percent smaller than last year. It was also reported that harvesting might begin as early as the week of October 8 in the Edison area. At the October 9 meeting (District 2), the average orange size was projected at 96 per carton, 14 percent larger than last year.

There may be times when small sizes as well as excessively large sizes will be shipped in fresh fruit channels at heavily discounted prices which could produce a negative return to producers. Such discounting could be disruptive to the orderly marketing of navel oranges. This condition could be alleviated through the use of size regulations authorized under the marketing order. However, because of the anticipated crop volume and distribution of orange sizes, the Committee has indicated that it presently does not believe it will be necessary to recommend to the Secretary the implementation of size regulation for the 1990–91 navel orange crop.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. According to the Committee, major export markets continue to be Hong Kong and Japan with nearly 76 percent of all navel orange exports shipped to these two markets in the past year. Navel oranges which are diverted to processing are generally those oranges which do not meet grade requirements or are too small to market economically as fresh fruit.

In terms of total crop utilization, the Committee estimates that approximately 51,250 cars of the 1990–91 crop of 79,350 cars (65 percent) will be utilized in fresh domestic markets compared with 54,000 cars (61 percent) in 1989–90; fresh exports are projected at 9,750 cars (12 percent) of the total 1990–91 crop compared to 10,000 cars (11 percent) in 1989–90; and 18,350 cars (23 percent) of the 1990–91 crop will be utilized in by-product channels and other forms of processing compared with 25,000 cars (28 percent) in 1989–90. The Committee's crop utilization estimates, like its production estimates, are revisions of its initial estimates of 45,000 cars (65 percent) utilized in fresh domestic markets; fresh exports at 9,500 cars (14 percent), and 14,150 cars (21 percent) utilized in by-product channels and other forms of processing. These revised utilization estimates were adopted by the Committee at its September 25 district meeting.

The 1990–91 season average on-tree price for California-Arizona navel oranges is not expected to exceed the season's average fresh parity equivalent price. Domestic fresh utilization about equal to the Committee's estimate of 51,250 cars is expected to result in a season average fresh on-tree price of $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. In contrast, the preliminary estimate of the 1989–90 season average fresh on-tree price is $3.70 per carton, or 58 percent of the preliminary on-tree parity equivalent price of $6.34 per carton.

Based on the information available and for the purposes of this rulemaking process, the Committee recommended to the Secretary on July 10, 1990, a proposed weekly schedule of the quantities of navel oranges that can be shipped, if volume regulation is recommended, approved and implemented for the 1990–91 season. That proposed shipping schedule, which was based on the Committee's initial domestic utilization estimate of 45,000 cars, was revised at its September 25 district meeting and is now based on a domestic utilization estimate of 51,200 cars. The Committee estimates that fresh domestic shipments this season will be between 47,000 and 53,000 cars. The revised shipping schedule is based on a total of 51,250 cars. This figure may be adjusted throughout the season to reflect revised crop estimates.

In developing the proposed shipping schedule, the Committee considered equity of marketing opportunity and established an equity factor pursuant to § 907.51(b). The Committee compiles production estimates in cars for each district. These production estimates are based on the entire anticipated tree crop in each district. The Committee combines these production estimates to project the total production for all four districts. The Committee then projects the number of cars that could be marketed in fresh domestic channels. From the relationship between these two totals an equity factor is derived and then applied to each district's estimated production in order to determine the estimated amount of each district's production that could be moved into fresh domestic markets under regulation. Therefore, all districts, no matter how much handlers ship weekly to fresh domestic markets, should be provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season. The equity factor for this season is 68 percent and is the same for all districts.

The shipping schedule also establishes the percentage allocation, pursuant to § 907.110(d) of the regulations, for each district for each week, which is used to determine each district's proportionate share of volume regulations issued for a particular week. Each district's volume limitation for a particular week is then equitably apportioned among all handlers in each district. Thus, each handler's individual allotment is based on the entire quantity of navel oranges available for all uses, including export.

A proposed rule concerning this action was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36853). That rule was based on the Committee's initial shipping schedule as adopted on July 10, 1990, and provided for volume regulation for the period from the week ending on November 22, 1990, through the week ending on May 31, 1991.

Comments concerning this action were invited until October 9, 1990. Forty-four comments were received. Comments supporting the proposed action, with some modification, were submitted by the Committee, Sunkist Growers, Inc. (Sunkist) and two handlers. Comments opposing the proposed action were submitted by the Antitrust Division of the U.S. Department of Justice (DOJ); the Small Business Administration's Office of Advocacy (SBA); Farmers Alliance for Improved Regulation (FAIR); Citizens for a Sound Economy Foundation (CSE); Public Voice for Food and Health Policy (Public Voice); and twenty-five growers and/or handlers.

In addition, the Department received two requests, one from the DOJ and one from FAIR, to extend the comment period on this action. These requests were subsequently denied, as the Department determined that ample time had been provided for interested persons to analyze the proposed rule and prepare comments. Interested persons were also given the opportunity to submit information and views at open Committee meetings which were held throughout the production area.

Comments submitted by the Committee, Sunkist, and two handlers supported the proposed use of volume regulations for navel oranges during the 1990–91 season, in general, with some modifications. The Committee submitted a comment after each district meeting (September 25, October 2, and October 9) informing the Department of its revised production and utilization estimates. In summary, the Committee revised its total production forecast from 68,650 to 79,350 cars; revised its

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estimate of domestic shipments from 45,000 to 51,250 cars; and revised its weekly shipping schedule to reflect these changes. These changes, as recommended and adopted by the Committee, are adopted in this final rule.

All of the commenters supporting the proposed rule contended that the published starting date for the onset of volume regulation (week ending on November 22) was too late. The Committee requested that the published shipping schedule reflect the starting date as contained in the Committee's marketing policy (week ending on October 11) rather than the week ending on November 22. The Committee stated that a later starting date would indicate to the industry that no regulation would be in effect prior to that time, and could lead to compliance and enforcement problems under the marketing order. Both the Committee and Sunkist commented that handlers could potentially flood the market prior to the first week of regulation, and that large volumes of such unregulated shipments could create a market glut with correspondingly low prices and low returns to producers. The Committee also stated that such conditions would be contrary to the orderly marketing objectives of the Act.

The Department is aware that crop and/or marketing conditions are variable and that the Committee may recommend the implementation of volume regulations sooner or later than contemplated by this rulemaking action. The Department would consider the Committee's recommendations and take whatever action is appropriate under the order to achieve the order's and the Act's purposes and objectives. Thus, no modification to the proposal regarding the onset of regulation is necessary.

Sunkist also commented that the proposed rule discussed several flexibilities provided to handlers under the navel orange order, but did not mention the Committee's authority to recommend mid-week increases in total volumes shipped in a given week, as provided in § 907.51(c) of the order. Sunkist stated that if the original supply estimate, as published in this rule or as revised at weekly volume regulation meetings, underestimates the market demand and there is no opportunity for an upward adjustment in supplies, it essentially represents a market opportunity permanently lost to the industry.

The Department recognizes the possible need for mid-week increases in the weekly allotment levels throughout the season. As in past seasons, the Department would review any recommendation for such action by the Committee and, if warranted, issue a final rule amending the initial regulation.

Sunkist also provided a discussion of its support for the navel orange marketing order. Sunkist stated that the main advantage of the order's rate of flow provision is that it allows producers as an industry to harvest and market their fruit in a manner that tailors supply to market demands, a major criterion for orderly marketing. Sunkist also stated that orderly marketing benefits producers by stabilizing and enhancing shipping point prices and benefits consumers by ensuring an adequate supply of high quality fruit over an extended period of time.

One handler commenting in general support of the proposed rule also included a discussion of the beneficial use of the navel orange marketing order. That handler stated that the regulatory provisions of the order provide a fair and practical system to stabilize volumes of navel oranges placed into the market, which results in reducing gluts and shortages, thereby enhancing producer returns and maintaining an available supply of oranges to consumers over longer periods of time. In addition, that handler also stated that due to the volume estimated for the 1990-91 navel orange crop, the costs of growing, harvesting, packing and marketing, combined with the other characteristics inherent to the industry, volume regulation for the 1990-91 season is absolutely necessary in order to assure producers a fair return on their labor and investment.

The remaining commenters raised several issues opposing the use of volume regulation for the 1990-91 navel orange crop. Many commenters who raised objections to the proposed action posed several questions on various aspects of volume regulation and the marketing order. Each issue raised is addressed herein.

Several commenters who opposed the proposal contended that volume regulations would have a significant adverse economic impact on small entities. The majority of handlers who opposed the proposal commented that the use of volume regulation causes severe operational and economic consequences for small entities. Several handlers commented that a small entity's weekly allotment under volume regulation is usually so low that it cannot operate its packinghouse at full capacity. This in turn results in an inefficient operation creating higher labor and packinghouse costs. Several handlers also commented that small entities are unable to meet the needs of the domestic and export markets under volume regulation.

The Department, in compliance with the RFA, has considered the economic impact of weekly volume regulations on small entities. Since the inception of the order, the Department has collected evidence through both formal and informal rulemaking proceedings, analyses of marketing policies, analyses related to the collection of information under the Paperwork Reduction Act, and the like that has led the Department to conclude that such regulations do not have a significant adverse impact on a substantial number of small entities.

The general purpose for, and effect of, prorate regulations, as demonstrated in the legislative histories of the Act and the order, is to benefit all producers. Prorate regulations would also help to assure a share of the domestic fresh market for the smallest and least powerful handlers as well as the largest. Small entities would find access to the fresh domestic market more difficult if the program were discontinued, and their revenues would likely be consistently lower.

Relating to small business concerns, one handler questioned the methodology for determining that there are approximately 130 handlers in the industry. The marketing order requires handlers to submit reports to the Committee's staff which allows the staff to characterize the industry in terms of number of handlers, production, disposition, and the like. Thus, the estimate of 130 handlers, the majority of which are small entities, is an accurate reflection of the average composition of the industry.

The SBA, CSE, and FAIR in their comments urged the Department to perform a regulatory flexibility analysis before adopting any recommendations of the Committee concerning the use of volume controls. The Department has certified that this action will not have a significant economic impact on small entities and, thus, the Department is not required to do a regulatory flexibility analysis under the RFA. As previously stated, the Department has collected a body of information through various proceedings under the order to support this certification.

Two handlers commenting in opposition to the proposal objected to the Department's position that this action, in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291, has been determined to be a non-major rule. One handler calculated that the Committee's initial domestic utilization estimate of 45,000 cars would have an estimated free on board (f.o.b.) value of $360 million. The commenter concluded that the regulation exceeds the threshold of $100 million which makes the regulation a major rule under Departmental Regulation 1512-1 and Executive Order 12291.

The estimated f.o.b. shipping point value is not the proper measure of the annual effect on the economy, as defined by Secretary's Memorandum 1512-1, dated June 11, 1981, for major regulations as defined under Executive Order 12291. The appropriate test is the difference between crop value with regulation and crop value without regulation. With prorate in effect, the Committee projects 1990-91 California-Arizona fresh domestic navel orange shipments at 51,250 cars. At an estimated f.o.b. shipping point price of $8.08 per carton, value at this level would total $414 million. With no prorate regulations, as much as 90 percent of the crop might be marketed in fresh domestic and export markets, but the estimated f.o.b. shipping point price would only be $5.25 per carton. Under this assumption, shipping point value would be expected to drop to about $375 million. Thus, the difference of $39 million would be less than the threshold value specified in Secretary's Memorandum 1512-1.

Two handlers who opposed the proposed rule commented that volume regulations extend the normal marketing season of navel oranges resulting in a greater amount of fruit that deteriorates and ends up going to less profitable markets. A major objective of the use of volume regulation under the marketing order is to provide the industry with the opportunity to market the largest volume of navel oranges possible in fresh domestic channels in an orderly manner. Under the order, the normal marketing season for navel oranges is that period in which the fruit is of such quality that it can be shipped and will be acceptable to consumers.

Several commenters who opposed the proposed use of volume regulation alleged that Sunkist, the industry's largest marketing cooperative organization, controls the market and manipulates the Committee and prorate to benefit its producers. FAIR alleged that Sunkist is virtually unrestricted by volume controls because it can control the weekly prorate figure with five Committee votes.

The Department's view is that volume regulations are handling regulations which help control the flow of supplies to market. All handlers are equally subject to such regulation and therefore, are limited equally.

In addition, recommendations for volume recommendations are developed by the Committee, which is comprised of members nominated by producers and handlers to represent their interests in administering the navel orange marketing order. Such individuals have an in-depth understanding of the navel orange industry and the California-Arizona citrus industries in general and are fully qualified to represent their producer and handler constituents. These members meet weekly to consider all views presented by producers, handlers, and other interested persons in making recommendations for volume regulation. A minority of members on the eleven member Committee currently represent Sunkist.

One handler contended that producers and non-Sunkist members appeared to have no input into the Committee's 1990-91 marketing policy. All producers and handlers had opportunities at the July 10 marketing policy meeting, and at subsequent district meetings held on September 25, October 2, and October 9 to review and provide input to the Committee's marketing policy.

That handler commented further that the Committee had failed to follow the requirement that all meetings held by the Committee, particularly those concerning adoption of the 1990-91 marketing policy, by announced and open to the public.

Section 907.50(b) of the order states that "All meetings of the Committee held for the purpose of formulating such marketing policies shall be open to growers and handlers. The Committee shall give notice to growers by publications of notice of such meeting in such newspapers as they deem appropriate and shall advise all handlers by mail of such meetings."

Handlers were notified through handler bulletins and public notices of the July 10 meeting and subsequent district meetings (September 25, October 2, and October 9) held regarding the 1990-91 navel orange marketing policy. These notices invited producers, handlers, and other interested persons to attend such meetings. The Committee's marketing policy was presented and adopted at its July 10 meeting. Subsequent to that action, open meetings were held throughout the production area to review and modify the policy. Changes were recommended and adopted at each such district meeting to reflect the needs of producers and handlers for the ensuing season.

Many commenters who opposed the proposed rule questioned why there are no volume restrictions on Florida and Texas navel oranges and other competing fruits. Florida and Texas navel oranges are also regulated under marketing orders. However, these marketing orders do not contain provisions for volume regulation as does the California-Arizona navel orange marketing order. Producers in Florida and Texas approved marketing orders developed through a formal rulemaking process to fit their own unique fresh marketing conditions, as was done by California-Arizona navel orange producers.

Several commenters opposing the proposal questioned why volume regulations have not been used for California-Arizona Valencia oranges during the past four seasons, but have been used for California-Arizona navel oranges. The Valencia orange industry, as represented by the Valencia Orange Administrative Committee (VOAC), has not recommended regulation for the past four seasons due to the nature of the crops and the market for Valencia oranges. The California-Arizona Valencia orange crop is traditionally more alternate bearing than the California-Arizona navel orange crop and crop maturity across growing areas is more dispersed. Moreover, the processing and export markets for Valencia oranges have been expanding and the latter provides a particularly attractive outlet for the Valencia crop. Also, most California-Arizona Valencia oranges are sold when no other competing fresh oranges are in the market. Given this combination of factors, there has been little need to regulate the flow of Valencia oranges to the fresh domestic market through the use of volume regulations. The Valencia orange regulatory record demonstrates that the industry is not opting to use features of the marketing order to regulate when regulation is not deemed necessary.

Several commenters who opposed the proposed rule questioned the equity of marketing opportunity provisions of the marketing order and the Committee's 1990-91 marketing policy and shipping schedule. In relation to equity of marketing opportunity, one handler and FAIR commented that District 1 is severely handicapped by the use of volume regulation, and is often forced to divert merchantable oranges to byproducts. Several handlers and FAIR commented that District 2 more from export opportunities than the other three districts benefits. FAIR also commented that the proposed regulations violate the Equal Protection Clause of the Constitution.

In response to these concerns regarding equity between districts,

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§ 907.51 of the order requires the Committee to provide equity of marketing opportunity in the regulated market to handlers in all districts. Section 907.110 provides that the Committee must establish an equity factor which is the same for all districts. The equity factor shall be stated as a percentage of the tree crop in each district and shall reflect a quantity of oranges (grown in each district) for which there will be equitable marketing opportunity under volume regulation during the ensuing season. In the development of its marketing policy, the Committee sets an equity factor which is used in the development of the weekly shipping schedules for all districts. While this schedule may change later in the season, i.e., when crop forecasts are most reliable (the schedule has already been revised since the Committee's initial marketing policy meeting on July 10 because of changes in the crop forecast), the equity factor will always be applied equally to all districts. Thus, all districts, no matter how much they ship weekly to any market should eventually be provided the opportunity to ship, under regulation, the same proportionate amount to fresh domestic markets during the season. This is in accord with the marketing order and the underlying statute, both of which have consistently been upheld after litigation in this regard.

One handler from District 4 contended that the use of volume regulations will cause severe problems for District 4. The handler suggested that no volume regulation should be imposed on any district until such district was handling four or five percent of the industry's volume. The marketing order, however, contains no general exemption for any district. The adoption of such a general exemption would require an amendment to the marketing order. The Committee, therefore, each year must study the probable effect and timing of volume regulations in each district. The Committee, which represents the interests of the majority of producers and handlers in the industry, considered many factors in projecting a weekly shipping schedule for the season. The schedule represents the desires of the majority of producers and handlers in each district as to the length and scheduling of their shipping seasons, and provides each district with equitable marketing opportunity. In addition, the weekly shipping schedule as published in this final rule is subject to modification throughout the season. The Committee is expected to meet on a weekly basis throughout the season to consider the appropriateness of specified weekly volume regulations and recommend amendments, when necessary, to the amounts allotted by this rule for each district for the upcoming week.

In a related issue, one handler suggested that Districts 3 and 4 be removed from the weekly shipping schedule and the allotment scheduled be transferred to Districts 1 and 2. As stated above, the Committee is expected to meet weekly throughout the season to review current and prospective marketing conditions prior to recommending any level of volume regulation. The Committee may recommend open movement for Districts 3 and 4 during any week such action is warranted. It would be inappropriate to make such a change to the shipping schedule at this time.

Several handlers commenting on the proposed rule contended that there are too many loopholes and inequities in the prorate system, i.e., allotment loans and provisions for overshipment and undershipment. As previously mentioned, such provisions are not loopholes but are designed to provide handlers with marketing flexibility within an established volume regulation week.

Several commenters opposing the use of volume regulation for the 1990–91 navel orange crop alleged that the proposed rule did not satisfy the "criteria" for establishing volume regulations under the Act. Volume regulations under the Act and the marketing order may be promulgated if the Secretary finds such action would tend to effectuate the policy of the Act. As stated previously, the declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. It is the Department's view that limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis during the 1990–91 season may contribute to the Act's objectives of orderly marketing and improving producers' returns.

Related to this issue, many commenters asked the Department to define the terms "orderly marketing" and "unreasonable fluctuation in supplies and prices." These are terms used by Congress to describe its policy to establish and maintain such orderly marketing conditions for specified agricultural commodities as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies and prices. Thus, there is no need for such definitions in this regulation.

FAIR, in its contention that the proposed rule violates the Act, alleged that the Department is using an improper "local" parity figure, which is only authorized for milk marketing orders, as opposed to the national parity price for oranges. FAIR claimed that if the Department had used the correct national parity figure, projected season average navel prices would be substantially above parity, thus making regulation impossible, according to FAIR, due to the parity limitation in the Act.

The Act provides for regulation in above parity situations in order to avoid a disruption of orderly marketing in the public interest. Furthermore, under the Act, marketing orders are issued for specific commodities, areas and usages. Parity equivalent prices which apply to most of the specific commodities, areas and usages regulated under marketing orders are not published by the National Agricultural Statistics Service (NASS).

The parity price published by the NASS for oranges includes all varieties of oranges grown in Arizona, California, Florida and Texas for all uses. Such an aggregate parity price does not adequately reflect parity for California-Arizona oranges sold in fresh market outlets. Therefore, the Department computes a parity equivalent price for the area and usage specified under Marketing Order No. 907, based on the U.S. parity price for oranges and historical relationships between U.S. average prices for oranges and average prices for fresh California-Arizona oranges. This is no statutory impediment to this method of calculating parity.

FAIR and two handlers also commented that the Department failed to "comply" with the Department's *Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'* (Guidelines) "requirement" that prorate programs used as a means of market allocation provide at least 110 percent of recent seasons' sales for the fresh domestic market. FAIR also contended that the Department failed to "comply" with the Guidelines' "requirement" to utilize volume regulations in a guarded manner.

The Guidelines recommend for market allocation and reserve pool programs that the primary markets have available a quantity equal to 110 percent of recent years' sales in those outlets before approving secondary market allocation or pooling. However, the navel orange marketing order utilizes weekly volume regulations which have flow-to-market functions, not market allocation and reserve pool requirements, to provide an orderly flow of available navel oranges in order to avoid unreasonable fluctuations in supplies and prices. Therefore, the 110 percent recommendation is not applicable. Furthermore, the Guidelines provide recommendations only, and are not requirements with which the Secretary must comply.

In addition, the 1990–91 navel orange marketing policy meets the requirements of § 907.50 of the navel orange marketing order and follows the Guidelines' recommendations which permit each industry utilizing prorate recommendations to assess its own unique problems and needs in order to effectively serve the interests of both producers and consumers.

FAIR alleged in its comment that both the Department and the Committee have completely ignored the criteria for evaluating the potential use of supply controls set forth in the 1986 Criteria Commission report. The "Criteria Commission" was an independent team which conducted a study and published a report through the facilities of the Department's Economic Research Service. The "Criteria" were considered in this rulemaking process. However, the "Criteria" report was published as an informational tool and imposes no requirements on AMS.

Several commenters opposing the proposed rule contended that the Department has failed to comply with the Administrative Procedure Act (APA). It is the Department's view that it has acted properly and in accordance with the requirements of the Act and other applicable legislation and within the limits of the navel orange marketing order in issuing volume regulations.

The Department is using new procedure to provide even further opportunity for public comment. The procedure, implemented this season and discussed previously in this rule, includes issuing a proposed rule for public comment on the need for regulation, the shipping schedule, and other factors in advance of the first regulation, analyzing the comments and, if warranted, issuing a final rule in advance of the issuance of the first regulation of the season.

CSE and other commenters questioned how the inherent characteristics of the navel orange permit the effective use of volume regulation to maintain orderly marketing conditions. As previously mentioned, mature navel oranges can be stored on the tree and picked as needed to provide the market with a steady supply of oranges throughout the season. This on-tree storage feature is particularly valuable early in the season when a large portion of the crop is often mature but the market may not be able to absorb that amount of fruit at the time. This feature is also valuable during large crop years, such as the 1989–90 season.

One handler contended that the proposed rule should be rejected because the Committee's crop estimate was simply based on supposition. The Committee's crop estimate is based on surveys and on-going grove measurements by the Committee's field staff. The crop estimate is periodically revised throughout the season based on the results of these ongoing surveys. As stated previously in this rule, the Committee has already revised its total crop estimate from 68,650 to 79,350 cars, resulting in a revision of its estimate of domestic utilization from 45,000 to 51,250 cars.

Several commenters who raised objections to the proposed rule questioned various economic issues raised by the implementation of volume regulation. Both the DOJ and FAIR contended that producers do not benefit from prorate in the long run. The DOJ and FAIR alleged that the results of numerous economic studies provide evidence that the use of prorate programs has negative effects on producers' returns and the availability of supplies, and contributes to resource misallocation.

Several commenters asserted that some researchers have concluded that their respective analyses support the contentions that, contrary to the objectives of the Act, volume regulations have reduced producer returns as compared with returns under no regulations, and that such regulations have contributed to the inefficient allocation of resources. The Department does not agree with such an interpretation of the relevant data. Such an interpretation does not take into account many factors that might be present if there were no volume regulations, including declining shipments to processors, fluctuating prices in the fresh market, and bearing acreage and production capacity concentrated in fewer hands. Therefore, the Department does not agree that the data presented necessarily leads to the conclusions suggested by the commenters.

During the years since the inception of the navel orange marketing order, there have been significant changes in the marketing system for California-Arizona navel oranges. At one time, navel oranges were sold at public auction in terminal markets. The fruit was shipped to the auctions by rail and handlers paid the freight. The auctions were open to all buyers and sellers. In the 1960s, the auctions were abandoned in favor of the current system of selling the fruit on an f.o.b. basis under which buyers pay the freight. At the same time, there continue to be marketing risks to producers and handlers that are not effectively offset by other mechanisms, such as pricing methods, risk sharing organizations and income diversification. In addition, the major objectives of the marketing order are unchanged—achieving orderly marketing and parity prices to producers. There is no evidence that, in the absence of flow-to-market controls, a price-depressing surplus of shipments would be any less likely now than it was four decades ago. There is evidence to support the conclusion that such regulations have mitigated the adverse effects of price-depressing surpluses, particularly early each season.

Several commenters who objected to the proposed rule questioned whether producers maximize their returns under volume regulation. Related to this issue, one handler presented a calculated net monetary loss due to prorate regulations. The Department contends that, consistent with the objectives of the Act, the use of volume regulations can improve returns to producers. To illustrate, the following table compares the likely returns for the estimated 79,350 car tree crop under a 65 percent domestic fresh allotment (as recommended by the Committee) with a 98 percent allotment (assuming that 98 percent of the crop is merchantable) on an industry-wide basis. While a commenter estimated that 98 percent of the crop is merchantable fresh, the Department believes this estimate is much too high. The season average fresh on-tree price referenced in the table will vary, depending on the total volume shipped to fresh outlets.

CALIFORNIA—ARIZONA NAVEL ORANGES: PRICES AND RETURNS FOR A 79,350 CAR TREE CROP UNDER ALTERNATIVE FRESH DOMESTIC ALLOTMENT LEVELS

| Item | Fresh domestic allotment | |
|---|---|---|
| | 65 percent | 98 percent |
| Crop size (Cars) | 79,350 | 79,350 |
| Domestic allotment (Cars) | 51,250 | 76,178 |
| Estimated exports (Cars) | 9,750 | (1) |
| Total fresh shipments (Cars) | 61,000 | 76,178 |

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CALIFORNIA—ARIZONA NAVEL ORANGES: PRICES AND RETURNS FOR A 79,350 CAR TREE CROP UNDER ALTERNATIVE FRESH DOMESTIC ALLOTMENT LEVELS—Continued

| Item | Fresh domestic allotment | |
|---|---|---|
| | 65 percent | 98 percent |
| Estimated season avg. fresh on-tree price ($/carton) | $4.33 | $1.43 |
| Estimated season avg. fresh on-tree value ($ million) | $264,043 | $108,892 |
| Revenue loss on fresh sales attributable to increased allotment ($ million) | | −$155,151 |
| Percentage reduction in revenue (Percent) | | −59 |

[1] Assume that 98 percent of production is marketed in fresh outlets, either domestic or export.

The table shows that, on an industry-wide basis, marketing 98 percent of the crop in fresh channels would reduce fresh on-tree revenue by nearly 60 percent. An individual producer's returns would likely be reduced comparably.

Several commenters alleged that the Committee has provided no evidence that producers' revenue will be consistently lower without prorate. The issuance of volume regulations under the Act is not conditioned on proving such a proposition. Moreover, revenues were modeled for the 1990–91 season under a no-regulation option and the assumption that producers would ship all of their merchantable oranges to the fresh market, as two commenters wished to do. As demonstrated above, producer revenue would be reduced as much as 59 percent compared with the seasonal projections with the recommended level of prorate.

Several commenters, including FAIR, CSE, and Public Voice, alleged that consumers do not benefit from volume regulation. Related to this issue, FAIR referenced a study by Dr. Lawrence Shepard which discussed the effects of deregulation, and suggested that: "* * * bearing acreage and shipments to processors would fall and processing prices would rise under a market-determined allocation of fruit. Prices and output would be more stable in the processing sector and less stable in the fresh orange market without the marketing order * * * average grower returns per carton would be somewhat higher but less stable and * * * productive capacity would be lower than under regulation * * * adjustment costs attending deregulation would prove transient once acreage and output matched (a new equilibrium described by the author as) market-determined levels of demand * * *."

The Department agrees that without the marketing order, shipments to processors would likely fall, and prices would be less stable in the fresh orange market. In addition, bearing acreage and productive capacity might be lower, and it would likely be concentrated in fewer hands. Adjustment costs associated with deregulation may prove transient to surviving producers but not to those unable to adjust quickly to the changed economic situation. Also, consumers would likely question the need to adjust to the much greater variability in supplies and prices. Thus, volume regulations can provide for the maintenance of ample supplies of navel oranges to consumers at times when they are needed and the ability to obtain a price which will provide suppliers the incentive to stay in business.

Additionally, there is a strong argument that prorates reduce variability in prices on an interseasonal basis, resulting in a rightward shift in the supply curve due to decreased producer uncertainty. That is, with decreased price variability, producers are willing to supply more oranges for a given return, resulting in an increase in social welfare.

CSE and several other commenters expressed the opinion that "no regulation" would foster a better long-term market outlook for navel oranges. On an intra-season basis, the program promotes orderly marketing, the purpose of which is to furnish sufficient navel orange supplies to fresh markets throughout the season and to avoid price-depressing gluts, particularly during the first few months of the season when supplies are heaviest. If the program were discontinued, projections based on historical relationships suggest that the short-run effects would be much greater variability in weekly supplies and prices than occurs with the use of prorate regulations. The expected long-run effect of discontinuing prorate is less certain, although there are indications that prices would rise because of more price risk to producers.

FAIR presented several alternatives to the 1990–91 shipping schedule as published in the proposed rule. First, FAIR suggested that the orange industry not be re-regulated. At this time, it is the Committee's view that volume regulation is needed for the 1990–91 season. However, the Committee is not precluded from a no-prorate option. In fact, experience shows that when the Committee deems prorate inappropriate, no regulations are recommended. During the 1989–90 season, for example, prorate regulations did not commence until the week ending on November 9, 1989, and were discontinued following the week ending on March 29, 1990.

Second, FAIR suggested that the Department and Committee comply with the provision in the Guidelines and establish an allocation to the fresh domestic market of 110 percent of recent seasons' primary market sales. This topic was discussed above.

Third, FAIR suggested that prorate should only be utilized as a flow-to-market tool, i.e., making the entire fresh quality crop (approximately 90 percent) available to the domestic fresh market. It is the Department's view that prorate regulations are utilized as a flow-to-market tool whereby the industry attempts to market the largest possible volume of navel oranges in fresh domestic markets in an orderly manner consistent with protecting producer returns. As illustrated earlier in this rule, if producers were able to ship a high percentage of their merchantable oranges into the fresh market, producers revenue could be reduced as much as 59 percent.

Fourth, FAIR suggested that prorate only be initiated when the weekly computed revenue falls below the three-week moving average revenue. Such a formula could be used, although on a delayed basis. In view of this delay, this alternative would be unworkable over the course of the season. Relative price levels are established early in the season based primarily on current and prospective supplies as well as consumer demand. Week-to-week price changes thereafter may or may not result in price levels requiring termination or implementation of prorate. Following this procedure would increase the difficulty of providing equity of marketing opportunity to the districts. The Committee is responsible for evaluating the market during the season and has the flexibility to adjust its recommendation for regulation to emerging conditions to support the orderly marketing of California-Arizona navel oranges.

Fifth, FAIR suggested setting prorates at a relatively high constant level (2,000 or 2,250 cars) for the entire season providing, according the FAIR, substantially increased flexibility and initiative and a consistent maximum shipping level. Recommending any specific level of volume regulation for the entire season would be inconsistent with the nature of the marketing order. The marketing order is one of flow-to-market rather than allocation and is designed to control the short term rate of flow. Further, a constant prorate level



would not reflect changes in supplies or market conditions. This approach would not provide the Committee with the opportunity to individually analyze the need for and level of regulation on a weekly basis.

Sixth, FAIR suggested establishing an early termination date for prorate at approximately February 15 to coincide with the end of freeze risk, and facilitate, according to FAIR, the objectives of the Guidelines that prorate be used guardedly and during limited portions of the season. While mid-February may usually bring an end to the risk of a serious freeze, the risk of a freeze is not the only reason to regulate during any season. The major objective is to provide an orderly flow to market of available navel oranges in order to avoid unreasonable fluctuations in supplies and prices. The 1990–91 navel orange marketing policy meets the requirements of section 907.50 of the navel orange order and conforms with the Guidelines, which call for each industry utilizing prorate recommendations to assess its own unique problems and needs in order to effectively serve the interests of both producers and consumers.

Seventh, FAIR suggested establishing a shipping schedule that allocates prorate consistent with recent historical shipping patterns, providing four-year average weekly shipments plus 10 percent as an example, with the objective of equalizing the burden of regulation felt by all handlers. The Committee uses historical patterns in developing an initial, tentative shipping schedule. However, in addition to historical patterns, it is also necessary to take into account the prospective size of the new season's crop and other factors required by the marketing order. Further, arbitrarily increasing the four-year average by any set amount would not necessarily provide a realistic reflection of available supplies or market needs. It is not clear how this alternative would equalize the burden of regulation.

Eighth, FAIR suggested establishing a shipping schedule that is equally binding on all districts. As discussed earlier, the shipping schedule as it appears in the Committee's marketing policy provides each district with equitable marketing opportunity whereby each district is provided the opportunity to ship, under volume regulation, the same proportionate amount to fresh domestic markets during the season.

Therefore, for the reasons stated, the above comments in opposition to the proposed rule, as well as the alternatives presented, are denied.

The shipping schedule set forth in this final rule has been revised, by extending the district carton figures and district percent allocation figures by one more decimal point for the purpose of accuracy. Also, the volume regulation amounts for the weeks ending on November 22, November 29, and December 6, 1990, have been omitted.

After consideration of all relevant material presented, including the Committee's recommendation, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers have already begun harvesting their 1990–91 California-Arizona navel oranges; (2) the shipping schedule is based on a marketing policy which was adopted by the Committee at open meetings; and (3) this action is needed to establish and maintain orderly marketing conditions, consistent with the declared policy of the Act.

**List of Subjects in 7 CFR Part 907**

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 907.1020 is added to read as follows:

**§ 907.1020 Navel orange regulation 720.**

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

| Week Ending | District 1 cartons/ % (000) | District 2 cartons/ % (000) | District 3 cartons/ % (000) | District 4 cartons/ % (000) | Total cartons (000) |
|---|---|---|---|---|---|
| (a) 12–13–90 | 1,824.0/91.2 | 76.0/3.8 | 85.0/3.3 | 34.0/1.7 | 2,000 |
| (b) 12–20–90 | 1,620.0/90.0 | 81.0/4.5 | 81.2/3.4 | 37.8/2.1 | 1,800 |
| (c) 12–27–90 | 766.8/85.2 | 75.6/8.4 | 28.8/3.2 | 28.8/3.2 | 900 |
| (d) 01–03–91 | 1,065.0/95.2 | 123.75/8.9 | 28.75/2.3 | 32.5/2.6 | 1,250 |
| (e) 01–10–91 | 1,443.75/87.5 | 165.0/10.0 | 13.2/0.8 | 28.05/1.7 | 1,650 |
| (f) 01–17–91 | 1,485.8/87.4 | 176.8/10.4 | 8.5/0.5 | 28.9/1.7 | 1,700 |
| (g) 01–24–91 | 1,480.7/87.1 | 181.9/10.7 | 8.5/0.5 | 28.9/1.7 | 1,700 |
| (h) 01–31–91 | 1,436.5/84.5 | 228.5/13.5 | 5.1/0.3 | 28.9/1.7 | 1,700 |
| (i) 02–07–91 | 1,445.0/85.0 | 231.2/13.6 | | 23.8/1.4 | 1,700 |
| (j) 02–14–91 | 1,453.5/85.5 | 232.9/13.7 | | 13.6/0.8 | 1,700 |
| (k) 02–21–91 | 1,453.5/85.5 | 232.9/13.7 | | 13.6/0.8 | 1,700 |
| (l) 02–28–91 | 1,544.4/85.8 | 246.6/13.7 | | 9.0/0.5 | 1,800 |
| (m) 03–07–91 | 1,634.0/86.0 | 260.3/13.7 | | 5.7/0.3 | 1,900 |
| (n) 03–14–91 | 1,637.6/86.2 | 262.2/13.8 | | | 1,900 |
| (o) 03–21–91 | 1,637.6/86.2 | 262.2/13.8 | | | 1,900 |
| (p) 03–28–91 | 1,637.6/86.2 | 262.2/13.8 | | | 1,900 |
| (q) 04–04–91 | 1,637.6/86.2 | 262.2/13.8 | | | 1,900 |
| (r) 04–11–91 | 1,637.6/86.2 | 262.2/13.6 | | | 1,900 |
| (s) 04–18–91 | 1,641.6/86.4 | 258.4/13.6 | | | 1,900 |
| (t) 04–25–91 | 1,556.2/86.4 | 244.8/13.6 | | | 1,800 |
| (u) 05–02–91 | 1,556.2/86.4 | 244.8/13.6 | | | 1,800 |
| (v) 05–09–91 | 1,555.2/86.4 | 244.8/13.8 | | | 1,800 |
| (w) 05–16–91 | 1,297.5/86.5 | 202.5/13.5 | | | 1,500 |
| (x) 05–23–91 | 1,038.0/86.5 | 162.0/13.5 | | | 1,200 |

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| Week Ending | District 1 cartons/ % (000) | District 2 cartons/ % (000) | District 3 cartons/ % (000) | District 4 cartons/ % (000) | Total cartons (000) |
|---|---|---|---|---|---|
| (y) 05-30-91 | 521.4/86.9 | 78.6/13.1 | | | 600 |
| (z) 06-06-91 | 218.5/87.6 | 30.5/12.2 | | | 250 |
| (aa) 06-13-91 | 91.0/91.0 | 9.0/9.0 | | | 100 |

Dated: November 30, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-28484 Filed 12-4-90; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-207-AD; Amdt. 39-6834]**

## Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737-300, -400, and -500 series airplanes, which requires visual inspection of certain wire bundles located above the overhead ceiling panels for damage due to chafing against ceiling panel hardware, and repair, if necessary. This amendment is prompted by a report of burned wire bundles caused by short circuits resulting from chafed wiring. This condition, if not detected and corrected, could result in fire and smoke in the passenger cabin and cockpit.

**EFFECTIVE DATE:** December 21, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen S. Oshiro, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, telephone (206) 227-2793. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** The FAA has recently received a report of burned wire bundles located above the overhead ceilings panels between fuselage stations 270 and 300 on a Model 737-300 series airplane. One operator reported that a strong burning odor was detected by the flight crew of a Model 737-300 airplane shortly after resetting several circuit breakers as part of a preflight checklist. Investigation has revealed that the odor resulted from the burning of wires above an overhead interior ceiling panel located between fuselage stations 270 and 300. The burned wires were the result of electrical short circuits caused by damage to wire insulation due to chafing of the wire bundle with the ceiling panel latch mechanism. This condition, if not detected and corrected, could result in fire and smoke in the cockpit and passenger cabin.

The ceiling panel design and wire bundle installation is common to the Model 737-300, -400, and -500 series airplanes. Therefore, the potentially unsafe condition could exist on any of these models.

The FAA has reviewed and approved Boeing Service Letter 737-SL-25-58, dated August 3, 1988, which describes procedures for the inspection and, if necessary, addition of protective sleeving. The manufacturer is developing a modification to the ceiling panel to prevent chafing of the wire bundles. The FAA may consider further rulemaking to terminate the repetitive inspections.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires visual inspection of wire bundles located above overhead ceiling panels between fuselage stations 270 and 300 for damage due to chafing against ceiling panel hardware, and repair if necessary.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39-[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:



**Boeing:** Applies to Model 737-300, -400, and -500 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the occurrence of fire and smoke in the passenger cabin and cockpit, accomplish the following:

A. Within the next 60 days after the effective date of this AD, visually inspect the wire bundles above the overhead ceiling panels between fuselage stations 270 and 300 for damage due to chafing or interference with ceiling panel bracketry and/or latch mechanisms. If wire damage is found, prior to further flight, repair in accordance with Boeing Standard Wiring Practices Document and add Expando PT or equivalent protective sleeving using methods specified in Boeing Service Letter 737-SL-24-58, dated August 3, 1988.

B. Repeat the inspection procedure required by paragraph A. of this AD at intervals not to exceed 120 days.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

This amendment becomes effective December 21, 1990.

Issued in Renton, Washington, on November 20, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28503 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

**[Docket No. 90-NM-147-AD; Amendment 39-6827]**

## Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all de Havilland Model DHC-7 series airplanes, which required repetitive visual inspections of the right-hand main landing gear (MLG) frame and attachment bolts to detect heat damage, and repair, if necessary. This condition, if not corrected, could result in degredation of the structural integrity of the right-hand MLG frame and attachment bolts and possible malfunction of the MLG. This action requires the installation of a modification which relocates the external power grounding stud to the nacelle longeron, and consititutes terminating action for the repetitive inspections.

**EFFECTIVE DATE:** January 14, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garrat Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Maher, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-09-02, Amendment 39-6579 (55 FR 14411, April 18, 1990), applicable to all de Havilland Model DHC-7 series airplanes, to require the installation of a modification which relocates the external power grounding stud to the nacelle longeron, and constitutes terminating action for the repetitive inspections, was published in the Federal Register on September 17, 1990 (55 FR 38081).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received in response to the proposal; both commenters supported the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The modification kit will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,040.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6579 (55 FR 14411, April 18, 1990), AD 90-09-02, with the following new airworthiness directive:

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**Boeing of Canada, LTD., de Havilland Division:** Applies to all de Havilland Model DHC-7 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the right main landing gear (MLG), accomplish the following:

A. Within 100 landings after May 29, 1990 (the effective date of AD 90-09-02), and thereafter at intervals not to exceed 500 landings, conduct a visual inspection of the right MLG frame and attachment bolts, in accordance with paragraph A. of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-34-58, Revision B, dated June 23, 1989.

1. If no damage is found, reassemble parts and return the airplane to service.

2. If damage is found, replace with serviceable parts prior to further flight, in accordance with the service bulletin.

B. Within 180 days after the effective date of this AD, install Modification No. 7/2577, which relocates the external power grounding stud, in accordance with paragraph B of the Accomplishment Instructions in de Havilland Service Bulletin No. 7-34-58, Revision B, dated June 23, 1989. Installation of this modification constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170.

**Note:** The request should be submitted directly to the Manager, New York Aircraft ACO, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE-170.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

This amendment supersedes Amendment 39-6579, AD 90-09-02.

This amendment becomes effective January 14, 1991.

Issued in Renton, Washington, on November 27, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28504 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 90-NM-247-AD; Amdt. 39-6826]**

## Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 0100 series airplanes, which requires repetitive inspections to detect missing, broken, or defective tie bolts and nuts in the main landing gear (MLG) wheel assemblies, and replacement of defective parts, if necessary; and eventual replacement of the main landing gear (MLG) wheel assemblies with modified wheel assemblies. This amendment is prompted by reports of MLG wheel assembly bolt failures. This condition, if not corrected, could result in wheel failure, reduced steering capability, loss of braking performance, structural damage, and possible injury to persons.

**EFFECTIVE DATE:** December 24, 1990.

**ADDRESSES:** The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314 and Aircraft Braking Systems Corporation, 1204 Massillon Road, Akron, Ohio 44306-4186. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of The Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Fokker Model F-28 Mark 0100 series airplanes. There have been several reports of the main landing gear (MLG) wheel assembly tie bolts failing on Fokker Model F-28 Mark 0100 series airplanes. In July 1990, Aircraft Braking Systems Corporation, the manufacturer of the wheel assemblies, issued a service bulletin which provides instructions to modify the MLG wheel assemblies and includes procedures to install larger diameter tie bolts. On September 28, 1990, an inboard wheel failed on a Model F-28 Mark 0100 while the airplane was taxiing prior to takeoff. Investigation revealed that all of the tie bolts on this airplane's unmodified MLG wheel assembly had failed. This condition, if not corrected, could result in wheel failure, reduced steering capability, loss of braking performance, structural damage, and possible injury to passengers or persons on the ground.

Fokker has issued Service Bulletin No. F100-32-044, dated October 24, 1990, which describes procedures to replace the MLG wheel assemblies with modified wheel assemblies. The Fokker service bulletin references Aircraft Braking Systems Corporation Service Bulletin Fo-100-32-24, dated July 30, 1990, for additional instructions on how to accomplish the modification.

The RLD has issued Airworthiness Directive (AD) BLA No. 90-122 addressing this subject. That AD requires (1) repetitive inspections of the wheels for missing bolts prior to each flight; (2) inspection of the tie bolts for cracks at each tire change, and replacement of the bolts, if necessary; (3) an inspection of all bolts and nuts for crossed threading and of their self-locking feature for minimum torque, and replacement of all defective parts, if necessary; and (4), as the final requirement, the eventual installation of wheels modified in accordance with Fokker Service Bulletin F100-32-044.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive visual inspections for missing bolts, magnetic particle inspections to detect cracked MLG wheel assembly tie bolts, replacement of bolts, if necessary, and eventual installation of modified MLG wheel assemblies; in accordance with the service bulletins previously described. The actions required by this AD parallel the substance of those required by the AD issued by the RLD, as described above.



Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Applies to all Model F-28 Mark 0100 series airplanes, equipped with main wheel assemblies Part Nos. 5006131-3 and 5006131-3, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent wheel failure, reduced steering capability, loss of braking performance, structural damage and possible injury to people, accomplish the following:

A. Within 6 days after the effective date of this AD, and thereafter prior to each flight, perform a visual inspection of the main landing gear (MLG) wheel assemblies for missing or cracked tie bolts. If any bolt is broken or missing, prior to further flight, replace the wheel with a serviceable wheel.

B. Upon removal of any wheel in accordance with paragraph A. of this AD or for a tire change, accomplish the following:

1. After thorough cleaning, perform a magnetic particle inspection of all main wheel tie bolts for cracks.

a. If a bolt is cracked, prior to further flight replace the cracked bolt.

b. If a bolt is broken or missing, prior to further flight, replace the bolt and the two adjacent bolts (one on each side).

c. If more than one bolt is broken or missing, prior to further flight, replace all bolts.

2. Inspect all bolts and nuts for crossed threads, and the self-locking feature for a minimum torque of 18 inch-pounds (2.0 Nm). If defective parts are found, prior to further flight, replace all defective parts.

Within 60 days after the effective date of this AD, replace the MLG wheel assemblies, having Part Nos. 5006131-2 or 5006131-3, with modified wheel assemblies, Part Number 5006131-4, in accordance with Fokker Service Bulletin F100-32-044, dated October 24, 1990. Installation of the modified wheel assemblies constitutes terminating action for the repetitive inspections required by paragraphs A. and B. of this AD.

**Note:** The Fokker service bulletin references Aircraft Braking System Corporation Service Bulletin Fo-100-32-24, dated June 30, 1990, for additional instructions.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314 or Aircraft Braking Systems Corporation, 1204 Massillon Road, Akron, Ohio 44306-4186. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 27, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28505 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket Number 90-ACE-15]**

## Alteration of Transition Area—Columbia, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal Action is to alter the 700-foot transition area at Columbia, Missouri. The E.W. Cotton Woods Memorial Airport has changed status from a public-use Instrument Flight Rules (IFR) Airport to a private-use Visual Flight Rules (VFR) Airport. Therefore, the purpose of this amendment is to remove that portion of the Columbia, Missouri, transition area that is based on the E.W. Cotton Woods Memorial Airport.

**EFFECTIVE DATE:** 0901 u.t.c. February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

**SUPPLEMENTARY INFORMATION:**

### History

On September 11, 1990, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of part 71 of the Federal Aviation Regulations so as to alter the transition area at Columbia, Missouri (55 FR 37331). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in

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Handbook 7400.6F, dated January 2, 1990.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations alters the 700-foot transition area at Columbia, Missouri. The E.W. Cotton Woods Memorial Airport, Columbia, Missouri, has changed status from public-use IFR to private-use VFR. Accordingly, action is taken herein to remove that portion of the Columbia, Missouri, 700-foot transition area which is based on the E.W. Cotton Woods Memorial Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.18 [Amended]**

2. Section 71.181 is amended as follows:

**Columbia, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within an 8½ mile radius of Columbia Regional Airport (latitude 38°48'49" N., longitude 092°13'12" W.); within 2½-miles each side of the Hallsville, Missouri, VORTAC 193° radial extending from the 8½-miles radius area to 10 miles south of the VORTAC; excluding the portion which overlies the Jefferson City, Missouri, 700 foot floor transition area.

Issued in Kansas City, Missouri, on November 1, 1990.

**William Behan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 90-28506 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 89-ACE-32]**

**Alteration of VOR Federal Airway V-506; MO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revokes a segment of VOR Federal Airway V-506 between Vichy, MO, and Springfield, MO. An FAA traffic survey for that area has indicated negligible use for that segment of V-506. In our effort to reduce chart clutter, this airway segment is revoked.

**EFFECTIVE DATE:** 0901 u.t.c., February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

**History**

On October 25, 1989, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a segment of VOR Federal Airway V-506 located between Vichy, MO, and Springfield, MO (54 FR 43433). The FAA has determined that this segment of V-506 is virtually never used or requested and is therefore a candidate for revocation. This action reduces chart clutter. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations revokes a segment of VOR Federal Airway V-506 between Vichy, MO, and Springfield, MO. An FAA traffic survey for that area indicated negligible use for that segment of V-506. In our efforts to reduce chart clutter, this airway segment if revoked.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR federal airways.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-506 [Amended]**

By removing the words "Springfield; INT Springfield 043° and Vichy, MO, 254° radials; Vichy," and substituting the words "to Springfield."

Issued in Washington, DC, on November 19, 1990.

**Harold W. Becker,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 90-28507 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 333, 444, and 448**

**[Docket No. 76N-482B]**

**RIN 0905-AA09**

**Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule that amends the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. This amendment allows several antibiotic combinations of bacitracin zinc, polymyxin B sulfate, and neomycin sulfate to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR parts 444 and 448 to be consistent with the monograph for OTC first aid antibiotic drug products. This amendment of the final monograph is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Effective December 5, 1991; a written notice of participation and request for hearing on the amendments to 21 CFR 444.542l, 448.513a, and 448.513c by January 4, 1991; data, information, and analyses to justify a hearing on the amendments to 21 CFR 444.542l, 448.513a, and 448.513c by February 4, 1991.

**ADDRESSES:** Written comments or requests for a hearing on the amendments to 444.542l, 448.513a, and 448.513c to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products in subpart B of 21 CFR part 333. The monograph provided for combinations of bacitracin ointment or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (21 CFR 333.120(b))(1) and (2)). In the **Federal Register** of August 16, 1989 (54 FR 34188), FDA issued a proposed amendment, and in the **Federal Register** of March 15, 1990 (55 FR 9721), FDA issued a final amendment to the final monograph for OTC first aid antibiotic drug products to allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient (§ 333.120(b)(3)).

On October 30, 1989, FDA received three citizen petitions (Docket Nos. 76N-482B/CP0001, CP0002, and CP0003), requesting the amendment of 21 CFR part 333 to include a suitable local anesthetic in several antibiotic combinations containing bacitracin zinc, polymyxin B sulfate, and neomycin sulfate. Specifically, the petitions requested that the following paragraphs be added to § 333.120(b):

(3) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(ii) 400 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient;

*Provided*, that it meets the tests and methods of assay in § 448.513c(b).

(4) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin zinc, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base: *Provided*, that it meets the tests and methods of assay in § 448.513a(b).

(5) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle: *Provided*, That it meets the tests and methods of assay in § 444.542l(b).

The citizen petitions noted that each of the combinations of first aid antibiotic active ingredients and local anesthetic active ingredients listed under 21 CFR 333.120(b) contain the ingredient bacitracin. The petitions contended that formulations containing bacitracin and formulations containing bacitracin zinc may be interchanged freely with no adverse effects on safety or efficacy. The petitions noted that bacitracin zinc, as well as bacitracin, have been utilized in OTC drug products for many years, and the petitions argued that it is unnecessary to restrict the usage of the combination together with a topical anesthetic to the bacitracin base alone.

After reviewing the citizen petitions, the agency concluded that there was sufficient evidence to generally recognize the requested combinations as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. The agency's proposed regulation, in the form of a proposed amendment of the final monograph for OTC first aid antibiotic drug products, was published in the **Federal Register** of June 6, 1990 (55 FR 23450). In that document, the agency proposed to amend 21 CFR 333.120, 444.542l, 448.513a, and 448.513c to allow several antibiotic combinations of bacitracin zinc, polymyxin B sulfate, and neomycin sulfate to include a suitable local anesthetic as an active ingredient.

One of the petitions requested three ointment combinations containing various potencies of bacitracin zinc-neomycin sulfate-polymyxin B sulfate. Two of the potencies corresponded to the potencies listed in § 333.120 (a)(5)(ii) and (a)(5)(iii) (21 CFR 333.120 (a)(5)(ii) and (a)(5)(iii)) for bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment. However, the petition did not request a local anesthetic be allowed with the monograph combination in § 333.120(a)(5)(i) and requested another combination not included in the monograph. That combination contained 500 units of bacitracin zinc, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B. The agency considered this additional potency to be sufficiently similar to those included in the monograph and proposed to add it to the monograph as new § 333.120(a)(5)(iii). The agency proposed to redesignate § 330.120(a)(5)(iii) as paragraph (a)(5)(iv) and to add bacitracin zinc-neomycin sulfate-polymyxin B sulfate-local anesthetic combinations in § 333.120(b)(1) (21 CFR 333.120(b)(1)) that correspond to the bacitracin zinc-neomycin sulfate-polymyxin B sulfate combinations without a local anesthetic in § 333.120(a)(5). Because a previous amendment to the final monograph added paragraph (3) to § 333.120(b) (55 FR 9721 at 9722; March 15, 1990), the agency numbered the new sections

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being proposed for addition to § 333.120 as paragraphs (b)(4) through (b)(6) instead of paragraphs (b)(3) through (b)(5) as requested by the petitions. The potency of bacitracin zinc in these new sections will be listed as 500 units of bacitracin, not 500 units of bacitracin zinc as requested by the petitions, for consistency with other portions of the monograph. The agency also proposed to amend §§ 444.542l(a)(1), 448.513a(a)(1), and 448.513c(a)(1) to provide for the inclusion of a local anesthetic in these products. Interested persons were invited to submit written comments by August 7, 1990, and to submit requests for an informal conference on the proposed changes in 21 CFR 444.542l, 448.513a, and 448.513c by July 9, 1990.

No comments were received in response to the proposed amendments and no requests for an informal conference were received in response to the proposed amendments to 21 CFR 444.542l, 448.513a, and 448.513c.

As discussed in the proposal (55 FR 23450 at 23452), the agency advised that any final rule resulting from the proposal would be effective 12 months after its date of publication in the **Federal Register**. Therefore, on or after December 5, 1991, any OTC drug product that is not in compliance with the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 23450 at 23452). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this amendment of the final rule for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by the amendments to 21 CFR 444.542l, 448.513a, and 448.513c may file objections to them and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) On or before January 4, 1991, a written notice of participation and request for hearing, and (2) on or before February 4, 1991, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch (address above)

The procedures and requirements governing this order, a notice of participation and request for a hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

*21 CFR Part 333*

First aid antibiotic drug products, Labeling, Over-the-counter drugs.

*21 CFR Part 444*

Antibiotics.

*21 CFR Part 448*

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in parts 333, 444, and 448 as follows:

## PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 333.120 is amended by redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and by adding new paragraphs (a)(5)(iii), (b)(4), (b)(5), and (b)(6) to read as follows:

**§ 333.120 Permitted combinations of active ingredients.**

* * * * *

(a) * * *

(5) * * *

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B; or

* * * * *

(b) * * *

(4) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, 8,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or



(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin, B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredieint;

*Provided,* That it meets the tests and methods of assay in § 448.513c(b) of this chapter.

(5) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base: *Provided,* That it meets the tests and methods of assay in § 448.513a(b) of this chapter.

(6) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle: *Provided,* That it meets the tests and methods of assay in § 444.542l(b) of this chapter.

## PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR part 444 continues to read as follows:

**Authority:** Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 444.542l is amended by revising paragraph (a)(1) to read as follows:

**§ 444.542l Neomycin sulfate-polymyxin B sulfate cream.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate cream is a cream containing, in each gram, neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 10,000 units of polymyxin B in a suitable and harmless vehicle. It may contain a suitable local anesthetic. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

* * * * *

## PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 448 continues to read as follows:

**Authority:** Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 448.513a is amended by revising paragraph (a)(1) to read as follows:

**§ 448.513a Bacitracin zinc-polymyxin B sulfate ointment.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate ointment contains bacitracin zinc and polymyxin B sulfate in a suitable and harmless ointment base. It may contain a suitable local anesthetic. Each gram contains 500 units of bacitracin and 10,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

7. Section 448.513c is amended by revising paragraph (a)(1) to read as follows:

**§ 448.513c Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment; bacitracin zinc-neomycin sulfate-polymyxin B sulfate hydrocortisone ointment.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* This drug, in a suitable and harmless ointment base, contains in each gram the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, and 8,000 units of polymyxin B; or

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B, with or without 10 milligrams of hydrocortisone; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B.

It may contain a suitable local anesthetic except for combinations in paragraph (a)(1)(ii) of this section that contain hydrocortisone. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its neomycin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1) of this chapter. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: November 1, 1990.

**James S. Benson,**

*Acting Commissioner of Food and Drugs.*

[FR Doc. 90–28528 Filed 12–4–90; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 235**

**[Docket No. R–90–1606; FR–2940–F–01]**

**Mortgage Insurance—Changes in Interest Rates**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations reduces the maximum allowable interest rate on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this

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program into line with competitive market rates.

**EFFECTIVE DATE:** November 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** James B. Mitchell, Director, Financial Services Division, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-4325. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The following amendments to 24 CFR chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 235 insurance programs has been lowered from 10.00 percent to 9.50 percent.

Until recently, HUD regulated interest rates not only for the section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the section 235 Program. The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56286 (1982), amending 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small adjustment in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance Program numbers are 14.108, 14.117, and 14.120.

**List of Subjects in 24 CFR Part 235**

Condominiums, Cooperatives, Low- and Moderate-Income housing, Mortgage insurance, Homeownership, Grant programs; Housing and community development.

Accordingly, the Department amends 24 CFR part 235 as follows:

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act [12 U.S.C. 1715b, 1715z]; section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum, except that where an application for commitment was received by the Secretary before November 19, 1990, the loan may bear interest at the maximum rate in effect at the time of application

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

**§ 235.540 Maximum interest rate.**

(a) On or before November 19, 1990, the loan shall bear interest at the rate agreed on by the lender and the borrower, which rate shall not exceed 9.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: November 19, 1990.

Arthur J. Hill,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 90-28456 Filed 12-4-90; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[T.D. 8320]

RIN 1545-AM55

### Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning the treatment by a regulated investment company (RIC) of a net capital loss, a net long-term capital loss, or a net foreign currency loss attributable to periods after October 31 of its taxable year (a "post-October loss"). The applicable tax law was amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The final regulations provide guidance relating to the treatment of a post-October loss in determining a RIC's



taxable income, the amount that a RIC may designate as capital gain dividends, and the RIC's earnings and profits.

**EFFECTIVE DATE:** The regulations are effective for taxable years of a regulated investment company ending after October 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:FI&P:2), or telephone (202) 566-3828 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1094. The estimated annual burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require greater or less time, depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

On January 31, 1990, the **Federal Register** published a notice of proposed rulemaking (55 FR 3231) [FI-105-88] by cross-reference to temporary regulations [T.D. 8287] published in the **Federal Register** for the same day (55 FR 3211) under section 852 of the Internal Revenue Code of 1986. The temporary and proposed regulations reflected the addition of Code section 852(b)(8) and the amendment of Code sections 852(b)(3) and 852(c) by sections 651(b)(2) and (3) of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2085) and sections 1006(1)(3), (4), and (7) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647; 102 Stat. 3342).

The regulations were intended to improve the coordination between the income tax provisions applicable to a RIC under section 852 and the provisions of section 4982, which imposes an excise tax on a RIC that fails to distribute a certain amount of its income. Section 4982 uses a 12-month period ending on October 31 in determining capital gain net income subject to the excise tax distribution requirement for the calendar year. To avoid certain mismatches between the distribution requirements under the excise tax provisions and those under the income tax provisions, section 852 provides for special income tax treatment of a post-October loss.

The regulations provided guidance relating to the determination of the amount that a RIC may designate as capital gain dividends and to the determination of earnings and profits by a RIC when it has a post-October loss.

In addition, the regulations provided procedures by which a RIC could elect to defer part or all of a post-October loss to the succeeding year for purposes of determining its taxable income. The regulations also provided guidance relating to the proper calculation of taxable income and earnings and profits for the years affected by the election.

One public comment was received concerning these regulations. No public hearing was requested, and accordingly none was held. After consideration of the written comment, the temporary regulations are adopted as revised by this Treasury Decision and the notice of proposed rulemaking is withdrawn.

**Public Comment**

The commentator suggested that § 1.852-11T(c) (relating to the definition of a post-October loss) be amended to clarify that post-October declines in value on instruments that are required to be marked to market on October 31 for section 4982 purposes will be treated as post-October losses.

The conference report to the Tax Reform Act of 1986 states that "the conferees understand that in applying this rule [for determining the RIC's capital gain net income for excise tax purposes], the period ending October 31 of each calendar year would be treated as the taxpayer's taxable year for purposes of the capital loss carryover provisions and for purposes of the year-end straddle and mark to market rules." H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-243 n.29. Thus, all provisions that normally apply in determining a RIC's capital gains or losses for taxable income purposes on the last day of its taxable year also apply in determining its capital gain net income for excise tax purposes on October 31. In the case of assets that are required to be marked to market, for example, the amounts determined on October 31 then become the benchmark for future determinations of gains or losses for excise tax (but not income tax) purposes. Because of this, it is possible for an asset to have two separate adjusted bases—one for income tax purposes and another for excise tax purposes. This does not pose a problem if there is no post-October loss for the taxable year. However, if there is a post-October loss, there must be parallel treatment of gains and losses for both income tax and excise tax purposes so that the RIC's earnings and profits for the year will be adequate to treat all amounts distributed for excise tax purposes as dividends.

Accordingly, § 1.852-11(c) of the final regulations provides that any item (other than a capital loss carryover) that is required to be taken into account or any rule that must be applied, for purposes of section 4982, on October 31 as if it were the last day of the RIC's taxable year must also be taken into account or applied both on October 31 and again on the last day of the RIC's taxable year for purposes of determining whether the RIC has a post-October loss for the taxable year. Thus, for example, if losses are not taken into account for purposes of section 4982 due to application of section 1092 on October 31 but are taken into account for purposes of determining the RIC's taxable income for the taxable year, the losses will be treated as sustained during the post-October period of the taxable year for purposes of determining whether the RIC has a post-October capital loss.

If, using this methodology, the RIC has a post-October loss, any item that must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the RIC's taxable year must also be marked to market on October 31 and again on the last day of RIC's taxable year for purposes of determining its taxable income. This rule does not apply, however, for purposes of determining the RIC's gross income for purposes of sections 851(b)(2) or (3).

The commentator also suggested that § 1.852-11T(f) (relating to the elective deferral of post-October capital losses and post-October currency losses for purposes of determining taxable income) be amended to clarify that the deferral of a post-October loss for taxable income purposes causes such losses to be treated as arising on the first day of

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the RIC's next fiscal year for purposes of computing the capital loss carryforward period. In response to this comment, the regulations have been revised to clarify that a post-October loss deferred for purposes of determining a RIC's taxable income is treated as having actually arisen on the first day of the RIC's taxable year immediately succeeding the loss year not only for the loss year and the immediately succeeding year, but also for all years following. See § 1.853–11(f).

The commentator further suggested that § 1.852–11T(j) (relating to the transition rules) be amended to (1) permit year-to-year netting of overdistributions and under-distributions, and (2) permit a retroactive capital gain designation to be made solely for purposes of computing the RIC-level dividends paid deduction.

The purpose of the RIC excise tax is to match the timing of shareholders' inclusion in taxable income of dividends received from a RIC to the calendar year in which the RIC earned the income. A RIC that has been forced to over-distribute or that did not designate the maximum amount allowable as capital gain dividends because no election was available at the time may nevertheless have paid out in total more than its actual income. Accordingly, the regulations are amended to provide that a RIC may "pay" a retroactive dividend under rules similar to the provisions for throwback (spillover) dividends under section 855 of the Code, either out of an overdistribution arising in the succeeding year as a result of the retroactive election or by paying a dividend on or before December 31, 1990. The regulations also provide that a RIC may recharacterize previously distributed dividends as capital gain dividends for purposes of determining its dividends paid deduction for the years affected.

Dividends "paid" by either method may be either ordinary or capital, within the limitations prescribed by section 852(b)(3)(C) of the Code and § 1.852–11(e) of the regulations. A change in the timing or character of distributions may, however, apply for certain other purposes relating to dividend distributions for years affected by the retroactive election (as, for example, the determination of the RIC's distribution requirements under section 4982).

Furthermore, as of the date of these amendments, some RICs may have already paid a retroactive dividend in accordance with the rules set forth in temporary regulations § 1.852–11T. Although the final regulations set forth in this Treasury Decision require a RIC to make an irrevocable election in order to pay a retroactive dividend, the manner in which a RIC must make a retroactive election and pay a retroactive dividend under § 1.852–11T is the same as the method of making the election to pay an additional dividend required in the final rules. Therefore, if a RIC complies with the provisions of temporary regulations § 1.852–11T(j), it also complies with the provisions of § 1.852–11(j).

The regulations have also been revised to permit a retroactive capital gain designation to be made for purposes of computing the RIC-level dividends paid deduction.

Finally, the commentator recommended that the operation of the transition rules not affect the tax treatment of RIC shareholders. The Internal Revenue Service recognizes that the retroactive adjustments to RIC income and deductions are necessary because the regulations regarding deferral of post-October losses were not issued at the time the distributions were originally made. Thus, to the extent that a RIC's reporting position changes as a result of making a retroactive election, the Service views the adjustments made as being purely a matter of RIC accounting and having no effect on its shareholders.

The Internal Revenue Service has determined however that no amendment to the regulations is necessary under the circumstances and therefore no amendment to the regulations has been adopted.

### Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Although a notice of proposed rule-making that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Drafting Information

The principal author of these regulations is Lauren G. Shaw of the Office of Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

### List of Subjects

*26 CFR Part 1.851–1—1.900–1*

Income taxes, Investment companies, Real estate investment trusts.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, title 26, parts 1 and 602 of the Code of Federal Regulations is amended as follows:

## PART 1—INCOME TAX; TAXABLE YEARS ENDING AFTER OCTOBER 31, 1987

Paragraph 1. The authority for part 1 is amended by removing the entry for § 1.852–11T and adding the following entry for § 1.852–11:

**Authority:** 26 U.S.C. 7805; * * * Section 1.852–11 is also issued under 26 U.S.C. 852(b)(3)(C), 852(b)(8), and 852(c).

**§ 1.852–11T [Redesignated as § 1.852–11]**

Par. 2. Section 1.852–11T is redesignated as § 1.852–11 and the word "(Temporary)" is removed from the end of the section heading.

Par. 3. § 1.852–11, as redesignated, is amended as follows:

1. The words "paragraph (c)(1) of this section" are removed from each place they appear in paragraphs (e)(2)(i), (f)(3)(i), and (f)(3)(ii)(A) and the words "paragraph (c)(1)(i) of this section" are added in their place.

2. The words "paragraph (c)(2) of this section" are removed from each place they appear in paragraphs (e)(2)(ii), (f)(3)(iii), and (f)(3)(iv) and the words "paragraph (c)(1)(ii) of this section" are added in their place.

3. The words "paragraph (c)(1) or (c)(2) of this section" are removed from paragraph (e)(3) and the words "paragraph (c)(1)(i) or (c)(1)(ii) of this section" are added in their place.

4. The words "from sales or exchanges after October 31 of" are removed from each place they appear in paragraphs (e)(2)(i), (e)(2)(ii), (f)(3)(i), (f)(3)(ii)(A), (f)(3)(iii), (f)(3)(iv), and (j)(1) and the words "taken into account in computing the post-October capital loss for" are added in their place.

5. The words "attributable to sales or exchanges after October 31 of" are removed from paragraph (f)(3)(ii)(B) and the words "taken into account in computing the post-October capital loss for" are added in their place.



6. The words "from sales or exchanges during" are removed from example (2) of paragraph (h) and the word "for" is added in their place.

7. The words "from sales or exchanges made during" are removed from examples (5) and (8) of paragraph (h) and the word "for" is added in their place.

8. The words "attributable to transactions after October 31 of" are removed from each place they appear in paragraphs (f)(3)(v) and (f)(3)(vi) and the words "taken into account in computing the post-October currency loss for" are added in their place.

9. The words "transactions during" are removed from example (11) of paragraph (h).

10. Paragraphs (a), (c), (d)(1), (f)(4), (j)(2)(i), (j)(4), and (j)(5) are revised to read as follows:

**§ 1.852–11 Treatment of certain losses attributable to periods after October 31 of a taxable year.**

(a) *Outline of provisions.* This paragraph lists the provisions of this section.

(a) Outline of provisions.
(b) Scope.
(1) In general.
(2) Limitation on application of section.
(c) Post-October capital loss defined.
(1) In general.
(2) Methodology.
(3) October 31 treated as last day of taxable year for purpose of determining taxable income under certain circumstances.
(i) In general.
(ii) Effect on gross income.
(d) Post-October currency loss defined.
(1) Post-October currency loss.
(2) Net foreign currency loss.
(3) Foreign currency gain or loss.
(e) Limitation on capital gain dividends.
(1) In general.
(2) Amount taken into account in current year.
(i) Net capital loss.
(ii) Net long-term capital loss.
(3) Amount taken into account in succeeding year.
(f) Regulated investment company may elect to defer certain losses for purposes of determining taxable income.
(1) In general.
(2) Effect of election in current year.
(3) Amount of loss taken into account in current year.
(i) If entire amount of net capital loss deferred.
(ii) If part of net capital loss deferred.
(A) In general.
(B) Character of capital loss not deferred.
(iii) If entire amount of net long-term capital loss deferred.
(iv) If part of net long-term capital loss deferred.
(v) If entire amount of post-October currency loss deferred.
(vi) If part of post-October currency loss deferred.
(4) Amount of loss taken into account in succeeding year and subsequent years.
(5) Effect on gross income.
(g) Earnings and profits.
(1) General rule.
(2) Special rule—treatment of losses that are deferred for purposes of determining taxable income.
(h) Examples.
(i) Procedure for making election.
(1) In general.
(2) When applicable instructions not available.
(j) Transition rules.
(1) In general.
(2) Retroactive election.
(i) In general.
(ii) Deadline for making election.
(3) Amended return required for succeeding year in certain circumstances.
(i) In general.
(ii) Time for filing amended return.
(4) Retroactive dividend.
(i) In general.
(ii) Method of making election.
(iii) Deduction for dividends paid.
(A) In general.
(B) Limitation on ordinary dividends.
(C) Limitation on capital gain dividends.
(D) Effect on other years.
(iv) Earnings and profits.
(v) Receipt by shareholders.
(vi) Foreign tax election.
(vii) Example.
(5) Certain distributions may be designated retroactively as capital gain dividends.
(k) Effective date.

* * * * *

(c) *Post-October capital loss defined*—(1) *In general.* For purposes of this section, the term *post-October capital loss* means—

(i) Any net capital loss attributable to the portion of a regulated investment company's taxable year after October 31; or

(ii) If there is no such net capital loss, any net long-term capital loss attributable to the portion of a regulated investment company's taxable year after October 31.

(2) *Methodology.* The amount of any net capital loss or any net long-term capital loss attributable to the portion of the regulated investment company's taxable year after October 31 shall be determined in accordance with general tax law principles (other than section 1212) by treating the period beginning on November 1 of the taxable year of the regulated investment company and ending on the last day of such taxable year as though it were the taxable year of the regulated investment company. For purposes of this paragraph (c)(2), any item (other than a capital loss carryover) that is required to be taken into account or any rule that must be applied, for purposes of section 4982, on October 31 as if it were the last day of the regulated investment company's taxable year must also be taken into account or applied in the same manner as required under section 4982, both on October 31 and again on the last day of the regulated investment company's taxable year.

(3) *October 31 treated as last day of taxable year for purpose of determining taxable income under certain circumstances*—(i) *In general.* If a regulated investment company has a post-October capital loss for a taxable year, any item that must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the regulated investment company's taxable year must also be marked to market on October 31 and again on the last day of the regulated investment company's taxable year for purposes of determining its taxable income. If the regulated investment company does not have a post-October capital loss for a taxable year, the regulated investment company must treat items must be marked to market for purposes of section 4982 on October 31 as if it were the last day of the regulated investment company's taxable year as marked to market only on the last day of its taxable year for purposes of determining its taxable income.

(ii) *Effect on gross income.* The marking to market of any item on October 31 of a regulated investment company's taxable year for purposes of determining its taxable income under paragraph (c)(3)(i) of this section shall not affect the amount of the gross income of such company for such taxable year for purposes of section 851(b)(2) or (3).

(d) *Post-October currency loss defined.* For purposes of this section—

(1) *Post-October currency loss.* The term *post-October currency loss* means any net foreign currency loss attributable to the portion of a regulated investment company's taxable year after October 31. For purposes of the preceding sentence, principles similar to those of paragraphs (c)(2) and (c)(3) of this section shall apply.

* * * * *

(f) * * *

(4) *Amount of loss taken into account in succeeding year and subsequent years.* If a regulated investment company has a post-October capital loss or a post-October currency loss for any taxable year and an election under paragraph (f)(1) is made for that year, then, for purposes of determining the taxable income of the company for the succeeding year and all subsequent years, all capital gains and losses taken into account in determining the post-October capital loss, and all foreign currency gains and losses taken into

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account in determining the post-October currency loss, that are not taken into account under the rules of paragraph (f)(3) of this section in determining the taxable income of the regulated investment company for the taxable year in which the loss arose shall be treated as arising on the first day of the succeeding year.

* * * * *

(j) * * *

(2) *Retroactive election*—(i) *In general.* A regulated investment company may make an election (a "retroactive election") under paragraph (f)(1) for a taxable year with respect to which it has filed an income tax return on or before May 1, 1990 (a "retroactive election year") by filing an amended return (including any necessary schedules) for the retroactive election year reflecting the appropriate amounts and by attaching a written statement to the return that complies with the requirements of paragraph (i)(2) of this section.

* * * * *

(4) *Retroactive dividend*—(i) *In general.* A regulated investment company that makes a retroactive election under this section for a retroactive election year may elect to treat any dividend (or portion thereof) declared and paid (or treated as paid under section 852(b)(7)) by the regulated investment company after the retroactive election year and on or before December 31, 1990 as having been paid during the retroactive election year (a "retroactive dividend"). This election shall be irrevocable with respect to the retroactive dividend to which it applies.

(ii) *Method of making election.* The election under this paragraph (j)(4) must be made by the regulated investment company by treating the dividend (or portion thereof) to which the election applies as a dividend paid during the retroactive election year in computing its deduction for dividends paid in its tax returns for all applicable years (including the amended return(s) required to be filed under paragraphs (j)(2) and (3) of this section).

(iii) *Deduction for dividends paid*—(A) *In general.* Subject to the rules of sections 561 and 562, a regulated investment company shall include the amount of any retroactive dividend in computing its deduction for dividends paid for the retroactive election year. No deduction for dividends paid shall be allowed under this paragraph (j)(4)(iii)(A) for any amount not paid (or treated as paid under section 852(b)(7)) on or before December 31, 1990.

(B) *Limitation on ordinary dividends.* The amount of retroactive dividends (other than retroactive dividends qualifying as capital gain dividends) paid for a retroactive election year under this section shall not exceed the increase, if any, in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)) that is attributable solely to the regulated investment company having made the retroactive election.

(C) *Limitation on capital gain dividends.* The amount of retroactive dividends qualifying as capital gain dividends paid for a retroactive election year under this section shall not exceed the increase, if any, in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid) that is attributable solely to the regulated investment company having made the retroactive election.

(D) *Effect on other years.* A retroactive dividend shall not be includible in computing the deduction for dividends paid for—

(*1*) The taxable year in which such distribution is actually paid (or treated as paid under section 852(b)(7)); or

(*2*) Under section 855(a), the taxable year preceding the retroactive election year.

(iv) *Earnings and profits.* A retroactive dividend shall be considered as paid out of the earnings and profits of the retroactive election year (computed with the application of sections 852(c) and 855, § 1.852–5, § 1.855–1, and this section), and not out of the earnings and profits of the taxable year in which the distribution is actually paid (or treated as paid under section 852(b)(7)).

(v) *Receipt by shareholders.* Except as provided in section 853(b)(7), a retroactive dividend shall be included in the gross income of the shareholders of the regulated investment company for the taxable year in which the dividend is received by them.

(vi) *Foreign tax election.* If a regulated investment company to which section 853 (relating to foreign taxes) is applicable for a retroactive election year elects to treat a dividend paid (or treated as paid under section 852(b)(7)) during the taxable year as a retroactive dividend, the shareholders of the regulated investment company shall consider the amounts described in section 853(b)(2) allocable to such distribution as paid or received, as the case may be, in the shareholder's taxable year in which the distribution is made.

(vii) *Example.* The provisions of this paragraph (j)(4) may be illustrated by the following example:

*Example.* X is a regulated investment company that computes its income on a calendar year basis. No election is in effect under section 4982(e)(4). X has the following income for 1988:

**Foreign Currency Gains and Losses**

*Gains and Losses*

Jan. 1–Oct. 31—100
Nov. 1–Dec. 31—(75)

**Capital Gains and Losses**

Jan. 1–Oct. 31—short term, 100; long term, 100
Nov. 1–Dec. 31—short term, 50; long term, (100)

(A) X had investment company taxable income of $175 and no net capital gain for 1988 for taxable income purposes. X distributed $175 of investment company taxable income as an ordinary dividend for 1988.

(B) If X makes a retroactive election under this section to defer the entire $75 post-October currency loss and the entire $50 post-October capital loss for the post-October period of its 1988 taxable year for purposes of computing its taxable income, that deferral increases X's investment company taxable income for 1988 by $25 (due to an increase in foreign currency gain of $75 and a decrease in short-term capital gain of $50) to $200 and increases the excess described in section 852(b)(3)(A) for 1988 by $100 from $0 to $100. The amount that X may treat as a retroactive ordinary dividend is limited to $25, and the amount that X may treat as a retroactive capital gain dividend is limited to $100.

(5) *Certain distributions may be designated retroactively as capital gain dividends.* To the extent that a regulated investment company designated as capital gain dividends for a taxable year less than the maximum amount permitted under paragraph (e) of this section for that taxable year, the regulated investment company may designate an additional amount of dividends paid (or treated as paid under sections 852(b)(7) or 855, or paragraph (j)(4) of this section) for the taxable year as capital gain dividends, notwithstanding that a written notice was not mailed to its shareholders within 60 days after the close of the taxable year in which the distribution was paid (or treated as paid under section 852(b)(7)).

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.



**§ 602.101 [Amended]**

Par. 5. The table of OMB control numbers in § 602.101(c) is amended by removing the entry for § 1.852–11T and adding an entry reading: "1.852–11T * * * 1545–1094" to read: "1.852–11 * * * 1545–1094".

Fred T. Goldberg, Jr.,
*Commissioner of Internal Revenue.*

Approved: November 24, 1990.

Kenneth W. Gideon,
*Assistant Secretary of the Treasury.*

[FR Doc. 90–28432 Filed 11–29–90; 4:30 pm]

BILLING CODE 4830–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 352a

[DoD Directive 5118.5]

### Defense Finance and Accounting Service (DFAS)

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Defense Finance and Accounting Service (DFAS) is established by the Secretary of Defense under the authority provided by title 10, U.S.C. 113, as an Agency of the Department of Defense (DoD). This rule informs the public of the new Defense Finance and Accounting Service.

**EFFECTIVE DATE:** November 26, 1990.

**ADDRESSES:** Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. Kennedy, telephone (703) 697–1142.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 352a**

Organization of functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R of the Code of Federal Regulations is amended to add part 352a as follows:

## PART 352a—DEFENSE FINANCE AND ACCOUNTING SERVICE (DFAS)

Sec.
352a.1 Purpose.
352a.2 Applicability.
352a.3 Organization and management.
352a.4 Responsibilities and functions.
352a.5 Relationships.
352a.6 Authorities.

Appendix to Part 352a—Delegations of Authority.

**Authority:** 10 U.S.C. 113.

**§ 352a.1 Purpose.**

Pursuant to the authority vested in the Secretary of Defense under provisions of title 10, United States Code, this part establishes the Defense Finance and Accounting Service (DFAS) as an Agency of the Department of Defense with responsibilities, functions, authorities, and relationships.

**§ 352a.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Inspector General of the Department of Defense (IG, DoD); the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

**§ 352a.3 Organization and management.**

(a) The DFAS is established as an Agency of the Department of Defense under the direction, authority, and control of the Comptroller of the Department of Defense (C, DoD).

(b) The DFAS shall consist of a Director, selected by the Secretary of Defense, and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(c) Military personnel shall be assigned to the DFAS in accordance with approved authorizations and procedures for assignment to joint duty.

**§ 352a.4 Responsibilities and functions.**

(a) The Director, Defense Finance and Accounting Service (DFAS), is the principal DoD executive for finance and accounting requirements, systems, and functions identified in DoD Directive 5118.3,[1] and shall:

(1) Organize, direct, and manage the DFAS and all assigned resources.

(2) Direct finance and accounting requirements, systems, and functions for all appropriated, nonappropriated, working capital, revolving, and trust fund activities, including security assistance.

(3) Establish and enforce requirements, principles, standards, systems, procedures, and practices necessary to comply with finance and accounting statutory and regulatory requirements applicable to the Department of Defense.

(4) Provide finance and accounting services for DoD Components and other Federal activities, as designated by the C, DoD.

(5) Direct the consolidation, standardization, and integration of finance and accounting requirements, functions, procedures, operations, and systems within the Department of Defense and ensure their proper relationship with other DoD functional areas (e.g., budget, personnel, logistics, acquisition, civil engineering, etc.).

(6) Execute statutory and regulatory financial reporting requirements and render financial statements.

(7) Serve as the proponent for civilian professional development in finance and accounting disciplines, and act as approval authority for competency standards and training requirements for appropriate military positions within the DFAS.

(8) Provide advice and recommendations to the C, DoD, on finance and accounting matters.

(9) Approve the establishment or maintenance of all finance and accounting activities independent of the DFAS.

(10) Develop, issue, and maintain DoD 7220.9–M,[2] in accordance with DoD 5025.1–M,[3] consistent with governing statutes, regulations, and policies.

(11) Perform other functions as the Secretary of Defense, Deputy Secretary of Defense, or the C, DoD, may prescribe.

(b) The Comptroller of the Department of Defense (C, DoD) shall provide guidance and direction to the Director, DFAS, on policies and procedures related to the development and operation of DFAS programs and systems.

(c) The Heads of DoD Components shall:

(1) Comply with the requirements, principles, standards, procedures, and practices issued pursuant to § 352a.4(a).

(2) Obtain finance and accounting services from the DFAS.

(3) Provide facilities, personnel, and other support and assistance required to accomplish DFAS objectives, consistent with this Directive and the responsibilities and functions in § 352a.4[a] and the authorities in § 352a.6.

(c) Operational commanders shall continue to be responsible for the control, location, and safety of deployed

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 352a.4(a).

[3] See footnote 1 to § 352a.4(a).

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accounting and finance personnel and resources.

**§ 352a.5 Relationships.**

(a) In the performance of assigned responsibilities and functions, the Director, DFAS, shall:

(1) Maintain liaison with DoD Components, other Government Agencies, foreign governments, and private sector organizations for the exchange of information concerning assigned programs, activities, and responsibilities.

(2) Use established facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve modernization, efficiency, economy, and user satisfaction.

(b) The heads of DoD Components shall coordinate with the Director, DFAS, on all matters related to the responsibilities and functions listed in § 352a.4(a).

**§ 352a.6 Authorities.**

The Director, DFAS, is specifically delegated authority to:

(a) Represent the C, DoD, on finance and accounting matters.

(b) Have free and direct access to, and communicate with, DoD Components and other Executive Departments and Agencies concerning finance and accounting activities, as necessary.

(c) Enter into agreements with DoD Components and other Government or Non-Government entities for the effective performance of the DFAS mission and programs.

(d) Establish DFAS facilities if needed facilities or services of other DoD Components are not available. Establishment of new facilities and services will be accomplished during normal program and budget processes.

(e) Obtain reports, information, advice, and assistance from DoD Components, consistent with the policies and criteria of DoD Directive 7750.5.[4]

**Appendix to Part 352a—Delegations of Authority**

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, Defense Finance and Accounting Service (DFAS), or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of the DFAS to:

1. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, in support of assigned DFAS functions pursuant to 10 U.S.C. 173; Pub. L. 92-463, "Federal Advisory Committe Act"; and DoD Directive 5105.4 [1], "Department of Defense Federal Advisory Committee Management Program," September 5, 1989.

2. Designate any position in the DFAS as a "sensitive" position, in accordance with 5 U.S.C. 7532; Executive Order 10450, as amended; and DoD Directive 5200.2 [2], "DoD Personnel Security Program," December 20, 1979, as appropriate.

a. Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

b. Authorize the suspension, but not terminate the service, of the employee in the interest of national security.

3. Authorize and approve overtime work for assigned civilian personnel in accordance with 5 U.S.C. Chapter 55, Subchapter V, and applicable Office of Personnel Management (OPM) regulations.

4. Authorize and approve:

a. Travel for assigned personnel, in accordance with Joint Travel Regulations.

b. Invitational travel to persons serving without compensation whose consultative, advisory, or other services are required for assigned activities and responsibilities pursuant to 5 U.S.C. 5703.

5. Approve the expenditure of funds available for travel by assigned or detailed military personnel for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

6. Develop, establish, and maintain an active and continuing Records Management Program and DoD Directive 5015.2 [3], "Records Management Program," September 17, 1980; DoD Directive 5400.7 [4], "DoD Freedom of Information Act Program," May 13, 1988; and DoD Directive 5400.11 [5], "Department of Defense Privacy Program," June 9, 1982.

7. Establish and use imprest funds for making small purchases of material and services, other than personal services, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10 [6], "Disbursing Policies," January 17, 1989.

8. Authorize the publication of advertisements, notices, or proposals, in newspapers, magazines, or other public periodicals as required for the effective administration and operation of assigned responsibilities, consistent with 44 U.S.C. 3702.

9. Establish and maintain appropriate property accounts, appoint Boards of Survey, approve reports of survey, relieve personal liability, and remove accountability for Agency property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

10. Promulgate the necessary security regulations for the protection of property placed under the jurisdiction of the Director, pursuant to DoD Directive 5200.8 [7], "Security of Military Installation of Resources," July 29, 1980.

11. Establish and maintain a publications system for the promulgation of common accounting and finance regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M [8], "Department of Defense Directives System Procedures," April 1981, authorized by DoD Directive 5025.1 [9], December 23, 1988.

12. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 310, 302(b), and 3101 of the employment, direction, and general administration of assigned employees.

13. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DFAS to perform this function.

14. Establish a DFAS Incentive Awards Board, and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DFAS or its subordinate activities, in accordance with 5 U.S.C. 4503, OPM regulations, and DoD Directive 5120.15 [10], "Authority for Approval of Cash Honorary Awards for DoD Personnel," August 13, 1985.

15. Act as an agent for the collection and payment of employment taxes imposed by Chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certification required or provided for under the Internal Revenue Code of 1954, as amended (26 U.S.C. 3122), and the Social Security Act (42 U.S.C. 405(p)(1) and (2)), as amended, on assigned employees.

16. Enter into and administer contracts directly or through a Military Department, a DoD contracting administration service component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the DFAS mission.

17. Oversee disbursing officials and operations in accordance with the procedures of 31 U.S.C., as follows:

a. Manage the approval and appointment process for disbursing and certifying officials pursuant to 31 U.S.C. 3321 and 3325.

b. Make determinations and recommendations with respect to the granting of relief to disbursing officials pursuant to the authority contained in 31 U.S.C. 3527.

C. Approve reqnests to hold cash at personal risk for authorized purposes, including imprest funds, and to redelegate such authority as appropriate in the administration and control of DoD funds, consistent with the Treasury Financial Manual (TFM) and under the authority of 31 U.S.C. 3321 and 3342.

d. Approve DoD Component disbursing regulations developed to implement the TFM and to grant waivers when delegated by the Secretary of the Treasury to heads of Executive Departments and Agencies.

The Director, DFAS may, in writing, redelegate these authorities as appropriate, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Dated: November 29, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc 90-28384 Filed 12-4-90; 8:45 am]

BILLING CODE 3801-01-M

[1] Copies may be obtained, at cost, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to paragraph 1. of this appendix.

[3] See footnote 1 to paragraph 1 of this appendix.

[4] See footnote 1 to paragraph 1 of this appendix.

[5] See footnote 1 to paragraph 1 of this appendix.

[6] See footnote 1 to paragraph 1. of this appendix.

[4] See footnote 1 to § 352a.4(a).

[7] See footnote 1 to paragraph 1 of this appendix.

[8] See footnote 1 to paragraph 1 of this appendix.

[9] See footnote 1 to paragraph 1 of this appendix.

[10] See footnote 1 to paragraph 1 of this appendix.



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 6820

[CA-940-4214-10; CACA 17849]

### Withdrawal of Public Land for Protection of the Rainbow Basin/Mud Hills Area; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 1,997.92 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect significant paleontological, geologic, scenic, and recreational values located in the Rainbow Basin/Mud Hills Area.

**EFFECTIVE DATE:** December 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from the mineral leasing laws, for the protection of the Rainbow Basin/Mud Hills Area:

**San Bernardino Meridian**

T. 11 N., R. 1 W.,
Sec. 18, lots 1 and 2, and NE¼.
T. 11 N., R. 2W.,
Sec. 10, W½SW¼, SE ¼SW¼, and S½S½SE¼;
Sec. 11, S½S½SW¼;
Sec. 14, W½ and SW¼SE¼;
Sec. 15;
Sec. 22, E½NE¼;
Sec. 23, NE¼NE¼, W½NE¼, NW¼, N½SW¼, and W½SE¼.

The areas described aggregate 1,997.92 acres of public land in San Bernardino County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 21, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-28431 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-40-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[GEN Docket No. 87-389; FCC 90-371]

### Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License—USCG/FAA Petition for Reconsideration

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This action dismisses a petition for reconsideration of the *First Report and Order* in GEN Docket No. 87-389 54 FR 17710, April 25, 1989, filed by the United States Coast Guard (USCG) and the Federal Aviation Administration (FAA) on May 24, 1989. The petition requested that the Commission impose field strength limits on Power Line Carrier (PLC) systems that operate on a non-licensed basis under part 15 of the FCC's rules. The Commission finds that the petition for reconsideration provides insufficient information to demonstrate a need for field strength limits on PLCs at this time.

**EFFECTIVE DATES:** December 5, 1990.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Karen Rackley, Office of Engineering and Technology, (202) 653-7316.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum, Opinion and Order* in GEN Docket No. 87-389, FCC 90-371, adopted November 5, 1990 and released November 27, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. It may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**Summary of the Memorandum, Opinion and Order**

1. In 1987, the Commission issued a *Notice of Proposed Rule Making (NPRM)* in this Docket 52 FR 37988, October 13, 1987, proposing a comprehensive revision of the part 15 rules. The USCG filed comments on the NPRM requesting that field strength limits be adopted for power line carrier (PLC) systems that operate in the 75–125 kHz band, stating that such limits are needed to avoid the potential of harmful interference to LORAN–C receivers. In addition, the USCG requested that data concerning PLC operating parameters be made public to facilitate the location of sources of interference to signals of the LORAN–C radionavigation system. The USCG stated that these safeguarding provisions are needed in view of the pending construction of a new, mid-continental chain of LORAN–C transmitters that will greatly expand the coverage area for LORAN–C.

2. In the *First Report and Order* in this proceeding, the Commission denied the USCG's requests. The Commission was concerned that the imposition of field strength limits on PLC systems would require that electric utilities perform extremely burdensome and expensive radiated emission measurements on all power lines used for PLC operation, with benefit only to those LORAN–C receivers located extremely close to the powerlines. The Commission also noted

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that the National Telecommunications and Information Agency (NTIA) of the U.S. Department of Commerce and the Utilities Telecommunications Council (UTC) had negotiated a Memorandum of Understanding (MOU) that would allow PLC operating parameters to be made available to LORAN–C users to resolve interference problems.

3. The USCG/FAA petition for reconsideration of the *First Report and Order* requests that the Commission: (1) Reconsider its decision regarding PLC field strength limit and, at the minimum, adopt as "interim guidelines" the field strength limited previously proposed by USCG; and, (2) initiate a Further Notice of Proposed Rulemaking to address mandatory field strength limits for PLC systems operating in the 75–125 kHz band. The petitioners contend that testing of all power lines used for PLC transmissions would not be necessary. They state that, instead, computer modeling programs, such as the Numerical Electromagnetic Code (NEC), could be used to predict whether a PLC system would conform to any limits imposed. The petitioners also argue that, since many of the PLC transmitters operating between 75 kHz and 125 kHz transmit short-term, narrow pulsed signals, testing is needed to determine the impact of such short-term PLC signals on LORAN–C receivers.

4. The Commission finds that the USCG/FAA petition for reconsideration provides insufficient evidence to warrant application of field strength limits to protect LORAN–C signals from interference by part 15 PLC operations. The petitioners have not demonstrated that PLC operations pose serious interference problems for the LORAN–C service or that the procedures already in place for resolving interference by PLC operations to LORAN–C do not provide an adequate regulatory safeguard. Although LORAN–C use will be increasing on and over the land areas of the United States, it is not yet clear whether the mid-continental chain of LORAN–C transmitters will make interference problems more common by attracting more LORAN–C users or eliminate potential interference problems by providing better LORAN–C coverage. In view of the above, the Commission believes that it would be premature to adopt or propose field strength limits for PLC systems operating on the 75–125 kHz band. Should a pending Department of Transportation study, or any other related information that may be made available, provide evidence that interference to LORAN–C reception by PLC operations is more serious than is presently indicated, or that the existing safeguards are inadequate, the Commission would, of course, take appropriate action.

5. Accordingly, pursuant to the authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's rules, *It is ordered* that the Joint Petition for Reconsideration and Further Rulemaking filed by the United States Coast Guard and the Federal Aviation Administration *is dismissed.*

**List of Subjects in 47 CFR Part 15**

Communications equipment.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 90–28475 Filed 12–4–90; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 88–17; Notice 3]**

**RIN 2127–AC55**

### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Response to petitions for reconsideration; final rule, amendments and delay of effective date.

**SUMMARY:** This notice responds to petitions for reconsideration of amendments to Federal Motor Vehicle Safety Standard No.108 published in May 1990 that incorporated by reference (with minor exceptions) the current SAE Standards for stoplamps and turn signal lamps. The agency denies a petition to remove the exclusions from the definition of "effective projected luminous lens area." However, in recognition that this may create an immediate compliance problem, the agency is delaying the effective date of all amendments from December 1, 1990, to December 1, 1991.

**DATES:** The effective date of the rule published May 15, 1990 and of these amendments is December 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kevin Carey, Office of Rulemaking, NHTSA (202–366–5271).

**SUPPLEMENTARY INFORMATION:** A final rule was published May 15, 1990 (55 FR 20158) adopting updated SAE standards for stop lamps and turn signal lamps. The updated standards are SAE J586 FEB84 Stop Lamps for Use on Motor Vehicles Less than 2032 mm in Overall Width, SAE J588 NOV84 Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in overall Width, SAE J1395 APR85 Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width, and SAE J1398 MAY85 Stop Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width. Petitions for reconsideration of the rule were received from Ford Motor Company and General Motors Corporation. Subsequently, comments were received from Peterson Manufacturing Company, which this notice will also address. The comments concerned the intensity multiplier, definition of "effective projected luminous lens area," and miscellaneous items.

**1. Issue of the Turn Signal—Headlamp Intensity Multiplier**

In the final rule, paragraph S5.3.1.7 was adopted to clarify that if a turn signal lamp is closer than 4 inches (100 mm) to a lower beam headlamp, it must have 2.5 times the intensity otherwise required. The purpose of the requirement was to distinguish it from the SAE specification, which applies the factor of 2.5 only if the turn signal is closer than 60 mm to the lower beam headlamp. In the previous SAE specification incorporated by reference in Standard No.108, measurement was taken from the optical center of the turn signal lamp. The updated SAE specification requires it to be taken from the centroid of the lens. This has presented a problem to Ford, which stated that several 1991 and later model year vehicles cannot meet the requirements of the final rule without substantial redesign, if measurement is to be taken from the centroid. Ford pointed out that the new SAE requirement is intended to be used in combination with graduated turn signal intensity multipliers, which NHTSA did not adopt. Peterson, Grote, and TSEI supported retention of the existing requirement.

Ford based its argument on SAE Information Report J1221 DEC84 Headlamp-Turn Signal Spacing which documents the change in the SAE specifications. NHTSA notes that the research in the Report was performed in 1977, which was before higher intensity headlamps which comply with SAE J579c were in common use. As these headlamps are now in almost universal use in the United States, NHTSA regards the earlier research as not truly relevant today. Given the advent and usage of higher intensity headlamps, there appears to be an even greater need than before to preserve the intensity ratio. NHTSA has done so by retaining the previously existing requirement of measurement from the optical center of the lens. The petition for reconsideration is granted, and an appropriate revision is made in S5.3.1.7.



**2. Issue of Definitions**

NHTSA adopted a definition for the term "effective projected luminous lens area" which specifically excluded "mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (½ deg. radius around the test point)." In its petition for reconsideration, GM called to the agency's attention a 20-year-old interpretation provided American Motors Corporation stating the "molded optical rings or markings shall be considered part of the total * * * even if they do not contribute significantly to the total light output." GM went on to say that it has depended on this interpretation as the basis for calculating lens area. In particular, GM has included the rim (or leg) of lenses in the calculation of lens area in those instances where the rim transmits unobstructed light. GM argues that it is disadvantaged by the new definition because at least one of its current production models requires inclusion of the lens rim area to meet the minimum lens area as now defined by Standard No. 108. It asked that NHTSA adopt the SAE definition. This same request was made by Ford, also concerned by the differences between the NHTSA definition, and SAE's.

NHTSA has carefully reviewed these comments. The definition in SAE J387 OCT88 includes lens parts, "even if they do not contribute significantly to the total light output." The agency has concluded that areas that do not contribute significantly to light output should not be included in determinations of minimum lens area because they do not add to the "effectiveness" of the lamp. To be fully effective, the lamp must project light in an appropriate manner. The optical parts of the reflector and lens are designed to achieve that purpose. Mounting bosses, screw holes, lens rims or legs do not contribute to the optical design. They take up surface area that can reduce the area of the optically designed part of the lens if they are allowed to be included in the computation of minimum lens area. After due consideration, the agency denies the petitions for adoption of the SAE definition.

**3. Issue of Terminology**

Paragraphs S5.1.1.11 and S5.1.1.12 establish requirements for lamps that are "manufactured to replace" equivalent lamps "designed to conform" to specified SAE requirements. Ford commented that the use of the word "manufactured" appeared to be in error, and that the word should have been "designed," in keeping with the standard's general requirement that equipment be "designed to conform," rather than "conform."

Choice of the word "manufactured" was deliberate, and not an error. The agency wished to avoid the use of the word "designed" twice in a single sentence, and found awkward the phrase "lamps designed to replace lamps designed to conform" to the SAE requirements. Such a phrase would not of itself require design compliance of replacement lamps with the SAE requirements. Neither section requires that the replacement lamps meet the SAE requirements that their original equipment counterparts are designed to meet (in which case the "design" language would be appropriate). Further, each provides an exception from those requirements if the lamps meet the specific requirements of Figure 1 of Standard No. 108. No petitioner argued that the lamps should be "designed to meet" Figure 1 which in this context appears the more appropriate argument.

However, in one instance Ford is correct. The phrase "manufactured to conform to SAE Standard J588e" appears in S5.1.1.12. NHTSA is amending that section to substitute "designed" for "manufactured."

**4. Issue of Effective Date**

The effective date of the final rule published on May 15, 1990 is December 1, 1990, except that the requirement that vehicles whose overall width is 80 inches or more be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches is effective December 1, 1991. The retooling involved in equipping vehicles with the new lamps provided sufficient cause for finding that an effective date later than one year after issuance was in the public interest.

As noted previously, NHTSA's actions in this rulemaking appear to have presented compliance problems for GM. The company has stated that NHTSA's definition of "effective projected luminous lens area" has created a compliance problem for it. This problem remains because NHTSA has denied GM's petition to adopt the SAE definition of the term. In recognition of GM's problems, NHTSA has decided to delay the effective date for the amendments published on May 15, 1990, to December 1, 1991.

Therefore, the effective date for the amendments to 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* published on May 15, 1990 (55 FR 20158) is hereby changed from December 1, 1990, to December 1, 1991.

The final rule contained an erroneous effective date in paragraph S5.1.1.7(c), and an appropriate amendment is made.

Pursuant to 5 U.S.C. 553(d)(1), this notice is effective on December 1, 1990, a period less than 30 days after its issuance, because it is a substantive rule that relieves a restriction.

**5. Miscellaneous Issue**

Peterson brought to the agency's attention the possibility that confusion could be caused by the statement in the summary information in the final rule that rear turn signal lamps require a minimum luminous lens area of 12 square inches, implying that there is a different requirement for the front turn signal lamps.

There is no different requirement for front turn signal lamps. The newly incorporated SAE documents make clear that the minimum luminous lens area requirements apply to all turn signal lamps. The thrust of the agency's rulemaking was toward rear lamps, and it regrets any confusion that may have been caused by not mentioning the front lamps.

*Impacts*

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The postponement made by this notice in the effective date does not alter the agency's conclusion in the May 1990 final rule that the economic impacts of that rule are so minimal as not to warrant the preparation of a full regulatory evaluation. As noted in that notice, most manufacturers already comply with the requirement regarding minimum luminous lens area. The postponement of the effective date would further reduce the negligible costs. Therefore, preparation of a full regulatory evaluation for this notice is not necessary.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect upon the human environment.

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The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle lamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and replacement lighting equipment will be minimally impacted because most motor vehicles subject to the requirement already comply with it.

Finally, the agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has concluded that the rule has no federalism implications.

**List of Subjects in 49 CFR Part 571.**

Imports, Motor vehicle safety, Motor vehicles.

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR part 571 and § 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, are amended as follows:

1. The authority citation for part 571 continues to read:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The effective date of the amendments published on May 15, 1990 (55 FR 20161) is delayed until December 1, 1991.

3. In S5.1.1.7(c), the date "October 31, 1991" is changed to "November 30, 1991."

4. In S5.1.1.12, the phrase "manufactured to conform to SAE Standard J588e" is revised to read "designed to conform to SAE Standard J588e."

5. S5.3.1.7 is revised to read:

S5.3.1.7 On a motor vehicle on which the front turn signal lamp is less than 100mm from the lighted edge of a lower beam headlamp, as measured from the optical center of the turn signal lamp, the multiplier applied to obtain the required minimum luminous intensities shall be 2.5.

Issued on: November 28, 1990.

Jerry Ralph Curry,

*Administrator.*

[FR Doc. 90-28478 Filed 11-30-90; 2:50pm]

BILLING CODE 4910-59-M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB36**

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Astragalus cremnophylax var. cremnophylax (sentry milk-vetch)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines *Astragalus cremnophylax* var. *cremnophylax* (sentry milk-vetch), to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from a single site on the South Rim of Grand Canyon National Park. The entire population consists of fewer than 500 plants. The plant is endangered by previous trampling by park visitors and degradation of habitat. This action will implement Federal protection provided by the Act for sentry milk-vetch. Critical habitat is not being designated.

**EFFECTIVE DATE:** January 4, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Ecological Services Field Office, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019.

**FOR FURTHER INFORMATION CONTACT:** Sue Rutman, at the above address (Telephone 602/379-4720 or FTS 261-4720).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Astragalus cremnophylax* var. *cremnophylax* is a dwarf milk-vetch that is endemic to a single site on the South Rim of Grand Canyon National Park. The plant occurs in crevices and depressions with shallow soils on Kaibab limestone on a broad platform at the rim of the Grand Canyon gorge. This milk-vetch apparently prefers the unshaded, well drained soils or limestone pavement in an opening in the piñon-juniper woodland. The plant appears to occur on one specific layer of Kaibab limestone where the limestone forms a minimum-sized bench or "patio." Dominant species in the surrounding community include *Petrophytum caespitosum* (rock-mat), *Pinus edulis* (piñon pine), *Juniperus osteosperma* (Utah juniper), *Cercocarpus intricatus* (little-leaf mountain mahogany), *Ephedra viridis* (Mormon tea), *Purshia mexicana* (cliffrose), *Artemesia bigelovii* (sagebrush), *Agropyron smithii* (wheatgrass), and *Poa pratensis* (bluegrass) (Phillips et al. 1982). Sentry milk-vetch and rock-mat are the two dominant species in the dwarf plant community that occurs on this limestone pavement.

*Astragalus cremnophylax* var. *cremnophylax* is usually less than 2.5 cm (1 inch) high and forms a mat 2.5—25 cm (1—10 inches) in diameter (McDougall 1964). The short, creeping stems have compound leaves less than 1.0 cm (0.4 inches) long composed of 5—9 tiny leaflets. The fruit is obliquely egg-shaped and densely hairy. Whitish or pale purple flowers are 0.5 cm (0.2 inches) long and appear from late April to early May. Seeds are set in late May—June (Phillips et al. 1982). The plants appear to be long-lived and have a thick tap root that penetrates the limestone surface to reach a more constant source of moisture.

A thorough count of all plants in 1988 indicated that the population contained 489 plants. A 1989 inventory of the monitoring plots established in 1988 indicated that the population declined by about 10 percent. Data indicate the cause for this decline may have been trampling by park visitors. The effects of trampling on both plants and their habitat may have been amplified by the below average rainfall in 1989. From May 1989 to May 1990, subpopulations experienced from 19 percent to 63 percent mortality, depending on degree of human visitation.

In 1988, the seedling class comprised only 22.2 percent of the population. Given the trampled condition of most mature plants, a likely explanation for the small proportion of seedlings is that they are killed by trampling. Only those seedlings in sites relatively safe from trampling survive. Poor seed dispersal may also affect the number of seedlings.

*Astragalus cremnophylax* was first discovered in 1903 by Marcus E. Jones who reported it as "apparently common at Grand Canyon * * * on sandy ledges." He mistook the plant for *A. humillimus* Gray, of which only Brandegee's imperfect, now flowerless type from Mesa Verde, Colorado, is extent. Both are alike in diminutive stature and similar pubescence but differ in petioles and pods. Barneby and Ripley recollected the species in 1947 at a location west of El Tovar, Grand Canyon National Park. Barneby described it as a new species in 1948. In 1979, Barneby distinguished a new variety, *A. cremnophylax* var.



*myriorraphis* after plants were discovered by Ralph Gierisch and associates in 1978 on Buckskin Mountain in Arizona. The typical form then became *A. cremnophylax* var. *cremnophylax*.

On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the **Federal Register** (45 FR 82480); *A. cremnophylax* was included in that notice as a category 1 species. Category 1 species are those for which the Service presently has sufficient information to support the biological appropriateness of their being listed as endangered or threatened species. The 1985 revision (50 FR 39526) of the 1980 notice included *Astragalus cremnophylax* var. *cremnophylax* in category 1, and moved *Astragalus cremnophylax* var. *myriorraphis* to category 3C. Category 3C includes taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat. The 1990 Plant Notice of Review (55 FR 6184) listed *A. cremnpphylax* var. *cremnophylax* as a proposed endangered species. A proposed rule to determine endangered status for *A. cremnophylax* var. *cremnophylax* was published in the **Federal Register** on October 18, 1989 (54 FR 42820).

**Summary of Comments and Recommendations**

In the October 18, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The Arizona Sun* on November 12, 1989, and *The Phoenix Gazette/Arizona Republic* on November 15, 1989, which invited general public comment. Eight comments were received and are discussed below: Two Federal and two State agencies, and four private conservation organizations and individuals. Comments supporting the listing were submitted by the National Park Service (NPS), The Arizona Nature Conservancy, the Center for Plant Conservation, and two plant taxonomists.

*Issue 1:* The Arizona Commission of Agriculture and Horticulture expressed concerns regarding the effects of listing this plant. They stated that listing would prohibit State pest control programs for gypsy moths or grasshoppers if critical habitat is not designated, could reduce the amount of grazing land, and would unnecessarily restrict visitor's access to areas of Grand Canyon National Park.

*Service Response:* The sentry milk-vetch is restricted to a single population in Grand Canyon National Park. Listing of this plant would have no effect on pest control programs conducted outside Grand Canyon National Park, whether or not critical habitat is designated. Pest control programs inside park boundaries must have the approval of the National Park Service and the Department of the Interior. With this listing as an endangered species, any State-administered pest control programs that would occur in the vicinity of the single population would have to go through the section 7 consultation process.

Because grazing is not allowed in the vicinity of the site where sentry milk-vetch occurs, there is no anticipated restriction on the amount of grazing land following listing of this plant.

Regarding visitor's access in Grand Canyon National Park, the NPS has rerouted foot traffic around the main part of the sentry milk-vetch population, in a voluntary effort to protect the plants from trampling prior to a final listing decision. However, no other area has been affected, and numerous opportunities for public access exist along the South Rim.

*Issue 2:* The Arizona Commission of Agriculture and Horticulture stated that listing the sentry milk-vetch as endangered is not appropriate because it belongs to a species that occurs in other areas of the State. The U.S. Forest Service questioned the taxonomic status of the two varieties in the species *A. cremnophylax*. The Forest Service suggested that observed morphological differences between the varieties may have been influenced by the effects of trampling on the sentry milk-vetch population. They suggested that chemical analysis or further field investigations be used to evaluate whether unique gene pools are involved, and suggested that cooperative efforts between the Fish and Wildlife Service and the NPS could alleviate impacts to the plants. The Forest Service also questioned the adequacy of survey efforts for this plant, given the abundance of seemingly suitable habitat within the known range of the species.

*Service Response:* The Service believes that *Astragalus cremnophylax* var. *Cremnophylax* is a taxonomically valid, rare species that meets the criteria for listing as an endangered species. This plant is a unique taxon that is widely separated geographically from its closest relatives, which are found on the opposite side of the Grand Canyon (Warren, in litt.). Two highly regarded plant taxonomists, Dr. Rupert Barneby of the New York Botanical Garden (who described the species and varieties), and Dr. Stanley Welsh of Brigham Young University, have concluded that the two varieties of *A. cremnophylax* are distinct. The Service accepts the conclusion of these two experts, and does not believe that chemical analysis is necessary to determine if the two varieties are distinct. Because *A. cremnophylax* var. *cremnophylax* plants that are relatively protected from trampling continue to exhibit morphological differences compared to the other variety, the Services does not believe that trampling causes the noted morphologic differences between the varieties.

Surveys for this plant have been conducted for many miles in each direction from the single known population and no new populations were discovered. In addition, the potential habitat for this species may be far more restricted than previously believed. Both varieties appear to occur on one specific layer of Kaibab limestone where the limestone forms a minimum-sized bench or "patio." Sentry milk-vetch was not found growing on smaller ledges. All sites had shallow or no soil and occurred in an opening in piñon-juniper woodland. The area long the South Rim where these criteria are all present is much smaller than all exposed Kaibab limestone rim areas.

Cooperative efforts between agencies, although desirable, are not legitimately a reason to defer the listing of a species. The service has been working with the NPS to protect this plant. Rerouting of foot traffic around the population by the NPS has reduced the degree of trampling of the plants. However, because of prior habitat degradation and continued decline of the plants in the single known population, sentry milk-vetch meets the criteria for protection under the Endangered Species Act.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Astragalus cremnophylax* var. *cremnophylax* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described

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in Section 4(a)(1). These factors and their application to *Astragalus cremnophylax* var. *cremnophylax* Barneby (sentry milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The population of sentry milk-vetch occurs at a single site in Grand Canyon National Park. Visitors may reach the area by walking or in vehicles. Previously, many visitors trampled any or all of the vegetation while walking to the rim. The 1988 survey showed that 65 percent of all plants in the population had experienced some degree of trampling. More than half of all plants (51.4 percent) experienced severe trampling. Data from 1989 indicate the percent of trampled plants increased, as did the percent of plants showing the effects of severe trampling. From May 1989 to May 1990, the sub-population in the most visited area experienced 63 percent mortality. Other plots in the area experienced about 19 percent mortality. The high centers of the plants are the first to show the effects of trampling.

Trampling may affect the plants and population stability in a number of ways. Observations indicate that foot traffic has uprooted seedlings and decreased the vigor of mature plants. Repeated foot-falls on individual plants may contribute to decreased productivity and decreased flower and fruit production, which may eventually affect recruitment. Degradation of the habitat by foot traffic is evidenced by the informal trails formed by visitors, the smoothness of the limestone caused by the abrasive action of shoes, and the soil loss in the area. Construction activities in the area probably resulted in the loss of habitat and destruction of plants.

The NPS has rerouted foot traffic to restrict access to this site. This action may increase and improve suitable habitat. However, plant vigor is so low from past trampling that the population is still at high risk. In addition, a few park visitors still trample the plants while walking to the rim.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. Because of its rarity, *Astragalus cremnophylax* var. *cremnophylax* is of interest to botanists and other rare plant enthusiasts. Therefore, this is a minor but present threat.

C. *Disease or predation.* None apparent.

D. *The inadequacy of existing regulatory mechanisms.* This species is protected by NPS regulations, as are all plant species within the Park.

Sentry milk-vetch is protected by the Arizona Native Plant Law. This law prohibits the collection of this species unless a permit for educational or scientific purposes is granted by the Arizona Commission of Agriculture and Horticulture. However, the law does not provide habitat protection. The Act would provide protection and encourage active management through the "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The number of seedlings produced per year seems to be small and their mortality is high. Seedling numbers may be less than predicted for a number of reasons. Seed production may be limited by hard frosts and freezes during the flowering/fruiting period, a situation that occurred in 1988. Poor seed dispersal may also affect the number of seedlings. The tiny orange seeds are inconspicuous and probably not an attractive food item for birds and mammals. Continuing the annual inventory of the monitoring plots may help determine whether or not natural recruitment levels are sufficient to maintain the population.

Any undue publicity directed toward this species could make it susceptible to collection or increased visitation. Many places in the Park have signs telling visitors the names and natural history of certain plants; this type of publicity may be detrimental to the survival of this rare endemic.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Astragalus cremnophylax* var. *cremnophylax* as endangered. With the only known population in decline, the species is in imminent danger of extinction. Endangered status seems appropriate because of the serious threat of trampling that degraded the habitat and contributed to plant mortality. Although the trampling has been reduced by rerouting of foot traffic, it still occurs at a reduced level. The population was so seriously disturbed that recovery is uncertain. Critical habitat is not being designated for the reasons discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. No direct attention should be drawn toward the species or its location. Any type of publicity on this species could make it susceptible to increased visitation or collection, which would be detrimental to the survival of this rare endemic (O'Brien 1984). As discussed under Factors A and B in the Summary of Factors Affecting the Species, *Astragalus cremnophylax* var. *cremnophylax* is threatened by taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of the critical habitat description and map would make *A. cremnophylax* var. *cremnophylax* more vulnerable and increase enforcement problems. The NPS has been notified of the location and importance of protecting this species' habitat, and has already initiated recovery actions. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *A. cremnophylax* var. *cremnophylax*.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The NPS has jurisdiction over the only known habitat for this species. Federal activities that could impact *Astragalus cremnophylax* var. *cremnophylax* include, but are not limited to, allowing large numbers of visitors to have access to the population, which would increase the threat of trampling, and possible future construction at the site.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22201 (703/358-2104).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

McDougall, W.B. 1964. Grand Canyon wildflowers. The Museum of Northern Arizona, Flagstaff.

O'Brien, S. 1984. Status of *Astragalus cremnophylax* and recommendations to protect it. Unpubl. report to Grand Canyon National Park. 6pp.

Phillips, A.M., III, B.G. Phillips, N. Brian, L.T. Green III, and J. Mazzoni. 1982. Status report, *Astragalus cremnophylax* Barneby. U.S. Fish and Wildlife Service, Albuquerque, NM. 16pp.

### Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

### Regulation Promulgation

### PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | | | | | |
|---|---|---|---|---|---|---|
| Scientific name | Common name | Historic range | Status | When listed | Critical habitat | Special rules |
| Fabaceae—Pea family: | | | | | | |
| *Astragalus cremnophylax* var. *cremnophylax.* | Sentry milk-vetch | U.S.A. (AZ) | E | | NA | NA |

Dated: November 1, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90-28483 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-55-M

VOL 55 ISS 234 3 DE 5 1990 UMI



# Proposed Rules

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 225

### Summer Food Service Program: Annual Regulatory Action

**AGENCY:** Food Nutrition Service, USDA.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** This notice is being issued in accordance with the provisions of section 13(g) of the National School Lunch Act which requires that any proposed changes to the Summer Food Service Progam (SFSP) regulations be published by November 1 of each fiscal year. The Department is publishing a separae interim rule which will change the requirements to collect social security numbers and household income information on the applications for free and reduced price meals under this Program. The rule gives the household the discretion to provide only the social security number of the household member who signs the application or that of the parent or guardian who is the primary wage earner. In addition, households will now only be required to provide income information sufficient to enable the determining official to calculate the total household income. These changes are mandated by Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989. With the exception of the above, this notice informs the public that the Department does not intend to publish any other revisions to the current SFSP regulations.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302; (703) 756–3620.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 13(g) of the National School Lunch Act (42 U.S.C. 1761(g)) requires that any proposed changes to the Summer Food Service Program regulations be published by November 1 of each fiscal year. Final regulations must be published by the following January 1.

Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, which was enacted on November 10, 1989, made major changes to the Summer Food Service Program. It readmitted private nonprofit sponsors which, except for school food authorities and summer camps, had not been allowed to participate in the Program since the enactment of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981, in August 1981. In addition it put a number of conditions on their readmittance including size limitations, restrictions on the areas which they may serve and the sources from which they may obtain Program meals. It also established technical assistance and monitoring requirements relative to their participation. In addition to private sponsors, the legislation also established an entirely new category of Program sites—those which serve primarily homeless children. Finally, it made colleges and universities which participate in the National Youth Sports Program (NYSP) during the academic year eligible for Program participation during the months of October through April. The Department published these regulations on April 10, 1990 (55 FR 13454). In order to give State agencies and program sponsors an additional year experience with these new requirements, as well as the fact that the Department believes that there are no essential changes to the regulations required at this time, the Department has determined that it will not propose any changes, other than those regarding the collection of social security numbers and household income information, to the Program regulations for the summer of 1991.

With regard to the change to the requirements for the collection of social security numbers and household income information on the application for free and reduced price meals, the Department will issue a separate interim rule with a comment period. This interim rule will implement the mandatory changes to these requirements which were made by section 202(b)(2) of the Public Law 101–147. The rule will give the household the option to provide only the social security number of the household member who signs the application or that of the parent or guardian who is the primary wage earner. In addition, households will only be required to provide income information sufficient to enable the determining official to calculate the total household income. The interim rule will provide more detailed information on these changes to the application requirements which are intended to reduce paperwork by simplifying the application requirements, while maintaining program integrity.

Dated: November 27, 1990.

**Betty Jo Nelsen,**
*Administrator.*

[FR Doc. 90–28372 Filed 12–4–90; 8:45 am]
BILLING CODE 3410–30–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 90–ASO–19]**

### Proposed Alteration of VOR Federal Airway; FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposed to alter the description of VOR Federal Airway V–329 located in the vicinity of Eglin Air Force Base (AFB), FL. VOR Federal Airway V–329 was utilized as a departure/arrival route for the Eglin AFB complex. A new description must be used now that the Eglin VOR has been decommissioned. This action would maintain the route alignment.

**DATES:** Comments must be received on or before January 10, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 90–ASO–19, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign VOR Federal Airway V–329 located in the vicinity of Eglin AFB, FL. The Eglin VOR was destroyed by a tornado and the Air Force decided not to replace the VOR. The FAA plans to replace the VOR in 1992. VOR Federal Airway V–329 would be realigned in that vicinity and would terminate at the Corky Intersection, which is in proximity of the Eglin VOR site. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V–329 [Revised]**

From INT Crestview, FL, 091°T(088°M) and Andalusia, AL, 192°T(192°M) radials; Andalusia; INT Andalusia 358°T(358°M) and Montgomery, AL, 188°T(185°M) radials; to Montgomery.

Issued in Washington, DC, on November 20, 1990.

**Harold W. Becker,**
*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 90–28510 Filed 12–4–90; 8:45 am]
BILLING CODE 4910–13–M

### 14 CFR Part 39

**[Docket No. 90–NM–236–AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which currently requires modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes. This condition, if not corrected, could result in overpressurization of the vertical stabilizer, which could cause structural failure in the event of a rupture of the fuselage under the dorsal fin. This action would require that the same modification be accomplished on eight additional airplanes that were not modified during production.

**DATES:** Comments must be received no later than January 29, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–238–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Satish K. Pahuja, Seattle Aircraft

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Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2781. *Mailing address:* FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-238-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

On August 21, 1990, the FAA issued AD 90-18-05, Amendment 39-6713 (55 FR 35576, August 31, 1990), to require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over lightening and access holes on Model 767 series airplanes, line numbers 002 through 299. That action was prompted by a finding that these holes provided an air flow path to the vertical stabilizer. In the event of a rapid decompression of the passenger cabin due to a rupture of the fuselage in the area under the dorsal fin, the vertical stabilizer may become overpressurized. This condition, if not correct, could result in structural failure of the vertical stabilizer.

Since issuance of that AD, Boeing has advised the FAA that airplanes line number 300 through 307 were not modified during production. Therefore, these eight airplanes are subject to the same unsafe condition addressed by the existing AD.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-55A0007, Revision 1, dated May 24, 1990, which describes installation of a cover plate and a panel assembly to close the lightening and access holes, and adds additional Model 767 airplanes to the effectivity of the service bulletin.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would supersede AD 90-18-05 with a new airworthiness directive that would also require modification of the vertical stabilizer forward closure rib by installation of a cover plate and a panel assembly over the lightening and access holes on airplanes line number 300 through 307, in accordance with the service bulletin previously described.

There are approximately 306 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 2 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,240 for the additional airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, Feburary 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6713 (55 FR 35576, August 31, 1990), AD 90-18-05, with the following new airworthiness directive:

**Boeing:** Applies to Model 767 series airplanes, line number 002 through 307, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure of the vertical stabilizer from overpressurization in the event of a rupture of the fuselage under the dorsal fin, accomplish the following:

A. Install a cover plate and a panel assembly over the lightening and access holes in the vertical stabilizer forward closure rib, in accordance with Boeing Alert Service Bulletin 767-55A0007, dated June 22, 1989, or Revision 1, dated May 24, 1990, within the following schedule.

1. For airplanes line number 001 through 299: Within the next 18 months after October 9, 1990 (the effective date of Amendment 39-6713, AD 90-18-05).

2. For airplanes line number 300 through 307: Within the next 18 months after the effective date of this amendment.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.



Issued in Renton, Washington, on November 26, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28508 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-254-AD]**

**Airworthiness Directives; British Aerospace Model ATP Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would require repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades and repair, if necessary. This proposal is prompted by a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in structural damage to the fuselage and possible injury to personnel on the ground.

**DATES:** Comments must be received no later than January 29, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-254-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. *Mailing address:* FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in reponse to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-254-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There has been a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in the detachment of the erosion strip from the propeller, which would subsequently lead to structural damage to the fuselage and possible injury to personnel on the ground.

British Aerospace has issued Alert Service Bulletin A-ATP-61-5, dated April 4, 1990, which describes procedures for repetitive inspections to detect disbonding of the nickel sheath from the propeller blades, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive inspections to detect disbonding of the nickel sheath from the propeller blades, and repair, if necessary, in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

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British Aerospace: Applies to ALL Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect disbonding of the nickel sheath from the propeller blades, accomplish the following:

A. Within 125 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the propeller blades for disbonding of the leading edge nickel sheath, in accordance with British Aerospace Alert Service Bulletin A-ATP-61-5, dated April 4, 1990.

B. If disbonding is found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 26, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28529 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

**Proposed Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds, Transfers by Banks, and Transmittals of Funds by Other Financial Institutions: Extension of Time and Corrections**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of proposed rulemaking; extension of comment period and corrections.

**SUMMARY:** Notice is hereby given that the Department of the Treasury is extending the comment period on the Notice of Proposed Rulemaking Relating to Amendment of the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers by Banks and Transmittals of Funds by Other Financial Institutions, published in the Federal Register on October 15, 1990 (55 FR 41696). The Department is also making corrections to typographical errors published in the same notice.

**DATES:** Comments now will be accepted through January 15, 1990.

**ADDRESSES:** Comments should be addressed to Peter G. Djinis, Deputy Director, Office of Financial Enforcement, Department of the Treasury, room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Linda Noonan, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel (Enforcement), (202) 566-2941.

**SUPPLEMENTARY INFORMATION:** In the Federal Register (Vol. 55, No. 199) of Monday, October 15, 1990, on page 41703, three typographical errors are corrected to read as follows:

1. On page 41703, in § 103.33, in column 2, in paragraph (e)(1)(iii)(G), 4th line, the sentence beginning "(2)(i)(A)" should be a new paragraph.

2. On page 41703, in § 103.33, in column 3, in paragraph (e)(2)(i)(A), 3rd line, "(f)(1)(i)" should be "(e)(1)(i)".

3. On page 41703, in § 103.33, in column 3, in paragraph (e)(2)(ii)(A)(2), 3rd line, the word "originating" should read "receiving".

Dated: November 29, 1990.

Peter K. Nunez,

*Assistant Secretary (Enforcement).*

[FR Doc. 90-28462 Filed 12-4-90; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 157

[CGD 90-051]

RIN 2115-AD61

**Double Hull Standards for Tank Vessels Carrying Oil**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to the Oil Pollution Act of 1990, the Coast Guard is proposing standards for double hulls on tank vessels carrying oil as cargo or cargo residue that are constructed or undergo a major conversion under contracts awarded after June 30, 1990. Additionally, the Coast Guard is proposing these same standards for double hulls on tank vessels carrying oil as cargo or cargo residue that are constructed or undergo a major conversion under earlier contracts. The Act requires these vessels to have double hulls according to a timetable commencing in 1995. This proposed rule provides the shipping and shipbuilding industries with standards in order to meet the double hull requirement. These standards are, to the greatest extent possible, based on existing domestic standards issued pursuant to the Port and Tanker Safety Act (1978) or international standards adopted by the Act to Prevent Pollution from Ships (1980), which implemented the provisions of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

**DATES:** Comments must be received on or before April 1, 1991.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 90-051), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of Navigation and Vessel Inspection Circulars (NVICs) are available from the U.S. Coast Guard Marine Safety Center (G-MSC), 400 Seventh Street SW., Washington, DC 20590-0001, telephone (202) 366-6483.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen M. Shapiro, Merchant Vessel Inspection and Documentation Division (G-MVI-2), telephone (202) 267-1181.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting



comments should include their name and address, identify this rulemaking (CGD 90-051), the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. However, persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it is determined that the opportunity to make oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

#### Drafting Information

The principal persons involved in drafting this document are Mr. Stephen M. Shapiro, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

#### Background and Purpose

Section 4115 of the Oil Pollution Act of 1990, "the Act," (Pub. L. 101-380) added section 3703a to Title 46 U.S.C. Section 3703a requires a double hull to be fitted on a tank vessel carrying oil as cargo or cargo residue which is constructed or undergoes a major conversion under a contract placed after June 30, 1990 (with certain exceptions). A tank vessel that is constructed or undergoes a major conversion under an earlier contract will be required to have a double hull in accordance with a timetable in section 3703a commencing in 1995.

The definition of a tank vessel in 46 U.S.C. 2101(39) and 33 CFR 157.03(v), which applies to this rulemaking, includes a vessel that carries any amount of oil in bulk as cargo or cargo residue. This definition goes beyond that in 46 CFR 30.10-69. Therefore this rulemaking applies to vessels certificated under 46 CFR subchapter D and to vessels certificated under other subchapters that carry limited quantities of oil in bulk as cargo under 46 CFR 30.01-5.

This rulemaking does not apply to vessels which are exempted from the provisions of 46 U.S.C. chapter 37 by 46 U.S.C. part 3702. These include certain offshore supply and fishing industry vessels.

The Act does not provide technical standards for a double hull. The purpose of this rulemaking is to provide the shipping and shipbuilding industries with standards in order to meet the double hull requirement.

On September 21, 1990, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 2-90. The NVIC provides policy guidance on double hull dimensions to assist in developing plans for tank vessels that must (as of July 1, 1990) be fitted with double hulls under the Act, prior to the issuance of final rules. Vessels built to plans that are approved in accordance with NVIC 2-90 prior to the effective date of these regulations, as finalized, will be deemed in compliance with the requirement for double hulls in 46 U.S.C. 3703a. Persons may request copies of NVIC 2-90 by contacting the Marine Safety Center at the address under "ADDRESSES."

After the EXXON VALDEZ grounding, the Coast Guard commissioned a study by the National Academy of Sciences' (NAS) Marine Board to evaluate alternative tank vessel designs. The Marine Board established the Committee on Tank Vessel Design to perform this study. The scope of this study includes oceangoing vessels of more than 10,000 deadweight tons. NAS is expected to release the Committee's report by February 1991, and it will be placed in the public docket at that time. Further input is likely to be received at the next meeting of the International Maritime Organization's Marine Environment Protection Committee (MEPC), scheduled for November 1990.

The expiration date of the comment period, April 1, 1991, has been established so as to provide an opportunity to include the committee reports, and related public comment, in the rulemaking docket.

Title 46 U.S.C. 3703a permits the substitution of a double containment system for a double hull on vessels of less than 5,000 gross tons, provided that the double containment system is as effective as a double hull in preventing oil spillage. The NAS Marine Board Committee on Tank Vessel Design is evaluating the viability and effectiveness of alternative protective systems as noted above. Their report may provide guidance on equivalent double containment systems that could be incorporated for tank vessels under 5,000 gross tons. As the Coast Guard is not now aware of any feasible equivalent system, standards for a double containment system in lieu of a double hull are not proposed in this rulemaking. Comments and suggestions for a double containment system meeting the requirements of 46 U.S.C. 3703a are invited. If standards for a double containment system are developed, notification and an opportunity for public comment will be published in the Federal Register.

#### Discussion of Proposed Amendments

The Coast Guard is proposing existing or previously considered standards to the greatest extent possible. These amendments ar proposed for title 33 of the Code of Federal Regulations, part 157 (33 CFR part 157), "Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk" because they are closely related to the existing requirements found in that part. Comments and suggestions concerning these proposed standards are encouraged.

A new paragraph (j) is proposed for § 157.08 to apply the standards of new § 157.10d to vessels covered under 46 U.S.C. 3703a. Those are U.S. vessels and foreign flag vessels that operate on the navigable waters of the United States and the United States Exclusive Economic Zone as defined in § 1001 of the Act. The following is a discussion of § 157.10d.

Paragraph (a) further defines the applicability of the new double hull requirement under section 3703a to tank vessels contracted for after June 30, 1990, which must have double hulls to carry oil as cargo as of July 1, 1990, and tank vessels constructed under contracts awarded before July 1, 1990, that will be required to have double hulls in accordance with the timetable in the Act beginning in 1995. For the convenience of the reader, 46 U.S.C. 3703a is reprinted as an appendix at the end of this preamble.

Paragraph (b) implements the requirement in 46 U.S.C. 3703a that these vessels have double hulls. The law does not define "double hull." The Coast Guard interprets "double hull" to mean spaces between a vessel's skin and cargo tanks that provide reasonable protection of the entire cargo block from damage due to grounding or collision, the most likely sources of damage resulting in the loss of cargo. On that basis, this proposed rule provides protection of the cargo block by specifying the minimum clearances between a tank carrying oil and the sides, bottom, bow, and stern of a vessel. Comments regarding these proposed clearances, especially insofar as existing vessels are concerned, are particularly invited.

Calculations required by this section under the procedures in existing appendix C of 33 CFR part 157 must

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substitute a value of J=1.00 in lieu of the values prescribed in paragraph 2(a) of appendix C. This will afford protection along the entire bottom and sides of the cargo block, rather than along just a percentage of the bottom and side area. Measurements of the required width and depth of protective spaces prescribed in this section shall be in accordance with existing guidance in NVIC 1–81, which is consistent with appendix 2 to the Unified Interpretation of Annex I of MARPOL 73/78. This guidance was originally developed for vessels of 20,000 deadweight tons and more. An additional clarification is proposed to ensure minimum separation between any part of a cargo tank and the hull.

This proposed rule does not include standards for the location of suction wells or piping within protective spaces. Existing standards for these items are in Regulations 23(3) and 24(6) of Annex I to MARPOL 73/78. In addition, current Coast Guard policy in paragraph B.3.h. of enclosure (2) to NVIC 1–81 permits a suction well within a double bottom if its area is not excessive and if it does not extend down over half the depth of the double bottom.

Paragraph (c) provides a standard for protecting the bottom and sides of the cargo block on vessels of 20,000 deadweight tons or more. This standard incorporates the exisiting international standard for dimensions of protective spaces that are fitted to comply with current requirements in § 157.10(d). The current requirements for protectively located segregated ballast tanks (PL/SBT) in § 157.10(d) were mandated by the Port and Tanker Safety Act of 1978 and the Act to Prevent Pollution by Ships (1980), which adopted the provisions of MARPOL 73/78. Specifications of the dimensions and surface area coverage of PL/SBT were first developed in 1975 for vessels of 70,000 deadweight tons or more, and were incorporated in the 1976 PL/SBT regulations for those vessels in domestic trade (41 FR 1479) under the Ports and Waterways Safety Act (1973). The primary purpose of SBT is to minimize operational pollution by maintaining separate tanks for the carriage of oil and ballast water. Protective location of SBT developed as a secondary purpose. Accordingly, when the specifications for PL/SBT were developed in 1975, there was no intent to require such spaces in excess of the spaces otherwise required for SBT. Those specifications for PL/SBT were later incorporated in Regulation 13E of Annex I to MARPOL 73/78 at the 1978 International Conference on Tanker Safety and Pollution Prevention (TSPP), which produced the 1978 Protocol of MARPOL 73/78. Existing § 157.10(d) and appendix C of this part conform to Regulation 13E.

Existing § 157.10(d) requires crude oil tankers of 20,000 deadweight tons or more, and product tankers of 30,000 deadweight tons or more, to have protective spaces separating a variable percentage of the sides and bottom area of the cargo block and a vessel's skin. Specifications for those spaces, and a procedure to determine the required percentage of the side and bottom cargo tank area that must be protected by such spaces, are provided in appendix C of this part. Substitution of J=1.00 in calculations under appendix C, as required by paragraph (b) as described above, extends such protection to the entire side and bottom area of the cargo block, rather than just the percentages of such areas specified in appendix C.

Existing § 157.10(c), which conforms to Regulation 13, contains the current requirements for SBT capacity to prevent operational pollution.

The SBT capacities required by § 157.10(c) exceed the minimum volumes for PL/SBT now required by § 157.10(d). The SBT capacities required by § 157.10(c) will exceed the minimum volumes for protective spaces required by this new § 157.10(c) for the vast majority of tank vessels over 70,000 deadweight tons. Most tank vessels under 70,000 deadweight tons will have to dedicate more volume to protective spaces under this paragraph than the volume necessary for SBT under § 157.10(c). A standard for locating the additional SBT required by § 157.10(c) for most vessels over 70,000 deadweight tons is not proposed at this time because it is not considered critical to the overall intent of this rulemaking and because more input is needed to develop such a standard. The previously noted study of the NAS Marine Board Committee on Tank Vessel Design and a study sponsored by the Royal Norwegian Council for Scientific and Industrial Research on protectively located spaces, as well as input presented to the MEPC, may address the location of additional ballast. The public is particularly encouraged to submit to this docket data and other comments concerning the best location of such additional ballast. If further standards for locating such additional ballast are developed, notification and an opportunity for public comment will be published in the **Federal Register.**

Paragraph (d) provides a standard for protecting the bottom and sides of the cargo block on oceangoing and Great Lakes vessels of less than 20,000 deadweight tons and inland vessels of between 10,000 and 20,000 deadweight tons. The specifications for protective spaces in Regulation 13E of MARPOL 73/78, Annex I, which are incorporated in paragraph (c), apply only to vessels of 20,000 deadweight tons or more.

A modification of those specifications is proposed for the smaller vessels covered under this paragraph. The width of the minimum required side protection decreases linearly from 2 meters (79 in.), for a vessel of 19,999 deadweight tons (as required by Regulation 13E, without modification, for a crude oil tanker of 20,000 deadweight tons or more), down to 1 meter (39 in.), for a vessel of 10,000 deadweight tons or less. Regulation 13E specifies the minimum depth of double bottoms as a function of vessel breadth. This specification is maintained in this paragraph, with the added proviso that a double bottom shall in no case be less than 1 meter (39 in.) deep.

Paragraph (e) provides a standard for protecting the bottom and sides of the cargo block on inland (as defined in 33 CFR 2.05–20) vessels of less than 10,000 deadweight tons, including inland vessels that are also certificated for limited short protected coastwise routes. These vessels are primarily barges. This standard, and the standards for bow and stern protection found in paragraphs (f) and (g), largely incorporate the regulations proposed by the Coast Guard for tank barges on June 14, 1979 (44 FR 34440). The Coast Guard also published an advance notice of proposed rulemaking on June 14, 1979 (44 Fr 34443), to discuss the removal of certain existing single hull tank barges from oil service to reduce spillage resulting from minor hull damage. Those notices were met with overwhelming opposition from the barge industry. The major issues raised were whether double hulls on tank barges would significantly reduce cargo spillage and, if so, whether single hull tank barges should be phased out. The technical standards for double hulls were not raised as a significant issue.

As a result of the controversy over the 1979 proposals and since the Coast Guard viewed tank barge oil pollution as a national issue, the Maritime Transportation Research Board of the NAS was asked to study that issue and recommend solutions. The Board's report did not recommend double hulls for all tank barges. After reviewing the Board's report and the rulemaking dockets, the Coast Guard withdrew the proposed rule and the advance notice of proposed rulemaking on March 25, 1982 (47 FR 12829) in favor of pursuing other alternatives in an effort to achieve an approach that would minimize the cost



and maximize the net benefit. The Coast Guard noted in the withdrawal notice that a steadily increasing percentage of new tank barges were being built with double hulls. The Coast Guard has encouraged this trend by establishing inspection standards which appropriately recognize the differences between maintenance characteristics of inland tank barges with double hull and single hull construction.

As stated previously, the Act has now mandated double hulls; this rulemaking proposes standards by which to meet that mandate. Paragraph (e) requires a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer skin along the sides and bottom, measured under a procedure similar to that found in appendix C of this part for larger vessels. This is consistent with the rule proposed in 1979, which would have required a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer skin in all areas of a barge (sides, bottom, bow, and stern). This distance is considered to be the minimum distance that permits access for inspection when accounting for framing. In addition to specifying the separation distance, the rule proposed in 1979 would have imposed additional new requirements regarding the stability of a barge as well as access, sounding, venting, and piping for the protective spaces. Although this rulemaking does not propose such requirements, comments and suggestions on those subjects are particularly invited. If further standards regarding those subjects are developed, notification and an opportunity for public comment will be published in the **Federal Register.**

Paragraph (f) provides a standard for protecting the forward end of the cargo block. This standard extends the existing requirements in 33 CFR 155.470, concerning prohibited oil spaces, to all vessels subject to this section. For most types of vessels, particularly self-propelled vessels, collision protection is provided by a collision bulkhead required by Regulation 11.2 of Chapter II–1 of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83). Paragraph (f) provides for equivalent protective spaces on tank vessels which do not have collision bulkheads. For an oceangoing vessel, these spaces extend five percent of the vessel's length aft of the forward perpendicular, from a minimum requirement of one meter (39 in.) to a maximum requirement of 10 meters (32.8 ft.). A modification for most inland vessels sets the headlog (or stem at the freeboard deck) as the reference point and proposes a maximum requirement of 7.62 meters (25 ft.). Box and trail barges do not need the same degree of protection, and need to have only a 61 cm. (2 ft.) separation from the headlog. These modifications for inland vessels and box and trail barges reflect existing requirements in 46 CFR 151.15–3(d)(1)(iii).

Paragraph (g) provides a standard for protecting the aft end of the cargo block in the event a tank vessel sustains external damage to its stern. This will primarily affect barges, since the cargo block on ships is generally forward of the engine room due to other design considerations. The separation between the cargo block and the stern is equal to the minimum distance required under this section between cargo tanks and the outer side. For barges of less than 10,000 deadweight tons, this proposal has the same effect as the standard which was proposed in 1979. As a minimum, this proposed rule will provide for a 61 cm. (2 ft.) separation between any part of a cargo tank and the outer hull along the stern.

**Regulatory Evaluation**

The Coast Guard has determined that this rulemaking is non-major under E.O. 12291, but is significant under the Department of Transportation Policies and Procedures (44 FR 11040, February 26, 1979) because of general and international public interest and because of Congressional interest in mandating the double hull requirement.

Title 46 U.S.C. 3703a will result in few, if any, crude oil tankers in foreign trade to be actually retrofitted or retired earlier than would otherwise be the case since single hull tankers are permitted to lighter more than 60 miles offshore or unload cargo at deepwater ports until 2015. Much existing tonnage is old, and would be replaced prior to 2015 due to maintenance and other considerations. The final date of January 1, 2015 for single hull tank vessels applies to existing vessels under 5,000 gross tons and to larger tank vessels that offload at approved deepwater ports or lighter more than 60 miles offshore. Vessels that are not permitted to operate in their current service as of an earlier date specified by the timetables in section 3703a may remain in operation until 2015 by limiting their U.S. service route to lightering zones and deepwater ports. Therefore, it is likely that sufficient double hull tonnage required to meet the provisions of the Act will become available as new tonnage is built to replace otherwise obsolete vessels; new construction solely to meet the requirements of this law will not generally be necessary.

Our preliminary analysis, based upon a comparison of estimated voyage costs for new single and double hull tankers, indicates that the impact on the average transportation cost of imported crude oil will be approximately 17 cents per barrel, or 0.4 cents per gallon. In 1989, imports of foreign crude oil by tanker were approximately 4.9 million barrels per day, indicating an increased cost for tanker transportation of $833 thousand per day, or approximately $304 million per year, at the current level of crude oil imports. This cost of $304 million represents the incremental construction and capital recovery costs of replacing all existing crude oil tankers with double hull, rather than single hull vessels. A more detailed analysis is being prepared and will be placed in the public docket.

The purpose of this rulemaking is to define standards for double hulls on vessels that are required to have double hulls by 33 U.S.C. 3703a. The requirement to replace existing tonnage with double hull, rather than single hull vessels, is mandated by the Act. The Coast Guard has no discretion on this point under the law. The Coast Guard's discretion is limited to defining the standards for such double hull vessels. The variation between the costs of building tankers to the various double hull standards the Coast Guard could adopt is minimal compared to the additional costs of building tankers with double rather than single hulls. In other words, the difference between the costs of various standards for locating the necessary extra steel for a double hull is minimal compared with the basic costs of fitting that necessary extra steel in any potential location.

Comments concerning the costs of these requirements, particularly for vessels in domestic trade, are encouraged. If warranted by the comments received, the Coast Guard will conduct additional analysis, as appropriate. Any such analysis will be placed in the public docket.

**Small Entities**

This proposed rule provides standards for double hulls that must be fitted in tank vessels carrying oil in accordance with 46 U.S.C. 3703a. These standards do not impact vessels currently in operation, some of which may be owned or operated by small entities, until 1995. Agencies may delay the completion of the initial regulatory flexibility analysis under section 608(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). To assist the Coast Guard in conducting the regulatory flexibility analysis for this rulemaking, we invite comments on the

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impact of these rules on small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will place the regulatory flexibility analysis in the public docket when completed and consider any comments received concerning the impact on small entities when this proposed rule is finalized.

**Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12812 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

This proposed rule requiring double hulls for certain tank vessels will implement section 4115 of the Oil Pollution Act of 1990 and benefit the human environment by mitigating or preventing oil spills resulting from certain groundings and collisions involving tank vessels. No significant adverse environmental impacts are anticipated.

The Coast Guard has no discretion under the Act to determine whether double hulls will be required. However, the Coast Guard does have discretion to determine the dimensions (standards) of protective spaces that will constitute a double hull. The differences between the environmental impacts of various potential double hull standards are small compared with the impact of the basic statutory requirements for double hulls. Government agencies, private industry, and other interested persons are encouraged to submit comments regarding these differences. The ongoing studies and other anticipated input noted in the "Discussion of Proposed Amendments" will also provide information on the environmental impact of this proposal.

The Coast Guard will review this information along with comments received in response to this rulemaking in determining appropriate environmental documentation under the National Environmental Policy Act. Such documentation will be placed in the public docket.

**Appendix—Double Hull Requirements (46 U.S.C. 3703a)**

46 U.S.C. 3703a, as added by section 4115 of the Oil Pollution Act of 1990 (Pub. L. 101–380), provides that:

(a) Except as otherwise provided in this section, a vessel to which this chapter applies shall be equipped with a double hull—

(1) If it is constructed or adapted to carry, or carries, oil as cargo or cargo residue; and

(2) When operating on the waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone.

(b) This section does not apply to—

(1) A vessel used only to respond to a discharge of oil or a hazardous substance;

(2) A vessel of less than 5,000 gross tons equipped with a double containment system determined by the Secretary to be as effective as a double hull for the prevention of a discharge of oil; or

(3) Before January 1, 2015—

(A) A vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.); or

(B) A delivering vessel that is offloading in lightering activities—

(i) Within a lightering zone established under section 3715(b)(5) of this title; and

(ii) More than 60 miles from the baseline from which the territorial sea of the United States is measured.

(c)(1) In this subsection, the age of a vessel is determined from the later of the date on which the vessel is—

(A) Delivered after original construction;

(B) Delivered after completion of a major conversion; or

(C) Qualifed for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. App. 14).

(2) A vessel of less than 5,000 gross tons for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage value determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statutes of the United States (46 U.S.C. App. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double containment system after January 1, 2015.

(3) A vessel for which a building contract or contract for major conversion was placed before June 30, 1990, and that is delivered under that contract before January 1, 1994, and a vessel that had its appraised salvage determined by the Coast Guard before June 30, 1990, and that qualifies for documentation under section 4136 of the Revised Statues of the United States (46 U.S.C. App. 14) before January 1, 1994, may not operate in the navigable waters or Exclusive Economic Zone of the United States unless equipped with a double hull—

(A) In the case of a vessel of at least 5,000 gross tons but less than 15,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 39 years old or older and has a single hull, or is 44 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 37 years old or older and has a single hull, or is 42 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 35 years old or older and has a single hull, or is 40 years old or older and has a double bottom or double sides;

(vii) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides;

(B) In the case of a vessel of at least 15,000 gross tons but less than 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 40 years old or older and has a single hull, or is 45 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 38 years old or older and has a single hull, or is 43 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 36 years old or older and has a single hull, or is 41 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 34 years old or older and has a single hull, or is 39 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 32 years old or older and has a single hull, or is 37 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 30 years old or older and has a single hull, or is 35 years old or older and has a double bottom or double sides;

(vii) After January 1, 2001, if the vessel is 29 years old or older and has a single hull, or is 34 years old or older and has a double bottom or double sides;

(viii) After January 1, 2002, if the vessel is 28 years old or older and has a single hull, or is 33 years old or older and has a double bottom or double sides;

(ix) After January 1, 2003, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(x) After January 1, 2004, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(xi) After January 1, 2005, if the vessel is 25 years old or older and has a single hull, or is 30 years old or older and has a double bottom or double sides; and

(C) In the case of a vessel of at least 30,000 gross tons—

(i) After January 1, 1995, if the vessel is 28 years old or older and has a single hull, or is



33 years old or older and has a double bottom or double sides;

(ii) After January 1, 1996, if the vessel is 27 years old or older and has a single hull, or is 32 years old or older and has a double bottom or double sides;

(iii) After January 1, 1997, if the vessel is 26 years old or older and has a single hull, or is 31 years old or older and has a double bottom or double sides;

(iv) After January 1, 1998, if the vessel is 25 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(v) After January 1, 1999, if the vessel is 24 years old or older and has a single hull, or is 29 years old or older and has a double bottom or double sides;

(vi) After January 1, 2000, if the vessel is 23 years old or older and has a single hull, or is 28 years old or older and has a double bottom or double sides;

(4) Except as provided in subsection (b) of this section—

(A) A vessel that has a single hull may not operate after January 1, 2010; and

(B) A vessel that has a double bottom or double sides may not operate after January 1, 2015.

**List of Subjects in 33 CFR 157**

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes amending 33 CFR part 157 as follows:

## PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 is revised to read as follows:

**Authority:** 33 U.S.C. 1903; Sec. 4115, Pub. L. 101–380; 46 U.S.C. 3703a; 49 CFR 1.46(n) and (hh).

2. Section 157.08 is amended by adding a new paragraph (j) to read as follows:

**§ 157.08 Applicability of Subpart B.**

* * * * *

(j) Section 157.10d applies to U.S. tank vessels and to foreign tank vessels of any gross tons operating on the navigable waters of the United States or the United States Exclusive Economic Zone, as defined in section 1001 of the Oil Pollution Act of 1990, Pub. L. 101–380, except:

(1) A vessel used only to respond to a discharge of oil or a hazardous substance; or

(2) Before January 1, 2015—

(i) A vessel unloading oil in bulk at a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*); or

(ii) A delivering vessel that is offloading in lightering activities—

(A) Within a lightering zone established under 46 U.S.C. 3715(b)(5); and

(B) More than 60 miles from the territorial sea baseline, as defined in 33 CFR 2.05–10.

3. Section 157.10d is added to read as follows:

**§ 157.10d Double hulls on tank vessels constructed after June 30, 1990.**

(a) With the exceptions stated in § 157.08(j), this section applies to a tank vessel—

(1) For which the building contract is awarded after June 30, 1990;

(2) That is delivered after December 31, 1993;

(3) That undergoes a major conversion for which;

(i) The contract is awarded after June 30, 1990; or

(ii) Conversion is completed after December 31, 1993; or

(4) That is otherwise required to have a double hull by 46 U.S.C. 3703a.

(b) Each tank vessel under this section must be fitted with a double hull in accordance with the requirements of this section.

(1) Calculations in Appendix C of this part that are required by this section must incorporate a value of J=1.00, in lieu of the values in paragraph 2(a) of appendix C.

(2) A vessel must not carry oil as cargo in any tank that has any part, except for suction wells, closer to the inboard side of the vessel's side or bottom shell plating than—

(i) One meter (39 in.); or

(ii) For a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, 61 cm. (2 ft.).

(c) A vessel of 20,000 deadweight tons or more must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length as determined under the procedure contained in paragraph 2 of Appendix C of this part.

(d) A vessel of less than 20,000 deadweight tons, except a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length as determined under the procedure contained in paragraph 2 of appendix C of this part, except that—

(1) The minimum width of each wing tank or space under paragraph 2(b)(1) of Appendix C must be [deadweight tonnage/10,000] meters but in no case less than 1 meter (39 in.); and

(2) The minimum vertical depth of each double bottom or space under paragraph 2(b)(2) of Appendix C must be the lesser of B/15 or 2 meters (79 in.) but in no case less than 1 meter (39 in.).

(e) A vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes must have ballast tanks, voids, or other spaces that do not carry oil distributed within the cargo tank length—

(1) A minimum of 61 cm. (2 ft.) from the inboard side of the side shell plate, extending the full depth of the side or from the main deck to the top of the double bottom required by paragraph (e)(2), measured at right angles to the centerline along the entire side in way of cargo tanks; and

(2) A minimum of 61 cm. (2 ft.) from the top of the bottom shell plate, measured vertically upward along the entire bottom in way of cargo tanks.

(f) A vessel must not carry oil in any tank extending forward of:

(1) The collision bulkhead; or

(2) In the absence of a collision bulkhead, the transverse plane perpendicular to the centerline through a point located:

(i) the lesser of 10 meters (32.8 ft.) or 5 percent of the vessel length, but in no case less than 1 meter (39 in.), aft of the forward perpendicular;

(ii) On a vessel of less than 10,000 deadweight tons that is constructed and certificated primarily for service on inland routes, the lesser of 7.62 meters (25 ft.) or 5 percent of the vessel length, but in no case less than 61 cm. (2 ft.), aft of the headlog or stem at the freeboard deck; or

(iii) On a box or trail barge, 61 cm. (2 ft.) aft of the headlog.

(g) A vessel must not carry oil as cargo in any tank that has any part closer to the stern than the minimum distance required under this section between a cargo tank and the vessel's outer side at amidships.

Dated: November 28, 1990.

**J. W. Kime,**

*Admiral, U.S. Coast Guard Commandant.*

[FR Doc. 90-28465 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-14-M

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**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 73-3c; Notice 8]**

**Rearview Mirror Systems**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Termination of rulemaking.

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**SUMMARY:** This notice terminates a rulemaking about Standard No. 111, Rearview Mirror Systems, that proposed requirements for field of view performance, reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation for all vehicle types. After reviewing the comments, the agency has determined that the benefits from the rulemaking would have been relatively small and would have been substantially outweighed by the costs.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Cavey, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366-5271.

**SUPPLEMENTARY INFORMATION:** On November 8, 1978, the agency issued a notice proposing extensive revisions to Federal Motor Vehicle Safety Standard 111, Rearview Mirrors, (49 CFR 571.111) including requirements for field of view performance, reflectance, adjustment, location, mounting, breakaway characteristics, shatter resistance, distortion, reference framing, and image orientation for all vehicle types. (43 FR 51657; Docket 71-3a; Notice 4). Concurrent with that rulemaking, the agency issued a notice proposing a new Federal motor vehicle safety standard 128, Fields of Direct View, which proposed limits on the maximum permissible size of obstructions in the driver's field of view and minimum field of view for the driver through the windshield (43 FR 51677, Docket 70-7, Notice 5). On July 10, 1981, the agency terminated the field of view rulemaking, concluding that its potential costs substantially outweighed its uncertain and relatively small safety benefits. (46 FR 36673)

The agency received extensive comments to Docket 71-3a on the notice proposing to amend the requirements for mirror systems. The comments about the proposal were mixed. Although some mirror inventors, safety organizations, and members of the general public favored improving indirect fields of view by amending requirements for mirror systems, most manufacturers and other commenters believed that there were insufficient safety data to justify the amendments and that further research and analysis was needed to assess the proposals. Some commenters criticized the large cost of the proposal relative to its uncertain or nonexistent benefits. Commenters also criticized the effectiveness, objectiveness, and practicability of specific proposals.

Since the 1978 NPRM, the agency amended provisions in Standard No. 111 to permit the use of exterior convex-mirrors on the passenger side to meet the standard's field of view requirements. (47 FR 38698, September 2, 1982; 48 FR 38842, August 26, 1983). As for the unresolved proposals raised in the 1978 NPRM, the agency has decided to terminate rulemaking on them. The information provided in response to the NPRM raised questions about the rule's potential benefits and the appropriateness of certain proposed requirements. After reviewing that information, the agency concludes that the benefits from the rulemaking would have been relatively small and would have been substantially outweighed by the costs.

Based on the above considerations, the agency has decided to close Docket No. 71-3a Notice 4 and to terminate the general rulemaking to amend requirements for rearview mirror systems. Notwithstanding this decision to terminate the general rulemaking on mirror systems, the agency will continue to assess specific performance factors with mirrors. For instance, the agency is currently reviewing S11's reflectance requirements in response to a petition from Donnelly Corporation. In addition, the agency is reviewing S9's requirements for convex crossview mirrors on school buses following the soliciting of public comments in an Advance Notice of Proposed Rulemaking. (54 FR 53127, December 27, 1989)

Issued on: November 29, 1990.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 90-28457 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-59-M

## 49 CFR Part 571

## Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; Side Impact Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** Mr. Peter N. Gold petitioned NHTSA to conduct rulemaking to improve occupant protection during side impact collisions. NHTSA is denying the petition as moot because NHTSA has already either completed or commenced a number of rulemakings to improve occupant protection during side impact collisions.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Kanianthra, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

**SUPPLEMENTARY INFORMATION:** NHTSA received a petition for rulemaking from Peter N. Gold, dated July 2, 1990. Mr. Gold requested that NHTSA establish additional requirements to protect vehicle occupants during side impact collisions. Specifically, Mr. Gold suggested that:

> All vehicles over the weight of two thousand pounds shall provide integral "means" to absorb, resist, and transfer a side impact energy load within the vehicle structure to provide for reduced incidents of lateral transfer of vehicle occupants at rest within said vehicle to sides of said vehicles as a result of a side impact collision.

Mr. Gold enclosed a patent application for a vehicle safety bar assembly, which he indicated could be used to protect occupants better during side impact collisions. According to Mr. Gold, the vehicle safety bar is mountable within the cavity of a vehicle door or panel. Perhaps unknown to Mr. Gold, NHTSA had already commenced rulemaking to improve side impact protection. Below, NHTSA describes the current requirements concerning side impact protection as well as ongoing rulemaking to establish additional requirements.

NHTSA's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214 (49 CFR 571.214). Since it became effective on January 1, 1973, the standard has specified performance requirements for each side door in a passenger car, to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a car is pushed into the passenger compartment during a side impact. The standard requires each door on a static vehicle to resist crush forces that are applied by a piston pressing as steel cylinder inward against the door's outside surface in a laboratory test. Vehicle manufactures have generally chosen to meet these performance requirements by reinforcing the side doors with metal beams.

NHTSA's analysis of crash data has shown that the strengthening of the side doors with metal beams is effective, but primarily in single car side impacts. The agency's November 1982 study, "An Evaluation of Side Structure Improvements in Response to Federal Motor Vehicle Safety Standard 214" (DOT HS 806-314), estimated that 460 lives have been saved and 9,500 fewer hospitalizations have occurred per year as a result of the standard. The study also found that while single vehicle occupant fatalities were reduced by 14 percent, the standard had little effect on reducing fatalities in multi-car collisions.

Because of the large number of fatalities and injuries which continue to result from side impact crashes, the agency initiated a research program to upgrade current standard. This effort focused primarily on thoracic protection, since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities.

Based on that research, on January 27, 1988, NHTSA published in the **Federal Register** (53 FR 2240), a notice of proposed rulemaking (NPRM) proposing to upgrade the standard. NHTSA analyzed comments on the proposal and published a final rule on October 30, 1990 (55 FR 45722). The final rule establishes a test procedure which simulates a two-vehicle side crash representative of an injurious side crash. The test uses a moving deformable barrier (MDB), weighing approximately 3,000 pounds, to represent a vehicle which is traveling at 30 mph and strikes the side of another vehicle which is traveling at 15 mph. The agency adopted specifications for the MDB in a separate notice (55 FR 45770) published at the same time as the October 30, final rule. To measure the magnitude of the threat of injury resulting from the side impact collision, the agency decided to use a specially developed side impact dummy (SID). NHTSA decided to use two of these dummies in a test, with one being placed on the front outboard seat and the other on the rear outboard seat, on the struck side of the car. The agency adopted specifications for the SID in a separate notice (55 FR 45757) published at the same time as the October 30, 1990 final rule.

NHTSA stated in the final rule that its new side impact requirements complement the long-standing requirements, which are primarily effective in single vehicle side impact accidents, by providing additional protection in multi-vehicle side impacts. In the final rule, the agency established specific performance crtieria which must be met to reduce the possibility of thoracic side impact injuries without increasing harm to the pelvis. The final rule requires passenger cars not to exceed specified performance limits for the thorax and the pelvis. For the thorax, the performance limit uses an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration of values of the upper and lower ribs of the test dummy. The final rule establishes a TTI(d) limit of 85 g's for four-door cars and 90 g's for two-door cars (where "g" is defined as the acceleration due to gravity). In addition, the final rule sets a limit of 130 g's on the peak acceleration that the pelvis can experience during the impact. Finally, to reduce the possibility of occupant ejection, the agency requires that each door in a struck vehicle, except a door struck by the MOB, remain closed during the crash test.

In addition to issuing the October 30, 1990 final rule to improve thoracic protection in passenger car side impacts, NHTSA has also, during the past several years, been involved in several other efforts to improve side impact protection. These efforts cover both passenger cars and light trucks, vans and mutipurpose passenger vehicles (MPV's).

On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an advance notice of proposed rulemaking (ANPRM) concerning requirements for passenger cars intended to reduce the risk of head and neck injuries and ejections, in side impact crashes between vehicles and in other crashes where the side protection of the vehicle is a relevant factor. The ANPRM also sought comments on whether additional requirements should be considered to address side impacts with poles and trees.

NHTSA's efforts to improve side impact protection for light trucks, vans and MPV's (collectively referred to as "LTV's") largely correspond to its efforts for passenger cars. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31710) an ANPRM regarding possible requirements for LTV's in each of the areas where requirements have been established, or are under consideration, for passenger cars. In summary, the ANPRM addressed: (1) Extension to LTV's of Standard No. 214's then-existing requirements, i.e., measuring performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder inward against the door, (2) developing dynamic test procedures and performance requirements for LTV's, corresponding to those proposed in the January 1988 NPRM for passenger cars, and (3) developing requirements for LTV's intended to reduce the risk of head and neck injuries and ejections, corresponding to those addressed in the August 1988 ANPRM for passenger cars.

On December 22, 1989, NHTSA published in the **Federal Register** (54 FR 52826) an NPRM proposing to extend the then-existing requirements of Standard No. 214 to LTV's. Of the various potential side impact requirements for LTV's that were addressed in the ANPRM, the agency was the furthest advanced in analyzing the extension of Standard No. 214's then-existing requirements to those vehicles. NHTSA decided to go forward with rulemaking on that issue separately, since addressing all of the potential requirements together could result in unnecessary delays. NHTSA has reviewed comments on the proposed rule. NHTSA anticipates that a decision concerning the final rule will be made soon.

In view of these completed and ongoing rulemakings concerning side impact protection, NHTSA has decided to deny Mr. Gold's petition as moot. NHTSA has already completed or commenced the rulemakings requested by Mr. Gold. NHTSA will include Mr. Gold's petition in the docket for the side impact rulemaking and, as appropriate, consider the information presented by Mr. Gold during the ongoing rulemakings.

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

Issued on November 28, 1990.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 90-28456 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 630

[Docket No. 901197-0297]

## Atlantic Swordfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NOAA proposes to amend the regulations implementing the Fishery Management Plan for Atlantic Swordfish (FMP) to (1) Establish as a condition for the renewal of an annual vessel permit in the Atlantic swordfish fishery that all fishing vessel reports required for that vessel must have been submitted, and (2) add to the swordfish regulations a reference regarding the marine mammal exemption program under the Marine Mammal Protection Act as it applies to vessels and persons in the longline and gillnet fisheries for swordfish. The intended effects of this

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action are to ensure compliance with and facilitate enforcement of the existing vessel reporting requirements and to advise vessel owners and operators of additional Federal regulatory requirements that may apply to them.

**DATES:** Written comments must be received by December 20, 1991.

**ADDRESSES:** Comments should be sent to Rodney C. Dalton, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

**FOR FURTHER INFORMATION CONTACT:** Rodney C. Dalton, 813–893–3722.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the FMP and its implementing regulations at 50 CFR part 630, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The regulations at 50 CFR 630.5(a) require an owner or operator of a permitted vessel that is selected by the NMFS Science and Research Director to ensure that a daily fishing record is maintained on available forms. The forms must be submitted on a monthly basis to the appropriate NMFS Science and Research Director. Information from the daily fishing records provides effort data and numbers of fish caught per set (i.e., catch per unit of fishing effort) and catch locations. This information is necessary for assessment and monitoring of the resource. When a selected, permitted vessel does not fish during a month, a simple report of this inactivity is required for the month. These reports of no fishing activity facilitate NMF's determination of the receipt of all required reports and provide data on the swordfishing fleet in general.

Compliance with the fishing vessel reporting requirements has not been uniformly satisfactory. The owners/operators of a number of selected, permitted vessels have not submitted the required forms. NOAA believes that the annual fishing permit required by 50 CFR 630.4 for such a vessel should not be renewed until all required reports have been submitted. Accordingly, NOAA proposes to condition the reissuance of a fishing permit on compliance with all applicable reporting requirements of 50 CFR 630.5(a) for the 12 months immediately preceding the renewal application. The owner/operator of a vessel for which all required reports have not been submitted would be notified of that deficiency when he applies for an annual permit and would have an opportunity to correct the deficiency.

Regulations issued under the Marine Mammal Protection Act of 1972 (the Act), as amended (16 U.S.C. 1384), establish a 5-year exemption program (until October 1, 1993) from the Act's general prohibition on the taking of marine mammals for certain incidental takings of marine mammals in the course of commercial fishing (see 50 CFR part 229). Under that interim exemption program, the longline and gillnet fisheries for swordfish in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) have been identified as commercial fisheries in which there is an incidental taking of marine mammals. Accordingly, requirements pertaining to registration, exemption certificates, decals, and reports, as contained in 50 CFR part 229, apply to vessels, owners, and operators in those swordfish fisheries. To ensure that swordfish longline and gillnet fishermen are aware of the requirements of the interim exemption program under the Act, section 630.3 of the swordfish regulations ("Relation to other laws") would be revised to reference 50 CFR part 229.

## Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this proposed rule is necessary for the conservation and management of the swordfish fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The primary effect of this proposed rule would be to enhance compliance with and facilitate enforcement of the existing vessel reporting requirements. The regulatory and economic impacts of the reporting requirements were fully evaluated when they were implemented (51 FR 20297, June 4, 1986). This proposed rule will not change those previously assessed impacts.

This proposed rule does not change any of the factors considered in the environmental impact statement prepared for the FMP; accordingly, this action is categorically excluded from the requirement of NOAA Directive 02–10 to prepare an environmental assessment.

In the final rule implementing the FMP (51 FR 20297, June 4, 1986) NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the approved coastal zone management programs of all the affected states. Since this proposed rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and the initial consistency determination, a new consistency determination under the Coastal Zone Management Act is not required.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

## List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 29, 1990.

**Michael F. Tillman,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 630 is proposed to be amended as follows:

## PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 630.3 is revised to read as follows:

**§ 630.3 Relation to other laws.**

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a longline or gillnet swordfish fishery in the Atlantic Ocean (including the Gulf of Mexico and Carribbean Sea) unless the vessel owner or authorized representative has complied with the



requirements pertaining to registration, exemption certificates, decals, and reports as contained in 50 CFR part 229.

3. In § 630.4, paragraph (c) is revised to read as follows:

**§ 630.4 Vessel permits.**

* * * * *

(c) *Issuance.* (1) The Regional Director will issue a vessel permit at any time during the fishing year to an applicant if:

(i) The application is complete; and

(ii) The applicant has complied with all applicable reporting requirements of § 630.5(a) for the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 630.5(a) for the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

* * * * *

[FR Doc. 90–28525 Filed 12–4–90; 8:45 am]
BILLING CODE 3510–22–M

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# Notices

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

November 29, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

**Extension**

- Agricultural Marketing Service
  Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping
  Recordkeeping
  Businesses or other for-profit; 1,926 hours; not applicable under 3504(h)

F. Tracy Schonrock (202) 447-3171
Donald E. Hulcher,
*Acting Departmental Clearance Officer.*
[FR Doc. 90-28438 Filed 12-4-90; 8:45 am]
BILLING CODE 3410-01-M

### Animal and Plant Health Inspection Service

[Docket No. 90-229]

### Scrapie Negotiated Rulemaking Advisory Committee; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.
**ACTION:** Notice of meetings.

**SUMMARY:** The purpose of this notice is to announce the seventh and eighth meetings in a series of sessions of the Scrapie Negotiated Rulemaking Advisory Committee.

**PLACE, DATES, AND TIME OF MEETINGS:** The seventh meeting will be held on December 13 and 14, 1990, from 9 a.m. to 5 p.m. each day. The seventh meeting will be held at the offices of the Conservation Foundation, 1250 24th Street NW., Washington, DC 20037. The eighth meeting will be held on January 20, 1991, from 9 a.m. to 5 p.m. at the Ramada Inn Long Beach, 5325 East Pacific Coast Highway, Long Beach, California 90804.

**FOR FURTHER INFORMATION CONTACT:** David Galbreath, Planning and Risk Analysis Systems, PPD, APHIS, USDA, room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8017.

**SUPPLEMENTARY INFORMATION:** In a **Federal Register** notice published on February 26, 1990 (55 FR 6662-6663, Docket No. 89-139), we announced our intent to establish a Scrapie Negotiated Rulemaking Advisory Committee (Committee), chartered under the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. No. 92-463). The Committee is developing alternatives to the current regulatory program designed to control scrapie in sheep and goats. The first meeting of the Committee was held on May 8 and 9, 1990, with five subsequent meetings in July, August, September, October, and November, 1990. This notice announces the seventh and eighth meetings in a series of sessions of the Committee.

The purpose of the meetings is to bring together members of the Animal and Plant Health Inspection Service, representatives of the sheep industry, and representatives of other parties with a definable stake in scrapie issues to frame a recommended rulemaking proposal as an alternative to the current regulatory program for the control of scrapie.

The tentative agendas for the seventh and eighth meetings of the Committee are as follows:

**Seventh Meeting**

*First Day*

*Morning session*—9 a.m.
Review of minutes of last meeting
Discussion of "Scrapie Uniform Methods and Rules" document
*Afternoon session*—1 p.m.
Discussion of "Scrapie Certification Proposed Rule" document
Public comments

*Second Day*

*Morning session*—9 a.m.
Discussion of "Scrapie Indemnity Proposed Rule" document
*Afternoon session*—1 p.m.
Committee administrative issues
Discussion of future Committee meeting agendas
Public comments

**Eighth Meeting**

*Morning session*—9 a.m.
Final review of Committee products
*Afternoon session*—1 p.m.
Discussion of future Committee activities
Public comments

The meetings will be open to the public. Public participation at the meetings will be allowed during periods announced at each meeting for this purpose. Anyone who wants to file a written statement with the Committee may do so before, at the time of the meetings, or after the meetings by sending the statement on or before February 8, 1991, to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to the Scrapie Negotiated Rulemaking Advisory Committee.

Due to administrative error, less than 15 days notice is being given.

This notice of meetings is given in compliance with the Federal Advisory Committee Act (5 U.S.C. App., Pub. L. 92-463).



Done in Washington, DC, this 29th day of November 1990.
James W. Glosser,
*Administrator, Animal and Plant Health Inspection Service.*
[FR Doc. 90-28467 Filed 12-4-90; 8:45 am]
BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** National Oceanic and Atmospheric Administration.

*Title:* Capital Construction Fund—Deposit/Withdrawal Report.

*Form Number:* NOAA Form 34-82; OMB—0648-0041.

*Type of Request:* Request for extension of the expiration date of a currently approved collection without any change in the substance or method of the collection.

*Burden:* 2000 respondents; 825 reporting hours; average hours per response—.33 hours.

*Needs and Uses:* Respondents are fishermen holding CCF Agreements. Information is used in checking for respondents' compliance with the program requirements and for inconsistencies in their reporting to NOAA and the IRS of program-related adjustments to their income. Deposit and withdrawal information is also required, by statute, to Treasury Department.

*Affected Public:* Businesses or other for-profit, small businesses or organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.
Edward Michals,
*Departmental Clearance Officer, Office of Management and Organization.*
[FR Doc. 90-28461 Filed 12-4-90; 8:45 am]
BILLING CODE 3510-CW-M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** International Trade Administration, Commerce.

*Title:* Product Characteristics—Design Check-Off List.

*Form Numbers:* Agency—ITA-426P, OMB—0625-0035.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 1,900 respondents; 950 reporting hours.

*Average Hours per Response:* one-half hour.

*Needs and Uses:* The International Trade Administration (ITA) sponsors up to 100 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 11 events annually, which is a combination of multi-stop trade missions and small equipment presentations. This collection seeks from participating U.S. firms information on the physical nature, power (utility), and graphic requirements of the products and services to be displayed in a U.S. pavilion or Matchmaker event, e.g. electrical voltage, dimension/weight of equipment to be exhibited, compressed air/gas, noise level, raw materials used for production during the exhibition, special anchorage (against vibration) photographs/wall graphics to be used, and company brochure to be forwarded. Without this information, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants.

*Affected Public:* Businesses or other for profit; small businesses or organizations.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.
Edward Michals,
*Departmental Clearance Officer, Office of Management and Organization.*
[FR Doc. 90-28462 Filed 12-4-90; 8:45 am]
BILLING CODE 3510-CW-M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**AGENCY:** International Trade Administration, Commerce.

*Title:* Application for an Export Trade Certificate of Review.

*Form Numbers:* Agency—ITA-4093P, OMB—0625-0125.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 30 respondents; 960 reporting hours.

*Average Hours per Response:* 32 hours.

*Needs and Uses:* The Export Trading Company Act of 1982 required the Department of Commerce to establish a program to evaluate applications for antitrust Export Trade Certificates of Review, and with concurrence of the Department of Justice, issue such certificates in appropriate cases. The information contained in the application and issue an Export Trade Certificate of Review. A certificate provides its holder and members named in the certificate with virtual immunity from Government actions under State and Federal Antitrust laws for the export conduct specified in the certificate. It also provides disincentive for frivolous private actions to actual damages. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving joint action by domestic competitors. This antitrust uncertainty was cited as one of the major impediments to increased U.S. exports.

*Affected Public:* State or local governments, businesses or other for profit; small businesses or organizations.

*Frequency:* On Occasion.

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*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90–28463 Filed 12–4–90; 8:45 am]

BILLING CODE 3510–CW–M

## International Trade Administration

**[Application No. 90–A0005]**

## Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the California Kiwifruit Commission. Notice of issuance of the Certificate was published in the **Federal Register** on August 17, 1990 (FR 33740).

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CCFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

Export Trade Certificate of Review No. 90–00005 was issued to the California Kiwifruit Commission ("CKC") on August 10, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on August 17, 1990 (55 FR 33740).

CKC sought to amend its Certificate by adding California Kiwifruit Exporters Association ("CKEA") as a "Member" (55 FR 41871). We amended the Certificate to add CKEA as a "co-certificate holder" rather than a "Member". The protection provided CKEA as a "co-certificate holder" is equivalent to adding it as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)).

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**EFFECTIVE DATE:** October 5, 1990.

Dated: November 29, 1990.

**George Muller,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 90–28464 Filed 12–4–90; 8:45 am]

BILLING CODE 3510–DR–M

## Short-Supply Review: Certain Manganese Steel Plate

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply review and request for comments; certain manganese steel plate.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 348 net tons of various sizes of certain managanese steel plate under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

**SHORT-SUPPLY REVIEW NUMBER:** 33.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain manganese steel plate. On November 29, 1990, the Secretary received an adequate petition from U.S. Metalsource requesting a short-supply allowance for 348 net tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

*Thickness*: ¼ to ¾ inch
*Width*: 60 inches to 96 inches
*Length*: 144 inches to 240 inches
*Tolerances*: as per ASTM—A6
*Chemistry*: Mn, 11 to 14%; C, 1.15%; Si, <0.06%; P, <0.04%; S, <0.06%; Cr, <5%
*Hardness*: BHN 200 in delivery condition (work hardens under impact to BHN 500–600)
*Yield Strength*: 50 KSI
*Tensile Strength*: 125 KSI
*Elongation*: 30%

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has granted short supply for this product during each of the two immediately preceding years. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than December 4, 1990.

Comments: Interested parties wishing to comment upon this review must send written comments not later than December 13, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S.



Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

**FOR FURTHER INFORMATION CONTACT:** Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28631 Filed 12–4–90; 8:45 am]

BILLING CODE 3510–DS–M

## National Institute of Standards and Technology

**[Docket No. 901102–0302]**

## National Voluntary Laboratory Accreditation Program

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Publication of 1990 NVLAP second quarterly supplement.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces the publication of the 1990 NVLAP Second Quarterly Supplement listing of laboratories accredited and de-accredited through September 30, 1990. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

**FOR FURTHER INFORMATION CONTACT:** Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016.

**SUPPLEMENTARY INFORMATION:** The Directory of NVLAP Accredited Laboratories (NISTIR 90–4290) is published annually pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

**John W. Lyons,**

*Director.*

[FR Doc. 90–28460 Filed 12–4–90; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF DEFENSE

## Department of the Air Force

## USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Directed Energy Weapons for Delay & Denial Security Systems will meet on 20–21 December 1990, from 8 a.m. to 5 p.m. at ANSER, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to review the task, obtain program briefings, and develop a roadmap for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 90–28429 Filed 12–4–90; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

## Armed Forces Epidemiological Board, DOD; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

*Committee Name:* Armed Forces Epidemiological Board, DOD.

*Date:* December 17, 1990.

*Time:* 0900–1700.

*Place:* Naval Medical Research Institute, Bethesda, Maryland.

*Proposed Agenda:* Review of Overseas Laboratories.

This meeting will be open to the public but very limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline, Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041–3258.

**FOR FURTHER INFORMATION CONTACT:** For further information contact CAPT W.M. Parsons, (703) 756–8013.

**Kenneth L. Denton,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 90–28430 Filed 12–4–90; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

## Chief of Naval Operations Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2,) notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Defense Subpanel Task Force will meet December 20, 1990 from 9 a.m. to 5 p.m., in the CNO's Conference Room, Pentagon 4E830, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agency for the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requries that all sessions of the meeting be closed to the public because they will be concerned with matters listed in sections 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO

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Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 3, 1990.

**C.B. Roberts,**

*LTCOL, USMC Register Liason Officer.*

[FR Doc. 90-28686 Filed 12-4-90; 8:45 am]

BILLING CODE 3810-AE-M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 12, 1990 beginning at 1 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at 11 a.m. at the same location and will include discussions of the upper Delaware ice jam project; middle and upper Delaware water quality protection briefings and hearing process and Delaware Estuary water quality standards proposed upgrades.

The subjects of the hearing will be as follows:

*Amendment of Project Review Filing Fee Schedule.* Notice was given in the October 15, 1990 Federal Register, Vol. 55, No. 199, page 41745, that the Commission would hold a public hearing on December 12, 1990 to receive comments on proposed amendments to its schedule of project review filing fees for review of water resources projects. The revisions would make the project review program more self-sustaining and would: Require filing fees for project review pursuant to § 3.8 and Article 10 of the Delaware River Basin Compact; no longer exempt government agencies from such filing fees; and establish a new fee schedule, increasing the minimum fee to $1,000 for any project requiring Commission action. In addition, each substantial project modification following Commission action would require an additional filing fee.

*Amendments to the Administrative Manual—Rules of Practice and Procedure.* Notice was given in the October 16, 1990 Federal Register, Vol. 55, No. 202, page 42207, that the Commission would hold a public hearing on December 12, 1990 to receive comments on proposed amendments to its Rules of Practice and Procedure in relation to Commission review of landfill projects. The proposal would reaffirm the policies established in Resolution No. 88-7 concerning the review of sanitary landfill projects by the Commission and incorporate those policies in the Rules of Practice and Procedure for the first time.

*A Proposal To Adopt the 1990 Water Resources Program.* A proposal that the 1990 Water Resources Program and the activities, programs, initiatives, concerns, projections, and proposals identified and set forth therein be accepted and adopted, in accordance with the requirements of § 13.2 of the Delaware River Basin Compact.

*Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or § 3.8 of the Compact*

1. *City of Allentown, PA D-73-177 CP (Revised).* An application for a change of ownership (from the Allentown Authority to City of Allentown, PA) and an expansion of service area for the applicant's existing 40.0 million gallons per day (mgd) sewage treatment plant (STP). The applicant's expanded service area will include portions of the Townships of Hanover, Weisenberg; and Lowhill. The STP is located in the City of Allentown and discharges directly to the Lehigh River. The STP and the project service area are entirely within Lehigh County, Pennsylvania.

2. *Deptford Township Municipal Utilities Authority D-82-7 CP Renewal.* An application for the renewal of a ground water withdrawal project to supply up to 30 million gallons (mg)/30 days of water to the applicant's distribution system from Well No. 7. Commission approval on October 30, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 123 mg/30 days. The project is located in Deptford Township, Gloucester County, New Jersey.

3. *E. I. duPont de NeMours and Company, Inc. D-88-85.* An application to upgrade the Chambers Works Wastewater Treatment Plant located in Carneys Point Township, Salem County, New Jersey. The applicant seeks approval for the construction of secondary clarification facilities and a powdered activated carbon treatment system. The existing treatment plant was approved on January 24, 1974 by Docket No. D-69-194-2 to process 102 mgd of industrial wastewater, sludge, landfill leachate, recovered ground water, and some stormwater runoff. Treatment plant effluent will continue to be discharged through the existing outfall to the Delaware River in Water Quality Zone 5. The applicant also seeks approval to expand the service area of the treatment plant to process additional off-sit wastes from sources other than the applicant's, including those from sources outside of the Delaware River Basin.

4. *New York Department of Transportation (Lordville Bridge) D-90-4 CP.* An application for approval to construct a highway bridge over the Delaware River between Lordville, New York and Equinunk, Pennsylvania, within the Upper Delaware Scenic and Recreational River. The three-span steel structure will replace a bridge that was removed in 1986, and reestablish the connection of N.Y. Rt. 97 (Delaware County) and Pa. Rt. 191 (Wayne County).

5. *Evansburg Water Company D-90-5 CP.* An application for approval of a ground water withdrawal project to supply up to 5.6 mg/30 days of water of the applicant's distribution systems from new Well Nos. 103, 203 and 204, and to limit the withdrawal from all wells to 8.1 mg/30 days. The project is located in Lower Providence and Perkiomen Townships, Montgomery County, and is in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Hazleton City Authority D-90-10 CP.* An application for the withdrawal of surface water and for the diversion of water out of the Delaware River Basin. The proposed project will supply the applicant's existing Hazleton Division service area comprised of the City of Hazleton, the Boroughs of West Hazleton and Beaver Meadows, and parts of Hazle Township. The applicant had requested the right to withdraw 6.0 mgd of surface water from the Lehigh River and the Pennsylvania Department of Environmental Resources has approved the project for up to 2.5 mgd, for which the applicant now seeks DRBC approval. The proposed intake is on the Lehigh River at its confluence with Buck Mountain Creek, near the Town of Rockport, Lehigh Township, Carbon County, Pennsylvania. Disposal of wastewater resulting from the proposed withdrawal will be to the Hazleton Joint Sewer Authority Wastewater Treatment Plant which discharges to Black Creek in the Susquehanna River Basin. The applicant also plans construction of a new water treatment facility next to Roan Reservoir in the City of Hazleton, Luzerne County, Pennsylvania.

7. *New Jersey Department of Corrections D-90-11 CP.* An application for approval of a ground water withdrawal project to supply up to 20 mg/30 days of water of the applicant's Bayside State Prison from existing Well Nos. 1, 2, 3 and 4, and to limit the withdrawal from all wells to 20 mg/30 days. The project is located in Maurice River Township, Cumberland County, New Jersey.

8. *Warrington Township Municipal Authority D-90-19 CP.* An application for approval of a ground water withdrawal project to supply up to 2.94 mg/30 days of water to the applicant's distribution system from new Well No. 11, and for the renewal of a ground water withdrawal project to supply up to 6.78 mg/30 days of water from Well No. 5. Commission approval of Docket No. D-80-50 CP (Revised) Renewal on December 18, 1985 was limited to five years and will expire unless renewed. The project is located in Warrington Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

9. *Berks County D-90-38 CP.* A sewage treatment project to serve the Berks County Welfare Tract, the Blue Marsh Recreation Area and various county facilities in the surrounding area. The existing 0.15 mgd sewage treatment plant (STP) will be replaced with a new STP designed to provide 0.50 mgd of treatment capacity but will operate at 0.30 mgd until the Pennsylvania 537 Plan approval for the higher rating is obtained. Treated effluent will be discharged to Plum Creek just upstream of its confluence with the Tulpehocken Creek in Bern Township, Berks County, Pennsylvania.

10. *Horsham Township Authority D-90-44 CP.* An application for approval of a ground water withdrawal project to supply up to 19.44 mg/30 days of water to the applicant's distribution system from new Well No. 21, and to increase the existing withdrawal limit of 82.8 mg/30 days from all wells to 83.36 mg/30 days. The project is located in Horsham Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

11. *Auburn Municipal Authority D-90-52 CP.* A surface water withdrawal project to serve the applicant's public water supply system in the Borough of Auburn and portions of South Manheim Township in Schuylkill County. The applicant proposes to increase its combined withdrawal from Stony Creek and an unnamed tributary to Stony Creek from 0.075 mgd to 0.125 mgd, with the withdrawal from each source not to exceed 0.125 mgd, all on an average monthly basis. The project withdrawals are both located in Tilden Township, Berks County, Pennsylvania, near the Schuylkill County line.

12. *Township of Medford D-90-57 CP.* An application for approval of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from each Well Nos. 9 and 10, and increase of the existing withdrawal limit of 46.6 mg/30 days from all wells to 68.7 mg/30 days. The project is located in Medford Township, Burlington County, New Jersey.

13. *Kiamesha Artesian Spring Water Company, Inc. D-90-68 CP.* An application for approval of a ground water withdrawal project to supply up to 2.9 mg/30 days of water to the applicant's distribution system from the new Fraser Road Well No. 1, and to increase the existing withdrawal limit of 6.9 mg/30 days from all wells to 9.8 mg/30 days. The project is located in the Town of Thompson, Sullivan County, New York.

14. *Lehigh County Authority D-90-69 CP.* An application for approval of a ground water withdrawal project to supply up to 4.3 mg/30 days of water to the applicant's Western Lehigh Service Area from existing Well No. 20, and to retain the existing withdrawal limit from all wells of 188 mg/30 days. The project is located in Lower Macungie Township, Lehigh County, Pennsylvania.

15. *Amity Township Municipal Authority D-90-78 CP.* A sewage treatment plant (STP) upgrade and expansion project which will provide 1.6 mgd of advanced secondary treatment capacity to the existing 0.8 mgd plant. The STP will continue to serve Amity Township and the treated effluent will discharge to the Schuylkill River via the existing outfall. The STP is located in the southeast corner of the Township of Amity, just east of the Schuylkill River, in Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related inquiries.

Persons wishing to testify at this hearing are requesting to register with the Secretary prior to the hearing and may be asked to limit their remarks to five minutes, to enable all who wish to speak to do so.

Dated: November 27, 1990.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 90-28499 Filed 12-4-90; 8:45 am]

BILLING CODE 6360-01-M



## DEPARTMENT OF EDUCATION

**[CFDA No. 84.165]**

### Magnet Schools Assistance Program; New Awards

**AGENCY:** Department of Education.

**ACTION:** Notice extending the closing date for new awards under the Magnet Schools Assistance Program for fiscal year (FY) 1991.

**SUMMARY:** On October 25, 1990, the Department of Education published in the Federal Register a notice inviting applications under the Magnet Schools Assistance Program for FY 1991. The purpose of this notice is to extend the closing date for transmittal of applications from December 12, 1990 to December 28, 1990, to provide applicants additional time to submit applications. Applicants that have already submitted applications will be able to supplement or revise their applications up to December 28, 1990. Three copies of any supplementary materials or of a revised application must be received by the Application Control Center by December 28, 1990. The Intergovernmental Review date is also extended from February 11, 1991 to March 5, 1991.

Applicants are reminded that a local educational agency that is implementing a plan required by a court, State agency or official of competent jurisdiction must have approval for any modification of its desegration plan from the court, agency, or official that originally approved the plan. The deadline for transmittal of proof of approval of modifications by the appropriate court, agency, or official is extended from January 15, 1991 to February 4, 1991.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Annie R. Mack, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, FOB #6, Washington, DC 20202-6439. Telephone (202) 401-0358.

**Authority:** 20 U.S.C. 3021-3032.

Dated: November 28, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90-28436 Filed 12-4-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance Awards to the State of Washington

**AGENCY:** Department of Energy, Richland Operations Office.

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**ACTION:** Notice of intent to make noncompetitive financial assistance awards.

**SUMMARY:** The Department of Energy, Richland Operations Office (DOE–RL), in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award noncompetitive grants to State of Washington agencies.

Under the terms of the awards, State agencies will conduct environmental oversight programs to include environmental monitoring and emergency preparedness activities in support of DOE's activities at the Hanford Site. The awards provide support for activities agreed to earlier under an Agreement in Principle signed by the parties regarding remedial work at the site and the "Hanford Federal Facility Agreement and Consent Order" between the Environmental Protection Agency, the Washington State Department of Ecology, and the Department of Energy signed May 15, 1989.

DOE has determined that awards on a noncompetitive basis are appropriate because each recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

DOE and State of Washington agencies are currently negotiating funding levels for the current year's activities. The levels of funding are renegotiated on a case-by-case basis and cannot be anticipated in advance due to the uncertain nature of activities to be performed. Funding will be on an annual basis subject to the availability of funds for such purposes and contingent upon submission of current applications from State of Washington agencies. It is anticipated that the awards will be issued by January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Marcia N. Roske, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–7285.

**Robert D. Larson,**

*Director, Procurement Division, Richland Operations.*

[FR Doc. 90–28515 Filed 12–4–90; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award (Cooperative Agreement): Washington State University

**AGENCY:** Department of Energy (DOE), Richland Operations Office.

**ACTION:** Notice of intent to make a noncompetitive financial assistance award.

**SUMMARY:** The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2) gives notice of its plan to renew a noncompetitive financial assistance cooperative agreement to Washington State University, which operates a branch university campus at Richland, Washington.

**SCOPE:** The award will help support an educational program of course work leading to MS and PhD degrees in the physical and biological sciences, in engineering, and in business.

The DOE has determined that the award on a noncompetitive basis is appropriate for the following reasons:

The activity to be supported is a continuation of an existing advanced degree program which DOE has previously supported. It is currently being conducted at the Washington State University Tri-Cities Branch campus, which, by action of the state legislature, is charged with delivery of graduate education programs in the Tri-Cities. Through Washington State University, the State of Washington provides the facilities for the program and will provide approximately 84% of the cost of operating the program, currently estimated at approximately $2,575,000 per year. DOE wishes to provide continuing assistance, though at a lower level than in the past, to insure that the graduate degree program will continue to be available in this area in order to continue to attract and retain qualified employees at the Hanford site. It is anticipated that the University will fund the entire program in the near future.

This activity is being conducted by the applicant using its own resources; DOE support for the activity will enhance the public benefit to be derived. In addition, Washington State University is the only educational institution through which advanced degrees in the sciences and engineering are available within commuting distance of Hanford.

**FOR FURTHER INFORMATION CONTACT:** Marji W. Parker, U.S. Department of Energy, Richland Operations Office, Procurement Division, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–2029.

Dated: November 29, 1990.

**Robert D. Larson,**

*Director, Procurement Division, Richland Operations Office.*

[FR Doc. 90–28516 Filed 12–4–90; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[FE Docket No. 90–69–NG]**

## Northern Minnesota Utilities; Order Granting Authorization To Import Canadian Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order granting authorization to import Canadian natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Minnesota Utilities authorization to import up to 10,000 Mcf per day of Canadian natural gas over a term beginning on the date of issuance of this order, and ending May 1, 2001.

A copy of the order is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 29, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–28517 Filed 12–4–90; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 90–62–NG]**

## Poco Petroleum, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order granting authorization to export natural gas to Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Poco Petroleum, Inc. (Poco) blanket authorization to export from the United States to Canada up to 70 Bcf of natural gas over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.



Issued in Washington, DC, on November 29, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–28518 Filed 12–4–90; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

## Inventory of Current DOE Reporting and Record-Keeping Requirements

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Department of Energy's inventory of energy information collections, including reporting and record-keeping requirements.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) herein publishes an inventory of energy information collections (including reporting and record-keeping requirements) which had Office of Management and Budget (OMB) approval on October 1, 1990. The inventory is published for the use of respondents and other interested parties. Management and procurement collections are the responsibility of DOE's Office of Administration and Human Resource Management and are not included in these notices.

The listing that follows this notice includes DOE energy information collections that had OMB approval as of October 1, 1990. For each information collection utilizing a structured form, Part I lists the current DOE control or form number, the title of the requirement, the OMB control number, and the OMB approval expiration date. Part II lists those information collections which do not utilize structured forms and the corresponding citations from the Code of Federal Regulations.

**FOR FURTHER INFORMATION CONTACT:** Jay Casselberry, Energy Information Administration (EI–73), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2171. Information on the availability of single, blank copies of those information collections utilizing structured forms can be obtained by contacting the National Energy Information Center (EI–231), 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8800.

**SUPPLEMENTARY INFORMATION:** As DOE's energy information collections are submitted for review and approval to OMB during the fiscal year, Federal Register notices will be published informing the public to that effect. Such notices not only provide an opportunity for the public to review and comment on the collections but also notify the public of proposed changes to the inventory.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC November 28, 1990.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

October 1, 1990 Inventory

PART I.—DOE ACTIVE INFORMATION COLLECTIONS

[Utilizing structured forms]

| DOE No. | Title | OMB Control No. | Expiration date |
|---|---|---|---|
| | **Civilian Radioactive Waste Management** | | |
| NWPA-830R-A-G | Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste (R—Contract is on standby; A–F—Annual report is on standby; G—Quarterly Report-Standard Remittance Advice is active). | 19010260 | 02/28/93 |
| RW-859 | Nuclear Fuel Data | 19010257 | 12/31/90 |
| | **Conservation and Renewable Energy** | | |
| CE-63A/B | Annual Solar Thermal Collector Manufacturers Survey and Annual Photovoltaic Module Cell Manufacturers Survey | 19010232 | 12/31/92 |
| | **Economic Regulatory Administration** | | |
| ERA-424D | Tertiary Incentive Program Annual Report of Prepaid Expenses | 19030069 | 03/31/93 |
| | **Energy Information Administration** | | |
| EIA-1 | Weekly Coal Monitoring Report—General Industries and Blast Furnaces (Standby) | 19050167 | 03/31/92 |
| EIA-3 | Quarterly Coal Consumption Report—Manufacturing Plants | 19050167 | 03/31/92 |
| EIA-4 | Weekly Coal Monitoring Report—Coke Plants (Standby Form) | 19050167 | 03/31/92 |
| EIA-5 | Coke Plant Report—Quarterly | 19050167 | 03/31/92 |
| EIA-6 | Coal Distribution Report | 19050167 | 03/31/92 |
| EIA-7A | Coal Production Report | 19050167 | 03/31/92 |
| EIA-14 | Refiners' Monthly Cost Report | 19050174 | 12/31/90 |
| EIA-20 | Weekly Telephone Survey of Coal Burning Utilities (Standby Form) | 19050167 | 03/31/92 |
| EIA-23 | Annual Survey of Domestic Oil and Gas Reserves | 19050057 | 12/31/91 |
| EIA-23P | Oil and Gas Well Operator List Update Report | 19050057 | 12/31/91 |
| EIA-26 | Financial Reporting System | 19050149 | 09/30/93 |
| EIA-64A | Annual Report of the Origin of Natural Gas Liquids Production | 19050057 | 12/31/91 |
| EIA-176 | Annual Report of Natural and Supplemental Gas Supply and Disposition | 19050175 | 12/31/90 |
| EIA-182 | Domestic Crude Oil First Purchase Report | 19050174 | 12/31/90 |
| EIA-191 | Underground Natural Gas Storage Report | 19050175 | 12/31/90 |
| EIA-254 | Semiannual Report on Status of Reactor Construction | 19050160 | 06/30/91 |
| EIA-412 | Annual Report of Public Electric Utilities | 19050129 | 12/31/92 |
| EIA-457A/G | Residential Energy Consumption Survey | 19050092 | 05/31/93 |
| EIA-627 | Annual Quantity and Value of Natural Gas Report | 19050175 | 12/31/90 |
| EIA-714 | Annual Electric Power System Report | 19050161 | 12/31/90 |
| EIA-759 | Monthly Power Plant Report | 19050129 | 12/31/92 |
| EIA-782A | Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report | 19050174 | 12/31/90 |
| EIA-782B | Reseller/Retailer's Monthly Petroleum Product Sales Report | 19050174 | 12/31/90 |
| EIA-782C | Monthly Report of Petroleum Products Sold into States for Consumption | 19050174 | 12/31/90 |

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PART I.—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Utilizing structured forms]

| DOE No. | Title | OMB Control No. | Expiration date |
|---|---|---|---|
| EIA-800 | Weekly Refinery Report | 19050165 | 04/30/92 |
| EIA-801 | Weekly Bulk Terminal Report | 19050165 | 04/30/92 |
| EIA-802 | Weekly Product Pipeline Report | 19050165 | 04/30/92 |
| EIA-803 | Weekly Crude Oil Stocks Report | 19050165 | 04/30/92 |
| EIA-804 | Weekly Imports Report | 19050165 | 04/30/92 |
| EIA-806 | Weekly Crude Watch Report | 19050165 | 04/30/92 |
| EIA-807 | Propane Telephone Survey | 19050165 | 04/30/92 |
| EIA-810 | Monthly Refinery Report | 19050165 | 04/30/92 |
| EIA-811 | Monthly Bulk Terminal Report | 19050165 | 04/30/92 |
| EIA-812 | Monthly Product Pipeline Report | 19050165 | 04/30/92 |
| EIA-813 | Monthly Crude Oil Report | 19050165 | 04/30/92 |
| EIA-814 | Monthly Imports Report | 19050165 | 04/30/92 |
| EIA-816 | Monthly Natural Gas Liquids Report | 19050165 | 04/30/92 |
| EIA-817 | Monthly Tanker and Barge Movement Report | 19050165 | 04/30/92 |
| EIA-818 | International Energy Agency Imports/Stocks-at-Sea Report | 19050165 | 04/30/92 |
| EIA-820 | Annual Refinery Report | 19050165 | 04/30/92 |
| EIA-821 | Annual Fuel Oil and Kerosene Sales Report | 19050174 | 12/31/90 |
| EIA-825 | Petroleum Facility Operator Identification Survey | 19050165 | 04/30/92 |
| EIA-826 | Monthly Electric Utility Sales and Revenue Report with State Distributions | 19050129 | 12/31/92 |
| EIA-846A/D | Manufacturing Energy Consumption Survey | 19050169 | 04/30/91 |
| EIA-851 | Domestic Uranium Mining Production Report | 19050160 | 06/30/91 |
| EIA-856 | Monthly Foreign Crude Oil Acquisition Report | 19050174 | 12/31/90 |
| EIA-857 | DOE Monthly Report of Natural Gas Purchases and Deliveries to Consumers | 19050175 | 12/31/90 |
| EIA-858 | Uranium Industry Annual Survey | 19050160 | 06/30/91 |
| EIA-860 | Annual Electric Generator Report | 19050129 | 12/31/92 |
| EIA-861 | Annual Electric Utility Report | 19050129 | 12/31/92 |
| EIA-863 | Petroleum Product Sales Identification Survey | 19050174 | 12/31/90 |
| EIA-867 | Annual Nonutility Power Producer Report | 19050177 | 11/30/90 |
| EIA-871A/F | Commercial Buildings Energy Consumption Survey | 19050145 | 05/31/92 |
| EIA-876A/E | Residential Transportation Energy Consumption Survey | 19050068 | 09/30/93 |
| EIA-877 | Winter Heating Fuels Telephone Survey | 19050180 | 03/31/91 |
| EIA-878 | Daily Motor Gasoline Price Survey | 19050181 | 11/16/90 |
| | **Environment, Safety and Health** | | |
| EIA-767(2) | Steam Electric Plant Operation and Design Report | 19010267 | 12/31/92 |
| | **Federal Energy Regulatory Commission** | | |
| EIA-714(1) | Annual Electric Power System Report | 19020140 | 12/31/90 |
| EIA-767(1) | Steam-Electric Plant Operation and Design Report | 19020034 | 12/31/92 |
| FERC-1 | Annual Report of Major Electric Utilities, Licensees and Others | 19020021 | 09/30/91 |
| FERC-1-F | Annual Report of Nonmajor Public Utilities and Licensees | 19020029 | 09/30/91 |
| FERC-2 | Annual Report for Major Natural Gas Companies | 19020028 | 08/31/93 |
| FERC-2A | Annual Report of Nonmajor Natural Gas Companies | 19020030 | 08/31/93 |
| FERC-6 | Annual Report of Oil Pipeline Companies | 19020022 | 08/31/93 |
| FERC-8 | Underground Gas Storage Report | 19020026 | 06/30/92 |
| FERC-11 | Natural Gas Pipeline Company Monthly Statement | 19020032 | 05/31/93 |
| FERC-15 | Interstate Pipeline's Annual Report of Gas Supply | 19020037 | 08/31/93 |
| FERC-16 | Report of Gas Supply and Requirements | 19020025 | 06/30/92 |
| FERC-73 | Service Life Data | 19020019 | 10/31/92 |
| FERC-80 | Licensed Hydropower Development Recreation Report | 19020106 | 11/30/92 |
| FERC-121 | Application for Determination of the Maximum Lawful Price Under the Natural Gas Policy Act of 1978 | 19020038 | 12/31/92 |
| FERC-423 | Monthly Report of Cost and Quality of Fuels for Electric Plants | 19020024 | 06/30/93 |
| FERC-561 | Annual Report of Interlocking Positions | 19020099 | 07/31/92 |
| FERC-580 | Fuel Purchase Practices | 19020137 | 03/31/92 |
| FERC-595 | Survey of Pipeline Responses to Extraordinary Demands of December 1989 | 19020159 | 10/31/90 |
| FPC-14 | Annual Report for Importers and Exporters of Natural Gas | 19020027 | 06/30/92 |
| | **Fossil Energy** | | |
| EIA-767(3) | Steam Electric Plant Operation and Design Report | 19010298 | 12/31/92 |
| FE-168 | Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities | 19010293 | 04/30/91 |
| FE-746 | Enhanced Oil Recovery Annual Report | 19010291 | 06/30/92 |
| FE-781R | Annual Report of International Electrical Export/Import Data | 19010296 | 06/31/92 |
| | **International Affairs and Energy Emergencies** | | |
| IE-417R | Major Electric Power System Emergency Report | 19010288 | 05/31/92 |

OCTOBER 1, 1990 INVENTORY



PART II.—DOE ACTIVE INFORMATION COLLECTIONS

[Not utilizing structured forms]

| DOE No. | Title | OMB Control No. | Expiration date | CFR citation |
|---|---|---|---|---|
| | **Economic Regulatory Administration** | | | |
| ERA-766R | Recordkeeping Requirements of DOE's General Allocation and Price Rules. | 19030073 | 09/30/93 | 10 CFR 210.1 |
| | **Federal Energy Regulatory Commission** | | | |
| FERC-16A | Monitoring (Omnibus) Report (stand-by authority) | 19020105 | 12/31/92 | By FERC Order. |
| FERC-16AT | Interstate Pipeline Curtailment (Telephone) Survey | 19020139 | 11/30/90 | By FERC Order. |
| FERC-314A | Application For Small Producer Exemption | 19020006 | 12/31/92 | 18 CFR 250.10. |
| FERC-500 | Application For License for Hydropower Projects Greater Than 5MW. | 19020058 | 07/31/91 | 18 CFR 4.38, 4.39, 4.40, 4.41, 4.50, 4.51, 4.200–.202. |
| FERC-505 | Application for License for Water Projects 5MW or Less | 19020115 | 07/31/91 | 18 CFR 4.61, 4.71, 4.92, 4.93, 4.107, 4.108, 4.112, 4.13, 4.201–.202. |
| FERC-510 | Application for Surrender of Electric License | 19020088 | 11/30/91 | 18 CFR 6.1, 6.3. |
| FERC-511 | Application for Transfer of Electric License | 19020098 | 10/31/91 | 18 CFR 6.1, 6.2, 6.10. |
| FERC-512 | Application for Preliminary Permit | 19020073 | 07/31/91 | 18 CFR 4.31, 4.32, 4.33, 4.81, 4.82. |
| FERC-515 | Hydropower License—Declaration of Intention | 19020078 | 07/31/91 | 18 CFR 24.1. |
| FERC-516 | Electric Rate Schedule Filings | 19020096 | 04/30/92 | 18 CFR 35, Subpart A, 35.12–.16, 35.26, 35.30, 35.31, 292, 301. |
| FERC-519 | Disposition of Facilities, Mergers, and Acquisitions of Securities. | 19020082 | 01/31/93 | 18 CFR 33. |
| FERC-520 | Application for Authority to Hold Interlocking Directorate Positions. | 19020083 | 01/31/93 | 18 CFR 45. |
| FERC-521 | Headwater Benefits | 19020087 | 07/31/92 | 18 CFR 11.16. |
| FERC-523 | Application for Authorization of The Issuance of Securities or the Assumption of Liabilities. | 19020043 | 10/31/92 | 18 CFR 34. |
| FERC-525 | Finalcial Audits | 19020092 | 03/31/92 | 18 CFR 101, 201. |
| FERC-530 | Gas Producer Certificate: Abandonment/Termination | 19020051 | 12/31/92 | 18 CFR 2.64 157.30, 250.7. |
| FERC-531 | Gas Producer Certificate: New Service/Amendments | 19020052 | 12/31/92 | 18 CFR 2.75, 154.91–154.111, 157.23–157.28, 157.40, 250.5, 250.10. |
| FERC-532 | Gas Producer Rate: Filing | 19020055 | 12/31/92 | 18 CFR 2.56(A). 154.91–.110, 157.301, 250.8–.9, 250.5, 250.14. |
| FERC-534 | Gas Producer Rate: Application for Production-Related Costs. | 19020057 | 12/31/92 | 18 CFR 154.94(K), 270, 271.1100–271.1101, 271.1103–271.1105. |
| FERC-537 | Gas Pipeline Certificate: Construction, Acquisition & Abandonment. | 19020060 | 04/30/92 | 18 CFR 2.79, 157.5–.21, .100, .201–.216, 158.1, 284.107, .127, .221. |
| FERC-538 | Gas Pipeline Certificate: Initial Service | 19020061 | 12/31/90 | 18 CFR 156.3, 156.4, 156.5. |
| FERC-539 | Gas Pipeline Certificate: Import/Export Related | 19020062 | 03/31/91 | 18 CFR 153. |
| FERC-541 | Gas Pipeline Certificate: Curtailment Plan | 19020066 | 03/31/91 | 18 CFR 2.78, 281. |
| FERC-542 | Gas Pipeline Rates: Initial Rates, Rate Change, and PGA Tracking. | 19020070 | 01/31/91 | 18 CFR 154.38, 154.61–154.67. |
| FERC-542A | Tracking and Recovery of Alaska Natural Gas Transportation System. | 19020129 | 12/31/90 | 18 CFR 154.201–154.213. |
| FERC-543 | Gas Pipeline Rates: Purchased Gas Adjustment Tracking. | 19020152 | 01/31/91 | 18 CFR 154.38. |
| FERC-544 | Gas Pipeline Rates: Rate Change (Formal) | 19020153 | 02/28/91 | 18 CFR 154.63–154.67. |
| FERC-545 | Gas Pipeline Rates: Rate Change (Non-Formal) | 19020154 | 07/31/93 | 18 CFR 154.63–154.67. |
| FERC-546 | Gas Pipeline Rates: Certificated Rate Filings | 19020155 | 02/28/91 | 18 CFR 154.62–154.67. |
| FERC-547 | Gas Pipeline Rates: Refund Obligations | 19020084 | 09/31/91 | 18 CFR 154.3(b)(v)(vi), 270.101, 273.301, 273.302. |
| FERC-548 | Staff Adjustment Under Natural Gas Policy Act Section 502(c). | 19020085 | 12/31/92 | 18 CFR 270–277, 281, 282, 284, 385, Subpart K. |
| FERC-549 | Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions. | 19020086 | 05/30/91 | 18 CFR 284 Sub. A/D/E/H, 284.7–.11, .102, .105, .108, .122, and others. |
| FERC-549(A) | Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions (Interim Rule Emergency Clearance). | 19020160 | 11/30/90 | 18 CFR 284 Sub. A/D/E-H, 284.7–.11, .102, .105, .108, .122, and others. |
| FERC-550 | Oil Pipeline Rates: Tariff Filings | 19020089 | 08/31/92 | 18 CFR 340–348, 347. |
| FERC-555 | Records Retention Requirements | 19020096 | 05/31/92 | 18 CFR 125, 158, 160.1, 225, 276.109, 277.210, 358. |
| FERC-556 | Cogeneration and Small Power Production | 19020075 | 10/31/91 | 18 CFR 292. |
| FERC-557 | PURPA Section 133: Cost of Service Data | 19020042 | 11/30/92 | 18 CFR 290. |
| FERC-558 | Format of Contract Summary for Applications for Certificates of Public Convenience and Necessity. | 19020108 | 12/31/92 | 18 CFR 250.5. |
| FERC-559 | Independent Producer Rate Change or Initial Filing Statement. | 19020036 | 12/31/92 | 18 CFR 250.14. |
| FERC-566 | Report of Utility's Twenty Largest Purchasers | 19020114 | 02/29/92 | 18 CFR 45.3. |
| FERC-567 | Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity. | 19020005 | 09/30/93 | 18 CFR 260.8, 284.12. |
| FERC-568 | Well Category Determination | 19020112 | 12/31/92 | 18 CFR 271.709, 274, 275. |
| FERC-569 | Establishment of Deadlines for 1st Sellers to Make and Report Refunds: Refund Obligation (producers). | 19020111 | 12/31/92 | 18 CFR 273. |
| FERC-570 | Recordkeeping Requirements for Certain Sales of Natural Gas. | 19020124 | 12/31/92 | 18 CFR 271.503, 271.803, 271.903. |
| FERC-574 | Gas Pipeline Certificates—Minshaw Exemption | 19020116 | 11/30/92 | 18 CFR 152. |
| FERC-576 | Report by Certain Natural Gas Companies on Service Interruptions. | 19020004 | 06/30/92 | 18 CFR 260.9. |
| FERC-577 | Gas Pipeline Certificates: Environmental Impact Statement. | 19020139 | 07/31/92 | 18 CFR 2.80, 2.82, 157.14 |

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PART II.—DOE ACTIVE INFORMATION COLLECTIONS—Continued

[Not utilizing structured forms]

| DOE No. | Title | OMB Control No. | Expiration date | CFR citation |
|---|---|---|---|---|
| FERC-577(A) | Gas Pipeline Certificates: Environmental Impact Statement (Interim Rule). | 19020161 | 11/30/90 | 18 CFR 2.80, 2.82, 157.14. |
| FERC-581 | Management and Procurement Reporting and Recordkeeping Requirements. | 19020130 | 05/31/93 | 48 CFR Subtitle A, Chapter 9. |
| FERC-582 | Oil, Gas, and Electric Fees and Annual Charges | 19020132 | 07/31/93 | 18 CFR 381.106, 382.105(A), 382.201(B)(4). |
| FERC-583 | Hydroelectric Fees and Annual Charges | 19020136 | 06/30/93 | 18 CFR 11.1, 11.3, 11.4, 11.8. |
| FERC-585 | Reports on Electric Energy Shortages & Contingency Plans Under PURA 206. | 19020138 | 09/30/93 | 18 CFR 294. |
| FERC-588 | Emergency Natural Gas Sale, Transportation and Exchange Transactions. | 19020144 | 06/30/91 | 18 CFR 284, Subpart I. |
| FERC-590 | Wellhead Pricing: Pricing Investigations | 19020147 | 12/21/92 | |
| FERC-592 | Marketing Affiliates of Interstate Pipelines | 19020157 | 03/31/91 | 18 CFR 161.250. |
| | **Fossil Energy** | | | |
| FE-322R | Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, and 504. | 19010297 | 03/31/92 | 10 CFR 500, 501, 503, 504, 505, 506, 515. |
| FE-746R | Import and Export of Natural Gas | 19010294 | 01/31/93 | 10 CFR 205, 590. |
| FE-750R | Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act. | 19010295 | 04/30/91 | 10 CFR 463. |

[FR Doc. 90-28519 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket Nos. ER91-122-000, et al.]

### Wisconsin Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Wisconsin Electric Power Co.**

[Docket No. ER91-122-000]

November 27, 1990.

Take notice that on November 15, 1990, Wisconsin Electric Power Company (WEPCO) tendered for filing a supplemental service specification for total requirements—conjunctive billing service for the Cities of Jefferson, Lake Mills, and Oconomowoc.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**2. United States Department of Energy—Western Area Power Administrator (Salt Lake City Area Integrated Projects)**

[Docket No. EF90-5171-000]

November 27, 1990.

Take notice that on November 16, 1990, the Western Area Power Administration ("WAPA") of the United States Department of Energy tendered its response to a deficiency letter issued by the Acting Director of the Office of Electric Power Regulation in connection with the rate filing in this docket.

*Comment date:* January 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

**3. Missouri Public Service Co.**

[Docket No. ER91-124-000]

November 27, 1990.

Take notice that on November 19, 1990, Missouri Public Service Company (Missouri) tendered for filing proposed changes in its FERC Electric Service Tariffs for wholesale firm power to supersede and replace those rate provisions of contract rate schedules presently in effect and on file with the Commission which relate to eight wholesale customers located in the state of Missouri as follows:

| Wholesale customers | Superseding and replacing |
|---|---|
| City of El Dorado Springs | Supplement No. 2 to Rate Schedule FERC No. 48. |
| City of Galt | Supplement No. 15 to Rate Schedule FERC No. 36. |
| City of Gilman City | Supplement No. 6 to Rate Schedule FERC No. 46. |
| City of Harrisonville | Supplement No. 15 to Rate Schedule FERC No. 39. |
| City of Liberal | Supplement No. 15 to Rate Schedule FERC No. 38. |
| City of Odessa | Supplement No. 6 to Rate Schedule FERC No. 47. |
| City of Pleasant Hill | Supplement No. 15 to Rate Schedule FERC No. 34. |
| City of Rich Hill | Supplement No. 4 to Rate Schedule FERC No. 49. |

The proposed changes would increase revenues from jurisdictional sales and service by $829,624 based on the adjusted twelve-month period ended June 30, 1990. The purposes of filing the proposed Municipalities-Resale Rate Schedule are:

1. To cover the increased cost of service including increased plant investment, labor, materials, purchased power capacity charges, cost of money, taxes and environmental requirements.

2. To increase revenues to produce a rate of return of 10.99 percent on MPS's investment with the proposed increase applied to the eight locations subject to unilateral rate filings. Missouri earned 6.32 percent rate of return from the Municipalities-Resale customers for Period I for the adjusted test year ending June 30, 1990.

3. To encourage municipalities to improve their load factor in a manner that will help improve MPS's load factors thus tending to lower the system cost per KWH. A summer-winter differential has been retailed for this specific purpose.

Copies of the filing were served upon the eight Municipalities-Resale customers whose rates and charges would be affected thereby, and upon the Public Service Commission of Missouri.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**4. New England Power Co.**

[Docket No. ER90-525-003]

November 27, 1990.

Take notice that on October 5, 1990, New England Power Company tendered for filing its compliance in this docket



pursuant to the Commission's order issued on September 28, 1990.

*Comment date:* December 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

**5. Florida Power & Light Co.**

[Docket No. EL90-24-001]

November 27, 1990.

Take notice that on November 19, 1990, Florida Power & Light Company tendered for filing its Refund Report in compliance with the Commission's order issued on October 4, 1990 in this docket.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**6. Union Electric Company**

[Docket No. ER91-125-000]

November 27, 1990.

Take notice that on November 19, 1990 Union Electric Company (UE) tendered for filing a revision in appendix C to the Interconnection Agreement dated February 18, 1972 between Central Illinois Public Service Company, Illinois Power Company, and UE reflecting the addition of a new circuit.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**7. John P. Frazee, Jr.**

[Docket No. ID-2514-000]

November 27, 1990.

Take notice that on November 16, 1990, John P. Frazee, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

| | |
|---|---|
| Director, Chairman, and Chief Executive Officer. | Centel Corporation. |
| Director | Harris Bankcorp, Inc. |
| Director | Harris Trust and Savings Bank. |

*Comment date:* December 14, 1990, in accordance with Standard Paragraph E end of this notice.

**8. Arkansas Power & Light Co.**

[Docket No. ER88-313-003]

November 27, 1990.

Take notice that on November 16, 1990, Arkansas Power & Light Company (AP&L) tendered for filing its compliance filing pursuant to the Commission's order issued on October 12, 1988.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**9. Montaup Electric Co.**

[Docket No. ER91-126-000]

November 27, 1990.

Take notice that on November 19, 1990, Montaup Electric Company (Montaup) filed a rate schedule for the sale by Montaup to Newport Electric Corporation (Newport) of power needed to meet a 15 megawatt shortfall in Newport's ability to meet its capacity requirement in the period beginning November 1, 1990 and ending when the Ocean State Power No. 1 Unit, in which Newport has an entitlement, enters service. The power to be sold to Newport consists of percentage entitlements to the capacity and associated energy in two gas turbine units in which Montaup has purchased entitlements from Northeast Utilities under the slice-of-system agreement accepted for filing in Docket Nos. ER89-586-000, ER89-629-000 and ER89-631-000.

| Unit | Entitlement | Megawatt |
|---|---|---|
| Middletown | 3.6380 | 14.55 |
| Montville | 0.1093 | .45 |

The capacity in these units will be sold to Newport at a demand charge of $4.35 per kilowatt per month, which is derived from the forecast amount that Northeast Utilities expects to charge Montaup for the same capacity under the formula rates accepted in Docket Nos. ER89-586-000, ER89-629-000 and ER89-631.

The sale of gas turbine capacity to Newport will benefit it by enabling it to buy peaking capacity needed to meet its load. The sale is not expected to have any effect on the demand or energy sales charged by Montaup for contract demand and all requirements service.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**10. Gulf States Utilities Co.**

[Docket No. ES91-8-000]

November 27, 1990.

Take notice that on November 23, 1990, Gulf States Utilities Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, for authority to issue up to $400 million of secured and/or unsecured short-term notes with a final maturity date of no later than December 31, 1993, and to issue up to a like amount of principal of first mortgage bonds and/or subordinated lien bonds in one or more series as security for the Notes and, with respect to issuance of bonds, under § 34.2(b)(2) for exemption from competitive bidding requirements pursant to § 34.2(a)(1)(iv) and for exemption from the requirements of § 34.2(b)(2)(i)(B).

*Comment date:* December 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

**11. PSI Energy, Inc.**

[Docket No. ER91-127-000]

November 27, 1990.

Take notice that PSI Energy, Inc. (PSI) on November 20, 1990, tendered for filing changes to the rates for certain of its services pursuant to the Interconnection Agreement between PSI and Indiana & Michigan Electric Company (I&ME), dated February 21, 1964.

The filed changes modify the rates for services provided by PSI under the following Service Schedules of the Interconnection Agreement:

(1.) Service Schedule A—Emergency Service
(2.) Service Schedule C—Interchange Power
(3.) Service Schedule D—Short Term Power
(4.) Service Schedule G—Limited Term Power

Copies of the filing were served on Indiana & Michigan Electric Company, American Electric Power Services Corporation, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

PSI has requested a waiver of the Commission's Rules and Regulations to permit the proposed rates for services to become effective November 28, 1990.

*Comment date:* December 11, 1990, in accordance with Standard Paragraph E at the end of this notice.

**12. Vermont Electric Power Co., Inc.**

[Docket No. ER90-501-000]

November 28, 1990.

Take notice that on November 21, 1990, Vermont Electric Power Company, Inc. (VELCO), was joined as a party to the above-captioned docket, and tendered for filing a proposed contract with three utilities—Citizens Utilities Company, Franklin Electric Light Company, Inc. and Green Mountain Power Corporation—that jointly owned a dedicated, metallic-neutral return conductor (the "DMNRC"), used to provide a neutral-return path as part of a direct-current transmission interconnection between Hydro-Quebec and utilities that are participants in the New England Power Pool (the "Quebec-New England Interconnection"). When

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accepted the contract will provide operating management services to the three utilities for the DMNRC.

The contract filed with this Commission for approval is the Phase II Vermont DMNRC Operating and Management Agreement dated January 1, 1988. Under the contract VELCO operates the facility consistently with the terms of the Phase II Vermont DMNRC Support Agreement, earlier noticed in this docket. Under the terms of the Phase II Vermont DMNRC Support Agreement, the DMNRC facility will be used by New England Hydro-Transmission Corporation, an affiliate of New England Electric System. By these agreements VELCO receives no ownership interest in the DMNRC and no profit. Copies of the filing were served on Citizens Utilities Company, Green Mountain Power Corporation and Franklin Electric Light Company, Inc. and the Vermont Public Service Board and Vermont Department of Public Service and are on file at VELCO's main office.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**13. Tampa Electric Co.**

[Docket No. ER91-128-000]

November 28, 1990.

Take notice that on November 20, 1990, Tampa Electric Company (Tampa) tendered for filing Service Schedule J providing for negotiated interchange Service between Tampa Electric and the Kissimmee Utility Authority (Kissimmee). Tampa Electric states that Service Schedule J is submitted for inclusion as a supplement under the existing agreement for interchange service between Tampa Electric and Kissimmee, designated as Tampa Electric Rate Schedule FERC No. 16.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule J, a Letter of Commitment providing for the sale by Tampa Electric to Kissimmee of capacity and energy at an initial hourly delivery rate of 10 megawatts.

Tampa Electric proposes an effective date of January 1, 1991, for the Service Schedule J and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Kissimmee and the Florida Public Service Commission.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**14. Tampa Electric Co.**

[Docket No. ER91-129-000]

November 28, 1990.

Take notice that on November 20, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Reedy Creek Improvement District (RCID) of 10 megawatts of capacity and energy from Tampa Electric's generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's contract for interchange service with RCID, designated as Tampa Electric Rate Schedule FERC No. 11.

Tampa Electric proposes an effective date of January 1, 1991, for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**15. Tampa Electric Co.**

[Docket No. ER91-130-000]

November 28, 1990.

Take notice that on November 21, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach) of 15 megawatts of capacity and energy from Tampa Electric's generating resources. The Letter of Commitment is submitted as a supplement to Service Schedule D under Tampa Electric's agreement for interchange service with New Smyrna Beach, designated as Tampa Electric Rate Schedule FERC No. 13.

Tampa Electric proposes an effective date of December 1, 1990, the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**16. Central Vermont Public Service Corp.**

[Docket No. ER91-131-000]

November 28, 1990.

Take notice that Central Vermont Public Service Corporation (CVPS) on November 21, 1991, tendered for filing a tariff providing for the sale of short-term power. CVPS states that the tariff provides for the parties to negotiate the charges for sales under the tariff. Rates under the tariff are capped at the lower of the purchaser's avoided costs or 150% of the Company's average system costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become available as of November 1, 1990.

*Comment date:* December 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Vermont Public Service Corp.**

[Docket No. ER91-132-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell 2 MW of capacity and related energy of the Vermont Yankee nuclear generating unit to the Village of Stowe Water & Light Department (Stowe) for a period of six months. CVPS states that the price for the transaction was negotiated by CVPS and Stowe and reflects less than CVPS' fully allocated cost for Vermont Yankee.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**18. Central Vermont Public Service Corp.**

[Docket No. ER91-133-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell to the Village of New Orleans Electric Department 800 kW of Hydro Quebec capacity and energy and 600 kW of capacity and energy from the Rutland 5 gas turbine for a period of six months. CVPS states that the price for the Rutland sale was negotiated by CVPS and Orleans and that the Hydro Quebec sale will be at CVPS' costs.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.



**19. Central Vermont Public Service Corp.**

[Docket No. ER91-134-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing a contract under which CVPS has agreed to sell 5 MW of capacity and related energy of the Vermont Yankee nuclear generating unit to Green Mountain Power Corporation for a period of six months. CVPS states that the price of the transaction was negotiated by CVPS and Green Mountain and reflects less than CVPS' fully allocated cost for Vermont Yankee.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

*Comment date:* December 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

**20. Central Vermont Public Service Corp.**

[Docket No. ER91-135-000]

November 28, 1990.

Take notice that on November 21, 1990 Central Vermont Public Service Corporation (CVPS) tendered for filing contracts under which CVPS has agreed to sell 330 kW of Hydro Quebec capacity and energy to Barton Village, Inc. and 700 kW of Hydro Quebec capacity and energy to the Village of Enosburg Falls Water and light Department for a period of six months. CVPS states that the contracts reflect its cost of purchasing the Hydro Quebec power and energy.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of November 1, 1990.

*Comment date:* December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28444 Filed 12-4-90; 8:45 am]

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**[Docket No. PL89-2-005]**

## Interstate Natural Gas Pipeline Rate Design; Public Conference With Respect to the Designing of Interstate Natural Gas Pipeline Rates

November 28, 1990.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is convening a conference to afford an opportunity for the natural gas industry and the public to discuss with the Commission issues with respect to the designing of interstate natural gas pipeline rates. The conference will be held in the Commission's Hearing Room No. 1, 810 First Street, NE, Washington, DC, on January 8, 1991, at 10:00 a.m.

### II. Background

In 1985, the Commission adopted Order No. 436 [1] to institute open-access transportation in furtherance of the Congressional objective to permit a competitive wellhead market.[2] The Commission codified the new open-access transportation program in part 284 of the Commission's regulations. In part 284, the Commission set forth regulations with respect to open access service governing matters such as the establishment of rates,[3] the non-discriminatory nature of service,[4] and the firm sales customers' conversion rights to firm transportation service.[5]

On May 30, 1989, the Commission issued a policy statement providing guidance with respect to the designing of pipeline transportation rates and the transportation component of pipeline sales rates.[6] In large measure, the policy statement was issued to ensure that pipeline transportation rates comply with the rate design objectives of section 284.7(c) of the Commission's regulations that "[r]ates for service during peak periods should ration capacity" and "[r]ates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput." [7] In addition, the rehearing order described the policy statement as follows:

> The policy statement stated that rates designed in light of those objectives promote economic efficiency in an allocative and productive sense. However, the policy statement also stated that while economic efficiency is a necessary objective, it is not the only objective in the fashioning of just and reasonable, and not unduly discriminatory rates for all customers. In addition, the policy statement stated that there should be no cross-subsidization between sales and transportation services and that rates for different services should reflect differences in the quality of the services. Simply put, "a lower quality service should have a lower rate."
>
> * * * * *
>
> Throughout the policy statement, the Commission emphasized that rates must be charged on a non-discriminatory basis and that transactions between affiliates will be carefully scrutinized to ensure equality of opportunity for all similarly situated shippers.[8]

The policy statement, however, did not endorse any particular methodologies nor did it mandate a particular end result apart from methods and results in line with the Commission's goals as set forth in the policy statement. The policy statement recognized the existence of goals other than those set forth in the policy statement, including the possible need for pragmatic adjustments in the event a particular method is theoretically consistent with the Commission's objectives but leads to undesirable or inequitable results. The Commission directed the presiding administrative law judges to

> Consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers [and] * * * to explicitly articulate equitable factors considered in

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[1] Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol, 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985 ¶ 30,665 (1985), *vacated and remanded, Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (DC Cir. 1987), *readopted on an interim basis*, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), *remanded, American Gas Association* v. *FERC*, 888 F.2d 136 (DC Cir. 1989), *readopted*, Order No. 500-H, 54 FR 52,244 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part and remanded in part, American Gas Association* v. *FERC*, 912 F.2d 1496 (DC Cir. 1990).

[2] The intent of the Natural Gas Policy Act was for market forces to play a "more significant role in determining the supply, the demand, and the price of natural gas." *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1988).

[3] 18 CFR 284.7(c)(1) and (2) (1990).

[4] 18 CFR 284.8 and 9.

[5] 18 CFR 284.10.

[6] Interstate Natural Gas Pipeline Rate Design, 47 FERC ¶ 61,295 *order on reh'g*, 48 FERC ¶ 61,122 (1989).

[7] 18 CFR 284.7(c)(1) and (2) (1990).

[8] 48 FERC ¶ 61,122 at p. 61,442. (Footnotes omitted).

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designing the rates, for example, whether rate design changes should be phased-in.[9]

In addition to the above matters, the policy statement discussed and provided guidance with respect to specific rate design and related issues. Those issues were: (1) Annual versus seasonal rates, (2) the classifying of costs between the demand and commodity charges, (3) capacity adjustments in connection with peak rate increases, (4) discounted rates and maximum interruptible rates, and (5) particular transportation rate issues (e.g., mileage-sensitive rates and backhauls and exchanges). Last, the policy statement stated (1) the Commission's preference that a pipeline offer its storage and production area services as separate services with separately charged rates and (2) that "the pipelines and the participants should explore, in addition to traditional service, the pipeline separately selling gas (the commodity) without the transportation service, with the customer using its right to capacity to move the gas." [10]

### III. The Need for a Conference

Since the issuance of the policy statement on May 30, 1989, the Commission and the participants in the natural gas industry have gained considerable experience with respect to transportation rate issues. The parties to rate proceedings have developed records and written briefs with respect to those issues. The Commission has ruled on a number of settlements with respect to whether a pipeline's rates comport with the policy statement.[11]

The Commission believes that a public conference should be convened in order to air in an open forum the views of the entire natural gas industry on rate design as they have evolved in light of the experience acquired since May 30, 1989. In addition, the Commission is aware that certain matters not explicitly discussed in the policy statement have become important to the natural gas industry. Examples are issues with respect to the designing of rates for open-access contract storage services, for incremental facilities of existing pipelines, and for new pipelines. In addition, the Commission is concerned that its rate designs not result in an unlevel playing field.[12] In addition, certain procedural recommendations have been suggested by various groups. An example is whether it is appropriate for rate design cases to be consolidated with other proceedings where the terms and conditions for pipeline services are at issue, such as GIC proceedings so that a pipeline's rates for its services and the terms and conditions for those services may be considered by the parties at the same time.

To conclude, a public conference will enable the Commission to gain overall insight into into how matters are going with respect to rate design and to determine what issues are of current importance to the industry. The Commission will be able to assess the progress made to date under the policy statement and to determine whether further refinement of the rate principles of Order No. 436 is warranted. In addition, the Commission will be able to determine whether to stay the course with individualized rate designs or to, in whole or in part, consider rate design in a generic fashion. This conference, however, should not be construed by anyone involved in an on going proceeding to mean that the Commission is not committed to pursuit of the goals of the policy statement or that progress in individual cases should be delayed.

### IV. Procedures

The Commission will not set forth particular topics for comment. That choice should be made by persons applying to make an oral presentation. However, oral presentations should not touch on case specific topics.

Persons desiring to make an oral presentation must file a request to speak. Persons with common points of view are urged to appoint a single spokesperson for oral presentations. The request to speak should be filed with the Secretary on or before December 28, 1990. Requests to speak should identify the name of the speaker and the group represented and the topics upon which it is desired to make a presentation. The requests should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. PL89-2-005. The Commission invites, but does not require, written comments on the subject of rate design policy issues from persons who will make an oral presentation at the conference and any other interested party. The written comments should be filed with the Secretary on or before January 4, 1991. The written comments should be no longer than 20 pages, double spaced typing, although attachments may be used as appropriate.

By direction of the Commission.
Commissioner Trabandt concurs with a separate statement to be issued at a later date.

**Lois D. Cashell,**
*Secretary.*

[FR Doc. 90-28443 Filed 12-4-90; 8:45 am]
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[9] 47 FERC ¶ 61,295 at p. 62,094. See also at p. 62,088.

[10] *Id.* at p. 62,088.

[11] *E.g.*, Blue Dolphin Pipe Line Co., 52 FERC ¶ 61,155 (1990), Black Marlin Pipeline Co., 51 FERC ¶ 61,280 (1990), and Midwestern Gas Transmission Corp., 50 FERC ¶ 61,084 (1990).

[12] *See* Opinion No. 387, Iroquois Gas Transmission System, L.P., *et al.*, 53 FERC ¶ 61,194 (1990), *slip op* at 61 n. 91, where the Commission stated:

> We advise the parties that any domestic interstate pipeline which desires to modify its existing rate design may file an application with the Commission under section 4 of the NGA to do so. Moreover, regarding the redesigning of the rate structure of domestic pipelines, the Commission has issued a policy statement initiating a process whereby our rate design process and policies are being examined in-depth in the context of individual rate proceedings before the Commission. Those proceedings are the appropriate forums within our jurisdiction for addressing the concerns voiced by IPAA. If IPAA or others raise the issue of a potential anticompetitive preference for Canadian versus domestic gas supply in those proceedings, all interested parties and the ALJ's shall thoroughly examine the issue and devise and consider appropriate and effective solutions. Together with the other objectives in the Rate Design Policy Statement, those solutions will ensure that both sales and transportation of Canadian and U.S. domestic gas are treated in a fair and nondiscriminatory manner. Tennessee Gas Pipeline Company, 51 FERC ¶ 61,113 (1990) (NIPPS II).

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**[Docket Nos. CP91-493-000, et al.]**

### Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Tennessee Gas Pipeline Co.**

[Docket No. CP91-493-00]

Take notice that on November 20, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-493-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sonat Marketing Company, a marketer, under the blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to an agreement dated October 26, 1988, as amended, it proposes to transport up to 40,000 dekatherms (Dth) per day equivalent of natural gas. Tennessee indicates that the gas would be transported from offshore Louisiana, Louisiana, Texas, and Alabama, and would be redelivered in Louisiana, Mississippi, Tennessee, and Alabama. Tennessee further indicates that it would transport 40,000 Dth on an average day and 14,600,000 Dth annually.

Tennessee explains that this transportation service replaces the former Natural Gas Policy Act of 1978 (NGPA) section 311 terminated services, which are set out more fully in the application, and retains the scheduling priority that existed under the October 26, 1988, agreement for service under section 31 of the NGPA. Tennessee states that such terminated services were for Southern Natural Gas Company and SNG Intrastate Pipeline, Inc., as reported in Docket Nos. ST89-1078-000 and ST90-472-000, respectively.

Tennessee advises that service under § 284.223(a) commenced October 12, 1990, as reported in Docket No. ST91-3143-000.

*Comment date:* January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.



**2. Williston Basin Interstate Pipeline Co., Columbia Gas Transmission Corp. Equitrans, Inc., Viking Gas Transmission Co.**

[Docket Nos. CP91-460-000, CP91-487-000, CP91-502-000, CP91-503-000]

November 27, 1990.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date:* January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day average day annual Dth | Receipt points [1] | Delivery points | Contract date rate schedule service type | Related docket start up date |
|---|---|---|---|---|---|---|
| CP91-460-000 (11-19-90) | Western Gas Processors, Ltd. (Producer). | 60,550<br>0<br>22,213,900 | ND, WY, MT | ND | 10-5-90, IT-1, Interruptible. | ST91-2840-000, 10-5-90. |
| CP91-487-000 (11-20-90) | Meridian Marketing and Transmission Corp. (Marketer). | 760MMBtu<br>554MMBtu<br>284,700MMBtu | Various | PA, MD | 6-20-90, ITS, Interruptible. | ST90-4296-000, 7-1-90. |
| CP91-502-000 (11-23-90) | Transport Gas Corporation | 726MMBtu<br>700MMBtu<br>255,500MMBtu | WV | PA | 10-25-90, ITS, Interruptible. | ST91-3561-000, 11-1-90. |
| CP91-503-000 (11-23-90) | Minnegasco, Inc. (Local Distribution Company). | 111,000<br>111,000<br>40,515,000 | WI, MN, ND | MN | 10-1-90, IT-2, Interruptible. | ST91-2355-000, 10-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

| Applicant's address | Blanket docket |
|---|---|
| Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, WV 25314 | CP86-240-000 |
| Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275 | CP86-553-000 |
| Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252 | CP90-273-000 |
| Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501 | CP89-1118-000 |

**3. Transwestern Pipeline Co.**

[Docket No. CP91-494-000]

November 27, 1990.

Take notice that on November 21, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-494-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for NGC Transportation, Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP88-133-000 and, related thereto, to utilize certain facilities originally installed for the delivery of Natural Gas Policy Act of 1978 (NGPA) section 311 transportation gas under the blanket certificate issued in Docket No. CP82-534-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that, pursuant to an agreement with NGC dated November 2, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 100,000 dekatherms (Dth) per day equivalent of natural gas. Transwestern indicates that the receipt points would include all receipt points listed in Transwestern's Transportation Point Catalog, and the gas would be redelivered in Texas and New Mexico. Transwestern further indicates that it would transport 100,000 Dth on an average day and 36,500,000 Dth annually.

Transwestern also proposes to operate and maintain nine related existing interconnect facilities as jurisdictional delivery points, previously installed and operated by Transwestern pursuant to § 284.3(c) of the Commission's Regulations for service pursuant to NGPA section 311(a). Transwestern advises that the gas delivered to NGC at these existing delivery points would be used for system supply. The delivery points are shown in the attached appendix.

*Comment date:* January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

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| Name of delivery point | Delivery point location | Quantity (Mcf) | | | Prior dockets section 311 |
|---|---|---|---|---|---|
| | | Peak day | Avg day | Annual | |
| Adobe Gas Pipeline | Randall County, Texas | 10,000 | 10,000 | 3,650,000 | ST90-1450-000 |
| Gas Company of New Mexico (Western Gas) | Lea County, New Mexico | 10,000 | 10,000 | 3,650,000 | ST87-1630-000 |
| (Chaves) | Chaves County, New Mexico | 5,000 | 5,000 | 1,825,000 | ST90-700-000<br>ST85-682-000<br>ST88-5406-000 |
| (Rio Puerco) | Valencia County, New Mexico | 39,000 | 39,000 | 14,235,000 | ST89-4617-000<br>ST87-1630-000<br>ST88-5406-000 |
| Llano (Rattlesnake) | Lea County, New Mexico | 30,000 | 30,000 | 10,950,000 | ST90-700-000 |
| West Texas Gas | Winkler County, Texas | 1,500 | 1,500 | 547,500 | ST87-1476-000 |
| Do | Randall County, Texas | 1,500 | 1,500 | 547,500 | ST87-437-000 |
| Do | Parmer County, Texas | 1,500 | 1,500 | 547,500 | ST87-437-000 |
| Do | Deaf Smith County, Texas | 1,500 | 1,500 | 547,500 | ST87-437-000 |

**4. Kerr-McGee Corp. (Successor-in-Interest to Flag-Redfern Oil Co.)**

[Docket No. CI90-129-000]

November 27, 1990.

Take notice that on June 25, 1990, as supplemented on August 10, 1990, Kerr-McGee Corporation (Kerr-McGee) of P.O. Box 25861, Oklahoma City, Oklahoma 73125, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Flag-Redfern Oil Company (Flag-Redfern) for authorization to continue the sales previously made by Flag-Redfern under the contracts listed in the appendix hereto and requested that the Commission accept such contracts as Kerr-McGee's related rate schedules, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective June 30, 1989, Flag-Redfern merged into Kerr-McGee with Kerr-McGee continuing as the surviving corporation. Prior to the merger, Flag-Redfern made sales under its small producer authorization issued in Docket No. CS67-66 and under the contracts listed in the appendix hereto.

*Comment date:* December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.

| Contract date | Contract name | Purchaser and location |
|---|---|---|
| July 9, 1970 | Kirtley #1 | Mississippi River Transmission Corporation, New Liberty, SW Field, Beckham County, Oklahoma. |
| June 21, 1978 | Drake 1-10 | Northern Natural Gas Company, Southeast Salon Field, Ellis County, Oklahoma. |
| September 2, 1975 | Corriee D 1-9/2-9 | Northern Natural Gas Company, South May Field, Ellis County, Oklahoma. |
| May 28, 1975 | Hardy 1-15 | Northern Natural Gas Company, S.E. Catesby Field, Ellis County, Oklahoma. |
| July 5, 1973 | Marker 1-23 | Northern Natural Gas Company, Mocane Laverne Field, Beaver County, Oklahoma. |
| April 27, 1967 | Wilson 1-T | Northern Natural Gas Company, Camerick Field, Beaver County, Oklahoma. |
| October 28, 1975 | Stanley 1-27 | Northern Natural Gas Company, Laverne Field, Harper County, Oklahoma. |
| September 24, 1976 | Sarkeys 1-26 | Northern Natural Gas Company, Mocane Laverne Field, Beaver County, Oklahoma. |
| November 20, 1968 | Blaine 1-12 | ANR Pipeline Company, Lenora Field, Dewey County, Oklahoma. |
| December 11, 1972 | Kelso 26/Sell 22 | ANR Pipeline Company, Quinlan NW Field, Woodward County, Oklahoma. |
| February 1, 1968 | Morey 1-3/2-3 | ANR Pipeline Company, Laverne Field, Ellis County, Oklahoma. |
| September 21, 1976 | Sahhahnin 1-31 | ANR Pipeline Company, East Binger Field, Caddo County, Oklahoma. |
| July 24, 1972 | San Juan 28-5 Units | El Paso Natural Gas Company, San Juan Field, Rio Arriba County, New Mexico. |
| October 16, 1975 | San Juan 27-5 Units | El Paso Natural Gas Company, San Juan Field, Rio Arriba County, New Mexico. |
| November 21, 1975 | Michell 1-14 | Northern Natural Gas Company, Catesby Field, Ellis County, Oklahoma. |
| February 18, 1952 | Paddock 1-1 | Northern Natural Gas Company, Tubb-Blinebry Field, Lea County, New Mexico. |
| December 1, 1955 | Gentle 1, 2, 3, 4 | El Paso Natural Gas Company, Fulcher-Kutz Field, San Juan County, New Mexico. |

**4. Meridian Oil Production Inc. (Successor-in-interest to El Paso Exploration Co.)**

[Docket No. CI91-1461-000, et al.]

November 27, 1990.

Take notice that on July 25, 1990, Meridian Oil Production Inc. (Meridian) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to El Paso Exploration Company (El Paso Exploration) for authorization to continue the sales previously made by El Paso Exploration under the certificates listed in the appendix hereto and requested that the related rate schedules listed in the appendix hereto be redesignated as those of Meridian, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Amendment of Certificate of Incorporation executed January 23, 1985, effective March 4, 1985, El Paso Exploration changed its name to Meridian Oil Inc. By Certificate of Amendment of Certificate of Incorporation executed March 12, 1985, effective March 20, 1985, Meridian Oil Inc. changed its name to Meridian Oil Production Inc.

*Comment date:* December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.



APPENDIX

| El Paso Exploration Co., FERC Gas Rate Schedule No. | Certificate Docket No. | Purchaser and location |
|---|---|---|
| 34 | CI61-1461 | Colorado Interstate Gas Co., Patrick Draw Field, Sweetwater County, Wyoming. |
| 35 | CI61-1461 | Colorado Interstate Gas Co., E. Rock Springs Field, Sweetwater County, Wyoming. |
| 39 | CI67-1365 | Northern Natural Gas Co., S. Cheney and NE Catesby Fields, Ellis County, Oklahoma. |
| 41 | CI75-423 | Colorado Interstate Gas Co., Higgins Field, Sweetwater County, Wyoming. |
| 44 | CI65-426 | Williams Natural Gas Co., Bishop Field, Ellis County, Oklahoma. |
| 45 | CI66-336 | Williams Natural Gas Co., Bishop Field, Ellis County, Oklahoma. |

**5. Pacific Gas Transmission Co.**

[Docket No. CP91-457-000]

November 27, 1990.

Take notice that on November 19, 1990, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-457-000 a request pursuant to Section 157.205(b) of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate a sales tap, to reassign a portion of the volumes of gas currently authorized for delivery at various existing sales taps for delivery to the new tap as well as to increase the service at various other existing taps, and to abandon service to Northwest Pipeline Corporation (Northwest) at the Crescent, Oregon sales tap, under the blanket certificate issued in Docket No. CP82-530-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

PGT states that PGT currently delivers up to 151,731 Mcf per day of natural gas to Northwest at various points in Idaho, Washington and Oregon. PGT requests authority to construct the new sales tap and reassign a portion of the volumes from the existing delivery points to enable Northwest to provide enhanced service to Cascade Natural Gas Corporation, a local distribution company, which in turn will provide gas service to the town of LaPine, Oregon. PGT indicates that the new meter station would be known as the LaPine Meter Station. PGT requests authority to reassign to the new tap 285 MMBtu per day of the natural gas presently authorized for delivery to Northwest at existing sales taps. PGT also requests authority to reassign 6,061 MMBtu per day from the existing sales taps at Schweitzer and Athol, Idaho; Spokane, Washington; and Kosmos Farms, Madras, Prineville, Redmond, Bend, Gilchrist, Crescent, Chemult, and Diamond Junction, Oregon to the new sales tap at LaPine and to the existing sales taps at Bonner's Ferry, Sandpoint and Rathdrum, Idaho; Mica, Spangle, Rosalia, St. John and Lacrosse, Washington; and Stanfield, Stearns, and Klamath Falls, Oregon. PGT also requests authority to abandon service to Northwest at the existing Crescent, Oregon sales tap. PGT states that there will be no increase in the total quantity of gas which PGT is authorized to transport for Northwest.

*Comment date:* January 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

**6. High Island Offshore System**

[Docket Nos. CP91-462-000 [2], CP91-463-000, CP91-464-000, CP91-465-000]

November 28, 1990.

Take notice that on November 19, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of various shippers under the blanket certificate authority issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the contract number, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by HIOS and is included in the attached appendix.

HIOS also states that it would provide the service for each shipper under an executed transportation agreement and that HIOS would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket number (contract No.) | Applicant | Shipper name | Peak day [1] avg. annual | Points of | | Start up date rate schedule service type | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| | | | | Receipt | Delivery | | |
| CP91-462-000 (0186/0187) | HIOS | Entrade Corporation | 300,000<br>300,000<br>109,500,000 | Off. TX and LA | Off. TX and LA | 9-19-90, IT, Interruptible. | ST91-59-000 |
| CP91-463-000 (0220) | HIOS | Meridan Oil Trading Inc. | 21,265<br>21,265<br>7,761,725 | Off. TX | Off. LA | 10-1-90, IT, Interruptible. | ST91-859-000 |
| CP91-464-000 (0151/0152) | HIOS | Mobil Natural Gas, Inc. | 157,200<br>157,200<br>57,378,000 | Off. TX and LA | Off. TX and LA | 9-22-90, IT, Interruptible. | ST91-84-000 |
| CP91-465-000 (0243/0244) | HIOS | Brooklyn Union Gas Company. | 100,000<br>100,000<br>36,500,000 | Off. TX and LA | Off. TX and LA | 9-18-90, IT, Interruptible. | ST91-60-000 |

[1] Quantities are shown in Mcf
[2] The ST docket indicates that a 120-day transportation service was reported in it.

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**7. James A. Brown and EJE Brown Co., et al. (James A. Brown), et al.**

[Docket Nos. CS76-807-001, et al.] [3]

November 28, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

*Comment date:* December 17, 1990, in accordance with Standard Paragraph J at the end of this notice.

[3] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS76-807-001 | [1] 11-8-90 | James A. Brown and EJE Brown Company (James A. Brown) c/o Mr. J. Scott Hall Miller, Stratvert, Torgerson & Schlenker, P.A., 125 Lincoln Avenue, Suite 303, P.O. Box 1986, Santa Fe, NM 87504-1986. |
| CS86-24-001 | [2] [4] 11-15-90 | Ultramar Oil and Gas Limited and Ultramar Production Company (Ultramar Oil and Gas Limited), 16825 Northchase, Suite 1200, Houston, TX 77060. |
| CS90-33-000 | [4] 10-2-90 | Tenison Oil Company, 601 One Glen Lakes, 8140 Walnut Hill Lane, Dallas, TX 75231. |
| CS91-1-000 | [5] 11-16-90 | Holcomb Oil & Gas, Inc., P.O. Box 2058, Farmington, NM 87499. |

[1] By letter dated April 11, 1990, Applicant requests that the small producer certificate in Docket No. CS76-807-001 be amended to include EJE Brown Company.
[2] While the initial application was received on an earlier date, pursuant to § 381.103(b)(2)(iii) of the Commission's regulations, the filing date is the date on which the Commission receives the appropriate fee.
[3] By letter dated November 2, 1990, Applicant requests that the small producer certificate in Docket No. CS86-24-001 be amended to include its affiliate, Ultramar Production Company.
[4] The application, to the extent that Applicant is proposing to make sales from gas reserves acquired in place from a large producer, is being considered as a certification filed pursuant to § 157.40(b)(6) of the Commission's regulations. Such sales are subject to the large producer rate limitations.

**8. ONEOK, Inc., OkTex Pipeline Co. and ONEOK Services, Inc.**

[Docket No. CP90-2286-000]

November 28, 1990.

Take notice that on November 16, 1990, ONEOK Inc. (ONEOK), OkTex Pipeline Company (OkTex), and ONEOK Services, Inc. (Services), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma 74102, collectively referred to as Applicants, filed in Docket No. CP90-2286-000 a joint application pursuant to sections 7(c) and 7(b) of the Commission's Regulations under the Natural Gas Act for (1) permission and approval to abandon certain interstate facilities which ONEOK has agreed to purchase from Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star) [4] by transfer of such facilities from ONEOK to its wholly owned subsidiary, Services and to OkTex; (2) permission and approval for the abandonment of certain producer contracts for the sale of natural gas in interstate commerce so that such gas, if any, may be sold in intrastate commerce; (3) permission and approval to abandon a transportation service for Coastal by assignment of the service to Services and OkTex; (4) permission and approval to abandon an exchange service for Arkla to be assumed by Services; (5) certificate authorization for OkTex to acquire and operate certain facilities in interstate commerce; (6) authorization granting OkTex an Order No. 436/500 blanket certificate; and (7) authorization granting Services a limited jurisdictional certificate to continue the exchange service for Arkla, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ONEOK [5] states that the interstate facilities which it is purchasing from Lone Star include nine river crossings which connect facilities owned by Lone Star in Texas with the facilities which ONEOK is purchasing from Lone Star in Oklahoma. ONEOK proposes to transfer seven of these river crossings to OkTex, who will continue to operate such facilities in interstate commerce, and to abandon two of the river crossings, located south of Durant, Oklahoma, because they were washed out in the 1990 spring flooding along the Red River.

OkTex requests authorization to acquire and operate the seven river crossings in interstate commerce and also requests that it be granted an Order No. 436/500 blanket certificate under which it would provide firm and interruptible transportation services pursuant to proposed Rate Schedules FTS and ITS, respectively. OkTex states that Rate Schedule FTS would have a monthly demand charge per MMBtu of maximum daily contract demand of $0.1983 and a commodity charge of $0.0067 and that Rate Schedule ITS would have a commodity charge of $0.0132; further, each of these rates would have a maximum and minimum rate.

ONEOK requests to abandon the interstate facilities in Oklahoma, other than the river crossings, by transferring the facilities to Services which will become an intrastate pipeline and operate the facilities on an intrastate basis subject to the jurisdiction of the Oklahoma Corporation Commission (OCC) except to the extent that the facilities would be used to transport gas under Section 311 of the NGPA.

ONEOK explains that upon approval of the abandonment of service for Coastal, OkTex would continue transportation for Coastal through its interstate facilities under the balanket certificate requested herein and that Services would continue transportation for Coastal by leasing or selling undivided capacity rights in Services' intrastate facilities to Coastal so that Coastal may continue to perform such rights and obligations for the term of the existing contract pursuant to section 311(a)(2) of the NGPA.

ONEOK also proposed to abandon an exchange arrangement with Arkla [6] by transfer to Services who would continue the exchange with Arkla on its intrastate system in accordance with the existing contract and certificate, subject to the rules and regulations of the Commission, provided that the Commission declares in its order granting the requests herein that the assumption of such service obligation by Services does not affect Services' non-jurisdictional status as an intrastate pipeline with respect to the facilities described herein and declares that Services can operate as an intrastate pipeline under the NGPA of 1978. Notwithstanding its status as a natural gas company for this limited section 7(c) service, Services requests that with respect to its remaining operations that the Commission determine that it is not subject to the provisions of the Natural Gas Act and the rules and regulations thereunder, that Services is not required to file reports required of natural gas pipeline companies by the Commission's Regulations and that it is not required to maintain its accounts pursuant to the Commission's Regulations.

ONEOK states that Lone Star has assigned to ONEOK Lone Star's obligation to purchase gas from Oklahoma producers and explains that once the proposed transfer of interstate facilities from ONEOK to Services takes place, the sales would be made for consumption within Oklahoma and the gas would be dedicated to intrastate commerce serving the same customers it was dedicated to serve in the first instance. Accordingly, on behalf of the various Oklahoma producers, ONEOK requests permission and approval for the abandonment of the producers' certificated obligations in order that each may continue to make such sales under their contracts in intrastate commerce, subject, where applicable, to the provisions of the NGPA of 1978. ONEOK states that it has notified each producer of the application and asked that each producer consent to this abandonment request and to execute a "Form of Contract Summary for Abandonment Applications" and further advised each producer that if it did not respond by a date certain, then it would be assumed that it consented to such abandonment.

*Comment date:* December 19, 1990, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28445 Filed 12-4-90; 8:45 am]
BILLING CODE 6717-01-M

[4] On September 28, 1990, as supplemented on October 30, 1990, Lone Star, ONEOK and Arkla Energy Resources (Arkla) filed in Docket No. CP90-2288-000 a joint application for: (1) Permission and approval for the abandonment by sale by Lone Star of certain facilities utilized in the transportation of natural gas in interstate commerce; (2) permission and approval for the abandonment of the transportation service performed on the aforesaid facilities by Lone Star for Coastal States Gas Transmission Company (Coastal); (3) permission and approval to abandon an exchange currently performed on the facilities by Lone Star with Arkla; (4) permission and approval to abandon an exchange previously performed on the facilities by Lone Star with Arkla; and (5) authorization for ONEOK to acquire and operate the subject facilities from Lone Star and to perform the transportation and exchange services formerly performed on the facilities by Lone Star.

[5] ONEOK is not currently a "natural gas company" within the meaning of the Natural Gas Act (see footnote 1). ONEOK's natural gas pipeline business is exclusively intrastate and its divisions and subsidiaries own and operate transmission lines, gathering lines, distribution systems, etc. through which they transport gas in intrastate commerce within the State of Oklahoma. Divisions and subsidiaries include: Oklahoma Natural Gas Company, a local distribution company (LDC); and ONG Transmission Company (ONG Transmission, ONG Western, Inc. ONG Red Oak Transmission Company and ONG Sayre Storage Company, intrastate pipelines. OkTex and Servides are newly formed interstate and intrastate pipelines, respectively.

[6] ONEOK agreed to undertake as part of its acquisition of Lone Star's facilities an exchange arrangement with Lone Star had with Arkla, originally certificated on October 27, 1978, 5 FERC ¶61,079. (See footnote 1)



[Docket No. TQ91-4-63-000]

**Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

November 29, 1990.

Take notice that on November 26, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Twelfth Revised Sheet No. 8
Substitute Twelfth Revised Sheet No. 9

Carnegie states that pursuant to section 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is filing an Out-of-Cycle PGA to reflect significant rate

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changes in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed by Texas Eastern on November 20, 1990. The revised rates are proposed to become effective December 1, 1990, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91-2-63-000: a $0.440 per Dth increase in the commodity component of its LVWS and CDS rate schedules; a $0.4677 per Dth increase in the commodity component of its LVIS rate schedule; a $4.2747 per Dth increase in the D1 component of its LVWS and CDS rate schedules; a $.0167 per Dth decrease in the D2 component of its LVWS and CDS rate schedules; and a $0.1396 per Dth increase in the DCA component. Carnegie does not propose a Standby Charge Adjustment in this filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such pleadings should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28446 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TQ91-3-24-000]**

### Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 29, 1990.

Take notice that Equitrans, Inc. (Equitrans) on November 27, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1990.

Twenty-First Revised Sheet No. 10
Twelfth Revised Sheet No. 34
Alternate Twenty-First Revised Sheet No. 10
Alternate Twelfth Revised Sheet No. 34

The primary tariff sheets contained in this filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in Equitrans' pipeline supplier rates to be effective December 1, 1990, under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1 filed in Docket Nos. TQ91-2-17-000 on November 20, 1990 and Tennessee Gas Pipeline Company's Compliance filing in response to Order No. 528 on November 16, 1990. The filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

In the event TETCO is granted a waiver in TQ91-2-17, Equitrans requests that it also be granted a waiver in order that the effective date of this filing coincide with TETCO's December 1, 1990 effective date.

Equitrans also submitted alternate tariff sheets to reflect an adjustment to Equitrans' non-gas cost base rates which Equitrans requested to become effective on December 1, 1990 in an abbreviated Section 4(e) filing it made on October 31, 1990 in Docket No. RP90-13-000. By that filing, Equitrans tendered tariff sheets to reflect the actual costs of transmission and compression of gas by others that are recorded in Equitrans' FERC Account No. 858.

Equitrans requested that the Commission accept for filing and make effective on December 1, 1990 Alternate Twenty-First Revised Sheet No. 10 and Alternate Twelfth Sheet No. 34 if the RP91-13 filing is made effective on December 1, 1990 as was requested by Equitrans in that proceeding, or that the Commission accept for filing and made effective on December 1, 1990 the primary tariff sheets if the RP91-13 filing is not made effective on December 1, 1990.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.0007 per dekatherm (Dth) and an increase in the commodity cost of $0.1043 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.1043 per Dth.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on December 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28447 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. PR91-4-000]**

### Hill Transportation Co., Inc.; Petition for Rate Approval

November 28, 1990.

Take notice that on November 19, 1990, Hill Transportation Company, Inc. filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 21 cents per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Hill Transportation's petition states that it owns and operates a 12.98 mile intrastate pipeline located in Iberville and West Baton Rouge Parishes, Louisiana. The primary purpose of this pipeline is to gather and transport gas from various fields for redelivery into Louisiana Intrastate Gas Corporation and Florida Gas Transmission Company. Hill Transportation's previous maximum interruptible transportation rate of 11 cents per Mcf for section 311(a)(2) service was approved by the Commission May 1, 1989 in Docket No. ST88-677-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.



Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 13, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28448 Filed 12-4-90; 8:45 am]

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**[Docket No. RP78-78-019]**

### Natural Gas Pipeline Co. of America, Report of Refunds

November 29, 1990.

Take notice that Natural Gas Pipeline Company of America (Natural) on September 28, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Distribution of Refunds, paid to jurisdictional customers. Natural states that the refund under Docket No. RP78-78 covers the final payment of amounts due in compliance with the provisions of Article XX of Natural's Stipulation and Agreement approved by Commission order dated October 4, 1979.

Natural states that it has previously made a refund under Article XX on April 24, 1987, as reported to the Commission on May 22, 1987, at Docket No. RP78-78-018. That report was approved by Commission letter order issued December 9, 1988. The prior report indicated Natural was withholding $873,370.45 of interest due pending resolution of a dispute with the IRS regarding the calculation of interest. That dispute was resolved on July 5, 1990 and Natural refunded the additional amount to its jurisdictional customers on August 31, 1990. Natural states that the refund was allocated based on the ratio of each customer's prior refund to the total refund distributed on April 24, 1987.

Natural notes that a copy of this report has been mailed to each of Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1990)). All such protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28449 Filed 12-4-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-62-009]**

### Pacific Gas Transmission Co.; Report of Refunds

November 29, 1990.

Take notice that on October 3, 1990, Pacific Gas Transmission Company (PGT), a California corporation, whose mailing address is 160 Spear Street, San Francisco, California 94105-1570, tendered for filing in compliance with ordering paragraph (C) of the Federal Energy Regulatory Commission's (Commission) order issued January 24, 1990, at Docket Nos. RP87-62-000, *et al.*, its Report of Refunds made in July and September to its interstate system jurisdictional sales and transportation customers entitled thereto for the period July 1, 1987 through the date of refund. Such refund resulted from decreased rates attributable to the offer of settlement approved by the Commission's order dated January 24, 1990 at Docket Nos. RP87-62-000, *et al.*

PGT states that it distributed to its interstate system firm customers entitled thereto refunds aggregating $27,429,828.87 and to its interruptible shippers entitled thereto refunds aggregating $166,698.32, inclusive of applicable interest calculated in accordance with § 154.67(c)(2)(iii) of the Commission's Regulations.

PGT states that copies of the report were served upon the interstate pipeline system sales customers and shippers of PGT receiving refunds associated with Docket Nos. RP87-62-000, *et al.*, and upon all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before December 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28450 Filed 12-4-90; 8:45 am]

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**[Docket No. RP91-29-001]**

### Tennessee Gas Pipeline Co.; Tariff Filing

November 28, 1990.

Take notice that on November 21, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered revised tariff sheets, and an alternate set of tariff sheets, to its Third Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff to be effective December 16, 1990.

Tennessee states that this filing is made to correct several typographical and computational errors in its filing made in Docket No. RP91-29-000. It requests that these corrected tariff sheets be substituted for the tariff sheets filed in Docket No. RP91-29-000.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28451 Filed 12-4-90; 8:45 am]

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**Office of Conservation and Renewable Energy**

**[Case No. F-018]**

**Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Lennox Industries**

**AGENCY:** Office of Conservation and Renewable Energy, DOE.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. F-018) granting Lennox Industries, Inc. a waiver for its G20 and G20R series atmospheric furnaces from existing DOE test procedures.

**FOR FURTHER INFORMATION CONTACT:**

Carl E. Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station, CE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Lennox Industries has been granted a waiver for its G20 and G20R series atmospheric furnaces permitting the company to use an alternate test method. Today's alternate test method is a modified version of the test method requested by Lennox and produces furnace efficiencies slightly lower than the Lennox requested method.

Issued in Washington, DC, November 30, 1990.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

**Decision and Order**

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendment of 1988 (NAECA 1988), Public Law 100-357, and requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27 to create the waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inadequate comparative data. Waivers general remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allows the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, and may be extended for an additional 180 days, if necessary.

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the Federal Register notice of each waiver granted, and any limiting conditions of each waiver.

**Background**

On August 1, 1989, Lennox Industries (Lennox) filed a "Petition for Waiver" and an "Application for Interim Waiver" regarding (a) Blower time delay and (b) determination of the off-cycle draft factor, $D_f$, in accordance with § 430.27 of 10 CFR part 430. DOE published in the Federal Register the Lennox petition and solicited comments, data, and information respecting the petition and granted the requested Interim Waiver in its entirety. 54 FR 50525 (December 7, 1989).

Comments were received from the American Gas Association (AGA), Energen Corporation (Energen), Southern Gas Association (SGA), Oklahoma Natural Gas Company (Oklahoma), Laclede Gas Company (Laclede), Lone Star Gas Company (Lone Star), Entex, and Michigan Furnace Company (Michigan) all of whom supported the waiver in its entirety. Comments were received from Amana, Snyder General Corporation (Snyder General), Natural Resources Defense Council (NRDC), Heil-Quaker Corporation (Heil-Quaker), Carrier Corporation (Carrier), Rheem Manufacturing Company (Rheem), and the California Energy Commission (CEC), all of whom opposed the waiver regarding the determination of $D_f$. All comments received were sent to Lennox for its rebuttal. DOE consulted with the Federal Trade Commission on September 20, 1990, concerning the Lennox petition.

**Assertions and Determinations**

*Blower delay.* Lennox seeks a waiver from the DOE test provisions that require 1.5 minute delay between the ignition of the burner and the starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 45 second blower time delay when testing its G20 and G20R series gas furnaces. Lennox states that since the 45 second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.7 percent, the waiver should be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985; the Magic Chef Company, 50 FR 41553, October 11, 1985; the Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; the Trane Company, 54 FR 19228, May 4, 1989; DMO Industries, 55 FR 4004, February 6, 1990; the Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; the Carrier Corporation, 55 FR 13182, April 9, 1990; and the Rheem Manufacturing Company, 55 FR 37521, September 12, 1990.

Since DOE did not receive any negative comments on this issue, the Lennox petition has provided the basis for DOE's review of the blower delay procedure. Based on the information provided by the Petitioner and DOE's review, DOE concluded that the existing test procedure does not give comparable results for the Lennox G20 and G20R series gas furnaces and therefore DOE is granting Lennox's request for an alternate blower delay test procedure.



*Determination of $D_f$.* Lennox also seeks a waiver from the DOE test procedure that requires the use of an assigned theoretical value of 1.0 for the $D_f$ of an atmospheric furnace. Lennox states that the G20 and G20R series of atmospheric furnaces incorporate an electro-mechanical burner box damper system that greatly restricts the flow through the heat exchanger when the damper is closed during the off-cycle and that the damper restriction is similar to that caused by a power burner during the off-cycle. Thus, Lennox claims it should be allowed to test to determine the $D_f$ value, as allowed for power burners. A resulting lower $D_f$ value will result in a higher Annual Fuel Utilization Efficiency (AFUE).

Lennox states that the current test method does not give credit for the energy savings due to the reduced flow and, as a result, provides materially inaccurate comparative data. To be able to take credit for the energy savings resulting from the reduced flow, Lennox requests a waiver from the furnace test procedure to allow $D_f$ to be determined by tracer gas test measurements and to use the calculations set forth in the test procedures for power burners. Lennox claims that this results in an AFUE for its G20 furnace which averages at least 4.0 percent higher than when tested under the current method of test for atmospheric furnaces using the specified value of 1.0 for $D_f$.

All of the comments in favor of this portion of Lennox's petition essentially state that allowing atmospheric furnaces with burner box dampers to use a tracer gas test to measure $D_f$ would result in higher AFUE's and thereby meet the 1992 NAECA standard. If this occurs, it would result in lower cost equipment basically for reasons of simplicity, i.e., no power burner or spark ignition, and therefore result in the elimination of the power burner as the anticipated basic model. Oklahoma and Lone Star both stated that because of draft dilution associated with atmospheric furnaces, the units would also be more compatible with existing vent systems than power burners are, which also means lower costs for many retrofit installations. However, the draft dilution associated with atmospheric furnaces was a major issue raised by all of the comments opposed to this portion of the Lennox waiver.

Those comments essentially state that most of these furnaces will be installed indoors, as opposed to installed as isolated combustion systems as they are rated. The draft dilution becomes a large infiltration loss when installed indoors that is not recognized by the test procedure and is not incurred by similarly rated power burner units. Thus, the Lennox unit would operate at a lower efficiency than its rated efficiency whereas a similarly rated power burner unit would operate at a higher efficiency when installed indoors. These comments further claim that if the waiver is granted, the majority of consumers who install these atmospheric furnaces indoors will be misled by the labeled efficiency; that the comparison of this furnace to a power burner unit will be unfair; and that the result will be an increase in energy usage. There were also several comments stating that this waiver is contracy to their understanding of NAECA in that the furnace standard was set to a level so as to effectively preclude atmospheric furnaces.

After review of the comments, DOE agrees that some furnaces with low off-period losses which utilize unrestricted draft dilution will operate at lower efficiencies when installed indoors as compared to when installed as an isolated combustion system. Lennox points out in its rebuttal that there are also some furnaces with power burners that had indoor ratings higher, as measured by the earlier 1988 test procedure, than their current ICS ratings. While this result, for the Lennox furnace and others, may be contrary to the intent of NAECA, DOE has determined that such result is not germane to the decision at hand. NAECA clearly states that AFUE is to be determined assuming an isolated combustion system installation and this Decision and Order is based on the technical aspects of the test procedure to produce accurate and comparable results for the Lennox G20 series furnace when tested as an isolated combustion system. However, DOE is concerned about the possible degradation of performance of furnaces with draft dilution when installed indoors relative to their ICS rated performance, especially in the absence of stack dampers which no longer receive performance credit, and, as a result, DOE will explore the possibility of having the legislated definition of AFUE changed to an indoor rating.

AGA, Energen, SGA, and Entex all commented that the tracer gas test to determine $D_f$ is allowed for other types of furnaces including power burners and vented heaters, and supported its use in this instance. However, Amana, Heil-Quaker, Carrier, and CEC question the accuracy of the tracer gas test for Lennox's burner box damper design with Heil-Quaker and Carrier conducting tracer gas tests on some of their atmospheric units to which they had fitted burner box dampers. Heil-Quaker and Carrier both claimed that the tracer gas tests with the burner box damper open yielded $D_f$ values of less than 1.0 and that they could only duplicate Lennox's low $D_f$ with the burner box damper closed by sealing the draft diverter. They maintain that Lennox should not be allowed to test with the draft diverter sealed because it will always be open in the field. They maintain that the open draft diverter allows the possibility of draft relief air from the draft diverter entering the heat exchanger which would lower the effect of the burner box damper.

Because of the questions raised by the potential precedental effect on industry product design and manufacturing in the event the waiver should be granted, DOE decided that more testing was necessary. Accordingly, DOE contracted with the National Institute for Standards and Technology (NIST) to conduct efficiency tests of a Lennox furnace using tracer gas tests to determine $D_f$. As stated above, Lennox claimed in its Petition for Waiver that its G20 Furnace, when tested using tracer gas tests to determine $D_f$, would perform with an AFUE improvement which would average at least 4.0 percent. Additionally, Lennox had rated the G20 furnace tested by NIST at an AFUE of 78.0 percent when tested using the test procedure required by Lennox. The result of the NIST test, using the Lennox procedure, was a somewhat lower AFUE of 77.3 percent. This result showed that the Lennox furnace design did increase ICS performance, which the current test procedure did not measure, although not by as much as Lennox claimed. However, the NIST test also showed that the tracer gas test did yield a $D_f$ of less than 1.0 with the burner box open as Heil-Quaker and Carrier claimed. This would automatically result in an increase in the AFUE, caused solely by utilizing testing to obtain $D_f$ and not by the Lennox design feature.

Further, the test showed that the entry and recirculation of draft diverter air into the heat exchanger did occur as Heil-Quaker and Carrier claimed. NIST also found that with the draft diverter open, the tracer gas test is difficult, if not impossible, to perform when the

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tracer gas is injected into the burner box.

Based on the above results, DOE has determined that a waiver is warranted but that the waiver should be a modified version of the Interim Waiver previously granted. The test procedure the today's Decision and Order reflects these findings.

DOE believes that the waiver should account only for the effect of the burner box damper and should not allow any improvement of $D_P$ (and resulting AFUE) due to the allowance of testing for $D_P$. Therefore, today's Decision and Order requires that the tracer gas test for $D_P$ be performed with the burner box damper open and closed—thus only the relative improvement in the $D_P$ value is allowed.

The NIST test also found that the entry and recirculation of draft relief air in the heat exchanger with the draft diverter open did occur but that it made little difference in the AFUE of the Lennox furnace. However, because DOE believes that other manufacturers may introduce similar designs in which an open draft diverter might make a greater difference and because the draft diverter is always open in the field, today's Decision and Order requires the tracer gas test be performed with the draft diverter open.

During its testing, NIST found the tracer gas test difficult to perform and, therefore, today's Decision and Order contains some other modifications from the Interim Waiver to simplify the test. Today's Decision and Order requires the tracer gas to be injected and sampled in the stack as opposed to in the heat exchanger. Today's Decision and Order also requires the ratio of $Q_{S\text{-}OFF}$, measured with the damper closed, to $Q_{S\text{-}OFF}$, measured with the damper open, (where $Q_{S\text{-}OFF}$ is the integrated value of the off-cycle sensible heat loss over a one minute period between the minutes 5 and 6 into the cool-down period), to be used as the effective $D_P$. The losses, $Q_{S\text{-}OFF}$ with damper open and closed, are measured over a one minute period instead of using the off-cycle sensible heat losses measured and integrated over the whole off-cycle period of 13.3 minutes because the latter proved difficult to measure using current tracer gas techniques.

The net result of all these changes from the Interim Waiver was an AFUE of 76.8 percent which is 0.5 AFUE points lower than NIST obtained using the Interim Waiver procedure and 1.2 AFUE points lower than Lennox currently rates the unit. Because of the complexities in the flue gas measurements and to validate the integrity of the test procedure which is the subject to today's Decision and Order, the Lennox furnace tested by NIST was shipped to an independent testing laboratory, ETL Testing Laboratories, to test using today's test procedure. The results of the ETL conducted test was an AFUE of 76.6 which DOE considers to be in reasonably good agreement with the NIST results.

*Conclusion*

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Lennox Industries (F–018) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraph (3), (4) and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Lennox Industries shall be permitted to test its G20 and G20R series gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with the modifications set forth below:

(i) Section 9.3.1 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following paragraph:

*Gas- and oil-fueled central furnaces.* After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 ($T_{P,ON(t1)}$) and 2.5 ($T_{P,ON(t2)}$) minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(ii)(1) The title of section 8.9 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following title:

8.9 Methods for Determining Draft Factors $D_P$, $D_P$, and $D_S$ and Off-Cycle Loss Factor $K_L$.

(2) Section 8.9.2 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following:

8.9.2 Optional Methods for Determining Draft Factors $D_P$, $D_P$, and $D_S$ for Systems Equipped with Power Burners or Draft Inducers, and Method for Determining Off-Cycle Loss Factor $K_L$ for Atmospheric Systems with an Integral Draft Diverter and with an Electro-mechanical Device at the burner air inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle. Draft factors $D_P$, $D_P$, and $D_S$ are to be determined as described in 9.4 and loss factor $K_L$ are to be determined as described in 9.6. The tracer gas chosen for task should have a density which is less or approximately equal to the density of air. Use a gas that is of a different chemical species or different concentration from the flue gas to be measured and unreactive with the environment to be encountered.

(3) Add the following section 8.9.2.3 in ANSI/ASHRAE Standard 103–1982:

8.9.2.3 On atmospheric systems with an integral draft diverter and an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger in the off-Cycle, determine $K_L$ (the ratio of off-cycle sensible heat loss tested with the electro-mechanical device closed during the off-cycle to the off-cycle sensible heat loss tested with the electro-mechanical device held open during the off-cycle) during two additional 10-minute duration cool-down tests. Conduct these two additional cool-down tests after the cool-down and heat-up tests described in 9.2 and 9.3 are completed. During a short burner off period, before the two additional cool-down tests but after the completion of the heat-up tests described in 9.3, remove the blocking over the draft relief opening and the restriction over the test stack outlet but keep the insulation over the rest of the draft diverter surface on (see 9.1.1.6). Conduct the first additional cool-down test by first running the unit until steady-state conditions are reached, (see 9.1) and then shutting the unit off with the electro-mechanical device adjusted or bypassed so that the device is held open during the resulting cool-down period. After the cool-down period, conduct the second additional cool-down test by again running the unit until steady-state conditions are reached, and then shutting the unit off but with the electro-mechanical device operating as designed during the resulting cool-down period. Measure the stack gas mass flow rate ($m_{S\text{-}OFF}$) and the stack gas temperature during the two additional cool-down periods described above starting at five minutes into the cool-down period using the procedure described in 9.6.5, and compute (as described in 11.4.4) the off-cycle sensible heat losses over the one minute interval between five and six minutes into the cool-down period using 9.6.



(4) Section 9.2.1.1 in ANSI/ASHRAE Standard 103–1982 is deleted and replaced with the following:

9.2.1.1 Turn off the main burner after steady-state testing is completed, and measure the flue gas temperature by means of the thermocouple grid described in 7.5 at 1.5 ($T_{P,OFF}$ [$t_1$]) and 9.0 minutes ($T_{P,OFF}$ ($t_2$)) after burner shut off. Bypass the damper control in units employing stack dampers and integral draft diverter or draft hood so that the damper remains open during the cool-down test. On atmospheric systems with an integral draft diverter and equipped with an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger in the off-cycle, bypass or adjust the control for the device electrically or mechanically so that the device remains open during the cool-down test.

(5) Add the following sections 9.6, and 9.6.1. to 9.6.8 ANSI/ASHRAE Standard 103–1982:

9.6 Tracer Gas Test Procedures for Determining Off-Cycle Loss Factor $K_L$ for Atmospheric Systems with Intergral Draft Diverter and Equipped with an Electro-Mechanical Device at the Burner Air Inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

9.6.1 As described in 9.4.1.

9.6.2 After the completion of the heat-up test in 9.3, turn the burner off and remove the blocking over the draft diverter and the restriction in the test stack that are installed during the steady-state test in 9.1.1.6. Do not remove the insulation covering the draft diverter surfaces (see 9.1.1.6). In the meantime, sample and feed the ambient air to the tracer gas analyzer and record the background concentration $C_B$ of the tracer gas to be used for the test (one data point is generally enough).

9.6.3 Turn the burner on until steady-state conditions are again achieved as specified in 9.1.1.1. Turn the burner off for a 10-minute cool-down period. Adjust or bypass the electro-mechanical device so that it remains open during the cool-down period. Within one minute after the unit is shut off to start the cool-down test, begin feeding a tracer gas with a known and certified concentration $C_{TM}$ at a constant flow rate $V_T$ into the lower part of the test stack just above the test plane where the stack thermocouple grid is located (see 8.2.1.5.1). Periodically measure the value of $V_T$ with an instantaneously reading flow meter having an accuracy of ± 3 percent of the quantity measured and maintain that value of tracer gas flow rate at less than one percent of the air flow rate through the test stack.

9.6.4 Within one minute after the tracer gas flow is started, connect the tracer gas sampling line to the sampling probe located at a plane inside and near the top exit of the test stack. Measure the transport delay time which is equal to the time between the connecting of the sampling line and the initial response of the tracer gas analyzer. Add to this transport time the time required for the analyser to reach 90% of its steady-state value as specified in the analyzer's operation manual. The sum of these two values is the tracer gas delay time $t_{DELAY}$, needed to match the concentration measurement to the temperature measurement in the off-period loss calculation. Make sure that a well mixed sample is collected by using a multi-hole sampling probe as recommended in appendix D, section B.

9.6.5 At five minutes after the unit is shut off to start the cool-down test, measure and record the percent volumetric concentration of tracer gas present in the stack gas sample, $C_T$, at the location specified in 9.6.4. At the same time, measure the stack gas temperature, $T_{S,OFF}$, using the thermocouple grid in the test plan (see 8.2.1.5.1). The data measurement and recording should be done at a time interval, Δt, of five second for the next two to three minutes. The exact length of time required for the data measurement is equal to the tracer gas sample delay time (see 9.6.4) plus one minute. (Even though only one minute of data is required for the computation of the off-cycle loss, the longer time is needed to take into account the time delay between the concentration data and the temperature data). Stop the tracer gas injection and sampling after the required data are measured and recorded. Disconnect the tracer gas sampling line from the sample probe and sample the ambient air to clean the line.

9.6.7 At the end of the 10-minute cool-down period, turn on the burner until steady-state conditions are again achieve as specified in 9.1.1.1. Turn the burner off for another 10-minute cool-down period. Let the electro-mechanical device close the way it is designed to. Repeat the test steps of 9.6.3 through 9.6.6 except that the electro-mechanical device is to remain closed. Note that the tracer gas feeding rate, $V_T$, may have to be adjusted to a lower rate to keep the sample concentration within the range of the gas analyzer used.

9.6.8 The rate of the stack gas flow through the stack, the off-cycle sensible loss rate, and the loss factor $K_L$ are calculated by the equations in 11.4.4.

(6) Add the following section 11.4.4 in ANSI/ASHRAE Standard 103–1982:

11.4.4 Tracer gas procedure for determining the off-cycle loss factor $K_L$ for atmospheric furnaces with integral draft diverter and equipped with an electro-mechanical device at the burner air inlet that restricts the flow through the heat exchanger during the off-cycle. Calculate the off-cycle loss factor, $K_L$, defined as the ratio of the off-cycle sensible heat loss with the electro-mechanical device closed during the off-cycle to the off-cycle sensible heat loss with the electro-mechanical device held open during the off-cycle.

$K_L$ = ($Q_{S\text{-}OFF}$ with device closed)/($Q_{S\text{-}OFF}$ with device open)

where

$Q_{S\text{-}OFF} = \Sigma\ (q_{S\text{-}OFF}) * (\Delta t/60)$

= One minute sum-total of the measured $q_{S\text{-}OFF} * \Delta t$ (Δt = timestep in seconds when data are recorded) over a one minute interval starting at five minutes into the cool-down period

Δt = time interval between measurements as defined in 9.6.5, seconds

60 = unit conversion factor to convert time in seconds to minutes

and where

$q_{S\text{-}OFF} = C_P * M_{S\text{-}OFF} * (T_{S\text{-}OFF} - T_{RA})$

$q_{S\text{-}OFF}$ = off-cycle sensible loss rate, Btu/min

$C_P$ = specific heat capacity of the stack gas, Btu/$lb_m$ °F

$T_{S\text{-}OFF}$ = measured stack temperature at time t as defined in 9.6.5, °F.

$T_{RA}$ = room ambient temperature as defined in 11.2.4, °F

$m_{S\text{-}OFF} = [C_{TM} - C_T)/(C_T - C_B)] * p_T * V_T$

$m_{S\text{-}OFF}$ = mass flow rate at time t of the stack gas during the off-cycle, $lb_m$/min

$C_{TM}$ = concentration of measurable tracer gas in a certified standard tracer gas mixture, percent

$C_T$ = concentration by volume of tracer gas present in the stack gas sample, measured at time t + $t_{DELAY}$, in accordance with 8.9, percent

$t_{DELAY}$ = tracer gas sample delay time as defined in 9.6.4, seconds

$C_B$ = room background concentration by volume of the tracer gas used as defined in 9.6.2, percent

$V_T$ = flow rate of tracer gas through the stack measured in accordance with 8.9, $ft^3$/min

$p_T$ = density of the stack gas as defined in 11.4.1, $lb_m/ft^3$

(7) Add the following section in ANSI/ASHRAE Standard 103–1982: 11.7 Additional Requirements for Atmospheric Furnaces with Integral Draft Diverter and Equipped with an Electro-Mechanical Device at the Burner Air Inlet that Restricts the Flow Through the Heat Exchanger in the Off-Cycle.

For furnaces with an integral draft diverter and equipped with an electro-mechanical device at the burner air inlet and installed as an isolated combustion system (ICS), the System Number and the draft factor $D_P$ are defined as:

System Number = 10

$D_P = K_L$

where

$K_L$ = off-cycle loss factor, as defined in 11.4.4

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(iii) With the exception of the modification set forth in subparagraph (i) and (ii) above, Lennox Industries shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect until the Department of Energy prescribes final test procedures appropriate to the G20 and G20R series furnace manufactured by Lennox – Industries.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) This Waiver supersedes the Interim Waiver granted to Lennox Industries on November 30, 1989 (54 FR 50525, Dec. 7, 1989) and extended on July 12, 1990 (55 FR 30285, July 25, 1990).

Issued in Washington, DC., November 30, 1990.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 90-28514 Filed 11-30-90; 2:25 pm]

BILLING CODE 6450-01-M

## Office of Energy Research

**[Notice 91-3]**

### Special Research Grants; Computer Hardware, Advanced Mathematics and Model Physics (CHAMMP) Program

**AGENCY:** Office of Energy Research, DOE.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support the development of advanced climate models in conjunction with the Atmospheric and Climate Research Division's (ACRD) Computer Hardware, Advanced Mathematics and Model Physics (CHAMMP) Program. This notice requests applications for grants to support research in the following areas:

(1) The theoretical limits to the prediction of climate and climate change on decade to century time scales and regional (100–1000 km) spatial scales using climate models, e.g. general circulation models (GCMs) of the atmosphere, ocean, and coupled atmosphere-ocean system.

(2) The development of new mathematical techniques, algorithms and computer software to efficiently use highly parallel computers, i.e. those that typically have 50–1000 processors, for climate models.

(3) The use of the current and next generations of supercomputing systems to dramatically increase the throughput of climate simulations.

(4) The development of improved representations of key climate processes (surface processes, convective transport, etc.) within climate models that properly scale with model resolution.

Applicants may apply for any combination or all of (1), (2), (3), and (4) above. Collaborative proposals among several investigators and/or organizations that cover two or more of the above areas are encouraged. It is anticipated that up to 20 grants will be awarded. Allocation among (1), (2), (3), and (4) above will depend on the number and quality of the proposals received. Grant awards will generally be for a 3 year period beginning in the spring of 1991.

**DATES:** Applications should be sent to the address below by 4:30 p.m., February 12, 1991. The project description portion of the application should not exceed 25 double spaced pages. Lengthy appendices are discouraged.

**ADDRESSES:** Completed applications referencing 91–3, as well as requests for the application and guide for the Special Research Grant Program 10 CFR part 605, should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Mail Stop G–236, Washington, DC 20585. Telephone requests for application kits may be made by calling (301) 353–3281.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ari Patrinos, Atmospheric and Climate Research Division, Office of Health and Environmental Research, ER–76, Washington, DC 20585, (301) 353–4375.

**SUPPLEMENTARY INFORMATION:** One of the major scientific objectives of the Atmospheric and Climate Research Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. This directly supports the National Energy Strategy and the U.S. Global Change Research Program.

The CHAMMP research program is a multi-year program to accelerate and improve climate prediction on global and regional scales. Its emphasis is on the integration of improved modeling methods with state-of-the-science and next generation high performance computing systems to increase both the throughput and accuracy of computer climate model predictions.

Successful applicants for grants in support of (1) above will conduct research into the capability of climate models for permforming decade to century scale climate predictions for regions encompassing $10^4$–$10^9$ $km^2$. These applicants must demonstrate the role of their research in defining the limits of predictability for advanced climate models, because these models will be used to determine the role of various factors, both natural and anthropogenic, in climate change. These studies may include, but are not limited to, both theoretical and modeling investigations of internal climate variability.

Successful applicants for grants in support of (2) above will conduct research for the development of new mathematical techniques and numerical algorithms that can be incorporated into climate models running on highly parallel computer systems of the type envisioned to be the next generation of supercomputers. These algorithms may deal with any or all of the climate system process representations that will comprise advanced climate models. These processes include, but are not limited to, atmospheric and oceanic dynamics and transport; surface energy and mass exchange; and atmospheric radiative transfer.

Successful applicants for grants in support of (3) above will conduct research into integrating state-of-the-science climate models with the current and next generations of state-of-the-science supercomputers to dramatically improve the throughput of model simulations on these systems.

Successful applicants for grants in support of (4) above will conduct research to improve the representations of climate system processes for inclusion into advanced climate models. These studies will explore methods for incorporating the results of the U.S. Global Climate Change Research Program's experimental and observational programs into modules that describe these processes correctly through a range of scales within advanced climate models.

To ensure that the program meets the broadest needs of the research community and the specific needs of the ACRD, the successful applicants will participate as members of the CHAMMP Science Team along with selected scientists from other ACRD programs that relate to the CHAMMP program. Costs for participation in the Science Team meetings and workshops should be included in the respondent's application. Yearly estimates for Science Team travel should be based on two trips of one week to Washington, DC and two trips of three days to Chicago, IL.

Approximately 1 million dollars is available in FY 1991 to fund these efforts, allocated evenly among activities (1), (2), (3), and (4) above. However, the actual allocation to (1), (2), (3), and (4) will depend on the number and quality of the proposals received and their relation to the goals of the overall CHAMMP program. Grant awards will generally be 3 years in duration. It is anticipated that the funding for the above described activities could reach 3 million dollars per year at some time during the 10 year program. All awards are subject to the availability of appropriated funds.

Available from ACRD (see address section above) to assist applicants is a copy of the draft plan for CHAMMP—Computer Hardware, Advanced Mathematics and Model Physics—A Department of Energy Initiative in Global Climate Change, October, 1990.

Information about submissions of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in the OER Application and Guide for the Special Research Grants Program, 10 CFR part 605. This document is available from the same office listed under the "Address" section of this notice. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, D.C., on November 19, 1990

**D.D. Mayhew,**

*Deputy Director for Management, Office of Energy Research.*

[FR Doc. 90-28520 Filed 12-4-90; 8:45 am]

BILLING CODE 6450-01-M



## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-100081; FRL-3840-4]**

### Acurex Corporation; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Acurex Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs, Health Effects Division and will require access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed as confidential business information (CBI) by submitters. This information will be transferred to Acurex Corporation as authorized by 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable Acurex Corporation to fulfill the terms of the contract, and this notice serves to notify affected persons.

**DATES:** Acurex Corporation will be given access to this information no sooner than December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** By mail: Clare Grubbs, Program Management and Support Division (H7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–4460.

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68–D0–0142, Acurex Corporation will assist the Dietary Exposure Branch of the Health Effects Division in the reregistration of pesticides and shall review and evaluate data relative to the product chemistry of pesticides on Reregistration Lists A, B, C, and D.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), Acurex Corporation shall not use the information for any purpose other than the purposes specified in the contract; shall not disclose the information in any form to a third party without prior written approval from the Agency or affected business; and shall require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided to Acurex Corporation until the above requirements have been fully satisfied. In addition, Acurex Corporation will submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. Records of information provided to Acurex Corporation will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Acurex Corporation by EPA for use in connection with the contract will be returned to EPA when Acurex Corporation has completed its work.

Dated: November 19, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 90-28154 Filed 12-4-90; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 29, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commision's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

*OMB Number:* 3060–0075.

*Title:* Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station.

*Form Number:* FCC Form 345.

*Action:* Revision.

*Respondents:* State or local governments, businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 380 responses; 10.166 hours average burden per response; 3,863 hours total annual burden.

*Needs and Uses:* FCC 345 is required when applying for authority for assignment of license or permit, or for consent to transfer of control for a low power television station, or FM or TV translator station. The data is used by FCC staff to determine if applicant

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meets basic statutory requirements to operate the station.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 90-28474 Filed 12-4-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted To OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

*Type of Review:* Extension of the expiration date of a currently proved collection without any change in the method or substance of collection.

*Title:* Public Disclosure by Banks.

*Form number:* None.

*OMB number:* 3064-0090.

*Expiration date of OMB clearance:* January 31, 1991.

*Frequency of Response:* Annually.

*Respondents:* FDIC-insured state nonmember banks and state-licensed branches of foreign banks.

*Number of respondents:* 7,848.

*Number of responses per respondent:* 1.

*Total annual responses:* 7,848.

*Average number of hours per response:* 0.5.

*Total annual burden hours:* 3,924.

*OMB reviewer:* Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0090), Washington, DC 20503.

*FDIC contact:* Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

*Comments:* Comments on these collections of information are welcome and should be submitted before February 4, 1991.

**ADDRESSES:** A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** This collection, contained in 12 CFR part 350, requires FDIC-insured state nonmember banks and FDIC-insured state licensed branches of foreign banks to notify the general public, and in some cases shareholders, that annual disclosure statements are available on request. Required annual disclosure statements consist of financial reports for the current and preceding year. Also, on a case-by-case basis, the FDIC may require that descriptions of enforcement actions be included in disclosure statements. The regulation allows, but does not require, the inclusion of management discussions and analysis.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-28479 Filed 12-4-90; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA-882-DR]**

### Republic of Palau (Trust Territory of the Pacific Islands); Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Republic of Palau (FEMA-882-DR), dated November 28, 1990, and related determinations.

**DATES:** November 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** Notice is hereby given that, in a letter dated November 28, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Republic of Palau, resulting from Super Typhoon Mike on November 10-11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Republic of Palau.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the affected areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be cost shared. The final terms of all cost sharing arrangements can include per capita cost sharing and will be determined by FEMA at a later date.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Frank L. Kishton of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Republic of Palau to have been affected adversely by this declared major disaster:

The Republic of Palau for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90-28482 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-883-DR]**

### Washington; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATED:** November 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** Notice is hereby given that, in a letter dated November 26, 1990, the President declared a major disaster



under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Washington, resulting from severe storms and flooding beginning on November 9, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency "Assistance Act (the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added, if warranted, and a proper commitment is obtained. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Washington to have been affected adversely by this declared major disaster:

The counties of Skagit, Snohomish, and Whatcom for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90-28493 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-883-DR]**

### Washington; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATED:** November 27, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the Public Assistance program in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

The counties of Skagit, Snohomish, and Whatcom for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90-28494 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA-883-DR]**

### Washington; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATED:** November 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

King County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90-28495 Filed 12-4-90; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Report on Laws, Rules, Regulations, Policies and Practices of the Republic of Korea Affecting Shipping in the United States/Korea Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Maritime Commission advises the public that it has ordered certain ocean carriers in the United States/Korea trade to report to the Commission, pursuant to section 10002(d) of the Foreign Shipping Practices Act of 1988, and section 15 of the Shipping Act of 1984, on whether and how laws and practices of the Republic of Korea result in the existence of unfavorable or adverse conditions affecting the operations of U.S.-flag carriers. The Commission now also solicits comments from interested persons who are able to provide information relevant to the requests made of the carriers. The information is sought to provide the Commission a basis for determining whether to initiate an investigation under section 10002(c) of the Foreign Shipping Practices Act or section 19(1)(b) of the Merchant Marine Act, 1920.

**DATES:** Comments due January 28, 1991.

**ADDRESS:** Comments (original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** Section 10002(b) of the Foreign Shipping Practices Act of 1988 ("FSPA"), 46 U.S.C. app. 1710a(b), authorizes and directs the Federal Maritime Commission ("Commission") to investigate whether any laws, rules, regulations, policies, or practices of foreign governments result in the existence of conditions that adversely affect the operations of United States carriers in the U.S. oceanborne trade, which conditions do not exist for foreign carriers of that

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country in the United States. Section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) authorizes and directs the Commission to make rules and regulations to adjust or meet general or special conditions unfavorable to shipping in the foreign trade arising from foreign laws, rules or regulations. Section 10002(d) of the FSPA empowers the Commission to require any person, including ocean common carriers, to respond to information requests which the Commission considers necessary or appropriate to further the objectives of that statute. Similarly, section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714 ("1984 Act") authorizes the Commission to require common carriers to file special reports appertaining to the business of those common carriers.

To this end, the Commission has directed U.S.—and Korean-flag ocean common carriers in the United States/Korea trade ("Trade") to report on the existence and effects of doing-business restrictions and practices of the Republic of Korea ("ROK" or "Korea") on the Trade.

The Commission has on previous occasion inquired into ROK laws, regulations and policies pursuant to the reporting mechanisms of the 1984 Act. Commercial and governmental negotiations to resolve complaints by U.S.-flag carriers in the Trade have been ongoing for some time, and the Commission has been closely monitoring these efforts and the mixed success with which they have met. Recent U.S.-Korea maritime consultations resulted in only partial progress on several key issues, and a resolution of remaining issues does not appear imminent. The Commission has accordingly required U.S.-flag carriers American President Lines, Ltd. and Sea-Land Service, Inc. ("U.S. Carriers") and Korean-flag carriers Hanjin Container Lines and Hyundai Merchant Marine Co. ("Korean Carriers") to report on the following issues.

**1. Trucking**

The Commission is concerned that U.S. Carriers in the Trade are impeded by the ROK from operating trucking services in Korea on an equal basis as Korean Carriers can and do operate in both the United States and in Korea.

**2. Branch Offices**

U.S. Carriers had previously complained of inability to apply for and receive branch office licenses in Korea. This issue appears to have been resolved by ROK legislative and administrative action brought about via diplomatic and commercial discussions. A status report on this issue is sought, however.

**3. Rail Service Access**

U.S. Carriers in the Trade have reported an inability to contract directly with railroads in Korea, and that such access to railroads is granted only to forwarders. There are no apparent impediments to Korean Carriers' contracting for railroad services in the United States. The Commission is unaware of whether Korean Carriers are allowed more direct access to rail service contracting in Korea than are U.S. Carriers.

**4. Container Terminal Ownership and Operations**

U.S. Carriers in the Trade have reported that they are unfairly precluded from owning or operating container terminal facilities in Korea. Discussions between U.S. Carriers and the ROK on U.S. Carrier participation in development at the Port of Pusan have apparently not been fruitful, and the ROK has reportedly offered only vague assurances of participation in the Port of Kwangyang, an alternative which U.S. Carriers have suggested may not be comparable or acceptable.

**5. Terminal Equipment Ownership**

The Commission is also concerned that U.S. Carriers may be discriminatorily precluded by the ROK from owning terminal equipment, such as container cranes, in Korea. Such restrictions may vary according to whether the equipment is in public berths or in the carriers' private berths.

**6. Discriminatory Port Charges**

It has been alleged that U.S. Carriers in Korea are charged higher port service fees, including telephone charges, pilotage fees, obligatory pilotage, terminal tariff rates at the Port of Pusan, and charges for miscellaneous port services, than are Korean Carriers. Also, it has been claimed that the ROK tonnage measurement system favors Korean-flag carriers over foreign car carriers.

The four named U.S. and Korean Carriers have been directed to comment on each of these issues, and on any additional conditions in the Trade not enumerated, including efforts by U.S. Carriers to obtain permission to perform these services or functions or to correct the alleged discriminatory conditions, and the ROK response to such efforts; the existence and effect of any disadvantage or adversity suffered by U.S. Carriers resulting from said ROK practices and policies; and the existence of any comparable restrictions on Korean Carriers in the United States. The Commission has also directly solicited information and reports of further relevant ROK-U.S. communications from the U.S. Department of Transportation and Department of State.

By this Notice, the Commission invites all other interested parties to file information conditions created by practices and policies adverse or unfavorable conditions created by practices and policies of the ROK. Information received in response to this Notice and the accompanying Order will be used to form the basis for a determination whether further action, including the initiation of a formal investigation under section 10002(c) of the FSPA, or a proceeding under section 19(1)(b) of the Merchant Marine Act, 1920, may be warranted. Any interested party may submit such information, views or comments on or before January 28, 1991, by addressing them to the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 in an original and fifteen (15) copies.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28437 Filed 12-4-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Ameson Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 26, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Arneson Bancshares, Inc.*, Clear Lake, Iowa; to become a bank holding company by acquiring 65.8 percent of the voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

*2. First Channahon Bancorp, Inc.*, Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois, a *de novo* bank.

*3. Worthington Bancorporation*, Farley, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Worthington, Worthington, Iowa.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. First McKinley Corporation*, Evanston, Wyoming; to acquire 100 percent of the voting shares of Wyoming National Bank-Kemmerer, Kemmerer, Wyoming.

*2. Plainview Holding Co.*, Plainview, Nebraska; to acquire 100 percent of the voting shares of Cones State Bank, Cones, Nebraska.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Ford Bank Group, Inc.*, Lubbock, Texas; to acquire 100 percent of the voting shares of MBank Waco, N.A., Waco, Texas.

*2. T.I.B. Delaware, Inc.*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Gulf Shores Bank, Crystal Beach, Texas; Bank of the West, Galveston, Texas; First State Bank of Hitchcock, Hitchcock, Texas; and Gulf National Bank of Texas City, Texas City, Texas.

Board of Governors of the Federal Reserve System, November 28, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28472 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M



### Cleo L. Craig Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 1990.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Cleo L. Craig Trust*, to acquire 16.34 percent; and Cleo L. Craig Grandchildren Trust, to acquire 83.18 percent of the voting shares of Lawton Security Bancshares, Inc., Lawton, Oklahoma, and thereby indirectly acquire The Security Bank and Trust Company, Lawton, Oklahoma.

*2. French E. Hickman*, Midwest City, Oklahoma; to acquire an additional 3.0 percent of the voting shares of Nichols Hills Bancorporation, Oklahoma City, Oklahoma, for a total of 16.0 percent, and thereby indirectly acquire Nichols Hills Bank & Trust Company, Oklahoma City, Oklahoma.

*3. Larry M. Keating*, Prague, Nebraska; to acquire an additional 10.22 percent for a total of 34.91 percent, and Judy A. Keating, Prague, Nebraska, to acquire an additional 10.22 percent of the voting shares of Prague Company, Omaha, Nebraska, and thereby indirectly acquire Bank of Prague, Prague, Nebraska.

Board of Governors of the Federal Reserve System, November 29, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28473 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

### 1st Source Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. 1st Source Corporation*, South Bend, Indiana; to acquire 29.87 percent of the voting shares of Mortgage Acquisition Company, South Bend, Indiana, and thereby engage in making, acquiring, and servicing loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28471 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

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**Union National Financial Corporation, et al.; Applications To Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Union National Financial Corporation*, Mount Joy, Pennsylvania; to engage *de novo* in certain community development activities, through the parent company, by making a 20% equity investment as a limited partner in the Sassafras Terrace Limited Partnership which will provide equity financing for low income housing units, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

*1. Security Bank Holding Company*, Coos Bay, Oregon; to engage *de novo* through its subsidiary, Security Data Processing Company, Coos Bay, Oregon, in the sale of data processing, consulting, and sale of hardware and software pursuant to § 225.25(b)(7) of the Board's Regulation Y.

*2. Security Bank Holding Company*, Coos Bay, Oregon; to engage *de novo* in Security Mortgage Company, Coos Bay, Oregon, in the making, selling, acquiring or servicing of loans or other extensions of credit for the subsidiary account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 28, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-28470 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 90P-0292]**

**Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing; Correction**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction

**SUMMARY:** The Food and Drug Administration (FDA) is correcting the notice that published in the **Federal Register** of October 23, 1990 (55 FR 42777), announcing that a temporary permit had been issued to Marigold Foods, Inc., for the market testing of a product designated as "lite eggnog" that deviated from the U.S. standard of identity for eggnog (21 CFR 131.170). The notice incorrectly stated, " * * *, and will be distributed in Minnesota and Wisconsin." " * * *, and will be distributed in Illinois, Iowa, Michigan, Minnesota, and Wisconsin." This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 90-25044, appearing at page 42777 in the **Federal Register** of Tuesday, October 23, 1990, the following correction is made: On the same page, in the third column, in the second paragraph, in the last line, "Minnesota and Wisconsin" is corrected to read "Illinois, Iowa, Michigan, Minnesota, and Wisconsin".

Dated: November 21, 1990.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28427 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 90P-0387]**

**Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Weeks Dairy Foods, Inc., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Weeks Dairy Foods, Inc., 330 North State Street, Concord, NH 03301.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 10,800 gallons (40,880 liters) of the test product. The product will be manufactured at Weeks Dairy Foods, Inc., Plant No. 33-08, 330 North State Street, Concord, NH 03301, and distributed in Massachusetts, New Hampshire, and Vermont.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

Dated: November 27, 1990.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28468 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M



**[Docket No. 90P-0386]**

**Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Jackson Ice Cream Co., Inc., to market test a product designated as "Light Egg Nog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0349.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Jackson Ice Cream Co., Inc., 2800 East 4th Ave., Hutchinson, KS 67501.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "Light Egg Nog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requiremetns in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 160,000 quarts (151,406 liters) of the test product. The product will be manufactured at Jackson Ice Cream Co., Inc., 2800 East 4th Ave., Hutchinson, KS 67501, and distributed in Kansas.

Each of the ingredients used the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 5, 1991.

Dated: November 27, 1990.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28467 Filed 12-4-90; 8:45 am]

BILLING CODE 4160-01-M

### Health Care Financing Administration

**Statement of Organization, Functions and Delegations of Authority**

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol 55, No. 100, pg. 21254, dated, Wednesday, May 23, 1990) is amended to reflect a change within the Medicaid Bureau. The specific change will subdivide the Division of Payment and Coverage Policy within the Office of Medicaid Policy into two separate divisions, each having two branches. The two divisions will be titled the Division of Payment Policy and the Division of Coverage Policy.

The specific amendments to part F. are described below:

- Section FM.20.F.1. Division of Payment and Coverage Policy (FME1), is deleted in its entirety.
- Section FM.20.F.2. Division of Medicaid Eligibility Policy (FME2), has been elevated to replace FM.20.F.1. The new citation will be Section FM.20.F.1., Division of Medicaid Eligibility Policy (FME2).
- A new Section FM.20.F.2., Division of Payment Policy (FME3), will be added to reflect the subdivision of the previous Division of Payment Coverage Policy. The new functional statement for the Division of Payment Policy (FME3) reads as follows:

2. Division of Payment Policy (FME3)

- Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares regulations, manuals, program guidelines, State plan preprints, and general instructions related to Medicaid institutional and noninstitutional payment policy.

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- Provides interpretations of Medicaid payment policies to regional offices, congressional staffs, other Departments of the Federal government, interest groups and State agencies.
- Develops, evaluates, reviews Medicaid policies, regulations, guidelines and instructions pertaining to provider and other facility payment under the Medicaid program including, for example, Medicaid institutional payment plans, Medicaid community provider rates, Medicaid payment to such entities as rural health clinics and federally qualified health centers and capitated rates for Medicaid managed care organizations.
- Formulates and evaluates policies and procedures related to Medicaid payment for long-term care, physician services, practitioner services, case management, obstetrical and pediatric services, pharmaceuticals, supplies and equipment such as hearing aids, eyeglasses, durable medical equipment, laboratory and other medical services.
- Participates in the development and evaluation of proposed legislation in the area of Medicaid payment.
- Reviews State plan amendment requests under Medicaid.
- Analyzes and recommends legislative or other remedies to improve the effectiveness of Medicaid payment policies.
- Reviews with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid payment.
- A new Section FM.20.F.3., Division of Coverage Policy (FME4), will also be added to reflect the subdivision of the previous Division of Payment and Coverage Policy. The new functional statement for the Division of Coverage Policy (FME4) reads as follows:

3. Division of Coverage Policy (FME4)

- Formulates and evaluates policies, regulations, instructions, and procedures related to Medicaid coverage activities. Prepares regulations, manuals, program guidelines, State plan preprints, and general instructions related to these areas.
- Provides interpretations of Medicaid coverage policies to regional offices, congressional staffs, other departmental offices, other Departments of the Federal government, interest groups and State agencies.
- Develops, evaluates, and reviews Medicaid coverage policies, regulations, and procedures pertaining, for example, to long-term care under Medicaid, case management, transportation, coverage of prescription drugs, family planning services, sterilization, hysterectomy, abortion, teenage pregnancy services, alcoholism, drug abuse treatment services, instructions for mental disease, personal care services, medical day care, Indian health services, intermediate care facilities (ICFs) and intermediate care facilities for the mentally retarded (ICF/MR) (including ICF level of care and Special ICF/MR requirements and definitions), and comparability services and uniform availability for services.
- Develops, evaluates, and reviews policies, regulations, and procedures pertaining to States' requests for approval of waivers of Medicaid requirements to provide home and community-based services and recommendations whether the waivers should be approved or disapproved.
- Develops, evaluates, and reviews national coverage policies concerning Medicaid contracts, interagency agreements, and prior authorizations.
- Reviews State plan amendment requests under Medicaid.
- Identifies, studies, and makes recommendations for modifying Medicaid coverage policies to reflect changes in recipient health care needs, program objectives, and the health care delivery system.
- Analyzes and recommends legislative or other remedies to improve coverage and utilization effectiveness.
- Reviews, with the Office of Research and Demonstrations, research and demonstration agendas in the area of Medicaid coverage.

Dated: November 19, 1990.

**Robert A. Streimer,**

*Associate Administrator for Management.*

[FR Doc. 90-28435 Filed 12-4-90; 8:45 am]

BILLING CODE 4120-03-M

## National Institutes of Health

### Establishment of Deafness and other Communication Disorders Programs Advisory Committee

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Acting Director, National Institutes of Health [NIH], announces the establishment of the Deafness and Other Communication Disorders Programs Advisory Committee.

This Committee will advise the Director, NIH; Director, National Institute on Deafness and Other Communication Disorders (NIDCD); and the Director, Division of Communication Sciences and Disorders, NIDCD, on the needs and opportunities for research on the nature, causes, diagnosis, treatment and prevention of deafness and other communications disorders; make recommendations on areas of research which require greater emphasis and the development and review of proposed requests for applications, requests for proposals, program announcement, and proposed conferences; and provides the review of project concepts for activities to be conducted under research and development contracts.

Unless renewed by appropriate action prior to its expiration, the Deafness and Other Communications Disorders Programs Advisory Committee will terminate two years from the date of establishment.

Dated: November 27, 1990.

**William F. Raub,**

*Acting Director, National Institute of Health.*

[FR Doc. 90-28441 Filed 12-4-90; 8:45 am]

BILLING CODE 4140-01-M

### National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, February 5, 1991, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Asthma Education Program. Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: November 27, 1990.

**William F. Raub,**

*Acting Director, NIH.*

[FR Doc. 90-28442 Filed 12-4-90; 8:45 am]

BILLING CODE 4140-01-M

## Office of Human Development Services

### Agency Information Collection Under OMB Review

**AGENCY:** Office of Human Development Services, HHS.



**ACTION:** Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval of an information collection for the Administration on Aging's Certification of Maintenance of Effort.

**ADDRESSES:** Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

**Information on Document**

*Title:* Certification of Maintenance of Effort.

*OMB No.:* Title III, section 309(c) of the Older Americans Act of 1965, as amended, Pub. L. 89-73, requires that a State's allotment be reduced by the percentage by which its State expenditures for such year are less than its average annual expenditures from State sources for the period of three fiscal years preceding such year. The information collected on the SF-269 report, which is provided to the federal government, combines the funds from State and local sources; as a result, the Department would be unable to identify funds solely from State sources.

The information will be used by the Administration on Aging (AoA) to verify the amount of State expenditures and make comparisons with the average annual expenditures for the period of three fiscal years preceding such year to assure that a State is in compliance with 45 CFR 1321.40. This section requires a State agency to spend for both services and administration at least the average amount of State funds it spent for the three previous fiscal years to meet the required non-federal share applicable to its allotments. If the information is not collected, AoA would not be able to comply with section 309(c) of the Older Americans Act.

*Annual Number of Respondents:* 57

*Annual Frequency:* 1

*Average Burden Hours Per Response:* 0.5

*Total Burden Hours:* 28.5

Dated: November 27, 1990.

**Mary Sheila Gall,**

*Assistant Secretary for Human Development Services.*

[FR Doc. 90-28434 Filed 12-4-90; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Delaware Water Gap National Recreation Area

**AGENCY:** National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth dates of the next two meetings of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act.

*Date:* January 12, 1991.

*Time:* 9 a.m.

*Location:* Montague Township Municipal Office, Clove Road, Montague, New Jersey.

*Alternate Date in Case of Inclement Weather:* January 26, 1991

*Date:* February 9, 1991.

*Time:* 9 a.m.

*Location:* Northampton County Government Center, 4th Floor Council Chambers, 7th and Washington Streets, Easton, PA.

*Alternate Date in Case of Inclement Weather:* February 16, 1991

**AGENDA:** The agendas will be devoted to committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. An opportunity for public comment to the Commission will be provided.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area Bushkill, PA 18324; 717-588-2435.

**SUPPLEMENTARY INFORMATION:** The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

**James W. Coleman, Jr.,**

*Regional Director, Mid-Atlantic Region.*

[FR Doc. 90-28485 Filed 12-4-90; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

### Technical Assistance Plan for the Americans with Disabilities Act of 1990

**AGENCY:** Department of Justice.

**ACTION:** Notice.

**SUMMARY:** The Department of Justice has prepared a technical assistance plan for public comment in accordance with the requirements of section 506 of the Americans with Disabilities Act of 1990 (ADA). The purpose of this plan is to explain the strategies that will be followed to assist entities covered by the ADA, individuals with disabilities, Federal agencies, and the general public to understand the rights and responsibilities established by the ADA. This plan was prepared in consultation with the Equal Employment Opportunity Commission, the Department of Transportation, the Architectural and Transportation Barriers Compliance Board, the Federal Communications Commission, the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, the Department of Commerce, and the National Institute on Disability and Rehabilitation Research.

**DATES:** Comments must be received by January 4, 1991.

**ADDRESSES:** Comments should be sent to Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Box 66118, Washington, DC 20035-6118.

**FOR FURTHER INFORMATION CONTACT:** James D. Bennett, Supervisory Program Analyst, (202) 307-2220 (Voice) and (202) 307-2678 (TDD).

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—Braille; and
—Electronic file on computer disk and electronic bulletin board (202) 514-6193.

**SUPPLEMENTARY INFORMATION:** The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability in employment, State and local government operations, public transportation, public accommodations, and telecommunications (42 U.S.C. 12101–12213). The ADA requires that the Department of Justice (DOJ) develop a technical assistance plan to assist entities covered by the ADA, and Federal agencies, to understand their responsibilities under this law. The ADA further requires that DOJ prepare the plan in consultation with the Equal Employment Opportunity Commission, the Department of Transportation, the Architectural and Transportation Barriers Board, and the Federal Communications Commission, and the ADA provides that DOJ may consult the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce. All of these agencies were consulted in the development of the proped plan, and DOJ also consulted the National Institute on Disability and Rehabilitation Research.

The purpose of this proposed plan is to outline how technical assistance with respect to understanding the ADA will be provided to entities covered by the ADA, individuals with disabilities, and the general public. The proposed plan discusses technical assistance in the areas of employment, public accommodations, transportation, State and local government services, and telecommunications, and the actions that the agencies identified above will undertake to fulfill their statutory responsibilities. We seek comments on all aspects of the plan. Following analysis of the comments received, a final technical assistance plan will be published by January 26, 1992, as required by section 506 of the ADA.

The responsibility for publishing this plan has been delegated by the Attorney General to the Assistant Attorney General for Civil Rights (55 FR 40653) (1990). This proposed technical assistance plan is issued in accordance with the requirements of section 506 of the ADA (Pub. L. 101–336, 104 Stat. 371, 42 U.S.C. 12206).

Dated: November 27, 1990.

John R. Dunne,

*Assistant Attorney General for Civil Rights.*

**Americans with Disabilities Act of 1990: Proposed Federal Government Technical Assistance Plan**

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## I. Introduction

### *A. Technical Assistance Provisions of the Americans With Disabilities Act*

The Americans with Disabilities Act of 1990 (ADA), which was signed into law by President Bush on July 26, 1990, provides to individuals with disabilities comprehensive civil rights protections that are similar in scope to those provided to individuals on the basis of race, national origin, sex, and religion. The ADA seeks to ensure equal opportunity for individuals with disabilities in employment, public accommodations, public services (including transportation), and telecommunications.

The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act. Section 506 of the ADA requires the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission (EEOC), the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board (ATBCB), and the Chairman of the Federal Communications Commission (FCC), to develop a plan to assist entities covered under the ADA, as well as other Federal agencies, in understanding their responsibilities under the Act.

The Attorney General is authorized to obtain the assistance of other Federal agencies in preparing the technical assistance plan. These agencies, especially the National Council on Disability (NCD) and the President's Committee on Employment of People with Disabilities (PCEPD), and including the Small Business Administration (SBA) and the Department of Commerce, also have a role in the planning and delivery of technical assistance under the ADA. Other Federal agencies not specifically mentioned in the statute, such as the National Institute on Disability and Rehabilitation Research of the Department of Education, are part of the ADA technical assistance planning and delivery network by virtue either of their mission or their current or planned programs.

The ADA requires the Attorney General to develop the technical assistance plan not later than 180 days after the date of the ADA's enactment, i.e., by not later than January 26, 1991. It is the Department of Justice's (DOJ) intention to publish the final technical assistance plan within the 180 day period established by the ADA. The Attorney General also is required to publish the technical assistance plan for public comment according to the provisions of the Administrative Procedure Act.

This document constitutes the proposed technical assistance plan developed by the Attorney General, in consultation with the above-cited agencies, that is being presented for public review and comment in the Federal Register. The period covered by the plan is FY 1991 through FY 1994; however, certain technical assistance activities, such as those carried out under grants and contracts that may be awarded during FY 1994, can be expected to continue into FY 1995 and FY 1996.

It is important to remember that the scope and amount of technical assistance actually provided under the ADA will depend upon the result of the Federal Government's budget preparation and approval process, and subsequent appropriations by Congress. Specific additional appropriations will be required to carry out the assistance and outreach initiatives described in this plan. In the absence of additional appropriations, the technical assistance grants and contracts described in this plan cannot be implemented, and the overall provision of technical assistance necessarily will be limited to minimum levels of dissemination of basic information regarding the ADA's requirements and compliance techniques.



Four Federal agencies have primary responsibility for implementing the ADA: DOJ, EEOC, DOT, and FCC. The ADA authorizes these agencies, within their respective spheres of responsibility under the ADA, to render technical assistance to individuals and institutions that have rights or duties under the ADA. These agencies are required to publish regulations under title I (employment), title II (public services, including transportation), title III (public accommodations), and title IV (telecommunications). They specifically are required to provide and make available, not later than six months after the publication of these regulations, appropriate technical assistance manuals to individuals or entities with rights or duties under the ADA. However, the Act states that the failure to receive technical assistance or publications required under the Act does not excuse entities covered under the ADA from complying with its provisions.

The four implementing agencies are convinced that, once given information on how to comply with the ADA, covered entities will do so voluntarily. The Federal Government's experience in implementing section 504 of the Rehabilitation Act of 1973, as amended, has demonstrated that a publicized, readily available, comprehensive technical assistance program responsive to the problems and needs of its audience offers many advantages. It reduces misunderstandings regarding rights and responsibilities, facilitates voluntary compliance, and promotes the exchange of information and the development of more effective and less costly methods to address compliance issues. It also avoids an unnecessary reliance on enforcement and litigation mechanisms to achieve compliance.

### *B. Definition and Description of Technical Assistance*

Technical assistance, as used in this plan, refers to the provision of expert advice, and both general and specific information and assistance, to the public and to entities covered by the ADA. The purposes of this technical assistance are twofold: to inform the public (including individuals with rights protected under the Act) and covered entities about their rights and duties; and to provide information about cost-effective methods and procedures to achieve compliance. Many of the initial strategies and programs described in this plan are directed at providing broad dissemination of basic program information and compliance requirements. Longer-range activities focus on addressing particular compliance issues and methods.

The technical assistance discussed in this plan will take many forms. It will employ virtually all aspects of communications, including the use of publications, exhibits, videotapes and audiotapes, public service announcements, and electronic bulletin boards. The development and dissemination of this body of information and materials in alternate formats accessible to individuals with disabilities is essential to the ADA technical assistance program.

Technical assistance under the ADA will include presentations at interactive group events such as conferences, workshops, and training programs. It also will include advice to individuals that addresses a specific topic or the resolution of a specific problem, such as can be provided through the use of telephone hotlines, information clearinghouses or on-site experts.

Finally, technical assistance will include a variety of clearinghouse functions in order to benefit from the experiences of covered entities and individuals with disabilities in complying with the ADA. Information systematically will be sought and shared to enhance the development, assessment, and replication of new and improved compliance methods and techniques.

Technical assistance under the ADA will be provided by staff of the four implementing agencies, by staff of other Federal agencies under agreements with the implementing agencies, by individual experts or consultants retained by the implementing agencies, and by associations, groups, or organizations under grant or contract to the implementing agencies. The ADA specifically authorizes the four Federal agencies with implementation responsibilities under the Act to enter into grants and contracts, subject to the availability of appropriations, with individuals, not-for-profit institutions, and associations that represent individuals who have rights or responsibilities under the ADA, and to enter into contracts with for-profit entities.

This plan provides for the extensive use of the skills, knowledge, and experience of trade associations, advocacy groups, and other similar organizations that have existing lines of communications and credibility with covered entities and persons with disabilities. By working with existing networks, whenever feasible, Federal agencies can maximize the resources devoted to technical assistance. Further, as the Federal Government's experience with section 504 enforcement and compliance has demonstrated, there will be a continuing need for technical assistance beyond the first several years of ADA implementation. By entering into a technical assistance partnership with appropriate national, regional, and "grassroots" organizations, Federal agencies can build the capacity of these organizations to provide technical assistance to their respective constituencies after the period covered by this plan and for as long as needed.

These organizations outside of the Federal Government will be active participants in the identification of the specific audiences that are covered or affected by the ADA's requirements. They will assist in the definition of the differing problems and technical assistance needs of these widely varied audiences. These associations, groups, and organizations also will participate in the development of technical assistance initiatives to address specific compliance problems and issues. In addition, they will participate in the actual delivery of technical assistance. The knowledge, experience, credibility, and existing communications networks and delivery systems that they possess will be a key element in assuring the success of the overall ADA technical assistance program.

The Federal agencies providing technical assistance under this plan recognize the importance of sound planning and evaluation to the development of an effective technical assistance program. They recognize that is important to coordinate their activities to avoid overlap or duplication of efforts. They also recognize the need to share information and evaluate the operation and effectiveness of their respective technical assistance activities.

### *C. Coordination of Federal Technical Assistance Activities*

This plan describes a comprehensive, coordinated Federal multiyear program of technical assistance to promote compliance with the ADA. Although specific program development, management, and evaluation responsibilities rest with DOJ, EEOC, DOT, and FCC, the need remains for government-wide coordination, especially during the FY 1991 through FY 1994 period covered by the plan.

To this end, the Attorney General will establish an ADA Technical Assistance Working Group. This working group will be chaired by DOJ. It will be composed of representatives of the four

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implementing agencies (DO), EEOC, DOT, and FCC), representatives from the ATBCB, NCD, PCEPD, SBA and Department of Commerce, and representatives from other agencies with ADA technical assistance responsibilities and activities that the Attorney General may identify and invite to participate. The working group will meet at least twice annually to discuss its activities under this plan, to assess the adequacy and effectiveness of technical assistance that is being provided, and to make recommendations to the Attorney General for improved coordination in the planning and delivery of technical assistance under this plan.

The Attorney General will prepare guidelines for the development of annual updates to this ADA Technical Assistance Plan by the agencies represented on the working group. These annual updates will be submitted to the Attorney General by October 1 of each year. The Attorney General also may require other Federal agencies, identified by the working group as having ADA technical assistance responsibilities or programs, to submit technical assistance plans. The technical assistance plans or updates will describe progress made during the past fiscal year to implement the provisions of the ADA and this plan, the results of any assessments or evaluations of technical assistance delivery or innovative methods or procedures to promote compliance, and program initiatives proposed for the current fiscal year.

The Attorney General, based upon the review of agency plans, will prepare an annual report that describes technical assistance provided by or on behalf of the Federal Government in support of the ADA. This report will be issued by December 31 of each year.

*D. Organization and Contents of the Plan*

Section II of this plan describes EEOC's technical assistance programs. Section III discusses DOJ's technical assistance program. Section IV describes the technical assistance to be provided by DOT. Section V focuses on FCC's technical assistance program. Section VI describes the technical assistance roles and activities of other Federal agencies in the planning and delivery of technical assistance under the ADA. Each section provides a brief summary of the agencies' responsibilities under the ADA and provides information on the entities and audiences for whom technical assistance projects and initiatives are to be developed.

Each agency's plan describes, on a broad program level, the technical assistance to be provided and the purposes the assistance is intended to achieve. Given that not all goals can be accomplished at once, each plan describes a framework of priorities for technical assistance delivery.

Neither the overall plan nor the individual component plans are intended to serve as detailed project-level operational documents, especially with respect to longer-range program activities. However, each plan does provide more detailed information with respect to short-term technical assistance activities (e.g., FY 1991 activities already underway).

**II. Equal Employment Opportunity Commission Technical Assistance Program**

Title I of the ADA prohibits employment discrimination on the basis of disability against qualified individuals with disabilities. Employers with 25 or more employees will be subject to the nondiscrimination requirements of the ADA on July 26, 1992; employers with 15 to 24 employees will be covered two years later, on July 26, 1994. The phase-in of coverage over four years was established to allow time for employers to become informed about their obligations under the statute and to provide additional time for smaller employers to comply with their obligations. This phase-in parallels the manner in which coverage of title VII of the Civil Rights Act of 1964 was applied to employers. All employers who are subject to title VII, with the exception of the Federal government, will be subject to the nondiscrimination requirements of the ADA. [The Federal government is covered by similar nondiscrimination requirements as well as affirmative action requirements under the Rehabilitation Act of 1973.]

The Equal Employment Opportunity Commission (EEOC or the Commission) is primarily responsible for the enforcement of the ADA's nondiscrimination provisions in employment. As is the case with title VII, which is also primarily enforced by the Commission, the Department of Justice has concurrent litigation authority under the ADA with respect to nondiscrimination in employment by State and local governmental entities. The Commission is responsible for issuing regulations to carry out the ADA's employment requirements by July 26, 1991.

As outlined in this proposed plan, the Commission, in cooperation with other governmental and private agencies and organizations, will conduct or expand existing technical assistance activities designed to ensure that employers, individuals, and the public learn about the ADA's requirements with respect to employment and develop the ability to identify and solve employment compliance problems. The Commission expects these technical assistance efforts to result in greater compliance with the ADA's employment requirements, with a corresponding reduction in the need to resort to enforcement activity.

The Commission initially will seek to develop active liaison with a wide range of organizations and associations representing employers, other covered entities, and individuals with disabilities, at national and local levels, and to explore ways in which their established informational channels can be used to provide general and specific information on the employment requirements of the ADA. These organizations also will be asked to identify specific technical assistance needs of their constituencies, so that the Commission may better direct its efforts to meet these needs.

In addition, the Commission will solicit from these groups examples of ways to accommodate individuals with disabilities and other practical experiences that will be helpful in promoting voluntary compliance. The Commission also will utilize resources of other Federal agencies with responsibilities and specialized expertise on disability issues related to employment. To assure consistent guidance, materials developed by other agencies with respect to title I legal requirements will be reviewed by EEOC, pursuant to Executive Order 12067.

Employers and other covered entities will be actively encouraged to seek information and assistance to maximize voluntary compliance. The Commission's technical assistance program will be separate and distinct from its enforcement responsibilities. Accordingly, employers and others who request information or assistance in regard to a particular aspect of compliance, or who participate in training conducted by the Commission, will not be subject to investigation or other enforcement action on the basis of such inquiries or participation.

The Commission's technical assistance program will include development of informational materials and training for employers, individuals with disabilities and the public, and assistance in response to individual requests. The program will be designed to provide information needed for compliance with the law to all those



covered by title I legal requirements. However, in allocating limited resources, priority may be given to providing technical assistance to targeted audiences. For example, small employers generally have not had previous experience in meeting nondiscrimination requirements of the Rehabilitation Act that have applied to larger employers who are Federal contractors or grantees. In addition, smaller employers have little access to information and assistance provided by commercial consultant services. The Commission also is aware of concerns expressed by small employers that indicate particular needs for guidance and assistance on the nature of their title I obligations.

The Commission's technical assistance program will be implemented in phases related to the effective dates of the statute and the issuance of regulations by the Commission. The Commission will focus its efforts on providing information and assistance on title I requirements prior to July 26, 1992, so that covered entities and individuals with disabilities are informed about their rights and obligations by the time the law comes into effect. It will provide general information on rights and responsibilities in employment under the ADA, specific information on the application of ADA nondiscrimination requirements to a range of employment practices, as well as guidance on how employers may comply with the law's reasonable accommodation requirements. In addition to technical assistance activities conducted by EEOC, many activities will be conducted by organizations representing employers and disabled individuals. The Commission also will utilize the resources of other Federal agencies to communicate legal requirements as widely as possible.

Prior to the issuance of regulations, EEOC will disseminate general information on the basic statutory requirements through a wide range of communications and information channels. It will publish a basic brochure on title I requirements, and separate, more detailed pamphlets providing information on legal requirements for employers as well as information on title I rights for disabled applicants and employees. Additional fact sheets and questions and answers will be developed in response to specific inquiries. The Commission's informational materials will be available in alternative formats to make them accessible to individuals with disabilities.

Information also will be provided to public media and to specialized communications media of employer and disability-oriented organizations. Commission staff will provide information on the law through active participation in conferences, workshops and meetings of these organizations throughout the country. An exhibit providing information on ADA requirements will be displayed at organizations' conferences and conventions.

EEOC will respond to individual inquiries through systems now used to respond to public inquiries on other laws it enforces, including a toll-free "800" number which will provide basic information on the ADA. Queries not answered by recorded information will be transferred to the nearest field office for a personal response. EEOC staff will be trained to assure that accurate helpful information is provided to the public. Staff also will be equipped to refer employers and others to appropriate specialized sources of assistance (such as national and local organizations representing persons with disabilities, the technical resources of regional disability research centers, and vocational rehabilitation agencies), that can provide assistance on making accommodations and other aspects of compliance.

Following issuance of the implementing regulations in July 1991, an expanded information and outreach program will be conducted to provide more detailed guidance to employers and individuals with disabilities on the application of the regulatory requirements. A comprehensive technical assistance manual will be produced and disseminated six months before the effective date of title I. The manual will be a major resource for employers and disabled persons. It will explain the legal requirements of the statute and regulations as they apply to specific employment practices, and will include guidance on reasonable accommodation, such as ways to accommodate individuals with specific types of impairments in specific work situations, as well as detailed guidance and examples of other important aspects of compliance.

The manual will include an extensive directory of technical assistance resources for reasonable accommodation, accessibility, and other aspects of compliance. EEOC intends to publish the manual in a format that can be updated with supplements as the Commission issues further guidance on specific issues, and as additional technical assistance references and resources become available.

Further guidance on key title I policy issues will be developed prior to the effective date of the law for EEOC's internal compliance manual. This policy guidance, with the regulations, will be used to train Commission staff, nationwide, before the law goes into effect. The compliance manual guidance also will be available to the public at EEOC headquarters and its 50 field offices, in public libraries, and through commercial information services. Information on this guidance, in simplified and condensed formats, will be developed for broader public dissemination.

The Commission will conduct training seminars for employers and for individuals with disabilities on the regulatory requirements and their application to specific employment practices. It will expand the availability of training by producing videotapes of training sessions and explore use of mechanisms such as video-conferences to reach wider audiences. Organizations representing employers and disabled persons will be encouraged to conduct training for their members, with materials, speakers and other assistance from the Commission. If funding is available, training and technical assistance also may be developed and conducted by other organizations, under grants or contracts from the Commission.

The Commission will expand public information and technical assistance activities near the effective date of title I. Public service announcements will be aired on radio and television, additional information will be provided to a broad range of general and specialized media, and Commission speakers will participate in radio, television, organizational and other forums throughout the country, to emphasize and clarify legal requirements.

EEOC will continue to provide technical assistance after the law becomes effective, through additional information materials, training activities and response to requests for information and assistance. As the Commission develops additional policy guidance, and as particular aspects of compliance are identified by employers and disabled individuals to require further explanation, informational materials and training will address these specific compliance issues. Expanded technical assistance will be provided by Commission field staff. A central information library of technical assistance resources will be developed and updated to facilitate response to

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individual requests. The Commission will continue to work closely with disability groups, employer organizations, and other Federal agencies, utilizing their resources and information networks to supplement its own technical assistance activities, and to provide specialized assistance that will aid compliance with the employment requirements of the ADA.

**III. Department of Justice Technical Assistance Program**

The Department of Justice is responsible for enforcing titles II and III of the ADA, and is responsible for providing technical assistance related to compliance with those titles, except as described below. Title II prohibits discrimination on the basis of disability by non-Federal public entities, and title III prohibits such discrimination in public accommodations. Although, as discussed below, each of these titles covers different types of entities and establishes separate substantive requirements, technical assistance in both areas will be discussed in this portion of the plan because DOJ has responsibilities in both areas and will pursue similar strategies in each area.

Title II of the ADA prohibits discrimination on the basis of disability by public entities, including State and local governments. Although the coverage provided by title II extends to public transportation services provided by such public entities, technical assistance related to transportation is covered in section IV of this plan. The ADA requires that State and local government operations be in compliance with those requirements of title II that are covered in this section of the plan effective January 26, 1992. The ADA further requires DOJ to issue regulations implementing the nontransportation requirements of title II by July 26, 1991. Compliance with title II shall be in accordance with the requirements of section 504 of the Rehabilitation Act of 1973, as amended. Accordingly, State and local governments will be required to ensure that government facilities, services, and communications are accessible to individuals with disabilities except where a fundamental alteration in the program or an undue burden would result. Enforcement of title II will be effected by Federal agencies to be designated by DOJ or by lawsuits brought by private parties.

Title III of the ADA prohibits discrimination on the basis of diability by public accommodations so that individuals with disabilities will have the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations in places of public accommodation. Although the coverage provided by title III extends to certain public transportation services provided by certain private entities, technical assistance related to transportation will be covered in section IV of this plan. The ADA requires that public accommodations be in compliance with those requirements of title III that are covered in this section of the plan effective January 26, 1992. The ADA further requires DOJ to issue regulations implementing the nontransportation requirements of title III by July 26, 1991.

Compliance with title III means that public accommodations will be readily accessible to individuals with disabilities. In order to accomplish this, the ADA establishes physical accessibility standards to make new construction and alterations accessible. The ADA also requires public accommodations to remove physical barriers to accessibility in existing facilities, if readily achievable, or, if such removal is not readily achievable, alternative methods of providing the services must be offered if those methods are readily achievable. In addition, entities covered by title III will be required to provide auxiliary aids and services to individuals with disabilities, such as hearing or vision impairments, in order to ensure that such individuals have access to the goods and services offered by a public accommodation, unless an undue burden would result. Enforcement of title III will be by DOJ or by lawsuits brought by private parties.

Examples of public accommodations addressed in this portion of the plan are private entities, other than those providing public transportation services, with operations that affect commerce, such as: places of public lodging, including inns, hotels, and motels; establishments that serve food or beverages, including restaurants and bars; places of entertainment or exhibition, including theaters; concert halls, and stadiums; places of public gathering, including auditoriums, convention centers, and lecture halls; sales or retail establishments, including bakeries, grocery stores, clothing stores, hardware stores, and shopping centers; service establishments, including laundromats, dry cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, accountants' offices, attorneys' offices, pharmacies, insurance offices, health care providers' offices, and hospitals; places of public display or collection, including museums, libraries, and galleries; places of recreation, including parks, zoos, and amusement parks; places of education, including nursery, elementary, secondary, undergraduate, and postgraduate private schools; social service establishments, including day care centers, senior citizen centers, homeless shelters, food banks, and adoption agencies; and places of exercise or recreation, including gymnasiums, health spas, bowling alleys, and golf courses.

DOJ will expand existing technical assistance activities designed to ensure that entities and individuals affected by titles II and III learn about the ADA's requirements and develop the ability to identify and solve compliance problems. The goal of this aspect of the plan is to provide technical assistance to as many entities and individuals as possible over the term of the plan. DOJ recognizes that it will be necessary to set priorities that take into consideration the relative need for such assistance and strategies for maximum effectiveness of such assistance.

Since July, 1990, DOJ has staffed an ADA information line to take requests for materials and answer questions about the ADA. Concomitantly, DOJ has developed and distributed general information, such as fact sheets, pamphlets, and copies of the ADA, in printed and accessible formats. DOJ has established a speakers' bureau to make DOJ personnel available to make speeches and participate in workshops, seminars, classes, conferences, conventions, and other similar meetings. A display also has been developed for use at such gatherings to focus attendees' attention on the ADA and facilitate the distribution of materials.

DOJ plans to base its future technical assistance activities on research, requests from contacts, and information received during the process of issuing regulations. DOJ will survey the universe of entities covered by titles II and III as well as existing networks of agencies, organizations, and associations that represent the covered entities. DOJ then will determine which of these organizations could most effectively provide technical assistance, and how to structure such technical assistance efforts.

Projects undertaken in conjunction with organizations of covered entities will inform and train covered entities about ADA requirements and how to solve compliance problems. Those projects will also provide information about model compliance strategies and will assist individual entities in achieving compliance. DOJ planning efforts will also determine the most effective types of informational and training materials and mechanisms for delivery of training for the different types of audiences that must be reached. For example, the informational needs and training delivery mechanisms for places of recreation, such as amusement parks, would differ greatly from those required by sales or retail establishments, such as grocery stores. In addition, DOJ will do research to determine issues on which further information is needed and prepare materials and training accordingly.

Similar types of determinations with respect to most effective technical assistance and the structuring of such assistance efforts will be made with respect to organizations and associations of, or representing, individuals with disabilities. Projects undertaken with such organizations will provide information and training to persons with disabilities to enable them to assist covered entities to resolve compliance questions.

In addition, DOJ will use teleconferences and videotapes to reach widely dispersed audiences. Depending on the needs of the particular groups participating in a given teleconference, a varying mix of presentations and questions and answers will be provided. Teleconferences will be videotaped and copies of the tapes distributed and made available for rebroadcast by media such as cable television stations. Wherever possible, other Federal agencies involved in enforcing the ADA or providing technical assistance about the ADA will participate in these teleconferences.

In addition to other types of training materials, DOJ will also prepare video training tapes that will be tailored to assist major groups of entities in complying with the ADA. For example, there could be one training tape designed to answer questions related to compliance by entities in the food service industry, and there could be another tape oriented toward answering compliance questions raised by sales and retail establishments.

In accordance with a requirement of the ADA, DOJ will also develop a technical assistance manual. DOJ will use both research and contacts to determine the contents of the manual and the most effective format for wide distribution. It is anticipated that it will be made available in electronic format (CD–ROM and computer disk), which will both enhance DOJ's ability to distribute the manual in an efficient manner and make the manual readily available to persons with sensory impairments. Moreover, as policy develops and as information is received regarding technical assistance needs, in succeeding years this manual will be updated and revised.

Other technical assistance materials will be developed to meet varying degrees of technical need by entities and individuals affected. For example, a narrative description of the requirements of the regulations implementing title III will be developed for general use. Question-and-answer booklets will be prepared, some for general use, others for use by specific types of entities that are encountering specific types of compliance issues. In addition, technical assistance guides (TAG's) each of which address a specific compliance issue or resource, will continue to be prepared. (DOJ has issued 43 such guides to assist entities in complying with section 504 of the Rehabilitation Act of 1973, as amended, and this ongoing program is now expanded to cover the ADA.)

Additional special technical assistance and training projects will be undertaken by DOJ, either directly or through grants or contracts. Personnel from other Federal agencies, who are either involved in ADA enforcement or other activities of have significant contact with individuals with disabilities, will be trained on the requirements of titles II and III. Examples might include personnel from United States Attorney's offices, the Rehabilitation Services Administration, and the civil rights offices of other Federal Executive agencies.

In addition, special training or outreach projects will be planned to meet needs as they are identified. Where problems are significant in terms of number of degree, checklists for compliance or models of compliance for certain types of entities and certain types of compliance issues will be developed for duplication elsewhere. (For example, checklists for the food service industry could be prepared, or compliance models for health providers' offices could be developed.) Or, where problems are found in terms of providing information to individuals with disabilities who are members of minority groups, including racial, language, or cultural minorities, special outreach and training projects will be developed. Special projects will be conducted to reach specific audiences, in some instances at a national level and in other instances at the local level, whichever will be more effective.

**IV. Department of Transportation Technical Assistance Program**

The Department of Transportation (DOT) has lead responsibility for issuing a regulation to implement title II of the ADA with respect to nondiscrimination in public mass transportation systems. (DOT has already issued a portion of the rules needed to implement the ADA, concerning the acquisition of accessible vehicles.) DOT has significant enforcement responsibilities for processing complaints alleging violations of the ADA in the public and private transportation sectors. The Secretary of Transportation reviews paratransit plans developed by local public transportation service providers. The Secretary also may grant relief from requirements addressing issues such as the purchase of new accessible vehicles or alternation of existing facilities. DOT has substantial interagency consultation responsibilities, primarily with the Architectural and Transportation Barriers Compliance Board (ATBCB) for the development of accessibility standards for public transit vehicles and facilities.

An entirely new sector of transportation service providers is affected by title III of the ADA. For the first time, many private entities engaged in transportation services are prohibited by Federal law from discriminating on the basis of disability. The ADA requires new over-the-road buses to be accessible within six years (seven years for small companies). This deadline may be extended by the President after completion of a study of Congress's Office of Technology Assessment. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. If a private charter company can accommodate its disabled consumers by using accessible vehicles in its existing fleet (or by using leased vehicles), newly purchased vehicles do not have to be accessible. With regard to private sector transportation, the ADA also requires that related transportation operations, including station facilities, must meet the requirements for public accommodations under title III.

Under title III, DOT must issue a regulation for such private sector transportation services, including an interim regulation for over-the-road buses until the technology study is completed. DOT will coordinate its activities and consult extensively with the ATBCB and DOJ in the development of private sector transportation service accessibility standards.

Under its general mandate to establish and administer national transportation policy, DOT has been involved over the years in an array of technical assistance efforts to make

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transportation services accessible, safe, convenient, and affordable for persons with disabilities. As a result, DOT has developed considerable institutional expertise in accessibility issues as they relate to transportation services. Many ongoing technical assistance projects and projected FY 1991 activities also are applicable to the ADA. Thus, DOT's technical assistance program under ADA would be dovetailed into the agency's ongoing efforts to enforce accessibility requirements, and to otherwise assist transportation providers and representatives of disabled individuals.

One of DOT's major technical assistance initiatives in the area of accessibility is Project Action, a program mandated by Congress in 1988, that calls for the creation and demonstration of cooperative methods for improving accessible transportation.

It is managed by the Easter Seal Society in conjunction with DOT's Urban Mass Transportation Administration. Congress, after consulting with transportation industry and disability rights leaders, identified Project Action's technical assistance priorities. These areas include: identifying people with disabilities in the community and their transportation needs; developing outreach and marketing strategies; developing training programs for transit providers and for transit users with disabilities; and, applying technology to eliminate barriers to transportation accessibility.

DOT would use these identified transportation access critical areas as the strategy springboard for its technical assistance activities under the ADA. DOT also would seek to expand upon these priority areas. Particular attention would be paid to identifying the range of disabilities that require innovation to make transportation accessible, and to providing technical assistance materials in alternate formats. The objects is to provide adequate notice so that the public and especially individuals with disabilities can participate effectively in the development of standards and regulations under the ADA. DOT also would focus on programs designed to train transit operators and educate consumers. DOT would give priority to expanding these activities beyond single-event orientation training.

Currently, DOT provides technical assistance to selected Federal agency staff and to a wide variety of public and private transportation entities, including many mass transit professionals. Individual consumers are also targeted. Many of these activities have been responsive to specific requests. DOT, as part of its ADA technical assistance initiatives, would actively encourage staff to develop technical assistance outreach efforts and to establish and maintain ongoing assessments (including compliance reviews and audits) of covered entity and consumer needs.

The goal of DOT's initial technical assistance activities would be to reach the public at large, the staff of State and local transit authorities, contract providers in the transit industry, equipment vendors, trade and professional organizations, disability advocacy groups, and individual consumers. DOT would provide technical assistance principally by using existing staff. However, to implement the ADA, and as budgeted resources permit, DOT could supplement its technical assistance effort with grants, cooperative agreements, and contracts.

DOT could encourage projects that are expected to continue to provide assistance beyond the duration of Federal funding, particularly when they foster cooperation between the transit industry and the disability community or promote interagency coordination. In selecting technical assistance grantees or contractors, DOT will consider giving priority to the grantees and contractors with the capacity to continue technical assistance activities, to produce deliverables that can be readily replicated, and to address innovative subject areas or solutions to problems.

DOT is considering a number of technical assistance activities, including the following:

- DOT could prepare materials for dissemination to covered entities and consumers that summarize and explain ADA requirements and DOT's policies and regulations. Preparation of such materials includes updating UMTA's 1986 bus lift and securement device guidelines.
- DOT could promote the training of transit industry officials, disability advocates, and individual consumers to encourage voluntary compliance with the ADA. Training transportation design and construction professionals, engineers and architects, and State and local code enforcement agencies also will be encouraged. Areas of emphasis would include innovative technology (such as wheelchair life and securement devices), transit operator training, consumer use outreach, marketing, and training, and the identification of the variety of disabilities that must be accommodated to achieve access to trasportation.
- DOT could develop guidance materials for DOT's program and legal staff to facilitate ADA enforcement techniques and strategies. Training in the newly covered areas of private sector transportation compliance would be provided as appropriate.
- DOT could continue with efforts underway to foster the exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among DOT staff providing technical assistance. Where current procedures are inadequate, DOT would intra-agency memoranda of understanding or other types of formal agreements to enhance such activities.
- DOT could improve its coordination with outside staff, including those of State and local transportation and civil rights agencies, to facilitate meeting mutual civil rights and ADA compliance objectives and to promote the sharing of information. Again, formal memoranda of understanding or delegation agreements to improve current efforts would be developed in warranted.

To summarize, DOT efforts would be intended to promote an extensive exchange of information, materials, techniques, and strategies to achieve compliance with the ADA. DOT would spread its technical assistance efforts equitably among its own staff, the transportation industry, and disability advocacy and individual consumers. Comment is sought on whether these activities are beneficial or sufficient, or whether there are more or different activities that DOT should consider. Given that DOT's resources for providing technical assistance may be limited, comment is also sought on how these activities should be prioritized.

## V. Federal Communications Commission Technical Assistance Program

Title IV of the Americans With Disabilities Act (ADA) amends title II of the Communications Act of 1934 and codifies the requirement that common carriers provide intrastate and interstate telecommunication relay services for telephone calls made between users of telecommunication devices for the deaf (TDD's) and users of voice telephones. Title IV also requires closed-captioning of federally produced or funded television public service announcements.

The Federal Communications Commission (FCC) has responsibility for issuing regulations to carry out the ADA's provisions for common carriers to establish relay services within three years either individually, through designees, or through selected vendors. The FCC also has significant enforcement responsibilities with regard to the establishment and operation of the intrastate and interstate relay



systems. Within 180 days, the FCC shall resolve complaints alleging violations of the relay service regulations. In instances where the FCC has certified a State relay service program, primary enforcement authority is placed with the States. However, the FCC exercises jurisdiction over complaints when States do not process complaints in timely fashion (180 days or sooner if State programs require) or when the State program is decertified by the FCC.

The FCC has been involved historically with issues concerning the telecommunications needs of hearing impaired and other disabled persons. For example, for purposes of section 504 of the Rehabilitation Act of 1973, as amended, the FCC is an "executive agency" and has issued its handicapped nondiscrimination regulations. Section 710 of the Communications Act, Telephone Service for the Disabled, 47 U.S.C. 610, required the Commission to establish regulations "as are necessary to ensure reasonable access to telephone service by persons with impaired hearing." Thus, prior to the ADA, the FCC gained considerable expertise on the broad subject of accessibility to telecommunications by disabled persons. As a result of these activities and its traditional role in regulating the telecommunications industry, the FCC has concluded that the principal method for providing the ADA's required technical assistance is through its rulemaking activity.

With its attendant private and public press coverage, the FCC's rulemaking process can be expected to go far in developing effective and efficient relay services as well as performing necessary education functions. The overarching principle the FCC will follow in telephone relay service rulemaking and other technical assistance efforts under the ADA will be to continue to provide the broadest and fairest opportunity for public participation to the telecommunications industry, disability rights advocacy groups, and to consumers.

In addition, the FCC will actively pursue other technical assistance actions to complement its regulation. For example, as resources permit, outside contractors and grantees may be used to develop technical assistance projects, especially in issue areas that require study or creative solutions to complex problems. The use of innovative technological products will be another focus area of technical assistance efforts. These efforts will be implemented by FCC staff, the regulated entities, and disability rights advocacy groups. In addition to responding to requests for technical assistance, the FCC headquarters and field staff will encourage affirmative outreach efforts based on existing staff resources and on the continuing assessment of needs among the common carriers, consumers, and their respective representative organizations.

Some specific ADA technical assistance activities and focus areas that will receive particular attention during FY 1991 are as follows:

- The FCC will encourage its staff to coordinate with and pursue advice and comments from all interested parties affected by telecommunications relay systems, *i.e.*, beyond the public forums. This action will include participation by FCC staff in the Technical Assistance Working Group. Ideally, meetings of industry or consumer coalitions will result in consensus recommendations about how to implement functional and reliable relay service systems that can be shared among covered entities and brought to the Commission for consideration and action.
- The FCC's headquarters Office of Public Affairs and the Field Operations Bureau through its Public Service Division will develop and disseminate ADA materials such as news releases, public notices, internal informaton documents, forms, bulletions, fact sheets, and other information material that summarize the ADA and the FCC's telephone relay regulations and enforcement procedures thereunder.
- The FCC will train appropriate staff about the ADA's requirements, particularly staff within the Common Carrier Bureau who work directly with the telecommunications industry, Public Utility Commissions, and State and local officials with telecommunications responsibilities.
- Material and training courses will be provided to the FCC's investigative personnel and legal staff charged with responding to complaints. Because primary enforcement responsibility for State certified relay programs resides with State officials, the FCC will promote the sharing of information about successful telephone relay operations and techniques.
- By virtue of the fact that there are approximately 17 States with operational formal relay programs and approximately 10 more are in planning stages, the FCC's technical assistance effort will seek to encourage the exchange of research, technical, and program information among these entities and carriers or States with less experience in relay systems. The FCC's staff will provide scientific and technical support, monitor scientific and technological developments, and analyze information in this regard.
- The FCC will seek to resolve in its rulemaking and technical assistance efforts issues that hinder effective and reliable relay services. They include such matters as operator confidentiality, ability of relay systems and operators to handle all classes of calls (credit card calls, TDD/voice mixed calls, calls to recorded messages, 911 emergency), skills of operators to interpret typewritten American sign language, general skills of operators as regards typing, spelling, and vocabulary, and transmission by both ASCII Baudot formats.
- The FCC will coordinate with other Federal agencies and disseminate information about the requirement that federally funded or produced public service announcements require closed captioning of verbal content. The FCC will monitor implementation of this provision and, if noncompliance dictates, the FCC will pursue remedial action.

## VI. Technical Assistance Provided by Other Federal Agencies

### *A. Architectural and Transportation Barriers Compliance Board*

The Architectural and Transportation Barriers Compliance Board (ATBCB or the Board) is an independent Federal agency established by section 502 of the Rehabilitation Act principally to enforce the Architectural Barriers Act. The Board's other major functions include establishing minimum guidelines for accessibility standards and providing technical assistance to entities affected by the Rehabilitation Act of 1973.

Pursuant to its technical assistance authority, the Board has been and is currently involved in various projects related to accessibility under the Uniform Federal Accessibility Standards (UFAS), the current Federal standard implementing the Architectural Barriers Act. The Board is also engaged in various other projects that are not specifically connected with UFAS but which were or will be undertaken pursuant to the Board's broad technical assistance authority under section 502 of the Rehabilitation Act. With the passage of the ADA, each of these projects will be amended to include specific ADA components, and other future projects will be specifically aimed at providing technical assistance under the ADA.

The ADA identifies UFAS as the interim accessibility standard for new construction and alterations if the Department of Justice (DOJ) or Department of Transportation (DOT)

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regulations are delayed or until the new ATBCB supplemental minimum guidelines are issued. Provision of technical assistance concerning UFAS is, accordingly, particularly important to ensure adequate understanding of ADA requirements. The Board has begun several major technical assistance projects concerning UFAS, including a retrofit manual, a UFAS checklist (which is now in printing), a training program, and a videotape.

In addition to these projects aimed at providing assistance in understanding UFAS, the Board plans to offer training specifically on the ADA at 30 locations throughout the country, assuming adequate resources. The Board will also provide technical assistance about the ADA through brochures, pamphlets, and other materials related to the development of the supplemental minimum guidelines, which it is required to issue within nine months of enactment of the ADA.

The Board has undertaken or will undertake a series of projects specifically related to transportation. The Board has designated 1991 and 1992 as transportation focus years, and all future transportation projects will have statements of work that have ADA components in them. During 1991 the Board will be developing training materials for the Urban Mass Transportation Administration (UMTA) and, during 1992, the Board will conduct training sessions for UMTA staff using those materials.

The Board will continue to fund and manage research projects to ensure that accessibility standards are consistent with emerging technologies and needs. The Board intends to conduct research on mobility aids and maneuvering space in vehicles as well as on transit facility design for persons with hearing and visual impairments. Upon completion of these research projects, the Board will provide technical assistance in the form of brochures, pamphlets, etc., to disseminate the research results. Each of these projects, although originally developed under the Board's section 502 or Architectural Barriers Act authority, is directly related to the ADA and will serve to provide technical assistance on implementation of the ADA.

In addition to modifications to projects already contemplated and authorized under other authorities, the Board will provide technical assistance to transportation officials specifically regarding implementation of the ADA. Given sufficient resources, it will develop a manual on transit vehicles and will subsequently give training around the country in connection with its facility accessibility training.

The Board currently provides technical assistance to Federal agencies as well as to a wide variety of private entities, including architects, designers, and private individuals. This effort will be greatly expanded under the ADA and will include technical assistance concentrated primarily on the building profession. The focus will be on architects, designers, architecture and design schools, engineering schools, organizations of construction companies and construction-related manufacturers, State and local code enforcement officials and organizations representing such officials, and State and local officials who are particularly responsible for access. Work with State code enforcement agencies will include technical assistance efforts for those agencies interested in improving their accessibility codes and obtaining certification. The Board's transportation efforts will be directed toward transportation planners and engineers (those who prepare bid specifications or similar documents), and equipment designers and manufacturers. Since July 1990, the Board has operated a toll-free information line to provide information to consumers and professionals about accessibility requirements under titles II and III of the ADA. In addition, the Board has an extensive technical library that is open to the public. The library has more than 3,500 titles, which provide technical information on products, services, and methods related to accessible design in new construction and alterations. The Board also has a computerized data base catalog of this collection with abstracts and is currently exploring options for making this resource available to the public through a computer bulletin board or other on-line service.

The ATBCB and DOJ will work closely together in connection with the development of accessiblity standards for the regulations implementing title III and, when ADA enforcement begins, the ATBCB will provide technical assistance to DOJ in connection with complaints filed with DOJ alleging violations of the new construction and alterations standards of the ADA. Likewise, in the area of transportation, the ATBCB will work closely with DOT in developing standards for vehicles and public transit facilities under title II. As part of its technical assistance effort, the Board will subsequently be available to DOT to provide technical assistance on complaints filed alleging violations of those standards.

*B. Department of Commerce*

The Department of Commerce (DOC) is responsible for fostering, promoting and developing commerce in both domestic and foreign markets. In order to accomplish these objectives, DOC is involved in an extensive array of activities in which a variety of offices within DOC interact with, and provide services to, the business community nationwide and State and local governments. These existing programs and services will be used by DOC to provide technical assistance to entities covered by the ADA, particularly in the areas of employment, public accommodations, and State and local government operations. Among the offices of DOC that will be participating in technical assistance efforts will be the National Technical Information Service, the International Trade Administration, the Office of Business Liaison, the National Institute of Science and Technology, the Office of Information Resources Management, the Minority Business Development Agency, and the Census Bureau.

Depending on the particular mission and expertise of each of these offices within DOC, some of these offices will focus more on providing information about the rights and responsibilities established by the ADA, and other DOC offices will focus more on the complementary function of providing information that will assist covered entities in complying with the ADA. For example, the International Trade Administration, the Office of Business Liaison, and the Minority Business Development Agency will all use their respective publications to disseminate information about the requirements of the ADA, about sources of additional information related to specific issues, and about resources available to assist their clientele to comply with the ADA. As appropriate, these offices will also utilize their mailing lists of clients to disseminate materials related to ADA issues of special interest to their client communities. As a general principle, these activities will be directed toward the dissemination of materials that have been prepared by other Federal agencies, particularly EEOC, DOJ, or ATBCB, or the incorporation of materials that have been prepared by EEOC, DOJ, or ATBCB into DOC publications. In addition, field staff in these offices will be prepared to serve as information coordinators so that when clients in the business community served by the DOC office call with specific questions about compliance with the ADA or sources available to assist them in complying with the ADA, DOC field staff will be able to make appropriate referrals.



For other offices within DOC, the technical assistance provided will focus on the dissemination of information that will assist entities covered by the ADA to comply with its requirements. For example, the Office of Information Resources will continue to provide workshops and exhibits for participants from the business community and from the public sector that provide information on computer technology available to assist in making reasonable accommodations for individuals with disabilities in employment and to assist in enabling individuals with disabilities to participate in other types of programs or activities. Similarly, the National Institute of Science, and Technology will acquire a collection of scientific and technical publications on disability issues, particularly publications that will be useful to the resolution of compliance questions. The availability of these publications, in a variety of accessible formats, will be extensively publicized by the Service. In addition, the National Institute of Science and Technology will continue to conduct research on disability-related issues and will disseminate its findings relevant to the solution of compliance issues arising under the ADA in the most effective manner available. The Census Bureau will make statistical information on individuals with disabilities available to business, government, and community representatives seeking to identify and resolve compliance issues.

*C. National Council on Disability*

The National Council on Disability (NCD) is an independent Federal agency responsible for reviewing all Federal laws, programs, and policies affecting individuals with disabilities and for making recommendations in these areas, as it deems necessary, to the President, the Congress, and a variety of Federal Executive departments and agencies, including the Department of Education, the Rehabilitation Services Administration, and the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, NCD establishes policies for and monitors the performance of NIDRR, and it reviews and approves standards concerning "Independent Living" and "Projects With Industry" programs.

Although many Federal agencies deal with issues and programs affecting people with disabilities, NCD is the only agency with a comprehensive mandate to address, analyze, and make recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, perceived economic need, specific functional ability, status as a veteran, or other indivdual circumstance(s). In carrying out these responsibilities, NCD performs a unique function by assuring a coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in all aspects of life. In the performance of these responsibilities, NCD prepared a report to the President and the Congress, *Towards Independence*, which has been recognized as the seminal document leading to the enactment of the ADA. As stated by the Conference Committee on the ADA:

> The conferees intend to recognize the National Council on Disability as the impetus, force, and originator of the initial legislation for the Americans with Disabilities Act, reflected in the Council's report, *Toward Independence*, published in February, 1988. Therefore, the conferees agree that the National Council on Disability should be one of the [F]ederal agencies with which the Attorney General consults in developing a plan to assist entities covered under this Act. The experience, expertise, and commitment of the Council will ensure that the technical assistance activities mandated under section 506 will be comprehensive, focused, and timely.

In order to carry out these responsibilities, NCD will be involved in the development of overall strategies for implementation of the ADA. As intended by Congress, an important focus of NCD's work with these other Federal agencies will be the development of strategies to ensure the performance of technical assistance activities that are coordinated, comprehensive, and effective.

*D. National Institute on Disability and Rehabilitation Research*

The National Institute on Disability and Rehabilitation Research (NIDRR) is a Federal institute responsible for the promotion and coordination of research and related activities regarding the provision of vocational and other rehabilitative services to individuals with disabilities. Among NIDRR's responsibilities is the award of contracts and grants for the purpose of planning and conducting research, demonstrations, and related activities pertaining to the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to individuals with disabilities. One of NIDRR's specialized research tasks is the establishment and support of rehabilitation research centers, which are operated in collaboration with institutions of higher education. Among the research responsibilities of these centers is the development and dissemination of innovative methods of applying advanced medical technology, engineering technology, and other scientific knowledge to solve rehabilitation problems. The research activities at other research centers established and supported by NIDRR are focused on training related to the more effective provision of rehabilitative services.

In order to assist entities covered by the ADA to benefit from the advanced engineering, medical, psychological, vocational, and other scientific information available through NIDRR and organizations assisted by NIDRR, NIDRR will establish technical assistance centers in 8 to 12 communities throughout the country. The centers will offer such services as toll-free infomation lines, publications and other materials, training, on-line data bases, referrals, and direct consultations with technical assistance providers. The emphasis of these technical assistance centers will be on assisting employers to comply with the ADA, for example, by providing engineering information relevant to making reasonable accommodations. However, the centers will also be available to provide this type of information to entities covered by other provisions of the ADA, such as public accommodations.

*E. President's Committee on Employment of People With Disabilities*

The President's Committee on Employment of People with Disabilities (PCEPD) is one of the oldest Presidential committees, established in 1947 as the President's Committee on Employment of the Handicapped. Since that time PCEPD has worked to eliminate structural and attitudinal barriers that have impeded opportunities and progress for individuals with disabilities, particularly in the work place, and to mobilize public and private resources to achieve these objectives. Members of PCEPD are selected from the public and private sectors, including government, business, industry, labor, education, the media, and the professions. As discussed below, PCEPD provides valuable services and works closely with existing networks that can be important in assisting and supplementing the technical assistance program of the Equal Employment Opportunity Commission on the employment requirements of the ADA.

Every State has a Governor's Committee on the Employment of the Handicapped or a similar organization

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with comparable goals that works closely with PCEPD. The State organizations enable PCEPD to reach the "grass roots" level, and the membership of the State committees reflects both the public and private sectors in a manner similar to PCEPD's membership. In many cases there are also committees with the same goals at the city, county, or town level, which work cooperatively with the State committees, enhancing further the ability of PCEPD to reach the "grass roots" level. Using these networks that have been developed over the years, PCEPD has engaged in a variety of activities that shall be expanded in order to provide technical assistance about the employment provisions of the ADA.

One of the most important of PCEPD's traditional activities has been its Job Accommodation Network (JAN), which is a service that provides specific information, free of charge, about how to make reasonable accommodations, about the most up-to-date technological devices that are available to assist employers in making reasonable accommodations, and about strategies that have been used successfully in specific employment contexts. This service is primarily used by employers, and has proved to be invaluable to employers who were subject to Federal laws requiring nondiscrimination on the basis of disability that predate the ADA, such as sections 503 and 504 of the Rehabilitation Act of 1973, as amended, which prohibit discrimination on the basis of disability by Federal contractors and by federally assisted programs, respectively. In order to provide even more technical assistance in this area so that new needs for information resulting from the ADA are met, PCEPD will expand this service by adding more incoming lines on its toll-free JAN telephone number and by adding staff to receive these calls and provide the requested information.

Another longstanding activity engaged in by PCEPD is the distribution of technical assistance materials, such as publications and posters, free of charge, to the Governor's Committees and other interested organizations. The State committees disseminate these materials to local committees and other local organizations. In addition, PCEPD maintains a library of technical assistance films and videotapes, which are loaned to interested organizations. Representatives of PCEPD provide direct technical assistance advice to these State and local organizations on a regular basis. All of these activities, distribution and loan of materials and provision of information directly to State and local committees, will be expanded to address the requirements of the ADA.

Another technical assistance network that has been developed over the years by PCEPD consists of labor and management organizations. Technical assistance materials are also disseminated through these channels and representatives of PCEPD provide direct technical assistance to these organizations. The technical assistance provided by PCEPD to labor and management organizations will be augmented to provide practical information about the employment requirements of the ADA.

Also, PCEPD has developed technical assistance networks with interested trade associations, providing materials and advice to these organizations. These activities will also be expanded to provide information about rights and responsibilities in employment under the ADA.

The primary mission of PCEPD is the provision of technical assistance related to employment and, for this reason, PCEPD will concentrate on providing information related to the employment provisions of the ADA. However, because many of the employers and other organizations with which PCEPD will be in contact will be affected by provisions of the ADA in addition to those pertaining to employment, for example, the provisions regarding nondiscrimination in public accommodations, PCEPD will also provide a certain amount of general technical assistance about the ADA through its existing networks.

*F. Small Business Administration*

The Small Business Administration (SBA) is responsible for assisting small businesses in their efforts to compete effectively in the national and international economies. Among the many activities carried out by SBA in order to accomplish these objectives are the dissemination of information needed by small businesses, and the training and counseling of individuals involved in the management of small business and individuals who are interested in owning and operating a small business. As explained below, in connection with carrying out its many activities, SBA has developed a number of networks for the communication of information and these networks will be used to provide technical assistance about the ADA, in the areas of employment and public accommodations, to small businesses covered by those provisions of the ADA. Several offices within SBA are particularly well suited to provide assistance, including the Office of Civil Rights Compliance, the Office of Advocacy, and the Office of Business Development. For the most part, SBA's technical assistance efforts will be directed toward (1) The dissemination of materials that have been prepared by other Federal agencies, particularly the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), or the Architectural and Transportation Barriers Compliance Board (ATBCB); and (2) the incorporation of materials that have been prepared by EEOC, DOJ, or ATBCB into SBA publications.

The SBA Office of Civil Rights Compliance has years of experience in assisting small businesses covered by section 504 of the Rehabilitation Act and similar laws that require equal opportunity regardless of disability to comply with those laws. This office will use these same channels of communication with organizations representing small businesses and directly with small businesses to disseminate information about the ADA and to provide information about resources available to small businesses to assist in compliance efforts.

The SBA Office of Business Development works with small businesses to assist them in starting up and operating effectively and successfully. This office will use its networks and resources to disseminate information about the requirements of the ADA and about how to comply with the ADA. Included among the channels of communication are training courses throughout the nation and publications and other materials that are made available to small businesses. This office also is able to access a variety of mailing lists that could be used for technical assistance purposes. The technical assistance efforts of this office will be further enhanced through its ongoing work in cooperation with the small business development centers and university programs, and through its coordination with the Service Corps of Retired Executives.

The SBA Office of Advocacy works with small businesses with an orientation toward determining what is helpful or what is detrimental to the operation of small businesses and then taking steps in a variety of forums to assist small businesses in the development of positive factors and the removal of harmful factors. This office also has resources and networks, including a newsletter and an "answer desk" with a toll-free number, that will be employed to disseminate information about the requirements of the ADA and how to comply with the ADA. It is also anticipated that this office, in its role of advocate for small businesses, will serve an important coordination role so that small businesses that have specific questions about the nature of their obligations with respect to employment or public accommodations under the ADA or technical questions about how to comply with those provisions will be put in touch with the appropriate sources of information and assistance.

[FR Doc. 90-28478 Filed 12-4-90; 8:45 am]

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[Docket No. M-90-175-C]

### Dominion Coal Corporation; Petition for Modification of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of CFR 75.305 (weekly examinations for hazardous conditions) to its Dominion No. 1 Mine (I.D. No. 44-05254) located in Buchanan County, Virginia. The petition is filed under section 101 (c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Access required to conduct weekly examinations of the seals is located between two gob areas and is becoming unsafe to travel due to deteriorating roof conditions.

3. Due to solid blocks of coal left adjacent to the seals the chances of accidental rupture of the seals are slim. Also, should something unforseen happen which would allow for contaminated air to leak from the seals, contaminated air would be coursed through a bleeder performance evaluation station.

4. As an alternate method, petitioner proposes to include examinations of the seals within its weekly examination at a bleeder performance evaluation station.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners effected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 4, 1991. Copies of the petition are available for inspection at that address.

Dated: November 29, 1990.

Patricia W. Silvey,

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-28522 Filed 12-4-90; 8:45 am]

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### Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-81; Exemption Application No. D-8294 et al.]

### Grant of Individual Exemptions; Norman B. Pester C.P.A. P.C. Profit Sharing Plan, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Norman B. Pester CPA, P.C. Profit Sharing Plan (the Plan) Located in Denver, CO.

[Prohibited Transaction Exemption 90-81, Exemption Application No. D-8294]

*Exemption*

The restrictions of 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale by the account of Mr. Normal Pester in the Plan of an interest in two parcels of real estate to Mr. Pester, a participant and trustee of the Plan, for a sale price equal to the fair market value of the interest.

For a more complete statement of facts and representations supporting the Department's decision to grant the exemption refer to the notice of proposed exemption published on September 28, 1990 at 55 FR 39795.

**FOR FURTHER INFORMATION CONTACT:** Allison Padams of the Department (202) 523-8671.

### State Farm Insurance Companies' Incentive and Thrift Plan for United States Employees (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 90-82; Exemption Application No. D-8298]

*Exemption*

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale (the Sale) on August 29, 1989, of 219,700 shares of Joslyn Corporation common stock (the Stock) by the Plan to State Farm Mutual Automobile Insurance Company (the Company), a party in

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interest with respect to the Plan, provided that the Company reimburses to the Plan an amount equal to the difference between the cost to the Plan of purchasing the Stock and the proceeds received by the Plan from the sale of the Stock to the Company; and further provided that the Company reimburses the Plan $3,295.50 for the commission paid by the Plan incidental to the Sale.

**EFFECTIVE DATE:** This exemption will be effective August 29, 1989.

For a more complete statement of facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 12, 1990, at 55 FR 37587.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Donaldson, Lufkin & Jenrette Securities Corporation (DLJ) Located in New York, New York**

[Prohibited Transaction Exemption 90-83; Application No. D-8346]

*Exemption*

I. Transactions

A. Effective March 13, 1990, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan (plan) when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective March 13, 1990, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective March 13, 1990, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective March 13, 1990, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.



II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trusts;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act fo 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates had discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which DLJ or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purpose of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)-(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter means:*

(1) DLJ;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with DLJ; or

(3) Any member of an underwriting syndicate or selling group of which DLJ or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* mean the entity that is a party to to pooling and

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servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interst in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;
(2) Each insurer;
(3) The sponsor;
(4) The trustee;
(5) Each servicer;
(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or
(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;
(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and
(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and
(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;
(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and
(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;
(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);
(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and
(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leases;
(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and
(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust hold a security interest in the lease;
(b) The trust holds a security interest in the leased motor vehicle; and
(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

**EFFECTIVE DATE:** This exemption will be effective for transactions occurring on or after March 13, 1990.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 6, 1990 at 55 FR 36713.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Dean Witter Reynolds Inc. (Dean Witter) Located in New York, NY**

[Prohibited Transaction Exemption 90–84; Exemption Application No. D–8473]

*Exemption*

I. Transactions

A. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:



(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[4]

B. Effective November 1, 1985, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A Plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[5] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective November 1, 1985, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[6]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective November 1, 1985, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of

[4] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[5] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[6] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

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all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

**III. Definitions**

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Dean Witter or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either—

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR section 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Dean Witter;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Dean Witter; or

(3) Any member of an underwriting syndicate or selling group of which Dean Witter or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the identure trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.



L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sales* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligaton to delivery certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not change the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt intruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 28, 1990 at 55 FR 39757.

**EFFECTIVE DATE:** This exemption, if granted, will be effective for transactions occurring on or after November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan. D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**City Wide Management Company Pension Plan and Trust (the Plan) Located in Baltimore, Maryland**

[Prohibited Transaction Exemption 90–85; Exemption Application No. D–8391]

*Exemption*

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a sale for cash of certain ground rent leases (the Property) to the Plan by City Wide Management Company and certain related entities, parties in interest with respect to the Plan, provided that the Plan pays no more than fair market value for the Property and that the transaction accounts for no more than 25 percent of the assets of the Plan at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 28, 1990, at 55 FR 39756.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 30th day of November, 1990.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 90-28523 Filed 12-4-90; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts in Schools Basic Education Grants Section) to the National Council on the Arts will be held on December 12, 1990 from 8:30 a.m.-5:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m.- 4:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting from 8:30 a.m.-3:30 p.m. and 4:30 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 13, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-28498 Filed 12-4-90; 8:45 am]

BILLING CODE 7537-01-M

### Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Advancement Section) to the National Council on the Arts will be held on December 10-11, 1990 from 9 a.m.-5:30 p.m. in Room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendaton on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 13, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-28497 Filed 12-4-90; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-280]**

### Virginia Electric and Power Co.; Surry Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a one-time exemption from the requirements of appendix R to 10 CFR part 50 to Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit 1, located in Surry County, Virginia.

**Environmental Assessment**

*Identification of Proposed Action*

A one-time exemption would be granted from the requirements of section III, paragraph O of appendix R to 10 CFR part 50, which requires that the reactor coolant pump oil collection system to capable of collecting oil from potential pressurized and non-pressurized leakage sites and routing it to a vented, closed container of sufficient capacity to hold the entire lube oil system inventory.

*The Need for the Proposed Action*

The Surry, Unit 1 reactor coolant pump (RCP) motor oil collection systems currently satisfy the requirements of Paragraph O. The Unit 1 "C" RCP motor required a routine, 5-year refurbishment at the end of Operating Cycle 10. The required that the RCP motor be shipped to an offsite facility. A replacement motor was purchased for the "C" pump. However, certain components of the new RCP motor have a different physical configuration than the existing "C" motor. Because of the configurational differences, the RCP oil collection system from the "C" motor cannot be fitted to the new motor without extensive modifications which cannot made within the current Cycle 10 refueling outage. Consequently, a one-time exemption was requested from Paragraph O to permit an interim oil collection method in conjunction with other compensatory measures to mitigate the consequences should a oil fire occur. The exemption would be effective through Operating Cycle 11, which is currently scheduled to commence on December 5, 1990 and end in February 1992.

*Environmental Impact of the Proposed Action*

The proposed exemption would be degrade the level of safety attained by compliance with the rule and there would be no change in accident doses to the environment. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined; nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption would not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and would reduce operational flexibility.

*Alternative Use of Resources*

The action does not involve the use of resources not previously considered in the Final Environmental Statement for the Surry Power Station, Unit No. 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 14, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington DC., and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 29th day of November 1990.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Project Directorate II-2 Division of Reactor Projects--I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28489 Filed 12-4-90; 8:45 am]

BILLING CODE 7590-01-M



## NATIONAL TRANSPORTATION SAFETY BOARD

### Performance Review Board, Senior Executive Service; Appointment of Members

Appointments of Performance Review Board members are required to be published in the Federal Register by 5 U.S.C. 4314(c)(4).

The following persons have been appointed to, and will serve on Performance Review Boards for senior executives at the National Transportation Safety Board:

Susan M. Coughlin
Lloyd F. Miller
John V. Moulden
B. Michael Levins
Daniel D. Campbell
Barry M. Sweedler
Herbert W. R. Banks
Leslie D. Kampschror
Timothy P. Forte
Robert W. Pyle
Bernie Loeb
George Reagle

Dated: November 27, 1990.

**Robert W. Pyle,**

*Director, Personnel and Training Division.*

[FR Doc. 90-28477 Filed 12-4-90; 8:45 am]

BILLING CODE 7533-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** John Daley, (202) 606-0950.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on November 15, 1990 (55 FR 12973). Individual authorities established or revoked under Schedules A, B, or C between October 1, 1990 and October 31, 1990, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities is published annually as of June 30, 1990.

**Schedule A**

No Schedule A authorities were established or revoked during October.

**Schedule B**

No Schedule B authorities were established or revoked during October.

**Schedule C**

*U.S. Arms Control and Disarmament Agency*

One Deputy to the Director, Office of Congressional Affairs. Effective October 29, 1990.

*Air Force*

One Secretary (Stenography), to the Under Secretary. Effective October 31, 1990.

*Agency for International Development*

One Public Affairs Specialist, to the (Acting) Director, Office of Public Liaison. Effective October 11, 1990.

One Special Assistant to the Assistant Administrator, Bureau for Asia and Private Enterprise. Effective October 17, 1990.

*Department of Agriculture*

One Staff Assistant to the Administrator, Federal Grain Inspection Service. Effective October 9, 1990.

One Private Secretary to the Deputy Director, Office of Public Affairs. Effective October 9, 1990.

One Director, Public Liaison, to the Director, Office of Public Affairs. Effective October 30, 1990.

*Commission on Civil Rights*

One Special Assistant to a Commissioner. Effective October 5, 1990.

One Special Assistant to the Chairman. Effective October 25, 1990.

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*Commodity Futures Trading Commission*

One Supervisory Public Affairs Specialist to the Chairman. Effective October 3, 1990.

*Department of Commerce*

One Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective October 4, 1990.

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective October 4, 1990.

One Press Secretary to the Director, Office of Public Affairs. Effective October 5, 1990.

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective October 10, 1990.

One Confidential Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective October 11, 1990.

One Confidential Assistant to the Managing Director, U.S. and Foreign Commercial Service. Effective October 11, 1990.

One Director, Executive Secretariat, to the Chief of Staff. Effective October 11, 1990.

One Special Assistant to the Under Secretary for Technology. Effective October 18, 1990.

One Confidential Assistant to the Director, Office of White House Liaison. Effective October 21, 1990.

One Confidential Assistant to the Assistant Secretary for Oceans and Atmosphere. Effective October 26, 1990.

One Speech Writer to the Secretary to the Director, Office of Public Affairs. Effective October 26, 1990.

One Special Assistant to the Assistant Secretary and Counselor to the Secretary. Effective October 26, 1990.

One Confidential Assistant to the Assistant Secretary for International Economic Policy. Effective October 30, 1990.

One Family Policy Specialist to the Deputy Assistant Secretary (Family Support, Education and Safety). Effective October 23, 1990.

*Department of Defense*

One Executive Assistant to the Deputy Assistant Secretary for Environment. Effective October 29, 1990.

One Private Secretary to the Deputy Under Secretary for International Programs. Effective October 31, 1990.

*Department of Energy*

One Director of Policy Coordination to the Deputy Under Secretary, Office of Policy, Planning and Analysis. Effective October 3, 1990.

One Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective October 17, 1990.

One Public Affairs Specialist to the Director, Office of Environmental Restoration and Waste Management. Effective October 17, 1990.

One Staff Assistant to the Superconducting Super Collider Project Manager. Effective October 23, 1990.

*Department of Transportation*

One Director of Public Affairs to the Administrator, Urban Mass Transportation Administration. Effective October 21, 1990.

One Staff Assistant to the Secretary. Effective October 25, 1990.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective October 25, 1990.

*Department of Education*

One Confidential Assistant to the Director, Issues Analysis Staff. Effective October 10, 1990.

One Confidential Assistant to the Special Advisor to the Secretary on Teacher Education. Effective October 18, 1990.

*Environmental Protection Agency*

One Special Assistant to the Associate Administrator for Communications and Public Affairs. Effective October 3, 1990.

One Special Assistant to the Administrator. Effective October 12, 1990.

One Staff Assistant to the Assistant Administrator, Office of Pesticides and Toxic Substances. Effective October 12, 1990.

*Farm Credit Administration*

One Public Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective October 15, 1990.

*Department of Health and Human Services*

One Confidential Assistant to the Secretary. Effective October 9, 1990.

One Special Assistant to the Associate Administrator, Office of Communications, Family Support Administration. Effective October 12, 1990.

One Executive Assistant to the Assistant Secretary for Human Development Services. Effective October 21, 1990.

One Deputy to the Director of Communications. Effective October 21, 1990.

One Special Assistant to the Commissioner, Administration on Developmental Disabilities. Effective October 21, 1990.

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Office of Human Development Services. Effective October 21, 1990.

One Special Assistant to the Associate Commissioner, Office of Disability, Social Security Administration. Effective October 23, 1990.

One Special Assistant to the Director, Medicaid Bureau, Health Care Financing Administration. Effective October 26, 1990.

One Special Assistant to the Assistant Secretary for Health. Effective October 31, 1990.

*Department of Housing and Urban Development*

One Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective October 4, 1990.

One Staff Assistant to the Assistant Secretary for Administration. Effective October 29, 1990.

One Executive Assistant to the Assistant Secretary for Public Affairs. Effective October 29, 1990.

One Executive Assistant to the Assistant Secretary for Administration. Effective October 30, 1990.

*Department of the Interior*

One Special Assistant to the Director, National Park Service. Effective October 11, 1990.

One Special Assistant to the Assistant to the Secretary and Director, External Affairs. Effective October 12, 1990.

One Staff Assistant to the Director, Bureau of Land Management. Effective October 26, 1990.

*Department of Justice*

One Congressional and Public Liaison Officer to the Assistant Attorney General, Office of Justice Programs. Effective October 31, 1990.

*Department of Labor*

One Confidential Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective October 16, 1990.

*National Mediation Board*

One Confidential Assistant to a Board Member. Effective October 26, 1990.

*National Transportation Safety Board*

One Confidential Assistant to a Board Member. Effective October 9, 1990.

*Small Business Administration*

One Special Assistant to the Administrator. Effective October 10, 1990.

*Department of State*

One Staff Assistant to the Under Secretary for Economic Affairs. Effective October 4, 1990.

One Supervisory Foreign Affairs Officer to the Deputy Assistant for International Social and Humanitarian Affairs. Effective October 4, 1990.

One Deputy to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective October 11, 1990.

One Staff Assistant to the Secretary. Effective October 29, 1990.

One Special Assistant to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective October 31, 1990.

*Department of the Treasury*

One Marketing Specialist to the Executive Director, U.S. Savings Bond Division. Effective October 5, 1990.

One Public Affairs Specialist to the Deputy Assistant Secretary for Public Liaison. Effective October 5, 1990.

One Deputy Director of Scheduling to the Assistant Secretary for Policy Management. Effective October 12, 1990.

One Legislative Assistant to the Deputy Assistant Secretary (Legislative Affairs). Effective October 21, 1990.

One Deputy Director (Operations) to the Executive Director, U.S. Savings Bonds Division. Effective October 25, 1990.

*United States Information Agency*

One Program Officer to the Deputy Director. Effective October 17, 1990.

One Special Assistant to the Director of Corporate Participation for the Seville Expo. Effective October 17, 1990.

**Authority:** 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

[FR Doc. 90–28681 Filed 12–4–90; 8:45 am]

BILLING CODE 6325–01–M

## PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS

### Meeting

**AGENCY:** President's Commission on the Federal Appointment Process.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Commission will meet to consider its final recommendations regarding the federal appointment process. The public is welcome to attend.

**DATES:** December 7, 1990, from 10 p.m. to 12 p.m.

**ADDRESSES:** The meeting will be held in Conference Room 5230, Department of Commerce, 14th and Constitution, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Alvin S. Felzenberg, Executive Director, President's Commission on the Federal Appointment Process, Room 502, Old Executive Office Building, Washington, DC 20500, (202) 456–6490.

**SUPPLEMENTARY INFORMATION:** The Commission was established by Executive Order 12719 to advise the President on the best means of simplifying the Presidential appointment process through reducing the number and complexity of forms to be completed by Presidential nominees. The Commission's mandate is to give special attention to achieving coordination between forms required in the executive branch clearance process and forms required by Senate Committees for confirmation hearings.

**Alvin S. Felzenberg,**

*Executive Director.*

[FR Doc. 90–28428 Filed 12–4–90; 8:45 am]

BILLING CODE 3110–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–28848; File No. SR–MBSCC–90–07]**

### Self-Regulatory Organizations; MBS Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Dealer Trade Input on Trade Date

November 28, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 1, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBSCC–90–07) as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).



**I. SRO's Statement of the Terms of Substance of the Proposed Rule Change**

This proposed rule change will require MBSCC dealer participants to submit dealer trade input on trade date.

**II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the SRO included statments concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to modify MBSCC's current trade date plus one ("T+1") input requirement for trades submitted by its dealer participants. Article I, Rule 1 of MBSCC's rules defines a "dealer" as "a Participant which is in the business of buying and selling Securities as principal, either directly or through a Broker." Article II, Rule 3, section 1 of MBSCC's rules provides that both selling and purchasing dealers are required to submit trade input on each business day as MBSCC specifies in its procedures. Currently, MBSCC's procedures require both selling and purchasing dealers to submit trade input T+1. Since June 1, 1990, MBSCC's procedures have required brokers, acting on behalf of selling and purchasing dealers in "broker give-up trades," [2] to submit trade input on trade date. Approximately 85% of all MBSCC trade input is submitted in the form of "give-up trades" by brokers.

In consultation with MBSCC's New Procedures/Services and Risk Management Committees, MBSCC will require dealer participants to submit trade input by the current cut-off time on the trade date. The effective date of this revised procedure is November 1, 1990. At that time, dealer participants will be responsible for reporting any discrepancies to the contra-side dealer

[2] The term "broker give-up trade" is defined as certain specified types of trades reported by a broker on behalf of selling and purchasing dealers in which the broker temporarily is identified as the original contra-side participant with respect to each dealer and in which the dealers are to be substituted on the broker give-up date. MBSCC rules, art. I, rule 1.

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on T+1, and the contra-side dealer will be responsible for corrections on T+2.

The proposed rule change is consistent with section 17A of the Act in that it facilitates the prompt and accurate clearance and settlement of securities transactions. The proposed change is designed to reduce to MBSCC and its participants by expediting reconciliation of trade comparison and reducing risks associated with market exposure. All trade data will now be immediately subject to MBSCC's market and margin protections.

*B. SRO's Statement on Burden on Competition*

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*C. SRO's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Participants were advised of the proposed rule change, and as of this date, all informal comments received have been positive.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19 (b)(3)(A) of the Act and paragraph (e) of Rule 19b–4,[3] thereunder, in that it effects a change to an existing MBSCC service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street,. NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–90–07 and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–28439 Filed 12–4–90; 8:45 am]

BILLING CODE 8010-01-M

[3] 17 CFR 240.19b–4(e).

[4] 17 CFR 200.30–3(a)(12).

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**[Release No. 34–28855; File No. SR–NYSE–90–54]**

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Charge for the Specialist Principal Activity Routing Service**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 6, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of the adoption of a one-time charge to be imposed on specialist units which subscribe to the Specialist Principal Activity Routing ("SPAR") service. The charge will be $3,000 for each Common Message Switch ("CMS") [1] port requested by a specialist unit in connection with this service.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Purpose

Beginning in December, 1990, the Exchange plans to offer the new SPAR service to specialists. The SPAR service will enable specialist firms, or clearing firms acting on their behalf, to receive information electronically intra day, relating to specialist principal trading executed against system orders.

The SPAR service is designed to help reduce the costs to specialist firms of keypunching a large percentage of their principal trading activity. Subscribers to the SPAR service will be required to have a communications line into the CMS in order to receive principal reports. The one-time charge of $3,000 for each SPAR/CMS port connection is to enable the Exchange to recoup costs associated with introducing the system.

Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60

[1] The CMS is a data communications application that accommodates a wide variety of member firm computer and technical connections, enabling a member firm to send orders directly to the appropriate floor booth on either the American Stock Exchange, Inc. or NYSE for execution by the firm's floor broker or to the appropriate specialist post.



days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–90–54 and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 29, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–28440 Filed 12–4–90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–28856; File No. SR–NASD–90–61]**

**Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating To Entry and Annual Fees Charged to Issuers Whose Securities Are Included in the NASDAQ System**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD has proposed amendments to Schedule D, part IV of the Association's By-Laws, governing the entry and annual fees charged to issuers whose securities are included in the NASDAQ System. Below is the text of the proposed rule change. Proposed new language is in italic, proposed deletions are in brackets.

**Schedule D**

**Part IV**

**[NASDAQ ISSUER QUOTATION] *LISTING* FEES**

*THE NASDAQ STOCK MARKET—NATIONAL MARKET SYSTEM*

*A. Entry Fee*

*1. Each issuer that submits an application for inclusion of any of its securities in the National Market System shall pay a $1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.*

*2. The issuer of each class of security which is listed in the National Market System shall pay to the Corporation:*

*a. Upon initial entry, a one-time original company listing fee of $5,000; and*

b. For each class of security listed, a fee calculated on a graduated rate of $.005 per share for the first 5 million shares, $.0025 per share for each share between 5,000,001 and 15 million, inclusive, and $.001 per share for each share over 15 million, based on the total number of shares outstanding. The total entry fees paid by a company for all classes of securities listed on the National Market system, regardless of the date those securities are listed, cannot exceed $50,000 (inclusive of the $5,000 original company listing fee).[2]

*3. The entry fee shall be based on the total outstanding securities of the class to be included in the National Market System as shown in the issuer's most recent periodic report or, in the case of new issues, as shown in the offering circular, required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.*

*4. The Board of Governors or its designee, may, in its discretion, waive all or any part of the entry fee prescribed herein.*

*B. Annual Fee*

*1. The issuer of each class of security which is listed in the National Market System shall pay annually to the Corporation an annual fee for each such class of security to be computed as follows with a maximum annual fee of $8,000 per issuer:*

*a. A $2,000 National Market System participation fee; and,*

*b. The sum of $500 or $.0005 per share outstanding, whichever is higher, up to a maximum of $6,000 for each security listed in the National Market System.*[3]

*2. The annual fee shall be based on the total amount of outstanding securities of the class included in the National Market System as shown in the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority and received by the NASDAQ Stock Market.*

*3. The Board of Governors, or its designee, may, in its discretion, waive all or any part of the annual fee prescribed herein.*

*4. If a security is removed from the National Market system, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.*

*REGULAR NASDAQ SYSTEM*

**[A.]** *C.* Entry Fee

*1. Each issuer that submits an application for inclusion of any class of its securities in the Regular NASDAQ System shall pay a $1,000 non-refundable processing fee with respect to each application, to be credited against the issuer's entry fee.*

**[1.]** *2.* The issuer of each *class of* security which is **[authorized for inclusion]** *listed* in the *Regular* NASDAQ System shall pay to the Corporation upon *initial* entry *of any of the issuer's securities* into the *Regular* NASDAQ System **[an entry]** *a one-time original company listing* fee *of $5,000. In addition, for each class of*

[1] By letter dated November 19, 1990, the NASD filed Amendment No. 1 to this proposed rule change. The amendment was technical in nature and changed the Article and Section cited in the NASD By-Laws that gives the Board of Governors authority to amend Schedules to the By-Laws without membership approval.

[2] *For purposes of this part, the term "shares" shall include common and preferred stock, American Depositary Receipts (ADRs), warrants, partnership interests, or any other security listed on the National Market System.*

[3] *Id.*

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*securities listed in the Regular NASDAQ System, the issuer shall pay an entry fee* to be computed as follows with a maximum entry fee [during any 24 month period] *for all classes of securities listed, regardless of the date those securities are listed, of* [$5,000] *$10,000 per issuer (inclusive of the $5,000 original company listing fee):*

*(i) Equity Securities—$1,000 or $.001 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in the Regular NASDAQ Sysem not covered by another provision of this section.*[4]

[a. Stock Issues—$1,000 or $.001 per share outstanding, whichever is higher;]

[b. Investment Company Shares—$1,000 or $.001 per share outstanding, whichever is higher;]

[c. Warrant Issues—$1,000 or $.001 per warrant outstanding, whichever is higher;]

[d. Unit Issues]

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System—$1,000;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System—$1,000 or $.001 per unit share outstanding, whichever is higher;]

[e. Shares of Beneficial Interest—$1,000 or $.001 per share outstanding, whichever is higher;]

[f.] *(ii)* Convertiable Debentures—$1,000 or $60 per million face amount of debentures outstanding, whichever is higher [;].

[g. Securities of Foreign Issuers and American Depository Receipts—$1,000.]

[2. The entry fee shall be waived for those securities reentering the NASDAQ System for which an entry fee the same security has been paid to the Corporation during the twenty-four month period the date of reentry. For purposes of calculating the above-mentioned twenty-four (24) month period the date of reentry shall be the date of receipt of the application for reentry in the NASDAQ System.]

[3. In the case of a merger, consolidation, or reorganizaton at least one issuer of an authorized security, the entry fee shall be waived for the security issued issued to carry out such merger, consolidation or re-organization provided that such security is promptly authorized for inclusion in the NASDAQ System.]

*3. The Board of Governors or its designee, may, in its descretion, waive all or any part of the entry fee prescribed herein.*

4. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipts] t]*The* entry fee shall be based on the total outstanding securities of the class to be included in the *Regular* NASDAQ System as shown [on] *in* the issuer's most recent [Form 10–K filed with the SEC] *periodic report* or, in the case of new issues, as shown in the [appropriate prospectus] *offering circular*; [. In the case of issuers which are not required to file a Form 10–K with the Commission, the entry fee shall be based on the annual report] required to be filed with the *issuer's* appropriate regulatory authority *and received by the NASDAQ Stock Market.*

[B.] *D.* Annual Fee

1. The issuer *of* each *class* of security which is [authorized for inclusion] *listed* in the *Regular* NASDAQ System shall pay annually to the Corporation an annual fee for each such security to be computed as follows with a maximum annual fee of $6,000 per issuer;

*(i) Equity Securities—$500 or $.0005 per share outstanding, whichever is higher. For purposes of this section, the term "equity securities" includes all securities eligible for inclusion in the Regular NASDAQ System not covered by another provision of this section.*[5]

[a. Stock Issues-$500 or $.0005 per share outstanding, whichever is higher;]

[b. Investment Company Shares-$500 or $.0005 per share outstanding, whichever is higher;]

[c. Warrant Issues-$500 or $.0005 per warrant outstanding, whichever is higher;]

[d. Unit Issues

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System-$500;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System-$500 or $.0005 per unit initially issued, whichever is higher;]

[e. Shares of Beneficial Interest-$500 or $.0005 per share outstanding, whichever is higher;]

[f.] *(ii)* Convertible Debentures-$500 or $25 per million dollars face amount of debentures outstanding, whichever is higher[;].

[g. Securities of Foreign Issuers and American Depositary Receipt-$500.]

2. [Except for Unit Issues, Securities of Foreign Issuers, and American Depositary Receipt, t]The annual fee shall be based on the total amount of outstanding securities of the class included in the *Regular* NASDAQ System as shown [on] *in* the issuer's most recent [Form 10–K annual report filed with the SEC. In the case of issuers which are not required to file a Form 10–K with the Commission, the annual fee shall be based on the annual] *periodic* report required to be filed with the *issuer's* appropriate regulatory authority *and received by the NASDAQ Stock Market.*

[3. In addition to the annual fee stated above, the issuer of each security designated for inclusion in the NASDAQ National Market System, shall pay annually to the corporation a NASDAQ/National Market System participation fee of $2,000 except with respect to issuers whose annual fee is calculated pursuant to section B.1.g. above.] [6]

*3. The Board of Governors or its designee, may, in its discretion, waive all or any part of the entry fee prescribed herein.*

4. If a [n authorized] security is removed from the *Regular* NASDAQ [(or NASDAQ/National Market)] System, that portion of the annual fees for such security attributable to the months following the date of removal shall not be refunded.

[C. Interim Inclusion Fee]

[1. In the case of a new issue which is authorized for inclusion in the NASDAQ System and for which an application has been made for listing on a national securities exchange pursuant to section 12(b) of the Securities Exchange Act of 1934, such issuer shall pay to the Corporation upon entry into the NASDAQ System an Interim Inclusion Fee to be computed as follows with a maximum Interim Inclusion Fee of $1,000:]

[(a) Stock Issues-$200 or $.0005 per share outstanding, whichever is higher;]

[(b) Warrant Issues-$200 or $.0005 per warrant outstanding, whichever is higher;]

[(c) Unit Issues]

[(i) Where one or more of the component securities in the unit is an authorized security in the NASDAQ System-$200;]

[(ii) Where the component securities in the unit are not authorized securities in the NASDAQ System-$200 or $.0005 per unit initially issued, whichever is higher;]

[(d) Shares of Beneficial Interest-$200 or $.0005 per share outstanding, whichever is higher;]

[(e) Convertible Debentures-$200 or $25 per million dollars face amount of debentures outstanding, whichever is higher;]

[(f) Securities of Foreign Issuers and American Depository Receipts-$200.]

[2. In the event the issue is not accepted for listing on a national securities exchange within 60 calendar days of inclusion in the NASDAQ System, the entry and annual fees set forth in sections A and B above shall apply and the Interim Inclusion Fee shall be credited toward the entry and annual fees.]

**II. Self-Regulatory Organization's Statement of the Purpose of, And Statutory Basis For, The Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD's current fee structure for issuers under Schedule D, part IV of the By-Laws, governing inclusion in the NASDAQ System generally does not distinguish between issues listed on the NASDAQ National Market System ("NASDAQ/NMS" or "NMS") and issues that are not listed on NMS ("Regular NASDAQ") (together referred to hereinafter as "The NASDAQ Stock Market"). With the continued substantial growth in the NASDAQ Stock Market in the last decade, and especially the growth in the quality and competitiveness of the National Market System, the NASD believes that changes to the fee structure are necessary and appropriate. Changes to the fee structure will compensate the NASD for the competitive value that National Market System listings provide to issuers and will differentiate between the two segments of the NASDAQ Stock Market.

Under the current fee structure, issuers that apply for inclusion on the NASDAQ Stock Market pay identical entry fees for both Regular NASDAQ and NMS listings. This fee schedule results in an NMS issuer's entry fee that is only a small fraction of that charged by the national securities exchanges. The NMS initial inclusion and maintenance requirements, however, are significantly more rigorous than the requirements for Regular NASDAQ and are comparable to the listing standards of the national securities exchanges.

In addition to erroneously implying to issuers that NMS listing may be less valuable than listing on the national securities exchanges, such low fees inhibit the NAD's ability to generate the revenue necessary to further enhance the NASDAQ Stock Market. In the current competitive environment, the NASD must devote adequate resources to maintaining and upgrading the NASDAQ Stock Market in order to provide issuers listed on the NASDAQ Stock Market with the superior access to capital they have so far enjoyed. As a result of these considerations, the NASD believes that a bifurcation of the fee structure and adjustments to the fees charged to NMS and Regular NASDAQ issuers are necessary.

The NASD is, therefore, proposing to replace entirely the current provisions of part IV to Schedule D to the By-Laws with a new structure that distinguishes between NMS fees in proposed sections A and B and Regular NASDAQ fees in proposed sections C and D. The NASD is proposing in new section A to charge a new initial one-time entry fee for NMS listing of $5,000 per issuer, plus a new graduated fee for each listed based on the total number of shares of the listed class of security outstanding. The total NMS entry fee will not exceed $50,000 for each NMS issuer (inclusive of the $5,000 one-time entry fee) in comparison to the current maximum of $5,000 per issuer during any 24 month period. The NMS annual fee in new section B is unchanged.

The NASD is similarly proposing to adopt the $5,000 one-time entry fee with respect to Regular NASDAQ and to raise the maximum entry fee from $5,000 to $10,000 per issuer (inclusive of the one-time $5,000 fee) in proposed section C. The NASD is also proposing to change the Regular NASDAQ entry and annual fee provisions to consolidate identical fees for different types of securities. Proposed new subsections C.2.(i) and D.1.(i) impose fees on what are now referred to as "equity securities." Each section defines equity securities to mean all securities eligible for inclusion in the Regular NASDAQ System and not otherwise covered by another subsection of each section. A footnote to each section also clarifies that in the case of units, only the components of the units will be considered an equity security. The purpose of this change is to establish a single fee formula for all types of securities eligible for inclusion unless a unique formula is established for a particular type of security in another subsection of the section. Thus, the language of subsections C.2.(ii) and D.1.(ii) retains the current language specifying the calculation of the fee for convertible debentures.

The NASD is also proposing to amend part IV of Schedule D to require the payment of a new non-refundable $1,000 processing fee, which will be credited against the applicant issuer's minimum entry fee applications to both NMS and Regular NASDAQ to cover the costs associated with processing these applications. Currently, issuers are not required to pay any fee to the NASD until their securities have been authorized for inclusion and are trading in the NASDAQ Stock Market. Each year the NASD receives approximately 200 applications for inclusion in the NASDAQ Stock Market from issuers that are never included. Many applications for inclusion are based upon the successful completion of a best-efforts offering of securities, and the issuer fails to satisfy the minimum contingency. In still other instances, the issuers' registration statements are never declared defective by the SEC. Furthermore, in many of these cases, the issuers apply for inclusion of their securities in the NASDAQ Stock Market when they do not meet the requirements for initial inclusion and are without any plan or prospect for meeting the requirements.

The costs to the NASD of processing these applications are significant, given the number of applications and the complexity of issues that may require resolution. The NASD believes the processing fee will discourage applications by issuers that cannot meet the NASDAQ Stock Market initial inclusion requirements and will encourage all applicant issuers to determine prior to applying for inclusion in the NASDAQ Stock Market the likelihood that their securities will qualify for inclusion.

The NASD is also proposing to add a provision allowing the waiver of entry and annual fees for both NMS and Regular NASDAQ applicants if, in the discretion of the Board of Governors or its designee, such a waiver is justified. Currently, part IV to Schedule D allows for a waiver of entry fees if comparable fees have been paid in the previous twenty-four months, or if new securities which qualify for listing are issued as the result of the merger, consolidation or reorganization of a listed company. When the current waiver provisions were adopted, virtually all situations where a waiver might be justified fell

[4] *Id.* In the case of units, each component, but not the unit itself be considered separately as an "equity security" for fee purposes.

[5] *See supra notes 1 and 3.*

[6] [This exception will expire December 31, 1990]

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into the standard categories covered by the provisions. The NASD has increasingly found situations in which granting a waiver under the current provisions appears unjustified and other situations where granting a waiver is justified but not permitted by the current provisions. The proposed waiver provision would allow the NASD more flexibility to waive fees on a case-by-base basis in situations which are not precisely covered by the waiver provisions currently in effect or where other unforeseen considerations might warrant a waiver.

Finally, the NASD is proposing to eliminate the current section entitled Interim Inclusion Fee with respect to both NMS and Regular NASDAQ. The interim inclusion fee has provided a means for new issues seeking listing on a national securities exchange to be listed on the NASDAQ Stock Market on an interim basis. If the issuer's application for listing on a national securities exchange was rejected, the interim fee was then applied to the issuer's regular entry and annual fees and the issue remained on the NASDAQ Stock Market without interruption. If, however, the exchange listing was accepted, the issuer was only subject to the interim fee which had a maximum of $1,000. In view of the proposed changes to the fee structure for NMS and Regular NASDAQ, the NASD has determined to eliminate the interim inclusion fee. Any need for a reduced fee for interim inclusion of a security can now be accommodated through the proposed entry fee waiver provision.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among issuers and other persons using any facility or system which the Association operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 30, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-28454 Filed 12-4-90; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Fitness Determination of Allied Airlines, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Determination—Order 90-11-53. Order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find that Allied Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: November 28, 1990.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 90-28453 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 47292]

### Application of Arctic Circle Air Service, Inc. for Authority To Transport Passengers

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 90-11-57).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Arctic Circle Air Service, Inc., fit and authorizing it to commence interstate and overseas scheduled air transportation of passengers under its existing section 401 certificate.

**DATES:** Persons wishing to file objections should do so no later than December 14, 1990.

**ADDRESSES:** Objections and answers to objections should be filed in Docket No. 47292 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721).



Dated: November 28, 1990.

**Patrick V. Murphy, Jr.,**

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 90-28454 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

### Proposed Advisory Circular on Emergency Medical Services/Helicopter.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for comments on proposed Advisory Circular (AC) for Emergency Medical Services/Helicopter (EMS/H).

**SUMMARY:** The proposed AC is intended to provide information in the conduct of EMS (Helicopter) for operators providing service under part 135 of the Federal Aviation Regulations.

**COMMENTS INVITED:** Comments are invited on all aspects of the proposed AC. Commentors must identify file number AC 135-14A.

**DATES:** Comments must be received on or before January 4, 1991.

**ADDRESSES:** Send all comments and request for copies of the proposed AC to: Federal Aviation Administration, Air Transportation Division (Attention: AFS-250), 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** William Wallace, AFS-250, at the above address; telephone: (202) 267-8086 (8 a.m. to 4:30 p.m. EST).

**SUPPLEMENTARY INFORMATION:** The guidance material contained in this AC reflects the material to assist all operators in the conduct of EMS.

Issued in Washington, DC, on November 22, 1990.

**Thomas C. Accardi,**

*Acting Director, Flight Standards Service.*

[FR Doc. 90-28511 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-51]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 25, 1990.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 28, 1990.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

**Petitions for Exemption**

*Docket No.:* 26376.
*Petitioner:* Bolivar Aviation.
*Sections of the FAR Affected:* 14 CFR 61.187(b).
*Description of Relief Sought:* To allow petitioner to utilize flight instructors who have held the flight instructor certificate for less than the required 24 months preceding the date of instruction.

**Dispositions of Petitions**

*Docket No.:* 23647.
*Petitioner:* Embry-Riddle Aeronautical University.
*Sections of the FAR Affected:* 14 CFR 141.55.
*Description of Relief Sought/ Disposition:* To amend Exemption No. 3859, as amended, which allows petitioner to recommend graduates of its flight instructor certification courses for flight instructor certificates (with the associated ratings) without having to take the FAA written or flight tests. The amendment eliminates the authorization that allows petitioner to recommend graduates of its flight instructor certification course (with associated ratings) without having to take the FAA's written test.

*GRANT, November 20, 1990, Exemption No. 3859F*

*Docket No.:* 25728.
*Petitioner:* Trans World Airlines, Inc.
*Sections of the FAR Affected:* 14 CFR part 121, appendix H.
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5097, as amended, which allows petitioner to upgrade L-1011 flight engineers to L-1011 seconds in command in a Phase II simulator without receiving any training or checking in the actual airplane.

*GRANT, November 23, 1990, Exemption No. 5097B*

*Docket No.:* 26247.
*Petitioner:* Era Aviation, Inc.
*Sections of the FAR Affected:* 14 CFR 121.411 and 121.413.
*Description of Relief Sought/ Disposition:* To amend Exemption No. 5182, which allows petitioner to utilize certain FlightSafety International instructors to train petitioner's pilots in de Havilland DHC8-100 airplanes that were newly acquired by petitioner. The amendment would extend the authorization to allow FlightSafety International to train eight pilots in a new DHC8-103 airplane purchased by the petitioner.

*GRANT, November 23, 1990, Exemption No. 5182A*

[FR Doc. 90-28512 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

### Deadline for Submission of Preapplication for Airport Grant Funds Under the Airport Improvement Program for Fiscal Year 1991

Section 509(e) of the Airport and Airway Improvement Act of 1982 (AAIA) provides that the sponsor of each airport to which entitlement funds are apportioned shall notify the Secretary, by such time and in a form as

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prescribed by the Secretary, of the sponsor's intent to apply for passenger and cargo entitlement funds. Notification of the sponsor's intent to apply during fiscal year 1991 for any of its entitlement funds, including those unused from prior years, shall be in the form of a project preapplication or application (SF 424) submitted to the Federal Aviation Administration (FAA) field office no later than January 31, 1991. Approval of preapplications or applications after that date may be deferred by the FAA until the following fiscal year. FAA field offices, in developing their regional programs, may request sponsors' input at an earlier date. Every effort should be made to have projects under grant by August 15, 1991.

The FAA also recommends that all other airports or planning agencies expecting to apply for airport grant funds do so early in the fiscal year. Such prospective applicants should contact the appropriate FAA field office for information on that office's deadline. These offices will assist in the preparation of preapplications/applications and provide procedural information as needed.

Prompt submission of complete requests will allow earlier funding decisions by the FAA. This, in turn, may be advantageous to sponsors in competing for available funds and in maximizing construction during a construction season.

This notice submitted by Mr. Stanley Lou, Manager, Programming Branch, APP-520 on (202) 267-7595.

**Robert W. Yatsek,**

*Director, Office of Airport Planning and Programming.*

[FR Doc. 90-28513 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement: Daviess, Greene & Monroe Counties, Indiana

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for construction of a portion of the proposed Evansville to Indianapolis highway between SR 37 at Bloomington and SR 57 near Newberry.

**FOR FURTHER INFORMATION CONTACT:** L. D. Tucker, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana, 46204, Telephone 317/226-7482.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Indiana Department of Transportation, will prepare an environmental impact statement (EIS) on the proposed construction of a portion of the Evansville to Indianapolis highway from SR 37 to SR 57, a distance of approximately 30 miles. The proposed typical highway section will be 2-24' pavements with a 60' median within a minimum 300' right-of-way. The facility will be built with either a partial access control or full access control.

The following alternatives are being considered: (1) Do Nothing; (2) Alternate #A is an alignment that begins at SR 37 west of Bloomington and roughly follows the SR 45 route to US 231 and then goes west to SR 57 south of Newberry; (3) Alternate #B is an alignment that begins at SR 37 south of Bloomington and heads west to within 4 miles of Bloomfield before turning southwest and connecting with SR 57 south of Newberry; (4) Alternate #C is an alignment that begins south of Bloomington on SR 37 and heads west to Stanford and then southwest along SR 45 to Cincinnati, Indiana and then southwest to SR 37 south of Newberry; (5) Alternate #D is a alignment that begins south of Bloomington on SR 37 and continues southwest to SR 45 and roughly follows SR 45 to US 231 and then west to SR 57 south of Newberry.

Construction of this highway is considered necessary to efficiently accommodate the traffic demand for existing and projected levels in Southwestern Indiana.

The project will be coordinated with various federal, state and local agencies to obtain and incorporate their input into the draft environmental impact statement.

A formal scoping meeting is currently planned for this proposed project. This meeting will be held on December 19, 1990 at the Ramada Inn in Bloomington, Indiana from 10 a.m. to 12 p.m. (noon). An opportunity for a public hearing will be advertised at a later date to discuss the DEIS. Notice will be given of the time and place of the public hearing. The approved draft environmental impact statement will be available for public and agency review and comment.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: November 27, 1990.

**L. D. Tucker,**

*District Engineer.*

[FR Doc. 90-28496 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-22-M

## Federal Railroad Administration

**[FRA Waiver Petition Docket No. RST-90-3]**

### Petition for Exemption or Waiver of Compliance; Burlington Northern Railroad Company

Notice is hereby given that the Burlington Northern Railroad Company (BN) has submitted a petition dated August 10, 1990, requesting a waiver of compliance with the provisions of 49 CFR 213.113(a)(2), notes C and D, as they apply to remedial action to be taken regarding the following types of internal rail defects: detail fracture; engine burn fracture; and defective weld.

BN, on specific tracks within Nebraska, Wyoming, South Dakota, and Montana proposes to place 132 pound/136 pound sized bars and clamps (known as the "Bulldog Clamp") over detected internal defects in lieu of bolted joint bars as presently required. The Bulldog Clamp would only be placed on rail which is box anchored on at least every other tie.

BN's request for waiver, applying to the tracks leading to and from the Wyoming Powder River Coal Basin, is predicated upon three goals:

1. Elimination of both holes in 132 and 136 pound per yard continuous welded rail (CWR),

2. Elimination of "subgrade memory" of rail joint location, where individual rail profile is deformed from temporary placement of repair rail and bolted rail joints; and

3. Increased daily productivity of internal railflaw detection equipment.

The BN line segments involved in the waiver petition are:

1. Hobson (Lincoln), Nebraska through York and Ravenna to East Alliance, Nebraska, Nebraska Division, 2nd Subdivision, railroad mileposts 1.9 to 364.4.

2. Third Street, (Alliance, Nebraska) through Northport to Bridgeport, Nebraska, Denver Division, 3rd Subdivision, Railroad milepost 0.3 to 41.

3. East Alliance, Nebraska through Crawford to Edgemont, South Dakota, Denver Division, 4th Subdivision, railroad mileposts 364.4 to 476.1.

4. Edgemont, South Dakota through New Castle, Wyoming to Gillette, Wyoming, Denver Division, 5th Subdivision, railroad mileposts 476.1 to 597.2.

5. Gillette, Wyoming through Sheridan to Huntley, Montana, Denver Division, 6th Subdivision, railroad mileposts 597.2 to 829.3.

6. Northport, Nebraska through Guernsey and Wendover, Wyoming, to Bridger Junction, Wyoming, Denver Division, 7th Subdivision, railroad mileposts 0.0 to 133.2.

7. Bridger Junction, Wyoming through Bill to Donkey Creek (Gillette) Wyoming, Denver Division, 10th Subdivision railroad mileposts 127.3 to 0.0.

8. Reno, Wyoming to Black Thunder Junction, Wyoming, Denver Division, 12th Subdivision, railroad mileposts 0.0 to 3.0.

9. Campbell, Wyoming to Eagle Butte Junction Wyoming, Denver Division, 13th Subdivision railroad mileposts 0.0 to 9.5.

10. Dutch, Wyoming to Nero, Montana, Denver Division, 14th Subdivision, railroad mileposts 0.0 to 22.6.

No National Railroad Passenger Corporation (Amtrak) trains operate over any of the above defined BN line segments.

BN requests that 49 CFR 213.113(a)(2) Note C., (prescribed remedial action) read as follows for this waiver petition request: "Apply joint bars bolted only through the outermost holes, or Bulldog Clamp system, to defect within 20 days after it is determined to continue the track in use. In the case of Classes 3 through 6 track, limit operating speed over defective rail to 30 mph until angle bars or Bulldog Clamp system are applied; thereafter limit speed to 60 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. This revised Note C will not apply to Damaged Rail. The petitioner (BN) will remove the Bulldog Clamp system after no more than five (5) calendar days in service. If the internal defect has not been removed or repaired in that time, bolted joint bars will be immediately applied."

BN requests that 49 CFR 213.11(a)(2) Note D., (prescribed remedial action) read as follows for this waiver petition request: "Apply joint bars bolted only through the outermost holes, or Bulldog Clamp system, to defect within 10 days after it is determined to continue the track in use. In the case of Classes 3 through 6 track, limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, until angle bars or Bulldog Clamp system are applied; thereafter, limit speed to 60 mph or the maximum allowable speed under § 213.9 for the class of track concerned, whichever is lower. The petitioner (BN) will remove the Bulldog Clamp system after no more than five (5) calendar days in service. If the internal defect has not been removed or repaired in that time, bolted joint bars will be immediately applied".

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final disposition of the petition. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if by January 17, 1991 the party submits a written request for hearing that demonstrates that the individual's position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA Waiver Petition Docket No. RST-90-3" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by January 17, 1991 will be considered in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC, on November 23, 1990.

**E.R. English,**

*Acting Director, Office of Safety Enforcement.*

[FR Doc. 90-28455 Filed 12-4-90; 8:45 am]

BILLING CODE 4910-22-M

## Maritime Administration

### Invitation to Nonprofit Organizations To Apply for Assistance Establishing Memorials to Merchant Mariners

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Maritime Administration is informing nonprofit organizations of its intention to implement Public Law 101-595, which authorizes the Secretary of Transportation to transfer title to obsolete vessels in the National Defense Reserve Fleet, which are of no use to the Government, to a group or groups of nonprofit organizations that would scrap the vessel(s) and share equally in the proceeds. Those proceeds would be used for expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners

**EFFECTIVE DATE:** December 5, 1990

**FOR FURTHER INFORMATION CONTACT:** Linda Somerville, Vessel Transfer and Disposal Officer, Maritime Administration, U.S. Department of Transportation, room 7324, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-5821.

**SUPPLEMENTARY INFORMATION:** Section 709 of Public Law 101-595, enacted on November 16, 1990, is summarized below. It authorizes the Secretary of Transportation, until November 16, 1992, to convey to a group of not less than two and not more than three nonprofit organizations, without consideration, all rights, title and interest of the United States Government in a vessel that is in the National Defense Reserve Fleet on November 16, 1990, is of not less than 4,000 displacement tons, has no usefulness to the Government, and is scheduled to be scrapped. The statute provides further that prior to the conveyance of such a vessel to a group of nonprofit organizations, the Secretary shall require that each nonprofit organization in the group shall: (1) Have entered into a formal agreement with others in the group that requires the sale of the vessel for scrap and the equal division of the sale proceeds among the nonprofit organizations in the group; (2) use its share of those proceeds for expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners; and (3) have raised prior to November 16, 1990, at least $100,000 from non-Federal sources for use in establishing a memorial to merchant mariners.

In implementing this authority, MARAD initially desires to identify all eligible groups of nonprofit organizations that wish to participate in this program.

Any nonprofit organization or any group of not less than two and not more than three nonprofit organizations which is interested in participating in this program, and believes it satisfies the three necessary statutory conditions, is invited to submit all relevant

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information concerning their eligibility to MARAD's Vessel Transfer and Disposal Officer, at the address above, no later than March 31, 1991. Sufficient information must be submitted to establish eligibility in order for any organization to be considered further under this program. Interested organizations should note that the statute provides that a nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this program, and, further, that any vessels conveyed under the program will be conveyed on an "as is, where is" basis, without cost to the Government.

Section 709 of Public Law 101–595 provides that:

* * * * *

(b) Vessel conveyance authority.—(1) Notwithstanding any other law, the Secretary of Transportation may convey to any group of not less than two and not more than three nonprofit organizations, without consideration, all right, title, and interest of the United States Government in a vessel which—

(A) Is in the National Defense Reserve Fleet on the date of enactment of this section;

(B) Is of not less than 4,000 displacement tons;

(C) Has no usefulness to the Government; and

(D) Is scheduled to be scrapped.

(2) As a condition of conveying a vessel to a group of nonprofit organizations pursuant to this section, the Secretary shall require that each nonprofit organization in the group—

(A) Before the date of that conveyance, enter into an agreement with the other nonprofit organizations in that group which requires—

(i) The sale of the vessel for scrap purposes; and

(ii) The equal division of the proceeds of the sale among the nonprofit organizations in that group;

(B) Use its share of those proceeds for the expenses directly related to acquiring land for, designing, berthing, refurbishing, repairing, or constructing a memorial to merchant mariners;

(C) Have raised, before the date of enactment of this section, at least $100,000 from non-Federal sources for use for establishing a memorial to merchant mariners; and

(D) Agree to any other conditions the Secretary considers appropriate.

(3) (A) A nonprofit organization may apply to the Secretary for a conveyance under this section individually or as a member of a group of nonprofit organizations.

(B) The Secretary shall designate, for purposes of this section, groups of not less than two and not more than three nonprofit organizations which apply individually under this section.

(C) A nonprofit organization may not be a member of more than one group of nonprofit organizations for purposes of this section.

(c) Delivery.—The Secretary shall deliver a vessel conveyed under this section to a group of nonprofit organizations—

(1) At a place where the vessel is located on the date of the approval of the conveyance,

(2) In its condition on that date, and

(3) Without cost to the Government.

(d) Expiration.—The authority of the Secretary under this section to convey vessels shall expire two years after the date of enactment of this section.

Dated: November 29, 1990.

By Order of the Maritime Administration.

**James E. Saari,**

*Secretary.*

[FR Doc. 90–28452 Filed 12–4–90; 8:45 am]

BILLING CODE 4910–81–M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirements Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of the extension of OMB 3116–0191 entitled "Assurance of Compliance with U.S. Information Agency Regulation under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972." The above-mentioned form requires prospective grantees to sign a statement that they, if awarded a grant, will comply with the provisions of the Civil Rights Act of 1964 the Rehabilitation Act of 1973, and the Education Amendments of 1972 regarding discrimination. Estimated burden for this information collection is estimated at five minutes. Respondents will be required to respond only one time.

**DATES:** January 4, 1991.

**COPIES:** Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7340.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for this collection of information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for USIA.

*Title:* Assurance of Compliance with U.S. Information Agency Regulation under title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and title IX of the Education Amendments of 1972.

*Form Number:* IAP–100.

*Abstract:* The signing of the above-mentioned form indicates a commitment on the part of the grantee to comply with the three statutes referred to in the Summary, as required by law. This assurance is given in connection with any and all financial assistance from the U.S. Information Agency after the date the form is signed, including payments after that for financial assistance approved previously. The applicant recognizes and agrees that any such financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, the transferees, assignees and the authorized official whose signature appears on the form.

*Proposed Frequency of Responses:*
No. of Respondents—200.
Recordkeeping Hours—0.
Total Annual Burden—16.6.

Dated: November 29, 1990.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 90–28459 Filed 12–4–90; 8:45 am]

BILLING CODE 8230–01–M

### Reporting and Information Collection Requirements Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Proposed collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval of a proposed information collection entitled "Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exhange Program Survey." Estimated burden hours per response is 30 minutes. Respondents will be required to respond only one time.

**DATES:** Comments must be received by December 20, 1990.

**COPIES:** Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for USIA, and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Secondary School Administrators Views on Foreign Exchange Student Programs—J-Visa Exchange Program Survey.

*Form Number:* IAP 116.

*Abstract:* Pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended, the U.S. Information Agency (USIA) administers an exchange program which includes a large portion of the international teenage student exchanges in U.S. high schools. In the interest of proper administration of the Exchange Visitor Program, USIA undertakes the collection of information on the attitudes and experience of Secondary School Administrators with regard to foreign teenage exchange student in their schools. The information obtained from this survey will be used by the Office of General Counsel, USIA, to evaluate existing regulations affecting issuance of the J-visa to foreign exchange students.

*Proposed Frequency of Responses:*
No. of Respondents—2000.
Recordkeeping Hours—0.
Total Annual Burden—1000.

Dated: November 30, 1990.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 90–28460 Filed 12–4–90; 8:45 am]

BILLING CODE 8230–01–M



## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301–81]**

### Response to Actions by the European Economic Community Under Article XXIV of the General Agreement on Tariffs and Trade

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of notification in response to actions by the European Economic Community (EEC) under Article XXIV of the General Agreement on Tariffs and Trade (GATT).

**SUMMARY:** The United States Trade Representative (USTR) has notified the Contracting Parties to the GATT that it will suspend tariff concessions on specified products in the United States tariff schedule, effective midnight December 31, 1990, unless there is by that time a satisfactory agreement to continue compensating the United States for trade damage associated with the accession of Portugal and Spain into the EEC. This notification has been made in accordance with United States rights and obligations under Articles XXIV and XXVIII of the GATT. The existing duty rates will continue to apply after December 31 until further notice is given to the GATT Contracting Parties. Before raising duties, the USTR will also give notice in the **Federal Register.**

**DATES:** Notification to the GATT Contracting Parties was made on November 30, 1990. The suspension of Tariff concessions on specified products will take effect at midnight on December 31, 1990, unless there is by that time a satisfactory resolution.

**FOR FURTHER INFORMATION CONTACT:** Bennett Harman, Director, European Community Affairs, (202) 395–3074, or Marilyn Moore, Senior Agricultural Economist, (202) 395–5006, or Andrew Shoyer, Assistant General Counsel, (202) 395–7203.

**SUPPLEMENTARY INFORMATION:** As part of the arrangements for the accession of Portugal and Spain to the European Economic Communities (EEC), the EEC withdrew tariff concessions on products from Portugal and Spain, imposed variable levies on Spanish imports of corn and sorghum, and took other actions affecting U.S. exports, effective beginning March 1, 1986.

In discussions with the EC in 1986, the United States Government sought the removal of certain restrictions and, in accordance with U.S. rights under Articles XXIV and XXVIII of the

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General Agreement on Tariffs and Trade (GATT), sought appropriate compensation from the EC for the tariff and variable levy actions.

On January 29, 1987, the United States Government entered into an "Agreement for the Conclusion of Negotiations Between the United States and the European Community Under GATT Article XXIV:6." That agreement set forth several measures to be taken by the EC and temporarily compensated the United States by, *inter alia*, reducing duty rates on an autonomous basis on 29 tariff lines and ensuring a minimum access level of imports of two million metric tons of corn and of three hundred thousand metric tons of sorghum into Spain for consumption from non-EC sources. Those measures were to apply until December 31, 1990. The agreement also specified that both parties would initiate in July 1990 a "major review of the situation * * * with the objective of determining at that time what new action, if any, might be appropriate." Both parties reserved "full GATT rights including those which would otherwise be time-limited."

In July 1990, representatives of the Government of the United States and the EC met to initiate a review of the situation. Notwithstanding the U.S. right under GATT Article XXIV to continued compensation for the withdrawal of concessions associated with the addition of Portugal and Spain to the EEC, the EC has refused to extend such compensation beyond December 31, 1990.

Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV of the GATT entitles other contracting parties to negotiated compensation, or, in the absence of a successful negotiation, to use Article XXVIII to " withdrawal substantially equivalent concessions." The Article XXVIII right is time-limited and could be construed, in this case, to expire at midnight on December 31, 1990, unless exercised.

Unless the trade measures in the 1987 agreement are extended or a new agreement is reached with the EC, certain trade rights or measures contained in the 1987 agreement might expire at midnight on December 31, 1990. Article XXVIII requires that notice of intent to withdraw substantially equivalent concessions be received by the GATT Contracting Parties thirty days prior to the date that such concessions are withdrawn.

Thus, the United States Government considers itself to be obliged to give notice by December 1, 1990, of the intent of the United States to exercise its Article XXVIII rights after December 31, 1990.

### Text of Notification to the GATT Contracting Parties

Accordingly, on November 30, 1990, the Government of the United States notified the Contracting Parties to the GATT as follows:

Article XXVIII:3 Notification in Response to Actions by the European Economic Community Under Article XXIV

Schedule XX: United States

On 13 February 1986, in document L/5936/Add.2, the European Economic Community gave notice that, pursuant to Article XXIV, it had withdrawn schedule XLV of Spain, Schedule XLIV of Portugal and Schedule LXXII and LXXIIBIS of the European Community of 10. The European Economic Community forwarded a copy of EC Council regulation No. 3330/85 containing the Community's offer under Article XXIV:6, suspended the rates laid down in the offer, and indicated that the rates in schedules LXXII and LXXIIBIS would apply for the EC of 10, with Spanish and Portuguese rates aligning onto EC rates according to the timetable foreseen in the Treaty of Accession. However, where the EC of 10 rate was not bound and a variable levy applied, the corresponding Spanish and Portuguese trade was subjected to the variable levy (in excess of 100 percent ad valorem) since 1 March 1986 notwithstanding the existence of any Spanish or Portuguese concessions and without prior examination of these actions in GATT or prior negotiation of compensation.

The above withdrawals had an immediate damaging effect in particular on the trade in two concessions made by Spain to the United States in previous negotiations, namely TSUS Item 10.05BII bound at 20 percent [corn, not hybrid, not for sowing] and TSUS Item 10.07CII bound at 20 percent (sorghum, not for sowing). The United States holds initial negotiating rights on both of these items and was the principal supplier of corn. The United States had also been a principal supplier of sorghum to Spain, together with Argentina. According to Spain's import statistics, 1981–1983 average annual Spanish imports of corn and sorghum from the United States amounted to U.S. $624 million.

Following the actions by the European Economic Community, the United States on several occasions communicated its views to the EC regarding the EC actions, in particular on those actions affecting corn and sorghum. The United States requested compensation for the corn and sorghum actions by 1 July 1986 which were to be factored into the results of the Article XXIV:6 negotiations.

Since the European Economic Community had already effected the withdrawal of the Spanish concessions on corn and sorghum and replaced them with variable levies, without agreement on compensation as provided in Articles XXIV:6 and XXVIII, the United States found it necessary, as provided in the procedures of paragraph 3 of Article XXVIII, to notify the suspension of certain concessions in Schedule XX (see L/5997, 28 May 1986). The suspensions took effect thirty days from the receipt of that notice by the Contracting Parties (which for the purposes of that notice was the day of receipt by the Secretariat).

Negotiations continued and on 29 January 1987, the Government of the United States and the European Community entered into an agreement under Article XXIV:6. That agreement set forth several measures to be taken by the EC and temporarily compensated the United States by, inter alia, reducing duty rates on an autonomous basis on 29 products and ensuring a minimum access level of imports form non-EC sources of two million metric tons of corn and of three hundred thousand metric tons of sorghum into Spain for consumption. Those measures are to apply until 31 December 1990. The agreement also specified that both parties would initiate in July 1990 a "major review of the situation * * * with the objective of determining at that time what new action, if any might be appropriate." Both parties reserved "full GATT rights including those which would otherwise be time-limited."

On 31 March 1988, the United States notified the Contracting Parties that the suspended bindings listed in document L/5997 were restored, subject to the provisions of the United States-European Community agreement of January 1987. (See L/5997/Add.2, 31 March 1988.)

In July 1990, representatives of the Government of the United States ad the EC met to initiate the "review of the situation" which had been provided for in the January 1987 agreement. Notwithstanding the U.S. right under GATT Article XXIV to continued compensation for the withdrawal of concessions associated with the addition of Portugal and Spain to the ECC, the ECC has failed to extend such compensation beyond 31 December 1990, and has refused to continue a review of the situation at this time.

Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV of the GATT entitles other contracting parties to negotiate compensation, or, in the absence of a successful negotiation, to use Article XXVIII to "withdraw substantially equivalent concessions." The Article XXVIII right is time-limited to six months. The agreed "review of the situation" began in July and has not resulted in a negotiated continuation of compensation to the United States.

If negotiations to continue compensation to the United States are not successful, then compensation under the 1987 agreement will expire at midnight on December 31, 1990. Moreover, the time-limited Article XXVIII right could be construed, in this case, to expire on December 31, 1990, unless exercised.

Therefore, without agreement on compensation as provided in Article XXIV:6 and XXVIII, the United States will find it necessary, as provided in the procedures of paragraph 3 of Article XXVIII, to suspend certain tariff concessions in Schedule XX, effective midnight, December 31, 1990.

Accordingly, the United States hereby notifies the suspension of concessions in Schedule XX as listed in the attachment. The



suspensions shall take effect at midnight on December 31, 1990, in the absence of a successful settlement. The existing duty rates will continue to be applied until further notice is given to the Contracting Parties. For the purposes of this notice, the day of receipt by the Secretariat shall be the date of receipt of this notice by the contracting parties.

The United States continues to reserve its rights with respect to the withdrawals of concessions in schedules XLV, XLIV, LXXII, and LXXIIBIS as announced by the European Economic Community on February 13, 1986.

### Annex Containing Products for Which Tariff Concessions May Be Suspended

The annex to this **Federal Register** notice sets forth the text of the attachment to the above-referenced notification to the GATT Contracting Parties and constitutes a complete list of the tariff items for which tariff concessions may be suspended.

**Richard H. Steinberg,**

*Assistant General Counsel and Acting Chairman, Section 301 Committee.*

ARTICLES ON WHICH UNITED STATES TARIFF CONCESSIONS IN SCHEDULE XX UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE ARE SUSPENDED

[United States imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

| Tariff Subheading | Product/Country | 1987 | 1988 | 1989 | Average 1987–1989 |
|---|---|---|---|---|---|
| 0406.40.60 | Blue-veined cheese, other than Roquefort, in original loaves | | | | |
| | GATT countries, total | $10,281,000 | $8,935,000 | $6,428,000 | $8,541,000 |
| | EC | 10,281,000 | 8,905,000 | 5,428,000 | 8,541,000 |
| 0406.40.80 | Blue-veined cheese, other than Roquefort, not in original loaves | | | | |
| | GATT countries, total | 497,000 | 230,000 | 506,000 | 411,000 |
| | EC | 409,000 | 230,000 | 506,000 | 382,000 |
| 0406.90.15 | Edam and Gouda cheeses | | | | |
| | GATT countries, total | 18,349,000 | 15,251,000 | 9,951,000 | 14,850,000 |
| | EC | 17,542,000 | 15,640,000 | 9,567,000 | 14,249,000 |
| 0705.21.00 | Witloof chicory (*Cichorium intybus* var. *foliosum*) fresh or chilled | | | | |
| | GATT countries, total | [1] 7,661,000 | [1] 8,652,000 | [1] 12,909,000 | [1] 9,741,000 |
| | EC | [1] 7,409,000 | [1] 8,509,000 | [1] 12,371,000 | [1] 9,430,000 |
| 0705.29.00 | Chicory, other than Witloof chicory, fresh or chilled | | | | |
| | GATT countries, total | (*) | (*) | (*) | (*) |
| | EC | (*) | (*) | (*) | (*) |
| 0802.40.00 | Chestnuts (*Castanea* spp.) fresh or dried, whether or not shelled or peeled | | | | |
| | GATT countries, total | 5,345,000 | 8,073,000 | 10,205,000 | 8,175,000 |
| | EC | 5,796,000 | 7,693,000 | 9,584,000 | 7,884,000 |

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ARTICLES ON WHICH UNITED STATES TARIFF CONCESSIONS IN SCHEDULE XX UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE ARE SUSPENDED—Continued

[United States imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

| Tariff Subheading | Product/Country | 1987 | 1988 | 1989 | Average 1987–1989 |
|---|---|---|---|---|---|
| 1514.90.00 | Rapeseed, colza or mustard oil, and fractions thereof, refined but not chemically modified, not denatured or imported to be used in the manufacture of rubber substitutes or lubricating oil | | | | |
| | GATT countries, total | 22,695,000 | 63,828,000 | 46,667,000 | 45,127,000 |
| | Canada | 22,670,000 | 54,124,000 | 41,833,000 | 39,609,000 |
| | EC | — | 9,705,000 | 6,834,000 | 5,513,000 |
| 2001.90.25 | Artichokes, prepared or preserved by vinegar or acetic acid | | | | |
| | GATT countries, total | 17,377,000 | 25,154,000 | 11,091,000 | 18,041,000 |
| | EC | 17,637,000 | 25,093,000 | 10,979,000 | 17,870,000 |
| 2005.90.50 | Pimientos (*Capsicum annuum*), prepared or preserved otherwise than by vinegar or acetic acid, not frozen | | | | |
| | GATT countries, total | 9,997,000 | 10,243,000 | 8,850,000 | 9,697,000 |
| | EC | 9,995,000 | 10,015,000 | 8,331,000 | 9,434,000 |
| 2005.90.60 | Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen | | | | |
| | GATT countries, total | 7,563,000 | 7,541,000 | 24,170,000 | 13,091,000 |
| | EC | 7,523,000 | 7,461,000 | 24,108,000 | 13,031,000 |
| 2201.10.00 | Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored | | | | |
| | GATT countries, total | 72,869,000 | 93,232,000 | 89,690,000 | 85,337,000 |
| | EC | 66,051,000 | 80,224,000 | 78,540,000 | 74,936,000 |
| 2205.10.30 | Vermouth in containers holding 2 liters or less | | | | |
| | GATT countries, total | [2] 16,164,000 | [2] 17,065,000 | [2] 17,221,000 | [2] 17,483,000 |
| | EC | [2] 16,164,000 | [2] 17,060,000 | [2] 17,220,000 | [2] 17,481,000 |
| 2205.90.20 | Vermouth in containers each holding over 2 liters but not over 4 liters | | | | |
| | GATT countries, total | [3] | [3] | [3] | [3] |
| | EC | [3] | [3] | [3] | [3] |
| 2205.90.40 | Vermouth in containers each holding over 4 liters | | | | |
| | GATT countries, total | [3] | [3] | [3] | [3] |
| | EC | [3] | [3] | [3] | [3] |
| 2208.20.40 | Spirits, except pisco and singani, obtained by distilling grape wine or grape marc (grape brandy), in containers each holding not over 4 liters, valued over $3.43/liter | | | | |
| | GATT countries, total | [3] | [3] | 27,369,000 | [4] 27,369,000 |
| | EC | [3] | [3] | 27,123,000 | 27,123,000 |



ARTICLES ON WHICH UNITED STATES TARIFF CONCESSIONS IN SCHEDULE XX UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE ARE SUSPENDED—Continued

[United States imports in 1987–1989 from Principal and Substantial Suppliers. For each tariff subheading contained herein, this tabulation lists (a) GATT countries which supplied 10 percent or more of average annual U.S. imports in the subheading in 1987–1989 from all GATT sources. The European Community is treated as a single "country" in this tabulation.]

| Tariff Subheading | Product/Country | 1987 | 1988 | 1989 | Average 1987–1989 |
|---|---|---|---|---|---|
| 2208.20.60 | Spirits, except pisco and singani, obtained by distilling grape wine or grape marc (grape brandy), in containers each holding over 4 liters, valued over $2.38/liter | | | | |
| | GATT countries, total | (5) | (5) | 338,000 | (5) 338,000 |
| | EC | (5) | (5) | 338,000 | (5) 338,000 |
| 2208.90.45 | Cordials, liqueurs, kirschwasser and ratafia | | | | |
| | GATT countries, total | 229,656,000 | 221,678,000 | 231,229,000 | 227,588,000 |
| | EC | 203,911,000 | 195,941,000 | 203,647,000 | 201,500,000 |
| 4111.00.00 | Composition leather with a basic of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls | | | | |
| | GATT countries, total | 13,429,000 | 12,123,000 | 12,767,000 | 12,773,000 |
| | EC | 13,027,000 | 11,647,000 | 12,231,000 | 12,302,000 |

[1] Includes imports of chicory in subheading 0705.29.00.
[2] Imports of chicory in subheading 07005.29.00 are included in statistics shown for subheading 0705.21.00.
[3] Includes imports of vermouth in subheading 2205.90.20 and 2205.90.40.
[4] Imports of vermouth in subheadings 2205.90.20 and 2205.90.40 are included in statistics shown for subheading 2205.10.30
[5] Data on imports corresponding to subheadings 2208.20.40 and 2208.20.60 were not separately reported in 1987 and 1988. Imports reported in 1989 are also used as a proxy for average imports in 1987–1989.

BILLING CODE 3190-01-M

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**Articles on Which United States Tariff Concessions in Schedule XX under the General Agreement on Tariffs and Trade Are Suspended**

[Note.— All concessions were established in protocol G/115/88]

| Tariff Subheading | Article | Rate of duty |
|---|---|---|
| | [The bracketed language in this list has been included only to clarify the scope of the numbered subheadings on which concessions are being suspended, and such language is not itself intended to describe articles on which concessions are suspended.] | |
| | Cheese and curd: | |
| | Blue-veined cheese: | |
| | [Roquefort] | |
| | Other: | |
| 0406.40.60 | In original loaves | 15% |
| 0406.40.80 | Other | 20% |
| | Other cheese: | |
| 0406.90.15 | Edam and Gouda cheeses | 15% |
| | Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled: | |
| | Chicory: | |
| 0705.21.00 | Witloof chicory (Cichorium intybus var. foliosum) | 0.33 cents/kg |
| 0705.29.00 | Other | 0.33 cents/kg |
| | Other nuts, fresh or dried, whether or not shelled or peeled: | |
| 0802.40.00 | Chestnuts (Castanea spp.) | Free |
| | Rapeseed, colza or mustard oil, and fractions thereof, whether or not refined, but not chemically modified: | |
| | [Crude oil] | |
| | Other: | |
| | [Imported to be used in the manufacture of rubber substitutes or lubricating oil] | |
| | Other: | |
| | [Denatured] | |
| 1514.90.90 | Other | 7.5% |
| | Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: | |
| | [Cucumbers including gherkins] | |
| | [Onions] | |
| | Other: | |
| | [Capers] | |
| | Other: | |
| | Vegetables: | |
| 2001.90.25 | Artichokes | 12% |
| | Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen: | |
| | [Sweet corn (Zea mays var. saccharata)] | |
| | Other vegetables and mixtures of vegetables: | |
| | Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice): | |
| 2005.90.50 | Pimientos (Capsicum annum) | 9.5% |
| 2005.90.80 | Artichokes | 17.5% |
| | Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow: | |
| 2201.10.00 | Mineral waters and aerated waters | 0.4 cents/liter |



| Tariff Subheading | Article | Rate of duty |
|---|---|---|
| | Vermouth and other wine of fresh grapes flavored with plants or aromatic substances: | |
| | In containers holding 2 liters or less: | |
| 2205.10.30 | Vermouth | 5.5 cents/liter |
| | Other: | |
| | Vermouth: | |
| 2205.90.20 | In containers each holding over 2 liters but not over 4 liters | 5.5 cents/liter |
| 2205.90.40 | In containers each holding over 4 liters | 8.5 cents/liter |
| | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages: | |
| | Spirits obtained by distilling grape wine or grape marc (grape brandy): | |
| | [Pisco and singani] | |
| | Other: | |
| | In containers each holding not over 4 liters: | |
| 2208.20.40 | Valued over $3.43/liter | 13.2 cents/pf. liter |
| | In containers each holding over 4 liters: | |
| 2208.20.60 | Valued over $2.38/liter | 10.6 cents/pf. liter |
| | Other: | |
| 2208.90.45 | Cordials, liqueurs, kirschwasser and ratafia | 13.2 cents/pf. liter |
| 4111.00.00 | Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls | 2.8% |

[FR Doc. 90-28500 Filed 12-5-90; 8:45 am]
BILLING CODE 3190-01-C

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## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 98–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 29, 1990.

By direction of the Secretary

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Revision**

1. Veterans Benefits Administration.
2. Request for Verification of Employment.
3. VA Form 26–8497.
4. The form is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. The use of this form is optional since any comprehensible form of independent verification is acceptable, provided all information contained on VA Form 26–8497 is furnished.
5. On occasion.
6. Businesses or other for-profit.
7. 300,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–28468 Filed 12–4–90; 8:45 am]

BILLING CODE 8320–01–M

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 98–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 29, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Revision**

1. Veterans Benefits Administration.
2. Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 1901–1904).
3. VA Form 21–4502.
4. The form is used to gather the necessary information to determine eligibility for financial assistance in the purchase of an automobile or other vehicle and/or the necessary adaptive equipment. The information is used to determine initial and continuing eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 1,500 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90–28469 Filed 12–4–90; 8:45 am]

BILLING CODE 8320–01–M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

### UNITED STATES INSTITUTE OF PEACE

**DATES:** December 6–7, 1990.

**TIME:** 9:00 a.m. to 5:30 p.m.

**PLACE:** 1550 M Street NW., Washington, DC. (ground floor, Board Room).

**STATUS:** Open session.—(portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

**AGENDA:** (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President Report. Committee Reports. Consideration of the Minutes of the Forty-Third meeting of the Board of Directors. Consideration of grant application matters.

**CONTACT:** Mr. Gregory McCarthy, Director, Public Affairs, telephone (202) 457–1700.

Dated: December 3, 1990.

**Ms. Bernice J. Carney,**

*Director of Administration, The United States Institute of Peace.*

[FR Doc. 90–28605 Filed 12–3–90; 1:20 pm]

BILLING CODE 3155–01–M

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 29, 1990.

**TIME AND DATE:** 10:00 a.m., Thursday, December 6, 1990.

**PLACE:** Room 600, 1730 K Street NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. *Rochester & Pittsburgh Coal Company,* Docket No. PENN 88–284–R, etc. (Issues include whether the judge erred in finding that two violations of 30 CFR § 75.305 were not the result of the operator's unwarrantable failure.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

**TIME AND DATE:** Immediately following oral argument.

**STATUS:** Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Rochester & Pittsburgh Coal Company,* Docket No. PENN 88–284–R. (See oral argument listing)

It was determined by a unanimous vote of the Commissioners that this portion be held in closed session.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 Toll Free.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 90–28610 Filed 12–3–90; 1:27 pm]

BILLING CODE 6735–01–M

### RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:58 p.m. on Thursday, November 29, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Vice Chairman Andrew C. Hove, Director T. Timothy Ryan Jr., (Director of the Office of Thrift Supervision), and Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(a)(ii), (c)(9)(b) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(a)(ii) and, (c)(9)(b)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550 17th Street, N.W., Washington, D.C.

Dated: November 30, 1990.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Executive Secretary.*

[FR Doc. 90–28630 Filed 12–3–90; 1:28 pm]

BILLING CODE 6714–01–M

### SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [55 FR 48954 and 49751 November 23 and November 30, 1990]

**STATUS:** Closed/open meeting.

**PLACE:** 450 Fifth Street, N.W., Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** Monday, November 19, 1990 and Wednesday, November 28, 1990.

**CHANGE IN THE MEETING:** Deletions.

The following item was not considered at a closed meeting on Thursday, November 29, 1990, at 3:30 p.m., formerly scheduled for Thursday, November 29, 1990, at 2:30 p.m.

Settlement of administrative proceedings of an enforcement nature.

The following item will not be considered at a closed meeting on Tuesday, December 4, 1990, at 2:30 p.m.

Institution of administrative proceeding of an enforcement nature.

The following item will not be considered at an open meeting on Thursday, December 6, 1990, at 2:00 p.m.

Oral argument on cross-appeals by William L. Kicklighter, Jr., a salesman for the former brokerage firm of Hereth, Orr & Jones, Inc. and the Division of Enforcement from an administrative law judge's initial decision. For further information, please contact Richard E. Connor at (202) 272–3981.

The following item will not be considered at a closed meeting on Thursday, December 6, 1990, following the 2:00 p.m. open meeting.

Post oral argument discussion.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times, change in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Young at (202) 272–2000.

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Dated: November 30, 1990.
**Jonathon G. Katz,**
*Secretary.*
[FR Doc. 90-28580 Filed 12-3-90; 1:29 pm]
BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, December 10, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

**STATUS:** Closed

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 30, 1990.
**Jennifer J. Johnson,**
*Associate Secretary of the Board.*
[FR Doc. 90-28580 Filed 11-30-90; 4:50 pm]
BILLING CODE 6210-01-M



# Corrections

Federal Register
Vol. 55, No. 234
Wednesday, December 5, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**7 CFR Part 301**

**[Docket No. 90-221]**

**Citrus Canker Regulations; Quarantined Areas**

*Correction*

In rule document 90-28015 beginning on page 49501, in the issue of Thursday, November 29, 1990, make the following correction:

On page 49502, in the third column, in the first line, "§ 301.74-4" should read "§ 301.75-4".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### Bureau of Census

**15 CFR Part 30**

**[Docket No. 900112-0265]**

**RIN 0607-AA13**

**Foreign Trade Statistics; Amendment to the Foreign Trade Statistics Regulations**

*Correction*

In rule document 90-28288 beginning on page 49613 in the issue of Friday, November 30, 1990, make the following correction:

On page 49614, in the first column, the **EFFECTIVE DATE** should read "November 30, 1990".

BILLING CODE 1505-01-D

## COMMODITY FUTURES TRADING COMMISION

**Chicago Board of Trade Proposed Option Contracts**

*Correction*

In notice document 90-27957 beginning on page 49560 in the issue of Thursday, November 29, 1990, in the third column, under **DATES**, in the second line, the date should read "December 31, 1990".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 3 and 52**

**[Federal Acquisition Circular 90-2]**

**RIN 9000-AD01**

**Federal Acquisition Regulation (FAR); Procurement Integrity**

*Correction*

In rule document 90-28113 beginning on page 49852 in the issue of Friday, November 30, 1990, make the following correction:

On page 49852, in the first colum, the **EFFECTIVE DATE** should read "November 30, 1990".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 178**

**[Docket No. 89F-0481]**

**Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers**

*Correction*

In rule document 90-28531 beginning on page 47054 in the issue of Friday, November 9, 1990, make the following corrections:

1. On page 47064, in the third column, in the first complete paragraph, in the first and second lines, the section reference should read "§ 171.1(h) (21 CFR 171.1(h))".

2. On the same page and column, in the second complete paragraph, in the third line, "section" should read "action".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Parts 312, 314, and 320**

**[Docket No. 89N-0367]**

**Retention of Bioavailability and Bioequivalence Testing Samples**

*Correction*

In rule document 90-26484 beginning on page 47034 in the issue of Thursday, November 8, 1990, make the following corrections:

1. On page 47034, in the first column, in the part heading " 414" should read " 314".

2. On page 47035, in the 2nd column, in the 14th line from the bottom, "51216" should read "51219".

**§ 320.32 [Corrected]**

3. On page 47038, in § 320.32(c), in the third line "identify" should read "identity".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 630**

**[Docket No. 85N-0053]**

**Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine**

*Correction*

In rule document 90-26996 beginning on page 47873 in the issue of Friday, November 16, 1990, make the following correction:

On page 47874, in the first column, in the eighth line from the bottom, the second "and" should read "through".

BILLING CODE 1505-01-D



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**Fish and Wildlife Service**

**50 CFR Part 33**

**RIN 1018-AA50**

**Refuge-Specific Fishing Regulations**

*Correction*

In proposed rule document 90-26703 beginning on page 47350 in the issue of Tuesday, November 13, 1990, make the following correction:

**§ 33.22 [Corrected]**

On page 47352, in the third column, in § 33.22(c), the second paragraph designated "(c)" should read "(1)".

BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[E-930-1-4212-13; MTM 76893]**

**Conveyance and Order Providing for Opening of Public Land in Beaverhead County; MT**

*Correction*

In notice document 90-25841 appearing on page 46106, in the issue of Thursday, November 1, 1990, make the following correction:

1. In the first column, under **Principal Meridian, Montana**, (the first time it appears) the first line should read "T.3S., R. 9W.,".

2. On the same page, in the 2nd column, in the 13th line, under item 5,"simultaneously" was misspelled..

BILLING CODE 1505-01-D

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[ID-030-00-4212-13, I-25846]**

**Realty Action; Private Exchange Involving Public Land in Jefferson County, ID**

*Correction*

In notice document 90-27537 beginning on page 48916 in the issue of Friday, November 23, 1990, make the following corrections:

1. On page 48916, in the third column, under "**Boise Meridian, Idaho**", the second line should read "Sec. 21, W½SW¼"

2. On page 48917, in the first column, under "**Boise Meridian, Idaho**", the fourth line should read, "Sec. 7, lots 7 & 8 (portions), SW¼NE¼".

BILLING CODE 1505-01-D

federal register

Wednesday
December 5, 1990

Part II

# Environmental Protection Agency

**40 CFR Parts 177, 178, 179 and 180**
**Procedures To Establish, Modify, or Revoke Food Additive Regulations; Final Rule**

VOL
55
ISS
234
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1990
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 177, 178, 179 and 180

[OPP-200061A; FRL 3868-4]

RIN 2070-AB78

# Procedures To Establish, Modify, or Revoke Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348. EPA also is issuing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is replacing the current procedural rules concerning objections and hearings under FFDCA section 408 with the procedural rules issued herein.

EFFECTIVE DATE: The rules are effective January 5, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. ((703) 557-7700).

SUPPLEMENTARY INFORMATION: EPA proposed issuance of these rules in the October 19, 1988 Federal Register (53 FR 41126). Discussed below are the comments received, the agency's response to the comments and some changes made in the rules at the initiative of EPA.

## I. Comments on Proposed Rule and Agency Responses to Comments.

The Agency received only three comments on the October 19 proposal. The commenters were the National Agricultural Chemicals Association (NACA), the Agricultural Division of Ciba-Geigy Corporation (Ciba-Geigy), and the National Food Processors Association (NFPA). No one requested an extension of the comment period. The substance of the comments, and the Agency's responses to the comments, are set forth in this unit.

### *A. Definition of Terms "Pesticide Chemical" and "Pesticide Residue"*

NACA and Ciba-Geigy commented on the proposed definitions of the terms "pesticide chemical" and "pesticide residue." In § 177.3, "pesticide chemical" is defined as any substance which is a pesticide under FIFRA including active and inert ingredients as well as impurities. A "pesticide residue" is defined as the residue of a pesticide chemical or any metabolite or degradation product of a pesticide chemical. These terms are central to the applicability of 40 CFR part 177 (and, by implication, of part 180). It was the Agency's intention in proposing those definitions to make it clear that any residue that is found to occur in any processed food as the result of the use at any time of any "pesticide" in the production, transportation, or storage of any raw agricultural commodity or processed food is to be regulated by EPA under FFDCA section 408 or 409 (or both, when appropriate), rather than by FDA under section 409.

NACA and Ciba-Geigy both argued that adoption of the proposed § 177.3 definition of the term "pesticide chemical," with its express statement that it included "inert ingredients" of pesticides (both deliberately-added inert ingredients and impurities), would go beyond the FFDCA section 201(q) definition of the term.

EPA disagrees with these comments. The statutory provision in question states:

> The term "pesticide chemical" means any substance which alone, in chemical combination[,] or in formulation with one or more other substances, is a "pesticide" within the meaning of (FIFRA) ***.

That definition uniformly has been read by EPA (and by FDA before EPA was formed) as including any substance which is an ingredient of any pesticide. It thus has been read as including not only active ingredients but also individual inert ingredients of pesticides. This is illustrated by the many hundreds of regulations issued under FFDCA section 408 establishing exemptions for deliberately-added inert ingredients (see 40 CFR 180.1001 *et seq.*), most of which were issued in response to petitions seeking such exemptions filed by pesticide registrants or applicants for registration. Some such regulations have expressly imposed limits on impurities (see, e.g., 40 CFR 180.1025(d), 180.1027, 180.1051, and 180.1056). Thus, stating that deliberately-added inert ingredients of pesticides, and impurities of pesticides, are subject to regulation under part 177 was intended simply to reflect existing policy with respect to the treatment of such substances.

The presence in a pesticide of an impurity of an active ingredient results from less than complete reaction of the manufacturing starting materials, from undesired side reactions of such materials, or from the carryover of undesired impurities present in such materials. Impurities typically are present in the pesticide at very low levels compared to the level of the active ingredient. It is not and has not been the policy of EPA under FFDCA sections 408 and 409 to require the establishment of a separate tolerance or exemption for substances that occur as impurities of pesticides, unless in a particular case the toxicity of the impurity and its potential level in a food warrants a separate tolerance. Rather, the tolerance ordinarily is written in terms of "residues of" a pesticide chemical. The impurities of the pesticide chemical, as well as the pesticide chemical itself, are treated as being "residues of" the pesticide chemical and thus covered by the tolerance, unless the tolerance otherwise states. The extent to which the Agency would require toxicity testing, residue method development, or residue analytical data with respect to an impurity would depend on the concern, if any, the Agency had about the potential risk of the impurity.

Ciba-Geigy and NACA also argued that the definition proposed for the term "pesticide residue" was overly broad. The definition proposed in § 177.3 stated:

> The term "pesticide residue" means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

Ciba-Geigy commented:

> This is a very broad definition and would include any form of a metabolite or degradate, even in the case where a complete breakdown of the chemical had taken place into naturally occurring products. In order for pesticide residues to have any relevance, their toxicological significance should be taken into consideration. What might be more appropriate to say is that a pesticide residue is a residue of a pesticide chemical or any of its metabolites or degradates that have toxicological significance.

NACA expressed a similar concern:

> Dramatically expanding by definition the universe of chemical substances potentially subject to the food additive regulations may result in otherwise wholesome food products being rendered "adulterated" not because of a health and safety finding, but simply because of a previously undetected trace amount that would be a "pesticide residue." As the techniques of analytical chemistry have advanced over the years, scientists have been able to detect ever smaller trace amounts of chemicals. EPA, FDA, and other agencies charged with the responsibility for protecting the health and safety of the public have attempted to apply a commonsense approach when called upon to address these chemical residues in the context of existing regulatory programs.



Accordingly, we believe EPA should continue to use the statutory definition of "pesticide chemical" found in the FFDCA, and should define "pesticide residue" as "a residue of a pesticide chemical." To the extent inerts, impurities, or metabolites need to be addressed, EPA should continue to do so on a case-by-case basis.

On close examination, the concern expressed by the commenters relates to the manner in which EPA will regulate metabolites and degradation products, rather than their legal categorization under the FFDCA. The commenters admit that EPA can regulate certain metabolites and impurities under the FFDCA. However, their proposed distinction between metabolites which are of toxicological significance and other metabolites has no statutory basis. In the end, therefore, the commenters are advocating that EPA implement its authority with an eye toward toxicological risk. EPA agrees with such an approach. As with impurities (discussed earlier in this section of the preamble), the extent to which toxicological testing and residue characterization and measurement is required for metabolites and other degradation products, and the need or lack of need for a separate tolerance for a particular metabolite or degradation product, is determined by EPA on a case-by-case basis taking into account the degree of potential risk. This will not change as a result of a clear statement in the regulation regarding the legal authority for any requirements that may be directed at such residues.

Moreover, failing to include impurities and metabolites within the definitions of pesticide chemical and pesticide residue would not result in excluding those substances from the coverage of the FFDCA since they still would fall under the definition of "food additive" and thus may be subject to regulation by the Food and Drug Administration (FDA). The Agency believes that any residue on food resulting from the use of a pesticide is best regulated by a single agency. The proposed definition was intended to memorialize the fact that EPA and FDA consistently have treated such residues as within the scope of EPA's responsibilities, and that EPA for many years has regarded questions about impurities, and about metabolites and other degradation products, as appropriate for resolution by EPA as an integral part of its consideration of tolerances and food additive regulations for pesticide chemicals. For all of these reasons, the Agency declines to make any changes in response to the comments.

While the definition of pesticide chemical includes impurities in pesticides, impurities are considered constituents of pesticide chemicals. When a substance is a constituent, it is subject to regulation by EPA under the constituents policy, discussed by EPA in the regulation of dicamba, 48 FR 50528, November 2, 1983, and the statement of Policy on the Regulation of Pesticides in Food, 53 FR 41104, October 19, 1988. These policies are based on the FDA policy statements in 47 FR 14136 (April 2, 1982) and 47 FR 14464 (April 2, 1982) and the decision in *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

EPA intends to revise the definition of pesticide chemical in 40 CFR part 180, to be consistent with this one at the time the substantive portion of part 180 is revised. As noted in the proposal for this rule, EPA plans to revise part 180 to set forth criteria, interpretations, and categorizations it will use in implementing sections 408 and 409.

### *B. Reference to the Statutory "Clock" or Schedule for Action*

NFPA, NACA, and Ciba-Geigy all argued that the regulation should contain a reference to the provision in FFDCA section 409 that directs the Administrator to act on a petition within 90 days (extendable to 180 days) after it is filed. One of the commenters urged retention of the "statutory clock" provisions of the present rule. Two of the commenters acknowledged that action within the statutory time period may not be feasible. For instance, Ciba-Geigy stated:

> In reality the Agency may find it difficult to complete its review in the given timeframe because of a lack of resources, etc.

Likewise, NFPA said that it:

> Recognizes that EPA has a difficult and time consuming task in reviewing pesticide tolerances and food additive petitions, and that full review of certain petitions may take longer than 180 days[.]

However, all three commenters argued that the regulation should include a reference to the provision. NFPA said:

> Even if a 180 day review period is unrealistic under some circumstances, it is a worthy goal for which the Agency should strive.

NACA said that:

> While EPA may want a different statutory provision or think that the law is unworkable, the statute is clear. Congress expects EPA to act on petitions quickly and the public has a statutory right to quick and responsible action. Accordingly, the rule should include the "statutory clock" and a reasonable approach to the deadline's demand on EPA's resources.

and Ciba-Geigy argued that:

> This provision in the law should not be ignored. If the Agency cannot meet its assigned responsibilities, then either the law must be changed to reflect another timeframe or a more effective way to handle petition requests must be devised***. Part 177 should address the statutory timeframe and the Agency's proposed method of dealing with petitions not reviewed within the 180 days.

EPA does not believe it is necessary to refer to the statutory time frames in the regulations. The time frames are statutory and repeating the timeframes in the regulation would not add to the obligation to abide by them. The Agency endeavors to meet the statutory time frames and will continue to use its best efforts to do so. EPA still believes, though, that in most cases it is unrealistic to expect that the Agency will be able to complete review of, and reach decision on, the merits of a petition under FFDCA section 409(b) in 90 or 180 days from the date of the initial submission. EPA considered retaining the intricate array of provisions similar to those in 40 CFR 180.4, 180.7(c), (d), (e), (f), and (g), 180.8, 180.9, 180.10(b), and 180.12(e) that would specify when the "clock" is started and when it may be restarted, for purposes of determining compliance with the 90-day action directive. However, EPA has concluded that this would be counterproductive. Resources spent on preparing and mailing letters to petitioners stating reasons why the clock has been reset reduce the time available for work on the petitions.

Virtually all failures to meet the statutory time frames are attributable to (1) inadequacies in the petition or the supporting data and information, (2) complexities of the issues presented by the petition, (3) competition for resources needed to review the petition presented by other pending petitions under section 408 and 409 and considerations of fairness in allocating available resources to their review, or (4) some combination of the first three factors. Thus, the question usually will not be whether EPA could make a timely response on the merits to a complete petition if EPA could devote its resources to that action alone. Rather the questions ordinarily will be whether the petition is adequately supported; whether the answer to the petition is obvious or difficult to perceive, and whether in fairness, other, earlier-filed petitions ought to be dealt with first.

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Including references to the "clock" would not help EPA deal with these matters.

Moreover, the statutory timeframes were enacted in the mid-1960's when the amount of data needed to support a petition was considerably less. Today, there is a need for data to address pesticide food safety issues not even contemplated at the time of enactment of this provision. The responsibility to review the data adequately takes more time than that originally envisioned.

However, as Ciba-Geigy requested, EPA has added to the regulation a description of how it will deal with petitions not reviewed within the statutory period. The final rule provides in 40 CFR 177.90 that a petitioner may demand action on a petition if EPA has not acted on it within the statutory time period. As noted in the preamble to the proposed rule, the likely response to such a demand would be a denial of the petition on the ground that EPA has been unable to conclude that the criteria of the statute have been met. Such a denial could be made the subject of objections filed under part 178 and eventually of a petition for judicial review. These steps will not, however, lead to approval of the petition if the petition is not adequately supported.

*C. Coordination of Data Requirements for Petitions Under FFDCA Sections 408 and 409*

Ciba-Geigy stated that EPA should attempt to integrate its data requirements under 40 CFR parts 177 and 180 to avoid the possibility that petitioners would have to present slightly different information in order to deal with closely similar issues under the two parts. EPA agrees that the data requirements should be coordinated, and that submissions made under one part may be cited, rather than furnished again, in submissions made under the other part. As noted in the preamble to the proposed rule, the integration of the two sets of rules is being undertaken by the Agency as a second stage of this rulemaking project.

*D. Requirement for Petition to Include Likely Opposing Arguments*

NACA commented that the proposed § 177.102 requirement that a petition for the establishment of a regulation include "any information or argument reasonably likely to be advanced in opposition to approval of the petition" would unfairly compel a petitioner to attempt to frame the arguments of those who might oppose a petition. According to the comment "[s]o long as the data and petitions are complete," it is up to EPA and others to assess whether there is opposing information and argument.

After consideration of the matter, EPA agrees with the comment that the regulation should be directed at ensuring adequate disclosure of the information needed to rule on a petition and not at requiring a petitioner to formulate arguments that an opponent might make. The intent of the proposal was to require a petitioner to provide a balanced discussion of the merits of the petition including well-known arguments that would militate against approval. A discussion of these arguments, and the petitioner's response to them, can make the presentation in the petition more effective. The Administrator urges petitioners to include such a discussion, but does not regard it as essential. The regulation has been revised to delete the reference to an opponent's arguments.

EPA has also revised the final rule to identify better the information that a petitioner should disclose in the petition. The proposal would have required a petitioner to state why a petition is appropriate in light of information that an opponent might have. Instead of having a petitioner anticipate what information an opponent might have, the petitioner should disclose any information, in addition to that specifically listed in the regulation, that is known to the petitioner and relevant to the issues raised by the petition, even if it is unfavorable to the petition. Although the disclosure of unfavorable information may be required by the existing requirement that the petitioner submit full reports of investigations on toxicity, this addition will clarify the scope of the information that should be provided. A similar requirement also exists under the procedural regulations of FDA governing citizen petitions in 21 CFR 10.3.

*E. Submitters' Rights in Data (Confidentiality and Compensation)*

NACA pointed out that the proposed rule did not specify what connection there is between submission of data under part 177 and the protection afforded to that data under FIFRA section 3(c)(1)(D) (which concerns citation by registration applicants of previously-submitted data and the compensation rights of original data submitters) or FIFRA section 10 (which concerns the extent that data submitted under FIFRA may be disclosed to the public).

It is usually (but not always) the case that data submitted in support of a part 177 petition also are submitted in support of the issuance, amendment, or maintenance of a FIFRA registration; to the extent that such data are so submitted under FIFRA, the fact that the data also are submitted under FFDCA section 409 (or section 408, for that matter) will not alter any rights of the submitter under FIFRA. Accordingly, information and data submitted both under part 177 and FIFRA will be confidential to the extent provided in FIFRA section 10. In addition, the use of that data for registration purposes under FIFRA will be governed by FIFRA section 3. For example, data submitted simultaneously to support both a registration application and a petition for a section 409 tolerance would be available for disclosure to the public, subject to claims of confidentiality under FIFRA section 10(d)(1)(A), (B), and (C), once the pesticide is registered under FIFRA. The provisions of FIFRA section 10(g) would apply to disclosure of the data, and the use of that data for registration purposes under FIFRA would be governed by FIFRA section 3.

However, some data may be submitted to EPA under part 177 which is not also submitted under FIFRA. This would be likely to occur when a petition is submitted by a person who is not a registrant or applicant for registration under FIFRA, particularly in situations where the tolerance would be for a pesticide residue on imported food only (i.e. the pesticide is not registered for use on that food in the U.S.). In those situations FIFRA sections 3 and 10 would not apply to the data. FFDCA does not provide for data compensation for use of data under FFDCA. In addition, section 409 does not provide any special provisions for the confidentiality of data and information submitted under section 408. Accordingly, for information submitted only under part 177 EPA's general rules on confidentiality of information in 40 CFR part 2 and FFDCA section 301(j) would apply.

In the final rule EPA has added § 177.81(f) which, in accordance with 40 CFR part 2, allows petitioners to assert confidentiality claims for data and information submitted in petitions, amendments to petitions, and supplements to petitions. It prescribes the manner for asserting confidentiality claims. It also makes clear that failure to assert a confidentiality claim for data or information in a petition, amendment, or supplement at the time of submission means that EPA can make the data or information available to the public without further notice to the petitioner.

*F. Service of Orders on Petitioner*

Ciba-Geigy commented that an order denying a petition or establishing a food additive regulation in response to a petition should be served on the petitioner, as well as being published in the Federal Register, before the 30-day period for filing objections begins to run. EPA declines to accept this suggestion. The proposed approach could not change the statutory provision that the time for filing objections runs from the date of the Federal Register publication; EPA regards this as a jurisdictional provision. From a logistical standpoint, the commenter's approach could be adopted without running afoul of the statutory 30-day objection period by furnishing a copy to the petitioner [and ensuring that it was received] before Federal Register publication occurred. However, this would require additional use of Agency resources. Moreover, adopting the suggestion could lead to a perception that EPA favored petitioners over others who might also be interested in filing objections to the Agency action. Finally, EPA is not aware of any problems resulting from the current practice under sections 408 and 409, which does not include the required furnishing of such an order.

*G. Persons Who are "Adversely Affected" by EPA Orders Issued Under Part 177 or Part 180*

NACA argued that it was improper to state, as proposed § 178.20 did, that "any person" could object to a tolerance or food additive regulation (or to the denial of a petition for a food additive) and request a hearing on an objection. NACA correctly noted that FFDCA sections 408 and 409 limit the right to a hearing to persons who are "adversely affected."

EPA has modified § 178.33 to reflect the statutory language in the FFDCA. EPA disagrees with the comment to the extent that it suggests that only certain narrow categories of persons may be "adversely affected." In EPA's view the term is broad. For example, an applicant for a pesticide registration, or an organization of agricultural producers, might be adversely affected either because it claimed that a tolerance was set too low to legalize the residue levels that would result from use of a pesticide, or because it argued that the tolerance was being set at a level that is higher than necessary and would cause public concern. A consumer organization might be adversely affected because it claimed that a tolerance was being set too high to protect its members' health, or at a level that was higher than necessary to allow effective use of a pesticide.

*H. "Parties" versus "Participants" in Hearings*

NACA also commented that EPA should distinguish, as does FDA in its procedural rules, between "parties" who have a right to cross-examine witnesses and "participants" who may cross-examine witnesses only if allowed to do so by an administrative law judge on a showing of good cause. NACA argued that intervenors should not be viewed as having the same legal rights as "adversely affected" parties.

The comment is correct that FDA does distinguish between the right of parties and of "nonparty participants" for purposes of cross-examination and certain other matters under 21 CFR 12.89. EPA is not persuaded by the comment to accept this approach. As noted in the preamble to the proposed rule EPA has not experienced difficulties with cross-examination by intervenors of the sort that FDA had found problematic at the time the FDA rules were proposed.

The question of what rights are afforded to those who participate in a hearing once a hearing has been granted is a separate question from whether a hearing is available by right on a certain matter. The party who requests a hearing and obtains one by right will have a key role in shaping the issues for the hearing. In that sense the rights of the party who requests a hearing are different from those of others who participate.

*I. Discovery and Submission of Data in Hearings*

NACA commented that there was an unexplainable difference in the treatment afforded EPA and other parties under proposed § 178.83 with respect to the routine, required production of files related to issues in a hearing. NACA noted that under the proposal EPA would be permitted to exclude internal memoranda reflecting the deliberative process, attorney work product, and documents prepared for use in connection with the hearing, but that no similar exclusion right was provided for other parties. EPA agrees with the comment. The final rule is being modified to provide the same rights for non-EPA parties with respect to attorney work product documents and documents prepared for use in connection with the hearing. On the other hand, deliberative process material relates to a specific exception to the Freedom of Information Act, 5 U.S.C. 552, and that exception is not pertinent to parties other than the Agency.

Ciba-Geigy was the only commenter on the general subject of the scope of discovery and sanctions for failure to comply with discovery requirements, saying simply that it agreed with the rule as proposed and that it set forth provisions that are "adequate and standard regarding this type of proceeding." However, Ciba-Geigy argued that inadvertent failure to comply with disclosure should not be the basis for exclusion of a party from a hearing, although it acknowledged that if a party was found to have willfully withheld information, it would be proper to make inferences about the information adverse to the party's position. In response, EPA notes that an inadvertent failure to comply with a disclosure requirement, corrected upon discovery of the failure, would not form the basis for sanctions of any sort against a party; the rule, in both its proposed and final form, allows only "adverse inferences and findings" as a remedy for a party's failure to comply "substantially and in good faith" with the requirement. A good faith, inadvertent failure to comply thus would not furnish a basis for excluding a party from a proceeding. No commenter urged that exclusion be adopted as an additional remedy, and the Agency has decided not to adopt that remedy.

*J. Form of Direct Testimony: Written versus Oral*

Ciba-Geigy argued that the regulation should permit a party to present direct testimony either in written form or orally, and should not (as was proposed) limit the presentation of oral direct testimony to cases in which the memory or demeanor of the witness is of importance. However, the commenter furnished no reasons to support this argument. EPA has determined not to make any changes.

**II. Changes made at EPA'S Initiative**

In reviewing the proposed regulation, EPA has decided to make certain changes on its own initiative. Several changes reflect the benefit of further experience since the time of the proposal with a proceeding subject to formal hearings under FIFRA. The changes and reasons for them are discussed below.

The definition of the term "pesticide chemical" was amended to clarify that the term "pesticide residue", which is defined as a residue of a pesticide chemical, covers both residues from pesticides used in the production, storage, and transportation of raw agricultural commodities and residues from pesticides used in the production,

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storage, and transportation of processed foods. The definition of the term "tolerance" has been amended to apply to the amount of pesticide residues allowed on raw agricultural commodities as well as processed foods. As proposed, the definition only applied to processed foods. However, review of part 177 revealed that the term tolerance was used in connection both with food additive regulations for processed food and tolerances for raw agricultural commodities. Amending this definition required no changes in the text of the rule, but two headings (§§ 177.102 and 177.105) have been revised to reflect the meaning of the text of those sections.

Section 177.35 has been amended to clarify that for food additive regulations, the Administrator may establish an effective date on other than the "date of publication." A similar change has been made in § 180.7(g) and § 180.29(g).

Section 178.30(d) concerns the Administrator's rulings on hearing requests for related objections. This section has been amended to provide that the Administrator may rule on the objections at a different time than that ordinarily contemplated under the rule if unusual circumstances provide good cause for acting differently. Paragraph (d) has also been amended to clarify that when related objections are grouped for purposes of a hearing, the granting of the hearing request on a related objection means that all of the related objections will be resolved in conjunction with the hearing, rather than there being a deferral until the end of the hearing of any ruling on these other objections. Judicial review is appropriately delayed until the end of the hearing on any of these related matters for which a hearing has been granted. FDA has taken a similar position under its procedural rules (See 40 FR 40701, 1975).

Section 178.32 relates to rulings on requests for hearings. A change similar to that discussed above has been made in paragraph (a) of the rule to give the Administrator flexibility in the timing of rulings on requests for hearings. Although the Administrator continues to expect to rule on these requests at one time, there may be unforseen circumstances that provide good cause for acting differently. As revised, paragraph (b)(2) refers to uncontested "claims or facts" rather than uncontested "evidence" since the determination is made before a hearing and the introduction of any evidence. Paragraph (b)(4) has been amended to delete the reference to "preliminary" in connection with rulings. This change is intended to eliminate any confusion about the scope of the rulings that can be made when necessary to decide on requests for hearings.

Paragraph (b)(4) has also been redesignated as paragraph (c) because paragraph (b) is a list of findings necessary to the granting of an evidentiary hearing.

Section 178.35 has been revised to provide that opportunity for objections and requests for hearings will be provided on modified or revoked regulations to the extent required by law. Section 178.70 identifies the administrative record for judicial review. Editorial changes have been made in paragraph (a)(4)(i) and (a)(5) to refer consistently to regulations without describing them as "final regulations". Another change has been made in paragraph (a)(6) to refer specifically to the Administrator's response to comments and data relied on by the Administrator, since this material is appropriately included in the record when the Administrator invites comments on a Notice of Filing or proposes a rule for comment. Corresponding changes have been made in § 179.130 which identifies the administrative record for review after a hearing.

- Section 179.20 has been revised to indicate that the place for a hearing will be designated in the Notice of Hearing. A conforming amendment has been made to § 179.70(a).

A change has been made in § 179.24(c)(2) to provide that cross-examination will be available, if an ex parte communication has occurred, to the extent necessary to determine the substance of the communication rather than "when possible." This change provides a standard to guide the availability of cross-examination for ex parte communications.

A change has been made in § 179.70 to refer to the Administrative Procedure Act rather than the ABA Canons of Judicial Ethics for general guidance in conducting these administrative proceedings.

Section 179.70, paragraph (b), has been revised to clarify the meaning of the presiding officer's role in establishing "procedures for use in developing evidentiary facts". The presiding officer is to establish an orderly manner for developing evidentiary facts at preliminary conferences and for making evidentiary rulings. Paragraph (m) which relates to the presiding officer's authority to modify these rules has been deleted as inconsistent with existing Agency rules for administrative hearings. Paragraph (o) has been changed to permit the presiding officer to take other action when it is not in conflict with law or these rules.

Section 179.80(a) has been revised to provide for the filing of copies in triplicate with the hearing clerk, the usual EPA requirement.

A change has also been made in § 179.80(e) to make it clear that a copy of the motion should be served upon other parties when a motion for an extension is made.

Section 179.81 has been revised to provide that the agency will make confidentiality determinations in accordance with part 2. The presiding officer will make certain determinations relating to the use of confidential documents only to the extent provided in § 2.301(g)(3) and (4).

Section 179.83 has been revised to clarify that the determination of what is a "principal file" for purposes of the disclosure of documents should be made with respect to each of the issues relevant in a hearing. Thus, if one of the issues at a hearing concerns a matter for which documents are ordinarily filed in a separate divisional file rather than in an organization's main files, the separate divisional file is the principal file with respect to the particular issue and the relevant documents in that file are to be disclosed. This change reflects the meaning of "principal files" indicated in the preamble, that the term is not an arbitrary location limitation and that a good faith effort is required to locate and produce relevant information without an unduly burdensome search for information of marginal relevance.

Section 179.90 has been changed to allow a party to submit a brief with a motion for summary judgment, or in response to such a motion.

An editorial change has been made in § 179.91 to refer to the burden of persuasion "on that issue" rather than "as to those contentions."

Section 179.93 has been modified to state that the presiding officer is to limit all oral testimony, including direct as well as cross, that is immaterial as well as irrelevant or unduly repetitious. This section has been revised to limit only unduly repetitious testimony, the test suggested in the Administrative Procedure Act (APA), 5 U.S.C. 556. A similar change has been made in § 179.95.

Section 179.95, which deals with admission or exclusion of evidence has been revised to delete the provision that, in making rulings, the presiding officer shall be guided by the principles of the Federal Rules of Evidence (FRE). The FRE governs courtroom trials where juries are present. The Administrator believes the reference to the FRE is confusing as to its effect and undesirable in suggesting courtroom procedures as a model for administrative hearings. A more useful guide in making evidentiary rulings for administrative hearings is the APA. That law does not make the FRE applicable in agency hearings and allows any evidence to be received, but the agencies as a matter of policy are to provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence (5 U.S.C. 556). These rules provide for exclusion of such evidence. In particular, the Agency believes it is inappropriate to exclude evidence merely because it is hearsay. In a recent administrative hearing under FIFRA, the Chief Judicial Officer found that the general admissibility of hearsay evidence is more consistent with the agency's present rules for cancellation proceedings. (In re Protexall Products, Inc., FIFRA Docket Nos. 625, at pages 61–62, note 78). Under this approach, issues relating to the reliability of evidence, such as its hearsay quality, go to the weight to be given to the evidence. The Administrator believes that the standard used in the APA and under the existing cancellation regulations is more appropriate and less confusing than that suggested in the proposal and has accordingly deleted the reference to guidance by the principles of the FRE from the final rule. The section has also been amended to clarify that evidence may be excluded to enforce other requirements in part 179 when those specific requirements relate to the admissibility of evidence, such as § 179.83(c).

Section 179.105 has been changed with respect to the support needed for findings of fact to incorporate the standard in the APA, 5 U.S.C. 556, which refers to reliable, probative and substantial evidence. In addition, the section as revised calls upon the presiding officer to have citations to the record which are adequate. This change is to make clear that the citations should be to the important places in the record providing the relevant support in light of the whole record. There is no need for the presiding officer to provide an exhaustive inventory of all places in the record dealing with the matter.

Section 180.7 has been revised editorially to describe better the procedure when a proposed regulation has been published for comment.

Sections 180.29 and 180.32 have been amended to indicate that the Administrator may provide additional procedures, in his discretion, when reviewing requests from interested persons to propose or revise rules. These procedures can include publishing a Federal Register notice inviting views on the petition, or other procedures. When the Administrator provides additional procedures, the decision on the petition is not final until the procedures are complete and a decision is reached on whether to deny the request. The section as revised also specifies the administrative record for rulings on requests.

Section 180.30 has been revised to refer to § 180.32 as well as § 180.29 since both sections deal with requests that the Agency propose rules.

## III. Basis for Adoption of Final Rules

The final rules promulgated by this document are, except insofar as discussed in this document, based on the reasons set forth in the preamble to the proposed rule and the documents cited in that preamble. The reasons for the changes from the proposed rule are explained in the preceding section. These changes to the proposal are minor or are of a procedural character and in most cases, are simply clarifications of the intent of the proposed rule. Some changes were in response to comments. Some reflect a reconsideration of proposed procedural limits in light of further experience. EPA has determined that such changes to a procedural rule do not warrant or require reproposal. Although EPA sought public comment when it first proposed these procedural rules, public comment was not required by the Administrative Procedures Act or the FFDCA. EPA does not believe that public comment is required on these minor changes to the final rule either. Moreover, if the regulations were to be adopted as proposed, while the changes made in this document were reproposed, the result would be confusing, since many of the changes represent clarifications of the meaning of the proposal. The implementation of the regulations would also be fragmented. Therefore, EPA finds it is appropriate to make the rules final at this time.

## IV. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, must submit a Regulatory Impact Analysis supporting its findings to the Office of Management and Budget (OMB) for review. EPA has determined that this rule is not "major" as defined by E.O. 12291.

As described earlier in this preamble, this rule is largely procedural in nature and draws heavily from other procedural regulations in closely related areas that members of the regulated community can be expected to be familiar with. By providing procedures in areas where none now exist, this final rule will lessen the likelihood of costs to the regulated community caused by uncertainty and the potential for delays in handling petitions and objections.

To the extent that the rule contains substantive provisions, they largely repeat statutory requirements or codify requirements that have been in effect for many years. The one exception is the requirement that a petitioner under section 408 state why the petition should be approved and submit a releasable summary of the petition. A summary of the petition will open the petition process to the public by increasing their understanding of the issues involved and providing the public an opportunity to comment on these issues.

This final rule has been reviewed by OMB under section 3 of Executive Order 12291.

### *B. Regulatory Flexibility Act*

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated have a significant impact on a substantial number of small entities and therefore, does not require a regulatory flexibility analysis.

This rule has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act, and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this rule is intended to formalize procedures and criteria specified in the statute itself, it is anticipated that little or no economic impact will occur on any small entity.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

### *C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0024.

Public reporting burden for this collection of information is estimated to average 1522.8 hours per response, (reduce the burden on respondents by 11,055 hours, or approximately 15 hours per response,) including time for reviewing instructions, searching







(1) The particular food or classes of

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existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**List of Subjects in 40 CFR Parts 177, 178, 179, and 180**

Administrative practice and procedure, Agricultural commodities, Processed foods, Pesticides and pests, Hearings, Reporting and recordkeeping requirements.

Dated: November 26, 1990.

William K. Reilly,

*Administrator.*

For the reasons stated in the preamble, chapter I of title 40, Code of Federal Regulations, is amended as follows:

1. By adding a new part 177, to read as follows:

## PART 177—ISSUANCE OF FOOD ADDITIVE REGULATIONS

**Subpart A—General Provisions**

Sec.

177.1 Scope and applicability.
177.3 Definitions.

**Subparts B—D [Reserved]**

**Subpart E—Procedures for Filing Petitions**

177.81 Petition for establishment, modification, or revocation of a food additive regulation.
177.84 Deficient or incomplete petitions.
177.86 Acceptance for review.
177.88 Publication of notice.
177.92 Amendments or supplements to petitions.
177.96 Withdrawal of petitions.
177.99 Demand for action.

**Subpart F—Submission of Scientific and Technical Information**

177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.
177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.
177.110 Additional data requirements; waiver of requirements.
177.116 Sample of food additive.

**Subpart G—Administrative Actions**

177.125 Action after review.
177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.
177.135 Effective date of regulation.

**Subpart H—Judicial Review**

177.140 Judicial review.

**Authority:** 21 U.S.C. 348, 371(a) 331(j); Reorg. Plan No. 3 of 1970.

**Subpart A—General Provisions**

**§ 177.1 Scope and applicability.**

(a) This part establishes procedures for the establishment, modification, or revocation by the Administrator of food additive regulations under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, for food additives which may result in pesticide residues in or on processed food or otherwise affect the characteristics of such food.

(b) Part 178 of this chapter contains procedures for filing objections and requests for hearings under FFDCA section 409(f) on food additive regulations or petition denials issued under this part. Part 179 of this chapter contains rules governing formal evidentiary hearings under FFDCA section 409(f).

(c) Part 180 of this chapter contains regulations establishing tolerances, or exemptions from the necessity for a tolerance, for pesticide residues on raw agricultural commodities under FFDCA section 408. If the use of a pesticide chemical in the production, storage, or transportation of a raw agricultural commodity (RAC) in conformity with such a tolerance or exemption results in the presence of a pesticide residue in or on processed food made from the RAC, FFDCA section 402(a)(2)(C) provides that such pesticide residue shall not be deemed unsafe for the purposes of FFDCA section 409 (despite the absence of a food additive regulation regarding such residue on the processed food) if the residue in or on the RAC has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the RAC. However, a food additive regulation would be required if the level of the pesticide residue in the processed food when ready to eat exceeded the level permitted in the "parent" RAC by the tolerance established under FFDCA section 408. In addition, if a pesticide residue in or on a processed food results from the application of a pesticide during or after processing, the food would be unsafe within the meaning of FFDCA section 409 unless a food additive regulation permitted that residue in or on the processed food.

**§ 177.3 Definitions.**

For the purposes of this part:

*Administrator* means the Administrator of the Agency, or an officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

*Agency* means the United States Environmental Protection Agency.

*FFDCA* means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301-392.

*FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

*Food additive* means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food (including any such substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), except that such term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity.

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(3) A color additive.

(4) Any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to the FFDCA, the Poultry Products Inspection Act, or the Federal Meat Inspection Act.

(5) A new animal drug.

(6) A substance that is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

*Food additive regulation* means a regulation issued pursuant to FFDCA section 409 that states the conditions under which a food additive may be safely used. A food additive regulation under this part ordinarily establishes a tolerance for pesticide residues in or on a particular processed food or a group of such foods. It may also specify:



(1) The particular food or classes of food in or on which a food additive may be used.

(2) The maximum quantity of the food additive which may be used in or on such food.

(3 The manner in which the food additive may be added to or used in or on such food.

(4) Directions or other labeling or packaging requirements for the food additive.

*Pesticide chemical* means any substance which alone, or in chemical combination with or in formulation with one or more other substances, is a "pesticide" within the meaning of FIFRA and which is used in the production, storage, or transportation of any raw agricultural commodity or processed food. The term includes any substance that is an active ingredient, intentionally-added inert ingredient, or impurity of such a "pesticide."

*Pesticide residue* means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

*Tolerance* means:

(1) The amount of a pesticide residue that legally may be present in or on a raw agricultural commodity under the terms of a tolerance under FFDCA section 408 or a processed food under the terms of a food additive regulation under FFDCA section 409. Tolerances are usually expressed in terms of parts of the pesticide residue per million parts of the food (ppm), by weight.

(2) [Reserved]

**Subparts B—D [Reserved]**

**Subpart E—Procedures for Filing Petitions**

**§ 177.81 Petition for establishment, modification, or revocation of a food additive regulation.**

(a) *Who may submit a petition.* Any person may submit a petition requesting the Agency to issue a regulation to establish, modify, or revoke a food additive regulation.

(b) *Where to submit petition.* A petition shall be submitted to: Office of Pesticide Programs (H7504C), Document Processing Desk - PETN, U. S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(c) *Identification of petitioner.* A petition must be signed by the petitioner or the petitioner's authorized representative, and must state the petitioner's mailing address and telephone number.

(d) *Material to be in English language.* The petition shall be written in the English language. If any part of the accompanying material is written in a language other than English, it shall be accompanied by an accurate and complete English translation.

(e) *Format for data submission.* Data and information submitted in support of a petition shall be on separate sheets or sets of sheets of paper, suitably identified. If an item of data has already been submitted to the Agency, the petitioner may cite it rather than resubmitting it. The data shall be submitted in the manner specified by § 158.32 of this chapter.

(f) *Confidentiality of data and information in petition, amendment, or supplement*—(1) *Asserting confidentiality claims.* A petitioner may assert a claim that data and information in a petition, or any amendment or supplement to a petition, other than the summary described in § 177.102(j), are entitled to confidential treatment under part 2 of this chapter. To assert such a claim, the petitioner must mark those portions of the petition, amendment, or supplement, and those portions of any data and information submitted in support of the petition, amendment, or supplement, with the words "trade secret," "proprietary," or other words that indicate the data or information are claimed to be confidential business information. If the data and information have also been submitted to EPA under FIFRA, the person shall assert the confidentiality claim in accordance with § 158.33 of this chapter.

(2) *Effect of asserting confidentiality claim.* If a petitioner asserts a confidentiality claim in accordance with this paragraph for any data or information in a petition, amendment, or supplement, the Agency will disclose that data or information only in accordance with parts 2, 158, 178, and 179, of this chapter, and FIFRA and FFDCA, as applicable.

(3) *Failure to assert confidentiality claim.* If a petitioner does not assert a claim that specific data and information in a petition, or any amendment or supplement to a petition, are entitled to confidential treatment under part 2 of this chapter in accordance with paragraph (e)(1) of this section at the time of submission of the petition, amendment, or supplement, the Agency will treat that data and information as available for disclosure to the public without further notice to the petitioner.

**§ 177.84 Deficient or incomplete petitions.**

(a) After a preliminary review of the petition, the Administrator may notify the petitioner that the Agency has found the petition to be incomplete or deficient, i.e., that it does not comply with the requirements of §§ 177.102 or 177.105, and that it will not be accepted for detailed review.

(b) A petitioner who receives a notice under paragraph (a) of this section may supplement the petition, in which case the Agency shall conduct a further preliminary review of the petition as supplemented and take action under paragraph (a) of this section or under § 177.86.

**§ 177.86 Acceptance for review.**

Unless the Administrator notifies the petitioner under § 177.84 that the petition is incomplete or deficient, the Administrator shall accept the petition for detailed review.

**§ 177.88 Publication of notice.**

Within 30 days of acceptance of a petition for detailed review, the Administrator shall publish in the **Federal Register** a notice which includes the name of the petitioner and the summary submitted in accordance with § 177.102(j).

**§ 177.92 Amendments or supplements to petitions.**

After a notice of a petition has been published, the petitioner may submit additional information or data in support of the petition, or may amend the petition. Any such submission or amendment shall be accompanied by an informative summary of its contents that may be published in the **Federal Register**. The Administrator shall publish a notice in the **Federal Register** to supplement the notice published under § 177.88 if:

(a) The petitioner seeks to amend the petition by:

(1) Increasing a requested tolerance, by identifying any additional food additive or additional pesticide residues to which the requested food additive regulation would apply.

(2) Identifying any additional processed food to which the requested food additive regulation would apply.

(3) Changing the method for detecting or measuring pesticide residues to be used for enforcement purposes.

(b) The Administrator finds that publication of such a notice otherwise would be in the public interest.

**§ 177.96 Withdrawal of petitions.**

A petitioner may withdraw a petition. The Agency may retain a copy of a withdrawn petition and any supporting data and information.

**§ 177.99 Demand for action.**

A petitioner may demand action on a petition if the Administrator has not acted on the petition within the timeframes in FFDCA section 409(c)(2).



Upon receipt of such a demand, the



effective date of the regulation if an Administrator delegates the authority to

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Upon receipt of such a demand, the Administrator shall take appropriate action under FFDCA section 409(c)(1).

### Subpart F—Submissions of Scientific and Technical Information

**§ 177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.**

A petition to establish a food additive regulation, or to modify a food additive regulation by increasing a tolerance for a pesticide residue in or on a processed food or by removing any other condition of use of a food additive, shall include the following data and information:

(a)(1) The name and composition of the food additive that is a subject of the petition, and the chemical composition of each component of the food additive.

(2) The name, chemical identity, and composition of each pesticide residue that is a subject of the petition.

(3) The identity of the processed food(s) in question.

(b) A statement of any conditions of use proposed for the food additive, including all directions, recommendations, and suggestions proposed regarding the use of the food additive, i.e., the amount, frequency, method, and time of application or other use, and a copy of its proposed labeling.

(c) Full reports of investigations made with respect to the toxicity of the food additive and of its safety for the proposed use, including full information as to the methods and controls used in conducting such investigations.

(d) The results of tests to determine the identity and amount of pesticide residues in or on the processed food resulting from the proposed use of the food additive, including a description of the analytical methods used, and a description of practicable methods for measuring such pesticide residues.

(e) Full reports of investigations made with respect to the toxicity of such pesticide residues, including full information as to the methods and controls used in conducting such investigations.

(f) All relevant data bearing on the physical or other technical effects such food additive is intended to produce, and the quantity of such food additive required to produce such effect.

(g) The terms of each food additive regulation proposed.

(h) Any other information relevant to the approval of the petition known to the petitioner that is unfavorable to the petition.

(i) A statement of why, in the petitioner's opinion, it would be reasonable for the Administrator to approve the petition, taking into account the terms of the FFDCA and FIFRA, this part, the petition, the data and information submitted or cited in support of the petition, and other information available to the Agency.

(j) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, and a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice to be furnished to the public under § 177.88 or as part of a proposal under § 177.130. The summary need not refer to any method or process that is entitled to protection as a trade secret under FFDCA section 301(j).

(Approved by the Office of Management and Budget under the control number 2070-0024)

**§ 177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.**

A petition to revoke a food additive regulation, or to modify such a regulation by decreasing a tolerance for a pesticide residue in or on a processed food or by adding a condition on the use of a food additive, shall include:

(a) The data and information required by § 177.102(a), (b), (g), (h), and (i).

(b) Such data and information of the types described in § 177.102(c), (d), (e), and (f) as the petitioner chooses to submit.

(c) Information showing what changes, if any, petitioner believes would have to be made in associated registrations of pesticides under FIFRA or in associated tolerance regulations issued under FFDCA section 408 if the petition were granted.

(Approved by the Office of Management and Budget under the control number 2070-0024)

**§ 177.110 Additional data requirements; waiver of requirements.**

(a) The Administrator may require or occasion a petitioner to submit data or information other than that described by this part only if the Administrator finds such data or information to be necessary for the evaluation of the petition.

(b) The Administrator may waive a requirement imposed by this part for the submission of data or information if the Administrator finds such data or information to be unnecessary for the evaluation of the petition.

(Approved by the Office of Management and Budget under the Control Number 2070-0024)

**§ 177.115 Sample of food additive.**

The Agency may require the petitioner to submit a sample of the food additive or pesticide residue that is a subject of the petition. The Agency shall specify in such request the quantity which it requires.

(Approved by the Office of Management and Budget under the control number 2070-0024)

### Subpart G—Administrative Actions

**§ 177.125 Action after review.**

(a) After a petition has been accepted for detailed review, the Administrator shall review the petition, the accompanying data and information, and other pertinent data or information available to the Administrator.

(b) Upon completion of such review, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a food additive regulation (whether or not in accord with the action proposed by the petitioner), whether to issue an order denying the petition, or whether to publish a proposed food additive regulation and request public comment thereon under § 177.130.

(c) The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter.

**§ 177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.**

(a) The Administrator may publish in the **Federal Register** a proposal to establish a food additive regulation or to modify or revoke an existing food additive regulation, on his or her own initiative or in response to a petition.

(b) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(c) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a food additive regulation, or may by order decide that no final action on the proposal is warranted. Each such order and each such regulation shall be published in the **Federal Register**. An order published under this section shall state that objections and requests for a hearing may be filed as prescribed by part 178 of this chapter.

**§ 177.135 Effective date of regulation.**

Any final regulation issued under § 177.125 or § 177.130 shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation. The Administrator, in his or her sole discretion, may stay the effective date of the regulation if an adversely affected person files an objection under part 178 of this chapter.

### Subpart H—Judicial Review

**§ 177.145 Judicial review.**

The FFDCA does not provide for judicial review of an order or regulation issued under this part or of a denial of a petition under this part. However, if an objection to such action is submitted to the Administrator in the manner prescribed by part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. (See FFDCA sections 409(f) and (g).)

2. By adding a new part 178 to read as follows:

## PART 178—OBJECTIONS AND REQUESTS FOR HEARINGS

### Subpart A—General Provisions

Sec.
178.3 Definitions.

### Subpart B—Procedures for Filing Objections and Requests for Hearings

178.20 Right to submit objections and requests for a hearing.
178.25 Form and manner of submission of objections.
178.27 Form and manner of submission of request for evidentiary hearing.
178.30 Response by Administrator to objections and to requests for hearing.
178.32 Rulings on requests for hearing.
178.35 Modification or revocation of regulation.
178.37 Order responding to objections on which a hearing was not requested or was denied.

### Subpart C—[Reserved]

### Subpart D—Judicial Review

178.65 Judicial review.
178.70 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

### Subpart A—General Provisions

**§ 178.3 Definitions.**

For the purposes of this part:

*Administrator* means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator delegates the authority to perform functions under this part.

*Agency* means the United States Environmental Protection Agency.

*Assistant Administrator* means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of the Agency's Office of Pesticides and Toxic Substances to whom the Assistant Administrator delegates the authority to perform functions under this part.

*FFDCA* means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301-392.

### Subpart B—Procedures for Filing Objections and Requests for Hearing

**§ 178.20 Right to submit objections and requests for a hearing.**

(a) On or before the 30th day after the date of publication in the **Federal Register** of an order under part 177 or part 180 of this chapter establishing, modifying, or revoking a regulation, or an order under part 177 of this chapter denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

(b) A person may include with any such objection a written request for an evidentiary hearing on such objection in accordance with § 178.27

(c) A person who submits objections need not request a hearing. For instance, if the person's objections are of a purely legal or policy nature, a hearing request would be inappropriate; the purpose of an evidentiary hearing is to resolve factual disputes. The Administrator will rule on the objections, whether or not a hearing is requested.

(d) As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

**§ 178.25 Form and manner of submission of objections.**

(a) To be considered by the Administrator, an objection must:

(1) Be in writing.

(2) Specify with particularity the provision(s) of the order, regulation, or denial objected to, the basis for the objection(s), and the relief sought.

(3) Be signed by the objector.

(4) State the objector's name and mailing address.

(5) Be accompanied by the fee prescribed by § 180.33(i) of this chapter, if the objection is to an order or regulation issued under part 180 of this chapter.

(6) Be submitted to the hearing clerk.

(7) Be received by the hearing clerk not later than the close of business of the 30th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

(b) Submissions to the hearing clerk shall be made as follows:

(1) Mailed submissions should be addressed to: Office of the Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at: room M3708, Waterside Mall, 401 M St., SW., Washington, DC.

**§ 178.27 Form and manner of submission of request for evidentiary hearing.**

To be considered by the Administrator, a request for an evidentiary hearing must met the criteria in § 178.32, and must:

(a) Be submitted as a part of, and specifically request an evidentiary hearing on an objection that complies with the requirements of § 178.25.

(b) Include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

(c) Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

(d) Include a summary of any evidence not described in paragraph (a)(3) of this section upon which the objector relies to justify an evidentiary hearing.

(e) Include a discussion of the relationship between the factual issues and the relief requested by the objection.

**§ 178.30 Response by Administrator to objections and to requests for hearing.**

The Administrator will respond to objections, and to requests for a hearing on such objections, as set forth in this section.

(a) *Denial of objections that are improperly submitted or that seek an unavailable form of relief.* The Administrator will by order issued under § 178.37 deny each objection and each request for a hearing that is included with such an objection, if:

(1) The objection is found not to conform to § 178.25.

(2) The action requested by the objection is inconsistent with any provision of FFDCA.

(3) The action requested by the objection is inconsistent with any generic, e.g., non-chemical specific, interpretation of a provision of FFDCA in any regulation in this chapter (the proper procedure in such a case is for





the person to petition for an amendment

Administrator for good cause



§ 178.37 Order responding to objections

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the person to petition for an amendment of the regulation involved).

(b) *Denial of improperly submitted requests for hearing.* The Administrator will then determine whether any objection that has not been denied under paragraph (a) of this section was accompanied by a request for an evidentiary hearing that conforms to § 178.27. The Administrator will deny under § 178.37 each request that does not conform to § 178.27.

(c) *Grouping of certain related objections.* If the Administrator then finds (1) That two or more undenied objections are substantially similar, or are related in such a way that any judicial review of the Administrator's action on those objections should occur at the same time, and (2) that one or more of those objections was accompanied by an undenied request for an evidentiary hearing on that objection, the Administrator will treat those objections as a group and will rule on them only after ruling under § 178.32 on the associated request for hearing.

(d) *Rulings on objections for which a request for hearing has been granted.* If the Administrator rules under § 178.32 that an evidentiary hearing should be held on an objection, the Administrator will resolve the issues raised by any other objection grouped with it under paragraph (c) of this section in conjunction with the evidentiary hearing upon which the hearing request was granted, unless the Administrator for good cause determines otherwise.

(e) *Rulings on objections for which no request for hearing was received, or for which each request for hearing was denied.* Except as provided in paragraphs (c) and (d) of this section, if no hearing was requested on an objection, or if each such request that was made is denied under the criteria of paragraphs (a) or (b) of this section or § 178.32(b), the Administrator will rule on the objection under § 178.37.

**§ 178.32 Rulings on requests for hearing.**

(a) In the case of each request for an evidentiary hearing that was not denied under § 178.30(a) or (b), the Administrator will determine whether such a hearing on one or more of the objections is justified, and will publish in the **Federal Register** the determination in an order issued under § 178.37 or a Notice of Hearing issued under § 179.20 of this chapter. If some requests for a hearing are denied and others pertaining to the same order or regulation are granted, the denial order and the hearing notice may be combined into a single document and shall be issued at the same time unless the Administrator for good cause determines otherwise.

(b) A request for an evidentiary hearing will be granted if the Administrator determines that the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. An evidentiary hearing will not be granted on issues of policy or law.

(2) There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary. An evidentiary hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions, nor if the Administrator concludes that the data and information submitted, even if accurate, would be insufficient to justify the factual determination urged.

(3) Resolution of the factual issue(s) in the manner sought by the person requesting the hearing would be adequate to justify the action requested. An evidentiary hearing will not be granted on factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(c) Where appropriate, the Administrator will make rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

**§ 178.35 Modification or revocation of regulation.**

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the **Federal Register.**

(b) The Administrator will provide an opportunity for objections and requests for hearing on such rule to the extent required by law. Such objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

**§ 178.37 Order responding to objections on which a hearing was not requested or was denied.**

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order also must state the reason for that denial (e.g., why the request for a hearing did not conform to § 178.27, or why the request was denied under § 178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is published unless the order contains the Administrator's findings as to the existence of emergency conditions that necessitate an earlier effective date.

**Subpart C—[Reserved]**

**Subpart D—Judicial Review**

**§ 178.65 Judicial review.**

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

**§ 178.70 Administrative record.**

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.



(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) Any comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, any data or information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question.

(8) The order issued under § 178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under § 178.37.

3. By adding new part 179 to read as follows:

## PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

**Subpart A—General Provisions**

Sec.
179.3 Definitions.
179.5 Other authority.

**Subpart B—Initiation of Hearing**

179.20 Notice of hearing.
179.24 Ex parte discussions; separation of functions.

**Subpart C—Participation and Appearance; conduct**

179.42 Notice of participation.
179.45 Appearance.
179.50 Conduct at oral hearings or conferences.

**Subpart D—Presiding Officer**

179.60 Designation and qualifications of presidingofficer.
179.70 Authority of presiding officer.
179.75 Disqualification of deciding officials.
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179.80 Filing and service.
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179.85 Purpose of preliminary conference.
179.86 Time and place of preliminary conference.
179.87 Procedures for preliminary conference.
179.89 Motions.
179.90 Summary decisions.
179.91 Burden of going forward; burden of persuasion.
179.93 Testimony.
179.94 Transcripts.
179.95 Admission or exclusion of evidence; objections; offers of proof.
179.97 Conferences during hearing.
179.98 Briefs and arguments.

**Subpart F—Decisions and Appeals**

179.101 Interlocutory appeal from ruling of presiding officer.
179.105 Initial decision.
179.107 Appeal from or review of initial decision.
179.110 Determination by Administrator to review initial decision.
179.112 Decision by Administrator on appeal or review of initial decision.
179.115 Motion to reconsider a final order.
179.117 Designation and powers of judicial officer.

**Subpart G—Judicial Review**

179.125 Judicial Review.
179.130 Administrative record.

**Authority:** 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

**Subpart A—General Provisions**

**§ 179.3 Definitions.**

*Administrator* means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

*Agency* means the United States Environmental Protection Agency.

*Assistant Administrator* means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of OPTS to whom the Assistant Administrator has delegated the authority to perform functions under this part.

*FFDCA* means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

*FIFRA* means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

*Judicial Officer* means a person who has been designated by the Administrator under § 178.117 to serve as a judicial officer.

*Office of the Administrator* means the Agency's Administrator and Deputy Administrator and their immediate staff, including the judicial officer.

*OPTS* means the Agency's Office of Pesticides and Toxic Substances.

**§ 179.5 Other authority.**

Questions regarding procedural matters arising under this part or part 178 of this chapter that are not addressed by this part or part 178 of this chapter shall be resolved by the Administrator or presiding officer, as appropriate.

**Subpart B—Initiation of Hearing**

**§ 179.20 Notice of hearing.**

(a) If the Administrator determines under § 178.32 of this chapter that a hearing is justified on any issue, the Administrator will file with the hearing clerk and publish in the **Federal Register** a Notice of Hearing. The Notice of Hearing will set forth:

(1) The docket number for the hearing.

(2) Each order, regulation, or petition denial that is the subject of the hearing, and a statement specifying any part of any such regulation or order that has been stayed in the Administrator's discretion.

(3) The identity of each person whose request for a hearing has been granted, and of any other person whose petition under §§ 177.81 or 180.7 of this chapter occasioned the order that the hearing concerns.

(4) A statement of the issues of fact on which a hearing has been found to be justified.

(5) A statement of the objections whose resolution depends on the resolution of those issues of fact.

(6) A statement that the presiding officer will be designated by the Chief Administrative Law Judge.

(7) The time within which notices of participation should be filed under § 179.42.

(8) The date, time, and place of the preliminary conference, or a statement that the date, time, and place will be announced in a later notice, and the place of the hearing.

(9) The time within which parties must submit written information and views under § 179.83.

(10) Designations with respect to separation of functions published under § 179.24(b)(2).

(b) The statement of the issues of fact on which a hearing has been justified

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determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A party may obtain interlocutory review by the Administrator of a decision by the presiding officer to revise the issues to include an issue on which the Administrator has not granted a request for a hearing or to eliminate an issue on which a request for a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the Notice of Hearing.

**§ 179.24 Ex parte discussions; separation of functions.**

(a) Any person may meet or correspond with any officer or employee of the Agency concerning a matter under parts 177, 178, or 180 of this chapter prior to publication of a Notice of Hearing under § 179.20.

(b) Upon publication of a Notice of Hearing, the following separation of function rules apply:

(1) OPTS, as a party to the hearing, is responsible for presentation of its position at the hearing and in any pleading or oral argument before the Administrator. The Pesticides and Toxic Substances Division of the Office of General Counsel shall advise and represent OPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPTS. Such designations will be included in the Notice of Hearing published under§ 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPTS.

(c) Between the date of publication of the Notice of Hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an ex parte communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any ex parte communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, to the extent necessary to determine the substance of the communication, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a Notice of Hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDCA, result in a decision adverse to the person knowingly making or causing the making of the communication.

## Subpart C—Participation and Appearance; Conduct

**§ 179.42 Notice of participation.**

(a) OPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the Notice of Hearing under § 179.20, a Notice of Participation in the following form:

**Notice of Participation**

Docket No. _____
Under 40 CFR part 179, please enter the participation of: _____
(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____
Service on the above will be accepted by:
(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____
Signed: _____
Date: _____

(c) An amendment to a Notice of Participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written Notice of Participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a Notice of Participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is striken may obtain interlocutory review thereof by the Administrator.

**§ 179.45 Appearance.**

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

**§ 179.50 Conduct at oral hearings or conferences.**

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.



## Subpart D—Presiding Officer

**§ 179.60 Designation and qualifications of presiding officer.**

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's chief administrative law judge.

**§ 179.70 Authority of presiding officer.**

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Administrative Procedure Act. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences, and issue and modify a schedule for the hearing.

(b) Establish an orderly manner for developing evidentiary facts at preliminary conferences under § 179.87, for making rulings on oral testimony and cross-examination under § 179.93, and for making other similar evidentiary rulings in accord with these regulations.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under § 179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Strike the participation of any person under § 179.42(f), or exclude any person from the hearing under § 179.50, or take other reasonable disciplinary action.

(n) Take any other action for the fair, expeditious, and orderly conduct of the hearing that is not in conflict with law or these rules.

**§ 179.75 Disqualification of deciding officials.**

(a) A deciding official in a hearing under this part (including, e.g., the Administrator, judicial officer, or presiding officer) shall not decide any matter in connection with which he or she has a financial interest in any of the parties, or a relationship that would make it otherwise inappropriate for him or her to act.

(b) A party may request that a deciding official disqualify himself/herself and withdraw from the proceeding. The party may obtain interlocutory review by the Administrator of a denial of such a request made to any deciding official other than the Administrator.

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

**§ 179.78 Unavailability of presiding officer.**

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, i.e., the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

## Subpart E—Hearing Procedures

**§ 179.80 Filing and service.**

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in triplicate with the hearing clerk, in the manner specified by § 178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it is actually received by the hearing clerk. When this part allows a response by a party to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) Each notice, order, decision, or other document issued under this part by the presiding officer, the judicial officer, or the Administrator shall be filed with the hearing clerk. The hearing clerk shall immediately serve all parties with a copy of such order, decision, or other document.

(c) At the same time that a party files any document with the hearing clerk, the party shall serve a copy thereof on each other party, unless the presiding officer specifies otherwise. Each filing shall be accompanied by a certificate of service, or a statement that service is not required. Service on a party is accomplished by mailing a submission to the address shown in the Notice of Participation or by personal delivery.

(d) The presiding officer may grant an extension of time for the filing of any pleading, document, or motion (1) Upon timely motion by a party, for good cause shown, and after consideration of prejudice to other parties, or (2) upon the presiding officer's own motion.

(e) A motion by a party for an extension may only be made after serving a copy of the motion on all other parties, unless the movant can show good cause why doing so is impracticable. The motion shall be filed in advance of the date on which the pleading, document, or motion is due to be filed, unless the failure of the party to make a timely motion for an extension was the result of excusable neglect.

**§ 179.81 Availability of documents.**

(a) All orders, decisions, pleadings, transcripts, exhibits, and other docket entries shall become part of the official docket and shall be retained by the hearing clerk. Except as otherwise provided by paragraph (b) of this section or part 2 of this chapter, all documents that are a part of the official docket shall be made available to the public for reasonable inspection during Agency business hours. Copies of such documents may be obtained by members of the public as provided in part 2 of this chapter.

(b) Whenever any information or data are required to be produced or examined in a hearing and any party makes a business confidentiality claim regarding such information under part 2 of this chapter, the availability of such information to the other parties or to the public shall be determined by EPA in accordance with part 2 of this chapter, including specifically the procedures and principles set forth in § 2.301(g)(3) and (g)(4) of this chapter. The presiding officer shall make the determinations with respect to the matters referred to in § 2.301(g)(3) and (g)(4) to the extent provided, and shall take such steps as are necessary for the protection of information entitled to confidential treatment or otherwise exempt from public disclosure, including issuance of protective orders to parties or taking testimony in a closed hearing.



**§ 179.83 Disclosure of data and information.**

hearing are ordinarily kept. Documents that are attorney work product, or were

(d) To obtain stipulations and admissions of facts

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**§ 179.83 Disclosure of data and information.**

(a) Within 60 days of the publication of the Notice of Hearing under § 179.20, or, if no party will be prejudiced, within another period set by the presiding officer, the Assistant Administrator shall file with the hearing clerk, in accordance with § 179.80, the following documents numbered and organized in the manner prescribed by the presiding officer:

(1) The portions of the administrative record of the proceeding developed under part 178 of this chapter, and under parts 177 or 180 of this chapter, that are relevant to the issues in the hearing.

(2) All documents in the files of OPTS containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS, which relate to the issues involved in the hearing. For purposes of this paragraph, "files" means the principal files in OPTS in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are internal memoranda reflecting the deliberative process, or are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information upon which OPTS plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence that OPTS intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the Assistant Administrator, the submission complies with this section.

(b) Within 70 days of the publication of the Notice of Hearing or, if no party will be prejudiced, within another period of time set by the presiding officer, each party other than OPTS shall submit to the hearing clerk in accordance with § 179.80 the following documents, numbered and organized in the manner prescribed by the presiding officer:

(1) Any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete.

(2) All documents (other than those filed under paragraph (a) of this section) in the party's files containing factual information or expert opinion, whether favorable or unfavorable to the party's position, that relates to the issues involved in the hearing. For purposes of this paragraph, "files" means the party's principal files in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information the party plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence the party intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the party, the submission complies with this section.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known by or available to the party when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

**§ 179.85 Purpose of preliminary conference.**

The presiding officer will conduct one or more preliminary conferences for the following purposes:

(a) To determine the areas of factual disagreement to be considered at the hearing.

(b) To establish any necessary procedural rules to control the course of the hearing and the schedule for the hearing.

(c) To group parties with substantially similar interests, for purposes of presenting evidence, making objections, cross-examination, and presenting oral argument.

(d) To obtain stipulations and admissions of facts.

(e) To take other action that may expedite the hearing.

**§ 179.86 Time and place of preliminary conference.**

A preliminary conference will commence at the date, time, and place announced in the Notice of Hearing, or as otherwise specified by the Administrator or presiding officer in a subsequent notice. The preliminary conference may not commence until after expiration of the time for filing notices of participation under § 179.42. The presiding officer may specify that two or more such conferences shall be held.

**§ 179.87 Procedures for preliminary conference.**

Parties in a hearing must appear at the preliminary conference(s) prepared to present a position on the matters specified in § 179.85. A preliminary conference may be held by telephone, or other electronic means, if appropriate.

(a) To expedite the hearing, parties are encouraged to prepare in advance for the conference. Parties should cooperate with each other and should request information and begin preparation of testimony at the earliest possible time. Failure of a party to appear at the preliminary conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the party regarding such matters as objections to the agreements reached, actions taken, or rulings issued. Such failure to appear may also be grounds for striking the party's participation under § 179.42(f).

(b) Each party shall bring to the preliminary conference the following specific information, which will be filed with the hearing clerk under § 179.80:

(1) Any additional information to supplement the submission which may have been filed under § 179.83, and/or which may be filed if approved under § 179.83(c).

(2) A list setting forth each person who has been identified as a witness whose oral or written testimony will be offered by the party at the hearing, with a full curriculum vitae for each and a summary of the expected testimony (including a list of the principal exhibits on which the witness will rely) or a statement as to when such a summary will be furnished. A party may amend its witness and document list to add, delete, or substitute witnesses or documents.



(c) The presiding officer may hold preliminary conferences off the record in an effort to reach agreement on disputed factual or procedural questions.

(d) The presiding officer shall issue and file under § 179.80 a written order reciting the actions taken at each preliminary conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

**§ 179.89 Motions.**

A motion, unless made in the course of a preliminary conference or a transcribed oral hearing before the presiding officer, must be filed in the manner prescribed by § 179.80 and include a draft order. A response may be filed within 10 days of service of a motion. The moving party has no right to reply, except as permitted by the presiding officer. The presiding officer shall rule upon the motion.

**§ 179.90 Summary decisions.**

(a) After the hearing commences, a party may file a written motion, with or without supporting affidavits or brief, for a summary decision on any issue in the hearing. Any other party may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause shown, serve opposing affidavits or brief or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs if not submitted by the parties.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine disagreement as to any material fact bearing on the issue and that a party is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a party opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must demonstrate specifically that there is a genuine issue of material fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If a summary decision is not rendered upon all issues or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A party may obtain interlocutory review by the Administrator of a summary decision of the presiding officer.

**§ 179.91 Burden of going forward; burden of persuasion.**

(a) The party whose request for an evidentiary hearing was granted has the burden of going forward in the hearing with evidence as to the issues relevant to that request for a hearing.

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 or 409 of the FFDCA has the burden of persuasion in the hearing on that issue, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or food additive regulation.

**§ 179.93 Testimony.**

(a) The presiding officer will conduct such proceedings as are necessary for the taking of oral direct testimony and for the conduct of oral examination of witnesses by the parties. The presiding officer shall limit oral examination to prevent irrelevant, immaterial or unduly repetitious examination.

(b) Direct testimony shall be submitted in writing, except that the presiding officer may order direct testimony to be presented orally in those unusual cases where the memory or demeanor of the witness is of importance. Written direct testimony shall be in the form of a verified statement of fact or opinion prepared by the witness, in narrative form or in question-and-answer form. Written direct testimony may incorporate exhibits. Such a verified statement or exhibit may not be admitted into evidence sooner than 14 days (or such other reasonable period as the presiding officer may order) after the witness has delivered to the presiding officer and each party a copy of the statement or exhibit. The admissibility of the evidence contained in such a statement is subject to the same rules as if such testimony had been given orally.

(c) Oral cross-examination of witnesses will be permitted. Each exhibit that a party intends to rely upon in cross-examining a witness shall be furnished to the other parties not later than 3 days (or such other reasonable period as the presiding officer may order) before such exhibit is used in the cross-examination.

(d) Witnesses shall give testimony under oath or affirmation.

**§ 179.94 Transcripts.**

(a) The hearing clerk shall make arrangements to have all oral testimony stenographically reported or recorded and transcribed, with evidence that is admitted in the form of written testimony or exhibits attached or incorporated as appropriate.

(b) Unless the presiding officer orders otherwise, parties shall have 15 days from the date that the transcript of particular oral testimony first becomes available to propose corrections in the transcript of that testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

(c) As soon as practicable after the taking of the last evidence, the presiding officer shall certify:

(1) That the original transcript is a true transcript of the oral testimony offered or received at the hearing, except in such particulars as the presiding officer specifies.

(2) That the written testimony and exhibits accompanying the transcript are all the written testimony and exhibits introduced at the hearing, with such exceptions as the presiding officer specifies.

(3) The transcript with attached or incorporated material, as so certified by the presiding officer, shall be submitted to and filed by the hearing clerk under § 179.80.

(d) Copies of the transcript shall be available to the public in accordance with § 179.81; parties may make special arrangements through the hearing clerk to obtain copies on an ongoing, expedited basis.

**§ 179.95 Admission or exclusion of evidence; objections; offers of proof.**

(a) Written material identified as direct testimony or as an evidentiary exhibit and offered by a party in a hearing, and oral testimony, whether on direct or on cross-examination, is admissible as evidence unless the presiding officer excludes it (on objection of a party or on the presiding officer's own initiative) because it is irrelevant, immaterial, or unduly repetitive, or because its exclusion is necessary to enforce a specific requirement of this part relating to the admissibility of evidence.

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(b) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the presiding officer, with the consent of all the parties, orders that such argument not be transcribed. The ruling and the reasons given therefor by the presiding officer on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(c) Whenever evidence is deemed inadmissible, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. If the Administrator in reviewing the record under § 179.112 decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Administrator may evaluate the evidence and proceed to a final decision.

(d) Official notice may be taken of Agency proceedings, any matter that might be judicially noticed by the courts of the United States, or any other fact within the knowledge and experience of the Agency as an expert agency. Any party shall be given adequate opportunity to show that such facts are erroneously noticed by presenting evidence to the contrary.

**§ 179.97 Conference during hearing.**

The presiding officer may schedule and hold conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, or other matters concerning the development of the evidence.

**§ 179.98 Briefs and arguments.**

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

## Subpart F—Decisions and Appeals

**§ 179.101 Interlocutory appeal from ruling of presidingofficer.**

(a) Except as provided in paragraph (b) of this section and in §§ 179.20(b), 179.42(f), 179.75(b), and 179.90(f), rulings of the presiding officer may not be appealed to the Administrator before the Administrator's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Administrator if the presiding officer certifies on the record or by document submitted under § 179.80 that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any party or substantial harm to the public interest. When an order or ruling is not certified by the presiding officer, it shall be reviewed by the Administrator only upon appeal from the initial decision except when the Administrator determines upon the request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal. Where a stay is granted, a stay of more than 30 days must be approved by the Administrator.

(c) Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the presiding officer, but the Administrator may allow further briefs and oral arguments. Any oral argument will be transcribed and the transcript will be prepared and certified in the same manner as provided in § 179.94.

**§ 179.105 Initial decision.**

(a) After the filing of briefs and any oral argument, the presiding officer shall prepare and file an initial decision on the issues of fact in the hearing and the objections relating to those issues.

(b) The initial decision must be based on a fair evaluation of the entire record, and must contain:

(1)(i) A conclusion that no change is warranted in the order or regulation to which objection was taken; or

(ii) A conclusion that changes in the order or regulation are warranted, the language of the order or regulation as changed, and an effective date for the order or regulation as changed, which date must not be earlier than the 90th day after it is published unless the order contains findings as to the existence of emergency conditions that necessitate an earlier effective date.

(2) Findings of fact supported by reliable, probative and substantial evidence that has been found admissible by the presiding officer, and adequate citations to the record supporting those findings.

(3) Conclusions on legal and policy issues, if such conclusions are necessary to resolve the objections.

(4) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any party.

(c) Except as otherwise provided by order of the Administrator filed in accordance with § 179.80, after the initial decision is filed, the presiding officer has no further jurisdiction over the matter and any motions or requests filed with the hearing clerk will be decided by the Administrator.

(d) The initial decision becomes the final decision of the Administrator by operation of law unless a party files exceptions with the hearing clerk under § 179.107 or the Administrator files a notice of review under § 179.110.

**§ 179.107 Appeal from or review of initial decision.**

(a) A party may appeal an initial decision to the Administrator by filing exceptions with the hearing clerk, and serving them on the other parties, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Administrator under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law or policy in the initial decision and, if errors in the findings of fact are alleged, must provide supporting citations to evidence of record. Oral argument before the Administrator may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the timeperiod specified in the initial decision. The timeperiod may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Administrator decides to hear oral argument, the parties will be informed of the date, time, and place; the amount of time allotted to each party, and the issues to be addressed.

**§ 179.110 Determination by Administrator to review initial decision.**

Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Administrator may file with the hearing clerk, and serve on the parties, a notice of the Administrator's determination to review the initial decision. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.



**§ 179.112 Decision by Administrator on appeal or review of initial decision.**

(a) On appeal from or review of the initial decision, the Administrator shall have the same powers as did the presiding officer in making the initial decision. On the Administrator's own initiative or on motion, the Administrator may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal to, or on review by the Administrator is the same as the scope of the issues before the presiding officer, unless the Administrator specifies otherwise.

(c) After the filing of briefs and any oral argument, the Administrator will issue a final decision on the issues of fact in the hearing and the objections related to those issues. A final decision must contain the elements required for an initial decision by § 179.105(b).

(d) The Administrator may adopt the initial decision as the final decision.

(e) The Administrator's decision, or a summary of the decision and a notice of its availability, will be published in the **Federal Register**.

**§ 179.115 Motion to reconsider a final order.**

A party may file a motion requesting the Administrator to reconsider a final decision under this part. Any such motion must be filed within 10 days after service of the final decision, and must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such a motion shall not stay the effective date of the final decision unless specifically so ordered by the Administrator.

**§ 179.117 Designation and powers of judicial officer.**

(a) One or more judicial officers may be designated by the Administrator. A judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or of another Federal agency. A judicial officer may perform other duties. A judicial officer who performs any duty under this part may not be employed by OPTS, by the Pesticides and Toxic Substances Division of the Office of General Counsel, or by any other person who is a representative of OPTS in the hearing. A person may not be designated as a judicial officer in a hearing if he or she performed any prosecutorial or investigative functions in connection with that hearing or any other factually related hearing.

(b) The Administrator may delegate to the judicial officer all or part of the Administrator's authority to act in a given proceeding under this part. Such a delegation does not prevent the judicial officer from referring any motion or case to the Administrator when appropriate.

## Subpart G—Judicial Review

**§ 179.125 Judicial review.**

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA sections 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

(b) The record for judicial review of a final decision under this part consists of the record described in § 179.130.

**§ 179.130 Administrative record.**

(a) For purposes of judicial review, the record of a hearing that culminates in a final decision of the Administrator under §§ 179.105(d) or 179.112(c) ruling on an objection shall consist of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) The comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, and the information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question under parts 177 or part 180 of this chapter.

(8) The Notice of Hearing published under § 179.20.

(9) All notices of participation filed under § 179.42.

(10) Any **Federal Register** notice issued under this part that pertains to the proceeding.

(11) All submissions filed under § 179.80.

(12) Any document of which official notice was taken under § 179.95.

(b) The record of the administrative proceeding is closed:

(1) With respect to the taking of evidence, when specified by the presiding officer.

(2) With respect to pleadings, at the time specified in § 179.98(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

4. In part 180 as follows:

**PART 180—[AMENDED]**

a. By revising the authority citation to read as follows:

**Authority:** 21 U.S.C. 346a, 371a; Reorg. Plan No. 3 of 1970.

b. In § 180.7 by revising paragraph (g) to read as follows:

**§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities.**

* * * * * * *

(g) If the petition is not referred to an advisory committee, or upon receipt of the report of an advisory committee under § 180.12(c) if such a referral occurred, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in

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accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. After receiving comments on any proposed regulation, the Administrator may issue an order that establishes modifies, or revokes a tolerance regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter. A regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

**[§ 180.13–180.28 [Removed]**

c. By removing §§ 180.13 through 180.28 and the heading "Procedure for filing Objection and Holding a Public Hearing".

**§ 180.29 [Amended]**

d. In § 180.29, paragraph (a) by removing the period at the end of the first sentence and adding in its place the words ", or a regulation modifying or revoking an existing tolerance or exemption.".

e. In § 180.29 by adding paragraphs (e), (f), (g), (h) and (i) to read as follows:

**§ 180.29 Adoption of tolerances on initiative of Administrator or on request of an interested person.**

* * * * *

(e) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(f) After reviewing any timely comments received, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and requests for a hearing in the manner described in part 178 of this chapter.

(g) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

(h) In ruling on a request under paragraph (a) of this section, the Administrator may publish a **Federal Register** notice requesting information and views on the request, or provide other procedures as a matter of discretion.

(i) When a request is denied under this section,the administrative record consists of:

(1) The request, including all data and information submitted in support of the request.

(2) Any **Federal Register** notice requesting information and views.

(3) Any comments submitted by members of the public in response to the **Federal Register** notice requesting information and views.

(4) If the request resulted in any other procedures, the order of the Administrator providing the procedures and the administrative record of the procedure provided.

(5) All other documents or information submitted to the record.

(6) The Administrator's order and decision on the request, including all information identified by the Administrator as part of the record.

f. By revising § 180.30 to read as follows:

**§ 180.30 Judicial review.**

(a) It is the Agency's view that the Act does not allow a person to obtain direct judicial review of a regulation issued under this part that establishes, amends, or revokes a tolerance regulation or a regulation exempting a pesticide chemical from the need for a tolerance. However, if an objection to such action is submitted to the Administrator in the manner prescribed by part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objections (see sections 408(d)(5) and 408(i) of the Act).

(b) A decision under §§ 180.29 and 180.32 that a request does not warrant the issuance of a proposed regulation is final agency action. Although the Act makes no special provision for review of such final agency action, the action may be reviewable under other provisions of the United States Code (see e.g., 5 U.S.C. 701–706, 28 U.S.C. 1331).

g. In § 180.32, by adding paragraphs (d) and (e) to read as follows:

**§ 180.32 Procedures for amending and repealing tolerances or exemptions from tolerances.**

* * * * *

(d) In ruling on a request under paragraph (a) of this section, the Administrator may publish a Federal **Register** notice requesting information and views on the request or providing other procedures as a matter of discretion.

(e) When a request is denied under this section, the administrative record consist of:

(1) The request, including all data and information submitted in support of the request.

(2) Any **Federal Register** notice requesting information and views.

(3) Any comments submitted by members of the public in response to the **Federal Register** notice requesting information and views.

(4) If the request resulted in any other procedures, the order of the Administrator providing the procedures and the administrative record of the procedure provided.

(5) All other documents or information submitted to the record.

(6) The Administrator's order and decision on the request, including all information identified by the Administrator as part of the record.

[FR Doc. 90–28301 Filed 12–4–90; 8:45 am]
BILLING CODE 6560–50–F

federal register

Wednesday
December 5, 1990

Part III

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 91**

**Suspension of Certain Aircraft From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement, Final Rule**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26242, SFAR No. 62]

RIN 2120-AD52

## Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Special Federal Aviation Regulation (SFAR) suspends, until December 30, 1993, certain provisions of the regulation which require the installation and use of automatic altitude reporting (Mode C) transponders (Mode C rule). This suspension provides access to specified outlying airports within 30 miles of a terminal control area (TCA) primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within air traffic control (ATC) radar coverage and not predominantly used by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment. This rule identifies approximately 300 airports at which operations by aircraft not equipped with Mode C transponders can be conducted at and below a specified altitude: (1) Within a 2-nautical mile radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the Mode C veil. The FAA expects that radar coverage in some Mode C veil airspace will improve as a result of scheduled radar system upgrades. After new radar systems are in service, the FAA may conduct field evaluations to reassess the actual radar coverage in appropriate areas. Based on those reassessments, the FAA, after further rulemaking, may extend the period that the Mode C transponder requirement will be suspended for operations at certain airports on a case-by-case basis.

DATES: December 5, 1990. SFAR No. 62 expires December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

### Background

On June 21, 1988, the FAA published a final rule which requires aircraft operating within Mode C veil airspace to be equipped with an operable Mode C transponder (53 FR 23356). Aircraft not originally certificated with an engine-driven electrical system or not subsequently certified with such a system installed, balloons, and gliders are excluded from this requirement. The Mode C transponder requirement resulted from regulatory proceedings initiated under Notice 88-2 (53 FR 4306; February 12, 1988.)

On May 25, 1990, the FAA published a Notice of Proposed Rulemaking (NPRM) which proposed to suspend, until December 30, 1993, the Mode C transponder equipment requirements for certain aircraft operations in the vicinity of approximately 300 airports in the outlaying area of Mode C veils (55 FR 21722; Notice No. 90-16). The FAA had determined that operations of aircraft without Mode C transponders could be accommodated safely provided such operations are conducted in areas not currently within ATC radar coverage. The proposal identified those airports: (1) At which operations within a 1.5-nautical mile radius of the airport, and along the most direct route between that airport and the outer boundary of the Mode C veil, at or below a specified altitude, cannot be detected by ATC radar; and (2) are not served by aircraft required to be equipped with TCAS.

### Comments to the NPRM

The comment period for Notice No. 90-16 expired on July 24, 1990. The FAA received 81 comments to the proposal, the majority of which were favorable. However, most commenters believed that the proposal did not go far enough with regard to providing access to airports and locations within Mode C veil airspace. The Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EEA), the Air Line Pilots Association (ALPA), the Soaring Society of America (SSA), the Department of the Air Force, the Ohio Department of Transportation, local aviation organizations and businesses, and private citizens were in general support of the proposal but provided suggestions and comments. The Department of the Army, although generally in support of the concept of providing access for aircraft without Mode C transponder equipment to certain airports within the Mode C veil, opposed the proposal on the basis that Army airports and locations should be included in the list of airports. Seven of the comments to Docket No. 26242 did not address any issue related to the proposal.

### Issues

The commenters identified the following issues in response to the proposals:

*(a) The relief proposed is not adequate.* The commenters favored a general exclusion of aircraft operations from the Mode C transponder equipment requirement in the airspace from the surface up to 2,500 or 3,500 feet above ground level (AGL) underneath Mode C veil airspace.

*(b) The specified altitudes should be uniform.* These commenters believed that a common altitude should be specified for all of the listed airports.

*(c) Other airports within the TCA veil should be listed.* A few commenters stated that certain additional airports should be included in the list of airports.

*(d) A list of airports for certain TCA's were omitted from the proposal.*

*(e) Operations between two excluded airports within the same TCA Mode C veil should be permitted.*

*(f) The specified altitudes and the 1.5-nautical mile radius from excluded airport is too restrictive.* Some commenters believed that limiting the exclusion to a 1.5-nautical mile radius from a listed airport would be too restrictive for a pilot and that determining a distance of 1.5 miles from an airport would be difficult. Other commenters were concerned that the specified altitudes, such as 1,000 feet AGL, would not afford pilots sufficient margin for maneuvering.

*(g) The proximity of Hernando County Airport (Tampa veil) to a military training route may compromise safety.* The Air Force commented that the exclusion of the Mode C transponder equipment requirement for operations in the vicinity of Hernando County Airport, Brooksville, FL, would impact the quality of traffic advisory service its pilots routinely receive from Tampa Approach Control.

### Discussion of Issues

*(a) The relief proposed is not adequate.* Most of the commenters believed that the FAA should provide access for aircraft without Mode C transponders to all airports or locations within Mode C veil airspace, and that the FAA should therefore exclude the airspace from the surface up to 2,500 or 3,500 feet AGL from the Mode C transponder requirement. The FAA has maintained that safety is enhanced by the Mode C rule because the operation of Mode C transponders results in the display of an enhanced radar target on air traffic controllers' radar scopes; facilities the radar identification of aircraft; facilities computer-assisted tracking of aircraft; and provides altitude information for each aircraft. Further, the availability of associated altitude information for all radar targets and computer-assisted radar identification and tracking reduces the controller workload. Radio communications are also reduced by the use of Mode C transponders since the display of altitude information eliminates unnecessary traffic advisories. Because of the numerous benefits and the increase in safety derived from the use of transponders with automatic altitude reporting equipment, the FAA believes that aircraft operating in the vicinity of TCA primary airports should be equipped with Mode C transponder equipment, to the maximum extent practicable.

In the preamble to Notice No. 90-16, the FAA stated that the issue of access to airports within a Mode C veil would be considered, but only to the extent that the safety of operations within and in the vicinity of a TCA are not compromised. The FAA acknowledged that certain safety benefits derived from the use of Mode C transponders may not be realized if such operations are not detected by ATC radar systems. Therefore, the FAA determined that operation conducted by aircraft without Mode C transponders could be safely accommodated if those operations are limited to areas and are conducted below altitudes that are not within current ATC radar coverage. The FAA further stated that the safety benefits attributed to the use of TCAS equipment should not be derogated. Consequently, the FAA concluded that the applicability of the suspension of the Mode C transponder requirement must be further limited to aircraft operations in the vicinity of airports that are not served by scheduled air carrier operations using aircraft that will be required to install TCAS.

By limiting the applicability of the Mode C transponder suspension to those areas outside ATC radar coverage, the possibility of unenhanced radar targets without associated altitude information being displayed on the radar scopes of air traffic controllers is minimized. A genenral exclusion of the Mode C transponder requirement for operations within a Mode C veil at and below 2,500 or 3,500 feet AGL would be inconsistent with the FAA's desire to limit operations of aircraft without Mode C transponder equipment to areas outside current ATC radar coverage and would derogate the level of safety to be provided to operations to, from, and in the vicinity of the TCA primary airport.

*(b) The specified altitudes should be uniform.* ATC radar coverage is dependent on a number of variables including terrain, electromagnetic interference, and other obstructions to radar signals. Consequently, radar coverage does not extend down to a uniform altitude throughout Mode C veil airspace. Similar to the discussion regarding a shelf or a general exclusion of the airspace underneath the Mode C veil, a uniform altitude would not be consistent with the requirement that excluded operations be conducted in areas not within ATC radar coverage.

*(c) Other airports within the TCA veil should be listed.* In response to comments that operations in the vicinity of other airports should be excluded from the Mode C transponder requirement, the extent of ATC radar coverage in the areas that were the subject of the comments was reexamined. As a result, five additional airports will be added to the list of airports at which operations by aircraft without Mode C transponder equipment will be permitted. Those airports are Ziermann Airport, Mayer, MN; Aero Country Airport, McKinney, TX; Kentmorr Airpark Airport, Stevensville, MD; Bay Bridge Airport, Stevensville, MD; and Castle Mariana Airport, Chester, MD.

With regard to the Army's comments about the absence of Army airports on the proposed list of airports, the FAA notes that the proposal did list the following airports: Moore Army Air Field (AAF), Ayer/Fort Devens, MA; Phillips AAF, Aberdeen, MD; and Weide AAF, Edgewood Arsenal, MD.

*(d) A list of airports for certain TCA's were omitted from the proposal.* The FAA determined that current radar coverage within the Los Angeles, Miami, Pittsburgh, Orlando, San Diego, and San Francisco TCA Mode C veils extends down to an altitude which would preclude the exclusion of operations in the vicinity of airports within these TCA Mode C veil locations from the Mode C transponder equipment requirement. Consequently, airports within the Mode C veils for these TCA's were not listed. However, based on a reevaluation of the radar coverage for the Orlando TCA Mode C veil, the FAA has determined that two airports should be included in the list of airports for that Mode C veil. Those airports are: (1) Arthur Dunn Air Park Airport, Titusville, FL; and (2) Space Center Executive Airport, Titusville, FL. Although there were no specific comments regarding the inclusion of airports for the Orlando TCA Mode C veil received during the comment period, the FAA believes that the exclusion of operations in the vicinity of the two airports from the Mode C transponder equipment requirement can be accommodated safely and is in the public interest.

*(e) Operations between two excluded airports within the same TCA Mode C veil should be permitted.* The FAA proposed to suspend the Mode C transponder requirement to provide access to and from outlying airports within a Mode C veil for operators of aircraft based at those airports who have no intention or desire of operating within any other airspace having a Mode C transponder requirement. The FAA has maintained that operators desiring or having need to operate within other areas in which Mode C transponders are required, must so equip their aircraft. Permitting operation from point to point within a Mode C veil is inconsistent with the intent of this regulation.

*(f) The specified altitudes and the 1.5-nautical mile radius from excluded airport is too restrictive.* While the FAA believes that a 1.5-nautical mile radius from a listed airport provides sufficient maneuvering airspace, the FAA concedes that it may be difficult for a pilot to accurately determine a distance of 1.5 nautical miles from an airport and that a 2-nautical mile distance from the airport would be easier to determine. In the interest of simplification and the marginal increase in safety attributable to a more consistent and accurate determination of a distance of 2 miles as opposed to 1.5 miles, the FAA is revising the area surrounding an airport within which operations will be excluded from the Mode C transponder equipment requirement to a 2-nautical-mile radius from a listed airport. Further, the area surrounding a listed airport within which operations by aircraft without Mode C transponders will be permitted is increased to a 5-nautical-mile radius, when directed or instructed by ATC. A 5-nautical-mile radius around a listed airport coincides with established airspace areas within which ATC routinely exercises control jurisdiction at airports with operating control towers. ATC may need to direct aircraft to operate beyond a 2-nautical-mile radius of a listed airport due to traffic or other operating procedures. The 5-nautical-mile provision is intended to eliminate any uncertainty as to whether an operator of an aircraft without a Mode C transponder, operating to or from an airport listed in this SFRA, should comply with any ATC instruction

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which would result in an operation beyond a 2-nautical-mile radius of the airport. Similarly, the FAA is adding clarifying language to allow an aircraft operator to proceed on other than the most direct and expeditious routing between a listed airport and the outer boundary of the Mode C veil when so directed by ATC.

With regard to the altitudes for each airport, the FAA believes that the specified altitudes provide sufficient maneuvering room and allow for operation in compliance with the minimum safe altitude provisions of § 91.119. However, should the pilot of an aircraft determine that the operation at or below the specified altitude is unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, then the pilot should seek relief from the Mode C transponder requirement via the ATC authorization process.

*(g) The proximity of Hernando County Airport (Tampa veil) to a military training route may compromise safety.* The Air Force commented that the exclusion of the Mode C transponder equipment requirement for operations in the vicinity of Hernando County Airport would impact the quality of the traffic advisory service its pilots routinely receive from Tampa Approach Control. The FAA does not agree with this comment because only those operations at, to, and from Hernando County Airport that are: (1) Within 30 miles of Tampa International Airport; and (2) not within ATC radar coverage, will be excluded from the Mode C transponder equipment requirement. Therefore, the FAA does not believe that the Air Force is routinely receiving traffic advisories with respect to these aircraft since such aircraft would not be detected by ATC radar. Excluding operations in the vicinity of Hernando County Airport from the Mode C transponder requirement should have no impact on the quality of traffic advisory service provided by ATC.

**ATC Radar System Improvements**

The FAA expects the radar coverage in some Mode C veil airspace to improve as a result of the scheduled upgrading of radar systems at each TCA location. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage on a site-by-site basis. Those reassessments may result in future proposed rulemaking to: (1) Extend the period that the Mode C transponder requirement is to be suspended if the evaluations indicate that aircraft operations at a designated airport are still not within radar coverage; or (2) designate other airports at which operations may be suspended from the Mode C transponder requirements if those evaluations determine that such operations are not within radar coverage.

**Proposed and Future TCA's**

A list of airports and specified altitudes below which aircraft operations will be excluded from the Mode C transponder requirement for the proposed Washington Tri-Area TCA Mode C veils is included in this SFAR. Should the proposed Washington Tri-Area TCA be established, the effective date of the suspension of the Mode C transponder requirements for operations in the vicinity of the listed airports will be coincident with the effective date of the establishment of that TCA. The list of airports within the proposed Washington Tri-Area TCA Mode C veil at which operations will be excluded from the Mode C transponder requirement contains a number of airports which are also included in the list of airports for the current Washington TCA Mode C veil. However, should the Washington Tri-Area TCA be adopted, the current Washington TCA would be revoked and replaced by the Washington Tri-Area TCA. The suspension of the Mode C transponder requirement for aircraft operations at the airports specified for the proposed Washington Tri-Area TCA will coincide with the effective date of the Washington Tri-Area TCA, should that TCA become effective.

With regard to future proposed TCA's, a list of airports and specified altitudes below which aircraft operations would be excluded from the Mode C transponder requirement will accompany any notice of proposed rulemaking for each proposed TCA. The inclusion of the list of airports in the NPRM for the proposed TCA will allow the public to fully consider the impact of the proposed TCA and Mode C veil on aircraft operations; provide the public with the opportunity to comment on the list of airports and specified altitudes; and allow for full consideration of such comments along with other comments to the proposed TCA. If the proposed TCA is adopted, then a final rule amending this SFAR will be published with an effective data coincident with the effective date of the new TCA. The final rule amendment to this SFAR will list those airports within the new TCA Mode C veil at which aircraft operations at and below the specified altitude within a 2-nautical mile radius of an airport and along a direct route between that airport and the outer boundary of the Mode C veil will be suspended from the Mode C transponder equipment requirement until December 30, 1993.

**The Special Federal Aviation Regulation**

This SFAR permits the operation of an aircraft to and from designated airports within the Mode C veil without a Mode C transponder. A list of airports at which operations without a Mode C transponder will be permitted is contained in this SFAR. The Mode C transponder requirement will be reinstated for aircraft operations to and from the designated airports after December 30, 1993. However, the FAA may conduct field evaluations to reassess the radar coverage within certain TCA Mode C veils on a site-by-site basis after new radar systems are in service. Based on those reassessments, the FAA may extend the period that the Mode C transponder requirement will be suspended for operations at certain airports on a case-by-case basis through further rulemaking.

Aircraft operations without a Mode C transponder will be permitted within a 2-nautical mile radius of a designated airport from the surface up to a specified altitude. Additionally, aircraft operations without a Mode C transponder will be permitted along the most direct route between that designated airport and the boundary of the Mode C veil, at and below the specified altitude. The routing must be consistent with established traffic patterns, noise abatement procedures, and safety. This SFAR and the designation of altitudes for each airport, however, are not intended to supersede the provisions of § 91.119, Minimum safe altitudes. Routings to and from each airport are intentionally unspecified to permit the pilot, complying with § 91.119, to avoid operating over obstructions, noise-sensitive areas, etc. Further, should the pilot of an aircraft intending to operate into or out of an airport listed in this SFAR determine that the operation at or below the specified altitude is unsafe due to meteorological conditions, aircraft operating characteristics, or other factors, the pilot should seek relief from the Mode C transponder requirement via the ATC authorization process.

Aircraft operations at, to, or from the listed airports will be suspended from the Mode C transponder requirement until December 30, 1993. This time period will accommodate the scheduled upgrading of present ATC radar systems at each TCA airport and an evaluation period to determine the extent of radar coverage within each Mode C veil as a result of radar system enhancements. Based on the results of these evaluations, the period that the Mode C transponder requirement will be suspended for operations at certain airports may be extended on a site-by-site basis by further rulemaking.

Operations of aircraft without Mode C transponders at airports not listed by this rule will continue to be safely accommodated in accordance with existing provisions for individual ATC authorizations.



**Regulatory Evaluation Summary**

*Introduction*

This section summarizes the full regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or highly controversial.

The FAA has determined that this rule will not be "major" as defined in the executive order. Therefore, a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to the final rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

*Benefit and Cost Analysis*

*Costs.* This final rule is not expected to impose costs on either the FAA or society. In addition, this rule will not impose significant costs on the aviation community (namely, fixed based operators). This assessment is based on rationale contained in the following discussion for each of these groups.

For the FAA, this rule will not impose additional costs for either personnel or equipment. The acquisition of new radar tracking systems is a routine cost of upgrading FAA equipment and will not occur as a result of this rule. In addition, this rule will not require the FAA to hire additional personnel. This is because the temporary suspension of the Mode C transponder requirement is expected to enhance air traffic control (ATC) operation efficiency by eliminating the need for ATC authorizations at the subject designated airports. This action will reduce the demand on ATC personnel and equipment resources.

This rule will not have an adverse impact on aviation safety. The FAA believes that access to certain outlying GA airports by aircraft without Mode C transponders can be accommodated without diminishing Mode C safety benefits, provided the operation is conducted outside radar coverage. When aircraft operations are confined exclusively to areas of no radar coverage, many of the safety benefits of the Mode C rule cannot be realized. Future enhancement of the radar tracking system is expected to increase radar coverage, thus extending the Mode C benefits to more areas outside of the current radar coverage. The scheduled installation of the new radar tracking systems at all TCA primary airports is expected to be completed in about three years. The Mode C transponder requirement will be reinstated for aircraft operations to and from the designated airports after December 30, 1993. After new radar systems are in service, the FAA may conduct field evaluations to reassess actual radar coverage. Those reassessments may result in future proposed rulemaking to amend the suspension period for operation at certain airports.

For the aviation community, the FAA anticipates no significant costs will be incurred by fixed base operators (FBOs) as the result of this rule. Fixed base operators represent the most likely group to potentially incur costs. These costs will be in the form of lost revenues from the relocation of GA aircraft without Mode C transponders as a result of this action. However, it is the informed opinion of FAA personnel that any potential cost impact on FBOs will be insignificant. The FAA believes that GA aircraft operators based at non-designated airports within a Mode C veil and currently authorized to operate without a Mode C transponder will have little incentive to relocate since: (1) The ATC authorization contains those conditions and provisions necessary for safe operation and the operator has agreed to comply with those provisions; and (2) the renewal process for an existing authorization is less cumbersome than the first-time authorization process. Furthermore, the FAA does not believe that significant numbers of GA aircraft without Mode C transponders will relocate from outside a Mode C veil to a designated airport within a Mode C veil. This is because this rule will only allow aircraft without Mode C transponders to operate from the surface up to a specified altitude within a 2.0 nautical mile radius of a designated airport and along the most direct route between that airport and the boundary of the Mode C veil. Although this rule will provide greater access to a Mode C veil, the FAA believes that this action will not provide much of an incentive for GA aircraft operators to relocate. This assessment is further supported by the belief that the vast majority of GA aircraft operators required to have Mode C transponders will have acquired them by December 30, 1990. This is when the requirement for such equipment at Airport Radar Service Areas goes into effect.

The FAA recognizes the possibility that lost revenues incurred by some FBOs outside of the Mode C veil could be offset by revenue gains on the part of FBOs inside the veil. However, there is much uncertainty associated with this possibility due to a lack of information concerning the level of competition among FBOs inside and outside of the Mode C veils throughout the United States. For example, in any given state, the market structure inside of the Mode C veil could resemble a spatial monopoly, in which unit prices for services rendered by FBOs will be higher than that of a more competitive market structure located outside of the veil. If some aircraft operators were to relocate from areas of higher competition to areas of lower competition among FBOs those operators may incur higher charges for services rendered. For those operators who elect to relocate, it can be assumed to be in their best interest to do so. Thus, any additional higher FBO charges aircraft operators incur as the result of relocating will be at least offset by those factors that prompted their decision to relocate. The net change in revenue among FBOs may not be offsetting because of differences in unit prices charged. While it is not known to what

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**Authority:** 49 U.S.C. 1301(7), 1303, 1344,

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exient revenue gains and losses will be offset among FBOs. the FAA, nonetheless, believes that the cost impacts on FBOs will not be significant for those reasons stated in the previous paragraphs.

*Benefits.* This final rule is expected to generate potential benefits in the form of increased convenience to GA aircraft operators (without Mode C transponders) and enhanced operation efficiency to FAA air traffic control.

For GA aircraft operators, this rule is expected to generate potential benefits in the form of increased convenience. Prior to this rule, GA aircraft operators, without Mode C transponders, could operate at an airport within the Mode C veil but outside of ATC radar coverage only after receiving ATC authorization. However, certain aspects of the authorization process are inefficient and time consuming because authorizations can only be granted on a case-by-case basis. This undesirable situation was true for both affected GA operators and the FAA. The convenience of this rule will be the temporary relief from the burden of obtaining ATC authorizations that sometimes confronts GA aircraft operators who wish to fly to and from the designated airports without Mode C transponders.

For FAA air traffic control (ATC), this rule will provide benefits in the form of enhanced operation efficiency. Such enhanced efficiency will be the temporary relief on ATC from assigning authorizations during busy periods. This action will better allow ATC to temporarily allocate its personnel and equipment resources to more productive functions.

Although the benefits of this rule have not been quantified, they are expected to be substantial for both the flying public and the FAA.

*Conclusion*

This rule is not expected to impose costs on either the FAA or society. In addition, this rule will not impose significant costs on the aviation community (FBOs). The FAA estimates that this rule will potentially generate substantial benefits such as increased convenience to some GA aircraft operators and increased operation efficiency to FAA air traffic control. Thus, the FAA firmly believes that this rule is cost-beneficial.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." This small entities that could be potentially affected by the implementation of the rule are air taxi operators and fixed based operators (FBOs).

In terms of air taxi operators, no cost impact are anticipated by this rule. This assessment is based on the FAA's estimation that these operators are already equipped with Mode C transponders. They are, in all likelihood, based at airports within the Mode C veil which fall within the radar coverage of ATC.

In terms of FBOs, the FAA estimates that this rule will not impose significant costs. This assessment is based on the belief that GA aircraft operators are not likely to impose lost revenues on FBOs by relocating from airports outside of the Mode C veil or undesignated airports within the Mode C veil to designated airports specified in this rule. Although the rule provides greater access to a Mode C veil, the FAA believes that this rule does not provide GA aircraft operators with much of an incentive to relocate. This assessment is further supported by the belief that the vast majority of those GA aircraft operators required to have Mode C transponders will acquire them by December 30, 1990 (Phase II of the Mode C rule for Airport Radar Service Areas). Therefore, the FAA believes that this rule will not have a significant economic impact on substantial number of small entities.

**International Trade Impact Assessment**

This rule will not have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because this rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that will result in a competitive disadvantage to either.

**Federalism Determination**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Effects**

This SFAR relieves the requirement for an aircraft to be equipped with a Mode C transponder when operating at/to/from certain airports within a Mode C veil. This action does not establish specific operating procedures, nor does it limit the operation of an aircraft to a specific route. Routings to and from each airport are intentionally unspecified to permit the pilot to avoid operating over obstructions, noise-sensitive areas, etc. and remain in compliance with § 91.119. Therefore, this SFAR accommodates the operation of an aircraft in compliance with existing safety and environmental requirements and procedures and does not alter or supersede those requirements. The FAA's experience with the granting of authorizations since the adoption of the Mode C transponder requirement indicates that there will not be a large number of aircraft operating at any one airport under the authority of this rule. For these reasons, the FAA concludes that the adoption of this rule is categorically excluded from the requirement for further environmental review or assessment pursuant to FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts.

*Conclusion*

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 91**

Aircraft, Air traffic control, Automatic altitude reporting equipment, Aviation safety, Mode C veil, Terminal control area, Transponder.

**The Amendment**

For the reasons set forth in the preamble, the Federal Aviation Administration amends part 91 of the Federal Regulations (14 CFR part 91) as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:



**Authority:** 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1356, 1401, 1421 (as amended by Pub. L. 100–223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; Pub. L. 100–202; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By adding Special Federal Aviation Regulation No. 62 to read as follows:

**SFAR No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement.**

Section 1. For purposes of this SFAR:

(a) The airspace within 30 nautical miles of a terminal control area primary airport, from the surface upward to 10,000 feet MSL, excluding the airspace designated as a terminal control area is referred to as the Mode C veil.

(b) Effective until December 30, 1993, the transponder with automatic altitude reporting capability requirements of FAR § 91.215(b)(2) do not apply to the operation of an aircraft:

(1) In the airspace at or below the specified altitude and within a 2-nautical-mile radius, or, if directed by ATC, within a 5-nautical mile radius, of an airport listed in section 2 of this SFAR; and

(2) In the airspace at or below the specified altitude along the most direct and expeditious routing, or on a routing directed by ATC, between an airport listed in section 2 of this SFAR and the outer boundary of the Mode C veil airspace overlying that airport, consistent with established traffic patterns, noise abatement procedures, and safety.

Section 2. Effective until December 30, 1993. Airports at which the provisions of § 91.215(b)(2) do not apply.

(1) Airports within a 30-nautical-mile radius of The William B. Hartsfield Atlanta International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Air Acres Airport, Woodstock, GA. | 5GA4 | 1,500 |
| B & L Strip Airport, Hollonville, GA. | GA29 | 1,500 |
| Camfield Airport, McDonough, GA. | GA36 | 1,500 |
| Cobb County-McCollum Field Airport, Marietta, GA. | RYY | 1,500 |
| Covington Municipal Airport, Covington, GA. | 9A1 | 1,500 |
| Diamond R Ranch Airport, Villa Rica, GA. | 3GA5 | 1,500 |
| Dresden Airport, Newnan, GA. | GA79 | 1,500 |
| Eagles Landing Airport, Williamson, GA. | 5GA3 | 1,500 |
| Fagundes Field Airport, Hariston, GA. | 8GA1 | 1,500 |
| Gable Branch Airport, Haralson, GA. | 5GA0 | 1,500 |
| Georgia Lite Flite Ultralight Airport, Acworth, GA. | 31GA | 1,500 |
| Griffin-Spalding County Airport, Griffin, GA. | 6A2 | 1,500 |
| Howard Private Airport, Jackson, GA. | GA02 | 1,500 |
| Newnan Coweta County Airport, Newnan, GA. | CCO | 1,500 |
| Peach State Airport, Williamson, GA. | 3GA7 | 1,500 |
| Poole Farm Airport, Oxford, GA. | 2GA1 | 1,500 |
| Powers Airport, Hollonville, GA. | GA31 | 1,500 |
| S & S Landing Strip Airport, Griffin, GA. | 6GA6 | 1,500 |
| Shade Tree Airport, Hollonville, GA. | GA73 | 1,500 |

(2) Airports within a 30-nautical-mile radius of the General Edward Lawrence Logan International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Barlin Landing Area Airport, Berlin, MA. | MA19 | 2,500 |
| Hopedale Industrial Park Airport, Hopedale, MA. | 1B6 | 2,500 |
| Larson's SPB, Tyngsboro, MA. | MA74 | 2,500 |
| Moore AAF, Ayer/Fort Devens, MA. | AYE | 2,500 |
| New England Gliderport, Salem, NH. | NH29 | 2,500 |
| Plum Island Airport, Newburyport, MA. | 2B2 | 2,500 |
| Plymouth Municipal Airport, Plymouth, MA. | PYM | 2,500 |
| Taunton Municipal Airport, Taunton, MA. | TAN | 2,500 |
| Unknown Field Airport, Southborough, MA. | 1MA5 | 2,500 |

(3) Airports within a 30-nautical-mile radius of the Charlotte/Douglas International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Arant Airport, Wingate, NC | 1NC8 | 2,500 |
| Bradley Outernational Airport, China Grove, NC. | NC29 | 2,500 |
| Chester Municipal Airport, Chester, SC. | 9A6 | 2,500 |
| China Grove Airport, China Grove, NC. | 76A | 2,500 |
| Goodnight's Airport, Kannapolis, NC. | 2NC8 | 2,500 |
| Knapp Airport, Marshville, NC | 3NC4 | 2,500 |
| Lake Norman Airport, Mooresville, NC. | 14A | 2,500 |
| Lancaster County Airport, Lancaster, SC. | LKR | 2,500 |
| Little Mountain Airport, Denver, NC. | 66A | 2,500 |
| Long Island Airport, Long Island, NC. | NC25 | 2,500 |
| Miller Airport, Mooresville, NC | 8A2 | 2,500 |
| U S Heliport, Wingate, NC | NC56 | 2,500 |
| Unity Aerodrome Airport, Lancaster, SC. | SC75 | 2,500 |
| Wilhelm Airport, Kannapolis, NC. | 8NC2 | 2,500 |

(4) Airports within a 30-nautical-mile radius of the Chicago-O'Hara International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Aurora Municipal Airport, Chicago/Aurora, IL. | ARR | 1,200 |
| Donald Allred Gade Airport, Antioch, IL. | IL11 | 1,200 |
| Dr. Joseph W. Esser Airport, Hampshire, IL. | 7IL6 | 1,200 |
| Flying M. Farm Airport, Aurora, IL. | IL20 | 1,200 |
| Fox Lake SPB, Fox Lake, IL | I50 3 | 1,200 |
| Graham SPB, Crystal Lake, IL. | I57 9 | 1,200 |
| Herbert C. Mess Airport, Zion, IL. | IL02 | 1,200 |
| Landings Condominium Airport, Romeoville, IL. | C49 | 1,200 |
| Lewis University Airport, Romeoville, IL. | LOT | 1,200 |
| McHenry Farms Airport, McHenry, IL. | 44IL | 1,200 |
| Olson Airport, Plato Center, IL. | LL53 | 1,200 |
| Redeker Airport, Milford, IL | IL86 | 1,200 |
| Reid RLA Airport, Gilberts, IL | 6IL6 | 1,200 |
| Shamrock Beef Cattle Farm Airport, McHenry, IL. | 49LL | 1,200 |
| Sky Soaring Airport, Union, IL | 55LL | 1,200 |
| Waukegan Regional Airport, Waukegan, IL. | UGN | 1,200 |
| Wormley Airport, Oswego, IL | 85LL | 1,200 |

(5) Airports within a 30-nautical-mile radius of the Cleveland-Hopkins International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Akron Fulton, International Airport, Akron, OH. | AKR | 1,300 |
| Bucks Airport, Newbury, OH | 40OH | 1,300 |
| Derecsky Airport, Auburn Center, OH. | 8O30 | 1,300 |
| Hannum Airport, Streetsboro, OH. | 69OH | 1,300 |
| Kent State University Airport, Kent, OH. | 1G2 | 1,300 |
| Lost Nation Airport, Willoughby, OH. | LNN | 1,300 |
| Mills Airport, Mantua, OH | OH06 | 1,300 |
| Portage County Airport, Ravenna, OH. | 29G | 1,300 |
| Stoney's Airport, Ravenna, OH. | OI32 | 1,300 |
| Wadsworth Municipal Airport, Wadsworth, OH. | 3G3 | 1,300 |

(6) Airports within a 30-nautical-mile radius of the Dallas/Fort Worth International Airport.

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| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Beggs Ranch/Alede Airport, Alede, TX. | TX15 | 1,800 |
| Belcher Airport, Sanger, TX | TA25 | 1,800 |
| Bird Dog Field Airport, Krum, TX. | TA48 | 1,800 |
| Boe-Wanata Airport, Ada, TX | 2WTS | 1,800 |
| Flying V Airport, Sanger, TX | 71XS | 1,800 |
| Graham Ranch Airport, Celina, TX. | TX44 | 1,800 |
| Haire Airport, Bolivar, TX | TX33 | 1,800 |
| Hartlee Field Airport, Denton, TX. | 1F3 | 1,800 |
| Hawkin's Ranch Strip Airport, Rhome, TX. | TA02 | 1,800 |
| Horseshoe Lake Airport, Sanger, TX. | TE24 | 1,800 |
| Ironhead Airport, Sanger, TX | T56 | 1,800 |
| Kezar Air Ranch Airport, Springtown, TX. | 61F | 1,800 |
| Lane Field Airport, Sanger, TX. | 56F | 1,800 |
| Log Cabin Airport, Alede, TX | TX16 | 1,800 |
| Lone Star Airpark Airport, Denton, TX. | T32 | 1,800 |
| Rhome Meadows Airport, Rhome, TX. | TS72 | 1,800 |
| Richards Airport, Krum, TX | TA47 | 1,800 |
| Tallows Field Airport, Celina, TX. | 79TS | 1,800 |
| Triple S Airport, Alede, TX | 42XS | 1,800 |
| Warshaw Ranch Airport, Denton, TX. | 4TA1 | 1,800 |
| Windy Hill Airport, Denton, TX. | 46XS | 1,800 |
| Aero Country Airport, McKinney, TX. | TX05 | 1,400 |
| Bailey Airport, Midlothian, TX | 7TX8 | 1,400 |
| Branscom Farm Airport, Burleson, TX. | TX42 | 1,400 |
| Carroll Air Park Airport, De Soto, TX. | F68 | 1,400 |
| Carroll Lake-View Airport, Venus, TX. | 70TS | 1,400 |
| Eagle's Nest Estates Airport, Ovilla, TX. | 2T26 | 1,400 |
| Flying B Ranch Airport, Ovilla, TX. | TS71 | 1,400 |
| Lancaster Airport, Lancaster, TX. | LNC | 1,400 |
| Lewis Farm Airport, Lucas, TX. | 6TX1 | 1,400 |
| Mantum Ranch Airport, Fort Worth, TX. | TX79 | 1,400 |
| McKinney Municipal Airport, McKinney, TX. | TKI | 1,400 |
| O'Brien Airpark Airport, Waxahachie, TX. | F25 | 1,400 |
| Phil L. Hudson Municipal Airport, Mesquite, TX. | HQZ | 1,400 |
| Plover Heliport, Crowley, TX | 82O | 1,400 |
| Venus Airport, Venus, TX | 76TS | 1,400 |

(7) Airports within a 30-nautical-mile radius of the Stapleton International Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Adhesalon Valley Airport, Blackhawk, CO. | CO07 | 1,200 |
| Boulder Municipal Airport, Boulder, CO. | 1V5 | 1,200 |
| Brown Farms No. 2 Airport, Strasburg, CO. | 3CO5 | 1,200 |
| Carrera Airpark Airport, Mead, CO. | 83CO | 1,200 |
| Cartwheel Airport, Mead, CO | 9CO9 | 1,200 |
| Colorado Antique Field Airport, Niwot, CO. | 9CO7 | 1,200 |
| Comanche Airfield Airport, Strasburg, CO. | 3CO6 | 1,200 |
| Comanche Livestock Airport, Strasburg, CO. | 58CO | 1,200 |
| Flying J Ranch Airport, Evergreen, CO. | 27CO | 1,200 |
| Frederick-Firestone Airport Strip Airport, Frederick, CO. | CO58 | 1,200 |
| Frontier Airstrip Airport, Mead, CO. | 84CO | 1,200 |
| Hoy Airstrip Airport, Bennett, CO. | 76CO | 1,200 |
| J & S Airport, Bennett, CO | CD14 | 1,200 |
| Kugel-Strong Airport, Platteville, CO. | 27V | 1,200 |
| Land Airport, Keenesburg, CO. | CO62 | 1,200 |
| Lindye Airpark Airport, Hudson, CO. | 7CO3 | 1,200 |
| Marshdale STOL, Evergreen, CO. | CO52 | 1,200 |
| Meyer Ranch Airport, Conifer, CO. | 5CO6 | 1,200 |
| Parkland Airport, Erie, CO | 7CO0 | 1,200 |
| Pine View Airport, Elizabeth, CO. | 02V | 1,200 |
| Platte Valley Airport, Hudson, CO. | 18V | 1,200 |
| Rancho D Aereo Airport, Mead, CO. | 05CO | 1,200 |
| Spickard Farm Airport, Byers, CO. | 5CO4 | 1,200 |
| Vance Brand Airport, Longmont, CO. | 2V2 | 1,200 |
| Yoder Airstrip Airport, Bennett, CO. | CD09 | 1,200 |

(8) Airports within a 30-nautical-mile radius of the Detroit Metropolitan Wayne County Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Al Meyers Airport, Tecumseh, MI. | 3TE | 1,400 |
| Brighton Airport, Brighton, MI | 45G | 1,400 |
| Cackleberry Airport, Dexter, MI. | 2MI9 | 1,400 |
| Erie Aerodome Airport, Erie, MI. | 05MI | 1,400 |
| Ham-A-Lot Field Airport, Petersburg, MI. | MI48 | 1,400 |
| Merillat Airport, Tecumseh, MI. | 34G | 1,400 |
| Rossette Airport, Manchester, MI. | 75G | 1,400 |
| Tecumseh Products Airport, Tecumseh, MI. | 0D2 | 1,400 |

(9) Airport within a 30-nautical-mile radius of the Honolulu International Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Dillingham Airfield Airport, Molokeia, HI. | HDH | 2,500 |

(10) Airports within a 30-nautical-mile radius of the Houston Inter-continental Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Ainsworth Airport, Cleveland, TX. | 0T8 | 1,200 |
| Biggin Hill Airport, Hockley, TX. | 0TA3 | 1,200 |
| Cleveland Municipal Airport, Cleveland, TX. | 6R3 | 1,200 |
| Fay Ranch Airport, Cedar Lane, TX. | 0T2 | 1,200 |
| Freeman Property Airport, Katy, TX. | 61T | 1,200 |
| Gum Island Airport, Dayton, TX. | 3T6 | 1,200 |
| Harbican Airpark Airport, Katy, TX. | 9XS9 | 1,200 |
| Harold Freeman Farm Airport, Katy, TX. | 6XS1 | 1,200 |
| Hoffpauir Airport, Katy, TX | 59T | 1,200 |
| Horn-Katy Hawk International Airport, Katy, TX. | 57T | 1,200 |
| Houston-Hull Airport, Houston, TX. | SGR | 1,200 |
| Houston-Southwest Airport, Houston, TX. | AXH | 1,200 |
| King Air Airport, Katy, TX | 55T | 1,200 |
| Lake Bay Gail Airport, Cleveland, TX. | 0T5 | 1,200 |
| Lake Bonanza Airport, Montgomery, TX. | 33TA | 1,200 |
| R W J Airpark Airport, Baytown, TX. | 54TX | 1,200 |
| Westheimer Air Park Airport, Houston, TX. | 6TA4 | 1,200 |

(11) Airports within a 30-nautical-mile radius of the Kansas City International Airport.

| Airport name | Arpt. ID | Alt. (AGL) |
|---|---|---|
| Amelia Earhart Airport, Atchison, KS. | K59 | 1,000 |
| Booze Island Airport, St. Joseph, MO. | 64MO | 1,000 |
| Cedar Air Park Airport, Olathe, KS. | 51K | 1,000 |
| D'Field Airport, McLouth, KS | KS90 | 1,000 |
| Dorel Airport, McLouth, KS | K59 | 1,000 |
| East Kansas City Airport, Grain Valley, MO. | 3GV | 1,000 |
| Excelsior Springs Memorial Airport, Excelsior Springs, MO. | 3EX | 1,000 |
| Flying T Airport Oskaloosa, KS. | 7KS0 | 1,000 |
| Harmon Farm Airport, Gardner, KS. | KS59 | 1,000 |
| Hillside Airport, Stilwell, KS | 89K | 1,000 |
| Independence Memorial Airport, Independence, MO. | 3IP | 1,000 |
| Johnson County Executive Airport, Olathe, KS. | OJC | 1,000 |
| Johnson County Industrial Airport, Olathe, KS. | IXD | 1,000 |
| Kimray Airport, Plattsburg, MO. | 7MO7 | 1,000 |
| Lawrence Municipal Airport, Lawrence, KS. | LWC | 1,000 |
| Martins Airport, Lawson, MO | 21MO | 1,000 |
| Mayes Homestead Airport, Polo, MO. | 37MO | 1,000 |
| McComas-Lee's Summit Municipal Airport, Lee's Summit, MO. | K84 | 1,000 |
| Mission Road Airport, Stilwell, KS. | 84K | 1,000 |
| Northwood Airport, Holt, MO | 2MO2 | 1,000 |



| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Plattsburg Airpark, Airport, Plattsburg, MO. | MO28 | 1,000 |
| Richards-Gebaur Airport, Kansas City, MO. | GVW | 1,000 |
| Rosecrans Memorial Airport, St. Joseph, MO. | STJ | 1,000 |
| Runway Ranch Airport, Kansas City, MO. | 2MO9 | 1,000 |
| Sheller's Airport, Tonganoxie, KS. | 11KS | 1,000 |
| Shemin Airport, Oskaloosa, KS. | 0KS1 | 1,000 |
| Stonehenge Airport, Williamstown, KS. | 71KS | 1,000 |
| Threshing Bee Airport, McLouth, KS. | 41K | 1,000 |

(12) Airport within a 30-nautical-mile radius of the McCarran International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Sky Ranch Estates Airport, Sandy Valley, NV. | 3L2 | 2,500 |

(13) Airports within a 30-nautical-mile radius of the Memphis International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Bernard Manor Airport, Earle, AR. | M85 | 2,500 |
| Holly Springs-Marshall County Airport, Holly Springs, MS. | MH1 | 2,500 |
| McNeely Airport, Earle, AR | M83 | 2,500 |
| Price Field Airport, Joiner, AR | 80M | 2,500 |
| Tucker Field Airport, Hughes, AR. | 78M | 2,500 |
| Tunica Airport, Tunica, MS | 36M | 2,500 |
| Tunica Municipal Airport, Tunica, MS. | M97 | 2,500 |

(14) Airports within a 30-nautical-mile radius of the Minneapolis-St. Paul International Wold-Chamberlain Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Belle Plaine Airport, Belle Plaine, MN. | 7Y7 | 1,200 |
| Carleton Airport, Stanton, MN | SYN | 1,200 |
| Empire Farm Strip Airport, Bongards, MN. | MN15 | 1,200 |
| Flying M Ranch Airport, Roberts, WI. | 75WI | 1,200 |
| Johnson Airport, Rockford, MN. | MY86 | 1,200 |
| River Falls Airport, River Falls, WI. | Y53 | 1,200 |
| Rusmar Farms Airport, Roberts, WI. | WS41 | 1,200 |
| Waldorf SPB, Forest Lake, MN. | 9Y6 | 1,200 |
| Ziermann Airport, Mayer, MN | MN71 | 1,200 |

(15) Airports within a 30-nautical-mile radius of the New Orleans International/Moisant Field Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Bollinger SPB, Larose, LA | L38 | 1,500 |
| Clovelly Airport, Cut Off, LA | LA09 | 1,500 |

(16) Airports within a 30-nautical-mile radius of the John F. Kennedy International Airport, the La Guardia Airport, and the Newark International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Allaire Airport, Belmar/Farmingdale, NJ. | BLM | 2,000 |
| Cuddihy Landing Strip Airport, Freehold, NJ. | NJ69 | 2,000 |
| Elizabhi Airport, Freehold, NJ | NJ59 | 2,000 |
| Fle-Net Airport, Netcong, NJ | 0NJ5 | 2,000 |
| Forrestal Airport, Princeton, NJ. | N21 | 2,000 |
| Greenwood Lake Airport, West Milford, NJ. | 4N1 | 2,000 |
| Greenwood Lake SPB, West Milford, NJ. | 8NJ7 | 2,000 |
| Lance Airport, Whitehouse Station, NJ. | 8N38 | 2,000 |
| Mar Bar L Farms, Englishtown, NJ. | NJ46 | 2,000 |
| Pawlkill SPB, Pawlkill, NY | 7N2 | 2,000 |
| Peters Airport, Somerville, NJ | 4NJ6 | 2,000 |
| Princeton Airport, Princeton/Rocky Hill, NJ. | 39N | 2,000 |
| Solberg-Hunterdon Airport, Readington, NJ. | N51 | 2,000 |

(17) Airports within a 30-nautical-mile radius of the Orlando International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Arthur Dunn Air Park Airport, Titusville, FL. | X21 | 1,400 |
| Space Center Executive Airport, Titusville, FL. | TIX | 1,400 |

(18) Airports within a 30-nautical-mile radius of the Philadelphia International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Glenn Airport, West Grove, PA. | 78N | 1,000 |
| Hammonton Municipal Airport, Hammonton, NJ. | N81 | 1,000 |
| Li Calzi Airport, Bridgeton, NJ | N50 | 1,000 |
| New London Airport, New London, PA. | N01 | 1,000 |
| Wide Sky Airpark Airport, Bridgeton, NJ. | N39 | 1,000 |

(19) Airports within a 30-nautical-mile radius of the Phoenix Sky Harbor International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Ak Chin Community Airfield Airport, Maricopa, AZ. | E31 | 2,500 |
| Boulais Ranch Airport, Maricopa, AZ. | 9E7 | 2,500 |
| Estrella Sailport, Maricopa, AZ. | E66 | 2,500 |
| Hidden Valley Ranch Airport, Maricopa, AZ. | AZ17 | 2,500 |
| Miller Airport, Maricopa, AZ | 3AZ4 | 2,500 |
| Pleasant Valley Airport, New River, AZ. | AZ05 | 2,500 |
| Serene Field Airport, Maricopa, AZ. | AZ31 | 2,500 |
| Sky Ranch Carefree Airport, Carefree, AZ. | E18 | 2,500 |
| Sycamore Creek Airport, Fountain Hills, AZ. | 0AS0 | 2,500 |
| University of Arizona, Maricopa Agricultural Center Airport, Maricopa, AZ. | 3AZ2 | 2,500 |

(20) Airports within a 30-nautical-mile radius of the Lambert/St. Louis International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Blackhawk Airport, Old Monroe, MO. | 6MO0 | 1,000 |
| Lebert Flying L Airport, Lebanon, MO. | 3H5 | 1,000 |
| Shafer Metro East Airport, St. Jacob, IL. | 3K6 | 1,000 |
| Sloan's Airport, Elsberry, MO | 0MO6 | 1,000 |
| Wentzville Airport, Wentzville, MO. | MO50 | 1,000 |
| Woodliff Airpark Airport, Farmington, MO. | 3MO | 1,000 |

(21) Airports within a 30-nautical-mile radius of the Salt Lake City International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Bolinder Field-Tooele Valley Airport, Tooele, UT. | TVY | 2,500 |
| Cedar Valley Airport, Cedar Fort, UT. | UT10 | 2,500 |
| Morgan County Airport, Morgan, UT. | 42U | 2,500 |
| Tooele Municipal Airport, Tooele, UT. | U26 | 2,500 |

(22) Airports within a 30-nautical-mile radius of the Seattle-Tacoma International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Firstair Field Airport, Monroe, WA. | WA36 | 1,500 |
| Gower Field Airport, Olympia, WA. | 6WAZ | 1,500 |
| Harvey Field Airport, Snohomish, WA. | S43 | 1,500 |

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(23) Airports within a 30-nautical-mile radius of the Tampa International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Hernando County Airport, Brooksville, FL. | BKV | 1,500 |
| Lakeland Municipal Airport, Lakeland, FL. | LAL | 1,500 |
| Zephyrhills Municipal Airport, Zephyrhills, FL. | ZPH | 1,500 |

(24) Effective until the establishment of the Washington Tri-Area TCA or December 30, 1993, whichever occurs first: Airports within a 30-nautical-mile radius of the Washington National Airport and Andrews Air Force Base Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Barnes Airport, Lisbon, MD | MD47 | 2,000 |
| Bay Bridge Airport, Stevensville, MD. | W29 | 2,000 |
| Castle Marina Airport, Chester, MD. | 0W6 | 2,000 |
| Davis Airport, Laytonsville, MD. | W50 | 2,000 |
| Fremont Airport, Kemptown, MD. | MD41 | 2,000 |
| Kentmorr Airpark Airport, Stevensville, MD. | 3W3 | 2,000 |
| Montgomery County Airpark Airport, Gaithersburg, MD. | GAI | 2,000 |
| Waredaca Farm Airport, Brookeville, MD. | MD16 | 2,000 |
| Aqua-Land/Clifton Skypark Airport, Newburg, MD. | 2W6 | 1,000 |
| Buds Ferry Airport, Indian Head, MD. | MD39 | 1,000 |
| Burgess Field Airport, Riverside, MD. | 3W1 | 1,000 |
| Chimney View Airport, Fredericksburg, VA. | 5VA5 | 1,000 |
| Holly Springs Farm Airport, Nanjemoy, MD. | MD55 | 1,000 |
| Lanseair Farms Airport, La Plata, MD. | MD97 | 1,000 |
| Nyce Airport, Mount Victoria, MD. | MD84 | 1,000 |
| Parks Airpark Airport, Nanjemoy, MD. | MD54 | 1,000 |
| Pilots Cove Airport, Tompkinsville, MD. | MD06 | 1,000 |
| Quantico MCAF, Quantico, VA. | NYG | 1,000 |
| Stewart Airport, St. Michaels, MD. | MD64 | 1,000 |
| U.S. Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA. | NDY | 1,000 |

(25) Effective upon the establishment of the Washington Tri-Area TCA: Airports within a 30-nautical-mile radius of the Washington National Airport, Andrews Air Force Base Airport, Baltimore-Washington International Airport, and Dulles International Airport.

| Airport name | Arpt ID | Alt. (AGL) |
|---|---|---|
| Albrecht Airstrip Airport, Long Green, MD. | MD48 | 2,000 |
| Armacost Farms Airport, Hampstead, MD. | MD36 | 2,000 |
| Barnes Airport, Lisbon, MD. | MD47 | 2,000 |
| Bay Bridge Airport, Stevensville, MD. | W29 | 2,000 |
| Carroll County Airport, Westminster, MD. | W54 | 2,000 |
| Castle Marina Airport, Chester, MD. | 0W6 | 2,000 |
| Clearview Airpark Airport, Westminster, MD. | 2W2 | 2,000 |
| Davis Airport, Laytonsville, MD. | W50 | 2,000 |
| Fallston Airport, Fallston, MD. | W42 | 2,000 |
| Faux-Burhans Airport, Frederick, MD. | 3MD0 | 2,000 |
| Forest Hill Airport, Forest Hill, MD. | MD31 | 2,000 |
| Fort Detrick Helipad Heliport, Fort Detrick (Frederick), MD. | MD32 | 2,000 |
| Frederick Municipal Airport, Frederick, MD. | FDK | 2,000 |
| Fremont Airport, Kemptown, MD. | MD41 | 2,000 |
| Good Neighbor Farm Airport, Unionville, MD. | MD74 | 2,000 |
| Happy Landings Farm Airport, Unionville, MD. | MD73 | 2,000 |
| Harris Airport, Still Pond, MD. | MD59 | 2,000 |
| Hybarc Farm Airport, Chestertown, MD. | MD19 | 2,000 |
| Kennersley Airport, Church Hill, MD. | MD23 | 2,000 |
| Kentmorr Airpark Airport, Stevensville, MD. | 3W3 | 2,000 |
| Montgomery County Airpark Airport, Gaithersburg, MD. | GAI | 2,000 |
| Phillips AAF, Aberdeen, MD. | APG | 2,000 |
| Pond View Private Airport, Chestertown, MD. | OMD4 | 2,000 |
| Reservoir Airport, Finksburg, MD. | 1W6 | 2,000 |
| Scheeler Field Airport, Chestertown, MD. | OW7 | 2,000 |
| Stolcrest STOL, Urbana, MD. | MD75 | 2,000 |
| Tinsely Airstrip Airport, Butler, MD. | MD17 | 2,000 |
| Walters Airport, Mount Airy, MD. | OMD5 | 2,000 |
| Waredaca Farm Airport, Brookeville, MD. | MD16 | 2,000 |
| Weide AAF, Edgewood Arsenal, MD. | EDG | 2,000 |
| Woodbine Gliderport, Woodbine, MD. | MD76 | 2,000 |
| Wright Field Airport, Chestertown, MD. | MD11 | 2,000 |
| Aviacres Airport, Warrenton, VA. | 3VA2 | 1,500 |
| Birch Hollow Airport, Hillsboro, VA. | W60 | 1,500 |
| Flying Circus Aerodrome Airport, Warrenton, VA. | 3VA3 | 1,500 |
| Fox Acres Airport, Warrenton, VA. | 15VA | 1,500 |
| Hartwood Airport, Somerville, VA. | 8W8 | 1,500 |
| Horse Feathers Airport, Midland, VA. | 53VA | 1,500 |
| Krens Farm Airport, Hillsboro, VA. | 14VA | 1,500 |
| Scott Airpark Airport, Lovettsville, VA. | VA61 | 1,500 |
| The Grass Patch Airport, Lovettsville, VA. | VA62 | 1,500 |
| Walnut Hill Airport, Calverton, VA. | 56VA | 1,500 |
| Warrenton Air Park Airport, Warrenton, VA. | 9W0 | 1,500 |
| Warrenton-Fauquier Airport, Warrenton, VA. | W66 | 1,500 |
| Whitman Strip Airport, Manassas, VA. | OV5 | 1,500 |
| Aqua-Land/Clifton Skypark Airport, Newburg, MD. | 2W6 | 1,000 |
| Buds Ferry Airport, Indian Head, MD. | MD39 | 1,000 |
| Burgess Field Airport, Riverside, MD. | 3W1 | 1,000 |
| Chimney View Airport, Fredericksburg, VA. | 5VA5 | 1,000 |
| Holly Springs Farm Airport, Nanjemoy, MD. | MD55 | 1,000 |
| Lanseair Farms Airport, La Plata, MD. | MD97 | 1,000 |
| Nyce Airport, Mount Victoria, MD. | MD84 | 1,000 |
| Parks Airpark Airport, Nanjemoy, MD. | MD54 | 1,000 |
| Pilots Cove Airport, Tompkinsville, MD. | MD06 | 1,000 |
| Quantico MCAF, Quantico, VA. | NYG | 1,000 |
| Stewart Airport, St. Michaels, MD. | MD64 | 1,000 |
| U.S. Naval Weapons Center, Dahlgren Lab Airport, Dahlgren, VA. | NDY | 1,000 |

Issued in Washington, DC on November 29, 1990.

**James B. Busey,**

*Administrator.*

[FR Doc. 90-28502 Filed 11-30-90; 4:05 pm]

BILLING CODE 4910-13-M

federal register

Wednesday
December 5, 1990

Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 61**

**Amendment of Compliance Date for Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Hours of Flight Time; Final Rule; Request for Comments**

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DEPARTMENT OF TRANSPORTATION

14 CFR Part 61

[Docket No. 24695; Amdt. No. 61-89]

RIN 2120-AA54

## Amendment of Compliance Date for Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Hours of Flight Time

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This final rule extends, until August 31, 1991, the compliance date for the requirement that recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time receive an annual flight review consisting of a minimum of 1 hour each of flight and ground instruction. This amendment is necessary to provide the Federal Aviation Administration adequate time in which to evaluate the petitions of the Aircraft Owners and Pilots Association and the Experimental Aircraft Association requesting deletion of the annual flight review. This amendment suspends the annual flight review requirement during the petition review period. It also precludes the necessity for large numbers of pilots to conduct this additional ground and flight instruction while the FAA conducts its review.

**EFFECTIVE DATE:** This final rule is effective November 30, 1990. Comments must be received on or before January 4, 1991.

**ADDRESSES:** Comments on this final rule may be delivered to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24695, 800 Independence Avenue SW., room 915G, Washington, DC 20591. Comments submitted on the final rule must be marked: Docket No. 24695. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267-8150.

**SUPPLEMENTARY INFORMATION:**

### Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, ATTN: APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267-3484. Communications must identify the docket number (Docket No. 24695) of this final rule. Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Background

The requirement for an annual flight review for recreational and non-instrument-rated private pilots with fewer than 400 hours of flight time was issued in the final rule entitled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots With Fewer Than 400 Flight Hours" (54 FR 13028; March 29, 1989). That final rule resulted, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) (47 FR 11026; March 15, 1982). The final rule was based upon Notice of Proposed Rulemaking No. 85-13 (50 FR 26286; June 25, 1985).

The effective date for the recreational pilot final rule, which contains the annual flight review requirement, at § 61.56(d), was August 31, 1989. This would mean that as of August 31, 1990, those affected recreational pilots and non-instrument-rated private pilots would have to complete the additional ground and flight instruction.

By letter dated May 22, 1989, the Aircraft Owners and Pilots Association (AOPA) petitioned the FAA to revise § 61.56(d) of the Federal Aviation Regulations (FAR) by deleting the annual flight review requirement. AOPA based its request for deletion of the annual flight review requirement on accident data which accompanied its petition.

By letter dated July 25, 1989, the Experimental Aircraft Association (EAA) also petitioned the FAA to delete the annual flight review requirement for recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time as a pilot.

On July 30, 1989, Secretary of Transportation Samuel Skinner spoke at EAA's annual convention at Oshkosh, WI. In response to requests from the aviation community, he promised that the FAA would review the data that was the basis for issuing the annual flight review rule.

As a result of these and other numerous inquiries questioning the sufficiency of the data used to justify the annual flight review requirement, the FAA initiated a review of the documents and data that were used to justify adoption of the requirement. On March 27, 1990, the FAA completed a preliminary study of these documents and data. As a result of this review the FAA has determined that the documents and data sources used by the agency in the development of the annual flight review requirement may have been insufficient.

In further consideration of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives July 13, 1990. In that meeting AOPA representatives stated that the annual flight review requirement singles out one particular segment for training that, for various reasons, they do not believe the safety data supports. EAA noted the continuing decline in general aviation and commented that the public feels burdened by additional rules. At the conclusion of the meeting, the FAA agreed that an extension of the compliance period for the annual flight review is warranted to allow additional time to consider the data presented by AOPA and EAA and to evaluate the need for the annual flight review. A copy of the record of this meeting is located in Docket No. 24695.

For the reasons stated above, the FAA is extending the compliance date for the annual flight review requirement until a satisfactory determination can be made as to the need for it. Additional time is required to update and analyze the data pertinent to the annual flight review requirement and to consider other related factors.

### General Discussion of this Final Rule

Upon preliminary review of the documents and data used in development of the annual flight review requirement, the FAA recognizes the need for further analysis. Therefore, the FAA has determined that it is in the public interest to delay the compliance date of the requirement for an annual flight review under § 61.56(d) of the FAR until August 31, 1991.

### Economic Statement

This final rule extends, until August 31, 1991, the compliance date for the requirement that recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time recieve an annual flight review consisting of a minimum of 1 hour each of flight and ground instruction.

The FAA has not been able to identify any economic impact of this action on either society or pilots because the data relied upon to promulgate the original annual flight review requirement may have been insufficient. The FAA does not desire to impose the annual flight review requirement until additional data and analysis support its need.



### Reason for No Notice and Immediate Adoption

This amendment is being adopted without notice and public comment procedure because delay would have a significant economic impact on the general aviation community. Large numbers of recreational and private pilots would be required to receive 2 hours, at a minimum, of ground and flight instruction on a yearly basis at an estimated annual cost of $6.4 million. Because the FAA needs more time to determine if this additional requirement for instruction is warranted or should be modified in some manner, requiring these persons to complete an annual review in the interim would constitute an undue burden.

The FAA finds that notice and public comment for this amendment are impracticable and contrary to the public interest because compliance with the current rule may be an undue burden on the general aviation public. In addition, because the date has already passed on which the one-year requirement would have taken effect, the FAA finds that good cause exists to make this rule effective in fewer than 30 days.

If the FAA determines that the annual review is not necessary or that it should be modified in some manner, a period of time will be required to draft a revision to the recreational pilot rule, to allow time for comment, and then to respond to those comments in a final rule.

Interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communciations received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

### Federalism Impact

The amendment adopted herein does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

### Conclusion

This amendment delays the compliance date, until August 31, 1991, of the annual flight review requirement for recreational pilots and non-instrument-rated private pilots with fewer than 400 hours of flight time as a pilot that was established in the "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Pilots with Fewer than 400 Hours" final rule. (FAR 61.56(d))

The FAA has determined that this amendment is not a major regulation under the criteria of Executive Order No. 12291 but is significant, because of the number of persons affected and public interest in this issue, under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

### List of Subjects in 14 CFR Part 61

Aviation safety, Student pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross-country flight privileges, Limitations.

### The Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is amended as follows:

## PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983).

2. By amended § 61.56 by revising the introductory text of paragraph (d) to read as follows:

**§ 61.56 Flight review.**

* * * * * * *

(d) Except as provided in paragraph (e) of this section, after August 31, 1991—* * *

* * * * * * *

Issued in Washington, DC, on November 30, 1990.

James B. Busey,

*Administrator.*

[FR Doc. 90-28501 Filed 12-4-90; 8:45 am]

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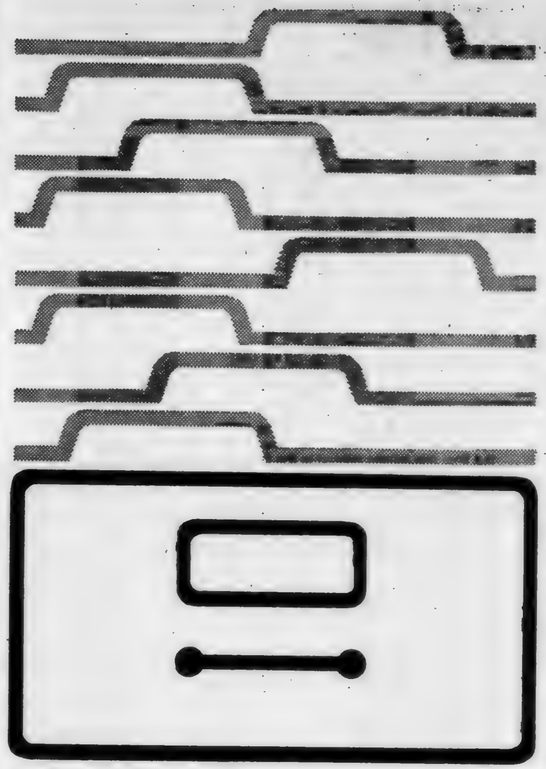
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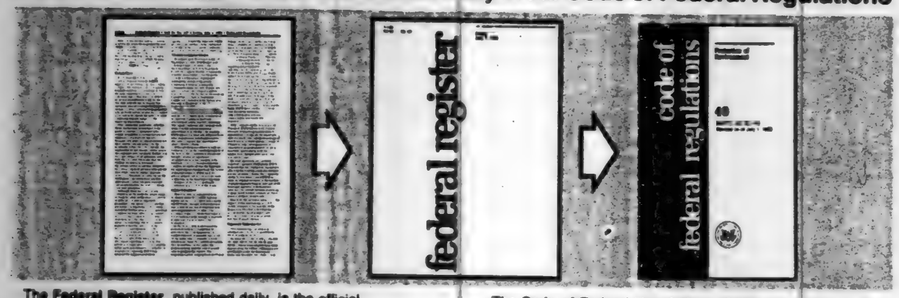


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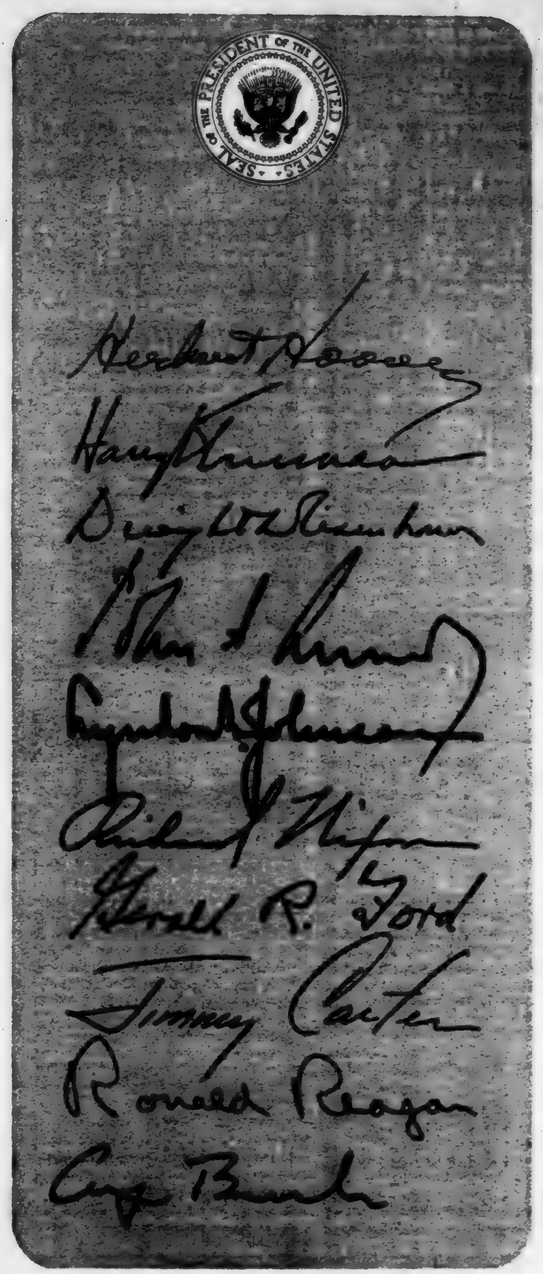
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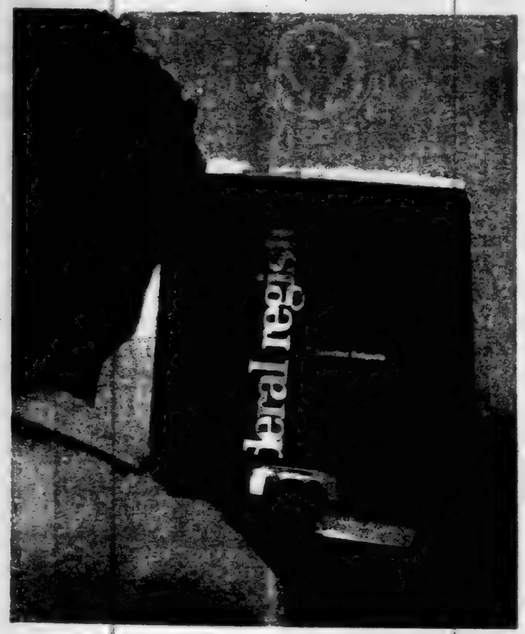
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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.



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# Rules and Regulations

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 225

### Summer Food Service Program; Child Nutrition and WIC Reauthorization Act Amendments

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Interim rule; Reopening of comment period.

**SUMMARY:** This rule reopens the comment period established in the Summer Food Service Program (SFSP) interim rule issued by the Department on April 10, 1990 (55 FR 13454). This action is being taken in order to provide Program administrators and sponsors additional time to provide comments on the implementation of the provisions of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, and the April 10, 1990 rulemaking.

**DATES:** To be assured of consideration, comments must be postmarked on or before September 30, 1991.

**ADDRESS:** Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie at the above address or phone (703) 756–3620.

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 10, 1990 the Department published at 55 FR 13454, an interim rule which implemented the Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, provisions affecting the Summer Food Service Program. That rule provided for a public comment period to run through October 31, 1990. It specifically stated that comments were particularly encouraged from State agencies and sponsors operating under the new provisions brought about by Public Law 101–147 (e.g., private sponsors, academic year NYSP sponsors and sponsors which operate homeless sites). The Department believes that comments from State agencies and sponsors which reflect an additional full year of Program operations under the new provisions would be of considerable benefit in finalizing regulations. Accordingly, the Department is reopening the public comment period found in the April 10, 1990 regulations through September 30, 1991.

Dated: November 27, 1990
Betty Jo Nelsen,
*Administrator.*
[FR Doc. 90-28581 Filed 12-5-90; 8:45 am]
BILLING CODE 3410-30-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 770, 771, and 772

[Docket No. 901071-0271]

### Exports to the Republic of Korea; Shorter Processing Time Frames and General License GCG

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** As part of the Department of Commerce initiative to encourage and recognize countries demonstrating increased ability to safeguard strategic goods and technology, the Bureau of Export Administration is granting certain licensing benefits to the Republic of Korea (South Korea). This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending § 770.14 of the Export Administration Regulations (EAR) to provide shorter processing time for license applications for the Republic of Korea; and
- Amending General License GCG to authorize certain shipments of U.S.-origin commodities to the Republic of Korea. General License GCG authorizes shipments to agencies of cooperating governments, as defined in § 771.14 of the EAR.

**EFFECTIVE DATE:** This rule is effective December 6, 1990. The procedures and the time limits set forth in § 770.14 of the EAR apply to license applications for the Republic of Korea received in the Office of Export Licensing after December 6, 1990. Applications for the Republic of Korea received prior to that date will be processed under the previous time frames.

**FOR FURTHER INFORMATION CONTACT:** Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–5171.

**SUPPLEMENTARY INFORMATION:**

#### Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694–0005, 0694–0007, and 0694–0010. This change will reduce the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an

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opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects**

*15 CFR Part 770*

Administrative practice and procedure, Exports.

*15 CFR Parts 771 and 772*

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 771, and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 770 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); and E.O. 12002 of July 7, 1977 (42 FR 35623, July, 1977); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citations for parts 771 and 772 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985 and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

**PART 770—[AMENDED]**

3. Section 770.14 is amended by revising paragraph (a) and (a)(3)(ii) to read as follows:

**§ 770.14 Processing license applications for COCOM participating countries and other selected countries.**

(a) Section 10(o) of the Export Administration Act provides for different processing time frames for license applications for exports of COCOM controlled items to countries participating in COCOM, the multilateral Coordinating Committee that cooperates in maintaining strategic export controls. These special processing time frames also apply to license applications for shipments to Austria, Finland, Korea (Republic of), and Switzerland. The procedures and time limits set forth in this section apply to license applications received in the Office of Export Licensing on or after the date that each country's eligibility was published in the **Federal Register**. License applications to one of the above countries received prior to that country's eligibility date will be processed under the previous time frames. Applications subject to nuclear non-proliferation controls that are referred to the interagency subgroup on Nuclear Export Coordination are not subject to the time limits in this section, but will be processed in accordance with § 770.13(g). As used in this section:

* * * * *

(3) * * *

(i) * * *

(ii) "*Other selected countries*" means Austria, Finland, Korea (Republic of), and Switzerland.

* * * * *

**PART 771—[AMENDED]**

**§ 771.14 [Amended]**

4. Section 771.14, paragraph (b) is amended by adding the phrase "Korea (Republic of)," immediately before the word "Singapore,".

**PART 772—[AMENDED]**

**§ 772.11 [Amended]**

5. Section 772.11(d)(3) is amended by adding the phrase "Korea (Republic of)," immediately before the word "Switzerland,".

Dated: November 29, 1990.

**Michael P. Galvin,**

*Assistant Secretary for Export Administration.*

[FR Doc. 90–28657 Filed 12–5–90; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Rel. No. 34–28550; File No. S7–11–89]**

**Prohibited Transactions in Connection With Partial Tender Offers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting clarifying amendments to Rule 10b–4 under the Securities and Exchange Act of 1934, the short tendering rule, and is redesignating the rule as rule 14e–4. Rule 14e–4 will continue to prohibit both short tendering and hedged tendering. With one minor exception, the deletion of the prohibition of multiple tendering to competing partial offers, the amendments are not intended to effect any substantive change in the operation of current rule 10b–4.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** M. Blair Corkran or Jodie J. Kelley at (202) 272–2848, Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction and Background**

The Securities and Exchange Commission is adopting amendments to clarify current rule 10b–4 ("Rule") [1] under the Securities Exchange Act of 1934 ("Exchange Act") [2] and to redesignate the rule as rule 14e–4. The Commission's clarification of the Rule is prompted in part by the decision of the United States Court of Appeals for the Second Circuit in *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker*.[3]

The Commission adopted Rule 10b–4 in 1966 for the purpose of prohibiting short tendering.[4] Prior to today's amendments, the Rule provided that it was a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive, or manipulative act or practice" as those terms are used in sections 10(b) and 14(e) of the Exchange Act for any person, in response to an offer or invitation for tenders of any security, to tender securities that he did not own. Ownership is defined in paragraph (a) of the rule. The Rule applies to all partial tender offers, whether made by a third party or by the issuer of the securities sought.[5]

Partial tender offers involve risk to securityholders of the subject company that not all of the securities tendered will be accepted. This risk is referred to as "proration risk." [6] Before the adoption of rule 10b–4, some securityholders tendered more securities than they owned in order to diminish proration risk. Broker-dealers and other market professionals were able to do this by their ability to guarantee their tenders [7] and by their access to borrowable shares. By tendering more securities than they owned, market professionals were able to secure acceptance of a disproportionately larger number of the securities owned by them than could be secured by other persons who tendered only securities that they owned.[8]

Following the adoption of rule 10b–4, it became apparent that requiring a shareholder to tender from a long position did not prevent market professionals from tendering shares they owned and then selling a portion of their shares before the proration deadline to a purchaser who would then also be able to tender the shares. This practice, known as hedged tendering, permitted tendering persons who hedged their tenders to shift proration risk to others who did not hedge.[9] This avoidance of proration risk was similar to that achieved by short tendering. In recognition of this, the Commission's Advisory Committee on Tender Offers ("Advisory Committee") recommended that the Commission prohibit hedged tendering.[10]

In 1984, the Commission adopted amendments to rule 10b–4 that were designed to prohibit hedged tendering without unduly affecting tendering practices or the structure of the trading markets during tender offers.[11] The amendments required a tendering person to have a net long position [12] to the extent if the tender not only at the time of tendering, but also at the end of the proration period.[13] In 1985, the Commission adopted a further amendment to Rule 10b–4 to prohibit hedged tendering by use of call options. That amendment required that a tendering person's net long position be reduced by the number of shares underlying any in-the-money call options that the tendering person had written since the tender offer was announced.[14]

**II. The Bobker Decision** [15]

Bobker, a customer of Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), owned and tendered 4000 shares of common stock in response to a partial offer. Subsequently, but before the proration date of the offer, Bobker sold 2000 shares of the common stock short, making delivery with borrowed shares. Shortly thereafter, Merrill Lynch's compliance department, apparently concerned about a potential violation of Rule 10b–4, canceled the short sale.[16] Bobker commenced an arbitration proceeding seeking $23,000 in profits that he would have earned if Merrill Lynch had not canceled his short sale. The arbitrators awarded Bobker $11,500 and Merrill Lynch appealed. The District Court vacated the arbitration award, finding that the arbitrators had acted in "manifest disregard of the law" with respect to the application of rule 10b–4 to Bobker's activities.[17]

The Second Circuit reversed and held that the arbitrators did not act in "manifest disregard of the law" in the manner in which they disposed of the arbitration proceeding.[18] In reaching its decision, the court stated that the arbitrators' "careful and conscientious analysis" of the application of rule 10b–4 to the facts of the case resulted in "serious doubts * * * about the rationality and interpretation of the 'net long' proviso and how it serves the rule's avowed purpose of preventing a stockholder such as Bobker from increasing his pro rata share of stock tendered and accepted over the *pro rata* share of that tendered by other stockholders."[19] The court reached this conclusion because it viewed Bobker's sale of 2000 shares as a transaction completely independent of his tender.

The court also noted that the term "net long" is not defined in the rule, and that the Commission has stated that the meaning of net long is the same as that employed in interpreting rule 10a–1 (the short sale rule)[20] under the Exchange Act.[21] The court cited a 1938 Commission release on rule 10a–1 explaining that a net long position is determined by offsetting against shares owned any shares sold short by the same person.[22] While specifically

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[1] 17 CFR 240.10b–4.

[2] 15 U.S.C. 78a *et seq.*

[3] 808 F.2d 930 (2d Cir. 1986). (cited as *Bobker*). *See* Securities Exchange Act Rel. No. 26009 (March 8, 1988) 54 FR 10675 (March 13, 1989) ("Proposing Release").

[4] Securities Exchange Act Rel. No. 8321 (May 19, 1968), 33 FR 8289 ("Release 34–8321") *See* n. 47 *infra.*

[5] 17 CFR 240.10b–4(c).

[6] Section 14(d)(6) of the Exchange Act, 15 U.S.C. 78n(d)(6), and rule 13e–4(f)(3) and rule 14d–8 under the Exchange Act, 17 CFR 240.13e–4(f)(3) and 240.14d–8, require an offeror to accept shares on a *pro rata* basis where more shares are tendered than the offeror is bound or willing to accept. When tendered securities are accepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[7] A letter of guarantee promises the required shares will be delivered to the bidder in accordance with the terms of the offer.

[8] *See* Testimony of Chairman Manuel F. Cohen in Hearings on S. 510 Before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 198–99 (1967).

[9] Both short tendering and hedged tendering enabled a market professional to significantly reduce its proration risk. The proration risk of persons who could not short tender or hedge their tenders, however, was increased because of the increase in the number of shares tendered. As the number of tendered shares increases, the percentage of shares accepted from each tendering shareholder decreases.

[10] As stated by the Advisory Committee: Notwithstanding contentions that short and hedged tendering operate to increase the efficiency of the market and to reduce the spread between the market price and tender price, thereby benefiting individuals who sell into the market rather than tender, the Committee strongly endorses continuation of Rule 10b–4's prohibition of short tendering and recommends that the rule be strengthened to prohibit specifically hedged tendering. Because short and hedged tendering opportunities are available almost exclusively to market professionals, they appear to provide a substantial, unfair advantage to market professionals. As a result, the Committee found that these techniques create too great a risk of undermining public confidence in the integrity of the markets.

Advisory Committee on Tender Offers, Report of Recommendations 67–68 (July 1983) ("Advisory Committee Report") (footnotes omitted).

[11] *See* Securities Exchange Act Rel. No. 20799 (March 30, 1984), 49 FR 13887 ("Release 34–20799").

[12] A person's net long position is determined by offsetting shares owned by any shares sold short and by shares that are subject to standardized call options representing a short position.

[13] 17 CFR 240.10b–4(a)(1).

[14] *See* 17 CFR 240.10b–4(a)(5) and Securities Exchange Act Release No. 21782 (February 22, 1985), 50 FR 8100. This amendment was also recommended by the Advisory Committee. *See* Advisory Committee Report 80.

[15] *See* Proposing Release, 54 FR at 10678, for a more complete discussion and analysis of *Bobker*.

[16] *See* 808 F.2d at 934 n.3. At the time of Bobker's short sale, the transaction did not violate the rule, because paragraph (b)(1) of the rule requires that a tendering person have a net long position equal to or greater than the amount of shares tendered only at the time of tendering and at the end of the proration period. However, it seems clear that Bobker did not intend to comply with the net long requirement, because the profits upon which his claim for damages was based would only have accrued if the short position remained open past the proration date. *See Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker*, 696 F. Supp. 944 (S.D.N.Y. 1988).

[17] *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Bobker*, 696 F. Supp. 944 (S.D.N.Y. 1988). "Manifest disregard of the law" by arbitrators is a judicially created ground for vacating an arbitration award. *Bobker*, 808 F.2d at 933, *citing Wilko* v. *Swan*, 346 U.S. 427, 436–437 (1953), overruled on other grounds, *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477 (1989).

[18] 808 F.2d at 936.

[19] 808 F.2d at 936–37. Two judges joined in the court's opinion, the third judge concurred in the result but disassociated himself from the court's discussion with respect to Rule 10b–4. 808 F.2d at 937–38 (Meskill, J., concurring).

[20] 17 CFR 240.10a–1.

[21] 808 F.2d at 934, *citing* Securities Exchange Act Rel. No. 8234 (January 3, 1968), 33 FR 813. For purposes of Rule 14e–4, the discussion of the determination of a person's "net long position" in that release is superseded by the adoption of today's amendments.

[22] 808 F.2d at 934, *citing* Securities Exchange Act Rel. No. 1671 (February 5, 1938), 13 FR 10969, 10970 (1948). "[I]f a person maintains two accounts and is short 1000 shares of a security in one and long 1000 shares of the same security in another, any sales of

Continued

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declining to decide whether the net long requirement of rule 10b–4 as administered by the Commission is invalid, the court suggested that the Commission's interpretation of the net long proviso as applied to Bobker's short sale was inconsistent with the purpose of the rule and lacked a rational basis.[25]

## III. Discussion

The Commission believes that Bobker's short sale, assuming that Bobker did not either cover the short sale or reduce the amount of his tender to reflect the short sale by the end of the proration period, would have caused Bobker to violate the provisions of rule 10b–4. The 1984 amendments to the rule were designed specifically to address the unfairness and lack of disclosure inherent in transactions such as Bobker's.[26] Bobker was attempting to participate in the proration pool as an owner of 4000 shares even though his actual net interest in the shares was that of an owner of 2000 shares. His post-tender sale, whether or not structured as a separate transaction,[27] would have enabled him to shift his proration risk to other tendering shareholders,[28] who would have had their *pro rata* acceptance reduced to reflect the additional shares tendered by the buyer of Bobker's shares. Similarly, substantial undisclosed professional hedged tendering can mislead an investor in the calculation of proration risk, and thereby alter the decision as to whether to tender or sell into the market.

The Second Circuit's decision in *Bobker* created some uncertainty in the application of the rule 10b–4 prohibition against hedged tendering.[29] Accordingly, the Commission requested comment on a revised version of rule 10b–4 to clarify the net long requirement of the rule, and proposed to redesignate the Rule as rule 14e–4.[30] The Proposing Release also requested comment on whether the prohibition of hedged tendering and the prohibition of multiple tendering continued to be appropriate. The Commission received six letters of comment.[31]

### A. Hedged Tendering

Two commenters expressly favored retaining the prohibition of hedged tendering. One of these commenters argued that it was unfair to permit market professionals effectively to obtain a greater percentage of acceptance of shares actually owned than is available to the general public. This commenter wanted no change in the substantive coverage of the rule. Another of these commenters said that there were valid arguments for and against the practice of hedged tendering, but on balance did not advocate a change in the current regulatory approach. A third commenter expressed appreciation that the Commission's Proposing Release clarified that hedged tendering continued to be prohibited.

Three commenters opposed the prohibition of hedged tendering. One of these commenters argued that arbitrageurs' ability to hedge their tenders enabled them to buy securities subject to a tender offer at a higher price, thereby benefiting public shareholders who wish to sell to avoid proration risk and the risk that a tender offer may be delayed or not consummated. This commenter stated that less sophisticated, smaller shareholders are likely to be those who are most risk-averse, and that there is no policy reason for the Commission to favor shareholders who tender rather than those who sell their shares in the market.[32]

The other two commenters who opposed the hedged tendering prohibition, both of whom were options market makers, focused on the rule's requirement that short in-the-money call option positions established after the announcement of a tender offer be deducted in determining a tendering person's net long position at the end of the proration period.[33] One of these commenters stated that option market makers suffer a hardship because they are not able to tender stock that they have acquired as a hedge against their short in-the-money call options, even though not all such options are exercised prior to the expiration of the tender offer.[34] Both of these commenters stated that the rule hindered their ability to maintain a liquid options market when the underlying stock was the subject of a tender offer.[35]

The Commission recognizes that there are valid arguments both for and against the prohibition of hedged tendering. Except for the comments submitted by the options market makers described above, the Commission notes, however, that none of the commenters offered any data or arguments not previously considered by the Commission when it adopted the hedged tendering prohibition in 1984 in accordance with the recommendation of the Advisory Committee.[36]

On balance, the Commission believes that hedged tendering should continue to be prohibited. Both short and hedged tendering require the ability to borrow shares, and market professionals have a clear advantage in obtaining access to such shares. Granting an advantage to those who can borrow shares contravenes the Congressional intent that each tendering shareholder receive equal treatment based solely on the shareholder's ownership interest in the securities that are the subject of a

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such security by such person are short sales and are subject to the provisions of the (short sale rule)." *Id.*

[25] 906 F.2d at 826. It should be noted that the majority's discussion of Rule 10b–4 does not constitute a holding in the case.

[26] *See* Rel. 34–20799 n.7, 48 FR at 12866 n.7.

[27] The effect of Bobker's "separate" short sale was the same as if he had tendered 4000 shares by letter of guarantee, sold 2000 of those shares in the market and delivered them, and then borrowed 2000 shares in order to deliver 4000 shares to the bidder. Borrowed shares are not considered part of a person's net long position for purposes of rule 10b–4.

While a separate short sale by a no-tendering person would potentially affect the proration pool in the same way as Bobker's sale, the sale would not be that of one participant in the proration pool securing an advantage at the expense of other tendering shareholders.

[28] If the hedged tenderer is able to estimate the *pro rata* acceptance rate closely, there is little proration risk, because the tender offer price or a tender offer-influenced market price would be received for all of the person's shares.

[29] *See, e.g.*, letter from Dennis H. Greenwald, Chairman, Securities Industry Association, to Richard Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission (March 11, 1987), contained in File No. S7–11–86.

[30] *See* Proposing Release.

[31] Letter from Sheriff Securities Corporation (April 29, 1986); Letter from J. Stephen Fossett, President, Fossett Corporation (May 8, 1985); letter from Sullivan & Cromwell (May 15, 1985); letter from Committee on Federal Regulation of Securities, and Subcommittee on Proxy Solicitations and Tender Offers, Section of Business Law, American Bar Association (May 14, 1985); letter from Federal Regulation Committee, Securities Industry Association (May 15, 1985); and letter from The O'Connor Partnerships (June 5, 1985), contained in File No. S7–11–85.

[32] This commenter's position is similar to that expressed by former Commissioner Cox, who dissented when the Commission adopted the hedged tendering prohibition in 1984. *See* Release 34–20799, 49 FR 12867 (Commissioner Cox, dissenting).

[33] *See* rule 10b–4(a)(5), 17 CFR 240.10b–4(a)(5), and n.12 *supra*.

[34] This commenter suggested that market makers should be able to tender to the extent that their options positions are not exercised against them. The Commission believes that such a procedure would prevent the same shares from being tendered twice, but would be inconsistent with the principal rationale of the rule, *i.e.*, that all tendering persons participate in the proration pool on an equal basis. The market makers, by selling in-the-money call options during a tender offer and receiving a tender offer-influenced premium, in effect would have sold a portion or all of the shares hedging their options positions.

[35] The Commission believes that the impact on options market making is not substantial because market makers are able to sell their shares in the market.

[36] See n.10 *supra*. *See also* the letters of comment in File No. S7–903.



tender offer.[38] The Commission believes that a prohibition of both short and hedged tendering enhances the fairness of the proration process by preventing certain tendering persons from gaining an advantage in the proration pool at the expense of others, and that it assures equal application of the proration factor to each tendering person's net ownership interest in the tendered shares.[39] Accordingly, rule 14e–4 as adopted today retains the current prohibition of hedged tendering.

### B. Multiple Tendering

The Commission requested comment on whether the prohibition of multiple tendering, set forth in paragraph (b)(3) of rule 10b–4, continues to be appropriate. Multiple tendering is the tendering of the same shares to more than one offer, by the use of one or more letters of guarantee. Since only partial offers are subject to the rule, the multiple tendering prohibition extended only to tendering to two or more partial offers. The one commenter who addressed the multiple tendering issue stated that the practice does not have sufficient impact to warrant regulation. This commenter expressed the view that while a shareholder's ability to tender into more than one competing partial offer might affect the aggregate proration pools of competing offers, the practice would not lessen that shareholder's proration risk at the expense of other shareholders with respect to any particular offer.[37]

As stated in the Proposing Release, the Commission is not aware of any problem in connection with multiple tendering to other offers where it has been permitted, *i.e.*, offers that are not subject to Rule 10b–4. Moreover, the elimination in 1986 [38] of the ten-day minimum proration period [39] took away the principal advantage that some tendering persons could obtain by multiple tendering.[40] The Commission has concluded that the prohibition of multiple tendering to two or more partial offers no longer appears to be necessary.[41]

### C. Equivalent Securities

The Rule has permitted the holder of an "equivalent security" [42] to be deemed to own the securities underlying the equivalent securities in determining the person's net long position for purposes of tendering. The tendering person is required to convert, exchange, or exercise such equivalent security only to the extent of the bidder's acceptance of his tender.[43] This approach eliminates any hardship that would result from requiring a tendering person to convert, exchange, or exercise the person's entire equivalent security position where only a portion of the shares tendered are accepted by a bidder. The equivalent securities provision may also be beneficial in freeing shareholders from the need to convert equivalent securities to tender to an offer that is unsuccessful.

In the Proposing Release, the Commission requested comments as to whether the ability to tender a subject security based on ownership of an equivalent security remained necessary or appropriate. The usefulness of the provision has diminished, since it appears that recent partial tender offers have uniformly required delivery of all shares tendered, rather than only those accepted. In such circumstances, partial conversion, exchange, or exercise of an equivalent security is possible only if the additional (non-accepted) shares can be borrowed or purchased in the cash market. The only commenter who responded believed that the continued ability to tender subject securities based on ownership of an equivalent security was both necessary and proper. This commenter asserted that there was no reason to require a person to suffer the economic consequences of converting a security or exercising a right in order to tender shares, only to suffer the consequences of prorationing, where the terms of the tender offer did not require such a result. The Commission has determined to retain the equivalent security provision in rule 14e–4.

### D. Restructuring and Redesignation of Rule

Three of the commenters that addressed the issue endorsed the proposed restructuring of the rule; one commenter favored retaining the rule in its present form. The commenters favoring the restructuring believed that the revised rule more clearly sets forth the requirement that a tendering person be "net long" the amount of shares that have been tendered. These commenters also stated that redesignating the rule as rule 14e–4 more accurately reflects the underlying rationale of the rule and more logically places the rule among those specifically dealing with tender offers.

Except for the elimination of the multiple tendering prohibition, rule 14e–4, as adopted, is not intended to effect any substantive change from the current rule, and is substantially identical to rule 14e–4 as proposed.[44] The rule has been restructured to clarify the net long proviso of the current rule. In addition, the title of the rule has also been changed as proposed to "Prohibited transactions in connection with partial tender offers." Accordingly, there is no need to delay effectiveness of the

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offered, where the winning bidder increased its offered consideration after the closing of its initial ten-day proration pool. The elimination of the possibility of multiple proration pools within a single offer renders moot the concern expressed by the Advisory Committee and the Commission in adopting the prohibition. *See* Advisory Committee Report at 48–49 (Recommendation 40).

[37] Multiple tendering, of course, could result in a violation of rule 14e–4 if acceptance of shares by one bidder reduces a tendering person's net long position with respect to a tender made to a partial offer, and the tendered shares are not withdrawn before the proration date of the partial offer.

[38] "Equivalent security" is defined in paragraph (a)(2) of the current rule and paragraph (a)(2) of rule 14e–4 as:

(i) Any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for a subject security, or (ii) any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

Equivalent securities are those representing a right to acquire only the security subject to the offer. Accordingly, financial instruments entitling the holder to receive a group of securities, e.g., index products involving physical delivery, *see, e.g.*, Securities Exchange Act Rel. No. 28309 (December 22, 1989), 55 FR 53901 (index participations), are not equivalent securities. Therefore, such securities would have to be exercised before a tender could be based on ownership of the underlying securities. Similarly, a person's unexercised short position in these products would not be part of his short position in the subject security. Financial instruments that involve the actual purchase or sale of a group of securities, e.g., a standardized basket of stocks, are not equivalent securities, and positions in the individual securities are included in the computation of a person's net long position.

[39] *See* rule 10b–4(b)(1)(ii), 17 CFR 240.10b–4(b)(1)(ii).

[40] *See* Securities Act Rel. No. 6653 (July 11, 1986), 51 FR 25873.

[41] As discussed *infra*, substantial undisclosed hedged tendering also may mislead a public investor faced with a choice of tendering or selling into the market.

[42] A shareholder can tender into each offer only the shares that the shareholder owns as determined by paragraph (a) of the rule.

[43] *See* Securities Exchange Act Rel. No. 12796 (January 14, 1986), 51 FR 3081.

[44] Rule 14d–8 under the Exchange Act, 17 CFR 240.14d–8, and rule 13e–4(f)(3), 17 CFR 240.13e–4(f)(3), require offerors to accord *pro rata* treatment for all shares deposited during the period the offer remains open.

[45] Formerly, the ten-day minimum proration period created the opportunity, chiefly available to market professionals, to participate in the initial proration pool of two or more competing partial tender offers in order to guarantee acceptance of all shares tendered at the eventual highest price

[46] No commenter responded to the Commission's invitation to address any of the proposed amendments that might operate differently from those of rule 10b–4. *See* Proposing Release, 54 FR at 10675.

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revised rule beyond the date of publication in the Federal Register.

In order to remove any potential misunderstanding or ambiguity concerning the Rule's application to persons responding to a partial tender offer, paragraph (a)(1) defines the term "net long position." A person's "net long position" in a security is equal to the excess, if any, of his "long position" in that security over his "short position." A person's "long position," as defined in paragraph (a)(1)(i), includes: (1) Securities to which a person or his agent has title or has purchased but has not yet received, (2) securities for which a person has converted, exchanged, or exercised a standardized call option or an equivalent security, and (3) securities that a person is entitled to receive upon conversion, exchange, or exercise of an equivalent security. A person's "short position" is defined in paragraph (a)(1)(ii) as equivalent to the amount of subject securities that the person: (1) Has sold, (2) is obligated to return to a lender, (3) is obligated to deliver upon exercise of a non-standardized call option or right pursuant to which the holder may tender, or (4) is obligated to deliver upon exercise of an in-the-money standardized call option sold after a tender offer for the subject security has been announced or otherwise made known by the bidder. These provisions are all drawn from the current rule.[45]

Paragraph (a)(5) defines a "partial tender offer" as a tender offer for less than all of the outstanding securities subject to the offer where acceptance is by lot or on a *pro rata* basis, or a tender offer for all of the outstanding shares with different offered consideration that involves *pro rata* acceptance. This definition incorporates current paragraph (c) of the rule and the staff's interpretive position that rule 10b–4 applies to any tender offer involving prorationing.[46]

The amendments also reflect the full scope of the Commission's authority to promulgate the rule by substituting the phrase "it shall be unlawful" in paragraph (b).[47] Paragraph (b) is otherwise unchanged from the current rule, except to reflect changes made in paragraph (a), and the deletion of paragraph (b)(3), which prohibited multiple tendering. Thus, a tendering person must have a net long position in the security equal to or exceeding the number of securities tendered both at the time of tender and at the end of the proration period of the offer.[48]

## IV. Regulatory Flexibility Act Certification and Effects on Competition

The Chairman of the Commission certified that the amendments to the rule will not have a significant economic impact on a substantial number of small entities because the amendments do not result in substantive changes to the rule. The Commission did not receive any comments that addressed the impact of the amendment on small entities.

Section 23(a)(2) of the Exchange Act [49] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the amended rule in light of the standards cited in section 23(a)(2) and believes for the reasons stated in this release that adoption of the amendments to the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

## V. Text of the Rule Amendments

On the basis of the above discussion and analysis, the Commission hereby amends part 240 of chapter II of title 17 of the Code of Federal Regulations as follows:

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

**Authority:** 15 U.S.C. 78w, as amended, unless otherwise noted. * * * § 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78o(c), and 78w(a)).

2. The authority citation following § 240.10b–4 is removed.

**§ 240.10b–4 [Redesignated as § 240.14e–4]**

3. Part 240 is amended by redesignating § 240.10b–4 as § 240.14e–4, revising the section heading, and revising paragraphs (a)(1), (a)(5), (b) introductory text, (b)(1), and (c), and removing (b)(3) and (d) as follows:

**§ 240.14e–4 Prohibited transactions in connection with partial tender offers.**

(a) *Definitions.* For purposes of this section:

(1) The amount of a person's "net long position" in a subject security shall equal the excess, if any, of such person's "long position" over such person's "short position." For the purposes of determining the net long position as of the end of the proration period and for tendering concurrently to two or more partial tender offers, securities that have been tendered in accordance with the rule and not withdrawn are deemed to be part of the person's long position.

(i) Such person's "long position," is the amount of subject securities that such person:

(A) Or his agent has title to or would have title to but for having lent such securities; or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received; or

(C) Has exercised a standardized call option for; or

(D) Has converted, exchanged, or exercised an equivalent security for; or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security.

(ii) Such person's "short position," is the amount of subject securities or subject securities underlying equivalent securities that such person:

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell; or

(B) Has borrowed; or

(C) Has written a non-standardized call option, or granted any other right pursuant to which his shares may be tendered by another person; or

(D) Is obligated to deliver upon exercise of a standardized call option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the purpose of this paragraph, if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer.

* * * * *

(5) The term *partial tender offer* means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.

* * * * *

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in:

(i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer; or

(ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

* * * * *

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

Dated: November 30, 1990.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90–28567 Filed 12–5–90; 8:45 am]

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45 Unexercised positions in substandardized put option contracts on the subject security do not affect a person's net long position. The exercise of such put option contracts reduces the exerciser's net long position; and the receipt of an exercise assignment with respect to such options increases the assignee's net long position.

46 See Rel. 34–27759 n.13, 49 FR at 12693 n.13.

47 Rule 14e–4, as amended, is adopted pursuant to sections 3(b), 10(a), 10(b), 13(e), 14(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78c(b), 78j(a), 78j(b), 78m(e), 78n(e), 78o(c), and 78w(a), and employs the Commission's authority to "prescribe means reasonably designed to prevent [ ] such acts and practices as are fraudulent, deceptive, or manipulative."

48 As proposed, former paragraph (d), which authorizes the Commission to grant exemptions, has been restructured and redesignated as paragraph (c).

49 15 U.S.C. 78w(a)(2).



## DEPARTMENT OF THE TREASURY

### 31 CFR Part 2

### National Security Information

**AGENCY:** Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This amendment to Department of the Treasury regulations, contained in 31 CFR part 2, on safeguarding national security information provides for the use of United States Postal Service express mail for the transmittal of Secret information. This is an added means for the transmittal of Secret information.

This amendment is issued pursuant to a change issued by the Information Security Oversight Office (ISOO), General Services Administration, authorizing the use of U.S. Postal Service express mail service for transmittal of national security information classified Secret (see 32 CFR part 2001).

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert Alexander McMenamin, Acting Assistant Director, Office of Security, Department of the Treasury, Room 1302, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220 (202) 343–0280.

### List of Subjects in 31 CFR Part 2

Classified information.

## PART 2—NATIONAL SECURITY INFORMATION

1. The authority citation for 31 CFR part 2 is revised to read as follows:

**Authority:** 31 U.S.C. 321; E.O. 12356, 47 FR 14874, April 6, 1982.

2. Section 2.28(d)(1) is revised to read as follows:

**§ 2.28 Transmittal [4.1(b)].**

* * * * *

(d) * * *

(1) The 50 States, District of Columbia and Puerto Rico. Secret information may be transmitted within and between the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico by one of the means authorized for Top Secret information, by the United States Postal Service registered mail or express mail service; or by protective services provided by United States air or surface commercial carriers under such conditions as may be prescribed by the Departmental Director of Security. United States Postal Service express mail service shall be used only when it is the most effective means to accomplish a mission within security, time, cost and accountability constraints. To ensure direct delivery to the addressee, the "Waiver of Signature and Indemnity" block on the United States Postal Service Express Mail Label 11–B may not be executed under any circumstances. All Secret express mail shipments are to be processed through mail distribution centers or delivered directly to a United States Postal Service facility or representative. The use of external (street side) express mail collection boxes is prohibited. Only the express mail services of the United States Postal Service are authorized.

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**Linda M. Combs,**

*Assistant Secretary (Management).*

[FR Doc. 90–28616 Filed 12–5–90; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 221

**[DoD Directive 6025.14]**

### Department of Defense Participation in the National Practitioner Data Bank

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part implements the Memorandum of Understanding between the Department of Health and Human Services and the Department of Defense regarding DoD participation in the National Practitioner Data Bank.

**EFFECTIVE DATES:** November 1, 1990. Written comments on this rule must be received by January 7, 1990.

**ADDRESSES:** Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), Pentagon, Washington, DC 20301–1200.

**FOR FURTHER INFORMATION CONTACT:** Major P.T. Ray, telephone (703) 695–6800.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 32 CFR Part 221

Health professions, Reporting and recordkeeping requirements.

Accordingly, title 32, subchapter M is amended to add part 221 to read as follows:

## PART 221—DEPARTMENT OF DEFENSE PARTICIPATION IN THE NATIONAL PRACTITIONER DATA BANK (NPDB)

Sec.

221.1 Purpose.
221.3 Applicability and scope.
221.3 Definitions.
221.4 Policy.
221.5 Responsibilities.
221.6 Procedures.
221.7 Information requirements.

**Authority:** Public Law 99–660, title IV (42 U.S.C. 11131–11152).

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**§ 221.1 Purpose.**

This part:

(a) Establishes DoD policy, assigns responsibilities, and prescribes procedure for implementing Public Law 99–660, title IV and the objectives of the Memorandum of Understanding (MOU) between the Department of Health and Human Services (DHHS) and the Department of Defense, September 21, 1987, which outlines the DoD's participation in the National Practitioner Data Bank (NPDB).

(b) Specifies the content of confidential reports to the NPDB established under part B of Public Law 99–660, and reporting responsibilities.

**§ 221.2 Applicability and scope.**

This part applies to:

(a) The Office of the Secretary of Defense (OSD) and the Military Departments (including their National Guard and Reserve components). The term, "Military Departments," as used herein, refers to the Army, the Navy, and the Air Force.

(b) Healthcare personnel who are in professions required to possess a license under DoD Directive 6025.6 [1] and/or who are granted individual clinical privileges.

**§ 221.3 Definitions.**

(a) *Healthcare entity.* A hospital, ambulatory health clinic, or dental clinic with an independent healthcare practitioner staff that carries out professional staff review and provides healthcare to medical or dental patients; and applicable professional staff components of each Service, as designated by the respective Surgeon General, which also perform peer review as part of the quality assurance program.

(b) *Licensed healthcare practitioner.* Any healthcare practitioner of one of the professions required to possess a professional license, as prescribed in DoD Directive 6025.6.

(c) *The National Practitioner Data Bank (NPDB).* The organization developed according to Public Law 99–660 to receive and provide data on professional competence and conduct of physicians, dentists, and other licensed healthcare providers. In Public Law 99–660, it is referred to as the "National Data Bank." That name was changed after the MOU was signed.

**§ 221.4 Policy.**

It is DoD policy that:

(a) Professional review shall occur in every case of alleged malpractice.

(b) When a malpractice claim results in a monetary payment for the benefit of a physician, dentist, or other healthcare practitioner required to be licensed by DoD Directive 6025.6, it shall be reported to the NPDB.

(c) Practitioners shall have benefit of due process procedures for professional review activities under requirements of Public Law 99–660, Military Department regulations, and healthcare entity professional staff by-laws.

(d) Information on adverse privileging actions and other professional review actions shall be reported to the appropriate State agencies and the NPDB.

(1) The Department of Defense shall continue to provide State(s) of known licensure the information required by DoD Directive 6025.11.[2]

(2) Physicians and dentists shall be reported for both malpractice payment and privileging actions. All other personnel required to be licensed by DoD Directive 6025.6 shall also be reported for malpractice payments.

(3) Other healthcare personnel shall be reported for privileging actions only after the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) notifies the Military Departments to begin submitting reports on a specified category of personnel.

(e) The NPDB shall be queried during the accessioning process of a healthcare practitioner, and at least every 24 months, thereafter, as a part of the Military medical departments' recredentialing and reprivileging procedures. Inquiries on healthcare practitioners, on board at the time this part is implemented, should be performed at the time of their next recredentialing and reprivileging. If the granting of initial clinical privileges occurs more than 1 year after the query for accessioning, querying the data bank shall be required as a part of the initial privileging.

**§ 221.5 Responsibilities.**

(a) The Assistant Secretary of Defense (Health Affairs) (ASD(HA)) shall:

(1) Monitor implementation of this part and issue such DoD Instructions as may be necessary.

(2) Authorize exceptions to requirements of this part, if deemed necessary.

(b) The General Counsel of the Department of Defense (GC, DoD) shall provide legal advice on the interpretation and implementation of this part and any subsequent DoD Instructions.

(c) The Secretaries of the Military Departments shall implement the requirements of this part and the DoD Instructions issued under paragraph (a) of this section.

**§ 221.6 Procedures.**

(a) The ASD(HA) shall issue Instructions, in accordance with § 221.5(a).

(b) The Military Departments shall:

(1) Develop policy and procedures that comply with requirements of this Directive and any subsequent DoD Instructions.

(2) Ensure that their Office of the Surgeon General (OTSG) sends the appropriate information, in accordance with § 221.7, to the NPDB and the Office of the Deputy Assistant Secretary of Defense (Professional Affairs and Quality Assurance) (ODASD(PA&QA)).

(3) Ensure that the NPDB is queried appropriately, in accordance with § 221.7.

**§ 221.7 Information requirements.**

(a) The method of reporting information to, and querying information from, the NPDB shall be by use of the Health Resources and Services Administration (HRSA) forms or, when possible, electronically.

(b) Reports to the ODASD(PA&QA) shall be submitted through electronic means, when available. Until then, DD Form 2499, "Health Care Provider Clinical Privileges Action Report," and DD Form 2528, "Case Abstract For Malpractice Claims," shall be used, as appropriate.

(c) The reporting requirements in this section have been assigned Report Control Symbols DD–HA(AR)1611 and DD–HA(AR)1782.

Dated: November 30, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90–28648 Filed 12–5–90; 8:45 am]

BILLING CODE 3810–01–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 221.2(b).

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900–AE33

### Burial Benefits

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.



**SUMMARY:** The Department of Veterans Affairs (VA) has amended its adjudication regulations on burial benefits. This change is based on VA General Counsel opinions holding that the 2-year time limit for filing claims does not apply to claims for service-connected burial allowance, reimbursement for the cost of transporting a veteran's remains to the place of burial, or monetary allowance in lieu of a Government-furnished headstone or grave marker. The intended effect of the change is to remove existing time limits for filing claims for those benefits.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 5, 1990, (55 FR 22982–22983), VA published a proposed regulatory amendment to remove the existing time limit for filing claims for service-connected burial benefits, for reimbursement of the cost of transporting a veteran's remains to the place of burial and for monetary allowance in lieu of a Government-furnished headstone or grave marker. Interested persons were invited to submit written comments, suggestions or objections on or before July 5, 1990. One comment was received.

The commenter suggested that the change being made should include an extension of the 2-year period for claiming the nonservice-connected burial benefit provided under 38 U.S. 902 for those veterans, such as Merchant Marines, whose service has only recently been recognized as provided under Public Law 95–202.

General Counsel has advised us that VA does not have the authority to implement this suggestion as 38 U.S.C. 904 specifically provides that claims must be filed within two years of the date of burial. The only exception the law allows is for those veterans whose character of discharge was corrected by competent authority after their deaths. The suggested change would require legislative action.

It should be noted that the unpublished General Counsel Opinion dated July 31, 1989, (O.G.C. Conclusive 7–89), referred to in the preamble to the proposed rule has been reissued as a published General Counsel Precedent Opinion dated June 13, 1990, (O.G.C. Prec. 27–90).

VA appreciates the comment submitted in response to the proposed rule, but for the reasons indicated we are unable to adopt the suggestion. The proposed rule is adopted without change.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.101)

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 15, 1990.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

**PART 3—[AMENDED]**

38 CFR Part 3, Adjudication, is amended as follows:

**§ 3.1601 [Amended]**

1. Section 3.1601 is amended by revising paragraph (a) to read as follows:

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) and plot or interment allowance under § 3.1600(f) must be received by VA within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. This time limit does not apply to claims for service-connected burial allowance under § 3.1600(a) or for the cost of transporting a veteran's body to the place of burial under § 3.1600(c) or § 3.1600(g).

* * * * *

**§ 3.1612 [Amended]**

2. Section 3.1612 is amended by revising paragraph (g) to read as follows:

* * * * *

(g) *Claims.* There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

[FR Doc. 90–28680 Filed 12–5–90; 8:45 am]

BILLING CODE 8320–01

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### 38 CFR Part 21

RIN 2900–AE38

### Veterans Education; Implementation of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulations.

**SUMMARY:** The Department of Defense Authorization Act for Fiscal Years 1990 and 1991 increases the "kicker" to the basic educational allowance payable to certain individuals training under the Montgomery GI Bill—Active Duty. This regulation will acquaint the public with the way in which the Department of Veterans Affairs (VA) intends to implement this provision of law.

**EFFECTIVE DATES:** November 29, 1989.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** In the Federal Register dated July 6, 1990, there was published a notice of intent to amend 38 CFR part 21 in order to implement the Department of Defense Authorization Act for Fiscal Years 1990 and 1991. Interested people were given 31 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections.

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Accordingly, VA is making the amended regulation final.

The Department of Veterans Affairs has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making this amendment to 38 CFR 21.7136, like the section of the law it implements, retroactively effective on November 29, 1989. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of this provision of law; and might result in awarding a smaller benefit to a veteran or servicemember than he or she is entitled by law to receive.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.124.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 14, 1990.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR part 21 is amended as follows:

**PART 21—[AMENDED]**

In § 21.7136 paragraph (c)(1) through (4) are revised, (c)(5) and (c)(6) are added and the authority line is revised to read as follows:

**§ 21.7136 Rates for payment of basic educational assistance.**

* * * * *

(c) * * *

(1) For individuals who first become members of the Armed Forces before November 29, 1989, (other than those pursuing cooperative training, an apprenticeship or other on-job training), it may not exceed—

(i) $400 per month for full-time training,

(ii) $300 per month for three-quarter-time training,

(iii) $200 per month for one-half-time training, or for training which is less than one-half, but more than one-quarter-time, or

(iv) $100 per month for one-quarter-time training or less.

(2) For individuals who first become members of the Armed Forces after November 28, 1989, (other than those pursuing cooperative training, an apprenticeship or other on-job training), it may not exceed—

(i) $700 per month for full-time training,

(ii) $525 per month for three-quarter-time training,

(iii) $350 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) $175 per month for one-quarter-time training or less.

(3) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed—

(i) $300 per month during the first six months of training,

(ii) $220 per month during the second six months of training, and

(iii) $140 per month during the remaining months of training.

(4) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing an apprenticeship or other on-job training, it may not exceed—

(i) $525 per month during the first six months of training,

(ii) $385 per month during the second six months of training, and

(iii) $245 per month during the remaining months of training.

(5) For individuals who first become members of the Armed Forces before November 29, 1989, and who are pursuing cooperative training, it may not exceed $320 per month.

(6) For individuals who first become members of the Armed Forces after November 28, 1989, and who are pursuing cooperative training, it may not exceed $560 per month.

(Authority: 38 U.S.C. 1432(d); Pub. L. 101–189) (Nov. 29, 1989)

* * * * *

[For Doc. 90–28545 Filed 12–5–90; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 8F3659/R1091; FRL–3797–4]**

### Gliocladium Virens GL-21; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the biological fungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices. This exemption was requested by W.R. Grace & Co. of Columbia, Maryland.

**DATES:** This regulation becomes effective December 6, 1990.

**ADDRESSES:** Written objections and/or requests for a hearing, identified by the document control number, [PP 8F3659/R1091], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, room 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1900.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice in the Federal Register of October 12, 1988 (53 FR 39783), announcing that W.R. Grace & Co., 7379 Route 32, Columbia, MD 21044, had submitted pesticide petition (PP) 8F3659 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biological fungicide *Gliosporium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

*Gliocladium virens* GL-21 is a naturally occurring soil fungus which is antagonistic to plant pathogenic fungi such as *Pythium* and *Rhizoctonia*, which are causal agents in damping-off diseases of seedling plants. The product is a granular formulation containing a high concentration of *Gliocladium* spores suitable for inoculation of soil or other plant growing media under greenhouse conditions. The product is intended for application to the plant growing media or to the soil surface prior to or at planting of ornamental or food crops.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include an acute oral toxicity/pathogenicity study in rats using the formulated product, an acute pulmonary toxicity/pathogenicity study in rats using the fungal spores, and an acute intravenous toxicity/pathogenicity study in rats using fungal mycelium. These tests inlcuded all growth stages of the fungus in order to detect any potential adverse effects from stages other than the chlamydospores used in formulating the products. A review of these studies indicates that the biofungicide is not toxic to, infective in, or pathogenic to rats by oral or pulmonary routes of exposure and not infective in or pathogenic to rats by intravenous injection. The mycelial injection was acutely toxic and lethal to the test animals due to mechanical clogging of capillaries; however, these mortalities were not considered to be relevant in this case since injection would not be a normal route of exposure.

An acute dermal toxicity study was not required for this product since the product consists of large pellets. The label will require that gloves be worn when handling the material and that application will be by soil incorporation. Inert materials in the product have been exempted from the requirement of a tolerance according to § 180.1001, and no indications of toxicity have been reported in workers following 1 to 2 years of working with the organism. A primary eye irritation study was not required for this product because the label will require that protective eye covering must be worn during application and handling. The toxicity data are sufficient to demonstrate that no foreseeable human or domestic animal health hazards are likely to ensue from the use of this biofungicide.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because a tolerance will not be established. Because no tolerance will be established, no enforcement actions are expected and the requirement for an analytical method for enforcement purposes is not applicable for this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

*Gliocladium virens* GL-21 is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d) and 40 CFR 180.13, any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or requests for a hearing with the hearing Clerk, at the address given above. Such objections and/or requests must be filed pursuant to 40 CFR 180.13 and should specify the provision of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. See 40 CFR 180.14.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 14, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. New § 180.1109 is added to subpart D, to read as follows:

**§ 180.1109 Gliocladium virens GL-21; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Gliocladium virens* GL-21 in or on all raw agricultural commodities when used as a fungicide for inoculation of plant growth media in greenhouses in accordance with good agricultural practices.

[FR Doc. 90–28536 Filed 12–5–90; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 180**

**[PP 9F3805/R1099; FRL–3839–3]**

### Trichoderma Harzianum, Rifai Strain KRL–AG2; Exemption From Requirement of Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the genetically modified biological fungicide *Trichoderma harzianum*, Rifai Strain DRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for treatment of seeds of these crops in accordance with good agricultural practices.

**DATES:** This regulation becomes effective November 23, 1990.

**ADDRESSES:** Written objections, identified by the document control number, [PP 9F3805/R1099], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, room 3708, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21 (H7505C), Registration Division, Environmental Protection Agency, 401 M

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St., SW., Washington, DC 20460. Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice in the **Federal Register** of January 9, 1990 (55 FR 779), announcing that Eastman Kodak Co., 343 State St., Rochester, NY 14650, had submitted pesticide petition (PP) 9F3805 to EPA proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the biological fungicide *Trichoderma harzianum*, Rifai Strain KRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for treatment of seeds of these crops in accordance with good agricultural practices.

The active ingredient is a strain of *Trichoderma harzianum* derived by protoplast fusion of auxotrophic mutants of two strains of *Trichoderma*. *Trichoderma harzianum* is an indigenous soil fungus which is antagonistic to other soil-inhabiting fungi, such as *Pythium* spp., which are causal agents of damping-off and seed rot diseases of seedling plants. The product is a powder formulation containing a high concentration of *Trichoderma* spores suitable for seed treatment through standard commercial slurry or mist-type seed-treating equipment.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirement of a tolerance include reports of an acute oral toxicity/pathogenicity study, an acute pulmonary toxicity/pathogenicity study, and an acute intravenous toxicity/pathogenicity study. The studies were performed using rats. All studies were classified as acceptable. The review of these studies indicates that the biofungicide is not toxic to, infective in, or pathogenic to rats by oral, pulmonary, or intravenous routes of exposure.

It was also requested that any sources of bacterial contamination and the steps in the manufacturing process where contamination might occur be identified to ensure the absence of pathogenic microorganisms and/or toxins. No human or animal pathogens were detected in any of the production batches of the products.

Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition because a tolerance will not be established, no enforcement actions are expected, and the requirement for an analytical method for enforcement purposes is not applicable for this exemption request. This is the first exemption from the requirement of a tolerance for this biofungicide.

*Trichoderma harzianum*, Rifai Strain KRL-AG2, is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

Pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d) and 40 CFR 180.13, any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or requests for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. See 40 CFR 180.14.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).



**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 23, 1990.

**Douglas D. Campt,**
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. New § 180.1102 is added, to read as follows:

**§ 180.1102 Trichoderma harzianum, Rifai Strain KRL-AG2; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biofungicide *Trichoderma harzianum*, Rifai Strain KRL-AG2, in or on beans (green and dry), cabbage, corn (field and sweet), cotton, cucumbers, peanuts, potatoes, sorghum, soybeans, sugar beets, and tomatoes when used as a fungicide for the treatment of seeds of these crops in accordance with good agricultural practices.

[FR Doc. 90-28529 Filed 12-5-90; 8:45 am]
BILLING CODE 6560-50-F

**40 CFR Part 272**

**[FRL-3866-7]**

**Hazardous Waste Management Program Codification of Approved State Hazardous Waste Program for Idaho**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The Resource Conservation and Recovery Act of 1976, as amended (RCRA) authorizes the United States Environmental Protection Agency (EPA) to grant Final and Interim Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. Title 40 Code of Federal Regulations (CFR) part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3006. This rule codifies Idaho's authorized State program in part 272.

**DATES:** The codification of Idaho's authorized hazardous waste program shall be effective February 4, 1991, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Idaho authorized program codification must be received by the close of bussiness January 7, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51.

**ADDRESSES:** Written comments should be sent to Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101 or call (206) 442-6502.

**FOR FURTHER INFORMATION CONTACT:** Nina Kocourek, HW-112, Waste Management Branch, U.S. EPA, Waste Management Branch, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 442-6502.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6926 *et. seq.*, allows the U.S. Environmental Protection Agency (ERA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. On March 26, 1990, EPA published a **Federal Register** notice announcing its decision to grant final and interim authorization to Idaho (See 55 FR 11015). Idaho received final authorization for the RCRA base program and those HSWA provisions promulgated as of July 7, 1987. Interim authorization was granted for the HSWA corrective action provisions promulgated as of July 7, 1987. Interim authorization is a temporary authorization which a state can request and which is granted if the evidence submitted shows the state requirements are at least substantially equivalent to the federal program requirement. (See section 3006(g)(2) 42 U.S.C. 6928(g)). All interim authorizations pursuant to section 3006(g) expire on January 1, 1993. Responsibility for the portion of the program returns (reverts) to EPA on that date, if a state has not received final authorization for those provisions.

Since that time, EPA has decided to codify its approval of State programs in part 272 of title 40, Code of Federal Regulations (CFR), and to incorporate by reference therein the State statutes and regulations that EPA will enforce under section 3006. The intended codifications reflects the State program that was in effect when EPA granted Idaho final and interim authorization under section 3006(b) for its hazardous waste program.

This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98-616. Revisions of State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized Idaho program, and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Idaho, the status of the Federally approved requirements of the Idaho hazardous waste program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the Idaho hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similiar to HSWA requirements that are in effect under Federal statutory authority in that State. However, as Idaho is only authorized for those federal requirements promulgated as of July 7, 1987, all other State HSWA-type requirements promulgated as of July 7, 1987, all other State HSWA-type requirements promulgated since that date are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for additional specific non-HSWA and HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analog.

To codify the Idaho authorized hazardous waste program, EPA will add subpart N to part 272 of title 40 of the CFR. Subpart N has previously been reserved for Idaho. Section 272.651(a)(1), (b)-(d), and § 272.652(a)(1) codifies for enforcement purposes, the State statutes and regulations, the Memorandum of Agreement, the Attorney General Statement; and the Program Description, which are authorized and made part of the hazardous waste management program under subtitle C of RCRA.

The Agency retains the authority under sections 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedures Act rather

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than the authorized State analog to these requirements. Therefore, the Agency does not intend to codify such authorized Idaho enforcement authorities. Section 272.651(a)(2) lists those authorized Idaho authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C. See 40 CFR 271.1(i). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in part 272. Section 272.651(a)(3) of the intended codification simply lists for reference and clarity the Idaho statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being codified. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not amending part 272 to include any unauthorized HSWA requirements and prohibitions that are immediately effective in Idaho and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA. (See 50 FR 28702, July 15, 1985.) Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to section 271. EPA expects that the States will be modifying their programs substantially and repeatedly. In general, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt additional HSWA provisions are authorized.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It codifies the decision already made to authorize Idaho's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

### List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 28, 1990.

Dana A. Rasmussen,
*Regional Administrator.*

For the reasons set forth in the preamble, 40 CFR part 272 is revised as follows:

## PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for 40 CFR part 272 continues to read as follows:

Authority: Sec. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resources Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Part 272 is amended by adding subpart N to read as follows:

Subpart N—Idaho 6

Sec.

272.650 State authorization.
272.651 State-administered program: Final authorization.
272.652 State-administered program: Interim authorization.
272.653 through 272.699 [Reserved]

### Subpart N—Idaho

#### § 272.650 State authorization.

(a) The State of Idaho is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98-616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g)). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's program as administered by the Idaho Department of Health and Welfare, was approved by EPA pursuant to 42 U.S.C. 6926(b) and (g) and part 271 of this chapter. EPA's approval of Idaho's program was effective on April 9, 1990, see 55 FR 11015, March 26, 1990.

(b) Idaho is not authorized to implement any other HSWA requirements promulgated after July 7, 1987, in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a Federal Register notice granting Idaho authorization.

(c) Idaho has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) Idaho must revise its approved program to adopt new changes to the Federal subtitle C program, in accordance with section 3006(b) of RCRA and 40 CFR part 271, subpart A. Idaho must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Idaho obtains final authorization for the revised requirements pursuant to section 3006(g), the newly authorized provision will be listed in § 272.651 of this subpart. If Idaho obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.652.



#### § 272.651 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Idaho has final authorization for the following elements submitted to EPA in Idaho's program application for final authorization and approved by EPA effective on April 9, 1990.

(a) State statutes and regulations. (1) The requirements in the Idaho statutes and regulations cited in this paragraph are incorporated by reference and codified as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51.

(i) Statutory authority is vested in the State of Idaho, Board of Health and Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). This includes the following statutes as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated, Volume 7A, published in May 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4401; 39-4402; 39-4406; 39-4407; 39-4412; 39-4416; 39-4417; 39-4418; 39-4419; 39-4420; 39-4421; 39-4422; 39-4427; 39-4428; 39-4429; 39-4430; 39-4431; 39-4432; and as contained in the 1988 Cumulative Pocket Supplement Idaho Code, Volume 7A, published in June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4403; 39-4404; 39-4405; 39-4408; 39-4409 (1), (2), (3), (4), (6), (7), (8), 39-4410 (3); 39-4411; 39-4417B; 39-4423; and 39-4428.

(ii) The following are the Idaho Department of Health and Welfare Rules and Regulations, as contained in title 1, chapter 5, "Rules and Regulations and Standards for Hazardous Waste", published December 13, 1988, in effect as of June 10, 1988, (hereinafter referred to as "IDHW Regulations") are part of the approved program under RCRA: IDHW Regulations, §§ 16.01.5000; 16.01.5001; 16.01.5002, 01, 02; 16.01.5003; 16.01.5004; 16.01.5005; 16.01.5006, 01, 02; 16.01.5007; 16.01.5008 (with the exception of 16.01.5008, 06—appendix A, which is the counterpart to 40 CFR 264.101); 16.01.5009; 16.01.5010, 01, 02; 16.01.5011; 16.01.5012; 16.01.5013; 16.01.5356, 01, 02, 03, 04, 05; and appendix A. (Copies of the IDHW Regulations, edition dated December 13, 1988, in effect as of June 10, 1988, that are incorporated by reference in this paragraph are available from Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 N. Hilton Boise, Idaho, 83720).

(2) The following statutes although *not* codified herein for enforcement purposes, are part of the authorized state program. These statutes are as contained in Chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), General Laws of Idaho Annotated Volume 7A, published in May 1985 by the Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4414 ("Remedies") and I.C. 39-4415 ("Violations constituting misdemeanors") and as contained in the 1988 Cumulative Pocket Supplement Idaho Code, Volume 7A, published in June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4413 ("Enforcement procedures").

(3) The following statutes and regulations concerning routing of hazardous waste shipments are "broader in scope" than the Federal program, are *not* codified herein for enforcement purposes and are *not* part of the authorized program. The statutes are as contained in chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.) 1988 Cumulative Pocket Supplement, Volume 7A, published June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4410 (1), (2), (4), and (5); and the regulations as contained in Title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste", published December 13, 1988, in effect as of June 10, 1988, hereinafter referred to as "IDHW Regulations" are: IDHW Regulations section 16.01.5500, 01 and 02.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region X and Idaho Department of Health and Welfare signed by the EPA Regional Administrator on March 28, 1990, is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA 42 U.S.C. 6921 *et. seq.*

(c) *Statement of legal authority.* (1) "Attorney General's Statement for Final Authorization", signed by the Attorney General of Idaho on July 5, 1988; and (2) Letter by the Attorney General of Idaho to EPA signed on July 3, 1989, amending and supplementing the July 5, 1988 Attorney General's Statement for Final Authorization, are codified as part of the approved hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(d) *Program description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the approved hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

#### § 272.652 State-administered program: Interim authorization.

Pursuant to section 3006(g) of RCRA as amended by the HSWA, 42 U.S.C. 6926(g): Idaho has interim authorization for the following elements submitted to EPA in Idaho's program application for interim authorization and approved by EPA on April 9, 1990 (see 55 FR 11015, March 26, 1990).

(a) *State Statutes and Regulations.* (1) The requirements in the Idaho statutes and regulations cited in paragraphs (a)(1)(i) and (a)(1)(ii) of this section are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Statutory authority is vested in the State of Idaho, Board of Health and Welfare, by the Hazardous Waste Management Act of 1983 (HWMA). The following statute concerns the HSWA corrective action provision that received interim authorization as contained in the chapter 44 "Hazardous Waste Management", section 39 of the Idaho Code (I.C.), 1988 Cumulative Pocket Supplement, Volume 7A, published June 1988; by The Michie Company, Law Publishers, Charlottesville, Virginia: I.C. 39-4409(5).

(ii) The following Idaho Department of Health and Welfare Rule and Regulation which contains the corrective action provision for which Idaho received interim authorization is as contained in Title 1, chapter 5, "Rules, Regulations and Standards for Hazardous Waste" as published December 13, 1988, in effect as of June 10, 1988, (hereinafter referred to as "IDHW Regulations") and is part of the approved program under RCRA: IDHW Regulations, section 16.01.5008, 06 (with the exception of 16.01.5008, 06—Appendix A, which is the counterpart to 40 CFR 264.101). (Copies of this regulation and all other IDHW Regulations, edition dated December 13, 1988, in effect as of June 10, 1988, that are incorporated by reference in this paragraph are available from Idaho Department of Health and Welfare, Administrative Procedures Section, 1410 Hilton, Boise, Idaho, 83720).

§§ 272.653-272.699 [Reserved]

[FR Doc. 90-28839 Filed 12-5-90; 8:45 am]
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ACTION

45 CFR Part 1215

Freedom of Information Act Regulations; Technical Amendment

AGENCY: ACTION.

ACTION: Final rule; technical amendment.

SUMMARY: ACTION's final rule on the production, inspection and copying of records and documents under the Freedom of Information Act, as amended by Public Law 93-502, was published in the Federal Register on May 15, 1990 (55 FR 20152). A provision on records which may be exempt from disclosure was inadvertently omitted in that final rule. This amendment restores that provision.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Edward F. Carey, FOIA Officer, ACTION, room 3202, 1100 Vermont Ave., NW., Washington, DC 20525; (202) 634-9242.

SUPPLEMENTARY INFORMATION: A section entitled "Records which may be exempt from disclosure," discusses in detail the types of records that may be exempted from disclosure pursuant to 5 U.S.C. 552 (b), and is being added as § 1215.10. The section on exemptions appeared in the Agency's former regulation, but was omitted when the revised regulation was published on May 15, 1990. The Agency has now determined that the section of exemptions should be reinstated.

List of Subjects in 45 CFR Part 1215

Freedom of information.

Accordingly, 45 CFR part 1215 is amended as follows:

## PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for part 1215 is revised to read as follows:

Authority: Pub. L. 93-113, 87 Stat. 411 (42 U.S.C. 4951, et seq.); 42 U.S.C. 5042 (13); and 5 U.S.C. 552.

2. Section 1215.10 is added to read as follows:

§ 1215.10 Records which may be exempt from disclosure.

The following categories are examples of records maintained by ACTION which, under the provision of 5 U.S.C. 552(b), may be exempted from disclosure:

(a) Records required to be withheld under criteria established by an Executive Order in the interest of national defense or foreign policy and which are in fact properly classified pursuant to any such Executive Order. Included in this category are records required by Executive Order No. 11652, as amended, to be classified in the interest of national defense or foreign policy.

(b) Records related solely to internal personnel rules and practices. Included in this category are internal rules and regulations relating to personnel management and operations which cannot be disclosed to the public without substantial prejudice to the effective performance of significant function of the Agency.

(c) Records specifically exempted from disclosure by statute.

(d) Information of a commercial or financial nature including trade secrets given in confidence. Included in this category are records containing commercial or financial information obtained from any person and customarily regarded as privileged and confidential by the person from whom they were obtained.

(e) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than a party in litigation with the Agency. Included in this category are memoranda, letters, interagency and intra-agency communications and internal drafts, opinions and interpretations prepared by staff or consultants and records of deliberations of staff, ordinarily used in arriving at policy determinations and decisions.

(f) Personnel, medical and similar files. Included in this category are personnel and medical information files of staff, volunteer applicants, former volunteers, and volunteers, lists of names and home addresses, and other files or material containing private or personal information, the public disclosure of which would violate a pledge of confidentiality and amount to a clearly unwarranted invasion of the privacy of any person to whom the information pertains.

(g) Investigatory files. Included in this category are files compiled for the enforcement of all laws, or prepared in connection with government litigation and adjudicative proceedings, provided however, that such records shall be made available to the extent that their production will not:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, confidential information furnished by confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of portions which are exempt under this section.

Issued at Washington, DC, on November 23, 1990.

Jane A. Kenny,

*Director.*

[FR Doc. 90-28547 Filed 12-5-90; 8:45 am]

BILLING CODE 8050-28-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 153

[CGD 90-100]

RIN 2115-AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its table summarizing the minimum requirements for the carriage of liquid, liquefied gas, or compressed gas hazardous materials in bulk by tankship. These amendments assign additional carriage requirements, a higher Pollution Category, or both to certain commodities already listed in the table. These amendments, which have no effect on tank barges, are necessary to align the minimum requirements in the table with those approved by the International Maritime Organization (IMO) for inclusion in its Chemical Codes applicable to tankships. These amendments should result in a further reduction in maritime pollution from tankships.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.



Regulatory History

On September 6, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Bulk Hazardous Materials" in the Federal Register (55 FR 36670). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This rule amends Table 1 of 46 CFR part 153, which summarizes the minimum requirements for the carriage of liquid and gas hazardous materials in bulk by tankship. The changes all consist of "upgrades" to commodities already listed in Table 1. An "upgrade" means that a commodity is assigned additional carriage requirements, a higher Pollution Category (Pol. Cat.), or both. Under this rulemaking, certain commodities become subject to one or more of the following existing special carriage requirements:

(a) *46 CFR 153.409—High level alarms.* Most commodities referenced in this rulemaking become subject to this requirement. High level alarms on tankship reduce the likelihood of a tank accidentally overflowing.

(b) *46 CFR 153.440—Cargo temperature sensors.* Four commodities become subject to this requirement. Sensors are needed to determine the cargo's temperature in order that the viscosity and melting point information under 46 CFR 153.908 may be applied. See paragraph (d) of this section.

(c) *46 CFR 153.488—Design and equipment for tanks carrying high melting point NLSs: Category B.* Two commodities, "Rosin oil" and "Tall oil (*crude and distilled*)", become subject to this requirement. Commodities subject to § 153.488 must be carried in tankships with a double bottom. In the preamble to the NPRM, "Creosote (coal tar)" was mistakenly identified as subject to this requirement (55 FR 36671). The proposed regulatory text, however, was correct.

(d) *46 CFR 153.908—Cargo viscosity and melting point information; measuring cargo temperature during discharge: Categories A, B, and C.* Seven commodities are affected by this section, which requires that the person in charge of a tankship be furnished with viscosity and melting point information on the commodity to be carried. Commodities subject to this requirement require heating to reduce their viscosity for efficient offloading. This in turn means less cargo remaining in a tank to be discharged overboard during tank cleaning or collected as slops to be disposed of at a port collection facility.

These additional requirements bring the carriage requirements for these commodities in line with the requirements for other cargoes with the same Pol. Cat. All of these amendments have been approved by IMO for incorporation in their Chemical Codes. IMO's incorporation became effective on October 13, 1990.

Discussion of Comments and Changes

1. No comments were received to the NPRM.

2. The NPRM mistakenly identified 46 CFR 153.903 as a special carriage requirement and added ".903" to the "Special requirements" column of Table 1 for seven commodities. Section 153.903, "Operating a United States ship in special areas: Categories A, B, and C", is a general requirement applicable to the carriage of any noxious liquid substance, rather than to a certain listed commodity. Therefore, all amendments proposing to add ".903" in the "Special requirements" column of Table 1 have been deleted in the final rule. Table 1 has no column for general requirements.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary.

This rulemaking amends a chemical table by adding requirements consistent with international law to further control pollution hazards. The special requirement contained in 46 CFR 153.488 which is imposed by this rulemaking will have no known effect on U.S. tankships. No U.S. Flag tankship are certificated to carry "Tall oil (*crude and distilled*)". Eight U.S. Flag tankships are permitted to carry "Rosin oil", however none of the eight currently carry, nor in the recent past have carried this commodity. The requirement that cargo viscosity and melting point information be furnished the person in charge (46 CFR 153.908) will impose a minimal burden in that this information should be readily available.

As for the high level alarm and cargo temperature sensor requirements (46 CFR 153.409 and 153.440), many tankships already have these devices for carriage of other commodities presently requiring them. Others may have had them installed in anticipation of the October 13, 1990, effective date for the IMO Chemical Code amendments. For these reasons, the Coast Guard does not expect that many tankships will be affected. No comments were received on this conclusion.

Small Entities

For the reasons set out under "Regulatory Evaluation," the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of the rulemaking and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This final rule adds more stringent requirements for the carriage of certain chemicals to further control pollution hazards. A Categorical Exclusion Determination is included in the regulatory docket.

List of Subjects in 46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

For the reasons set out in the preamble, 46 CFR part 153 is amended as follows:

## PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

1. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703, 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

Table 1 [Amended]

2. Table 1 is amended by removing all bold-faced type wherever it may appear and adding, in its place, Roman type.

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**Table 1 [Amended]**

3. Table 1 is amended as follows, and all material added is to appear in bold-faced type:

(a) For the entry "(iso-, n-) Butyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(b) For the entry "2- or 3-Chloropropionic acid", in the "Special requirements" column, remove ".906(b)" and add, in its place, ".908(a), (b)".

(c) For the entry "Creosote (coal tar)", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "A" and, in the "Cargo containment system" column, remove the Roman numeral "III" and add, in its place, the Roman numeral "II".

(d) For the entry "Ethyl acrylate", in the "pollution category" column, remove the letter "B" and add, in its place, the letter "A" and, in the "Special requirements" column, add ".409" in sequential order.

(e) For the entry "2-Ethylhexyl acrylate", in the "pollution category" column, remove the letter "D" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(f) For the entry "Formaldehyde solution (37% to 50%)", in the "Special requirements" column, add ".440" and ".906(b)" in sequential order.

(g) For the entry "Methyl acrylate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(h) For the entry "Phthalic anhydride (molten)", in the "Special requirements" column, remove ".906(b)" and add, in its place, ".906(a), (b)".

(i) For the entry "Rosin oil", in the "Special requirements" column, remove the word "None" and add, in its place, ".409, .440, .488, .906(a), (b)".

(j) For the entry "Tall oil (*crude and distilled*)", in the "Special requirements" column, remove the word "None" and add, in its place, ".409, .440, .488, .906(a), (b)".

(k) For the entry "Tall oil, fatty acid (*resin acids less than 20%*)", in the "Special requirements" column, remove the word "None" and add, in its place, ".440, .908(a), (b)".

(l) For the entry "Toluenediamine", in the "Special requirements" column, remove ".906(b)" and add, in its place, ".906(a), (b)".

(m) For the entry "Vinyl neodecanate", in the "pollution category" column, remove the letter "C" and add, in its place, the letter "B" and, in the "Special requirements" column, add ".409" in sequential order.

(n) For the following entries, in the "Special requirements" column, remove the word "None" and add, in its place, ".409":

Calcium naphthenate in Mineral oil
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution
Diphenyl ether
Diphenyl ether, Biphenyl phenyl ether mixtures
Dodecene (all isomers)
Glycidyl ester of Tridecyl acetic acid
N-Methyl-2-pyrrolidone
Methyl salicylate
Rosin soap (disproportionated) solution
Tributyl phosphate
1,1,1-Trichloroethane
1-Undecene

(o) For the following entries, in the "Special requirements" column, add ".409" in sequential order:

(n-, crude) Butyraldehyde
Chloroform
o-Chlorotoluene
m-Chlorotoluene
Coal tar naphtha solvent
Crotonaldehyde
Decyl alcohol (all isomers)
1,1-Dichloroethane
2,2'-Dichloroethyl ether
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution
1,1-, 1,2-, or 1,3-Dichloropropane
Diglycidyl ether of Bisphenol A
Diisobutyl phthalate
Dodecanol
Dodecyl diphenyl ether disulfonate solution
2-Ethylhexylamine
2-Ethyl-3-propylacrolein
Fumaric adduct of rosin, water dispersion
2-Methyl-5-ethylpyridine
Pyridine
Sodium hydrosulfide solution (45% or less)
Sodium-2-mercaptobenzothiazol solution
Styrene *monomer*
Tall oil soap (disproportionated) solution
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane
Trichloroethylene
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers)
Vinylidene chloride
Xylenol

Dated: November 30, 1990.

**D.H. Whitten,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90-28627 Filed 12-5-90; 8:45 am]

BILLING CODE 4910-14-M



# Proposed Rules

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 112

[Docket No. 89-105]

### Viruses, Serums, Toxins, and Analogous Products, Amendment of the Labeling Requirements for Autogenous Biologics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations pertaining to labeling of autogenous biologics. Current regulations prohibit manufacturers of autogenous biologics from including on the label the identity of the flock or herd from which the culture was isolated or the name of the person(s) responsible for making the isolation. This amendment would remove these restrictions and allow the manufacturers to provide more complete information on the labels of all autogenous biologics.

**DATES:** Consideration will be given only to comments received on or before January 7, 1991.

**ADDRESSES:** To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development Staff, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-105. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michele M. April, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

**SUPPLEMENTARY INFORMATION:**

**Background**

Autogenous biologics are products prepared from cultures of microorganisms which have been inactivated and are nontoxic. Microorganisms used to prepare autogenous products are isolated from sick or dead animals or birds and represent the causative agent or agents of the disease affecting such animals or birds. Under normal circumstances, microorganisms isolated from one herd or flock are not used to prepare an autogenous biologic for another herd or flock.

The regulations (§ 112.7(g)) prohibit autogenous biologics labels from showing the identity of the herd or flock from which the culture was isolated, or the name of the person(s) responsible for making the isolation. The Agency has received requests from manufacturers that they be permitted to include this information on their labels for autogenous biologics. Upon analyzing these requests and considering the nature of these products, it is the Agency's opinion that by allowing the addition of this information on labels, manufacturers would be able to provide more complete identification on their product. Current regulations allow manufacturers to use an organism for production of an autogenous biologic for up to 12 months. This may involve the use of the organism in the production and distribution of several serials during this time period. More complete identification on labeling would enable manufacturers to keep better records and better control of their inventory. This would help them to ensure that autogenous biologics are produced from the microorganisms isolated from a particular herd or flock. More complete identification on the product label would also provide the user and consumer added assurance that the autogenous biologic they receive from a manufacturer was produced from microorganisms isolated from their individual herd or flock.

Therefore, we are proposing to amend § 112.7 by removing paragraph (g) and redesignating paragraphs (h) through (l) as paragraphs (g) through (k). The general labeling requirements described in paragraph (g) also appear in § 112.2(a)(5), and need not be retained in § 112.7.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Currently, manufacturers of autogenous biologics are prohibited form including on labels the identity of the herd or flock from which the culture was isolated or the name(s) of the person(s) responsible for making the isolations. This proposed rule, if adopted, would allow for greater flexibility in labeling autogenous biologics.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

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**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 9 CFR Part 112**

Animal biologics.

Accordingly, 9 CFR part 112 would be amended as follows:

**PART 112—PACKAGING AND LABELING**

1. The authority citation for 9 CFR part 112 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159, 37 FR 28477, 28640, 38 FR 19141.

**§ 112.7 [Amended]**

2. In § 112.7, paragraph (g) would be removed, and paragraphs (h) through (l) would be redesignated as paragraphs (g) through (k).

Done in Washington, DC, this 30th day of November 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-28570 Filed 12-5-90; 8:45 am]

BILLING CODE 3410-34-M

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 107**

**Small Business Investment Companies; Miscellaneous Amendments**

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed rulemaking (NPRM); extension of comment period.

**SUMMARY:** On September 27, 1990, SBA published in the **Federal Register** fifteen proposed amendments to the regulations governing the Small Business Investment Company program (*See* 55 FR 39422). That publication provided that comments would be accepted until November 27, 1990. The present notice extends the comment period until December 31, 1990, in order to provide more time for public comment.

**DATES:** Comments on the above-referenced NPRM must be received by December 31, 1990.

**ADDRESSES:** Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., room 808, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584.

**Authority:** 15 U.S.C. 687(c).

Dated: November 24, 1990.

**Susan Engeleiter,**

*Administrator.*

[FR Doc. 90-28553 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 36**

**RIN: 2900-AC63**

**Loan Guaranty: Suspension of Individual Employees of Manufactured Home Dealers**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program and other interested parties that VA is not longer considering a regulation, which was previously under consideration, concerning suspension of individual employees of manufactured home dealers.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Caden, Acting Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3042.

**SUPPLEMENTARY INFORMATION:** On October 18, 1988, the Department of Veterans Affairs published a proposed regulatory amendment in the **Federal Register** (53 FR 40742). This proposal was titled Suspension of Individual Employees of Manufactured Home Dealers, and was designed to amend 38 CFR 36.4235 to authorize the suspension of individual employees of manufactured home dealers who engage in unfair or prejudicial practices. Since this authority is now set forth in VA's government-wide debarment and suspension regulations at 38 CFR part 44, a change to 38 CFR 36.4235 is no longer necessary.

Approved: September 4, 1990.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

[FR Doc. 90-28546 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL MARITIME COMMISSION

**46 CFR Parts 580 and 581**

**[Docket No. 90-25]**

**Publication and Filing of Payments Made by Common Carriers to Foreign Freight Forwarders and Ocean Freight Brokers in Tariffs and Service Contracts**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The proposed rule in this proceeding, published September 25, 1990 (55 FR 39181), would amend the Commission's foreign tariff filing regulations to require common carriers and conferences to state in their tariffs the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule would define foreign freight forwarders and ocean freight brokers. The Proposed Rule would also amend the FMC's service contract filing regulations to require common carriers and conferences to state in service contracts the amount of payments made, and a description of services for which any payments are made, to foreign freight forwarders or ocean freight brokers. The Proposed Rule would require public disclosure of any payments made by common carriers for services provided by foreign freight forwarders and ocean freight brokers. The proposal is intended to facilitate enforcement efforts to detect and prevent unlawful activity related to such payments. Comments on the Notice of Proposed Rulemaking were previously due November 26, 1990. The National Customs Brokers and Forwarders Association of America, Inc. and the Pacific Coast Council of Freight Forwarders and Customs Brokers now have requested an extension of time to file comments. This notice grants the requests in part and extends the time for filing comments to December 26, 1990. Because the instant requests were not filed until the very date comments were due, parties who have previously filed comments without knowing of a possible extension and who desire to supplement their submissions will be allowed to do so. Those submitting comments and supplementary comments are cautioned, however, that they are not permitted to include material in reply to those comments already filed.

**DATES:** Comments due December 26, 1990.



**ADDRESSES:** Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001, (202) 523–5787.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-28572 Filed 12-5-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 73 and 76**

**[MM Docket Nos. 90-570 [1] and 83-670; FCC 90-373]**

**Broadcast and Cable Services, Children's Television Act**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This Notice of Proposed Rule Making initiates a proceeding to implement the commercial limits and educational and informational programming requirements mandated in the Children's Television Act of 1990 (the Act). The Act imposes three requirements which affect FCC Rules. First, commercial television broadcast licensees and cable operators must limit the amount of advertising in children's programming to not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays. Second, in its review of television broadcast renewal applications, the Commission must consider whether the licensee has complied with the commercial limits and has served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." Finally, the Act requires that the Commission: (1) Complete a pending proceeding, MM Docket 83–670, which includes the issue of how to define and treat "program length commercials," and (2) conduct a rulemaking to prescribe standards implementing the statutorily-mandated commercialization limits on children's programming. In light of the mandate of the Act, the Commission initiates this new proceeding and consolidates it with MM Docket 83–670.

**DATES:** Comments are due by January 30, 1991, and reply comments are due by February 20, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Regina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

**SUPPLEMENTARY INFORMATION:**

1. This is a synopsis of the Commission's Notice of Proposed Rule Making (Notice) in MM Docket No. 90–570, FCC 90–373, adopted November 8, 1990, and released November 30, 1990.

2. The complete text of the *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Synopsis of Notice of Proposed Rule Making**

3. The Commission adopts this Notice in compliance with the Act (Pub. L. No. 101–437, enacted October 18, 1990). The Act requires that commercial television broadcast licensees and cable operators limit the amount of advertising in children's programs to "not more than 10.5 minutes per hour on weekends and not more than 12 minutes per hour on weekdays".[2] The Commission proposes to define "children" as 12 years of age and under for purposes of applying the commercial limits. This age range comports with the purpose of establishing the commercial limitations to protect youngsters not yet old enough to distinguish commercial from programming material. The Commission also proposes to define "commercial matter" in terms of common parlance, *i.e.*, as air time sold for the purposes of selling a product.

4. The commercial limits apply to commercial television stations, as well as to "cable operators" as defined in section 602 of the Cable Communications Policy Act of 1984 (47 U.S.C. 522(4)). The legislative history of the Children's Television Act suggests that if a cable operator merely passively transmits a commercial television broadcast station, the cable operator would not be independently liable for violations of the Act committed by the broadcast station. In addition, section 611(e) of the Cable Communications Policy Act of 1984 (47 U.S.C. 531(e)) provides that a cable operator "shall not exercise any editorial control over any public, educational, or governmental use of channel capacity provided pursuant to this Section." The Commission thus proposes that cable operators not be held responsible for ensuring compliance with the commercial limits either on the commercial television stations or the access channels they carry. The Commission proposes, however, to hold cable operators responsible for ensuring that the commercial limits are not exceeded in children's programming carried on any channel locally originated by the operator. The Commission seeks comment on these tentative conclusions. Neither the Act nor the legislative history would appear to intend to hold cable operators responsible for violations of the commercial limits on the part of cable network programs. The Commission seeks comment on the legal authority it would have to hold a cable network programmer directly liable for cable network program violations.

5. The Commission proposes to impose forfeitures on both cable and broadcast operators that exceed the commercial limits in more than a *de minimis* fashion. For continuing or otherwise egregious violations of these rules, television broadcast licensees would lose their license renewal expectancy and their renewal applications would be set for hearing. The Notice asks interested parties to comment on this proposal and on whether the Commission should permit commercial television broadcasters to certify compliance with the commercial limits in their renewal applications. Further, the Notice asks whether it would be necessary to impose any recordkeeping requirements with respect to the commercial limits.

6. The Act requires that, in reviewing television license renewal applications, the Commission consider whether the licensee has served "the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." The statute provides that the Commission may also consider (1) "any special nonbroadcast efforts * * *, which enhance the educational and informational value of such programming" and (2) any "special

[1] Pleadings and comments citing both captioned dockets will be physically filed and recorded as filed in Mass Media Docket No. 90–570.

[2] After January 1, 1993, the Commission may, after notice and comment and demonstration of need, modify these limits in accordance with the public interest. *See* the Act, Section 102(c).

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found, if adopted, to impose new or modified information requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

**Ex Parte Consideration**

15. This is a non-restricted proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

**Comment Information**

16. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 30, 1991, and reply comments on or before February 20, 1991. No extension of these comment periods is anticipated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

**Initial Regulatory Flexibility Act Analysis**

17. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the actions proposed in this decision, if enacted, will impact on commercial television stations, cable operators, program sponsors and potential sponsors, program producers and suppliers, and possibly non-commercial television stations. As prescribed by the Act, commercial limitations and educational and informational programming requirements would be effectuated. In the case of television broadcasters, compliance would be considered as part of the renewal process. The Act provides broadcasters with flexibility in fulfilling their children's programming obligations and in the accompanying recordkeeping burden, and that flexibility is maintained in the Commission's proposals. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

18. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

19. Authority for the actions proposed above is contained in sections 4(i), 4(j), 303(r), 317, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 317, and 503, and in the Children's Television Act of 1990, Pub. L. 101–437.

**List of Subjects**

*47 CFR Part 73*

Television broadcasting.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*

[FR Doc. 90–28804 Filed 12–5–90; 8:45 am]
BILLING CODE 6712–01–M



effort" to produce or support programming broadcast by another station in the licensee's market that is "specifically designed to serve the educational and informational needs of children."

7. The Commission seeks comment on whether Congress intended that the Act's educational and informational programming requirements apply to both commercial and noncommercial stations. Additionally, the Commission solicits comments on how children should be defined for purposes of reviewing broadcasters' compliance with these requirements. The Notice seeks comment on whether the age range of "children" should be the same as for commercial limits, *i.e.*, 12 years of age or under, or whether it should be more broadly defined. Parties are also invited to comments on whether the Act requires broadcasters to target their programs to particular segments of the child audience, whether such targeting is feasible, and how such segments might be defined.

8. The Notice proposes to require each licensee to assess the needs of children given: (1) The circumstances with the community, (2) other programming on the station, (3) programming aired on other broadcast stations within the community, and (4) other programs for children available in the broadcaster's community of license. Each licensee should then air programs intended to meet the "educational and informational needs of children" responding to its assessment. The Commission seeks comment on this proposal. Commenters who believe that the Commission should attempt to define for broadcasters the parameters of the Act's children's programming requirement should address what definition of "educational and informational programming" might be used.

9. The Commission proposes to require broadcasters to maintain records sufficient to determine at renewal time whether the broadcaster has served the educational and informational needs of children as provided in the Act. The Notice proposes to leave to the broadcaster's judgment the form in which it will maintain such records. At a minimum, however, the records should include a description of the programming, as well as its time, date and duration. The Notice proposes to require broadcasters to maintain these records in their public inspection file. The Notice also proposes, consistent with the legislative history, that broadcasters be required to submit those records with their license renewal applications. The Commission seeks comment on these proposals, and on whether, given the legislative history of the Act, it would nevertheless be possible as an alternative to permit broadcasters to certify their compliance on a short-form renewal. The Notice also invites comment on whether the Commission's policy with respect to remedies for television broadcasters' failure to meet the educational and informational needs of children should be analogous to those proposed for commercialization limits.

10. The Notice solicits comment on what the effective date of our implementing rules with regard to renewal applications should be. One potential approach might be that any applications for renewal filed after the new commercialization and children's programming rules and policies are in effect, must demonstrate compliance with such rules and policies from the time of their effective date, however brief a period that may be. Although this approach comports with the language of the statute requiring review for compliance "[a]fter the standards required by section 102 [the commercial limits] are in effect," the legislative history of the Act suggests that Congress may have intended to afford licensees a longer period of notice with respect to the children's programming requirements. The Notice therefore requests comment on whether to require television broadcast renewal applicants to demonstrate compliance with the Act's programming requirements as of October 1991. It also seeks comment on whether we should allow a similar notice period for implementation of commercial limits.

11. The final provision of the Act requires that the Commission complete MM Docket No. 83–670 in 180 days. That docket concerns (1) the appropriate commercial levels in children's programming, an issue now superseded by the Act; and (2) the propriety of product-related programs, including those using interactive toys. The Commission now (1) incorporates the entire record of Docket 83–670 into this consolidated proceeding; (2) dismisses as moot, in light of the Act, that portion of Docket 83–670 relating to commercial limits, and (3) seeks further comment on the issue of product related programs. The Notice tentatively proposes to define "program-length commercial" in the context of children's programming as a program associated with a product in which commercials for that product are aired. The Notice observes that the Commission traditionally has defined "program-length commercial" as a program segment "so interwoven with, and in essence auxiliary to the sponsor's advertising * * * that the entire program constitutes a single commercial promotion for the sponsor's products or services." The Commission seeks comment on the utility of its proposed definition and on how it might be refined further for children's programming. Further, the Notice invites comment on whether any children's program that was found to be a "program-length commercial" would count toward the statutory commercial limits, and/or whether there should be a separate rule or policy applicable to such programs. The Notice also invites comment on whether and how application of the proposed definition or any other definition of "program-length commercial" would apply to existing programs.

12. The Commission tentatively finds that, since the issuance of the Further Notice of Proposed Rule Making/Notice of Inquiry (Further Notice) in MM Docket 83–670 (52 FR 44816, November 20, 1987) interactive toys have not been used with children's programs. The Notice requests comment on whether this impression is accurate and on whether there are any children's programs in which such toys are being used. Assuming the Notice is correct in this conclusion, there appears to be no need for further consideration of regulations relating to interactive toy programs. If, however, such toys are being used, the Notice invites comment on whether any Commission action is appropriate or necessary, and if so, what form should such Commission action take.

13. The Further Notice deferred a decision on requests by Action For Children's Television (ACT) that we require sponsorship identification announcements to be interspersed throughout programs involving interactive toys and program-length commercials. The Notice now seeks comment on when licensees should have a section 317 or other binding obligation (*see* 104 FCC 2d 371, n. 41) to air sponsorship identification announcements in product-related programs, either in the form that ACT requests or in some other manner. Also, the Notice seeks comment on whether the particular technique suggested by ACT, that of interspersing such announcements, would adequately apprise a child audience of the content of a program.

**Paperwork Reduction Act Statement**

14. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, and

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# Notices

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776, the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: January 29-30, 1991.

Time: 8:30 a.m.-5 p.m., January 29; 8:30 a.m.-12 noon, January 30.

Place: Conference Room 104-A, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: H. L. Shands, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, room 140, Building 005, Beltsville, Maryland 20705. Telephone: (301 344-3311. Done at Beltsville, Maryland, this 25th November 1990.

Henry L. Shands,

*Executive Secretary, National Plant Genetic Resources Board.*

[FR Doc. 90-28629 Filed 12-5-90; 8:45 am]

BILLING CODE 3410-03-M

## Forest Service

### Flying Twisp Timber Sale, Okanogan National Forest, Okanogan County, WA

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation of an environmental impact statement.

**SUMMARY:** The Office of the Secretary, USDA, gave notice that the Chief of the Forest Service vacated the decision contained in the December 1986 Record of Decision which amended the Regional Guide for the Pacific Northwest Region with regard to management of northern spotted owl habitat. This notice appeared in the October 3, 1990 Federal Register (55 FR 40413). The announcement in the Federal Register further states that the Forest Service will conduct timber management activities in a manner not inconsistent with the May 1990 Interagency Scientific Committee recommendations pending enactment of new legislation. The Interagency Scientific Committee report recommends that a large portion of the Flying Twisp Timber Sale project area be placed in a Category 3 Habitat Conservation Area, which precludes timber harvest.

The Notice of Intent, published in the Federal Register of May 25, 1990, is hereby rescinded (55 FR 21637).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Klepach, Presale Forester, Twisp Ranger District, P.O. Box. 188, Twisp, WA 98856; phone (509) 997-2131

Dated: November 19, 1990.

Sam Cohr,

*Forest Supervisor.*

[FR Doc. 90-28582 Filed 12-5-90; 8:45 am]

BILLING CODE 3410-11-M

### Plumas National Forest, California; Intention To Prepare an Environmental Impact Statement on California Department of Forestry Conservation Camp

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of a proposed California Department of Corrections Conservation Camp located on the La Porte Ranger District, Plumas National Forest, in Yuba County, California. The proposed location is approximately 35 air miles from Marysville, California, in T. 18 N. and Range 7 E., section 34, Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in May 1991, and the Final Environmental Impact Statement (FEIS) will be available for review in August 1991.

**DATES:** Comments concerning the scope of analysis should be received in writing by January 30, 1991.

**ADDRESSES:** Submit written comments and suggestions to Charles W. Smay, District Ranger, P.O. Drawer 369, Challenge, CA 95925.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Heath, Resource Officer, phone 916-675-2462.

**SUPPLEMENTARY INFORMATION:** The California Department of Forestry and Fire Protection and the California Department of Corrections propose jointly to operate a minimum security conservation camp in Yuba County. Several locations have been proposed on the Plumas National Forest and several locations on private lands.

The conservation camp will be designed to handle 140 men year round. An important aspect of the camp will be the various natural resource projects that will be performed by camp crews. These projects generally fall into the following categories:

1. Fire defense improvements, such as fuelbreak construction and roadside hazard reduction.
2. Forest conservation, such as tree seed collection, tree planting, wildlife habitat improvement, and recreation campground improvement.
3. Emergency activity (Firefighting, flood control, and search and rescue).
4. In camp projects (cabinet carpenter work, metal welding, and automotive maintenance).

The purpose of the conservation camp program is to provide training and use of inmates assigned to the camps for the furtherance of conservation and development of natural resources. A range of alternatives will be considered for the location of the camp including the use of private lands and state lands. One alternative will be no action.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring addition, alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed project area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for the public to review by May 1991. At that time the EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the Federal Register. It is very important that those interested in the location and management of the conservation camp participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978)], and the environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final Environment Impact Statement (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by August 1991. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: November 19, 1990.

Mary J. Coulombe,

*Forest Supervisor.*

[FR Doc. 90-28377 Filed 12-5-90; 8:45 am]

BILLING CODE 3410-11-M



## DEPARTMENT OF COMMERCE

### Bureau of the Census

[Docket No. 901100-0300]

### Current Industrial Reports

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** The Bureau of the Census will make the changes listed below, effective January 1, 1991, to the Current Industrial Reports (CIR) program. The Census Bureau conducts the surveys in the CIR program under authority of title 13, United States Code, sections 41, 61, 81, 131, 182, 224, and 225. This action is made necessary by a reduction to the 1991 fiscal year CIR base budget.

**ADDRESSES:** Director, Bureau of the Census, Washington, DC 20233.

**FOR FURTHER INFORMATION CONTACT:** Gaylord Worden on (301) 763-5860.

**SUPPLEMENTARY INFORMATION:** The Census Bureau, authorized by title 13, United States Code, conducts a series of monthly, quarterly, and annual surveys as part of the CIR program in order to provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Changes to the CIR program were initially proposed in a Notice of Consideration, July 27, 1990, 55 FR 30732, to meet the reduction to the 1991 fiscal year CIR base budget. As a result of the Notice of Consideration, during the period July 27 to August 27, we received 127 letters resulting in over 230 comments pertaining to specific surveys. Virtually all of the letters were opposed to the proposed modifications, citing the loss of timely data as the primary concern. However, our ability to meet the needs of all data users is extremely limited due to the significant reduction to the CIR program budget. Therefore, unless non-Census Bureau funds are forthcoming, we must proceed with the following changes to the CIR program effective January 1, 1991.

**Change Survey Frequency From Monthly to Quarterly**

M20A—Flour Milling
M20J—Oilseeds, Beans, and Nuts
M20K—Fats and Oils
M22P—Cotton
M28A—Inorganic Chemicals
M28B—Inorganic/Phosphates Fertilizer
M28C—Industrial Gases
M28F—Paint, Varnish, Lacquer
M31A—Shoes and Slippers
M32D—Clay Construction Products
M37L—Truck Trailers

**Discontinue Annual Surveys**

MA20D—Confectionery
MA24F—Hardwood, Softwood Plywood
MA28A—Pulp, Paper, and Board
MA30A—Rubber
MA32J—Fibrous Glass
MA34N—Selected Heating Equipment

These surveys have been approved by the Office of Management and Budget (OMB Control Numbers 0607-0269, 0607-0392, 0607-0393, 0607-0395, 0607-0475, and 0607-0478) in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended.

Dated: November 30, 1990.

Barbara Everitt Bryant,

*Director, Bureau of the Census.*

[FR Doc. 90-28563 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-07-M

## Foreign-Trade Zones Board

[Order No. 492]

### Resolution and Order Approving the Application of the Manatee County Port Authority for a Foreign-Trade Zone in Manatee County, FL

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

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**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Manatee County Port Authority, filed with the Foreign-Trade Zones Board on August 31, 1989, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Manatee County, Florida, within the Port Manatee Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Manatee County, FL**

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas*, the Manatee County Port Authority (the Grantee), has made application (filed August 31, 1989, FTZ Docket 14–89, 54 FR 37405, 9/11/89) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Manatee County, Florida, within the Port Manatee Customs port of entry;

*Whereas*, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas*, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore*, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 169, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenues of the United States and the installation of suitable facilities.

*In witness whereof*, the Foreign-Trade Zone Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Office at Washington, DC, this 21st day of November, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Robert Mosbacher,**

*Secretary of Commerce, Chairman and Executive Officer.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 90-28867 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

**[Order No. 493]**

## Resolution and Order Approving With Restriction the Application of the Greater Kansas City Foreign-Trade Zone, Inc., for a Special-Purpose Subzone for Sink Processing at the Metcraft Plant, Grandview, MO

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order;

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, filed with the Foreign-Trade Zones Board (the Board) on September 5, 1989, requesting special-purpose subzone status for a period not beyond December 31, 1998, for the stainless steel sink finishing operation at the Metcraft, Inc., manufacturing plant in Grandview, Missouri, adjacent to the Kansas City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were subject to a restriction that requires that all foreign merchandise admitted to the plant under foreign-trade zone procedures be reexported or destroyed, approves the application subject to the foregoing restriction and time period (12/31/98).

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**Grant of Authority To Establish a Foreign-Trade Subzone in Grandview, MO**

*Whereas*, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas*, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas*, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, has made application (filed September 5, 1989, FTZ Docket 15–89, 54 FR 181, 9/20/89), in due and proper form to the Board for authority to establish a special-purpose subzone at the stainless sink operation of Metcraft, Inc., located in Grandview, Missouri;

*Whereas*, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

*Whereas*, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

*Now, therefore*, in accordance with the application filed September 5, 1989, the Board hereby authorizes the establishment of a special-purpose subzone at the Metcraft plant in Grandview, Missouri, designated on the records of the Board as Foreign-Trade Subzone No. 15F at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facility in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In witness whereof*, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 27th day of November 1990, pursuant to Order of the Board.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 90-28088 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M



## International Trade Administration

**[A-351-606]**

## Tubeless Steel Disc Wheels From Brazil; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from the petitioner, Budd Company, Wheel and Brake Division, and one manufacturer/exporter, Borlem S.A., Empreedimentos Industriais (Borlem), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on tubeless steel disc wheels from Brazil. The review covers one manufacturer/exporter and the period May 1, 1988 through April 30, 1989.

As a result of the review, the Department has preliminarily found no dumping margin for Borlem. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Britt Doughtie or Maria MacKay, Office of Countervailing Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 23, 1987, the Department published in the *Federal Register* (52 FR 19003) an antidumping duty order on tubeless steel disc wheels from Brazil. The petitioner and one manufacturer/exporter requested, in accordance with § 353.22(a) of the Department of Commerce Regulations (19 CFR 353.22(a) (1989)), that we conduct an administrative review. We published a notice of initiation of administrative review on June 21, 1989 (54 FR 26068). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of Review**

Imports covered by this review are shipments of tubeless steel disc wheels from Brazil designed to be mounted with pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses. During the beginning of the review period, such merchandise was classifiable under item number 692.3230 of the *Tariff Schedules of United States Annotated* (TSUSA). This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 8716.90.50. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States and the period May 1, 1988 through April 30, 1989.

**United States Price**

In calculating United States price (USP), the Department used purchase price, as defined in section 772 of the Tariff Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on the packed, c.i.f. price to unrelated purchasers in the United States. We made deductions, where appropriate, for ocean freight, ocean insurance, foreign inland freight, foreign port charges, and brokerage fees. We also added to the USP the amount of Brazilian commodity taxes forgiven by reason of exportation of the merchandise to the United States. We calculated the adjustments by multiplying the involved price of the merchandise sold in the United States by the rates of each respective Brazilian commodity tax and added the result to

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USP. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act. Home market price was based on the packed, f.o.b. customer warehouse price to unrelated purchasers. We made adjustments, where applicable, for inland freight, credit, commodity taxes, and differences in home market and U.S. packing costs. In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for the differences in the physical characteristics between the U.S. and home market products.

**Preliminary Result of Review**

As a result of our review, we preliminarily determine that there is no dumping margin for Borlem.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request, a hearing with 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1 of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for this firm. for any future entries of tubeless steel disc wheels from a new exporter not covered in this or in prior reviews, whose first shipment occurred after April 30, 1989, and who is unrelated to the reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Brazilian tubeless steel disc wheels designed to be mounted on pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28669 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-475-401]**

## Preliminary Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protection Systems from Italy

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** In response to a request from Rubinetteria A. Giacomini, S.p.A. ("Giacomini"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. The review covers Giacomini, a manufacturer/exporter of this merchandise to the United States, and the period March 1, 1989 through February 28, 1990.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3003 or (202) 377-5288, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 8, 1990, the Department published in the **Federal Register**(55 FR 19094) the amended final results of its prior administrative review of the antidumping duty order on certain valves and connections, of brass, for use in fire protection systems from Italy. In accordance with 19 CFR 353.22, the Department received a request from respondent to conduct this administrative review. We published in the **Federal Register** a notice of initiation of antidumping duty administrative review on April 27, 1990 (55 FR 17783). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

**Scope of Review**

Imports covered by this review are shipments from Italy of certain valves and connections, of brass, suitable for use in fire protection systems. Such merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 8481.80.1050 and 8481.80.1070. HTS sub-headings are provided for convenience and customs purposes. The written description remains dispositive.

This review covers Giacomini, a manufacturer/exporter to the United States of certain valves and connections, of brass, for use in fire protection systems and the period March 1, 1989 through February 28, 1990.

**United States Price**

In calculating United States price, the Department used purchase price as defined in section 772(b) of the Act. Purchase price is based on the packed, C&F, CIF, or delivered price, duty excluded, to unrelated distributors in the United States. Where applicable, we made adjustments for foreign inland freight, ocean freight, marine insurance, brokerage and handling charges, and U.S. inland freight.

**Foreign Market Value**

Giacomini, the only respondent, did not make any sales to Italian customers during the review period. Consequently, in calculating foreign market value, the Department used either sales to a third country, Canada, or constructed value (CV), as defined in section 773 of the Act.

Third country sales price was based on the packed, FOB Italian port price to unrelated distributors in Canada. In cases in which there were no comparable Canadian sales of the subject merchandise, we calculated foreign market value based on CV.

When third country prices were used, we made a deduction, where appropriate, for foreign inland freight. We deducted third country packing costs and added U.S. packing costs.

We made circumstances of sale adjustments for differences in credit terms and commissions pursuant to 19 CFR 353.56. Where no payment date was reported for a specific date, we calculated a simple average of the reported credit days on a sale-by-sale basis for the corresponding customer, and used that average as best information available in calculating credit expense. For certain sales, we deducted from the foreign market value



credit revenue,which Giacomini received from its United States customers. This amount was received by Gaicomini when the customer paid after the date specified in the payment terms.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise in accordance with 19 CFR 353.57.

Because Giacomini did not provide differences in merchandise information for one model, we used the highest calculated margin for the most similar U.S. model as best information available, pursuant to section 776(c) of the Act.

We calculated CV in accordance with section 773(e)(1) of the Act. CV includes the costs of materials, fabrication, general expenses, profit, and packing. In all cases: (1) Since the actual general expenses exceeded the statutory ten percent minimum of materials and fabrication, actual expenses were used; (2) since actual profit exceeded the statutory minimum, the actual profit was applied; and (3) imputed credit was included in selling expenses. We calculated an offset to interest expense as reflected on the company's books to avoid double counting. Because there were no sales of subject merchandise in the home market during the period of review, we used third country data to derive selling expenses and profit.

We made circumstance of sale adjustments for differences in credit terms and commissions pursuant to 19 CFR 353.56.

The CV data submitted by Giacomini was relief upon except in those instances where the costs were not appropriately quantified or valued. The following adjustments were made to Giacomini's data: (1) General and administrative and interest expenses were adjusted based on cost of sales as reflected in Giacomini's financial statements; and (2) certain indirect selling expenses excluded from the Submission were added to general expenses.

**Currency Conversion**

In accordance with 19 CFR 353.60, we used the official exchange rates in effect on the appropriate dates for determining foreign market value. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine the margin to be

| Manufacturer/exporter | Time period | Margin |
|---|---|---|
| Rubinetteria A. Giacomini, S.p.A.... | 09/01/89-02/28/90 | 1.87 |

The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain values and connections, of brass, for use in fire protection systems from Italy entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a) (1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the amended final results of the prior administrative review for Giacomini (55 FR 19094, May 8, 1990); (2) the cash deposit rate for Giacomini will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this review or any other prior review, whose first shipments occurred after February 28, 1990 and who is unrelated to the reviewed firm or any previously reviewed firm, will be the same as the rate established for Giacomini in the final results of this review.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice in the **Federal Register**, and rebuttal briefs no later than 37days after the date of publication. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held on January 17, 1991 at 9:30 a.m., at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act, 19 U.S.C. 1675(a)(1), and 19 CFR 353.22.

Dated November 28, 1990.

**Eric I. Garfinkel,**

*Assistant Secretary for Import Administration.*

[FR Doc. 90-28670 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

**[C-223-401]**

## Certain Cut Flowers From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATES:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street NW., Washington, DC 20230; telephone: (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 24, 1990, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (55 FR 2398) of the agreement suspending the countervailing duty investigation on certain cut flowers from Costa Rica (52 FR 1356; January 13, 1987). On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative

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review of the suspension agreement. We initiated the review, covering January 1, 1989 through December 31, 1989, on February 28, 1990 (55 FR 7015). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). The final results of the last administrative review in this case were published in the **Federal Register** on April 25, 1990 (55 FR 17478).

**Scope of Review**

Imports covered by this review are shipments of miniature (spray) carnations, standard carnations, and pompon chrysanthemums from Costa Rica. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* ("HTS") items 0603.10.30 and 0603.10.70. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and six programs. The producers and exporters listed in Appendix A, accounting for more than eighty-five (85) percent of total exports of subject merchandise from Costa Rica to the United States, are signatories to the suspension agreement.

**Analysis of Programs**

*(1) Tax Credit Certificates*

Certificados de Abono Tributario ("CAT") are bearer instruments issued by the Central Bank of Costa Rica. The value of the CAT is equal to 15 percent of the f.o.b. value of a firm's shipments of non-traditional exports. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CAT program for shipments of the subject merchandise to the United States. Effective the date of the agreement (January 13, 1987), any unused certificates received on prior shipments of the subject merchandise to the United States were to be returned to the Central Bank of Costa Rica. During verification, we found that none of the signatory producers and exporters applied for, received, or possessed unused CATs for the subject merchandise during the review period. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

*(2) Certificates for Increasing Exports (CIEX)*

This program provides grants to agricultural and agro-industrial producers who increase exports from one year to the next. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any benefits under the CIEX program. In August 1984, the program was discontinued due to lack of funds, and the last benefit was paid in 1986. In 1988, Congress approved a special emission of bonds for the purpose of liquidating the outstanding CIEX benefits for 1983/84, 1984/85, and 1985/86. During verification, we found that none of the signatory producers and exporters received benefits under this program during the review period and that none of them is on the government's list of bond recipients. Therefore, we preliminarily determine that the signatories were in compliance with the portion of the suspension agreement covering this program.

*(3) Income Tax Exemptions for Export Earnings*

Firms in Costa Rica are eligible for a tax exemption for export earnings. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any income tax exemptions for income derived from exports of the subject merchandise to the United States. During verification, we found that two signatories received tax exemptions on export earnings. One company, a new signatory, provided information during verification which showed that the company generated no earnings on exports of the subject merchandise. The other company stated that it inadvertently received the benefit but has subsequently repaid the exempt portion attributable to the subject merchandise. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

*(4) Exporter Credit for Sales Tax and Consumption Tax on Certain Domestic Purchases*

Exporting firms in Costa Rica are eligible for a rebate of sales taxes and selective excise taxes (*i.e.*, indirect taxes) paid on certain domestically-purchased articles. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any rebates of sales taxes and selective excise taxes on domestic purchases not physically incorporated into any exports. During verification, we found that none of the signatory producers and exporters applied for or received any rebates of these taxes during the review period on domestic purchases not physically incorporated into exports. Therefore, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

*(5) Exporter Exemptions for Taxes and Duties on Imports*

At the time the suspension agreement was signed, Costa Rican firms had to have an export contract in order to be exempted from paying duties and taxes on imported raw materials, intermediate products, and capital goods used to produce exported finished products. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from applying for or receiving any exemptions from taxes, surcharges, and duties (*i.e.*, indirect taxes) on non-physically incorporated imports.

During the negotiation of the suspension agreement, the Costa Rican government asked the Department to look into the effects of the Agrichemical and FODEA laws, enacted in 1985 and 1987, respectively, on the countervailability of this program. We stated at that time that we would address this issue in a subsequent administrative review. During verification, we were informed that the two laws have been merged and are now referred to as the FODEA law. In addition, Costa Rican government officials stated that the FODEA law eliminated the possession of the export contract as the precondition for the receipt of this benefit and that the benefit is now available to any company or individual regardless of whether it exports. Therefore, the Costa Rican government asserts that this program is no longer an export subsidy and no longer countervailable.

During verification, we found that the laws specify that a company does not have to export to be eligible for exemptions for taxes and duties on imports. Although the program is no longer export-related, the laws do stipulate that exemptions may be granted only for specific imported products, and therefore, eligibility requirements may continue to make it countervailable but as a domestic benefit. At this time, information on the record does not support the elimination from the suspension agreement of the Exporter Exemptions for Taxes and Duties on Imports program. We have requested additional information regarding this program, and we will continue to review it.

During verification, we found that the agency responsible for granting the exemptions, the Centro para la Promocion de las Exportaciones y de las Inversiones ("CENPRO"), had instituted a system of controls to ensure that no exemptions would be given for imports not physically incorporated into exports of the subject merchandise. As part of this system of controls, ACOFLOR received a list from CENPRO that showed those flower growers that applied for tax and duty exemptions under this program. Before any applications were processed, a representative of ACOFLOR visited the flower growers claiming the exemptions, inspected the imported good in question, and verified its intended use. If the ACOFLOR representative determined that the imported good would be used in the production of the subject merchandise, ACOFLOR would require that the flower grower promptly withdraw its application for exemption.

At verification, we examined the system of controls administered by ACOFLOR and CENPRO. We also visited a flower farm and inspected the imported items that received duty exonerations during the review period. During verification, we found that one company received an exemption for non-physically incorporated merchandise for which they could provide no documentation on the use of the import (*i.e.*, whether the import was used in the production of the subject merchandise). Company officials stated that they thought these products were used in the production of non-subject merchandise; however, the company has subsequently repaid the taxes that were exempted. Because we were able to verify satisfactorily that items receiving duty-free treatment did not provide benefits on the subject merchandise, we preliminarily determine that, with respect to this program, the signatories have complied with the agreement.

*(6) Accelerated Depreciation*

Exporting firms in Costa Rica may use accelerated depreciation for new equipment if they are authorized for that benefit by the Ministerio de Hacienda. The suspension agreement prohibits Costa Rican producers and exporters of cut flowers from making use of accelerated depreciation in the calculation of income taxes.

During verification, we found that none of the signatory firms used this program during the review period. Therefore, we preliminarily determined that, that with respect to this program, the signatories have complied with the suspension agreement.

**Preliminary Result of Review**

As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1989 through December 31, 1989.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject cut flowers into the United States. Our information indicates that the 35 signatory companies accounted for substantially all of the imports into the United States of this merchandise during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

**Appendix A.—List of Signatory Procedures and Exporters**

1. American Flower Corporation, S.A.
2. Flores del Cerro
3. Agroflor de Pariaso, S.A.
4. Hermelink y Garces, S.A.
5. Tico Flor, S.A.
6. Cooexflo, R.L.
7. Compania Agricola Flex, S.A.
8. Flor Bella, S.A.
9. Exporflor de Cartago, S.A.
10. Lianpa, S.A.
11. Floricultura de Costa Rica, S.A.
12. Vivero El Zamorano, S.A.
13. Flores de Ixtaru, S.A.
14. Inversiones Costa Flor, S.A.
15. Cooperflor
16. Euroflores, S.A.
17. Flores y Follajbes del Tirol, S.A.
18. Flores del Volcan CRP, S.A.
19. Goreza, S.A.
20. Llano Claro, S.A.
21. Ornamentales Cargil, S.A.
22. Floricultura La Colina, S.A.
23. Flores Intercontinentales, S.A.
24. Fincas Nabori, S.A.
25. Flores de Coris, S.A.
26. Florex, S.A.
27. C.R.B. Internacional, S.A.
28. Flores del Caribe, S.A.
29. Zurqui Flor de Costa Rica, S.A.
30. Rio Tapezco Ltda.
31. Jardin Botanico LDL de Costa Rica S.A.
32. Tropiflor de la Montana, S.A.
33. Floricultura Santa Rosa, S.A.
34. Corporacion Rica Flor, S.A.
35. Intertec, S.A.

[FR Doc. 90-28671 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M



**[C-301-601]**

## Miniature Carnations From Colombia; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1989 through December 31, 1989 and ten programs. We preliminarily determine that Colombian miniature carnation exporters have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 24, 1990, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (55 FR 2398) of the agreement suspending the countervailing duty investigation on miniature carnations from Colombia (52 FR 1353; January 13, 1987). On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative review of the suspension agreement. We initiated the review, covering January 1, 1989 through December 31, 1989, on February 28, 1990 (55 FR 7015). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

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**Scope of Review**

Imports covered by these reviews are shipments of miniature carnations from Colombia. The merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item number 0603.10.50. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and ten programs. The producers and exporters listed in Appendix I, accounting for more than eighty-five (85) percent of the total exports of miniature carnations from Colombia to the United States, are signatories to the suspension agreement.

**Analysis of Programs**

*(1) Tax Rebate Certificate*

On April 1, 1984, the Colombian government pursuant to Law 48/83, established the Tax Rebate Certificate ("CERT"), which replaced the Tax Reimbursement Certificate ("CAT"). According to the Colombian government, the CERT rebated all or part of the indirect taxes paid by exporters. The CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

Before the suspension agreement, the Colombian government provided payment to exporters of miniature carnations in the form of CERT. Rebates were calculated as a percentage of the value of the exported product attributable to the domestic value-added content.

As a term of the suspension agreement, the Colombian government terminated CERT payments on exports of miniature carnations to the United States. The response to the Department's questionnaire stated that none of the signatory producers and exporters received benefits under this program for shipment of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that this program provided no countervailable benefits to the signatories and that they have complied with the terms of the agreement.

*(2) Working Capital Resolutions*

Resolution 59

Resolution 59/72 provided working capital financing at preferential rates to firms that manufacture, store, or sell products destined for export. This program was updated by Resolution 22/84. All industries were eligible, except producers of coffee, petroleum, and petroleum by-products. Resolution 22/84 loans are administered by the Export Promotion Fund ("PROEXPO"), an agency of the Colombian government. The loans are for 180 days and the interest is paid quarterly, in advance.

Because we found this program to be countervailable in the agreement suspending the countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9863; March 12, 1985), we included it in the January 13, 1987 suspension agreement on miniature carnations. Resolution 3/87, which is an update to Resolution 22/84, was passed by PROEXPO on February 20, 1987. Resolution 3/87 changed the short-term interest rate to 22.5 percent and required that the interest rate on all outstanding loans that were taken out under Resolution 22/84 be refinanced at the interest rate benchmark.

The questionnaire response for this review period stated that no exporter of the subject merchandise applied for, or received, any short-term working capital financing under this resolution for products destined for export. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

Resolution 11

Resolution 11/87 provides pre-shipment working capital loans. Resolution 11/87 established interest rates at either 22.5 percent per year prepaid quarterly or the certificate of deposit rate (DTF) paid at the end of the quarter, whichever is higher. The DTF rate is a market-determined rate. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 11/87 and set the interest rate at 22.5 percent or the DTF rate, whichever is higher, payable at the end of each quarter.

The suspension agreement requires that the miniature carnation exporters not apply for, or receive, any short-term export financing provided by PROEXPO other than that offered at or above the Department's short-term benchmark interest rate. The questionnaire response stated that exporters received pre-shipment working capital loans under Resolution 11/87. When the suspension agreement was signed, we established a short-term benchmark interest rate of 22.5 percent for short-term loans, which was the average rate of the Fondo Financiero Agropecuario ("FFA") and the Caja Agrarian Fund as of March 31, 1986. Based on information submitted in the questionnaire response, the Department has determined that the short-term benchmark interest rate of 22.5 percent is no longer appropriate. The Department bases this conclusion on documentation in the questionnaire response for this review indicating that short-term interest rates for the FFA and the Caja Agrarian Fund have increased. Therefore, for the purpose of this review period the Department has established a short-term benchmark interest rate of 24.0 percent, the average short-term rate of the FFA and the Caja Agrarian Fund. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the average DTF rate of 27.94 percent during the review period, which was higher than the Department's benchmark rate of 24.0 percent for this review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

Resolution 14

Resolution 14/87 provides working capital financing to export companies for various products, including miniature carnations. Resolution 14/87 established financing to miniature carnation exporters by setting the base rate at the highest rate of 25.0 percent prepaid quarterly or the DTF rate, which depended on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 14/87 and set the interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 8 of Resolution 14), whichever is higher, payable at the end of each quarter. The questionnaire response for this review period stated that no exporter of the subject merchandise applied for, or received, any working capital financing under this resolution. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

*(3) Fixed Capital Resolution*

Resolution 40

Resolution 40/78 was approved under Decree 2366 of 1974. Decree 2366/74 provides exporters with fixed asset financing. On February 26, 1987, PROEXPO passed Resolution 4/87, which updated Resolution 40/78 and changed the interest rate to 21.0 percent. On December 21, 1987, PROEXPO passed Resolution 13/87 which set the interest rate at the highest rate of 25.0 percent per year prepaid quarterly or the DTF rate, which depended on the size of the company. On October 13, 1988, PROEXPO passed Resolution 009/88, which updated Resolution 13/87 and set the interest rate at 25.0 percent or applicable interest rate according to company size (as defined under Article 7 of Resolution 13), whichever is higher, payable at the end of each quarter.

The suspension agreement states that miniature carnations exporters are required not to apply for, or receive, any long-term export financing provided by PROEXPO other than that offered at or above the Department's long-term benchmark interest rate. The questionnaire response stated that exporters received fixed asset financing under this resolution during the review period. When the suspension agreement was signed, the Department established a long-term benchmark interest rate of 21.0 percent, which was the FFA interest rate for long-term loans. Based on information submitted in the questionnaire response, the Department has determined that the long-term benchmark interest rate of 21.0 percent is no longer appropriate. The Department bases this conclusion on documentation in the questionnaire response for this review indicating that the long-term interest rate for the FFA has increased. Therefore, for the purpose of this review period the Department has established a long-term benchmark interest rate of 26.5 percent, which was the long-term interest rate of the FFA in effect during the review period. The questionnaire response stated that no exporter of the subject merchandise received any loans at a rate below the average DTF rate of 27.94 percent during the review period, which was higher than the Department's benchmark rate of 26.5 percent for this review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

*(4) Duty and Tax Exemptions under Plan Vallejo*

Plan Vallejo exempts exporters from import duties on imported raw materials, intermediate products, and capital goods used to produce exported products. In addition, on July 22, 1988, an operational modification was established under Resolution 2601/88. The new resolution provides that a bank guarantee can now be provided at the time the imported goods clear customs.

As a term of the suspension agreement, the Colombian government agreed to no longer provide Plan Vallejo contracts on imported capital goods that are used in the production of miniature carnations exported to the United States. The questionnaire response stated that none of the signatory producers and exporters received any Plan Vallejo benefits for shipments of miniature carnations to the United States during the review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the agreement with respect to this program.

*(5) Resolution 10*

The flower exporters, on a voluntary basis, allowed the Banco de la Republica to withhold a certain percentage of their CAT/CERT rebates earned on non-U.S. exports. As a result of the suspension agreement on roses and other cut flowers from Colombia, the Banco de la Republica also held all CAT/CERT rebates that would have been paid on exports of the flowers subject to the suspension agreement from January 1983 until November 1985, when the rebate rate on those exports was reduced to zero. PROEXPO issued Resolution 10, effective January 23, 1990, to use these funds for the diversification and development of flowers and vegetables for external markets, for transport and control procedures to prevent drug and narcotic traffic in exports of flowers and vegetables, for the development of new markets, and for payment of local and technical services required in Colombia and abroad. The resolution requires that any funds expended under this program be disbursed in a manner consistent with the suspension agreement.

The questionnaire response stated that three new research projects and a laboratory for plant and soil disease analysis were established under this program during the review period. Two of the three research projects were initiated to continue research of fungal diseases afflicting carnations; the third project involved the control of white rust. The research will be conducted by the Universidad Nacional, the Universidad de los Andes, the Centro de Investigaciones Microbiologicas, a research center, and the Asocolflores; all findings will be made public. The questionnaire response stated that during the period of review expenditures from this fund were used for legal fees, security, generic promotion and services provided by a European association. We found no evidence to indicate that these funds were provided to exporters of miniature carnations to the United States. Therefore, we preliminarily detemine that signatories did not receive a countervailable benefit from this program during the review period.

*(6) Other Programs*

The questionnaire response indicated that exporters of miniature carnations did not use the following programs during the period of review:

(a) Fund for Agricultural Financing;
(b) Fund for Industrial Financing;
(c) Benefits to Free Industrial Zones;
(d) Preferential Export Insurance; and
(e) Countertrade.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the signatories complied with the terms of the suspension agreement during the period January 1, 1989 through December 31, 1989.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject merchandise into the United States. The questionnaire response indicated that the signatories accounted for all imports of this merchandise into the United States during the period of review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 30, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28872 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

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[C-351-406]

**Certain Round-Shaped Agricultural Tillage Tools (Discs) From Brazil; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Determination Not To Revoke Countervailing Duty Order**

**AGENCY:** International Trade Administration/Import Administration, Commerce.



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**ACTION:** Notice of final results of changed circumstances countervailing duty administrative review and determination not to revoke countervailing duty order.

**SUMMARY:** On October 10, 1990, the Department of Commerce published the preliminary results of its changed circumstances countervailing duty administrative review and intent not to revoke the countervailing duty offer on certain round-shaped agricultural tillage tools (discs) from Brazil. We have now completed that review and determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 10, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 11286) the preliminary results of its changed circumstances countervailing duty administrative review and intent not to revoke the countervailing duty order on certain round-shaped agricultural tillage tools (discs) from Brazil (50 FR 43006; October 22, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of Review**

Imports covered by this review are shipments from Brazil of certain round-shaped agricultural tillage tools (discs) with plain or notched edge such as colters and furrow-opener blades. This merchandise is currently classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00, and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke. We received no comments.

**Final Results of Review**

As a result of our review, we determine that changed circumstances do not exist sufficient to warrant revocation of the countervailing duty order on certain round-shaped agricultural tillage tools from Brazil. Therefore, we do not intend to revoke the countervailing duty order.

The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(b)(1) of the Tariff Act (19 U.S.C. 1675(b)(1)) and 19 CFR 355.22(h) and 355.25(d)(3).

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28673 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 900515-0306]

## The Japan Corporate Program Under the Japan Export Promotion Program

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce (the "Department") has selected 20 "threshold" companies to participate in the Japan Corporate Program (the "Program"), a component of the Japan Export Promotion Program. The Program is intended to increase the number and level of activity of U.S. firms competing in the Japanese market. Nearly 130 firms requested participation in the Program. The "threshold companies" will be required to make a five-year commitment to enter and develop the Japanese market. The Department will assist such companies by supplying market information and strategic recommendations. This notice announces the 20 threshold firms.

**FOR FURTHER INFORMATION CONTACT:** Laureen Daly, Office of Planning and Coordination, Trade Development, U.S. Department of Commerce, telephone (202) 377-1125.

**SUPPLEMENTARY INFORMATION:** On May 16, 1990, 55 FR 20618, the Department announced its intention to select approximately twenty U.S. firms to participate in the Program. These "threshold companies" will undertake long-term commitments to enter and develop the Japanese market or to expand existing activity in Japan.

**Selection of Threshold Firms**

From a total of nearly 130 companies that requested participation in the Program, the Department has selected the following 20 firms as threshold companies:

ADC Telecommunications, Inc., Minneapolis, MN
American of Martinsville, Martinsville, VA
Anilam Electronics Corporation, Miami, FL
Applied Communications, Inc., Omaha, NE
Candela Laser Corporation, Wayland, MA
Compaq Computer Corporation, Houston, TX
Contact Lumber Company, Portland, OR
Dana Corporation, Toledo, OH
Detroit Center Tool, Inc., Detroit, MI
General DataComm, Inc., Middlebury, CT
Guardian Industries Corporation, Northville, MI
Halstead Industries, Greensboro, NC
The Hartwell Company, Hartwell, GA
Hurco Companies, Inc., Indianapolis, IN
Masstor Systems Corporation, New York, NY
Oracle Corporation, Redwood Shores, CA
Oracle Corporation, Redwood Shores, CA
Sperry Marine, Inc., Charlottesville, VA
Square D Company, Palatine, IL
Stonhard International, Maple Shade, NJ
The Timken Company, Canton, OH

Dated: November 29, 1990.

**James C. Lake,**

*Deputy Assistant Secretary for Trade Development.*

[FR Doc. 90-28658 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DR-M

## Short-Supply Determination: Withdrawal of Request for Certain Continuous Cast Slabs

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of withdrawal of a request for a short-supply determination on continuous cast slabs.

**SUMMARY:** On November 21, 1990, Tuscaloosa Steel Corporation ("TSC") submitted a letter to the Secretary of Commerce ("Secretary") withdrawing its October 30, 1990, request, under various steel arrangements, for a short-supply allowance for 125,000 net tons of certain continuous cast ("concast") steel slabs for the fourth quarter of 1990.

**SHORT-SUPPLY REVIEW NUMBER:** 30.

**EFFECTIVE DATE:** November 21, 1990.

**SUPPLEMENTARY INFORMATION:** On September 12, 1990, TSC requested a short-supply allowance for 125,000 net tons of certain concast slabs under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America, Concerning Trade in Certain Steel Products (the "U.S.-EC arrangement") because domestic producers could not meet its needs for the fourth quarter of 1990 and because it could not obtain sufficient supplies through regular export licenses from its traditional offshore supplier. On October 10, 1990, the Secretary granted a short-supply allowance to TSC for this tonnage.

On October 30, 1990, the Secretary received an adequate short-supply petition from TSC for 125,000 net tons of certain concast slabs for the fourth quarter of 1990 under the U.S.-EC arrangement, article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement"), Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement"), and Paragraph 8 of the Arrangement Between the Government of Venezuela and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Venezuela arrangement"). These concast slabs are used in the manufacture of hot-rolled coils, plate coils and cut-to-length plate. This petition did not request tonnage in addition to the October 10, 1990, allowance. Rather, TSC requested that the Secretary grant a short-supply allowance for this quantity under the U.S.-EC, U.S.-Brazil, U.S.-Mexico and U.S.-Venezuela arrangements.

The Secretary established an official record on this short-supply request on October 30, 1990 (Case Number 30) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.106(b)(2) of the Department of Commerce's Short-Supply Procedures (19 CFR 357.106(b)(2)) ("Commerce's Short-Supply Procedures"), require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary found that none of these conditions exists with respect to the requested product and, therefore, considered this review under the 30-day guidelines. On November 13, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to comment. This notice stated that the Secretary would make a determination on this short-supply review not later than November 28, 1990.

On November 21, 1990, TSC submitted a letter to the Secretary indicating that it was withdrawing its October 30, 1990, request under multiple arrangements because it no longer needed authority to fill its requirements from sources outside the European Community.

**CONCLUSION:** The Secretary considers TSC's October 30, 1990, petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to the requested concast steel slabs is hereby terminated.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28674 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

## Short-Supply Determination: Withdrawal of Request For Certain Welding Quality Steel Billets

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of withdrawal of a request for a short-supply determination on certain welding quality steel billets.

**SUMMARY:** On November 20, 1990, American Steel and Wire Corp. ("ASW") submitted a letter to the Secretary of Commerce ("Secretary") withdrawing its request for a short-supply allowance for 10,900 net tons of certain welding quality steel billets for the fourth quarter of 1990.

**SHORT-SUPPLY REVIEW NUMBER:** 27.

**EFFECTIVE DATE:** November 20, 1990.

**SUPPLEMENTARY INFORMATION:** On October 22, 1990, the Secretary received an adequate short-supply petition from ASW for the fourth quarter of 1990 under Article 8 of the Arrangement Between the Government of Australia and the Government of the United States of America Concerning Trade in Certain Steel Products for 10,900 net tons of certain welding quality steel billets used in the manufacture of wire rod which is used to make continuous welding wire. The Secretary established an official record on this short-supply request on October 22, 1990 (Case Number 27) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Section 4(b)(4)(B)(i) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.106(b)(2) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.106(b)(2)) ("Commerce's Short-Supply Procedures"), require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary found that none of these conditions exists with respect to the requested product and, therefore, considered this review under the 30-day guidelines. On October 31, 1990, the Secretary published a notice in the **Federal Register** announcing this short-supply review and requesting comments from interested parties. This notice stated that the Secretary would make a determination on this short-supply review not later than November 21, 1990.

On November 20, 1990, ASW submitted a letter to the Secretary indicating that it was withdrawing its short-supply request. ASW noted that "the supply situation for this type of billet has changed for the immediate future."

**CONCLUSION:** The Secretary considers ASW's petition for a short-supply allowance to be withdrawn. The Secretary's short-supply review with respect to the requested welding quality steel billets is hereby terminated.

Dated: November 28, 1990

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28675 Filed 12-5-90; 8:45 am]

BILLING CODE 3510-DS-M

## Short-Supply Review: Certain Tin-Free Steel

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply review and request for comments on certain tin-free steel.

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**SUMMARY:** The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 8,013 metric tons of various sizes of certain tin-free steel ("TFS") under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products for January 1, 1991-March 31, 1992.

Short-supply review number: 34.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain TFS for use in the manufacture of photopolymer newspaper printing plates. On November 29, 1990, the Secretary received an adequate petition from NAPP Systems (USA) Incorporated ("NAPP") requesting a short-supply allowance for 8,013 metric tons of this product under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products.

The requested material meets the following specifications:

*Thickness:*
- 0.0066 inch (80 lbs/base box).
- 0.0094 inch (55 lbs/base box).

*Thickness Tolerance:* ±0.0005 inch.

*Chromium Coating Weight:*
- Metallic Chromium—100 mg/m2.
- Chromium Oxide—10 mg/m2.

*Chemical Composition (maximum):*
- C—0.13%
- Mn—0.60%
- Si—0.15%
- Cu—0.20%
- P—0.04%
- S—0.05%
- Al—0.20%

*Inclusion/Foreign Matter:* No more than 15 inclusions/foreign matter in 15 feet (4.8 meters).

*Camber:* ¼ inch (6.3 mm) per 20 feet (6.1 meters).

*Coilset or Curling:*
- 0.0066—Maximum 9/32 inch (5.0 mm).
- 0.0094—Maximum 5/32 inch (3.2 mm).

*Oil Can:* Absolute depth maximum 5/64 inch (2.0 mm).

*Wavy Edge:* Height—maximum 5/64 inch (2.0 mm).

*Width Ranges:*
- 0.0066 inch—27.75 to 36 inches.
- 0.0094 inch—28 to 34 inches.

*Weight:* Minimum net 18, 000 lbs. (8,164.8 kg). Maximum net 20,000 lbs. (9,071.0 kg).

The quantity of 0.0066 inch and 0.0094 inch material requested by NAPP totals 7,285 and 728 metric tons, respectively, for January 1, 1991-March 31, 1992.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that the requested steel product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than December 14, 1990.

*Comments:* Interested parties wishing to comment upon this review must send written comments not later than December 13, 1990 to the Secretary of Commerce, Attention: Import Administration , room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

**FOR FURTHER INFORMATION CONTACT:** Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: December 4, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28776 Filed 12–5–90; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

### Business Development Center Applications: Montgomery, Alabama

November 30, 1990.

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *5/1/91* to *4/30/92*. The MBDC will operate in the *Montgomery, Alabama,* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Federal government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR Part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

**CLOSING DATE:** The closing date for applications is January 15, 1991. Applications must be postmarked on or before January 15, 1991. The anticipated processing time is 120 days.

**ADDRESSES:** Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street, NW., Room 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

**FOR FURTHER INFORMATION CONTACT:** Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Note: A pre-application conference to assist all interested Applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Room 1930, Atlanta, Georgia, December 28, 1990, at 9 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 30, 1990.

**Carlton L. Eccles,**

*Regional Director, Atlanta Regional Office.*

[FR Doc. 90–28628 Filed 12–5–90; 8:45 am]

BILLING CODE 3510-21-M

### Business Development Center Applications: Charlotte, North Carolina

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Correction of closing date.

**SUMMARY:** This amends the advertisement for the Minority Business Development Agency (MBDA) announcing that it is soliciting competitive applications under its Charlotte, North Carolina Minority Business Development Center (MBDC) Program to operate on MBDC for a 3-year period.

**CLOSING DATE:** The closing date has been changed to January 7, 1991. Applications must be postmarked on or before January 7, 1991.

**ADDRESS:** Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 W. Peachtree St., NW, room 1930, Atlanta, Georgia 30308, 404/730–3300.

**FOR FURTHER INFORMATION CONTACT:** Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW, room 1930, Atlanta, Georgia, December 19, 1990, at 9 a.m.

Dated: November 29, 1990.

**Carlton L. Eccles,**

*Regional Director, Atlanta Regional Office.*

[FR Doc. 90–28569 Filed 12–5–90; 8:45 am]

BILLING CODE 3510-21-M

## National Institute of Standards and Technology

### Visiting Committee on Advanced Technology; Meeting

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet on Friday, January 11, 1991, from 9 a.m. to 10 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Insitute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to discuss the Institute's organization and budget, and to present their 1990 Annual Report to the Secretary of Commerce. The Secretary will forward this report to the Congress by the Congressionally mandated deadline of January 31, 1991. The members of the Committee will discuss their findings as outlined in the report.

**DATES:** The meeting will convene January 11, 1991, at 9 a.m. and adjourn at 10 a.m. on January 11, 1991.

**ADDRESS:** The meeting will be held in Conference Room 5898, Department of Commerce, 14th and Constitution, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology,

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Gaithersburg, Maryland 20879, telephone number (301) 975–2158.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(E) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

John Lyons,
*Director.*

Dated: November 30, 1990.

[FR Doc. 90–28603 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–13–M

## National Oceanic and Atmospheric Administration

### National Fish and Seafood Promotional Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**TIME AND DATE:** The meeting will convene at 8:30 a.m. on Monday, December 10, and adjourn approximately 12:30 p.m. on Tuesday, December 11, 1990.

**PLACE:** Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

**STATUS:** NOAA announces a meeting of the National Fish and Seafood Promotional Council (NFSPC). The NFSPC, consisting of 15 industry members and the Secretary of Commerce as a non-voting member, was established by the Fish and Seafood Promotion Act of 1986 to carry out programs to promote the consumption of fish and seafood and to improve the competitiveness of the U.S. fishing industry.

The NFSPC is required to submit an annual marketing plan and budget to the Secretary of Commerce for his approval that describes the marketing and promotion activities the NFSPC intends to carry out. Funding for NFSPC activities is provided through Congressional appropriations.

**Matters to be Considered**

*Portion Opened to the Public*

*December 10, 1990*

8:30 p.m.–12 noon.—Chairman's opening remarks; approval of minutes from previous meeting; review of meeting agenda and objectives; and presentation and discussion on seafood industry referendum process and strategy. 1:30 p.m.–5 p.m.—Presentation and discussion on advertising, public relations and promotion options and strategy for 1991.

*December 11, 1990*

8 a.m.–12:30 p.m.—Further discussion, as required, and decision on advertising and referendum strategies; discussion of committee functions; and other general business.

*Portion Closed to the Public*

None.

**FOR FURTHER INFORMATION CONTACT:** Jeanne M. Grasso, Program Manager, National Fish and Seafood Promotional Council, 1825 Connecticut Avenue, NW., room 620, Washington, DC 20235. Telephone: (202) 673–5237.

Dated: December 3, 1990.

David S. Crestin,
*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–28634 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–22–M

## National Technical Information Service

### Withdrawal of Notice of Prospective Grant of Exclusive Patent Licensing and Notice of Availability of Inventions for Licensing

The National Technical Information Service (NTIS), U.S. Department of Commerce, hereby withdraws its notices, announced in the Federal Register, Vol. 54, No. 124, p. 27419 (June 29, 1989) and Vol. 53, No. 164, p. 32271 (August 24, 1988) of its intention to grant Gilead Sciences, Inc. Foster City, CA exclusive licenses under U.S. Patent Applicants Serial Number 7–340,073, "Novel Oligonucleotides with 5' Linked Chemical Groups, Methods of Production Thereof and Use Thereof" and Serial Number 7–159,017, "Inhibitors for Replication of Retroviruses and for the Expression of Oncogene Products" respectively.

Serial No. 7–340,073 describes a synthesis method for novel oligodeoxynucleotides 5' linked to covalently phosphoramidites. The synthesis of the covalently attached chemical group to the phosphoramidite moiety occurs outside an automatic synthesizer, followed by application of this complex as a terminator of the 5' end of a phosphate-modified oligodeoxynucleotide in an automatic synthesizer. The compounds are used to attenuate or destroy mammalian gene expression or viral activity. The invention is related to the invention described and claimed in abandoned U.S. Patent Application 7–030,073, "Phosphorothioate Analogues of Oligodeoxynucleotides as Inhibitors for Replication and Cytopathic Effects of HIV–III Retroviruses and Other Foreign Nucleic Acids."

Serial No. 7–159,017 concerns the use of phosphorothioate oligodeoxynucleotide analogs to prevent replication of foreign nucleic acids in the presence of normal living cells and inhibit the proliferaton of neoplastic cells and is a continuation-in-part of Serial No. 7–030,073.

Serial No. 7–159,017 in turn has a continuation-in-part U.S. Patent Application 7–258,417, "Inhibitors for Replications of Viruses," which concerns the use of phosphorothiate oligodeoxyribonucleotide analogs to prevent replication of viruses such as herpes Simplex II and viruses that replicate by means of HBLV DNA polymerase in the presence of normal living cells.

Another related case is United States Patent Application Serial Number 7–246,688, "Phosphorothioate and Normal Oligodeoxynucleotides with 5' Linked Acridine," which describes methods for flourescently tagging the 5' end of an oligodeoxynucleotide.

Full rights are available for license under 7–340,073 and 7–246,688. Rights limited to fields of use other than prevention of replication of human T-cell lymphotropic virus type III are available for licenses under Nos. 7–159,017 and 7–258,417.

NTIS solicits applications from parties interested in obtaining a license under one or more of the above patent applications. Applicants for a license under 7–340,073 should be prepared to identify what rights, if any, under 7–159,017 and/or 7–258,417 would be necessary for them to practice a license under 7–340,073. License application forms and other information may be obtained from NTIS, Center for the Utilization of Federal Technology, Box 1423, Springfield, 22151, Attention: Papan Devnani, Phone: (703) 487–4738.

Copies of these patent applications may be purchased by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650.

Douglas J. Campion,
*Patent Licensing Specialist, Center for the Utilization of Federal Technology.*

[FR Doc. 90–28614 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–04–M



### Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), United States Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in United States Patent Number 4,773,612, "Wading Tagline Reel" to Rickly Hydrological Company having a place of business at 2710 Joyce Avenue, Columbus, Ohio 43211. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention covers a lightweight plastic reel for retaining and dispensing tagline for measuring streams and rivers which comprises an outer plastic casing, a hollow plastic handle capable of receiving a support rod used in stationing the reel on the bank of a river, an inner plastic spool having spool locking means, a central shaft, and a simplified drag assembly comprised primarily of two metal plates which provide braking action on the rotation of the spool. The drag assembly of the reel is constructed so as to be virtually maintenance-free, and resistant to fouling from mud, dirt, grit or other conditions normally encountered in stream measurements.

The availability of the invention for licensing was published in the Federal Register of December 8, 1988 Vol. 53, No. 236, p. 49583. A copy of the instant patent may be purchased from the Commissioner of Patents, United States Patent and Trademark Office, Washington, DC 20231.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Charles A. Beverlacqua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,
*Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 90–28615 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–04–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

November 30, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6791. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and cancellation of special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53354, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 30, 1990.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 7, 1990, the directive of December 20, 1989 is being amended further to adjust the limits for the following categories, as provided under the provisions of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990:

| Category | Adjusted 12-month limit [1] |
|---|---|
| Group I<br>200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870,[2] 369–S,[3] 369–O,[4] 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 555, 666, 669–P,[5] 669–T,[6] 669–O,[7] 670–H [8] and 670–O,[9] as a group. | 502, 954, 348 square meters equivalent. |
| Sublevels in group I | |
| 313 | 61,551,570 square meters. |
| 314 | 24,764,483 square meters. |
| 361 | 1,227,100 numbers. |
| 363 | 11,729,103 numbers. |
| 369–L/670–L/870 | 41,410,000 kilograms. |
| 611 | 2,725,000 square meters. |
| 613/614/615/617 | 16,800,183 square meters. |
| 619/620 | 12,193,970 square meters. |
| 625/626/627/628/629 | 16,183,519 square meters. |
| Group II | |

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| Category | Adjusted 12-month limit [1] |
|---|---|
| 237, 239, 330–332, 333/334/335, 336, 338/339, 345–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C,[10] 359–H/659–H,[11] 359–O,[12] 431–444, 445/446, 447/448, 458, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S,[13] 659–S,[14] 831–844, and 845–859, as a group. | 763,421,167 square meters equivalent. |
| Sublevels in group II | |
| 239 | 5,250,000 kilograms. |
| 331 | 540,958 dozen pairs. |
| 333/334/335 | 254,400 dozen of which not more than 137,800 dozen shall be in Category 335. |
| 336 | 119,407 dozen. |
| 338/339 | 851,535 dozen. |
| 342 | 261,908 dozen. |
| 345 | 106,245 dozen. |
| 347/348 | 1,294,913 dozen. |
| 359–C/659–C | 1,569,660 kilograms. |
| 359–H/659–H | 4,930,402 kilograms. |
| 435 | 20,581 dozen. |
| 444 | 110,920 numbers. |
| 445/446 | 137,931 dozen. |
| 831 | 4,462,600 dozen pairs. |
| 633/634/635 | 1,674,629 dozen of which not more than 968,096 dozen shall be in Categories 633/634 and not more than 866,537 dozen shall be in Category 635. |
| 636 | 356,551 dozen. |
| 638/639 | 8,872,137 dozen. |
| 642 | 799,217 dozen. |
| 644 | 751,186 numbers. |
| 659–S | 1,920,460 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 670; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.3030 and 4202.92.9020.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 5307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.8030.

[7] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669–P), 6306.12.0000, 6306.19.0010 and 6306.22.8060 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4020 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4020, 4202.22.8050 (Category 670–H); 4202.12.8020, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1530 and 6505.90.2540; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6060, 6505.90.7060 and 6505.90.9060.

[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1530 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.62.2010, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[15] Category 359–H: only HTS numbers 6505.90.1530 and 6505.90.2540; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6060, 6505.90.7060 and 6505.90.9060.

[16] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1530 and 6505.90.2060 (Category 359–H).

[17] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28655 Filed 12–5–90; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency Advisory Board; Closed Meeting

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

**DATES:** Tuesday, January 29, 1991 (8:30 a.m. to 5 p.m.).

**ADDRESSES:** The DIAC, Bolling AFB, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John G. Satay, USAF, Chief, DIA Advisory Board Office, Washington, DC 20340–1328 (202/373–4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Counternarcotics.

Dated: November 30, 1990.

L.M., Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90–28649 Filed 12–5–90; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Navy

### Secretary of the Navy's Advisory Committee on Naval History; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Secretary of the Navy's Advisory Committee on Naval History will meet on February 7, 1991 at 8:30 a.m. in the Dudley Knox Center for Naval History Conference Room, second floor, Building 57, Washington Navy Yard, Washington, DC. The meeting will be open to the public.

The purpose of the meeting is to review naval historical activities since the last meeting of the Advisory Committee in August 1987 and to make comments and recommendations on these activities to the Secretary of the Navy.

For further information concerning this meeting, write to the Director of Naval History, Washington Navy Yard, Washington, DC 20374, or telephone Dr. William S. Dudley, Senior Historian, at 202–433–2364.

Dated: November 29, 1990.

Wayne T. Baucino,

*LT, JAGC, USNR, Alternate Federal Register Liaison Officer.*

[FR Doc. 90–28621 Filed 12–5–90; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

### Implementation Plan Concerning Criticality Safety at the Rocky Flats Plant; Response to Recommendation 90–6 of the Defense Nuclear Facilities Safety Board

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Pursuant to section 312(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90–6 of the Defense Nuclear Facilities Safety Board, concerning criticality safety at Rocky Flats Plant. DOE hereby requests public comment on the response of the Secretary to Recommendation 90–6.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before January 7, 1991.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 30, 1990.

Donald F. Knuth,

*Deputy Assistant Secretary for Operations, Defense Programs.*

November 29, 1990.

The Honorable John T. Conway
*Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 2004*

Dear Mr. Conway: In accordance with section 315 of Public Law 100–456, please find enclosed the Department of Energy's Implementation Plan for Defense Nuclear Facilities Safety Board Recommendation 90–6, which I accepted in my letter to the Board dated July 24, 1990.

To date, several actions have been completed to reduce the probability of a critically event in the ventilation ducts and associated systems at the Rocky Flats Plant. The Plan describes those actions which have been completed as well as the remaining actions required to comprehensively address this issue, including measures to reduce and control material accumulations during future operations. We will keep you informed of our progress in executing this program.

Sincerely,

James D. Watkins,

*Admiral, U.S. Navy (Retired).*

### Department of Energy Implementation Plan for the Defense Nuclear Facility Safety Board

[Recommendation 90–6]

October 7, 1990.

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## *1.0 Introduction*

### 1.1 Purpose

Fissile materials and other undefined debris have been accumulating in the ventilation ducts and associated systems at the Rocky Flats Plant over many years of operation. The presence of such material in the ventilation ducts and associated systems is a matter of concern relating to the safety and health of the public, including on-site workers. These concerns arise from the effect that such materials might have on criticality safety, radiation exposure, system operability, and the potential for environmental contamination. This implementation plan describes the Department of Energy's program to address the accumulation of fissile and other materials in ventilation ducts and related systems and includes the actions necessary to respond to Defense Nuclear Facilities Safety Board recommendation 90–6 (Reference 1).

The objectives of this program are to ensure that: (1) Potential hazards associated with the accumulation of fissile and other materials in ventilation ducts and related systems are addressed and resolved in a safe and environmentally sound manner; and (2) actions are taken to ensure that material accumulation resulting from future operations will be prevented to the maximum extent practicable, effectively monitored, and controlled.

### 1.2 Background

In response to public concerns that nuclear criticality accidents involving plutonium may have occurred at the Department of Energy's (DOE) Rocky Flats Plant (RFP), an independent review was conducted by SCIENTECH, Inc. (hereafter referred to as SCIENTECH). The SCIENTECH Criticality Safety Assessment Team (CSAT) found no evidence of any criticality accident but made recommendations for improving criticality safety at the RFP. In particular, the accumulation of fissile material in several ventilation ducts and associated systems was identified as a potential criticality safety problem. The ventilation ducts and associated systems evacuate the atmosphere from gloveboxes to the building ventilation plenums where the exhaust gasses pass through four stages of High Efficiency Particulate Air (HEPA) filters prior to being released to the environment.

In their report to the DOE (Reference 2), the CSAT made a number of recommendations which, if fully implemented, would reduce the probability of a criticality accident and maintain an acceptably low level of risk to the workers and the public. In response to this report, EG&G Rocky Flats, Inc. (hereafter referred to as EG&G) issued an Action Plan on February 16, 1990. The EG&G Action Plan, was revised on May 4, 1990, in response to comments from the DOE Rocky Flats Operations Office (RFO). A second revision to the EG&G Action Plan was issued on May 16, 1990 (Reference 3) based on an independent review of the EG&G Action Plan, conducted by SCIENTECH, (Reference 4). The revised Action Plan was responsive to the recommendations of the CSAT (reference 2) and SCIENTECH noted that if properly implemented the revised Action Plan would result in a reduced probability of a criticality accident and maintain an acceptably low level of risk to the workers and the public.

Based on its review of this issue, the Defense Nuclear Facilities Safety Board (DNFSB) recommended (Reference 1) that the DOE prepare a written program, with commitments, to address the accumulation of fissile and other materials in ventilation ducts and related systems. The recommendation further stated that the written program should address and include the following:

- Description of remediation actions, including the scheduling and basis for same, that are deemed necessary prior to resumption of plutonium operations by DOE.
- Descriptions and justification of non-destructive assay techniques, calibration, modeling, and assay methodology.
- Estimation of radiation levels in areas of occupancy, both from gamma rays and fast neutrons.
- Determination of the effects of accumulation of fissile and other materials on the functionability of the ventilation ducts and related systems which must act to protect the health and safety of the public, including plant operating personnel.
- Description and justification of procedures and schedules, both short term and long term, for removal or reduction in amount and concentration of existing fissile and other unidentified debris in the ventilation ducts and related systems, as stated above.

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• Determination of any design and operational changes in the ventilation ducts and related systems necessary to prevent further accumulation of significant amounts of fissile and other materials therein and to ensure continued operability of systems installed to protect the health and safety of the public including plant operating personnel. This includes a thorough study of the glovebox filters and ventilation and alarm systems.

• Establishment of a monitoring program for the ventilation ducts and related systems to establish that design and operational changes and modifications are effective in preventing significant additional accumulation of fissile and other materials.

The DNFSB was briefly by EG&G and SCIENTECH on June 26, 1990 concerning the Action Plans (references 3 and 4). On July 24, 1990 the Secretary of Energy accepted the DNFSB recommendation and established the following additional requirements (Reference 5):

1. All lines of ductwork containing more than 400 grams of plutonium shall be cleaned to remove the material to the maximum extent practicable but in no case to leave a residue exceeding 400 grams in any one system of ducts. This will physically rule out the possibility of a criticality in even the most unlikely series of events.

Note: Ducts not exceeding the 400 gram limit will be cleaned, to the maximum extent practicable, as soon as possible after resumption of operations. The 400 gram threshold limit was selected because there are no circumstances under which 400 grams (or less) of plutonium in any chemical form or geometry found at the Rocky Flats Plant can achieve a critical mass. To account for fissile material measurement uncertainties, measured values are doubled before applying the 400 gram criteria. Thus, if the measured amount of fissile material in a duct is greater than or equal to 200 grams, it is considered to meet the 400 gram criteria and remediation actions are required by the Secretary's policy (Reference 5).

2. The contractor shall develop and implement an Operational Safety Requirement (OSR) which includes a limiting condition for operation, a corresponding surveillance requirement, and a remediation action directive to assure that future operations do not lead to the accumulation of more than 400 grams of plutonium in any one system of ducts. The OSR must be submitted to and approved by DOE prior to resumption of operations.

3. If the contractor determines that the risks to workers during removal of material from ductwork exceeds the risks of continued operation with the material in the duct, the contractor must submit an analysis of the respective risks along with a justification for continued operation of the process lines contributing material to the affected ductwork. If it is not possible to remove the material for other valid reasons, the contractor shall also submit an analysis justifying continued operation of the affected process line. The Secretary shall determine, on a case-by-case basis, if continued operation is warranted.

EG&G has begun implementation of the revised Action Plan (Reference 3) and is now developing a comprehensive Program Plan for accomplishing the remaining actions required to fully address the accumulation of fissile and other materials in ventilation ducts and associated systems. The sections that follow provide detailed descriptions of the program for addressing the DNFSB recommendations and implementing the Secretary of Energy's requirements.

### 1.3 Terms and Definitions

The following terms and definitions are used in this implementation plan:

*ALARA.* Acronym for "As Low As Reasonably Achievable," a basic concept of radiation protection that specifies that the radioactive discharges from nuclear plants and radiation exposure to personnel be kept as far below regulatory limits as practical.

*DOE Orders.* The Department of Energy controls the activities under its cognizance by promulgating Orders which must be followed by all Departmental Elements and, in accordance with contractual provisions, by contractors performing work for the Department. The DOE Orders referenced in this document are briefly described in appendix A.

*Duct.* A duct, or system of ducts, is defined as a collection of header piping that forms a single upward flow path to an exhaust plenum. Included in the definition of a duct are the small diameter lateral lines that connect gloveboxes to headers.

*Fissile Material.* A nuclide capable of undergoing fission by interaction with slow neutrons provided the thermal neutron production cross section exceeds the effective thermal neutron absorption cross section. The fissile material discussed in this implementation plan is assumed to be plutonium with an isotopic content of 95 weight percent $Pu^{239}$ and 5 weight percent $Pu^{240}$ (and associated daughter products), which is representative of process stream material at the Rocky Flats Plant. The plutonium is combined with various unidentified materials in the ducts.

In uranium processing areas, any fissile material accumulations would consist of enriched uranium in various forms.

*Independent Review.* Independent reviews will be conducted in accordance with contractor independent review and appraisal system requirements delineated in Reference 6, DOE Order 5480.5, "Safety of Nuclear Facilities."

*Prior to Resumption.* Refers to remediation activities which will be completed as soon as practicable and which must be completed prior to resumption of operations involving fissile materials.

*Remediation Action.* Refers to any action that either reduces the amount of, mitigates the effects of, or prevents further accumulation of fissile and other materials in the ventilation ducts and associated systems.

## 2.0 *Program Description*

### 2.1 Scope

This program focuses primarily on public (including on-site workers) health and safety risks associated with the accumulation of fissile and other materials in the ventilation ducts and associated systems at the Rocky Flats Plant.

The program encompasses those activities which must be completed prior to the resumption of operations involving fissile materials and longer-term activities which may be completed after resumption.

### 2.2 Approach

To implement this program, EG&G established a task team responsible for: (1) Directing the plant-wide effort to determine more accurately the extent of the problem; (2) evaluating the associated hazards and risks; and (3) recommending and implementing measures to mitigate the problem and prevent its recurrence.

A program plan is being developed to comprehensively address the Board's recommendation and to implement the Secretary of Energy's policy. The program plan will encompass the Action Plan of reference 3. Six major tasks have been identified as follows:

Task 1: Determination of fissile material accumulation.

Task 2: Evaluation of nuclear safety risk.

Task 3: Evaluation of potential worker radiation exposures.

Task 4: Review of risk assessments and safety analyses.

Task 5: Prevention of fissile material accumulation.

Task 6: Removal of material from ventilation systems.

These tasks are described in further detail in Section 3.0, Detailed Technical Approach.

### 2.3 Program Objectives

The objectives established for this program are as follows:

#### 2.3.1 *Objective to be Accomplished Prior to Resumption*

(a) Assure that a criticality accident does not take place.



(b) Assure that the presence of fissile and other materials in the ventilation ducts and associated systems does not result in an undue risk to the health and safety of the public, including on-site personnel.

(c) Assure that occupational radiation exposure resulting from the presence of fissile material in ventilation ducts and associated systems is As Low As Reasonably Achievable in accordance with Reference 7.

(d) Assure that future operations do not cause excessive accumulation of fissile and other materials in ventilation ducts and associated systems in the future.

#### 2.3.2 *Objectives to be Accomplished After Resumption*

(a) Assure that fissile material and other debris in the ventilation ducts and associated systems will be properly removed or substantially reduced in amount and concentration.

(b) Assure that occupational radiation exposure resulting from the presence of fissile material in ventilation ducts and associated systems continues to be maintained As Low As Reasonably Achievable in accordance with Reference 7.

(c) Minimize future accumulations of fissile and other materials in ventilation ducts and associated systems.

## 3.0 *Detailed Technical Approach*

This section describes the six tasks that constitute the remediation program and indicates when activities must be completed relative to resumption of plutonium operations. The activities which must be completed complete prior to resumption will be reviewed for adequacy by the DOE Operational Readiness Review for each plutonium operations building. Decisions regarding remediation action requirements will be based on the policy outlined in Reference 5 and the following criteria (Reference 3).

(a) Criticality: $K_{eff} + 4$ sigma $< 0.94$ for fissile material found in exhaust ducts or waste lines including an account of: 1) the chemical form of Pu, 2) the effects of non-fissile material co-located with the Pu, and 3) the potential for relocation of Pu outside the exhaust duct or waste line. The methodology for criticality calculations assumes the accumulation of the fissile material in a minimum volume, minimum surface area, maximum density, optimally moderated (e.g., flooding) and fully reflected configuration.

(b) Occupational Radiation Exposure: Dose equivalent rate locations with possible continuous occupancy during normal operations $< 0.4$ mrem/hr. The federal annual allowable whole body radiation dose limit for occupational workers is 5 rem/year. The Rocky Flats Plant administrative whole body dose limit is 2 rem/year and will be further lowered to 1.5 rem/year in the near future. If a worker is exposed continuously to a 0.4 mrem/hour radiation source, for a full year (52 weeks $\times$ 40 hours/week), the resulting annual dose received by the worker would be 832 mrem (0.8 rem), which is less than one-half of the allowable limit.

(c) Environmental Release Source Term: Estimated radiological consequence to general public following creditable accident does not exceed limits established by DOE Order 5430.1A.

(d) System Operability Requirements: The accumulation of material does not hinder the safe operation of the process line or otherwise invalidate assumptions made in the Final Safety Analysis Reports regarding the operability of the ventilation ducts and associated systems.

(e) Removal and Disposal: The risk associated with the removal and disposal of the material that has accumulated in the duct does not exceed the risks associated with the presence of the material in the duct.

### 3.1 Task 1: Determination of Fissile Material Accumulation

The purpose of this task is to determine the quantity and distribution of fissile material accumulation in glovebox exhaust ducts through non-destructive assay (NDA) measurements. The main objective is to identify those ducts which require fissile material removal. Detailed descriptions and justification of non-destructive assay techniques, calibration modelling, and assay methodology are provided in Reference 8. The technical activities described by this task were previously reviewed by the CSAT, which found the corrective actions and plans to be technically adequate. Throughout the program, the NDA measurements will be independently reviewed, in accordance with Reference 6, including the treatment of the data, the assumptions made in evaluation of the data, and the validity of the statistical methods used in determining the sample size and composition for statistical measurements. This task is divided into sub-tasks as follows:

Prior to Resumption

#### 3.1.1 *NDA Measurements Prior to Resumption*

The purpose of this sub-task is to perform measurements on the ductwork considered to have the highest probability of fissile material holdup based on analysis of operations performed and materials processed in gloveboxes served by the ducts.

(a) *General Survey.* General survey measurements were made utilizing the methodology employed by the SCIENTECH CSAT. A total of 5500 feet of duct was surveyed in Buildings 371, 707, 771, 776, and 778. The results were in agreement, within stated levels of uncertainty (see Reference 8), with the results obtained in Reference 2. The survey provided a gross conservative estimate of the maximum total accumulation of plutonium in ducts and also identified ducts containing sufficient accumulations of plutonium to warrant more detailed measurements. This sub-task was completed in September 1989.

(b) *Detailed Measurements.* More detailed NDA measurements were made of 1713 linear feet of glovebox exhaust ducts identified as continuing significant holdup of plutonium by the General Survey in Buildings 771, 707, and 777. A total of 5.75 Kg of plutonium were detected.

To further refine the upper bound and confidence limits on the total fissile material accumulation in the glovebox exhaust ducts detailed measurements will be made of all physically accessible ducts. These detailed measurements will begin after completion of the Statistical Sample described below.

(c) *Statistical Sampling.* After the initial survey, in which the selection of duct work for measurement was guided by the concern for nuclear safety, it was recognized that total plutonium accumulation in ventilation ducts would have to be determined to establish a new upper bound and confidence limits. Recognizing that available resources would constrain this effort, a Statistical Sampling Plan was developed by the Rocky Flats Statistical Applications group in conjunction with the Safeguards Measurements group. All glovebox exhaust ducts scheduled for NDA measurements prior to resumption were categorized in terms of their service, diameter, location, atmosphere (wet versus dry) and other pertinent factors and a representative sample of these ducts was selected for measurement. The statistical sample results provided rapid confirmation of the accuracy of predictions, based on operation analysis, regarding which ducts would likely contain significant quantities of material and which ducts would contain little or no material and thus increased the confidence that duct

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measurements have been appropriately prioritized.

Measurements initially included in this task were completed in July 1990 in Buildings 371, 374, 559, 707, 771, 774, 776, 777, 779. Additional measurements of the second floor of Buildings 707, 771, and 776 were added to the scope of this sub-task in July 1990. These subsequent measurements in Buildings 707 and 776 have been completed. The results will be documented in a formal report.

3.1.2 *Validation of Assay Measurements and Methods*

The purpose of this task is to correlate the "before remediation" and "after remediation" NDA measurements with the actual laboratory analyses (calorimetric assay) of the material removed from the duct. This correlation will provide additional information that can be used to determine the validity of the NDA measurements and methods. The overall validation process will continue throughout the life of this program. However, measurements associated with individual ducts will be compared to calorimetric assays of removed material prior to resumption of operations in gloveboxes served by those ducts.

**After Resumption**

3.1.3 *NDA Measurements After Resumption*

NDA measurements will be made of ventilation systems in uranium buildings and ducts in fissile material handling buildings which were not measured prior to resumption because no accumulation of fissile material would be expected (e.g. room ventilation ducts). Effort on this sub-task will begin at the completion of section 3.1.1 above. This sub-task will complete the determination of fissile material accumulation and identification of ventilation ducts and associated systems which might require remediation.

3.2 Task 2: Evaluation of Nuclear Safety Risk

The purpose of Task 2 is to assess the potential for a nuclear criticality accident due to the accumulation of fissile material in ventilation ducts and related systems. In Reference 9, the EG&G Nuclear Safety organization has documented, on a generic basis, the acceptable subcritical mass limits for pipes of various diameters and wall thicknesses.

Based on this generic analysis, all currently identified fissile material accumulations in ducts are considered safe and will remain safe in their current configuration unless catastrophic flooding and a combination of unlikely conditions should occur. These conditions would include the accumulation of the fissile material in a minimum volume, minimum surface area, maximum density, optimally moderated, and fully reflected configuration. The assumptions, calculations, and conclusions arising from these safety assessments will be independently reviewed, throughout the program. An initial review of the criticality safety analysis methodology has already been accomplished (Reference 10). This task is divided into the following sub-tasks:

**Prior to Resumption**

3.2.1 *Conduct Criticality Assessments Using the Results of Section 3.1.1 Measurements*

The purpose of this sub-task is to conduct a criticality safety evaluation of the amount of plutonium found in the ducts as a result of the section 3.1.1 measurements. The General Survey and Detailed Measurements identified fourteen ducts in buildings 707, 771, and 776 which must be cleaned to meet the requirements specified in reference 5. No ducts in building 559 have been identified as requiring material removal prior to resumption. The CSAT reviewed this work performed and found the results to be technically adequate.

Review of measurements from the Statistical Sampling program has identified five additional ducts in building 707 which must be cleaned. Since review of data from the statistical sampling conducted to date and the statistical sampling of the second floor of building 771 has not yet been performed it is anticipated that additional ducts might yet be identified.

The measurements which are to be made for the Complete Sampling phase of section 3.1.1 will also be evaluated by the Nuclear Safety organization and might identify other ducts requiring remediation.

**After Resumption**

3.2.2 *Review Duct Measurements Made After Resumption*

Criticality assessments will be made by the Nuclear Safety organization based on measurements made after resumption (see section 3.1.3) to identify ducts requiring remediation.

3.3 Task 3: Evaluation of Worker Radiation Exposure

The purpose of Task 3 is to evaluate exposure levels to personnel resulting from the presence of radioactive materials in ventilation ducts and associated systems and to develop and implement actions to assure that personnel radiation exposures do not exceed established limits and are maintained As Low as Reasonably Achievable in accordance with Reference 7. The predicted operator exposure data will be independently reviewed and the soundness of the recommended remediation actions will be validated throughout the program. If the dose equivalent rate at locations with possible continuous occupancy during normal operations equals or exceeds 0.4 mrem/hr, remediation action will be required prior to resumption. Additional remediation actions will be implemented after resumption of operations based on the ALARA principle. This Task is divided into the following subtasks:

**Prior to Resumption**

3.3.1 *Conduct Analysis of Worker Radiation Exposure Based on Survey Measurements*

The purpose of this sub-task is to analyze worker radiation exposures based on NDA measurements. Measurement data from Task 1.0 will be evaluated to determine which plant locations represent potential radiation exposure risks. Radiation measurements will then be made to determine actual radiation levels. As required, areas will be posted and controlled in accordance with Reference 7.

3.3.2 *Incorporate Occupancy Times and Calculate Annual Operator Exposures*

Once exposure rates are known, estimates of annual operating exposures will be made assuming that a worker would spend 2000 hr/yr at the work station. More realistic estimates of occupancy times will be combined with exposure rates to project annual exposures. These projected exposures will provide a basis for actions required to maintain exposures within established limits and As Low as Reasonably Achievable in accordance with Reference 7.

3.3.3 *Recommend Corrective Actions Based on Exposure*

The purpose of this sub-task is to develop corrective action recommendations based on exposure estimates from section 3.3.2 Exposure reduction measures might include installing shielding, limiting worker occupancy time, removing material from the duct, or removing a section of duct altogether. This task will continue through the end of removal operations.



**After Resumption**

3.3.4 *Reduce Personnel Radiation Exposure ALARA*

Measures to continually reduce personnel radiation exposure, per the ALARA principle in accordance with Reference 7, will be identified and implemented.

3.4 Task 4: Review of Risk Assessments and Safety Analyses

The purpose of this task is to: review existing safety analyses in view of the plutonium accumulations in the ventilation ducts and associated systems; update safety analyses as required; and implement corrective actions, if needed. This task is divided into the following sub-tasks:

**Prior to Resumption**

3.4.1 *Assess Impact of Accumulation on Current Safety Analyses*

The purpose of this sub-task is to review current safety analyses taking into account the plutonium accumulations determined in section 3.1.1 and to identify compensatory action requirements.

**After Resumption**

3.4.2 *Annually Assess Impact of Fissile Material Accumulations on Safety Analyses*

The purpose of this sub-task is to evaluate the need for revision of current safety analyses on an annual basis. The annual evaluations will take into account the residual fissile material remaining in ventilation ducts as determined by NDA measurements.

3.5 Task 5: Control of Fissile Material Accumulation

The purpose of this task is to develop and implement corrective actions to: increase criticality safety margins; reduce future accumulation of material; and assure continued operability of these systems. In reference 2, the CSAT identified root causes for the excessive accumulation of material in ventilation ducts and associated systems. These causes included design factors (e.g. unfiltered ventilation ducts) and operational factors (e.g. a history of workers puncturing prefilters with a sharp tool, such as a screwdriver). This task identifies activities for further identifying and addressing root causes. The technical activities described by this task were previously reviewed by the CSAT as documented by reference (4). The CSAT found the approach to be technically adequate. This task is divided into sub-tasks as follows:

**Prior to Resumption**

3.5.1 *Corrective Actions To Increase Criticality Safety Margins*

The purpose of this sub-task is to increase criticality safety margins by implementing actions to prevent flooding of four exhaust duct headers that have been identified to be of nuclear safety concern because $K_{eff} + 4$ sigma $> 0.94$, as discussed in section 3.0. Two corrective actions are planned as a result of this sub-task.

The first corrective action was installation of a flow control valve on the fire control sprinkler system in Plenum #101 in Building 707, which serves three of the four ducts in question. The fourth duct in Building 771 already had a flow control valve installed.

The second corrective action involves testing the criticality drains in the heat chambers of Plenum #101 and Plenum FU-2 Zone 5 in Building 771 to ensure their operability.

It is anticipated that additional corrective actions might be identified as a result of activities related to this sub-task.

3.5.2 *Corrective Actions To Minimize Further Accumulations*

The purpose of this sub-task is to implement measures to minimize any further accumulation of material in ventilation systems. Planned or completed corrective actions include:

(a) Inspection of currently installed HEPA prefilters located at the gloveboxes to ensure that: filter media were intact; pressure drops across the filters were within acceptable limits; and the filter housings were seated properly in their mounting frames. The inspections began in April 1990, and were completed in May 1990. Testing and surveillance will be performed at appropriate intervals to assure that HEPA filter efficiency continues to meet design requirements.

(b) Evaluation of design modifications to reduce, to the maximum extent practicable, the amount of material that could enter the ventilation ducts and associated systems through the bypass lines. Potential design modifications being studied include installation of filters on exhaust bypass ducts, blinking off, or alarming and monitoring bypass ducts.

(c) Implementation of an Operational Safety Requirement, which includes a Limiting Condition of Operation, a corresponding surveillance requirement, and a remediation action directive, to assure that future operations do not lead to the accumulation of more than 400 grams of plutonium in any one system of ducts.

(d) To prevent improper operational practices which could result in unnecessary accumulation of material in the ducts, operational procedures will be reviewed and upgraded and operations personnel will be trained to assure that operators adhere to the approved procedures.

3.5.3 *Verify Operability of Ventilation Ducts and Related Systems*

Operability of the glovebox ventilation systems and their major components will be verified as part of vital safety system operability verifications to be made prior to resumption of plutonium operations.

3.5.4 *Monitoring*

A plan will be developed and implemented to conduct periodic sampling to determine if the corrective actions are effectively reducing the rate of accumulation of material in ducts and to assure that unsafe quantities of fissile and other materials do not accumulate in ventilation ducts and related systems. Monitoring frequencies will be based on measured quantities and projected accumulation rates.

**After Resumption**

3.5.5 *Design Studies*

The purpose of this sub-task is to conduct studies to identify design related causes of material accumulation in the ventilation ducts and associated systems. These studies will evaluate the following:

- Means to improve exhaust filter seals
- Optimization of glovebox exhaust flow rates
- Reduction of the amount of heat, dust, and moisture in gloveboxes
- Redesign of glovebox duct systems
- Minimization of atmosphere flow past bypass valves when valves are closed
- Evaluation of the use of additional prefilters
- Evaluation of bypass valve alarm and prefilter systems
- Glovebox temperature, air flow, and humidity instrumentation

The completed studies will be evaluated to identify the need for design and operational modifications.

3.6 Task 6: Removal of Material From Ventilation Systems

The purpose of this task is to remove materials from ventilation ducts and associated systems identified as requiring such removal based on the criteria stated in section 3.0 or to meet

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the Secretary of Energy's requirements of reference 5. Based on the above requirements a number of ducts in three buildings have been identified as requiring material removal operations for nuclear safety reasons. Other ducts may yet be identified as requiring material removal based on the criteria identified in section 3.0.

The actual removal of material from ventilation ducts and associated systems will be accomplished via a program that includes systematic inspections, sample analyses, and equipment verifications and rehearsal in a mock-up facility. Unique procedures are developed for removal of material from each duct. Specific duct configurations are modelled in the mock-up facility to permit training of personnel and verification of equipment and procedures. The removal of material typically involves loosening of material by abrasive, vibratory or mechanical techniques and then collecting the loosened material in a vacuum collection device. New technologies, including robotics devices, are being developed to enhance removal effectiveness.

This task is divided into two sub-tasks as follows:

**Prior to Resumption**

3.6.1 *Removal of Pu from Ducts Prior to Resumption*

Fissile and other materials will be removed to the maximum extent practicable from ducts containing exceeding the 400 gram (Pu) limit of Reference 5 prior to resumption of operations involving fissile materials in gloveboxes served by those ducts. In the event the contractor determines that the risks to workers during removal of material from ductwork exceeds the risks of continued operation with the material in the duct, the contractor must submit an analysis of the respective risks along with a justification for continued operation of the process lines contributing material to the affected ductwork. If it is not possible to remove the material for other valid reasons, the contractor shall also submit an analysis justifying continued operation of the affected process line. The Secretary of Energy shall determine, on a case-by-case basis, if continued operation is warranted. Prior to resumption, removal operations are planned in buildings 707, 771, and 776.

**After Resumption**

3.6.2 *Removal of Plutonium from Remaining Ducts*

All ducts identified as containing fissile material will be cleaned to reduce, to the maximum extent practicable, the amount and concentration of fissile and other materials.

*4.0 Administration of the Program*

4.1 Responsibilities

*Deputy Assistant Secretary for Facilities, Defense Programs.* The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the preparations at Rocky Flats Plant for resumption of plutonium operations.

*DOE Headquarters Rocky Flats Plant Resumption Program Office.* The DOE Headquarters Rocky Flats Resumption Office is responsible for concurring in the EG&G Program Plan.

*Rocky Flats Operations Office Manager.* The Manager of the Rocky Flats Operations Office (RPO) is responsible for ensuring that duct remediation is performed in a safe and environmentally sound manner, coordinating DOE–RFO activities, approving EG&G plans, and ensuring the timely resolution of open items.

*EG&G.* EG&G is responsible for preparing plans and procedures and ensuring that ventilation ducts and associated system remediation actions are performed safely, efficiently, and in an environmentally sound manner. EG&G is also responsible for improving the conduct of plutonium operations at the Rocky Flats Plant to assure that future operations will not result in excessive accumulation of fissile and other materials in ventilation ducts and associated systems.

4.2 Program Plan

A Program Plan will be developed by EG&G and will document the plans, and management systems that those responsible for managing the program are to use.

The Program Plan will include:

(a) Program Summary (including a program description and objectives).

(b) Task Descriptions.

(c) Organization and Responsibilities.

(d) Budget.

4.3 Quality Assurance (QA)

The Rocky Flats quality assurance program is currently undergoing a major upgrade to consolidate the existing War Reserve Quality Manual and the Non-Weapons Quality Manual into one Rocky Flats Quality Assurance Manual. In conjunction with this consolidation, plans are being developed to bring the site into full compliance with DOE Order 5700.6B "Quality Assurance" (Reference 11) and ASME NQA–1 (Reference 12) which is identified in Reference 11 as the preferred quality assurance standard for nuclear facilities. The plan for achieving this upgrade is defined in the EG&G Rocky Flats, Inc., Quality Assurance Organization and Development Plan/Schedule, Dated July 31, 1990. This transition is planned to be completed by September, 1991.

Reference 13 describes QA program requirements which apply to all quality related resumption activities including the activities described in this plan. Upgrades to the following select elements of the QA Program are being accelerated in an effort to support strengthened management control of remediation and resumption activities. These elements are:

QR–1 Organization
QR–2 Quality Assurance Program
QR–5 Instructions, Drawings, and Procedures
QR–7 Control of Purchased Items and Services
QR–10 Inspection
QR–11 Test Control
QR–14 Inspection, Test, and Operating Status
QR–15 Control of Non-Conforming Items
QR–16 Corrective Action
QR–17 Quality Assurance Records
QR–18 Audits
QR–21 Surveillance

As other quality elements are fully implemented site-wide the upgraded requirements will apply to the activities covered by this plan.

*5.0 Deliverables and Schedule*

A Program Plan will be prepared by EG&G Rocky Flats, Inc. and approved by the DOE. The Program Plan will be provided to the DNFSB within 90 days of the date of this implementation plan. The Department of Energy does not feel that there is yet sufficient information upon which to base a detailed schedule for implementation of this plan. In lieu of a detailed schedule, the Board will be kept currently and fully informed with respect to implementation of the Board's recommendation as follows:

- Technical and other reports regarding this recommendation will be provided to the Board as they are made available to DOE.
- Progress reports will be prepared monthly by EG&G Rocky Flats, Inc. and transmitted to the DNFSB. The first progress report will be due to the Board within 30 days of the date of this implementation plan. The reports will summarize activities completed during the reporting period and discuss activities planned for the next reporting period.

The Board will be given a comprehensive briefing regarding the status of implementation of this recommendation, as it pertains to each building, after completion of the Operational Readiness Review and prior to resumption of operations.

A written report, for each building, will be provided at least one week prior to the completion of the Operational Readiness Review.

It is expected that execution of this plan will take longer than one year. In this event, notifications will be made in accordance with reference 14.

**References**

1. Defense Nuclear Facilities Safety Board Recommendation for the Secretary of Energy pursuant to Section 312(5) of the Atomic Energy Act of 1954, as amended, of June 4, 1990.

2. SCIENTECH, Inc., An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant Plane, Golden CO. July—September 1989.

3. EG&G Rocky Flats, Inc., Revised Response to July-September 1989 Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant, golden, Colorado, dated May 16, 1990.

4. SCIENTECH, Inc., A Review of EG&G Response to SCIENTECH's September 1989 Report "An Assessment of Criticality Safety at Rocky Flats Plant," dated June 6, 1990.

5. Secretary of Energy Letter to John T. Conway of July 24, 1990.

6. DOE Order 5480.5, "Safety of Nuclear Facilities."

7. DOE Order 5480.11, "Radiation Protection for Occupational Workers."

8. EG&G Rocky Flats, Inc., Non destructive Assay (NDA) Measurements of Process Holdup, dated July 19, 1990 (UCNI).

9. EG&G Rocky Flats Inc., Generic Criticality Safety Analysis of Plutonium in Glovebox Exhaust Systems, July 1990.

10. J.B. Briggs, letter to D.L. Mayfield, "Review of Generic Criticality Safety Analysis of Plutonium Glovebox Exhaust Systems", JBB–07–90, dated July 3, 1990.

11. DOE Order 5700.6B, "Quality Assurance."

12. ASME NQA–1, "Quality Assurance Program Requirements for Nuclear Facilities", 1989.

13. EG&G Rocky Flats, Inc., Plutonium Operations Phased Resumption Management Plan, Revision 3, September 14, 1990.

14. Public Law 100–456, section 315.

**Appendix A—Summary Description of DOE Orders**

*DOE Order 6430.1A, General Design Criteria* DOE Order 6430.1A provides general design criteria which apply to DOE facilities. Of particular interest, in section 0200–1.3, radiological siting guidelines are established for nonreactor nuclear facilities. The guidelines state that the maximum dose of an off-site individual shall not exceed 25 rem to the whole body, 300 rem to the thyroid, 300 rem to the bone surface, 75 rem to the lung, or 150 rem to any other organ from exposure to internally-deposited radioactive materials and/or to radiation from external sources. Accidents to be considered in evaluating radiological consequences include operational events and natural phenomena as applicable to the facility and site.

*DOE Order 5480.5, Safety of Nuclear Facilities.* DOE Order 5480.5 establishes nuclear facility safety program requirements for the Department of Energy (DOE) and DOE contractors in the areas of:

- Nuclear facility siting, design, construction, modification, operation, maintenance, and decommissioning;
- Radioactive and fissionable material production, processing, storage, transfer and handling;
- Environment, Safety, and Health; and
- Criticality hazards associated with fissionable material operations outside of nuclear reactors.

*DOE Order 5480.11, Radiation Protection for Occupational Workers.* DOE Order 5480.11 establishes radiation protection standards and program requirements for the DOE and its contractors with respect to the protection of workers from ionizing radiation. This Order defines a process whose objective it is to assure that dose levels are As Low As Reasonably Achievable.

*DOE Order 5700.6B, Quality Assurance Program Requirements for Nuclear Facilities.* DOE Order 5700.6B establishes DOE policy, sets forth requirements, and assigns responsibilities for establishing, implementing, and maintaining, plans and actions to assure quality achievement in DOE programs. The Order identifies ANSI/ASME NQA–1 as the preferred standard for Quality Assurance.

[FR Doc. 90–28600 Filed 12–5–90; 8:45 am]

BILLING CODE 6450–01–M

## DOE Implementation Plan for Conducting an Operational Readiness Review at the Rocky Flats Plant Prior to Resumption of Operations; Response to Recommendation 90–4 of the Defense Nuclear Facilities Safety Board

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90–4 of the Defense Nuclear Facilities Safety Board, for conducting an Operational Readiness Review at the Rocky Flats Plant prior to resumption of operations. DOE hereby requests public comment on the response of the Secretary to Recommendation 90–4.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before January 7, 1991.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 30, 1990.

**Donald F. Knuth,**

*Deputy Assistant Secretary for Operations, Defense Programs.*

November 29, 1990

The Honorable John T. Conway,
*Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Washington, D.C. 20004*

Dear Mr. Conway: In accordance with section 315 of Public Law 100–456 and with Defense Nuclear Facilities Safety Board Recommendation 90–4, which I accepted in my June 20, 1990, letter to the Board, I am enclosing the Department of Energy's Implementation Plan for an operational readiness review at the Rocky Flats Plant. This review is to be conducted prior to resumption of plutonium production operations at the facility and will address the specific issues cited in Board Recommendation 90–4. The review will also address other issues required to evaluate plant, personnel, and procedural readiness.

A detailed schedule for the operational readiness review is not yet available. The enclosed Implementation Plan details the sequence of key review elements that will occur following the contractor's notification of readiness to the Department. I will provide you with more detailed scheduling information as soon as that information becomes available.

Sincerely,

James D. Watkins,

*Admiral, U.S. Navy (Retired).*

**Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant**

1.0 Background

This Implementation Plan has been prepared in response to the Defense Nuclear Facilities Safety Board's (DNFSB) recommendation to conduct an operational readiness review (ORR) for plutonium operations at the Rocky Flats Plant (RFP). This plan responds to the specific DNFSB recommendations concerning the nuclear safety of plutonium operations. This plan does not attempt to describe other related initiatives taken by the Department of Energy (DOE) in the areas of nuclear materials controls and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term

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waste management. DOE approval to resume plutonium operation at RFP will be based upon the results of the ORRs described in this Implementation Plan and the results of or plans for these other DOE initiatives.

EG&G assumed responsibility for the safety of RFP on January 1, 1990, as the management and operations contractor to DOE. At that time, RFP was shut down for a semiannual nuclear material inventory as required by DOE Order 5633.3. However, a wide range of criticisms and concerns, which were indicative of systematic deficiences in the conduct of past operations, had been raised by oversight groups prior to shutdown. Reviews by EG&G management confirmed that there were deficiencies in operational control. It was concluded that troublesome incidents and events could continue to occur unless the underlying issues were identified and corrective actions were taken. Based on this assessment, EG&G recommended, and DOE agreed, that resumption of plutonium operations at RFP should be delayed to permit EG&G undertake the following measures:

(1) Perform a thorough review of the status of facilities and personnel

(2) Implement selected measures to improve the margin of safety associated with plutonium operations in the near term

(3) Formulate a long-term program for improvement of RFP operations

EG&G identified specific actions as essential elements for resumption of plutonium operations. Central to the EG&G resumption strategy was the introduction of short-term measures for early and substantial improvements in the formality and discipline of operations at RFP. Further review of operations and related activities by DOE, the DNFSB, and the Advisory Committee on Nuclear Facility Safety (ACNFS) identified additional short-term measures that should be completed prior to the resumption of plutonium operations.

DOE's normal practice after an extended outage at a nuclear complex is to conduct a comprehensive operational readiness review (ORR) before resuming operations. In keeping with this practice, and consistent with a May 3, 1990, DNFSB recommendation, the Secretary of Energy notified the DNFSB on June 20, 1990, that DOE would perform an ORR at RFP prior to resumption of plutonium operations.

EG&G is currently proceeding with a phased program to resume plutonium operations at RFP. Each phase of EG&G's resumption program is intended to allow plutonium operations to be resumed in a specific building. EG&G's resumption program for each building consists of a readiness program to upgrade the safety of operations, followed by an EG&G readiness review to confirm the success of the readiness program for that building, followed by a start-up test program to confirm the capability to resume plutonium operations safely. Since the plutonium-handling buildings at RFP will be made ready for operations individually, rather than all at once, DOE will conduct a separate ORR for each building after the completion of EG&G's readiness review for that building.

## 2.0 Purpose

The purpose of this DOE ORR process is to verify the readiness of RFP to resume plutonium operations safely. As part of this process, DOE will conduct an ORR for each building in which plutonium operations are conducted to evaluate whether EG&G has satisfied DOE's safety objectives (contained in a document entitled "ORR Safety Objectives and Assignments" and discussed in Section 5.1, below). Each ORR conducted by DOE will include the following:

- Assessment of the adequacy and correctness of operating procedures for process and utility systems.
- Assessment of the adequacy of the level of knowledge achieved during operator requalification as evidenced by review of qualification and requalification documentation, including examination questions and results; selective oral examination of operators; and observation of operator performance by members of the ORR Team.
- Examination of records of tests of safety systems and calibration of other instruments that monitor limiting conditions of operation or that satisfy operating safety requirements.
- Verification that all plant changes, including modifications of vital safety systems and plutonium processing workstations, have been reviewed for potential impact on procedures, training and requalification and that training and requalification have been completed using the revised procedures.
- Examination of each building's Final Safety Analysis Report (FSAR) to ensure that its description of the plan, procedures, and accident analyses is consistent with the as-built plant, including those modifications made during the outage period.

Other areas to be addressed in each ORR to assure that adequate safety is achieved and maintained include the following:

- Status of safety-related structures, systems, and components, including operational interfaces between separate buildings. Safety-related structures, systems, and components include all vital safety systems and all other items which support safety functions
- Management systems, organization, practices and policies
- Self-assessment capability
- Operating experience review program
- Adequacy of the graded startup test program, including planning for the plutonium handling tests to be included in the program

## 3.0 Scope

In order to provide the Secretary of Energy with a partial basis for determining whether to allow EG&G to resume plutonium operations in each building, DOE Headquarters will implement an ORR for each building in which plutonium operations are conducted.

The DOE ORR will address the following for each plutonium operations building:

- The operational readiness review conducted by EG&G
- Implementation of DOE directives and resolution of recommendations and findings made by oversight groups and review teams
- Readiness of the plant, equipment, personnel, and administrative systems to resume plutonium processing operations
- Adequacy of operational support services in the areas of training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering

The DOE ORR process will also include briefing DOE senior management and the DNFSB on the result of each ORR, public hearings on the ORR results for Buildings 559 and 707 (i.e., the first two buildings evaluated), and input to the Secretary of Energy's determination to resume plutonium operations for each building.

The ORR process will include consideration of the results of a related DOE initiative to review RFP compliance with DOE orders. However, initiatives such as nuclear material control and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management issues are not within the scope of the ORR implementation plan.

## 4.0 Overall Approach

Each ORR will provide DOE senior management with independent, objective, building-by-building evidence of the adequacy of EG&G's preparations to resume plutonium operations safely.

The sequence of the ORR activities is discussed below.

a. *Readiness to Proceed Memorandum*—After successful completion of the readiness program and readiness review of a specific building, EG&G will issue a Readiness to Proceed memorandum requesting DOE approval for resumption of plutonium operations for that building.

b. *Operational Readiness Review*—After receiving the Readiness to Proceed memorandum from EG&G, DOE will initiate an ORR for the building. During each ORR, a team comprised of Technical Experts and Senior Nuclear Safety Experts will review EG&G's procedures and programs; inspect equipment, systems, and the building; audit records; interview personnel; and observe simulated operations. At the completion of each ORR, the Team Leader and the Senior Nuclear Safety Experts will prepare a report regarding the readiness to safely resume plutonium operations in the building.

c. *Operational Readiness Review Team Briefings*—Briefings on the ORR report will be presented to DOE senior management, the ACNFS, and the DNFSB, as requested. A briefing will be presented to the DNFSB prior to the resumption of plutonium operations in each building.

d. *Approval to Proceed Memorandum*—Once all resumption objectives have been met, the DOE-Headquarters Resumption Program Office will request the Secretary of Energy's approval for EG&G to resume plutonium operations associated with the Plutonium Startup Test Program by preparing an Approval to Proceed memorandum for each building. Each memorandum will be based, in part, upon the results of the ORR conducted by DOE for that building. Other DOE initiatives related to the approval to proceed are identified in section 3.0, above.

e. *Plutonium Startup Test Program*—Following the approval of resumption of plutonium operations, EG&G will conduct a plutonium startup test program in each building. Each plutonium operation in the building is to be performed in a supervised environment prior to final approval of operator qualifications This startup test program will simultaneously confirm the operability of equipment, the viability of procedures, and the training of operators in a production setting. Successful completion of the startup test program will permit the building to resume normal production activities subject to DOE approval.

In addition to these activities, DOE will hold public hearings prior to making recommendations to the Secretary of Energy regarding the resumption of plutonium operations for Buildings 559 and 707. These buildings, an analytical laboratory and a manufacturing facility, respectively, are expected to be the first buildings EG&G makes ready for resumption of plutonium operations. The operations conducted in Buildings 559 and 707 represent many of the types of plutonium operations conducted at RFP. The public hearings will be held to provide the public with information concerning the DOE ORR and to address the public's questions and concerns.

The general process described above will be repeated for each building in which plutonium operations are conducted. However, as ORRs are conducted on each building, the scope of each ORR will be modified to reflect the results of the previous ORRs. For example, site-wide quality assurance procedures previously found to be acceptable would not have to be reviewed again for acceptability during ORRs of other buildings, but the implementation of these quality assurance procedures within each building would be reviewed in the subsequent ORRs. Consequently, the scope and the number of people assigned to ORR teams may decrease as the series of ORRs proceeds. The public will continue to be informed of the results of ORRs conducted for those buildings evaluated after Buildings 559 and 707.

## 5.0 Description

### 5.1 ORR Preparations

Each ORR will be conducted by a team of experts in engineering, science, nuclear facility safety, and plutonium processing operations. Team members will be individually chosen by the ORR Team Leader to ensure that collectively their backgrounds will include the important facets of operations to be reviewed at RFP. The experts will also be chosen to ensure that each ORR Team includes senior nuclear safety experts and technical specialists to cover the following functional areas, as appropriate, for each building:

- Emergency preparedness
- Facilities, process, and fabrication engineering
- Environmental protection and waste management
- Fire protection
- Industrial safety and hygiene
- Maintenance, testing, and surveillance
- Management, organization, and staffing
- Operations
- Quality assurance
- Radiological protection and health physics
- Nuclear safety assessment
- Training

The reviews conducted by each ORR Team will be guided by a specific DOE-approved ORR safety objectives and assignments document.[1] The safety objectives contained in this document will be grouped into the following three categories:

- Plant and equipment (hardware) readiness
- Management and personnel readiness
- Management programs (procedures, plans, etc.) readiness

A set of safety objectives has been developed based on (1) essential actions to be completed prior to the phased resumption of operations, as identified by EG&G; (2) directives issued by DOE; (3) findings and recommendations of oversight groups; and (4) recommendations of review teams. These objectives are contained in the ORR safety objectives and assignments document that will be revised for each ORR and will identify the members of each ORR Team and their specific assignments.

The ORR Team will be led by a senior DOE manager and will be comprised of Senior Nuclear Safety Experts and Technical Experts. The Senior Nuclear Safety Experts will assist the Team Leader in defining the issues to be addressed by the Technical Experts, overseeing and reviewing the activities of the Technical Experts, and preparing a report regarding the safety of resuming plutonium operations based on the Team's findings.

Before arriving at RFP, each Technical Expert on the team will be given instructions on how to review and use the safety objectives and assignments document to develop criteria that they will use in performing their reviews. The Team Leader may request that Team Members visit RFP for a limited time prior to the start of a building's ORR in

[1] The initial version of this document is attached to this plan. Subsequent revisions will be provided to the DNFSB and DOE internal oversight groups as prepared.

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order to facilitate preparations for that ORR.

Criteria proposed by the Technical Experts will be based on their expertise in their assigned areas, their knowledge of DOE orders and other requirements, the operational history of RFP and other DOE facilities, the issue management system at the RFP, and past appraisals. The review approach proposed by the Technical Experts will identify the scope of their review and include plans for reviewing procedures and programs; inspecting equipment and facilities; auditing records; interviewing personnel; and observing operations during operational tests without plutonium. Some reviews may also recommend simulated operations by EG&G to test the response of operational and support personnel to normal and off-normal events.

The detailed criteria and the review approach prepared by each Technical Expert will be reviewed by the Team Leader, the Senior Nuclear Safety Experts, and the other Technical Experts on the Team. Revisions will be made to the criteria and review approach as appropriate. After final approval by the Team Leader and the Senior Nuclear Safety Experts, the Technical Experts will use the revised criteria and review approach to perform their reviews.

A copy of the criteria and review approach for each building will be provided to the DNFSB and DOE internal oversight groups.

5.2 ORR Process

After receiving and accepting EG&G's Readiness to Proceed memorandum for each building, the onsider portion of the ORR will begin. During a nominal 3-week onsite review, the ORR Team will use the inspection criteria and review approaches discussed above, and the ORR Technical Experts will assess whether the DOE safety objectives assigned to them for review have been met. The Senior Nuclear Safety Experts will actively participate in the reviews performed by the Technical Experts, and assist the Team Leader in providing oversight of the ORR.

Each ORR will consist of programmatic reviews of EG&G's readiness activities to assess whether plutonium operations could be conducted safely if allowed to resume. In addition, the ORR Team will evaluate EG&Gs performance in conducting ongoing activities, such as equipment operability checks and dry runs, and the simulated plutonium, operations requested by the Team Leader.

To facilitate Team coordination and the exchange of information, the Team will meet each evening during the onsite review period. The results of the reviews conducted by the Senior Nuclear Safety Experts and Technical Experts will be used by the Senior Nuclear Safety Experts and the Team Leader to refine and focus the future activities of the Technical Experts. For example, the Senior Nuclear Safety Experts may identify trends or patterns that indicate the need for additional investigation. An EG&G observer and a DOE–RFO observer will attend these meetings to aid in planning and coordinating upcoming activities and in validating the facts being relied upon by the ORR Team.

During the ORR, the documentation of review findings and the assembly of objective evidence of operational readiness will be the responsibility of individual Technical Experts in accordance with specific direction given by the Team Leader and the Senior Nuclear Safety Experts. Each Technical Expert's review findings will be documented on a standard worksheet.

At the end of the onsite portion of the ORR for each building, the Technical Experts will complete their evaluation of the operational readiness of the building, and their findings will be submitted to the Team Leader and the Senior Nuclear Safety Experts. The Senior Nuclear Safety Experts will review the Technical Experts' findings and assist the Team Leader in developing a recommendation regarding the readiness to safely resume plutonium operations in that building. A report will be prepared by the Senior Nuclear Safety Experts and the Team Leader to document the results of the ORR and provide justification for the Team's recommendation. The report will also identify any open items found in the review, including those that must be resolved prior to resumption of plutonium operations.

Team members will be asked to concur in the ORR report. Any dissenting opinions will be documented and attached to the report. The ORR report will be transmitted by the Team Leader to the Deputy Assistant Secretary for Facilities.

The Resumption Program Office in the Office of Defense Programs will prepare the Approval to Proceed memorandum for each building. The ORR report will become part of the basis for recommending to the Secretary the action that should be taken on EG&G's Readiness to Proceed memorandum. After the Secretary of Energy signs an Approval to Proceed memorandum, EG&G will be allowed to resume plutonium operations by initiating the graded plutonium startup test program for that building.

The Rocky Flats Operations Office (RFO) will verify closure, as necessary, of open items. In the event the open item requires action on the part of RFO, the closure of the item will be verified by DOE-Headquarters or an ORR Team member. The resources of the ORR Team will remain available to assist in determining the adequacy of closure.

6.0 Administration

6.1 Overall

This Implementation Plan is the top-level DOE document describing the activities necessary for safely resuming plutonium operations at each RFP building and serves the purpose of a management plan. The document hierarchy for the ORR is shown below.

- ORR Implementation Plan (top-level document for ORRs for all plutonium operations)
- ORR Safety Objectives and Assignments (mid-level document written for each building)
- Criteria and Review Approaches (bottom-level document controlling the work of each Technical Expert)

6.2 Quality Assurance and Document Control

The quality assurance (QA) and document control requirements for each ORR will be identified by the ORR Team Leader, with assistance by the Senior Nuclear Safety Experts, will be issued by the ORR Team Leader, and will be implemented by all ORR Team members. The QA requirements will include Team Leader approval of the qualifications of Technical Experts, daily onsite peer review of the findings of the Technical Experts, verification of facts relied upon in preparation of ORR reports, oversight of the activities of the Technical Experts by the Senior Nuclear Safety Experts, and specification of the form of reports and the retention of records on which the Team's conclusions are based.

6.3 Responsibilities

*Deputy Assistant Secretary for Facilities, Defense Programs*—The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the Operational Readiness Reviews at the RFP in preparation for resumption of plutonium operations. The Deputy Assistant Secretary for Facilities has appointed the Director of the Office of Engineering and Operations Support as the Team Leader for the RFP Operational Readiness Reviews.

*DOE Headquarters RFP Resumption Program Office*—The DOE Headquarters RFP Resumption Program Office is responsible for coordinating



DOE Headquarters resumption activities, concurring in resumption plans, and the preparing the Approval to Proceed memorandum for each building. The Approval to Proceed memorandum will identify any unresolved issues and recommend actions for resolution and will address generic and specific issues. Issues raised by the Secretary, the ACNFS, or the DNFSB will be resolved or action plans to resolve the issues will be prepared, as appropriate, prior to forwarding each Approval to Proceed memorandum to the Secretary from the Assistant Secretary for Defense Programs.

*EG&G*—EG&G is responsible for ensuring that its phased resumption program sufficiently improves the safety of plutonium operations at the RFP Plant to allow the resumption of plutonium operations. In addition, EG&G is responsible for preparing a Readiness to Proceed memorandum for each building to notify DOE–RFO that EG&G's readiness review has been completed satisfactorily. EG&G is also responsible for supporting the activities of each DOE ORR Team. For example, EG&G shall conduct operations and tests requested by the Team Leader and ensure that EG&G is represented at daily meetings of each ORR Team and at other Team meetings, as requested.

*ORR Team Leader*—The Team Leader is responsible for the selection of ORR Team members; DOE direction and guidance to each ORR Team in accordance with this Implementation Plan; preparation of internal ORR Team correspondence; liaison with the Manager of the Rocky Flats Operations Office and the Director of the RFP Resumption Program Office; and submission of ORR reports to the Deputy Assistant Secretary for Facilities. The Team Leader is also responsible for issuing the ORR safety objectives and assignments document at least 4 weeks before the start of each ORR.

*ORR Senior Nuclear Safety Experts*—The ORR Senior Nuclear Safety Experts are responsible for providing assistance to the Team Leader in the exercise of his responsibilities; providing guidance to the Technical Experts; identifying the issues to be addressed during the ORR; approving the criteria and review approaches to be used by the Technical Experts; and assisting the ORR Team Leader in writing the report for each ORR. The ORR reports will be signed by all Senior Nuclear Safety Experts and the Team Leader. Any differing opinions will be attached in writing.

*ORR Technical Experts*—The Technical Experts are responsible for assessing the adequacy of EG&G's readiness results by conducting reviews in selected areas important to the safe resumption of plutonium operations. The Technical Experts will assist the Team Leader and the Senior Nuclear Safety Experts in defining the scope of review in their assigned area; documenting the criteria and review approach for their assigned area, subject to approval by the senior Nuclear Safety Experts and the Team Leader; attending Team meetings to coordinate activities with other Team members; documenting their own activities, findings and conclusions in a manner to be specified by the Team Leader and the Senior Nuclear Safety Experts; and concurring in final ORR reports written by the Team Leader and the Senior Nuclear Safety Experts (any differing opinions will be attached to the report in writing).

*Rocky Flats Operations Office Manager*—The Manager of the Rocky Flats Operations Office (RFO) is responsible for coordinating DOE–RFO resumption activities, approving the EG&G RFP resumption plans, and forwarding the Site Resumption Action Memorandum for each building to the Director, RFP Resumption Program Office, under a separate cover letter signed by the DOE–RFO Manager that includes any DOE–RFO recommendations. The Manager of the RFO is also responsible for ensuring that the DOE–RFO is represented at meetings of the ORR Team, as requested, and for verifying resolution of open items.

7.0 Deliverables and Schedule

The ORR safety objectives and assignments document will be issued at least 4 weeks prior to the start of each ORR and will be modified as necessary for each building. A copy of each Technical Expert's criteria and review approach, which are developed from the ORR safety objectives and assignments document for each building, will be approved prior to the start of ORR onsite inspections.

A report documenting the results of each ORR will be issued within 2 weeks of completion of the onsite portion of the ORR and prior to any public hearing on that ORR. The report will contain the recommendation of the ORR Team regarding the safety of resuming plutonium operations for that building.

A schedule for performing ORRs at RFP will be made available after EG&G issues a resumption schedule. The DNFSB will be informed of the ORR start date for each building when these dates have been selected.

**Operational Readiness Review Safety Objectives and Assignments for the Rocky Flats Plant**

1.0 Purpose

This document provides the initial safety objectives and team member assignments for conducting the Operational Readiness Review (ORR) at the Rocky Flats Plant (RFP). The approach for conducting the ORR is described in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The specific assignments will be provided for each ORR by a revision of this document that is consistent with the Implementation Plan.

2.0 Team Composition

The individuals identified for participation in the initial ORRs are listed below. A statement of their credentials is provided in Appendix A. Additional skill areas may be identified before the initial ORRs are conducted.

*Team Leader*

James P. Knight

*Senior Safety Experts*

Roger J. Mattson, Coordinator
William Kerr
James P. O'Reilly
Lawrence J. Ybarrondo

*Technical Experts*

Lance E. Traver, Review Coordinator
Joseph F. Tinney, Issue Resolution
H. Michael Hawkins, Emergency Preparedness
Carl R. Forsberg, Engineering (Facilities, Process, Fabrication)
Gary J. Toman, Engineering (Facilities, Process, Fabrication)
Monique V. Helfrich, Environmental Protection and Waste Management
James A. Shurick, Fire Protection
Lawrence Blackwell, Industrial Safety
Charles R. Jones, Maintenance, Testing, and Surveillance
David M. Pinkston, Maintenance, Testing, and Surveillance Management, Organization, and Staffing [1]
Albert P. Baione, Management, Organization, and Staffing
Shirley J. Olinger, Management, Organization, and Staffing
Rowland E. Felt, Operations
Leonard W. Gray, Operations
Robert E. Hanvey, Operations
Matthew S. McCormick, Operations
Marvin P. Norin, Quality Assurance
Arthur J. Toy, Radiological Protection and Instrumentation
C. Leslie Brown, Safety Assessment
Elizabeth Conrad, Safety Assessment
Gilbert A. Nicholson, Safety Assessment
Training [1]

[1] Additional Technical Experts in this area are being sought.

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John W. Robinson, Training
Eugene F. Redden, Training

3.0 Safety Objectives and Assignments

Readiness to resume plutonium operations at Rocky Flats will be evaluated using the safety objectives set forth in Sections 3.1 to 3.3. The safety objectives were developed by the ORR Team Leader and the Senior Nuclear Safety Experts based on professional judgment an experience input from the Technical Experts aided by a week-long meeting of the Team at the Plant in June 1990, and on information contained in references listed in appendix C. Particular attention was given to the following references:

- An EG&G report, "Rocky Flats Plan for Phased Resumption of Plutonium Operations" (Reference 17)
- Directives issued by DOE (References 8, 14, and 16)
- Findings and recommendations of oversight groups (References 11, 12, and 13)
- Recommendations of review teams (References 9, 10, and 15)

The information to be relied on by the ORR Team will be recorded and, where appropriate, references will be added to appendix C. The safety objectives of sections 3.1 and 3.3 were developed generically; they will be modified as necessary for each ORR based on the unique operating features of the building being evaluated.

Each Technical Expert will be assigned to evaluate a set of safety objectives based on their area of review. The Technical Experts will be responsible for determining whether their assigned objectives have been met in accordance with the process set forth in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The assignments for each technical expert are listed in appendix B.

3.1 Plant and Equipment (Hardware) Readiness

The hardware objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (H.1, H.2, etc.). Under each objective, supporting objectives are identified and given a number (H.1.1, H.1.2, etc.).

H.1 The configuration of vital safety systems, including safety-related process systems and safety-related utility systems, is consistent with assumptions made about such systems in Safety Analysis Reports (SARs).

H.1.1 Vital safety systems have been correctly identified in the SARs.

H.1.2 Identification markers are installed on vital safety systems, including safety-related process systems, safety-related utility systems, and any other equipment and instrumentation used to demonstrate compliance with operational safety requirements.

H.1.3 The adequacy of labeling and drawings for vital safety systems has been verified.

H.1.4 The types, modes of operation, and locations of vital safety systems, including safety-related process systems and safety-related utility systems, identified in new procedures are physically verified.

H.2 The condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems, are confirmed.

H.2.1 Instruments, indicators, and alarms that monitor limiting conditions of operation or that satisfy operational safety requirements have been demonstrated to be capable of performing their intended functions in the required manner.

H.2.2 The maintenance backlog for vital safety systems, including safety-related process systems and safety-related utility systems, is acceptable for resumption of operations.

H.2.3 Good housekeeping is practiced in all buildings that are involved with plutonium operations.

H.2.4 Tools and equipment for proper operation and maintenance of vital safety systems, including safety-related process systems and safety-related utility systems, have been identified, calibrated, tested, and are available.

H.2.5 Ductwork is evaluated to identify and characterize plutonium buildup. There is high confidence that all lines of ductwork with more than 400 grams of plutonium have been identified.

H.2.6 Plutonium is removed, or ductwork is replaced, to the maximum extent practicable, for those lines of ductwork containing more than 400 grams of plutonium. In no case shall a residue exceeding 400 grams of plutonium remain in any one line of ductwork unless approved by the Secretary of Energy.

H.2.7 Improved prefilters have been installed in those glovebox exhaust lines identified as requiring this modification.

H.2.8 Prefilters have been installed on ventilation system bypass lines, and other changes to guard against plutonium buildup in ductwork have been made, for all gloveboxes identified as requiring these modifications.

H.2.9 Operability of vital safety systems, including safety-related process systems and safety-related utility systems, is physically verified.

H.3 Facilities and equipment are available for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

H.3.1 Equipment and facilities needed for operational support services are available.

H.3.2 Sampling and analysis capabilities exist to perform the monitoring and characterization activities needed for resumption of operations, including those for environmental protection and waste management.

H.3.3 Approved storage facilities exist to receive wastes and residues generated from operations within a building.

3.2 Management and Personnel Readiness

The personnel objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (P.1, P.2, etc.). Under each objective, supporting objectives are identified and given a number (P.1.1, P.1.2, etc.).

P.1 There are sufficient numbers of qualified plutonium operations personnel, supervisors, shift technical advisors, and managers to support the safe resumption of plutonium operations.

P.1.1 Plutonium operations personnel have an adequate understanding of technical fundamentals including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity.

P.1.2 Plutonium operations personnel, supervisors, and shift technical advisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.1.3 An adequate startup test program has been developed and will be used for final sign-off of operator qualification.

P.1.4 Plutonium operations personnel have been trained to adhere to procedures and operational safety requirements and to understand the importance of procedural compliance.

P.1.5 Qualification and staffing requirements have been established and met for plutonium operations personnel.



supervisors, shift technical advisors, and managers.

P.1.6 The level of knowledge achieved during operator qualification is adequate to operate safely.

P.2 As a minimum, one DOE person trained and qualified in plant operations will be stationed in each plutonium building during operations that involve plutonium.

P.2.1 Qualification requirements and staffing levels are established and met.

P.2.2 Training has been conducted.

P.2.3 Personnel are familiar with the buildings, equipment, operating procedures, and the identity of senior building managers.

P.3 Sufficient numbers of qualified personnel are provided for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparednes, fire protection, quality assurance, criticality safety, and engineering.

P.3.1 Operational support personnel have a requisite understanding of technical fundamentals.

P.3.2 Operational support personnel and supervisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.3.3 Qualification and staffing requirements have been established and met for operational support personnel.

P.3.4 The level of knowledge achieved during qualification is adequate to support resumption of operations.

P.4 Personnel exhibit an awareness of safety and environmental protection requirements and, through their actions, demonstrate a commitment to comply with those requirements.

3.3 Management Programs (Procedures, Plans, etc.) Readiness

The management systems objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (M.1, M.2, etc.). Under each objective, supporting objectives are identified and given a number (M.1.1, M.1.2, etc.).

M.1 There are adequate and correct procedures and safety limits for operating the process systems and the utility systems.

M.1.1 Procedures for operations, training, and maintenance reflect the current configuration (including changes made during the outage) of vital safety systems, including safety-related precess systems and safety-related utility systems.

M.1.2 Operating and maintenance procedures for vital safety systems, including safety related process systems and safety-related utility systems, and building administrative procedures are consistent with approved operational safety requirements and deal with normal and abnormal events (e.g., spills).

M.1.3 Consistent with the contractor's operating philosophy, operating procedures for vital safety systems, including safety-related process systems and safety-related utility systems, contain sufficient detail to permit initiation of use of a "procedural compliance" concept at RFP.

M.1.4 Procedures produced or revised for the conduct of plutonium operations have undergone a joint walkdown verification by DOE and EG&G technical personnel.

M.1.5 The adequacy of operating procedures is demonstrated during equipment and system operability checks.

M.1.6 Operational safety requirements are established and measured to ensure that operations are conducted within the analyzed safety envelope.

M.1.7 Operational safety requirements have been developed by engineering and plutonium operations personnel.

M.1.8 A system has been established to ensure procedures are kept current and accurate, including temporary changes to procedures.

M.1.9 Safety limits are clearly stated and posted in appropriate locations.

M.2 Training and qualification programs for plutonium operations personnel have been established, documented, and implemented.

M.2.1 Contents of training and qualification programs properly account for plant and procedural changes.

M.2.2 Primers covering technical fundamentals, including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity, are available.

M.2.3 Training and qualification programs, including building-specific training, job-specific training, and general employee training are available.

M.2.4 Instructor guides, examinations, lesson material, and reference documents are available and adequate to support an effective training program.

M.2.5 The training department uses post-training feedback, internal evaluations, and operating experience to modify their programs as needed.

M.2.6 An adequate startup test program has been developed and will be used to evaluate the adequacy of the training program for plutonium operations personnel.

M.3 Vital safety systems are defined, and a system to maintain control over the design and modification of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, is established.

M.3.1 Administrative controls are provided to assure that modifications of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, made during the outage have been analyzed, documented, and approved.

M.3.2 An adequate process has been established to assure that documentation for plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems is established and kept current.

M.3.3 Administrative controls are in place to assure that deactivation of alarms is accomplished in a controlled manner requiring formal review and approval.

M.3.4 One-line drawings and other documentation relied upon to demonstrate compliance with operational safety requirements are up-to-date with the current plant configuration.

M.4 A system is in place to confirm and periodically reconfirm the condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.1 Procedures are in place to verify the operability of alarms and instrumentation for vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.2 Appropriate procedures, including monitoring requirements and operational constraints, are in place to assure that future operations will not allow the level of plutonium in any line of ductwork to exceed 400 grams.

M.4.3 Procedures are in place to assure that if the 400-gram limit for plutonium buildup in the ductwork is exceeded, or if the risks to personnel from accumulation of radioactive material in ductwork appear unacceptable, or if the level of accumulation of plutonium in ductwork presents an unreviewed public safety question, continued operation of such a ductwork system will require a full technical justification and Secretarial approval.

M.4.4 Surveillance requirements, procedures, and intervals are established and implemented.

M.5 A process has been established to identify, evaluate, and resolve recommendations and findings made by

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oversight groups, official review teams, audit organizations, and the operating contractor.

M.5.1 A system for identifying, reviewing, and cataloging documents that describe deficiencies or recommendations is established and adequately implemented.

M.5.2 A system for prioritizing and tracking corrective actions and recommendations is established.

M.5.3 Criteria for identifying resumption issues have been developed.

M.5.4 Issues to be resolved prior to resumption of plutonium operations have been properly identified and corrective actions have been completed and verified.

M.6 A baseline compliance status review of the nine Category 1 DOE Orders has been performed and non-complying items have been addressed.

M.6.1 A process has been implemented to identify and evaluate noncompliance issues associated with the nine Category I DOE Orders and to determine which specific issues must be resolved prior to resumption of plutonium processing operations.

M.6.2 Noncompliance issues have been corrected or appropriately justified for use as is.

M.7 Management systems are established to assure operational support services (e.g., training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection, and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering) are adequate for the resumption of plutonium processing.

M.7.1 Organizational responsibilities for and interfaces with operational support services have been formally identified and implemented.

M.7.2 Readiness for the resumption of plutonium operations has the concurrence of cognizant operational support services organizations.

M.7.3 An effective public information program is established, including provision for comment by the public, oversight groups, and Federal, State and local agencies.

M.7.4 An emergency preparedness program has been established and drills and exercises are conducted at appropriate intervals. Drills and exercises have demonstrated the capability to perform emergency preparedness activities.

M.7.5 An adequate maintenance program has been established.

M.7.6 An adequate quality assurance program has been established, including processes for tracking, trending, and correcting significant conditions adverse to quality.

M.7.7 Necessary environmental permits have been obtained and necessary environmental compliance agreements are in place.

M.7.8 Safety programs have been established that ensure that plant personnel are trained and can respond correctly to safety hazards.

M.7.9 Adequate reviews are conducted by operational support organizations with quality personnel at suitable intervals to monitor safety performance.

M.7.10 A program for adequate oversight of unresolved safety question determinations has been implemented.

M.7.11 Operational support organizations have the appropriate administrative controls (e.g. schedules, plans, policies, surveillances, procedures) to ensure compliance with appropriate Federal and State regulations and good practices.

M.8 A formal program is established to develop a site-wide culture that places the highest priority on safety and protection of the environment.

M.8.1 Policies, plans, and procedures are established that can reasonably be expected to support the desired cultural changes such as placing the highest priority on safety and protection of the environment, formality and discipline of operations, and inquisitive employee attitudes.

M.8.2 A self-assessment process is in place to provide a mechanism to measure safety performance and to determine and correct the root causes of unusual occurrences.

M.8.3 Facility management personnel are made aware of safety issues and occurrences that could affect their operations, and lessons learned are applied.

M.8.4 The philosophy of openness on matters affecting safety, health, and environment is supported by an effective public information program and line management practices.

M.8.5 Management commitment to the safe operation of the facility is evident from personal involvement, interest, and knowledge.

M.9 The results of the EG&G corporate review verify the readiness of hardware, personnel, and management systems to resume plutonium operations.

M.10 An adequate startup test program has been developed and the non-plutonium handling portion has been adequately implemented to confirm the operability of equipment, the viability of procedures and the training of operators. The startup test program shall also include adequate plans for graded plutonium testing to simultaneously confirm operability of equipment, the viability of procedures, and the training of operators.

M.11 Functions, assignments, responsibilities, and reporting relationships of individuals are clearly defined, understood, and effectively implemented with line management responsibility for control of safety.

M.11.1 Responsibility, authority, and accountability of each element of line management, from top-level management through shift supervisors, is clearly defined by policy and evident by practice.

M.11.2 Effective coordination and communication exists among the line organizations.

M.12 The DOE Rocky Flats Operations Office (DOE/RFO) has established oversight programs to support the resumption of plutonium processing operations.

M.12.1 The DOE/RFO organization is committed to the safe operation of the facility as evidenced by its day-to-day involvement with operations activities and its level of knowledge of plant operations.

M.12.2 The DOE/RFO has the capability to verify the adequacy of EG&G's operations at RFP prior to and following resumption of operations.

M.12.3 The DOE/RFO has established a formal program to foster a safety culture that places the highest priority on safety and protection of the environment.

**Appendix A—Statements of Credentials**

Albert P. Baione is a nuclear engineer with 11 years experience. Mr. Baione worked in the DOE Division of Naval Reactors for 10 years in nuclear facility operations and safety. The majority of this work involved the development and evaluation of refueling and radiological control programs, including evaluations of management and organizational performance. Mr. Baione led Naval Reactors Headquarters inspection teams that appraised the performance of nuclear-powered ships and nuclear ship repair facilities in their implementation of Headquarters radiological control requirements. He serves as Engineering Group Manager in SCIENTECH's Rockville, Maryland, office and participates in various safety and regulatory projects related to nuclear engineering for the NRC and DOE.

Lawrance Blackwell is a Ph.D. physicist with 32 years of management experience. He provides consulting services in nuclear facility safety, personnel reliability programs, emergency management, specialized



training, and industrial safety. In his 12 years of employment at Los Alamos National Laboratory (LANL), Dr. Blackwell held assignments in the Health, Safety, and Environment Division including Safety Director, Associate Division Leader, Fire Protection Program Manager, and Construction Project Manager, giving him a broad background in industrial safety. He was responsible for the complete revision and documentation of the LANL industrial safety program and developed the necessary training and evaluation systems to ensure implementation and compliance. Dr. Blackwell also designed and operated the LANL Emergency Operations Center and directed the Emergency Management Program.

C. Leslie Brown has 30 years experience in nuclear criticality safety. He is a Fellow Scientist with the Westinghouse Hanford Company and is currently serving as a criticality safety representative at the plutonium finishing plant. Mr. Brown has conducted criticality experiments with fast reactor fuel and performed criticality safety analyses for commercial nuclear power plants. He has served as a process engineer at the plutonium fabrication plant and was trained in criticality safety at the Hanford Critical Mass Laboratory. He was elected a Fellow of the American Nuclear Society (ANS) in 1980 and received the Bronze George Westinghouse Signature Award for Excellence in 1988 and the ANS Criticality Safety Division Achievement Award in 1978. He has published 76 documents, 14 ANS transaction papers, and 11 journal articles on the subject of criticality safety.

Elizabeth A. Conrad is a chemical engineer with 9 years expereince in nuclear chemical processing operations at Westinghouse Hanford Company (WHC). As a process engineer in the PUREX Plant, she provided technical shift support during the 1983 restart of the plant and served as lead engineer for neptunium recovery startup in 1985. In 1987, she was chosen as the technical team leader for the criticality safety review of chemical process operations. As a senior process engineer at the plutonium finishing plant (PFP), Ms. Conrad contributed to the successful restart of plutonium metal production after the plant was shut down for safety reasons. In 1988, she established and managed the PFP Operations Training Group instituting formal criteria for the evaluation of operator and shift management qualifications. Ms. Conrad is currently assigned as the WHC technical advisor on plutonium processing to the DOE Office of Nuclear Materials.

Rowland E. Felt is a Ph.D. chemical engineer with 25 years experience in plutonium and uranium processing at the DOE Hanford Site. His experience includes development of aqueous and pyrochemical processes for plutonium conversion and scrap recovery. Dr. Felt served as the Process Engineering Manager for the 234–5 Z Plant and served as the Separation Process Engineering Manager for the 200 Area at Hanford. His safety experience includes participating in the fire investigation at Rocky Flats in 1969, conducting plutonium fire experiments, and follow-on evaluation of plutonium release fractions associated with accident analyses. Dr. Felt's recent assignment with Westinghouse Idaho Nuclear Company included the development of a flowsheet and supporting process analysis for dose reduction, waste minimization, and plant support operations for the Special Isotope Separation Program. He is currently serving as the Idaho National Engineering Laboratory representative to the Planning Support Group at the Savannah River Site.

Carl R. Forsberg has been involved in the design and construction of high explosive and nuclear material processing facilities for the past 34 years. He served in the Plant Engineering Department at the Lawrence Livermore National Laboratory for 17 years and served the Atomic Energy Commission and DOE Office of Military Applications for 12 years. Mr. Forsberg was the construction project manager during the design of the Lawrence Livermore National Laboratory plutonium facility and was the DOE Headquarters project manager for the Office of Military Applications during the latter half of construction of the Rocky Flats Plutonium Recovery and Waste Treatment Facility, Building 371/374. He retired from DOE in 1985; since then he has been providing consulting services primarily related to construction project management and facility design.

Leonard W. Gray has a Ph.D. in inorganic chemistry, and is an internationally recognized expert in actinide processing. He has 20 years experience at the Savannah River Site and 2 years experience at Lawrence Livermore National Laboratory (LLNL). Dr. Gray has authored or coauthored more than 50 publications and presentations, the majority having been written as a result of new plutonium feedstocks or problems resulting from process upsets. As a process troubleshooter, he dealt with the following unit operations in plutonium processing: dissolution, feed clarification, purification (solvent extraction, cation exchange, anion exchange, and selective precipitation), isolation, and conversion to either metal or oxide. Dr. Gray is the Section Leader for the Plutonium Processing Technology Section of the Special Isotope Separation Program at LLNL. He provides technical leadership in all areas of plutonium processing (aqueous and molten salt-based chemistries), equipment engineering, process automation, and process control.

Robert E. Hanvey has 35 years experience in nuclear chemical processing at the Savannah River Site (SRS) where he worked in both plutonium finishing and residue recovery operations. He has prepared safety analysis reports for plutonium processing at SRS, was a member of the DOE Operational Readiness Review team at Lawrence Livermore National Laboratory, and participated in special studies for DOE Headquarters for plutonium residue recovery. Since 1987, Mr. Hanvey has been a production planner for Westinghouse Savannah River Company at SRS. He works with representatives from other DOE Nuclear Weapons Complex Sites regarding the transfer and processing of plutonium-239. Mr. Hanvey also provides input on the future direction for process improvements and production schedules for the entire DOE Nuclear Weapons Complex.

H. Michael Hawkins has a Graduate Certificate in National Security and Emergency Mobilization; he has 18 years experience in emergency preparedness and safeguards and security with the Atomic Energy Commission, NRC, DOE, and in the commercial nuclear industry. Mr. Hawkins has recently been involved in DOE's NMP contract as an SAIC senior scientist in support of the review and evaluation of the Emergency Management Program. These efforts include involvement with rewriting DOE Order 500.3A, participation in the Occurrence Reporting Pilot Program at the Savannah River Site and Rocky Flats Plant, assistance to the DOE Office of Defense Programs in the order compliance review of Westinghouse and EG&G, and various activities in direct support of the DOE Office of Emergency Operations. For 8 years, Mr. Hawkins was actively involved in the NRC's Emergency Preparedness Program and was instrumental in the design, construction, and operation of the NRC Operations Center. Mr. Hawkins was the Manager of the Seabrook Nuclear

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Power Plant Emergency Plans and Procedures organization and was an active participant in Seabrook's initial Federal Emergency Preparedness Exercise. His field assignment at the Comanche Peak Steam Electric Station included overall coordination and scenario development of the initial Emergency Preparedness exercise among Texas Utilities (TU) Electric, Federal (NRC and FEMA), State of Texas, and various local governments.

Monique V. Helfrich is a Senior Environmental Engineer at SAIC; she has 9 years experience in safety and environmental issues at various DOE facilities. Ms. Helfrich has an M.S. in Systems Engineering and is currently providing technical support on environment, safety, and health issues to the Assistant Secretary for Defense Programs. Ms. Helfrich was a senior environmental and systems engineer and on-site project manager for a technical support contract to the Rocky Flats Office Waste Management Branch. This support included analysis of the responsibilities and schedules inherent in compliance agreements entered into by DOE, the Environmental Protection Agency, and the Colorado Department of Health; and evaluation of waste disposal efforts in the Pondcrete Pad Clearance and Solar Evaporation Ponds Cleanup projects.

Charles R. Jones has an M.S. in Mechanical Engineering with 24 years of experience including a 20-year career in nuclear reactor and nuclear weapon technology with the United States Navy. In the Navy, he served as a senior nuclear engineer and operator on several nuclear-powered surface ships, qualified as Chief Engineer of the USS Nimitz, CVN 68, conducted a training program for nuclear plant Chief Engineers, and participated in team inspections of nuclear power plants for the Pacific Fleet. He is an experienced engineering troubleshooter for technical problems associated with power plant machinery, procedures, operator training, plant system operations, and qualification of maintenance personnel. From 1981 to 1988, he worked in the Navy advanced weapons program on nuclear weapons safety, security, and control matters. Since his retirement from the Navy in 1988, he has assisted in safety system inspections and system operational reliability studies for various commercial nuclear power plants. As an employee of SCIENTECH, Inc., Mr. Jones participated in the September 1989 and June 1990 Criticality Safety Assessments at Rocky Flats, the December 1989 Rocky Flats Facility Observation Team, and two Technical Safety Appraisals in the area of maintenance. He is currently providing assistance to DOE Headquarters on monitoring the progress of the Savannah River Site Reactor Safety Improvement Program (RSIP).

William Kerr is a Ph.D. electrical engineer with 47 years of experience. He has been a professor at the University of Michigan since 1954, where he served as Chairman of Nuclear Engineering for 13 years and director of Michigan Memorial-Phoenix Project from 1961 to the present time. He has been a member of the Advisory Committee on Reactor Safeguards (ACRS) of the Nuclear Regulatory Commission since 1972, having served three years as ACRS Chairman, most recently in 1987 and 1988. Dr. Kerr has consulted with Atomic Power Development Associates, Oak Ridge National Laboratory, and the Department of State and was a member of the Michigan Governor's Task Force on Nuclear Waste Disposal. He has received the Compton Award of the American Nuclear Society, Outstanding Educator in America Award, and the NRC's Meritorious Service Award.

James P. Knight has 30 years experience in mechanical and nuclear engineering. He worked for 8 years as a design engineer and analyst for spacecraft, biochemical process, and reactor equipment components. In the later part of this period, he was Chief of the Engineering Services Section for the National Bureau of Standards Reactor (NBSR) and Vice Chairman of the NBSR Hazards Committee. For 17 years, Mr. Knight served on the staff of the Atomic Energy Commission and the Nuclear Regulatory Commission in the regulation of nuclear facility safety. He managed the safety review and evaluation efforts on the mechanical, structural, materials, and geosciences areas for over 85 nuclear power plants as well as other regulated nuclear facilities. He also led numerous special evaluation teams dealing with nuclear safety issues requiring resolution at the Commission level. For the past 5 years, Mr. Knight has managed the Department of Energy headquarters programs for licensing, quality assurance, and safety appraisals. Mr. Knight is presently Director, Office of Engineering and Operations Support, Office of Defense Programs.

Matthew S. McCormick has 6 years experience in nuclear facility safety analysis, reactor operation, radiological controls, environmental compliance, procedures, and nuclear systems. He currently is a supervisory nuclear engineer at DOE Rocky Flats Operations Office. Previously, he was a Senior Nuclear Engineer with the Savannah River Restart Office and was a Nuclear Engineer with the Office of Environment, Safety, and Health. Mr. McCormick has also served as a DOE Headquarters site representative at the Savannah River Site. He was a supervisory nuclear engineer at Mare Island Naval Shipyard.

Roger J. Mattson is a Ph.D. mechanical engineer with 26 years of experience. He worked in nuclear facility design for 3 years at Sandia Laboratory, served the Atomic Energy Commission and the NRC for 17 years in the regulation of nuclear facility safety, managed radiation surveillance and emergency preparedness at the Environmental Protection Agency, assisted the U.S. Government in responding to accidents at Three Mile Island and Chernobyl, and assisted the International Atomic Energy Agency with siting standards and safety principles. For 7 years at NRC, Dr. Mattson directed the technical review of applications for construction permits and operating licenses for nuclear power plants. He has received NRC Meritorious and Distinguished Service Awards. Since 1987, he has been Vice President of SCIENTECH, Inc., where he manages offices in Rockville, Maryland, Washington, D.C., and Dallas, Texas, and consults in the areas of nuclear safety, waste management, and environmental protection. Dr. Mattson was the Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Gilbert A. Nicholsen has an M.S. in chemical engineering and 28 years experience in the radiochemical processing field. His process engineering responsibilities have ranged from shift process control engineer to team leader and coordinator for process engineering and safety support functions at the Hanford PUREX Plant. His management experience includes process engineering and control management at the PUREX Plant, and management of the Hanford Plutonium Finishing Plant. His Hanford Site safety support experience includes development of the draft Operational Safety Requirements document and Final Safety Analysis Report (FSAR) for the PUREX Plant. With SAIC, Mr. Nicholsen has provided extensive technical support to the DuPont-Savannah River Site (SRS) in the preparation of a major revision to the SRS F-Canyon Safety Analysis Report and to Westinghouse Hanford Company in the preparation of major revisions to the FSAR's for the Aging Waste Facility and the B-Plant Waste Processing Facility.



Marvin P. Norin has an M.S. in mechanical engineering and 37 years of experience. He is a Senior Scientist at SAIC and has participated in various readiness inspections and safety reviews at numerous DOE facilities, including the DOE Quality Verification at Oak Ridge and a quality inspection of the High Flux Isotope Reactor. He assisted the DOE Office of Materials Production in the development of an Action Plan responding to the Tiger Team Assessment of the Feed Materials production Center in Fernald, Ohio. Prior to joining SAIC, he worked for DOE and its predecessor agencies as Director of Regulatory Development and as Deputy Director of Safety, Quality Assurance, and Safeguards in the Nuclear Energy Program; Chief of Codes and Standards Branch; and was a systems engineer for the Fast Flux Test Facility and breeder demonstration plant design studies. He serves on the Nuclear Standards Board of the American National Standards Insitute and is a former member of the Institute's Executive Standards Council. He is a member of the American Society of Mechanical Engineers.

Shirley J. Olinger has 8 years experience in nuclear facility safety analysis, technical specification and operational safety requirements, reactor operations, operational readiness reviews, radiological controls, procedures, and nuclear systems. She is a supervisory nuclear engineer at the DOE Rocky Flats Office. She was also the supervisory nuclear engineer at the Savannah River Restart Office. In these two positions, she has evaluated management and organizational performance in implementing DOE safety requirements. Prior to these positions she served as a DOE Headquarters site representative at Savannah River and as a nuclear engineer for various DOE offices. Ms. Olinger also was a supervisory nuclear engineer at the Pearl Harbor Naval Shipyard.

James P. O'Reilly is a nuclear operations management expert with 32 years of experience. Mr. O'Reilly served in the U.S. Navy nuclear power program, served in the Atomic Energy Commission and the NRC for 23 years as the Chief Reactor Inspector and Regional Administrator for Regions I and II, and managed the nuclear operations program for the Georgia Power Company as Senior Vice President. Mr. O'Reilly directly participated in the response to the Three Mile Island accident and many of the abnormal operational occurrences that have occurred at commercial nuclear power plants. He received the NRC Meritorious and Distinguished Service Awards and the Presidential Meritorious Service Award. Since early 1988, Mr. O'Reilly has been a full-time nuclear management consultant. He has provided services to problem nuclear plants, law firms, consulting firms, and the U.S. Government.

David M. Pinkston is a chemical engineer with more than 7 years experience in nuclear power plant operations and safety. He served for 5 years in the U.S. Naval Nuclear Propulsion Program where he qualified as Chief Engineer for nuclear cruiser propulsion plants and gained experience in supervising reactor plant operations and maintenance. Mr. Pinkston was an operations liaison engineer at the Savannah River Site plutonium production facility, where he coordinated the design, management, and technical support needed for major projects and upgrades in the areas of plutonium processing and waste handling. Since October 1989, he has worked as consulting engineer for SAIC providing technical support and programmatic analysis for DOE. Specific activities include review and development of operational safety requirements for various DOE facilities and development of detailed reporting criteria for a new DOE incident reporting system.

Eugene F. Redden has an M.S. in engineering management, and is a nuclear engineer with over 32 years experience with the Air Force, DOE and predecessor organizations, and the commercial nuclear power industry. His analytical, management, and consulting services have covered a broad spectrum of activities, including nuclear power plant operations, tritium processing and handling, packaging and transport of nuclear materials, disposal of nuclear waste, conduct of Operational Readiness Reviews, and the review and critique of Safety Analysis Reports. Mr. Redden has participated in Operational Readiness Reviews as a technical expert in training and operations for the Remote Mechanical C Line at Richland, the Neptunium Processing Line at Savannah River, the Fluorinel Dissolution Facility at Idaho, the Enriched Uranium Conversion Facility at Oak Ridge, the Engineered Demonstration System at Livermore, the High Flux Isotope Reactor, and the High Flux Beam Reactor. He has also participated in several DOE training initiatives, including Training Resource and Data Exchange (TRADE).

John W. Robinson has 10 years experience in performance-based training for nuclear operations, radiation protection, and industrial safety. As Manager, Fuel Dissolution Processing and Nuclear Safety Training at Westinghouse Idaho Nuclear Company, Mr. Robinson is responsible for coordination, development, and implementation of operations training for fuel processing, fuel handling, waste processing, and radiological and nuclear safety training courses for all levels of company personnel. Mr. Robinson has been involved in several DOE training initiatives, including the development of the Training Resource and Data Exchange (TRADE) Special Interest Group on Radiation Protection Training, served as coordinator and principal author of the DOE Guide to Good Practice in Radiation Protection Training; and functioned as a lead developer of the DOE Training Accreditation Program. He currently serves on the DOE TRADE Executive Committee. In October 1988, Mr. Robinson received the "Jack M. Brewer" award from DOE for individual excellence in human resource development, primarily for his efforts in training.

James A. Shurick is a fire protection and safety engineer with 41 years of experience. He worked for 20 years with Factory Insurance Association (now Insurers Risk Insurance) as a Field Inspector and Chief Engineer. Mr. Shurick served the Atomic Energy Commission and the DOE for 19 years as a fire protection design engineer and was responsible for fire protection requirements in the construction of new facilities and the modification of existing facilities. Engineering efforts included improvement to water supplies, sprinkler protection, heat and smoke detection, special protection and construction, exit requirements, and emergency lighting.

Joseph F. Tinney has a Ph.D. in Engineering Sciences and 25 years of Defense Programs experience, the last 8 years as the Program Manager for SAIC's technical support services in DOE's Office of Defense Programs. Since joining SAIC, Dr. Tinney has been the Principal Investigator on projects for the Defense Nuclear Agency, the Nuclear Regulatory Commission, and the Federal Emergency Management Administration. Dr. Tinney has served on, and provided technical support for, the Plutonium Special Isotope Separation (SIS) Program Peer Review (1982), the SIS Process Readiness Review Team (1986), the New Production Reactor (NPR) Site Evaluation Team (1988), and the Technical Support Team for the Energy

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Research Advisory Board's NPR Technology Assessment Panel (1987–1988). Dr. Tinney worked for 12 years at the Lawrence Livermore National Laboratory. He served as the Head of the Hazards Control Department supervising 200 health, safety, and environmental personnel; served as Safety Review Team Leader for the design and construction of a new plutonium facility; served as a Senior Scientific Advisor on the Nuclear Weapons Accident Response Group and Nuclear Emergency Search Team; and served as Division Director for the Special Projects Division.

Gary J. Toman is an electrical engineer with 20 years of experience. He has 10 years experience in commercial nuclear power plant operations and a total of 14 years experience in commercial nuclear power plant licensing, maintenance, equipment qualification, quality assurance, component failure evaluation, and safety-system functional inspections. Most recently, Mr. Toman led a functional assessment of the electric power distribution system for Palo Verde Nuclear Generating Station. He has broad experience with verification of equipment operability and has developed a nondestructive test methodology for evaluating aging of installed electrical cable insulation. Mr. Toman has also contributed to the NRC's Nuclear Plant Aging Research Program in the areas of relays, circuit breakers, solenoid valves, and pressure transmitters. He evaluated reactor trip circuit breaker failures for the U.S. Nuclear Regulatory Commission at the Salem Nuclear Generating Station and the San Onofre, McGuire, North Anna, and D.C. Cook plants. He is a Principal Engineer with ERC Environmental and Energy Services Company.

Arthur J. Toy has a Ph.D. in Radiation Biophysics and has worked at Lawrence Livermore National Laboratory for 27 years. He is the Facility Manager of LLNL's Plutonium Facility, where he is responsible for assuring environmental and personnel safety for all operations in the Facility. In a previous position, as the Hazards Control Department Head/Safety Program Leader, Dr. Toy was responsible for assuring implementation of the LLNL's Safety Program. Dr. Toy also managed environmental monitoring of LLNL and local environs, environmental assessments of Laboratory construction, and Laboratory compliance with all Federal, State and local environmental regulations. He has written safety analysis reports for nuclear facilities and was the editor of the LLNL Environmental Impact Statement.

Lance E. Traver is a nuclear engineer with 7 years experience. Mr. Traver served in the U.S. Naval Nuclear Propulsion Program for 5 years where he developed an understanding of reactor operations and safety principles. He qualified as Chief Engineer and Senior Supervisor of Naval Nuclear Propulsion Plants. As an employee of SCIENTECH, Inc., he has participated in evaluating the reactor restart program for the Savannah River Site Production Reactors and has conducted root cause analyses of safety issues at both the Savannah River Site and the Rocky Flats Plant. Mr. Traver provided technical support to the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Lawrence J. Ybarrondo is a Ph.D. mechanical engineer with 30 years experience. Dr. Ybarrondo worked in nuclear facility design, construction, analysis, testing, and operations at the Idaho National Engineering Laboratory. He held the position of Associate General Manager of EG&G, Idaho, and was in charge of the operations of four nuclear reactor facilities. He has served on the Board of Directors of the American Nuclear Society and on its executive committee on nuclear reactor safety. Dr. Ybarrondo assisted the U.S. Government in responding to the accidents at Three Mile Island and Chernobyl. He was the Deputy Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

**Appendix B.—Assignments**

To be provided at a later date.

**Appendix C.—References**


1. "Guidelines for Application of Readiness Reviews to Department of Energy Activities," January 1987.
2. "Process Operational Readiness and Operational Readiness Follow-On," DOE–76–45/30, SSDC–30, February 1987.
3. *Occupancy-Use Readiness Manual*, "Safety Considerations," ERDA–76–45–1, SSDC–1, September 1976.
4. "Events and Casual Factors Charting" (regarding management oversight and risk free development and use), DOE–76–45/14, SSDC–14, Rev. 1, August 1978.
5. *Mort User's Manual* (for use with management oversight and risk free analytical logic diagram), DOE–76–45/4, SSDC–4, Rev. 2, May 1983.
6. "Operational Readiness Assessment Team Inspections," NRC Inspection Procedure 93806, August 21, 1989.
7. *Guidelines for the Conduct of Operations at Nuclear Power Stations*, Guideline INPO 85–017, Rev. 01, April 1988.
8. Memorandum from Victor Stello, Jr., to R. Nelson, "Order Compliance Verification at the Rocky Flats Plant," May 3, 1990.
9. "Technical Safety Appraisal of the Rocky Flats Plant," DOE/EH–0081, January 1989.
10. "An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant," SCIE–DOE–201–89, July-September 1989.
11. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding resumption of plutonium processing operations at the Rocky Flats Plant), May 4, 1990.
12. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding criticality safety and resumption of plutonium processing operations at the Rocky Flats Plant), June 5, 1990
13. Advisory Committee on Nuclear Facility Safety, letters to the Secretary of Energy regarding resumption of plutonium processing operations at Rocky Flats, dated November 30, 1989, March 28, 1990, and June 4, 1990.
14. Memorandum to Acting Assistant Secretary for Defense Programs from Secretary of Energy regarding "Resumption of Plutonium Processing at the Rocky Flats Plant," June 5, 1990.
15. "Environmental Tiger Team Assessment of the Rocky Flats Plant," June 6 to July 21, 1989.
16. Letter from Secretary of Energy to the Defense Nuclear Facilities Safety Board, "Response to May 4, 1990, Recommendation," June 20, 1990.
17. "Rocky Flats Plan for Phased Resumption of Plutonium Operations," EG&G Rocky Flats, March 5, 1990 (including the April 19, and May 25, 1990 updates).


[FR Doc. 90–28659 Filed 12–5–90; 8:45 am]
BILLING CODE 6450–01–M



**Federal Energy Regulatory Commission**

**[Docket Nos. CP89–362–000, CP89–362–001, CP89–363–000, and CP89–363–001]**

**North Country Gas Pipeline Co.; Intent To Prepare an Environmental Assessment for the Proposed North Country Pipeline Project and Request for Comments on Its Scope**

November 30, 1990.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the natural gas facilities proposed in the above-referenced dockets. The proposed will be referred to as the North Country Project.

Pursuant to §§ 153.1 through 153.12 of the Commission's regulations, North Country Gas Pipeline Company (North Country) seeks the issuance of a Presidential Permit to connect a natural gas facility at a point of entry on the United States/Canadian border near the town of Champlain, New York. North Country also seeks Natural Gas Act section 3 authorization from the Commission to construct, operate, and maintain such facilities at the point of entry for the importation of natural gas.

The jurisdictional point of importation into the United States would be located on the United States/Canadian border about one-half mile west of the U.S. Customs post on Interstate 87 near the town of Champlain, in Clinton County, New York. A meter station would be constructed at this location on a three-quarter-acre site.

Additional proposed nonjurisdictional facilities related to this proposal would consist of 26 miles of 12-inch-diameter pipeline, three 79 megawatt (MW) cogeneration facilities, and approximately 17 miles of new, upgraded, or replaced electric transmission line. The 26 miles of 12-inch-diameter pipeline would be owned and operated by North Country and would extend from Champlain in a southerly direction to Plattsburgh. The three cogeneration facilities would be located adjacent to the proposed 12-inch-diameter pipeline and would be owned and operated by affiliates of North Country. The electric transmission lines would be owned by the New York State Electric and Gas Company (NYSEG). All of the facilities related to this project are located within Clinton County, New York. Any State or local approval or ongoing environmental analysis of the nonjurisdictional facilities will be utilized by the Commission staff in conducting its National Environmental Policy Act review in order to avoid duplication.

Falcon Seaboard Gas Company, an affiliate of North Country, proposes to import 20 Bcf of natural gas per year, or 54 MMcf per day, from TransCanada Pipeline Limited (TransCanada) for a period of 15 years. The gas would be transported through the proposed facilities of North Country for sale to three proposed cogeneration facilities and the Georgia-Pacific Corporation (Georgia-Pacific), all in the Plattsburgh area. Each cogeneration facility would be 79 MW in size and would consume approximately 16,000 to 18,200 Mcf of natural gas per day. North Country is also willing to transport approximately 7,500 Mcf of gas per day for NYSEG if it desires such delivery of gas for resale to residential, commercial, and industrial customers in the Plattsburgh area. Currently, the area proposed to be served by the proposed North Country pipeline is without natural gas service.

Maps showing the location of the pertinent facilities are contained in the attached appendix.[1]

The 26 miles of 12-inch-diameter pipeline would extend from Champlain in a southerly direction to Plattsburgh, in Clinton County, New York. The pipeline would cross the towns of Champlain, Chazy, Beekmantown, and Plattsburgh as well as the city of Plattsburgh. The proposed pipeline would roughly parallel the Adirondock Northway (Interstate 87) at an average distance of one-half to one mile to the west from milepost (MP) 0.0 to MP 14.0 and closely parallel the interstate from MP 14 to MP 27. The pipeline would cross the Great Chazy River at MP 1.3, the Lake Alice State Game Management Area at MP 9.5, Dead Creek at MP 21, the Saranac River at MP 26, and the Plattsburgh Air Force Base at MP 26.1.

The proposed pipeline would be constructed on new natural gas pipeline right-of-way. North Country proposes to clear a 60-foot-wide construction right-of-way and to maintain a 30-foot wide permanent right-of-way.

North Country has filed an application for a Certificate of Environmental Compatibility and Public Need for the pipeline facilities with the New York Public Service Commission (PSC). As part of the resulting proceeding, the Department of Public Service (DPS) is currently conducting a detailed environmental review of the proposed pipeline route. Most State level permits or approvals that would be required, such as for road crossings, stream crossings, and agricultural concerns of the New York Department of Agriculture and Markets, will be consolidated into the PSC certificate. Other Federal approvals will be required, such as the U.S. Army Corps of Engineers sections 10 (River and Harbors Act) and 404 (Clean Water Act) permits, and a State Coastal Zone Management Consistency Determination.

Additionally, the cogeneration plant applicants will be required to file Draft Environmental Impact Statements (DEIS's) with the New York Department of Environmental Conservation (DEC) in accordance with the New York State Environmental Quality Review procedures (SEQR). The DEC's environmental review will address the cogeneration plants and associated electric transmission lines.

The project proponents have filed DEIS's with the New York DEC addressing the proposed cogeneration plants and the associated electric transmission lines. The DEC's review period will end in mid-December 1990. Approval of the cogeneration facilities and related electric transmission facilities will require the DEC's acceptance of the adequacy of the DEIS's. The U.S. Department of Energy, Office of Fossil Energy (DOE/FE) has issued Opinion and Order No. 394 (Order), dated May 21, 1990, granting the importation of the requested volumes of natural gas for this project. The Order is conditional upon the DOE/FE's review of the FERC's environmental assessment, thereby fulfilling its National Environmental Policy Act responsibilities. TransCanada has also received National Energy Board approval for the export of the required volumes of natural gas.

**Current Environmental Issues**

The Commission's EA will address the environmental concerns that have been and will be identified by the FERC staff, intervenors, and by concerned resource agencies and individuals. Subject to the condition noted under Comment Procedures, the EA will address the entire 26 miles of proposed pipeline, the cogeneration plants, and the associated electrical transmission lines. The following issues have been identified for consideration in the EA:

Cultural Resources—Effect on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources—Impact on threatened and endangered species.
—Impact on wetlands and fisheries.
—Habitat alteration.

[1] The map appendix is not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, telephone (202) 208–1371.

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Land Use—Utilization of existing right-of-way.
—Coastal zone management plan consistency.
—Impact at the point of importation on land use and aesthetics.

**Comment Procedures**

Comments from Federal, State, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of issues that need to be analyzed, and to identify and eliminate from detailed review the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale.

If no significant issues are raised concerning the nonjurisdictional facilities, and the facilities have been approved or are under environmental review at the State or local level, the Commission staff intends to rely on such analysis in order to take advantage of existing data and not duplicate effort. However, in this case, the review would still address the potential effects on federally listed or proposed threatened and endangered species, cultural resources, and consistency with approved coastal zone management plans.

Comments should be submitted on or before December 31, 1990, reference Docket Nos. CP89-362-000, CP89-362-001, CP89-363-000, and CP89-363-001 and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Howard Wheeler, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street NE., room 7312, Washington, DC 20426.

The EA will be based on the FERC staff's independent analysis of the proposal, and together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28584 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-513-000, et al.]

## El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

November 29, 1990.

Take notice that the following filings have been made with the Commission:

### 1. El Paso Natural Gas Co.

[Docket No. CP91-513-000]

Take notice that on November 28, 1990, El Paso Natural Gas Company (El Paso), P.O. box 1492, El Paso, Texas 79978, filed in Docket No. CP91-513-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PSI, Inc., and Utilicorp United Inc., brokers, under the blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that, pursuant to an agreement dated June 1, 1990, under its Rate Schedule T-1, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas. El Paso indicates that the gas would be transported from various gathering system points of receipt on El Paso's system, and would be redelivered in the High Island Area, Offshore Texas. El Paso further indicates that it would transport 51,500 MMBtu on an average day and 18,797,500 MMBtu annually.

El Paso advises that service under § 284.223(a) commenced October 1, 1990, as reported in Docket No. ST91-3806-000.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

### 2. High Island Offshore System

[Docket No. CP91-461-000]

Take notice that on November 19, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed a request with the Commission in Docket No. CP91-461-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for BHP Gas Marketing Company (BHP), a producer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

HIOS proposes an interruptible natural gas transportation service of 100,000 Mcf on peak and average days, and 36,500,000 Mcf annually for BHP, pursuant to an April 1, 1990, agreement under its Rate Schedule IT. HIOS states that it would transport the gas from offshore Texas and would deliver the gas in offshore Louisiana and offshore Texas. HIOS also states that began its transportation service for BHP under § 284.223(a) of the Regulations on September 18, 1990, as reported in Docket No. ST-01-62.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

### 3. Columbia Gas Transmission Corp.

[Docket Nos. CP91-421-000, CP91-422-000, CP91-423-000, CP91-424-000, CP91-425-000]

Take notice that on November 13, 1990, Columbia Gas Transmission Corporation (Applicant), P.O. box 1273, Charleston, West Virginia 25325-1273, filed in the respective dockets as supplemented on November 26, 1990, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.



| Docket No. (date filed) | Shipper name | Peak day,[1] average, annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related[2] dockets |
|---|---|---|---|---|---|---|
| CP91-421-000 (11-13-90) | NGC Transportation, Inc. | 200,000<br>150,000<br>73,000,000 | KY, OH | DE, KY, NJ, NY, OH, VA, WV. | 7-25-90, ITS | ST90-4485-000 |
| CP91-422-000 (11-13-90) | Panhandle Trading Company. | 100,000<br>50,000<br>36,500,000 | KY | MD, PA, OH, VA, DE, NY, WV. | 8-1-90, ITS | ST90-4484-000 |
| CP91-423-000 (11-13-90) | Transatlantic Energy Corporation. | 4,000<br>3,200<br>1,460,000 | OH | WV | 8-2-90, ITS | ST90-4482-000 |
| CP91-424-000 (11-13-90) | American Central Gas Marketing Company. | 100,000<br>50,000<br>36,500,000 | OH, WV KY | MA, NJ, NY, PA, RI | 8-1-90, ITS | ST90-4481-000 |
| CP91-425-000 (11-13-90) | R.E. Fox & Associates | 11,000<br>5,800<br>4,015,000 | PA, WV | KY, NY, OH, PA, VA, WV. | 8-10-90, ITS | ST90-4485-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

### 4. United Gas Pipe Line Co.

[Docket Nos. CP91-469-000, CP91-470-000, CP91-471-000, CP91-472-000, CP91-473-000, CP91-474-000, CP91-475-000]

Take notice that on November 19, 1990, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day,[1] average annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related[2] dockets |
|---|---|---|---|---|---|---|---|
| CP91-469-000 (11-19-90) | United Gas Pipe Line Company. | Laser Marketing Company. | 618,000<br>618,000<br>225,570,000 | LA, TX | AL, FL, LA, MS, TX | 10-25-90, ITS | CP88-6-000<br>ST91-2961-000 |
| CP91-470-000 (11-19-90) | United Gas Pipe Line Company. | Gulf South Pipeline Co. | 309,000<br>309,000<br>112,785,000 | LA, TX | AL, LA, MS, TX | 10-25-90, ITS | CP88-6-000<br>ST91-2958-000 |
| CP91-471-000 (11-19-90) | United Gas Pipe Line Company. | Phoenix Gas Pipeline Company. | 209<br>209<br>76,285 | TX | TX | 10-4-90, FTS | CP88-6-000<br>ST91-2950-000 |
| CP91-472-000 (11-19-90) | United Gas Pipe Line Company. | Phoenix Gas Pipeline Company. | 262<br>262<br>95,630 | TX | TX | 10-4-90, FTS | CP88-6-000<br>ST91-2952-000 |
| CP91-473-000 (11-19-90) | United Gas Pipe Line Company. | Phoenix Gas Pipeline Company. | 175<br>175<br>63,875 | TX | TX | 10-4-90, FTS | CP88-6-000<br>ST91-2951-000 |
| CP91-474-000 (11-19-90) | United Gas Pipe Line Company. | Phoenix Gas Pipeline Company. | 300<br>300<br>109,500 | TX | TX | 10-4-90, FTS | CP88-6-000<br>ST91-2743-000 |
| CP91-475-000 (11-19-90) | United Gas Pipe Line Company. | Sport Pipeline Corporation. | 257,500<br>257,500<br>93,987,500 | LA, MS | LA | 10-13-90, ITS | CP88-6-000<br>ST91-2742-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

### 5. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-446-000]

Take notice that on November 16, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP91-446-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and the regulations promulgated thereunder for the issuance of a certificate of public convenience and necessity and for amendments to certain certificates for the authorization to implement an interim Gas Inventory Charge ("GIC") applicable to sales customers purchasing firm sales service pursuant to Panhandle's Rate Schedules G and LS, pending the restructuring of long-term sales agreements with such customers and the filing of a permanent Gas Inventory Charge, approval of the Interim Service Agreements; and,

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authorization for abandonment of Sales Contract Demand ("CD"), all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open for public inspection.

Specifically, Panhandle states that all General Service and Limited Service sales agreements, which are due to expire April 1, 1991, will be replaced by interim service agreements which will be effective April 1, 1991 through October 31, 1992, thus bridging the gap between the termination of the Seasonal Sales Program (SSP) and the implementation of long-term restructured services. Panhandle further states that the interim service agreements will allow for specified Contract Demand reductions, effective April 1, 1991, and for specified conversion to firm transportation.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-28585 Filed 12-5-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. ST90-4570-000 through ST90-5354-000]**

## Algonquin Gas Transmission Co.; Self-Implementing Transactions

November 30, 1990.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of the interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an interstate to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

**Lois D. Cashell,**

*Secretary.*

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.



| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-4570 | Algonquin Gas Transmission Co. | Tejas Power Corp. | 09-04-90 | G-S | 300,000 |
| ST90-4571 | Algonquin Gas Transmission Co. | Everett Energy Corp. | 09-04-90 | G-S | 42,000 |
| ST90-4572 | Algonquin Gas Transmission Co. | Citizens Gas Supply Corp. | 09-04-90 | G-S | 80,000 |
| ST90-4573 | Algonquin Gas Transmission Co. | Boston Gas Co. | 09-04-90 | B | 510,000 |
| ST90-4574 | Algonquin Gas Transmission Co. | Catamount Natural Gas, Inc. | 09-04-90 | G-S | 70,721 |
| ST90-4575 | Florida Gas Transmission Co. | Mobil Natural Gas Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4576 | Florida Gas Transmission Co. | Mobil Oil Corp. | 09-04-90 | G-S | 200,000 |
| ST90-4577 | Florida Gas Transmission Co. | Mobil Exploration & Producing U.S., Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4578 | Florida Gas Transmission Co. | Mobil Explor. & Prod. N. America, Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4579 | Florida Gas Transmission Co. | Howell Gas Management Co. | 09-04-90 | G-S | 50,000 |
| ST90-4580 | Florida Gas Transmission Co. | Mobil Rocky Mountain, Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4581 | Florida Gas Transmission Co. | Tennessee Gas Pipeline Co. | 09-04-90 | G | 300,000 |
| ST90-4582 | Florida Gas Transmission Co. | Paragon Gas Corp. | 09-04-90 | G-S | 40,000 |
| ST90-4583 | Florida Gas Transmission Co. | Mobil Exploration & Producing Se, Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4584 | Florida Gas Transmission Co. | Mobil Producing TX and NM, Inc. | 09-04-90 | G-S | 200,000 |
| ST90-4585 | Florida Gas Transmission Co. | Union Texas Petroleum Corp. | 09-04-90 | G-S | 100,000 |
| ST90-4586 | Southern Natural Gas Co. | Howell Gas Management Co. | 09-04-90 | G-S | 50,000 |
| ST90-4587 | Southern Natural Gas Co. | Alabama Gas Corp. | 09-04-90 | B | 100,000 |
| ST90-4588 | Southern Natural Gas Co. | Gulf States Pipeline Corp. | 09-04-90 | B | 10,000 |
| ST90-4589 | Sonat Intrastate-Alabama Inc. | Transcontinential Gas Pipe Line Corp. | 09-04-90 | C | 35,000 |
| ST90-4590 | Gas Gathering Corp. | U.S. Exploration Co. | 09-04-90 | K | 5,000 |
| ST90-4591 | Stingray Pipeline Co. | Arco Natural Gas Marketing, Inc. | 09-04-90 | K-S | 150,000 |
| ST90-4592 | Stingray Pipeline Co. | Equitable Resources Marketing Co. | 09-04-90 | K-S | 50,000 |
| ST90-4593 | Delhi Gas Pipeline Corp. | Tennessee Gas Pipeline Co. | 09-04-90 | C | 1,200 |
| ST90-4594 | Kentucky West Virginia Gas Co. | Equitable Resources Marketing Co. | 09-04-90 | G-S | 50,000 |
| ST90-4595 | Dow Pipeline Co. | TPC Transmission, Inc. | 09-04-90 | C | 25,000 |
| ST90-4596 | Natural Gas Pipeline Co. of America | Trans Marketing Houston, Inc. | 09-04-90 | G-S | 250,000 |
| ST90-4597 | Natural Gas Pipeline Co. of America | Vesta Energy Co. | 09-04-90 | G-S | 6,200 |
| ST90-4598 | Natural Gas Pipeline Co. of America | Howell Gas Management Co. | 09-04-90 | G-S | 100,000 |
| ST90-4599 | Southern Natural Gas Co. | Municipal Gas Authority of Georgia | 09-04-90 | G-S | 100,000 |
| ST90-4600 | Southern Natural Gas Co. | Alabama Gas Corp. | 09-04-90 | B | 100 |
| ST90-4601 | Natural Gas Pipeline Co. of America | Eastex Gas Transmission Co. | 09-05-90 | B | 300,000 |
| ST90-4602 | United Gas Pipe Line Co. | Pine Pipeline Co. | 09-05-90 | G-S | 25,750 |
| ST90-4603 | United Gas Pipe Line Co. | FEC Marketing | 09-05-90 | G-S | 8,343 |
| ST90-4604 | United Gas Pipe Line Co. | Mississippi Fuel Co. | 09-05-90 | G-S | 38,625 |
| ST90-4605 | United Gas Pipe Line Co. | Gulf Coast Energy, Inc. | 09-05-90 | G-S | 1,030 |
| ST90-4606 | United Gas Pipe Line Co. | FEC Marketing | 09-05-90 | G-S | 15,450 |
| ST90-4607 | Transcontinental Gas Pipe Line Corp. | United Texas Transmission Co. | 09-05-90 | B | 55,000 |
| ST90-4608 | U T Offshore System | Chevron U.S.A., Inc. | 09-06-90 | K-S | 67,000 |
| ST90-4609 | U T Offshore System | Phillips Petroleum Co. | 09-06-90 | K-S | 88,500 |
| ST90-4610 | U T Offshore System | NGC Transportation, Inc. | 09-06-90 | K-S | 225,000 |
| ST90-4611 | Northern Natural Gas Co. | Mock Resources, Inc. | 09-06-90 | G-S | 100,000 |
| ST90-4612 | ANR Pipeline Co. | End Users Supply System | 09-06-90 | G-S | 25,000 |
| ST90-4613 | Williston Basin Interstate P/L Co. | Rainbow Gas. Co. | 09-06-90 | G-S | 65,000 |
| ST90-4614 | Florida Gas Transmission Co. | Coast Energy Group, Inc. | 09-06-90 | G-S | 75,000 |
| ST90-4615 | Florida Gas Transmission Co. | Associated Natural Gas Co., Inc. | 09-06-90 | G-S | 80,000 |
| ST90-4616 | Florida Gas Transmission Co. | Winnie Pipeline Co. | 09-06-90 | B | 29,585 |
| ST90-4617 | Florida Gas Transmission Co. | Tex/Con Gas Marketing Co. | 09-06-90 | G-S | 250,000 |
| ST90-4618 | Florida Gas Transmission Co. | Texaco Gas Marketing, Inc. | 09-06-90 | G-S | 200,000 |
| ST90-4619 | Florida Gas Transmission Co. | Stellar Gas Co. | 09-06-90 | G-S | 100,000 |
| ST90-4620 | Florida Gas Transmission Co. | Sonat Marketing Co. | 09-06-90 | G-S | 250,000 |
| ST90-4621 | Florida Gas Transmission Co. | Reliance Gas Marketing Co. | 09-06-90 | G-S | 50,000 |
| ST90-4622 | Florida Gas Transmission Co. | PPG Industries, Inc. | 09-06-90 | G-S | 60,000 |
| ST90-4623 | Florida Gas Transmission Co. | Exxon Corp. | 09-06-90 | G-S | 250,000 |
| ST90-4624 | Florida Gas Transmission Co. | Users Supply System | 09-06-90 | G-S | 100,000 |
| ST90-4625 | Natural Gas Pipeline Co. of America | Acacia Gas Corp. | 09-07-90 | G-S | 50,000 |
| ST90-4626 | Natural Gas Pipeline Co. of America | Louis Dreyfuss Energy Corp. | 09-07-90 | G-S | 100,000 |
| ST90-4627 | Panola/Rusk Gatherers | Natural Gas Pipline Co. of America | 09-07-90 | G-S | 10,000 |
| ST90-4628 | Florida Gas Transmission Co. | Arco Natural Gas Marketing, Inc. | 09-07-90 | G-S | 200,000 |
| ST90-4629 | Florida Gas Transmission Co. | C.F. Industries, Inc. | 09-07-90 | G-S | 200,000 |
| ST90-4630 | Florida Gas Transmission Co. | Eastex Hydrocarbons, Inc. | 09-07-90 | G-S | 358,325 |
| ST90-4631 | Florida Gas Transmission Co. | Tenngasco Corp. | 09-07-90 | G-S | 200,000 |
| ST90-4632 | Florida Gas Transmission Co. | Meridian Oil Trading, Inc. | 09-07-90 | G-S | 200,000 |
| ST90-4633 | Florida Gas Transmission Co. | Entrade Corp. | 09-07-90 | G-S | 100,000 |
| ST90-4634 | Florida Gas Transmission Co. | Citrus Marketing, Inc. | 09-07-90 | G-S | 400,000 |
| ST90-4635 | United Gas Pipe Line Co. | Cornerstone Natural Gas Co. | 09-07-90 | G-S | 3,090 |
| ST90-4636 | United Gas Pipe Line Co. | Delta Pipeline Co. | 09-07-90 | G-S | 41,200 |
| ST90-4637 | United Gas Pipe Line Co. | Delta Pipeline Co. | 09-07-90 | G-S | 10,300 |
| ST90-4638 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4639 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 48,142 |
| ST90-4640 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4641 | United Gas Pipe Line Co. | Endevco Pipeline Co. | 09-07-90 | G-S | 6,180 |
| ST90-4642 | United Gas Pipe Line Co. | Calcasieu Gas Gathering System | 09-07-90 | G-S | 82,400 |
| ST90-4643 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 48,142 |
| ST90-4644 | United Gas Pipe Line Co. | Endevco Pipeline Co. | 09-07-90 | G-S | 4,120 |
| ST90-4645 | United Gas Pipeline Co. | Endevco Pipeline | 09-07-90 | G-S | 3,090 |
| ST90-4646 | United Gas Pipe Line Co. | Endevco Pipeline Co. | 09-07-90 | G-S | 515 |
| ST90-4647 | United Gas Pipe Line Co. | Texas Southern Pipeline, Inc. | 09-07-90 | G-S | 7,210 |
| ST90-4648 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc. | 09-07-90 | G-S | 45,475 |
| ST90-4649 | United Gas Pipe Line Co. | Texas Southern Pipeline, Inc. | 09-07-90 | G-S | 46,256 |

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| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-4650 | United Gas Pipe Line Co. | Calcasieu Gas Gathering System | 09-07-90 | G-S | 61,600 |
| ST90-4651 | United Gas Pipe Line Co. | Endevco Pipeline Co. | 09-07-90 | G-S | 5,159 |
| ST90-4652 | United Gas Pipe Line Co. | Endevco Oil & Gas Co. | 09-07-90 | G-S | 515 |
| ST90-4653 | United Gas Pipe Line Co. | Endevco Pipeline Co. | 09-07-90 | G-S | 721 |
| ST90-4654 | United Gas Pipe Line Co. | Texas Southern Pipline, Inc. | 09-07-90 | G-S | 1,030 |
| ST90-4655 | United Gas Pipe Line Co. | Rally Pipeline Corp. | 09-07-90 | G-S | 20,600 |
| ST90-4656 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4657 | United Gas Pipe Line Co. | Calcasieu Gas Gathering System | 09-07-90 | G-S | 43,260 |
| ST90-4658 | United Gas Pipe Line Co. | Cornerstone Natural Gas Co. | 09-07-90 | G-S | 12,360 |
| ST90-4659 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4660 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 10,300 |
| ST90-4661 | United Gas Pipe Line Co. | Endevco Oil and Gas Co. | 09-07-90 | G-S | 15,450 |
| ST90-4662 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4663 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4664 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4665 | United Gas Pipe Line Co. | Gulf States Gas Corp. | 09-07-90 | G-S | 41,200 |
| ST90-4666 | United Gas Pipe Line Co. | Calcasieu Gas Gathering System | 09-07-90 | G-S | 61,564 |
| ST90-4667 | United Gas Pipe Line Co. | Endevco Oil and Gas Co. | 09-07-90 | G-S | 20,600 |
| ST90-4668 | United Gas Pipe Line Co. | Endevco Oil and Gas Co. | 09-07-90 | G-S | 30,900 |
| ST90-4669 | United Gas Pipe Line Co. | Endevco Oil and Gas Co. | 09-07-90 | G-S | 25,750 |
| ST90-4670 | United Gas Pipe Line Co. | Cornerstone Natural Gas Co. | 09-07-90 | G-S | 25,750 |
| ST90-4671 | United Gas Pipe Line Co. | Delhi Gas Pipeline Corp. | 09-07-90 | B | 169,000 |
| ST90-4672 | Equitrans, Inc. | Consolidated Fuel Corp. | 09-07-90 | G-S | 20,482 |
| ST90-4673 | Gas Transport, Inc. | River Gas Co. | 09-07-90 | B | 2,800 |
| ST90-4674 | Transcontinental Gas Pipe Line Corp. | Texas Ohio Gas, Inc. | 09-07-90 | G-S | 1,800 |
| ST90-4675 | ANR Pipeline Co. | Brooklyn Union Gas Co, et al. | 09-07-90 | B | 50,000 |
| ST90-4676 | ANR Pipeline Co. | Coastal Gas Marketing Co. | 09-07-90 | G-S | 900,000 |
| ST90-4677 | ANR Pipeline Co. | NGC Transportation, Inc. | 09-07-90 | G-S | 100,000 |
| ST90-4678 | ANR Pipeline Co. | Hunt Oil Co. | 09-07-90 | G-S | 20,000 |
| ST90-4679 | ANR Pipeline Co. | Coastal Gas Marketing Co. | 09-07-90 | G-S | 600,000 |
| ST90-4680 | ANR Pipeline Co. | Amoco Production Co. | 09-07-90 | G-S | 60,000 |
| ST90-4681 | ANR Pipeline Co. | Coastal Gas Marketing Co. | 09-07-90 | G-S | 600,000 |
| ST90-4682 | Columbia Gas Transmission Corp. | Ashland Exploration, Inc. | 09-07-90 | G-S | 30,000 |
| ST90-4683 | Tennessee Gas Pipeline Co. | Mississippi Fuel Co. | 09-07-90 | B | 1,000,000 |
| ST90-4684 | Natural Gas Pipeline Co. of America | Conoco Corp. | 09-10-90 | G-S | 30,000 |
| ST90-4685 | Natural Gas Pipeline Co. of America | Marathon Oil Co. | 09-10-90 | G-S | 20,000 |
| ST90-4686 | Natural Gas Pipeline Co. of America | Phillips Petroleum Co. | 09-10-90 | G-S | 28,000 |
| ST90-4687 | Oasis Pipe Line Co. | El Paso Natural Gas Co. | 09-10-90 | C | 50,000 |
| ST90-4688 | Oasis Pipe Line Co. | El Paso Natural Gas Co. | 09-10-90 | C | 30,000 |
| ST90-4689 | Houston Pipe Line Co. | Transcontinental Gas Pipe Line Corp. | 09-10-90 | C | 1,500 |
| ST90-4690 | Houston Pipe Line Co. | Florida Gas Transmission Co. | 09-10-90 | C | 20,000 |
| ST90-4691 | Houston Pipe Line Co. | United Gas Pipe Line Co. | 09-10-90 | C | 10,000 |
| ST90-4692 | Houston Pipe Line Co. | Seagull Interstate Corp. | 09-10-90 | C | 10,000 |
| ST90-4693 | Houston Pipe Line Co. | Transcontinental Gas Pipe Line Corp. | 09-10-90 | C | 1,000 |
| ST90-4694 | Houston Pipe Line Co. | Black Marlin Pipeline Co. | 09-10-90 | C | 50,000 |
| ST90-4695 | Houston Pipe Line Co. | El Paso Natural Gas Co. | 09-10-90 | C | 30,000 |
| ST90-4696 | Tennessee Gas Pipeline Co. | Cranberry Pipeline Corp. | 09-10-90 | B | 4,775 |
| ST90-4697 | U T Offshore System | Houston Gas Exchange Corp. | 09-10-90 | K-S | 100,000 |
| ST90-4698 | U T Offshore System | Energy Marketing Exchange, Inc. | 09-10-90 | K-S | 300,000 |
| ST90-4699 | U T Offshore System | Excel Gas Marketing, Inc. | 09-10-90 | K-S | 100,000 |
| ST90-4700 | U T Offshore System | Stellar Gas Co. | 09-10-90 | K-S | 1,400,000 |
| ST90-4701 | U T Offshore System | Continental Natural Gas, Inc. | 09-10-90 | K-S | 100,000 |
| ST90-4702 | U T Offshore System | LL & E Gas Marketing, Inc. | 09-10-90 | K-S | 35,000 |
| ST90-4703 | U T Offshore System | Koch Hydrocarbons Co. | 09-10-90 | K-S | 250,000 |
| ST90-4704 | U T Offshore System | ARCO Natural Gas Marketing, Inc. | 09-10-90 | K-S | 1,670,000 |
| ST90-4705 | U T Offshore System | Marathon Oil Co. | 09-10-90 | K-S | 28,000 |
| ST90-4706 | U T Offshore System | Meth Corp. | 09-10-90 | K-S | 145,000 |
| ST90-4707 | Williston Basin Interstate P/L Co. | Montana-Dakota Utilities Co. | 09-10-90 | B | 190,370 |
| ST90-4708 | Kentucky West Virginia Gas Co. | Equitable Resources Energy Co. | 09-10-90 | G-S | 40,000 |
| ST90-4709 | Sabine Pipe Line Co. | Louisiana Resources Co. | 09-10-90 | B | 299,000 |
| ST90-4710 | Sipco Gas Transmission Corp. | Natural Gas Pipeline Co. of America | 09-10-90 | C | 50,000 |
| ST90-4711 | Texas Gas Transmission Corp. | Graham Energy Marketing Co. | 09-11-90 | G-S | 5,000 |
| ST90-4712 | Panola/Rusk Gatherers | Natural Gas Pipeline Co. of America | 09-11-90 | C | 5,000 |
| ST90-4713 | Tennessee Gas Pipeline Co. | Associated Natural Gas, Inc. | 09-05-90 | G-S | 90,000 |
| ST90-4714 | Stingray Pipeline Co. | Shell Gas Trading Co. | 09-11-90 | K-S | 200,000 |
| ST90-4715 | Northern Natural Gas Co. | Meadco Properties | 09-11-90 | G-S | 15 |
| ST90-4716 | Northern Natural Gas Co. | Phillips Gas Marketing Co. | 09-11-90 | G-S | 100,000 |
| ST90-4717 | Mississippi River Transmission Corp. | Amgas, Inc. | 09-11-90 | G-S | 5,300 |
| ST90-4718 | Northern Natural Gas Co. | Equitable Resources Marketing Co. | 09-11-90 | G-S | 257,500 |
| ST90-4719 | Texas Eastern Transmission Corp. | O & R Energy Development, Inc. | 09-11-90 | G-S | 60,000 |
| ST90-4720 | Northern Natural Gas Co. | Phillips 66 Natural Gas Co. | 09-12-90 | G-S | 200,000 |
| ST90-4721 | Northern Natural Gas Co. | Mobil Natural Gas, Inc. | 09-12-90 | G-S | 300,000 |
| ST90-4722 | Northern Natural Gas Co. | Phillips Petroleum Co. | 09-12-90 | G-S | 100,000 |
| ST90-4723 | Northern Natural Gas Co. | Fremont Dept. of Utilities | 09-12-90 | B | 30,000 |
| ST90-4724 | Northern Natural Gas Co. | Superior Water, Light and Power Co. | 09-12-90 | B | 30,000 |
| ST90-4725 | Natural Gas Pipeline Co. of America | Mobil Natural Gas, Inc. | 09-13-90 | G-S | 50,000 |
| ST90-4726 | Tennessee Gas Pipeline Co. | Florida Gas Transmission Co. | 09-12-90 | G | 1,000,000 |
| ST90-4727 | El Paso Natural Gas Co. | Mar Oil and Gas Corp. | 09-13-90 | G-S | 1,830 |
| ST90-4728 | U T Offshore System | Midcon Marketing Corp. | 09-13-90 | K-S | 250,000 |
| ST90-4729 | U T Offshore System | Centran Corp. | 09-13-90 | K-S | 37,000 |



| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-4730 | U T Offshore System | Superior Natural Gas Corp. | 09-13-90 | K-S | 50,000 |
| ST90-4731 | U T Offshore System | Access Energy Corp. | 09-13-90 | K-S | 290,000 |
| ST90-4732 | U T Offshore System | Illinois Power Co. | 09-13-90 | K-S | 200,000 |
| ST90-4733 | U T Offshore System | Delmarva Power and Light Co. | 09-13-90 | K-S | 100,000 |
| ST90-4734 | Texas Gas Transmission Corp. | Access Energy Corp. | 09-13-90 | G-S | 30,000 |
| ST90-4735 | Taft Pipeline Co. | Northern Natural Gas Co. | 09-13-90 | C | 20,000 |
| ST90-4736 | Transok, Inc. | Williams Natural Gas Co. | 09-13-90 | C | 50,000 |
| ST90-4737 | U T Offshore System | TXG Gas Marketing Co. | 09-14-90 | K-S | 120,000 |
| ST90-4738 | U T Offshore System | Pontchartrain Natural Gas System | 09-14-90 | K-S | 100,000 |
| ST90-4739 | U T Offshore System | BP Gas Inc. | 09-14-90 | K-S | 220,000 |
| ST90-4740 | U T Offshore System | Eastern Shore Natural Gas Co. | 09-14-90 | K | 50,000 |
| ST90-4741 | U T Offshore System | Texaco Gas Marketing, Inc. | 09-14-90 | K- S | 300,000 |
| ST90-4742 | U T Offshore System | Reliance Gas Marketing Co. | 09-14-90 | K-S | 600,000 |
| ST90-4743 | U T Offshore System | Consolidated Edison Co. of NY, Inc. | 09-14-90 | K-S | 1,400,000 |
| ST90-4744 | U T Offshore System | Sun Operating Limited Partnership | 09-14-90 | K-S | 152,200 |
| ST90-4745 | Tennessee Gas Pipeline Co. | Ocean State Power | 09-14-90 | G-S | 60,000 |
| ST90-4746 | Black Marlin Pipeline Co. | Transok, Inc. | 09-14-90 | B | 20,408 |
| ST90-4747 | Columbia Gas Transmission Corp. | Public Service Electric and Gas Co. | 09-16-90 | B | 66,000 |
| ST90-4748 | Gas Co. of NM (Div. Public Serv. Co. NM) | El Paso Natural Gas Co. | 09-14-90 | G-HT | 10,000 |
| ST90-4749 | Sea Robin Pipeline Co. | Baltimore Gas and Electric Co. | 09-14-90 | B | 100,000 |
| ST90-4750 | United Gas Pipe Line Co. | Coast Energy Group, Inc. | 09-14-90 | G-S | 30,900 |
| ST90-4751 | United Gas Pipe Line Co. | Sigo Marketing, Inc. | 09-14-90 | G-S | 4,892 |
| ST90-4752 | Williston Basin Interstate P/L Co. | Chevron U.S.A., Inc. | 09-14-90 | G-S | 13,148 |
| ST90-4753 | Williston Basin Interstate P/L Co. | Montana-Dakota Utilities Co. | 09-14-90 | B | 438 |
| ST90-4754 | Williston Basin Interstate P/L Co. | Western Gas Processors, Ltd. | 09-14-90 | G-S | 226,645 |
| ST90-4755 | Williston Basin Interstate P/L Co. | Western Gas Processors, Ltd. | 09-14-90 | G-S | 50,600 |
| ST90-4756 | Enogex Inc. | Williams Natural Gas Co. | 09-17-90 | C | 50,000 |
| ST90-4757 | Natural Gas Pipeline Co. of America | Longhorn Natural Gas Co., Inc. | 09-17-90 | G-S | 10,000 |
| ST90-4758 | Natural Gas Pipeline Co. of America | Ep Operating Co. | 09-17-90 | G-S | 30,000 |
| ST90-4759 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 15,450 |
| ST90-4760 | United Gas Pipe Line Co. | Polo Energy Corp. | 09-17-90 | G-S | 4,120 |
| ST90-4761 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-17-90 | G-S | 206,000 |
| ST90-4762 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 257,500 |
| ST90-4763 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 41,200 |
| ST90-4764 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 13,390 |
| ST90-4765 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-17-90 | G-S | 206,000 |
| ST90-4766 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-17-90 | G-S | 206,000 |
| ST90-4767 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 28,840 |
| ST90-4768 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 13,390 |
| ST90-4769 | United Gas Pipe Line Co. | Polo Energy Corp. | 09-17-90 | G-S | 1,030 |
| ST90-4770 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 51,500 |
| ST90-4771 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 30,900 |
| ST90-4772 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 12,360 |
| ST90-4773 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 25,750 |
| ST90-4774 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 13,390 |
| ST90-4775 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-17-90 | G-S | 20,600 |
| ST90-4776 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 41,200 |
| ST90-4777 | United Gas Pipe Line Co. | Shell Gas Trading Co. | 09-17-90 | G-S | 10,900 |
| ST90-4778 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-17-90 | G-S | 20,600 |
| ST90-4779 | United Gas Pipe Line Co. | FEC Marketing | 09-17-90 | G-S | 15,450 |
| ST90-4780 | Williams Natural Gas Co. | Reliance Gas Marketing Co. | 09-17-90 | G-S | 50,000 |
| ST90-4781 | Williams Natural Gas Co. | Reliance Gas Marketing Co. | 09-17-90 | G-S | 50,000 |
| ST90-4782 | Williams Natural Gas Co. | Mega Natural Gas CO | 09-17-90 | G-S | 55,000 |
| ST90-4783 | Williams Natural Gas Co. | Frito-Lay, Inc. | 09-17-90 | G-S | 2,000 |
| ST90-4784 | Williams Natural Gas Co. | Centran Corp. | 09-17-90 | G-S | 220 |
| ST90-4785 | High Island Offshore System | Conoco, Inc. | 09-17-90 | K-S | 205,000 |
| ST90-4786 | High Island Offshore System | Corpus Christi Oil & Gas Co. | 09-17-90 | K-S | 35,000 |
| ST90-4787 | High Island Offshore System | Eastern Shore Natural Gas Co. | 09-17-90 | K | 25,000 |
| ST90-4788 | High Island Offshore System | Anadarko Trading Co. | 09-17-90 | K-S | 120,000 |
| ST90-4789 | High Island Offshore System | Natural Gas Pipeline Co. of America | 09-17-90 | K | 500,000 |
| ST90-4790 | High Island Offshore System | Fina Oil and Chemical Co. | 09-17-90 | K-S | 34,530 |
| ST90-4791 | High Island Offshore System | Equitable Resources Marketing Co. | 09-17-90 | K-S | 885,000 |
| ST90-4792 | High Island Offshore System | Enron Gas Marketing | 09-17-90 | K-S | 1,530,000 |
| ST90-4793 | High Island Offshore System | Oxy, U.S.A., Inc. | 09-17-90 | K-S | 30,000 |
| ST90-4794 | High Island Offshore System | Reliance Gas Marketing Co. | 09-17-90 | K-S | 80,000 |
| ST90-4795 | High Island Offshore System | Tex/Con Marketing Co. | 09-17-90 | K-S | 185,000 |
| ST90-4796 | High Island Offshore System | Total Minatome Corp. | 09-17-90 | K-S | 54,900 |
| ST90-4797 | U T Offshore System | Power Authority of the State of NY | 09-17-90 | K-S | 110,000 |
| ST90-4798 | U T Offshore System | PSI, Inc. | 09-17-90 | K-S | 100,000 |
| ST90-4799 | U T Offshore System | PSI, Inc. | 09-17-90 | K-S | 100,000 |
| ST90-4800 | U T Offshore System | Bishop Pipeline Corp. | 09-17-90 | K-S | 200,000 |
| ST90-4801 | U T Offshore System | Northern Illinois Gas Co. | 09-17-90 | K-S | 210,000 |
| ST90-4802 | U T Offshore System | Public Service Electric and Gas Co. | 09-17-90 | K-S | 300,000 |
| ST90-4803 | U T Offshore System | Calcasieu Gas Gathering System | 09-17-90 | K-S | 100,000 |
| ST90-4804 | U T Offshore System | Mobil Natural Gas, Inc. | 09-17-90 | K-S | 200,000 |
| ST90-4805 | U T Offshore System | Associated Natural Gas Co., Inc. | 09-17-90 | K-S | 200,000 |
| ST90-4806 | U T Offshore System | Graham Energy Marketing Co. | 09-17-90 | K-S | 75,000 |
| ST90-4807 | U T Offshore System | Philadelphia Electric Co. | 09-17-90 | K-S | 200,000 |
| ST90-4808 | U T Offshore System | Total Minatome Corp. | 09-17-90 | K-S | 200,000 |

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|---|---|---|---|---|---|
| ST90-4809 | U T Offshore System | Brooklyn Interstate Natural Gas Corp. | 09-17-90 | K-S | 100,000 |
| ST90-4810 | U T Offshore System | Spindletop Gas Distribution System | 09-17-90 | K-S | 100,000 |
| ST90-4811 | U T Offshore System | Neches Pipeline System | 09-17-90 | K-S | 100,000 |
| ST90-4812 | Northern Natural Gas Co. | Entrade Corp. | 09-17-90 | K-S | 50,000 |
| ST90-4813 | Northern Natural Gas Co. | Mobil Natural Gas, Inc. | 09-17-90 | K-S | 20,000 |
| ST90-4814 | Northern Natural Gas Co. | Mobil Natural Gas, Inc. | 09-17-90 | K-S | 20,000 |
| ST90-4815 | U T Offshore System | EP Operating Co. | 09-17-90 | K-S | 10,000 |
| ST90-4816 | U T Offshore System | Coastal Gas Marketing Co. | 09-18-90 | K-S | 700,000 |
| ST90-4817 | U T Offshore System | Western Methane Co. | 09-18-90 | K-S | 400,000 |
| ST90-4818 | U T Offshore System | Amoco Gas Co. | 09-18-90 | K-S | 180,000 |
| ST90-4819 | U T Offshore System | Natural Gas Pipeline Co. of America | 09-18-90 | K | 500,000 |
| ST90-4820 | Valero Transmission, L.P. | El Paso Natural Gas Co. | 09-18-90 | C | 30,000 |
| ST90-4821 | Texas Eastern Transmission Corp. | Philadelphia Electric Co. | 09-18-90 | G-S | 53,104 |
| ST90-4822 | K N Energy, Inc. | Coastal Gas Marketing Co. | 09-18-90 | G-S | 30,000 |
| ST90-4823 | K N Energy, Inc. | Arkla Energy Marketing | 09-18-90 | G-S | 35,000 |
| ST90-4824 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-18-90 | G-S | 160,250 |
| ST90-4825 | United Gas Pipe Line Co. | Pennzoil Gas Marketing Co. | 09-18-90 | G-S | 30,900 |
| ST90-4826 | United Gas Pipe Line Co. | Nicor Exploration Co. | 09-18-90 | G-S | 41,120 |
| ST90-4827 | United Gas Pipe Line Co. | United Texas Transmission Co. | 09-18-90 | G-S | 82,400 |
| ST90-4828 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 30,900 |
| ST90-4829 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 309,000 |
| ST90-4830 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 29,255 |
| ST90-4831 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 10,300 |
| ST90-4832 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 1,133 |
| ST90-4833 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 567 |
| ST90-4834 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 41,200 |
| ST90-4835 | United Gas Pipe Line Co | Rally Pipeline Corp | 09-18-90 | G-S | 51,500 |
| ST90-4836 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 10,300 |
| ST90-4837 | United Gas Pipe Line Co | Rally Pipeline Corp | 09-18-90 | G-S | 51,500 |
| ST90-4838 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 20,600 |
| ST90-4839 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 5,150 |
| ST90-4840 | United Gas Pipe Line Co | Mid Louisiana Gas Co | 09-18-90 | G-S | 41,200 |
| ST90-4841 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 51,500 |
| ST90-4842 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 32,960 |
| ST90-4843 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 1,030 |
| ST90-4844 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 51,500 |
| ST90-4845 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 82,400 |
| ST90-4846 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 10,300 |
| ST90-4847 | United Gas Pipe Line Co | Victoria Gas Corp. | 09-18-90 | G-S | 77,250 |
| ST90-4848 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 30,900 |
| ST90-4849 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 25,750 |
| ST90-4850 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 206,000 |
| ST90-4851 | United Gas Pipe Line Co | Pennzoil Gas Marketing Co | 09-18-90 | G-S | 30,900 |
| ST90-4852 | Northern Natural Gas Co. | Michigan Gas Co | 09-18-90 | B | 2,000 |
| ST90-4853 | Superior Offshore Pipeline Co. | Access Energy Corp | 09-18-90 | G-S | 500 |
| ST90-4854 | Williams Natural Gas Co | Reliance Gas Marketing Co | 09-18-90 | G-S | 300 |
| ST90-4855 | Williams Natural Gas Co | City Utilities of Springfield | 09-18-90 | G-S | 1,539 |
| ST90-4856 | Williams Natural Gas Co | Reliance Gas Marketing Co. | 09-18-90 | G-S | 85 |
| ST90-4857 | Williams Natural Gas Co | Reliance Gas Marketing Co. | 09-18-90 | G-S | 119 |
| ST90-4858 | Williams Natural Gas Co | Reliance Gas Marketing Co. | 09-18-90 | G-S | 779 |
| ST90-4859 | Williams Natural Gas Co | Reliance Gas Marketing Co. | 09-18-90 | G-S | 2,000 |
| ST90-4860 | Williams Natural Gas Co | Brock Gas Systems and Equipment Co | 09-18-90 | G-S | 950 |
| ST90-4861 | Columbia Gulf Transmission Co. | Centran Corp | 09-18-90 | G-S | 100,000 |
| ST90-4862 | Columbia Gulf Transmission Co. | Exxon Corp | 09-18-90 | G-S | 75,000 |
| ST90-4863 | Columbia Gulf Transmission Co. | NGC Transportation, Inc. | 09-18-90 | G-S | 200,000 |
| ST90-4864 | Columbia Gulf Transmission Co. | Tenngasco Corp. | 09-18-90 | G-S | 55,000 |
| ST90-4865 | Panhandle Eastern Pipe Line Co. | Anadarko Trading Co | 09-18-90 | G-S | 50,000 |
| ST90-4866 | Panhandle Eastern Pipe Line Co. | Union Electric Co | 09-18-90 | B | 200 |
| ST90-4867 | Panhandle Eastern Pipe Line Co. | Amgas, Inc | 09-18-90 | G-S | 60 |
| ST90-4868 | Panhandle Eastern Pipe Line Co. | Amgas, Inc | 09-18-90 | G-S | 70 |
| ST90-4869 | United Gas Pipe Line Co | American Cyanamid Co. | 09-18-90 | G-S | 6,180 |
| ST90-4870 | United Gas Pipe Line Co | Air Products & Chemicals, Inc. | 09-18-90 | G-S | 36,050 |
| ST90-4871 | United Gas Pipe Line Co | Access Energy Corp | 09-18-90 | G-S | 25,750 |
| ST90-4872 | United Gas Pipe Line Co | Brandywine Industrial Gas, Inc. | 09-18-90 | G-S | 10,030 |
| ST90-4873 | United Gas Pipe Line Co | Crescent Gas Corp | 09-18-90 | G-S | 10,300 |
| ST90-4874 | United Gas Pipe Line Co | Consolidated Fuel Corp | 09-18-90 | G-S | 77,250 |
| ST90-4875 | United Gas Pipe Line Co | Brandywine Industrial Gas, Inc. | 09-18-90 | G-S | 1,957 |
| ST90-4876 | United Gas Pipe Line Co | Crescent Gas Corp | 09-18-90 | G-S | 30,900 |
| ST90-4877 | United Gas Pipe Line Co | Coastal States Gas Transmission Co | 09-18-90 | G-S | 25,750 |
| ST90-4878 | United Gas Pipe Line Co | Canadian Occidental California, Inc | 09-18-90 | G-S | 149,350 |
| ST90-4879 | United Gas Pipe Line Co | American Cyanamid Co. | 09-18-90 | G-S | 12,360 |
| ST90-4880 | United Gas Pipe Line Co | American Pipeline Co | 09-18-90 | G-S | 1,545 |
| ST90-4881 | United Gas Pipe Line Co | Arkla Energy Marketing | 09-18-90 | G-S | 5,150 |
| ST90-4882 | United Gas Pipe Line Co | Scott Paper Co. | 09-18-90 | G-S | 3,090 |
| ST90-4883 | United Gas Pipe Line Co | Arkla Energy Marketing | 09-18-90 | G-S | 103,000 |
| ST90-4884 | United Gas Pipe Line Co | Chuncheta Energy Corp | 09-18-90 | G-S | 721 |
| ST90-4885 | United Gas Pipe Line Co | Access Energy Corp | 09-18-90 | G-S | 25,750 |
| ST90-4886 | United Gas Pipe Line Co | Access Energy Corp | 09-18-90 | G-S | 41,200 |
| ST90-4887 | United Gas Pipe Line Co | Coastal States Gas Transmission Co | 09-18-90 | G-S | 1,030 |
| ST90-4888 | United Gas Pipe Line Co | Crescent Gas Corp | 09-18-90 | G-S | 15,450 |



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|---|---|---|---|---|---|
| ST90-4889 | United Gas Pipe Line Co | Brandywine Industrial Gas, Inc. | 09-19-90 | G-S | 10,300 |
| ST90-4890 | United Gas Pipe Line Co | Cornerstone Production Corp. | 09-19-90 | G-S | 1,288 |
| ST90-4891 | United Gas Pipe Line Co | Crescent Gas Corp. | 09-19-90 | G-S | 2,575 |
| ST90-4892 | United Gas Pipe Line Co | Brock Oil & Gas Corp. | 09-19-90 | G-S | 618 |
| ST90-4893 | United Gas Pipe Line Co | Associated Interstate Pipeline Co. | 09-19-90 | G-S | 10,300 |
| ST90-4894 | United Gas Pipe Line Co | Coastal Gas Marketing Co. | 09-19-90 | G-S | 1,854 |
| ST90-4895 | United Gas Pipe Line Co | Bay-Tech Operating Co. | 09-19-90 | G-S | 1,133 |
| ST90-4896 | United Gas Pipe Line Co | Shreveport Interstate Gas Trans., Inc. | 09-19-90 | G-S | 63,860 |
| ST90-4897 | United Gas Pipe Line Co | Associated Interstate Pipeline Co. | 09-19-90 | G-S | 206,000 |
| ST90-4898 | United Gas Pipe Line Co | Artla Energy Marketing | 09-19-90 | G-S | 20,600 |
| ST90-4899 | United Gas Pipe Line Co | Shreveport Interstate Gas Trans., Inc. | 09-19-90 | G-S | 63,860 |
| ST90-4900 | United Gas Pipe Line Co | Shreveport Interstate Gas Trans., Inc. | 09-19-90 | G-S | 3,090 |
| ST90-4901 | United Gas Pipe Line Co | Shreveport Interstate Gas Trans., Inc. | 09-19-90 | G-S | 63,860 |
| ST90-4902 | United Gas Pipe Line Co | ANR Gathering Co. | 09-19-90 | G-S | 10,300 |
| ST90-4903 | Sea Robin Pipeline Co | Seagull Marketing Services, Inc. | 09-19-90 | G-S | 48,410 |
| ST90-4904 | Sea Robin Pipeline Co | PSI, Inc. | 09-19-90 | G-S | 103,000 |
| ST90-4905 | Sea Robin Pipeline Co | SNG Trading Co. | 09-19-90 | G-S | 12,360 |
| ST90-4906 | Sea Robin Pipeline Co | Santa Fe Minerals | 09-19-90 | G-S | 25,750 |
| ST90-4907 | Sea Robin Pipeline Co | PSI, Inc. | 09-19-90 | G-S | 103,000 |
| ST90-4908 | Sea Robin Pipeline Co | Marathon Oil Co. | 09-19-90 | G-S | 30,900 |
| ST90-4909 | Sea Robin Pipeline Co | Seagull Marketing Services, Inc. | 09-19-90 | G-S | 48,410 |
| ST90-4910 | Delhi Gas Pipeline Co | Panhandle Eastern Pipe Line Co. | 09-20-90 | C | 1,400 |
| ST90-4911 | Valero Transmission, L.P. | Texas Eastern Transmission Corp. | 09-20-90 | C | 3,000 |
| ST90-4912 | Trunkline Gas Co. | Llano, Inc. | 09-20-90 | B | 90,000 |
| ST90-4913 | Florida Gas Transmission Co. | NGC Transportation, Inc. | 09-20-90 | G-S | 2,152 |
| ST90-4914 | U T Offshore System | Phillips Energy, Inc. | 09-18-90 | K-S | 400,000 |
| ST90-4915 | Williams Natural Gas Co. | Golden Gas Energies, Inc. | 09-20-90 | G-S | 20,000 |
| ST90-4916 | Williams Natural Gas Co. | Coastal Gas Marketing Co. | 09-20-90 | G-S | 20,000 |
| ST90-4917 | Williams Natural Gas Co. | Vesta Energy Co. | 09-20-90 | G-S | 7,000 |
| ST90-4918 | Williams Natural Gas Co. | Continental Natural Gas, Inc. | 09-20-90 | G-S | 2,000 |
| ST90-4919 | Williams Natural Gas Co. | V.H.C. Gas System, L.P. | 09-20-90 | G-S | 100,000 |
| ST90-4920 | Louisiana Resources Co. | Florida Gas Transmission Co., et al. | 09-20-90 | C | 100,000 |
| ST90-4921 | Kentucky West Virginia Gas Co. | Southeastern Gas Co. | 09-20-90 | G-S | 1,000 |
| ST90-4922 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 09-20-90 | B | 890 |
| ST90-4923 | Columbia Gas Transmission Corp. | North Carolina Natural Gas Corp. | 09-20-90 | B | 50,000 |
| ST90-4924 | Williams Natural Gas Co. | Golden Gas Energies, Inc. | 09-21-90 | G-S | 1,125 |
| ST90-4925 | Williams Natural Gas Co. | Continental Natural Gas, Inc. | 09-21-90 | G-S | 890 |
| ST90-4926 | Williams Natural Gas Co. | Golden Gas Energies, Inc. | 09-21-90 | G-S | 400 |
| ST90-4927 | Williams Natural Gas Co. | Golden Gas Energies, Inc. | 09-21-90 | G-S | 400 |
| ST90-4928 | Williams Natural Gas Co. | Golden Gas Energies, Inc. | 09-21-90 | G-S | 638 |
| ST90-4929 | ANR Pipeline Co. | American Central Gas Companies | 09-21-90 | G-S | 5,000 |
| ST90-4930 | Red River Pipeline | K N Energy, Inc. | 09-24-90 | C | 30,000 |
| ST90-4931 | Columbia Gas Transmission Corp. | Direct Gas Supply Corp. | 09-21-90 | G-S | 25,000 |
| ST90-4932 | Columbia Gas Transmission Corp. | Catamount Natural Gas, Inc. | 09-21-90 | G-S | 30,000 |
| ST90-4933 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 09-21-90 | B | 100 |
| ST90-4934 | Columbia Gas Transmission Corp. | Columbia Gas of Ohio, Inc. | 09-21-90 | B | 2,981 |
| ST90-4935 | Columbia Gas Transmission Corp. | City of Charlottesville | 09-21-90 | B | 1,000 |
| ST90-4936 | Columbia Gas Transmission Corp. | Columbia Gas of Pennsylvania, Inc. | 09-21-90 | B | 80,000 |
| ST90-4937 | U T Offshore System | Louis Dreyfus Energy Corp. | 09-21-90 | K-S | 100,000 |
| ST90-4938 | U T Offshore System | Coast Energy Group, Inc. | 09-21-90 | K-S | 250,000 |
| ST90-4939 | Algonquin Gas Transmission Co. | Berkshire Gas Co. | 09-21-90 | B | 51,250 |
| ST90-4940 | Algonquin Gas Transmission Co. | Phillbro Distributors Corp. | 09-21-90 | G-S | 50,000 |
| ST90-4941 | Algonquin Gas Transmission Co. | Phillbro Distributors Corp. | 09-21-90 | G-S | 50,000 |
| ST90-4942 | Algonquin Gas Transmission Co. | Orange and Rockland Utilities, Inc. | 09-21-90 | B | 40,000 |
| ST90-4943 | Tennessee Gas Pipeline Co. | Channel Industries Gas Co. | 09-24-90 | B | 2,000 |
| ST90-4944 | Acadian Gas Pipeline System | Texas Eastern Gas Pipeline Co. | 09-24-90 | C | 10,000 |
| ST90-4945 | Acadian Gas Pipeline System | Natural Gas Pipeline Co. of America | 09-24-90 | C | 30,000 |
| ST90-4946 | Northern Natural Gas Co. | Seadrift Pipeline Co. | 09-24-90 | B | 30,000 |
| ST90-4947 | Northern Natural Gas Co. | Osage Municipal Utilities | 09-24-90 | B | 5,000 |
| ST90-4948 | Northern Natural Gas Co. | Duluth Water and Gas Co. | 09-24-90 | B | 10,000 |
| ST90-4949 | Northern Natural Gas Co. | City of Hibbing | 09-24-90 | B | 7,000 |
| ST90-4950 | Northern Natural Gas Co. | Austom Utility Dept. | 09-24-90 | B | 20,000 |
| ST90-4951 | Northern Natural Gas Co. | Western Gas Utilities, Inc. | 09-24-90 | B | 20,000 |
| ST90-4952 | Northern Natural Gas Co. | Llano, Inc. | 09-24-90 | B | 25,000 |
| ST90-4953 | Northern Natural Gas Co. | Shell Gas Trading Co. | 09-24-90 | G-S | 30,000 |
| ST90-4954 | Northern Natural Gas Co. | Burro Corp. (The) | 09-24-90 | G-S | 2,000 |
| ST90-4955 | Questar Pipeline Co. | Northwest Pipeline Corp. | 09-24-90 | G | 10,000 |
| ST90-4956 | ONG Transmission Co. | Northern Natural Gas Co. | 09-24-90 | C | 20,000 |
| ST90-4957 | U T Offshore System | Enron Gas Marketing, Inc. | 09-24-90 | K-S | 1,000,000 |
| ST90-4958 | U T Offshore System | Conoco, Inc. | 09-24-90 | K-S | 105,000 |
| ST90-4959 | Transcontinental Gas Pipe Line Corp. | Nassau District Energy Corp. | 09-24-90 | G-S | 22,000 |
| ST90-4960 | Questar Pipeline Co. | Barrett Energy Co. | 09-24-90 | G-S | 14,000 |
| ST90-4961 | Natural Gas Pipeline Co. of America | Coastal Gas Marketing Co. | 09-25-90 | G-S | 50,000 |
| ST90-4962 | Natural Gas Pipeline Co. of America | Total Minatome Corp. | 09-25-90 | G-S | 75,000 |
| ST90-4963 | Exxon Gas System, Inc. | El Paso Natural Gas Co. | 09-25-90 | C | 5,000 |
| ST90-4964 | Colorado Interstate Gas Co. | Rangeline Corp. | 09-25-90 | G-S | 10,000 |
| ST90-4965 | Colorado Interstate Gas Co. | Northern Gas Co. | 09-25-90 | B | 15,000 |
| ST90-4966 | Colorado Interstate Gas Co. | Interenergy Transmission Partners | 09-25-90 | G-S | 5,000 |
| ST90-4967 | Transwestern Pipeline Co. | Access Energy Corp. | 09-25-90 | G-S | 100,000 |
| ST90-4968 | Transwestern Pipeline Co. | Continental Natural Gas, Inc. | 09-25-90 | G-S | 50,000 |

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|---|---|---|---|---|---|
| ST90-4969 | Transwestern Pipeline Co. | Mesa Operating Limited Partnership | 09-25-90 | G-S | 10,000 |
| ST90-4970 | Northern Border Pipeline Co. | Centerra Natural Gas, Inc. | 09-25-90 | G-S | 30,000 |
| ST90-4971 | Northern Border Pipeline Co. | Koch Hydrocarbons Co. | 09-25-90 | G-S | 200,000 |
| ST90-4972 | Northern Border Pipeline Co. | Chevron U.S.A., Inc. | 09-25-90 | G-S | 100,000 |
| ST90-4973 | Northern Border Pipeline Co. | Mobil Natural Gas, Inc. | 09-25-90 | G-S | 200,000 |
| ST90-4974 | Northern Border Pipeline Co. | Western Gas Processors | 09-25-90 | G-S | 200,000 |
| ST90-4975 | Northern Border Pipeline Co. | Amoco Energy Trading Corp. | 09-25-90 | G-S | 400,000 |
| ST90-4976 | Northern Border Pipeline Co. | Amoco Energy Trading Corp. | 09-25-90 | G-S | 400,000 |
| ST90-4977 | Northern Border Pipeline Co. | Alanco Resources, Inc. | 09-25-90 | G-S | 75,000 |
| ST90-4978 | Northern Border Pipeline Co. | V.H.C. Gas System, L.P. | 09-25-90 | G-S | 200,000 |
| ST90-4979 | Northern Border Pipeline Co. | National Steel Corp. | 09-25-90 | G-S | 80,000 |
| ST90-4980 | Northern Border Pipeline Co. | Semco Energy Services, Inc. | 09-25-90 | G-S | 50,000 |
| ST90-4981 | Northern Border Pipeline Co. | Bethlehem Steel Corp. | 09-25-90 | G-S | 80,000 |
| ST90-4982 | Northern Border Pipeline Co. | Colony Natural Gas Corp. | 09-25-90 | G-S | 200,000 |
| ST90-4983 | Northern Border Pipeline Co. | Access Energy Corp. | 09-25-90 | G-S | 150,000 |
| ST90-4984 | Northern Border Pipeline Co. | Dolphin Energy, Inc. | 09-25-90 | G-S | 200,000 |
| ST90-4985 | Northern Border Pipeline Co. | American Central Gas Cos., Inc. | 09-25-90 | G-S | 100,000 |
| ST90-4986 | Northern Border Pipeline Co. | Victoria Gas Corp. | 09-25-90 | G-S | 100,000 |
| ST90-4987 | Columbia Gulf Transmission Co. | LL & E Gas Marketing, Inc. | 09-25-90 | G-S | 7,500 |
| ST90-4988 | Columbia Gulf Transmission Co. | Amalgamated Gas Pipeline Co. | 09-25-90 | G-S | 45,000 |
| ST90-4989 | Columbia Gulf Transmission Co. | Konetz, Inc. | 09-25-90 | G-S | 10,000 |
| ST90-4990 | Columbia Gulf Transmission Co. | Laser Marketing Co. | 09-25-90 | G-S | 15,000 |
| ST90-4991 | Columbia Gulf Transmission Co. | Laser Marketing Co. | 09-25-90 | G-S | 20,000 |
| ST90-4992 | Columbia Gulf Transmission Co. | Equitable Resources Marketing Co. | 09-25-90 | G-S | 20,000 |
| ST90-4993 | Columbia Gulf Transmission Co. | Mobil Natural Gas, Inc. | 09-25-90 | G-S | 10,000 |
| ST90-4994 | Columbia Gulf Transmission Co. | Louisiana State Gas Corp. | 09-25-90 | G-S | 25,000 |
| ST90-4995 | Columbia Gulf Transmission Co. | Endevco Oil & Gas Co. | 09-25-90 | G-S | 20,000 |
| ST90-4996 | Columbia Gulf Transmission Co. | American Central Gas Co. | 09-25-90 | G-S | 40,000 |
| ST90-4997 | Columbia Gulf Transmission Co. | Ledo, Inc. | 09-25-90 | G-S | 50,000 |
| ST90-4998 | Columbia Gulf Transmission Co. | Eastex Gas Transmission Co. | 09-25-90 | G-S | 50,000 |
| ST90-4999 | Columbia Gulf Transmission Co. | Equitable Resources Marketing Co. | 09-25-90 | G-S | 100,000 |
| ST90-5001 | Columbia Gulf Transmission Co. | Eastex Gas Transmission Corp. | 09-25-90 | G-S | 30,000 |
| ST90-5002 | Columbia Gulf Transmission Co. | Entrade Corp. | 09-25-90 | G-S | 50,000 |
| ST90-5003 | Columbia Gulf Transmission Co. | CNG Trading Co. | 09-25-90 | G-S | 10,000 |
| ST90-5005 | Columbia Gulf Transmission Co. | Polaris Pipeline Corp. | 09-25-90 | G-S | 50,000 |
| ST90-5006 | Columbia Gulf Transmission Co. | Shell Gas Trading Co. | 09-25-90 | G-S | 30,000 |
| ST90-5007 | Columbia Gulf Transmission Co. | Transco Energy Marketing, Inc. | 09-25-90 | G-S | 75,000 |
| ST90-5008 | Columbia Gulf Transmission Co. | Transco Energy Marketing, Inc. | 09-25-90 | G-S | 150,000 |
| ST90-5009 | Columbia Gulf Transmission Co. | Enron Gas Marketing, Inc. | 09-25-90 | G-S | 23,000 |
| ST90-5010 | Columbia Gulf Transmission Co. | Enron Gas Marketing, Inc. | 09-25-90 | G-S | 20,000 |
| ST90-5011 | Columbia Gulf Transmission Co. | PNG Energy Co. | 09-25-90 | G-S | 30,000 |
| ST90-5012 | Columbia Gulf Transmission Co. | Shell Offshore, Inc. | 09-25-90 | G-S | 80,000 |
| ST90-5013 | Columbia Gulf Transmission Co. | Excel Gas Marketing, Inc. | 09-25-90 | G-S | 25,000 |
| ST90-5014 | Columbia Gulf Transmission Co. | Krupp & Associates | 09-25-90 | G-S | 40,000 |
| ST90-5015 | Columbia Gulf Transmission Co. | Stellar Gas Co. | 09-25-90 | G-S | 50,000 |
| ST90-5017 | Columbia Gulf Transmission Co. | Gulf Ohio Corp. | 09-25-90 | G-S | 14,000 |
| ST90-5019 | Columbia Gulf Transmission Co. | Adobe Gas Co. | 09-25-90 | G-S | 100,000 |
| ST90-5019 | Columbia Gulf Transmission Co. | Enron Gas Marketing, Inc. | 09-25-90 | G-S | 50,000 |
| ST90-5020 | Columbia Gulf Transmission Co. | Texican Natural Gas Co. | 09-25-90 | G-S | 1,000 |
| ST90-5021 | Columbia Gulf Transmission Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 5,000 |
| ST90-5022 | Columbia Gulf Transmission Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 5,000 |
| ST90-5023 | Columbia Gulf Transmission Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 5,000 |
| ST90-5024 | Columbia Gulf Transmission Co. | North Atlantic Utilities, Inc. | 09-25-90 | G-S | 15,000 |
| ST90-5025 | Columbia Gulf Transmission Co. | Public Service Electric & Gas Co. | 09-25-90 | G-S | 50,000 |
| ST90-5026 | Columbia Gulf Transmission Co. | Crescent Gas Corp. | 09-25-90 | G-S | 25,000 |
| ST90-5027 | Columbia Gulf Transmission Co. | Southland Royalty Co. | 09-25-90 | G-S | 35,000 |
| ST90-5028 | Sea Robin Pipeline Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 38,110 |
| ST90-5029 | Sea Robin Pipeline Co. | Southland Royalty Co. | 09-25-90 | G-S | 36,050 |
| ST90-5030 | Sea Robin Pipeline Co. | Midcon Marketing Corp. | 09-25-90 | G-S | 206,000 |
| ST90-5031 | Sea Robin Pipeline Co. | Sonat Marketing Co. | 09-25-90 | G-S | 54,590 |
| ST90-5032 | Sea Robin Pipeline Co. | Stellar Gas Co. | 09-25-90 | G-S | 51,500 |
| ST90-5033 | Sea Robin Pipeline Co. | Ouivira Gas Co. | 09-25-90 | G-S | 5,150 |
| ST90-5034 | Sea Robin Pipeline Co. | Midcon Ventures, Inc. | 09-25-90 | G-S | 206,000 |
| ST90-5035 | Sea Robin Pipeline Co. | Transco Energy Marketing Co. | 09-25-90 | G-S | 103,000 |
| ST90-5036 | Sea Robin Pipeline Co. | NGC Intrastate Pipeline Co. | 09-25-90 | G-S | 103,000 |
| ST90-5037 | Sea Robin Pipeline Co. | Texican Natural Gas Co. | 09-25-90 | G-S | 25,750 |
| ST90-5038 | Sea Robin Pipeline Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 38,110 |
| ST90-5039 | United Gas Pipe Line Co. | Prior Intrastate Corp. | 09-25-90 | G-S | 515,000 |
| ST90-5040 | United Gas Pipe Line Co. | Polaris Pipeline Co. | 09-25-90 | G-S | 25,750 |
| ST90-5041 | United Gas Pipe Line Co. | Polaris Pipeline Co. | 09-25-90 | G-S | 51,500 |
| ST90-5042 | United Gas Pipe Line Co. | Polaris Pipeline Co. | 09-25-90 | G-S | 25,750 |
| ST90-5043 | United Gas Pipe Line Co. | Transco Energy Marketing Co. | 09-25-90 | G-S | 103,000 |
| ST90-5044 | United Gas Pipe Line Co. | Westvaco Corp. | 09-25-90 | G-S | 4,120 |
| ST90-5045 | United Gas Pipe Line Co. | Natgas U.S., Inc. | 09-25-90 | G-S | 422,300 |
| ST90-5046 | United Gas Pipe Line Co. | Westvaco Corp. | 09-25-90 | G-S | 4,120 |
| ST90-5047 | United Gas Pipe Line Co. | TXG Gas Marketing Co. | 09-25-90 | G-S | 20,600 |
| ST90-5048 | United Gas Pipe Line Co. | TXG Gas Marketing Co. | 09-25-90 | G-S | 248,479 |
| ST90-5049 | United Gas Pipe Line Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 22,660 |
| ST90-5050 | United Gas Pipe Line Co. | Natgas U.S., Inc. | 09-25-90 | G-S | 422,300 |
| ST90-5051 | United Gas Pipe Line Co. | TXG Gas Marketing Co. | 09-25-90 | G-S | 41,200 |



| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-5052 | United Gas Pipe Line Co. | Riverway Gas Pipeline Co. | 09-25-90 | G-S | 206,000 |
| ST90-5053 | United Gas Pipe Line Co. | Westvaco Corp. | 09-25-90 | G-S | 4,120 |
| ST90-5054 | United Gas Pipe Line Co. | Texas School Land Board | 09-25-90 | G-S | 1,030 |
| ST90-5055 | United Gas Pipe Line Co. | Transam Energy Inc. | 09-25-90 | G-S | 103,000 |
| ST90-5056 | United Gas Pipe Line Co. | Public Service Electric and Gas Co. | 09-25-90 | G-S | 61,800 |
| ST90-5057 | United Gas Pipe Line Co. | TXO Gas Marketing Corp. | 09-25-90 | G-S | 272,960 |
| ST90-5058 | United Gas Pipe Line Co. | Riverway Gas Pipeline Co. | 09-25-90 | G-S | 123,600 |
| ST90-5059 | United Gas Pipe Line Co. | OXY U.S.A., Inc. | 09-25-90 | G-S | 22,660 |
| ST90-5060 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 4,120 |
| ST90-5061 | United Gas Pipe Line Co. | Delhi Gas Pipeline Corp. | 09-25-90 | G-S | 14,420 |
| ST90-5062 | United Gas Pipe Line Co. | Prior Intrastate Corp. | 09-25-90 | G-S | 14,420 |
| ST90-5063 | United Gas Pipe Line Co. | Dow Intrastate Gas Co. | 09-25-90 | G-S | 20,600 |
| ST90-5064 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 6,180 |
| ST90-5065 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 6,180 |
| ST90-5066 | United Gas Pipe Line Co. | Dow Intrastate Gas Co. | 09-25-90 | G-S | 56,650 |
| ST90-5067 | United Gas Pipe Line Co. | Enmark Gas Corp. | 09-25-90 | G-S | 1,030 |
| ST90-5068 | United Gas Pipe Line Co. | Enmark Gas Corp. | 09-25-90 | G-S | 3,100 |
| ST90-5069 | United Gas Pipe Line Co. | Excel Gas Marketing, Inc. | 09-25-90 | G-S | 121,025 |
| ST90-5070 | United Gas Pipe Line Co. | Concorde Gas Marketing, Inc. | 09-25-90 | G-S | 41,071 |
| ST90-5071 | United Gas Pipe Line Co. | FRM, Inc. | 09-25-90 | G-S | 2,060 |
| ST90-5072 | United Gas Pipe Line Co. | Delhi Gas Pipeline Corp. | 09-25-90 | G-S | 103,000 |
| ST90-5073 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 51,500 |
| ST90-5074 | United Gas Pipe Line Co. | Dow Intrastate Gas Co. | 09-25-90 | G-S | 56,650 |
| ST90-5075 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 51,500 |
| ST90-5076 | United Gas Pipe Line Co. | Houston Pipe Line Co. | 09-25-90 | G-S | 5,150 |
| ST90-5077 | United Gas Pipe Line Co. | Enmark Gas Corp. | 09-25-90 | G-S | 4,120 |
| ST90-5078 | United Gas Pipe Line Co. | Enmark Gas Corp. | 09-25-90 | G-S | 6,592 |
| ST90-5079 | United Gas Pipe Line Co. | Prior Intrastate Corp. | 09-25-90 | G-S | 206,129 |
| ST90-5080 | United Gas Pipe Line Co. | Natgas U.S., Inc. | 09-25-90 | G-S | 422,300 |
| ST90-5081 | United Gas Pipe Line Co. | Texas Gulf South Pipeline Co. | 09-25-90 | G-S | 10,300 |
| ST90-5082 | United Gas Pipe Line Co. | Enmark Gas Corp. | 09-25-90 | G-S | 27,078 |
| ST90-5083 | United Gas Pipe Line Co. | Amerada Hess Corp. | 09-25-90 | G-S | 10,300 |
| ST90-5084 | United Gas Pipe Line Co. | Caddo Natural Gas Co. | 09-25-90 | G-S | 17,510 |
| ST90-5085 | United Gas Pipe Line Co. | Huggs Gas Marketing | 09-25-90 | G-S | 6,180 |
| ST90-5086 | United Gas Pipe Line Co. | Concorde Gas Marketing, Inc. | 09-25-90 | G-S | 5,150 |
| ST90-5087 | United Gas Pipe Line Co. | Delhi Gas Pipeline Corp. | 09-25-90 | G-S | 103,000 |
| ST90-5088 | United Gas Pipe Line Co. | Houston Pipe Line Co. | 09-25-90 | G-S | 5,150 |
| ST90-5089 | United Gas Pipe Line Co. | Excel Gas Marketing, Inc. | 09-25-90 | G-S | 100,940 |
| ST90-5090 | United Gas Pipe Line Co. | First Chemical Corp., MS | 09-25-90 | G-S | 5,150 |
| ST90-5091 | Columbia Gas Transmission Corp. | Northeast Ohio Natural Gas Corp. | 09-25-90 | B | 4,300 |
| ST90-5092 | Delhi Gas Pipeline Corp. | Southern Natural Gas Co. | 09-26-90 | C | 500 |
| ST90-5093 | Delhi Gas Pipeline Corp. | Transwestern Pipeline Co. | 09-26-90 | C | 15,000 |
| ST90-5094 | Natural Gas Pipeline Co. of America | Odeco Oil & Gas Co. | 09-26-90 | G-S | 75,000 |
| ST90-5095 | Natural Gas Pipeline Co. of America | Anadarko Trading Co. | 09-26-90 | G-S | 100,000 |
| ST90-5096 | Natural Gas Pipeline Co. of America | Clinton Gas Transmission Inc. | 09-26-90 | G-S | 50,000 |
| ST90-5097 | Natural Gas Pipeline Co. of America | Amerada Hess Corp. | 09-26-90 | G-S | 100,000 |
| ST90-5098 | Natural Gas Pipeline Co. of America | Torch Energy Marketing, Inc. | 09-26-90 | G-S | 10,000 |
| ST90-5099 | Natural Gas Pipeline Co. of America | Enron Gas Marketing, Inc. | 09-26-90 | G-S | 200,000 |
| ST90-5100 | Northern Natural Gas Co. | PSI, Inc. | 09-26-90 | G-S | 250,000 |
| ST90-5101 | U T Offshore System | Kaztex Energy Management, Inc. | 09-26-90 | K-S | 25,000 |
| ST90-5102 | U T Offshore System | Oxy U.S.A., Inc. | 09-26-90 | K-S | 50,000 |
| ST90-5103 | U T Offshore System | BHP Gas Marketing Co. | 09-26-90 | K-S | 100,000 |
| ST90-5104 | U T Offshore System | V.H.C. Gas System, L.P. | 09-26-90 | K-S | 400,000 |
| ST90-5105 | U T Offshore System | Anadarko Trading Co. | 09-26-90 | K-S | 40,000 |
| ST90-5106 | U T Offshore System | Amoco Production Co. | 09-26-90 | K-S | 165,000 |
| ST90-5107 | Algonquin Gas Transmission Co. | Catamount Natural Gas, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5108 | Algonquin Gas Transmission Co. | Catamount Natural Gas, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5109 | Algonquin Gas Transmission Co. | Catamount Natural Gas, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5110 | Enogex Inc. | Phillips Gas Pipeline Co. | 09-26-90 | C | 50,000 |
| ST90-5111 | Enogex Inc. | Natural Gas Pipeline Co. of America | 09-26-90 | C | 200,000 |
| ST90-5112 | Enogex Inc. | Williams Natural Gas Co. | 09-26-90 | C | 10,000 |
| ST90-5113 | Transcontinental Gas Pipe Line Corp. | Baltimore Gas & Elect. Co., et al. | 09-26-90 | B | 15,000 |
| ST90-5114 | Transcontinental Gas Pipe Line Corp. | City of Shelby | 09-26-90 | B | 81,200 |
| ST90-5115 | Sabine Pipe Line Co. | PSI Gas Marketing, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5116 | Sabine Pipe Line Co. | Seagull Marketing Services, Inc. | 09-26-90 | G-S | 40,000 |
| ST90-3117 | Sabine Pipe Line Co. | LL & E Gas Marketing, Inc. | 09-26-90 | G-S | 25,000 |
| ST90-5118 | Sabine Pipe Line Co. | Williams Gas Marketing Co. | 09-26-90 | G-S | 100,000 |
| ST90-5119 | Sabine Pipe Line Co. | Mobil Natural Gas, Inc. | 09-26-90 | G-S | 200,000 |
| ST90-5120 | Sabine Pipe Line Co. | Phibro Energy, Inc. | 09-26-90 | G-S | 500,000 |
| ST90-5121 | Sabine Pipe Line Co. | Chevron U.S.A., Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5122 | Sabine Pipe Line Co. | Tex/Con Oil & Gas Co. | 09-26-90 | G-S | 100,000 |
| ST90-5123 | Sabine Pipe Line Co. | Eastex Hydrocarbons, Inc. | 09-26-90 | G-S | 50,000 |
| ST90-5124 | Sabine Pipe Line Co. | Citizens Gas Supply Corp. | 09-26-90 | G-S | 50,000 |
| ST90-5125 | Sabine Pipe Line Co. | Excel Gas Marketing, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5126 | Sabine Pipe Line Co. | Ledco, Inc. | 09-26-90 | G-S | 25,000 |
| ST90-5127 | Sabine Pipe Line Co. | Tejas Hydorcarbons Co. | 09-26-90 | G-S | 50,000 |
| ST90-5128 | Sabine Pipe Line Co. | Cornerstone Production Corp. | 09-26-90 | G-S | 100,000 |
| ST90-5129 | Sabine Pipe Line Co. | Shell Gas Trading Co. | 09-26-90 | G-S | 50,000 |
| ST90-5130 | Sabine Pipe Line Co. | Pontchartrain Natural Gas System | 09-26-90 | G-S | 220,000 |
| ST90-5131 | Sabine Pipe Line Co. | Amoco Energy Trading Corp. | 09-26-90 | G-S | 100,000 |

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| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-5132 | Sabine Pipe Line Co. | Brooklyn Interstate Natural Gas Corp. | 09-25-90 | G-S | 100,000 |
| ST90-5133 | Sabine Pipe Line Co. | Calcasieu Gas gathering System | 09-26-90 | G-S | 220,000 |
| ST90-5134 | Sabine Pipe Line Co. | Tejas Power Corp. | 09-26-90 | G-S | 50,000 |
| ST90-5135 | Sabine Pipe Line Co. | Hadson Gas Systems, Inc. | 09-26-90 | G-S | 35,000 |
| ST90-5136 | Sabine Pipe Line Co. | Coastal Gas Marketing Co. | 09-26-90 | G-S | 100,000 |
| ST90-5137 | Sabine Pipe Line Co. | Arco Oil & Gas Co. | 09-26-90 | G-S | 100,000 |
| ST90-5138 | Sabine Pipe Line Co. | Enron Gas Marketing, Inc. | 09-26-90 | G-S | 100,000 |
| ST90-5139 | Sabine Pipe Line Co. | Woodward Marketing, Inc. | 09-26-90 | G-S | 15,000 |
| ST90-5140 | Sabine Pipe Line Co. | Access Energy Corp. | 09-26-90 | G-S | 100,000 |
| ST90-5141 | Sabine Pipe Line Co. | Midcon Marketing Corp. | 09-26-90 | G-S | 50,000 |
| ST90-5142 | Sabine Pipe Line Co. | Entrade Corp. | 09-26-90 | G-S | 150,000 |
| ST90-5143 | Sabine Pipe Line Co. | Cnyx Gas Marketing Limited Partners | 09-26-90 | G-S | 20,000 |
| ST90-5144 | Sabine Pipe Line Co. | Tejas Power Corp. | 09-26-90 | G-S | 20,000 |
| ST90-5145 | Sabine Pipe Line Co. | Krupp and Assoc. | 09-26-90 | G-S | 36,000 |
| ST90-5146 | Sabine Pipe Line Co. | Transco Energy Marketing Co. | 09-26-90 | G-S | 300,000 |
| ST90-5147 | Sabine Pipe Line Co. | NGC Transportation, Inc. | 09-26-90 | G-S | 250,000 |
| ST90-5148 | Sabine Pipe Line Co. | Eagle Natural Gas Co. | 09-26-90 | G-S | 40,000 |
| ST90-5149 | Sabine Pipe Line Co. | Superior Natural Gas Corp. | 09-26-90 | G-S | 50,000 |
| ST90-5150 | Sabine Pipe Line Co. | Trans Marketing Houston, Inc. | 09-26-90 | G-S | 250,000 |
| ST90-5151 | Sabine Pipe Line Co. | Louis Dreyfuss Energy Corp. | 09-26-90 | G-S | 100,000 |
| ST90-5152 | Sabine Pipe Line Co. | Louisiana Gas Marketing Co. | 09-26-90 | G-S | 100,000 |
| ST90-5153 | Sabine Pipe Line Co. | Bishop Pipeline Corp. | 09-26-90 | G-S | 75,000 |
| ST90-5154 | Williams Natural Gas Co. | Natural Gas Clearinghouse, Inc. | 09-26-90 | G-S | 16,800 |
| ST90-5155 | Williams Natural Gas Co. | ARCO Natural Gas Marketing, Inc. | 09-26-90 | G-S | 207,000 |
| ST90-5156 | Williams Natural Gas Co. | Seagull Marketing Services, Inc. | 09-26-90 | G-S | 66,888 |
| ST90-5157 | Williams Natural Gas Co. | Quivira Gas Co. | 09-26-90 | G-S | 26,000 |
| ST90-5158 | Williams Natural Gas Co. | Natural Gas Clearinghouse, Inc. | 09-26-90 | G-S | 34,530 |
| ST90-5159 | Columbia Gas Transmission Corp. | Clinton Gas Marketing | 09-26-90 | G-S | 5,500 |
| ST90-5160 | Columbia Gas Transmission Corp. | AGF Direct Gas Sales, Inc. | 09-26-90 | G-S | 8,000 |
| ST90-5162 | Gas Transport, Inc. | A. B. Chance Co. | 09-26-90 | G-S | 1,500 |
| ST90-5163 | Gas Transport, Inc. | Transatlantic Energy Corp. | 09-26-90 | G-S | 2,000 |
| ST90-5164 | Valero Interstate Transmission Co. | Val Gas, L.P. | 09-27-90 | G-S | 70,000 |
| ST90-5165 | Valero Interstate Transmission Co. | Shell Western E & P, Inc. | 09-27-90 | G-S | 20,000 |
| ST90-5166 | Questar Pipeline Co. | Grand Valley Gas Co. | 09-27-90 | G-S | 11,500 |
| ST90-5167 | Questar Pipeline Co. | Universal Resources Corp. | 09-27-90 | G-S | 279,600 |
| ST90-5168 | Questar Pipeline Co. | Union Pacific Fuels, Inc. | 09-27-90 | G-S | 90,000 |
| ST90-5169 | Questar Pipeline Co. | Celsius Energy Co. | 09-27-90 | G-S | 6,000 |
| ST90-5170 | Questar Pipeline Co. | Chevron U.S.A., Inc. | 09-27-90 | G-S | 20,000 |
| ST90-5171 | Questar Pipeline Co. | Williams Gas Marketing Co. | 09-27-90 | G-S | 54,000 |
| ST90-5172 | Questar Pipeline Co. | Conoco, Inc. | 09-27-90 | G-S | 25,000 |
| ST90-5173 | Questar Pipeline Co. | Phillips Natural Gas Co. | 09-27-90 | G-S | 25,000 |
| ST90-5174 | Questar Pipeline Co. | Oregon Natural Gas Development Corp. | 09-27-90 | G-S | 10,000 |
| ST90-5175 | Questar Pipeline Co. | Amoco Production Co. | 09-27-90 | G-S | 8,200 |
| ST90-5176 | Questar Pipeline Co. | Grand Valley Gas Co. | 09-27-90 | G-S | 75,000 |
| ST90-5177 | Sabine Pipeline Co. | Panhandle Trading Co. | 09-27-90 | G-S | 75,000 |
| ST90-5178 | Sabine Pipeline Co. | Intercom Gas, Inc. | 09-27-90 | G-S | 5,000 |
| ST90-5179 | Sabine Pipeline Co. | Pennzoil Gas Marketing Co. | 09-27-90 | G-S | 75,000 |
| ST90-5180 | Sabine Pipeline Co. | Energy Marketing Exchange, Inc. | 09-27-90 | G-S | 20,000 |
| ST90-5181 | Sabine Pipeline Co. | Centran Corp. | 09-27-90 | G-S | 10,000 |
| ST90-5182 | Sabine Pipeline Co. | Anadarko Trading Co. | 09-27-90 | G-S | 80,000 |
| ST90-5183 | Sabine Pipeline Co. | Texaco Gas Marketing Inc. | 09-27-90 | G-S | 100,000 |
| ST90-5184 | Sabine Pipeline Co. | AEC Gas Co. | 09-27-90 | G-S | 10,500 |
| ST90-5185 | Sabine Pipeline Co. | Mobil Natural Gas Inc. | 09-27-90 | G-S | 100,000 |
| ST90-5186 | Sabine Pipeline Co. | TXG Gas Marketing Co. | 09-27-90 | G-S | 50,000 |
| ST90-5187 | Sabine Pipeline Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 3,130 |
| ST90-5188 | Sabine Pipeline Co. | Exxon Corp. | 09-27-90 | G-S | 50,000 |
| ST90-5189 | Sabine Pipeline Co. | Mobil Natural Gas, Inc. | 09-27-90 | G-S | 100,000 |
| ST90-5190 | Sabine Pipeline Co. | Reliance Gas Marketing Co. | 09-27-90 | G-S | 50,000 |
| ST90-5191 | Sabine Pipeline Co. | Coast Energy Group, Inc. | 09-27-90 | G-S | 45,000 |
| ST90-5192 | Sabine Pipeline Co. | Continental Natural Gas, Inc. | 09-27-90 | G-S | 50,000 |
| ST90-5193 | Sabine Pipeline Co. | Diamond Shamrock Offshore Partners, L.P. | 09-27-90 | G-S | 150,000 |
| ST90-5194 | Sabine Pipeline Co. | Delhi Gas Pipeline Corp. | 09-27-90 | G-S | 50,000 |
| ST90-5195 | Sabine Pipeline Co. | Enron Gas Marketing, Inc. | 09-27-90 | G-S | 3,130 |
| ST90-5196 | Sabine Pipeline Co. | Enron Gas Marketing, Inc. | 09-27-90 | G-S | 5,216 |
| ST90-5197 | Sabine Pipeline Co. | Enron Gas Marketing, Inc. | 09-27-90 | G-S | 7,302 |
| ST90-5198 | Sabine Pipeline Co. | Morgan Stanley Capital Group, Inc. | 09-27-90 | G-S | 250,000 |
| ST90-5199 | Sabine Pipeline Co. | Access Energy Corp. | 09-27-90 | G-S | 45,000 |
| ST90-5200 | Sabine Pipeline Co. | Citrus Industrial Sales Co., Inc. | 09-27-90 | G-S | 5,000 |
| ST90-5201 | OWG Transmission Co. | Panhandle Eastern Pipe Line Co. | 09-27-90 | C | 5,000 |
| ST90-5202 | Natural Gas Pipeline Co. of America | AMOCO Gas Co. | 09-27-90 | B | 380,000 |
| ST90-5203 | Natural Gas Pipeline Co. of America | Midcon Marketing Corp. | 09-27-90 | G-S | 100,000 |
| ST90-5204 | Natural Gas Pipeline Co. of America | Mitchell Marketing Co. | 09-27-90 | G-S | 50,000 |
| ST90-5205 | Natural Gas Pipeline Co. of America | Delhi Gas Pipeline Corp. | 09-27-90 | B | 200,000 |
| ST90-5206 | Sea Robin Pipeline Co. | Industrial Energy Services Co. | 09-27-90 | G-S | 2,000 |
| ST90-5207 | Sea Robin Pipeline Co. | Entrade Corp. | 09-27-90 | G-S | 7,210 |
| ST90-5208 | Sea Robin Pipeline Co. | Exxon Corp. | 09-27-90 | G-S | 22,660 |
| ST90-5209 | Sea Robin Pipeline Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 53,000 |
| ST90-5210 | Sea Robin Pipeline Co. | Panhandle Trading Co. | 09-27-90 | G-S | 77,250 |
| ST90-5211 | Sea Robin Pipeline Co. | Union Texas Petroleum Corp. | 09-27-90 | G-S | 66,950 |
| ST90-5212 | Sea Robin Pipeline Co. | Pontchartrain Natural Gas System | 09-27-90 | G-S | 51,500 |



| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-5213 | Sea Robin Pipeline Co. | Citizens Gas Supply Corp. | 09-27-90 | G-S | 41,200 |
| ST90-5214 | Sea Robin Pipeline Co. | Calcasieu Gas Gathering System | 09-27-90 | G-S | 300,000 |
| ST90-5215 | Sea Robin Pipeline Co. | Heath Petra Resources, Inc. | 09-27-90 | G-S | 20,000 |
| ST90-5216 | Sea Robin Pipeline Co. | Corpus Christi Oil & Gas Co. | 09-27-90 | G-S | 20,600 |
| ST90-5217 | Sea Robin Pipeline Co. | Coastal Gas Marketing Co. | 09-27-90 | G-S | 200,000 |
| ST90-5218 | Sea Robin Pipeline Co. | Enmark Gas Corp. | 09-27-90 | G-S | 15,450 |
| ST90-5219 | Sea Robin Pipeline Co. | Industrial Energy Services Co. | 09-27-90 | G-S | 10,300 |
| ST90-5220 | Sea Robin Pipeline Co. | Crescent Gas Corp. | 09-27-90 | G-S | 10,300 |
| ST90-5221 | Sea Robin Pipeline Co. | LL & E Gas Marketing, Inc. | 09-27-90 | G-S | 20,000 |
| ST90-5222 | Sea Robin Pipeline Co. | Adobe Gas Marketing Co. | 09-27-90 | G-S | 25,750 |
| ST90-5223 | Sea Robin Pipeline Co. | Diamond Shamrock Offshore Partners, L.P. | 09-27-90 | G-S | 10,000 |
| ST90-5224 | Sea Robin Pipeline Co. | Enron Corp. | 09-27-90 | G-S | 51,510 |
| ST90-5225 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 41,200 |
| ST90-5226 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 2,060 |
| ST90-5227 | United Gas Pipe Line Co. | Armstrong World Industries, Inc. | 09-27-90 | G-S | 3,605 |
| ST90-5228 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 41,200 |
| ST90-5229 | United Gas Pipe Line Co. | Bay Minette Utilities Board | 09-27-90 | G-S | 345 |
| ST90-5230 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 25,750 |
| ST90-5231 | United Gas Pipe Line Co. | KM Texas Pipeline Corp. | 09-27-90 | G-S | 20,600 |
| ST90-5232 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 41,200 |
| ST90-5233 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 41,200 |
| ST90-5234 | United Gas Pipe Line Co. | Natural Gas Clearinghouse, Inc. | 09-27-90 | G-S | 30,900 |
| ST90-5235 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 5,150 |
| ST90-5236 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 51,500 |
| ST90-5237 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 97,850 |
| ST90-5238 | United Gas Pipe Line Co. | Valero Transmission Co. | 09-27-90 | G-S | 30,900 |
| ST90-5239 | United Gas Pipe Line Co. | Woodwork Marketing, Inc. | 09-27-90 | G-S | 15,450 |
| ST90-5240 | United Gas Pipe Line Co. | Apache Transmission Corp. | 09-27-90 | G-S | 30,900 |
| ST90-5241 | United Gas Pipe Line Co. | Tristar Energy, Inc. | 09-27-90 | G-S | 30,900 |
| ST90-5242 | United Gas Pipe Line Co. | V.H.C. Gas System, L.P. | 09-27-90 | G-S | 206,000 |
| ST90-5243 | United Gas Pipe Line Co. | Sigco Marketing, Inc. | 09-27-90 | G-S | 1,467 |
| ST90-5244 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 51,500 |
| ST90-5245 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 103,000 |
| ST90-5246 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 20,600 |
| ST90-5247 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 103,000 |
| ST90-5248 | United Gas Pipe Line Co. | Natural Gas Clearinghouse, Inc. | 09-27-90 | G-S | 71,379 |
| ST90-5249 | United Gas Pipe Line Co. | Natural Gas Clearinghouse, Inc. | 09-27-90 | G-S | 20,600 |
| ST90-5250 | United Gas Pipe Line Co. | Woodwork Marketing, Inc. | 09-27-90 | G-S | 15,450 |
| ST90-5251 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 103,000 |
| ST90-5252 | United Gas Pipe Line Co. | Natural Gas Clearinghouse, Inc. | 09-27-90 | G-S | 20,600 |
| ST90-5253 | United Gas Pipe Line Co. | Natgas U.S. Inc. | 09-27-90 | G-S | 422,300 |
| ST90-5254 | United Gas Pipe Line Co. | NGC Intrastate Pipeline Co. | 09-27-90 | G-S | 103,000 |
| ST90-5255 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 113,300 |
| ST90-5256 | United Gas Pipe Line Co. | Energy Marketing Exchange, Inc. | 09-27-90 | G-S | 77,250 |
| ST90-5257 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 15,450 |
| ST90-5258 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 5,150 |
| ST90-5259 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 10,300 |
| ST90-5260 | United Gas Pipe Line Co. | Dow Intrastate Gas Co. | 09-27-90 | G-S | 36,050 |
| ST90-5261 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 77,250 |
| ST90-5262 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 15,450 |
| ST90-5263 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 5,150 |
| ST90-5264 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 5,150 |
| ST90-5265 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 5,150 |
| ST90-5266 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 3,090 |
| ST90-5267 | United Gas Pipe Line Co. | KM Texas Pipeline Corp. | 09-27-90 | G-S | 20,600 |
| ST90-5268 | United Gas Pipe Line Co. | Hadson Gas Systems, Inc. | 09-27-90 | G-S | 51,500 |
| ST90-5269 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 20,600 |
| ST90-5270 | United Gas Pipe Line Co. | Apache Transmission Corp. | 09-27-90 | G-S | 10,300 |
| ST90-5271 | United Gas Pipe Line Co. | Southern Industrial Gas Corp. | 09-27-90 | G-S | 618 |
| ST90-5272 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 1,030 |
| ST90-5273 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 309,000 |
| ST90-5274 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 77,250 |
| ST90-5275 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 97,850 |
| ST90-5276 | United Gas Pipe Line Co. | Richardson Products Co. | 09-27-90 | G-S | 824 |
| ST90-5277 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-27-90 | G-S | 15,450 |
| ST90-5278 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 103,000 |
| ST90-5279 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 77,250 |
| ST90-5280 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 103,000 |
| ST90-5281 | United Gas Pipe Line Co. | Seagull Marketing Services, Inc. | 09-27-90 | G-S | 103,000 |
| ST90-5282 | ANR Pipeline Co. | Brooklyn Union Gas Co. | 09-27-90 | B | 40,000 |
| ST90-5283 | ANR Pipeline Co. | New York State Electric & Gas | 09-27-90 | B | 200,000 |
| ST90-5284 | ANR Pipeline Co. | Michigan Consolidated Gas Co. | 09-27-90 | B | 20,000 |
| ST90-5285 | ANR Pipeline Co. | East Ohio Gas Co. (The) | 09-27-90 | B | 100,000 |
| ST90-5286 | ANR Pipeline Co. | Fountaintown Gas Co. | 09-27-90 | B | 5,000 |
| ST90-5287 | ANR Pipeline Co. | Mountaineer Gas Co. | 09-27-90 | B | 5,000 |
| ST90-5288 | ANR Pipeline Co. | Michigan Gas Utilities Co. | 09-27-90 | B | 1,000 |
| ST90-5289 | ANR Pipeline Co. | Michigan Gas Utilities Co. | 09-27-90 | B | 33,333 |
| ST90-5290 | ANR Pipeline Co. | Frito-Lay, Inc. | 09-27-90 | G-S | 500 |
| ST90-5291 | Sabine Pipe Line Co. | Louisiana Resources Co. | 09-27-90 | B | 100,000 |
| ST90-5292 | U T Offshore System | UGI Corp. | 09-27-90 | K-S | 77,474 |

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| Docket No. [1] | Transporter/seller | Recipient | Date filed | Part 284 subpart | Est. max. daily quantity [2] |
|---|---|---|---|---|---|
| ST90-5293 | U T Offshore System | Elf Exploration, Inc. | 09-27-90 | K-S | 75,000 |
| ST90-5294 | U T Offshore System | Polaris Pipeline (The) | 09-27-90 | K-S | 46,100 |
| ST90-5295 | Mississippi River Transmission Corp. | O & R Energy, Inc. | 09-27-90 | G-S | 40,000 |
| ST90-5296 | Columbia Gas Transmission Corp. | Grandview Hospital | 09-27-90 | G-S | 400 |
| ST90-5297 | Texas Eastern Transmission Corp. | Nortech Energy Corp. | 09-27-90 | G-S | 50,000 |
| ST90-5298 | Panhandle Eastern Pipe Line Co. | Trunkline Gas Co. | 09-27-90 | B | 150,000 |
| ST90-5299 | Trunkline Gas Co. | Catamount Natural Gas, Inc. | 09-27-90 | G-S | 150,000 |
| ST90-5300 | Trunkline Gas Co. | Panhandle Trading Co. | 09-27-90 | G-S | 100,000 |
| ST90-5301 | Trunkline Gas Co. | Tennessee Corp | 09-27-90 | G-S | 100,000 |
| ST90-5302 | Trunkline Gas Co. | BP Gas, Inc. | 09-27-90 | G-S | 50,000 |
| ST90-5303 | Trunkline Gas Co. | Amoco Production Co. | 09-27-90 | G-S | 50,000 |
| ST90-5304 | Trunkline Gas Co. | Peoples Gas Light and Coke Co. | 09-27-90 | B | 150,000 |
| ST90-5305 | Texas Eastern Transmission Corp. | Herbert Oil & Gas Corp. | 09-27-90 | G-S | 60,000 |
| ST90-5306 | Texas Eastern Transmission Corp. | Marathon Oil Co. | 09-27-90 | G-S | 48,000 |
| ST90-5307 | Williams Natural Gas Co. | Pittsburgh Corning Corp. | 09-28-90 | G-S | 1,890 |
| ST90-5308 | Williams Natural Gas Co. | Natural Gas Clearinghouse, Inc. | 09-28-90 | G-S | 300,000 |
| ST90-5309 | Williams Natural Gas Co. | Williams Gas Marketing Co. | 09-28-90 | G-S | 5,812 |
| ST90-5310 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 41,200 |
| ST90-5311 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5312 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5313 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 5,150 |
| ST90-5314 | United Gas Pipe Line Co. | Amax Petroleum Corp. | 09-28-90 | G-S | 1,545 |
| ST90-5315 | United Gas Pipe Line Co. | Apache Transmission Corp. | 09-28-90 | G-S | 30,900 |
| ST90-5316 | United Gas Pipe Line Co. | Tristar Energy, Inc. | 09-28-90 | G-S | 36,050 |
| ST90-5317 | United Gas Pipe Line Co. | Tristar Energy, Inc. | 09-28-90 | G-S | 36,050 |
| ST90-5318 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5319 | United Gas Pipe Line Co. | NGC Transportation, Inc. | 09-28-90 | G-S | 139,050 |
| ST90-5320 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5321 | United Gas Pipe Line Co. | Bishop Pipeline Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5322 | United Gas Pipe Line Co. | Endevco Industrial Gas Sales Co. | 09-28-90 | G-S | 7,210 |
| ST90-5323 | United Gas Pipe Line Co. | Amax Petroleum Corp. | 09-28-90 | G-S | 1,545 |
| ST90-5324 | Sea Robin Pipeline Co. | Exxon Corp. | 09-28-90 | G-S | 51,510 |
| ST90-5325 | Sea Robin Pipeline Co. | Emmark Gas Corp. | 09-28-90 | G-S | 15,450 |
| ST90-5326 | Sea Robin Pipeline Co. | Texaco Gas Marketing, Inc. | 09-28-90 | G-S | 77,250 |
| ST90-5327 | Sea Robin Pipeline Co. | Texaco Gas Marketing, Inc. | 09-28-90 | G-S | 206,000 |
| ST90-5328 | Sea Robin Pipeline Co. | Ll. & E Gas Marketing, Inc. | 09-28-90 | G-S | 20,000 |
| ST90-5329 | Southern Natural Gas Co. | Midcon Marketing Corp. | 09-28-90 | G-S | 300,000 |
| ST90-5330 | Southern Natural Gas Co. | Ashton Energy Co. | 09-28-90 | G-S | 30,000 |
| ST90-5331 | Southern Natural Gas Co. | Superior Natural Gas Corp. | 09-28-90 | G-S | 50,000 |
| ST90-5332 | Southern Natural Gas Co. | Canton Municipal Utilities | 09-28-90 | B | 100,000 |
| ST90-5333 | Southern Natural Gas Co. | Midcon Marketing Corp. | 09-28-90 | G-S | 300,000 |
| ST90-5334 | U T Offshore System | Emmark Gas Corp. | 09-28-90 | K-S | 103,800 |
| ST90-5335 | Transok, Inc. | Black Marlin Pipeline Co. | 09-28-90 | C | 100,000 |
| ST90-5336 | Transok, Inc. | Panhandle Eastern Pipeline Co. | 09-28-90 | C | 100,000 |
| ST90-5337 | Transok, Inc. | Williams Natural Gas Co. | 09-28-90 | C | 100,000 |
| ST90-5338 | Transok, Inc. | Arkla Energy Resources | 09-28-90 | C | 100,000 |
| ST90-5339 | Transok, Inc. | North American Resources Co. | 09-28-90 | C | 20,000 |
| ST90-5340 | Transok, Inc. | Enron Industrial Natural Gas Co. | 09-28-90 | C | 70,000 |
| ST90-5341 | Transok, Inc. | Phillips Gas Pipeline Co. | 09-28-90 | C | 100,000 |
| ST90-5342 | Transok, Inc. | Northern Natural Gas Co. | 09-28-90 | C | 100,000 |
| ST90-5343 | Transok, Inc. | Natural Gas Pipeline Co. of America | 09-28-90 | C | 100,000 |
| ST90-5344 | Gulf Energy Pipeline Co. | Tennessee Gas Pipeline Co. | 09-28-90 | C | 15,000 |
| ST90-5345 | Transwestern Pipeline Co. | Hadson Gas Systems, Inc. | 09-28-90 | G-S | 100,000 |
| ST90-5346 | Trunkline Gas Co. | Amerada Hess Corp. | 09-28-90 | G-S | 75,000 |
| ST90-5347 | Natural Gas Pipeline Co. of America | Mobil Vandenlit-Beaumont Pipeline Co. | 09-28-90 | B | 100,000 |
| ST90-5348 | Natural Gas Pipeline Co. of America | Pacific Gas & Electric Co. | 09-28-90 | B | 50,000 |
| ST90-5349 | Slingray Pipeline Co. | V.H.C. Gas Systems, L.P. | 09-28-90 | K-S | 250,000 |
| ST90-5350 | Natural Gas Pipeline Co. of America | Tejas Power Corp. | 09-28-90 | G-S | 100,000 |
| ST90-5351 | Slingray Pipeline Co. | Brooklyn Interstate Natural Gas Corp. | 09-28-90 | K-S | 100,000 |
| ST90-5352 | Rocky Mountain Natural Gas Co. | Northwest Pipeline Corp. | 09-28-90 | G-HT | 4,000 |
| ST90-5353 | Texas Gas Gathering Co. | Natural Gas Pipeline Co. of America | 09-28-90 | C | 20,000 |
| ST90-5354 | Texas Gas Gathering Co. | Natural Gas Pipeline Co. of America | 09-28-90 | C | 20,000 |

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes reported by the filing company in MMBTU, MCF and DT.

[FR Doc. 90-28589 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. TQ91-2-21-000, TM91-5-21-000]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 30, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 28, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective December 1, 1990:

Sixth Revised Sheet No. 26
Sixth Revised Sheet No. 26A
Sixth Revised Sheet No. 26B
Sixth Revised Sheet No. 26C
Seventh Revised Sheet No. 163



Columbia states that the sales rate set forth on Sixth Revised Sheet No. 26 reflects an overall increase of 10.01¢ per Dth in the Commodity rate and no change in the Demand rate. In addition, the transportation rates set forth on Sixth Revised Sheet No. 26C reflect an increase in the Fuel Charge component of .24¢ per Dth.

The purpose of the revised tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1991; and

(3) A Transportation Fuel Charge Adjustment.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before December 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28587 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. RP89-38-010, RP89-89-010, CP90-1676-001 and CP78-118-019]**

## U-T Offshore System; Tariff Filing

November 30, 1990

Take notice that on November 14, 1990, U-T Offshore System (U-TOS) tendered the following tariff sheets for filing as part of the U-TOS' FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 1
Second Revised Sheet No. 5
Original Sheet No. 72
Original Sheet No. 72-A
Original Sheet No. 72-B

On November 14, 1990 U-TOS made a tariff filing in compliance with an order issued by the Federal Energy Regulatory Commission (Commission) on October 30, 1990 in the above-refenced dockets. The October 30 Order approved an uncontested settlement that provided for, among other things, an experimental program of firm transportation capacity brokering on the U-TOS system, and specfied the terms and conditions applicable to the brokering program.

U-TOS tenders the required tariff sheets, subject to the October 30 Order becoming final and non-appealable without further substantive modification. U-TOS reserves the right to withdraw the tendered tariff sheets if the Commission's approval of the settlement is modified on rehearing.

Sheet No. 1 contains a revised Table of Contents for the tariff, showing inclusion of the Experimental Capacity Brokering section. Sheet No. 5 contains the settlement rates, including the rates for brokered capacity. Sheet Nos. 72, 72-A and 72-B contain the terms and conditions of the Experimental Capacity Brokering program.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28588 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP90-156-002]**

## Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

November 30, 1990.

Take notice that on November 27, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute Original Sheet No. 191A to be part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the tariff sheet was submitted in compliance with the Commission's Order issued November 19, 1990, at Docket No. RP90-156-001.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective August 27, 1990.

Natural states that a copy of this filing was mailed to its jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP90-156-009.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-28589 Filed 12-5-90; 8:45 am]
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 3866-6]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382-2840.

**SUPPLEMENTARY INFORMATION:**

### Office of Pesticides and Toxic Substances

*Title:* Section 313 Supplier Notification Survey (EPA ICR #1575.01). This ICR requests approval of a new collection.

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*Abstract:* As part of the Toxic Release Inventory (TRI) section 313 reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA), certain industrial facilities that supply mixtures or trade name products containing one or more of the listed chemicals must notify their customers of the contents of the products they have purchased. These "supplier notification requirements" provide recipient facilities with information on the toxic chemical composition of the products they use. The planned survey will evaluate the compliance with the supplier notification requirement, determine the quality of the information passed on by suppliers, and examine whether the information in the notifications is helpful in making threshold determinations, reducing overall burden in filing the TRI Form R.

The survey is designed as a telephone interview of environmental compliance personnel at each of three types of facilities: Manufacturers, distributors, and users/processors. The survey will use a stratified sampling frame and rely on two databases: 1988 versions of the TRI database and the Dun and Bradstreet Dun's Marketing Identifiers (DMI) establishment file. The desired number of completed interviews is 480, with 270 allocated among manufacturers, 70 among distributors, and 140 among users/processors. The survey is not an enforcement activity, and participation is both voluntary and confidential.

Selected facilities will be asked to report: (1) Their general customer category (manufacturer, distributor), (2) the number of mixtures or trade name products they manufacture, distribute or use/process that contain 313 chemicals, (3) the number of mixtures and trade name products for which they provide or receive supplier notification, (4) if applicable, the reasons for not providing notification for all mixtures or trade name products that contained 313 chemicals (manufacturers and distributors only), (5) source of knowledge of the supplier notification requirement, (6) the amount of time the company saved or spent due to supplier notification in 1989, (7) the degree to which supplier notification was helpful in filling out Form R (users/processors), (8) the effect, if any, supplier notification has had on business (manufacturers, distributors), and (9) the number of full-time employees at the facility.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 7 minutes for chemical manufacturers and user/processors, and 5 minutes for chemical distributors. it will not be necessary for respondents to review instructions or gather and maintain the data needed to fill out the questionnaire. Respondent activities are limited to agreeing to participate and verbally responding to questions posed by telephone interviewers.

*Respondents:* A stratified sample of facilities manufacturing, distributing, using or proceeding section 313 chemicals.

*Estimated No. of Respondents:* 480.

*Estimated Total Annual Burden on Respondents:* 54 hours.

*Frequency of Collection:* One-time survey.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: November 27, 1990.

**Rick Westland,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 90–28542 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

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**[OPP–200000; FRL 3841–3]**

## Request for Proposals; Research and Development on Antimicrobial Test Methodology and Statistical Support on Experimental Design and Data Analysis

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The purpose of this Request For Proposal (RFP) is to solicit proposals to conduct research and development on the sporicidal test method; and to provide independent statistical analysis on antimicrobial test methodology research. Proposals to conduct research on the sporicidal test method will result in the development of a reproducible, reliable, and statistically valid sporicidal test method used to evaluate the efficacy of antimicrobial products bearing sterilizer or sporicidal claims. Research is expected to improve the sporicidal test method by upgrading the current Association of Official Analytical Chemists (AOAC) Sporicidal Test Method or developing a new test method. Proposals for statistical support will assist the Agency in evaluating experimental designs of projects and analyzing results from on-going test methodology research by statistical analysts who will work independently of the research teams.

**DATES:** The original and nine copies of the application must be received by January 30, 1991.

**ADDRESSES:** The original and eight copies must be sent to: Grants Operations Branch (PM–216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. One copy of the original must be sent to: Susan Parker, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Application kits may be obtained by writing to: Research Grants Staff (RD–675), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by calling (202) 382–7445.

**FOR FURTHER INFORMATION CONTACT:** For general information: By mail: Susan Parker, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: room 711, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2141). For technical information: By mail: Juanita Wills, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 711, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–3661).

**SUPPLEMENTARY INFORMATION:** This notice solicits proposals to conduct research and development on antimicrobial test methodology and to provide statistical support on experimental design and data analysis. Both types of proposals are expected to be funded through cooperative agreements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. EPA anticipates funding the research/statistical analysis for a 2–year project period.

### I. Background

The Office of Pesticide Programs within EPA regulates antimicrobial pesticides under the statutory authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. A current source of test methods used to evaluate antimicrobial efficacy is the "Official Methods of Analysis" published by the Association of Official



Analytical Chemists (AOAC). In recent years, the public health community has raised concerns regarding the reliability, accuracy, and reproducibility of the permitted test methods. Consequently, EPA intends to commit funds for research and development to upgrade antimicrobial test methodologies and appropriate performance standards, thus assuring the data submitted to the Agency in support of product registration are based on reliable, reproducible, and statistically valid test methods. EPA expects to award funds under cooperative agreements to qualified applicants to conduct developmental research on the sporicidal test method and to provide statistical support for on-going test methodology research evaluation.

### II. Research Proposal Parameters

Solicitations are being made for research on the development of a reproducible, statistically valid, and reliable sporicidal test method under a cooperative agreement with EPA. EPA intends to be substantially involved in the test methodology research and development by approving work by stages, approving any subcontracts, conducting on-site visits/inspections at reasonable intervals, co-authoring published reports relative to the funded study, and halting research activity if the intent, approach, or anticipated phases leading to the accomplishment of the study are not being achieved, or have been revised without prior Agency approval.

Currently, the test methods used for sporicidal efficacy testing are alleged to lack reliability and reproducibility due to the following conditions:

1. The variability introduced by the hardness of the dilution water is not addressed.
2. The efficacy of currently authorized neutralizers is unknown.
3. The current performance standard of zero out of 720 may be too stringent.
4. The soil-extract medium used during the AOAC Sporicidal test has not been defined or standardized.
5. The existing growth medium for *Clostridium sporogenes* may be unreliable.
6. Carriers which provide the best "real use" testing conditions and highest stringency to assure efficacy need to be developed.
7. Uniform carrier conditions need to be developed and defined.
8. The spore load on the carriers has not been standardized.
9. The range of 2 to 20 minutes for HCl resistance for spores allows for variability in results. Questions have been raised about the correlation between HCl resistance and sporicide resistance.
10. It has not been verified that sporicides will also kill *Mycobacterium tuberculosis.*

The above issues should be considered when developing a proposal for research on test methodology. The experimental design of the study should follow the AOAC Handbook for development of AOAC methods. The study should also be designed to permit meaningful statistical analysis to be performed on the data (as in the AOAC Statistical Manual). Research must include a plan for a collaborative study under the auspices of the AOAC to validate the developed test method. AOAC Manuals may be obtained from AOAC, 2200 Wilson Blvd., suite 400, Arlington, VA, 22201, or by phoning (703) 522–3032.

### III. Statistical Support Proposal Parameters

Solicitations are also being made for proposals to conduct statistical analysis independent of the researchers developing the new test methods. Statistical support is needed to evaluate experimental designs and to assist in the analysis of the research results. The statisticians will evaluate both proposed test methodology research and the research currently underway to validate or revise AOAC test methods for efficacy evaluation of antimicrobial products.

Statistical proposals should demonstrate a good grasp of background issues necessitating the issuance of the RFP and of the importance of statistical assistance in the design and review of the planned studies. Proposals should address the need for rigorous efficacy testing in the evaluation of germicidal agents and demonstrate some familiarity with the parameters in need of most serious attention.

Proposals should demonstrate a sound understanding of the areas of statistical support that are relevant to the proposed studies. Issues of experimental design, such as sample size, replication and statistical power for distinguishing sources of variability should be addressed.

Types of statistical testing to be explored should be documented, including some discussion of the relative merits of different types of proposed tests. The possibility of mathematical modeling of efficacy factors should be addressed, including discussion of the likely appropriateness of different types of models.

Proposals should discuss computer hardware and software capabilities for data reduction, graphical display, and data analysis. In addition, methods for transferring data between facilities should be discussed, including a plan for assuring the data quality and integrity.

Finally, methods for communicating with the performing laboratories should be specified for participation in the design of the studies, for onsite monitoring of study progress, for data transfer, and for collaboration in the data analysis and interpretation of results.

### IV. Mechanisms of Support

EPA funding of methodology development and research is authorized under FIFRA. The research and statistical support are expected to be funded under cooperative agreements requiring substantial involvement by EPA personnel in the proposed study.

Federal grant regulation 40 CFR 30.307 requires all recipients to provide a minimum of 5 percent of the total project cost, which may not be taken from Federal sources.

### V. The Application

Each application will consist of the Application for Federal Assistance Forms (standard forms 424 and 424A) and an addendum to forms 424 and 424A, as stated below, which will include the following: Curriculum vitae for the principal investigator; an abstract of the proposed project; a narrative description of the statistical method(s) that will be used to assess data; the required Quality Assurance Program Plan; a narrative certification of intent to conduct studies in accordance with GLP standards, 40 CFR part 160; and a narrative certification that EPA will be notified of any non-EPA sources of cost-sharing.

### VI. Addendum to Forms 424 and 424A

The following information must be included in an addendum to Forms 424 and 424A:

1. *Principal investigator and key personnel:* Present a biographical sketch of the principal investigator incorporating the following information: name, address, phone number, education, background and other qualifying experience for the project. Also, list the name and training discipline of other key personnel who will be engaged in the project. Identify other projects in which the principal investigator is presently engaged and the amount of time he/she devotes to each. Provide a bibliography of the principal investigator's publications. Provide a summary of employment, including contracts and consultancies, for the present and for the past 2 years

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for the principal investigator and each of the key personnel.

2. *Objectives of this project:* Describe the principal and subordinate objectives of the project. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring solution. Supporting documents from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included and footnoted.

3. *Approach:* a. Provide a detailed work plan for the accomplishment of the scope and detail of the proposed project. Cite factors which might accelerate or decelerate the work. Indicate why this approach has been taken rather than alternatives. Describe any unusual features of the project such as design or innovations, reductions in cost or time, or extraordinary social and community involvement.

b. Describe all facilities presently available for use in carrying out the project.

c. For all applications, list by name all non-Federal sources of funds and facilities to be utilized in the performance of the proposed project.

d. List in chronological order a schedule of accomplishments, progress, or milestones that are anticipated over the length of the project.

e. Indicate by whom each element of the work plan will be carried out including supporting agencies, consultants and contractors.

f. Give a narrative description of the collaborative study proposed and the statistical method(s) used to assess the data and basic research findings.

4. *General project information:* a. Identify the kind of data to be collected (and maintained) and discuss the criteria to be used to evaluate the results and success of the project.

b. *Discuss:* (1) The effect of this project on or its relationship to other work planned, anticipated, or underway by the grantee, recipient of the funds, or other Government agencies; (2) Federal, State, interstate, and local programs with which the work will be coordinated and the extent and nature of the coordination.

5. *Quality assurance:* The application must include a quality assurance plan as described in 40 CFR 30.503(d) of the grant regulations (Part 30—General Regulations for Assistance Programs Other than State and Local Governments). In addition, certification of intent to conduct studies in accordance with GLP Standards, 40 CFR part 160, must be included.

**VII. Administrative Details of Proposal**

a. The proposal must consist of no more than a total of 35 pages (regular size type - no smaller than elite, single or double spaced, standard "8 1/2 x 11" pages) one side only including application forms and all enclosures, covers, or attachments. Proposals exceeding 35 pages will not be reviewed.

b. Curriculum vitaes or resumes may not exceed two pages for each principal investigator.

c. The identification tag "OPP/RD/APB" must be printed in the upper right hand corner of the EPA assistance application forms. The absence of this identifier from an application absolves EPA of any responsibility if it is not reviewed along with the other applications responding to this notice.

**VIII. Application Review**

All applications received in response to this notice will be reviewed and evaluated for scientific merit according to the following criteria:

1. Quality of proposed research, to include sound rationale of experimental design, originality, and significance of the anticipated results.

2. Qualifications and competency of individuals designated to conduct the research as evidenced by prior experience in the proposed or similar research areas.

3. Adequacy of support offered by the applicant's organization in terms of laboratory facilities, adequate and appropriate laboratory equipment, support personnel and services, library, etc.

4. Appropriateness of the proposed budget and budget period needed for completion of the specified research.

According to 40 CFR 40.150, the reviewer of applications for research and development must arrange for a minimum of one intramural (In-House) review and two extramural (non-EPA) reviews to assess the technical and scientific merit of all relevant applications.

Dated: November 19, 1990.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 90-28532 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

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[FRL 3666-1]

## Identification and Evaluation of Biological Indicators of Terrestrial Ecosystem Stress

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for Applications (RFA) B10-02-91.

**SUMMARY:** The purpose of this RFA is to solicit proposals which will result in the development of methods to measure stresses within an ecosystem. Of particular interest are those biological markers which can distinguish between stresses due to anthropogenic activity from those caused by natural disturbances. Issues of ecological stress/response/recovery processes apply across all levels of biological organization, from molecular, cellular, organ and organism levels, through population, community, ecosystem, and landscape levels of the environment.

**DATES:** The original and eight copies of the application must be received no later than the close of business, March 15, 1991 to be considered.

**ADDRESSES:** The applications must be sent to: Grants Operations Branch (PM-216F), U.S. Environmental Protection Agency, Washington, DC 20460, or for overnight express mail, the address is: Grants Operation Branch, Grants Administrative Division, U.S. Environmental Protection Agency, 499 South Capitol Street SW., Washington, DC 20460, 202/382-5266.

**APPLICATION KITS MAY ALSO BE OBTAINED FROM:** Research Grants Staff (RD-675), 401 M Street SW., Washington, DC 20460, or by calling on (202) 382-7445.

**FOR FURTHER INFORMATION CONTACT:** Clyde C. Bishop, by telephone (202) 382-7445.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Ecosystems and their component organisms are continually exposed to stresses, both natural and anthropogenic. One task of the Environmental Protection Agency (EPA) is to determine whether systems are sufficiently stressed by anthropogenic agents to cause damage. Problems to be addressed by scientists are the difficulty in detecting stress and to identify the causative stressors. These problems are particularly acute because of the interactive nature of stress, in which multiple anthropogenic factors act in an integrated manner with multiple natural stressors.

The following is presented as a conceptual basis for a research program to address these problems. Organisms expose to stress undergo a predictable sequence of changes in response to stress. At low to moderate levels of stress, behavioral responses (avoidance), acclimation (physiological response) and compensation occur. Acclimation and compensation allow organisms to continue functioning while exposed to a stressor, but growth and allocation costs are incurred. At some level of stress, adaptation (genetic response) occurs. When the stress exceeds the ability of organisms to acclimate, or exceeds the ability of populations to adapt, damage occurs. Each of these processes produces measurable changes in ecosystems, populations, or organism states and processes. Detection of acclimation or compensation could serve as an early warning, which would trigger more intensive monitoring of a system. These changes may or may not result in degradation, but they may provide information about causal factors.

Distinguishing ecological responses associated with anthropogenic stresses from natural stresses is the central step in the proposed strategy for characterizing ecological responses to human activities. Experience has shown that this is a difficult task because of the inherent uncertainties and the lack of an adequate baseline data for monitoring a single ecological system or for system comparisons. Consequently, this area of ecological research requires special attention. Only through distinguishing anthropogenic stress responses from other stress responses can causal factors be inferred that specifically relate ecosystem damage to human activity.

The development of new tools and criteria for detecting stress and determining the cause(s) would enhance the ability to EPA to assess the impacts of anthropogenic stress and would play a particularly important role in early detection of ecosystem change due to stress.

**II. Scope**

The purpose of this Request for Application (RFA) is to promote research on identifying and evaluating biological indicators of ecosystem stress responses in terrestrial environments.

An indicator is a specific organism (plants or animals) or measures (proteins, lipids or other macromolecules) that characterizes an endpoint, either directly (e.g., the population level or an endpoint species) or indirectly (e.g., coliform count as an indicator of water contamination). Ecological research is needed to identify the types of indicators that are appropriate for different ecosystems and the particular types of indicators most appropriate for characterizing endpoints. Of particular importance are those biological indicators and endpoints which can distinguish between anthropogenic and natural disturbances.

For the purposes of this RFA, the focus should be limited to biological indicators applicable to terrestrial ecosystems including forests, soils, grasslands, deserts, etc., or other relevant terrestrial systems not described in this announcement.

**III. Mechanisms of Support**

Assistance under this RFA will be provided by a research grant, administered through EPA's investigator-initiated research grants program. The applicant will be responsible for the planning, direction and execution of the proposed research. Support under this program is limited to non-profit organizations and educational institutions.

Approximately 1.0 million dollars will be available from fiscal 1991 funds and it is estimated that about ten projects will be supported. Each project will be supported for a period of two years and approximately at $100,000 per year. This RFA is for a single competition with a deadline of March 15, 1991.

**IV. The Application**

Each application will consist of Application for Federal Assistance forms (standard forms 424 and 424A), separate sheets providing the budget breakdown for each year of the project, curriculum vitae for the principal investigator, abstract of the proposed project, and a project narrative. All certification (drug free work-place, etc.) forms must be signed and included with the application. Attachments, appendices or other materials included in addition to those identified above will not be forwarded to the reviewers. Application forms, instructions, and other pertinent information are contained in the Federal grant application kit obtainable from: Research Grants Staff (RD-675), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling on (202) 382-7445.

**V. Special Instructions**

1. The project narrative or proposal must not exceed 30 single sided 8½ by 11 inch pages. Typeface must be standard 10-12 characters per inch.

2. CVs or resumes must not exceed 2 pages for each principal investigator and should focus on education, positions held and most recent or related publications.

3. Project period will be for two years.

4. Applications in response to this RFA must be identified by printing "RFA BIO-02-01" in item 10 on the face page of form 424 or in item 3 if you are using the old form 5700-12. The absence of this identifier from an application absolves EPA of any responsibility if it is not reviewed along with the other applications responding to this RFA.

**VI. Application Review**

All applications in response to this solicitation will be reviewed at a single meeting of a scientific peer panel which will evaluate and rank each proposal according to its scientific merit as a basis for recommending agency approval or disapproval. The panel will consider:

- Quality of research plan (including theoretical and/or experimental design, originality, and creativity),
- Qualifications of the research team,
- Availability and adequacy of facilities and equipment, and
- Appropriateness of the proposed budget.

**VII. Application Submission**

The original and eight copies of the application must be received no later than the close of business, March 15, 1991, to be considered. The applications must be sent to: Grants Operation Branch (PM-216F), Grants Administration Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; or for overnight express mail, the address is: Grants Operations Branch, Grants Administration Division, U.S. Environmental Protection Agency, 499 South Capital Street, SW., Washington, DC 20460, 202/382-5266.

**VIII. Staff Contact**

Questions relating to this solicitation may be directed to Clyde Bishop by telephone on (202) 382-7445.

Dated: November 27, 1990.

**Robert Papetti,**

*Director, Research Grants Staff.*

[FR Doc. 90-28661 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3667-3]

## Transfer of Data to Contractors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of transfer of data and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) will transfer to its contractor, Wade Miller Associates, Inc., and their subcontractor Apogee Research, information which has been submitted to EPA under the 1988

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National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Survey (TSDR). [The contractor will not identify specific facilities). Some of this information may have a claim of business confidentiality. These firms will use information submitted by facilities that responded to the TSDR Survey as part of the data inputs to a computerized simulation model. The model will create several projection scenarios for hazardous waste management capacity. The contractor will not identify specific facilities.

**DATE:** Transfer of confidential data submitted to EPA will occur no sooner than December 13, 1990.

**ADDRESSES:** Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data".

**FOR FURTHER INFORMATION CONTACT:** Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3410.

**SUPPLEMENTARY INFORMATION:**

**I. Transfer of data**

The U.S. Environmental Protection Agency is in the process of preparing a national report which will analyze the data submitted in the 1989 State CAPs. This assessment will include projection scenarios through simulation modeling of hazardous waste demand and management capacity.

Under Contract No. 68-03-3514, the contractor provides support to the Office of Drinking Water as it develops regulations to control contamination of drinking water, and as it undertakes new initiatives to protect public and private drinking water supply systems. The primary function of the contractor under this contract is to provide support of regulatory analysis required under the Safe Drinking Water Act. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(c)(9) requires that as a condition for receiving further EPA remedial funding after October 17, 1989, each State must provide an assurance that sufficient hazardous waste capacity would exist to manage 20 years of hazardous waste generated in that State. States used the TSDR Survey as an information source for determining hazardous waste management capacity.

In cooperation with the Office of Solid Waste, Waste Management Division, and the Office of Drinking Water, Wade Miller Associates, Inc., and their subcontractor, Apogee Research will use the TSDR information as part of the data inputs to a computerized simulation model. The model will create several projection scenarios for hazardous waste management capacity.

In accordance with 40 CFR 2.305(h), EPA has determined that Wade Miller Associates, Inc., and their subcontractor, Apogee Research require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform the particular work outlined under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, Wade Miller Associates, Inc., and their subcontractor, will return all such materials to EPA.

The contractor and their subcontractor have been authorized access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plan of the contractor and will inspect their facility, and approve them prior to RCRA CBI being transmitted to the contractor. Personnel from Wade Miller Associates, Inc., and their subcontractor, Apogee Research will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: November 30, 1990.

**Mary A. Gade,**

*Acting Assistant Administrator.*

[FR Doc. 90-28535 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

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[FRL 3867-3]

**Transfer of Data to Contractors**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of transfer of data and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) will transfer to its contractor, Research Triangle Institute, information, which has been or will be, submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). The RCRA of 1976, as amended, requires EPA to institute a national program to control hazardous wastes. The Environmental Protection Agency's Office of Solid Waste (OSW) is involved in various activities to support the development of hazardous waste regulations, including method development, quality assurance and control, and actions related to other aspects of 40 CFR, parts 260-265. RTI will provide support to the Office of Solid Waste in the areas of health and ecological exposure and risk assessments; toxic and pharmacokinetic studies; analyzing regulatory options and impacts; investigating impacts of infectious wastes; and evaluating the RCRA manifest tracking system. Some of the information may have a claim of business confidentiality.

**DATES:** Transfer of confidential data submitted to EPA will occur no sooner than December 13, 1990.

**ADDRESSES:** Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

**FOR FURTHER INFORMATION CONTACT:** Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3410.

**SUPPLEMENTARY INFORMATION:**

**I. Transfer of Data**

The U.S. Environmental Protection Agency is required under the Resource Conservation and Recovery Act of 1976, as amended, to institute a national program to control hazardous waste. Under Contract 68-W0-0032, RTI will provide support to the Characterization and Assessment Division of the Office of Solid Waste to develop the hazardous waste regulations, including method development, quality assurance and control and other actions related to 40 CFR parts 260-265. RTI will also assist OSW in the area of health and ecological exposure and risk assessments, toxic and pharmacokinetic studies, investigate the impact of infectious wastes and evaluate the RCRA manifest tracking system.

In accordance with 40 CFR 2.305(h), EPA has determined that RTI requires access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to this firm, on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, RTI will return all such materials to EPA.

RTI has been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plan of the contractor and will inspect their facility, and approve them prior to RCRA CBI being transmitted to the contractor. Personnel from RTI will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: November 29, 1990.

**Don R. Clay,**

*Assistant Administrator.*

[FR Doc. 90-28534 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-M

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[PF-540; FRL-3840-7]

**Hoechst Celanese Corp.; Revision of Pesticide Petition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from the Hoechst Celanese Corp. a request to amend pesticide petition (PP) 9F3714 that proposes amending 40 CFR 180.430 to establish tolerances for the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, each calculated as parent, in or on various raw agricultural commodities. This notice follows two previous notices for the petition.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Acting Product Manager (PM-23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1830.

**SUPPLEMENTARY INFORMATION:** This notice announces that EPA has received from the Hoechst Celanese Corp., P.O. Box 2500, Somerville, NJ 08876-1258, a request to amend PP 9F3714 that proposes amending 40 CFR 180.430 by establishing tolerances for residues of the herbicide fenoxaprop-ethyl, [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, each calculated as parent, in or on the following raw agricultural commodities: wheat, grain at 0.05 part per million (ppm); wheat, straw at 0.50 ppm; cattle fat, meat, and meat byproducts (mbyp) at 0.05 ppm; goat fat, meat, and mbyp at 0.05 ppm; hog fat, meat, and mbyp at 0.05 ppm; horse fat, meat, and mbyp at 0.05 ppm; sheep fat, meat, and mbyp at 0.05 ppm; and milk at 0.02 ppm.

The proposed analytical method for determining residues is gas chromatography with electron-capture detector.

Previous notices regarding PP 9F3714 appeared in the **Federal Register** of February 28, 1989 (54 FR 8393) and January 9, 1990 (55 FR 780).

**Authority:** 21 U.S.C. 136a.

Dated: November 21, 1990.

**Herbert S. Harrison,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 90-28531 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

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[PF-539; FRL-3901-6]

**Mobay Chemical Corp.; Withdrawals of Pesticide Petitions and Feed Additive Petition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from the Mobay Chemical Corp. requests to withdraw without prejudice to future filing notices of three pesticide petitions, PP's 3F2917, 7F1951, 7F1988, and a feed additive petition, FAP 7H5169.

**ADDRESSES:** By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Room 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in room 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Marilyn Mautz, Acting Product Manager (PM-16), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 211, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-2600.

**SUPPLEMENTARY INFORMATION:** This notice announces that EPA has received from the Mobay Chemical Corp., Chemagro Agricultural Div., P.O. Box 4913, Kansas City, MO 64120, the following requests to withdraw without prejudice to future filings notices of filing of three pesticide petitions and a feed additive petition.

1. *PP 3F2917.* Mobay has requested the withdrawal of PP 3F2917, notice of which appeared in the **Federal Register** of February 8, 1984 (49 FR 4840), which proposed that 40 CFR 180.387 be

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amended by establishing tolerances for the combined residues of the insecticide1-methylethyl 2-[[ethoxy [(1-methylethyl) amino]phosphinothioyl] oxy]benzoate and its cholinesterase-inhibiting metabolites 1-methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinoyl)oxy) benzoate, 1-methylethyl 2-((ethoxy(1-amino)phosphinoyl)oxy) benzoate, and 1-methylethyl 2-(ethoxy((1-amino) phosphinothioyl)oxy) benzoate in or on the commodities broccoli, brussels sprouts, cabbage, and cauliflower at 0.3 part per million (ppm).

2. *PP 7F1951.* Mobay has reqested the withdrawal of PP 7F1951, notice of which appeared in the **Federal Register** of June 30, 1977 (42 FR 33363), which proposed that 40 CFR 180.320 be amended by establishing a tolerance for residues of the insecticide mesurol, 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities artichokes at 0.1 part per million (ppm), beans (lima) at 0.1 ppm, beans (snap) at 1.0 ppm, cabbage at 20 ppm, cauliflower at 5.0 ppm, strawberries at 7.0 ppm, and tomatoes at 0.5 ppm. A correction notice, published in the **Federal Register** of July 25, 1977 (42 FR 37847), added the raw agricultural commodities broccoli at 2.0 ppm and brussels sprouts at 1.0 ppm. A revised section F, published in the **Federal Register** of September 23, 1981 (46 FR 47008), proposed that tolerances be increased for artichokes from 0.1 ppm to 0.2 ppm; beans (lima) from 0.1 to 0.2 ppm; cauliflower from 5.0 ppm to 7.0 ppm; and tomatoes from 0.5 ppm to 1.0 ppm. Mobay also proposed that a tolerance be established for bean vines and hay at 1.0 ppm.

3. *PP 7F1988.* Mobay has requested the withdrawal of PP 7F1988, notice of which appeared in the **Federal Register** of August 23, 1977 (42 FR 42372), which proposed that 40 CFR 180.320 be amended by establishing a tolerance for residues of the insecticide 3,5-dimethyl-4-(methylthio) phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities apples at 15 parts per million (ppm); meat, fat, and meat byproducts of cattle, goats, horses, sheep, and swine at 0.05 ppm; and milk at 0.01 ppm.

4. *FAP 7H5169.* Mobay has requested the withdrawal of FAP 7H5169, notice of which appeared in the **Federal Register** of August 23, 1977 (42 FR 42373), which proposed to amend 40 CFR part 561 (redesignated as 40 CFR part 186 in the **Federal Register** of June 29, 1988 (53 FR 24668)), by establishing a regulation permitting the use of the insecticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the commodity dried apple pomace with a tolerance limitation of 30 parts per million (ppm) resulting in animal feed when present as a result of application of the pesticide chemical to the growing commodity apples.

Authority: 21 U.S.C. 346a and 348.

Dated: October 31, 1990.

Anne E. Lindsay,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 90-28528 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-36177; FRL 3803-5]

## Reevaluation and Update of Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comments.

**SUMMARY:** In October 1982, EPA published the Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate. Subdivision N presented information on the required test substance, proposed methods, and required data to be reported with respect to the environmental fate of pesticides and their degradate(s). The studies were designed to assess the fate of pesticides and their degradates in air, soil and water environments in order that exposure quantifications could be made. Twelve years of experience with the Subdivision N Guidelines and its predecessors, and advances in scientific and technological knowledge since 1982 have illustrated the need to modify the guidelines and associated documents. This notice is requesting scientific and technological comments and information on the tests given in Subdivision N in order to bring them up to date in light of these advances and experiences.

**DATE:** Comments must be received on or before April 4, 1991.

**ADDRESSES:** Submit three copies of written comments, identified with the Docket Control Number "OPP-36177" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location to deliver comments to: Room 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" or "confidential Business Information" may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in room 246 Bay at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert W. Holst, Deputy Chief, Environmental Fate and Ground Water Branch, Environmental Fate and Effects Division (H7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Room 700, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5734.

**SUPPLEMENTARY INFORMATION:** The Pesticide Assessment Guidelines, Subdivision N, Chemistry: Environmental Fate, describes protocols and data to be reported in the performance of pesticide environmental fate studies to support the registration of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended. A description of the organization of these Guidelines and their relationship to pesticide data requirements appears in 40 CFR part 158, Data Requirements for Registration. The Agency is also in the process of updating the data requirements to register pesticides, as specified in 40 CFR part 158, and will independently publish proposed modifications for public comment.

Subdivision N was proposed for public comment in 1978 (as subpart N to 40 CFR part 163), and after extensive public comment and modification based on these comments, Subdivision N was published in 1982 as a non-regulatory guideline. Data Reporting Guidelines have been published as addenda to these guidelines, however, there has been no major scientific or technical reevaluation of this Guideline since 1982. There have been numerous advances in technology in pesticides, application methods and analytical methods since 1982 which are not reflected in the Guidelines or their supporting documents. Also, experience in dealing with the various pesticide environmental fate studies is not captured in these documents. Questions have arisen as to the scientific usefulness of certain tests, the clarity of the description of certain tests and the necessity of adding to, changing, or deleting certain portions or whole studies. In addition, the Agency's and scientific community's interpretation as to what constitutes scientifically valid test results, including quality control and assurance, has subtly changed.

This request for comments is designed to combine the EPA's and the public's practical experience with the Subdivision N Guidelines and the scientific advances in pesticide environmental fate testing since about 1980.

Certain areas of technical and scientific changes have occurred over the past decade that have impacted on the assessment and presence of pesticides in the environment for which the EPA requests specific comments about their inclusion in Subdivision N:

1. Mathematical models have become increasingly popular in supporting environmental exposure assessments (i.e., potential surface water, ground water and aerial movement contamination). The EPA is requesting comment on the employment and usefulness of these models and their effect upon or replacement of the submission of required field data.

2. Although the models are being used in exposure assessments and sometimes to replace expensive field studies, most models still require extensive validation. The EPA requests comments on the use of small-scale monitoring studies to estimate large-scale exposure and the need to validate modeling.

3. Monitoring studies are designed to determine the extent of the presence of pesticides in the environment. The EPA requests comments on the scaling up of small-scale monitoring measurements to reflect a large water shed or large aquifer scenarios.

4. The presence of pesticides in the air, especially localized air masses, has become an increasing concern. The EPA requests comments on the inclusion of appropriate data requirements to estimate potential presence and movement of pesticides in the atmosphere (e.g., pesticides in fogs).

5. Newer pesticides are being applied in orders of magnitude quantities smaller than a decade ago which leads to problems in detecting micro-quantities of the pesticide in the environment. The classic detection methods cannot be used to definitively identify these pesticides in the environment. The EPA requests comments on the acceptability and use of nonclassical analytical chemistry methods (e.g., ALISA - immunoassays and bioassays) as means to quantify pesticides in the environment.

All interested parties are encouraged to submit scientifically and technically directed and supported comments on the Subdivision N Guidelines and their supporting documents. Comments are generally expected to fall into the following categories: (1) The scientific usefulness of certain tests; (2) the clarity of the description of certain tests; and (3) the necessity of modifying certain tests. Comments should specify the test by name, number and paragraph or subparagraph. Recommended changes/modifications must be supported by current scientific/technical knowledge and include supporting references. References may be to other existing guidelines (from EPA or other Federal or State agencies), the published literature, studies submitted to the Agency in support of registration, and unpublished information. Citations must be sufficiently detailed to allow the Agency to obtain copies of the publicly available documents (unless furnished with the comments). Unpublished data must be supplied with the comments and be in sufficient detail to allow evaluation.

Comments on Subdivision N will be considered by the Agency and such modifications of the Guidelines and the accompanying Standard Evaluation Procedures (SEPs) which are considered to be of scientific and technical merit will be drafted into the Guidelines and SEPs, respectively. The draft of the modified Guidelines and SEPs will be made available for public comment and will be presented to the FIFRA Scientific Advisory Panel (SAP) at a public meeting for their comments before being published in a final form.

Copies of the Pesticide Assessment Guidelines, Subdivision N, its amendments, and the associated Standard Evaluation Procedures (SEPs) may be obtained from the National Technical Information Service (NTIS). Orders may be placed to NTIS at: National Technical Information Service, Attention: Order Desk, 5285 Port Royal Road, Springfield, VA 22161. Titles and order numbers are as follows:

| Titles | Order Number |
|---|---|
| Guidelines: | |
| Subdivision N, Chemistry Environmental Fate | PB83-153073 |
| Subdivision N, Chemistry Environmental Fate - Addendum 1 | PB88-247646 |
| Subdivision N, Chemistry Environmental Fate - Addendum 2 | PB87-235388 |
| Subdivision N, Chemistry Environmental Fate - Addendum 3 | PB88-139682 |
| Subdivision N, Chemistry Environmental Fate - Addendum 4 | PB88-139680 |
| Subdivision N, Chemistry Environmental Fate - Addendum 5 | PB88-181167 |
| Subdivision N, Chemistry Environmental Fate - Addendum 6 | PB88-161125 |
| Subdivision N, Chemistry Environmental Fate - Addendum 7 | PB88-191721 |
| Subdivision N, Chemistry Environmental Fate - Addendum 8 | PB88-191739 |
| Standard evaluation procedures (SEPs): | |
| Aerobic soil metabolism | PB85-128966 |
| Anaerobic soil metabolism | PB85-100941 |
| Aqueous photolysis | PB85-128950 |
| Hydrolysis | PB85-128942 |
| Soil column leaching | PB85-128984 |
| Soil photolysis | PB85-128976 |
| Terrestrial field dissipation | PB90-238035 |

The Agency will also use this occasion as an opportunity to combine those portions of Subdivision N that have been published at different times into a single document for public dissemination.

Dated: November 15, 1990.

Anne L. Barton,

*Director, Environmental Fate and Effects Division, Office of Pesticide Programs.*

[FR Doc. 90-28683 Filed 12-5-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3808-8]

## Benton, Inc. Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response cost at Benton, Inc. Site, Ashland, Mississippi. EPA will consider public comments on the proposed settlement for thirty days.

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EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments may be submitted to the person above by January 7, 1991.

Dated: October 23, 1990.

**Donald J. Guinyard,**

*Acting Director, Waste Management Division.*

[FR Doc. 90–28541 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

**[FRL 3867–7]**

## Proposed Settlement of Administrative Order by Consent, Summit National Site, OH

**AGENCY:** Environmental Protection Agency (U.S. EPA)

**ACTION:** Proposed *De Minimis* settlement.

**SUMMARY:** U.S. EPA is proposing to settle a claim under section 122 of CERCLA with a *de minimis* potentially responsible party for costs that have been and will be incurred during remedial and removal activities at the Summit National Site in Deerfield, Ohio. Respondent, Mansfield Industries, Inc., has agreed to pay $62,702 into a specially created escrow account that will be used by the *de minimis* settlors for remedial work at the Site, or, in the event a consent order is not entered into between U.S. EPA and the *de minimis* settlors, the money will be used to reimburse the U.S. EPA for costs incurred during U.S. EPA's removal and remedial actions at the Site. This action is being taken to settle all liability related to the Summit National site with the Respondent pursuant to the intent of section 122(g) of CERCLA, as amended.

**DATES:** Comments on this proposed settlement must be received on or before January 7, 1991.

**ADDRESS:** A copy of the proposed settlement is available at the following address for review: (It is recommended that you telephone Cheryl Allen at (312) 353–6196, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on the proposed settlement should be addressed to: (Please submit an original and three copies, if possible).

Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

**SUPPLEMENTARY INFORMATION:** The Summit National Site, which is listed on the National Priorities List, was operated as a waste disposal facility from 1974 until 1980, when it was closed by the State of Ohio. Due to the nature of the material received by the facility when it was in operation, the release of hazardous substances into the environment has caused the U.S. EPA to take emergency removal actions at the Site and to conduct an investigation as to long term remedial measures necessary to rectify the environmental hazard at the Site.

Mansfield Industries, Inc. is a small quantity generator of the hazardous substances sent to the Site. Respondent's share of the waste delivered to the Site does not exceed 0.2 percent of the total waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (5PA–14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**Robert Springer,**

*Acting Regional Administrator—Region V, U.S. Environmental Protection Agency.*

[FR Doc. 90–28603 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

**[OPTS–140139; FRL–3837–4]**

## Access to Confidential Business Information by Certain Contractors and Subcontractor

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized the following contractors and subcontractor for access to information which has been submitted to EPA under the Toxic Substances Control Act (TSCA): (1) General Sciences Corporation (GSC), of Laurel, Maryland has been authorized access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of TSCA, (2) Research and Evaluation Associates, Incorporated (REA), of Chapel Hill, North Carolina has been authorized access to information which has been submitted to EPA under all sections of TSCA, and, (3) TMC Micrographics (TMC), of Columbus, Ohio has been authorized access to information which has been submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be confidential business information (CBI). This document also includes an addendum to a contract authorized to Versar Incorporated (VER), of Springfield, Virginia that was published in the **Federal Register** of January 19, 1990.

**DATES:** Access to confidential data submitted to EPA will occur no sooner than December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** EPA is issuing this notice to inform all submitters of information under TSCA that EPA may provide the following contractors and subcontractor access to these CBI materials on a need-to-know basis.

Under contract number 68–D0–0060, contractor GSC, of 6100 Chevy Chase Drive, Laurel, MD will assist the Office of Toxic Substances (OTS) in using computerized models to estimate physicochemical properties of chemicals, to assess fate of chemicals, and to estimate human and environmental exposures. GSC personnel will be given access to information submitted under sections 4, 5, 6, and 8 of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters only. In a previous notice published in the **Federal Register** of August 25, 1987 (52 FR 32053), GSC was authorized for access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA, under contract number 68–02–4281, until June 15, 1990. Clearance for access to TSCA CBI under contract number 68–D0–0060 may continue until June 30, 1993.

Under contract number 68–D0–0063, contractor REA, of 100 Europa Drive, Suite 590, Chapel Hill, NC will assist the Office of Air Quality Planning and Standards (OAQPS) in designing and implementing a system for the handling, tracking, and safeguarding of CBI materials gathered by OAQPS under TSCA and the Clean Air Act. REA personnel will be given access to information submitted under all sections of TSCA. All access to TSCA CBI under this contract will take place at EPA Durham, NC facilities only. In a previous notice published in the **Federal Register** of November 8, 1989 (54 FR 46961), REA was authorized for access to CBI submitted to EPA under all sections of TSCA, under contract number 68–D8–0063, until September 30, 1990. Clearance for access to TSCA CBI under contract number 68–D0–0063 may continue until September 30, 1994.

Under contract number 68–W0–0028, subcontractor TMC, of 9100 Bank Street, Columbus, OH under subcontract to Chemical Abstracts Service (CAS), of 2540 Olentangy River Road, Columbus, OH will assist OTS in microfilming TSCA CBI materials. TMC personnel will be given access to information submitted under sections 5 and 8 of TSCA. All access to TSCA CBI under this subcontract will take place either at CAS's Columbus, OH facility, or the subcontractor may take TSCA CBI materials to its facility for the purpose of microfilming, providing that the transfer of materials is done so only under the direct supervision of a CAS official authorized for TSCA CBI access, and that all TSCA CBI materials be returned daily to CAS's facility. In a previous notice published in the **Federal Register** of September 4, 1990 (55 FR 35955), CAS was authorized for access to CBI submitted to EPA under sections 5 and 8 of TSCA at its Columbus, OH facility under contract number 68–W0–0028. Clearance for access to TSCA CBI under contract number 68–W0–0028 may continue until June 30, 1995.

In addendum to a **Federal Register** of January 16, 1990 (55 FR 1513), concerning contract number 68–D9–0166, EPA is extending VER's TSCA CBI access to include access to CBI materials submitted to EPA under section 21 of TSCA. All other aspects of the contract will remain the same.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract numbers, 68–D0–0060, 68–D0–0063, 68–W0–0028, and 68–D9–0166, the aforementioned contractors and subcontractor will require access to CBI submitted to EPA under TSCA to successfully perform the duties specified under the respective contracts.

GSC, REA, TMC, and VER personnel, will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: November 27, 1990.

**Linda A. Travers,**

*Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90–28605 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–F



**[FRL–3867–6]**

## Indiana Department of Natural Resources Underground Injection Control Primacy Application

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public comment period and of public hearing.

**SUMMARY:** The purpose of this notice is to announce that: (1) The United States Environmental Agency (USEPA) has received a complete application from the Indiana Department of Natural Resources requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period and public hearing will provide USEPA with the breadth of information and public opinion necessary either to approve, partially approve, or disapprove the application from the Indiana Department of Natural Resources to regulate Class II injection wells.

**DATES:** A public hearing will be held beginning at 7 p.m. on January 8, 1991. Written comments must be received by January 22, 1991.

**ADDRESSES:** Comments and requests to testify may be mailed to Richard J. Zdanowicz, Underground Injection Control Section (5WD–TUB–9), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the application and pertinent material are available for inspection and copying between 9 a.m. and 4:30 p.m. Monday through Friday at the following locations:

United States Environmental Protection Agency, Region V Library, 14th Floor, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353–2022.

Indiana Department of Natural Resources, Division of Oil and Gas, Old Trails Building, 309 West Washington Street, suite 601, Indianapolis, Indiana 46204 (317) 233–4055.

The hearing will be held at 7 p.m. on January 8, 1991, in the Executive Inn, Highway 41, Vincennes, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Zdanowicz, Underground Injection Control Section (5WD–TUB–9), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–1502. Comments should also be sent to this address.

**SUPPLEMENTARY INFORMATION:** The application from the Indiana Department of Natural Resources is for the regulation of Class II injection wells. Injection wells are regulated under the Safe Drinking Water Act (SDWA) of 1974, amended 1980 and 1986; the delegation of primary enforcement authority by section 1425 of the SDWA. USEPA has held primary enforcement authority over injection well activities in Indiana since the Underground Injection Control portion of the SDWA was implemented in 1984.

The Underground Injection Control program seeks to protect as "underground sources of drinking water" (USDWs) all aquifers capable of yielding a significant amount of water containing less than 10,000 mg/l of total dissolved solids. If this application for Indiana is approved, the State would protect USDWs from endangerment caused by the following kinds of injection of fluids produced during oil or natural gas production, injection of fluids for the storage of hydrocarbons, injection of fluids for enhanced recovery of oil or natural gas.

At present, Indiana has approximately 1800 Class II wells, and a permit to operate will be required for all Class II wells. The permit would specify a number of technical requirements designed to assure that the injection did not result in native or injected fluids reaching USDWs. Such requirements include criteria for siting, construction, testing, operation, monitoring and abandonment.

This application includes a description of the State Underground Injection Control program, copies of all applicable regulations and forms, a statement of legal authority, and the memorandum of agreement between the Indiana Department of Natural Resources and the Region V office of the Environmental Protection Agency.

Dated: November 29, 1990.

**Robert Springer,**

*Acting Regional Administrator.*

[FR Doc. 90–28602 Filed 12–5–90; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| I | | |
| A. Sundown Communications; Lenoir, NC | BPH-890612MI | 90-430 |
| B. Maria M. Ochoa; Lenoir, NC | BPH-890615ME | |
| C. Bowman Communications, Inc.; Lenoir, NC | BPH-890616MK | |
| D. Furniture City Broadcasters, Inc.; Lenoir, NC | BPH-890616MM | |
| E. Gateway Media Limited Partnership; Lenoir, NC | BPH-890616MN | |
| F. Janet W. Lingafelt; Lenoir, NC | BPH-890616MO | |
| G. Mystic Radio Corp.; Lenoir, NC | BPH-890616MQ | |
| H. Foothills Broadcasting, Inc.; Lenoir, NC | BPH-890616MR | |
| I. R. Dennis Goodale; Lenoir, NC | BPH-890615MF (Dismissed herein) | |

*Issue heading and Applicants*
1. Air Hazard, H
2. Comparative, A,B,C,D,E,F,G,H
3. Ultimate, A,B,C,D,E,F,G,H

| | | |
|---|---|---|
| II | | |
| A. Golden Gulf Coast Broadcasting Company; Ocean Springs, MS | BPH-880914MF | 90-429 |
| B. Hughes, Moore and Bell; Ocean Springs, MS | BPH-880914MG | |
| C. H. Hunter White, III; Ocean Springs, MS | BPH-880914MP | |
| D. Royal Broadcasting, Inc.; Ocean Springs, MS | BPH-880914MU | |
| E. Ocean Springs Broadcasting Co.; Ocean Springs, MS | BPH-880914MY | |
| F. Ocosta Broadcasting Ltd.; Ocean Springs, MS | BPH-880914NA | |
| G. Mark Albert Hinterlang; Ocean Springs, MS | BPH-880908MG (Dismissed herein) | |

*Issue heading and Applicants*
1. Financial, A
2. Environmental, B
3. See Appendix, D
4. See Appendix, D
5. See Appendix, D

| Applicant, city and state | File No. | MM Docket No. |
|---|---|---|
| 6. Comparative, A-F | | |
| 7. Ultimate, A-F | | |
| III | | |
| A. Tallahassee Minority Partners; Tallahassee, FL | BPH-880324MH | 90-431 |
| B. Ferguson Communications, Inc.; Tallahassee, FL | BPH-880324MN | |
| C. Dolphin Communications, Ltd.; Tallahassee, FL | BPH-880324MR | |
| D. Capital City Broadcast, Inc.; Tallahassee, FL | BPH-880324MW | |
| E. Moorhead/ Kledrowski, Ltd.; Tallahassee, FL | BPH-880324NE | |
| F. Maranatha Broadcasting Company, Inc.; Tallahassee, FL | BPH-880324NG | |
| G. WCVC, Inc.; Tallahassee, FL | BPH-880324NI | |
| H. Tally Radio, Inc.; Tallahassee, FL | BPH-880324NL | |
| I. Women's Broadcasting Corp.; Tallahassee, FL | BPH-880324NQ | |
| J. Kenneth B. Derby; Tallahassee, FL | BPH-880324NX | |
| K. Metro Tallahassee Broadcasters Limited Partnership; Tallahassee, FL | BPH-880324OA | |
| L. Quad Communications, Inc.; Tallahassee, FL | BPH-880324OD | |
| M. John S. Matthews, Jr.; Tallahassee, FL | BPH-880324OH | |
| N. J.L.J.B. Wireless, Inc.; Tallahassee, FL | BPH-880324OL | |

*Issue heading and Applicants*
1. Financial, B
2. See Appendix, D
3. See Appendix, D
4. See Appendix, D
5. Air Hazard, C,D,E,G,I,K,L,M,N
6. Comparative, A-N
7. Ultimate, A-N

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the isuse and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
*Assistant Chief, Audio Services Division.*

**Appendix (Ocean Springs, Mississippi)**

3. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Royal).

4. To determine whether D's (Royal's) organizational structure is a sham.

5. To determine, from the evidence adduced pursuant to Issues 3 and 4 above, whether D (Royal) possesses the basic qualifications to be a licensee of the facilities sought herein.

**Appendix (Tallahassee, Florida)**

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (Capital).

3. To determine whether D's (Capital's) organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to Issues 2 through 3 above, whether D (Capital) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-28661 Filed 12-5-90; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL LABOR RELATIONS AUTHORITY

### Senior Executive Service; Performance Review Board

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the Performance Review Board.

**DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Theresa J. Jackson, Director of Personnel and EEO, Federal Labor Relations Authority, 500 C St., SW., Washington, DC 20424, (202) 382-0751.

**SUPPLEMENTARY INFORMATION:** Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following person will serve on the FLRA's Performance Review Board:

Susan D. McCluskey, Office of the Chairman, FLRA
Brenda M. Robinson, Office of General Counsel, FLRA
Johnny J. Butler, Equal Employment Opportunity Commission
Paul D. Mahoney, Merit Systems Protection Board
Peter J. Basso, Office of Management and Budget

Theresa J. Jackson,
*Director of Personnel and EEO.*

[FR Doc. 90-28664 Filed 12-5-90; 8:45 am]
BILLING CODE 6727-01-M



## FEDERAL MARITIME COMMISSION

### Filing And Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on November 28, 1990, the following agreement was filed with the Commission pursuant to section 5 (d) of the Shipping Act of 1984 and was considered effective that date to the extent it constitutes an assessment agreement as described in section 3 (3) of the Shipping Act of 1984.

*Agreement No:* 224-000083-006.
*Title.* Master Contract Assessment Agreement.
*Parties:*
Carriers Container Council, Inc.
New York Shipping Association, Inc.
Southeast Florida Employers Port Association
Council of North Atlantic Shipping Associations
The International Longshoremen's Association, AFL-CIO.

*Synopsis:* The Agreement provides for the settlement of Master Contract issues agreed to on October 30, 1990.

Dated: November 30, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28573 Filed 12-5-90; 8:45 am]
BILLING CODE 6730-01-M

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224-002813-008.
*Title:* San Francisco Port Commission/Metropolitan California Stevedore Terminal Agreement.
*Parties:*
San Francisco Port Commission (Port)
Metropolitan California Stevedore (MCS).

*Synopsis:* The Agreement amends the basic agreement to: reduce the crane rental rate for carriers that guarantee 3,500 crane rental hours per year; and set forth rent credits for MCS to provide certain transtainer work.

*Agreement No.:* 224-002813-007.
*Title:* San Francisco Port Commission/Metropolitan California Stevedore/California Stevedore & Ballast Co. Terminal Agreement.
*Parties:*
San Francisco Port Commission (Port).
Metropolitan California Stevedore (MCS).
California Stevedore & Ballast Co. (CSB).

*Synopsis:* The Agreement provides for CSB to assign and transfer to MCS all its right in the basic agreement, and for MCS to assume obligations to the Port under the basic agreement.

*Agreement No.:* 224-200444.
*Title:* San Francisco Port Commission/Companies Sud-America de Vapores (CSAV) Terminal Agreement.
*Parties:*
San Francisco Port Commission (Port).
Companie Sub-America de Vapores (CSAV).

*Synopsis:* The Agreement provides for the non-exclusive use of the South Container Terminal for berthing vessels and loading and discharging of cargo. CSAV agrees to use the Port as its published regularly scheduled Northern California port of call and will receive certain reduced dockage and wharfage rates.

*Agreement No.:* 224-200332-003.
*Title:* San Francisco Port Commission/Nedlloyd Lines (U.S.A.) Corp. Terminal Agreement.
*Parties:*
San Francisco Port Commission.
Nedlloyd Lines (U.S.A.) Corp.

*Synopsis:* The Agreement amends the basic agreement to revise guarantees for: The annual minimum vessel calls, the annual minimum container throughput, and the hours of crane rental per year. The Agreement also provides a wharfage charge of $25 per full 20-foot equivalent unit.

Dated: November 30, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28574 Filed 12-5-90; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Lincolnland Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for banking holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected

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to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 1990.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincolnland Bancorp, Inc.*, Dale, Indiana; to acquire Ayer-Wagoner Insurance Agency, Inc., Rockport, Indiana, and Deal Insurance Agency, Inc., Rockport, Indiana, and thereby engage in insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Rockport, Indiana.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28598 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

## Mid-Citco Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mid-Citco Incorporated*, Chicago, Illinois; to engage *de novo* through its subsidiary, Mid-Citco Data Services, Inc., Chicago, Illinois, and thereby engage in providing data processing services subsidiary banks and third parties including payroll services, data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28599 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

## David A. Rosow and Jean D. Rosow; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act 12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1990.

**A Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *David A. Roscow and Jean D. Rosow*, Fairfield, Connecticut; to acquire an additional 15.23 percent of the voting shares of Westport Bancorp, Inc., Westport, Connecticut, for a total of 24.9 percent, and thereby indirectly acquire Westport Bank & Trust Company, Westport, Connecticut.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28597 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

## Wilmington Trust Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentaton would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 28, 1990.



**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Wilmington Trust Corporation*, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Wilmington Trust Company, Wilmington, Delaware.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Folden Financial Corporation*, Hendricks, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Bank-Hendricks, Hendricks, Minnesota.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cedar Creek Bancshares, Inc.*, Seven Points, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Cedar Creek Bank, Seven Points, Texas.

2. *TFBC Acquisition Corporation*, Dallas, Texas; to become a bank holding company by acquiring 78.5 percent of the voting shares of Tahoka First Bancorp, Inc., Dallas, Texas, and thereby indirectly acquire Cedar Creek Bank, Seven Points, Texas, and First National Bank of Tahoka, Tahoka, Texas.

Board of Governors of the Federal Reserve System, November 30, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28598 Filed 12-5-90; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

## Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111290 AND 112390

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| John H. Harland Company, Courier Dispatch Group, Inc., Courier Dispatch Group, Inc. | 91-0089 | 11/13/90 |
| Mr. Vincent Piazza, TRW Inc., the Customer Service Division | 91-0146 | 11/13/90 |
| Publicker Industries, Inc., Hanson PLC, 10 wholly-owned subsidiaries of HM Holidays Inc. | 91-0148 | 11/13/90 |
| CPI Development Corporation, E.I. du Pont de Nemours and Company, E.I. du Pont de Nemours and Company | 91-0159 | 11/14/90 |
| Adia SA, BellSouth Corporation, Dataserv Equipment, Inc. | 91-0160 | 11/14/90 |
| Mercy Health System, Lourdes Hospital, Inc., Lourdes Hospital, Inc. | 91-0174 | 11/14/90 |
| Craig O. McCaw, Graphic Scanning Corp., Cellular Mobile Systems of Illinois, Inc. | 91-0060 | 11/15/90 |
| Graphic Scanning Corp., Craig O. McCaw, Indiana Cellular Holdings, Inc. | 91-0118 | 11/15/90 |
| Philip Morris Companies, Inc., Ms. Virginia Figge, Santa Ana Beverage, Inc. & Virginia Figge | 91-0132 | 11/15/90 |
| General Cinema Corporation, The Neiman Marcus Group, Inc., The Neiman Marcus Group, Inc. | 91-0152 | 11/15/90 |
| PacifiCorp, Adobe Resources Corporation, Adobe Resources Corporation | 91-0158 | 11/15/90 |
| PepsiCo, Inc., Collins Foods International, Inc., Collins Foods International, Inc. | 91-0072 | 11/16/90 |
| Preussag AG, Charles Faust, North American Steel Corporation | 91-0123 | 11/16/90 |
| Carena Holdings Inc.; GWU Capital Corp., Arbor Living Centers of America, Inc. | 91-0145 | 11/16/90 |
| Legend Capital Group, L.P., Sharon Steel Corporation, subsidiaries | 91-0158 | 11/16/90 |
| Gerald W. Schwartz, Wasserstein, Perella Partners, L.P., Wickes Elco Corporation and Dura Acquisition Corp. | 91-0166 | 11/16/90 |
| Gerald W. Schwartz, Blackstone Capital Partners L.P., Wickes Elco Corporation and Dura Acquisition Corp. | 91-0167 | 11/16/90 |
| US West, Inc., IP Partners, MFT Corp. | 91-0199 | 11/16/90 |
| Joseph Kruger II, an individual, Marshall Field V, an individual, Manistique Papers, Inc. | 91-0049 | 11/19/90 |
| KELP-1987 Limited Partnership, Krupp Cash Plus Limited Partnership, Krupp Cash Plus Limited Partnership | 91-0061 | 11/19/90 |
| KELP-1987 Limited Partnership, Krupp Cash Plus-II Limited Partnership, Krupp Cash Plus-II Limited Partnership | 91-0062 | 11/19/90 |
| KELP-1987 Limited Partnership, Krupp Cash Plus-III Limited Partnership, Krupp Cash Plus-III Limited Partnership | 91-0063 | 11/19/90 |
| KELP-1987 Limited Partnership, Krupp Cash Plus-IV Limited Partnership, Krupp Cash Plus-IV Limited Partnership | 91-0064 | 11/19/90 |
| Unocal Corporation, Oryx Energy Company, Sun Operating Limited Partnership | 91-0119 | 11/19/90 |
| Charles P. Gallagher, Dudley D. Malone, Liquid Container Corp. | 91-0170 | 11/19/90 |
| Adobe Resources Corporation, USX Corporation, TXO Production Corporation | 91-0171 | 11/19/90 |
| James A. Collins, Collins Foods International, Inc., Bucket Project, Inc. | 91-0191 | 11/19/90 |
| Ford Motor Company, Hongkong and Shanghai Banking Corporation, Limited, Marine Midland Automotive Financial Corporation | 91-0197 | 11/19/90 |
| Scripps Memorial Corporation, Scripps Clinic and Research Foundation, Scripps Clinic and Research Foundation | 91-0094 | 11/20/90 |
| Scripps Clinic and Research Foundation, Scripps Memorial Corporation, Scripps Memorial Corporation | 91-0095 | 11/20/90 |
| David N. Jones, National Convenience Stores Incorporated, National Convenience Stores Incorporated | 91-0097 | 11/20/90 |
| International Paper Company, Cookson Group plc, Cookson Graphic Arts Group | 91-0173 | 11/20/90 |
| Herbert T. Hayashi, 900 Partners' Investments, Amtac, Inc. | 91-0180 | 11/20/90 |
| North West Water Group PLC, Jeffrey J. Steiner, Enviro Holding Company | 91-0185 | 11/20/90 |
| Kamori Kanko Co., Ltd., William D. Killebrew, Heavenly Valley, a Nevada limited partnership | 91-0188 | 11/20/90 |
| URCARCO, Inc., Pacific Automart, Inc., Pacific Automart, Inc. | 91-0190 | 11/20/90 |
| Cox Enterprises, Inc., RMB Anchor Media Investors, Ltd., Anchor Media, Ltd. | 91-0196 | 11/20/90 |
| Martel Corporation, V. Prem Watsa, F-M Acquisition Corporation | 91-0207 | 11/20/90 |
| Cimenteries CBR S.A., Paul and Karen Taylor, Jon Magnussen, Cadman Gravel Co. Inc. | 91-0114 | 11/21/90 |
| Chiles Offshore Corporation, Grosvenor Holding Limited, Manhattan Maritime Corporation | 91-0172 | 11/21/90 |
| Oglethorpe Power Corporation, The Southern Company, Georgia Power Company | 91-0189 | 11/21/90 |
| Fred R. Adams, Jr., Jack Linville, Sunnyside Eggs, Inc. | 91-0195 | 11/21/90 |

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 111290 AND 112390—Continued

| Name of acquiring person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Pinault P.L.C., CFAO, CFAO | 91-0217 | 11/21/90 |
| Triton Holdings Limited, Triton Container Partners 1985-A2, Triton Container Partners 1985-A2 | 91-1597 | 11/23/90 |
| Triton Holdings Limited, Triton Container Partners 1985-A1, Triton Container Partners 1985-A1 | 91-1598 | 11/23/90 |
| Asko Oy, Concorde Industries, Inc., Concorde Industries, Inc. | 91-0147 | 11/23/90 |
| Share, Physicians Health Plan of Minnesota, Physicians Health Plan of Minnesota | 91-0161 | 11/23/90 |
| Physicians Health Plan of Minnesota, Share, Share | 91-0165 | 11/23/90 |
| Green Capital Investors, L.P., William Farley, West Point-Pepperell, Inc. | 91-0157 | 11/25/90 |
| General Motors Corporation, The Morgan Stanley Leveraged Equity Fund II, L.P., Fort Howard Corporation | 91-0247 | 11/23/90 |

**FOR FURTHER INFORMATION CONTACT:**
Sandra M. Peay or Renee A. Horton, Contact Representatives.
Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326-3100.

By direction of the Commission.

**Donald S. Clark,**
*Secretary.*

[FR Doc. 90-28639 Filed 12-5-90; 8:45 am]
BILLING CODE 6750-01-M

**[Docket No. C-3311]**

## E-Z-EM, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.
**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Westbury, N.Y., based corporation to divest, within twelve months of the issuance of this order, the Lafayette Pharmacal barium business and assets to a Commission-approved acquirer. Respondents are prohibited, for a period of ten years, from acquiring any interest in any other firm in the relevant market without prior Commission approval, and from selling or otherwise disposing of any interest in or assets of respondents to such a firm without providing thirty days prior notice to the Commission.

**DATES:** Complaint and Order issued October 29, 1990.[1]

**FOR FURTHER INFORMATION CONTACT:**
Susan Pettee, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** On Thursday, July 19, 1990, there was published in the **Federal Register**, 55 FR 29420, a proposed consent agreement with analysis In the Matter of E-Z-EM, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

**Donald S. Clark,**
*Secretary.*

[FR Doc. 90-28638 Filed 12-5-90; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

## Partial Suspension Lifted; Laboratory Again Meets Minimum Standards To Engage in Confirmatory Drug Testing for Amphetamines

**AGENCY:** National Institute on Drug Abuse, HHS.
**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services routinely publishes in the **Federal Register** a list of standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for federal agencies was partially suspended on October 22, 1990 (53 FR 43219, October 26, 1990) and was reinstated effective November 29, 1990:

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709; Telephone (919)-361-7770.

**FOR FURTHER INFORMATION CONTACT:**
Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301)-443-6245.

**Charles R. Schuster,**
*Director, National Institute on Drug Abuse.*

[FR Doc. 90-28601 Filed 12-5-90; 8:45 am]
BILLING CODE 4160-20-M

### Food and Drug Administration

**[Docket No. 90N-0418]**

## Drug Export; Chiron® RIBA™ HCV Test System Second Generation Assay

**AGENCY:** Food and Drug Administration, HHS.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Chiron Corp., has filed an application requesting approval for the export of the biological product Chiron® RIBA™ HCV Test System Second Generation Assay to Australia, Austria, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Japan, New Zealand, Norway, Spain, Sweden, Switzerland, and The United Kingdom.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contract person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:**
Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.



**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Chiron Corp., 4560 Horton St., Emeryville, CA 94608, has filed an application requesting approval for the export of the biological product Chiron® RIBA™ HCV Test System Second Generation Assay to Australia, Austria, Canada, Denmark, Federal Republic of Germany, Finland, France, Ireland, Italy, Japan, New Zealand, Norway, Spain, Sweden, Switzerland, and The United Kingdom. The Chiron® RIBA™ HCV Test System Second Generation Assay is a nitrocellulose based supplemental test for the HCV antibody ELISA which qualitatively detects antibodies to HCV encoded antigens in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on November 9, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 17, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: November 21, 1990.

**Thomas S. Bozzo,**
*Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 90-28623 Filed 12-5-90; 8:45 am]
BILLING CODE 4160-01-M

### Food and Drug Administration

**[Docket No. 90P-0384]**

## Cottage Cheese Deviating From the Standard of Identity; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Friendship Dairies, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 131.128) and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

**FOR FURTHER INFORMATION CONTACT:**
Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Friendship Dairies, Inc., 4900 Maspeth Ave., Maspeth, NY 11378.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of the test product is 0.1 percent compared to not less than 4 percent milkfat in cottage cheese and 0.5 to 2.0 percent in lowfat cottage cheese. The product meets all requirements of the standards with the exception of this deviation. The purpose of this variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese and lowfat cottage cheese but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." In accordance with FDA's current views, "fat free" food labeling is acceptable because the product contains 0.1 percent milkfat per serving. The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

The permit provides for the temporary marketing of a total of 1,200,000 pounds (544,320 kilograms) of test product to be packaged in 16-ounce (453.6-gram) containers and distributed in California, Connecticut, Florida, Georgia, Illinois, Maryland, New Jersey, New York, Pennsylvania, Texas, and Washington, DC. The test product will be produced and packaged at Friendship Dairies, Inc., Friendship, NY 14739.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but not later than March 6, 1991.

Dated: November 28, 1990.

**Douglas L. Archer,**
*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28634 Filed 12-5-90; 8:45 am]
BILLING CODE 4160-01-M

**[Docket No. 90P-0389]**

## Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Roberts Dairy Co., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

**FOR FURTHER INFORMATION CONTACT:**
Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food

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and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Roberts Dairy Co., P.O. box 1436, Omaha, NE 68101.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 350,000 quarts (331,205 liters) of the test product. The product will be manufactured at Roberts Dairy Co., 2901 Cuming St., Omaha, NE 68101, and distributed in Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, and South Dakota.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 6, 1991.

Dated: November 28, 1990.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28625 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 90F-0320]

## Leonard S. Finegold; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Leonard S. Finegold has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(phenyleneterephthalamide) resins as a repeated-use cooking bag material for popping corn in microwave or conventional ovens.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Leonard S. Finegold, P.O. box 23033, San Diego, CA 92123, has filed a petition (FAP OB4220) proposing that the food additive regulations be amended to provide for the safe use of poly(phenyleneterephthalamide) resins as a repeated-use cooking bag material for popping corn in microwave or conventional ovens.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 28, 1990.

**Douglas L. Archer,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-28626 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 88N-0201]

## International Drug Scheduling; Convention on Psychotropic Substances; Propylhexedrine; Delta-9-THC; Certain Exempt Preparations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments and to request an informal public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, pursuant to international treaties, on certain drug substances. The comments received in response to this notice and/or public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in January 1991. This notice is issued pursuant to the Controlled Substances Act (CSA).

**DATES:** Written comments by December 21, 1990; written requests for a public meeting and the reasons for such a request by December 17, 1990.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Written requests for a public meeting and the reasons for such a request to Nicholas P. Reuter, Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nicholas P. Reuter, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (the Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the Convention that CND proposes to decide whether to add a drug or other substance to one of the schedules of the Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (HHS).



The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS shall then evaluate the proposal and furnish a recommendation to the Secretary of State which shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed below, the Secretary of State has received three notifications from the Secretary-General. These notifications reflect the recommendations from the 27th WHO Expert Committee for Drug Dependence (ECDD), which met in September 1990. ECDD recommended that one substance, *delta*-9-THC be transferred from Schedule I to Schedule II of the Convention. In addition, ECDD recommended that propylhexedrine, presently controlled in Schedule IV of the Convention, be removed from international control under the Convention. Finally, ECDD recommended the partial termination of exemption provisions for 55 preparations (pharmaceutical products) containing butalbital. A full discussion of these recommendations follows.

*A. Propylhexedrine*

In 1986, the United States filed a petition with the United Nations requesting that propylhexedrine be removed from Schedule IV of the Convention. The United States took this action because it strongly believed that insufficient evidence was available to demonstrate that propylhexedrine met the criteria for scheduling described in Article 2, paragraph 4 of the 1971 Convention. Of primary concern was the fact that the recommendation to add propylhexedrine to Schedule IV of the Convention in 1986, did not include evidence that the substance was currently abused or was likely to be abused in a manner so serious as to present a public health or social problem. WHO has reviewed the United States Government request and has recommended that propylhexedrine be removed from international control under the 1971 Convention.

*B. Delta-9-THC*

In 1987, the United States Government transmitted a petition to the Secretary-General requesting that the substance *delta*-9-THC be transferred from Schedule I to Schedule II of the Convention. At that time, tetrahydrocannabinols (all isomers) were listed under control in Schedule I of the Convention. The United States petition followed the approval, in 1986, of the drug product Marinol, which contained one isomeric form of *delta*-9-THC (specifically dronabinol, or synthetic (-)-*delta*-9-(trans)-THC) as the active ingredient.

In 1989, WHO recommended that dronabinol be transferred from Schedule I to Schedule II of the Convention. This recommendation was considered by the United Nations CND in 1990. The WHO recommendation did not receive the necessary votes (27) at the CND meeting; however, CND recommended that WHO re-evaluate dronabinol and present its findings to a subsequent CND. Accordingly, after reviewing the available data in 1989, and again in 1990, WHO has recommended that all *delta*-9-THC isomers, including dronabinol, be transferred from Schedule I to Schedule II of the Convention.

*C. Partial Revocation of Preparation Exemptions*

Under Article 3 of the Convention, a party may exempt preparations (pharmaceutical preparations) containing substances controlled in Schedule II through IV, from certain Convention requirements. The requirements that may be exempted pertain to licenses (Article 8), records (Article 11), import and export (Article 13), inspection (Article 15), reports (Article 16), and penal provisions (Article 22). In addition, Article 3, paragraph 4 sets forth the procedure for WHO actions (review and recommendations as appropriate) on these exemptions.

In 1990, WHO reviewed an updated list of 111 preparations which have been exempted by the United States from various control measures under the CSA. As a result of this review, WHO has recommended that portions of the exemptions pertaining to Article 12, paragraph 2 be terminated for 55 substances. All 55 of these preparations contain butalbital, which is controlled in Schedule III of the Convention. Article 12, paragraph 2 pertains to export declarations that, at present, are not required under domestic laws and regulations. If the WHO recommendations are endorsed by CND, domestic actions would be necessary to comply with the United States' obligations under the Convention.

Although this notification does not pertain to the modification in the control of substances under the Convention, FDA seeks comments and information on the partial termination of these product exemptions.

The full text of the notifications from the Secretary-General of the United Nations is provided below in section II of this notice. Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) requires the Secretary of HHS, after receiving a notification proposing scheduling to publish a notice in the **Federal Register**, to provide the opportunity for interested parties to submit information and comments on the proposed scheduling action.

### II. United Nations Notifications

The formal United Nations notifications which identify the two drug substances and explain the basis for the recommendations are reproduced below.

*A. Notification on Propylhexedrine*

**Reference:** NAR/CL.20/1990, DND 411/1(2) WHO/ECDD 27

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.10/1986 of 17 November 1986 by which he informed the Government of a notification received from the Government of the United States pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, to the effect that *N*, alpha-dimethyl-cyclohexaneethylamine (hereinafter referred to as propylhexedrine), which is presently in Schedule IV of the Convention, should be deleted from that schedule without transferring it to any other schedule annexed to the Convention.

The Secretary-General also transmitted a copy of that notification to the World Health Organization, in accordance with the provisions of article 2, paragraph 2, of the Convention, for consideration by the Twenty-fifth WHO Expert Committee on Drug Dependence (25th ECDD) in April 1988.

The 25th ECDD examined the notification in question and, based on data available at that time, recommended that no change be made in the current scheduling of propylhexedrine but that the substance should be reviewed again in two years time.

The 27th ECDD which met in September 1990 examined this question again and, based on new data, recommended to the Director-General of WHO that propylhexedrine be removed from international control under the 1971 Convention.

In accordance with the provisions of article 2, paragraphs 1 and 6, of that Convention, the World Health

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Organization has accordingly notified the Secretary-General on 22 October 1990 that it is the opinion that propylhexedrine be removed from international control under the Convention on Psychotropic Substances.

The Secretary-General hereby transmits the text of that notification, together with the relevant information in support of that recommendation, as an annex to the present note, pursuant to article 2, paragraph 2, of the Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substance, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its thirty-fourth session in January-February 1991. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1, relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible descheduling of propylhexedrine could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by 30 November 1990.

8 November 1990

Reference: NAR/CL.20/1990 Annex

**Annex**

*Note addressed to the Secretary-General by the Director-General of the World Health Organization on 27 October 1990*

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 6, of the Convention on Psychotropic Substances, 1971, assessments and recommendations of the World Health Organization, as set forth in the annex hereto, concerning proposed international control in respect of propylhexedrine.

*Summary of the Recommendations Arising out of the 27th Expert Committee on Drug Dependence*

*Propylhexedrine*

1. *Substance identification.* Propylhexedrine (INN, CA3 101–40–6) is chemically *N*, alpha-dimethyl-cyclohexaneethylamine. It has one chiral carbon atom in the molecule, so that two stereoisomeric forms and one racemate are possible.

2. *Similarity to already known compounds and effects on the central nervous system.* Animal pharmacological studies indicated that propylhexedrine has some stimulant actions, for example on locomotor activity and pressor effects, in common with amfetamine.

In humans, propylhexedrine produced pressor and stimulant effects similar to those of (+)-amfetamine but was significantly less potent. Administered by inhalation, propylhexedrine had local vasoconstrictor activity similar to that of ephedrine, but the duration of the activity was longer. Mucosal rebound congestion and chronic rhinitis may occur following excessive use of propylhexedrine in nasal inhalers. Amfetamine-like intoxication symptoms have been observed after oral or intravenous abuse.

3. *Dependence potential.* Studies in rats infused with propylhexedrine indicated that it acts as a typical stimulant of the central nervous system to which some tolerance develops. In drug-discrimination studies, propylhexedrine produced complete generalization to amfetamine in monkeys but only partial generalization in pigeons. It was self-administered by monkeys trained to self-administer cocaine, but at much lower response rates.

There have been no controlled laboratory studies of the dependence potential of propylhexedrine in human subjects.

4. *Actual abuse and/or evidence for likelihood of abuse.* Oral and intravenous abuse of propylhexedrine has been documented over a period of about 30 years, usually in the form of single case reports. Some of these reports mention severe adverse reactions after intravenous use, including myocardial infarction, "shock lung" syndrome and death. Since 1988 when WHO last reviewed propylhexedrine, more information has become available on the incidence of abuse. People who abuse a variety of drugs on a chronic basis do not find the subjective effects of propylhexedrine very appealing and rarely bother to use it despite its easy availability. The Drug Abuse Warning Network of the United States of America reported two emergency room and one medical examiner mentions of propylhexedrine from 1988 to 1989. Earlier data from the Drug Abuse Warning Network were also considered. This network has not detected a significant amount of propylhexedrine abuse over the past seven years. The threshold for inclusion in the list of "most frequently mentioned drugs" (which recently contained 256 drugs) is ten reported episodes of abuse in any one year. Propylhexedrine did not exceed this threshold in 1983, 1984, 1986, 1987, 1988 or 1989. Since 1982, there have been only 50 mentions of propylhexedrine abuse out of a total of a million reported episodes of drug abuse. These mentions were considered in relation to production within the USA and Canada of about 2,500,000 inhalers (approximately equivalent to 100 kg) annually, all of which were readily available on an over-the-counter basis. Since 1988, illicit traffic has been reported in only two countries. In the Federal Republic of Germany, only one prescription forgery was reported. In the USA, 4 cases involving propylhexedrine were reported. Three cases primarily involving seizures of small amounts (a total of 8.8 grams) of propylhexedrine from facilities described as "clandestine laboratories", and 2 nasal inhalers.

Based on these recent trends and the length of time that propylhexedrine has been available, it has been concluded that propylhexedrine is not likely to be abused so as to constitute significant public health and social problems. However, it is considered desirable not to make propylhexedrine available over-the-counter in forms other than an inhaler.

5. *Therapeutic usefulness.* Propylhexedrine is used in an inhalant form for nasal decongestion. An oral formulation of the hydrochloride has been used as an anorectic agent in the



treatment of obesity. A number of alternative drugs are available for both these indications. The therapeutic usefulness of propylhexedrine is rated as little to moderate.

6. *Recommendation.* Based on new data documenting that the incidence of abuse and trafficking was still low thus confirming the absence of any significant public health problems, it is recommended that propylhexedrine be removed from international control under the Convention on Psychotropic Substances, 1971.

*B. Notification on Delta-9-THC*

**Reference:** NAR/CL.21/1990 DND 411/1(2) WHO/ECDD 27

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.3/1988 of 28 January 1988 by which he informed the Government of a notification received from the Government of the United States pursuant to article 2, paragraph 1, of the Convention on Psychotropic Substances, to the effect that *delta*-9-tetrahydro-cannabinol, (hereinafter referred to as *delta*-9-THC), which is presently in Schedule I of the Convention, should be transferred from that schedule to Schedule II of the same Convention.

The Secretary-General also transmitted a copy of that notification to the World Health Organization, in accordance with the provisions of article 2, paragraph 2, of the Convention, for consideration by the Twenty-sixth WHO Expert Committee on Drug Dependence (26th ECDD) in April 1989.

The 26th ECDD examined the notification in question and, based on data available at that time, recommended to the Director of WHO that only dronabinol, one of the stereochemical variants of *delta*-9-THC, should be transferred from Schedule I to Schedule II of the Convention on Psychotropic Substances.

The Commission on Narcotic Drugs, at its eleventh special session in 1990, considered the proposal and decided not to transfer dronabinol from Schedule I to Schedule II of that Convention.

The 27th ECDD which met in September 1990, examined this question again and recommended that *delta*-9-THC and its stereochemical variants should be rescheduled from Schedule I to Schedule II of that Convention.

In accordance with the provisions of article 2, paragraphs 1 and 6, of the Convention, the World Health Organization notified the Secretary-General on 22 October 1990 of its assessment and recommendation concerning the rescheduling of *delta*-9-THC and its stereochemical variants. In this regard, it recommended that *delta*-9-THC and its stereochemical variants should be transferred from Schedule I to Schedule II of the Convention.

The Secretary-General hereby transmits the text of that notification, together with the relevant information in support of that recommendation, as an annex to the present note, pursuant to article 2, paragraph 2, of the Convention.

In accordance with the provisions of article 2, paragraph 2, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs at its thirty-fourth session in January-February 1991. Any action or decision taken by the Commission with respect to this notification, pursuant to article 2, paragraphs 5 and 6, of the Convention, will be notified to States Parties in due course. Article 2, paragraphs 5 and 6, read as follows:

5. The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may add the substance to Schedule I, II, III or IV. The Commission may seek further information from the World Health Organization or from other appropriate sources.

6. If a notification under paragraph 1 relates to a substance already listed in one of the Schedules, the World Health Organization shall communicate to the Commission its new findings, any new assessment of the substance it may make in accordance with paragraph 4 and any new recommendations on control measures it may find appropriate in the light of that assessment. The Commission, taking into account the communication from the World Health Organization as under paragraph 5 and bearing in mind the factors referred to in that paragraph, may decide to transfer the substance from one Schedule to another or to delete it from the Schedules.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the possible rescheduling of *delta*-9-THC could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A–1400 Vienna, Austria, by 30 November 1990.

8 November 1990

Reference: NAR/CL.21/1990 Annex

*Note addressed to the Secretary-General by the Director-General of the World Health Organization on 23 October 1990*

The Director General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and has the honour to transmit, in accordance with Article 2, paragraphs 1 and 6, of the Convention on Psychotropic Substances, 1971, assessments and recommendations of the World Health Organization, as set forth in the annex hereto, concerning proposed international control in respect of *delta*-9-tetrahyro-cannabinol and its stereochemical variants.

*Summary of the recommendations arising out of the 27th Expert Committee on Drug Dependence*

*Delta-9-tetrahydrocannabinol and its stereochemical variants*

1. *Introduction.* Dronabinol [INN, CA3 1972–08–3, for (-)-*trans-delta*-9-tetrahydorcannabinol], the active principle of cannabis, is included in Schedule I of the Convention on Psychotropic Substances, 1971. Dronabinol was reviewed by WHO in 1989 in response to a notification by the Government of the United States of America, requesting the transfer of all *delta*-9-tetrahydro-cannabinols (*delta*-9-THC) from Schedule I to Schedule II of the Convention. Based on data available at that time, it was recommended that only dronabinol be rescheduled from Schedule I to Schedule II.

The United Nations Commission on Narcotic Drugs did not endorse this recommendation. Some delegations pointed out that the value of dronabinol in therapy did not seem to counterbalance its high potential for abuse, which would constitute a serious disadvantage if dronabinol would be moved to Schedule II. It was suggested, however, that WHO should continue collecting data on the therapeutic usefulness for another review.

WHO reviewed additional data compiled on therapeutic usefulness, and reconsidered its abuse potential and possible implications of rescheduling, bearing in mind the various concerns expressed by the Commission on Narcotic Drugs.

2. *Assessment of therapeutic usefulness.* Dronabinol is an effective antiemetic in the management of cancer chemotherapy-induced nausea and vomiting, with efficacy similar to that of oral phenothiazines. There is evidence

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that when used in combination with phenothiazines efficacy is enhanced and side-effects are reduced. There are limited data comparing dronabinol with the most effective antiemetic regimens used today to manage chemotherapy-induced nausea and vomiting. There are some data which indicate that dronabinol is less effective than intravenous metoclopramide when used in the treatment of nausea and vomiting caused by highly emetogenic cancer chemotherapy drugs. There are no adequate comparative data on dexamethasone or 5-$HT_3$-receptor blockers. It should be noted, however that the 5-$HT_3$ blockers are not as yet generally available.

Dronabinol causes various adverse reactions due to its effects on the central nervous system. Although the frequent occurrence of these side-effects lessens its value as a therapeutic agent, dronabinol currently has a real but limited place in the management of chemotherapy-induced nausea and vomiting and may be useful in patients refractory to other antiemetics.

It is concluded that dronabinol has therapeutic usefulness definitely greater than that of other substances in Schedule I, which have "very limited, if any" therapeutic usefulness, and comparable to a number of drugs in Schedule II.

However, the therapeutic usefulness of dronabinol, which is based on the balance between its therapeutic benefits and adverse consquences, may vary from country to country depending on a number of factors such as the prevalence of cancer and the extent of use of cancer chemotherapy as well as the supply of pharmaceutical products in general.

3. *Assessment of abuse liability and public health and social consequences of abuse of dronabinol.* The pharmacology of dronabinol is regarded to be identical to that of cannabis since the psychoactive pharmacological effects of cannabis are attributable to the effects of this substance. However, the likelihood of actual abuse and adverse public health and social consequences of dronabinol and/or synthetic THC is assessed to be substantially lower than that of cannabis, based on an examination of other determinants of the abuse liability which involve social factors such as popularity, availability, and price.

Reports on actual abuse of dronabinol and its public healty and social consequences are nil. Introduction of pure *delta*-9-tetrahydrocannabinols into the illicit market place through illicit production is not economically viable either by synthesis or extraction from plant material. As a matter of fact, no single case of clandestine manufacturing of dronabinol has been reported in the United States of America and only one minor report worldwide. Also, diversion of dronabinol preparations are extremely rare; only one case of diversion and some cases of theft have been reported in the United States of America since the drug was marketed in 1985.

Thus, it was concluded that the extent of the risk that might be caused by abuse of licit and illicit synthetic THC will not be especially serious particularly in the light of the massive volume and relatively low cost of cannabis in the illicit market place.

4. *Assessment of the possibility of dronabinol's transfer to Schedule II leading to an increase in its abuse.* Substances in Schedule II of the Convention on Psychotropic Substances, 1971 are subject to strict control measures similar to those applicable to narcotic drugs in Schedule I of the Single Convention on Narcotic Drugs, such as morphine. Although it is likely that the licit supply and use of dronabinol will increase, it is reasonable to predict that its abuse or diversion into illicit traffic will remain insignificant based on the experience in the countries where it is already marketed. This may also be inferred from the absence of evidence of significant abuse of nabilone, a synthetic homologue of dronabinol with a similar pharmacological profile which is not controlled at the international level, in spite in its marketing in several countries since 1983.

With regard to the possibility of increasing the abuse of illicit dronabinol or clandenstinely manufacturing *delta*-9-THC, it is unlikely that the change in the scheduling status of dronabinol will favour the economic viability of its clandestine manufacturing in view of the massive availability of cannabis, a strong competitior of natural origin, at relatively low cost.

5. *Assessment of the possibility of dronabinol's transfer to Schedule II leading to an increase in the abuse of cannabis.* Since cannabis is controlled under the Single Convention on Narcotic Drugs, there will be no change in the control status of cannabis. Nevertheless, there might be a concern about the possibility that the official recognition of therapeutic usefulness of dronabinol might encourage the "medicinal" use of cannabis and thus its abuse. However, cannabis is already the most widely abused illicit drug in the world, with an annual seizure figure of 30,000 to 40,000 tons. It is unlikely that such recognition will make a significant difference to the current level of massive cannabis abuse.

6. *Scope of recommendation.* Although the data on the theraputic usefulness and dependence liability relate only to one stereochemical variant of *delta*-9-tetrahydrocannabinol (dronabinol), it was noted that making a distinction between the one single isomer and the others contained in this group may create legal and forensic analytical problems in some countries. For this reason, it is recommended that *delta*-9-THC and its stereochemical variants be rescheduled together.

7. *Recommendation.* It is recommended that *delta*-9-tetrahydrocannabinol and its stereochemical variants be rescheduled from Schedule I to Schedule II of the Convention on Psychotropic Substances, 1971.

*C. Notification on Exempted Preparations*

**Reference:**
NAR/CL.19/1990
DND 411/1(2) WHO/ECDD 27
DND 421/12 (2) USA

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to refer to his note NAR/CL.19/1989 of 30 November 1989 concerning the exemption by the Government of the United States of America of 111 preparations containing psychotropic substances from certain control measures under the provisions of the Convention on Psychotropic Substances.

Article 3 of that Convention provides that, if certain conditions are met, a Party may decide to exempt various preparations containing psychotropic substances from certain measures of control provided for in the Convention except for specific obligatory requirements. Article 3, paragraph 4, of the Convention stipulates in part that

> If a Party or the World Health Organization has information regarding a preparation exempted pursuant to paragraph 3 which in its opinion may require the termination, in whole or in part, of the exemption, it shall notify the Secretary-General and furnish him with the information in support of the notification. The Secretary-General shall transmit such notification, and any information which he considers relevant, to the Parties, to the Commission and, when the notification is made by a Party, to the World Health Organization.

In accordance with the provisions of article 3, paragraph 4, of the Convention, the Director-General of the World Health Organization notified the Secretary-General on 22 October 1990 that the World Health Organization recommends that the exemption of the 33 preparations containing butalbital be terminated, so that the requirements of article 12, paragraph 2, of the 1971 Convention should apply to those preparations.

The Secretary-General accordingly hereby transmits that notification, together with the relevant information in support of that recommendation, as annex I to the present note.

The exact composition of the preparations in question, as communicated by the Government of the United States of America in its notification of 12 June 1989, is given in annex II.

In accordance with the provisions of article 3, paragraph 4, of the Convention on Psychotropic Substances, the notification from the World Health Organization will be brought to the attention of the Commission on Narcotic Drugs for consideration at its thirty-fourth session in January-February 1991. Article 3, paragraph 4, further stipulates that

> The Commission, taking into account the communication from the World Health Organization, whose assessment shall be determinative as to medical and scientific matters, and bearing in mind the economic, social, legal, administrative and other factors it may consider relevant, may decide to terminate the exemption of the preparation from any or all control measures.

Any action or decision taken by the Commission with respect to this notification, pursuant to article 3, paragraph 4, of the Convention, will be notified to Governments in due course.

In order to assist the Commission in reaching a decision, it would be appreciated if any economic, social, legal, administrative or other factors the Government may consider relevant to the question of the termination of the exemption concerning the 55 preparations containing butalbital could be communicated to the Secretary-General, c/o Division of Narcotic Drugs, P.O. Box 500, A-1400 Vienna, Austria, by 30 November 1990.



6 November 1990

**Annex I**

*Note addressed to the Secretary-General by the Director-General of the World Health Organization on 22 October 1990*

The Director-General of the World Health Organization presents his compliments to the Secretary-General of the United Nations and, with reference to his note verbale (DND 421/12(2) USA) dated 18 December 1989, has the honour to transmit, in accordance with Article 3, paragraph 4 of the Convention on Psychotropic Substances, 1971, an assessment and recommendation of the World Health Organization, as set forth in the annex hereto, concerning the preparations exempted from certain control measures by the Government of the United States of America.

*Summary of the recommendations arising out of the 27th Expert Committee on Drug Dependence*

*Exempted Preparations by the United States of America*

1. *Outline of exempted preparations.* A total of 111 preparations, 55 containing butalbital and 56 containing either chlordiazepoxide, phenobarbital, secbutabarbital or their salts, have been exempted from various control measures by the Government of the United States of America. Butalbital is in Schedule III of the Convention on Psychotropic Substances, 1971, and the other cited substances are in Schedule IV of the same Convention. Those preparations containing barbiturates are compounded with such drugs as antipyretic analgesics, anticholinergics, ephedrine and xanthines in varying quantities. Those of chlordiazepoxide or its salt are compounded either with sodium estrone sulfate or clidinium bromide. The rationale applied by the exempting authorities of the United States of America is based on the concept of combining with the controlled substance an amount of counteractive drug sufficient to cause early subjective deterrent effects.

2. *Assessment and Recommendation.* There is some concern about the possibility that some of the 111 preparations, or some substances extracted from them, will be abused so as to constitute significant public health and social problems if exported to another country. Although they are reported to have caused no significant abuse problems in the exempting country, their possible exportation requires a more careful review in the future in order to determine whether termination of the exemption of some of these preparations will be needed.

It is also noted that the Guidelines for the Exemption of Preparations from Certain Control Measures under the Provisions of Article 3 of the 1971 Convention on Psychotropic Substances, adopted by the Commission on Narcotic Drugs in 1984,[1] state that there should be no exemption from the requirements of article 12, export declarations, and of article 10, paragraph 2, prohibition of advertisement to the general public (unless such exemption would be in keeping with national statutory requirements). In this regard, the exemption with respect to the 55 preparations containing butalbital from the requirement of article 12 is inconsistent with the 1984 Guidelines, although it would appear that the requirement of article 10, paragraph 2 is met anyway by the national requirements applicable to products sold only on prescription.

As a result of the above, it is recommended that the exemption of the 55 preparations containing butalbital from the requirement of article 12, paragraph 2, be terminated.

It would also be desirable if appropriate measures were taken by the Government of the United States of America to ensure that none of the 111 preparations would be exported without appropriate notice to the authorities of the importing country until such time that WHO can conduct a systematic review of the exemptions. This would be consonant with resolution 1987/30 "Improvement of the control of international trade in psychotropic substances listed in Schedules III and IV of the 1971 Convention", adopted by the Economic and Social Council of the United Nations in 1987.

[1] Resolution 1 (S-VIII) of the United Nations Commission on Narcotic Drugs, United Nations document E/CN.7/1984/13.

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ANNEX II

ANNEXE II

ANEXO II

[Schedule III]

[Tableau III]

[Lista III]

| Substance, substance, substancia | Name of preparation, nom de la preparation, nombre del preparado | Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento |
|---|---|---|
| Butalbital | Acetaminophen 325 mg, Butalbital 50 mg | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Acetaminophen 500 mg, Butalbital 50 mg | (per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Amaphen, reformulated | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Anoler 300 | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Anoquan, modified formula | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Axotal | (per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg. |
| Butalbital | B-A-C | (per tablet) Aspirin: 650.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Bancap | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Blue Cross Butalbital APAP and Caffeine | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Bucet | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Bucet | (per capsule) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Butace | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butacet | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital and Acetaminophen | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Butalbital and Acetaminophen Tablets 50/325 | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Butalbital and Acetaminophen Tablets 50/650 | (per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Butalbital with Acetaminophen, Caffeine | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital, Acetaminophen or Caffeine | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |



ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

| Substance, substance, substancia | Name of preparation, nom de la preparation, nombre del preparado | Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento |
|---|---|---|
| Butalbital | Butalbital, APAP and Caffeine | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital, Acetaminophen Caffeine | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital, Acetaminophen and Caffeine | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital Acetaminophen and Caffeine II | (per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Butalbital Compound | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Con-Ten | (per capsule) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Dolmar | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Endolar | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Esgic | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Esgic | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Esgic Forte | (per tablet) Acetaminophen: 500.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Esgic | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Febophen | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Febridyne Plain | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Femcet | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Floricet | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | G-1 Capsule | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | IDE-Cet | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |

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ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

| Substance, substance, substancia | Name of preparation, nom de la preparation, nombre del preparado | Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento |
|---|---|---|
| Butalbital | Isocet | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Isopap | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Margesic | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Medigesic | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Pacaps | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Pacaps, modified formula | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Phrenilin | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Phrenilin Forte | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Repan | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Repan | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Rogesic | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Sangesic | (per tablet) Acetaminophen: 200.0 mg. Butalbital: 50.0 mg. Salicylamide: 200.0 mg. |
| Butalbital | Sedapap-10 | (per tablet) Acetaminophen: 650.0 mg. Butalbital: 50.0 mg. |
| Butalbital | Tencet | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Tencet | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Triad | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Triad | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |
| Butalbital | Triaprin | (per capsule) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. |



ANNEX II—Continued

[Schedule III]

[Tableau III]

[Lista III]

| Substance, substance, substancia | Name of preparation, nom de la preparation, nombre del preparado | Composition of exempted preparation, composition de la preparation exemptee, composicion del preparado exento |
|---|---|---|
| Butalbital | Two-Dyne Revised | (per tablet) Acetaminophen: 325.0 mg. Butalbital: 50.0 mg. Caffeine: 40.0 mg. |

### III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, CND is not obliged to follow the WHO recommendations. Options available to CND include: (1) Acceptance of the WHO recommendations; (2) acceptance of the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

Propylhexedrine and *delta*-9-THC, are controlled under the CSA in Schedules V and I, respectively. The proposed international drug scheduling actions, if adopted by CND, will result in no greater degree of control of these substances than are currently applied domestically.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the United Nations notifications concerning these two drug substances and the notification on the exempted preparations. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, pursuant to section 811(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations at the CND meeting in January 1991.

### IV. Submission of Comments and Opportunity for Public Meeting

Interested persons may, on or before December 21, 1990, submit to the Dockets Management Branch (addressed above) written comments regarding this notice. FDA does not presently plan to hold a public meeting. If any person believes that, in addition to its written comments, a public meeting would contribute to the development of the U.S. position on any of these two substances, a request for a public meeting and the reasons for such a request should be sent to Nicholas P. Reuter (address above) on or before December 17, 1990. The short time period for the submission of comments and requests for a public meeting is needed to assure that HHS may, in a timely fashion, carry out the required action and be responsive to the United Nations. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 30, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-28622 Filed 12-5-90; 8:45 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### Predictability and Stability of Biomedical Research; Meeting on Draft Financial Management Plan

Notice is hereby given that the National Institutes of Health (NIH) will hold a public forum to solicit views and comments on a draft financial management plan developed in response to concerns expressed by the Congress regarding the predictability and stability of NIH funding for biomedical research. The meeting will be held on November 17, 1990, from 9 a.m. to 4:30 p.m. in the Lipsett Amphitheater in the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

To facilitate discussions, a panel will receive testimony from public witnesses. Each witness will be limited to a maximum of ten minutes. Attendance and the number of presentations will be limited to the time and space available. Consequently, all individuals wishing to attend or to present a prepared statement at this public meeting should notify, in writing, Ms Jackie Brockman, Editorial Experts, Inc., 66 Canal Center Plaza, suite 200, Alexandria, Virginia 22314 (FAX No. 703-683-4915). Those planning to make a presentation should file a one-page summary of their remarks with Ms. Brockman by December 10, 1990; a copy of the full text of these remarks should be submitted for the record at the time of the meeting.

Additional information may be obtained by calling Ms. Jackie Brockman on (703) 683-0683.

Dated: November 27, 1990.

**William F. Raub,**

*Acting Director, National Institutes of Health.*

[FR Doc. 90-28590 Filed 12-5-90; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3075; FR-2916-N-01]

### Mortgagee Review Board Administrative Actions

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 202(c)(5) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

**FOR FURTHER INFORMATION CONTACT:** William Heyman, Director, Office of Lender Activities and Land Sales Registration, 451 Seventh Street, SW., room 9146, Washington, DC 20410, Telephone: (202) 708-1824. The

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Telecommunications Device for the Deaf (TDD) number is (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989)) requires that HUD "publish in the **Federal Register** a description of and the cause for administrative action against a (HUD-approved) mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5) of the National Housing Act, notice is hereby given of final administrative actions taken by the Mortgagee Review Board from the date that section 142 of the HUD Reform Act of 1989 was signed into law (December 15, 1989) and the causes for such actions.

**1. Philadelphia Freedom Corporation, Las Vegas, Nevada**

*Action:* Proposed withdrawal of HUD mortgagee approval.

*Cause:* HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations included: Failure to perform face-to-face interviews with mortgagors; failure to assure that mortgagors made the minimum required investment in the property; overinsured mortgage; failure to document implementation of a Quality Control Plan; improper styling of mortgagor escrow accounts; and improper compensation of staff appraisers.

**2. Denver Mortgage Banking Corporation, Denver, Colorado**

*Action:* Withdrawal of HUD mortgagee approval.

*Cause:* HUD monitoring review citing violations of HUD–FHA single family program loans origination requirements. The violations included: Submitting loans to HUD–FHA without disclosing that the loan applications were previously rejected by other HUD-approved mortgages; failure to disclose mortgagor liabilities and past credit performance; submitting inaccurate information concerning the number of mortgagors' dependents; and failure to implement and maintain a Quality Control Plan.

**3. First Commercial Mortgage Company, Little Rock, Arkansas**

*Action:* Settlement Agreement that provides for indemnification to HUD for future claim losses in connection with 26 improperly originated loans.

*Cause:* HUD monitoring review citing noncompliance with HUD–FHA single family program loan origination requirements. The violations included: False gift letters; failure to ensure that mortgagors made the minimum required investment in the property; omitting mortgagor liabilities; permitting verification documents to be hand-carried by interested third parties; and use of non-employees to assist in preparing HUD–FHA mortgage insurance applications.

**4. Simmons First Mortgage Company, Little Rock, Arkansas**

*Action:* Letter of Reprimand and a Settlement Agreement that provides for indemnification to HUD in the amount of $179,450 for claim losses and agreement to indemnify HUD for future claim losses in connection with 30 improperly originated loans.

*Cause:* HUD monitoring review citing noncompliance with HUD–FHA single family program loan origination requirements. The violations included: Failure to assure that mortgagors made the minimum required investment in the property; failure to obtain supporting documentation for approving loans; omitting mortgagor liabilities; permitting verification documents to be hand-carried by interested third parties; failure to perform face-to-face interviews with mortgagors; failure to determine mortgators' source of funds; and failure to implement a Quality Control Plan.

**5. First Security Mortgage Company, Tulsa, Oklahoma**

*Action:* Withdrawal of HUD mortgagee approval.

*Cause:* Unauthorized transfers of escrow funds of approximately $1.1 million from the Government National Mortgage Association (GNMA) principal and interest account for loans serviced by the company. Failure to pay securities holders under the GNMA Mortgage-Backed Securities Program.

**6. Delson Financial Mortgage Bankers, Phoenix, Arizona**

*Action:* Settlement Agreement that provides for indemnification to HUD in the amount of $317,917 for claim losses in connection with nine improperly originated loans.

*Cause:* HUD Office of Inspector General Audit citing noncompliance with HUD–FHA single family program loan origination requirements by the company's Arizona branch office. The violations included: Failure to verify mortgagor assets or income; failure to obtain proper appraisals; permitting mortgagors to sign blank loan documents; and overinsured mortgages.

**7. Carl I. Brown and Company, Overland Park, Kansas**

*Action:* Settlement Agreement that provides for indemnification to HUD in the amount of $181,858 for claim losses in connection with twelve improperly originated loans.

*Cause:* HUD monitoring review citing noncompliance with HUD–FHA single family program loan origination requirements by the company's Kansas City branch office. The violations included: Failure to assure that mortgagors made the minimum required investment in the properties; and submitting loans that were in default for HUD–FHA mortgage insurance.

**8. Conner Mortgage Company, Arlington, Texas**

*Action:* Withdrawal of HUD mortgagee approval and referral for possible action under the False Claims Act.

*Cause:* HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements and failure to submit an annual audited financial statement. The loan origination violations included: Submission of false statements; failure to assure that mortgagors made the required minimum investment in the property; improper disbursements or failure to account for mortgage proceeds; and failure to maintain a Quality Control Plan.

**9. United Austin Mortgage Company, Austin, Texas**

*Action:* Probation and proposed Settlement Agreement that would provide for indemnification for claim losses in the amount of $1.1 million for 27 improperly originated mortgages.

*Cause:* Office of Inspector General audit citing violations of HUD–FHA single family program loan origination violations. The violations included: Failure to verify borrowers assets; overinsured mortgages; failure to assure that borrowers made the minimum required investment in the property; failure to assure that mortgagors' income was sufficient to support the mortgages; and failure to maintain an effective Quality Control Plan.

**10. Innovative Mortgage, Inc., Houston, Texas**

*Action:* Probation and Settlement Agreement that provides for future indemnification for two improperly originated loans, a buydown on two loans relating to violations of repair escrow agreements and a buydown of two loans relating to overcharging mortgagors for interim interest.



*Cause:* HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Misrepresenting the marital status of mortgagors; failure to adhere to requirements relating to repair escrows; and overcharging mortgagors for interim interest.

**11. Flagship Mortgage Services, Inc., Bedford, Texas**

*Action:* Withdrawal of HUD mortgagee approval.

*Cause:* HUD monitoring review citing violations of HUD-FHA single family program loan origination requirements. The violations included: Submission of false verifications of employment for mortgagors; failure to assure that mortgagors made the minimum required investment in the property; omitting borrowers liabilities; failure to properly maintain mortgagor escrow accounts; and failure to implement a Quality Control Plan.

**12. Pacific Bancorp, Inc., Spokane, Washington**

*Action:* Withdrawal of HUD mortgagee approval.

*Cause:* Failure to remit mortgage insurance premiums to HUD in connection with 62 loans for which the premiums were collected from mortgagors and used for unauthorized purposes; and failure to submit an acceptable audited financial statement.

**13. First Union Mortgage Corporation, Raleigh, North Carolina**

*Action:* Letter of Reprimand and Settlement Agreement that provides for indemnification to HUD for claim losses of $297,832 in connection with ten improperly originated loans and agreement to indemnify HUD for future claim losses on seven loans.

*Cause:* HUD Office of Inspector General audit of the company's Mesa, Arizona branch office that disclosed violations of HUD–FHA single family program loan origination violations. The violations included: Failure to perform face-to-face interviews with borrowers; failure to assure that mortgagors made the minimum required investment in the property; and submitting inaccurate information.

**14. American Residential Mortgage Corporation, La Jolla, California**

*Action:* Settlement Agreement that provides for indemnification to HUD in the amount of $496,194 for claim losses in connection with eight improperly originated mortgages and agreement not to submit future claims on 6 improperly originated loans. Also, an additional 126 loans are to be reviewed by HUD for non-compliance with HUD–FHA requirements and indemnification will be made to HUD for any loan that was knowingly originated by the company in violation of HUD–FHA requirements.

*Cause:* HUD Office of Inspector General audit of the company's Phoenix and Gilbert, Arizona branch offices citing violations of HUD–FHA single family program loan origination requirements. The violations included: Failure to assure that borrowers made the minimum required investment in the property; excessive mortgage buydowns; failure to properly determine the mortgagors' source of funds; overinsured mortgages; and improper double escrow loan transactions.

**15. CityFed Mortgage Company, Bellevue, Washington**

*Action:* Letter of Reprimand and proposed Settlement Agreement that provides for indemnification to HUD in the amount of $366,980 for claim losses in connection with 11 improperly originated loans and agreement not to submit future claims on two loans.

*Cause:* HUD Office of Inspector General audit of the company's Nashville, Tennessee branch office citing violations of HUD–FHA single family program loan origination requirements. The violations included: Failure to verify borrowers' cash assets; failure to assure that borrowers made the minimum required investment in the property; and failure to perform a face-to-face interview in one loan transaction.

**16. Mortgage and Trust, Inc., Houston, Texas**

*Action:* Probation and a proposed negotiated settlement that would provide for reimbursement to HUD for claim losses for improperly originated and serviced FHA mortgages.

*Cause:* HUD Office of Inspector General audit citing violations of HUD–FHA single family program loan origination requirements including: Failure to assure that borrowers had sufficient assets to close the loan transaction; failure to verify earnest money deposits; and failure to verify borrowers gift deposits; also a HUD monitoring review of the company's loan servicing practices cited; failure to take prompt collection action and meet HUD–FHA servicing requirements on delinquent loans; failure to properly administer the assignment program; and failure to initiate foreclosures in a timely manner.

**17. City Mortgage Company, Anchorage, Alaska**

*Action:* Proposed Settlement Agreement that provides for indemnification to HUD in the amount of $152,491 for claim losses in connection with two improperly originated mortgages and a buydown of an overinsured mortgage.

*Cause:* HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations included: Submitting a loan in default for HUD–FHA mortgage insurance; overinsured mortgage; and closing loans on more than seven adjacent or contiguous rental units for the same mortgagor.

**18. MidFirst Mortgage Company, Oklahoma City, Oklahoma**

*Action:* Proposed Settlement Agreement.

*Cause:* HUD Office of Inspector General audit citing violations of HUD–FHA requirements by the company's San Antonio, Texas branch office. The violations included: Failure to assure that independent verifications of mortgagors' employment and deposit were obtained; failure to properly analyze mortgagors' rental income; failure to perform face-to-face interviews with mortgagors; and failure to obtain proper support for the source of mortgagors' downpayments.

**19. Master Financial, Inc., Anaheim, California**

*Action:* Letter of Reprimand and Settlement Agreement that provides for future indemnification to HUD for any claim loss in connection with an improperly originated loan.

*Cause:* HUD monitoring review citing violations of HUD–FHA single family program loan origination requirements. The violations included: Failure to timely remit mortgage insurance premiums in connection with nine loans; submission of a loan for mortgage insurance with an unacceptable subleasehold interest; and interest overcharges to mortgagors.

Dated: November 28, 1990.

**Arthur J. Hill,**

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 90-28092 Filed 12-5-90; 8:45 am]

BILLING CODE 4210-27-M

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**Office of Administration**

[Docket No. N-90-3076]

**Submission of Proposed Information Collection to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collections | 35 | | 1 | | 92.5 | | 3,238 |

*Total Estimated Burden Hours:* 3,238.
*Status:* New.
*Contact:* Andrew Zirneklis, HUD, (202) 708-1824, Scott Jacobs, OMB, (202) 395-6880.

Dated: November 29, 1990.

[FR Doc. 90-28691 Filed 12-5-90; 8:45 am]

BILLING CODE 4210-01-M

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**Information Collection Submitted to the Office of Management and Budget for Review**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the bureau clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1084-0009), Washington, DC 20503, telephone (202) 395-7340.

*Title:* Nondiscrimination on the Basis of Handicap in Federal Assisted Programs of the Department of the Interior, 43 CFR part 17, subpart B.

*OMB approval number:* 1084-0021.

*Abstract:* Department of the Interior's regulation effectuating section 504 of the Rehabilitation Act of 1973, prohibits discrimination on the basis of handicap in federally assisted programs or activities. The regulation requires that recipients collect, maintain, and occasionally report certain types of civil rights compliance information regarding their operations to the Department. The regulation requires recipients to provide assurances or certification relative to their compliance status. Additionally, the regulation provides for the conduct of recipient self-evaluations on a nonrecurring basis; the adoption of grievance procedures; and notices to employees and beneficiaries regarding the requirements of the Act.

*Bureau form number:* None.
*Frequency:* On occasion.
*Description of respondents:* State and local government agencies receiving Federal financial assistance from the Department of the Interior.
*Estimated completion time:* 20 hours.
*Annual responses:* 278.
*Annual burden hours:* 5,560.
*Bureau clearance officer:* John Strylowski, 202-208-5345.

Dated: November 19, 1990.

**Carmen R. Maymi,**

*Director, Office for Equal Opportunity.*

[FR Doc. 90-28613 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-RE-M

**Performance Review Board Appointment**

**AGENCY:** Office of the Secretary, Department of the Interior.



**ACTION:** Notice of appointment of a replacement individual for a performance review board.

**SUMMARY:** This notice provides the name of a replacement individual who has been appointed to serve as a member of one of the Department of the Interior's Performance Review Boards. The entire Assistant Secretary—Land and Minerals Management Performance Review Board is listed which includes the name of the replacement member. The publication of this appointment is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4).

**DATES:** This appointment is effective December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 208-6761.

**Department of the Interior Performance Review Board**

As of October 30, 1990

*Assistant Secretary—Land and Minerals Management*

James Hughes (NC) (Chairperson)
Jennifer Salisbury (NC) (replacing Ed Cassidy)
Carson Culp (CA)
Robert Fagin (CA)
Thomas Gernhofer (CA)
Sustan Recce-Lamson (NC)
Dean Stepanek (CA)

Dated: October 31, 1990.

For the Executive Resources Board.

**Charles E. Kay,**

*Principal Deputy Assistant Secretary—Policy, Management and Budget.*

[FR Doc. 90-28618 Filed 12-5-90; 8:45 am]

BILLING CODE 4310-10-M

**Bureau of Indian Affairs**

**Fort Hall Irrigation Project, Idaho**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed operation and maintenance rates.

**SUMMARY:** The purpose of this notice is to change the assessment rates for operating and maintaining the Fort Hall Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

**EFFECTIVE DATES:** Interested parties may submit written comments no later than January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, telephone FTS 429-6750; commercial (503) 231-6750.

**SUPPLEMENTARY INFORMATION:** This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Fort Hall Irrigation Project for Calendar year 1991 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026).

The purpose of this notice is to announce an increase in the Fort Hall Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1991 will amount to an increase of 14% for the Fort Hall unit which has not had an increase for the past eight years and a 17.5% increase for the Michaud Unit due to an increase in power rates. The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views and arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232-4169, no later than 30 days after publication of this notice in the **Federal Register.**

**Fort Hall Irrigation Project**

*Regulations and Charges Administration*

The Fort Hall Irrigation Project, which consists of the Fort Hall Unit including the ceded area south of the Fort Hall Reservation, the Michaud Unit and the Minor Units on the Fort Hall Indian reservation, Idaho, is administered by the Bureau of Indian Affairs. The Superintendent of the Fort Hall Agency is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employee designated by him. The general regulations are contained in part 171, Operation and Maintenance, title 25—Indians, Code of Federal Regulations.

*Irrigation Season*

Water will be available for irrigation purposes from May 1 to September 30 of each year. These dates may be varied by 15 days depending on weather conditions and the necessity for doing maintenance work.

*Methods of Irrigation*

Where soil, topography, and other physical conditions are unfavorable for surface irrigation, and the project facilities are designed to deliver water to farm units for sprinkler irrigation, the Officer-In-Charge may limit deliveries to this type of irrigation.

*Distribution and Apportionment of Water*

(a) *Delivery:* Water for irrigation purposes will be delivered throughout the irrigation season by either the continuous flow or rotation method at the discretion of the Officer-in-Charge. If during a time when delivery is by the rotation method, a water user desires to loan his turn to another eligible water user, he shall notify either the watermaster or the ditch rider who may permit such exchange, if feasible.

(b) *Preparation and submission of water schedule:* If the decision of the Officer-in-Charge is to deliver water by the rotation method, the watermaster will assist the water users on each lateral in preparing a rotation schedule should they choose to get together and prepare the schedule. In cases where the water users fail to exercise this right before March 1, the watermaster will prepare the schedule which shall be final for the season. Owners of 120 acres or more in one farm unit may elect between the continuous flow and rotation method of delivery, provided such choice does not interfere with delivery to other lands served by the lateral.

(c) *Application for deliveries of irrigation water:* Request for water changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditch rider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Water users

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will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

*Duty of Water*

Depending upon available supplies of water for each unit of the Project, the duty of water is based on the delivery to the farm unit of 5.5 acre-feet of water per acre per irrigation season. This duty of water may be varied at the discretion of the Officer-in-Charge depending on supplies available, but each irrigable acre shall be entitled to its pro-rate share of the total water supply.

*Charges*

Bills covering irrigation charges will be issued to the owner of record taken from the Bannock, Bingham or Power County records as of December 31, preceding the due date. In the case of Indian-owned land leased to a non-Indian, when an approved lease contract is on file with the superintendent of the Fort Hall Agency, operation and maintenance charges will be billed to the lessee of record.

*Basic and Other Water Charges*

(a) The annual basic water charges for the operation and maintenance of the Fort Hall Irrigation Project lands in non-Indian ownership, and assessable Indian-owned lands leased to a non-Indian or a non-member of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho, are fixed for the Calendar Year 1991 and subsequent years until further notice as follows:

(1) Fort Hall Unit basic rate.....$19.40 per acre
(2) Michaud Unit basic rate.....$25.00 per acre
Additional rate for sprinkler when pressure is supplied by project...$12.00 per acre
(3) Minor Units basic rates.....$14.00 per acre

(b) The minimum bill issued for any tract will be $25.00.

*Payments*

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership which do not qualify for free water, remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

*Interest and Penalty Fees*

Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

*Assessments on Indian Owned Land*

When land owned by members of the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation is first leased to non-Indians or non-members of the tribe, and an approved lease is on file at the Fort Hall Agency, the leased land is not subject to operation and maintenance assessments for three years. The three years the land is not subject to assessment need not run consecutively. When land has been leased for a total of three years, the land, when under lease to non-Indians or non-members of the tribe, is subject to operation and maintenance assessments the same as lands in non-Indian ownership and lands owned by non-members of the tribe within the project. (See Solicitor's Opinion M 28701, approved September 24, 1936, and the instructions of September 19, 1936, and instructions of December 1, 1936).

Willford Bowker,
*Acting Portland Area Director.*
[FR Doc. 90-28635 Filed 12-5-90; 8:45 am]
BILLING CODE 4310-02-M

## Bureau of Land Management

[G-910-G1-0407-4214-10; NMNM 55234]

### Record of Decision (ROD); Waste Isolation Pilot Plant (WIPP); Correction

In Federal Register document 90-22097, Vol. 55, No. 182, on the issue of Wednesday, September 19, 1990, beginning on page 38586, the following corrections are made:

1. On page 38587, in part E. Public Involvement, the third sentence is corrected to read: "Comments on the Draft SEIS were received and were considered by the DOE in preparing their FSEIS, their ROD, and this ROD."

2. On the same page, same heading, the acronym "FSEIS" in the second to last sentence is corrected to read: "the DRAFT SEIS," and the "eight locations nationwide" is corrected to read "nine locations nationwide."

Dated: November 27, 1990.
Kathy Eaton,
*Acting State Director.*
[FR Doc. 90-28609 Filed 12-5-90; 8:45 am]
BILLING CODE 4310-FB-M

[AZ-050-1-4212-13; CAAZCA 19693]

### California: Realty Action, Noncompetitive Sale of Public Lands in San Bernardino County

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** The following described land has been found suitable for direct sale under sections 203 and 209, Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), to Mr. and Mrs. Charles W. Butler, at not less than fair market value. This sale will resolve a longstanding inadvertent trespass.

T. 9 N., R. 22 E., San Bernardino Meridian,
Sec. 13, lot 7, containing .45 acre, more or less.

This land is not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. The land will not be offered for sale until at least 60 days after publication of this notice in the Federal Register.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interest being offered have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

Upon publication of this notice in the Federal Register, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

**DATES:** On or before January 22, 1991, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Jerry Page, Supervisory Natural Resource Specialist, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403.

Dated: November 26, 1990.
Bill Walters,
*Acting District Manager.*
[FR Doc. 90-28632 Filed 12-5-90; 8:45 am]
BILLING CODE 4310-32-M



[ID-942-01-4730-12]

### Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 30, 1990.

The plat representing the dependent resurvey of a portion of the Boise Meridian (east boundary, T. 15 N., R. 1 W.), and a portion of the subdivisional lines, and subdivision of certain sections, T. 15 N., R. 1 E., Boise Meridian, Idaho, Group No. 791, was accepted November 27, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 30, 1990.
Jerrold E. Knight,
*Acting Chief Cadastral Surveyor for Idaho.*
[FR Doc. 90-28637 Filed 12-5-90; 8:45 am]
BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-15286]

### Proposed Continuation of Withdrawal, Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Bureau of Reclamation, Department of the Interior, proposes that the withdrawal of 84.00 acres for the minidoka Reclamation Project in Power County be continued for an additional 16 years. The land is still being used for the purpose for which it was withdrawn. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

**DATES:** Comments should be received by March 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawal made by Secretarial Order dated April 23, 1924, be continued for a period of 16 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

**Boise Meridian**

T. 8 S., R. 30 E.,
Sec. 22, lot 4 and SE¼SW¼.

The area described contains 84.00 acres in Power County.

The withdrawal is essential for continued administrative jurisdiction for control, operation, and maintenance of the project. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: November 26, 1990.
William E. Ireland,
*Chief, Realty Operations Section.*
[FR Doc. 90-28636 Filed 12-5-90; 8:45 am]
BILLING CODE 4310-GG-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523.

*Date Submitted:* November 30, 1990.
*Submitting Agency:* Agency for International Development.
*OMB Number:* 0412-0525.
*Form Number:* AID 1384-1.
*Type of Submission:* Renewal.
*Title:* IAP Usage Report.
*Purpose:* The IAP-66A Usage Report form is to establish a procedure to ensure accountability in the Use of the IAP-66A forms. The IAP-66A forms are applications submitted to the Immigration and Naturalization Service for entry visas or extension of visas of A.I.D. participants who are being trained in the U.S. Collection of this information from A.I.D. field missions and participating contractors is used to improve accuracy in the accountability of IAP-66A forms being issued, voided, or lost.
*Annual Reporting Burden:* Respondents: 300; annual responses: 1; average hours per response: 1.5; burden hours: 450.
*Reviewer:* Marshall Mills (202) 395-7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: November 29, 1990.
Elizabeth Baltimore,
*Communications and Program Management Division.*
[FR Doc. 90-28630 Filed 12-5-90; 8:45 am]
BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-293]

### Commission Investigative Attorney

In the Matter of Certain Crystalline Cefadroxil Monohydrate.

Notice is hereby given that, as of this date, James M. Gould, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of George C. Summerfield, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: November 29, 1990.
Respectfully submitted,
Lynn I. Levine,
*Director, Office of Unfair Import Investigations.*
[FR Doc. 90-28545 Filed 12-5-90; 8:45 am]
BILLING CODE 7020-02-M

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[Investigation No. 337-TA-316]

**Change of Commission Investigative Attorney**

In the Matter of Certain Plastic Encapsulated Integrated Circuits.

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. and Linda C. Odom, Esq. of the Office of Unfair Import Investigations are designated as the Commission investigative Attorneys in the above-captioned matter instead of Thomas L. Jarvis, Esq. and Deborah J. Kline, Esq.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: November 30, 1990.

Respectfully submitted,

Lynn L. Levine,

*Director, U.S. International Trade Commission, Office of Unfair Import Investigations.*

[FR Doc. 90-28506 Filed 12-5-90; 8:45 am]

BILLING CODE 7020-02-M

## DEPARTMENT OF JUSTICE

**Lodging of Consent Decree; Marathon Electric Manufacturing Corp.**

In accordance with Departmental policy, notice is hereby given that on November 7, 1990, a proposed Consent Decree in *United States* v. *Marathon Electric Manufacturing Corporation, et al.*, Case No. 90-C-831-S, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree requires the defendants address the groundwater contamination at the Wausau Groundwater Contamination Site, located in Marathon County, Wisconsin. The defendants are required, pursuant to the proposed Consent Decree, to perform soil vapor extraction, utilize two municipal wells for capturing contaminants, and to continue to operate an extraction well, installed pursuant to a previous Consent Decree. In addition, the proposed Consent Decree provides for reimbursement to the United States of $1,650,000.00, plus 8.47% interest form April 1, 1990, for response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Marathon Electric Manufacturing Corporation, et al.* D.J. reference #90-11-2-444A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $68.00 payable to the Consent Decree Library.

Richard B. Stewart,

*Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-28578 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree; City of Phoenix, AZ and State of Arizona**

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Phoenix, Arizona and State of Arizona*, Civil Action No. 89-1648-PHX-CAM, has been lodged in the United States District Court for the District of Arizona on November 13, 1990. This consent decree settles the claims alleged in a previously filed complaint pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, for injunctive relief and civil penalties for violations of the Clean Water Act, the Environmental Protection Agency's ("EPA") pretreatment regulations at 40 CFR part 403, and the City's National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA for the City's two publicly-owned treatment works ("POTW"): The 23rd Avenue Wastewater Treatment Plant (WWTP); and the 91st Avenue Wastewater Treatment Plant.

Under the terms of the proposed consent decree, the City has agreed: to implement and enforce its EPA-approved wastewater pretreatment program; develop technically-based local discharge limits and, when approved by EPA, incorporate such limits in an enforceable city ordinance; to issue or reissue permits to all significant and/or categorical industrial users of the City's WWTPs; and, to monitor and report progress on implementation of its approved wastewater pretreatment program. In addition, the City has agreed to pay a civil penalty of $450,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Phoenix, Arizona and State of Arizona*, D.J. Ref. 90-5-1-1-3378.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

*EPA Region IX*

Contact: Gary Hess, Office of Regional Counsel, U.S. Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103 (415) 556-5955.

*United States Attorney's Office*

230 North First Avenue, Phoenix, Arizona 85025.

The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

*Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-28579 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-10-M

## Drug Enforcement Administration

[Docket No. 88-106]

**Devendranathen Chanmugram, M.D.; Revocation of Registration**

On October 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Devendranathan Chanmugram, M.D. (Respondent) of the Martin County Medical Clinic, Route 40, P.O. Box 784, Inez, Kentucky, proposing to revoke his DEA Certificate of Registration BC0880371 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Louisville, Kentucky on June 27 and 28, 1989. On February 16, 1990, Judge Bittner entered her opinion and recommended ruling, findings of fact, conclusions of law and decision, recommending that the Administrator revoke Respondent's registration and that any pending applications for renewal of that registration be denied. On March 12, 1990, Respondent filed exceptions to the administrative law judge's opinion and on May 29, 1990, filed a motion and documentation regarding Respondent's attendance and participation in programs relating to controlled substances.

On April 12, 1990, Judge Bittner transmitted the record of these proceedings, including the Respondent's exceptions, to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter.

The administrative law judge found that Respondent studied medicine in Sri Lanka and England. He became a member of the Royal College of Physicians in London in internal medicine in 1959. He returned to Sri Lanka in 1960, came to the United States for about three years in 1962, and then went back to Sri Lanka. In 1965, Respondent returned to the United States. In April 1967, Respondent began working for Dr. Parameswaran who operated two medical clinics in Kentucky. In is essential to note that Dr. Parameswaran is the respondent in Ekambaram Parameswaran, M.D., Docket No. 88-107, which was consolidated in the instant case for hearing. See 55 FR 28029 (June 28, 1990).

The administrative law judge found that Dr. Parameswaran had been the subject of an investigation by the West Virginia State Police, the Drug Control Branch of the Kentucky Cabinet for Human Resources and the Kentucky Board of Medical Licensure. During the course of that investigation, an Investigator with the Medical Board obtained the medical records of approximately eighty to ninety patients of the medical clinic. The medical records contained entries by both Respondent and Dr. Parameswaran. At the request of the Medical Board, a physician reviewed those medical charts and concluded that the prescribing practices of both Respondent and Dr. Parameswaran were excessive and inappropriate. They prescribed inappropriate combinations of drugs and prescribed controlled substances for an excessive period of time to certain patients. A review of the patient charts revealed that Respondent prescribed Percodan, Tylenol No. 4, and Valium simultaneously. The physician testified that prescribing Percodan with Tylenol No. 4 is "inappropriate and excessive, and coupled with Valium certainly raise[s] the specter of abuse." In addition to the physician's testimony regarding Respondent's prescribing practices, he also provided a written analysis of the patient charts that he reviewed. In this review of these patient records, the physician characterized Respondent's prescribing practices as "excessive," and in some instances as "prolonged" and/or "inappropriate." The physician further testified that Respondent had essentially followed and duplicated Dr. Parameswaran's prescribing practices.

As a result of the foregoing, the Kentucky Medical Board issued an Order of Temporary Restriction on October 22, 1987, suspending Respondent's controlled substance handling authority.

On May 20, 1988, the Medical Board dismissed the Order and the underlying complaint.

On February 26, 1988, in Martin County, Kentucky, Respondent was indicated for trafficking in controlled substances by dispensing and/or prescribing Percodan, Didrex, Tylenol No. 3 and No. 4, Valium and Phentermine without good medical reason. On October 4, 1988, the Commonwealth moved to dismiss Respondent as a defendant on the grounds of insufficient evidence to proceed against him. The court granted the motion and dismissed the indictment against Respondent on October 25, 1988.

At the DEA administrative hearing, Respondent testified on his own behalf and claimed that prior to coming to the United States he had never come across the problem of addiction to medications, and that in hindsight he realized that he should have been more attentive to the problem. Further, he testified that he had not realized that Percodan was a popular medication with drug addicts. The Respondent also stated that he never intentionally overprescribed or inappropriately prescribed any medication. Respondent further argued that the criminal indictment has been dismissed, the state authorities have permitted him to retain his medical license, and that even if Respondent's prescribing practices were inappropriate, he has learned from experience. Respondent's ultimate conclusion in his own behalf was that revocation of his DEA registration would not be in the public interest.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge as set forth herein.

Under 21 U.S.C. 823(f) and 824(a)(4), the Administrator has the authority to revoke a registration based upon a sufficient showing that the continued registration would be inconsistent with the public interest. The factors which are considered in determining whether the continued registration would be inconsistent with the public interest are:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

There is no requirement that the Administrator make findings with respect to all five of the listed factors. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances presented in each case, in determining the public interest. See *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *England Pharmacy*, 52 FR 1674 (1987); and *Felix Seisin, M.D.*, Docket No. 85-53, 51 FR 3883 (1985).

The administrative law judge concluded that Respondent inappropriately provided controlled substances to a substantial number of patients. The record clearly supports this finding. The Respondent's experience with dispensing controlled substances and his own acknowledgement that he is unfamiliar with the serious addictive nature and propensity for illegal use of certain

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controlled substances is substantial evidence in and of itself that Respondent's continued registration is inconsistent with the public interest. Further, Respondent's own testimony is indicative of his failure to consider the consequences of his actions in excessively and inappropriately prescribing controlled substances. Such irresponsible professional conduct is a threat to the public health and safety which the Administrator cannot ignore.

Although the Respondent was found not to be responsible for the recordkeeping violations found in Dr. Parameswaran's practice while Respondent was in his employ, and although the criminal indictment against him was dismissed, the Administrator is nevertheless greatly concerned about the circumstances revealed by the Kentucky State investigations of Respondent's prescribing practices. The evidence in this record, including both the state investigations and the findings of the reviewing physician, clearly show that Respondent inappropriately provided controlled substances to a substantial number of patients.

The Administrator has considered the material submitted by the Respondent after the record in this matter was closed. The information submitted was considered due to the fact that it indicated tht the Respondent has taken initial steps toward educating himself in the abuse of controlled substances. The Respondent's initial efforts toward education must be balanced against the weight of the fact that the Respondent was indiscriminate in his prescription practices merely because of his alleged lack of information about American drug problems.

After considering the evidence in the record, the Administrator concludes that the Respondent's continued registration would be inconsistent with the public interest, and that Respondent's DEA registration must be revoked. Therefore, under the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration hereby orders that DEA Certificate of Registration BC0660371 issued to Devendranathan Chanmugram, M.D., be, and it hereby is, revoked. Any pending applications for registration or renewal are hereby denied.

Due to Respondent's indicated willingness to undergo continuing education with regard to substance abuse and the abuse of prescribed controlled substances, the Administrator finds that the Respondent has demonstrated initial efforts to reform his prior activities. Should the Respondent obtain employment with a registrant in the future, DEA, upon request and sufficient proof of reform and education, will consider waiving the provisions of 21 CFR 1301.76 which state,

(1) The registrant shall not employ as an agent or employee who has access to controlled substances any person who has had an application for registration denied, or has had his registration revoked, at any time.

See, *Joseph Bruce Friedman, M.D.*, Docket No. 81-17, 46 FR 58821 (1981); *Joseph Henry Pritchett, M.D.*, Docket No. 81-12, 47 FR 28053 (1982); and, *Frank T. Riforgiato, M.D.*, 47 FR 50589 (1982).

This order is effective January 7, 1991.

Dated: November 29, 1990.

**Robert C. Bonner,**

*Administrator.*

[FR Doc. 90-28564 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

**[Docket No. 90-20]**

## Bobbie W. Deshotel, M.D., Basile, LA; Hearing

Notice is hereby given that on February 22, 1990, the Drug Enforcement Administration, Department of Justice, issued to Bobbie W. Deshotel, M.D., and Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AD3404011, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing have been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on December 18, 1990, commencing at 9:30 a.m., at the U.S. Tax Court, Courtroom Number 211, U.S. Custom House, 423 Canal Street, New Orleans, Louisiana.

Dated: November 28, 1990.

**Robert C. Bonner,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 90-28647 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Registration

By Notice dated October 4, 1990, and published in the **Federal Register** on October 15, 1990, (55 FR 41776), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phenylacetone (8501) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 21, 1990.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 90-28643 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 19, 1990, Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Levorphanol (9220) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 7, 1991.



Dated: November 19, 1990.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 90-28644 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Registration

By Notice dated October 1, 1990, and published in the **Federal Register** on October 9, 1990 (55 FR 41147), Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 21, 1990.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 90-28645 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Registration

By Notice dated October 22, 1990, and published in the **Federal Register** on November 2, 1990, (55FR46282), Toxi-Lab Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Phencyclidine (7471) | II |
| 1-piperidinocyclohexanecarbonitrile (PCC)(8603) | II |
| Benzoylecgonine (9180) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the applications submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 21, 1990.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 90-28646 Filed 12-5-90; 8:45 am]

BILLING CODE 4410-09-M

# NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

## Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by January 7, 1991.

**ADDRESSES:** Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202) 395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Design Arts Application Guidelines for FY 1992.

*Frequency of Collection:* One time.

*Respondents:* Individuals or households; State or local governments; Non-profit institutions.

*Use:* Guideline instructions and applications elicit relevant information from individual artists, non-profit organizations, and State or local arts agencies that apply for funding under specific Design Arts Program categories. This information is necessary for the accurate, fair, and thorough consideration of competing proposals in the peer review process.

*Estimated Number of Respondents:* 910.

*Average Burden Hours per Response:* 31.

*Total Estimated Burden:* 28,480.

**Anne C. Doyle,**

*Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 90-28561 Filed 12-5-90; 8:45 am]

BILLING CODE 7537-01-M

# NATIONAL SCIENCE FOUNDATION

## Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persons are invited to submit comments by January 4, 1991. Comments may be submitted to:

(1) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335. and to;

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project (3145-0067), OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title.* 1991/1993 National Survey of Academic Research Instruments and Instrumentation Needs.

*Affected Public.* Non-profit institutions.

*Responses/Burden Hours.* 6,400 responses / 30 minutes per response.

*Abstract.* This study of academic scientific research instruments, to be conducted during 1991-94, will update measures of equipment quantity, age, condition, utilization, and need obtained in three previous surveys (1983-84, 1986-87, and 1989-90). Changes and trends

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occurring over the period since the earlier studies will be documented, and reassessments made.

Dated: November 30, 1990.

Herman G. Fleming,

*NSF Reports Clearance Officer.*

[FR Doc. 90-28573 Filed 12-5-90; 8:45 am]

BILLING CODE 7555-01-M

## Denial of Permit Applications Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of denial of permit applications under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued or denied under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On October 25, 1990, the National Science Foundation published a notice in the Federal Register of permit applications received. One applicant, Society Expeditions Inc., submitted two applications to take various bird and mammal specimens. On November 28 these applications were denied.

Charles E. Myers,

*Permit Office, Division of Polar Programs.*

[FR Doc. 90-28617 Filed 12-5-90; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-17088; License No. 53-19179-01, EA 90-191]

## C&R Laboratories, Inc., Pearl City, Hawaii; Order Modifying License

I

C&R Laboratories, Inc. (C&R or Licensee) is the holder of NRC License No. 53-19179-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to receive, possess, and utilize sealed sources of Iridium 192 and Cobalt 60 in industrial radiographic exposure devices. The license was issued on March 21, 1980, was most recently renewed on July 6, 1988, and is due to expire on July 31, 1991.

II

Under C&R License Condition 16, and sections 5.C. and 13.B. of the C&R Operating and Emergency Procedures, as set forth more fully in the Notice of Violation and Proposed Imposition of Civil Penalty attached to this Order, personnel performing licensed activities under C&R's license are required to conduct radiation surveys when exposure devices are removed from or returned to their storage areas, and to conduct such surveys to confirm that radiation levels in the passenger compartments and on the outside surfaces of vehicles used to transport licensed materials are within required limits.

On December 12, 1988, an NRC investigator observed a Licensee radiographer, Gary Wood, and another individual, remove a radiation exposure device from the Licensee's "mobile laboratory" vehicle located in front of the residence of Mr. Roland Watson, President of C&R Laboratories, Inc., place the device in the back of a pickup truck, and drive to an industrial site to perform radiography. Later on the same day, Mr. Wood and the second individual returned to Mr. Watson's residence and returned the exposure device to the mobile laboratory. The investigator observed that at no time during the removal from and return to the mobile laboratory did Mr. Wood or the accompanying individual perform surveys of the radiation exposure device or of the mobile laboratory. When NRC personnel reviewed Licensee records on March 9, 1989, they found records signed by Mr. Wood purportedly documenting that the surveys had been performed as required on December 12, 1988. The investigator attempted to interview Mr. Wood to obtain his version of what occurred, but he refused to be interviewed. Under the circumstances, it is reasonable to conclude that the survey record was falsified. The investigator also observed that Mr. Wood failed to survey the vehicle into which the device was loaded.

On May 12, 1989, NRC representatives held an enforcement conference with the Licensee, at which time Mr. Watson informed the NRC that upon learning from the NRC of Mr. Wood's actions described above, C&R, on its own initiative, had terminated Mr. Wood's employment with C&R. On August 17, 1990, NRC representatives contacted Mr. Watson by telephone and discussed the findings of the investigation. During the discussion, Mr. Watson stated that the Licensee had not reemployed and does not intend to reemploy, Gary Wood to perform radiography. Mr. Watson also indicated that should C&R's intent in this regard change, the Licensee would provide NRC prior notice of any intention to employ Mr. Wood.

III

Considering the importance of compliance with all safety requirements in the conduct of radiography and the fact that radiographers work independently, the NRC must have confidence that each radiographer will comply with these requirements. I find the Licensee's commitments, as stated in the telephone discussion on August 17, 1990, and as modified below, acceptable and necessary in order to protect the public health and safety. In view of the foregoing, I have determined that it is appropriate that the Licensee's commitments concerning Mr. Wood, as modified, be formalized by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 34, It is hereby ordered that License No. 53-19179-01 is modified as follows:

C&R Laboratories, Inc. shall not utilize Mr. Gary Wood in licensed activities without providing written notice to the NRC two weeks in advance of the scheduled utilization. Such notice shall be provided to the Regional Administrator, Region V, and shall explain why the Licensee will have confidence that Mr. Wood will comply with the requirements of License No. 53-19179-01. This condition will expire five years from the date of this modification.

The Regional Administrator, Region V, may relax or rescind, in writing, the above conditions upon a showing of good cause by the Licensee.

V

The Licensee, Mr. Gary Wood, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within 20 days of its issuance. The answer shall set forth the matters of fact and law on which the Licensee or other persons affected relies and the reasons as to why the Order should not have been issued. Any answer filed within 20 days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region V, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596, and to the Licensee, if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Gary Wood requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Committee will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Upon the Licensee's consent to the provisions set forth in section IV of this Order, or on failure of the Licensee or Mr. Gary Wood to file an answer within the specified time, and in the absence of any request for hearing, the provisions specified in section IV above shall be final without further Order or proceedings.

Dated at Rockville, Maryland this 28th day of November 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

*Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support.*

[FR Doc. 90-28641 Filed 12-5-90; 8:45 am]

BILLING CODE 7590-01-M



[Docket No. 50-192]

## The University of Texas; Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-92, issued to the University of Texas for a possession-only license for the University of Texas Research Reactor located on the University's campus in Austin, Texas.

The renewal would extend the expiration date of Facility License No. R-92 to February 12, 1993, in accordance with the licensee's application for renewal dated October 19, 1990. The licensee received an Order dated March 9, 1987 authorizing dismantling of the facility, and it is anticipated that the term of renewal will be sufficient to complete dismantling and terminate the license.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By January 7, 1991, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the renewal under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; The University of Texas, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Ray Farabee, Vice Chancellor and General Counsel of the University of Texas System, 201 West 7th Street, Austin, Texas 78701, the attorney for the licensee.

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Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated October 19, 1990, which is available for public inspection at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 29th day of November 1990.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors, Decommissioning and Environmental Projects Directorate Division of Advanced Reactors and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28642 Filed 12-5-90; 8:45 am]

BILLING CODE 7590-01-M

## Florida Power and Light Co.

**[Docket Nos. 50-250-OLA-6 and 50-251-OLA-6, (Emergency Power System Enhancement) ASLBP No. 91-625-02-OLA-5]**

## Establishment of Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

**Florida Power and Light Co., Turkey Point Plant, Unit Nos. 3 and 4**

[Facility Operating License Nos. DPR-31 and DPR-41]

This Board is being established pursuant to a notice published by the Commission on September 26, 1990 in the **Federal Register** (55 FR 39331) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendments would modify the electrical power systems, including the addition of two emergency diesel generators, two additional battery chargers, an additional battery bank, and the associated support equipment and electrical distribution equipment such as motor control centers, load centers, and switchgear. The amendments would also modify the Technical Specifications (TS), primarily those concerning electric power supplies, so that they are applicable to the improved design.

The Board is comprised of the following administrative judges:

John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 30th day of November 1990.

**B. Paul Cotter, Jr.,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 90-28640 Filed 12-5-90; 8:45 am]

BILLING CODE 7590-01-M

## RAILROAD RETIREMENT BOARD

## Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**SUMMARY OF PROPOSAL(S):**

(1) *Collection title:* Application and Claim for RUIA Benefits Unpaid at Death

(2) *Form(s) submitted:* ID–28(a)(1), SI–62 and UI–63

(3) *OMB Number:* 3220–0055

(4) *Expiration date of current OMB clearance:* Three years from date of approval

(5) *Type of request:* Extension of the expiration date of a currently approved collection collection without any change in the substance or in the method of collection

(6) *Frequency of response:* On occasion

(7) *Respondents:* Individuals or households

(8) *Estimated annual number of respondents:* 375

(9) *Total annual responses:* 375

(10) *Average time per response:* .133 hours

(11) *Total annual reporting hours:* 50

(12) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under section 2(g) of the RUIA benefits under that Act accrued but not paid because of the death of the employee.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**Dennis Eagan,**

*Clearance Officer.*

[FR Doc. 90-28612 Filed 12-5-90; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-28664; File No. SR-Amex-90-34]**

## Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Proposed Amendments To Exchange Procedures Governing Administration of Securities Industry Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.



### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its rules and procedures governing the administration at the Exchange.[1]

### II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The American Stock Exchange is proposing to amend its rules and procedures governing the administration of arbitration. These amendments codify modifications to the Uniform Code of Arbitration ("Uniform Code") already approved by the Securities Industry Conference on Arbitration ("SICA").[2]

*Rule 608* In order to discourage adjournments of scheduled hearing sessions, the Exchange is proposing to amend Rule 608(e) to increase the fee for adjournments and provide arbitrators with the authority to dismiss cases without prejudice in instances of repeated adjournments.

*Rule 618* The form and content of the written arbitration award has been the focus of discussion for some time. Currently, an award must, in pertinent part, identify the parties and contain a summary of the issues involved. The proposed amendment to Rule 618 will require that the award identify the product involved in the dispute. Including such information will give the public a better general understanding of the award. In addition, the award will identify the parties' counsel, if any.

In order to encourage prompt payment of awards and to increase confidence in the arbitration process, the proposal also amends Exchange Rule 618 to provide arbitrators with express authority to award interest and to determine the rate of such interest. The amended rule will also state that awards shall bear interest from the date of the award and require that awards be paid within thirty days of receipt.

*Rule 620* It is proposed that Exchange Rule 620 be amended to increase the total fees paid by claimants, and to increase the amounts which may be retained by the Exchange when a case is settled or withdrawn prior to a hearing. Specifically, the amendment requires parties, at the time of filing a claim, counterclaim, third-party claim or Cross-Claim, to deposit a hearing session fee in addition to the filing fee and permits the Exchange to retain the filing fee and hearing deposit when a case is resolved in any manner other than by a hearing (*i.e.*, through settlement or withdrawal of the claim). Currently, the Exchange retains $100 when a case is resolved other than by a hearing, regardless of the amount of the claim or the number of claims and parties involved. This amount does not begin to reflect the costs actually borne by the Exchange in selecting a panel, paying the arbitrators and other administrative costs. Under the proposed rule, the arbitrators may determine in the award that a party must reimburse another party for any non-refundable filing fee or hearing session deposit such party has paid.

In order to eliminate uncertainty regarding the fees for pre-hearing conferences, the Exchange is also proposing to amend Exchange Rule 620 to set forth a table of fees for such conferences, based on the amount of the claim. Currently, the rule provides merely the rate of calculation for pre-hearing conference fees and does not specify on which figures the calculation is based.

*Rule 622* In order to conform the Exchange's schedule of fees to those of other SRO, the proposal sets forth a new Exchange Rule 622 to specify a separate filing fee schedule for member/member controversies. The proposed rule also provides a schedule of fees for pre-hearing conferences with an arbitrator in member/member cases.

The following miscellaneous procedural changes also are proposed:

- Rule 606(d) will set forth the elements required for joinder or consolidation.
- Rule 616(a) will provide for service of amended pleadings by the parties themselves rather than by the Exchange.
- Rule 619 will dictate that the Exchange's arbitration rules shall be deemed incorporated by reference in all agreements to arbitrate.
- Rules 620 and 622 will eliminate ambiguity regarding classifications of disputes by setting forth three distinct categories: customer claimants, industry claimants against non-members and member claimants against members (member/member controversies).

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

[1] For the exact language of the proposed rule change *see* Exhibit A to File No. SR–Amex–90–34.

[2] The Commission notes that SICA originally developed the Uniform Code in 1977. The self-regulatory organizations ("SROs") that maintain arbitration forums, including the Amex, have adopted the Uniform Code, and, therefore, the arbitration procedures at these SROs are substantially similar. Further, the Amex's proposal being noticed herein is substantially similar to a proposed rule change submitted by the New York Stock Exchange, Inc. ("NYSE") which recently was approved by the Commission. *See* Securities Exchange Act Release No. 28421 (September 10, 1990), 55 FR 36181 (order approving File No. SR–NYSE–90–19).

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Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-24 and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28651 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-28662; File No. SR-CBOE-90-29]

**Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to New Listing Criteria Under Exchange Rule 31.5**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The CBOE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to amend Exchange Rule 31.5 to include listing criteria for new securities not otherwise covered under the existing provisions of the Exchange's rules.[1] Criteria for subscription rights currently covered in Rule 31.5(F) would be incorporated into Rule 31.22(I) on Subscription Rights, which sets forth the procedures for listing these lights.[2] The exact text of the proposed listing standards was attached to the rule filing as Exhibit A and is available at the CBOE and the Commission at the address noted in Item III below.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

(a) Listing Guidelines—the CBOE currently has provisions in its listing criteria to accommodate securities that could not be readily categorized under the Exchange's listing guidelines for common and preferred stocks, bonds, debentures, and warrants. For example, the Exchange has specific listing guidelines covering foreign currency and index warrants in Rule 31.5(E).

Today, more so than at any time in the past, issuers and underwriters are proposing to list new types of securities. These securities may contain features borrowed from more than one category of currently listed securities, *e.g.*, fixed face amount debt securities incorporating an opportunity for equity appreciation and fixed amount payment certificates based on the price level of the issuer's equity securities. Such securities are often designed to achieve more than one objective in connecting with a specific corporate transaction, and, on occasion, have involved assets or categories of assets that traditionally may not have been segregated or used as collateral for a particular issue. Consequently, such securities may take a variety of forms depending upon the particular objective(s) being sought, as well as general market conditions.

The Exchange believes it is necessary to provide added flexibility in its guidelines to accommodate such multi-faceted and/or multi-purpose issues without having to continually add new provisions to its listing criteria. The proposed Rule 31.5(F) criteria are intended to allow the Exchange added flexibility to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. However, the proposed criteria are not intended to accommodate the listing of securities that raise significant new regulatory issues.[3]

The proposed numerical listing criteria are intended to accommodate major issuers with assets of $100 million and stockholders' equity of $10 million. These criteria substantially exceed the Exchange's standard listing criteria for common stock, which require, for example, that an issuer have stockholder's equity of at least $4 million. In addition, issuers of securities under the proposed criteria generally would be expected to meet the Exchange's earnings criteria, set forth in Rule 31.5, which requires pre-tax income of at least $750,000 in the last fiscal year or in two of the last three fiscal years. Issuers not meeting the Exchange's earnings criteria generally would be required to have assets in excess of $200 million and stockholders' equity of $10 million, or, alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria is proposed paragraph (F) are comparable to those currently existing in Rule 31.5 for equity issues, except that when trading is expected to occur in much larger than average trading units, *e.g.*, $1,000 principal amount, a minimum of 100 holders would be expected which is the same number required for debt securities of non-listed issuers. The aggregate market value of issues listed under paragraph (F) would be expected to be at least $20 million, the same as the standard for debt securities on non-listed securities.

Where such an instrument contains cash settlement provisions, settlement would be required to be made in U.S. dollars. Where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

The CBOE proposes to apply the Exchange's existing criteria for continued listing, which is set forth in Rule 31.94 (Suspension and Delisting Policies), to paragraph (F) securities as appropriate, in light of the specific nature of the securities, *e.g.*, debt/equity characteristics.

Finally, the Exchange proposes to further amend existing paragraph (F) of Rule 31.5 by deleting the provision on subscription rights and repositioning it to Rule 31.22 (Subscription Rights), which sets forth the Exchange's procedure for listing subscription rights.

(b) Membership Circular—Securities listed for trading under paragraph (F) of Rule 31.5 are likely to possess characteristics common to debt and equity instruments alike. For this reason, prior to trading securities admitted to listing under paragraph (F), the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities when handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as: Unit size and term; cash-settlement; exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of institutional interest; and such other features of the issues that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[4]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file No. SR-CBOE-90-29 and should be submitted by December 27, 1990.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the CBOE's proposal to provide listing standards for new types of hybrid securities that cannot be readily categorized under the Exchange's existing listing standards is consistent with the requirements of the Act and the rules and requirements thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[5] In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. Over the past several years, the Commission has approved listing criteria for various new products for trading on exchange markets, such as index warrants [6] and foreign currency warrants.[6] In addition, the Commission has recently approved listing standards on the Amex and the NYSE to accommodate new products.[7] In response to these new products, the Commission has carefully identified and evaluated certain regulatory concerns which must be addressed by the exchange that proposes to list and trade these products.

The Commission believes that the CBOE's proposal to establish listing criteria for new hybrid products addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their new products listed on the Exchange. This is an important consideration in light of the contingent financial obligations which may be created by these instruments, and should serve to protect investors by ensuring that the companies listing their new products have sufficient financial means to meet their settlement obligations.

In addition, the Commission that the proposed membership circular addresses the additional sales practice concerns raised by these new products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determined whether to distribute a membership circular indicating member firm compliance responsibilities, prior to trading securities admitted to listing under Rule 31.5(F), will provide the CBOE with the ability to address any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the

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[1] The Commission has recently approved similar proposals by the New York ("NYSE") and American ("Amex") Stock Exchanges. *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) (adoption by the NYSE of listing standards for new hybrid products); Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8634 (March 8, 1990) (adoption by the Amex of listing standards for new hybrid products).

[2] The CBOE's proposed new listing criteria would be included in Rule 31.5 as subparagraph (F). The existing language under subparagraph (F), which deals with subscription rights, would be moved to Rule 31.22(I).

[3] The Commission notes that the listing of securities that raise significant new regulatory issues would require a separate filing with the Commission pursuant to Rule 19b-4 under the Act. Examples of securities that have raised significant new regulatory issues in the past include Americus Trusts [See Securities Exchange Act Release No. 21863 (March 16, 1985), 50 FR 11972 (March 20, 1985) (File No. SR-Amex-84-35)]; currently warrants [See Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87-15) (proposal to list warrants on foreign currencies)]; index warrants [See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR-39832 (October 12, 1988) (order approving File No. SR-Amex-87-27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average)]; and unbundled stock units ("USUs") [See File Nos. SR-NYSE-89-39 and 89-40 (proposals to list USUs and constituent securities, subsequently withdrawn by the NYSE)].

[4] 15 U.S.C. 78f (1982).

[5] *See supra* note 3.

[6] *Id.*

[7] *See supra* note 1.

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distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their broker's recommendations. Finally, the Commission believes that the membership circular requirement will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the CBOE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As discussed *supra*, the Commission has approved an identical proposal by the Amex to provide listing criteria for hybrid securities.[9] In addition, the Commission recently approved a substantially similar proposal by the NYSE.[10] Further, the Commission recently approved proposals by the NYSE, the Midwest ("MSE"), and the Pacific ("PSE") Stock Exchanges to adopt listing criteria to trade Contingent Value Rights ("CVRs"), which are akin to the type of hybrid products the CBOE proposal would include.[11] The Commission did not receive any comments on the those proposals or on the NYSE or Amex hybrid products filings. In light of the lack of new regulatory issues raised by the CBOE proposal, the Commission believes it is in the public interest to approve it on an accelerated basis so that the CBOE will be able to compete sooner with other exchanges for hybrid securities.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act [12] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 30, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28652 Filed 12-5-90; 8:45 am]

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[Release No. 34-28663; International Series Release No. 198; File No. SR-NASD-90-65]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. Notice of Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD hereby files, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, for Commission authorization to extend for 90 days the informational linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("NASD-ISE linkage" or "linkage"). The Commission's temporary approval of the NASD-ISE linkage will extend the operation of the linkage through March 1, 1991. Absent such an extension, the NASD's link with the ISE will terminate December 1, 1990. During the requested extension period, there will be no change in the linkage's operational characteristics or access terms.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On October 2, 1987, the Commission issued an order approving operation of the linkage for a pilot term of two years, through October 2, 1989,[1] and subsequently approved a one year extension of the linkage's operation on December 1, 1989.[2] The NASD-ISE linkage permits an interchange of quotation information ("linkage information") on approximately 740 securities ("linkage securities"). Of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and ISE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and ISE dealer systems ("common issues") may access linkage information without paying a separate charge to receive the information.

During the proposed extension, the NASD and ISE will continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage or the pursuit of other initiatives responsive to the challenges posed on the internationalization of major securities markets. Either outcome will entail another Rule 19b-4 filing that will enable the Commission (and other interested parties) to focus on relevant policy and regulatory issues. In the interim, the continuation of the linkage, as proposed, would be supportive of the NASD's and ISE's efforts to define system linkages capable to accommodating cross-border trading more efficiently.

Regarding the statutory basis of the extension of the NASD-ISE linkage, the NASD relies on sections 11A(a)(1)(B) and (C), 15A(b)(6), and 17A(a)(1)(C) and (D) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communciations techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In its original release announcing interim approval of the NASD-ISE linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through its counsel.[3] In response, the NASD, after consultation with the ISE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the 1987 Order. Further, in File No. SR-NASD-89-44 (which resulted in the linkage's current authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the linkage. In the event the NASD and ISE determine to seek permanent approval of the linkage, every effort will be made to supply the Commission with the empirical data needed for its deliberations.

With respect to the instant filing, the NASD believes that a three month extension of the linkage will not create any competitive burden *vis-a-vis* Instinet or any other vendor of securities information. The linkage will continue to operate in accord with the terms of the October 1987 Order. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent Rule 19b-4 filing involving permanent approval and/or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**. The Association maintains that the requested extension of the pilot period will allow the NASD and ISE to continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes the accelerated approval is appropriate to avoid termination of the linkage formalization of the sponsors' plans for the future operation of this program. The brief extension being approved should allow sufficient time for the NASD and the ISE to evaluate feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Further, the Commission acknowledges the limited nature of the linkage and that no substantive changes will be implemented during the proposed extension. Based on the foregoing, the Commission finds good cause for granting accelerated approval of this proposed rule change in accordance with section 19(b)(2)(B) of the Act.

**IV. Solicitation of Comment**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1990.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1)(B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that File No. SR-NASD-90-65, be, and hereby is, approved for a period of 90 days from the date of this Order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 30, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28650 Filed 12-5-90; 8:45 am]

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[8] *See supra* note 3.

[9] *See* Securities Exchange Act Release No. 27783 (March 1, 1990), 55 FR 8634 (March 8, 1990) (order approving File No. SR-Amex-89-29).

[10] *See* Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30088. The CBOE's proposal differs from the NYSE proposal in four principal respects: 1) the NYSE evaluates net tangible assets available to common stock while the CBOE uses "stockholders' equity"; 2) the NYSE distribution criterion looks to round lot holders, or alternatively all holders together with average monthly trading volume, while the CBOE requires a minimum number of holders; 3) the NYSE proposal contains no minimum price per share criterion either for original or continued listing while CBOE provides for a minimum redemption price per unit; and 4) the NYSE provides a debt listing standard based upon minimum public market value and the CBOE has no such listing criterion. As noted above, the CBOE proposal is identical to the Amex proposal to list hybrid securities (SR-Amex-89-29).

[11] *See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23100 (June 6, 1990) (approving the NYSE proposal to list CVRs on the Exchange); Securities Exchange Act Release No. 28143 (June 28, 1990), 55 FR 27317 (July 2, 1990) (granting accelerated approval to the MSE's proposal to list CVRs); and Securities Exchange Act Release No. 28556 (October 22, 1990), 55 FR 43238 (October 26, 1990) (granting accelerated approval to the PSE's proposal to list CVRs).

[12] 15 U.S.C. 78s(b)(2) (1982).

[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (October 8, 1987), approving File No. SR-NASD-87-20.

[2] Securities Exchange Act Release No. 27494 (December 1, 1989) 54 FR 50078 (December 8, 1989), approving File No. SR-NASD-89-44.

[3] *See* Securities Exchange Act Release No. 25186 (April 21, 1988), 51 FR 15989 (April 29, 1988). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 18, 1988.

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[Release No. 34-28657; File No. SR-NASD-90-53]

**Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Retention of Jurisdiction and Conforming Changes to the Code of Procedure**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend Article III, section 5(b) and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice to: (1) Place on hold a termination for cause where the Uniform Termination Notice for Securities Industry Registration ("Form U-5") indicates the possibility of misconduct; (2) permit the NASD, in any case, to declare the termination effective at any time; (3) declare a termination ineffective retroactively where the NASD receives notice of the possibility of misconduct; (4) clarify that in the case of a termination that does not take effect, the person remains subject to the filing of a complaint until one year following the NASD's determination to permit the termination to take effect; (5) retain jurisdiction over persons where registration has been revoked for one year for purposes of filing a complaint; (6) expand the NASD's jurisdiction to file a complaint with respect to a member whose membership has been canceled or revoked; and (7) expand the NASD's jurisdiction to file a complaint with respect to a terminated member or revoked person for failure to provide information pursuant to Article IV, section 5 of the Rules of Fair Practice.

The NASD is also proposing to amend Article V, sections 1 and 3 of the Rules of Fair Practice to change the term "penalty" to "sanction" and empower the National Business Conduct Committee ("NBCC") to impose sanctions for violations of NASD rules, and authorize the NBCC to impose costs of disciplinary proceedings on respondents.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

A significant aspect of the NASD's self-regulatory activity is the investigation of members and associated persons to determine if their activities comply with the Association's rules and the federal securities laws. In addition to investigating the full range of potential violations, the Association also routinely investigates associated persons who have been terminated for cause to determine whether the circumstances leading to the termination involved violations of the NASD's or other securities rules. Currently, Article IV, section 3(a) of the Association's By-Laws only provides the NASD authority to place on hold a termination for cause where any complaint or action that involves the associated person is in progress. Where no complaint, action, or examination is in progress, the NASD's practice has been to place a hold on terminations for cause when the Form U-5 indicates the possibility of misconduct to ensure adequate time to investigate such matters fully and to bring disciplinary action where appropriate. The effect of the hold is to prevent the termination from becoming effective and thus postpone the commencement of the one year period within which, under Article IV, section 4 of the By-Laws, an individual no longer associated with a member firm remains subject to the NASD's jurisdiction to file a complaint.

The NASD is, therefore, proposing to amend Article IV, section 3(a) of the NASD By-Laws to codify the NASD's current practice of placing a hold on a termination for cause of a person associated with a member when the Form U-5 indicates that the circumstances surrounding the termination may have involved actionable misconduct. The proposed amendment would also codify the NASD's position that although it may declare a termination effective at any time, a hold may be imposed retroactively; that is, where a termination is permitted to become effective, the NASD may rescind the effective termination date based upon the subsequent receipt of an amended Form U-5 or other information that discloses previously undiscovered misconduct. Any hold placed on the termination of the registration of an associated person operates only to preserve the Association's jurisdiction and does not affect the termination of the person's relationship with his firm.

The NASD is also proposing to amend Article IV, section 4 of the By-Laws to codify the NASD's practice of placing a hold on a termination and preventing the termination from taking effect, thus extending the one year jurisdictional period within which the NASD may file a complaint against the person.

The amendment would also provide that failure of a person to respond to a request for information pursuant to Article IV, section 5 of the Rules of Fair Practice during the period that a person is subject to the NASD's jurisdiction to file a complaint may be charged as a violation of the NASD's rules, notwithstanding that such failure occurred after the person ceased to be associated with an NASD member. Finally, the NASD is proposing to amend this provision to retain jurisdiction over persons whose registration has been revoked for purposes of filing a complaint.

A similar issue arises in connection with the membership status of firms whose membership has been canceled or revoked. When a member firm resigns its membership voluntarily, Article III, section 5(b) of the By-Laws currently provides that the firm remains subject to the NASD's jurisdiction to file a complaint for one year. Further, a resignation does not take effect if a complaint, action or examination is pending. The membership of numerous firms has been canceled or revoked by the NASD for failure to pay dues, fees and fines and to file financial reports with the NASD. However, because Article III, section 5(b) of the By-Laws does not apply to canceled or revoked firms, the NASD does not cancel or revoke the membership of a firm as a matter of practice. Instead, the NASD holds the cancellation or revocation of the firm's membership in abeyance pending completion of any investigation

[1] Amendment No. 1 to the proposal, filed with the Commission on November 13, 1990, sets forth the results of the member vote on SR-NASD-90-53.



where it is determined that a formal disciplinary action may be warranted. This procedure frustrates the NASD obligation to cancel or revoke the membership of firms that do not comply with NASD requirements and can lead to firms remaining in the securities business for an extended period of time.

The NASD is, therefore, proposing to renumber current section 5(b) to Article III of the By-Laws as new section 6 and revise the provision to codify the NASD's current practice of retaining jurisdiction over members for one year whose membership has been cancelled or revoked by the NASD for failure to pay a fee or a fine or to file financial reports.

The NASD is also proposing to amend Article IV, section 5 of the Rules of Fair Practice to codify the NASD's position that the obligation to respond to a request for information extends to persons who remain subject to the NASD's jurisdiction to file a complaint. The NASD believes it essential that persons whose terminations are being investigated for possible misconduct be under an obligation to provide information necessary to enable the staff to determine whether a complaint is warranted.

Investigations of terminations for cause, as with other investigations, necessarily involve obtaining information from terminated individuals, typically by means of a request for information pursuant to Article IV, section 5 of the Rules of Fair Practice. The NASD has consistently taken the position that an individual who remains subject to the filing of a complaint pursuant to Article IV, Section 4 of the By-Laws, or whose termination is subject to a hold, remains a "person associated with a member" for purposes of the individual's obligation to provide information requested by the NASD pursuant to Article VI, section 5 of the Rules of Fair Practice. Further, the NASD regards any failure by a member or associated person to respond to Article IV, section 5 requests for information a violation of Article III, section 1 of the Rules of Fair Practice. When required to provide information with regard to any matter involved in an NASD investigation, a member or associated person is required to testify on the record if so directed by any committee, or duly authorized agent of any such committee, in order to comply with Article IV, section 5. The NASD's ability to require such persons to provide information regarding the circumstances of their termination and to impose sanctions for failure to do so is essential to the discharge of its regulatory obligations.

In addition, the NASD is proposing to amend Section 5 to provide that "failure" to respond to an Article IV, Section 5 request for information constitutes a violation of the NASD's rules, rather than a "refusal" as is presently provided. Also, when a member or associated person is required to report with regard to any matter, that person will be required to testify on the record if so directed by any NASD committee or duly authorized agent of any such committee. It is also proposed that section 5 by amended to provide that a request for information is properly made if sent to a member's or person's last address of record with the NASD.

Finally, the NASD is proposing to amend Article V, Sections 1 and 3 of the Rules of Fair Practice to conform those rules to amendments to the Code of Procedure made previously in SR-NASD-90-35,[2] which implemented the recommendation of the Special Committee on NASD Structure and Governance. SR-NASD-90-35 provides that decisions of the National Business Conduct Committee ("NBCC") are the final decisions of the NASD in disciplinary cases and do not require action by the full Board of Governors to become effective. The proposed amendment to Section 1 would change the term "penalty" to "sanction" and empower the NBCC to impose sanctions for violations of NASD rules. The amendment to section 3 would authorize the NBCC to impose costs of disciplinary proceedings on respondents.

The NASD believes that the proposed rule change is consistent with the provisions of sections 15A(B) (6), (7) and (8) of the Act, which requires that the rules of a national securities association be designed to protect investors and the public interest, provide for the disciplining of members and associated persons for violations of the securities laws, rules and the Association's rules, and that such rules provide a fair procedure for conducting disciplinary proceedings. The NASD believes that by codifying its practice of retaining jurisdiction over member firms and associated persons until it has had sufficient time to uncover potential violations, the Association enhances its ability to discipline violators of the securities laws, rules and the Association's rules, thereby protecting investors and the general public. In addition, the NASD believes that by codifying its practices and adopting the conforming rule change it ensures that the Association's rules provide for a fair procedure for conducting disciplinary actions by providing express notice of the rules governing such actions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

In April, 1990, the Association issued Notice to Members 90-20 requesting comments on the proposed amendments to Article III, section 5(b) and Article IV, sections 3 and 4 of the NASD By-Laws, and Article IV, section 5 of the NASD Rules of Fair Practice. No comments were requested or received with respect to the conforming amendments to Article V, sections 1 and 3 of the Rules of Fair Practice.

The Association received one comment on the proposed rule change published for comment in Notice to Members 90-20 which was generally in favor of the proposal.

Lincoln National Corporation ("Lincoln") expressed general support for the proposed amendments, but requested clarification on several points. Primarily, Lincoln wanted to ensure that the placing of a "hold" by the NASD on the termination of an associated person would be done solely for the purpose of retaining NASD jurisdiction, and would not have any effect on the cessation of the relationship between that person and his or here former firm. Lincoln was concerned with the possible impact of such a "hold practice" on existing rules, including those regarding private securities transactions, outside business activities, and dual registration. Lincoln stated that it should be clear that a firm would not have any responsibility for, or continuing relationship with, a person who has been terminated. Lincoln was also concerned that firms not be responsible for providing current addresses for such terminated persons to the NASD in order to ensure that the NASD has current information for service of requests for information pursuant to Article IV, section 5 of the Rules.

The Association does not believe that the concerns raised by Lincoln require any changes to the proposed rule change. A statement was added to the

[2] See Securities Exchange Act Release No. 28284 (October 18, 1990); 55 FR 42825 (October 24, 1990), approving File No. SR-NASD-90-35.

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Notice to Members requesting member vote on the proposal noting that a "hold" on the termination of the registration of associated person operates only to preserve the Associations' jurisdiction and does not affect the termination of the person's relationship with his firm.

In addition, as a result of further consideration of the proposed rule change, language was added to Article IV, sections 3 and 4 that would allow the Association to retroactively "hold" a termination if violative activity comes to the attention of the Association from sources other than an amended Form U-5. The addition of this language is consistent with the proposed rule change and is consistent with prior practices.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comment**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 29, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28666 Filed 12-5-90; 8:45 am]

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**[Release No. 34-28661; File No. SR-PSE-90-42]**

**Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Relating to Alternate Specialists**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 21, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE proposes to extend, for an additional one-year period, its current pilot program governing the activities of alternate specialists on its two equity trading floors in order to allow the Exchange an opportunity to continue to evaluate the effectiveness of the policies.[3] The text of the policies was attached to the rule filing as Exhibit A and is available at the PSE and the Commission at the address noted in Item III below.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its original submission to the Commission in September, 1989 (File No. SR-PSE-89-25), the PSE proposed the adoption, on a six-month pilot basis, of several policy statements concerning the operation of the Exchange's alternate specialist system. These proposals were approved by the Commission [4] and were incorporated as commentaries into PSE Rule II, section 10(d).[5] Upon termination of the original pilot, the PSE filed a proposed rule change (SR-PSE-90-24) to renew the pilot program for an additional six months in order to allow the Exchange the opportunity to continue its evaluation of the effectiveness of these proposals.[6] on June 13, 1990, the Commission approved SR-PSE-90-24 and renewed the pilot program for an additional six-month period ending on December 1, 1990.

In its approval order, the Commission requested that, during the renewed pilot period, the PSE develop criteria to evaluate the effects of its policy statements on the activities of alternate specialists and to determine, for example, whether implementation of these policy statements is increasing the performance and effectiveness of alternate specialists within the specialist system. Specifically, the Commission requested that the PSE submit a report to the Commission describing how the implementation of commentaries .02, .03, and .04 to Rule II, section 10(d) are improving the effectiveness of the PSE's alternate specialist system.

In response to the Commissions request, the PSE submitted a letter which indicated that the policies regarding the activities of alternate specialists set forth in the pilot program have been beneficial to the Exchange in evaluating the performance of alternate specialists.[7] In this letter, the Exchange stated that these policy statements are serving as an incentive to specialists acting as alternate specialists to improve their performance, thereby improving the overall effectiveness of the Exchange's specialist system. The PSE letter states that, since the inception of the pilot program, the PSE surveillance program has included provisions for the investigations of complaints regarding violations of the clearing the post requirement of Commentary .02.[8] The PSE reports that, since the pilot program began, thee have been no specific instances of violations of this policy. In addition, the PSE reports that there have been no specific complaints of non-compliance with Commentary .04, which sets forth a 500-share minimum requirement for alternate specialists participating in certain pre-opening orders when requested to do so by a primary specialist.

In a subsequent letter submitted to the Commission, the PSE described the Exchange's experiences with regard to Commentary .03, which provides that a specialist whose specialist evaluation ranking falls in the bottom 10% of his or her trading floor is precluded from acting as an alternate specialist until his or her ranking rises above the bottom 10%.[9] The Exchange reported that out of the specialists who fell into the bottom 10%, four in each quarter also were alternate specialists. Pursuant to Commentary .03, these specialists became subject to the sanctions of this rule, that is, they would be precluded from acting as alternate specialists until their specialist ranking rose above the bottom 10%, unless the Exchange Equity Allocation Committee ("Committee") determined otherwise. The Committee found that one specialist in each quarter received poor performance rankings due to mitigating circumstances and was relieved from the sanctions of this rule. Based on poor performance, however, the remaining specialists were precluded from acting as alternate specialists in the quarter following their poor performances. These specialists will not be allowed to resume alternate specialist activities until their performance rankings rise above the bottom 10%.

Because the pilot is due to expire on December 1, 1990, the Exchange now seeks Commission approval to extend the pilot program for an additional one-year period in order to allow the Exchange the opportunity to continue its evaluation of the effectiveness of these proposals.

The statutory basis for the proposed rule change and policy amendments is section 6(b)(5) of the Act in that they will act to facilitate transactions in securities and will help to protect the mechanism of a free and open market in Exchange-listed securities, by furthering the effectiveness of the alternate specialist within the trading system.

*B. Self-Regulatory Organization's on Burden on Competition*

The Exchange does not believe that its policy statements regarding the activities of alternate specialists will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-42 and should be submitted by December 27, 1990.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the PSE's proposal to extend its pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[10] The Commission notes that the extension of the pilot furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program.

The Commission notes that the preliminary reports submitted by the PSE indicate that the pilot program has been helpful to the Exchange in the evaluation of the performance of specialists who are acting as alternate specialists. For instance, the Exchange has stated that a specialist who was precluded from acting as an alternate specialist during the last quarter of 1990 because of poor performance will not be allowed to resume alternate specialist activities on the Exchange until his or her performance ranking rises above the bottom 10%. The Commission therefore agrees with the PSE's conclusions that precluding specialists from acting as alternate specialists in accordance with this rule should act as an effective incentive in encouraging specialists with

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In File No. SR-PSE-89-25, the Commission approved, on a six-month pilot basis ending June 1, 1990, the adoption of several policy statements concerning the operation of the Exchange's alternate specialist system. *See* Securities Exchange Act Release No. 27403 (December 1, 1989), 54 FR 50633. Subsequent to the original pilot, the Commission approved the renewal of the pilot program for an additional six-month period in order to allow the Exchange additional time to evaluate the effectiveness of the policies, and to amend Rule II, Section 10(d), Commentary .02, to exempt the alternate specialist from clearing both posts when he or she has been requested by the primary specialist to participate in a transaction. *See* Securities Exchange Act release No. 28112 (June 13, 1990), 55 FR 24963 (June 19, 1990) (File No. SR-PSE-90-24). The six-month pilot program of SR-PSE-90-24 expires December 1, 1990.

[4] *See* Securities Exchange Act Release No. 27403 (December 1, 1989), 54 FR 50633 (December 11, 1989) (order approving File No. SR-PSE-89-25). The original six month pilot expired June 1, 1990.

[5] These policies, which were added to PSE Rule II, Section 10(d) as Commentaries .02 through .05, provide: (1) A clarification of the duty of alternate specialists to clear both primary specialist posts on each of the PSE's two equity trading floors prior to entering into a trade; (2) sanctions for alternate specialists if their specialist evaluation ranking falls in the bottom 10% of their trading floor; (3) a 500-share minimum requirement for alternate specialists participating in certain pre-opening orders when requested to do so by a specialist; and (4) that the names of the alternate specialist and designated stocks be displayed at each specialist post in alphabetical order.

[6] In addition to seeking a six-month renewal of the pilot program, the Exchange, in SR-PSE-90-24, proposed an amendment to Commentary .02 which would exempt the alternate specialist from clearing both posts when a primary specialist has requested the alternate specialist's participation in the transaction.

[7] *See* letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE, to Elizabeth Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 1, 1990.

[8] Commentary .02 provides that an alternate specialist shall clear both posts prior to effecting a transaction shall clear both posts prior to effecting a transaction on the equity trading floors or over ETS, except when the alternate specialist has been called upon by a registered primary specialist to participate in a transaction.

[9] *See* letter from Kenneth J. Marcus, Senior Staff Attorney, Equity Compliance, PSE, to Elizabeth Pucciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 27, 1990.

[10] 15 U.S.C. 78f (1982).

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poor performances to improve their scores. This improved performance by specialists should enhance competition among specialists and alternate specialists on the Exchange floor and strengthen the PSE specialist system. Moreover, this enhanced performance by alternate specialists should make them more effective in aiding primary specialists in creating a more effective and competitive market.

During the extended pilot period, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its policy statements on the activities of alternate specialists and to determine, for example, whether implementation of these policy statements is increasing the performance and effectiveness of alternate specialists within the specialist system. In particular, the Commission expects the Exchange to submit a report to the Commission by October 1, 1991, describing how the implementation of commentaries .02, .03, and .04 to Rule II, section 10(d) has improved the effectiveness of the PSE's alternate specialist system. In its reports, the Commission requests that the PSE address, among other things, the following issues: whether there have been any complaints or any disciplinary actions against alternate specialists for violating the policies in the pilot program; whether requiring alternate specialists to clear the posts on the Exchange's two trading floors has helped in ensuring that public customers obtain the best possible executions of their securities orders; whether any specialists have been precluded from acting as alternate specialists on the Exchange based on their performance rankings; and whether implementation of a 500-share participation requirement for alternate specialists on certain pre-opening orders has added depth to the PSE market. Finally, the Commission expects the PSE to file a proposed rule change by October 1, 1991, requesting one of the following: (1) An extension of the pilot, if further time is needed for evaluation; (2) permanent approval of the alternate specialist system policy statements; or (3) termination of the pilot program.

The Commission finds good cause for approving the proposed renewal of the pilot prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is necessary to extend the pilot program's operation so as to afford both the Exchange and the Commission an opportunity to evaluate the pilot's operation on an uninterrupted basis. In addition, the reports submitted by the PSE indicate that the pilot program has been effective in evaluating the performance of alternate specialists and in encouraging alternate specialists to improve their performance. As stated previously, the Commission believes that improved performance by alternate specialists will strengthen the overall effectiveness and competitiveness of the PSE's specialist system. Further, the substance of the proposal has been noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on it. The Commission believes, therefore, that accelerated effectiveness of the proposal for an additional one-year period is appropriate.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act [11] that the proposed rule change is hereby approved for a one-year period ending on December 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: November 30, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28653 Filed 12-5-90; 8:45 am]

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[Rel. No. 34-28858; File No. SR-NASD-90-54]

## Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Notification to District Offices on the Occurrence of Certain Events Affecting Ownership or Control of a Member

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1990 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed an amendment to schedule C to the By-Laws that would require members to provide written notification to the appropriate District Office within ten days upon the occurrence of the following events affecting the ownership or control of a member: (1) The merger of a member; (2) an acquisition by a member; (3) an acquisition of a member or substantially all of its assets; and (4) any change in the equity ownership or partnership capital of the member which results in one person or entity owning 50% or more of such equity ownership or partnership capital.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD proposes to add a new section to Part I of Schedule C to the By-Laws which would require prompt written notification to NASD district offices within ten days on the occurrence of certain specific events affecting the ownership or control of a member.

Schedule C to the NASD By-Laws currently permits an NASD member to experience a change in ownership or control without prior review by the appropriate NASD district office. Pursuant to section (4) to part I of schudule C to the NASD By-Laws, in cases where the ownership or control of an existing member changes, the NASD has the discretion to condition continuance in membership on prompt compliance with the pre-membership interview procedures. Notice of a change in ownership or control of a member must be filed on a revised Form BD whenever the information previously on file changes. Since the form does not specify a time for filing, a general rule of thumb has developed that filing is required within 30 days. In certain cases, a previously dormant member can become active unexpectedly or be sold or taken over by new management. While a new pre-membership interview can be conducted, regulatory problems may have already occurred in reference to the merger, purchase, or change of ownership of a member. The NASD believes that prompt notification of such a change in ownership will allow the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled.

The amendment would require prompt notification to the member's district office after a specified significant event. The amendment would require members to provide notification in writing to the applicable district office no later than ten business days after a specific event, thereby indicating that notifying the district prior to the event is permitted but not required.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act which mandates that the rules of a national securities association be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanisms of, a free and open market because it will permit the NASD to act more expeditiously in determining whether a new pre-membership interview should be scheduled in situations where there are certain changes in the ownership or control of an NASD member.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The proposed amendment was published for comment in NASD Notice to Members 90-43 in July 1990. As a result of this Notice, the NASD received five comment letters. All five generally supported the proposal with suggested modifications.

Two commentators suggested changing the notice period from 5 to 10 days and one of those commentators suggested only requiring notification of an acquisition by the member if it had a material impact on the broker-dealer's business. Similarly, two other commentators expressed concern over whether notification was necessary for every variety of acquisition by a member. Both commentators felt that notification of an acquisition by a member of a non-securities related entity would be unnecessary. One other commentator suggested that notice be given via CRD or by requiring that a revised Form BD be filed within 5 days.

The NASD concurred in the suggestions of two commentators to change the notice period from 5 to 10 days, but did not agree with commentators who suggested requiring notification of an acquisition by the member only if it had a material impact on the member's business. The NASD believes that leaving the determination of what constitutes material impact to the member may be too subjective an approach and somewhat at odds with the intent of the rule. The NASD also modified the proposal to require notification if any change in the equity or partnership capital of a member resulted in a person or entity owning 50% or more of such equity or capital.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In particular, the Commission is interested in commentary on the appropriateness of the proposed ten (10) day deadline for member notification contained in the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by December 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 28, 1990.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 90-28568 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M

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[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30-3(a)(12) (1988).



[Rel. No. 34-28859; File No. SR-NSCC-90-23]

## Self-Regulatory Organizations; National Securities Clearing Corp.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Elimination of Correspondent Delivery and Collection Service

November 29, 1990.

### I. Introduction

On October 18, 1990, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-90-23) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on November 15, 1990, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on an accelerated basis.

### II. Description of the Proposal

The purpose of the proposed rule filing is to eliminate NSCC's Correspondent Delivery and Collection Service ("CDCS"). CDCS is a service which provides for the physical delivery of securities in exchange for payment between NSCC Members and non-Members ("CDCS Participants") at various locations throughout the United States.[3] Currently, NSCC has agreements with nine banks, clearing agencies, exchanges, and depositories that act as CDCS facilities for the purpose of receiving and/or delivering securities on behalf of CDCS Participants.

NSCC is eliminating the service due to the minimal volume and participation in

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Rel. No. 28550 (November 7, 1990), 55 FR 47822.

[3] To use the service, CDCS Participants place their securities for delivery in an envelope and forward it to NSCC one day before scheduled settlement. NSCC processes, sorts, and distributes the envelopes, via armored couriers, to the appropriate CDCS facility. On settlement day, the envelope is presented to the receiving party.

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recent years. The volume has declined from a daily average of thirty-one transactions in 1986 to a daily average of fourteen transactions to date in 1990. There are currently only eight NSCC Members who use the service on a daily basis. Due to the limited usage, NSCC is unable to cover its costs of providing the service. This year NSCC increased its fee for the service in an effort to cover its costs but continues to suffer a loss on this service. NSCC believes that a further increase would not remedy the problem because it would made CDCS more expensive for CDCS Participants than alternative solutions.

The decline in the use of CDCS is primarily due to the decline in the use of physical certificates. With the industry's movement to a book entry environment, there is and will be a significantly reduced need to transfer physical certificates in securities transactions. In addition, in the event that a minimal need for this kind of service remains, NSCC believes there are viable alternatives available to CDCS Participants. Banks offer drafting and collection services for a fee comparable to NSCC's. In addition, firms can use express mail, registered mail, or telemail. The Midwest Clearing Corporation also has a similar service which could be used.

NSCC has contacted each of the eight CDCS Participants who utilize the service on a daily basis to determine whether the elimination of the service would negatively impact them. According to NSCC, none of the firms objected to the proposal, and in fact, all stated that they were aware of alternatives.

The proposed rule change also modifies NSCC's fee structure to reflect the elimination of the CDCS service.

### III. NSCC's Rationale for the Proposal

NSCC believes that the proposal will eliminate a service that has minimal volume and is not cost effective, thereby minimizing its financial losses incurred in connection with providing the service. Thus, NSCC believes the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder applicable to it.

### IV. Discussion

The Commission believes that NSCC's proposed rule change is consistent with the Act and, in particular, with Section 17A. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The Commission believes that the proposal is consistent with section 17A(b)(3)(D) of the Act.[4] That Section provides that the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. Because CDCS is generating operating losses and has minimal participation, NSCC is in effect subsidizing a service that is benefitting only a few of its members. As a result, NSCC Members not utilizing the service are nevertheless paying for it, thus creating an unequitable allocation of charges among NSCC Members. As proposed, the elimination of CDCS will remedy this problem and will foster an environment at NSCC wherein the allocation of dues, fees, and other charges is more equitable.

The Commission also believes that the proposal is consistent with NSCC's obligation to provide efficient procedures for clearance and settlement that do not impose unnecessary costs on its members. Congress articulated this general obligation as part of its findings embodied in section 17A of the Act. Specifically, section 17A(a)(1)(B) of the Act [5] delineates the obligation to provide efficient, cost-effective clearance and settlement procedures. As discussed above, CDCS is generating an operating loss and non-users of the service are subsidizing the users. The unnecessary costs incurred by the non-users of CDCS will be eliminated by the proposal. Additionally, the existence of the loss associated with CDCS is an inefficiency that will be eliminated along with CDCS's elimination.

The proposal also is consistent with sections 17A(b)(3) (A) and (F) of the Act,[6] which provide, among other things, that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By eliminating a service that provides for the delivery of physical certificates, NSCC is streamlining its operation towards the predominant use of certificateless securities in a book-entry environment. The Commission believes that such an environment is more efficient than one that involves the transfer of physical certificates and will thus promote the prompt and accurate clearance and settlement of securities transactions. However, should an NSCC Participant have need for the delivery of physical certificates, NSCC has indicated that there exist several viable alternatives for such participants. Additionally, NSCC has indicated that the current principal users of CDCS have been informed of its proposed elimination and have neither expressed any objections to NSCC nor submitted comments in response to the relevant notice in the Federal Register.

Finally, the Commission finds "good cause" under section 19(b)(2) of the Act [7] for approving this proposal prior to the thirtieth day after publication of notice because the expedited elimination of the service will minimize NSCC's financial loss incurred in providing the service.

### V. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with section 17A of the Act.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that NSCC's proposed rule change (SR–NSCC–0–23) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90–28569 Filed 12–5–90; 8:45 am]
BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(D).
[5] 15 U.S.C. 78q–1(a)(1)(B).
[6] 15 U.S.C. 78q–1(b)(3) (A) and (F).

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[Release No. 34–28658; File No. SR-OCC-90–10]

## Self-Regulatory Organizations; Proposed Rule Change by Options Clearing Corp. Relating to Addition of Put Margin Credit

November 29, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice hereby is given that on August 20, 1990, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change (File No. SR–OCC–90–10) as described in Items I, II and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice solicit comments on the proposed rule change from interested persons.

### I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new Paragraph (e), (captioned "Put Margin Credit"), to OCC's existing rule 604 (captioned "Forms of Margin") to authorize the development of a Put Margin Credit ("PMC") Program. The

[7] 15U.S.C. 78s(b)(2).
[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).

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PMC Program would maximize the margin credit that OCC could give to its clearing members where they hold, in combination, long positions in: (1) Puts of a class of American-style options,[2] and (2) the underlying stock.[3] The proposed PMC Program would combine such stock and option positions to generate greater clearing margin credits than either position could provide individually in either OCC's existing clearing margin system [4] or its Valued Securities programs.[5]

*II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, or the most significant aspect of such statements.

*A. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

One of the major problems that arose during the October 1987 and October 1989 market breaks was a generalized cash squeeze for OCC's clearing members. In particular, OCC clearing members that were utilizing OCC's Market-Maker Pledge System [6] to pledge long call option positions to banks were faced with repaying loans as the value of their collateral rapidly declined. During this same period, clearing members that had stocks pledged as collateral for loans and letters of credit, or were lenders of such securities, had to use substantial amounts of their cash to pay down loans as some banks reduced the amount of credit they would extend against the collateral to meet marks-to-market and to pay for returned stock.

During these same market breaks, many of OCC's clearing members held in their proprietary market-maker accounts substantial long put positions that were rapidly increasing in value. Many banks, however, were reluctant to accept clearing members' long put options as collateral for loans at that time. Although clearing members received clearing margin credit from OCC for their long put positions, the clearing margin credit calculated by OCC's clearing margin system did not reflect the full value of put options that were held in combination with underlying stocks.

To rectify this situation, OCC has developed the PMC Program that will maximize the clearing margin credit that can be given to long put positions and underlying stock positions held in combination. For the reasons stated above, OCC believes this program will be especially helpful in a declining marketplace. The PMC Program would combine long put positions with positions in underlying stocks to generate greater margin credits than either position individually would provide in OCC's existing margin or Valued Securities programs. Consequently, OCC anticipates that in some situations a clearing member would have a reduced need to borrow from commercial banks in order to meet its clearing margin requirements at OCC.

The proposed PMC Program would be limited to clearing members' proprietary market-maker and proprietary specialist accounts under section 5(c)(10) of Regulation U of the Board of Governors of the Federal Reserve System.[7] The PMC Program would allow a clearing number that is carrying long positions in put options on individuals stocks in such proprietary market-maker and proprietary specialist accounts to direct OCC to treat the put options and the shares of underlying stocks covered by the options as a combined position for purposes of clearing margin credit.[8] Because the combined option/stock position can never be worth less than the option's exercise price, which would be realized if the underlying stock were delivered pursuant to an exercise of the option, OCC can prudently give clearing margin credit for the combined position equal to 100% of the exercise price. On the other hand, the combined position could theoretically be worth more than the exercise price if the market value of the stock substantially exceeds the exercise price of the option. Accordingly, OCC would give margin credit for the combined position equal to 100% of: (1) The greater of the exercise price of the option, or (2) the maximum loan value (i.e., 50% of current market value) that would be given to the stock alone under OCC's Valued Securities Program.

In order to avoid any "double counting," options that are included in the PMC Program would generate no margin credit in calculating the clearing margin requirement for the account. Further, the underlying securities that are included in the PMC Program would not receive any additional credit under the Valued Securities Program during the time they are included in the PMC Program.

Because put options, under certain circumstances, might provide more margin credit if they were spread against short option positions, rather than included in the PMC Program, the decision as to whether or not to include them in the PMC Program would be for the clearing member, who would be permitted to make this decision on a daily basis in light of existing positions.

Finally, underlying stocks that are included in the PMC Program would not be counted in the 10% limitation that applies to stocks of any one issuer for purposes of the Valued Securities Program; i.e., the 10% stock concentration ratio of OCC rule 604(d) would not apply to the PMC Program. The reason for this exclusion is that 10% limitation is intended only to protect OCC against concentration of risk where a particular stock position might decrease very substantially in value, but because a combined position in the PMC Program would not be worth less than the exercise price of the option regardless of the market value of the underlying stock, the concentration risk does not exist with respect to such securities.[9]

[2] The term "American-style option" means an option contract that may be exercised, subject to certain rules, at any time from its commencement date until its expiration date. This is in distinction from a "European-style option" that may be exercised only on its expiration date. See OCC By-Laws, Art. I, Section 1(ttt), (uuu). The OCC has represented by letter to the Commission that no European-style option will be eligible for its PMC Program. See letter from Stuart C. Harvey, Jr., Attorney, to Thomas C. Etter, Jr., Attorney, SEC, dated October 26, 1990.
[3] The term "held in combination," for the purpose of this rule proposal, means holdings of both put options and of the underlying stock. Telephone conversation between Stuart C. Harvey, Jr., Attorney, OCC, and Thomas C. Etter, Jr., Attorney, SEC (October 29, 1990).
[4] See OCC rule 604.
[5] See OCC rule 604(d).
[6] See OCC rule 614(e).
[7] 12 CFR 221.4(c)(10).
[8] This proposal assumes that the clearing member in question had deposited stocks underlying such options as clearing margin pursuant to OCC's Valued Securities Program. See OCC rule 604(d).
[9] OCC takes the position that the 10% concentration ratio of OCC rule 604(d) is not warranted in the PMC Program because other protections eliminate the need for the ratio. OCC states that such other protections are twofold: (1) The positions would be hedged and therefore without market risk; and (2) OCC always would have the alternative of exercising the puts (i.e., putting in-the-money puts to assignees for cash) and/or selling the stock. Telephone conversation between Stuart C. Harvey, Jr., Attorney, OCC, and Thomas C. Etter, Jr., Attorney, SEC (October 29, 1990).

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The proposed rule change is consistent with the purposes of section 17A of the Act in that it reduces the need for cash margin a declining market, while protecting the integrity of OCC's back-up systems for the clearance and settlement of option transactions.

*B. SRO's Statement on Burden on Competition*

OCC believes that the proposed rule change will have no burden on competition.

*C. SRO's Statement on Comments Received on the Proposed Rule Change Received from Members, Participants or Others*

OCC did not solicit nor did it receive any comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–90–10 and should be submitted by December 27, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90–28570 Filed 12–5–90; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–17897; 812–7557]

**Dean Witter Reynolds Inc.; Application and Temporary Order**

November 29, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Temporary order and notice of filing of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

*Applicant:* Dean Witter Reynolds Inc. ("DWR" or "Applicant").

*Relevant 1940 Act Sections:* Permanent order requested and temporary order granted under section 9(c) of the Act granting exemption from section 9(a).

*Summary of Application:* DWR has been granted a temporary order and has requested a permanent order exempting it from the provisions of section 9(a) to relieve it from any ineligibility resulting from the employment of three individuals who are subject to injunctions against certain securities or commodities related offenses.

*Filing Date:* The application was filed on July 10, 1990, and amended on July 30, 1990, August 27, 1990, September 25, 1990, and October 16, 1990.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Dennis H. Greenwald, Esq., Dean Witter Reynolds Inc., Two World Trade Center, New York, New York 10048.

[10] 17 CFR 200.30–3(a)(12).

**FOR FURTHER INFORMATION CONTACT:** Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Max Berueffy, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. DWR, a Delaware corporation, is a registered broker-dealer and registered investment adviser. DWR is a subsidiary of Dean Witter Financial Services Group Inc. Its ultimate parent is Sears, Roebuck and Co.

2. Through its InterCapital Division, DWR serves as the investment adviser or sub-investment adviser for 38 registered investment companies listed in Exhibit A to the application and, except as disclosed in such exhibit, as the principal underwriter for each such company. These investment companies and portfolios had aggregate assets of approximately $41,702,287,000 on June 29, 1990. DWR anticipates serving in similar capacities with regard to registered investment companies and portfolios thereof that may be organized in the future.

3. DWR is the sole depositor and principal underwriter of the series of the unit investment trusts registered as investment companies listed in Exhibit B to the application. DWR is a depositor and principal underwriter, but not the sole depositor and sole principal underwriter, for the series of the unit investment trusts listed in Exhibit C to the application. DWR anticipates serving as underwriter and depositor for future series of the unit investment trusts listed in Exhibits B and C and for other unit investment trusts that may be organized in the future.

4. Applicant currently employs two individuals subject to securities-related injunctions, John E. Kilfoyle and Shelley Cohen, and one individual subject to a commodities-related injunction, John Farwell Howe III (Kilfoyle, Cohen, and Howe are collectively referred to as the "Subject Employees").

5. Kilfoyle is an account executive and a registered representative in DWR's Glendale, California branch office. He has been employed by DWR since 1975. In March 1988, Kilfoyle consented to the entry of a permanent injunction in a suit filed by the Commission alleging that he effected profitable trades in the stock of Early California Industries, Inc. for one customer while in possession of material, non-public information regarding a possible tender offer for the



securities of the company. The injunction permanently enjoined Kilfoyle from aiding and abetting violations of section 17(a) of the Securities Act of 1933 (the "1933 Act"), section 10(b) of the Securities Exchange Act of 1934 (the "1934 Act"), or Rule 10b–5 thereunder. Kilfoyle also agreed to disgorge the sum of $1,600. In April 1988, the Commission issued an order that simultaneously instituted an administrative proceeding, made findings, and imposed sanctions against Kilfoyle. The Commission accepted an offer of settlement in the proceeding pursuant to which Kilfoyle agreed to a suspension from association with any broker, dealer, municipal securities dealer, investment company, or investment adviser for a period of 30 days. Kilfoyle's association with DWR was continued by the New York Stock Exchange ("NYSE"), DWR's principal self-regulatory organization, on November 27, 1989.

6. Cohen is an account executive and registered representative in DWR's Hallandale, Florida branch office. She has been employed by DWR since May 1981. On July 5, 1983, the Commission filed suit against Cohen alleging that in 1980, as a registered representative of Bache Halsey Stuart Shields, Inc., she manipulated the market for certain securities of Intercontinental Diamond Corp., purchased and sold certain securities of that company for her own account, induced others to purchase and sell such securities, and participated in a distribution of such securities in violation of the federal securities laws. On the same date, Cohen consented to the entry of an injunction permanently enjoining her from violating section 17(a) of the 1933 Act, section 10(b) of the 1934 Act, or Rules 10b–5 or 10b–6 thereunder. Cohen also agreed to be suspended from association with any broker-dealer for a period of 60 days, to be barred from any position of supervision with any broker-dealer, and to not make any recommendations to customers for the purchase of non-exchange listed securities without authority from her branch manager. Cohen's association with DWR was continued by the NYSE on May 21, 1985.

7. Howe is a registered representative and regional insurance coordinator based in DWR's Norwell, Massachusetts branch office. He has been employed by DWR since 1988. In 1976, the Commodity Futures Trading Commission ("CFTC") filed suit against Howe and his former employer, First Commodity Corp. of Boston, alleging violations of the anti-fraud provisions of the Commodity Exchange Act ("CEA") in connection with trades for a customer account. On November 11, 1976, Howe consented to the entry of a permanent injunction against future violations of various sections of the CEA. In 1978, in an administrative proceeding before the CFTC arising out of the same set of facts, the Administrative Law Judge found that Howe should have been registered as a commodity trading advisor under the CEA and that Howe has violated the anti-fraud provisions of the CEA. Howe and First Commodity Corp. of Boston were ordered to pay a reparation award of $3,218. Howe's association with DWR was approved by the NYSE on February 27, 1989.

8. The existence of the injunctions against the Subject Employees disables DWR, under section 9(a)(3) of the Act, from acting as an investment adviser to any registered investment comppany, as a principal underwriter of any registered open-end investment company, or as a principal underwriter or depositor of any registered unit investment trust, unless an exemption is obtained pursuant to section 9(c).

9. DWR previously knew of the existence of each of the injunctions, but until recently was unware of their significance for purposes of section 9(a) of the Act. Prior to the present time, DWR did not have in place procedures to screen specifically for section 9(a) disqualifications.

10. Since the entry of their respective injunctions and related administrative sanctions, none of the Subject Employees has been enjoined by any court or sanctioned by the Commission, the CFTC, any self-regulatory organization, or any state securities commission.

11. Senior members of DWR's Law and Compliance Departments have reviewed each of the Subject Employees' records during the course of his or her employment with DWR and represent that each of them is satisfactory. Except as set forth below with respect to Kilfoyle and Cohen, there have been no customer complaints against any of the Subject Employees during their employment with DWR.

12. There have been two customer complaints relating to Kilfoyle during his employment with DWR. The most recent complaint was brought in August 1987 by a customer who alleged that Kilfoyle recommended an unsuitable investment and claimed damages of approximately $30,000. DWR settled this complaint on October 2, 1988 for $37,500, of which Kilfoyle contributed $5,000. The other complaint, brought in November 1984, also involved an alleged unsuitable investment and sought approximately $41,000. DWR settled this claim for $15,000. DWR states that although it disputed each of the foregoing claims, it was willing to settle in order to avoid the costs of litigation.

13. There has been one customer complaint relating to Cohen while she has been employed by DWR. The complaint was brought on December 29, 1989 and is currently pending. The complaint makes several claims including unsuitability, churning, and lack of diversification in connection with Cohen's recommendation of certain limited partnership interests and municipal securities and seeks damages in excess of $2,000,000. DWR is contesting the claims and expects the complaint to go to arbitration in the near future.

14. None of the Subject Employees serves in any capacity related to providing investment advice to any registered investment company or at acting as principal underwriter or depositor to any registered open-end investment company or as principal underwriter or depositor to any registered unit investment trust. None of the Subject Employees is an officer of DWR or serves in a policy making role. None of the Subject Employees has any relation to DWR's management or adminstrative activities relating to registered investment companies.

15. The conduct that precipitated the injunctive actions against the Subject Employees was unrelated to providing investment advice or acting as depositor or underwriter for any registered investment company.

16. Prior to becoming employed by DWR, Howe disclosed to DWR the existence of the injunction against him and Cohen disclosed the existence of the investigation that lead to the injunction against her. DWR was fully aware of the proceedings involving Kilfoyle because they arose during the course of his employment by DWR. DWR and each of the Subject Employees took the necessary steps to obtain the approval of the NYSE, DWR's principal self-regulatory organization, with respect to the association of each of the Subject Employees with the firm.

17. Pending disposition of DWR's request for temporary relief, DWR has required each of the Subject Employees to take a leave of absence with pay. If temporary relief is granted, DWR will permit the Subject Employees to return to work on a normal basis pending determination as to permanent relief.

18. DWR and its subsidiaries are amending their compliance and registration procedures to assure that any prospective employee subject to a

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statutory disqualification under section 9(a) is not employed by any DWR company involved in registered investment company activities as a principal underwriter, depositor, or investment adviser (a "Covered Company") until all section 9(c) issues concerning that prospective employee are resolved. These new procedures include notification of DWR's Law Department whenever a statutory disqualification is disclosed in an employment application for a prospective employee. Prior to receiving a permanent order, DWR's general counsel will file with the Commission a certificate attesting to the adequacy and implementation of DWR's compliance procedures.

19. Upon recognizing the significance of the injunctions under section 9(e), DWR met with the staff of the SEC's Division of Investment Management and agreed to deposit its investment advisory fees in an escrow account until the Commission acted on the application for a permanent exemption. Because of an internal misunderstanding, the account was not actually opened. When this failure was discovered on August 23, 1990, DWR informed the staff and, on the same day, established the account. All investment advisory fees accruing on or after June 27, 1990 have been and will continue to be deposited in the account until the Commission has acted upon DWR's application of a permanent exemption. Because DWR initially failed to establish the account as agreed, the staff advised DWR that it is unwilling to rely solely upon its representatives regarding the implementation and adequacy of its compliance procedures and requested an independent review of DWR's compliance procedures. DWR has agreed to obtain this review.

20. DWR has advised the independent directors of the investment companies that pay advisory fees to it of the facts leading to, and the contents of, its application for relief. DWR represents that such advice will be updated as new developments arise.

**Applicant's Legal Analysis**

1. Each of the Subject Employees is ineligible to serve or act as an investment adviser, principal underwriter, or depositor for a registered investment company. Each of these individuals is an employee, and thus an "affiliated person," of DWR. DWR is therefore ineligible under section 9(a)(3) of the Act to serve or act in the capacities enumerated unless it obtains an exemption under section 9(c).

2. For the reasons discussed below, DWR asserts that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to DWR, and the conduct of DWR does not make it against the public interest or the protection of investors to grant the requested relief.

3. DWR submits that the activities that gave rise to the injunctions are not sufficiently related to DWR or to the investment companies for which DWR acts as investment adviser, principal underwriter, or depositor to justify barring DWR from acting in such capacities. Furthermore, there is no basis to assert that the employment of the Subject Employees may affect DWR's performance of its responsibilities to any registered investment company.

4. DWR asserts that the balance of fairness requires that the application be granted. In particular, DWR argues that if the exemption is not granted, it would be required to terminate the employment of the Subject Employees in order to continue the affected business. DRW contends that such a result would be manifestly unfair since each of the Subject Employees has fulfilled the terms of his or her sanction and has performed his or her duties satisfactorily over the years.

**Conditions to the Requested Relief**

1. As a condition to the temporary relief, Applicant will continue to escrow all investment advisory fees until the Commission acts on DWR's request for a permanent exemption. Amounts paid into the escrow account will be disbursed to the investment companies paying such fees or to DWR, as the case may be, after the Commission has acted on DWR's application for permanent relief.

2. As a condition to the permanent relief, DWR will not employ any of the Subject Employees in any capacity related directly to the provision of investment advisory services or to acting as depositor for a registered investment company or as a principal underwriter for a registered open-end investment company, registered unit investment trust, or registered face-amount certificate company without first making further application to the Commission.

3. DWR will take appropriate steps reasonably to confirm that there are no other employees subject to a section 9(a) disqualification. These steps may include reviewing the personnel files of other employees, requesting employees to confirm that they are not subject to a statutory disqualification, or utilizing some other combination of procedures that may vary depending on the level and type of employee. A permanent order will not be granted until DWR has notified the Commission in writing that these steps have been completed.

4. As a condition to the permanent relief, DWR will file as an exhibit to the application a representation, attested to by its General Counsel, stating that he has reviewed the compliance procedures described in the application, that he believes after due inquiry that those procedures have been fully implemented, and that they are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with DWR in the future.

5. As a condition to the temporary relief, DWR agrees to appoint, at DWR's sole expense, a Special Reviewer (the "Reviewer") acceptable to the Commission within 30 days of the entry of the temporary order. The Reviewer will review the compliance procedures described in the application and prepare a written report for DWR containing all recommendations relating to DWR's compliance procedures. Copies of the report shall be submitted to the staff of the Commission at the same time that they are submitted to DWR.

6. As a condition to the permanent relief, the Reviewer will submit to the Commission a final written report (a) describing the compliance procedures adopted and implemented in connection with the application and (b) certifying that he has reviewed DWR's compliance procedures, that to the best of his knowledge those procedures have been fully implemented, and that those procedures are reasonable and appropriate to prevent persons subject to a statutory disqualification from becoming affiliated with DWR in the future.

**Temporary Order**

The Commission has considered the matter and finds under the standards of section 9(c), that Applicant has made the necessary showing to justify granting a temporary exemption.

Our decision to grant the requested relief is based primarily on two factors. First, the Subject Employees have not been, and (without further Commission action) will not be, engaged in investment advisory or investment company activities. Second, DWR has represented that it is correcting the deficiencies in its compliance procedures that allowed these violations of section 9(a) to occur. It is also relevant to our determination that each of the Subject Employees fully disclosed the existence of the injunctions to DWR on a timely basis and was authorized by action of the NYSE to associate with DWR as a registered representative. The Commission's decision to allow DWR to continue to employ the Subject Employees in non-investment adviser, non-investment company activities is thus consistent with the actions of the self-regulatory organization.

However, we must express our serious concern with the conduct of DWR with respect to the establishment of the escrow account. The Commission's procedure for obtaining exemptive orders under the Act depends to a great extent upon the accuracy of the representations in an application. DWR repeatedly represented to the staff that it has established such an account, when, in fact, it had not. In light of this, the staff and the Commission are reluctant to rely entirely on DWR's representations as to the implementation and adequacy of its new compliance procedures. We have, therefore, required DWR to obtain an independent review of its compliance procedures as a condition to the granting of the permanent relief.

In recent months, the Commission has become aware of a number of companies that have violated section 9(a)(3) of the Act under circumstances similar to this case. *See Smith Barney, Harris, Upham & Co., Inc.*, Investment Company Act Release Nos. 17404 and 17404A (April 2 and April 11, 1990) (notice and temporary order), 17501 (May 21, 1990) (permanent order); *PaineWebber Inc.*, Investment Company Act Release Nos. 17588 (July 16, 1990) (notice and temporary order), 17789 (October 10, 1990) (permanent order); *Prescott, Ball & Turben, Inc.*, (File No. 812-7576); *Prudential-Bache Securities, Inc.*, (File No. 812-7591). We view such violations with concern because they evidence fundamental compliance system deficiencies which have resulted in the employment of disqualified employees for extended periods without discovery. In granting DWR relief under section 9(c), we weighed heavily that it voluntarily undertook a review of its employees to determine the existence of such violations within a reasonable time after publication of the notice and order in *Smith Barney*. However, we may not be as sympathetic to future applicants that are less timely or less forthcoming.

Accordingly, *It is Ordered*, under section 9(c) of the 1940 Act, that Applicant is hereby temporarily exempted from the provisions of section 9(a) for the shorter of 90 days or until the Commission takes final action on the application for an order granting Applicant a permanent exemption from the provisions of section 9(a).

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-28571 Filed 12-5-90; 8:45 am]

BILLING CODE 8010-01-M



## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster Loan Area #7171]**

**Washington; Declaration of Disaster Loan Area**

The City of Mountlake Terrace, Snohomish County, and the contiguous counties of Chelan, King, and Skagit in the State of Washington constitute an Economic Injury Disaster Loan Area due to arson fires which occurred in the City of Mountlake Terrace on August 6 and 11, 1990. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 21, 1991 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 21, 1990.

**Susan Engeleiter,**

*Administrator.*

[FR Doc. 90-28554 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2469]**

**Washington; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on November 26, 1990, I find that the Counties of Skagit, Snohomish, and Whatcom in the State of Washington constitute a disaster area as a result of damages caused by severe storms and flooding beginning on November 9, 1990. Applications for loans for physical damage may be filed until the close of business on January 25, 1991, and for loans for economic injury until the close of business on August 26, 1991, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chelan, Island, King, Kitsap, Okanogan, and San Juan in the State of Washington may be filed until the specified date at the above location. The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-profit Organizations) With Credit Available Elsewhere | 9.250 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 246906 and for economic injury the number is 719400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 29, 1990.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 90-28555 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

**Region IX Advisory Council; Public Meeting**

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Friday, December 14, 1990, at the Small Business Administration, 211 Main Street, 5th floor, Conference room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the Office of the District Director, San Francisco District Office, 211 Main Street, 4th floor, San Francisco, California 94105, telephone (415) 744-6801.

Dated: November 21, 1990.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 90-28556 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

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**Region V Advisory Council Public Meeting**

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m. on Friday, December 14, 1990, at the Administration Building—Cuyahoga Community College, 2900 Community College Avenue, room 210, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199-2095, phone (216) 522-4180.

Dated: November 28, 1990.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

[FR Doc. 90-28587 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

**Region V Advisory Council Public Meeting**

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Columbus, will hold a public meeting at 9:30 a.m. on Friday, December 7, 1990, at the U.S. Federal Courthouse, 85 Marconi Blvd., room 512, Columbus, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Frank D. Ray, District Director, U.S. Small Business Administration, 85 Marconi Blvd., room 512, Columbus, Ohio 43215, phone (614) 469-7310.

Dated: November 27, 1990.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

[FR Doc. 90-28588 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

**[Application No. 09/09-0194]**

**Rural America Fund, Inc.; Application for a License To Operate as a Small Business Investment Company**

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Rural America Fund, Inc. (Rural), 2201 Cooperative Way, Herndon, VA 22071, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1990).

The proposed officers, directors, and owner of Rural are as follows:

| Name and address | Position | Percentage of ownership |
|---|---|---|
| Carl R. Weber, 13449 Marble Rock Drive, Chantilly, VA 22021 | Manager | |
| Gary A. Gordy, 2167 Greenkeepers Ct., Reston, VA 22091 | President | |
| Richard S. Bulman, 10840 Burr Oak Way, Burke, VA 22015 | Director | |
| Truman L. Brandt, 6953 Williamsburg Pond Ct., Falls Church, VA 22043 | Director | |
| National Rural Utilities, Cooperative Finance Corp., 2201 Cooperative Way, Herndon, VA 22071 | Sole shareholder | 100 |

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business throughout the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Herndon, Virginia.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1990.

Bernard Kulik,

*Associate Administrator for Investment.*

[FR Doc. 90-28559 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

**[Application No. 04/04-0254]**

**Southeast SBIC, Inc.; Application for License To Operate as a Small Business Investment Company**

An application for a license to operate a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 *et seq.*) has been filed by Southeast SBIC, Inc. (Southeast), One Southeast Financial Center, Miami, Florida 33131, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1990).

The proposed officers, directors, and owner of Southeast are as follows:

| Name and address | Position | Percentage of ownership |
|---|---|---|
| Thomas M. Koller, 1016 Southeast 5th Street, Ft. Lauderdale, FL 33316 | President, Director | |
| Fernando L. Vasquez, 3897 SW. 84 Terrace, Miami, FL 33145 | Vice President | |
| John P. Ballard, Jr., 1003 Alhambra Ave., Coral Gables, FL 33146 | Director | |
| William Crowley, Jr., 3525 South Mooring Ways, Coconut Grove, FL | Director | |
| Thomas R. Wooley, 11720 SW. 97th CT., Miami, FL 33176 | Secretary | |
| Southeast Bank, N.A., One Southeast Financial Center, Miami, FL 33131 | Sole shareholder | 100 |

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant



intends to conduct its business in the State of Florida.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Miami, Florida.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1990.

Bernard Kulik,

*Associate Administrator for Investment.*

[FR Doc. 90-28560 Filed 12-5-90; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF VETERANS AFFAIRS

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please to not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

Frank E. Lalley,

*Director, Office of Information Resources Policies.*

**Extension**

1. Veterans Benefits Administration
2. Request to Mortgage Company for Amount of Unpaid Mortgage
3. VA Form Letter 29-712
4. The form letter is used to request the amount of veteran's unpaid mortgage from the lending institution with whom veteran carries his/her mortgage. The information is used by VA to determine the veteran's Veterans Mortgage Life Insurance (VMLI) premiums.
5. On occasion
6. Business or other for-profit
7. 450 responses
8. ⅙ hour
9. Not Applicable

[FR Doc. 90-28600 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01-M

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s); if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

Frank E. Lalley,

*Director, Office of Information Resources Policies.*

**Revision**

1. Veterans Benefits Administration
2. Application for Cash Surrender Value or Policy Loan
3. VA Form Letter 29-1546
4. The form is used by the insured to apply for cash surrender value or policy loan on his/her insurance. The information is used to initiate the processing of the insured's request for a policy loan or cash surrender
5. On occasion
6. Individuals or households
7. 29,636 responses
8. ⅙ hour
9. Not Applicable

[FR Doc. 90-28601 Filed 12-5-90; 8:45 am]

BILLING CODE 8320-01-M

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the

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Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before January 7, 1991.

Dated: November 30, 1990.

By direction of the Secretary:

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Extension**

1. Veterans Benefits Administration.
2. Notice for Election to Convey and/or Invoice for Transfer of Property.
3. VA Form 26–8903.
4. The form is used by lenders to notify VA of the conveyance of a property to VA incident to foreclosure of a GI home loan. The form serves four purposes: lender's election to convey; invoice for the purchase price of the property; VA's voucher for authorizing payment to the lender; and establishment of VA's property records.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 35,000 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–28602 Filed 12–5–90; 8:45 am]

BILLING CODE 8320-01-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 2 p.m., Monday, December 17, 1990.

**PLACE:** 2033 K St., NW., Washington, DC, 8th floor Hearing room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**
Enforcement Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 90–28785 Filed 12–4–90; 3:02 pm]

BILLING CODE 6351-01-M

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NUMBER:** 90–28218.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, December 6, 1990, 10:00 a.m., Meeting Open to the Public.

The following item has been added to the agenda:

Change in Vote Procedures Concerning Requests for Extension of Time.

The following item has been deleted from the agenda:

Advisory Opinion 1990–14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.

**DATE AND TIME:** Tuesday, December 11, 1990, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Correction and Approval of Minutes
Advisory Opinions:
AO 1990–14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.
AO 1990–23—Morgan L. Staines on behalf of Community Psychiatric Centers Federal PAC.
Regulations: Public Financing of Presidential Primary and General Election Candidates: Notice of Proposed Rulemaking
Administrative Matters

**DATE AND TIME:** Tuesday, December 11, 1990, to Convene After Open Meeting.

**PLACE:** 999 E Street, N.W., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

**Hilda Arnold,**

*Administrative Assistant, Office of the Secretariat.*

[FR Doc. 90–28764 Filed 12–4–90; 1:23 pm]

BILLING CODE 6715-01-M

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:**

**TIME AND DATE:** 1:30 p.m., December 17, 1990.

**PLACE:** 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

**STATUS:** Open

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the November 19, 1990, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Audit status review.
4. Ethics briefing.

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: December 3, 1990.

**Francis X. Cavanaugh,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 90–28778 Filed 12–4–90; 3:02 pm]

BILLING CODE 6760-01-M

**LEGAL SERVICES CORPORATION**

**BOARD OF DIRECTORS MEETING CHANGES**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** FR Doc. 90–28851, 55 FR 50080.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** Meeting commencing at 9:00 a.m. on December 11, 1990.

**CHANGES IN THE MEETING:** The meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: December 4, 1990.

**Maureen R. Bozell,**

*Corporation Secretary.*

[FR Doc. 90–28804 Filed 12–4–90; 3:53 pm]

BILLING CODE 7050-01-M

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# Corrections

Federal Register
Vol. 55, No. 235
Thursday, December 6, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 90N-0390]

### Ciba-Geigy Corp., et al.; Withdrawal of Approval of New Drug Applications

*Correction*

In notice document 90-26905 beginning on page 47807 in the issue of Thursday, November 15, 1990, make the following correction:

On page 47806, in the second column of the table, in the fifth from last entry, "I-242" should read "I-131".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 90P-0331]

### Sour Cream Deviating From Identity Standards; Temporary Permit for Market Testing

*Correction*

In notice document 90-27176 appearing on page 48174 in the issue of Monday, November 19, 1990, under the **DATES** caption, in the last line, the date should read "February 19, 1991"..

BILLING CODE 1505-01-D

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-81]

### Initiation of Section 302 Investigation, Proposed Determinations, Public Hearing, and Request for Written Comments: Denial of Benefits Under a Trade Agreement by the European Communities

*Correction*

In the heading of notice document 90-27333 beginning on page 48197 in the issue of Monday, November 19, 1990, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-45; Amdt. 39-6750]

### Airworthiness Directives; McDonnell Douglas Helicopter Co.; Model 369 Series Helicopters

*Correction*

In rule document 90-22125 beginning on page 38542 in the issue of Wednesday, September 19, 1990, make the following corrections:

§ 39.13 [Corrected]

1. On page 38543, in the first column, in § 39.13, under **MCDONNELL DOUGLAS HELICOPTER CO.**, starting in the fifth line the part numbers should read:

"(P/N's) 369A1100-BSC, -501, -503, -505, -601, 369D21100-BSC, -503, -505, -507, -509, -511, -513, and 369D21102-BSC; or (2) Main rotor hub lead-lag link assemblies having P/N's 369A1203-BSC, -3, -11, 369H1203-BSC, -11, -21, -31. (Docket No. 88-ASW-45)

§ 39.13 [Corrected]

2. In the same section, in the same column, the part numbers in the last six lines, as well as, the first six lines of the next column should read as follows:

"P/N's 369A1100-BSC, -501, -503, -505, -601; 369D21100-BSC, -503, -505, -507, -509, -511, -513; 369D21100-BSC; and of the exposed portions of the attach lugs of the main rotor hub lead-lag links, P/N's 369A1203-BSC, -3, -11; 369H1203-BSC, -11, -21, -31."

BILLING CODE 1505-01-D

federal register

Thursday
December 6, 1990

Part II

# Environmental Protection Agency

40 CFR Part 260, et al.
Wood Preserving; Identification and Listing of Hazardous Waste; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 270, 271, and 302

[EPA/OSW-FR-91-008/FRL-3858-7]

RIN 2050-AC43

## Identification and Listing of Hazardous Waste; Wood Preserving

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three categories of wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives. Today's rule finalizes portions of a proposed rule published by EPA on December 30, 1988 (53 FR 53282).

The listings finalized today include wastewaters, process residuals, preservative drippage, and spent preservatives from wood preserving processes at facilities that use or have previously used chlorophenolic formulations, facilities that use creosote formulations, and facilities that use inorganic preservatives containing arsenic or chromium. With respect to wastes from surface protection processes that use chlorophenolic formulations (proposed waste F033), EPA is deferring a final listing until more information can be collected on which to support a decision. These wastes may, however, exhibit the Toxicity Characteristic and consequently, may already be regulated as hazardous waste under subtitle C.

Today's rule includes permitting and interim status standards for drip pads used to assist in the collection of treated wood drippage. These standards include requirements for drip pad design and operation, inspections, and closure. Under today's rule, generators may be eligible for a 90-day generator exemption from permitting if their pads meet all of the technical standards for drip pads.

The effect of listing F032, F034, and F035 will be to subject them to the hazardous waste regulations of 40 CFR parts 124, 262 through 266, 268, 270, and 271; the notification requirements of section 3010 of RCRA; and the notification requirements under CERCLA section 103.

**DATES:** Today's final rule will become effective on June 6, 1991. For compliance deadlines, see section VIII of this preamble. The information collection requirements contained in the following paragraphs have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them: § 261.35(b)(1), (b)(3), (c); § 262.34(a)(2)(i), (a)(2)(ii); § 264.571(a), (b); § 264.572(i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (o); § 264.573(a); § 264.574(c)(1)(i), (c)(1)(ii); § 265.441(a); (b); § 265.443(g), (i), (k), (m)(1)(i), (m)(1)(iv), (m)(3), (n); § 265.444(a); § 265.445(c)(1)(i), (c)(1)(ii); § 270.22(a), (b), (c). A **Federal Register** Notice will be published in which the effective dates for these regulations will be established.

**ADDRESSES:** The official record for this rulemaking is identified as Docket Number F–90–WPWF–FFFFF and is located in the EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 475–9327, for the RCRA portion of the docket, or (202) 382–3046 for the CERCLA portion of the docket. Both dockets are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no charge. Additional copies cost $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/CERCLA Hotline at (800) 424–9346 or, in the Washington, DC area, at (202) 382–3000. For technical information on the RCRA portion of the rule contact Mr. Ed Freedman or Mr. Edwin F. Abrams of the Office of Solid Waste (OS–333) at (202) 382–4770. For technical information on the CERCLA portion of the rule, contact Mr. Daniel Chellaraj, Response Standards and Criteria Branch, Emergency Response Division, Office of Emergency and Remedial Response (OS–210) at (202) 382–2344. Both offices are located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:

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List of Subjects

### I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a) and 6921(b) and (e)(1) (commonly referred to as RCRA), and section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 U.S.C. 9602(a).

### II. Background

Pursuant to section 3001 of subtitle C of the Resource Conservation and Recovery Act (RCRA), this notice lists as hazardous certain wastes generated from wood preserving processes that use either chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives. EPA proposed to list these and other wastes generated at wood preserving and surface protection facilities as hazardous in a notice published in the **Federal Register** on December 30, 1988 (see 53 FR 53282). Certain other wastes from wood preserving are already regulated as hazardous waste under RCRA. An overview of past RCRA regulatory



actions taken by the Agency that affect the wood preserving industry was provided in the preamble to the proposed listing (see 53 FR 53283).

Today's listing for wastes from wood preserving processes that use or have previously used pentachlorophenol formulations (F032) partially fulfills the requirements of section 3001(e)(1) of RCRA, added by the Hazardous and Solid Waste Amendments (HSWA) of 1984. This section requires EPA to list, as appropriate, wastes containing chlorinated dioxins or chlorinated dibenzofurans, within certain specified deadlines.

EPA proposed four listings pertaining to wastes from wood preserving and surface protection, including two listings for pentachlorophenol wastes, on December 30, 1988. Today's notice promulgates three of the four listings, including one of the listings for chlorophenolic wastes, with some modifications.

EPA notes that today's listings do not in any way affect the present listing for hazardous waste number K001, bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol. K001 wastes are not included in the listings being promulgated today. Today's listings supplement the existing K001 listing and increase the quantity and numbers of types of wastes from wood preserving processes regulated under subtitle C of RCRA.

Today, EPA is amending § 261.31 by adding three broad categories of wastes from wood preserving processes that use organic and/or inorganic preservatives to the list of wastes from non-specific sources. These wastes (which were described fully in the preamble to the proposed rule, see 53 FR 53288–53291) include wastewaters, process residuals, treated wood drippage (i.e. drippage from treated wood), and spent preservative. Table 1 lists the constituents of concern that constitute the basis for listing the three categories of wastes. These constituents typically occur in the wastes at concentrations that pose a threat to human health and the environment if the wastes are mismanaged. EPA has described the data documenting the hazards posed by these wastes in the preamble to the proposed rule (see 53 FR 53284 and 53291–53306). Because these wastes are capable of posing a threat to human health and the environment when improperly treated, stored, transported, disposed, or otherwise handled, EPA is listing them as hazardous. Consequently, as a result of today's final rule, these wastes are subject to the applicable requirements of 40 CFR parts 124, 260 through 266, 268, 270, and 271.

TABLE 1.—CONSTITUENTS OF CONCERN

| | F032 | F034 | F035 |
|---|---|---|---|
| **Chlorophenols** | | | |
| Pentachlorophenol | X | | |
| **PAHs** | | | |
| Benz (a) anthracene | X | X | |
| Benzo (a) pyrene | X | X | |
| Benzo (k) fluoranthene | | X | |
| Dibenz (a,h)anthracene | X | X | |
| Indeno (1,2,3-c,d) pyrene | X | X | |
| Naphthalene | | X | |
| **Dioxins and Furans** | | | |
| Tetrachlorodibenzo-p-dioxins | X | | |
| Pentachlorodibenzo-p-dioxins | X | | |
| Hexachlorodibenzo-p-dioxins | X | | |
| Heptachlorodibenzo-p-dioxins | X | | |
| Tetrachlorodibenzofurans | X | | |
| Pentachlorodibenzofurans | X | | |
| Hexachlorodibenzofurans | X | | |
| Heptachlorodibenzofurans | X | | |
| **Inorganics** | | | |
| Arsenic | X | X | X |
| Chromium | X | X | X |
| Lead | | | X |

Note: X indicates that constituents have been found to be present at levels of regulatory concern in individual listings.

### III. Summary of the Regulation

#### *A. Overview of the Proposed Rule*

The notice published on December 30, 1988 proposed to add the following four listings pertaining to wastes from wood preserving and surface protection processes to the list of wastes from non-specific sources:

F032—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use or have previously used chlorophenolic formulations (except wastes from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations). This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F033—Wastewaters, process residuals, protectant drippage, and discarded spent formulations from wood surface protection processes at facilities that currently use or have previously used chlorophenolic formulations (except wastes from processes that have complied with the cleaning or replacement procedures set forth in § 261.35 and do not resume or initiate use of chlorophenolic formulations).

F034—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use creosote formulations. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035—Wastewaters, process residuals, preservative drippage, and discarded spent formulations from wood preserving processes at facilities that currently use inorganic preservatives containing arsenic or chromium. This listing does not include K001, bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

All four of the listings were proposed to be designated as toxic (T) hazardous waste.

The scope of the proposed F032 listing included wastes from creosote and inorganic processes that currently use or previously used chlorophenolic formulations because these wastes may be cross-contaminated with chlorinated dioxins and/or dibenzofurans. Similarly, the F033 listing covered wastes from surface protection processes that currently use or previously used chlorophenolic formulations.

EPA included the cross-contaminated wastes in the F032 and F033 listings because we concluded that such cross-contamination is likely to occur under two circumstances:

(1) When creosote or inorganic processes are located at a plant where chlorophenolic preservatives are or have been used; and

(2) When equipment used for a non-chlorophenolic process has been previously employed in a chlorophenolic process.

EPA anticipated that some generators might benefit from provisions for demonstrating that the potential for cross-contamination had been eliminated through proper cleaning and/or replacement of contaminated equipment. For example, surface protectors can change to protectants or formulations that are not addressed by the listings. With standards for proper equipment cleaning and replacement, EPA anticipated that the wastes generated after changing protectants could be removed from subtitle C coverage, if they also did not exhibit any of the characteristics of hazardous waste. The proposal, therefore, included standards for proper cleaning and replacement of equipment, documentation of the cleaning and replacement procedures, and certification that the procedure used followed a plan previously approved by the Regional Administrator of State Director.

Another important component of the December 1988 proposed rule was the technical standards for drip pads, which assist in collection and containment of

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treated wood drippage. Typically, drippage is generated at two points in the wood preserving process: (1) immediately after the treated wood is removed from the treating vessel (i.e., retort or tank) while it is held in an area often called the "kick-back" area and (2) during the time that the wood is held in storage after treatment is complete. At those plants that collect drippage, a concrete drip pad, sometimes equipped with sumps, is typically used. In developing the proposed rule, EPA, therefore, included interim status and permitting standards for drip pads.

The proposed rule defined a drip pad as "° ° ° a curbed, impermeable base installed to assist collection of drippage and accumulated precipitation in drip or kick-back areas at wood preserving facilities or in treated wood storage yards" (see 55 FR 50325). Under the proposed rule, all drip pads were to have associated collection systems or sumps that conform to the 40 CFR parts 264 and 265 standards for tanks. The standards for drip pads included technical requirements for containment, a general operating requirement designed to prevent tracking of hazardous waste and hazardous waste constituents off the drip pad, inspection requirements, and closure requirements. While EPA regulations generally require that RCRA permits be obtained for all hazardous waste management units, the proposed rule provided an extension of the existing § 262.34 exemption for generators who store hazardous waste in tanks or containers for no more than 90 days. Under this proposed exemption, owners and operators of drip pads used in handling treated wood drippage would not have been required to obtain RCRA permits for their drip pads provided that they remove the waste from the pad at least every 90 days and comply with the 40 CFR part 265 interim status standards for drip pads.

EPA proposed the F032 and F034 listings in response to the Hazardous and Solid Waste Amendments (HSWA) of 1984. HSWA required EPA to consider listing dioxin and furan-containing wastes as hazardous and the listings for F032 and F034 that were proposed described dioxin and furan-containing wastes. Thus, appropriate modifications to the part 271 list of regulations implementing the Hazardous and Solid Waste Amendments of 1984 were also included in the proposed rule. Finally, the proposed rule included provisions for designating the four categories of waste streams as CERCLA hazardous substances and established proposed reportable quantities for the wastes.

### B. Overview of the Final Rule

Today's rule adds to the list of wastes from non-specific sources three of the four listings proposed on December 30, 1988, with some modification. These are:

F032—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F034—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001, bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.

F035—Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001, bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.

These listings are the same as those proposed for F032, F034, and F035 (for a complete description of the wood preserving processes affected by today's listing, see 53 FR 53287 et seq. EPA has deleted the term "discarded" from the listings, as it was used in reference to spent formulations. The reason for this change is that a spent material need not actually be discarded to be a solid waste. This change does not change the scope of the listing in any way. Spent formulations normally include drippage. The listing language refers to drippage separately, however, in order to be clear. Throughout this preamble and rule, the term "drippage" refers to excess preservative that is kicked back from the wood following treatment. It does not apply to precipitation that drips from a stack of wood in the storage yard when it falls from wood that had ceased to drip on the process area drip pad before being moved to the storage yard. As explained later in this preamble and rule, drippage must cease on the drip pad before the treated wood can be moved to the storage yard. In addition, the word "generated" has been added immediately before "at plants" in each listing to further clarify that only wastes generated at wood preserving plants are included in today's final listings. Finally, the term "plant" has been substituted for "facility" because the term "facility" has a specific meaning under 40 CFR 260.10, which is not applicable here.

Today's rule does not include a final listing for F033, wastewaters, process residuals, protectant drippage, and spent formulation from wood surface protection processes at facilities that use chlorophenolic formulations (for a complete description of the surface protection processes proposed to be affected by the F033 listing, see 55 FR 53288). After considering the comments received and evaluating the data which provided the basis for the proposed F033 listing, EPA has concluded that it has insufficient information at this time on which to base a final listing decision for F033. The Agency has, therefore, decided to defer the F033 listing until such time as further information concerning waste quantities and waste characterization can be collected and evaluated. EPA will conduct a program of site visits in order to collect additional information and better characterize the surface protection industry and the waste generated by surface protection processes. The Agency will take action on the proposal to list F033 when this additional data collection is complete. EPA encourages commenters to submit data to the Agency that may aid in analysis of the F033 listing.

Today's rule makes several modifications to the technical standards proposed for drip pads, under new subpart W of parts 264 and 265, to account for issues raised by commenters and to ensure that all drip pads at wood preserving plants provide the same level of protection, whether permitted under part 264 or exempt from permitting under the 90-day accumulator provisions of § 262.34 (the technical standards for drip pads were included as subpart T in the proposed rule). The specific provisions of today's rule are discussed in detail later in this preamble.

Finally, EPA has removed the prescriptive technical standards for equipment cleaning and replacement from the rule and replaced them with a general provision that allows the F032 waste code to be delisted from F034 or F035 wastes generated at plants that previously used chlorophenolic formulations. Thus, rather than carrying two waste codes (e.g., F032 and F034 or F035), these wastes will carry only one code (F034 or F035). This provision is available to generators who comply with certain performance standards for



equipment cleaning and replacement, recordkeeping requirements, and certification requirements, and provided that the generator does not resume or initiate use of chlorophenolic preservatives.

EPA recognizes that today's rule affects a large number of small businesses, many of which may not have previously been subject to regulation under RCRA and are therefore unfamiliar with Federal and state programs for hazardous waste management. To assist the regulated community with RCRA compliance, EPA provides informational assistance through its RCFA/CERCLA Hotline. The regulated community can contact the Hotline, toll free, at (800) 424-4396 (or, in the Washington, DC area at (202) 382-3000) daily, exclusive of holidays and weekends, between the hours of 8 a.m. and 4 p.m., Eastern Standard or Daylight Time. Hotline personnel are able to answer questions regarding the regulations and provide any written materials requested. Additionally, EPA staff (as listed at the opening of this Notice) are available to answer technical questions regarding the rule, also between the hours of 8 a.m. and 4 p.m. daily.

The following sections discuss all of the technical and administrative aspects of today's final rule and describe changes that have been made to the proposed rule in response to comments received. EPA's response to certain comments are also presented in this section because they constitute the basis for changes made to the proposal. Elsewhere in today's preamble (see section IV), we provide EPA's response to comments on six major topics addressed by commenters. A comprehensive summary of all comments received and the Agency's response to the significant comments is provided as part of the public docket to this rule and is available for inspection.

#### 1. Requirements for Drip Pads

As in the proposed rule, today's rule includes technical standards under 40 CFR parts 264 and 265 for drip pads used to assist in the collection, storage, or management (treatment prior to reuse or recycling of preservatives) of treated wood drippage. Because today's rule explicitly prohibits moving treated wood off of the drip pad until drippage has ceased, EPA anticipates that owners and operators will elect to construct drip pads only in process or kick-back areas (i.e., immediately adjacent to treatment tanks or cylinders). Drip pads may also be constructed in long term storage yards, in accordance with the applicable technical standards, if it is anticipated that drippage from treated wood will be generated in the storage yard.

EPA is aware that past releases of drippage and other residuals associated with routine practices in the wood preserving industry have resulted in considerable environmental contamination at some sites. Before building new drip pads, generators should assess the extent of any existing contamination and conduct appropriate clean-up activities. Where such contamination is significant, EPA Regional or state authorities may require clean up in the future under Federal or state CERCLA authority. Additionally, EPA Regional authorities may require clean-up under RCRA section 7003, or, if the facility is required to obtain a RCRA permit in the future, under section 3004(u) and/or section 3004(v) of RCRA. EPA will be continuing to assess whether other authorities might be available to address this problem.

Should generators fail to clean up the process area where past drippage has accumulated prior to constructing a new drip pad, drip pads will likely have to be destroyed and excavated in the event that clean-up is required. Generators should also note that certain states have enacted legislation requiring certification that all environmental contamination has been eliminated from a property before real estate transactions can be completed. For these reasons, EPA urges generators to take steps to assess the extent of potential contamination at their plant sites and to work with the appropriate EPA Regional and/or state authorities to ensure proper cleanup before building new drip pads.

In response to comments on the proposed rule, EPA has made changes to the technical standards for drip pads. These changes are intended to address issues concerning drip pad design and requirements for impermeability, identified by commenters. They provide for equivalent levels of protection under parts 264 and 265. The following paragraphs discuss each of the sections of subpart W (parts 264 and 265).

*Section 264.570 (265.440)—Applicability.* The subpart W standards are applicable to all drip pads that are used to handle hazardous waste from wood preserving operations. This section provides for exemptions from the requirements for run-on and run-off controls, as appropriate, for drip pads that are enclosed in structures or covered (and hence, protected from precipitation in a manner that prevents run-on and run-off). A drip pad, according to the definition added to 40 CFR 260.10, is: "an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation and surface water run-on to associated collection systems at wood preserving plants."

Today's rule distinguishes between new and existing drip pads by defining new drip pads as those constructed after December 6, 1990, and those for which owners and operators have not yet entered into binding financial or other agreements for construction. Existing drip pads are defined as those in use as of today and those for which owners or operators have entered into binding financial or other agreements for construction.

*Section 264.571 (265.441)—Assessment of Existing Drip Pad Integrity.* EPA is aware that there are some drip pads in use that meet most of the standards for design and operation but may not have liners and leak detection systems. In order to avoid unnecessary destruction and excavation of these pads, today's rule provides that such pads, if they are capable of meeting all of the requirements for new pads except those for liners and leak detection systems, may continue to operate without upgrading for a period of up to 15 years (depending on the age of the drip pad), when also retrofitted with an impermeable coating, sealant, or other material.

The purpose of the requirements for liners and leak detection systems beneath drip pads is to provide secondary containment beneath the pad (which provides primary containment). This secondary containment serves as protection against leakage reaching the soil beneath the pad, in the event of an undetected leak. Commenters pointed out that concrete, a common material used in drip pad construction, is not impermeable. Further, concrete is subject to cracking and degradation associated with heavy vehicular traffic such as forklifts. Such cracking may occur underneath the top layer and would not be detected during inspections. However, EPA believes that a properly installed and maintained impermeable coating or cover on the surface of the drip pad is a viable temporary substitute for bottom liners and leak detection systems.

To ensure that existing pads are structurally sound and capable of containing hazardous waste, subpart W requires that owners and operators of existing drip pads complete an assessment of the integrity of their drip pads with regard to the subpart W standards. The assessment must be

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complete on the effective date of today's rule. The purpose of the assessment is to have the owner/operator document that (1) the pad is capable of containing drippage by preventing run-on and run-off as well as penetration through the pad and (2) the pad meets all of the subpart W requirements except those for liners and leak detection systems. Owners and operators must maintain a copy of the results of the assessment on file at the facility. Additionally, the rule requires that the written assessment be reviewed and approved by an independent qualified, registered professional engineer. This assessment must be reviewed and re-certified annually until the drip pad is brought into compliance with all of the requirements of subpart W. Owners and operators should be aware, however, that such certification (and the other certifications required in this rulemaking) will in no way be deemed to be compliance with the regulations.

Section 264.571(c) (265.441(c)) allows owners and operators to establish a schedule for upgrading drip pads to meet the requirements for bottom liners and leak detection systems based on the age of the drip pad. Today's rule states that all upgrades, repairs, or modifications necessary to bring drip pads of known and documented age into compliance with all subpart W requirements, including those for bottom liners and leak detection systems, must be completed no later than two years after the effective date of this rule or by the time the drip pad is 15 years of age, whichever is later. For drip pads of unknown or undocumented age, the date for completing all upgrades, repairs or modifications will be set based on the age of the wood preserving plant. For drip pads for which the age of the pad or the age of the plant cannot be documented, upgrades, repairs and modifications must be completed within eight years of the effective date of this rule. However, facilities that are more than seven years old must comply with all design and operating standards by the time the facility reaches 15 years of age or no later than two years after the effective date of this rule, whichever is later.

EPA has selected 15 years of age as the limit for making repairs and upgrades because information from the wood preserving industry indicates that 15 years is a somewhat conservative estimate of a reasonable life-expectancy for a well-built drip pad. After 15 years, drip pads may begin to deteriorate significantly and often must be replaced or undergo extensive repairs in order to maintain containment integrity.

In developing today's rule, EPA considered several options for establishing a compliance period. For example, EPA considered establishing a fixed period of 15 years for all existing drip pads. The provisions of today's rule were selected because they account for wide variability in the ages of existing drip pads.[1] EPA intends that this provision allow for reasonable schedules to be established for drip pad modifications and anticipates that most will need to be completed in time periods considerably shorter than 15 years.

Today's rule anticipates three different compliance circumstances for existing drip pads:

1. Pads that are cracked and leaking, or otherwise unfit for use must be removed from service on the effective date of today's rule. Those that can be repaired may be put back into service after repairs are complete and upgraded in accordance with the appropriate schedule constraints, based on the age of the pad. Those that operate after the effective date and cannot or will not be repaired must be closed in accordance with § 264.574 (§ 265.445) and all applicable requirements of part 264/265 subpart G (Closure and Post-Closure).

2. Pads that are not unfit for use and for which the age can be documented may remain in use after the integrity assessment is complete. All upgrades must be complete either by the time the pad is 15 years old or by two years after the effective date of this rule, whichever is later.

3. Pads that are not unfit for use for which the age cannot be documented may remain in use after the integrity assessment is complete. All upgrades must be complete within eight years after the effective date of this rule. However, if the wood preserving plant (rather than the pad) is known to be more than seven years old, all upgrades must be completed by the time the facility is 15 years old or by two years after the effective date of this rule.

During the period between the effective date of today's rule and the date when repairs and modifications must be complete, owners and operators must re-evaluate the initial drip pad assessment, make any necessary changes, and have the updated assessment reviewed and certified by an independent, qualified registered professional engineer annually. The certified assessment must be maintained at the facility and must include documentation of the age of the drip pad or, where drip pad age cannot be definitively established, the information that constitutes the basis for establishing the compliance schedule. Also during this period, owners and operators are subject to all provisions of subpart W pertaining to operating practices, recordkeeping, inspections, and closure, including the provisions for repairing any conditions that have led or could lead to leakage from the pad. No later than two years before the date that all upgrades will be completed, owners and operators must prepare a plan for upgrading the drip pad to meet all design standards. This plan must be certified by an independent, qualified registered professional engineer and must be submitted to the Regional Administrator or State Director. The plan should provide sufficient detail to allow the Regional Administrator or State Director to make a determination that the pad will meet all of the requirements of subpart W upon completion. The plan must also include information documenting the age of the drip pad or, where the age cannot be established, information constituting the basis for establishing the compliance schedule.

EPA recognizes that, at some wood preserving plants, new drip pads have recently been built that may continue to be protective of human health and the environment, although they may not have synthetic liners and leak detection systems, beyond the date established for compliance with these requirements. Consequently, today's rule allows for owners and operators of such facilities to petition the Regional Administrator for a reasonable extension of the deadline for compliance with liner and leak detection requirements. In deciding whether to grant such extensions, the Regional Administrator will be concerned with whether the drip pad is in compliance with all of the requirements of § 264.571, except those for liners and leak detection systems, and that the pad design and operation are protective of human health and the environment.

As stated previously, EPA has developed the requirements of § 264.571 (265.441) in order to ensure that all existing drip pads in use after the effective date of the rule are capable of containing any drippage, contaminated precipitation, or other waste that may fall on them and minimizing releases to the soil, ground water or surface water. The rule also allows owners and operators ample time to upgrade their drip pads as needed to comply with the design and operating requirements of Subpart W without closing drip pads, except where necessary to prevent releases to the environment. These requirements ensure that all drip pads will be brought into compliance with the same protective standards before any failure of the drip pad is likely to occur. Numerous commenters responding to the proposed rule stated that owners and operators of drip pads would require more than six months to bring existing drip pads into compliance. Today's rule addresses their concerns while preventing operation of any pad that is likely to fail, causing a release of hazardous waste to the soil, ground water, or surface water.

*Section 264.573 (§ 265.442)—Design and Installation of New Drip Pads.*

Under § 265.442, owners and operators must ensure that any new drip pads that will be operated in accordance with the § 265.34 exemption from permitting for 90-day accumulation, are built and operated in compliance with all of the requirements of subpart W. For facilities that do not have drip pads, generators should note that, as of the effective date of today's rule, treated wood drippage will be subject to all of the requirements of subtitle C of RCRA and cannot be disposed of on the land except in a properly permitted land disposal facility.

*Section 264.572 (265.443)—Design and Operating Requirements.* The subpart W standards for drip pads included in today's rule require that drip pads consist of a base that is constructed of non-earthen materials, excluding wood and non-structurally supported asphalt. Drip pads must have a collection area or device (system) designed to collect drippage, leakage, and the water volume resulting from a 24-hour, 25-year storm. Drip pads must be sloped to free-drain treated wood drippage and any other waste that falls on the pad to the associated collection system and must have a curb or berm around the perimeter. They must be of sufficient strength and thickness to prevent failure due to physical contact, climate conditions, the stress of installation, and the stress of daily operations (e.g., stresses caused by vehicles, wood movement, or other activities).

The surface of drip pads must be sealed, coated, or covered with an impermeable material such that it is capable of containing drippage and accumulated precipitation and preventing any leakage to the underlying soil as the waste is conveyed to the collection system. Commercially available epoxy or polyurethane sealants or synthetic coatings similar to liners may be used for this purpose. Additionally, EPA anticipates that, where possible, drip pad joints will be filled with chemically-resistant water stops to ensure an impermeable surface.

To ensure that drippage and related wastes are contained on the pad and that migration of hazardous wastes from the pad to the underlying soil or ground water is prevented, the subpart W standards require that all drip pads (except certain, temporarily exempt existing pads) be constructed with leak detection systems, as defined in 40 CFR 260.10. The standards further require that the pad and leak detection system be underlaid with a chemically-resistant synthetic liner. As stated previously, this synthetic liner will provide secondary containment to ensure that any leakage resulting from undetected cracks in the drip pad is not released to the environment.

EPA developed the revised standards in response to commenters' concerns regarding use of the term "impermeable" in the proposed rule. Commenters generally believed that EPA should define impermeable so that the regulated community would be more certain of the meaning of the standard. Rather than define a numeric standard for impermeability (or a standard for acceptable permeability), we have added technical requirements that better define acceptable design characteristics. These requirements are intended to ensure that drip pads are capable of containing all drippage and related wastes and of minimizing the likelihood of releases of hazardous waste to the soil or ground water under the pad.

Today's rule therefore requires a containment system with three components: (1) The drip pad itself, coated or covered with an impermeable material; (2) a leak detection system, and (3) a chemically resistant, synthetic bottom liner. The coated or covered drip pad provides primary containment for drippage and other hazardous waste. The drip pad must be structurally sound so that it can withstand the stresses of daily activities. Because EPA expects that drip pads will crack with time in service, subpart W includes a requirement for inspecting drip pads once every 7 days and procedures for making repairs in the event that a condition (i.e., a crack or detection of leakage) is recognized that could lead to a release of hazardous waste.

As stated previously, EPA also recognizes, however, that all cracks are not necessarily visible from the surface of the pad or may not be recognized as significant at the time of inspection. Consequently, we have included the requirement for leak detection systems. These systems will allow owners and operators to know when drip pads are leaking, although no significant cracks have been identified. Furthermore, the synthetic liner under the leak detection system will ensure that such leakage is not released to the environment. EPA believes that this three-component containment system will ensure "impermeability" and make clear to owners and operators what EPA expects in terms of drip pad design.

In order to ensure that drip pads are designed to meet all of the design requirements of subpart W, today's rule requires that drip pads be examined and evaluated for compliance with the standards and that owners and operators obtain a certification attesting to compliance from an independent qualified, registered professional engineer. This certification must be maintained at the facility as part of the operating log and/or submitted with a RCRA permit application if such an application is filed for the drip pad.

Section 264.572 (265.443), also requires the following operating practices:

—Drip pads must be maintained free of cracks, corrosion, or deterioration that could lead to leakage.

—Drip pads and their associated collection systems must be designed and operated to collect drippage or precipitation that falls onto the pad.

—Drip pads must have run-on and run-off control to prevent contamination or surface water, unless enclosed in a structure.

—Drippage and precipitation must be removed from the collection system as necessary to prevent overflow onto the drip pad. Collection systems must be emptied as soon as possible following storms to ensure that the design capacity of the system is maintained.

—Drip pads must be operated and maintained so as to minimize tracking of hazardous waste from the pad as a result of the activities of personnel or equipment. EPA believes that in most cases owners and operators will choose to have equipment (i.e., fork lifts, trams, etc.) dedicated to a particular drip pad in order to comply with this requirement. Procedures for cleaning equipment before leaving the pad to minimize tracking of waste or waste constituents from the pad are also acceptable.

—To ensure that inspections are as effective as possible, drip pad surfaces must be thoroughly cleaned at least once every seven days to remove accumulated residues (these residues are hazardous waste and must be managed accordingly). The

[1] See RCRA section 3004(x), stating that EPA "* * * should, where appropriate, distinguish in [performance] standards between requirements appropriate for new facilities and for facilities in existence on the day of promulgation of such regulations."

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cleaning procedure must employ detergents or techniques such as steam cleaning as necessary to remove accumulated residues; permanent stains, however, need not be removed. Owners and operators are required to document the date and time of each cleaning and record the procedure used in the facility operating log.

—Owners and operators are also required to document past operating and waste management practices in the facility operating log. This information will assist in determining the potential extent and severity of contamination at the facility site.

—Treated wood must be held on drip pads until drippage has ceased. The owner or operator must maintain records documenting compliance with this requirement.

This final requirement has been added to the rule in order to ensure that only minimal drippage occurs after the wood is moved to the storage yard. EPA believes that, in most cases, this requirement will result in deminimis levels of drippage in storage yards, making drip pads unnecessary in these areas. If in the future, EPA receives evidence that significant drippage is generated in storage yards despite this requirement, the Agency may amend today's rule to require drip pads in storage yards.

Today's rule includes requirements that drip pads (or portions of drip pads) discovered to be leaking or in danger of leaking be removed from service and repaired or closed immediately. Upon discovery of cracks or other conditions that are causing or may cause leaks, owners and operators are required to close the affected area of the pad and notify the Regional Administrator or State Director within 24 hours of the extent and nature of the damage. Within 10 working days of discovering damage, the owner or operator must provide a written notice to the Regional Administrator or State Director, together with a description of steps that will be taken to repair the damage, and the schedule for making repairs.

The Regional Administrator or State Director will review the information provided and make a determination regarding whether the pad must be taken out of service completely or partially until repairs are complete. This determination may or may not involve an inspection of the drip pad by a regional or state inspector. The pad or affected portion of the pad must remain out of service throughout this period. Once all repairs are complete, the owner or operator must notify the Regional Administrator or State Director and provide a statement, signed by an independent qualified, registered professional engineer, confirming that repairs have been completed in accordance with the plan provided. The drip pad, or affected portion of the pad, may be put back in service upon completion of the repairs. These procedures apply to all drip pads, regardless of their permitting status, throughout their active life. EPA believes that they are necessary to protect against contamination that could pose a threat to human health or the environment.

Owners and operators of drip pads are also required to comply with all of the general facility requirements of subparts C and D of part 264 (if obtaining a RCRA permit) and subparts C and D of part 265, if operating under the 90-day accumulator exemption.

*Section 264.573 (265.444)—Inspections.* Subpart W requires owners and operators to inspect drip pads weekly during operation and after storms to detect evidence of any conditions that could lead to failure. Owners and operators are required to maintain records of all inspections and to conduct inspections in accordance with a written inspection plan, as required by §§ 264.15 and 265.15.

*Section 264.574 (265.445)—Closure.* Today's rule requires that, upon closure, owners and operators remove or decontaminate all drip pad materials, liners, equipment, wastes, and contaminated soils. In the event that the owner or operator finds that all contaminated materials cannot be decontaminated or removed, the facility must be closed as a hazardous waste landfill and the owner or operator must comply with the requirements for post-closure care specified at 40 CFR 264.310 and 265.310. The closure requirements provide for post-closure care where owners or operators are unable to remove all contaminated soil. For permitted units, the requirement to have a permit continues throughout the post-closure period.

2. 90-Day Accumulator Exemption

Today's rule retains the proposed exemption for drip pads under § 262.34. Under this provision, generators of wood preserving wastes are not required to operate under interim status or to obtain RCRA permits for their drip pads provided that:

(1) All wastes are removed from the pad and the associated collection system at least once every 90 days,

(2) The drop pad meets all of the technical design and operating standards for drip pads included in subpart W of part 265, and

(3) The generator complies with certain recordkeeping requirements related to documenting proper waste removal from the drop pad.

EPA intends for all drip pads in use to meet the same technical standards and, consequently, provide the same level of protection to human health and the environment, regardless of whether they have a RCRA permit. To ensure that this will be the case, today's rule requires that drip pads operating under the part 265 interim status standards be designed, operated, and maintained to meet the same technical standards as permitted drip pads (except during the period allowed for existing drip pads to come into compliance with the requirements for liners and leak detection systems, as discussed later in this preamble).

In addition to meeting the same standards as permitted facilities, owners and operators of drip pads operating under the 90-day accumulator exemption will be required to maintain records documenting that their drip pads and associated collection systems are emptied of all wastes at least once every 90 days. The recordkeeping requirements specify that owners and operators maintain, as part of the facility operating record, a description of all procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least every 90 days. Owners and operators must also document each waste removal in the operating record by recording, at a minimum, the quantity of waste removed, and the date and time of removal.

If an owner or operator fails to comply with the provisions of the 90-day generator exemption, EPA may require that they apply for and obtain a RCRA permit, and/or bring an enforcement action under RCRA section 3008. Additionally, section 7003 of RCRA provides the Agency with authority to bring suit where past or present handling, treatment, storage, disposal, or transportation of a solid or hazardous waste presents an imminent and substantial endangerment to human health or the environment.

3. Equipment Cleaning and Replacement

As stated previously, the proposed rule published on December 30, 1988, included standards for proper cleaning and replacement of wood preserving equipment that has been used in the past for the application of chlorophenolic preservatives. These standards were intended to minimize



cross-contamination of wastes generated using other types of preservatives (i.e., creosote and inorganic formulations) with constituents typical of chlorophenolic processes. In the preamble to the proposed rule, EPA requested public comment on the need for such standards and the appropriateness of the standards proposed. In response, commenters pointed out many technical issues with the standards (see section IV.F. of this preamble). Because the extent of cross-contamination will vary considerably among facilities as a result of many site-specific variables, EPA has developed a process by which generators who previously used chlorophenolic formulations but believe their wastes are not significantly cross-contaminated may have the F032 waste code delisted from their wastes so that the wastes only carry a code of F034 or F035, as appropriate.

Today's rule includes an amendment to 40 CFR part 261 which adds § 261.35. This new section provides a process by which generators of cross-contaminated waste may have the F032 waste code delisted from their wastes, if warranted. The process involves documenting that equipment once used for pentachlorophenol processes has been cleaned or replaced in such a manner as to ensure that cross-contamination or the potential for cross-contamination has been eliminated. The provision requires that contaminated equipment be replaced, or that waste residues be removed from equipment, using an appropriate solvent, such that the final rinse shows no detection levels of contaminants at or below the lower method calibration limit in Table 1 of Method 8270 in SW-846. Water or steam constitute an appropriate solvent only for water-soluble contaminants. Alternatively, generators who have previously cleaned or replaced their equipment after switching from pentachlorophenol to another preservative and who have not resumed use of pentachlorophenol may compile documentation of the cleaning process conducted and maintain this documentation as part of the facility operating log in order to take advantage of this provision and have the F032 waste code deleted from their waste (i.e., generators who have previously cleaned or replaced equipment need not necessarily repeat the process, provided that the procedures conducted meet the requirements of today's rule and can be documented). This provision is substantially similar to that included in the proposed rule. Today's rule varies from the proposed rule, however, in that it provides for deletion of the F032 waste code by a self-implementing process. That is, once generators conduct the equipment cleaning and replacement procedure, in accordance with the rule, and establish all required documentation, their wastes no longer meet the listing description of F032 and should be classified only as F034 or F035.

*C. Industry Overview*

In the preamble to the proposed rule, EPA presented a description of the wood preserving and surface protection industry, information on the wood preserving and surface protection chemicals addressed by the listing, and a description of wood preserving and surface protection processes. With only a few exceptions, as discussed below, the information provided in the premable to the proposed rule continues to be the most recent and accurate information available to EPA. Readers should note that EPA has continued to rely on the industry description presented in the December 30, 1988 proposal for this final rule, although all of the information is not repeated here.

Preserved wood production and treatment chemical consumption for the industry are summarized in Table 2. In the proposal, 1986 data were presented (Micklewright, 1987) to describe the industry. One commenter who responded to the proposal provided the most recent Micklewright report (see F-88-WPWF-00123-B), which summarizes an industry survey for 1987. This recent data has been incorporated into Table 2 (Micklewright, 1989).[2]

[2] Micklewright, J.T., 1989, Wood Preservation Statistics, 1987, A Report to the Wood-Preserving Industry in the United States, December, 1989.

TABLE 2.—PRESERVED WOOD PRODUCTION AND TREATMENT CHEMICAL CONSUMPTION, 1987

| | Preservative type | | |
|---|---|---|---|
| | Creosote solutions | Pentachlorophenol | Inorganics |
| Number of plants * | 116 | 78 | 499 |
| Products Treated: | | | |
| Crossties, switch and bridge ties (million cubic meter) | 2.0 | 0.001 | 0 |
| Lumber and timbers (million cubic meters) | 0.16 | 0.87 | 10.2 |
| Poles (million cubic meters) | 0.5 | 1.3 | 0.44 |
| Other (million cubic meters) | 0.2 | 0.05 | 1.3 |
| Total volume of wood preserved (million cubic meters) | 2.5 | 1.4 | 11.9 |
| Treating Chemical Consumed: | | | |
| Creosote and creosote/coal tar (million liters) | 305 | | |
| Petroleum solvent (million liters) | 39 | 112 | |
| Pentachlorophenol (million kg) | | 8 | |
| Inorganic salts (million kg) | | | 65 |

* Plants that use more than one preservative type are counted in multiple categories. The total number of plants is 583.
Source: Micklewright (1989).

One commenter who responded to the proposed rule stated that the Micklewright data are unrepresentative of the industry because non-certified plants (i.e., plants not certified by the Society of American Wood Preservers) are not accounted for in the Micklewright survey. The commenter estimated that an additional 100 soak-treatment (i.e., non-pressure) plants are operating in the United States. EPA acknowledges that additional facilities

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may exist that are not accounted for in the Micklewright surveys. These plants, which are all non-pressure soak-treatment plants (and are covered by today's rule), constituted only approximately three percent of the industry in 1987. The Micklewright surveys constitute the most recent and most comprehensive body of descriptive data available. Moreover, the differences pointed out by commenters have no bearing on EPA's decision to list wood preserving wastes.

In 1987, three major product groups accounted for 90 percent of the total production of preserved wood in the United States: (1) Lumber and timbers, mostly preserved with inorganic preservatives; (2) railroad crossties, switch ties, and bridge ties, almost all preserved with creosote; and (3) poles, 58 percent preserved with pentachlorophenol, 22 percent with creosote, and 20 percent with inorganic preservatives. The remainder of 1987 production consisted of fence posts, piling, plywood, and other products (Micklewright, 1989).[3]

The distribution of preservative use by the wood preserving industry is summarized in Table 3. This table also has been revised to reflect the 1987 Micklewright data. Twelve percent of the plants treated wood with more than one preservative in 1987. Wastes generated at these plants can be contaminated with the constituents of concern identified for all of the preservatives used at the plant.

The American Wood Preservers Institute (AWPI) reported that 588 plants produced treated wood in 1987. Approximately 60 percent of these plants are in the southeast and south central portions of the United States and account for 64 percent of 1987 production. Most plants that treat with creosote and/or pentachlorophenol are more than 25 years old; several operating plants are more than 75 years old.

TABLE 3.—DISTRIBUTION OF PRESERVATIVE USE, 1987

| Plants Treating With | No. of Plants |
|---|---|
| Creosote | 55 |
| Creosote/pentachlorophenol | 17 |
| Creosote/inorganics | 21 |
| Pentachlorophenol/inorganics | 19 |
| Pentachlorophenol | 21 |
| Inorganics | 429 |

[3] Report submitted by AWPI as part of the AWPI comment, F-85-WTWP-00128.

TABLE 3.—DISTRIBUTION OF PRESERVATIVE USE, 1987—Continued

| Plants Treating With | No. of Plants |
|---|---|
| Creosote/pentachlorophenol/inorganics | 21 |
| Total | [1] 583 |

[1] An additional 19 plants treated wood using nonpressure processes.

Source: Regulatory Impact Analysis for the Final Listing of Certain Wood Preserving Wastes.

### D. Wastes Included in Today's Listing

In the preamble to the December 1988 proposed rule, EPA presented detailed information describing the residuals included in today's listings. This information included descriptions of the wastes, estimated annual waste generation quantities, and information concerning waste management practices currently used by industry.[4] EPA also provided data describing the composition of the wastes proposed for listing (see 53 FR 53284–53291). This information remains the most current and reliable available to EPA and, although not repeated in entirety here, EPA continues to rely on the waste characterization, waste generation, and waste management information (pertaining to F032, F034, and F035) provided in the preamble to the proposed rule. Commenter data pertaining to drippage rates have been evaluated and are presented in the Background Document for this rule. As stated previously, EPA is reviewing the information presented in the preamble to the proposed rule pertaining to F033 wastes and will publish any revisions necessary with the Agency's final decision concerning the F033 listing.

### E. Basis for Listing

In the preamble to the December 1988 proposed rule, EPA provided a detailed discussion of the basis for listing F032, F033, F034, and F035, and why F032 and F033 wastes should be designated as toxic (rather than as acute hazardous) (see 53 FR 53291–53308). The discussion presented included quantitative data on the concentrations of constituents of concern found in the wastes, summaries of the known health effects of the constituents of concern, data describing the relative persistence and mobility of the constituents of concern, and an analysis of the relative hazards posed by the wastes. In general, the information presented in the preamble to the proposed rule remains the most current available to EPA and serves as the basis for today's listings for F032, F034, and F035.

While the proposed rule was in development, EPA had received the results of a recent 1988 bioassay, conducted by the National Toxicology Program (NTP), which demonstrates the carcinogenicity of commercial grade pentachlorophenol in mice. At the time of publication of the proposal, EPA had not completed its formal review of the study. While the results of the study served as our basis for designating the proposed F032 and F033 as toxic hazardous waste, in our analysis of the relative hazards posed by the constituents of concern in proposed F032 and F033, we continued to rely on previous data and treated pentachlorophenol as a systemic toxicant rather than as a potential carcinogen (Class $B_2$ carcinogen). EPA has now completed its review of the NTP bioassay, has designated pentachlorophenol as a Class $B_2$ carcinogen, and calculated an oral dose slope factor of 1.2 X 10E–1 mg/kg/day and a Risk Specific Dose (RSD) of 8.3 X 10E–6 mg/kg/day in drinking water at a 10–6 risk level, assuming a 70 kg man ingesting 2 liters of water per day. The RSD translates to a concentration of 2.7 X 10E–4 parts per million in drinking water. Table 4 is a revised version of Table 11 from the preamble to the proposed rule, reflecting the new RSD for pentachlorophenol. Table 4 is part of a set of tables, which appeared in the preamble to the proposed rule, that EPA used to demonstrate the relative hazards posed by the four waste streams proposed for listing (see 53 FR 53295–53300). The tables for F034 and F035 wastes (Tables 13 and 14 in the preamble to the proposed rule) are not repeated here. Table 12 in the proposal pertained to wastes from surface protection process that use pentachlorophenol preservatives (proposed RCRA waste F033) and is not pertinent to today's listing. EPA continues to rely on Tables 13 and 14 from the preamble to the proposed rule for purposes of the final listing for F034 and F035 wastes.

[4] EPA would like to clarify one point made in the proposal. There, EPA indicated that drippage and drippage residuals include preservative that is washed off treated wood by precipitation (53 FR 53286). The Agency also suggested that storage area rainwater might become subject to regulation when it is disposed together with drippage covered by the listing (53 FR 53286). Those statements were premised upon a proposal that did not include the final rule requirement that treated wood be held on a drip pad until drippage has ceased. We clarify that today's listings do not apply to precipitation run-off from treated wood in storage yards without drip pads, where the owner or operator has complied with the no drippage requirement. This is consistent with (and factually supported by) the general position not to apply the derived from rule to precipitation run-off (see 40 CFR 261.3(c)(2) and 45 FR 33066 (May 19, 1980)).



TABLE 4.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN F032

| Hazardous constituent | Average waste concentration detected [1] (ppm) | Health-based water concentration limits (ppm) | Basis [2] | Estimated DA 100 | Drinking conc.[3] DA 1000 | Well (ppm) DA 10,000 | Calculated based limit DA 100 | Conc. to ratios [4] DA 1000 | Health-DA 10,000 |
|---|---|---|---|---|---|---|---|---|---|
| Benz(a)anthracene | 900 | $1.0\times10^{-5}$ | RSD($B_2$) | 9 | 0.9 | 0.09 | 900,000 | 90,000 | 9,000 |
| Benzo(a)pyrene | 500 | $2.0\times10^{-6}$ | RSD($B_2$) | 5 | 0.5 | 0.05 | 25,000 | 2,500 | 250 |
| Dibenz(a,h)anthracene | 200 | $7.0\times10^{-7}$ | RSD($B_2$) | 2 | 0.2 | 0.02 | 2,800,000 | 280,000 | 28,000 |
| Indeno(1,2,3-cd)pyrene | 70 | $2.0\times10^{-6}$ | RSD(C) | 0.7 | 0.07 | 0.007 | 350 | 35 | 3.5 |
| Pentachlorophenol | 20,000 | $2.7\times10^{-4}$ | RSD($B_2$) | 200 | 20 | 2 | 740,000 | 74,000 | 7,400 |
| Arsenic | 2,000 | 0.05 | MCL | 20 | 2 | 0.2 | 400 | 40 | 4 |
| Chromium | 3,000 | 0.05 | MCL | 30 | 3 | 0.03 | 600 | 60 | 6 |
| Dibenzo-p-Dioxins [5]: | | | | | | | | | |
| TCDDs | $3\times10^{-3}$ | $2.2\times10^{-10}$ | RSD($B_2$) | $3\times10^{-5}$ | $3\times10^{-6}$ | $3\times10^{-7}$ | 135,000 | 13,500 | 1,350 |
| PeCDDs | $1\times10^{-3}$ | $4.4\times10^{-10}$ | RSD($B_2$) | $1\times10^{-5}$ | $1\times10^{-6}$ | $1\times10^{-7}$ | 23,000 | 2,300 | 227 |
| HxCDDs | 2 | $2.2\times10^{-9}$ | RSD($B_2$) | 0.02 | 0.002 | $2\times10^{-4}$ | 9,091,000 | 910,000 | 91,000 |
| HpCDDs | 30 | $2.2\times10^{-9}$ | RSD($B_2$) | 0.3 | 0.03 | 0.003 | 13,640,000 | 1,364,000 | 136,400 |
| Dibenzofurans [5]: | | | | | | | | | |
| TCDFs | $2\times10^{-3}$ | $2.2\times10^{-10}$ | RSD($B_2$) | $2\times10^{-4}$ | $2\times10^{-5}$ | $2\times10^{-6}$ | 909,000 | 90,900 | 9,090 |
| PeCDFs | 0.5 | $6.1\times10^{-9}$ | RSD($B_2$) | $5\times10^{-3}$ | $5\times10^{-4}$ | $5\times10^{-5}$ | 819,700 | 81,970 | 8,200 |
| HxCDFs | 3 | $2.2\times10^{-9}$ | RSD($B_2$) | 0.03 | $3\times10^{-3}$ | $3\times10^{-4}$ | 13,640,000 | 1,364,000 | 136,400 |
| HpCDFs | 44 | $2.3\times10^{-8}$ | RSD($B_2$) | 0.44 | 0.044 | $4\times10^{-3}$ | 1,818,000 | 181,000 | 18,180 |

[1] Average concentrations calculated from process residuals or process sludge data.
[2] Reference Dose (RfD), risk Specific dose (RSD), and Maximum Contaminant Level (MCL) are explained later in the preamble, as are the classes of RSDs. Class A, B, and C carcinogens are based on exposure limits at a $10^{-6}$ risk level.
[3] Calculated for three dilution/attention (DA) levels.
[4] Ratio obtained by dividing assumed drinking well concentration column by health-based water concentration limit column, for all three dilution/attenuation (DA) levels.
[5] Health-based water concentration limits presented for dioxins and furans are based on the International Toxicity Equivalency Factors (I-TEF) for the 2,3,7,8-isomers of each homolog group (see Risk Assessment Forum, 1989). Within the PeCDF homologue group, the 1,2,3,7,8- congener has an I-TEF of 0.05 and the 2,2,4,7,8- congeners has the I-TEF of 0.5. In this table a simple arithmetic average of the I-TEF was used to calculate health-based concentration limits.

Source: Table 11 Wood Preserving Wastes Preamble and Proposed Rule, December 30, 1988.

Table 4 of today's preamble and Tables 13 and 14 in the preamble to the proposed rule (see 53 FR 53299–53300) summarize the Agency's analysis of the hazards posed by the constituents of concern present in F032, F034, and F035 wastes. In this analysis, EPA examined hypothetical ground water concentrations for the constituents of concern assuming three dilution and attenuation factors: 100, 1,000, and 10,000. These three levels encompass a broad range of dilution/attenuation factors (DA). The drinking water well concentrations calculated for dilution/attenuation levels of 100, 1,000, and 10,000 assume that the concentration of each constituent of concern in the well water are 1 percent, 0.1 percent, and 0.01 percent, respectively, of their concentrations in the waste. The tables show that, in the vast majority of cases, the constituents of concern, including pentachlorophenol, are likely to appear in ground water at concentrations that exceed the health-based levels of concern by one to four orders of magnitude using the extremely liberal dilution and attenuation factor of 10,000. Thus, even if the Agency did not evaluate the hazard conservatively, these wastes clearly would contain concentrations of constituents of concern far in excess of safe human exposure levels. EPA also believes that the constituents of concern pose a serious threat to the environment via potential releases to surface water, as discussed in section VIII of this preamble. EPA notes that the change from the RfD used in the proposed rule for pentachlorophenol to the RSD used in Today's Table 4 (and based on the NTP 1988 study, does not affect this conclusion.

After considering all of the factors of 40 CFR 261.11(a)(3), based on the information presented in the preamble to the proposed rule, and the information presented here, because these wastes contain high concentrations of highly toxic constituents that are mobile and persistent and are unlikely to degrade in the environment before reaching receptors, and because past mismanagement of these wastes has already resulted in serious environmental damage and risk to human health, EPA is adding F032, F034, and F035 to the list of hazardous wastes from non-specific sources.

### F. Applicability of RCRA Rules for Recycled or Reclaimed Hazardous Waste

In the preamble to the proposed rule, EPA recognized that certain wastes from wood preserving and surface protection, most notable drippage, are reclaimed and then returned to the wood preserving process for reuse (see 53 FR 53311). EPA noted that information regarding the manner in which process residuals are reclaimed in wood preserving and surface protection processes indicates that the materials are not typically reused directly and that recycling does not take place in a closed-loop system, as defined in EPA's existing regulations. Hence, EPA concluded that most on-site recycling at wood preserving and surface protection plants would not be excluded from regulation under the existing rules (see 40 CFR 261.2(e)(1)(i) and 261.4(a)(8)(i)) or under the exclusion proposed on January 8, 1988 (see 53 FR 519).

Numerous commenters who responded to the proposed rule stated that waste recycling and reuse practices at wood preserving and surface protection plants should be excluded from the Definition of Solid Waste. We respond to those comments below. Our response indicates why drippage and wastewaters captured on pads, reclaimed and returned to the wood preserving process is a solid waste under the current rules and why those rules are legally valid. This discussion also deals with how the recent DC Circuit opinions in *API* v. *EPA*, 906 F. 2d 729 (DC Cir. 1990) and *American Mining Congress* v. *EPA*, 907 F. 2d 1179 (DC Cir. 1990) [AMC II] bear on this determination.

Under the Agency's current rules, spent materials that must be reclaimed are defined as solid wastes (see 40 CFR 261.2(c)(3)). Drippage and wastewaters

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that escape from the process and are unfit for use until they can be decontaminated by filtering or other means are types of spent material, and the purification step is a type of reclamation (see § 261.1(c) (1) and (4)). The rules recognize that some types of on-site reclamation are so integrally related to a facility's production activity as to be properly viewed as an aspect of that process, and so do not involve any aspect of discarding. Such closed-loop processes are characterized by tank storage through point of reclamation and hard pipe (or comparable) connection between tanks (see § 261.4(a)(8)). Drip pads used in the wood preserving industry do not meet the terms of this exclusion, given that they are not closed devices like tanks, and given that pads at existing facilities have been characterized by leakage and other releases to the environment.

Commenters did not contend that, as a factual matter, their operations met the terms of this exclusion. (Of course, EPA would evaluate such a factual argument in a specific context rather than in this rulemaking. The point addressed above is whether the normal drip pad/reclamation operation, as the Agency understands it, fits within the terms of the existing closed-loop exclusion).

Rather, they maintained that the Agency lacks jurisdiction over such activities as a matter of law based on the DC Circuit's opinion in *American Mining Congress* v. *EPA*, 824 F.2d 1177 (DC Cir. 1987) [AMC I]. They read this opinion to state that if a material is recycled rather than being literally thrown away, it is not "discarded" (see RCRA § 1004) and hence cannot be a solid waste. EPA has never accepted this argument, and the argument was rejected by the DC Circuit in *API* and *AMC II*, cited above. In those opinions, the court made clear that simply because a material may be destined for some type of recycling does not prevent EPA from classifying it as "discarded" and hence a solid waste (see 907 F.2d 1165 and 908 F.2d 740–741). Only those materials that are " 'destined for *immediate reuse* in another phase of the industry's ongoing production process' and that 'have not yet become part of the waste disposal problem' " are outside the Agency's jurisdiction (907 F.2d 1165, quoting *AMC I*, emphasis original). The Agency also retains flexibility in interpreting when materials are "discarded" under this standard.

The Agency sees no jurisdictional defect in its present rules as applied to drippage and wastewaters in the wood preserving industry that are destined for recovery and returned to the wood preserving process. Drippage and wastewaters escaping from the process and falling on the ground or into some capture device can be viewed as a discarding both because the process need no longer be viewed as continuous, and more importantly, because such escape from the process can be "part of the waste disposal problem." Certainly this operation has caused past environmental harm because of releases of drippage into the environment from improperly designed and maintained pads (see *AMC II*, 907 F.2d 1167)—threat of release from management use sufficient to accord EPA flexibility to determine that a material is "discarded"). The Agency concludes, therefore, that the current regulations do not impermissibly classify drippage and wastewaters destined for reclamation as a solid waste when the capture and conveyance mechanisms do not meet the terms of the current closed-loop exclusion in the regulations.

Two further points should be made, however. First, there is a case-by-case variance in the current regulations that could apply to particular wood preserving facilities. This provision (§ 260.31b)) allows a Regional Administrator (or authorized State Director) to determine that a particular reclamation operation is an essential part of the production process based on a weighing of a number of criteria, including how carefully the material is handled before it is reclaimed. Wood preserving plants with well-designed and well-maintained drip pads that are collecting drippage for reclamation and return to the wood preserving process may qualify for a case-by-case exclusion under this provision (pending a factual determination by the decisionmaker).

In addition, while the current rules remain in place, the Agency retains some flexibility in evaluation whether materials destined for reprocessing/recycling are discarded, and how environmental considerations (such as whether the operation is potentially "part of the waste disposal problem") plays a part in this determination. Today's discussion is not intended to foreclose any such exercise of flexibility. The Agency is addressing a number of broad issues concerning the definition of solid waste in a series of forums outside the scope of this rulemaking. For example, the Agency is sponsoring a series of meetings with a range of interested groups to consider whether it may be appropriate to revise the solid waste definition. The Agency may consider publishing an advanced notice of proposed rulemaking as an outgrowth of this process.

The wastes from use of reclaimed drippage are once again drippage (or spent preservative) and subject to the listing, unless and until they are reclaimed again. Additionally, spent preservative or drippage that is not contained in the system (i.e., that which is spilled or otherwise removed from the drip pad) is not reclaimed and is therefore hazardous waste.

EPA has previously promulgated regulations for recyclable materials that are used in a manner constituting disposal (see 40 CFR 266.20 through 266.23) and standards for hazardous waste burned for energy recovery (see 40 CFR 266.30 through 266.35). Generators should note that, to the extent that the wastes listed today are recycled in ways that constitute disposal or are burned for energy recovery in boilers or industrial furnaces that are exempt from regulation under subpart O part 264, the appropriate standards of part 266 apply.

In addition to comments asserting that spent preservative should be exempt from the Definition of Solid Waste, commenters also noted that products (i.e., treated wood) made from reclaimed spent preservative should be excluded from the Definition of Solid Waste. EPA agrees with these commenters. Pursuant to 40 CFR 261.4(c)(2)(i), reclaimed spent preservative will cease to be a solid waste when it is reclaimed (i.e., upon reinsertion in the process—to a work or storage tank that delivers formulation to the treatment cylinder or tank). The Agency acknowledges, however, that the applicable regulatory provisions could be interpreted such that the reclaimed preservative and the wood products treated with reclaimed spent preservative would be subject to regulation under subtitle C because wood products are often used in a manner constituting disposal (i.e, used in a manner that involves placement on the land). Under such an interpretation, wood products that are treated with reclaimed spent preservative and are subsequently placed on the land would be waste-derived products subject to regulation under 40 CFR part 266.

Regulating reclaimed spent preservative and products made with reclaimed spent preservative was not and is not EPA's intent. To avoid such erroneous interpretation of the rules, today's rule adds an exclusion from the Definition of Solid Waste under § 261.4 for reclaimed spent wood preserving solutions. This action prevents any interpretation that products made from reclaimed spent preservative are subject to regulation under subtitle C as a result of today's new listing.



### Regulatory Integration Under RCRA

The largest number of comments received by the Agency concerning the proposed rule pertained to the statutory framework for regulation. These commenters expressed the belief that RCRA is an inappropriate statute for regulating all or most of the wood preserving wastes included in today's listing. The majority of comments received on this subject stated that the industry should be regulated using a multi-statute approach pursuant to section 1006(b)(1) of RCRA, which states that the Administrator shall integrate the provisions of RCRA and avoid duplication with certain other environmental statutes to the maximum extent practicable, provided that such integration can be done in a manner consistent with the goals and policies of RCRA and those other statutes.

The multi-statute approach proposed by a large number of commenters would utilize the Clean Water Act (CWA) to regulate process wastewaters and stormwaters. Specifically, the control of process wastewaters under National Pollutant Discharge Elimination System (NPDES) Effluent Guidelines (issued under section 402(a) of the Clean Water Act) and the control of run-off under stormwater discharge permits, under section 402(p) of the Clean Water Act, were urged. These commenters also proposed regulation of drippage under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Commenters suggested that this be accomplished by voluntary FIFRA pesticide label changes to require the use of drip pads and process changes to reduce the amount of drippage. Process residuals were generally accepted by commenters as appropriate for listing under RCRA. Commenters favoring the multi-statute approach cited section 1006(b)(1) of RCRA which requires the Agency to "avoid duplication, to the maximum extent practicable," by integrating RCRA regulation with regulation under certain other environmental statutes administered by EPA.

While there may be aspects of regulatory programs under statutes other than RCRA that are available to regulate wood preservative pesticides and associated wastes, the Agency disagrees with commenters who assert that section 1006 of RCRA requires EPA to use other statutes preferentially to RCRA. Furthermore, section 1006(b)(1) states that "such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and the other acts referred to in this subsection."

## IV. Summary of Public Comments and Responses

### *A Statutory Framework for Regulation*

Thus, as EPA has previously stated, section 1006(b) does not mandate that where EPA's statutory authorities provide overlapping jurisdiction over certain activities, the Agency must promulgate regulations under a statute other than RCRA. Nor is EPA required to give preference to another statue. Rather, it is within the Administrator's discretion to decide which regulatory program or programs are best suited to regulate the activities, considering the goals and policies of the various statutes. See 45 FR 33154, 33172–73, 33218–19 (1980); 55 FR 22520, 22653 (1990). In short, section 1006(b) requires EPA to consider whether and what type of regulatory integration is appropriate, but does not in any way dictate a particular result. EPA favors integrating cross-media regulations to promote efficiency and streamlined regulation when consistent with protecting health and the environment.

If, as a number of commenters suggested, Congress intended either FIFRA or the CWA to be the exclusive statutory basis for regulating several aspects of the wood preserving industry, the relevant statutes would have so stated. Where Congress has meant to impose limits on RCRA jurisdiction, it has done so clearly. For example, the definition of "solid waste" under RCRA section 1004(27) excludes "solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act."

No provision of RCRA, the CWA or FIFRA so limits EPA's authority to regulate wood preserving wastes under RCRA. The only relevant provision of any of these statutes points in the opposite direction of the commenters' arguments. Section 19(h) of FIFRA states that "[n]othing in this section shall diminish the authorities or requirements of the Solid Waste Disposal Act." Congress added this subsection when it amended FIFRA in 1988, one year after the wood preserving industry began advocating its multi-statute approach.

### Clean Water Act

EPA has considered whether, as suggested by many commenters, drippage in the facility storage yards and wastewaters should be regulated under the CWA, rather than RCRA. EPA notes first that to the extent process water or storm water is discharged to waters of the United States, an individual NPDES permit is required (the timing of the stormwater permit requirement is discussed below). However, not all drippage is discharged to surface waters, and EPA believes it is important to implement a comprehensive regulatory resolution, rather than address drippage in a piecemeal fashion. For example, drippage that seeps to groundwater that has no hydrological connection to surface water is not currently regulated under the Clean Water Act. Thus, neither stormwater permits nor a revision to the Effluent Guideline could address ground water protection. As is discussed in the preamble to the proposed listing (see 53 FR 53323) and the Background Document to the proposed listing, groundwater contamination has been a serious problem at many wood preserving facilities.

The Agency rejects the suggestion that regulation of storage yard drippage and wastewaters be deferred into some future planned Effluent Guideline rulemaking. It is not the Agency's current plan to revise the Effluent Guideline and standard for the Timber Products Processing industry category (the guidelines category that includes wood preserving). The Clean Water agenda for effluent guideline rulemakings is set under section 304(m) of that Act, which requires a biannual plan for review and revision of existing effluent guidelines and promulgation of new effluent guidelines. The Agency reads that provision as directing it to set priorities for the promulgation of new guidelines, and has established criteria which assess the presence and quantity of toxic and nonconventional pollutants in discharges to waters of the United States, the utility of national guidelines covering categories of dischargers under consideration, and the presence of specific legislative or judicial mandates to issue guidelines for particular categories (see generally 55 FR 80, 82).

The first such 304(m) plan was announced on January 2, 1990 and announced an Agency intention to engage in six rulemakings for "new" industry categories and three "revisions." The projected promulgation dates for these rulemakings range from 1992 to 1995, reflecting the reality that effluent guideline rulemakings are, of necessity, complex regulatory projects which require extensive data gathering and analysis. The next scheduled 304(m) plan will be announced in January 1992, using the criteria outlined above. While Timber Products are among the industry categories under consideration, even a decision to undertake rulemaking in 1992 would not result in a regulation in less than 3 to 5 years after that date. In contrast, the listing under RCRA

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addresses the entire problem and is accomplished today without further delay. In any case, the industry concedes that the process of establishing a guideline is similar to establishment of land disposal restriction standards (LDRs). Yet, the industry fails to note that LDRs apply to land disposal, not surface water discharge.

Similarly, the Agency's rulemaking activities addressed to regulation of stormwater under the CWA would not adequately resolve at this time the issues raised by this listing. As set out above, the requirements of the Clean Water Act would reach only a portion of drippage. Furthermore, the current rule addressing stormwater, signed by the Administrator on October 31, 1990 (and expected to be published in the Federal Register by November 15, 1990), is designed only to establish permit application requirements. The rule establishes that applications for industrial permits must be received between 12 to 18 months after promulgation of the final rule. Thus, it could be years before stormwater permits are issued.

Finally, the commenters contend that listing wood preserving wastewaters as hazardous under RCRA is unprecedented and will seriously limit or eliminate the wood preserving industry's ability to discharge wastewaters to municipal sewage treatment systems. This argument is unfounded. EPA has listed under RCRA wastewaters from many industries; these wastewaters are routinely discharged to municipal systems following pretreatment. Moreover, any possible difficulty in discharging to municipal systems would not serve as an adequate basis to support a decision not to list the wastewaters. See *Hazardous Waste Treatment Council* v. *EPA*, 861 F.2d 270 (DC Cir. 1988). (EPA was not permitted to consider stigmatic consequences of listing recycled oil in deciding whether to list it as a hazardous waste under RCRA).

Federal Insecticide, Fungicide, and Rodenticide Act

In reviewing the multi-statute proposal of AWPI and other industry commenters, EPA considered a wide variety of individual issues; however, the Agency focused on three major categories: applicability, enforceability, and timeliness. EPA believes that any regulatory system for addressing the drippage/spill problems at wood treatment facilities must be generally applicable to all facilities, readily enforceable, and, in light of the history of significant pollution problems at these facilities, capable of being implemented in the near future. In each of these areas, the Agency has determined that, in this situation, a more comprehensive, efficient, and effective system could be developed under RCRA than under FIFRA.

In its comments in support of a multi-statute approach, AWPI also proposes that drippage and spills from wood treatment processes be regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., through labeling provisions for pressure treatment wood preservative pesticides. Specifically, AWPI proposes that

> all production process area drippage * * * be regulated under FIFRA along with any other production process areas which might result in spills, leaks, and drips of preservative and/or kick-back material. The areas to be regulated under FIFRA include the process area drip pad, pesticide unloading area, pesticide storage and handling areas, and the pesticide application area * * * along with associated process units and equipment (AWPI Comments at 36).

While EPA agrees that labeling under FIFRA is one mechanism that could be used to regulate certain wood treatment drippage and spills, the Agency does not agree that it is the best or only approach.

The label provisions proposed by AWPI would not (and do not appear to be intended to) cover all wood treatment products and/or facilities. For example, the most obvious groups not addressed are nonpressure treatment products and facilities. Also, because labeling is a part of the registration process, the label provisions proposed by AWPI would not directly affect use of unregistered wood treatment pesticides (often prepared on site by combining several chemicals acquired as unregistered chemicals and therefore not labeled pursuant to FIFRA). It is the Agency's understanding that both nonpressure treatment and unregistered pesticides are currently being used at some wood treatment facilities. Even assuming that the bulk of the registrants could come to some voluntary agreement with EPA on label provisions, anything less than 100% participation and/or continued use of unregistered or non-pressure treatment products would necessitate EPA taking affirmative action under FIFRA or RCRA (e.g., rulemaking or cancellation actions) to impose comparable protective measures.

Use of RCRA would also provide the Agency with more comprehensive and readily available enforcement powers than use of FIFRA. This is because of the greater number and type of enforcement actions available under RCRA, the generally larger penalties, and the greater number of RCRA enforcement officials in the field. For example, under RCRA section 7002, any citizen may bring a civil action against any person who is alleged to be in violation of a RCRA regulation or permit. There is no comparable citizen suit provision under FIFRA. Moreover, the penalty provisions for Federal enforcement actions are substantially higher under RCRA. In RCRA civil enforcement actions, a penalty of up to $25,000 per day of noncompliance for each violation may be assessed. For a knowing violation, a person is subject to a criminal fine of up to $50,000 for each day of violation, as well as a prison term of as long as two to five years, depending on the circumstances (see RCRA section 3008). Under FIFRA, in contrast, the maximum civil penalty for a commercial applicator is $5,000 per violation. For a knowing violation, the maximum criminal fine is $5,000 and the maximum prison term is one year (FIFRA section 14).

In addition, because the problems to be addressed relate to use of wood treatment pesticides, rather than the sale or distribution of pesticides, RCRA currently provides the more direct mechanism for inspection of user facilities, the cornerstone of an effective enforcement program. Under FIFRA, enforcement against wood treaters for label violations would generally be available only after inspections uncover misuse; however, because FIFRA does not contain an explicit provision authorizing neutral inspections of user facilities, inspection of such a facility must be by consent, or to the extent allowed under FIFRA section 9(b), pursuant to a warrant. By the time either could be obtained, considerable environmental damage could have occurred. Under RCRA section 3007(a), consent or a warrant is not needed to inspect a facility. All of these factors indicate that the enforcement mechanisms available under RCRA are more appropriately applicable to the situation being addressed than those currently available under FIFRA. These same factors also increase the likelihood that violators would be caught and punished.

Finally, under the AWPI approach, it could be several years before all wood treatment products/facilities would be regulated. As indicated above, any products/facilities not regulated through voluntary adoption of label provisions agreed upon by EPA and the registrants would have to be addressed by other actions under FIFRA and/or RCRA. Any of these nonvoluntary actions could take



months (if not years) and considerable resources to implement, with no guarantee that the outcomes would be comparable to those voluntarily adopted for registered, pressure treatment products/facilities.[5] Moreover, given the expense and technical complexity of installing the recycling systems included in the AWPI label proposal, the hardship "variance procedures" also proposed by AWPI (AWPI Comments at 39) could mean that a significant number of wood treatment facilities would not be in compliance for an extended period of time. If label provisions under FIFRA were the only mechanism used by the Agency to control the drippage and spills of wood preservatives at these noncomplying facilities, these situations would essentially be unregulated.

In summary, EPA has carefully considered the proposal included in the comments of AWPI and other industry commenters, and has concluded that, while label provisions under FIFRA may be able to address some of the pollution problems identified at wood treatment facilities, they are not the most appropriate means of reaching all wood treatment products and facilities in one action, at one time. Conversely, the mechanisms available under RCRA provide a more comprehensive, efficient, and effective approach to addressing the whole range of problems in a single regulatory action.

Conclusion

In general, the commenters' proposed multi-statute approach would rely on future regulation which EPA believes would not provide the same protective standards available under RCRA. Given the extent of contamination at many wood preserving facilities and the serious risks to health and the environment posed by the wastes listed today, EPA believes that setting any less protective standards would be unjustified. Moreover, the Agency cannot justify deferring to regulation under other statutes on the basis of requirements that do not yet exist. This is especially true because EPA cannot guarantee that it will adopt a particular regulatory approach in the future, even if it intended to today. Consistent with its obligations under the Administrative Procedure Act, the Agency must analyze public comments on a proposed rule and change the rule as appropriate.

[5] For example, the most straightforward approach to the regulation of unregistered pesticides under FIFRA appears to be promulgation of a rule under FIFRA section 3(a), which gives the Agency authority to limit the use of an unregistered pesticide, by regulation, "* * * to the extent necessary to prevent unreasonable adverse effects on [human health and] the environment."

Section 1004(5) of RCRA states that all solid wastes capable of causing a substantial present or potential hazard to human health and the environment if mismanaged are subject to regulation as hazardous wastes. The damage incidents presented in the record to the proposed rule, supplemented by case studies and other analyses developed as part of the evaluation of benefits resulting from today's regulation (see section IX of this preamble), document the fact that wood preserving wastes pose a substantial present or potential threat to human health and the environment when mismanaged. Consequently, after careful consideration of comments received, EPA has concluded that listing only process residuals under RCRA and relying on other statutes to regulate other wastes, as suggested by commenters, has serious shortcomings and would not provide the level of protection equivalent to that afforded by listing all of the wastes covered by the F032, F034, and F035 under RCRA, particularly with respect to hazardous waste releases to ground water. EPA notes, however, that this final RCRA rule does not preclude promulgation of requirements applicable to wood preserving plants in the future under CWA or FIFRA. In fact, the Agency believes that today's action will help, not hinder, any future efforts to further integrate environmental regulation of the wood preserving industry.

*B. Listing for Storage Yard Drippage*

Many of the commenters who responded to the proposed rule addressed the listing for treated wood drippage. These commenters made three important points: (1) That most drippage from treated wood occurs in the kick-back area immediately following removal of the treated wood from the treatment vessel, (2) that drippage in the storage yard is minimal, and (3) that EPA had failed to demonstrate that treated wood drippage generated in storage yards poses a significant hazard to human health and the environment. Commenters also noted that changes in wood pressure treating processes can be made, such as the application of a final vacuum step, to reduce the amount of drippage generated.

EPA agrees with commenters that current operating practices in the industry are such that most drippage from treated wood is generated in kick-back areas immediately following removal of wood from the treatment tank or cylinder. Site visits conducted by EPA indicate that treated wood is often held on a kick-back area drip pad for a period of 24 to 48 hours to ensure that most of the drippage generated is collected. Site visits and information from commenters also confirm that process modifications designed to minimize drippage, such as the application of a final vacuum step, are also being used increasingly. EPA encourages generators to continue to develop and implement such changes in order to minimize the amount of drippage generated.

EPA disagrees with commenters, however, with respect to the evidence that uncontrolled drippage in treated wood storage yards does not pose a hazard to human health and the environment. Case studies evaluated by the Agency in support of today's listing indicate that storage yards are one of several potential sources of soil and surface water contamination at wood preserving sites. Many RCRA Facility Assessment reports that have been developed by EPA's Regional Offices for purposes of implementing corrective action at wood preserving sites identify treated wood storage yards as a significant source of contamination and designate them solid waste management units targeted for corrective action. Although at many sites, contamination is ubiquitous and cannot be directly attributed to a single source, such as the storage yard, information reviewed by EPA indicates clearly that uncontrolled disposal of drippage in treated wood storage yards has been a significant contributor to environmental contamination at wood preserving sites.

For this reason, today's rule requires that treated wood drippage be contained on a drip pad that meets the Subpart W standards. EPA believes that holding treated wood on a process or kick-back area drip pad until drippage has ceased, as required by Subpart W, will minimize or eliminate the need to construct large drip pads in treated wood storage yards.

EPA believes that generators of F032, F034, and F035 will take steps to minimize drippage (for example, by implementing wood treatment process modifications and/or by holding wood under cover until completely dry after treatment) to avoid possible enforcement consequences such as criminal or civil penalties, facility-wide corrective action, and/or liability claims related to damages that may occur from disposal of drippage on the land. EPA notes also that today's rule of course, does not in any way preclude owners and operators from installing drip pads in treated wood storage yards to protect against possible inadvertent disposal of drippage on the land.

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*C. Technical Standards for Drip Pads*

EPA received many comments regarding aspects of the subpart W standards for drip pads. Commenters addressed issues related to drip pad construction, operating practices, inspection requirements, and closure requirements. Commenters concerns and EPA's responses to these issues are summarized in the following discussions.

1. Drip Pad Construction

Ten commenters expressed concerns related to the requirement that drip pads be impermeable. Five of these stated that concrete has a tendency to crack and therefore makes a poor material for drip pads. One suggested that drip pads be constructed of stainless steel with welded seams. Two suggested that roofs be used instead of pads to prevent runoff. Commenters also suggested that the subpart W standards for drip pad design are too lenient, should be more like those for other hazardous waste management units, and should include requirements for double liners and leak detection and collection.

EPA agrees with the commenters' suggestions regarding the need to be more specific in defining impermeability and using roofs or enclosures to control surface water run-on and runoff. The purpose of the subpart W standards is to ensure that drip pads are designed to contain all hazardous waste that may come into contact with them. EPA used the term "impermeable" in the proposed rule as a performance standard for the ability of a drip pad to provide complete containment, recognizing that there are many ways in which containment may be achieved. We agree with commenters that the standards can be made more specific with respect to those aspects of drip pad design that contribute to "impermeability" and believe that making such changes to the rule will enhance its enforceability and give the regulated community a clear understanding of what EPA considers an effective drip pad design. Consequently, today's final rule includes requirements that drip pad surfaces be sealed, coated, or covered with an impermeable material to ensure impermeability and that drip pads be equipped with a leak detection system underlaid with a chemically-resistant liner. Commercially available epoxy or polyurethane sealants or coatings, or synthetic covers may be used to meet the standard for sealing or coating drip pad surfaces. Additionally, where appropriate and possible, special steps should be taken to seal drip pad joints, for example, by installing chemically-resistant water stops.

Provisions have been added to address drip pad strength and thickness that require drip pads to be capable of preventing failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations to further ensure the ability of drip pads to contain hazardous waste. Finally, in deference to commenters' suggestion, today's rule adds provisions for exempting drip pads from requirements for run-on and runoff controls, as appropriate, where the pads are enclosed in a structure and covered such that neither runoff nor run-on are generated.

As stated previously, today's rule requires a containment system with three components: (1) The drip pad itself, coated or covered with an impermeable material, (2) a leak detection system, and (3) a chemically resistant, synthetic bottom liner. The coated or covered drip pad provides primary containment for drippage and other hazardous waste. The drip pad must be structurally sound so that it can withstand the stresses of daily activities. Because EPA expects that drip pads will crack with time in service, subpart W includes a requirement for inspecting drip pads once every 7 days and procedures for making repairs in the event that a condition (i.e., a crack or detection of leakage) is recognized that could lead to a release of hazardous waste.

EPA also recognizes, however, that all cracks are not necessarily visible from the surface of the pad, or may not be recognized as significant at the time of inspection. Consequently, we have included the requirement for leak detection systems. These systems will allow owners and operators to know when drip pads are leaking, although no significant cracks have been identified. Furthermore, the synthetic liner under the leak detection system will ensure that such leakage is not released to the environment. EPA believes that this three-component containment system will ensure "impermeability" and make clear to owners and operators what EPA expects in terms of drip pad design.

The rule does not dictate that drip pads be constructed of concrete, contrary to commenters' assertions. Rather, subpart W states that drip pads must be constructed of non-earthen materials and that they be maintained free of cracks, gaps, corrosion, or other deterioration that could cause waste to leak from the pad. Today's rule specifically states that wood and non-structurally supported asphalt cannot be used to construct drip pads because these materials do not provide the structural support necessary to prevent cracking and maintain impermeability.

2. Operating Practices

Commenters addressed two aspects of the subpart W requirements for operating practices: The requirement to minimize tracking of hazardous waste from drip pads and the need for establishing a holding time for wood after treatment and before moving to the storage yard.

Six commenters were concerned with the requirements for preventing tracking of hazardous waste from drip pads. These commenters contended that the requirement constitutes a requirement for dedicated equipment. Four stated that no tracking requirement should be included in the rule. Two contended that use of dedicated equipment is not standard practice and is not achievable in some segments of the industry.

For the reasons stated in the proposal, EPA remains concerned about potential contamination of the soil and surface water in the vicinity of drip pads that could result from tracking of waste and waste constitutents off drip pads by equipment and/or personnel. Consequently, today's rule retains a requirement that tracking of hazardous waste or waste constituents from the drip pad be minimized. EPA agrees that methods for effectively preventing such migration of contaminants will vary depending on plant configuration and other factors. The requirement is therefore stated in terms of a performance standard. EPA believes that many owners and operators will choose to dedicate equipment to the pad in order to comply with this standard. Other techniques, such as procedures for washing all equipment before leaving the pad are also acceptable.

With regard to treated wood holding times, two commenters suggested that EPA establish a standard that treated wood be held under cover for a minimum of 24 hours at a temperature of at least 45 degrees. Commenters noted that the effectiveness of air-drying treated wood would vary depending on climate and other conditions, but stated that such a requirement would serve to minimize or eliminate storage yard drippage.

EPA agrees that holding wood on the process area drip pad after treatment will help to minimize drippage in storage yards. A specific numeric standard for holding time could not be established, however, because the time required to dry wood after treatment varies based on many site-specific conditions.



Consequently, today's rule requires that owners and operators account for climate and other conditions that affect drying by holding wood on the drip pad until drippage has stopped.

3. Inspection Requirements

Seven commenters were concerned about inspection requirements. One stated that a weekly inspection requirement is overly-burdensome because of the need to move lumber and the associated equipment and personnel requirements. Four commenters stated that inspections should only be required monthly, upon removal of wood, or should apply only to drip pad surfaces that are visible (i.e., there should be no requirement to move wood in order to inspect the entire surface of the pad). Other commenters stated that the inspection requirement should be supplemented with requirements to record the time that each stack of wood is held on the drip pad in order to document compliance.

EPA agrees that recordkeeping specific to treated wood holding times is warranted and today's rule includes such provisions. Owners and operators of drip pads should note that they are subject to the general requirements for inspections (subpart B of parts 264 and 265), which require, among other things, that owners and operators develop and follow an inspection plan that ensures compliance with all specific inspection requirements.

EPA disagrees with commenters who contended that inspections should be conducted less frequently than weekly or that the entire surface of the drip pad need not be inspected each time. The inspection requirement provides routine monitoring of the integrity of the pad and must be conducted carefully, thoroughly, and systematically throughout the life of the pad in order to be effective. Owners and operators may establish a plan and schedule for weekly inspections that facilitates or is compatible with schedules for storing and/or moving wood on and off the drip pad that involve, for example, inspecting portions of the pad on different days, provided that the entire surface is inspected weekly, (i.e., once every seven days).

4. Closure Requirements

Two commenters were concerned about closure requirements. One stated that a provision should be added to close drip pads as landfills. The second commenter stated that, without specification of a decontamination method, owners and operators would be unable to estimate closure costs as required.

EPA agrees that provisions should be made to close drip pads as land disposal units where all contamination cannot be removed. Consequently, today's rule requires that owners and operators who are unable to achieve clean closure (i.e., remove all contamination from the drip pad site) must close the drip pad in accordance with the requirements for closure of land disposal units, including provisions for post-closure care and ground-water monitoring.

EPA disagrees that a specific method for decontamination must be specified in the regulation in order to make closure cost estimates possible. Today's rule therefore does not specify a particular decontamination method. Effective methods will vary, depending on the size of the pad, its construction materials, and other factors. Owners and operators should select an effective method for decontamination and calculate costs accordingly.

*D. Basis for Listing and Toxic Designations*

In response to the proposed rule, many commenters raised issues regarding EPA's basis for proposing to list F032, F033, F034, and F036. Their principal concerns were the evaluation of hazards presented in the preamble and the designation of proposed wastes F032 and F033 as toxic rather than acute hazardous. The main points made by commenters and EPA's response to those comments are summarized below.

Numerous commenters who responded to the proposed rule questioned the hypothetical ground water concentrations used in Tables 11 through 14 of the preamble to the proposed rule and their relevance to EPA's basis for listing wastes from wood preserving and surface protection processes as hazardous. Some commenters contended that the hypothetical ground water concentrations should not be used to indicate the hazards posed by the wastes because the calculated concentrations were based on oversimplified speculative assumptions, are not supported by analytical data, and do not represent the range of possible variations in environmental conditions.

EPA agrees with commenters that the analyses presented in the tables may not represent the range of variation that occurs in the environment. We do not agree, however, that the analysis is irrelevant to a determination of potential hazard. Rather, EPA believes that commenters have misinterpreted the intent of Tables 11 through 14 of the preamble to the proposed rule. As stated previously in the preamble to the proposed rule, the three dilution and attenuation factors used in the analyses were intended to encompass a broad range of possibilities. They were not specifically selected to represent any particular environmental conditions or range of environmental conditions. The tables demonstrate that, to the extent that the three dilution and attenuation factors represent a range of possible assumptions varying from 1 percent of the waste disposed reaching the point of exposure, or very little dilution and attenuation (this is the dilution and attenuation factor used in the Agency's recently-promulgated Toxicity Characteristic rule, see 55 FR 11827, May 29, 1990), to 0.01 percent of the waste disposed reaching the point of exposure (i.e., a high degree of dilution and attenuation), the wastes examined pose a potential threat to human health and the environment across a wide range of circumstances. In fact, the tables show that the actual assumptions used to project ground water concentrations have little bearing on the conclusion that the wastes are hazardous since the wastes are clearly hazardous under all of the scenarios examined. EPA therefore disagrees with commenters that the analyses shown in the tables were inappropriately used to support the proposed listing.

Other commenters referred to the dilution and attenuation factors as a model and criticized assumptions which, they contend, are built into the model. The commenters contend that the tables inappropriately represent only oily waste transport, which is inapplicable to proposed wastes F033 and F036, that the tables incorrectly assume that ground water concentrations in drinking water wells will be equivalent to ground water concentrations beneath the facility, and that the tables incorrectly assume that the constituents of concern will migrate to ground water in the same relative concentrations that appear in the wastes.

EPA believes that these commenters have also misinterpreted the intent of Tables 11 through 14 in the preamble to the proposed rule. The analyses presented in these tables in no way represent an attempt by EPA to model or mathematically simulate actual transport of hazardous constituents from the wastes into the ground water or in the environment. While EPA has, in other RCRA rulemakings, discussed a variety of ground water transport models and their applicability to rulemaking decisions, none of these models serve as the basis for the tables presented in the preamble to the proposed rule. Hence, commenters'

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assertions that the underlying assumptions are inappropriate or incorrect are not relevant. The tables represent neither oily waste transport nor any other specific form of transport in the environment. Nor do they attempt to relate ground water quality beneath a facility to ground water quality in a drinking water well. They also do not account for the many chemical and physical processes (degradation and mobility) that might affect the relative concentrations actually occurring in the environment. Instead, the analyses shown in the tables were conducted simply to show that in a wide range of circumstances, representing a wide range of assumptions that might be used, the constituents of concern may migrate to ground water and reach drinking water wells in concentrations that exceed established acceptable human exposure levels. Moreover, some degree of uncertainty as to the levels of constituents that reach ground water or environmental receptors is not grounds for deciding not to list these hazardous wastes (see RCRA sections 1002, 1003 and 1004 (d), (e) and (g)).

The tables did not stand alone as EPA's basis for proposing to list F032, F033, F034, and F035. The hypothetical ground water concentrations shown are supported by numerical data in the rulemaking record showing that the constituents of concern are capable of migrating in the environment, persisting in ground water, and reaching drinking water wells. Improper management of these wastes by wood preservers has repeatedly resulted in substantial present or potential harm to human health and the environment (see RCRA section 1004(5)). As stated previously, the dilution and attenuation factors and the resulting hypothetical ground water concentrations were not selected to represent any particular environmental conditions or range of environmental conditions. Any comparison to actual ground water concentrations measured in the environment at wood preserving or surface protection facilities is therefore inappropriate. Actual ground water measurements do, however, support EPA's conclusion that the constituents of concern are capable of posing a threat to human health and the environment.

Damage cases described in the preamble to the proposed rule (see 53 FR 53323) demonstrate that the constituents of concern in the wastes proposed for listing are sufficiently mobile and persistent for past mismanagement to have resulted in contamination of ground water, surface water, and soils. Commenters contended that the damage cases are irrelevant to the listing because they reflect practices that are no longer in use. EPA agrees that waste management practices in the industry have changed. The damage cases remain relevant, however, not because they demonstrate that the wastes are mismanaged, but because they show that, upon release to the environment, the constituents of concern in F032, F034, and F035 are sufficiently mobile and persistent to reach human receptors (see RCRA section 1004(5)).

As discussed in the proposal, wastes associated with pentachlorophenol have been listed by EPA as acutely hazardous in the past. Pentachlorophenol wastes were designated as acutely hazardous wastes in 1985 based on toxicity data for hexachlorodibenzodioxin (HxCDD) provided by a bioassay conducted by the National Cancer Institute (NCI) in 1983. Existing 'F' listings (F020–F023, F025–F028) considered acutely hazardous as a basis for the existing listing, however, such characteristic is not the basis, nor should it be, for determining the status of F032 and F033 in today's rulemaking.

Since 1983, additional data have been generated in a study performed by the National Toxicology Program (NTP), which was published in 1988. This new information regarding the toxicity of commercial pentachlorophenol products contaminated with HxCDD may affect the Agency's basis for designating F021 and F027 as acutely hazardous wastes. Any changes in previous listings would be the subject of a separate rulemaking. More important to today's rulemaking is the significance the NTP data has for the status of F032. Today's final rule, therefore, designates F032 as toxic rather than acutely hazardous based on the Agency's most current data (NTP, 1988) rather than precedence set by previous listings.

The most significant aspects of the NTP study results were discussed in the proposal. Several commenters expressed concern regarding the NTP study data which indicated that HxCDD is not a good predictor of the risk associated with pentachlorophenol wastes.

Although HxCDD is far more carcinogenic than pentachlorophenol, the tumor activity in the B6C3F1 mice used in the NTP study indicate that the HxCDD is not of the same magnitude when HxCDD and pentachlorophenol are together in the relative concentrations existing in the 1988 NTP study scenario. It should be noted that the NCI 1983 HxCDD study was previously used to serve as surrogate data to indicate the relative toxicity of pentachlorophenol wastes. Now that the pentachlorophenol data are available, it is more appropriate to use the NTP 1988 data as the primary source, thereby referring to the HxCDD study as supporting evidence of toxicity for that constituent of concern.

Nine commenters expressed their opposition to the Agency's proposal to list pentachlorophenol wood preserving wastes as toxic rather than acutely hazardous. A number of commenters stated that since pentachlorophenol wastes contain dioxins and other carcinogens, they should be listed as acutely hazardous waste in all cases. The Agency disagrees with this logic. Previous listing activity on EPA's part does not itself constitute a basis for new listings. Because EPA has new data that show the threat of dioxins is variable and not absolute, the Agency believes that F032 waste warrants the designation of toxic. EPA notes that several commenters agreed with the toxic designation.

One commenter was concerned that the mixture of various carcinogens results in an even more potent waste that would be a "super" acutely hazardous waste; that the sum of the parts is greater than the parts themselves. Another commenter believes that not enough is known about the synergistic effects of the various contaminants in the waste to conclude that the toxic listing is appropriate. EPA is in agreement with this, in part. There are very little data available for use in determining the interactive effect of the contaminants. In assessing the various sets of data, it is clear that HxCDD contributes to liver tumor formation. However, the studies with pentachlorophenol (NTP, 1988) reveal the formation of not only liver tumors but also adrenal medulla pheochromocytomas and malignant pheochromocytomas and/or hemangiosarcomas and hemangiomas in one or both sexes of mice using two different preparation of pentachlorophenol. The presence of HxCDD in the pentachlorophenol preparations may play a role in the tumor response, but obviously, other ingredients in the preparations (including pentachlorophenol) are significantly influencing the tumor response. In any case, the fact that data accurately and completely describing any synergistic or antagonistic effects are not available does not constitute a basis for designating F032 as acutely hazardous.

The basis for listing pentachlorophenol wastes as acutely hazardous in the past was because of the presence of HxCDD in significant concentrations and the selection of HxCDD as an indicator of hazard due to its extreme carcinogenic potency value. In light of the NTP study results, EPA can no longer use HxCDD as a reasonable surrogate to indicate the toxicity of pentachlorophenol, as stated in the proposal. The NTP study provides carcinogenic potency values for pentachlorophenol products such as "purified" pentachlorophenol, 0.245 (mg/kg/day)–1, and technical grade pentachlorophenol, 0.788 (mg/kg/day)–1, which are within the range of values associated with other wastes listed as toxic. The pentachlorophenol tested in the NTP study was contaminated with other dioxin compounds which were specifically identified in the proposal. The potency value determined from the NTP study accounted for the other contaminants simply because the substances tested in the assay were pentachlorophenol products that were contaminated with ppm concentrations of these constituents.

One commenter asked EPA to clarify the statement that the pentachlorophenol products tested in the NTP study "* * * exhibit significantly lower carcinogenic potency than EPA had anticipated when listing F021 and F027." The commenter felt that this statement implied that the carcinogenic potency value for HxCDD was being confused with the potency assigned to F021 and F027 where HxCDD is present in the ppm range. In all cases, F021 and F027 as well as F032, HxCDD is present in the ppm range. The distinction being made is not between previous waste listings and the proposed F032 and F033 listings, but between data from the NCI 1983 report and more current data generated by the NTP 1988 report.

Several commenters cited the language provided in 40 CFR part 261.11 Criteria for Listing Hazardous Waste, that defines the criteria for designation as Acute Hazardous Waste. It states that wastes which are "* * * capable of causing or significantly contributing to an increase in serious irreversible * * * illness." should be listed as acute hazardous. The commenters believe it applies to the proposed listings. As stated previously in this section and discussed at length in the proposal, the carcinogenic potency value for the constituents of concern designated in the F032 listing is well within the range of potency values of other toxic wastes regulated under RCRA.

The Agency would like to expand on this point in response to another comment received pertaining to the designation of proposed wastes F032 and F033 as toxic rather than acutely hazardous. Commenters were concerned that the toxic status would be inappropriate because of the more lenient standards applied to these wastes. The comments seem to convey the belief that only through the designation as an acute hazardous waste is a waste adequately regulated. The Agency strongly disagrees with this implication, and believes that its existing regulations are adequate to regulate wastes designated as toxic, that F032, F034, and F035 do not qualify as acutely hazardous, and that the additional regulation is therefore unnecessary.

EPA also notes that the significance of designating a waste as acute hazardous is now greatly diminished, if necessary at all. EPA adopted such a designation in the original dioxin listings. The designation carried with it special management standards for the wastes, in particular, more stringent standards for tanks and containers, no land disposal without a special waste management plan, and a more stringent standard for incineration. The rules, however, were proposed before the 1984 amendments to RCRA and adopted only months after the 1984 amendments became law and before EPA fully understood the implications of those amendments, particularly the pretreatment requirements imposed pursuant to the land disposal restrictions program, the minimum technological requirements for many types of units, and the omnibus permitting authority, all of which provide the same types of controls the Agency envisioned in the initial dioxin listing rule.

EPA is now fully exercising the authority provided by the 1984 amendments and finds that these authorities provide the types of controls that would be provided if any of these wastes were listed as acute hazardous (even assuming that the facts warranted such a listing). Thus, such a listing does not result in superior environmental protection.

The Agency also received comments expressing concern over the use of a summary report presented to EPA by Vulcan Materials Company. As is stated clearly in the proposed rule, EPA has reviewed the NTP report, found the study valid, and concluded that the data from the study are appropriate for use in calculating carcinogenic potency values for the products studied. Although Vulcan Materials Co. has submitted a summary report of the NTP report to EPA, this summary report was provided to support a petition for rulemaking made by Vulcan, is not relevant to the F032 listing, and is not included in the record supporting today's rule. EPA has not relied on the Vulcan summary report in making its evaluation of the relative hazards posed by F032 waste. Rather, the Agency has conducted its own review of the NTP 1988 report.

One commenter disagreed with the Agency's statement that other (non-HxCDD) dioxin homologues were found to be present in F032 and F033 wastestreams at concentrations one to two orders of magnitude lower than those observed in the two pentachlorophenol products studied in the NTP report. EPA disagrees with this comment. The waste characterization data can be found in the docket and is available for public viewing. Using the waste characterization data, one can verify the similarity between the mixtures studied in the NTP report and the F032 wastes.

*E. Listing Wastes from Surface Protection Processes*

EPA received several comments from industry which stated that the information presented in the docket for the proposed rule did not sufficiently demonstrate that wastes from wood surface protection processes that use or previously used chlorophenolic formulations warrant listing under RCRA. These commenters noted that EPA had information from only a few surface protection plants, all located in one region of the country and that EPA was able to collect only very limited waste characterization data. Consequently, they concluded that the Agency had not adequately characterized the industry or the wastes generated by the industry and, therefore, had failed to establish sufficient basis for listing F033.

As stated earlier, after considering the comments received and evaluating the data which provided the basis for the proposed F033 listing, EPA has concluded that it has insufficient information at this time on which to base a final listing decision for F033. The Agency has, therefore, decided to defer the F033 listing until such time as further information concerning waste quantities and waste characterization can be collected and evaluated. EPA will conduct a program of site visits in order to collect additional information and better characterize the surface protection industry and the wastes generated by surface protection processes. The Agency will take action on the proposal to list F033 after

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completing this additional data collection.

*F. Equipment Cleaning and Replacement Standards*

EPA received many comments concerning the equipment cleaning and replacement standards that were included in the proposed rule. Representatives from industry contended that the standards were impractical, technically infeasible, and cumbersome. Others noted potential interpretational problems and anticipated implementation difficulties. Commenters disagreed on the appropriate level of specificity for the equipment cleaning standards with respect to the type of solvent to be used for cleaning and the appropriate test to determine the effectiveness of cleaning. They also disagreed on the potential benefits to be derived from the standards and many challenged the need for such provisions in the listing.

Today's listing for F032 includes similar provisions for cross-contaminated waste (i.e., wastes generated from equipment previously used with chlorophenolic formulations) as were included in the proposed rule. EPA has retained this aspect of the rule because it results in isolating all wood preserving wastes that are potentially contaminated with the constituents of concern in F032 in one listing. Hence, wastes that are generated from processes that use creosote and/or inorganic preservatives at wood preserving plants that previously used chlorophenolic formulations and wastes generated by creosote or inorganic processes located at plants where chlorophenolic preservatives are also used will be F032 waste, as well as F034 or F035.

The most important benefit provided by the equipment cleaning and replacement standards was that they allowed a mechanism by which operators of wood surface protection processes that previously used chlorophenolic formulations but have switched to other formulations not addressed by the listing could have their wastes removed from subtitle C control (provided that they also did not exhibit one of the characteristics of hazardous waste and that use of a chlorophenolic formulation was not resumed). Because today's listings do not include F033 wastes (i.e., those generated by surface protection processes), this benefit is no longer of any consequence.

EPA believes, however, that provisions for equipment cleaning and replacement to allow the deletion of the F032 waste code from cross-contaminated creosote or inorganic wastes are still of potential benefit to many generators. Consequently, today's rule retains substantially similar equipment cleaning and replacement standards and the provision for deleting the F032 waste code (see § 261.35). Under the rule, generators who have cleaned or replaced or who plan to clean or replace equipment previously used for pentachlorophenol processes may comply with a self-implementing process for reclassifying their cross-contaminated F032 waste as F034 or F035. Generators choosing to reclassify are required to clean or replace equipment in accordance with a written plan, as specified in the proposed rule, and to maintain records and certifications to document that the cleaning and replacement activities are conducted in accordance with the plan and that use of chlorophenolic preservatives is not resumed. Today's rule is different from the proposed rule in that the cleaning and replacement plan and documentation of cleaning and replacement activities need not be submitted to the Regional Administrator for review and approval as a condition for deleting the F032 code. Today's rule allows generators to conduct cleaning and replacement, collect appropriate records, certify that cleaning and replacement has been conducted in accordance with a written plan, and delete the F032 code.

Although some commenters asserted that EPA should develop specific technical standards for cleaning equipment, we have maintained the general performance standards that were included in the proposed rule. EPA believes that appropriate and effective cleaning procedures should be selected on the basis of many site-specific factors, including the type and size of the equipment to be cleaned, the construction materials of the equipment, the extent of the contamination, the type of solvent used in the wood preserving process, and other factors. Consequently, the standards must provide sufficient flexibility to accommodate the wide range of appropriate cleaning techniques. While EPA acknowledges that very specific standards facilitate enforcement and relieve the owner/operator of the burden of making engineering judgments or seeking professional advice, we believe that to rely on very specific standards in this case may hamper the effectiveness of equipment cleaning and/or impose unnecessary or impractical burdens on generators.

## V. Interaction With Other Regulations

*A. Toxicity Characteristic*

As stated previously, in developing today's listing rule, EPA evaluated the potential for other environmental regulations to provide protection to human health and the environment from the hazards posed by wastes from wood preserving as an alternative to listing under RCRA. As part of this analysis, EPA considered relying on the Toxicity Characteristic (see 55 FR 11798 and 40 CFR 261.24) to capture wood preserving wastes. Commenters responding to the December 1988 proposed rule suggested that the rules for hazardous waste characteristics would provide adequate coverage and that, consequently, new listings are unnecessary.

EPA has decided, however, that the Toxicity Characteristic (TC) will not provide the same level of protection for wood preserving wastes as is provided by listing for several reasons. Most importantly, the Toxicity Characteristic does not address several of the hazardous constituents of concern in wood preserving wastes, including chlorinated dibenzodioxins and dibenzofurans and benzo(a)pyrene. Moreover, because most F032 and F034 wastes are oily waste and the current Toxicity Characteristic Leaching Procedure is limited in its ability to accurately characterize wastes having oily matrices, reliance on the Toxicity Characteristic as an alternative to listing is not appropriate in this case. That is, a given waste could have high levels of toxic constitutents but, due to the oily nature of the waste, the Toxicity Characteristic constituents, as measured by the Toxicity Characteristic Leaching Procedure, might not exceed the regulated levels.

Listings provide several other advantages also. For example, listed wastes can only be removed from subtitle C control through the delisting process which involves a thorough review of waste analysis data and waste management practices and a formal public notice and comment procedure. Characteristic wastes are no longer hazardous when they cease to exhibit the characteristic (in this case the Toxicity Characteristic). This difference is especially important in this case because several of the constituents of concern in wood preserving wastes are not considered by the Toxicity Characteristic and will be found in residues derived from treatment, storage, or disposal of the listed wastes. Thus, listing continues to account for the fate of toxic constituents in residues not specifically listed and helps ensure proper handling of such residues as well. This is consistent with RCRA's cradle to grave mandate (see *API* v. *EPA*, 906 F.2d 729, 741–42, DC Cir. 1990). Furthermore, enforcement of the listings has proven to be more straightforward than enforcement of the rules for hazardous waste characteristics.

Some of the Extraction Procedure (EP) toxic metals and several of the new constituents added to the TC rule are likely to be found in the wastes listed today. Some of the wastes listed today may fail the EP or the TC and, therefore, may already be regulated as characteristic hazardous wastes. Until today's rule becomes effective in a generator's State, as discussed below, these wastes must be designated as characteristic wastes. After the rule becomes effective, the wastes must be designated as listed wastes rather than as characteristic wastes for purposes of complying with the land disposal restrictions rules. Wastes that were already hazardous by virtue of exhibiting any of the characteristics of hazardous waste, including the TC, may still have to be treated to meet standards promulgated for characteristic wastes after the effective date of this listing. Generators of drippage that exhibits the Toxicity Characteristic should note that the subpart W standards for drip pads may be applied to units used in management of such drippage prior to the effective date of today's rule in their State.

*B. Land Disposal Restrictions*

HSWA mandated that the Agency promulgate land disposal prohibition determinations under a specific schedule for wastes identified and listed prior to the enactment of HSWA (RCRA section 3004(d), 3004(e), and 3004(g)(4), 42 U.S.C. 6924 (d), (e) and (g)(4)). If the Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes are absolutely prohibited from land disposal after May 8, 1990 (or in some cases November 8, 1988, or July 8, 1987). HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR 261 after November 8, 1984, within six months of the date the new listing is promulgated (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for automatic restriction or prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

Although some of the wastes covered by today's notice are being listed in part because of the presence of hazardous constituents at levels similar to those found in K001, they are newly listed wastes, and therefore, the treatment standards for K001 do not apply to today's newly listed wastes. The Agency has not yet completed treatability and capacity analyses for these newly listed wastes. For this reason, the Agency will address land disposal restrictions for the wastes listed today at a later date. It should be noted that because the statute does not provide for automatic restriction or prohibition of land disposal for newly identified wastes until such restrictions are promulgated, land disposal of these wastes will not be restricted or prohibited until the Agency promulgates land disposal restrictions (unless the wastes exhibit one of the restricted hazardous characteristics or are subject to other land disposal restrictions such as the prohibition on disposing of liquids in landfills). Wastes that exhibit the newly promulgated Toxicity Characteristic are considered newly identified as hazardous and are not covered by the LDR, unless also EP Toxic (see the Third Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520).

Wastes that exhibit the Extraction Procedure (EP) Toxicity Characteristic were evaluated as part of the Third Third land disposal prohibition determination, and treatment standards were promulgated for these wastes on May 8, 1990 (see 55 FR 22520). Most wastes generated from the use of inorganic wood preservatives (identified as F035 in today's rule) are expected to exhibit the EP characteristic for arsenic and chromium and thus are already subject to the land disposal restrictions standards which include reporting, recordkeeping, and tracking requirements, dilution and storage prohibitions, and treatment standards, for arsenic and chromium (see 55 FR 22659). These wastes also may be subject to certain California List treatment standards (see 55 FR 22874).

## VI. State Authority

*A. Applicability of Final Rule in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State that was authorized to issue permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, HSWA amended RCRA to add section 3006(g) (42 U.S.C. 6926(g)). Under section 3006(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements are implemented by EPA in authorized States in the interim.

Certain portions of today's rule are being promulgated pursuant to RCRA section 3001(e)(1), a provision added by HSWA. These portions include the listing of F032. Therefore, the Agency is adding the requirements to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble. The remaining portions of today's rule, in particular the listing of F034 and F035 and the addition of a test method to appendix III of part 261, are being promulgated pursuant to pre-HSWA authority. These provisions, therefore, will become effective only in those States without final authorization, and will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

*B. Effect on State Authorization*

As noted above, EPA will implement certain portions of today's rule in authorized States until they modify their programs to adopt these rules and the modifications are approved by EPA.

Pursuant to section 3001(e) of RCRA, a provision added by HSWA, EPA is

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adding F032 to the list of hazardous wastes from non-specific sources. Thus, these standards will take effect in all States (authorized and non-authorized) on the effective date. Certain other portions of today's rule are necessary to effectively implement the previously mentioned HSWA provisions. In particular, the permitting and interim status drip pad standards (subpart W) are necessary to provide regulatory standards applicable to F032 drippage listed today pursuant to HSWA authority. Under the Federal rules, the regulatory status of the pads (but not the collection system) is somewhat unclear (the collection system would be subject to hazardous waste tank requirements). Because these units do not appear to have any applicable standards under the base RCRA program, but have regulatory standards in connection with, and as necessary to implement, a HSWA listing, EPA considers these standards to be HSWA requirements under section 3006(g) when used in connection with the F032 listing. Thus, these provisions will also be effective on the effective date and administered by EPA pursuant to RCRA section 3006(g) and 40 CFR 264.1(f)(2) (see discussion of proposed § 265.1(c)(4)(iii) in paragraph 3 below). The addition of F034 and F035 to the list of hazardous wastes from non-specific sources and the addition of the test method to appendix III of part 261 are not immediately effective in authorized States since the requirements are not imposed pursuant to the HSWA. The permitting and interim status standards for drip pads associated with F034 and F035 wastes will therefore only become effective in authorized States when F034 and F035 become hazardous waste in each authorized State and when the State is authorized for the drip pad standards. However, should such wastes be designated as exhibiting the Toxicity Characteristic, which was promulgated under HSWA authority and is effective in authorized States, then such wastes may be managed on drip pads meeting the subpart W standards.

1. HSWA Provisions

As noted above, EPA will implement the addition of F032 to the list of hazardous wastes from non-specific sources in authorized States until the States modify their programs to adopt these rules and the modification is approved by EPA. Because portions of this rule are promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes, and they must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1992 (or July 1, 1993, if a State statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become RCRA subtitle C requirements. States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In addition, because some of the wastes delisted today are likely already to be hazardous under authorized state law (i.e., through implementation of the EP), States may, of course, continue to regulate such wastes as part of the authorized program. In many cases, EPA will be able to defer to the States in their program implementaiton efforts, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final State authorization applications is described in 40 CFR 271.3.

2. Non-HSWA Provisions

Other portions of todays's rule are not effective in authorized States since the requirements will not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. These portions include the addition of F034 and F035 to the list of wastes from non-specific sources, the permitting and interim standards for drip pads that handle F034 and F035 wastes, and the addition of test methods to 40 CFR part 261 appendix III. These requirements will be applicable only in those States that do not have final authorization. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law, unless the wastes are designated as hazardous due to the Toxicity Characteristic, which would allow an owner or operator to comply with the drip pad standards administered under Federal law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation will be July 1, 1992 (or July 1, 1993 if a State statutory change is needed), in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those finalized in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, States are not authorized to carry out their regulations as RCRA requirements until State program modifications are submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In addition, because some of the wastes listed today are likely already to be hazardous under authorized state law (i.e., through implementation of the EP), States may, of course, continue to regulate such wastes as part of the authorized program.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these



standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements that States must meet when submitting final authorization applications.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. See 40 CFR 271.1(i). Some of the standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Those provisions appear in 40 CFR 262.34(a)(2). (As noted above, EPA does not believe that drip pads were regulated units prior to today's rule and thus, such standards are more stringent requirements for drip pads.) Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above.

3. Special Provisions for Drip Pad Standards

Under 40 CFR 264.1(f)(3), EPA may issue permits in authorized States if the treatment, storage, or disposal unit is subject to requirements of HSWA and the State has not yet received authorization for the particular HSWA requirements. EPA will therefore issue permits for drip pads that are subject to permitting (i.e., do not qualify for the § 262.34 accumulation provision or other permit exemption) and are managing F032 (or Toxicity Characteristic) wastes in authorized States. The standards for drip pads in 40 CFR part 264 subpart W will be used for these permits.

For F034 and F035 wastes, EPA will implement the standards for permitting drip pads in unauthorized States pursuant to 40 CFR 264.1(b). For F034 and F035 wastes in authorized States, the standards will generally apply when the State modifies its program in accordance with 40 CFR 271.21(e). However, should wastes that meet the listing descriptions of F034 and F035 exhibit the toxicity characteristic, a HSWA requirement, then these TC wastes can be managed in subpart W drip pads which would be implemented by EPA (under 40 CFR 264.1(f)(3), as described above) until the States modify their programs.

Furthermore, for wastes that meet the listing descriptions of F034 and F035 that also exhibit the EP characteristic under authorized state law, EPA has authority to issue a permit under 40 CFR 264.1(f)(2). This authority is available in authorized States if the subject regulated unit was not regulated under RCRA at the time of the State's authorization and if the standards for permitting the unit were promulgated after the State received final authorization. EPA may therefore, under 40 CFR 264.1(f)(2), issue permits for drip pads that are subject to permitting (i.e., do not qualify for the § 262.34 accumulation provision or other permit exemption) and are managing these EP wastes in authorized States. However, wherever possible the Agency expects to defer such permitting actions until authorized states are able to adopt the new listings and process these permitting actions. Of course, facilities that have handled or are handling EP toxic wastes in units that are not subpart W drip pads have pre-existing permit and interim status requirements which continue to apply under State law.

VII. CERCLA Designation and Reportable Quantities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Therefore, the wastes listed as hazardous in today's notice will, on the effective date of today's rule, automatically become hazardous substances under section 101(14) of CERCLA by virtue of their listing under RCRA. The CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ immediately notify the National Response Center (NRC) of the release at (800) 424–8802 or at (202) 426–2675. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner of operator of a facility to report the release of a CERCLA hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance or one pound where no RQ has been set.

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. According to the "mixture rule" developed in connection with the Clean Water Act section 311 regulations and also used for notification under CERCLA and SARA (50 FR 13463, April 4, 1985), the release of mixtures and solutions containing hazardous waste would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. The mixture rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). RQs of different hazardous substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

On December 30, 1988, the Agency proposed RQs of one pound for each of today's wastes; later, EPA issued a supplemental correction notice (54 FR 7214, February 17, 1989) providing updated RQs for the constituents of the wastes. (EPA did not alter the proposed RQs for any of today's wastes.) Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ of one pound unless and until adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding wastes F032, F034, and F035 to 40 CFR 302.4, the codified list of CERCLA hazardous substances, and adjusting their final RQs to one pound.

VIII. Regulatory Impact Analysis

*A. Executive Order Requirements*

Executive Order 12291 requires EPA to conduct a Regulatory Impact Analysis (RIA) for all rules that meet the definition of a "major rule." A major rule is one likely to result in (1) an annual impact on the economy of $100

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million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant impacts on competition, unemployment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Although EPA has determined that the final rule will not be a major rule, the Agency was concerned about the potential for significant impacts on the wood preserving industry. Accordingly, the Agency prepared an RIA to measure the costs and benefits of regulatory options considered during development of the final rule and to assess tradeoffs among these options. The RIA is in the public docket for this rulemaking.

*B. Description of Baseline and Final Rule*

EPA considered a wide range of regulatory alternatives during the development of the final rule. Alternatives were considered for resolving three key policy issues: Waste management in the process area, waste management in the storage yard, and permitting requirements. From these alternatives, EPA selected four regulatory options for detailed analysis and determined an appropriate pre-regulatory baseling from which to analyse the incremental costs and benefits of each regulatory option. The costs and benefits of the regulatory options are discussed in detail in the RIA. This preamble presents results only for the pre-regulatory baseline and the final rule.

*Baseline:* The baseline defines the current condition of wood preserving facilities, their waste management practices, and their compliance with other requirements under RCRA or other statutes relevant to the wood preserving listing rule. Evidence from comparison of the Micklewright list of wood preserving facilities, discussed in section III.C, with data from EPA's Hazardous Waste Data Mangement System (HWDMS) suggested that, despite the fact that many wood preserving wastes are characteristically hazardous (under the Extraction Procedure or EP [6]), many wood preserving facilities have not notified EPA that they generate a hazardous waste. This indicates that many facilities are not in full compliance with existing regulations. For this analysis, current waste management practices and actual compliance with existing regulations were used as baseline conditions; full compliance with existing RCRA requirements was not assumed in the baseline.

*Final rule:* Under the final rule, drippage in the process area, wastewaters, process residuals, and discarded spent formulation are listed as hazardous waste and must be managed according to subtitle C regulations. All facilities must build a pad in the process area conforming to subpart W standards. Facilities are also required to take any measures necessary to prevent drippage in areas not covered by the drip pad. Facilities that already have a drip pad and that obtain annual certification from a professional engineer as to the integrity of the pad may delay replacement of the pad for up to 15 years according to a specified replacement schedule. Facilities accumulating waste for less than 90 days are not required to obtain a RCRA permit.

*C. Costs and Economic Impacts*

1. Methodology

a. *Overview.* The cost and economic impact analysis involved estimating the costs of the final rule to wood preserving facilities and then determining the number of facilities likely to close because they would be unable to pay those costs out of current profits.

Costs of compliance were determined using a two-step process. First, 18 model facilities were developed to represent the 583 actual facilities. Second, average incremental compliance costs were estimated for each model for all activities required under the final rule.

Facility closures were projected in the baseline and due to the rule using a three step process. First, the profitability of facilities in the short-run was determined based on average revenues and short-run operating costs. Next, baseline closures were estimated by determining the number of facilities in each model that would be unable to pay long-run operating costs out of short-run profits. Finally, the number of closures due to the rule was estimated by determining the number of facilities unable to pay compliance costs out of profits remaining after payment of short-run and long-run operating costs.

The costs and economic impacts of the rule were estimated under two scenarios: (1) Assuming facilities would be unable to pass any costs on to consumers in the form of higher prices and (2) assuming facilities could pass through all costs. Under the first scenario, costs and economic impacts were estimated as both costs paid by facilities remaining open and the number of facilities that close. Under the second scenario, costs and economic impacts were estimated as the total cost assuming all facilities remain open.

b. *Model facility development.* Eighteen model facilities were developed to represent the 583 active facilities in the industry (see section III.C for industry characterization). Facilities represented by each model had similar production characteristics and operating costs and revenues. Each of the 583 facilities was assigned to one of the 18 models according to three parameters: Preservative type used, geographic location, and annual production.

(1) *Preservative.* Although 14 percent of facilities use more than one type of preservative, most of these facilities treat primarily with one type of preservative. For this reason, multiple preservative facilities were classified into single preservative groups. Because each preservative type is closely associated with a particular treated wood product, each preservative type group was also assigned a single treated wood product; model inorganic facilities were assumed to treat lumber and timber, model creosote facilities were assumed to treat railroad ties, and model PCP facilities were assumed to treat utility poles.

(2) *Location.* Facilities were assigned to regions that correspond to the regional markets for preserved wood products and the regional availability of different species of trees. The definition of the regions varied by preservative type.

(3) *Production.* Data on actual per-facility annual production were not available; therefore, EPA estimated production based on the number and size of cylinders at each facility. The facilities were then divided into size categories based on production volume. The number of size categories varied by preservative type and region.

c. *Incremental compliance costs.* Incremental compliance costs were estimated for each model facility for all activities required under the final rule, including building a drip pad in the process area, managing process residuals as hazardous waste, and complying with the requirements of 40 CFR part 262 for hazardous waste generators. All facilities that currently have a drip pad were assumed to remove it immediately and install a new drip pad meeting subpart W standards. For some compliance activities, EPA was uncertain of the exact response of facilities to the regulation. For example, although a drip pad in the process area is required, EPA did not know exactly how large a pad facilities would build. To account for this uncertainty, EPA estimated lower and upper bound costs to cover the range of possible compliance responses.

All costs were estimated as the present value of the initial and recurring pre-tax costs incurred by facilities over an assumed 20-year operating life. The present value cost was then annualized over 20 years to arrive at equal annual payments. The annualized cost represents the annual compliance cost to facilities that smooth out anticipated compliance costs with some form of financing over a 20-year period. An eight percent real rate of interest was used as both the discount and annualization rates.

d. *Baseline operating costs.* Among the critical inputs for the cost and economic impact analysis were the average operating costs for each model. These costs were estimated for each model by identifying all of the production inputs and process activities used at wood preserving facilities and estimating the costs associated with these inputs and activities. All costs were estimated on a pre-tax basis.

Costs were divided into direct and indirect operating costs. Direct operating costs were defined as those costs that facilities must pay to remain in business in the short run, such as expenditures for raw materials, labor, utilities, maintenance and repair, property taxes, insurance, and current environmental compliance practices. Indirect operating costs were defined as the sustaining capital needed to replace capital equipment, such as treatment cylinders, buildings, and equipment. Facilities must pay both direct and indirect costs to remain in business in the long run.

Many wood preserving facilities already undertake some environmental compliance activities, such as complying with 40 CFR part 262 hazardous waste generator requirements; operating as an interim status hazardous waste management facility under 40 CFR part 265; obtaining a RCRA treatment, storage, or disposal (TSD) permit under 40 CFR part 264; and/or installing a drip pad in the process and/or storage areas. The cost of these activities was included in the baseline as a direct operating cost of the model facilities.

Facilities that currently have interim status or a permit to operate as a hazardous waste TSDF may also be undergoing corrective action. Corrective action was assumed to be necessary at 31 percent of current TSDFs, based on estimates from the RIA for the proposed subpart S corrective action rule.[7] The cost of soil and ground-water remediation at wood preserving facilities requiring corrective action was estimated based on cleanup costs at seven wood preserving facilities undergoing cleanup under CERCLA. The cost of corrective action was treated in the baseline in the same manner as an indirect operating cost.

The percentage of facilities that are currently generators and/or TSDFs was determined form EPA's Hazardous Waste Data Management System (HWDMS). The percentage of facilities that have some form of drip pad in the process and/or storage area was determined from a 1987 survey of wood preservers conducted by the American Wood Preserving Institute (AWPI) submitted as part of the comments to the proposed rule (F-88-WPWP-00128-A).

e. *Facility closures and national costs.* To estimate the number of facility closures, the Agency developed an economic model that estimated the profitability of wood preserving facilities before and after compliance with the listing rule. Based on the number of closures, EPA also estimated losses of production and jobs. The economic model provided the Agency with greater resolution in predicting facility closures than the methodology used for the analysis of the proposed rule. This methodology differed from that used for the proposed rule in that it allowed the Agency to predict impacts on a percentage of facilities within a model, rather than on the entire model only.

Facility closures were determined using a three step process. First, a supply curve was estimated for each model to represent the range of pre-regulatory short-run operating costs of facilities within the model. The supply curves were estimated based on the assumption that short-run operating costs are less than or equal to revenues for all facilities represented by each model. Second, long-run operating costs were added to short-run operating costs and total costs were compared to revenues. With the addition of long-run operating costs, total costs for some marginal facilities were pushed above revenues, and the facilities were projected to close. These facilities were considered to be non-viable in the long run even without the new regulations and their closure was not considered an impact of the rule. Finally, compliance costs were added to total operating costs; if this pushed total costs above revenues, then a percentage of facilities were projected to close due to the rule.

Under the first cost pass-through scenario, it was assumed that no compliance costs would be passed on to consumers through price increases. For this scenario, costs and economic impacts were estimated jointly; i.e., the results were presented as both costs paid by facilities remaining open and the number of facilities that close. Second order effects, such as jobs lost and production lost, were also estimated.

It may be somewhat unrealistic to assume that facilities would be unable to recoup any of the compliance costs by raising prices, as assumed in the first cost pass-through scenario above. To the extent that prices were raised, additional facilities would likely find it profitable to remain in business. The Agency accordingly considered in the second cost pass-through scenario the effect of assuming full cost pass-through, whereby facilities raise prices to cover all compliance costs. Under such an assumption, there would be no closures of wood preserving facilities as a result of the rule; however, national costs would be higher because compliance costs would be paid by more facilities. (Scenario 2, which assumes no facility closures, could also be used to represent impacts on facilities that pay compliance costs out of savings or land sales rather than current profits.) In the event of full cost pass-through there may be some impacts on the purchasers of treated wood products due to the higher prices for these products. However, assessing such impacts was beyond the scope of this analysis.

2. Results

Of the initial population of approximately 580 wood preserving facilities, about 150 facilities, or almost 25 percent, were projected to close in the baseline due to indirect costs and the cost of existing corrective action requirements. The nearly 440 facilities remaining open represent the population of facilities potentially impacted by the regulation.

Under the assumption that facilities would not be able to pass compliance costs on to consumers in the form of higher prices, the rule was estimated to close less than 20 facilities. At the remaining 420 facilities, total national costs were estimated at between $11 million and $14 million per year, in 1980 dollars. The majority of the cost was for drip pad construction. Small inorganic

[6] At the time that data were retrieved from HWDMS, the EP was the test for determining if a waste was characteristically hazardous. The EP has since been replaced by the Toxicity Characteristic (TC) Leaching Procedure which changed the testing protocol and expanded the list of constituents used to define a waste as hazardous.

[7] U.S. Environmental Protection Agency (USEPA). June 25, 1990. Regulatory Impact Analysis for the Proposed Rulemaking on Corrective Action for Solid Waste Management Units. Washington, DC: Office of Solid Waste.

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facilities were estimated to incur a larger share of the compliance costs and closures than any other category of facility, approximately $4.5 million and 15 closures. This was due to the fact that most wood preserving facilities are of this type and that these facilities have the lowest profit margins of any type of wood preserving facility. Production of treated lumber and timber was estimated to decrease by three percent, while utility pole production was estimated to decrease by six percent (from closure of one large PCP facility). Railroad tie production was not estimated to change because no creosote facilities were projected to close. Approximately 250 jobs were projected to be lost.

Under the assumption that facilities can pass on all compliance costs through higher prices, the rule was also estimated to cost between $11 million and $14 million per year. No facilities were projected to close under this scenario. The costs are the same under the two cost pass-through scenarios because the compliance cost to the facilities projected to close were small.

3. Limitations

Some important limitations of the analysis tend to underestimate, overestimate, or create uncertainty in the results of the costs and economic impacts of the rule. The following factors tend to underestimate the costs and economic impacts:

- As discussed in section III.C, EPA did not have sufficient information on non-pressure treaters to include them in the analysis. However, one commenter asserted that there are approximately 100 non-pressure treaters in the Northwest. If these facilities generate more than 100 kg of hazardous waste per month, they would be subject to RCRA regulation and could be impacted by this rule.
- When closing their existing drip pads, facilities could be required to clean up contamination underlying the pads. Since the cost of this clean-up was not included in the cost analysis, estimates of costs and impacts are likely to be understated.
- The method of annualizing costs assumes that facilities have unlimited access to borrowing at a real rate of interest of 6 percent for 20 years. To the degree that this type of borrowing is not available, annual costs and/or closures would be higher.
- Facilities may need to halt production during construction of a new drip pad or repair of an existing drip pad. In addition, facilities that are unable to construct a drip pad before the effective date of the rule may need to halt production for a longer period of time until they are able to comply with the rule. The cost of this lost production was not included in the analysis.

The following factors tend to overestimate the cost and economic impacts:

- It was assumed that all facilities with existing pads would need to replace them immediately with new pads meeting subpart W standards. To the degree that facilities with existing pads are able to annually certify that the pad will not cause releases, they will be able to delay replacement of the pad. Thus, this assumption leads to an overestimate of the true costs and impacts of the rule.
- In the analysis, it was assumed that all jobs and production of treated wood products would be lost at closing facilities. To the degree that jobs and production are tranferred to other facilities, this assumption leads to an overestimate of the true economic impacts.
- Under the subpart W requirements, if facilities build a roof over their drip pad, they may build a smaller sump that is not designed to contain a 25-year/24-hour storm event. To the degree that this option represents a cost savings to facilities, the costs and economic impacts have been overestimated.

The following factors tend to create uncertainty that could over- or underestimate the cost and economic impacts:

- The corrective action costs estimated for the baseline were based on examination of seven Superfund sites that are not necessarily representative of the universe of active wood preserving facilities. Also, the number of facilities assumed to incur corrective action costs in the baseline was based on estimates in the RIA for the proposed subpart S corrective action rule. Estimates from the corrective action RIA may, however, not be representative of wood preserving facilities. These assumptions could lead to an over- or underestimate of the number of facilities projected to close in the baseline and, therefore, the number of facilities remaining open to incur the cost of the rule.
- Several potential costs were not included in the baseline operating costs, such as costs for surface impoundment closure, wastewater treatment, and management of K001 wastes. Had these costs been included, more facilities would have closed in the baseline leaving fewer facilities open to pay the costs of compliance, in turn leading to lower costs and impacts due to the rule. However, facilities remaining open after baseline closures would have appeared financially weaker, with lower profits, due to the additional baseline costs, leading to higher impacts due to the rule.

*D. Benefits*

EPA analyzed the benefits of this rule using modeling, case studies, and screening analyses. The modeling analysis estimated risks posed to human health and the environment from drippage wastes using a multi-media exposure and risk estimation model. The case studies provide evidence of contamination at actual wood preserving facilities, complementing the modeling results. In addition, EPA conducted two benefits screening analyses on potential resource damage and food chain bioaccumulation. These analyses are summarized briefly below; complete documentation is provided in the RIA.

1. Modeling

*a. Methodology.* EPA used a computerized multi-media exposure and risk estimation model (the MMSOILS model) to simulate human health and environmental impacts from wood preserving drippage in the baseline (pre-regulatory case) and then again under the final rule. The Agency used MMSOILS to simulate releases of contaminants from wood preserving facilities and resulting concentrations in ground water and surface water.

The ground-water pathway examines leaching of pollutants from contaminated soils by infiltrating rainwater. EPA used the predicted pollutant concentrations in ground water as a basis for estimating cancer and non-cancer risks to humans drinking the contaminated water. The surface water pathway simulates concentrations of contaminants in streams as a result of (1) discharge of contaminated ground water into the stream and (2) erosion of contaminated soils which are then carried to the stream over the land surface. EPA examined two types of effects associated with contaminated surface water: human health risk from consumption of contaminated fish and stream water, and adverse effects on aquatic life.

(1) *Selection and characterization of sample facilities.* Modeling was conducted for a random sample of 55 actual wood preserving facilities. The sample was stratified by preservative type and was comprised of 44 facilities using inorganics, five using creosote, and six using PCP. To extrapolate the modeling results from the sample to the national population of wood preserving facilities, a weighting system was developed. The weights reflect the frequency of occurrence of preservative types in the population compared to the frequency within the sample.



Running the MMSOILS model required a wide variety of data inputs for each of the 55 sample facilities. Facility-specific information relating to climate, soil characteristics, and hydrogeology was obtained from a variety of sources, including the U.S. Department of Agriculture Soil Conservation Service (county soil surveys); the U.S. Geological Survey (topographic maps, water supply papers, computerized stream reach data); well logs kept by state departments responsible for ground-water management; documents used in the Superfund program; the on-line "Graphical Exposure Modeling System" or GEMS; and the scientific literature. U.S. Geological Survey topographic maps provided site-specific information on the location of private drinking water wells within one mile downgradient of the site. Information on the distance to the nearest public well and the number of people served was obtained from U.S. Geological Survey topographic maps and the on-line Federal Reporting Data System (FRDS).

(2) *Facility size and waste characterization.* Information on facility size and the amount of drippage generated by each sample facility were unavailable. EPA estimated the surface area of each facility by assuming that there is a direct correlation between facility size and wood production rate; wood production rates were calculated as described above in section VIII.C.1.b(3). EPA then calculated an annual drippage volume for each sample facility by multiplying the production rates by an estimated drippage rate per volume of treated wood. A limited amount of data on drippage rates per volume of treated wood were provided by commenters to the proposed wood preserving rule, which EPA used as a basis for estimating an average rate for each preservative type.

Pollutant concentrations in drippage were assumed to be the same across all facilities using each preservative type. Data on the chemical composition of inorganic, creosote, and PCP drippage were reported in the background document supporting the proposed rule.

(3) *Constituents of concern.* The Agency selected a subset of the constituents in the background document for risk modeling, referred to as constituents of concern (COCs). Only those constituents with EPA-approved toxicological parameters were considered. From the list of constituents with EPA-approved values, the Agency identified those with the highest potential for posing risk to humans or aquatic life based on their concentrations in drippage, mobility in the environment, and toxicity. The COCs selected for modeling were: arsenic, hexavalent chromium, and copper for inorganic facilities; acenaphthene, benzo(a)pyrene, fluoranthene, and naphthalene for creosote facilities; and naphthalene, pentachlorophenol, polychlorinated dibenzo-p-dioxins (referred to in this section as "dioxins"), and polychlorinated dibenzofurans (referred to in this section as "furans") for PCP facilities.

To assess human health risks from exposure to these contaminants in ground water, EPA used cancer potencies for carcinogenic COCs and reference doses (RfDs) for non-carcinogenic COCs. Cancer potencies and RfDs were taken from two sources: the Integrated Risk Information System or IRIS, and Health Effects Assessment (HEA) Summary Tables. The only exceptions were for pentachlorophenol (PCP), dioxins, and furans. The cancer potency for PCP was recently verified by the Agency; the cancer potencies for dioxins and furans were derived using procedures recommended by EPA's Risk Assessment Forum.[8]

To assess human health and environmental risk from exposure to contaminated surface water, EPA generally used Ambient Water Quality Criteria (AWQC) from EPA's Office of Water Regulations and Standards "Quality Criteria for Water" (May 1986). AWQCs for the protection of human health are the concentrations in surface water that would pose a cancer risk of $10^{-6}$, or doses above the RfD, for humans that both drink the surface water and ingest fish living in the stream. AWQCs for aquatic life are the concentrations in surface water considered by EPA to be protective of aquatic life.

(4) *Estimation of baseline and post-regulatory risk.* For each facility, MMSOILS provided the annual concentration of each COC in ground water over a 300-year time frame, and the concentration of each COC in the nearest stream. For the ground-water pathway, EPA calculated risks to the most exposed individual at each site (i.e., to an individual exposed at the actual nearest well) and population risk (i.e., the number of cancer cases expected in the population and number of people at risk for non-cancer effects) across all wells at each site. To measure potential adverse effects on aquatic organisms in nearby streams, EPA calculated the ratio of the annual concentration of each pollutant in the stream to the AWQC for the protection of aquatic life. Human health risks from exposure to contaminated surface water were calculated in a similar fashion, using AWQC for the protection of human health.

To simulate the benefits of the rule, EPA focused on facilities already in existence on the effective date of the wood preserving listing. To determine how long each facility had been in operation prior to the rule, the Agency calculated the average current age of wood preserving facilities, by preservative type, based on information provided by the American Wood Preserving Institute and the Society of American Wood Preservers, Inc. To be consistent with the cost and economic impacts analyses, EPA assumed that all facilities would be in operation for an additional 20 years after the effective date of the rule. EPA modeled risks for a period equal to the current average age of the facility plus an additional 300 years.

To simulate risks in the baseline, EPA assumed for modeling purposes that the drippage is uniformly distributed across the process and storage areas. An average drippage rate for both the process and storage areas was developed for each preservative type based on limited data provided by commenters to the proposed wood preserving rule. EPA multiplied the average drippage rates derived from commenter data by 10 to account for uncertainty in the data and the likelihood that actual drippage rates would be higher than indicated by the available data.

EPA also assumed that drip pads currently in place at wood preserving facilities do not effectively prevent contaminants from being released to or from soil. Examination of one of the wood preserving case study sites indicates that even where drip pads have been installed, cracking in the pad or inadequate berms may result in significant soil and ground water contamination. (See the discussion of case study #4 in chapter 8 and appendix F of the RIA background document.)

Consistent with the cost analysis, EPA assumed that 31 percent of the TSDFs would trigger corrective action in the baseline. Human health and environmental risks for facilities that trigger corrective action in the baseline were assumed to be negligible.

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[8] *Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and –Dibenzofurans (CDDs and CDFs) and 1989 Update* (USEPA, 1989)

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EPA assumed that all facilities would install drip pads on the effective date of the rule. Thus, the facilities were assumed to operate without pads for a period of time equal to their current age and then for 20 years with the pads in place. Because MMSOILS does not have the capability to simulate drip pads that cover only a portion of the facility, EPA assumed that the drip pads would cover both the process area and storage yard. EPA assumed that the pads are 100 percent effective in preventing both drippage and rainwater from entering the soil throughout the entire facility and that they remain 100 percent effective throughout the remainder of the modeling period. For facilities with significant existing storage yard contamination, or that allow preservatives to drip to storage yard soils in the future, this assumption overestimates the effectiveness of the rule.

b. *Results*—(1) *Baseline risk/hazard.* The results indicated that, in the baseline, exposure to contaminated ground water poses 300-year average individual risks exceeding $10^{-6}$ at about 23 percent of wood preserving facilities. About 5.3 percent of facilities had risks in excess of $10^{-4}$. All of the facilities that pose cancer risk via ground water were inorganic plants, for which the cancer-causing pollutant is arsenic. Facilities using only creosote or PCP preservatives posed no ground-water risk within the modeling period because the contaminants of concern move very slowly in the subsurface environment. The Agency estimated that, across all facilities, exposure to contaminated ground water could lead to 300 cancer cases over 300 years in the baseline, virtually all of which (296 cases) would be attributable to arsenic exposure at public water supply wells near inorganic facilities.

The predominance of arsenic-related risk at public wells raised two issues. First, arsenic is a Safe Drinking Water Act pollutant monitored by public water supply systems; presumably, municipal water supply systems would treat arsenic-contaminated drinking water to reduce levels below the MCL. It is also noteworthy that arsenic poses a lifetime risk of $3\times10^{-3}$ at its MCL of 0.05 mg/l; nearly all the baseline population risk and most of the MEI risk is due to arsenic concentrations below the MCL. Second, pollutant concentrations were simulated at the top of the aquifer, where concentrations are highest. This is a conservative assumption for all drinking water wells, but is particularly conservative for public water supply systems which tend to draw ground water from deep within the aquifer, where pollutant concentrations are likely to be lower.

Soil erosion from PCP plants is of concern for its potential adverse effects on aquatic life in nearby streams. The model results indicated that, in the baseline, erosion of soils contaminated with dioxins and furans led to surface water concentrations that threaten aquatic life at 83 percent of the PCP plants. Predicted concentrations of dioxins in streams near PCP plants were also high enough to threaten human health if people drink the water or eat the fish; simulated risks to hypothetically exposed individuals exceeded $10^{-6}$ at 83 percent of the PCP plants and $10^{-5}$ at one-third of the PCP facilities. Contaminated surface water was also potentially of concern for human health at the inorganic and creosote facilities, but the simulated risks to hypothetically exposed individuals rarely exceeded $10^{-6}$. The Agency did not examine whether people actually use these streams as a drinking water supply or for fishing. Most of the affected streams are too small to support public water systems, suggesting that few people are likely to be exposed on a continuing basis via the drinking water route; however, consumption of contaminated fish could still threaten human health.

(2) *Risk/hazard reduction due to the rule.* EPA estimates that requiring drip pads (and the associated inspection and response requirements) will eliminate all of the risk from on-going operations at the affected wood preserving facilities that meet the new pad standards. The pads should prevent releases to ground water or surface water. If there is failure of the pads, the leak detection and response provisions, along with the closure provisions, should assure that there is no release from on-going operations at new pads.

The modeling done for this rule did show that there are facilities where past contamination poses cancer risks above 10–4. If those facilities are reviewed in a permit context or in the context of remediation under CERCLA, EPA policy (as articulated in the proposed RCRA corrective action regulation and the NCP for CERCLA) will be to seek to reduce the risk at such sites.

In deciding in this regulation that compliance with the drip pad standards could be accomplished with a provision similar to the 90-day generator requirements for tanks, EPA is making a decision regarding what procedure is appropriate for addressing waste it is deciding to list in this regulation. It is not implying that it finds risks from past contamination at these facilities to be acceptable.

c. *Limitations.* There is considerable uncertainty in the modeling results. The following factors tend to bias the Agency's results in the direction of understating risks from wood preserving facilities:

- Contaminant sources other than drippage (e.g., routine preservative spills, on-site disposal of process residuals) were not considered.
- The ground-water modeling was limited to a time frame of 300 years and a distance of one mile. An extended time horizon and additional well distance could have resulted in some additional risk. For example, a longer modeling period would eventually have resulted in constituent breakthrough at wells down-gradient from PCP and creosote facilities.
- Only pollutants with EPA-approved risk values (human health or aquatic) were simulated. This could underestimate risk for creosote and PCP plants, as the preservative solutions contain many potentially high-risk pollutants for which EPA has not yet derived dose-response information.
- Population growth over time was not considered when calculating the number of cancer cases. If larger populations are exposed, then a greater number of cases would be predicted.
- Health risks through several potential pathways of exposure, including inhalation of contaminated particulate matter, incidental ingestion of contaminated soils, and dermal contact with contaminated soils were not examined.

The following factors tend to bias the Agency's results in the direction of overstating risks from wood preserving facilities:

- Very little information on drippage rates was available; conservative assumptions for drippage rates (10 times the values provided by commenters) could overstate risks.
- Assuming that drip pads currently in place are totally ineffective, while those installed in response to the rule are 100 percent effective over the duration of the modeling period, tends to overstate the benefits of the regulation.
- Pollutant concentrations in ground water were modeled at the top of the aquifer, where pollutant concentrations are highest. This overstates baseline risks, particularly for facilities with public drinking water wells.
- The potential for decline in the population utilizing ground water was not considered; if fewer persons are exposed, then the number of cancer cases would be lower than predicted.



Some of the major factors that contribute to uncertainty in risk results are as follows:

- The algorithms used in MMSOILS to represent different environmental transport mechanisms are simple models that can only approximate the detailed heterogeneity and complex environmental influences affecting the fate and transport of chemicals at specific sites.
- MMSOILS, like most currently available fate and transport models, does not simulate contaminant flow through fractures or discrete zones of high permeability. This type of flow could act to channel contaminants toward, or away from, exposure points, potentially resulting in significantly higher or lower risks than estimated.
- EPA did not attempt to simulate two-phase flow. This is a potentially significant source of uncertainty for creosote and PCP facilities, which apply preservatives to wood in oil-based solutions.
- The analysis was based on limited information on pollutant concentrations in drippage, process and storage area sizes, and annual drippage volumes.
- EPA assumed that drippage is uniformly distributed across the process and storage areas, as very little information was available to quantify the difference in drippage rates between these two areas. Assuming that drippage is concentrated in the process area could potentially have resulted in higher risk than estimated.

2. Case Studies

a. *Purpose of the case studies.* There is strong evidence that significant environmental contamination has resulted from both routine operations and waste mismanagement at wood preserving facilities. For example, as of June 1990, 54 wood preserving facilities had been listed on the Superfund National Priorities List (NPL), while RCRA corrective action measures had been mandated for numerous other facilities. At many facilities where Superfund Remedial Investigations/Feasibility Studies (RI/FSs) and RCRA Facility Assessments (RFAs) have been performed, extensive groundwater and soil contamination has been found.

Although many of these sites involve contamination resulting from management practices that are no longer permitted under current regulations, such as the use of unlined surface impoundments, environmental contamination can also be attributed to routine operating practices that would be affected by the listing of wood preserving wastes. These practices include allowing freshly treated wood to drip preservatives onto the soil and the on-site disposal of process residuals.

The Agency developed seven case studies to document examples of contamination resulting from operating practices addressed by the listing rule. The case studies also serve to provide "real world" evidence to complement the modeling analysis performed for the listing. Complete versions of the case studies are included in appendix G of the RIA.

b. *Selection of the case studies.* EPA selected seven case studies after screening the available information on contamination at wood preserving facilities. This information included the case studies from the public docket for the proposed rule; Superfund RODs, fact sheets, and RI/FSs; and RCRA RFAs. EPA focused its research efforts on those facilities where evidence of contamination was substantially documented and where contamination could be directly attributable to wastes and management practices addressed by the listing. Facilities were not used as case studies if contamination resulted primarily from surface impoundment releases, or if such contamination could not be distinguished from other types of contamination.

Of the seven case studies selected, four were based on information from RI/FSs, two were based on RCRA RFA data, and one was developed using a Superfund Endangerment Assessment.

c. *Results of the case study analysis.* Soil contamination with wood preservatives was detected in the process and drip track areas at all seven case study facility sites, and was above health-based levels at five of them. Of the five sites showing soil contamination above health-based levels, derivatives of creosote and PCP were the primary contaminants at three sites and inorganic constituents from CCA were the primary contaminants at the other two sites. At the sixth site, no soil samples were taken, but the RFA noted that creosote stains could be seen in soil samples as deep as 33 feet. At the seventh site, contamination was found, but at concentrations below health-based levels.

Ground water underlying or downgradient of the process area and drip track area was contaminated above health-based levels in all seven case studies. Three of the cases involved inorganic contaminants from CCA and four involved contamination from creosote and/or PCP.

Soil and ground-water contamination in the drip track area is most likely the result of excessive drippage of preservatives from freshly treated wood. For example, at several of the case study facilities, soil samples were taken directly under the drip track and contamination can, therefore, be unambiguously attributed to drippage. At another case study facility, soil samples were taken in a natural drainage area where storm water runoff is believed to have carried contamination from the drip track.

The exact cause of some of the soil contamination in process areas is not clear. Contamination in the work tank area at most of the facilities, for example, likely resulted from a combination of factors including product spills, leaking tanks, and poor housekeeping practices. These practices are not covered by the listing. They are, however, covered by other EPA regulations. To the extent that contamination results from releases of a CERCLA hazardous substance in excess of the Reportable Quantity, the facility must notify EPA and the State, and could be liable for cleanup under CERCLA section 107. Such contamination may also result from substances deemed to be RCRA hazardous waste, either as a characteristic waste under the toxicity characteristic, or as a U or P waste, such as U051 (creosote), or another listed waste. Release of these materials could constitute land disposal of a RCRA hazardous waste which would require interim status of a part B permit and, therefore, subject the facility to RCRA corrective action requirements.

Soil contamination was also found in the storage yard at case study facilities, but less frequently and at lower levels than in the process area. Soil contamination above health-based levels was found at two sites and creosote stains were observed at one other facility. Ground water underlying the storage area was contaminated above health-based levels at three sites. Detailed descriptions of the production process at case study facilities were usually not provided in the RI/FS, therefore, the observed storage yard contamination could not be linked to specific management practices. Storage yard contamination could have resulted from continuing drippage in the storage yard, precipitation runoff carrying excess preservative from the treated wood, or from management of other wastes in the storage yard.

Off-site contamination was found at one case study site. At this site, surface water runoff contaminated with preservative from the drip track and storage areas formed ponds on an area entirely off-site. Soil samples taken from this area revealed high levels of chromium and arsenic. Ground-water

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monitoring in this area also revealed high levels of contamination. Because this ponding area was downgradient of the rest of the facility, some of the ground-water contamination may have resulted from other parts of the facility upgradient of this area.

The primary benefit of the rule will be to eliminate contamination from drippage of excess preservative in the drip track area, a significant source of contamination at the case study wood preserving facilities. Because contamination from the drip track can migrate through ground water, contamination of other areas both on-site and off-site will also be curtailed.

d. *Limitations of the case study analysis.* The seven case studies provide substantial evidence that soil and ground-water contamination can result from routine operational practices. There are, however, limitations on the degree to which these findings can be generalized to the universe of wood preserving facilities. First, the analysis is based on only seven facilities, two of which are closed and are, therefore, not on the list of 583 active wood preserving facilties. Second, the seven case study sites were specifically selected because they were contaminated and detailed data were available. Hence, they are more likely to represent the most severely contamination facilities rather than the typical facility. In addition, the quality and quantity of data contained in available documents varied greatly. In some cases, documents explicitly identified sources of contamination, while in other cases, the source of contamination was inferred from the location of the samples and information on ground-water flow.

3. Resource Damage Screening Analysis

The impact of ground-water contamination can be measured in terms of the loss of ground water as a resource, as well as the threat posed to human health. EPA performed a screening analysis of the 55 sample wood preserving facilities discussed in section VIII.D.1.a to determine whether resource damage is potentially of concern at wood preserving sites. For this analysis, resource damage was considered to occur whenever ground water is rendered unfit for use as a drinking water supply (i.e., when contaminant concentrations in ground water exceed Maximum Contaminant Levels (MCLs) or taste and odor thresholds). EPA's basic approach was to identify facilities at which estimated constituent concentrations in ground water at the downgradient facility boundary were above these thresholds.

EPA estimated that over a 300-year time frame, pollutant concentrations in ground water at the downgradient facility boundary would exceed resource damage thresholds at 68 percent of wood preserving facilities (70 percent of the inorganic facilities, 60 percent of the creosote facilities, and 67 percent of the PCP facilities). The magnitude of the resource damage at each site would depend on several factors that were not considered in this simple screening approach, such as the extent of plume growth over time, the number of people whose water supply would be affected, the proximity of the site to alternate drinking water supplies, and the cost of utilizing those supplies. However, the analysis does indicate that, when the resource value of ground water is considered, the number of facilities with potentially significant environmental contamination can be higher than indicated based on human health risks alone. The analysis also indicates that compliance with the rule would reduce but not eliminate ground-water contamination and resource damage.

4. Food Chain Contamination Screening Analysis

a. *Methodology.* EPA conducted a screening analysis of potential human health risks from exposure through the food chain to contaminants released to soil from wood preserving drippage. The Agency used the MMSOILS model to simulate releases of contaminants to soil at 4 of the 55 sample wood preserving facilities (see section VIII.D.1.a.), resulting concentrations in crops grown in contaminated soils and in food products derived from cattle consuming the crops, and potential health risks to humans ingesting the crops and food products. Human health risks from incidental ingestion of soil and dermal contact with soil were examined as well. The results were used to identify which exposure pathways are potentially of concern under the assumption that wood preserving operations cease 20 years after the effective date of the rule and the land is converted to food and feed production.

The Agency selected two inorganic and two PCP facilities for the screening analysis; each pair of facilities includes a "typical" and a "worst-case" facility (based on average soil concentration of constituents) to represent "typical" and "worst-case" potential human health risks. The Agency used the same information on facility size and drippage rates as those used for the ground-water and surface water risk modeling (see section VIII.D.1.a.). Facility-specific information relating to feed (i.e., pasture) and food (i.e., vegetable) production and factors affecting the deposition of contaminated soil particulates was obtained from a variety of sources, including the U.S. Department of Agriculture (county soil surveys); the on-line GEMS: and the scientific literature. Information on the typical consumption rates of crops and food products by humans and/or cattle was obtained from EPA documents on exposure assessment and the scientific literature.

From the set of constituents of concern (COCs) developed for ground-water risk modeling (see section VIII.D.1.a.), the Agency selected only those constituents that are known to translocate in food and feed crops. The COCs selected for food chain modeling were arsenic and hexavalent chromium for the inorganic facilities; and pentachlorophenol, polychlorinated dibenzo-p-dioxins (referred to in this section as "dioxins"), and polychlorinated dibenzofurans (referred to in this section as "furans") for the PCP facilities. To evaluate the mobility of COCs in the food chain pathways, the Agency used transfer factors obtained from the scientific literature. To assess human health risks from exposure to these contaminants in soil and the food chain, EPA used the same cancer potencies for carcinogenic COCs and reference doses for non-carcinogenic COCs as those used for ground-water risk modeling.

b. *Results.* The modeling results indicated that several of the food chain pathways analyzed are potentially of concern (i.e., may present high MEI risk) under the hypothetical scenario where wood preserving sites are converted to food production. At both the typical and worst-case inorganic facilities, the greatest potential for cancer risk is through exposure to arsenic in vegetables; potential exposure to chromium, a non-carcinogen, in any of the food chain and soil pathways is limited and would not result in chronic health effects. At the typical PCP facility, the greatest potential for cancer risk is through exposure to dioxins in vegetables and to furans in beef and milk. At the worst-case PCP facility, the greatest potential for cancer risk is through exposure to both dioxins and furans in vegetables, beef, and milk. At the worst-case PCP facility, potential exposure to pentachlorophenol in vegetables is significant and would result in chronic (i.e., non-cancer) health effects. The analysis also indicated that the final rule, by requiring process area drip pads and preventing further soil contamination, would reduce the potential for adverse health effects caused by ingestion of contaminated foods.

c. *Limitations.* The food chain pathway and soil exposure modeling was undertaken as a screening analysis and, therefore, the Agency made many simplifying assumptions. The most important of these assumptions include the following:

- The potential health risks correspond to a hypothetical maximum exposed individual (MEI) who lives in a nearby farm household (i.e., a subsistence farmer) and whose diet consists, in part, of foods which are grown directly on the former wood preserving site and food products derived from cattle grazing at the site.
- Constituent levels in soil and feed that would cause plant or animal mortality, thereby eliminating the possibility of human exposure to the foods, were not considered.
- Neither chemical decay in soils nor erosion of soils from the site were considered.
- Potential institutional restrictions prohibiting food production on former wood preserving sites were ignored.

Other limitations of the MMSOILS model are identified in section VIII.D.1.c.

5. Summary of Benefits

The primary focus of the wood preserving listing rule is to prevent drippage in the process area from being released to the surrounding environment. The results of the benefits modeling analysis unambiguously indicate that uncontrolled drippage at wood preserving facilities poses a risk to human health and the environment via transport through the soil to the ground water and surface water. These results are substantiated by "real world" evidence from case studies of actual facilities which indicates that uncontrolled drippage in the process area has resulted in contamination of soil and ground water. EPA's actions to require drip pads in the process area at wood preserving facilities will prevent such contamination from occurring in the future.

## IX. Regulatory Flexibility Analysis

### A. Approach

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). An RFA is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA examined the final rule's potential effects on small entities as required by the Regulatory Flexibility Act. Two measures, based on EPA guidelines for conducting an RFA, were used to determine whether the rule would have a "significant economic effect" on small entities. The first measure was the ratio of compliance cost to cost of production (the "COP ratio"). A COP ratio exceeding five percent was assumed to represent a significant impact because it indicated that facilities would need to raise their prices by more than five percent, assuming costs could be passed through to customers, in order to maintain the same level of profits. The second measure was the potential number of facility closures, estimated assuming no costs could be passed through to customers. The methodology used to estimate the costs of production, compliance costs, and potential closures is discussed in section VIII.C.1.

A "substantial number" of small entities was assumed to be 20 percent or more of the population of small businesses, small organizations, or small government jurisdictions within the universe of facilities affected by the rule. The only entities found to be affected by the final rule were small businesses; no small organizations or small government jurisdictions would likely be affected. "Small" businesses were defined based on the volume of production. This production-based definition varied by preservative type and geographic region. Production volume was used to define a small business instead of the number of employees (which was used in the Economic Impact Analysis conducted for the proposed rule) because the ratio of labor to final output varies widely among wood preserving operations; two firms with the same number of employees may have significantly different production volumes, revenues, and profits.

### B. Results

The cost and economic impact model calculated average COP ratios for facilities in each model. The average COP ratio did not exceed five percent for any of the models representing small facilities. The model with the highest average COP ratio had a COP ratio of 1.8 percent. The average COP ratio for most models was below one percent. The percent of small facilities projected to close was also very low. Closures of small facilities were projected only for inorganic facilities, with four percent of these facilities estimated to close.

EPA has concluded that today's final rule will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal RFA in support of the rule. More detailed information on small business impacts is available in the RIA for this rule.

## X. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

Public reporting burden for this collection of information is estimated to average 230 hours per facility per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

## XI. Compliance Procedures and Deadlines

This section is intended to assist the regulated community in understanding their regulatory obligations for managing today's listed wastes. As discussed in section VI of this preamble, the F032 listing is promulgated pursuant to HSWA and is therefore effective in all states. The F034 and F035 listings are promulgated pursuant to pre-HSWA authority and will take effect only in unauthorized States; the effective date in authorized States for these two listings will be established when each State adopts the rule. The compliance discussion in this section first discusses notification requirements for all facilities, then generator and transportation requirements in all States, and finally the requirements for treatment, storage and disposal facilities in authorized and in unauthorized States, where some of the rule will not

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take effect until States adopt the non-HSWA listings.

*A. Notification*

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and TSDF's who have previously notified EPA with respect to the management of other hazardous wastes.

In the December 30, 1988, Federal Register notice, EPA proposed to waive the notification requirement for persons who manage F032, F034, or F035 wastes and have already (1) notified the Agency that they manage other hazardous wastes and (2) received an EPA identification number under RCRA section 3010. EPA has decided to waive the notification requirement for these persons as proposed. The Agency believes that a notification requirement for persons already identified within the hazardous waste management universe is unnecessary.

EPA is not waiving the notification requirement for handlers of F032, F034, or F035 that have not notified the Agency that they manage hazardous wastes under RCRA section 3010. Thus, by March 6, 1991, all generators, transporters, and owners or operators of treatment, storage, and disposal facilities who are managing F032 hazardous waste must notify EPA. Similarly, by March 6, 1991, all generators, transporters, and owners or operators of treatment, storage, and disposal facilities who are managing F034 and F035 hazardous waste in an unauthorized State must notify EPA. This is done by completing a section 3010 notification form and sending it to the appropriate EPA Regional Office. (See EPA Form 8700-12, dated 7/90. See 55 FR 31388, August 2, 1990 for a copy of the form. Notification instructions are set forth in 45 FR 12746.)

Persons in authorized States that are handling F034 and F035 wastes subject to today's final rule are not required to notify EPA of such activity. Notification will be required of these facilities after the State receives authorization or otherwise amends its program to regulate these wastes or require such notification. EPA has concluded that it is appropriate to waive the notification requirement at this time in authorized States because (1) the universe of newly regulated activities will be identified when State regulations are revised, as they must be for the States to retain authorization; and (2) RCRA identification numbers provided to notifiers in authorized States are obtained by the State from EPA, so in this way EPA is informed of the notification that authorized States receive.

*B. Generators and Transporters*

Generators of F032 wastes in authorized States and generators of any of the wastes listed today in unauthorized States will be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). Persons who transport these wastes will be required to obtain an EPA identification number by submitting Form 8700-12 as described above and will be subject to the transporter requirements set forth in 40 CFR part 263.

Until the authorized State adopts today's F034 and F035 listings, these wastes are not considered to be hazardous (unless they are hazardous due to other listings or characteristics under the State program or the Federal HSWA program). Therefore, generators, transporters, and treatment, storage, and disposal facilities managing wastes that are hazardous solely due to the F034 and F035 listing are not subject to today's rule until the State adopts the rule.

EPA expects that most generators of today's wood preserving wastes will choose to manage these wastes in units that are not subject to the permitting requirements of parts 264 to 270. The following discussion identifies the most likely compliance options that will be followed by generators of wood preserving wastes.

EPA anticipates that most generators will use drip pads and comply with the 90 day accumulation provision in § 262.34(a)(2) of today's rule. This provision requires the drip pad to comply with the management standards of part 265, subpart W, as well as other specific standards of part 265. The generators' drip pad units that are used to treat or store F032, F034, and F035 are not subject to RCRA permitting provided the specific conditions of § 262.34(a)(2) are met.

Similarly, F032, F034, F035, or Toxicity Characteristic wastes may be treated or stored by generators in tanks or containers for 90 days or less under the generator accumulation provisions of 40 CFR 262.34. (Small quantity generators have more than 90 days for accumulation. See § 262.34) These tank and container accumulation units are not subject to permitting, but must comply with specified part 265 standards.

In addition, because some of the wastes listed today are wastewaters, they may be managed in tanks that are part of wastewater treatment systems. Drip pads are not tanks nor are they ancillary equipment to tanks. Under 40 CFR 264.1(g)(6) and 265.1(c)(10), tanks and tank systems that meet the definition of wastewater treatment unit in 40 CFR 260.10 are not subject to the permitting and interim status requirements of 40 CFR parts 264 and 265. The wastewater treatment unit definition includes devices that (1) are part of a wastewater treatment facility that is subject to section 402 or 307(b) of the Clean Water Act; (2) treat or store an influent wastewater that is a hazardous waste, or that generate and accumulate a wastewater treatment sludge that is a hazardous waste, or that treat or store a wastewater treatment sludge which is a hazardous waste; and (3) meet the definition of tank or tank system in 40 CFR 260.10 (see 53 FR 34079). Therefore, all tanks and tank systems that meet the wastewater treatment unit definition, and in which the newly listed wastes are generated, accumulated, treated, or stored, are exempt from the regulatory requirements of 40 CFR parts 264 and 265. Because the definition of tank system includes all connected ancillary equipment as defined in 40 CFR 260.10, which includes piping, fittings, flanges, valves, and pumps, any such equipment that is part of an exempt wastewater treatment unit in which the newly listed wastes are generated, accumulated, treated, or stored is also excluded from the requirements of parts 264 and 265. (See 53 FR 34079 for further discussion of the scope of the exemption.) The listed sludges, once removed from the excluded units in which they are generated, are subject to all applicable RCRA subtitle C regulations. Wastes left in inactive units also are subject to RCRA subtitle C.

*C. Treatment, Storage, and Disposal Facilities in Unauthorized States*

There are three types of treatment, storage, and disposal facilities (TSDF's) in unauthorized States which may be affected by today's rule: (1) Facilities which are subject to RCRA permit requirements for the first time as a result of today's rule, (2) facilities which are already operating under interim status, and (3) facilities that have been issued a RCRA permit.

Permitted and interim status facilities can also be affected by today's rule in two distinct ways: (1) The facility may already be managing wastes that are hazardous under the existing EP or TC rules and which also are wastes newly listed under today's rule (and thus the waste would have a new waste code), or (2) the facility may be managing a solid waste which is newly subject to regulation as a result of today's listing.

Of course, generators that qualify for the accumulation provisions of § 262.34 are not considered to be TSDF's with respect to wastes managed under that provision and are not subject to permitting for those activities. The following sections describe the compliance obligations for facilities that have units subject to permitting due to today's listings.

1. Newly Regulated Facilities

Newly regulated facilities (i.e., facilities at which the only hazardous wastes that are treated, stored, or disposed are wastes newly regulated by today's final rule) must qualify for interim status by the effective date of the rule in order to continue managing wastes listed by today's rule prior to receiving a permit. To obtain interim status, an eligible facility must submit a section 3010 notification form to EPA by March 6, 1991 and submit a part A permit application to EPA by June 6, 1991. (See 270.70(a).) Interim status facilities are subject to regulation under 40 CFR part 265 (including the drip pad standards in subpart W) until a permit is issued by EPA or an authorized state. To retain interim status, a newly-regulated land disposal facility must submit a RCRA permit application within one year after the effective date of the rule and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements (see RCRA section 3005(e)(3) and 40 CFR 270.73(d)).

2. Permitted and Interim Status Facilities

Facilities which have been managing EP or TC wastes which now also meet the listing description for the wastes listed today must notify EPA of the waste code changes for these wastes. Permitted facilities must submit permit modifications to EPA as required under 40 CFR 270.42 that reflect the new waste codes. Interim status facilities must submit revised part A permit applications in accordance with 40 CFR 270.72. These facilities must continue to comply with the applicable federal standards for hazardous waste management.

Permitted and interim status facilities which manage a solid waste that is newly defined as hazardous waste as a result of today's rule must also submit Class 1 permit modification requests or part A permit application revisions to EPA. Facilities must manage these wastes in accordance with 40 CFR part 265 or 40 CFR part 264 until permit modification or issuance, depending on whether the waste is managed in a newly regulated or previously regulated unit.

For permitted facilities, the Class 1 modification must be submitted to EPA by June 6, 1991, and should include a revised part A form clearly indicating all activities that are newly regulated as a result of today's listings, and any other description that will clarify which units at the facility are managing the new wastes. Also as part of the § 270.42(g) procedure for identifying newly listed wastes at permitted facilities, the permittee must notify the public within 90 days of the Class 1 submittal to the Agency.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the effective date of today's listings, and it is at this time that detailed part B information must be submitted. If a new land disposal unit is newly-regulated due to today's rule, the permittee must certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements within one year after the effective date of the rule (see 40 CFR 270.42(g)(1)(v)).

*D. Treatment, Storage, and Disposal Facilities in Authorized States*

There are also three types of facilities located in authorized states which are affected by today's rule; already permitted facilities managing F032 wastes, facilities operating under interim status managing F032 wastes, and facilities newly subject to RCRA permit requirement under today's rule because they manage F032 wastes. As in unauthorized states, some of the permitted and interim status facilities have been managing EP or TC wastes that meet today's listing descriptions.

For facilities which have been managing EP wastes under an authorized State program which are also F032 wastes, the facility will need to change the waste code (and possibly also change the unit type, if a drip pad is used) assigned to its wastes. Permitted facilities must submit permit modifications to EPA reflecting the new waste codes (and unit types, if applicable). Because EPA must implement this rule until the state is authorized to do so, the permittee must comply with Federal permit modification procedures under 40 CFR 270.42 rather than state permit modification procedures. However, because the permit undergoing modification is most likely a joint EPA-State RCRA permit, a copy of the modification request should also be submitted to the authorized State. Similarly, interim status facilities managing F032 wastes must submit a revised part A permit application to EPA pursuant to 40 CFR 270.72, with a copy to state permitting authorities. Although these facilities must make appropriate waste code (and unit type, if applicable) modifications to reflect the new listing, the wastes are already regulated as EP wastes under the authorized state program. Accordingly, such wastes may not be subject to any new management requirements as a result of this rule if they are managed in tanks, land disposal units, or other units described in 40 CFR parts 264/265, subparts I through Q.

Some permitted and interim status facilities in authorized states will be managing F032 wastes which are hazardous as a result of the toxicity characteristic, which became effective on September 25, 1990, but were not regulated as EP wastes under the authorized state program. See discussion of relationship between EPTC and revised TC at 55 FR 11847-11849 (March 29, 1990). Since no state is authorized for TC wastes, facilities managing TC wastes which are also hazardous as F032 under today's rule must comply with EPA procedures for permit modifications or interim status changes in order to continue management of these wastes after the effective date of today's rule.

Some permitted and interim status facilities in authorized States may be managing F032 wastes which will become hazardous as a result of today's rule, rather than the TC or EP. These facilities must also submit permit modifications or part A permit application revisions to EPA. However, because these wastes were previously unregulated under RCRA, they also were not regulated under the authorized state program. As a result, if these wastes are in a previously unregulated unit, they will be subject to the self-implementing Federal standards for hazardous waste management at 40 CFR part 265 until permit issuance (for interim status facilities) or modification (for permitted facilities). After permit issuance or modification, the Federal permitting standards at 40 CFR part 264 will apply to these wastes (or the state

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permitting standards if the permit is ultimately issued or modified by a state authorized for F032). However, if the wastes are at a permitted facility in a unit that is already regulated by the State, that unit will continue to comply with the applicable permit conditions based on 40 CFR part 264 (or State equivalent) standards.

Facilities in authorized States which are newly subject to RCRA permit requirements as a result of today's rule for F032 must obtain an EPA identification number and submit their part A permit application and section 3010 notification to EPA in order to obtain interim status (see 40 CFR 270.70). Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued by EPA or a State authorized for F032.

**List of Subjects**

*40 CFR Part 260*

Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

*40 CFR Part 261*

Hazardous materials, Waste treatment and disposal, Recycling.

*40 CFR Part 262*

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping.

*40 CFR Part 264*

Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal.

*40 CFR Part 265*

Air pollution control, Hazardous materials, Packaging and containers, Reporting requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

*40 CFR Part 270*

Administrative practice and procedures, Air pollution control, Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Confidential business information.

*40 CFR Part 271*

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 302*

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: November 15, 1990.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR parts 260, 261, 262, 264, 265, 270, 271, and 302 are amended as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

2. Section 260.10 is amended by adding the definition of "Drip Pad", in alphabetical order, as follows:

**§ 260.10 Definitions.**

* * * * *

*Drip pad* is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

* * * * *

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.4 is amended by adding paragraph (a)(9) to read as follows:

**§ 261.4 Exclusions.**

* * * * *

(a) * * *

(9) Spent wood preserving solutions that have been used and are reclaimed and reused for their original intended purpose.

* * * * *

5. Section 261.31(a) is amended by adding the following hazardous waste listings in alphanumeric order to read as follows:

**§ 261.31 Hazardous wastes from non-specific sources.**

(a) * * *

| Industry and EPA hazardous waste No. | Hazardous waste | Hazard code |
|---|---|---|
| • | • | • |
| F032 | Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | (T) |
| F034 | Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | (T) |
| F035 | Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | (T) |

6. Section 261.35 is added to read as follows:

**§ 261.35 Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.**

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner which minimizes or eliminates the escape of hazardous waste or waste constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground and surface waters and to the atmosphere. Generators must either:

(1) Prepare and sign a written equipment cleaning or replacement plan that describes the equipment to be cleaned or replaced, how the equipment will be cleaned or replaced, and the appropriate solvent chosen to use in cleaning and conduct cleaning and/or replacement in accordance with the plan by replacing the equipment and managing the discarded equipment as F032 waste; or

(2) Removing all visible residues from process equipment; and rinsing process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse at or below the lower method calibration limit (MCL) in Table 1 when tested in accordance with SW–846 Method 8290; and managing all residues from the cleaning process as F032 waste; or

(3) Document that previous equipment cleaning or replacement was performed in accordance with the requirements of this section and occurred after a change in preservative.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

7. Table 1 in appendix III to part 261 is amended to add the following compound in alphabetical order as follows:

**Appendix III—Chemical Analysis Test Methods**

TABLE 1.—ANALYSIS METHODS FOR ORGANIC CHEMICALS CONTAINED IN SW–846

| Compound | Method Nos. |
|---|---|
| • | • |
| Benzo(k) fluoranthene | 8100,8250, 8270, 8310 |
| • | • |

* * * * *

8. Appendix VII to part 261 is amended to add the following waste streams in alphanumeric order as follows:

**Appendix VII—Basis for Listing Hazardous Waste**

| EPA hazardous waste No. | Hazardous constituents for which listed |
|---|---|
| • | • |
| F032 | Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans. |
| F034 | Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium. |
| F035 | Arsenic, chromium, lead. |
| • | • |

9. Appendix VIII to part 261 is amended to add the following hazardous constituents in alphabetical order as follows:

**Appendix VIII—Hazardous Constituents**

| Common name | Chemical abstracts name | Chemical abstracts No. | Hazardous waste No. |
|---|---|---|---|
| • | • | • | • |
| Benzo(k)fluoranthene | Same | 207–08–9 | |
| • | • | • | • |
| Heptachlorodibenzofurans | | | |
| Heptachlorodibenzo-p-dioxins | | | |
| • | • | • | • |

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

10. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

11. Section 262.34 is amended by redesignating paragraphs (a)(2) through (a)(4) as (a)(3) through (a)(5) and by adding a new paragraph (a)(2) to read as follows:

**§ 262.34 Accumulation time.**

(a) * * *

(2) The waste is placed on drip pads and the generator complies with subpart

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W of 40 CFR part 265 and maintains the following records at the facility:

(i) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(ii) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for § 265.111 and § 165.114.

* * * * *

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

13.–14. Section 264.190 is amended by revising the introductory text and by adding paragraph (c) to read as follows:

**§ 264.190 Applicability.**

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 264.1 of this part.

* * * * *

(c) Tanks, sumps, and other such collection devices or systems used in conjunction with drip pads, as defined in § 260.10 of this chapter and regulated under 40 CFR part 264 subpart W, must meet the requirements of this subpart.

* * * * *

15. Part 264 is amended by adding subpart W as follows:

**Subpart W—Drip Pads**


264.570 Applicability.
264.571 Assessment of existing drip pad integrity.
264.572 Design and operating requirements.
264.573 Inspections.
264.574 Closure.
264.575 Design and installation of new drip pads.


**Subpart W—Drip Pads**

**§ 264.570 Applicability.**

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage to an associated collection system. Existing drip pads are those constructed before December 6, 1990 and those for which the owner or operator has a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 264.572(e) or § 264.572(f), as appropriate.

**§ 264.571 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.572(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 264.572 of this subpart are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.572 of this subpart, except the standards for liners and leak detection systems, specified in § 264.572(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.572(b) of this subpart and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.572 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified, registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 264.572 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b) (1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline as specified in paragraph (b) (1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 264.572, except those for liners and leak detection systems specified in § 264.572(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent, qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) If the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 264.572(m) of this subpart or close the drip pad in accordance with § 264.574 of this subpart.

**§ 264.572 Design and operating requirements.**

(a) Drip pads must:

(1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials, or other wastes while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

**Note:** EPA will generally consider applicable standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) or the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A drip pad must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and to prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed and operated to function without clogging through the scheduled closure of the drip pad.

(iii) Designed so that it will detect the failure of the drip pad or the presence of a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

**Note:** See § 264.572(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm, unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in § 264.570(b) of this subpart.

(f) Unless protected by a structure or cover, as described in § 264.570(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad and as specified in the permit, if the owner or operator detects a condition that has caused or could lead to or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that has led or could lead to a release of hazardous waste (e.g., upon detection of leakage in the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad and clean up any leakage from below the drip pad, and establish a schedule for accomplishing the repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

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(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification, signed by an independent, qualified registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(3) of this section.

(n) Should a permit be necessary, the Regional Administrator will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(o) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

**§ 264.573 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 264.572 of this subpart by an independent qualified, registered professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leak detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 264.573(m) for remedial action required if deterioration or leakage is detected.

**§ 264.574 Closure.**

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (§ 264.310). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purposes of closure, post-closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

(c)(1) The owner or operator of an existing drip pad, as defined in § 264.570 of this subpart, that does not comply with the liner requirements of § 264.572(b)(1) must:

(i) Include in the closure plan for the drip pad under § 264.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 264.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 264.112 and 264.144 of this part for closure and post-closure care of a drip pad subject to this Paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

**§ 264.575 Design and installation of new drip pads.**

Owners and operators of drip pads must ensure that the pads are designed, installed and operated in accordance with all of the applicable requirements of §§ 264.572, 264.573 and 264.574 of this subpart.

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

16. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

17.–18. Section 265.190 is amended by revising the introductory text and by adding paragraph (c) to read as follows:

**§ 265.190 Applicability.**

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 265.1 of this part.

* * * * *

(c) Tanks, sumps, and other collection devices used in conjunction with drip pads, as defined in § 260.10 of this chapter and regulated under 40 CFR part 265 subpart W, must meet the requirements of this subpart.

* * * * *

19. Part 265 is amended by adding subpart W as follows:

Subpart W—Drip Pads

265.440 Applicability.
265.441 Assessment of existing drip pad integrity.
265.442 Design and installation of new drip pads.
265.443 Design and operating requirements.
265.444 Inspections.
265.445 Closure.

## Subpart W—Drip Pads

**§ 265.440 Applicability.**

(a) The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage to an associated collection system. Existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has generated a design and has entered into binding financial or other agreements for construction prior to December 6, 1990. All other drip pads are new drip pads.

(b) The owner or operator of any drip pad that is inside or under a structure that provides protection from precipitation so that neither run-off nor run-on is generated is not subject to regulation under § 265.443(e) or § 265.443(f), as appropriate.



**§ 265.441 Assessment of existing drip pad integrity.**

(a) For each existing drip pad as defined in § 265.440 of this subpart, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent, qualified registered professional engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all of the standards of § 265.443 of this subpart are complete. The evaluation must justify and document the extent to which the drip pad meets each of the design and operating standards of § 265.443 of this subpart, except the standards for liners and leak detection systems, specified in § 265.443(b) of this subpart, and must document the age of the drip pad to the extent possible, to document compliance with paragraph (b) of this section.

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b) of this subpart and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications will be complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443 of this subpart and must document the age of the drip pad to the extent possible. The plan must be reviewed and certified by an independent qualified, registered professional engineer. All upgrades, repairs, and modifications must be completed in accordance with the following:

(1) For existing drip pads of known and documentable age, all upgrades, repairs, and modifications must be completed within two years of the effective date of this rule, or when the drip pad has reached 15 years of age, whichever comes later.

(2) For existing drip pads for which the age cannot be documented, within 8 years of the effective date of this rule, but if the age of the facility is greater than 7 years, all upgrades, repairs and modifications must be completed by the time the facility reaches 15 years of age or by two years after the effective date of this rule, whichever comes later.

(3) If the owner or operator believes that the drip pad will continue to meet all of the requirements of § 265.443 of this subpart after the date upon which all upgrades, repairs and modifications must be completed as established under paragraphs (b) (1) and (2) of this section, the owner or operator may petition the Regional Administrator for an extension of the deadline as specified in paragraph (b) (1) or (2) of this section. The Regional Administrator will grant the petition for extension based on a finding that the drip pad meets all of the requirements of § 265.443, except those for liners and leak detection systems specified in § 265.443(b), and that it will continue to be protective of human health and the environment.

(c) Upon completion of all, repairs, and modifications, the owner or operator must submit to the Regional Administrator or State Director, the as-built drawings for the drip pad together with a certification by an independent, qualified registered professional engineer attesting that the drip pad conforms to the drawings.

(d) if the drip pad is found to be leaking or unfit for use, the owner or operator must comply with the provisions of § 265.443(m) of this subpart or close the drip pad in accordance with § 265.445 of this subpart.

**§ 265.442 Design and installation of new drip pads.**

Owners and operators of new drip pads must ensure that the pads are designed, installed and operated in accordance with all of the applicable requirements of §§ 265.443, 265.444 and 265.445 of this subpart.

**§ 265.443 Design and operating requirements.**

(a) Drip pads must:

(1) Be constructed of non-earthen materials, excluding wood and non-structurally supported asphalt;

(2) Be sloped to free-drain treated wood drippage, rain and other waters, or solutions of drippage and water or other wastes to the associated collection system;

(3) Have a curb or berm around the perimeter;

(4) Be impermeable, e.g., concrete pads must be sealed, coated, or covered with an impermeable material such that the entire surface where drippage occurs or may run across is capable of containing such drippage and mixtures of drippage and precipitation, materials and other wastes, while being routed to an associated collection system; and

(5) Be of sufficient structural strength and thickness to prevent failure due to physical contact, climatic conditions, the stress of installation, and the stress of daily operations, e.g., variable and moving loads such as vehicle traffic, movement of wood, etc.

Note: EPA will generally consider applicable standards established by professional organizations generally recognized by industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirement of this paragraph.

(b) A new drip pad or an existing drip pad, after the deadline established in § 265.441(b) of this subpart, must have:

(1) A synthetic liner installed below the drip pad that is designed, constructed, and installed to prevent leakage from the drip pad into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the drip pad. The liner must be constructed of materials that will prevent waste from being absorbed into the liner and prevent releases into the adjacent subsurface soil or ground water or surface water during the active life of the facility. The liner must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or drip pad leakage to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation (including stresses from vehicular traffic on the drip pad);

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression or uplift; and

(iii) Installed to cover all surrounding earth that could come in contact with the waste or leakage; and

(2) A leakage detection system immediately above the liner that is designed, constructed, maintained and operated to detect leakage from the drip pad. The leakage detection system must be:

(i) Constructed of materials that are:

(A) Chemically resistant to the waste managed in the drip pad and the leakage that might be generated; and

(B) Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying materials and by any equipment used at the drip pad; and

(ii) Designed so that it will detect the failure of the drip pad or the presence of

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a release of hazardous waste or accumulated liquid at the earliest practicable time.

(c) Drip pads must be maintained such that they remain free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the drip pad.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

(d) The drip pad and associated collection system must be designed and operated to convey, drain, and collect liquid resulting from drippage or precipitation in order to prevent run-off.

(e) Unless protected by a structure, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-on control system capable of preventing flow onto the drip pad during peak discharge from at least a 24-hour, 25-year storm unless the system has sufficient excess capacity to contain any run-on that might enter the system, or the drip pad is protected by a structure or cover, as described in § 265.440(b) of this subpart.

(f) Unless protected by a structure or cover, as described in § 265.440(b) of this subpart, the owner or operator must design, construct, operate and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from an independent, qualified registered professional engineer certifying that the drip pad design meets the requirements of this section.

(h) Drippage and accumulated precipitation must be removed from the associated collection system as necessary to prevent overflow onto the drip pad.

(i) The drip pad surface must be cleaned thoroughly at least once every seven days such that accumulated residues of hazardous waste or other materials are removed, using an appropriate and effective cleaning technique, including but not limited to, rinsing, washing with detergents or other appropriate solvents, or steam cleaning. The owner or operator must document the date and time of each cleaning and the cleaning procedure used in the facility's operating log.

(j) Drip pads must be operated and maintained in a manner to minimize tracking of hazardous waste or hazardous waste constituents off the drip pad as a result of activities by personnel or equipment.

(k) After being removed from the treatment vessel, treated wood from pressure and non-pressure processes must be held on the drip pad until drippage has ceased. The owner or operator must maintain records sufficient to document that all treated wood is held on the pad following treatment in accordance with this requirement.

(l) Collection and holding units associated with run-on and run-off control systems must be emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system.

(m) Throughout the active life of the drip pad, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the condition must be repaired within a reasonably prompt period of time following discovery, in accordance with the following procedures:

(1) Upon detection of a condition that has led or could lead to a release of hazardous waste (e.g., upon detection of leakage by the leak detection system), the owner or operator must:

(i) Enter a record of the discovery in the facility operating log;

(ii) Immediately remove the portion of the drip pad affected by the condition from service;

(iii) Determine what steps must be taken to repair the drip pad, remove any leakage from below the drip pad, and establish a schedule for accomplishing the clean up and repairs;

(iv) Within 24 hours after discovery of the condition, notify the Regional Administrator of the condition and, within 10 working days, provide a written notice to the Regional Administrator with a description of the steps that will be taken to repair the drip pad, and clean up any leakage, and the schedule for accomplishing this work.

(2) The Regional Administrator will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and clean up are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(3) Upon completing all repairs and clean up, the owner or operator must notify the Regional Administrator in writing and provide a certification, signed by an independent qualified, registered professional engineer, that the repairs and clean up have been completed according to the written plan submitted in accordance with paragraph (m)(3) of this section.

(n) The owner or operator must maintain, as part of the facility operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

**§ 265.444 Inspections.**

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 of this Subpart by an independent qualified, registered professional engineer. The certification must be maintained at the facility as part of the facility operating record. After installation liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

(b) While a drip pad is in operation, it must be inspected weekly and after storms to detect evidence of any of the following:

(1) Deterioration, malfunctions or improper operation of run-on and run-off control systems;

(2) The presence of leakage in and proper functioning of leakage detection system.

(3) Deterioration or cracking of the drip pad surface.

Note: See § 265.443(m) for remedial action required if deterioration or leakage is detected.

**§ 265.445 Closure.**

(a) At closure, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (pad, liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leakage, and manage them as hazardous waste.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practically removed or decontaminated, he must close the facility and perform post/closure care in accordance with closure and post-closure care



requirements that apply to landfills (§ 265.310). For permitted units, the requirement to have a permit continues throughout the post-closure period.

(c)(1) The owner or operator of an existing drip pad, as defined in § 265.440 of this subpart, that does not comply with the liner requirements of § 265.443(b)(1) must:

(i) Include in the closure plan for the drip pad under § 265.112 both a plan for complying with paragraph (a) of this section and a contingent plan for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure; and

(ii) Prepare a contingent post-closure plan under § 265.118 of this part for complying with paragraph (b) of this section in case not all contaminated subsoils can be practicably removed at closure.

(2) The cost estimates calculated under §§ 265.112 and 265.144 of this part for closure and post-closure care of a drip pad subject to this paragraph must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under paragraph (a) of this section.

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

20. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

21.—22. Subpart B of part 270 is amended by adding § 270.22 as follows:

**§ 270.22 Special part B information requirements for drip pads.**

Except as otherwise provided by § 264.1 of this chapter, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

(a) A list of hazardous wastes placed or to be placed on each drip pad.

(b) If an exemption is sought to subpart F of part 264 of this chapter, as provided by § 264.90 of this chapter, detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) of this chapter will be met.

(c) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of § 264.572 of this chapter, including the as-built drawings and specifications. This submission must address the following items as specified in § 264.571 of this chapter:

(1) The design characteristics of the drip pad;

(2) The liner system;

(3) The leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;

(4) Practices designed to maintain drip pads;

(5) The associated collection system;

(6) Control of run-on to the drip pad;

(7) Control of run-off from the drip pad;

(8) The interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;

(9) Procedures for cleaning the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned.

(10) Operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;

(11) Procedures for ensuring that, after removal from the treatment vessel, treated wood from pressure and non-pressure processes is held on the drip pad until drippage has ceased, including recordkeeping practices;

(12) Provisions for ensuring that collection and holding units associated with the run-on and run-off control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;

(13) If treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals.

(14) A description of how each drip pad, including appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.572 of this chapter. This information should be included in the inspection plan submitted under § 270.14(b)(5) of this part.

(15) A certification signed by an independent qualified, registered professional engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) of § 264.571 of this chapter.

(16) A description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under § 264.573(a) of this chapter. For any waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how § 264.310 (a) and (b) of this chapter will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under § 270.14(b)(13).

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

23. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

24. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication and a new footnote 2 to read as follows:

**§ 271.1 Purpose and scope.**

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Promulgation date | Title of regulation | Federal Register reference | Effective date |
|---|---|---|---|
| * | * | * | * |
| December 6, 1990 | The listing of wastes from wood preserving processes.[2] | [Insert FR publication citation] | June 6, 1991. |
| * | * | * | * |

[2] These regulations implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032. Listings of Hazardous Waste Nos. F034 and F035, test methods for benzo(k)fluoranthene, and technical standards for drip pads do not implement HSWA.

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**PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION**

25. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

26. Section 302.4(a) is amended by adding the waste streams F032, F034, and F035 to Table 302.4 in alphanumeric order. The appropriate footnotes in Table 302.4 are republished without change.

**§ 302.4 Designation of hazardous substances.**

(a) * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

| Hazardous Substance | CASRN | Regulatory Synonyms | Statutory RQ | Statutory Code † | Statutory RCRA Waste Number | Final RQ Category | Final RQ Pounds (Kg) |
|---|---|---|---|---|---|---|---|
| * * * * * | | | | | | | |
| F032 Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except wastes from processes that have had the F032 waste code deleted in accordance with § 261.35 and do not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | | | 1 * | 4 | F032 | X | 1(0.454) |
| F034 Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | | | 1 * | | F034 | X | 1(0.454) |
| F035 Wastewaters, process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol. | | | 1 * | 4 | F035 | X | 1(0.454) |
| * * * * * | | | | | | | |

† indicates the statutory source as defined by 4 below.
1* indicates that the 1-pound RQ is a CERCLA statutory RQ.
4 indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001

[FR Doc. 90-28406 Filed 12-5-90; 8:45 am]
BILLING CODE 6560-50-M

federal register

Thursday
December 6, 1990

Part III

# Environmental Protection Agency

40 CFR Parts 195 and 700
Fees for Radon Proficiency Programs and Training Courses; Proposed Rule

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 195 and 700**

**[FRL-3745-2]**

**Fees for Radon Proficiency Programs and Training Courses**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to amend title 40 of the Code of Federal Regulations chapter I, subchapter F by adding a new part 195 which authorizes the Agency to collect fees in advance for certain voluntary radon proficiency programs and training courses. This rule is proposed under the authority of the Indoor Radon Abatement Act (Title III, Toxic Substances Control Act). Fees for other authorized training courses and proficiency programs may be proposed at a later date.

**DATES:** Comments must be received on or before February 4, 1991.

**ADDRESSES:** All written comments must be identified with the document control number "A–90–09" and be submitted in duplicate to: EPA Air Docket (LE–131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments received on this proposed rule will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, in room M–1500, first floor Waterside Mall, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Jamie Burnett, Radon User Fee Information Line, 9300 Lee Highway, room 434, Fairfax, VA 22031, Telephone: (703) 934–3485.

**SUPPLEMENTARY INFORMATION:**

## I. Authority

Section 305 of the Indoor Radon Abatement Act (IRAA) of 1988, 15 U.S.C. 2665, authorizes the Administrator of EPA to impose fees for radon proficiency programs and training courses to recover costs associated with developing and operating these programs. In this document EPA is proposing a fee for two proficiency programs, the National Radon Measurement Proficiency (RMP) Program and the National Radon Contractor Proficiency (RCP) Program Examination, and a daily fee for each of three radon training courses — a Classroom, a Field, and an Instructor course. Fees for other training courses and proficiency programs may be proposed at a later date.

For the first year of fee collection, the EPA is proposing a fee of $1,000 for each application to the RMP Program by a primary company and $200 for each secondary company included on the primary company RMP application, a fee of $200 for the RCP examination, a fee of $135 per day for the Classroom training course, a fee of $160 per day for the Field training course, and a fee of $300 per day for the Instructor training course. Beginning in the second year, EPA is proposing to adjust the fees each year to a level expected to recover full annual costs of each program and course. Fees are authorized to be deposited into a special account in the United States treasury with amounts in the account to be appropriated for establishing and administering these programs and courses. State and local governments are exempt from paying a fee to participate in the programs or courses covered by this proposed rule. The EPA is interested in receiving comments on these proposed fees.

This amendment is being cross-referenced to title 40 of the Code of Federal Regulations (CFR) chapter I, subchapter R, part 700 which lists regulations promulgated under the Toxic Substances Control Act (TSCA). Although IRAA was enacted as Title III of TSCA, this regulation is listed under subchapter F of the CFR because it deals solely with a radiation program.

## II. Background

Radon is a naturally occurring odorless, invisible radioactive gas. Radon comes from the radioactive decay of uranium. Radon can be found in high concentrations in soils and rocks containing uranium, granite, shale, phosphate, and pitchblende.

The EPA, the American Lung Association, and the American Medical Association have identified radon as the second leading cause of lung cancer in the United States. The EPA estimates that 20,000 lung cancer deaths a year in the United States may be attributed to radon. Homes with radon problems occur in every State. The EPA estimates that 1 out of 10 homes will have elevated radon levels.

The EPA has developed proficiency programs and training courses to assist States address the radon problem. These proficiency programs and training courses are part of a comprehensive Agency program to address the radon problem nationwide. In 1988, Congress enacted the IRAA which directs EPA to continue these training courses and proficiency programs and develop an additional proficiency program for radon mitigation contractors. The statute also authorizes the collection of a user fee from applicants to each of these programs. The programs are described below.

### *A. National Radon Measurement Proficiency (RMP) Program*

1. *Overview of the RMP.* The EPA established the RMP Program in 1986 to assist States and the public in selecting companies to measure indoor radon and radon progeny. Radon progeny are the radioactive isotopes which follow radon 222 in the decay chain, primarily polonium-218, lead-214, bismuth-214, and polonium-214. The measurement companies and each of their radon measurement methods are tested. The names of those applicants who meet program requirements are listed in the RMP proficiency report "The National Radon Measurement Proficiency Program Cumulative Proficiency Report" (EPA 520/1-90-001, January 1990). The RMP program is a voluntary proficiency program, not a Federal certification program.

The purposes of the program are to provide information to the public about radon measurement company capabilities and to promote standard measurement and quality assurance procedures for all radon measurement companies. The program is performed in "rounds" which are testing cycles.

Any individual or company that provides indoor radon measurement services to the public and has radon analysis capability may apply to the RMP Program. Companies are categorized as primary or secondary. Primary companies provide radon measurement services to the public, including calibration services, and have analysis capability, either from the instrument (for example, continuous working level monitor) or from their own laboratory. These companies apply to the RMP, are evaluated by EPA and if successful, are listed in the RMP Proficiency Report.

Secondary companies provide indoor radon measurement services to the public, have no analysis capability and use the laboratory analysis of a primary company. Secondary companies do not apply to the RMP. Their names are submitted to EPA by the primary company applying to the program. If the primary company is listed in the RMP Proficiency Report, the secondary company is also listed.

The program is performed in "rounds" or testing cycles. As of December 1989 there have been six rounds, two in 1988, two in 1987, one in 1988, and one in 1989. Round 6 of the RMP was performed from March 1989 through December 1989.



2. *Round 6 of the RMP.* Data from Round 6 is the basis for the economic analysis for this proposed rule. In Round 6, a primary company had to meet the following requirements to participate successfully in the National RMP Program: (1) Follow EPA measurement protocols described in EPA documents "Indoor Radon and Radon Decay Product Measurement Protocols" (EPA 520–1/89–009, March 1989) and "Interim Protocols for Screening and Followup Radon and Radon Decay Product Measurements" (EPA 520–1/86–014–1, February 1987); (2) demonstrate management tracking capability, i.e., the ability to transmit correct measurement results to the proper homeowner; and (3) demonstrate the ability to measure radon and radon progeny within the established program measurement criteria.

Each primary company submitted one application for each device type within a radon measurement method to be tested.There are currently nine radon measurement methods tested in the RMP: alpha track detection, activated charcoal adsorption, charcoal liquid scintillation, electret ion chamber/EIC, continuous radon monitoring, grab radon sampling, continuous working-level monitoring, grab working-level sampling, and radon progeny integrated sampling/RPISU. Additional methods may be tested in future rounds as methods and protocols are developed.

Secondary companies did not submit applications. Names of secondary companies were provided by the primary companies.

### *B. National Radon Contractor Proficiency (RCP) Program*

The EPA established the RCP Program in the fall of 1989 as required under IRRA. The purpose of the program is to provide information to the public about indoor radon mitigation contractor capabilities and to promote quality radon mitigation. It is a voluntary proficiency program, not a Federal certification program.

Radon mitigation contractors are typically construction and residential services contractors who provide radon mitigation services to the public. To participate successfully in the program, a radon mitigation contractor must meet the following requirements: (1) Pass a written examination; (2) conduct business according to the EPA mitigation guidance; (3) successfully complete continuing education requirements, and (4) agree to be re-examined every 2 years. The names of those applicants who meet program requirements are listed in the EPA National Radon Contractor Proficiency Report.

The fee proposed in this document is for the examination only. Additional fees for other costs of the program may be proposed in the future.

The structure and management of the RCP are subject to change as requirements and experience dictate.

### *C. Radon Training Courses*

In 1986 EPA established a training course to provide initial training on radon measurement, diagnosis, mitigation, and prevention to the States and private sector personnel. This course has been expanded to three separate courses, Classroom, Field, and Instructor. The Classroom course consists of intensive classroom training and includes slides, visual aids, demonstrations, and video presentations. The course manual can be used as a reference after the course is completed.

The Field course consists of diagnosis and mitigation work on a building (house, school, etc.). This course may include some classroom training but consists mostly of field demonstrations and mitigation installation. The Instructor course is a classroom course which prepares individuals to teach radon diagnosis, mitigation, and prevention in the classroom and field courses.

## III. Proposed Fee System

### *A. Activities Proposed for Cost Recovery*

EPA proposes to recover both direct and indirect costs for the various activities conducted under each program and course. Direct costs include personnel salaries, benefits, and travel, as well as equipment costs and contractor expenses. Indirect costs are those resources, outside of direct program costs, that are expended to manage, oversee, and provide counsel to program offices. They include costs such as those incurred by EPA's administrative, policy, research, legal, investigative, and international offices. Indirect costs also include such things as overhead costs, including utilities and rents.

In this document EPA proposes to set fees to recover as much as possible the full costs of the RMP and the Instructor training course, beginning in the first year of fee collection, and continued subsequently each year through annual fee adjustments. The basis for setting fees for each of these programs and courses is to calculate the average full costs, which are defined as the total cost of all the activities of the program or course divided by the expected participation in the program. EPA also proposes to charge fees that are lower than the average full cost to the EPA for the RCP Examination and the Classroom and Field radon training courses for the first year of fee collection. Beginning in the second year, all fees will be adjusted to a level expected to recover full annual costs for each program and course. A description of these programs and courses can be found in Unit II of this preamble. Specific activities proposed for cost recovery for each program and course are described below. Further information on activities and a detailed description of costs and how they were calculated is presented in Unit IV of this preamble and in the Economic Impact Analysis of Radon User Fees, February 1990, EPA, Office of Radiation Programs.

The time period over which costs are averaged is important for each analysis. Because of the anticipated changes to the RMP Program, the costs are averaged for a particular single test round. For the RCP Examination and training courses, costs and participation were estimated over a 1–year period, and the full average costs were computed for that time period.

1. *National Radon Measurement Proficiency (RMP) Program.* The costs for this program include both direct costs, such as salaries and equipment, and a proportion of indirect costs. Direct costs cover application revision, printing, mailing and processing; calibration, exposure of detectors and measurement analysis; notification of results; update and maintenance of data base; and preparation of the proficiency report. Indirect costs include management and supervisory costs.

2. *National Radon Contractor Proficiency (RCP) Program Examination.* The costs for this program include both direct costs, such as salaries, and a proportion of indirect costs. Direct costs cover such activities as: periodic updates, a proficiency report, and data base management. Indirect costs include management and supervisory costs.

3. *Radon training courses.* The costs of each course include both direct costs, such as salaries, and a proportion of indirect costs. Direct costs include travel, conference facilities, equipment, and development and printing of a manual. Indirect costs include management and supervisory costs.

### *B. Fees for Training Courses*

EPA proposes to establish a different fee for each of the radon training courses. The course fees are based on

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the operating costs of the particular course and therefore vary for each course.

All fees for the training courses will be charged on a daily basis. For example, the fee for 2 days of the Classroom course would be twice the proposed daily Classroom course fee.

These daily fees will not change if the course is adjusted to accommodate a different audience. The operating costs will be very similar for each course type even though the audience may change because the basic material used will not change.

This fee structure is consistent with the statutory requirement that fees reflect the costs of operating the courses. This structure also provides EPA flexibility to continue to charge a user fee for training courses as program needs change and new courses evolve. This provision, however, does not allow course participants to attend and pay for less than a full course. For example, a participant in a 3-day training course may not elect to attend and pay for only 2 days of the course.

EPA projects that some of its courses will have higher costs than existing training courses. These higher costs will result in higher course fees. To encourage attendance at these courses, EPA will offer their training courses at a subsidized competively priced level the first year. The fee the second year will be adjusted to reflect the full cost of the training course.

*C. Proposed Fee Schedule*

The proposed fees for each program and course are as follows:

| Program | Amount[1] |
|---|---|
| Radon Measurement Proficiency Program | |
| a. Primary Company[2] | $1,000 |
| b. Secondary Company[3] | 200 |
| Radon Contractor Proficiency Program | |
| a. Exam | 200 |
| Radon Training Courses (Per Day) | |
| a. Classroom | 135 |
| b. Field | 160 |
| c. Instructor | 300 |

[1] This amount is for each application by a primary company per device type within a radon measurement method. A separate application must be submitted every round by a primary company for each device type within a radon measurement method.
[2] This amount is for each secondary company included on an application by a primary company.
[3] Full cost recovery fees will be published in the FEDERAL REGISTER each year, based on annual adjustments accounting for changes in participation and operating costs.

*D. Payment, Refund, and Deferral Procedures*

Payment must be in United States currency in the form of a certified check payable to the U.S. Environmental Protection Agency and sent to EPA. The fee must be submitted with the completed application form for the appropriate program or course. Payment of applicable fees must be remitted before EPA will process or review an application for the programs or courses discussed in this proposed rule.

Refunds will be available for all the fees if requested within the time limits set out below. No refund will be issued for requests received after these limits. All refund requests must be submitted in writing to EPA.

Refunds will be the amount of the fee paid less the amounts listed below. The cost of processing a refund request for each program and course is $55, and is incurred in each program or course every time a refund is requested. This amount covers financial processing and program tracking costs.

Refunds for the RCP Exam and the training courses will be the amount of the fee paid less the cost of processing the refund request — $55. The $55 will be withheld for each application to a training course, regardless of the length of the course.

Refunds for the RMP will be the amount of the fee paid less the $55 cost of processing the refund request, and the $335 average variable costs per application incurred prior to a refund request. These variable costs are withheld from the $1,000 primary applicant fee because the RMP includes significant initial processing costs for applications and scheduling of tests. The $200 fee for each secondary company will be refunded in full.

| Program | Deadline for EPA Receipt of Refund Request | Amount Withheld from Fee Paid |
|---|---|---|
| Radon Measurement Proficiency Program | 30 calendar days after EPA receives application | $ 390 |
| Radon Contractor Proficiency Program | 14 calendar days prior to exam date | |
| a. Examination | | 55 |
| Radon Training Courses (Per Course) | 14 calendar days prior to scheduled course | |
| a. Classroom | | 55 |
| b. Field | | 55 |
| c. Instructor | | 55 |

If an applicant has paid a fee and is unable to participate in the scheduled RMP, RCP exam, or training course, the fee may be deferred to the next available offering of the program or course for which the fee was paid. The deferral must be requested in writing and sent to EPA. The deferral request must be made within the time limits given above. One deferral per fee paid is permitted. No refund is available after a deferral request has been processed. If the applicant is still unable to participate in or attend the deferred program or course, the fee is forfeited.

*E. Adjusting the Fees for Full Cost Recovery Level, Inflation, and Other Factors*

EPA's intent is to charge fees which continue to reasonably reflect full cost recovery, beginning in the second year of fee collection. For the RMP program and the Instructor training course, the fees proposed in this rule are already set at levels expected to recover full costs, beginning in the first year of fee collection. For the RCP exam and the Classroom and Field training courses, the fees proposed in this rule are set at a subsidized level for the first year of fee collection, in order to encourage participation. Beginning in the second year of fee collection, EPA intends to announce annual adjustments to the fees for each program and course so that the fee level accurately reflects annual participation and operating cost changes in order to attain full cost recovery each year. Specifically, EPA intends, through a three-step process, to charge fees that will reasonably recover its full costs for each program and course, beginning in the second year. First, EPA will estimate for the upcoming year, the costs of providing each of the programs and courses discussed above. The Agency will account for future additional fixed costs (e.g. updating training materials) and increases in variable expenses due to inflation and other factors. In order to calculate increases in costs due to inflation, EPA will use one of three indexes: the Federal General Schedule (GS) pay-scale, the Consumer Price Index (CPI), or a component of the CPI, such as services. EPA requests comments in particular on the appropriateness of these indexes for calculating increases expenses due to inflation, as part of the first step for adjusting fees. Second, EPA will estimate the number of participants for each program and course. To do this, EPA will initially estimate the potential number of participants for each program and course, and then develop individual participation rates for each program and course. These participation rates will at least be based on the past participation rates, potential costs, and estimated future participation rates. Third, EPA will calculate the per capita costs individuals or firms should pay to enable the Agency to fully recover both its fixed and variable expenses each year. EPA requests comments on the appropriateness of this three-step process for adjusting the fees to reasonably achieve full cost recovery. EPA will announce the annual fee adjustment in the **Federal Register** as a final rule to become effective 30 days or more after promulgation, as specified in the final rule.



**IV. Economic Impacts**

*A. Introduction*

The EPA's analysis for the proposed fees is based on an analysis of the estimated costs of each of the programs or courses, estimates of participation, and the impacts on the participation in response to fees. The analysis is contained in Economic Impact Analysis of Radon User Fees, February 1990, EPA, Office of Radiation Programs.

*B. Methodology*

Two different methodologies were employed for estimating participation in response to the imposition of fees, one for the RMP Program, and one for the RCP Program Examination and Radon Training Program. The RMP methodology employed a framework based on selected interviews with industry representatives to determine the impact of several levels of fees, and estimating the potential reduction in participation as the fee level increased. The second methodology employed a framework of examining fees charged for similar programs or courses, both those of Government agencies and those of private business. If full cost fees appeared to greatly exceed fees charged elsewhere in the market, EPA assumed that participation in EPA programs or courses would be significantly affected.

*C. Impacts*

1. *Total costs.* The total cost of the RMP, the RCP Examination, and the three training courses, is estimated at $3.4 million annually. EPA is proposing fees of about $2.5 million annually, which represents 72 percent of EPA's operating costs for the programs and courses.

2. *RMP Program.* EPA's analysis shows an average full cost recovery fee of $1,000 for each primary applicant, and $200 for each secondary company included on the primary company application is reasonable for the first year. Although the imposition of a fee may result in a decrease in participation, factors other than the fee will cause much of the drop-out. The total estimated cost of the RMP program for a single round (testing cycle) is $2.1 million, and the recovered fees are expected to equal this cost, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

3. *RCP Program Examination.* The EPA's analysis shows that the first year average full cost recovery fee of $1,394 would be significantly higher than fees charged for similar kinds of exams. However, EPA anticipates that the average full cost recovery fee for the second year will be significantly lower than $1,394, due to an increase in participation by the second year of fee collection. Therefore, the proposed fee for the first year is $200. This is somewhat higher than the fee charged for comparable exams provided by States and the private sector and will allow EPA to recover some of its costs for operating the program, during the first year of fee collection. EPA believes the subsidized first year will boost participation. The total estimated cost of the program and recovered fees are expected to total $761,000 and $109,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

4. *Radon training courses* —a. *Classroom.* EPA's analysis shows that the first year average full cost recovery daily fee of $494 would be significantly higher than fees charged for similar radon training courses by States and the private sector. Therefore, the proposed daily fee is $135 for the first year, which is comparable to fees charged for radon classes by States and the private sector. The total annual estimated cost of the course and recovered fees are expected to total $183,000 and $45,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

b. *Field.* EPA's analysis shows that the first year average full cost recovery daily fee of $549 would be significantly higher than fees charged for similar radon training courses by States and the private sector. Therefore, the proposed daily fee is $160 for the first year which is comparable to the fees charged for radon classes provided by States and the private sector. The total annual estimated cost of the course and recovered fees are expected to total $261,000 and $76,000, respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

c. *Instructor.* EPA's analysis shows that an average full cost recovery daily fee of $300 would be reasonable. No comparable training is currently available. Applicants successfully completing this course will be able to offer their instruction services for payment. Therefore, the proposed daily fee is $300 for the first year. The total annual estimated cost of the course and recovered fees are expected to total $130,000 and $128,000 respectively, during the first year. Full cost recovery fees will be published in the **Federal Register** each year, based on annual adjustments accounting for changes in participation and operating costs.

**V. Other Statutory Requirements**

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement to conduct a regulatory impact analysis. This proposed rule is not major as that term is defined in section 1(b) of E.O. 12291 because: the annual effect of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by Executive Order 12291.

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*B. Regulatory Flexibility Act*

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C. 60 *et seq.*). The EPA has determined that a significant number of small businesses are covered by this regulation, in particular by the fees charged for the RMP program and the RCP Examination. For the purposes of this analysis, EPA is defining small businesses as those with less than 10 employees. This definition was reviewed by the Small Business Administration.

Approximately 23 percent of the primary company applicants and 50 percent of the secondary companies included on primary company applications are estimated to drop out of the program as a result of the imposition of fees. This drop-out from the program is not considered a problem for several reasons. First, the RMP is a voluntary proficiency program developed to test the ability of firms to provide adequate measurement capability to the public. Firms do not have to participate in EPA's program except in selected States where certification programs require participation. Second, the estimate of drop-out participation also accounts for firms which will go out of business for reasons separate from the imposition of the fee, such as volatility of the radon measurement market. Third, the overall purpose of the program is to ensure the availability of proficient measurement firms to the public. EPA's determination is that even if the estimated drop-out rates do occur, an adequate number of proficient radon measurement firms will be available to the public.

For the RCP Examination and the training courses, estimates of drop-out cannot be quantified but a number of small businesses may be affected. However, EPA does not believe that a substantial adverse impact will result because all of these programs are voluntary. The training programs offered by EPA will only expand training opportunities available to the public. For the RCP exam (also voluntary), EPA cannot determine participation very accurately because the program is being initiated and implemented at the same time as this fee is being proposed. EPA has decided to charge prevailing market fees in the first year for the Classroom course and the Field course. When the fees for these programs are adjusted in the second year to full recovery costs, the programs will be well established and should be better able to absorb these fees. For the Instructor course, no comparable training is available, and EPA believes that no significant impact will occur.

The Agency is requesting comment on the size and effects of the fee proposed today.

*C. Paperwork Reduction Act*

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

**List of Subjects in 40 CFR Parts 195 and 700**

Environmental protection, Radon, User fees.

Dated: November 16, 1990.

William K. Reilly,

*Administrator.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

1. In subchapter F, by adding a new part 195 to read as follows:

## PART 195—RADON PROFICIENCY AND TRAINING PROGRAMS

**Subpart A—General Provisions**

Sec.

195.1 Purpose and applicability.
195.3 Definitions.

**Subpart B—Fees**

195.20 Fee payments.
195.22 Submission of fee.
195.25 Refund and deferral of fees paid.
195.30 Failure to remit fee.

**Authority:** 15 U.S.C. 2665.

### Subpart A—General Provisions

**§ 195.1 Purpose and applicability.**

(a) *Purpose.* The purpose of this part is to collect fees from applicants for the following EPA programs and courses: the National Radon Measurement Proficiency (RMP) Program, the National Radon Contractor Proficiency (RCP) Program Examination, and the EPA radon training courses.

(b) *Applicability.* This part applies to all non-exempt applicants to the following EPA programs and courses: the RMP, the RCP Examination, and the EPA radon training courses.

**§ 195.3 Definitions.**

Definitions in 15 U.S.C. 2601 *et seq.* apply to this part unless otherwise specified in this section. In addition, the following definitions apply:

*Applicant* means a person or company which submits an application to the RMP, RCP Examination, or one of the radon training courses.

*Application* means the document submitted to EPA by applicants to the RMP, RCP Examination, or one of the radon training courses, which requests participation in a program or course. In the RMP, an application is submitted every round for each device type within a method to be evaluated by EPA.

*Deferral of a fee* means an applicant has paid a fee but is unable to participate in the scheduled RMP, RCP exam, or radon training course. Upon timely request, EPA will apply the fee to the next available program or course for which the fee was paid.

*Primary company* means a company which provides indoor radon measurement services to the public, including calibration services, and has radon analysis capability.

*Radon measurement device* means a device used to measure the concentration of radon or radon decay products.

*Radon measurement method* means a uniform process or operation for measuring radon or radon progeny which is uniquely associated with a specific type of measurement device or instrument.

*Radon mitigation contractor* means a construction or residential services contractor who provides radon mitigation services to the public.

*Round of the RMP* means a testing cycle.

*Secondary company* means a company which provides indoor radon measurement services to the public, has no analysis capability, and uses the laboratory analysis of a primary company.

### Subpart B—Fees

**§ 195.20 Fee payments.**

(a) *Persons who must pay fees.* All non-exempt applicants to the National Radon Measurement Proficiency (RMP) Program, the National Radon Contractor Proficiency (RCP) Program Examination, and the EPA radon training courses shall remit an appropriate fee identified in paragraph (c) of this section in accordance with the procedures in paragraph (d) of this section.

(b) *Exemption.* State and local governments are exempt from paying a fee to participate in the programs and courses covered by this rule.

(c) *Fees.* Applicants shall remit fee payments in advance to EPA as follows:

| Program | Amount[1] |
|---|---|
| National Radon Measurement Proficiency Program | |
| a. Primary Company[2] | $1,000 |
| b. Secondary Company[3] | 200 |
| Radon Contractor Proficiency Program | |
| a. Examination | 200 |
| Radon Training Courses (Per Day) | |
| a. Classroom | 135 |
| b. Field | 160 |
| c. Instructor | 500 |

[1] This amount is for each application by a primary company per device type within a radon measurement method. A separate application must be submitted every round by a primary company for each device type within a radon measurement method.

[2] This amount is for each secondary company included on an application by a primary company.

[3] Full cost recovery fees will be announced in the FEDERAL REGISTER, beginning in the second year, based on annual adjustments accounting for changes in participation and operating costs.

(d) *Adjustment of fees.* This fee schedule will be adjusted annually, through a three-step process, to charge fees that will reasonably recover its full costs for each program and course, beginning in the second year. First, EPA will account for future additional fixed costs (e.g. updating training materials) and increases in variable expenses due to inflation and other factors. In order to calculate increases in costs due to inflation, EPA will use one of three indexes: the Federal General Schedule (GS) pay-scale, the Consumer Price Index (CPI), or a component of the CPI, such as services. Second, EPA will estimate the number of participants for each program and course, using individual participation rates, based on at least the past participation rates, potential costs, and estimated future participation rates. Third, EPA will calculate the per capita costs individuals or firms should pay to enable the Agency to fully recover both its fixed and variable expenses each year. The new fee schedule will be published in the **Federal Register** as a final rule to become effective 30 days or more after publication, as specified in the rule.

**§ 195.22 Submission of fee.**

(a) Each remittance under this rule shall be in United States currency and shall be paid by certified check payable to the order of the U.S. Environmental Protection Agency. The fee must be submitted with the completed application form for the appropriate program.

(b) All fees shall be sent to: EPA Radon User Fees, P.O. Box 953723, St. Louis, MO 63195–3723.

**§ 195.25 Refund and deferral of fees paid.**

(a) *Refund procedures.* Requests for a refund of a fee shall be submitted in writing by the applicant to EPA. All refund requests must be received by EPA within the time limits set out in this paragraph. No requests received by EPA after the time limits set out below will be processed or issued. No refund is available after an applicant has requested a deferral under paragraph (b) of this section. Refunds will be the amount of the fee paid less the amounts listed in the table below.

| Program | Deadline for EPA Receipt of Refund Request | Amount Withheld from Fee Paid |
|---|---|---|
| Radon Measurement Proficiency Program | 30 calendar days after EPA receives application | $ 390 |
| Radon Contractor Proficiency Program | | |
| a. Examination | 14 calendar days prior to exam date | 55 |
| Radon Training Courses (Per Course) | 14 calendar days prior to scheduled course | |
| a. Classroom | | 55 |
| b. Field | | 55 |
| c. Instructor | | 55 |

(b) *Deferral procedures.* A request for deferral of a fee shall be submitted in writing by the applicant to EPA. A deferral is available if an applicant has paid a fee and is unable to participate in the scheduled RMP, RCP exam, or training course. The deferral may be only to the next available program or course for which the fee was paid. One deferral per fee paid is permitted. The request must be received by EPA within the time limits set out in paragraph (a) of this section. No request received by EPA after the time limits set out in paragraph (a) of this section will be processed or issued. No refund is available after a deferral request has been processed.

**§ 195.30 Failure to remit fee.**

The EPA will not consider an application to the National Radon Measurement Proficiency (RMP) Program, the Contractor Proficiency (RCP) Program Examination, or the EPA radon training courses to be complete, and will not process or review the application, until appropriate remittance under § 195.22 has been received by EPA.



**PART 700—[AMENDED]**

2. In part 700:

a. By revising the authority citation for part 700 to read as follows:

**Authority:** 15 U.S.C. 2625 and 2665.

b. By adding a new § 700.51 to read as follows:

**§ 700.51 Radon fees.**

Fees relating to radon proficiency programs and training courses authorized under the Toxic Substances Control Act appear at 40 CFR part 195.

[FR Doc. 90–28627 Filed 12–5–90; 8:45 am]
BILLING CODE 6560–50–F

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federal register

Thursday
December 6, 1990

Part IV

# Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Parts 621 and 655
29 CFR Part 504

## Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses; Interim Final Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 621 and 655

[RIN 1205-AA84]

Wage and Hour Division

29 CFR Part 504

[RIN 1215-AA55]

**Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses**

**AGENCIES:** Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of attestations by facilities seeking to use nonimmigrant aliens as registered nurses under H–1A visas.

The attestations, required under the Immigration and Nationality Act, as amended by the Immigration Nursing Relief Act of 1989 (INRA), pertain to substantial disruption in the delivery of health care services, absence of adverse effect on wages and working conditions of similarly employed registered nurses, payment to nonimmigrant alien nurses employed by the facility at wage rates paid to other registered nurses similarly employed by the facility, taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant alien nurses, absence of a strike or lockout, and giving appropriate notice of filing.

Facilities are required to submit these attestations to DOL as a condition for being able to petition the Immigration and Naturalization Service (INS) for H–1A nurses. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

**DATES:**

*Effective Date:* The interim final rule is effective on December 6, 1990.

*Comments:* The comment period on this rulemaking is being reopened through February 4, 1991. Written comments on the July 6, 1990, proposed rule will be considered as part of this rulemaking. Comments on the interim final rule shall be submitted by mail and be received by February 4, 1991.

**ADDRESSES:** Send comments on 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, to the Assistant Secretary for Employment and Training, Department of Labor, room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Director, U.S. Employment Service.

Send comments on 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, to the Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Written comments on the collection of information requirements also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** On 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, contact Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0163 (this is not a toll-free number).

On 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E; contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–523–7605 (this is not a toll-free number).

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## I. Paperwork Reduction Act

The information collection requirements contained in the rule were submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). See also 5 CFR part 1320.



OMB has cleared the requirements and assigned them OMB Control No. 1205–____. Comments on the paperwork requirements also were requested from the public.

A number of employers and OMB commented that the estimate of 2–4 hours per response in connection with preparing and submitting the attestation and associated documentation is unrealistically low. See 55 FR at 27997. DOL has re-evaluated this estimate and, in consideration of the substantial changes incorporated in the interim final rule, now estimates up to 2 hours for completing and submitting the attestation form and accompanying explanations, and 8–10 hours for compiling the documentation required to be maintained at the facility.

Also, in response to an OMB comment, the attestation filing requirement contained at § ____.310(c)(1)(i) has been changed to require the chief executive officer's original signature on only one Form ETA 9029 submitted to the Department. Two copies of the completed (and signed/dated) Form ETA 9029 also must be submitted with the original, but do not require original signatures. (The proposed rule had required the submission of signed triplicate original Form ETA 9029's.)

ETA estimates that approximately 1,000 facilities per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average up to 2 hours for completing and submitting the attestation form and any accompanying explanations, and 8–10 hours for searching existing information/data sources and gathering, compiling and maintaining the information/data needed at the facility. It is likely that the burden will be considerably less in the second and subsequent years in which a facility submits an attestation.

ETA estimates that approximately 10 facilities per year will be submitting notices of strikes or lockouts. The public reporting burden for this collection of information is estimated to average less than 1 hour per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the notice of strike or lockout.

ETA estimates that approximately less than 10 States per year will be submitting annual State plans. Fewer than that number of States currently have a significant number of H–1 nurses working at facilities in the State. The public reporting burden for this collection of information is estimated to average less than 40 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the annual State plan.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

## II. Background

### *A. Introduction*

The Immigration Nursing Relief Act of 1989 (INRA), Public Law 101–238, 103 Stat. 2099 (December 18, 1989), amended the Immigration and Nationality Act (INA) to add new sections 101(a)(15)(H)(i)(a) and 212(m) governing the admission to the United States of nonimmigrant aliens for employment as registered nurses (RNs) during a five-year "pilot" period. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The INRA amendments to the INA recently were further amended by section 162(f) of the Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (November 29, 1990).

(Note: The provisions of INRA do not apply to nurses admitted under the Free Trade Agreement with Canada, whose admission is authorized under section 214(e) of the INA.)

Congress enacted this legislation based on its finding of a shortage of RNs in the United States. See, *e.g.*, H.R. Rep. No. 101–288, 101st Cong., 1st Sess. 1–4 (October 16, 1989). Some health facilities have been relying on nonimmigrant RNs admitted under H–1 visas to meet this need. However, the numbers of visas available for such aliens to adjust their immigration status to permanent residency have been limited. *Id.* at 2 and 3.

At the time of enactment, many such RNs were facing the end of their periods of admission to the United States and faced return to their home countries. Many H–1 RNs potentially affected by the INRA were thought to be employed in critical care and emergency service units. *Id.* at 2. The House Judiciary Committee found that departure of these H–1 RNs would have a detrimental impact on the care provided to critically ill patients. *Id.*

The INRA addresses this situation by permitting certain RNs who had H–1 status to become permanent residents. Public Law 101–238, sec. 2, 8 U.S.C. 1255 note.

At the same time, Congress was concerned about the perceived increased dependence of health care providers on foreign RNs. As a result, INA, as amended by the INRA, links future access to nonimmigrant RNs to the taking of significant steps by the facility to develop, recruit and retain U.S. workers in the registered nursing profession while ensuring that the temporary foreign nurses admitted are protected in their employment and that their employment does not adversely affect the employment of U.S. nurses. 8 U.S.C. 1182(m). The regulations in this document effectuate that purpose.

### *B. Comment on Proposed Rule*

On July 6, 1990, a proposed rule was published in the Federal Register to implement the Department's responsibilities relating to attestations by facilities seeking to use nonimmigrants as registered nurses, with a comment period ending July 23, 1990. 55 FR 27992. The comment period was subsequently extended through August 6 by notice in the Federal Register on July 27. 55 FR 30720.

Comments were received from 41 entities and individuals, as well as comments from the Office of Management and Budget under the Paperwork Reduction Act and 5 CFR part 1320. Sixteen commenters are employers or employer organizations (hospitals, nursing homes, homes for the aging). These commenters generally assert that the proposed regulations go beyond the statute and Congressional intent; that the proposed requirements would be extremely difficult for most facilities to meet; and that the documentation requirements are too heavy. These views were expressed also by the American Immigration Lawyers Association and the Office of Management and Budget (OMB)

Seven commenters were unions, nurses associations and the Commission on Graduates of Foreign Nursing Schools (CGFNS). These commenters generally view the proposed regulations favorably, believing they are consistent with the statute and Congressional intent; that they provide necessary protections for U.S. nurses; and that the proposed administrative processes and requirements are appropriate and not unduly burdensome to facilities.

Twelve commenters were the National Council of State Boards of Nursing, Inc., and eleven individual State Boards of Nursing. All of these recommended a modification to the definition of "nurse".

Two Federal agencies, the Department of Veterans Affairs (VA) and OMB

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submitted comments. The VA's comments dealt with the administrative structure peculiar to that organization in relation to the proposed regulations. OMB's comments were noted above.

Comments were also received from four members of Congress: Senator Kennedy, Chairman of the Senate Judiciary Committee's Subcommittee on Immigration and Refugee Affairs; Senator Hatch, ranking minority member of the Senate Committee on Labor and Human Resources; Congressman Hawkins, Chairman of the House Committee on Education and Labor; and Congressman Morrison, Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees and International Law. Senators Kennedy and Hatch and Congressman Morrison opposed some basic features of the proposed regulations; Congressman Hawkins was generally supportive of the regulations.

To the extent feasible, all of these comments, as well as the INA amendments in the Immigration Act of 1990, have been considered in preparing this interim final rule. A number of changes to the proposed regulations, discussed below, have been made as a result of this review. Other comments received remain under the review.

While the comments received during the comment period on the proposed rule continue to be considered, DOL is publishing this final rule on an interim basis. The comment period is being reopened through February 4, 1991, with comments invited on the interim final rule. A final rule will be published at a later date. The preamble to that final rule will discuss fully the comments received on the proposed rule and the interim final rule, and, where appropriate, the interim final rule will be amended.

*C. Changes in Interim Final Rule*

1. Modification of DOL Attestation Review Function

This interim final rule eliminates much of the DOL function, contained in the proposed regulation, of reviewing attestations when submitted and deciding whether to accept or reject them for filing based on conformance with the regulations. Both Senator Kennedy, Chairman of the Senate Judiciary Committee's Subcommittee on Immigration and Refugee Affairs, and Congressman Morrison, Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees, and International Law and one of the principal authors of the legislation, commented that, in their view, this function as described in the proposed regulation was not intended by the legislation. This was also the view expressed by many facility commenters and OMB.

In response to these comments, the interim final rule substantially restricts this function—DOL will review only those elements of attestations where facilities choose to utilize the "other" categories under Attestation Elements One (substantial disruption) and Four (timely and significant steps), the bases advanced by facilities claiming the unreasonableness of taking a second step under the fourth attestation element, and the bases advanced by facilities for demonstrating a bona fide medical emergency (for the purpose of securing a waiver of Element Four (timely and significant steps or State plan), where a facility uses H–1A nurses only through a nursing contractor). See also Item II.C.8 of this preamble, below, for a discussion of nursing contractors and worksite facilities using contract nurses. For all other attestation elements and parts thereof, DOL's function when receiving the attestation will be limited to simply checking that the facility has attested to compliance with the regulatory standards. Thus, any facility's attestation which is complete and does not select either of the "other" categories included in Attestation Elements One and Four, does not claim the unreasonableness of taking a second step under Element Four, and does not claim a bona fide medical emergency with respect to Element Four, is not subject to DOL review and will simply be "accepted for filing." However, the interim final rule specifically recognizes as a basis for filing a complaint of "misrepresentation" that the attestation as submitted (including any required supporting information *e.g.*, submitted explanations and retained documentation) does not meet the regulatory standards.

2. Kind and Location of Supporting Documentation

The proposed documentation requirements have basically been retained in the interim final rule as far as content is concerned, but the requirements as to submission and location of the documentation have been substantially changed. Congressman Morrison, while supporting the kinds of documentation specified in the proposed rule, indicated that the intent of a streamlined attestation process would best be served by keeping the amount of documentation filed with the attestation to a minimum, and requiring the bulk of it to be retained at the facility. (OMB, in its official comments to the Department on the paperwork burden, also stated that there should be a streamlined attestation process.) The interim final rule requires submission, with certain exceptions, of only a brief explanation of what documentation is available at the facility for each attestation element and how it indicates compliance with the regulatory standard for the element. This is consistent with Congressman Morrison's comment that "an attempt should be made to limit the documentation being filed to that which will assist a party in interest in determining whether to challenge a petition." The exceptions as to documentation relate to the "other" categories under Attestation Elements One (substantial disruption) and Four (timely and significant steps), to the unreasonableness of taking a second step under the fourth attestation element, and to a bona fide medical emergency with respect to Element Four. In these specific cases, sufficient explanation must be submitted for DOL to determine whether the standards of "substantial", "significant", "unreasonable", and "bona fide medical emergency" have been met. DOL may request additional explanation and/or documentation from the facility in making this determination. In addition, the full documentation specified in the regulations for all attestation elements must be retained at the facility for the duration of the attestation period, and for as long thereafter as the facility continues to employ an H–1A nurse hired under the attestation. Further, the facility shall attest that the documentation will be available for public examination on a timely basis. Failure to provide such timely access may be the basis for a complaint as a "failure to perform."

A definition of "bona fide medical emergency" is included in the final rule, for the purpose of justifying a 60-workday or more use of H–1A contract nurses, by a worksite facility seeking a waiver of Attestation Element Four (timely and significant steps or State plan). It means a situation in which the services of one or more H–1A contract nurses are necessary at a worksite facility (which itself does not employ an H–1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area. See discussion on computation of "workdays", below.

It is the Department's intention to construe the term "bona fide medical emergency" narrowly. For example, threat of death or serious impairment of health due to a natural disaster or epidemic, using up the capacity of facilities in the geographic area (as defined), could be a basis for the 60-workday waiver.



3. Other Documentation Requirements

OMB and a number of employer commenters noted that certain documentation may be fairly readily available, but not for the time periods specified in the proposed rule (*i.e.*, the 12-month period prior to the filing of the attestation). For example, it may be available on a calendar year basis, and recompiling the information was asserted to be an additional and unnecessary paperwork burden. DOL weighed this paperwork concern against the need to have fairly current information. The interim final rule has been changed to require documentation relating to any twelve month period ending within three months prior to the submission date of the attestation. Many employer commenters also indicated that they would not be in a position to provide the required documentation immediately, but nevertheless have an urgent need to have access to H–1A nurses. The interim final regulation permits a first-time filing of an attestation without supporting documentation required to be maintained and immediately available at the facility, on the condition that such documentation be available in the prescribed form at the facility within 90 days after filing. This provision may be invoked only on a claim of business exigency by the facility, which shall be able to provide a full explanation and support for its claim if requested or challenged. This provision is available only for attestations filed prior to April 1, 1991.

4. Training Requirements

The proposed rule required that the facility cover the total cost of the training for nurses (for facilities electing step one of the fourth attestation element) and that the nurses must be allowed to attend such training on paid duty time. Many employers commented that these requirements far exceed the financial ability of virtually all facilities to meet. They also maintained that the paid-duty-time requirement would only exacerbate the nursing shortage by taking nurses away from their nursing duties. While DOL believes that Congressional intent is that the timely and significant steps should go beyond normal existing practice, DOL does not believe they should be unreachable standards. Nor does DOL believe Congress intended any of these steps to exacerbate the nursing shortage by reducing the availability of U.S. nurses. Accordingly, the interim final rule eliminates the paid-duty-time requirement and requires that the facility cover only tuition costs, whether through direct financing by the facility or by arranging for such financing by a third party. (Note, however, that the Wage and Hour requirement in 29 CFR 785.27 *et seq.* relating to hours worked for the purposes of the Fair Labor Standards Act nevertheless still must be observed.)

5. Definition of "Nurse"

The National Council of State Boards of Nursing, individual State Boards, the CGFNS and the American Nurses Association have all recommended changes to the definition of "nurse" which would recognize State differences in defining nursing duties and practices, and clarify that those foreign nurses who have not yet been licensed by State Boards must have passed the CGFNS examination. The interim final rule makes such changes, as they are consistent with and clarify DOL's original intent.

6. Eliminate Private Household Exemptions

The proposed regulation provided an exemption from the applicability of certain attestation elements for private households. Congressman Hawkins and other commenters questioned DOL's authority for permitting such exemptions, since the statute, prior to the Immigration Act of 1990, made no such provision. More recently, however, section 162(f)(2)(A) of the Immigration Act of 1990 amended section 101(a)(15)(H)(i)(a) of the INA to exclude specifically private households from having to file attestations where their use of H–1A nurses is solely through a nursing contractor. See also Item II.C.8 of this preamble, below, for a discussion of nursing contractors and facilities using contract nurses. In consideration of the recent statutory amendments and the comments received, DOL has decided to eliminate such exemptions, except in the circumstances provided for in the INA amendments made by section 162(f)(2)(A) of the Immigration Act of 1990.

7. Definition of "geographic area"

Upon further consideration by DOL, the phrase "any place within the MSA *is* deemed to be within normal commuting distance [Emphasis added]" from the proposed rule has been revised in the interim final rule to read "any place within the MSA *may be* deemed to be within normal commuting distance [Emphasis added]". This change is intended to permit greater flexibility in making prevailing wage determinations where anomalies could otherwise exist.

8. Nursing Contractors and Facilities Using Nursing Contractors

Nursing contractors are entities that employ registered nurses and supply these nurses, on a temporary basis and for a fee, to health care facilities or private homes.

The proposed rule required that nursing contractors refer H–1A nurses only to facilities which had attestations in effect in their own right. A number of commenters, particularly homes for the aging, commented that this requirement was unreasonable where facilities use only contract nurses on an emergency basis, for extremely limited periods of time. OMB also expressed concerns about this provision.

Section 162(f) of the Immigration Act of 1990 recently amended the INA to make clear that, where nursing contractors are involved, both the contractor and the worksite facility (other than private households (see Item II.C.6 of this preamble, above)) must file attestations. However, section 212(m)(2)(A) of the INA, as amended by section 162(f)(2)(B)(iii) of the Immigration Act of 1990, also grants to the Secretary discretion in determining the requirements of the worksite facility attestation:

> (A) * * *
> In the case of an alien for whom the employer has filed an attestation under this subparagraph and who is performing services at a worksite other than the employer's or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as may be appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause.
> (8 U.S.C. 1182(m)(2)(A).)

Section 162(f)(2)(B)(ii) of the Immigration Act of 1990 amended section 212(m)(2)(A)(iii) of the INA, clarifying that the third attestation element (relating to facility wage) is inapplicable to a worksite facility which uses the services of an H–1A nurse only through a nursing contractor. 8 U.S.C. 1182(m)(2)(A)(iii).

Accordingly, the interim final rule permits a worksite facility using the services of H–1A contract nurses, but which worksite facility itself does not employ, seek to employ, or file a visa petition on behalf of an H–1A nurse, to request and be granted waivers of:

(a) All but the fifth attestation element (strike, lockout, intent to influence

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bargaining representative election) and the sixth attestation element (notice), if the worksite facility will use no more than 15 workdays of H–1A contract nursing services in any three-month period of the attestation's one-year period of validity, to meet emergency needs on a temporary basis;

(b) Only the substantial disruption aspect of the first attestation element (but not the no-layoff aspect of that element) and the fourth attestation element (timely and significant steps), if the worksite facility will use more than 15, but not more than 60, workdays of H–1A contract nursing services in any three-month period of the attestation's one-year period of validity; or

(c) Only the fourth attestation element (timely and significant steps), in the case of a bona fide medical emergency, regardless of the number of H–1A contract nurse workdays anticipated during the one-year period of the attestation's validity.

The worksite attestations described above, unless invalidated, shall remain valid and on file for one year, as do all attestations covered by the interim final rule. Worksite facilities which themselves employ one or more H–1A nurses are not eligible for waivers.

A workday of H–1A contract nursing services is a workday of services performed by one H–1A contract nurse. Thus, for example, fifteen H–1A contract nurses working on the same day provide 15 workdays of H–1A contract nursing services on that one day; as does one H–1A contract nurse working for 15 days.

Comments specifically are invited on the waiver provisions for worksite facilities using H–1A contract nursing services, particularly the aspects dealing with numbers of workdays.

The interim final rule also specifically permits a nursing contractor to act as the authorized agent for its worksite facilities in preparing the attestations. Each worksite facility, however, retains liability for its attestation.

*D. Changes Considered But Not Made*

Two issues raised by a number of commenters appeared to merit special consideration for possible changes in the interim final rule, but after careful deliberation the proposed rule was left unchanged with respect to these issues.

1. Multi-site Entities

The VA and other entities having multiple sites, as well as OMB, commented that such entities should be permitted to file one attestation on behalf of all of their sites, on the basis that such entities are the single employer for all the employees at the various sites they represent, and have a number of centralized functions, such as recruitment, training and the like. While this position has some merit and was carefully considered prior to the proposed rule and in context of comments received, on closer examination it does not seem to offer any real advantage for these entities. Also, area prevailing wage rates would be different for sites in different metropolitan or rural areas. DOL also believes these entities would be significantly increasing the vulnerability of their entire systems to suspension from the program, should but one of their sites incur a violation or should a lay-off of nurses occur at only one of their sites. DOL believes these entities could simplify the process for their individual sites by developing materials which could be used by all sites, with perhaps some minor modifications, and providing other assistance.

However, it should be noted that the interim final rule states that separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. An example is an employer who manages a nursing home and a hospital in the same area and who regularly shifts or rotates the nurses between the two. Non-contiguous sites, even within the same geographic area, which do not share the same nursing staff and operational purpose are not a single facility. For example, hospitals which are located on opposite sides of a municipality, but which are managed or owned by a single entity, are separate facilities if they do not regularly share nursing staff and operational purpose.

2. Prevailing Wage

Senator Hatch and several employer commenters questioned DOL's interpretation of the statutory phrase "not adversely affect the wages" as requiring the prevailing wage in the geographic area. Senator Hatch maintains that this interpretation was specifically considered and purposefully rejected by the Congress in removing the term "prevailing wage rate" from the third attestation element (relating to facility wage rates) in the version of the bill originally passed by the House, and from Step Three of the fourth attestation element (relating to payment of wages higher than currently being paid in the geographic area). He also maintains that because INRA has instituted a new attestation process, rather than a traditional labor certification process, any terms having an established interpretation under a labor certification process should not be interpreted in the same way under the new attestation process. DOL has again carefully reviewed this issue and concluded that the statutory construction requires the interpretation that DOL has adopted, for the reasons discussed in Item II.D.3.b of this preamble, below. While the attestation process for H–1A nurses is clearly not the same as the labor certification process for other visa categories, the "not adversely affect" language is the same as used elsewhere in the same statute, the INA. Therefore, DOL is constrained to interpret duplicate language in the same statute consistently. In addition, the alternative interpretation offered by commenters would render the language of Attestation Element Two surplusage, as it would duplicate the effect of the third attestation element.

*E. Attestation Process*

The INRA requires a health care facility seeking access to temporary foreign RNs (under the newly created H–1A visa category) to file an "attestation" with the Department of Labor (DOL or Department) on an annual basis. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m)(2) (A) and (C). This includes worksites (except private households) seeking to use the services of an H–1A nurse through a nursing contractor. See Immigration Act of 1990, section 162(f). The attestation must assure that the following six statutory criteria are met:

(1) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such alien(s). A facility is not considered to meet this clause if, within the previous year, it laid off RNs.

(2) The employment of the alien(s) will not adversely affect the wages and working conditions of RNs similarly employed.

(3) The alien(s) employed by the facility will be paid the wage rate for RNs similarly employed by the facility.

(4) Either:

(a) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient RNs who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant RNs, or

(b) The facility is subject to an approved State plan for the recruitment and retention of nurses (see 8 U.S.C. 1182(m)(3)).

(5) There is not a strike or lockout in the course of a labor dispute, and the employment of such alien(s) is not intended or designed to influence an election for a bargaining representative for RNs of the facility.

(6) At the time of the filing of the petition for RNs, notice of the filing has been provided by the facility to the bargaining representative of the RNs at the facility or, where there is none, notice of the filing has been provided to RNs employed at the facility through posting in conspicuous locations.

8 U.S.C. 1182(m)(2)(A) (i) through (vi).

Each of the following is a "significant step" reasonably designed to recruit and retain RNs (see Item (4)(a) above):

(i) Operating a training program for RNs at the facility or financing (or providing participation in) a training program for RNs elsewhere;

(ii) Providing career development programs and other methods of facilitating health care workers to become RNs;

(iii) Paying RNs' wages at a rate higher than currently being paid to RNs similarly employed in the geographic area;

(iv) Providing adequate support services to free RNs from administrative and other non-nursing duties;

(v) Providing reasonable opportunities for meaningful salary advancement by RNs.

8 U.S.C. 1182(m)(2)(B) (i) through (v); see 8 U.S.C. 1182(m)(2)(A)(iv)(I).

Items (i) through (v) above are not an exclusive list of the significant steps that may be taken to meet the requirements of the fourth attestation element, and a facility is not required to take more than one step if the facility can demonstrate that taking a second step is not reasonable. 8 U.S.C. 1182(m)(2)(B).

In the case of an alien for whom an employer has filed an attestation and who is performing services at a worksite other than the employer's worksite or other than a worksite controlled by the employer, the Secretary may waive such requirements for the attestation for the worksite as the Secretary may determine are appropriate in order to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause. 8 U.S.C. 1182(m)(2)(A) (as amended by section 162(f)(2)(B)(iii) of the Immigration Act of 1990).

These attestations are to be available for public examination in the Employment and Training Administration (ETA) National Office in Washington, D.C. 8 U.S.C. 1182(m)(2)(E)(i). The Department must also inform the Immigration and Naturalization Service (INS) that such attestation is on file as a prerequisite for INS approving a petition to bring in foreign RNs under H–1A visas (which visas are issued by the U.S. Department of State (DOS)). 8 U.S.C. 1101(a)(15)(H)(i)(a).

In summary, DOL's administrative functions under the INRA basically consist of receiving and accepting for filing attestations (in some limited cases, reviewing the attestations prior to acceptance or rejection); making the accepted attestations available for public inspection; and notifying INS of those attestations that DOL has on file. These administrative functions are delegated, by regulation, to ETA.

*F. Complaints, Investigations and Enforcement*

The Department also is authorized to investigate allegations that a facility has failed to meet the conditions attested to or that a facility has misrepresented a material fact in an attestation. 8 U.S.C. 1182(m)(2)(E) (ii) through (v). If violations are found, DOL may impose administrative remedies, including civil money penalties (CMPs); shall notify the Attorney General, who shall not approve petitions for a period of at least one year for the facility; shall obtain back wages; and may impose other remedies. These activities constitute the Department's enforcement functions under the INRA. Under the regulations, the enforcement functions are delegated, by regulation, to the Department's Employment Standards Administration (ESA), Wage and Hour Division.

*G. Advisory Group*

Finally, the INRA requires the Secretary of Labor (Secretary) to provide for the appointment, by January 1991, of an advisory group which will include representatives of DOL, the Department of Health and Human Services, the Attorney General, hospitals, and labor organizations representing RNs. Public Law 101–238, sec. 3(c)(2), 103 Stat. at 2103.

The INRA calls for this advisory group to advise the Secretary on:

(1) The impact of this legislation on the nursing shortage,

(2) Programs that health care facilities may implement to recruit and retain U.S. RNs,

(3) State recruitment and retention plans, and

(4) The advisability of extending the law beyond the current five-year duration of this pilot program.

The advisory group will be coordinated by the DOL Office of the Assistant Secretary for Policy.

## II. Contents of Regulations

The following is a section-by-section summary of the primary components of the regulations. In particular, where one or more options were considered, these options are discussed briefly. Commenters are encouraged to comment, whether pro or con, on all options. Commenters are also invited to suggest additional options. This will provide the fullest possible administrative record as a basis for promulgating a final rule.

*A. Section—.300 Purpose and Scope*

This section describes the overall purpose of the INRA, and delimits the scope of these regulations (Subparts D and E).

*B. Section—.301 Overall Process for Utilizing H–1A Nurses*

This section describes briefly the overall process a facility must follow in order to secure an H–1A nurse, including the roles of individual DOL components and the INS and DOS. This section is intended to provide health care facilities with an understanding of where these regulations (Subparts D and E) fit within the overall H–1A visa process.

*C. Section—.302 Definitions*

This section provides definitions for terms used in the regulations, including the following:

1. "Date of Filing"; and "Accepted for Filing"

The terms "date of filing" and "accepted for filing" together determine the beginning date of the period for which an attestation will be valid. The INRA states that an attestation shall "expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor." 8 U.S.C. 1182(m)(2)(C)(i). In order not to penalize a facility for the time it takes DOL to process the attestation, "date of filing" has been defined to be the date the attestation is accepted for filing by DOL.

2. "Board of Alien Labor Certification Appeals (BALCA)"

The "Board of Alien Labor Certification Appeals" has been designated as the entity within the Office of Administrative Law Judges to review appeals from any rejections of attestations and annual State plans and certain attestation acceptances, because this mechanism has been found to be effective in achieving uniformity and consistency in reviewing appeals under the alien labor certification programs. See 20 CFR 655.112(a)(1), 656.26, 656.27, and 656.50.

3. "Employer"; "Nursing Contractor"; and "Facility"

The terms "employer," "nursing contractor," and "facility," taken together, identify the kinds of entities which are eligible to submit attestations for H–1A nurses under the INRA. Consideration was given to whether nursing contractors and private

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households were intended to be covered. The regulations permit all employers who were eligible to apply for H–1 nurses in full-time employment in the past to continue to be eligible to apply for H–1A nurses.

In the case of nursing contractors, both the contractor and the using worksite (other than private households) are required to file complete attestations, with limited exceptions, discussed above. Comments specifically are invited on the interim final rule's implementation of those exceptions.

Specifically excluded are facilities which are not involved in the direct provision of health care services. Comments are invited whether such facilities should be included.

4. "Layoff"

The term "layoff" is defined specifically to exclude a situation where a separated nurse is offered retraining and retention at the same facility in another activity but refuses. Occupations other than nursing are excluded from the no-layoff attestation.

5. "Nurse"

The term "nurse" includes all persons who are or will be authorized by a State Board of Nursing to practice as registered nurses.

6. "Prevailing Wage"; "Geographic Area"; and "Similarly Employed"

The terms "prevailing wage," "geographic area," and "similarly employed" together serve to define the wage which must be paid in order to prevent adverse effect on the wages of registered nurses similarly employed (see the second attestation element). Consideration was given to whether a single rate for nurses in an area should be the standard or whether a series of rates, recognizing various factors as legitimate bases for differentials, should be permitted.

These definitions permit a series of rates, with various bases for differentials permitted at the discretion of the State Employment Security Agency (SESA) conducting the survey.

*D. Section—.310 Attestations*

1. General

This section describes the basic process for submitting an attestation, prescribes what information should be submitted with the attestation and what supporting documentation should be maintained at the facility. In developing the requirements for attestations, DOL is cognizant of Congressional intent that the process not be unduly burdensome and not involve lengthy processing by DOL. DOL also recognizes the need to establish criteria which meet the statutory terms regarding "substantial disruption", "significant" steps, and the like, indicating that Congress intended this to be more than a paper exercise. In addition, DOL is very cognizant of the need to have criteria and standards in the process which could serve as a basis for complaints and subsequent investigation by DOL. The criteria strike an appropriate balance of these several considerations.

2. Nursing Contractors

For a nursing contractor, the attestation must include an additional special element. The nursing contractor must attest that it will refer H–1A nurses to perform nursing services only at worksite facilities which themselves (other than private households) have valid attestations on file with ETA/DOL. The nursing contractor will keep in its file and make available for inspection a copy of each worksite facility's attestation, on Form ETA 9029, accepted for filing by ETA (the supporting documentation for the worksite facility's attestation need not be retained by the nursing contractor in its files; that documentation will be retained by the worksite facility for inspection). While this special element imposes additional responsibilities on nursing contractors, it is a necessary responsibility to ensure that the intent of the INRA is carried out. A nursing contractor may serve as an authorized agent, develop model attestation forms, and provide other technical assistance in preparing attestations for facilities to which it may refer nurses.

3. Attestation Elements

The attestation filed by a health care facility contains six elements, with certain exceptions for facilities using H–1A nurses only through a nursing contractor. Complete supporting documentation relating to each of these elements must be maintained at the facility and be open to public examination. With the attestation it will be sufficient, with certain exceptions, to provide a brief explanation of what supporting documentation is available and maintained at the facility for each attestation element, and how such documentation indicates compliance with the regulatory standard. The documentation exceptions relate to facilities which utilize the "other" categories under the first and fourth attestation elements, assert the unreasonableness of taking a second step under the fourth attestation element, or claim a bona fide medical emergency with respect to the fourth attestation element. In these cases, fuller explanations are required to permit DOL to make the appropriate determinations. Where a facility can make a showing of business exigency, the supporting documentation may be compiled and maintained within 90 days after filing the attestation, provided such filing is made prior to April 1, 1991.

a. *Element I: substantial disruption.* Four alternative indicators, in addition to the no-layoff requirement, are in the regulations. The first relates to the vacancy rate for nurses; the second to unutilized beds at a facility; the third to the elimination or curtailment of essential health care services; and the fourth to the inability to effect plans to provide needed new services. These are intended as simple, objective proxy indicators of substantial disruption, which should be suitable for most institutions using H–1A nurses. However, it is also recognized there may be situations where these indicators are not appropriate. The regulations provide an alternate approach in these instances, but do require that the facility explain why the four primary measures are not appropriate for that facility and how the alternate measures chosen meet the statutory standard of "substantial disruption".

b. *Element II: no adverse effect.* In proscribing "adverse effect" on nurses similarly employed, the INRA uses language used in the alien labor certification process for many years. With respect to wages, this has been interpreted in this document as requiring at least the prevailing wage in the geographic area. The phrase "not adversely affect the wages" is a well-established legal term of art that has been used for decades in alien labor certification programs, with a very specific meaning of at least the area prevailing wage for the occupation. See, *e.g.*, 8 U.S.C. 1182(a)(14) and 1188; 8 CFR 214.2(h); and 20 CFR 656.40. Presumably Congress was aware of this meaning in incorporating this language in the INRA. Nevertheless, there may be some confusion on this issue, related to the Senate amendment which specifically struck the word "prevailing" from the *facility* wage requirement, which is the third element to which the facility must attest. However, that third element, which relates to the going rate for the occupation at the facility, is separate and distinct from the phrase "not adversely affect the wages" in the second attestation element. The construction of the legislation supports this interpretation by DOL. This use of a prevailing wage standard is specific to this program, in light of the statutory language ("not adversely affect the wages"), and does not mandate the application of such a standard under future legislation.

Commenters are invited to provide information on the potential impact on wages and health care costs which may result from this area prevailing wage requirement.

The facility does not independently determine the prevailing wage. Instead, the facility, prior to submitting its attestation to ETA, shall request, from the State employment service in whose State the worksite for H–1A nurses will be located, a determination of the prevailing wage for nurses in the worksite's geographic area.

The facility may not know, at the time it submits the attestation, the number of H–1A nurses for whom it will submit visa petitions during the year, or in what specific jobs (*e.g.*, specialties or shifts) such nurses will be employed. For that reason, the regulations provide that the facility's supporting documentation summarize its entire pay and other compensation package for nurses employed by it in categories of positions for which H–1A nurses are being or will be hired or promoted into, and positions for which H–1 or H–1A nurses have been promoted into. Categories of positions not covered by the supporting documentation are not covered by the attestation and, therefore, H–1A nurses may not occupy those positions.

Regarding working conditions, the regulations apply an adverse effect standard on a facility basis, due to the administrative infeasibility of making prevailing practice determinations on an area-wide basis at this time.

c. *Element III: facility wage.* Facilities must have as supporting documentation a summary of their pay schedule for nurses, including an explanation of the factors accounting for differentials. This is needed to serve as a basis for comparison with the wages paid any H–1A nurses. The summary must cover all categories of positions in which H–1A nurses are or will be hired or promoted into. Categories of positions not covered by the documentation are not covered by the attestation and, therefore, H–1A nurses may not occupy those positions.

d. *Element IV: Timely and significant steps; or State plan*—(1) *Timely and significant steps.* The objective of these timely and significant steps, as stated in the INRA, is to "remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." 8 U.S.C. 1182(m)(2)(A)(iv)(I). The criteria have been developed with this objective in mind; they also attempt to meet the statutory requirement that the steps be both "timely" and "significant." This is interpreted to mean that such steps should represent efforts which go beyond the normal practices for the industry.

Where possible, both qualitative and quantitative criteria are established for these steps. A facility is required to take at least two of these steps, unless the facility can demonstrate that taking a second step is unreasonable.

The regulations specify how a facility which claims that taking a second step is not reasonable shall make the required showing. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care services, or if the provision of nursing services would otherwise be jeopardized by the taking of such a step. An alternative definition considered, on which public comment is invited, is a showing that the costs of an additional step would outweigh the benefits.

The regulations describe each of the five steps specified in the legislation and several additional steps which might be considered as alternatives. The legislation specifically states that the statutory list is not intended to be all-inclusive, and still other steps may be taken. However, a facility taking steps other than those identified in the regulation must submit a description of the steps it is taking and an explanation of how and why these steps are of comparable "timeliness" and "significance" to those specified in the statute. An alternative to meeting the specific criteria for the steps also is provided for facilities which meet certain goals for reducing their reliance on nonimmigrant nurses. This alternative may be characterized as a results-driven approach, which could apply to the second and subsequent years a facility submits attestations for filing.

(i) Significant step I: Operating a training program for nurses. The regulations interpret this as applying to training programs for persons who are already RNs, rather than for persons to become RNs, although consideration was given to the latter interpretation as well. The latter is provided for in the second significant step, for those who are U.S. health care workers and want to become registered nurses, and in the "other" significant steps for other U.S. workers who want to become registered nurses.

The training of RNs may be continuing education endeavors that are approved by a professional association/organization, a State-approved institution of higher learning, or a State Board of Nursing. The training of RNs also may be courses which lead to an academic degree in nursing and which are accredited by the appropriate State authority.

Regarding the number of U.S. nurses who should participate in such training, since the presumed objective of this step is to retain U.S. nurses, the number relates to those leaving during the past year. The statutory requirement that the facility "provide" or "finance" such training is interpreted to mean covering the total tuition costs of such training, either directly or through arrangements with a third party.

(ii) Significant step II: Facilitating health care workers to become nurses. The regulations include programs which lead both directly and indirectly to becoming an RN, and are limited to U.S. workers who are working or have worked in health care occupations. Since the presumed objective of this step is to recruit U.S. workers as nurses, the number required to participate relates to the number of vacancies at the facility. Financing by the facility, either directly or arranged through a third party, shall cover the total costs of such programs.

(iii) Significant step III: Paying wage higher than that in geographic area. The regulations set this standard at five percent above the prevailing wage. This is thought to be a "significant" differential, but not an unreasonable one.

(iv) Significant step IV: Free nurses from non-nursing duties. The regulations call for non-nursing duties to be excluded from nurses' duties at a facility, except under extraordinary circumstances.

Alternative standards considered include establishing a ratio of support staff to nurses. However, there could be legitimately wide variations in such ratios between different types of institutions. Another alternative considered was to establish a percent limit on the proportion of nurses' time which could be spent on non-nursing duties. However, this would appear to sanction performance by nurses of non-nursing duties.

(v) Significnat step V: Opportunities for salary advancement. This step addresses the concern that nurses' starting wages are reasonably adequate and some salary advancement in the first few years generally occurs, but thereafter a salary plateau is reached which creates a disincentive for nurses to remain in the field. The standard calls for continuing salary increases over a ten-year period.

(vi) Other steps. The regulations provide examples of other steps which



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could be taken and, depending on their scope and other factors, may meet the statutory requirement to be "timely and significant." However, commenters are invited to suggest other possible steps of comparable timeliness and significance to those defined in the statute.

(vii) Alternative to criteria for each step. This alternative is designed to permit facilities to achieve the objective of the INRA, without continuing to subject them to the detailed requirements as to the specific means of achieving that objective. It is not applicable in the first year a facility submits an attestation for filing, but is an alternative in the second and subsequent years, provided certain goals for reducing reliance on temporary foreign nurses are achieved.

(2) *Subject to State plan.* As an alternative to attesting to and documenting the timely and significant steps described above, the facility may attest that it is subject to an approved State plan. The State plan is described in the discussion of §_____.315 below.

e. *Element V: No strike; lockout; or intent or design to influence bargaining representative election.* The regulations make this provision apply only to nurses. While the legislation speaks to the absence of a strike or lockout at the time the attestation is submitted, the regulations also require that the facility notify DOL should a strike or lockout occur during the time the attestation is in effect. This will permit DOL to certify such strike or lockout to INS, which may result in INS discontinuing H–1A visa petition approvals under the INS regulations. See 8 CFR 214.2(h)(16), 55 FR 2606 (January 26, 1990). This approach is consistent with the INRA.

f. *Element VI: Notice of filing.* While the INRA calls for notice of filing when the visa petition is filed, the regulations also require such notice when the attestation is submitted. This approach is consistent with the intent of Congress that all aspects of the process be open to public review. This is also necessitated to facilitate the complaint and investigation process called for in the INRA.

4. Acceptance, Rejection, and Appeals

If a facility attests to compliance and provides the information required under Elements II, III, V, and VI; and attests that it meets the no-layoff requirement as well as the criteria relating to the vacancy rate, the unutilized bed rate, the elimination/curtailment of services, and/or the inability to provide planned and needed new services under Element I; and attests that it is taking two or more of the timely and significant steps specified in INRA under Element IV; and is not a facility intending to use H–1A nurses only through a nursing contractor and does not claim a bona fide medical emergency exemption from Element IV; DOL will accept, without review, the attestation for filing. If a facility chooses to use an alternative measure of substantial disruption under Element I; or asserts that taking more than one of the timely and significant steps specified in INRA under Element IV is unreasonable; or proposes to take as one or more timely and significant step (under Element IV) one or more steps of the facility's own devise; or claims a bona fide medical emergency exemption from Element IV as a worksite using H–1A nurses through a nursing contractor only; DOL will review the facility's explanation for doing so and determine whether the attestation meets the statutory and regulatory standards, and DOL will accept or reject the attestation for filing. Where DOL reviews the attestation and determines whether to accept or reject it for filing, the regulations provide appeal rights to the Board of Alien Labor Certification Appeals (BALCA) in the DOL Office of Administrative Law Judges for parties affected by the acceptance/rejection decision.

5. Effective Date and Validity of Attestation

The regulations make the attestation effective as of the date it is accepted for filing by DOL. The attestation may be suspended, for purposes of securing additional H–1A nurses:

(1) Where the Wage and Hour Division, ESA, determines that a violation has been committed and no timely request for a hearing is filed;

(2) Where an administrative law judge, after a hearing, finds that a violation has been committed; or

(3) Where an administrative law judge finds no violation, but the Secretary, on a discretionary review, determines that a violation has been committed.

Such suspension, however, does not relieve the facility from having to continue to comply with the attestation during the remainder of the attestation's one-year period, where the facility has one or more H–1 or H–1A nurses. Further, the facility shall comply with the terms of the attestation, even if suspended, invalidated, or expired, and may be subject to remedies, as appropriate for violations, as long as H–1A nurses admitted under the attestation are used by the facility, unless the attestation is superseded by a subsequent attestation accepted for filing by ETA. The regulations state that the suspension will be for a period of at least one year, as stated in the statute. No new attestation will be accepted by ETA from a facility that fails to pay civil money penalties and/or fails to satisfy a remedy assessed by the Wage and Hour Administrator, where that penalty assessment or remedy has become the final agency action.

*E. Section _____.315 State plan*

This section describes the process for submitting the State plan, the contents of the plan, and the approval/disapproval and appeal processes.

The State plan is clearly intended to be broader in scope and coverage than the attestations of individual health care facilities. Therefore, the regulations require that all of the timely and significant steps specifically mentioned in the INRA be addressed in the State plan. See 8 U.S.C. 1182(m)(2)(b) (i) through (v). However, this does not change the more limited requirements for individual facilities covered by the State plan.

In addition, States are encouraged to develop and pursue efforts which go well beyond the steps specified in the INRA. The INRA clearly requires that where an individual facility is covered by a State plan, the specific criteria required for each step which might be chosen for that facility shall be addressed, just as if an individual facility attestation were being submitted. The facility must also maintain appropriate documentation for these steps.

The State may appeal to the BALCA from ETA/DOL's disapproval of a State plan. Further appeal of a BALCA decision on a State plan may be made by the Director of the U.S. Employment Service or by the State to the Secretary, whose consideration of the appeal is discretionary.

*F. Section _____.350 Public access*

This section describes the specific documents which shall be available for public review in the National Office of the Employment and Training Administration in Washington, D.C. and at the facility. The regulations require that all documents maintained at the facility pertaining to the process of apply for H–1A nurses by a facility be available to the public.

*G. Section _____.400 Enforcement authority of Administrator, Wage and Hour Division*

This section describes the scope of the investigative authority of the Administrator of the ESA Wage and Hour Division (Administrator), through which appropriate investigations are conducted. The Administrator (or designees) may enter and inspect places and records (and make transcriptions thereof), question persons, and gather information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested under 8 U.S.C. 1182(m) and these regulations (Subparts D and E).

In order to assure effective enforcement, this section states the Administrator's intention to maintain confidentiality for complainants and informants; prohibits interference in the investigation and discrimination against any person cooperating in an investigation or exercising that person's rights under 8 U.S.C. 1182(m); requires compliance with the public access provisions regarding documentation; and prohibits waivers of rights under the regulations and 8 U.S.C. 1182(m).



*H. Section _____.405 Complaints and investigative procedures*

This section states that, within 180 days of the receipt of a complaint sufficient to warrant an investigation, the Administrator will conduct an investigation and issue a written determination stating whether there is a basis to make a finding that the facility misrepresented a material fact, or failed to meet a condition in its attestation, or otherwise violated 8 U.S.C. 1182(m) or these regulations (Subparts D and E). Where the Administrator determines that an investigation is not warranted, the complainant shall be so notified and may submit a new complaint with such additional information as may be necessary.

*I. Section _____.410 Civil money penalties and other remedies*

Under this section, the Administrator may assess a civil money penalty up to $1,000 for each affected person with respect to whom there has been a violation and with respect to each instance in which such violation occurred. See 8 U.S.C. 1182(m)(2)(E)(iv). The assessment will be based on numerous relevant factors; an indicative list is presented in this section. The Administrator may also assess remedies, such as payment of back wages. All penalties and remedies shall be promptly paid or performed when the agency action becomes final. A facility that fails to comply with any penalty or remedy will be ineligible to participate in the H–1A program through any future attestation, until the penalty or remedy is satisfied.

*J. Section _____.415 Written notice and service of Administrator's determination*

This section provides that the Administrator's decision shall set out the determination as to violations, penalties, and remedies, and shall be served on all interested parties. Further, the decision shall inform the interested parties that they may request an administrative law judge hearing through the prescribed proceeding. Finally, the notice shall inform the interested parties that the Administrator shall notify ETA and INS of such violation, in the event that:

(1) A violation has been found and no timely request for a hearing is made;

(2) A hearing is requested and the administrative law judge finds a violation has been committed; or

(3) The administrative law judge finds no violation, but the Secretary, on discretionary review, determines that a violation has been committed.

Upon receipt of the Administrator's notice, ETA shall suspend the violator's attestation and notify INS, which agency is required to deny all H–1V visa petitions from the violator for a period of at least one year.

*K. Section _____.420 Request for hearing*

This section sets out the procedure and deadline by which an administrative law judge hearing may be requested. Any interested party may request a hearing. If the Administrator found no violation and the complainant or other interested party requests a hearing, the requestor shall be the prosecuting party, the facility shall be the respondent, and the Administrator shall have the option to participate as an intervenor or *amicus curiae*. If the Administrator found a violation and the facility or other interested party requests a hearing, the Administrator shall be the prosecuting party and the facility shall be the respondent.

*L. Sections _____.425 through _____.440 Administrative law judge proceedings*

These sections specify the procedural and evidentiary rules, the methods of service of documents, the rules for computation of time, and the deadlines for the administrative law judge hearing and decision.

*M. Section _____.445 Secretary's review of administrative law judge decision*

This section provides for discretionary review by the Secretary, at the request of the Administrator or an interested party. The deadlines and procedures for the review are prescribed.

*N. Section _____.450 Administrative record*

This section provides that the DOL Chief Administrative Law Judge maintain custody of the official record of the administrative proceedings and, in the event of a U.S. District Court action, certify and file that record with the clerk of the court.

*O. Section _____.455 Non-applicability of the Equal Access to Justice Act*

This section provides that attorney fees and costs under the Equal Access to Justice Act are not available in proceedings under this rule.

*P. Technical and clarifying amendments*

Other technical and clarifying amendments also are made, primarily by redesignating the temporary alien nonagricultural/nonlogging labor certification (H–2B) regulations from 20 CFR part 621 to 20 CFR part 655, subpart A.

**Regulatory Impact and Administrative Procedure**

*E.O. 12291:* The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

*Regulatory Flexibility Act:* At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

*Effective Date:* The interim final rule is effective without a 30-day delay in the effective date. Section 3(c)(1) of Public Law 101–238, 103 Stat. 2099, 2103 (December 18, 1989), had required regulations to be published by August 1, 1990. The attestation process applies to classification petitions filed with INS for nonimmigrant status beginning on September 1, 1990. See section 3(d) of Public Law 101–238, 103 Stat. 2099, 2103 (December 18, 1989). Absent this rule, no standards for attestations would exist

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and attestations and classification petitions could not be accepted. Given these facts and the Congressional finding of a shortage of nurses in the United States, the Department of Labor finds that good cause exists to publish the interim final rule effective immediately, with a request for comments, and that a delay in the effective date, for those reasons, would be contrary to the public interest. See 5 U.S.C. 553(d)(3).

**Catalog of Federal Domestic Assistance Number**

This program is not yet listed in the Catalog of Federal Domestic Assistance.

**List of Subjects**

*20 CFR Part 621*

Administrative practice and procedure, Aliens, Employment, Guam, Labor, Wages.

*20 CFR Part 655*

Administrative practice and procedure, Agriculture, Aliens, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

*29 CFR Part 504*

Administrative practice and procedures, Aliens, Employment, Enforcement, Health professions, Immigration, Labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

**Title 20—Employees' Benefits**

**CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR**

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

**PART 655—[AMENDED]**

1. The authority citation for part 655 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1186, and 8 CFR 214.2(h)(4)(i); subparts A and C also issued under 8 CFR 214.2(h)(4)(i); subpart B also issued under 8 U.S.C. 1186; subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103.

**PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES**

2. The heading for part 655 is revised to read as set forth above.

**Subpart A—Labor Certification Process for Temporary Employment in Occupations Other Than Agriculture, Logging, or Registered Nursing in the United States (H–2B Workers)**

3. The heading for subpart A of part 655 is revised to read as set forth above.

**§ 655.1 [Removed]**

4. Section 655.1 of part 655 is removed.

**PART 621—[REMOVED AND RESERVED]**

**§§ 621.1, 621.2, 621.3 [Redesignated as §§ 655.1, 655.2, 655.3]**

5. Sections 621.1, 621.2, and 621.3 of part 621 are redesignated as §§ 655.1, 655.2, and 655.3 of subpart A of part 655, respectively.

6. Part 621 is removed and reserved.

**PART 655—[AMENDED]**

**§ 655.0 [Amended]**

7. Section 655.0 is amended as follows:

a. In paragraph (a), (1) and (2) are redesignated as (i) and (ii);

b. Paragraph (a) is redesignated as paragraph (a)(1);

c. Paragraph (b), including the concluding text, is redesignated as paragraph (a)(2);

d. A heading is added for paragraph (a), reading "*Subparts A, B, and C.*";

e. The heading for newly designated paragraph (a)(1) continues to read "*General.*";

f. In paragraph (a), the phrase "This part sets" is removed from the first sentence and the phrase "Subparts A, B, and C of this part set" is added in lieu thereof;

g. A new paragraph (b) is added, to read as follows:

**§ 655.0 Scope and purpose of part.**

* * * * *

(b) *Subparts D and E.* Subparts D and E of this part set forth the process by which health care facilities can file attestations with the Department of Labor for the purpose of employing or otherwise using nonimmigrant registered nurses under H–1A visas.

* * * * *

**§ 655.00 [Amended]**

8. Section 655.00 is amended as follows:

a. The section heading is revised to read as follows:

**§ 655.00 Authority of the Regional Administrator Under Subparts A, B, and C.**

b. The first sentence in § 655.00 is amended by adding between the words "determinations" and "are" the phrase "under Subparts A, B, and C of this part".

**§ 655.000 [Amended]**

9. Section 655.000 is amended as follows:

a. In the first sentance, the phrase "and part 621 of this chapter do" is removed and the word "does" is added in lieu thereof;

b. In the first sentence, the period at the end of the sentence is removed and added in lieu thereof are the words ", and with respect to temporary employment or use of nonimmigrant (H–1A) registered nurses under Subpart D of this part."

**§ 655.1 [Revised]**

10. Newly designated § 655.1 is revised to read as follows:

**§ 655.1 Scope and purpose of Subpart A.**

This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant aliens in the United States in occupations other than agriculture, logging, or registered nursing.

**§ 655.2 [Amended]**

11. Newly designated § 655.2 is amended by removing the phrase "(Form ETA–575–B) for certification for temporary nonagricultural foreign labor" and by adding in lieu thereof the phrase "for certification of temporary employment of nonimmigrant aliens".

**§ 655.3 [Amended]**

12. Newly designated § 655.3 is amended as follows:

a. In paragraph (a), the acronym "RAETA" is removed and the phrase "Regional Administrator, Employment and Training Administration," is added in lieu thereof; and the word "he" is removed and the phrase "he or she" added in lieu thereof;

b. In paragraph (b), the phrase "parts 655 and 604 of this chapter" is removed and the phrase "part 652 of this chapter and subparts B and C of this part" is inserted in lieu thereof;

c. In paragraph (c), the words "RAETA", "he", and "him" are removed and the phrases "Regional Administrator, Employment and Training Administration,", "he or she", and "him or her" added in lieu thereof, respectively;

d. In paragraph (d), the phrase "his petition Form I–129B," is removed and the phrase "its visa petition," is added in lieu thereof.

*Subparts D and E [Added]*

12. Part 655 is amended by adding new subparts D and E, as set forth at the end of this document.



**Subpart D—Attestations by Facilities Using Nonimmigrant Aliens As Registered Nurses**

Sec.
655.300 Purpose and scope of subparts D and E.
655.301 Overview of process.
655.302 Definitions.
655.310 Attestations.
655.315 State plans.
655.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
655.350 Public access.

**Subpart E—Enforcement of H–1A Attestations**

655.400 Enforcement authority of Administrator, Wage and Hour Division.
655.405 Complaints and investigative procedures.
655.410 Civil money penalties and other remedies.
655.415 Written notice and service of Administrator's determination.
655.420 Request for hearing.
655.425 Rules of practice for administrative law judge proceedings.
655.430 Service and computation of time.
655.435 Administrative law judge proceedings.
655.440 Decision and order of administrative law judge.
655.445 Secretary's review of administrative law judge's decision.
655.450 Administrative record.
655.455 Non-applicability of the Equal Access to Justice Act.

**Authority:** 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1186, and 8 CFR 214.2(h)(4)(i); subparts A and C also issued under 8 CFR 214.2(h)(4)(i); subpart B also issued under 8 U.S.C. 1186; subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Public Law 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103.

Signed at Washington, DC, this 30th day of November, 1990.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*

**William C. Brooks,**

*Assistant Secretary for Employment Standards.*

**Roderick A. DeArment,**

*Acting Secretary of Labor.*

**Title 29—Labor**

**CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR**

Accordingly, title 29, Code of Federal Regulations, is amended by adding a new part 504 to read as follows, and subparts D and E are added to new part 504 as set forth at the end of this document:

**PART 504—ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES**

**Subparts A, B, and C [Reserved]**

**Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses**

Sec.
504.300 Purpose and scope of subparts D and E.
504.301 Overview of process.
504.302 Definitions.
504.310 Attestations.
504.315 State plans.
504.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
504.350 Public access.

**Subpart E—Enforcement of H–1A Attestations**

504.400 Enforcement authority of Administrator, Wage and Hour Division.
504.405 Complaints and investigative procedures.
504.410 Civil money penalties and other remedies.
504.415 Written notice and service of Administrator's determination.
504.420 Request for hearing.
504.425 Rules of practice for administrative law judge proceedings.
504.430 Service and computation of time.
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504.450 Administrative record.
504.455 Non-applicability of the Equal Access to Justice Act.

**Authority:** 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103.

Signed at Washington, DC, this 30th day of November, 1990.

**Roberts T. Jones,**

*Assistant Secretary for Employment and Training.*

**William C. Brooks,**

*Assistant Secretary for Employment Standards.*

**Roderick A. DeArment,**

*Acting Secretary of Labor.*

**Text of the Interim Final Joint Rule**

The text of the interim final joint rule as adopted by ETA and the Wage and Hour Division, ESA, in this document appears below:

**Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses**

Sec.
____.300 Purpose and scope of subparts D and E.
____.301 Overview of process.
____.302 Definitions.
____.310 Attestations.
____.315 State plans.
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**Subpart E—Enforcement of H–1A Attestations**

____.400 Enforcement authority of Administrator, Wage and Hour Division.
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**Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses**

**§ ____.300 Purpose and scope of subparts D and E.**

(a) *Purpose.* The Immigration Nursing Relief Act of 1989 (INRA) was enacted to provide relief for the nursing shortage crisis. Subpart D of this part sets forth the procedure by which health care facilities seeking to use nonimmigrant registered nurses may submit attestations to the Department of Labor relating to the effects of the nursing shortage on their operations, their efforts to recruit and retain United States workers as registered nurses and certain information on wages and working conditions for nurses at the facility. Subpart E of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INRA establishes a procedure for health care facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H–1A visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls for the health care facility to attest, and be able to demonstrate, that, *e.g.*, there would be substantial disruption to health services without the nonimmigrant nurses and that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts D and E of this part set forth the specific requirements for those procedures.

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(c) *Applicability.* Subparts D and E of this part apply to all facilities that seek the temporary admission or use of, nonimmigrants as registered nurses.

**§ _____.301 Overview of process.**

This section provides a context for the attestation process, to facilitate understanding by health care facilities that may seek nonimmigrant nurses under H–1A visas.

(a) *Federal agencies' responsibilities.* The United States Department of Labor (DOL), Department of Justice, Department of State, and Department of Health and Human Services are involved in the H–1A visa process. Within DOL, the Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Health care facility's attestation responsibilities.* Each health care facility seeking one or more H–1A nurses shall, as the first step, submit an attestation on *Form ETA 9029*, as described in § _____.310 of this part, to the national office of the Employment and Training Administration (ETA) of DOL at the address set forth at § _____.310(b) of this part. If the attestation is found to meet the requirements set forth at § _____.310 (a) through (k) of this part, ETA shall accept the attestation for filing, shall return the cover form of the accepted attestation to the health care facility, and, at the same time, in the case of a facility seeking to employ one or more H–1A nurses and to petition for her/his/their admission, shall notify the Immigration and Naturalization Service (INS) of the Department of justice of the filing. As discussed in § _____.310 of this part, if the facility proposes to utilize alternative methods to comply with Attestation Elements I and/or IV or asserts that taking a second timely and significant step under Element IV would be unreasonable, or claims a bona fide medical emergency exemption from Element IV as a worksite using one or more H–1A nurses through a nursing contractor only, additional supporting information and ETA review shall be required.

(c) *Visa petitions and supporting letters.* Upon ETA's acceptance of the filing, the health care facility intending to employ the H–1A nurses may then file, with INS, H–1A visa petitions and supporting letters which accompany applications for extensions of stays filed by H–1A nurses, attaching a copy of the accepted attestation form (*Form ETA 9029*). At the same time that the facility files any such visa petition or supporting letter with INS, it shall also send a copy of that visa petition or supporting letter to the ETA national office, at the address set forth at § _____.310(b) of this part.

(d) *Visa issuance.* The usual visa issuance process, including the Department of State role, shall then be followed. INS shall assure that the nonimmigrants possess the required qualifications and credentials to be employed as nurses (see 8 U.S.C. 1182(m)(1)).

(e) *Board of Alien Labor Certification Appeals (BALCA) review of attestations accepted and not accepted for filing.* If an attestation is not accepted by ETA for filing, the health care facility may request review by the DOL Board of Alien Labor Certification Appeals (BALCA). If the attestation is accepted by ETA for filing in those cases where ETA performs a review function, *i.e.*, accepts alternative methods of compliance with Attestation Elements I and IV and/or accepts that taking a second timely and significant step under Element IV would be unreasonable, any interested party may request review by BALCA.

(f) *Complaints.* Complaints concerning misrepresentation in the attestation or failure of the health care facility to carry out the terms of the attestation may be filed with the Wage and Hour Division (Division), Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart E of this part. Complaints of "misrepresentation" may include assertions that a facility's attestations of compliance failed to meet the regulatory standards for attestation elements under which the attestation was accepted by ETA for filing without ETA review. The Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart E of this part also provides that interested parties may obtain an administrative law judge hearing and may seek the Secretary's review of the administrative law judge's decision.

**§ _____.302 Definitions.**

For the purposes of subparts D and E of this part:

*Accepted for filing* means that the attestation and supporting documentation submitted by the health care facility have been received by the Employment and Training Administration of the Department of Labor (DOL) and have been found to be in compliance with the attestation requirements in § _____.310 of this part.

*Act* and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

*Administrative law judge* means an official appointed pursuant to 5 U.S.C. 3105.

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts D and E of this part.

*Attorney General* means the chief official of the U.S. Department of Justice or the Attorney General's designee.

*Board of Alien Labor Certification Appeals (BALCA)* means a panel of one or more administrative law judges who serve on the permanent Board of Alien Labor Certification Appeals established by 20 CFR part 656. BALCA consists of administrative law judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals.

*Bona fide medical emergency* means a situation in which the services of one or more H–1A contract nurses are necessary at a worksite facility (which itself does not employ an H–1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

*Chief Administrative Law Judge* means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

*Chief, Division of Foreign Labor Certifications, USES* means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

*Date of filing* means the date an attestation is "accepted for filing" by ETA.

*Department* and *DOL* mean the United States Department of Labor.

*Director* means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

*Division* means the Wage and Hour Division of the Employment Standards Administration, DOL.

*Employer* means a person, firm, corporation, or other association or organization involved in the direct provision of health care services, which:

(1) Suffers or permits a person to work;



(2) Has a location within the United States to which U.S. workers may be referred for employment;

(3) Proposes to employ workers at a place within the United States; and

(4) Has an employer-employee relationship with respect to employees under subparts D and E of this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of such employee.

*Employment* means full-time work by an employee for an employer/health care facility other than oneself. "Full-time work" means work where the nurse is regularly scheduled to work 40 hours or more per week, unless the facility documents as part of its attestation that it is common practice for the occupation at the facility or for the occupation in the geographic area for nurses to work fewer hours per week.

*Employment and Training Administration (ETA)* means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

*Employment Standards Administration (ESA)* means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

*Facility* means a user of nursing services with either a single site or a group of contiguous locations at which it provides health care services. "Facility" includes an employer of registered nurses which provides health care services in a home or other setting, such as a hospital, nursing home, or other site of employment, not owned or operated by the employer (*e.g.*, a visiting nurse association or a nursing contractor). "Facility" also includes a private household which employs or seeks to employ one or more H–1A nurses, but does not include a private household which uses H–1A nurses only through a nursing contractor. Groups of structures which form a campus or separate buildings across the street from one another are a single facility. However, separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. An example is an entity which manages a nursing home and a hospital in the same area and which regularly shifts or rotates the nurses between the two. Non-contiguous sites, even within the same geographic area, which do not share the same nursing staff and operational purpose are not a single facility. For example, hospitals which are located on opposite sides of a municipality, but which are managed or owned by a single entity, are separate facilities if they do not regularly share nursing staff and operational purpose.

*Geographic area* means the area within normal commuting distance of the place (address) of the intended worksite. If the geographic area does not include a sufficient number of facilities to make a prevailing wage determination, the term "geographic area" shall be expanded (by the State employment service, unless directed not to do so by the Director) with respect to the attesting facility to include a sufficient number of facilities to permit a prevailing wage determination to be made. If the place of the intended worksite is within a Metropolitan Statistical Area (MSA), any place within the MSA may be deemed to be within normal commuting distance of the place of intended employment.

*Governor* means the chief elected official of a State or the Governor's designee.

*H–1A nurse* means any nonimmigrant alien admitted to the United States to perform services as a nurse under section 101(a)(15)(H)(i)(a) of the Act (8 U.S.C. 1101(a)(15)(H)(i)(a)).

*Immigration and Naturalization Service (INS)* means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions to petitioners seeking the admission of nonimmigrant nurses under H–1A visas.

*Layoff* means an involuntary separation of nurses without cause/prejudice. If nurses are separated from one specialized activity and are offered retraining and retention at the same facility in another activity at the same wage and status, but refuse, this shall not constitute a layoff. The layoff provision applies to nurses only, not to other health occupations. If the position is covered by a collective bargaining agreement, the collective bargaining agreement definition of "layoff" (if any) shall apply to that position.

*Lockout* means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

*Nurse* means a person who is or will be authorized by a State Board of Nursing to engage in registered nursing practice in a State or U.S. territory or possession at a facility which provides health care services. In order to qualify under this definition of "nurse" the alien shall:

(1) Have obtained a full and unrestricted license to practice nursing in the country where the alien obtained nursing education, or have received nursing education in the United States or Canada;

(2) Have passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or have obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or have obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and,

(3) Be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and be authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States and registers to take the first available examination for permanent licensure.

*Nursing contractor* means an entity that employs registered nurses and supplies these nurses, on a temporary basis and for a fee, to health care facilities or private homes.

*Prevailing wage* means the average wage paid to similarly employed registered nurses within the geographic area.

*Secretary* means the Secretary of Labor or the Secretary's designee.

*Similarly employed* means employed by the same type of facility (acute care or long-term care) and working under like conditions, such as the same shift, on the same days of the week, and in the same specialty area.

*State* means one of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

*State employment security agency (SESA)* means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

*Strike* means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

*United States Employment Service (USES)* means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is

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charged with administering the national system of public employment offices.

*United States (U.S.) nurse* means a nurse who is a U.S. citizen, a U.S. national, a permanent resident alien, or a temporary resident alien.

*United States (U.S.) worker* means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or a temporary resident alien.

*United States* is defined at 8 U.S.C. 1101(a)(38).

*Worksite* means the health care facility or home where the nurse is involved in the practice of nursing. It is possible, in the case of nursing contractors, that the employer's physical location and the worksite facility's physical location will differ.

§ ____.310 Attestations.

(a) *Who may submit attestations?* Any entity meeting the definition of "facility" in § ____.302 of this part may submit an attestation. The attestation shall include: a completed *Form ETA 9029*, which shall be signed by the chief executive officer of the facility (or the chief executive officer's designee); and the supporting information prescribed in paragraphs (c) through (k) of this section. A nursing contractor that seeks to employ nonimmigrant nurses shall file its own attestation (including *Form ETA 9029* and supporting information) as prescribed by this section, and, as part of its own attestation, shall attest that it shall refer H–1A nurses only to facilities that, with the exception of private households which themselves do not employ H–1A nurses, have current and valid attestations on file with ETA. Subparts D and E of this part shall apply both to the nursing contractor and to the worksite facility.

(b) *Where should attestations be submitted?* Attestations shall be submitted, by U.S. mail or private carrier, to ETA at the following address:

Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210

(c) *What should be submitted?*— (1) *Form ETA 9029 and supporting information.* (i) A completed and dated original *Form ETA 9029*, containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with two copies of the completed, signed, and dated) *Form ETA 9029*. (Copies of *Form ETA 9029* are available at the address listed in paragraph (b) of this section.) In addition, explanations for each of the required attestation elements as to what documentation is available at the facility and how such documentation indicates compliance with the regulatory standards as prescribed in paragraphs (d) through (i) of this section and,

(A) If the facility is a nursing contractor, the special attestation element in paragraph (j) of this section; or

(B) If the facility is a worksite (other than a private household which itself does not employ, seek to employ, or file a visa petition on behalf of an H–1A nurse) which will use H–1A nurses only through a nursing contractor, the special attestation element in paragraph (k) of this section,

shall be submitted in triplicate with the *Form ETA 9029*.

(ii) If the facility is proposing to meet alternative standards for substantial disruption (Element I) and/or the taking of timely and significant steps (Element IV), an explanation of the standards being proposed and an explanation of how these proposed standards are of comparable significance to those set forth in the statute shall be submitted in triplicate. If the facility is attesting that it can only take one timely and significant step (Element IV), it shall submit an explanation, in triplicate, demonstrating that taking a second step is unreasonable. If the facility uses H–1A nurses only through a nursing contractor, but claims a bona fide medical emergency exemption from Element IV, it shall submit a written explanation, in triplicate, demonstrating the existence of such an emergency. DOL may request additional explanation and/or documentation from a facility in the process of determining acceptability in cases described in this paragraph (c)(1)(ii).

(iii) A facility may claim business exigency as a basis for delaying the compilation of documentation supporting its attestation for up to 90 days following submittal of the completed attestation, provided that such submittal is made prior to April 1, 1991. The facility shall provide a full explanation of and support for this claim of business exigency if requested or challenged. Complete supporting documentation relating to all elements shall be maintained at the facility and be open to public examination.

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the Act (8 U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) of the Act requires covered facilities to attest as follows:

(i) The attestation referred to in section 101(a)(15)(H)(i)(a) of the Act, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(A) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

(B) The employment of the aliens will not adversely affect the wages and working conditions of registered nurses similarly employed.

(C) The aliens employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(D) Either—(*1*) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or

(*2*) The facility is subject to an approved State plan for the recruitment and retention of nurses (described in section 212(m)(3) of the Act; 8 U.S.C. 1182(m)(3)).

(E) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(F) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations.

(ii) A facility is considered not to meet paragraph (c)(2)(i)(A) of this section (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Nothing in paragraph (c)(2)(i)(D) of this section shall be construed as requiring a facility to have taken significant steps described in such paragraph before December 18, 1989 (*i.e.*, the date of enactment of the Immigration Nursing Relief Act of 1989).

(d) *The first attestation element: substantial disruption.* The facility shall attest that "there would be substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens." This element shall be met if the facility provides the following information:

(1) *Layoffs.* The facility shall attest that it has not laid off nurses during the 12-month period prior to submitting the attestation.

(2) *Nursing shortage.* (i) The facility shall attest that:

(A) It has a current nurse vacancy rate of seven percent or more, and provide brief explanatory information on the actual current nurse vacancy rate for the facility, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(B) It is unable to utilize seven percent or more of its total beds due to a shortage of nurses, and provide brief explanatory information on the actual current rate of underutilization of beds at the facility due to a nursing shortage, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(C) It has had to eliminate or curtail the delivery of essential health care services that are otherwise not available in the community due to a shortage of nurses, and provide brief explanatory information about the essential services eliminated or curtailed by the facility due to a nursing shortage, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation; or

(D) It has been unable to effect established plans to provide needed new health care services in the community due to a shortage of nurses, and provide brief explanatory information about needed new services that have not been implemented by the facility due to a nursing shortage and which will be implemented with the availability of H–1A nurses, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation.

(ii) *Other substantial disruption.* When an attesting facility finds that the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be demonstrated, or that such indicators are inappropriate to that facility, but that without the services of H–1A nurses, substantial disruption in the delivery of health care services of the facility still would occur due to a shortage of nurses, the facility shall provide an explanation of how a shortage of nurses has caused a "substantial disruption" in the delivery of its health care services. Such explanation shall be sufficient to provide a clear showing of "substantial disruption" in the delivery of specific health care services due to a shortage of nurses, and shall clearly explain why the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be met by or are inappropriate to that facility. In addition to the documentation required to be maintained by attesting facilities described in paragraph (d)(3) below, facilities attesting under this paragraph also shall maintain and make available for inspection (as described elsewhere in this section) such additional documentation as is necessary to substantiate such claim of substantial disruption.

(3) *Documentation of facility's nursing positions.* The attesting facility shall maintain and make available for inspection (as described in § ____.350(b)) documentation substantiating:

(i) The total number of nursing positions at the facility;

(ii) The number of nursing vacancies at the facility during a twelve-month period ending no later than three months prior to submittal of the attestation;

(iii) The number of nurses who left the facility during the same twelve-month period;

(iv) The number of nurses hired by the facility during the same twelve-month period;

(v) The overall staffing pattern for nursing positions at the facility; and

(vi) A description of the facility's efforts to recruit U.S. nurses during the same twelve-month period. The documentation on numbers of nurses, maintained for the purposes of this paragraph (d)(3), shall be broken out by numbers of U.S. nurses, nurses admitted under H–1 visas, nurses admitted under H–1A visas, nurses admitted under other nonimmigrant visas, and other nurses.

(e) *The second attestation element: no adverse effect.* The facility shall attest that "the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed."

(1) *Wages.* To meet the requirement of no adverse effect on wages, the facility shall attest that it shall pay each nurse at the facility at least the prevailing wage for the occupation in the geographic area. The facility shall pay the higher of the wage required pursuant to this paragraph (e) or the wage required pursuant to paragraph (f) of this section (*i.e.*, the third attestation element: facility wage).

(i) *State employment security agency determination.* The facility does not independently determine the prevailing wage. The State employment security agency (SESA) shall determine the prevailing wage for similarly employed nurses in the geographic area.

(ii) *Collectively bargained wage rates.* Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered "prevailing" for that facility for the purposes of this subpart.

(iii) *Total compensation package.* The prevailing wage finding under this paragraph (e)(1) relates to wages only. However, each item in the total compensation package for U.S., H–1A, and other nurses employed by the facility shall be the same within a given facility, including such items as housing assistance and other perquisites.

(iv) *Documentation of pay and total compensation.* The facility shall maintain documentation summarizing its pay schedule and compensation package for nurses. See § ____.350(b) of this part. The summary shall cover each category of nursing position in which H–1A nurses are or will be hired or promoted into and each category of nursing position in which H–1A nurses (or nurses admitted on H–1 visas) have been hired or promoted into. Categories of nursing positions not covered by the documentation shall not be covered by the attestation, and, therefore, such position shall not be filled or held by H–1A nurses.

(2) *Working conditions.* To meet the requirement of no adverse effect on working conditions, the facility shall attest that it shall afford equal treatment to U.S. and H–1A nurses with the same seniority, with respect to such working conditions as the number and scheduling of hours worked (including shifts, straight days, weekends); vacations; wards and clinical rotations; and overall staffing-patient patterns.

(f) *The third attestation element: facility/employer wage.* The facility employing or to employ the alien shall attest that "the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility." The facility shall maintain documentation substantiating compliance with this attestation which shall include a description of the factors taken into consideration by the facility in making compensation decisions for nurses and the facility pay schedule for nurses maintained pursuant to paragraph (e)(1) of this section. See § ____.350(b) of this part. The facility

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shall pay the higher of the wage required pursuant to this paragraph (f) or the wage required pursuant to paragraph (e) of this section (*i.e.*, the second attestation element: no adverse effect).

(g) *The fourth attestation element: timely and significant steps; or State plan.* The facility may satisfy the fourth attestation element by satisfying Alternative I in paragraph (g)(1) of this section or by satisfying Alternative II in paragraph (g)(2) of this section.

(1) *Alternative I: Timely and significant steps.* The facility shall attest that it "has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." The facility shall take at least two such steps, unless it demonstrates that taking a second step is not reasonable. The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. The facility is not required to have taken any of these steps prior to December 18, 1989. A facility choosing to take timely and significant steps other than those specifically described in paragraph (g)(1)(i)(A) of this section shall submit with its attestation a description of the steps it is proposing to take and an explanation of how the proposed steps are of comparable timeliness and significance to those described in paragraph (g)(1)(i)(A) of this section. A facility claiming that a second step is unreasonable shall submit an explanation of why such second step would be unreasonable.

(i) *Descriptions of steps*—(A) *Statutory steps.* Each of the actions described in this paragraph (g)(1)(i)(A) shall be considered a significant step reasonably designed to recruit and retain U.S. nurses. A facility choosing any one of the following steps shall attest that its program(s) meets the regulatory requirements set forth for each and provide an explanation of how the requirements are satisfied by the program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation specified in the particular step selected and/or documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements for the particular step selected.

(*1*) *Step One: "Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere."* Training programs may include either courses leading to a higher degree (*i.e.*, beyond an associate or a baccalaureate degree), or continuing education courses. If the program includes courses leading to a higher degree, they shall be courses which are part of a program accepted for degree credit by a college or university and accredited by a State Board of Nursing or a State Board of Higher Education (or its equivalent), as appropriate. If the program includes continuing education courses, they shall be courses which meet criteria established to qualify the nurses taking the courses to earn continuing education units accepted by a State Board of Nursing (or its equivalent). In either type of program, financing by the facility, either directly or arranged through a third party, shall cover the total tuition costs of such training. The number of U.S. nurses for whom such training actually is provided shall be no less than half of the number of nurses who left the facility during the twelve-month period prior to submission of the attestation. (U.S. nurses to whom such training was offered, but who rejected such training, may be counted towards those provided training, but the facility, in such case, shall maintain documentation of such offer and rejection). See § ____.350(b) of this part.

(*2*) *Step Two: "Providing career development programs and other methods of facilitating health care workers to become registered nurses."* This may include programs leading directly to a degree in nursing, or career ladder/career path programs which could ultimately lead to a degree in nursing. A facility choosing this step shall maintain as documentation a description of the content and eligibility requirements for both types of programs and an explanation of how the requirements of this paragraph (g)(1)(i)(A)(*2*) are satisfied by each program. Any such degree program shall be, at a minimum, either through an accredited community college (leading to an associate's degree), four-year college (a bachelor's degree), or diploma school, and the course of study shall be one accredited by a State Board of Nursing (or its equivalent). For career ladder or career path programs, the facility shall maintain documentation that the programs are normally part of a course of study or training which prepares a U.S. worker for enrolling in formal direct training leading to a degree in nursing, either through an accredited community college, a four-year college, or a diploma school. See § ____.350(b) of this part. Financing by the facility, either directly or arranged through a third party, shall cover the total costs of such programs. U.S. workers participating in such programs shall be working or have worked in health care occupations or health care facilities. The number of U.S. workers for whom such training is provided shall be equal to no less than half the average number of vacancies for nurses during the twelve-month period prior to the submission of the attestation.

(*3*) *Step Three: "Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area."* A facility choosing this step shall maintain documentation showing that its entire schedule of wages for nurses is at least five percent higher than the prevailing wages as determined pursuant to paragraph (e)(1) of this section, and it shall attest that such differentials shall be maintained throughout the period of the attestation's effectiveness. See § ____.350(b) of this part.

(*4*) *Step Four: "Providing adequate support services to free registered nurses from administrative and other non-nursing duties."* Non-nursing duties include such activities as housekeeping duties; food preparation and delivery; transporting patients; providing occupational and respiratory therapy; answering telephones; running errands for patients; and clerical tasks. A facility choosing this step shall not require nurses at the facility to perform non-nursing duties. However, it is understood that on an infrequent non-recurring basis, nurses at the facility may perform one or more of the tasks encompassed by the duties listed above in this paragraph (g)(1)(i)(A)(*4*) or other non-nursing duties. Facilities choosing this step shall maintain documentation showing what steps they have taken to ensure that nursing jobs do not include any of these duties and that such activity by nurses at the facility occurs without regularity and infrequently. Such a facility also shall maintain documentation with respect to any other steps being taken to relieve nurses from non-nursing duties, or to enhance the nursing function, such as computerizing



certain writing and routine functions performed by nurses.

(*5*) *Step Five: "Providing reasonable opportunities for meaningful salary advancement by registered nurses."* Documentation for this step shall include documentation of systems for salary advancement based on factors such as merit, education, and specialty, and/or salary advancement based on length of service with other bases for wage differentials remaining constant.

(*ii*) *Merit, education, and specialty.* For salary advancement based on factors such as merit, education, and specialty, the facility shall maintain and make available for inspection documentation that it provides opportunities for professional development of its nurses which lead to salary advancement, *e.g.*, opportunities for continuing education; in-house educational instruction; special committees, task forces, or projects considered of a professional development nature; participation in professional organizations; and writing for professional publications. Such opportunities shall be available to all the facility's nurses.

(*iii*) *Length of service.* For salary advancement based on length of service, the facility shall maintain and make available for inspection documentation that it has clinical ladders in place which provide, annually, salary increases of three percent or more for a period of no less than ten years, over and above the cost of living and merit, education, and specialty increases and differentials.

(B) *Other possible steps.* The Act indicates that the five steps described in paragraphs (g)(1)(i)(A) (*1*) through (*5*) of this section are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other timely and significant steps, but these shall be of timeliness and significance comparable to those in paragraphs (g)(1)(i)(A) (*1*) through (*5*) to qualify. A facility may attest that it has taken and is taking other such steps and explain in its attestation what these steps are, their nature and scope, how they are effected and how they meet the statutory test of timeliness and significance comparable to those Steps One through Five described above. A facility choosing alternative steps shall attest that its program(s) meet(s) the statutory requirements of timeliness and significance in promoting the development, recruitment and retention of U.S. nurses, explaining how these requirements are satisfied by such program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements of this paragraph (g)(1)(i)(B). Examples of such steps which—depending on the circumstances, the size and nature of the attesting facility, the nature and scope of the step(s) described, the number of persons affected, and other such factors—may meet these requirements are:

(*1*) *Monetary incentives*—providing monetary incentives to nurses, through bonuses and merit pay plans not included in the base compensation package, for additional education, and for efforts leading to increased recruitment and retention of U.S. nurses. Such monetary incentives can be based on actions by nurses such as: Innovations to achieve better patient care, increased productivity, reduced waste, better safety; obtaining additional certification in a nursing specialty; unused sick leave; recruiting other U.S. nurses; staying with the facility for a given number of years; taking less desirable assignments (other than shift differential); participating in professional organizations, on task forces and on special committees; or contributing to professional publications. Facilities attesting to this step shall have a documented system for providing significant financial rewards in the form of bonuses or salary advancement to nurses participating in the activities described in this paragraph.

(*2*) *Special Perquisites*—providing nurses with special perquisites for dependent care or housing assistance of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*3*) *Work schedule options*—providing nurses with non-mandatory work schedule options for part-time work, job-sharing, compressed work week or non-rotating shifts (provided, however, that H-1A nurses are employed only in full-time work) of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*4*) *Other training options*—providing training opportunities to become registered nurses to U.S. workers not currently in health care occupations by means of financial assistance (*e.g.*, scholarship, loan or pay-back programs) to such persons.

(ii) *Unreasonableness of second step.* The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. A facility taking only one step shall provide an explanation with its attestation, and maintain documentation at the facility, relating to why taking a second step is not reasonable. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or if the provision of nursing services would otherwise be jeopardized by the taking of such a step. If the single step which is taken is one of the statutorily defined steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall explain with its attestation, and maintain documentation at the facility, with respect to each of the four statutory steps (described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section) not taken, relating to why it would be unreasonable for the facility to take such step and also shall explain with its attestation, and shall maintain and make available for inspection (as described in § ____.350(b) of this part) documentation demonstrating why it would be unreasonable for the facility to recruit, develop and retain sufficient U.S. nurses to meet its staffing needs. If the single step which is taken is not one of the five statutory steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall, with respect to each of the five statutory steps not taken, explain with its attestation, and maintain documentation and make available for inspection (as described in § ____.350(b) of this part) documentation, demonstrating why it would be unreasonable for the facility to take such step; the facility also shall explain with its attestation, and make available for inspection (as described in § ____.350(b) of this part) documentation demonstrating why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. On the basis of the explanation submitted by the facility, the Chief, Division of Foreign Labor Certifications, USES, shall determine whether the requirements of this paragraph (g)(1)(ii) have been met. See

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paragraph (m) of this section regarding such determinations and administrative appeals therefrom.

(iii) *Alternative to criteria for each specific step.* Instead of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include in its prior year's attestation, in addition to the actions taken under Steps One through Five, that it shall reduce the number of alien (H–1 and H–1A visaholders) nurses it utilizes one year from the date of attestation by at least 10 percent, without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and made available for inspection, and indicated in its subsequent year's attestation), the facility's subsequent year's attestation may simply include the *Form ETA 9029*, an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of alien nurses it utilizes one year from the date of attestation by at least 10 percent. This alternative is designed to permit a facility to achieve the objectives of the Act, without subjecting the facility to detailed requirements and criteria as to the specific means of achieving that objective. The first, second and succeeding years shall be consecutive.

(2) *Alternative II: subject to approved annual State plan.* As an alternative to attesting to the timely and significant steps set forth in paragraph (g)(1) of this section, the facility may attest that it "is subject to an approved State plan for the recruitment and retention of nurses." The contents of the annual State plan are described in more detail in § _____.315 of this part. For an individual facility to meet the requirements of this paragraph (g)(2), the annual State plan shall provide for the taking of timely and significant steps by that facility, and the facility shall maintain appropriate documentation with respect to those steps. See § _____.350(b) of this part. To qualify for this Alternative II, the annual State plan shall have been approved prior to the date the facility submits its attestation to ETA for filing.

(h) *The fifth attestation element: No strike or lockout; no intention or design to influence bargaining representative election.* The facility shall attest that "there is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility."

Labor disputes for purposes of this attestation element relate only to those involving nurses providing nursing services; other health service occupations are not included. This attestation element applies to strikes and lockouts and elections of bargaining representatives at both the facility employing the nurse and, in the case of nursing contractors, at the worksite facility.

(1) *Notice of strike or lockout.* In order to remain in compliance with the no strike or lockout portion of this attestation element, if a strike or lockout of nurses at the facility occurs during the one year's validity of the attestation, the facility, within three days of the occurrence of the strike or lockout, shall submit to ETA, by U.S. mail or private carrier, written notice of the strike or lockout.

(2) *ETA notice to INS.* Upon receiving from a facility a notice described in paragraph (h)(1) of this section, ETA shall examine the documentation, and may consult with the union at the facility or other appropriate entities. If ETA determines that the strike or lockout is covered under INS's "*Effect of strike*" regulation for "H" visaholders, ETA shall certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of nurses is in progress at the facility.

(i) *The sixth attestation element: notice of filing.* The facility shall attest that at the time of filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations. This requirement applies to providing notice of filing both for attestations submitted to ETA and for visa petitions filed with INS.

(1) *Notification of bargaining representative.* No later than the date the attestation is mailed to DOL to be considered for filing, the facility shall notify the bargaining representative (if any) for nurses at the facility that the attestation is being submitted to DOL, and shall state in that notice that the attestation is available at the facility (explaining how it can be inspected or obtained) and at the national office of ETA for review by interested parties. No later than the date the facility transmits a visa petition for H–1A nurses to INS, the facility shall notify the bargaining representative (if any) for nurses at the facility that the visa petition is being submitted to INS, and shall state in that notice that the attestation and visa petition are available at the facility (explaining how they can be inspected or obtained) and at the national office of ETA for review by interested parties. Notices under this paragraph (i)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice.* If there is no bargaining representative for nurses at the facility, when the facility submits an attestation to ETA, and each time the facility files an H–1A visa petition with INS, the facility shall post a written notice at the facility (and, in addition, at the worksite facility, if at a different location, such as in the case of nursing contractors), stating that the attestation and/or visa petition(s) have been filed and are available at the facility (explaining how these documents can be inspected or obtained) and at the national office of ETA for review by interested parties. In order for the facility to remain in compliance with this paragraph (i)(2), all such notices shall remain posted during the validity period of the attestation and the attestations and petitions shall be available for examination at the facility throughout this period of time. The notice of posting shall provide information concerning the availability of these documents for examination at the facility and at the national office of ETA, and shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor." Such posted notices shall be clearly visible and unobstructed while posted, shall be posted in conspicuous places, where the facility's U.S. nurses readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices.

(j) *Special provisions for nursing contractors.* A nursing contractor submitting an attestation for filing as a facility shall attest, in addition to the first through sixth attestation elements, that it will refer H–1A nurses only to



facilities that (with the exception of private households which themselves do not employ H–1A nurses) have valid attestations on file with ETA. The nursing contractor shall obtain from each such worksite facility a copy of that facility's *Form ETA 9029*, accepted for filing by ETA and then currently on file with ETA. The nursing contractor shall maintain a copy of such worksite facility's accepted attestation on file at the nursing contractor's principal office during the validity period of the nursing contractor's attestation or the period of time that any H–1A nurse in its employ is providing nursing services at the worksite facility, whichever is longer.

(k) *Special provisions for worksite facilities which are not employers of H–1A nurses and are not controlled by employers of H–1A nurses.* A facility (other than a private household) which obtains the services of an H–1A nurse by contracting with a nursing contractor, but which is itself neither the employer of any H–1A nurse nor controlled by the employer of any H–1A nurse (see paragraph (k)(1) of this section), shall file an attestation with ETA pursuant to this subpart. Such a worksite facility may request from ETA a waiver of specific elements of the attestation to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause. The attesting worksite facility shall be able to demonstrate the existence of the circumstances or good cause which are asserted as the basis(es) for the request for a waiver are of a particular element of the attestation, but need not submit such evidence with its request for waiver, except evidence with respect to a bona fide medical emergency (see paragraph (k)(3)(iii) of this secton).

(1) *Worksites employing, seeking to employ, or filing visa petitions on behalf of H–1A nurses.* An attestation with respect to which waiver is requested or granted pursuant to this paragraph (k) is not valid (*i.e.*, is not "on file and in effect") for a worksite facility employing, seeking to employ, or filing a visa petition on behalf of H–1A nurses. Only an attestation meeting the requirements of paragraphs (a) through (j) of this part (and paragraph (k) of this part, in the case of a nursing contractor) can serve as the basis for a petition for an H–1A visa. A worksite facility which uses H–1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation in order to be able to use such attestation as a basis for itself filing a visa petition for an H–1A nurse. Thus, a worksite facility should consider its future needs for H–1A nurses in filing attestations and requests for waiver pursuant to this paragraph (k).

(2) *Inapplicability of third attestation element: facility/employer wage.* If a worksite facility uses H–1A nurses only through a nursing contractor, the third attestation element (facility/employer wage; see paragraph (f) of this section) is not applicable to that facility, since the worksite facility is not the employer of the H–1A nurse and does not guarantee the H–1A nurse's wage.

The third attestation element is required only for the employer of the H–1A nurse(s), *i.e.*, the third attestation element shall be included in the attestation of and met by the H–1A nurse's employer (*i.e.*, the nursing contractor).

(3) *Waiver of attestation elements.* ETA may consider, pursuant to this paragraph (k)(3) requests for waiver of certain attestation elements by a worksite facility which uses or will use an H–1A nurse provided by a nursing contractor (*i.e.*, an "H–1A contract nurse"), but which worksite facility itself does not employ, seek to employ, or file a visa petition on behalf of an H–1A nurse. Paragraphs (k)(3) (i) through (iii) of this section set forth different conditions for waiver depending on the number of workdays of H–1A contract nurse services the worksite facility will use. For the purposes of this paragraph (k)(3), a "workday" shall consist of one H–1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H–1A contract nurses totals 15 workdays.

(i) *Minimal use of H–1A contract nurses by a worksite.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 15 workdays of H–1A contract nurse services in any 3-month period of the attestation's one-year period of validity to meet emergency needs on a temporary basis, ETA may waive the first (substantial disruption), second (adverse effect), and fourth (timely and significant steps or State plan) elements of the attesting worksite facility's attestation. See paragraphs (d), (e), and (g) of this section; see also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(i) the fifth attestation element (strike, lockout, or intent or design to influence bargaining representative election) or the sixth attestation element (notice). See paragraphs (h) and (i) of this section.

(ii) *Short-term use of H–1A contract nurses.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 60 workdays of H–1A contract nurse services in any 3-month period of the attestation's one-year period of validity to meet temporary needs, ETA may waive the nursing shortage component of the first element (substantial disruption; see paragraphs (d)(2) and (d)(3) of this section) and may waive the fourth (timely and significant steps or State plan; see paragraph (g) of this section) element of the attesting worksite facility's attestation. See also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(ii) the no-layoff component of the first attestation element (substantial disruption; see paragraph (d)(1) of this section); the second attestation element (adverse effect); the fifth attestation element (strike, lockout, or intent to influence a bargaining representative election); or the sixth attestation element (notice). See paragraphs (d), (e), (h), and (i) of this section.

(iii) *Long-term use of H–1A contract nurse services.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use more than 60 workdays of H–1A contract nurse services in any 3-month period of the attestation's one-year period of validity, ETA shall not waive any attestation element, except that, if the attestor documents a bona fide medical emergency warranting a waiver of the fourth attestation element (timely and significant steps or State plan) ETA may waive such element. See paragraph (g) of this section.

(l) *Agents of worksite facilities.* A worksite facility (including a worksite facility which itself employs or seeks to employ an H–1A nurse) may authorize a nursing contractor to act as its agent in preparing and filing the worksite facility's attestation; however, a worksite facility using an agent for preparation and filing of the attestation is responsible for the contents of such attestation and remains liable for any violations which may be disclosed in any investigation under Subpart E of this Part, and the chief executive officer of the worksite facility shall sign the original attestation, as required by paragraph (c)(1)(i) of this section.



(m) *Actions on attestations submitted*

(2) *Appeals of acceptances.* If an

or is suspended or invalidated as a

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(m) *Actions on attestations submitted for filing.* An attestation which meets the established criteria set forth in this § ____.310 shall be accepted for filing by ETA on the date it is signed by the Chief, Division of Foreign Labor Certifications. ETA shall then follow the procedures set forth in paragraph (m)(1) of this section. An attestation submitted by a facility proposing alternative criteria or steps for the first and/or the fourth attestation elements, and/or proposing to take only one timely and significant step, and/or claiming a bona fide medical emergency exemption from the fourth attestation element shall be reviewed by ETA, and a determination shall be made by the Chief, Division of Foreign Labor Certifications, USES, whether to accept or reject the attestation for filing. See paragraphs (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), and (k)(3)(iii) of this section. The Chief may request additional explanation and/or documentation from the facility in making this determination. If the Chief does not contact the facility for such information or make any determination within 30 days of receiving the attestation, the attestation shall become accepted for filing. Upon the facility's submitting the attestation to ETA and providing the notice required by the sixth attestation element (see § ____.310(i) of this part), the attestation shall be available for public examination at the health care facility itself and at the ETA national office. Information contesting an attestation received by ETA prior to the determination to accept or reject the attestation for filing shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to Subpart E of this part, and, if such attestation nevertheless is accepted by ETA for filing, the complaint will be handled by ESA under that subpart.

(1) *Acceptance.* (i) If the attestation (and any supporting documentation that may be required) meet the requirements of this subpart, ETA shall accept the attestation for filing, shall, in the case of a facility intending to file a visa petition as the employer of an H–1A nurse, notify INS in writing of the filing, and shall return to the facility one copy of the attestation form submitted by the facility, with ETA's acceptance indicated thereon. The facility may then file a visa petition with INS for alien nurses in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Appeals of acceptances.* If an attestation which is subject to a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section is accepted for filing, any interested party may appeal ETA's determination(s) on the element(s) that have been reviewed. Appeals of acceptances shall be filed with the BALCA, no later than 30 days after the date of acceptance, and will be considered under the procedures set forth at § ____.320 of this part.

(3) *Appeals of rejections.* If the attestation is not accepted for filing, which may occur as a result of a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section, ETA shall notify the facility in writing, specifying the reasons for rejection and quoting the language of § ____.320(a)(1) of this part. Any interested party may appeal such rejection to the BALCA, no later than 30 days after the date of rejection. Appeals of rejections shall be filed and considered under the procedures set forth at § ____.320 of this part.

(n) *Effective date and validity of filed attestations.* An attestation becomes filed and effective as of the date it is accepted and signed by the Chief, Division of Foreign Labor Certifications, USES/ETA, and accepted thereby for filing. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to § ____.320 of this part or subpart E of this part. The filed attestation expires at the end of the 12-month period of validity.

(o) *Suspension or invalidation of filed attestation.* Suspension or invalidation of an attestation may result from a BALCA decision reversing an ETA acceptance for filing; from investigations by the Administrator, Wage and Hour Division, of the facility's misrepresentation in or failure to carry out its attestation; or from a discovery by ETA that it made an error in its review of the attestation (in those cases where ETA performs such review pursuant to paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), (k)(3)(iii) of this section) and that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at § ____.310 (a) through (k) of this part. If an attestation is suspended or invalidated, DOL shall notify INS.

(1) *Result of BALCA or Wage and Hour Division action.* If an attestation is suspended or invalidated as a result of a BALCA decision overruling an acceptance of the attestation for filing, or is suspended or invalidated as a result of a Wage and Hour Division action pursuant to subpart E of this part, such suspension or invalidation may not be separately appealed, but shall be merged with appeals of BALCA's or the Wage and Hour Division's determination on the underlying violation.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA discovers that it erroneously accepted that attestation for filing, and, as a result, ETA suspends or invalidates that acceptance, the facility may appeal such suspension or invalidation pursuant to § ____.320 of this part as if that suspension or invalidation were a decision to reject the attestation for filing.

(p) *Facility's responsibilities during suspension and after invalidation or expiration of filed attestation.* A facility shall comply with the terms of its attestation, even if such attestation is suspended, invalidated, or expired, as long as any H–1A nurse is at the facility, unless the attestation is superseded by a subsequent attestation accepted for filing by ETA.

(q) *Facilities subject to penalties.* No attestation shall be accepted for filing from a nursing contractor or other facility which has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart E of this part.

(Approved by the Office of Management and Budget under Control No. 1205–0305.)

§ ____.315 State plans.

A State may submit an annual plan for the recruitment and retention of U.S. citizens and permanent resident aliens who are authorized to perform nursing services in the State.

(a) *Who should prepare and file the annual plan?* The Governor of each State that chooses to submit an annual State plan shall be responsible for the preparation and filing of the annual plan. The Governor may designate any public and/or private organization(s) to assist the Governor in the development of the annual plan.

(b) *When and where should the annual plan be filed?* If a State determines to file an annual State plan, the Governor shall submit the original plan, signed by the Governor, by U.S. mail or private carrier, to ETA at the following address: Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW., Room N–4456, Washington, DC 20210.



An annual State plan may be filed with ETA at any time. However, for an individual facility legitimately to attest to being subject to an annual State plan for the purposes of the fourth attestation element, Alternative II (see § ____.310(g)(2) of this part), such annual State plan shall have been approved prior to the date the attestation was submitted to ETA for filing and be in current effect. Therefore, if the Governor is aware that a facility within the State plans to submit an attestation for filing with ETA, the annual State plan should be mailed to ETA at least 35 days prior to the facility's submission of its attestation to ETA.

(c) *What overall issues should the annual State plan address?* The annual State plan shall address the overall issue of supply of and demand for nurses within the State, with particular emphasis on measures to develop a sufficient supply of U.S. nurses to meet projected demand. The State, as opposed to individual facilities, is in a position—and may be expected to—address broad issues and perform such functions as conducting a Statewide needs assessment; overall management, facilitation and coordination among various interested entities within the State; and undertaking more regionally based approaches. The State is also in a position to devote resources which individual facilities may be lacking.

(d) *How should the annual State plan address the timely and significant steps?* The annual State plan shall address all of the timely and significant steps in §§ ____.310 (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this part generically, without regard to the specific criteria therein, on a Statewide basis. However, for the annual State plan to satisfy Alternative II of the fourth attestation requirement for an individual facility (see § ____.310(g)(2) of this part), the annual State plan shall indicate which of those timely and significant steps relate to individual facilities, and that each individual facility shall take such a step (either one step or more, as appropriate) to meet the appropriate specific criteria as set forth in § ____.310(g)(1).

(e) *What other components may the annual State plan include?* An annual State plan may include the following components:

(1) The cooperation of high schools and colleges may be enlisted in counseling health workers and other individuals to enter the nursing profession.

(2) Geographic and salary data may be made available to assist in linking nurses to facilities.

(3) Publications of vacancies and programs may be made in industry and State newsletters.

(4) Training films and videotapes, as well as information on housing and relocation services, may be developed and distributed.

(5) Measures may be taken to encourage other health professionals to become nurses, such as: setting up home study programs with State licensing boards to allow work credits for purposes of meeting educational or State clinical requirements; entering into cooperative agreements for providing health care insurance and other job-related elements which would allow greater flexibility for those attempting to combine careers and school; providing monetary grants or long-term loans to persons preparing to become nurses.

(6) Steps may be taken to encourage nurses who have left the nursing field to return to nursing, by providing such inducements as child care, holiday schedule adjustments, and substantial salary increases.

(7) The State may profile and publicize those facilities with special model programs.

(8) The annual State plan may place demands on facilities for comprehensive plans to reduce reliance on foreign nurses.

(f) *Approval and disapproval of annual State plans.* Determinations of approval and disapproval of annual State plans shall be made by the Director, USES. The annual State plan shall be reviewed by ETA, in consultation with the Department of Health and Human Services, and a determination to approve or disapprove the annual State plan made within 30 calendar days of ETA's receipt of the plan.

(1) If the annual State plan is approved, the Director shall notify the Governor in writing.

(2) If the annual State plan is disapproved, the Director shall notify the Governor in writing, specifying the reason(s) for disapproval. The notice shall state that within 30 calendar days of the date of the notice of disapproval, the Governor may correct the deficiencies noted in the disapproval and resubmit the annual State plan to ETA; and shall inform the state of its right to an appeal, by quoting the language of § ____.320(a) of this part.

(g) An approved annual State plan shall be valid for 12-month period beginning on the date of its approval by DOL.

(Approved by the Office of Management and Budget under Control No. 1205–0305)

§ ____.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.

(a) *Appeal rights*—(1) *Attestations; when to file appeals from acceptances and rejections.* On the basis that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at § ____.310(d)(2)(ii), (g)(1)(i)(B)(*5*), or (g)(1)(ii) of this part, an interested party may appeal an acceptance or rejection by ETA of an attestation submitted by a facility for filing in those cases where DOL performed an attestation review function under those provisions. The appeal shall be limited to ETA's determinations on the element(s) reviewed and shall not be an appeal as to any other element(s) in the attestation. An interested party may also appeal ETA's invalidation or suspension of a filed attestation due to a discovery by ETA that it made an error in its reviewing of the attestation (see § ____.310(o) of this part). In the case of an appeal of an acceptance, the facility shall be a party to the appeal; in the case of the appeal of a rejection, invalidation, or suspension, the collective bargaining representative (if any) representing nurses at the facility shall be a party to the appeal. Appeals shall be in writing; shall set forth the grounds for the appeal; shall state if *de novo* consideration by BALCA is requested; and shall be mailed by certified mail within 30 calendar days of the date of the action from which the appeal is taken (*i.e.*, the acceptance, rejection, suspension or invalidation of the attestation).

(2) *Annual State plans; when to file appeals from disapprovals.* A Governor of a State may appeal from ETA's disapproval of an annual State plan. Individual facilities in the State may file briefs as *amici curiae*. Appeals shall be in writing and shall be mailed by certified mail within 30 calendar days of the disapproval of the annual State plan.

(3) *Where to file appeals.* Appeals made pursuant to this section shall be in writing and shall be mailed by certified mail to: Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210

(4) *Complaints.* Appeals under this paragraph (a) shall not encompass questions of misrepresentation by a health care facility or nonperformance by such a facility of its attestation. Such complaints shall be filed with an office of the Wage and Hour Division, United States Department of Labor.

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(b) *Transmittal to BALCA; case file.* Upon receipt of an appeal pursuant to this section, the Director, USES, shall send to BALCA a certified copy of the ETA case file, containing the attestation and supporting documentation and any other information or data considered by ETA in taking the action being appealed. The administrative law judge chairing BALCA shall assign a panel of one or more administrative law judges who serve on BALCA to review the record for legal sufficiency and to consider and rule on the appeal.

(c) *Consideration on the record; de novo hearings*—(1) *General.* BALCA shall not remand, dismiss, or stay the case, except as provided in paragraph (c)(2) of this section, but may otherwise consider the appeal on the record or in a *de novo* hearing (on its own motion or on a party's request). Interested parties and *amici curiae* may submit briefs in accordance with a schedule set by BALCA. The ETA official making the determination from which the appeal was taken shall be represented by the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, Department of Labor, or the Associate Solicitor's designee. If BALCA determines to hear the appeal on the record without a *de novo* hearing, BALCA shall render a decision within 30 calendar days after BALCA's receipt of the case file. If BALCA determines to hear the appeal through a *de novo* hearing, the procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required;

(ii) BALCA shall ensure that, at the request of the appellant, the hearing is scheduled to take place within a reasonable period after BALCA's receipt of the case file (see also the time period described in paragraph (c)(1)(iv) of this section);

(iii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B), shall not apply to any hearing conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by BALCA conducting the hearing; BALCA may exclude irrelevant, immaterial, or unduly repetitious evidence; the certified copy of the case file transmitted to BALCA by the Director, USES, shall be part of the evidentiary record of the case and need not be moved into evidence; and

(iv) BALCA's decision shall be rendered within 120 calendar days after BALCA's receipt of the case file.

(2) *Dismissals and stays.* If the BALCA determines that the appeal is solely a question of misrepresentation by the facility or is solely a complaint of the facility's nonperformance of the attestation, BALCA shall dismiss the case and refer the matter to the Administrator, Wage and Hour Division, for action under subpart E of this part. If the BALCA determines that the appeal is partially a question of misrepresentation by the facility or is partially a complaint of the facility's nonperformance of the attestation, BALCA shall refer the matter to the Administrator, Wage and Hour Division, for action under subpart E of this part and shall stay BALCA consideration of the case pending final agency action on such referral. During such stay, the 120-day period described in paragraph (c)(1)(iv) of this section shall be suspended.

(d) *BALCA's decision.* After consideration on the record or a *de novo* hearing, BALCA shall either affirm or reverse ETA's decision, and shall so notify the appellant, the Director, and any other parties. See § _____450 of this part regarding custody of the record of the appeal.

(e) *Decisions on attestations.* With respect to an appeal of the acceptance, rejection, suspension or invalidation of an attestation, the decision of BALCA shall be the final decision of the Secretary, and no further review shall be given to the matter by any DOL official.

(f) *Decisions on annual State plans.* With respect to an appeal of the disapproval of an annual State plan, the decision of the BALCA shall be the final decision by the Secretary, unless a petition for review of the BALCA decision is filed with the Secretary and the Secretary determines to review the decision.

(1) *Filing of petition for review.* The Director or the State desiring review of the decision and order of BALCA shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on BALCA.

(2) *Form of petition for review.* No particular form is prescribed for any petition for Secretary's review permitted by this paragraph (f). However, any such petition shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the issue or issues stated in the BALCA decision and order giving rise to such petition;

(iv) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(v) Be signed by the party filing the petition or by an authorized representative of such party;

(vi) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(vii) Attach copies of BALCA's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(3) *Notice of determination to review.* Whenever the Secretary determines to review the decision and order of BALCA on an annual State plan, a notice of the Secretary's determination shall be served upon BALCA and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(4) *Hearing record.* Upon receipt of the Secretary's notice, BALCA shall within fifteen days forward the complete hearing record to the Secretary.

(5) *Contents of Secretary's notice.* The Secretary's notice shall specify:

(i) The issue or issues to be reviewed;

(ii) The form in which submissions shall be made by the parties;

(iii) The time within which such submissions shall be made.

(6) *Filing of documents.* All documents submitted to the Secretary pursuant to this paragraph (f) shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(7) *Service of documents.* Copies of all documents filed with the Secretary pursuant to this paragraph (f) shall be served upon all other parties involved in the proceeding. Service upon the Director shall be in accordance with paragraph (a)(3) of this section.

(8) *Secretary's decision.* The Secretary's final decision pursuant to this paragraph (f) shall be issued within 180 days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and BALCA.

(9) *Transmittal of record.* Upon issuance of the Secretary's decision under this paragraph (f), the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____450 of this part.

**§ _____350 Public access.**

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of facilities which have filed attestations, and such facilities' visa petitions (if any) for H–1A nurses, and for each such facility, a copy of the facility's attestation and any supporting documents it has received; the annual State plan (if any) which relates to the facility's attestation; and a copy of each of the facility's H–1A visa petitions (if any) to INS. A copy of the latter shall be transmitted to ETA by the facility at the same time it is submitted to INS. The facility shall also forward to ETA a copy of the INS visa petition approval notice within five days after it is received from INS.

(b) *Public examination at facility.* For the duration of the attestation's validity and thereafter for so long as the facility uses any H–1 or H–1A nurse under the attestation, the facility shall maintain a separate file containing the attestation and required documentation, and shall make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility shall provide it and any change for such copy shall not exceed the cost of reproduction.

(c) *Notice to public.* ETA periodically shall publish a notice in the Federal Register announcing the names and addresses of facilities which have submitted attestations; facilities which have attestations on file; facilities which have submitted attestations which have been rejected for filing; facilities which have had attestations suspended; States which have submitted annual State plans; States which have approved annual State plans; and States which have submitted annual State plans which were disapproved.

(Approved by the Office of Management and Budget under Control No. 1205–0305)

## Subpart E—Enforcement of H–1A Attestations

**§ _____400 Enforcement authority of Administrator, Wage and Hour Division.**

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under 8 U.S.C. 1182(m) and subparts D and E of this part.

(b) The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts D and E of this part.

(c) A facility being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No facility shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(m) or subparts D or E of this part. In the event of such interference, the Administrator may deem the interference to be a violation and take such further actions as the Administrator considers appropriate.

(Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) A facility subject to subparts D and E of this part shall at all times cooperate in administrative and enforcement proceedings. No facility shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(3) Exercised or asserted on behalf of himself or others any right or protection afforded by section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to the Act or to subparts D or E of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(m).

In the event of such intimidation or restraint as are described in paragraphs (d)(1), (d)(2), (d)(3), or (d)(4) of this section, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(e) A facility subject to subparts D and E of this part shall maintain a separate file containing its attestation and required documentation, and shall make that file or copies thereof available to interested parties, as required by § _____350(b) of this part. In the event of a facility's failure to maintain the file, to provide access, or to provide copies, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(f) No health care facility shall seek to have an H–1A nurse, or any other nurse similarly employed by the employer, or any other employee waive rights conferred under the Act or under subparts D or E of this part. In the event of such waiver, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or subpart D or E of this part may be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or subparts D and E of this part. This prohibition of waivers does not prevent agreements to settle litigation among private parties.

(g) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any complainant or other person who provides information to the Department.

**§ _____405 Complaints and investigative procedures.**

(a) The Administrator, through investigation, shall determine whether a facility has failed to perform any attested conditions, misrepresented any material facts in an attestation (including misrepresentation as to compliance with regulatory standards), or otherwise violated the Act or subparts D or E of this part.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546).

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of section 212(m) of the INA (8 U.S.C. 1182(m)) or subparts D or E of this part. No particular form of complaint is required, except that the complaint shall be

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written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine what part or parts of the attestation or regulations have allegedly been violated. Upon the request of the complainant, the Administrator shall, to the extent possible under existing law, maintain confidentiality regarding the complainant's identity; if the complainant wishes to be a party to the administrative hearing proceedings under this subpart, the complainant shall then waive confidentiality. The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation and, if so, shall conduct an investigation, within 180 days of the receipt of a complaint. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary.

(d) When an investigation has been conducted, the Administrator shall, within 180 days of the receipt of a complaint, issue a written determination, stating whether a basis exists to make a finding that the facility failed to meet a condition of its attestation, or made a misrepresentation of a material fact therein, or otherwise violated the Act or subparts D or E of this part. The determination shall specify any sanctions imposed due to violations. The Administrator shall provide a notice of such determination to the interested parties and shall inform them of the opportunity for a hearing pursuant to §§ _____.415(d) and _____.420 of this part.

**§ _____.410 Civil money penalties and other remedies.**

(a) The Administrator may assess a civil money penalty not to exceed $1,000 for each affected person with respect to whom there has been a violation of the attestation or subparts D or E of this part and with respect to each instance in which such violation occurred. The Administrator also shall impose appropriate remedies, including the payment of back wages and the performance of attested obligations such as providing training.

(b) In determining the amount of civil money penalty to be assessed for any violation, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the facility under the Act and subparts D or E of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the attestation or the State plan as provided in the Act and subparts D and E of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury or adverse effect upon the workers.

(c) The civil money penalty, back wages, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The facility shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred. The payment of back wages, monetary relief, and/or the performance or any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The facility's failure to pay the civil money penalty, back wages, or other monetary relief, or to perform any other assessed remedy, shall result in the rejection by ETA of any future attestation submitted by the facility, until such payment or performance is accomplished.

**§ _____.415 Written notice and service of Administrator's determination.**

(a) The Administrator's determination, issued pursuant to § _____.405(d) of this part, shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant had requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § _____.405(c) of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility attestation and/or State plan, and the amount of any civil money penalty assessment and the reason or reasons therefor.

(2) Inform the interested parties that they may request a hearing pursuant to § _____.420 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 10 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that the Administrator shall notify ETA and INS of the occurrence of a violation, upon the earliest of the following events:

(i) Where the Administrator determines that there is a basis for a finding of violation, and no timely request for hearing is made pursuant to § _____.420 of this part;

(ii) Where, after a hearing, the administrative law judge issues a decision and order finding a violation and imposing a civil money penalty and/or other remedy; or

(iii) Where the administrative law judge finds that there was no violation and the Secretary, upon review, issues a decision pursuant to § _____.445(g) of this part, holding that a violation was committed and imposing a civil money penalty and/or other remedy.

(6) Upon receipt of the Administrator's notification, ETA shall suspend the violator's attestation and shall notify INS, which then is required to deny any H–1A visa petitions from the violator for a period of at least 12 months from the



date of receipt of the Administrator's notification.

**§ _____.420 Request for hearing.**

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ _____.405(d) and _____.415(d) of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) Where the Administrator determines that there is no basis for a finding of violation, the complainant or other interested party may request a hearing. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the facility shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) Where the Administrator determines that there is a basis for a finding of violation, the facility or other interested party may request a hearing. In such a proceeding, the Administrator shall be the prosecuting party and the facility shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge no later than 10 days after the date of the determination. For the requesting party's protection, if the request is by mail, it should be by certified mail.

(e) Copies of the request for a hearing shall be sent by the requestor to the Administrator and all interested parties.

**§ _____.425 Rules of practice for administrative law judge proceedings.**

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

**§ _____.430 Service and computation of time.**

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

**§ _____.435 Administrative law judge proceedings.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § _____.425 of this part, the Chief Administrative Law Judge shall appoint an administrative law judge to hear the case.

(b) Within seven days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least five days notice of such hearing.

(c) The date of the hearing shall be not more than 60 days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § _____.430 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § _____.430 of this part.

**§ _____.440 Decision and order of administrative law judge.**

(a) Within 90 days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

**§ _____.445 Secretary's review of administrative law judge's decision.**

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

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(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs, oral argument);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § _____.430(b) of this part.

(h) The Secretary's final decision shall be issued within 180 days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.450 of this part.

**§ _____.450 Administrative record.**

The official record of every completed administrative hearing procedure provided by subparts D and E of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

**§ _____.455 Non-applicability of the Equal Access to Justice Act.**

A proceeding under subparts D or E of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

**Appendix (Not To Be Codified in the CFR): Form ETA 9029**

Printed below is a copy of *Form ETA 9029.*

BILLING CODE 4510-10-M, 4510-27-M



## Health Care Facility Attestation (H-1A)

**U.S. Department of Labor**
Employment and Training Administration
U.S. Employment Service

1. Name of Facility (Full Legal Name of Organization)

3. Telephone (Area Code and Number)

OMB Approval No.: 1205-0306
Expires: 11/91

2. Address (Number, Street, City or Town, State and Zip Code)

4. Facility's Federal Employer I.D. Number

5. Nature of Facility's Business Activity

6. Name of Chief Executive Officer

**7. Kind of Facility (check appropriate item)**

☐ a. Nurse contractor intending to petition for H-1A nurses. (Also complete item 8.g.)
☐ b. Other Facility intending to petition for H-1A nurses.
☐ c. Facility intending to use H-1A nurses through a contractor only (check appropriate item; waivers of some of the elements in item 8 may be requested, in writing, if item 7.c.(i), 7.c.(ii), or 7.c.(iii) is checked; see the instructions for items 7. and 8.)
  ☐ (i) For no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis.
  ☐ (ii) For more than 15 but no more than 60 workdays in any 3-month period to meet temporary needs.
  ☐ (iii) For more than 60 workdays in any 3-month period due to a bona fide medical emergency. Describe on an attached sheet; see instructions.
  ☐ (iv) None of the above.

**8. FACILITY ATTESTATION: Applicable in its entirety if item 7.a. or item 7.b. is checked. Item 8.g. required if item 7.a. is checked.**

☐ a. (i) This facility has not laid off any registered nurses within the past year; and
☐ (ii) Through no fault of this facility, there would be a substantial disruption in the delivery of health care services of the facility without the services of a nonimmigrant nurse(s), as demonstrated by (check one or more appropriate items):
  ☐ Current nurse vacancy rate of seven percent or more.
  ☐ Unutilized bed rate of seven percent or more.
  ☐ Elimination/Curtailment of essential health care services.
  ☐ Inability to implement established plans for needed new health care services.
  ☐ Other (Describe on an attached sheet; see instructions).

☐ b. The employment of the alien(s) will not adversely affect the wages and working conditions of registered nurses similarly employed.
☐ c. Alien(s) employed by the facility will be paid the wage rate for registered nurses similarly employed by this facility.
☐ d. (i) Check appropriate item:
  ☐ This facility has taken and is taking timely and significant steps designed to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services in order to remove as quickly as reasonably possible our dependence on nonimmigrant nurses; or
  ☐ This facility is subject to an approved State plan for the recruitment and retention of nurses. (If checked, skip item 8.d.(ii).)

**(NOTE: 8. FACILITY ATTESTATION CONTINUES ON THE BACK OF THIS FORM.)**

**9. DECLARATION OF FACILITY:**

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and correct

Signature of Chief Executive Officer — Date

**FOR GOVERNMENT AGENCY USE ONLY:**

**By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid through _____ (date twelve months from the date it is accepted for filing).**

Signature of Authorized Department of Labor Official

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average ___ minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden, including estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0306 ) Washington, D.C. 20503.

ETA 9029 (Rev. Nov. 1990)

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(E. FACILITY ATTESTATION CONTINUATION)

(ii) Timely and significant steps being taken by this facility include (Check two or more unless second step is unreasonable; see item 8.d.(iii) and instructions).

- ☐ Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.
- ☐ Providing career development programs and other methods of facilitating health care workers to become registered nurses.
- ☐ Paying registered nurses at a rate higher than currently being paid registered nurses similarly employed in the geographic area.
- ☐ Providing adequate support services to free registered nurses from administrative and other nonnursing duties.
- ☐ Providing reasonable opportunities for meaningful salary advancement by registered nurses.
- ☐ Other (Describe on an attached sheet; see instructions.)

(iii) Only one timely and significant step has been and is being taken by this facility. (Check item below and attach explanation; see instructions.)

- ☐ Taking a second step is unreasonable.

(iv) Alternative to criteria for each step for second and succeding years. (Check item below and attach explenation; see instructions).

- ☐ This facility does not have a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided.
- ☐ This facility has a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10 percent without reducing the quality or quantity of services provided.
- ☐ Pursuant to its prior attestation, this facility has reduced the number of nonimmigrant nurses it utilizes by 10 percent within one year of the date of such prior attestation, without reducing the quality or quantity of services provided.

e. There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of this facility.

f. A copy of this attestation and supporting documentation are available at this facility for examination by interested parties. Copies of all visa petitions filed by the facility with INS for H-1A nurses will also be available for examination at this facility. The facility will make this attestation, including supporting documentation and other records available to officials of the Department of Labor upon request during any investigation upon this attestation.

CHECK APPROPRIATE ITEM:

- ☐ (i) Notice of this filing has been provided to the bargaining representative of the registered nurses at this facility; or
- ☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to registered nurses employed at this facility through posting in conspicuous locations.

g. For nurse contractors only.

- ☐ (i) H-1A nurses shall be referred only to facilities which themselves have valid and current attestations.
- ☐ (ii) This employer maintains copies of the valid attestation (Form ETA 9029) from each facility where its H-1A nurses are working.



## INSTRUCTIONS FOR COMPLETING FORM ETA 9029

## HEALTH CARE FACILITY ATTESTATION (H-1A)

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Submit the completed original Form ETA 9029 along with two copies of the form and all attachments to: Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, N.W., Room N-4456, Washington, D.C. 20210. If this attestation is used to support a visa petition for one or more H-1A nurses, a copy of that petition must be filed at the same address.

**To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).**

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions of 20 CFR Part 655, Subparts D and E, and at 29 CFR Part 504, Subparts D and E.

Item 1. Name of Facility. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Facility. Self explanatory.

Item 3. Telephone Number. For private households, enter a business and home telephone number when all adults are employed.

Item 4. Facility's Federal Employer I.D. Number. Enter the facility's federal employer identification number assigned by the Internal Revenue Service.

Item 5. Nature of Facility's Business Activity. Enter a brief, non-technical description, *e.g.*, acute care, long-term care, nursing contractor.

Item 6. Name of Chief Executive Officer. Self explanatory.

Item 7. Kind of Facility. A facility intending to use H-1A nurses through a contractor only must check the applicable box under Item 7.c. and may request, in writing on an attached sheet,a waiver of certain attestation elements (see §__.310(k) of the regulations. See instructions to Item 8. Waiver requests must include an estimate of the maximum number of workdays of H-1A contract nurse services the facility intends to use in any 3-month period. A workday consist of one H-1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H-1A contract nurses to total 15 workdays.

A facility intending to use H-1A nurses through a contractor for no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis may request, in writing, a waiver of Item 8.a (substantial disruption; layoffs), Item 8.b (adverse effect), and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for no more than 60 workdays in any 3-month period to meet temporary needs may request, in writing, a waiver of Item 8.a(ii) (substantial disruption, but not layoff under Item 8.a(i)) and Item 8.d (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for more than 60 workdays in any 3-month period may request, in writing, a waiver of Item 8.d (timely and significant steps; or State plan) due to a bona fide medical emergency. As part of the request for waiver, the facility must attach an explanation documenting the bona fide medical emergency. "Bona fide medical emergency" means a situation in which the services of one or more H-1A contract nurses are necessary at a worksite facility (which itself does

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not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

A worksite facility which uses H-1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation if it intends to use (or subsequently intends to use) such attestation as a basis for itself filing a visa petition for an H-1A nurse. Thus, a worksite facility should consider its future needs for H-1A nurses in filing attestations and requests for waiver (see §__.310(k) of the regulations).

Item 8. Facility Attestation. In order to be eligible to hire nonimmigrant alien (H-1A) nurses, a facility must attest to the conditions listed in elements (a) through (g). A facility requesting a waiver, in writing, of any attestation element (see §__.310(k) of the regulations) may obtain the services of an H-1A nurse by contracting with a nurse contractor but will not be eligible to itself employ any H-1A nurses under this attestation. The attestation cannot be accepted for filing if the required explanations or information supporting these elements are not attached to the Form ETA 9029. See § ___.310(c) through (k) of the regulations for guidance on the supporting information that must be attached to the Form ETA 9029.

Item 8.a(i). No Layoffs. Layoff means any involuntary separation of nurses without cause or prejudice. If nurses are separated from one specialized activity and offered retraining and retention at the same facility in another activity at the same wage and status, but refuse, it is not a layoff. If the position is covered by a collective bargaining agreement, the agreement's definition of "layoff" (if any) shall apply to that position.

Item 8.a.(ii). (A waiver of this item may be requested, in writing on an attached sheet, if Item 7.c.(i) or Item 7.c.(ii) is checked.) Substantial Disruption. A facility may attest that substantial disruption in the delivery of its health care services without nonimmigrant nurses is demonstrated by one or more of the specific circumstances listed. To make such an attestation, a facility must check the appropriate item(s) and attach brief explanatory information as to the circumstances and the nature and location of supporting documentation (see §§ __.310(d)(2)(i) and ____.310(d)(3) of the regulations). If a facility finds that the listed circumstances are inapplicable or cannot be demonstrated, the facility may make an attestation of substantial disruption in the delivery of the facility's health care services by checking the "Other" item and attaching a clear explanation and such documentation as demonstrates the substantial disruption (see §§ __.310(d)(2)(ii) and __310(d)(3) of the regulations).

Item 8.b. No Adverse Effect. A waiver of this item may be requested, in writing, if Item 7.c.(i) is checked.

Item 8.c. Facility/Employer Wage. This is not applicable if Item 7.c. is checked.

Item 8.d. Timely and Significant Step. A waiver of this item may be requested, in writing, if Item 7.c.(i), Item 7.c.(ii) or Item 7.c.(iii) is requested.

Item 8.d.(ii). Timely and Significant Steps. A facility may attest that it has taken and is taking one or more of the listed timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses. To make such an attestation, a facility must check the appropriate item(s) and attach a brief explanation of how the facility's program(s) meet the requirements of the step(s) (see § __.310(g)(1)(i)(A) of the regulations). The five steps listed on the form are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other steps, that are of comparable timeliness and significance. A facility choosing to take step(s) other than the five listed steps must make its attestation by checking the "Other" item and attaching an explanation of the nature and scope of the step(s) taken, how the step(s) are effected, and how the step(s) meet the statutory test of timeliness and significance comparable to





the listed steps. Examples of such other steps which may be considered to be of comparable timeliness and significance, depending upon all of the circumstances, are monetary incentives, special perquisites, work schedule options, and other training options. See § __.310(g)(1)(i)(B) of the regulations

Item 8.d.(iii). Unreasonableness of second step. The listed steps are not an exclusive list of the significant steps that may be taken to meet the requirements of the Act. Nothing shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. To make an attestation that taking a second step would be unreasonable, a facility must check the appropriate item and attach an explanation of why such a step would be unreasonable. The taking of a second step may be considered unreasonable, if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or the provision of nursing services would otherwise be jeopardized by the taking of such a step. For any of the five listed steps not taken, the facility's explanation shall demonstrate, with respect to each of the listed steps not taken, why it would be unreasonable for the facility to take such step. Such facility also shall explain why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. See § __.310(g)(1)(ii).

Item 8.d.(iv). Alternative to criteria for each specific step after the first year of attestation. In order to avoid the necessity of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include with its Form ETA 9029, in addition to the actions taken under Items 8.d.(ii) and (iii), an attestation that it shall reduce the number of nonimmigrant alien (H-1 and H-1A visaholders) nurses it uses one year from the date of attestation by at least 10 percent. This shall be achieved without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and indicated in its subsequent year's Form ETA 9029), the facility's subsequent year's Form ETA 9029 may simply include an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of nonimmigrant alien (H-1A) nurses it uses one year from the date of attestation by at least 10 percent.

Item 9. Declaration of Facility. One copy of this form must bear the original signature of the chief executive officer of the facility (or the chief executive officer's designee). By signing this form the chief executive officer is attesting to Item 7 and Item 8 on the Form ETA 9029 and to the accuracy of the information provided in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

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If the attestation bears the necessary entries of information and attached explanations for all items except Item 7.c.(iii) "Bona Fide Medical Emergency", Item 8.a.(ii) "Other," Item 8.d.(ii) "Other," and Item 8.d(iii), and if for those three items the Department of Labor determines after review that the attached explanations are sufficient to demonstrate compliance with the regulatory standards, the Department of Labor shall accept the attestation for filing and shall document such acceptance on the original and two copies of Form ETA 9029's submitted. A copy of the attestation form indicating the Department's acceptance will be returned to the health care facility. The facility may then file a visa petition with INS for temporary nonimmigrant nurses in accordance with INS regulations. The facility shall include a copy of the Form ETA 9029 with each visa petition filed with the Immigration and Naturalization Service.

A copy of this attestation, along with any supporting documentation and visa petitions, will be available for public inspection in the United States Employment Service's Public Disclosure Room in Room N-4456, 200 Constitution Avenue, NW., Washington, D.C. 20210.

[FR Doc. 90-28599 Filed 12-5-90; 8:45 am]
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Part V

Department of Defense
General Services
Administration
National Aeronautics and
Space Administration

48 CFR Part 15
Federal Acquisition Regulation (FAR);
Defective Pricing; Proposed Rule

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

**Federal Acquisition Regulation (FAR); Defective Pricing**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the policies affecting defective pricing price reductions. Review of the Defense Federal Acquisition Regulation Supplement indicated that there were policies which had value beyond use solely within the Department of Defense and which should be made applicable Governmentwide.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before February 4, 1991, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–54 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501–3221. Please cite FAR Case 90–54.

**SUPPLEMENTARY INFORMATION:**

**A. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because most contracts awarded to small business are awarded on the basis of sealed bidding and no certified cost or pricing data is required. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–54) in correspondence.

**B. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed change to the FAR does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: November 28, 1990.

Albert A. Vicchiolla,

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR part 15 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.804–7 is amended by revising paragraph (b)(2) to read as follows:

**15.804–7 Defective cost or pricing data.**

* * * * *

(b) * * *

(2) In arriving at the price adjustment, the contracting officer shall consider:

(i) The time by which the cost or pricing data became reasonably available to the contractor;

(ii) The extent to which the Government relied upon the defective data; and

(iii) The amount by which the price was increased based upon all available information.

* * * * *

[FR Doc. 90–28619 Filed 12–5–90; 8:45 am]

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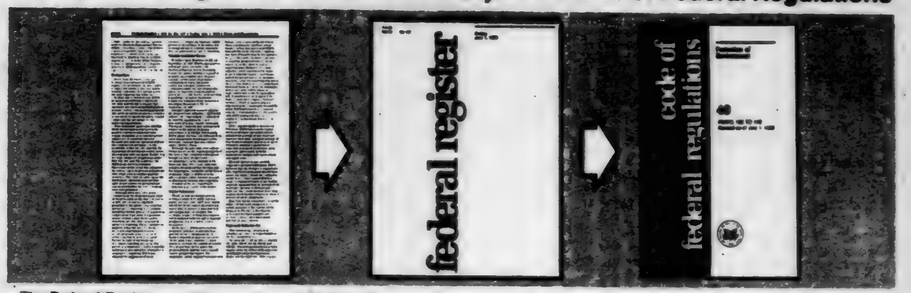
**Note:** This completes the listing of public laws enacted during the second session of the 101st Congress. A cumulative list of Public Laws for the second session will be published in Part II of the **Federal Register** on December 10, 1990.

The list will be resumed when bills are enacted into public law during the first session of the 102nd Congress, which convenes on January 3, 1991. It may be used in conjunction with >P L U S< (Public Laws Update Service on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as >slip laws<) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

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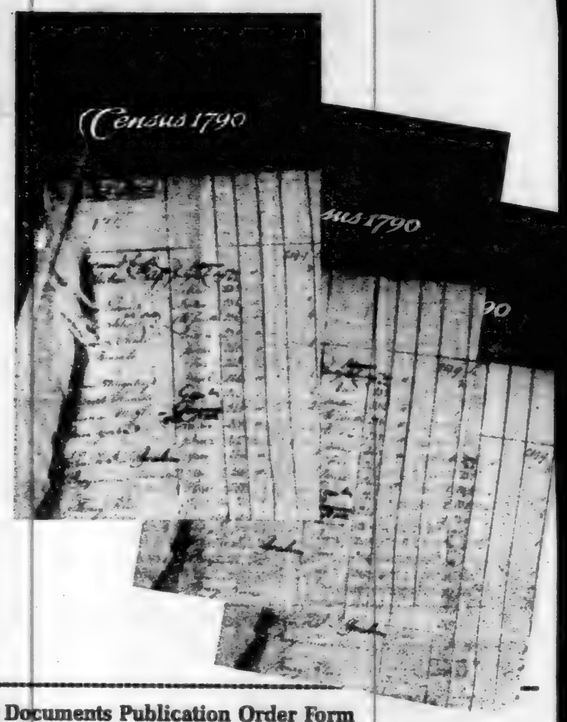
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 870 and 890**

## Federal Employees Health Benefits Program, Federal Employees' Group Life Insurance Program: Benefits for Hostages in Iraq, Kuwait, and Lebanon

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement section 599C of Public Law 101–513 (the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991) enacted November 5, 1990. Section 599C of Public Law 101–513 extends coverage under the Federal Employees' Group Life Insurance (FEGLI) Program and the Federal Employees Health Benefits (FEHB) Program to U.S. hostages in Iraq, Kuwait, and Lebanon while they are in hostage status and for 12 months thereafter. These interim regulations set forth the circumstances of their coverage in the two programs.

**DATES:** Interim regulations are effective on November 5, 1990. Comments must be received on or before February 5, 1991.

**ADDRESSES:** Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sears, (202) 606–0780, extension 207.

**SUPPLEMENTARY INFORMATION:** Section 599C of Public Law 101–513 provides for the coverage of certain hostages in Iraq, Kuwait, and Lebanon under the FEGLI and FEHB Programs during the period they are in hostage status and for 12 months thereafter if such benefits are not provided by any other insurer. It also requires that OPM prescribe regulations for the application of the FEGLI and FEHB laws to these hostages. The legislation does not make the hostages Federal employees for any purpose. These interim regulations explain how the provisions of the FEGLI and FEHB laws apply to hostages (and their families) who are covered under these programs by reason of Public Law 101–513.

Public Law 101–513 gives the U.S. Department of State the responsibility for determining the eligibility of individuals for coverage under this legislation. It also provides for a payment for hostages that is the equivalent of GS 9, step 1 pay ($24,705 in 1990). An allocation of $10,000,000 is earmarked from the State Department Foreign Assistance appropriations to carry out the provisions of Public Law 101–513.

Under these regulations, the U.S. Department of State determines hostages who are eligible for FEGLI and/or FEHB coverage. The State Department also acts as personnel and payroll office and sets the period of time that will serve as a pay period for the hostages.

These interim regulations permit OPM to accept the advance transfer of funds from the State Department representing premiums (Government and enrollee shares) if necessary to fund the 12-month period of coverage that begins the earlier of: (1) The end of economic sanctions or hostilities or (2) the end of the individual's hostage status. OPM will hold these funds in a special account and disburse them under normal procedures when the appropriate pay period occurs.

### Life Insurance

The interim regulations provide that a hostage who is eligible for life insurance coverage has basic life insurance coverage. A covered hostage may cancel the basic insurance coverage, but cannot reacquire it later (unless it would be against equity and good conscience not to allow the individual to be covered). This provision for automatic coverage under basic life insurance is similar to the requirement for mandatory coverage of Federal employees under basic life insurance (unless they waive coverage).

Under these interim regulations, the basic insurance amount for hostages is the same as for a Federal employee earning an annual salary equal to the amount of the payment provided to hostages under section 599C of Public Law 101–513. The extra life insurance benefit for Federal employees under age 45 also applies to hostages. This extra benefit doubles the amount of life insurance payable for individuals who are age 35 or less at death. Beginning at age 36, the extra benefit decreases by 10 percent each year, until at age 45, there is no extra benefit.

Like Federal employees, hostages may cancel their coverage at any time by a written request. If they cancel their coverage, they cannot reacquire it unless it would be against equity and good conscience not to allow the individual to be covered. Hostages themselves must request cancellations; cancellations by proxy are not acceptable.

If the covered individual does not cancel his or her coverage, coverage under this part terminates 12 months after hostage status ends.

Coverage is effective on August 2, 1990, for hostages in Iraq and Kuwait and on January 1, 1990, for hostages captured in Lebanon, unless the State Department determines that a later date is appropriate. Since premiums are required for every pay period during which an individual is covered, the initial payment must include premiums for coverage from the effective date through the current pay period. These interim regulations also permit OPM to accept the advance transfer of funds from the State Department appropriation representing premiums (Government and enrollee shares) on behalf of the enrollee if necessary to fund the 12-month period of coverage beginning the earlier of: (1) The end of economic sanctions of hostilities or (2) the end of the individual's hostage status. The premiums will be held in a special account and disbursed according to FEGLI law when the appropriate pay period occurs.

Also, unlike FEGLI coverage for employees, the commencement and termination of coverage does not necessarily coincide with the beginning and ending of pay periods. Therefore,

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the regulations provide a simple formula for determining a daily premium to use for periods that are not full pay periods.

These interim regulations provide that insurance benefits will be paid according to the order of precedence set forth in the FEGLI law. Designated beneficiaries are first in this order of precedence. Designations of beneficiaries as described in existing regulations will be acceptable under these interim regulations. Under existing regulations, a designation of beneficiary must be in writing, signed, and witnessed by two people (other than a named beneficiary), and received in the employing office (in this case, the State Department) before the death of the covered individual. Additional details regarding designations of beneficiary can be found in 5 CFR 870.902. There is no regulatory requirement for hostages to use the Standard Form 2823, Designation of Beneficiary, for this purpose.

These interim regulations also provide that requests for reconsideration of State Department's initial decisions must be directed to the State Department, since the State Department determines eligibility for coverage under Public Law 101–513.

**Health Benefits**

The interim regulations provide that a hostage who is eligible for health benefits coverage (based on the determination of the U.S. Department of State) is covered under the Standard Option of the Service Benefit Plan. These regulations provide for automatic enrollment in the Service Benefit Plan for the duration of coverage under this legislation since this plan is open to all enrollees and no membership dues are required. If it is clear that the hostage is not married and has no eligible dependent children, he or she has a self only enrollment. If the hostage is married, or if the martial status is unknown, he or she has a self and family enrollment.

Enrollees may change from self only to self and family enrollment, or vice versa, within the Standard Option of the Service Benefit Plan because of a change in family status (that is, a gain or loss of a family member).

Coverage is effective on August 2, 1990, for hostages in Iraq and Kuwait and on January 1, 1990, for hostages captured in Lebanon, unless the State Department determines that a later date is appropriate. As with FEGLI, FEHB premiums are required for every pay period during which an individual is covered; therefore, the initial payment must include premiums for coverage from the effective date through the current pay period. The interim regulations also provided a simple formula for determining a daily premium rate for use when a period of coverage is less than a full pay period.

These interim regulations also permit OPM to accept the advance transfer of funds from the State Department appropriation representing premiums if necessary to fund the 12-month period of coverage beginning the earlier of (1) the end of economic sanctions or hostilities or (2) the end of the individual's hostage status. The premiums will be held in a special account and disbursed according to FEHB law when the appropriate pay period occurs.

A hostage may cancel coverage at any time; however, cancellations are irrevocable (unless it would be against equity and good conscience not to allow the individual to be covered). Hostages themselves must request cancellations; cancellations by proxy are not acceptable.

The interim regulations provide that if a covered hostage dies while in hostage status, family members can continue coverage for 12 months thereafter. If a former hostage dies during the 12 months of coverage following the end of hostage status, the family members can continue the coverage for the remainder of the 12-month period after the end of the period of hostage status.

As with life insurance coverage under these interim regulations, requests for reconsideration of State Department's initial coverage decision must be made to the State Department rather than OPM.

Eligibility for both life insurance and health benefits shall be subject to the availability of funds under section 599C of Public Law 101–513.

**Waiver of Notice of Proposed Rulemaking**

Pursuant to section 553(b)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making the rules effective in less than 30 days. OPM is required under section 599C of Public Law 101–513, enacted November 5, 1990, to prescribe regulations implementing that section of law within 30 days after enactment.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect United States hostages in Iraq, Kuwait, and Lebanon.

**List of Subjects**

*5 CFR Part 870*

Administrative practice and procedure, Life insurance.

*5 CFR Part 890*

Administrative practice and procedure, Health insurance.

U.S. Office of Personnel Management.

**Constance Berry Newman,**
*Director.*

Accordingly, OPM is amending 5 CFR parts 870 and 890 as follows:

## PART 870—BASIC LIFE INSURANCE

1. The authority citation for part 870 is revised to read as follows:

Authority: 5. U.S.C. 8716; subpart J is also issued under section 599C of Pub. L. 101–513.

2. In part 870, a new subpart J is added to read as follows:

**Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon**

Sec.

870.1001 Purpose.
870.1002 Definitions.
870.1003 Coverage and amount of insurance.
870.1004 Effective date of coverage.
870.1005 Cancellation of coverage.
870.1006 Termination of coverage.
870.1007 Premiums.
870.1008 Order of precedence and designation of beneficiary.
870.1009 Responsibilities of the U.S. Department of State.
870.1010 Reconsideration and appeal rights.


**Subpart J—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon**

**§ 870.1001 Purpose.**

This subpart sets forth the circumstances under which individuals are covered under this part in accordance with the provisions of section 599C of Public Law 101–513.

**§ 870.1002 Definitions.**

In this subpart—

*Hostage* and *hostage status* have the meaning set forth in section 599C of Public Law 101–513.

*Pay period* for individuals covered under this subpart means the pay period established by the U.S. Department of State for paying individuals covered under Public Law 101–513.

*Period of eligibility* means the period beginning on the effective date set forth in § 870.1004 and ending 12 months after hostage status ends.



**§ 870.1003 Coverage and amount of insurance.**

(a) An individual is covered under this subpart when the U.S. Department of State determines that the individual is eligible for coverage under section 599C of Public Law 101–513.

(b) Subject to the applicable conditions prescribed in this part, an individual who is covered under this subpart is insured for the amount of basic life insurance specified in § 870.301 of this part.

(c) The basic insurance amount under § 870.301 is deemed to be the amount of the payment specified in section 599C(b)(2) of Public Law 101–513, rounded to the next higher multiple of $1,000, plus $2,000.

(d) An individual who is insured under paragraph (b) of this section is also insured for group accidental death and dismemberment insurance in accordance with 5 U.S.C. 8704(b).

(e) An individual covered by this subpart is not considered an employee for the purpose of this part.

(f) Eligibility for coverage under this subpart shall be subject to the availability of funds under section 599C(e) of Public Law 101–513.

**§ 870.1004 Effective date of coverage.**

Coverage under this subpart was effective on August 2, 1990, for hostages in Iraq and Kuwait and on January 1, 1990, for hostages captured in Lebanon, unless the U.S. Department of State determines that a later date is appropriate.

**§ 870.1005 Cancellation of coverage.**

(a) An individual who is covered under this subpart may cancel his or her coverage at any time by written request. The cancellation is effective on the 1st day of the pay period after the pay period in which it is received by the U.S. Department of State.

(b) An individual who cancels his or her coverage under this section cannot reacquire coverage unless the U.S. Department of State determines that it would be against equity and good conscience not to allow the individual to be covered.

(c) A cancellation of coverage must be made by the covered individual and cannot be made by a representative acting on the individual's behalf.

**§ 870.1006 Termination of coverage.**

(a) Coverage of an individual under § 870.1003(a) terminates 12 months after hostage status ends unless the individual cancels the coverage earlier.

(b) Covered individuals whose coverage terminates are eligible for temporary extension of coverage and conversion as set forth in subpart E of this part unless coverage is terminated by cancellation.

**§ 870.1007 Premiums.**

(a) Government contributions and employee withholdings (premiums) required under subpart D of this part are paid from the appropriation provided under section 599C(e) of Public Law 101–513.

(b) If the individual is not covered under this subpart for the full pay period, premiums are paid only for the days he or she is actually covered. The daily premium rate is an amount equal to the monthly premium rate multiplied by 12 and divided by 365.

(c) The payments required by this section may be accepted by OPM in advance from a State Department appropriation if necessary to fund the 12-month period of coverage beginning the earlier of:

(1) The day after sanctions or hostilities end; or

(2) The day after the individual's hostage status ends.

(d) OPM will place any funds received under paragraph (c) of this section in an account established for that purpose. OPM will make the disbursement required under 5 U.S.C. 8714 from the account when the appropriate pay period occurs.

**§ 870.1008 Order of precedence and designation of beneficiary.**

Payment of insurance benefits is made under the order of precedence set forth in 5 U.S.C. 8705 and under the provisions of subpart I of this part.

**§ 870.1009 Responsibilities of the U.S. Department of State.**

(a) The U.S. Department of State functions as the "employing office" for individuals covered under this subpart.

(b) The U.S. Department of State must determine the eligibility of individuals who qualify under Public Law 101–513 for coverage under this part. This determination includes the determination as to whether the individual is barred from coverage under chapter 87 of title 5 U.S. Code by reason of other life insurance coverage as provided in section 599C of Public Law 101–513.

**§ 870.1010 Reconsideration and appeal rights.**

(a) Under procedures set forth by the U.S. Department of State, an individual may request the U.S. Department of State to reconsider an initial decision if it has made denying coverage under this subpart.

(b) Neither the initial decision nor the reconsideration decision of the U.S. Department of State is subject to reconsideration by OPM.

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p., 22 U.S.C. 4069c, and 4069c–1; subpart L also issued under Pub. L. 101–513.

4. In part 890, a new subpart L is added to read as follows:

**Subpart L—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon**

Sec.

890.1201 Purpose.
890.1202 Definitions.
890.1203 Coverage.
890.1204 Effective date of coverage.
890.1205 Change in type of enrollment.
890.1206 Cancellation of coverage.
890.1207 Termination of coverage.
890.1208 Premiums.
890.1209 Responsibilities of the U.S. Department of State.
890.1210 Reconsideration and appeal rights.


**Subpart L—Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon**

**§ 890.1201 Purpose.**

This subpart sets forth the circumstances under which individuals are covered under this part in accordance with the provisions of section 599C of Public Law 101–513.

**§ 890.1202 Definitions.**

In this subpart—

*Covered family members* as it applies to individuals covered under this subpart has the same meaning as set forth in § 890.101(a). For eligible survivors of individuals enrolled under this subpart, a family enrollment covers only the survivor or former spouse and unmarried dependent natural or adopted child of both the survivor or former spouse and hostage.

*Hostage* and *hostage status* have the meaning set forth in section 599C of Public Law 101–513.

*Pay period* for individuals enrolled under this subpart means the pay period established by the U.S. Department of State for paying individuals covered under Public Law 101–513.

*Period of eligibility* means the period

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beginning on the effective date set forth in § 890.1204 of this part and ending 12 months after hostage status ends.

**§ 890.1203 Coverage.**

(a) An individual is covered under this subpart when the U.S. Department of State determines that the individual is eligible for coverage under section 599C of Public Law 101–513.

(b) An individual who is covered under this subpart is covered under the Standard Option of the Service Benefit Plan. The individual has a self and family enrollment unless the U.S. Department of State determines that the individual is unmarried and has no dependent children. Unmarried individuals who have no eligible dependent children have a self only enrollment.

(c) Individuals covered under this subpart are deemed ineligible for enrollment in any FEHB plan or option other than the Standard Option of the Service Benefit Plan.

(d) Eligible surviving family members of an individual covered under this subpart whose hostage status ends because of death or who dies during the 12 months following the end of hostage status are eligible to continue enrollment under this part. The enrollment terminates no later than 12 months after hostage status ended.

(e) An individual covered by this subpart is not considered an employee for the purpose of this part.

(f) Eligibility for coverage under this subpart shall be subject to the availability of funds under section 599C(e) of Public Law 101–513.

**§ 890.1204 Effective date of coverage.**

Coverage under § 890.1203(b) is effective on August 2, 1990, for hostages in Iraq and Kuwait and on January 1, 1990, for hostages captured in Lebanon, unless the State Department determines a later date is appropriate.

**§ 890.1205 Change in type of enrollment.**

(a) Individuals covered under this subpart or eligible survivors enrolled under this subpart may change from self only to self and family coverage if they acquire an eligible family member. The change may be made at the written request of the enrollee at any time after the family member is acquired. A change in enrollment under this paragraph becomes effective on the 1st day of the pay period after the pay period during which the request is received by the U.S. Department of State, except that a change based on the birth or addition of a child as a new family member is effective on the 1st day of the pay period during which the child is born or otherwise becomes a new family member.

(b) Individuals covered under this subpart or eligible survivors enrolled under this subpart may change from a self and family enrollment to a self only when the last eligible family member (other than the enrollee) ceases to be a family member. The change may be made at the written request of the enrollee at any time after the last family member is lost and it becomes effective on the 1st day of the pay period after the pay period during which the request is received by the U.S. Department of State.

(c) A family member may file a request to change the type of enrollment on behalf of a hostage during the period of hostage status or on behalf of an eligible former hostage who cannot file the election on his or her own behalf because of a mental or physical disability.

**§ 890.1206 Cancellation of coverage.**

(a) An individual who is covered under § 890.1203(b) may cancel his or her enrollment at any time by written request. The cancellation is effective on the 1st day of the pay period after the pay period in which it is received by the U.S. Department of State.

(b) An individual who cancels his or her coverage under this section cannot reacquire coverage unless the U.S. Department of State determines that it would be against equity and good conscience not to allow the individual to be enrolled.

(c) A cancellation of coverage must be made by the enrolled individual and cannot be made by a representative acting on the individual's behalf.

**§ 890.1207 Termination of coverage.**

(a) Coverage of an individual under § 890.1203(b) terminates 12 months after hostage status ends unless the individual cancels the coverage earlier.

(b) Enrollees and family members are eligible for temporary extension of coverage for conversion as set forth in subpart D of this part unless the covering enrollment is terminated by cancellation.

**§ 890.1208 Premiums.**

(a) Government and employee contributions (premiums) required under §§ 890.501 and 890.502 of this part are paid from the appropriation provided under section 599C(a) of Public Law 101–513.

(b) If the individual is not covered under this subpart for the full pay period, premiums are paid only for the days he or she is actually covered. The daily premium rate is an amount equal to the monthly premium rate multiplied by 12 and divided by 365.

(c) The payments required by this section may be accepted by OPM from the State Department appropriation in advance if necessary to fund the 12-month period of coverage beginning on the earlier of:

(1) The day after sanctions or hostilities end; or

(2) The day after the individual's period of hostage status ends.

(d) OPM will place any funds received under paragraph (c) of this section in an account established for this purpose. OPM will make the disbursements specified under § 890.506 from this account when the appropriate pay period occurs.

**§ 890.1209 Responsibilities of the U.S. Department of State.**

(a) The U.S. Department of State functions as the "employing office" for individuals covered under this subpart.

(b) The U.S. Department of State must determine the eligibility of individuals who qualify under Public Law 101–513 for coverage under this part. This determination includes the determination as to whether the individual is barred from coverage under chapter 89 of title 5 U.S. Code by reason of other health insurance coverage as provided in section 599C of Public Law 101–513.

(c) The U.S. Department of State must determine whether eligible individuals are married or single for the purpose of coverage under a self only or a self and family enrollment as set forth in § 890.1203(b). If the marital status of the individual cannot be determined, the U.S. Department of State must enroll the individual for self and family coverage.

**§ 890.1210 Reconsideration and appeal rights.**

(a) Under procedures set forth by the U.S. Department of State, an individual may request the U.S. Department of State to reconsider an initial decision it has made denying coverage or a change in the type of enrollment under this subpart.

(b) Neither the initial decision nor the reconsideration decision of the U.S. Department of State is subject to reconsideration by OPM.

[FR Doc. 90–28707 Filed 12–4–90; 2:41 pm]
BILLING CODE 6325–01–M



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 989**

**[FV–91–212 FR]**

## 1990–91 Expenses and Assessment Rate Under Marketing Order No. 989 Raisins Produced From Grapes Grown in California

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 989 for the 1990–91 fiscal year established under the federal marketing order for raisins produced from grapes grown in California. Authorization of this budget will allow the Raisin Administrative Committee (Committee) to incur reasonable and necessary expenses to administer the marketing order program. Funds for the program are derived from assessments on handlers of California raisins.

**EFFECTIVE DATE:** August 1, 1990, through July 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3920.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Department Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of handlers and the majority of producers of raisins may be classified as small entities.

The federal marketing order for California raisins requires that the assessment rate for a particular marketing year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. That rate is applied to actual shipments to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the budget of annual expenses and assessment rate approval must be expedited so that the Committee will have funds to meet its obligations.

The Committee met on October 4, 1990, as required by the marketing order, and unanimously recommended 1990–91 marketing order expenditures of $450,550 and an assessment rate of $1.90 per assessable ton of raisins. In comparison, 1989–90 marketing year budgeted expenditures were $534,505, and the assessment rate was $1.50 per ton. Assessment income for 1990–91 is estimated at $540,550 based on 284,500 tons of assessable raisins.

Major expenditure categories in the 1990–91 budget are $185,000 for executive salaries, $101,000 for office personnel salaries, $50,000 for Committee travel, $38,000 for compliance staff salaries, and $35,000 for insurance and bonds. Comparable budgeted expenditures for the 1989–90 fiscal year were $176,400, $91,200, $40,000, $33,000, and $35,000, respectively. The increase in the assessment rate is necessary because the estimate of the crop is about 35,000 tons less than last year. Also, the Committee has increased salaries for executive personnel.

While this action will impose some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new section 989.341 and is based on Committee recommendations and other information. A proposed rule on the establishment of expenses and an assessment rate was published in the November 9, 1990, issue of the Federal Register (55 FR 47063). Comments on the proposed rule were invited from interested persons until November 19, 1990. No comments were received.

After consideration of the information and recommendation submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Committee at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

1. The authority citation for 7 CFR part 989 continues to read as follows:

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Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.341 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA**

**§ 989.341 Expenses and assessment rate.**

Expenses of $540,550 by the Raisin Administrative Committee are authorized and an assessment rate payable by each handler in accordance with § 989.80 of $1.90 per ton of assessable raisins is established for the crop year ending July 31, 1991. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: December 3, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–28699 Filed 12–6–90; 8:45 am]

BILLING CODE 3410–02–M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 204**

**[Regulation D; Docket No. R–0716]**

**Reserve Requirements of Depository Institutions, Reserve Requirement Ratios**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to section 19 of the Federal Reserve Act (12 U.S.C. 461) the Board's Regulation D, Reserve Requirements of Depository Institutions (12 CFR part 204), requires depository institutions to maintain reserves of 3 percent on their nonpersonal time deposits with original maturities or notice periods of less than one and one-half years. Such time deposits are sometimes referred to as "short-term nonpersonal time deposits." Also pursuant to section 19 of that Act, the Board's Regulation D requires any depository institution, including a U.S. branch or agency of a foreign bank, to maintain reserves of 3 percent on net balances owed to a directly related foreign office or to foreign offices of nonrelated depository institutions, on loans to U.S. residents made by related foreign offices, and on assets held by related foreign offices acquired from domestic offices. Such reservable liabilities are known as "Eurocurrency liabilities." The Board is now amending its Regulation D to reduce the reserve requirement on short-term nonpersonal time deposits and Eurocurrency liabilities from the current level of 3 percent to zero percent. These reductions will be phased in over two successive reserve maintenance periods for depository institutions that report their deposits weekly under Regulation D, and will be effective at the beginning of the next quarterly period for quarterly reporters.

Reserve requirements on transaction accounts (generally 12 percent) and nonpersonal time deposits with original maturities or notice periods of one and one-half years or more (zero percent) are not being changed. Reporting requirements and regulatory definitions also are not being changed.

**DATES:** *Effective date:* December 13, 1990.

*Compliance dates:*[1] Reserves on short-term nonpersonal time deposits and Eurocurrency liabilities for weekly reporting depository institutions will be reduced from 3 percent to 1 and ½ percent effective with the weekly reporter reserve maintenance period that begins on Thursday, December 13, 1990, and will be reduced from 1 and ½ percent to zero percent effective with the weekly reporter reserve maintenance period that begins on Thursday, December 27, 1990. For quarterly reporting institutions, reserves on these liabilities will be reduced to zero percent effective January 17, 1991, the beginning of the next quarterly period.[2] The Board believes that this time period will be sufficient to provide the desired stimulus promptly while minimizing the disruption to the financial markets resulting from the reduction.

**FOR FURTHER INFORMATION CONTACT:** John Harry Jorgenson, Senior Attorney (202/452–3778), or Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, or Brian Reid, Economist (202/452–3589), Division of Monetary Affairs; for the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

[1] These compliance dates do not affect the compliance dates for amendments to Regulation D concerning the low reserve tranche and the deposit cutoff as announced at 55 FR 40992, December 4, 1990. However, the amendments made by the Board in this action to 12 CFR 204.9(a)(1) supersede the amendments made by the Board to that section on November 28, 1990 and announced at 55 FR 49092, December 4, 1990.

[2] Required reserves on nonpersonal time deposits and Eurocurrency liabilities for quarterly reporters total on the order of $450 million.

**SUPPLEMENTARY INFORMATION:** Section 19(b)(2) of the Federal Reserve Act, as amended by Title I of the Monetary Control Act of 1980 (Pub. L. 96–221; March 31, 1980), provides:

(B) Each depository institution shall maintain reserves against its nonpersonal time deposits in the ratio of 3 per centum, or in such other ratio not greater than 9 per centum and not less than zero per centum as the Board may prescribe by regulation solely for the purpose of implementing monetary policy.

* * * * *

(D) * * * Reserve requirements imposed under this subsection shall be uniformly applied to nonpersonal time deposits at all depository institutions, except that such requirements may vary by the maturity of such deposits.

Pursuant to this authority, the Board in 1980 amended its Regulation D to carry out provisions of the Monetary Control Act of 1980 (45 FR 56009; August 22, 1980). As part of this revision of Regulation D, the Board set the reserve requirement ratio on nonpersonal time deposits with original maturities or required notice periods of less than four years at 3 percent and the ratio on such deposits with maturities or notice periods of four years or more at zero percent (45 FR at 56027). On three subsequent occasions, the Board reduced reserves on nonpersonal time deposits with certain maturities to zero for monetary policy purposes. In 1982, it reduced the maturity for zero percent reserves on nonpersonal time deposits from four years to three and one-half years. (47 FR 18847; May 3, 1982). In March of 1983, the Board reduced the maturity for zero percent reserves to two and one-half years (48 FR 12083; March 23, 1983), and in October of 1983 reduced the maturity for zero percent reserves to one and one-half years, the current maturity cut-off (48 FR 46005; October 11, 1983).

The Board's Regulation D as revised in 1980 also incorporated a reserve requirement ratio of 3 percent on Eurocurrency liabilities as defined in § 204.2(h) of Regulation D, regardless of maturity. Such reserves are authorized by section 19(b)(5) of the Federal Reserve Act, which provides that these liabilities are subject to reserves in such ratios as the Board may prescribe. The Board has not changed this reserve requirement ratio of 3 percent on Eurocurrency liabilities since its adoption in 1980.

The Board is reducing the 3 percent reserve requirement on short-term nonpersonal time deposits and Eurocurrency liabilities to zero. It is taking this action based on its determination that reserves on these liabilities are not necessary for the conduct of monetary policy.



The Board took action at this time in response to mounting evidence that commercial banks have been tightening their standards of creditworthiness and the terms and conditions for many types of loans. While much of this tightening has been welcome from a safety and soundness standpoint, it has in recent months begun to exert a contractionary influence on the economy. This has been reflected in slow growth in the broad monetary aggregates and in bank credit. Lower reserve requirements at any given level of money market interest rates will reduce costs to depository institutions, providing added incentive to lend to creditworthy borrowers, thus countering, to some extent, the recent tightening in credit terms.

This reduction in reserve requirements is being phased in over two reserve maintenance periods for weekly reporters so that the change in reserves does not disrupt the money markets. Although the reserve requirement ratios are being reduced to zero, reporting requirements that distinguish between short-term and long-term deposits through the use of the one and one-half year maturity requirement for long-term deposits are being retained as is the distinction between personal and nonpersonal accounts. Reserve requirements on transaction accounts also are being retained.

Regulation D is also being revised to reflect technical changes made necessary by the reduction of the reserve requirements. For example, § 204.9(a)(2) of Regulation D directs that any portion of the zero percent reserve requirement tranche created by the section remaining after the tranche is applied to transaction accounts will be applied to nonpersonal time deposits with maturities of less than one and one-half years (that is, to short-term nonpersonal time deposits) or to Eurocurrency liabilities, both of which are subject to a reserve requirement ratio of three percent. This provision is being changed to delete the reference to nonpersonal time deposits and Eurocurrency liabilities.

*Notice and public participation; effective date.* The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the Board for "good cause" finds that notice and public comment on the proposed changes are "impracticable, unnecessary, or contrary to the public interest." The Board finds that it is impracticable and contrary to the public interest because the economic conditions discussed above warrant providing the prompt stimulus to lending that will result from immediate steps to reduce reserves.[3] In order to avoid disruption in the money markets, this change is being phased in over two reserve maintenance periods for weekly reporters beginning December 13, 1990.

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of these amendments. Section 553(d) also provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. This rule does reduce such a burden, and, as noted, the Board has determined that delaying the effectiveness of that relief is contrary to the public interest.

*Regulatory Flexibility Act Analysis.* Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed amendments will not have a significant adverse economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

**List of Subjects in 12 CFR Part 204**

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

## PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for Part 204 continues to read as follows:

**Authority:** Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St. Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. In § 204.2, footnote 2 in paragraph (c)(1)(i) introductory text is revised to read "[2] A nonpersonal time deposit with a stated maturity of one and one-half years or more may be treated as having an original maturity of one and one-half years or more only if it is subject to the minimum penalty described in § 204.2(f)(3)."

3. In § 204.3, the word "and" is added after the semicolon in paragraph (a)(3)(i)(A); the colon and the word "and" are removed at the end of paragraph (a)(3)(i)(B) and a period is added; and paragraph (a)(3)(i)(C) is removed.

4. In § 204.3, paragraph (C)(2) is revised to read as follows:

**§ 204.3 Computation and maintenance.**

* * * * *

(c) *Computation of required reserves for institutions that report on a weekly basis.*

* * * * *

(2) A reserve balance shall be maintained during a given maintenance period based on the daily average net transaction accounts held by the depository institution during the computation period that began immediately prior to the beginning of the maintenance period.

* * * * *

5. Section 204.9(a)(1), as revised in a final rule document published on December 4, 1990 (55 FR 49992), is hereby withdrawn. Section 204.9(a) is now revised to read as follows:

**§ 204.9 Reserve requirement ratios.**

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

| Category | Reserve requirement |
|---|---|
| Net transaction accounts[1] | |
| $0 to $41.1 million | 3 percent of amount. |
| Over $41.1 million | $1,233,000 plus 12 percent of amount over $41.1 million. |
| Nonpersonal time deposits. | 0 percent. |
| Eurocurrency liabilities | 0 percent. |

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $3.4 million determined in

[3] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in general requirements regarding reserves. 12 CFR 262.2(e).

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accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 4, 1990.
William W. Wiles,
*Secretary of the Board.*
[FR Doc. 90-28706 Filed 12-6-90; 8:45 am]
BILLING CODE 6210-01-M

## 12 CFR Part 265

[Docket No. R-0715]

## Delegation of Authority to General Counsel

**AGENCY:** Board of Governors of the Federal Reserve System.
**ACTION:** Final rule.

**SUMMARY:** The Board is amending paragraph (13) of § 265.2(b), to delegate to the General Counsel, after consultation with the Staff Director of the Division of Banking Supervision and Regulation, the authority to grant requests for temporary director interlocks under the Board's Regulation L: (1) When depository organizations experience conditions endangering safety or soundness, (2) for organizations sponsoring a credit union, and (3) for organizations that lose thirty percent or more of their directors or management officials due to changes in circumstances.

This delegation of authority will relieve the Board from having to act on matters that are more efficiently and effectively handled by Board staff.

**EFFECTIVE DATE:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Corsi, Attorney, Legal Division (202) 452-3275, or Anne R. Wolfson, Attorney, Legal Division (202) 452-2248. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The amendment does not have particular effect on small entities.

### Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

### List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR part 265 is amended as follows:

## PART 265—RULES REGARDING DELEGATION OF AUTHORITY

The authority citation for part 265 continues to read as follows:

1. **Authority:** Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. In § 265.2, paragraph (b)(13) is revised to read as follows:

**§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.**

* * * * *

(b) * * *

(13) Under the provisions of § 212.4(b)(1)—(b)(5) of this chapter, after consultation with the Staff Director of the Division of Banking Supervision and Regulation, to grant requests for temporary director interlocks under Regulation L for newly-chartered banking organizations in low-income areas or minority or women's banks, organizations experiencing conditions endangering their safety or soundness, organizations sponsoring a credit union, and organizations that lose thirty percent or more of their directors or management officials due to changes in circumstances.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 4, 1990.
William W. Wiles,
*Secretary of the Board.*
[FR Doc. 90-28706 Filed 12-6-90; 8:45 am]
BILLING CODE 6210-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 348

**RIN 3064-AA38**

## Management Official Interlocks

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").
**ACTION:** Final rule.

**SUMMARY:** The FDIC is amending part 348 of its regulations governing management official interlocks to conform those regulations to changes made in the Depository Institution Management Interlocks Act which is implemented by part 348. The changes implement statutorily mandated exceptions to the prohibitions on management interlocks. These exceptions relate to advisory directors, certain types of savings associations and savings and loan holding companies, emergency acquisitions of savings associations, interlocks involving diversified savings and loan holding companies, and the extension of the grandfather period under the statute.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Pamela E. F. LeCren, Counsel, Legal Division, (202) 898-3730, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### Discussion

Part 348 of the FDIC's regulations (12 CFR part 348) implements the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act", 12 U.S.C. 3201 *et seq.*). The Interlocks Act, which generally prohibits unaffiliated depository institutions and depository institution holding companies from sharing management officials depending upon their size and location, was amended in 1988 with the passage of the Management Interlocks Revision Act of 1988 ("Revision Act", Pub. L. 100-650, 102 Stat. 3819) and again on August 9, 1989 with the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ["FIRREA", Pub. L. 101-73 103 Stat. 183). An exception to the prohibitions of the Interlocks Act was also created by FIRREA through an amendment to the Federal Deposit Insurance Act ("FDI Act"). As a result of the above enactments it is necessary to amend the FDIC's regulations to conform to the statutory changes.

The Revision Act amended the Interlocks Act in several ways:

(1) Changed the definition of affiliation by common ownership to allow for an affiliation where 25% of the voting stock of a depository institution or depository holding company is beneficially owned by the same person or group of persons;

(2) Provided that the prohibitions of the Interlocks Act would not apply for the five year period beginning on the date of the acquisition to an interlock that results from the acquisition of a depository institution or a depository holding company that is closed or in danger of closing;

(3) Extended the grandfather period for management interlocks in existence prior to November 10, 1978 (which was set to expire on November 10, 1988) for an additional five years;

(4) Provided that, notwithstanding the prohibitions of the Interlocks Act, a management official of a depository institution or depository holding company could become a director of an unaffiliated diversified savings and loan holding company or a nondepository subsidiary thereof (and visa versa) if the appropriate regulatory agencies are given 60 days advance notice and the proposed dual service is not disapproved on one of the three grounds for disapproval set forth in the statute. (The dual service can be disapproved any time after the 60 days if a change of circumstances occurs that would have provided a basis for disapproval.); and

(5) Excluded advisory and honorary directors of depository institutions with total assets of less than $100 million from the definition of the term "management official".

FIRREA amended both the Interlocks Act and the FDI Act to provide for additional exceptions to prohibited dual service. The Interlocks Act was itself amended to provide that the prohibitions thereof would not apply to an interlock involving a single management official of any savings association or any savings and loan holding company, or any subsidiary thereof, that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owner's Loan Act ("HOLA", 12 U.S.C. 1467a(q)) if the Director of the Office of Thrift Supervision determines that such service as a management official is consistent with the purposes of the Interlocks Act and HOLA. ("Purchase of Minority Interest in Undercapitalized Savings Associations by Holding Companies Allowed", section 604 of FIRREA, 103 Stat. 410). Section 13 of the FDI Act was amended to provide that the dual service of a management official that would otherwise be prohibited under the Interlocks Act after, or as the result of, an emergency acquisition of a savings association authorized by the FDIC or the Resolution Trust Corporation ("RTC") pursuant to the language of section 13(K) as amended may, with the FDIC's or RTC's approval, continue for up to ten years. Section 217 of FIRREA, 103 Stat. 259).

The FDIC is amending part 348 in order to conform the regulation to the statutory changes described above. The amendment to the regulation revises the definition of the term "management official" to exclude advisory and honorary directors of depository institutions with total assets of less than $100,000,000; adds a new definition for the phrase "appropriate Federal depository institutions regulatory agency"; adds two new categories of "exempt organizations" to § 348.4(a) of the regulation setting forth permitted interlocks without board approval; adds a new exception to the list of permitted interlocks with board approval; amends § 348.4(c) to allow director interlocks between a diversified savings and loan holding company or its nondepository organization subsidiaries and any unaffiliated depository organization with 60 days prior notice to the appropriate Federal depository institutions regulatory agency provided that the agencies do not disapprove of the interlock; and amends § 348.5 "Grandfathered interlocking relationships" to reflect the extension of the grandfather period to November 10, 1993. In addition, the cross reference in the regulation to what had been the definition of the term "diversified savings and loan holding company" as found in the National Housing Act has been changed to refer to section 10 of the Home Owners' Loan Act. This change was necessary as the relevant definition was moved from the National Housing Act and placed into the Home Owners' Loan Act by FIRREA.

Notices filed with the FDIC pursuant to § 348.4(c)(2)(i) of FDIC's regulations as added hereby should be sent to the regional director for the Division of Supervision for the FDIC region in which the insured nonmember bank is located. This is presently the agency's practice with respect to all requests for exemptions to the prohibitions of part 348 pursuant to Board order under § 348.(b).

The amendments are being adopted in final form without opportunity for public comment pursuant to the authority in section 553 of the Administrative Procedure Act ("APA", 5 U.S.C. 553) to dispense with opportunity for public comment when an agency finds for good cause that public comment is unnecessary. The FDIC's Board of Directors has found opportunity for public comment to be unnecessary inasmuch as the amendments merely conform the regulation to changes made in the relevant statutes. As the amendments provide for exceptions to a number of regulatory prohibitions, they are being made immediately effective upon publication in the **Federal Register** pursuant to the authority of section 553(d)(3) of the APA.

### Regulatory Flexibility Analysis

As no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act, the Regulatory Flexibility Act (5 U.S.C. 601-612) does not apply. In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement, is not required.

### List of Subjects in 12 CFR Part 348

Antitrust; Banks and banking; Holding companies.

## PART 348—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 is revised to read as follows:

**Authority:** 12 U.S.C. 3207, 12 U.S.C. 1823(k).

**§§ 348.2, 348.4 [Amended]**

2. Part 348 is amended in §§ 348.2(l) and 348.4(c) by removing the phrase "section 408(a)(1)(F) of the National Housing Act (12 U.S.C. 1730a(a)(1)(F))" and substituting therefor "section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(1)(F))".

3. Section 348.2 is amended by revising paragraph (h)(1) and adding paragraph (o) to read as follows:

**§ 348.2 Definitions.**

* * * * *

(h)(1) *Management official* means:

(i) An employee or officer with management functions (including a branch manager);

(ii) A director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

(iii) A trustee of a business organization under the control of trustees (*e.g.*, a mutual savings bank); or

(iv) Any person who has a representative or nominee serving in any such capacity.

* * * * *

(o) *Appropriate federal depository institutions regulatory agency* means, with respect to any depository institution or depository holding company, the agency referred to in section 209 of the Interlocks Act in connection with such institution or company.

4. Section 348.4 is amended by removing the word "or" at the end of paragraph (a)(5), and removing the period at the end of paragraph (a)(6) and replacing it with a semicolon; adding new paragraphs (a) (7) and (8); removing the phrase "in paragraph (b)" from the first sentence in the introductory text of

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paragraph (b) and inserting in lieu thereof "in paragraphs (b)(1) through (b)(5)", and removing the word "below" from the second sentence of the introductory text and inserting in lieu thereof "in paragraphs (b)(1) through (b)(5)", and adding a new paragraph (b)(6); designating the text of paragraph (c) following the heading as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

**§ 348.4 Permitted interlocking relationships.**

(a) * * *

(7) A depository organization which is closed, or is in danger of closing as determined by the appropriate federal depository institutions regulatory agency in accordance with its regulations, and which is acquired by another depository organization for the 5 year period beginning on the date of the acquisition; or

(8) Any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(1)(A)) or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act, 12 U.S.C. 1467a(1)(F)) which has issued stock in connection with a qualified stock issuance pursuant to setion 10(q) of the Home Owners' Loan Act (12 U.S.C. 1467a(q)) with respect to the service as a single management official of such savings association or savings and loan holding company, or any subsidiary thereof, by a single management official of the savings association or savings and loan holding company which purchased the stock, provided that the Director of the Office of Thrift Supervision determines that such dual service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

(b) * * *

(6) Emergency acquisition of savings association. Dual service by a management official that would otherwise be prohibited under the Interlocks Act as a result of an emergency acquisition of a savings association authorized in accordance with section 13(k) of the Federal Deposit Insurance Act may continue for up to ten years from the date of the acquisition provided that the FDIC or the Resolution Trust Corporation has given its approval for the continuation of such service.

(c) *Diversified savings and loan holding company.*

(1) * * *

(2)(i) A director of an unaffiliated depository organization may serve as a director of a diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act, 12 U.S.C. 1467a(1)(F)) or any subsidiary of such holding company that is not a depository organization provided that:

(A) Notice of the proposed dual service is given to the appropriate Federal depository institutions regulatory agency for such company, and for the unaffiliated depository organization for which the individual will also serve as a management official, not less than 60 days before the dual service begins, and;

(B) Neither agency disapproves of the dual service prior to the expiration of the 60-day period.

(ii) The FDIC may disapprove the proposed dual service of a management official at a diversified savings and loan holding company of which the FDIC has been given notice as required by paragraph (c)(2)(i) of this section if the FDIC finds that:

(A) The dual service cannot be structured or limited so as to preclude the service from resulting in a monopoly or the substantial lessening of competition in financial services in any part of the United States;

(B) The dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(C) The diversified savings and loan holding company has neglected, failed, or refused to furnish all the information requested by the FDIC in connection with the notice.

(iii) The FDIC may require that any dual service which was not disapproved prior to the expiration of the 60-day notice period be terminated if a change in circumstances occurs which would have provided a basis for disapproval of the dual service during the prior notice period.

**§ 348.5 [Amended]**

5. Section 348.5 is amended by removing "November 10, 1988" and inserting in lieu thereof "November 10, 1993".

By Order of the Board of Directors. Dated at Washington, DC this 29th day of November, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90-28582 Filed 12-6-90; 8:45 am]

BILLING CODE 6714-01-M

## FARM CREDIT ADMINISTRATION

**12 CFR Part 614**

**RIN 3052-AA94**

**Loan Policies and Operations; Correction**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule; correction.

**SUMMARY:** The Farm Credit Administration is correcting an error that appeared in the final rule that amended the regulation setting forth lending authorities and lending requirements for Farm Credit banks and associations, reconciling, where necessary the authorities of institutions created under the restructuring provisions of the Agricultural Credit Act of 1987. The final rule appeared in the **Federal Register** on June 19, 1990 (55 FR 24861).

**EFFECTIVE DATE:** July 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** In preparing the final rule for publication in the **Federal Register**, the word "term" was omitted from the introductory paragraph of § 614.4233.

## PART 614—LOAN POLICIES AND OPERATIONS

**Subpart E—Loan Terms and Conditions**

1. On page 24865, third column, in the introductory paragraph of § 614.4233, the word "term" was inadvertently omitted. Section 614.4233, introductory text is corrected to read as follows:

**§ 614.4233 International loans.**

Term loans by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act to foreign or domestic parties to finance export or import transactions with a voting stockholder of the bank and loans to a foreign or domestic party in which a voting stockholder of the bank has at least a minimum ownership interest to facilitate such transactions shall be subject to the conditions of paragraphs (a), (b), and (c) of this section.

* * * * *

Dated: December 3, 1990.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 90-28753 Filed 12-6-90; 8:45 am]

BILLING CODE 6705-01-M



## FEDERAL HOUSING FINANCE BOARD

**12 CFR Part 934**

**[No. 90-129.5]**

**Procedures for Federal Home Loan Bank Access to Nonpublic Information of Federal Financial Regulatory Agencies**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Interim final rule.

**SUMMARY:** The Federal Housing Finance Board ("FHFB") is adopting a procedure for the Federal Home Loan Banks ("Bank" or "Banks") to request and receive financial reports, records and other information from various federal regulatory agencies regarding financial institutions which are current or potential members of the Banks, or with which the Banks have had or may engage in transactions under the Federal Home Loan Bank Act (12 U.S.C. 1421, *et seq.*) ("Bank Act") as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 422 ("FIRREA"). This regulation establishes procedures by which the Banks will maintain the security and confidentiality of records, reports or other information containing sensitive financial regulatory information. This regulation will require the Federal Home Loan Bank System ("Bank System") to maintain such information in confidence.

**DATES:** *Effective date:* December 7, 1990. *Comment date:* Comments must be received on or before February 5, 1991.

**ADDRESSES:** Comments may be submitted in writing to: Executive Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Amy Maxwell, Acting Director, Office of Bank Operations, (202) 408-2882; Charles Szlenker, Attorney, Office of General Counsel, (202) 408-2554; Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**A. General**

Section 719 of FIRREA amended section 22 of the Bank Act (12 U.S.C. 1422) to provide that upon request by any Bank the Department of the Treasury, including the Office of the Comptroller of the Currency and the Office of Thrift Supervision; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; and the National Credit Union Administration must make available in confidence various financial records, reports and other information concerning any member of a Bank or any institution with which a Bank has had or contemplates having transactions under the Bank Act, as amended. FIRREA section 719 mandates that the Banks keep confidential any such information received. The requirement to keep such information confidential includes maintaining its physical security as well as preventing unauthorized use. This regulation establishes procedures to maintain the confidentiality of the records, reports and other information supplied to a Bank by any of the above named financial regulatory agencies.

Section 22, as amended, applies to information concerning member institutions of the Bank System or institutions with which the Banks have had or contemplate having transactions under the Bank Act. However, the referenced regulatory agencies have executed an interagency agreement with each of the Banks by which the agencies will release financial information, in confidence, to the Banks on financial institutions that are applicants for Bank System membership. Accordingly, these regulations will apply to any transfer of financial information between a financial regulatory agency and a Bank pursuant to any interagency agreement or Bank Act section 22, as amended.

Generally, this regulation provides that a Bank will disclose confidential information when required pursuant to a subpoena from a federal or state court or agency after giving timely notice to the regulatory agency which gave the information to the Bank, and after either receiving permission from such agency to release the information or after a final and binding court or administrative order to release the information.

The regulation excuses a Bank from notifying a regulatory agency about a subpoena if notice is prohibited by law, as in the case of some grand jury subpoenas. In such cases, a Bank should refer the subpoena issuing party to the appropriate regulatory agency that gave the information to the Bank.

**B. Administrative Procedure Act**

The FHFB is adopting these regulations set forth below as an interim final rule effective on December 7, 1990. The FHFB finds the procedure for notice and comment mandated by the Administrative Procedure Act (5 U.S.C. 553 (1988)) may be suspended pursuant to 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The FHFB finds that good cause exists to suspend the notice and comment period before issuing this rule and that the public interest requires that this rule become effective December 7, 1990.

Such good cause consists of the fact that the information described in Bank Act section 22, as amended, is highly sensitive financial information concerning thrifts, credit unions or depository institutions that is not available to the general public, and the Bank Act mandates that the Banks hold this information in confidence. As the primary regulator of the Bank System, the FHFB has the duty to ensure that this information remains confidential after it comes into the possession of the Bank System. This regulation serves to implement that statutory duty.

However, the FHFB is also soliciting comments on this regulation from the general public with a view towards possible revision when the FHFB adopts a final rule.

**C. Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

**List of Subjects in 12 CFR Part 934**

Federal home loan banks, Privacy, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby amends part 934, subchapter B, chapter IX, title 12, Code of Federal Regulations, as set forth below.

**PART 934—[AMENDED]**

1. The authority citation for part 934 is revised to read as follows:

**Authority:** Sec. 2B, 103 Stat. 414, as amended (12 U.S.C. 1422b); sec. 22, 103 Stat. 422, as amended (12 U.S.C. 1442).

2. Part 934 is amended by adding § 934.15 to read as follows:

**§ 934.15 Bank requests for information.**

This section governs the procedure by which a Federal Home Loan Bank will request and receive Confidential Information, as defined in paragraph (a)(4) of this section, pursuant to section 22 of the Federal Home Loan Bank Act.

(a) *Definitions.* As used in this section:

(1) *Board* means the Federal Housing Finance Board.

(2) *Bank* means a Federal Home Loan Bank, including its directors, officers, employees or agents.

(3) *Financial Regulatory Agency* means any of the following:

(i) The Department of the Treasury, including either the Office of the

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Comptroller of the Currency or the Office of Thrift Supervision;

(ii) The Board of Governors of the Federal Reserve System;

(iii) The National Credit Union Administration; or

(iv) The Federal Deposit Insurance Corporation.

(4) *Confidential Information* means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a Financial Regulatory Agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Bank Act.

(5) *Third party* means any person or entity except a director, officer, employee or agent of either:

(i) A Bank in possession of any particular confidential information; or

(ii) The Financial Regulatory Agency that supplied the particular confidential information to such Bank.

(b) *Request for confidential information.* A bank shall make all requests for confidential information to a Financial Regulatory Agency, or to a regional office of such Agency if mutually agreeable, in accordance with the procedures contained in this section as well as any procedures of general applicability for requesting information promulgated by such Financial Regulatory Agency. This section and its procedures may be supplemented by a confidentiality agreement between a Bank and a Financial Regulatory Agency.

(c) *Form of Request.* A request by a Bank to a Financial Regulatory Agency for confidential information shall be made in writing or by such other means as may be agreed upon between the Bank and the Financial Regulatory Agency. The request shall reference section 22 of the Bank Act, as amended, and this regulation, and shall describe the confidential information requested and identify its intended use pursuant to the Bank Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

(d) *Storage of Confidential Information.* Each Bank will store all identified confidential information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members' privileged or non-public information. Each Bank shall have in place a written set of procedures and policies designed to insure the confidentiality of confidential information in its possession, and shall establish an internal review of its procedures for storing confidential information and maintaining its confidentiality, as a part of its internal audit process.

(e) *Access to Confidential Information.* A Bank will insure that access to the Confidential Information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential information in accordance with the Bank's own procedures for maintaining the confidentiality of its members' privileged or non-public information.

(f) *Third party requests for Confidential Information*—(1) *In general.* In the event a Bank receives a request for confidential information in its possession from any third party, the Bank shall forward such requests to the Financial Regulatory Agency from which the confidential information was obtained.

(2) *By subpoena.* In the event a Bank receives a subpoena for confidential information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the Financial Regulatory Agency from which the confidential information was obtained, unless such notice is prohibited by applicable law.

Except as limited herein, the Bank may disclose confidential information pursuant to the subpoena, after giving timely written notice, when:

(i) The Financial Regulatory Agency gives written approval to the disclosure; or

(ii) A binding order to produce the confidential information has become final with all rights of appeal either exhausted or lapsed.

*(3) Nondisclosure to third parties.* Except as provided in paragraph (f)(2) of this section, a Bank shall not disclose confidential information to any third party. A Bank shall refer all third party requests for such confidential information to the Financial Regulatory Agency that released the confidential information to the Bank.

(4) *Disclosure to Board.* (i) Neither this section nor any confidentiality agreement executed between a Bank and a Financial Regulatory Agency shall prevent a Bank from disclosing confidential information in its possession to the Board whenever disclosure is necessary to accomplish the Board's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential information in its possession if such disclosure is made pursuant to an audit conducted pursuant to paragraph (d) of this section or section 20 of the Bank Act.

(ii) The Board shall keep all confidential information received under paragraph (f)(4) of this section in strict confidence.

(g) *Computer data.* This section shall not preclude a bank from arranging with any Financial Regulatory Agency to transmit or allow access to confidential information with the consent of such agency by means of an electronic computer system. Any such arrangement shall insure the security of the computerized data stored in a bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the bank and the Financial Regulatory Agency.

By the Federal Housing Finance Board.

Dated: November 26, 1990.

**Jack Kemp,**

*Chairman.*

[FR Doc. 90-28732 Filed 12-6-90; 8:45 am]

BILLING CODE 6725-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 90-CE-45-AD; Amendment 39-6807]**

## Airworthiness Directives; SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 airplanes. This action requires a one-time visual inspection of the oil cooler inlet and outlet elbow mounting bases for cracks or distortion and replacement if found damaged. There have been two reports of oil loss because of oil cooler damage to these airplanes. This action will prevent the uncontrolled release of flammable fluids into the engine compartment, engine damage and malfunction, and the forced landings that could result from engine oil loss from a crack in the oil cooler.

**EFFECTIVE DATE:** January 3, 1991.

**ADDRESSES:** SOCATA Groupe AEROSPATIALE TB Aircraft Mandatory Service Bulletin (SB) Number 50/1, updated, that is applicable to this AD may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; Telephone 62.41.74.26; Facsimile 62.41.74.32; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; Facsimile (214) 641-3527. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond Stoer, Aerospace Engineer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi, B-1040, Brussels, Belgium; Telephone (322) 513.38.30, extension 2710; Facsimile (322) 230.68.99; or Mr. Richard Yotter, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recently notified the FAA that an unsafe condition may exist on SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 airplanes. The DGAC reports that oil leaks have occurred in the oil cooler inlet and outlet elbow mounting bases and the sponsons located near the outlet fittings on these airplanes. These oil leaks are believed to be the result of fatigue crack growth originating at the site of damage incurred during installation of the oil cooler. This damage is identified by a one-time visual inspection of these oil coolers. SOCATA Groupe AEROSPATIALE has issued TB Aircraft Mandatory Service Bulletin (SB) No. 50/1, updated, which requires removal of the engine cowling, a visual inspection of oil cooler mounting bases adjacent to the inlet and outlet elbows and the sponsons located near the outlet fitting elbows for oil leakage and distortion, and replacement of the cooler with applicable serviceable parts if bends or cracks are found. The DGAC classified this SB as mandatory and issued Consigne de Navigabilite (DGAC AD) No. 90-143(A), dated August 22, 1990, to assure the continued airworthiness of these airplanes in France. Under a bilateral airworthiness agreement, the DGAC has shared this information with the FAA.

The FAA has examined the findings of the DGAC, reviewed all other available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. The FAA has determined that an emergency unsafe condition exists in which the uncontrolled release of flammable fluids into the engine compartment could occur if oil coolers on these airplanes were damaged at installation. Therefore, AD action is required for a one-time visual inspection of the oil cooler for leakage or distortion, and replacement of any leaking oil coolers on SOCATA Groupe AEROSPATIALE Models TB9, TB10, TB20, and TB21 airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:



**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**SOCATA Groupe AEROSPATIALE:** Amendment 39-6807; Docket No. 90-CE-45-AD. Applicability: Models TB9, TB10, TB20, and TB21 airplanes (all serial numbers), certificated in any category. Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent possible uncontrolled release of flammable fluids into the engine compartment and engine malfunction because of loss of oil, accomplish the following:

(a) Visually inspect the mounting bases of the oil cooler inlet and outlet elbows and the sponsons located near the outlet fittings for cracks or distortions.

(1) If no cracks or distortions are found, return the airplane to service.

(2) If cracks or distortions are found, prior to further flight remove the damaged cooler and install a new engine oilcooler as specified below in accordance with SOCATA Groupe AEROSPATIALE TB Aircraft Mandatory Service Bulletin No. 50/1, undated:

| Model | Oil cooler part No. |
|---|---|
| TB9-TB10 | Z00.12258.04 |
| TB20 | Z00.12258.513 |
| TB21 | Z00.12258.518 |

(b) Airplanes may be flown in accordance to FAR 21.197 and 21.199 to a location where the AD can be accomplished.

(c) An alternate method of compliance or adjustment to the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, 15 Rue de la Loi, B-1040, Brussels, Belgium.

**Note 1:** The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification staff.

**Note 2:** All persons affected by this directive may obtain copies of the document referred to herein upon request to SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, BP 930, 65009 Tarbes Cedex, France; Telephone 62.41.74.26; Facsimile 62.41.74.32; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; Facsimile (214) 641-3527; or may examine these documents at the FAA.

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Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 3, 1991.

Issued in Kansas City, Missouri, on November 27, 1990.

**Barry D. Clements,**

*Manager, Small Airplane Directorate Aircraft Certification Service.*

[FR Doc. 90-28734 Filed 12-6-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 90-AEA-10]**

## Alteration of Transition Area; Sidney, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice modifies the 700 foot Transition Area established at Sidney, NY, for the Sidney Municipal Airport due to the closure of the Harmony Crest Airpark, the updating of the actual geographic position of the Sidney Municipal Airport, and a review of air traffic control procedures in the area. This action reduces that amount of controlled airspace to that which is actually required by the FAA to separate aircraft operating under instrument flight rules from those operating under visual flight rules in controlled airspace.

**EFFECTIVE DATE:** 0901 u.t.c. February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

**SUPPLEMENTARY INFORMATION:**

### History

On August 23, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area at Sidney, NY, due to the closure of the Harmony Crest Airpark, the updating of the geographic position of the Sidney Municipal Airport, and a review of air traffic control procedures in the area. (55 FR 36810). The proposed action would return that amount of controlled airspace, not needed by the FAA, back to the public.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area at Sidney, NY, due to the closure of the Harmony Crest Airpark, the updating of the actual geographic position of the Sidney Municipal Airport, and a review of air traffic control procedures in the area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Sidney, NY [Revised]**

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the center, lat. 42°18'00"N., long. 75°24'59"W., of Sidney Municipal Airport, Sidney, NY; within 5 miles either side of the Rockdale VORTAC 218°(T) 229°(M) radial, extending from the Rockdale VORTAC to the 8.5-mile radius area; within 5 miles either side of the hancock VORTAC 343°(T) 354°(M) radial, extending from the 8.5-mile radius area to 11 miles southeast of the airport.

Issued in Jamaica, New York, on November 20, 1990.

**Gary W. Tucker,**

*Manager, Air Traffic Division.*

[FR Doc. 90-28735 Filed 12-6-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 90-ASW-40]**

## Revision of Transition Area: Huntsville, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the transition area located at Huntsville, TX. The relocation of the Huntsville Nondirectional Radio Beacon (NDB), requiring the revision of the NDB RWY 18 standard instrument approach procedure (SIAP), makes this action necessary. This action provides adequate controlled airspace for aircraft executing this revised SIAP.

**EFFECTIVE DATE:** 0901 u.t.c., February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Kennedy, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

### History

On August 6, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Huntsville, TX (55 FR 34026).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the transition area located at Huntsville, TX. The revised location of the Huntsville NDB and subsequent revision of the NDB RWY 18 SIAP to the Huntsville Municipal Airport have necessitated this action. This action will expand the 700-foot transition area around the Huntsville Municipal Airport to 6.5 miles and revise the arrival extension to the north to 11 miles long and 4 miles from the Huntsville Municipal Airport. The arrival extension to the northwest will remain unchanged.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

### Adoption of the Amendment

### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Huntsville, TX [Revised]**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Huntsville Municipal Airport (latitude 30°44'48"N., longitude 95°35'13"W.), within 3 miles each side of the Leona VORTAC (latitude 31°07'25"N., longitude 95°58'04"W.) 130° radial extending from the 6.5-mile radius to 27.5 miles southeast of the Leona VORTAC, and within 2 miles each side of the 001 bearing of the Huntsville NDB, (latitude 30°44'25"N., longitude 95°35'26"W.), extending from the 6.5-mile radius to 11 miles north of the Huntsville Municipal Airport.

Issued in Fort Worth, TX, on November 20, 1990.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-28737 Filed 12-6-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

**[Airspace Docket No. 90-AEA-16]**

## Revise Control Zone and Transition Area; Newport News, VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice updates the name of the Patrick Henry International Airport, Newport News, VA, to the Newport News/Williamsburg International Airport, Newport News, VA, due to a name change enacted by the Peninsula Airport Commission. Additionally, the geographic position of the airport incorporated in the 700 foot Transition Area description established for the airport (Norfolk, VA, Transition Area) and the associated Control Zone has been updated. This action does not alter the physical dimensions or the amount of controlled airspace in the area.

**EFFECTIVE DATE:** 0901 U.T.C. February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

**SUPPLEMENTARY INFORMATION:**

### The Rule

This amendment to §§ 71.171 and 71.181 of part 71 of the Federal Aviation Regulations updates the name of the Patrick Henry International Airport, Newport News, VA, to the Newport News/Williamsburg International Airport, Newport News, VA. Additionally, the geographic position of the airport is being updated to reflect the actual location of the airport. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in FAA Handbook 7400.6F, January 2, 1990. Because this action does not alter the dimensions on the amount of controlled airspace and does not involve a matter in which the public would be interested in commenting, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Newport News, VA [Amended]**

Change "lat. 37°07'51" N., long. 76°29'35" W." to read "lat. 37°07'54" N., long. 76°29'36" W.";

Change "Patrick Henry International Airport" to read "Newport News/Williamsburg International Airport".

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Norfolk, VA [Amended]**

Change "lat. 37°07'51" N., long. 76°29'35" W." to read "lat. 37°07'54" N., long. 76°29'36" W.",

BEST COPY AVAILABLE



Change all occurrences of "Patrick Henry

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Change all occurrences of "Patrick Henry International Airport" to read "Newport News/Williamsburg International Airport".

Issued in Jamaica, New York, on November 19, 1990.

Gary W. Tucker,

*Manager, Air Traffic Division.*

[FR Doc. 90-28730 Filed 12-6-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

RIN 0960-AD02

### Federal Old-Age, Survivors, and Disability Insurance Benefits; Elimination of the Carryover Reduction in Old-Age and Disability Insurance Benefits Due to the Receipt of Widow's or Widower's Insurance Benefits Prior to Age 62

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rules.

**SUMMARY:** These final rules amend our regulations on the carryover reduction in old-age and disability insurance benefits due to the receipt of widow's and widower's insurance benefits prior to age 62, to reflect section 10203 of Public Law 101-239, the Omnibus Budget Reconciliation Act of 1989, enacted December 19, 1989. Section 10203 eliminated the carryover reduction of old-age insurance benefits and disability insurance benefits caused by the receipt of reduced widow's or widower's insurance benefits prior to the attainment of age 62. The statutory change applies to old-age benefits of individuals who attain age 62 on or after January 1, 1990 and to disability insurance benefits of individuals who both attain age 62 and become disabled on or after January 1, 1990.

**EFFECTIVE DATE:** These rules are effective on December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Philip Berge, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1769.

**SUPPLEMENTARY INFORMATION:**

#### Background

In certain situations an individual's old-age insurance benefit, disability insurance benefit, or widow's or widower's insurance benefit may be reduced under the Social Security Act (Act) if he or she is entitled to the benefit prior to retirement age. Generally, the amount of the reduction is determined by the number of months the individual is entitled to benefits prior to retirement age and by various percentages contained in the Act depending on the type of benefit. Sections 404.410 and 404.413 of our regulations describe in detail when and how benefits are reduced pursuant to these statutory provisions.

These regulations are concerned only with the elimination of the carryover reduction which is applicable in situations where the individual has received reduced widow's or widower's insurance benefits prior to age 62 and subsequently becomes entitled to old-age insurance benefits or disability insurance benefits. These regulations explain how the amount of old-age insurance benefits or disability benefits is determined under the amended law.

#### Statutory Provision

Section 10203 of Public Law 101-239 amended section 202(q)(3) of the Act to eliminate the carryover reduction of old-age insurance benefits and disability insurance benefits due to the receipt of reduced widow's or widower's benefits prior to the attainment of age 62. The new provision applies only to recipients of old-age insurance benefits who attain age 62 on or after January 1, 1990 (i.e., those whose date of birth is January 2, 1928 or later) and to recipients of disability insurance benefits who attain age 62 on or after January 1, 1990, and whose disability began after December 31, 1989. This provision allows a widow, widower or surviving divorced spouse who meets these conditions and was entitled to reduced widow's or widower's benefits prior to the attainment of age 62 to become entitled to old-age insurance benefits and disability insurance benefits without the benefits being reduced due to the receipt of the widow's or widower's benefits. This change is designed to eliminate a complex computation and make the provision easier for the public to understand.

#### New Regulatory Provisions

We are amending § 404.411 to provide for the computation of old-age insurance benefits and disability insurance without regard to entitlement to widow's or widower's insurance benefits before age 62. This change applies to old-age benefits of individuals who attain age 62 on or after January 1, 1990 and to disability insurance benefits of individuals who both attain age 62 and become disabled on or after January 1, 1990. Old-age insurance benefits will continue to be computed taking into consideration the reduction for entitlement to widow's or widower's insurance benefits prior to the attainment of age 62 for those individuals who attained age 62 before January 1, 1990 (i.e., those whose date of birth is January 1, 1928 or earlier). Disability insurance benefits will continue to reflect this reduction for individuals who either attained age 62 or became disabled before January 1, 1990.

#### Regulatory Procedures

The Department generally follows the Notice of Proposed Rulemaking and public comment procedures specified in the Administrative Procedure Act, 5 U.S.C. 553, in the development of its regulations. That Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

#### *Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant administrative or program costs. Any increase in program or administrative costs is attributable to the legislation and not the regulations. Therefore, a regulatory impact analysis is not required.

#### *Paperwork Reduction Act*

These final regulations impose no reporting/recordkeeping requirements requiring the Office of Management and Budget clearance.

#### *Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security—Disability Insurance; 13.803, Social Security—Retirement Insurance; 13.804, Social Security—Survivor's Insurance.)

#### List of Subjects in 20 CFR Part 404

Administrative Practice and Procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability.

Dated: October 1, 1990.

Gwendolyn S. King,

*Commissioner of Social Security.*

Approved: October 29, 1990.

Louis W. Sullivan,

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, part 404 of chapter III of title 20, Code of Federal Regulations, is amended as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

1. The authority citation for part 404, subpart E continues to read as follows:

**Authority:** Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.411 is amended by revising paragraph (a) to read as follows:

**§ 404.411 Special reduction in benefits for age involving entitlement to two or more benefits.**

(a) *General.* (1) Except as specifically provided in this section, benefits of an individual entitled to more than one benefit will be reduced for months of entitlement before retirement age according to the provisions of § 404.410. Such age reductions are made before any reduction under the provisions of § 404.407.

(2) If an individual was born after January 1, 1928 and becomes disabled after December 31, 1989, his or her disability insurance benefits are reduced in accordance with paragraph (b)(1) of this section. In other situations involving prior receipt of widow's or widower's insurance benefits, disability insurance benefits are reduced in accordance with paragraph (b)(2) of this section.

(3) If an individual was born after January 1, 1928, his or her old-age insurance benefits are reduced in accordance with § 404.410(a). In other situations involving prior receipt of widow's or widower's insurance benefits, old-age insurance benefits are reduced in accordance with paragraph (c) of this section.

* * * * *

[FR Doc. 90-28686 Filed 12-6-90; 8:45 am]

BILLING CODE 4190-11-M



## Food and Drug Administration

### 21 CFR Part 524

### Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject To Certification; Ivermectin Pour-on

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories. The NADA provides for use of IVOMEC ® (ivermectin) Pour-On for the treatment and control of infections caused by certain species of gastrointestinal roundworms, lungworms, grubs, lice, mites, and flies in cattle.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, WB D-360, Rahway, NJ 07065-0914, filed NADA 140-041 which provides for topical use of IVOMEC ® (ivermectin) Pour-On for treatment and control of infections caused by certain gastrointestinal roundworms (including brown stomach worm), lungworms, grubs, horn flies, sucking and biting lice, and mange mites in cattle.

The NADA was approved by letter dated December 4, 1990, and 21 CFR 524.1193 is added to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning December 4, 1990, because new clinical or field investigations and human food safety studies were required for its approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 524.1193 is added to read as follows:

**§ 524.1193 Ivermectin pour-on.**

(a) *Specifications.* Each milliliter of solution contains 5 milligrams of ivermectin.

(b) *Sponsor.* See No. 000008 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.344 of this chapter.

(d) *Conditions of use*—(1) *Amount.* One milliliter per 22 pounds of body weight.

(2) *Indications for use.* It is used in cattle for the treatment and control of gastrointestinal roundworms (adults and fourth-stage larvae) *Ostertagia ostertagi* (including inhibited stage), *Haemonchus placei, Trichostrongylus axei, T. colubriformis, Cooperia* spp., *Oesophagostomum radiatum, O. venulosum* (adults), *Strongyloides papillosus* (adults), *Trichuris* spp. (adults), lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); cattle grubs (parasitic stages) (*Hypoderma bovis, H. lineatum*); lice (*Linognathus vituli, Haematopinus eurysternus, Damalinia bovis, Solenopotes capillatus*); mites (*Chorioptes bovis, Sarcoptes scabiei* var. *bovis*); horn flies (*Haematobia irritans*).

(3) *Limitations.* For use on skin surface only. Do not treat cattle within

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48 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. Drug has been associated with severe adverse reactions in sensitive dogs; therefore drug is not recommended for use in animals other than cattle. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: December 3, 1990.

Gerald B. Guest,

*Director, Center for Veterinary Medicine.*

[FR Doc. 90-28770 Filed 12-6-90; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

[T.D. 8321]

RIN 1545-AM50

### Withholding Upon Proceeds of Dispositions of U.S. Real Property Interests by Publicly Traded Partnerships, Publicly Traded Trusts and Real Estate Investment Trusts

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final Income Tax Regulations relating to the withholding that is required upon the disposition of a U.S. real property interest by publicly traded partnerships, publicly traded trusts, and real estate investment trusts. These final regulations enable publicly traded partnerships, publicly traded trusts and real estate investment trusts, by meeting certain notice requirements, to shift the responsibility for withholding on proceeds from the disposition of U.S. real property interests to a nominee where such an entity does not make a payment directly to a foreign person.

**DATES:** This document is effective with respect to distributions after March 7, 1991. However, at the option of any person who would be treated by these final regulations as a withholding agent, that person may apply these regulations to any distributions occurring on an earlier date which is after December 7, 1990, as long as no other person also acts as a withholding agent with respect to the same distribution.

**FOR FURTHER INFORMATION CONTACT:** John F. Dean of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-088-86) 202-377-9493, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504 (h)) under control number 1545-0096. The estimated annual burden per respondent/recordkeeper varies from 3 minutes to 9 minutes, depending on individual circumstances, with an estimated average of 6 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project (RIN 1545-AM50), Washington, DC 20503.

### Background

On December 24, 1986, the **Federal Register** published proposed and temporary amendments (51 FR 46651) to the Income Tax Regulations (26 CFR part 1) under section 1445, which was added to the Internal Revenue Code (98 Stat. 494) by section 129(a) of the Tax Reform Act of 1984. Written comments responding to this notice were received. A public hearing was not requested or held. After consideration of the comments regarding the proposed and temporary amendments, one recommendation has been adopted as an amendment in this Treasury Decision. The comments and revision are discussed below.

### Public Comments

The proposed and temporary regulations establish a mechanism whereby the withholding obligation on FIRPTA distributions by publicly traded partnerships, publicly traded trusts and REITs is, under certain conditions, shifted to those who are in a position to know the foreign status of an interest holder. Section 1.1445-8T(c) provides rules governing the amount to be withheld with respect to such distributions by such entities. Due to the unique rules of section 857 governing the taxation of REITs, a distinction was drawn between them and publicly traded partnerships and trusts. Proposed and temporary regulation § 1.1445-8T(c)(2)(ii) provides that, in the case of a REIT, the amount subject to withholding under section 1445 is the amount of any distribution, determined with respect to each share or certificate of beneficial interest, which the REIT designates as a capital gain dividend (as defined in section 857(b)(3)(C)) multiplied by the number of shares or certificates of beneficial interest held by the foreign person.

The language of the proposed and temporary regulation is largely adopted except for some clarifying changes. The final regulations clarify that, in the case of a publicly traded partnership, compliance with the withholding requirements of § 1446 satisfies the partnership's withholding requirements under § 1445-8. Also, the repeal, for taxable years beginning after 1986, of the former preferential rates of taxation for long term capital gains (subject to certain transition rules) made it necessary to adjust the withholding rules with respect to REITs, which are based on capital gain dividend designations. The new rules are reflected in § 1.1445-8(c)(2)(ii) and § 1.1445-8(h).

The elimination of the preferential rate for net capital gains may remove an incentive for REITs to designate capital gain dividends. In this context it should be observed that, under the rules of the proposed and temporary regulations, FIRPTA withholding would be avoided if no portion of a dividend were designated as a capital gain dividend.

A commentator suggested that this potential concern could be avoided by amending regulation § 1.1445-8T(c)(2)(ii) to require deemed capital gain dividend treatment for distributions that could be, but are not, designated as a capital gain dividend by a REIT. The suggestion has been adopted. Therefore, the largest amount of any distribution occurring after March 7, 1991 that could be designated as a capital gain dividend will be deemed to have been designated by the publicly traded REIT as a capital gain dividend for purposes of § 1.1445-8, thereby making it automatically subject to withholding under this § 1.1445-8. However, the liability for withholding on a distribution will shift to a nominee under the rules of § 1.1445-8(b)(3) if and only to the extent the REIT makes an actual designation of a capital gain distribution. If the REIT does not make an actual designation, it remains liable



for withholding on all distributions deemed designated under this final regulation as capital gain dividends.

If, subsequent to these regulations, a provision for preferential treatment is enacted for net capital gains, the deemed capital gain dividend provision in §1.1445-8(c)(2)(ii) will be amended in accordance with and to reflect the enactment of such preferential treatment.

The final regulations reserve on the issue of whether and how to impose withholding pursuant to § 1.1445-8 with respect to a dividend distributed by a REIT, which is not a capital gain dividend but is attributable to net short-term capital gain realized from the disposition of U.S. real property interests by the REIT. The Internal Revenue Service invites comments on this issue.

### Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

### Drafting Information

The principal author of these regulations is John F. Dean of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

### List of Subjects

*26 CFR 1.144-1 through 1.1464-1*

Income taxes, Aliens, Foreign corporations.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAX REGULATIONS

**Paragraph 1.** The authority for part 1 is amended by removing the authorities for § 1.1445-8T and adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.1445-8 also issued under 26 U.S.C. 1445(e)(6).

**Par. 2.** Section 1.1445-5(c)(3) is amended as follows:

1. By revising paragraph (c)(3)(i) to read as follows,
2. By removing paragraph (c)(3)(v), and
3. By redesignating paragraph (c)(3)(vi) as paragraph (c)(3)(v).

**§ 1.1445-5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.**

* * * * *

(c) *Dispositions of U.S. real property interests by domestic partnerships, trusts, and estates.*

* * * * *

(3) *Large partnerships or trusts*—(i) *In general.* If a partnership or trust has more than 100 partners or beneficiaries, then the partnership or fiduciary of the trust may elect to withhold in accordance with the provisions of this § 1.1445-5(c)(3) in lieu of withholding in the manner required by § 1.1445-5(c)(1). However, the rules of this § 1.1445-5(c)(3) shall not apply to any partnership or trust interests in which are regularly traded on an established securities market except as described in § 1.1445-8(c)(1). The rules of this § 1.1445-5(c)(3) shall not apply to any real estate investment trust. See § 1445-8.

* * * * *

**§ 1.1455-8T [Removed]**

**Par 3.** Section 1.1445-8T is removed.

**Part 4.** New § 1.1445-8 is added in the appropriate place to read as follows:

**§ 1.1445-8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITs).**

(a) *Entities to which this section applies.* The rules of this section apply to—

(1) Any partnership or trust, interests in which are regularly traded on an established securities market (regardless of the number of its partners or beneficiaries), and

(2) Any REIT (regardless of the form of its organization).

For purposes of paragraph (a)(1) of this section, the rules of section 1445 (e)(1) and this section shall not apply to a publicly traded partnership (as defined in section 7704) which is treated as a corporation under section 7704(a), or to those entities that are classified as "associations" and taxed as corporations. See § 301.7701-2.

(b) *Obligation to withhold*—(1) *In general.* An entity described in paragraph (a) of this section is not required to withhold under the provisions of § 1.1445-5(c), which states the withholding requirements of domestic partnerships, trusts and estates upon the disposition of U.S. real property interests. Except as otherwise provided in this paragraph (b), an entity described in paragraph (a) of this section shall be liable to withhold tax upon the distribution of any amount attributable to the disposition of a U.S. real property interest, with respect to each holder of an interest in the entity that is a foreign person. The amount to be withhold is described in paragraph (c) of this section.

(2) *Publicly traded partnerships.* Publicly traded partnerships which comply with the withholding procedures under section 1446 will be deemed to have satisfied their withholding obligations under this paragraph (b).

(3) *Special rule for certain distributions to nominees.* In the case of a person that—

(i) Is a nominee (as defined in paragraph (e) of this section),

(ii) Receives a distribution attributable to the disposition of a U.S. real property interest directly from an entity described in paragraph (a) of this section or indirectly from such entity through a nominee,

(iii) Receives the distribution for payment to any foreign person, or the account of any foreign person, and

(iv) Receives a qualified notice pursuant to paragraph (f) of this section, then the obligation to withhold in accordance with the general rules of section 1445(e)(1) and this paragraph (b) shall be imposed solely on that person to the extent of the amount specified by the qualified notice. A person obligated to withhold by reason of this paragraph (b)(3) is referred to as a withholding agent.

(4) *Person designated to act for withholding agent.* The rules stated in § 1.1441-7(b) (1) and (2) regarding a person designated to act for a withholding agent shall apply for purposes of this section.

(5) *Effect of withholding exemption granted under § 1.1441-4(f).* A letter issued by a district director under the provisions of § 1.1441-4(f), which exempts a person from withholding under section 1441 or section 1442, shall also exempt that person from withholding under this paragraph (b), if—

(i) The letter identifies another person as the withholding agent for purposes of section 1441 or 1442, and

(ii) Such other person enters into a written agreement, with the district director who issued the letter, to be the

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withholding agent for purposes of this paragraph (b).

The exemption granted, and the corresponding withholding obligation imposed, by this paragraph (b)(5) shall apply with respect to the first distribution made after execution of the agreement described in the preceding sentence and shall continue to apply to all distributions made during the period in which the exemption granted under § 1.1441–4(f) is in effect.

(6) *Payment other than in money.* The rule stated in § 1.1441–7(c) regarding payment other than in money shall apply for purposes of this section.

(c) *Amount to be withheld*—(1) *Distribution from a publicly traded partnership or publicly traded trust.* The amount to be withheld under this section with respect to a distribution by a publicly traded partnership or publicly traded trust shall be computed in the manner described in § 1.1445–5(c)(3) (ii) and (iii), subject to the rules of this section.

(2) *REITs*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 34 percent (28 percent in the case of a distribution occuring before January 1, 1967) of the amount described in paragraph (c)(2)(ii) of this section.

(ii) *Amount subject to withholding*—(A) *In general.* Except as otherwise provided in paragraph (c)(2)(ii)(C) of this section, the amount subject to withholding is the amount of any distribution, determined with respect to each share or certificate of beneficial interest, designated by a REIT as a capital gain dividend, multiplied by the number of shares or certificates of beneficial interest owned by the foreign person. Solely for purposes of this paragraph, the largest amount of any distribution occurring after March 7, 1991 that could be designated as a capital gain dividend under section 857(b)(3)(C) shall be deemed to have been designated by a REIT as a capital gain dividend regardless of the amount actually designated.

(B) *Distribution attributable to net short-term capital gain from the disposition of a U.S. real property interest.* [Reserved]

(C) *Designation of prior distribution as capital gain dividend.* If a REIT makes an actual designation of a prior distribution, in whole or in part, as a capital gain dividend, such prior distribution shall not be subject to withholding under this section. Rather, a REIT must characterize and treat as a capital gain dividend distribution (solely for purposes of section 1445(e)(1)) each distribution, determined with respect to each share or certificate of beneficial interest, made on the day of, or any time subsequent to, such designation as a capital gain dividend until such characterized amounts equal the amount of the prior distribution designated as a capital gain dividend. The provisions of this paragraph shall not be applicable in any taxable year in which the REIT adopts a formal or informal resolution or plan of complete liquidation.

(iii) *Example.* The following example illustrates the rules of paragraph (c)(2)(ii)(C) of this section.

In the first quarter of 1988, XYZ REIT makes a dividend distribution of $2X. In the second quarter of 1988, XYZ sells real property, recognizing a long term capital gain of $15X, and makes a dividend distribution of $5X. In the third quarter of 1988, XYZ makes a distribution of $3X. In the fourth quarter of 1988, XYZ sells real property recognizing a long term capital loss of $2X. Within 30 days after the close of the taxable year, XYZ designates a capital gain dividend for the year of $13X. It subsequently makes a fourth quarter distribution of $7X. Since XYZ has made an actual designation of prior distributions during the taxable year as capital gain dividends, withholding on those prior distributions will not be required. However, the REIT must characterize, solely for purposes of section 1445(e)(1), a total amount of $13X of dividend distributions as capital gain dividends. Therefore, the fourth quarter dividend distribution of $7X must be characterized as a capital gain dividend subject to withholding under this section. In addition, XYZ will be required to characterize an additional $6X of subsequent dividend distributions as capital gain dividends.

(d) *Definition of nominee.* For purposes of this section, the term "nominee" means a domestic person that holds an interest in an entity described in paragraph (a) of this section on behalf of another domestic or foreign person.

(e) *Determination of non-foreign status by withholding agent.* A withholding agent may rely on a certificate of non-foreign status pursuant to § 1.1445–2(b) or on the statements and address provided to it on Form W–9 or a form that is substantailly similar to such form, to determine whether an interest holder is a domestic person. Reliance on these documents will excuse the withholding agent from liability imposed under section 1445(e)(1) in the absence of actual knowledge that the interest holder is a foreign person. A withholding agent may also employ other means to determine the status of an interest holder, but, if the agent relies on such other means and the interest holder proves, in fact, to be a foreign person, then the withholding agent is subject to any liability imposed pursuant to section 1445 and the regulations thereunder for failure to withhold.

(f) *Qualified notice.* A qualified notice for purposes of paragraph (b)(3)(iv) of this section is a notice given by a partnership, trust or REIT regarding a distribution that is attributable to the disposition of a U.S. real property interest in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b) (1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In the case of a REIT, a qualified notice is only a notice of a distribution, all or any portion of which the REIT actually designates, or characterizes in accordance with paragraph (c)(2)(ii)(C) of this section, as a capital gain dividend in accordance with 17 CFR 240.10b–17(b) (1) or (3), with respect to each share or certificate of beneficial interest. A deemed designation under paragraph (c)(2)(ii)(A) of this section may not be the subject of a qualified notice under this paragraph (f). A person described in paragraph (b)(3) of this section shall be treated as receiving a qualified notice at the time such notice is published in accordance wtih 17 CFR 240.10b–17(b) (1) or (3).

(g) *Reporting and paying over withheld amounts.* With respect to an amount withheld under this section, a withholding agent is not required to conform to the requirements of § 1.1445–5(b)(5) but is required to report and pay over to the Internal Revenue Service any amount required to be withheld pursuant to the rules and procedures of section 1461, the regulations thereunder and § 1.6302–2. Forms 1042 and 1042S are to be used for this purpose.

(h) *Early refund procedure not available.* The early refund procedure set forth in § 1.1445–6(g) shall not apply to amounts withheld under the rules of this section. For adjustment of over-withheld amounts, see § 1.1461.4.

(i) *Liability upon failure to withhold.* For rules regarding liability upon failure to withhold under § 1445(e) and this section, see § 1.1445–1(e).

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 5.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 6.** Section 602.101(c) is amended by removing in the table "§ 1.1445–8T . . . 1545–0096" and by adding in the appropriate place in the table "§ 1.1445–8 . . . 1545–0096".

Dated: November 14, 1990.

Approved:

**Fred T. Goldberg, Jr.,**

*Commissioner of Internal Revenue.*

**Kenneth W. Gideon,**

*Assistant Secretary of the Treasury.*

[FR Doc. 90–28771 Filed 12–6–90; 8:45 am]

BILLING CODE 4830–01–M



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 946

### Virginia Regulatory Program; Coal Surface Mining Reclamation Fund Special Assessment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule, approval of amendment.

**SUMMARY:** OSM is announcing approval of an amendment to the Virginia Regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendment is intended to strengthen the Pool Bond Fund's assets by assessing each participating permittee a one-time fee of $500 per permit.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Virginia Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

### I. Background on the Virginia Program

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 Federal Register (46 FR 61088–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15 and 946.16.

### II. Submission of Amendment

By letter dated August 31, 1990 (Administrative Record No. VA–760), Virginia submitted a proposed amendment consisting of the addition of a section to the Code of Virginia numbered 45.1–270.4:1.

OSM announced receipt of the proposed amendment in the September 24, 1990 **Federal Register** (55 FR 39012–39013), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 is the Director's finding concerning the proposed amendment to the Virginia program submitted on August 31, 1990.

*1. 45.1–270.4:1 Special Assessment*

Virginia is proposing to add a new section to the Code of Virginia to allow the Commissioner of the Division of Mined Land Reclamation to require each permittee to pay a special assessment to assure the Coal Surface Mining Reclamation Fund's solvency. The Commissioner would assess each permit in the Pool Bond Fund on and after July 1, 1990, the amount of $500. The assessment would be made only one time and all revenues collected would be applied to the balance of the Fund. The permittee would be responsible for payment of the assessment. Failure to tender moneys assessed pursuant to this statute within 30 calendar days of assessment would constitute a violation of the Virginia Coal Surface Mining Control and Reclamation Act.

This proposal would not alter the basis for the Director's findings approving the original alternative bonding system, which was approved September 21, 1982 (45 FR 61556), as it only provides for additional moneys and does not affect existing sources of revenue for the Fund. Therefore, the Director finds the proposal to be no less effective than 30 CFR 800.11(e).

### IV. Summary and Disposition of Comments

*Public Comments*

The public comment period and opportunity to request a public hearing announced in the September 24, 1990 **Federal Register** ended October 24, 1990. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program. The Environmental Protection Agency, Soil Conservation Service and Forest Service all generally supported the amendment.

### V. Director's Decision

Based on the above finding, the Director is approving the program amendment as submitted on August 31, 1990. The Federal regulations at 30 CFR 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective on publication in the **Federal Register** to expedite the State program amendment process.

### VI. Procedural Determinations

*National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure existing requirements established by SMCRA and the Federal rules will be met by the State.

*Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

**List of Subject in 30 CFR Part 946**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

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Dated: November 27, 1990.

**Alfred E. Whitehouse,**

*Acting Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 946.15, a new paragraph (bb) is added to read as follows:

**§ 946.15 Approval of regulatory program amendments.**

* * * * *

(bb) The following amendments were approved December 7, 1990.

(1) Added section 45.1–270.4:1 to the Virginia Coal Surface Mining Control and Reclamation Act submitted on August 31, 1990, concerning a change to Virginia's Coal Surface Mining Reclamation Fund.

[FR Doc. 90-28488 Filed 12-6-90; 8:45 am]

BILLING CODE 4310-05-M

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 202

**[Docket No. RM 90-1]**

### Registration of Claims to Copyright: Group Registration of Serials

**AGENCY:** Library of Congress, Copyright Office.

**ACTION:** Final regulations.

**SUMMARY:** The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of certain serial publications. Issues of serials published at intervals of a week or longer within a three-month period during the same calendar year can be grouped and registered on a single application and fee. The group registration privilege is contingent upon automatic regular submission of two complimentary subscription copies of each issue for the Library of Congress, and upon meeting the other conditions specified in the regulation. The regulation implements a portion of section 408(c)(1) of the Copyright Act of 1976, title 17 of the U.S. Code, relating to the deposit requirements for copyright registration.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8380.

**SUPPLEMENTARY INFORMATION:** Under section 407 of the Copyright Act of 1976, title 17 of the U.S. Code, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect the copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights.

Section 408 of title 17 requires deposit of material in connection with applications for registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

In 1978 when the Copyright Office issued the original deposit regulations, publishers of serials urged that the Copyright Office permit group registration of serial issues. Until this time, the Copyright Office has declined to establish such procedures due to concerns about the administrative burden associated with processing several works on a single application.

The 101st Congress, enacted Public Law No. 101–318, which raises the copyright service fees set by section 708 of the copyright law, effective January 3, 1991.

In the legislative consideration of the Copyright Office's need for a fees increase, representatives of serial publishers renewed the request for establishing a serials group registration procedure. According to the publishers, their administrative costs in making separate registrations for each issue constitute a significant burden. Some serial publishers elect not to register for this reason; however, they remain subject to the mandatory deposit requirement of section 407. The publishers contended that one application covering several issues would greatly reduce the impediments to registration, and they would not object to supplying the Library with complimentary subscription copies of copyrighted serials, nor to paying the reasonable administrative costs of the Copyright Office in processing serial group registration applications.

Accordingly, the Copyright Office has decided to adopt appropriate procedures for registering a group of related serials published at intervals of a week or longer within a three-month period during the same calendar year, provided that the publishers of these publications on a regular, automatic basis submit two complimentary subscription copies of each issue to the Library of Congress and later, when registration is applied for, also deposit one copy of each issue of the works covered by the group registration application.

The two complimentary subscription copies will satisfy the mandatory deposit requirement of section 407 and assure that the Library of Congress receives each issue as published on a regular basis, even though registration may be deferred several months in order to apply for registration on a group basis. The regulation provides that the privilege of group registration of serials will be revoked for any publisher who fails to submit the required complimentary subscription copies on a regular, automatic basis promptly after publication of each issue of the serial.

The copy of each work that must accompany the group registration application will enable the Copyright Office to examine the work to determine that it is copyrightable subject matter and that the other legal and formal requirements of the statute have been satisfied, pursuant to section 410(a) of the Copyright Act.

Group registration of related works is entirely discretionary with the Copyright Office. Based on the Office's experience with statutory group registration of contributions to periodicals, the Office finds that, unless appropriate restrictions limit the availability of group registration, the administrative costs and burden on the Office escalate. In the case of group registration of serials, the Copyright Office has determined that only the possibility of regular, automatic submission of complimentary subscription copies for the benefit of the Library of Congress, which satisfies the mandatory deposit requirement, outweighs the administrative burden of group registration. Therefore, publishers who do not enter complimentary subscriptions for the Library are not entitled to group registration, and the privilege of group registration of serials will be revoked for publishers who fail to forward the complimentary subscription copies on a regular, automatic basis.



The fee for group registration is set at $10 per issue to reflect the administrative cost of processing multiple works on a single application. In addition, it has been necessary to impose several restrictions on the availability of group registration to minimize processing costs. Group registration will be restricted to those serials that are eligible for a new simplified application form SE/Group. The issues must be published within a given calendar year.

The collective work authorship must be essentially new, but publishers may use Form SE/Group to register claims in individual contributions published for the first time in the serial, if the publisher has obtained ownership of the copyright.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (Title 5, chapter 5 of the U.S. Code. Subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

### List of Subjects in 37 CFR Part 202

Registration of claims to copyright, Claims to copyright, Copyright registration.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17], except with respect to the making of copies of copyright deposits]. [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

### Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

## PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:

**Authority:** Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.3 and 202.20 are also issued under 17 U.S.C. 407 and 408.

**§ 202.3 [Amended]**

2. Sections 202.3(b)(5) and (6) are redesignated as 202.3(b)(6) and (7) respectively.

3. Section 202.3(b)(5) is added to read as follows:

**§ 202.3 Registration of copyright.**

* * * * *

(b) * * *

(5) *Group registration of related serials.* (i) Pursuant to the authority granted by section 408(c)(1) of title 17 of the United States Code, the Register of Copyrights has determined that, on the basis of a single application, deposit, and filing fee, a single registration may be made for a group of serials published at intervals of a week or longer if all the following conditions are met:

(A) The Library of Congress receives two complimentary copies promptly after publication of each issue of the serial.

(B) The single application covers no more than the issues published in a given three month period.

(C) The claim to copyright for which registration is sought is in the collective work.

(D) The collective work authorship is essentially new material that is being published for the first time.

(E) The collective work is a work made for hire.

(F) The author(s) and claimant(s) of the collective work are the same person(s) or organization(s).

(G) Each issue must have been created no more than one year prior to publication and all issues included in the group registration must have been published in the same calendar year.

(ii) To be eligible for group registration of serials, publishers must submit a letter affirming that two complimentary subscriptions to the particular serial have been entered for the Library of Congress. The letter should be sent to: Office of the General Counsel, Copyright Office, Library of Congress, Department 17, Washington, DC 20540.

(iii) The complimentary subscription copies must be addressed to: Group Periodicals Registration Library of Congress, Washington, DC 20540.

(iv) The Register of Copyrights may revoke the privilege of group registration of serials for any publisher who fails to submit the required complimentary subscription copies promptly after publication of each issue. Notice of revocation of the group registration of serials privilege shall be given in writing and shall be sent to the individual person or organization applying for group registration of serials, at the last address shown in the records of the Copyright Office. A notice of revocation may be given at any time if the requirements of the regulation are not satisfied, but it shall state a specific date of revocation that is at least 30 days later than the date the notice is mailed.

(v) To apply for group registration of serials under section 408(c)(1) of title 17 and this subsection, the following items must be sent together in the same package:

(A) A completed Form SE/Group giving the requested information.

(B) A filing fee of $10 for each issue covered by the group registration.

(C) A deposit consisting of one complete copy of the best edition of each issue included in the group registration.

4. Section 202.20(c)(2)(xvii) is added to read as follows:

**§ 202.20 Deposit of copies and phono records for copyright registration.**

* * * * *

(c) Nature of required deposit. * * *

(2) * * *

(xvii) *Group registration of serials.* For group registration of related serials, as specified in § 202.3(b)(5), the deposit must consist of one complete copy of the best edition of each issue included in the group registration. In addition, two complimentary subscriptions to any serial for which group registration is sought must be entered and maintained in the name of the Library of Congress, and the copies must be submitted regularly and promptly after publication.

* * * * *

Dated: November 13, 1990.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 90-28697 Filed 12-6-90; 8:45 am]

BILLING CODE 1410-07-M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 61 and 69**

**[CC Docket No. 87-313, DA 90-1543]**

**Policy and Rules Concerning Rates for Dominant Carriers**

**AGENCY:** Federal Communications Commission [FCC].

**ACTION:** Final rule; correction.

**SUMMARY:** Pursuant to delegated authority, the Chief of the FCC Common Carrier Bureau corrects certain errors in the summary and final rules which appeared in the **Federal Register** on October 19, 1990 (55 FR 42375), FR Doc. 90-24696.

**FOR FURTHER INFORMATION CONTACT:** Allen A. Barna, Common Carrier Bureau, (202) 632-6917.

**SUPPLEMENTARY INFORMATION:** With regard to the Second Report and Order and final rules adopted in Policy and Rules Concerning Rates for Dominant Carriers, Common Carrier Docket No. 87-313, FCC 90-314, on September 19, 1990, and released on October 4, 1990, the following corrections are made to the summary of that Second Report and Order and to the text of those rules published in the **Federal Register** on October 19, 1990 (55 FR 42375), FR Doc. 90-24696.

1. In paragraph 1, on page 42375, third column, the third and fourth sentences are corrected to read as follows: "By our action today, the 'cost-plus' system of regulation will be replaced for the largest of the LECs on January 1, 1991, with an incentive-based system of regulation similar to the system we now use to regulate AT&T. Incentive regulation will reward companies that become more productive and efficient, while ensuring that productivity and efficiency gains are shared with ratepayers."

2. In paragraph 28, on page 42378, second column, the fifteenth line, "(d)" is corrected to read "(e)," in the seventeenth line, "(e)" is corrected to read "(f)," and in the twentieth line, "(f)" is corrected to read "(g)."

3. In paragraph 35, on page 42379, third column, the first sentence is corrected to read as follows: "We recognize that in launching an entirely new system of regulating local exchange carriers, we have a responsibility to monitor its application and results to guard against unintended, unanticipated effects or problems." In that same paragraph, the third sentence is corrected to read as follows: "We also must consider the information that will be necessary for us to conduct the performance review of the price cap program which we expect to begin after no more than three years and to complete by the fourth year of the plan."

4. In paragraph 40, on page 42380, second column, the first sentence is corrected to read as follows: "In view of our earlier finding that we have legal authority to adopt a price cap plan for AT&T, the primary basis for our conclusion that we also have legal authority to adopt our LEC price cap plan lies in the fact that the LEC plan was derived from the AT&T plan and accordingly shares a number of common elements."

5. In paragraph 45, on page 42381, beginning in the first column, the eighth and ninth sentences are removed.

**§ 61.41 [Corrected]**

6. a. On page 42382, third column, § 61.41(c)(3) is correctly revised to read as follows: "Notwithstanding the provisions of § 61.41(c)(2) above, when a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that qualifies as an 'average schedule' company, the latter company may retain its 'average schedule' status or become subject to price cap regulation in accordance with § 69.3(i)(3) and the requirements referenced in that section."

**§ 61.42 [Corrected]**

b. Also, on that same page, in the third column, § 61.42(d)(4) is correctly added to read as follows: "To the extent that a local exchange carrier specified in § 61.41(a) (2) or (3) offers interstate interexchange services that are not classified as access services for the purpose of part 69 of this chapter, such exchange carrier shall establish a fourth basket for such services."

**§ 61.45 [Corrected]**

7. a. On page 42383, second column, the thirtieth line of § 61.45(c) is corrected to read "$PCI_t$ = The new PCI value, and".

b. On the same page in the third column, § 61.45(d)(4) is correctly added to read as follows: "Exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Exogenous cost changes thus attributed to price cap services shall be further apportioned on a cost-causative basis among the price cap baskets."

**§ 61.46 [Corrected]**

c. In addition, on the same page beginning in the third column, in § 61.46, the introductory text of paragraph (d), the definition of "$CL_{460U}$" and the definition of "$EUCL_{460U}$" are correctly added to read as follows:

* * * * *

(d) In connection with any price cap tariff proposing changes to rates for services in the basket designated in § 61.42(d)(1), the maximum allowable carrier common line (CCL) charges shall be computed pursuant to the following methodology:

* * * * *

$CL_{460U}$ = The sum of each of the existing maximum allowable Carrier Common Line rates multiplied by its corresponding base period Carrier Common Line minutes of use plus each existing End User Common Line (EUCL) rate multiplied by its corresponding base period lines, divided by the sum of all types of base period Carrier Common Line minutes of use,

$EUCL_{460U}$ = Proposed End User Line rates multiplied by base period lines and divided by the sum of all types of base period Carrier Common Line minutes of use, and

* * * * *

**§ 69.3 [Corrected]**

8. On page 42386, first column, in § 69.3, the introductory text to paragraph (i), and paragraphs (i)(1), (i)(2), and (i)(3) are correctly added to read as follows:

* * * * *

(i) The following rules apply to the withdrawal from Association tariffs under the provisions of paragraphs (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to § 69.3(h).

(1) In addition to the withdrawal provisions of § 69.3(e) (6) and (9), a telephone company that participates in one or more Association tariffs during one tariff year and that elects to file price cap tariffs effective July 1 of the following tariff year, shall provide the Association with at least 6 months' notice that it is withdrawing from all Association tariffs, subject to the terms of this Rule, to participate in price cap regulation.

(2) The Association shall maintain records of such withdrawals sufficient to discharge its obligations under these Rules and to detect efforts by such companies or their affiliates to rejoin any Association tariffs in violation of the provisions of paragraph (i)(4) of this section.



(3) Notwithstanding the provisions of § 69.3(e) (6) and (9), in the event a telephone company withdraws from all Association tariffs for the purpose of filing price cap tariffs, such company shall exclude from such withdrawal all "average schedule" affiliates and all affiliates so excluded shall be specified in the withdrawal. However, such company may include one or more "average schedule" affiliates in price cap regulation provided that each price cap affiliate relinquishes "average schedule" status and withdraws from all Association tariffs and any tariff filed pursuant to § 61.39(b)(2). *See generally* § § 69.605(c), 61.39(b) of this chapter;

MTS and WATS Market Structure: Average Schedule Companies, Report and Order, 103 FCC 2D 1026-1027 (1986).[1]

* * * * *

**§ 69.113 [Amended]**

b. Also, on page 42386, third column, in § 69.113, the last sentence of paragraph (c) is correctly revised to read as follows: "Through June 30, 1993, the non-premium charge shall be computed by multiplying the LS2 charge for such element by .45."

[1] The FCC 2d is available in the Publications Branch, room 224, Federal Communications Commission, 1919 M St., NW., DC 20554.

**§ 69.205 [Amended]**

9. On page 42387, first column, in § 69.205, the last sentence of paragraph (c) is correctly revised to read as follows: "For telephone companies that are not subject to price cap regulation, as that term is defined in § 61.3(v) of this chapter, the premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for each element."

**Richard M. Firestone,**

*Chief, Common Carrier Bureau.*

[FR Doc. 90-27656 Filed 12-6-90; 8:45 am]

BILLING CODE 6712-01-M



## Proposed Rules

VOL 55 ISS 236 DEC 7 1990 UMI



# Proposed Rules

Federal Register
Vol. 55, No. 236
Friday, December 7, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 213**

**Excepted Service—Schedule A Authority for Employment of Students**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise the Schedule A excepted service appointing authority used by agencies to hire student assistants. An agency has suggested that the grade level limit be raised to GS–9. These regulations would permit agencies to make appointments under the authority at grades up to GS–9, or equivalent. Currently, the authority permits appointments only up to grade GS–7, or equivalent.

**DATES:** Comments must be received on or before February 5, 1990.

**ADDRESSES:** Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Tracy Spencer, (202) 606–0960.

**SUPPLEMENTARY INFORMATION:** The Schedule A authority for appointment of student assistance was established in 1949. Originally, it contained a monetary limit on the compensation that an appointee could receive during a year. Subsequent amendments replaced the monetary limit with limits on the grade levels at which student assistants may be hired and on the amount of time they may work during a year. Currently, the authority permits employment at grades GS–7 or equivalent, and below for up to 1,040 hours in a service year. An agency has suggested that the grade level limit be raised to GS–9. OPM believes that this change would not dilute the basis for Schedule A exception.

OPM has authority to except positions under Schedule A when examining for the positions is impracticable. The work performed by student assistants is often similar to that for which OPM conducts competitive examinations. Students may compete in those examinations along with other candidates. However, examinations geared toward career employment may not produce candidates interested in part-time temporary employment or may do so only at excessive cost. The grade and service limits in the Schedule A authority represent a break-even point above which examining would be appropriate and cost-effective.

When the GS–7 limit was established, OPM maintained standing registers of eligibles for many occupations and grade levels. That is no longer true. Many jobs above entry levels are now filled under case examining procedures in which announcements are issued and registers established only when agencies have specific vacancies. These procedures would not be cost-effective for jobs that are both temporary and part-time. Thus, increasing the grade level limit to GS–9 would be within the spirit of the Schedule A authority.

The Schedule A authority requires agencies to apply experience and training requirements comparable to those imposed by OPM in the competitive service. This requirement would not change. Since positions at grade GS–9 require substantial graduate education, a master's degree, or specialized professional experience, relatively few candidates would qualify for appointments at that level. However, those candidates may represent a valuable recruiting source. Federal agencies can expect increasing competition from other employers for a decreasing supply of college-educated candidates. Raising the grade level limit of the student assistant authority may increase the candidate pool for some part-time and project work.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain employees in Federal agencies.

**List of Subjects in 5 CFR Part 213**

Government employees.

Office of Personnel Management.

**Constance Berry Newman,**
*Director.*

Accordingly, OPM proposes to amend 5 CFR part 213 as follows:

**PART 213—[AMENDED]**

1. The authority citation for part 213 continues to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1948 Comp., p. 218; Section 213.101 also issued under 5 U.S.C. 2103; Section 213.102 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); Section 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h), and 8457.

2. In § 213.310(q), the first sentence is revised to read as follows:

**§ 213.3102 Entire Executive Civil Service.**

* * * * *

(q) Positions at grade GS–9, or equivalent, and below when appointees are to assist scientific, professional, or technical employees.* * *

[FR Doc. 90–28706 Filed 12–6–90; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

**Agricultural Marketing Service**

**7 CFR Part 981**

**[AMS–FV–90–208PR]**

**Almonds Grown in California; Proposed Minimum Prices for 1990–91 Crop Year Reserve Almonds Disposed of by Handlers in Specified Outlets**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This action gives notice of a proposal to establish minimum prices for 1990–91 crop year reserve almonds disposed of by handlers in several specified outlets. These outlets are almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. The action is needed to help ensure that



1990–91 crop year almonds which handlers dispose of in reserve outlets are sold at prices which will not be detrimental to producers' returns. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

**DATES:** Comments must be received by December 24, 1990.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Allen Belden, Marketing Order Administration Branch, F&V AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under marketing agreement and Order No. 981 [7 CFR Part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with U.S. Department of Agriculture (USDA) Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The propose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The proposed rule invites comments on a change to the administrative rules and regulations of the order. The proposed change would establish minimum prices for 1990–91 crop year reserve almonds disposed of by handlers in several specified outlets. This action is intended to help ensure that reserve almonds are sold at prices which will not be detrimental to producers' returns and is not expected to impose any additional burden or costs on handlers.

This action propose to revise § 981.467 of Subpart—Administrative Rules and regulations and is based on a recommendation of the Board, passed on a 7 to 1 vote, and other available information.

Section 981.67 of the order provides that upon request of a handler, the Board shall authorize such handler to act as agent of the Board for the disposition of that handler's reserve almonds upon such reasonable terms and conditions as the Board may specify. A final rule was published in the Federal Register on September 21, 1990 [55 FR 38797), which established a reserve percentage of 35 percent for marketable California almonds received by handlers during the 1990–91 crop year, which began on July 1, 1990. That rule became effective on October 22, 1990.

Section 981.467(a) of the rules and regulations established under the order provides that a handler may become an agent of the Board pursuant to § 981.67 for the purpose of disposing of reserve almonds of a particular crop year in authorized outlets. Section 981.66(c) of the order provides that those authorized outlets shall be sales to governmental agencies or to charitable institutions for charitable purposes and for diversion into almond oil, almond butter, poultry or animal feed, and other channels which the Board finds are noncompetitive with existing normal markets for almonds. The Board has designated two additional outlets for the disposition of 1990–91 crop year reserve outlets—natural almond paste and foil packets for sales to airlines.

This action proposes to add a new paragraph (c) to section 981.467 of the administrative rules and regulations to establish minimum prices for 1990–91 crop year almonds disposed of by handlers in several specified outlets. These outlets are almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. Different minimum prices are proposed for different grades and other categories of shelled almonds. The grades used are those contained in the "United States Standards for Grades of Shelled Almonds" [7 CFR 51.2105–51.2132). The recommended prices are ranked according to the quality of the grade, with the highest quality grade receiving the highest recommended price. Minimum prices for almonds to be used for almond butter manufactured in the 45 contiguous states and shipped to European Economic Community (EEC) nations are set lower than the corresponding prices for domestic shipments or for shipments to foreign countries other than EEC countries, however, to counter a 12 percent duty imposed by the EEC on finished products such as almond butter going to EEC countries.

The recommended minimum prices would be established on a F.O.B. basis from the handler's plant. Thus, transportation costs to the buyer's facilities would not be included in the minimum prices. To include such costs in the minimum prices would require an unduly complicated minimum price system, as the transportation costs to ship almonds to various destinations vary widely. A maximum two percent brokerage commission would be allowed to be included in the minimum prices. Brokers customarily are employed in the industry to negotiate sales between handlers and buyers and the standard industry commission for this service is two percent. No cash discounts would be allowed, as the Board believes that to devise a method for cash discounts would unduly complicate the proposed system.

The minimum prices proposed by this rule would apply to the disposition of the 35 percent reserve established by a final rule published in the Federal Register on September 21, 1990 (55 FR 38797). The 35 percent reserve is estimated to represent 220 million kernel-weight pounds of almonds. However, at a later date, the Board or two or more handlers who handled at least 15 percent of all almonds handled during the 1989–90 crop year could request that all or a portion of this reserve be released to the salable category. Pursuant to § 981.48 of the order, this recommendation would have

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to be made prior to May 15, 1991. At its July 25, 1990, meeting, however, the Board passed a resolution that it does not intend to recommend that the salable percentage for the 1990–91 crop year be increased to more than 93 percent of marketable production. The Board believes that, while additional almonds may need to be released to the salable category at a future date if it is found that the current 65 percent salable percentage is insufficient to satisfy 1990–91 trade demand needs or for desirable carryover requirements for use during the 1991–92 crop year, at least 7 percent of marketable production is not likely to be needed for this purpose.

The minimum prices recommended by the Board are in the range of 60 cents to 95 cents per kernelweight pound. These prices are expected to be approximately one half of what comparable grades of almonds are expected to sell for in salable markets. By contrast, almonds disposed of in low-value outlets, such as almond oil and animal feed, for which no minimum prices would be established, are expected to sell for less than 10 cents per kernelweight pound.

In making its recommendation for minimum prices, the Board considered different price levels for the various grades and categories for which minimum prices were at levels that are competitive with other nuts, particularly peanuts, used for similar products such as peanut butter and foil packets of peanuts.

The Board hopes to develop new markets for almonds by supplying those markets with reserve almonds, which are generally sold at prices lower than those for salable almonds. However, the Board would also like sales to those markets to cover the costs of processing the almonds and provide at least some returns to growers. Thus, the minimum prices recommended by the Board are intended to ensure the highest return possible to growers within the constraint of providing buyers of reserve almonds a price which is attractive enough to encourage the development of new markets, which in future years may utilize substantial quantities of salable almonds at competitive prices.

The Department understands that some members of the almond industry would like the minimum prices proposed herein to apply to dispositions since July 1, 1990, the beginning of the crop year. Under this scenario, handlers would receive reserve credit for any dispositions made during the crop year, which compiled with the proposed minimum price requirements, even though these requirements were not established until the crop year was well under way. It is the position of the USDA, however, that applying such minimum prices in this manner would discourage handlers from disposing of reserve almonds until the rulemaking process on this issue is completed, due to uncertainty as to what minimum prices, if any, would be established. Section 981.67 of the order provides that the Board shall authorize a handler to act as an agent of the Board for the purpose of disposing of reserve almonds upon request of the handler. It is the position of the USDA that handlers should be allowed to dispose of reserve almonds in a timely manner without concern as to minimum prices established after dispositions have been made. Therefore, the minimum prices will apply only to dispositions made after the effective date of the rule.

The Board also recommended surcharges for various finished products, such as almond butter or foil packets of almonds, manufactured by handlers themselves. These recommended surcharges would require handlers to sell these finished products at a specified minimum price above the minimum price for the almonds themselves. Establishing such surcharges would unduly complicate the proposed system, without necessarily benefiting producer returns. In addition, the recommendation failed to indicate how such a proposal is within the ambit of the order provisions. Therefore, these surcharges are not included in this rule.

In the past years, minimum prices have been set in the agency agreement between handlers and the Board. Despite the fact that the Board is representative of the entire industry and seeks public input in forming its recommendations, a few handlers have desired that notice and comment rulemaking be used to establish the minimum prices. In order to provide even further opportunity for public participation, the Department is issuing this proposal.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic effect on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because handlers are currently disposing of reserve almonds. Accordingly, handlers, buyers, and producers should know as soon as possible what minimum prices, if any, will be put into effect.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.467 is amended by adding a new paragraph (c) to read as follows:

**§ 981.467 Disposition in reserve outlets by handlers.**

* * * * *

(c) *Minimum prices.* Minimum prices shall apply to 1990–91 crop year reserve almonds diverted to almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. Prices are F.O.B. handlers plant. The prices may contain a maximum of two percent brokerage commission. No cash discounts are allowed. The prices are as follows for various grades or categories of almonds:

| Grade or category | Price per pound (in cents) |
|---|---|
| U.S. Select Sheller Run or better, unblanched | 75 |
| U.S. Standard Sheller Run, unblanched | 74 |
| U.S. No. 1 Whole and Broken, unblanched | 73 |
| U.S. No. 1 Pieces, unblanched | 73 |
| U.S. No. 1 Pieces or better, unblanched, to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries | 60 |
| Blanched made from U.S. No. 1 Pieces or better | 95 |
| Blanched made from U.S. No. 1 Pieces or better to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries | 82 |

Dated: December 3, 1990.

Robert C. Kenney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–28700 Filed 12–6–90; 8:45 am]

BILLING CODE 3410–02–M



**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90-NM-257-AD]**

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes, which would require various modifications to the rear pressure bulkhead door. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in reduced structural integrity of the rear pressure bulkhead door. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

**DATES:** Comments must be received no later than January 30, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–257–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2146. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–257–AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious that, because of the increase in air travel, the relatively slow production rate for new airplanes, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was determined that increased attention needed to be focused on this aging fleet to maintain operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The working group assigned to review the Model BAC 1–11, the BAC 1 Structures Task Unit (STU), included personnel from British Aerospace, the United Kingdom Civil Aviation Authority (CAA), the FAA, and various U.S. and foreign operators of Model BAC 1–11 series airplanes. The STU completed its work on Item (1) above, in December 1989; its proposal is contained in British Aerospace Alert Service Bulletin 5–A–PM5995, Issue No. 2, dated July 1, 1990. (The FAA previously issued AD 90–23–09, Amendment 39–6795 (5 FR 33129, August 14, 1990), which requires incorporation of numerous structural modifications described in that service bulletin. Certain other modifications described in that service bulletin were not mandated by AD 90–23–09 because their applicable related service information had not been finalized at the time the AD was initiated.)

British Aerospace has recently issued Service Bulletin 52–PM–5970, dated August 16, 1990, which describes procedures for various modifications to the rear pressure bulkhead door. These modifications include the installation of new horizontal members that have increased thickness and are made of improved material. This service bulletin also describes procedures for installing various angle bracket assemblies, throat strips, cleats, furnishing bracket assemblies, furnishing angles, stiffeners, and a detachable door panel, which must be accomplished during this modification. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory by including it in Table 1 of British Aerospace Alert Service Bulletin 5–A–PM5995, Issue No. 2, dated July 1, 1990 (which is classified as mandatory).

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since fatigue cracking is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which

would require various modifications to the rear pressure bulkhead door in accordance with Service Bulletin 52–PM–5970, previously described.

The proposed compliance time for implementation of these structural modifications is upon reaching a certain "not exceed time," as specified in British Aerospace Service Bulletin 5–A–PM5995, Issue No. 2, dated July 1, 1990, or within 15 months, whichever occurs later. This time interval is based upon the ability of the manufacturer to provide the parts necessary for modification, and the time necessary to incorporate the modifications.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 240 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the required parts and modification kit is estimated to be $8,415 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,261,050.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1–11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 52–PM–5970, dated August 16, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the rear pressure bulkhead door, accomplish the following:

A. Prior to the accumulation of 55,000 landings or within 15 months after the effective date of this AD, whichever occurs later, install horizontal members, various angle bracket assemblies, throat strips, cleats, furnishing bracket assemblies, furnishing angles, stiffeners, and a detachable door panel, in accordance with British Aerospace Service Bulletin 52–PM–5970, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 27, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–28740 Filed 12–6–90; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 90–NM–280–AD]**

**Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F–28 Mark 0100 series airplanes, which would require a one-time visual inspection for incorrectly installed insulation sleeves and washers in the Electrical Power Center (EPC) and battery rely panel, and repair, if necessary. This proposal is prompted by reports of smoke in the flight deck due to loose contactors in the EPC. This condition, if not corrected, could result in a temperature increase in the contractor studs, smoke in the cockpit, and a potential electrical fire.

**DATES:** Comments must be received no later than January 30, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–280–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.



Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–280-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F–28 Mark 0100 series airplanes. There has been a recent report of smoke in the flight deck due to loose contactors in the Electrical Power Center (EPC). There was also one report of a missing washer and an incorrect installation of the insulation sleeves. This condition, if not corrected, could result in a temperature increase in the contactor studs, smoke in the cockpit, and a potential electrical fire.

Fokker has issued Service Bulletin F100–24–012, dated September 3, 1990, which describes procedures for a one-time visual inspection for incorrectly installed insulation sleeves and washers in the EPC and battery relay panel, and repair, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA No. 90–103 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection for incorrectly installed insulation sleeves and washers in the EPC and battery relay panel, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [AMENDED]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Applies to certain Model F–28 Mark 0100 series airplanes; Serial Numbers 11244 through 11256, 11259, 11260, 11263, 11266 through 11278, 11280 through 11283, and 11286; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent temperature increase in the contactor studs, smoke in the cockpit, and a potential electrical fire, accomplish the following:

A. Within 45 days after the effective date of this AD, perform an inspection of the Electrical Power Center (EPC), the Battery Relay Panel (BRP), contactors, and terminal blocks for insulation sleeve length and washer installation, in accordance with part 1 and part 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin F100–24–012, dated September 3, 1990.

1. If defects are found, prior to further flight, correct the sleeve length and the washer installation in accordance with part 3 of the Accomplishment Instructions of the service bulletin.

2. If no defects are found, or if the corrections required by paragraph A.1. of this AD have been accomplished, accomplish the work completion procedures and perform the operational checks in accordance with part 4 of the Accomplishment Instructions of the service bulletin before returning the airplane to service.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 27, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–28741 Filed 12–6–90; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 90–ANE–20]**

**Airworthiness Directives; Pratt & Whitney (PW) JT9D Series Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD), applicable to PW JT9D series turbofan engines, that requires modification of certain fuel nozzles from a two piece knife-edge seal design to a one piece welded configuration. This proposal is prompted by fuel nozzle failures which have resulted in uncontained engine failures. The proposed AD is needed to prevent fuel nozzle distress which could result in an uncontained lenticular seal failure, and inflight engine shutdown.

**DATES:** Comments must be received no later than February 5, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90–ANE–20, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to Room 311, at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Daniel Kerman, Engine Certification Branch, ANE–141, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 270–2410.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–ANE–20." The postcard will be date/time stamped and returned to the commenter.

**Discussion**

The FAA has determined that there have been a total of 41 fuel nozzle failures, of which 9 are associated with uncontained engine failures. These uncontained engine failures were initiated by leaking nozzle seals. It has been determined that fuel can leak beyond the secondary knife-edge seal where the fuel burns and destroys the integrity of the fuel nozzle assembly. In some instances, fuel leaked past the seal, due to improper nozzle seal surface preparation, and burned the securing nut and nozzle heat shield; in others, the nozzle cup was liberated into the gas path. This damage to the nozzle alters the fuel distribution in the combustor. This condition, if not corrected, could result in an uncontained lenticular seal failure, and an inflight engine shutdown.

The FAA has reviewed and approved PW Service Bulletin (SB) 5566, Revision 4, dated June 23, 1988, which describes new design modifications for certain fuel nozzles.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require modification of certain fuel nozzles in accordance with the SB previously described.

There are approximately 586 engines of the affected design in the worldwide fleet. It is estimated that 120 engines of U.S. registry would be affected by this AD, that it would take approximately 91.5 manhours per engine to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $439,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following airworthiness directive (AD):

**Pratt & Whitney:** Applies to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines installed on, but not limited to, Boeing 747, Airbus A300, and McDonnell Douglas DC10 aircraft.

Compliance is required prior to December 31, 1991, unless previously accomplished.

To prevent fuel nozzle distress which can result in an uncontained lenticular seal failure, and an inflight engine shutdown, accomplish the following:

(a) Modify the fuel nozzle and support assembly, part numbers 795098, 5004189–01, 795090, and 5003981–01, in accordance with part 1 and part 2 of the Accomplishment Instructions contained in PW Service Bulletin (SB) 5566, Revision 4, dated June 23, 1988.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on November 28, 1990.

**Ronald L. Vavruska,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 90–28742 Filed 12–6–90; 8:45 am]

BILLING CODE 4910–13–M



**14 CFR Part 39**

**[Docket No. 90–NM–185–AD]**

## Airworthiness Directives; SAAB–Scania Models SF–340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain SAAB–Scania Models SF–340A and SAAB 340B series airplanes, which would require replacement of certain life-limited components associated with the main landing gear (MLG) and nose landing gear (NLG) in accordance with revised life limits. This proposal is prompted by an analysis in which the landing gear component life limits have been recalculated in order to compensate for operations of the SAAB–Scania Model SF 340 series airplanes at higher weights than the projected weights used to establish the life limits during airplane certification. Failure to replace the landing gear components at these new life limits could result in reduced structural capability of the MLG and NLG.

**DATES:** Comments must be received no later than January 30, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–185–AD, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. The applicable service information may be obtained from SAAB–Scania AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by sumbitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–185–AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB–Scania Model SF–340A and SAAB 340B series airplanes. The design weights for these models have been increased subsequent to the initial certification. These airplanes are also being operated at higher weights than the project weights used to establish the landing gear component life limits during airplane certification. SAAB–Scania has recalculated and revised (reduced) the landing gear life limits to compensate for operations at the higher weights. Failure to replace landing gear components at the revised (reduced) the landing gear life limits to compensate for operations at the higher weights. Failure to replace landing gear components at the revised life limits, could result in reduced structural integrity of the NLG and MLG.

SAAB–Scania has issued Service Bulletin SAAB 340–32–066, Revision 1, dated October 17, 1990, to inform the operators of the revised landing gear component fatigue life limits. The LFV has approved this service bulletin.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the removal and replacement of certain components associated with the NLG and MLG at specified intervals, in accordance with the service bulletin previously described.

It is estimated that 106 airplanes of U.S. registry would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that average labor cost would be $40 per manhour. The estimated cost for required parts is $4,700. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $714,960.

The regulation proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules

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Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**SAAB-Scania:** Applies to Model SF-340A series airplanes, Serial Numbers 004 through 159; and SAAB 340B series airplanes, Serial Numbers 160 and subsequent; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the nose landing gear (NLG) and main landing gear (MLG), accomplish the following:

A. Remove the NLG and MLG components identified in Attachments 1 through 6 of SAAB Service Bulletin 340-32-086, Revision 1, dated October 17, 1990, and replace them with serviceable components prior to the accumulation of the number of landings listed in the "Fatigue-Life Flights" column of the applicable "Life Limited Parts List," or within 60 days after the effective date of this AD, whichever occurs later. Thereafter, replace these components with serviceable components at intervals not to exceed the number of landings listed in the "Fatigue-Life Flights" column of the applicable "Life Limited Parts List."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, S-581-88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 27, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28730 Filed 12-6-90; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[CO-76-90]**

**RIN 1545-AP19**

## Proposed Regulations Under Section 108 of the Internal Revenue Code; Discharge of Indebtedness

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 108(e)(8)(A) of the Internal Revenue Code of 1986 ("the Code"). Section 108(e)(8)(A) was added by the Bankruptcy Tax Act of 1980 and amended be section 11325 of the Revenue Reconciliation Act of 1990. The proposed regulations provide rules for determining whether stock issued in exchange for indebtedness is nominal or token under section 108(e)(8)(A) of the Code.

**DATES:** Written comments and requests for a public hearing must be received by February 4, 1991.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, CC: CORP:T:R [CO-76-90], room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Lori J. Jones of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or telephone (202) 566-3422 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document concerns section 108(e)(8)(A) of the Code and adds proposed regulations § 1.108-1. Section 108(e)(8)(A) was added by section 2(a) of the Bankruptcy Tax Act of 1980 (Pub. L. No. 96-589, 94 Stat. 3389) and amended by section 11325 of the Revenue Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388).

The regulations are proposed to be effective on December 6, 1990 and are proposed to apply to exchanges on or after December 6, 1990. Although the regulations are not proposed to apply to exchanges occurring before December 6, 1990, no inference is intended concerning the interpretation of section 108(e)(8)(A) prior to the effective date of these regulations. The Internal Revenue Service will apply the principles underlying the rules of the proposed regulations to exchanges occurring before December 6, 1990 in testing whether the stock transferred is "nominal or token" within the meaning of section 108(e)(8)(A).

**Explanation of Provisions**

*(a) Overview of Section 108*

Under section 61(a)(12) of the Code, gross income includes income from the discharge of indebtedness. Discharge of indebtedness income to a debtor generally arises when a creditor accepts less than full payment for an amount of indebtedness. Section 108 provides certain rules with respect to discharge of indebtedness income occurring in a title 11 case or when the debtor is insolvent. In general, insolvent debtors exclude discharge of indebtedness income from gross income to the extent of their insolvency (defined in section 108(d)(3)) while title 11 debtors exclude all income arising from a discharge of indebtedness pursuant to a plan approved by the bankruptcy court (section 108(d)(2)). Under section 108(b), title 11 and insolvent debtors must reduce certain tax attributes in an amount equal to the excluded amount of discharge of indebtedness income. If the amount of discharge of indebtedness income exceeds the amount of tax attributes, the excess is disregarded. S. Rep. No. 1035, 96th Cong., 2d. Sess. 2 (1980), 1980-2 C.B. 625.

Section 108(e)(10)(A) of the Code provides that a debtor corporation that transfers stock to a creditor in satisfaction of indebtedness is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock. As a result, debtor corporations subject to section 108(e)(10)(A) realize discharge of indebtedness income to the extent the amount of the indebtedness exceeds the fair market value of the stock issued in exchange for the indebtedness. Under section 108(e)(10)(B)(i), section 108(e)(10)(A) does not apply to any transfer of stock (other than disqualified stock) by a debtor corporation in a title 11 case or to the extent the debtor is insolvent. Disqualified stock, as defined in section 108(e)(10)(B)(ii), is stock with a stated redemption price if (a) the stock has a fixed redemption date, (b) the issuer of such stock has the right to redeem such stock at one or more times, or (c) the holder of such stock has the right to require its redemption at one or more times.

As a consequence of the exclusion in section 108(e)(10)(B)(i) of the Code, title 11 and insolvent debtors remain eligible for the common law exception to the realization of discharge of indebtedness income where a debtor corporation issues stock, other than disqualified stock, to its creditors in exchange for debt ("the stock-for-debt exception"). If the stock-for-debt exception applies, gross income does not arise from the exchange, the exclusion under section 108(a) of the Code does not apply since there is no gross income to exclude and, therefore, no reduction of tax attributes occurs under sections 108(b) and 1017.

Section 108(e)(8) of the Code prevents the application of the stock-for-debt exception in certain *"de minimis"* cases. Section 108(e)(8)(A) provides that the stock-for-debt exception does not apply to the issuance of nominal or token shares. The flush language of section 108(e)(8), which was added by the Revenue Reconciliation Act of 1990 (Pub. L. No. 101-508), provides that disqualified stock is not treated as stock in determining whether shares are nominal or token. Section 108(e)(8)(B) provides that the stock-for-debt exception does not apply with respect to an unsecured creditor, where the ratio of the value of the stock received by the unsecured creditor to the amount of its indebtedness canceled or exchanged for stock in the workout is less than 50 percent of a similar ratio computed for all unsecured creditors participating in the workout.

Thus, the stock-for-debt exception is available in the case of an insolvent or title 11 debtor only if the exchange of stock for debt satisfies the *de minimis* rules of section 108(e)(8) of the Code. If, for example, stock is considered nominal or token under section 108(e)(8)(A), the debtor is treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock. Any resulting discharge of indebtedness income is excluded from gross income to the extent provided under section 108(a), but attribute reduction is required under section 108(b).

*(b) Overview of proposed regulations*

The legislative history of section 108(e)(8)(A) of the Code indicates that a facts and circumstances inquiry must be made to ensure that the stock-for-debt exception is not circumvented by the issuance of nominal or token shares to a creditor who has no real equity interest in the corporation. S. Rep. No. 1035, 96th Cong., 2d. Sess. 17, 1980-2 C.B. 628. The proposed regulations provide a nonexclusive list of facts and circumstances to be taken into account in determining if stock is nominal or token. The factors are generally taken into account with respect to the issuance of stock to a creditor in exchange for indebtedness held by that creditor.

For purposes of making the nominal or token analysis, § 1.108-1(a)(2) of the Proposed Regulations adopted the flush language in section 108(e)(8) of the Code which provides that "disqualified stock" under section 108(e)(10)(B)(ii) will not be considered to be stock for purposes of section 108(e)(8). H. Rep. No. 964, 101st Cong., 2d Sess. 1099. Section 1.108-1(a)(2) does not apply to stock that is not disqualified stock under the effective date provisions of section 11325(c) of the Revenue Reconciliation Act of 1990. Accordingly, such stock is treated as stock for purposes of the Proposed Regulations.

In applying the facts and circumstances test, Prop. Reg. § 1.108-1(b)(1)(i) provides that the most important factor is the ratio of the fair market value of the stock issued to the creditor to the allocable indebtedness treated as exchanged for the stock ("Stock to Debt Ratio"). The transfer to a creditor of stock with a fair market value that is low relative to the allocable indebtedness that is discharged is evidence that the shares are nominal or token. The second factor, described in Prop. Reg. § 1.108-1(b)(1)(ii), is a comparison of the fair market value of stock received by a creditor to the fair market value of the total consideration received by the creditor in the exchange ("Stock to Total Consideration Ratio"). If the fair market value of the stock is low compared to the fair market value of the total consideration received by the creditor, that is evidence that the shares are nominal or token. The third factor, described in Prop. Reg. § 1.108-1(b)(1)(iii), is a comparison of the fair market value of the stock issued to the creditors as a group and the total fair market value of the outstanding stock after the bankruptcy reorganization or insolvency workout ("Stock to Total Stock Ratio"). The fact that the fair market value of the stock issued to the creditors as a group is low in comparison to the fair market value of all of the debtor corporation's outstanding stock is evidence that the shares are nominal or token. Whether a ratio described in Prop. Reg. § 1.108-1(b)(1) is low depends upon the particular ratio and whether other facts and circumstances, including the other ratios, indicate that the stock transferred is nominal or token.

The proposed regulations provide special rules for calculating the Stock to Debt Ratio where a debtor issues preferred stock in exchange for outstanding debt. (These rules do not apply to stock that is "disqualified stock" under § 1.108-1(a)(2) of the Proposed Regulations.) "Preferred stock," as described in Prop. Reg. § 1.108-1(b)(2)(i), is stock that has a limited or fixed redemption price or liquidation preference and does not have a meaningful right to participate in corporate growth. For this purpose, a liquidation preference exists if the stock's right to share in liquidation proceeds is limited and preferred. In addition, a meaningful right to participate in corporate growth is not established by (i) a right to convert preferred stock into a class of stock other than preferred stock or (ii) the fact that the redemption price or liquidation preference exceeds the fair market value of the preferred stock. A meaningful right to participate in corporate growth generally denotes a higher degree of participation than a right to participate in corporate growth to any significant extent as used in other provisions of the Code.

The Stock to Debt Ratio is determined separately for each class of preferred stock; other classes of stock ("other stock") are aggregated in determining the Stock to Debt Ratio. Preferred stock is tested separately from other stock because preferred stock, unlike other stock, qualifies for the stock-for-debt exception only to the extent of the lesser of its redemption price or liquidation preference.

The proposed regulations provide that, in determining the Stock to Debt Ratio with respect to preferred stock, the fair market value of each class of preferred stock issued to the creditor is compared to the portion of the discharged indebtedness that is allocable to the preferred stock. In general, the amount of indebtedness allocable to a class of preferred stock is the lesser of the redemption price or liquidation preference of the preferred stock. The indebtedness that is allocable to a class of preferred stock may not be less than the fair market value of the preferred stock nor greater than the total amount of the indebtedness discharged. The determination of redemption price

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and liquidation preference is made with reference to the lowest redemption price or liquidation preference of the preferred stock for any period after its issuance established at the time of its issuance. Based on this comparison and other relevant factors, such as the Stock to Total Consideration Ratio and the Stock to Total Stock Ratio, a determination is made as to whether the issuance of the preferred stock to a given creditor is nominal or token.

If both common stock and preferred stock are issued by a debtor to a creditor, the Stock to Debt Ratio is determined separately for stock other than preferred stock. In determining the ratio with respect to other stock, the fair market value of all classes of other stock issued to a creditor is compared to the portion of the discharged indebtedness that is allocable to the other stock. The amount of the indebtedness allocable to the other stock is the adjusted issue price of the indebtedness discharged by the creditor, reduced by the amount of other consideration, if any, transferred to the creditor in exchange for the indebtedness. Accordingly, the adjusted issue price of the indebtedness discharged by a creditor is reduced by the sum of (i) the amount of money paid to the creditor, (ii) the issue price of new indebtedness issued to the creditor, (iii) the amount of indebtedness properly allocable to preferred stock issued to the creditor, and (iv) the fair market value of other property, including disqualified stock under section 108(e)(10)(B)(ii), transferred to the creditor in exchange for the indebtedness. The amount of indebtedness allocable to preferred stock is generally determined in accordance with the rules described in the preceding paragraph. If preferred stock is determined to be nominal or token, however, the amount of allocable indebtedness is limited to the stock's fair market value. Based on a comparison of the fair market value of the other stock to the allocable indebtedness and other relevant factors, such as the Stock to Consideration Ratio and the Stock to Total Stock Ratio, a determination is made as to whether the other stock is nominal or token.

*(c) Proposed Standards*

The Service is also considering issuing a revenue procedure or other appropriate guidance setting forth specific circumstances in which shares issued to discharge indebtedness will not be considered nominal or token. The Service requests comments on the proposed standards set forth in the following paragraphs.

Under the proposed standards, stock (within the meaning of section 108(e)(8) of the Code) that is issued in exchange for indebtedness would not be nominal or token if:

(1) The fair market value of stock transferred to the creditor is at least 10% of the amount of the allocable indebtedness discharged (i.e., Stock to Debt Ratio is at least 10% for each class of stock for which a separate ratio is calculated) and the fair market value of the stock transferred to the creditor is at least 25% of the total fair market value of all consideration transferred in exchange for the debt (i.e., Stock to Total Consideration Ratio for that creditor is at least 25%);

(2) The fair market value of the stock transferred to the creditor is at least 25% of the total fair market value of all consideration transferred in exchange for the debt (i.e., Stock to Total Consideration Ratio for that creditor is at least 25%), and the fair market value of the stock transferred to the creditor is at least 25% of the total fair market value of all outstanding stock of the debtor after the bankruptcy reorganization or insolvency workout (i.e., Stock to Total Stock Ratio for that creditor is at least 25%); or

(3) The only consideration transferred in exchange for debt held by unsecured creditors is stock (i.e., Stock to Total Consideration Ratio for unsecured creditors is 100%), and the stock transferred to the unsecured creditors as a group is 90% of the outstanding stock of the corporation after the bankruptcy reorganization or insolvency workout (i.e., Stock to Total Stock Ratio is 90%).

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A Regulatory Flexibility Analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. In particular, the Service invites comments on the proposed standards for determining when stock is more than nominal or token under section 108(e)(8)(A) of the Code. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Lori J. Jones, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

**List of Subjects in 26 CFR 1.61 through 1.281–4**

Deductions, Exemptions, Income tax, Taxable income.

**Proposed Amendments to the Regulations**

Accordingly, title 26, chapter I, part 1 of the Code of Federal Regulations, is proposed to be amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation for part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805; * * * Section 1.108–1 also issued under 26 U.S.C. 108(e)(8) and 108(e)(10)(B).

**Par. 2.** New § 1.108–1 is added to read as set forth below.

**§ 1.108–1 Nominal or token shares issued to discharge indebtedness.**

(a) *Overview*—(1) *In general.* Under section 108(e)(10)(A), if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, the corporation generally is treated as satisfying the indebtedness with an amount of money equal to the fair market value of the stock. Section 108(e)(10)(B) provides that this rule does not apply to any transfer of stock (other than disqualified stock) by a debtor corporation in a title 11 case or by any other debtor but only to the extent the debtor is insolvent. A title 11 or insolvent debtor does not realize discharge of indebtedness income to the extent the common law stock-for-debt exception applies. Section 108(e)(8), as added by the Bankruptcy Tax Act of 1980 and amended by the Revenue Reconciliation Act of 1990, prevents the application of the stock-for-debt exception in certain "*de minimis*" cases.



Section 108(e)(8)(A) provides that the stock-for-debt exception does not apply if the shares of stock issued in exchange for the indebtedness are nominal or token.

(2) *Disqualified stock.* The flush language of section 108(e)(8) provides that "disqualified stock" (as defined in section 108(e)(10)(B)(ii)) is not treated as stock for purposes of section 108(e)(8). Section 108(e)(10)(B)(ii) defines disqualified stock as stock with a stated redemption price if the stock has a fixed redemption date, the issuer of such stock has the right to redeem such stock at one or more times, or the holder of such stock has the right to require its redemption at one or more times. Accordingly, disqualified stock is not considered stock for purposes of this section. This paragraph (a)(2) applies generally to stock, to which section 108(e)(10)(B)(ii) applies, that is transferred after October 9, 1990, in satisfaction of any indebtedness.

(b) *Facts and circumstances to be considered in determining nominal or token shares.*—(1) *In general.* All relevant facts and circumstances must be considered in determining whether shares of stock issued to a creditor are nominal or token. Set forth below is a nonexclusive list of relevant factors to be taken into account in making this determination.

(i) *Stock to debt ratio.* A comparison of the fair market value of stock transferred to a creditor to the amount of discharged indebtedness allocable to that stock ("Stock to Debt Ratio") is relevant to the determination of whether shares of stock issued to the creditor are nominal or token. A low Stock to Debt Ratio is evidence that the shares issued in exchange for the discharged indebtedness are nominal or token. The Stock to Debt Ratio is the most important factor in making the determination of whether shares are nominal or token.

(ii) *Stock to total consideration ratio.* A comparison of the fair market value of stock transferred to a creditor to the fair market value of the total consideration received by the creditor in the exchange ("Stock to Total Consideration Ratio") is relevant to the determination of whether shares of stock are nominal or token. A low Stock to Total Consideration Ratio is evidence that the shares issued in exchange for the discharged indebtedness are nominal or token.

(iii) *Stock to total stock ratio.* A comparison of the fair market value of the stock transferred to the creditors as a group to the total fair market value of all of the outstanding stock of the corporation after the bankruptcy reorganization or insolvency workout ("Stock to Total Stock Ratio") is relevant to the determination of whether shares of stock are nominal or token. A low Stock to Total Stock Ratio is evidence that the shares issued in exchange for the discharged indebtedness are nominal or token.

(2) *Special rules.*—(i) *Preferred stock.* For purposes of applying paragraph (b)(1)(i) of this section, the allocable indebtedness of each creditor that is discharged by each class of preferred stock issued to the creditor is equal to the lesser of the redemption price or liquidation preference of the respective class of preferred stock. This determination is made with reference to the lowest redemption price or liquidation preference of the preferred stock for any period after its issuance as established at the time of issuance. However, the allocable indebtedness may not be less than the fair market value of the preferred stock nor greater than the total amount of the indebtedness discharged. "Preferred stock" is stock that: has a limited or fixed redemption price or liquidation preference, and does not have a meaningful right to participate in corporate growth. For this purpose, a liquidation preference exists if the stock's right to share in liquidation proceeds is limited and preferred. In addition, solely for purposes of applying the tests of this section, a meaningful right to participate in corporate growth is not established by a right to convert preferred stock into stock other than preferred stock or the fact that the redemption price or liquidation preference exceeds the fair market value of the preferred stock.

(ii) *Other stock.* For purposes of paragraph (b)(1)(i) of this section, the allocable indebtedness of each creditor discharged by all stock other than preferred stock ("other stock") issued to the creditor is the adjusted issue price of the indebtedness discharged by the creditor, reduced by the amount of other consideration, if any, transferred to the creditor in exchange for the indebtedness, including:

(A) The amount of any money,

(B) The issue price of any new indebtedness,

(C) The amount of any indebtedness allocable to preferred stock under paragraph (b)(2)(i) of this section, and

(D) The fair market value of any other property, including any disqualified stock described in section 108(e)(10)(B)(ii).

For purposes of this section, the amount of indebtedness allocable to preferred stock is limited to the fair market value of the preferred stock if the preferred stock is determined to be nominal or token.

(iii) *Analysis of ratios.* Whether a ratio described in paragraph (b)(1) of this section is low depends upon the particular ratio and whether other facts and circumstances, including the other ratios, indicate that the stock transferred is nominal or token.

(iv) *Example.*

*(a)* Z Corporation is under the jurisdiction of a court in a case under title 11 of the United States Code. Creditor holds debt of Z with an adjusted issue price of $100x. Pursuant to a plan approved by the court, Z issues preferred stock with a redemption price and liquidation preference of $37x and a fair market value of $36x, common stock with a fair market value of $59x and $2x of cash to Creditor in discharge of the indebtedness of $100x. The preferred stock is first redeemable more than five years after its issuance and is not disqualified stock under section 108(e)(10)(B)(ii).

*(b)* Under paragraph (b)(2)(i) of this section, the fair market value of the preferred stock, $35x, is compared to the amount of allocable indebtedness. Allocable indebtedness is equal to the redemption price and liquidation preference of $37x.

*(c)* Under paragraph (b)(2)(ii) of this section, the fair market value of the other stock, $30x, is compared to the allocable portion of the indebtedness. Assuming the preferred stock is not nominal or token, the allocable indebtedness is the adjusted issue price of the indebtedness, $100x, less the sum of the amount of indebtedness allocated to the preferred stock under paragraph (b)(1)(i) of this section, $37x, and $3x, the amount of cash paid. Thus, the allocable indebtedness for determining whether the common stock is nominal or token is $60x ($100x − $37x − $3x).

(c) *Effective date.* The proposed regulations apply to exchanges that occur on or after December 8, 1990.

Fred T. Goldberg, Jr.,
*Commissioner of Internal Revenue.*

[FR Doc. 90–28663 Filed 12–6–90; 8:45 am]
BILLING CODE 4830–01–M

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 208 and 252**

**Department of Defense Federal Acquisition Regulation Supplement; Antifriction Bearings**

**AGENCY:** Department of Defense.

**ACTION:** Request for comments.

**SUMMARY:** The Department of Defense (DoD) has regulations restricting defense procurements of imported bearings (48 CFR subpart 208.79 and section 252.208–7006). The regulations were deemed necessary to strengthen an industry vital to national defense. The restriction is scheduled to remain in effect for

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contracts awarded through September 30, 1991 but may be extended for an additional two years if conditions warrant. DoD wishes to consider the opinions of interested parties and is, therefore, soliciting comments on whether the restriction should be extended for an additional two years. Respondents are urged to include a rationale for positions advocated.

**DATES:** Comments should be received on or before March 31, 1991.

**ADDRESSES:** Comments should be submitted to: Office of Industrial Base Assessment, ATTN: Richard Mirsky, 5203 Leesburg Pike, Suite 1406, Falls Church, VA 22041-3466.

**FOR FURTHER INFORMATION CONTACT:** Richard Mirsky, Office of Industrial Base Assessment, 5203 Leesburg Pike, Suite 1406, Falls Church, VA 22041-3466. Tel. 703-756-2310.

**David M. Hickman,**

*Deputy Director, Office of Industrial Base Assessment.*

[FR Doc. 90-28667 Filed 12-6-90; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 651

### Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 4 (amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the Amendment and associated documents.

**DATES:** Comments will be accepted until January 23, 1991.

**ADDRESSES:** Send comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930. Clearly mark the outside of the envelope "Comments on Multispecies Amendment 4". Copies of the amendment, Environmental Assessment, Minority Report, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01960.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill, Resource Policy Analyst, 508-281-9252.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) This amendment proposes measures for managing the multispecies finish fisheries in the Northwest Atlantic and establishes definitions of overfishing for Atlantic cod, haddock, winter flounder, yellowtail flounder, American plaice, witch flounder, redfish, silver hake, red hake, and ocean pout.

Amendment 4 contains the following proposed changes and additions to the management system: (1) Modifications to the Exempted Fisheries Program; (2) addition of a framework mechanism to modify shrimp gear requirement; (3) inclusion of silver hake (whiting), red hake and ocean pout in the multispecies finfish management unit; (4) establishment of a 2½ inch minimum codend mesh size for the mixed trawl fishery in the multispecies fishery; (5) allowance of fishing for silver hake (whiting) in the Cultivator Shoal area within set boundaries and time periods; (6) a framework measure designed to protect small yellowtail flounder in the Southern New England area; (7) a framework measure designed to protect small Atlantic cod on Stellwagen Bank and Jeffreys Ledge; (8) a modification of the language that allows nets or smaller mesh than the regulated mesh aboard, but not in use, in the Regulated Mesh Area, and (9) additional measures for the Southern New England yellowtail flounder closure area.

The receipt date for this amendment is November 24, 1990. Proposed regulations to implement this amendment are scheduled to be published within 15 days.

**Authority:** 16 U.S.C. 1801 *et seq.*

**List of Subjects in 50 CFR Part 651**

Fish, Fisheries, Reporting and recordkeeping requirements, Vessel permits and fees.

Dated: December 3, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28701 Filed 12-3-90; 4:45 pm]

BILLING CODE 3510-22-M



# Notices

Federal Register
Vol. 55, No. 236
Friday, December 7, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

**[EIS No. 900070]**

### Allegheny National Forest; Warren County, Pennsylvania; Motel/ Restaurant Complex Site Selection

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; cancellation of decision.

**SUMMARY:** On March 2, 1990, a notice of availability of the final environmental impact statement and accompanying Record of Decision to select a site for the possible development of a motel/ restaurant complex adjacent to the Allegheny Reservoir, Allegheny National Forest, was published in the **Federal Register** (55 FR 7585). A correction to that notice was published March 30, 1990 (55 FR 12006).

In the Record of Decision, the Forest Supervisor adopted Alternative A, which selects Kinzua Beach as the preferred site. The Forest Service now gives notice that the Forest Supervisor is vacating that decision.

The need for considering the selection of a site for the potential development of a motel/restaurant complex inside the proclamation boundary of the Allegheny National Forest may be reconsidered when the Forest Plan for the Allegheny National Forest is revised.

Legal notice of this determination will be published in the Warren Times Observer, Warren, Pennsylvania and notice of this action will be mailed to those who commented on the environmental impact statement.

**DATES:** This action is effective upon publication in the **Federal Register** December 7, 1990 or the Warren Times Observer, Warren, PA.

**CONTACT:** Dale Dunshie, Information Management Team Leader 222 Liberty Street, P.O. Box 847, Warren, PA 16365; telephone 814/723-5150 for further information.

Dated: November 30, 1990.

**David J. Wright,**

*Forest Supervisor.*

[FR Doc. 90-28748 Filed 12-6-90; 8:45 am]

BILLING CODE 3410-11-M

### Sequoia National Forest, Tulare County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to harvest and regenerate timber and rehabilitate the watershed burnt in the Stormy Compex Fire on the Hot Springs and Greenhorn Ranger Districts of Sequoia National Forest. The Sequoia National Forest Land and Resource Management Plan has been prepared.

The alternatives to be considered in the Stormy II Fire Salvage Environmental Impact Statement will range from "no action" to harvesting up to approximately 50 million board feet. The quantity of timber cut, road construction and reconstruction, and the physical, biological, economic, and social effects of project implementation will be analyzed within the context of the alternatives. Potential resource issues which may affect alternative development are sensitive species habitat, timber harvest, and watershed rehabilitation.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service will be invited to participate as cooperating agencies to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale areas. Federal, State, and local agencies; industry; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues and/or concerns.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Scoping will be conducted during the month of December 1990.

The analysis is expected to take approximately 2 months to complete. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by March 1991. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date of the EPA's published notice of availability. All persons interested in the proposed project are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.)

Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions [Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)] and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. [Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so that the agency can respond to them in the final EIS.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by mid-June 1991. In the final EIS, the Forest Service is required to respond to comments received on the draft EIS (40 CFR 1503.4). The responsible official will consider these comments, their responses, environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding the project proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision which is published simultaneously with the final EIS.

James A. Crates, Forest Supervisor, Sequoia National Forest, Porterville, CA, is the responsible official. Written comments, questions, and suggestions concerning project scoping or the

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analysis should be sent to Jim Whitfield, Sequoia National Forest, 900 West Grand Avenue, Porterville, California 93257. The telephone number is (209) 784–1500.

Dated: November 30, 1990.

**James A. Cates,**

*Forest Supervisor.*

[FR Doc. 90–28719 Filed 12–6–90; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### High Seas Salmon Fisheries off Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment of a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 4 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska (FMP) for Secretarial review, and is requesting comments from the public. Amendment 4 provides a definition of "overfishing" as required by NOAA regulations at 50 CFR part 602 which direct the fishery management councils to amend their fishery management plans to include definitions of overfishing for the fisheries involved. Copies of amendment 4 and the associated Environmental Assessment and Federalism Assessment may be obtained from the address below.

**DATES:** Comments on Amendment 4 should be submitted on or before January 28, 1991.

**ADDRESSES:** All comments should be sent to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. Copies of amendent 4, the Environmental Assessment, and the Federalism assessment are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

**FOR FURTHER INFORMATION CONTACT:** Avon M. Anderson, National Marine Fisheries Service, Alaska Region, Juneau, Alaska (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act; 16 U.S.C. 1801 *et seq.*) requires each Regional Fishery Management Council to submit fishery management plan (FMP) amendments to the Secretary of Commerce (Secretary) for review, approval, and implementation. The Magnuson Act also requires that the Secretary, upon receiving the FMP amendment, immediately publish a notice that the amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve, disapprove, or partially disapprove the amendment.

The Magnuson Act establishes seven national standards for fishery conservation and management which fishery management plans and plan amendments must meet to be approved and implemented; the Magnuson Act also requires the Secretary to publish guidelines for the Councils to use in conforming to these national standards. The guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for the fisheries involved. Specifically, the NOAA guidelines require that each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by an FMP and provide an analysis of how the definition was determined and how it relates to reproductive potential. Amendment 4 is intended to address these requirements.

In developing Amendment 4, the Council examined three alternatives regarding the definition requirement for salmon stocks occurring the EEZ off Alaska: (1) The status quo (i.e., no definition of overfishing), (2) a definition based upon goals and management objectives set by the Pacific Salmon Commission and the Alaska Board of Fisheries, and (3) a definition incorporating the fishery management policies and definitions of overfishing adopted by the Pacific Salmon Commission and the Alaska Board of Fisheries. The Council adopted the third alternative as its preferred definition of overfishing. The specific management policies and definitions of overfishing promulgated by the Alaska Board of Fisheries and the Pacific Salmon Commission are set forth in Amendment 4.

No Federal regulatory action is necessary to implement Amendment 4. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments in the Council's region. The amendment incorporates an Environmental Assessment, which is available upon request (see Addresses). Neither a Regulatory Impact Analysis nor a Regulatory Flexibility Analysis was prepared since Amendment 4 will not require rulemaking. There will be no impact on marine mammals or endangered species. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1990.

**Joe P. Clem,**

*Acting Director, Office of Fisheries Conservation Management, National Marine Fisheries Service.*

[FR Doc. 90–28704 Filed 12–4–90; 9:00 am]

BILLING CODE 3510–22–M

### Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of amendment to a fishery management plan, and request for comments.

**SUMMARY:** NOAA issues this notice that the Pacific Fishery Management Council (Council) has submitted Amendment 5 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for review by the Secretary of Commerce (Secretary), and is requesting comments from the public.

**DATE:** Comments will be accepted until January 28, 1991.

**ADDRESSES:** Send comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731–7415. Copies of the amendment are available from the Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW First Avenue, Portland, Oregon 97201–5344.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten, 206–526–6140; E. Charles Fullerton, 213–514–6196; or the Pacific Fishery Management Council, 503–326–6352.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Act) requires that a Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to the Secretary for review and approval, disapproval, or partial disapproval. The Act also requires that upon receipt of the amendment, the Secretary shall publish immediately a notice stating the amendment is available for public review and comment. Comments received from the public will be considered during the secretarial review.

Amendment 5 proposes a definition of overfishing that will be applied to the Pacific coast groundfish fishery off Washington, Oregon, and California, consistent with the criteria at 50 CFR 602.11(c)(5). The Council recommended an overfishing definition that is an upper limit to the fishing mortality rate rather than a threshold biomass. Specifically, the Council defined overfishing as exceeding the fishing mortality rate that would reduce spawning biomass per recruit to 20 percent of its unfished level (F(20%)). When spawning biomass is greater than that which produces the maximum sustainable yield (MSY), the overfishing rate equals the greater of F(20%) or the rate that would, in one year, reduce the spawning biomass to the level that produces MSY. This definition is to be used as an upper limit or constraint to fishing and not as a targeted optimal harvest policy. It is linked to the same productivity assumptions used for determined levels of acceptable biological catch (ABC). Therefore, an objective evaluation of overfishing is feasible for the predominant species and species groups in the Pacific coast groundfish fishery.

Implementation of Amendment 5 will provide fishery managers with an effective means to prevent a stock from closely approaching or reaching an overfished status. The current FMP, which was modified by Amendment 4 on November 15, 1990, contains several safeguards that are intended to alert the Council before an "overfishing" threshold is triggered. First, the Council must justify its recommendation if a harvest guideline or quota is set above an ABC. Second, the Council must make a determination that a resource conservation issue will not occur if landings exceed the ABC or harvest guideline. However, as stated in the 602 Guidelines at 50 CFR 602.11(c)(8), overfishing of a species that is unavoidably caught in a multispecies fishery may be authorized, if justified by the Council, if an analysis demonstrates that it will result in a net benefit to the Nation, and if it does not result in a threatened or endangered listing under the Endangered Species Act.

The Council determined that this amendment would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of California, Oregon, and Washington. Letters have been sent to all of the States listed above stating that the Council concluded that Amendment 5 is consistent to the maximum extent practical with the States' coastal zone management programs. The responsible state agencies are reviewing this finding under section 307 of the Coastal Zone Management Act.

Amendment 5 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The receipt date for Amendment 5 was November 28, 1990. Proposed regulations are unnecessary for implementation of Amendment 5. A decision by the Secretary on approvability of the amendment is scheduled for March 1, 1991.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 3, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–28691 Filed 12–3–90; 4:09 pm]

BILLING CODE 3510–22–M



## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

December 3, 1990.

**AGENCY:** Committee for the implementation Textile Agreements CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status to these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (2020 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 632 is being increased for special shift, reducing the limit for Category 640–D. As a result, the limit for Category 632, which is currently filed, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1706, published on January 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee For The Implementation of Textile Agreements**

December 3, 1990.

*Commissioner of Customs, Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 10, 1990, you are directed to amend further the January 11, 1990 to adjust the limits for the following categories, in accordance with the provisions of the current bilateral agreement between the Governments of the United States and Republic of Korea, as amended:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group II: | |
| 632 | 1,573,613 dozen pairs. |
| 640 D [2] | 2,956,930 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 640 D- only HTS 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

The Committee for the implementation of Textile Agreements has determined that these actions fall within the foreign affairs expection to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28689 Filed 12–6–90; 8:45 am]

BILLING CODE 3510–DR–M

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## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** January 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On July 27, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 30745) of proposed addition to the Procurement List.

Comments on this proposed addition were received from the current contractor for this item. The contractor noted that it had been a continuous supplier of items of this type for four years; its plant is located in a labor surplus area; these items made up a significant part of its business and that of certain subcontractors; and the number of employees of one subcontractor who would be displaced if this item were added to the Procurement List exceeded the estimated number of persons with severe disabilities who would gain employment. The contractor noted that the proposed price was higher than that of the current contract, and also questioned whether there was adequate evidence to support a determination that the workshop proposed to produce this item was capable or that the Committee had made an independent capability determination. Finally, the contractor questioned whether the proposed addition met statutory requirements concerning the ratio of workers with disabilities to other workers.

The Committee has taken into account the record of the contractor as a continuous supplier of items of this type and its location in a labor surplus area in determining that the proposed addition would not constitute serious adverse impact on that contractor. The proposed addition concerns only 55 percent of the Government requirement for one of several different disposable coveralls procured by the Government; the remainder of the Government requirement for this item and several other disposable coveralls remain available for bids from this and other contractors. As the market for these other coveralls is not affected by the proposed addition, the impact on the current contractor is not as significant as its comments allege.

The commenter claims that its subcontractors would lose the portion of business and employment attributed to their production of disposable coveralls if this item is added to the Procurement List. As the above paragraph notes, the impact of losing just this partial requirement for one disposable coverall would be less than alleged. Additionally, the Committee has determined that the creation of jobs for people with severe disabilities, a group which has extremely high unemployment rates, outweighs the potential loss of jobs for more employable people.

While the price the Government will pay for this item on the Procurement List may slightly exceed the current contract price, it should be noted that the statute (41 U.S.C. 47(b) and 48) requires that the price be a fair market price, not the lowest possible price. The price established for this item falls within the Committee guidelines for a fair market price.

The Committee uses the same standards for determining industrial capability of work centers as that used for other Government contractors. Based on on-site inspections by the contracting activity and the central nonprofit agency, the Committee has determined that the workshop is capable of producing these coveralls in compliance with the Government's specification and delivery requirements.

Contrary to the commenter's assertions, the statutory requirement (41 U.S.C. 48b(3)(c) and (4)(c)) that 75 percent of the direct labor employed in the production of commodities and the provision of services by a workshop must be performed by people with severe disabilities applies to the totality of commodities and services produced or provided by the workshop and not to individual items on the Procurement List. Accordingly, the Committee permits lower levels of direct labor on individual items, particularly during a phase-in of production of a new item, as long as the overall requirement is met. In this case, no phase-in was required as the item will be produced with at least 75 percent direct labor by persons with severe disabilities from the start of production.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 52–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

**Coveralls, Disposable**

8415-01-092-7529
8415-01-092-7530
8415-01-092-7531
8415-01-092-7532
8415-01-092-7533
(55 percent of Government's Requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**
*Executive Director.*

[FR Doc. 90-28757 Filed 12-6-90; 8:45 am]
BILLING CODE 6820-33-M

### Procurement List; Addition

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Addition to Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** January 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On September 28, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 39686) of proposed addition to the Procurement List. After consideration of the material presented to it concerning the capability of a qualified workshop to produce this commodity at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 52–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to the Procurement List:

Key Blank, Standard, USPS
5340-00-NIB-0002

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**
*Executive Director.*

[FR Doc. 90-28758 Filed 12-6-90; 8:45 am]
BILLING CODE 6820-33-M



### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** January 7, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped. It is proposed to add the following commodities and services to the Procurement List:

**Commodities**

Remover, Floor Polish
7930-00-045-6923
Brassard, Military Police
8455-00-816-8826
Marker, Traffic Control Device
9905-01-009-7826

**Services**

Commissary Shelf Stocking & Custodial, Fitzsimons Army Medical Center Commissary, Denver, Colorado
Commissary Shelf Stocking & Custodial, Fort Riley, Kansas
Janitorial/Custodial, F. Edward Hebert Federal Building, New Orleans, Louisiana

**Beverly L. Milkman,**
*Executive Director.*

[FR Doc. 90-28759 Filed 12-6-90; 8:45 am]
BILLING CODE 6820-33-M

### Procurement List; Additions; Correction

In notice document 90-23640, appearing on page 40904 in the issue of Friday, October 5, 1990, third column; Mask, Surgical, 6515-00-082-7493 should be followed by (Requirements of the Department of Veterans Affairs, Hines, Illinois).

**Beverly L. Milkman,**
*Executive Director.*

[FR Doc. 90-28760 Filed 12-6-90; 8:45 am]
BILLING CODE 6820-33-M

### Procurement List; Proposed Additions and Deletion; Correction

In notice document 90-27077, appearing on page 47905 in the issue of Friday, November 16, 1990, second column, line 31; Port Angeles, California should read Port Angeles, Washington.

**Beverly L. Milkman,**
*Executive Director.*

[FR Doc. 90-28761 Filed 12-6-90; 8:45 am]
BILLING CODE 6820-33-M

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 91-C0003]**

### Graco Children's Products, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Graco Children's Products, Inc., a corporation.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 24, 1990.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** William J. Moore, Jr., Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

**SUPPLEMENTARY INFORMATION:** (attached).

Dated: December 3, 1990.

**Sheldon D. Butts**
*Deputy Secretary.*

**SETTLEMENT AGREEMENT AND CONDITION OF SETTLEMENT**

1. This settlement Agreement, entered into between Graco Children's Products, Inc., a corporation, (hereinafter, "Graco"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

2. The provisions of this Settlement Agreement and Condition of Settlement shall apply to Graco and to each of its successors and assigns.

**I. The Parties**

3. The "staff" is the staff of the Consumer Product Safety Commission

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(hereinafter, "Commission"), an independent federal regulatory agency of the United States of America, established by Congress pursuant to Section 4 of the Consumer Product Safety Act (CPSA), as amended 15 U.S.C. 2053.

4. Graco is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal corporate offices located at Main Street, Elverson, Pennsylvania.

**II. Jurisdiction**

5. Graco has distributed certain models of children's strollers (hereinafter, "Strollers"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in recreation of otherwise or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. The strollers are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

6. Graco manufactured and imported the strollers for sale to consumers throughout the United States. Graco, therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4) and (11) of the CPSA 15 U.S.C. 2052(a)(1), (4) and (11).

**III. The Product**

7. Graco manufactured, and distributed several stroller models from September 1983 through September 1988, containing the design of concern to the staff. The Graco strollers involved are full size "stroll-a-bed" type strollers that used a particular seat recline mechanism of which there may still be in excess of 1.0 million currently in distribution. The specific stroller models involved are those listed in Attachment A, appended to, and incorporated by reference into, this Settlement Agreement.

**IV. Staff Allegations**

8. In 1988 Graco began receiving reports of finger injuries to children placed in the strollers. By August, 1988 Graco had learned of four incidents involving fracture, laceration, or partial finger tip amputation in the stroller's recline mechanism latch. In August, 1988 Graco began investigating possible alternative recline mechanism designs.

9. In October, 1988, Graco created a plan to improve the safety of the stroller recline mechanism latch design. In November, 1988, Graco designed and ordered plastic guards to be placed over each of the two recline mechanism latches on strollers in Graco inventory. The guard was designed to prevent children from placing fingers in the recline mechanism latch. The installation of these guards was completed on all inventory in May of 1989.

10. In January, 1989, Graco introduced a safety change in the stroller production process. All of the subject strollers produced after January 4, 1989 were manufactured with a plastic guard affixed over each of the two recline mechanism latches.

11. By the end of July, 1989, Graco had learned of a total of seven incidents involving laceration, fracture or fingertip amputation in the stroller's recline mechanism.

12. The Commission Staff believes that Graco had received sufficient information no later than August, 1988, to reasonably support the conclusion that the strollers may contain a defect which could create a substantial product hazard. The company did not report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

**V. Response of Graco**

13. Graco denies each and all of the staff allegations with respect to its strollers. It further and specifically denies that its products contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the subject strollers.

14. Specifically, and without limitation on any of the denials set forth above, Graco alleges that there are no design, manufacturing, labeling, warning, instruction or other defects within the meaning of the CPSA. Graco further alleges that the incidents described in paragraph 8 were caused by highly unusual circumstances or possibly through improper use by the user or parent and does not admit any liability for any accidents or injuries with respect to the incidents described herein.

15. Graco further alleges that the recline latch mechanism in use on the subject stroller described in paragraph 7 was state-of-the-art design in the relevant industry, continues to be used by some stroller manufacturers on strollers that are presently sold to consumers, and may exist in substantially the same form on many strollers sold during the period of time in question, the majority of which were not Graco manufactured or distributed units.

**VI. Agreement of the Parties**

16. Graco and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Condition of Settlement.

17. Graco agrees to pay the Commission the amount of $100,000 within 30 days after service of the final acceptance of the Commission of this Settlement Agreement. This payment is made as a Condition of Settlement of disputed allegations by the staff that Graco violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to the subject strollers manufactured and sold by Graco between 1986 and 1988. Graco makes no admission of any fault, liability or statutory violation. The Commission does not make any determination that such strollers described in paragraph 7 contain a defect which creates or could create a substantial product hazard or that a violation of the CPSA has occurred. Neither this Agreement nor Condition of Settlement shall constitute evidence or an admission with respect to any allegation of the staff, or of any wrongdoing, misconduct, or violation of any statute or rule on the part of Graco.

18. This Settlement Agreement constitutes a settlement of the disputed allegations of violations of the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), alleged on the basis of the information that the Commission currently possesses concerning the recline mechanism latch on the subject strollers described in paragraph 7. The Commission specifically waives its right to pursue any further payment based on the information which the staff currently possesses with respect to the recline mechanism latch defect alleged to be present in the strollers identified in paragraph 7.

19. Upon provisional acceptance of this Settlement Agreement and Condition of Settlement by the Commission, this Settlement Agreement and Condition of Settlement shall be placed on the public record and in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Condition of Settlement within 15 days, the Settlement Agreement and Condition of Settlement and accompanying Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. Upon final acceptance of this Settlement Agreement and Condition of Settlement by the Commission, Graco knowingly, voluntarily and completely waives any rights it may have. (1) To an administrative or judicial hearing with respect to the staff allegations cited herein (2) to judicial review or to the challenge or contest of the validity of the Commission's action with regard to the staff allegations cited herein (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the staff claims cited herein. By making this waiver, Graco does not concede that the subject strollers contain a defect which creates or could create a substantial product hazard within the meaning of section hazard within the meaning of section 15(b) of the CPSC, 15 U.S.C. 2064(b).

21. The Commission may disclose the terms of the Settlement Agreement and Condition of Settlement and Order to the public, subject to the normal procedures for public disclosure of information required by section 6 of the Consumer Product Safety Act and all applicable regulations.

22. This Settlement Agreement is binding upon the Commission and Graco and, with the exception of Graco's successors and assigns, does not bind or limit others not party to this Settlement Agreement and Condition of Settlement.

23. The parties further agree that the accompanying Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Graco to appropriate legal action.

24. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement, Condition of Settlement and accompanying Order may be used to vary or to contradict its terms.

Graco Children's Products, Inc.

Dated: September 25, 1990 By:

**Jerome J. Drobieski,**

*Vice President, Product Development, The Consumer Product Safety Commission.*

**David Schmeltzer,**

*Associate Executive Director, Directorate for Compliance and Administrative Litigation.*

**Alan H. Schoem,**

*Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.*

Dated: September 25, 1990.

**William J. Moore, Jr.,**

*Trial Attorney, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.*



ATTACHMENT A

[Stroller Model Number Profile]

| | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|---|---|---|---|---|---|
| Travel-Mate | 7405<br>7405AW<br>57521<br>7405B<br>57024 | | 5506<br>57006<br>5507<br>57015 | 5506<br>57006<br>57016 | 5506<br>57006<br>57016<br>57026<br>7100<br>7100T<br>7101 | 5506<br>57006<br>7100<br>7101<br>7100T<br>57026 |
| Stroll-a-Bed | | 5524<br>57023<br>57024<br>57024W<br>57032<br>57033<br>57034 | 5508<br>57013<br>57014<br>57024<br>57034<br>57024<br>57044<br>57104 | 5507<br>57014<br>57024<br>57032<br>57034<br>57034W<br>57044<br>57104 | 37052<br>5563<br>5507<br>58024<br>58024W<br>57034<br>57055<br>57104<br>57115<br>7200<br>2408<br>57019<br>57163<br>7211 | 36455<br>5503<br>58024<br>57055<br>57104<br>7200<br>7210<br>57104<br>7211 |
| Elite | | 5561<br>57043 | 1080<br>4510<br>57043<br>57163<br>57073<br>57203 | 5508<br>57013<br>57043<br>57053 | 57173<br>57183<br>57213<br>57223<br>57253<br>7310 | 57173<br>57213<br>57223<br>7310<br>1003<br>2408<br>57163<br>57243<br>7300<br>7320CB<br>9080 |
| Brougham | | | 58593 | 58532<br>58583 | 1085<br>4510<br>58523<br>7500 | 1085<br>4510<br>37080<br>7500<br>L7500<br>58583 |
| Regency | | | | 58600 | 36452<br>58603<br>7600 | L7600<br>58603<br>7600 |
| Regency Ltd | | | | | 58609 | 58609<br>7610 |
| Premier | | | | 58719<br>58709 | 58718 | 58718<br>7700 |
| Premier Ltd | | | | | 58649 | 7701<br>58649 |

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**Order**

Upon consideration of the Settlement Agreement of the parties, it is hereby *Ordered*, that Graco Children's Products, Inc. shall pay, within 30 days of final acceptance of this Settlement Agreement and service of this order, a sum in the amount of $100,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 3rd day of December, 1990.

By order of the Commission.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc 90-28715 Filed 12-6-90; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF ENERGY

### Morgantown Energy Technology Center, Financial Assistance Award to Westinghouse Electric Corporation (Cooperative Agreement)

**AGENCY:** Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

**ACTION:** Notice of acceptance of an unsolicited financial assistance application for Cooperative Agreement award.

**SUMMARY:** Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a sixty (60) month Research Cooperative Agreement to Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, for research entitled "Development of High-Temperature Tubular Solid Oxide Fuel Cell (SOFC) Generators." The estimated cost of the project is $155,000,000 of which Westinghouse will cost share approximately $91,000,000 and DOE will share approximately $64,000,000.

**FOR FURTHER INFORMATION CONTACT:** Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone (304) 291-4386, Procurement Request No. 21-91MC28055.000.

**SUPPLEMENTARY INFORMATION:** The objective of this project is to develop tubular solid oxide fuel cell (SOFC) technology to the point of acceptable risk for private sector commercialization. This will involve the development of commercial market reference designs which in turn will define SOFC cost and performance criteria. Cell technology which meets those criteria will be developed and demonstrated. Generator test and development that demonstrate progression of the technology towards commercialization will be conducted. Activities that involve the integration of potential commercial users with SOFC operation will form the basis of a field test program.

Issued: November 29, 1990.

**Louie L. Calaway,**

*Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.*

[FR Doc. 90-28785 Filed 12-6-90; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. CP91-504-000, et al.]**

### Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

November 30, 1990.

Take notice that the following filings have been made with the Commission:

**1. Columbia Gas Transmission Corp.**

[Docket No. CP91-504-000]

Take notice that on November 26, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP91-504-000, a request pursuant to §§ 157.205 and 157.216 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act, and Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act (NGA), to abandon three (3) additional Points of Delivery to Columbia Gas of Ohio, Inc. (COH), for mainline taps as a result of the sale to Cameron Drilling Company, Inc. (Cameron) of certain non-jurisdictional facilities located in Muskingum County, Ohio, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that the jurisdictional facilities that it requests authorization to abandon consists of three (3) additional Points of Delivery from mainline tap consumers [1] located on, and served directly from Columbia's existing gathering facilities to be sold and that these three (3) Points of Delivery were inadvertently omitted due to clerical error from Columbia's similiar request in Docket No. CP90-2144-000 filed with the Commission on September 5, 1990. Further, Columbia states that the proposed abandonment will not result in the abandonment of service to any customer and that National Gas and Oil Corporation will become responsible for providing and maintaining all necessary gas supplies and deliveries to the former mainline customers of COH.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

**2. Arkla Energy Resources, a division of Arkla, Inc.**

[Docket No. CP91-488-000]

Take notice that on November 20, 1990, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP91-488-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon certain pipeline facilities located in Pittsburg and Kay Counties, Oklahoma under Arkla's blanket certificate issued in Docket No. CP82-384-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to abandon, in place, six 1-inch sales taps located on Arkla's Line 32 (Line 32) in Pittsburg County, Oklahoma used for the delivery of natural gas to Arkansas Louisiana Gas Company (Arkansas) for resale to domestic customers and to abandon, in place, 2,050 feet of 3-inch pipe and 3,155 feet of 1-inch pipe of Line A-3-C-1 in Kay County, Oklahoma used for delivery of natural gas to Arkansas for resale. Arkla states that Line 32 which is old and deteriorated is no longer economically feasible to operate and poses a safety hazard. Arkla indicates that it plans to abandon Line 32 in place under § 157.216(a) of the Commission's Regulations. Arkansas' customers have consented to the abandonment of these sales taps, it is stated. Arkla states that it will install, at its own expense, facilities for these customers to receive propane service. Also, Arkla states that Line A-3-C-1 was a market lateral to support Arkansas' service to rural customers and that there are no longer any customers receiving service from these facilities. Due to its age, Line A-3-C-1 has become deteriorated and is no longer economically feasible to operate, it is indicated. Arkansas has consented to the abandonment of these facilities, it is stated.

Arkla states that the cost to abandon these facilities is approximately $2,296.

[1] The three (3) Points of Delivery serve a total of four (4) mainline customers as a result of one (1) manifold setting.



*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

**3. Colorado Interstate Gas Co.**

[Docket No. CP91-505-000]

Take notice that on November 27, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-505-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Osborn Heirs Company (Osborn), a producer, under the authorization issued in Docket No. CP89-589-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed interruptible transportation service for Osborn, pursuant to a transportation service agreement dated June 1, 1990 (contract No. 13055). The term of the transportation agreement is from June 1, 1990, and shall continue in full force and effect for a term extending until May 31, 1991, and month to month thereafter until terminated by 30 days' prior written notice by either party. CIG proposes to transport on a peak day up to 15,000 Mcf; on an average day up to 5,000 Mcf; and on an annual basis up to 1,700,000 Mcf of natural gas for Osborn. CIG states that it would receive the gas at an existing receipt point on its system in Kansas and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of Osborn in Kearny County, Kansas. It is indicated that CIG would charge Osborn for the proposed transportation the rates fixed pursuant to CIG's Rate Schedule TI-1, or any effective superseding rate schedule on file with the Commission. CIG avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. CIG commenced such self-implementing service on October 1, 1990, as reported in Docket No. ST91-3155-000.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

**4. Florida Gas Transmission Co.**

[Docket No. CP91-506-000]

Take notice that on November 27, 1990, Florida Gas Transmission Company (Florida Gas) Post Office Box 1087, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-506-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Crescent City Natural Gas (Crescent), under the authorization issued in Docket No. CP89-50-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Florida Gas would perform the proposed interruptible transportation service for Osborn, pursuant to a transportation service agreement dated August 15, 1990 (transportation agreement No. 3546). The term of the transportation agreement is from August 15, 1990, and shall continue for a primary term of one month and month to month thereafter unless terminated by either party upon 30 days written notice to the other party. Florida Gas proposes to transport on a peak day up to 1,050 MMBtu, on an average day up to 788 MMBtu; and on an annual basis up to 383,250 MMBtu of natural gas for Osborn. Florida Gas states that it would receive the gas at multiple receipt points located in various counties or parishes of Texas, Louisiana, Mississippi, Alabama, Florida, and various offshore areas off the states of Texas and Louisiana and redeliver the subject gas to an existing delivery point located in Putnam County, Florida. It is alleged that Florida Gas would charge Crescent for the rates as set in its Rate Schedule ITS-1. Florida Gas avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. Florida Gas commenced such self-implementing service on October 1, 1990, as reported in Docket No. ST91-1952-000.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

**5. Western Transmission Corp.**

[Docket Nos. CP91-489-000, and CP91-490-000]

Take notice that on November 20, 1990, Western Transmission Corporation (Applicant), 1801 California Street, Suite 3500, Denver, Colorado 80202, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-717-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 14, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

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| Docket number (date filed) | Shipper name | Peak day [1], average day annual | Receipt points | Delivery points | Start up date rate schedule service type | Related [2] docket, contract date |
|---|---|---|---|---|---|---|
| CP91-469-000 (11-29-90) | Grand Valley Gas Company | 6,100<br>1,000<br>365,000 | WY | WY | 10-4-90, OAT-2, Interruptible. | ST91-4037-000 9-01-90 |
| CP91-469-000 (11-29-90) | TXO Production Corp. | 500<br>250<br>91,250 | WY | WY | 10-15-90, OAT-2, Interruptible. | ST91-4036-000 9-01-90 |

[1] Quantities are shown in Mcf.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**
*Secretary.*

[FR Doc. 90-28702 Filed 12-6-90; 8:45 am]
BILLING CODE 6717-01-M

## Office of Energy Research

### Special Research Grant Program: Nuclear Engineering Research

**AGENCY:** Department of Energy (DOE), Idaho Operations Office.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Idaho Operations Office of the Department of Energy is keeping with the Special Research Grant Program, 10 CFR part 605, hereby announces its interest in receiving applications for special research grants that will support nuclear engineering research.

However, in accordance with 10 CFR 600.7(b)(1) eligibility for awards under this program is restricted to colleges and universities that have nuclear engineering programs.

**DATES:** To permit timely consideration for awarding during FY 1991, applications submitted in response to this Notice should be received by the Idaho Operations Office, Contracts Management Division by January 31, 1991.

**ADDRESSES:** Applications should be forwarded to: James P. McGowan, U.S. Department of Energy, Idaho Operations Office, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402, ATTN: Nuclear Engineering Research.

**FOR FURTHER INFORMATION CONTACT:** Mr. James P. McGowan, Financial Assistance Branch, Idaho Operations Office, USDOE, Idaho Falls, Idaho 83402.

**SUPPLEMENTARY INFORMATION:** Applications should be directed to state-of-the-art research that contributes to the following areas: Applied nuclear sciences, reactor operations and control, reactor neutronics, nuclear thermal hydraulics, nuclear materials, advanced reactor concepts, nuclear technology for space, waste management and environmental remediation, and heavy water reactor safety research for Westinghouse Savannah River Laboratory. The research to be supported should be innovative and revolutionary, rather than evolutionary. Incremental improvements in technologies related to conventional light reactor (LWR) technologies or research typically supported by the U.S. Nuclear Regulatory Commission will not be supported.

1. *Applied nuclear sciences* focuses on research applications of radiation and research reactors, including, but not limited to improved instrumentation or measurement techniques for health physics or biomedical research and the use of research reactors for fundamental studies, and other innovative applications of nuclear science which support DOE missions and goals.

a. Improved instrumentation for health physics or biomedical applications focuses on the development of dosimetry techniques for monitoring of radiation exposures due to neutrons and other radiation in medical application of radiation sources.

b. The use of research reactors for fundamental studies focuses on the development of novel research capabilities using research reactors or the application of radiation from reactors to probe matter in pursuit of basic knowledge in areas such as condensed matter physics, chemical kinetics, or biotechnology.

c. Other innovative applications of nuclear science which have not been specifically identified elsewhere in this program call will also be considered for funding if they support DOE missions and goals.

2. *Reactor operations and control* includes innovative applications of computer systems and computational tools to improvements in the safety and reliability of nuclear reactor operation, including advances in reactor control and instrumentation, and real-time instrumentation to monitor component and system performance.

a. Advances in reactor control and instrumentation includes the application of human factors engineering and/or expert systems to improve monitors and displays for the control room environment and the application of real-time signal analysis and processing to improve fault detection in reactor instrumentation and components.

b. Real-time instrumentation includes, but is not limited to, the monitoring of component performance to optimize component maintenance and to minimize failure, and the development of nuclear or non-nuclear methods to detect in real time the radiation embrittlement of nuclear reactor vessel materials.

3. *Reactor neutronics* focuses on improvements in reactor computational methodologies in the light of continuing dramatic improvements in computational hardware, including, but not limited to, improvements in core neutronics, reactor kinetics, radiation transport, fission product behavior, nuclear fuel management and fuel cycle optimization.

4. *Nuclear thermal hydraulics* focuses on improvements of models and analysis of thermal hydraulic behavior in a nuclear reactor system, including, but not limited to, applications to multiphase flow, convective and conductive heat transport, degraded core cooling and emergency coolant flow.

5. *Nuclear materials* addresses the application of engineering sciences to improve knowledge of material behavior in a radiation environment typical of nuclear power plants, including, but not limited to, the identification of improved materials for plant life extension, and the modeling of corrosion and erosion in such environments.

6. *Advanced reactor concepts* focuses on innovative design concepts for improved power reactor performance, including, but not limited to, advanced converter reactors, liquid metal reactors, light water reactors and high temperature gas-cooled reactors.

7. *Nuclear technology for space* focuses on the applications of novel nuclear technologies to the requirements of planetary exploration of the President's Space Exploration Initiative, including, but not limited to, novel nuclear power sources and propulsion systems for planetary exploration and supplying power to a permanent non-terrestrial settlement, nuclear techniques for mineral exploration and material processing, self-illuminations systems, remote power, habitat design, and water and sewage treatment.

8. *Waste management and environmental remediation* focuses on the use of innovative nuclear instruments or nuclear techniques to monitor or remediate radioactive or mixed hazardous wastes in soil or water as part of a global effort to improve the environmental quality of a particular federal or commercial site, and includes, but is not limited to, development of active nuclear interrogation techniques for monitoring low-level environmental contaminant in situ.

9. *Heavy Water Reactor Safety Research for Savannah River Site* focuses on innovative concepts to enhance performance and safety of the DOE's existing and planned low temperature, low pressure production reactors at the Savannah River Site. Research areas of special interest are severe accident phenomena, thermal-hydraulics, reactor neutronics and human performance.

a. Severe accident phenomena research includes understanding of reactor behavior during and following postulated accidents which go beyond fuel melting, including research in aluminum fuel melt morphology, interaction of molten uranium/aluminum with water and structural materials, related fission product chemistry, aerosol behavior of lithium and aluminum species, filter design for capture of aerosols and fission products in high volumetric flow condition, and mathematical models of the above processes.

b. Thermal hydraulic research includes improved understanding of the analysis capabilities of the RELAP5 and TRAC codes for SRS reactors, including the validation of constitutive relations for two-phase thermal hydraulics at near-atmospheric pressure conditions in annular geometry. The research program also covers development of detailed two-phase flow codes for simulation of the thermal-hydraulic precursors to fuel damage. This code development work is supported by experimental investigations of the thermal-hydraulic precursors (heated air-water-steam flows).

c. Reactor neutronics research includes improved numerical methods and modeling strategies in reactor analysis, including resonance calculations, lattice cell calculations, and full reactor static and transient calculations.

d. Human performance research includes improved understanding of operator response during routine and accident situations, including human factors, advanced operator aides, and control room design, and the application of robotics in emergency response to improve human performance.

It is anticipated that approximately $2M will be available for grant awards during FY 1991, and that awards will range from $50K to $250K per year, with a typical requested project duration of two to three years. However, note that future fiscal year awards will be subject to the availability of appropriated funds. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. The application kit and guide is available from the U.S. Department of Energy, Idaho Operations Office (see address above). It is specifically requested that the "Detailed Description of Research Work Proposed" section of the proposal not exceed fifteen double-spaced pages. An abstract of the proposed work consisting of no more than 200 words should be included. The Catalog of Financial Domestic Assistance Number for this program is 81.049.

Issued in Idaho Falls, Idaho, on November 30, 1990.

**R. Jeffrey Hoyles,**
*Acting Director, Contracts Management Division.*

[FR Doc. 90-28700 Filed 12-6-90; 8:45 am]
BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Issuance of Decisions and Orders; Week of October 22 Through October 26, 1990

During the week of October 22 through October 26, 1990, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Motion for Discovery**

*Murphy Oil Corp., et al./Economic Regulatory Administration, 10/22/90, KRD-0460, KRD-0461, LRZ-0010, LRZ-0011*

Murphy Oil Corporation, et al. (the respondents) filed a Motion for Discovery in connection with their Statement of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to it on December 15, 1988. The DOE found that the PRO established a prima facie case of regulatory violation, and concluded that the respondent's numerous requests for discovery and depositions concerning the factual and legal bases of the PRO were unwarranted. The DOE also denied the respondents' requests for contemporaneous construction and administrative record discovery on the grounds that no new arguments had been presented that would cause it to reconsider denials of such discovery in previous cases. The DOE next denied a Motion for Discovery filed by the ERA. The DOE found that the ERA had not established a basis for corporate state of mind discovery. It also found that the ERA's discovery requests concerning the respondents' affirmative defenses were unnecessary, because these defenses lacked essential factual evidence in the record of the proceeding. The DOE granted the ERA's Motion to Strike an evidentiary submission of the respondents, finding that the evidence was privileged information relating to confidential settlement negotiations. It allowed the respondents to submit their own information on this issue, and also

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to submit evidence on factual assertions whose sole support in the record of the proceeding were assertions contained in affidavits. Finally, the DOE denied a motion by the ERA for an Order Finding Facts on the grounds that such an order was premature in light of the additional evidentiary submissions permitted the respondents.

**Implementation of Special Refund Procedures**

*Gasoline Marketers of America, Paul Investments, Inc., 10/22/90, KEF-138, LEF-006*

The DOE issued a Decision and Order implementing procedures for the distribution of $77,500 in principal, plus accrued interest, and $45,534 in principal, plus accrued interest, obtained as a result of a settlement agreement and a Consent Order entered into between the DOE and the Gasoline Marketers of America (GMA) and Paul Investments, Inc. (Paul) respectively. The DOE determined that the funds should be distributed to customers that purchased motor gasoline from GMA during the period from March 1, 1979, through August 30, 1979, and from Paul during the period from March 1, 1979, through December 31, 1979. The specific information required in an Application for Refund is set forth in the Decision and Order.

*United Refining Co., United Refining Company of Pennsylvania, 10/26/90, KEF-0132*

The DOE issued a Decision and Order implementing procedures for the distribution of $4,351,589.43, plus interest, received pursuant to a consent order entered into by United Refining Company and United Refining Company of Pennsylvania (United) and the DOE on January 13, 1988. The DOE determined that the funds will be distributed to United's customers who purchased certain refined petroleum products from United during specific months. The types of products and the specific months are listed in the Appendix to the Decision and Order. A number of United's subsidiaries, which are listed in the Decision and Order, are included under the definition of United for purposes of the special refund proceeding. The specific information to be included in an Application for Refund is specified in the Decision and Order.

**Refund Applications**

*Anderson Clayton Foods, Oscar Mayer Foods, Corp., Quincy Soybean Co., 10/24/90, RF272-360, RD272-360, RF272-500, RD272-500, RF272-556*

The Department of Energy (DOE) issued a Decision and Order granting refunds from crude oil overcharge funds to Anderson Clayton Foods, Oscar Mayer Foods Corporation, and Quincy Soybean Company based on the three applicants' respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The three firms were each engaged in segments of the food and food processing industry and each used the products in their business operations. The applicants were end-users of the products claimed and were therefore presumed injured. A consortium of 30 states and two territories filed virutally identical "Statements of Objectives" to the three claims. In addition, the States filed "Motions for Discovery" with respect to the claim of Anderson Clayton Foods and Oscar Mayer Food Corporation. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in these cases. Therefore, the Applications for Refund were granted and the Motions for Discovery were denied. The total refunds granted in this Decision are $31,179.

*B-tu-Mix Construction Co., Inc., 10/22/90, RF272-43081, RD272-43081*

B-tu-Mix Construction Company is involved in the road construction industry. B-tu-Mix filed an Application for Refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, and provided evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show the B-tu-Mix had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as B-tu-Mix were injured by crude oil overcharges. B-tu-Mix was unable to pass through its alleged overcharges through the use of price escalator clauses. The DOE granted B-tu-Mix a refund of $19,217, based on its approved purchases of 24,020,852 gallons of petroleum products.

*Daughters of Jacob Geriatric Center, 10/23/90, RC272-99*

The DOE issued a Supplemental Order to Daughters of Jacob Geriatric Center, in the crude oil subpart V proceeding. The check sent to DOJGC had been returned, and it was determined that the refund should be rescinded until DOJGC's gallonage figures had been verified and certain irregularities concerning its representative, Infotech Management, Inc., had been investigated.

*Dennis Leppert et al., 10/22/90, RF272-78585 et al.*

The DOE issued a Decision and Order granting refunds to 16 purchasers of refined petroleum products in the subpart V crude oil refund proceeding. Each applicant was an end-user of the purchased products, and therefore was not required to demonstrate injury in order to qualify for a refund. The refunds approved in this Decision total $1,392.

*Exxon Corp., Tenneco Oil Co., 10/25/90, RF307-8390*

The DOE issued a Decision and Order concerning an Application for Refund filed by Tenneco Oil Co. (Tenneco) in the Exxon Corporation special refund proceeding. Tenneco purchased directly from Exxon during the consent order period. The DOE determined that Tenneco was eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater, based on a portion of its purchases from Exxon. In Tenneco's case, $5,000 was greater. However, the DOE determined that certain purchases made by Tenneco during the Exxon consent order period were spot purchases. Accordingly, Tenneco did not receive a refund for those spot purchases. The sum of the refund granted to Tenneco in this Decision is $8,696 ($5,000 principal plus $1,696 interest).

*MacAndrews & Forbes Co., 10/24/90, RF272-556, RD272-556*

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to MacAndrews & Forbes Company based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant was involved in the food and food processing industry and used the petroleum products in its business operations. MacAndrews & Forbes was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's claim. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to MacAndrews & Forbes Company is $250,596.



*Owens-Illinois, Inc., 10/23/90, RF272-11705, RD272-11705*

Owens-Illinois, Inc., a manufacturer of packaging products and supplies, filed an Application for Refund in the subpart V crude oil refund proceeding. The Applicant certified, based on available records and reasonable estimates, that it purchased 539,741,611 gallons of petroleum products during the crude oil price control period. Rejecting the generalized economic objections filed by a group of States, the DOE found that the end-user presumption of injury should be applied to Owens-Illinois, Inc. The refund approved was $431,793. A related Motion for Discovery filed by the States was denied.

*PVM Oil Associates, Inc./New York, 10/26/90, RQ30-565*

The State of New York proposed to use a total of $5,289.47 in PVM Oil Associates, Inc. consent order funds to supplement an ongoing Multifamily Energy Efficiency Training Program, which trains owners, operators, tenants, and maintenance staff in ways to make multifamily buildings more energy efficient. New York's second-stage Application for Refund was approved in full because the program will provide restitution to residents of the New York City metropolitan area who are the tenants or owners of multifamily buildings by creating more energy efficient housing for them and by reducing heating oil bills.

*Shell Oil Co./Arne Moores Inter City Oil Co., 10/23/90, RF315-3884, RF315-10004*

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order granting the refund application of Inter City Oil Co., Inc. (RF315-10004), in the Shell Oil Company refund proceeding, and denying that of Arne Moores (RF315-3884). Mr. Moores was the former owner of Consumers Oil Company, a purchaser of Shell products. In 1980, Mr. Moores sold all of the stock of Consumers to Inter City. Because in instances of a sale of stock, OHA considers the refund transferred to the new owner, OHA denied Mr. Moores' application. Inter City, however, had already received a small claims principal refund of $2,233. As the combined gallonage of its own and Consumers' claims fell under the $5,000 presumption, Inter City was only eligible to receive an additional $2,787. Inter City argued that the amount of its second refund should not be limited because it had not acquired Consumers until the end of the consent order period. The OHA, however, determined that because Consumers and Inter City no longer had separate facilities, separate marketing areas, different accountants, separate business records, or separate operations, it would be inappropriate to grant Inter City two refunds under different presumptions. Accordingly, OHA granted Inter City an additional principal refund of $2,787, to make its total principal refund received $5,020. To its refund of $2,787, OHA added $843 in interest, for a total of $3,630.

*Shell Oil Co./The Wemett Corp., 10/24/90, RF315-7691*

The DOE issued a Decision and Order granting an application for refund filed by the Wemett Corporation in the Shell Oil Company special refund proceeding. The applicant purchased the assets of the Wemett Corporation in January 1974, and had previously contested the application for refund filed by Wemett's former owners, who claimed a refund on the basis of The Wemett Corporation's pre-1974 Shell purchases. *See Shell Oil Company/The Wemett Corporation*, 20 DOE ¶ 85,015 (1990) (*Wemett I*). In *Wemett I*, the DOE determined that, because the sale of Wemett involved only assets, not stock, and because the purchase agreement did not specify that the right to collect an oil overcharge refund had been transferred to Wemett's new owners, the original owners of Wemett were entitled to collect a refund on the basis of Wemett's pre-1974 purchases. We therefore granted a refund to Wemett's present owner solely on the basis of 66,272,114 gallons of petroleum products which it purchased from Shell in and after 1974. The applicant was a mid-level purchaser of Shell products. Accordingly, the applicant was granted a refund equal to 40 percent of its volumetric share plus a proportionate share of the interest that has accrued on the Shell escrow account. The refund granted was $7,815 ($5,991 principal plus $1,824 interest).

*Texaco Inc./Commercial Oil Co. Kwik Shop, 10/26/90, RF321-2495, RF321-7810*

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Texaco Inc. special refund proceeding on behalf of Commercial Oil Co. (Commercial) and Kwik Shop. Mr. Whitney Duhon owned Kwik Shop during the consent order period and acquired ownership of Commercial subsequent to this period. Since both firms are currently owned by Mr. Duhon, the DOE considered the applications that he filed on each firm's behalf to be affiliate applications. During the consent order period, Commercial purchased refined petroleum products directly from Texaco and subsequently sold these products to Kwik Shop. Since these firms are currently affiliated, the DOE denied Kwik Shop's application because its claim was based solely on purchases from Commercial. The DOE determined that Commercial was eligible for a refund equal to its full allocable share. The refund granted to Commercial in this Decision is $5,867 ($4,933 principal plus $934 interest).

*The True Co./Petrolane, Inc., 10/22/90, RF195-10*

The DOE issued a Decision and Order considering an Application for Refund filed by Petrolane, Inc. in the True Companies special refund proceeding. Petrolane originally claimed that it would make a showing of injury in order to receive a refund of $29,488.97. However, the firm then indicated that gathering the data to support such a showing would be too burdensome. The firm therefore requested a small claims presumption refund of $5,000, for which no injury showing is required. The DOE found that since the record did not show that Petrolane was not injured by the True purchases, the firm should receive the small claims refund it requested. Accordingly, the firm was granted a refund of $5,000 plus interest of $3,434.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| Case Name | Case No. | Date |
|---|---|---|
| Atlantic Richfield Co./ Bob Elder Oil Co. *et al* | RF304-8515 | 10/22/90 |
| Atlantic Richfield Co./ Gozzo's Service Center *et al* | RF304-11571 | 10/22/90 |
| Billy R. Jones *et al* | RF272-83661 | 10/25/90 |
| City of Philadelphia, Dept. of Commerce—Division of Aviation | RF272-28089 | 10/25/90 |
| Co-Op Products Association, Fredonia Coop Oil Company | RF272-47736<br>RF272-47982 | 10/23/90 |
| Edward Kwatz *et al* | RF272-25277 | 10/25/90 |
| Eugene Ruprow *et al* | RF272-26276 | 10/25/90 |
| Exxon Corporation/ American Cyanamid Company *et al* | RF307-8721 | 10/24/90 |
| Exxon Corporation/ Ken's Exxon *et al* | RF307-943 | 10/26/90 |

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| Case Name | Case No. | Date |
|---|---|---|
| Exxon Corporation/ Montair, Inc. | RF307-8916 | 10/24/90 |
| Gulf Oil Corp./J.D. Holcomb *et al.* | RF300-8930 | 10/25/90 |
| Gulf Oil Corp./Marion Gulf | RF300-10319 | 10/25/90 |
| Gulf Oil Corp./The Sommers Company d/b/a Sommers Oil Co. | RF300-8411 | 10/23/90 |
| Gulf Oil Corp./Walter Gulf Service, Sides Brothers Gulf Service | RF300-9091<br>RF300-9133 | 10/25/90 |
| Hoppe Grain *et al.* | RF272-73795 | 10/25/90 |
| Mull Brothers, Inc. *et al.* | RF272-1489 | 10/24/90 |
| Murphy Oil Corp./ Kenda's Spur, Inc. | RF309-656 | 10/24/90 |
| Tennessee Farmers Cooperative, U.S. Army Armor Center and Fort Knox | RF309-1303<br>RF309-1308 | |
| P & L Cote Inc. *et al.* | RF272-13666 | 10/23/90 |
| Quaker State Oil Refining Corporation | RF272-52841 | 10/23/90 |
| Shell Oil Co./ Allegheny Airlines, Inc. *et al.* | RF315-5518 | 10/22/90 |
| Shell Oil Company/ Laughlin Oil Company *et al.* | RF315-5269 | 10/23/90 |
| Sterling Engineered Products, Consolidated Freightways, Inc. | RF272-50289<br>RF272-61630 | 10/26/90 |
| Texaco Inc./Anaheim Hills Texaco | RF321-1510 | 10/26/90 |
| Texaco Inc./Gene's Texaco *et al.* | RF321-282 | 10/22/90 |
| Texaco Inc./Gonzalez Texaco *et al.* | RF321-1541 | 10/25/90 |
| Texaco Inc./Home Oil Co., Inc. *et al.* | RF321-3616 | 10/23/90 |
| Texaco Inc./Radiant Fuel Co., Inc. *et al.* | RF321-3678 | 10/25/90 |
| Texaco Inc./Town of Sturbridge *et al.* | RF321-3617 | 10/25/90 |
| Texas Refinery Corp. | RF272-43677 | 10/22/90 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Amber Oil Co., Inc | RF307-6187 |
| ANR Freight Systems, Inc | RF307-10023 |
| Back River Exxon | RF307-9180 |
| Bean Latino Texaco | RF321-7405 |
| Bulk Petroleum Corporation | RF309-1306 |
| C.F. Industries, Inc | RF321-7902 |
| Charles Pruitt | RF315-4600 |
| Chas. Landry | RF321-7408 |
| Chuck's Strip Gulf | RF300-10253 |
| Chuck's Texaco | RF321-110 |
| D.G. Lambert Construction | RF321-7412 |
| Dick's Exxon | RF307-6722 |
| Doug's Texaco | RF321-9809 |
| Epperly's Texaco | RF321-1585, RF321-1589 |
| Frank Sellins | RF321-7413 |
| G.W. O'Keefe | RF315-4606 |
| George Abdallah | RF307-5451 |
| Hetrick Bros., Inc | RF272-36918 |
| James Adrian Lloyd | RF315-4606 |
| James H. Gueho | RF321-7409 |
| Jax Beer Distributor | RF321-7415 |
| John S. Rogers | RF315-4605 |
| John W. Kinsey | RF321-9360 |
| Joseph Molliere | RF321-7411 |
| L.I. Reliable Corp | RF307-6195 |
| Las Vegas-Tonopah-Reno Stagelines | RF272-61323 |
| Lester Chedotal | RF321-7406 |
| Marcello Distributor, Inc | RF321-7402 |
| Martin C. Beech | RF315-4602 |
| Memphis City Schools | RF307-10024 |
| Mervin J. Hebert | RF321-7404 |
| N.J. Cavalier | RF321-7410 |
| N. Rodrigue & Son | RF321-7416 |
| Nick's Texaco Service | RF321-9671 |
| Norm's Garage | RF307-6159 |
| Paul's Exxon #1 | RF307-7105 |
| Paul's Exxon #2 | RF307-7106 |
| Savage Exxon | RF307-1783 |
| Sheridan School District 48J | RF272-82556 |
| South Capitol Street Exxon | RF307-6156 |
| Steve Fransioli | RF315-4601 |
| Sunnyside Corp | RF272-70842 |
| Thomas McGuire | RF315-4603 |
| Tom Hoekenga | RF315-4607 |
| Tommy Shaw's Marina | RF321-5318 |
| Vernon Crochet | RF321-7407 |
| Vic's Texaco | RF321-7901 |
| Vic's Texaco | RF321-7403 |
| White's Exxon | RF307-5845 |
| Yamhill-Carlton UHS District | RF272-82557 |
| 467 Associates | RF272-49185 |
| 61st Street Texaco | RF321-9610 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 30, 1990.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 90-28767 Filed 12-6-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER-FRL-3867-3]**

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared November 19, 1990 Through November 23, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 15949).

**Draft EISs**

*ERP No. D-AFS-G65003-NM Rating LO*, Creek Diversity Unit Timber Sales and Road Construction, Implementation, Santa Fe National Forest, Pecos Ranger District, San Miguel County, NM.

*Summary:* EPA has no objections to the draft EIS. EPA recommends selection of alternative plan 6 as the preferred plan of action.

*ERP No. DS-COE-H34008-IA Rating LO*, Coralville Lake Flood Control, Downstream Area of Influence to Columbus Junction, Operation and Maintenance Changes, Johnson, Iowa, Louisa and Washington Counties, IA.

*Summary:* EPA has no objections to the proposed action, but requests that the final EIS clarify several wetlands sections.

*ERP No. DS-FHW-G40123-NM Rating LO*, NM-516/Santa Fe-Los Alamos Corridor Study-Phase C, Additional Information, Funding, Possible COE 404 Permit, Sante Fe, Los Alamos and Sandoval Counties, NM.

*Summary:* EPA has no objections to the proposed action as described. EPA recommends selection of the Mortandad alignment with the mitigation as described.

**Final EISs**

*ERP No. F-AFS-L40172-ID*, South Fork Salmon River Road Reconstruction, Warm Lake Highway to the confluence of the South Fork Salmon River, Implementation, Boise and Payette NFs, Valley County, ID.

*Summary:* EPA believes that closing 16 miles of road is the environmentally preferred alternative over the Forest Service preferred alternative of paving 33 miles of road. EPA is concerned that dredging of sediment as mitigation for short-term construction effects should be pursued as remedial activity rather than future project mitigation.

Dated: December 4, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90-28779 Filed 12-6-90; 8:45 am]

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**[ER-FRL-3867-6]**

**Environmental Impact Statements; Availability**

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

**Availability of Environmental Impact Statements Filed November 26, 1990 Through November 30, 1990 Pursuant to 40 CFR 1506.9.**

*EIS No. 900433* Final EIS, FAA, KY, Louisville Airport Improvements, Construction of two Parallel Runways at Standiford Field, Airport Layout Plan, Approval, Funding and 404 Permit, Jefferson County, KY, Due: January 7, 1991, Contact: Peggy S. Kelly (901) 544-3495.

*EIS No. 900434*, Final EIS, FHW, OR, US 30/Columbia River Highway Improvements, Bennett Road to Columbia Road, Funding and 404 Permit, Columbia County, OR, Due: January 7, 1991, Contact: Richard Fairbrother (503) 399-5749.

*EIS No. 900435*, Draft EIS, AFS, MT, Flathead National Forest Land and Resource Management Plan, Amendment No. 10 Open Road Density Standard for Non-Wilderness Portion of the Forest, Implementation, Flathead, Lake, Lincoln and Missoula Counties, MT., Due: January 31, 1991, Contact: Charles Snyder (406) 755-5401.

*EIS No. 900436*, Draft EIS, IBR, CA, Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA, Due: March 1, 1991, Contact: Colette Diede (916) 978-4956.

*EIS No. 900437*, Final EIS, BLM, UT, Dixie Resource Area, Resource Management Plan, Implementation, Washington County, UT, Due: January 7, 1991, Contact: David Everett (801) 673-4654.

*EIS No. 900438*, Final EIS, COE, FL, Canaveral Harbor Navigation Improvements, Implementation, Brevard County, FL, Due: January 7, 1991, Contact: Ray Boothby (904) 791-3453.

*EIS No. 900439*, Final EIS, BLM, WY, Rock Springs District Wilderness Study Areas (WSAs), Wilderness Recommendations, Designation or Nondesignation, Fremont, Lincoln, Sublette and Sweetwater Counties, WY, Due: January 7, 1991, Contact: Alan Stein (307) 382-5350.

*EIS No. 900440*, Draft EIS, BLM, AZ, Kingman Resource Area, Resource Management Plan, Implementation, Mohave, Yavapi and Coconino, AZ Due: March 6, 1991, Contact: Bill Carter (602) 757-3161.

*EIS No. 900441*, Draft EIS, COE, CA, North Delta Multipurpose Water Program, Sacramento, Cosumnes and Mokelumne River, Section 10 and 404 Permit Sacramento County, CA, Due: March 31, 1991, Contact: Jean Elder (916) 551-2270.

*EIS No. 900442*, Draft EIS, GSA, VA, U.S. Navy Systems Commands Consolidation, Office Complex Construction and Rehabilitation at Seven Sites in either the City of Alexandria or Arlington County, VA Due: January 21, 1991, Contact: Thomas Sherman (202) 708-5891.

*EIS No. 900443*, Final EIS, USN, NJ, Naval Weapons Station Earle Trestle Replacement, Construction and Section 10 Permit, Sandy Hook Bay, Colts Neck, Monmouth County, NJ, Due: January 7, 1991, Contact: Robert Oftermueller (215) 897-6282.

*EIS No. 900444*, Final EIS, AFS, MT, Badger-Two Medicine Area Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Lewis and Clark National Forest, Rocky Mountain Ranger District, Pondera and Glacier Counties, MT, Due: January 11, 1991, Contact: Norman Yogerst (406) 329-3634.

*EIS No. 900445*, Draft Supplement, FHW, OR, Salem-Dayton Highway/OR-221/ Wallace Road Widening, Orchard Heights Road to Oakcrest Drive, Funding, Section 404 Permit, Polk County, OR, Due: January 31, 1991, Contact: Richard Fairbrother (503) 399-5749.

Dated: December 4, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90-28780 Filed 12-6-90; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-59899; FRL 3842-5]**

**Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 48086) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

**DATES:** Close of Review Periods:

| | |
|---|---|
| *Y 91-38*, | November 26, 1990. |
| *Y 91-39*, | December 3, 1990. |
| *Y 91-40*, | December 5, 1990. |
| *Y 91-41*, | December 4, 1990. |
| *Y 91-42*, | December 5, 1990. |

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and noon, and 1:00 p.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 91-38**

*Importer.* I & I USA, Inc.

*Chemical.* (S) 2-Propenoic acid, 2-methyl-2-propenoic acid, 2-methyl-2-hydroxethyl ester; benzene, ethenyl-; poly (oxy (methyl-1,2-ethanediyl),alpha.-(2-methyl-1-1-oxo-2-propenyl)-.omega.-hydroxy-2-propenoic acid, 2-methyl-, methyl ester 2-propenoic acid, 2-methyl-, methyl ester 2-propenoic acid, ethyl ester.

*Use/Import.* (S) Coating resin of carrier particles for controlling surface of particles for electrographic developer. Import range: 9,200-45,000 kg/yr.

**Y 91-39**

*Importer.* Confidential.

*Chemical.* (G) Adpic acid polyester.

*Use/Import.* (G) Plasticizer. Import range: Confidential.

*Toxicity Data.* Acute oral toxicity: LD50 > 1371 mg/kg species (Rat). Mutagenicity: negative.

**Y 91-40**

*Manufacturer.* Akzo Coatings Inc.

*Chemical.* (G) Acrylic resin solution.

*Use/Production.* (G) Resin for coatings. Prod. range: Confidential.

**Y 91-41**

*Manufacturer.* Confidential.

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*Chemical.* (G) Fatty acid isophthalene alkyd.

*Use/Production.* (S) Binder for general metal coating. Prod. range: Confidential.

T 91-48

*Importer.* Reichhold Chemicias, Inc.

*Chemical.* (G) Acrylic-styrene modified epoxy ester.

*Use/Import.* (S) Automobile parts coatings. Import range: Confidential.

Dated: December 3, 1990.

Steven Newburg-Rinn,

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-28752 Filed 12-6-90; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59239; FRL 3842-6]

## Toxic and Hazardous Substances; Test Market Exemption Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

**DATES:**

*Written comments by:*

T 91-1, December 16, 1990.

**ADDRESSES:** Written comments, identified by the document control number "(OPTS-59239)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW, Rm. L-100, Washington, DC 20460, (202) 382-3532.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and noon, and 1:00 p.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 91-1

*Close of Review Period.* December 30, 1990.

*Importer.* Confidential.

*Chemical.* (G) Isocyanate prepolymer.

*Use/Import.* (G) Curing agent additive for surface coating. Import range: Confidential.

Dated: December 3, 1990.

Steven Newburg-Rinn,

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-28751 Filed 12-6-90; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

[Petition No. P5-90]

## Conditions Unfavorable to Shipping in United States-Venezuela Trade; Filing of Petition for Relief

Notice is given that a petition for relief from conditions unfavorable to shipping in the United States-Venezuela trade ("Trade") has been filed by Total Ocean Marine Services Inc. ("Petitioner"), requesting relief under section 19(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(b). Petitioner requests Commission assistance to obtain confirmation of Petitioner's authorization by the Venezuelan Ministry of Transport and Communications for Petitioner to operate third flag vessels in a common carrier service in the Trade and/or provide such other relief as deemed appropriate.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than January 7, 1991. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on Thomas F. Vogt, President, Total Ocean Marine Services Inc., 845 North Central Avenue, Massapequa, New York 11758.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28602 Filed 12-6-90; 8:45 am]

BILLING CODE 6730-01-M

## Agreement(s) Filed; Port of New Orleans/Coastal Cargo Co., Inc.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No:* 224-200446.

*Title:* Port of New Orleans/Coastal Cargo Co., Inc. Terminal Agreement.

*Parties:*

Board of Commissioners of the Port of New Orleans ("Port")

Coastal Cargo Company, Inc. ("Coastal").

*Filing Party:* Gerald O. Gussoni, Jr., Port General Counsel. The Board of Commissioners of the Port of New Orleans, Post Office Box 60046, New Orleans, Louisiana 70160.

*Synopsis:* The Agreement provides for Coastal's lease of 105,881 square feet of sections 1-40, all divisions, shed only, of the Port's Milan Street Wharf for a term of two years. The Port will receive an annual base rent of $127,057.20.

*Agreement No:* 224-200447.

*Title:* Port of New Orleans/Coastal Cargo Co., Inc. Terminal Agreement.

*Parties:*

Board of Commissioners of the Port of New Orleans ("Port")

Coastal Cargo Company, Inc. ("Coastal").

*Filing Party:* Gerald O. Gussoni, Jr., Port General Counsel. The Board of Commissioners of the Port of New Orleans, Post Office Box 60046, New Orleans, Louisiana 70160.

*Synopsis:* The Agreement provides for Coastal's lease of sections 1-30, all divisions, shed only, of the Port's Mandeville Street Wharf for a term of two years. The Port will receive an annual base rent of $64,491.00.

Dated: December 4, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28747 Filed 12-6-90; 8:45 am]

BILLING CODE 6730-01-M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

## Partial Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Confirmatory Urine Drug Testing for Amphetamines

**AGENCY:** National Institute on Drug Abuse, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories certified to meet standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979-11986) dated April 11, 1988. This notice informs the public that, effective December 3, 1990, the following laboratory's certification is partially suspended under § 3.14 of the Guidelines:

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017; Telephone (614)-889-1061.

The certification of the above named laboratory is suspended from conducting confirmatory testing of amphetamines. Under the terms of the suspension, the laboratory is required to send a portion of each urine specimen that it determines by initial testing to be positive for amphetamines to another HHS/NIDA certified laboratory for independent testing of the specimen for amphetamines. The result determined by this independent testing will be the result reported.

The laboratory named above continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine.

**FOR FURTHER INFORMATION CONTACT:** Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301)-443-6245.

Charles R. Schuster,

*Director, National Institute on Drug Abuse.*

[FR Doc. 90-28802 Filed 12-6-90; 8:45 am]

BILLING CODE 4160-20-M

### Food and Drug Administration

[Docket No. 90N-0298]

RIN 0905-AC44

## Drug Export Amendments Act of 1986; Export Applications Review Document; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a review document relating FDA's experience with the export of unapproved new human drugs, unlicensed human biological products, and unapproved new animal drugs, under the Drug Export Amendments Act of 1986. The document entitled "A review of FDA's Implementation of the Drug Export Amendments of 1986" is being made available to the public to provide information on the agency's implementation of the amendments. This notice announces the availability of the review document.

**DATES:** Written comments on or before March 7, 1991.

**ADDRESSES:** Written comments regarding the review document may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for single copies of the review document may be sent to the CDER Executive Secretariat (HFD-008), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Division of Congressional and Public Affairs (HFB-140), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Copies of the revised application checklist for the export of unlicensed partially processed biological products may be obtained from the Division of Inspections and Surveillance (HFB-124), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist FDA in processing your request. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (Export Amendments) amends the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act to authorize the export, from the United States to other countries for commercial marketing, of unapproved new human drugs, unlicensed human biological products, and unapproved new animal drugs. Prior to the Export Amendments, such articles could not be exported for commercial marketing unless approved or licensed by FDA for marketing in the United States.

The Export Amendments provide three tracks for the export of these products. Under each track, FDA must approve an application before export is permitted. The tracks very in terms of drug eligibility criteria, procedures for approval of export applications, and postapproval requirements. The first track governs applications to export unapproved new human drugs, unlicensed human biological products, and unapproved new animal drugs to foreign countries in which the products are approved. (See sections 802(b) through 802(e) of the act (21 U.S.C. 382(b) through 382(e)).) Export under this track is limited to 21 countries that are listed in the Export Amendments. The second track governs applications to export such unapproved and unlicensed products, to any country, for use in the prevention or treatment of tropical diseases. (See section 802(f) of the act (21 U.S.C. 382(f)).) The third track governs applications to export unlicensed, partially processed biological products for human use that are approved, or are in the process of being approved, in the 21 listed countries. (See section 351(h)(1)(A) of the Public Health Service Act (42 U.S.C. 262(h)(1)(A)).)

FDA has completed a review document that provides a summary of the Export Amendments. This notice announces the availability of the review document. Copies of the document may be obtained from either the CDER Executive Secretariat (HFD-008) or the

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Division of Congressional and Public Affairs (HFB–140) (addresses above).

In addition, the Center for Biologics Evaluation and Research has prepared a revised checklist for the contents of applications to allow the export of unlicensed, partially processed biological products. The new checklist recommends the submission of less information than was recommended by the previous checklist. Copies of the checklist may be obtained from the Division of Inspections and Surveillance (HFB–124) (address above).

Dated: November 28, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90–28712 Filed 12–6–90; 8:45 am]

BILLING CODE 4160–01–M

## Health Care Financing Administration

**[BPD–623–PN]**

**RIN 0938–AE96**

## Medicare Program; Proposed Additions to and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** This notice announces and solicits public comment on the specific proposed additions to and deletions from the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC). It also announces and solicits public comment on the assignment of payment groups for each procedure. Additionally, this notice announces and solicits public comment on the proposed coordination of our biennial ASC procedure list update with our annual ASC rate update for those years when the two updates are both made.

This proposed notice would implement section 1833(i)(1) of the Social Security Act, as amended by section 9343 of the Omnibus Budget Reconciliation Act of 1986 which requires, in part, that the list of covered ASC procedures be reviewed and updated at least every 2 years.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 4, 1990.

**ADDRESSES:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–623–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–623–PN. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

**FOR FURTHER INFORMATION ABOUT PROPOSED ADDITIONS OR DELETIONS, CONTACT:** Robert Careghino, (301) 966–4645.

**FOR INFORMATION ABOUT PROPOSED PAYMENT GROUPS, CONTACT:** Vivian Braxton (301) 966–4571.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 934 of Pub. L. 96–499, the Omnibus Reconciliation Act of 1980, enacted on December 5, 1980, amended sections 1832(a)(2) and 1833 of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC).

With respect to the surgical procedures covered under this provision, section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis. The report accompanying the legislation (Report of the Committee on the Budget, House of Representatives, that accompanied H.R. 7765, H.R. Rep. No. 96–1167, 96th Cong., 2d Sess. 390 (1980)) explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included in the list of covered procedures.

In line with this Congressional intent, our current regulations (42 CFR 416.65(a)) specify the following four requirements regarding the range of covered ASC services.

1. Procedures on the list are commonly performed on an inpatient basis but also may, consistent with accepted medical practice, be performed in an ambulatory surgical facility.

2. The list excludes procedures that are commonly performed, or may be safely performed, in physicians' offices.

3. Procedures are limited to those requiring a dedicated operating room and generally do not require an overnight stay.

4. The list does not contain procedures excluded from Medicare coverage.

We recognize that for individuals with certain medical conditions, a procedure on the list may nonetheless be safely performed only on an inpatient basis. The choice of operating site remains a matter for the professional judgment of the patient's physician.

Currently, ASC covered procedures are classified according to an 8 group payment classification system, as follows:

| | |
|---|---|
| Group 1—$271 | Group 5—$586 |
| Group 2—$363 | Group 6—$753 |
| Group 3—$417 | Group 7—$812 |
| Group 4—$513 | Group 8—$971 |

The ASC facility payment for all procedures in each group is established at a single rate adjusted for geographic variation. This prospectively determined facility group rate does not include physicians' fees and other medical items and services (for example, prosthetic devices, except intraocular lenses) for which separate payment is authorized under other provisions of the Medicare program. Rather, the rate is a standard overhead amount that covers the cost of services such as nursing, supplies, equipment, and use of the facility.

Section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, enacted on October 21, 1986) amended section 1833(i)(2)(A) of the Act to require annual rather than periodic updating of ASC rates beginning no later than July 1, 1987. We published revised rates as set forth above in the July 5, 1990 Federal Register notice with comment period (55 FR 27690). These new rates were applied to facility services furnished on or after July 1, 1990.

For the proposed additions to the list of covered procedures in this notice, we have proposed payment group rates. These rates were established by HCFA medical staff based on already existing procedure payment rates in the same coding and medical category.

Section 9343 of Public Law 99–509 also requires that the ASC list of procedures be reviewed and updated by April 21, 1987 and not less often than every 2 years thereafter. Accordingly, we published the latest updates to the list of covered ASC procedures in the Federal Register on April 21, 1987 (52 FR 13176) and on June 1, 1989 (54 FR 23540). These updates supplement the original list of covered ASC procedures published on August 5, 1982 (47 FR 34099).



### II. Provisions of the Proposed Notice

In this notice, we propose specific procedures for addition to or deletion from the ASC list. We also propose a payment group for each proposed addition. These proposed changes are the result of our consideration of data on site of service from the Part B Medicare Data (BMAD) files, as explained below, and general correspondence received from the public and the medical community over the past few years. Additionally, we propose to coordinate our biennial ASC procedure list update with our annual ASC rate update for those years when the two updates are both made and would implement the ASC update effective October 1 of each year.

#### *A. Criteria for Determining Procedures To Be Added To or Deleted From the ASC List*

We evaluated the usual site of service of surgical procedures considered for coverage under the ASC benefit based on the BMAD files, which are maintained centrally as a component of the Medicare statistical system. These files consist of data sets produced from information maintained by the Medicare carriers in (1) prevailing charge screen files, (2) beneficiary history files, and (3) physician/supplier history files. One of the BMAD files is the procedure file, from which source data are extracted to create an array of every procedure code used by each carrier in processing Medicare claims. The procedure file includes data elements such as frequency, submitted charges, allowed charges, and denied services. These variables can be arrayed for each procedure code by site of service (for example, physicians' office, ASC, inpatient hospital, outpatient hospital) and by type of service (for example, surgical service).

The procedure file is constructed from 100 percent of the bills processed annually by carriers which report procedures using the HCFA Common Procedure Coding System (HCPCS). The source data that we used in assessing site of service are claims processed in calendar year 1988.

The 1988 file is the most current data available and includes claims from all carriers. In addition to reviewing the site of service data for procedures suggested by the public in general correspondence, we also reviewed the data for all covered procedures on the current list as well as data for all other codes in the surgery section of the Physician's Current Procedural Terminology, Fourth Edition, 1990 (CPT–4). (The CPT–4 is a compilation of current terminology for medical procedures and codes for each procedure that have been assigned by the American Medical Association.) Thus, our proposed additions and deletions are based on a comprehensive analysis of site of service data for all codes in the surgery section of the CPT–4.

When we arrayed the CPT–4 codes by site of service, we found that many of the surgical procedures were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations and program objectives to cover these procedures when performed in an ASC.

In the August 11, 1987 Federal Register proposed notice (52 FR 29729), we described a threshold rule that we used in analyzing 1984 BMAD data. We decided that if a procedure was performed on an inpatient basis 20 percent of the time or less, or in physicians' offices 50 percent of the time or more, it should not be covered when performed in an ASC. Based on our analysis of available claims payment data, we believed these levels best reflected the legislative objectives of (1) moving procedures from the more expensive inpatient hospital setting to the less expensive ASC setting and (2) preventing the migration of procedures from the less expensive physicians' office setting to the ASC. We indicated we would monitor our claims experience in order to assure that the 20/50 threshold rule we developed would continue to achieve these objectives.

HCFA medical consultants may make exceptions and override the threshold rule when they believe the threshold rule is inaccurate or to maintain clinical consistency.

#### *B. Proposed Additions*

##### 1. Additions Based on Data

The proposed additions listed in the addendum to this notice are the result of our consideration of site of service data from the BMAD files, suggestions from HCFA medical staff, and suggestions from the general public in correspondence over the past few years. Additions suggested by the public are marked with an asterisk (*). The proposed additions are listed according to body system, appropriate terminology, and CPT–4 coding. Proposed assigned payment groups are also given for each procedure.

##### 2. Additions Not on the Basis of Data Alone

We identified 8 procedures that would not have been proposed for addition to the list on the basis of data alone but which we propose to add for the reasons discussed below. Additions marked with an asterisk denote those suggested by the general public. A proposed payment group is given for each procedure.

Based on general correspondence from the medical community, our medical staff are proposing to reinstate on the ASC list the following 4 procedures which pertain to the removal of benign or malignant skin lesions of a diameter from 3.1–4.0 centimeters. We were advised by our medical advisors that these lesions are too large to be removed routinely in physicians' offices. We have accepted that viewpoint.

| PYMT GRP | CPT–4 Code | Description |
|---|---|---|
| 1 | *11404 | Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 3.1 to 4.0 cm. |
| 1 | *11444 | Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 3.1 to 4.0 cm. |
| 1 | *11624 | Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 3.1 to 4.0 cm. |
| 1 | *11644 | Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 3.1 to 4.0 cm. |

Although the BMAD files indicate that the following 3 procedures are performed in physicians' offices more than 50 percent of the time, we decided to propose their addition to the list because our medical consultants advised us that, in spite of the data, the procedures are not commonly performed in physicians' offices. We note that these procedures are infrequently performed in any setting and that a few errors in the reporting of the site of service would have a significant effect on our analysis of place of service data.

| PYMT GRP | CPT–4 Code | Description |
|---|---|---|
| 5 | 24362 | Arthroplasty, elbow; with implant and fascia lata ligament reconstruction. |

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| PYMT GRP | CPT-4 Code | Description |
|---|---|---|
| 2 | 26560 | Polldization of a digit. |
| 5 | 26565 | Repair bifid digit. |

The following 11 procedures were added to the CPT-4 in 1990. These are similar to already covered procedures. Based on general correspondence with the medical community, we are proposing to add these procedures to the list:

| PYMT GRP | CPT-4 Code | Description |
|---|---|---|
| 5 | 21343 | Open treatment of closed or open depressed frontal sinus fracture. |
| 4 | 26037 | Decompressive fasciotomy, hand (excludes 26035). |
| 3 | 29826 | Arthroscopy, shoulder, surgical; decompression of subacromial space with partial acromioplasty with or without coracoacromial release. |
| 5 | 31611 | Construction of tracheoesophageal fistula and subsequent insertion of an alaryngeal speech prosthesis (eg, voice button, Blom-Singer prosthesis). |
| 2 | 32002 | Thoracentesis with insertion of tube with or without water seal (eg, for pneumothorax) (separate procedure). |
| 2 | 36522 | Photopheresis, extracorporeal. |
| 4 | 36832 | Revision of an arteriovenous fistula, with or without thrombectomy, autogenous or non-autogenous graft. |
| 5 | 58660 | Laparoscopy, surgical; with removal of adnexal structures (partial or total oophorectomy and/or salpingectomy). |
| 2 | 58662 | Hysteroscopy; with lysis of intrauterine adhesions or resection of intrauterine septum (any method). |
| 3 | 58564 | Hysteroscopy; with removal of submucous leiomyomata (any method). |
| 5 | 59852 | Revision of stapedectomy or stapedotomy. |

*3. Suggestions for Additions Not Accepted*

Based on our threshold rule and the restriction that approved procedures be surgical in nature, we do *not* propose to add to the ASC list the following procedures that were submitted by the public in general correspondence during the last few years.

**Integumentary System Skin, Subcutaneous and Areolar Tissues Incision**

| | |
|---|---|
| 10000 | Incision and drainage of infected or noninfected sebaceous cyst; one lesion. |
| 10001 | Second lesion. |
| 10002 | More than two lesions. |
| 10003 | Incision and drainage of infected or noninfected epithelial inclusion cyst ("sebaceous cyst") with complete removal of sac and treatment of cavity. |
| 10020 | Incision and drainage of furuncle. |
| 10040 | Acne surgery (e.g., marsupialization, opening or removal of multiple milia, comedones, cysts, pustules). |
| 10060 | Incision and drainage of abscess (e.g., carbuncle, suppurative hidradenitis, and other cutaneous or subcutaneous abscesses); simple. |
| 10061 | Complicated. |
| 10080 | Incision and drainage of pilonidal cyst; simple. |
| 10081 | Complicated. |
| 10100 | Incision and drainage of onychia or paronychia; single or simple. |
| 10101 | Multiple or complicated. |
| 10120 | Incision and removal of foreign body, subcutaneous tissues; simple. |
| 10121 | Complicated. |
| 10140 | Incision and drainage of hematoma; simple. |
| 10160 | Puncture aspiration of abscess, hematoma, bulla, or cyst. |
| | Excision—Debridement |
| 11000 | Debridement of extensive eczematous of infected skin; up to 10% of body surface. |
| 11001 | Each additional 10% of the body surface. |
| 11040 | Debridement; skin, partial thickness. |
| 11041 | Full thickness. |
| | Biopsy |
| 11100 | Biopsy of skin, subcutaneous tissue and/or mucous membrane (including simple closure), unless otherwise listed (separate procedure); one lesion. |
| 11101 | Each additional lesion. |
| | Excision—Benign Lesions |
| 11400 | Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.5 cm or less. |
| 11401 | Lesion diameter 0.6 to 1.0 cm. |
| 11402 | Lesion diameter 1.1 to 2.0 cm. |
| 11403 | Lesion diameter 2.1 to 3.0 cm. |
| 11420 | Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less. |
| 11421 | Lesion diameter 0.6 to 1.0 cm. |
| 11422 | Lesion diameter 1.1 to 2.0 cm. |
| 11423 | Lesion diameter 2.1 to 3.0 cm. |

**Integumentary System Skin, Subcutaneous and Areolar Tissues Incision—Continued**

| | |
|---|---|
| 11440 | Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.5 cm or less. |
| 11441 | Lesion diameter 0.6 to 1.0 cm. |
| 11442 | Lesion diameter 1.1 to 2.0 cm. |
| 11443 | Lesion diameter 2.1 to 3.0 cm. |
| | Excision—Malignant Lesions |
| 11600 | Excision, malignant lesion, trunk, arms or legs; lesion diameter 0.5 cm or less. |
| 11601 | Lesion diameter 0.6 to 1.0 cm. |
| 11602 | Lesion diameter 1.1 to 2.0 cm. |
| 11603 | Lesion diameter 2.1 to 3.0 cm. |
| 11620 | Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter 0.5 cm or less. |
| 11621 | Lesion diameter 0.6 to 1.0 cm. |
| 11622 | Lesion diameter 1.1 to 2.0 cm. |
| 11623 | Lesion diameter 2.1 to 3.0 cm. |
| 11640 | Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter 0.5 cm or less. |
| 11641 | Lesion diameter 0.6 to 1.0 cm. |
| 11642 | Lesion diameter 1.1 to 2.0 cm. |
| 11643 | Lesion diameter 2.1 to 3.0 cm. |
| | Introduction |
| 11900 | Injection, intralesional; up to and including seven lesions. |
| 11901 | More than seven lesions. |
| 11920 | Tattooing, intradermal introduction of insoluble opaque pigments to correct color defects of skin; 6.0 sq cm or less. |
| 11921 | 6.1 to 20.0 sq cm. |
| | Repair—Simple |
| 12001 | Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 2.5 cm or less. |
| 12002 | 2.6 cm to 7.5 cm. |
| 12004 | 7.6 cm to 12.5 cm. |
| 12011 | Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 2.5 cm or less. |
| 12013 | 2.6 cm to 5.0 cm. |
| 12014 | 5.1 cm to 7.5 cm. |
| 12015 | 7.6 cm to 12.5 cm. |
| | Miscellaneous Procedures |
| 15780 | Dermabrasion; total face (eg, for acne scarring, fine wrinkling, rhytids, general keratosis). |
| 15781 | Segmental, face. |
| 15782 | Regional, other than face. |
| 15783 | Superficial, any site (eg, tattoo removal). |
| 15786 | Abrasion; single lesion (eg, keratosis, scar). |
| 15787 | Each additional four lesions or less. |
| 15822 | Blepharoplasty, upper eyelid. |
| 15823 | With excessive skin weighting down lid. |



**Integumentary System Skin, Subcutaneous and Areolar Tissues Incision—Continued**

| | |
|---|---|
| | Burns, Local Treatment |
| 16000 | Initial treatment, first degree burn, when no more than local treatment is required. |
| | Destruction |
| 17000 | Destruction by any method, with or without surgical curettement, all facial lesions or premalignant lesions in any location, including local anesthesia; one lesion. |
| 17001 | Second and third lesions, each. |
| 17002 | Over three lesions, each additional lesion. |
| 17010 | Complicated lesion(s). |
| 17100 | Destruction by any method of benign skin lesions on any area other than the face, including local anesthesia; one lesion. |
| 17101 | Second lesion. |
| 17102 | Over two lesions, each additional lesion up to 15 lesions. |
| 17104 | 15 or more lesions. |
| 17105 | Complicated lesions. |
| 17110 | Destruction by any method of flat (plane, juvenile) warts or molluscum contagiosum, milia, up to 15 lesions. |
| 17200 | Electrosurgical destruction of multiple fibrocutaneous tags; up to 15 lesions. |
| 17201 | Each additional ten lesions. |
| | Repair and Reconstruction |
| 19355 | Correction of inverted nipples. |
| | Respiratory System Accessory Sinuses Endoscopy |
| 31256 | Nasal endoscopy, diagnostic (includes examination of the medical meatus, infundibulum and sinus ostia). |
| | Eye and Ocular Adnexa Anterior Segment—Anterior Chamber Incision |
| *65855 | Trabeculoplasty by laser surgery, one or more sessions (defined treatment series). |
| | Anterior Segment—Iris, Ciliary Body Destruction |
| 66761 | Iridotomy by photocoagulation (one or more sessions) (e.g., for glaucoma). |
| | Anterior Segment—Lens Incision |
| 66820 | Discission of lens capsule; laser surgery (one or more stages). |
| 66821 | Discission of secondary membranous cataract ("after cataract"), and/or anterior hyaloid; incisional technique (Ziegler or Wheeler knife). |
| | Posterior Segment—Retinal Detachment Prophylaxis |
| 67145 | Prophylaxis of retinal detachment (e.g., retinal break, lattice degeneration) without drainage, one or more sessions; photocoagulation (laser or xenon arc). |

**Integumentary System Skin, Subcutaneous and Areolar Tissues Incision—Continued**

| | |
|---|---|
| | Posterior Segment—Other Procedures Destruction—Retina, Choroid |
| 67229 | Destruction of localized lesion of retina (e.g., neurobpathy, choroidopathy, small tumors), one or more sessions; photocoagulation (laser or xenon arc). |
| | Ocular Adnexa—Orbit Other Procedures |
| 67500 | Retrobulbar injection; medication (separate procedure, does not include supply of medication). |
| | Office and Other Outpatient Medical Services Cardiovascular Cardiac Catheterization |
| 93501 | Right heart catheterization. |
| 93510 | Left heart catheterization, retrograde, from the brachial artery, axillary artery or femoral artery; percutaneous. |
| 93524 | Combined transseptal and retrograde left heart catheterization. |
| 93526 | Combined right heart catheterization and retrograde left heart catheterization. |
| 93527 | Combined right heart catheterization and transseptal left heart catheterization (with or without retrograde left heart catheterization). |
| 93540 | Combined left heart catheterization and left ventriculer angiography. |
| 93547 | Combined left heart catheterization, selective coronary angiography and selective left ventricular angiography. |
| 93548 | Combined left heart catheterization, selective coronary angiography, selective left ventriculography, with aortic root aortography. |
| 93549 | Combined right and left heart catheterization, selective coronary angiography, and selective left ventricular angiography. |
| 93550 | With selective visualization of bypass graft. |
| 93551 | Selective opacification of aortocoronary bypass grafts; one or more coronary arteries. |
| 93552 | Combined left heart catheterization, selective coronary angiography, selective left ventricular cineangiography and visualization of bypass grafts. |
| 93553 | With aortic root aortography. |
| | Intracardiac Electrophysiological Procedures |
| 93600 | Bundle of His recording. |
| 93602 | Intra-atrial recording. |
| 93603 | Right ventricular recording. |
| 93607 | Left ventricular recording. |
| 93610 | Intra-atrial pacing. |
| 93612 | Intraventricular pacing. |
| 93618 | Induction of arrhythmia by electrical pacing. |

*C. Proposed Retentions*

We applied the threshold criteria to our list of over 1300 individual CPT-4 codes. We identified 22 procedures with an inpatient frequency of 20 percent or less, or that are performed in physicians' offices 50 percent of the time or more. Before placing the procedures on the list of proposed deletions, we reviewed them to see if the simple statistical tests, used alone, had produced inconsistent results. We identified 15 procedures that would have been proposed for deletion on the basis of the data alone, but which we propose to retain on the current ASC list for the following reasons.

Although the BMAD files indicate that the following 5 procedures were performed infrequently on an inpatient basis, we decided not to delete them from the list because they are frequently performed in an ASC. We believe it would be inappropriate to delete a procedure from the ASC list when the reason it is performed infrequently on an inpatient basis is because it is paid for under the ASC setting.

| | |
|---|---|
| 65420 | Excision or transposition of pterygium without graft. |
| 66741 | Cyclodialysis; subsequent. |
| 66762 | Coreoplasty by photocoagulation. |
| 66821 | Discission of secondary membranous cataract; laser surgery. |
| 66700 | Plastic repair of canaliculi. |

Although the BMAD files indicate that the following 6 procedures are performed in physicians' offices more than 50 percent of the time, we decided not to delete them from the list because to do so would lead to inconsistency in the coverage of the type of surgery described by the code. For example, CPT-4 code 64726, "Decompression; plantar digital nerve," is a type of neuroplasty (surgical repair of a nerve). All other neuroplasty procedures meet the threshold rule. Therefore, CPT-4 code 64726 and the codes listed below will not be deleted so that clinical consistency may be maintained.

| | |
|---|---|
| 13101 | Repair, complex, trunk; 2.6 cm to 7.5 cm. |
| 25670 | Tendon lengthening, extensor; hand or finger, single, each. |
| 41005 | Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, superficial. |
| 64726 | Decompression; plantar digital nerve. |
| 64837 | Suture of each additional nerve, hand or foot. |

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| | |
|---|---|
| 64745 | Suture facial nerve, intratemporal, with or without graft or decompression; including medial to geniculate ganglion. |

Although the BMAD files indicate that the following 4 procedures are performed in physicians' offices more than 50 percent of the time, we decided not to delete them from the list because our medical consultants advised us that, in spite of the data, they are not commonly performed in physicians' offices. We note that these procedures are infrequently performed in any setting and that a few errors in the reporting of site of service would have significant effect on an analysis of place of service data.

| | |
|---|---|
| 23069 | Biopsy, soft tissue of shoulder area; deep. |
| 25450 | Epiphyseal arrest by epiphysiodesis or stapling; distal radius OR ulna. |
| 28545 | Treatment of closed tarsal bone dislocation; requiring anesthesia. |
| 69120 | Excision external ear; complete amputation. |

*D. Proposed Deletions*

We propose to delete the following 7 procedures from the current ASC list because our data indicate they are performed 50 percent of the time or more in physicians' offices.

| | |
|---|---|
| 41820 | Excision of lesion or tumor, dentoalveolar. |
| 42805 | Ligation salivary duct, intraoral. |
| 54205 | Injection procedure for Peyronie disease with surgical exposure of plaque. |
| 54230 | Injection procedure for corpora cavernosography. |
| 57450 | Culdoscopy, diagnostic. |
| 64408 | Injection, anesthetic agent; vagus nerve. |
| 69105 | Biopsy external auditory canal. |

In addition, we propose to delete CPT–4 code 74741, "Hysterosalpingography; complete procedure," because it is a radiological procedure. We also propose to delete CPT–4 code 27095, "Injection procedure for hip arthrography; with anesthesia," CPT–4 code 31708, "Instillation of contrast material for laryngography or bronchography, without catheterization," and CPT–4 code 50394, "Injection procedure for pyelography," because they are performed only in conjunction with radiological procedures.

*E. Suggested Procedures Sometimes Cosmetic*

We have received a few suggestions to add the following 4 miscellaneous integumentary procedures. These blepharoplasty procedures are often cosmetic and as such are not covered under Medicare. We are therefore not listing these codes under "Proposed Additions," but are instead seeking public comment for recommendation of further HCFA study.

These procedures are:

| | |
|---|---|
| 15820 | Blepharoplasty, lower eyelid. |
| 15821 | Blepharoplasty, lower eyelid; with extensive herniated fat pad. |
| 15822 | Blepharoplasty, upper eyelid. |
| 15823 | Blepharoplasty, upper eyelid; with excessive skin weighting down lid. |

*F. Proposed Coordination of ASC Payment Rate and Procedure Updates*

As previously stated, section 9343 of Public Law 99–509 directs the Secretary to review and update not later than July 1, 1987 and annually thereafter the amount of payment made to ASCs for facility services furnished in conjunction with a covered ASC procedure. This statutory provision also revised section 1833(i)(2)(A) of the Act directing the Secretary to review and update the list of procedures for which ASC payment can be made by April 21, 1987, and no less often than every two years thereafter. To date, separate documents have been published in the **Federal Register** when changes have been made in either payment rates or the list of ASC covered procedures. However, both ASC industry representatives and Medicare servicing contractors indicate that the lack of coordination and predictability in the publication of these ASC updates is costly and disruptive because of the changes in coverage and benefits that these updates trigger. Hospital outpatient departments are affected also because their payments for the performance of ASC-approved procedures are based in part on the ASC payment rate.

We have reviewed the statute and believe that it does not prohibit synchronization of ASC procedure list and payment rate updates. Therefore, we are proposing to schedule implementation of the annual ASC rate update and the biennial ASC procedure list update to coincide and be made effective on the same day for those years when the two updates are both made. Additionally, we propose to make the ASC payment update cycle consistent with the updating of the hospital prospective payment system wage index currently used in calculating ASC payment rates. This would allow ASCs to benefit from use of the most recently revised wage index values. This advantage cannot be attained under the July 1 ASC rate update cycle because under the current schedule the revised ASC rates generally would be published three months before the new hospital wage index is made final in October. Therefore, we are proposing to publish the ASC rate update on or before September 1 each year to be effective October 1. We believe that adoption of an October implementation date would be advantageous to both the industry and the Medicare program.

**III. Request for Information**

This proposed notice solicits comments on the following:

- Specific additions to and deletions from the current ASC list.
- Assignment of payment groups. With respect to renal extra corporeal shock wave lithotripsy (CPT–4 code 50590), which we are proposing to assign to payment group 7, preliminary information is insufficient to allow us to evaluate the appropriateness of our proposed assignment. Therefore, we invite comment on the appropriateness of our proposed group assignment and solicit detailed information on facility charges and costs associated with providing lithotripsy services in an ASC, e.g., cost and types of lithotriptors currently in use, supply costs, machine maintenance expenses and personnel costs.
- Elimination of separate **Federal Register** publications to update ASC procedures and payment rates.

Comments and suggestions must be forwarded to the address indicated under the "Addresses" section of this notice. We request that, when commenting on our proposed additions and deletions and in making suggestions for further revisions to the list, respondents specifically consider the four requirements contained in § 416.65(a) and discussed in section I. above. We also request that suggestions for additional procedures or changes in existing procedures refer to each surgical procedure code according to the American Medical Association's (AMA) Physician's Current Procedural Terminology, Fourth Edition, 1990 (CPT–4).

**IV. Regulatory Impact Statement**

*A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed notice would permit facility fees to be paid when the approximately 900 surgical procedures proposed to be added by this notice are performed in an ASC. Payments to ASCs are generally lower than payments to hospitals for surgery performed in a hospital, whether on an inpatient or outpatient basis. We do not anticipate that many services would shift from the hospital inpatient setting to ASCs, therefore the savings as a result of this shifting would be negligible. However, we anticipate some program savings due to shifting of services from hospital outpatient departments to ASCs since payments to ASCs for a given surgical procedure are generally lower than payments to hospitals for the same procedure. Additional savings would be realized as a result of lower payments to hospitals when the listed procedures continue to be performed on an outpatient basis since the hospital rate would become a blend of hospital costs and ASC rates instead of hospital costs alone.

In addition, a small number of physicians' office services are expected to shift to the ASC setting as a result of the expansion of the list of covered ASC services. Since a facility fee is not paid when surgery is performed in the physicians' office, this shifting would result in increased program costs. The additional payments made to ASCs, as a result of surgical procedures being shifted from physicians' offices to ASCs, would not completely offset the savings realized as a result of other shifting, explaining why the net result of this notice would be a savings to the program.

Based on a proposed effective date of October 1, 1991, we estimate $10 million in savings in each year from FY 1992 through FY 1996. Since this proposed notice would not meet the $100 million criterion or meet the other E.O. 12291 criteria, a regulatory impact analysis is not required.

*B. Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians, ASCs and hospitals to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

There should be no significant impact on surgeons because surgeons generally are paid the same fee for performing the service in the ASC, in the office or in the hospital. Physicians and hospitals with an ownership interest in ASCs may benefit, but profits are limited by the ASC fee schedule payment.

We anticipate that approximately 10 percent of the procedures being performed in hospital outpatient units would shift to ASCs, resulting in some savings, but 90 percent would continue to be performed in hospitals.

As explained with reference to E.O. 12291, we expect no significant impact from this proposed notice. Therefore, we have determined and the Secretary certifies, that this proposed notice would not result in a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

**V. Other Required Information**

*A. Response to Comments*

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

*B. Paperwork Reduction Act*

This proposed notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

(Catalog of Federal Domestic Assistance Program No. 13.744, Medicare—Supplementary Medical Insurance Program)

(Section 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(7); 42 CFR 405.85)

Dated: October 17, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

**Addendum—Proposed Additions to the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers (ASCs)**

The proposed additions listed in this addendum are the result of our consideration of site of service data from the BMAD files, suggestions from HCFA medical staff, and suggestions from the general public in correspondence over the past few years. The additions suggested by the public are marked with an asterisk (*). The additions outside threshold parameters that have been recommended by HCFA medical consultants to maintain clinical consistency are marked with a bullet (•). The additions are listed according to body system, appropriate terminology, and Physician's Current Procedural Terminology, Fourth Edition, 1990 (CPT–4) coding. Proposed payment groups are also given for each procedures.

Caution: This addendum is not a complete list of proposed additions. For additions proposed for reasons other than data or maintenance of clinical consistency, see section B.2. of this notice.

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| | | **Integumentary System—Skin, Subcutaneous and Areolar Tissues** |
| | | *Incision* |
| 2 | 10180 | Incision and drainage, complex, postoperative wound infection. |
| | | *Excision—Benign Lesions* |
| 2 | 11450 | Excision of skin and subcutaneous tissue for hidradenitis, axillary; with primary suture. |
| 2 | 11451 | Excision of skin and subcutaneous tissue for hidradenitis, axillary; with other closure. |
| 2 | 11462 | Excision of skin and subcutaneous tissue for hidradenitis, inguinal; with primary suture. |
| 2 | 11463 | Excision of skin and subcutaneous tissue for hidradenitis, inguinal; with other closure. |
| 2 | 11470 | Excision of skin and subcutaneous tissue for hidradentitis, perianal, perineal, or umbilical; with primary closure. |
| | | *Excision—Malignant Lesions* |
| 2 | 11604 | ** Excision, malignant lesion, trunk, arms, or legs; lesion diameter 3.1 to 4.0 CM. |
| | | **Miscellaneous** |
| | | *Introduction* |
| 2 | 11960 | *Insertion of tissue expander(s). |
| 3 | 11970 | *Replacement of tissue expander with permanent prosthesis. |
| 1 | 11971 | *Removal of tissue expander(s) without insertion of prosthesis. |
| | | **Repair** |
| | | *Repair—Simple* |
| 2 | 12006 | **Simple repair of superficial wounds of scalp, neck, axillae, external genitalia, trunk and/or extremities (including hands and feet); 12.6 CM to 30.0 CM. |
| 2 | 12016 | **Simple repair of superficial wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 12.6 CM to 20.0 CM. |
| 1 | 12020 | *Treatment of superficial wound dehiscense; simple closure. |
| 1 | 12021 | **Treatment of superficial wound dehiscense; with packing. |
| | | *Repair—Intermediate* |
| 2 | 12034 | *Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 7.6 CM to 12.5 CM. |
| 2 | 12035 | *Layer closure of wounds of scalp, axillae, trunk and/or extremities (excluding hands and feet); 12.6 CM to 20.0 CM. |
| 2 | 12044 | Layer closure of wounds of neck, hands, feet and/or external genitalia; 7.6 CM to 12.5 CM. |
| 2 | 12045 | Layer closure of wounds of neck, hands, feet and/or external genitalia; 12.6 CM to 20.0 CM. |
| 2 | 12054 | **Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 7.6 CM to 12.5 CM. |
| 2 | 12055 | *Layer closure of wounds of face, ears, eyelids, nose, lips and/or mucous membranes; 12.6 CM to 20.0 CM. |
| | | *Repair—Complex* |
| 2 | 13100 | **Repair, complex, trunk; 1.1 CM to 2.5 CM. |
| 2 | 13120 | **Repair, complex, scalp, arms, and/or legs; 1.1 CM to 2.5 CM. |
| 2 | 13131 | **Repair, complex, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; 1.1 CM to 2.5 CM. |
| 2 | 13150 | **Repair, complex eyelids, nose, ears and/or lips; 1.0 CM or less. |
| 2 | 13151 | **Repair, complex, eyelids, nose, ears and/or lips. 1.1 CM to 2.5 CM. |
| 2 | 13160 | *Secondary closure of surgical wound or dehiscence, extensive or complicated. |
| 2 | 14000 | *Adjacent tissue transfer or rearrangement, trunk; defect 10 SQ CM or less. |
| 2 | 14040 | **Adjacent tissue transfer or rearrangement, forehead, cheeks, chin, mouth, neck, axillae, genitalia, hands and/or feet; defect 10 SQ CM or less. |
| | | *Free Skin Grafts* |
| 2 | 15120 | *Split graft, face, eyelids, mouth, neck, ears, orbits genitalia, and/or multiple digits; 100 SQ CM or less; or each one percent of body area of infants and children (except 15050). |
| 3 | 15121 | *Split graft, face, eyelids, mouth, neck, ears, orbits genitalia, and/or multiple digits; 100 SQ CM or less, or each one percent of body area of infants and children, or part thereof. |
| 2 | 15400 | *Application of xenograft, skin. |
| | | *Pressure Ulcers (Decubitus Ulcers)* |
| 3 | 15934 | Excision, sacral pressure ulcer, with local or regional skin flap closure (eg, advancement, rotation, rhomboid, bipedicle). |
| 4 | 15935 | Excision, sacral pressure ulcer, with local or regional skin flap closure (eg, advancement, rotation, rhomboid, bipedicle) with ostectomy. |
| 4 | 15936 | Excision, sacral pressure ulcer, with other closure. |
| 4 | 15937 | Excision, sacral pressure ulcer, with other closure; with ostectomy. |
| 3 | 15940 | Excision, ischial pressure ulcer, with primary suture. |
| | | *Burns, Local Treatment* |
| 1 | 16030 | Dressings and/or debridement, initial or subsequent; without anesthesia, large (eg, more than one extremity). |
| 2 | 16035 | Escharotomy. |
| | | **Breast** |
| | | *Excision* |
| 1 | 19100 | * Biopsy of breast; needle (separate procedure). |
| 2 | 19110 | Nipple exploration, with or without excision of a solitary lactiferous duct or a papilloma lactiferous duct. |
| 3 | 19112 | * Excision of lactiferous duct fistula. |
| 7 | 19162 | Mastectomy, partial; with axillary lymphadenectomy. |
| 5 | 19260 | Excision of chest wall tumor including rib. |
| | | *Repair and Reconstruction* |
| 1 | 19328 | * Removal of intact mammary implant. |
| 1 | 19330 | * Removal of mammary implant material. |
| 2 | 19340 | Immediate insertion of breast prosthesis following mastopexy, mastectomy or in reconstruction. |
| 3 | 19342 | Delayed insertion of breast prosthesis following mastopexy, mastectomy or in reconstruction. |
| 4 | 19350 | * Nipple/areola reconstruction. |
| 5 | 19360 | * Breast construction with muscle or myocutaneous flap. |
| 5 | 19364 | Breast reconstruction with free flap. |
| 5 | 19366 | Breast reconstructino with other technique. |
| 4 | 19370 | * Open perprosthetic capsulotomy, breast. |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| 4 | 19371 | * Perprosthetic capsulectomy, breast. |
| 5 | 19380 | * Revision of reconstructed breast |
| | | **Musculoskeletal System—General** |
| | | *Excision* |
| 2 | 20200 | Biopsy, muscle; superficial. |
| 1 | 20206 | Biopsy, muscle, percutaneous needle. |
| 1 | 20220 | Biopsy, bone, trocar or needle; superficial (EG, ilium, sternum, spinous process, ribs). |
| | | *Introduction or Removal* |
| 1 | 20670 | * Removal of implant; superficial, (EG, buried wire, pin or rod) (separate procedure). |
| 2 | 20690 | Application of external fixation system (EG, Hoffman apparatus), including removal. |
| | | *Grafts (or Implants)* |
| 4 | 20924 | Tendon graft, from a distance (EG, palmaris, toe extensor, plantaris). |
| 1 | 20976 | Electrical stimulation to aid bone healing; percutaneous insertion of electrodes. |
| | | **Head** |
| | | *Excision* |
| 2 | 21025 | Excision of bone (EG, for osteomyelitis or bone abscess); mandible. |
| 2 | 21026 | Excision of bone (EG, for osteomyelitis or bone abscess); facial bone(s). |
| 2 | 21041 | Excision of benign cyst or tumor of mandible; complex. |
| 3 | 21070 | Coronoidectomy (separate procedure). |
| | | *Repair, Revision, or Reconstruction* |
| 5 | 21200 | Osteotomy (EG, for prognathism, micrognathism, apertognathism or for reconstruction), mandible, total or horizontal. |
| 5 | 21202 | Osteotomy (EG, for prognathism, micrognathism, apertognathism or for reconstruction), mandible, segmental. |
| 5 | 21203 | Osteotomy (EG, for prognathism, micrognathism, apertognathism or for reconstruction), mandibular, ramus (osteciomy). |
| 5 | 21204 | Osteotomy (EG, for prognathism, micrognathism, apertognathism or for reconstruction), maxilla, total. |
| 5 | 21205 | Osteotomy (EG, for prognathism, micrognathism, apertognathism or for reconstruction), maxilla, segmental. |
| 7 | 21208 | Osteoplasty, facial bones; augmentation (autograft, allograft, or prosthetic implant). |
| 5 | 21209 | Osteoplasty, facial bones; reduction. |
| 7 | 21210 | Graft, bone; nasal, maxillary or malar areas (includes obtaining graft). |
| 7 | 21215 | Graft, bone; mandible (includes obtaining graft). |
| 7 | 21230 | Graft; rib cartilage, autogenous, to face, chin, nose or ear (includes obtaining graft). |
| 7 | 21235 | Graft; ear cartilage to nose or ear (includes obtaining graft). |
| 4 | 21240 | Arthroplasty, temporomandibular joint, with or without autograft. |
| 5 | 21242 | Arthroplasty, temporomandibular joint, with allograft. |
| 5 | 21243 | Arthroplasty, temporomandibular joint, with prosthetic joint replacement. |
| 7 | 21244 | Reconstruction of mandible, extraoral, with transosteal bone plate (EG, mandibular staple bone plate). |
| 7 | 21245 | Reconstruction of mandible or maxilla, subperiosteal implant; partial. |
| 7 | 21246 | Reconstruction of mandible or maxilla, subperiosteal implant; complete. |
| 7 | 21248 | * Reconstruction of mandible or maxilla, endosteal implant (EG, blade, cylinder); partial. |
| 7 | 21249 | Reconstruction of mandible or maxilla, endosteal implant (EG, blade, cylinder); complete. |
| 7 | 21250 | Osteoplasty of maxilla and/or other facial bones for midface hypoplasia or retrusion (leofort type operation); without bone graft. |
| 7 | 21254 | Osteoplasty of maxilla and/or other facial bones for midface hypoplasia or retrusion (leofort type operation); with bone graft. |
| 7 | 21257 | Orbital repositioning, periorbital osteotomies, unilateral, with bone grafts; extracranial approach. |
| 5 | 21270 | Malar augmentation, bone or alloplastic material. |
| 7 | 21275 | Secondary revision of orbitocraniofacial reconstruction. |
| 5 | 21280 | Medial canthoplasty. |
| 5 | 21282 | Lateral Canthopexy. |
| | | *Fracture and/or Dislocation* |
| 2 | 21300 | Treatment of closed skull fracture without operation. |
| 2 | 21337 | Treatment of closed nasal septal fracture. |
| 5 | 21339 | Open treatment of nasoethmoid fracture; with external fixation. |
| 5 | 21385 | Open treatment of orbital floor "blowout" fracture; transantral approach (Caldwell-LUC type operation). |
| 5 | 21386 | Open treatment of orbital floor "blowout" fracture; periorbital approach. |
| 5 | 21387 | Open treatment of orbital floor "blowout" fracture; combined approach. |
| 5 | 21390 | Open treatment of orbital floor "blowout" fracture; periorbital approach, with alloplastic or other implant. |
| 5 | 21395 | Open treatment of orbital floor "blowout" fracture; periorbital approach with bone graft (includes obtaining graft). |
| 2 | 21400 | treatment of fracture of orbit, except "blowout"; without manipulation. |
| 3 | 21401 | Treatment of fracture of orbit, except "blowout"; with manipulation. |
| 4 | 21406 | Open treatment of fracture of orbit, except "blowout"; without implant. |
| 5 | 21407 | Open treatment of fracture of orbit, except "blowout"; with implant. |
| 4 | 21421 | Treatment of palatal or alveolar ridge fractures (lefort I type); closed manipulation with interdental wire fixation or fixation of denture or splint. |
| 5 | 21422 | Treatment of palatal or alveolar ridge fractures (lefort I type); open treatment. |
| 3 | 21440 | Manipulative treatment of alveolar ridge fracture (separate procedure). |
| 4 | 21445 | Open treatment of alveolar ridge fracture (separate procedure). |
| 5 | 21454 | Open treatment of closed or open mandibular fracture with external fixation. |
| 4 | 21455 | Closed manipulative treatment by interdental fixation of closed or open mandibular fracture. |
| 4 | 21461 | Open treatment of closed or open mandibular fracture; without interdental fixation. |
| 5 | 21462 | Open treatment of closed or open mandibular fracture; with interdental fixation. |
| 4 | 21465 | Open treatment of mandibular condyler fracture. |
| 5 | 21470 | Open treatment of complicated closed or open mandibular fracture by multiple surgical approaches including internal fixation, interdental fixation, and/or wiring of dentures or splints. |
| 3 | 21493 | Treatment of closed or open hyoid fracture; without manipulation. |
| 2 | 21497 | Interdental wiring, for condition other than fracture. |
| | | *Neck (Soft Tissues) and Thorax* |
| | | *Excision* |
| 1 | 21550 | Biopsy, soft tissue of neck or thorax. |

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| 3 | 21557 | Radical resection of tumor (EG, malignant neoplasm), soft tissue of neck or thorax. |
| 2 | 21620 | Ostectomy of sternum, partial. |
| | | *Repair, Revision or Reconstruction* |
| 2 | 21700 | Division of scalenus anticus; without resection of cervical rib. |
| 3 | 21720 | Division of sternocleidomastoid for torticollis, open operation; without cast application. |
| 3 | 21725 | Division of sternocleidomastoid for torticollis, open operation; with cast application. |
| | | *Fracture and/or Dislocation* |
| 1 | 21800 | * Treatment of rib fracture; closed, uncomplicated, each. |
| 2 | 21805 | Treatment of rib fracture; open or complicated, each. |
| 2 | 21810 | * Treatment of rib fracture; closed or open requiring external fixation ("flail chest"). |
| 1 | 21820 | Treatment of sternum fracture; closed. |
| | | **Back and Flank** |
| | | *Excision* |
| 1 | 21920 | Biopsy, soft tissue of back or flank; superficial. |
| 2 | 21925 | Biopsy, soft tissue of back or flank; deep. |
| 2 | 21930 | Excision, tumor, soft tissue of back or flank. |
| 3 | 21935 | Radical resection of tumor (EG, malignant neoplasm), soft tissue of back or flank.Q09 |
| | | **Spine (vertebral Column)** |
| | | *Excision* |
| 3 | 22100 | Partial resection of vertebral component, spinous processes; cervical. |
| 3 | 22101 | Partical resection of vertebral component, spinous processes; thoracic. |
| 3 | 22102 | Partial resection of vertebral component, spinous processes; lumbar. |
| | | *Fracture and/or dislocation* |
| 1 | 22305 | Closed treatment of vertebral process fracture(s). |
| 1 | 22310 | Closed treatment of vertebral body fracture(s), without manipulation. |
| 2 | 22315 | Closed treatment of vertebral fracture and/or dislocation, with or without anesthesia, by manipulation or traction, each. |
| 3 | 22325 | Open treatment of vertebral fracture and/or dislocation; lumbar, each. |
| 3 | 22326 | Open treatment of vertebral fracture and/or dislocation; cervical, each. |
| 3 | 22327 | Open treatment of vertebral fracture and/or dislocation; thoracic, each. |
| | | *Manipulation* |
| 2 | 22505 | * Manipulation of spine requiring anesthesia, any region.Q09 |
| | | **Shoulder** |
| | | *Excision* |
| 1 | 23065 | * Biopsy, soft tissue of shoulder area; superficial. |
| 2 | 23075 | Excision, tumor, shoulder area; subcutaneous. |
| 3 | 23077 | Radical resection of tumor (eg, malignant neoplasm), soft tissue of shoulder area. |
| 4 | 23105 | Arthrotomy for synovectomy; glenohumeral joint. |
| 4 | 23106 | Arthrotomy for synovectomy; sternoclavicular joint. |
| 4 | 23107 | Arthrotomy, glenohumeral joint, with joint exploration, with or without removal of loose or foreign body. |
| 5 | 23120 | Claviculectomy; Partial. |
| 5 | 23125 | Clavicutectomy; total. |
| 5 | 23145 | Excision or curettage of bone cyst or benign tumor of clavicle or scapula; with autograft (includes obtaining graft). |
| 5 | 23146 | Excision or curettage of bone cyst or benign tumor of clavicle or scapula; with allograft. |
| 5 | 23155 | Excision or curettage of bone cyst or benign tumor of proximal humerus; with autograft (includes obtaining graft). |
| 5 | 23156 | Excision or curettage of bone cyst or benign tumor of proximal humerus; with allograft. |
| | | *Introduction or Removal* |
| 1 | 23330 | * Removal of foreign body, shoulder; subcutaneous. |
| | | *Repair, revision or reconstruction.* |
| 5 | 23395 | Muscle transfer, any type for paralysis of shoulder or upper arm; single. |
| 7 | 23397 | Muscle transfer, any type for paralysis of shoulder or upper arm; multiple. |
| 4 | 23400 | Scapulopexy (EG, Sprengel's deformity or for paralysis). |
| 5 | 23410 | Repair of ruptured supraspinatus tendon (rotator cuff) or musculotendinous cuff; acute. |
| 7 | 23412 | Repair of ruptured supraspinatus tendon (rotator cuff) or musculotendinous cuff; chronic. |
| 5 | 23415 | Coracoacromial ligament release, with or without acromioplasty; for chronic ruptured supraspinatus tendon (rotator cuff). |
| 7 | 23420 | Repair of complete shoulder (rotator) cuff avulsion, chronic (includes acromioplasty). |
| 4 | 23430 | Tenodesis for rupture of long tendon of biceps. |
| 4 | 23440 | Resection or transplentation of long tendon of biceps, for chronic tenosynovitis. |
| 5 | 23450 | Capsulorrhaphy for recurrent dislocation, anterior; putti-platt procedure or magnuson type operation. |
| 7 | 23455 | Capsulorrhaphy for recurrent dislocation, anterior; bankart type operation with or without stapling. |
| 5 | 23460 | Capsulorrhaphy for recurrent dislocation, anterior, any type; with bone block. |
| 7 | 23462 | Capsulorrhaphy for recurrent dislocation, anterior, any type; with coracoid process transfer. |
| 5 | 23465 | Capsulorrhaphy for recurrent dislocation, posterior, with or without bone block. |
| 7 | 23466 | Capsulorrhaphy for recurrent dislocation with any type multi-directional instability. |
| 4 | 23480 | Osteotomy, clavicle, with or without internal fixation. |
| 5 | 23485 | Osteotomy, clavicle, with or without internal fixation; with bone graft for nonunion or malunion (includes obtaining graft and/or necessary fixation). |
| 3 | 23490 | Prophylactic treatment (nailing, pinning, plating or wiring) with or without methyl methacrylate; clavicle. |
| 3 | 23491 | Prophylactic treatment (nailing, pinning, plating, or wiring) with or without methyl methacrylate; proximal humerus and humeral head. |
| | | Fracture and/or Dislocation |
| 1 | 23500 | Treatment of closed clavicular fracture; without manipulation. |
| 3 | 23510 | Treatment of open clavicular fracture, with uncomplicated soft tissue closure. |
| 1 | 23520 | Treatment of closed sternoclavicular dislocation; without manipulation. |
| 1 | 23525 | Treatment of closed sternoclavicular dislocation; with manipulation. |
| 3 | 23530 | Open treatment of closed or open sternoclavicular dislocation, acute or chronic. |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| 4 | 23532 | Open treatment of closed or open sternoclavicular dislocation, acute or chronic; with fascial graft (includes obtaining graft). |
| 1 | 23540 | Treatment of closed acromioclavicular dislocation; without manipulation. |
| 1 | 23545 | Treatment of closed acromioclavicular dislocation; with manipulation |
| 3 | 23550 | Open treatment of closed or open acromioclavicular dislocation, acute or chronic. |
| 4 | 23552 | Open treatment of closed or open acromioclavicular dislocation, acute or chronic; with fascial graft (includes obtaining graft). |
| 1 | 23570 | Treatment of closed scapular fracture; without manipulation. |
| 1 | 23575 | Treatment of closed scapular fracture; with manipulation (with or without shoulder joint involvement). |
| 3 | 23580 | Treatment of open scapular fracture, with uncomplicated soft tissue closure. |
| 3 | 23585 | Open treatment of closed or open scapular fracture juxta-articular. |
| 1 | 23600 | Treatment of closed humeral (surgical or anetomical neck) fracture; without manipulation. |
| 4 | 23615 | Open treatment of closed or open humeral (surgical or anetomical neck) fracture, with or without internal or external skeletal fixation. |
| 1 | 23620 | *Treatment of closed greater tuberosity fracture; without manipulation. |
| 1 | 23650 | *Treatment of closed shoulder dislocation, with manipulation; without anesthesia. |
| | | *Arthrodesis* |
| 4 | 23800 | Arthrodesis, shoulder joint with or without local bone graft. |
| 5 | 23802 | Arthrodesis, shoulder joint, with primary autogenous graft (includes obtaining graft). |
| | | *Amputation* |
| 3 | 23921 | Disarticulation of shoulder; secondary closure or scar revision. |
| | | *Humerus (Upper Arm) and Elbow.* |
| | | *Incision.* |
| 2 | 23931 | Incision and drainage, upper arm or elbow area; infected bursa. |
| | | *Excision.* |
| 1 | 24065 | Biopsy, soft tissue of upper arm or elbow area; superficial. |
| 2 | 24066 | Biopsy, soft tissue of upper arm or elbow area; deep. |
| 3 | 24077 | Radical resection of tumor (EG, malignant neoplasm), soft tissue of upper arm or elbow area. |
| 4 | 24102 | Arthrotomy, elbow; for synovectomy. |
| 3 | 24150 | Radical resection for tumor, shaft or distal humerus. |
| 4 | 24151 | Radical resection for tumor, shaft or distal humerus; with autograft (includes obtaining graft). |
| 3 | 24152 | Radical resection for tumor, radial head or neck. |
| 4 | 24153 | Radical resection for tumor, radial head or neck; with autograft (includes obtaining graft). |
| | | *Repair, Revision and Reconstruction.* |
| 5 | 24360 | Arthroplasty, elbow; with membrane. |
| 5 | 24361 | Arthroplasty, elbow; with distal humeral prosthetic replacement. |
| 7 | 24363 | Arthroplasty, elbow; with distal humerus and proximal ulnar prosthetic replacement ("total elbow"). |
| 5 | 24365 | Arthroplasty, radial head. |
| 5 | 24366 | Arthroplasty, radial head; with implant. |
| 4 | 24400 | Osteotomy, humerus, with or without internal fixation. |
| 4 | 24410 | Multiple osteotomies with realignment on intramedullary rod, humeral shaft (solfield type procedure). |
| 3 | 24430 | Repair of nonunion or malunion, humerus; without graft (EG, compression technique). |
| 4 | 24435 | Repair of nonunion or malunion, humerus; with iliac or other autograft (includes obtaining graft). |
| 3 | 24498 | Prophylactic treatment (nailing, pinning, plating or wiring); with or without methylmethacrylate, humerus. |
| | | *Fracture and/or Dislocation.* |
| 1 | 24500 | Treatment of closed humeral shaft fracture; without manipulation. |
| 1 | 24560 | Treatment of closed humeral epicondylar fracture, medial or lateral; without manipulation. |
| 1 | 24576 | Treatment of closed humeral condylar fracture, medial or lateral; without manipulation. |
| 5 | 24587 | Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with implant. |
| 5 | 24588 | Open treatment of closed or open comminuted elbow fracture (fracture distal humerus and/or proximal ulna/radius), with or without internal or external skeletal fixation; with implants and fascia lata ligament reconstruction. |
| 1 | 24600 | Treatment of closed elbow dislocation; without anesthesia. |
| 2 | 24660 | Treatmeht of open radial head or neck fracture, with uncomplicated soft tissue closure. |
| 1 | 24670 | Treatment of closed ulnar fracture, proximal end (olecranon process); without manipulation. |
| | | *Athrodesis* |
| 4 | 24800 | Arthrodesis, elbow joint; with or without local autograft or allograft |
| 5 | 24802 | Arthrodesis, elbow joint; with autograft (includes obtaining graft other than locally obtained). |
| | | *Amputation* |
| 3 | 24925 | Amputation, arm through humerous; secondary closure or scar revision. |
| | | **Forearm and Wrist** |
| | | Incision |
| 2 | 25031 | Incision and drainage, forearm and/or wrist; infected bursa |
| | | *Excision* |
| 1 | 25065 | *Biopsy, soft tissue of forearm/or wrist; superficial |
| 2 | 25075 | Excision, tumor, forearm and/or wrist area; subcutaneous. |
| 3 | 25077 | Radical resection of tumor (eg, malignant neoplasm), soft tissue of forearm and/or wrist area. |
| 4 | 25105 | Arthrotomy, wrist joint; for synovectomy. |
| 4 | 25115 | Radical excision of bursa, synovia of wrist, or forearm tendon sheaths (eg, tenosynovitis, fungus, TBC, or other granulomas, rheumatoid arthritis); flexors. |
| 4 | 25116 | Radical excision of bursa, synovia of wrist, or forearm tendon sheaths (eg, tenosynovitis, fungus, TBC, or other granulomas, rheumatoid arthritis); extensors, with or without transposition of dorsal retinaculum. |
| 2 | 25118 | Synovectomy, extensor tendon sheath, wrist, single compartment. |
| 3 | 25119 | Synovectomy, extensor tendon sheath, wrist, single compartment; with resection of distal ULNA. |
| 3 | 25170 | Radical resection for tumor, radius or ulna. |
| | | *Introduction or Removal* |
| 1 | 25250 | Removal of wrist prosthesis (separate procedure). |
| 1 | 25251 | Removal of wrist prosthesis; complicated, including "total wrist". |
| | | *Repair, Revision or Reconstruction* |
| 5 | 25330 | Arthroplasty, wrist. |

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| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 5 | 25331 | Arthroplasty, wrist; with implant. |
| 5 | 25332 | Arthroplasty, wrist, pseudarthrosis type with internal fixation. |
| 3 | 25335 | Centralization of wrist on ulna (EG, radial club hand). |
| 3 | 25350 | Osteotomy, radius; distal third. |
| 3 | 25356 | Osteotomy, radius; middle or proximal third. |
| 3 | 25360 | Osteotomy; ulna. |
| 3 | 25365 | Osteotomy; radius and ulna. |
| 3 | 25370 | Multiple osteotomies, with realignment on intramedullary rod (solid type procedure); radius or ulna. |
| 4 | 25375 | Multiple osteotomies, with realignment on intramedullary rod (solid type procedure); radius and ulna. |
| 3 | 25400 | Repair of nonunion or malunion, radius or ulna; without graft (EG, compression technique). |
| 4 | 25405 | Repair of nonunion or malunion, radius or ulna; with iliac or other autograft (includes obtaining graft). |
| 3 | 25415 | Repair of nonunion or malunion, radius and ulna; without graft (EG, compression technique). |
| 4 | 25420 | Repair of nonunion or malunion, radius and ulna; with iliac or other autograft (includes obtaining graft). |
| 1 | 25425 | Repair of defect with autograft; radius or ulna. |
| 1 | 25426 | Repair of defect with autograft; radius and ulna. |
| 4 | 25440 | Repair of nonunion, scaphoid (navicular) bone, with or without radial styloidectomy (includes obtaining graft and necessary fixation). |
| 5 | 25441 | Arthroplasty with prosthetic replacement; distal radius. |
| 5 | 25442 | Arthroplasty with prosthetic replacement; distal ulna. |
| 5 | 25443 | Arthroplasty with prosthetic replacement; scaphoid (navicular). |
| 5 | 25444 | Arthroplasty with prosthetic replacement; lunate. |
| 5 | 25445 | Arthroplasty with prosthetic replacement; trapezium. |
| 7 | 25446 | Arthroplasty with prosthetic replacement; distal radius and partial or entire carpus ("total wrist"). |
| 5 | 25447 | Interposition arthroplasty, intercarpal or carpometacarpal joints. |
| 5 | 25449 | Revision of arthroplasty, including removal of implant, wrist joint. |
| 3 | 25480 | Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; radius. |
| 3 | 25481 | Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; ulna. |
| 3 | 25482 | Prophylactic treatment (nailing, pinning, plating or wiring), with or without methyl methacrylate; radius and ulna. |
| | | *Fracture and/or Dislocation* |
| 2 | 25624 | Treatment of closed carpal scaphoid (navicular) fracture; with manipulation. |
| | | *Arthrodesis* |
| 4 | 25800 | Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); without bone graft. |
| 5 | 25805 | Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); with sliding graft. |
| 5 | 25810 | Arthrodesis, wrist joint (including radiocarpal and/or ulnocarpal fusion); with iliac or other autograft (includes obtaining graft). |
| 4 | 25820 | Intercarpal fusion; without bone graft. |
| 5 | 25825 | Intercarpal fusion; with autograft (includes obtaining graft). |
| | | *Amputation* |
| 3 | 25907 | Amputation, forearm, through radius and ulna; secondary closure or scar revision. |
| 3 | 25922 | Disarticulation through wrist; secondary closure or scar revision. |
| 3 | 25929 | Transmetacarpal amputation; secondary closure or scar revision. |
| | | **Hand and Fingers** |
| | | *Excision* |
| 3 | 26117 | Radical resection of tumor (eg, malignant neoplasm), soft tissue of hand or finger. |
| 3 | 26130 | Synovectomy, carpometacarpal joint. |
| 3 | 26236 | Partial excision (craterization, saucerization, or diaphysectomy) of bone (eg, for osteomyelitis); distal phalanx of finger. |
| 3 | 26250 | Radical resection (osteotomy) for tumor, proximal or middle phalanx of finger. |
| 7 | 26262 | Radical resection (osteotomy) for tumor, distal phalanx of finger. |
| | | *Introduction or Removal* |
| 2 | 26320 | Removal of implant from finger or hand. |
| | | *Repair, Revision or Reconstruction* |
| 4 | 26357 | Flexor tendon repair or advancement, single, in "no man's land"; secondary, each tendon. |
| 4 | 26415 | Extensor tendon excision, implantation of plastic tube or rod for delayed extensor tendon graft, hand or finger. |
| 3 | 26437 | Extensor tendon realignment, hand. |
| 1 | 26478 | Tendon lengthening, flexor, hand or finger, single, each. |
| 1 | 26479 | Tendon shortening, flexor, hand or finger, single, each. |
| 4 | 26504 | Tendon pulley reconstruction; with tendon prosthesis (separate procedure). |
| 5 | 26527 | Arthroplasty, carpometacarpal joint. |
| 4 | 26548 | Repair and reconstruction, finger, volar plate, interphalangeal joint. |
| 2 | 26560 | Repair of syndactyly (web finger) each web space; with skin flaps. |
| 3 | 26561 | Repair of syndactyly (web finger) each web space; with skin flaps and grafts. |
| 4 | 26562 | Repair of syndactyly (web finger) each web space; complex (eg, involving bone, nails). |
| 5 | 26565 | Osteotomy for correction of deformity; metacarpal. |
| 5 | 26580 | Repair cleft hand. |
| 5 | 26590 | Repair macrodactylia. |
| 3 | 26591 | Repair, intrinsic muscles of hand (specify). |
| 3 | 26599 | Release, intrinsic muscles of hand (specify). |
| 2 | 26596 | Excision of constricting ring of finger, with multiple Z-plasties. |
| 3 | 26597 | Release of scar contracture, flexor or extensor, with skin grafts, rearrangement flaps, or Z-plasties, hand and/or finger. |
| | | *Fracture and/or Dislocations* |
| 4 | 26615 | Open treatment of closed or open metacarpal fracture, single, with or without internal or external skeletal fixation, each bone. |
| 2 | 26742 | Treatment of closed articular fracture, involving metacarpophalangeal or proximal interphalangeal joint; with manipulation, each |
| 2 | 26756 | Treatment of closed distal phalangeal fracture; finger or thumb; with percutaneous pinning, each. |
| 2 | 26776 | Treatment of closed interphalangeal joint dislocation, single, with manipulation; with percutaneous pinning. |
| | | *Arthrodesis* |
| 4 | 26850 | Arthrodesis, metacarpophalangeal joint, with or without internal fixation. |
| 4 | 26852 | Arthrodesis, metacarpophalangeal joint, with or without internal fixation; with autograft (includes obtaining graft). |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| | | **Pelvis and Hip Joint** |
| | | *Excision* |
| 3 | 27049 | Radical resection of tumor (eg, malignant neoplasm), soft tissue of pelvis and hip area. |
| 3 | 27050 | Arthrotomy, for biopsy; sacroiliac joint. |
| 5 | 27060 | Excision; ischial bursa. |
| 5 | 27062 | Excision; trochanteric bursa or calcification. |
| | | *Introduction and/or Removal* |
| 1 | 27086 | Removal of foreign body, pelvis or hip; subcutaneous tissue. |
| | | *Repair, Revision or Reconstruction* |
| 3 | 27097 | Hamstring recession, proximal. |
| 3 | 27098 | Adductor transfer to ischium. |
| 4 | 27100 | Transfer external oblique muscle to greater trochanter including fascial or tendon extension (graft). |
| 4 | 27105 | Transfer paraspinal muscle to hip (includes fascial or tendon extension graft). |
| 4 | 27110 | Transfer iliopsoas to greater trochanter. |
| 4 | 27111 | Transfer iliopsoas to femoral neck. |
| | | *Fractures and/or Dislocations* |
| 1 | 27190 | Treatment of closed sacral feature. |
| 2 | 27192 | Open treatment of closed or open sacral fracture. |
| 1 | 27195 | Treatment of sacroiliac and/or symphysis pubis dislocation, without manipulation. |
| 2 | 27196 | Treatment of sacroiliac and/or symphysis pubis dislocation, with anesthesia and with manipulation. |
| 2 | 27201 | Treatment of open coccygeal fracture. |
| 1 | 27210 | Treatment of closed iliac, pubic or ischial fracture. |
| 1 | 27230 | Treatment of closed femoral fracture, proximal end, neck; without manipulation. |
| 1 | 27236 | Treatment of closed intertrochanteric, pertrochanteric, or subtrochanteric femoral fracture; without manipulation. |
| 1 | 27246 | Treatment of closed greater trochanteric fracture, without manipulation. |
| 1 | 27250 | Treatment of closed hip dislocation, traumatic; without anesthesia. |
| 2 | 27252 | Treatment of closed hip dislocation, traumatic; requiring anesthesia. |
| 1 | 27255 | Treatment of atraumatic hip dislocation (eg, post-total hip arthroplasty); without anesthesia. |
| 2 | 27256 | Treatment of atraumatic hip dislocation (eg, post-total hip arthroplasty); requiring general anesthesia. |
| | | **Femur (Thigh Region) and Knee Joint** |
| | | *Excision* |
| 1 | 27323 | Biopsy, soft tissue of thigh or knee area; superficial. |
| 4 | 27331 | Arthrotomy, knee with joint exploration, with or without biopsy, with or without removal of loose or foreign bodies. |
| 4 | 27332 | Arthrotomy, knee, for excision of semilunar cartilage (meniscectomy); medial or lateral. |
| 4 | 27333 | Arthrotomy, knee, for excision of semilunar cartilage (meniscectomy); medial and lateral. |
| 4 | 27334 | Arthrotomy, knee, for synovectomy; anterior or posterior. |
| 4 | 27335 | Arthrotomy, knee, for synovectomy; anterior and posterior including popliteal area. |
| 3 | 27340 | Excision, prepatellar bursa. |
| 4 | 27356 | Excision or curettage of bone cyst or benign tumor of femur; with allograft. |
| | | *Repair, Revision or Reconstruction* |
| 1 | 27380 | Suture of infrapatellar tendon; primary. |
| 3 | 27381 | Suture of infrapatellar tendon; secondary reconstruction, including fascial or tendon graft. |
| 3 | 27385 | Suture of quadriceps or hamstring muscle rupture; primary. |
| 3 | 27386 | Suture of quadriceps or hamstring muscle rupture; secondary reconstruction, including fascial or tendon graft. |
| 4 | 27403 | Arthrotomy with open meniscus repair. |
| 4 | 27405 | Repair, primary, torn ligament and/or capsule, knee; collateral. |
| 4 | 27407 | Repair, primary, torn ligament and/or capsule, knee; cruciate. |
| 4 | 27409 | Repair, primary, torn ligament and/or capsule, knee; collateral and cruciate ligaments. |
| 3 | 27418 | Anterior tibial tubercle plasty for chondromalacia patellae (maquet procedure). |
| 3 | 27427 | Ligamentous reconstruction (augmentation), knee; extra-articular. |
| 4 | 27428 | Ligamentous reconstruction (augmentation), knee; intra-articular (open). |
| 4 | 27429 | Ligamentous reconstruction (augmentation), knee; intra-articular (open) and extra-articular. |
| 4 | 27437 | Arthroplasty, patella; without prosthesis. |
| 5 | 27438 | Arthroplasty, patella; with prosthesis. |
| 5 | 27440 | Arthroplasty, knee, tibial plateau. |
| 5 | 27441 | Arthroplasty, knee, tibial plateau; with debridement and partial synovectomy. |
| 5 | 27442 | Arthroplasty, knee, femoral condyles or tibial plateaus. |
| 5 | 27443 | Arthroplasty, knee, femoral condyles or tibial plateaus; with debridement and partial synovectomy. |
| | | *Fractures and/or Dislocations* |
| 1 | 27500 | Treatment of closed femoral shaft fracture (including supracondylar); without manipulation (includes traction). |
| 2 | 27502 | Treatment of closed femoral shaft fracture (including supracondylar); with manipulation. |
| 2 | 27504 | Treatment of closed femoral shaft fracture (including supracondylar), with uncomplicated soft tissue closure. |
| 1 | 27506 | Treatment of closed femoral fracture, distal end, medial or lateral condyle; without manipulation. |
| 1 | 27510 | Treatment of closed femoral fracture, distal end, medial or lateral condyle; without manipulation. |
| 2 | 27512 | Treatment of open femoral fracture, distal end, medial or lateral condyle; with uncomplicated soft tissue closure. |
| 1 | 27516 | Treatment of closed distal femoral epiphyseal separation; without manipulation (includes traction). |
| 1 | 27517 | Treatment of closed distal femoral epiphyseal separation; with manipulation. |
| 1 | 27520 | Treatment of closed patellar fracture, without manipulation. |
| 1 | 27530 | Treatment of closed tibial fracture, proximal (plateau); without manipulation. |
| 1 | 27538 | Treatment of closed intercondylar spine(s) fracture(s) of knee. |
| 1 | 27550 | Treatment of closed knee dislocation; without anesthesia. |
| 1 | 27560 | Treatment of closed patellar dislocation; without anesthesia. |
| | | *Amputation* |
| 3 | 27594 | Amputation, thigh, through femur, any level; secondary closure or scar revision. |

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| Pymt grp | CPT–4 code | Description |
|---|---|---|
| | | **Leg (Tibia and Fibula) and Ankle Joint** |
| | | *Incision* |
| 2 | 27604 | Incision and drainage, leg or ankle; infected bursa. |
| | | *Excision* |
| 1 | 27613 | Biopsy, soft tissue of leg or ankle area; superficial. |
| 2 | 27614 | Biopsy, soft tissue of leg or ankle area; deep. |
| 3 | 27615 | Radical resection of tumor (eg, malignant neoplasm), soft tissue of leg or ankle area. |
| 2 | 27618 | Excision, tumor, leg or ankle area; subcutaneous. |
| 3 | 27619 | Excision, tumor, leg or ankle area; deep, subfascial or intramuscular. |
| 4 | 27625 | Arthrotomy, ankle, for synovectomy; arthrotomy, ankle, for synovectomy. |
| 4 | 27626 | including tenosynovectomy. |
| | | *Repair, Revision or Reconstruction* |
| 3 | 27687 | Gastrocnemius recession (ER, Strayer Procedure). |
| 2 | 27695 | Suture, primary, torn, ruptured or severed ligament, ankle; collateral. |
| 2 | 27696 | Suture, primary, torn, ruptured or severed ligament, ankle; both collateral ligaments. |
| 2 | 27698 | Suture, secondary repair, torn, ruptured or severed ligament, ankle, collateral (EG, Watson-Jones procedure). |
| 5 | 27700 | Arthroplasty, ankle. |
| 2 | 27704 | Removal of ankle implant. |
| 2 | 27705 | Osteotomy; tibia. |
| 2 | 27707 | Osteotomy; fibula. |
| 2 | 27709 | Osteotomy; tibia and fibula. |
| 4 | 27715 | Osteoplasty, tibia and fibula, lengthening. |
| 2 | 27730 | Epiphyseal arrest by epiphysiodesis or stapling; distal tibia. |
| 2 | 27732 | Epiphyseal arrest by epiphysiodesis or stapling; distal fibula. |
| 2 | 27734 | Epiphyseal arrest by epiphysiodesis or stapling; distal tibia and fibula. |
| 2 | 27740 | Epiphyseal arrest by epiphysiodesis or stapling; combined, proximal and distal tibia and fibula. |
| 2 | 27742 | Epiphyseal arrest by epiphysiodesis or stapling; combined, proximal and distal tibia and fibula and distal femur. |
| 3 | 27745 | Prophylactic treatment (nailing, pinning, plating or wiring); with or without methylmethacrylate, tibia. |
| | | *Fractures and/or Dislocations* |
| 1 | 27750 | Treatment of closed tibial shaft fracture; without manipulation. |
| 1 | 27752 | Treatment of closed tibial shaft fracture; without manipulation. |
| 2 | 27754 | Treatment of open tibial shaft fracture; with uncomplicated soft tissue closure. |
| 1 | 27760 | *Treatment of closed distal tibial fracture (medial malleolus); without manipulation. |
| 1 | 27762 | Treatment of closed distal tibial fracture (medial malleolus); with manipulation. |
| 1 | 27780 | *Treatment of closed proximal fibula or shaft fracture; without manipulation. |
| 1 | 27786 | *Treatment of closed distal fibula fracture (lateral malleolus); without manipulation. |
| 1 | 27788 | Treatment of closed distal fibula fracture (lateral malleolus); without manipulation. |
| 1 | 27800 | Treatment of closed tibial and fibula fractures, shafts; without manipulation. |
| 1 | 27806 | Treatment of closed bimalleolar ankle fracture, (including pott's); without manipulation. |
| 1 | 27810 | Treatment of closed bimalleolar ankle fracture, (including pott's); with manipulation. |
| 2 | 27812 | Treatment of open bimalleolar ankle fracture, with uncomplicated soft tissue closure. |
| 3 | 27814 | Open treatment of closed or open bimalleolar ankle fracture, with or without internal skeletal fixation. |
| 1 | 27816 | Treatment of closed trimalleolar ankle facture; without manipulation. |
| 1 | 27818 | Treatment of closed trimalleolar ankle fracture; without manipulation. |
| 2 | 27820 | Treatment of open trimalleolar ankle fracture; with uncomplicated soft tissue closure. |
| 3 | 27822 | Open treatment of closed or open trimalleolar ankle fracture, with our without internal or external skeletal fixation, medial and/or lateral malleolus; only |
| 3 | 27823 | Open treatment of closed or open trimalleolar ankle fracture; with or without internal or external skeletal fixation, medial and/or lateral malleolus; including internal skeletal fixation of posterior lip (malleolus). |
| 1 | 27830 | Treatment of proximal tibiofibular joint dislocation; without anesthesia. |
| 1 | 27831 | Treatment of proximal tibiofibular joint dislocation; requiring anesthesia. |
| 2 | 27832 | Open treatment of proximal tibiofibular joint dislocation; with fixation or excision. |
| 1 | 27840 | Treatment of ankle dislocation; with anesthesia. |
| | | *Arthrodesis* |
| 4 | 27870 | Arthrodesis, ankle, any method. |
| 4 | 27871 | Arthrodesis, tibiofibular joint, proximal or distal |
| | | *Amputation* |
| 3 | 27884 | Amputation leg, through tibia and fibula; secondary closure or scar revision. |
| | | **Foot** |
| | | *Incision* |
| 2 | 28020 | Arthrotomy, with exploration, drainage or removal of loose or foreign body; intertarsal or tarsometatarsal joint. |
| | | *Excision* |
| 2 | 28043 | *Excision, tumor, foot; subcutaneous. |
| 3 | 28046 | Radical resection of tumor (EG, malignant neoplasm), soft tissue of foot. |
| 2 | 28054 | Arthrotomy for synovial biopsy; interphalangeal joint. |
| 2 | 28060 | Fasciectomy, excision of plantar fascia; partial (separate procedure). |
| 3 | 28070 | Synovectomy; intertarsal or tarsometatarsal joing, each. |
| 2 | 28100 | Excision or curettage of bone cyst or benign tumor, talus or calcaneus. |
| 2 | 28104 | Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus. |
| 3 | 28106 | Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except talus or calcaneus; with iliac or other autograft (including obtaining graft). |
| 3 | 28118 | Ostectomy, excision of tarsal coalition. |
| 4 | 28119 | Ostectomy, calcaneus for spur, with or without plantar fascial release. |
| 3 | 28120 | Talectomy (astragalectomy) |
| 3 | 28150 | Phalangectomy of toe, single, each. |
| | | *Introduction and/or Removal* |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 2 | 28192 | Removal of foreign body, foot; deep. |
| | | *Repair, Revision or Reconstruction* |
| 2 | 28236 | Transfer of tendon, anterior tibial into tarsal bone. |
| 3 | 28238 | Advancement of posterior tibial tendon with excision of accessory navicular bone (Kidner type procedure). |
| 2 | 28240 | Tenotomy, lengthening, or release, abductor hallucis muscle. |
| 4 | 28252 | Capsulotomy, midfoot, extensive, including posterior talotibial capsulotomy and tendon(s) lengthening as for resistant clubfoot deformity |
| 2 | 28280 | * Webbing operation (create syndactylism of toes) for web corn (Kelikian type procedure). |
| 3 | 28285 | Osteotomy, partial, exostectomy or condylectomy, single, metatarsal head, first through fifth, each metatarsal head, (separate procedure). |
| 2 | 28300 | * Osteotomy; calcaneus (Dwyer or Chambers type procedure), with or without internal fixation. |
| 2 | 28302 | Osteotomy; talus |
| 2 | 28304 | Osteotomy, midtarsal bones, other than calcaneus or talus. |
| 3 | 28305 | Osteotomy, midtarsal bones, other than calcaneus or talus; with stucgraft (includes obtaining graft) (Fowler type). |
| 4 | 28309 | * Osteotomy, metatarsals—multiple, for cavus foot (Swenson type procedure). |
| 2 | 28313 | Reconstruction, angular deformity of toe (overlapping second toe, fifth toe, curly toes), soft tissue procedures only |
| 4 | 28320 | Repair of nonunion or malunion tarsal bones (eg, calcaneus, talus). |
| | | *Fracture and/or dislocation* |
| 1 | 28400 | * Treatment of closed calcaneal fracture; without manipulation. |
| 3 | 28410 | Treatment of open calcaneal fracture, with uncomplicated soft tissue closure. |
| 3 | 28415 | Open treatment of closed or open calcaneal fracture, with or without internal or external skeletal fixation. |
| 3 | 28440 | Treatment of open talus fracture, with uncomplicated soft tissue closure. |
| 3 | 28445 | Open treatment of closed or open talus fracture, with or without internal skeletal fixation. |
| 3 | 28450 | Treatment of open tarsal bone fracture (except talus and calcaneus), with uncomplicated soft tissue closure, each. |
| 2 | 28476 | Treatment of closed metatarsal fracture; with manipulation and percutaneous pinning, each. |
| 3 | 28480 | Treatment of open metatarsal fracture, with uncomplicated soft tissue closure, each. |
| 2 | 28496 | Treatment of closed fracture great toe, phalanx or phalanges; with manipulation and percutaneous pinning. |
| 1 | 28535 | Treatment of closed metatarsophalangeal joint dislocation; requiring anesthesia. |
| 3 | 28540 | Treatment of open metatarsophalangeal joint dislocation, with uncomplicated soft tissue closure. |
| 1 | 28665 | * Treatment of closed interphalangeal joint dislocation; requiring anesthesia. |
| | | *Arthrodesis* |
| 4 | 28705 | Pantalar arthrodesis. |
| 4 | 28715 | Triple arthrodesis. |
| 4 | 28725 | Subtalar arthrodesis. |
| 4 | 28730 | Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse. |
| 4 | 28735 | Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse—with osteotomy as for flatfoot correction. |
| 5 | 28737 | Arthrodesis, midtarsal navicular-cuneiform, with tendon lengthening and advancement (Miller type procedure) |
| 4 | 28740 | Arthrodesis, midtarsal or tarsometatarsal, single joint. |
| | | *Arthroscopy* |
| 3 | 29815 | Arthroscopy, shoulder, diagnostic, with or without synovial biopsy (separate procedure). |
| 3 | 29819 | Arthroscopy, shoulder, surgical; with removal of loose body or foreign body |
| 3 | 29820 | Arthroscopy, shoulder, surgical; synovectomy, partial. |
| 3 | 29821 | Arthroscopy, shoulder, surgical; synovectomy, complete. |
| 3 | 29822 | Arthroscopy, shoulder, surgical; debridement, limited. |
| 3 | 29823 | Arthroscopy, shoulder, surgical; debridement, extensive. |
| 3 | 29825 | Arthroscopy, shoulder, surgical; with lysis and resection of adhesions with or without manipulation. |
| 3 | 29830 | * Arthroscopy, elbow, diagnostic, with or without synovial biopsy (separate procedure). |
| 3 | 29834 | * Arthroscopy, elbow, surgical; with removal of loose body or foreign body |
| 3 | 29835 | * Arthroscopy, elbow, surgical; synovectomy, partial. |
| 3 | 29836 | * Arthroscopy, elbow, surgical; synovectomy, complete. |
| 3 | 29837 | * Arthroscopy, elbow, surgical; debridement, limited. |
| 3 | 29838 | * Arthroscopy, elbow, surgical; debridement, extensive. |
| 3 | 29840 | Arthroscopy, wrist, diagnostic, with or without synovial; biopsy (separate procedure). |
| 3 | 29843 | Arthroscopy, wrist, surgical; for infection, lavage and drainage. |
| 3 | 29844 | Arthroscopy, wrist, surgical; synovectomy, partial. |
| 3 | 29845 | * Arthroscopy, wrist, surgical; synovectomy, complete. |
| 3 | 29846 | Arthroscopy, wrist, surgical; excision of triangular fibrocartilage and/or joint debridement. |
| 3 | 29847 | Arthroscopy, wrist, surgical; internal fixation for fracture or instability |
| 4 | 29850 | Arthroscopy, knee, surgical; with meniscectomy (medial and lateral, including any meniscal shav |
| 3 | 29863 | Arthroscopy, knee, surgical; with meniscus repair (medial and lateral). |
| 3 | 29865 | Arthroscopy, knee, surgical; drilling for osteochondritis dissecans with bone grafting; with or without internal fixation (including debridement of base of lesion). |
| 3 | 29868 | Arthroscopically aided anterior cruciate ligament repair/augmentation or reconstruction. |
| 3 | 29869 | Arthroscopically aided posterior cruciate ligament repair/augmentation or reconstruction. |
| 3 | 29894 | * Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; with removal of loose body or foreign body. |
| 3 | 29895 | Arthroscopy, ankle (tibiotalar, and fibulotalar joints), surgical synovectomy, partial. |
| 3 | 29897 | * Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; debridement, limited. |
| 3 | 29898 | * Arthroscopy, ankle (tibiotalar and fibulotalar joints), surgical; debridement, extensive. |
| | | **Respiratory System—Nose** |
| | | *Excision* |
| 1 | 30120 | Excision or surgical planing of skin of nose for rhinophyma. |
| 1 | 30124 | * Excision dermoid cyst, nose; simple, skin, subcutaneous. |
| | | *Repair* |
| 5 | 30540 | Repair choanal stresis; intranasal. |
| 2 | 30560 | Lysis intranasal synechia. |
| | | *Other Procedures* |
| 1 | 30820 | * Cyrosurgery of turbinates, unilateral or bilateral. |
| 1 | 30903 | * Control nasal hemorrhage, anterior, complex (cauterization with local anesthesia and packing). |
| 1 | 30905 | Control nasal hemorrhage, posterior, with posterior nasal packs and/or cauterization; initial. |

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| 1 | 30906 | Control nasal hemorrhage, posterior, with posterior nasal packs and/or cauterization; subsequent. |
| | | **Accessory Sinuses** |
| | | *Incision* |
| 2 | 31050 | Sinusotomy, sphenoid, with or without biopsy. |
| 4 | 31051 | Sinusotomy, sphenoid, with or without biopsy; with mucosal stripping or removal of polyp(s) |
| 4 | 31075 | Sinusotomy frontal; transorbital, unilateral (for mucocele or osteitis, lynch type). |
| 4 | 31080 | Sinusotomy frontal obliterative without osteoplastic flap, brow incision (includes ablation). |
| 4 | 31085 | Sinusotomy frontal; nonobliterative, with osteoplastic flap, brow incision. |
| 5 | 31090 | Sinusotomy combined, three or more sinuses. |
| | | *Endoscopy* |
| 2 | 31252 | * Nasal endoscopy, surgical; with nasal polypectomy. |
| 3 | 31254 | * Nasal endoscopy, surgical; with ethmoidectomy, partial. |
| 5 | 31255 | * Nasal endoscopy, surgical; with ethmoidectomy, anterior and posterior (total). |
| 3 | 31256 | * Nasal endoscopy, surgical; with maxillary antrostomy. |
| 3 | 31258 | * Nasal endoscopy, surgical; with removal of foreign body(s). |
| 2 | 31260 | * Maxillary sinus endoscopy, diagnostic, with or without biopsy. |
| 3 | 31263 | * Maxillary sinus endoscopy, surgical; with removal of foreign body(s). |
| 3 | 31265 | * Maxillary sinus endoscopy, surgical; with removal of cyst. |
| 3 | 31267 | Maxillary sinus endoscopy, surgical; with removal of mucous membrane and/or polyps. |
| 3 | 31268 | * Maxillary sinus endoscopy, surgical; with removal of fungus ball. |
| 1 | 31270 | * Sphenoid endoscopy, diagnostic. |
| 2 | 31275 | * Sphenoid endoscopy, surgical; including sphenoidotomy. |
| 3 | 31277 | * Sphenoid endoscopy, surgical; with removal of mucous membrane. |
| | | **Larynx** |
| | | *Excision* |
| 5 | 31300 | Laryngotomy (thyrotomy, laryngofissure); with removal of tumor or laryngocele, cordectomy. |
| 2 | 31320 | Laryngotomy (thyrotomy, laryngofissure); diagnostic laryngoscopy direct, with or without tracheoscopy; diagnostic, newborn. |
| | | *Endoscopy* |
| 1 | 31520 | Laryngoscopy direct, with or without tracheoscopy; diagnostic, newborn. |
| 2 | 31528 | Laryngoscopy direct, with or without tracheoscopy; with dilatation, initial. |
| 2 | 31529 | Laryngoscopy direct, with or without tracheoscopy; with dilatation, subsequent. |
| 5 | 31560 | Laryngoplasty; for laryngeal web, two stage, with keel insertion and removal. |
| 5 | 31562 | Laryngoplasty; for laryngeal stenosis, with graft or core mold, including tracheotomy. |
| 4 | 31584 | Laryngoplasty; with open reduction of fracture. |
| 1 | 31586 | Treatment of closed laryngeal fracture; without manipulation. |
| 2 | 31586 | Treatment of closed laryngeal fracture; with closed manipulative reduction. |
| 5 | 31588 | Laryngoplasty, not otherwise specified (eg, for burns, reconstruction after partial laryngectomy). |
| 5 | 31590 | Laryngeal reinnervation by neuromuscular pedicle. |
| 2 | 31595 | Section recurrent laryngeal nerve, therapeutic (separate procedure), unilateral. |
| | | **Trachea and Bronchi** |
| | | *Endoscopy* |
| 2 | 31629 | Bronchoscopy; with transbronchial needle aspiration biopsy. |
| | | *Repair* |
| 5 | 31750 | Tracheoplasty; cervical. |
| 2 | 31755 | Tracheoplasty; tracheopharyngeal fistulization, each stage. |
| 4 | 31765 | Excision of tracheal tumor or carcinoma; cervical. |
| | | *Suture* |
| 2 | 31800 | Suture of external tracheal wound or injury; cervical. |
| 1 | 31820 | Surgical closure tracheostomy or fistula; without plastic repair. |
| 2 | 31825 | Surgical closure tracheostomy or fistula; with plastic repair. |
| 2 | 31830 | Revision of tracheostomy scar |
| | | **Lungs and Pleura** |
| | | *Incision* |
| 1 | 32000 | Thoracentesis, puncture of pleural cavity for aspiration, initial or subsequent. |
| 2 | 32005 | Chemical Pleurodesis (eg, for recurrent or persistent pneumothorax). |
| 2 | 32020 | Tube thoracostomy with or without water seal (eg, for abscess, hemothorax, empyema) (separate procedure). |
| | | *Excision* |
| 1 | 32400 | Biopsy, pleura; percutaneous needle. |
| 1 | 32405 | Biopsy, lung or mediastinum, percutaneous needle. |
| 1 | 32420 | Pneumonocentesis, puncture of lung for aspiration. |
| | | **Cardiovascular System—Heart and Pericardium** |
| | | *Pericardium* |
| 2 | 33010 | Pericardiocentesis; initial. |
| 2 | 33011 | Pericardiocentesis; subsequent. |
| | | **Arteries and Veins** |
| | | *Arterial Embolectomy or Thrombectomy.* |
| 3 | 34101 | Embolectomy or thrombectomy, with or without catether: axillary, brachial, innominate, subclavian artery, by arm incision. |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| | | *Intra-Arterial—Intra-Aortic:* |
| 4 | 36260 | Insertion of implantable intra-arterial infusion pump (eg, for chemotherapy of liver). |
| 2 | 36261 | Revision of implanted intra-arterial infusion pump. |
| 1 | 36262 | Removal of implanted intra-arterial infusion pump. |
| | | *Venous:* |
| 1 | 36488 | Placement of central venous catheter (subclavian, jugular, or other vein) (eg, for central venous pressure, hyper-alimentation, hemodialysis, or chemotherapy); percutaneous, age 2 years or under. |
| 1 | 36489 | Placement of central venous catheter (subclavian, jugular, or other vein) (eg, for central venous pressure, hyper-alimentation; hemodialysis, or chemotherapy); percutaneous, over age 2. |
| 1 | 36490 | Placement of central venous catheter (subclavian, jugular, or other vein) (eg, for central venous pressure, hyper-alimentation, hemodialysis, or chemotherapy); cutdown, age 2 years or under. |
| 1 | 36491 | Placement of central venous catheter (subclavian, jugular, or other vein) (eg, for central venous pressure, hyper-alimentation, hemodialysis, or chemotherapy); cutdown, over age 2. |
| 3 | 36495 | Insertion of implantable intravenous infusion pump or venous access port. |
| 2 | 36496 | Revision of implantable intravenous infusion pump or venous access port. |
| 1 | 36497 | Removal of implantable intravenous infusion pump or venous access port. |
| | | *Arterial.* |
| 1 | 36840 | Arterial catheterization for prolonged infusion therapy (chemotherapy), cutdown. |
| | | *Intervascular Cannulization or Shunt (Separate Procedure).* |
| 3 | 36800 | *Insertion of cannula for hemodialysis, other purpose; vein to vein. |
| 3 | 36810 | *Insertion of cannula for hemodialysis, other purpose; arteriovenous, external (scribner type). |
| 3 | 36815 | *Insertion of cannula for hemodialysis, other purpose; arteriovenous, external revision or closure. |
| 3 | 36820 | *Insertion of cannula for hemodialysis, other purpose; arteriovenous, internal (cimino type). |
| 3 | 36821 | *Arteriovenous anastomosis, direct, any site; creation of arteriovenous fistula. |
| 4 | 36825 | *Autogenous graft. |
| 4 | 36830 | *Creation of arteriovenous fistula; nonautogenous graft. |
| 4 | 36835 | *Insertion of Thomas Shunt. |
| 4 | 36840 | *Insertion mandril. |
| 4 | 36845 | *Anastomosis mandril. |
| 2 | 36860 | *Cannula declotting; without balloon catheter. |
| 3 | 36861 | *Cannula declotting; with balloon catheter. |
| | | **Hemic and Lymphatic Systems—Lymph nodes and lymphatic channels.** |
| | | *Incision.* |
| 1 | 38300 | *Drainage of lymph node abscess or lymphadenitis; simple. |
| | | *Excision.* |
| 1 | 38505 | Biopsy or excision of lymph node(s); by needle, superficial (eg, cervical, inguinal, axillary). |
| 2 | 38525 | Biopsy or excision of lymph node(s); deep axillary node(s). |
| | | **Digestive System—Vestibule of Mouth** |
| | | *Incision.* |
| 1 | 40806 | Incision of labial frenum (frenotomy). |
| | | *Excision, Destruction.* |
| 1 | 40819 | *Excision of frenum, labial or buccal (frenumectomy, frenulectomy, frenectomy). |
| 1 | 40820 | *Destruction of lesion or scar of vestibule of mouth by physical methods (eg, laser, thermal, cryo, chemical). |
| | | **Tongue, Floor of Mouth** |
| | | *Incision.* |
| 1 | 41006 | Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; sublingual, deep, supramylohyoid. |
| 1 | 41007 | Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; submental space. |
| 1 | 41008 | Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; submandibular space. |
| 1 | 41009 | Intraoral incision and drainage of abscess, cyst, or hematoma of tongue or floor of mouth; masticator space. |
| 1 | 41010 | Incision of lingual frenum (frenotomy). |
| 1 | 41015 | Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; sublingual. |
| 1 | 41016 | Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; submental. |
| 1 | 41017 | Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; submandibular. |
| 1 | 41018 | Extraoral incision and drainage of abscess, cyst, or hematoma of floor of mouth; masticator space. |
| | | *Excision.* |
| 1 | 41110 | *Excision of lesion of tongue without closure. |
| 2 | 41112 | Excision of lesion of tongue with closure; anterior two-thirds. |
| 2 | 41113 | Excision of lesion of tongue with closure; posterior one-third. |
| | | *Repair.* |
| 2 | 41250 | Repair of laceration 2.5 cm or less; floor of mouth and/or anterior two-thirds of tongue. |
| 2 | 41252 | Repair of laceration of tongue, floor of mouth, over 2.6 cm or complex. |
| | | *Other Procedures* |
| 1 | 41500 | Fixation of tongue, mechanical, other than suture (eg, K-wire). |
| 1 | 41510 | Suture of tongue to lip for micrognathia (Douglas type procedure). |
| 2 | 41520 | Frenoplasty (surgical revision of frenum, eg, with z-plasty). |
| | | **Dentoalveolar structures.** |
| | | *Incision* |
| 1 | 41800 | Drainage of abscess, cyst, hematoma from dentoalveolar structures. |
| 1 | 41805 | Removal of embedded foreign body from dentoalveolar structures soft tissues. |

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| | | **Palate, Uvula** |
| | | *Excision, destruction* |
| 5 | 42145 | Palatopharyngoplasty (eg, uvulopalatopharyngoplasty, uvulopharyngoplasty). |
| 1 | 42160 | Destruction of lesion, palate or uvula (thermal, cryo or chemical). |
| | | *Repair* |
| 1 | 42180 | Repair, laceration of palate; up to 2 cm. |
| 5 | 42200 | Palatoplasty for cleft palate, soft and/or hard palate only. |
| 5 | 42205 | Palatoplasty for cleft palate, with closure of alveolar ridge; soft tissue only. |
| 5 | 42210 | Palatoplasty for cleft palate, with closure of alveolar ridge; with bone graft to alveolar ridge (includes obtaining graft). |
| 7 | 42215 | Palatoplasty for cleft palate; major revision. |
| 5 | 42220 | Palatoplasty for cleft palate; secondary lengthening procedure. |
| 5 | 42225 | Palatoplasty for cleft palate; attachment pharyngeal flap. |
| 5 | 42235 | Repair of anterior palate, including vomer flap. |
| 4 | 42260 | Repair of nasolabial fistula. |
| 3 | 42281 | Insertion of pin-retained palatal prosthesis. |
| | | **Salivary Gland and Ducts** |
| | | *Incision* |
| 1 | 42300 | *Drainage of abscess; parotid, simple. |
| 1 | 42310 | *Drainage of abscess; submaxillary or sublingual, intraoral. |
| | | *Excision* |
| 2 | 42405 | Biopsy of salivary gland; incisional. |
| 3 | 42409 | *Marsupialization of sublingual salivary cyst (ranula). |
| 7 | 42410 | Excision of parotid tumor or parotid gland; lateral lobe, without nerve dissection. |
| 7 | 42420 | Excision of parotid tumor or parotid gland; total, with dissection and preservation of facial nerve. |
| 7 | 42425 | Excision of parotid tumor or parotid gland; total, en bloc removal with sacrifice of facial nerve. |
| 7 | 42426 | Excision of parotid tumor or parotid gland; total, with unilateral radical neck dissection. |
| | | *Repair* |
| 4 | 42510 | *Parotid duct diversion, bilateral (Wilke type procedure); with ligation of both submandibular (Wharton's) ducts. |
| | | **Pharynx, Adenoids, and Tonsils** |
| | | *Incision* |
| 1 | 42700 | *Incision and drainage abscess; peritonsillar. |
| | | *Excision* |
| 1 | 42802 | Biopsy; hypopharynx. |
| 1 | 42804 | Biopsy; nasopharynx, visible lesion, simple. |
| 5 | 42820 | Tonsillectomy and adenoidectomy; under age 12. |
| 5 | 42821 | Tonsillectomy and adenoidectomy; age 12 or over. |
| 3 | 42825 | Tonsillectomy, primary or secondary; under age 12. |
| 4 | 42826 | Tonsillectomy, primary or secondary; age 12 or over. |
| 3 | 42830 | Adenoidectomy, primary; under age 12. |
| 4 | 42831 | Adenoidectomy, primary; age 12 or over. |
| 3 | 42835 | Adenoidectomy, secondary; under age 12. |
| 4 | 42836 | Adenoidectomy, secondary; age 12 or over. |
| | | *Other Procedures* |
| 1 | 42960 | Control oropharyngeal, hemorrhage, primary or secondary (eg, postionsillectomy); simple. |
| 2 | 42962 | Control oropharyngeal, hemorrhage, primary or secondary (eg, postionsillectomy); with secondary surgical intervention. |
| | | **Esophagus** |
| | | *Incision* |
| 1 | 43234 | Upper gastrointestinal endoscopy, simple primary examination (eg, with small diameter flexible fiberscope). |
| 2 | 43241 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; with transendoscopic tube or catheter placement. |
| 2 | 43243 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for injection sclerosis of esophageal and/or gastric varices. |
| 2 | 43245 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for dilation of gastric outlet for obstruction. |
| 2 | 43246 | Upper gastrointestinal endoscopy including esophagus, stomach, and either the duodenum and/or jejunum as appropriate; for directed placement of percutaneous gastrostomy tube. |
| 2 | 43265 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for destruction lithotripsy of stone, any method. |
| 2 | 43267 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for insertion of nasobiliary or nasopancreatic drainage tube. |
| 2 | 43269 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for insertion of tube or stent into bile or pancreatic duct. |
| 2 | 43269 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for removal and/or change of tube, stent or foreign body. |
| 2 | 43271 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for balloon dilation of ampulla, biliary or pancreatic duct. |
| 2 | 43272 | Endoscopic retrograde cholangiopancreatography (ERCP), with or without biopsy and/or collection of specimen; for ablation of tumor or mucosal lesion (eg, laser, hot biopsy/fulguration). |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| | | **Stomach** |
| | | *Excision* |
| 1 | 43600 | Biopsy of stomach: by capsule, tube, peroral (one or more specimens). |
| | | *Introduction* |
| 2 | 43750 | Percutaneous placement of gastrostomy tube change of gastrostomy tube. |
| | | *Suture* |
| 1 | 43870 | Closure of Gastrostomy, surgical. |
| | | **Intestines (Except Rectum)** |
| | | *Excision* |
| 1 | 44100 | Biopsy of intestine by capsule, tube, peroral (one or more specimens). |
| | | *Enterostomy—External Fistulization of Intestines (Separate Procedure).* |
| 1 | 44312 | Revision of ileostomy; simple (release of superficial scar). |
| | | *Endoscopy, small bowel and stomal.* |
| 2 | 44372 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for placement of percutaneous jejunostomy tube. |
| 2 | 44379 | Small intestinal endoscopy, enteroscopy beyond second portion of duodenum; for conversion of percutaneous gastrostomy tube to percutaneous jejunostomy tube. |
| 1 | 44385 | Fiberoptic evaluation of small intestinal (kock) or pelvic pouch. |
| 1 | 44386 | Fiberoptic evaluation of small intestinal (KOCK) or pelvic pouch; for biopsy and/or collection of specimen by brushing or washing. |
| 1 | 44393 | Fiberoptic colonoscopy through colostomy; for ablation of tumor or mucosal lesion (eg, laser, hot biopsy/fulguration). |
| | | **Rectum** |
| | | *Excision* |
| 1 | 45100 | Biopsy of anorectal wall, anal approach (eg, congenital megacolon). |
| 2 | 45108 | Anorectal myomectomy. |
| 2 | 45150 | Division of stricture of rectum. |
| | | *Endoscopy* |
| 1 | 45305 | *Proctosigmoidoscopy; for biopsy. |
| 1 | 45307 | Proctosigmoidoscopy; for removal of foreign body. |
| 1 | 45310 | *Proctosigmoidoscopy; for removal of polyp or papilloma. |
| 1 | 45315 | *Proctosigmoidoscopy; for removal of multiple excrescenes, papillomata or polyps. |
| 1 | 45317 | Proctosigmoidoscopy; for control of hemorrhage (eg, electrocoagulation, laser photocoagulation). |
| 1 | 45320 | Proctosigmoidoscopy; for ablation of tumor (eg, electrocoagulation, photocoagulation, hot biopsy/fulguration). |
| 1 | 45321 | Proctosigmoidoscopy; for decompression of volvulus. |
| 1 | 45332 | Sigmoidoscopy, flexible fiberoptic; for removal of foreign body. |
| 1 | 45336 | Sigmoidoscopy, flexible fiberoptic; for ablation of tumor or mucosal lesion (eg, electrocoagulation, photocoagulation, hot biopsy/fulguration). |
| 1 | 45337 | Sigmoidoscopy, flexible fiberoptic for decompression of volvulus. |
| | | *Manipulation* |
| 1 | 46905 | Dilation of anal sphincter (separate procedure) under anesthesia other than local. |
| | | **Anus** |
| | | *Incision.* |
| 1 | 46030 | *Removal of anal seton, other marker. |
| 1 | 46050 | *Incision and drainage, perianal abscess, superficial. |
| | | *Excision* |
| 2 | 46210 | Cryptectomy; single. |
| 1 | 46220 | *Papillectomy or excision of single tag, anus (separate procedure). |
| | | *Endoscopy* |
| 1 | 46606 | *Anoscopy; for removal of foreign boby. |
| 1 | 46610 | Anoscopy; for removal of polyp. |
| 1 | 46612 | Anoscopy; for multiple polyp removal. |
| | | *Repair* |
| 3 | 46700 | Anoplasty, Plastic operation for stricture; adult. |
| 3 | 46705 | Anoplasty, plastic operation for stricture; infant. |
| | | *Destruction* |
| 1 | 46922 | Destruction of lesion(s), anus (eg, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; surgical excision. |
| | | **Biliary Tract** |
| | | *Introduction* |
| 2 | 47510 | Introduction of percutaneous transhepatic catheter or stent for biliary drainage. |
| 1 | 47525 | Change of percutaneous biliary drainage catheter. |
| 1 | 47530 | Revision and/or reinsertion of transhepatic T-Tube. |
| | | *Endoscopy* |
| 2 | 47552 | Biliary endoscopy, percutaneous via T-tube or other tract; diagnostic |
| 3 | 47553 | Biliary Endoscopy, percutaneous via T-tube or other tract for biopsy and/or collection of specimen by brushing or washing |
| 3 | 47554 | Biliary endoscopy, percutaneous via T-tube or other tract for removal of stone(s). |
| 3 | 47555 | Biliary endoscopy, percutaneous via T-tube or other tract for dilation of biliary duct stricture. |
| | | *Excision* |
| 3 | 47630 | Biliary duct stone extraction, percutaneous via T-tube tract, basket or snare (EG, Burhenne Technique) |
| | | **Pancreas** |
| | | *Excision* |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 1 | 48102 | Biopsy of pancreas, percutaneous needle. |
| | | **Abdomen, Peritoneum, and Omentum** |
| | | *Incision* |
| 2 | 49060 | Peritoneocentesis, abdominal paracentesis, or peritoneal lavage; initial. |
| 2 | 49061 | Peritoneocentesis, abdominal paracentesis, or peritoneal lavage; subsequent. |
| 2 | 49065 | Removal of peritoneal foreign body from peritoneal cavity. |
| | | *Excision and Destruction* |
| 1 | 49180 | Biopsy, abdominal or retroperitoneal mass, percutaneous needle. |
| | | *Repair* |
| | | *Hernioplasty, Herniorrhaphy, Herniotomy* |
| 4 | 49580 | Repair umbilical hernia; under age 5 years |
| | | **Urinary System—Kidney** |
| | | *Introduction* |
| 1 | 50396 | Introduction of guide into renal pelvis and/or ureter; with dilation to establish nephrostomy tract, percutaneous. |
| | | *Suture* |
| 1 | 50520 | Closure of Nephrocutaneous or pyelocutaneous fistula. |
| | | *Endoscopy* |
| 1 | 50551 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service. |
| 1 | 50555 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy. |
| 1 | 50557 | Renal endoscopy through established nephrostomy or pyelostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with fulguration and/or incision, with or without biopsy. |
| 1 | 50574 | Renal endoscopy through nephrotomy or pyelotomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service; with biopsy. |
| | | *Other Procedures* |
| 7 | 50590 | Lithotripsy, extracorporeal shock wave. |
| | | **Ureter** |
| | | *Incision* |
| 2 | 50600 | Ureterotomy with exploration or drainage (separate procedure). |
| 2 | 50605 | Ureterotomy for insertion of indwelling stent, all types. |
| | | *Introduction* |
| 1 | 50688 | Change of ureterostomy tube. |
| | | *Suture* |
| 1 | 50920 | Closure of ureterocutaneous fistula. |
| 2 | 50940 | Deligation of ureter. |
| | | *Endoscopy* |
| 1 | 50951 | Ureteral endoscopy through established ureterostomy, with or without irrigation, instillation, or ureteropyelography, exclusive of radiologic service. |
| | | **Bladder** |
| | | *Incision* |
| 4 | 51020 | Cystotomy or cystostomy; with fulguration and/or insertion of radioactive material. |
| 4 | 51030 | Cystotomy or cystostomy; with cryosurgical destruction of intravesical lesion. |
| 3 | 51040 | Cystostomy, cystotomy with drainage. |
| 4 | 51045 | Cystotomy, with insertion of ureteral catheter or stent (separate procedure). |
| 4 | 51050 | Cystolithotomy, cystotomy with removal of calculus, without vesical neck resection. |
| 4 | 51060 | Transvesical ureterolithotomy. |
| 4 | 51065 | Cystotomy, with stone basket extraction and/or ultrasonic or electrohydraulic fragementation of ureteral calculus. |
| 3 | 51080 | Drainage of perivesical or previesical space abscess. |
| | | *Excision* |
| 4 | 51500 | Excision of urachal cyst or sinus, with or without umbilical hernia repair. |
| 3 | 51520 | Cystotomy; for simple excision of vesical neck (separate procedure). |
| 4 | 51525 | Cystotomy; for excision of bladder diverticulum, single or multiple (separate procedure). |
| 4 | 51530 | Cystotomy; for excision of bladder tumor. |
| 4 | 51535 | Cystotomy for excision, incision, or repair of ureterocele. |
| | | *Urodynamics* |
| 1 | 51725 | Simple cystometrogram (CMG) (EG, spinal manometer). |
| 1 | 51726 | Complex cystometrogram (EG, calibrated electronic equipment). |
| 1 | 51772 | Urethral pressure profile studies (UPP) (urethral closure pressure profile), any technique. |
| 1 | 51785 | Electromyography studies (EMG) or anal or urethral sphincter, any technique. |
| | | *Repair* |
| 1 | 51860 | Closure of cystostomy (separate procedure). |
| 3 | 51920 | Closure of vesicouterine fistula. |
| | | *Transurethral Surgery (Ureter and Pelvis)* |
| 4 | 52325 | Cystourethroscopy (including ureteral catheterization): with fragmentation of ureteral calculus (EG, ultrasonic or electro-hydraulic technique). |
| 3 | 52334 | Cystourethroscopy with insertion of ureteral guide wire through kidney to establish a percutaneous nephrostomy, retrograde. |
| 4 | 52330 | Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method); with removal or manipulation of calculus (ureteral catheterization is included). |
| 4 | 52337 | Cystourethroscopy, with ureteroscopy and/or pyeloscopy (include dilation of the ureter by any method); with lithotripsy (ureteral catheterization is included). |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 4 | 52338 | Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter by any method); with biopsy and/or fulguration of lesion. |
| | | **Urethra** |
| | | *Excision* |
| 1 | 53200 | Biopsy of urethra. |
| 5 | 53210 | Urethrectomy, total, including cystostomy; female. |
| 5 | 53215 | Urethrectomy, total, including cystostomy; male. |
| 2 | 53250 | Excision of bulbourethral gland (cowper's gland). |
| 2 | 53260 | Excision or fulguration; urethral polyp(s), distal urethra. |
| | | *Repair* |
| 1 | 53442 | Removal of perineal prosthesis introduced for continence. |
| | | *Suture* |
| 2 | 53505 | Urethromaphy, suture of urethral wound or injury; penile. |
| | | **Male Genital System—Penis** |
| | | *Incision* |
| 1 | 54015 | Incision and drainage of penis, deep. |
| | | *Destruction* |
| 1 | 54057 | Destruction of lesion(s), penis (EG, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple laser surgery. |
| 1 | 54060 | Destruction of lesion(s), penis (EG, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), simple; surgical excision. |
| 1 | 54065 | Destruction of lesion(s), penis (EG, condyloma, papilloma, molluscum contagiosum, herpetic vesicle), extensive, any method. |
| | | *Excision* |
| 1 | 54100 | Biopsy of penis; cutaneous (separate procedure). |
| 3 | 54111 | |
| 3 | 54112 | Excision of penile plague (peyronie disease); with graft greater than 5 cm in length. |
| | | *Repair* |
| 3 | 54300 | Plastic operation of penis for straightening of chordee (EG, hypospadias), with or without mobilization of urethra. |
| 3 | 54360 | Plastic operation on penis to correct angulation. |
| 5 | 54400 | Insertion of penile prosthesis; non-inflatable (semi-rigid). |
| 5 | 54401 | Insertion of penile prosthesis; inflatable (self-contained). |
| 3 | 54402 | Removal or replacement of non-inflatable (semi-rigid) or inflatable (self-contained) penile prosthesis. |
| 7 | 54405 | Insertion of inflatable (multi-component) penile prosthesis, including placement of pump, cylinders, and/or reservoir. |
| 5 | 54407 | Removal, repair, or replacement of inflatable (multi-component) penile prosthesis, including pump and/or reservoir and/or cylinders. |
| 3 | 54409 | Surgical correction of hydraulic abnormality of inflatable (multi-component) prosthesis including pump and/or reservoir and/or cylinders. |
| 4 | 54420 | Corpora cavernosa-saphenous vein shunt (priapism operation), unilateral or bilateral. |
| 4 | 54430 | Corpora cavernosa-corpus spongiosum shunt (priapism operation), unilateral or bilateral. |
| 4 | 54435 | Corpora cavernosa-glans penis fistulization (EG, biopsy needle, winter procedure, rongeur, or punch) for priapism. |
| 2 | 54440 | Plastic operation of penis for injury. |
| | | *Manipulation* |
| 1 | 54450 | Foreskin manipulation including lysis of preputial adhesions and stretching. |
| | | **Testis** |
| | | *Excision* |
| 1 | 54500 | Biopsy of testis, needle (separate procedure). |
| 4 | 54550 | Exploration for undescended testis (inguinal or scrotal area). |
| 7 | 54560 | Exploration for undescended testis with abdominal exploration. |
| 4 | 54600 | Reduction of torsion of testis, surgical, with or without fixation of contralateral testis. |
| 3 | 54620 | Fixation of contralateral testis (separate procedure). |
| 4 | 54640 | Orchiopexy, any type, with or without hernia repair. |
| 4 | 54645 | Orchiopexy, any type, with or without hernia repair; second stage (torek type). |
| 2 | 54660 | Insertion of testicular prosthesis (separate procedure). |
| | | **Epididymis** |
| | | *Excision* |
| 1 | 54800 | Biopsy of epididymis, needle. |
| | | **Scrotum** |
| | | *Incision* |
| 1 | 55100 | Drainage of scrotal wall abscess. |
| 2 | 55110 | Scrotal exploration. |
| | | **Vas Deferens** |
| | | *Incision* |
| 2 | 55200 | Vasotomy, cannulization with or without incision of vas, unilateral or bilateral (separate procedure). |
| | | **Seminal Vesicles** |
| | | *Incision* |
| 1 | 55600 | Vesiculotomy. |
| | | **Prostate** |
| | | *Incision* |
| 2 | 55725 | Prostatotomy, external drainage of prostatic abscess, any approach; complicated. |

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PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 4 | 55740 | Prostatolithotomy, removal of prostatic calculus (separate procedure). |
| | | *Excision* |
| 3 | 55860 | Exposure of prostate, any approach, for insertion of radioactive substance. |
| | | **Female Genital System—Perineum** |
| | | *Excision* |
| 1 | 56100 | *Biopsy of perineum (separate procedure). |
| | | *Repair* |
| 5 | 56200 | Perineoplasty, repair of perineum, nonobstetrical (separate procedure). |
| | | **Vulva and Introitus** |
| | | *Excision* |
| 5 | 56620 | Vulvectomy; partial (less than 80% of vulvar area). |
| 7 | 56625 | Vulvectomy; complete (skin and subcutaneous tissue). |
| 1 | 56700 | Hymenectomy, partial excision of hymen. |
| 3 | 56710 | Plastic revision of hymen. |
| 1 | 56720 | Hymenotomy, simple incision. |
| | | *Repair* |
| 3 | 56800 | Plastic repair of introitus. |
| | | **Vagina** |
| | | *Incision* |
| 1 | 57000 | Colpotomy; with exploration. |
| 2 | 57010 | Colpotomy; with drainage of pelvic abscess. |
| | | *Destruction* |
| 1 | 57065 | Destruction of vaginal lesion(s); extensive, any method. |
| | | *Excision* |
| 2 | 57135 | Excision of vaginal cyst or tumor. |
| | | *Introduction* |
| 1 | 57180 | Introduction of any hemostatic agent or pack for spontaneous or traumatic nonobstetrical vaginal hemorrhage (separate procedure). |
| | | *Repair* |
| 1 | 57200 | Colporrhaphy, suture of injury of vagina (nonobstetrical). |
| 2 | 57210 | Colpoperineorrhaphy, suture of injury of vagina and/or perineum (nonobstetrical). |
| 3 | 57220 | Plastic operation on urethral sphincter, vaginal approach (eg, Kelly urethral plication) (separate procedure). |
| 3 | 57230 | Plastic repair of urethrocele (separate procedure). |
| 5 | 57240 | Anterior colporrhaphy, repair of cystocele with or without repair of urethrocele (separate procedure). |
| 6 | 57250 | Posterior colporrhaphy, repair of rectocele with or without perineorrhaphy. |
| 5 | 57260 | Combined anteroposterior colporrhaphy. |
| 7 | 57265 | Combined anteroposterior colporrhaphy; with enterocele repair. |
| 3 | 57300 | Closure of rectovaginal fistula; vaginal or transanal approach. |
| 3 | 57310 | Closure of urethrovaginal fistula. |
| 4 | 57311 | Closure of urethrovaginal fistula; with bulbocavernosus transplant. |
| 3 | 57320 | Closure of vesicovaginal fistula; vaginal approach. |
| | | *Endoscopy* |
| 2 | 57451 | Culdoscopy, diagnostic; with biopsy and/or lysis of adhesions or tubal sterilization. |
| | | **Cervix Uteri** |
| | | *Excision* |
| 2 | 57513 | Cauterization of cervix; laser surgery. |
| 3 | 57530 | Trachelectomy (cervicectomy), amputation of cervix (separate procedure). |
| 3 | 57550 | Excision of cervical stump, vaginal approach. |
| | | *Repair* |
| 1 | 57700 | Cerclage of uterine cervix, nonobstetrical. |
| 1 | 57800 | * Dilation of cervical canal, instrumental (separate procedure). |
| | | **Corpus Uteri** |
| | | *Excision* |
| 5 | 58145 | Myomectomy, excision of fibroid tumor of uterus, single or multiple (separate procedure); vaginal approach. |
| | | **Ovary** |
| | | *Incision* |
| 3 | 58800 | Drainage of ovarian cyst(s), unilateral or bilateral, (separate procedure); vaginal approach. |
| 3 | 58820 | Drainage of ovarian abscess; vaginal approach. |
| | | **Endoscopy-Laparoscopy-Hysteroscopy** |
| 1 | 58960 | Hysteroscopy; diagnostic. |
| | | **Endocrine System—Thyroid Gland** |
| | | *Incision* |
| 1 | 60000 | * Incision and drainage of thyroglossal cyst, infected. |
| | | *Excision* |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT–4 code | Description |
|---|---|---|
| 4 | 60281 | Excision of thyroglossal duct cyst or sinus; recurrent. |
| | | **Nervous System—Skull, Meninges, and Brain** |
| | | *Puncture for Injection, Drainage or Aspiration* |
| 1 | 61055 | Cisternal or lateral cervical puncture with injection of drug or other substance for diagnosis or treatment. |
| | | *Twist Drill, Burr Hole(s) or Trephine* |
| 3 | 61215 | Insertion of subcutaneous reservoir, pump or continuous infusion system for connection to ventricular catheter. |
| | | *Stereotaxis* |
| 3 | 61790 | Creation of lesion by stereotactic method, percutaneous, by neurolytic agent (e.g., alcohol, thermal, electrical, radiofrequency); gasserian ganglion. |
| 3 | 61791 | Creation of lesion by stereotactic method, percutaneous, by neurolytic agent (e.g., alcohol, thermal, electrical, radiofrequency); trigeminal medullary tract. |
| | | *Neurostimulators, Intracranial* |
| 2 | 61885 | Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling. |
| 1 | 61888 | Revision or removal of intracranial neurostimulator receiver. |
| | | *CSF Shunt* |
| 1 | 62194 | Replacement or irrigation, subarachnoid/subdural catheter. |
| 1 | 62225 | Replacement or irrigation, ventricular catheter. |
| 2 | 62230 | Replacement or revision of CSF shunt, obstructed valve, or distal catheter in shunt system. |
| 2 | 62256 | Removal of complete CSF shunt system; without replacement. |
| | | **Spine and Spinal Cord** |
| | | *Puncture for Injection, Drainage or Aspiration* |
| 1 | 62268 | Percutaneous aspiration, spinal cord cyst or syrinx. |
| 1 | 62269 | Biopsy of spinal cord, percutaneous needle. |
| 1 | 62272 | Spinal puncture, therapeutic, for drainage of spinal fluid (by needle or catheter). |
| 1 | 62280 | Injection of neurolytic substance (e.g., alcohol, phenol, iced saline solutions); subarachnoid. |
| 1 | 62282 | Injection of neurolytic subsance (e.g., alcohol, phenol, iced saline solutions); lumbar or caudal epidural. |
| 3 | 62294 | Injection procedure, arterial, for occlusion of arteriovenous malformation, spinal. |
| | | *Stereotaxis* |
| 2 | 63600 | Creation of lesion of spinal cord by stereotactic method, percutaneous, any modality (including stimulation and/or recording). |
| 1 | 63610 | Stereotactic stimulation of spinal cord, percutaneous, separate procedure not followed by other surgery. |
| | | *Neurostimulators, Spinal* |
| 2 | 63650 | Percutaneous implantation of neurostimulator electrodes; epidural. |
| 2 | 63652 | Percutaneous implantation of neurostimulator electrodes; intradural (spinal cord). |
| 1 | 63660 | Revision or removal of spinal neurostimulator electrodes. |
| 2 | 63685 | Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling. |
| 1 | 63688 | Revision or removal of spinal neurostimulator receiver. |
| | | *Shunt, Spinal CSF* |
| 3 | 63744 | Replacement, irrigation or revision of lumbosubarachnoid shunt. |
| 2 | 63746 | Removal of entire lumbosubarachnoid shunt system without replacement. |
| 4 | 63750 | Insertion, subarachnoid catheter with reservoir and/or pump for intermittent or continuous infusion of drug, including laminectomy. |
| 2 | 63780 | Insertion, subarachnoid or epidural catheter, with reservoir and/or pump for drug infusion, without laminectomy. |
| | | **Extracranial Nerves, Peripheral Nerves, and Autonomic Nervous—System Introduction/Injection of Anesthetic Agent (Nerve Block), Diagnostic or therapeutic** |
| | | *Neurostimulators, Peripheral Nerve* |
| 1 | 64575 | Incision for implantation of neurostimulator electrodes; peripheral nerve. |
| 2 | 64590 | Incision for subcutaneous placement of neurostimulator receiver, direct or inductive coupling. |
| 1 | 64595 | Revision or removal of peripheral neurostimulator receiver. |
| 1 | 64620 | Destruction by neurolytic agent; intercostal nerve. |
| | | **Destruction by Neurolytic Agent (e.g., Chemical, Thermal, Electrical, Radiofrequency)** |
| | | *Somatic Nerves* |
| 1 | 64623 | Destruction by neurolytic agent; paravertebral facet joint nerve, lumbar, each additional level. |
| | | *Sympathetic Nerves* |
| 2 | 64680 | Destruction by neurolytic agent, celiac plexus, with or without radiologic monitoring. |
| | | *Transection or Avulsion of Nerve.* |
| 2 | 64746 | Transection or avulsion of phrenic nerve. |
| 2 | 64771 | Transection or avulsion of other cranial nerve, extradural. |
| | | *Excision-Somatic Nerves* |
| 2 | 64783 | Excision of neuroma; hand or foot, each additional nerve, except same digit (list separately by this number) |
| 3 | 64792 | Excision of neurofibroma or neurolemmoma; extensive (including malignant type). |
| | | *Nerve Repair by Suture (Neurorrhaphy)* |
| 2 | 64858 | Suture of sciatic nerve. |
| 1 | 64859 | Suture of each additional major peripheral nerve. |
| 3 | 64861 | Suture of brachial plexus. |
| 3 | 64862 | Suture of lumbar plexus. |
| 3 | 64864 | Suture of facial nerve; extracranial. |
| 4 | 64865 | Suture of facial nerve; infratemporal, with or without grafting. |
| 4 | 64870 | Anastomosis; facial-phrenic. |
| | | **Eye and Ocular Adnexa Eyeball** |
| | | *Removal of Eye* |
| 5 | 65112 | Exenteration of orbit (does not include skin graft), removal of orbital contents; with therapeutic removal of bone. |
| 7 | 65114 | Exenteration of orbit (does not include skin graft), removal of orbital contents; with temporalis muscle transplant. |

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| Pymt grp | CPT-4 code | Description |
|---|---|---|
| | | *Removal of Ocular Foreign Body* |
| B | 65240 | Removal of foreign body, intraocular; from lens (without extraction lens), magnetic extraction. |
| | | *Repair of Laceration of Eyeball* |
| 1 | 65270 | Repair of laceration; conjunctiva, with or without nonperforating laceration sclera, direct closure. |
| 3 | 65275 | *Repair of laceration; cornea, nonperforating, with or without removal foreign body. |
| | | **Anterior Segment—Anterior Chamber** |
| | | *Incision* |
| 2 | 65825 | Goniotomy; with goniopuncture. |
| B | 65830 | *Goniopuncture; without goniotomy. |
| 2 | 65850 | *Trabeculotomy ab externo. |
| | | **Anterior Segment—Iris, Ciliary Body** |
| | | *Destruction* |
| 2 | 66740 | **Cyclodialysis; initial. |
| | | **Posterior Segment—Vitreous** |
| 2 | 67031 | *Severing of vitreous strands, vitreous face adhesions, sheets, membranes or opacities, laser, surgery (one or more stages). |
| 5 | 67036 | Vitrectomy, mechanical, pars plana approach; with epiretinal membrane stripping. |
| 5 | 67040 | Vitrectomy, mechanical, pars plana approach; with endolaser panretinal photocoagulation. |
| | | **Posterior Segment—Retinal Detachment** |
| | | *Repair* |
| 5 | 67112 | Repair of retinal detachment, one or more sessions; previously operated upon, any technique. |
| 2 | 67115 | Release of encircling material (posterior segment). |
| 2 | 67121 | Removal of implanted material, posterior segment; intraocular. |
| 2 | 67141 | *Prophylaxis of retinal detachment, (eg, retinal break, lattice degeneration) without drainage, one or more sessions; cryotherapy, diathermy. |
| | | **Ocular Adnexa—Orbit** |
| | | *Exploration, Excision* |
| 5 | 67420 | Orbitotomy with bone flap, lateral approach (eg, kroenlein); with removal of lesion. |
| 5 | 67430 | *Orbitotomy with bone flap, lateral approach (eg, kroenlein); with removal of foreign body. |
| 5 | 67440 | Orbitotomy with bone flap, lateral approach (eg, kroenlein); with drainage or decompression. |
| 5 | 67460 | Orbitotomy with bone flap, lateral approach (eg, kroenlein); for exploration, with or without biopsy. |
| | | **Ocular Adnexa—Eyelids** |
| | | *Excision or Removal of Lesion Involving More Than Skin (IE, Involving Lid Margin, Tarsus, and/or Palbebral Conjunctiva* |
| | | *Repair Blepharoptosis, Lid Retraction* |
| 1 | 67911 | *Correction of lid retraction. |
| | | **Ocular Adnexa—Conjunctiva** |
| | | *Conjunctivoplasty* |
| 4 | 68330 | *Repair of symblepharon; conjunctivoplasty, without graft. |
| 4 | 68335 | Repair of symblepharon; with free graft conjunctiva or buccal mucous membrane (includes obtaining graft). |
| 4 | 68340 | *Repair of symblepharmon; division of symblepharmon with or without insertion of conformer or contact lens. |
| | | **Ocular Adnexa—Lacrimal System** |
| | | *Excision* |
| 1 | 68525 | Biopsy of lacrimal sac; probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia. |
| | | *Probing and Related Procedures* |
| 1 | 68626 | Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; requiring general anesthesia. |
| | | **Auditory System—External Ear** |
| | | *Removal Foreign Body* |
| 1 | 69205 | *Removal foreign body from external auditory canal; with general anesthesia. |
| | | *Repair* |
| 3 | 69110 | Reconstruction of external auditory canal (meatoplasty) (eg, for stenosis due to trauma, infection), (separate procedure). |
| 7 | 69320 | Reconstruction of external auditory canal for congenial atresia, single stage. |
| | | **Middle Ear** |
| | | *Incision* |
| 3 | 69421 | *Myringotomy including aspiration and/or eustachian tube inflation requiring general anesthesia. |
| 1 | 69424 | *Ventilating tube removal when originally inserted by another physician. |
| 3 | 69436 | Tympanostomy (requiring insertion of ventilating tube), general anesthesia. |
| | | *Excision* |
| 7 | 69502 | Mastoidectomy; complete. |
| 7 | 69505 | Mastoidectomy; modified radical. |
| 7 | 69511 | Mastoidectomy; radical. |
| 7 | 69530 | Petrous apicectomy including radical mastoidectomy. |



PROPOSED ADDITIONS TO COVERED PROCEDURES IN AMBULATORY SURGICAL CENTERS (ASCS)—Continued

| Pymt grp | CPT-4 code | Description |
|---|---|---|
| 5 | 69550 | Excision aural glomus tumor; transcanal. |
| 7 | 69552 | Excision aural, glomus tumor; transmastoid. |
| | | *Repair* |
| 7 | 69601 | Revision mastoidectomy; resulting in complete mastoidectomy. |
| 7 | 69602 | Revision mastoidectomy; resulting in modified radical mastoidectomy. |
| 7 | 69603 | Revision mastoidectomy; resulting in radical mastoidectomy. |
| 7 | 69604 | Revision mastoidectomy; resulting in tympanoplasty. |
| 7 | 69605 | Revision mastoidectomy; with apicoectomy. |
| | | *Other Procedures* |
| 3 | 69710 | Implantation of replacement of electromagnetic bone conduction hearing device in temporal bone. |
| 1 | 69711 | Removal or repair of electromagnetic bone conduction hearing device in temporal bone. |
| | | **Inner Ear** |
| | | *Incision, Destruction* |
| 5 | 69801 | Labyrinthotomy, with or without cryosurgery or other nonexcisional destructive procedures or tack procedure; transcanal. |
| 7 | 69802 | Labyrinthotomy, with or without cryosurgery or other nonexcisional destructive procedures or tack procedure; with mastoidectomy. |
| 7 | 69805 | Endolymphatic sac operation; without shunt. |
| 7 | 69806 | Endolymphatic sac operation; with shunt. |
| 5 | 69820 | Fenestration semicircular canal. |
| 5 | 69840 | *Revision fenestration operation. |
| | | *Excision* |
| 7 | 69905 | Labyrinthectomy; transcanal. |
| 7 | 69910 | Labyrinthectomy; with mastoidectomy. |
| 7 | 69915 | Vestibular nerve section, translabyrinthrine approach. |
| 7 | 69930 | Cochlear device implantation, with or without mastoidectomy. |

* Denotes addition suggested by the general public.
* Denotes addition outside threshold parameters recommended by HCFA medical consultants to maintain clinical consistency.

[FR Doc. 90-28633 Filed 12-6-90, 8:45 am]
BILLING CODE 4120-03-M

## Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on November 16, 1990.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Certificate of Election for Reduced Spouse's Benefits—0960-0398—The information on form SSA-25 is used by the Social Security Administration to entitle eligible spouses to reduced benefits for months in which they do not have an entitled child in care. The respondents are eligible spouses who file this certificate to elect reduced benefits.

*Number of Respondents:* 30,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 2 minutes.
*Estimated Annual Burden:* 1,000 hours.

2. State Agency Schedule for Equipment Purchases for SSA Disability Programs—0960-0406—The information collected on the form SSA-871 is used by the Social Security Administration to reimburse state agencies for equipment purchases necessary to administer the disability provisions of the Social Security (Title II) and Supplemental Security Income (Title XVI) programs. The affected public is comprised of the 54 State Disability Determination Services who are purchasers of equipment.

*Number of Respondents:* 54.
*Frequency of Response:* 1.
*Average Burden Per Response:* 1 hour.
*Estimated Annual Burden:* 54 hours.

3. DDS CEMS Data Reporting Form—0960-0384—The information on form SSA-1461 is used by the Social Security Administration (SSA) to analyze and evaluate the costs incurred by the State Disability Determination Services in making disability determinations for SSA.

*Number of Respondents:* 52.
*Frequency of Response:* 4.
*Average Burden Per Response:* 5 hour.
*Estimated Annual Burden:* 1,040 hours.

4. Service Delivery Questionnaires—0960-NEW—The information of forms SSA-4298 and SSA-4299 will be used by the Social Security Administration to assess the public's perception of the quality of the services offered. The respondents will be recipients of Title II benefits or title XVI payments.

*Number of Respondents:* 8,100.
*Frequency of Response:* 1.
*Average Burden Per Response:* 15 minutes.
*Estimated Annual Burden:* 2,025 hours.

5. Request for Correction of Earnings Record—0960-0029—The information on form SSA-7008 is used by the Social Security Administration (SSA) to compare an individual's alleged earnings with those contained in SSA's records. The respondents are individuals who request a correction of their earnings shown in SSA's records.

*Number of Respondents:* 375,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 10 minutes.
*Estimated Annual Burden:* 62,500 hours

6. Referral and Treatment Status of SSI Drug Addicts or Alcoholics—0960-0331—The information on form SSA-8740 is used by the Social Security Administration to refer and monitor the treatment of people who receive Supplemental Security Income because they are either drug addicts or alcoholics. The respondents are State agencies which have agreed to refer and monitor the treatment of such people.

*Number of Respondents:* 27,000.
*Frequency of Response:* 1.
*Average Burden Per Response:* 10 minutes.
*Estimated Annual Burden:* 4,500 hours.

*OMB Desk Officer:* Laura Oliven.

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Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 30, 1990.

**Ron Compston,**

*Social Security Administration, Reports Clearance Officer.*

[FR Doc. 90-28666 Filed 12-6-90; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2834-N-02]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**EFFECTIVE DATE:** December 7, 1990.

**ADDRESSES:** For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.).

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's needs, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Brietman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Air Force: John Carr, Real Estate Specialist, Air Force Closure and Integration Divison (LEER), Washington, DC 20330-5000, (703) 697-9556. (This is not a toll-free number.)

Dated: November 30, 1990.

**Paul Roitman Bardack**

*Deputy Assistant Secretary for Economic Development.*

**New Hampshire—Pease Air Force Base**

All properties included in this Notice are located at Pease Air Force Base, Rockingham County, New Hampshire. The Base is being closed pursuant to the Base Closure and Realignment Act. The Department of the Air Force is the land holding and disposal agency. The property is excess. The majority of properties will be vacant not later than March 31, 1991.

The Base covers 4,257 acres, has over 3.8 million square feet of building space, and includes a hospital, theatre, bowling alley, 2 chapels, over 2,000 bachelor bed spaces, and 1,200 military multifamily housing units. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base.

HUD has reviewed information on 703 properties located at the Base and has found 687 to be suitable for possible use to assist the homeless. To facilitate review by interested homeless assistance providers, like use facilities have been grouped below, rather than listed individually. Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Mr. Gary Kuwabara at (603) 430-3303.

*Suitable Buildings*

Property Number: 189040320-189040323
Type Facility: 3 open mess and 1 dining hall
Property Number: 189040324
Type Facility: Credit union building
Property Number: 189040325-189040326
Type Facility: 2 bachelor quarters buildings
Property Number: 189040327
Type Facility: Hospital heat plant
Property Number: 189040328
Type Facility: Hospital



Property Number: 189040329
Type Facility: Trailer (hospital office space)
Property Number: 189040330-189040332
Type Facility: 3 training facilities
Property Number: 189040333-189040334
Type Facility: 2 child care facilities
Property Number: 189040335
Type Facility: Fire station
Property Number: 189040069-189040319
Type Facility: 201 4-unit residences
Property Number: 189040347 and 189040349
Type Facility: 2 sales stores
Property Number: 189040350
Type Facility: Commissary
Property Number: 189040351-189040352
Type Facility: 2 chapels
Property Number: 189040353
Type Facility: Single family residence
Property Number: 189040354
Type Facility: Rod and gun club
Property Number: 189040355
Type Facility: Motor pool
Property Number: 189040356-189040394
Type Facility: 9 dormitories
Property Number: 189040395-189040404
Type Facility: 10 residences with detached garage
Property Number: 189040405-189040467
Type Facility: 63 2-unit residences with detached garage
Property Number: 189040468-189040471
Type Facility: 4 8-unit residences with attached garage
Property Number: 189040472-189040715
Type Facility: 244 detached housing storage sheds
Property Number: 189040720, 189040721, 189040728
Type Facility: 3 communications facilities
Property Number: 189040734-189040742
Type Facility: 9 recreational facilities, including library, bowling center, theatre, gymnasium, youth center, bath house, and automotive shop
Property Number: 189040743-189040751
Type Facility: 9 small concrete munitions storage buildings
Property Number: 189040752-189040771
Type Facility: 20 administrative facilities
Property Number: 189040773-189040788, 189040790-189040793, 189040795-189040805
Type Facility: 31 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes

[FR Doc. 90-28503 Filed 12-6-90; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-942-01-4214-12; U-016859]

### Termination of Recreation and Public Purpose Classification; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates Recreation and Public Purpose Classification affecting 2,550.50 acres in Grand County, Utah.

**EFFECTIVE DATE:** January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mike Barnes, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84155 (801) 539-4119.

**SUPPLEMENTARY INFORMATION:** By virtue of the authority vested in the Secretary of the Interior by the Recreation and Public Purpose Act of June 14, 1926, as amended; 43 U.S.C. 869; 869-4, it is ordered as follows: 1. Pursuant to 43 CFR 2091.7-1(b)(1), and the authority delegated to me by BLM Manual section 1203, classification decision U-016859 dated September 14, 1955, as amended, which classified 2,550.50 acres of public land as suitable for recreation and public purposes is hereby terminated insofar as it affects the following described lands:

**Salt Lake Meridian**

T. 20 S., R. 19 E.,
Sec. 25, All above 5000 feet;
Sec. 28, E½ to canyon rim;
Sec. 35, E½NE¼ to the rim.
T. 26 S., R. 20 E.,
Sec. 20, SW¼, W½SE¼;
Sec. 28, N½N½NE¼, SE¼NE¼NE¼, N½NW¼SW¼NE¼NE¼, E¼SW¼NE¼NE¼, N½SW¼NW¼NE¼, NW¼SE¼NW¼NE¼, N½NE¼SE¼NW¼NE¼, N½NE¼SE¼NE¼, E½SE¼SE¼NE¼SE¼, E½NE¼NE¼SE¼SE¼, SE¼NE¼SE¼SE¼, NE¼SE¼SE¼SE¼;
Sec. 29, NW¼NE¼, N½NW¼;
Sec. 30, Lot 1, N½NE¼, NE¼NW¼;
Sec. 31, Lots 2, 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 33, SW¼SW¼SW¼, E½SW¼SW¼, E½SW¼, W½SE¼, SE¼SE¼.
T. 27 S., R. 20 E.,
Sec. 4, Lots 3, 6, S½NW¼, NE¼SW¼;
Sec. 6, NW¼.

The area described contains 2,550.50 acres located in Grand County.

2. The classification provided for segregation of the lands against all forms of appropriation under the public land laws, but not the Recreation and Public Purposes act, the United States mining and the mineral leasing laws. At 8 a.m. on January 7, 1991, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on January 7, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

**James M. Parker,**

*State Director.*

[FR Doc. 90-28749 Filed 12-6-90; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-060-4333-10]

### Closure Order; Samoa Dunes Recreation Area, California

**SUMMARY:** Notice is hereby given related to the closure of Bureau of Land Management (BLM) administered lands to all public use in accordance with regulations contained in 43 CFR 8364.1. This action affects approximately 40 acres located in Section 31, T.5N., R.1W., Humboldt Meridian, known as the Rare Plant Protection Area of the Samoa Dunes Recreation Area. These public lands will be temporarily closed to all public use to protect Menzies' Wallflower (Erysimum menziesii) habitat until an interpretive hiking trail is completed which will guide visitors along a specific path. Employees, agents and permittees of the BLM may be exempt from this closure as determined by the authorized officer.

**DATES:** This action is effective immediately.

**ADDRESSES:** Maps and supporting documentation of the area temporarily closed to public use are available for review at the following location: Bureau of Land Management, Arcata Resource Area, 1125 16th Street, room 219, Arcata, CA 95521.

**FOR FURTHER INFORMATION CONTACT:** Dan Averill, Acting Area Manager at the Arcata address given above: telephone (707) 822-7648.

**SUPPLEMENTARY INFORMATION:** The purpose of temporarily closing the 40 acre Rare Plant Protection Area is to prevent visitors from inadvertently trampling Menzies' Wallflower populations as they hike through this rare plant habitat. This particular plant species is listed as endangered by the California Department of Fish and Game and is a candidate for Federal listing by the U.S. Fish and Wildlife Service. Its habitat has been reduced to dune systems along the California coast in three locations—Monterey, Fort Bragg and the Samoa Peninsula near Eureka.

An interpretive hiking trail will be developed during the next several months which will direct visitors along a specified path nearby the rare plants. This will provide people with the opportunity to come in close proximity to the plants without disturbing them or

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their habitat. Until this trail is completed, however, visitors must be prevented from meandering throughout the area as these plants are extremely difficult to identify during the winter months and unintentional trampling could result in resource damage. The determination to terminate the closure order will be made by the authorized officer.

Dan Averill,

*Acting Area Manager.*

[FR Doc. 90-28690 Filed 12-6-90; 8:45 am]

BILLING CODE 4310-40-M

[NM-940-90-GPO-406-4111-15; TX NM 66731]

## Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of 43 CFR 3108.2-3, Union Pacific Resources petitioned for reinstatement of oil and gas lease TX NM 66731, covering the following described lands located in Houston County, Texas:

Tract K1b-VI

Containing 2,560.00 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence. No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of $500.00 has been paid. Future rentals shall be at the rate of $5.00 per acre per year and royalties shall be at the rate of 16⅔ percent.

Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, February 1, 1990.

Dated: November 29, 1990.

Katy Galassini,

*Acting Chief, Adjudication Section.*

[FR Doc. 90-28682 Filed 12-6-90; 8:45 am]

BILLING CODE 4310-FB-M

## Proposed Resource Management Plan and Final Environmental Impact Statement for the Dixie Resource Area, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of proposed resource management plan and final environmental impact statement.

**SUMMARY:** The proposed resource management plan (RMP) and final environmental impact statement (EIS) for the Dixie Resource Area, Cedar City District, Washington County, Utah, is available for distribution to the public; Federal, State, and local agencies; and Indian tribes. The RMP will guide management of the public lands and resources in the Dixie Resource Area, Bureau of Land Management (BLM).

The RMP would provide comprehensive management for the public lands in Washington County, Utah. It would designate 11 Areas of Critical Environmental Concern (ACECs). The EIS presents the RMP and three land use alternatives for management of the Dixie Resource Area.

A 30-day protest period for the RMP will commence with publication of a Notice of Availability for the EIS in the Federal Register by the Environmental Protection Agency.

The RMP will be implemented after publication of a separate Record of Decision and Final RMP.

**FOR FURTHER INFORMATION CONTACT:** David Everett, Team Leader, Dixie Resource Area, Bureau of Land Management, 225 North Bluff Street, St. George, Utah 84770, (801) 673-4654.

**SUPPLEMENTARY INFORMATION:** The Dixie RMP/EIS analyzes three alternatives and the RMP. Each plan provides management guidance for all relevant resource programs administered by the BLM within the planning area. Various combinations of special designations are analyzed under the alternatives.

### Alternatives Analyzed

1. Alternative A (no action) presents the continuation of current management.
2. Alternative B emphasized land tenure adjustment by acquisition primarily through exchanges for resource enhancing for public purposes.
3. Alternative C was to optimize opportunities for the long term retention, protection, and special management of public lands identified as having critical resource values or uses.
4. The RMP is a refinement of Alternative C, with consideration given to public comments and clarification. The RMP would designate 11 ACECs. The special management designations are summarized in the accompanying table.

This action is announced pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and 43 CFR part 1610. The RMP is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must be received by the Director (760), BLM, 18th and C Streets NW., Washington, DC 20240, within 30 days after the date of publication of the Notice of Availability for the final EIS in the Federal Register by the Environmental Protection Agency.

Dated: December 3, 1990.

James M. Parker,

*State Director.*

PROPOSED ACEC DESIGNATIONS

| Area Name | Critical Concerns | Acres |
|---|---|---|
| Red Bluff | Endangered plant species (Dwarf bear poppy); Colorado River salinity control (saline soils). | 6,010 |
| Warner Ridge—Fort Pearce | Endangered plant species (Dwarf bear poppy, Siler cactus); Colorado River salinity control (saline soils); riparian system; Candidate animal species (Spotted bat). | 3,990 |
| Santa Clara River—Gunlock Section | Riparian system; cultural resources (Virgin Anasazi and Paiute riverine sites); wildlife habitat; candidate fish species (Virgin River spinedace). | 1,790 |
| Santa Clara River—Land Hill | Riparian system; cultural resources (Virgin Anasazi and Paiute riverine sites); wildlife habitat; candidate fish species (Virgin River spinedace); petroglyphs. | 1,770 |
| Lower Virgin River | Riparian system; endangered fish (Woundlin minnow) and (Virgin River chub); cultural resources (Virgin Anasazi riverine sites; wildlife habitat. | 1,460 |
| Little Creek Mountain | Cultural resources (Virgin Anasazi upland sites). | 16,455 |
| Canaan Mountain | National scenic resources. | 31,670 |
| Red Mountain | National scenic resources. | 5,460 |
| Beaver Dam Slope | Threatened animal species (Desert tortoise); National Natural Landmark. | 26,980 |
| City Creek | Threatened animal species (Desert tortoise); community watershed; wildlife habitat. | 2,595 |



PROPOSED ACEC DESIGNATIONS—Continued

| Area Name | Critical Concerns | Acres |
|---|---|---|
| Upper Beaver Dam—Wash | Watershed, riparian, and wildlife values | 39,380 |

[FR Doc. 90-28709 Filed 12-6-90; 8:45 am]

BILLING CODE 4310-DQ-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Third Meeting of the Board for International Food and Agricultural Development (BIFAD) on December 19, 1 p.m. to 4 p.m.

The purpose of the Meeting is to address university-A.I.D. relationships, including Program Support Grants, the proposed University Development Linkage Project and other such mechanisms to achieve closer and more effective university cooperation in development activities.

The Meeting will be held in the Department of State, room 1107, Main State Department Building. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification or a visitor's pass at all times while in the building.

Please let the BIFAD Staff know (tel. nos. 663-2585 or 663-2576) that you expect to attend the meeting. Provide your full name, name of employing company or organization, address and telephone number not later than Friday, December 14, 1990.

A BIFAD Staff member will meet you at the South Entrance of the Department of State at 2201 C Street with your visitor's pass.

Visitors who are not pre-cleared will have to wait in line and present valid identification with photograph to the receptionist before they can be admitted to the building.

Curtis Jackson, Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, room 309, SA-18, Washington, DC 20523, or telephone him on (703) 875-4565.

Dated: December 3, 1990.

Stuart Callison,

*Acting Executive Director, BIFAD.*

[FR Doc. 90-28709 Filed 12-6-90; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice to hereby given that on October 26, 1990 a proposed Consent Decree in *United States et al.* v. *Miller Metals Product Corporation*, Civil Action No. C-89-40461-CA, was lodged with the United States District Court for the Western District of Michigan. The proposed Consent Decree concerns Defendant's violation of the Clean Air Act at its plant located in Grand Rapids, Michigan. The proposed Consent Decree requires defendant to comply with the requirements of regulations issued pursuant to the Clean Air Act. Additionally, defendant is required to pay as a civil penalty $75,000 to the United States and $75,000 to the State of Michigan.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comment should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States et al.* v. *Miller Metal Product Corporation*, D.J. Ref. 90-5-2-1-1228.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 699 Federal Building, Grand Rapids, Michigan 49503, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.75 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

*Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-28681 Filed 12-6-90; 8:45 am]

BILLING CODE 4410-01-M

## Bureau of Prisons

### Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Institution in San Joaquin County, CA

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal correctional institution with an adjacent satellite prison camp is needed in its system. A 200 acre tract of land located approximately 5 miles west of the City of Tracy will be evaluated. The proposal calls for the construction of a 750 bed facility to house medium security inmates and a 250 bed camp to house minimum security inmates.

Approximately 150 of the 200 acres would be used for road access, inmate housing, administration and program spaces and service and support facilities. In addition, exercise areas would be included in the needed acreage.

### The Process

In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

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**Alternatives**

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

**Scoping Process**

During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Tracy. The meeting will open with the showing of a 22 minute videotape titled "A Federal Prison in your Community". The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings will be held by representatives of the Bureau of Prisons with interested community leaders and officials.

**DEIS Preparation**

Public notice will be given concerning the availability of the DEIS for public review and comment.

**ADDRESSES:** Questions concerning the proposed action and the DEIS can be answered by: Patricia K. Sledge, Site Acquisition Coordinator, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514–6470.

**William J. Patrick,**

*Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.*

[FR Doc. 90–28703 Filed 12–6–90; 8:45 am]

BILLING CODE 4410–05–M

## Federal Prison Industries, Inc.

**[RFP 1P1–0003–91]**

**Market Study Consulting Service; Request for Proposals**

**AGENCY:** Federal Prison Industries, Inc.; Bureau of Prisons, DOJ

**ACTION:** Notice.

**SUMMARY:** The following request for proposal (RFP) for consulting service to provide an independent market study of Federal Prison Industries, Inc. operations was published in the Commerce Business Daily on Friday, November 30, 1990. In the interest of making this information more widely available to the public, the RFP is being announced in this issue of the Federal Register.

*Request for proposal:* Consulting Service, to provide an independent market study of Federal Prison Industries, Inc. (FPI) operations, with study results to be reported to Congress by August, 1991. The study is to review five areas of interest: (1) Potential new product lines for prison-made products; (2) Analyze the impact that FPI has had on certain private sector industries; (3) Provide, after consulting with the Department of Labor and the Department of Commerce, an estimate of the number of jobs displaced in the private sector by the operation of FPI; (4) Analyze whether Federal departments and agencies should consider placing limits on the market share that FPI can obtain in specific products or product lines; (5) Determine whether the current law governing Federal procurement from FPI should be retained or revised.

**DATES:** Deadline for submission is January 18, 1991

**ADDRESSES:** UNICOR, Federal Prison Industries, Inc., Financial Management and Procurement Division, 320 First Street, Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Jack Rigsby, (202) 508–8492.

Dated: December 4, 1990.

**Ira Kirschbaum,**

*General Counsel, Federal Prison Industries, Inc.*

[FR Doc. 90–28768 Filed 12–6–90; 8:45 am]

BILLING CODE 4410–05–M

## DEPARTMENT OF LABOR

### Office of the Secretary

**Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)**

**BACKGROUND:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency recordkeepng/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Who will be required to or asked to report or keep records.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS, Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**New**

Departmental Management—Office of the Assistant Secretary for Administration and Management, Directorate of Personnel Management.
DOL Exit Survey
Individuals or households.
400 respondents; 15 minutes per response; 100 hours; 1 form.

The survey is designed to collect data on reasons why employees leave the Department of Labor (DOL) which can be analyzed to targeted groups; and to identify the most effective recruitment efforts. About 400 former DOL employees annually will be affected and their participation is voluntary



**Revision**

Employment Standards Administration.
Report of Construction Contractor's Wage Rates.
1215–0008; WD–10.
On occasion.
Businesses or other for profit; small businesses or organizations 37,500 respondents; 25,000 total hours; .333 hr. per response; 1 form.

Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage data is used to determine locally prevailing wage rates under the Davis Bacon and Related Acts.

Occupational Safety and Health Administration.

Respirator Standard.
1218–0099.
No reporting.
Business or other for-profit; small business or organizations.
0 respondents; 0 Burden Hours; 0 hours per response.

As a result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for these paperwork activities involving the employer and the third party (employee) disclosure.

OSHA had previously requested clearance from OMB on the following respirator standard §§ 29 CFR: 1910.134(b)(1) Standard Operating Procedures; 1910.134(e)(3) Emergency Procedures; 1910.134(f)(2)(iv) Inspection Records; and 1910.134(f)(3)(i) labeling requirements. These sections ensure that employers develop, provide, or make available to employees information documenting that respirators will provide the necessary protection in case of emergencies, as well as, proper usage of respirators. Since employers are disclosing information to employees, OMB review under the Paperwork Reduction Act (PRA) is no longer applicable. While these sections are no longer subject to OMB review under PRA, employers must continue to comply with the aforementioned respirator requirements as required by the Occupational Safety and Health Act.

**Bureau of Labor Statistics**

Census of Fatal Occupational Injuries
1120–0132; BLS–CFOI

| Form | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| BLS–CFOI | All | 8500 | once | 20 minutes |
| Source documents | Federal, State, local agencies | 165 | 190 | 10 minutes |
| 3750 total hours | | | | |

The Census of Fatal Occupational Injuries will provide policymakers and the public with a comprehensive, accurate, and timely measure of work-injury fatalities. The system will collect demographic information about the deceased, characteristics of the employer, and information concerning the incident.

**Extension**

Mine Safety and Health Administration
Petitions for Modification of Mandatory Safety Standards
1219–0065
On occasion
Businesses and other for profit; small businesses or organizations
232 respondents; 40 hours per response; 9,280 total burden hours
Provides guidance for mine operators or representatives of miners for filing petitions for modification of mandatory safety standards.

Occupational Safety and Health Administration
1218–0104
Inorganic Arsenic
On Occasion
Business or other for-profit; small businesses or organizations
42 respondents; 85 burden hours; 1.7 hours per response; 0 form

The Inorganic Arsenic standard and its information collection requirements provide protection for employees from adverse health effects associated with occupational exposure to Inorganic Arsenic. The standard requires employees to notify OSHA Area Offices of regulated areas and changes to regulated areas. The standard also requires that OSHA have access to various records to ensure that employees are complying with disclosure provisions of the Inorganic Arsenic standard.

| Information collection activity | Proposed total burden hours |
|---|---|
| Regulated Areas | 84 |
| Federal Records Access and Transfer | 1 |
| Total | 85 |

Coke Oven Emissions
1218–0128
On Occasion
Business or other for-profit; small business or organizations.
Respondents 1; 1 total hour; 1 hour per response; 0 form

The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to Coke Oven Emissions. The standard requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Coke Oven Emissions standards.

**Reinstatement**

Bureau of Labor Statistics
National Longitudinal Survey of Work Experience of Young Women
(Was 1220–0110)
Annually
Individuals of households
3,508 responses; 3,249 hours; 2 forms

The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by women 37–47. These women were 14–24 years of age when this longitudinal survey began in 1968.

Signed at Washington, DC this 4th day of December, 1990.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 90–28762 Filed 12–6–90; 8:45 am]

BILLING CODE 4510–26–M

## Employment and Training Administration

**Job Training Partnership Act: Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

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**SUMMARY:** The Department of Labor is publishing for public information the Job Training Partnership Act title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, room N–4703, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0577 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to title III of the Job Training partnership Act (JTPA or the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States" as set forth in section 303 (a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4–88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Program Year (PY) 1990 was described in Training and Employment Information Notice No. 7–90, dated August 10, 1990, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Funds During Program Year (PY) 1990.

NOO adjustments are being issued to adjust the PY 1990 (July 1, 1990–June 30, 1991) formula allotments in accordance with expenditure reports submitted to the Secretary by the States.

Pursuant to the provisions of section 303(b) of JTPA, the funds reallotted are an amount equal to the sum of unexpended funds in excess of 20 percent of the PY 1989 formula allotments and all unexpended funds made available by formula for PY 1988. 29 U.S.C. 1653(b). Such reallotted funds are from PY 1990 allotments made available by formula and, as stated above, result in either upward or downward adjustments to PY 1990 allotments.

### Unemployment Data

The unemployment data used in the formula for reallotments, relative numbers of unemployed, and relative numbers of excess unemployed were for the July 1989 through June 1990 period. Long-term unemployment data used were for calendar year 1989. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds was also based on unemployment data for the period July 1989 through June 1990, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below is a distribution of the net changes to PY 1990 formula allotments.

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–4–

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION
PY 1990 JTPA TITLE III REALLOTMENT TO STATES
24-Oct-90

| | COL 1 | COL 2 | COL 3 | COL 4 | COL 5 | COL 6 |
|---|---|---|---|---|---|---|
| Alabama | 6.8 | 0 | 49,476 | 49,476 | 23,837 | 73,313 |
| Alaska | 6.9 | 0 | 7,230 | 7,230 | 3,483 | 10,713 |
| Arizona | 5.1 | 0 | 18,464 | 0 | 8,896 | 8,896 |
| Arkansas | 6.8 | 0 | 30,122 | 30,122 | 14,513 | 44,635 |
| California | 5.1 | 247,884 | 102,427 | 0 | 87,892 | (159,992) |
| Colorado | 5.2 | 0 | 24,207 | 0 | 11,663 | 11,663 |
| Connecticut | 4.5 | 462 | 14,271 | 0 | 6,875 | 6,407 |
| Delaware | 3.8 | 0 | 2,258 | 0 | 1,088 | 1,088 |
| District of Columbia | 5.3 | 0 | 4,300 | 0 | 2,072 | 2,072 |
| Florida | 5.7 | 811,273 | 0 | 0 | 0 | (811,273) |
| Georgia | 5.4 | 0 | 45,049 | 0 | 21,704 | 21,704 |
| Hawaii | 2.5 | 0 | 2,209 | 0 | 1,064 | 1,064 |
| Idaho | 5.3 | 0 | 6,467 | 0 | 3,116 | 3,116 |
| Illinois | 6.0 | 0 | 126,077 | 126,077 | 60,743 | 186,820 |
| Indiana | 5.2 | 0 | 35,781 | 0 | 17,239 | 17,239 |
| Iowa | 4.3 | 0 | 14,188 | 0 | 6,836 | 6,836 |
| Kansas | 3.9 | 105,047 | 0 | 0 | 0 | (105,047) |
| Kentucky | 5.9 | 72,763 | 0 | 0 | 0 | (72,763) |
| Louisiana | 6.9 | 0 | 58,241 | 58,241 | 28,060 | 86,301 |
| Maine | 4.3 | 1,803 | 4,456 | 0 | 2,147 | 344 |
| Maryland | 3.5 | 0 | 14,684 | 0 | 7,075 | 7,075 |
| Massachusetts | 4.9 | 0 | 30,631 | 0 | 14,758 | 14,758 |
| Michigan | 7.5 | 0 | 142,050 | 142,050 | 68,439 | 210,489 |
| Minnesota | 4.3 | 0 | 19,087 | 0 | 9,196 | 9,196 |
| Mississippi | 7.2 | 0 | 34,040 | 34,040 | 16,400 | 50,440 |
| Missouri | 5.4 | 0 | 43,451 | 0 | 20,934 | 20,934 |
| Montana | 5.5 | 0 | 6,661 | 6,661 | 3,209 | 9,870 |
| Nebraska | 2.7 | 38,906 | 0 | 0 | 0 | (38,906) |
| Nevada | 4.8 | 0 | 6,270 | 0 | 3,021 | 3,021 |
| New Hampshire | 4.5 | 0 | 4,131 | 0 | 1,990 | 1,990 |
| New Jersey | 4.6 | 0 | 34,518 | 0 | 16,631 | 16,631 |
| New Mexico | 6.3 | 0 | 15,807 | 15,807 | 7,616 | 23,423 |
| New York | 5.1 | 0 | 119,806 | 0 | 57,722 | 57,722 |
| North Carolina | 3.5 | 0 | 20,413 | 0 | 9,835 | 9,835 |
| North Dakota | 4.2 | 0 | 2,719 | 0 | 1,310 | 1,310 |
| Ohio | 5.7 | 349,910 | 104,179 | 104,179 | 50,193 | (195,538) |
| Oklahoma | 5.3 | 84,155 | 23,089 | 0 | 11,124 | (73,031) |
| Oregon | 5.3 | 0 | 22,409 | 0 | 10,796 | 10,796 |
| Pennsylvania | 5.0 | 0 | 70,642 | 0 | 34,035 | 34,035 |
| Puerto Rico | 14.3 | 0 | 82,137 | 82,137 | 39,573 | 121,710 |
| Rhode Island | 5.7 | 0 | 7,557 | 7,557 | 3,641 | 11,198 |
| South Carolina | 4.7 | 0 | 18,710 | 0 | 9,014 | 9,014 |
| South Dakota | 3.9 | 86,538 | 0 | 0 | 0 | (86,538) |
| Tennessee | 5.0 | 211 | 30,651 | 0 | 14,768 | 14,457 |
| Texas | 6.4 | 0 | 192,028 | 192,028 | 92,517 | 284,545 |
| Utah | 4.5 | 0 | 6,698 | 0 | 3,227 | 3,227 |
| Vermont | 4.0 | 0 | 2,130 | 0 | 1,026 | 1,026 |
| Virginia | 3.9 | 0 | 22,159 | 0 | 10,676 | 10,676 |
| Washington | 5.8 | 270 | 42,785 | 42,785 | 20,614 | 63,129 |
| West Virginia | 8.0 | 0 | 29,543 | 29,543 | 14,234 | 43,777 |
| Wisconsin | 4.4 | 0 | 20,616 | 0 | 9,933 | 9,933 |
| Wyoming | 5.8 | 0 | 4,474 | 4,474 | 2,156 | 6,630 |
| NATIONAL TOTAL | 5.4 | 1,799,298 | 1,799,298 | 932,407 | 866,891 | 0 |

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**Explanation of Table**

*Column 1:* This column shows each State's unemployment rate for the twelve months ending June 1990.

*Column 2:* This column shows the amount of excess funds (unexpended PY 1989 funds in excess of 20 percent of the State's PY 1989 allotment and/or unexpended PY 1988 formula-allotted funds), which are subject to reallotment. PY 1990 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

*Column 3:* This column shows total excess funds distributed among all "eligible States" by applying the regular Title III formula. "Eligible States" are those with unexpended PY 1989 funds at or below the level of 20 percent of their PY 1989 formula allotment.

*Column 4:* Eligible States with unemployment rates higher than the national average, which was 5.4 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4.

*Column 5:* The sum of the remaining shares of available funds ($866,891) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

*Column 6:* Net changes in PY 1990 formula allotment are presented. This column represents the decreases in title III funds shown in column 2, and the increases in title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

**Equitable Procedures**

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

**Distribution of Funds**

Funds are being reallotted by the Secretary in accordance with section 303(a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653(a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulation at 20 CFR 631.12(d), 54 FR 39118, 39140 (September 22, 1989).

Signed at Washington, DC, this 14th day of November 1990.

**Roberts T. Jones,**

*Assistant Secretary of Labor.*

[FR Doc. 90-28521 Filed 12-6-90; 8:45 am]

BILLING CODE 4510-30-M

## Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Florida, FL90-17 (Jan. 5, 1990). p. 143, p. 144.

Georgia:
- GA90-1 (Jan. 5, 1990)..... p. 213, p. 214.
- GA90-3 (Jan. 5, 1990)..... p. 217, pp. 218-220b.
- GA90-9 (Jan. 5, 1990)..... p. 239.
- GA90-12 (Jan. 5, 1990)..... p. 241, p. 242.
- GA90-23 (Jan. 5, 1990)..... p. 263, p. 264.
- GA90-32 (Jan. 5, 1990)..... p. 280a, p. 280b.



Virginia:
- VA90-15 (Jan. 5, 1990)..... p. 1243, pp. 1244-1245.
- VA90-20 (Jan. 5, 1990)..... p. 1281, p. 1282.

West Virginia, WV90-2 (Jan. 5, 1990). p. 1391, p. 1396.

*Volume II*

Iowa, IA90-2 (Jan. 5, 1990)... p. 23, p. 24.

Illinois:
- IL90-1 (Jan. 5, 1990)..... p. 59, p. 60.
- IL90-2 (Jan. 5, 1990)..... p. 67, pp. 92-93, 103.
- IL90-3 (Jan. 5, 1990)..... p. 105, p. 107.
- IL90-4 (Jan. 5, 1990)..... p. 111, p. 113.
- IL90-5 (Jan. 5, 1990)..... p. 117, pp. 118-119.
- IL90-6 (Jan. 5, 1990)..... p. 123, pp. 124-125.
- IL90-7 (Jan. 5, 1990)..... p. 127, p. 130.
- IL90-8 (Jan. 5, 1990)..... p. 135, pp. 136, 140.
- IL90-9 (Jan. 5, 1990)..... p. 143, p. 144.
- IL90-11 (Jan. 5, 1990)..... p. 153, pp. 156, 156.
- IL90-12 (Jan. 5, 1990)..... p. 161, pp. 163-164.
- IL90-13 (Jan. 5, 1990)..... p. 173, p. 176.
- IL90-14 (Jan. 5, 1990)..... p. 185, p. 188.
- IL90-15 (Jan. 5, 1990)..... p. 195, p. 198.
- IL90-16 (Jan. 5, 1990)..... p. 205, p. 208.

Michigan, MI90-4 (Jan. 5, 1990). p. 471, p. 474.

Nebraska:
- NE90-1 (Jan. 5, 1990)..... p. 717, p. 718.
- NE90-3 (Jan. 5, 1990)..... p. 725, p. 726.
- NE90-5 (Jan. 5, 1990)..... p. 731, p. 732.
- NE90-11 (Jan. 5, 1990)..... p. 743, p. 744.

*Volume III*

Arizona, AZ90-2 (Jan. 5, 1990). p. 15, p. 19.

California:
- CA90-1 (Jan. 5, 1990)..... p. 31, pp. 32-33, 35, pp. 36, 36-40b.
- CA90-2 (Jan. 5, 1990)..... p. 41, pp. 42-66.

Colorado:
- CO90-1 (Jan. 5, 1990)..... p. 107, pp. 108-109.
- CO90-4 (Jan. 5, 1990)..... p. 125, p. 126.
- CO90-5 (Jan. 5, 1990)..... p. 132a, p. 132b.
- CO90-6 (Jan. 5, 1990)..... p. 132e, p. 132f.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of November 1990.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 90-28694 Filed 12-6-90; 8:45 am]

BILLING CODE 4510-27-M

## Occupational Safety and Health Administration

**[Docket No. NRTL-2-88]**

### Dash, Straus and Goodhue, Inc.

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory.

**SUMMARY:** This notice announces the application of Dash, Straus and Goodhue, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** The last date for interested parties to submit comments is January 7, 1991.

**ADDRESSES:** Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:**

**Notice of Application**

Notice is hereby given that Dash, Straus and Goodhue, Inc., (DS&G), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 50003, 12/16/88), and which was so recognized (see 54 FR 25643, 6/16/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The address of the concerned laboratory is:

Dash, Straus and Goodhue, Inc., 503 Massachusetts Avenue, Boxborough, Massachusetts 01719.

**Expansion of Recognition**

Dash, Straus and Goodhue, Inc., (DS&G) submitted an application for expansion of its current recognition (Exhibit 10A), to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 1244—Electrical and Electronic Measuring and Testing Equipment.
ANSI/UL 1262—Laboratory Equipment.

The NRTL Recognition Program staff made an in-depth study of the details of DS&G's application and supplementary material and its original recognition and determined that DS&G had the staff capability and the necessary equipment to conduct testing of products using the proposed test standards. The NRTL staff determined that an additional on-site review was not necessary since the proposed additional test standards were closely related to DS&G's current areas of recognition. A report on the "Expansion of Dash, Straus and Goodhue, Incorporated's Recognition Under the NRTL Program", dated November 6, 1990, was prepared (see Exhibit 10B).

**Preliminary Finding**

Based upon a review of the details of DS&G's recognition and an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, and the NRTL staff's report on the expansion of DS&G's recognition, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to certify products using the two aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards can be added to DS&G's recognition.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of Dash, Straus and Goodhue, Inc., as required by 29 CFR 1910.7.

Submission of pertinent written documents and exhibits shall be made no later than January 7, 1991, and must

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be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL-2-88), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC this 3rd day of December, 1990.

Gerard F. Scannell,

*Assistant Secretary.*

[FR Doc. 90-28763 Filed 12-6-90; 8:45 am]

BILLING CODE 4510-26-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-254 and 50-265]

### Commonwealth Edison Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR part 50, appendix A, General Design Criterion 17, to Commonwealth Edison Company (CECo or the licensee) for the Quad Cities Nuclear Power Station (Units 1 and 2) located in Rock Island County, Illinois.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action would grant an Exemption from certain requirements of General Design Criterion (GDC) 17 of appendix A to 10 CFR part 50. More specifically, the Low Pressure Coolant Injection (LPCI) swing bus design does not meet the single failure criterion or the independence requirements of GDC 17.

*The Need for the Proposed Action*

The LPCI swing bus design was found acceptable in the Quad Cities Safety Evaluation Report (SER), issued August 25, 1971. This SER acknowledged that this design did not meet GDC 17, but no Exemption was issued at that time or with the issuance of the licenses for Quad Cities, Units 1 and 2.

The staff reexamined the design and again found it acceptable in NUREG-0138, issued November 1976. NUREG-0138 states that the staff does not consider a change in the LPCI swing bus design to satisfy GDC 17 justifiable as substantial additional protection required to protect the public health and safety.

*Environmental Impacts of the Proposed Action*

The proposed Exemption merely acknowledges a design that has been in place since the Quad Cities units have been operating. Thus, this Exemption will not change the types, or allow an increase in the amounts, of effluents that may be released offsite. Nor would it result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed Exemption.

With regard to potential nonradiological impacts, the proposed Exemption involves features located entirely within restricted areas as defined by 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed Exemption.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (construction permit and operating license) for Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

*Alternatives to the Proposed Action*

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed Exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the Exemption would be to require rigid compliance with the requirements of GDC 17 of appendix A to 10 CFR part 50. Such action would not enhance the protection of the environment and would result in unwarranted licensee expenditures of engineering and construction resources, as well as associated capital costs.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's design and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed Exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the Quad Cities Safety Evaluation Report, dated August 25, 1971 and NUREG-0138, "Staff Discussion of Fifteen Technical Issues Listed in Attachment to November 3, 1976 Memorandum from Director, NRR to NRR Staff," published November 1976. These documents are available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 29th day of November 1990

For the Nuclear Regulatory Commission.

Richard J. Barrett,

*Director, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28714 Filed 12-6-90; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28667; File No. SR-CSE-90-09]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Reduction of Exposure Time of Agency Orders

On May 8, 1990, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-CSE-90-09) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") that amends CSE's Rule 11.9(o) reducing from 30 seconds to 15 seconds the exposure period during which agency orders are exposed to Approved Dealers.[1] On May 23, 1990, the

[1] On the CSE, orders are executed automatically through its National Securities Trading System ("NSTS"). The NSTS is a fully automated, electronic trading system that permits CSE members to enter agency or principal orders into the system through remote terminals. Once entered, orders are stored, queued, and executed by the system according to price/time and agency/principal priorities. Market making support for securities traded in the NSTS is provided by competitive market makers. In addition, each security traded in the system has an assigned designated dealer who is responsible, among other things for the automatic execution of

Continued



Commission received a letter amendment from the CSE requesting a six-month renewal of its expired pilot program to allow the Exchange and the Commission additional time to evaluate the effectiveness of the reduced "flash" time.[2]

On May 29, 1990, the Commission published notice of the proposed rule change and granted partial accelerated approval to an additional pilot program testing the shortened exposure period in Securities Exchange Act Release No. 28064 (May 29, 1990), 55 FR 22980. In the release the Commission requested that the CSE submit a report detailing its experience under the renewed pilot program.[3] The Commission received no comments on the proposal. This order approves the proposal.

Originally, the Exchange requested and received Commission approval to reduce, on a pilot basis, the processing period for public and professional agency orders by lowering the exposure period from thirty seconds to fifteen seconds.[4] In File No. SR-CSE-90-09, the CSE proposed to implement an additional six-month pilot program and to amend Rule 11.9(o) to permanently reduce the exposure period after an agency order has interacted with the CSE book from thirty seconds to fifteen seconds.

In its original submission, the CSE stated that the application of the fifteen second flash requirement is an adequate time period for approved dealers to respond to the interest being "flashed" and lessens the instances of executions which trade-through other ITS participants. Furthermore, the CSE stated that it believes the proposed change serves to equalize the total CSE time necessary to execute orders in NSTS with other exchanges' execution times, thereby removing the competitive disadvantage to CSE members and giving them the ability to better meet their fiduciary obligation to obtain best execution for their customers. As an automated exchange, no specific order exposure period is needed for price improvement since market-makers must always display the best quotes at which they are willing to trade.

To clarify in what ways the CSE's proposal would achieve these goals, the Commission requested that the CSE submit a letter elaborating on the rationale in the original filing. In response, the CSE submitted a letter to the Commission describing its experience with the reduced exposure period.[5] To respond to the Commission's request, the CSE studied two one-week periods, one of which was a week during which the longer 30-second flash period was in effect and the other was a week during which the 15-second flash period was in effect. The CSE noted that the flash period did not result in an improved execution for the orders flashed during either week examined. Thus, the length of the flash period did not affect the likelihood that an order would receive an improved excution. In addition, the CSE noted that its designated dealers believe that the reduced flash period improves customer service by reducing delay. Finally, the CSE stated that by reducing the flash period, total processing time for orders sent to the NSTS would be equivalent to that on other exchanges, thus enabling the CSE to more effectively compete for orders. In response to a Commission question on how the reduced processing time results in a better execution, CSE noted that their study showed that a longer flash period did not result in an appreciable increase in the chance that an order would receive a better execution and that the customer thus benefits by receiving an execution at the best bid or offer in a shorter period of time.

The CSE further believes the proposed rule as amended, is consistent with, and furthers the purposes of, those provisions of sections 6(b)(5) and 11A of the Act [6] which provide for fair competition among market centers and the perfection of the national market system.

As stated in the release originally approving the CSE's pilot program, the Commission continues to recognize the importance of creating an effective balance between a customer's need to receive the best possible execution price and the need for timely execution.[7] A reduced flash period did not seem to adversely affect the likelihood that an order would receive an improved execution. In addition, it is clearly in the customers' interest to receive a quick execution. The alternative of an increased order exposure period of 30 seconds may result in imposing a costly (and illusory) requirement on market participants to attempt to achieve price improvement in a moving market.

The proposed rule change should increase the efficiency with which NSTS transactions are executed, without sacrificing the opportunity for an improved execution during the exposure period. These were the same considerations that led the Commission to approve similar proposals by the Midwest and Pacific Stock Exchanges.[8] Thus, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act [9] which provides, in part, that the rules of the exchange be designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act [10] that File No. SR-CSE-90-09 be, and hereby is, approved.

public agency market orders and marketable limit orders of up to 2,099 shares at the Intermarket Trading System ("ITS") best bid and offer.

Upon entry into the system, a public agency market order is priced at the ITS best bid or offer and exposed to the CSE market by executing it against any matching contra interest in the system's central limit order book. The remainder is then automatically executed against the designated dealer for up to 2,099 shares, and any balance is further exposed to all approved dealers for execution via a "flash" on NSTS terminals for 15 seconds. Finally, any unexecuted remainder is reformatted into an ITS commitment and transmitted to whichever ITS participant is displaying the best bid or offer. With the exception that it does not receive a guaranteed execution against the designated dealer, a professional agency market order is processed in the same manner. *See* File No. SR-CSE-88-03.

[2] *See* letter from Craig R. Carberry, Vice President—Market Regulation, CSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated May 23, 1990.

[3] The CSE submitted a letter to the Commission addressing the following issues: (1) The number of orders where the execution price was better than the existing consolidated best bid or offer at the time of order entry over a one-week period; (2) the relative reduction in executions that trade-through other ITS participants resulting from using the 15 second "flash" time as opposed to 30 seconds; and (3) a comparative analysis of the extent to which the CSE's reduced processing time resulting from the 15 second order exposure period equalizes the order processing time of other exchanges and the extent to which such an equalization results in a better execution on the CSE. *See* letter from Kevin S. Fogarty, Vice President-Market Regulation, CSE, to Christine Sekach, Branch Chief, Division of Market Regulation, SEC, dated September 28, 1990.

[4] *See* Securities Exchange Act Release No. 25958 (August 1, 1988), 53 FR 29637 (August 8, 1988) ("August Order") (order approving File No. SR-CSE-88-03). The original six month pilot expired February 1, 1989.

[5] *See supra* n.3.

[6] 15 U.S.C. 78f(b)(5) and 78k-1 (1982).

[7] *See* August Order at 29637.

[8] *See* Securities Exchange Act Release No. 27727 (February 22, 1990), approving a reduction in the exposure periods for the MSE's MAX system and the PSE's SCOREX system.

[9] 15 U.S.C. 78s (1982).

[10] 15 U.S.C. 78s(b)(2) (1982).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: November 30, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-28698 Filed 12-6-90; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-17892; 812-7590]

## IDS Life Insurance Co., et al.; Application for Exemption

November 30, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** IDS Life Insurance Company ("IDS Life"), IDS Life Insurance Company of New York ("IDS Life of New York"), IDS Life Variable Account for Shearson Lehman (the "Shearson Account"), IDS Life of New York Account 7 (the "Shearson Account of New York") (collectively, the "Shearson Accounts"), Shearson Lehman Series Fund (the "Shearson Fund") and IDS Life Series Fund, Inc. (the "IDS Life Fund").

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 17(b) from section 17(a) and approval requested under section 26(b).

**SUMMARY OF APPLICATION:** Applicants seek an Order under section 26(b) of the 1940 Act approving the substitution of shares of the IDS Life Fund for shares of the Shearson Fund held by the Shearson Accounts. Applicants also seek an Order under sections 17(a) and 17(b) of the 1940 Act exempting certain purchase and sale transactions between the Shearson Fund and the IDS Life Fund in connection with the substitution.

**FILING DATE:** The application was filed on September 11, 1990 and amended on November 29, 1990.

**HEARING OR NOTIFICATION OF HEARING:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, IDS Tower 10, Minneapolis, MN 55440.

**FOR FURTHER INFORMATION CONTACT:** Wendy B. Finck, Staff Attorney, (202) 272-3045, or Heidi Stam, Assistant Chief, (202) 272-2060 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

### Applicants' Representations

1. IDS Life is a stock life insurance company organized under the laws of Minnesota. It is a wholly-owned subsidiary of IDS Financial Corporation ("IDS") which, in turn, is a wholly-owned subsidiary of the American Express Company. IDS Life of New York is a wholly-owned subsidiary of IDS Life and is a stock life insurance company organized under the laws of New York.

2. The Shearson Account was established by IDS Life as a separate account under Minnesota law to fund single premium variable life insurance policies (the "Policies") issued by IDS Life. The Shearson Account of New York was established by IDS Life of New York as a separate account under New York law to fund Policies issued by IDS Life of New York. The Policies have not been offered since December of 1988. The Shearson Accounts are registered as unit investment trusts under the 1940 Act. The Shearson Accounts are each divided into five sub-accounts that invest in shares of a corresponding portfolio of the Shearson Fund.

3. The IDS Life Variable Life Separate Account (the "IDS Life Account") was established by IDS Life as a separate account under Minnesota law to fund variable life insurance policies issued by IDS Life. The IDS Life of New York Account 8 (the "IDS Life of New York Account") (collectively, the "IDS Life Accounts") was established by IDS Life of New York as a separate account under New York law to fund variable life insurance policies issued by IDS Life of New York. The IDS Life Accounts are registered as unit investment trusts under the 1940 Act. The IDS Life Accounts are each divided into five sub-accounts that invest in shares of a corresponding portfolio of the IDS Life Fund.

4. Shares of the Shearson Fund are currently held by the Shearson Accounts. The Shearson Fund was formed as a Massachusetts business trust and is registered under the 1940 Act as a diversified, open-end management investment company. The Shearson Fund is comprised of five portfolios: the Money Market Portfolio, the Government Securities Portfolio, the High Income Bond Portfolio, the Appreciation Portfolio, and the Total Return Portfolio. The Bernstein-McCauley division of Shearson Lehman Hutton Inc. serves as investment adviser to the Money Market, Government Securities and High Income Bond Portfolios. The Shearson Asset Management division of Shearson Lehman Hutton Inc. serves as investment adviser to the Appreciation Portfolio. The Boston Company Advisers, Inc. serves as investment adviser to the Total Return Portfolio and also is administrator to each of the portfolios.

5. Shares of the IDS Life Fund are currently held by the IDS Life Accounts. The IDS Life Fund was incorporated under Minnesota law and is registered under the 1940 Act as a diversified, open-end management investment company. The IDS Life Fund is comprised of five portfolios: the Money Market Portfolio, the Government Securities Portfolio, the Income Portfolio, the Equity Portfolio, and the Managed Portfolio. IDS Life is investment manager of the IDS Life Fund. IDS Life and IDS have an investment advisory agreement under which IDS Life pays IDS a fee for investment advice about IDS Life Fund's portfolios. The investment objectives and policies of the IDS Life Fund portfolios are generally comparable to those of the corresponding Shearson Fund portfolios.

6. Applicants propose substituting shares of the IDS Life Fund portfolios for shares of the corresponding Shearson Fund portfolios held by the Shearson Accounts. Accordingly, shares of the Money Market Portfolio of the IDS Life Fund would be substituted for shares of the Money Market Portfolio of the Shearson Fund; shares of the Government Securities Portfolio of the IDS Life Fund would be substituted for shares of the Government Securities Portfolio of the Shearson Fund; shares of the IDS Life Fund's Income Portfolio would be substituted for shares of the Shearson Fund's High Income Bond Portfolio; shares of the IDS Life Fund's Equity Portfolio would be substituted for shares of the Shearson Fund's Appreciation Portfolio; and shares of the IDS Life Fund's Managed Portfolio would be substituted for shares of the Shearson Fund's Total Return Portfolio.

Given the Shearson Fund's relatively small asset size and high level of expenses, the Boards of Directors of IDS Life and IDS Life of New York have determined that investment in the Shearson Fund is no longer appropriate and that existing Policy owners would benefit by the substitution. Sales of the Policies were discontinued in 1988 after amendments to the tax law made purchase of the Policies less advantageous. Consequently, no additional Policy premiums are available for purchase of Shearson Fund shares. In contrast, the asset size of the IDS Life Fund is expected to continue to increase since shares of the IDS Life Fund are sold to fund benefits under variable universal life insurance policies that continue to be issued by IDS Life and IDS Life of New York. The larger asset base of the IDS Life Fund also affords the IDS Life Fund's portfolio managers increased flexibility. Finally, the actual operating expenses of the Shearson Fund generally have been higher than those of the IDS Life Fund and it is expected that they will remain relatively higher because the Policies are no longer offered for sale. In light of these factors, and pursuant to authority granted to them under the Policies, the Boards of Directors of IDS Life and IDS Life of New York propose substituting shares of the IDS Life Fund for shares of the Shearson Fund held by the Shearson Accounts. The Board of Trustees of the Shearson Fund approved the proposed substitution on January 7, 1990.

7. It is intended that the substitution would be effected by exchanging an interest in the Shearson Fund for an interest of equal value in the IDS Life Fund. The Shearson Accounts would redeem the shares they hold of the Shearson Fund and receive in-kind payment of the portfolio securities of the Shearson Fund. The Shearson Accounts would sell such securities to the IDS Life Accounts for a cash receivable. The Shearson Accounts would then use this cash receivable to purchase the corresponding shares of the IDS Life Fund.[1] Similarly, the Shearson Fund would also transfer to the IDS Life Fund any remaining assets and liabilities including dividend and interest receivables, accrued fee expenses, cash, and any other receivables and liabilities of the Shearson Fund as of the substitution date. These transactions will occur simultaneously at the current market price of the securities involved calculated in accordance with rule 22c-1 under the 1940 Act. Any costs that may be associated with the transaction, such as custodial transaction charges or any costs of selling portfolio securities acquired by the IDS Life Fund as a result of the substitution to meet diversification requirements or the investment strategies of the portfolio managers, will be paid by IDS Life and IDS Life of New York.[2]

8. Applicants represent that the proposed substitution is fair to policy owners. Any expenses of the substitution with respect to the Policies will be borne by IDS Life and IDS Life of New York and not by Policy owners. Any expenses incurred in winding down the Shearson Fund will be borne by the investment advisers and administrators to the Shearson Fund portfolios. Applicants believe that the proposed substitution will have no federal income tax consequences for Policy owners. In addition, the substitution will not alter the Policy values, insurance benefits to Policy owners or the contractual obligations of IDS Life or IDS Life of New York. The voting rights of Policy owners will be the same before and after the substitution. The fees and charges paid by Policy owners will not increase as a result of the substitution. Policy owners will have prior knowledge regarding the proposed substitution in the form of a notice letter and prospectus mailed approximately 10 days before the substitution. For a period of one year after the date of the mailing of such notice, Policy owners would be permitted to make one reallocation of Policy value to the IDS Life Fund portfolios of their choice pursuant to Policy transfer privileges. This reallocation of Policy value will not count toward the number of transfers allowed annually under the Policy and will not generate any transfer fees.

9. Applicants also request an Order pursuant to section 17(b) of the 1940 Act approving certain sale and purchase transactions between the Shearson Fund and the IDS Life Fund (collectively, the "Funds") in connection with the proposed substitution. The Order would permit substitution of shares of the IDS Life Fund for shares of the Shearson Fund held by the Shearson Accounts without incurring brokerage or transaction expenses.

10. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

11. The Funds may be deemed to be affiliated persons, or an affiliated person of an affiliated person, of each other or of other Applicants, under section 2(a)(3) of the 1940 Act, and the proposed substitution may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants.

12. Section 17(b) of the 1940 Act provides that the SEC may grant an Order exempting transactions prohibited by section 17(a) of the 1940 Act upon application if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

13. The Funds represent that the terms of the proposed substitution, including any consideration paid or received, are reasonable and fair and do not involve overreaching on the part of any person.

14. The investment objectives and policies of the portfolios of the Funds involved in the transaction are generally comparable. Thus, the purchase and sale transactions are consistent with the objectives, policies and restrictions of the Funds.

15. The proposed substitution is consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in section 1 of the 1940 Act. The proposed transaction does not present any of the issues or abuses that the 1940 Act is designed to prevent. The proposed substitution will be effected in a manner consistent with the public interest and protection of Policy owners. The Policy owners will be fully informed of the terms of the proposed substitution and will have an opportunity to reallocate Policy value following the substitution.

16. The Funds also note in support of their request for an Order under section 17(b) that the proposed substitution falls within the intent of, but not the literal

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

[2] Applicants represent that, during the Notice Period, the application will be amended to reflect this representation.

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requirements of rule 17a–7 under the 1940 Act. That Rule generally exempts from section 17(a) certain purchase and sale transactions between registered investment companies, or separate series, of registered investment companies, which are affiliated persons of each other, provided certain enumerated conditions are met. The Funds represent that, as a condition to any Order under section 17(b), they will comply with the conditions set forth in subparagraphs (b), (c), (d) and (e) of rule 17a–7, namely, that: (b) The transactions will be effected at the independent current market price of the securities; (c) the transactions are consistent with the policy of the Funds and the Policies involved in the proposed substitution, as recited in the applicable registration statements and reports filed under the 1940 Act; (d) no brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with the transactions; and (e) the Boards of Directors or Trustees of the Funds, including a majority who are not interested persons, (1) have adopted procedures pursuant to which such purchase or sale transactions may be effected, which are reasonably designed to provide that all the conditions of paragraph (b) through (d) of rule 17a–7 are complied with, and (2) will determine that the purchases or sales are effected in compliance with such procedures.

17. The Funds cannot, however, meet the conditions of subparagraphs (a) and (f) of rule 17a–7. Subparagraph (a) requires the transaction be "for no consideration other than cash payment." The Funds cannot comply with subparagraph (a) because the consideration involved in the transaction will be a cash receivable rather than cash payment. If cash, instead of a cash receivable, were used to pay the Shearson Fund for its portfolio securities, unnecessary brokerage expenses would be incurred to the detriment of Policy owners. Subparagraph (f) requires the Funds to: (1) Maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of rule 17a–7, and (2) maintain and preserve for a period not less than six years, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e) of rule 17a–7 were made. Since subparagraph (f) contemplates that each party will have continuing operations after a transaction pursuant to rule 17a–7 (in order to be able to satisfy the record-keeping requirements) the Shearson Fund will not be able to comply. However, the IDS Life Fund represents that it will comply with such requirements. The Funds submit that lack of a cash payment and the fact that the Shearson Fund is discontinuing operations after the substitution is completed, under the circumstances, do not give rise to the type of potential abuse rule 17a–7 was designed to guard against. Rather, rule 17a–7 was designed to permit investment companies to sell securities between themselves at current market prices without necessarily incurring costs, including brokerage costs, to the detriment of Policy owners. Here the transactions involved will be effected at current market price, and thus, in substance, are of the type ordinarily exempted by rule 17a–7.

18. Applicants submit, for all the reasons set forth above, that the requested order under section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants further submit that the requested Order under sections 17(a) and 17(b) of the 1940 Act is reasonable and fair, is consistent with the policies of the registered investment companies, and is consistent with the general purposes of the 1940 Act, the public interest, and the protection of investors.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28693 Filed 12–6–90; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–17991; File No. 812–7607]**

## Keystone Provident Life and Insurance Co., et al.; Application for Exemption

November 30, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Keystone Provident Life Insurance Company ("Keystone Provident"), KMA Variable Account ("KMA Account"), Keystone Provident Variable Account I ("Variable Account I"), SteinRoe Variable Investment Trust ("SteinRoe Trust") and Stein Roe & Farnham Incorporated ("Stein Roe").

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 17(b) or, alternatively, under section 6(c) of the 1940 Act, from section 17(a) and approval requested under section 26(b) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order approving the substitution of shares of the Mortgage Securities Income Fund ("MSIF") for shares of the Government Guaranteed Securities Fund ("GGSF") and the substitution of shares of the Cash Income Fund ("CIF") for shares of the Government Securities Zero Coupon Fund ("GSZCF") each of which are portfolios of the SteinRoe Trust (the "Substitution") and, an exemption to the extent necessary to permit the transfer of unit values among the sub-accounts of the KMA Account and the Variable Account I.

**FILING DATE:** The application was filed on October 4, 1990 and amended on November 27, 1990.

**HEARING OR NOTIFICATION OF HEARING:** If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Robert R. Baird, Esq., Keystone Provident Life Insurance Company, 99 High Street, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Bisset, Staff Attorney, at (202) 272–2058, or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance (Divisions of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).



**Applicant's Representations**

1. Keystone Provident is a stock life insurance company, and is a wholly-owned indirect subsidiary of Liberty Mutual Insurance Company ("Liberty Mutual"). Among Liberty Mutual's other indirect subsidiaries is the investment advisory form of Stein Roe, adviser to SteinRoe Trust. Keystone Provident writes fixed individual life insurance and individual and group fixed and variable immediate and deferred annuity contracts on a non-participating basis.

2. The Accounts are segregated investment accounts registered under the 1940 Act as unit investment trusts. Each Account is further divided into sub-accounts ("Sub-accounts") that correspond to the portfolios of the SteinRoe Trust, including MSIF, GGSF, CIF and GSZCF. KMA Account serves as the funding medium for certain flexible premium variable annuity contracts (the "Contracts") and Variable Account I was established to fund certain single person variable life insurance policies (the "Policies").

3. The current Contracts offered by the KMA Account provide for investment in the Sub-accounts that invest in the portfolios of the SteinRoe Trust except for GSZCF. Only Contracts designed for use in connection with retirement plans defined as qualified plans or receiving special income tax treatment under sections 401, 403, 408, 457 and similar provisions of the Internal Revenue Code of 1986, as amended ("Code"), may invest in the Sub-account that invests in GGSF. The Policies previously offered by Variable Account I provide for investment in the Sub-accounts that invest in each of the portfolios of the SteinRoe Trust, including GSZCF.

4. Keystone Provident is no longer actively offering the Policies primarily as a result of provisions of the Technical and Miscellaneous Revenue Act of 1988 ("Act") that applies to all single premium life insurance policies, including the Policies. These provisions limit the marketability of the Policies, and have adverse tax consequences for the Policy Owners (Policy Owners and Contract Owners are hereinafter collectively referred to as "Owners"). In addition, investment in GGSF and GSZCF has been limited to the Policies and to the Contracts offered in connection with Qualified Plans since 1986, consistent with Department of the Treasury Regulations.

5. The SteinRoe Trust is a series type investment company which has eleven investment portfolios (referred to as "Fund" or "Funds") that have differing investment objectives, policies and restrictions.

6. On August 31, 1990 there were only 439 Owners (314 Contract Owners and 125 Policy Owners) participating in GGSF representing assets of approximately $6,700,000 of total assets of $20,350,618 and only 19 Policy Owners participating in GSZCF representing assets of approximately $440,000 of total assets of $576,259. The other assets of GGSF and GSZCF, approximately $13,550,000 and $134,000 respectively, are attributable to Keystone Provident's "seed money" investments.

7. Keystone Provident on its own behalf and on behalf of the Accounts proposes to effect a Substitution of shares of MSIF and CIF for all shares of GGSF and GSZCF, respectively, attributable to the Contracts and Policies. Keystone Provident will schedule the Substitution to occur as soon as practicable following the issuance of the order so as to maximize the benefits to be realized from the Substitution. Keystone Provident will pay all expenses and transaction costs of the Substitution. Within five days after the Substitution, Keystone Provident will send to Owners written notice of the Substitution ("Notice") that identifies the shares that have been eliminated and the shares of the Fund that have been substituted, and will also include the prospectus for the SteinRoe Trust and supplements to the prospectuses of the Accounts that describe the Substitution. Keystone Provident has sent letters and supplements to the prospectuses for the Accounts, dated October 25, 1990, to Owners advising them of the proposed substitution.

8. Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets, as substituted, to any other available Sub-account, without limitation and without charge. Any such transfer, and any transfer from GGSF and GSZCF prior to the Substitution (during the period from the date of the supplements to the date of the Substitution), will not be counted toward the current limitations on transfers under the Contracts and Policies. Following the Substitution, Owners will be afforded the same contract rights as they currently have. Immediately following the Substitution, Keystone Provident for administrative purposes, will treat, as single Sub-accounts of its Accounts, the Sub-accounts invested in shares of GGSF and GSZCF and the continuing Sub-accounts invested in MSIF and CIF, respectively. This treatment will be reflected in all disclosure documents filed by the Accounts.

9. Keystone Provident will redeem for cash and securities all shares it currently holds on behalf of the Accounts at the close of business on the date selected for the Substitution. All shares held by the Accounts are attributable to Owners. Keystone Provident's redemption of shares of GSZCF will be entirely for cash which will then be invested in CIF. The redemption of shares of GGSF will be effected partly for cash and partly for securities as a "redemption-in-kind." Prior to effecting the Substitution, the SteinRoe Trust will take all actions necessary to comply with the requirements of section 16(f) of the 1940 Act and rule 18f–1 thereunder. The securities redeemed-in-kind will be used together with the cash proceeds to purchase the shares of MSIF. Applicants have determined that effecting the redemption of shares of GGSF in-kind is appropriate based on the current similarity of the portfolio investments of GGSF and MSIF. Such similarity does not exist as between the portfolio investments of GSZCF and CIF. In all cases, Keystone Provident on behalf of the Accounts will simultaneously place the redemption requests with GGSF and GSZCF and the purchase orders with MSIF nad CIF, so that the purchases will be for the exact amounts of the redemption proceeds. As a result, at all times, monies attributable to the Owners currently invested in GGSF and GSZCF will be fully invested.

10. Keystone Provident's "send money" investment in the SteinRoe Trust is held directly in its General Account and not through the Accounts or any other separate account. On the business day following the Substitution or as soon thereafter as consistent with the purpose explained below, Keystone Provident will redeem entirely for cash the shares of GGSF and GSZCF held by its General Account. By effecting the redemptions in the order described, Keystone Provident is providing the mechanism whereby it assumes all of the transaction costs relating to the Substitution. The full net asset value of the redeemed shares held by the Accounts will be reflected in the Owners' accumulation unit values following the Substitution. Any direct or indirect costs of liquidating the assets of GGSF and GSZCF will be reflected in the net asset value at which Keystone Provident subsequently redeems its shares.

11. Stein Roe has been fully advised of the terms of the Substitution and will effect the trading of portfolio securities

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and adjust the maturities of GGSF and GSZCF to provide for the anticipated redemptions of shares held by the Accounts and Keystone Provident.

12. The purpose of section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

13. The purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses section 26(b) is designed to prevent. The Substitution is an appropriate solution to the limited owners interest and investment in GGSF and GSZCF resulting from changes in the Code. The Substitution is proposed to provide a consolidation of assets of Funds that, therefore, currently and in the future may be expected to be of insufficient size to promote positive investment performance or to reduce operating expenses.

14. The Substitution will not result in the type of costly forced redemption that section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons: (1) The Substitution is of shares of Funds of the SteinRoe Trust whose objectives, policies and restrictions are sufficiently similar to those of the substituted Funds so as to continue fulfilling the Owner's objectives and expectations; (b) Owners will have prior notice of the Substitution and have the opportunity to reallocate their investment without charge or other restriction from the date of the prospectus supplement until thirty days after the Substitution; (c) the Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge; (d) Keystone Provident has undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions relating to the Substitution and is effecting the redemption of shares of GGSF and GSZCF in a manner that attributes all transaction costs to Keystone Provident; (e) the Substitution will not be counted against the number of allowable transfers; (f) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of Keystone Provident; (g) the Substitution in no way will alter the tax benefits to Owners; (h) Owners may choose to withdraw amounts credited to them following the Substitution under the conditions that currently exist; and (i) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of the Funds.

15. Keystone Provident has determined that it is in the best interests to Owners to substitute shares of MSIF and CIF for shares of GGSF and GSZCF, respectively, based on the following facts and circumstances. Each of the Funds is an existing portfolio of the SteinRoe Trust and managed by Stein Roe. The Custodian, Independent Accountants, distributor and administrator are the same entities for each Fund. The investment objectives and related investments of MSIF are significantly similar to those of GGSF and the investment objective and related investments by CIF are compatible with those of GSZCF. GSZCF is unique in its investment objective, and no alternative investment portfolio will approximate the characteristics of investment in zero coupon Treasury securities. However, CIF does provide a reasonable alternative by virtue of its investment objective. A money market portfolio, such as CIF, moreover provides less volatility and investment risk than any other portfolio of investments available in the SteinRoe Trust.

The SteinRoe Trust's adviser and administrator have voluntarily agreed to reimburse the Funds for operating expenses in excess of certain specific percentages. The expenses as a percentage of average net assets before the reimbursement are slightly higher for GGSF than for MSIF and considerably greater for GSZCF as compared to CIF. In any event, the current undertaking to cap expenses at 1.00% applies to each Fund, but only extends to April 30, 1991. It is not known at this time whether a further undertaking to cap expenses will be made. Thus, Owners will not be exposed to higher expenses following the Substitution and may in fact benefit from the lower expense ratio after reimbursements cease. Further, the management fee component of such expenses is the same for GGSF and MSIF. Although the management fee component is .10% higher for CIF than for GSZCF, Owners will benefit immediately from CIF's lower overall expense ratio. It is also expected that the consolidation of assets of the Funds as a result of the Substitution will lead to modest economies of scale and reduced operating expenses.

16. Immediately following the Substitution, Keystone Provident will treat, as single Sub-accounts of its Accounts, the Sub-accounts invested in shares of the substituted Funds and the continuing Funds. The Commission has taken the interpretive position that sub-accounts of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. The transfer of unit values between Sub-accounts could be said to involve purchases and sale transactions between sub-accounts, that are affiliated persons. The Sub-accounts investing in GGSF and GSZCF could be said to be selling shares of such Funds to the Sub-accounts investing in MSIF and CIF in return for units of such Sub-accounts. Conversely, it could be said that the Sub-accounts investing in MSIF and CIF were purchasing shares of GGSF and GSZCF. The sale and purchase transactions between Sub-accounts could be said to come within the scope of sections 17(a)(1) and 17(a)(2) of the 1940 Act.

17. In addition, the Substitution may be deemed to entail one or more purchases or sales of securities between and among certain Applicants as a result of the purchase of certain shares of MSIF with the securities received by the Accounts as a redemption-in-kind of shares of GGSF. Although SteinRoe Trust has established procedures pursuant to rule 17a-7 under section 17 of the 1940 Act, rule 17a-7 may not be applicable as the affiliations between the accounts and the Funds do not arise solely by reason of having a common investment adviser, common directors and common officers. Therefore Applicants seek an exemption from section 17(a) of the 1940 Act pursuant to section 17(b) of the 1940 Act, as a result of the redemptions-in-kind.

18. All valuation procedures have been established and approved by the Board of the SteinRoe Trust. Such procedures, including procedures established pursuant to rule 17a-7 with regard to equity securities, will be followed in connection with the Substitution. Debt securities will be valued based upon bid prices or pricing services, as necessary to preserve the respective net asset values of each Fund and avoid disparities of valuation between the Funds. The Board of the SteinRoe Trust has determined that such procedures are in the best interests of all Owners.

19. The transactions effecting the Substitution including the redemption of the shares of GGSF and GSZCF and the purchase of shares of MSIF and CIF will be effected in conformity with section 22(c) of the 1940 Act and rule 22c-1 thereunder. Moreover, the redemption-in-kind of shares of GGSF will be effected in conformity with section 18(f) under the 1940 Act and rule 18f-1, thereunder. Owner interests in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. Keystone Provident believes, based on its review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

20. The investment objectives of the Funds to be substituted are sufficiently similar to the investment objectives of the substituted Funds. In this regard, the Substitution is consistent with Commission precedent pursuant to section 17.

21. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by section 6(c) of the 1940 Act. Owners will be fully informed of the terms of the Substitution through the Supplements to the prospectuses of the Accounts, the Prospectuses for the SteinRoe Trust and the Notice and will have an opportunity to reallocate investments following the Substitution. Applicants represent that the terms of the proposed transactions as described in the application and for the reasons set forth herein, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the policies of the Funds and are consistent with the general purposes of the 1940 Act.

22. Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in sections 6(c), 17(b) and 26(b) of the 1940 Act and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 90-28894 Filed 12-6-90; 8:45 am]
BILLING CODE 8010-01-M



[Release No. 35-25188]

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 30, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 24, 1990 to the Secretary, Securities and Exchange Commission, Washington DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Indeck Energy Service, Inc. (31-845)

Indeck Energy Services, Inc. ("Indeck"), 1130 Lake Cook Road, Suite 300, Buffalo Grove, Illinois 60089, has filed an application for an order granting an exemption under section 3(a)(5) from all provisions of the Act, except section 9(a)(2).

Indeck is a privately-held Illinois corporation principally engaged in the design, development, ownership, operation and maintenance of industrial energy projects. Through various wholly owned subsidiary companies, Indeck owns and operates cogeneration facilities in Corinth, Ilion, Oswego and Tonowanda, New York that are qualifying facilities under the Public Utility Regulatory Policies Act of 1978. Neither Indeck nor any corporation owned or controlled by Indeck is a "public-utility company," a "holding company" or an "affiliate" of a holding company within the meaning of the Act.

Indeck seeks to invest in an independent power producer ("IPP") project consisting of a cogeneration facility at Windsor, (Quebec) Canada. Indeck intends to establish a new subsidiary under Canada law ("IPP Subsidiary") to be a general partner in a limited partnership that will own and operate the Canadian IPP.

Indeck, through its ownership of the voting securities of the IPP Subsidiary, and IPP Subsidiary itself, as general partner of the limited partnership that will own the Canadian IPP, will be holding companies as defined by section 2(a)(7)(A) of the Act and will thus be subject to regulation under the Act, unless an exemption is obtained.

Indeck states that it will not become a company the principal business of which within the United States is that of a public utility, after consummation of the Proposed Investment, and it will not derive any material part of its income, directly or indirectly, form any one or more subsidiary companies the principal business of which within the United States is that of a public utility.

### American Electric Power Company, Inc. (70-5943)

American Electric Power Company, Inc., ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a post-effective amendment to its declaration under section 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By orders dated January 3, 1986 (HCAR No. 23980) and December 18, 1987 (HCAR No. 24534), the Commission authorized AEP to issue and sell, from time-to-time through December 31, 1990, up to 44 million shares of its authorized but unissued shares of common stock, $6.50 par value ("Common Stock"), pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan").

AEP now proposes to extend the time period during which the shares of Common Stock previously authorized may be issued and sold pursuant to the Plan, from December 31, 1990 to December 31, 1993.

### The Southern Company, et al. (70-7532)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, and its wholly owned service company subsidiary, Southern Company

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Services, Inc. ("Services"), both at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

By order dated November 23, 1988 (HCAR No. 24757) ("Order"), the Commission authorized Southern from time-to-time through December 31, 1990, to incur indebtedness in an aggregate amount up to $75 million at any time outstanding pursuant to either short-term borrowings from banks through the issuance of notes ("Notes"), or the issuance of notes ("Additional Notes") to Southern, or any combination thereof. The Commission, by that same Order, also authorized Southern to guaranty Service's Notes and to acquire Service's Additional Notes.

The Notes that Services proposed to issue under the Order would have maximum maturities of nine months, would be at rates per annum not in excess of the prime rate, the CD rate plus ¾% and LIBOR plus 1%. Compensation for the credit facilities, not to exceed ½ of 1% per annum of the amount of the facilities, is expected to be provided by balances or comparable fees in lieu of balances.

The Additional Notes that Services proposed to issue under the Order would bear interest at a rate equal to the average effective interest cost of Southern's outstanding obligations for borrowed money on the date of issue, as authorized by the Commission, or, if no such obligations are outstanding at the time, at the rate or rates at which Southern may borrow under its existing lines of credit as authorized by order dated April 28, 1990 (HCAR No. 25077). Services and Southern now request that such authority be extended through December 31, 1995.

**The Washington Water Power Company (70-7752)**

The Washington Water Power Company ("WWP"), E. 1411 Mission Avenue, Spokane, Washington 99202, has filed an application under section 3(b) of the Act and Rule 10 thereunder, in connection with the participation by WWP and certain affiliated companies in a proposed electric generating project in British Columbia.

WWP is an electric and gas utility company providing service to portions of the states of Washington, Idaho and Montana. WWP is not presently a "holding company" or an "affiliate" as these terms are defined in the Act.

WWP is participating with certain parties in Canada and the United States in a joint venture known as NW Energy Corporation ("NW Energy"), a Canadian corporation. NW Energy proposes to construct a 55–60 megawatt electric generating plant in Williams Lake, British Columbia (the "Williams Lake Project"). The Williams Lake Project will provide additional low-cost generating capacity to the British Columbia Hydro and Power Authority ("BC Hydro"). Construction of the Williams Lake Project is expected to begin in March 1991, with commercial operations to commence in April 1993.

WWP will participate in the joint venture through its wholly-owned subsidiary, Pentzer Corporation ("Pentzer"), a Washington corporation which owns substantially all of WWP's non-regulated businesses. Pentzer, in turn, owns all of the common stock of WP Energy Canada, Ltd. ("WP Canada"), a Canadian corporation. WP Canada owns 33⅓% of the common stock of NW Energy. It is anticipated that NW Energy will establish a corporate subsidiary or limited partnership (the "Generating Company") to hold legal title to the electric generating facilities of the Williams Lake Project during construction thereof and throughout commercial operation.

Once the electric generating facilities are operational, the Generating Company will be an "electric utility company" as defined in section 2(a)(3) of the Act. WWP, Pentzer, WP Canada and NW Energy will each be a "holding company" as defined in section 2(a)(7) of the Act, with respect to the Generating Company, and the Generating Company will be a direct or indirect "subsidiary company" of each of these companies, as defined in section 2(a)(8) of the Act.

WWP seeks an unqualified order of exemption under section 3(b) of the Act for the Generating Company. WWP asserts that the Generating Company will derive no material part of its income, directly or indirectly, from sources within the United States, and, further, that the Generating Company will not operate, nor will it have any subsidiary operating, as a public-utility company within the United States.

Upon issuance of such order, WWP will claim exemption pursuant to Rule 10 under the Act, for itself, Pentzer, WP Canada, NW Energy and any other related entity that will be a statutory holding company solely by reason of such company having as a subsidiary the Generating Company.

**Jersey Central Power & Light Company, et al. (70-7885)**

Jersey Central Power & Light Company, Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Company, P.O. Box 16001, Reading, Pennsylvania 19640 and Pennsylvania Electric Company, 1001 Broad Street, Johnstown, Pennsylvania 15907 (collectively, "GPU Companies"), electric public-utility subsidiary companies of General Public Utilities Corporation, a registered holding company, have filed an application under section 12(b) of the Act and Rule 45 thereunder.

The GPU Companies are each parties, along with other public-utility companies (collectively, "PJM Companies"), to the Pennsylvania-New Jersey-Maryland Interconnection Agreement, dated September 26, 1956, as amended and supplemented ("PJM Agreement"). Pursuant to the PJM Agreement, the PJM Companies have established and leased the PJM Interconnection Office ("PJM Office") located in Valley Forge, Pennsylvania. In order to renovate and expand the PJM Office, and extend the 1969 lease ("Lease") for the PJM Office to not later than January 1, 2017, the lessor will require each PJM Company to now become jointly and severally liable for the obligations of the PJM Companies under the lease. Therefore, the GPU Companies propose to become jointly and severally liable for up to an aggregate amount of $20 million, under the terms of the Lease.

**Energy Initiatives, Inc., et al. (70-7909)**

Energy Initiatives, Inc. ("EII") and its wholly-owned subsidiary, Hunterdon Energy Corporation ("HEC"), both located at One Gatehall Drive, Parsippany, New Jersey 07054, each a subsidiary of General Public Utilities Corporation, a registered holding company, 100 Interspace Parkway, Parsippany, New Jersey 07054, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

Pursuant to the Commission's orders dated April 16, 1987 (HCAR No. 24373) and September 16, 1988 (HCAR No. 24718), EII acquired 100 shares of common stock, no par value for $1000, of HEC, a New Jersey corporation. HEC is organized solely for the purpose of developing a proposed qualifying cogeneration facility, as defined in the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder, to be located in Clinton, New Jersey ("Facility"). EII also formed Hunterdon Energy Limited Partnership ("Partnership"). The Partnership is a Delaware limited partnership formed solely for the purpose of developing, financing, constructing and operating the Facility.



In connection with the development of the Facility, EII proposes to sell, and HEC proposes to acquire, all of EII's 100% general partnership interests and all of EII's 99% limited partnership interest in the Partnership. The remaining 1% of the limited partnership interest in the Partnership will temporarily be held of record by an individual, pending eventual acquisition by the Facility's other equity investor(s), as part of the project construction financing.

EII and HEC also propose to guaranty either directly or indirectly or, alternately, become obligated under a Repayment Agreement for a letter of credit of up to a $300,000 maximum amount to be obtained by the Partnership to secure its liquidated damage obligations under a long-term agreement ("Power Purchase Agreement") for the Facility entered into on February 27, 1990 with Jersey Central Power & Light ("JCP&L"), a wholly owned public-utility subsidiary of GPU. The Power Purchase Agreement provides for the sale to JCP&L of the Facility's net electrical energy and capacity. EII and HEC would not guarantee or incur any such repayment obligation maturing more than 10 years from issuance or bearing interest at a rate in excess of 125% of the prime rate or comparable rate as in effect from time-to-time.

Alternatively, EII seeks authority to make capital contributions to HEC of up to $300,000 which HEC, in turn, would contribute to the Partnership to provide for such security. The Partnership would deposit such funds in escrow or, pursuant to a similar arrangement, secure its liquidated damage obligations to JCP&L under the Power Purchase Agreement.

**Entergy Power, Inc. (70-7818)**

Entergy Power, Inc. ("Entergy Power"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, a wholly owned electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, has filed an application-declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By order dated August 27, 1990 (HCAR No. 25136), the Commission authorized, among other things, Entergy Power to issue and sell, and Entergy to acquire, up to 1,000 shares of Entergy Power common stock, at a price of $5 dollars per share, and up to $200 million of unsecured notes ("Notes").

Entergy Power now requests authority, through December 31, 1991, to issue and sell fixed or flexible rate debt securities ("New Debt") in the aggregate principal amount of up to $175 million, expected to mature not earlier than January 1, 1997 and not later than December 31, 2005, under a new indenture, or other form of security agreement. The proceeds derived from the New Debt will be used to refund all or a portion of the approximately $174 million of Notes and to provide working capital. The New Debt may be subject to optional prepayment prior to maturity, in whole or in part, subject to certain restrictions, at prepayment prices not less than the principal amount of the New Debt being prepaid and not greater than such principal amount plus an amount not to exceed the initial annual interest on such New Debt.

Entergy Power proposes to issue the New Debt under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Entergy Power requests authorization to begin negotiations for the terms and conditions of the New Debt. It may do so.

Entergy Power further proposes to issue and sell unsecured short-term debt ("Short-Term Debt") through December 31, 1991 to specified lenders pursuant to a revolving credit facility ("Facility") in an amount not to exceed $50 million. It is contemplated that the Facility would have a term of three years, renewable annually for one additional year. The Short-term Debt would mature at the then current termination date, or at the end of interest period of 30, 60, or 90 days, and proceeds will be used for working capital. The Short-Term Debt would bear interest at either the banks base or prime rate, a eurodollar rate, a CD rate, or a federal funds rate, in each case plus a percentage not in excess of two percent.

**Energy Initiatives, Inc., et al. (70-7815)**

Energy Initiatives, Inc. ("EII"), Camchino Energy Corporation ("Camchino"), OLS Power Limited Partnership ("OLS"), OLS Energy-Chino ("Chino") and OLS Energy-Camarillo ("Camarillo"), each located at One Gatehall Drive, Parsippany, New Jersey 07054, and each an indirect subsidiary of General Public Utilities Corporation ("GPU"), a registered holding company, have filed an application under sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated August 1, 1989 (HCAR No. 24931), the Commission authorized, among other things, OLS, of which EII, through Camchino, holds a 50% partnership interest, to acquire, through a wholly-owned subsidiary, all of the outstanding common stock of Chino, Camarillo and OLS Energy-Berkely ("Berkely"). Chino, Camarillo and Berkely are each the lessee, pursuant to leases ("Leases") with a wholly-owned subsidiary of General Electric Capital Corporation ("GECC"), a nonassociate company, of an operating cogeneration facility located in California, each of which is a qualifying facility ("QF") under the Public Utility Regulatory Policies Act of 1978.

By order dated February 9, 1990 (HCAR No. 25038) ("February 1990 Order"), Chino, Camarillo and Berkely were authorized to amend their outstanding Revolving Credit Agreements, dated December 30, 1987 ("Credit Agreements"), with GECC providing for the short-term working capital requirements of their QF's. Chino, Camarillo and Berkely have issued to GECC their secured promissory notes ("Notes") evidencing their borrowings under the Credit Agreements. The Chino and Camarillo Credit Agreements also provide for the issuance by GECC of letters of credit ("LOC's) as security for the respectivie obligations of Chino and Camarillo to pay for natural gas supplied to their QF's.

A notice of the filing, by post-effective amendment in File No. 70-7725, of a proposal by Chino, Camarillo and Berkeley to extend to December 31, 1992 the time during which they may make borrowings under their respective Credit Agreements and Notes, and, in the case of Chino and Camarillo, the time during which LOC's may be outstanding under their respective existing Credit Agreements, was issued by the Commission on November 23, 1990 (HCAR No. 25162).

Chino and Camarillo now propose to restructure their respective Leases, energy services agreements and related financing agreements for their QF's. It is proposed that OLS make, from time-to-time through December 31, 1991, subordinated loans of up to $150,000 to each of Chino and Camarillo, for an aggregate of 300,000, to fund expenses incurred by Chino and Camarillo in connection with the proposed restructuring ("OLS Loans"). The OLS Loans shall be evidenced by unsecured promissory notes issued by each of Chino and Camarillo to OLS ("OLS Notes"), which would bear interest at a rate of 10% per annum, payable semi-annually. The principal amount of the OLS Notes will be repayable only in such events and from such funds as may be available therefor after payment of other specified obligations, and they will mature no later than December 31, 2007.

In order to fund the OLS Loans, EII proposes to make capital contributions or make loans to Camchino which, in

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turn, would make capital contributions or loans to OLS from time-to-time through December 31, 1991, in an aggregate amount of up to $300,000.

Chino and Camarillo propose to enter into amendments to their respective existing Credit Agreements to provide for a loan facility ("Overhaul Loan Facility") with GECC, subject to the satisfaction of certain conditions precedent, and for each to borrow thereunder from time-to-time prior to December 31, 2007 up to $1 million at any time outstanding and issue to GECC their respective promissory notes evidencing such borrowings. The funds derived from the Overhaul Loan Facility will be used to fund the cost of major repairs, non-routine maintenance activities and overhauls of their respective QF's; provided that the initial advance under the Overhaul Loan Facility may be used to pay certain project operating and maintenance expenses. Borrowings under the Overhaul Loan Facility: (1) May be made from time-to-time during the respective terms of the restructured Leases, which would expire in 2007; (2) will bear interest at an annual rate of prime, as defined, plus 2%; and (3) will be repayable on a fixed amortization schedule (determined at the time each loan is made) over the lesser of (a) five years or (b) the remaining term of the respective lease.

Chino and Camarillo also propose to extend the time during which borrowings may be made under their respective existing Credit Agreements to the end of their respective Leases, December 31, 2007, and provide for an origination fee of $5,000 for the issuance of LOC's in replacement of those presently outstanding thereunder, plus an annual fee of 1% per annum of the face amount of any such replacement LOC.

Upon issuance of an order granting the authority requested, Chino and Camarillo will relinquish any remaining authority granted by the February 1990 Order, and by any authority subsequently granted by orders issued in File No. 70-7725.

**New England Electric System (70-7816)**

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

By orders dated January 10, 1990 and June 21, 1990 (HCAR Nos. 25025 and 25103, respectively) ("1990 Orders"), NEES was authorized to make capital contributions to its wholly owned subsidiary companies ("Subsidiaries") through December 31, 1990 of up to $50 million to Massachusetts Electric Company ("Mass-Elec") and $20 million to The Narragansett Electric Company ("Narragansett"), and up to $3 million to Granite State Electric Company ("Granite State") through December 31, 1991.

NEES now proposes to make, from time to time through December 31, 1992, one or more capital contributions ("Capital Contributions") not to exceed an aggregate of $40 million for Mass-Elec, $40 million for Narragansett, and $2 million for Granite State. NEES states that it will consider the authorization previously granted in the 1990 Orders to Mass-Elec and Narragansett to be superceded by the new order under which NEES proposes to make the Capital Contributions.

The Subsidiaries will apply the funds received from the Capital Contributions for general corporate purposes including, but not limited to, the reimbursement of the treasury for, or the payment of short term borrowings incurred for, capital additions and improvements to plant and property.

**Central Power and Light Company, et al. (70-7817)**

Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas 78401, Public Service Company of Oklahoma, 212 East 6th Street, Tulsa, Oklahoma 74119, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156, and West Texas Utilities Company, 301 Cypress, Abilene, Texas 79601, (collectively, the "CSW Companies"), each an electric public-utility subsidiary of Central and South West Corporation, a registered holding company, have filed an application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By orders dated October 23, 1986 (HCAR No. 24219) and October 12, 1988 (HCAR No. 24728), the Commission authorized each of the CSW Companies to acquire and retire up to 20% of the par value of its preferred stock and 10% of the aggregate principal amount of its first mortgage bonds issued and outstanding on September 30, 1986 and June 30, 1988, respectively. Authority under the existing order (HCAR No. 24728) expires December 31, 1990.

The CSW Companies are each requesting to extend this authority, through December 31, 1992, to purchase and retire up to 20% of the par value of its preferred stock and 10% of the aggregate principal amount of its first mortgage bonds issued and outstanding on September 30, 1990, in open market and negotiated transactions at prices not exceeding the then current general redemption prices for such securities. Purchases would be made only if the issuer of the security in question determined that it would be in the best interest of the issuer to do so based on, among other things, the interest or dividend rates of the securities, the issuer's financing plans and capital structure and the issuer's then current cash position. Funds for such purchases will be made available from internally generated funds or short-term borrowings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 90-28865 Filed 12-6-90; 8:45 am]
BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Reivew

December 3, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New.
*Form Number:* None.
*Type of Review:* New Collection.
*Title:* Self-Administered Questionnaire to Assess Taxpayer Attitudes Towards Joint Electronic Filing.
*Description:* The self-administered questionnaires are necessary to obtain public input on the merits of a joint federal/state electronic filing program along with suggestions on improving the system from the taxpayer's perspective. Affected public is 200 participants.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 200.
*Estimated Burden Hours Per Response:* 10 minutes.
*Frequency of Response:* One-time self-administered questionnaire.
*Estimated Total Reporting Burden:* 33 hours.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*

[FR Doc. 90-28710 Filed 12-6-90; 8:45 am]
BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: December 3, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0913.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Below-Market Loans.
*Description:* Section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have either imputed income or claim imputed deductions under section 7872.
*Respondents:* Individuals or households, Businesses or other for profit, Small businesses or organizations.
*Estimated Number of Respondents:* 1.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1 hour.
*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*

[FR Doc. 90-28711 Filed 12-6-90; 8:45 am]
BILLING CODE 4830-01-M

## Customs Service

[T.D. 90-95]

### Revocation of IPIC, Ltd., To Gauge Imported Petroleum and Petroleum Products

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of revocation of approval of a commercial guager.

**SUMMARY:** Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the approval to guage imported petroleum and petroleum products granted to IPIC, Ltd, formerly located at 1234 West 8th Street, Los Angeles, California 90801 has been revoked with prejudice for failure to meet bonding requirements and provisions contained in the Commercial Gauger Agreement.

Accordingly, the approval of IPIC, Ltd., to gauge imported petroleum and petroleum products in all Customs districts is revoked.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: December 4, 1990.

John B. O'Loughlin,
*Director, Office of Laboratories and Scientific Services.*

[FR Doc. 90-28754 Filed 12-6-90; 8:45 am]
BILLING CODE 4820-02-M

## Internal Revenue Service

### Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on December 12 & 13, 1990. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, December 12 and 8:30 a.m. on Thursday, Decem,ber 13, 1990. The agenda will include the following topics:

**Wednesday, December 12, 1990**

IRS Ethics and Integrity
Circular 230 Proposed Amendment Project
Statistics of Income
Report on Coordinated Examination Program
Development of Tax Forms & Pubs
Wage Reporting: Standards for Electronic Receipt of Information Documents
Report to the Commissioner on Modernization
Electronic Filing for AARP

**Thursday, December 13, 1990**

Small Business Concerns—Reporting Burdens
QIP Team Report on Powers of Attorney
Follow-up, Q & A, and News Items

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public will be in a room that accommodates, approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Railford Gaffney, Senior Program Analyst no later than December 3, 1990. Ms. Gaffney may be reached on (202) 566-3161 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Railford Gaffney, Senior Program Analyst, Executive Secretariat, C:ES room 3308, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Railford Gaffney, Senior Program Analyst, (202) 566-3161 (Not toll-free).

Fred T. Goldberg, Jr.,
*Commissioner.*

[FR Doc. 90-28664 Filed 12-6-90; 8:45 am]
BILLING CODE 4830-01-M

## Office of Thrift Supervision

### First Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(E) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform,

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Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association, Las Vegas, New Mexico, on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28729 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### San Jacinto Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for San Jacinto Savings Association, Bellaire, Texas, Docket No. 6321, on November 30, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28730 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Atascosa Savings, a F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Atascosa Savings, a F.S.B., Jourdanton, Texas, Docket No. 7258, on November 30, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28722 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Equitable Federal Savings Bank, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision had duly appointed the Resolution Trust Corporation as sole Receiver for Equitable Federal Savings Bank, Fremont, Nebraska, Docket No. 4379, on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28723 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Community Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Community Federal Savings Bank, East Moline, Illinois, Docket No. 8784, with the Resolution Trust Corporation as sole Receiver for the Association on November 2, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28716 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Fidelity Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Fidelity Federal Savings Association, Galesburg, Illinois, Docket No. 8698, with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28719 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### First American Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First American Federal Savings Bank, Santa Fe, New Mexico with the Resolution Trust Corporation as sole Receiver for the Association on November 29, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28717 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings and Loan Association of Las Vegas; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Las Vegas, Las Vegas, New Mexico, Docket No. 3100, on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28724 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Heritage Federal Savings Bank of Omaha; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Heritage Federal Savings Bank of Omaha, Omaha, Nebraska with the Resolution Trust Corporation as sole Receiver for the Association on November 15, 1990.



Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28718 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Hiawatha Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for The Hiawatha Federal Savings Association, Hiawatha, Kansas, Docket No. 6770, with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28725 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Nassau Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Nassau Savings and Loan Association, F.A., Brooklyn, New York, Docket No. 6809, with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28720 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Parish Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Parish Federal Savings and Loan Association, Denham Springs, Louisiana with the Resolution Trust Corporation as sole Receiver for the Association on November 29, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28726 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Resource Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Resource Savings Association, Denison, Texas, Docket No. 0033, on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28731 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Security Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subsection (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation for Security Federal Savings Bank, Carlsbad, New Mexico, New Mexico, Docket No. 8513, with the Resolution Trust Corporation as sole Receiver for the Association on November 16, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28727 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### Sun State Savings and Loan Association, F.S.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Sun State Savings and Loan Association, F.S.A., Scottsdale, Arizona, with the Resolution Trust Corporation as sole Receiver for the Association on November 29, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28728 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

### St. Charles Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for St. Charles Federal Savings Association, St. Charles, Illinois, Docket No. 8729, with the Resolution Trust Corporation as sole Receiver for the Association on November 29, 1990.

Dated: December 4, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-28721 Filed 12-6-90; 8:45 am]

BILLING CODE 6720-01-M

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# Sunshine Act Meetings

Federal Register
Vol. 55, No. 236
Friday, December 7, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 2:00 p.m., Tuesday, December 11, 1990.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** Reloadable Tube Aerial Shell Fireworks.

The staff will brief the Commission on a notice of proposed rulemaking concerning certain reloadable tube aerial shell fireworks devices.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: December 4, 1990.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 90-28660 Filed 12-5-90; 1:39 pm]

BILLING CODE 6355-01-M

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m. (Continue at 2:00 p.m. if necessary), Thursday, December 13, 1990.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*1. FY 91 Operating Plan*

The Commission will consider issues related to the Operating Plan for Fiscal year 1991.

*2. Art Materials Labeling*

The staff will brief the Commission on proposed guidelines and criteria for assessing chronic hazards under the Federal Hazardous Substances Act as required by the Labeling of Hazardous Art Materials Act.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: December 4, 1990.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 90-28687 Filed 12-5-90; 1:39 pm]

BILLING CODE 6355-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, December 11, 1990, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note:** Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

*Discussion Agenda*

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: December 4, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-28836 Filed 12-5-90; 9:50 am]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 11, 1990, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.



*Discussion Agenda*

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would ensure that limits are placed on the amount of purchased mortgage servicing rights that State nonmember banks and savings associations can recognize for regulatory capital purposes.

Memorandum and resolution re: Proposed amendment to the Corporation's rules and regulations in the form of a new Part 334, entitled "Contracts Adverse to Safety and Soundness of Insured Depository Institutions," which would implement section 225 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by prescribing regulations to prevent any depository institution insured by the Corporation from contracting for goods, products or services in a way that would adversely affect the safety and soundness of that institution.

Memorandum re: Agreement between the United States and Republic of the Federated States of Micronesia.

FDIC study of the feasibility of establishing a risk-based deposit insurance premium rate structure.

Corporation's 1991-1992 Business Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: December 4, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-28837 Filed 12-5-90; 9:50 am]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, December 4, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendation regarding assistance agreements with depository institutions.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 5, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-28898 Filed 12-5-90; 2:02 pm]

BILLING CODE 6714-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, December 12, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda*

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Cost of Federal Reserve notes in 1991.
2. Proposed 1991 Federal Reserve Bank of St. Louis Employee Salary Structure Adjustments.
3. Proposed 1991 Federal Reserve Bank of Minneapolis Employee Salary Structure Adjustments.
4. Proposed amendments to the Board's Rules Regarding Delegation of Authority to delegate to Federal Reserve Banks authority to approve issuance and redemption of capital notes, and investment in bank premises, by State member banks.
5. Determination with respect to Germany under the Primary Dealers Act of 1988.

*Discussion Agenda*

6. Proposed 1991 Federal Reserve Bank budgets.
7. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: December 5, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-28852 Filed 12-5-90; 11:10 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM:** Board of Governors.

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, December 12, 1990, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 5, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-28853 Filed 12-5-90; 11:10 am]

BILLING CODE 6210-01-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Thursday, December 13, 1990.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open.

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**MATTERS TO BE CONSIDERED:**

*Thursday, December 13*

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule, Part 20—Revised Standards for Protection Against Radiation (Tentative)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementally notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492-0292

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: December 3, 1990.

William M. Hill, Jr.,

*Office of the Secretary.*

[FR Doc. 90-28659 Filed 12-5-90; 1:38 pm]

BILLING CODE 7590-01-M

federal register

Friday
December 7, 1990

Part II

# Department of Agriculture

**Forest Service**

**36 CFR Part 223**

**Forest Service Timber Sale Contract Financial Initiatives; Notice, Final Rule, Proposed Rule and Notice of Proposed Policy**

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**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Timber Sale Contracting Initiatives**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; summary of rules and policies published in this Part II.

**SUMMARY:** In response to law and the requirements of sound business management, the Forest Service has identified a number of objectives and actions it needs to accomplish to deter speculation and prevent default and, thus, ensure orderly sale and harvesting of National Forest System timber. This Part II contains three Forest Service documents which address these objectives—a final rule establishing market-related contract term additions; a proposed rule to revise downpayment and periodic payment requirements; and a proposed policy to establish additional financial security measures on timber sale contracts to protect the Government from damages arising from default. To assist reviewers in understanding the relationship between the documents and how they would contribute to achieving the agency's broad objectives, the Forest Service has prepared a chart that appears at the end of this notice showing the objectives, actions, and codifications of the three documents. This chart is provided for information only.

**FOR FURTHER INFORMATION CONTACT:** Allan McCombie, Timber Management Staff (2300), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. Telephone: (202) 447–6882.

Dated: October 3, 1990.

George M. Leonard,

*Associate Chief.*

CHART OF CHANGES TO TIMBER SALE FINANCIAL SECURITY PROCEDURES

| Action Proposed | Objective/Benefit of Action | Codification | Document |
|---|---|---|---|
| 1. Increase minimum bid guarantee from 5 to 10 percent of advertised value. | Provides greater incentive to high bidder to execute contract. Ensures financial ability of potential purchasers. | FSH 2409.18, Sec. 56.4. (Forest Service Handbook). | Proposed policy; financial security of NFS timber sale contracts. |
| 2. Change procedure for determination of damages for purchaser's failure to honor bid and consummate the contract. | Deter speculative bidding; assess damages on actual resale basis; ensure that bidder in inadvertent breach is charged actual damages; provide for uniform treatment for all failures to complete contracts. | FSH 2409.18, Sec. 73. (Forest Service Handbook). | Proposed policy; financial security of NFS timber sale contracts. |
| 3. Remove $500,000 cap on performance bonds. The minimum bond will be 10 percent of bid value. | Ensures equal treatment of performance bonds on all sales. Deter speculation by increasing capital requirements; provides additional security for default collection. Increases financial ability screening prospective purchasers. | FSH 2409.18, Sec. 54.1. (Forest Service Handbook). | Proposed policy; financial security of NFS timber sale contracts. |
| 4. Discontinue discount test in western R–6 and R–5 national forests; allow discounting servicewide under certain conditions. | Eliminates needless benefit given reduced sale volumes on affected forests. Provides an administrative mechanism to allow discounting when in public interest. | FSH 2409.18, Sec. 54.4. (Forest Service Handbook). | Proposed policy; financial security of NFS timber sale contracts. |
| 5. Increase downpayment amount to 10 percent of advertised value plus 20 percent of bid premium. | Eliminates administrative complexity of calculation; provides additional security. | 36 CFR 223.49 | Proposed rule; Downpayment and Periodic Payments. |
| 6. Change basis of release of downpayment from 25 percent of volume removed to 25 percent of stumpage value charged. | Makes requirement uniform; bases release on value (receipts) which is better protection for government. | 36 CFR 223.49 | Proposed rule; Downpayment and Periodic Payments. |
| 7. Grant chief authority to extend retention of down payment. | Deters speculation; increases government financial security and collection potential. | 36 CFR 223.49 | Proposed rule; Downpayment and Periodic Payments. |
| 8. Increase midpoint payment to 35 percent of total contract value or 50 percent of bid premium, whichever is greater. | Provides for orderly harvest, overflow of receipts, increased financial security. | 36 CFR 223.50 | Proposed rule; Downpayment and Periodic Payments. |
| 9. Require additional periodic payment to equal 75 percent of bid value on longer contracts. | Provides for orderly harvest, overflow of receipts, increased financial security. | 36 CFR 223.50 | Proposed rule; Downpayment and Periodic Payments. |
| 10. Provides a mechanism for contract term addition when a drastic reduction in wood product prices has occurred. | Facilitates orderly harvest and averts contract defaults. | 36 CFR 223.52 | Final rule; Market-related contract term addition. |

[FR Doc. 90–28076 Filed 12–6–90; 8:45 am]

BILLING CODE 3410–11–M



**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 223**

**RIN 0596–AA33**

**Sale and Disposal of National Forest Timber; Market-related Contract Term Additions**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts a mechanism for granting extensions of National Forest System timber sales contracts during adverse market conditions. The intended effect is to have in place an administrative mechanism for responding to any future downturns in the forest products market that will enable purchasers to fulfill their contract obligations without undue financial hardship and that will facilitate continuation of the orderly harvest and payment for National Forest timber.

**EFFECTIVE DATE:** This rule is effective January 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Allan B. McCombie, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 475–3757.

**SUPPLEMENTARY INFORMATION:**

## Background

Prior to 1980, purchasers of National Forest timber defaulted very few timber sale contracts. Cyclic fluctuations in forest products markets occurred but were of comparatively short duration and limited impact. Prior to 1980, Forest Service timber sale contract terms were of a longer duration and, thus, were able to overlap the market price cycles. Prior to 1980, it also was believed that the long-term projection for forest products prices indicated a continuing trend of price increases. Therefore, under those circumstances, a purchaser could usually schedule a sale's harvest for a time when the markets were good or were at least good enough that the purchaser would not lose more money operating a sale than would be lost in a default.

However, beginning in 1980, the forest products market began a serious and dramatic decline, leaving a large number of purchasers with timber sales bid at prices far higher than the market was bringing.

In response, the Chief of the Forest Service granted timber sale contract extensions in 1980, 1981, 1982, and 1983 based on findings of substantial, overriding public interest. The intent of these extensions was to provide purchasers additional contract time until the markets improved. Unfortunately, the adverse market conditions continued. Faced with the likelihood of massive defaults and attendant adverse economic impacts on industry and dependent communities, Congress took emergency action and enacted the Federal Timber Contract Payment Modification Act (16 U.S.C. 618). This act allowed purchasers of Federal timber to return certain sales to the Government upon payment of a "buy-out charge" and, thus, avoid default. Both the Congress and the Administration viewed this legislation as an extraordinary measure to respond to a one-time crisis and recognized the need to develop a mechanism to avoid such a crisis in the future.

On November 6, 1987 (52 FR 43020), the Forest Service published a proposed rule to establish procedures under the Federal Timber Contract Payment Modification Act for extending contract termination dates in response to adverse conditions in the timber market. This rule was published as part of a larger proposal that included rules for implementing the periodic payments and downpayment procedures as required by the Federal Timber Contract Modification Act. This final rulemaking deals only with procedures for extending contract terms. A new proposed rule for periodic payments and downpayments is set out in this part as a separate rulemaking.

Experience has shown the market declines necessary to cause a market-related contract term addition generally coincide with national economic recessions and are indicative of substantial economic dislocation in the wood products industry. Such economic distress broadly affects community stability and the ability of industry to supply construction lumber and other products for public use and threatens the maintenance of plant capacity necessary to meet future needs of the Nation for wood products from domestic sources. Accordingly, in order to insure the retention of a viable established industry capable of supplying the wood fiber needs of the public for housing and other products, the Chief of the Forest Service has determined that if there is a drastic reduction in wood product prices sufficient to trigger the market-related contract term addition being adopted by this rule, it would be in the substantial overriding public interest to extend the contract term (36 CFR 223.115(b)).

The finding that the overriding public interest would best be served by the contract term addition in the event of such a drastic market decline is based on the following. First, contract term addition would help avoid financial hardship on purchasers and ensure that the federal government will receive payments due from purchasers by reducing the likelihood of default. Second, by reducing the likelihood of default, a contract term addition would help ensure that receipts to States and counties from timber sales are not adversely affected. Additionally, contract term addition would help promote stability in the wood products industry. This in turn would help ensure community stability, competition, employment, investment, productivity, innovation and the ability of United States-based enterprises to compete with foreign-based enterprises in both domestic and export markets.

A market-related contract term addition cannot be granted to contracts previously extended under the Multi-Sale Extension Policy pursuant to the Federal Timber Contract Payment Modification Act. The Federal Timber Contract Payment Modification Act, 16 U.S.C. 618(b)(1), prohibits any additional extensions for timber sale contracts bid prior to January 1, 1982.

Under the proposed rule, the agency proposed to use various producer price indices prepared by the Department of Labor and Bureau of Labor Statistics to determine whether a drastic reduction in wood product prices has occurred. Under the proposal, each producer price index would be adjusted to a constant dollar base through division by the Bureau of Labor Statistics—All Commodities—Producer Price Index, Commodity Code 00000000. Producer price indexes would be assigned by Forest Service region or subregion as follows:

| Forest service region | Bureau of Labor Statistics: producer price index | Commodity code |
|---|---|---|
| Northern (1) | Other Species, Dressed. | 081103 |
| Rocky Mountain (2) | Other Species, Dressed. | 081103 |
| Southwestern (3) | Other Species, Dressed. | 081103 |
| Intermountain (4) | Other Species, Dressed. | 081103 |
| Pacific Southwest (5) | Other Species, Dressed. | 081103 |
| Pacific Northwest (6): | | |
| Westside | Douglas Fir, Dressed. | 081101 |
| Eastside | Other Species, Dressed. | 081103 |
| Southern (8): | | |
| Primarily Hardwood NF's. | Hardwood Lumber. | 0612 |
| Primarily Softwood NF's. | Southern Pine, Dressed. | 081102 |
| Eastern (9) | | |

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| Forest service region | Bureau of Labor Statistics; producer price index | Commodity code |
|---|---|---|
| Primarily Hardwood NF's. | Hardwood Lumber. | 0612 |
| Primarily Softwood NF's. | Other Species, Dressed. | 061103 |
| Alaska (10) | Other Species, Dressed. | 061103 |

Regional Foresters for those Regions with more than one producer price index to be used for each National Forest.

Under the proposed rule, the Forest Service would conclude that a drastic reduction in wood product prices has occurred where, for two or more consecutive calendar quarters after contract award, the applicable adjusted index is less than 80 percent of the average of such adjusted index for the 4 highest of the 8 calendar quarters immediately prior to the initial qualifying quarter.

If, within the contract period there were two consecutive qualifying quarters, the Forest Service upon the purchaser's written request, would add 1 year to the contract's term; and for each additional consecutive qualifying quarter, the Forest Service would add an additional 3 months to a contract's term.

Under the proposed rule, the amount of time that could be added to any contract term as a result of a market-related contract term addition would be limited to (1) no more than twice the original contract length or (2) a maximum of 3 years, whichever is less. The proposed rule contained an additional limitation on granting term addition that no contract period could exceed 10 years.

Where a contract was lengthened as a result of market conditions, any periodic payment dates of the contract would be recalculated by the Forest Service, if requested by the purchaser.

If a contract included timber subject to rapid deterioration, such as salvage timber, or if it were necessary for another reason to require that included timber be removed early in the contract period, the contract would specify an early removal date for the applicable timber. In addition, other contract provisions, such as those applying to timber cut during road construction, could specify when the timber must be removed.

In these cases, if such specified timber was not removed by the contractual removal date, significant damage could occur to National Forest resources. In the event such timber was not removed by the contract removal date, the proposed rule provided that the Forest Service would not extend the contractual removal dates under the market-related contract term addition procedures.

**Response To Public Comments**

The comment period on the proposed rule closed January 5, 1988, but was subsequently extended to February 19, 1988 (53 FR 519). The majority of the 27 comments received were related to downpayment and periodic payments. Thirteen respondents addressed the market-related contract term addition proposal. The 13 comments came from private citizens (2), timber purchasers (6), timber purchaser associations (4), and the USDA Office of Inspector General (1). Seven of the comments came for the Northwest, two from the Intermountain area, and four from the East.

The following summarizes the major comments and suggestions received and the agency's response to these in the final rule.

**Comments**

Fifty-four percent of the respondents expressed support for the market-related contract term additions proposal either in its entirety or with suggested modifications to strengthen it. The remaining 46 percent did not support any part of the proposal.

Three respondents objected to the language that distinguished between contracts with road construction and those without road construction. The Department agrees there is no need for this distinction and has revised the rule accordingly.

Four respondents felt the proposal would lead to speculative bidding. The primary reason given was the belief that because the proposal would permit delays in contract performance, purchasers would be tempted to increase bids in the hope that market prices would improve by the time the timber had to be cut and paid for. The Department agrees in part. The contract term addition provision would be activated when there is a drastic reduction in wood product prices after contract award. The conditions that produce a drastic reduction in wood product prices would normally meet the criteria for extension under substantial overriding public interest, as set forth in 36 CFR 223.115(b), so the amount of speculation resulting from this rule should be minimal. Nevertheless, this rule might cause some speculative bidding due to the added financial protection provided. However, this potential will not be addressed in this rulemaking. Instead, to provide additional protection against speculative bidding, the agency is proposing a new rule addressing periodic payments, which also appears in this part.

One respondent was concerned about the rule being too complex and costly. The primary purpose of the rule is to allow the orderly removal of timber from National Forest System lands without requiring legislation to prevent default in the event of adverse market conditions in the future. In comparing the cost and complexity to past extension and buy-out policies, the Department believes this final rule will indeed be more efficient and effective than past procedures. With a mechanism in place to address severe market slumps, the agency can proceed in an orderly and efficient way to prevent default. Thus, the rule will improve the orderly removal of timber from National Forest System lands without undue hardship to the timber purchasers.

One respondent suggested that the rule be modified to provide that the additional time authorized for each additional consecutive qualifying quarter be added within the normal operating season. This respondent observed that if a contract expires on December 31 and qualifies for 15 months of additional time based on 3 qualifying quarters, the language of the proposed rule would add the last 3 months of that time in the winter when operations are not likely to occur. By adding the time in the next operating season, the purchaser would get the relief when operations take place. The Department agrees and has incorporated the change in the final rule in paragraph (c)(1).

In addition, the Department, on further consideration, has clarified in paragraph (c) what a qualifying quarter is. A qualifying quarter is now defined as a quarter where the applicable adjusted index is more than 20 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. Qualifying quarter calculations will be made using the applicable adjusted Producer Price Indexes for the months of March, June, September, and December.

The Department is also adding a new paragraph (b)(3) to the rule for consistency. This paragraph clarifies the authorization for the market-related term addition by incorporating the finding of a substantial overriding public interest in the event of a drastic reduction in wood product prices. A discussion of this was included in the preamble to the proposed rule.



**Summary**

Having fully considered the comments received on the proposed rule, the Department is adopting a final rule to permit the Forest Service to extend the terms of contracts that have periodic payment provisions when adverse market conditions indicate a need to do so. Under the rule, the Forest Service shall maintain and use regional producer price indexes for wood products as prepared by the Department of Labor and Bureau of Labor Statistics, adjusted to a constant dollar base to determine whether a drastic reduction in wood product prices has occurred. The Forest Service will monitor the various indexes and determine that a drastic reduction in wood product prices has occurred when, for two or more consecutive quarters after contract award, the applicable adjusted price index is less than 80 percent of the average of such adjusted index for 4 of the 8 calendar quarters immediately prior to the initial qualifying quarter. If a drastic reduction in wood prices has occurred during the contract period, the Forest Service will notify purchasers and, upon purchaser's written request, will add 1 year to the contract term. For each additional consecutive quarter a contract qualifies for term addition, the Forest Service will, upon written request, add an additional 3-month period to the operating season of the contract. The granting of periods of contract term addition may not exceed twice the contract length or 3 years whichever is less. Revised contract terms cannot exceed 10 years.

This final rule is one of three initiatives the Department is undertaking for timber sale contracting. The other initiatives are a proposed rule to 36 CFR 223.49 and 36 CFR 223.50, and a proposed policy to increase financial security of timber sale contracts. To assist readers in understanding the various actions being taken and proposed, a notice and chart are set out at the beginning of the part.

**Regulatory Impact**

This action has been reviewed pursuant to E.O. 12291, and it has been determined that this regulation is not a major rule.

While the rule would allow extension of time for purchasers to cut and pay for the timber, the rule would not change the amount of money the purchasers would pay for their sales, except as provided under existing escalation provisions of the contract. Escalation provisions allow rates to vary in response to market changes over time. Extending the contract term allows the use of additional future indexes in calculating payment rates for stumpage. This is a procedural rule, the intent of which is to avoid financial hardship on purchasers, and, thus, ensure that the Federal Government will receive payments due from purchasers. This in turn will ensure that receipts to States and counties from timber sales are not adversely affected. The final rule also would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In fact, the rule should have a stabilizing effect on the wood products industry.

Moreover, the Department has determined that this final rule would not have a significant economic impact on a substantial number of small entities. The rule will have a positive effect on counties and local communities that receive payments based on the sale of National Forest timber by avoiding timber sale defaults. The extensions are available to timber purchasers of all size classes.

The provisions of this rule are limited to administrative and business practice related to contract administration and, therefore, have no effect on forest resources. Each timber sale is subject to analysis of its environmental effects before it is sold. This rule is intended to have positive economic and social effects by averting default, maintaining Treasury receipts, and helping stabilize industry and timber-dependent communities in adverse market situations. As such, this rule is strictly procedural and would have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required. Furthermore, the final rule would not result in additional procedures, paperwork, or other information collection not already required by law and approved for use. To utilize the features of the rule, all a purchaser has to do is make a written request under the provision of a timber sale contract for extension. The burden of determining if a request is justified is imposed on the agency not the purchaser, who does not have to provide any evidence or documentation in support of a request. Therefore, review of the rule under the Paperwork Reduction Act (44 U.S.C. 3507) is not necessary.

**List of Subjects in 36 CFR Part 223**

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, part 223 of chapter II of title 36 of the Code of Federal Regulations is amended as follows:

**PART 223—[AMENDED]**

1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 616; unless otherwise noted.

**Subpart B—[Amended]**

2. Add a new § 223.52 to read as follows:

**§ 223.52 Market-related term additions.**

(a) *Contract provision.* Each timber sale contract that contains periodic payment requirements shall contain a provision allowing the addition of time to the contract term if the Forest Service determines that adverse wood products market conditions have resulted in a drastic reduction in wood product prices. Such extension must be requested by the purchaser in writing.

(b) *Determination of drastic wood product price reductions.* (1) The Forest Service shall maintain and use producer price indexes for wood products as prepared by the Department of Labor and Bureau of Labor Statistics adjusted to a constant dollar base, to determine whether a drastic reduction in wood product prices has occurred. Where there is more than one producer price index for a Region, the Regional Forester shall determine the index to be used for each National Forest based on the characteristics of the volume being harvested on the Forest.

(2) The agency shall determine that a drastic reduction in wood product prices has occurred when, for two or more consecutive quarters, the applicable adjusted price index is less than 80 percent of the average of such adjusted index for the 4 highest of the 8 calendar quarters immediately prior to the initial qualifying quarter. A qualifying quarter is a quarter where the applicable adjusted index is more than 20 percent below the average of such index for the 4 highest of the previous 8 calendar quarters. Qualifying quarter determinations will be made using the Producer Price Indexes for the months of March, June, September, and December.

(3) A determination that a drastic reduction in wood product prices, as defined in paragraphs (b) (1) and (2) of

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this section, has occurred shall constitute a finding that the substantial overriding public interest justifies the contract term addition.

(c) *Granting contract term additions.* Purchasers shall receive appropriate notice whenever the Regional Forester determines that a drastic reduction in wood product prices has occurred. When the Forest Service determines a drastic reduction in wood product prices has occurred after contract award and before contract termination, the Forest Service, upon a purchaser's written request, will add 1 year to the contract's term, except as provided in paragraphs (c)(1)–(3) of this section. This 1-year addition includes time outside of the normal operating season.

(1) For each additional consecutive quarter, in which a contract qualifies for a term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract.

(2) No more than twice the original contract length or 3 years, whichever is less, shall be added to a contract's term by market-related contract term addition.

(3) In no event shall a revised contract term exceed 10 years as a result of market-related contract term additions.

(d) *Recalculation of periodic payments.* Where a contract is lengthened as a result of market conditions, any subsequent periodic payment dates shall be recalculated using the new termination dates, and the payment dates shall be delayed accordingly; however, no periodic payment may be delayed beyond a contract's revised termination date.

Dated: November 29, 1990.

**Clayton Yeutter,**

*Secretary.*

[FR Doc. 90-28877 Filed 12-6-90; 8:45 am]

BILLING CODE 3410-11-M



**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 223**

**RIN 0596-AA33**

**Sale and Disposal of National Forest Timber; Downpayment and Periodic Payments**

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase and revise downpayment requirements and implement periodic payment requirements pursuant to the Federal Timber Contract Payment Modification Act. The intended effect is to clarify downpayment requirements and to encourage orderly harvest of National Forest timber sales.

**DATES:** Comments must be received in writing by January 7, 1991.

**ADDRESSES:** Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect all written submissions received on this proposal during regular business hours in the office of the Director, Timber Management Staff, Third Floor, Northwest Wing, Auditors Building, 201 14th Street SW., Washington, DC. To facilitate entrance into building, visitors are encouraged to call ahead (447–6883).

**FOR FURTHER INFORMATION CONTACT:** Allan B. McCombie, Timber Management Staff (202) 447–6662.

**SUPPLEMENTARY INFORMATION:** Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat. 2213; 16 U.S.C. 618(d)), requires that "[I]n any contract for the sale of timber from the National Forests, the Secretary of Agriculture shall require a cash downpayment at the time the contract is executed and periodic payments to be made over the remaining period of the contract."

To implement these payment requirements as well as to implement the bid monitoring provisions of the act, the Department of Agriculture published a proposed rule in the **Federal Register** of January 17, 1985 (50 FR 2591).

Substantial opposition was received on the proposal for periodic payments, primarily due to the requirement that they be made annually. Timber purchasers felt the annual payment would reduce flexibility in operations which, in turn, could increase operational costs and could result in environmental damage. Others felt that periodic payments would add to the complexity of purchasing National Forest timber.

After the initial public comments were analyzed, the Department of Agriculture published a final rule on October 11, 1985 (50 FR 41498), implementing only those provisions of the Federal Timber Contract Payment Modification Act (FTCPMA) that require: (1) Purchasers to make a downpayment for the sale of National Forest timber (36 CFR 223.49); and (2) the Secretary of Agriculture to monitor bidding patterns on timber sale contracts and to take action to discourage speculative bidding (36 CFR 223.51). The rule also required a midpoint payment on sales with contract periods exceeding 1 year (36 CFR 223.50).

In publishing this final rule, the Department also stated that it would offer a revised proposed rule implementing periodic payments in timber sale contracts. New proposed rules were published on November 6, 1987 (52 FR 43020), to establish procedures for periodic payments as well as new rules for adding to the length of the contract terms in response to adverse conditions in the timber market. In addition, the Forest Service proposed to make clarifying amendments to the downpayment requirement (36 CFR 223.49) in order to minimize possible inconsistencies in the implementation of that requirement. The comment period was extended to February 19, 1988 (53 FR 519). Twenty-seven respondents commented on the proposed rule. Comments were received from timber sale purchasers (63 percent), trade associations (26 percent), private citizens (7 percent), and other Government agencies (4 percent). Approximately, three-fourths of the respondents were from the West.

Many of the comments received (52 percent) addressed only the proposals for downpayments and periodic payments. Fewer than 12 percent of the respondents favored the proposal for downpayments and periodic payments. Nearly 33 percent stated that they supported the concept but favored a system that was less complicated and simpler to administer. An additional 46 percent of the respondents stated that they felt the existing payment requirements were sufficient to encourage the orderly harvest of National Forest timber sales. These respondents did not favor additional changes at this time.

As a result of the input received, the Forest Service is proposing a new rule concerning downpayment and periodic payment requirements to fulfill the requirement for periodic payments as specified in the Federal Timber Contract Payment Modification Act of 1984.

**Section-by-Section Analysis**

*Proposed changes to the downpayment requirement.* The current provisions of 36 CFR 223.49(c) require that the minimum cash downpayment be the equivalent of 10 percent of the total bid value of each sale. Under 36 CFR 223.49(c)(1), for sales on National Forests where average bid ratios have exceeded 1.6 in the previous year or where the bid ratio on a significant number of timber sales exceeds a 1.6 ratio and the average bid premium is at least $25 per thousand board feet or equivalent, the amount of the downpayment will be equal to 10 percent of the advertised value plus 20 percent of the total bid premium, unless increased by the Chief of the Forest Service where the Chief determines such increase is necessary to deter speculation. In calculating bid ratios and bid premiums for the downpayment requirement, the Forest Service does not use the portion of the bid premium that offsets ineffective purchaser credit for road construction.

Under § 223.49(d), a purchaser cannot apply the amount deposited as a downpayment to cover other payments due on that sale until 25 percent of the advertised timber volume has been scaled and paid for on scaled sales or until 25 percent of the advertised timber volume is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales.

An explanation of the proposed changes to these current provisions follows.

1. In the proposed rule, all references to the bid ratio in § 223.49 would be removed. The downpayment requirements would be changed to require 10 percent of the advertised value of each sale, plus 20 percent of the bid premium for all sales except as otherwise provided to deter speculation. This change would simplify the calculation of the downpayment amount by providing one set of calculation procedures for determining the amount of the downpayment. The current procedures apply one calculation method for sales on forests with bid ratios less than 1.6 and another method for sales on forests where bid ratios exceed 1.6. Using one calculation basis would reduce confusion about which method is in effect for a particular forest or sale. The change in calculating procedure also would increase the amount of financial security for sales on forest where the bid ratio is less than

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1.0. The amount of the downpayment would be calculated uniformly and equally for all sales. The amount of downpayment would be directly proportional to the amount of bid premium for each sale.

2. Under the proposed rule, a purchaser would not apply the amount deposited as a downpayment to cover other payments due on that sale until stumpage value representing 25 percent of the original bid value has been charged and paid for on scaled sales or until stumpage value representing 25 percent of the orignial bid value is shown on the timber sale statement of account to have been cut, removed, and paid for on tree measurement sales. Current release requirements are based on removal of 25 percent of the advertised volume. Bid values vary greatly by species, in some cases, by as much as $400 per thousand board feet (MBF); therefore, release of the downpayment on a volume basis may have little or no relationship to the value of the sale. If harvesting takes place in low value timber, the downpayment may be released with very little of the value of the sale being paid for. Conversely, for harvesting done in high-value species, the downpayment may not be released until a large share of the sale value has been removed. Use of sale value rather than sale volume for determining when the downpayment amount is released would provide additional security to the Government that the contract will be completed and would provide equitable treatment between sales for release of the downpayment.

3. Under the proposed rule, § 223.49 would be further amended to authorize the Chief of the Forest Service to increase the period of retention of the downpayment to deter speculative bidding on Forest Service timber sales. The Chief has the authority to increase the amount of the downpayment to deter speculation under current regulations in § 223.49(c). Increasing the retention period for the downpayment would provide an additional complementary deterrent to speculation by extending the period the funds are encumbered. Thus, extending the retention period would increase the Government's financial security. When speculation occurs, the resulting high-bid values increase both the potential for default and the amount of the potential financial damages the Government could sustain in event of default. Longer retention of the downpayment amount provides the Government greater access to funds for the collection of default damages. A decision to increase the retention period would be based on the scope of the speculative bidding situation and the amount of the Government's increased exposure to loss from default.

4. The proposed rule would provide that the downpayment will not be retained on lump sum sales after the sale is paid for. Lump sum sales are premeasured sales where the entire value of the sale is paid for in advance. Under the payment provisions of the lump sum contract, the total value of the sale is required at the time of release for cutting; therefore, it is not reasonable or necessary to require an additional downpayment requirement when the Forest Service has already collected the full value of the sale.

*Proposed changes to midpoint payment requirements.* Currently 36 CFR 223.50 requires the following:

(1) Timber sale contracts must include provisions requiring a midpoint payment for all timber sales with 1 year or more between the bid date and termination date. Midpoints are determined on the basis of the timber sale contract period remaining after the specified road completion date.

(2) The amount of payments or deposits at midpoint of the contract term must equal at least 25 percent of the total contract value, total contract value includes required deposits in effect at the bid date or 50 percent of the amount of the bid premium, whichever is higher.

The proposed rule would increase the periodic payment at midpoint to 35 percent of the total contract value at bid date, exclusive of required deposits (specific rates for slash disposal and/or road maintenance) or 50 percent of the bid premium, whichever is greater. Also, the proposed rule would require periodic payment at midpoint on sales exceeding one full operating season. The procedure for determining midpoint would remain unchanged. The increase in the midpoint periodic payment to 35 percent of contract value provides a better balance of required payment in relation to the period allowed for harvesting.

*Revisions to periodic payment requirement.* Under the proposed rule, 36 CFR 223.50 would be revised to add a requirement for an additional periodic payment in the amount of 75 percent of the bid value due not later than the midpoint of the last normal operating season or 12 months from the midpoint payment, whichever date is first. This additional periodic payment would be required on all contracts exceeding two or more full operating seasons. When calculations indicate the midpoint payment and/or the additional periodic payment would fall due at other than normal billing dates, the payment date would be extended to the next closest billing date.

The proposed rule would also revise the procedures for determining periodic payments. For the midpoint payment and the additional periodic payment, the Forest Service would compare the purchaser's deposits for timber charges with the amount of the periodic payment required to have been made at that time. If the purchaser's deposits were less than the amount of the periodic payment due, the purchaser would have to make a payment equal to the difference between the deposits and the amount of the periodic payment. If the purchaser's deposits equaled or exceeded the sum of the scheduled payments, an additional payment would not be needed. In addition, the Forest Service would reduce the amount of a periodic payment due if the payment would result in the purchaser's credit balance for timber charges exceeding the current contract value.

Under the proposed rule at 36 CFR 223.50(f), the Chief of the Forest Service could authorize Contracting Officers to establish, prior to timber sale advertisement, alternative periodic payment schedules to provide additional incentives for harvest early in the contract period for salvage or other types of timber sales, where another periodic payment schedule would better meet sale objectives.

Finally, the Forest Service proposes that if a purchaser has qualified for a contract term adjustment or market-related contract term addition, the Forest Service, upon the purchaser's written request, would recalculate the contract's periodic payment dates based on the adjusted termination date and the amount of the normal operating season lost for the causes that resulted in the contract term adjustment or term addition. The procedure for changing the midpoint date pursuant to a contract term adjustment is already in effect; however, the proposed rule would add a requirement at § 223.50(e) to conform to common contracting practice that the purchaser must initiate a written request to have the dates changed under contract term adjustment and that the adjustment procedures will also apply to both periodic payment dates as applicable. The proposal also specifies that the dates would change to reflect time granted for the market-related contact term addition in conformance with changes being made in a separate rule on market-related contract term additions.

The purpose of these proposed changes to the periodic payment requirement is to increase the government's financial security. By knowing in advance that such periodic payments are required during the life of a timber sale contract, it is believed that speculative bidding will be reduced. Additionally, in the event the purchaser is unwilling or unable to operate the timber sale, the government can go ahead and hold the sale in default instead of having to wait until the expiration of the contract term.



## Conclusion

The proposal strengthens the current downpayment requirement by increasing both the amount and the period of retention for certain sales. The proposal also would fully implement the periodic payment requirement of the Federal Timber Contract Payment Modification Act by increasing the amount of the midpoint payment and providing for an additional payment. The agency has structured the periodic payment requirements to reflect the progression of normal harvest operation. The payment period considers the fact that purchasers must build roads before harvest can begin; therefore, the midpoint is halfway through the harvest period. Increasing the midpoint to 35 percent of sale value similarly recognizes normal harvest scheduling. The Forest Service is also proposing to eliminate the use of periodic payments on sales having less than one operating season. The agency has determined that requirements for a downpayment, immediate harvest, and advance deposits made the periodic payment redundant for sales of such short duration. The proposal authorizes the agency to establish alternative periodic payment schedules to facilitate early harvest and meet special sale objectives.

The agency has considered the total effects of both the downpayment and the periodic payment in this proposal. The new proposed rule combines various financial requirements to meet the intent of the act. In so doing, the agency believes this proposal will also encourage the prompt and orderly harvest of timber, ensure an orderly flow of revenues from timber sales, and increase financial security during the contract period. Public comments are invited and will be considered in adoption of a final rule.

## Regulatory Impact

This action has been reviewed pursuant to Executive Order 12291 and Department of Agriculture procedures, and it has been determined that this regulation is not a major rule. It implements the requirement of the Federal Timber Contract Payment Modification Act (FTCPMA) requiring the Secretary of Agriculture to provide for downpayments and periodic payments for Forest Service timber sale contracts. While the rule would change when certain purchasers would pay for timber, the rule would not change the total amount of money that purchasers would pay for their sales. Exclusive of the statutory requirements, this rule would not have an annual effect on the economy of $100 million or more and would not result in a major increase in costs for consumers, individual industries, Federal, State, local Government agencies, or geographic regions. The rule also would not result in significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed rule should strengthen the United States forest products industry by implementing Congressional direction to promote orderly harvest and payment for National Forest timber and to deter speculation on Forest Service timber sales and, thereby, should help to preserve the structure of the industry and the employment generated by it.

It has also been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The periodic payments are required by statute and will not adversely affect those small entities who harvest their National Forest timber sales in a timely manner.

Based on both past experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The rule involves business procedures under a Federal contract. Therefore, it is determined to be categorically excluded from documentation in either an Environmental Assessment or an Environmental Impact Statement (40 CFR 1508.4) Furthermore, the proposed rule would not result in additional procedures or paperwork or other information collection not already required by law and approved for use. Therefore, review pursuant to 44 U.S.C. 3507 is not required.

## Lists of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, subpart B of part 223, chapter II of title 36 of the Code of Federal Regulations, is proposed to be amended as follows:

## PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation for part 223 continues to read as follows:

**Authority:** 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; unless otherwise noted.

### Subpart B—Timber Sale Contracts

2. Revise § 223.49 to read as follows:

**§ 223.49 Downpayment.**

(a) For the purposes of this section, the terms listed in this paragraph shall have the following meaning:

(1) Total bid value is the sum of the products obtained by multiplying the rate the purchaser bid for each species by the estimated volume listed in the contract.

(2) Ineffective purchaser credit is that portion of the credit earned, pursuant to a specific Forest Service timber sale contract for construction of specified roads, or for other purposes in such contract, that exceeds the current contract value, minus base rate value as defined in that contract and, thus, is an amount that cannot be applied toward stumpage charges.

(3) Bid premium is the amount in excess of the advertised value that a purchaser bids for timber offered.

(4) Lump sum timber sales are premeasured sales where the entire value of the sale is paid in one payment at time of release for cutting.

(c) The minimum downpayment shall be equivalent to 10 percent of the total bid value of each sale, plus 20 percent of the bid premium, except in those geographic areas where the Chief of the Forest Service determines that it is necessary to increase the amount of the downpayment in order to deter speculation. To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustment.

(d) On scaled sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the bid value of the sale has been charged and paid for. On tree measurement sales, a purchaser cannot apply the amount deposited as a downpayment to cover other obligations due on that sale until stumpage value representing 25 percent of the bid value of the sale is shown on

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the timber sale statement of account to have been cut, removed, and paid for. For lump sum sales, the downpayment amount may be released when payment for release of the single payment unit has been received. The Chief of the Forest Service may increase the period for retention of the downpayment for future contracts when the Chief determines it is necessary to deter speculation.

3. Revise § 223.50 to read as follows:

**§ 223.50 Periodic payments.**

(a) For the purposes of this section, the following terms have the meaning given:

(1) Total contract value of a contract without stumpage rate adjustment is the same as the total bid value, which is the product of the advertised volume of the sale times the rates bid by the purchaser.

(2) The total contract value of a sale with stumpage rate adjustment is the product of the advertised volume of the sale and the current contract rates as of the periodic payment date.

(3) Normal operating season is the period so specified in a timber sale contract.

(4) Periodic payment(s) are payment(s) specified in a timber sale contract that must be made by the specified date(s). Periodic payments shall consist of a payment at the midpoint of the contract or a combination of the payment at midpoint and an additional periodic payment, depending on the number of full normal operating seasons contained in a timber sale contract.

(5) A periodic payment determination date is a date specified in a timber sale contract upon which the Forest Service will compare the amount deposited by the timber sale purchaser for timber charges with the sum of the periodic payments required as of that date in the contract.

(6) Stumpage rate adjustment is a process authorized in most Forest Service timber sale contracts in the western National Forests which permits the price paid for timber under the contract to fluctuate, within stated limits, in response to established market indicators.

(b) Except for lump sum sales, each timber sale contract of more than one full normal operating season shall provide for periodic payments. The number of periodic payments required will be dependent upon the number of normal operations seasons within the contract, but shall not exceed 2 such payments during the course of the contract. Periodic payments must be made by the date specified in a contract, unless an amount of timber whose value is equal to the amount of the periodic payment has been removed and paid for by the periodic payment determination date. Should the payment fall due on a date other than normal billing dates, the contract shall provide that the payment date will be extended to coincide with the next timber sale statement of account billing date.

(1) At a minimum, each such contract shall require a periodic payment at the midpoint between the specified road completion date and the termination date, unless a different payment schedule is authorized pursuant to paragraph (f) of this section. If there is no road construction requirement, payments shall be due at the midpoint between award date and the termination date.

(2) For contracts exceeding two or more full operating seasons, contracts shall require an additional periodic payment to be due no later than the midpoint of the last normal operating season or 12 months from the midpoint payment whichever date is first.

(3) The amount of the additional periodic payment will be determined at the time of contract award and will be based on total contract value.

(c) The amount of payments or deposits at the midpoint of the contract term must equal at least 35 percent of the total contract value at the bid date, exclusive of other required deposits, or 50 percent of the bid premium, whichever is greater.

(d) Where an additional periodic payment is required, the amount of payment or deposits at the time the additional payment is due must equal at least 75 percent of the total contract value.

(e) Upon written request of the purchaser, periodic payment dates may be adjusted when contract term adjustments are authorized under 36 CFR 223.46 or market-related term additions are authorized under 36 CFR 223.52.

(f) The Chief of the Forest Service may authorize Contracting Officers to establish, prior to timber sale advertisement, alternative periodic payment schedules to meet uncommon sale objectives.

Dated: October 3, 1990.

George M. Leonard,

*Associate Chief.*

[FR Doc. 90-28678 Filed 12-6-90; 8:45 am]

BILLING CODE 3410-11-M



**DEPARTMENT OF AGRICULTURE**

**RIN 0596-AB18**

**Financial Security of National Forest System Timber Sale Contracts**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy.

**SUMMARY:** The Forest Service is proposing additional measures and changes to existing policy related to timber sale contract financial security. The changes being proposed are to increase the amount of the bid guarantee, revise the method for determining damages for failure to consummate a contract, and eliminate the performance bond ceiling and the sale discounting procedures. The intended effect is to better protect the public's financial interest in the sale of National Forest System timber by reducing the opportunities for speculative bidding and defaulting contract obligations.

**DATES:** Comments must be received in writing January 7, 1991.

**ADDRESSES:** Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090. The public may inspect comments received on this rule in the office of the Director, Timber Management Staff, Third Floor Northwest Wing, Auditors Building, 201 14th Street, SW. To facilitate entrance into the building, visitors are encouraged to call ahead (447-6883).

**FOR FURTHER INFORMATION CONTACT:** Allan B. McCombie, Timber Management Staff, (202) 447-6882.

**SUPPLEMENTARY INFORMATION:** After the timber market collapse of 1981, an unprecedented number of National Forest System timber sale contracts became unprofitable. Some contracts were defaulted and others were "bought out" by the Government under the Federal Timber Contract Payment Modification Act. The market decline during the 1980 period exposed a number of potential long-term difficulties with National Forest System timber sale procedures which, if not remedied, could result in speculative bidding and increase the potential for contract defaults in the future.

In 1982, the Forest Service began implementing a number of contract reforms to reduce speculative and unsound bidding, to provide for an even flow of timber receipts into the Treasury, and to prevent sale defaults. The following changes or additions to financial requirements on National Forest System sales were made:

(1) The timber sale bid guarantee was raised to 5 percent of the advertised value of the contract;

(2) A cash deposit was required. The initial deposit requirement was for 5 percent of the bid value of a sale; this was later increased to 10 percent;

(3) The maximum amount of the performance bond was changed from $200,000 to $300,000; and

(4) A midpoint payment to the Government was required to provide additional incentive for timely timber removal.

These changes in timber sale financial requirements have been somewhat successful in stabilizing timber sale contracting by encouraging performance; discouraging speculation; and more adequately securing contract performance. However, additional changes are needed to further enhance financial security of timber sale contracts and to protect the taxpayer from repudiation of bids and default of contracts.

In recent months, the prices being bid for Forest Service timber have risen substantially over the advertised rates established by the agency's appraisal of the fair market value of the timber. The agency uses the selling value of lumber and other forest products in determining the appraised value. When bid values far exceed advertised values and lumber values retain constant or rise minimally, the potential for purchaser financial loss increases. Thus, based on bidding practices in recent months, the Forest Service believes that the public and the Government could be facing additional repudiations of bids and defaults of contracts if lumber prices do not keep pace with bid values and if additional financial security requirements are not instituted. Accordingly, the agency believes it is essential to take additional steps to protect the public's financial interests in timber sale contracts that will assure timely execution and completion of contracts, and minimize the financial risk to the Government.

The additional financial security measures now being proposed are as follows:

1. *Eliminate the present $300,000 performance guarantee ceiling and set the minimum performance guarantee based on 10 percent of the bid value.* Timber sale contracts generally require the purchaser to furnish a performance guarantee for satisfactory compliance with its terms (36 CFR 223.35). Most of the timber sale contracts sold within the last 15 years have required a performance guarantee that was equivalent to 10 percent of the bid value subject to certain maximum amounts. The maximum performance guarantee for sales sold prior to the spring of 1982 was $200,000. The maximum performance guarantee for sales sold since the spring of 1982 has been $500,000.

Removal of the $500,000 ceiling would insure that the performance guarantee amount would be applied equally to all sales. In the face of existing bids, the current ceiling could result in less secure guarantees that purchasers of high-priced sales will perform their contracts. Removal of the ceiling on performance guarantees should not affect many of those purchases that ordinarily bid on National Forest timber sales. The removal of the cap would only affect sales with more than $5 million bid value. Very few sales are this size and few small businesses buy timber sales that are this expensive. Therefore, the change would not stifle or constrain competition. What the removal of the ceiling will do is help to deter speculation by increasing capital requirements and, thus, increase bidder financial liability in the event of default.

2. *Increase the amount of the bid guarantee on timber sales to 10 percent of the advertised sale value.* In order to bid on Forest Service timber sales, all prospective purchasers must now supply a bid guarantee in the amount of 5 percent of the advertised sale value. The bid guarantee provides incentive for a purchaser to consummate the contract. It also provides a source of funds to satisfy the Government's losses if the contract is repudiated. The bid guarantee also has the secondary benefit of establishing a minimum level of bidder responsibility. A bidder who has demonstrated the ability to supply a bid guarantee is more likely to be able to meet the requirements necessary for award. However, there are still occasions when a high bidder does not take the steps necessary to be awarded the contract. This failure to consummate the contract is especially onerous when the high bidder, after seeing the bid of competitors, repudiates the bid because of the amount of the bid difference. The Government is then forced to reoffer the sale, conduct another bid opening, and complete collection action on the bid guarantee. Therefore, the Forest Service proposes to require a bid guarantee equal to 10 percent of the advertised value.

Under the present security requirements, the purchaser has to provide a performance bond and a cash deposit within 30 days of notification of award, each of which must equal 10 percent of the total bid value. A prospective purchaser who could not get a bid guarantee equal to 10 percent of

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the advertised value would be unlikely to be able to provide a performance guarantee and a cash deposit each at 10 percent of the bid value.

3. *Assess damages in the same manner that is prescribed under the current contract provision C(T)9.4 for Failure to Cut Timber.* This contract provision ordinarily establishes damages by offering uncut timber for resale. If the resale bid price does not exceed the original purchaser's price plus certain additional costs (e.g., interest and the cost of resale), damages are assessed at the amount of the deficiency. Using the terms contained in provision C(T)9.4 for bid repudiations would provide the Forest Service the option of retaining the timber and establishing damages for this breach based on appraisal rather than resale, if resale cannot be accomplished in the immediate future or if no bids are received at resale. Due to timing considerations, it is highly unlikely that a resale would not be used in most cases of repudiation. Damages assessed in the manner provided under C(T)9.4 closely resemble a common law damage assessment where the injured party goes out into the market and "covers" the breach by attempting to resell. Application of damage assessment in the same manner as under the Failure to Cut provision would not "punish" the defaulting purchaser but would merely provide a means to quantify damages that are otherwise difficult to measure. Additionally, this method of damage assessment is likely to deter repudiation because a bidder who greatly outbids the competition and then repudiates would incur a greater liability for substantial damages. On the other hand, a high bidder who simply fails to meet the deadline for executing a contract is likely not to have greatly outbid the competition. Thus, resale of the timber by the Government would greatly reduce the amount of the damages in this instance compared to the present system of withholding the bidder's 10 percent guarantee which could be many times the actual damages caused by the inadvertent breach. Any bidder who repudiates a contract has breached its contract and is subject to exclusion from bidding on the resale under 36 CFR 223.06(A)(1).

In addition to the foregoing financial security measures, the Forest Service also plans to eliminate the timber sale discounting procedure implemented on a test basis on some National Forests in western Washington, Oregon, and Northern California in 1982 (47 FR 16181). The discounting procedure was implemented to provide an incentive to encourage purchasers to remove timber promptly after award of the contract. An additional objective of discounting was to provide an even flow of receipts to the United States and the local governments.

Discounting of payment rates for early harvest is authorized for scaled sales that extend over 3 years between bid and the termination dates. Rates are discounted by a percentage factor based upon a combination of the interest rate being paid on money being borrowed by the Treasury at the time of advertisement and the length of time before the sale termination date that material is cut and scaled. No discount applies for material scaled during the 12 months before termination of the sale. For material scaled 12 to 24 months before the termination date, the Forest Service calculates the discount factor by taking 50 percent of the Treasury rate stated in the advertisement. For material scaled 24 to 36 months before the termination date, the discount factor is calculated by taking 100 percent of the Treasury rate. For material scaled 36 months to 48 months the agency uses 150 percent; for 48 months to 60 months, 200 percent; and 60 months to 72 months, 250 percent of the Treasury rate. However, in no case can the discount factor exceed 25 percent.

In 1982 when the discount procedure was established, timber sale volumes under contract exceeded 3 years annual production in areas where discounting was authorized. Current inventories under contract on most western forests have fallen to 1 year's timber volume under contract. Therefore, there is no longer a need to provide an incentive for removal, because purchasers are removing sale volumes immediately to meet saw mill production needs. Also use of discount procedures in conjunction with periodic payments in the same timber sale contract would be redundant and unnecessarily complicated. Under the current market and inventory situation, the discounting procedure serves no purpose; therefore, the Forest Service intends to stop the discount procedure test.

Although the agency intends to discontinue the discount test, it is considering applying the current discounting procedures on an individual sale basis when timber characteristics support a need for immediate harvesting. Establishing an economic incentive for early removal for fire-damaged, insect-damaged, and windthrown timber through sale discounting would support the accomplishment of land management objectives and provide for optimal utilization of salvage timber.

In addition, the Forest Service proposes to provide for use of discounting upon request of the Regional Forester when market conditions warrant discounting. Under the proposal, authorization of discounting could be considered when remaining volume under contract in an area exceeds 3 times the Allowable Sale Quantity (ASQ) or exceeds 3 or more years of sold volume whichever is greater. Consideration would also be given to volume inventories held by area purchasers. The determination of a need to provide a discounting incentive would be based on the need for increasing or providing an even flow of timber receipts to the Government. The public is invited to suggest additional criteria that the agency should consider.

The objectives of these various changes in the proposal are to assure timely execution and completion of timber sale contracts, maintain competition by qualified bidders, to discourage speculation, and to minimize the financial risk to the Government in instances where purchasers do not complete contracts. The Forest Service wants to increase financial security requirements at this time to reflect the additional risk resulting from the large increase in bid values.

Comments received from the public on these proposed policy changes will be analyzed and considered in developing a final policy. Federal regulations at 36 CFR part 223 set forth rules and regulations for sale and disposal of timber from National Forests. Timber sale policies and procedures stated in Forest Service Manual, title 2400, implement those rules and regulations. The revised procedures will be implemented by appropriate amendments to the Forest Service Manual. Notice of adoption of the final policy will be published in the **Federal Register**.

### Regulatory Impact

This action has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this policy is not a major rule. The procedures implemented by this policy will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, State, or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this notice of policy change. This action consists of administrative changes to policy for timber sale contract financial security. In the removal of the bond maximum, very few sales are over $5 million in value, therefore, few sales or purchasers are involved. The change in liability for repudiation of contract [by failing to: Provide the necessary bond; execute the contract; or make the required cash deposit) will only have an effect on purchasers who do not consummate their contracts. These purchasers are few in number. All prospective purchasers must submit a bid guarantee with their bids. The guarantee is returned to the unsuccessful bidders after completion of the bid opening procedures. Only the high bidder is required to maintain the bid guarantee until the contract is consummated. Under existing procedures, the successful purchaser would have to provide a performance bond equal to 10 percent of the bid value and, in addition, make a minimum cash deposit equal to 10 percent of the bid value within 30 days after notification of award. In view of existing requirements, increasing the bid guarantee to 10 percent of the advertised value should have minimal effects on purchasers.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this act will not have a significant economic impact on a substantial number of small entities. These policies will preserve the long-range revenues to affected counties and will reduce the adverse economic impacts these entities would experience in the event of sale defaults.

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Finally, based on both experience and environmental analysis, this proposed policy will have no significant effect on the human environment, individually or cumulatively. This policy deals with business practices related to timber sale contracts and, as such, has no direct effect on amount, location, or manner of timber offered for purchase. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4; 7 CFR 1b.3).

Dated: October 3, 1990.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 90-28679 Filed 12-6-90; 8:45 am]
BILLING CODE 3410-11-M

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federal register

Friday
December 7, 1990

Part III

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 71**

**Proposed Alteration of the St. Louis Terminal Control Area, MO; Supplemental Notice of Proposed Rulemaking**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-3]

RIN 2120-AD61

## Proposed Alteration of the St. Louis Terminal Control Area; MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This supplemental notice proposes to amend an earlier notice that proposed to establish a modification to the St. Louis, MO, Terminal Control Area (TCA). One mistake was discovered and it is as follows: The word "and" was inadvertently omitted from Area A of the official description of the TCA which would incorrectly depict the circle that was intended for Area A. This action would correct this mistake. This action also proposes to modify the earlier notice by lowering the departure/arrival areas of Area F from 5,000 feet MSL to 4,500 feet MSL. The purpose of this modification is to contain heavy jets within the TCA while in a climb or descent profile. Flight simulation tests of the TCA indicated this change was necessary to improve safety for all aircraft operating within the St. Louis terminal airspace.

**DATES:** Comments must be received on or before January 7, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 90-AWA-3, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holiday, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Background

On September 13, 1990, the FAA proposed to modify the St. Louis, MO, TCA (55 FR 37834). This proposal would maintain the altitude of the upper limit of the TCA at 8,000 feet mean sea level (MSL) and redefine several existing subareas to improve air traffic procedures and simplify visual flight rules (VFR) operations outside the TCA. The primary air of this modification to the TCA is to improve the degree of safety while providing the most efficient use of the terminal airspace. This action would improve the flow of traffic and increase safety in the St. Louis terminal area.

### Availability of NPRM's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (SNPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the St. Louis TCA located at the Lambert-St. Louis International Airport (STL), St. Louis MO. This supplemental notice proposes to amend the earlier proposal by changing the description of Area A of the TCA so that the area would be described as a complete circle, maintaining the current altitudes from the surface to 2,000 feet MSL. In Areas F of the TCA, we have determined that the altitudes should be changed from 5,000 feet to 8,000 feet MSL, to 4,500 feet to 8,000 feet MSL. Further study has determined that the lower altitude is necessary to contain heavy departure/arrival jets. These actions are necessary to increase aircraft safety within the TCA. Section 71.401(b) of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.



§ 71.401(b) [Amended]

2. Section 71.401(b) is amended as follows:

St. Louis, MO [Amended]

By removing Area A and substituting the following:

Area A. That airspace extending from the surface up to and including 8,000 feet MSL within a 6-mile radius of the Lambert-St. Louis International Airport, excluding that airspace south of Interstate 70 and west of Interstate 270; and west of the west bank of the Missouri River from Interstate 70 clockwise to the point where the river intersects with the 6-mile arc, directly north of the Lambert-St. Louis International Airport.

In Area F, by removing the words "5,000 feet MSL to and including 8,000 feet MSL" and substituting the words "4,500 feet MSL to and including 8,000 feet MSL."

Issued in Washington, DC, on November 30, 1990.

Harold W. Becker,

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90-28733 Filed 12-6-90; 8:45 am]

BILLING CODE 4910-13-M

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55
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federal register

Friday
December 7, 1990

Part IV

# Department of the Interior

**Bureau of Indian Affairs**

**List of Rejected Statute of Limitations Claims; Notice of Rejected Claims**

VOL 55 ISS 236 DEC 7 1990 UMI



**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**List of Rejected Statute of Limitations Claims**

November 26, 1990.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of rejected claims.

**SUMMARY:** This notice lists certain potential pre-1966 Indian damage claims which have been rejected for litigation by the Secretary of the Interior pursuant to the Indian Claims Limitation Act of 1982. This notice also contains a list of claims which the Bureau of Indian Affairs considers resolved.

**DATES:** To file an action in court, on any claim contained on the list of rejected claims, tribes, groups, and individual Indians must file such action no later than December 9, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue SE., Aberdeen, South Dakota 57401-4182, Telephone (605) 226-7343;

Albuquerque Area Director, Bureau of Indian Affairs, 615 1st Street, NW., Box 26567, Albuquerque, New Mexico 87125-6567, Telephone (505) 766-3170;

Anadarko Area Director, Bureau of Indian Affairs, WCD Office Complex, Box 368, Anadarko, Oklahoma 73005-0368, Telephone (405) 247-6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101-1397, Telephone (406) 657-6315;

Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, suite 260/ Mailroom, Arlington, VA 22203 Telephone (703) 235-2571;

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3-8000, Juneau, Alaska 99802-1219, Telephone (907) 586-7177;

Minneapolis Area Director, Bureau of Indian Affairs, 15 South 5th Street—10th Floor, Minneapolis, Minnesota 55402-1026, Telephone (612) 349-3631;

Muskogee Area Director, Bureau of Indian Affairs, 5th & West Okmulgee, Muskogee, OK 74401-4666, Telephone (918) 687-2296;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box M, Window Rock, Arizona 86515-0714, Telephone (505) 663-9501;

Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001-0010, Telephone (602) 241-2305;

Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Ave., Portland, OR 97232-4169, Telephone (503) 231-6702;

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825-1884, Telephone (916) 978-4691.

**SUPPLEMENTARY INFORMATION:** The Indian Claims Limitation Act of 1982, Public Law 97-394 (96 Stat. 1966, 1976) extends the statute of limitations governing pre-1966 Indian damage claims (28 U.S.C. 2415) which was due to expire on December 31, 1982. A claim subject to the statute of limitations is an Indian claim for money damages which arose prior to July 18, 1966. Claims against the United States are not governed by this law, only money damage claims against persons, corporations, states, or any other entities except the Federal Government. Claims for title to land are also not governed by this statute of limitations. This notice is required by section 5(c) of the Act.

Pursuant to sections 3 and 4 of the Indian Claims Limitation Act of 1982, lists of all potential Indian damage claims, which had at any time been identified by or submitted to the Bureau of Indian Affairs under the Department of the Interior's Statute of Limitations Program, were published in the **Federal Register** at 48 FR 13565, on March 31, 1983, amended at 48 FR 15006, on April 6, 1983; and at 48 FR 51204, on November 7, 1983, amended at 49 FR 518, on January 4, 1984. Excluded from these lists were claims which were erroneously identified as claims and those which had no legal merit whatsoever.

When rejecting any claim or category of claims included on the published lists, the Secretary must send a report to the appropriate tribe whose rights or the rights of whose members could be affected by the rejection. The report must identify each separate claim being rejected, list the names of potential plaintiffs and defendants, if known or reasonably ascertainable, and briefly set forth the reason or reasons for rejection. A written notice of rejection must be sent to individual Indian claimants if their identities and addresses are known or reasonably ascertainable from Bureau of Indian Affairs records. After a report has been forwarded to a tribe, the Secretary must publish a notice in the **Federal Register** identifying the claims covered in the report. By the terms of the Indian Claims Limitation Act of 1982, any right of action on any claim appearing on the following list of claims, which have been rejected and reported accordingly by the Secretary, shall be barred unless a complaint is filed in accordance with date established in the "DATE" section of this notice. A list of claims which the Bureau of Indian Affairs considers resolved follows the list of rejected claims.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Eddie F. Brown,

*Assistant Secretary—Indian Affairs.*

BILLING CODE 4310-02-M



MINNEAPOLIS AREA REJECTED CLAIMS:

| | | | | |
|---|---|---|---|---|
| F55-430-0059 | F55-430-0091 | F55-431-0047 | F55-435-0031 | F55-435-0032 |
| F55-430-0074 | F55-430-0094 | F55-431-0073 | | |

MUSKOGEE AREA REJECTED CLAIMS:

| | | | | |
|---|---|---|---|---|
| G03-906-0001 | G03-906-0060 | G06-930-0014 | G07-908-0067 | |
| G03-906-0003 | G03-906-0061 | G06-930-0045 | G07-908-0068 | G07-908-0140 |
| G03-906-0004C | G03-906-0062 | G06-930-0047 | G07-908-0069 | G07-908-0141 |
| G03-906-0004D | G03-906-0063 | G06-930-0048 | G07-908-0070 | G07-908-0142 |
| G03-906-0004E | G03-906-0064 | G07-908-0001 | G07-908-0072 | G07-908-0143 |
| G03-906-0004F | G03-906-0065 | G07-908-0003 | G07-908-0073 | G07-908-0144 |
| G03-906-0005 | G03-906-0066 | G07-908-0006 | G07-908-0074 | G07-908-0145 |
| G03-906-0006 | G03-906-0067 | G07-908-0008 | G07-908-0075 | G07-908-0146 |
| G03-906-0007 | G03-906-0068 | G07-908-0009 | G07-908-0076 | G07-908-0147 |
| G03-906-0008 | G03-906-0069 | G07-908-0010 | G07-908-0077 | G07-908-0148 |
| G03-906-0012 | G03-906-0070 | G07-908-0011 | G07-908-0079 | G07-908-0149 |
| G03-906-0013 | G03-906-0071 | G07-908-0012 | G07-908-0081 | G07-908-0150 |
| G03-906-0014 | G03-906-0072 | G07-908-0013 | G07-908-0083 | G07-908-0151 |
| G03-906-0016 | G03-906-0073 | G07-908-0015 | G07-908-0086 | G07-908-0152 |
| G03-906-0017 | G03-906-0074 | G07-908-0016 | G07-908-0088 | G07-908-0153 |
| G03-906-0018 | G03-906-0075 | G07-908-0017 | G07-908-0089 | G07-908-0154 |
| G03-906-0019 | G03-906-0076 | G07-908-0018 | G07-908-0090 | G07-908-0155 |
| G03-906-0020 | G03-906-0077 | G07-908-0019 | G07-908-0093 | G07-908-0156 |
| G03-906-0021 | G03-906-0078 | G07-908-0020 | G07-908-0094 | G07-908-0157 |
| G03-906-0023 | G03-906-0079 | G07-908-0021 | G07-908-0095 | G07-908-0158 |
| G03-906-0024 | G03-906-0080 | G07-908-0022 | G07-908-0096 | G07-908-0159 |
| G03-906-0025 | G03-906-0082 | G07-908-0023 | G07-908-0098 | G07-908-0160 |
| G03-906-0026 | G03-906-0083 | G07-908-0024 | G07-908-0099 | G07-908-0161 |
| G03-906-0028 | G03-906-0084 | G07-908-0025 | G07-908-0100 | G07-908-0162 |
| G03-906-0029 | G03-906-0085 | G07-908-0026 | G07-908-0101 | G07-908-0163 |
| G03-906-0030 | G03-906-0086 | G07-908-0028 | G07-908-0105 | G07-908-0164 |
| G03-906-0033 | G03-906-0087 | G07-908-0030 | G07-908-0107 | G07-908-0165 |
| G03-906-0034 | G04-920-0001 | G07-908-0032 | G07-908-0108 | G07-908-0166 |
| G03-906-0035 | G04-920-0002 | G07-908-0033 | G07-908-0110 | G07-908-0167 |
| G03-906-0039 | G04-921-0001 | G07-908-0034 | G07-908-0112 | G07-908-0168 |
| G03-906-0040 | G04-922-0001 | G07-908-0035 | G07-908-0113 | G07-908-0169 |
| G03-906-0041 | G04-922-0002 | G07-908-0037 | G07-908-0114 | G07-908-0170 |
| G03-906-0042 | G04-922-0003 | G07-908-0041 | G07-908-0115 | G07-908-0171 |
| G03-906-0043 | G04-922-0004 | G07-908-0042 | G07-908-0116 | G07-908-0172 |
| G03-906-0044 | G04-922-0005 | G07-908-0043 | G07-908-0117 | G07-908-0173 |
| G03-906-0045 | G04-922-0008 | G07-908-0045 | G07-908-0118 | G07-908-0174 |
| G03-906-0046 | G04-923-0001 | G07-908-0046 | G07-908-0119 | G07-908-0175 |
| G03-906-0047 | G04-923-0002 | G07-908-0047 | G07-908-0120 | G07-908-0176 |
| G03-906-0048 | G04-923-0003 | G07-908-0048 | G07-908-0121 | G07-908-0177 |
| G03-906-0049 | G04-924-0001 | G07-908-0049 | G07-908-0122 | G07-908-0178 |
| G03-906-0050 | G04-925-0001 | G07-908-0051 | G07-908-0128 | G07-908-0179 |
| G03-906-0051 | G04-926-0002 | G07-908-0052 | G07-908-0129 | G07-908-0180 |
| G03-906-0052 | G06-930-0003 | G07-908-0055 | G07-908-0132 | G07-908-0181 |
| G03-906-0053 | G06-930-0005 | G07-908-0056 | G07-908-0133 | G07-908-0182 |
| G03-906-0054 | G06-930-0006 | G07-908-0057 | G07-908-0134 | G07-908-0183 |
| G03-906-0055 | G06-930-0007 | G07-908-0058 | G07-908-0135 | G07-908-0184 |
| G03-906-0056 | G06-930-0008 | G07-908-0059 | G07-908-0136 | G07-908-0185 |
| G03-906-0057 | G06-930-0009 | G07-908-0061 | G07-908-0137 | G07-908-0186 |
| G03-906-0058 | G06-930-0010 | G07-908-0063 | G07-908-0138 | G07-908-0187 |
| G03-906-0059 | G06-930-0011 | G07-908-0066 | G07-908-0139 | G07-908-0188 |

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MUSKOGEE AREA REJECTED CLAIMS (CONTINUED):

| | | | | |
|---|---|---|---|---|
| G07-908-0189 | G07-908-0243 | G08-905-0006 | G08-905-0169 | G08-905-0285 |
| G07-908-0190 | G07-908-0244 | G08-905-0022 | G08-905-0172 | G08-905-0289 |
| G07-908-0191 | G07-908-0245 | G08-905-0023 | G08-905-0173 | G08-905-0291 |
| G07-908-0192 | G07-908-0246 | G08-905-0025 | G08-905-0175 | G08-905-0292 |
| G07-908-0193 | G07-908-0247 | G08-905-0028 | G08-905-0190 | G08-905-0296 |
| G07-908-0194 | G07-908-0248 | G08-905-0029 | G08-905-0196 | G08-905-0297 |
| G07-908-0195 | G07-908-0249 | G08-905-0029A | G08-905-0199 | G08-905-0298 |
| G07-908-0196 | G07-908-0250 | G08-905-0030 | G08-905-0226 | G08-905-0299 |
| G07-908-0197 | G07-908-0251 | G08-905-0030A | G08-905-0227 | G08-905-0302 |
| G07-908-0198 | G07-908-0252 | G08-905-0032 | G08-905-0229 | G08-905-0304 |
| G07-908-0199 | G07-908-0253 | G08-905-0033 | G08-905-0230 | G08-905-0305 |
| G07-908-0200 | G07-908-0254 | G08-905-0035 | G08-905-0231 | G08-905-0310 |
| G07-908-0201 | G07-908-0255 | G08-905-0041 | G08-905-0232 | G08-905-0311 |
| G07-908-0202 | G07-908-0256 | G08-905-0043 | G08-905-0233 | G08-905-0312 |
| G07-908-0203 | G07-908-0257 | G08-905-0044 | G08-905-0234 | G08-905-0313 |
| G07-908-0204 | G07-908-0258 | G08-905-0045 | G08-905-0235 | G08-905-0315 |
| G07-908-0205 | G07-908-0259 | G08-905-0046 | G08-905-0236 | G08-905-0321 |
| G07-908-0206 | G07-908-0260 | G08-905-0047 | G08-905-0237 | G08-905-0322 |
| G07-908-0207 | G07-908-0261 | G08-905-0048 | G08-905-0238 | G08-905-0328 |
| G07-908-0208 | G07-908-0262 | G08-905-0049 | G08-905-0239 | G08-905-0329 |
| G07-908-0209 | G07-908-0263 | G08-905-0052 | G08-905-0240 | G08-905-0334 |
| G07-908-0210 | G07-908-0264 | G08-905-0053 | G08-905-0241 | G08-905-0335 |
| G07-908-0211 | G07-908-0265 | G08-905-0055 | G08-905-0245 | G08-905-0336 |
| G07-908-0212 | G07-908-0266 | G08-905-0056 | G08-905-0246 | G08-905-0337 |
| G07-908-0213 | G07-908-0267 | G08-905-0062 | G08-905-0247 | G08-905-0339 |
| G07-908-0214 | G07-908-0268 | G08-905-0067 | G08-905-0248 | G08-905-0341 |
| G07-908-0215 | G07-908-0269 | G08-905-0070 | G08-905-0249 | G08-905-0342 |
| G07-908-0216 | G07-908-0270 | G08-905-0073 | G08-905-0252 | G08-905-0347 |
| G07-908-0217 | G07-908-0271 | G08-905-0074 | G08-905-0253 | G08-905-0357 |
| G07-908-0218 | G07-908-0272 | G08-905-0076 | G08-905-0254 | G08-905-0358 |
| G07-908-0219 | G07-908-0273 | G08-905-0078 | G08-905-0255 | G08-905-0359 |
| G07-908-0220 | G07-908-0282 | G08-905-0082 | G08-905-0257 | G08-905-0360 |
| G07-908-0221 | G07-908-0283 | G08-905-0084 | G08-905-0258 | G08-905-0361 |
| G07-908-0222 | G07-908-0286 | G08-905-0089 | G08-905-0259 | G08-905-0362 |
| G07-908-0223 | G07-908-0287 | G08-905-0092 | G08-905-0260 | G08-905-0363 |
| G07-908-0224 | G07-908-0288 | G08-905-0096 | G08-905-0262 | G08-905-0367 |
| G07-908-0225 | G07-908-0289 | G08-905-0104 | G08-905-0263 | G08-905-0371 |
| G07-908-0226 | G07-908-0290 | G08-905-0108 | G08-905-0264 | G08-905-0374 |
| G07-908-0227 | G07-908-0291 | G08-905-0109 | G08-905-0265 | G08-905-0375 |
| G07-908-0228 | G07-908-0292 | G08-905-0116 | G08-905-0267 | G08-905-0380 |
| G07-908-0229 | G07-908-0293 | G08-905-0117 | G08-905-0268 | G08-905-0381 |
| G07-908-0230 | G07-908-0295 | G08-905-0122 | G08-905-0269 | G08-905-0382 |
| G07-908-0231 | G07-908-0302 | G08-905-0123 | G08-905-0270 | G08-905-0383 |
| G07-908-0232 | G07-908-0303 | G08-905-0125 | G08-905-0271 | G08-905-0384 |
| G07-908-0233 | G07-908-0304 | G08-905-0126 | G08-905-0272 | G08-905-0385 |
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| G07-908-0240 | G07-908-0340 | G08-905-0153 | G08-905-0282 | G08-905-0400 |
| G07-908-0241 | G08-905-0002 | G08-905-0158 | G08-905-0283 | G08-905-0402 |
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MUSKOGEE AREA REJECTED CLAIMS (CONTINUED):

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| G08-905-0407 | G08-905-0605 | G08-905-0660 | G08-905-0715 | G08-905-0770 |
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| G08-905-0409 | G08-905-0607 | G08-905-0662 | G08-905-0717 | G08-905-0772 |
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| G08-905-0587 | G08-905-0643 | G08-905-0698 | G08-905-0753 | G08-905-0808 |
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| G08-905-0592 | G08-905-0648 | G08-905-0703 | G08-905-0758 | G08-905-0814 |
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| G08-905-0594 | G08-905-0650 | G08-905-0705 | G08-905-0760 | G08-905-0816 |
| G08-905-0595 | G08-905-0651 | G08-905-0706 | G08-905-0761 | G08-905-0817 |
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| G08-905-0598 | G08-905-0654 | G08-905-0709 | G08-905-0764 | G08-905-0820 |
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| G08-905-0601 | G08-905-0656 | G08-905-0711 | G08-905-0766 | G08-905-0822 |
| G08-905-0602 | G08-905-0657 | G08-905-0712 | G08-905-0767 | G08-905-0823 |
| G08-905-0603 | G08-905-0658 | G08-905-0713 | G08-905-0768 | G08-905-0824 |
| G08-905-0604 | G08-905-0659 | G08-905-0714 | G08-905-0769 | G08-905-0825 |

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MUSKOGEE AREA REJECTED CLAIMS (CONTINUED):

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| G08-905-0828 | G09-907-0050 | G09-907-0201 | G09-907-0256 | G09-907-0311 |
| G08-905-0829 | G09-907-0077 | G09-907-0202 | G09-907-0257 | G09-907-0312 |
| G08-905-0830 | G09-907-0090 | G09-907-0203 | G09-907-0258 | G09-907-0313 |
| G08-905-0831 | G09-907-0092 | G09-907-0204 | G09-907-0259 | G09-907-0314 |
| G08-905-0832 | G09-907-0098 | G09-907-0205 | G09-907-0260 | G09-907-0315 |
| G08-905-0833 | G09-907-0098A | G09-907-0206 | G09-907-0261 | G09-907-0316 |
| G08-905-0834 | G09-907-0098B | G09-907-0207 | G09-907-0262 | G09-907-0317 |
| G08-905-0835 | G09-907-0105 | G09-907-0208 | G09-907-0263 | G09-907-0318 |
| G08-905-0836 | G09-907-0108 | G09-907-0209 | G09-907-0264 | G09-907-0319 |
| G08-905-0837 | G09-907-0109 | G09-907-0210 | G09-907-0265 | G09-907-0320 |
| G08-905-0838 | G09-907-0112 | G09-907-0211 | G09-907-0266 | G09-907-0321 |
| G08-905-0839 | G09-907-0121 | G09-907-0212 | G09-907-0267 | G09-907-0322 |
| G08-905-0840 | G09-907-0122 | G09-907-0213 | G09-907-0268 | G09-907-0323 |
| G08-905-0841 | G09-907-0123 | G09-907-0214 | G09-907-0269 | G09-907-0324 |
| G08-905-0842 | G09-907-0126 | G09-907-0215 | G09-907-0270 | G09-907-0325 |
| G08-905-0843 | G09-907-0133 | G09-907-0216 | G09-907-0271 | G09-907-0326 |
| G08-905-0844 | G09-907-0138 | G09-907-0217 | G09-907-0272 | G09-907-0327 |
| G08-905-0845 | G09-907-0145 | G09-907-0218 | G09-907-0273 | G09-907-0328 |
| G08-905-0846 | G09-907-0155A | G09-907-0219 | G09-907-0274 | G09-907-0329 |
| G08-905-0847 | G09-907-0156 | G09-907-0220 | G09-907-0275 | G09-907-0330 |
| G08-905-0848 | G09-907-0161 | G09-907-0221 | G09-907-0276 | G09-907-0331 |
| G08-905-0849 | G09-907-0167 | G09-907-0222 | G09-907-0277 | G09-907-0332 |
| G08-905-0850 | G09-907-0168 | G09-907-0223 | G09-907-0278 | G09-907-0333 |
| G08-905-0851 | G09-907-0169 | G09-907-0224 | G09-907-0279 | G09-907-0334 |
| G08-905-0852 | G09-907-0170 | G09-907-0225 | G09-907-0280 | G09-907-0335 |
| G08-905-0853 | G09-907-0171 | G09-907-0226 | G09-907-0281 | G09-907-0336 |
| G08-905-0854 | G09-907-0172 | G09-907-0227 | G09-907-0282 | G09-907-0337 |
| G08-905-0855 | G09-907-0173 | G09-907-0228 | G09-907-0283 | G09-907-0338 |
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| G08-905-0858 | G09-907-0176 | G09-907-0231 | G09-907-0286 | G09-907-0341 |
| G08-905-0859 | G09-907-0177 | G09-907-0232 | G09-907-0287 | G09-907-0342 |
| G08-905-0860 | G09-907-0178 | G09-907-0233 | G09-907-0288 | G09-907-0343 |
| G08-905-0861 | G09-907-0179 | G09-907-0234 | G09-907-0289 | G09-907-0344 |
| G08-905-0862 | G09-907-0180 | G09-907-0235 | G09-907-0290 | G09-907-0345 |
| G08-905-0863 | G09-907-0181 | G09-907-0236 | G09-907-0291 | G09-907-0346 |
| G08-905-0864 | G09-907-0182 | G09-907-0237 | G09-907-0292 | G09-907-0347 |
| G08-905-0865 | G09-907-0183 | G09-907-0238 | G09-907-0293 | G09-907-0348 |
| G08-905-0866 | G09-907-0184 | G09-907-0239 | G09-907-0294 | G09-907-0349 |
| G08-905-0867 | G09-907-0185 | G09-907-0240 | G09-907-0295 | G09-907-0350 |
| G08-905-0868 | G09-907-0186 | G09-907-0241 | G09-907-0296 | G09-907-0351 |
| G08-905-0869 | G09-907-0187 | G09-907-0242 | G09-907-0297 | G09-907-0352 |
| G08-905-0945 | G09-907-0188 | G09-907-0243 | G09-907-0298 | G09-907-0353 |
| G09-907-0004 | G09-907-0189 | G09-907-0244 | G09-907-0299 | G09-907-0354 |
| G09-907-0006 | G09-907-0190 | G09-907-0245 | G09-907-0300 | G09-907-0355 |
| G09-907-0009 | G09-907-0191 | G09-907-0246 | G09-907-0301 | G09-907-0356 |
| G09-907-0012 | G09-907-0192 | G09-907-0247 | G09-907-0302 | G09-907-0357 |
| G09-907-0017 | G09-907-0193 | G09-907-0248 | G09-907-0303 | G09-907-0358 |
| G09-907-0021 | G09-907-0194 | G09-907-0249 | G09-907-0304 | G09-907-0359 |
| G09-907-0022 | G09-907-0195 | G09-907-0250 | G09-907-0305 | G09-907-0360 |
| G09-907-0029 | G09-907-0196 | G09-907-0251 | G09-907-0306 | G09-907-0361 |
| G09-907-0032 | G09-907-0197 | G09-907-0252 | G09-907-0307 | G09-907-0362 |
| G09-907-0034 | G09-907-0198 | G09-907-0253 | G09-907-0308 | G09-907-0363 |



MUSKOGEE AREA REJECTED CLAIMS (CONTINUED):

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| G09-907-0365 | G09-907-0382 | G09-907-0399 | G10-909-0030 | G10-909-0047 |
| G09-907-0366 | G09-907-0383 | G09-907-0400 | G10-909-0031 | G10-909-0048 |
| G09-907-0367 | G09-907-0384 | G09-907-0401 | G10-909-0032 | G10-909-0049 |
| G09-907-0368 | G09-907-0385 | G09-907-0402 | G10-909-0033 | G10-909-0050 |
| G09-907-0369 | G09-907-0386 | G09-907-0403 | G10-909-0034 | G10-909-0051 |
| G09-907-0370 | G09-907-0387 | G09-907-0404 | G10-909-0035 | G10-909-0052 |
| G09-907-0371 | G09-907-0388 | G09-907-0405 | G10-909-0036 | G10-909-0053 |
| G09-907-0372 | G09-907-0389 | G09-907-0406 | G10-909-0037 | G10-909-0054 |
| G09-907-0373 | G09-907-0390 | G09-907-0407 | G10-909-0038 | G10-909-0055 |
| G09-907-0374 | G09-907-0391 | G09-907-0408 | G10-909-0039 | G10-909-0056 |
| G09-907-0375 | G09-907-0392 | G09-907-0409 | G10-909-0040 | G10-909-0057 |
| G09-907-0376 | G09-907-0393 | G09-907-0410 | G10-909-0041 | G10-909-0058 |
| G09-907-0377 | G09-907-0394 | G09-907-0411 | G10-909-0042 | G10-909-0059 |
| G09-907-0378 | G09-907-0395 | G10-909-0026 | G10-909-0043 | G10-909-0060 |
| G09-907-0379 | G09-907-0396 | G10-909-0027 | G10-909-0044 | G10-909-0061 |
| G09-907-0380 | G09-907-0397 | G10-909-0028 | G10-909-0045 | G10-909-0062 |
| | | | | G10-909-0063 |

PORTLAND AREA REJECTED CLAIMS:

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| P00-000-0012 | P00-000-0090 | P00-000-0145 | P00-000-0207 | P00-000-0242 |
| P00-000-0013 | P00-000-0093 | P00-000-0153 | P00-000-0208 | P00-000-0243 |
| P00-000-0014 | P00-000-0094 | P00-000-0155 | P00-000-0209 | P00-000-0244 |
| P00-000-0015 | P00-000-0095 | P00-000-0156 | P00-000-0210 | P00-000-0245 |
| P00-000-0016 | P00-000-0096 | P00-000-0160 | P00-000-0211 | P00-000-0246 |
| P00-000-0017 | P00-000-0097 | P00-000-0161 | P00-000-0212 | P00-000-0247 |
| P00-000-0023 | P00-000-0100 | P00-000-0162 | P00-000-0213 | P00-000-0248 |
| P00-000-0026 | P00-000-0103 | P00-000-0163 | P00-000-0214 | P00-000-0253 |
| P00-000-0029 | P00-000-0105 | P00-000-0164 | P00-000-0215 | P00-000-0255 |
| P00-000-0031 | P00-000-0106 | P00-000-0165 | P00-000-0216 | P00-000-0257 |
| P00-000-0032 | P00-000-0107 | P00-000-0166 | P00-000-0217 | P00-000-0258 |
| P00-000-0033 | P00-000-0108 | P00-000-0167 | P00-000-0218 | P00-000-0259 |
| P00-000-0034 | P00-000-0109 | P00-000-0169 | P00-000-0219 | P00-000-0260 |
| P00-000-0035 | P00-000-0110 | P00-000-0175 | P00-000-0220 | P00-000-0261 |
| P00-000-0036 | P00-000-0114 | P00-000-0176 | P00-000-0221 | P00-000-0262 |
| P00-000-0037 | P00-000-0120 | P00-000-0177 | P00-000-0222 | P00-000-0263 |
| P00-000-0039 | P00-000-0121 | P00-000-0179 | P00-000-0223 | P00-000-0264 |
| P00-000-0048 | P00-000-0123 | P00-000-0186 | P00-000-0224 | P00-000-0265 |
| P00-000-0049 | P00-000-0124 | P00-000-0187 | P00-000-0225 | P00-000-0266 |
| P00-000-0050 | P00-000-0125 | P00-000-0191 | P00-000-0226 | P00-000-0267 |
| P00-000-0054 | P00-000-0128 | P00-000-0192 | P00-000-0227 | P00-000-0268 |
| P00-000-0058 | P00-000-0129 | P00-000-0193 | P00-000-0228 | P00-000-0269 |
| P00-000-0059 | P00-000-0130 | P00-000-0194 | P00-000-0229 | P00-000-0270 |
| P00-000-0062 | P00-000-0131 | P00-000-0195 | P00-000-0230 | P00-000-0271 |
| P00-000-0066 | P00-000-0132 | P00-000-0196 | P00-000-0231 | P00-000-0272 |
| P00-000-0067 | P00-000-0133 | P00-000-0197 | P00-000-0232 | P00-000-0273 |
| P00-000-0068 | P00-000-0134 | P00-000-0198 | P00-000-0233 | P00-000-0274 |
| P00-000-0077 | P00-000-0135 | P00-000-0199 | P00-000-0234 | P00-000-0275 |
| P00-000-0082 | P00-000-0137 | P00-000-0200 | P00-000-0235 | P00-000-0276 |
| P00-000-0083 | P00-000-0138 | P00-000-0201 | P00-000-0236 | P00-000-0277 |
| P00-000-0084 | P00-000-0140 | P00-000-0202 | P00-000-0237 | P00-000-0278 |
| P00-000-0085 | P00-000-0141 | P00-000-0203 | P00-000-0238 | P00-000-0279 |
| P00-000-0086 | P00-000-0142 | P00-000-0204 | P00-000-0239 | P00-000-0280 |

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| | | | | |
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| P00-000-0282 | P03-101-0264 | P04-180-0070 | P07-143-0019 | P10-107-0011B |
| P00-000-0283 | P03-101-0277 | P05-182-0007 | P07-143-0020 | P10-107-0011C |
| P00-000-0284 | P03-101-0278 | P05-182-0008 | P07-143-0021 | P10-107-0011D |
| P00-000-0285 | P03-101-0279 | P05-182-0009 | P07-143-0022 | P10-107-0011E |
| P00-000-0286 | P03-101-0280 | P05-182-0010 | P09-144-0030 | P10-107-0011F |
| P00-000-0287 | P03-101-0281 | P05-182-0011 | P09-144-0037 | P10-107-0011G |
| P00-000-0288 | P03-101-0282 | P05-182-0012 | P09-145-0004 | P10-107-0011H |
| P00-000-0289 | P03-101-0283 | P05-182-0013 | P09-145-0007 | P10-107-0011I |
| P00-000-0290 | P03-101-0284 | P05-182-0014 | P09-145-0008 | P10-107-0011J |
| P00-000-0291 | P03-101-0285 | P05-182-0015 | P09-145-0009 | P10-107-0011K |
| P00-000-0292 | P03-101-0286 | P05-182-0016 | P10-000-0013 | P10-109-0007 |
| P00-000-0293 | P03-101-0287 | P05-182-0017 | P10-000-0016 | P10-109-0014 |
| P00-000-0294 | P03-101-0288 | P05-182-0018 | P10-000-0017 | P10-109-0015 |
| P00-000-0295 | P03-101-0289 | P05-182-0019 | P10-000-0025 | P10-109-0025 |
| P00-000-0296 | P03-101-0290 | P05-182-0020 | P10-000-0027 | P10-110-0014 |
| P00-000-0297 | P03-101-0291 | P05-182-0021 | P10-000-0029 | P10-111-0002 |
| P00-000-0298 | P03-101-0293 | P05-182-0022 | P10-000-0030 | P10-111-0003D |
| P00-000-0299 | P03-101-0295 | P05-182-0023 | P10-000-0034 | P10-111-0004 |
| P00-000-0300 | P03-101-0296 | P05-182-0024 | P10-000-0035 | P10-111-0004B |
| P00-000-0301 | P03-101-0297 | P05-182-0025 | P10-000-0036 | P10-111-0004L |
| P00-000-0302 | P03-101-0298 | P05-182-0026 | P10-000-0040 | P10-111-0004M |
| P00-000-0303 | P03-101-0299 | P05-182-0027 | P10-000-0041 | P10-111-0008 |
| P00-000-0304 | P03-101-0303 | P05-182-0028 | P10-000-0056 | P10-111-0010 |
| P00-000-0305 | P03-101-0308 | P05-182-0029 | P10-000-0058 | P10-111-0012 |
| P00-000-0306 | P03-101-0312 | P05-182-0030 | P10-000-0059 | P10-111-0013 |
| P00-000-0307 | P03-101-0314 | P06-000-0004 | P10-000-0063 | P10-111-0020 |
| P00-000-0308 | P03-101-0335 | P06-000-0007 | P10-000-0065 | P10-111-0023 |
| P00-000-0309 | P04-180-0013 | P06-000-0010 | P10-000-0070 | P10-111-0024 |
| P00-000-0310 | P04-180-0014 | P06-000-0019 | P10-000-0071 | P10-114-0010 |
| P00-000-0311 | P04-180-0015 | P06-000-0020 | P10-000-0072 | P10-122-0007 |
| P00-000-0312 | P04-180-0016 | P06-000-0021 | P10-000-0073 | P10-123-0012 |
| P00-000-0313 | P04-180-0018 | P06-000-0023 | P10-000-0074 | P10-123-0013 |
| P00-000-0314 | P04-180-0019 | P06-000-0026 | P10-000-0075 | P10-123-0015 |
| P00-000-0315 | P04-180-0020 | P06-000-0029 | P10-000-0077 | P10-130-0012 |
| P00-000-0316 | P04-180-0021 | P06-000-0034 | P10-000-0078 | P10-130-0013 |
| P00-000-0317 | P04-180-0022 | P06-000-0035 | P10-000-0079 | P11-124-0023 |
| P00-000-0318 | P04-180-0023 | P06-117-0005 | P10-000-0080 | P11-124-0025 |
| P00-000-0319 | P04-180-0024 | P06-117-0022 | P10-000-0084 | P11-124-0039 |
| P00-000-0329 | P04-180-0025 | P06-117-0023 | P10-000-0087 | P11-124-0043 |
| P00-146-0001 | P04-180-0026 | P06-117-0026 | P10-000-0089 | P11-124-0045 |
| P00-146-0002 | P04-180-0029 | P06-117-0027 | P10-000-0090 | P11-124-0047 |
| P00-146-0003 | P04-180-0029A | P07-143-0009 | P10-000-0091 | P11-124-0053 |
| P00-146-0004 | P04-180-0030 | P07-143-0010 | P10-000-0092 | P11-124-0054 |
| P00-146-0005 | P04-180-0031 | P07-143-0012 | P10-000-0094 | P12-103-0007 |
| P03-101-0007 | P04-180-0035 | P07-143-0013 | P10-000-0095 | |
| P03-101-0076 | P04-180-0037 | P07-143-0017 | P10-107-0011 | |



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| A04-301-0071 | A07-345-0307 | A10-302-0038 | A10-302-0085 | A10-302-0139 |
| A04-301-0072 | A07-345-0308 | A10-302-0039 | A10-302-0087 | A10-302-0140 |
| A04-301-0073 | A07-345-0309 | A10-302-0040 | A10-302-0091 | A10-302-0141 |
| A04-301-0074 | A07-345-0310 | A10-302-0043 | A10-302-0093 | A10-302-0142 |
| A04-301-0075 | A07-345-0312 | A10-302-0044 | A10-302-0094 | A10-302-0144 |
| A04-301-0076 | A07-345-0313 | A10-302-0044 | A10-302-0095 | A10-302-0145 |
| A04-301-0077 | A07-345-0314 | A10-302-0045 | A10-302-0096 | A10-302-0146 |
| A04-301-0079 | A07-345-0315 | A10-302-0047 | A10-302-0097 | A10-302-0148 |
| A04-301-0080 | A09-347-0003 | A10-302-0048 | A10-302-0099 | A10-302-0149 |
| A04-301-0082 | A09-347-0009 | A10-302-0049 | A10-302-0100 | A10-302-0150 |
| A04-301-0083 | A09-347-0030 | A10-302-0052 | A10-302-0101 | A10-302-0151 |
| A04-301-0084 | A10-302-0001 | A10-302-0053 | A10-302-0102 | A10-302-0152 |
| A04-301-0085 | A10-302-0003 | A10-302-0054 | A10-302-0104 | A10-302-0153 |
| A04-301-0086 | A10-302-0004 | A10-302-0055 | A10-302-0105 | A10-302-0154 |
| A04-301-0087 | A10-302-0005 | A10-302-0057 | A10-302-0107 | A10-302-0155 |
| A04-301-0088 | A10-302-0007 | A10-302-0058 | A10-302-0108 | A10-302-0156 |
| A04-301-0089 | A10-302-0008 | A10-302-0059 | A10-302-0110 | A10-302-0157 |
| A04-301-0090 | A10-302-0009 | A10-302-0060 | A10-302-0111 | A10-302-0158 |
| A04-301-0091 | A10-302-0010 | A10-302-0061 | A10-302-0112 | A10-302-0160 |
| A04-301-0092 | A10-302-0012 | A10-302-0062 | A10-302-0115 | A10-302-0161 |
| A04-301-0093 | A10-302-0013 | A10-302-0063 | A10-302-0116 | A10-302-0162 |
| A04-301-0094 | A10-302-0014 | A10-302-0064 | A10-302-0117 | A10-302-0163 |
| A04-301-0095 | A10-302-0015 | A10-302-0065 | A10-302-0118 | A10-302-0164 |
| A04-301-0096 | A10-302-0016 | A10-302-0066 | A10-302-0119 | A10-302-0165 |
| A04-301-0097 | A10-302-0017 | A10-302-0067 | A10-302-0120 | A10-302-0166 |
| A04-301-0098 | A10-302-0018 | A10-302-0069 | A10-302-0121 | A10-302-0167 |
| A04-301-0099 | A10-302-0019 | A10-302-0070 | A10-302-0122 | A10-302-0168 |
| A04-301-0100 | A10-302-0020 | A10-302-0071 | A10-302-0123 | A10-302-0169 |
| A04-301-0101 | A10-302-0021 | A10-302-0072 | A10-302-0124 | A10-302-0170 |
| A06-344-0151 | A10-302-0023 | A10-302-0073 | A10-302-0126 | A10-302-0172 |
| A07-345-0083 | A10-302-0024 | A10-302-0074 | A10-302-0127 | A10-302-0173 |
| A07-345-0175 | A10-302-0025 | A10-302-0075 | A10-302-0129 | A10-302-0174 |
| A07-345-0296 | A10-302-0026 | A10-302-0076 | A10-302-0130 | A10-302-0175 |
| A07-345-0297 | A10-302-0028 | A10-302-0077 | A10-302-0131 | A10-302-0176 |
| A07-345-0298 | A10-302-0030 | A10-302-0078 | A10-302-0132 | A10-302-0178 |
| A07-345-0299 | A10-302-0031 | A10-302-0079 | A10-302-0133 | A10-302-0179 |
| A07-345-0300 | A10-302-0032 | A10-302-0080 | A10-302-0134 | A10-302-0181 |
| A07-345-0301 | A10-302-0033 | A10-302-0081 | A10-302-0135 | A10-302-0182 |
| A07-345-0303 | A10-302-0034 | A10-302-0082 | A10-302-0136 | A10-302-0183 |
| A07-345-0304 | A10-302-0036 | A10-302-0083 | A10-302-0137 | A10-302-0184 |
| A07-345-0305 | A10-302-0037 | A10-302-0084 | A10-302-0138 | |

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| C51-201-0030 | C51-201-0050 | C51-201-0065 | C51-201-0083 | C51-201-0105 |
| C51-201-0032 | C51-201-0051 | C51-201-0066 | C51-201-0085 | C51-201-0106 |
| C51-201-0033 | C51-201-0052 | C51-201-0070 | C51-201-0087 | C51-201-0107 |
| C51-201-0036 | C51-201-0053 | C51-201-0071 | C51-201-0089 | C51-201-0108 |
| C51-201-0039 | C51-201-0055 | C51-201-0072 | C51-201-0090 | C51-201-0109 |
| C51-201-0042 | C51-201-0056 | C51-201-0073 | C51-201-0092 | C51-201-0110 |
| C51-201-0043 | C51-201-0058 | C51-201-0074 | C51-201-0093 | C51-201-0111 |
| C51-201-0044 | C51-201-0059 | C51-201-0075 | C51-201-0094 | C51-201-0112 |
| C51-201-0046 | C51-201-0060 | C51-201-0076 | C51-201-0095 | C51-201-0113 |
| C51-201-0047 | C51-201-0062 | C51-201-0079 | C51-201-0096 | C52-202-0052 |
| C51-201-0048 | C51-201-0064 | C51-201-0082 | C51-201-0104 | C52-202-0054 |

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| C52-202-0064 | C52-202-0067 | C52-202-0069 | C52-202-0072 | |

MINNEAPOLIS AREA OFFICE RESOLVED CLAIMS:

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|---|---|---|---|---|
| F52-409-0002 | F53-407-0247 | F53-407-0258 | F53-408-0496 | F55-432-0035 |
| F53-407-0229 | F53-407-0248 | F53-407-0259 | F55-430-0088 | F55-432-0045 |
| F53-407-0230 | F53-407-0249 | F53-407-0260 | F55-430-0089 | F55-434-0004 |
| F53-407-0231 | F53-407-0250 | F53-407-0268 | F55-430-0090 | F55-439-0101 |
| F53-407-0238 | F53-407-0251 | F53-407-0270 | F55-431-0085 | F55-439-0102 |
| F53-407-0240 | F53-407-0253 | F53-407-0271 | F55-431-0086 | F55-439-0113 |
| F53-407-0242 | F53-407-0254 | F53-407-0272 | F55-432-0025 | F55-439-0114 |
| F53-407-0243 | F53-407-0256 | F53-407-0274 | F55-432-0029 | F55-439-0115 |
| F53-407-0244 | F53-407-0257 | F53-407-0658 | F55-432-0032 | |

MUSKOGEE AREA OFFICE RESOLVED CLAIMS:

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| G03-906-0022 | G06-930-0024 | G06-930-0040 | G07-908-0360 | G09-907-0013 |
| G03-906-0032 | G06-930-0025 | G06-930-0041 | G08-905-0124 | G09-907-0016 |
| G04-920-0004 | G06-930-0026 | G06-930-0042 | G08-905-0145 | G09-907-0020 |
| G06-930-0001 | G06-930-0027 | G06-930-0043 | G08-905-0149 | G09-907-0033 |
| G06-930-0002 | G06-930-0028 | G06-930-0046 | G08-905-0387 | G09-907-0127 |
| G06-930-0004 | G06-930-0029 | G07-908-0004 | G08-905-0394 | G09-907-0130 |
| G06-930-0012 | G06-930-0030 | G07-908-0005 | G08-905-0404 | G09-907-0135 |
| G06-930-0015 | G06-930-0031 | G07-908-0044 | G08-905-0406 | G09-907-0141 |
| G06-930-0016 | G06-930-0032 | G07-908-0053 | G08-905-0412 | G09-907-0150 |
| G06-930-0017 | G06-930-0033 | G07-908-0085 | G08-905-0416 | G09-907-0150A |
| G06-930-0018 | G06-930-0034 | G07-908-0124 | G08-905-0417 | G09-907-0158 |
| G06-930-0019 | G06-930-0035 | G07-908-0125 | G08-905-0419 | G09-907-0166 |
| G06-930-0020 | G06-930-0036 | G07-908-0321 | G08-905-0874 | G09-907-0419 |
| G06-930-0021 | G06-930-0037 | G07-908-0322 | G09-907-0001 | G10-909-0013 |
| G06-930-0022 | G06-930-0038 | G07-908-0349 | G09-907-0008 | G10-909-0025 |
| G06-930-0023 | G06-930-0039 | G07-908-0350 | G09-907-0010 | |

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| M25-709-0005 | M25-709-0033 | M25-710-0048 | M25-710-0113 | M25-714-0011 |
| M25-709-0007 | M25-709-0034 | M25-710-0049 | M25-710-0114 | M25-714-0013 |
| M25-709-0008 | M25-709-0035 | M25-710-0050 | M25-710-0115 | M25-714-0055 |
| M25-709-0009 | M25-709-0036 | M25-710-0051 | M25-710-0116 | M25-714-0056 |
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| M25-709-0011 | M25-709-0042 | M25-710-0053 | M25-710-0118 | M25-714-0058 |
| M25-709-0012 | M25-709-0043 | M25-710-0055 | M25-710-0119 | M25-714-0059 |
| M25-709-0013 | M25-709-0044 | M25-710-0056 | M25-710-0120 | M25-714-0060 |
| M25-709-0015 | M25-709-0045 | M25-710-0057 | M25-710-0121 | M25-714-0068 |
| M25-709-0016 | M25-709-0047 | M25-710-0058 | M25-710-0122 | M25-714-0069 |
| M25-709-0017 | M25-709-0048 | M25-710-0069 | M25-710-0123 | M25-714-0070 |
| M25-709-0018 | M25-709-0050 | M25-710-0070 | M25-710-0124 | M25-714-0071 |
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| M25-709-0024 | M25-710-0012 | M25-710-0092 | M25-710-0126 | M25-714-0301 |
| M25-709-0025 | M25-710-0013 | M25-710-0101 | M25-710-0127 | M25-714-0302 |
| M25-709-0026 | M25-710-0014 | M25-710-0102 | M25-710-0128 | M25-714-0303 |
| M25-709-0027 | M25-710-0027 | M25-710-0103 | M25-710-0129 | M25-714-0304 |
| M25-709-0028 | M25-710-0028 | M25-710-0104 | M25-710-0130 | M25-714-0305 |
| M25-709-0029 | M25-710-0029 | M25-710-0105 | M25-710-0135 | M25-714-0318 |
| M25-709-0030 | M25-710-0045 | M25-710-0110 | M25-710-0140 | M25-714-0324 |
| M25-709-0031 | M25-710-0046 | M25-710-0111 | M25-710-0141 | M25-714-0325 |
| M25-709-0032 | M25-710-0047 | M25-710-0112 | M25-710-0144 | M25-714-0326 |



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| M25-714-0328 | M25-714-0366 | M25-714-0398 | M25-714-0483 | M25-714-0509 |
| M25-714-0329 | M25-714-0367 | M25-714-0399 | M25-714-0484 | M25-714-0510 |
| M25-714-0330 | M25-714-0368 | M25-714-0401 | M25-714-0485 | M25-714-0511 |
| M25-714-0331 | M25-714-0369 | M25-714-0402 | M25-714-0486 | M25-714-0514 |
| M25-714-0332 | M25-714-0370 | M25-714-0403 | M25-714-0487 | M25-714-0519 |
| M25-714-0333 | M25-714-0371 | M25-714-0462 | M25-714-0488 | M25-714-0520 |
| M25-714-0334 | M25-714-0372 | M25-714-0463 | M25-714-0489 | M25-714-0521 |
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| M25-714-0338 | M25-714-0374 | M25-714-0465 | M25-714-0491 | M25-714-0524 |
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| M25-714-0351 | M25-714-0376 | M25-714-0468 | M25-714-0494 | M25-716-0008 |
| M25-714-0352 | M25-714-0377 | M25-714-0469 | M25-714-0495 | M25-716-0009 |
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| M25-714-0355 | M25-714-0380 | M25-714-0472 | M25-714-0498 | M25-719-0001 |
| M25-714-0356 | M25-714-0381 | M25-714-0473 | M25-714-0499 | M25-719-0002 |
| M25-714-0357 | M25-714-0382 | M25-714-0474 | M25-714-0500 | M25-719-0003 |
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| M25-714-0363 | M25-714-0394 | M25-714-0480 | M25-714-0506 | M25-719-0011 |
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12-10-90
Vol. 55 No. 237
Pages 50671-50810

# federal register

Monday
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 907

[Navel Orange Regulation 720, Amdt. 1]

### Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulation for the 1990-91 Season

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Navel Orange Regulation 720 [55 FR 50157] by revising the percentage allocation between districts regulated under the marketing order for California-Arizona navel oranges during the period from December 7 through December 13, 1990. Consistent with program objectives, such action is needed to maintain orderly marketing conditions for fresh California-Arizona navel oranges and to enhance producer returns. This action was recommended by the Navel Orange Administrative Committee (Committee) which locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

**EFFECTIVE DATE:** Regulation 720, Amendment 1 (7 CFR 907) is effective for the period from December 7 through December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-6139.

**SUPPLEMENTARY INFORMATION:** This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

The 1990-91 season average on-tree price for California-Arizona navel oranges is not expected to exceed the season's average fresh parity equivalent price. Domestic fresh utilization about equal to the Committee's estimate of 51,250 cars is expected to result in a season average fresh on-tree price of $4.33 per carton, about 68 percent of the estimated fresh on-tree parity equivalent price of $6.36 per carton. In contrast, the preliminary estimate of the 1989-90 season average fresh on-tree price is $3.70 per carton, or 58 percent of the preliminary on-tree parity equivalent price of $6.34 per carton.

The Committee met publicly on December 4, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with six members voting in favor, four opposing, and one abstaining, an amendment to Navel Orange Regulation 720 [55 FR 50157] to decrease the total allotment for all districts from 2,000,000 cartons to 1,900,000 cartons for the week ending on December 13, 1990. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

At the meeting, Committee members reported that maturity of the navel orange crop remains variable throughout the producing areas. Most Committee members reported that current demand for navel oranges is good. Some Committee members commented that, despite the continued problems with maturity, enough quality fruit was available to warrant recommending the 2,000,000 carton level established for shipment. Those members also commented that a sufficient quantity of California-Arizona navel oranges should be available on retail shelves to compete with fruit from Florida and Chile. The majority of Committee members indicated, however, that the established 2,000,000 carton level was too ambitious. Committee members discussed the pros and cons of implementing volume regulation at this time. Two Committee members favored the established 2,000,000 carton allotment level, two members favored

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open movement, and six members favored a 1,900,000 carton allotment level for Districts 1 and 3.

The Department has reviewed the Committee's recommendation in light of its projections set forth in its 1990–91 marketing policy, information provided at the meeting, and as previously established in Navel Orange Regulation 720. Based on this review, the Department has modified the Committee's recommendation to reflect the total allotment level of 2,000,000 cartons as established in Navel Orange Regulation 720. The allotment will be allocated between Districts 1 and 3 as follows: 1,914,000 cartons for District 1 and 86,000 cartons for District 3. Handlers in Districts 2 and 4 are not regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on November 29, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,480,000 cartons compared with 1,566,000 cartons shipped during the week ending on November 30, 1989. Export shipments totaled 225,000 cartons compared with 166,000 cartons shipped during the week ending on November 30, 1989. Processing and other uses accounted for 313,000 cartons compared with 321,000 cartons shipped during the week ending on November 30, 1989.

Fresh domestic shipments to date this season total 5,385,000 cartons compared with 6,734,000 cartons shipped by this time last season. Export shipments total 589,000 cartons compared with 963,000 cartons shipped by this time last season. Processing and other use shipments total 1,111,000 cartons compared with 1,731,000 cartons shipped by this time last season.

For the week ending on November 29, 1990, regulated shipments of navel oranges to fresh domestic markets were 1,477,000 cartons on an adjusted allotment of 1,500,000 cartons which resulted in net undershipments of 23,000 cartons. Regulated shipments for the current week (November 30 through December 6, 1990), are estimated at 1,940,000 cartons on an adjusted allotment of 1,749,000 cartons. Thus, overshipments of 191,000 cartons could be carried forward into the week ending on December 13, 1990.

The average f.o.b. shipping point price for the week ending on November 29, 1990, was $8.82 per carton based on a reported sales volume of 1,277,000 cartons compared with last week's average of $9.84 per carton on a reported sales volume of 818,000 cartons. The season average f.o.b. shipping point price to date is $9.67 per carton. The average f.o.b. shipping point prices for the week ending on November 30, 1989, was $7.38 per carton; the season average f.o.b. shipping point price at this time last year was $8.47.

According to the National Agricultural Statistics Service, the 1989–90 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 64 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990–91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990–91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 7 through December 13, 1990, to 2,000,000 cartons would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990–91 season was published in the September 6, 1990, issue of the **Federal Register** [55 FR 36653]. That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations. A final rule concerning this action was published in the **Federal Register** on December 5, 1990 [55 FR 50157], implementing the shipping schedule, as revised, for the season. Amendments may be warranted to that final rule throughout the season based on analysis of the prevailing marketing conditions and available data.

Accordingly, this final rule amends Navel Orange Regulation 720 [55 FR 50157] by revising the percentage allocation between districts regulated under the marketing order for California-Arizona navel oranges during the period from December 7 through December 13, 1990.

Moreover, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this amendment and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 4, 1990, and this action needs to be effective for the regulatory week which begins on December 7, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

**List of Subjects in 7 CFR Part 907**

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

**PART 907—[AMENDED]**

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 907.1020 is amended by republishing the introductory text and revising paragraph (a) to read as follows:

**§ 907.1020 Navel Orange Regulation 720, Amendment 1.**

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:



| Week ending | District 1 Cartons/ Percent (000) | District 2 Cartons/ Percent (000) | District 3 Cartons/ Percent (000) | District 4 Cartons/ Percent (000) | Total Cartons/ Percent (000) |
|---|---|---|---|---|---|
| (a) 12-13-90 | 1,914.0/95.7 | | 86.0/4.3 | | 2,000 |

* * * * *

Dated: December 5, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-28827 Filed 12-7-90; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 910**

**[Lemon Reg. 747]**

**Lemons Grown in California and Arizona; Limitation of Handling**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from December 9 through December 15, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

**EFFECTIVE DATE:** Regulation 747 (7 CFR part 910) is effective for the period from December 9 through December 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** Beatrix Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,412 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,900 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,282 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 11,112 cars compared to the 9,438 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 6 percent above the 1989–90 season and 1 percent more than the crop utilized in 1989–90.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,412 cars, the Committee estimates that about 42.2 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 18,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.8 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and

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size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 4, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 1 vote, recommended that 320,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 21,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on December 1, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 285,000 cartons compared with 285,000 cartons shipped during the week ending on December 2, 1989. Export shipments totaled 162,000 cartons compared with 144,000 cartons shipped during the week ending on December 2, 1989. Processing and other uses accounted for 456,000 cartons compared with 366,000 cartons shipped during the week ending on December 2, 1989

Fresh domestic shipments to date for the 1990–91 season total 5,425,000 cartons compared with 5,219,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,700,000 cartons compared with 2,832,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 4,961,000 cartons compared with 3,513,000 cartons shipped by this time during 1989–90.

For the week ending on December 1, 1990, regulated shipments of lemons to the fresh domestic market were 285,000 cartons on an adjusted allotment of 291,000 cartons, resulting in undershipments of 6,000 cartons. Regulated shipments for the current week (December 2 through December 8, 1990) are estimated at 310,000 cartons on an adjusted allotment of 300,000 cartons. Thus, overshipments of 10,000 cartons should be carried forward to the week ending on December 15, 1990.

The average f.o.b. shipping point price for the week ending on December 1, 1990, was $9.89 per carton based on a reported sales volume of 286,000 cartons compared with last week's average of $10.29 per carton on a reported sales volume of 269,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.39 per carton. The average f.o.b. shipping point price for the week ending on December 2, 1989, was $12.49 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.14 per carton.

The Department's Market News Service reported that, as of December 4, the demand for lemons is "moderate" and the market for lemons is "steady." At the meeting, a Committee member indicated that demand is moderate. However, that member commented on the inventory buildup of second grade fruit ranging in size from 95 to 200 and on first grade, 165's and smaller fruit. That member also expressed concern over the abundance of small-sized fruit in the market. One Committee member supported open movement and stated that too many small growers and handlers may be negatively impacted if the Committee recommends a restrictive prorate. The Committee, by an 11 to 1 vote, recommended volume regulation for the week ending on December 15, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 9 through December 15, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 4, 1990, and this action needs to be effective for the regulatory week which begins on December 9, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1047 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 910.1047 Lemon Regulation 747.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 9 through December 15, 1990, is established at 320,000 cartons.



Dated: December 5, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–28911 Filed 12–7–90; 8:45 am]

BILLING CODE 3410–02–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

**[Airspace Docket No. 90–ASO–18]**

**Amendment of Controlling Agency for Restricted Areas R–2104A, R–2104B, and R–2104C; AL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the controlling agency for Restricted Areas R–2104A, B, and C, Huntsville, AL, from FAA, Atlanta Air Route Traffic Control Center (ARTCC) to FAA, Memphis ARTCC. This action is necessary because the restricted areas lie entirely within the airspace controlled by Memphis ARTCC.

**EFFECTIVE DATE:** 0901 u.t.c., February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mike Ostapiej, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9573.

**The Rule**

This amendment to part 73 of the Federal Aviation Regulations changes the controlling agency for Restricted Areas R–2104A, B, and C, Huntsville, AL, from FAA, Atlanta ARTCC to FAA, Memphis ARTCC. As a result of center boundary resectorization, the restricted areas lie entirely within the airspace controlled by Memphis ARTCC; therefore, this action enhances airspace management. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action, which does not affect the existing configuration of airspace, is a minor technical amendment in which the public would not be particularly interested. Section 73.21 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

**PART 73—SPECIAL USE AIRSPACE**

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.21 [Amended]**

2. Section 73.21 is amended as follows:

**R–2104A, R–2104B, and R–2104C Huntsville, AL [Amended]**

By removing the present Controlling agency and substituting the following:

Controlling agency. FAA, Memphis ARTCC.

Issued in Washington, DC, on November 30, 1990.

**Harold W. Becker,**

*Manager, Airspace—Rules and Aeronautical Information Division*

[FR Doc. 90–28873 Filed 12–7–90; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 97**

**[Docket No. 26395; Amdt. No. 1440]**

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by

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reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 23, 1990.

**Thomas C. Accardi,**

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

**PART 97—[AMENDED]**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*. . . Effective February 7, 1991*

Kenai, AK—Kenai Muni, VOR RWY 19, Amdt. 14
Kenai, AK—Kenai Muni, VOR/DME RWY 1, Amdt. 5
Kenai, AK—Kenai Muni, NDB–A, Amdt. 3
Kenai, AK—Kenai Muni, ILS RWY 19, Amdt. 5
La Junta, CO—La Junta Muni, NDB RWY 8, Amdt. 5
Jefferson, GA—Jackson County, NDB RWY 34, Orig.
Newnan, GA—Newnan Coweta County, VOR/DME–A, Amdt. 5
Newnan, GA—Newnan Coweta County, NDB RWY 32, Amdt. 1
Liberal, KS—Liberal Muni, RNAV RWY 12, Amdt. 3, CANCELLED
Frankfort, KY—Capital City, VOR RWY 6, Amdt. 1
Frankfort, KY—Capital City, VOR RWY 24, Amdt. 1
Frankfort, KY—Capital City, VOR RWY 24, Amdt. 9
Laurel/Hattiesburg, MS—Pine Belt Regional, VOR RWY 36, Amdt. 4
Laurel/Hattiesburg, MS—Pine Belt Regional, ILS RWY 18, Amdt. 6
Pascagoula, MS—Jackson County, VOR RWY 18, Amdt. 9, CANCELLED
Pascagoula, MS—Jackson County, NDB–A, Amdt. 1, CANCELLED
Pascagoula, MS—Jackson County, RNAV RWY 13, Amdt. 3, CANCELLED
York, NE—York Municipal, NDB RWY 17, Amdt. 1
York, NE—York Municipal, NDB RWY 35, Amdt. 1
Reno, NV—Reno/Stead, NDB–E, Amdt. 2, CANCELLED
Klamath Falls, OR—Klamath Falls International, VOR/DME or TACAN RWY 32, Amdt. 4
Cody, WY—Yellowstone Regional, VOR–A, Amdt. 5

*. . . Effective January 10, 1991*

Urbana, IL—Frasca Field, VOR–A, Amdt. 11
Urbana, IL—Frasca Field, VOR/DME–B, Amdt. 6
Kendallville, IN—Kendallville Muni, VOR–A, Amdt. 5
Des Moines, IA—Des Moines Intl, VOR RWY 23, Orig.
Washington, KS—Washington County Memorial, NDB–A, Orig.
Ludington, MI—Mason County, NDB RWY 25, Amdt. 8
Middletown, OH—Hook Field Muni, LOC RWY 23, Amdt. 7
Middletown, OH—Hook Field Muni, NDB–A, Amdt. 2
Middletown, OH—Hook Field Muni, NDB RWY 23, Amdt. 8
Springfield, OH—Springfield–Beckley Muni, VOR RWY 6, Amdt. 8
Springfield, OH—Springfield–Beckley Muni, VOR RWY 24, Amdt. 8
Springfield, OH—Springfield–Beckley Muni, NDB RWY 24, Amdt. 14
Springfield, OH—Springfield–Beckley Muni, ILS1 RWY 24, Amdt. 2
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 32, Amdt. 8
Del Rio, TX—Del Rio Intl, VOR–A, Amdt. 10
Del Rio, TX—Del Rio Intl, VOR/DME–B, Amdt. 3
Del Rio, TX—Del Rio Intl, LOC RWY 23, Amdt. 3
Del Rio, TX—Del Rio Intl, NDB RWY 13, Amdt. 2
Milwaukee, WI—General Mitchell International, LOC RWY 25L, Amdt. 3
Milwaukee, WI—General Mitchell International, ILS RWY 7R, Amdt. 13

*. . . Effective November 15, 1990*

Rifle, CO—Garfield County Regional, LOC/DME–A, Amdt. 3
Oxford, CT—Waterbury–Oxford, ILS RWY 36, Amdt. 9
Orlando, FL—Orlando Executive, LORAN RNAV RWY 7, Amdt. 1
Orlando, FL—Orlando Executive, LORAN RNAV RWY 25, Amdt. 1
Stillwater, OK—Stillwater Muni, VOR RWY 17, Amdt. 9
Philadelphia, PA—Philadelphia Intl, COVERGING ILS RWY 9R, Amdt. 2
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 28R, Amdt. 5
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 28L, Amdt. 4
Pittsburgh, PA—Greater Pittsburgh Intl, VOR or TACAN RWY 28L/C, Amdt. 3

*. . . Effective September 20, 1990*

Fargo, ND—Hector International, ILS RWY 17, Amdt. 4
Fargo, ND—Hector International, ILS RWY 35, Amdt. 32

[FR Doc. 90–28738 Filed 12–7–90; 8:45 am]

BILLING CODE 4910–13–M



**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 385**

**[Docket No. RM90–11–000; Order No. 530]**

**Streamlining Commission Procedures for Review of Staff Action**

Issued: December 3, 1990.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has amended its regulations to streamline its procedures for review of staff actions. The final rule amends § 385.1902 of the Commission's regulations to simplify and accelerate the review process by condensing the previous two-stage appeal procedure into a single stage of review. The requirement to file an appeal from staff action as a prerequisite to filing a request for rehearing is eliminated. With certain exceptions, orders issued by the Commission's staff pursuant to authority delegated by the Commission constitute final agency action that is immediately subject to rehearing, pursuant to § 385.713 of the Commission's regulations.

The final rule is effective on its date of issuance, and applies to all appeals of staff action that are pending before the Commission on that date (as well as to review of staff action subsequent to that date). All appeals of staff action that are pending on the effective date of the final rule are deemed to be requests for rehearing, and all pending notices of intent to act on such pending appeals are deemed to be orders granting rehearing solely for the purpose of further consideration.

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–2067.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

**I. Introduction**

The Federal Energy Regulatory Commission (Commission) is amending § 385.1902 of the Commission's regulations to streamline the Commission's procedures for review of staff actions. The amendment simplifies and accelerates the review process by condensing the previous two-stage appeal procedure into a single stage of review. The requirement to file an appeal from staff action as a prerequisite to filing a request for rehearing is eliminated. With certain exceptions, orders issued by the Commission's staff pursuant to authority delegated by the Commission now constitute final agency action that is immediately subject to rehearing, pursuant to § 385.713 of the Commission's regulations.

The final rule is effective on its date of issuance, and applies to all appeals of staff action that are pending before the Commission on that date (as well as to review of staff action subsequent to that date). All appeals of staff action that are pending on the effective date of the final rule are deemed to be requests for rehearing, and all pending notices of intent to act on such pending appeals are deemed to be orders granting rehearing solely for the purpose of further consideration.

**II. Background**

Subpart C of part 375 of the Commission's regulations sets forth a series of delegations of the Commission's authority to office directors, including limited authority to redelegate.[1] Section 385.301(a) provides in part that "[a]ny action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with § 385.1902 of this chapter."

Prior to its amendment in this final rule, § 385.1902 provided for a two-stage process for seeking review of orders issued by office directors pursuant to delegated authority. Within 30 days after issuance of a director's order, anyone seeking modification of the order could file an appeal to the Commission. Prior § 385.1902(a) made clear that "[a] *Commission decision* on a petition for appeal is a prerequisite to *a request* for rehearing under Rule 713." (Emphasis in the original.)

The vast majority of the staff orders issued on authority delegated by the Commission are issued pursuant to either the Federal Power Act (FPA)[2] or the Natural Gas Act (NGA).[3] Section 313 of the FPA[4] and section 19 of the NGA,[5] as implemented by § 385.713 of the regulations, make the filing (and Commission action thereon) of a request for rehearing a prerequisite to filing a petition for review in the court of appeals. Thus, prior to the adoption of this final rule, any person desiring to challenge an office director's order in court first had to exhaust two consecutive stages of review by the Commission: (1) An appeal resulting in a Commission order resolving the appeal, followed by (2) a request for rehearing resulting in an order on rehearing. These two stages were not hierarchical in the sense of appealing from a lower authority to a higher authority; on the contrary, the order on appeal and the order on rehearing were both issued by the Commission itself.

[1] See also 18 CFR 12.4.
[2] 16 U.S.C. 791a–825r (1988).
[3] 15 U.S.C. 717–717w (1988).
[4] 16 U.S.C. 825l (1988).
[5] 15 U.S.C. 717r (1988).

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On August 1, 1990, the Commission issued a notice of proposed rulemaking (NOPR) in which it proposed to amend § 385.1902 to condense the previous two-stage appeal procedure into a single stage of review.[9] In the NOPR, the Commission explained that its experience had been that, when an appeal of staff action was followed by a request for rehearing of the order resolving the appeal, in most cases the request for rehearing was filed by the same person who filed the appeal of staff action, and reiterated on rehearing the same arguments that had been raised in the appeal. Thus, while a significant percentage of appeals of staff action resulted in Commission orders modifying or reversing the staff action, requests for rehearing of the Commission's orders on appeal rarely resulted in modification or reversal on rehearing. The primary reason for this was that the person requested rehearing in most cases had already fully expressed his views in the prerequisite appeal of staff action, and the Commission had fully considered those views in its order resolving the appeal. The rehearing process therefore constituted, in most cases, an additional procedural step with minimal value to the proceeding, especially when balanced against its demands on the time and resources of parties, the Commission, and its staff.

For these reasons, the Commission proposed to eliminate the intermediate step of filing an appeal of staff action as a prerequisite to filing a request for rehearing. The NOPR proposed to amend § 385.1902 so as to construe orders issued by office directors pursuant to authority delegated by the Commission to the staff as final agency action that is immediately subject to a request for rehearing under § 385.713.

## IV. Discussion

Eight comments were received in response to the NOPR.[7] Questar Corp. and the Association of Oil Pipelines support the Commission's proposal. They believe it is a useful means of improving the Commission's efficiency by eliminating a redundant step in processing cases.[8]

Georgia Power Company generally supports the proposal, provided that it is modified so as to stay the effectiveness of office director orders under certain circumstances. In particular, Georgia Power is concerned that hydropower licenses issued by the Director, Office of Hydropower Licensing, may contain conditions requiring significant capital expenditures. Similarly, a "new" license (*i.e.*, in a relicensing proceeding) issued by the Director might require modification of a project's current operations. In these situations the applicant/licensee may wish to seek Commission review on rehearing before implementing license conditions that involve significant financial consequences for the licensee, and to do so without exposing itself to potential enforcement proceedings. Thus, Georgia Power urges us to stay the effectiveness of the Director's orders issuing licenses for 60 days from their date of issuance (30 days to request rehearing and 30 days thereafter for the Commission to act on the request), and to extend the stay if the applicant/licensee feels it is aggrieved unless the proponent of the license condition justifies denial of such a stay.

We believe it is unnecessary to codify Georgia Power's proposals into the regulations. The better approach is for an aggrieved licensee to express its views in a motion for a stay, and for the Commission to evaluate the request on its merits. Under our present practice, licensees frequently request extensions of license article deadlines pending further legal proceedings, and under the circumstances described by Georgia Power such extensions are routinely granted.

The Edison Electric Institute (EEI), the National Hydropower Association (NHA), Pacific Gas and Electric Company (PG&E), and Alabama Power Company all oppose the rule. Inasmuch as they raise similar or parallel arguments, we will address these comments jointly.[9]

EEI and Alabama Power [10] contend that the Commission lacks statutory authority to delegate to its office directors the authority to issue legally binding orders that constitute final agency action, even if such orders are subject to review by the Commission on rehearing. They contend that such delegations of authority, in the context of the proposed rule, are in derogation of the FPA and the Department of Energy Organization Act (DOE Act).[11] In support of its position, Alabama quotes a decision of a U.S. District Court: "Functions constituting final agency action, such as administrative adjudication and rulemaking, must be made or ratified by the Commissioners and may not be delegated to subordinates under broad grants of authority," [12]

As we stated in Order No. 492, "[t]he Commission has broad statutory authority to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory functions. Courts have held that agencies may delegate these powers to their employees. Delegations which result in final decisions may be reviewed by the Commission. Such review acts as a safeguard in the exercise of delegated authority." [13]

The FPA, the NGA and the DOE Act neither explicitly authorize nor explicitly preclude the exercise of delegated authority at issue herein. As noted in Order No. 492, section 309 of the FPA and section 16 of the NGA both provide broad statutory authority to the Commission to carry out its statutory functions. In that statutory posture, wherein no statutory provision precludes delegation of authority, the courts have upheld use of such delegations, in a broad range of circumstances, as a reasonable means of efficiently managing governmental workload.[14]

In *National Labor Relations Board* v. *Duval Jewelry Company of Miami, Inc.*, 357 U.S. 1 (1957), the Supreme Court upheld delegation of the Board's subpoena power, citing the Board's discretionary authority to revoke subpoenas issued by subordinates on delegated authority: [15]

> Section 7(1) of the Act, as noted, gives a person served with a subpoena *duces tecum* the right to "petition the Board to revoke"; and that section provides that "the Board shall revoke * * * such subpoena if in its opinion" the statutory requirements are not satisfied. The limited nature of the delegated authority distinguishes the case from *Cudahy Packing Co.* v. *Holland*, 315 U.S. 357, and *Fleming* v. *Mohawk Wrecking Co.*, 331 U.S. 111, where the person endowed with the power to issue subpoenas delegated the function to another. While there is delegation here, the ultimate decision on a motion to revoke is reserved to the Board, not to a subordinate. All that the Board has delegated is the preliminary ruling on the motion to revoke. It retains the final decision on the merits. One who is aggrieved by the ruling of the regional director or hearing officer can get the Board's ruling. The fact that special permission of the Board is required for the appeal is not important. Motion for leave to appeal is the method of showing that a substantial question is raised concerning the validity of the subordinate's ruling. If the Board denies leave, it has decided that no substantial question is presented. We think that no more is required of it under the statutory system embodied in § 11. No matter how strict or stubborn the statutory requirement may be, the law does not "preclude practicable administrative procedure in obtaining the aid of assistants in the department."

The same reasoning applies to the final rule before us. A subpoena is binding on its recipient unless it is revoked. Orders issued by the Commission's office directors are binding on all persons affected by them unless they are modified or rescinded on rehearing. Deletion of the intermediate step of appealing the office directors' orders to the Commission (as a prerequisite to seeking rehearing) expedites the process, but does not in any way reduce the ultimate decisional power and authority of the Commission. With or without the intermediate step, it is the office directors who issue the initial orders and the Commission that (if and when asked to do so) makes the ultimate decisions.

Alabama Power also argues that the purpose of the rehearing requirement in section 313 of the FPA is to permit reconsideration by the Commission of an order that the Commission itself has issued, and that this purpose is evaded in derogation of the FPA if the order on rehearing addresses requests for rehearing of an order issued by the staff on delegated authority. The short answer is that orders issued by office directors on delegated authority are orders of the Commission, and that orders on rehearing of such office director orders do in fact constitute orders on rehearing of Commission orders.

NHA expresses concern that failure of a licensee to comply with a validly issued order of the Director, Office of Hydropower Licensing, could result in imposition of a civil penalty pursuant to section 31 of the FPA,[16] and contends that civil penalties should not be applicable unless the licensee violates an order issued by the Commission itself. We categorically reject NHA's position, for the same reason as above: Pursuant to the final rule, the Director's order *is* the Commission order.[17]

All four of the opposing commenters argue that orders issued by office directors on delegated authority are less comprehensive than orders issued by the Commission, and often do not fully disclose the technical record relied upon in reaching the decision. NHA insists that applicants must resort to time-consuming requests for data under the Freedom of Information Act [18] in order to obtain information in the record. These commenters also argue that orders issued on delegated authority often fail to fully disclose the path of the office directors' reasoning, or alternatively, that the Commission, in reviewing such orders on appeal of staff action, uses different reasoning to support the same result.

These commenters contend that if the full record and reasoning relied upon are made clear in an order on appeal that is subject to rehearing, then the parties have an opportunity to file requests for rehearing that address the Commission's own reasoning, and in the context of a more complete record. Conversely, they contend that if orders on appeal of staff action are eliminated, the Commission's reasoning and the full record upon which it is based may not emerge until the order on rehearing is issued, at which point there is no opportunity to address the record and reasoning disclosed in that order.

We reject this characterization of the orders issued by our staff on delegated authority. Inasmuch as the staff also participates significantly in the preparation of the orders that the Commission itself issues, we are confident that the staff is equally capable of using comparable thoroughness in the preparation of orders issued by the office directors. When controversies are apparent in the record, it is important for our office directors to ensure that the orders they issue fully disclose the record evidence and reasoning upon which their decisions are based.

The opposing commenters point out that the 30-day time limit for filing requests for rehearing is mandated by statute and cannot be waived. They contend that orders of office directors sometimes are delayed in the mail for one or more weeks, leaving little time to prepare requests for rehearing if faced with an immutable 30-day deadline for filing them. In more complex cases, even the full 30 days may not afford sufficient time to obtain and analyze record evidence upon which the director's order was based.

These commenters also argue that the rigid 30-day deadline for rehearing requests may foreclose opportunities for applicants to negotiate mutually acceptable settlements or other resolutions with either the staff or other interested parties. In this regard, they also point out that the Commission's regulations preclude such interested parties (or the applicant) from filing pleadings responsive to requests for rehearing, and that such pleadings might assist the Commission in reaching the best resolution of issues raised on rehearing of orders issued on delegated authority.

These points are well taken, but do not justify rejecting the rule. We note at the outset that the Commission issues

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[9] Streamlining Commission Procedures for Review of Staff Action, 55 FR 32,445 (Aug. 9, 1990), IV FERC Stats. & Regs. ¶32,474 (Aug. 1, 1990).

[7] Comments were received from Questar Pipeline Company, Enron Corp., Georgia Power Company, Pacific Gas and Electric Company, Alabama Power Company, the Edison Electric Institute, the National Hydropower Association, and the Association of Oil Pipelines.

[8] The Association of Oil Pipelines, in its comments, also urges us to further amend the regulations to establish procedures by which oil pipelines may file pleadings in response to protests or staff recommendations, procedures for ascertaining disputed issues of material fact, procedures for the issuance of Oil Pipeline Board orders, and procedures for seeking reconsideration by the Board. As the Association recognizes, these matters are beyond the scope of the NOPR.

[9] PG&E also joins in EEI's comments.

[10] NHA and Alabama Power, in their comments, also express their view on the legal operativeness of staff orders issued pursuant to delegated authority, and that were appealed pursuant to § 385.1902 prior to its amendment in this final rule. That matter is beyond the scope of this rulemaking proceeding. In fact, the final rule adopted herein renders that matter substantially moot.

[11] 42 U.S.C. 7101–7352 (1988).

[12] Reico, Inc. v. Consumer Product Safety Commission, 391 F. Supp. 841, 845–846 (S.D. Tex. 1975). As discussed below, the agency action by office directors pursuant to the final rule is not inconsistent with the court's above-quoted statement in Reico because the office director's orders are subject to "ratification" or reversal on rehearing. Alabama Power also cites Thompson v. Department of the Treasury, 533 F. Supp. 99 (D. Utah 1981). In Thompson, the court noted the possibility of a subdelegation issue, but no party raised the issue and the court didn't rule on it.

[13] Regulations Delegating Authority, Order No. 492, III FERC Stats. & Regs. ¶ 30,214 (1988) at 31,217. In footnotes to this quote, the Commission cited section 309 of the Federal Power Act, 16 U.S.C. 825h; section 16 of the Natural Gas Act, 15 U.S.C. 717o; section 301(a) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3411; Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111, 122 (1947); O'Neal v. U.S., 140 F.2d 908 (6th Cir.), cert. denied, 322 U.S. 729 (1944); and Davis, Administrative Law Treatise, 2d Ed., Vol. 1, §§ 3.12 and 3.17 (1979).

[14] Fleming v. Mohawk Wrecking & Lumber Co., 331 U.S. 111 (1947) (delegation of authority to issue subpoenas), cited in Order No. 492; Jay v. Boyd, 351 U.S. 345, 351, n.8 (1956) (delegation of the Attorney General's power to suspend deportation); Equal Employment Opportunities Commission v. Raymond Metal Products Co., 530 F.2d 650 (4th Cir. 1976) (delegation of determination of reasonable cause); Tabor v. Joint Board for Enrollment of Actuaries, 566 F.2d 705, 708, n.5 (D.C. Cir. 1977) (reliance on examinations conducted by a private association); and Hume v. Southern Stevedoring Co., 793 F.2d 97 (4th Cir. 1963) (delegation of authority to approve settlement of workers' compensation awards). In Municipal Light Boards of Reading and Wakefield, Massachusetts v. Federal Power Commission, 450 F.2d 1301, 1305–1306 (D.C. Cir. 1971), although the matter of delegated authority was not at issue, the court upheld the rejection of a rate filing by our Commission's Secretary.

[15] 357 U.S. at 7 (footnotes and citations omitted).

[16] 16 U.S.C. 823b(1) (1988).

[17] Orders issued by the Director frequently involve issues of dam safety in which the licensee's failure to take immediate remedial measures pursuant to the Director's order might result in a catastrophic failure involving damage to property, personal injury or loss of life. In such circumstances, the public interest requires immediate compliance with the Director's order, and any delay in compliance with such an order may fully justify imposition of a civil penalty to the maximum extent authorized by section 31.

[18] 5 U.S.C. 552(b) (1988).

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many lengthy and complex orders in proceedings in which there has been no prior issuance of an order on delegated authority, and interested parties routinely file lengthy and complex requests for rehearing thereon within the 30 days mandated by statute. The identical situation pertains with respect to orders issued on delegated authority that are now subject to rehearing instead of to appeal. We also note that copies of Commission issuances can be obtained by any interested person or party through the Commission's Public Reference Room or through the Commission's electronic bulletin board, the Commission Issuance Posting System (CIPS). Many interested persons and parties routinely avail themselves of these opportunities.

Under compelling circumstances it may be appropriate for the Commission to grant requests to supplement rehearing material on a timely basis after the 30 days has expired. The statutory deadline will have been met by the filing of whatever request for rehearing can be prepared and filed within that 30-day time frame and, upon a showing of good cause, the Commission can permit a reasonable and timely supplement.

Similarly, the Commission can, under appropriate circumstances and upon a showing of good cause, waive its restriction against the filing of answers to requests for rehearing, or delay issuance of an order on rehearing pending reasonable and good faith efforts to resolve issues through informal negotiation or settlement. The showing of good cause should be filed in writing. If the good cause is in the nature of settlement negotiations, the showing should be made in a joint filing submitted by all of the parties involved in the negotiation. We note, however, that such negotiations can and should be pursued in earnest prior to the issuance of the order, and that the filing of a request for rehearing does not preclude such negotiations pending Commission action on the rehearing.

In short, there are ample means available to the Commission to ameliorate the potential problems identified by the commenters on a case-by-case basis if the circumstances so warrant. These problems need to be addressed and resolved if and when they occur, and under the circumstances presented, but they do not warrant perpetuating the present inefficient system of issuing multiple layers of orders on the same subject.

EEI expresses uncertainty as to which documents issued by the staff constitute orders issued on delegated authority that are subject to rehearing. This should not be a problem because, as § 385.1902 states, all actions on delegated authority are subject to rehearing. In any event, it is no different from ascertaining which staff documents previously constituted staff action ripe for appeal to the Commission. In those areas in which there might be a potential confusion, the solution would be for office directors to clearly identify in their orders that the order constitutes a final action of the Commission that is subject to a 30-day deadline for the filing of a request for rehearing.

Alabama Power asserts that office directors issue orders on matters that involve contested issues of material fact for which formal trial-type hearings should be held. This contention is irrelevant to the final rule. That is an issue that may be raised on rehearing. If a trial-type hearing is required to resolve contested issues of material fact, that requirement will not be satisfied by substitution of a layer of appeals of staff action prior to rehearing. Conversely, if a trial-type hearing is not warranted, then there is no particular justification for interjecting the intermediate, redundant layer of review of the office director's order.

Finally, EEI proposes as an alternative that the Commission provide a procedure for optional waiver of the right to file an appeal of staff action. In other words, persons affected by the director's order could file a pleading waiving the right to appeal and requesting that the Commission proceed to an order on rehearing. While we commend EEI for trying to find an alternative, we believe its proposal would more likely serve to compound the problem than to ameliorate it. It could significantly increase the number of filings to consider rather than reducing them, particularly in light of EEI's further proposal to permit pleadings in response to waivers.

In the NOPR, the Commission stated that, in its discretion, it would pursue a policy of entertaining motions for reconsideration after acting on the order on rehearing. Thus, an aggrieved party could appeal the staff action, which would be deemed a final order of the Commission, to the Commission in a request for rehearing. Once the Commission had acted on the request for rehearing, and if the aggrieved party still did not agree with the order on rehearing, the aggrieved party could then either (1) seek immediate judicial review of the order on rehearing or (2) if the aggrieved party believed that the Commission had not fully grasped the facts presented in its request for rehearing, file a motion for reconsideration of the order on rehearing. Once the Commission acted on the motion for reconsideration, which it would intend to do on an expeditious basis, the aggrieved party could then decide to forego judicial review or file an appeal with the U.S. Circuit Court.[19] In the NOPR, the Commission sought comment on this policy approach and such use of the motion for reconsideration procedure as an additional opportunity for considering and resolving appeals of staff action.

Six of the eight commenters addressed this procedure. Enron suggests that reconsideration after rehearing is in itself redundant, but has no objection to it because it is purely voluntary. The Association of Oil Pipelines finds it a potentially useful alternative.

NHA characterizes the reconsideration procedure as an unsatisfactory substitute for rehearing following an order on appeal, and advances many of the arguments we have already addressed above. Alabama Power contends that the procedure constitutes an unlawful substitute for the rehearing mandated by the FPA, because it is voluntary and not mandatory. The short answer to Alabama Power is that the final rule does not eliminate rehearing; it eliminates appeals of staff action as a prerequisite to rehearing. The reconsideration procedure is in addition to rehearing, not in lieu thereof.

EEI, NHA and PG&E contend that the reconsideration procedure would not be useful because the deadline for filing petitions for review in the Circuit Court is mandated by statute and would not be tolled by the filing or pendency of a motion for reconsideration. Thus, they contend that the reconsideration procedure would inevitably generate jurisdictional confusion resulting from multiple simultaneous filings in different fora.

We believe that a procedure for "expeditious consideration" of motions for reconsideration could serve a useful purpose under the new administrative appeal process, although clearly not required as a matter of law. The phrase "expeditious consideration" simply means that if parties file their request for reconsideration within 25 days of our order, we will endeavor to act before the 60 day time limit for filing an appeal in court. There may well be instances in which the Commission may overlook or misunderstand a point made in a request for rehearing of a delegated order, and may be persuaded to modify its order in response to a motion for reconsideration. We have entertained motions for reconsideration in the past, and we are not foreclosing that possibility in the future.

Thus, the practice of entertaining motions for reconsideration of orders on rehearing will continue, recognizing that "expeditious" processing of such motions may become impractical if all parties use this option routinely and as a substitute for the appeal process abolished by this rule. For this reason, the Commission will review in six months from the issuance date of this order, the administrative burden associated with handling "expeditiously" the volume of motions for reconsideration filed during that time frame to see if such practice should continue or as necessary, be modified. We think such practice, if used prudently by parties who feel they have been aggrieved by Commission action, will provide more than ample opportunity to those parties to fully develop their case before the Commission, while retaining the option for judicial review.

As we stressed in the NOPR, the final rule does not in any way lessen the opportunity to seek review by the Commission of orders issued by the staff on delegated authority. Anyone seeking modification or reversal of an office director's order has the same opportunity to appeal it to the Commission; the only change is that (1) The appeal is now styled a "request for rehearing" rather than an "appeal of staff action"; and (2) the Commission's order is ripe for review in court without first exhausting a second stage of review by the Commission.[20]

As explained in the NOPR, new § 385.1902(a) provides two exceptions to these procedures. The first preserves without change the exception for decisions and rulings of presiding officers made in proceedings set for hearing under subpart E of part 385. Those decisions and rulings continue to be subject to the procedures for exceptions, briefs and interlocutory appeals in §§ 385.711 and 385.715.[21]

The second exception is for orders issued by the Oil Pipeline Board pursuant to the delegation of authority in § 385.306.[22] Those orders are subject to the statutory procedural requirements of section 17 of the Interstate Commerce Act (ICA).[23] Section 17(5) of the ICA provides a 20-day period in which interested parties may file exceptions to those orders.

Section 17(8) of the ICA authorizes the Commission to provide for rehearing. It requires rehearing by the Commission as a prerequisite for court review with respect to orders issued by the Commission's staff on delegated authority, but not with respect to orders issued by the Commission itself. New § 385.1902(b) implements this statutory discretion by providing: (1) That the filing of exceptions is not a prerequisite to the filing of a request for rehearing; (2) that the filing of a request for rehearing is not a prerequisite to the filing of a petition for review in the court of appeals of an order issued by the Commission pursuant to the ICA; but (3) that the filing of a request for rehearing *is* a prerequisite for filing a petition for review in the court of appeals of an order issued by the Oil Pipeline Board *if* the Commission has not issued an order on exceptions to the Oil Pipeline Board's order. Thus, after the Oil Pipeline Board has issued its order, interested persons can file either exceptions or a request for rehearing, and the filing of one or the other (but not both) is a prerequisite to filing a petition for review in the court of appeals.

With respect to administrative appeals of orders issued by the Oil Pipeline Board, the final rule differs from the Commission's prior practice in several respects. Prior to its amendment in this final rule, § 385.1902 provided 30 days in which to file an "appeal of staff action," and such an appeal was a prerequisite to filing a request for rehearing. New § 385.1902(b) provides 20 days (instead of 30) to file "exceptions" to the Oil Pipeline Board's orders, but the filing of exceptions is not a prerequisite to the filing of a request for rehearing. Further, in recognition of the ICA provision for a 20-day period for filing exceptions, the final rule provides that requests for rehearing may be filed up to 50 days after service of Oil Pipeline Board orders if no exceptions are filed within the 20-day period after service of the order (*i.e.*, 30 days after expiration of the 20-day period). If exceptions are filed, the deadline for requesting rehearing is 30 days after issuance of the Commission order on the exceptions (*i.e.*, the same 30-day deadline for all other requests for rehearing under § 385.713).

The NOPR recognized that there were approximately 126 appeals of staff action then pending before the Commission for decision. The Commission had issued notices of intent to act on these appeals, such that they were not deemed denied automatically in the absence of a Commission order on their merits within 30 days of the filing of the appeal. New § 385.1902(c) of the final rule deems all appeals of staff action that are pending before the Commission on the effective date of the final rule to be requests for rehearing, and all notices of intent to act on those appeals to be orders granting rehearing for the sole purpose of further consideration. Thus, there is no need for any person to file a request for rehearing with respect to any pending appeal of staff action.[24] New § 385.1902(c), however, provides a one-time 30-day opportunity to file supplementary pleadings with respect to any appeal of staff action that was filed prior to the effective date of the final rule and was pending for decision on that date.

Attached to the NOPR were two appendices listing the dockets that the Commission believed fell within the parameters of the proposed rule. We have updated these appendices as attachments to this order.

Finally, we emphasize here, as we did in the NOPR, that, pursuant to section 313 of the FPA and section 19 of the NGA, prosecuting a request for rehearing is a prerequisite to filing a petition for review in the court of appeals, and the request for rehearing must be filed within 30 days of the date of issuance of the office director's order sought to be reheard. Unlike the 30-day limit for filing the appeals of staff action, the 30-day limit for filing requests for

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[19] We noted, however, and reemphasize here, that the deadlines for filing petitions for review in the court of appeals are statutory and cannot be waived or tolled by the Commission, and that the filing of a motion for reconsideration would not extend those statutory deadlines for seeking court review.

[20] The NOPR noted, as we reemphasize here, that the amendment to § 385.1902(a) does not alter in any way the existing requirements (imposed by the FPA and the NGA, as interpreted by the courts) that an argument not raised on rehearing before the Commission cannot be raised on judicial review. See, *e.g.*, Sierra Association for Environment v. FERC, 799 F.2d 1488, 1492–97 (9th Cir. 1986); Delmarva Power & Light Co. v. FERC, 770 F.2d 1131, 1137 (D.C. Cir. 1985). Thus, if the Commission on rehearing reverses an order issued (pursuant to the FPA or the NGA) on delegated authority by an office director, and thereby aggrieves someone other than the person who requested the rehearing, the newly aggrieved person will need to file a request for rehearing of the order on rehearing as a prerequisite to filing a petition for review in the court of appeals.

[21] 18 CFR 385.711 and 385.715 (1990).

[22] 18 CFR 385.306 (1990).

[23] 49 U.S.C. 17 (1976).

[24] As we noted in the NOPR, and reemphasize here, the final rule does not effect in any way the previously existing requirement to file a request for rehearing as a prerequisite to filing a petition for review in the court of appeals with respect to all orders on appeal of staff action that were issued prior to the effective date of the final rule. Similarly, the final rule has no effect on requests for rehearing that are currently pending before the Commission.

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rehearing is prescribed by statute and cannot be waived or extended by the Commission.

### IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [26] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities. The final rule is purely procedural in nature, and streamlines the Commission's processes by eliminating duplicative stages of review. Accordingly, the Commission certifies that this rule does not have a "significant economic impact on a substantial number of small entities."

### V. Environmental Statement

The Commission concludes that promulgating the final rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[27] This final rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[27]

### IV. Effective Date

Because this final rule is purely procedural in nature, it is effective on its date of issuance, December 3, 1990.

### List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Pipeline, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 385, chapter I, title 18 of the *Code of Federal Regulations* as set forth below.

By the Commission. Commissioner Moler dissented in part with a separate statement attached.

**Lindwood A. Watson, Jr.,**

*Acting Secretary.*

## PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 is revised to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1988); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1988); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1988); Federal Power Act, 16 U.S.C. 717–717w (1988); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1988); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1988); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. Section 385.1902 is revised to read as follows:

**§ 385.1902 Appeals from action of staff (Rule 1902).**

(a) Any staff action (other than a decision or ruling of presiding officer, as defined in Rule 102(e)(1), made in a proceeding set for hearing under subpart E of this part, or a decision of the Oil Pipeline Board under § 375.306 of this chapter) taken pursuant to authority delegated to the staff by the Commission is a final agency action that is subject to a request for rehearing under Rule 713 (request for rehearing).

(b) Orders issued by the Oil Pipeline Board pursuant to § 375.306 of this chapter are subject to the procedural rules in section 17 of the Interstate Commerce Act, 49 U.S.C. 17. Interested parties may file exceptions to Oil Pipeline Board orders no later than 20 days after the service of such orders. If no exceptions are filed within this 20-day period, interested parties may file requests for rehearing pursuant to Rule 713 no later than 50 days after service of the Oil Pipeline Board's order. Interested parties may also file requests for rehearing, pursuant to Rule 713, of orders issued by the Commission on exceptions to Oil Pipeline Board orders. The filing of exceptions is not a prerequisite to filing a request for rehearing. The filing of either exceptions or a request for rehearing (but not both) is a prerequisite to filing a petition for review in the court of appeals of any order issued by the Oil Pipeline Board. The filing of a request for rehearing is not a prerequisite to the filing of a petition for review in the court of appeals of any order issued by the Commission pursuant to the Interstate Commerce Act.

(c) All appeals of staff action that were timely filed prior to December 3, 1990 and that had not been acted upon by the Commission on their substantive merits are deemed to be timely filed requests for rehearing of final agency action. All notices issued by the Commission prior to December 3, 1990 stating the Commission's intent to act on appeals of staff action such that they are not deemed denied by the expiration of a 30-day period after the filing of the appeal, are deemed to be orders granting rehearing of final agency action for the sole purpose of further consideration, unless the Commission issued an order on the substantive merits of the appeal prior to December 3, 1990. No later than January 2, 1991, persons who had timely filed appeals of staff action prior to December 3, 1990 which were pending before the Commission on that date may file additional pleadings to update or supplement those appeals.

**Note:** The following appendices will not be published in the *Code of Federal Regulations*.

### Appendix A

This appendix lists the applicant and docket in which an appeal of staff action has been filed with the Commission, and the Commission has issued a notice of intent to act such that the appeal is not deemed denied within 30 days of its filing. In each instance, by virtue of the final rule the appeal of staff action is deemed to be a request for rehearing, and the notice of intent to act is deemed to be an order granting rehearing for the purpose of further consideration.

| Docket | Applicant | Date of Issuance of Notice of Intent to Act |
|---|---|---|
| EL88-35-001 | Bemis-Newhalen-Nondalton Elec. | June 9, 1989. |
| P-1417-010 | Platte River Trust | October 10, 1989. |
| P-1835-023 | Platte River Trust | October 10, 1989. |
| P-1957-004 | Wisconsin Public Service Corp | December 27, 1989. |
| P-2322-006 | Central Maine Power Company | March 27, 1989. |
| P-2325-000 | Central Maine Power Company | March 27, 1989. |
| P-2389-007 | August Development Corp | April 30, 1990. |
| P-2516-014 | Potomac Edison Company | August 27, 1990. |
| P-2531-000 | Central Maine Power Company | June 9, 1989. |

[26] 5 U.S.C. 601–612 (1988).

[27] 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[27] See 18 CFR 380.4(a)(1) (1988).



| Docket | Applicant | Date of Issuance of Notice of Intent to Act |
|---|---|---|
| P-2552-003 | Central Maine Power Company | March 27, 1989. |
| P-2574-007 | Merrimil Limited Power Co | March 27, 1989. |
| P-2611-009 | Scott Paper Co., et. al | March 27, 1989. |
| P-2785-002 | Wolverine Power Corporation | January 29, 1988. |
| P-2785-008 | Wolverine Power Corporation | November 30, 1988. |
| P-2785-009 | Wolverine Power Corporation | February 24, 1989. |
| P-2801-012 | Mary C. Heather | January 18, 1990. |
| P-2627-004 | City of Redding, California | July 20, 1990. |
| P-2932-016 | Boise-Kuna Irrigation Dist., et al | December 3, 1990. |
| P-3344-022 | Town of Gasseway | February 5, 1990. |
| P-3484-036 | Allegheny No. 6 Hydro Partners | August 17, 1990. |
| P-4236-000 | Racehorse Company | October 29, 1987. |
| P-4444-008 | Trans Mountain Hydro Corp | August 17, 1990. |
| P-4539-010 | Christine Falls Corporation | February 21, 1990. |
| P-4569-008 | Rancho Riata Hydro Partners, Inc | December 29, 1988. |
| P-4569-018 | Rancho Riata Hydro Partners, Inc | August 11, 1989. |
| P-4569-019 | Rancho Riata Hydro Partners, Inc | September 8, 1989. |
| P-4900-030 | Trafalgar Power, Inc | February 21, 1990. |
| P-5000-018 | Trafalgar Power, Inc | February 21, 1990. |
| P-5073-016 | Berlton Falls Associates | March 27, 1989. |
| P-5984-001 | Niagara Mohawk Power Corp., et. al | September 29, 1987. |
| P-5984-002 | Niagara Mohawk Power Corporation | February 22, 1988. |
| P-6568-003 | Delmer Wagner | August 28, 1987. |
| P-6879-001 | Southeastern Hydro-Power, Inc | April 29, 1985. |
| P-6902-015 | City of New Martinsburg | September 24, 1990. |
| P-8121-003 | Warren B. Nelson | January 17, 1989. |
| P-8165-007 | Bluestone Energy Design | August 9, 1990. |
| P-8357-010 | Highland Hydro Construction, Inc | December 9, 1990. |
| P-8377-002 | Central Hydroelectric Corporation | July 29, 1988. |
| P-8377-003 | Central Hydroelectric Corporation | July 29, 1988. |
| P-8377-014 | Central Hydroelectric Corporation | April 7, 1988. |
| P-8489-004 | City of Redding, California | August 30, 1990. |
| P-8747-005 | Power Resources Development Corp | November 19, 1990. |
| P-8874-002 | So. New Hampshire Hydro. Devl. Corp | June 13, 1988. |
| P-9042-011 | Gallo Hydro Partners | September 24, 1990. |
| P-9419-002 | JDJ Energy Company | December 9, 1988. |
| P-9607-003 | JDJ Energy Company | July 30, 1990. |
| P-9685-008 | Trafalgar Power, Inc | February 21, 1990. |
| P-9708-014 | Trafalgar Power, Inc | February 21, 1990. |
| P-9821-023 | Trafalgar Power, Inc | February 21, 1990. |
| P-9840-001 | Appomattox River Water Authority | February 21, 1989. |
| P-9851-001 | Long Lake Energy Corporation | May 18, 1987. |
| P-9852-001 | Long Lake Energy Corporation | May 18, 1987. |
| P-10035-004 | Hynergix, Inc | May 4, 1989. |
| P-10484 | Long Lake Energy Corp | February 1, 1990. |
| P-10521 | Mahoning Hydro Associates | July 6, 1990. |
| P-10530 | Franklin Hydro Company | October 4, 1990. |
| P-10551 | City of Oswego, New York | February 1, 1990. |
| P-10655-004 | Manter Corporation | October 5, 1990. |
| P-10668-001 | Barbara K. Londergan | March 15, 1988. |
| P-10675-002 | Western Massachusetts Elec. Co | October 19, 1990. |
| P-10676-002 | Western Massachusetts Elec. Co | October 19, 1990. |
| P-10677-002 | Western Massachusetts Elec. Co | October 19, 1990. |
| P-10678-002 | Western Massachusetts Elec. Co | October 19, 1990. |
| P-10704-001 | Pacific Water and Power, Inc | August 23, 1989. |
| P-10707-001 | Clark Gruening | February 8, 1989. |
| P-10725-001 | Little Horn Energy Wyoming, Inc | August 4, 1989. |
| P-10727-001 | Robert W. Shaw | June 1, 1989. |
| P-10731-002 | South Hadley Electric Light Dept | October 19, 1990. |
| P-10732-002 | South Hadley Electric Light Dept | October 19, 1990. |
| P-10733-002 | South Hadley Electric Light Dept | October 19, 1990. |
| P-10734-002 | South Hadley Electric Light Dept | October 19, 1990. |
| P-10745-001 | Robert Hoe | December 20, 1989. |
| P-10802-001 | Grover Kelly No. 2, et al | December 20, 1989. |
| P-10845-001 | Alpine Hydroelectric Company | February 5, 1990. |
| P-10895-001 | Phoenix Hydro Corporation | April 25, 1990. |
| P-10923-001 | Town of Westernport, Maryland | October 5, 1990. |
| P-10965-001 | Inter-West, Ltd | October 31, 1990. |
| P-233-023 | Pacific Gas and Electric Company | February 4, 1988. |
| P-2570-011 | Ohio Power Company | February 12, 1988. |
| P-3407-031 | Magic Reservoir Hydroelectric, Inc | May 9, 1990. |
| P-3623-030 | Youghiogheny Hydroelectric Auth | July 10, 1990. |
| P-3671-034 | Allegheny Hydro Partners | August 17, 1990. |
| P-3756-006 | City of Bountiful | October 17, 1988. |
| P-5223-011 | International Falls Power Company | August 10, 1988. |
| UL87-14-001 | Upper Peninsula Power Company | May 27, 1987. |
| UL87-15-001 | Upper Peninsula Power Company | May 27, 1987. |
| UL88-17-001 | Central Vermont Public SVC. Corp | November 30, 1988. |
| UL89-8-002 | Sheldon Jackson College | July 11, 1989. |
| UL89-11-001 | Mass. Water Resources Authority | December 20, 1989. |
| UL89-14-002 | North American Hydro, Inc | January 17, 1989. |

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| Docket | Applicant | Date of Issuance of Notice of Intent to Act |
|---|---|---|
| UL89-16-001 | Consolidated Hydro, Inc. | June 21, 1989. |
| UL89-28-001 | Madison Electric Works | November 22, 1989. |
| UL90-6-001 | Habersham Mills | July 17, 1990. |
| UL90-9-000 | Wisconsin Power Light Company | November 28, 1990. |
| ER88-439-000 | Central Illinois Public SVC Company | August 11, 1988. |
| ER88-627-000 | Union Electric Company | November 4, 1988. |
| ER89-671-000 | Southwestern Electric Power Company | September 17, 1990. |
| ER90-127-000 | Southwestern Electric Power Company | April 16, 1990. |
| ER89-142-000 | Arizona Public Service Company | April 16, 1990. |
| ER90-330-000 | Eua Corp. | July 16, 1990. |
| ER90-482-001 | West Texas Utilities Company | November 14, 1990. |
| CP91-107-000 | Cng Transmission Corporation | October 5, 1988. |
| CP93-488-014 | Cng Transmission Corporation | October 6, 1988. |
| CP87-253-004 | Williston Basin Interstate P/L Co | August 20, 1990. |
| CP87-286-004 | Cng Transmission Corporation | October 6, 1988. |
| CP87-388-006 | Cng Transmission Corporation | October 6, 1988. |
| CP88-428-002 | Cng Transmission Corporation | October 6, 1988. |
| CP88-467-001 | Transcontinental Gas Pipeline Corp | January 23, 1990. |
| CP88-668-002 | K N Energy, Inc. | August 20, 1990. |
| CP89-275-001 | Viking Gas Transmission Company | October 16, 1989. |
| CP90-1886-004 | Texas Gas Transmission Corporation | October 5, 1988. |
| CP88-2065-001 | Trunkline Gas Company | December 29, 1989. |
| CP89-2165-001 | Algonquin Gas Transmission Co | August 16, 1988. |
| CP90-14-004 | Transwestern Pipeline Company | July 23, 1990. |
| CP90-738-001 | Nescnal Fuel Gas Supply Corp | November 23, 1990. |
| CP90-889-003 | National Fuel Gas Supply Corp | August 2, 1990. |
| RP95-169-044 | Cng Transmission Corporation | October 16, 1989. |
| RP95-179-075 | Tennessee Gas Pipeline Company | October 29, 1990. |
| RP87-110-012 | Northwest Pipeline Corporation | January 17, 1989. |
| RP88-191-023 | Tennessee Gas Pipeline Company | October 29, 1990. |
| RP89-11-007 | Trunkline Gas Company | July 10, 1989. |
| RP89-119-035 | Texas Gas Transmission Corp | October 16, 1989. |
| RP89-208-003 | Texas Gas Transmission Corp | October 16, 1989. |
| RP90-64-001 | Texas Gas Transmission Corp | March 19, 1990. |
| RP90-123-005 | Tennessee Gas Pipeline Company | October 29, 1990. |
| RP90-132-001 | United Gas Pipe Line Company | September 6, 1990. |
| TA87-1-37-011 | Northwest Pipeline Corp | April 16, 1990. |
| TM90-3-18-001 | Texas Gas Transmission Corp | May 4, 1990. |
| TM90-3-35-003 | El Paso Natural Gas Company | May 7, 1990. |
| TM90-5-17-001 | Texas Eastern Transmission Corp | October 1, 1990. |
| TM90-5-18-001 | Texas Gas Transmission Corp | October 18, 1989. |
| TM90-5-18-001 | Texas Gas Transmission Corp | March 12, 1990. |
| TM90-10-28-001 | Panhandle Eastern Pipe Line Company | March 12, 1990. |
| TM90-11-28-001 | Panhandle Eastern Pipe Line Company | October 15, 1990. |
| TM90-14-28-001 | Panhandle Eastern Pipe Line Company | June 4, 1990. |
| TQ90-5-4-001 | Raton Gas Transmission Company | October 19, 1990. |
| TQ90-3-27-001 | North Penn Gas Company | November 21, 1990. |
| CS85-97-002 | Herbert Energy Corporation | June 10, 1987. |
| EL85-42-001 | Guy M. Carleton | August 4, 1988. |
| HB20-85-1-002 | Public Service Co. of Indiana | September 2, 1987. |
| HB61-85-1-001 | Public Service of New Hampshire | |

**Appendix B**

This appendix lists the applicant and docket in which an appeal of staff action has been filed with the Commission within the last 30 days, and the Commission has not issued a notice of intent to act. In each instance, by virtue of the final rule the appeal of staff action is deemed to be a request for rehearing.

| Docket | Applicant |
|---|---|
| P-4787-008 | Cogeneration, Inc. |
| P-5797-004 | B & C Energy, Inc. |
| P-6319-004 | Gall Industries, Inc. |
| P-6066-005 | Tranquility Irrigation District |
| P-7728-012 | Robley Point Hydro Partners |
| P-9340-005 | Lawrence E. & Veronica P. Smith |
| RP89-167-001 | ANR Pipeline Company |
| RP91-8-002 | National Fuel Gas Supply Corp. |

December 3, 1990.

Moler, Commissioner, *dissenting in part:*

I believe this order simply goes too far in delegating the Commission's policymaking and decisionmaking responsibilities to the staff. It also takes away a party's statutory right to seek rehearing of Commission orders (not staff orders). Thus it truncates the review process for those officially responsible under the various statutes we administer—the duly appointed members of the Commission who, in my view, can and should bear the decisionmaking responsibilities in major cases. I believe in doing so we abdicate our responsibilities in the name of administrative efficiency. Therefore, I dissent.[1]

[1] I do not dissent from those parts of the rule addressing orders issued by the Oil Pipeline Board. As the Preamble makes clear (at pp. 19–21) in this respect the changes track the statutory prescriptions of the Interstate Commerce Act under which we operate.

**This rule does not deal with merely ministerial duties or matters for which the Commission has provided specific and readily applicable standards. If such were the case, I should have no objections to this change in our procedures. Rather, we also deal with matters providing staff the authority to decide questions of first impression involving the exercise of critical judgment for which parties may be held liable at their peril.[2] Under this rule, such orders**

[2] Originally designated to encompass only "routine ministerial Commission functions" and matters "requiring] limited discretionary decisionmaking on the part of the named office director", Delegations To Various Office Directors Of Certain Commission Authority, FERC Stats. & Regs. ¶ 30,018 at p. 30,077 [Regulations Preambles 1977–1981], the delegations have grown to encompass much more. See, e.g. Order No. 482: Regulations Delegating Authority, FERC Stats. & Regs. ¶ 30,816 (1988), providing, among other things, authority to the Chief Accountant or his designee to

Continued



can now be issued by Office Directors and their designees in the Commission's name without any Commissioner having ever seen, much less voted on, the orders. These orders are, nonetheless, final pending Commission "rehearing", however long that may take. The safeguards built into our process to ensure that the result is a "Commission" action no longer apply.[3] I cannot endorse such a rule.

Nor is it by any means clear that the Commission can lawfully vest staff with the authority to decide cases in its name. The general provisions the Commission invokes "to perform any and all acts and make such rules as are necessary or appropriate to carry out its statutory function" (Preamble at pp. 7–8),[4] while sufficient to allow for the subdelegation of authority in most cases, cannot be invoked if the subdelegation is inconsistent with the purposes of the statute.[5]

Congress well knows how to craft broad statutory authorizations allowing commissions to delegate their functions to staff.[6] It did not use such language when it created the FERC.[7] Moreover, as the comments point out, the rehearing provisions of the Federal Power, Natural Gas and Natural Gas Policy Acts provide a strong indication that what the Commission does here is inconsistent with its statutory mandates.[8]

The rehearing provisions operate, contrary to the normal rule of administration law, to allow Commission orders to be enforceable without yet being final or subject to judicial review.[9] Indeed, this rehearing requirement is provided at the expense of efficiency:

"[W]e do not think the purpose of the statute is purely one of administrative exhaustion * * *. We have no basis for assuming that the need for prompt resolution of Commission affairs is any less important a goal than that of permitting the Commission a second chance to modify its decisions."

*Boston Gas Company* v. *FERC*, 575 F.2d 975, 979 (1st Cir. 1978). The rule change adopted today is in fundamental conflict with these provisions.

A "second chance" for the Commission to modify "its decisions" necessarily requires that the Commission had a first chance. Stated another way, the necessary predicate for *re*hearing is that the Commission has heard the matter at least once before. Here, there is no "rehearing", the Commission will review staff action *de novo*. (The majority's response to the comments raising this issue (Preamble at 10) completely ignores this crucial point by begging the question presented.)

I have no quarrel with the majority's desire to speed up our administrative process. Indeed, we share a common dissatisfaction with the length of time required for providing the public with final, enforceable, agency decisions and a common responsibility to promptly act on matters brought before us.[10] But, "[c]onvenience and efficiency are not the primary objectives—or the hallmarks—of democratic government," *Immigration and Naturalization Service* v. *Chadha*, 462 U.S. 919, 944 (1983). We are governed by a process designed by the Congress to ensure public accountability for our decisions. Members of the Commission are the duly appointed policymakers, not the staff. Here, the majority eschews that principal and acts not to delegate but rather to abdicate its decisionmaking responsibilities. In doing so, the majority simply goes too far for me to be comfortable that we, as members of the Commission, are meeting our statutory responsibilities.

**Elizabeth Anne Moler,**

*Commissioner.*

[FR Doc. 90–28614 Filed 12–7–90; 8:45 am]

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pass on contested audit reports, 18 CFR 375.309(f) (1990) and for the Director of the Office of Hydropower Licensing or his designee to determine whether the Commission has jurisdiction over an unlicensed project, 18 CFR 375.314(h)(2) (1990).

[3] Indeed, several parties including EEI, PG&E and Alabama point up that it is not clear what constitutes official staff action under delegated authority. The majority fails to address this issue in the rule today.

Comments also suggest that, under the earlier delegation-and-appeal scheme, staff's orders could not be lawfully enforced. See, e.g., the comments of Alabama Power Company, pp. 6-7. If true, this adds force to the argument that the Commission today goes too far. If there is a question as to whether a Commission ruling is enforceable, that question should, in my view, be resolved through action of the Commissioners, not through action of the staff.

[4] More precisely, the FERC is provided the authority, "to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter." Section 16 of the Natural Gas Act, 15 U.S.C. 717o (1988); see also section 309 of the Federal Power Act, 16 U.S.C. 825h (1988) (identical language). The authority of these two provisions originally vested in the Commission's predecessor, the Federal Power Commission, is explicitly vested in the FERC. See section 402(a)(2) of the Department of Energy Organization Act, Pub. L. No. 95–91 (1977), 91 Stat. 584 (1977) (DOE Act), codified at 42 U.S.C. 7172(a)(2) (1988). In addition, similar authority is independently provided the Commission under section 401(f) of the DOE Act (Commission "is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions"), 42 U.S.C. 7171(f) (1988) and under section 501(a) of the Natural Gas Policy Act, 15 U.S.C. 3411(a) (1988).

[5] Rodrigues v. Compass Shipping Co., 617 F.2d 955, 958 (2nd Cir. 1980), *aff'd on other grounds*, 451 U.S. 596 (1981); see also Fleming v. Mohawk Wrecking and Lumber Co., 331 U.S. 111, 120–122 (1947); House v. Southern Stevedoring Company, 703 F.2d 87, 89–90 (4th Cir. 1983); Exxon Corp. v. FTC, 605 F.2d 1274, 1279 (D.C. Cir. 1981) (per curiam).

[6] See, e.g., 15 U.S.C. 78d–1 (1988) which authorizes the Securities and Exchange Commission "to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business or matter."

[7] Indeed, in the only provision that I have found where Congress explicitly spoke to the Commission's authority to delegate its functions to staff, Congress limits that authority to designating personnel to "conduct any hearing or other inquiry necessary or appropriate to its functions." section 401(g) of the DOE Act, 42 U.S.C. 7171(g) (1988).

[8] See section 313 of the Federal Power Act, 16 U.S.C. 825l (1988); section 19 of the Natural Gas Act, 15 U.S.C., 717r (1988); and section 506(a) of the Natural Gas Policy Act, 15 U.S.C. 3416(a) (1988).

[9] A mandatory petition-for-rehearing requirement, with or without the additional requirement of raising the very objection urged on appeal, is virtually unheard-of, but both requirements happen to exist in all three of the major statutes administered by FERC * * *. [These operate] quite the opposite of the usual rule, set forth in the Administrative Procedure Act, that "agency action otherwise final is final for the purposes of [judicial review] whether or not there has been presented or determined an application for * * * any form of reconsideration."

Asarco, Inc. v. FERC, 777 F.2d 764, 774 and 773 (D.C. Cir. 1985) (Scalia, J. for the court) (quoting 5 U.S.C. 704 (1982)).

[10] Nor have I any quarrel with staff's ability to act promptly to decide the matters delegated to it and to do so with the high level of professionalism we and the public too often take for granted.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910 and 1926

**[Docket No. H–033d]**

**RIN 1218–AA20**

### Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Extension of partial stay and amendment of final rule.

**SUMMARY:** The Occupational Safety and Health Administration OSHA is hereby extending the partial administrative stay of the revised final standards for occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry (29 CFR 1910.1001) and construction (29 CFR 1926.58), insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite. The current partial stay, originally set to expire on April 21, 1987 and extended until November 30, 1990 is being further extended until August 31, 1991 to allow OSHA to complete supplemental rulemaking limited to the issue of whether non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standard as asbestos, or should be treated in some other way. OSHA also is making minor conforming amendments to notes to the affected standards.

**DATES:** The partial stay of 29 CFR 1910.1001 and 1926.58 is extended until August 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** James F. Foster, Director of Information

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and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** In June 1986, OSHA issued revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite for general industry and construction which were to be effective on June 21, 1988. (See 51 FR 22612 *et seq.*, June 20, 1986).

On October 17, 1986, OSHA published a partial stay of the revised standards insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite, in order to enable the Agency to review new submissions raising questions about the appropriateness of regulating these minerals in the revised asbestos standards, and to allow sufficient time to reopen the rulemaking record and conduct supplemental rulemaking proceedings limited to this issue (51 FR 37002).

OSHA extended the stay until July 21, 1988 in a notice published on April 30, 1987 (52 FR 15722), until July 21, 1989, in a notice published on July 28, 1988 (53 FR 27345), and again until November 30, 1990, in a notice published on July 21, 1989 (54 FR 30704).

The last extension was issued in order to allow OSHA sufficient time to conclude rulemaking on whether and how to regulate the non-asbestiform minerals at issue.

Subsequently, on February 12, 1990 OSHA published a notice of proposed rulemaking (55 FR 4934) to amend the asbestos standards (29 CFR 1910.1001, 1926.58) to remove non-asbestiform tremolite, anthophyllite and actinolite from their scope.

Public hearings were held in Washington, DC, May 8–14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summations and briefs.

After the close of the post-hearing comment periods, the American Thoracic Society (ATS) submitted a report to the record concerning the health risks of non-asbestiform tremolite, actinolite and anthophyllite (Ex. 525). The Agency set an additional period, later extended to December 14, 1990, to enable the public to submit written comments and analyses on all issues raised in the ATS report. (See 55 FR 40877, 55 FR 48956).

At the close of this comment period, the Agency will evaluate the rulemaking record to determine whether it supports the proposal to remove the non-asbestiform minerals from the scope of the asbestos standards.

To date, the record consists of 526 exhibits, 24 comments and transcripts of the five days of rulemaking hearings. OSHA anticipates receiving a significant number of additional submissions relating to the ATS report.

Because of the size of the record and the complexity of the issues, the Agency's review of the rulemaking record and formulation of a final regulatory determination will not be completed until August 31, 1991. Thus, an extension of the stay until August 31, 1991 is necessary to conclude the rulemaking on the regulation of non-asbestiform tremolite, anthophyllite and actinolite.

As was the case with the initial partial stay, the 1972 standard governing occupational exposure to asbestos (redesignated 29 CFR 1910.1101) will remain in effect to the extent of the stay during the period of the extension.

The full text of the stay with respect to these non-asbestiform minerals was published in the October 17, 1986 Federal Register (51 FR 37002).

With respect to the extension of the partial stay, OSHA finds that advance notice and opportunity for comment are impractical and unnecessary within the meaning of 5 U.S.C. 553 in view of the limited duration of the extension and the continued applicability of the 1972 standard (29 CFR 1910.1101) to cover the gaps in coverage created by the partial stay.

The minor amendments to the notes to 29 CFR 1910.1001, 1910.1101, and 1926.58, similarly are made without advance notice and opportunity for comment. OSHA finds such process unnecessary and impracticable in that the changes merely reference the extension of the stay and restate the applicability of the 1972 standard. No evidentiary issues are involved.

**List of Subjects in 29 CFR Parts 1910 and 1926**

Asbestos, Occupational safety and health.

**Authority and Signature**

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sections 4, 6(b), 6(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), the Longshore and Harbor Workers Compensation Act (33 U.S.C. 941), 29 CFR part 1911, Secretary of Labor's Order No. 1–90 (55 FR 9033), as applicable.

Signed at Washington, DC, this 4th day of December 1990.

Gerard F. Scannell,

*Assistant Secretary of Labor.*

**Amended Standards**

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

**PART 1910—[AMENDED]**

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2, and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under section 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 CFR part 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 553 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

**§ 1910.1001 [Amended]**

2. Section 1910.1001 is hereby amended by revising the note after appendix H to § 1910.1001 to read as follows:



**Note:** Pursuant to an administrative stay effective July 21, 1988, published on October 17, 1986 (51 FR 37002), extended to July 21, 1988 (52 FR 15722), to July 21, 1989 (53 FR 27345), to November 30, 1990 (54 FR 30704) and to August 31, 1991 (55 FR _____) enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

3. Section 1910.1101 is hereby amended by revising the note preceding § 1910.1101(a) to read as follows:

**§ 1910.1101 Asbestos.**

**Note:** This section applies in lieu of the revised standards governing occupational exposure to asbestos, tremolite, anthophyllite and actinolite (29 CFR 1910.1001; 29 CFR 1926.58), during the period and to the extent that the revised standards have been partially stayed. (See 51 FR 37002, October 17, 1986, 52 FR 15722, April 30, 1987, 53 FR 27345, July 28, 1988, and 54 FR 30704, July 21, 1989, and 55 FR _____, December 10, 1990, for a description of the stay).

Part 1926 of the Code of Federal Regulations is hereby amended as follows:

**PART 1926—[AMENDED]**

**Subpart D—[Amended]**

4. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sections 4, 6 and 8, Occupational Safety and Health Act of 1970, (29 U.S.C. 653, 655, 657) Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

**§ 1926.58 [Amended]**

5. Section 1926.58 is hereby amended by revising the note after appendix J to § 1926.58 to read as follows:

**Note:** Pursuant to an administrative stay effective July 21, 1988, published October 17, 1986 (51 FR 37002), extended to July 21, 1988 (at 52 FR 1577, April 30, 1987), to July 21, 1989 (53 FR 27345, July 28, 1988) to November 30, 1990 (54 FR 30704; July 21, 1989), and to August 31, 1991, (55 FR _____, December 10, 1990), enforcement of this section is stayed as it applies to non-asbestiform tremolite, anthophyllite and actinolite. During the period and to the extent of this stay, the 1972 standard governing occupational exposure to asbestos (redesignated as 29 CFR 1910.1101) will remain in effect.

[FR Doc. 90–28635 Filed 12–7–90; 8:45 am]

BILLING CODE 4510-26-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 372**

**[OPTS–400041A; FRL–3798–1]**

## Terephthalic Acid; Toxic Chemical Release Reporting; Community Right-to-Know

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is delisting terephthalic acid (TA), CAS Registry No. 100–21–0, from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). By promulgating this rule, EPA is relieving facilities of their obligation to report releases of TA that occurred during the 1990 calendar year, and thereafter. This relief applies only to reporting requirements under section 313 of EPCRA.

**DATES:** This rule is effective January 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Maria Doa, Acting Petition Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington DC 20460, Toll free: 800–535–0202.

**SUPPLEMENTARY INFORMATION:**

**I. Description of Petition**

EPA received a section 313(e) petition to delete Terephthalic acid (TA), CAS No. 100–21–0, from the list of toxic chemicals in 40 CFR 372.65. The petition from the Amoco Corporation was received on July 27, 1988.

After reviewing the petition and additional related information, EPA concluded that TA did not meet the listing criteria under section 313(d)(2) for acute human health effects, chronic health effects or environmental toxicity. While EPA considered data which were suggestive of developmental and systemic toxicity, these data were inadequate to support a conclusion that TA can reasonably be anticipated to cause these effects in humans. It is EPA's determination that the available data do not demonstrate that TA can cause or can reasonably be anticipated to cause significant adverse human health or environmental effects. As a result, EPA issued a proposed rule to delete TA from section 313 reporting requirements in the Federal Register of February 15, 1990 (55 FR 5472).

The proposed rule contains a detailed summary of EPA's review of the petition to delete TA. The proposed rule also discussed EPA's consideration of proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) to address potential developmental and systemic toxicity. This proposed test rule will be published in the Federal Register in the near future. The proposal to delete TA indicated that EPA might choose, if it proposed a test rule, to await the results of such testing before promulgating the deletion of TA from section 313 of EPCRA. However, in light of additional information, EPA has decided to promulgate the deletion of TA from the section 313 list.

**II. Response to Public Comment**

EPA received five comments on the proposed rule. All of the comments received on the proposed rule to delete TA were from industry and industry associations. Comments were submitted by Amoco Corporation, the Chemical Manufacturers Association (CMA), Eastman Kodak Company, E.I. Du Pont De Nemours and Company, and Monsanto Company.

All of the commenters were supportive of EPA's decision to delete TA from section 313 reporting requirements. However, all of the commenters objected to delaying promulgation of the deletion of TA from EPCRA section 313 pending a test rule under section 4 of TSCA stating it would take years to promulgate a rule and complete such testing. Commenters stated that the Administrator should base section 313 petition decisions on readily available data. Furthermore, they stated that section 313 of EPCRA does not provide EPA with the authority to obtain additional toxicity testing for making petition decisions.

EPA acknowledges that additional testing cannot be obtained under EPCRA section 313. However, the indirect use or knowledge of data gathering efforts under other statutory authorities to obtain information to make proper assessments may be warranted under certain circumstances. In reviewing the subject EPCRA section 313 petition, EPA has decided for this particular case, not to delay promulgation of the deletion of TA pending any TSCA section 4 action. EPA will propose testing under TSCA section 4 at a later date in the Federal Register. If testing under TSCA section 4 should provide EPA with evidence that TA does meet the section 313 listing criteria,

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EPA would immediately initiate rulemaking to return TA to the EPCRA section 313 list.

One commenter, Monsanto Company, referred EPA to two literature reports by Hoshi and Kuretani (Refs. 5 and 6) on the pharmacokinetics of TA as being useful in assessing the toxicity of this compound. These data have been considered in EPA's assessment. They are reviewed in an EPA document, "Health and Environmental Effects Profile (HEEP) for Phthalic Acids" (Ref. 4), which in turn, was one of the sources of information on TA used in the EPA hazard assessment for the petition.

Three of the five commenters addressed various aspects of the technical case EPA has presented with regard to developmental and reproductive toxicity. However, the Agency noted only that there are indications of possible developmental and systemic toxicity; the reproductive toxicity study did not indicate toxic effects on the male or female reproductive system, but did indicate potential toxicity during the development of the offspring.

### III. Technical Review

At the time of the submission of the TA delisting petition, one inhalation developmental toxicity study of TA on rats was available. This study provided no evidence of maternal toxicity, but there was a significant increase in the incidence of rib anomalies in the mid-dose group; a statistically significant increase in rib anomalies was not observed in the high-dose group. Data regarding a second species were not available. Therefore, concern was raised about whether TA is or is not developmentally toxic to the fetus.

Since the publication of the proposed rule for TA, EPA has reviewed three developmental toxicity feeding studies on rats and rabbits submitted for the herbicide, Dacthal, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) with data on the chemicals dimethyl tetrachloroterephthalate (the herbicide) and 2,3,5,6-tetrachloroterephthalic acid (Refs. 2, 3, and 7). These compounds are close analogues of TA. These studies do have a direct bearing upon the issue of developmental toxicity of TA on the developing fetus. Each study met the EPA Guidelines for Toxicity Assessment, with evidence of maternal toxicity in the mid- and/or high-dose groups. The fetuses were weighed, sexed, and examined for external, internal, and skeletal abnormalities. There was no evidence of developmental toxicity to the fetuses.

Since the increased incidence of rib anomalies (or any other evidence of developmental toxicity) was not observed in these developmental toxicity studies on closely analogous chemicals, the weight of evidence for a toxicity concern for TA on the developing fetus is considerably lessened.

Several commenters questioned various aspects of EPA's assessment of the reproductive toxicity study. At the time of the submission of the delisting petition, a 90-day dietary subchronic/one-generation reproductive toxicity study of TA from CITT was available (Ref. 1). It was concluded that the study was inadequate for hazard assessment, but the study did provide evidence of parental systemic toxicity and postnatal developmental toxicity. The comments submitted by the various companies do not dispute the findings, but there is disagreement about whether the study is adequate for hazard assessment, and at what dose levels significant toxicity occurs.

EPA concluded that the CIIT study (Ref. 1) lacked an adequate sample size (5 to 10 females per group vs. 20 or more per group to increase the "power" of the study), maternal body weight data during gestation and lactation, male fertility parameters, and postnatal pup body weight data. Eastman Kodak Company commented that: (1) "The guidelines were developed to be used as guidelines for developing new test standards for future testing and not to be used as a retrospective standard against which previously conducted studies should be judged," and (2) the lacking data could be derived from the available data.

First, the guidelines merely suggest a minimal set of data required for evaluation of the potential toxicity of a compound. In the present context they are not viewed as rules to be followed. However, it becomes increasingly clear that certain minimal data are required to evaluate a compound, and the inadequacies of the CIIT study (Ref. 1) were such that a confident evaluation could not be conducted.

With reference to deriving the lacking data from the available data, Eastman Kodak Company suggested that a reasonable estimation of study reproducibility is possible since the study was performed in two rat strains (CD and Wistar). Furthermore, they state that similar results were found in a study by Wolkowski-Tyl et al. (Ref. 11) in Fischer 344 rats. However, this study was designed to address the question of whether TA crosses the placenta, and to determine the incidence of bladder calculi in pups exposed prenatally and/or postnatally. The study indicated that no calculi were found in pups until the initiation of self-feeding. It is not clear how a comparison of these data would address questions of reproductive or general early postnatal toxicity since data concerning these issues were not provided.

In addition, while a comparison of the data from the CD and Wistar strains used in the CIIT study (Ref. 1) may provide some estimation of study reproducibility, it provides no information concerning the critical question concerning at what dose level significant toxicity occurs. In fact, the two strains do react differently to TA. The study summary specifically states that "toxic effects were apparent as reductions in weight gain at the 0.5, 2.0, and 5.0 percent dietary concentrations, with CD rats being slightly more sensitive to terephthalic acid."

Amoco stated that in spite of the lack of body weight data in the pregnant females, the available data on a non-pregnant female should allow one to assume at least that level of toxicity. However, EPA believes that it is not possible to extrapolate such effects, since pregnancy can alter metabolism and other physiologic parameter and, of course, changes in weight due to the developing fetus would result.

DuPont cited a study (Ref. 8) which provided evidence of no developmental or reproductive impairment. This study was reviewed in the HEEP (Ref. 4), but was discounted because it used only a single dose in mice, and only in the females. Thus the study did not address male reproductive toxicity and since a different species was used, the results cannot be extrapolated to rats (which may be affected by TA at different levels). For risk assessment purposes, EPA chose to consider the most sensitive species.

As noted above, there is disagreement as to what dose levels parental systemic toxicity and postnatal developmental toxicity occurred. EPA concluded that some degree of parental toxicity was apparent at all doses (0.03 to 5 percent dietary TA) in the CD rats, and at dietary concentrations of 2 and 5 percent in the Wistar rats. Eastman Kodak Company claims that parental toxicity was evident at doses of 0.5, 2.0, and 5.0 percent dietary TA in the CD rats, and they concur with EPA with respect to the Wistar rats. Thus, the discrepancy is whether toxicity occurred at doses of 0.03 and 0.125 percent in the CD rats. Mean body weights were significantly reduced in the 0.5, 2.0, and 5.0 percent groups for various periods of



time during the premating period. In addition, the male CD rats in the 0.03 percent group exhibited a significant reduction in mean body weight and mean body weight gain at 13 weeks. Eastman Kodak discounted this reduction (as did other commenters) since a statistically significant decrease was not observed in the 0.125 percent group and went on to conclude that this was the No Observable Effect Level (NOEL) (DuPont considered 0.5 percent a NOEL). EPA did not discount the reduction and believes that the poor power of this study makes it inadequate for determining the NOEL for TA. Obviously, this discrepancy could be solved with the inclusion of body weight data for later time periods (i.e. during the mating and postmating periods). It is precisely the lack of such data that makes interpretation difficult, and why the study was viewed as inadequate.

There was also disagreement regarding the dose levels at which postnatal developmental toxicity occurred. EPA concluded that there was evidence suggestive of postnatal developmental toxicity at all doses. Eastman Kodak concluded that toxicity only occurred at 2 and 5 percent TA. At concentrations of 2 and 5 percent TA postnatal survival was reduced. Commenters argued that the reduced postnatal survival was due to decreased care resulting from acute maternal toxicity or to the formation of bladder calculi in the pups at these doses.

One commenter claimed that the number of pups which were denoted as "dead at birth" may be attributed to how soon after birth, the newborn pups were evaluated. However, information on this point was not provided in the study and hence no conclusion may be drawn. Eastman Kodak went into some detail about the finding of bladder calculi in many of the pups that died, presumably to establish that exposure levels that do not result in calculi do not increase the risk of toxic effects due to TA. They pointed out that there were incidence of renal and urinary tract pathology at low doses in both strains of rat used in the CIIT study (Ref. 1) and that the EPA reviewer's statement concerning "no significant increase in lesions" for these doses was inaccurate. EPA did not discount these data and, while poorly phrased, the statement was meant to indicate a lack of statistical significance. The point of this argument concerning the influence of bladder calculi on pup death late in the testing is unclear, as neither Eastman Kodak nor EPA would argue, or did argue, that there was no correlation. The Agency's position on maternal and developmental toxicity has already been made public. The EPA 1989 Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants (Ref. 10) state that developmental effects produced only at maternally toxic doses should be examined carefully and should not be discounted as being secondary to maternal toxicity.

In addition, since the publication of the proposed rule for TA, EPA has reviewed a one-generation reproductive dietary toxicity study on rats submitted for the herbicide, Dacthal, under FIFRA on a close analog of TA, dimethyl tetrachloroterephthalate (Ref. 9). The study was not adequate for hazard assessment according to the EPA test guidelines, but it does provide additional support for concern for potential postnatal developmental toxicity. There was a significant reduction in postnatal survival (day 1 to 21 interval) in the high-dose group (1 percent level) and in the low-dose group (0.1 percent - with no clear dose-response relationship). The lack of a clear dose-response in the low-dose group is disturbing, but it provides additional support that additional testing is needed to address postnatal developmental toxicity. Interestingly, there was no evidence of maternal toxicity at either exposure level.

In the CIIT study (Ref.1), pup body weight data were only provided for postnatal days 0, 1, and 21. The treated CD pups exhibited a reduction in mean body weight on day 21; mean body weights were reduced by 14, 5, 10, 22, and 52 percent in the 0.03, 0.125, 0.5, 2.0, and 5.0 percent TA groups, respectively, and the differences were statistically significant for the 5.0 percent group. Eastman Kodak concluded that the difference observed in the 2.0 percent group was biologically significant as well, but the reductions in the 0.03, 0.125, and 0.5 percent groups were not. EPA concluded that in the absence of more complete data, the possibility that the observed reductions were indicative of developmental toxicity should not be discounted. Again, this is simply a disagreement that a properly conducted study of greater power would solve.

### IV. Reasons for Issuing Final Rule

EPA has determined that the weight of the evidence supports removal of TA from the section 313 list. EPA has determined that the available data do not demonstrate that TA can cause or reasonably be anticipated to cause significant adverse human health or environmental effects described in section 313 (d) (2). However, in other cases denial of a petition to remove a chemical may be warranted even if the evidence of toxicity is less than adequate to meet current EPA testing standards. EPA views the weight of the evidence determination as a continuum to be evaluated on a case-by-case basis.

### V. References


(1) Chemical Industry Institute of Toxicology (CIIT). A 90-day study of terephthalic acid-induced urolithiasis and reproductive performance in Wister and CD rats. CIIT Docket No. 17982. CIIT, Six Davis Drive, P.O. Box 12137, Research Triangle Park, NC 27709. 1982.

(2) Chun, J., Lucas, F., and Killeen, J. A Teratology Study with Technical DCPA in Rabbits: Proj. ID 87-2294. Unpublished Ricerca Document 1116-87-0067-TX-002 prepared by Bio/dynamics Inc. 775 p. (OPP MRID: 41054820). 1988.

(3) Ford, W. A Teratology Study in Rats with Technical DCPA: Document No. 712-5TX-85-0039-003; Report SDS-453. Unpublished study prepared by SDS Biotech Corp. in cooperation with Argus Research Laboratories, Inc. 194 p. (OPP MRID: 00140685). 1986.

(4) Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment, U.S. Environmental Protection Agency. Health and Environmental Effects Profile for Phthalic Acids. EPA 600/X-86/292. 1986.

(5) Hoshi, A. and Kuretani, K. Metabolism of Terephthalic Acid. III. Absorption of Terephthalic Acid from Gastrointestinal Tract and Detection of its Metabolites. Chem. Pharm. Bull. 15:1979-1984. 1967.

(6) Hoshi, A. and Kuretani, K. Distribution of Terephthalic Acid in Tissues. Chem. Pharm. Bull. 16:131-135. 1968.

(7) Mirens, M. A Teratology Study in Rats with Tetrachloroterephthalic Acid: SDS-454: Document No. 685-5TX-84-0035-002. Unpublished study prepared by SDS Biotech Corp. 177 p. (OPP MRID: 00158030). 1985.

(8) Nagasawa, H. and Fujimoto, M. Inhibition of terephthalic acid of spontaneous mammary tumorigenesis in mice. Experientia 29:89-90. 1973.

(9) Paynter, O. E. and Kundzin, M. Reproduction Study--Albino Rats. (Unpublished study received Dec 15, 1963 under PP0411; prepared by Hazelton Laboratories, Inc., submitted by Diamond Shamrock Agricultural Chemicals, Cleveland, Ohio; CDL:090443-N). (OPP MRID: 00083578). 1963.

(10) Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants. Federal Register 54 FR 9386-9403. March 6, 1989.

(11) Wolkowski-Tyl, R., Chin, T. T., and Heck, H. Chemical urolithiasis. III. Pharmacokinetics and transplacental transport of terephthalic acid in Fischer-344 rats. Drug Metab. Dispos. 10:488-493. 1982.

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**VI. Regulatory Assessment Requirements**

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more. This rule will decrease the impact of the section 313 reporting requirements on covered facilities and will result in cost-savings to industry, EPA, and States.

This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act of 1980, EPA must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule will result in cost savings to facilities, EPA certifies that small entities will not be significantly affected by this rule.

*C. Paperwork Reduction Act*

This rule relieves facilities from having to collect information on the use and releases of TA. Therefore, there were no information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 372**

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: December 4, 1990.

**Victor J. Kimm,**

*Acting Assistant Administrator, Office of Pesticides and Toxic Substances.*

Therefore, 40 CFR part 372 is amended as follows:

**PART 372—[AMENDED]**

1. The authority citation for part 372 continues to read as follows:

**Authority:** 42 U.S.C. 11013 and 11028.

**§ 372.65 [Amended]**

2. Section 372.65(a) and (b) are amended by removing the entire entry for terephthalic acid under paragraph (a) and removing the entire CAS No. entry for 100-21-0 under paragraph (b).

[FR Doc. 90-28674 Filed 12-7-90; 8:45 am]
BILLING CODE 6560-50-F

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 73 and 74**

**[MM Docket No. 88-140; FCC 90-375]**

**Broadcast Service; Amendment of the Rules Concerning FM Translator Stations**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** FM translators were first authorized in 1970 as stations that receive the signals of FM radio broadcast stations and simultaneously retransmit those signals on another frequency. On November 8, 1990, the Commission adopted amendments to part 74 of the Commission's Rules governing the FM translator service. This action makes the FM translator rules more consistent with the intended purpose of the service in order to ensure that the development of FM radio broadcast stations is not harmed by translator operations. In particular, we revise and clarify the service rules regarding ownership and financial support of translators, methods for selecting among mutually exclusive translator applications, and the definition of a "major change" in translator coverage areas. We also adopt new technical rules to govern the use of commercial FM and auxiliary band frequencies, interference criteria, and maximum power output. The Commission also concludes that the freeze on applications for new commercial FM translators and major changes to existing commercial FM translators will continue for 60 days after the effective date of these new rules and that, within sixty days thereafter, applicants with pending applications should amend their applications to conform with the new rules. Existing stations must comply with the new service rules within three years of their effective date, and we will entertain waiver requests where service to the public would be unduly lost as a result. Since most translators already comply with the new technical rules, we will "grandfather" existing translators until interference problems occur, at which time compliance will be required.

**EFFECTIVE DATE:** March 1, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jim Coltharp, Mass Media Bureau, Policy and Rules Division, (202) 632-6302; or, Gordon Godfrey, Mass Media Bureau, Engineering Policy Branch, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order (Report) in MM Docket No. 88-140, FCC 90-375, adopted November 8, 1990, and released December 4, 1990. The complete text of this Report is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**Synopsis of Report and Order**

1. In this Report, the Commission revises and clarifies several of the FM translator rules. The rulemaking restores the service to its intended role as a secondary service supplementing the development of FM radio broadcast stations where distance and intervening terrain barriers impede the direct reception of the primary station. The following summary describes the principle rule changes regarding the service and technical standards for FM translators as set forth in the Report and Order.

**Service Issues**

2. The Commission adopts a definition for an FM translator station's "coverage area". Accordingly, the coverage contour of a translator providing fill-in service—i.e., the FM translator's coverage contour is contained within the coverage contour of the primary station—is defined congruent with the coverage (or protected) contour of the primary station for respective station classes. An FM translator's protected contour is defined as 1 mV/m both for protection of authorized FM translator stations and for determining applications that are to be considered mutually exclusive. For "other area" translators, *i.e.*, where the FM translator's coverage contour extends beyond the coverage contour of the primary station, the coverage area is defined by maximum power and permissible coverage distance limitations as detailed below.

3. The Report also adopts changes to the ownership rule. The Commission continues to believe that relaxed restrictions on commercial primary station ownership of translators would be contrary to the public interest, which is best served by maximizing service through FM radio broadcast stations. Consequently, while fill-in translators may be owned by commercial primary stations or independent parties, ownership of "other area" commercial translators will be restricted to independent parties. Noncommercial educational FM (NCE-FM) translators remain exempt from ownership limitations. In areas beyond the protected contour of any full-time aural service, or "white areas", where a licensee establishes that service is indeed unavailable, the Commission will be favorably disposed toward requests for waivers of the rules to permit commercial primary station ownership of FM translators. Independent parties may establish FM translators to serve any area.

4. With respect to financial support of FM translators by commercial primary stations, the Commission's Notice of Proposed Rule Making, 55 FR 13296 (1990), suggested revisions intended to remove the ambiguities that precipitated the alleged abuses reported by commenting parties. Under the revised rule, commercial primary stations may support fill-in translators both before and after the translator commences operation, but they may not provide direct or indirect financial support beyond technical assistance to FM translators serving other areas. Once again, the Commission will be favorably disposed toward requests for waivers of this financial support restriction upon showing that the translator would serve a "white area". NCE-FM translators remain exempt from financial support restrictions.

5. The Commission retains the existing fundraising and program origination rules that permit translators to originate announcements of only 30 seconds per hour for acknowledging and soliciting financial support, while also permitting emergency warnings of imminent danger. The 30-second announcement may be split during the hour and no local service obligations will be imposed. Under these rules, FM translators will continue to function as a secondary service useful for informing local residents of emergency situations. Several commenters proposed intermediate program origination options, including Gerard A. Turro's request for waiver of § 74.1231 of the Commission's Rules to permit his FM translator to originate local programming for residents in Bergen County, New Jersey. However, the Commission denies Turro's request for a number of reasons, primarily that Bergen County is amply served by stations licensed to nearby communities and New York City, as well as NCE-FM stations licensed in the county.



6. The Report also modifies the rules regarding signal delivery and use of auxiliary frequencies. In order to enhance the quality of signal transmission, commercial translators providing "fill-in" service may use any terrestrial means to receive the primary station signals, with waivers seeking similar permission regarded favorably for "white area" translators. "Other area" commercial translators are restricted to receiving the signal off-air. Commercial "fill-in" translators will also be authorized to use aural intercity relay frequencies on a secondary basis following advance notification of local frequency coordination committees, and waiver requests for translators serving "white areas" will be viewed favorably. The Commission will continue to prohibit use of a translator solely to relay signals of a primary station to more distant facilities, but will permit incidental relays.

7. The Commission clarifies that licensees may operate multiple translators following a showing of "need" on technical grounds as determined by the quality of signal received from the intended primary station or any operating translator. Also, a priority scheme will be used to resolve mutually exclusive applications such that "full-in" translators of the commonly owned primary station will have highest priority; alternative frequencies will be assigned when possible; when alternative frequencies are unavailable, and alternative system using factors considered for FM allotments will be applied. Where mutual exclusivity is unresolved by the above scheme, the Commission will select applications on a first-come-first-served basis.

8. The Report also determines that a "major change" will be defined as any change in output frequency, or any change or increase (but not decrease) in the predicted 1 mV/m coverage area of more than 10 percent of the previously authorized coverage area. The Commission makes this ruling on the grounds that it is appropriate to give licensees some flexibility to make minor facility adjustments without triggering the "major change" process. Finally, rules are retained exempting FM translators from multiple ownership rules and prohibiting rebroadcast of AM signals.

**Technical Issues**

9. In order to reduce actual interference problems through an expanded range of channels, the Commission will allow all FM translators to operate on any of the 80 non-reserved commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE-M translator use. With respect to the maximum permissible translator power output, the Report reduces the proposed maximum effective radiated power (ERP) standard of 1 kilowatt to 250 watts at low antenna height (HAAT). The 250 watt maximum ERP limit will be applied to all parts of the country, with the exception that FM translators in the border areas are also subject to the bilateral agreements with Mexico and Canada. Fill-in translators are constrained by the requirement that there coverage contour must not reach beyond the coverage contour of the primary station. Furthermore, the coverage of "other area" translators will also be restricted to power and height combinations that produce a distance to the translator's 1 mV/m coverage contour not exceeding 7 kilometers (km) in Southern California and east of the Mississippi, and 13 km elsewhere. The Commission will also be favorably disposed toward waiving the power rule to permit higher power up to 250 watts at any HAAT if the applicant demonstrates that the service to a greater distance reaches only a "white area". As applied to NCE-FM translator applications, a "white area" will be defined as any area that is not served by a full-service public radio station. All applications requesting greater than 100 watts ERP will be required to determine whether excessive human exposure to RF radiation would result, and, if so, to submit, an environmental assessment.

10. The Report clarifies the standards for antennas by allowing composite, multiple array, and directional antennas, pursuant to the specific standards adapted from § 73.316 of the rules. In addition, the Commission adopts the proposed prohibition of contour overlap to avoid predicted translator interference to FM stations and TV Channel 6 stations. However, the Report finds it inappropriate to introduce explicit standards for determining actual interference, but instead, the Commission modifies its proposed rule to emphasize that FM translator licensees are responsible for resolving all interference complaints by appropriate means. The Commission also makes minor changes to clarify other aspects of the FM translator rules, including conforming some FM booster rules with the revised FM translator rules and simplifying the procedures and requirements for approval of transmission equipment.

11. The Commission seeks to ensure that the revised rules will not withdraw FM translator service from areas

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currently benefiting from these facilities. Consequently, the Commission will "grandfather" those existing translators not in compliance with the new technical standards until interference problems occur, at which time compliance will be required. Translators presently in operation must comply with the new service rules within three years of the effective date of the new rules. The Commission will also entertain waiver requests for extended "grandfathering" periods for those licensees showing that service to the public would be unduly lost as a result of compliance with the new service rules.

**Paperwork Reduction Act Statement**

12. Public reporting burden for the collection of information in § 74.1231(b) Note is estimated to average 1 hour per response. The burden for § 74.1251(c) is estimated to average 15 minutes per response. The burden for § 74.1263(c) is estimated to average 20 minutes per response. The burden for § 74.1283(c) is estimated to average 10 minutes per record. The burden for FCC Form 349 (3060–0405) is estimated to average 35 hours and 30 minutes per response. The burden for FCC Form 350 (3060–0404) is estimated to average 3 hours and 30 minutes per response. Each of these estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burdan estimates, as well as any other aspect of these collection of information or recordkeeping requirements, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

**Regulatory Flexibility Act Analysis**

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 606, it is certified that the adopted rules will have a significant impact (both positive and negative) on a substantial number of small entities because of the limitations placed on the ownership and financial support of FM translators by commercial FM radio broadcast stations, because of the paperwork involved in the application process in order to satisfy the revised power and distance limitations, and because of the risk of prosecution in case of violation of the new rules. However, the Commission believes that its action is necessary to achieve the purposes of the FM translator service. Also, the action is warranted by the potential for abuse of the Commission's current processes, and will positively affect entities by reducing that potential for abuse, and thus enhancing that fairness of Commission processes for all possible participants. Consequently, several rules must be clarified and tightened in order to ensure that FM radio broadcast stations are not adversely affected by translator operations.

14. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

15. Authority for the rule changes adopted in this document is contained in sections (4) (i) and (j), and 301, 303, 306, and 309 of the Communications Act of 1934, as amended.

16. Accordingly, *it is ordered that* pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, parts 1, 73 and 74 of the Commission's rules and regulations *are amended* as set forth in the attached rules. These rules and regulations *are effective* March 1, 1991.

17. *It is further ordered that* the freeze on new commercial FM translator applications and major changes to existing commercial FM translators *Shall continue for 60* days after the effective date of these new rules and, that within sixty days thereafter, applicants with pending applications on file *Shall amend* their applications to conform with the new rules.

18. *It is further ordered* That the request for waiver of § 74.1231 of the Commission's Rules filed by Gerald A. Turro on July 28, 1989 *is denied.*

19. *It is further ordered that* this proceeding *is terminated.*

**List of Subjects**

*47 CFR Part 1*

Environmental impact statements.

*47 CFR Part 73*

Radio broadcasting.

*47 CFR Part 74*

Radio broadcasting.

**Regulatory Text and Rule Changes**

Title 47 CFR parts 1, 73, and 74 are amended as follows:

**PART 1—[AMENDED]**

20. The authority citation for parts 1, 73, and 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

21. Section 1.1307, paragraph (b), is amended by revising Note 1 to read as follows:

**§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.**

* * * * *

(b) * * *

Note 1: Paragraph (b) shall apply to facilities and operations licensed or authorized under the following Parts of the Commission's Rules: 5, 21 (subpart K), 25, 73, 74 (subparts A, G, I, and L), and 80. With respect to part 21 (subpart K) and part 74 (subpart I), paragraph (b) is applicable only to MDS and ITFS stations transmitting with an equivalent isotropically radiated power (EIRP) in excess of 200 watts. With respect to part 74 (subpart L), paragraph (b) is applicable only to FM booster and translator stations transmitting with an effective radiated power (ERP) in excess of 100 watts. With respect to part 80, paragraph (b) is applicable only to ship earth stations. Facilities and operations licensed or authorized under all other parts, subparts, or sections of the Commission's Rules shall be categorically excluded from considerastion under paragraph (b).

* * * * *

**PART 73—[AMENDED]**

22. Section 73.3573 is amended by revising the section heading, by removing the fourth sentence in paragraph (a)(1), by designating the Note at the end of the section as Note 1, and by adding a Note 2, to read as follows:

**§ 73.3573 Processing FM broadcast station applications.**

* * * * *

Note 2: For rules on processing FM translator and booster stations, see Section 74.1233 of this chapter.

**PART 74—[AMENDED]**

23. Section 74.501 is amended by revising paragraph (b) to read as follows:

**§ 74.501 Classes of aural broadcast auxiliary stations.**

* * * * *

(b) *Aural broadcast intercity relay station.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, between FM radio stations and FM translator stations operating within the coverage contour of their commercial primary FM stations, between FM radio stations and their co-owned FM booster stations, or for such other purposes as authorized in §74.531 of this part.

* * * * *

24. Section 74.531 is amended by redesignating paragraphs (c) through (g) as (d) through (h) and adding new paragraph (c) to read as follows:

**§ 74.531 Permissible service.**

* * * * *

(c) An aural broadcast intercity relay station is authorized to transmit aural program material between an FM radio station and an FM translator station operating within the coverage contour of its commercial primary FM station. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) of this section.

* * * * *

25. Section 74.532 is amended by revising paragraph (a) to read as follows:

**§ 74.532 Licensing requirements.**

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations, other than international broadcast stations, and for use by a broadcast station or an FM booster station owned entirely by or under common control of the licensee or licensees, or for use by an FM translator station operating within the coverage contour of the commercial primary FM station being rebroadcast.

* * * * *

26. Section 74.1201 is amended by adding paragraphs (g), (h) and (i) to read as follows:

**§ 74.1201 Definitions.**

* * * * *

(g) *Translator coverage contour.* The coverage contour for an FM translator providing "fill-in" service is congruent with its parent station: For a fill-in translator for a commercial Class B station it is the predicted 0.5 mV/m field strength contour; for a fill-in translator for a commercial Cass B1 station it is the predicted 0.7 mV/m field strength contour; and for a fill-in translator for all other classes of commercial stations as well as all noncommercial educational stations it is the predicted 1 mV/m field strength contour. A fill-in FM translator's coverage contour must be contained within the primary station's coverage contour. The protected contour for an FM translator station is its predicted 1 mV/m contour.

(h) *Fill-in area.* The area where the coverage contour of an FM translator or booster station is within the protected contour of the associated primary station (*i.e.*, predicted 0.5 mV/m contour for commercial Class B stations, predicted 0.7 mV/m contour for commercial Class B1 stations, and predicted 1 mV/m contour for all other classes of stations).

(i) *Other area.* The area where the coverage contour of an FM translator station extends beyond the protected contour of the primary station (*i.e.*, predicted 0.5 mV/m contour for commercial Class B stations, predicted 0.7 mV/m contour for commercial Class B1 stations, and predicted 1 mV/m contour for all other classes of stations).

27. Section 74.1202 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2); by removing paragraphs (c), (d) and the Note to this section; and by redesignating paragraph (e) as paragraph (c) and revising it to read as follows:

**§ 74.1202 Frequency assignment.**

* * * * *

(b) Subject to compliance with all the requirements of this subpart, FM broadcast translators may be authorized to operate on the following FM channels, regardless of whether they are assigned for local use in the FM Table of Allotments (§ 73.202(b) of this chapter):

(1) *Commercial FM translators:* Channels 221–300 as identified in § 73.201 of this chapter.

(2) *Noncommercial FM translators:* Channels 201–300 as identified in § 73.201 of this chapter. Use of reserved channels 201–220 is subject to the restrictions specified in § 73.501 of this chapter.

* * * * *

(c) An FM broadcast booster station will be assigned the channel assigned to its primary station.

28. Section 74.1203 is revised to read as follows:

**§ 74.1203 Interference.**

(a) An authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to:

(1) The transmission of any authorized broadcast station; or

(2) The reception of the input signal of any TV translator, TV booster, FM translator or FM booster station; or

(3) The direct reception by the public of the off-the-air signals of any authorized broadcast station including TV Channel 6 stations, Class D (secondary) noncommercial educational FM stations, and previously authorized and operating FM translators and FM booster stations. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

(b) If interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures. If a complainant refuses to permit the FM translator or booster licensee to apply remedial techniques which demonstrably will eliminate the interference without impairment to the original reception, the licensee of the FM translator or booster station is absolved of further responsibility for that complaint.

(c) An FM booster station will be exempted from the provisions of paragraphs (a) and (b) of this section to the extent that it may cause limited interference to its primary station's signal, *provided* it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station.

(d) A fill-in FM translator operating on the first, second or third adjacent channel to its primary station's channel will be exempt from the provisions of paragraphs (a) and (b) of this section to the extent that it may cause limited interference to its primary station's signal, *provided* it does not disrupt the existing service of its primary station or cause such interference within the boundaries of the principal community of its primary station.

(e) It shall be the responsibility of the licensee of an FM translator station or FM booster station to correct any condition of interference which results from the radiation of radio frequency energy by its equipment on any frequency outside the assigned channel. Upon notice by the Commission to the station licensee or operator that such interference is being caused, the operation of the translator station or booster station shall be immediately suspended and shall not be resumed until the interference has been eliminated or it can be demonstrated that the interference is not due to

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spurious emissions by the FM translator station or FM booster station; *provided, however,* That short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

29. A new § 74.1204 is added to read as follows:

**§ 74.1204 Protection of FM broadcast stations and FM translators.**

(a) An application for an FM translator station will not be accepted for filing if the proposed operation would involve overlap of predicted field strength contours with any other authorized station, including commercial and noncommercial educational FM broadcast stations, FM translators and Class D (secondary) noncommercial educational FM stations, as set forth below:

(1) Commercial Class B FM Stations (Protected Contour: 0.5 mV/m)

| Frequency separation | Interference contour of proposed translator station | Protected contour of commercial Class B station |
|---|---|---|
| Co-channel | 0.05 mV/m (34 dBu) | 0.5 mV/m (54 dBu). |
| 200 kHz | 0.25 mV/m (48 dBu) | 0.5 mV/m (54 dBu). |
| 400 kHz | 5.00 mV/m (74 dBu) | 0.5 mV/m (54 dBu). |
| 600 kHz | 50.0 mV/m (94 dBu) | 0.5 mV/m (54 dBu). |

(2) Commercial Class B1 FM Stations (Protected Contour: 0.7 mV/m)

| Frequency separation | Interference contour of proposed translator station | Protected contour of commercial Class B1 station |
|---|---|---|
| Co-channel | 0.07 mV/m (37 dBu) | 0.7 mV/m (57 dBu). |
| 200 kHz | 0.35 mV/m (51 dBu) | 0.7 mV/m (57 dBu). |
| 400 kHz | 7.00 mV/m (77 dBu) | 0.7 mV/m (57 dBu). |
| 600 kHz | 70.0 mV/m (97 dBu) | 0.7 mV/m (57 dBu). |

(3) All Other Classes of FM Stations (Protected Contour: 1 mV/m

| Frequency separation | Interference contour of proposed translator station | Protected contour of any other station |
|---|---|---|
| Co-channel | 0.1 mV/m (40 dBu) | 1 mV/m (60 dBu). |
| 200 kHz | 0.5 mV/m (54 dBu) | 1 mV/m (60 dBu). |
| 400 kHz | 10 mV/m (80 dBu) | 1 mV/m (60 dBu). |
| 600 kHz | 100 mV/m (100 dBu) | 1 mV/m (60 dBu). |

(b) The following standards must be used to compute the distances to the pertinent contours:

(1) The distances to the protected contours are computed using Figure 1 of § 73.333 [F(50,50) curves] of this chapter.

(2) The distances to the interference contours are computed using Figure 1a of § 73.333 [F(50,10) curves] of this chapter. In the event that the distance to the contour is below 16 kilometers (approximately 10 miles), and therefore not covered by Figure 1a, curves in Figure 1 must be used.

(3) The effective radiated power (ERP) to be used is the maximum ERP of the main radiated lobe in the pertinent azimuthal direction. If the transmitting antenna is not horizontally polarized only, either the vertical component or the horizontal component of the ERP should be used, whichever is greater in the pertinent azimuthal direction.

(4) The antenna height to be used is the height of the radiation center above the average terrain along each pertinent radial, determined in accordance with § 73.313(d) of this chapter.

(c) An application for a change (other than a change in channel) in the authorized facilities of an FM translator station will be accepted even though overlap of field strength contours would occur with another station in an area where such overlap does not already exist, if:

(1) The total area of overlap with that station would not be increased;

(2) The area of overlap with any other station would not increase;

(3) The area of overlap does not move significantly closer to the station receiving the overlap; and,

(4) No area of overlap would be created with any station with which the overlap does not now exist.

(d) The provisions of this section concerning prohibited overlap will not apply where the area of such overlap lies entirely over water. In addition, an application otherwise precluded by this section will be accepted if it can be demonstrated that no actual interference will occur due to intervening terrain, lack of population or such other factors as may be applicable.

(e) The provisions of this section will not apply to overlap between a proposed fill-in FM translator station and its primary station operating on a first, second or third adjacent channel, *provided* That such operation may not result in interference to the primary station within its principal community.

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

(g) An application for an FM translator station specifying a channel that is separated by 53 or 54 channels from the channel of an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distance set out in § 73.207 of this chapter. For purposes of determining compliance with § 73.207 of this chapter, translator stations will be treated as Class A stations; provided, however, that translator stations operating with 10 watts or less ERP will be treated as Class D stations and will not be subject to intermediate frequency separation requirements.

(h) An application for an FM translator station will not be accepted for filing if it specifies a location within 320 kilometers (approximately 199 miles) of either the Canadian or Mexican borders and it does not comply with § 74.1235(d) of this part.

(i) FM booster stations shall be subject to the requirement that the signal of any first adjacent channel station must exceed the signal of the booster station by 6 dB at all points within the protected contour of any first adjacent channel station, except that in the case of FM stations on adjacent channels at spacings that do not meet the minimum distance separations specified in § 73.207 of this chapter, the signal of any first adjacent channel station must exceed the signal of the booster by 6 dB at any point within the predicted interference free contour of the adjacent channel station.

(j) FM translator stations authorized prior to March 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* That operation is in conformance in § 74.1203 of this part regarding actual interference. Applications to modify such FM translator stations must specify facilities that comply with the provisions of this section.

30. A new § 74.1205 is added to read as follows:



**§ 74.1205 Protection of channel 6 TV broadcast stations.**

(a) An application for a construction permit for new or modified facilities for a noncommercial educational FM translator station operating on Channels 201–220 must include a showing that demonstrates compliance with paragraph (b), (c) or (d) of this section if it is within the following distances of a TV broadcast station which is authorized to operate on Channel 6.

| FM Channel | Distance (kilometers) |
|---|---|
| 201 | 148 |
| 202 | 146 |
| 203 | 143 |
| 204 | 141 |
| 205 | 140 |
| 206 | 137 |
| 207 | 135 |
| 208 | 135 |
| 209 | 135 |
| 210 | 135 |
| 211 | 135 |
| 212 | 135 |
| 213 | 135 |
| 214 | 134 |
| 215 | 134 |
| 216 | 133 |
| 217 | 133 |
| 218 | 132 |
| 219 | 132 |
| 220 | 131 |

(b) *Collocated stations.* An application for a noncommercial educational FM translator station operating on Channels 201–220 and located at 0.4 kilometer (approximately 0.25 mile) or less from a TV Channel 6 station will be accepted if it includes a certification that the applicant has coordinated its antenna with the affected TV station.

(c) *Contour overlap.* Except as provided in paragraph (b) of this section, an application for a noncommercial educational FM translator station operating on Channels 201–220 will not be accepted if the proposed operation would involve overlap of its interference field strength contour with any TV Channel 6 station's Grade B contour, as set forth below.

(1) The distances to the TV Channel 6 station Grade B (47 dBu) field strength contour will be predicted according to the procedures specified in § 73.684 of this chapter, using the F(50,50) curves in § 73.699, Figure 9 of this chapter.

(2) The distances to the applicable noncommercial educational FM translator interference contour will be predicted according to the procedures specified in § 74.1204(b) of this part.

(3) The applicable noncommercial educational FM translator interference contours are as follows:

| FM channel | Interference Contour F(50,10) curves (dBu) |
|---|---|
| 201 | 54 |
| 202 | 56 |
| 203 | 59 |
| 204 | 62 |
| 205 | 64 |
| 206 | 69 |
| 207 | 73 |
| 208 | 73 |
| 209 | 73 |
| 210 | 73 |
| 211 | 73 |
| 212 | 74 |
| 213 | 75 |
| 214 | 77 |
| 215 | 78 |
| 216 | 80 |
| 217 | 81 |
| 218 | 85 |
| 219 | 88 |
| 220 | 90 |

(d) FM translator stations authorized prior to March 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, *provided* That operation is in conformance with § 74.1203 of this part regarding actual interference. Applications to modify such FM translator stations must specify facilities that comply with the provisions of this section.

31. Section 74.1231 is amended by revising paragraph (b) and adding an accompanying Note to (b), revising paragraphs (c), (e), (g), and (h), and an accompanying Note to (h), and removing paragraph (i) to read as follows:

**§ 74.1231 Purpose and permissible service.**

* * * * *

(b) An FM translator may be used for the purpose of retransmitting the signals of a primary FM radio broadcast station or another translator station which have been received directly through space, converted, and suitably amplified. However, a commercial FM translator providing fill-in service may use any terrestrial facilities to receive the signal that is being rebroadcast. An FM booster station or a noncommercial educational FM translator station operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts may use alternative signal delivery means, including, but not limited to, satellite and terrestrial microwave facilities. *Provided, however,* That an applicant for a noncommercial educational FM translator station operating on a reserved channel (Channel 201–220) and owned and operated by the licensee of the primary noncommercial educational FM station it rebroadcasts complies with either paragraph (b)(1) or (b)(2) of this section:

(1) The applicant demonstrates that:

(i) The transmitter site of the proposed FM translator station is within 80 kilometers of the predicted 1 mV/m contour of the primary station to be rebroadcast; or,

(ii) The transmitter site of the proposed FM translator station is more than 180 kilometers from the transmitter site of any authorized full service noncommercial educational FM station; or,

(iii) The application is mutually exclusive with an application containing the showing as required by § 74.1231(b)(2) (i) or (ii) of this section; or,

(iv) The application is filed after October 1, 1992.

(2) If the transmitter site of the proposed FM translator station is more than 80 kilometers from the predicted 1 mV/m contour of the primary station to be rebroadcast or is within 180 kilometers of the transmitter site of any authorized full service noncommercial educational FM station, the applicant must show that:

(i) An alternative frequency can be used at the same site as the proposed FM translator's transmitter location and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour; or,

(ii) An alternative frequency can be used at a different site and can provide signal coverage to the same area encompassed by the applicant's proposed 1 mV/m contour.

Note: For paragraphs 74.1231(b) and 74.1231(h) of this section, auxiliary intercity relay station frequencies may be used to deliver signals to FM translator and booster stations on a secondary basis only. Such use shall not interfere with or otherwise preclude use of these frequencies for transmitting aural programming between the studio and transmitter location of a broadcast station, or between broadcast stations, as provided in paragraphs 74.531 (a) and (b) of this part. Prior to filing an application for an auxiliary intercity relay microwave frequency, the applicant shall notify the local frequency coordination committee, or, in the absence of a local frequency coordination committee, any licensees assigned the use of the proposed operating frequency in the intended location or area of operation.

(c) The transmissions of each FM translator or booster station shall be intended only for direct reception by the general public. An FM translator or booster shall not be operated solely for the purpose of relaying signals to one or more fixed received points for

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retransmission, distribution, or further relaying in order to establish a point-to-point FM radio relay system.

* * * * *

(e) An FM translator shall not deliberately retransmit the signals of any station other than the station it is authorized to retransmit. Precautions shall be taken to avoid unintentional retransmission of such other signals.

* * * * *

(g) The aural material transmitted as permitted in paragraph (f) of this section shall be limited to emergency warnings of imminent danger and to seeking or acknowledging financial support deemed necessary to the continued operation of the translator. Originations concerning financial support are limited to a total of 30 seconds an hour. Within this limitation the length of any particular announcement will be left to the discretion of the translator station licensee. Solicitations of contributions shall be limited to the defrayal of the costs of installation, operation and maintenance of the translator or acknowledgements of financial support for those purposes. Such acknowledgements may include identification of the contributors, the size or nature of the contributions and advertising messages of contributors. Emergency transmissions shall be no longer or more frequent than necessary to protect life and property.

(h) FM broadcast booster stations provide a means whereby the licensee of an FM broadcast station may provide service to areas in any region within the primary station's predicted, authorized service contours. An FM broadcast booster station is authorized to retransmit only the signals of its primary station which have been received directly through space and suitably amplified, or received by alternative signal delivery means including, but not limited to, satellite and terrestrial microwave facilities. The FM booster station shall not retransmit the signals of any other station nor make independent transmissions, except that locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

Note: In the case of an FM broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, an FM booster station will only be authorized within the protected contour of the class of station being rebroadcast as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned.

32. Section 74.1232 is amended by revising paragraph (b) and adding a Note to (b), by revising paragraph (d), removing the notes following paragraph (d), by redesignating paragraphs (e) through (g) as paragraphs (f) through (h), revising redesignated paragraphs (f) through (h), and adding new paragraph (e) to read as follows:

**§ 74.1232 Eligibility and licensing requirements.**

* * * * *

(b) More than one FM translator may be licensed to the same applicant, whether or not such translators serve substantially the same area, upon an appropriate showing of technical need for such additional stations. FM translators are not counted as FM stations for the purpose of § 73.3555 of this chapter concerning multiple ownership.

Note: As used in this section need refers to the quality of the signal received and not to the programming content, format, or transmission needs of an area.

* * * * *

(d) An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) An FM translator station whose coverage contour goes beyond the protected contour of the commercial primary station shall not receive any support, before or after construction, either directly or indirectly, from the commercial primary FM radio broadcast station. Such support also may not be received from any person or entity having any interest whatsoever, or any connection with the primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to March 1, 1991 may continue to receive contributions or support from the commercial primary station for the operation and maintenance of the translator station until March, 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

(f) An FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit, to serve areas within the protected contour of the primary station, subject to Note, § 74.1231(h) of this part.

(g) No numerical limit is placed upon the number of FM booster stations which may be licensed to a single licensee. A separate application is required for each FM booster station. FM broadcast booster stations are not counted as FM broadcast stations for the purposes of § 73.5555 of this chapter concerning multiple ownership.

(h) Any authorization for an FM translator station issued to an applicant described in paragraphs (d) and (e) of this section will be issued subject to the condition that it may be terminated at any time, upon not less than sixty (60) days written notice, where the circumstances in the community or area served are so altered as to have prohibited grant of the application had



such circumstances existed at the time of its filing.

33. A new § 74.1233 is added to read as follows:

**§ 74.1233 Processing FM translator and booster station applications.**

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. In the case of FM translator stations, a major change is any change in frequency (output channel), or change (only the gain should be included in determining amount of change) or increase (but not decrease) in area to be served greater than ten percent of the previously authorized 1 mV/m contour. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.2104 of this chapter pertaining to major changes.

(2) In the second group are applications for licenses and all other changes in the facilities of the authorized station.

(b) Applications for FM translator and booster stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

(c) In the case of an application for an instrument of authorization, other than a license pursuant to a construction permit, grant will be based on the application, the pleadings filed, and such other matters that may be officially noticed. Before a grant can be made it must be determined that:

(1) There is not pending a mutually exclusive application filed in accordance with paragraph (b) of this section.

(2) The applicant is legally, technically, financially and otherwise qualified;

(3) The applicant is not in violation of any provisions of law, the FCC rules, or established policies of the FCC; and

(4) A grant of the application would otherwise serve the public interest, convenience and necessity.

(d) Applications for FM translator stations proposing to provide fill-in service (within the primary station's protected contour) of the commonly owned primary station will be given priority over all other applications.

(e) Where applications for FM translator stations are mutually exclusive and do not involve a proposal to provide fill-in service of a commonly owned primary station, the FCC may stipulate different frequencies as necessary for the applicants.

(f) Where there are no available frequencies to substitute for a mutually exclusive application, the FCC will base its decision on the following priorities: (1) First full-time aural services; (2) second full-time aural services; and (3) other public interest matters including, but not limited to the number of aural services received in the proposed service area, the need for or lack of public radio service, and other matters such as the relative size of the proposed communities and their growth rate.

(g) Where the procedures in paragraph (d), (e) and (f) of this section fail to resolve the mutual exclusivity, the applications will be processed on a first-come-first-served basis.

34. Section 74.1235 is revised to read as follows:

**§ 74.1235 Power limitations and antenna systems.**

(a) An application for an FM translator station filed by the licensee or permittee of the primary station to provide fill-in service within the primary station's coverage area will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds 250 watts.

(b) An application for an FM translator station, other than one for fill-in service which is covered in paragraph (a) of this section, will not be accepted for filing if it specifies an effective radiated power (ERP) which exceeds the maximum ERP (MERP) value determined in accordance with this paragraph. The antenna height above average terrain (HAAT) shall be determined in accordance with § 73.313(d) of this chapter for each of 12 distinct radials, with each radial spaced 30 degrees apart and with the bearing of the first radial bearing true north. Each raidal HAAT value shall be rounded to the nearest meter. For each of the 12 radial directions, the MERP is the value corresponding to the calculated HAAT in the following tables that is appropriate for the location of the translator. For an application specifying a nondirectional transmitting antenna, the specified ERP must not exceed the smallest of the 12 MERP's. For an application specifying a directional transmitting antenna, the ERP in each azimuthal direction must not exceed the MERP for the closest of the 12 radial directions.

(1) For FM translators located east of the Mississippi River or in Zone I–A as described in § 73.205(b) of this chapter:

| Radial HAAT (meters) | Maximum ERP (MERP in watts) |
|---|---|
| Less than or equal to 30 | 250 |
| 30 to 39 | 178 |
| 40 to 47 | 120 |
| 48 to 57 | 99 |
| 58 to 68 | 55 |
| 69 to 82 | 38 |
| 83 to 96 | 27 |
| 97 to 115 | 19 |
| 116 to 140 | 13 |
| Greater than or equal to 141 | 10 |

(2) For FM translators located in all other areas:

| Radial HAAT (meters) | Maximum ERP (MERP in watts) |
|---|---|
| Less than or equal to 107 | 250 |
| 108 to 118 | 205 |
| 119 to 130 | 170 |
| 131 to 144 | 140 |
| 145 to 157 | 115 |
| 158 to 173 | 92 |
| 174 to 192 | 75 |
| 193 to 212 | 62 |
| 213 to 235 | 50 |
| 236 to 260 | 41 |
| 261 to 285 | 34 |
| 286 to 310 | 26 |
| 311 to 345 | 23 |
| 346 to 380 | 19 |
| 381 to 425 | 15.5 |
| 426 to 480 | 13 |
| 481 to 540 | 11 |
| Greater than or equal to 541 | 10 |

(c) The effective radiated power of FM booster stations shall be limited such that the predicted service contour of such stations computed in accordance with § 73.313, paragraphs (a) through (d) of this chapter, may not extend beyond the area covered by the predicted service contour of the primary station that they rebroadcast and that such FM booster effective radiated power may not exceed 20 percent of the maximum allowable effective radiated power for the primary station's class.

(d) Applications for FM translator stations located within 320 km of the Canadian border will not be accepted if they specify more than 50 watts effective radiated power in any direction or have a 34 dBu interference contour, calculated in accordance with

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§ 74.1204 of this part, that exceeds 32 km. FM translator stations located within 320 kilometers of the Mexican border must be separated from Mexican allotments and assignments in accordance with § 73.207(b)(3) of this chapter and are limited to a transmitter power output of 10 watts or less. For purposes of compliance with that section, FM translators will be considered as Class D FM stations.

(e) In no event shall a station authorized under this subpart be operated with a transmitter power output (TPO) in excess of the transmitter type-accepted rating. A station authorized under this subpart for a TPO that is less than its transmitter type-accepted rating shall determine its TPO in accordance with § 73.267 of this chapter and its TPO shall not be more than 105 percent of the authorized TPO.

(f) Composite antennas and antenna arrays may be used where the total ERP does not exceed the maximum determined in accordance with paragraphs (a), (b) or (c) of this section.

(g) Either horizontal, vertical, circular or elliptical polarization may be used provided that the supplemental vertically polarized ERP required for circular or elliptical polarization does not exceed the ERP otherwise authorized. Either clockwise or counterclockwise rotation may be used. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

(h) All applications must comply with § 73.316, paragraphs (d) through (h) of this chapter.

(i) An application that specifies use of a directional antenna must comply with § 73.316, paragraphs (c)(1) through (c)(3) of this chapter. Prior to issuance of a license, the applicant must: (1) Certify that the antenna is mounted in accordance with the specific instructions provided by the antenna manufacturer; and (2) certify that the antenna is mounted in the proper orientation. In instances where a directional antenna is proposed for the purpose of providing protection to another facility, a condition may be included in the construction permit requiring that before program tests are authorized, a permittee: (1) Must submit the results of a complete proof-of-performance to establish the horizontal plane radiation patterns for both the horizontally and vertically polarized radiation components; and, (2) must certify that the relative field strength of neither the measured horizontally nor vertically polarized radiation component shall exceed at any azimuth the value indicated on the composite radiation pattern authorized by the construction permit.

(j) FM translator stations authorized prior to March 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, *provided* That operation is in conformance in § 74.1203 of this part regarding interference. Applications to modify such FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

35. Section 74.1236 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 74.1235 Emission and bandwidth.**

(a) The license of a station authorized under this subpart allows the transmission of either F3 or other types of frequency modulation (see § 2.201 of this chapter) upon a showing of need, as long as the emission complies with the following:

* * * * *

36. Section 74.1237 is amended by revising paragraph (d) to read as follows:

**§ 74.1237 Antenna location.**

* * * * *

(d) The transmitting antenna of a commonly owned FM translator or booster station shall be located within the protected contour of its FM station, subject to Note, § 74.1231(h) of this part.

37. Section 74.1250 is revised to read as follows:

**§ 74.1250 Transmitters and associated equipment.**

(a) FM translator and booster transmitting apparatus, and exciters employed to provide a locally generated and modulated input signal to translator and booster equipment, used by stations authorized under the provisions of this subpart must be type accepted or notified upon the request of any manufacturer of transmitters in accordance with this section and subpart J of part 2 of this chapter. If acceptable, the apparatus will be included in the FCC's "Radio Equipment List, Equipment Acceptable for Licensing." In addition, FM translator and booster stations may use FM broadcast transmitting apparatus notified or type accepted under the provisions of part 73 of this chapter.

(b) Transmitting antennas, antennas used to receive signals to be rebroadcast, and transmission lines are not subject to the requirement for type acceptance.

(c) The following requirements must be met before translator, booster or exciter equipment will be notified or type accepted in accordance with this section:

(1) Radio frequency harmonics and spurious emissions must conform with the specifications of § 74.1236 of this part.

(2) The local oscillator or oscillators, including those in an exciter employed to provide a locally generated and modulated input signal to a translator or booster, when subjected to variations in ambient temperature between minus 30 degrees and plus 50 degrees centigrade, and in primary supply voltage between 85 percent and 115 percent of the rated value, shall be sufficiently stable to maintain the output center frequency within plus or minus 0.005 percent of the operating frequency and to enable conformance with the specifications of § 74.1261 of this part.

(3) The apparatus shall contain automatic circuits to maintain the power output in conformance with § 74.1235(e) of this part. If provision is included for adjusting the power output, then the normal operating constants shall be specified for operation at both the rated power output and the minimum power output at which the apparatus is designed to operate. The apparatus shall be equipped with suitable meters or meter jacks so that the operating constants can be measured while the apparatus is in operation.

(4) Apparatus rated for transmitter power output of more than 1 watt shall be equipped with automatic circuits to place it in a nonradiating condition when no input signal is being received in conformance with § 74.1283(b) of this part and to transmit the call sign in conformance with § 74.1283(c)(2) of this part.

(5) For exciters, automatic means shall be provided for limiting the level of the audio frequency voltage applied to the modulator to ensure that a frequency swing in excess of 75 kHz will not occur under any condition of the modulation.

38. Section 74.1251 is amended by revising the section heading, revising paragraphs (b) introductory text, (b)(7), (b)(8), removing paragraph (b)(9), and adding paragraph (c) to read as follows:

**§ 74.1251 Technical and equipment modifications.**

* * * * *

(b) Formal application on FCC Form



349 is required of all permittees and licensees for any of the following changes:

* * * * *

(7) Any change of authorized effective radiated power.

(8) Any change in area being served.

(c) Changes in the primary FM station being retransmitted must be submitted to the FCC in writing.

39. Section 74.1261 is revised to read as follows:

**§ 74.1261 Frequency tolerance.**

(a) The licensee of an FM translator or booster station with an authorized transmitter power output of 10 watts or less shall maintain the center frequency at the output of the translator within 0.01 percent of its assigned frequency.

(b) The licensee of an FM translator or booster station with an authorized transmitter power output greater than 10 watts shall maintain the center frequency at the output of the translator or booster station in compliance with the requirement of § 73.1545(b)(1) of this chapter.

40. Section 74.1263 is revised to read as follows:

**§ 74.1263 Time of operation.**

(a) The licensee of an FM translator or booster station is not required to adhere to any regular schedule of operation. However, the licensee of an FM translator or booster station is expected to provide a dependable service to the extent that such is within its control and to avoid unwarranted interruptions to the service provided.

(b) An FM translator or booster station rebroadcasting the signal of a primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted.

(c) The licensee of an FM translator or booster station must notify the Commission of its intent to discontinue operations for 30 or more consecutive days. Notification must be made within 10 days of the time the station first discontinues operation and Commission approval must be obtained for such discontinued operation to continue beyond 30 days. The notification shall specify the causes of the discontinued operation and a projected date for the station's return to operation, substantiated by supporting documentation. If the projected date for the station's return to operation cannot be met, another notification and further request for discontinued operations must be submitted in conformance with the requirements of this section. Within 48 hours of the station's return to operation, the licensee must notify the Commission of such fact. All notification must be in writing.

(d) The licensee of an FM translator or booster station must notify the Commission of its intent to permanently discontinue operations at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

(e) Failure of an FM translator or booster station to operate for a period of 30 or more consecutive days, except for causes beyond the control of the licensee or as authorized pursuant to paragraph (c) of this section, shall be deemed evidence of permanent discontinuance of operation and the license of the station may be canceled at the discretion of the Commission.

41. Section 74.1269 is revised to read as follows:

**§ 74.1269 Copies of rules.**

The licensee or permittee of a station authorized under this subpart shall have a current copy of Volumes I (parts 0, 1, 2 and 17) and III (parts 73 & 74) of the Commission's Rules and shall make the same available for use by the operator in charge. Each such licensee or permittee shall be familiar with those rules relating to stations authorized under this subpart. Copies of the Commission's Rules may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

42. Section 74.1283 is revised to read as follows:

**§ 74.1283 Station identification.**

(a) The call sign of an FM broadcast translator station will consist of the initial letter K or W followed by the channel number assigned to the translator and two letters. The use of the initial letter will generally conform to the pattern used in the broadcast service. The two letter combinations following the channel number will be assigned in order and requests for the assignment of particular combinations of letters will not be considered.

(b) The call sign of an FM booster station will consist of the call sign of the primary station followed by the letters "FM" and the number of the booster station being authorized, e.g., WFCCFM-1.

(c) A translator station authorized under this subpart shall be identified by one of the following methods.

(1) By arranging for the primary station whose station is being rebroadcast to identify the translator station by call sign and location. Three such identifications shall be made during each day: once between 7 a.m. and 9 a.m., once between 12:55 p.m. and 1:05 p.m. and once between 4 p.m. and 6 p.m. Stations which do not begin their broadcast before 9 a.m. shall make their first identification at the beginning of their broadcast days. The licensee of an FM translator whose station identification is made by the primary station must arrange for the primary station licensee to keep in its file, and to make available to FCC personnel, the translator's call letters and location, giving the name, address and telephone number of the licensee or his service representative to be contacted in the event of malfunction of the translator. It shall be the responsibility of the translator licensee to furnish current information to the primary station licensee for this purpose.

(2) By transmitting the call sign in International Morse Code at least once each hour. Transmitters of FM broadcast translator stations of more than 1 watt transmitter output power must be equipped with an automatic keying device that will transmit the call sign at least once each hour, unless there is in effect a firm agreement with the translator's primary station as provided in § 74.1283(c)(1) of this section. Transmission of the call sign can be accomplished by:

(i) Frequency shifting key; the carrier shift shall not be less than 5 kHz nor greater than 25 kHz.

(ii) Amplitude modulation of the FM carrier of at least 30 percent modulation. The audio frequency tone use shall not be within 200 hertz of the Emergency Broadcast System Attention signal alerting frequencies.

(d) FM broadcast booster stations shall be identified by their primary stations, by the broadcasting of the primary station's call signs and location, in accordance with the provisions of § 73.1201 of this chapter.

(e) The Commission may, in its discretion, specify other methods of identification.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 90-28789 Filed 12-7-90; 8:45 am]

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**GENERAL SERVICES ADMINISTRATION**

**48 CFR Parts 503 and 552**

**[APD 2800.12A, CHGE 14]**

**General Services Administration Acquisition Regulation; Procurement Integrity**

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A) chapter 5, is amended to revise section 503.104–5 to make it clear that the GSA Form 3617, Record of Authorization of Access to Proprietary or Source Section Information, is available for use in complying with FAR 3.104–5(d)(2); to revise section 503.104–7 to make it clear that employees are presumed to know if they are procurement officials and that employees who are procurement officials at the same time of their departure from Government service are subject to postemployment restrictions regardless of the dollar value of the procurement; and to revise 552.203–72 to reflect the further suspension of subsection 27(f) of the OFPP Act by section 815 of the FY 1991 DoD Authorization Act, Public Law 101–510.

**EFFECTIVE DATE:** December 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501–1224.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On November 5, 1990, section 27 of the Office of Federal Procurement Policy Act was amended by section 815 of the FY 1991 DoD Authorization Act, Public Law 101–510. Section 815 suspended the postemployment restrictions contained in subsection 27(f) of the Act during the period beginning December 1, 1990, and ending May 31, 1991. Section 815 also provides that contractors need only obtain one certification required by subsection 27(e)(1)(B) from individuals required to certify under that subsection and that this certification be obtained at the earliest possible date after the beginning of the individual's employment or association with that contractor. Federal Acquisition Circular (FAC) 90–2 amended the Federal Acquisition Regulation (FAR) to implement section 815 of Public Law 101–510. In addition, the Office of Federal Procurement Policy, Office of Management and Budget, recommended that certain changes be made in section 503.104–7 of the GSAR in order to clarify the requirements related to the postemployment restrictions applicable to Government employees serving as procurement officials and certifications required from procurement officials leaving Government service. This change revises the GSAR to conform to the FAR as amended by FAC 90–2 and incorporates OFPP's recommended changes.

**B. Executive Order 12291**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291 The exemption applies to this rule

**C. Regulatory Flexibility Act**

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it implements the FAR by providing agency procedures for implementing the procurement integrity provisions at FAR subpart 3.1 Therefore, a Regulatory Flexibility Analysis has not been prepared.

**D. Paperwork Reduction Act**

This rule contains information collection requirements which implement the provisions of Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 100–189 and section 815 of Public Law 101–510. The referenced public laws require contractors to certify, prior to execution of each contract, modification or extension in excess of $100,000, with respect to conduct prohibited by the Act in contracts for the acquisition of leasehold interests in real property. Because the FAR does not apply to acquisitions of leasehold interests in real property a Certificate of Procurement Integrity substantially the same as the FAR Certificate of Procurement Integrity is provided of use in such acquisitions in this rule The information collections have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq ) and assigned control number 3090–0247. The title of collection is under 48 CFR part 503—Procurement Integrity. The estimated annual burden for this collection is 1,688 hours. This is based on an estimated average burden hour per response of approximately 2 hours, 1 response per respondent, and an estimated 300 respondents per year. Comments on the information collection requirement may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503.

**List of Subjects in 48 CFR Parts 503 and 552.**

Government procurement.

1 The authority citation for 48 CFR parts 503 and 552 continues to read as follows:

**Authority:** 40 U.S.C. 486(c).

**PART 503—[AMENDED]**

2. Section 503.104–5 is amended by revising paragraph (c)(4) to read as follows:

**503.104–5 Disclosure, protection, and marking of proprietary and source selection information.**

* * * * *

(c) * * *

(4) The GSA Form 3617, Record of Authorization of Access to Proprietary or Source Selection Information, may be used to comply with the requirement at FAR 3.104–5(d)(2) to maintain the list of individuals authorized access to proprietary or source selection information at the contracting activity.

* * * * *

3. Section 503.104–7 is amended by revising paragraph (a) to read as follows.

**503.104–7 Postemployment restriction applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.**

(a) The supervisor of each departing GSA employee shall remind the departing employee that:

(1) He/she is presumed to know if he/she is a procurement official (see FAR 3.104–8(b)(2));

(2) If he/she is a procurement official at the time of departure, he/she is subject to certain postemployment restrictions (see FAR 3.104–7), and

(3) If he/she leaves the Government during the conduct of a procurement expected to result in a contract or modification in excess of $100,000, he/she must certify to the contracting officer that he/she understands the continuing obligation, during the conduct of the procurement, not to disclose proprietary or source selection information related to the procurement

A procurement is not considered complete until all actions associated with the award or modification of the procurement have been taken. A departing employee must submit the certification to the contracting officer if



he/she participated, in a contract or modification expected to exceed $100,000 that has not been completed, even though his/her duties may be complete at the time of departure. The GSA Form 3606, Procurement Integrity Certification of Departing GSA Procurement Officials, must be used by departing employees to make the required certification to contracting officers. The departing employee may list all contracts or modifications for which he/she is a procurement official on the GSA Form 3606. The original or a copy of the form must be submitted to the contracting officer for each contract or modificaiton listed. Each copy must be annotated to identify the contracting officer who received the original certification and the contract number of the contract that the contracting officer is responsible for so that the contract file with the original certification can be retrieved, if necessary.

* * * * *

**PART 552—[AMENDED]**

4. Section 552.203–72 is amended in the provision by revising paragraph (b)(2); by revising the asterisked footnote to paragraph (b)(1) and moving it to precede the concluding paragraph of (b)(4); and by revising pragraph (e) to read as follows:

**552.203–72 Requirement for Certificate of Procurement Integrity.**

* * * * *

**Requirement for Certificate of Procurement Integrity (November 1990)**

* * * * * *

(b) * * *

(1) * * *

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of *[Name of offeror]* who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27 (a), (b), and (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

* * * * *

* Subsection 27 (a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991

* * * * *

(e) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a onetime certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If the contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., before December 1, 1989), the contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date of a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

Dated: December 4, 1990.

**Richard H. Hopf, III,**

*Associate Administrator for Acquisition Policy*

[FR Doc. 90–28651 Filed 12–7–90; 8:45am]

BILLING CODE 6820–61–M

VOL 55 ISS 237 DE 10 1990 UMI



# Proposed Rules

Federal Register
Vol. 55, No. 237
Monday December 10, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 15, 16 and 19**

**Changes in Reporting Levels for Large Trader Reports Option Monthend Reporting by Contract Markets Reporting Cash Positions in the Grains (Including Soybeans) and Cotton**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission has completed a review of its reporting requirements forth in parts 15, 16 and 19 of the regulations under the Commodity Exchange Act ("Act"). As a result of this review, the Commission is proposing changes to a number of its rules. These proposed changes affect the following: reporting levels at which FCMs, clearing members, foreign brokers and traders must file large trader reports; option month-end reports filed by contract markets; and cash position reports.

**DATES:** Comments must be received by February 8, 1991.

**ADDRESSES:** Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, and should make reference to "large trader reports."

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, Division of Economic Analysis, 2033 K Street NW., Washington, DC 20581, Telephone (202) 254-3310.

**SUPPLEMENTARY INFORMATION:**

### I. Paperwork Reduction Act Notice

Public reporting burden for this collection of information has been estimated to average .1496 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038–0009), Washington, DC 20503.

### II. Background

The Commission has completed a review of its reporting requirements set forth in parts 15, 16 and 19 of the regulations under the Commodity Exchange Act ("Act"). As a result of this review, the Commission is proposing changes to a number of its rules. These proposed changes affect the following: reporting levels at which FCMs, clearing members, foreign brokers and traders must file large trader reports; option month-end reports filed by contract markets; and cash position reports.

*Reporting Levels*

Reporting levels are set in futures to ensure that the Commission receives adequate information to carry out its market surveillance programs. These are designed to detect and prevent market congestion and price manipulation and to enforce speculative position limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants and other matters of public concern.

Generally, parts 17 and 18 of the regulations require reports from members of contracts markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," *i.e.*, any open position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03 of the regulations.

Members of contract markets, FCMs and foreign brokers who carry accounts in which traders hold "reportable positions" are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a form 103 showing positions and transactions in the contract market specified in the call.

The Commission periodically reviews information concerning trading volume, open interest and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage is adequate for effective market surveillance. In cases where market conditions have changed, so that coverage appears to have become more than that required, the Commission may propose to raise reporting levels as part of its ongoing effort to reduce the reporting burden. In other cases, where the current reporting level appears too high for adequate coverage, the Commission may propose to lower the reporting level.

The Commission's most recent review of reporting levels indicates that the size of trading volume, open interest and positions of individual traders in futures traded on coffee, long-term U.S. Treasury notes, medium-term U.S. Treasury notes and Eurodollars enable the Commission to raise reporting levels for those commodities as follows. In coffee from 25 contracts to 50 contracts; in long-term U.S. Treasury notes from 300 contracts to 400 contracts, in medium-term U.S. Treasury notes from 25 contracts to 300 contracts; and in Eurodollars from 400 contracts to 500 contracts.

*Option Monthend Reporting*

The Commission has been petitioned by several exchanges under rule 13.2, 17 CFR 13.2 (1990), to repeal Commission rule 16.04, 17 CFR 16.04 (1990). That rule requires each designated contract market to submit to the Commission separate monthly reports for options on futures contracts and options on physicals detailing all open option positions held at month-end by category of commercial and noncommercial trader. The petitioners, the Coffee, Sugar and Coca Exchange, Inc., and Comex, Inc., assert in their petition that, in light of the permanent status of the Commission's rules permitting exchange-traded commodity options, it is no longer necessary to collect the information required by those reports.



The petition for repeal of rule 16.04 was supported by correspondence from the Chicago Board of Trade and the Chicago Mercantile Exchange. Additionally, the petitioners, as well as those supporting the petition, cited the cost to the exchanges to compile, edit and transmit those data to the Commission on a continuing basis as a reason for repeal of the rule.

A major tenet of the philosophy regarding the creation of the program for exchange-traded options has been to lodge with the exchanges "significantly greater self-regulatory duties and responsibilities on boards of trade than is presently the case for futures trading, particularly with respect to the protection of the public from sales practice abuses * * *." 46 FR 54500, 54502 (November 3, 1981). In keeping with this philosophy, the Commission provided under rule 16.04 that the exchanges compile monthly data on option trading that is similar to that produced by the Commission with regard to futures trading. These reports provide for the tabulation of positions, long and short, by commercial and noncommercial trader. They are made available to the public by the Commission, along with the futures-related "Commitments of Traders Reports," which are generated by the Commission. Moreover, such reports are used by the Commission from time to time to illustrate uses made of the futures and options markets to Congress and others.

The Commission initially adopted rule 16.04 as part of a broader array of reporting requirements under the pilot option program. In particular, the exchanges were also required to provide option large-trader data for surveillance and to conduct periodic market-wide surveys to ascertain the commercial usage of these markets. 17 CFR 16.02, 16.03, and 16.05 (1982). The Commission deleted the requirement to conduct surveys when it terminated the pilot option program, explaining that it had "not found it effective to * * * rely upon exchanges to conduct market-wide surveys." 51 FR 17471. However, the Commission did not amend the requirement under Commission rule 16.04 that exchanges compile month-end data relating to option positions. Rather, the Commission continued to require that the exchanges shoulder the responsibility for compiling those data. Early in the life of the option program, option large trader data could not be used as a reliable guide to indicate commercial usage of the markets since, initially, open interest in options was relatively small and relatively few traders held positions of a reportable size.[1] Moreover, the Commission, in maintaining this requirement, assumed, in part, that such option data would be similarly useful to the public as are the futures-related data and, therefore, should continue to be available.

The Commission provides the information concerning options and futures to the public on a subscription, as well as an ad hoc, basis. A review of the Commission's subscription list indicates that public demand for the option data has dwindled in recent years. Currently, the Commission has no subscribers for the options publication and relatively few requests each year for those data on specific dates or for specific markets. In terms of its own use, open interest in options has grown to the point that reliable estimates of commercial usage figures can be made using option large-trader data. In view of this and the costs to the exchanges to provide month-end data, the Commission is proposing to repeal rule 16.04. It should be noted that, as a consequence of repealing rule 16.04, data will no longer be publicly available since the Commission does not itself intend to tabulate these data. Accordingly, during the comment period, the Commission specifically invites interested parties to comment on the importance of these data, and whether these or alternative data concerning option large trader positions should continue to be available through other reports.[2]

*Cash Position Reports*

The Commission requires that persons owning or controlling futures positions in commodities for which the Commission has established speculative limits file reports concerning their long and short cash positions, *i.e.*, stocks of the commodities owned and the quantity of their fixed-price purchase and sale commitments, 17 CFR part 19 (1990). These commodities include the grains, the soybean complex and cotton. 17 CFR part 150 (1990). The primary purpose for these reports is to determine if the futures positions of traders that exceed the Commission's speculative limits qualify as hedging as defined in section 1.3(z) of the Commission's regulations.[3] Additionally, merchants, processors and dealers in cotton must provide information on the quantity of their "call purchases and sales." Call purchases and sales are unfixed price purchase and sales commitments transacted as a basis price referenced to a particular cotton futures delivery month.[4] Information concerning call purchases and sales is used as a basis for the Commission's weekly "Cotton on Call" report.

With the exception of merchants, dealers and processors in cotton, reporting levels for cash position reports (CFTC Forms 204 and 304) are set at the speculative limit levels defined in rule 150.2, 17 CFR 150.2 (1990). Merchants, dealers and processors in cotton must file reports at the lower levels specified in rule 15.03. This lower level for cotton is to ensure adequate coverage of call sales and purchases on the "Cotton on Call" report. At this time, the Commission is proposing amendments to part 19 which would increase the timeliness of the report, reduce the reporting burden on cotton processors and require the reporting of "equity cotton."

Commission rule 19.10 allows Forms 204 and 304 to be mailed and postmarked by midnight of the second business day and the first business day, respectively, following the week of the report. Reports that are mailed, particularly from traders in foreign locations, are not timely either for enforcing speculative position limits or for inclusion in the "Cotton on Call" report which is released on Thursdays. The development and widespread use of facsimile machines and other information transmission media would appear to offer a means to eliminate these delays.

Recently, Commission staff have encouraged firms filing Forms 204 and 304 to file via facsimile. Most firms have cooperated with this request, although a few continue to mail their reports. It does not appear that it would be

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[1] Commission rule 15.00(b)(2)(i) defines a reportable position in options as any one open contract position on any one contract market in the put option or separately in the call option of a specified option expiration date * * * which, at the close of the market on any business day equals or exceeds 25 options on futures contracts or 25 options on physicals, except as otherwise approved by the Commission. 17 CFR 15.00 (1990).

[2] Commission rule 1.37 requires that FCMs and members of contract markets record the occupation of each commodity option account and indicate whether the option customer is a commercial or noncommercial for each commodity option. The Commission is not proposing that this requirement be deleted since the Commission intends to use such codes when it is necessary to issue special calls under part 21 of its regulations.

[3] Among other things, the Commission enumerates as bona fide hedges those short futures positions that do not exceed the quantities of the commodity owned and the quantities of fixed-price purchases of the commodity and those long futures positions that do not exceed the quantities of fixed-priced sales of the commodity

[4] For example, an unfixed price purchase may be transacted at so many cents per pound above or below the December 1990 cotton future traded on the New Your Cotton Exchange.

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burdensome for such firms to either use facsimile to transmit their forms or alternatively report the information by telephone to the Commission prior to mailing the forms. In view of this, the Commission is proposing to amend rule 19.10 to require that Forms 204 and 304 be received in the appropriate Commission office on the second business day following the week of the report with the proviso that such reports may be telefaxed or the information reported by telephone to the Commission and the report mailed.[6] The Commission is specifically interested in comments on any additional burdens this may impose on traders.[6]

As noted previously, cotton merchants, dealers and processors must file CFTC Form 304 at a lower reporting level than other traders in cotton to afford adequate coverage of call purchases and sales for the Commission's weekly "Cotton On Call" report. The Commission has noted that cotton processors provide little or no information on call sales on the CFTC Form 304. Moreover, processors' call purchases are not used by the Commission in its weekly report since call purchases may duplicate information provided by merchants and dealers. Since the "Cotton on Call" report is the primary purpose for the lower reporting level for merchants, processors and dealers, the Commission is proposing to amend rules 15.01(d) and 19.00(a)(2), and the title to part 19 to require cotton processors to file reports pursuant to part 19 only if their futures position exceeds the higher levels specified in rule 150.3 rather than those specified in rule 15.02.[7]

The Commission's last proposal is to amend its rules concerning cotton cash reports to provide for the reporting of the quantity of equity in cotton held by the Commodity Credit Corporation under the provision of the Upland Cotton Program of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture (equity cotton).

This program is intended both to support the income of cotton growers and to make U.S. cotton prices competitive abroad. Cotton producers who wish to receive the program's benefits must deposit graded cotton in a licensed warehouse. A producer with cotton in the loan program may redeem the cotton, forefeit the cotton to the government, or at any time sell the equity in such cotton. Merchants who buy equity cotton commit to repaying the loan and redeeming the cotton unless the equity cotton is resold. Equity cotton is redeemed from the loan program within the duration of the loan period at the lower of the adjusted world price (AWP) or the sum of the loan rate and up to ten months' carrying charges.

So long as the AWP is higher than the loan rate plus carrying charges, a purchase of equities is in effect a fixed-price purchase because the total cost of the cotton is expected to be the loan rate plus carrying charges plus the price paid for the equities. A merchant who purchases such equities may hedge them for the same reason it is desirable to hedge any cotton purchases; if cotton prices go down, a loss will result.

The Commission notes that there has been some confusion within the cotton industry on how (or whether) holdings of equity cotton should be reported on CFTC Form 304 reports. Commission staff interviewed 47 domestic cotton merchants filing cash position reports in cotton. Thirty-two of the 47 hold or have recently held cotton equities. Of these 32, 11 reported cotton equities with their fixed-price purchases, 4 reported them with their call purchases, 3 reported them with stocks, and 15 did not report their cotton equities at all. The Commission believes that it is important that traders report their holding of equity cotton on CFTC Form 304 reports since, as noted above, equity cotton may represent a part of their hedgeable cash position. Since the hedging characteristics of a cash position in equity cotton may differ from other cash cotton positions, the information on equity cotton should be reported separately from other cash cotton positions. The Commission, therefore, is proposing to amend rule 19.02 to require the reporting of cotton equities and to revise its form 304 to allow the separate reporting of such information.[8]

## III. Related Matters

### *A. The Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires that agencies, in proposing rules, consider the impact of those rules on small businesses. These amendments affect large traders and futures commission merchants and other similar entities such as foreign brokers and foreign traders. The Commission had defined "small entities" as used by the Commission in evaluating the impact of its rule in accordance with the RFA. 47 FR 18618–18621 (April 30, 1982).

In that statement, the Commission concluded that large traders and futures commission merchants are not considered to be small entities for purposes of the RFA. In this regard, the proposed amendments to reporting requirements fall mainly upon futures commission merchants. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. Thus pursuant to section 3(a) of the RFA (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any firm which believes that these rules would have a significant economic impact upon its operations.

### *B. Paperwrwork Reduction Act*

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget.The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden Hours Per Response..... .1496
Number of Respondents..... 4,088
Frequency of Response..... 22.46

Persons wishing to comment on the information which would be required by these proposed rules should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7304.

[6] The Commission, in proposing to amend this regulation, recognizes that certain firms may require more than one business day to prepare the information. This may be particularly true for firms that must collect the information from subsidiaries.

[6] The Commission is also proposing to amend the introductory language to § 19.10 to clarify that this section does not apply to reports filed in response to special calls made under § 19.00(a)(3). Rule 19.00(a)(3) specifies that reports must be filed within one business day of receipt of the special call.

[7] The Commission is also proposing to amend rule 15.01(d) by using two paragraphs to set forth the current requirements. Proposed § 15.01(d)(1) describes persons reportable under part 19 at the levels set forth in § 150.3, and § 15.01(d)(2), those persons reportable at the levels set forth in § 15.03. The Commission is also correcting rule 15.01(d) by deleting reference to § 15.03(b). Deletion of this reference was inadvertently omitted when § 15.03(b) was previously deleted from the regulations (52 FR 38923, October 20, 1987).

[8] The Commission is also proposing corrections and clarifying amendments to rule 19.02. The corrections delete reference to §§ 19.01 through 19.04 and the sentence immediately following this reference. The above material was inadvertently retained when §§ 19.03 and 19.04 were deleted (52 FR 38923, October 20, 1987). The current proposal also changes the introductory text to § 19.02(a) to clarify the information required.



Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, [202] 254-3310.

**List of Subjects**

*17 CFR Part 15*

Brokers, Reporting and recordkeeping requirements.

*17 CFR Part 16*

Commodity futures, Reporting and recordkeeping requirements.

*17 CFR Part 19*

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1990), the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 5, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.01 is proposed to be amended by revising the introductory text of paragraph (d) and adding paragraphs (d) (1) and (2) as follows:

**§ 15.01 Persons required to report.**

Pursuant to the provisions of the Act, the following persons shall file reports with the Commission with respect to such commodities, on such forms, at such time, and in accordance with such directions as are hereinafter set forth:

* * * * *

(d) Persons, as specified in part 19, either:

(1) Who hold or control positions for future delivery that exceed the amounts set forth in § 150.2 for the commodities enumerated in that section, any part of which constitutes bona fide hedging positions (as defined in § 1.3(z)); or

(2) Who are merchants or dealers of cotton holding or controlling positions for future delivery in cotton that equal or exceed the amount set forth in § 15.03.

3. Section 15.03 is proposed to be revised to read as follows:

**§ 15.03 Quantities fixed for reporting.**

The quantities for the purpose of reports filed under parts 17 and 18 of this chapter are as follows:

| Commodity | Quantity |
|---|---|
| Wheat (bushels) | 500,000 |
| Corn (bushels) | 500,000 |
| Soybeans (bushels) | 500,000 |
| Oats (bushels) | 300,000 |
| Cotton (bales) | 5,000 |
| Soybean oil (contracts) | 150 |
| Soybean meal (contracts) | 150 |
| Live cattle (contracts) | 100 |
| Feeder cattle (contracts) | 50 |
| Hogs (contracts) | 50 |
| Sugar No. 11 (contracts) | 200 |
| Sugar No. 14 (contracts) | 100 |
| Cocoa (contracts) | 50 |
| Coffee (contracts) | 50 |
| Copper (contracts) | 100 |
| Gold (contracts) | 200 |
| Silver bullion (contracts) | 100 |
| Platinum (contracts) | 50 |
| No. 2 heating oil (contracts) | 150 |
| Crude oil (contracts) | 250 |
| Unleaded gasoline (contracts) | 100 |
| Long-term U.S. Treasury bonds (contracts | 500 |
| GNMA (contracts) | 100 |
| Three-month (13 week) U.S. Treasury bills (contracts) | 100 |
| Long-term U.S. Treasury notes (contracts) | 400 |
| Medium-term U.S. Treasury notes (contracts) | 300 |
| Three-month Eurodollar time deposit rates (contracts) | 500 |
| Foreign currencies (contracts) | 200 |
| Standard and Poor's 500 stock price index (contracts) | 300 |
| New York Stock Exchange composite index (contracts) | 50 |
| Amex major market index-mmi (contracts) | 50 |
| Municipal bonds (contracts) | 50 |
| Value line average index (contracts) | 50 |
| All other commodities (contracts) | 25 |

## PART 16—REPORTS BY CONTRACT MARKETS

4. The authority citation for part 16 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12A.

**§ 16.04 [Removed and reserved]**

5. Section 16.04 is proposed to be removed and reserved.

## PART 19—REPORTS BY PERSONS HOLDING BONA FIDE HEDGE POSITIONS PURSUANT TO § 1.3(z) OF THIS CHAPTER AND BY MERCHANTS AND DEALERS IN COTTON

6. The authority citation for part 19 continues to read as follows:

**Authority:** 7 U.S.C. 6g(i) and 12a(5).

7. The heading for part 19 is proposed to be revised as set forth above.

8. Section 19.00 is proposed to be amended by revising paragraph (a)(2) and the introductory text of paragraph (b) as follows:

**§ 19.00 General provisions.**

(a) * * *

(2) Merchants and dealers of cotton holding or controlling positions for futures delivery in cotton that are reportable pursuant to § 15.03(b)(1)(ii) of this chapter, or

* * * * *

(b) *Information required.* Persons required to file series '04 reports shall show the information specified in § 19.01 of this part if the reportable futures position is in wheat, corn, oats, soybeans, soybean meal or soybean oil; and § 19.02 of this part if the reportable futures position is in cotton. The manner of reporting the information required in §§ 19.01 and 19.02 of this part is subject to the following:

* * * * *

9. Section 19.02 is proposed to be revised as follows:

**§ 19.02 Cash reports pertaining to futures positions in cotton.**

Persons required to file '04 reports under § 19.00(a) of this part shall file CFTC Form 304 reports containing the following information:

(a) The quantity of equity in cotton held by the Commodity Credit Corporation under the provisions of the Upland Cotton Program of the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) The quantity of certificated cotton owned.

(c) For all cotton, cotton products and each commodity cross hedged in cotton futures—the quantity of open fixed-price spot positions (long and short) including:

(1) Unfilled open fixed-price purchase commitments;

(2) Stocks on hand (owned and at fixed prices), and the quantity of the commodity in process of manufacture, and finished products; and

(3) Unfilled fixed-price-sale commitments of the commodity and of finished products.

(d) The quantity of call cotton bought or sold on which the price has not been fixed, together with the respective futures on which based. As used herein, call cotton refers to spot cotton bought or sold, or contracted for purchase or sale, at a price to be fixed later based upon a specified future.

10. Section 19.10 is proposed to be amended by revising the introductory paragraph as follows:

**§ 19.10 Time and place of filing reports.**

Except for reports filed in response to special calls made under § 19.00(a)(3), each report shall be filed at the appropriate Commission office specified in paragraph (a) or (b) of this section not later than the second business day

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following the date of the report. Reports may be transmitted by facsimile or, alternatively, information on the form may be reported to the appropriate Commission office by telephone and the report mailed to the same office, post marked not later than midnight of its due date.

* * * * *

Issued in Washington, DC, this third day of December 1990, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 90-28748 Filed 12-7-90; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[EL-366-89]

RIN 1545-AO09

## Information With Respect to Certain Foreign-Owned Corporations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed Income Tax Regulations relating to information which must be reported and records which must be maintained by certain foreign-owned corporations under sections 6038A and 6038C of the Internal Revenue Code. These regulations will provide appropriate guidance for affected reporting corporations and related parties. The regulations will affected any reporting corporation, that is, certain domestic corporations or foreign competitors, as well as certain related parties of the repqrting corporation.

**DATES:** Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for Friday, February 22, 1991, at 10 a.m., must be received by Friday, February 8, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Concerning the hearing on the proposed rulemaking, Felicia Daniels, Regulations Unit, 202-566-3935 (not a toll-free call); concerning a particular regulation section, Carol P. Tello or Grace Perez-Navarro of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel (202-377-9493) (Ms. Tello), 202-287-4851) (Ms. Perez-Navarro), not toll-free calls).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224. The collection of information in this regulation is in §§ 1.6038A-2 and 1.6038A-3. This information is required by the Internal Revenue Service to determine the correct tax treatment of transactions between 25-percent foreign-owned corporations engaged in U.S. trade or business and related parties. The likely respondents for Form 5472 are corporations.

These estimates are an approximation of the average time expected to be necessary for record maintenance and collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or lesser time, depending on their particular circumstances.

Estimated total annual reporting and recordkeeping burden: 1,539,000 hours.

The estimated average annual reporting burden per respondent is 14 hours and 26 minutes.

The estimated average annual recordkeeping burden per recordkeeper is 10 hours.

Estimated number of respondents/recordkeepers: 63,000.

Estimated annual frequency of responses: 1.

### Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 6038A and 6038C of the Internal Revenue Code of 1986. These regulations are generally proposed to be effective for taxable years beginning after July 10, 1989. However, special effective date rules are proposed to provide that certain provisions sections will be effective as of December 10, 1990, except as follows:

| | |
|---|---|
| § 1.6038A-1(c) | July 10, 1989 |
| § 1.6038A-2 | July 10, 1989 |
| § 1.6038A-3 | March 20, 1990 |
| § 1.6038A-4 | July 10, 1989 |
| § 1.6038A-6 | November 5, 1990 |

### Explanation of Provisions

*Prior Law*

Prior to the enactment of the Revenue Reconciliation Act of 1989, section 6038A required an annual filing of an information return, Form 5472, by a domestic corporation (or a foreign corporation engaged in trade or business within the United States) that is controlled by a foreign person. A person controlled a corporation if that person owned stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock. If a corporation failed to furnish the information required under the statute, a penalty of $1,000 was imposed for each taxable year with respect to which such failure occurred. An additional penalty of $1,000 was imposed for each 30-day period during which such failure continued after the expiration of a 90-day period following the mailing of a notice of failure. The increase in the additional penalty was limited to $24,000.

*Statutory Provision*

The Revenue Reconciliation Act of 1989 amended section 6038A in several significant ways. First, the threshold of foreign ownership subjecting a corporation to the application of section 6038A was lowered from 50 percent to 25 percent. Second, amended section 6038A requires the maintenance of records as prescribed by regulations.

The penalty for failure either to file timely the annual information return or to maintain (or to cause another to maintain) the prescribed records is $10,000 for each taxable year with respect to which such failure occurs. The former maximum additional penalty of $24,000 has been deleted. If the failure continues for more than 90 days after the day on which notice is given by the Service of such failure, an additional penalty of $10,000 is assessed for each 30-day period or part thereof that the failure continues.

In addition to the above changes, the 1989 Act added a new section, section 6038A(e)(1), requiring a foreign related party that engages in transactions with a reporting corporation to authorize the reporting corporation to act as its agent solely for purposes of sections 7602, 7603, and 7604.

If the related party does not authorize the reporting corporation to act as its agent, the Secretary shall apply the noncompliance penalty with respect to transactions between the related party and the reporting corporation.



If the noncompliance penalty applies, the amount allowed as a deduction for amounts paid or incurred to the related party and for the cost of goods purchased from the related party or sold by the reporting corporation to the related party is determined by the Secretary in his sole discretion based upon such probative information as the Secretary may choose to obtain. See H.R. Conf. Rep. 386, 101st Cong., 1st Sess. 593-595 (1989).

The noncompliance penalty may also be applied to a transaction between the related party and the reporting corporation if the reporting corporation does not substantially comply with a summons for records or testimony relating to such transaction.

The Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) added section 6038C to the Internal Revenue Code. Foreign corporations engaged in U.S. trade or business are subject to the provisions of section 6038C, which are similar to the provisions of section 6038A. Additional regulations under section 6038C will be issued at a later time which will reflect the 1990 Act changes with respect to such corporations.

*Comments*

Comments are solicited with respect to ways to permit related foreign corporations to file a single agency designation, in a manner similar to the rules contained in paragraph (g) of § 1.6038A-1 regarding the ability of the common parent of an affiliated group to file a consolidated Form 5472 for all related party transactions of the U.S. consolidated return group and to be designated as agent for related parties.

The *de minimis* rule of § 1.6038A-1(h) was developed after consideration of case studies submitted by international examiners. Comments from taxpayers are solicited.

Comments and case studies are also solicited on whether the various tests for determining material profit and loss statements under § 1.6038A-3(c)(3) are appropriate. In particular, comments regarding the existing accounting and business practices for maintaining profit and loss statements are requested. Objections to the profit and loss statement standards set forth in these regulations should be accompanied by proposed alternatives. Comments also are solicited on when a profit margin analysis, rather than a return on assets analysis, might be appropriate for the high profit test under paragraph (c)(6) of § 1.6038A-3.

### Explanation of Proposed Regulations

*General Requirement and Definitions*

Section § 1.6038A-1 provides the general rule that certain foreign-owned U.S. corporations and foreign corporations engaged in trade or business within the United States (reporting corporations) must furnish certain information annually on an information return, Form 5472, and maintain records relating to transactions between the reporting corporation and a foreign related party as described in § 1.6038A-3. Definitions are provided for the terms reporting corporation, 25-percent foreign-owned, 25-percent foreign shareholder, related party, foreign person, and foreign related party. Special rules are provided for U.S. consolidated return groups.

*Requirement of Return*

Section § 1.6038A-2 describes the information that must be furnished annually on Form 5472. Reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in § 1.864-4(c)(5)(i) (formerly excepted from filing Form 5472) will be subject to the information filing requirement of § 1.6038A-2.

*Record Maintenance*

Section § 1.6038A-3 provides the general rule that records to be maintained by a reporting corporation are those records sufficient to establish the correctness of the federal income tax return (including the correct treatment of transactions with related parties) of the reporting corporation. Records prepared, maintained, or possessed by a foreign related party relating to transactions between the reporting corporation and any related parties must be maintained in the United States, except where an election is in effect under paragraph (f) of § 1.6038A-3. A record may be maintained in the United States by a party other than the reporting corporation; however, the reporting corporation remains liable for the proper compilation and maintenance of such records.

The regulations generally are based upon the view that the requirement to "maintain" records does not require their creation. However, basic accounting records and material profit and loss statements must be created if they are not otherwise maintained. In connection with record maintenance and production, labels placed upon documents by the taxpayer shall not control.

Some reporting corporations may be unfamiliar with record maintenance practices generally adopted in the United States under the guidance of section 6001, its regulations, and longstanding administrative practice developed thereunder. In addition, such corporations may not be aware of the specific information that would be relevant to an examination of their related party transactions. In the absence of detailed guidance, such reporting corporations might not retain the information that is required for U.S. tax purposes. Therefore, six general categories of records with respect to related party transactions are provided as a safe harbor. Reporting corporations that maintain records in the categories that apply to the particular industry or business of the reporting corporation, to the extent such records may be relevant to the correct U.S. tax treatment of the transactions between related parties, are deemed to meet the record maintenance requirements of section 6038A.

Reporting corporations may enter into agreements with the District Director or the Assistant Commissioner (International) specifying what records must be maintained to satisfy the maintenance requirements for such reporting corporations under this section. Agreements with respect to retention of machine-sensible records under Rev. Proc. 86-19 may also be executed. An annual election to maintain records outside the United States is provided if the reporting corporation agrees to produce the records as prescribed by the regulations. The District Director or the Assistant Commissioner (International) may invalidate the election to maintain records outside the United States under certain circumstances.

*Monetary Penalty*

Section 1.6038A-4 provides for the imposition of a monetary penalty of $10,000 for each taxable year in which a reporting corporation fails to timely file Form 5472, fails to maintain or cause another to maintain the records described in § 1.6038A-3, or fails to produce the records within the time prescribed in § 1.6038A-3. A rule permitting a reporting corporation to show reasonable cause as to why the failure occurred is provided. The reasonable cause exception is to be interpreted in accordance with the legislative history. See S. Prt. 101-[ ], 101st Cong., 1st Sess. 117 (1989) and H. Conf. Rep. No. 386, 101st Cong., 1st Sess. 593 (1989). Failure to maintain records is determined upon the basis of the overall compliance with the records maintenance requirement by a reporting

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corporation. Finally, rules relating to the increase in the penalty where the failure continues after notification are provided.

*Authorization of Agent*

Section 1.6038A–5 provides that the noncompliance penalty in § 1.6038A–7 shall apply to any transaction between a related party and a reporting corporation, unless the related party authorizes the reporting corporation to act as its limited agent solely for purposes of sections 7602, 7603, and 7604. When the proposed regulations become final, a related party annually shall authorize the reporting corporation to act as its limited agent on Form 5472 or within 30 days of a request from the Service. Until official Internal Revenue Service forms are available, the authorization as set forth in the regulations should be utilized. A procedure is provided for the retroactive authorization of an agent with respect to inadvertent transactions with related parties when the relationship is attenuated and certain other requirements are met. Additionally, a provision allows for the authorization by a foreign related party to be deemed under certain circumstances. A deemed authorization is effective only for transactions entered into prior to the time when the reporting corporation knew or had reason to know that the related party was in fact related.

*Failure to Furnish Information*

Section 1.6038A–6 provides that the noncompliance penalty contained in § 1.6038A–7 may be applied under certain circumstances when information requested by the Service is not produced. A special rule permits the District Director or the Assistant Commissioner (International) to choose not to apply the noncompliance penalty when, in the discretion of the District Director or the Assistant Commissioner (International), the failure to furnish information is *de minimis*.

*Noncompliance Penalty*

Section 1.6038A–7 provides that if a foreign related party does not authorize the reporting corporation to act as its agent as required by § 1.6038A–5 or, if following a failure to furnish information as required by § 1.6038A–6, the District Director or the Assistant Commissioner (International) determines that § 1.6038A–7 should apply, the District Director or the Assistant Commissioner (International) shall determine the amount of deductions allowed for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction and the cost to the reporting corporation of any property acquired in such transaction from the related party or transferred to the related party. The amount of the deduction or cost to the reporting corporation shall be determined in the sole discretion of the District Director or the Assistant Commissioner (International). See H. Conf. Rep. 386, 101st Cong., 1st Sess. 593–95 (1989).

*Section 6038C*

Corporations subject to section 6038C generally will be subject to the rules contained in §§ 1.6038A–1 through 1.6038A–7.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comments on their impact on small business.

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on Friday, February 22, 1991.

**Drafting Information**

The principal authors of these regulations are Carol P. Tello and Grace Perez-Navarro of the Office Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

**List of Subjects in 26 CFR §§ 1.6000–1 Through 1.6109–2**

Income taxes, Administration and procedure, Payment of tax.

**Adoption of Amendment to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAX REGULATIONS**

**Paragraph 1.** The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805. * * * Sections 1.6038A–1, 1.6038A–2, 1.6038A–3, 1.6038A–4, 1.6038A–5, 1.6038A–6, and 1.6038A–7 also issued under 26 U.S.C. 6038A. * * *

**§ 1.6038A–1 [Removed]**

**Par. 2.** Section 1.6038A–1 is removed.

**Par. 3.** New §§ 1.6038A–0 through 1.6038A–7 are added to read as follows:

**§ 1.6038A–0 Table of contents.**

This section lists the captions that appear in the regulations under section 6038A.

*§ 1.6038A–1 General requirements and definitions.*

(a) Purpose and scope.
(b) In general.
(c) Reporting corporation.
(1) In general.
(2) 25-percent foreign-owned.
(3) 25-percent foreign shareholder.
(i) In general.
(ii) Totalvoting power and value.
(d) Related party.
(e) Attribution rules.
(1) Attribution under section 318.
(2) Attribution of transactions with related parties engaged in by a partnership.
(f) Foreign person.
(g) Foreign related party.
(h) Safe harbor for reporting corporations with *de minimis* value of related party transactions.
(1) In general.
(2) Aggregate value of gross payments made or received.
(i) Consolidated return groups.
(1) Required information.
(2) Authorization of agent and retention of records.
(3) Monetary penalties.
(j) Examples.
(k) Effective dates.
(1) Section 1.6038A–1.
(2) Section 1.6038A–2.
(3) Section 1.6038A–3.
(4) Section 1.6038A–4.
(5) Section 1.6038A–5.
(6) Section 1.6038A–6.
(7) Section 1.6038A–7.

*§ 1.6038A–2 Requirement of return.*

(a) Form 5472 required.
(1) In general.
(2) Reportable transaction.
(b) Contents of return.
(1) Reporting corporation.
(2) Related party.
(3) Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation.
(4) Foreign related party transactions involving nonmonetary consideration or no consideration.
(5) Additional information.
(6) Reasonable estimate.
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(7) Small amounts.
(8) Accrued payments and receipts.
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(e) Duplicate filing required.
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(2) Transactions solely with a domestic reporting corporation.
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(g) Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation.
(h) Effective dates for certain reporting corporations.

*§ 1.6038A–3 Record maintenance.*

(a) General maintenance requirements.
(1) Section 6001 and section 6038A.
(2) Safe harbor.
(b) Other maintenance requirements.
(1) Records that must be maintained in the United States.
(2) Indirectly related records.
(3) Foreign related party or third-party maintenance.
(4) Translation of records.
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(c) Specific records to be maintained for safe harbor.
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(3) Material profit and loss statements.
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*§ 1.6038A–4 Monetary penalty.*

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*§ 1.6038A–5 Authorization of agent.*

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*§ 1.6038A–6 Failure to furnish information.*

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*§ 1.6038A–7 Noncompliance.*

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(b) Determination of the amount.
(c) Separate application.
(d) Effective dates.

**§ 1.6038A–1 General requirements and definitions.**

(a) *Purpose and scope.* This section and §§ 1.6038A–2 through 1.6038A–7 provide rules for certain foreign-owned U.S. corporations and foreign corporations engaged in trade or business within the United States (reporting corporations) relating to information that must be furnished, records that must be maintained, and the authorization of the reporting corporation to act as agent for related foreign persons for purposes of sections 7602, 7603, and 7604 that must be executed. Section 6038A (e) and this § 1.6038A–1 require that a reporting corporation furnish certain information annually and maintain certain records relating to transactions between the reporting corporation and certain related parties. This § 1.6038A–1 also provides definitions of terms used in section 6038A. Section 1.6038A–2 provides guidance concerning the information to be submitted and the filing of the required return. Section 1.6038A–3 provides guidance concerning the maintenance of records. Section 1.6038A–4 provides guidance concerning the application of the monetary penalty for the failure either to furnish information or to maintain records. Section 1.6038A–5 provides guidance concerning the authorization for an agent for purposes of sections 7602, 7603, and 7604. Section 1.6038A–6 provides guidance concerning the failure to furnish information requested by a summons. Finally, § 1.6038A–7 provides guidance concerning the application of the noncompliance penalty for failure by the related party to authorize an agent or for the reporting corporation to substantially comply with a summons.

(b) *In general.* A reporting corporation must furnish the information described in § 1.6038A–2 by filing an annual information return (Form 5472), and must maintain records as described in § 1.6038A–3.

(c) *Reporting corporation*—(1) *In general.* For purposes of section 6038A, a reporting corporation is either a domestic corporation that is 25-percent foreign-owned as defined in paragraph (c)(2), or a foreign corporation that is 25-percent foreign-owned and engaged in trade or business within the United States. After November 4, 1990, a foreign corporation engaged in a trade or business within the United States at any time during a taxable year is a reporting corporation. See section 6038C.

(2) *25-percent foreign-owned.* A corporation is 25-percent foreign-owned if it has at least one 25-percent foreign shareholder at any time during the taxable year.

(3) *25-percent foreign shareholder*—(i) *In general.* A foreign person is a 25-percent foreign shareholder of a corporation if such person owns at least 25 percent of—

(A) The total voting power of all classes of stock of such corporation entitled to vote, or

(B) The total value of all classes of stock of such corporation.

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(ii) *Total voting power and value.* In determining whether one foreign person owns 25 percent of the total voting power of all classes of stock of a corporation entitled to vote or 25 percent total value of all classes of stock of a corporation, consideration will be given to all the facts and circumstances of each case, under principles similar to § 1.957–1(b)(2) (consideration of arrangements to shift formal voting power away from the foreign person).

(d) *Related party.* The term "related party" means—

(1) Any 25-percent foreign shareholder of the reporting corporation,

(2) Any person who is related within the meaning of section 267(b) or 707(b)(1) to the reporting corporation or to a 25-percent foreign shareholder of the reporting corporation, or

(3) Any other person who is related to the reporting corporation within the meaning of section 482 and the regulations thereunder.

However, the term "related party" does not include any corporation filing a consolidated federal income tax return with the reporting corporation.

(e) *Attribution rules*—(1) *Attribution under section 318.* For purposes of determining whether a corporation is 25-percent foreign-owned and whether a person is a related party under section 6038A, the constructive ownership rules of section 318 shall apply. However, "10 percent" shall be substituted for "50 percent" in section 318(a)(2)(C), and subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a U.S. person as owning stock that is owned by a person who is not a U.S. person.

(2) *Attribution of transactions with related parties engaged in by a partnership.* The transactions in which a domestic or foreign partnership engages shall be attributed to any reporting corporation whose interest in the capital or profits of the partnership, either directly or indirectly, combined with the interests of all related parties to the reporting corporation partner, equals 25 percent or more of the total partnership interests. Attribution of such transactions shall be made only to the extent of the partnership interest held by that reporting corporation partner. See sections 675 and 702(a) and the regulations thereunder. (Attribution shall not be made, however, of transactions directly between the partnership and a reporting corporation.) Accordingly, a reporting corporation partner that is deemed to engage in transactions with related parties under this rule is subject to the information reporting requirements of § 1.6038A–2, to the record maintenance requirements of § 1.6038A–3, to the monetary penalty under § 1.6038A–4, to the requirement of authorization of agent under § 1.6038A–5, and to the rules of § 1.6038A–6 relating to the requirement to produce records.

(f) *Foreign person.* For purposes of section 6038A, a foreign person is—

(1) Any individual who is not a citizen of resident of the United States, but not including any individual for whom an election under section 6013 (g) or (h) (relating to an election to file a joint return) is in effect;

(2) Any individual who is a citizen of any possession of the United States and who is not otherwise a citizen or resident of the United States;

(3) Any partnership, association, company, or corporation that is not created or organized in the United States or under the law of the United States or any State thereof;

(4) Any foreign trust or foreign estate, as defined in section 7701(a)(31); or

(5) Any foreign government or foreign controlled commercial entity as defined by section 892(a)(2)(B) and the regulations thereunder to the extent that it is engaged directly or indirectly in a U.S. trade or business and receives income that is not exempt under section 892(a) and the regulations thereunder. A foreign government or foreign controlled commercial entity, however, will be treated as a foreign person under section 6038A and this section only for purposes of the return requirement described in § 1.6038A–2. For purposes of section 6038A(a), a possession of the United States shall be considered to be a foreign country.

(g) *Foreign related party.* A foreign related party is a foreign person as defined under paragraph (f) of this § 1.6038A–1 that is also a related party as defined under paragraph (d) of this § 1.6038A–1.

(h) *Safe harbor for reporting corporations with de minimis value of related party transactions*—(1) *In general.* A reporting corporation.

(i) That has an aggregate value of not more than $2,000,000 of gross payments made to (or received from) foreign related parties with respect to related party transactions, including monetary consideration, nonmonetary consideration, and the value of transactions involving no consideration, and

(ii) For which the aggregate value of the gross payments made to (or received from) foreign related parties with respect to related party transactions is less than 10 percent of its U.S. gross income.

is not subject to the requirements of §§ 1.6038A–3 and 1.6038A–5. Such a corporation remains subject to the information reporting requirements of § 1.6038A–2 and the general record maintenance requirements of section 6001. The threshold amounts described in this paragraph are to be applied separately to such amounts paid to or received from foreign related parties, rather than netting such amounts.

(2) *Aggregate value of gross payments made or received.* The aggregate value of gross payments made to (or received from) a foreign related party with respect to foreign related party transactions is determined by totaling the dollar amounts of related party transactions as described in § 1.6038A–2(b) (3) and (4) on all Forms 5472 filed by the reporting corporation. The aggregate value of gross payments made to (or received from) all foreign related parties with respect to transactions engaged in with reporting corporations that are related (under the principles described in paragraphs (d) and (e) of this § 1.6038 A–1) is determined by totaling all dollar amounts of payments made to (or received from) all foreign related parties as described in § 1.6038A–2(b) (3) and (4) on all Forms 5472 filed by all such related reporting corporations.

(i) *Consolidated return groups*—(1) *Required information.* If a U.S. consolidated income tax return is filed, the return requirement described in § 1.6063A–2 may be satisfied for the U.S. consolidated group by the filing of a consolidated Form 5472. In such a case, the common parent, as indicated on Form 851, must attach a schedule to the consolidated Form 5472 stating which members of the U.S. consolidated return group would otherwise be separate reporting corporations under section 6038A. The schedule must provide the name, address, and taxpayer identification number of each member. A member is not required to join in filing a consolidated Form 5472 merely because other members of the group choose to file one or more Forms 5472 on a consolidated basis.

(2) *Authorization of agent and retention of records.* The common parent of a group of reporting corporations filing a consolidated income tax return may be authorized to act as the agent for foreign related persons engaged in transactions with members of the consolidated return group solely for purposes of section 7602, 7603, and 7604 under section 6038A(e)(1) and § 1.6038A–5. The common parent may be authorized to act as an agent by the completion of the authorization of agent on the Form 5472,



or by filing an authorization of agent statement as described in § 1.6038A–5 until amended Form 5472 is available. Each member of the group, however, must maintain the records required under section 6038A(a) and § 1.6038A–3 relating to its related party transactions.

(3) *Monetary penalties.* The common parent and each reporting corporation that join in the filing of a consolidated Form 5472 are liable jointly and severally for penalties for failure to file Form 5472 and for failure to maintain records under section 6038A(d) and § 1.6038A–4(e). See § 1.1502–77 (a) regarding the scope of agency of the common parent corporation.

(j) *Examples.* The following examples illustrate the rules of this section.

*Example (1).* A U.S. partnership that is engaged in a U.S. trade or business is 75 percent owned by FC1, a foreign corporation that, in turn, is wholly owned by another foreign corporation, FC2. The remaining 25 percent of the U.S. partnership is owned by Corp, a domestic corporation, that is wholly owned by FC3. The U.S. partnership engages in transactions solely with FC2 and FC3. These transactions are attributed to FC1 and Corp. For purposes of section 6038A and this § 1.6038A–1, FC1 and Corp are reporting corporations and must report their respective pro rata shares of the value of the transactions with FC2 and FC3, 25 percent to Corp and 75 percent to FC1.

*Example (2).* FC2 and FC3 are both foreign corporations that are wholly owned by FC1, also a foreign corporation. FC2 engages in a trade or business in the United States through a branch. The branch engages in related party transactions with FC1. FC2 is a reporting corporation. FC3 is a foreign related party. FC1 is a 25-percent foreign shareholder of both FC2 and FC3. Neither FC1 nor FC3 is a reporting corporation.

*Example (3).* FC1 owns 25 percent of total voting power in each of FC2 and FC3. FC2 and FC3 each own 20 percent of the total voting power of Corp, a domestic corporation. The remaining stock of Corp is owned by an unrelated domestic corporation. Neither FC2 nor FC3 is engaged in a U.S. trade or business. Under section 318(a)(2)(C) and paragraph (e) of this § 1.6038A–1, FC1 constructively owns its proportionate share of the stock of Corp owned directly by FC2 and FC3. Thus, FC1 is treated as constructively owning five percent of Corp through each of FC2 and FC3 or a total of 10 percent of the Corp stock. Consequently, Corp is not a reporting corporation because no 25 percent shareholder exists.

(k) *Effective dates.*—(1) *Section 1.6038A–1.* Section 1.6038–1(c) (relating to the definition of a reporting corporation) is effective for taxable years beginning after July 10, 1989. The remaining paragraphs of section 1.6038A–1 are effective as of December 10, 1990, without regard to when the taxable year began.

(2) *Section 1.6038A–2.* Section 1.6038A–2 (relating to the requirement to file Form 5427) is generally effective for taxable years beginning after July 10, 1989. However, § 1.6038A–2 as it applies to reporting corporations whose sole trade or business in the United States is a banking, financing, or similar business as defined in § 1.864–4(c)(5)(i) is effective as of December 10, 1990.

(3) *Section 1.6038A–3.* Section 1.6038A–3 (relating to the record maintenance requirement) is generally effective as of December 10, 1990. However, records in existence on or after March 20, 1990, must be maintained, without regard to when the taxable year (to which the records relate) began.

(4) *Section 1.6038A–4.* Section 1.6038A–4 (relating to the monetary penalty) is generally effective for taxable years beginning after July 10, 1989, for the failure to file Form 5472. For the failure to maintain records or the failure to produce documents as agreed under the election to maintain records outside the United States, the effective date is December 10, 1990, without regard to when the taxable year (to which the records relate) began.

(5) *Section 1.6038A–5.* Section 1.6038A–5 (relating to the authorization of agent requirement) is effective as of December 10, 1990, without regard to when the taxable year (to which the records relate) began.

(6) *Section 1.6038A–6.* Section 1.6038A–6 (relating to the failure to furnish information under a summons) is effective after November 5, 1990, without regard to when the taxable year (to which the summons relates) began.

(7) *Section 1.6038A–7.* Section 1.6038A–7 (relating to the noncompliance penalty adjustment) is effective as of December 10, 1990, without regard to when the taxable year began.

**§ 1.6038A–2 Requirement of return.**

(a) *Form 5427 required*—(1) *In general.* Each reporting corporation as defined in § 1.6038A–1(c) shall make a separate annual information return on Form 5472 with respect to each related party as defined in § 1.6038A–1(d) with which such reporting corporation has had any reportable transaction during the taxable year. The information required by section 6038A and this section must be furnished even though it may not affect the amount of any tax due under the Code.

(2) *Reportable transaction.* A reportable transaction is any transaction of the types listed in paragraph (b) (3) and (4) of this section. However, if neither party to the transaction is a United States person as defined in section 7701(a)(30) and the transaction—

(i) Does not give rise to any deferred payment or recognized income or gain that is from sources within the United States or that is effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States, and

(ii) Does not give rise to any expense, loss or other deduction that is allocable or apportionable to such income,

the transaction is not a reportable transaction.

(b) *Contents of return*—(1) *Reporting corporation.* Form 5472 must provide the following information in the manner the form prescribes with respect to each reporting corporation.

(i) Name, address (including mailing code) and U.S. taxpayer identification number; each country in which the reporting corporation files an income tax return as a resident under the tax laws of the country or countries; country or countries of organization and incorporation; total assets; where its business is conducted; and principal business activity;

(ii) Name, address, U.S. tax identification number, if applicable, of each 25-percent foreign shareholder; country or countries in which the 25-percent foreign shareholder files an income tax return as a resident under the tax laws of the country or countries; the place where the 25-percent shareholder conducts its business; and country or countries of organization, citizenship, or incorporation of each 25-percent foreign shareholder of the reporting corporation;

(iii) Number of Forms 5427 filed for the taxable year and aggregate value in U.S. dollars of gross payments as defined by paragraph (h)(2) of § 1.6038A–1 made with respect to all foreign related party transactions as reported on all Forms 5472.

(2) *Related party.* The taxpayer must provide information on Form 4572, set forth in the manner the form prescribes, about each related party, whether foreign or domestic, with which the reporting corporation had a transaction of the types described in paragraphs (b) (3) and (4) of this section during its taxable year, including the following information.

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(i) The name, U.S. tax identification number, if applicable, and address of the related party;

(ii) The nature of the related party's business and the principal place or places where such business is conducted;

(iii) Each country in which the related party files an income tax return as a resident under the tax laws of the country; and

(iv) The relationship of the reporting corporation to the related party.

(3) *Foreign related party transactions for which only monetary consideration is paid or received by the reporting corporation.* If the related party is a foreign person, the reporting corporation must set forth on Form 5472 the dollar amounts of all reportable transactions for which monetary consideration (including U.S. and foreign currency) was the sole consideration paid or received during the taxable year of the reporting corporation. The total amount of such transactions, as well as the separate amounts for each type of transaction described below, must be reported on Form 5472, in the manner the form prescribes. Where actual amounts are not determinable, a reasonable estimate (as described in paragraph (b)(6) of § 1.6038A–2) is permitted. The types of transactions described in this paragraph are:

(i) Sales and purchases of stock in trade (inventory);

(ii) Sales and purchases of tangible property other than stock in trade;

(iii) Rents and royalties paid and received (other than amounts reported under paragraph (b)(3)(iv) of this paragraph);

(iv) Sales, purchases, and amounts paid and received as consideration for the use of all intangible property, including (but not limited to) copyrights, designs, formulas, inventions, models, patents, processes, trademarks, and other similar intangible property rights;

(v) Consideration paid and received for technical, managerial, engineering, construction, scientific, or similar services;

(vi) Commissions paid and received;

(vii) Amounts loaned and borrowed (except open accounts resulting from sales and purchases reported under other items listed in this paragraph (b)(3) that arise and are collected in full in the ordinary course of business);

(viii) Interest paid and received;

(ix) Premiums paid and received for insurance and reinsurance; and

(x) Other amounts paid or received not specifically identified in this paragraph (b)(3).

Amounts required to be reported under paragraph (b)(3)(vii) of this section shall be reported as monthly averages or outstanding balances at the beginning and end of the taxable year, as the form shall prescribe.

(4) *Foreign related party transactions involving nonmonetary consideration or no consideration.* If the related party is a foreign person, the reporting corporation must provide on Form 5472 a description of any reportable transaction, or group of reportable transactions, listed in paragraph (b)(3) of this section, or which any part of the consideration paid or received was not monetary consideration, or for which no consideration was paid or received. A description required under this paragraph (b)(4) of this section shall include sufficient information from which to determine the nature and approximate monetary value of the transaction or group of transactions, and shall include—

(i) A description of all property (including monetary consideration), rights, or obligations transferred from the reporting corporation to the foreign related party and from the foreign related party to the reporting corporation;

(ii) A description of all services performed by the reporting corporation for the foreign related party and by the foreign related party for the reporting corporation; and

(iii) A reasonable estimate of the fair market value or a description of such property (other than money), rights, obligations, or services.

If, for any transaction, the entire consideration received includes both tangible and intangible property and the consideration paid is solely monetary consideration, the transaction should be reported under paragraph (b)(3) if the intangible property was related and incidental to the transfer of the tangible property (*e.g.*, a right to warranty services.)

(5) *Additional information.* In addition to the information required under paragraphs (b) (3) and (4) of this section, a reporting corporation must provide on Form 5472, in the manner the form prescribes, the following information.

(i) If the reporting corporation imports goods from a foreign related party, whether the costs taken into account in computing the basis or inventory cost of such goods are different from the costs taken into account in computing the valuation of the goods for customs purposes, adjusted pursuant to section 1059A and the regulations thereunder, and if so, the reason or reasons for such difference.

(ii) Whether the documents supporting the reporting corporation's treatment of the items set forth in paragraph (b)(5)(i) of this section are in existence and available in the United States at the time of the filing of Form 5472.

(6) *Reasonable estimate*—(i) *Estimate within 25 percent of actual amount.*—Any amount reported under this section is considered to be a reasonable estimate if it is at least 75 percent and not more than 125 percent of the actual amount.

(ii) *Other estimates.* If any amount reported under this paragraph (b) of this section fails to meet the reasonable estimate test of paragraph (b)(6)(i) of this section, the reporting corporation may, nevertheless, show that such amount is a reasonable estimate by making an affirmative showing of relevant facts and circumstances in a written statement containing a declaration that it is made under the penalties of perjury. The District Director or the Assistant Commissioner (International) shall determine whether the amount reported was a reasonable estimate.

(7) *Small amounts.* If any actual amount required under this section does not exceed $50,000, the amount may be reported as "$50,000 or less."

(8) *Accrued payments and receipts.* For purposes of this section, in the case of an accrual basis taxpayer, the terms "paid" and "received" shall include accrued payments and receipts, respectively.

(c) *Method of reporting.* All statements required on or with the Form 5472 under this section and § 1.6038A–5 shall be in the English language. All amounts required to be reported under paragraph (b) of this section shall be expressed in United States currency, with a statement of exchange rates used to translate into U.S. currency.

(d) *Time and place for filing returns.* A Form 5472 required under this section shall be filed with the reporting corporation's income tax return for the same taxable year, and shall be filed by the date (including extensions) for filing that income tax return. However, if a reporting corporation's income tax return is not timely filed (including extensions), the Form 5472 shall be filed with the Internal Revenue Service Center with which the reporting corporation's income tax return is required to be filed and the Philadelphia Service Center, and shall be filed on or before the due date required by law (including extensions) for filing of that income tax return. In such a case, a copy of the Form 5472 also must be filed with the income tax return when return is filed.



(e) *Duplicate filing required.* The reporting corporation shall file a duplicate copy of each Form 5472 (including any attachments and/or schedules) (at the same time as the original copy is filed) with the Internal Revenue Service Center, Philadelphia, PA 19255.

(f) *Exceptions*—(1) *No reportable transactions.* A reporting corporation is not required to file Form 5472 if it has no transactions of the types listed in paragraphs (b) (3) and (4) of this section during the taxable year with any related party. Such a reporting corporation, however, remains subject to the record maintenance requirements of § 1.6038A–3 and the authorization of agent requirement of § 1.6038A–5.

(2) *Transactions solely with a domestic reporting corporation.* If all of a foreign reporting corporation's reportable transactions are with one or more related domestic reporting corporations, the foreign reporting corporation shall furnish on Form 5472 only the information required under paragraphs (b) (1) and (2) of this section, if the domestic reporting corporations provide the information required under paragraphs (b) (3) through (5) of this section. Such a foreign reporting corporation is, nonetheless, subject to the record maintenance requirements of § 1.6038A–3 and the requirements of §§ 1.6038A–5 and 1.6038A–6. The name or names, address(es), and taxpayer identification number(s) of the domestic reporting corporation that provided such information must be indicated on Form 5472 in the space provided for the information under paragraphs (b) (1) and (2) of this section.

(3) *Transactions with a corporation subject to reporting under section 6038.* A reporting corporation is not required to make a return of information on Form 5472 with respect to a related corporation for a taxable year for which a U.S. person that controls the reporting corporation makes a return of information on Form 5471 that is required under section 6038 and § 1.6038–2, if that return contains information required under § 1.6038–2(f)(11) with respect to the reportable transactions between the reporting corporation and the related corporation for that taxable year.

(g) *Filing Form 5472 when transactions with related parties engaged in by a partnership are attributed to a reporting corporation.* A reporting corporation, to which transactions engaged in by a partnership are attributed under paragraph (e)(2) of § 1.6038A–1, must report on Form 5472 only the value of the transaction or transactions that is represented by its partnership interest. Thus, for example, if a partnership buys $1000 of widgets from the foreign parent of a reporting corporation whose partnership interest in the partnership equals 50 percent of the partnership interests (and the remaining 50 percent is held by unrelated parties), the reporting corporation must report $500 of purchases from a foreign related party on Form 5472.

(h) *Effective dates for certain reporting corporations.* For effective dates for this section, see § 1.6038A–1(k).

**§ 1.6038A–3 Record maintenance.**

(a) *General maintenance requirements*—(1) *Section 6001 and section 6038A.* A reporting corporation must keep the permanent books of account or records as required by section 6001 that are sufficient to establish the correctness of the federal income tax return of the corporation, including information, documents, or records ("records") to the extent they may be relevant to determine the correct treatment of transactions with related parties. See section 6001 and the regulations thereunder. This requirement applies to records of the reporting corporation itself, as well as to records of any foreign related party that may be relevant to determine the correct treatment of transactions between the reporting corporation and foreign related parties. While records required to establish the correct tax treatment of transactions between the reporting corporation and foreign related parties are within the scope of section 6001, section 6038A and this section provide detailed guidance regarding the required maintenance of records with respect to such transactions and specifies penalties for noncompliance.

(2) *Safe harbor.* A safe harbor for record maintenance is provided under paragraph (c) of this section, which sets forth detailed guidance concerning the types of records to be maintained with respect to related party transactions. A corporation that maintains or causes another person to maintain the records listed in paragraph (c)(2) will be deemed to have met the record maintenance requirements of section 6038A.

(b) *Other maintenance requirements*—(1) *Records that must be maintained in the United States.* Records prepared, maintained, or possessed by a foreign related party relating to transactions between the reporting corporation and any related parties must be maintained in the United States, except where an election is in effect under paragraph (f) of this section.

(2) *Indirectly related records.* This section applies to records that are directly or indirectly related to transactions between the reporting corporation and any foreign related parties. An example of records that are indirectly related to such transactions is records possessed by a foreign subsidiary of a foreign related party that document the raw material or component costs of a product that is manufactured or assembled by the subsidiary and sold as a finished product by the foreign related party to the reporting corporation.

(3) *Foreign related party or third-party maintenance.* If records that are required to be maintained under this section are in the control of a foreign related party, the records may be obtained or compiled (if not already in the possession of the foreign related party or already compiled) under the direction of the reporting corporation and then maintained by the reporting corporation, the foreign related party, or a third party. A foreign related party or third party may make arrangements with the District Director or the Assistant Commissioner (International) to directly furnish requested records, rather than through a reporting corporation. If a foreign related party or a third party maintains records in the ordinary course of business that are not in the possession of the reporting corporation, the reporting corporation, nonetheless, is liable for the maintenance of such records. A reporting corporation shall be subject to the monetary penalty for the failure of a foreign related party or third party to maintain required records.

(4) *Translation of records.* When records are provided to the Service under a request for production, any portion of such records must be translated into the English language within 30 days of a request for translation of that portion by the District Director or the Assistant Commissioner (International). An extension of this time period may be requested under the rules of paragraph (f)(3) of this section.

(5) *Exception for foreign governments.* A foreign government or a controlled commercial entity as defined by section 892(2)(B) is not subject to the obligation to maintain records under this section.

(c) *Specific records to be maintained for safe harbor*—(1) *In general.* A reporting corporation that maintains or causes another person to maintain the records specified in this paragraph (c) will be deemed to have met the record maintenance requirements of this section. This paragraph provides general descriptions of the categories of records

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to be maintained; the particular title or label applied by a reporting corporation or related party does not control. Functional equivalents of the specified documents are acceptable. Record maintenance in accordance with this safe harbor, however, requires only the maintenance of types of documents described in paragraph (c)(2) of this section that are directly or indirectly related to transactions between the reporting corporation and any foreign related party. Additionally, to the extent the reporting corporation establishes that records in a particular category are not applicable to the industry or business of the reporting corporation and any foreign related party, maintenance of such records is not required under this paragraph. Record maintenance in accordance with this paragraph (c) generally does not require the original creation of records that are ordinarily not created by the reporting corporation or its related parties. If, however, a document that is actually created is described in this paragraph (c), it is to be maintained even if the document is not of the type ordinarily created by the reporting corporation or its related parties.) There are two exceptions to the rule. First, basic accounting records, if they do not otherwise exist, must be created and retained that are sufficient to document the U.S. tax effects of transactions between related parties. Second, records sufficient to produce material profit and loss statements as described in paragraphs (c)(2)(ii) and (c)(3) of this section must be created if such records are not ordinarily maintained. All internal records storage and retrieval systems used for each taxable year must be retained.

(2) *Descriptions of categories of documents to be maintained.* The following records must be maintained in order to satisfy this paragraph (c) to the extent they may be relevant to determine the correct treatment of transactions between the reporting corporation and any foreign related party.

(i) *Original entry books and transaction records.* This category includes books and records of original entry or their functional equivalents, however designated or labeled, that are relevant to transactions between any foreign related party and the reporting corporation. Examples include, but are not limited to, general ledgers, sales journals, purchase order books, cash receipts books, cash disbursement books, canceled checks and bank statements, workpapers, sales contracts, and purchase invoices.

(ii) *Profit and loss statements.* This category includes records from which the reporting corporation can compile and supply, within a reasonable time, material profit and loss statements of the reporting corporation and all related parties as defined under § 1.6038A–1(d) (the "related party group") which reflect profit or loss of the related party group attributable to U.S.-connected products or services. The determination of whether a profit and loss statement is material is made under the rules provided in paragraph (c)(3) of this section. For purposes of this paragraph (c), the term "U.S.-connected products or services" means products or services that are imported to or exported from the United States by transfers between the reporting corporation and any of its foreign related parties. The material profit and loss statements described in this paragraph (c)(2)(ii) must reflect revenue and expenses of all members of the related party group. Thus, records in this category include the documentation of the cost of raw materials used by a related party to manufacture finished goods that are then sold by another related party to the reporting corporation. The records should be kept under U.S. generally accepted accounting principles if they are ordinarily maintained in such manner. If such records are not ordinarily maintained under such accounting principles, an explanation of the material differences between the accounting principles used and U.S. generally accepted accounting principles must be made available. An explanation of methods used to allocate specific items to a particular profit and loss statement also must be made available.

(iii) *Pricing documents.* This category includes all documents relevant to establishing the appropriate price or rate for transactions between the reporting corporation and any foreign related party. Examples include, but are not limited to, documents related to transactions involving the same or similar products or services entered into by the reporting corporation or a foreign related party with related and unrelated parties; shipping and export documents; commission agreements; documents relating to production or assembly facilities; third-party and intercompany purchase invoices; manuals, specifications, and similar documents relating to or describing the performance of functions conducted at a location; intercompany correspondence discussing any instructions or assistance relating to such transactions provided to the reporting corporations by the related foreign person (or vice versa); intercompany and intracompany correspondence concerning the price or the negotiation of the price used in such transactions; documents regarding the value of intangibles used or developed by the reporting corporation or the foreign related party; documents regarding the direct and indirect costs of materials, labor, cost of goods sold, and other expenses; and documents relating to direct and indirect selling, general and administrative expenses (*e.g.*, relating to advertising, sales promotions, or warranties).

(iv) *Foreign country and third party filings.* This category includes financial and other documents filed with or prepared for any foreign government entity, any independent commission, or any financial institution relating to transactions between the reporting corporation and any foreign related party.

(v) *Ownership and capital structure records.* This category includes records or charts showing the relationship between the reporting corporation and the related foreign party; the location, ownership, and status (for example, joint venture, partnership, branch, or division) of all entities and offices directly or indirectly involved in the transactions between the reporting corporation and any foreign related party; a worldwide organization chart; records showing the management structure of all foreign affiliates; and loan documents, agreements, and other documents relating to any transfer of the stock of the reporting corporation that results in the change of the status of a foreign person as a foreign related party.

(vi) *Records of loans, services, and other non-sales transactions.* This category includes documents relating to loans (including all third-party loans that are related to a transaction between a reporting corporation and a foreign related party); guarantees of a related foreign party of debts of the reporting corporation and vice versa; hedging arrangements involving the reporting corporation and any foreign related party; security agreements between the reporting corporation and any foreign related party; research and development expense allocations between any foreign related party and the reporting corporation; service transactions between any foreign related party and the reporting corporation, including, for example, a description of the allocation of charges for management services, time or travel records, or allocation studies; import and export transactions; the registration of patents and copyrights with respect to transactions between the reporting corporation and any foreign related party; and documents regarding lawsuits in foreign countries that relate to such transactions (for example, product liability suits for U.S. products).

(3) *Material profit and loss statements.* For purposes of paragraph (c)(2)(ii), the determination of whether a profit and loss statement is material will be made according to the following rules. An agreement between the reporting corporation and the District Director or the Assistant Commissioner (International) as described in paragraph (d) of this section may identify all material profit and loss statements of the related party group and describe the items to be included in any profit and loss statements for which records are to be maintained to satisfy the requirements of paragraph (c)(2)(ii) of this section. In the absence of such an agreement, a profit and loss statement will be material if it meets any of the following tests: the existing records test described in paragraph (c)(4) of this section, the significant industry segment test described in paragraph (c)(5) of this section, or the high profit test described in paragraph (c)(6) of this section.

(4) *Existing records test.* A profit and loss statement is material under the existing records test described in this paragraph (c)(4) if any member of the related party group creates or compiles such statement in the course of its business operations. For example, a profit and loss statement is described in this paragraph if it was produced for internal accounting or management purposes, or for disclosure to shareholders, financial institutions, government agencies, or any other persons. Accordingly, such existing statements and the records from which they were compiled are subject to the record maintenance requirements described in paragraph (c)(2)(ii) of this section to the extent they reflect the profit or loss of the related party group attributable to U.S.-connected products or services.

(5) *Significant industry segment test*—(i) *In general.* A profit and loss statement is material under the significant industry segment test described in this paragraph (c)(5) if—

(A) The statement reflects the profit or loss of the related party group attributable to a single industry segment;

(B) The gross revenue from U.S.-connected products or services attributable to such industry segment meets the gross revenue test described in paragraph (c)(5)(ii) of this section; and

(C) One of the percentage tests described in paragraph (c)(5)(iii) of this section is satisfied with respect to the products and services attributable to such industry segment.

An industry segment is a segment of the related party group's combined operations which is engaged in providing a product or service or a group of related products or services (as defined in paragraph (c)(5)(iv)(E)) primarily to customers that are not members of the related party group. Paragraph (c)(5)(v) provides rules for determining the level of specificity required in grouping related products and services. Profit and loss statements compiled for each significant industry segment must reflect revenues and expenses attributable to the operations in such segment by all members of the related party group.

(ii) *Gross revenue test.* An industry segment meets the gross revenue test described in this paragraph (c)(5)(ii) if the amount of gross revenue earned within such segment by the provision of U.S.-connected products or services by the related party group to customers outside of such group is $25 million or more in the taxable year. Where the U.S.-connected products or services consist of components which are incorporated into other products or services before sale to customers, the portion of the total gross revenue derived from sales of such finished products or services attributable to the components may be determined on the basis of relative costs of production. Thus, where relevant for determining whether the $25 million threshold has been met, the amount of gross revenue derived by the related party group from the provision of such finished products or services may be reduced by multiplying such gross revenue by a fraction, the numerator of which is the costs of production of the related party group attributable to the component products or services that constitute U.S.-connected products or services and the denominator of which is the costs of production of the related party group attributable to the finished products in which such components are incorporated.

(iii) *Percentage tests.* An industry segment meets one of the percentage tests described in this paragraph (c)(5)(iii) if—

(A) Its gross revenue is 10 percent or more of the combined gross revenue of all of the group's industry segments;

(B) Its identifiable assets are 10 percent or more of the combined identifiable assets of all industry segments; or

(C) The absolute amount of its operating profit or operating loss is 10 percent or more of the greater, in absolute amount, of the combined operating profit of all industry segments that did not incur an operating loss or the combined operating loss of all industry segments that did incur an operating loss.

(iv) *Definitions.* The following definitions apply for purposes of this paragraph (c)(5).

(A) *Gross revenue.* Gross revenue includes receipts (prior to reduction for cost of goods sold) both from sales to customers outside of the related party group and from intersegment sales or transfers within the related party group. Interest from sources outside the related party group and interest earned on intersegment trade receivables is included in gross revenue if the asset on which the interest is earned is included among the industry segment's identifiable assets, but interest earned on advances or loans to other industry segments is not included. Accounting for intersegment sales or transfers must be made on a reasonable basis and a description of such basis must be provided.

(B) *Identifiable assets.* The identifiable assets of an industry segment are those tangible and intangible assets of the related party group that are used by the industry segment, including assets that are used exclusively by that industry segment and an allocated portion of assets used jointly by two or more industry segments. Any allocation of assets among industry segments must be made on a reasonable basis and a description of such basis must be provided. Assets of an industry segment that transfers products or services to another industry segment shall not be allocated to the receiving segment. Assets that represent part of the related party group's investment in an industry segment, such as goodwill, shall be included in the industry segment's identifiable assets. Assets maintained for general corporate purposes (*i.e.*, those not used in the operations of any industry segment) shall not be allocated to industry segments.

(C) *Operating profit or loss.* The operating profit or loss of an industry segment is its gross revenue (as defined in paragraph (c)(5)(iv)(A) of this section) minus all operating expenses. None of the following shall be added or deducted in computing the operating profit or loss of an industry segment: revenue earned at the corporate level and not derived from the operations of any industry segment; general corporate expenses; interest expense (except where the industry segment's operations are principally of a financial nature,

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such as banking, insurance, leasing or financing); domestic and foreign income taxes; and extraordinary items not reflecting the ongoing business operations of the industry segment.

(D) *Product.* The term "product" generally means an item of property (or combination of component parts) which is the result of a production process, is primarily sold to unrelated parties (or incorporated by the related party group into other products sold to unrelated parties), and performs a specific function.

(E) *Related products or services.* The term "related products or services" refers to groupings of products and types of services that reflect reasonable accounting, marketing, or other business practices within the industries in which the related party group operates. For this purpose, products are segregated into narrow classifications of models and also aggregated into broad classifications of product lines. Similar principles shall be applied in grouping types of services into reasonable levels of narrow and broad classifications.

(F) *Model.* The term "model" generally means a classification of products that incorporate particular components, options, styles, and any other unique features resulting in product differentiation. Examples of models would include electronic products that are sold or accounted for under a single model number and automobiles sold under a single model name.

(G) *Product line.* The term "product line" generally means a group of products that are aggregated into a single classification for accounting, marketing, or other business purposes. Examples of product lines would include groups of products that perform similar functions; products that are marketed under the same trade names, brand names or trademarks; and products that are related economically (*i.e.*, having similar rates of profitability, similar degrees of risk, and similar opportunities for growth).

(v) *Level of specificity required.* In applying the significant industry segment test of this paragraph (c)(5), groups of related products and services must be chosen to provide a reasonable level of specificity that results in the greatest number of separate significant industry segments in comparison to other possible classifications. This determination must be made on the basis of the particular facts presented by the operations of the related party group. The following rules, however, provide general guidelines for making such classifications. First, the related party group's operations that involve the provision of U.S.-connected products should be grouped into product lines. The rules of this paragraph (c)(5) should then be applied to determine if any such product line would, standing alone, constitute a significant industry segment when compared to the operations of the related party group as a whole. Any significant industry segment determined at the level of product lines should be further segregated, and tested for significant industry segments, at the level of separate products. Finally, any significant industry segments determined at the level of separate products should be segregated, and tested for significant industry segments, at the level of separate models. Similar principles should be applied in classifying and testing types of services. A profit and loss statement reflecting the related party group's provision of any product or service (or group of products or services as classified under these rules) that constitutes a significant industry segment will be considered material for purposes of this paragraph (c)(5).

(vi) *Examples.* The rules for determining reasonable levels of specificity for significant industry segments may be illustrated by the following examples.

*Example (1).* A related party group is engaged in the manufacture and worldwide sales of automobiles and aftermarket parts. The group's operations within the categories of "automobiles" and "aftermarket parts" are each sufficient to constitute significant industry segments for the group under the rules of paragraph (c)(5) of this section. No narrower classification of aftermarket parts results in any significant industry segments. Automobiles produced by the group are generally classified for marketing purposes by trade names; aggregating groups of automobiles by these trade names results in three significant industry segments, those for trade names A, B, and C. Finally, two car models sold under the trade name A ("A1" and "A2") and one cars model sold under the trade name B ("B3"), produce sufficient revenue to constitute significant industry segments. Such classifications into trade names and car models are generally used in the related party group's industry; moreover, different types of classifications would produce fewer significant industry segments. Accordingly, a reasonable level of specificity for this related party group's industry segments would be eight categories of products consisting of "automobiles", "aftermarket parts", "A", "B", "C", "A1", "A2", and "B3".

*Example (2).* A related party group is engaged in manufacturing electronic goods that are distributed at retail in the United States by the reporting corporation. The group sells three types of products in the United States: televisions, radios, and video cassette recorders (VCRs). Each of these three broad product areas constitutes a significant industry segment for the group as a whole. VCRs can be further segregated by price into high-end and low-end models, and the provision of each constitutes a significant industry segment for the group. Revenues from only one VCR model, model number VCRX-10, are sufficiently large to make the provision of that model a significant industry segment. With respect to televisions, the group normally accounts for these products by size. Using this classification, portable televisions, medium-sized televisions, and consoles each constitute significant industry segments. Narrower classifications by television model numbers result in no additional significant industry segments. Finally, sales of a single radio product line, those sold under the trade name R, results in a significant industry segment, but no other radio models or product groups are large enough to constitute a significant industry segment. In each case, these classifications conform to normal business practices in the industry and result in the greatest possible number of significant industry segments for this related party group. Accordingly, a reasonable level of specificity for this related party group's industry segment would include the ten categories consisting of "VCRs", "high-end VCRs", "low-end VCRs", "model number VCRX-10", "televisions", "portable televisions", "medium-sized televisions", "console televisions", "radios", and "radio trade name R".

(6) *High profit test*—(i) *In general.* A profit and loss statement is material under the high profit test described in this paragraph (c)(6) if—

(A) The statement reflects the profit or loss of the related party group attributable to a single industry segment;

(B) The gross revenues from U.S.-connected products or services attributable to such segment meet the gross revenue test described in paragraph (c)(5)(ii) of this section (except that the $25 million threshold for this purpose is raised to $75 million); and

(C) The return on assets test described in paragraph (c)(6)(ii) of this section is satisfied with respect to the products and services attributable to such segment.

Accordingly, a significant industry segment (as determined under paragraph (c)(5) of this section) must be divided into any narrower industry segments that meet the high profit test of this paragraph (c)(6), even if such narrower segments would not, standing alone, meet the significant industry segment test of paragraph (c)(5) of this section.

(ii) *Return on assets test.* An industry segment meets the return on assets test if the rate of return on assets earned by the related party group within this industry segment exceeds 10 percent, and is at least 200 percent or more of the



rate of return on assets earned by any significant industry segment (determined under the rules of paragraph (c)(5) of this section) which incorporates the business operations of the first industry segment. One industry segment will be considered to incorporate the business operations of a narrower industry segment only if all of the gross revenue attributable to the narrower segment is also attributable to the broader segment. For purposes of this paragraph, the rate of return on assets earned by an industry segment is determined by dividing that segment's operating profit (as defined in paragraph (c)(5)(iv)(C) of this section) by its identifiable assets (as defined in paragraph (c)(5)(iv)(B) of this section).

(d) *Liability for certain partnership record maintenance.* A reporting corporation, to which transactions engaged in by a partnership are attributed under paragraph (e)(2) of § 1.6038A–1, is subject to the record maintenance requirements of this § 1.6038A–3 to the extent of the transactions so attributed.

(e) *Agreements with the District Director or the Assistant Commissioner (International).* The District Director or the Assistant Commissioner (International), in the discretion of either, may negotiate and enter into an agreement with a reporting corporation that establishes what records the reporting corporation must maintain or cause another to maintain, how such records must be maintained, and by whom such records must be maintained in order to satisfy the reporting corporation's obligations under this section.

(f) *Exception to U.S. maintenance*—(1) *Annual election.* A reporting corporation may elect to maintain outside the United States records not ordinarily maintained in the United States but required to be maintained in the United States under this section. To make the election, the reporting corporation must agree to the production of records by either:

(i) Delivering to the Service duplicates of the original documents requested within 60 days of the request by the Service for such records and providing translations of such documents within 30 days of a request for translations of specific documents; or

(ii) Moving duplicates of the original documents requested to the United States within 60 days of the request of the Service for such records; providing the Service with an index to the requested records, the name and address of a custodian located within the United States having control over the records, and the address where the records are located within 60 days of the Service's request for such records; and continuing to maintain such records within the United States throughout the period of retention described in paragraph (g) of this section. For summons procedures with respect to such records that have been moved to the United States, see sections 6038A(e), 7602, 7603, and 7604.

For material profit and loss statements described in paragraphs (c)(5) and (c)(6) of this section, "120 days" shall be substituted for "60 days" in paragraphs (f)(1)(i) and (f)(1)(ii) of this section, and labels and text with respect to such statements must be in the English language. The agreement described in this paragraph must be signed by an officer of the reporting corporation. An annual agreement may be made on Form 5472. Until revised Forms 5472 are available, the agreement shall be made on an attachment to the Form 5472 which contains the following heading and statement.

**Election to Maintain Records Outside the U.S.**

"[Name of reporting corporation] hereby elects to maintain outside the United States the records described in paragraph (b) of § 1.6038A–3, relating to transactions between [name of reporting corporation] and [name of foreign related party] for its taxable year ending on [date]. [Name of reporting corporation] agrees to produce upon request of the Internal Revenue Service any [name of reporting corporation] or [name of foreign related party] records covered by this election (and translations of specified records) within the time and in the manner prescribed by the regulations.

Signature for [name of reporting corporation]

(To be signed by a corporate officer, on behalf of the reporting corporation: I certify that I have the authority to execute this agreement on behalf of [name of reporting corporation].)

(Signature)

(Title)

(Date)

Please print or type your name below.

(2) *Retroactive elections.* An election pertaining to documents that were in existence on or after March 20, 1990, with respect to taxable years for which the Form 5472 was required to be filed prior to the date on which the final regulations under section 6038A are published may be made on the first timely filing of Form 5472 after that date. Such election should bear the caption "Retroactive election for taxable years prior to final section 6038A regulations."

(3) *Scheduled production for high volume or other reasons.* Upon a written request, for good cause shown, the District Director or the Assistant Commissioner (International), in the discretion of either, may grant an extension of the time for the production or translation of the requested documents. Such requests should be made within 30 days of the request for records by the Internal Revenue Service. If an extension is needed because of the volume of records requested, the District Director or the Assistant Commissioner (International) may allow production to be scheduled over a period of time so that not all records must be produced at the same time.

(4) *Invalidation of non-U.S. maintenance election.* The District Director (with the concurrence of the Assistant Commissioner (Examination)), or the Assistant Commissioner (International), may invalidate, for cause, an election to maintain outside the United States the records specified in paragraph (b) of this section. An election may be invalidated only if there exists a clear pattern of failure to maintain or timely produce the required records. The assessment of a monetary penalty under section 6038A (d) and § 1.6038A–4 for failure to maintain records is not necessarily sufficient in and of itself to cause invalidation of the election to maintain records outside the United States.

(g) *Period of retention.* Records required to be maintained by section 6038A (a) and this section shall be kept as long as they may be relevant to determining the correct tax treatment of any transaction between the reporting corporation and a related party, but in one case less than the applicable statute of limitations on assessment and collection with respect to the taxable year in which the transaction or item to which the records relate affects the U.S. tax liability of the reporting corporation. See section 6001 and the regulations thereunder.

(h) *Effective dates.* For effective dates for this section, see § 1.6038A–1 (k).

**§ 1.6038A–4 Monetary penalty.**

(a) *Imposition of monetary penalty*—(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A–2 within the time and manner prescribed in paragraphs (d) and (e) of § 1.6038A–2 (relating to the filing of Form 5472), fails to maintain or cause another to maintain records as required by § 1.6038A–3, or fails to produce records maintained outside the

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United States within the time prescribed in paragraph (f) of § 1.6038A–3 (relating to the production of maintained records), a penalty of $10,000 shall be assessed for each taxable year with respect to which such failure occurs. Such a penalty may be imposed by the District Director, the Assistant Commissioner (International), or the Director of the Internal Revenue Service Center where the income tax return is filed. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in paragraph (b) (3) through (5) of § 1.6038A–2 is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

(2) *Liability for certain partnership transactions.* A reporting corporation, to which transactions engaged in by a partnership are attributed under paragraph (e)(2) of § 1.6038A–1, is subject to the rules of this section to the extent failures occur with respect to the partnership transactions so attributed to the reporting corporation.

(3) *Calculation of monetary penalty.* If a reporting corporation fails to maintain records as required by § 1.6038A–3 of transactions with multiple related parties, the monetary penalty may be assessed for each failure to maintain records with respect to each related party. The monetary penalty, however, shall be imposed on a reporting corporation only once for a taxable year with respect to each related party for a failure to furnish the information required on Form 5472, for a failure to maintain or cause another to maintain records, or for a failure to timely produce records under an election to maintain records outside the United States. An additional penalty for a another failure may be imposed, however, under the rules of paragraph (d)(2) of this section. Thus, unless such failures continue after notification as described in paragraph (d) of this section, the maximum penalty under this paragraph with respect to each related party for all such failures in a taxable year is $10,000. The members of a group of corporations filing a consolidated return are jointly and severally liable for any monetary penalty under this section that may be imposed.

(b) *Reasonable cause*—(1) *In general.* If an affirmative showing is made that there is reasonable cause for a failure that results in the assessment of the monetary penalty, the period during which reasonable cause exists shall be treated as beginning on the day reasonable cause is established and ending not earlier than the last day on which reasonable cause existed for any such failure. Failures which may be excused for reasonable cause include not timely filing Form 5472, not maintaining or causing another to maintain records as required by § 1.6038A–3, and not producing records maintained outside the United States within the time prescribed in paragraph (f) of § 1.6038A–3. Additionally, the beginning of the 90-day period after mailing of a notice by the District Director, the Assistant Commissioner (International), or the Director of an Internal Revenue Service Center of a failure described in paragraph (d) of this § 1.6038A–4, shall be treated as not earlier than the last day on which reasonable cause existed.

(2) *Affirmative showing required*—(i) *In general.* To show that reasonable cause exists for purposes of paragraph (b)(1), the reporting corporation must make an affirmative showing of all the facts alleged as reasonable cause for such failure in a written statement containing a declaration that it is made under penalties of perjury. The statement must be filed with the District Director or the Assistant Commissioner (International) (in the case of failure to maintain or furnish requested information permitted to be maintained outside the United States under the election or a failure to file), or the Director of the Internal Revenue Service Center where the Form 5472 is required to be filed (in the case of failure to file Form 5472). The District Director, the Assistant Commissioner (International), or the Director of the Internal Revenue Service Center where the income tax return is filed, as appropriate, shall determine whether the applicable failure was due to reasonable cause, and if so, the period of time for which such reasonable cause existed. If a return has been filed as required by § 1.6038A–2 or records have been maintained and produced as required by § 1.6038A–3, except for an omission of, or error with respect to, some of the information required or a record to be maintained, the omission or error shall not constitute a failure for purposes of section 6038A (d) if the reporting corporation who filed the return establishes to the satisfaction of the District Director, the Assistant Commissioner (International), or the Director of the Internal Revenue Service Center that the person has substantially complied with the filing of Form 5472 or the requirement to maintain or produce records.

(ii) *Small corporations.* The District Director or the Assistant Commissioner (International) shall apply the reasonable cause exception liberally in the case of a small corporation that

(A) had no knowledge of the requirements imposed by section 6038A;

(B) has limited presence in and contact with the United States; and

(C) promptly and fully complies with all requests by the District Director or the Assistant Commissioner (International) to file Form 5472, and to furnish books, records, or other materials relevant to the reportable transaction.

(c) *Failure to maintain records or to cause another to maintain records.* A failure to maintain records or to cause another to maintain records is determined by the District Director or the Assistant Commissioner (International) upon the basis of the overall compliance (including compliance with an agreement to produce records under the election to maintain records outside the United States) with the maintenance of records requirement by a reporting corporation. It is not an item-by-item determination. Thus, for example, a failure to maintain a single or small number of items may not constitute a failure for purposes of section 6038A (d), unless such item or items are essential to the correct determination of the tax liability of the reporting corporation. Upon such a determination, the District Director or the Assistant Commissioner (International) shall notify the reporting corporation of the failure in writing.

(d) *Increase in penalty where failure continues after notification*—(1) *In general.* If any failure described in this section continues for more than 90 days after the day on which the District Director, the Assistant Commissioner (International), or the Director of the Internal Revenue Service Center where the return is required to be filed (regarding a failure to file Form 5472), mails notice of the failure to the reporting corporation, the reporting corporation shall pay a penalty (in addition to the penalty described in paragraph (a) of this section) of $10,000 with respect to each related party for which a failure occurs for each 30-day period during which the failure continues after the expiration of the 90-day period. Any uncompleted fraction of a 30-day period shall count as a 30-day period for purposes of this paragraph (d) of this section.

(2) *Additional penalty for another failure.* An additional penalty for a taxable year may be imposed, however, if at a subsequent time from the time of the imposition of the monetary penalty described in paragraph (a) of this section, a second failure is determined



and such second failure continues after notification under paragraph (d)(1) of this section. Thus, if a taxpayer fails to file Form 5472 and is assessed a monetary penalty and later, upon audit, is determined to have failed to maintain records, an additional penalty for the failure to maintain records may be assessed under the rules of this paragraph if the failure to maintain records continues after notification under this paragraph.

(3) *Cessation of accrual.* The monetary penalty will cease to accrue if the reporting corporation either files Form 5472 (in the case of a failure to file Form 5472), furnishes information to substantially complete Form 5472, or demonstrates compliance with respect to the maintenance of records (in the case of a failure to maintain) records for the taxable year in which the examination occurs and subsequent years to the satisfaction of the District Director or the Assistant Commissioner (International). The monetary penalty also will cease to accrue if requested information, documents, or records, kept outside the United States under and the election contained in § 1.6038A–3 (f) and not produced within the time specified, are produced.

(4) *Continued failures.* If a failure under this section relating to a taxable year beginning before July 11, 1990 occurs, and if the failure continues following 90 days after the notice of failure under this paragraph is sent, the amount of the additional penalty to be assessed under this paragraph is $10,000 for each 30-day period (or fraction thereof) beginning after November 5, 1990, during which the failure continues.

There is no limitation on the amount of the monetary penalty that may be assessed after November 5, 1990.

(e) *Other penalties.* For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203 and 7206 of the Code.

(f) *Examples.* The following examples illustrate the rules of this section.

*Example (1)—Failure to file Form 5472.* Corp X, a U.S. reporting corporation, engages in related party transactions with FC. Corp X does not file timely a Form 5472 or maintain records relating to the transactions with FC for Year 1 or subsequent years. The Service Center with which Corp X files its income tax return imposes a $10,000 penalty for each of Years 1, 2, and 3 under section 6038A (d) and this § 1.6038A–4 for failure to provide information as required on Form 5472 and mails a notice of failure to provide information. Corp X does not file Form 5472. Ninety days following the mailing of the notice of failure to Corp X an additional penalty of $10,000 is imposed. On the 135th day following the mailing of the notice of failure, Corp X files Form 5472 for Years 1, 2, and 3. The total penalty owed by Corp X for Year 1 is $30,000. ($10,000 for not timely filing Form 5472, $10,000 for the first 30-day period following the expiration of the 90-day period, and $10,000 for the fraction of the second 30-day period). The penalty for Years 2 and 3 for the failure to file Form 5472 is also $30,000 for each year, calculated in the same manner as for Year 1. The total penalty for failure to file Form 5472 for Years 1, 2, and 3 is $90,000.

*Example (2)—Failure to maintain records.* Assume the same facts as in *Example (1).* In Year 5, Corp X is audited for Years 1 through 3. Corp X has not been maintaining records relating to the transactions with FC. The District Director issues a notice of failure to maintain records. Corp X has already been subject to the monetary penalty of $10,000 for each of Years 1, 2, and 3 for failure to file Form 5472 and, therefore, a monetary penalty under paragraph (a) of this section for failure to maintain records is not assessed. However, an additional penalty is assessed after the 90th day following the mailing of the notice of failure to maintain records. Corp X develops a record maintenance system as required by section 6038A and § 1.6038A–3. On the 180th day following the mailing of the notice of failure to maintain records, Corp X demonstrates to the satisfaction of the District Director that the newly developed record maintenance system will comply with the requirements of § 1.6038A–3 and the increase in the monetary penalty after notification ceases to accrue. The additional penalty for failure to maintain records is $30,000. An additional penalty of $30,000 per year is assessed for each of years 2 and 3 for the failure to maintain records for a total of $90,000.

(g) *Effective dates.* For effective dates for this section, see § 1.6038A–1 (k).

**§ 1.6038A–5 Authorization of agent.**

(a) *Failure to authorize.* The rules of § 1.6038A–7 shall apply to any transaction between a foreign related party and a reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under paragraph (e)(2) of § 1.6038A–1), unless the foreign related party authorizes the reporting corporation to act as its limited agent solely for purposes of sections 7602, 7603, and 7604 with respect to any request by the Secretary to examine records or produce testimony related to such a transaction or with respect to any summons by the Secretary for such records or testimony. The fact that a reporting corporation is authorized to act as an agent for a foreign related party is not sufficient without other activities to establish for the foreign related party either a trade or business in the United States for purposes of the Code or a permanent establishment or fixed base for purposes of an income tax treaty.

(b) *Annual authorization by related party*—(1) *In general.* A foreign related party annually shall authorize as its agent (solely for purposes of sections 7602, 7603, and 7604) the reporting corporation with which it engages in transactions by providing a statement on Form 5472, signed by the foreign related party or an officer of the foreign related party possessing the authority to authorize an agent for purposes of Rule 4(d)(3) of the Federal Rules of Civil Procedure. The reporting corporation will accept this appointment by providing such a statement, signed by an officer of the reporting corporation possessing the authority to accept such an appointment. The agency shall be effective at all times. Until official Internal Revenue Service forms are available, the authorization and acceptance must be attached to the Form 5472 and must contain a heading and statement as set forth below. A foreign government or a controlled commercial entity as defined by section 892(2)(B) is not subject to the authorization of agent requirement.

**Authorization of Agent**

"[Name of foreign related party] hereby expressly authorizes [name of reporting corporation] to act as its agent solely for purposes of sections 7602, 7603, and 7604 of the Internal Revenue Code with respect to any request to examine records or produce testimony related to any transaction between [name of the above-named foreign related party] and [name of reporting corporation] or with respect to any summons for such records or testimony.

Signature of or for [name of foreign related party]

(Title)

(Date)

(If signed by a corporate officer, partner, or fiduciary on behalf of foreign related party): I certify that I have the authority to execute this authorization of agent to act on behalf of [name of foreign related party].

Type or print your name below if signing for a foreign related party that is not an individual.

[Name of reporting corporation] accepts this appointment to act as agent for [name of foreign related party] for the above purpose."

Signature for [Name of Reporting Corporation]

(Title)

(Date)

I certify that I have the authority to accept this appointment to act as agent on behalf of [name of foreign related party] and agree to accept service of process for the above purposes.

Type or print your name below.

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(2) *Authorization for prior years.* A foreign related party may authorize a reporting corporation to act as its agent with respect to taxable years for which a Form 5472 is required to be filed prior to the date on which the final regulations under section 6038A are published by providing the above executed authorization of agent within 30 days of a request by the Service for such an authorization.

(c) *Legal effect of authorization of agent.* The legal consequences of a foreign related party authorizing a reporting corporation to act as its agent for purposes of sections 7602, 7603, and 7604 of the Code are as follows.

(1) *Agent for purposes of commencing judicial proceedings.* A reporting corporation that is authorized by a foreign related party to act as its agent for purposes of sections 7602, 7603, and 7604 (including service of process) is also the agent of the foreign related party for purposes of—

(i) The filing of a petition to quash under section 6038A(e)(4)(A) or a petition to review an Internal Revenue Service determination of noncompliance under section 6038A(e)(4)(B), and

(ii) The commencement of a judicial proceeding to enforce a summons under section 7604, whether commenced in conjunction with a petition to quash under section 6038A(e)(4)(A) or commenced as a separate proceeding in the federal district court for the district in which the person to whom the summons is issued resides or is found.

(2) *Foreign related party found where reporting corporation found.* For any purposes relating to sections 7602, 7603, or 7604 (including service of process), a foreign related party that authorizes a reporting corporation to act on its behalf under section 6038(e)(1) and this section may be found anywhere where the reporting corporation has residence or is found.

(d) *Successors in interest.* A successor in interest to a related party should execute and file a new Authorization of Agent on Form 5472 following the succession event. If the Form 5472 containing the new Authorization of Agent is not filed as part of an income tax return, only the information regarding the reporting corporation and the related party as described in paragraphs (b) (1) and (2) of § 1.6038A–2, plus the Authorization of Agent sections of Form 5472 (or attachment thereto) need be completed. The Form 5472 should be sent to the Internal Revenue Service Center with which the reporting corporation's income tax return is required to be filed. A duplicate copy of the Form 5472 must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255. A new Authorization of Agent should be filed no later than the next filing date (including extensions) of the corporate income tax return of the reporting corporation.

(e) *Retroactive authorization for inadvertent transaction*—(1) *In general.* If a foreign person and a reporting corporation that engage in a transaction discover only after the completion of the transaction and after the time to timely file Form 5472 that the foreign person is a related party within the meaning of section 6038A(c)(2) and § 1.6038A–1(c)(4) and the foreign person has not authorized the reporting corporation to act as its agent under section 6038A(e)(1) and paragraph (b) of this section, the related party, upon discovery of the relationship, retroactively may authorize the reporting corporation to act as its agent for purposes of section 6038A(e)(1) and this section if the District Director or the Assistant Commissioner (International) permits. The District Director or the Assistant Commissioner (International) may permit a retroactive authorization if—

(i) The transaction is a small or isolated transaction on arm's-length terms; and

(ii) The related party engaging in the transaction does not directly own stock in the reporting corporation.

(2) *Procedure for requesting retroactive authorization.* In cases described in paragraph (e)(1) of this section, a foreign related party may submit a request in writing to the District Director or the Assistant Commissioner (International) that it be permitted retroactively to authorize as its agent a reporting corporation with which it engaged in a transaction. The request should include statements demonstrating that the foreign related party and the reporting corporation meet the requirements of paragraph (e)(1) of this section. If the District Director or the Assistant Commissioner (International) so permits, such permission should be in writing. The foreign related party may authorize the reporting corporation to act as its agent by filing a form 5472 within 30 days after receipt of such written permission (or if the Form 5472 has not been revised to include an authorization section, the Form 5472 and the authorization of agent statement contained in paragraph (b) of this section for the year in which the transaction occurred). One Form 5472 should be filed as an amended return with the Internal Revenue Service Center which the reporting corporation's income tax return is required to be filed. A duplicate Form 5472 should be filed at the same time as the amended return is filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

(3) *Effect of retroactive authorization*—(i) *Noncompliance penalty adjustment.* If a foreign related party retroactively authorizes as its agent a reporting corporation with which it engaged in a transaction, the foreign related party shall be treated as having complied with the authorization of agent requirement of this section. If a related party does not retroactively authorize a reporting corporation as its agent for purposes of sections 7602, 7603, and 7604, the reporting corporation will be subject to the noncompliance penalty contained in § 1.6038A–7 with respect to transactions that occurred prior to the time the reporting corporation first became aware that the requirements of section 6038A would apply.

(ii) *Monetary penalty.* A Form 5472 that is filed under paragraph (e)(2) of this section within 30 days of the receipt of the written permission to retroactively authorize an agent will be treated as timely filed. Accordingly, the monetary penalty under § 1.6038A–4 will not be applicable.

(4) *Deemed compliance.* In exceptional circumstances, the District Director or the Assistant Commissioner (International) may treat a reporting corporation as retroactively authorized to act as agent for a related party for purposes of sections 7602, 7603, and 7604 in the absence of an actual agency appointment by the foreign related party. Factors to be considered include—

(i) If neither the reporting corporation nor the other party to the transaction knew or had reason to know that the two parties were related at the time of the transaction, and

(ii) The extent to which the taxpayer establishes to the satisfaction of the District Director or the Assistant Commissioner (International) that all transactions between the reporting corporation and the related party were on arm's-length terms and did not involve the participation of any known related party.

(5) *Reason to know.* Whether the reporting corporation or other party had reason to know that the two parties were related at the time of the transaction will be determined by all the facts and circumstances.

(6) *Effect of deemed compliance.* If a reporting corporation is deemed under paragraph (e)(4) of this section to have been retroactively authorized to act as an agent for a foreign related party for purposes of section 7602, 7603, and 7604, such deemed compliance is applicable only for that particular transaction and other reportable transactions entered into prior to the time when the reporting corporation knew or had reason to know that the related party, in fact, was related. The noncompliance rule of § 1.6038A–7 shall apply to any transaction subsequent to that time with the same related party, unless the related party actually authorizes the reporting corporation to act as its agent under paragraph (a) of this section. A new authorization must be executed for all subsequent transactions. In addition, the record maintenance requirements of § 1.6038A–3 will apply to all subsequent transactions and, with respect to prior transactions, will apply to relevant records in existence at the time the relationship was discovered.

(f) *Effective dates.* For effective dates for this section, see § 1.6038A–1 (k).

**§ 1.6038A–6 Failure to furnish information.**

(a) *In general.* The rules of § 1.6038A–7 may be applied with respect to a transaction between a foreign related party and the reporting corporation (including any transaction engaged in by a partnership that is attributed to the reporting corporation under paragraph (e)(2) of § 1.6038A–1) if a summons is issued to the reporting corporation to produce any records or testimony, either directly or as agent for such related party, to determine the correct treatment under Title 1 of the Code of such a transaction between the reporting corporation and the related party; and if—

(1)(*i*) The summons is not quashed in a proceeding, if any, begun under section 6038A(e)(4) and is not determined to be invalid in a proceeding, if any, begun under section 7604 to enforce such summons; and

(ii) The reporting corporation does not substantially and timely comply with the summons, and the District Director or the Assistant Commissioner (International) has sent by certified or registered mail a notice under section 6038A(3)(2)(C) to the reporting corporation that it has not so complied; or

(2) The reporting corporation fails to maintain or to cause another to maintain records as required by § 1.6038A–3, and by reason of that failure, the summons is quashed in a proceeding under section 6038A(e)(4) or in a proceeding begun under section 7604 to enforce the summons, or the reporting corporation is not able to provide the records requested in the summons.

(b) *Enforcement proceeding not required.* The District Director or the Assistant Commissioner (International) is not required to begin an enforcement proceeding to enforce the summons in order to apply the rules of § 1.6038A–7.

(c) *De minimis failure.* Where a reporting corporation's failure to comply with the requirement to furnish information under this section is *de minimis*, the District Director or the Assistant Commissioner (International), in the discretion of the District Director or the Assistant Commissioner (International), may choose not to apply the noncompliance penalty. Thus, for example, in cases where a particular document or group of documents is not furnished upon request or summons, the District Director or the Assistant Commissioner (International), in their sole discretion, may choose not to apply the noncompliance penalty if the District Director or the Assistant Commissioner (International) deems the document or documents not to have significant or sufficient value in the determination of the correctness of the tax treatment of the related party transaction.

(d) *Effective dates.* For effective dates for this section, see § 1.6038A–1(k).

**§ 1.6038A–7 Noncompliance.**

(a) *In general.* In the case of any failure described in § 1.6038A–5 or § 1.6038A–6, the rules of this § 1.6038A–7 apply to the reporting corporation. In such a case—

(1) The amount of the deduction allowed under subtitle A for any amount paid or incurred by the reporting corporation to the related party in connection with such transaction, and

(2) The cost to the reporting corporation of any property acquired in such transaction from the related party or transferred by such corporation in such transaction to the related party, may be determined by the District Director or the Assistant Commissioner (International).

(b) *Determination of the amount.* The amount of the deduction or the cost to the reporting corporation shall be the amount determined by the District Director or the Assistant Commissioner (International) in the sole discretion of the District Director or the Assistant Commissioner (International) from the District Director's or Assistant Commissioner (International)'s own knowledge or from such information as the District Director or Assistant Commissioner (International) may choose to obtain through testimony or otherwise. The District Director or Assistant Commissioner (International) may disregard any information, documents, or records submitted by the reporting corporation or the related party if, in the sole discretion of the District Director or the Assistant Commissioner (International), the District Director or the Assistant Commissioner (International) deems that they do not have significant or sufficient value in the determination of the correctness of the tax treatment of the related party transaction.

(c) *Separate application.* If the noncompliance penalty of this section applies with respect to transactions with a related party of the reporting corporation, it will not be applied with respect to any other related parties of the reporting corporation solely upon the basis of that failure. Thus, for example, if a reporting corporation engages in transactions with related party A and related party B, and the reporting corporation does not respond to a summons for records related to the transactions between the reporting corporation and related party A, the noncompliance penalty imposed as a result of such failure will not apply to the transactions between the reporting corporation and related party B. If a separate summons is issued for records relating to the transactions between the reporting corporation and related party B and the reporting corporation does not produce such records, the noncompliance penalty may be applied to those transactions.

(d) *Effective dates.* For effective dates for this section, see § 1.6038A–1(k).

**Par. 4.** The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6038C–1 also issued under 26 U.S.C. 6038C.

**Par. 5.** New § 1.6038C–1 is added to read as follows:

**§ 1.6038C–1 General rule.**

The rules of §§ 1.6038A–1 through 1.6038A–7 generally will apply for purposes of section 6038C.

**Fred T. Goldberg, Jr.,**
*Commissioner of Internal Revenue.*

Approved: November 29, 1990.

**Kenneth W. Gideon,**
*Assistant Secretary of the Treasury.*

[FR Doc. 90-28773 Filed 12-4-90; 2:30 pm]
BILLING CODE 4830-01-M

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**26 CFR Part 1**

**[IL-868-89]**

**RIN 1545-AO69**

## Information With Respect to Certain Foreign-Owned Corporations; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

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**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing relating to information with respect to certain foreign-owned corporations.

**DATES:** The public hearing will be held on February 22, 1991, beginning at 10 a.m. Outlines of oral comments must be received by February 8, 1991.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IL–868–89), room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–568–3935 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 6038A and 6038C of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than February 8, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 90–28774 Filed 12–4–90; 2:30 pm]

BILLING CODE 4830–01–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Parts 1910 and 1917

**[Docket H–117]**

**RIN 1218–AA22**

### Grain Handling Facilities

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for information.

**SUMMARY:** In this notice OSHA is asking a series of questions designed to explore the scope and current relevancy of the grain handling facilities rulemaking record, closed in 1985, on matters such as dust-containment methods and costs. Based on the comments received, OSHA will determine whether the existing record is sufficiently complete and current to support a conclusion on alternatives to applying the 1/8 inch action level housekeeping provision only to priority areas, including the alternative of expanding the action level to the entire grain elevator facility.

**DATES:** Information submitted in response to this request must be postmarked by March 11, 1991.

**ADDRESSES:** Information submitted in response to this request must be submitted in quadruplicate to the Docket Officer, Docket H–117, U. S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Office of Public Affairs, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202)523–8151.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On December 31, 1987, OSHA promulgated a final standard on grain handling facilities (52 FR 49592, 29 CFR part 1910.272). Paragraph (i)(2) of that standard required grain elevators to initiate appropriate cleaning measures whenever grain dust accumulations reached a depth of 1/8 inch in "priority housekeeping areas." These areas included floor areas which are within 35 feet of inside bucket elevators; floors of enclosed areas containing grinding equipment; and floors of enclosed areas containing grain dryers located inside the facility. This provision of the standard was challenged in the U.S. Court of Appeals for the Fifth Circuit by the National Grain and Feed Association, and in the D.C. Circuit by the Food and Allied Service Trades Department, AFL-CIO. The cases were consolidated in the Fifth Circuit.

In a decision issued October 27, 1988 and amended January 24, 1989, the Court remanded the standard to the Agency for consideration of two issues. First, the Court directed OSHA to further consider whether the "priority area" 1/8 inch action level provision was economically feasible. The Court directed OSHA to reconsider this issue based upon the Court's perception that there was "a significant factual gap in the record" on the costs of sweeping up grain dust in priority areas and the appropriate sweeping rate that should be assumed in calculating these costs. Second, the Court directed OSHA to consider alternatives to applying the action level only to priority areas, including the alternative of expanding the action level requirement to the entire facility. *See National Grain and Feed Association* v. *OSHA*, 866 F.2d 717 (5th Cir. 1989).

OSHA's reconsideration of the first issue was completed on December 4, 1989. On that date, OSHA published a Supplemental Statement of Reasons (54 FR 49971) concluding that the Final Rule's "priority area" 1/8 inch action level was economically feasible. By order dated April 25, 1990, the Court upheld OSHA's reasons for concluding that the priority area housekeeping requirement was economically feasible, and lifted its stay of the provision, effective August 1, 1990. The Court also affirmed OSHA's decision to use the existing record in making the determination that the priority area provision was feasible. *See National Grain and Feed Association* v. *OSHA*, 903 F.2d 308 (5th Cir. 1990).

OSHA deferred its consideration of the second issue which the Court had remanded, whether the action level requirement should be expanded beyond priority areas, because OSHA's conclusions regarding the first issue could have determined its conclusions regarding the second issue. If, for example, OSHA had concluded that the action level was economically infeasible when applied only to priority areas within the facility, extending the action level beyond the priority areas would clearly also have been economically infeasible; thus further consideration of the second issue would have become unnecessary. Because the action level as applied to priority areas has been found to be economically feasible, however, further consideration is now required to determine whether extension beyond those areas is feasible and necessary.

On June 14, 1990, the Secretary reported to the Court on the status of the Agency's review of the question whether to extend the action level beyond the priority areas. In the report, OSHA concluded: (1) That a substantial question exists as to whether the existing record, which closed in 1985, is sufficiently complete and current to support a conclusion on the remaining issue, and (2) that public comment about the contents of the record can assist the agency in evaluatjng its adequacy. OSHA decided to develop a series of questions designed to explore the record's scope and current relevancy on matters such as dust-containment methods and costs. OSHA expects the comments to be useful in evaluating the capacity of the existing record to support conclusions about the feasibility and efficacy of expanding the action level housekeeping provision.

Accordingly, OSHA invites interested persons and organizations to provide written comments regarding whether the existing record is adequate to support conclusions on alternatives to applying the 1/8 inch action level only to priority areas, including the alternative of applying the action level to the entire grain elevator facility. Interested persons are invited more particularly to respond to the following questions.

#### II. Information Requested

1. Is the current record adequate to answer all questions regarding the benefits, costs and feasibility of expanding the housekeeping action level requirement? If not, describe those areas of the record which are deficient and what information is needed.

2. Have the fundamental financial conditions (sales, profits, etc.) of grain elevators changed significantly since 1984? If so, how? What impact has the housekeeping action level provision in priority areas had on the structure and financial status of the industry?

3. Is there any new information available regarding the cleaning rate for elevator floors? Have there been any new studies performed to estimate the cleaning rate for grain elevator floors or other similar surfaces? If so, describe the results of the studies. Have there been any changes in technology that would affect the speed at which workers can clean elevator floors?

4. Has the structure of the industry changed significantly with regard to the number, size and type of grain elevators currently operating? If so, how?

5. Have grain elevators changed significantly with regard to technology and construction in ways that would affect the rate of grain dust accumulation? Has the grain handling standard had an effect in this regard? If so, how?

6. Have the amount and frequency of cleaning occurring in grain elevators changed since 1984? If so, how and why? Are non- priority areas cleaned differently now? If so, how has this affected accumulations of dust on ledges and equipment in these areas?

7. Have there been any significant changes in the labor market that would affect the cost of hiring workers to manually clean grain dust from grain elevator floors? If so, what are they?

8. Is there new information regarding worker fatalities and injuries that would be prevented by expanding the action level housekeeping provision to additional areas in the grain elevator or to the entire grain elevator? If so, please provide the information and describe the equipment or activity contained in these areas.

9. What dust control engineering methods (such as oil additives) are currently being used and are they effective? Do they affect dust levels in non-priority areas? If so, how? What has been their cost of installation and annual maintenance?

10. Would the dust-reduction methods (vacuuming, sweeping, or other methods) that are currently used in priority areas be practical for use in larger areas? Why or why not?

11. Would it be feasible and beneficial to adopt the action level concept for non-priority areas but impose a less-stringent action level in these non-priority areas? If so, describe the alternate action level and its costs and benefits.

#### III. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this notice. These submissions must be postmarked by March 11, 1991, and submitted in quadruplicate to the OSHA Docket Officer, Docket H–117, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is (202)523–7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday. Submissions limited to 10 pages or less may also be transmitted by facsimile to (202)523–5046, provided that the original and four copies of the submission are sent to the Docket Officer immediately thereafter.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be considered during this information gathering process.

#### IV. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, in response to the order of the U.S. Court of Appeals for the Fifth Circuit in *National Grain and Feed Association* v. *OSHA*, 866 F.2d 717 (5th Cir. 1989). *See also National Grain and Feed Association* v. *OSHA*, 903 F.2d 306 (5th Cir. 1990). It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)); section 41 of the Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

Signed at Washington, DC, this 3rd day of December, 1990.

**Gerard F. Scannell,**

*Assistant Secretary of Labor.*

[FR Doc. 90–28808 Filed 12–7–90; 8:45 am]

BILLING CODE 4510–26–D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD8–90–10]**

### Drawbridge Operation Regulations; Gulf Intracoastal Waterway, TX

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This is an amended proposal that has been agreed upon by the Laguana Madre Yacht Club and the Long Island Owner's Association, in lieu of the proposed regulations published in the **Federal Register**, Vol. 55, No. 132, page 28233, dated July 10, 1990.

At the request of the Long Island Owner's Association, Inc., the Coast Guard is considering a change to the regulation governing the operation of the pontoon bridge across the Gulf Intracoastal Waterway, mile 666.0, at Port Isabel, Texas to limit the bridge openings for pleasure craft on weekdays, except holidays, between 5

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a.m. and 8 p.m. to every hour on the hour. The bridge would open on demand for all vessels at all other times, and the bridge would continue to open on demand for commercial vessels at all times. This action will relieve vehicular traffic congestion, while still providing for the reasonable needs of navigation.

**DATES:** Comments must be received on or before January 24, 1991.

**ADDRESSES:** Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1115 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

**Drafting Information**

The drafters of this notice are John Wachter, project officer, and LT J.A. Wilson, project attorney.

**Discussion of Proposed Regulation**

Vertical clearance of the bridge in the closed position is zero. Navigation through the bridge consists of commercial vessels, including fishing/shrimp boats and tour boats, and various types of recreational craft. Data submitted by the bridge owner show that about 340 vehicles cross the bridge on a daily basis, while approximately nine commercial vessels and seven pleasure boats pass through the bridge site during the same period. The recreational craft, the only vessels affected by the proposed regulation, can easily adjust their arrival time at the bridge to insure a minimum delay while transiting the waterway. Pleasure vessels will also be passed when the draw is opened for commercial vessels during the restricted weekday periods. At the same time, motorists can anticipate the possibility of the bridge openings and arrange to arrive at the bridge at a time to avoid a possible bridge opening.

On July 10, 1990, the Commander, Eighth Coast Guard District published a notice of proposed rulemaking (55 FR 28233) soliciting comments on a proposal to limit the number of openings for pleasure craft through the Port Isabel pontoon bridge. From 5 a.m. to 8 p.m. the bridge would open only on the hour. Sixty-one letters in support of the proposal were received. Twenty-nine letters of objection to the proposal were received, primarily from individual pleasure boat owners. All of the objections were typified by that expressed by the Laguna Madre Yacht Club, the primary pleasure craft user of the bridge. This yacht club stated that pleasure craft awaiting a bridge opening, especially during the peak boating periods of weekends and holidays, could be endangered by large commercial vessels, such as barge tows, which will continue to be passed through the bridge at any time. The yacht club withdrew its objection when the applicant agreed to open the bridge for pleasure craft at all times on weekends and holidays. This action will provide for the reasonable needs of navigation as well as relieve vehicular traffic congestion. In addition, the shallow draft channel through the old causeway bridge is currently being redredged to provide an alternate route for pleasure boats to bypass the pontoon bridge.

This supplemental notice of proposed rulemaking is being published because the amended proposal represents a significant change to the original proposal.

**Federalism**

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed limited opening period there will be very little inconvenience for the pleasure vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed regulated period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Environmental Impact**

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulation**

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 498; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.968 is revised to read as follows:

**§ 117.968 Gulf Intracoastal waterway.**

The draw of the Port Isabel bridge, mile 666.0, shall open on signal; except that, from 5 a.m. to 8 p.m. on weekdays only, excluding holidays, the draw need open only on the hour for pleasure craft. The draw shall open on signal at any time for commercial vessels, for a vessel in distress, or for an emergency aboard a vessel. When the draw is open for a commercial vessel, waiting pleasure craft shall be passed.



Dated: November 14, 1990.

J.M. Loy,

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 90-28900 Filed 12-7-90; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF LABOR

**Employment Standards Administration, Wage and Hour Division**

**41 CFR Part 50-201**

**RIN 1215-AA33**

## General Regulations Under the Walsh-Healey Public Contracts Act

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Reopening of comment period on proposed rule.

**SUMMARY:** The Department of Labor (DOL or Department) is reopening the comment period on a proposal published in the **Federal Register** on June 22, 1989, at 54 FR 26212, which proposed to amend the Walsh-Healey Public Contracts Act (PCA) regulations to provide an alternative regular dealer definition for "information systems integrators," firms that contract to provide fully operational information processing ("ADP") systems to the Federal Government.

**DATES:** Comments must be received on or before February 8, 1991.

**FOR FURTHER INFORMATION CONTACT:** John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523-8305. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Walsh-Healey Public Contracts Act (PCA) provides labor standards for employees working on Federal contracts over $10,000 for the manufacturing or furnishing of materials, supplies, articles, or equipment. Section 1(a) of PCA provides that contracts subject to the Act may only be awarded to a manufacturer of, or a regular dealer in, the materials, supplies, articles, or equipment to be furnished under the contract. "Regular dealer" is defined in 41 CFR 50-201.101(a)(2) as "a person who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the contract are bought, kept in stock, and sold to the public in the usual course of business." As provided in 41 CFR 50-206.53(b)(2), the stock maintained by a regular dealer must be "a true inventory from which sales are made."

Situations arise under which the standard definitions are found not to accommodate the Government's needs and a particular industry's practices, and the statute and regulations allow for exceptions to be made when the Government's operations would be seriously impaired if the normal definitions were to be followed. In addition to a number of full and partial administrative exemptions from the eligibility requirements which have been granted for certain types of contracts (see 41 CFR 50-201.603 and .604), special alternate definitions have been granted over the years for regular dealers in eleven particular products (including one for the procurement of used automatic data processing equipment), in order to recognize commercial practices in those industries (see 41 CFR 50-201.101(a)(2) (i) through (xi)). Common to all of these alternative definitions is the absence of a requirement that the dealer physically maintain a stock from which sales are made.

On June 22, 1989, DOL published in the **Federal Register** (54 FR 26212) a proposed alternative regular dealer definition for "information systems integrators," intended to amend the PCA regulations by adding a new subparagraph (a)(2)(xii) to 41 CFR 50-201.101 that would contain the new definition. The proposal resulted from information furnished by representatives of contracting agencies and the industry indicating that information systems integrators play a crucial role in the economic and efficient acquisition of information processing resources by Federal agencies, and that uncertainty as to their eligibility under PCA could endanger agencies' operational capabilities that are heavily dependent upon the performance of advanced technology computer systems.

Only two comments were received on the proposal. In addition, in November 1989, the Subcommittee on Legislation and National Security of the Committee on Government Operations, U.S. House of Representatives, began a series of hearings on the Federal Government's purchase of ADP equipment which included a review of procurements awarded to systems integrators. Based on these Congressional hearings and the fact that only two comments were received, it was decided to reopen the comment period on the Department's proposal to ensure that interested parties have sufficient opportunity to submit comments, and to ensure that the Department has sufficient information in deciding what further rulemaking activity is appropriate.

Accordingly, the Department is inviting additional comments for sixty days on the proposed alternative regular dealer definition for "information systems integrators," as published in the **Federal Register** on June 22, 1989 (54 FR 26212), to allow such firms to bid on contracts to furnish the Federal Government fully operational information processing systems. In addition to establishing alternative qualifications for eligibility the special definition would relieve potential contractors in this industry from having to physically maintain a stock of inventory from which sales are made, a custom that appears to be inconsistent with this industry's practices.

Comments submitted in response to the original Notice of Proposed Rulemaking published on June 22, 1989, are already included in the Department's rulemaking record and will be fully considered in developing the final rule in this matter, as will the information relevant to these proceedings from the Congressional Committee hearings initiated in November 1989. However, commenters responding to this Notice are particularly invited to focus their attention in the comments, in addition to commenting on the substance of the proposed definition itself, on the following two areas: (1) The extent to which the existing, standard PCA definitions for "manufacturer" and "regular dealer" present problems to the Federal Government in its ability to efficiently and effectively procure needed information processing systems and related ADP equipment; and, (2) whether the criteria specified in the proposed special definition are sufficient to prevent "bid brokering," or whether additional limitations or refinements are needed in the rule to ensure that pure "bid brokering" does not occur under the guise of systems integration.

For the convenience of the reader, the proposed special definition published June 22, 1989, is being repeated here for informational purposes:

*Section 50-201.101 Manufacturer or Regular Dealer*

(a) *Definitions.* * * *

(2) * * *

(xii)(A) An "information systems integrator" is a person or firm that owns, operates or maintains an established business which is engaged in contracting to provide fully operational information

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processing systems, comprised of "information processing resources" as defined in 41 CFR 201-2.001, that meet the buyer's designated information processing functional ADP system specifications, as defined in 41 CFR 201-2.001. An "information systems integrator" may qualify as a regular dealer under contracts where, pursuant to contract requirements: (1) The government agency solicits to acquire a fully operational information processing system which meets functional ADP system specifications and mission objectives delineated by the solicitation and/or the contract, as opposed to a solicitation and/or contract describing only the specific make and model of the equipment required; (2) the contractor assumes the risks for designing, delivering, implementing, and testing (and, where required by the contract, maintaining) a fully operational information processing system that meets the buyer's designated functional specifications; and (3) the contractor is responsible to the buyer for correcting any system deficiencies or component failures regardless of the manufacturer of the component or components involved.

(B) An "information systems integrator" will, in accordance with the contract, perform substantially all of the following functions:

(1) Analyze the buyer's requirements and needs;

(2) Assess currently-available technological offerings and identify/evaluate alternative system designs;

(3) Determine the composition of the system;

(4) Select and deliver the information processing resources;

(5) Customize, modify, or configure components (hardware, software, and supporting equipment) if necessary to satisfy inter-connectibility/compatibility requirements and the buyer's specialized information processing needs;

(6) Assemble, install, test, implement, and render operational the final information processing system.

* * * * *

(54 FR 26213, June 22, 1989)

In the Department's Notice of Proposed Rulemaking published on June 22, 1989, the Department advised that the proposed definition of "information systems integrator" is based in part on terms then codified in the Federal Information Resources Management Regulations (FIRMR) issued by the General Services Administration (GSA). The Department further advised that GSA had proposed to revise FIRMR part 201-2 (41 CFR part 201-2) to establish a definition for ADP entitled "Federal information processing resources," and that the Department would give full consideration to the final revisions in the FIRMR in the Department's rulemaking. GSA has issued a final rule amending FIRMR part 201-2, which was published in the **Federal Register** on July 27, 1990, at 55 FR 30705.

### Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

### Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary of Labor certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect in connection with the proposed rule published June 22, 1989. Accordingly, no regulatory flexibility analysis is required. However, the new definition would relieve potential contractors in this industry, both large and small, from having to maintain stock in a manner that is inconsistent with industry practices.

### Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

### List of Subjects in 41 CFR Part 50-201

Administrative practice and procedures, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, DC, this 30th day of November, 1990.

**Roderick A. DeArment,**
*Acting Secretary of Labor.*

**William E. Anderson,**
*Deputy Assistant Secretary for Employment Standards.*

**John R. Fraser,**
*Deputy Administrator, Wage and Hour Division.*

[FR Doc. 90-28875 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-27-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 662

### Northern Anchovy Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a fishery management plan amendment and request for comments.

**SUMMARY:** NOAA issues this notice that the Pacific Fishery Management Council (Council) has submitted Amendment 6 to the Northern Anchovy Fishery Management Plan (FMP) for Secretarial review, and is requesting comments from the public. Copies of Amendment 6 may be obtained from the Council at the address below.

**DATES:** Comments on the amendment should be submitted on or before January 25, 1991.

**ADDRESSES:** Comments on the amendment should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment may be obtained from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW., First Avenue (Metro Center), Suite 420, Portland, Oregon 97201.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, NMFS, Southwest Region, (213) 514-6660.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any amendment to a fishery management plan it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the amendment be available for public review and comment. The Secretary will consider all public comments in determining whether to approve the amendment.

The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised July 24, 1989 (54 FR 30828 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for their respective fisheries. Amendment 6 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

Implementation of Amendment 6 would require that all fishing under U.S. jurisdiction cease when the spawning biomass of northern anchovy is below 50,000 mt for two succeeding years. No fishing would be permitted until the spawning biomass again reaches or exceeds 50,000 mt. On those anticipated rare occasions when the biomass is below 50,000 mt, the absence of an allocation would present a small economic loss to small harvesters and entail some monitoring costs.

Section 303(a)(6) of the Magnuson Act requires that all fishery management plans consider and provide for adjustments regarding access to the fishery for vessels otherwise prevented from harvesting because of bad weather or other ocean conditions affecting safety. Amendment 6 discusses this subject and concludes that the geographical area and opportune time of harvesting in the anchovy fishery contribute to the safety of fishing vessels. There are no management practices that contribute to poor safety conditions.

Section 303(a)(7) of the Magnuson Act requires that all plans include readily available information on the significance of the habitat to the fishery and to assess the effects changes to that habitat might have on the fishery. Amendment 6 discusses this subject in conjunction with sections 4.1.1 and 4.2.8 of the previous amendment, Amendment 5, which provided a thorough description of the habitat of northern anchovy and the effects that changes in the habitat have on the fishery.

Regulations proposed by the Council to implement this amendment are scheduled to be published by December 11, 1990.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1990.

**Richard H. Schaefer,**
*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28862 Filed 12-5-90; 12:17 pm]
BILLING CODE 3510-22-M

### 50 CFR Parts 672 and 675

### Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of amendments to fishery management plans and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council (Council) has resubmitted a portion of Amendment 16 to the Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish (BSAI FMP) and Amendment 21 to the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (GOA FMP) for Secretarial review and is requesting comments from the public. Copies of the amendments may be obtained from the address below.

**DATES:** Comments on the revised amendments should be submitted on or before January 9, 1991.

**ADDRESSES:** All comments should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the revised Amendments 16 and 21 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Hal Weeks, North Pacific Fishery Management Council, (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comment in determining whether to approve the plan or amendment.

If approved, rules implementing the revised Amendments 16 and 21 would hold operators of individual trawl vessels accountable for their bycatch of halibut and red king crab while participating in specified groundfish fisheries.

Regulations proposed by the Council to implement these amendments are scheduled to be published within 15 days.

### List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 4, 1990.

**Richard H. Schaefer,**
*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28801 Filed 12-5-90; 12:17 pm]
BILLING CODE 3510-22-M

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# Notices

Federal Register
Vol. 55, No. 237
Monday, December 10, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held January 8, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1629, 14th Street & Pennsylvania Avenue NW., Washington, DC. The meeting is called on short notice due to the unanticipated results of recent negotiations of COCOM (Coordinating Committee for Multilateral Export Controls). The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: December 4, 1990.

**Betty A. Ferrell,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 90-28888 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DT-M

## Foreign-Trade Zones Board

**[Docket 47-90]**

### Foreign-Trade Zone 90—Onondaga County, NY Request to Expand Scope of Manufacturing Authority—Data Processing Equipment Subzone 90A, Smith Corona Plant, Cortland, NY

A request has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Onondaga, New York, grantee of Foreign-Trade Zone 90, on behalf of Smith Corona Corporation, for authority to expand the scope of manufacturing conducted under zone procedures at the company's typewriter manufacturing plant in Cortland, New York (Subzone 90A).

The Board approved FTZ Subzone 90A in April 1985 (Board Order 300, 50 FR 15469, 4/18/85). The pending request was made because Smith Corona is beginning to manufacture a wider range of data processing products at the Cortland plant, including word processors, personal computer systems/components, and data transmission/communication equipment, as well as certain parts and subassemblies for these items such as keyboards, display units, power supplies, circuit boards, and data storage/memory units. Future plans call for production of duplicating machines. Foreign-sourced components for these products include cathode ray tubes, disc drives, motors, printed circuit boards, typewriter parts and accessories, keyboard, brackets, plate assemblies, batteries, capacitors, power cords, and other parts and accessories for data processing equipment.

As with the ongoing activity, the use of zone procedures on the new products would exempt Smith Corona from Customs duty payments on parts and materials used to produce items for export. On its domestic sales, the company would be able to choose the lower duty rate applicable to finished products (0.0–2.2%). The duty rates for components range from zero to 10 percent. The request indicates that the use of zone procedures for the expanded range of products will help Smith Corona maintain and improve the plant's international competitiveness.

Comments on the request are invited from interested parties. They should be addressed to: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce (room 4213), 14th & Pennsylvania Avenue, NW., Washington, DC 20230, and postmarked on or before January 22, 1991.

Dated: December 3, 1990.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 90-28898 Filed 12-7-90; 8:45 a.m.]

BILLING CODE 3510-DS-M

## International Trade Administration

**[A-357-805]**

### Initiation of Antidumping Duty Investigation: Steel Wire Rope From Argentina

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Argentina are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Argentina of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joel Fischl or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1778 or 377-5288, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of steel wire rope are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Argentina of steel wire rope.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(E) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

#### United States Price and Foreign Market Value

Petition presented two methodologies which it used to estimate United States price: (1) Petitioner provided an actual price quote for steel wire rope that was quoted in mid-October 1990 and adjusted for U.S. inland freight, distributor mark-up, broker fees and U.S. duty, supported by an affidavit from an industry expert. (2) Alternatively, petitioner based its estimates of United States price on the average Customs value of imports of bright steel wire rope from Argentina (which accounts for 98 percent of all wire rope imports from Argentina) classified under Harmonized Tariff Schedule (HTS) item number 7312.10.9090. For purposes of initiation, we are calculating United States price based on the actual price quote noted above.

Petitioner's estimate of foreign market value is based on a price list (included in a sales contract between an Argentinian producer and its customer) for steel wire rope. The petitioner adjusted the listed price for physical differences in merchandise.

Based on a comparison of U.S. price and foreign market value, petitioner alleges a dumping margin of 199.99 percent.

#### Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petition supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigations to determine whether imports of steel wire rope from Argentina are being, or are likely to be, sole in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

#### Scope of Investigation

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate HTS subheadings under which the subject merchandise is classifiable are 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

#### ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business property information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order within the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

#### Preliminary Determination by ITC

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 28, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28416 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-337-801]**

### Initiation of Antidumping Duty Investigation: Steel Wire Rope From Chile

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Chile are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Chile of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.

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**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8498 or 377–5288, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of steel wire rope are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Chile of steel wire rope.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(E) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner presented two different methodologies which it used to estimate United States price: (1) Petitioner based its estimates of United States price on actual F.O.B. Chilean port prices for several steel wire rope products obtained by a consultant, to which no adjustments were made; and (2) alternatively, petitioner based United States price on the unadjusted average monthly customs value of imports of the subject merchandise (both bright and galvanized). For purposes of initiation, we are calculating United States price based on the actual prices noted above.

Petitioner's estimate of FMV is based on constructed value (CV). CV was calculated using the average costs for producing carbon steel wire rope (both galvanized and bright) experienced by members of the Committee, adjusted for known differences between Chilean and U.S. products.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 19.3 to 61.5 percent.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Chile are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Chile of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28417 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–570–809]**

**Initiation of Antidumping Duty Investigation: Steel Wire Rope From The People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from The People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.



**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Edward Easton or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377–1777 or 377–1769, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353-12), petitioners allege that imports of steel wire ropes are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from The People's Republic of China of steel wire rope.

Petitioner stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value on constructed value using factors of production valued in a market economy.

Petitioner based its estimates of United States price on actual prices offered to a U.S. firm for several steel wire rope products. The prices were obtained by a domestic producer of steel wire rope that has contact with personnel associated with the sales of the subject merchandise in the United States. Petitioner adjusted the CIF prices for overseas shipping and handling and selling commissions.

Petitioner's estimate of foreign market value is based on constructed value, using the factors of production for steel wire rope. In valuing the factors of production, petitioner used India, a third country whose economy is market-driven and which petitioner contends is comparable to the PRC.

Based on a comparison of U.S. price and foreign market value, petitioners allege dumping margins ranging from 99.5 to 136.4 percent. We have accepted this comparison.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from The People's Republic of China are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.1060, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28418 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–533–801]**

**Initiation of Antidumping Duty Investigation: Steel Wire Rope From India**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from India are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from

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India of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** V. Irene Darzenta or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377–0186 or 377–1769, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of steel wire rope are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from India of steel wire rope.

Petitioner has stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(E) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner presented two methodologies which it used to estimate United States price: (1) Actual net delivered prices quoted to a U.S. distributor for several Indian steel wire rope products; and (2) average monthly Customs value of imports of the subject merchandise. For purposes of initiation, we are calculating United States price based on actual price quotations. Petitioner obtained these prices from a domestic producer of steel wire rope that has contact with personnel associated with sales of the subject merchandise in the United States. Petitioner adjusted these prices for overseas shipping and handling, Customs user fees, and U.S. inland freight.

Petitioner's estimate of foreign market value is based on actual ex-godown prices derived from a price list obtained by a consultant from an Indian producer of the subject merchandise. Petitioner adjusted these prices for discounts and foreign inland freight.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 62.5 to 65.6 percent.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from India are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28419 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-201-803]**

## Initiation of Antidumping Duty Investigation: Steel Wire Rope From Mexico

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Mexico of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.



**EFFECTIVE DATES:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–5288.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of steel wire rope are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Mexico of steel wire rope.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner based its estimates of United States price on actual prices offered to U.S. distributors for several steel wire rope products. The prices were obtained by domestic producers of steel wire rope which have contact with personnel associated with sales of the subject merchandise in the United States. Petitioner adjusted the price for overseas shipping, customs user fees, Mexican value added tax (VAT), and where appropriate, U.S. inland freight.

Petitioner's estimate of foreign market value is based on actual prices derived from price lists obtained by a consultant to petitioner. Petitioner adjusted these prices for discounts, foreign inland freight, and VAT. Petitioner incorrectly calculated the VAT adjustment and, in some cases, improperly compared home market prices effective during one time period to U.S. prices effective during another. We recalculated petitioner's estimate of foreign market value to correct these items.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 59.5 to 111.5 percent. Based on our recalculation, these margins range from 43.2 to 85.4 percent.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Mexico are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.10.60, 732.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28420 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

**[A-583-811]**

## Initiation of Antidumping Duty Investigation: Steel Wire Rope From Taiwan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may

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determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Taiwan of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.

**EFFECTIVE DATES:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377–8922 or 377–1769, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of steel wire rope are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Taiwan of steel wire rope.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner based its estimates of United States price on actual prices offered to U.S. distributors for several steel wire rope products. The prices were obtained by a domestic producer of steel wire rope that has contact with personnel associated with the sales of the subject merchandise in the United States. Petitioner adjusted the C.I.F. New York or Norfolk prices for international freight and insurance.

Petitioner's estimate of foreign market value is based on actual prices offered in Taiwan for several steel wire rope products. The terms of the Taiwan prices were F.O.B. factory.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 1.5 to 31.0 percent.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered in this investigation is steel wire rope. Steel wire rope encompasses ropes, cables and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28421 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–549–805]**

**Initiation of Antidumping Duty Investigation: Steel Wire Rope From Thailand**

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Thailand are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Thailand of steel wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make a preliminary determination on or before April 15, 1991.



**EFFECTIVE DATES:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Louis Apple or Carolina Olivieri, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1769 or 377–2778, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition filed in proper form by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of steel wire ropes are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Thailand of steel wire rope.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner based its estimates of United States price on the average monthly Customs value for imports of the subject merchandise from Thailand.

Petitioner's estimate of foreign market value is based on actual prices derived from a comprehensive price list obtained from a Thai producer of the subject merchandise. The prices derived from this list are stated in ex-factory terms.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 28.4 to 34.4 percent.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of steel wire rope from Thailand are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 15, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire.

The appropriate Harmonized Tariff Schedule (HTS) subheadings under which the subject merchandise is classifiable are 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090. HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**ITC Notification**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand of steel wire rope. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28422 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[C–533–802]**

**Initiation of Countervailing Duty Investigation: Steel Wire Rope From India**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in India of steel wire rope (wire rope), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make our preliminary determination on or before January 28, 1991.

**EFFECTIVE DATE:** December 10, 1990.

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**FOR FURTHER INFORMATION CONTACT:** Margot Paijmans or Stephanie Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1442 and (202) 377–0165, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition in proper form filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), on behalf of the U.S. industry producing wire rope. In compliance with the filing requirements of § 355.12 of the Department's regulations (19 CFR 355.12), petitioner alleges that manufacturers, producers, and exporters of wire rope in India receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since India is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party as defined under section 771(9)(E) of the Act and because it has filed the petition on behalf of the U.S. industry manufacturing the product which is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this section, please file written notification with the Assistant Secretary for Import Administration.

**Initiation of Investigation**

Under section 702(c) of the Act, we must determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that: (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire rope from India and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Indian manufacturers, producers, or exporters of wire rope receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than standard wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Steel wire rope is currently provided for in subheadings 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**Allegations of Subsidies**

As stated in the "Initiation of Investigation" section of this notice, we have determined that the petition meets the two criteria of section 702(b) of the Act. All programs alleged by the petitioner are export subsidy programs. When the Department applies the two criteria set out in section 702(b) of the Act to export subsidy allegations, the allegations must identify (1) receipt of benefits contingent upon export performance and (2) provision of a countervailable benefit.

Petitioner lists a number of practices by the Government of India which allegedly confer subsidies on manufacturers, producers, or exporters of wire rope in India. Petitioner has met the criteria listed above. Accordingly, we are initiating an investigation of the following programs:

1. Rebates Under the International Price Reimbursement Scheme (IPRS)
2. Preferential Export Financing Through Export Packing Credits
3. Rebates under the Cash Compensatory Support Program (CCS)
4. Income Tax Deductions for Exporters (Section 80HHC)
5. Preferential Post-Shipment Financing
6. Grants Under the Market Development Assistance Program (MDA)
7. Import Permits/Replenishment Licenses

**ITC Notification**

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by the ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that imports of wire rope from India materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will be terminated; otherwise, this investigation will continue according to statutory and regulatory time limits.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28423 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[C–508–804]**

## Initiation of Countervailing Duty Investigation: Steel Wire Rope From Israel

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of steel wire rope (wire rope), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reasons of imports from Israel of wire rope. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 20, 1990. If that determination is affirmative, we will make our preliminary determination on or before January 29, 1991.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Graham or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–4105 and (202) 377–0167, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition in proper form filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), on behalf of the U.S. industry producing wire rope. In compliance with the filing requirements of § 355.12 of the Department's regulations (19 CFR 355.12), petitioner alleges that manufacturers, producers, and exporters of wire rope in Israel receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Israel is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, the U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party as defined under section 771(9)(E) of the Act and because it has filed the petition on behalf of the U.S. industry manufacturing the product which is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistance Secretary for Import Administration.

**Initiation of Investigation**

Under section 702(c) of the Act, we must determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that: (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire rope from Israel and have found that it meets those requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Israeli manufacturers, producers, or exporters of wire rope receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made of brass plated wire. Steel wire rope is currently provided for in subheadings 7312.10.60, 7312.10.9030, 7312.10.9060 and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

**Allegations of Subsidies**

As stated in the "Initiation of Investigation" section of this notice, we have determined that the petition meets the two criteria of section 702(b) of the Act. When the Department applies these two criteria to domestic subsidy allegations, the allegations must identify (1) specificity (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries); and (2) provision of a countervailable benefit. When the Department applies these two criteria to export subsidy allegations, the allegations must identify (1) receipt of benefits contingent upon export performance; and (2) provision of a countervailable benefit.

Petitioner lists a number of practices by the Government of Israel which allegedly confer subsidies on manufacturers, producers, or exporters of wire rope in Israel. Petitioner has met the criteria listed above. Accordingly, we are initiating an investigation of the following programs:

1. Encouragement of Capital Investment Law Grants, Long-Term Industrial Development Loans, Tax Exemptions, Accelerated Depreciation, Reduced Income Tax and Interest Subsidy Grants
2. Exchange Rate Risk Insurance Scheme
3. Encouragement of Research and Development Law Grants

**ITC Notification**

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in the Department's files, provide the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by the ITC**

The ITC will determine by December 20, 1990, whether there is a reasonable indication that imports of wire rope from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will be terminated; otherwise, this investigation will continue according to statutory and regulatory time limits.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28424 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

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**[C–549–808]**

## Initiation of Countervailing Duty Investigation: Steel Wire Rope From Thailand

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of steel wire rope (wire rope), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before January 29, 1991.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Vincent Kane or Ross Cotjanle, Office of Countervailing Investigations, Import Administration, International Trade

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Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2815 and (202) 377–3534.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 5, 1990, we received a petition in proper form filed by the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee), on behalf of the U.S. industry producing wire rope. In compliance with the filing requirements of § 355.12 of the Department's regulations (19 CFR 355.12), the petition alleges that manufacturers, producers, and exporters of wire rope in Thailand receive certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, section 303 of the Act applies to this investigation. Accordingly, petitioner is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product from Thailand materially injure, or threaten material injury to, a U.S. industry.

Petitioner has alleged that it has standing to file the petition because it is an interested party as defined under section 771(9)(E) of the Act and because it has filed the petition on behalf of the U.S. industry manufacturing the product which is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

**Initiation of Investigation**

Under section 702(c) of the Act, the Department is required to determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire rope from Thailand and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Thai manufacturers, producers, or exporters of wire rope, as described in the "Scope of the Investigation" section of this notice, receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1991.

**Scope of Investigation**

The product covered by this investigation is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Steel wire rope is currently provided for in subheadings 7312.10.60, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule (HTS). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

**Allegations of Bounties or Grants**

As stated in the "Initiation of Investigations" section of this notice, we have determined that the petition meets the two criteria of section 702(b) of the Act. When the Department applies these two criteria to domestic subsidy allegations, the allegations must identify (1) specificity (i.e., the program is limited to a specific enterprise or industry or group of enterprises or industries); and (2) provision of a countervailable benefit. When the Department applies these two criteria to export subsidy allegations, the allegations must identify: (1) Receipt of benefits contingent upon export performance; and (2) provision of a countervailable benefit.

Petitioner lists a number of practices by the Government of Thailand which allegedly confer bounties or grants on manufacturers, producers, or exporters of wire rope in Thailand. Petitioner has met the criteria listed above. Accordingly, we are initiating an investigation of the following programs:

1. Export Packing Credits
2. Tax Certificates for Exporters
3. Electricity Discount for Exporters
4. Rediscount of Industrial Bills
5. Export Processing Zones
6. International Trade Promotion Fund
7. Investment Promotion Act

- Section 28: Import Duty and Tax Exemption for Machinery
- Section 31: Income Tax Exemption
- Section 33: Goodwill and Royalties Tax Exemption
- Section 34: Tax Deduction for Dividends
- Section 36(1): Import Duty and Tax Exemption on Raw and Essential Materials
- Section 36(2): Import Duty and Tax Exemption on Imports for Re-export
- Section 36(3): Export Duty and Tax Exemption on Products for Export
- Section 36(4): Tax Deduction on Income Resulting from Increased Exports

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: November 26, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–28425 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

## Sanctions for Violations of Administrative Protective Orders

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice of status of investigation into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

**SUMMARY:** This is a notice of the status of investigations into charges of violation of administrative protective orders in antidumping and countevailing duty proceedings.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–8916.

**SUPPLEMENTARY INFORMATION:** The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to an administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a recent allegation that the provisions of an APO have been violated.

Certain individuals violated their APO by including in a public submission business proprietary information from the respondent's business proprietary version of its response to the Department's questionnaire. By including APO-covered information in a public submission, the individuals violated their application for access to business proprietary information which was incorporated by reference into the APO.

In this case, the individuals involved were (1) issued private reprimands which warned that future violations by them or others associated with the law firm would be treated more severely; (2) required to send a letter to counsel for the affected company which explains and apologizes for the circumstances surrounding the violation; (3) required to attend a training session on procedures for protecting proprietary data; and (4) required to submit to the ITA a written office plan describing how business proprietary information received under APO would be protected and accounted for in order to ensure that all such materials will not be disclosed to parties or persons not specified in the APO.

We consider these sanctions appropriate for the following reasons: (1) The violation appears to have been inadvertent; (2) there appears to be little, if any, harm caused by the inclusion of the APO-covered information in the public document as the alleged violation was discovered shortly after submission of the public comment and all of the public documents containing the business proprietary information were retrieved immediately thereafter; (3) the individuals cooperated fully with the ITA's preliminary investigation.

Serious harm can result from the inclusion in a public document of business proprietary information received under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have been breached, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, and debarment from practice before the ITA.

Dated: November 30, 1990.

**Roger W. Wallace,**

*Deputy Under Secretary for International Trade.*

[FR Doc. 90–28689 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.



**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulation, we are initiating those administrative reviews.

**EFFECTIVE DATE:** December 10, 1990.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

**Initiation of Reviews**

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 1991.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| Italy: | |
| *Pressure Sensitive Plastic Tape* A–475–059 | |
| N.A.R. | 10/1/89–9/30/90 |
| Japan: | |
| *Tapered Roller Bearings, Over 4 Inches* A–588–054 | |
| Koyo Seiko, Nippon Seiko, Nachi Fujikoshi, NTN Toyo Bearing. | 10/1/89–9/30/90 |
| Peoples Republic of China: | |
| *Cotton Shop Towels* A–570–003 | |
| Chinatex, CNART, Tianjin Arts and Crafts. | 10/1/89–9/30/90 |
| **Countervailing Duty Proceedings** | |
| Brazil: | |
| *Agricultural Tillage Tools* C–351–406. | 1/1/89–12/31/89 |
| India: | |
| *Certain Iron-Metal Castings* C–533–063. | 1/1/89–12/31/89 |
| Sweden: | |
| *Certain Carbon Steel Products* C–401–401. | 1/1/89–12/31/89 |
| Thailand: | |
| *Certain Steel Wire Nails* C–549–701. | 1/1/89–12/31/89 |

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: November 8, 1990.

**Bernard T. Carreau,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 90–28802 Filed 12–7–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–506]

## Final Results of Antidumping Duty Administrative Reviews Oil Country Tubular Goods From Canada

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews.

**SUMMARY:** On July 23, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 29874) the preliminary results of its administrative reviews of the antidumping duty order on oil country tubular goods ("OCTG") from Canada (51 FR 21782, June 16, 1986). The reviews cover Christianson Pipe Ltd., an exporter of this merchandise to the United States, and the periods January 1, 1986 through May 31, 1987 and June 1, 1987 through May 31, 1988. We preliminarily found dumping margins.

We gave interested parties an opportunity to comment on the preliminary results. Based on the analysis of the comments received, we have changed the margins from that presented in our preliminary results.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph B. Kaesshaefer, Jr. or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 23, 1990, the Department published in the **Federal Register** (55 FR 29874, July 23, 1990) the preliminary results of its administrative reviews of the antidumping duty order on OCTG from Canada (51 FR 21782, June 16, 1986). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

**Scope of Review**

Imports covered by these reviews are shipments of OCTG from Canada. This

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includes API-specification OCTG and all other pipe with the following characteristics used in OCTG applications: length of at least 16 feet; outside diameter of standard sizes published in the API or proprietary specifications for OCTG with tolerances of plus ⅛ inch for diameters less than or equal to 8⅝ inches and plus ¼ inch for diameters greater than 8⅝ inches, minimum wall thickness as identified for a given outer diameter as published in the API or proprietary specifications for OCTG; a minimum of 40,000 PSI yield strength and a minimum 60,000 PSI tensile strength; and if with seams, must be electric resistance welded. Furthermore, imports covered by this review include OCTG with non-standard size wall thickness greater than the minimum identified for a given outer diameter as published in the API or proprietary specifications for OCTG, with surface scabs or silvers, irregularly cut ends, ID or OD weld flash, or open seams; OCTG may be bent, flattened or oval, and may lack certification because the pipe has not been mechanically tested or has failed those tests. During the periods of review, these shipments were provided for in Tariff Schedules of the United States Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3245, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3295, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. The corresponding Harmonized Tariff Schedule (HTS) numbers are 7304.20, 7305.20, and 7306.20. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover one exporter of OCTG from Canada, Christianson Pipe Ltd., and the periods January 1, 1986 through May 31, 1987 and June 1, 1987 through May 31, 1988.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, Lone Star Steel Company and CF&I Steel Corporation, we held a public hearing on September 18, 1990. We received comments and rebuttal comments from the petitioners and respondent.

*Analysis of Petitioners' Comments*

*Comment 1*: Petitioners claim that the Department erred in using information submitted by Christianson in its preliminary analyses because the data contained in Christianson's responses were unverifiable. Petitioners argue that the Department should therefore disregard Christianson's response completely, and rely instead on best information available. Petitioners recommend for use as best information available the "all other" rate established by the Department during its fair value investigation.

*Department's position*: We disagree. The data received were substantially correct. Christianson brought certain calculation or programming errors to the Department's attention, and when the Department found other discrepancies and errors, Christianson corrected them and the Department verified the amended data.

*Comment 2*: Petitioners contend that the Department erred in not calculating U.S. price on the basis of Prudential's (Christianson's supplier) sales prices to Christianson because Prudential knew or should have known that some of its merchandise was destined for the United States. Petitioners maintain that Christianson is at best a broker for Prudential and that Prudential was involved in Christianson's resale process. Petitioners claim that this is further supported by the fact that Christianson never inventories the pipe. For these reasons, petitioners believe Prudential's prices to Christianson should have been used as the price to the United States.

Christianson argues that Prudential had no knowledge at the time of sale that the commercial grade pipe would be exported to the United States and that the relationship between Christianson and Prudential is strictly arms-length. Therefore, the Department was correct in comparing Christianson's home market sales with Christianson sales to the United States.

*Department's position*: We agree with Christianson. Christianson negotiates annually to purchase all commercial grade pipe generated by Prudential. The company sells this pipe to the United States as well as in Canada. Prudential, however, does not know the ultimate disposition of the merchandise it sells to Christianson at the time of its sales agreement with Christianson. Furthermore, Christianson's invoicing, shipping, and payment records indicate that the pipe is marketed solely by Christianson. The Department verified that Christianson takes title to the goods while they are on Prudential's premises and that Prudential is not involved in establishing Christianson's selling prices. Under these circumstances, the Department therefore believes it appropriate to base United States price on Christianson's sales to its unrelated U.S. customers.

*Comment 3*: Petitioners contend that the Department erred in calculating FMV based on home market sales instead of constructed value because the merchandise sold by Christianson in the home market is not such or similar to the merchandise sold to the United States. Petitioners argue that because there is a wide range of defects in commerical grade pipe, the Department should use a difference in merchandise adjustment through constructed value to account for the variety of defects. Further, petitioners state that the pipe sold by Christianson in the home market is not OCTG because it cannot be used for drilling in Canadian wells. Petitioners argue that the Department recognized that commercial grade pipe could be used in other than OCTG applications so it expressly limited the scope of the order by eliminating pipe which was not used in OCTG applications in the United States as determined by the Department's end use certification procedure.

Respondent contends that the merchandise it sells in Canada is commercially identical to the merchandise it sells in the United States, and that the Department correctly based its comparison on merchandise sold by Christianson in the home market.

*Department's position*: We disagree with petitioners. The Department believes that the commercial grade pipe sold by Christianson in the home market is such or similar to the commercial grade pipe it sells in the United States within the statutory definition of "such or similar" merchandise found at section 771(16) of the Act. The merchandise Christianson sells in both markets consists of pipe possessing the same range of defects which causes all of that pipe to be classified as commercial grade pipe. Christianson sells its commercial grade pipe in both Canada and the United States without regard to the individual differences in defects between different pipe; Christianson merely sorts the pipe by size and sells it on an "as is," non-warranted basis to distributors and end users in both markets. The purchaser in both markets purchases a variety of defective pipe of the same size.

Petitioners argue that the commercial grade pipe sold by Christianson in the United States is not "such or similar" to that sold in Canada because Canadian



regulations prohibit using defective pipe as OCTG without first sufficiently upgrading that pipe similarly defected. At the time Christianson sells the commercial pipe in both markets, however, that pipe can be applied to the same variety of uses in both markets. According to section 773(a)(1) of the Act, the foreign market value of the imported merchandise depends upon the price charged for that merchandise "at the time such merchandise is first sold within the United States." Thus, if use is a factor in determining whether merchandise is "such or similar" for foreign market value purposes, the relevant uses the Department must consider is the use of the merchandise at the time of that first sale in the United States. As noted above, at the time of that first sale of commercial pipe in the United States, that pipe can be used in the United States for the same variety of purposes as in Canada. For merchandise such as commerical grade pipe, which at the time of importation can be used in a variety of ways, the ultimate use of that merchandise cannot drive the initial determination of whether that merchandise is "such or similar" for foreign market value purposes, particularly when ultimate use may be decided far in the future by a subsequent purchaser.

The Department's end use certification procedure merely provided domestic parties the opportunity to certify that certain pipe was not used in OCTG applications and, therefore, was not subject ultimately to the antidumping duty order. This procedure did not change the fact that when Christianson sold commercial grade pipe in both markets, the variety of possible uses for that pipe was the same.

Additionally, petitioners assert that the range of defects in commercial grade pipe should lead the Department of adjust for differences in merchandise. According to §'353.57 of the Department's regulations, however, the Department will adjust for differences in physical characteristics only when the Department is satisfied that "the amount of any price differential is wholly or partly due to such differences." Because Christianson did not sort or sell the various types of commercial grade pipe according to defects, the Department concluded that no price differentials existed between the various types of commercial grade pipe. Therefore, the Department did not make adjustments for physical differences.

*Comment 4*: Petitioners argue that the Department's decision to reject petitioners' sales below cost allegations as untimely filed is unreasonable. Petitioners assert that at the time it filed its allegations, there was no regulatory deadline for submission of such allegations. Further, petitioners state that there was an established practice of permitting sales below cost allegations to be filed prior to the Department's publication of its preliminary results of review. Petitioner claims that prior to the effective date of its new regulations the Department applied a "flexible" approach to below cost allegation deadlines. Petitioner cites Tapered Roller Bearings from Japan, 55 FR 22369 (June 1, 1990) and Stainless Steel Wire Rod from France, 48 FR 2808 (January 21, 1983) for the proposition that the Department only rejected cost allegations which failed to provide the Department with sufficient time to undertake cost investigations.

Petitioner cites Certain Internal-Combustion Forklift Trucks from Japan, 52 FR 45003 (November 24, 1987), Stainless Steel Hollow Products from Sweden, 52 FR 37610 (October 9, 1987), Certain Stainless Steel Cooking Ware from Korea, 51 FR 42873 (November 26, 1986), and Certain Stainless Steel Cooking Ware from Taiwan, 51 FR 42882 (November 26, 1986) to support its contention that allegations submitted at any time prior to a preliminary determination were presumed to be timely.

Christianson argues that the Department properly rejected petitioners' untimely allegation. Christianson cites an article written in 1985 by two Department officials which states that below cost allegations will not be considered later than 120 days after the publication of the notice of initiation of the review.

*Department's Position:* The Department agrees with Christianson that the below cost allegations should be rejected as untimely. Section 353.31(c)(ii) of the Department's regulations, though not in effect officially until after the cost allegations in these reviews were filed, was published in proposed form on August 13, 1986, and codified Departmental practice in effect at the time of filing. That practice, based upon reasonableness, was that "petitioner is *obligated* to make sales below cost allegations at the *earliest possible time* during the course of a review in order to avoid unduly delaying the review" (emphasis added). Circular Welded Pipes and Tubes from Korea 52 FR 33460 (September 3, 1987); Portable Electric Typewriters from Japan, 53 FR 40928 (October 19, 1988).

As stated in Circular Welded Pipes and Tubes from Korea, consistent with the then-proposed regulations, "cost allegations should be received within 120 days after the date of publication of the notice of initiation of the review. Normally, this should be within thirty to forty-five days from receipt of the questionnaire responses." Thus, though the regulations were not yet in effect officially, the Department clearly had given notice of what it considered to be a reasonable time frame to file below cost allegations.

Petitioner filed its cost allegation for the first and second administrative reviews on March 22, 1989, twenty months after initiation of the first review (July 17, 1987) and eighteen months after petitioner received Christianson's first review questionnaire response. Petitioners argue that it did not file a cost allegation before that date because: (1) The review was "on hold" from September 8, 1987 to April 1988; and (2) a Department official no longer at the Department agreed that petitioner should wait to file cost allegations pending a decision on petitioners' June 27, 1988 request concerning constructed value. Nothing in the administrative record supports either of these allegations.

The Department initiated the second review on July 28, 1988. Christianson submitted its questionnaire response in the second review on October 13, 1988; petitioners state that it received the proprietary version "nearly three months later". However, sufficient information was available in the public response that would have allowed petitioners to decide whether or not to file a cost allegation. Not until March 22, 1989, did petitioners file any cost allegation whatsoever, eight months after initiation and five months after receiving the public response.

Petitioners cite several determinations to argue that the Department regularly accepts cost allegations as long as they are filed before a preliminary determination. However, petitioners fail to address the reasonableness of the Department's acceptance of those allegations under the facts of those determinations. The facts of the reviews currently before the Department clearly demonstrate that while filed before the preliminary determinations, petitioners did not submit their cost allegations within a reasonable period of time.

*Comment 5:* Petitioners argue that Christianson's home market sales were made at prices below the cost of production, and that the Department must not use Christianson's acquisition price in any cost analysis because the

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acquisition price does not reasonably reflect the actual cost of production of the merchandise. Further, petitioners believe the Department should not use Christianson's selling, general, and administrative expenses and profit figures because they were inaccurately reported.

*Department's position:* The Department did not conduct a cost of production test for these reviews because petitioners' allegations were untimely filed. (*See* the Department's response to Petitioners' Comment 4.)

*Comment 6:* Petitioners contend that the Department erred in basing Christianson's imputed U.S. credit expense adjustment on purchase price transactions on the cost of U.S. dollars that Christianson would have incurred had it borrowed U.S. funds. Petitioners state that because Christianson never borrowed U.S. funds, the average Canadian interest rate for the respective review periods should be used in both the home market and U.S. credit expense calculations.

Christianson argues that the Department correctly used U.S. imputed credit costs using U.S. dollar interest rates in the preliminary results of these administrative reviews.

*Department's position:* After further review and consideration of this matter, we agree with petitioners. The Department generally uses a home market interest rate in its imputed credit expense calculations for purchase price transactions when a company has not actually borrowed any funds since short term financing is generally made in the funds of the country where the company is located. We calculated over the annual review period a simple average of the home market interest rates offered by Christianson's Canadian bank to approximate the rate Christianson would have paid had it borrowed money. We then multiplied this average interest rate by the number of days from the date of the sale to the payment date to determine an amount for credit expense in both the United States and home market transactions.

*Comment 7:* Petitioners argue that the Department's adjustments for federal taxes on home market sales are incorrect. Petitioners contend that the Department erred in its assumption that all export sales would have been subject to the tax and should not make upward adjustments to United States price on all sales. Petitioners believe that the Department should make no upward adjustment to United States price for the federal taxes, but if Commerce insists on doing so, the adjustment should be based on Christianson's acquisition cost.

*Department's position:* We agree in part. The Department verified that in Canada all pipe produced and sold ultimately has a federal tax imposed upon it and paid by some party in Canada. This tax is based on Christianson's acquisition price.

In the preliminary results of these reviews, we added to the United States price the amount of federal sales taxes that would have been collected on the export sales had those sales been subject to the tax. On the home market side, we deducted the tax where it was paid by Christianson before computing weighted average foreign market values ("FMV"). We then made a circumstance of sales adjustment to FMV in the amount of the difference in the tax between the two markets, resulting in a tax-neutral margin. This adjustment is needed to avoid artificially inflating or deflating margins that can result from the fact that tax amounts attributable to foreign products differ from those associated with U.S. products.

The Department erred in its calculations, using the wrong tax rate in the second review. This has been corrected in the final determination.

*Comment 8:* Petitioners argue that the amount of provincial tax deducted from FMV, which amounts to over three percent of the invoice price, was incorrect and, therefore, no adjustment should be made. Petitioners recommend that if the Department allows the adjustment, it should be limited to a maximum three percent of invoice value.

Christianson argues that the provincial tax should be added to United States price because it is functionally equivalent to Canadian federal taxes.

Petitioners respond that the provincial tax was not forgiven by reason of the exportation to the United States, and that Christianson failed to establish that its claimed amount was reasonable.

*Department's position:* Petitioners misunderstood the treatment of the provincial sales tax. A rate of 6 percent, not 3 percent, applies only to sales made to customers in British Columbia. Christianson was rebated 3 percent of the tax paid, if the tax charged was paid in full and on time to the provincial government. The adjusted amount of the provincial tax was subtracted from FMV and was not added to the United States price. We agree with petitioners that the provincial tax is not functionally equivalent to the federal tax because it was not forgiven by reason of exportation to the United States.

*Comment 9:* Petitioners argue that the Department should have adjusted United States price by subtracting estimated antidumping duties paid to its brokers by Christianson on certain sales during the first review period to achieve the price equilibrium intended under the U.S. antidumping law.

*Department's position:* We do not consider estimated antidumping duties to be expenses related to the sales under consideration. Given the tenuous nature of these estimated rates and the possibility that they could be zero, we do not consider them to be expenses within the meaning of section 772(d)(2)(A) of the Tariff Act for the purposes of determining United States price. Thus, the Department does not deduct from United States price any estimated duties paid on behalf of, or reimbursed to, an importer. (See, e.g., Color Television Receivers from Korea, FR 26225 (1990); Anhydrous Sodium Metasilicate from France, 49 FR 43733 (1984)).

*Comment 10:* Petitioners argue that the preliminary dumping margin and cash deposit rates established for Christianson and new exporters are unreasonable and undermine proper enforcement of the antidumping order. Petitioners request that the Department establish a deposit rate for the manufacturer/exporter combination of Prudential Steel Ltd./Christianson so that the manufacturer cannot take advantage of the lower rate and export directly to the United States.

Christianson argues that the Department has established such manufacturer/exporter deposit rates only when the manufacturer had knowledge of the destination of the merchandise at the time it was sold to the reseller. Respondent notes that the Department calculates margins for each company reviewed, and since Prudential was not reviewed, the new deposit rate applies solely to Christianson without reference to the producer.

*Department's Position:* The Department has determined that Prudential does not know the ultimate disposition of commercial grade pipe at the time of its sales to Christianson. Since there is not relationship between Christianson and Prudential and Christianson's pricing practices are the ones reflected in our fair value finding, we believe it inappropriate to report the result of these reviews as a Prudential/Christianson rate.

*Comment 11:* Petitioners argue that the cash deposit rate for new exporters is unreasonable because the rate does not reflect the selling practices of Canadian OCTG producers and that the all other rate from the less than fair value investigation should apply to new exporters. Petitioners contend that if the new rate applies to all new exporters,



OCTG producers with higher dumping margins will export their product through new unrelated exporters to take advantage of the lower cash deposit rate.

*Department's Position:* It is Department practice to assign the new cash deposit rate to new exporters. If petitioners believe or have evidence that exporters with a low cash deposit rate are acting as a conduit for producers with a higher rate, petitioners can request an administrative review of those exporters.

*Analysis of Respondent's Comments*

*Comment 1:* Christianson argues that the Department erred in comparing Christianson's Canadian distributor sales solely with its U.S. distributor sales and Christianson's Canadian end user sales solely with its U.S. end user sales. Christianson believes that its Canadian prices do not differentiate between distributor and end user customers.

Petitioners argue that the Department consistently makes sales comparisons at the same commercial level of trade when they exist in the U.S. and foreign market and that the Department correctly made such a comparison in Christianson's case.

*Department's Position:* We agree with petitioners. According to § 353.56 of the Department's regulations, we "normally will calculate foreign market value and United States prices based on sales of the same commercial level of trade." Despite Christianson's argument, prices do not determine the level of trade.

*Comment 2:* Christianson argues that the Department should have compared similar U.S. and Canadian truck load quantities because Christianson generally makes large quantity sales (*i.e.*, truckload quantities) at a lower price per ton than the price it charges for smaller quantities (*i.e.*, less-than-truckload quantities).

Petitioners argue that Christianson does not grant quantity discounts on its home market sales. Further, petitioners argue that in many instances Christianson reported higher average prices for sales of truckload quantities than for less-than-truckload quantities.

*Department's Position:* Section 353.55 of the Department's regulations establishes that "[i]n comparing the United States price with foreign market value, the [Department] *normally* will use sales of comparable quantities of merchandise" (emphasis added). This practice is based on the assumption that normally comparable quantities of merchandise will be sold at comparable prices. The Department determined that Christianson applied no consistent pricing policy to sales of truckload quantities versus less-than-truckload quantities. In our analysis, we found that some prices for truckload quantities were actually higher than the prices of less-than-truckload quantities. Because the Department found no logical price relationship between comparable quantities, we did not apply this provision to Christianson's sales in these reviews.

*Comment 3:* Christianson claims that the Department should adjust two U.S. credit costs by the average U.S. payment period instead of the actual, verified payment period. Christianson asserts that the payment period on these two sales abnormally exceeded its average U.S. payment experience.

Petitioners argue that if a company's actual experience is not favorable for certain sales, the Department should not disregard the unfavorable experience. Further, petitioners state that while Christianson favors making allowances for longer than average credit period on certain sales, Christianson does not advocate making allowances for shorter than average credit periods on other sales.

*Department's Position:* We agree with petitioners. We calculated the average rate for the respective periods, and, following Departmental practice, we used the U.S. payment experience for each sale to measure the credit cost.

**Final Results of the Review**

As a result of the comments received, we determine the margin for Christianson to be:

| Period of review | Margin |
|---|---|
| 1/1/86–5/31/87 | 1.86 |
| 6/1/87–5/31/88 | 3.24 |

The Department will instruct the Customs Service to assess antidumping duties at these rates on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Act, the cash deposit rate of estimated antidumping duties based on the above margins shall be required on entries of this merchandise from Christianson. For any entries of this merchandise from a new exporter whose first shipments occurred after May 31, 1988, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 3.24 percent shall be required. These deposit requirements are effective for all shipments of oil country tubular goods from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations.

Dated: November 30, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28800 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

## Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from the petitioner and the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on stainless steel butt-weld pipe and tube fittings ("SSPFs") from Japan. The review covers one manufacturer, Nippon Benkan Kogyo, K.K. ("Benkan"), an exporter of this merchandise to the United States for the period from September 16, 1987, through February 28, 1989. The exporter sold two types of SSPFs, conventional and superclean fittings, during the review period to the United States. As a result of the review, the Department has preliminarily determined that 0.52 percent margins exist.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bruce Harsh or Linda Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 25, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9787) the antidumping duty order on stainless steel butt-weld pipe fittings

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from Japan. On March 23, 1989, Benkan, the respondent, requested an administrative review of the antidumping order. We published a notice of initiation of the antidumping administrative review on April 28, 1989 (54 FR 18320). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of stainless steel butt-weld pipe and tube fittings from Japan. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other applications.

During the review period and until December 31, 1988, such merchandise was classifiable under item 610.8948 of the Tariff Schedules of the United States Annotated ("TSUSA"). Since January 1, 1989, the merchandise is classifiable under HTS item number 7307.230000. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one exporter of stainless steel pipe and tube fittings from Japan to the United States during the review period beginning on September 16, 1987, and ending on February 20, 1989. Verification was conducted at Benkan, in Tokyo and Gumma, Japan, the week of November 27, 1989.

**United States Price**

In calculating the United States price, the Department used purchase price as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the delivered price to unrelated purchasers in the United States. For purchase price sales, we made deductions for foreign inland freight, U.S. inland freight, U.S. customs duty, U.S. brokerage fees, ocean freight, marine insurance, foreign brokerage fees, and, where applicable, cash discounts. No other adjustments were claimed or allowed. We determined that the date of sale is the date of shipment for the merchandise sold to the United States.

**Foreign Market Value**

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a reasonable basis for comparison. Home market price was based on a packed, delivered price to purchasers in the home market. The Department excluded from its analysis all sales to one related customer because we determined that these sales were not arm's length transactions. The Department made deductions for inland freight, and adjustments, where applicable, for differences in packing costs, cash discounts, and credit. For U.S. sales where we had no home market sales of identical merchandise, the Department used home market sales of similar merchandise. The Department allowed an adjustment for physical differences in wall thickness and nominal size.

We made currency conversions in accordance with § 353.60 of our regulations. We made all currency conversions using the daily exchange rates certified by the Federal Reserve Bank of New York.

We verified all information used in reaching the preliminary determination in this review. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by the respondent.

**Preliminary Results of Review**

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that a margin of 0.52 percent exists for Benkan for the period of review.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above for Benkan. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after February 28, 1989, and who is unrelated to the reviewed firm, a cash deposit of 0.52 percent will be required.

These deposit requirements are effective for all shipments of stainless steel butt-weld pipe and tube fittings from Japan, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53(a) (1985) of the Commerce Department's regulations (note that this review was issued after the effective date of the new antidumping regulations except as to the new §§ 353.22 (a) and (c)).

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28891 Filed 12-7-90; 8:45 am]

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**[C-201-003]**

## Ceramic Tile From Mexico; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On June 20, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. We have now completed that review and determine the total bounty or grant to be zero or *de minimis* for 47 firms and 1.29 percent *ad valorem* for all other firms during the period January 1, 1987 through December 31, 1987.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 20, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 25149) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013; May 10, 1982). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

**Scope of Review**

Imports covered by this review are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the review period, such merchandise was classifiable under item numbers 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 6907.10.0000, 6907.90.0000, 6908.10.5000 and 6908.90.0000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and thirteen programs: (1) FOMEX; (2) Article 15 of the General Law of Credit Institutions and Auxiliary Organizations; (3) CEPROFI; (4) FONEI; (5) FOGAIN; (6) state tax incentives; (7) National Industrial Development Fund (FOMIN); (8) NDP preferential discounts; (9) Trust Fund for the Study and Development of Industrial Parks (FIDEIN); (10) Bancomext loans; (11) delay of payments on loans; (12) delay of payments to PEMEX of fuel charges; and (13) import duty reductions and exemptions.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from two respondents: Ceramica Regiomontana, S.A., and Industrias Intercontinental, S.A. (the respondents).

*Comment 1:* The respondents contend that the Department does not have the legal authority to impose countervailing duties on ceramic tile from Mexico and must revoke the countervailing duty order. Effective April 23, 1985, the date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding), the United States Trade Representative designated Mexico a "country under the Agreement" as defined in section 701 of the Tariff Act. Since Mexico is now a "country under the Agreement," section 303 of the Tariff Act is no longer applicable to any merchandise from Mexico. The United States Trade Representative did not exclude existing countervailing duty orders from the application of "country under the Agreement" status. Therefore, section 701 entitles Mexico to a determination by the International Trade Commission (ITC) that imports of the subject merchandise are materially injuring or threatening material injury to a United States industry producing a like product. Pursuant to section 701, the Department cannot impose countervailing duties on any merchandise from Mexico without an affirmative ITC injury determination. Since there has been no affirmative injury determination with respect to ceramic tile from Mexico, the Department cannot impose countervailing duties and should revoke the order effective April 23, 1985.

Respondents further contend that the Department's failure to revoke this order is inconsistent with past practice. In two previous countervailing duty administrative reviews, Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (Indian Fasteners) (47 FR 44129; October 6, 1982) and Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order (Trinidad and Tobago Wire Rod) (50 FR 19561; May 9, 1985), where an outstanding countervailing duty order was issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, the Department determined that it did not have the authority to impose countervailing duties when events subsequent to the issuance of the order required an affirmative ITC injury determination prior to imposition of countervailing duties.

Merchandise subject to an outstanding countervailing duty order, issued pursuant to section 303(a)(1) without benefit of an ITC injury determination, is entitled to an injury test when there is a change in the status of the merchandise or the country. Since the ITC has indicated that it does not have the legal authority to conduct an injury investigation concerning merchandise already subject to a countervailing duty order, the Department has in the past concluded that it could not impose countervailing duties and revoked, or preliminarily determined to revoke, the order effective the date the affirmative injury determination became a requirement.

*Department's position:* We disagree. The U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit (CAFC) have sustained the Department's legal position that Mexican imports subject to an outstanding countervailing duty order already in effect when Mexico entered into the Understanding are not entitled to an injury test pursuant to section 701 of the Tariff Act and paragraph 5 of the Understanding (*Cementos Anahuac del Golfo, S.A.* v. *U.S.*, 689 F. Supp. 1192, 1210-1211 (CIT 1988), *aff'd Cementos Guadalajara, S.A.* v. *U.S.* 879 F.2d 847 (Fed. Cir. 1989), *cert. denied*, 110 S. Ct. 1318 (1990)). Because the Department published the countervailing duty order on ceramic tile from Mexico before Mexico entered into the Understanding, imports of the subject merchandise are not entitled to an injury test pursuant to section 701 of the Tariff Act.

Furthermore, respondents' reliance upon Indian Fasteners and Trinidad and Tobago Wire Rod is misplaced. In those cases, the United States had an international obligation pursuant to section 303(a)(2) of the Tariff Act and Article VI of the General Agreement on Tariffs and Trade (GATT) to provide an injury test. The exporting countries in question were signatories to the GATT and the merchandise was duty-free. The two cases cited by respondents are not analogous to this proceeding because ceramic tile from Mexico is not duty-free and, therefore, is not subject to section 303(a)(2). Contrary to respondents' argument concerning the relevance of Indian Fasteners, the Department did not provide an injury test for this order after India became a "country under the Agreement." The Department partially revoked the order only when some of the merchandise covered by the order attained duty-free status under the Generalized System of Preferences and, thus, was entitled to an injury test under section 303(a)(2). The only Mexican cases where the Department revoked a countervailing duty order as a result of

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injury test obligations concerned merchandise that was duty-free. See, e.g., Lime from Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order (54 FR 49324; November 30, 1989).

*Comment 2:* The respondents contend that the Department incorrectly calculated the bounty or grant for each program investigated by excluding companies with zero or *de minimis* aggregate benefits from its calculation of the country-wide rate. In *IPSCO, Inc. and IPSCO Steel* v. *United States*, 899 F.2d 1192 (Fed. Cir. 1990) (*IPSCO*), the CAFC ruled that the total benefit received by manufacturers must be divided by the total industry's net sales or exports, as appropriate. While it is appropriate for the Department to exclude companies with zero or *de minimis* aggregate benefits from the assessment of countervailing duties, these companies must be included in any calculation of the weighted-average bounty or grant, and the assessment and cash deposit rates should be recalculated accordingly.

*Department's position:* We disagree. The Department's regulations, at 19 CFR 355.20(d), establish the basis for calculating individual company rates. According to the preamble to 19 CFR 355.20(d) (53 FR 52325), the Department initially must calculate a country-wide rate based on all companies being reviewed. If that country-wide rate is *de minimis*, our determination would be negative in an investigation or *de minimis* in an administrative review. If that rate is above *de minimis*, the Department will apply company-specific rates to all individual companies whose rates are significantly different from the country-wide rate. When that is the case, we no longer use the country-wide rate for duty deposit or assessment purposes. The remaining companies are subject to an "all other" rate, which is different from a country-wide rate because it is not based on all companies, but rather those companies being reviewed whose rates are not significantly different from the country-wide rate. Because the country-wide rate in this review was greater than *de minimis*, and there were 47 companies with rates significantly different from the country-wide rate, the Department proceeded to the next step and calculated an "all-other" rate as required by the regulations.

Respondents' reliance upon *IPSCO* is misplaced. The CAFC, in *IPSCO*, was only addressing the first step in this process. *IPSCO* differs from the calculation in this review because it refers only to the case whereby the country-wide rate, inclusive of zero-rate and *de minimis* companies, is *de minimis*. In such a case, the Department does not proceed further in its calculations and the assessment rate for all companies, regardless of the level of benefits of each company, is zero.

*Comment 3:* The respondent contends that the Department overstated the net benefit attributable to the FOMEX pre-export loan program and should revise its methodology and recalculate the net subsidy. In calculating the benchmark rate for pre-export loans, the Department used Mexico's published monthly annual CPP rate as a base and then added a constant, based on rates published in Banco de Mexico's *Indicadores Economicos* for the years 1981 through 1984, so that the CPP rate reflected an effective loan rate. The Department then compounded the benchmark rate. The companies, however, are not charged compounded interest for the FOMEX loans they receive. The Department should recalculate the net benefit for FOMEX pre-export loans by eliminating compounding from the benchmark rate calculation.

*Department's position:* We disagree. It is the Department's practice to compare effective rates to effective rates. As discussed in greater detail in Fabricated Automotive Glass from Mexico; Final Results of Administrative Review (51 FR 44652; December 11, 1986), the nominal rate for FOMEX pre-export loans is the same as the effective rate. Therefore, the Department used the FOMEX rate and compared that to our effective rate benchmark. Contrary to respondents' claim, we did not compound the annual effective rate benchmark; the benchmark itself reflects the compounding of interest. The fact that the preferential rates are not compounded does not change the appropriateness of the comparison of them to our benchmark rate.

*Comment 4:* The respondent contends that the Department should not collect cash deposits of estimated countervailing duties with respect to the FOMEX program because the FOMEX loan program was terminated by decree published in the *Diario Oficial* on December 30, 1989. It is the Department's policy to change the cash deposit rate as a result of program-wide changes occurring prior to publication of preliminary results of administrative review.

*Department's position:* We disagree. According to the December 30, 1989 decree, the FOMEX trust is being transferred to the National Bank of Foreign Trade, which was "empowered likewise to carry out the operations under the mentioned trust [FOMEX]." Until the Department can verify that benefits under the pre-export and export loan regimes under FOMEX and its successor have been terminated, we will continue to require the collection of cash deposits of estimated countervailing duties for this program.

**Final Results of Review**

After considering all comments received, we determine the total bounty or grant to be zero or *de minimis* for 47 firms and 1.29 percent *ad valorem* for all other firms during the period January 1, 1987 through December 31, 1987.

The following 47 firms received zero or *de minimis* benefits during the period of review:

(1) Alfonso Cortez Coronel
(2) Augustin Cedillo Ruiz
(3) Aurelio Cedillo Ruiz
(4) Azulejos Decorativos Carillo
(5) Azulejos Orion
(6) Barros Procesados
(7) Barros y Pisos Artesanales
(8) Benjamin Chavez Torres
(9) Ceramica Santa Julia
(10) Eduardo S. Garcia de la Pena
(11) Ernesto Cortez
(12) Fernando Espinosa Sanchez
(13) Francisco Almanza Estrada
(14) Francisco Gallegos Garcia
(15) Francisco Rincon Leija
(16) Idelfonso Chavez Parga
(17) Ines Bustos
(18) Isabel Cortez
(19) Jesus Ambrosio Garcia R.
(20) Jesus Gallegos Olivares
(21) Jesus Garza Arocha
(22) Jesus Hernandez T.
(23) Jesus Jimenez Lucio
(24) Jose Angel Hernandez Martinez
(25) Jose Arellano Valdez
(26) Jose Davilla Torres
(27) Jose Dolores Hernandez Saucedo
(28) Jose Vasquez Garcia
(29) Juan Cortez Coronel
(30) Juan Rodriguez Rocha
(31) Julio Ulloa Rodriguez
(32) Ladrillera Monterrey
(33) Leopoldo Montiel Rincon
(34) Manual Alvarez Ramon
(35) Pablo Cortez Coronel
(36) Pedro Lopez Alonso
(37) Pisos Coloniales de Mexico, S.A.
(38) Ramon Jimenez De Leon
(39) Raul Leija
(40) Reynol Martinez Chapa
(41) Rosendo Rodriguez Hernandez
(42) Santos Rivera Tovar
(43) Sergio Garcia de las Fuentes
(44) Sotero Jalomo Reyna
(45) Teofilo Covarrubias Villareal
(46) Vicente Jaloma Reyna
(47) Zenon Cortez Coronel

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 47 firms listed above and to assess countervailing duties of 1.29 percent of the f.o.b. invoice price on shipments from the 47 firms listed from all other firms exported on or after January 1, 1987 and on or before December 31, 1987.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 47 firms listed above and to collect a cash deposit of estimated countervailing duties of 1.29 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 3, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28693 Filed 12-7-90; 8:45 am]

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[C-533-063]

## Certain Iron-Metal Castings From India; Final Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On April 5, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India. We have now completed that review and determine the net subsidy to be 9.61 percent *ad valorem* for R.B. Agarwalla, 19.32 percent *ad valorem* for Carnation, 36.40 percent *ad valorem* for Crescent, 78.86 percent *ad valorem* for Govind, 44.84 percent *ad valorem* for Kajaria, 9.06 percent *ad valorem* for RSI, 41.87 percent *ad valorem* for Serampore and 27.37 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 12702) the preliminary results of its administrative review of the countervailing duty order on certain iron-metal castings from India (October 16, 1980; 46 FR 16921). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

**Scope of Review**

Imports covered by the review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or for drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item numbers 657.0950 and 657.0990. These products are currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1985 through December 31, 1985 and ten programs: (1) International Price Reimbursement Scheme (IPRS), (2) Cash Compensatory Support program (CCS), (3) pre-shipment export loans, (4) post-shipment financing, (5) income tax reductions, (6) Market Development Assistance (MDA) grants, (7) sale of import replenishment licenses, (8) extension of free trade zones, (9) preferential freight rates, and (10) import duty exemptions available to 100 percent export-oriented units.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the Indian exporters, U.S. importers and the petitioner, Pinkerton Foundry.

*Comment 1:* The exporters and importers argue that IPRS payments are not countervailable subsidies. In intent and practice, the IPRS refunds to exporters of castings the difference between the price they must pay for certain raw materials purchased from government-owned Indian producers and the price they would otherwise pay on the world market. It was operated in a manner consistent with item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the List) which states:

> The delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, *if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters* (emphasis added).

Item (d) of the List is thus explicit that the provision of raw materials at world market prices to exporters is not a subsidy. The Department recognized this in previous countervailing duty cases, namely in Final Negative Countervailing Duty Determination; Certain Steel Wire Nails from the Republic of Korea (47 FR 39549; September 8, 1982), the Department held that "price preferences for inputs to be used in the production of export goods constitute a subsidy only if the preference lowers the price of that input below that which the input purchaser would pay on world markets." Similarly, in Final Negative Countervailing Duty Determination; Oil Country Tubular Goods from Taiwan (51 FR 19583; May 30, 1986), the Department stated that:

> Based on an examination of China Steel's second-tier prices for hot-rolled coil used in the production of OCTG, and of the world market prices for such coil, we found that China Steel's prices were at world market levels; therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit within the meaning of the countervailing duty law.

Furthermore, the exporters state that there is no evidence in the statutes or in the legislative history to support a theory that Congress intended to reject the principle embodied in item (d) of the List when it enacted the Trade Agreements Act of 1979 (the TAA). In fact, the importers claim that this issue was examined by the U.S. Treasury Department in a countervailing duty investigation that predates the 1979 statute (*see*, Final Countervailing Duty Determination; Leather Wearing Apparel from Uruguay (43 FR 3974; January 30, 1978). According to the importers, Treasury determined that direct payments to exporters of apparel that lowered the price of their primary

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input, hides, to the "readily available price of hides in other markets" was not a subsidy.

The exporters also argue that the IPRS benefits not the exporter of castings, but rather the Indian pig iron producers. Castings exporters can import pig iron or purchase domestic pig iron at the relatively high price that is set by the Indian government and receive IPRS rebates. The net effects of these two alternatives are the same.

In addition, importers argue that the Department is attempting to use an unauthorized interpretation of U.S. law to find the Indian IPRS program countervailable. In Certain Cotton Yarn Products from Brazil: Final Results of Countervailing Duty Administrative Review (55 FR 3442; February 1, 1990), the Department determined as countervailable a similar Brazilian dual pricing scheme, the Price Equalization Program (PEP). In Cotton Yarn, the Department advanced the theory that the List is not controlling on the identification of subsidies: "It is irrelevant whether the PEP is consistent with item (d) or whether cotton yarn exporters could have imported raw cotton at world market prices. We are concerned with the alternative price commercially available in the domestic market" (55 FR 3442). Importers argue that such a theory is untenable because Congress incorporated the List into U.S. countervailing duty law and the Department has no authority to claim item (d) as "irrelevant." The Court of International Trade (CIT) has acknowledged this adoption of the List in U.S. law in its decision in *Fabricas El Carmen, S.A. de C.V., et al.* v. *United States*, Slip Op. 87-113 (CIT October 7, 1987), as did the U.S. Court of Appeals in its decision of the 1984 review of this countervailing duty order (*see RSI (India) Pvt., Ltd.* v. *United States*, 887 F.2d 1571 (Fed. Cir. 1989)). The legislative history confirms that the sole reservation expressed by Congress in adopting the List was that it not be regarded as a permanent, exhaustive listing of all export subsidies countervailable under U.S. law. The Department is empowered only to supplement or expand the existing List, not alter or ignore established principles of the List. Consequently, in the case of item (d), U.S. law specifically excludes from countervailability any such programs which do not result in the provision of inputs on terms more favorable than those obtainable on world markets. Furthermore, the Department's failure to observe the principle of the statutory language and item (d) also directly conflicts with its efforts to codify item (d) in its own regulations. Commerce's proposed Regulation 355.44(h) in 19 CFR part 355 Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366; May 31, 1989) clearly states that price preferences for inputs used in the production of goods for export are subsidies only if they are provided on terms or conditions that "are more favorable than those commercially available on world markets to their exporters."

Conversely, petitioner argues that the IPRS is a countervailable subsidy because the exception in item (d) applies only to the preferential pricing of inputs and not to payments contingent upon the exportation of finished goods. Petitioner maintains that the Department's interpretation of item (d) has always been a narrow one, i.e., the exception in item (d) applies only to inputs, not monetary payments. Such an interpretation of item (d) is consistent with a panel report of the GATT Committee on Subsidies and Countervailing Measures that examined item (d) in conjunction with an investigation of European Community pasta export payments. See GATT Panel Report on EEC Subsidies on Export Pasta Products, SCM/433 (May 19, 1983). The Department's determination in *Cotton Yarn*, that the Brazilian PEP program is countervailable, is consistent with past Department determinations that reflect a narrow interpretation of the exception in item (d). The Department's preliminary determination that IPRS payments are countervailable implicitly recognizes that the exception in item (d) does not apply because item (d) clearly encompasses the IPRS within its definition of an export subsidy.

*Department's position:* We disagree with the importers and exporters. The Indian government's decision to insulate its pig iron producers from foreign competition placed users of domestic pig iron at a disadvantage vis-a-vis competitors abroad by raising the price of domestic pig iron. During the review period, Indian castings exporters could have overcome this competitive disadvantage in two ways: Duty drawback and the IPRS.

Imported pig iron in India is subject to normal customs duties. Had Indian castings exporters imported foreign pig iron for use as an input and processed it into castings for export, they could have been exempted from the normal customs duties on pig iron by using duty drawback, a practice acceptable under U.S. countervailing duty law and the GATT. Alternatively, under the IPRS, the Indian government created a benchmark price for pig iron and made cash payments to exporters based on the difference between the benchmark price and the domestic price. These cash payments were made exclusively to castings exporters, with the net effect being a reduction in the price of pig iron to a level well below the price commercially available in the domestic market. The IPRS was an instrument used by the Indian government to ameliorate the deleterious effects of high-price pig iron on a specific group of downstream users.

The circumstances is both Korean Nails and Taiwanese OCTG differ from those in this case. In Korean Nails, the Korean producers of nails for export had access to wire rod from foreign as well as domestic sources at comparable prices. Although afforded the opportunity through tariff protection to charge high prices for wire rod used in the manufacture of products sold domestically, POSCO (an integrated steel producer which is largely government-owned) and other Korean producers of wire rod chose to lower their prices to exporters of nails and compete with foreign-sourced wire rod purchased under duty drawback. We concluded that "the different prices for purchasers do not arise from a scheme to subsidize exports, but rather are a commercial response to a segmented market, one segment being protected and the other fully open to foreign competition." We further stated that "this dual pricing system reflects strictly economic motivations (of the wire rod producers) rather than a desire of the Government of Korea (the owners of POSCO) to subsidize nail exports" (47 FR 39552).

We noted in addition that our conclusion regarding the dual pricing system was consistent with the principle contained in item (d). However, our decision not to countervail the Korean pricing scheme was not made solely on the basis of item (d). Rather, our decision was based in large part on a determination that POSCO was acting in a commercially reasonable fashion by instituting a dual-pricing system. As support for this, we stated that two privately-owned Korean wire rod producers also had dual-pricing systems in place. These facts led us to conclude that the Korean government was not acting to subsidize exports.

Similary, in Taiwanese OCTG, we found that China Steel, a state-owned corporation and a supplier of pipe and tube inputs, maintained a two-tiered pricing policy. Accordingly, in determining whether China Steel's prices were preferential, we compared not only the actual prices FEMCO (an OCTG producer) paid China Steel to the actual prices FEMCO paid for imported coil, but we also compared the prices FEMCO paid China Steel to generally available world market prices for coil. In doing so, we found that China Steel's prices were at world market levels. Once again, our decision was based on a determination that China Steel was acting in a commercially reasonable manner.



In this case, the fact pattern is different. The Steel Authority of India, Ltd. (SAIL), an Indian government entity that supplied all of the pig iron used by the castings exporters, did not institute a dual-pricing scheme for pig iron. Instead, the Indian government intervened to ensure that Indian castings exporters could continue to use domestically-sourced pig iron while pig iron producers continued to enjoy the full benefits of tariff protection. Thus, the Indian government's decision to establish the IPRS and make cash payments to castings producers made possible exports that otherwise would not have occurred. Without this direct government action, castings exporters would have had to pay the high domestic price for Indian pig iron.

The fact that the Illustrative List is incorporated into U.S. law has no bearing on our decision. In determining whether item (d) is applicable to the identification and measurement of an export subsidy from this type of program, we have examined the law and its legislative history. Section 771(5) of the Tariff Act states, in relevant part: "the term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303, and includes, *but is not limited to*, the following: (A) Any export subsidy described in Annex A to the Agreement (relating to the illustrative list of export subsidies) * * *" (emphasis added). While Congress incorporated the Illustrative List in the statute, it did not limit the definition of export subsidy to the practices outlined in the List. The legislative history of the TAA explains, "The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill. The administering authority may expand upon the list of specified subsidies consistent with the basic definition." S. Rep. No. 96-249, 96th Cong., 1st Sess. 85 (1979). See also Trade Agreements Act of 1979: Statements of Administrative Action, H.R. Doc. No. 96-153, Pt. II, 96th Cong., 1st Sess. 432 (1979). The Illustrative List is not, therefore, controlling of the identification and measurement of export subsidies, but must be considered along with other provisions of the statute and its legislative history, administrative practice and judicial precedent. In light of the foregoing reasons, the inclusion of proposed regulation 355.44(h), which corresponds to item (d) on the List, in no way supports the importers' position. Finally, contrary to the exporter's claim regarding administrative practice prior to 1979, Uruguayan Leather Apparel is not relevant to the exception in item (d). There was no provision of hides to apparel manufacturers by the Uruguayan government, nor did the Uruguayan government intervene to manipulate the domestic price of hides. Uruguayan leather tanners were provided payments upon the export of finished leather wearing apparel, and Treasury offset the amount of the payment to the extent that it considered of a rebate of value-added and other indirect taxes.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically-sold products to confer a subsidy within the meaning of section 771(5) of the Tariff Act. It is irrelevant whether the IPRS is consistent with item (d) because we are not concerned with world market prices but with the alternative price of pig iron commercially available in the domestic market. This, we determine the IPRS program to be countervailable.

An analogy to the IPRS program is the case of export loans. In this case, as in many others, we have determined that export loans at preferential interest rates constitute a subsidy. In measuring the subsidy, we do not concern ourselves with whether firms could have borrowed money at commercial rates in international credit markets. The fact that, as a result of a government program, they borrowed from domestic sources at rates below those commercially available in the domestic market leads us to determine that a subsidy is bestowed.

*Comment 2:* The exporters argue that the benefit from the IPRS program is overstated, claiming that it should be offset by the Engineering Goods Export Assistance Fund (EGEAF) and Freight Equalization Fee (FEF) levies which are included in the price of pig iron. Because IPRS payments include the refund of both the EGEAF and the FEF, the amounts paid for these two levies should be deducted from IPRS receipts to determine the net subsidy from this program.

Conversely, petitioner argues that the EGEAF and the FEF levies are not allowable offsets under section 771(6) of the Tariff Act. These levies are included in the price of pig iron and are paid regardless of whether the castings produced from the purchased pig iron is sold domestically or exported.

*Department's position:* We agree with petitioner. Section 771(6)(A) of the Tariff Act states that to determine the net subsidy the Department may subtract from the gross subsidy the amount of "any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy * * *." Both levies are paid by all consumers of Indian pig iron, not just exporters. Therefore, they do not constitute offsets to the IPRS benefits as defined in the statute.

*Comment 3:* The exporters argue that the Department overstated the IPRS benefit received by Uma, because the questionnaire response shows a refund of "excess claims" that the Department failed to deduct from the amount of the IPRS payment.

*Department's position:* Despite repeated attempts by the Department to remedy deficiencies in initial and supplemental questionnaire responses, the existence of Uma's refund is not substantiated. Therefore, we have not deducted any amount from Uma's reported receipts of IPRS payments.

*Comment 4:* The exporters argue that the Department overstated the IPRS benefit received by Carnation because Carnation reported IPRS payments received on all exports to all markets and the Department allocated the IPRS payments over the value of subject exports to the United States.

*Department's position:* We agree and have corrected our calculation accordingly.

*Comment 5:* The exporters claim that the Department overstated the amount of IPRS payments received by Serampore because of an inadvertent transposition of two numbers.

*Department's position:* We agree and have corrected our calculation accordingly.

*Comment 6:* The petitioner claims that the Department understated the IPRS benefit to RSI by allocating the IPRS payments over a value of exports that included RSI's exports of furniture.

*Department's position:* We agree and have corrected our calculation accordingly.

*Comment 7:* The petitioner claims that the Department understated the amount of IPRS payments received by Super Castings because of a transposition of two numbers.

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*Department's position:* We agree and have corrected our calculation accordingly.

*Comment 6:* The petitioner argues that a single country-wide rate should be applied to all exporters. Section 706(a) of the Tariff Act states, in part, that "the order *may* provide for differing countervailing duties," 19 U.S.C. section 1671(a) (emphasis added). Thus, Congress created a presumption in favor of country-wide rates. The exporters add that the Department's discretion to apply separate company-specific rates should not be exercised because all the companies benefit from the IPRS program to the same degree. The varying rates of subsidy attributable to the IPRS program led to the application of individual company rates not because the companies received differing rates of benefits under the IPRS program, but rather because the Department used IPRS payments received in 1985, rather than the amounts claimed on 1985 exports. Therefore, it is inappropriate to assign individual company rates solely because some companies, as a result of happenstance, received IPRS payments during the review period that were substantially different from the amounts claimed for exports made during the review period.

Conversely, the importers argue that the Department correctly assigned company-specific rates, rather than a single country-wide rate. The Department is required by its regulations to issue company-specific rates if significant differentials exist between the weighted-average country-wide rate and individual company rates.

*Department's position:* We disagree with the petitioner and the exporters. Section 607 of the Tariff and Trade Act of 1984 establishes a statutory presumption in favor of country-wide countervailing duty rates, with the possibility of company-specific rates if the Department determines that a "significant differential" exists between companies receiving subsidies benefits. 19 U.S.C. 1671e(a)(2). Pursuant to that section, the Department promulgated regulations to use a single weighted-average country-wide rate unless there is a significant differential between an individual company rate and the weighted-average country-wide rate. Under § 355.20(d)(3) of our regulations, a significant differential is a "difference of the greater of at least five percentage points or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis." In this review, seven companies met the standard in the regulations for being significantly different; therefore, we assigned them company-specific rates.

Regarding the exporters' argument that it is inappropriate to assign company-specific rates solely because lagged receipts of IPRS payments resulted in varying subsidies for individual companies, the Department has consistently used receipts and not claims filed during the review period to measure the subsidy from the IPRS program. We use receipts because they represent a tangible measure of benefits received. Claims, on the other hand, are tenuous in nature and have the potential to be rejected.

As a result of the changes in our calculations discussed in Comments 4 through 7, we determine the net subsidy from the IPRS program to be 9.11 percent *ad valorem* for R.B. Agarwalla, 18.14 percent *ad valorem* for Carnation, 30.92 percent *ad valorem* for Crescent, 65.83 percent *ad valorem* for Govind, 39.17 percent *ad valorem* for Kajaria, 8.00 percent *ad valorem* for RSI, 41.08 percent *ad valorem* for Serampore and 25.33 percent *ad valorem* for all other firms.

*Comment 9:* The exporters argue that it is inappropriate to calculate IPRS benefits based on when benefits are received because, even though payment is not received for months after shipment, the program provides known payments on a sale-by-sale basis. The Department should calculate the benefit from the IPRS using payments claimed during the review period, rather than payments received during the review period.

Conversely, the petitioner argues that the Department should be consistent from one review to the next and continue to use the total amount of IPRS payments received during the review period in calculating the benefit from this program.

*Department's position:* We agree with petitioner. It has been our general practice to compute benefits received by a firm during the review period (in this case the 1985 calendar year), and apply them to the total value of exports for the same period. There are a few exceptions to this practice, such as when a benefit is earned on a shipment-by-shipment basis and the exact amount of the benefit is known at the time of export (see e.g., Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from New Zealand (52 FR 37196; October 5, 1987)). Even if we were to consider the IPRS such an exception, the exporters did not make such a claim when we first determined in the 1984 review of this order that the IPRS provided a countervailable subsidy. In that review, we calculated the subsidy from the IPRS program by allocating receipts over exports. The use of the lag in payments from this new program resulted in lower benefits than would have been the case if we had measured the subsidy based on IPRS claims during the 1984 review period. Furthermore, a shift in methodology at this time would result in a substantial gap in the measurement of subsidies from this program (*i.e.*, IPRS payments claimed in 1984 but received in 1985 would be excluded from not only 1984 but 1985 as well).

*Comment 10:* The petitioner argues that the Department incorrectly determined that the benefit from the IPRS program is zero for purposes of the cash deposit of estimated countervailing duties. While it is the Department's policy to adjust the deposit rate if a program-wide change has taken place since the review period but prior to publication of the preliminary results of administrative review, the exporters' renunciation of IPRS payments on exports of the subject merchandise to the United States does not constitute a program-wide change because it was not effectuated by an official act, statute, regulation or decree, and the exporters could resume receiving IPRS payments if they chose.

The exporters respond that the Department verified that no exporter was permitted to receive IPRS payments on sales to the United States of the subject merchandise and that this change applied to all exporters without exception. The Engineering Export Promotion Council (EEPC) issued a decree, verified by the Department, terminating IPRS payments for exports of subject castings to the United States. The EEPC is an official body legally sanctioned by the Indian Ministry of Commerce. A change that affects the entire program and affects equally all exporters under that program is a program-wide change. Accordingly, the exporters argue that the Department correctly determined that this program-wide change meets the Department's requirements for setting a deposit rate different from the net subsidy determined for the review period.

*Department's position:* We agree with the exporters. At verification, we established that the EEPC stopped accepting any IPRS claims filed on shipments of the subject merchandise exported to the United States after July 1, 1987. The Ministry of Commerce has subsequently enforced the renunciation. Allowing for the normal lag of a few months between the filing of IPRS claims and the receipt of payment, there is no evidence or reason to believe that IPRS payments will be received by any exporters after publication of the preliminary results. Therefore, for purposes of the cash deposit of estimated countervailing duties, we determine the benefit from this program to be zero.



*Comment 11:* The exporters claim that Crescent inadvertently failed to include in the questionnaire response a revision to the amount of income tax benefit it received under section 80HHC and, with the submission of the revised information, argue that the Department should recalculate its benefit accordingly.

*Department's position:* We disagree. Section 355.31(b) of the Department's regulations does not allow for submission of factual information after the date of publication of the preliminary results. Crescent's submission was untimely.

*Comment 12:* The exporters argue that the Department overstated Carnation's benefit from the Income Tax Deduction under section 80HHC by incorrectly applying a 68.25 percent tax rate, instead of the 63 percent rate applicable to Carnation. Although the exporters acknowledge that the verification report and the questionnaire response show that Carnation's tax rate is 68.25 percent, they claim this information is incorrect.

*Department's position:* We disagree. The exporters' assertion that this information is incorrect was untimely and unsubstantiated.

*Comment 13:* The exporters argue that the Department overstated Uma's, Agarwalla's and Kejriwal's benefits from the Income Tax Deduction under section 80HHC by incorrectly applying a 63 percent tax rate, instead of the rates applicable to partnerships.

*Department's position:* We agree and have corrected our calculations by applying an 18 percent tax rate to Uma and a 21 percent tax rate to Agarwalla and Kejriwal. These are the rates that the partnerships actually paid during the review period. Accordingly, we determine the net subsidy from this program to be 0.21 percent *ad valorem* for R.B. Agarwalla, 1.18 percent *ad valorem* for Carnation, 5.48 percent *ad valorem* for Crescent, 11.81 percent *ad valorem* for Govind, 0.83 percent *ad valorem* for Kajaria, zero for RSI, 0.12 percent *ad valorem* for Serampore and 0.62 percent *ad valorem* for all other firms.

*Comment 14:* The exporters argue that a separate and greater deposit rate for Govind is inappropriate. Govind received benefits under the section 80HHC income tax provision during the 1985 assessment year. Because the income tax provision changed substantially between 1985 and 1986, the Department has no basis to set a greater deposit rate based on prior findings. Furthermore, the benefit of a tax program will always vary depending upon profits, and profits vary from year to year. Therefore, all companies should be considered as benefitting equally from a tax reduction program until the actual company-specific profit/loss data demonstrate otherwise.

*Department's position:* We disagree. We calculate deposit rates based upon the amount of benefits each company received during the review period, except where program-wide changes have been demonstrated prior to the notice of preliminary results of review. Because we have no basis for assuming what the future benefit will be in any given program, we have consistently determined the deposit rate based upon prior benefit levels. We have determined the deposit rates for all companies based upon their respective net subsidies in 1985. It would be inappropriate to treat Govind differently from the rest.

*Comment 15:* The exporters argue that the Department overstated the benefit to Govind, RSI, Uma and Serampore from packing credit loans by incorrectly allocating the benefits over castings exports rather than all exports. The companies reported packing credit loans used to finance all exports not castings exports alone, and the Department should have divided by each company's exports of all products.

*Department's position:* We agree and have corrected our calculations accordingly. We determine the benefit from packing credit loans to be 0.49 percent *ad valorem* for R.B. Agarwalla, zero for Carnation, zero for Crescent, 1.22 percent *ad valorem* for Govind, 4.84 percent *ad valorem* for Kajaria, 1.08 percent *ad valorem* for RSI, 0.22 percent *ad valorem* for Serampore and 0.44 percent *ad valorem* for all other firms.

*Comment 16:* The petitioner claims that the Department incorrectly allocated Serampore's benefit from post-shipment preferential financing over castings exports to all markets. Because Serampore reported post-shipment financing only on sales to the United States, the benefit should be allocated over castings exports to the United States.

*Department's position:* We disagree. Serampore exported castings *only* to the United States. Therefore, castings exports to all markets and castings exports to the United States are the same.

*Comment 17:* The exporters argue that Govind had commercial borrowings during the review period at a 15 percent annual rate of interest. Therefore, the Department should revise its calculation of the benefits from export packing and pre-shipment financing.

*Department's position:* We disagree. Information in the record shows the Govind's commercial borrowing rate was 16.5 percent during the review period. Nevertheless, the Department does not use company specific-benchmarks, rather we use one benchmark for all companies based on the average interest rate commercially available for short-term borrowings in the country during the review period (see Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (53 FR 15091; April 27, 1988)).

*Comment 18:* The petitioner claims that the Department inadvertently understated Super Castings' benefit from post-shipment financing because of a transposition of numbers.

*Department's position:* We agree and have corrected our calculation accordingly. We determine the benefit from this program to be 0.45 percent *ad valorem* for Serampore, zero for R.B. Agarwalla, Carnation, Crescent, Govind, Kajaria, and RSI, and 0.98 percent *ad valorem* for all other firms.

*Comment 19:* The exporters claim that castings exporters paid an insurance premium to the Export Credit Guarantee Corp. (ECGC) in order to utilize the preferential packing credit. Since castings exporters can borrow commercially without paying such a premium, the Department should deduct the cost of the premium paid from the benefit received under packing credit financing.

*Department's position:* We disagree. The cost of export credit insurance is not an offset to a benefit as defined by section 771(6)(A) of the Tariff Act (see the Department's position in response to Comment 2). Credit insurance is part of the cost of obtaining pre-shipment financing and, as such, is part of the calculation of the effective interest on these loans. However, we lack sufficient information to derive an effective interest rate benchmark. Therefore, we can only compare a nominal interest rate benchmark to a nominal preferential interest rate.

*Comment 20:* The exporters claim that the Department used an incorrect Indian rupee/U.S. dollar exchange rate to convert Crescent's reported sales values from dollars to rupees.

*Department's position:* We disagree. We used an average annual exchange

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rate based on verified information obtained from the Central Bank of India. The exporters presented no evidence that this information is incorrect.

*Comment 21:* The petitioner argues that the Department should not accept Kejriwal's allocation of its MDA grant when calculating the benefit from the grant. Kejriwal's representatives used MDA grant money to attend trade fairs in both Atlanta and Toronto. However, because Kejriwal provided neither information detailing the duration of its representatives' stay in each city nor a list of contacts made in each city, the Department should not accept the allocation offered by Kejriwal. Instead, the Department should allocate the total amount of the grant based solely on Kejriwal's sales of castings to the United States.

The exporters respond that the Department verified that the MDA grant was used for meetings both within and outside of the United States, and argue that it is appropriate to allocate half of the grant over exports to the United States.

*Department's position:* We agree with the exporters. We verified that Kejriwal applied for the MDA grant for meetings in Atlanta and Toronto. We also verified that the representatives did, in fact, attend meetings in the two cities. Allocating the grant equally between the two cities is reasonable.

*Comment 22:* The petitioner argues that the responding companies failed to provide specific information detailing their transactions in which the central sales tax (CST) and the West Bengal sales tax (WBST) apply to purchases of pig iron. In the absence of such information, the Department should assume that the CST and WBST do not apply to purchases of pig iron when calculating the benefit attributable to the Cash Compensatory Scheme (CCS).

*Department's position:* We disagree. The official record demonstrates a reasonable and documented calculation of the indirect tax incidence on exported castings. Where we had no evidence that pig iron was purchased from dealers in the West Bengal state, we did not include the WBST in the amount of taxes paid and rebated on pig iron.

*Comment 23:* The petitioner claims the Department inadvertently understated the average f.o.b. value per metric ton of pig iron in its calculation of Kejriwal's tax rebate through the CCS program.

*Department's position:* We agree and have corrected our calculation accordingly. We still find no overrebate of indirect taxes to Kejriwal from the CCS program.

*Comment 24:* The petitioner argues that the Department failed to measure the indirect tax incidence and compare it to the rebate provided under the CCS program for Super Castings and Kajaria.

*Department's position:* We agree and have measured the indirect tax incidence and rebate from the CCS program for Super Castings and Kajaria. We determine the benefit from the CCS program to be zero for both companies.

**Final Results of Review**

After reviewing all of the comments received, we determine that the following net subsidies exist for the period January 1, 1985 through December 31, 1985:

| Manufacturer/exporter | Net subsidy (percent) |
|---|---|
| R.B. Agarwalla | 9.81 |
| Carnation | 19.32 |
| Crescent | 36.40 |
| Govind | 78.86 |
| Kajaria | 44.84 |
| RSI | 9.06 |
| Serampore | 41.87 |
| All other firms | 27.37 |

The Department will instruct the Customs Service to assess countervailing duties at the above percentages of the f.o.b. invoice price on shipments of the subject merchandise exported on or after January 1, 1985, and on or before December 31, 1985.

As a result of the termination of benefits attributable to the IPRS program, the Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 13.03 percent of the f.o.b. invoice price for Govind and 2.21 percent for all other firms on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28894 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

## Short-Supply Determination; Certain Large Diameter Pipe

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice of short-supply determination on certain large diameter pipe.

**SHORT-SUPPLY REVIEW NUMBER:** 31.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 31,350.5 net tons of certain large diameter pipe ("LDP") for the first half of 1991 under the U.S.-Japan steel arrangement.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4037 or (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** On October 31, 1990, Enron Corporation ("Enron") submitted an adequate petition to the Secretary requesting a short-supply allowance under Paragraph 8 of the Arrangement Between the Government of Japan, and the Government of the United States of America Concerning Trade in Certain Steel Products, for: 31,350.5 net tons of American Petroleum Institute grade X-70 submerged arc welded steel pipe, 30 inches in diameter and with a wall thickness of 0.30 inch; and 3,200 net tons of a "contingency quantity" of LDP for which no size and grade were specified. The X-70 grade material will be used for production of the Transwestern Pipeline Expansion and must be delivered during the first half of 1991. Enron states that the contingency quantity "is needed in case any of our domestic sources have difficulty in producing the quantities ordered from them since their schedules are so full that they have no margin for error." Enron is requesting a short-supply allowance because the domestic manufacturers of LDP are unable to meet Enron's needs for this material during the requested period and its potential foreign supplier has no regular export licenses available. The Secretary conducted this review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law Number 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

**Action**

On October 31, 1990, the Secretary established an official record on this short-supply request (Case Number 31) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, at the above address. On November 13, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than November 20, 1990, and interested parties were invited to file replies to any comments not later than five days after that date. In order to determine whether this product could be supplied to Enron during the first half of 1991, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Napa Pipe Corporation ("Napa") and Berg Steel Pipe Company ("Berg"). The Secretary received questionnaire responses from Bethlehem and Berg and comments to the **Federal Register** notice by Bethlehem. The Secretary did not receive a questionnaire response from Napa.



**Questionnaire Responses**

Berg notes that it has the capability to produce the requested product and is a regular supplier of this product to Enron. However, Berg states that it has no available capacity to produce the requested product during the first half of 1991 because its mill is "fully booked". Bethlehem also states that it has the capability to produce the requested product and is a regular supplier to Enron. However, Bethlehem states that due to "schedule constraints," it does not have the ability to supply the requested product during the first half of 1991.

In addition to its questionnaire response, Bethlehem provided comments to the Department concerning the request. Bethlehem indicated that it could not see the need for a short-supply allowance since its estimated tonnage of the subject pipe available under regular quota during the first half of 1991 was significantly higher than its estimates of the tonnage for LDP projects that voluntary restraint arrangement (VRA) countries have been awarded. Based on its estimates, Bethlehem believes there is significant available licenses to meet Enron's needs.

*Analysis*

This request is for two different tonnages of LDP: 31,350.5 net tons of X-70 grade submerged arc welded LDP, 30 inches in diameter with a wall thickness of 0.300 inch; and 3,200 net tons of an unspecified size of LDP to be used as a "contingency quantity; in case Enron's domestic suppliers have difficulty meeting their obligations for other types of LDP.

Concerning the 31,350.5 net tons of X-70 grade LDP, no domestic producer indicated that it could supply this material during the required time period. However, Bethlehem is concerned that regular export licenses of line pipe are not being exhausted before Enron is requesting short supply. While the Department can understand Bethlehem's concerns regarding the utilization of export quotas, the total line pipe export ceilings of VRA countries are distributed among numerous producers. Some of these companies may produce LDP; however, some may not be able to meet Enron's specifications and a significant number of these companies may only make smaller sizes of line pipe. Hence, it is not always possible for the export ceilings to be exhausted before a company requests short supply for a particular grade and size of a product. In this case, Enron made a commercial decision to source material for this pipeline from both domestic and foreign suppliers. It has purchased all the material it could from domestic sources and has purchased the balance from a foreign supplier that can physically meet Enron's needs. This producer has informed Enron that it could only supply the requested material through a short-supply allowance due to its regular quota being accounted for by other customers. Based on the unavailability of this material from domestic sources and the inability of the potential offshore supplier to meet Enron's needs without short-supply licenses, the Secretary can only conclude that a supply shortfall does exist for this material.

Concerning the 3,200 net tons of "contingency" LDP, Enron is seeking this material as a form of short-supply relief in case domestic mills are unable to meet its total needs for various types of LDP. Since domestic mills will be operating at optimal capacity during the first half of 1991, Enron believes they may have difficulty meeting their total obligation on all projects. Therefore, it wants this tonnage to have a guaranteed supply. While Enron may have legitimate concerns in its request for this material, the short-supply procedures are not intended to guarantee a potential short-supply requestor with material in anticipation of domestic mills failing to meet contractual obligations. Rather, the short-supply program exists to address market situations in which there is an insufficient supply of a particular product to meet demand. In this request, Enron has found suppliers for its LDP needs (both domestic and foreign) who are committed to supply Enron's requirements by specified dates. No evidence has been provided to indicate that these suppliers will not meet their commitments. Therefore, the Secretary concludes that a short-supply situation for this tonnage does not exist.

**Conclusion**

Concerning the 31,350.5 net tons of X-70 grade submerged arc welded LDP included in this request, potential domestic suppliers have stated that they are unable to supply this material to Enron during the required time frame, and Enron's potential foreign supplier cannot meet Enron's needs for this tonnage with regular export licenses. However, Enron has failed to demonstrate that there is an insufficient supply of 3,200 net tons of the "contingency" tonnage to meet demand. Therefore, the Secretary determines that short-supply exists with respect to 31,350.5 net tons of the X-70 grade submerged arc welded LDP included in this request. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures (19 CFR 357.102), the Secretary grants Enron a short-supply allowance for 31,350.5 net tons of the X-70 grade submerged arc welded LDP included in this request for the first half of 1991.

Dated: November 30, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28895 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

**Business Development Center Applications: Anaheim, CA**

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $276,250 in Federal funds and a minimum of $46,750 in non-Federal contributions for the budget period May 1, 1991 to April 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the

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Anaheim, California Geographic service area.

The I.D. number for this project will be 08-10-01006-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

**CLOSING DATE:** The closing date for applications is January 22, 1991. Applications must be postmarked on or before January 22, 1991.

Proposals are to be mailed to the following address: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744-3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. January 3, 1991 at 10 a.m.

**FOR FURTHER INFORMATION CONTACT:** Xavier Mena, Regional Director, San Francisco Regional Office.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 4, 1990.

**Xavier Mena,**

*Regional Director, San Francisco Regional Office.*

[FR Doc. 90-28863 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management; Federal Consistency Appeal by Robert E. Harris From Objection by State of New York Department of State

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Notice of appeal and request for comments.

On November 1, 1990, the Secretary of Commerce received a notice of appeal from Robert E. Harris (Appellant). Mr. Harris is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of New York, Department of State, (New York) to the appellant's consistency certification that his proposal to install a 75 foot walking pier and an 18 slip float platform offshore from appellant's property on the Hudson River in Rensselaer, New York, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with the State's coastal zone management program.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3) (A) or (B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 15 CFR 930.122.

Appellant requests that the Secretary override New York's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) The proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA; (2) the



adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with New York's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Brian Cullen, New York Department of State, 1621 Washington Avenue, Albany, NY 12231-0001.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the New York Department of State, 1621 Washington Avenue, Albany, NY, and the Office of the Assistant General Counsel for Ocean Services, NOAA.

**FOR ADDITIONAL INFORMATION CONTACT:** Susan K. Auer, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 4, 1990.

**Thomas A. Campbell,**

*General Counsel.*

[FR Doc. 90-28897 Filed 12-7-90; 8:45 am]

BILLING CODE 3509-10-M

## Pelagic Fisheries of the Western Pacific Region

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of a fishery management plan amendment and request for comments.

**SUMMARY:** NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 1 to its Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review and is requesting comments from the public. Copies of Amendment 1 may be obtained from the Council (See **ADDRESSES**).

**DATES:** Comments on the amendment should be submitted on or before January 28, 1991.

**ADDRESSES:** All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, Hawaii 96813, (808) 541-1974.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, NMFS, Terminal Island, California (213) 514-6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.* requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised July 24, 1989 (54 FR 30826 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 1 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

The amendment defines overfishing (i.e., recruitment overfishing) for pelagic management unit species in terms of Spawning Potential Ratio (SPR), which may be estimated in several ways depending on the quality of available statistics. SPR is a measure of the current reproductive capacity of the stock relative to its unexploited capacity and is inversely proportional to fishing mortality. Thus, SPR ranges from 1.0 before exploitation to 0.0 with increasing fishing mortality. Billfishes, mahimahi, and wahoo are considered overfished when SPR is equal to or less than 0.2. A pelagic shark species is considered overfished when its SPR is equal to or less than 0.35. When a pelagic management unit species or stock is overfished, overfishing is defined as a harvesting rate that is not consistent with a program established to maintain the species or stock above the minimum level of SPR and incapable of achieving Optimum Yield (OY). The Council will evaluate annually the status of the pelagic stocks and conditions in the fishery to determine if any stock is overfished relative to the overfishing definitions. It is the Council's intent to manage the fisheries at OY, thus preventing the stocks from declining to the point of recruitment overfishing. The amendment also revises the objectives of the FMP and definition for OY in order to bring them into accord with the overfishing definitions.

No Federal regulatory action is necessary to implement this amendment. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments in the Council's region and has asked for concurrence with this determination. The amendment incorporates an environmental assessment which is available upon request (See **ADDRESSES**). It has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore, neither a Regulatory Impact Analysis nor a Regulatory Flexibility Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking under Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time. Amendment 1 does

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not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** December 4, 1990.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28880 Filed 12-6-90; 12:23 pm]

BILLING CODE 3510-22-M

## Caribbean Fishery Management Council; Statement of Organization, Practices and Procedures

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604, and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 99-659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-mentioned final rule, the Caribbean Fishery Management Council (Caribbean Council) has prepared its revised SOPP originally published October 13, 1977. Interested parties may obtain a copy of the Caribbean Council's revised SOPP by contacting Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, P.O. Box 1001, Hato Rey, Puerto Rico 00918-2577; telephone (809) 753-5910.

**Dated:** December 4, 1990.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-28885 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### The Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1991

December 4, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**SUPPLEMENTARY INFORMATION:** The Committee for the Implementation of Textile Agreements (CITA) announces that the 1991 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available on or about December 5, 1990.

Copies of the Correlation may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28857 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DR-M

### Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Poland

December 4, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984, as amended and extended, between the Governments of the United States and the Republic of Poland establishes limits for the period January 1, 1991 through December 31, 1991. The limits for Categories 433 and 443/643/644 are being reduced for carryforward used during the 1990 agreement year.

A copy of the current agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 4, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984, as amended and extended, between the Governments of the United States and the Republic of Poland; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period begining on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

| Category | 12-month restraint limit |
|---|---|
| Levels not in a group | |
| 334 | 306,667 dozen of which not more than 26,500 dozen shall be in Category 334-O.[1] |
| 335 | 80,415 dozen. |
| 338/339 | 1,060,000 dozen. |
| 340/640 | 125,080 dozen. |
| 341/641 | 95,400 dozen. |
| 347/348 | 180,200 dozen. |
| 611 | 1,325,000 square meters. |
| 645/646 | 153,432 dozen. |
| Group II | |
| 400, 410/624, 414, 431-436, 438-440, 442, 443/643/644, 444-448, 459, 464, 465 and 469, as a group. | 5,252,000 square meters equivalent. |
| Sublevels in group II | |
| 410/624 | 2,525,000 square meters of which not more than 2,121,000 square meters shall be in Category 410. |
| 433 | 7,605 dozen. |
| 434 | 5,555 dozen. |
| 435 | 8,080 dozen. |
| 440 | 7,975 dozen. |
| 443/643/644 | 175,750 numbers. |
| 444 | 63,226 numbers. |
| 445 | 17,736 dozen. |
| 446 | 11,398 dozen. |
| 447 | 12,521 dozen. |
| 459 | 51,112 kilograms. |
| Group III | |
| 200-239, 300-333, 336, 342, 345, 349-359, 600-607, 613-622, 625-639, 648, 647-654, 659, 665-670 and 831-858, as a group. | 13,780,000 square meters equivalent. |

[1] Category 334-O: all HTS numbers except 6101.20.0010, 6101.20.0020 and 6112.11.0010.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Poland.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28858 Filed 12-7-90; 8:45 am]

BILLING CODE 3510-DR-M



## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Employment in Private Shipyards under Cognizance of Supervisors of Shipbuilding, Conversion and Repair (SUPSHIPS), NAVSEA 4350/2, OMB Control No. 0703-0005.

*Type of Request:* Reinstatement.

*Average Burden Hours/Minutes per Response:* 8 hours.

*Responses per Respondent:* 12.

*Number of Respondents:* 115.

*Annual Burden Hours:* 11,040.

*Annual Responses:* 1,380.

*Needs and Uses:* To collect information on employment in private shipyards to make a determination of the capabilities of the shipbuilding industry and its ability to meet the shipbuilding, conversion and repair needs for Navy and Merchant ships. It is collected from firms that build, convert or repair ships.

*Affected Public:* Businesses or other for-profit.

*Frequency:* Monthly.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

**Dated:** November 4, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28799 Filed 12-7-90; 8:45 am]

BILLING CODE 3810-01-M

## Office of the Secretary

### Environmental; Chlorofluorocarbons (CFCs) Advisory Committee

**ACTION:** Notice of meeting.

**SUMMARY:** This is another in a series of meetings to be held by the CFC Advisory Committee Subcommittee Chairman to study the feasibility and cost within DoD of substituting chemicals or technologies to replace ozone depleting chemicals whose production is restricted by the Montreal Protocol.

**DATES:** December 18, 1990.

**ADDRESSES:** 409 12th St., SW., suite 700, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Goins, (703) 325-2215.

**SUPPLEMENTARY INFORMATION:** Due to limited space and security considerations, please contact Charles W. Purcell, (202) 646-6062 for attendance information and admission number.

**Dated:** November 4, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28798 Filed 12-7-90; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Review of the A-12 Aircraft

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board Task Force on Review of the A-12 Aircraft will meet in closed session on 19 and 20 December 1990 at the Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on the Navy requirements for a medium-attack aircraft and the technical design aspects of the A-12 aircraft.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. Nl. 92-463, as amended (5 U.S.C. app. II, (1982)), it has been determined

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that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 4, 1990.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28790 Filed 12-7-90; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on The Detection and Neutralization of Illegal Drugs and Terrorist Devices

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on the Detection and Neutralization of Illegal Drugs and Terrorist Devices will meet in closed session on December 19–20, 1990 at System Planning Corporation, 1500 Wilson Blvd., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as the affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with the DoD counternarcotics efforts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II. (1982)). It has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 4, 1990.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28787 Filed 12-7-90; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Strategic Sensors

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Strategic Sensors will meet in closed session on December 21, 1990 at DBA, Inc. in Fairfax, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they effect the perceived needs of the Department of Defense. At this meeting the Task Force will investigate technologies that are capable of improving strategic surveillance sensor performance.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Froce meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: December 5, 1990.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-28804 Filed 12-7-90; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB)

*Dates of Meeting:* 8 January 1991

*Time:* 1000–1100

*Place:* Pentagon, Washington, DC

*Agenda:* The Army Science Board (ASB) Ad Hoc Subgroup on Electromagnetic and Electrothermal Technologies will meet for the final report and discussion on the findings and conclusions concerning the report. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 90-28793 Filed 12-7-90; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before January 9, 1991.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell (202) 708–5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.



Dated: December 3, 1990.

James O'Donnell,

*Acting Director for Office of Information Resources Management.*

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Extension.
*Title:* Quarterly Cumulative Caseload Report.
*Frequency:* Quarterly.
*Affected Public:* State or local governments.
*Reporting Burden:*
*Responses:* 84
*Burden Hours:* 336
*Recordkeeping Burden:*
*Recordkeepers:* 84
*Burden Hours:* 84
*Abstract:* State Vocational Rehabilitative (VR) agencies report caseload data. The Department uses the information collected to assess the accomplishment of program goals and objectives and to aid in effective program management.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision.
*Title:* Application—Handicapped Infants and Toddlers Program, Under Part H of the Education of the Handicapped Act.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:*
*Responses:* 58
*Burden Hours:* 580
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* States are required to submit an application for funds authorized under part H of the Education of the Handicapped Act. Funds will be used by States to plan, develop, and implement the statewide comprehensive system of early intervention services for infants and toddlers with handicaps and their families.

**Office of Educational Research and Improvement**

*Type of Review:* New.
*Title:* School Library Survey—A component of the Schools and Staffing Survey (SASS)—Field Test.
*Frequency:* One-time.
*Affected Public:* State or local governments; Non-profit institutions; Small businesses or organizations.
*Reporting Burden:*
*Responses:* 650
*Burden Hours:* 1300
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* This field test for a national survey of school media centers and of school librarians will provide a basis for planning, policy decisions, and program administration. This information will contribute to the assessment of the Federal role in supporting school libraries.

**Office of Postsecondary Education**

*Type of Review:* Revision.
*Title:* Performance Report for the Robert C. Byrd Honors Scholarship Program.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:*
*Responses:* 52
*Burden Hours:* 52
*Recordkeeping Burden:*
*Recordkeepers:* 52
*Burden Hours:* 5
*Abstract:* State agencies that have participated in the Robert C. Byrd Honors Scholarship Program submit these reports to the Department. The Department uses the information to assess the accomplishment of project goals and objectives, and to aid in effecive program management.

**Office of Vocational and Adult Education**

*Type of Review:* Extension.
*Title:* Performance Report for State Administered Vocational Education.
*Frequency:* Annually.
*Affected Public:* State and local governments.
*Reporting Burden:*
*Responses:* 53
*Burden Hours:* 2,544
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* State Boards for Vocational Education must submit state plans under the Carl D. Perkins Vocational Education Act, as amended. The Department uses the information to determine compliance with the Act.

[FR Doc. 90-28634 Filed 12-7-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Award of a Grant, Noncompetitive Financial Assistance

**AGENCY:** DOE, Yucca Mountain Site Characterization Project Office (Project Office).

**ACTION:** Notice of intent to award based on an unsolicited application.

**SUMMARY:** Pursuant to 10 CFR 600.14(j), DOE announces its intent to award a grant based on an unsolicited application from the Clark County Community College, North Las Vegas, Nevada, to provide a local source of training in the use of Geographic Information Systems (GIS). The training is essential for the development of GIS in the monitoring of effects involved with the Yucca Mountain Site Characterization Project. The Nuclear Waste Policy Act of 1982, as amended by the Nuclear Waste Policy Amendments Act of 1987, provides for the development of a program for the permanent, safe storage of spent-fuel and high-level nuclear waste. It is the DOE policy to keep the Nevada residents informed of activities with respect to the project.

The objectives of the work effort are to set up and provide a locally available source of training in the use of GIS. It has been determined that GIS will be part of the Project Technical Data Base, used in storing and evaluating the results of the project site characterization activities of the Yucca Mountain Site Characterization Project. The program set up under this proposed grant will provide the community with individuals trained in the development and use of this technology. It will also make reasonable, affordable training in GIS technology available to the community.

The project period for the proposed grant award is one year. The anticipated award date is January 1, 1991. The total estimated cost of this award is $143,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, Attn: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, Nevada 89193–8608.

Issued in Las Vegas, Nevada, on November 29, 1990.

Nick C. Aquilina,

*Manager, Nevada Operations Office.*

[FR Doc. 90-28682 Filed 12-7-90; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Project No. 10656-001 New York]

### Kenneth M. Grover; Availability of Environmental Assessment

December 4, 1990

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of

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Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Tuck Tape Dam Hydroelectric Project, located on Fishkill Creek in the city of Beacon, Dutchess County, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28830 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP91-35-000]**

## ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that on November 30, 1990, pursuant to section 4 of the Natural Gas Act and part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder, ANR Pipeline Company ("ANR") tendered for filing with the Commission Seventh Revised Sheet No. 570 of its FERC Gas Tariff, Original Volume No. 2 with a proposed effective date of January 1, 1991.

Seventh Revised Sheet No. 570 reflects a decrease from $261,482 to $250,763 in the monthly charge paid by the High Island Offshore System ("HIOS") to ANR pursuant to Rate Scheduled X-64 under Original Volume No. 2 of ANR's FERC Gas Tariff. Rate Schedule X-64 is a Service Agreement dated August 4, 1977 between ANR and HIOS. Under the terms of this Service Agreement, which was approved by Commission Order issued July 6, 1978 at Docket No. CP78-134, ANR provides certain gas measurement, dehydration and related services for HIOS at the Grand Chenier, Louisiana facility.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28821 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. RP91-35-000]**

## ANR Pipeline Co.; Changes in FERC Gas Tariff

December 4, 1990.

Take notice that ANR Pipeline Company ("ANR") on November 29, 1990 tendered for filing as part of its Original Volume No. 1 of its FERC Gas Tariff, six copies each of the following tariff sheets which ANR proposes to become effective on December 29, 1990:

Thirty-Fourth Revised Sheet No. 18
Eighth Revised Sheet No. 88
Eighth Revised Sheet No. 89
Eighth Revised Sheet No. 90
Seventh Revised Sheet No. 90A
Fourth Revised Sheet No. 90A.1
First Revised Sheet No. 130
First Revised Sheet No. 131

ANR states that the above-referenced tariff sheets are being filed under Section 2.104 of the Commission's Regulations to implement partial recovery of approximately $11.0 million of additional buyout buydown costs. Under the proposed filing, ANR is proposing to absorb twenty five percent of its buyout buydown costs, to recover twenty-five percent of such costs through a fixed monthly charge applicable to its Rate Schedules CD-1, MC-1 amd SGS-1 sales customers and to recover up to fifty percent of such costs through a volumetric buyout buydown surcharge of 0.28¢ per dth applicable to each sales, transportation and storage rate schedule, where appropriate, under Original Volume Nos. 1, 1-A, 2 and 3 of ANR's FERC Gas Tariff, but all subject to reservation of rights to make changes, including to achieve 100 percent cost recovery by increased direct charge recovery. It states that its allocation of is based on the methodology proposed in Docket No. RP91-33-000, filed on November 21, 1990, in response in Order No. 528.

ANR states that copies of the filing were served upon all of its Volume Nos. 1, 1-A, 2 and 3 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426 by December 11, 1990, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28822 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ91-3-20-000]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that Algonquin Gas Transmission Company "Algonquin") on November 30, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

**Proposed to be effective December 1, 1990**

48 Rev Sheet No. 201
10 Rev Sheet No. 201A
49 Rev Sheet No. 203
45 Rev Sheet No. 204
42 Rev Sheet No. 205

Algonquin states that above listed tariff sheets are being filed as part of an Out-of-Cycle Purchased Gas Adjustment ("PGA") pursuant to section 17 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Second Revised Volume No. 1 to reflect the changes in standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern") and changes in purchased gas costs to be charged by its suppliers, Texas Eastern, National Fuel Gas Supply Corporation ("National") and CNG Transmission Corporation ("CNGT").

Algonquin states that the proposed effective date for the above listed tariff Sheet Nos. 201 through 205, is December 1, 1990.

Algonquin further states that the effect of the instant filing is to increase the demand charges by $0.5270 per MMBtu and to increase the commodity charges by 27.40¢ per MMBtu under Algonquin's firm sales rate schedules from those rates contained in Algonquin's regularly scheduled Quarterly PGA filing of October 31, 1990 in Docket No. TQ91-3-20-000. In addition, the rate under, (i) Rate Schedule I-1 has increased by 27.40¢ per MMBtu, (ii) Rate Schedule WS-1 excess commodity has increased by 37.94¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.21 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28815 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ91-3-20-000]**

## Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 30, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

**Proposed to be effective January 1, 1991**

49 Rev Sheet No. 201
11 Rev Sheet No. 201A
50 Rev Sheet No. 203
46 Rev Sheet No. 204
43 Rev Sheet No. 205
4 Rev Sheet No. 208
9 Rev Sheet No. 223
9 Rev Sheet No. 224
14 Rev Sheet No. 324

Algonquin states that the revised tariff sheets listed above are being submitted to incorporate the Commission approved Gas Research Institute's ("GRI") Adjustment for the calendar year 1991. The instant filing is made pursuant to section 28 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date for the listed revised tariff sheets is January 1, 1991.

Algonquin further states that the effect of the change in the GRI Adjustment is to increase all commodity and commodity handling charges in the listed tariff sheets by $0.0016 per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28825 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ91-3-21-000]**

## Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

December 4, 1990.

Take notice that on November 30, 1990, Arkla Energy Resources (AER) a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective January 1, 1991:

Original Volume No. 2
11th Revised Sheet No. 185.1
First Revised Volume No. 1
59th Revised Sheet No. 4
First Revised Volume No. 1
12th Revised Sheet No. 7A

These tariff sheets reflect AER's third quarterly PGA filing made subsequent to its annual PGA effective April 1, 1990 under the Commission's Order Nos. 483 and 483A.

The proposed changes would increase AER's system cost by $124,478 and its revenue from jurisdictional sales and service by $1,285 for the PGA period of January, February, and March 1991 as adjusted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 1.6 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-28828 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TQ91-3-22-000]**

## CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on November 29, 1990, pursuant to section 4 of the Natural Gas Act and section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheet, all to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

4th Revised First Revised Sheet No. 31

CNG requests that the Commission allow the proposed tariff revisions to become effective on December 1, 1990, as CNG's out-of-cycle purchased gas adjustment ("PGA") filing.

The filing would increase CNG's RQ and CD commodity rates by 8.04 cents per dekatherm, increase the D-1 demand rates by 87 cents per dekatherm, and decrease the D-2 demand rates by 8.31 cents per dekatherm from the rates as filed on the primary sheet in CNG's Quarterly PGA in Docket No. TQ91-1-22-000 filed October 31, 1990. Other rates will change correspondingly.

The sole change in this filing from the Quarterly PGA is to reflect a significant increase in Texas Eastern Transmission Corporation's rates as filed November 20, 1990, in its Out-of-Cycle PGA in Docket No. TQ91-2-17.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214

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and 385.211). All motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28816 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-22-000]

**CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 4, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on November 30, 1990, pursuant to section 4 of the Natural Gas Act ("NGA"), part 154 and § 2.104 of the Commission's regulations, the provisions of the Settlement in CNG's Docket No. RP88-217, *et al.*, approved by the Commission by order issued October 6, 1989, and §§ 12.10 and 13.5 of the General Terms and Conditions of CRG's FERC Gas Tariff, files (8) copies of the following revised tariff sheets, all to Volume No. 1 of CNG's FERC Gas Tariff:

5th Revised First Revised Sheet No. 31
4th Revised Original Sheet No. 32

The proposed effective date is January 1, 1991.

The purpose of this filing is to make a minor change in the "Take-or-Pay Commodity Surcharge," which is currently in effect to facilitate CNG's collection of direct take-or-pay costs and to track Commission approved changes in the Gas Research Institute ("GRI") surcharge.

CNG also seeks waiver of the refund provisions of § 12.10 of the General Terms and Conditions of its tariff. This section requires CNG to credit customer invoices for any interest amounts overcollected in the previous year.

CNG states that copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR §§ 385.214 and 385.211). All motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28823 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-37-000]

**Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

December 4, 1990.

Take notice that on November 30, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Thirteenth Revised Sheet No. 8;
Thirteenth Revised Sheet No. 9;
Second Revised Sheet No. 10;
First Revised Sheet No. 13;
First Revised Sheet No. 14;
Second Revised Sheet No. 18;
Second Revised Sheet No. 19;
First Revised Sheet No. 45;
First Revised Sheet No. 46; and
First Revised Sheet No. 103.

The proposed effective date of these revised tariff sheets is January 1, 1991.

Through this filing, Carnegie proposes to increase the level of its jurisdictional rates to provide an overall annual increase in its jurisdictional cost of service of approximately $1.2 million. Carnegie states that the filing is a general Natural Gas Act section 4 rate change submitted in accordance with 18 CFR 154.63 (1990) through which it proposes a change in its currently effective sales and transportation rates based on the twelve months ended September 30, 1990, adjusted for known and measurable changes through June 30, 1991, and further adjusted as outlined in the tariff filing. The rates stated on the revised tariff sheets are based on proposed jurisdictional sales of 13,406,200 Dth and annual jurisdictional interruptible transportation of 1,695,807 Dth.

Carnegie states that its filing reflects revisions in the design of its rates. The proposed rates are based on a seasonal demand-commodity rate structure, with seasonally-differentiated single demand and commodity charges applicable to firm sales and interruptible transportation rates. The filing also implements seasonally-differentiated Demand Charge Adjustment rates. Carnegie states that these rates have been developed in light of the Commission's Rate Design Policy Statement issued in Docket No. PL89-2-000.

Carnegie proposes to continue to track through its PGA, on a current as-billed basis, all transportation-related Standby Charges incurred from Texas Eastern Transmission Corporation. Carnegie also proposes to continue to price its storage inventory on a commodity-only basis, with all purchased gas demand charges recovered currently on an as-billed basis through its PGA. Carnegie is also proposing to change its ACA rate from $.0022 per Mcf to $.0021 per dekatherm as required by Commission order issued on October 26, 1990 in Docket No. TM91-1-63-000.

Carnegie states that its filing was served on each of its customers and affected state commissions pursuant to § 154.16 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211, 385.214). All such petitions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28808 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-32-000 and TM91-3-32-000]

**Colorado Interstate Gas Co.; Filing**

December 4, 1990.

Take notice that Colorado Interstate Gas Company (CIG) on November 30, 1990, submitted for filing fourteen copies of affected tariff sheets from Original Volume No. 1 of its FERC Gas Tariff. CIG requests that these proposed tariff sheets be made effective on January 1, 1991.

The instant purchased gas adjustment ("PGA") filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et seq.* The tariff rates underlying Substitute Fifth Revised Second Substitute First Revised Sheet Nos. 7.1 through 8.2 reflect a 0.51 cent/Mcf decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules, and a 6 cent/Mcf increase in the Demand-1 rate for applicable rate schedules.

The proposed rates compare with those filed by CIG on October 12, 1990 in Docket Nos. TA91-1-32-001 and RP90-166-001, which rates were pending before the Commission at the time of this filing. In Docket Nos. TA91-1-32-001 and RP90-166-001, CIG seeks a waiver of § 154.305 (b) (1) of the Commission's regulations permitting the PGA flow-through of the demand and commodity pricing provisions in two newly negotiated September 28, 1990 producer contracts. Since September 28, 1990, CIG has entered into a third arrangement with a non-affiliated producer which provides for demand and commodity pricing. This arrangement results in a 6 cent/Mcf increase in the Demand-1 rate in the instant filing.

Accordingly, CIG requests waiver of § 154.305(b)(1) of the Commission's regulations to permit the "as billed" flow-through of the demand and commodity costs for this newly structured gas purchase agreement. Moreover, pursuant to § 388.112 of the Commission's regulations, CIG is filing one copy of this arrangement solely with the Commission, and requests privileged treatment by the Commission of all pages. The arrangement, enclosed in a separate sealed envelope, contains information that is commercially sensitive and could affect CIG's competitive position, and could jeopardize ongoing negotiations with other third party producers supplying gas to CIG.

The proposed rates also incorporate the 0.16 cent/Mcf increase in the GRI charge to 1.46 cents effective January 1, 1991, that CIG filed with the Commission on November 15, 1990 in Docket No. TM91-2-32-000.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28831 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-36-000]

**Florida Gas Transmission Co., Proposed Changes in FERC Gas Tariff**

December 4, 1990.

Take notice that on November 30, 1990 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets to be effective January 1, 1991:

**Second Revised Volume No. 1**

Eighth Revised Sheet No. 8
Third Revised Sheet No. 8A
Third Revised Sheet No. 8B

**Original Volume No. 3**

Fourth Revised Sheet No. 1039

**Reason for Filing**

FGT is filing the above-referenced tariff sheets pursuant to section 25 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and section 4 of the Natural Gas Act to begin to recover, via a volumetric surcharge applicable to all throughput (TCR Surcharge), contract reformation costs incurred on or before September 30, 1990. The initial TCR surcharge is 3.5¢/MMBtu.

FGT states that on October 17, 1989, in Docket No. RP89-50 *et al.*, FGT filed a comprehensive Stipulation and Agreement (hereinafter "Stipulation") that provided for, among other items, the expansion of the FGT system, reallocation of capacity on the system, a comprehensive service restructuring on the FGT system, implementation of open access transportation of the FGT system under the Commission Order Nos. 436/500 *et seq.*, and the implementation of a Transitional Cost Recovery Mechanism under section 25 of General Terms and Conditions of its FERC Gas Tariff. On June 15, 1990 the Commission approved the Stipulation with regard to the proposed restructuring of FGT's service, open access tariff and most importantly, the TCR Mechanism. On August 1, 1990 FGT, as required by the Stipulation, implemented the terms of the June 15 Order, restructured its services, and became an open access transporter under part 284 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 21 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing have been served on all of FGT's customers and interested State commissions. Additionally, copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room, as well as FGT's offices in Houston, Texas and Maitland, Florida.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28818 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-34-000]

**Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

December 4, 1990.

Take notice that on November 30, 1990 Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

**Second Revised Volume No. 1**

Seventh Revised Sheet No. 8
Second Revised Sheet No. 8A
Second Revised Sheet No. 8B

**Original Volume No. 3**

Third Revised Sheet No. 1039

**Reason for Filing**

FGT is filing the above-referenced tariff sheets pursuant to Opinion No. 355 issued on October 1, 1990 in Docket No. RP90-120-000 by the Federal Energy Regulatory Commission (Commission) approving Gas Research Institute's (GRI) 1991 Research, Development and Demonstration Program and Five-Year Plan for 1991-1995. In Opinion No. 355

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the Commission approved a GRI funding unit of 1.424 per dekatherm.

The proposed effective date of the tariff sheets listed above is January 1, 1991.

FGT states that copies of the filing have been served on FGT's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28626 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-15-000]

## Mid Louisiana Gas Co.; Proposed Change of Rates

December 4, 1990.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on November 29, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective December 1, 1990:

| | Superseding |
|---|---|
| Seventy-Ninth Revised Sheet No. 3a. | Seventy-Eighth Revised Sheet No. 3a. |

Mid Louisiana states that the purpose of the filing of Seventy-Ninth Revised Sheet No. 3a is to reflect a $0.0063 per MCF increase in its current cost of gas.

The Tariff Sheet was filed as an Out of Cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. The majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana requests waived of the notice requirements of § 154.309 of the Commission's regulations and any other waivers necessary to permit the above Tariff Sheet to become effective December 1, 1990, in order to implement the pricing provisions currently in effect between Mid Louisiana and its gas suppliers.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions and are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28617 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-25-000]

## Mississippi River Transmission Corp.; Rate Change Filing

December 4, 1990.

Take notice that on November 30, 1990, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Tariff:

| Second revised volume No. 1 | Proposed effective date |
|---|---|
| Fifty-Second Revised Sheet No. 4 | Jan. 1, 1991 |
| Eleventh Revised Sheet No. 4.1 | Jan. 1, 1991 |
| Eleventh Revised Sheet No. 4.2 | Jan. 1, 1991 |
| Tenth Revised Sheet No. 4B | Jan. 1, 1991 |
| Original Volume 1-A | |
| Sixth Revised Sheet No. 2 | Jan. 1, 1991. |
| Sixth Revised Sheet No. 3 | Jan. 1, 1991. |

The tariff sheets reflect an increase in the Gas Research Institute (GRI) surcharge to 1.29 cents per MMBtu in accordance with the Commission's Opinion No. 335, issued October 1, 1990 at Docket No. RP90-129-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28627 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-35-000]

## Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on November 29, 1990, tendered for filing proposed changes to its FERC Gas Tariff. Northern has requested that the proposed filing become effective, and be implemented as proposed, on January 1, 1991.

Northern states that the purpose of this tariff filing is to adjust the Take-or-Pay Surcharge to recover approximately $5.3 million in litigation exception costs pursuant to section V of the Stipulation and Agreement of Settlement (Settlement) of Docket Nos. RP86-250 and RP89-136, approved by the Commission on December 29, 1989.

Northern states that this filing is being submitted to recover take-or-pay litigation exception costs, excluding interest, over a 50 month period commencing January 1, 1991 and ending February 28, 1995. Northern states that the termination of this surcharge coincides with the termination provided for in Northern's previous litigation exception cost filing in Docket No. RP90-82, which was filed on February 16, 1990.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28611 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. RP91-40-000]

## Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

This notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on November 30, 1990, tendered for filing proposed changes to its FERC Gas Tariff. Northern has requested that the proposed filing become effective February 1, 1991, and that a Settlement Conference be set as soon as possible.

Nothern states that this filing is being submitted pursuant to Order No. 528 to recover one hundred percent of certain settlement costs associated with Northern's gas purchase contracts (Transition Costs) that Northern has paid, or incurred an obligation to pay as of November 30, 1990, plus interest. Northern proposes to recover fifty percent of these costs through a direct bill over a twelve month period and the remaining fifty percent through a five year volumetric surcharge on total sales and transportation throughput. In the alternative Northern has proposed to absorb twenty-five percent of such costs, recover twenty-five percent through a direct bill over a twelve month period, and the remaining fifty percent through a five year volumetric surcharge on total sales and transportation throughput.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before December 11, 1990. Protests will be considered by before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28624 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-42-000 & TM91-4-37-000]

## Northwest Pipeline Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that on November 30, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

**Second Revised Volume No. 1**

Third Revised Sheet No. 10
Third Revised Sheet No. 11
First Revised Sheet No. 13
First Revised Sheet No. 15

**First Revised Volume No. 1-A**

Second Revised Sheet No. 201

**Original Volume No. 2**

Nineteenth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective January 1, 1991, to reflect (1) interest applicable to October, November and December 1990, and (2) the amortization of principal and interest. The proposed revised Commodity SSP Charge is 4.28 cents per MMBtu. Northwest has also revised the Fixed Monthly SSP Charges to reflect additions to the Fixed SSP Account that have occurred since Northwest's last quarterly filing.

In Order No. 528 ("Order"), the Commission stayed tariff provisions of various pipelines, including Northwest, effective December 17, 1990 that provide for the collection of take-or-pay settlement costs pursuant to a purchase deficiency allocation methodology.

However, the Commission's Order permits individual pipelines to continue collections under a purchase deficiency allocation methodology if said collections are (1) the result of a Commission approved settlement, or (2) under filings approved by Commission orders that have become final and nonappealable. In appendix A of its Order the Commission identified all pipelines that are not currently affected by the stay because they satisfy one of the above qualifications. The Commission stated that there may be other pipelines who could qualify for "appendix A" treatment and encouraged any pipeline which believes it belongs on appendix A to make a filing stating the basis for its position.

On November 14, 1990 Northwest filed a Motion to be Included on appendix A of Order No. 528. First Revised Sheet No. 15, as tendered herein, provides for the collection of Northwest's Fixed SSP costs in a manner consistent with prior scheduled quarterly filings based on the assumption that the Commission will approve Northwest's motion. In the event the Commission denies Northwest's motion to be included on appendix A, First Revised Sheet No. 15 would not become effective January 1, 1991, and Northwest hereby reserves the right to file in the future a revised tariff sheet to collect the Fixed SSP charges under a different methodology consistent with Commission policy.

Northwest states that a copy of the non-confidential portion of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-28619 Filed 12-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-65-000]

## Pacific Gas Transmission Co.; Change in Rates

December 4, 1990.

Take notice that on November 30, 1990, Pacific Gas Transmission

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Company (PGT), a California corporation, whose mailing address is 160 Spear Street, San Francisco, California 94105–1570, tendered for filing a revision in the Gas Research Institute (GRI) funding unit adjustment component of PGT's rates for certain sales and transportation services in accord with paragraph 3, Gas Research Institute Charge Adjustment Provisions of the General Terms and Conditions in PGT's FERC Gas Tariff Second Revised Volume No. 1 and paragraph 2 of the Transportation General Terms and Conditions in PGT's FERC Gas Tariff Original Volume 1–A. This change in rates is filed pursuant to section 4 of the Natural Gas Act and part 154 of the Regulations issued thereunder.

PGT states it is tendering certain tariff sheets in compliance with its GRI Tariff provisions, which reflect an increase in the GRI funding unit adjustment component of $0.0016 per Dth.

By Opinion No. 355 issued October 1, 1990 at Docket No. RP90–120–000, the Commission amended and approved the GRI's application for advanced approval of its 1991 research and development program and related five-year plan for 1991–1995. In so doing, the Commission approved the GRI's 1991 funding requirement which is to be raised through a funding unit of 1.42 cents per Dth. Accordingly, the tendered revised tariff sheets, when accepted for filing and permitted to become effective, will increase the GRI funding unit adjustment component of PGT's rates for certain sales and transportation services from the currently effective 1.28 cents per Dth to the 1.42 cents per Dth approved by the Commission in Opinion No. 355.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90–28612 Filed 12–7–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ91–3–8–000]

## South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 4, 1990.

Take notice that on November 30, 1990, South Georgia Natural Gas Company (South Georgia) tendered for filing Sixty-Eighth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is being filed pursuant to the Purchased Gas Cost Adjustments (PGA) provision set out in section 14 of South Georgia's FERC Gas Tariff with a proposed effective date of January 1, 1991.

South Georgia states that Sixty-Eighth Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from January 1, 1991, through March 31, 1991, reflects an increase in jurisdictional revenues of approximately $639,000 which is attributable to an increase in the demand components of $1.117 per Mcf and an increase in the commodity component of $.32 per MMBtu from South Georgia's quarterly PGA filing in Docket No. TQ91–1–8–002.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90–28620 Filed 12–7–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TQ91–2–7–000 and TM91–2–7–000]

## Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

December 4, 1990.

Take notice that on November 30, 1990, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff:

Sixth Revised Volume No. 1:

Fifth Revised Ninety-seventh Revised Sheet No. 4A
Fifth Revised Sixteenth Revised Sheet No. 4J
First Revised First Revised Sheet No. 45I

Original Volume No. 2:

First Revised Tenth Revised Sheet No. 785
First Revised Tenth Revised Sheet No. 865
First Revised Eighth Revised Sheet No. 904

The proposed tariff sheets and supporting information are being filed with a proposed effective date of January 1, 1991. The proposed tariff sheets effect an increase of 31.7¢ per Mcf in the commodity component of Southern's rates from the level stated in Southern's last quarterly Purchased Gas Adjustment filing, Docket No. TQ91–1–7–000, to conform to projected changes in its commodity cost of purchased gas, and implement the revised Gas Research Institute surcharge of 1.42¢ per MMBtu. Southern has also requested a waiver from the Commission of those regulations which require it to continue compiling and reporting Natural Gas Policy Act price category information for those volumes of gas which have become price decontrolled pursuant to the Wellhead Decontrol Act of 1989.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.



Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90–28613 Filed 12–7–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM91–6–18–000]

## Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that on November 29, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Thirty-second Revised Sheet No. 10
Thirty-second Revised Sheet No. 10A
Thirteenth Revised Sheet No. 11
Third Revised Sheet No. 11A
Third Revised Sheet No. 11B

FERC Gas Tariff, First Revised Volume No. 2–A

First Revised No. 10A
First Revised No. 11

The revised tariff sheets are being filed pursuant to section 24 of Volume No. 1 and section 20 of Volume No. 2–A of Texas Gas's tariff to reflect the 1991 General RD&D Funding Unit authorized by Opinion No. 355, issued by the Commission on October 1, 1990, in Docket No. RP90–120–000.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90–28613 Filed 12–7–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM91–4–29–000]

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 4, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 29, 1990, certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing.

Transco states that the purpose of the filing is to track rate changes attributable to (1) transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) storage services purchased from Texas Eastern Transmission Corporation under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2, and (3) transportation services purchased from National Fuel under its Rate Schedule X–64 the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedule LSS, section 26 of the General Terms and Conditions of Volume No. 1 of Transco's FERC Gas Tariff and section 4 of Transco's Rate Schedule SS–2.

Included in appendices B through D attached to the filing is an explanation of each of the tracking rate changes, the proposed effective date of such changes, and details regarding the computation of the revised LSS, S–2, and SS–2 rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS, S–2 and SS–2 rate changes proposed therein into subsequent intervening rate filings which have been accepted by the Commission on the effective dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90–28610 Filed 12–7–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM91–5–29–000]

## Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 4, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on November 30, 1990 tendered for filing to be effective January 1, 1991 certain revised tariff sheets included in appendix A attached to the filing.

Transco states that the purpose of this filing is to reflect an increase of 0.16¢ per dt in the Gas Research Institute (GRI) Adjustment Charge applicable to sales and transportation deliveries to distributors for resale, to pipelines which are not members of GRI, and to ultimate consumers.

Transco states that on October 1, 1990 the Commission issued Opinion No 355 in Docket No. RP90–120–000. The Opinion provides that, as a member of GRI, Transco may file under its Gas Research Institute Charge Adjustment Provision to collect, in advance of payments to GRI, 1.42¢ per dt on sales and transportation deliveries. This charge will replace the currently effective charge of 1.26¢ per dt. All amounts collected under this provision will be remitted to GRI, less any applicable taxes.

Transco further states that copies of the filing have been mailed to each of its customers and State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 11, 1990. Protests will be



considered by the Commission in

existing border substation, near

Merchant Marine Co., Ltd. Terminal

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considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-28629 Filed 12-7-90; 8:45 am]
BILLING CODE 6717-01-M

## Office of Fossil Energy

[Docket No. PP-90]

### Issuance of Presidential Permit to Imperial Irrigation District

**AGENCY:** Office of Fossil Energy Department of Energy.

**ACTION:** Notice of issuance of Presidential permit in Docket No. PP-90 to Imperial Irrigation District.

**SUMMARY:** Pursuant to the authority contained in Executive Order No. 10485, as amended by Executive Order No. 12038, the Office of Fuels Programs (OFP) of the Department of Energy (DOE) gives notice of the issuance of Presidential Permit PP-90 to Imperial Irrigation District (IID).

**FOR FURTHER INFORMATION CONTACT:**
William H. Freeman, Office of Fuels Programs (FE-52), Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5883
Lise Courtney M. Howe, Office of General Counsel (GC-41), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2900

**SUPPLEMENTARY INFORMATION:** On February 6, 1989, the Imperial Irrigation District (IID) filed on application with OFP for a Presidential permit to construct, connect, operate and maintain a 34.5-kilovolt (kV) transmission facility at the international border between the United States and Mexico. The IID is an Irrigation District duly formed, organized and operating under Section 20500, *et seq.*, Division 11, of the Water Code of the State of California, and engaged in the business of providing electric service in a portion of Riverside and Imperial Counties, California, and in the wholesale sales of water in portions of Imperial County. IID seeks permission to extend a 34.5-kV electric transmission line approximately 100 feet from its existing border substation, near Calexico, California, across the U.S.-Mexican border, to connect with similar facilities owned and operated by the Commission Federal de Electricidad (CFE), the Mexican national electric utility. The authorized facilities will provide an emergency back-up electric supply to the U.S. Port of Entry located near Calexico, California, on the U.S. side of the U.S-Mexican border and the Mexican Port of Entry located near Mexicali, Mexico, on the Mexican side of the international border, in order to cope with occasional outages of both the IID and CFE electric systems.

On November 29, 1990, Presidential Permit PP-90 was issued to IID for the construction of the abovementioned facilities. A copy of this Presidential permit will be made available, upon request, for public inspection and copying at the DOE Freedom of Information Library, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on November 29, 1990.

Clifford P. Tomaszewski,
*Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.*

[FR Doc. 90-28863 Filed 12-7-90; 8:45 am]
BILLING CODE 6450-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Port of Portland/Hyundai Merchant Marine Co., Ltd. Terminal Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

**Agreement No.: 224-200445.**

*Title:* Port of Portland/Hyundai Merchant Marine Co., Ltd. Terminal Agreement.

*Parties:* Hyundai Merchant Marine Co., Ltd. ("Hyundai") Port of Portland, Oregon ("Port").

*Synopsis:* The Agreement provides for the preferential use of a container yard area, a vessel berth and two container cranes at the Port's Terminal 6 and for the Port (or its stevedore) to perform all terminal handling services, vessel stevedoring, and ancillary services. Hyundai agrees to call at the Port with a minimum of 75 vessel calls, and to provide a minimum of 26,000 containers, in Hyundai's joint Space Charter and Sailing Agreement with Nippon Yusen Kaisha, Ltd. ("NYK") (FMC Agreement No. 232-011283) combined with NYK's FEX service. Hyundai agrees to pay applicable Port tariff charges for services provided by the Port with the exception of a wharfage and dockage rate of $36 per container for the first 26,000 containers, with reduced rates to apply after that volume is attained. The Agreement's term is for one year.

**Agreement No.: 224-200448**

*Title:* Port of Portland/Nipon Yusen Kaisha, Ltd. Terminal Agreement.

*Parties:* Port of Portland, Oregon ("Port"), Nippon Yusen Kaisha, Ltd. ("NYK").

*Synopsis:* The Agreement provides for the preferential use of a container yard area, a vessel berth and two container cranes at the Port's Terminal 6 and for the Port (or its stevedore) to perform all terminal handling services, vessel stevedoring, and ancillary services. NYK agrees to call at the Port with a minimum of 75 vessel calls, and to provide a minimum of 26,000 containers, in NYK's joint Space Charter and Sailing Agreement with Hyundai Merchant Marine Co., Ltd. (FMC Agreement No. 232-011283) combined with NYK's FEX service. NYK agrees to pay applicable Port tariff charges for services provided by the Port with the exception of a wharfage and dockage rate of $36 per container for the first 26,000 containers, with reduced rates to apply after that volume is attained. The Agreement's term is for one year.

By order of the Federal Maritime Commission.

Dated: December 4, 1990.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28766 Filed 12-7-90; 8:45 am]
BILLING CODE 6730-01-M



[Docket No. 90-34]

### Sea-Land Service, Inc. v. Beza International Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sea-Land Service, Inc. ("Complainant") against Beza International Corp. ("Respondent") was served December 4, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff for six shipments of waste paper from Florida to El Salvador and Guatemala between September 19, 1989, and May 9, 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 4, 1991, and the final decision of the Commission shall be issued by April 1, 1992.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28836 Filed 12-7-90; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 90-33]

### Sea-Land Service, Inc. v. Shivago Enterprises; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sea-Land Services, Inc. ("Complainant") against Shivago Enterprises ("Respondent") was served December 4, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff for twenty shipments of automobiles from Florida to Honduras and Guatemala between September and December 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by April 1, 1992.

Joseph C. Polking,
*Secretary.*

[FR Doc. 90-28835 Filed 12-7-90; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 90-35]

### Royal Caribbean Cruises Ltd.—Possible Violations of Passenger Vessel Certification Requirements; Order of Investigation

This proceeding is instituted pursuant to section 3 of Public Law 89-777, 46 U.S.C. app. 817e; section 22 of the Shipping Act, 1916, 46 U.S.C. app. 821; and the Commission's regulations at 46 CFR Part 540.

Royal Caribbean Cruises Ltd. ("Royal Caribbean") [1] is a Florida corporation organized on February 11, 1969. It is a cruise line operator and has operated in the United States trades for a number of years.

It appears that Royal Caribbean advertised cruises on the Nordic Empress in travel magazines, trade publications and newspapers prior to May 4, 1990, the date the Commission issued a Certificate (Performance) for the Nordic Empress. It further appears that Royal Caribbean sold 324 full fares and collected 31,041 deposits for passages on the Nordic Empress. The cruises were between Miami, Florida and the Bahamas and were scheduled to embark passengers at Miami after June 24, 1990. It further appears that the Nordic Empress is a vessel having berth or stateroom accommodations for fifty or more passengers.

Therefore, it appears that Royal Caribbean arranged, offered advertised, and collected fares and deposits for passages on the Nordic Empress, scheduled to embark passengers at a U.S. port, without first having obtained a Certificate (Performance) from the Commission, in violation of section 3(a) of Public Law 89-777 and the Commission's regulations at 46 CFR 540.3.

*Now therefore it is ordered,* That pursuant to section 3 of Public Law 89-777, section 22 of the Shipping Act, 1916, and 46 CFR part 540, a proceeding is instituted to determine whether Royal Caribbean violated section 3(a) of Public Law 89-777 and (or) the Commission's regulations at 46 CFR 540.3;

*It is further ordered,* That if Royal Caribbean is found to have violated Public Law 89-777 and (or) 46 CFR part 540, then this proceeding shall also determine whether civil penalties should be assessed, and if so, in what amount;

*It is further ordered,* That this matter be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be determined by the Administrative Law Judge in compliance with rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61;

*It is further ordered,* That Royal Caribbean Cruises Ltd. is designated a respondent in this proceeding;

*It is further ordered,* That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

*It is further ordered,* That notice of this Order be published in the **Federal Register**, and copies be served upon all parties of record;

*It is further ordered,* That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

*It is further ordered,* That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

*It is further ordered,* That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with rule 118 of the Commission's Rules of Practice and

[1] Sometime in October, 1990, Royal Caribbean's corporate name was changed from Royal Caribbean Cruise Line, Inc. to its present form.

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Procedure, 46 CFR 502.118, and shall be served on parties of record;

*It is further ordered*, That pursuant to rule 51 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by August 5, 1991 and the final decision of the Commission shall be issued by December 5, 1991.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-28854 Filed 12-7-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor-Management Cooperation Program; Application Solicitation for Labor-Management Committees—FY 1991

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Publication of final Fiscal Year 1991 Program Guidelines/Application Solicitation for labor-management committees.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1991 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

No comments were received from the public. Changes in allocations were made to reflect congressional intent. The date for the application development training program has also been changed to January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Regner, 202/653-5320.

### A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 1991 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

### B. Program Description

*Objectives*

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1991, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, *etc.*). In addition, $77,000 will be reserved for a continuation grant to the State and Local Government Labor-Management Committee for support of the Sixth National Labor-Management Conference.

*Required Program Elements*

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (*e.g.*, members represent 70% of the area or plant workforce);

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as résumés for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (*i.e.*, in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1991 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from all proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. Union letters should be submitted on union letterhead.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

*Selection Criteria*

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

### C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document

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particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

**D. Allocations**

FMCS has been given an allocation of $1,063,000 for this program. Of this amount, $800,000 will be allocated for new submissions, $186,000 for continuation of selected FY89 grantees, and $77,000 for support of the Sixth National Labor-Management Conference. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY91 appropriation to contract for program support purposes other than administration.

**E. Dollar Range and Length of Grants and Continuation Policy**

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio. The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

**F. Match Requirements and Cost Allowability**

Applicants for new labor-management committees must provided at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult with the FY91 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

**G. Application Submission and Review Process**

Applications should be signed by both a labor and management representative and be postmarked no later than May 11, 1991. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grants and Projects, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will be the only person with whom FMCS will communicate during the application review process.

All FY91 grant applicants will be notified of results and all grant awards will be made before September 30, 1991. Applications submitted after the May 11 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants and Projects.

**H. Application Development Training**

In FY91, FMCS will offer a free half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on January 22, 1991. This date has been changed from the previously announced January 29 date. Individuals interested in attending the session should contact FMCS to reserve a space and receive additional information. See section I for contact information.

**I. Contact**

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC 20427; or by calling 202/653-5320.

**Bernard E. DeLury,**

*Director, Federal Mediation and Conciliation Service.*

[FR Doc. 90-28791 Filed 12-7-90; 8:45 am]

BILLING CODE 6732-01-M



## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of October 2, 1990

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 2, 1990.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity expanded at a slow pace in the third quarter. The recent large increase in oil prices has boosted key measures of inflation and eroded real personal income; however, data available thus far provide only limited evidence of a retarding effect on production and aggregate spending. Total nonfarm payroll employment declined in July and August, reflecting layoffs of temporary census workers; employment in the private sector changed little over the two months. The civilian unemployment rate edged up to 5.6 percent in August. Consumer spending appeared to be about unchanged in real terms over July and August but was at a level significantly above the average for the second quarter. Advance indiactors of business capital spending point to some softening in investment in coming months. Residential construction weakened further in August. The nominal U.S. merchandise trade deficit increased sharply in July from the low rate in June. Markedly higher oil prices contributed to substantial increases in consumer and producer prices in August; excluding energy and food items, consumer inflation has picked up from the second-quarter rate. Data on labor costs suggest no improvement in underlying trends.

In short-term debt markets, Treasury bill rates have fallen somewhat since the Committee meeting on August 21, while rates on private market instruments are little changed. In the bond markets, most rates have edged lower on balance over this period. The trade-weighted foreign exchange value of the dollar in terms of the other G-10 currencies has declined slightly further on balance from the low level reached at the time of the August meeting.

M2 and M3 expanded at appreciably faster rates in August; available data for September suggest continued strength in M2 and some slowing in the growth of M3. More rapid expansion of M1 and money market funds has contributed to the greater strength in the broad aggregates over the two months. Through September, expansion of M2 was estimated to be a little below the middle of the Committee's range for the year and growth of M3 in the lower portion of its range. Expansion of total domestic nonfinancial debt appears to have been near the midpoint of its monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the range it had established in February for M2 growth of 3 to 7 percent, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The Committee in July also retained the monitoring range of 5 to 9 percent for the year that it had set for growth of total domestic nonfinancial debt. With regard to M3, the Committee recognized that the ongoing restructuring of thrift depository institutions had depressed its growth relative to spending and total credit more than anticipated. Taking account of the unexpectedly strong M3 velocity, the Committee decided in July to reduce the 1990 range to 1 to 5 percent. For 1991, the Committee agreed on provisional ranges for monetary growth, measured from the fourth quarter of 1990 to the fourth quarter of 1991, of 2½ to 6½ percent for M2 and 1 to 5 percent for M3. The Committee tentatively set the associated monitoring range for growth of total domestic non-financial debt at 4½ to 8½ percent for 1991. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of progress toward price stability, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint might or somewhat lesser reserve restraint would be acceptable in the inter-meeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 4 and 2 percent respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, December 3, 1990.

**Normand Bernard,**

*Assistant Secretary, Federal Open Market Committee.*

[FR Doc. 90-28639 Filed 12-7-90; 8:45 am]

BILLING CODE 6210-01-M

[1] Copies of the Record of policy actions of the Committee for the meeting of October 2, 1990, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

### Apple Merger Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for



processing, it will also be available for



types of equity securities, except

unfair competition, conflicts of interests,

Order dated September 21, 1990, 75

presentation would not suffice in lieu of

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processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Apple Merger Corp.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Apple Bancorp, Inc., New York, New York, and thereby indirectly acquire Apple Bank for Savings, New York, New York.

In connection with this application, Applicant also proposes to engage in making commercial loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28840 Filed 12-7-90; 8:45 am]

BILLING CODE 6210-01-M

## Barclays PLC et al.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Barclays PLC, London, England, and Barclays Bank PLC, London, England (collectively "Applicant"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Barclays de Zoete Wedd Securities, Inc., New York, New York ("Company"), in underwriting and dealing, to a limit extent, in all types of equity securities, except securities issued by open-end investment companies, on a world-wide basis.

Company is currently authorized to engage (i) in underwriting and dealing in government obligations and money market instruments, pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16)); (ii) in underwriting and dealing in debt securities, pursuant to Board order, *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC, and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) ("*Canadian Imperial*"); (iii) in providing investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4)); and (iv) in acting as a futures commission merchant, pursuant to § 225.25(b)(18) and (b)(19) of the Board's Regulation Y (12 CFR 225.25(b)(18) and (b)(19)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant has applied to underwrite and deal in equity securities in substantial accordance with the Board's prior orders approving these activities for a number of bank holding companies. *Canadian Imperial*. Applicant has proposed the following modifications to the Board's previous orders. First, Applicant has requested that the Board review its requirement that Applicant must obtain the approval of the Board prior to providing additional funding for Company's operations. Applicant submits that the Bank of England, Applicant's primary regulator, should decide any issues regarding Applicant's method of funding the operations of Company. Second, Applicant maintains that extensions of credit by Applicant's U.S. operations in connection with Company's activities should restricted only if the operation is a United States bank, savings association, or branch, the deposits of which are insured by the Federal Deposit Insurance Corporation. Third, Applicant maintains that the Board should permit increased officer, director, and employee interlocks between Company and Applicant's United States banks, savings associations, or branches. Fourth, Applicant proposes to modify the current restrictions on marketing activities so as to be consistent with a recent proposal by the Board. *See, Review of Restrictions on Director and Employee Interlocks, Cross-Marketing Activities and the Purchase and Sale of U.S. Government Agency Securities*, 55 FR 28,295 (1990). Finally, Applicant proposes that the Board modify its previous orders so as to apply the current structure only to transactions and relationships between Company and affiliates that maintain deposits insured by the Federal Deposit Insurance Corporation.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed equity securities underwriting and dealing activities, Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board. *See* Board's Order dated September 21, 1988, 75 Federal Reserve Bulletin 751 (1989).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 31, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented in a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, December 4, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28838 Filed 12-4-90; 8:45 am]

BILLING CODE 6210-01-M

## H.M.S. Holdings, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 27, 1990.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *H.M.S. Holdings, Inc.*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Hills National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, December 3, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28841 Filed 12-7-90; 8:45 am]

BILLING CODE 6210-01-M

## Nancy K. Kelly and Clay Belongia; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 21, 1990.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690.

1. *Nancy K. Kelly and Clay Belongia*, as trustee under the Peter G. Giachini Charitable Remainder Trust; to acquire 32 percent of the voting shares of Continental Mortgage Corporation, Maywood, Illinois, and thereby indirectly acquire Maywood Proviso State Bank, Maywood, Illinois.

Board of Governors of the Federal Reserve System, December 3, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28836 Filed 12-7-90; 8:45 am]

BILLING CODE 6210-01-M

## J.P. Morgan & Co. Incorporated; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *J.P. Morgan & Co. Incorporated*, New York, New York; to engage *de novo* through its subsidiary, J.P. Morgan California, Los Angeles, California, in trust company activities, including activities of a fiduciary, investment management, agency, security safekeeping and corporate trust nature pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the Western United States.

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Board of Governors of the Federal Reserve System, December 3, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28643 Filed 12-7-90; 8:45 am]
BILLING CODE 6210-01-M

**Saastopankkien Keshukus-Osake-Pankki; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking acivity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statment of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evicence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Soastopankkien Keshukus-Osake-Pannki*, Helsinki, Finland; to acquire Haskell Financing, Inc., Dallas, Texas, and thereby engage in making, acquiring, and or servicing purchase money loans for industrial equipment purchase to § 225.23(b)(1); leasing personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 3, 1990.
Jennifer J. Johnson,
*Associate Secretary of the Board.*
[FR Doc. 90-28644 Filed 12-7-90; 8:45 am]
BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

**Development of Clinical Guidelines for AIDS and HIV Infection**

The Agency for Health Care Policy and Research announces that it is establishing a panel of experts and health care consumers to develop clinical practice guidelines for AIDS and HIV infection and invites nominations of qualified individuals to serve as the chairperson(s) and as panel members.

**Background**

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing and delivery of health care services.

Section 911 of the Act established within the AHCPR the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act directs the Forum to arrange for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 also requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, medical review organizations, and consumers of health care; and

3. In forms appropriate for use in clincial practice, educational programs, and reviewing quality and appropriateness of medical care.

**Panel Nominations**

The panel of qualified experts and health care consumers that will develop the guidelines for AIDS and HIV infection will consist of a chairperson(s) and nine to fifteen members. To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing specialty and general practices, nurses, and allied health and other health care practitioners, as well as consumers with pertinent experience or information. AHCPR is especially interested in receiving nominations of individuals with experience in developing guidelines for AIDS and HIV-related conditions, persons representing affected minority groups, women, and persons experienced in the care of children with AIDS and HIV infection.

This Notice requests nominations of qualified individuals to serve on the panel as members and as panel chairperson(s). The functions of the panel chairperson(s) are critical to the guideline development process and the final product. The chairperson(s) will provide leadership to the panel regarding methodology, literature review, panel deliberations, and formation of the final product. Nominations for the chairperson(s) should take into consideration the criteria specified below, which the AHCPR will use in making its selection.

AHCPR will appoint the panel chairperson(s) from among the nominations received using criteria that include the following:

- Relevant training and clinical experience
- Demonstrated interest in quality assurance and research on the clinical condition including publication of relevant peer-reviewed articles
- Commitment to the need to produce clinical guidelines
- Recognition in the field with a record of leadership in relevant activities
- Broad public health view of the utility of the particular procedure or clinical service
- Demonstrated capacity to lead a health care team in a group decisionmaking process
- Demonstrated capacity to respond to consumer concerns
- Prior experience in developing guidelines for the clinical conditions in question.

Once the panel chairperson(s) have been appointed, the nominations for members of the panel will be submitted for further review and consideration to the selected chairperson(s) who will in turn recommend proposed panel members to AHCPR. Appointments of the panel members will be made by the AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of experience and expertise.

Nominations should indicate whether the individual is being recommended to serve as the panel chairperson(s) or to serve as a member of the panel. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by January 31, 1991 at the following address:

Office of the Forum on Quality and Effectiveness in Health Care,
Attention: Director, HIV Clinical Policy Program, Agency for Health Care Policy and Research, 5600 Fishers Lane, Parklawn Building, room 18A46, Rockville, MD 20857.

**For Additional Information**

Additional information on the guideline development process is contained in the AHCPR Program Note, Clinical Guideline Development dated August 1990. This Program Note, describing the activities underway by AHCPR for developing clinical practice guidelines, includes the process and criteria for selecting the panels. Copies may be obtained by calling the Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, at (301) 443-2904.

For further information on the process for developing guidelines for AIDS and HIV infection, contact Janet Arrowsmith-Lowe, M.D., Director, HIV Clinical Policy Program, Office of the Forum on Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the above address.

Dated: December 4, 1990.
J. Jarrett Clinton,
*Assistant Surgeon General, Acting Administrator.*
[FR Doc. 90-28649 Filed 12-7-90; 8:45 am]
BILLING CODE 4160-17-M



## Food and Drug Administration

[Docket No. 75P-0248]

**Vitamin K Active Substances in Animal Feeds; Notice Concerning Food Additive Status**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a notice concerning the regulatory status of certain vitamin K active substances (VKAS) in animal food. The agency earlier concluded that certain VKAS are food additives but declined to formalize their regulatory status. This notice states that such VKAS are required to be marketed under provisions of a food additive regulation.

**FOR FURTHER INFORMATION CONTACT:** George Graber, Center for Veterinary Medicine (HFV-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4638.

**SUPPLEMENTARY INFORMATION:** On July 12, 1990, the District Court of the United States for the Eastern District of New York issued an order requiring FDA to publish a notice under § 570.38 (21 CFR 570.38), providing for use of vitamin K active substances (VKAS) in accordance with one of the four alternatives listed in § 570.38(c). Section 570.38 is an FDA procedural regulation which determines the food additive status of a substance that is added to animal food. Section 570.38(b) provides that, if the agency concludes that the substance in question is not generally recognized as safe (GRAS) or otherwise exempt from the definition of a food additive in section 201(s) of the Food, Drug, and Cosmetic Act (the act), the agency will publish a notice thereof in the Federal Register. Section 570.38(c) states that the notice will provide for one of four alternatives that include: (1) Issuing a food additive regulation; (2) issuing an interim food additive regulation; (3) requiring discontinuation of the marketing of the substance; or (4) implementing a combination of the foregoing.

The District Court's decision resulted from a lawsuit filed by Heterochemical Corp. following publication by FDA of a notice concerning the regulatory status of VKAS. In the notice, published April 29, 1985 (48 FR 18748), the agency stated that it had concluded that none of the VKAS about which it had knowledge were GRAS, but that two VKAS—menadione and menadione sodium bisulfite complex (MSBC)—were prior-sanctioned for use in poultry feed at 2 to 4 grams per ton (g/ton). However, the agency concluded that it would not propose the issuance of food additive or GRAS affirmation regulations at that time. The agency decision not to formalize the regulatory status of the VKAS in question was based on its conclusion that VKAS had been added to animal food for more than 30 years without apparent animal or human safety problems. The agency's decision also reflected its assessment of its regulatory priorities and enforcement resources at that time. The agency advised those persons that intended to market new VKAS in the future to consult with it first in case the substance would raise potential safety questions such that a food additive regulation would be required.

The agency's 1985 notice responded to a petition filed by Heterochemical Corp., in which the firm asked the agency to review and clarify the legal status of several VKAS then being used as supplements in animal food. Heterochemical Corp. asked FDA to: (1) Require discontinuation of the use of menadione; (2) require discontinuation of the use of menadione sodium bisulfite; (3) declare that MSBC is GRAS for use solely in poultry feed at levels of up to 2 grams per ton; (4) require the discontinuation of use of MSBC for all other purposes; (5) and establish a reference standard for MSBC. See the Federal Register of August 18, 1978 (43 FR 35888).

FDA has concluded that it does not have in its possession enough scientific data and information to support publication of a food additive regulation for any of the VKAS in question. The agency has also concluded that publication of an interim food additive regulation for those VKAS would not be appropriate. Therefore, the agency is issuing this notice to state that the marketing of VKAS, other than menadione or MSBC for use in poultry feed at 2 to 4 g/ton is required to be done under provisions of a food additive regulation. Menadione dimethylpyrimidinol bisulfite may be marketed under the provision of 21 CFR 573.820. Persons who wish to market such substances should submit a food additive petition under the provisions in section 409 of the act. Such persons may also request GRAS affirmation under appropriate regulations.

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The FDA has determined that it is not required to examine the economic impact of this notice in accordance with the Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This notice is not a rule or regulation, but instead is a declaratory order under 5 U.S.C. 554(e) to terminate a controversy or remove uncertainty. Compare *Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609, 624–25 (1973).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 3, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90–28648 Filed 12–7–90; 8:45 am]

BILLING CODE 4160–01–M

## Health Resources and Services Administration

### Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Commission on Childhood Vaccines

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Law Library, HHS North Building, room G–619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Dated: December 4, 1990.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 90–28646 Filed 12–7–90; 8:45 am]

BILLING CODE 4160–15–M

### Program Announcement for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces that during fiscal year (FY) 1991 that $16,907,000 is available to initiate and continue the development of AIDS Regional Education and Training Centers (ETCs) as authorized by section 788A of the Public Health Service Act (the Act). The continuation of multi-year projects approved in prior years is estimated to cost $1,125,000. Approximately $15,782,000 is expected to be available for 16 competitive awards averaging $986,375.

In the past, section 301 of the Act has also been used to implement the ETC training program. Applications will also be accepted under the authority of section 301 should funds become available.

The ETCs will provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV). Comments are invited on the proposed project requirements, funding preference, priorities and set-aside stated below.

**Eligibility**

Awards are made to accredited health professional schools and academic health science centers (see below):

1. To train the faculty of schools and graduate departments of medicine, nursing, osteopathic medicine, dentistry, public health, psychology, and allied health to teach health professions students to provide for the health care needs of individuals with HIV/AIDS;

2. With respect to improving clinical skills in the diagnosis, treatment and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

3. To develop and disseminate curricula relating to the care and treatment of individuals with HIV/AIDS.

*Accredited Health Professional Schools* means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act and a program for the training of physician assistants as defined in section 701(8)(A).

*Academic Health Science Center* means an organization within a post-secondary educational system, which brings together major divisions or programs of health professions instruction, research in the health sciences, and health services.

These definitions are consistent with the use of the terms within other title VII programs administered by HRSA.

**Proposed Project Requirements**

The proposed project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus of FY 1991 will be on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the Federal funds provided must be expended to provide education to primary care providers (i.e., physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists).

A needs assessment must be made to guide program implementation. This assessment must be based on current epidemiological data, as well as training and educational needs within the defined region. Established centers will have up to one year to conduct the needs assessment and make required adjustments. New centers will also have up to one year for start-up activities and to conduct an educational and training needs assessment. The assessment must include training needs associated with rural and other low incidence areas within the defined region.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists;
- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkage to PHS funded AIDS Service Demonstration projects (section 301);
- Linkage to PHS funded migrant (section 329) and community health (section 330) centers, health care for the homeless programs (section 340) State and local health agencies;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

**Collaboration**

The ETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, AIDS Service Demonstration projects, Health Care for the Homeless programs, community and migrant helath centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

ETC projects also are encouraged to collaborate with the national network of 47 AIDS Clinical Trial Units (ACTUs) and the 18 Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the Robert Wood Johnson Foundation or the american Foundation for AIDS Research. Listing of the federally-funded programs will be provided to each applicant with the ETC application kit.

**Conversion of Funding Mechanism From Grant to Cooperative Agreement**

Effective in FY 1991 the funding mechanism for this program (competing and continuation projects) changed from grants to cooperative agreements to allow for a greater degree of Federal involvement in the conduct of the funded programs. This will permit greater Federal participation in many program areas. Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key ETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

**Review Criteria**

The review criteria stated below, which were established in FY 1989 after public comment, will remain unchanged in FY 1991.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;

2. The degree to which the project plan adequately provides for meeting the project requirements;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of funds; and

5. The potential of the project to continue of a self-sustaining basis after the period of support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications.

2. Funding priorities—favorable adjustment of review scores by HRSA staff when applications meet specified objective criteria.

**Statutory Funding Preferences**

In making awards in FY 1991, as required by section 788A, the Secretary shall give preference to projects which will:

1. Train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immunodeficiency syndrome and other individuals who are at a high risk of contracting such syndrome; and

2. Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with HIV/AIDS.

**Proposed Funding Preference for Fiscal Year 1991**

The Health Resources and Services Administration proposes to give a funding preference to applications that spend the majority of Federal funds in a designated HIV/AIDS high incidence area(s). For purposes of this announcement in FY 1991, high incidence area means the 20 metropolitan statistical area(s) (MSA) with the highest cumulative number of cases or the 20 MSAs with the highest rate of AIDS as indicated in the July 1990 Centers for Disease Control HIV/AIDS Surveillance Report. A listing of the eligible MSAs will be provided to applicants with the program materials.

Where applicable, there must be remaining funds for lower incidence areas. Based on the needs assessment and, if applicable, the remaining effort and funds must be spent in lower incidence contiguous or regional localities, including rural or other areas experiencing significant increases in the incidence of HIV/AIDS. Projects must assume training responsibility for outlying areas where parctitioners are providing care for HIV infected persons.

This funding preference is designed to target resources to areas of greatest need and maximize prior Federal investments.

**Proposed Funding Priorities for Fiscal Year 1991**

In determining the order of funding of approved applications, the HRSA is proposing that funding priorities be given to the following:

1. Applications proposing substantial training in: Area Health Education Centers, (section 781 of the Act); Health Manpower Shortage Areas, (section 332 of the Act); Migrant Health Centers, (section 329 of the Act); Community Health Centers, (section 330 of the Act); or Health Care for the Homeless Programs, (section 340 of the Act).

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Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers.

Section 330 authorizes support for community health care services to medically underserved populations. Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities, in the States, as Health Manpower Shortage Areas (HMSAs). Section 340 authorizes support for community-based programs of comprehensive primary care and substance abuse services brought to the homeless population. Section 781 authorizes support for the planning, development and operation of area health education center programs. As the AIDS epidemic has expanded into underserved communities, there is an increasing need to educate and train more primary care providers (physicians, physician assistants, nurses, nurse practitioners, dentists, dental hygienists) in these centers and health manpower shortage areas to provide effective services to these communities.

2. Applications documenting the participation of underrepresented minorities, as faculty or key staff in the ETC program. There is an increasing need for minority faculty and key teaching and management staff to meet more effectively the special needs and expanded incidence of HIV/AIDS of Black Hispanic populations. ("Key staff" is faculty or any individual in an administrative or supervisory position.)

**Proposed Funding Set-Aside for Fiscal Year 1991**

It is proposed that up to 10 percent of appropriated funds for this program be set aside to fund rural regional education and training center projects that focus on training in early diagnosis, counseling, prevention, and treatment for primary care practitioners in rural areas. This is designed to address the need for an increased number of health providers trained to meet the expanding incidence of HIV-infected persons in rural areas. In the establishment of technical merit of approved rural regional ETCs, consideration will be given to those projects covering the largest geographic areas or number of States.

**Definitions**

The following definitions apply to those training sites/facilities included in the first proposed funding priority listed above:

**Facilities**

Community health center means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR 57.102(c).

Health care for the homeless program, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population under section 340 of the PHS Act. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in Federal Register, (55 FR 31283) (August 1, 1990).

Health manpower shortage area means an area designated under section 332 of the PHS Act.

Migrant health center means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

**Other Definitions**

Rural area means a Non-Metropolitan Statistical area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget.

Rural regional education and training center is an AIDS ETC project which meets the essential characteristics of an ETC, is adapted to serve the health professions education needs of rural areas and rural primary care providers, and has components which may be replicated in other rural areas.

The proposed preference, priorities and set-aside do not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration for the proposed preference, priorities, or set-aside are encouraged to submit applications.

Interested persons are invited to comment on the proposed project requirements, funding preferences, priorities, and set-aside. Normally the comment period would be 60 days but due to the need to implement any changes for the FY 1991 award cycle, this comment period has been reduced to 30 days.

All comments received on or before January 9, 1991 will be considered before the final funding mechanisms are established. No funds will be allocated or final selections made until a final notice is published stating whether the final project requirements funding preference, priorities and set-aside will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

The application deadline date is January 24, 1991. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

Requests for technical or programmatic information should be directed to: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

The standard application form (PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and Supplement) for this program has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. In addition, it should be emphasized that projects funded through cooperative agreements that involve collection of information from 10 or more individuals will be subject to OMB review under the Paperwork Reduction Act.

Application materials and additional information regarding business, administrative and fiscal issues related to the awarding of funds under this notice may be requested from: Grants Management Officer (D35), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

This program is listed at 93.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 18, 1990.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 90–28845 Filed 12–7–90; 8:45 am]

BILLING CODE 4160–15–M



## National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room #702, Rockville, MD 20852, (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the Federal Register a notice of each petition filed. Set forth below is a list of petitions received by PHS from July 17, 1990, through August 27, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Kenneth and Meda Braker on behalf of Dawn Braker, Kirtland AFB, Arizona, Claims Court Number 90–0654/655 V
2. Randi Jo Flynn, Leonardwood, Michigan, Claims Court Number 90–0657 V
3. James and Kay Brink on behalf of Amy Brink, Ft. Huachuca, Arizona, Claims Court Number 90–0658 V
4. Frankie Cronkhite, Presque Isle, Maine, Claims Court Number 90–0660 V
5. Larry and Pat Collins on behalf of Mindy Dawn Collins, Nashville, Tennessee, Claims Court Number 90–0661 V
6. Douglas and Muriel Burt on behalf of Matthew Burt, Sarasota, Florida, Claims Court Number 90–0662 V
7. Colleen Krauch, New Lenox, Illinois, Claims Court Number 90–0666 V
8. Richard Wonish on behalf of Charmaine Wonish, St. Louis, Missouri, Claims Court Number 90–0667 V
9. Isabelle Dube on behalf of Martha Dube, Ft. Myers, Florida, Claims Court Number 90–0668 V
10. Jaleel and Liesa Malik on behalf of Sarah Malik, Tampa, Florida, Claims Court Number 90–0669 V
11. Jess and Jayne Ashcraft on behalf of Joy Ann Grimes, Deceased, Hugo, Colorado, Claims Court Number 90–0670 V
12. Stephen and Jackie Conafay on behalf of Stephen G. Conafay, Washington, DC, Claims Court Number 90–0672 V
13. Francis and Diane Froelich, Jr. on behalf of Natalie Froelich, Dallas, Texas, Claims Court Number 90–0676 V
14. Judith Klinglesmith on behalf of Jean Annette Tompkins, Louisville, Kentucky, Claims Court Number 90–0677 V
15. Terry Lugenbeel on behalf of Amy Lugenbeel, Deceased, Colorado Springs, Colorado, Claims Court Number 90–0678 V
16. Barbara Clarke on behalf of Heather Clarke, Chicago, Illinois, Claims Court Number 90–0679 V
17. Holly Adkins on behalf of Lisa Adkins, Wheatridge, Colorado, Claims Court Number 90–0685 V
18. Ann Arrington on behalf of Christine Arrington, Tampa, Florida, Claims Court Number 90–0686 V
19. Cynthia Lawton on behalf of Delshawn Lawton, Deceased, Virginia Beach, Virginia, Claims Court Number 90–0687 V
20. Michael and Linda Eagley on behalf of LaShell Eagley, Erie, Pennsylvania, Claims Court Number 90–0688 V
21. Barbara Eberle on behalf of Brad Scott Eberle, McPherson, Kansas, Claims Court Number 90–0689 V

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22. Victor Matos on behalf of Joseph Matos, Bronx, New York, Claims Court Number 90-0690 V
23. Celeste Robinson on behalf of Eric Robinson, Philadelphia, Pennsylvania, Claims Court Number 90-0691 V
24. Michael and Kay Whitecotton on behalf of Margaret Whitecotton, Crawfordsville, Indiana, Claims Court Number 90-0692 V
25. Larry and Shirley McClanahan on behalf of Joseph McClanahan, Barboursville, West Virginia, Claims Court Number 90-0693 V
26. Frank and Elina Joy on behalf of Lucas Joy, East Liverpool, Ohio, Claims Court Number 90-0694 V
27. Wallace Jones on behalf of Jeremiah Jones, North Haven, Connecticut, Claims Court Number 90-0695 V
28. Sandra Gramling on behalf of Kimberly Gramling, Deceased, St. Petersburg, Florida, Claims Court Number 90-0696 V
29. Harold and Mary Held on behalf of Nicole Held, Greeley, Colorado, Claims Court Number 90-0697 V
30. Laurie Dearnley on behalf of Troy Dearnley, Worcester, Massachusetts, Claims Court Number 90-0700, V
31. Bonnie Marlow on behalf of Johnathon Marlow, Deceased, Cody, Wyoming, Claims Court Number 90-0701 V
32. Phillip and Mary Moore on behalf of Andria Moore, Parkersburg, West Virginia, Claims Court Number 90-0702 V
33. Michael and Lesli Muchnick on behalf of Jessica Muchnick, Sunrise, Florida, Claims Court Number 90-0703 V
34. James and Mary Edgar on behalf of Jamie Edgar, Piscataway, New Jersey, Claims Court Number 90-0711 V
35. Lucie Alexander on behalf of Robert Alexander, Mill Valley, California, Claims Court Number 90-0713 and 90-0788 V
36. Vasya Cochran on behalf of Deborah Fair, Cumberland, Maryland, Claims Court Number 90-0714 and 90-0715 V
37. Robin Lacy on behalf of Jason Eric Lacy, Deceased, Apple Valley, California, Claims Court Number 90-0717 V
38. Sandra Underwood on behalf of Travis Underwood, La Mesa, California, Claims Court Number 90-0719 V
39. Amanda Dickerson on behalf of Christopher Dickerson, Newton, Massachusetts, Claims Court Number 90-0720 V
40. Stephanie Sharp on behalf of Curtis Sharp, Harrison County, West Virginia, Claims Court Number 90-0721 V
41. Mary Ekel on behalf of Sarah Lawrence, Zephyrhills, Florida, Claims Court Number 90-0722 V
42. Ann Kozloski on behalf of Jennifer Kozloski, Duluth, Minnesota, Claims Court Number 90-0723 V
43. Susan Mihal on behalf of Heath Mihal, Cedar Rapids, Iowa, Claims Court Number 90-0724 V
44. Anna Baldanza on behalf of Jeremy Baldanza, Clifton, New Jersey, Claims Court Number 90-0725 V
45. Jennifer Byl, Oakland, California, Claims Court Number 90-0726 V
46. Joseph and Carlene Cioffi on behalf of Joseph Cioffi, Williamsport, Pennsylvania, Claims Court Number 90-0727 V
47. Jeanne Morse on behalf of Courtney Morse, Boynton Beach, Florida, Claims Court Number 90-0728 V
48. Todd and Shawne Gardiner on behalf of Brynne Gardiner, Crowley, Louisiana, Claims Court Number 90-0730 V
49. Robb Chapman on behalf of John Chapman, Deceased, Dunwoody, Georgia, Claims Court Number 90-0731 V
50. Andrew and Susan Callihan on behalf of Rory Callihan, Tampa, Florida, Claims Court Number 90-0735 V
51. Edward and Elizabeth Janowski on behalf of Matthew Janowski, Eldora, Iowa, Claims Court Number 90-0736 V
52. Andrew and Karin Spooner on behalf of Alexander Spooner, San Pedro, California, Claims Court Number 90-0738 V
53. Suzanne Ketcham on behalf of Zachary Needham, Deceased, Reedley, California, Claims Court Number 90-0740 V
54. Mark and Donna Melancon on behalf of Mark Melancon Jr., Lafayette, Louisiana, Claims Court Number 90-0741 V
55. James Hazelbaker, Portsmith, Ohio, Claims Court Number 90-0743 V
56. Robert and Mary Jesch on behalf of Emily Jesch, Deceased, Milwaukee, Wisconsin, Claims Court Number 90-0745 V
57. Matthew Ponder, Forth Smith, Arkansas, Claims Court Number 90-0747 V
58. Patricia Shifflet on behalf of Kurt Shifflet, Salt Lake City, Utah, Claims Court Number 90-0748 and 90-0791 V
59. Alfred and Mary Estabrook on behalf of Elizabeth Estabrook, Portland, Oregon, Claims Court Number 90-0752 V
60. David and Linda Lane on behalf of David Lane, Deceased, Mesa, Arizona, Claims Court Number 90-0755 V
61. Mario and Anna Candelas on behalf of Rene Candelas, Deceased, Long Beach, California, Claims Court Number 90-0759 V
62. Michael and Roberta Hess on behalf of Brandon Hess, Deceased, Long Beach, California, Claims Court Number 90-0760 V
63. Linda Joyce Crutchet, Huntsville, Alabama, Claims Court Number 90-0761 V
64. Jeanne Bedell on behalf of Brooke Belander, Atlanta, Georgia, Claims Court Number 90-0765 V
65. Barbara and Warren Amendola on behalf of Christopher Amendola, Huntington, New York, Claims Court Number 90-0766 V
66. Renwick and Nichole Knox on behalf of Jean Knox, St. Petersburg, Florida, Claims Court Number 90-0767 V
67. Deborah Davis on behalf of James Davis, Severna Park, Maryland, Claims Court Number 90-0769 V
68. Patty Chatigny on behalf of Travis Chatigny, Beaumont, California, Claims Court Number 90-0770 V
69. Robert and Barbara Zinko on behalf of Steven Zinko, Deceased, Pueblo, Colorado, Claims Court Number 90-0774 V
70. Michael and Kerri Evanson on behalf of Michael Evanson, Deceased, Stayton, Oregon, Claims Court Number 90-0775 V
71. Earl and Diane Veasey on behalf of Brandon Veasey, Little Rock, Arkansas, Claims Court Number 90-0776 V
72. Robert McAllister on behalf of Dana McAllister, Mineola, New York, Claims Court Number 90-0778 V
73. William and Mary Messing on behalf of Mark Messing, Deceased, Minnesota Lake, Minnesota, Claims Court Number 90-0782 V
74. Peggy Werlhof on behalf of Jennifer Werlhof, Chico, California, Claims Court Number 90-0789 V
75. Ronald Cheney, Grosse Point Farms, Michigan, Claims Court Number 90-0790 V
76. Thomas and Janice Taylor on behalf of Jason Taylor, Suffern, New York, Claims Court Number 90-0792 V
77. Gilbert and Yvonne Rodriguez on behalf of Elizabeth Rodriguez, Tampa, Florida, Claims Court Number 90-0793 V
78. Dianne Rouse on behalf of Stephanie Rouse, Great Falls, Minnesota, Claims Court Number 90-0794 V
79. Betty Jean Wilson on behalf of Monique Wilson, El Cajon, California, Claims Court Number 90-0795 V
80. Leolan and Aserlia Birch on behalf of Seth Birch, Portland, Oregon, Claims Court Number 90-0796 V
81. Aubrey and Joann Davis on behalf of Kevin Davis, Deceased, Longview, Texas, Claims Court Number 90-0799 V
82. Aubrey and Joann Davis on behalf of Kyle Davis, Deceased, Lonview, Texas, Claims Court Number 90-0800 V
83. Joseph and Joan Consiglio on behalf of Abigail Consiglio, Rochester, New York, Claims Court Number 90-0801 V
84. Darrell and Sharon Lafler on behalf of John Lafler, Lincoln, Nebraska, Claims Court Number 90-0802 V
85. Vazma Tomac on behalf of Timothy Tomac, Sanayvale, California, Claims Court Number 90-0803 V
86. Radona Estrada on behalf of Kenneth Anderson, Jr., Salt Lake City, Utah, Claims Court Number 90-0805 V
87. JoAnn Allison on behalf of Thomas Allison, Las Vegas, Nevada, Claims Court Number 90-0810 V
88. Genera Correa on behalf of Gerson Correa, Brooklyn, New York, Claims Court Number 90-0811 V
89. Frank and Karen Strauhal on behalf of Benjamin Strauhal, Sioux City, Iowa, Claims Court Number 90-0812 V
90. Suzanne Johnson on behalf of Kial Johnson, Lincoln, Nebraska, Claims Court Number 90-0813 V
91. Mary Catherine Rusher on behalf of Elizabeth Rusher, Neptune, New Jersey, Claims Court Number 90-0817 V
92. Robert and Annette Daege on behalf of Annette Daege, Deceased, Rochester, New York, Claims Court Number 90-0818 V
93. Gary and Donna Heins on behalf of Gregory Heins, Branford, Connecticut Claims Court Number 90-0819 V
94. Velvet Carter on behalf of Christopher Carter, North St. Petersburg, Florida, Claims Court Number 90-0820 V
95. Darrell and Nova Carpenter on behalf of Angela Carpenter, Long Beach, California, Claims Court Number 90-0821 V
96. Barbara Wilkerson on behalf of Wendy Wilkerson, St. Joseph, Missouri, Claims Court Number 90-0822 V
97. Carma Ann Peery on behalf of Angela Peery, Albany, Missouri, Claims Court Number 90-0823 V
98. Toni Saunders on behalf of Chad Saunders, Casper, Wyoming, Claims Court Number 90-0826 V
99. Ron and Laurie Duffield on behalf of John Duffield, Portland, Oregon, Claims Court Number 90-0827 V
100. Gust and Carol Zahariades on behalf of John Zahariades, St. Paul, Minnesota, Claims Court Number 90-0828 V
101. James and Vilois Harmon on behalf of Joel Harmon, Pampa, Texas, Claims Court Number 90-0829 V

Dated: December 4, 1990.

Robert G. Harmon,

*Administrator.*

[FR Doc. 90-28647 Filed 12-7-90; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WO-610-4111]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project ( ), Washington, DC, telephone 202-395-7340.

*Title:* Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General.

Subpart 3192–Cooperative Agreements with States and Tribes.

*OMB approval number:* (Has not been assigned).

*Abstract:* Respondents submit information relating to the type and extent of activities they are proposing to carry out under a cooperative inspection agreement with the Bureau of Land Management (BLM).

*Bureau form number:* None.

*Frequency:* On occasion.

*Description of respondents:* States and tribes proposing to enter into a cooperative inspection agreement with BLM.

*Estimated completion time:* 2 hours.

*Annual responses:* 10.

*Annual burden hours:* 20.

*Bureau Clearance Officer:* (Alternate) Gerri Jenkins, 202-653-8853.

Hillary A. Oden,

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 90-28637 Filed 12-7-90; 8:45 am]

BILLING CODE 4310-84-M

### National Park Service

### Availability of the Record of Decision on the Lockheed Boulevard Connector Road Supplemental Environmental Assessment for Huntley Meadows Park, Virginia

**AGENCY:** National Park Service, Interior.

**ACTION:** Record of decision.

**SUMMARY:** Notice is hereby given that the National Park Service has prepared a Record of Decision for the Lockheed Boulevard Connector Road Supplemental Environmental Assessment for Huntley Meadows Park, Virginia. The Record of Decision will be available for public review at the National Park Service, National Capital Region, Office of Land Use Coordination, 1100 Ohio Drive SW., room 201, Washington, DC.

The Record of Decision is required by the National Environmental Policy Act of 1969 as amended (Public Law), and addresses the potential impacts to the Huntley Meadows Park which may result from construction of the proposed Lockheed Boulevard Connector.

**SUPPLEMENTARY INFORMATION:** For further information please contact Mr. Jeffrey L. Knoedler, Project Coordinator, Office of Land Use Coordination, 1100 Ohio Drive SW., room 201, Washington, DC 20242, (202) 619-7108.

Dated: November 21, 1990.

Robert Stanton,

*Regional Director, National Capital Region.*

[FR Doc. 90-28762 Filed 12-7-90; 8:45 am]

BILLING CODE 4310-70-M

### Mississippi River Coordinating Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** January 9, 1991; 6 p.m. to 9:30 p.m.

**ADDRESSES:** Holiday Inn Metrodome, 1500 Washington Avenue South, Minneapolis, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** Norman J. Reigle, Superintendent, Mississippi National River and Recreation Area, Post Office Box 65456, St. Paul, MN 55165-0456 (612-290-4160).

**SUPPLEMENTARY INFORMATION:** The Mississippi River Coordinating Commission was established by Public Law 100-696, November 18, 1988.

Dated: November 29, 1990.

Warren H. Hill,

*Acting Regional Director, Midwest Region.*

[FR Doc. 90-28761 Filed 12-7-90; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 13)]

### Intrastate Rail Rate Authority, Maryland

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of recertification.

**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Interstate Commerce Commission recertifies the State of Maryland to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

**DATES:** Recertification will be effective January 9, 1991, and will expire February 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmer (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: December 3, 1990.

By the Commission, Chairman Phillips, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.

*Secretary.*

[FR Doc. 90-28671 Filed 12-7-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388; Sub-No. 17]

### Intrastate Rail Rate Authority—Missouri

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of recertification.

BEST COPY AVAILABLE

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**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Interstate Commerce Commission recertifies the State of Missouri to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

**DATES:** Recertification will be effective January 9, 1991, and will expire February 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. *Telephone:* (202) 289–4357/4359.

*Decided:* December 3, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–28870 Filed 12–7–90; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–55, Sub-No. 367X]**

**CSX Transportation, Inc.; Abandonment Exemption in Liberty County, GA**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonment to abandon its 1.62-mile line of railroad between mileposts S–531.00 and S–529.38, at Riceboro, in Liberty County, GA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 9, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 20, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 31, 1990, with:
Office of the Secretary,
Case Control Branch,
Interstate Commerce Commission,
Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:
Charles M. Rosenberger,
CSX Transportation, Inc.,
500 Water Street,
Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 14, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Decided: November 30, 1990.

By the Commission, David M. Knoschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–28867 Filed 12–7–90; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–318 (Sub-No. 2X)]**

**Louisiana and Delta Railroad, Inc.—Abandonment Exemption in Terrebonne Parish, LA**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Louisiana and Delta Railroad, Inc., of 17.55 miles of rail line in Terrebonne Parish, LA, subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 9, 1990. Formal expressions of intent to file on offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 20, 1990, petitions to stay must be filed by December 26, 1990, and petitions for reconsideration must be filed by January 7, 1990. Requests for a public use condition must be filed by December 20, 1990.

**ADDRESSES:** Send pleadings referring to Docket AB–318 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representatives: James B. Gray Jr., Harter, Secrest & Emery, 700 Midtown Tower, Rochester, NY 14604.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decisicn. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: November 21, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald. Commissioner Simmons dissented with a separate expression. Commissioner McDonald would have denied the exemption request, without prejudice to petitioner's right to seek abandonment through the regular abandonment process.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).



**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–28868 Filed 12–7–90; 8:45 am]

BILLING CODE 7035–01–M

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**[Docket No. AB–290; Sub-No. 108X]**

**Southern Railway Co.; Abandonment Exemption in Transylvania County, NC**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Southern Railway Company of 2 miles of rail line between Pisgah Forest (milepost TR–19.8) and Brevard (milepost TR–21.8), in Transylvania County, NC, subject to standard labor protective conditions and an environmental condition.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 9, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 20, 1990, petitions to stay must be filed by December 26, 1990, and petitions for reconsideration must be filed by January 7, 1991. Requests for a public use condition must be filed by December 20, 1990.

**ADDRESSES:** Send pleadings referring to Docket No. AB–290 (Sub–No. 108X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: F. Blair Wimbush, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired: (202) 275–1721]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 275–1721.]

**Decided: December 3, 1990.**

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–28869 Filed 12–7–90; 8:45 am]

BILLING CODE 7035–01–M

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## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW in Washington, DC on January 3 and 4, 1991, from 8:30 a.m. to 5 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S. Code, section 1242(a)(1)(B) and to review the November 1990 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, there will be a discussion of the concept of open book examinations and topics for inclusion on the syllabus for the Joint Board's examinations.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the November 1990 Joint Board examination fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the concept of open book examinations and the Joint Board examination syllabus will commence at 1:30 p.m. on January 3 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than December 21, 1990 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: December 4, 1990.

**Leslie S. Shapiro,**

*Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 90–28777 Filed 12–7–90; 8:45 am]

BILLING CODE 4810–25–M

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## DEPARTMENT OF JUSTICE

### Information Collection Under Review

December 5, 1990.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514–4312.

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If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

**Extension(s) of the Expiration Date(s) of Currently Approved Collection(s) of Information Without any Change in the Substance or in the Method of Collection**

(1) DEA/USMS/USSS Drug of Abuse Chain of Custody Form.

(2) No form number. Health Services Unit, office of Personnel, Drug Enforcement Administration.

(3) On occasion.

(4) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free Federal workplace.

(5) 2,900 annual respondents at .083 hours per response.

(6) 245 estimated annual public burden hours.

(7) Not applicable under 3504(h).

**Special Note:** The following three extension items deal with aspects of the Victims of Crime Act Grant Program, Office for Victims of Crime, Office of justice Programs. In all cases, respondents are State or local governments administering the crime victim assistance provisions of the Victims of Crime Act, as amended. The information collected is necessary to generate and submit statutorily required reports to the President and to the Congress on the effectiveness of the Victims of Crime Act, as amended, and to ensure grantees' compliance with statutory criteria. These items are not applicable under 3504(H).

1. The Program Performance Report (Revised), Crime Victim Compensation Grant Program, OJP Form 7390/2. Collected from grantees 90 days after the completion of the grant. 56 annual respondents at five hours each with an associated recordkeeping burden of three hours for each respondent for an estimated annual burden of 448 hours.

2. The Subgrant Award Report (Revised), OJP Form 7390/2A. Grantees must submit 30 days after an award is made. 56 annual respondents with 32 responses per respondent, at 2 hours for each response with an associated recordkeeping burden of 32 annual hours each recordkeeper for an estimated annual burden of 5,376 hours.

3. The Program Performance Report (Revised), Crime Victim Assistance Grant Program, OJP Form 7390/4. Grantees submit 90 days after completion of the grant. 56 annual respondents at 22 hours each with an associated recordkeeping burden of one hour for each respondent for an estimated annual burden of 1,288 hours.

**Larry E. Miesse,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 90-28850 Filed 12-7-90; 8:45 am]

BILLING CODE 4410-18-M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on October 22, 1990, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1986, CFI filed its original notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26285). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990 (55 FR 925). On February 15, 1990, CFI filed an additional written notification. The Department published a notice in response to the further additional notification on April 23, 1990 (55 FR 15295).

CFI filed an additional notification on May 15, 1990. The Department published a notice in response to the additional notification on June 29, 1990 (55 FR 26792). CFI filed an additional notification on August 16, 1990. The Department published a notice in response to the additional notification on September 18, 1990 (55 FR 38417).

The purpose of this notification is to disclose certain changes in the membership of CFI. The changes consist of the following: (1) The addition of corporate member, Sharp Corporation; (2) the addition of associate members: Timothy Andrews, Philip S. Au, Gaal Balazs, John Burton, Bernard Clark, Peter Cundall, Thomas Miller, Myer Morron, Gordon Neal, Robert Piloty, John Prieur, Timothy Sampson, Jerry Sewell; (3) GenRad, Ltd. has not renewed its associate membership in CFI; (4) as reported in CFI's May 15, 1990 filing, Siemens AG has merged with Nixdorf Computer AG, however, Nixdorf Computer AG should be listed separately as an associate member and Siemens AG will continue to be listed as a corporate member.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 90-28787 Filed 12-7-90; 8:45 am]

BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1984, National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on November 7, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research projects. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as members of NCMS:

Chem-tronics, Inc., Hydro-Abrasive Machining, Inc., Manufacturing Resources, Inc., ORSCO, Inc.

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward its objectives in those areas are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, and July 31, 1990, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), and August 28, 1990 (55 FR 35192), respectively.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 90-28788 Filed 12-7-90; 8:45 am]

BILLING CODE 4410-01-M

### Notice Pursant to the National Cooperative Research Act of 1984 Software Productivity Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* (the "Act"), Software Productivity Consortium ("SPC") on November 7, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain additional activities of the Consortium. Those additional activities are providing Software Process Assessment services in connection with its primary work in advanced computer productivity technology, and contracting with third parties to provide technology services. Also SPC is considering establishment of a separate, wholly-owned subsidiary corporation to conduct some or all of those activities. The notification was filed for the purpose of maintaining the protections of the Act limited the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Except as indicated above, no other changes have been made in either the membership or planned activity of SPC.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985, 50 FR 2833. Since then, SPC filed additional notifications on April 23, 1985, September 24, 1985, December 10, 1985, February 13, 1986, and November 30, 1988, identifying changes in its membership, and the Department of Justice published notice of these changes in the **Federal Register** pursuant to section 6(b) of the Act on May 21, 1985, 50 FR 20954; October 22, 1985, 50 FR 42786; January 13, 1986, 51 FR 1450; March 11, 1986, 51 FR 8373; and January 10, 1990, 55 FR 926, respectively. SPC also filed additional notifications on December 19, 1988, and December 27, 1988, notice of which the Justice Department published on January 31, 1989, 54 FR 4922, and another notification on March 23, 1989, notice of which the Department published on May 4, 1989, 54 FR 19256-57.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 90-28790 Filed 12-7-90; 8:45 am]

BILLING CODE 4410-01-M

### Notice Pursuant to the National Cooperative Research Act of 1984—PDES Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES Inc. ("PDES") on November 1, 1990 has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282). On February 16, 1989, June 27, 1989, January 5, 1990, and February 26, 1990, PDES filed additional written notifications. The Department published notices in response to the additional notifications on March 21, 1989 (54 FR 11580), July 18, 1989 (54 FR 30116), February 12, 1990 (55 FR 4918), and March 26, 1990 (55 FR 11067), respectively.

Rolls-Royce, plc. has admitted as been a member of PDES effective August 6, 1990.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 90-28789 Filed 12-7-90; 8:45 am]

BILLING CODE 4410-01-M



## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W-21,506]**

### AT&T Technologies, Inc., General Markets Group a/k/a/ AT&T Information Systems, Inc., Shreveport, LA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 30, 1988, applicable to all workers of AT&T Technologies, Inc., General Markets Group, Shreveport, Louisiana. The notice was published in the **Federal Register** on November 28, 1989 (54 FR 48955).

At the request of the State Agency, the Department reviewed the subject certification and found that the Shreveport facility was transferred from AT&T Technologies, Inc., to AT&T Information Systems, Inc. AT&T Information Systems in Shreveport, Louisiana is a successor-in-interest firm to AT&T Technologies, Inc., in Shreveport. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-21,506 is hereby issued as follows:

All workers of the Shreveport, Louisiana plant of AT&T Information Systems, Inc., previously known as AT&T Technologies, Inc., General Markets Group, Shreveport, Louisiana who became totally or partially separated from employment on or after October 17, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of November, 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28878 Filed 12-7-90; 8:45 am]

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**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Aberdeen Sportswear, Inc. et al.**

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 20, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 26th day of November 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition number | Articles produced |
|---|---|---|---|---|---|
| Aberdeen Sportswear, Inc. (Wkrs) | Trenton, NJ | 11/26/90 | 10/07/90 | 25,110 | Clothing |
| Caterm, Inc. (Workers) | Hillsdale, MI | 11/26/90 | 11/05/90 | 25,111 | Auto Parts |
| Columbia Mfg Co. (IAM) | Westfield, MA | 11/26/90 | 11/13/90 | 25,112 | Bicycles |
| Comdial Communications Corp. (Wkrs) | Charlottesville, VA | 11/26/90 | 11/13/90 | 25,113 | Telephones |
| Crown Worsted Mills Inc. (Wkrs) | Central Falls, RI | 11/26/90 | 11/09/90 | 25,114 | Yarns |
| Dorstar Gypsum (Workers) | Still Water, TX | 11/26/90 | 11/12/90 | 25,115 | Sheetrock |
| Endicott Johnson (Workers) | Chapel Hill, TN | 11/26/90 | 11/08/90 | 25,116 | Footwear |
| Hyden Industries (Workers) | Fergus Falls, MN | 11/26/90 | 11/08/90 | 25,117 | Apparel |
| Mack Truck (Workers) | Winnsboro, SC | 11/26/90 | 11/10/90 | 25,118 | Trucks |
| McMoran Oil & Gas Co. (Wkrs) | New Orleans, LA | 11/26/90 | 10/25/90 | 25,119 | Oil & Gas |
| Moly Corp. (USWA) | Washington, PA | 11/26/90 | 10/15/90 | 25,120 | Oxide |
| Oak Technical, Inc. (URW) | Ravenna, OH | 11/26/90 | 11/16/90 | 25,121 | Gloves |
| Sanyo-Fisher Audio Corp. (Workers) | Milroy, PA | 11/26/90 | 11/16/90 | 25,122 | Components |

[FR Doc. 90-28669 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-24, 362]**

**Action Tungsram, Inc., East Brunswick, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 5, 1990 applicable to all workers of Action Tungsram, Inc., East Brunswick, New Jersey. The certification notice was published in the Federal Register on July 24, 1990 (55 FR 30047). The notice was amended on August 27, 1990 and published in the Federal Register on September 5, 1990 (55 FR 36334).

New information from the company shows that worker separations began in 1989 following the acquisition in 1989 by General Electric of Tungsram, Ltd., a Hungarian light bulb manufacturer. Therefore, the certification is amended by deleting the previous impact date and inserting a new impact date of April 16, 1989. The amended notice applicable to TA-W-24, 362 is hereby issued as follows:

"All workers of Action Tungsram, Incorporated, East Brunswick, New Jersey who became totally or partially separated from employment on or after April 16, 1989 and before August 28, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 30th day of November 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28676 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-24,811]**

**Agnew Lumber Co., Centralia, WA; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance**

By an application dated November 12, 1990, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 6, 1990.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that imported oriented strand board (OSB) competes with the veneer produced at Centralia.

The workers produced veneer for plywood manufacturers. Veneer is a component of plywood.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of Agnew's major declining customers showed that none of the respondents imported veneer or OSB/waferboard during the period under investigation.

Further, the issue of components was addressed early in the administration of the worker adjustment assistance program. In *United Show Workers of America, AFL–CIO* v. *Bedell*, 506 F2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of OSB/waferboard cannot be considered in determining import injury to workers producing veneer a component of plywood which competes with OSB/waferboard. Imports of articles (OSB) competing with finished articles incorporating components (veneer) are not like or directly competitive with the articles produced at the workers' firm. Only imports of veneer, the article produced at the workers' firm, can be considered.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of December 1990.

**Robert O. Deslongchamps,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28677 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-24,714]**

**Greenville Pants Manufacturing Company, Greenville, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 11, 1990 applicable to all workers of Greenville Pants Manufacturing Company, Greenville, Texas.

At the request of the State Agency the Department reviewed the subject certification. New information from the company reveals that the parent company, Haggar Apparel Company, placed the Greenville Pants Manufacturing Company under the Olney Manufacturing Company account for tax purposes. This name change is for accounting reasons and did not reflect a change in ownership. The notice, therefore, is amended to properly reflect the correct worker group.

The amended notice applicable to TA–W–24,714 is hereby issued as follows:

All workers of Greenville Pants Manufacturing Company, Greenville, Texas, also known as Olney Manufacturing Company Greenville, Texas who became totally or partially separated from employment on or after July 27, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of November 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28680 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-24,753]**

**Larsan Manufacturing Company Newark, OH; Negative Determination Regarding Application for Reconsideration**

By an application postmarked November 19, 1990, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on October 16, 1990 and published in the Federal Register on October 31, 1990 (55 FR 45674).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Newark produce handsaws, power tool accessories and lawn and garden spray tanks. The union claims that subject firm is transferring its production of lawn and garden spray tanks to Canada.

The Department's denial was based on the fact that "contributed importantly" test of the Group Eligibility Requirement of the Trade Act was not met. Larsan is transferring production of handsaws and power tool accessories from the subject plant to other domestic company plants. A domestic transfer of production would not provide a basis for a worker group certification. Investigation findings also showed that sales and production of handsaws and power tool accessories increased in 1989 compared to 1988.

Other investigation findings show that Larsan Manufacturing was one of several divisions of the Vermont American Corporation. Larsan produced the metal lawn and garden tanks for the Gilmore Company, another division of Vermont American Corporation which produced the plastic tank garden and lawn sprayer but not the metal tank. Production and inter-company sales of metal lawn and garden tanks at Newark accounted for less than three percent of Newark's total production in 1989. The decrease in production of metal spray tanks was the result of the increasing use of plastic tanks produced by Gilmore.

Although Gilmore contracted with a Canadian firm to produce the metal tanks because it lost Larsan as a supplier, this was a temporary measure to provide a supply for the new owner. Gilmore is in the process of being purchased by another domestic firm. Company officials indicated that no imports of the metal lawn and garden spray tanks have taken place.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of November, 1990.

**Mary Ann Wyrsch,**

*Director, Office of Unemployment Insurance Service, UIS.*

[FR Doc. 90-28679 Filed 12-7-90; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-24,764]**

**Soabar Product Group of Avery Corp., Philadelphia, PA, Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Soabar Product Group of Avery Corporation, Philadelphia, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's

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determination. Therefore, dismissal of the application was issued.

TA-W-24,764; Soabar Product Group of Avery Corporation, Philadelphia, PA (November 28, 1990)

Signed at Washington, DC this 27th day of November, 1990.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28681 Filed 12-7-90; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Advisory Panel for Studies, Evaluation, and Dissemination is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Advisory Panel for Studies, Evaluation, and Dissemination.

*Purpose:* Advises on the merit of proposals and procurements for research, education, and related purposes submitted to the NSF for financial support. The Panel also provides general advice and policy guidance concerning research, studies and analyses, assessments, dissemination, evaluations, and related activities in the area of mathematical, scientific, and engineering education.

*Balanced Membership Plan:* About 72 panelists will be selected on an "as needed" basis in response to specific proposals, applications, projects, and/or sites to be reviewed. Members will be selected for their demonstrated mathematical, scientific, engineering and educational expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled experts.

*Responsible NSF Official:* Thomas Berger, Program Manager for Studies, Evaluation, and Dissemination, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: December 4, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-28832 Filed 12-7-90; 8:45 am]

BILLING CODE 7555-01-M

### Committee Management; Establishment

The Assistant Director for Engineering has determined that the establishment of the Special Emphasis Panel in Engineering Infrastructure Development is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

*Name of Committee:* Special Emphasis Panel in Engineering Infrastructure Development.

*Purpose:* To advise on the merit of special initial proposals or applications submitted to NSF for financial support.

*Balanced Membership Plan:* Membership will be selected on an "as needed basis in response to specific proposals/applications/sites to be reviewed. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

*Responsible NSF Official:* Lucy C. Morse, Program Director for Engineering Infrastructure Development, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: December 4, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-28833 Filed 12-7-90; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Potential for NRC Requirements Regarding a Uniform Low-Level Radioactive Waste Manifest; Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will discuss efforts to develop a uniform low-level radioactive waste manifest in light of recommendations received from the Host State Technical Coordinating Committee for Low-Level Radioactive Waste Disposal (TCC).

**DATES:** January 9, 1991.

**ADDRESSES:** Host State Technical Coordinating Committee Meeting, Hyatt Regency Hotel, One St. Louis Union Station, St. Louis, MO 63103.

**FOR FURTHER INFORMATION CONTACT:** William R. Lahs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-0589.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to discuss NRC efforts to develop a uniform manifest as an adjunct to a proposed rulemaking on low-level waste manifest information and reporting. The TCC believes that a uniform manifest is necessary and justifiable and, in a November 9, 1990 letter to Chairman Carr, submitted an example uniform manifest together with comments the TCC received on an earlier draft of this manifest.

The NRC staff, at a session of this meeting tentatively scheduled between 1:30 and 2:30 p.m. will present their preliminary views regarding the manifest and will use the session as a mechanism to discuss issues which may be raised on this subject.

Persons other than NRC staff and TCC members may observe the meeting but will be permitted to participate in the discussion only as time allows. Registrations will be conducted prior to the meeting.

Dated at Rockville, Maryland, this 3rd day of December 1990.

For the Nuclear Regulatory Commission.

John H. Austin,

*Chief, Regulatory Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.*

[FR Doc. 90-28804 Filed 12-7-90; 8:45 am]

BILLING CODE 7590-01-M

### Appendix A to the Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Defense Nuclear Facilities Safety Board

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Publication of appendix A to memorandum of understanding.

**SUMMARY:** On November 28, 1990, the Nuclear Regulatory Commission (NRC) and the Defense Nuclear Facilities Safety Board (the Board) approved



Appendix A to the Memorandum of Understanding between the parties dated June 22, 1990. Appendix A outlines the Employee Assistance Program (EAP) support services which NRC will provide to the Board.

**FOR FURTHER INFORMATION CONTACT:** James L. Blaha, Assistant for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-3702.

Dated at Rockville, Maryland, this 3rd day of December, 1990.

For the Nuclear Regulatory Commission.

James L. Blaha,

*Assistant for Operations.*

Appendix A to the Memorandum of Understanding Between the Defense Nuclear Facilities Safety Board and the Nuclear Regulatory Commission

*Employee Assistance Program*

This appendix sets forth an understanding of the Employee Assistance Program (EAP) support services which the Nuclear Regulatory Commission (NRC) will provide to the Defense Nuclear Facilities Safety Board (Board).

*Authority and Background*

This agreement is entered into pursuant to Section 114 of the National Defense Authorization Act for FY-1989 (Public Law 100-456). The NRC considers employees to be the agency's most valuable resource. For this reason, their health and safety are of paramount concern. The agency also has a major responsibility for protecting the health and safety of the public and national security. Consistent with these dual concerns, the agency has established a policy of zero tolerance for illegal drug use and encourages employees with an alcohol or drug abuse problem to seek assistance. Executive Order 12564 mandates that all Federal agencies establish Employee Assistance Programs to accomplish these goals.

Office of Personnel Management guidelines set forth the following as required components of an Employee Assistance Program: (1) Employee counseling and referral; (2) education and training on drug-related issues; (3) supervisory consultation regarding troubled employees; and (4) supervisory training to assist managers in maintaining a drug-free workplace.

I. Scope of Work

The NRC will assist the Board in establishing and maintaining an Employee Assistance Program by offering the following services:

(a) *Education and Training for Board Managers and Supervisors* to familiarize them with the signs and symptoms of alcohol and drug abuse, and to define and clarify their role and responsibilities as they relate to the Drug-free Federal Workplace Program.

The NRC schedules supervisory training on a regular basis and will provide spaces for Board employees in these cures. If, however, the Board wishes to provide training sooner and/or more extensively than can be accommodated by NRC's schedule, NRC will provide the names of possible sources for training which can meet the Board's needs.

(b) *Informal Consultation.* The NRC's Employee Assistance Program and Labor Relations staffs will be available to the Board's General Manager and other designated staff members to share their knowledge and experiences in matters dealing with troubled employees, including drug testing, disciplinary action, confidentiality issues, the rehabilitation process, and reintegration of rehabilitated employees into the workplace. NRC staff will not, however, provide direct counseling to Board employees or directly advise Board supervisors and managers on specific cases.

(c) *Referral Sources.* The NRC will assist the Board with other EAP functions, i.e., individual counseling, referral, supervisory consultation, and employee education, by providing the names of EAP firms in the Washington metropolitan area who can provide these services to meet the unique requirements of the Board.

II. Period of Performance

The period of performance shall commence upon signature by both parties and shall continue uninterrupted at the pleasure of either party. This agreement may be modified with the consent of both parties. Either party may terminate the agreement by providing 60 days written notice to the other party.

III. Applicable Guidance

The NRC and the Board will follow the guidance and directives contained in NRC Manual chapter 4183 and the NRC Drug Testing Plan (NUREG/BR-0134), section IV.

IV. Funding

NRC training and informal advice will be provided to the Board at no cost.

V. Point of Contact

The organizational points of contact are:

NRC: Patricia Kaplan, (301) 492-4020.
DNFSB: Janet Burke, (202) 376-5063.

Accepted:

By:

John T. Conway,

*Chairman, Defense Nuclear Facilities Safety Board.*

Dated: November 28, 1990

By:

James M. Taylor,

*Executive Director for Operations, U.S. Nuclear Regulatory Commission.*

Dated: November 28, 1990.

[FR Doc. 90-28805 Filed 12-7-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

### Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-52 issued to Tennessee Valley Authority (the licensee) for operation of Browns Ferry Nuclear Plant, Unit 2 (BFN2) located in Limestone County, Alabama.

The amendment request dated August 7, 1990 was previously noticed (55 FR 36356, September 5, 1990). The licensee's request of August 7, 1990 proposed to revise BFN2 Technical Specifications (TS) surveillance requirements of TS section 4.11.B.1.f for the electric and diesel-driven fire pumps to specify new values for flow and system head pressure (2100 gpm and 300 feet, respectively).

During the course of the review, the NRC staff determined that the reduction of the flow value would not be desirable below 2250 gpm. This matter was discussed with the licensee and on November 30, 1990 the licensee supplemented their original request by proposing the recommended flow value of 2250 gpm. As such the NRC staff decided to noticce the original "Consideration Of Issuance Of Amendment" and revised proposed No Significant Hazards Consideration (NSHC). The licensee stated that the original NSHC and supporting analysis submitted on August 7, 1990 would be unchanged except that the 2250 gpm value would replace 2100 gpm in the discussion on the safety margin.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

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(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.91, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Therfore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, TVA has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The present BFN technical specification requirements for the electric and diesel-driven high pressure fire pumps [Surveillance Requirements 4.11.B.1.f.(2) and 4.11.B.1.f(3)] are based on a single data point on the manufacturer's laboratory performance curve and are not based on actual demand. Tests on the pumps installed at BFN have shown that in some cases they fall just short of achieving the technical specification value for flow at the specified head. The proposed change will revise the pump flow and head requirements based on actual demand requirements.

TVA has performed a calculation to determine the actual fire pump flow/pressure requirements to meet the most demanding fire suppression water load and an above normal raw service water (RSW) load. The calculation concluded that a fire pump developing 2100 gpm at a system head of 300 feet will adequately meet the fire suppression water and RSW loads. This requirement is applicable to both the electric and diesel-driven fire pumps.

This change will not involve an increase in the probability or consequences of a design basis event. It will ensure the fire protection system can supply sufficient water to suppress fires while not placing an overly restrictive surveillance requirement on the pumps.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to pump flow and head requirements for the electric and diesel-driven high pressure fire pumps does not involve any modification to plant equipment. No new failure modes are introduced nor are any new system interactions introduced by the change. The methods and ability of the BFN fire protection system to suppress fires is unaffected by the change. Sufficient capability will still exist to suppress fires and to supply the necessary demands. Therefore, the changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The current technical specification flow and head requirements for the electric and diesel-driven fire pumps are 2500 gpm at system heads of 300 and 340 feet respectively. The proposed change would revise the flow and head requirements for both the electric and diesel-driven fire pumps to [2250] gpm at a system head of 300 feet. The current technical specification values are based on a single data point on the manufacturer's laboratory performance curve and are not based on actual demand. The proposed values are based on a calculation of the actual demands that must be met for fire suppression water and RSW loads plus an additional margin. Although the fire pump surveillance flow requirements have been reduced, sufficient capacity still exists beyond the projected demands for fire suppression water and RSW. Thus, the margin of safety has not been reduced [significantly].

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 9, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based on a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 7, 1990, as supplemented November 30, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**Thierry Ross,**

*Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28606 12-7-90; 8:45 am]

BILLING CODE 7590-01-M



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28699; File No. SR-OCC-90-12]

**Self-Regulatory Organizations; the Options Clearing Corp. Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for the Options New Network Service**

December 3, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 11, 1990, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would amend OCC's schedule of fees for clearing Member services to add a new service, the Options News Network ("ONN" [1]). OCC proposes to charge fees immediately for ONN.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

ONN is an on-line centralized database developed by OCC at the request of its participant exchanges. The database contains informational memoranda and other notices issued by OCC and its participant exchanges for the benefit of Clearing Members as well as other options market participants. In December 1988, OCC began providing

[1] ONN is a trademark of OCC.

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ONN on a pilot basis to a number of Clearing Members at no cost. Participant response has been highly favorable to the pilot, especially with respect to the ease of access to ONN and to timeliness of information contained therein. OCC does not believe that its operation of ONN will affect its systems' capacity to clear options transactions because the ONN database is maintained on a system separate from that which processes Clearing Members' position information.

OCC currently prints and distributes copies of information memoranda to Clearing Members via locked boxes. That distribution method, is inefficient compared to ONN. Moreover, ONN provides access not only to OCC's informational memoranda but also to those to OCC's participant exchanges. ONN additionally contains memoranda issued by OCC's futures subsidiary, the Intermarket Clearing Corporation ("ICC"), and the contract markets for which ICC provides clearing services. Accordingly, OCC has determined to charge a fee to those Clearing Members and exchange participants which elect to access informational memoranda via ONN. The proposed fees for ONN are based upon OCC's costs of developing and operating the service.

In conjunction with ONN, OCC proposes to offer to Clearing Members and exchange participants a sophisticated electronic mail ("E-mail") function which will facilitate communication among subscribing Clearing Members, exchanges, and OCC.[3] The proposed fees for the E-mail function are based upon OCC's costs of developing and operating the service.

The proposed rule change is consistent with section 17A of the Act, as amended, in that it allocates reasonable fees in an equitable manner among OCC's Clearing Members and exchange participants (*i.e.*, the costs of the services will be borne by those using the services).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

[3] Currently, only exchange participants are using the E-mail function. Subsequent to the filing on this proposed rule change, OCC withdrew from this rule filing (letter from Jean M. Cawley, Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission [November 30, 1990]) and submitted as a separate rule filing (File No. SR–OCC–90–13) that portion pertaining to use of the E-mail function by Clearing Members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective on filing pursuant to section 19(b)(3)(A) of the Act and pursuant to Rule 19b–4(e) promulgated thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by OCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–90–12 and should be submitted by December 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–28807 Filed 12–7–90; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[License No. 03/03–0160]**

**First Valley Capital Corporation, License Surrender**

Notice is hereby given that First Valley Capital Corporation, One Bethlehem Plaza, Bethlehem, PA 18018, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). First Valley Capital Corporation was licensed by the Small Business Administration on August 19, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on November 27, 1990 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1990.

**Bernard Kulik,**

*Associate Administrator for Investment.*

[FR Doc. 90–28800 Filed 12–7–90; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

**[Public Notice No. 1300]**

**Secretary of State's Advisory Committee on Private International Law, International Protection of Cultural Property: Draft Convention on the Return of Stolen and Illegally Exported Cultural Objects; Request for Public Comment**

The Department of State has received for comment a preliminary draft convention (multilateral treaty) on the return of stolen or illegally exported cultural objects. The draft convention was prepared under the auspices of the International Institute for the Unification of Private Law (UNIDROIT). The United States is a member state of UNIDROIT, an international organization headquartered in Rome, Italy, which is comprised of 55 member states. UNIDROIT has requested comments from governments by March, 1991 in preparation for a meeting of governmental representatives in May, 1991 to review the draft convention. Comments by interested persons and organizations are being solicited through this notice to assist the Department of State to prepare responses to UNIDROIT's request.

The draft convention, issued as document "UNIDROIT 1990—Study LXX/Doc. 19", contains provisions on two basic subjects: restitution of stolen cultural objects and the return of illegally exported cultural objects. Other provisions cover certain rights of compensation, claims and actions, application of national law and related matters. The draft convention is accompanied by an explanatory report which provides background information and sets forth underlying premises for the approaches taken and alternative solutions that were considered.

In order for the Department of prepare U.S. government comments for UNIDROIT, comments from interested persons and organizations should be received by January 15. Comments should deal with the nature of seriousness of the problems addressed and the effectiveness of the approach taken by the draft convention, as well as the specific provisions of the draft. We may of course propose alternative solutions or different underlying premises for those solutions. It should be noted that the Department of State has not been involved in the preparation of the draft convention, and has taken no position previously with regard to its provisions.

The Department will not focus on whether such a draft Convention, if completed, should be considered for possible United States implementation unless and until the convention proceeds through UNIDROIT to the point of being formally proposed to governments for their adoption. We plan to participate in the preparation of this draft as an UNIDROIT member state in order to ensure, in so far as possible, that its provisions reflect U.S. concerns.

For copies of the draft convention and explanatory report or for additional information, please contact Harold S. Burman, Executive Director of the Secretary of State's Advisory Committee on Private International Law, by writing to the Office of the Legal Adviser, room 402, 2100 K Street, NW., Washington, DC 20037, or by calling direct to (202) 653–9852. Written comments on the draft convention should be forwarded to the same address.

**Peter H. Pfund,**

*Assistant Legal Adviser for Private International Law.*

[FR Doc. 90–28794 Filed 12–7–90; 8:45 am]

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**[Public Notice No. 1301]**

**Overseas Schools Advisory Council; Meeting**

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Thursday, January 24, 1991, at 9:30 a.m. in Conference room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting, chaired by Dr. Ernest L. Boyer, President of Carnegie Foundation for the Advancement of Teaching, will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Access to the State Department is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the office of Dr. Ernest N. Mannino, Department of State, telephone 703–875–7800, prior to January 24. All attendees must use the C Street entrance to the building.

Dated: November 28, 1990.

**Ernest N. Mannino,**

*Executive Secretary, Overseas Schools Advisory Council.*

[FR Doc. 90–28785 Filed 12–7–90; 8:45 am]

BILLING CODE 4710–24–M

## DEPARTMENT OF TRANSPORTATION

**Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 30, 1990.**

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 47285.

*Dated filed:* November 27, 1990.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 26, 1990.

*Description:* Application of Virgin Atlantic Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, requests an amendment to its Foreign Air Carrier Permit to authorize scheduled combination air transportation of passengers, cargo and mail between London (Gatwick) and Boston, Massachusetts commencing May 30, 1991.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 90–28783 Filed 12–7–90; 8:45 am]

BILLING CODE 4910–62–M

**Aviation Proceedings; Agreements Filed During the Week Ended November 30, 1990**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 47285

*Date filed:* November 27, 1990

*Parties:* Members of the International Air Transport Association

*Subject:* Approval of Amendment to IATA Articles of Association

*Proposed Effective Date:* Subject to Departmental Approval

*Docket Number:* 47289

*Date filed:* November 28, 1990

*Parties:* Members of the International Air Transport Association

*Subject:* Middle East-Africa Resolutions R–1 to R–13

*Proposed Effective Date:* April 1, 1991

*Docket Number:* 47290

*Date filed:* November 28, 1990

*Parties:* Members of the International Air Transport Association

*Subject:* TC23 Europe-South Asian Subcontinent Expedited Reso et al.

*Proposed Effective Date:* December 15, 1990

*Docket Number:* 47293

*Date filed:* November 28, 1990

*Parties:* Members of the International Air Transport Association

*Subject:* North Atlantic-Africa Expedited Reso 002h (R–1)

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*Proposed Effective Date:* December 15, 1990

*Docket Number:* 47294

*Date filed:* November 30, 1990

*Parties:* Members of the International Air Transport Association

*Subject:* SNAC/1949 dated November 16, 1990, US-Europe Agreement, Resolution No. 21

*Proposed Effective Date:* December 10, 1990

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 90-28784 Filed 12-7-90; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: December 3, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0014

*Form Number:* None

*Type of Review:* Extension

*Title:* Exclusion From Gross Income for Certain Foster Care Payments

*Description:* Section 131 of the Internal Revenue Code allows a foster care provider of a qualified foster individual to exclude from gross income difficulty of care payments designated as such by the payor, who may be a state, a political subdivision of a state, or an organization described in section 501(c)(3) of the Code.

*Respondents:* State or local governments, Non-profit institutions

*Estimated Number of Respondents:* 60,000

*Estimated Burden Hours Per Response:* 15 minutes

*Frequency of Response:* On occasion

*Estimated Total Reporting Burden:* 15,000 hours

*Clearance Officer:* Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 90-28792 Filed 12-7-90; 8:45 am]

BILLING CODE 4830-01-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 237
Monday, December 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

### FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, December 13, 1990

December 6, 1990.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 13, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW. Washington, DC.

*Item No., Bureau, and Subject*

1—General Counsel—*Title:* Reform of the Commission's Comparative Hearing Process to Expedite the Resolution of Cases (Gen. Docket No. 90-264). *Summary:* The Commission will consider whether to adopt a Report and Order on this issue.

2—Mass Media—*Title:* Amendment of § 73.3525 of the Commission's Rules Regarding Settlement Agreements for Construction Permits (MM Docket No. 90-263). *Summary:* The Commission will consider whether to adopt a Report and Order placing limitations on settlement payments in comparative proceedings involving the licensing of new stations.

3—Mass Media—*Title:* Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates (MM Docket No. 90-4). *Summary:* The Commission will consider whether to revise its effective competition standard for the regulation of basic cable television rates.

4—Private Radio—*Title:* Amendment of the Amateur Radio Service Rules to Make the Service More Accessible to Persons with Handicaps (PR Docket No. 90-356). *Summary:* The Commission will consider whether to exempt handicapped persons from the higher speed telegraphy examinations.

5—Private Radio—*Title:* Amendment of Part 97 of the Commission's Rules Concerning the Establishment of a Codeless Class of Amateur Operator License (PR Docket No. 90-55). *Summary:* The Commission will consider whether to establish a codeless class of amateur operator licenses.

6—Common Carrier—*Title:* In the Matter of Computer III Remand Proceedings: Open Network Architecture (ONA) (CC Docket No. 90-368). *Summary:* The Commission will consider whether to adopt a Report and Order in this proceeding.

7—Common Carrier—*Title:* In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rulemaking and Order in this proceeding.

8—Common Carrier—*Title:* Policies and Rules Concerning Operator Service Providers: Further Notice of Proposed Rulemaking (CC Docket No. 90-313, RM-6787). *Summary:* The Commission will consider whether to adopt a Further Notice proposing rules and initiating proceedings consistent with the Telephone Operator Consumer Services Improvement Act of 1990.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: December 6, 1990.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 90-29003 Filed 12-6-90; 2:30 pm]

BILLING CODE 6712-01-M

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 5, 1990.

**TIME AND DATE:** 10:00 a.m., Wednesday, December 12, 1990.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Lancashire Coal Company*, Docket No. PENN 89-147-R, etc. (Issues include whether the judge erred in holding that demolition of coal preparation structures at a former mine site is subject to the jurisdiction of the Mine Act.)

2. *Mettiki Coal Corporation*, Docket No. YORK 89-6. (Issues include whether the judge erred in finding violations of a roof control plan.)

3. *Eastern Associated Coal Corp.*, Docket No. WEVA 89-198. (Issues include whether the judge erred in finding that a violation of 30 CFR § 75.400 was not significant and substantial and was not caused by an unwarrantable failure.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 90-29017 Filed 12-6-90; 3:33 pm]

BILLING CODE 6735-01-M

### OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

**TIME AND DATE:** 10:00 a.m., Tuesday, December 18, 1990.

**PLACE:** Room 410, 1825 K Street, NW., Washington, D.C. 20006.

**STATUS:** Open Meeting.

**MATTERS TO BE CONSIDERED:** Oral Argument before the Commission in—

*Boise Cascade Corporation*
OSHRC Docket Nos. 89-3097 & 89-3098.

**CONTACT PERSON FOR MORE INFORMATION:** Mrs. Mary Ann Miller, (202) 634-4015.

Dated: December 5, 1990.

Earl R. Ohman, Jr.,

*General Counsel.*

[FR Doc. 90-28941 Filed 12-6-90; 1:34 pm]

BILLING CODE 7600-01-M

### NUCLEAR REGULATORY COMMISSION

**DATE:** Thursday, December 13, 1990.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Thursday, December 13*

*8:30 a.m.*
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule, Part 20—Revised Standards for Protection Against Radiation (Tentative)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492-0292.

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**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: December 5, 1990.

**William M. Hill, Jr.,**

*Office of the Secretary.*

[FR Doc. 90-28868 Filed 12-6-90; 1:37 pm]

BILLING CODE 7590-01-M

**POSTAL SERVICE**

**Board of Governors; Vote to Close Meeting**

At its meeting on December 3, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for January 7, 1991, in Washington, DC. The members will consider the Postal Rate Commission's recommended decision in Docket No. R90-1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

**David F. Harris,**

*Secretary.*

[FR Doc. 90-28942 Filed 12-6-90; 1:35 pm]

BILLING CODE 7715-12-M

**RESOLUTION TRUST CORPORATION**

**Change in Subject Matter of Agency Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation determined, by unanimous vote, that Corporation business required the addition of the following matter for consideration at the closed meeting held at 2:40 p.m. on Tuesday, December 4, 1990. The Board also determined that the item could be considered with less than seven days notice to the public, that the public interest did not require consideration of the matter in a meeting open to public observation, and that no earlier notice of this change was practicable.

Memorandum re: Approval of contractors to perform accounting and data processing services.

[Exemptions (c)(5), (c)(6), (c)(7), and (c)(10)]

The meeting was held in the Board Room on the sixth floor of the Federal Deposit Insurance Corporation Building located at 550 17th Street NW., Washington, DC.

Resolution Trust Corporation.

Dated: December 5, 1990.

**John M. Buckley, Jr.,**

*Executive Secretary.*

[FR Doc. 90-28983 Filed 12-6-90; 1:38 pm]

BILLING CODE 6714-01-M



# Corrections

Federal Register
Vol. 55, No. 237
Monday, December 10, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1205

[CN-90-001]

### Amendment to the Regulations Governing the Cotton Research and Promotion Program

*Correction*

In proposed rule document 90-27206 beginning on page 48242, in the issue of Tuesday, November 20, 1990, make the following corrections:

1. On page 48242, in the third column, in the first complete paragraph, in the second line "condition" should read "conditions".

**§ 1205.515 [Corrected]**

2. On page 48243, in the second column, in § 1205.515(d)(1)(ii), in the sixth line, "procedures" was misspelled.

3. In the same column, in § 1205.515(d)(2), in the sixth line, "marking" should read "marketing".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 275

[Amdt. No. 325]

### Food Stamp Program; Quality Control Claims Adjustments for State Agency Investments

*Correction*

In Proposed rule document 90-27723 beginning on page 49290, in the issue of Tuesday, November 27, 1990, make the following corrections:

1. On page 49291, in the second column, in the third complete paragraph, in the second line, "part" should read "apart". In the last paragraph, in the third line, "JR" should read "HR".

2. On the same page, in the third column, in the second complete paragraph, in the fifth line from the end, delete "those".

3. On page 49292, in the first column, in the last paragraph, in the third line, delete "a".

4. On the same page in the third column, under **Implementation**, in the seventh line, "eligible" was misspelled.

**§ 275.23 [Corrected]**

5. On page 49293, in the second column, in § 275.23(e)(8)(ii)(E), in the second line "he" should read "the".

BILLING CODE 1505-01-D

## GENERAL ACCOUNTING OFFICE

### 4 CFR Parts 91, 92, and 93

### Standards for Waiver of Claims for Erroneous Payments of Pay and Allowances

*Correction*

In proposed rule document 90-28157 beginning on page 49624, in the issue of Friday, November 30, 1990, make the following corrections:

1. On page 49624, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, "Association" should read "Associate".

2. On the same page, in the third column, in the paragraph designated 2, in the third line from the end, "compass" should read "encompass".

**§ 91.4 [Corrected]**

3. On page 49627, in the first column, in § 91.4(c)(3), in the fourth line "amount" should read "account".

**§ 92.1 [Corrected]**

4. On the same page in the third column, in § 92.1, in the fourth line, "unauthorized" should read "authorized".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 61, 63, 65, and 121

[Docket Nos. 25148; Amdts. 61-83, 63-26, 65-33, 121-203]

RIN 2120-AC33

### Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

*Correction*

In rule document 90-27408 beginning on page 48822 in the issue of Wednesday, November 21, 1990, the docket number should read as set forth above.

BILLING CODE 1505-01-D

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Part II

# Reader Aids

Cumulative List of Public Laws—Second Session of the 101st Congress

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## CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for second session of the 101st Congress. The List of Public Laws will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
|---|---|---|---|---|---|
| 101-241 | H.J. Res. 82 | Feb. 12 | 3 | To designate February 8, 1990, as "National Women and Girls in Sports Day" | $1.00 |
| 101-242 | S.J. Res. 217 | Feb. 12 | 5 | To designate the period commencing February 4, 1990, and ending February 10, 1990, and the period commencing February 3, 1991, and ending February 9, 1991, as "National Burn Awareness Week". | $1.00 |
| 101-243 | H.R. 3952 | Feb. 14 | 7 | Urgent Assistance for Democracy in Panama Act of 1990 | $1.00 |
| 101-244 | S.J. Res. 103 | Feb. 14 | 11 | To designate the period commencing February 18, 1990, and ending February 24, 1990, as "National Visiting Nurse Associations Week". | $1.00 |
| 101-245 | S.J. Res. 130 | Feb. 14 | 13 | Designating February 11 through February 17, 1990, as "Vocational-Technical Education Week". | $1.00 |
| 101-246 | H.R. 3792 | Feb. 16 | 15 | Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 | $2.25 |
| 101-247 | H.J. Res. 149 | Feb. 16 | 92 | Designating February 16, 1990, as "Lithuanian Independence Day" | $1.00 |
| 101-248 | S.J. Res. 186 | Feb. 27 | 93 | Designating the week of March 1 through March 7, 1990, as "National Quarter Horse Week". | $1.00 |
| 101-249 | H.R. 150 | Mar. 6 | 94 | Posthumous Citizenship for Active Duty Service Act of 1989 | $1.00 |
| 101-250 | H.R. 2281 | Mar. 6 | 96 | To amend the Elementary and Secondary Education Act of 1965 to extend the authorization for certain school dropout demonstration programs. | $1.00 |
| 101-251 | S.J. Res. 227 | Mar. 13 | 98 | To designate March 11 through March 17, 1990, as "Deaf Awareness Week" | $1.00 |
| 101-252 | S.J. Res. 257 | Mar. 13 | 99 | To designate March 10, 1990, as "Harriet Tubman Day" | $1.00 |
| 101-253 | S. 1016 | Mar. 14 | 100 | To change the name of "Marion Lake", located northwest of Marion, Kansas, to "Marion Reservoir". | $1.00 |
| 101-254 | H.R. 2742 | Mar. 15 | 101 | Library Services and Construction Act Amendments of 1990 | $1.00 |
| 101-255 | H.R. 4010 | Mar. 15 | 114 | To provide the Secretary of Agriculture authority regarding the sale of sterile screwworms | $1.00 |
| 101-256 | S.J. Res. 343 | Mar. 20 | 116 | To designate March 25, 1990, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy". | $1.00 |
| 101-257 | H.R. 2749 | Mar. 20 | 117 | To authorize the conveyance of a parcel of land in Whitney Lake, Texas | $1.00 |
| 101-258 | S.J. Res. 237 | Mar. 27 | 118 | Providing for the commemoration of the 100th anniversary of the birth of Dwight David Eisenhower. | $1.00 |
| 101-259 | H.R. 3311 | Mar. 30 | 121 | To designate the Federal building located at 350 South Main Street in Salt Lake City, Utah, as the "Frank E. Moss United States Courthouse". | $1.00 |
| 101-260 | S. 1091 | Mar. 30 | 122 | United States Coast Guard Bicentennial Medal Act | $1.00 |
| 101-261 | S.J. Res. 229 | Mar. 30 | 123 | To designate April 1990 as "National Prevent-A-Litter Month" | $1.00 |
| 101-262 | S. 2231 | Mar. 31 | 124 | Energy Policy and Conservation Act Extension Amendment of 1990 | $1.00 |
| 101-263 | S. 1521 | Apr. 4 | 125 | To provide for an increase in the maximum rates of basic pay for the police force of the National Zoological Park. | $1.00 |
| 101-264 | S.J. Res. 250 | Apr. 4 | 126 | Designating April 1990 as "National Recycling Month" | $1.00 |
| 101-265 | S.J. Res. 266 | Apr. 4 | 128 | Designating March 1990, as "United States Naval Reserve Month" | $1.00 |
| 101-266 | S.J. Res. 190 | Apr. 5 | 129 | Designating April 9, 1990, as "National Former Prisoners of War Recognition Day" | $1.00 |
| 101-267 | H.J. Res. 500 | Apr. 6 | 130 | To designate April 6, 1990, as "Education Day, U.S.A." | $1.00 |
| 101-268 | H.R. 2692 | Apr. 9 | 132 | To amend the Woodrow Wilson Memorial Act of 1968 to provide that the Secretary of Education and two additional individuals from private life shall be members of the Board of Trustees of the Woodrow Wilson International Center for Scholars. | $1.00 |
| 101-269 | S. 2151 | Apr. 9 | 133 | To permit the transfer of the obsolete submarine U.S.S. Requin to the Carnegie Institute in Pittsburgh, Pennsylvania, before the expiration of the 60-day waiting period that would otherwise be applicable to the transfer. | $1.00 |
| 101-270 | H.R. 4089 | Apr. 10 | 134 | To suspend section 332 of the Agricultural Adjustment Act of 1938 for the 1991 crop of wheat. | $1.00 |
| 101-271 | S. 368 | Apr. 11 | 135 | Federal Energy Regulatory Commission Member Term Act of 1990 | $1.00 |
| 101-272 | S. 1813 | Apr. 18 | 137 | To ensure that funds provided under section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 may be used to acquire land for emergency shelters. | $1.00 |
| 101-273 | S. 1949 | Apr. 18 | 138 | To amend the Labor Management Relations Act of 1947 to permit parties engaged in collective bargaining to bargain over the establishment and administration of trust funds to provide financial assistance for employee housing. | $1.00 |
| 101-274 | H.R. 3966 | Apr. 23 | 139 | To further delay the applicability of certain amendments to the Public Health Service Act that relate to organ procurement organizations. | $1.00 |
| 101-275 | H.R. 1048 | Apr. 23 | 140 | Hate Crime Statistics Act | $1.00 |
| 101-276 | S.J. Res. 242 | Apr. 25 | 143 | Designating the week of April 22 through April 28, 1990, as "National Crime Victims' Rights Week". | $1.00 |
| 101-277 | S. 1066 | Apr. 30 | 143 | To provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission. | $1.00 |
| 101-278 | H.R. 2334 | May 1 | 147 | To redesignate the Post Office located at 300 East Ninth Street in Austin, Texas, as the "Homer Thornberry Judicial Building". | $1.00 |
| 101-279 | S.J. Res. 258 | May 1 | 148 | To authorize the President to proclaim the last Friday of April 1990 as "National Arbor Day". | $1.00 |
| 101-280 | H.J. Res. 553 | May 4 | 149 | To make technical changes in the Ethics Reform Act of 1989 | $1.00 |
| 101-281 | S. 2539 | May 4 | 164 | To amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program, and for other purposes. | $1.00 |
| 101-282 | S.J. Res. 236 | May 8 | 167 | Designating May 6 through May 12, 1990, as "Be Kind to Animals and National Pet Week". | $1.00 |
| 101-283 | H.R. 3602 | May 9 | 168 | To designate May 1990 as "Asian/Pacific American Heritage Month" | $1.00 |
| 101-284 | S.J. Res. 155 | May 9 | 169 | Designating the third week in May 1990 as "National Tourism Week" | $1.00 |
| 101-285 | S.J. Res. 230 | May 9 | 170 | To designate the period commencing on May 6, 1990, and ending on May 12, 1990, as "National Drinking Water Week". | $1.00 |



| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
|---|---|---|---|---|---|
| 101-286 | H.R. 1011 | May 9 | 171 | Wildfire Disaster Recovery Act of 1989 | $1.00 |
| 101-287 | H.J. Res. 546 | May 10 | 177 | Designating May 13, 1990, as "Infant Mortality Awareness Day" | $1.00 |
| 101-288 | S. 1485 | May 10 | 178 | To grant the consent of Congress to the Quad Cities Interstate Metropolitan Authority Compact entered into between the States of Illinois and Iowa. | $1.00 |
| 101-289 | S.J. Res. 224 | May 10 | 182 | To designate the month of May 1990, as "National Trauma Awareness Month" | $1.00 |
| 101-290 | S.J. Res. 241 | May 10 | 183 | To designate the week of May 6, 1990 through May 13, 1990, as "Jewish Heritage Week". | $1.00 |
| 101-291 | H.R. 922 | May 17 | 184 | To designate the building located at 1515 Sam Houston Street in Liberty, Texas, as the "M.P. Daniel and Thomas F. Calhoon, Senior, Post Office Building". | $1.00 |
| 101-292 | H.R. 1472 | May 17 | 185 | To establish the Grand Island National Recreation Area in the State of Michigan, and for other purposes. | $1.00 |
| 101-293 | H.R. 4637 | May 17 | 192 | To amend Public Law 101-86 to eliminate the 6-month limitation on the period for which civilian and military retirees may serve as temporary employees, in connection with the 1990 decennial census of population, without being subject to certain offsets from pay or other benefits. | $1.00 |
| 101-294 | H.J. Res. 453 | May 17 | 193 | Designating May 1990 as "National Digestive Disease Awareness Month" | $1.00 |
| 101-295 | H.J. Res. 490 | May 17 | 195 | Commemorating May 18, 1990, as the 25th anniversary of Head Start | $1.00 |
| 101-296 | S. 1853 | May 17 | 197 | To award a congressional gold medal to Laurance Spelman Rockefeller | $1.00 |
| 101-297 | H.R. 2690 | May 22 | 200 | To designate the Federal Building and United States Courthouse located at 750 Missouri Avenue in East St. Louis, Illinois, as the "Melvin Price Federal Building and United States Courthouse". | $1.00 |
| 101-298 | S. 993 | May 22 | 201 | Biological Weapons Anti-Terrorism Act of 1989 | $1.00 |
| 101-299 | S.J. Res. 275 | May 23 | 204 | Designating May 13, 1990, as the "National Day in Support of Freedom and Human Rights in China and Tibet". | $1.00 |
| 101-300 | S. 2300 | May 24 | 205 | To provide financial assistance to the Simon Wiesenthal Center in Los Angeles, California, for the education programs of the Museum of Tolerance. | $1.00 |
| 101-301 | S. 1846 | May 24 | 206 | To make miscellaneous amendments to Indian laws, and for other purposes | $1.00 |
| 101-302 | H.R. 4404 | May 25 | 213 | Dire Emergency Supplemental Appropriations for Disaster Assistance, Food Stamps, Unemployment Compensation Administration, and Other Urgent Needs, and Transfers, and Reducing Funds Budgeted for Military Spending Act of 1990. | 1.25 |
| 101-303 | H.R. 1805 | May 29 | 250 | To amend title 5, United States Code, to allow Federal annuitants to make contributions for health benefits through direct payments rather than through annuity withholdings if the annuity is insufficient to cover the required withholdings, and for other purposes. | $1.00 |
| 101-304 | H.R. 3961 | May 29 | 252 | To redesignate the Federal building at 1800 5th Avenue, North in Birmingham, Alabama, as the "Robert S. Vance Federal Building and United States Courthouse". | $1.00 |
| 101-305 | H.R. 3610 | May 30 | 253 | 1992 National Assessment of Chapter 1 Act | $1.00 |
| 101-306 | H.R. 644 | June 6 | 260 | East Fork of the Jemez River and the Pecos River Wild and Scenic Rivers Addition Act of 1990. | $1.00 |
| 101-307 | S.J. Res. 231 | June 6 | 262 | To designate the week of June 10, 1990 through June 16, 1990, as "State-Supported Homes for Veterans Week". | $1.00 |
| 101-308 | S.J. Res. 267 | June 6 | 263 | To authorize and request the President to designate May 1990 as "National Physical Fitness and Sports Month". | $1.00 |
| 101-309 | S.J. Res. 251 | June 18 | 264 | Designating "Baltic Freedom Day" | $1.00 |
| 101-310 | H.J. Res. 516 | June 18 | 266 | To designate the week beginning June 10, 1990, as "National Scleroderma Awareness Week". | $1.00 |
| 101-311 | H.R. 4612 | June 25 | 267 | To amend title 11 of the United States Code regarding swap agreements and forward contracts. | $1.00 |
| 101-312 | S. 2700 | June 25 | 271 | To authorize the Secretary of Veterans Affairs to proceed with a proposed administrative reorganization of the regional field offices of the Veterans Health Services and Research Administration of the Department of Veterans Affairs, notwithstanding the notice-and-wait provisions in section 210(b) of title 38, United States Code. | $1.00 |
| 101-313 | S. 266 | June 27 | 272 | To establish Petroglyph National Monument and Pecos National Historical Park in the State of New Mexico, and for other purposes. | $1.00 |
| 101-314 | S.J. Res. 245 | June 28 | 281 | Designating July 3, 1990, as "Idaho Centennial Day" | $1.00 |
| 101-315 | H.J. Res. 575 | June 28 | 282 | To designate June 25, 1990, as "Korean War Remembrance Day" | $1.00 |
| 101-316 | S.J. Res. 264 | June 28 | 284 | To commemorate the 50th anniversary of the National Sheriffs' Association | $1.00 |
| 101-317 | S.J. Res. 246 | June 28 | 285 | Calling upon the United Nations to repeal General Assembly Resolution 3379 | $1.00 |
| 101-318 | H.R. 1622 | July 3 | 287 | Copyright Fees and Technical Amendments Act of 1989 | $1.00 |
| 101-319 | H.R. 3046 | July 3 | 290 | Copyright Royalty Tribunal Reform and Miscellaneous Pay Act of 1989 | $1.00 |
| 101-320 | H.R. 3545 | July 3 | 292 | To amend the Chesapeake and Ohio Canal Development Act to make certain changes relating to the Chesapeake and Ohio Canal National Historical Park Commission. | $1.00 |
| 101-321 | H.R. 3834 | July 3 | 293 | Selma to Montgomery National Trail Study Act of 1989 | $1.00 |
| 101-322 | H.R. 5075 | July 6 | 295 | Amtrak Reauthorization and Improvement Act of 1990 | $1.00 |
| 101-323 | H.J. Res. 555 | July 6 | 299 | To commemorate the bicentennial of the enactment of the law which provided civil government for the territory from which the State of Tennessee was formed. | $1.00 |
| 101-324 | S. 1999 | July 6 | 300 | To amend the Higher Education Amendments of 1986 to clarify the administrative procedures of the National Commission on Responsibilities for Financing Postsecondary Education, and for other purposes. | $1.00 |
| 101-325 | S.J. Res. 271 | July 6 | 302 | To designate July 10, 1990 as "Wyoming Centennial Day" | $1.00 |
| 101-326 | S.J. Res. 315 | July 6 | 304 | For the designation of July 22, 1990, as "Rose Fitzgerald Kennedy Family Appreciation Day". | $1.00 |
| 101-327 | S.J. Res. 320 | July 6 | 306 | Designating July 2, 1990, as "National Literacy Day" | $1.00 |
| 101-328 | S. 2124 | July 6 | 308 | National Space Council Authorization Act of 1990 | $1.00 |
| 101-329 | S.J. Res. 276 | July 6 | 310 | Designating July 18, 1990, as "Flight Attendant Safety Professionals' Day" | $1.00 |
| 101-330 | H.R. 5149 | July 12 | 311 | To amend the Child Nutrition Act of 1966 to provide that the Secretary of Agriculture may not consider, in allocating amounts to a State agency under the special supplemental food program for women, infants, and children for the fiscal year 1991, any amounts returned by such agency for reallocation during the fiscal year 1990 and to allow amounts allocated to a State for such program for the fiscal year 1991 to be expended for expenses incurred in the fiscal year 1990. | $1.00 |
| 101-331 | H.J. Res. 599 | July 13 | 312 | To designate July 1, 1990, as "National Ducks and Wetlands Day" | $1.00 |
| 101-332 | H.R. 1029 | July 16 | 313 | Mount Rushmore Commemorative Coin Act | $1.00 |

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| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
|---|---|---|---|---|---|
| 101-353 | H.R. 4252 | July 16 | 316 | To authorize the Secretary of the Air Force to purchase certain property at Pease Air Force Base, New Hampshire. | $1.00 |
| 101-354 | H.R. 4525 | July 16 | 318 | Ethics in Government Act Amendment of 1990 | $1.00 |
| 101-355 | H.R. 2514 | July 17 | 319 | Thrift Savings Plan Technical Amendments Act of 1990 | $1.00 |
| 101-356 | S. 933 | July 26 | 327 | Americans with Disabilities Act of 1990 | $1.50 |
| 101-357 | H.R. 2844 | July 27 | 379 | To improve the ability of the Secretary of the Interior to properly manage certain resources of the National Park System. | $1.00 |
| 101-358 | S.J. Res. 276 | July 27 | 382 | Designating the week beginning July 22, 1990, as "Lyme Disease Awareness Week" | $1.00 |
| 101-359 | S.J. Res. 75 | July 31 | 383 | Relating to NASA and the International Space Year | $1.00 |
| 101-360 | S.J. Res. 281 | July 31 | 385 | To designate September 13, 1990, as "National D.A.R.E. Day" | $1.00 |
| 101-361 | S.J. Res. 338 | July 31 | 387 | To designate August 1, 1990, as "Helsinki Human Rights Day" | $1.00 |
| 101-362 | H.J. Res. 591 | Aug. 2 | 390 | Designating the third Sunday of August of 1990 as "National Senior Citizens Day" | $1.00 |
| 101-363 | H.J. Res. 577 | Aug. 3 | 391 | Designating the month of November 1990 as "National American Indian Heritage Month" | $1.00 |
| 101-364 | H.R. 2940 | Aug. 6 | 393 | To establish the Tumacacori National Historical Park in the State of Arizona | $1.00 |
| 101-365 | H.J. Res. 625 | Aug. 7 | 395 | Designating August 6, 1990, as "Voting Rights Celebration Day" | $1.00 |
| 101-366 | H.J. Res. 548 | Aug. 9 | 397 | Designating the week of August 19 through 25, 1990, as "National Agricultural Research Week". | $1.00 |
| 101-367 | S.J. Res. 77 | Aug. 9 | 399 | Recognizing the National Fallen Firefighters' Memorial at the National Fire Academy in Emmitsburg, Maryland, as the official national memorial to volunteer and career firefighters who die in the line of duty. | $1.00 |
| 101-368 | S.J. Res. 256 | Aug. 9 | 399 | To designate the week of October 7, 1990, through October 13, 1990, as "Mental Illness Awareness Week". | $1.00 |
| 101-369 | S.J. Res. 315 | Aug. 9 | 401 | To designate the second Sunday in October of 1990 as "National Children's Day" | $1.00 |
| 101-370 | H.R. 5360 | Aug. 9 | 403 | To provide for a temporary increase in the public debt limit | $1.00 |
| 101-371 | H.R. 5432 | Aug. 9 | 404 | To extend the expiration date of the Defense Production Act of 1950 | $1.00 |
| 101-372 | H.R. 293 | Aug. 10 | 405 | Fire Safe Cigarette Act of 1990 | $1.00 |
| 101-373 | H.R. 3049 | Aug. 10 | 408 | To designate the Agricultural Research Service, United States Department of Agriculture, animal health research building in Clay Center, Nebraska, as the "Virginia D. Smith Animal Health Research Laboratory". | $1.00 |
| 101-374 | H.R. 4780 | Aug. 10 | 409 | Breast and Cervical Cancer Mortality Prevention Act of 1990 | $1.00 |
| 101-375 | H.J. Res. 457 | Aug. 10 | 416 | Designating September 21, 1990, as "National POW/MIA Recognition Day", and recognizing the National League of Families POW/MIA flag. | $1.00 |
| 101-376 | S. 1046 | Aug. 10 | 417 | Merrimack River Study Act of 1990 | $1.00 |
| 101-377 | S. 1524 | Aug. 10 | 418 | Pemigewasset River Study Act of 1989 | $1.00 |
| 101-378 | S. 1543 | Aug. 10 | 419 | To authorize the Board of Regents of Gunston Hall to establish a memorial to George Mason in the District of Columbia. | $1.00 |
| 101-379 | S. 1975 | Aug. 10 | 420 | To redesignate the Calamus Dam and Reservoir authorized under the Reclamation Project Authorization Act of 1972 as the Virginia Smith Dam and Calamus Lake Recreation Area. | $1.00 |
| 101-380 | S. 2952 | Aug. 10 | 421 | Energy Policy and Conservation Act Short-Term Extension Amendment of 1990 | $1.00 |
| 101-381 | S.J. Res. 296 | Aug. 10 | 422 | Designating August 7, 1990, as "National Neighborhood Crime Watch Day" | $1.00 |
| 101-382 | S.J. Res. 343 | Aug. 10 | 423 | To designate August 13 through August 19, 1990, as "Home Health Aide Week" | $1.00 |
| 101-383 | H.R. 4972 | Aug. 14 | 424 | National Advisory Council on the Public Service Act of 1990 | $1.00 |
| 101-384 | H.R. 78 | Aug. 15 | 428 | To amend the Wild and Scenic Rivers Act to study the eligibility of the St. Marys River in the States of Florida and Georgia for potential addition to the wild and scenic rivers system. | $1.00 |
| 101-385 | H.R. 1159 | Aug. 15 | 429 | Juan Bautista de Anza National Historic Trail Act | $1.00 |
| 101-386 | H.R. 1199 | Aug. 15 | 430 | Department of Veterans Affairs Nurse Pay Act of 1990 | $1.00 |
| 101-387 | H.R. 4035 | Aug. 15 | 445 | To designate the Federal building located at 777 Sonoma Avenue in Santa Rosa, California, as the "John F. Shea Federal Building". | $1.00 |
| 101-388 | H.R. 4273 | Aug. 15 | 446 | Tuberculosis Prevention Amendments of 1990 | $1.00 |
| 101-389 | H.R. 4314 | Aug. 15 | 448 | To implement the Inter-American Convention on International Commercial Arbitration | $1.00 |
| 101-390 | H.R. 5131 | Aug. 15 | 451 | To amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program, and for other purposes. | $1.00 |
| 101-391 | H.J. Res. 515 | Aug. 15 | 453 | Designating the week beginning September 16, 1990, as "National Give Kids a Fighting Chance Week". | $1.00 |
| 101-392 | H.J. Res. 554 | Aug. 15 | 454 | Designating January 6, 1991 through January 12, 1991 as "National Law Enforcement Training Week". | $1.00 |
| 101-393 | H.J. Res. 427 | Aug. 15 | 455 | Designating Labor Day weekend, September 1 through September 3, 1990, as "National Drive for Life Weekend". | $1.00 |
| 101-394 | S. 2461 | Aug. 15 | 458 | Drug Abuse Treatment Waiting Period Reduction Amendments of 1990 | $1.00 |
| 101-395 | S.J. Res. 249 | Aug. 15 | 460 | To designate the month of September 1990 as "International Visitors' Month" | $1.00 |
| 101-396 | H.R. 3080 | Aug. 17 | 461 | Civil Service Due Process Amendments | $1.00 |
| 101-397 | H.R. 3248 | Aug. 17 | 464 | To revise the boundary of Gettysburg National Military Park in the Commonwealth of Pennsylvania, and for other purposes. | $1.00 |
| 101-398 | S. 998 | Aug. 17 | 468 | To enroll twenty individuals under the Alaska Native Claims Settlement Act | $1.00 |
| 101-399 | H.R. 496 | Aug. 18 | 473 | Indian Law Enforcement Reform Act | $1.00 |
| 101-400 | H.R. 1465 | Aug. 18 | 484 | Oil Pollution Act of 1990 | $2.50 |
| 101-401 | S. 2240 | Aug. 19 | 576 | Ryan White Comprehensive AIDS Resources Emergency Act of 1990 | $1.50 |
| 101-402 | H.R. 1594 | Aug. 20 | 629 | Customs and Trade Act of 1990 | $2.75 |
| 101-403 | S. 2068 | Sept. 15 | 727 | Energy Policy and Conservation Act Amendments of 1990 | $1.00 |
| 101-404 | S. 3053 | Sept. 18 | 737 | To amend title 39, United States Code, to allow free mailing privileges to be extended to members of the Armed Forces while engaged in temporary military operations under arduous circumstances. | $1.00 |
| 101-405 | H.J. Res. 668 | Sept. 20 | 736 | Designating the week beginning September 16, 1990, as "Emergency Medical Services Week". | $1.00 |
| 101-406 | S. 2567 | Sept. 20 | 739 | To amend the Act of June 20, 1910, to clarify in the State of New Mexico authority to exchange lands granted by the United States in trust, and to validate prior land exchanges. | $1.00 |
| 101-407 | S.J. Res. 291 | Sept. 20 | 741 | To designate the period commencing September 9, 1990, and ending on September 15, 1990, as "National Historically Black Colleges Week". | $1.00 |
| 101-408 | S.J. Res. 299 | Sept. 20 | 742 | To designate October 1990 as "Polish American Heritage Month" | $1.00 |



| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
|---|---|---|---|---|---|
| 101-389 | S.J. Res. 309 | Sept. 20 | 744 | Designating the month of October 1990 as "Crime Prevention Month" | $1.00 |
| 101-390 | S.J. Res. 279 | Sept. 21 | 745 | To designate the week of September 16, 1990, through September 22, 1990, as "National Rehabilitation Week". | $1.00 |
| 101-391 | H.R. 94 | Sept. 25 | 747 | Hotel and Motel Fire Safety Act of 1990 | $1.00 |
| 101-392 | H.R. 7 | Sept. 25 | 753 | Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 | $2.50 |
| 101-393 | S.J. Res. 313 | Sept. 25 | 844 | Designating October 3, 1990, as "National Teacher Appreciation Day" | $1.00 |
| 101-394 | S.J. Res. 331 | Sept. 25 | 845 | To designate the week of September 23 through 29, 1990, as "Religious Freedom Week" | $1.00 |
| 101-395 | S.J. Res. 333 | Sept. 25 | 847 | To designate the week of September 30, 1990, through October 6, 1990, as "National Job Skills Week". | $1.00 |
| 101-396 | H.R. 3255 | Sept. 28 | 848 | Federal Communications Commission Authorization Act of 1990 | $1.00 |
| 101-397 | H.R. 1101 | Sept. 28 | 852 | To extend the authorization of appropriations for the Water Resources Research Act of 1984 through the end of fiscal year 1994. | $1.00 |
| 101-398 | H.R. 2174 | Sept. 28 | 856 | Mississippi River Corridor Study Commission Act of 1988 | $1.00 |
| 101-399 | H.R. 4501 | Sept. 28 | 860 | To provide for the acquisition of the William Johnson House and its addition to the Natchez National Historical Park, and for other purposes. | $1.00 |
| 101-400 | S. 950 | Sept. 29 | 861 | Route 66 Study Act of 1990 | $1.00 |
| 101-401 | S. 2205 | Sept. 29 | 863 | Maine Wilderness Act of 1990 | $1.00 |
| 101-402 | H.R. 5747 | Oct. 1 | 866 | To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. | $1.00 |
| 101-403 | H.J. Res. 655 | Oct. 1 | 867 | Making continuing appropriations for the fiscal year 1991, supplemental appropriations for "Operation Desert Shield" for the fiscal year 1990, and for other purposes. | $1.00 |
| 101-404 | H.R. 2761 | Oct. 2 | 875 | United Services Organization's 50th Anniversary Commemorative Coin Act | $1.00 |
| 101-405 | H.R. 5755 | Oct. 2 | 878 | To extend the temporary increase in the public debt limit | $1.00 |
| 101-406 | H.R. 4962 | Oct. 3 | 879 | 1992 Olympic Commemorative Coin Act | $1.00 |
| 101-407 | H.R. 5725 | Oct. 4 | 882 | To extend the expiration date of the Defense Production Act of 1950 | $1.00 |
| 101-408 | S. 2075 | Oct. 4 | 883 | Indian Environmental Regulatory Enhancement Act of 1990 | $1.00 |
| 101-409 | H.R. 4773 | Oct. 5 | 885 | White House Conference on Small Business Authorization Act | $1.00 |
| 101-410 | S. 535 | Oct. 5 | 890 | Federal Civil Penalties Inflation Adjustment Act of 1990 | $1.00 |
| 101-411 | S. 3155 | Oct. 6 | 893 | To extend the expiration date of the Defense Production Act of 1950 to October 20, 1990 | $1.00 |
| 101-412 | H.J. Res. 666 | Oct. 9 | 894 | Making further continuing appropriations for the fiscal year 1991, and for other purposes | $1.00 |
| 101-413 | H.J. Res. 469 | Oct. 11 | 896 | To designate October 6, 1990, as "German-American Day" | $1.00 |
| 101-414 | H.J. Res. 603 | Oct. 11 | 899 | To designate the month of October 1990 as "Country Music Month" | $1.00 |
| 101-415 | S.J. Res. 301 | Oct. 11 | 900 | Designating October 1990 as "National Breast Cancer Awareness Month" | $1.00 |
| 101-416 | H.R. 5843 | Oct. 12 | 902 | To grant a temporary extension on the authority under which the Government may accept the voluntary services of private-sector executives; to clarify the status of Federal employees assigned to private-sector positions while participating in an executive exchange program; and for other purposes. | $1.00 |
| 101-417 | H.J. Res. 398 | Oct. 12 | 904 | To commemorate the centennial of the creation by Congress of Yosemite National Park | $1.00 |
| 101-418 | H.J. Res. 462 | Oct. 12 | 906 | Designating March 1991 as "Irish-American Heritage Month" | $1.00 |
| 101-419 | S. 1736 | Oct. 12 | 907 | To convey certain Oregon and California Railroad Grant Lands in Josephine County, Oregon, to the Rogue Community College District, and for other purposes. | $1.00 |
| 101-420 | S. 2565 | Oct. 12 | 908 | To amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances. | $1.00 |
| 101-421 | H.R. 3007 | Oct. 12 | 909 | Drug and Alcohol Dependent Offenders Treatment Act of 1990 | $1.00 |
| 101-422 | H.R. 3897 | Oct. 12 | 910 | To authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes. | $1.00 |
| 101-423 | S.J. Res. 57 | Oct. 12 | 912 | To establish a national policy on permanent papers | $1.00 |
| 101-424 | S.J. Res. 181 | Oct. 12 | 914 | To establish calendar year 1992 as the "Year of Clean Water" | $1.00 |
| 101-425 | H.R. 1243 | Oct. 15 | 915 | Department of Energy Metal Casting Competitiveness Research Act of 1990 | $1.00 |
| 101-426 | H.R. 2372 | Oct. 15 | 920 | Radiation Exposure Compensation Act | $1.00 |
| 101-427 | S. 2806 | Oct. 15 | 927 | To redesignate The National System of Interstate and Defense Highways as The Dwight D. Eisenhower System of Interstate and Defense Highways. | $1.00 |
| 101-428 | H.R. 5841 | Oct. 15 | 928 | Capitol Police Retirement Act | $1.00 |
| 101-429 | S. 647 | Oct. 15 | 951 | Securities Enforcement Remedies and Penny Stock Reform Act of 1990 | $1.00 |
| 101-430 | S. 1230 | Oct. 15 | 956 | To authorize the acquisition of additional lands for inclusion in the Knife River Indian Villages National Historic Site, and for other purposes. | $1.00 |
| 101-431 | S. 1974 | Oct. 15 | 960 | Television Decoder Circuitry Act of 1990 | $1.00 |
| 101-432 | H.R. 3657 | Oct. 16 | 963 | Market Reform Act of 1990 | $1.00 |
| 101-433 | S. 1511 | Oct. 16 | 978 | Older Workers Benefit Protection Act | $1.00 |
| 101-434 | H.R. 435 | Oct. 17 | 985 | To amend the Appalachian Regional Development Act of 1965 to include Columbiana County, Ohio, as part of the Appalachian region. | $1.00 |
| 101-435 | H.R. 971 | Oct. 17 | 986 | Telephone Operator Consumer Services Improvement Act of 1990 | $1.00 |
| 101-436 | H.R. 2909 | Oct. 17 | 992 | To provide for the conveyance of certain lands to the State of California, and for other purposes. | $1.00 |
| 101-437 | H.R. 1677 | Oct. 18 | 996 | Children's Television Act of 1990 | $1.00 |
| 101-438 | H.R. 4756 | Oct. 18 | 1001 | Rio Grande American Canal Extension Act of 1990 | $1.00 |
| 101-439 | H.J. Res. 602 | Oct. 18 | 1004 | Designating October 1990 as "National Domestic Violence Awareness Month" | $1.00 |
| 101-440 | S. 247 | Oct. 18 | 1006 | State Energy Efficiency Programs Improvement Act of 1990 | $1.00 |
| 101-441 | S. 630 | Oct. 18 | 1017 | To amend Public Law 99-647, establishing the Blackstone River Valley National Heritage Corridor Commission, to authorize the Commission to take immediate action in furtherance of its purposes and to increase the authorization of appropriations for the Commission. | $1.00 |
| 101-442 | S. 2437 | Oct. 18 | 1019 | To authorize the acquisition of certain lands in the States of Louisiana and Mississippi for inclusion in the Vicksburg National Military Park, to improve the management of certain public lands in the State of Minnesota, and for other purposes. | $1.00 |
| 101-443 | H.R. 3468 | Oct. 19 | 1026 | Connecticut Coastal Protection Act of 1990 | $1.00 |
| 101-444 | H.J. Res. 677 | Oct. 19 | 1030 | Making further continuing appropriations for the fiscal year 1991, and for other purposes | $1.00 |
| 101-445 | H.R. 1608 | Oct. 22 | 1034 | National Nutrition Monitoring and Related Research Act of 1990 | $1.00 |
| 101-446 | H.R. 4522 | Oct. 22 | 1045 | Firefighters' Safety Study Act | $1.00 |
| 101-447 | H.R. 4593 | Oct. 22 | 1047 | San Carlos Mineral Strip Act of 1990 | $1.00 |
| 101-448 | H.R. 4065 | Oct. 22 | 1048 | To designate the Federal building located at 51 Southwest 1st Avenue in Miami, Florida, as the "Claude Pepper Federal Building". | $1.00 |

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| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
|---|---|---|---|---|---|
| 101-449 | H.R. 5070 | Oct. 22 | 1059 | To amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration and other services necessary for the John F. Kennedy Center for the Performing Arts, and for other purposes. | $1.00 |
| 101-450 | S.J. Res. 304 | Oct. 22 | 1062 | To designate October 17, 1990, as "National Drug-Free Schools and Communities Education and Awareness Day". | $1.00 |
| 101-451 | S.J. Res. 317 | Oct. 22 | 1063 | To designate the week of October 14, 1990, through October 20, 1990, as "National Radon Action Week". | $1.00 |
| 101-452 | H.R. 3787 | Oct. 24 | 1064 | Chehalis River Basin Fishery Resources Study and Restoration Act of 1990 | $1.00 |
| 101-453 | H.R. 4279 | Oct. 24 | 1068 | Cash Management Improvement Act of 1990 | $1.00 |
| 101-454 | S. 2017 | Oct. 24 | 1083 | Eisenhower Exchange Fellowship Act of 1990 | $1.00 |
| 101-455 | S. 2640 | Oct. 24 | 1087 | To authorize the Board of Regents of the Smithsonian Institution to plan, design, construct, and equip space in the East Court of the National Museum of Natural History building, and for other purposes. | $1.00 |
| 101-456 | S. 3046 | Oct. 24 | 1088 | To redesignate the Federal building located at 1 Bowling Green in New York, New York, as the "Alexander Hamilton United States Custom House". | $1.00 |
| 101-457 | S. 3127 | Oct. 24 | 1089 | To designate the Department of Veterans Affairs Medical Center in Albany, New York, as the "Samuel S. Stratton Department of Veterans Affairs Medical Center". | $1.00 |
| 101-458 | S.J. Res. 342 | Oct. 24 | 1070 | Designating October 1990 as "Ending Hunger Month" | $1.00 |
| 101-459 | S.J. Res. 346 | Oct. 24 | 1071 | To designate October 20 through 28, 1990, as "National Red Ribbon Week for a Drug-Free America". | $1.00 |
| 101-460 | S.J. Res. 349 | Oct. 24 | 1074 | Designating October 1990 as "Italian-American Heritage and Culture Month" | $1.00 |
| 101-461 | H.J. Res. 681 | Oct. 25 | 1075 | Making further continuing appropriations for the fiscal year 1991, and for other purposes | $1.00 |
| 101-462 | H.R. 4757 | Oct. 25 | 1079 | To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police. | $1.00 |
| 101-463 | H.J. Res. 214 | Oct. 25 | 1080 | Designating the week of October 22 through October 28, 1990, as "Eating Disorders Awareness Week". | $1.00 |
| 101-464 | H.J. Res. 518 | Oct. 25 | 1081 | Designating October 13 through 20, 1990, as "American Textile Industry Bicentennial Week". | $1.00 |
| 101-465 | S.J. Res. 156 | Oct. 25 | 1082 | Designating October 21 through October 27, 1990, as "World Population Awareness Week". | $1.00 |
| 101-466 | H.J. Res. 662 | Oct. 27 | 1084 | Waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress. | $1.00 |
| 101-467 | H.J. Res. 667 | Oct. 29 | 1086 | Making further continuing appropriations for the fiscal year 1991, and for other purposes | $1.00 |
| 101-468 | S.J. Res. 270 | Oct. 30 | 1088 | To designate the period commencing February 17, 1991, and ending February 23, 1991, as "National Visiting Nurse Associations Week". | $1.00 |
| 101-469 | S.J. Res. 323 | Oct. 30 | 1090 | Designating November 11 through 17, 1990, as "Geography Awareness Week" | $1.00 |
| 101-470 | S.J. Res. 347 | Oct. 30 | 1092 | Designating April 7 through 13, 1991, as "National County Government Week" | $1.00 |
| 101-471 | S.J. Res. 351 | Oct. 30 | 1093 | To designate the month of May, 1991 as "National Trauma Awareness Month" | $1.00 |
| 101-472 | S.J. Res. 362 | Oct. 30 | 1094 | To designate the period commencing on November 18, 1990, and ending on November 24, 1990, as "National Adoption Week". | $1.00 |
| 101-473 | S.J. Res. 366 | Oct. 30 | 1096 | To designate March 30, 1991, as "National Doctors Day" | $1.00 |
| 101-474 | H.R. 4174 | Oct. 30 | 1097 | Administrative Office of the United States Courts Personnel Act of 1990 | $1.00 |
| 101-475 | H.R. 5579 | Oct. 30 | 1102 | To amend section 29(w) of the Mineral Leasing Act, and for other purposes | $1.00 |
| 101-476 | S. 1824 | Oct. 30 | 1103 | Education of the Handicapped Act Amendments of 1990 | $1.50 |
| 101-477 | S. 2167 | Oct. 30 | 1152 | To reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act. | $1.00 |
| 101-478 | S. 3091 | Oct. 30 | 1157 | To amend the Act incorporating the American Legion so as to redefine eligibility for membership therein. | $1.00 |
| 101-479 | H.R. 3888 | Oct. 31 | 1158 | To allow a certain parcel of land in Rockingham County, Virginia, to be used for a child care center. | $1.00 |
| 101-480 | H.R. 5748 | Oct. 31 | 1160 | American University Incorporation Amendments Act of 1990 | $1.00 |
| 101-481 | H.J. Res. 519 | Oct. 31 | 1162 | Designating August 29, 1990, as "National Sarcoidosis Awareness Day" | $1.00 |
| 101-482 | H.J. Res. 566 | Oct. 31 | 1163 | Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 19, 1990, as "National Military Families Recognition Day". | $1.00 |
| 101-483 | H.J. Res. 587 | Oct. 31 | 1165 | Committing to the private sector the responsibility for support of the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes. | $1.00 |
| 101-484 | S. 1747 | Oct. 31 | 1167 | Ponca Restoration Act | $1.00 |
| 101-485 | S. 2059 | Oct. 31 | 1171 | Weir Farm National Historic Site Establishment Act of 1990 | $1.00 |
| 101-486 | S. 2203 | Oct. 31 | 1174 | Zuni Land Conservation Act of 1990 | $1.00 |
| 101-487 | S. 3032 | Oct. 31 | 1177 | To designate the planned Department of Veterans Affairs Medical Center in Honolulu, Hawaii, as the "Spark M. Matsunaga Department of Veterans Affairs Medical Center". | $1.00 |
| 101-488 | S. 3216 | Oct. 31 | 1178 | To designate the Department of Veterans Affairs Medical Center in Charleston, South Carolina, as the "Ralph H. Johnson Department of Veterans Affairs Medical Center". | $1.00 |
| 101-489 | S.J. Res. 293 | Oct. 31 | 1179 | To designate November 16, 1990, as "National Philanthropy Day" | $1.00 |
| 101-490 | S.J. Res. 307 | Oct. 31 | 1180 | Designating November 11 through November 17, 1990, as "National Women Veterans Recognition Week". | $1.00 |
| 101-491 | S.J. Res. 324 | Oct. 31 | 1181 | Designating June 2 through 8, 1991, as a "Week for the National Observance of the 50th Anniversary of World War II". | $1.00 |
| 101-492 | S.J. Res. 353 | Oct. 31 | 1182 | To designate September of 1991 as "National Rice Month" | $1.00 |
| 101-493 | H.R. 5209 | Oct. 31 | 1184 | Drug and Household Substance Mailing Act of 1990 | $1.00 |
| 101-494 | H.R. 5833 | Oct. 31 | 1185 | To provide for the temporary extension of the certain laws relating to housing and community development. | $1.00 |
| 101-495 | S. 2737 | Oct. 31 | 1187 | Korean War Veterans Memorial Thirty-Eighth Anniversary Commemorative Coin Act | $1.00 |
| 101-496 | S. 2753 | Oct. 31 | 1191 | Developmental Disabilities Assistance and Bill of Rights Act of 1990 | $1.00 |
| 101-497 | S.J. Res. 398 | Oct. 31 | 1205 | Waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990. | $1.00 |
| 101-498 | H.R. 4111 | Nov. 2 | 1207 | Strategic and Critical Minerals Act of 1990 | $1.00 |
| 101-499 | S. 2846 | Nov. 2 | 1209 | To authorize and direct the Secretary of the Interior to conduct a study of the feasibility of establishing a unit of the National Park System to interpret and commemorate the origins, development, and progression of jazz in the United States, and for other purposes. | $1.00 |



| Public Law | Bill | Approval Date | 104 Stat. | Title | Price |
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| 101-500 | H.R. 3388 | Nov. 3 | 1213 | Sanitary Food Transportation Act of 1990 | $1.00 |
| 101-501 | H.R. 4151 | Nov. 3 | 1222 | Augustus F. Hawkins Human Services Reauthorization Act of 1990 | $1.75 |
| 101-502 | H.R. 4230 | Nov. 3 | 1285 | Vaccine Immunization Amendments of 1990 | $1.00 |
| 101-503 | H.R. 5967 | Nov. 3 | 1292 | Seneca Nation Settlement Act of 1990 | $1.00 |
| 101-504 | H.R. 5794 | Nov. 3 | 1298 | Age Discrimination Claims Assistance Amendments of 1990 | $1.00 |
| 101-505 | H.J. Res. 520 | Nov. 3 | 1299 | Granting the consent of Congress to amendments to the Washington Metropolitan Area Transit Regulation Compact. | $1.00 |
| 101-506 | H.R. 5269 | Nov. 5 | 1315 | Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991 | 1.25 |
| 101-507 | H.R. 5158 | Nov. 5 | 1361 | Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991. | 1.25 |
| 101-508 | H.R. 5835 | Nov. 5 | 1388 | Omnibus Budget Reconciliation Act of 1990 | $14.50 |
| 101-509 | H.R. 5241 | Nov. 5 | 1399 | Treasury, Postal Service and General Government Appropriations Act, 1991 | $2.75 |
| 101-510 | H.R. 4739 | Nov. 5 | 1485 | National Defense Authorization Act for Fiscal Year 1991 | $11.50 |
| 101-511 | H.R. 5803 | Nov. 5 | 1656 | Department of Defense Appropriations Act, 1991 | $1.75 |
| 101-512 | H.R. 5769 | Nov. 5 | 1915 | Department of the Interior and Related Agencies Appropriations Act, 1991 | $1.75 |
| 101-513 | H.R. 5114 | Nov. 5 | 1979 | Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 | $2.75 |
| 101-514 | H.R. 5019 | Nov. 5 | 2074 | Energy and Water Development Appropriations Act, 1991 | $1.50 |
| 101-515 | H.R. 5021 | Nov. 5 | 2101 | Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991. | $1.50 |
| 101-516 | H.R. 5229 | Nov. 5 | 2195 | Department of Transportation and Related Agencies Appropriations Act, 1991 | $1.25 |
| 101-517 | H.R. 5257 | Nov. 5 | 2199 | Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991. | $1.25 |
| 101-518 | H.R. 5311 | Nov. 5 | 2224 | District of Columbia Appropriations Act, 1991 | $1.50 |
| 101-519 | H.R. 5313 | Nov. 5 | 2240 | Military Construction Appropriations Act, 1991 | $1.00 |
| 101-520 | H.R. 5398 | Nov. 5 | 2254 | Legislative Branch Appropriations Act, 1991 | $1.25 |
| 101-521 | H.R. 5758 | Nov. 5 | 2257 | To amend the Age Discrimination in Employment Act of 1967 to clarify the application of such Act to employee group health plans. | $1.50 |
| 101-522 | H.R. 3640 | Nov. 5 | 2288 | To establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes. | $1.50 |
| 101-523 | H.R. 5144 | Nov. 5 | 2297 | To provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes. | $1.50 |
| 101-524 | H.R. 2331 | Nov. 6 | 2301 | Deceptive Mailings Prevention Act of 1990 | $1.00 |
| 101-525 | H.R. 5275 | Nov. 6 | 2305 | Congressional Award Amendments of 1990 | $1.50 |
| 101-526 | H.R. 5482 | Nov. 6 | 2309 | District of Columbia Revenue Bond Act of 1990 | $1.50 |
| 101-527 | H.R. 5792 | Nov. 6 | 2311 | Disadvantaged Minority Health Improvement Act of 1990 | $1.50 |
| 101-528 | H.J. Res. 525 | Nov. 6 | 2326 | Designating November 18 through 24, 1990, "National Family Caregivers Week" | $1.00 |
| 101-529 | H.J. Res. 667 | Nov. 6 | 2327 | To designate November 16, 1990, as "National Federation of the Blind Day" | $1.50 |
| 101-530 | S. 1890 | Nov. 6 | 2330 | To amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes. | $1.50 |
| 101-531 | S. 3062 | Nov. 6 | 2341 | To transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas. | $1.50 |
| 101-532 | H.J. Res. 669 | Nov. 7 | 2342 | To salute and congratulate the people of Poland as they commemorate the two-hundredth anniversary of the adoption of the Polish Constitution on May 3, 1991. | $1.50 |
| 101-533 | S. 2516 | Nov. 7 | 2344 | Foreign Direct Investment and International Financial Data Improvements Act of 1990 | $1.50 |
| 101-534 | H.R. 3911 | Nov. 7 | 2352 | Attendant Allowance Adjustment Act | $1.00 |
| 101-535 | H.R. 3562 | Nov. 8 | 2353 | Nutrition Labeling and Education Act of 1990 | $1.00 |
| 101-536 | H.R. 4080 | Nov. 8 | 2368 | Pecos National Historical Park Expansion Act of 1990 | $1.00 |
| 101-537 | H.R. 4299 | Nov. 8 | 2370 | To authorize a study of the fishery resources of the Great Lakes, and for other purposes | $1.00 |
| 101-538 | H.R. 5004 | Nov. 8 | 2376 | To amend the Wild and Scenic Rivers Act to designate certain segments of the Mills River in the State of North Carolina for potential addition to the wild and scenic rivers system. | $1.00 |
| 101-539 | H.R. 5433 | Nov. 8 | 2377 | To direct the Secretary of Agriculture to release on behalf of the United States a condition in a deed conveying certain lands to the Conservation Commission of West Virginia, and for other purposes. | $1.00 |
| 101-540 | H.R. 5872 | Nov. 8 | 2379 | To amend title I of the Employee Retirement Income Security Act of 1974 to require qualifying employer securities to include interest in publicly traded partnerships. | $1.00 |
| 101-541 | H.J. Res. 649 | Nov. 8 | 2380 | Approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of Czechoslovakia. | $1.00 |
| 101-542 | S. 980 | Nov. 8 | 2381 | Student Right-To-Know and Campus Security Act | $1.00 |
| 101-543 | S. 1756 | Nov. 8 | 2389 | Maine Acadian Culture Preservation Act | $1.00 |
| 101-544 | S.J. Res. 375 | Nov. 8 | 2393 | To designate October 30, 1990, as "Refugee Day" | $1.00 |
| 101-545 | H.R. 5007 | Nov. 14 | 2394 | To designate the facility of the United States Postal Service located at 100 South John F. Kennedy Drive, Carpentersville, Illinois, as the "Robert McClory Post Office Building". | $1.00 |
| 101-546 | H.R. 5409 | Nov. 14 | 2395 | To designate the Post Office building at 222 West Center Street in Orem, Utah, as the "Arthur V. Watkins Post Office Building". | $1.00 |
| 101-547 | H.J. Res. 673 | Nov. 14 | 2396 | To designate November 2, 1990, as a national day of prayer for members of American military forces and American citizens stationed or held hostage in the Middle East, and for their families. | $1.00 |
| 101-548 | S. 3158 | Nov. 14 | 2398 | To correct a clerical error in Public Law 101-383 | $1.00 |
| 101-549 | S. 1630 | Nov. 15 | 2399 | To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes. | $9.50 |
| 101-550 | H.R. 1396 | Nov. 15 | 2713 | Securities Acts Amendments of 1990 | $1.00 |
| 101-551 | H.R. 1463 | Nov. 15 | 2733 | National Capital Transportation Amendments of 1990 | $1.00 |
| 101-552 | H.R. 2497 | Nov. 15 | 2736 | Administrative Dispute Resolution Act | $1.00 |
| 101-553 | H.R. 3045 | Nov. 15 | 2749 | Copyright Remedy Clarification Act | $1.00 |
| 101-554 | H.R. 3089 | Nov. 15 | 2751 | Displaced Homemakers Self-Sufficiency Assistance Act | $1.00 |
| 101-555 | H.R. 3310 | Nov. 15 | 2756 | To authorize appropriations for activities of the National Telecommunications and Information Administration for fiscal years 1990 and 1991. | $1.00 |
| 101-556 | H.R. 4630 | Nov. 15 | 2762 | Saco Location No. 1 Land Acquisition and Study Act of 1990 | $1.00 |
| 101-557 | H.R. 5112 | Nov. 15 | 2766 | Home Health Care and Alzheimer's Disease Amendments of 1990 | $1.00 |
| 101-558 | H.R. 5113 | Nov. 15 | 2772 | Injury Control Act of 1990 | $1.00 |

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| 101-559 | H.R. 5419 | Nov. 15 | 2774 | To designate the Federal Building at 88 West 100 North in Provo, Utah, as the "J. Will Robinson Federal Building". | $1.00 |
| 101-560 | H.R. 5507 | Nov. 15 | 2775 | Regarding the Early Winters Resorts | $1.00 |
| 101-561 | H.R. 5667 | Nov. 15 | 2776 | To amend the Water Resources Development Act of 1974 to transfer jurisdiction of the Big South Fork National River and Recreation Area from the Secretary of the Army to the Secretary of the Interior, and for other purposes. | $1.00 |
| 101-562 | H.R. 5708 | Nov. 15 | 2780 | To authorize acquisition of certain real property for the Library of Congress, and for other purposes. | $1.00 |
| 101-563 | H.J. Res. 562 | Nov. 15 | 2782 | Designating October 21 through 27, 1990 as "National Humanities Week" | $1.00 |
| 101-564 | H.J. Res. 652 | Nov. 15 | 2783 | To designate March 25, 1991, as "National Medal of Honor Day" | $1.00 |
| 101-565 | H.J. Res. 657 | Nov. 15 | 2784 | Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes. | $1.00 |
| 101-566 | S. 639 | Nov. 15 | 2787 | Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990 | $1.00 |
| 101-567 | S. 1805 | Nov. 15 | 2802 | To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164 | $1.00 |
| 101-568 | S. 3215 | Nov. 15 | 2804 | To authorize the transfer by lease of a specified naval landing ship dock to the Government of Brazil. | $1.00 |
| 101-569 | S.J. Res. 318 | Nov. 15 | 2806 | Providing for the appointment of Ira Michael Heyman as a citizen regent of the Smithsonian Institution. | $1.00 |
| 101-570 | S.J. Res. 380 | Nov. 15 | 2807 | Designating 1991 as the "Year of Thanksgiving for the Blessings of Liberty" | $1.00 |
| 101-571 | H.R. 2419 | Nov. 15 | 2808 | To authorize the Secretary of Agriculture to exchange certain property in the Chattahoochee National Forest for the construction of facilities in the National Forest. | $1.00 |
| 101-572 | H.R. 3658 | Nov. 15 | 2810 | Gas Related Activities Act of 1990 | $1.00 |
| 101-573 | H.R. 4107 | Nov. 15 | 2812 | To authorize the Secretary of the Interior to permit certain uses of lands within the Colonial National Historical Park in the Commonwealth of Virginia. | $1.00 |
| 101-574 | H.R. 4793 | Nov. 15 | 2814 | Small Business Administration Reauthorization and Amendments Act of 1990 | $1.00 |
| 101-575 | H.R. 4808 | Nov. 15 | 2834 | Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 | $1.00 |
| 101-576 | H.R. 5687 | Nov. 15 | 2836 | Chief Financial Officers Act of 1990 | $1.00 |
| 101-577 | H.R. 5871 | Nov. 15 | 2856 | Farm Poundage Quota Revisions Act of 1990 | $1.00 |
| 101-578 | H.R. 5796 | Nov. 15 | 2858 | To conduct certain studies in the State of New Mexico | $1.00 |
| 101-579 | H.J. Res. 606 | Nov. 15 | 2862 | Designating February 16, 1991, as "Lithuanian Independence Day" | $1.00 |
| 101-580 | S. 469 | Nov. 15 | 2863 | To amend title 35, United States Code, with respect to the use of inventions in outer space. | $1.00 |
| 101-581 | S. 1831 | Nov. 15 | 2865 | Criminal Victims Protection Act of 1990 | $1.00 |
| 101-582 | S. 2055 | Nov. 15 | 2867 | Year 2000 Health Objectives Planning Act | $1.00 |
| 101-583 | S. 2930 | Nov. 15 | 2871 | To eliminate "substantial documentary evidence" requirement for minimum wage determination for American Samoa, and for other purposes. | $1.00 |
| 101-584 | S. 3187 | Nov. 15 | 2872 | To address immediate problems affecting environmental cleanup activities | $1.00 |
| 101-585 | S. 3237 | Nov. 15 | 2874 | Silver Coin Proof Sets Act | $1.00 |
| 101-586 | S.J. Res. 302 | Nov. 15 | 2876 | Providing for reappointment of Anne Legendre Armstrong as a citizen regent of the Smithsonian Institution. | $1.00 |
| 101-587 | S.J. Res. 357 | Nov. 15 | 2877 | To designate October 1-31, 1991, as "Community Center Month" | $1.00 |
| 101-588 | H.R. 29 | Nov. 16 | 2879 | Antitrust Amendments Act of 1990 | $1.00 |
| 101-589 | H.R. 996 | Nov. 16 | 2881 | Excellence in Mathematics, Science and Engineering Education Act of 1990 | $1.25 |
| 101-590 | H.R. 1602 | Nov. 16 | 2915 | Trauma Care Systems Planning and Development Act of 1990 | $1.00 |
| 101-591 | H.R. 2840 | Nov. 16 | 2931 | Coastal Barrier Improvement Act of 1990 | $1.00 |
| 101-592 | H.R. 3000 | Nov. 16 | 2943 | Fastener Quality Act | $1.00 |
| 101-593 | H.R. 3338 | Nov. 16 | 2964 | To direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes. | $1.00 |
| 101-594 | H.R. 3977 | Nov. 16 | 2975 | Antarctic Protection Act of 1990 | $1.00 |
| 101-595 | H.R. 4009 | Nov. 16 | 2979 | Federal Maritime Commission Authorization Act of 1990 | $1.00 |
| 101-596 | H.R. 4323 | Nov. 16 | 3000 | Great Lakes Critical Programs Act of 1990 | $1.00 |
| 101-597 | H.R. 4487 | Nov. 16 | 3013 | National Health Service Corps Revitalization Amendments of 1990 | $1.00 |
| 101-598 | H.R. 4721 | Nov. 16 | 3037 | To designate the Federal building located at 340 North Pleasant Valley Road in Winchester, Virginia, as the "J. Kenneth Robinson Postal Building". | $1.00 |
| 101-599 | H.R. 4896 | Nov. 16 | 3038 | To improve navigational safety and to reduce the hazards to navigation resulting from vessel collisions with pipelines in the marine environment, and for other purposes. | $1.00 |
| 101-600 | H.R. 5140 | Nov. 16 | 3042 | School Dropout Prevention and Basic Skills Improvement Act of 1990 | $1.00 |
| 101-601 | H.R. 5237 | Nov. 16 | 3046 | Native American Graves Protection and Repatriation Act | $1.00 |
| 101-602 | H.R. 5308 | Nov. 16 | 3060 | Fort Hall Indian Water Rights Act of 1990 | $1.00 |
| 101-603 | H.R. 5467 | Nov. 16 | 3065 | To authorize the Secretary of the Interior to acquire certain lands to be added to the Fort Raleigh National Historic Site in North Carolina. | $1.00 |
| 101-604 | H.R. 5732 | Nov. 16 | 3066 | Aviation Security Improvement Act of 1990 | $1.00 |
| 101-605 | H.R. 5909 | Nov. 16 | 3089 | Florida Keys National Marine Sanctuary and Protection Act | $1.00 |
| 101-606 | S. 169 | Nov. 16 | 3096 | Global Change Research Act of 1990 | $1.00 |
| 101-607 | S. 555 | Nov. 16 | 3105 | De Soto Expedition Trail Commission Act of 1990 | $1.00 |
| 101-608 | S. 605 | Nov. 16 | 3110 | Consumer Product Safety Improvement Act of 1990 | $1.00 |
| 101-609 | S. 677 | Nov. 16 | 3125 | To amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions. | $1.00 |
| 101-610 | S. 1430 | Nov. 16 | 3127 | National and Community Service Act of 1990 | $1.75 |
| 101-611 | S. 2267 | Nov. 16 | 3166 | National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991 | $1.00 |
| 101-612 | S. 2566 | Nov. 16 | 3209 | Smith River National Recreation Area Act | $1.00 |
| 101-613 | S. 2857 | Nov. 16 | 3224 | National Institutes of Health Amendments of 1990 | $1.00 |
| 101-614 | S. 2789 | Nov. 16 | 3231 | National Earthquake Hazards Reduction Program Reauthorization Act | $1.00 |
| 101-615 | S. 2936 | Nov. 16 | 3244 | Hazardous Materials Transportation Uniform Safety Act of 1990 | $1.25 |
| 101-616 | S. 2946 | Nov. 16 | 3279 | Transplant Amendments Act of 1990 | $1.00 |
| 101-617 | S. 3069 | Nov. 16 | 3287 | Environmental Research Geographic Location Information Act | $1.00 |
| 101-618 | S. 3084 | Nov. 16 | 3288 | Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 | $1.25 |
| 101-619 | S. 3176 | Nov. 16 | 3325 | National Environmental Education Act | $1.00 |
| 101-620 | S.J. Res. 208 | Nov. 16 | 3340 | Calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons. | $1.00 |
| 101-621 | H.R. 4559 | Nov. 16 | 3342 | Red Rock Canyon National Conservation Area Establishment Act of 1990 | $1.00 |



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| 101-622 | H.R. 5264 | Nov. 21 | 3347 | To authorize modification of the boundaries of the Alaska Maritime National Wildlife Refuge. | $1.00 |
| 101-623 | H.R. 5567 | Nov. 21 | 3350 | International Narcotics Control Act of 1990 | $1.00 |
| 101-624 | S. 2830 | Nov. 28 | 3359 | Food, Agriculture, Conservation, and Trade Act of 1990 | $21.00 |
| 101-625 | S. 566 | Nov. 28 | 4079 | Cranston-Gonzalez National Affordable Housing Act | $10.00 |
| 101-626 | H.R. 967 | Nov. 28 | 4426 | Tongass Timber Reform Act | $1.00 |
| 101-627 | H.R. 2061 | Nov. 28 | 4436 | Fishery Conservation Amendments of 1990 | $1.25 |
| 101-628 | H.R. 2570 | Nov. 28 | 4469 | To provide for the designation of certain public lands as wilderness in the State of Arizona. | $1.25 |
| 101-629 | H.R. 3095 | Nov. 28 | 4511 | Safe Medical Devices Act of 1990 | $1.00 |
| 101-630 | H.R. 3703 | Nov. 28 | 4531 | To authorize the Rumsey Indian Rancheria to convey a certain parcel of land | $1.25 |
| 101-631 | H.R. 4567 | Nov. 28 | 4569 | To authorize an exchange of lands in South Dakota and Colorado | $1.00 |
| 101-632 | H.R. 4834 | Nov. 28 | 4575 | To provide for a visitor center at Salem Maritime National Historic Site in the Commonwealth of Massachusetts. | $1.00 |
| 101-633 | H.R. 5428 | Nov. 28 | 4577 | Illinois Wilderness Act of 1990 | $1.00 |
| 101-634 | S. 319 | Nov. 28 | 4580 | Salt Lake City Watershed Improvement Act of 1990 | $1.00 |
| 101-635 | S. 845 | Nov. 28 | 4583 | Food and Drug Administration Revitalization Act | $1.00 |
| 101-636 | S. 1859 | Nov. 28 | 4586 | To restructure repayment terms and conditions for loans made by the Secretary of the Interior to the Wolf Trap Foundation for the Performing Arts for the reconstruction of the Filene Center in Wolf Trap Farm Park in Fairfax County, Virginia, and for other purposes. | $1.00 |
| 101-637 | S. 1993 | Nov. 28 | 4589 | Asbestos School Hazard Abatement Reauthorization Act of 1990 | $1.00 |
| 101-638 | S. 1939 | Nov. 28 | 4599 | To extend the authorization of appropriations for the Taft Institute | $1.00 |
| 101-639 | S. 2628 | Nov. 28 | 4600 | Mental Health Amendments of 1990 | $1.00 |
| 101-640 | S. 2740 | Nov. 28 | 4604 | Water Resources Development Act of 1990 | $1.50 |
| 101-641 | S. 3012 | Nov. 28 | 4654 | Independent Safety Board Act Amendments of 1990 | $1.00 |
| 101-642 | S.J. Res. 329 | Nov. 28 | 4659 | To designate the week of November 3, 1990, to November 10, 1990, as "National Week to Commemorate the Victims of the Famine in the Ukraine, 1932-1933", and to commemorate the Ukrainian famine of 1932-1933 and the policies of Russification to suppress Ukrainian identity. | $1.00 |
| 101-643 | S.J. Res. 364 | Nov. 28 | 4661 | To designate the third week of February 1991 as "National Parents and Teachers Association Week". | $1.00 |
| 101-644 | H.R. 2006 | Nov. 29 | 4662 | To expand the powers of the Indian Arts and Crafts Board, and for other purposes | $1.00 |
| 101-645 | H.R. 3789 | Nov. 29 | 4673 | Stewart B. McKinney Homeless Assistance Amendments Act of 1990 | $2.50 |
| 101-646 | H.R. 5390 | Nov. 29 | 4761 | To prevent and control infestations of the coastal inland waters of the United States by the zebra mussel and other nonindigenous aquatic nuisance species, to reauthorize the National Sea Grant College Program, and for other purposes. | $1.00 |
| 101-647 | S. 3266 | Nov. 29 | 4789 | Crime Control Act of 1990 | 6.00 |
| 101-648 | S. 303 | Nov. 29 | 4869 | Negotiated Rulemaking Act of 1990 | $1.00 |
| 101-649 | S. 358 | Nov. 29 | 4975 | Immigration Act of 1990 | 3.00 |
| 101-650 | H.R. 5316 | Dec. 1 | 5089 | Judicial Improvements Act of 1990 | $1.50 |

**NOTE:** The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030). Some slip laws may not yet be available for purchase.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

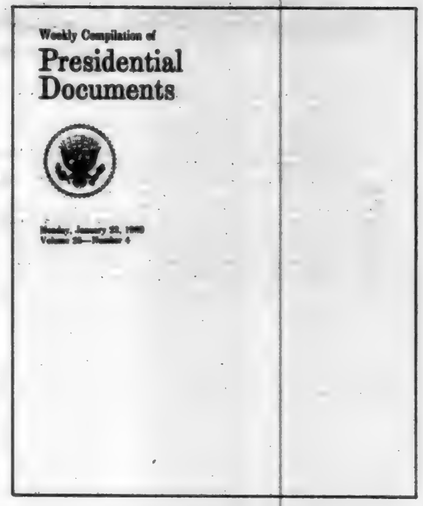
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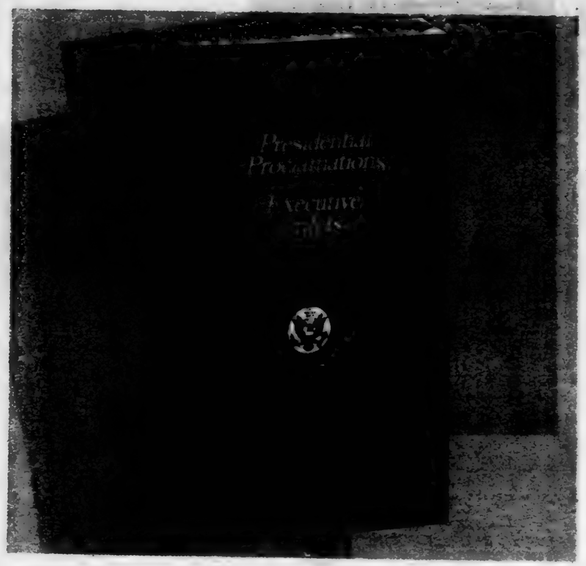
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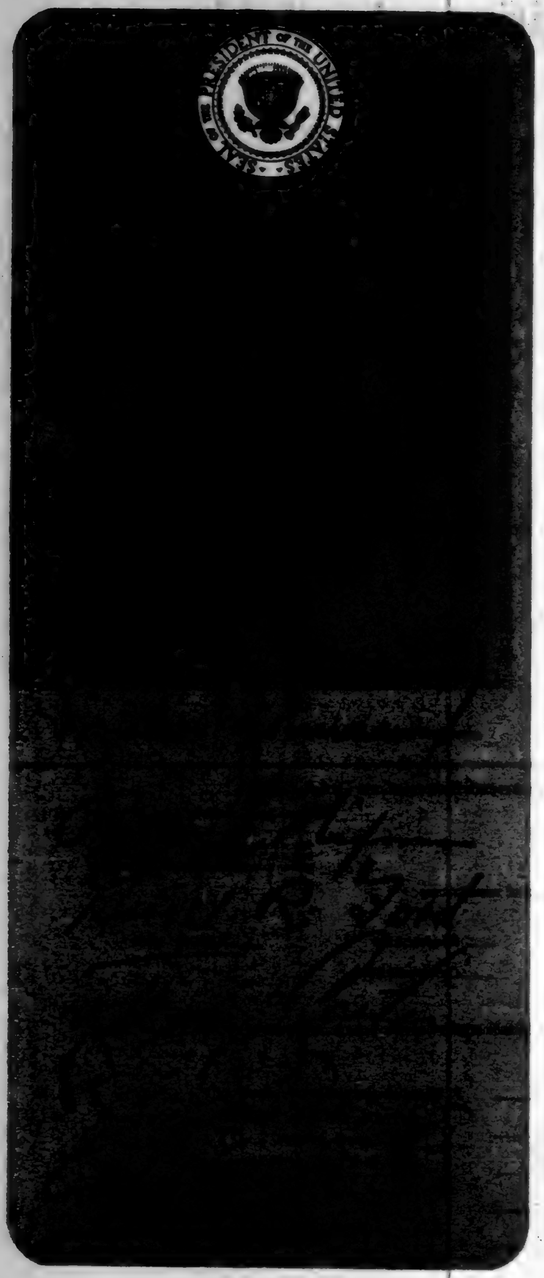
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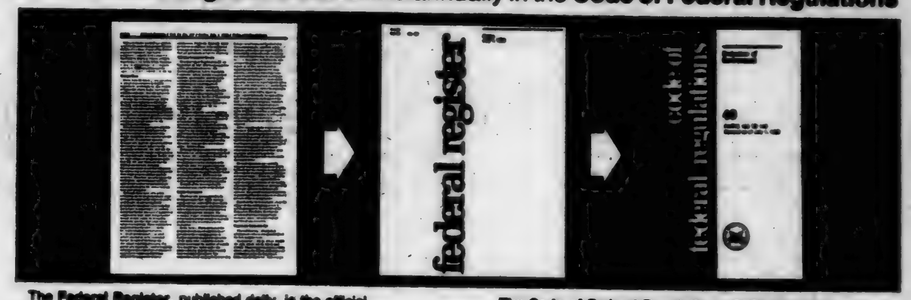
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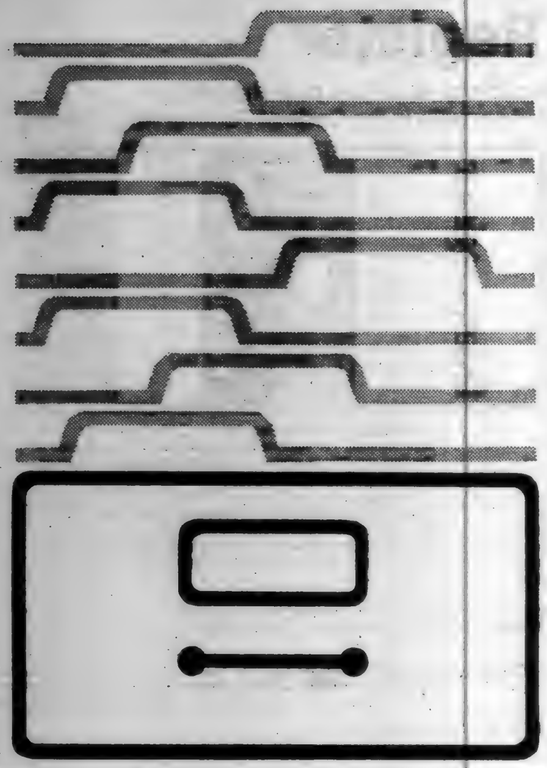
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### Implementation of the Whistleblower Protection Act; Correction

**AGENCY:** U.S. Office of Special Counsel.

**ACTION:** Final rule; correction.

**SUMMARY:** On November 16, 1990 (55 FR 47839), the U.S. Office of Special Counsel (OSC) published a rule adopting as final with minor changes an interim rule implementing the Whistleblower Protection Act of 1989 which was originally published on November 14, 1989 (54 FR 47341–47345). Reference to the portion of the interim rule which dealt with 5 CFR part 1850 (formerly 5 CFR part 1262) relating to nondiscrimination on the basis of handicap in programs or activities by OSC was inadvertently omitted from the amendatory instructions of the final rule. This document corrects that omission.

**FOR FURTHER INFORMATION CONTACT:** John Marshall Meisburg, Jr., at 202/653–7307.

**SUPPLEMENTARY INFORMATION:** In the final rule document 90–27092 beginning on page 47839 in the issue of Friday, November 16, 1990, make the following correction:

On page 47840, in the first column, add the following amendatory instruction after the amendatory instruction for part 1840:

**PART 1850—ENFORCEMENT OF DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL**

The portion of the interim rule redesignating 5 CFR part 1262 as 5 CFR part 1850 and making minor amendments to the newly designated part 1850, published on November 14, 1989, at 54 FR 47345, is adopted as final without change.

Dated: December 6, 1990.

Mary F. Wieseman,

*Special Counsel.*

[FR Doc. 90–29000 Filed 12–10–90; 8:45 am]

BILLING CODE 7400–02–M

## DEPARTMENT OF AGRICULTURE

**Federal Crop Insurance Corporation**

**7 CFR Part 401**

**[Amdt. No. 37; Doc. No. 7891S]**

### General Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; (2) allow for an extension of the sales closing date when such date falls on a weekend or Federal holiday; (3) clarify premium discount language applicable to good insuring experience and whole units; and (4) modify the restriction against insuring land which has been strip mined to provide crop insurance by written agreement between the insured and FCIC. The intended effect of this final rule is to provide that a sales closing date will be extended if the date falls on a weekend or Federal holiday and the insured's service office is not open on such date, and provide a clarification of premium discount if the insured did not select optional units and/or is eligible for good insuring experience.

**EFFECTIVE DATE:** January 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, room 4090–S, Washington, DC 20250, telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Department Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness established for these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistant under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC published a notice of proposed rulemaking in the **Federal Register** on Tuesday, August 15, 1989, at 54 FR 33559, to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, to: (1) Clarify the time limit for an insured producer to submit a report or a notice to FCIC; and (2) modify the restriction against insuring land which has been strip mined. The intended effect of this rule was to provide language allowing the insured producer to submit required notices or reports on the next business day if the reporting of notification date falls on a

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weekend or Federal holiday, or if the insured's service office is, for any reason, closed on such reporting or notification date, and to provide crop insurance on land which has been strip mined by written agreement between the insured and FCIC.

FCIC published a notice of additional proposed rulemaking on October 5, 1990, at 55 FR 40841, to further amend the General Crop Insurance Regulations (7 CFR part 401) to: (1) Include in the addition to the proposed amendment to paragraph 20 (Notices) of the General policy, similar clarifying language to the annual premium section (paragraph 5) to provide for a premium discount if the insured did not select optional units or is eligible for a good insurance experience discount.

The public was given 30 days in which to submit written comments, data, and opinions on the additional notice of proposed rulemaking, but none were received. Therefore, the notice of proposed rulemaking published at 54 FR 33559, as amended by the additional notice of proposed rulemaking published at 55 FR 40841 is hereby adopted as a final rule.

**List of Subjects in 7 CFR Part 401**

Crop insurance; General crop insurance policy.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1991 and succeeding crop years, in the following instances:

**PART 401—GENERAL CROP INSURANCE REGULATIONS**

1. The authority citation for 7 CFR part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR 401.8 is amended by revising paragraph (b); subparagraph (d)2.e.(12); and paragraphs 5., and 20., of the General Crop Insurance Policy to read as follows:

* * * * *

**§ 401.8 The application and policy.**

* * * * *

(b) The Corporation may reject or discontinue the acceptance of applications in any county or of any individual application upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications. If the sales closing date falls on a Saturday or Sunday or legal holiday when the service office is not open, the application must be submitted by the close of business on the next business day.

* * * * *

(d) * * *

2. Crop, Acreage, and Share Insured

* * * * *

e. * * *

(12) Which has been strip mined unless we agree in writing to insure such acreage.

* * * * *

5. Annual Premium

a. The annual premium is earned and payable at the time insurance attaches. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, and where applicable, times any applicable premium adjustment factor shown on the actuarial table.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement through the 1991 crop year.

c. Your premium payment, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop endorsement.

* * * * *

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit an application or a report or notice falls on a Saturday, Sunday, or Federal holiday if your service office is not open for business on such date such notice or report must be submitted on the next business day.

* * * * *

Done in Washington, DC, on December 4, 1990.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28902 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 401**

**[Amdt. No. 65; Doc. No. 7888S]**

**General Crop Insurance Regulations; Soybean Endorsement**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117) to provide conditions for the retention of premium reduction based on good insuring experience. The intended effect of this rule is to restore provisions to the Soybean Endorsement that set out conditions to be met by eligible insureds for the retention of premium discount earned through good insuring experience.

**DATES:** This interim rule is effective on December 11, 1990. Written comments, data, and opinions on this interim rule must be submitted not later than February 11, 1991, to be sure of consideration.

**ADDRESSES:** Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the Soybean Endorsement regulations affected by this rule under those procedures. The sunset review date established is October 1, 1992.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major role as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the General Crop Insurance Regulations (7 CFR part 401) to provide the conditions to be met by eligible insureds in order to retain the premium discount for good insuring experience. This technical amendment restores conditions which were mistakenly removed in a rule published on November 21, 1989, at 54 FR 48071.

The provisions for premium discount for good insuring experience remain in the Soybean Endorsement. This rule restores the certain conditions which must be met by a producer whose insuring experience entitles that producer to the discount. This action does not detract from the benefit of premium discount; merely adding those requirements necessary to receive such benefit.

In accordance with 5 U.S.C. 553(b)B, David W. Gabriel, Acting Manager, FCIC, has determined that the restoration of the conditions for premium discount to the Soybean Endorsement is necessary to correct a previous erroneous removal of the same provisions which bestow a benefit on some program recipients and which is not detrimental to any program recipient, and that publication as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon publication.

FCIC, consistent with the provisions of 5 U.S.C. 553, is soliciting comments on this rule for 60 days following publication in the **Federal Register**. This rule will be scheduled for review so that any amendment made necessary by public comments made be published as soon as possible.

Written comments should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendment made necessary by public comment will be published in the **Federal Register** as quickly as possible.

**List of Subjects in 7 CFR Part 401**

Crop insurance, Soybeans.

**Interim Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the provisions of the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1990 and succeeding crop years, by amending the Soybean Endorsement (7 CFR 401.117), in the following instances:

**PART 401—[AMENDED]**

1. The authority citation for 7 CFR part 401 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. Section 401.117 is amended by revising and reissuing section 3 to read as follows:

**§ 401.117 Soybean endorsement.**

* * * * *

3. Annual Premium.

(a) The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because:

(1) You have not selected optional units; or

(2) You are eligible for a good insuring experience discount.

(b) If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1989 crop year under the terms of the experience table contained in the soybean policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

* * * * *

Done in Washington, DC on December 4, 1990.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28903 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 414**

**[Amdt. No. 3; Doc. No. 7873S]**

**Forage Seeding Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Forage Seeding Crop Insurance Regulations (7 CFR part 414), effective for the 1991 and succeeding crop years, to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance. The intended effect of this rule is to provide the cancellation and termination dates for policyholders in those States.

**EFFECTIVE DATE:** January 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1995.

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David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith amends the Forage Seeding Crop Insurance Regulation (7 CFR part 414) to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance.

On Thursday, September 20, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 38693, to provide cancellation and termination dates for counties in New Hampshire, Pennsylvania, and Vermont, recently approved for such insurance. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 55 FR 38693 is adopted as a final rule.

**List of Subjects in 7 CFR Part 414**

Crop insurance, Forage seeding.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Forage Seeding Crop Insurance Regulations (7 CFR part 414), proposed to be effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 414 is revised to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR part 414.7(d) is amended by revising paragraph 15.d. to read as follows:

**§ 414.7 The application and policy.**

* * * * *

(d) * * *

**15. Life of Contract: Cancellation and Termination**

* * * * *

d. The cancellation and termination dates are:

| State | Cancellation termination date |
|---|---|
| New Hampshire, New York, Pennsylvania, Vermont. | July 31. |
| All other states | April 15. |

* * * * *

Done in Washington, DC on December 4, 1990.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28905 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 430**

**[Amdt. No. 2; Doc. No. 7879S]**

**Sugar Beet Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), effective for the 1992 and succeeding crop years, to: (1) Correct planting dates and clarify the insurance period in California; (2) change the end of insurance period for Texas; and, (3) change the definition of crop year in California and Texas. The intended effect of this rule is to simplify the sugar beet program in California and Texas with respect to planting dates and insurance period to more closely reflect farming practices.

**DATES:** January 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

David Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), effective for the 1992 and succeeding crop years, by (1) Correcting planting dates and clarifying the insurance period in California; (2) changing the end of insurance period for Texas; and, (3) changing the definition of crop year in California and Texas. This action will simplify the sugar beet program in California and Texas with respect to planting dates and insurance period to more closely reflect farming practices for sugar beets.



On Thursday, September 20, 1990, FCIC published a notice of proposed rulemaking in the **Federal Register** at 55 FR 38693 to: (1) Correct planting dates and clarify the insurance period in California; (2) change the end of insurance period for Texas; and, (3) change the definition of crop year in California and Texas to simplify the sugar beet program in California and Texas with respect to planting dates and insurance period to more closely reflect farming practices. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the proposed rule published at 55 FR 38693 is adopted as a final rule without change.

**List of Subjects in 7 CFR Part 430**

Crop insurance; Sugar beet.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Sugar Beet Crop Insurance Regulations (7 CFR part 430), proposed to be effective for the 1992 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 430 continues to read as follows:

**Authority:** 7 U.S.C. 1506, 1516.

2. 7 CFR 430.7(d) is amended revising paragraph 7, paragraph 15.e., and paragraph 16, to read as follows:

**§ 430.7 The application and policy.**

* * * * *

(d) * * *

**7. Insurance Period**

Insurance attaches when the sugar beets are planted and ends at the earliest of:

(a) Total destruction of the sugar beets;
(b) Harvest of the sugar beets on the unit;
(c) Final adjustment of a loss; or
(d) The following calendar dates:
(1) July 15 for Arizona and Imperial County, California;
(2) The dates established by practice as contained in the actuarial table for all other California counties;
(3) November 25 in Ohio;
(4) December 31 in Texas; and
(5) November 15 in all other states.

* * * * *

**15. Life of Contract: Cancellation and Termination**

* * * * *

(e) The cancellation and termination dates are:

| State and county | Cancellation and termination dates |
|---|---|
| Arizona and Imperial County, California. | August 31 |
| All other California Counties | March 31, |
| All other states | April 15. |

* * * * *

**16. Contract Changes**

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

(a) April 30 preceding the cancellation date for Arizona and Imperial County, California;

(b) November 30 preceding the cancellation date for all other California counties;

(c) December 31 preceding the cancellation date for all other states.

Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

Done in Washington, DC on December 4, 1990.

**David Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28906 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

**7 CFR Part 433**

**[Amdt. No. 2; Doc. No. 7858S]**

**Dry Bean Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, to expand crop insurance coverage to all classes of dry beans. The intended effect of this final rule is to provide the provisions for insuring all classes of dry beans to include those classes not insurable in the past, provided the class of dry beans has been demonstrated to be adapted to the area.

**EFFECTIVE DATE:** January 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1995.

David W. Gabriel, Acting Manager, FCIC, (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC published a notice of proposed rulemaking in the **Federal Register** on Friday, October 5, 1990, at 55 FR 40842, to amend the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, to provide the provisions for expanding crop insurance coverage to all classes of dry beans, and to include those classes not insurable in the past, provided the class of dry beans has been demonstrated to be adapted in the area.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the notice of

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proposed rulemaking at 55 FR 40642 is hereby adopted as a final rule.

**List of Subjects in 7 CFR Part 433**

Crop insurance, Dry beans.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). The Federal Crop Insurance Corporation amends the Dry Bean Crop Insurance Regulations (7 CFR part 433), effective for the 1991 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR part 433 is revised to read as follows:

**Authority:** 7 U.S.C. 1508, 1510.

**§ 433.7 (Amended)**

2. 7 CFR 433.7(d) is amended by revising subparagraph 2.a., to read as follows:

**§ 433.7 The application and policy.**

* * * * *

(d) * * *

2. Crop Acreage, and Share Insured

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and

(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract (with a seed company executed before the acreage reporting date), which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

In addition to the classes of dry beans listed on the actuarial table for your county, we will insure other classes of beans provided:

(i) The class you intend to plant has been demonstrated to be adapted to the area. (Evidence of adaptability includes results of test plots and recommendations by universities and seed companies. Two years of personal experience producing the class in your production area may be submitted for this requirement.);

(ii) You submit your production report and prices received by the sales closing date, or the test plot results and price information on or before the sales closing date; and

(iii) We provide you, in writing, an approved insurance offer which you accept in writing.

* * * * *

Done in Washington, DC on December 4, 1990.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 90-28904 Filed 12-10-90; 8:45 am]

BILLING CODE 3410-08-M

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 229**

**[Regulation CC; Docket No. R-0717]**

**RIN 7100-AB01**

**Availability of Funds and Collection of Checks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act ("Act") (see the Cranston-Gonzales National Affordable Housing Act, Pub. L. No. 101-625, § 1001). The amendments extend the availability schedules for deposits to nonproprietary automated teller machines ("ATMs") for a period of two years. The amendments to the Act were signed into law on November 28, 1990, with a retroactive effective date of September 1, 1990. The Board has adopted these conforming changes to Regulation CC on an interim basis. The Board is requesting comments on the interim rule pending adoption of a final rule.

**DATES:** *Effective date:* September 1, 1990. *Comment date:* Comments must be submitted on or before January 11, 1991.

**ADDRESSES:** Comments, which should refer to Docket No. R-0717, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m.

**FOR FURTHER INFORMATION CONTACT:** Louise L. Roseman, Assistant Director (202/452-3874), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or Appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** The Expedited Funds Availability Act specifies the time periods within which funds deposited at ATMs must be made available for withdrawal. Different rules applied under the temporary schedule (which was effective from September 1, 1988, to August 31, 1990) to deposits at nonproprietary ATMs [1] than to deposits at proprietary ATMs, because of operational differences in the way these deposits are processed. During consideration of the Act, banks reported to the Congress on the processing limitations associated with accepting deposits at nonproprietary ATMs. They indicated that the account-holding bank does not have the information necessary to place holds on nonproprietary ATM deposits because the deposits are removed and processed by the ATM operator rather than the account-holding bank. Given these limitations, the Act allowed the account-holding bank to treat any such deposits as though they were composed of nonlocal checks under the temporary schedule. At that time, the Congress anticipated that the processing limitations that necessitated the special availability rule for nonproprietary ATM deposits under the temporary schedule would be addressed by the time the permanent schedule became effective in September 1990. Therefore, under the permanent schedule, deposits at nonproprietary ATMs generally had to be made available for withdrawal within the same time periods as deposits made at staffed teller facilities.

During the past two years, ATM networks, banks, and the Board have investigated a number of potential alternatives both to address the processing limitations and to facilitate compliance with the permanent schedule. A viable systems solution to address the processing limitations has not been identified. All of the identified solutions are costly and would likely result in increased fees for customers who make deposits at nonproprietary ATMs. The possible system solutions would degrade the efficiency of shared ATM networks and may slow the collection of checks, which would be contrary to the intent of the Act.

In addition, depository institutions and ATM operators have expressed concern that the potential for fraud will increase if institutions must comply with the permanent availability schedule for nonproprietary ATMs. Under the permanent availability schedule, second-business-day availability is required for local checks. Thus, an account-holding bank that could not ascertain the composition of deposits at nonproprietary ATMs would have to provide second-business-day availability for all deposits made at nonproprietary ATMs in order to ensure compliance with the availability schedules, even though longer holds could apply with respect to similar deposits, i.e., nonlocal checks, made at a staffed teller facility. Thus, deposits of nonlocal checks at nonproprietary ATMs would be available for withdrawal several days before the checks could be presented and returned, and therefore such deposits would be an attractive vehicle for check fraud. Substantial increases in operating costs or fraud losses could lead some institutions to cease accepting deposits at nonproprietary ATMs, thereby limiting a convenient consumer banking service.

Based on this research and analysis, the Board submitted two reports [2] on this issue to the Congress that recommended that the Congress amend the Act to treat nonproprietary ATM deposits under the permanent schedule in the same manner as such deposits were treated under the temporary schedule; i.e., permit banks to make deposits at nonproprietary ATMs available for withdrawal as if they were nonlocal checks (not later than the fifth business day following the day of deposit). ATM networks and participating institutions also have made this recommendation to the Congress.

On November 28, 1990, the President signed into law the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101-625; § 1001), which amended the Expedited Funds Availability Act to extend the schedules applicable to deposits at nonproprietary ATMs for a two-year period. The Board is amending Regulation CC to conform to this recent amendment of the Act.

Section 229.12 of Regulation CC sets forth the permanent availability schedule under which funds deposited in an account by local and nonlocal checks must be made available for withdrawal. A new § 229.12(f) has been added to provide a special rule for deposits made at nonproprietary ATMs. Section 229.12(f) provides that during the period from September 1, 1990, through November 27, 1992, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the day of deposit. Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit, and nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

The Board also has made revisions to other paragraphs of § 229.12 to conform that section to the statutory requirements of the Act. Paragraphs (a), (b), (c), and (d) of § 229.12 were amended to add cross-references to the new paragraph (f) as well as to other paragraphs. In addition, in paragraph (b), which lists the types of deposits that must be accorded two-day availability under the permanent schedule, the Board has removed the language, "a check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM." Deposits of these checks are now governed by the provisions of new paragraph (f) and are subject to a five-day availability schedule until November 27, 1992, and a two-day availability schedule after that date.

Section 229.16(b)(5) requires banks wishing to take advantage of the extended hold for deposits at nonproprietary ATMs to disclose this to their customers in their initial disclosures. Model Clause C-10, which can be used to make this disclosure, has been revised to reflect the new rules for nonproprietary ATM deposits. Conforming changes have also been made to the commentary to Appendix C and the commentary to § 229.16.

Section 229.18(e) requires banks to disclose changes in their availability policy to their consumer account holders. Changes other than those that result in faster availability must be disclosed 30 calendar days before they are implemented. Accordingly, banks wishing to take advantage of the extended hold for nonproprietary ATM deposits must provide 30-day advance notice to their consumer account holders. This requirement may be fulfilled by mailing Model C-10 prefaced with language indicating the effective date of the change.

The Board believes that it is necessary to amend the regulation with an interim amendment, so that the regulation conforms to the statutory requirements, and so that banks that permit their customers to make deposits at nonproprietary ATMs can rely on the Board's regulation in providing availability in accordance with the amended requirements. If the Board's rule is not effective immediately, banks that wish to take advantage of the provisions of the Act regarding nonproprietary ATMs, which reflect the intent of the Congress to reduce the risk for banks of accepting deposits at nonproprietary ATMs, would be in violation of Regulation CC because the current provisions call for faster availability of these deposits than is required under the amended Act. There was no opportunity for the Board to publish proposed regulations for comment prior to the effective date of the amendment to the Act, which was effective upon enactment. Accordingly, the Board, for good cause, finds that the notice and public comment procedure normally required is impractical and contrary to the public interest under 5 U.S.C 553(b)(B). The Board further finds that, for the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to make the interim amendment effective on September 1, 1990, without regard for the 30-day period provided for in U.S.C. 553(d).

Initial Regulatory Flexibility Analysis:

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b)), a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the proposed rule, are contained in the supplementary information above. The Board's interim rule requires no additional reporting or recordkeeping requirements, nor are there relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

Another requirement for the initial regulatory flexibility analysis is a description of, and where feasible, an estimate of the number of small entities to which the proposed rule shall apply. The interim rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a signficant negative economic impact on small

[1] A *nonproprietary ATM* is defined in the Act as one that is not proprietary. In the Act, the term "proprietary ATM" means an automated teller machine that is (1) located at or adjacent to a branch of the receiving institution or in close proximity, as defined by the Board, or (2) owned by, operated exclusively for, or operated by the receiving institution.

[2] The reports on this subject were transmitted to Congress in October 1989 and July 1990. An earlier report submitted in October 1988 provided background information on the processing of deposits at nonproprietary ATMs but did not include a legislative recommendation because there was limited research available at that time.

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institutions, but rather will decrease the risk to all depositary banks by enabling them to impose longer holds on deposits made to nonproprietary ATMS.

**List of Subjects in 12 CFR Part 229**

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

**PART 229—[AMENDED]**

1. The authority citation for part 229 continues to read as follows:

**Authority:** Title VI of Pub. L. 100-86, 101 Stat. 552, 636, 12 U.S.C. 4001 *et seq.*

2. In § 229.12, paragraph (a) and the introductory text to paragraph (b) are revised, paragraph (b)(3) is removed, paragraphs (b)(4) and (b)(5) are redesignated as (b)(3) and (b)(4), newly redesignated paragraph (b)(4) is revised, paragraph (c)(1) introductory text and the first and third sentences of paragraph (d) are revised, and a new paragraph (f) is added to read as follows:

**§ 229.12 Permanent availability schedule.**

(a) *Effective date.* Except as provided in paragraph (f), the permanent availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

* * * * *

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks*—(1) *In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

* * * * *

(d) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. * * * A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5 p.m. on the business day on which the funds are available under paragraphs (b), (c), or (f) of this section.

* * * * *

(f) *Deposits at nonproprietary ATMs.*

(1)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(ii) Paragraph (f)(1) of this section is effective September 1, 1990, through November 27, 1992.

(2)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM available for withdrawal not later than the second business day following the banking day on which the funds are deposited, in the case of—

(A) Cash;

(B) A check described in § 229.10(c)(1)(i) through (vi); and

(C) A check described in paragraph (b) of this section.

(ii) A depositary bank shall make funds deposited in an account by a check described in paragraph (c) at a nonproprietary ATM available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(iii) Paragraph (f)(2) of this section is effective November 28, 1992.

**Appendix C to Part 229—[Amended]**

3. In model clause C-10, the heading and the first sentence under the subheading "Deposits at Automated Teller Machines" are revised to read as follows:

C-10—Automated Teller Machine Deposits (Permanent Schedule, Extended Holds)

**Deposits at Automated Teller Machines**

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. * * *

**Appendix E to Part 229—[Amended]**

4. Appendix E is amended as set forth below:

a. In the Commentary to § 229.12, a new sentence is added to the end of paragraph (a), the second paragraph of paragraph (b) is revised, and a new paragraph (f) is added to read as follows:

*Section 229.12 Permanent Availability Schedule*

(a) *Effective date.* * * * Paragraph (f) provides special effective dates for deposits made to nonproprietary ATMs.

(b) *Local checks and certain other checks.*

* * * * *

In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c); checks drawn on Federal Reserve Banks and Federal Home Loan Banks; checks drawn by a state or unit of general local government; and cashier's, certified, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depositary bank, must be made available for withdrawal by the second business day following deposit.

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. Notwithstanding other provisions of the regulation concerning availability requirements, during the period from September 1, 1990, through November 27, 1992, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule. Thus from September 1, 1990, to November 27, 1992, a deposit at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. Nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit. This rule does not apply to deposits made at proprietary ATMs.

b. In the Commentary to § 229.16, the first sentence of the seventh paragraph of paragraph (b) is revised to read as follows:

*Section 229.16 Specific Availability Policy Disclosure*

* * * * *

(b) * * *

* * * * *

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12(f)(1) must explain this in the initial disclosure. * * *

* * * * *

c. In the Commentary to appendix C, under the subheading "Model C-10," the first sentence is revised to read as follows:

**Appendix C—Model Forms, Clauses, and Notices**

* * * * *



*Model C-10.*

This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f)(1). * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 5, 1990.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 90-28928 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90-NM-143-AD; Amendment 39-6628]**

## Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires repetitive inspections to detect corrosion in the main landing gear (MLG) bogie beam, and repair or replacement of the MLG bogie beam, if necessary. This amendment is prompted by reports of in-service airplanes showing signs of deterioration of the protective paint and cadmium coating, corrosion, and cracking in both MLG bogie beams. This condition, if not corrected, could result in a ruptured MLG bogie beam and possible collapse of the MLG.

**EFFECTIVE DATE:** December 27, 1990.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires repetitive inspections to detect corrosion in the main landing gear (MLG) bogie beam, and repair or replacement of the MLG bogie beam, if necessary, was published in the **Federal Register** on August 15, 1990 (55 FR 33321).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

In its comments to the Notice, the manufacturer presented data to indicate that a reduction in the proposed compliance time for the inspection of certain older bogie beams is necessary. The manufacturer stated that inspection records provided by Airbus operators have indicated that, out of 272 bogie beams inspected, representing 36% of the fleet, 14 bogie beams (5%) were found corroded in the most sensitive area, and 2 of these had experienced a rupture. The inspection data also revealed that, for bogie beams never overhauled, the cases of steel corrosion occurred on those that had accumulated at least 5½ years; and for bogie beams already overhauled, the cases of steel corrosion occurred on those that had accumulated at least 4 years since overhaul. As a result of this data, both the manufacturer and the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, recommended that inspections of older bogie beams be conducted much sooner than the time proposed, in order to detect corrosion in a more timely manner.

Further, the manufacturer has issued Airbus Service Bulletin A300-32-394, Revision 3, dated October 10, 1990; A310-32-2053, Revision 2, dated March 5, 1990; and A300-32-6031, Revision 1, dated March 5, 1990. These revisions clarify the procedures for inspecting the bogie beams and revise the recommended inspection intervals. The French DGAC has classified these service bulletins as mandatory, and has issued a parallel AD 90-005-101(B), dated September 19, 1990, which requires that initial inspections of older bogie beams be performed within a shortened time schedule (approximately 30 days).

Additionally, the Air Transport Association (ATA) of America reported that, if the FAA were to reduce the compliance time, affected member operators would require more than 30 days to accomplish the requirements of this AD; the ATA recommended a compliance time of 45 days.

In consideration of this new data, the FAA has determined that the compliance time for the initial inspections of older bogie beams should be reduced from the proposed 6 months to 45 days. Failure to detect corrosion and cracking in a timely manner could result in a ruptured MLG bogie beam and possible collapse of the MLG. Accordingly, paragraph A. of the final rule has been revised to require that bogie beams, aged 6 years and 6 months since new and which have never been subject to a general overhaul, must be inspected within 45 days after the effective date of this AD.

In making this revision, the FAA finds that, with respect to the reduced compliance time, since a situation exists that requires immediate adoption of this requirement, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Another commenter requested clarification of certain instruction in the referenced service bulletins prior to proceeding with the rule. The FAA notes, as described above, that the manufacturer has issued revised service information which clarifies the inspection procedures. The final rule has been revised to cite these latest revisions to the applicable service bulletins as the appropriate service information sources. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 35 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $158,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

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on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air Transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 B4-100 and B4-200, A310-200 and -300, and A300-600 B4-600 series airplanes, without Messier Hispano Bugatti (MHB) Modification 784, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect and prevent corrosion and protection deterioration (paint and cadmium coating) and subsequent rupture of the main landing gear (MLG) bogie beam accomplish the following:

A. Perform an inspection of the inner side of the bogie beam between the two axles in accordance with Airbus Industrie Service Bulletins A300-32-394, Revision 3, dated October 10, 1990 (for Model A300 Series Airplanes); A310-32-2053, Revision 1, dated March 5, 1990 (for Model A310 series airplanes); or A300-32-6031, Revision 1, dated March 5, 1990 (for Model A300-600 series airplanes); as follows:

1. For bogie beams which have never been subject to a general overhaul, prior to reaching 6 years and 6 months since new, or within 60 days after the effective date of this Ad, whichever occurs later; or

2. For bogie beams which have been subject to a general overhaul, within 6 months after the effective date of this AD or prior to reaching 3 years and 6 months since overhaul, whichever occurs later.

**Note:** These service bulletins reference MHB Service Bulletin 470-32-659, Revision 1, dated January 8, 1990, for additional instructions.

B. If cracks or corrosion are found, prior to further flight, repair or replace bogie beam in accordance with Airbus Industrie Service Bulletins A300-32-394, Revision 3, dated October 10, 1990 (for Model A300 Series Airplanes); A310-32-2053, Revision 1, dated March 5, 1990 (for Model A310 series airplanes); or A300-32-6031, Revision 1, dated March 5, 1990 (for Model A300-600 series airplanes).

**Note:** These service bulletins reference MHB Service Bulletin 470-32-659 for additional instructions.

C. For bogie beams with traces of corrosion in a critical area as defined in MHB Service Bulletin 470-32-659, Revision 1, dated January 8, 1990, replace bogie beam within 10 months following the repair or since the reinstallation on the airplane, whichever occurs later.

D. For bogie beams having had paint restoration in a critical area, as defined in MHB Service Bulletin 470-32-659, Revision 1, dated January 8, 1990, perform repetitive inspections at intervals not to exceed 18 months.

E. If no corrosion or defects are found, repeat the inspection, required by paragraph A., above, at intervals not to exceed 3 years and 6 months.

F. Incorporation of MHB Modification 784, in accordance with MHB Service Bulletin 470-32-672, dated January 23, 1990, constitutes terminating action for the inspections required by paragraph A., D., and E., above

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspection (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 27, 1990.

Issued in Seattle, Washington, on November 28, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28956 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-135-AD; Amendment 39-6830]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires modification of hydraulic lines in the elevator control system. This amendment is prompted by a report that damage to the horizontal stabilizers of the early production Model 747 airplanes could potentially cause the loss of fluid from all four hydraulic systems. This condition, if not corrected, could result in a loss of the primary flight controls in the event of major structural damage.

**EFFECTIVE DATE:** January 15, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires modification of hydraulic lines in the elevator control system, was published in the **Federal Register** on August 14, 1990 (55 FR 33125).



Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurred with the provisions of the proposed rule.

Another commenter requested that the proposed rule be revised to allow operators the option to deactivate hydraulic tubing in the critical areas rather than removing it entirely, which would be more expensive. The FAA will consider requests for alternate means of compliance for optional methods such as this on a case-by-case basis under the provisions of paragraph B. of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 34 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of required parts is estimated at $1,356 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $75,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, line numbers 1 through 30, certificated in any category. Compliance required within the next 4,500 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent the loss of the airplane primary flight controls due to loss of hydraulic fluid from all four hydraulic systems, accomplish the following:

A. Modify the hydraulic lines in the elevator control system in accordance with Section III of the Accomplishment Instructions, Steps G through H, of Boeing Alert Service Bulletin 747-29A2063, Revision 5, dated June 7, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 15, 1991.

Issued in Renton, Washington, on November 29, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28981 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-261-AD; Amendment 39-6832]**

## Airworthiness Directives; Boeing Model 737-300, 737-400, 737-500, and 757-200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300, 737-400, 737-500, and 757-200 series airplanes, which requires the inspection and repair or replacement, if necessary, of certain Transaero double flight attendant seats. This amendment is prompted by in-service reports of damaged seat bottoms caused by the apparent mis-manufacture of these seats. This condition, if not corrected, could result in injury to flight attendants.

**EFFECTIVE DATE:** December 26, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terrell W. Rees, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2785. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Several operators of Boeing Model 737 and 757 series airplanes have reported instances of bent, fractured, broken, cracked, or otherwise damaged seat bottoms of certain double flight attendant seats manufactured by Transaero. These conditions were apparently caused by the incorrect manufacture of these seats. The location of diagonal stiffeners and the selection of fasteners do not conform to drawing specifications. Consequently, the seats are not satisfactorily withstanding the loads normally encountered in service. Tests conducted subsequent to the discovery of this problem indicate that these seats will perform as required when new, but as experience corroborates, will damage easily in service. Damaged seats have been reported after as little as two months in service.

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This condition, if not corrected, could result in seat failures and possible injury to flight attendants.

Boeing issued an all-operator Telex M-7272-90-7083 on November 1, 1990, to notify its customers of this problem. The telex identified the affected airplanes, provided background history, and outlined suggested interim maintenance procedures. This telex also referenced a pending Transaero Service Bulletin 176, which will contain procedures for repairing or replacing the seat pans.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections of these seat pans to detect damage. If damage is found, operators have the option of (1) installing a placard on the damaged seat, stating that the damaged seat is not to be occupied; (2) replacing the seat pan with a new unit and continuing the inspections for it; or (3) repairing the seat pan in a manner approved by the FAA. These actions may be terminated when the seat pan is replaced with a newly manufactured seat pan that is approved by the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300, 737-400, and 737-500 series airplanes, and Model 757-200 series airplanes; equipped with Transaero P/N 91466 series double flight attendant seats; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent injury to flight attendants, accomplish the following:

A. Within 21 days after the effective date of this AD, inspect the front edge of the affected seat pans for areas of abnormal flexibility when hand pressure is applied perpendicular to the seat pan, and for permanent deflection or misfair of the seat pan edge when stowed.

1. If no obvious damage is detected, repeat the inspection at intervals not to exceed 30 days.

2. If any of the above conditions are found, prior to further flight, accomplish one of the following:

a. Install a placard stating that the damaged seat is not to be occupied; or

b. Replace the seat pan with a new seat pan of the same part number, and continue to inspect at intervals not to exceed 30 days thereafter in accordance with paragraph A. of this AD; or

c. Repair the seat pan in a manner approved by the Manager, Seattle Aircraft Certification Office, and continue to inspect at intervals not to exceed 30 days in accordance with paragraph A. of this Ad.

B. The actions required by paragraph A. of this AD may be terminated upon replacement of affected seat pans with seat pans that have been approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 26, 1990.

Issued in Renton, Washington, on November 30, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28954 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-244-AD; Amendment 39-6829]**

## Airworthiness Directives; Boeing Model 747-400 and 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747-400 and 767-300 series airplanes, which currently requires a one-time inspection of cargo fire protection plumbing, replacement of the fire extinguisher discharge orifices if necessary, and reporting of all improper configurations detected. That amendment was prompted by a report from the manufacturer that fire protection components may have been incorrectly installed during production. This condition, if not corrected, could result in insufficient extinguishant concentration or duration in the event of a cargo compartment fire. This amendment increases the number of Model 767 series airplanes for which the inspection is applicable and adds an inspection of the Model 767 aft cargo compartment.

**EFFECTIVE DATE:** December 27, 1990.



**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. G. M. Dail, Seattle Aircraft Certification Office, Systems & Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** On September 6, 1990, the FAA issued AD 90-19-11, Amendment 39-6736, September 12, 1990), to require a one-time inspection of cargo fire protection plumbing on certain Boeing Model 747-400 and 767-300 series airplanes, replacement of the fire extinguisher discharge orifices if necessary, and reporting of any findings of improper configurations to the FAA.

That action was prompted by reports from the manufacturer indicating that the cargo compartment fire extinguishing discharge orifices on five Boeing Model 747-400 series airplanes may have been incorrectly configured in production. The installation of incorrect fire extinguisher discharge orifices could result in inadequate fire protection. If the orifice size is smaller than required, the quantity of agent discharged into the cargo compartment may be insufficient to maintain fire suppression. If the orifice is larger than required, the duration of fire protection would be shortened.

Since Model 767 series airplanes use this same orifice, the possibility exists for incorrect configurations to have been installed on those models as well.

Since issuance of that AD, Boeing has advised the FAA that 223 more Model 767 airplanes may have incorrect orifices installed and that the orifices in the aft cargo compartment of the Model 767 must also be checked.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-26A0068, Revision 1, dated September 18, 1990, which describes procedures for a one-time inspection of the forward and aft cargo compartments, and if necessary, replacement of the fire extinguisher discharge orifices with the correct part.

Since this condition is likely to exist on other airplanes of the same type design, this AD supersedes AD 90-19-11, to also require a one-time inspection of the forward and aft cargo compartment fire extinguisher orifices on the additional Model 767 airplanes in accordance with the service bulletin previously described, and reporting of improper configurations detected. The aft cargo compartment on the Model 767 airplanes that are subject to AD 90-19-11 must also be inspected.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6736 (55 FR 33046, September 12, 1990), AD 90-19-11, with the following new airworthinese directive:

Boeing: Applies to Model 747-400 series airplanes listed in Boeing Alert Service Bulletin 747-28A2170, dated July 5, 1990; and Model 767 series airplanes listed in Boeing Alert Service bulletin 767-28A0068, Revision 1, dated September 18, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent insufficient cargo fire protection, which could result in significant damage to the airplane in the event of a cargo compartment fire, accomplish the following:

A. For Model 747-400 series airplanes, within 30 days after October 1, 1990 (the effective date of Amendment 39-6736, AD 90-19-11), inspect the cargo compartment fire extinguisher orifices in accordance with Boeing Alert Service Bulletin 747-28A2170, dated July 5, 1990. If the part number does not match any number specified as the correct number in the service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

B. For Model 767-300 series airplanes listed in Boeing Alert Service Bulletin 767-28A0068, dated July 5, 1990:

1. Within 30 days after October 1, 1990 (the effective date of Amendment 39-6736, AD 90-19-11), inspect the forward cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with Boeing Alert Service Bulletin 767-28A0068, dated July 5, 1990. If the part number does not match any number specified as the correct number in that service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

2. Within 30 days after the effective date of this amendment, inspect the aft cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with Boeing Alert Service Bulletin 767-28A0068, Revision 1, dated September 18, 1990. If the part number does not match any number specified as the correct number in that service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

C. For Model 767 series airplanes listed in Boeing Alert Service Bulletin 767-28A0068, Revision 1, dated September 18, 1990, other than those that are subject to paragraph B. of this AD, within 30 days after the effective date of this amendment, inspect the cargo compartment fire extinguisher orifices to determine the part number installed, in accordance with that service bulletin. If the

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part number in the service bulletin does not match any number specified as the correct number in the service bulletin, prior to further flight with cargo in that compartment, replace with a correct part.

D. Within 10 days after the inspection required by paragraph A., B., or C. of this AD, if configuration discrepancies are discovered, submit a report of findings to the Manager, Seattle Manufacturing Inspection District Office, ANM-105S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The report must include the airplane serial number.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6736, AD 90-19-11.

This amendment becomes effective December 27, 1990.

Issued in Renton, Washington, on November 30, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28955 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-NM-172-AD; Amendment 39-6834]

## Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires repetitive visual inspections to detect cracks in the flight deck pilot's and co-pilot's side glazing frame at Pillars B and C, followed by an eddy current inspection to determine extent of damage, and repair or replacement, if necessary. This amendment is prompted by reports of cracks found in the direct view window aperture at Pillars B and C. This condition, if not corrected, could result in reduced structural capability of the glazing frame and possible rapid decompression of the airplane.

**EFFECTIVE DATE:** January 16, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148, Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires inspections to detect cracks in the flight deck pilot's and co-pilot's side glazing frame at Pillars B and C, and repair or replacement, if necessary, was published in the Federal Register on September 20, 1990 (55 FR 38701).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the glazing frame and possible rapid decompression of the airplane, accomplish the following:

A. For airplanes operating at a maximum cabin differential pressure of 7.5 pounds per square inch (psi): Prior to the accumulation of 20,000 landings on the glazing frame since new, or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,800 landings, perform an internal and external visual inspection, or non-destructive testing (NDT) inspection, of the pilot's and co-pilot's direct view (DV) window aperture (flight deck side glazing frame at Pillars B and C), in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990.

B. For airplanes modified for operation above 7.5 psi to a maximum of 8.2 psi cabin differential pressure: Prior to the accumulation of 14,000 landings on the



glazing frames since new, or within 1,100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,110 landings, perform an internal and external visual inspection, or non-destructive testing (NDT) inspection, of the pilot's and co-pilot's DV window aperture (flight deck side glazing frame at Pillars B and C), in accordance with the Accomplishment Instructions of British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990.

C. If cracks are found during the inspections required by paragraphs A. and B. of this AD, prior to further flight, perform an eddy current inspection, in accordance with British Aerospace Alert Service Bulletin 53-A-PM5985, Issue 1, dated March 21, 1990; and

1. For cracks equal to or less than 0.2 inch, damage may be blended out in accordance with Table 1 or Table 2 of the service bulletin, as appropriate.

2. All other cracks must be repaired in accordance with the Structural Repair Manual, as specified in Table 1 and Table 2 of the service bulletin, as appropriate; or repaired in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate; or the glazing frame must be replaced with a serviceable part.

3. If blending has been previously accomplished, all cracks must be repaired in accordance with the BAC 1-11 Structural Repair Manual, as specified in Table 1 or Table 2 of the service bulletin, as appropriate; or repaired in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

4. Following repair or replacement, the inspections specified in paragraphs A. and B. of this AD are still required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, P.O. Box 17414, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 16, 1991.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28950 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-NM-161-AD; Amendment 39-6833]

## Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain SAAB-Scania Model SF-340A series airplanes, which currently requires an eddy current inspection to detect cracks in the horizontal stabilizer, and repair, if necessary; and reinforcement of the horizontal stabilizer. This action requires, in addition to the previous requirements, the removal and replacement of the right and left drag angle and associated shims. This amendment is prompted by additional reports of damage in the area of the drag angle and fuselage skin that occurred during airframe fatigue tests after the horizontal stabilizers had been reinforced. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer.

**EFFECTIVE DATE:** January 16, 1991.

**ADDRESSES:** The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone, (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-12-12, Amendment 39-6628 (55 FR 23189, June 7, 1990), applicable to certain SAAB-Scania Model SF-340A series airplanes, to require, in addition to the previous requirements, the removal and replacement of the right and left drag angle and associated shims, was published in the Federal Register on September 17, 1990 (55 FR 38082).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Since the issuance of the Notice, SAAB-Scania has issued Revision 1 to Service Bulletin 340-55-027, dated October 10, 1990. This revision clarifies the procedures for reinforcing the horizontal stabilizer and drag angle. The final has been revised to incorporate this latest revision to the service bulletin as an additional source of service information.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

It is estimated that 79 airplanes of U.S. registry will be affected by this AD, that it will take approximately 250 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $4,936. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,179,944.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 49 U.S.C. 1180.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding Amendment 39-6628 (55 FR 23189, June 7, 1990), AD 90-12-12, with the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, Serial Numbers 004 through 136, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the horizontal stabilizer, accomplish the following:

A. Prior to the accumulation of 16,000 landings or within 90 days after July 13, 1990 (the effective date of AD 90-12-12, Amendment 39-6628), whichever occurs later, accomplish the following:

1. Perform an eddy current inspection to detect cracks in the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340-55-013, dated December 1, 1989. If cracks are detected, repair prior to further flight, in accordance with the service bulletin.

2. Reinforce the horizontal stabilizer, in accordance with SAAB-Scania Service Bulletin 340-55-013, dated December 1, 1989.

B. Prior to the accumulation of 16,000 landings, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the Accomplishment Instructions in SAAB-Scania Service Bulletin 340-55-027, dated June 28, 1990, or Revision 1, October 10, 1990.

1. Remove the left and right drag angles and associated shims.

2. Perform a visual and dye penetrant inspections of the drag angle attaching holes; if cracks are found, repair prior to further flight.

3. Install new drag angles and associated shims.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Produce Support, S-581.88, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6628, AD 90-12-12.

This amendment becomes effective January 16, 1991.

Issued in Renton, Washington, on November 30, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28952 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1316**

**Administrative Functions, Practices, and Procedures**

**AGENCY:** Drug Enforcement Administration (DEA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations concerning administrative inspections which set forth the Drug Enforcement Administration's (DEA) authority to include the recently acquired authority to inspect any person who manufactures, distributes, imports or exports listed chemicals, tableting machines or encapsulating machines. This amendment addresses the DEA's authority regarding the Chemical Diversion and Trafficking Act of 1988 (CDTA).

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Brophy, Deputy Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-7297.

**SUPPLEMENTARY INFORMATION:** On October 4, 1989, a notice of proposed rulemaking was published in the Federal Register (54 FR 40688). The Administrator of the DEA proposed to amend the regulations concerning administrative inspections to include the authority to inspect persons regulated under the CDTA. The proposed rule provided the opportunity for interested parties to submit comments and objections. One party submitted comments to the proposed rule.

The comments addressed two areas: (1) The DEA has exceeded its inspection authority, and (2) the definition of controlled premises needed clarification. The comments stated that the DEA has attempted to exceed the authority granted by Congress under the CDTA, and recommended revision of the proposed rule and clarification of the definition of controlled premises.

The CDTA establishes a system which requires certain regulated persons to maintain records of specified transactions which involve chemicals listed in the CDTA and transactions with tableting and encapsulating machines. Section 6052 of the CDTA (21 U.S.C. 830 and 21 CFR parts 1310 and 1313) describes the responsibilities of a regulated person to keep and provide records and states that such records "shall be available for inspection and copying by the Attorney General." Similar language is found in the Controlled Substances Act (CSA), which incorporates the CDTA, for persons who handle controlled substances and are registered under 21 U.S.C. 823. Title 21 U.S.C. 827(b) states that a registrant shall keep and make available records for inspection and copying by officers and employees authorized by the Attorney General. Since the language in the CSA pertaining to controlled substances and the language in the CDTA pertaining to chemicals and machines are identical, it is apparent that Congress applied the DEA's existing inspection authority under the CSA to chemicals and machines.

The CSA provides a mechanism for the Attorney General and his designees to conduct administrative inspections of premises where records required to be kept under the CSA are located. This mechanism is outlined in 21 U.S.C. 880. This section authorizes the Attorney General to conduct administrative inspections of controlled premises to ensure the correctness of records. Under the scope of an administrative inspection, 21 U.S.C. 880(b), an inspector can inspect, copy and verify the correctness of required documents to facilitate the carrying out of the Attorney General's functions. With an inspection warrant, the inspector also has the authority to inspect controlled premises, equipment, other substances or materials, containers, labels, and all other things therein, appropriate for verification of documents. To achieve the DEA's objective it is vital that verification be a part of the investigative process. Investigation without verification would nullify the CDTA.

In regard to the second comment, the definition of controlled premises is divided into two areas: 21 U.S.C. 880(a)(1) defines controlled premises as places where records required under the Act are kept or required to be kept. This definition, therefore, includes places where records required under the CDTA are kept or required to be kept, which is the regulated person's place of business where the transaction occurred. Title 21 U.S.C. 880(a)(2) defines controlled premises and pertains to persons registered under 21 U.S.C. 823 to handle controlled substances. This subsection is not applicable to persons regulated under the CDTA. The foregoing explanation fulfills the request that this definition be further clarified.

After reviewing the comments, the DEA has decided to maintain section 1316.03(a) as originally proposed as it has been determined that the original language is quite clear and does not cause confusion on which records are subject to the CDTA requirements.

The Acting Administrator of the Drug Enforcement Administration hereby certifies that this Final Rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the Rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 21 CFR Part 1316**

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Research, Seizures and forfeitures.

For reasons set out in the preamble, part 1316, chapter II, title 21, Code of Federal Regulations is amended as follows:

**PART 1316—[AMENDED]**

1. The authority citation for part 1316, subpart A, continues to read as follows:

**Authority:** 21 U.S.C. 822(f), 830(a)(2), 871(b), 880, 958(f), 965.

2. Section 1316.03 is amended by revising paragraph (a) as follows:

**§ 1316.03 Authority to make inspections.**

* * * * *



(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to part 1304 of this chapter, order form records required to be kept pursuant to part 1305 of this chapter, prescription and distribution records required to be kept pursuant to part 1306 of this chapter, records of listed chemicals, tableting machines, and encapsulating machines required to be kept pursuant to part 1310 of this chapter, import/export records of listed chemicals required to be kept pursuant to part 1313 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

* * * * *

Dated: October 15, 1990.

**Robert C. Bonner,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 90-28922 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-09-M

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[T.D. 8321]**

RIN 1545-AJ74

**Untimely Filing of Income Tax Returns by Nonresident Alien Individuals and Foreign Corporations**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final Income Tax Regulations relating to denial of deductions and credits to nonresident alien individuals and foreign corporations that do not file true and accurate income tax returns by the time limits set forth in the final regulations. These regulations are necessary so that the income tax returns will be filed in a timely manner.

**EFFECTIVE DATE:** The amendments are effective July 31, 1990, for taxable years ending after July 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL-74-89) (202-566-3452, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in these final regulations at §§ 1.874-1 and 1.882-4 have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-0089 and 1545-0123. This information is required by the Internal Revenue Service to allow it to properly determine the taxable income of and tax owed by nonresident alien individuals and foreign corporations. The likely respondents are nonresident alien individuals and foreign corporations. The burdens on the nonresident alien individuals and foreign corporations are the burdens associated with Forms 1040NR and 1120F.

Comments concerning these burdens and suggestions for reducing these burdens should be directed to the Office of Management and Budget, Paperwork Reduction Project (1545-0089 and 1545-0123), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

**Background**

On July 31, 1989, (54 FR 31545) the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 874 and 882 of the Internal Revenue Code. Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The comments and revisions are discussed below.

**Explanation of Provisions**

The proposed regulations at § 1.874-1(b) with regard to nonresident alien individuals and § 1.882-4(a)(3) with regard to foreign corporations provided that under sections 874(a) and 882(c)(2) otherwise allowable deductions and credits will be allowed only if a return is filed by the time limits as set forth in those regulations.

Under the proposed regulations, whether a return has been filed on a timely basis for purposes of section 874(a) or 882(c)(2) is dependent upon

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whether the nonresident alien individual or foreign corporation has filed a return for the taxable year immediately preceding the taxable year for which deductions or credits are claimed. If a return was filed for the immediately preceding taxable year, a return for the current taxable year must be filed within one year of the extended due date, as set forth in sections 6072 and 6081, for filing that return. If a return has not been filed for the immediately preceding taxable year, or if the current year is the first year for which a return is required under section 874(a) or 882(c)(2), the current year's return must have been filed no later than the earlier of the date which is one year after the extended due date, as set forth in sections 6072 and 6081, for filing that return or the date the Internal Revenue Service mails a notice informing the taxpayer that a tax return has not been filed and that no deductions or credits may be claimed.

Commenters questioned the validity of the filing deadlines as set forth in the proposed regulations. The filing deadlines were not eliminated in the final regulations, however, since the statute clearly provides for the denial of deductions and credits if returns are not filed in a timely manner. This requirement is justified because of different administrative and compliance concerns with regard to nonresident alien individuals and foreign corporations.

In response to a commenter's suggestion, the final regulations modify the filing deadline for the first taxable year for which a return is required to be filed. Under the final regulations, the filing deadline for those returns will be the same as if a return was filed for the immediately preceding taxable year.

A new § 1.882–4(a)(3)(v) provides that in order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return, on a timely basis, in the manner as set forth in paragraphs (a) (2) and (3) of that section.

In response to commenters' suggestions, several provisions of the proposed regulations have been clarified. The references to the filing deadlines have been clarified so as to set forth a specific number of months (i.e., 18 months for nonresident alien individuals and 18 months for foreign corporations) rather than referring, as in the proposed regulations, to one year after the extended due date. Paragraph (b)(3) of § 1.874–1 clarifies that the filing deadlines of that paragraph apply to a nonresident alien individual who has a permanent establishment or fixed base in the United States. Likewise, as provided in § 1.882–4(a)(3)(iii), the filing deadlines also apply to a foreign corporation which has a permanent establishment in the United States. Sections 1.874–1(b)(4) and 1.882–4(a)(3)(iv) have been clarified to provide that neither deductions nor credits need be reported on the protective returns filed pursuant to those sections.

### Drafting Information

The principal author of these regulations is Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

### Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business. The collections of information contained in this document, for which no substantive changes were proposed, are currently approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB Control Nos. 1545–0069 and 1545–0126).

### List of Subjects in 26 CFR §§ 1.861–1 Through 1.907–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAX REGULATIONS

**Paragraph 1.** The authority for part 1 continues to read in part:

**Authority:** 26 U.S.C. 7805. * * *

**Par. 2.** The heading and text for § 1.874–1 are revised to read as follows:

### § 1.874–1 Allowance of deductions and credits to nonresident alien individuals.

(a) *Return required.* A nonresident alien individual shall receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, only if the nonresident alien individual timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of the income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States by the nonresident alien individual. No provision of this section (other than paragraph (c)(2)) shall be construed, however, to deny the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii). In addition, notwithstanding the requirement that a nonresident alien must file a timely return in order to receive the benefit of the deductions and credits otherwise allowable with respect to the income tax, the nonresident alien individual may, for purposes of determining the amount of tax to be withheld under section 1441 from remuneration paid for labor or personal services performed within the United States, receive the benefit of the deduction for personal exemptions provided in section 151, to the extent allowable under section 873(b)(3) and paragraph (c)(3) of § 1.873–1, or in any applicable tax convention, by filing a claim therefor with the withholding agent. The amount of the deduction for the personal exemptions and the amount of the tax to be withheld under those circumstances shall be determined in accordance with paragraph (e)(2) of § 1.1441–3. The deductions and credits allowed such a nonresident alien individual electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(b) *Filing deadline for return*—(1) *General rule.* As provided in paragraph (a) of this section, for purposes of computing the nonresident alien individual's taxable income for any taxable year, otherwise allowable deductions and credits will be allowed only if a true and accurate return for that taxable year is filed by the nonresident alien individual on a timely basis. For taxable years of a nonresident alien individual ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the



nonresident alien individual filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the nonresident alien individual for which a return is required to be filed, the required return for the current taxable year must be filed within 18 months of the due date, as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the nonresident alien individual for which a return is required to be filed) must have been filed no later than the earlier of the date which is 18 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the nonresident alien individual advising the nonresident alien individual that the current year tax return has not been filed and that no deductions or credits (other than those provided in sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the nonresident alien individual.

(2) *Waiver.* The filing deadlines set forth in paragraph (b)(1) of this section may be waived by the District Director or Assistant Commissioner (International) in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the nonresident alien individual.

(3) *Income tax treaties.* A nonresident alien individual who has a permanent establishment or fixed base, as defined in an income tax treaty between the United States and the country of residence of the nonresident alien individual, in the United States is subject to the filing deadlines as set forth in paragraph (b)(1) of this section.

(4) *Protective return.* If a nonresident alien individual conducts limited activities in the United States in a taxable year which the nonresident alien individual determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 871(b) and 864 (b) and (c) and the regulations under those sections, the nonresident alien individual may nonetheless file a return for that taxable year on a timely basis under paragraph (b)(1) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the nonresident alien individual is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (b)(4). If the nonresident alien individual determines that part of the activities which he or she conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the nonresident alien individual must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of that trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the nonresident alien individual should attach to that return the statement described in this paragraph (b)(4) with regard to the other activities. The nonresident alien individual may follow the same procedure if the nonresident alien individual determines initially that he or she has no United States tax liability under the provisions of an applicable income tax treaty. In the event the nonresident alien individual relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax to which that income is subject, disclosure may be required pursuant to section 6114.

(c) *Allowed deductions and credits*—(1) *In general.* Except for losses of property located within the United States, charitable contributions and personal exemptions (see section 873(b)), deductions are allowed to a nonresident alien individual only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of the nonresident alien individual's trade or business in the United States. Other than credits allowed by sections 31, 32, 33, 34, and 852(b)(3)(D)(ii), the nonresident alien individual is entitled to credits only if they are attributable to effectively connected income. See paragraph (a) of this section for the requirement that a return be timely filed. Except as provided by section 960, a nonresident alien individual shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a nonresident alien individual claiming deductions from gross income which is effectively connected or treated as effectively connected, with the conduct of a trade or business in the United States and credits attributable to that income must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the nonresident alien individual is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of the claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a nonresident alien individual fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part.

(d) *Return by Internal Revenue Service.* If a nonresident alien individual has various sources of income within the United States, so that from any one source, or from all sources combined, the amount of income shall call for the assessment of a tax greater than that withheld at the source in the case of that individual, and a return of income has not been filed in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (b)(1) of this section, the Internal Revenue Service shall:

(1) Cause a return of income to be made,

(2) Include on the return the income described in §§ 1.871–7 or § 1.871–8 of that individual from all sources concerning which it has information, and

(3) *Assess the tax.* If the nonresident alien individual is not engaged in, or does not receive income that is treated as being effectively connected with, a United States trade or business and § 1.871–7 is applicable, the tax shall be assessed on the basis of gross income without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more sources of income within the United States. If the nonresident alien individual is engaged in a United States trade or business or is treated as having effectively connected income and § 1.871–8 applies, the tax on the income of the nonresident alien individual that is not effectively connected, or treated as effectively connected with the

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conduct of a United States trade or business shall be assessed on the basis of gross income, determined in accordance with the rules of § 1.871–7, without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States. Tax on income that is effectively connected, or treated as effectively connected, with the conduct of a United States trade or business shall be assessed in accordance with either section 1, 55 or 402(e)(1) without allowance for deductions or credits (other than the credits provided by sections 31, 32, 33, 34 and 852(b)(3)(D)(ii)) and collected from one or more of the sources of income within the United States.

(e) *Alien resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.* This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands during the entire taxable year. *See* section 876 and § 1.876–1.

**Par. 3.** The heading and text for § 1.882–4 are revised to read as follows:

**§ 1.882–4 Allowance of deductions and credits to foreign corporations.**

(a) *Foreign corporations*—(1) *In general.* A foreign corporation that is engaged in, or receives income treated as effectively connected with, a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's gross income which is effectively connected, or treated as effectively connected, with its conduct of a trade or business within the United States. The foreign corporation is entitled to credits which are attributable to that effectively connected income. No provision of this section (other than paragraph (b)(2)) shall be construed to deny the credits provided by sections 33, 34 and 852(b)(3)(D)(ii) or the deduction allowed by section 170.

(2) *Return necessary.* A foreign corporation shall receive the benefit of the deductions and credits otherwise allowed to it with respect to the income tax, only if it timely files or causes to be filed with the Philadelphia Service Center, in the manner prescribed in subtitle F, a true and accurate return of its taxable income which is effectively connected, or treated as effectively connected, for the taxable year with the conduct of a trade or business in the United States by that corporation. The deductions and credits allowed such a corporation electing under a tax convention to be subject to tax on a net basis may be obtained by filing a return of income in the manner prescribed in the regulations (if any) under the tax convention or under any other guidance issued by the Commissioner.

(3) *Filing deadline for return.* (i) As provided in paragraph (a)(2) of this section, for purposes of computing the foreign corporation's taxable income for any taxable year, otherwise allowable deductions (other than that allowed by section 170) and credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)) will be allowed only if a return for that taxable year is filed by the foreign corporation on a timely basis. For taxable years of a foreign corporation ending after July 31, 1990, whether a return for the current taxable year has been filed on a timely basis is dependent upon whether the foreign corporation filed a return for the taxable year immediately preceding the current taxable year. If a return was filed for that immediately preceding taxable year, or if the current taxable year is the first taxable year of the foreign corporation for which a return is required to be filed, the required return for the current taxable year must be filed within 18 months of the due date as set forth in section 6072 and the regulations under that section, for filing the return for the current taxable year. If no return for the taxable year immediately preceding the current taxable year has been filed, the required return for the current taxable year (other than the first taxable year of the foreign corporation for which a return is required to be filed) must have been filed no later than the earlier of the date which is 18 months after the due date, as set forth in section 6072, for filing the return for the current taxable year or the date the Internal Revenue Service mails a notice to the foreign corporation advising the corporation that the current year tax return has not been filed and that no deductions (other than that allowed under section 170) or credits (other than those allowed under sections 33, 34 and 852(b)(3)(D)(ii)) may be claimed by the taxpayer.

(ii) The filing deadlines set forth in paragraph (a)(3)(i) of this section may be waived by the District Director or Assistant Commissioner (International), in rare and unusual circumstances if good cause for such waiver, based on the facts and circumstances, is established by the foreign corporation.

(iii) A foreign corporation which has a permanent establishment, as defined in an income tax treaty between the United States and the foreign corporation's country of residence, in the United States is subject to the filing deadlines set forth in paragraph (a)(3)(i) of this section.

(iv) If a foreign corporation conducts limited activities in the United States in a taxable year which the foreign corporation determines does not give rise to gross income which is effectively connected with the conduct of a trade or business within the United States as defined in sections 882(b) and 864 (b) and (c) and the regulations under those sections, the foreign corporation may nonetheless file a return for that taxable year on a timely basis under paragraph (a)(3)(i) of this section and thereby protect the right to receive the benefit of the deductions and credits attributable to that gross income if it is later determined, after the return was filed, that the original determination was incorrect. On that timely filed return, the foreign corporation is not required to report any gross income as effectively connected with a United States trade or business or any deductions or credits but should attach a statement indicating that the return is being filed for the reason set forth in this paragraph (a)(3). If the foreign corporation determines that part of the activities which it conducts in the United States in a taxable year gives rise to gross income which is effectively connected with the conduct of a trade or business and part does not, the foreign corporation must timely file a return for that taxable year to report the gross income determined to be effectively connected, or treated as effectively connected, with the conduct of the trade or business within the United States and the deductions and credits attributable to the gross income. In addition, the foreign corporation should attach to that return the statement described in this paragraph (b)(3) with regard to the other activities. The foreign corporation may follow the same procedure if it determines initially that it has no United States tax liability under the provisions of an applicable income tax treaty. In the event the foreign corporation relies on the provisions of an income tax treaty to reduce or eliminate the income subject to taxation, or to reduce the rate of tax, disclosure may be required pursuant to section 6114.

(v) In order to be eligible for any deductions and credits for purposes of computing the accumulated earnings tax of section 531, a foreign corporation must file a true and accurate return; on a timely basis, in the manner as set forth in paragraph (a) (2) and (3) of this section.



(4) *Return by Internal Revenue Service.* If a foreign corporation has various sources of income within the United States and a return of income has not been filed, in the manner prescribed by subtitle F, including the filing deadlines set forth in paragraph (a)(3) of this section, the Internal Revenue Service shall:

(i) Cause a return of income to be made,

(ii) Include on the return the income described in § 1.882–1 of that corporation from all sources concerning which it has information, and

(iii) Assess the tax and collect it from one or more of those sources of income within the United States, without allowance for any deductions (other than that allowed by section 170) or credits (other than those allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

If the income of the corporation is not effectively connected with, or if the corporation did not receive income that is treated as being effectively connected with, the conduct of a United States trade or business, the tax will be assessed under § 1.882–1(b)(1) on a gross basis, without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)). If the income is effectively connected, or treated as effectively connected, with the conduct of a United States trade on business, tax will be assessed in accordance with either section 11, 55 or 1201(a) without allowance for any deduction (other than that allowed by section 170) or credit (other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii)).

(b) *Allowed deductions and credits*—(1) *In general.* Except for the deduction allowed under section 170 for charitable contributions and gifts (see section 882(c)(1)(B)), deductions are allowed to a foreign corporation only to the extent they are connected with gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States. Deductible expenses (other than interest expense) are properly allocated and apportioned to effectively connected gross income in accordance with the rules of § 1.861–8. For the method of determining the interest deduction allowed to a foreign corporation, see § 1.882–5. Other than the credits allowed by sections 33, 34 and 852(b)(3)(D)(ii), the foreign corporation is entitled to credits only if they are attributable to effectively connected income. See paragraph (a)(2) of this section for the requirement that a return be filed. Except as provided by section 906, a foreign corporation shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(2) *Verification.* At the request of the Internal Revenue Service, a foreign corporation claiming deductions from gross income which is effectively connected, or treated as effectively connected, with the conduct of a trade or business in the United States or credits which are attributable to that income must furnish at the place designated pursuant to § 301.7605–1(a) information sufficient to establish that the corporation is entitled to the deductions and credits in the amounts claimed. All information must be furnished in a form suitable to permit verification of claimed deductions and credits. The Internal Revenue Service may require, as appropriate, that an English translation be provided with any information in a foreign language. If a foreign corporation fails to furnish sufficient information, the Internal Revenue Service may in its discretion disallow any claimed deductions and credits in full or in part. For additional filing requirements and for penalties for failure to provide information, see also section 6038A.

Dated: November 13, 1990.

**Fred T. Goldberg,**

*Commissioner of Internal Revenue.*

Approved:

**Kenneth W. Gideon,**

*Assistant Secretary of the Treasury.*

[FR Doc. 90–28772 Filed 12–10–90; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Part 418

[BPD–670–FC]

## Medicare Program; Hospice Care Amendments; Medicare

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** These rules amend the hospice care provisions on physician certification of terminal illness—

- To allow up to 8 days to obtain written certification of terminal illness, provided oral certification is obtained within 2 days after the initial period of care begins; and
- To modify the certification statement which, in its previous form, was shown to discourage physicians from certifying terminal illness and thereby discourage hospice participation in Medicare.

These changes are necessary—

- To conform HCFA rules to amendments made by section 6006(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89); and
- To carry out the recommendations of the General Accounting Office (GAO), aimed at encouraging greater participation of hospices in the Medicare program.

These rules also simplify and clarify other hospice policies, remove outdated content, and correct cross-references.

**DATES:** *Effective date:* Except for § 418.22, which requires OMB approval before it becomes effective, the rules are effective January 10, 1991.

*Comment date:* We will consider comments received by February 11, 1991.

**ADDRESSES:** Please address written comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–670–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If your prefer, you may deliver your comments to: Room 309—Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC. or Room 132, East High Rise Building, 6325 Security Blvd., Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–670–FC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks from today, in Room 309G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday from 8:30 a.m. to 5 p.m. (202–245–7890).

**FOR FURTHER INFORMATION CONTACT:** John J. Thomas (301) 966–4623.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Hospice care is an alternative way of treating individuals who are terminally ill. The emphasis in hospice care is on controlling pain and providing services that enable the patient to remain at home as long as possible and to continue normal activities to the extent feasible. Hospices provide social and psychological, as well as medical services. Hospice staff work with the family—helping them to deal with the illness and the anticipated death of the patient. Hospices afford those who are caring for a patient occasional brief

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periods of respite by providing inpatient care for the beneficiary.

Hospice care emerged in this country around 1975. Medicare coverage of hospice care was established by section 122 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, commonly referred to as "TEFRA"). Since 1983, Medicare beneficiaries certified as terminally ill have had the option of electing hospice care in lieu of most other Medicare-covered services.

*A. Statutory Amendment*

Section 8005(b) of OBRA '89 (Pub. L. 101-239) amends section 1814(a)(7)(A)(i) of the Act, effective for services furnished on or after January 1, 1990—

- To require that the initial physician certifications of terminal illness be in writing; and
- To allow up to 8 days for the written certifications, provided oral certifications are made within 2 days after the first 90-day period of care begins.

*B. Results of GAO Study*

After a comprehensive study of the Medicare hospice benefit, GAO found that many physicians were concerned about the statement that they were required to use to certify terminal illness. That statement seemed to require certainty of prognosis, whereas the establishment of long term prognoses always involves some uncertainty. The GAO suggested that physician reluctance to provide certification could be overcome by modifying the statement to incorporate the concept that the certification is based on general knowledge of the normal course of the illness and not on certain knowledge of the patient's prognosis.

**II. Changes in the Regulations**

1. We have revised § 418.22 of the Medicare rules to reflect both the statutory change and the recommendation that grew out of the GAO study. Specifically—

- Revised paragraph (a) allows up to 8 days after the initial period of care begins for the hospice to obtain written certifications of terminal illness, provided the hospice obtains oral certification within 2 days.
- Paragraph (b) sets forth the revised certification statement.
- Revised paragraph (c) clarifies which physicians must provide certification for the initial and subsequent periods of care.
- Paragraph (d) requires that hospice staff make appropriate entries in the patient's medical record as soon as they receive oral certifications, and file written certification in that record.

2. We have taken advantage of this opportunity to clarify and simplify the hospice provisions through the following non-substantive changes:

- Undesignated center headings are converted to subpart headings to facilitate references, and several section headings are revised to reflect more accurately the content of the sections.
- Four definitions are removed as unnecessary in these rules. "Carrier" and "Intermediary" are already in the basic definitions at the beginning of the HCFA rules. "Election period" is a matter of rules rather than definition, and this is provided in the new § 418.21. "Freestanding hospice" was used only in § 418.100 and has been removed as erroneous and misleading, since the requirements of that section apply to all hospices.
- Three definitions have been revised. The previous definition of "Hospice" limited the term to facilities that met all the conditions in part 418. We need a broader definition, since the term is also used in these rules for facilities that do not yet—or no longer—meet all those conditions. The revision of "Representative" is purely editorial, to provide better word order. The revision of "Terminally ill" conforms it to the change made in the required certification statement.
- A new § 418.21 is inserted to substitute for the definition of "Election period" and to set forth the rules for the three periods of hospice care that are available.
- Sections 418.24 and 418.28 are revised to improve readability and combine like requirements within sections.
- Section 418.26 is removed and its content is incorporated in § 418.24.
- Section 418.32 is removed as outdated, and outdated content is removed from §§ 418.98 and 418.204(b)(3).
- Several sections are amended to refer to the newly designated or redesignated subparts.

**III. Waiver of Proposed Rulemaking**

We ordinarily provide notice and opportunity for public comment before issuing final regulations. The notice of proposed rulemaking (NPRM) identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance of, and the reasons for, the particular provisions being proposed. This procedure can be waived when an agency finds that it is impracticable, unnecessary, or contrary to the public interest, and incorporates in a final rule a finding of good cause for waiver.

In this particular case, we find that there is good cause to waive NPRM as unnecessary and contrary to the public interest.

We find that notice and opportunity for comment are unnecessary because—

- The statutory amendment is so clear and specific as to leave no room for alternative interpretations.
- Previous rules already require that certifications be in writing; therefore, implementation of the new law actually eases requirements rather than imposing new ones.
- The simplification and clarification of several sections involve no substantive changes.

We also find that it would be contrary to the public interest (as well as the interest of the program) to delay modification of a certification statement that has been shown to discourage the necessary physician certification, and thereby to discourage the participation of hospices in the Medicare program.

Although this rule is final, we will consider any comments received within the time frames specified under "**DATES**", above. Because of the large number of comments we receive in response to **Federal Register** publication, we cannot respond to them individually. However, if we revise these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

**IV. Regulatory Impact Statement**

*A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, a rule likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since this rule does not meet any of the E.O. 12291 criteria, a regulatory impact analysis is not required.

*B. Regulatory Flexibility Act (RFA)*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider hospices to be small entities.

This final rule extends from 2 to 8 the number of days within which hospices must obtain physician certification of terminal illness, provided the hospice obtains an oral certification within 2 days after the initial period of care begins. This extension should ease the burden on hospices and physicians.

Currently, if a hospice is unable to obtain a written certification within 2 days, the intermediary denies payment for all days of service from the day of admission to the date of certification. With the extension provided under the revised rules (which reflects recommendations made during the GAO survey, as well as the change in the law), hospices should be able to ensure full payment for services furnished to Medicare beneficiaries. This will more than compensate for the very small impact that may result from the requirement that hospice staff note the oral certifications in the patient's medical record.

The GAO report indicated that, as of September, 1989, there were 1,700 hospices in the United States, of which only 35 percent were participating in Medicare. We believe that—

- The extension of time for obtaining written certification of terminal illness will have a favorable economic impact on participating hospices and thus ensure that they will continue to furnish services to Medicare beneficiaries; and
- The cited economic advantage, plus the revised certification statement, which makes it easier to obtain the required physician certifications, will encourage additional hospices to participate in the Medicare program.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Since this rule applies only to hospices, we have determined and the Secretary certifies that the rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

**V. Paperwork Reduction Act**

Sections 418.22 and 418.24 of these rules contain information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The cited sections had been approved under OMB control number 0938-0246.

Since the certification statement set forth in § 418.22 has been revised, it is again subject to OBM review. When OMB approves the revised statement, we will publish a **Federal Register** notice to that effect.

If you comment on the revised certification statement, please send a copy of that comment directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron, Desk Officer for HCFA.

**List of Subjects in 42 CFR Part 418**

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

**PART 418—(AMENDED)**

In 42 CFR chapter IV, part 418 is amended as set forth below:

A.1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811-1814, 1815(e), 1861-1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c-1395f, 1395g(e), 1395x-1395cc, and 1395hh).

2. The table of contents is revised to read as follows:

**PART 418—HOSPICE CARE**

**Subpart A—General Provisions and Definitions**

Sec.
418.1 Statutory basis.
418.2 Scope of part.
418.3 Definitions.

**Subpart B—Eligibility, Election and Duration of Benefits**

418.20 Eligibility requirements.
418.21 Duration of hospice care coverage—Election periods.
418.22 Certification of terminal illness.
418.24 Election of hospice care.
418.28 Revoking the election of hospice care.
418.30 Change of the designated hospice.

**Subpart C—Conditions of Participation, General Provisions and Administration**

418.50 Condition of participation—General provisions.
418.52 Condition of participation—Governing body.
418.54 Condition of participation—Medical director.
418.56 Condition of participation—Professional management.
418.58 Condition of participation—Plan of care.
418.60 Condition of participation—Continuation of care.
418.62 Condition of participation—Informed consent.
418.64 Condition of participation—Inservice training.
418.66 Condition of participation—Quality assurance.
418.68 Condition of participation—Interdisciplinary group.
418.70 Condition of participation—Volunteers.
418.72 Condition of participation—Licensure.
418.74 Condition of participation—Central clinical records.

**Subpart D—Conditions of Participation: Core Services**

418.80 Condition of participation—Furnishing of core services.
418.82 Condition of participation—Nursing services.
418.83 Nursing services—Waiver of requirement that substantially all nursing services be routinely provided directly by a hospice.
418.84 Condition of participation—Medical social services.
418.86 Condition of participation—Physician services.
418.88 Condition of participation—Counseling services.

**Subpart E—Conditions of Participation: Other Services**

418.90 Condition of participation—Furnishing of other services.
418.92 Condition of participation—Physical therapy, occupational therapy, and speech-language pathology.
418.94 Condition of participation—Home health aide and homemaker services.
418.96 Condition of participation—Medical supplies.
418.98 Condition of participation—Short term inpatient care.
418.100 Condition of participation—Hospices that provide inpatient care directly.

**Subpart F—Covered Services**

418.200 Requirements for coverage.
418.202 Covered services.
418.204 Special coverage requirements.

**Subpart G—Payment for Hospice Care**

418.301 Reimbursement for hospice care.
418.302 Payment procedures for hospice care.
418.304 Payment for physician services.
418.306 Determination of payment rates.
418.307 Periodic interim payments.
418.308 Limitation on the amount of hospice payments.
418.309 Hospice cap amount.
418.310 Reporting and recordkeeping requirements.
418.311 Administrative appeals.

**Subpart H—Coinsurance**

418.400 Individual liability for coinsurance for hospice care.
418.402 Individual liability for services that are not considered hospice care.
418.405 Reduction of Medicare reimbursement by individual coinsurance liability.

3. Subparts D, E, and F are redesignated as subparts F, G, and H, respectively.

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B. Subpart A is amended as follows:

**Subpart A—General Provisions and Definitions**

**§ 418.3 [Amended]**

In § 418.3, the definitions of "*Carrier*", "*Election period*", "*Freestanding hospice*", and "*Intermediary*" are removed and the definitions of "*Hospice*", "*Representative*", and "*Terminally ill*" are revised to read as follows:

*Hospice* means a public agency or private organization or subdivision of either of these that—is primarily engaged in providing care to terminally ill individuals.

* * * * *

*Representative* means an individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

* * * * *

*Terminally ill* means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.

C. Subpart B is amended as follows:

**Subpart B—Eligibility, Election and Duration of Benefits**

1. A new § 418.21 is added, to read as follows:

**§ 418.21 Duration of hospice care coverage—Election periods.**

(a) Subject to the conditions set forth in this part, an individual may elect to receive hospice care during one or more of the following election periods:

(1) An initial 90-day period.

(2) A subsequent 90-day period.

(3) A subsequent 30-day period.

(b) The periods of care are available in the order listed and may be elected separately at different times.

**§ 418.22 [Amended]**

2. Section 418.22 is revised to read as follows:

**§ 418.22 Certification of terminal illness.**

(a) *Timing of certification*—(1) *General rule.* The hospice must obtain written certification of terminal illness for each of the periods listed in § 418.21, even if a single election continues in effect for two or three periods, as provided in § 418.24(c).

(2) *Basic requirement.* Except as provided in paragraph (a)(3) of this section, the hospice must obtain the written certification no later than two calendar days after the period begins.

(3) *Exception.* For the initial 90-day period, if the hospice cannot obtain the written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

(b) *Content of certification.* The certification must specify that the individual's prognosis is for a life expectancy of 6 months or less if the terminal illness runs its normal course.

(c) *Sources of certification.* (1) For the initial 90-day period, the hospice must obtain written certification statements (and oral certification statements if required under paragraph (a)(3) of this section) from—

(i) The medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(ii) The individual's attending physician if the individual has an attending physician.

(2) For subsequent periods, the only requirement is certification by one of the physicians listed in paragraph (c)(1)(i) of this section.

(d) *Maintenance of records.* Hospice staff must—

(1) Make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and

(2) File written certifications in the medical record.

**§ 418.24 [Amended]**

3. Section 418.24 is revised to read as follows:

**§ 418.24 Election of hospice care.**

(a) *Filing an election statement.* An individual who meets the eligibility requirement of § 418.20 may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative (as defined in § 418.3) may file the election statement.

(b) *Content of election statement.* The election statement must include the following:

(1) Identification of the particular hospice that will provide care to the individual.

(2) The individual's or representative's acknowledgement that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.

(3) Acknowledgement that certain Medicare services, as set forth in paragraph (d) of this section, are waived by the election.

(4) The effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement.

(5) The signature of the individual or representative.

(c) *Duration of election.* An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual—

(1) Remains in the care of a hospice; and

(2) Does not revoke the election under the provisions of § 418.28.

(d) *Waiver of other benefits.* For the duration of an election of hospice care, an individual waives all rights to Medicare payments for the following services:

(1) Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice).

(2) Any Medicare services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or that are equivalent to hospice care except for services—

(i) Provided by the designated hospice;

(ii) Provided by another hospice under arrangements made by the designated hospice; and

(iii) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

(e) *Re-election of hospice benefits.* If an election has been revoked in accordance with § 418.28, the individual (or his or her representative if the individual is mentally or physically incapacitated) may at any time file an election, in accordance with this section, for any other election period that is still available to the individual.

**§ 418.26 [Removed]**

4. Section 418.26 is removed.

**§ 418.32 [Removed]**

5. Section 418.32 is removed.

D. Subpart C is amended as set forth below:

1. The subpart heading is revised and § 418.56(a) is revised, to read as follows:

**Subpart C—Conditions of Participation—General Provisions and Administration**

**§ 418.50 Condition of participation—General provisions.**

(a) *Standard: Compliance.* A hospice must maintain compliance with the conditions of this subpart and subparts D and E of this part.

* * * * *

2. The undesignated center heading "Administration" is removed.

3. The undesignated center heading "Core Services" is revised to read:

**Subpart D—Conditions of Participation: Core Services**

**§ 418.60 [Amended]**

4. In § 418.60, the following changes are made:

a. The section heading is revised to read:

**§ 418.60 Condition of participation: Furnishing of core services.**

b. The phrase "§§ 418.62 through 418.68", wherever it appears, is changed to "this subpart".

5. The undesignated center heading "Other Services" is revised to read:

**Subpart E—Conditions of Participation: Other Services**

**§ 418.90 [Amended]**

6. In § 418.90, the following changes are made:

a. The section heading is revised to read:

**§ 418.90 Condition of participation: Furnishing of other services.**

b. The phrase "§§ 418.92 to 418.96" is changed to "this subpart".

**§ 418.94 [Amended]**

7. In § 418.94, the following changes are made:

a. In the introductory text to the section, "§ 405.1227" is changed to "§ 484.36".

b. In paragraph (b), "§ 405.1227(a)" is changed to "§ 484.36(c)".

**§ 418.98 [Amended]**

8. In § 418.98, the following changes are made:

a. In paragraphs (a)(2) and (b)(2), "(f)" is changed to "(e)".

b. Paragraph (c) is revised to read as follows:

(c) *Standard: Inpatient care limitation.* The total number of inpatient days used by Medicare beneficiaries who elected hospice coverage in any 12-month period preceding a certification survey in a particular hospice may not exceed 20 percent of the total number of hospice days for this group of beneficiaries.

9. The undesignated center heading "Freestanding Hospice with Inpatient Unit" is removed.

**§ 418.100 [Amended]**

10. In § 418.100, the following changes are made:



a. The section heading is revised to read:

**§ 418.100 Condition of participation: Hospices that provide inpatient care directly.**

b. The word "freestanding" is removed from the introductory text.

E. Newly redesignated subpart F is amended as follows:

**§ 418.202 [Amended]**

1. In § 418.202, in paragraph (e), "§ 418.100 (e) and (f)" is changed to "§ 418.202 (e) and (e)".

**§ 418.204 [Amended]**

2. Section 418.204 is amended by revising paragraph (b)(2) and removing paragraph (b)(3), to read as follows:

**§ 418.204 Special coverage requirements.**

* * * * *

(b) *Respite care.* (1) Respite care is short-term inpatient care provided to the individual only when necessary to relieve the family members or other persons caring for the individual.

(2) Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

* * * * *

F. Newly redesignated subpart G is amended by revising the subpart heading to read as follows:

**Subpart G—Payment for Hospice Care**

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: June 5, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

Approved: July 9, 1990.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 90-28756 Filed 12-10-90; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 222**

**[Docket No. 90530-0301]**

**RIN 0648-AD72**

**Endangered and Threatened Species: Indus River Dolphin**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS has determined that the Indus River dolphin is endangered and should be added to the U.S. List of Endangered and Threatened Wildlife. Scientists estimate the population, which is found mainly in the lower Indus River in Pakistan, at about 500.

In a separate rule published in the Federal Register, the U.S. Fish and Wildlife Service, which is responsible for maintaining the List of Endangered and Threatened Species, is adding the Indus River dolphin to the list.

**EFFECTIVE DATE:** January 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Margaret C. Lozens, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301) 427-2322.

**SUPPLEMENTARY INFORMATION:**

**Background**

Based on a review of the status of the Indus River dolphin (*Platanista minor*), NMFS determined that this species is endangered and should be added to the U.S. List of Threatened and Endangered Species under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et. seq.* NMFS published its initial determination in a proposed rule on November 8, 1989 (54 FR 47094). In April 1987, NMFS notified the public of its intent to review the status of this species, and also included the Indus River dolphin in its list of candidate species (August 31, 1988; 53 FR 33516).

The status of the Indus River dolphin was reviewed by NMFS and Fish and Wildlife Service scientists, and the determination that the species is endangered was made using the best scientific information available. The status review concludes that the species is endangered because of the present destruction, modification, and curtailment of its habitat, overutilization of the species for commercial purposes, and inadequate existing regulatory mechanisms.

**Notification of the Government of Pakistan**

NMFS notified the Government of Pakistan of its intention to add this species to the U.S. List of Endangered and Threatened Wildlife. The Government of Pakistan forwarded extracts from two publications on the Indus River dolphin, but did not express any opinion regarding the listing of this species.

**Public Comments**

The only comment received on the proposed rule was from the Connecticut Cetacean Society International which

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supports the proposed listing of the Indus River dolphin.

**Critical Habitat**

Critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction (see criteria for designating critical habitat at 50 CFR 424.12(h)).

**Classification**

The 1982 amendments to the ESA (Pub. L. 97-304) revised section 4(b)(1)(A) to clarify that only limited information may be considered in determining whether to list a species. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 2d 829 (6th Cir., 1981), NMFS has categorically excluded all endangered species listings from the environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

**List of Subjects in 50 CFR Part 222**

Administrative practice and procedure, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: December 5, 1990.

**Michael F. Tillman,**

*Deputy Assistant Administrator for Fisheries.*

For the reasons described in the preamble, 50 CFR part 222 is amended as follows:

**PART 222—ENDANGERED FISH OR WILDLIFE**

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531-1543.

**§ 222.23 [Amended]**

2. Section 222.23(a) of subpart C is amended by adding the phrase "Indus River dolphin (*Platanista minor*);" immediately after the phrase "Chinese river dolphin (*Lipotes vexillfier*);" in the second sentence.

[FR Doc. 90-28981 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

**Quality Assurance in the Medical Use of Byproduct Material; Meeting**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the Agreement States to discuss a proposed rule, draft regulatory guide, and other applicable guidance concerning quality assurance in the medical use of byproduct material.

**DATES:** The meeting will be held Tuesday and Wednesday, December 18 and 19, 1990 and will begin at 9 a.m. and end about 5 p.m.

**ADDRESSES:** Embassy Suite Hotel, 4550 W. Airport Freeway, Irving, TX 75062.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Regulation Development Branch, Mail Stop NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the Federal Register on January 16, 1990 (55 FR 1439) which described a performance-based quality assurance program that the NRC believes should be incorporated into each licensee's medical use program. The proposed rule also contains certain modifications to the definition of the term misadministration and to the related reporting and recordkeeping requirements. The NRC has also prepared a draft regulatory guide that contains specific quality assurance procedures that could be used by the licensees to establish a QA program that meets the performance-based rule.

The purpose of the meeting is to hold a roundtable discussion on the proposed rule, draft regulatory guide, and other applicable guidance with the representatives of the Agreement States.

The draft regulatory guide is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC. A transcript of the meeting will be available by about January 14, 1991 at the NRC Public Document Room.

**Conduct of the Meeting**

The meeting will be chaired by Mr. John Telford, Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting.

1. At the meeting, questions or statements from attendees other than participants (i.e., representatives of the Agreement States and designated NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come-first served basis.

Dated at Rockville, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**Sher Bahadur,**

*Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 90-28906 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

### 10 CFR Part 35

**Quality Assurance in the Medical Use of Byproduct Material; Meeting**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to discuss a proposed rule, draft regulatory guide, and other applicable guidance concerning quality assurance in the medical use of byproduct material.

**DATES:** The meeting will be held Monday, December 17, 1990 and will begin at 9 a.m. and end about 4 p.m.

**ADDRESSES:** JCAHO, Conference room D, One Renaissance Boulevard, Oakbrook Terrace, IL 60222.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Regulation Development Branch, Mail Stop NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

**SUPPLEMENTARY INFORMATION:** A proposed rule was published in the Federal Register on January 16, 1990 (55 FR 1439) which described a performance-based quality assurance program that the NRC believes should be incorporated into each licensee's medical use program. The proposed rule also contains certain modifications to the definition of the term misadministration and to the related reporting and recordkeeping requirements. The NRC has also prepared a draft regulatory guide that contains specific quality assurance procedures that could be used by the licensees to establish a QA program that meets the performance-based rule.

The purpose of the meeting is to hold a roundtable discussion on the proposed rule, draft regulatory guide, and other applicable guidance with the representatives of the JCAHO.

The draft regulatory guide is available for inspection, and copying for a fee, at the NRC Public Document room, 2120 L Street (Lower Level) NW., Washington, DC. A transcript of the meeting will be available by about January 14, 1991 at the NRC Public Document Room.

**Conduct of the Meeting**

The meeting will be chaired by Mr. John Telford, Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., representatives of the JCAHO and designated NRC staff) will be entertained as time permits.

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2. Seating for the public will be on a first come—first served basis.

Dated at Rockville, Maryland, this 4th day of December, 1990.

For the Nuclear Regulatory Commission.

**Sher Bahadur,**

*Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 90-28985 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-258-AD]**

### Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped With Main Wheel Assemblies, Part Number AHA1538 and AHA1663

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary. This proposal is prompted by reports that certain seals can grip the axle or contact the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-258-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt on their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-258-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There have been recent reports that certain brake side hub half wheel bearing grease retainer seals have a tendency to grip the axle sleeve and allow the wheel to rotate around the grease retainer. Also, the valve side wheel bearing grease retainer seal can contact and possibly foul the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

British Aerospace has issued Service Bulletin ATP-32-13, Revision 1, dated February 28, 1990, which describes procedures to replace certain valve side grease retainer seals with modified seals; and to perform repetitive inspections to detect damage to the wheel hub halves and wheel bearing grease retainer seals, and replacement, if necessary. This service bulletin references Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990, for additional instructions. The United Kingdom CAA has classified both service bulletins as mandatory.

Dunlop limited has also issued Service Bulletin AHA1538/AHA1663-32-1042, dated April 10, 1990, which describes procedures to install improved grease retainer seals on both the brake side and the valve side hub halves (identified as Dunlop Modification C2614). The United Kingdom CAA has not classified this service bulletin as mandatory, but recommends installation of this modification when parts are available.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of certain wheel bearing grease retainer seals, and repetitive inspections to detect defects in the wheel hub halves and wheel bearing grease retainer seals, and replacement of seals, if necessary, in accordance with the service bulletins previously described.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model ATP series airplanes equipped with main wheel assemblies, Part Number AHA1538 and AHA1663, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent seizure of the main landing gear (MLG) wheel and subsequent damage to the tire, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at each wheel removal, on each wheel of the left and right main landing gear, perform a visual inspection of the wheel hub halves and wheel bearing grease retainer seals, in accordance with British Aerospace Service Bulletin ATP-32-13, Revision 1, dated February 28, 1990.

Note: The British Aerospace service bulletin references Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990, for additional instructions.

1. Measure the diameter of the grease retainer seal locating groove for wear on the brake side half hub.

a. If the diameter of the groove exceeds 4.540 inches, prior to further flight, replace with a serviceable part, in accordance with Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990.

b. If the diameter of the groove does not exceed 4.540 inches, prior to further flight, protect the bore of the hub half with an application of Alocrom, in accordance with the Dunlop Limited service bulletin.

2. Verify that the brake side grease retainer seal, Part Number AH089109, has the cross-section shown in Figure 2 of Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990. If this part's configuration is different (has not been chamfered), prior to further flight, replace it with a modified Part Number AH089109, in accordance with the Dunlop Limited service bulletin.

3. Visually inspect the inner bore and outer circumference of brake side grease retainer seal, Part Number AH089109. If the external circumference and the internal bore of the grease retainer seal, Part Number AH089109, is scored or chipped, prior to further flight, replace it with a serviceable part in accordance with the Dunlop Limited service bulletin.

4. Verify that the valve side grease retainer seal is marked as Part Number AH089720. Prior to further flight, replace any grease retainer seals not marked Part Number AH089720 with one so marked.

5. Visually inspect the valve side grease retainer seal, Part Number AH089720. If the internal bore and the wheel bearing face of the grease retainer seal show signs of wear, prior to further flight, replace all defective grease retainer seals in accordance with the Dunlop Limited service bulletin.

B. Accomplishment of Dunlop Modification C2614, which consists of installing improved grease retainer seals on both the brake side and the valve side half hubs, in accordance with Dunlop Limited Service Bulletin AHA1538/AHA1663-32-1042, dated April 10, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 30, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28987 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-13-M



### 14 CFR Parts 21 and 23

**[Docket No. 064CE, Special Condition 23-ACE-55]**

### Special Conditions; Cessna Model 525 Airplane

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Cessna Aircraft Co. Model 525 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

**DATES:** Comments must be received on or before January 10, 1991.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 064CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 064CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Norman R. Vetter, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5588.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments

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specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 084CE" The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Background**

On February 14, 1990, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for normal category type certification of the Model 525 airplane. This airplane is a five-to-seven place, all metal, low wing, T-tail, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 525 has engines mounted aft on the fuselage and is capable of Mach .785 performance.

**Type Certification Basis**

Type certification basis of the Model 525 airplane is: Federal Aviation Regulations (FAR) 23, effective February 1, 1965, through amendment 23–36, effective October 20, 1989, plus amendment 23–40, effective September 10, 1990; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; exemptions, if any; and any special conditions that may result from this notice.

**Discussion**

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.17(a)(2).

**Cockpit Evacuation of Smoke**

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke without creating an unsafe condition. The Cessna Model 525 will not have smoke evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. These proposed special conditions require the capability to evacuate smoke from the cockpit and require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane.

**Protection of Electronic Flight Instrument System (EFIS) and Autopilot Flight Director From Indirect Effects of Lightning**

Concern for the vulnerability of airplane electrical and electronic systems to the effects of lightning has increased substantially over the past few years. This concern is due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement. These proposed special conditions will provide for the requisite protection from the indirect effects of lightning.

**Protection of Systems From High Intensity Radiated Fields (HIRF)**

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safety are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

FIELD STRENGTH VOLTS/METER

| Frequency | Peak | Average |
|---|---|---|
| 10–500 KH | 90 | 90 |
| 500–2000 | 90 | 90 |
| 2–30 MH | 200 | 200 |
| 30–100 | 33 | 33 |
| 100–200 | 33 | 33 |



FIELD STRENGTH VOLTS/METER—Continued

| Frequency | Peak | Average |
|---|---|---|
| 200–400 | 150 | 33 |
| 400–1000 | 8.3K | 2K |
| 1–2 GH | 9K | 1.5K |
| 2–4 | 17K | 1.2K |
| 4–6 | 14.5K | 900 |
| 6–8 | 4K | 666 |
| 8–12 | 9K | 2K |
| 12–20 | 4K | 509 |
| 20–40 | 4K | 1K |

Or:

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HIRF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without upgrading the design. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

**EFIS**

When part 23 airworthiness standards were promulgated, they did not address the electronic display systems (cathode-ray tube displays) that are presently available for installation in small airplanes. Revisions to part 23 have not included criteria needed to define a minimum level of safety for evaluation of technology used in electronic display systems that will be installed in small airplanes. Special conditions are proposed that will allow electronic display units to replace mechanical or electromechanical instruments, which present part 23 standards address. The EFIS installations must meet the legibility, sensor cur, redundancy, and reliability requirements defined in these proposed special conditions.

These proposed special conditions require a detailed examination of each item of equipment or component of the electronic instrument system. They will also require an investigation of the system installation to determine: (1) If the airplane is dependent upon its function for continued safe flight and landing; (2) if its failure will significantly reduce the IFR capability of the airplane; (3) if its failure will significantly reduce the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified as being critical to the safe operation of the airplane will be required to comply with these proposed special conditions, and, therefore, will permit the approval of more advanced systems.

These proposed special conditions also require that essential components of the electronic display system that require electrical power be considered "essential loads" on the aircraft's power supply. The power source(s) and its distribution system must be able to supply power to the electronic display system as stated in the proposed special conditions since the operational reliability of the electronic display system is dependent on the power source of the airplane.

Section 23.1309 has been used since amendment 23–14 as a means of evaluating systems. The "no single fault" or "fail safe" concept, along with experience based on service-proven designs and good engineering judgment, has been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept and to utilize the application of "good engineering judgment" as a means of determining the likelihood or effects of certain failures to complex systems like those proposed in the Cessna Model 525. Therefore, there is a need to include the proposed additional reliability requirements in the certification basis. This will allow use of the latest available "rational method" of safety analysis of the proposed electronic display system and assure a level of safety to which the airplane is to be certified.

To develop rational methods for safety assessment of systems requires that an inverse relationship exist between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that it will occur.

The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "no single fault" or "fail-safe" concept, has prompted the FAA to propose these special conditions, since this installation is proposed to incorporate electronic flight displays.

These proposed special conditions provide reliability requirements that are based on the criticalness of the system's function. They will provide the standards needed for the certification of complex safety-critical electronic display systems being proposed for the Model 525 airplane.

It has been determined that some electronic display systems perform critical functions. Therefore, it will be necessary to show that the systems meet more stringent requirements. Systems that perform a function that is needed for continued safe flight and landing of the airplane must meet the requirement that there will be no failure of that system.

The proposed conditions also require that system failures that would reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, are not likely to occur. It is recognized that any electronic display system or other system failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be serious enough to make the operation of the airplane potentially catastrophic.

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**Thrust Attenuation**

The Model 525 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reversers in that attenuators do not provide for either zero or reverse thrust levels. These proposed special conditions provide requisite standards for thrust attenuating systems.

**Engine Fire Extinguishing System**

The Model 525 design includes engines mounted aft on the fuselage. The applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted engine installations, along with the need to protect such installed engines from fires, were not envisaged in the development of part 23; therefore, a special condition for a fire extinguishing system for the engines of the Model 525 is proposed.

**Performance**

Previous certification and operational experience with jet powered airplanes of similar design in the normal category reveal certain unusual characteristics compared to other airplanes certificated in the normal category. The average pilot, expected to be the operator of this class of airplane, is not likely to be familiar with the characteristics applicable to jet powered airplanes. These characteristics have caused significant safety problems when pilots attempted takeoffs and landings using procedures and instincts developed with conventional part 23 airplanes, particularly with a large variation in temperature and altitude. In recognition of these characteristics, Special Civil Air Regulation No. SR-422, and follow-on regulations, established weight-altitude-temperature limitations and procedures for scheduling takeoff and landing for turbine engine-powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. Similar requirements have been applied to airplanes certified in the commuter category of part 23. This entails specific takeoff and landing performance tests. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at the destination can be achieved.

Current standards in part 23 did not envisage this type of airplane and the associated performance. Based upon the knowledge and experience gained during certification and operation of previous similar part 23 jet airplanes, special conditions are proposed for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

General performance special conditions are proposed to require that procedures for takeoff, accelerate-stop, and landing be those established for operation in service, be executable by pilots of average skill, and include reasonably expected time delays.

**Climb**

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to propose associated requirements that specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Current standards in part 23 did not envisage this type of airplane and the associated climb considerations. Special conditions are proposed for climb with one engine inoperative, landing climb, and general climb conditions.

**Landing**

Landing distance determined for the same parameters, plus the effect of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices, such as spoilers and brakes. Current standards in part 23 did not envisage this type of airplane and the associated landing performance considerations. Special conditions are proposed to address these items.

**Minimum Control Speed**

The Cessna Model 525 will be operated in an environment and in a manner requiring defined minimum control speeds, both in the air and on takeoff, to ensure safe operations. A requisite to sequentially establishing proper controllability from the start of takeoff until reaching the decision speed ($V_1$) proposed under the takeoff performance special conditions is identification of $V_{MCG}$, the minimum control speed on the ground. In the past, a requirement to define $V_{MCG}$ has not been necessary for part 23 airplanes. However, the existence of $V_{MCG}$ has been considered in determining $V_1$ decision speed and has been administered by established policy in Advisory Circular AC 23-8A.

**Trim**

Special conditions are proposed to maintain a level of safety that is consistent with the use of $V_{MO}/M_{MO}$ and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envisage this type of airplane and the associated trim considerations.

**Static Longitudinal Stability**

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes, it is appropriate to define applicable requirements for static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are proposed to establish static longitudinal stability requirements that include a stick force versus speed specification and stability requirements applicable to high speed jet airplanes.

**Demonstration of Static Longitudinal Stability**

To maintain a level of safety consistent with the proposed static longitudinal stability requirements, it is necessary to establish corresponding requirements for the demonstration of static longitudinal stability. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions are proposed to do so.

**Static Directional and Lateral Stability**

In keeping with the concept of $V_{MO}/M_{MO}$ being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the $V_{MO}/M_{MO}$ of part 23 to the maximum speed for stability characteristics, $V_{FC}/M_{FC}$, for this airplane. Current standards in part 23 did not envisage this type of airplane and the associated stability considerations. Special conditions to do this are proposed.

**Stall Characteristics**

In order to maintain consistency with the stall warning requirements and the level of safety previously applied to other jet powered small airplanes, it is appropriate to specify the conditions under which level flight, turning flight, and accelerated entry stall characteristics should be demonstrated. Current standards in part 23 did not envisage this type of airplane, the associated high thrust-to-weight ratio, and laminar flow airfoil characteristics. Special conditions are proposed to define stall characteristics demonstrations.



**Stall Warning**

Advisory Circular AC 23-8A provides guidelines for the application of the stall warning requirements currently specified in § 23.207(c). The FAA has recognized the problems associated with showing literal compliance with § 23.207(c) when airplanes with high power-to-weight ratios are being evaluated. Current standards in part 23 did not envisage this type of airplane and the associated stall warning considerations. This issue was discussed during the Small Airplane Airworthiness Review Conference held in St. Louis, Missouri, during the week of October 22-26, 1984 at which it was concluded that § 23.207(c) required revision to properly address this condition. Previous guidance relating to this matter was provided in FAA Order 8110.7 and AC 23-8. The service history of numerous airplanes that were certified using this earlier guidance, which is similar to that proposed for this special condition, has been satisfactory. Special conditions are proposed to specify appropriate requirements for stall warning for the Model 525.

**Vibration and Buffeting**

The Model 525 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur. This is not presently addressed in part 23. Information that will enable the flight crew to plan flight operations that will maximize maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet is necessary. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, i.e., stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet should not occur at any normal operating speed up to the maximum operating limit speed, $V_{MO}/M_{MO}$. Sufficient information must be provided to the crew so that buffet encounters during normal flight operations can be avoided. Special conditions are proposed that will require buffet onset tests and the inclusion of this information in the Airplane Flight Manual (AFM) to provide guidance to the crew.

**High Speed Characteristics and Maximum Operating Limit Speed**

The Cessna Model 525 will be operated at high altitudes and high speeds. The proposed operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. These conditions may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to assure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flight crew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of $V_{DF}/M_{DF}$, the highest demonstrated flight speed for the type design is appropriate for this airplane. This permits $V_D/M_D$, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Current standards in part 23 did not envisage this type of airplane and the associated high speed considerations. Accordingly, special conditions are proposed to allow determination of a maximum demonstrated flight speed and to relate the determination of $V_{MO}/M_{MO}$ to this speed, $V_{DF}/M_{DF}$.

**Airspeed Indicating System**

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Current standards in part 23 did not envisage this type of airplane and the associated airspeed indicating system requirements. Special conditions are proposed to establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to normal category jet airplanes.

**Static Pressure System**

To maintain a level of safety consistent with that applied to previous part 23 jet airplanes and to be consistent with the establishment of scheduled performance requirements, it is appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropriate to establish requirements to ensure the continued availability of altitude information when such a device malfunctions. Current standards in part 23 did not envisage this type of airplane and the associated static pressure system considerations. Special conditions to do this are proposed.

**Minimum Crew**

The Cessna Model 525 will operate at high altitudes and speeds and must be flown to a precise speed schedule to achieve required takeoff and landing distances. It employs operating considerations not envisaged in part 23 airworthiness standards. Therefore, it is appropriate to specify workload considerations. Special conditions are proposed to specify the items to be considered in workload determination evaluations used to determine the minimum required flight crew.

**Operating Limitations and Operating Procedures**

Previous certification and operational experience with jet powered airplanes of similar design in the normal category have shown that operating limitations appropriate to this type of airplane were not envisaged in part 23. Special conditions applicable to the establishment of operating procedures appropriate to this airplane are proposed.

To maintain a level of safety that is consistent with the requirements of the proposed special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, takeoff run, accelerate-stop distance, landing distance, and climb performance over the range of weights, altitudes, and temperatures approved for operation, it is appropriate to propose associated requirements that specify certain conditions that must be used in establishing operating limitations. Additionally, appropriate special conditions that implement these performance requirements are proposed.

**Performance Information**

Current standards in part 23 did not envisage this type of airplane and the associated performance considerations. To maintain a level of safety that is consistent with the proposed special conditions, it is appropriate to propose

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associated requirements that specify the information that must be included in the AFM.

**Airplane Flight Manual**

To maintain a level of safety that is consistent with the proposed special conditions for operating procedures and performance information, it is appropriate to delete the option in the AFM requirements that allow operating procedures, performance information and loading information to be unapproved. A special condition is proposed to delete that option.

**Airspeed Indicator**

Current standards in part 23 did not envisage this type of airplane and the associated speed scheduling considerations. To maintain a level of safety that is consistent with the proposed special conditions for performance, including scheduled takeoff and landing indicator markings required by part 23 and to replace these markings with airspeed indicator markings consistent with the more complex performance requirements applicable to this airplane. Special conditions are proposed that specify the airspeed indicator markings applicable to these procedures.

**Effects of Contamination on Natural Laminar Flow Airfoils**

Airfoil configurations similar to the Cessna Model 525 have been found to have measurable degradations of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contaminations such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradations to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination considerations. Special conditions are proposed since existing regulations do not require these adverse effects to be evaluated.

**Conclusion**

In view of the design features discussed for the Model 525 airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

**List of Subjects in 14 CFR Parts 21 and 23**

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions are as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

**The Proposed Special Condition**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special condition as part of the type certification basis for the Cessna Model 525 airplane:

*1. Cockpit Evacuation of Smoke*

In the absence of specific requirements for evacuating smoke from the cockpit, the following applies: The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonably probably failure or malfunctioning of the ventilation heating, pressurization or other system and equipment. If the accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, the evacuation of such smoke must be readily accomplished starting with full cockpit pressurization and without depressurizing beyond safe limits.

*2. Protection of Electrical and Electronic Systems From Indirect Effects of Lightning*

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lighting.

*3. Protection of Electrical and Electronic Systems From High Intensity Radiated Fields*

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

*4. Electronic Flight Instrument Displays*

In addition to, and instead of, the applicable airworthiness standards of part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be required to continued safet flight and landing of the airplane, the following special conditions apply:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures, under any foreseeable operating condition, that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of these special conditions may be shown by analysis and, where necessary, by appropriate ground, flight,



or simulator tests. The analysis must consider:

(i) Modes of failures, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed instead of mechanical or electromechanical instruments if, during normal modes of operation:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) Do not inhibit the primary display of attitude, altitude, or airspeed; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, are designed so that one display of information essential to safety and successful completion of the flight remains available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

*5. Thrust Attenuating Systems*

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

*6. Engine Fire Extinguishing System*

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system.

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid from entering any personnel compartment even though a defect may exist in the extinguishing system.

(c) Fire extinguishing agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures.

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(d) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

*7. Performance: General*

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, the applicant must select the takeoff, en route, approach, and landing configurations for the airplane.

(b) The airplane configurations may vary with weight, altitude, and temperature, to the extent they are compatible with the operating procedures required by paragraph (c) of this special condition.

(c) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff of flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(d) Procedures for the execution of balked landings and missed approaches associated with the conditions prescribed in special conditions 14 and 16 must be established.

(e) The procedures established under paragraphs (a), (b), and (d) of this special condition must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

*8. Takeoff*

Instead of complying with § 23.51, the following apply:

(a) The takeoff speeds described in special condition 9, the accelerate-stop distance described in special condition 10, the takeoff path described in special condition 11, and the takeoff distance and takeoff run described in special condition 12 must be determined:

(1) At each weight, altitude, and ambient temperature within the operational limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this special condition may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the

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takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

*9. Takeoff Speeds*

Instead of complying with § 23.53, the following apply:

(a) $V_1$ must be established in relation to $V_{EF}$ as follows:

(1) $V_{EF}$ is the airspeed at which the critical engine is assumed to fail. $V_{EF}$ must be selected by the applicant, but may not be less than $V_{MCG}$ determined under special condition 18.

(2) $V_1$, in terms of airspeed, is the takeoff decision speed selected by the applicant; however, $V_1$ may not be less than $V_{EF}$ plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) $V_2$ min, in terms of airspeed, may not be less than:

(1) 1.2 $V_{SI}$.

(2) 1.10 time $V_{MC}$ established under § 23.149.

(c) $V_2$, in terms of airspeed, must be selected by the applicant to provide at least the radient of climb required by special condition 14 (b) but may not be less than:

(1) $V_2$ min; and

(2) $V_R$ plus the speed increment attained (in accordance with special condition 11) before reaching a height of 35 feet above the takeoff surface.

(d) $V_{MU}$ is the airspeed at, and above, which the airplane can safely lift off the ground and continue the takeoff. $V_{MU}$ speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) $V_R$, in terms of airspeed, must be selected in accordnace with the conditions of subparagraphs (1) through (4) of this section:

(1) $V_R$ may not be less than:

(i) $V_1$;

(ii) 105 percent of $V_{MC}$;

(iii) The speed (determined in accordance with special condition 11(c)(2)) that allows reaching $V_2$ before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a $V_{LOF}$ of not less than 110 percent of $V_{MU}$ in the all-engines-operating condition and not less than 105 percent of $V_{MU}$ determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of $V_R$, obtained in accordance with this section, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) If must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than $V_R$, established in accordance with subparagraphs (1) and (2) of this section, does not exceed the corresponding one-engine-inoperative takeoff distance using the established $V_R$. The takeoff distances must be determined in accordance with special condition 12(a)(1).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition 12.

(f) $V_{LOF}$ is the airspeed at which the airplane first becomes airborne.

*10. Accelerate-Stop Distance*

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to:

(1) Accelerate the airplane from a standing start to $V_{EF}$ with all engines operating;

(2) Accelerate the airplane from $V_{EF}$ to $V_1$, assuming that the critical engine fails at $V_{EF}$; and

(3) Come to a full stop form the point at which $V_1$ is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed $V_1$.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means:

[1] Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

*11. Takeoff Path*

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with special condition 14(c) is shown, whichever point is higher. In addition:

(1) The takeoff path must be based on procedures prescribed in special condition 7.

(2) The airplane must be accelerated on the ground to $V_{EF}$, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching $V_{EF}$, the airplane must be accelerated to $V_2$.

(b) During the acceleration to speed $V_2$, the nose gear may be raised off the ground at a speed not less than $V_R$. However, landing gear retraction may not be begun until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach $V_2$ before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, $V_2$ until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path. The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.



*12. Takeoff Distance and Takeoff Run*

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition 11; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition 11.

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 11.

*13. Takeoff Flight Path*

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition 12.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition 11 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

*14. Climb: One Engine Inoperative*

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches $V_{LOF}$ and at which the landing gear is fully retracted) and in the configuration used in special condition 11 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, steady gradient of climb must be positive at $V_{LOF}$, and with:

(1) The critical engine inoperative and the remaining engine at the power or thrust available when retraction of the landing gear is begun in accordance with special condition 11 and

(2) The weight equal to the weight existing when retraction of the landing gear is begun, determined under special condition 11.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition 11 without ground effect, the steady gradient of climb may not be less than 2.4 percent at $V_2$, and with:

(1) The critical engine inoperative, the remaining engine at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition 11 unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition 11.

(c) Final takeoff. In the en route configuration at the end of the takeoff path, determined in accordance with special condition 11 the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 $V_s$, and with:

(1) The critical engine inoperative and the remaining engine at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition 11.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which $V_2$ for this configuration does not exceed 110 percent of the $V_2$ for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with:

(1) The critical engine inoperative, and the remaining engine at the available takeoff power or thrust;

(2) The maximum landing weight; and

(3) The climb speed established in connection with normal landing procedures, but not exceeding 1.5 $V_s$.

*15. Landing*

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration.

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than 1.3 $V_s$, must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 16 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition:

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance date must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be

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noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

*18. Balked Landing*

Instead of compliance with § 23.77, the following apply: In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position; and

(b) A climb speed of not more than 1.3 $V_{S1}$.

*17. Climb: General*

In the absence of specific general climb requirements, the following applies:

Compliance with the requirements of special conditions 14 and 16 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

*18. Minimum Control Speed*

In addition to the requirements of § 23.149, the following apply:

(a) In establishing the minimum control speed required by this special condition, the method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) $V_{MCG}$, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run (when the critical engine is suddenly made inoperative) at which it is possible to recover control of the airplane with the use of primary aerodynamic controls alone (without the use of nose-wheel steering) to enable the takeoff to be safely continued normal piloting skill and rudder control forces not exceeding 150 pounds. In the determination of $V_{MCG}$, assuming that the path of the airplane accelerating with all engines operating is along the center line of the runway, the airplane's path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the center line is completed may not deviate more than 30 feet laterally from the center line at any point. $V_{MCG}$ must be established with:

(1) The airplane in each takeoff configuration or, at the option of the applicant, in the most critical takeoff configuration;

(2) Maximum available takeoff power or thrust on the operating engine;

(3) The most unfavorable center of gravity;

(4) The airplane trimmed for takeoff (all engines operating); and

(5) The most unfavorable weight in the range of takeoff weights.

*19. Trim*

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 $V_{S1}$ to $V_{MO}/M_{MO}$).

(c) Longitudinal trim. The airplane must maintain longitudinal trim during:

(1) A climb with maximum continuous power at a speed not more than 1.4 $V_{S1}$, with the landing gear retracted, and the flaps

(i) retracted, and

(ii) in the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with:

(i) The wing flaps retracted and at a speed of 1.4 $V_{S1}$; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition 15.

(3) Level flight at any speed from 1.4 $V_{S1}$ to $V_{MO}/M_{MO}$, with the landing gear and flaps retracted, and from 1.4 $V_{S1}$ to $V_{LE}$ with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (and for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 $V_{S1}$ during climbing flight with:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

*20. Static Longitudinal Stability*

Instead of compliance with § 23.173 (b) and (c), the following apply:

(a) The airspeed must return to within the tolerances specified when the control force is slowly released at any speed within the speed range specified in § 23.173(a). The applicable tolerances are:

(1) The airspeed must return to within plus or minus 10 percent of the original trim airspeed; and

(2) The airspeed must return to within plus or minus 7.5 percent of the original trim airspeed for the cruising condition specified in § 23.175(b) and special condition 21.

(b) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

*21. Demonstration of Static Longitudinal Stability*

Instead of compliance with § 23.175(b)(2), the following apply:

(a) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range or 50 knots plus the resulting free return speed range, above and below the trim speed, except that the speed range need not include speeds less than 1.4 $V_{S1}$, nor speeds greater than $V_{FC}/M_{FC}$, nor speeds greater that require a stick force ore than 50 pounds, with:

(1) The wing flaps retracted;

(2) The center of gravity in the most adverse position;

(3) The most critical weight between the maximum takeoff and maximum landing weights;

(4) The maximum cruising power or thrust selected by the applicant as an operating limitation (see § 23.1521), except that the power or thrust need not exceed that required at $V_{MO}/M_{MO}$; and

(5) The airplane trimmed for level flight at the power or thrust required in subparagraph (4) of this section.

*22. Static Directional and Lateral Stability*

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 $V_{S1}$ up to $V_{FE}$, $V_{LE}$, or $V_{FC}/M_{FC}$ (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than $V_{FE}$ or $V_{LE}$, when appropriate) in the following airspeed ranges:

(1) From 1.2 $V_{S1}$ to $V_{MO}/M_{MO}$.



(2) From $V_{MO}/M_{MO}$ to $V_{FC}/M_{FC}$ unless the Administrator finds that the divergence is:

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor or proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

*23. Wings Level Stall*

Instead of compliance with § 23.201 (c) and (f), the following apply:

(a) The roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(b) Compliance with the requirements of this section must be shown within:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 $V_{S1}$ (where $V_{S1}$ corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps and landing gear in any likely combination of positions.

(3) Trim at 1.4 $V_{S1}$ or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

*24. Turning Flight and Accelerated Stalls*

Instead of compliance with § 23.203(c), the following apply: Compliance with the requirements of this section must be shown with:

(a) The thrust necessary to maintain level flight at 1.6 $V_{S1}$ (where $V_{S1}$ corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(b) Flaps and landing gear in any likely combination of positions.

(c) Trim at 1.4 $V_{S1}$ or at the minimum trim speed, whichever is higher.

(d) Representative weights within the range for which certification is requested.

(e) The most adverse center of gravity for recovery.

*25. Stall Warning*

Instead of compliance with § 23.207(c), the following apply:

(a) The stall warning must begin at a speed exceeding the stalling speed by not less than five knots. For stalls where the pitch control reaches the stop without uncontrollable downward pitching motion (i.e. minimum steady speed), a lesser margin is acceptable if the stall warning has enough clarity, duration, distinctiveness or similar properties.

(b) The stall warning margin must not be above a speed at which warning would become objectionable in the normal operating range (i.e., adequate maneuvering capability exists prior to stall warning to conduct normal maneuvers).

*26. Vibration and Buffeting*

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power or thrust conditions up to at least the minimum value of $V_D$ allowed in § 23.335. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition 30. In addition, it must be shown by analysis or tests that the airplane is free from such vibration that would prevent safe flight under the conditions in § 23.629(f).

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to $V_{MO}/M_{MO}$, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

*27. High Speed Characteristics*

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed to $V_{MO}/M_{MO}$. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to $V_{MO}/M_{MO}$ without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding $V_D/M_D$ or $V_{DF}/M_{DF}$, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to $V_{DF}/M_{DF}$. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, $V_{FC}/M_{FC}$. $V_{FC}/M_{FC}$ is the maximum at which the requirements of special conditions 21 and 22 must be met with flaps and landing gear retracted. It may not be less than a speed midway between $V_{MO}/M_{MO}$ and $V_{VD}/M_{DF}$ except that, for altitudes where Mach number is the limiting factor, $M_{FC}$ need not exceed the Mach number at which effective speed warning occurs.

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*28. Airspeed Indicating System*

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined:

(1) From 0.8 of the minimum value of $V_1$ to the maximum value of $V_2$, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition 13, assuming that the critical engine fails at the minimum value of $V_1$.

(b) Each system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

(c) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

*29. Static Pressure System*

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be bypassed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including failure, to the flight crew. The indicating means must be effective for any cockpit lighting condition likely to occur.

*30. Maximum Operating Limit Speed*

Instead of compliance with § 23.1505(c), the following applies:

The maximum operating limit speed ($V_{MO}/M_{MO}$ airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. $V_{MO}/M_{MO}$ must be established so that it is not greater than the design cruising speed $V_C$ and so that it is sufficiently below $V_D/M_D$ or $V_{DF}/M_{DF}$, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between $V_{MO}/M_{MO}$ and $V_D/M_D$ or $V_{DF}/M_{DF}$ may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition 27.

*31. Minimum Flight Crew*

Instead of compliance with § 23.1523, the following apply:

The minimum flight crew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual crewmembers and each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight stations.

(b) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(c) The kinds of operation authorized under § 23.1525.

*32. Operating Limitations*

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed $V_{MO}/M_{MO}$ and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed $V_A$ and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angels of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension $V_{FE}$ for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, $V_{LO}$.

(6) The landing gear extended speed, $V_{LE}$, if greater than $V_{LO}$, and a statement that this is the maximum speed at which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished.

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marketing the instruments, required by § 23.1549 through § 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.25 and 23.1589 must be furnished in the Airplane Flight Manual. In addition, all of the following information must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. Acrobatic maneuvers, including spins, are unauthorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers, must be furnished.

(f) Flight crew. The number and functions of the minimum flight crew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) in which the airplane may or may not be used, and the meteorological conditions (such as icing conditions) under which it may or may not be used, must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition 14 (a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions 14 and 16 for altitudes and ambient temperatures).



(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions 10 and 12 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(k) Maximum operating temperature. The maximum operating temperature established under § 23.1521 must be furnished.

*33. Operating Procedures*

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities or normal operations (including starting and warming the engines, taxiing, operation of wing flaps, landing gear, and the automatic pilot) must be furnished, together with recommended procedures for:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) Procedures for transition from landing approach to balked landing climb; and

(7) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in §23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane, showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished which indicates that, when the fuel quantity indicator reads "zero" in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition 24 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

*34. Performance Information*

Instead of compliance with subparagraphs § 23.1587(a)(5), (a)(6), (a)(7), (a)(8), (c)(4), and (c)(5), the following apply:

(a) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of part 23 (including special conditions 8 through 17 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the preformance information was obtained, including the speeds associated with the performance information;

(2) Procedures established under special condition 7 that are related to the limitations and information required by special condition 32 and by this special condition. These procedures must be in the form of guidance material, including any relevant limitations or information;

(3) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

*35. Airspeed Indicator*

Instead of compliance with § 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

A maximum allowable airspeed indication showing the variation of $V_{MO}/M_{MO}$ with altitude or compressibility limitations (as appropriate), or a radial red line marking for $V_{MO}/M_{MO}$ must be made at the lowest value of $V_{MO}/M_{MO}$ established for any altitude up to the maximum operating altitude for the airplane.

*36. Effects of Contamination on Natural Laminar Flow Airfoils*

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of §§ 23.141 through 23.253 and special conditions 19 through 27 with any airfoil contamination that would normally be encountered in serviced and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special conditions 33 and 34.

37. For the purpose of these special conditions, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

38. Instead of complying with § 23.1581(b), the following applies:

*Approved Information*

a. Each part of the Airplane Flight Manual containing information prescribed in §§ 23.1583 through 23.1589 must be approved, segregated, identified and clearly distinguished from each unapproved part of that Airplane Flight Manual.

b. Each page of the Airplane Flight Manual containing information prescribed in this section must be of a type that is not easily erased, disfigured, or misplaced, and is capable of being inserted in a manual provided by the applicant, or in a folder, or in any other permanent binder.

Issued in Kansas City, Missouri on November 30, 1990.

Barry D. Clements,

*Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28863 Filed 12-10-90; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 260–261, 262, 263, 264, 265, 266, 268, 270, and 271**

**[FRL–3866–1]**

**Waste Minimization Incentives**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of a comment period for the notice and request for comment on desirable and feasible incentives to reduce or eliminate the generation hazardous wastes.

**SUMMARY:** On October 5, 1990 EPA published in the **Federal Register** (55 FR 40881) a "Notice and request for comment on desirable and feasible incentives to reduce or eliminate the generation of hazardous wastes," with the comment period ending on December 4, 1990. This notice extends the comment period to January 18, 1991.

**DATES:** EPA urges interested parties to comment on this notice in writing. Comments must be submitted on or before January 18, 1991.

**ADDRESSES:** All comments must be submitted in triplicate (original and two copies) to EPA RCRA Docket (room SE 201, mail code (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Place the docket number F–90–IRGP–FFFFF on your documents.

**FOR FURTHER INFORMATION CONTACT:** Contact: Manik Roy (703) 308–8402 or the RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000.

Mary A. Gade,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 90–28962 Filed 12–10–90; 8:45 am]

BILLING CODE 56–28962



# Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Quarterly Survey of the Finances of Public Employee Retirement Systems.

*Form number(s):* F–10.

*Agency approval number:* 0607–0143.

*Type of request:* Revision of a currently approved collection.

*Burden:* 362 hours.

*Number of respondents:* 91.

*Avg hours per response:* 1.

*Needs and uses:* This survey provides on a quarterly basis, nationwide data on the receipts, expenditures, and cash and security holdings of the 104 largest public-employee retirement systems. These 104 systems control billions of asset dollars and represent 90 percent of the total assets of all public employee retirement systems. The Census Bureau conducts this survey at the request of the Council of Economic Advisory and the Federal Reserve Board. Economists from these agencies, the Department of Treasury, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

*Affected public:* State or local governments.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*OMB desk officer:* Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90–28991 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–07–M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1992 Census of Governments—Prelist Survey of Special Districts.

*Form number(s):* G–24.

*Agency approval number:* None.

*Type of request:* New collection.

*Burden:* 1,521 hours.

*Number of respondents:* 3,042.

*Avg hours per response:* 30 minutes.

*Needs and uses:* The Bureau of the Census will use the G–24 form to verify the existence of special governmental districts, obtain current addresses, and identify new districts for the 1992 Census of Governments. We will send computer listings of current special districts to officials in each of the 3,042 counties in the United States and ask county clerks or other officials to update the listings using the G–24 form. The Bureau needs an updated list of all special governmental districts to ensure complete coverage and a minimum number of postmaster returns and remailings in subsequent phases of the 1992 Census of Governments.

*Affected public:* State or local governments.

*Frequency:* Every five years.

*Respondent's Obligation:* Voluntary.

*OMB desk officer:* Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90–28992 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–07–M

## International Trade Administration

**[A–588–401]**

### Calcium Hypochlorite From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of Antidumping Duty Administrative Review.

**SUMMARY:** On October 23, 1990 the Department of Commerce published the preliminary results of two administrative reviews of the antidumping duty order on calcium hypochlorite from Japan. The reviews cover two manufacturers/exporters of this merchandise to the United States and the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 23, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 24748) the preliminary results of its

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administrative reviews of the antidumping duty order on calcium hypochlorite from Japan (50 FR 15470, April 18, 1985). The Department has now completed the administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

**Scope of the Reviews**

Imports covered by these reviews are shipments of calcium hypochlorite from Japan. This merchandise is currently classifiable under HTS item number 2828.10.00.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990, and two manufacturers/exporters, Tohoku Tosoh Chemical Co., Ltd., and Nankai Chemical Industry Co., Ltd.

**Final Results of Review**

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that the following margins exist for the periods April 1, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990:

| Manufacturer/ Exporter | Period | Margin (percent) |
|---|---|---|
| Tohoku Tosoh Chemical Co., Ltd. | 04/01/88-03/31/89 | *10.56 |
| | 04/01/89-03/31/90 | *10.56 |
| Nankai Chemical Industry Co., Ltd. | 04/01/88-03/31/89 | 10.56 |
| | 04/01/89-03/31/90 | 10.56 |

*No shipments during the periods of review; margin from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties at the above rates on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, not covered in these administrative review, whose first shipment occurred after April 1, 1990, and who is unrelated to any reviewed firm, a cash deposit of 10.56 percent shall be required. For any shipments from the remaining known manufacturers/exporters not covered in this review, a cash deposit shall be required at the rates published in the last administrative review for those firms.

These deposit requirements are effective for all shipments of Japanese calcium hypochlorite entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with 19 U.S.C. 1675(a)(1), (c) and 19 CFR 353.22.

Dated: December 4, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28993 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-475-703]**

## Granular Polytetrafluoroethylene Resin From Italy; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of Antidumping Duty Administrative Review.

**SUMMARY:** On October 10, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on granular polytetrafluoroethylene resin (PTFE) from Italy. The review covers one manufacturer/exporter of this merchandise to the United States and the period April 20, 1988 through July 31, 1989.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from the respondent. Based on our analysis of these comments we have corrected certain clerical errors, and we have changed the final results from the preliminary results. The final margin is 20.79 percent.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Simone Altfeld or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 10, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 41261) the preliminary results of its antidumping duty administrative review of the antidumping duty order on granular PTFE from Italy (53 FR 33163, August 30, 1988). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

**Scope of the Review**

Imports covered by the review are shipments of granular polytetrafluoroethylene resin, filled and unfilled, which during the period was provided for in Tariff Schedules of the United States (TSUS) item number 445.54, and is currently classifiable under Harmonized Tariff Schedules (HTS) item number 3904.61.90. Polytetrafluoroethylene dispersions in water and fine powders are not covered by this order. The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/ exporter to the United States of Italian PTFE, Montefluos, and the period April 20, 1988 through July 1989.

**Analysis of Comments Received**

We invited interested parties to comment on the preliminary results. We received timely comments from Montefluos regarding clerical errors in the Department's calculations. We have corrected the following programming errors: the miscalculation of the value of the ESP offset and the inadvertent omission of a conversion from lira/kg. to lira/lb. in the calculation of differences in the merchandise.

**Final Results of the Review**

As a result of the correction of certain clerical errors, we have revised our preliminary results for Montefluos, and we determine the weighted-average margin to be:

| Manufacturer/Exporter | Period | Margin (percent) |
|---|---|---|
| Montefluos, S.p.A. | 04/20/88-07/31/89 | 20.79 |

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue



appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 20.79 percent shall be required. These deposit requirements are effective for all shipments of Italian granular PTFE resin, filled or unfilled, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 3, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28994 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-122-057]**

## Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests from one manufacturer/exporter and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period January 1, 1989 through August 31, 1989. The review indicates the existence of dumping margins during the period

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3312/ 3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 11, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 37498) of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). On September 28 and September 29, 1989, one manufacturer/exporter, Allatt Paving Division of Ingersoll-Rand Canada, Inc., and the petitioner, Blaw Knox, requested an administrative review of the antidumping finding. We initiated the review, covering the period January 1, 1989 through August 31, 1989, on October 25, 1989 (54 FR 43438). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on May 15, 1990 (55 FR 20175).

**Scope of the Review**

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remain dispositive.

The review covers one exporter of this merchandise to the United States, Allatt Paving Division of Ingersoll-Rand (Allatt), and the period January 1, 1989 through August 31, 1989.

**United States Price**

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on packed, f.o.b. prices to unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, and discounts. For ESP sales we also deducted commissions to unrelated parties, credit, and indirect selling expenses.

For end-user sales, we accounted for taxes imposed in Canada, but rebated or not collected by reason of the exportation of the merchandise to the United States, by adding imputed Canadian Federal sales taxes to the U.S. price pursuant to 19 U.S.C. 1677a(d)(1)(C). No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value, we used home market price where sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Where sufficient quantities of such or similar merchandise were not sold in the home market or to third countries, we used constructed value in accordance with 19 U.S.C. 1677b(a)(2).

Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers in the home market. Where applicable, we deducted discounts, inland freight, credit expenses, commissions to unrelated parties, and packing, and added U.S. packing. When making comparisons with PP sales we added U.S. credit expenses and commissions to unrelated parties. When making comparisons with ESP sales we also deducted indirect selling expenses from foreign market value in an amount not exceeding the indirect selling expenses incurred in the U.S. market. We also made circumstances-of-sale adjustments, where appropriate, pursuant to 19 U.S.C. 1677b(a)(4), in the amount of the difference in taxes between the Canadian and U.S. markets to ensure a tax-neutral margin.

For product codes where the respondent failed to provide any FMV information, we used best information available (BIA) to calculate FMV, which was the U.S. price of the subject merchandise plus 9.47 percent, the margin found in the last review for this company.

We calculated constructed value by adding material and fabrication costs, general expenses, profit, and U.S. packing. Since actual general expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual general expenses. We used actual profit since it was above the statutory minimum.

No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison United States price to foreign market value, we preliminarily determine that the margin

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for Allatt is 5.73 percent for the period January 1, 1989 through August 31, 1989.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice, and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs/written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issue raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated anti dumping duties based on the above margin shall be required for Allatt. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, as cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment of covered merchandise occurred after August 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 5.73 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1989).

Dated: December 4, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28695 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-802]

## Standard Carnations From Chile; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final reulats of Antidumping Duty Administrative Review and intent to revoke in part.

**SUMMARY:** On October 22, 1990, the Department of Commerce published the revised preliminary results of its administrative review of the antidumping duty order on standard carnations from Chile. The review covers foru prodocers/exporters and the period November 3, 1986 through February 29, 1988.

We gave interested parties an opportunity to commeat on our revised preliminary results. We received no comments. The final results are unchanged from those presented in the revised preliminary results of review.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Laurie A. Lacksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, telephone: (202) 5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 22, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 42615) the revised preliminary results of its administrative review of the antidumping duty order on standard carnations from Chile (52 FR 6850, March 20, 1987). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

### Scope of the Review

Imports covered by the review are shipments of standard carnations from Chile. During the review period such merchandise was classifiable under item 192.21 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item 0603.10.90. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers four producers/exporters of standard carnations from Chile to the United States and the period November 3, 1986 through February 29, 1988.

### Final Results of Review

We invited interested parties to comment on the revised preliminary results. We received no comments. The final results are unchanged from those presented in the revised preliminary results of review, and we determine that the following margins exist for the period November 3, 1986 through February 29, 1988:

| Producer/Exporter | Margin (percent) |
|---|---|
| Agricola Longotoma | 28.78 |
| Coexflor | 0.00 |
| Flores de Chile | 0.04 |
| Sociedad Agricola | 0.00 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for shipments of standard carnations from Chile by these firms. Since the margin for Flores de Chile is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries of standard carnations from Flores de Chile. For any future entries of this merchandise from a new exporter, not covered in this review, whose first shipments occurred after February 29, 1988 and who is unrelated to any reviewed firm, no cash deposit shall be required.

These cash deposit requirements are effective for all shipments of standard carnations from Chile, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)) and 19 CFR 353.22 (1990).

Dated: December 4, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-28696 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M



## Presbyterian University Hospital, et al., Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90-197. *Applicant:* Presbyterian University Hospital, DeSoto at O'Hara Streets, Pittsburgh, PA 15213-2582. *Instrument:* Cell Transfer System, Model Quixcell 42. *Manufacturer:* Saxon Micro, United Kingdom. *Intended Use:* The instrument will be used for studies of human white blood cells infected with pathogenic viruses to discover whether viruses or bacteria are the causes of infection in certain white cells. *Application Received by Commissioner of Customs:* November 1, 1990.

*Docket Number:* 90-198. *Applicant:* Research Foundation of SUNY at Albany, AD-335, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Infrared Neon Gas Laser. *Manufacturer:* MPB Technologies Inc., Canada. *Intended Use:* The instrument will be used to measure gaseous hydrogen peroxide in the atmosphere at various locations seasons and times of the day. *Application Received by Commissioner of Customs:* November 2, 1990.

*Docket Number:* 90-199. *Applicant:* The Pennsylvania State University, 1600 Woodland Road, Abington, PA 19002. *Instrument:* Hi-Plan 2 Structures Apparatus Teaching Aid. *Manufacturer:* Hi-Tech Ltd., United Kingdom. *Intended Use:* The instrument will be used for educational purposes to demonstrate structural engineering principles to engineering and engineering technology students. *Application Received by Commissioner of Customs:* November 2, 1990.

*Docket Number:* 90-200. *Applicant:* University of California, Santa Barbara, Department of Electrical and Computer Engineering, Santa Barbara, CA 93106. *Instrument:* Metal-organic Chemical Vapor Deposition System. *Manufacturer:* Thomas Swan & Co., Ltd., United Kingdom. *Intended Use:* The instrument will be used for research in the following areas: Materials growth and processing, optoelectron integrated circuits and related components, high-speed devices and measurement techniques and optoelectronic computing. *Application Received by Commissioner of Customs:* November 8, 1990.

*Docket Number:* 90-201. *Applicant:* University of North Carolina at Chapel Hill, Purchasing Department, Chapel Hill, NC 27599-1100. *Instrument:* Spectrophotometer Accessory, RX-1000/S. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument is an accessory to an existing spectrofluorimeter used to study the calcium ion release process on a more physiological (10-1000 millisecond) time scale. *Application Received by Commissioner of Customs:* November 9, 1990.

*Docket Number:* 90-202. *Instrument:* Curie-Point Pyrolysis Head. *Manufacturer:* F.O.M. Institute, The Netherlands.

*Docket Number:* 90-203. *Instrument:* Curie-Point Pyrolysis Control Unit. *Manufacturer:* Horizon Instruments, United Kingdom. *Applicant:* Woods Hole Oceanographic Institution, Wood Hole, MA 02543. *Intended Use:* The instruments will be used for analysis of organic matter in marine samples (organisms, sediments, water-borne particulates) in relation to preservation of organic matter in sediments. Experiments will be conducted involving the analysis of whole samples and purified sub-fractions of organic matter from sediments etc. from a variety of locations by Curie-point pyrolysis. *Applications Received by Commissioner of Customs:* November 9, 1990.

*Docket Number:* 90-204. *Applicant:* Texas A&M University, Electron Microscopy Center, Biological Sciences Building West Room 119, College Station, TX 77843-2257. *Instrument:* Electron Microscope, Model JEM 2010/SEG/SIP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the microstructure of metals, metal alloys, ceramics, high-temperature superconductors, polymers, zeolites, minerals soils, and clays, and biological specimens that include plant and animal sections. *Application Received by Commissioner of Customs:* November 13, 1990.

*Docket Number:* 90-205. *Applicant:* National Institutes of Health, Gerontology Research Center, NIA, 4940 Eastern Avenue, room 3E16, Baltimore, MD 21224. *Instrument:* Spectrofluorimenter, Model SF-17. *Manufacturer:* Applied Photophysics, Ltd., United Kingdom. *Intended Use:* The instrument will be used to measure the speed of interaction of metal ions with membrane vesicles which contain specific transport systems for the metal ions. *Application Received by Commissioner of Customs:* November 4, 1990.

*Docket Number:* 90-206. *Applicant:* SUNY/College of Optometry, 100 East 24th Street, New York, NY 10010. *Instrument:* Infra-red Autorefractor, Model R-1. *Manufacturer:* Canon, Japan. *Intended Use:* The instrument will serve multiple important functions in an instruction program for optometry students which will include: Lab courses, vision training labs and related patient clinics, visual optics/physiological optics course and ocular disease clinics. *Application Received by Commissioner of Customs:* November 15, 1990

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 90-28697 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS-M

## Rice University, et al.; Consolidated Decision on Applications For Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 90-112. *Applicant:* Rice University, Houston, TX 77251. *Instrument:* Mass Spectrometer, Model MAT 252V. *Manufacturer:* Finnigan MAT, GmbH, West Germany. *Intended Use:* See notice at 55 FR 30953, July 30, 1990. *Reasons:* The foreign instrument provides a multicollector system with six movable Faraday cups and negative ion analysis at full acceleration potential (10 kV).

*Docket Number:* 90-146. *Applicant:* U.S. DOE/Argonne National Laboratory, Argonne, IL 60439. *Instrument:* Mass Spectrometer, Model 30-01. *Manufacturer:* VG Instruments, United

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Kingdom. *Intended Use:* See notice at 55 FR 35162, August 28, 1990. *Reasons:* The foreign instrument provides: (1) A Daly electron multiplier detector, (2) detection to 1 ppb and (3) a batch inlet system.

*Docket Number:* 90-158. *Applicant:* Washington University, St. Louis, MO 63130. *Instrument:* Mass Spectrometer, VG Sector 54. *Manufacturer:* VG Isotopes, Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 35163, August 28, 1990. *Reasons:* The foreign instrument provides: (1) A 7-collector Faraday cup array, (2) A Daly collector and (3) an internal precision of 20 ppm or better for U, Nd, and Sr.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 90-8998 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DS

## National Technical Information Service

### Withdrawal of Prospective Grant of Exclusive Patent Licensing and Availability of Inventions for Licensing

The National Technical Information Service (NTIS), U.S. Department of Commerce, hereby withdraws its notice, announced in the Federal Register, Vol. 54, No. 124, p. 27419, (June 29, 1989), of its intention to grant Gilead Sciences, Inc. of Foster City, CA an exclusive license under U.S. Patent Application Serial Number 7-351,502, "Method of Treatment of Hepatitis." The application describes and claims treatment of hepatitis B infections using 2',3'-dideoxyinosine (ddI), 2',3'-dideoxyadenosine (ddA) or 2',3'-dideoxyguanosine (ddG). NTIS solicits applications from parties interested in obtaining a license under the subject application in the United States and certain foreign countries.

Applicants should be aware that the use of ddI, ddA and ddG for treatment of retroviral infections is claimed in U.S. Patent 4,861,759 and counterpart filings in certain foreign countries. The use of those compounds solely for the treatment of AIDS is the subject of an exclusive license under the patent and its foreign counterparts to Bristol-Myers Squibb Company. Therefore NTIS requests that applicants for a license under 7-351,502 expressly address the issue of potential "cross-prescribing" for the respective therapies.

In addition, hepatitis B is considerably more prevalent in foreign countries than in the U.S. Applicants are invited to address the question of whether licensing of the invention in foreign countries should be handled differently or separately from licensing in the United States.

NTIS also announces the availability for licensing of a related case, U.S. Patent Application Serial Number 7-460,460, "Treatment of Human Retroviral Infections with 2',3'-dideoxyinosine (ddI)," and its counterpart filings in certain foreign countries. The application describes a preferred method and dosages for the short and long-term treatment of human retroviral infections, or retroviral-like infections, including acquired immunodeficiency syndrome (AIDS) and other manifestation of human immunodeficiency virus (HIV) infections, with 2',3'-dideoxyinosine (ddI), along with a protocol for halting and restarting 2',3'-dideoxyinosine to minimize certain side effects.

Copies of these patent applications may be purchased by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650.

NTIS solicits applications from parties interested in obtaining a license under the subject patent applications. License application forms and other information may be obtained from NTIS, Center for the Utilization of Federal Technology, Box 1423, Springfield, VA 22151, Attention: Papan Devnani, Phone: (703) 487-4736.

Douglas J. Campion,

*Patent Licensing Specialist, Center for the Utilization of Federal Technology.*

[FR Doc. 90-28943 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products From Haiti

December 5, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 15, 1989, between the Governments of the United States and Haiti establishes limits and guaranteed access levels (GALs) for certain cotton and man-made fiber textile products for the period January 1, 1991 through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the Federal Register at a later date.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 21208, published on June 11, 1986; 52 FR 6053, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 5, 1990.

Commissioner of Customs,

*Department of the Treasury,*

*Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 20 and 30, 1986, as amended and extended by the Memorandum of Understanding dated December 15, 1989, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Haiti and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following designated levels:

| Category | 12-Month restraint level |
|---|---|
| 331 | 424,000 dozen pairs. |
| 340/640 | 424,000 dozen. |
| 341/641 | 407,040 dozen. |
| 347/348 | 477,000 dozen. |
| 350 | 59,300 dozen. |

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In accordance with the provisions of the Special Access program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Haiti from fabric formed and cut in the United States and re-exported to the United States from Haiti during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991:

| Category | Guaranteed access level |
|---|---|
| 331 | 500,000 dozen pairs. |
| 340/640 | 440,000 dozen. |
| 341/641 | 400,000 dozen. |
| 347/348 | 600,000 dozen. |
| 350 | 120,000 dozen. |

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of February 19, 1987, as amended, shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28938 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DR-M

## Announcing 1991 Agreement Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

December 5, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:**

**AUTHORITY:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of August 4, 1986, as amended, establishes limits for the period January 1, 1991 through December 31, 1991. A complete list of the 1991 limits is published below.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3660.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 52 FR 23481, published on June 22, 1987. Information regarding the 1991 Correlation will be published in the Federal Register at a later date.

| Category | Twelve-month limit |
|---|---|
| **Group I** | |
| 200-229, 300-326, 360-369, 400-414, 464-469, 600-629 and 665-670, as a group. | 206,307,567 square meters equivalent. |
| **Subgroups in Group I** | |
| 200 | 274,813 kilograms. |
| 219 | 31,674,786 square meters. |
| 218/225/317/326 | 60,815,875 square meters of which not more than 3,349,500 square meters shall be in Category 219(1)-yarn dyed fabric other than denim and jacquard.[1] |
| 226/313 | 67,176,524 square meters. |
| 314 | 15,419,622 square meters. |
| 315 | 7,623,613 square meters. |
| 369(1) [2] (shoptowels) | 626,508 kilograms. |
| 604 | 186,640 kilograms. |
| 611 | 5,025,490 square meters. |
| **Group II** | |
| 237, 239, 330-369, 431-459, 630-669 and 843/844(1), as a group. | 708,254,839 square meters equivalent. |
| **Subgroups in Group II** | |
| 237 | 821,733 dozen. |
| 239 | 3,129,864 kilograms. |
| 331 | 3,691,975 dozen pairs. |
| 333/334 | 251,600 dozen. |
| 335 | 309,728 dozen. |
| 336 | 176,022 dozen. |
| 336-O/339-O [3] (shirts and blouses other than tank tops and tops, knit). | 2,632,596 dozen. |
| 339-T/339-T [4] (tank tops & knit tops). | 1,977,884 dozen. |
| 340 | 2,520,991 dozen. |
| 341 | 2,551,822 dozen. |
| 342 | 467,831 dozen. |
| 345 | 362,723 dozen. |
| 347/348 | 6,025,907 dozen of which not more than 2,366,722 dozen shall be in Category. 347 and not more than 4,566,852 dozen shall be in Category 348. |
| 350 | 115,572 dozen. |
| 351 | 1,077,775 dozen. |
| 352 | 5,421,507 dozen. |
| 359(1) [5] (coveralls, overalls and jumpsuits). | 494,964, kilograms. |
| 359(2) [6] (outer vests) | 1,031,650 kilograms. |
| 434 | 9,585 dozen. |
| 435 | 69,303 dozen. |
| 436 | 90,285 dozen. |
| 438 | 741,340 dozen. |
| 442 | 79,640 dozen. |
| 443 | 56,952 numbers. |
| 443/444/643/644/843/844/(1) (made-to-measure suits). | 50,448 numbers. |
| 444 | 35,788 numbers. |
| 445/446 | 1,225,357 dozen. |
| 447/448 | 61,222 dozen. |
| 631 | 511,575 dozen pairs. |
| 633/634/635 | 1,126,565 dozen of which not more than 422,102 dozen shall be in Categories 633/634 and not more than 866,603 dozen shall be in Category 635. |
| 636 | 239,589 dozen. |
| 638/639 | 4,419,686 dozen. |
| 640 | 770,835 dozen. |
| 641 | 763,689 dozen. |
| 642 | 180,531 dozen. |
| 644 | 34,699 numbers. |
| 645/646 | 1,270,704 dozen. |
| 647 | 428,682 dozen. |
| 648 | 957,117 dozen. |

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| Category | Twelve-month limit |
|---|---|
| 648 | 955,195 dozen. |
| 650 | 135,492 dozen. |
| 651 | 259,466 dozen. |
| 652 | 3,862,325 dozen. |
| 659(1) [7] (coveralls, overalls and jumpsuits). | 547,067 kilograms. |
| 659(2) [8] (swimsuits) | 218,563 kilograms. |
| Group III | |
| 831–843, 845/846 (excluding made-to-measure suits), and 847–859, as a group. | 42,372,184 square meters equivalent. |
| Sublevels in Group III | |
| 835 | 99,137 dozen. |
| 836 | 132,970 dozen. |
| 840 | 586,877 dozen. |
| 842 | 217,836 dozen. |
| 847 | 316,249 dozen. |
| Limits not in a group | |
| 845(1) [9] (sweaters made in Hong Kong). | 1,098,578 dozen. |
| 845(2) [10] (sweaters assembled in Hong Kong from knit-to-shape component parts knitted elsewhere). | 2,629,580 dozen. |
| 846(1) [11] (sweaters made in Hong Kong). | 177,590 dozen. |
| 846(2) [12] (sweaters made in Hong Kong from knit-to-shape component parts knitted elsewhere). | 426,070 dozen. |

[1] Category 218(1): The Government of Hong Kong will continue to visa these products as 218.

[2] Category 359(1): only HTS number 6307.10.2005.

[3] Categories 336–O/336–O, all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Categories 336–T/336–T: only HTS numbers 6106.10.0018, 6106.10.0023, 6106.10.0060, 6106.10.0065, 6114.20.0005 and 6114.20.0010.

[5] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[6] Category 359(2): only HTS Numbers 6103.19.2000, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2000, 6110.20.2035, 6110.90.0044, 6110.90.0048, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4050, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[7] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 845(1): only HTS numbers 6103.29.2074, 6104.29.2072, 6110.90.0084, 6110.90.0042 and 6117.90.0020.

[10] Category 845(2): only HTS numbers 6103.29.2070, 6104.29.2070, 6110.90.0022 and 6110.90.0040.

[11] Category 846(1): only HTS numbers 6103.29.2052, 6104.29.2058, 6110.90.0020, 6110.90.0038 and 6117.90.0018.

[12] Category 846(2): only HTS numbers 6103.29.2064, 6104.29.2064, 6110.90.0018 and 6110.90.0036.

Philip J. Martello,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28624 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–DR–M

## Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

December 5, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6041. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated November 21 and December 4, 1986, as amended and extended, establishes limits for the period January 1, 1991 through December 31, 1991. The limits for Categories 345 and 645/646 are being reduced to account for special carryforward used in 1990.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3660.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the agreement, but are designed to assist only in the implementation of certain of its provisions.

Philip J. Martello,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 5, 1990

Commissioner of Customs
*Department of the Treasury*
*Washington, DC 20229*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraint limits:

| Category | Twelve-month restraint limit |
|---|---|
| Group I | |
| 200, 201, 218–220, 222–229, 300–326, 360–363, 369–O,[1] 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–O,[2] as a group. | 381,524,000 square meters equivalent. |
| Subtevels within Group I | |
| 200 | 379,250 kilograms. |
| 201 | 1,378,000 kilograms. |
| 218 | 7,687,500 square meters. |
| 219 | 7,175,000 square meters. |
| 300/301 | 2,576,757 kilograms. |
| 313 | 42,025,000 square meters. |
| 314 | 23,431,297 square meters. |
| 315 | 16,540,000 square meters. |
| 317/326 | 15,617,582 square meters. |
| 363 | 922,500 numbers. |
| 410 | 3,282,500 square meters. |
| 604 | 307,662 kilograms. |
| 607 | 922,500 kilograms. |
| 611 | 3,075,000 square meters. |
| 613/614 | 5,125,000 square meters. |
| 619/620 | 37,395,000 square meters. |
| 624 | 7,687,500 square meters. |
| 625–629 | 13,120,000 square meters. |



| Category | Twelve-month restraint limit |
|---|---|
| 669–P [3] | 1,984,984 kilograms. |
| Group II | |
| 237, 239, 330–364, 369, 431–448, 469, 630–654 and 659, as a group. | 584,598,000 square meters equivalent. |
| Subtevels within Group II | |
| 237 | 50,998 dozen. |
| 239 | 661,767 kilograms. |
| 333/334/335 | 230,625 dozen of which not more than 117,875 dozen shall be in Category 335. |
| 336 | 46,738 dozen. |
| 338/339 | 1,025,000 dozen. |
| 340 | 533,000 dozen of which not more than 276,750 dozen shall be in Category 340–D.[4] |
| 341 | 182,409 dozen. |
| 342/642 | 170,951 dozen. |
| 345 | 90,744 dozen. |
| 347/348 | 379,250 dozen. |
| 350 | 14,175 dozen. |
| 351/651 | 194,732 dozen. |
| 352 | 151,536 dozen. |
| 353/354/653/654 | 240,126 dozen. |
| 359–H [5] | 2,163,017 kilograms. |
| 433 | 13,395 dozen. |
| 434 | 6,870 dozen. |
| 435 | 32,558 dozen. |
| 436 | 13,782 dozen. |
| 438 | 55,250 dozen. |
| 440 | 190,950 dozen. |
| 442 | 46,578 dozen. |
| 443 | 322,055 numbers. |
| 444 | 50,754 numbers. |
| 445/446 | 50,250 dozen. |
| 447 | 85,731 dozen. |
| 448 | 32,767 dozen. |
| 459–W [6] | 88,639 kilograms. |
| 631 | 255,865 dozen pairs. |
| 632 | 1,365,425 dozen pairs. |
| 633/634/635 | 1,326,737 dozen of which not more than 150,450 dozen shall be in Category 633 and not more than 560,677 dozen shall be in Category 635. |
| 636 | 241,302 dozen. |
| 638/639 | 5,165,450 dozen. |
| 640–D [7] | 3,015,000 dozen. |
| 640–O [8] | 2,512,500 dozen. |
| 641 | 1,004,848 dozen of which not more than 37,956 dozen shall be in Category 641–Y.[9] |
| 643 | 744,440 numbers. |
| 644 | 1,119,978 numbers. |
| 645/646 | 9,384,751 dozen. |
| 647/648 | 1,227,318 dozen. |
| 650 | 20,742 dozen. |
| 659–H [10] | 1,191,303 kilograms. |
| 659–S [11] | 152,548 kilograms. |
| Group III | |
| 831–844 and 847–859, as a group. | 18,084,269 square meters equivalent. |
| Subtevel within Group III | |
| 835 | 27,662 dozen. |
| Group IV | |
| 845 | 2,315,056 dozen. |
| 846 | 612,324 dozen. |
| Group VI | |
| 669–L/670–L/670 [12] | 69,137,888 square meters equivalent. |

[1] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000 (Category 369–L).

[2] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.9000 and 4202.92.9026 (Category 670–L).

[3] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[5] Category 359–H: only HTS numbers 6505.90.1530 and 6505.90.2060.

[6] Category 459–W: only HTS number 6505.90.4060.

[7] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[8] Category 640–O: all HTS numbers except 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030 (Category 640–D).

[9] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[10] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[11] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[12] Category 670; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9026.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1991 levels are subject to adjustment in the future according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea.

| Category | Conversion factor |
|---|---|
| 333/334/335 | 33.75 |
| 369–L/670–L/670 | 3.8 |
| 633/634/635 | 94.1 |
| 638/639 | 12.96 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Philip J. Martello,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28627 Filed 12–10–90; 8:45 am]

BILLING CODE 3510–DR–M

## Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru

December 5, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Custom port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 13, 1985, as amended, between the Governments of the United States and Peru, establishes limits for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3660.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

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only in the implementation of certain of its provisions.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 5, 1990

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| **Limits not in a Group** | |
| 218 | 16,067,623 square meters. |
| 220 | 9,962,304 square meters. |
| 226/312 | 19,756,726 square meters of which not more than 3,543,320 square meters shall be in Category 226. |
| 315 | 4,697,264 square meters. |
| 317/326 | 19,822,574 square meters of which not more than 7,965,518 square meters shall be in Category 326. |
| 338/339 | 693,000 dozen of which not more than 580,050 dozen shall be in Categories 338–S/339–S.[1] |
| **Cotton Apparel Group** | |
| 237, 239, 330–336 and 340–359, as a group. | 14,632,229 square meters equivalent. |
| **Wool Group** | |
| 400 and 414–469, as a group. | 3,762,573 square meters equivalent. |

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Peru.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-28923 Filed 12-10-90; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 5, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–6791. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products establishes limits for the period beginning January 1, 1991 and extending through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Philip J. Martello,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 5, 1990

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following restraint limits:



| Category | Twelve-month restraint limit |
|---|---|
| **Group I** | |
| 200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [1], 369–O [1], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 666, 669, 669–P [1], 669–T [1], 669–O [1], 670–H [1] and 670–O [1], as a group. | 534,464,226 square meters equivalent. |
| **Sublevels within Group I** | |
| 200 | 574,440 kilograms. |
| 218 | 17,777,958 square meters. |
| 219 | 13,073,676 square meters. |
| 225/317/326 | 31,556,830 square meters. |
| 226 | 5,726,376 square meters. |
| 300/301/607 | 1,522,500 kilograms of which not more than 1,268,750 kilograms each shall be in Categories 300, 301 and 607. |
| 313 | 61,551,570 square meters. |
| 314 | 23,257,663 square meters. |
| 315 | 17,844,296 square meters. |
| 361 | 1,153,925 numbers. |
| 363 | 11,871,035 numbers. |
| 369–L/670–L/870 | 41,820,000 kilograms. |
| 369–S | 466,195 kilograms. |
| 604 | 203,170 kilograms. |
| 611 | 2,562,500 square meters. |
| 613/614/615/617 | 15,892,373 square meters. |
| 619/620 | 11,881,140 square meters. |
| 625/626/627/628/629 | 15,199,922 square meters. |
| 669–P | 276,330 kilograms. |
| 669–T | 626,128 kilograms. |
| 670–H | 16,014,000 kilograms. |
| **Group II** | |
| 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 3554, 359–C/659–C [2], 359–H/659–H [2], 359–O [2], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [2], 659–O [2], 831–844 and 846–859, as a group. | 799,297,233 square meters equivalent. |
| **Sublevels within Group II** | |
| 237 | 561,234 dozen. |
| 239 | 5,075,000 kilograms. |
| 331 | 469,813 dozen pairs. |
| 333/334/335 | 248,000 dozen of which not more than 135,250 dozen shall be in Category 335. |
| 336 | 95,816 dozen. |
| 336/336 | 705,704 dozen. |
| 340 | 1,111,110 dozen. |
| 341 | 328,825 dozen. |
| 342 | 204,044 dozen. |
| 345 | 99,910 dozen. |
| 347/348 | 1,064,931 dozen. |
| 350/650 | 136,250 dozen. |
| 351 | 339,461 dozen. |
| 352/652 | 2,596,857 dozen. |
| 359–C/659–C | 1,447,200 kilograms. |
| 359–H/659–H | 4,630,891 kilograms. |
| 433 | 14,074 dozen. |
| 434 | 9,771 dozen. |
| 435 | 23,206 dozen. |
| 436 | 4,619 dozen. |
| 438 | 26,079 dozen. |
| 440 | 5,050 dozen. |
| 442 | 43,390 dozen. |
| 443 | 29,404 numbers. |
| 444 | 56,119 numbers. |
| 445/446 | 130,775 dozen. |
| 447/448 | 19,232 dozen. |
| 631 | 4,237,722 dozen pairs. |
| 633/634/635 | 1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635. |
| 636 | 354,169 dozen. |
| 638/639 | 5,592,119 dozen. |
| 640 | 2,196,291 dozen of which not more than 1,361,060 dozen shall be in Category 640–Y.[14] |
| 641 | 725,258 dozen of which not more than 253,840 dozen shall be in Category 641–Y.[15] |
| 642 | 777,133 dozen. |
| 643 | 466,925 numbers. |
| 644 | 603,654 numbers. |
| 645/646 | 4,107,691 dozen. |
| 647/648 | 5,707,874 dozen. |
| 651 | 425,706 dozen. |
| 659–S | 1,778,222 kilograms. |
| **Group III** | |
| 845 | 845,278 dozen |

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.9000; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3090 and 4202.92.9020.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–L: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1530 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[11] Category 359–C: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6505.90.1530 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–C: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060, (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[15] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990.

The conversion factors are as follows:

| Category | Conversion factor |
|---|---|
| 300/301/607 | 6.5 |
| 333/334/335 | 25.75 |
| 352/652 | 11.3 |
| 359–C/659–C | 10.1 |
| 359–H/659–H | 11.5 |
| 369–L/670–L/870 | 3.8 |
| 633/634/635 | 34.1 |
| 638/639 | 12.5 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,
*Philip J. Mastallo,*
*Acting Chairman, Committee for the Implementation of Textile Agreements.*
[FR Doc. 90-28935 Filed 12-10-90; 8:45 am]
BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 5, 1991; Tuesday, February 12, 1991; Tuesday, February 19, 1991; and Tuesday, February 26, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 6, 1990.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 90-28869 Filed 12-10-90; 8:45 am]
BILLING CODE 3810-01-M

### Strategic Defense Initiative (SDI) Technology Applications Information System Data Base

**AGENCY:** Strategic Defense Initiative Organization, Office of Technology Applications, DoD.

**ACTION:** Notice.

**SUMMARY:** The Strategic Defense Initiative Organization, Office of Technology Applications (SDIO/TNO) has developed the Technology Applications Information System (TAIS) to identify emerging Strategic Defense Initiative technologies with spinoff potential and to expedite the transfer of these technologies to the commercial sector, federal agencies and researchers. The SDIO TAIS is a database that has recently been updated to include more than 2,400 unclassified, non-proprietary synopses of technology innovations and is accessible by computer modem.

In addition to these synopses, the TAIS contains descriptions of technological and business opportunities originating from three SDIO programs: the Innovative Science and Technology Program, the Small Business Innovation Research Program and a recent addition highlighting manufacturing technologies. This addition is the result of a new SDI program known as Manufacturing Operations Development and Integration Laboratories (MODILs) which has been established to develop manufacturing technologies unique to producing a strategic defense system. The program is currently focusing on technology needed to manufacture advanced optics and sensors.

The TAIS also provides a list of other technology transfer databases that are available and information on technology transfer and business assistance services provided by over 800 federal, state and local agencies.

Any U.S. citizen or corporation can gain access to the TAIS once a militarily critical technology data agreement has been completed and the Defense Logistics Agency has certified the user's eligibility under provisions of DOD Directive 5230.25, Control of Unclassified Technical Data with Military or Space Applications. Information regarding the qualifications for being certified to access militarily critical technology can be obtained by calling (800) DLA-DLSC. Information on use of the TAIS can be obtained by calling SDIO/TNO at (703) 693-1583.

**FOR FURTHER INFORMATION CONTACT:** The Strategic Defense Initiative Organization, Office of Technology Applications, The Pentagon, Washington, DC 20301-7100, (703) 695-1563.

Dated: December 6, 1990.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 90-28936 Filed 12-10-90; 8:45 am]
BILLING CODE 3810-01-M

### Per Diem, Travel and Transportation Allowance Committee

**AGENCY:** Per Diem, Travel and Transportation Allowance Committee, DoD.

**ACTION:** Publication of changes in Per Diem Rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 153. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 153 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** December 1, 1990.

**SUPPLEMENTARY INFORMATION:** This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Footnotes

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Fort Yukon, Gelena, Indian Mountain, King Salmon, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for US Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when US Government or contractor quarters are available and US Government or contractor messing facilities are used, a per diem rate of $25 is prescribed instead of the rate prescribed in the table.

Dated: December 5, 1990.

L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense*
BILLING CODE 3810-01-M

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| ALASKA: | | | | |
| ADAK 5/ | $ 46 | $ 31 | $ 77 | 12-01-90 |
| ANAKTUVUK PASS | 83 | 57 | 140 | 12-01-90 |
| ANCHORAGE | | | | |
| 05-16--09-15 | 82 | 59 | 141 | 05-16-91 |
| 09-16--05-15 | 73 | 57 | 130 | 12-01-90 |
| ATQASUK | 129 | 86 | 215 | 12-01-90 |
| BARROW | 89 | 59 | 148 | 12-01-90 |
| BETHEL | 70 | 73 | 143 | 12-01-90 |
| BETTLES | 65 | 45 | 110 | 12-01-90 |
| COLD BAY | 71 | 54 | 125 | 12-01-90 |
| COLDFOOT | 75 | 47 | 122 | 12-01-90 |
| CORDOVA | 73 | 77 | 150 | 12-01-90 |
| DILLINGHAM | 76 | 38 | 114 | 12-01-90 |
| DUTCH HARBOR-UNALASKA | 91 | 54 | 145 | 12-01-90 |
| EIELSON AFB | | | | |
| 05-15--09-15 | 67 | 57 | 124 | 05-15-91 |
| 09-16--05-14 | 55 | 54 | 109 | 12-01-90 |
| ELMENDORF AFB | | | | |
| 05-16--09-15 | 82 | 59 | 141 | 05-16-91 |
| 09-16--05-15 | 73 | 57 | 130 | 12-01-90 |
| FAIRBANKS | | | | |
| 05-15--09-15 | 67 | 57 | 124 | 05-15-91 |
| 09-16--05-14 | 55 | 54 | 109 | 12-01-90 |
| FT. RICHARDSON | | | | |
| 05-16--09-15 | 82 | 59 | 141 | 05-16-91 |
| 09-16--05-15 | 73 | 57 | 130 | 12-01-90 |
| FT. WAINWRIGHT | | | | |
| 05-15--09-15 | 67 | 57 | 124 | 05-15-91 |
| 09-16--05-14 | 55 | 54 | 109 | 12-01-90 |
| HOMER | 76 | 54 | 130 | 12-01-90 |
| JUNEAU | 64 | 59 | 123 | 12-01-90 |
| KATMAI NATIONAL PARK | 89 | 59 | 148 | 12-01-90 |
| KENAI | | | | |
| 05-01--09-30 | 88 | 61 | 149 | 05-01-91 |
| 10-01--04-30 | 68 | 59 | 127 | 12-01-90 |
| KETCHIKAN | 66 | 67 | 133 | 12-01-90 |
| KING SALMON 3/ | 75 | 59 | 134 | 12-01-90 |
| KODIAK | 61 | 57 | 118 | 12-01-90 |
| KOTZEBUE | 96 | 57 | 153 | 12-01-90 |
| KUPARUK OILFIELD | 75 | 52 | 127 | 12-01-90 |





MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| ALASKA: (CONT'D) | | | | |
| MURPHY DOME | | | | |
| 05-15--09-15 | $ 67 | $ 57 | $124 | 05-15-91 |
| 09-16--05-14 | 55 | 54 | 109 | 12-01-90 |
| NOATAK | 77 | 66 | 143 | 12-01-90 |
| NOME | 66 | 63 | 129 | 12-01-90 |
| NOORVIK | 77 | 66 | 143 | 12-01-90 |
| PETERSBURG | 66 | 61 | 127 | 12-01-90 |
| POINT HOPE | 99 | 61 | 160 | 12-01-90 |
| POINT LAY | 106 | 73 | 179 | 12-01-90 |
| PRUDHOE BAY-DEADHORSE | 64 | 57 | 121 | 12-01-90 |
| SAND POINT | 63 | 40 | 103 | 12-01-90 |
| SEWARD | 52 | 50 | 102 | 12-01-90 |
| SHUNGNAK | 77 | 66 | 143 | 12-01-90 |
| SITKA-MT. EDGECOMBE | 66 | 61 | 127 | 12-01-90 |
| SKAGWAY | 66 | 61 | 127 | 12-01-90 |
| SPRUCE CAPE | 61 | 57 | 118 | 12-01-90 |
| ST. MARY'S | 60 | 40 | 100 | 12-01-90 |
| ST. PAUL ISLAND | 81 | 34 | 115 | 12-01-90 |
| TANANA | 66 | 63 | 129 | 12-01-90 |
| TOK | 53 | 59 | 112 | 12-01-90 |
| UMIAT | 97 | 63 | 160 | 12-01-90 |
| UNALAKLEET | 58 | 47 | 105 | 12-01-90 |
| VALDEZ | | | | |
| 05-01--10-31 | 108 | 61 | 169 | 05-01-91 |
| 11-01--04-30 | 71 | 57 | 128 | 12-01-90 |
| WAINWRIGHT | 90 | 75 | 165 | 12-01-90 |
| WALKER LAKE | 82 | 54 | 136 | 12-01-90 |
| WRANGELL | 66 | 61 | 127 | 12-01-90 |
| YAKUTAT | 70 | 40 | 110 | 12-01-90 |
| OTHER 3, 4/ | 54 | 40 | 94 | 12-01-90 |
| AMERICAN SAMOA | 55 | 47 | 102 | 12-01-90 |
| GUAM | 99 | 59 | 158 | 12-01-90 |
| HAWAII: | | | | |
| ISLAND OF HAWAII: HILO | 59 | 36 | 95 | 12-01-90 |
| ISLAND OF HAWAII: OTHER | 59 | 47 | 106 | 12-01-90 |
| ISLAND OF KAUAI | 87 | 61 | 148 | 12-01-90 |
| ISLAND OF KURE 1/ | | 13 | 13 | 12-01-90 |
| ISLAND OF MAUI: KIHEI | | | | |
| 04-01--12-19 | 85 | 50 | 135 | 12-01-90 |
| 12-20--03-31 | 97 | 50 | 147 | 12-20-90 |

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MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| HAWAII: (CONT'D) | | | | |
| ISLAND OF MAUI: OTHER | $ 59 | $ 47 | $106 | 12-01-90 |
| ISLAND OF OAHU | 86 | 40 | 126 | 12-01-90 |
| OTHER | 59 | 47 | 106 | 12-01-90 |
| JOHNSTON ATOLL 2/ | 18 | 17 | 35 | 12-01-90 |
| MIDWAY ISLANDS 1/ | | 13 | 13 | 12-01-90 |
| NORTHERN MARIANA ISLANDS: | | | | |
| ROTA | 45 | 31 | 76 | 12-01-90 |
| SAIPAN | 68 | 47 | 115 | 12-01-90 |
| TINIAN | 44 | 24 | 68 | 12-01-90 |
| OTHER | 20 | 13 | 33 | 12-01-90 |
| PUERTO RICO: | | | | |
| BAYAMON | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| CAROLINA | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| FAJARDO (INCLUDING LUQUILLO) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| HAYAGUEZ | 117 | 50 | 167 | 12-01-90 |
| PONCE | 117 | 50 | 167 | 12-01-90 |
| ROOSEVELT ROADS | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| SABANA SECA | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| SAN JUAN (INCL SAN JUAN COAST GUARD UNITS) | | | | |
| 04-16--12-14 | 89 | 61 | 150 | 12-01-90 |
| 12-15--04-15 | 110 | 63 | 173 | 12-15-90 |
| OTHER | 53 | 43 | 96 | 12-01-90 |
| VIRGIN ISLANDS OF THE U.S. | | | | |
| 05-01--11-30 | 95 | 63 | 158 | 05-01-91 |
| 12-01--04-30 | 128 | 66 | 194 | 12-01-90 |
| WAKE ISLAND 2/ | 4 | 17 | 21 | 12-01-90 |
| ALL OTHER LOCALITIES | 20 | 13 | 33 | 12-01-90 |

[FR Doc. 90-28697 Filed 12-10-90; 8:45 am]
BILLING CODE 3810-01-C





## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before January 10, 1991.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: December 5, 1990.

James O'Donnell,

*Acting Director, for Office of Information Resources Management.*

### Office of Vocational and Adult Education

*Type of review:* Extension
*Title:* Carl D. Perkins Vocational Education Act of 1984—Reporting Requirements
*Frequency:* Biennial
*Affected public:* State or local governments
*Reporting burden:*
*Responses:* 4,212
*Burden hours:* 1,332,132
*Recordkeeping burden:*
*Recordkeeper:* 0
*Burden hours:* 0
*Abstract:* State Boards for Vocational Education must submit state plans under the Carl D. Perkins Vocational Education Act, as amended. The Department uses the information to determine compliance with the Act and to make grant awards.

### Office of Vocational and Adult Education

*Type of review:* Reinstatement
*Title:* Application for Adult Education for the Homeless Program (Discretionary Grants)
*Frequency:* Annually
*Affected public:* State or local governments
*Reporting burden:*
*Responses:* 50
*Burden hours:* 1,000
*Recordkeeping burden:*
*Recordkeepers:* 0
*Burden hours:* 0
*Abstract:* This form will be used by applicants to apply for funding under the Adult Education for the Homeless Program direct grant programs. The Department uses the information to make grant and cooperative agreement awards.

[FR Doc. 90-28915 Filed 12-10-90; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Announcement of Dates, Locations and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement (PEIS) for the Department of Energy's Proposed Integrated Environmental Restoration and Waste Management Program

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** DOE announced on October 22, 1990, (55 FR 42623-6) that it intends to prepare a PEIS on the Department's proposed Integrated Environmental Restoration and Waste Management Program pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) as amended, and to conduct a series of public scoping meetings nationwide. A second notice was published on November 6, 1990, which identified the dates, locations, times and DOE points-of-contact for the ten (10) scoping meetings to be held in December 1990. Today's Notice supplements the October 22, 1990, and November 6, 1990, issuances and provides the dates, locations, times and DOE points-of-contact for the thirteen (13) scoping meetings to be held in January and February 1991. This notice also repeats the information on the first 10 scoping meetings, i.e., the complete listing of dates, locations, times and DOE points-of-contact are available in this one notice. The first two meetings were held in Columbia, South Carolina, and in Richland, Washington, on December 3, and December 4, 1990, respectively. Subsequent meetings will be held in the following locations: Atlanta, Georgia; St. Louis, Missouri; and Spokane, Washington, on December 6, 1990; Amarillo, Texas, on December 10, 1990; Oak Ridge, Tennessee; Portland, Oregon; and Chicago, Illinois, on December 11, 1990; and Seattle, Washington, on December 13, 1990; Oakland, California and Newburgh, New York, on January 6, 1991; Princeton, New Jersey, on January 10, 1991; Cincinnati, Ohio, on January 14, 1991; Albuquerque, new Mexico, and Las Vegas, Nevada, on January 15, 1991; Columbus, Ohio, on January 16, 1991; Idaho Falls, Idaho, and Paducah, Kentucky, on January 22, 1991; Denver, Colorado, on January 23, 1991; Boise, Idaho, on January 24, 1991; Tampa, Florida, on January 29, 1991; and Washington, DC., on February 7, 1991.

**BACKGROUND:** The PEIS will assess the potential environmental consequences of alternatives for implementing an integrated environmental restoration and waste management program. This program is expected to provide a broad, systematic approach to addressing cleanup activities and waste management practices. The Department is committed to ensuring that potential risks to human health and the environment from the cleanup of contamination resulting from past operations and future waste

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management activities are at safe levels. DOE is further committed to full compliance with applicable environmental requirements and to the goal of completing environmental restoration by 2019.

**ADDRESSES AND FURTHER INFORMATION:** Written comments on the scope of the PEIS, questions concerning the program, and requests for copies of the draft PEIS should be directed to: Mr. William E. Wisenbaker, Acting Director, Division of Program Support, Office of Environmental Restoration (EM-43), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-2950.

For further information on the DOE NEPA process please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

**PUBLIC SCOPING MEETINGS AND INVITATION TO COMMENT:** For the reader's convenience, the following is repeated from the October 22, 1990, Notice referenced above. DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities. The public scoping process began with the October 22, 1990, **Federal Register** announcement that DOE will prepare a PEIS on its environmental restoration and waste management activities; this process will continue until February 19, 1991.

The public is invited to present oral or written comments concerning: (1) The scope of the PEIS; (2) the issues that should be addressed; and (3) the alternative integrated approaches to be analyzed in the PEIS. Written comments may be addressed to Mr. William E. Wisenbaker or the contact for the specific scoping meetings. These comments should be postmarked by February 19, 1991, to ensure consideration. The Department is holding scoping meetings to facilitate receipt of public comments on the PEIS. These meetings will begin in December 1990; a total of 23 scoping meetings will be held nationwide. The schedule for all 23 scoping meetings is shown below.

Oral and written comments will be given equal consideration. Instructions for submitting written comments are given above. People desiring to speak at the public scoping meetings should submit their requests to do so to the contact persons designated for that meeting. Oral presentation requests for each meeting should be received by DOE at least two days before the meeting.

The meetings will be chaired by a presiding officer. They will not be conducted as evidentiary hearings. Speaker will not be cross-examined, although the DOE representatives present may ask them clarifying questions.

To ensure everyone an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted a timely request to speak may register at the meetings, and will be called on to speak if time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will make a transcript of each meeting. Copies will be made available for inspection at the DOE Freedom of Information Reading Room (Room 1E-190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, during business hours, Monday through Friday and in local DOE reading rooms. Locations of local reading rooms for the scoping meetings are included in this Notice.

Issued in Washington, DC, this 6th day of December 1990.

**Paul L. Ziemer,**

*Assistant Secretary, Environment, Safety and Health.*

### Scoping Meeting Schedule

*Meeting:* Columbia, SC
*Date:* Monday, December 3, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Park Inn International, 773 St. Andrews Road, Columbia, SC 29210, (803) 772-7275

*Meeting:* Atlanta, GA
*Date:* Thursday, December 6, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Holiday Inn, Atlanta Peachtree Corners, 6050 Peachtree Industrial Blvd., Norcross, GA 30071, (404) 448-4400

*Contact For The Two Meetings Above*

Mr. Stephen R. Wright, Director, Environmental Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, 1-800-242-8269

*Public Reading Rooms For The Two Meetings Above*

Aiken: Public Reading Room—DOE, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801. Hours: 8 a.m.–5 p.m. Mon.–Fri., 12 p.m.–5 p.m. Sat.
Oak Ridge: U.S. Department of Energy, Oak Ridge Operation Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831. Hours: 8:30 a.m.–4:30 p.m. Mon.–Fri.

*Meeting:* St. Louis, MO
*Date:* Thursday, December 6, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Clayton Plaza, 7730 Bonhomme Avenue, St. Louis, MO 63105

*Meeting:* Oak Ridge, TN
*Date:* Tuesday, December 11, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN 37830

*Contact For The Two Meetings Above*

Oak Ridge: Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW-91, Oak Ridge, TN 37831-8541, (615) 576-0727

*Public Reading Rooms For The Two Meetings Above*

Oak Ridge: U.S. Department of Energy, Oak Ridge Operations Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831. Hours: 8:30 a.m.–4:30 p.m. Mon.–Fri.
St. Louis, MO: St. Louis County Library, 1640 S. Lindbergh Blvd., St. Louis, MO 63131. Hours: 8:30 a.m.–9 p.m. Mon.–Fri., 8:30 a.m.–6 p.m., Sat.
St. Charles, MO: St. Charles County Library, Kisker Road Branch, Kisker Road, St. Charles, MO 63306. Hours: 6:30 a.m.–9 p.m., Mon.–Thurs., 6:30 a.m.–6 p.m., Sat.

*Meeting:* Richland, WA
*Date:* Tuesday, December 4, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Federal Building Auditorium, 825 Jadwin Avenue, Richland, WA 99352

*Meeting:* Spokane, WA
*Date:* Thursday, December 6, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Ridpath Hotel, W. 515 Sprague Avenue, Spokane, WA

*Meeting:* Portland, OR
*Date:* Tuesday, December 11, 1990
*Time:* 9 a.m–9:30 p.m.
*Location:* City Hall Council Chambers, 1220 SW Fifth Avenue, Portland, Oregon

*Meeting:* Seattle, WA
*Date:* Thursday, December 13, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Henry M. Jackson Federal Building, North Auditorium, 915 Second Avenue, Seattle, WA

*Contact For The Four Meetings Above*

Richland: Ken Morgan, U.S. Department of Energy, 825 Jadwin, Mail Stop A775, Richland, WA 99352, (509) 376-7162

*Public Reading Rooms For The Four Meetings Above*

Richland: Department of Energy Richland Operations, Public Reading Room, Federal Building, Room 187, 825 Jadwin Avenue, Richland, WA 99325, (509) 376-8583. Hours: 8 a.m.–12 p.m., and 1 p.m.–4:30 p.m., Mon.–Fri., 9 a.m.–1 p.m., Sat.
Spokane: Crosby Library, Gonzaga University, E. 502 Boone, Spokane, WA 99258, (509) 328-4220. Hours: 8 a.m.–12 a.m., Mon.–Thurs., 8 a.m.–9 p.m., Fri., 9 a.m.–9 p.m., Sat., 11 a.m.–12 a.m., Sun.



Portland: Portland State University Library, 934 S.W. Harrison, Portland, OR 97207, (503) 464-4617. Hours: 8 a.m.–5 p.m., Mon.–Fri. Closed Saturdays and Sundays
Seattle: University of Washington, Suzzalo Library, FM-25 Government Publications, Seattle, WA 98195, (206) 543-4664. Hours: 10 a.m.–5 p.m., Mon.–Fri. Closed Saturdays and Sundays 8 a.m.–8 p.m. Mon.–Fri., 8 a.m.–6 p.m., Fri., 10 a.m.–5 p.m., Sat.

*Meeting:* Chicago, IL
*Date:* Tuesday, December 11, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Sheraton International Hotel at O'Hare, 6810 N. Mannheim Road, Rosemont, IL 60018

*Contact For The Meeting Above*

Ms. Kimberly Phillips, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, IL 60439, (708) 972-2028

*Public Reading Room*

Argonne, IL: U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Ill 60439. Hours: 8:30 a.m.–5 p.m., Mon.–Fri.

*Meeting:* Amarillo, TX
*Date:* Monday, December 10, 1990
*Time:* 9 a.m.–9:30 p.m.
*Location:* Amarillo Civic Center, 401 S. Buchanan, Amarillo, TX 79101

*Contact For The Meeting Above*

Patrick J. Higgins, Jr., Division Director, Environmental Management Staff, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (800) 633-7156 (24 Hours)

*Public Reading Room*

DOE Public Reading Room, Reference Department, Lynn Library and Learning Center, Amarillo College, 2201 South Washington, 4th Floor, Amarillo, TX 79100, 806-371-5400. Hours: 7:45 a.m.–10 p.m., Mon.–Thur., 7:45 a.m.–5 p.m., Fri., closed Sat., 2–6 p.m., Sun.

*Meeting:* Oakland, CA
*Date:* Tuesday, January 8, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* Hyatt Regency Oakland, 1001 Broadway, Oakland, CA 94607, (415) 893-1234

*Contact For The Meeting Above*

Ray Corey, U.S. Department of Energy, Lawrence Livermore Site Office, 7000 E. Avenue L-574, Livermore, CA 94550, (415) 423-3594

*Public Reading Rooms For The Two Meetings Above*

Oakland: U.S. Department of Energy, Public Reading Room, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612, (415) 273-4429. Hours: 8:30 a.m.–4:30 p.m. Mon.–Fri.
Berkeley: Berkeley Public Library, 2090 Kittredge Street, Berkeley, CA 94704, (415) 644-6100. Hours: 10 a.m.–9 p.m., Mon.–Thur., 10 a.m.–6 p.m., Fri.–Sat., 1 p.m.–5 p.m. Sun.
Davis: Davis Branch, Yolo County Library, 315 East 14th St., Davis, CA 95616, Contact: Mee Bolton, (916) 756-3322. Hours: 1 p.m.–9 p.m., Mon., 10 a.m.–9 p.m., Tues.–Wed., 10 a.m.–6 p.m., Thur.–Fri., 10 a.m.–5 p.m., Sat.
Palo Alto: Palo Alto Public Library, 1213 Newell Road, Palo Alto, CA 94303, contact: Roger Bonilla, (415) 329-2436. Hours: 10 a.m.–9 p.m., Mon.–Fri., 10 a.m.–6 p.m., Sat., 1 p.m.–5 p.m., Sun.
Semi Valley: Semi Valley Public Library, 2969 Tapo Canyon Road, Semi Valley, CA 93063, Contact: Gail Demirtos, (805) 526-1735. Hours: 10 a.m.–9 p.m., Mon.–Thurs., 10 a.m.–5 p.m., Fri. Sat. 1 p.m.–4 p.m., Sun.
Livermore: Livermore Public Library, 1000 South Livermore Ave., Livermore, CA 94550, (415) 373-550. Hours: 10 a.m.–9 p.m., Mon.–Thur., 10 a.m.–5 p.m., Fri.–Sat., 1 p.m.–4 p.m., Sun.

*Meeting:* Newburgh, NY
*Date:* Tuesday, January 8, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* Holiday Inn, 90 Route 17K, Newburgh, NY 12550, (Across from the airport) (914) 5469020

*Contact For The Meeting Above*

Charles F. Baxter, U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York, NY 10278, (212) 264-1021

*Public Reading Rooms For The Meeting Above*

U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York, NY 10278, Contact: Charles F. Baxter, (212) 264-1021 Hours: 7 a.m.–5 p.m., Mon.–Fri.
Albany: New York State Library, Cultural Education Department, Madison Avenue, Empire State Plaza, Albany, NY 12230, Contact: Gerome Yavarkovski, (518) 473-1189,Materials available at the Circulation Desk, Hours: 9 a.m.–5 p.m., Mon.–Fri.
Springville: Concord Public Library, 23 N. Buffalo Street, Springville, NY 14141, (716) 592-7742, Contact: Annette Gernett, Hours: 2 p.m.–9 p.m., Mon. 2 p.m.–7 p.m., Tues., 10 a.m.–12 noon and 2 p.m.–9 p.m., Thurs., 2 p.m.–9 p.m. Fri., 10 a.m.–12 noon, Sat.

*Meeting:* Princeton, NJ
*Date:* Thursday, January 10, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* Ramada Inn at Princeton, 4355 Route 1, Princeton, NJ 08540 (609) 452-2400

*Contact For The Meeting Above*

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW-91, Oak Ridge, TN 37831-8541, (615) 576-0727

*Public Reading Room For The Meeting Above*

Trenton: Mercer County Library, Lawrenceville Branch, Lawrenceville, NJ, Hours: 9:30 a.m.–9 p.m., Mon.–Thurs., 9:30 a.m.–5:30 p.m., Fri., 10 a.m.–5 p.m. Sat.
Albany: Cultural Educational Department, Madison Avenue, Empire State Plaza, Albany, NY 12230, Contact: Gerome Yavarkovski, (518) 473-1189. Materials available at the Circulation Desk, Hours: 9 a.m.–5 p.m., Mon.–Fri.
Springville: Concord Public Library, 23 N. Buffalo Street, Springville, NY 14141, (716) 592-7742, Contact: Annette Gernett, Hours: 2 p.m.–9 p.m., Mon. 2 p.m.–7 p.m., Tues., 10 a.m.–12 noon and 2 p.m.–9 p.m., Thurs., 2 p.m.–9 p.m., Fri., 10 a.m.–12 noon, Sat.

*Meeting:* Princeton, NJ
*Date:* Thursday, January 10, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* U.S. Department of Energy, Plasma Physics Laboratory, James Forrestal Campus, Highway 1 at Sayre Drive, Princeton, New Jersey 08542

*Contact For The Meeting Above*

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW-91, Oak Ridge, TN 37831-8541, (615) 576-0727

*Public Reading Room For The Meeting Above*

Trenton: Mercer County Library, Lawrenceville Branch, Lawrenceville, NJ, Hours: 9:30 a.m.–9 p.m., Mon.–Thurs., 9:30 a.m.–5:30 p.m., Fri., 10 a.m.–5 p.m. Sat.

*Meeting:* Cincinnati, OH
*Date:* Monday, January 14, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* Hilton North, 3855 Hauck Road, Cincinnati, OH 45241 (512) 563-8332

*Meeting:* Columbus, OH
*Date:* Wednesday, January 16, 1991
*Time:* 9 a.m.–9:30 p.m.
*Location:* Hyatt on Capital Square, 75 State Street, Columbus, OH 43215, (614) 228-1234

*Contact For The Two Meetings Above*

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW-91, Oak Ridge, TN 37831-8541, (615) 576-0727

*Public Reading Rooms For The Two Meetings Above*

Cincinnati: Lane Library, 800 Vine Street, Cincinnati, OH 45202, Hours: 9 a.m.–9 p.m., Mon.–Thurs. 9 a.m.–5 p.m., Fri.–Sat.
Columbus: Portsmouth Public Library, 1220 Gallia Street, Portmouth, OH 45667, Hours 9 a.m.–8 p.m., Mon.–Fri. 9 a.m.–5:30 p.m., Sat.

*Meeting:* Albuquerque, NM
*Date:* Tuesday, January 15, 1991,
*Time:* 9 a.m.–9:30 p.m.,
*Location:* Albuquerque Convention Center, 401 2nd Street NW., Albuquerque, NM 87102

*Contact For The Meeting Above*

Patrick J. Higgins, Jr. Division Directors, Environmental Management Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (800) 633-7156 (24 Hours)

*Public Reading Rooms For The Meeting Above*

Albuquerque: U.S. Department of Energy, National Atomic Museum Public Reading Room, Building 20358 on Wyoming Blvd., Kirtland Air Force Base, Albuquerque, NM 87115, Contact: Loretta Helling, (505 845-4378 Hours: 9 a.m.–5 p.m., Mon.–Fri.
Albuquerque: General Publications Department, Zimmerman Library, University of New Mexico, Albuquerque, NM 87130, Contact: Eulalie W. Brown, (505) 277-5441, Hours 8 a.m.–9 p.m., Mon.–Thurs., 8 a.m.–5 p.m., Friday, 1 p.m.–5 p.m., Sat.–Sun.

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Carlsbad: Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, NM 88220, Contact: Mrs. Mary Elms, (505) 885–6779. Hours: 8 a.m.–6 p.m., Mon.–Fri. 12 p.m.–5 p.m., Saturday.
Los Alamos: Mesa Public Library, 1742 Central Avenue, Los Alamos, NM 87545, Contact: Kathy Bjorklund, (505) 662–8253. Hours: 10 a.m.–9 p.m., Mon., 10 a.m.–6 p.m., Fri., 9a.m.–5 p.m., Saturday, 11 a.m.–5 p.m., Sunday
*Meeting:* Las Vegas, NV
*Date:* Tuesday, January 15, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* U.S. Department of Energy, Nevada Operations Office Auditorium, 2753 South Highland Drive, Las Vegas, NV 89109

*Contact For The Meeting Above*

Karen Randolph, DOE Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193, (702) 295–3521

*Public Reading Rooms For The Meeting Above*

Las Vegas: Government Documents Department, James R. Dickinson Library, University of Nevada, Las Vegas, 4505 South Maryland Parkway, Las Vegas, NV 89154. Contact: Ken Schott, (702) 739–3408. Hours 8 a.m.–6 p.m.
Department of Energy 2753 S. Highland Drive, Las Vegas, NV 89109, Contact: Cynthia Ortiz, (702) 295–1274. Hours: 7:30 a.m.–4:30 p.m., Mon.–Fri.
Beatty: Beatty Community Library, P.O. Box 129 Beatty, NV 89003 Contact: Jay Wolf, (702) 553–2257. Hours: 8:15 a.m.–4:45 p.m.
*Meeting:* Idaho Falls, ID
*Date:* Tuesday, January 22, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* West Bank Inn, 475 River Parkway, Idaho Falls, ID 83402 (208) 523–2310
*Meeting:* Boise, ID
*Date:* Thursday, January 24, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* Red Lion Riverside, 2900 Chinden Blvd., Boise, ID 83714, (208) 343–1871

*Contact For The Two Meetings Above*

Jackie Clements, INEL Public Affairs Office, 765 DOE Place, MS 1215, Idaho Falls, ID 83415, (208) 526–8121

*Public Reading Rooms For The Two Meetings Above*

Idaho Falls: DOE–ID Public Reading Room, INEL Technical Library, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–1191 or (208) 526–1144, Hours: 8 a.m.–7 p.m., Mon.–Thurs., 8 a.m.–5 p.m., Fri. 9 a.m.–1 p.m., Sat., 8 a.m.–5 p.m., Summer, [Mon.–Fri.]
Pocatello: INEL Pocatello Office, 215 North 9th Pocatello, Idaho 83201, (208) 232–4732. Hours: 8 a.m.–7 p.m., Mon., 8 a.m.–5 p.m., Tues.–Fri.
Twin Falls: INEL Twin Falls Office, 1062 Blue Lakes Blvd. North, Suite 108, Twin Falls, Idaho 83301, (208) 734–0462. Hours: 8 a.m.–7 p.m., Mon., 8 a.m.–5 p.m. Tues.–Fri.

*Information Repositories*

Boise: Boise Public Library, 715 South Capitol Boulevard, Boise, Idaho 83702, (208) 384–4076. Hours: 10 a.m.–6 p.m., Mon., 10 a.m.–8 p.m., Tues–Thurs., 10 a.m.–6 p.m., Fri., 1 p.m.–5 p.m., Sat. & Sun.
Moscow: Moscow-Latah County Library, 110 South Jefferson, Moscow, Idaho 83843, (208) 882–3925. Hours: 10 a.m.–9 p.m., Mon. & Thur., 10 a.m.–6 p.m., Tues., Wed. and Fri., 10 a.m.–5 p.m., Sat.
Idaho Falls: Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID 83402, (208) 529–1450. Hours: 9 a.m.–9 p.m., Mon.–Thurs., 9 a.m.–5:30 p.m., Fri.–Sat.
Twin Falls: Twin Falls Public Library, 434 2nd Street East, Twin Falls, ID 83301, (208) 733–2964. Hours: 10 a.m.–6 p.m., Mon. & Fri., 10 a.m.–9 p.m., Tues., Wed., & Thurs., 12 p.m.–5 p.m., Sat.
Pocatello: Pocatello Library, 812 East Clark, Pocatello, ID 83201, (208) 232–1263. Hours: 10 a.m.–9 p.m., Mon.–Thurs., 10 a.m.–6 p.m., Fri. & Sat.
*Meeting:* Paducah, KY
*Date:* Tuesday, January 22, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* J.R.'s Executive Inn, 1 Executive Boulevard, Paducah, KY 42001 (502) 443–8000

*Contact For The Meeting Above*

Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office 200 Administration Road, Mail Stop EW–91, Oake Ridge, TN 37831–8541, (615) 576–0727

*Public Reading Room For The Meeting Above*

Paducah: Paducah Public Library, 555 Washington Avenue, Paducah, KY 42001. Hours: 10 a.m.–9 p.m., Mon.–Fri., 10 a.m.–6 p.m., Sat., 2 p.m.–6 p.m., Sun.
*Meeting:* Denver, Colorado Area
*Date:* Wednesday, January 23, 1991
*Time:* 8 a.m. to 6:30 p.m.
*Location:* Westminster City Park Recreation Center, 10455 N. Sheridan Blvd., Westminster, CO 80030

*Contact For The Meeting Above*

Ms. Beth Brainard, Office of Public Affairs, Attn: ER/WM PEIS, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, C 80402–0935, 1–800–448–7640

*Public Reading Rooms For The Meeting Above*

Rocky Flats Environmental Monitoring Council, 1536 Cole Blvd., Suite 150 Golden, CO 80401 (303) 235–1998, Contact: Howard Brown, Hours by appointment
Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, (303) 469–4435. Hours: 12–8 p.m., Mon. & Tues., 9 a.m.–5:45 p.m., Wed.–Fri.
*Meeting:* Tampa, FL
*Date:* Tuesday, January 29, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* Tampa Convention Center, 333 S. Franklin Street, Tampa, FL 33602 (813) 223–8511

*Contact For The Meeting Above*

Patrick J. Higgins, Jr., Division Director, Environmental Management Staff, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115 (800) 653–7156 (24 Hours)

*Public Reading Room For The Meeting Above*

Largo: Largo Public Library, 351 East Bay Drive, Largo, FL 34640, Contact: Joanna Bromberg, (813) 587–6715. Hours: 9:30 a.m.–8 p.m., Mon.–Thur., 9:30 a.m.–5 p.m., Fri.–Sat.
*Meeting:*
*Date:* Thursday, February 7, 1991
*Time:* 8 a.m.–6:30 p.m.
*Location:* Holiday Inn Capitol, 550 C Street, SW, Washington, DC 20024 (202) 479–4000

*Contact For The Meeting Above*

W.E. Wisenbaker, Acting Director, Division of Program Support, Environmental Restoration (EM–43) U.S. Department of Energy, 1000 Independence, Avenue, SW., Washington, DC 20585, (301) 353–4500

*Public Reading Room For The Meeting Above*

Department of Energy, Freedom of Information Reading Room, 1000 Independence Ave., SW. Room 1E190, Washington, DC 20585, (202) 586–6020. Hours: 9 a.m.–4 p.m., Mon.–Fri.

[FR Doc. 90–28987 Filed 12–10–90; 8:45 am]
BILLING CODE 6450–01–M

## Financial Assistance Award, Intent to Award a Grant to the United Nations Institute for Training and Research

**AGENCY:** U.S. Department of Energy, Bartlesville Project Office.

**ACTION:** Notice of non-competitive financial assistance (Grant) award with United Nations Institute for training and research.

**SUMMARY:** The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to United Nations Institute for Training and Research (UNITAR) for a conference entitled "International Conference on Heavy Crude and Tar Sands."

**SCOPE:** The objective of the grant project is to cofund the fifth International Conference on Heavy Crude and Tar Sands. The purpose of the conference is to inform participants of the existence of heavy crude and tar sands and the possibilities for their development and utilization to meet energy demands of the future. More specifically, the conference plans to: (1) Discuss new technological breakthroughs in the exploration, production, refining, and marketing of heavy crude and tar sands, (2) facilitate contacts between large producers of heavy crude and more modest ones, and (3) encourage governments to refine or establish appropriate legislation regarding exploration and production of heavy crude and tar sands.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive financial Assistance Award to UNITAR has been justified.

This effort would be conducted by the UNITAR using their own resources; however, DOE support of the activity would enhance public benefits to be derived by further understanding of heavy crude architecture. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $238,000. The DOE share of cofunding for the conference is estimated at $50,000 and shall be used to pay for the reasonable cost of staff, administrative support personnel, consultants, and experts as necessary for the Conference.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Debra E. Ball, Telephone: AC (412) 892–4959.

Carroll Lambton,
*Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.*

[FR Doc. 90–28988 Filed 12–10–90; 8:45 am]
BILLING CODE 6450–01–M

## Public Notice and Sources Sought for Operation of the National Institute of Petroleum and Energy Research (NIPER) Facility in Bartlesville, Oklahoma

**AGENCY:** U.S. Department of Energy, Pittsburgh Energy Technology Center.

**ACTION:** Public Notice and sources sought.

**SUMMARY:** This announcement is not a formal solicitation, and should not be construed as a commitment by the Government. It is intended for information and planning purposes only.

The U.S. Department of Energy, Bartlesville Project Office, is compiling a source list of potential offerors who are both interested in and capable of utilizing the facility and sharing in the operation of the National Institute of Petroleum and Energy Research (NIPER) facility located in Bartlesville, Oklahoma. This announcement further seeks public comment as to the most effective use of the facility as it relates to the Department's presently expanding Oil Research Program Implementation Plan. Although NIPER continues to perform important research services and plays an important role in the Department of Energy's Oil Program, the current programmatic needs are not sufficient to fully support and utilize the facility. Thus the Department is seeking comments from organizations, including profit and not for profit firms.

**SUPPLEMENTARY INFORMATION:** The National Institute for Petroleum and Energy Research (NIPER) was created in 1983 as a result of the defederalization of the Bartlesville Energy Technology Center. DOE continues to be committed to an active and effective petroleum research program of which NIPER is an integral part and to maintaining that part of the program in Bartlesville, Oklahoma, at the current facility.

NIPER is a government-owned facility that operates as a center for research on petroleum and other fossil fuel liquids. DOE-supported programs at NIPER include fundamental and applied research for improving the performance and predictability of enhanced oil recovery (EOR) processes in chemical flooding, carbon dioxide flooding, thermal recovery, microbial EOR and reservoir characterization and for improving our understanding of upgrading heavy oils and alternative feedstocks for solving refining problems. In addition, NIPER conducts research for other DOE and government offices, such as the Strategic Petroleum Reserve, Air Force and Navy Defense Fuel Supply Center, Environmental Protection Agency, and Federal Aviation Agency.

Historically, the NIPER Research and Development activities have functioned under four (4) types of programs:

- Base Program—Traditionally, a fundamental program to prepare for future energy needs. Previous emphasis was placed on basic research and high risk, long-term projects to build on the petroleum technology base but is now evolving to support DOE's new near, mid-term program emphasis. This program includes research proposed in an Annual Research Plan, approved and funded by DOE at $5M per annum. All Base Program work is non-fee bearing.
- Optional Program—Included research of joint interest beyond the Base Program and was funded cooperatively by DOE and various industrial companies and government agencies. The DOE contribution for the first year was $4M with a progressively reduced amount between FY1984 and FY1987.
- Supplemental Government Program—Includes energy-related research for non-DOE government agencies as well as DOE work not included in the Base Program. Unlike the Base Program, this category has the potential to be fee-bearing. This program was established to replace the Optional Program that ended in FY1988.
- Work for Others Program—Includes research performed by the operator of NIPER on its own behalf. It allows NIPER to solicit work from the private sector and others. It is exclusive of all work performed under the Base, Supplemental and Government Optional Programs.

The following table provides past and present funding levels and sources of funding at NIPER:

| FY | Base | Optional* | GPP** | SGP*** | Total |
|---|---|---|---|---|---|
| FY84 | 5,000,000 | 3,670,586 | 595,662 | 0 | 9,266,248 |
| FY85 | 5,202,500 | 3,290,000 | 500,000 | 0 | 8,992,500 |
| FY86 | 4,865,264 | 5,570,569 | 98,000 | 0 | 10,533,833 |
| FY87 | 4,932,296 | 4,263,503 | 0 | 0 | 9,195,799 |
| FY88 | 5,675,000 | 0 | 338,100 | 3,713,109 | 12,726,209 |
| FY89 | 1,417,615 | 0 | 167,500 | 3,335,924 | 4,920,839 |
| FY90 | 4,597,385 | 0 | 214,204 | 3,511,953 | 8,323,542 |
| Total | 34,690,000 | 16,794,838 | 1,913,586 | 10,580,586 | 63,958,810 |
| Total Government Share is | | | | | $46,274,152 |
| Total Contractor Share is | | | | | $17,684,658 |

*DOE total contribution was $9,670,586 with the remaining $7,124,072 contributed by the contractor.
**General Plant Property
***Includes Supplemental Government Program tasks for FY88–FY90
Sources of funding include: DOE (Army, Navy, Air Force), EPA, Federal Aviation, Treasury, Consumer Product Safety, Strategic Petro Reserve, and Fossil Energy.

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Work-for-others includes industry and other project acquired through NIPER marketing efforts. This financial information is proprietary to the operator and are not included in the table.

In the process of defederalization of the facility in 1983, a small federal office, the Bartlesville Project Office (BPO) was established to plan, implement and manage DOE's contract research in petroleum which includes technical oversight of the NIPER operation.

BPO is the lead government agency for administering programs in EOR and Advanced Extraction and Process Technology (AEPT). These programs are carried out by a staff of 15 Federal personnel through management of a number of Fossil Energy projects executed by (1) NIPER, which utilizes the Federal equipment and facility, (2) industrial and university research organizations, and (3) National Laboratories. Typical BPO activities include: contract monitoring, performance of technical evaluations, development of project and procurement plans, dissemination of technical data, coordination with petroleum organizations, such as the Interstate Oil Compact Commission (IOCC) and the National Petroleum Council (NPC), implementation of international cooperative agreements and other activities related to petroleum research.

In addition, BPO operates and maintains the Tertiary Oil Recovery Information System (TORIS), a comprehensive body of information, data bases and programs that provide the capability for analytical studies, data base applications and project management related to petroleum. The TORIS system contains data bases of up-to-date information on enhanced oil recovery projects, reservoirs, and crude oil analysis.

Current Federal and Contractor Staffing for the facility is as follows:

| | Contractor | Federal |
|---|---|---|
| Administrative Professional | 21 | 2 |
| Clerical/Support | 40 | 3 |
| Technical Professional | 75 | 10 |
| Technician | 39 | 0 |
| Total | 184 | 15 |

In recent years, many studies have been performed to determine the important aspects of oil extraction and processing. In response to the results from several of these studies related to oil availability, DOE developed an Oil Research Program Implementation Plan (ORPIP/4/90) that redirected its research focus from "long-term, high-risk" research objectives to maximizing economic recovery of oil through a strategy of near,- mid-, and long-term objectives. As an integral part of that strategy, NIPR is addressing the new research strategy through an interdisciplinary team approach performing research focused on geoscience, extraction technology, crude oil analysis, thermodynamics and other research related to the ORPIP. FY1990 finds the NIPER research in transition, with components of bpth the old and new research objectives. In the next two years, the DOE-funded research will fully address the new focus of the ORPIP.

The following list includes, but not limited to, all potential applications of the Department's NIPER facilities located in Bartlesville, Oklahoma. It is not intended to be exhaustive in nature, and is provided in order that all interested organizations be made aware of the broad range of opportunities which are presently under consideration by the Department as potential near term uses for the unique facilities.

**A. Research on-site**

—DOE funded
  —FE program only
  —Other DOE programs
—Other Government agency funded
  —Petroleum related only
  —Other potential technical applications
—Privately funded
  —At full cost recovery
  —On non-interference basis
  —With certain rights to access and license technical data developed at private expense.
  —Performance of research activities at various locations within the continental United States, Alaska, Hawaii, and its United States territories.
  —Development, placement and/or management of research activities under subcontract to contract performers at various locations within the continental United States, Alaska, Hawaii, and its United States territories.
  —Performance of research for foreign entities.

**B. Technical Support Services**

—Assistance in evaluating existing technologies
—Assistance in preparing near-term and long-range program plans
—Assistance in preparing specific work requirements
—Assistance in evaluating contract performance
—Assistance in evaluating and preparing environmental safety and health and other related documents

**C. Management Support Services**

—Assistance in preparing and monitoring annual budgets
—Assistance in providing clerical, administrative, and procurement support at the NIPER facility
—Assistance in providing ADP support at the NIPER facility
—Assistance in the printing and publication of technical administration materials

**D. Maintenance Support Services**

—Physical plant, grounds, and building support

**Request for Public Comment**

The Department is extremely interested in receiving public input regarding both the present, and potential applications which should be considered in developing the most effective use of this facility. In addition, we are interested in receiving input regarding use of the facility in support of the new Oil Research Program Implementation Plan (ORPIR). The ORPIR is available upon written request to Herbert Tiedemann, Bartlesville Project Office, P.O. Box 1398, Bartlesville, Oklahoma 74005.

In addition to the basic DOE program, the Department is looking for creative ideas on utilizing the facility through private and public organizations, thereby contributing to its growth. Each party could benefit through the cost savings and efficiencies due to the other's support.

Interest in expanding use of the facility to include work in areas other than petroleum technology will be considered. Information provided in response to this announcement will be comprehensively assessed and analyzed by the Department for possible inclusion in a forthcoming competitive solicitation.

**Guidelines**

Methods of contracting are generally established for the DOE by the Federal Acquisition Regulations and the Federal Assistance Regulations.

Funding for any new approach is subject to congressional action and may range from the minimum monies necessary to operate the existing facility to major funding for a nation wide oil program. This request for new approaches is predicated upon future funding decisions and is not related to current levels of appropriations. The details of the new approaches should support the level of funding proposal so as to make your comments credible.

An excerpt from current congressional language states,

Notwithstanding any other provision of law, the Secretary of Energy may enter into a contract, agreement, or arrangement, including, but not limited to, a Management and Operating Contract as defined in the Federal Acquisition Regulations (17.601), with a profit-making or non-profit entity to conduct activities at the Department of Energy's research facilities at Bartlesville, Oklahoma: *Provided*, That any contract, agreement, or arrangement shall contain provisions encouraging use of the Department of Energy's Bartlesville facilities by interested third party sponsors * * *.

Organizations interested in providing comments, as well as those interested in being placed on the Department's source list, for the upcoming solicitation are encouraged to submit a response to: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. 10940, MS 921-165, Pittsburgh, Pa. 15236, Attention: Ronald J. Dunnington.

Responses must include: The company name, address, and point of contact, including telephone number, and be submitted within 30 days from publication of this announcement for consideration by DOE. Any questions concerning this announcement should be directed to Mr. Dunnington at (412) 892-6209.

**Gregory J. Kawalkin,**
*Contracting Officer, Pittsburgh Energy Technology Center.*

[FR Doc. 90-28989 Filed 12-10-90; 8:45 am]
BILLING CODE 6450-01-M

## DOE's Response to Recommendation 90-7 of the Defense Nuclear Facilities Safety Board Concerning Ferrocyanide in the Single-Shell Tanks Used to Store High-Level Radioactive Waste at the Hanford Site

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Pursuant to section 315 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d, the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 90-7 of the Defense Nuclear Facilities Safety Board, regarding single-shell high-level waste tanks at DOE's Hanford site, located near Richland, Washington. DOE hereby requests public comment on the response of the Secretary to Recommendation 90-7.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before January 10, 1991.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Donald K. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 4, 1990.

**Steven D. Richardson,**
*Deputy Assistant Secretary for Nuclear Materials, Defense Programs.*

The Honorable John T. Conway, Chairman, *Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004*

Dear Mr. Chairman: I am in receipt of your letter and recommendations of October 12, 1990 (Recommendation 90-7). As you know, the Department of Energy (DOE) submitted an Implementation Plan on August 10, 1990, that responded to four recommendations made by the Defense Nuclear Facilities Safety Board (DNFSB) concerning ferrocyanide in the single-shell tanks used to store high-level radioactive waste (HLW) at the Hanford Site.

The Department agrees with the need to accelerate and expand its programs to address HLW safety issues and will submit a supplement to its original Implementation Plan that is responsive to DNFSB Recommendation 90-7. the Department accepts the six recommendations that comprise DNFSB Recommendation 90-7, although the Department cannot implement immediately one recommendation given an unreviewed safety question involving the single-shell HLW tanks at Hanford that contain Ferrocyanide. Preparation and approval of detailed safety evaluations are required to support work on these tanks. The Department believes that tank temperatures are well below any known temperature which could cause a reaction and maintenance is controlled until the required safety evaluations are completed. Detailed responses to each section of DNFSB Recommendation 90-7 are provided as Enclosure 1.

The Department has undertaken many management actions to aggressively address HLW safety issues. A HLW Tanks Task Force and a HLW Tanks Advisory Panel have been established to ensure that potential safety concerns with HLW tanks are identified and addressed in a systematic and timely manner. The Task Force, established in August 1990 under the direction of the Director of Environmental Restoration and Waste Management, Mr. Leo P. Duffy, is working with all facilities having HLW tanks to identify and address potential safety issues and to perform a detailed reanalysis of the postulated hydrogen and ferrocyanide accidents at the Hanford Site. The Advisory Panel, originally formed in June 1990 and expanded in August, will work with the Task Force and with Mr. Duffy to ensure technical credibility as well as to make certain that the latest scientific and technological knowledge are considered. Professor Majid Kazimi of the Massachusetts Institute of Technology chairs this Advisory Panel. These initiatives are described in the HLW Tanks Task Force Work Plan, which was provided to the Board previously.

The DOE Richland Operations Office has established a new project office to address HLW tanks management and safety issues. (The proposed organization structure and mission statements for this new office is provided for your information as Enclosure 2.)

I have discussed the importance of the Hanford HLW tanks safety issues with senior Westinghouse Electric Corporation executives and have received their commitment for managerial and technical support. The Westinghouse Hanford Company (WHC), in recognition of the seriousness and urgency of reaching an acceptable resolution to issues relating to waste tank safety and remediation, will implement a new organizational structure on December 1, 1990. (A copy of the new WHC organizational structure is provided for your information as Enclosure 3). This new structure is designed to address concerns expressed by the Board and by the Department. Management of HLW will become the responsibility of a separate organization reporting directly to the WHC President. New senior management with proven related technical, scientific, operating, and project experience are identified to head the organization. This organization will be responsible also for obtaining the technical resources, both internally (WHC and Westinghouse corporate) and externally, necessary to assist in the resolution of identified concerns, and to respond promptly to new issues. Although reorganization was not a DNFSB-identified issue, the lack of a focused contractor organization is believed to be the root cause of many of the Hanford deficiencies.

My policy and actions continue to emphasize that safety is the number one priority at DOE. All operations in and around the Hanford HLW tanks that have been identified as being of a safety concern are now strictly controlled, with extensive safety reviews and senior management approvals required before operation. Certain operations have been curtailed, including the deferral of pumping interstitial liquid from two single-shell tanks containing ferrocyanide, until a safety analysis has been completed. Hanford has been developing integrated program plans to address both the ferrocyanide and the hydrogen issues.

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The Department has initiated programs to aggressively identify for resolution any potential safety issues concerning the HLW tanks in the DOE complex with the initial focus on the Hanford tanks, i.e., the ferrocyanide and hydrogen issues. All actions will be conducted in accordance with all applicable requirements. Internal safety oversight organizations are being kept informed so that they can discharge their independent review function. We continue to work closely with the State of Washington and the U.S. Environmental Protection Agency in implementing any programs that may potentially affect regulatory compliance with Federal and state environmental requirements at the Hanford Site.

As you may know, I visited Tank 101–SY recently with Washington Governor Booth Gardner. Resolution of the Hanford HLW safety issues is one of my top priorities, and I am committed to working closely with the DNFSB to address these safety issues. Please contact me or Mr. Duffy if we can be of further assistance to the Board in this matter.

Sincerely,

James D. Watkins,

*Admiral, U.S. Navy (Retired).*

Enclosures

Enclosure 1

*Response to Defense Nuclear Facilities Safety Board Recommendation 90–7*

Issued on October 12, 1990

In September 1990, the Westinghouse Hanford Company (WHC) established a Ferrocyanide Task Team to manage activities related to resolving the ferrocyanide issue. A program plan is being prepared by this Task Team that will incorporate recommendations made by the Defense Nuclear Facilities Safety Board (DNFSB), a General Accounting Office consultant, and Department of Energy (DOE) experts. The program plan will be developed with detailed information on activities, milestones, and schedules on a rolling 3-month basis as well as planning schedules for the remainder of the program. The DOE High-Level Waste (HLW) Tank Task Force is working closely with the Westinghouse Ferrocyanide Task Team to ensure adequacy of this ferrocyanide program plan, which will be the basis for supplementing the Implementation Plan submitted in August and will be responsive to DNFSB Recommendation 90–7.

Many actions related to the ferrocyanide issue have been undertaken since submittal of the Implementation Plan in August 1990. Some of these actions, together with DOE's response to each DNFSB recommendation, follow.

DNFSB Recommendation 90–7.1 *Immediate steps should be taken to add instrumentation as necessary to the single-shell tanks containing ferrocyanide that will establish whether hot spots exist or may develop in the future in the stored waste. The instrumentation should include, as a minimum, additional thermocouple trees. Trees should be introduced at several radial locations in all tanks containing substantial amounts of ferrocyanide to measure the temperature as a function of elevation at these radii. The use of infra-red techniques to survey the surface of waste in tanks should continue to be investigated as a priority matter, and on the assumption that this method will be found valuable, monitors based on it should be installed now in the ferrocyanide bearing tanks.*

DOE Response to DNFSB Recommendation 90–7.1 DOE accepts the intent of this recommendation, although DOE cannot add instrumentation to the "ferrocyanide" tanks immediately because of an unreviewed safety question involving these tanks. DOE is moving as quickly as possible to install improved temperature sensors at several radii in four tanks (104–BY, 105–BY, 106–BY, and 110–BY) that have substantial amounts of ferrocyanide and higher temperatures (130°F). The schedule for installing the improved temperature sensors in these four tanks (as well as planned actions for the other 18 HLW tanks at Hanford that contain substantial amounts of ferrocyanide) will be identified in the Implementation Plan. Work in and around any of the 22 ferrocyanide tanks will require performance of a detailed safety analysis and top management approval. Analyses of postulated accidents have been initiated to support preparation of procedures for work in and around those tanks that contain a substantial amount of ferrocyanide (e.g., monitoring for flammable gases and moisture in the dome space, core sampling, insertion of instrument trees). DOE estimates that it will take about 6 to 9 months to complete the safety analysis for installing the new instrument tree currently under development.

DOE believes that this delay is acceptable since preliminary modeling results indicate that the temperature inertia of these tanks is large and takes long periods of time to heat up and that heat transfer within a tank is sufficient to keep any localized "hot spots" well below the initial ferrocyanide reaction temperature of 430°F.

The instrumentation trees will be capable of measuring temperature at various levels in the waste as well as performing other functions. WHC is continuing to investigate the feasibility of using infra-red techniques for possible early application. In addition, Hanford is working with Westinghouse Science and Technology Center personnel, scientists from national laboratories, and manufacturers to obtain spark-proof instrumentation, such as ultrasonic detectors, and video cameras, including use of fiber optics technology, for use in the HLW tanks.

DNFSB Recommendation 90–7.2 *The temperature sensors referred to above should have continuous recorded readouts and alarms that would signal at a permanently manned location any abnormally high temperatures and any failed temperature instrumentation.*

DOE Response to DNFSB Recommendation 90–7.2 DOE accepts this recommendation. Temperature data from these four critical ferrocyanide tanks will be recorded, monitored, and alarmed at an existing, continuously manned control room. Because this capability may take up to 9 months to design, procure and install, an interim monitoring and alarm capability (not continuously manned) will be installed in the BY Tank Farm for existing thermocouples in the 104–, 105–, 106– and 110–BY tanks during the first quarter in 1991. WHC had previously implemented stricter procedures to ensure quality of thermocouple data from all HLW tanks. Operational procedures are being implemented to require same day analysis of the temperature data from the HLW tanks for detection of early trends.

DNFSB Recommendation 90–7.3 *Instrumentation should also be installed to monitor the composition of cover gas in the tanks, to establish if flammable gas is present.*

DOE Response to DNFSB Recommendation 90–7.3 DOE accepts this recommendation. This capability is included in the design of the new instrument tree discussed above. Alternative instrumentation being considered to study the flammable gas accumulation issue for Tank 101–SY will be directly applicable to the ferrocyanide tanks.

DNFSB Recommendation 90–7.4 *The program of sampling the contents of these tanks should be greatly accelerated. The proposed schedule whereby analysis of two core samples from each single-shell tank is to be completed by September 1998, is seriously inadequate in light of the uncertainties as to the safety of these tanks. Furthermore, additional samples are required at several radii and at a range of elevations for the tanks containing substantial amounts of ferrocyanide.*

DOE Response to DNFSB Recommendation 90–7.4 DOE accepts this recommendation. The *Waste Characterization Plan for the Hanford Site Single-Shell Tanks* (WHC–EP–0210, Rev. 1) will be revised to reflect the critical need to obtain core samples from the tanks containing ferrocyanide as soon as possible, in accordance with procedural requirements. Sampling of ferrocyanide tanks will be initiated within the next 3 to 12 months, after completion of safety evaluations and the development of appropriate sampling techniques. Several core samples from different radii will be collected from the first few tanks considering the availability of riser locations, and need for statistically valid samples. The sampling and analysis protocol identified in the *Hanford Federal Facility Agreement and Consent Order* (commonly referred to as the Hanford Tri-Party Agreement, or TPA) are being reviewed to ensure that needed information is collected to address safety issues as well as TPA needs.

DNFSB Recommendation 90–7.5 *The schedule for the program on the study of the chemical properties and explosive behavior of the waste in these tanks is indefinite and does not reflect the urgent need for a comprehensive and definitive assessment of the probability of a violent chemical reaction. The study should be extended to other metallic compounds of ferrocyanide that are known or believed to be present in the tanks, so that conclusions can be generalized as to the range of temperature and other properties needed for a rapid chemical reaction with sodium nitrate.*

DOE Response to DNFSB Recommendation 90–7.5 DOE accepts this recommendation. A greatly expended program is being aggressively pursued at the Hanford Site, the Los Alamos National Laboratory, and by



Fauske and Associates, Inc., a firm under contract to Westinghouse Hanford Company. Resulting studies will include effects of possible catalysts and diluents on reaction initiation temperature. These studies are part of the overall ferrocyanide program plan; a draft will be available in December 1990 for DOE review.

DNSFB Recommendation 90–7.6 *The Board had recommended "* * * that an action plan be devolved for the measures to be taken to neutralize the conditions that may be signaled by alarms." Two types of measures are implied: actions to respond to unexpected degradation of a tank or its contents, and actions to be taken if an explosion were to occur. Your implementation plan stated that "* * * current contingency plans * * * will be reviewed and revised if needed." We do not consider that this proposed implementation of the Board's recommendation is adequately responsive. It is recommended that a written action plan founded on demonstrated principles be prepared as soon as possible, that would respond to indications of onset of abnormal temperatures or other unusual conditions in a ferrocyanide-bearing tank, to counter any perceived growth in hazard. A separate emergency plan should be formulated and instituted, covering measures that would be taken in the event of an explosion or other event leading to an airborne release of radioactive material from the tanks, and that would protect personnel both on and off the Hanford site. The Board believes that even though it is considered that the probability is small that such an event will occur, prudence dictates that steps be taken at this time to prepare the means to mitigate the unacceptable results that could ensue.*

DOE Response to DNFSB Recommendation 9–7.6 DOE accepts this recommendation. Existing plans and procedures are being reviewed and an interim action plan to respond to the onset of abnormal conditions has been prepared and is undergoing internal Hanford review. DOE believes that the existing emergency preparedness plan for the Hanford Site is effective for previously identified potential accidents associated with waste tank operations. Joint exercises have been held with the State of Washington and local public safety agencies over the past few years. Given the potential for higher consequences of the postulated ferrocyanide accidents, DOE will review and update these procedures to ensure that they are adequate to respond to possible accidents in HLW tank farms.

Enclose 2

*Mission*

The Tank Farm Project Office (TFPO) plans, coordinates and provides general direction and integration of programs for the management, budgeting and storage of Hanford radioactive liquid waste in underground storage tanks. TFPO assures that all Tank Farm operations and maintenance are conducted in a safe and environmentally sound manner and are in compliance with the letter and interest of applicable regulations and standards.

The project support staff responsibilities include developing, planning and preparing budgets for the TFPO activities. Also, provides input to the Hanford Five-Year Plan for TFPO; performs schedule and budget performance activities for TFPO; provides document control services for the project office; provides interface with DOE–HQ and regulatory agencies for reporting and coordination; and prepares and disseminates reports to the proper agencies on TFPO activities.

Organizational Structure

1. Operations Branch
2. Safety Evaluation Branch
3. Corrective Actions Branch

Functions

1. Operations branch. a. Provides technical guidance during functional designs activities related to assigned waste storage facilities. Provides DOE approved functional design criteria to the contractor.

b. Plans, coordinates and provides general direction for the proper management of plant-generated radioactive liquid waste stored underground in Single Shell and Double Shell Tanks. The Tank farm Project Office also manages the Evaporator Facility located in the Tank Farms.

c. Assures that current approved safety analyses and operational safety requirements are in place for Tank Farm facilities.

d. Assures compliance with applicable environmental regulations for all Tank Farm operations.

e. Ensures that day-to-day operations and maintenance of the Tank Farms is in accordance with requirements.

2. Safety evaluation branch. a. Responsible for identifying safety issues for all single and double-shell storage tanks at Hanford.

b. Responsible for auditing existing records for each tank and establishing a historical file on each tank.

c. Responsible for analyzing data collected in the audits and personal interviews to identify any new safety or environmental issues that need to be resolved.

d. Establishes auditable records for each tank that can be used as reference files in the present and future.

e. Identifies all tank anomalies and conducts performance and risk assessment for tank characterization.

3. Corrective actions branch. a. Responsible for resolving all tank safety and operational concerns for tanks with potential safety questions.

b. Characterizes chemical and physical properties of tank contents.

c. Performs research and development activities on Single Shell and Double Shell tanks where needed to meet mission objectives.

d. Conducts engineering evaluations and safety analyses.

e. Conducts mock-up testing where necessary.

f. Implements corrective actions in conjunction with the Operations Branch.

g. Arranges for independent assessment review (peer) and oversight evaluations.

h. Issues requirement and restrictions for addition to tanks and mixing of tank contents.

Enclosure 3

*Priority Message: November 16, 1990*

To: All Westinghouse Hanford/BCSR Employees

Subject: We're Restructuring for Success in New Environmental Mission

Effective December 1, we are reorganizing to achieve success in carrying out our mission of waste management and environmental restoration. Our new organizational structure aggressively addresses the concerns of our DOE customer and oversight groups, including the DOE Tiger Team. I think you will agree that the new structure is a positive step in our transition.

In part, the reorganization results from our ongoing self-assessment, which indicates that we need to realign our talents and skills to focus on some major technical issues. It also is a product of listening to DOE, the states of Washington and Oregon, the public, various stakeholders and to you, our employees.

In the new organization, we have formed a staff-level organization dedicated to the waste tank farms; established an internal "Tiger Team"; restructured two groups that have key roles in our long-term environmental restoration and remediation mission; created a resource planning and integration department; consolidated employee development and technical activities in a central organization; and set up dedicated maintenance support in two line organizations.

Media reports of our restructuring will no doubt highlight some aspects of the new organization over others. I want you to know, however, that I consider every element of the new organization to be extremely important to achieving success. Our expectation is that the new organization will help all of us to be even more effective in doing our jobs.

I am pleased to announce that we have successfully recruited Dr. Harry Harmon to join us as vice president, Waste Tank Safety, Operations and Remediation. We are also fortunate to have Steve Marchetti join us as the director of the new Tank Farm Project, which will report to Harry, as will the tank safety group and others. Together, they will provide the leadership and technical expertise necessary for effectively resolving tank farm issues.

We selected Harry, who is manager of the Chemical Processes and Environmental Technology Department at the Westinghouse Savannah River Company, for his technical knowledge, reputation and demonstrated ability to solve tough problems involving nuclear and hazardous materials. His extensive research in nuclear materials processing will serve him well in effectively meeting the scientific and technical challenges associated with the tank farms, and in interacting with scientific oversight groups. His broad network of contacts in the chemical industry, developed in 17 years with du Pont and Westinghouse at Savannah River, will assist us in recruiting additional technical expertise. Harry holds a Ph.D. in inorganic and nuclear chemistry from the University of Tennessee.

Steve, who earned his bachelor's degree at St. Francis College in Pennsylvania and a

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master's at Duquesne University, is currently manager of the Projects Management Department at Savannah River. He has been with Westinghouse for 19 years, serving in a variety of waste management and radiation safety positions at the Bettis Atomic Power Laboratory, the Naval Reactors Facility at Idaho Falls, the Waste Isolation Pilot Plant, the West Valley Nuclear Services Company and other sites before going to Savannah River two years ago. Steve was also here at Hanford for three years in the late 1970s with Atlantic Richfield and Rockwell.

The new Tank Farm Project will have the dedicated resources necessary to direct all aspects of tank farm operations in 200 East and West. This will include maintenance, engineering, safety, health protection, environmental and quality assurance support, as well as planning and cost schedule/control systems to ensure all activities are defined, costed, scheduled and controlled in a disciplined manner.

Ron Bliss is appointed vice president, Restoration and Remediation. This organization is responsible for the central, long-term mission of Westinghouse Hanford—the environmental remediation of the Hanford Site—which is embodied in the 30-year Tri-Party Agreement between the DOE and the Environmental Protection Agency and the Washington Department of Ecology.

Ron's organization will comprise current operations engaged in environmental restoration, waste storage and processing operations, such as the Central Waste Complex, T Plant and Grout; project activities such as B Plant, the Liquid Effluent Retention Facility, the Hanford Waste Vitrification Plant (HWVP) and Waste Receiving and Packaging (WRAP) facility, which will be involved in future processing of waste; and the engineering, permitting and environmental resources needed to support remediation activities. This group will be responsible for meeting the key milestones of the Tri-Party Agreement. Ron is currently vice president of the Environmental and Waste Management organization.

Dr. Mike Korenko is appointed vice president of a newly structured Engineered Applications organization. It will have a key role in environmental restoration as it focuses our technical resources on developing and applying technology to waste management and environmental restoration and on addressing alternative technologies. It will also make recommendations on waste prevention, characterization, stabilization, retrieval, processing, disposal and utilization. It will support remediation activities through analytical laboratories management, safety analysis and configuration control. It will work closely with Battelle and other DOE sites, national labs, universities and the commercial sector in developing solutions to Hanford remediation problems. Mike is currently vice president, Engineering and Development.

The reorganization involves the consolidation of major facilities and projects, such as the FFTF, N Reactor, PUREX, PFP, SP-100 and FMEF, into a new Facility Operations Division. Wally Ruff is appointed the acting director of the division. This group will have its own dedicated maintenance support staff. Wally currently manages the Waste Management Division.

Roger Knight will continue as director of Operations Support Services, which will now encompass Safeguards and Security, the Fire Department and Emergency Preparedness—functions which support all Hanford contractors—as well as existing OSS activities. Maintenance support assigned to the Waste Tank Safety, Operations and Remediation and Facility Operations groups, however, will report directly to those line organizations. OSS will continue to provide maintenance support for the Restoration and Remediation organization and for other sitewide activities.

Dr. Ken Jordan is appointed director of Environment, Safety, Health and Quality Assurance. This department will assist all organizations in complying with environmental, safety, quality assurance, health protection and operational performance requirements called for by DOE Orders and federal and state regulations. It will be responsible for establishing our standards in these areas. Ken is currently manager of Quality Assurance.

Rich Slocum is appointed director of new organization, the Performance Assessment and Oversight Department. This new activity, totally independent of all other parts of the Company, represents an innovation approach to overall Company performance assessments. The department will perform an independent oversight function separate from that of Environment, Safety, Health and Quality Assurance. In effect, it will be an internal "Tiger Team." It will also have the responsibility of assessing the overall performance and effectiveness of all elements of the Westinghouse Hanford Company in managing the engineering and operations contract for the DOE. We want this group to find our problems so that we can fix them ourselves. We expect this group to be professional, thorough and tough. Rich is currently Support Services manager.

Hank McGuire is appointed director of a new department, Resource Planning and Program Integration. The primary job of this department will be comprehensive, realistic, long-term planning for effective use of resources. It will develop a system to help management set priorities, make recommendations on resource allocation in view of budget constraints, consolidate out-year programs for financial planning and provide management the tools and information to evaluate needs versus resources. Hank is currently manager of Environmental and Waste Program Integration.

Human Resources and Administration will continue to be directed by Jim Cassady, with added responsibility as the focal point for training related to the new mission. All employee training and retraining activities, with the exception of on-the-job or plant-specific training, will be consolidated within Human Resources Development. This will enable us to effectively development and implement a retraining plan due to Secretary Watkins February 1.

The functions of Controller, Communications, General Counsel and Information Resources Management remain essentially unchanged under Ernie Vodney, John Burk, Karen Hoewing and Ben Dole, respectively. However, the General Counsel's Office will assume responsibility for internal investigations.

In a related move, Dan Simpson has announced his intention to retire July 1, 1991, after 25 years with Westinghouse. He has been vice president, Safety, Quality Assurance and Security, since September 1986. He will serve as special assistant to the President's Office until his retirement, and focus on assisting the new Performance Assessment and Oversight and the Resource Planning and Program Integration departments with startup activities and other special assignments.

Also, Norm Boytar, who has been manager of the Defense Operations Division since August 1989, has accepted a new opportunity as manager of the Projects Management Department at Savannah River. He has made significant contributions here at Hanford in several key staff positions since 1967. We wish him well in his new assignment.

There will be a number of related reassignments and appointments made in the coming weeks to complete this restructuring. Your managers will be meeting with you to define any effect on your organization.

I am confident we have developed a framework for success in our new mission as well as for addressing several current and long-term priority issues. It is my hope that you will also see strengthened team efforts with the other Hanford contractors evolve through this reorganization.

I recognize the disruptive effects of changes such as these, but I am certain that your continued cooperation, patience and support will help us stay the course to leadership in environmental management. Each of you is key to making our new vision a reality, and to our success in carrying out the mission and meeting our commitments. Together, we can help create a positive legacy for future generations.

Roger Nichols,
*President.*

[FR Doc. 90-28890 Filed 12-10-90; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3963-3]

### Science Advisory Board, Environmental Engineering Committee, Municipal Solid Waste Recycling Subcommittee; Teleconference Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), Municipal Solid Waste Recycling Subcommittee (MSWRS) will conduct a Teleconference Meeting on Wednesday, December 19, 1990. The meeting will be held in the Environmental Protection Agency's Headquarters Conference room 6, South, 401 M Street, SW., Washington, DC 20460. The teleconference will begin at 1:30 p.m. and adjourn no later than 4 p.m. on Wednesday, December 19, 1990.

The purpose of the teleconference is to conduct a consultative review to provide suggestions directly to the staff of the Environmental Criteria and Assessment Office (ECAO) of the Office of Health and Environmental Assessment (OHEA) for selection of members of an expert panel and discussion of related issues for the project entitled: "Potential Hazards of Municipal Solid Waste Recycling". For receiving materials pertinent to this teleconference, please call Mr. Randall Bruins, OHEA/ECAO at (513) 569-7539.

The teleconference is open to the public. Any member of the public wishing further information on the teleconference or those who wish to submit written comments or who wish to attend should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Marcy Jolly, Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 382-2552 by December 17, 1990. Seating space is limited.

Dated: December 4, 1990.
Donald G. Barnes,
*Director, Science Advisory Board (A-101).*

[FR Doc. 90-28963 Filed 12-10-90; 8:45 am]
BILLING CODE 6560-50-M



[OPTS-40021; FRL 3841-7]

### Conditional Exemptions from TSCA Section 4 Test Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemicals substances subject to these rules.

**DATES:** These conditional exemptions are effective on December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers which submitted exemption applications for testing of the chemical substances named in the final test rules listed below as of September 30, 1990. Any application received after that date will be addressed separately.

| Chemicals | CAS No. | CFR Citation |
|---|---|---|
| C9 aromatic hydrocarbon fraction | 70693-06-0 | 799.2175 |
| commercial hexane: | | |
| methylcyclopentane | 96-37-7 | |
| *n*-hexane | 110-54-3 | 799.2155 |
| 2-ethylhexanoic acid | 149-57-5 | 799.1650 |
| isopropanol | 67-63-0 | 799.2325 |
| meta-cresols | 108-39-4 | 799.1250 |
| methyl ethyl ketoxime | 96-29-7 | 799.2700 |
| 2-mercaptobenzothiazole | 149-30-4 | 799.2475 |
| monochlorobenzene | 108-90-7 | 799.1051 |
| 1,2,4-trichlorobenzene | 120-82-1 | 799.1053 |
| 1,1,1 trichloroethane | 71-55-6 | 799.4400 |
| tributyl phosphate | 126-73-8 | 799.4360 |
| Unsubstituted Phenylenediamines: | | |
| *m*-phenylenediamine | 108-45-2 | 799.3300 |
| *o*-phenylenediamine | 95-54-5 | 799.3300 |
| *p*-phenylenediamine | 106-50-3 | 799.3300 |

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2601, 2603.

Dated: November 30, 1990.
Charles M. Auer,
*Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

[FR Doc. 90-28961 Filed 12-10-90; 8:45 am]
BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Greece Westbound Conference

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-009238-027.
*Title:* Greece Westbound Conference.
*Parties:* Farrell Lines, Inc., P&O Containers Limited, Sea-Land Service, Inc., Zim Israeli Navigation Company, Ltd.

*Synopsis:* The proposed modification would amend Article 13 by decreasing the required notification period for a party to take independent action (I/A) from ten calendar days to five calendar days. Additionally, it would provide that the conference Secretary will call an explanatory meeting within two calendar days of receipt of a party's I/A notice.

*Agreement No.:* 203-011308.
*Title:* FMG/CSAV Cooperative Working Agreement—Atlas.
*Parties:* Flota Mercante Grancolombinan (FMG), Compania Sud Americana de Vapores (CSAV).

*Synopsis:* The proposed Agreement would permit FMG and CASV to operate a cooperative working agreement with up to six sailings per month, to consult and agree on sailing schedules, service frequency, ports to be served and port rotations, to regulate rates charges, practices and conditions, and to pool revenues. The Agreement would cover the trade between the East Coast of United States and Colombia, Panama and the West Coast of South

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America. The parties have requested a shortened review period.

*Agreement No.:* 203–011309.

*Title:* FMG/CSAV Cooperation Working Agreement—Carat.

*Parties:* Flota Marcante Grancolombiana (FMG), Compania Sud Americana de Vapores (CSAV).

*Synopsis:* The proposed Agreement would permit FMG and CSAV to operate a cooperative working agreement with up to six sailings per month, to consult and agree on sailing schedules, service frequency, ports to be served and port rotations, to regulate rates, charges, practices and conditions, and to pool revenues. The Agreement would cover the trade between U.S. and Canadian Coast ports, Central America, the Caribbean Islands, the Caribbean Coast of Colombian and the Caribbean Coast of South America. The parties have requested a shortened review period.

Dated: December 5, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28910 Filed 12-10-90; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed; City of Los Angeles/Stevedoring Services of America Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–200410.

*Title:* City of Los Angeles/Stevedoring Services of America Terminal Agreement.

*Parties:* City of Los Angles (City), Stevedoring Services of America (SSA).

*Synopsis:* The Agreement provides for the 3-year preferential assignment of a City-owned crane at Berth 228. SSA will pay the City for use of the crane at the City's hourly tariff rates and will receive a credit of $184 per hour for maintaining the crane.

By Order of the Federal Maritime Commission.

Dated: December 5, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28907 Filed 12-10-90; 8:45 am]

BILLING CODE 6730-01-M

### Filing And Effective Date Of Agreement; Extension of the 1989 Memorandum of Settlement of the Port of Greater New York and New Jersey

The Federal Maritime Commission hereby gives notice that on December 3, 1990, the following agreement was filed with the Commission pursuant to section 5(d) of the Shipping Act of 1984 and was considered effective that date to the extent it constitutes an assessment agreement as described in section 3(3) of the Shipping Act of 1984.

*Agreement No.:* 224–000086–005.

*Title:* Extension of the 1989 Memorandum of Settlement of the Port of Greater New York and New Jersey.

*Parties:* New York Shipping Association, Inc. ("NYSA") International Longshoremen's Association, AFL–CIO ("ILA").

*Synopsis:* The Agreement extends the existing NYSA–ILA collective bargaining agreement to December 12, 1990, pending ratification of the November 28, 1990 Memorandum of Settlement of the Port of Greater New York and New Jersey.

By Order of the Federal Maritime Commission.

Dated: December 5, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28908 Filed 12-10-90; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Diamond Cruise Ltd., Oy, C/O Richardson, Berlin & Morvillo, Market Square, 801 Pennsylvania Ave., N.W. 650, Washington, DC 20004.

*Vessel:* Radisson Diamond.

Dated: December 5, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-28909 Filed 12-10-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### The Dai-Ichi Kangyo Bank, Ltd; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 26, 1990.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Dai-Ichi Kangyo Bank, Limited,* Tokyo, Japan; to engage through The CIT Group Holdings, Inc., New York, New York, in acquiring certain commercial finance assets of Fidelcor Business Credit Corporation, Commercial Capital Corporation and Comwest Capital Corporation and thereby engage in making, acquiring, and servicing loans and other extensions of credit to businesses for its own account and for the account of others pursuant to §225.23(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28929 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M



### First State Bancorp of Monticello, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for imediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested pesons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 31, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bankcorp of Monticello, Inc.,* Monticello, Illinois; to acquire 100 percent of the voting shares of Atwood State Bank, Atwood, Illinois.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28930 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

### KeyCorp, et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *KeyCorp,* Albany, New York, and Key Bancshares of Wyoming, Inc., Cheyenne, Wyoming; to engage *de novo* through their subsidiary, The Key Trust Company of the West, Cheyenne, Wyoming, in performing functions or activities that may be performed by a trust company in the States of Idaho and Utah pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *HomeBanc Corporation,* Guntersville, Alabama; to engage *de novo* through its subsidiary, Valley Finance, Inc., Guntersville, Alabama, in making consumer loans pursuant to § 225.25(b)(1)(i); and serving as agent or broker for insurance directly related to the extension of credit by itself and limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *San Bancorp,* Sanborn, Iowa; to engage *de novo* in leasing of personal or real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 5, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-28931 Filed 12-10-90; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL ACCOUNTING OFFICE

### Transmittal of the United States General Accounting Office Compliance Report for Fiscal Year 1991 to the President and the Congress

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report for Fiscal Year 1991 to the President, the President of the Senate, and the Speaker of the House of Representatives.

James L. Kirkman,

*Director, Budget Issues, Accounting Financial Management Division.*

[FR Doc. 90-28980 Filed 12-10-90; 8:45 am]

BILLING CODE 1610-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** National Institute on Drug Abuse, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

**FOR FURTHER INFORMATION CONTACT:** Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443–6014.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an onsite inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, onsite inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are *not* to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200
American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525
American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 186, Fairfax, VA 22030, 703–891–9100
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444
Bio–Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–8900
CBC Clinilab, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840, (name changed: formerly Chem-Bio Corporation)
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7300
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
DrugScan, Inc., P. O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609
Environmental Health Research & Testing, Inc., 1073 South 13th St., Birmingham, AL 35205–9998, 205–934–0065
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–878–3500
HealthCare/Preferred Laboratory, 24451 Telegraph Road, Southfield, MI 48034, 800–255–9414 ext.4300
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365 800–484–7081
Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631
Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0069
Med–Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439
Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–5526
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312–595–3888 ext. 671
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

The certification of this laboratory Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR (Dec. 6, 1990).

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537
Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770
Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–799–3822
Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800–631–5250
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628

**Charles R. Schuster,**
*Director, National Institute on Drug Abuse.*

[FR Doc. 90–28803 Filed 12–10–90; 8:45 am]

BILLING CODE: 4160–20–M



## Advisory Committee Meetings in January

**AGENCY:** Alcohol, Drug Abuse, and Mental Health Administration, HHS.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of January 1991.

The Advisory Panel on Alzheimer's Disease will discuss plans for the third annual report and a special report on ethnic minority and cross cultural issues in Alzheimer's disease, plans for a hearing on values and goals relating to Alzheimer's disease, and other business before the Panel. Attendance by the public will be limited to space available.

The Extramural Science Advisory Board, NIMH, will discuss Brain Tissue Banking and Clinical Research Infrastructure. Attendance by the public will be limited to space available.

Notice of these meetings is required under the Federal Advisory Committee, Public Law 92–463.

*Committee Name:* Advisory Panel on Alzheimer's Disease.

*Date and Time:* January 9: 9 a.m., January 10: 8:30 a.m.

*Place:* Holiday Inn Crowne Plaza, Salon-Ballroom Level, 775 12th Street NW., Washington, DC 20005.

*Status of Meeting:* OPEN—January 9: 9 a.m.–5:30 p.m., January 10: 8:30 a.m.–3:30 p.m.

*Contact:* George Niedzeha, room 11C–09, Parklawn Building, 500 Fishers Lane, Rockville, MD 20857, (301) 443–1185.

*Purpose:* The Advisory Panel on Alzheimer's Disease assists the Secretary of Health and Human Services and the council on Alzheimer's Disease in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias.

*Committee Name:* Extramural Science Advisory Board, NIMH.

*Date and Time:* January 14: 8:30 a.m., January 15: 8:30 a.m.

*Place:* National Institutes of Health, Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Status of Meeting:* OPEN—January 14: 8:30 a.m.–5 p.m., January 15: 8:30 a.m.–3 p.m.

*Contact:* Tony Pollitt, room 17C–25, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3657.

*Purpose:* The Extramural Science Advisory Board, NIMH, advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis on the Institute's extramural science programs.

Substantive information, a summary of the meeting, and a roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–4333.

Dated: December 5, 1990.

**Peggy W. Cockrill,**
*Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 90–28990 Filed 12–10–90; 8:45 am]

BILLING CODE 4160–20–M

## Agency for Toxic Substances and Disease Registry

[Announcement Number 107]

## Public Health Conference Support Grant Program

### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR), announces the availability of funds in Fiscal Year 1991 for the Public Health Conference Support Grant Program.

### Authority

This program is authorized under sections 104(i) (14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9604(i) (14) and (15).

### Eligible Applicants

Eligible applicants are states, and political subdivisions thereof, which may include state universities, state colleges, state research institutions, state hospitals and state and local health departments.

### Availability of Funds

Approximately $75,000 will be available in Fiscal Year 1991 to fund approximately ten awards. It is expected that the average award will be $7,500 ranging from $5,000 to $10,000. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of necessary equipment, registration fees, transportation costs (not to exceed economy class fare) for non-federal employees.

2. Grant funds may not be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time federal employee, for per diem or expenses other than local mileage for local participants, or reimbursement of indirect costs.

Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, federal funds cannot be used for this purpose.

### Purpose

This program will provide partial support for non-federal conferences on disease prevention, health promotion and information/education projects. Applications are being solicited for conferences on: (1) Health effects of toxic substances; (2) disease and exposure registries; (3) hazardous substance removal and remediation; (4)

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emergency response to toxic and environmental disasters; (5) risk communication; (6) disease surveillance; and (7) investigation and research.

**Evaluation Criteria**

Applications for support of the types of conferences listed in the Purpose section above will be evaluated and ranked for funding. The major factors to be considered in the evaluation of responsive applications will include:

*1. Proposed Program (50%)*

The description of (a) the public health significance of the proposed conference including the degree to which the conference can be expected to influence public health practices; (b) the feasibility of the conference in terms of an operational plan; (c) clearly stated conference objectives and the potential for accomplishing those objectives; and (d) the method of evaluating the conference.

*2. Program Personnel (30%)*

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate staff persons, discussion leaders, speakers and presenters to accomplish the proposed conference.

*3. Applicant Capability (20%)*

The description of (a) the adequacy and commitment of institutional resources to administer the program, and (b) the adequacy of the facilities to be used for the conference.

*4. Program Budget (Not Scored)*

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

**Executive Order 12372 Review**

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 13.161.

**Application Submission and Deadline**

The original and two copies of the Application Form PHS 5161–1 shall be submitted in accordance with the schedule below. The schedule also sets forth the earliest possible award date:

| Application deadline | Earliest possible award date |
|---|---|
| January 29, 1991 | April 15, 1991. |
| May 15, 1991 | August 15, 1991. |

Applications must be submitted on or before the deadline date to: Mr. Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the review committee. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures and an application package may be obtained from Mr. Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, telephone (404) 842–6630 or FTS 236–6630.

Technical assistance may be obtained from Mr. Peter Sherman, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–33, Atlanta, Georgia 30333, telephone (404) 639–0730 or FTS 236–0730.

Please refer to Announcement Number 107 when requesting information and submitting any application on the Request for Assistance.

Dated: December 4, 1990.

**William L. Roper,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 90-28877 Filed 12-10-90; 8:45 am]

BILLING CODE 4160-70-M

## Food and Drug Administration

**[Docket No. 90M-0334]**

### Dow Corning Wright; Premarket Approval of the Whiteside Total Hip System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Dow Corning Wright, Arlington, TN, for premarket approval, under the Medical Device Amendments of 1976, of the Whiteside Total Hip System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 25, 1990, of the approval of the application.

**DATES:** Petitions for administrative review by January 10, 1991.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Callahan, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

**SUPPLEMENTARY INFORMATION:** On June 21, 1989, Dow Corning Wright, Arlington, TN 38002, submitted to CDRH an application for premarket approval of the Whiteside Total Hip System. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating hips damaged as a result of noninflammatory degenerative joint disease or any of its composite diagnoses of osteoarthritis, avascular necrosis, traumatic arthritis, slipped capital epiphysis, fused hip, fracture of the pelvis, and diastrophic variant. The Whiteside Total Hip System in indicated for use with the Dow Corning Wright Femoral Head to comprise a modular femoral component. The total hip system consists of a femoral component that is placed in the intramedullary canal of the femur, an acetabular component placed in the pelvis, and an optional acrylic sleeve. Regulatory review of safety and effectiveness data for the cemented use of the Whiteside Total Hip System is not required at this time because use of the device with bone cement has been found to be substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see 21 CFR 888.3350).

On November 17, 1989, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 25, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ–410), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 10, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 21, 1990.

**Elizabeth D. Jacobson,**

*Acting Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 90-28932 Filed 12-10-90; 8:45 am]

BILLING CODE 4160-01-M



## National Institutes of Health

### National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on January 22 and 23, 1991, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 22, in Building 31, Conference Room 10, from 8:30 a.m. to 11 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on January 22 from 11 a.m. to 6 p.m., and on January 23 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

In addition to the regular meeting of the National Advisory General Medical Sciences Council, the Council will be meeting on January 21, at the Hyatt Regency Hotel, Bethesda, Maryland, from 9 a.m. to 5 p.m., in a closed session for the review, discussion, and evaluation of individual grant applications for the National Center for Human Genome Research.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting, roster of council members. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, room 953, Bethesda, Maryland 20892, Telephone: 301, 496–7061 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Biophysics and Physiological Sciences; 13–859, Pharmacological Sciences; 13–862, Genetics Research; 13–865, Cellular and Molecular Basis of Disease Research; 13–880, Minority Access Research Careers (MARC); and 13–375, Minority Biomedical Research Support [MBRS].

Dated: November 29, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90-28947 Filed 12-10-90; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

*Name of committee:* National Advisory Neurological Disorders and

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Stroke Council and its Planning Subcommittee

*Date:* January 23, 1991 (Planning Subcommittee)

*Place:* National Institutes of Health, Building 31, Conference room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 1 p.m.–3 p.m.

*Closed:* 3 p.m.–recess

*Dates:* January 24 and 25, 1991 (Council)

*Place:* National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* January 24, 9 a.m.–1 p.m.

*Closed:* January 24, 1 p.m.–recess, January 25, 8:30 a.m.–adjournment

*Executive Secretary:* John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9248.

*Name of committee:* Neurological Disorders Program Project Review A Committee

*Date:* February 24, 25, and 26, 1991

*Place:* Holiday Inn, Union Square, 480 Sutter Street, San Francisco, CA 94108.

*Open:* February 24, 7:30 p.m.–8 p.m.

*Closed:* February 24, 8 p.m.–recess, February 25, 8:00 a.m.–recess, February 26, 8:00 a.m.–adjournment

*Executive Secretary:* Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9223.

*Name of committee:* Training Grant and Career Development Review Committee

*Dates:* February 26 and 27, 1991.

*Place:* Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Open:* February 26, 7 p.m.–8 p.m.

*Closed:* February 26, 8 p.m.–recess, February 27, 8:30 a.m.–adjournment.

*Executive Secretary:* Dr. Herbert Yellin, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9223.

*Name of committee:* Neurological Disorders Program Project Review B Committee.

*Dates:* February 28, March 1 and 2, 1991.

*Place:* Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Open:* February 28, 7:30 p.m.–8 p.m.

*Closed:* February 28, 8 p.m.–recess, March 1, 8 a.m.–recess, March 2, 8 a.m.–adjournment.

*Executive Secretary:* Dr. A. Beau White, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 9.853, Clinical Research Related to Neurological Disorders; No. 9.854, Biological Basis Research in the Neurosciences)

Dated: November 29, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90–28946 Filed 12–10–90; 8:45 am]

BILLING CODE 4140–01–M

## Public Health Service

### National Vaccine Advisory Committee, Public Meeting

**AGENCY:** Office of the Assistant Secretary for Health.

**SUMMARY:** The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

**DATE:** Date, Time and Place: January 7, 1991, at 9 a.m.; January 8, at 8:30 a.m.; Hubert H. Humphrey Building, Room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

**FOR FURTHER INFORMATION CONTACT:** Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, Room 13A–53, Rockville, Maryland 20857, (301) 443–0715.

**AGENDA:** *Open Public Hearing:* Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before December 18, 1990 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

*Open Advisory Committee Discussion:* There will be discussions on Subcommittee Report on Measles in the United States; Challenges and Opportunities of New Biotechnology in its Application to Vaccine Development and Licensure; and the National Vaccine Report to Congress. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: December 4, 1990.

**Yuth Nimit,**

*Executive Secretary, NVAC.*

[FR Doc. 90–28982 Filed 12–10–90; 8:45 am]

BILLING CODE 4160–17–M

### Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), chapter HG, Indian Health Service (IHS), 52 FR 47053–67, December 11, 1987, as most recently amended at 55 FR 34764–66, August 24, 1990, is amended to reflect the establishment of an organizational substructure for the Aberdeen Area Office to more accurately reflect current activities in the Area Office.

Under Chapter HG, Section HG–20, Functions, after the statement for the IHS Area Office (HGF), Information and Resources Management Programs, insert the following:

**Aberdeen Area Office (HGFB)**

*Office of the Area Director (HGFB1).* (1) Plans, develops, and directs the Area Program within the framework of IHS policy in pursuit of the IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the Indian Health Services activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) ensures the full application of the principles of Indian preference and EEO; and (6) provides Indian tribes and other Indian community groups with optional ways of participating in the Indian health programs including an opportunity to participate in developing the goals and objectives for the Aberdeen Area Indian Health Service (AAIHS).

*Office of Administrative Support (HGFB2).* (1) Plans, coordinates, implements, and evaluates the administrative management support activities of the Aberdeen Area; (2) advises the Area Director on all matters relating to area management and administrative support activities; (3) provides guidance to the Area on financial management activities, including program policy inerpretation in budget formulation and execution, preparation of program planning and budgeting data and financial management of grants and contracts; (4) participates in the advises the Area Director on the allocation of the Area's personnel management resources and funding resources; (5) interprets policy an provides direction in the conduct of the Area's procurement, contracting, and grants activities; and (6) maintains necessary liaison with various components of the IHS in furtherance of the AAISH management activities.

*Office of Environmental Health and Engineering (HGFB3).* (1) Provides overall administration and direction for the sanitation and facilities construction program, the facilities management program, and the environmental health services program; and (2) advises the Area Director on all matters relating to environmental health and engineering activities.

*Office of Planning and Legislation (HGFB4).* (1) Advises on the development of strategic plans, strategies and innovative directions for the Area in relation to health needs, and program management as well as on their implications for Area legislation, regulations, policies, and operations; (2) coordinates the development of Area positions on national issues in the field of Indian health; (3) participates in the process of discharging the Area's responsibilities in the formulation, evaluation, and related functions concerning legislation and regulations; (4) assesses and interprets departmental policies and procedures while maintaining systems for their implementation and dissemination; (5) coordinates the formulation of and participates in the execution of area-wide executive policy; (6) provides consultation to the Area in program and management policy development, interpretation, and application; (7) maintains the Area documentation and issuance system; and (8) negotiates solutions and intra-departmental problems pertaining to Area organization, functions, delegations, procedures, and intra/inter-departmental policy needs.

*Office of Tribal Health Management (HGFB6).* (1) Serves as liaison with State and tribal governments as well as other Federal agencies; (2) provides technical assistance to tribal community health development programs; (3) develops and implements Area contracts and grants response system for Public Law 93–638; and (4) coordinates tribal training activities and special Indian health projects.

*Office of Patient Care and Health Evaluation (HGFB7).* (1) Plans, coordinates, implements, directs, and evaluates the Area health care program; (2) advises the Area Director on all matters related to health care programs operations including clinical services, preventive health and tribal programs; (3) provides for the evaluation of clinical services, preventive health and tribal programs; (4) monitors and reviews health care operations including coordinating the reviews by Medicare/Medicaid, Joint Commission on Accreditation of Healthcare Organization (JCAHO) survey teams, and other health professional review teams; (5) identifies additional program resources required and/or realigns existing resources to achieve effective and efficient program operation; (6) directs established routine health care program operations within the Area through the service unit directors; and (7) ensures that all health care services delivered in the Area are of the highest quality compatible with resouces available.

**Aberdeen Area Service Units (HGFBD through HGFBH, HGFBJ through HGFBN, and HBFBP through HGFBS)**

Cheyenne Rover Service Unit (HGFBD); Ft. Totten Service Unit (HGFBE); Rapid City Service Unit (HGFBG); Rosebud Service Unit (HGFBH); Sisseton Service Unit (HGFBJ); Standing Rock Service Unit (HGFBK); Belcourt Service Unit (HGFBL); Winnebago/Omaha Service Unit (HGFBM); Yankton Service Unit (HGFBN); Minne Toho Service Unit (HGFBP); Pine Ridge Service Unit (HGFBQ); Lower Brule Service Unit (HGFBR); Crow Creek Service Unit (HGFBS). (1) Plans, develops, and directs health programs within the framework of IHS policy and mission; (2) promotes activities to improve and maintain the health and welfare of the service population; (3) delivers quality health services; (4) coordinates service unit activities and resources with those of other governmental and nongovernmental programs; (5) participates in the development and demonstration of alternative means and techniques of health services management and health care.

Under Section HG–30, Order of Succession, following item number (5) add:

During the absence or disability of the Area Director of the Aberdeen Area Office, or in the event of a vacancy in that office, the first Area Office official listed below who is available shall act as the Area Director, except that during a planned period of absence, the Area Director may specify a different order of succession. The order of succession will be:

(1) Health Care Administrator, Office of the Area Director.

(2) Health System Administrator, Office of Administrative Support.

(3) Health System Administrator, Office of Patient Care and Health Evaluation.

(4) Supervisory Environmental Engineer, Office of Environmental Health and Engineering.

(5) Program Analysis Officer, Office of Planning and Legislation.

(6) Tribal Health Project Officer, Office of Tribal Health Management.

*Section HG–40 Delegations of Authority.* Add the following new paragraph:

All delegations and redelegations of authority made to IHS Area Offices which were in effect immediately prior to this reorganization, and which are consistent with the reorganization of January 18, 1989 shall continue in effect pending further redelegation.

Dated: November 30, 1990.

**Everett R. Rhoades,**

*Assistant Surgeon General, Director.*

[FR Doc. 90–28801 Filed 12–10–90; 8:45 am]

BILLING CODE 4160–16–M

## Social Security Administration

### Social Security Acquiescence; Rescissions of Extended (15-Month) Eligibility for Trial Work Period (SSR 82–67)

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Rescission of Social Security Ruling (SSR) 82–67.

**SUMMARY:** The Commissioner of Social Security gives notice of the rescission of SSR 82–67.

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**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1713.

**SUPPLEMENTARY INFORMATION:** Social Security Rulings make available to the public precedential decisions relating to the Federal Old-Age, Survivors, Disability, Supplemental Security Income (SSI), and Black Lung Benefits Programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal Court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

SSR 82–67 was published in the October 1982 quarterly edition of the Rulings. SSR 82–67 is based on section 303 of Public Law 98–265, the Social Security Disability Amendment of 1980. Section 303 amended titles II and XVI of the Social Security Act (the Act) to provide a Social Security disability beneficiary, or a recipient of SSI payments based on disability, who completes a 9-month trial work period and continues to have a disabling impairment, with a 15-month extended period of eligibility during which the individual could test his or her ability to work without losing his or her entitlement to Social Security benefits or eligibility for SSI payments. SSR 82–67 explains the Agency's policy for applying the extended period of eligibility established by section 303 of Public Law 98–265. The portion of SSR 82–67 which discusses title XVI cases does not reflect current law because of the amendment made by section 4(d) of Public Law 99–643 (the Employment Opportunities for Disabled Americans Act). Section 4(d) of Public Law 99–643 amended title XVI of the Act to eliminate the extended period of eligibility for title XVI cases, effective July 1, 1987. Moreover, effective January 1, 1988, section 9010 of Public Law 100–203 (the Omnibus Budget Reconciliation Act of 1987) lengthened this 15-month period in title II cases to 36 months. Because of these changes, SSR 82–67 is out of date. Consequently, we are rescinding this Ruling. We also plan to revise the regulations that contain our policy concerning the extended period of eligibility, see 49 FR 22268 (May 29, 1984), to reflect the changes in law.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: November 16, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

[FR Doc. 90–28985 Filed 12–10–90; 8:45 am]

BILLING CODE 4190–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

**[Docket No. N–90–3078]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 30, 1990.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Request For Financial Information.

*Office:* Housing.

*Description of the Need for the Information and its Proposed Use:* The information provided on Form HUD–92068F will be used in evaluating a mortgagor's eligibility for assistance under the Department's mortgage assistance program.

*Form number:* HUD–92068F.

*Respondents:* Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees.

*Frequency of submission:* On Occasion.

*Reporting burden:*

| | Number of Respondents | × | Frequency of Response | × | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| HUD–92068F | 80,000 | | 1 | | .5 | | 40,000 |

*Total estimated burden hours:* 40,000.

*Status:* Reinstatement.

*Contact:* Tom Hitchcock, HUD, (202) 708–3864 Scott Jacobs, OMB, (202) 395–6880.

Dated: November 30, 1990.

[FR Doc. 90–28984 Filed 12–10–90; 8:45 am]

BILLING CODE 4210–01–M



**[Docket No. N–90–3079]**

### Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 3, 1990.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Preauthorized Debits.

*Office:* Housing.

*Description of the need for the information and its proposed use:* The preauthorized debit is a method for making monthly payments using electronic funds transfer to debit a program participant's checking or, in some instances, savings account. The program participant owes the Department a specific monthly amount and may elect to pay by this method. This form is needed to obtain the data to effect a preauthorized debit.

*Form number:* HUD–92080.

*Respondents:* Individuals or Households.

*Frequency of submission:* On Occasion.

*Reporting burden:*

| | Number of Respondents | × | Frequency of Response | × | Hours per Response | = | Burden Hours |
|---|---|---|---|---|---|---|---|
| HUD–92080 | 5,000 | | 1 | | .25 | | 1,250 |

*Total estimated burden hours:* 1,250

*Status:* Extension.

*Contact:* Betty Gray, HUD, (202) 708–1941, Scott Jacobs, OMB, (202) 395–6880.

Date: December 3, 1990.

[FR Doc. 90–28985 Filed 12–10–90; 8:45 am]

BILLING CODE 4210–01–M

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

**[Docket No. N–90–3082; FR 2611–N–02]**

### Fair Housing Initiatives Program Announcement of Funding Awards; Alaskan Human Rights State Commission, et al.

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Fair Housing Initiatives Program (FHIP). This announcement contains the names and addresses of the award winners and the amounts of the awards.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn J. Shelton, Director, Office of Fair Housing Enforcement and section 3 Compliance, room 5206, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone number (202) 708–3214. A telecommunications device for deaf persons (TDD) is available at (202) 708–3214. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, and to other public or private entities formulating or carrying out programs to prevent or eliminate housing discrimination practices.

The FHIP has three funding categories: The Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. HUD has not solicited proposals under the Administrative Enforcement Initiative. This Notice announces the award winners under the Education and Outreach Initiative and the Private Enforcement Initiative.

On February 5, 1990 (55 FR 3800), the Department announced the availability of $3.6 million in FHIP funds for the Education and Outreach Initiative. Applications for funding, which were due on March 7, 1990, were reviewed, evaluated and scored based on the criteria in the final rule. As a result, a total of $3.6 million was awarded to forty-one organizations to carry out education and outreach projects.

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On June 19, 1990 (55 FR 24985), HUD announced in the Federal Register the availability of $3.9 million in FHIP funds for the Private Enforcement Initiative. A maximum amount of $3 million was allocated for testing activities and approximately $900,000 for other enforcement activities. The application deadline was August 3, 1990. HUD has awarded 28 non-profit organizations $3.9 million for testing and other enforcement activities.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards under the Education and Outreach Initiative and the Private Enforcement Initiative.

**Fair Housing Initiatives Program**

**Education and Outreach Grantees**

1. Alaska State Commission for Human Rights, 800 A St., Anchorage, AK 99501, Ms. Paula M. Haley, $34,015.

2. Civil Rights Division, Arizona Attorney General's Office, 1275 West Washington, Phoenix, AZ 85007, Mr. Phillip A. Austin, $42,036.

3. City of Phoenix, Arizona, 550 W. Washington St., Phoenix, AZ 85003, Mr. Howard Marshall, $75,000.

4. Old Pueblo Community Housing Resource Board, P.O. Box 2241, Tuscon, AZ 85702, Ms. Herminia L. Cubillos, $30,000.

5. Fair Housing Council of San Diego, 4252 Boston Ave., San Diego, CA 92113, Ms. Mary S. Knoll, $23,456.

6. Housing for All, The Metro Denver Fair Housing Center, 1150 Lipan, Denver, CO 80204, Ms. Kathryn Cheever, $75,000.

7. Colorado Department of Institutions, 4131 S. julian Way, Denver, CO 80236, Ms. Norleen Norden, $18,725.

8. Fair Housing Council of Greater Washington Inc., 1400 Eye St., NW., Washington, DC 20005, Ms. Ellen Shogan, $58,010.

9. National Fair Housing Alliance, 1400 Eye St., NW., Washington, DC 20005, Ms. Shanna Smith, $1,198,594.

10. National Council of La Raza, 810 First St., NE., Washington, DC 20002, Mr. Charles Kamasaki, $249,864.

11. International Association of Official Human Rights Agencies, 444 North Capitol St., NW., Washington, DC 20001, Mr. Arthur L. Green, $70,000.

12. National Association of Protection and Advocacy Systems, 220 Eye St., NE., Washington, DC 20002, Mr. Curtis L. Decker, $30,000.

13. Iowa Civil Rights Commission, 211 East Maple, Des Moines, IA 50319, Ms. Inga B. Langston, $75,000.

14. Caldwell Community Housing Resource Board, 1002 Blaine St., Caldwell, ID 83605, Mr. Andrew C. Thomas, $87,894.

15. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $75,000.

16. Chicago Fair Housing Alliance, 1140 Wilmette Ave., Wilmette, IL 60091, Mr. Michael D. Roche, $47,795.

17. Wyandotte County Community Housing Resource Board, 7315 State Ave., Kansas City, KS 66112, Mr. Jack Delap, $30,000.

18. Kentucky Fair Housing Center Council, Kentucky Council on Human Relations Inc., P.O. Box 1293, Louisville, KY 40201, Mr. Bill Holiday, $42,192.

19. Lake Charles Community Housing Resource Board, P.O. Box 90870, Lake Charles, LA 70609, Ms. Mary Richardson, $60,000.

20. Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, MA 02108, Ms. Berneta Walrauen, $65,569.

21. Massachusetts Association of Realtors, 256 Second Ave., Waltham, MA 02254, Ms. Maribeth Perry, $13,528.

22. York County Community Action Corporation, 11 Cottage St., Sanford, ME 04073, Ms. Barbara Crider, $43,803.

23. Legal Aid Society of Minneapolis, Inc., 323 Fourth Ave., Minneapolis, MN 55415, Mr. Stephen Scott, $46,903.

24. Montana Human Relations Commissions, P.O. Box 1728, Helena, MT 59624, Ms. Anne L. Macintyre, $75,000.

25. Elizabeth City State University, Elizabeth City, NC 27909, Mr Ulysses Bell, $72,500.

26. Urban Housing Foundation, Inc., 2416 Lake St., Omaha, NE 68111, Ms. Deborah L. Brockman, $37,412.

27. Camden County Community Housing Resource Board, P.O. Box 2034, Camden, NJ 08101, Ms. Shirley W. Slayton, $75,000.

28. National Urban League, 500 East 62nd St., New York, NY 10021, Mr. Ronald Dozier, $256,932.

29. Suffolk County Housing Services Community, Housing Opportunities, Inc., 550 Smithtown Bypass, Long Island, NY 11787, Mr. David Berenbaum, $75,000.

30. New York State Division of Human Rights, 55 West 125 St., New York, NY 10027, Mr. Armando Martinez, $75,000.

31. Professional Housing Services, Inc., 4614 Prospect Ave., Cleveland, OH 44103, Ms. Charlett Bundy, $32,500.

32. The Cuyahoga Plan of Ohio, Inc., 1101 Euclid Ave., Cleveland, OH 44115, Mr. Charles Bromley, $74,084.

33. City of Tulsa Department of Human Rights, 200 Civic Center, Tulsa, OK 74103, Ms. Dyanne Mason, $30,000.

34. Multnomah County Community Development Division, 2115 Morrison St., Portland, OR 97214, Ms. Janet C. Hawkins, $75,000.

35. Booker T. Washington Center, Inc., 1720 Holland St., Erie, PA 16503, Ms. Dorothy Lockett, $28,492.

36. Temple University of the Commonwealth System of Higher Education, Montgomery Ave., Philadelphia, PA 19122, Dr. Ira Goldstein, $38,774.

37. Chattanooga Community Housing Resource Board, P.O. Box 906, Chattanooga, TN 37401, Ms. Marcia Lillich, $29,405.

38. City of El Paso Department of Community and Human Development, 2 Civic Plaza Center, El Paso, TX 79901, Ms. Deborah G. Hamlyn, $71,128.

39. Virginia Polytechnic Institute and University, 301 Burruss Hall, Blacksburg, VA 24061, Mr. Garnett S. Linkous, $52,092.

40. Fair Housing Council of Fox Valley, 110 North State St., Appleton, WI 54911, Mr. Richard H. Juengling, $9,972.

41. Metropolitan Milwaukee Fair Housing Council, 1442 N. Farwell Ave., Milwaukee, WI 53202, Mr. William R. Tisdale, $62,052.

**Private Enforcement Grantees (Testing)**

1. Operational Sentinel, 430 Sherman Ave., Palo Alto, CA 94306, Ms. Ann Marquart, $87,625.

2. Marin Housing Center, 88 Belvedere St., San Rafael, CA 94901, Ms. Nancy Kenyon, $87,828.

3. Fair Housing Council of Greater Washington, Inc., 1400 Eye St., N.W., Washington, D.C. 20005, Ms. Ellen Shogan, $128,612.

4. National Fair Housing Alliance, 1400 Eye St., Washington, D.C. 20005, Ms. Shanna L. Smith, $599,031.

5. Housing Opportunities Project for Excellence, Inc., P.O. Box 013163, Miami, FL 33101, Mr. James Howe, $70,000.

6. Metropolitan Fair Housing Services, Inc., Fulton County, Atlanta, GA 30307, Mr. Robert M. Shifalo, $214,400.

7. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $87,132.

8. South Suburban Housing Center, 2057 Ridge Road, Homewood, IL 60430, Mr. Ken Chastain, $54,591.

9. HOPE, Inc., 154 South Main St., Lombard, IL 60148, Mr. Bernard J. Kleina, $50,000.

10. Interfaith Housing Center of the Northern Suburbs, 1140 Wilmette Ave., Wilmette, IL 60091, Ms. Barbara Boyts, $51,600.



11. Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association, 294 Washington St., Boston, MA 02108, Ms. Barbara W. Rabin, $235,040.

12. Fair Housing Center of Metropolitan Detroit, 1249 Washington Blvd., Detroit, MI 48226, Mr. Clifford C. Schrupp, $198,760.

13. Concerned Citizens Coalition, 825 Third Ave., Great Falls, MT 59405, Mr. Ken Toole, $97,509.

14. Truckee Meadows Fair Housing, P.O. Box 3935, Reno, NV 89505, Mr. Ernest Nielsen, $67,559.

15. Housing Opportunities Made Equal of Buffalo, Inc., 700 Main St., Buffalo, NY 14202, Mr. Scott W. Gehl, $41,997.

16. Open Housing Center, Inc., 504 Broadway, New York, NY 10012, Ms. Elizabeth Hoeber, $154,336.

17. Westchester Residential Opportunities, Inc., 470 Mamaroneck Ave., White Plains, NY 10605, Ms. Blossum Blum, $64,390.

18. Fair Housing Contact Services, 33 South Main St., Akron, OH 44308, Mr. Donald Nighwander, $75,161.

19. The Cuyahoga Plan of Ohio, Inc., 1101 Euclid Ave., Cleveland, OH 44115, Ms. Susie Rivers, $156,233.

20. Professional Housing Services, Inc., 4614 Prospect Ave., Cleveland, OH 44103, Ms. Karen Gordon, $52,704.

21. Toledo Fair Housing Center, 1900 Monroe St., Toledo, OH 43624, Ms. Lisa Rice, $117,976.

22. Metropolitan Fair Housing Council of Greater Oklahoma City, P.O. Box 53143, Oklahoma City, OK 73117, Ms. Gwen McCormick, $96,337.

23. Urban League of Pittsburgh, Inc., 200 Ross St., Pittsburgh, PA 15219, Mr. Stuart Cohen, $118,161.

24. Housing Opportunities Corporation, 147 Jefferson, Memphis, TN 38103, Ms. Carol Gish, $128,514.

25. Housing Opportunities Made Equal of Richmond, Inc., 503 East Main St., Richmond, VA 23219, Ms. Constance K. Chamberlain, $74,142.

**Private Enforcement Grantees (Non-Testing)**

1. Operation Sentinel, 430 Sherman Ave., Palo Alto, CA 94306, Ms. Ann Marquart, $11,500.

2. Mental Health Law Project, 2021 L St., NW., Washington, DC 20036, Mr. Leonard S. Rubenstein, $96,865.

3. Leadership Council for Metropolitan Open Communities, 401 South State St., Chicago, IL 60605, Mr. Kale Williams, $131,486.

4. Fair Housing Council of Northern New Jersey, 345 Union St., Hackensack, NJ 07601, Ms. Lee Porter, $569,450.

5. Legal Aid Society of New York City, 15 Park Row, New York, NY 10038, Ms. Susan B. Lindenauer, $147,096.

Dated: December 5, 1990.

**Gordon H. Mansfield,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 90-28686 Filed 12-10-90; 8:45 am]

BILLING CODE 4210-28-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-704830

*Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 6, Denver, CO*

The applicant requests amendment of their current permit to include the take of pallid sturgeon (*Scaphirhynchus albus*) for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans or other Service work for this species.

PRT-754344

*Applicant: Laidlaw Environmental Services, Buttonwillow, CA*

The applicant requests a permit to take (captive via live traps) blunt-nosed lizards (*Gambelia silus*), San Joaquin kit foxes (*Vulpes macrotis mutica*), and giant kangaroo rats (*Dipodomys ingens*) which are inadvertently accessing their hazards waste disposal facility and release them back into the wild.

PRT-687819

*Applicant: U.S. Fish and Wildlife Service, Regional Director, Region 4*

The applicant requests amendment to their current permit to allow take of additional species for the purposes of scientific research and enhancement of propagation or survival of the species in accordance with Recovery Plans or other Service work.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 21, 1990.

**Karen Wilson,**

*Acting Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 90-28621 Filed 12-10-90; 8:45 am]

BILLING CODE 4310-55-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree; John Boyce, et al.

In accordance with Department policy, 28 CFR § 50.7, notice is hereby given that on November 29, 1990 a proposed Consent Decree in *United States* v. *John Boyce, et al.* Civil Action No. 84-166-C, was lodged with the United States District Court for the Northern District of West Virginia. Under the Consent Decree defendants Consolidation Coal Company, Eastern Associated Coal Company, Monongahela Power Company, and Westinghouse Electric Corporation agree to pay $500,000.00 in past response costs incurred by the Unites States at the "Big John Salvage" Superfund Site near Fairmont, West Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *John Boyce, et al.*, DOJ Ref. 90-11-3-52.

The proposed Consent Decree may be examined at the Office of the United States Attorney, room 247, Federal Building, 1125 Chapline Street, Wheeling, West Virginia 26003 and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA

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19107. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

**George Van Cleve,**

*Environment and Natural Resources Division.*

[FR Doc. 90-28918 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-01-M

## Antitrust Division

### National Cooperative Research Notifications; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on October 11, 1990 has filed a written notification on behalf of Bellcore and Symbolics, Inc. ("Symbolics") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Symbolics is a California corporation having a place of business at 8 New England Executive Park, Burlington, MA 01803.

On August 30, 1990, Bellcore and Symbolics entered into an agreement, effective as of August 30, 1990, to engage in cooperative research of advanced animation software systems to better understand the communicating of multidimensional data as part of exchange and exchange access service.

**Joseph H. Widmar,**

*Director of Operations Antitrust Division.*

[FR Doc. 90-28919 Filed 12-10-90; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA-W-24,683]**

### Diebold, Incorporated Canton, OH; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the location of Diebold, Incorporated in the **Federal Register** on page 41,902 of FR Document 90-24316.

Under Negative Determinations, TA-W-24,683, Diebold, Inc., Canton, Ohio, the negative determination covering the petitioning group of workers under TA-W-24,683 should be Diebold, Inc., Hamilton, Ohio instead of Diebold, Inc., Canton, Ohio.

Signed at Washington, DC, this 4th day of December 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28972 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-30-M

### Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act may be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,859; Jayco Manufacturing, Inc., Portage, PA*

*TA-W-24,850; Harbor Pallet, Hoquium, WA*

*TA-W-24,871; Fleck, Inc., Fayette, MS*

*TA-W-24,867; Wonderknit/Scoreboard, Galax, VA*

*TA-W-24,896; Amax Potash Corp, Dumas, TX*

*TA-W-24,781; L.A. Shirt Co., Inc., Northampton, PA*

*TA-W-24,916; New West Manufacturing, Hoquium, WA*

*TA-W-24,900; Capital Gears, Inc., St. Paul, MN*

*TA-W-24,911; Lone Star Industries, Inc., Bonner Springs, KS*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA-W-25,018; Yellow Front Stories, Roosevelt, UT*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,873; Friedrich Refrigeration Co., San Antonio, TX*

Increased imports did not contribute importantly to work separations at the firm.

*TA-W-24,876; Hamilton Production Equipment, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,961; Team Bank, Wichita Falls Office, Wichita Falls, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,944; Emerson Quiet Kool, Dover, NJ*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,879; Parker Gas Treating Co., A & B Gas Plt, Fort Stockton, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-24,866; Unit Drilling Co., Tulsa, OK*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-24,869; Cabinet Industries, Inc., Danville, PA*



Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,886; Superior Combustion Industries, Inc., Emmaus, PA*

Increased imports did contribute importantly to worker separations at the firm.

*TA-W-24,874; Friedrich Air Conditioning Co., San Antonio, TX*

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

*TA-W-24,904; Emerson Quite Kool, Woodbridge, NJ*

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

*TA-W-24,885; Sunbelt Specialized Services, S2S, Inc., Roby, TX*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,910; I-Sidi, Princeton, NJ*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,913; Nannette Manufacturing Co., Inc., Philadelphia, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,920; The Timken, Co., Columbus, OH*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,887; Beth Energy Mines, Bethlehem Steel Corp., Eighty Four, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-24,901; Ciba-Geigy Corp., Toms River, NJ*

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

*TA-W-24,800; National Cooperative Refinery Assoc., McPherson, KS & Operating at Other Locations in The Following States:*

*TA-W-24,800A; Denver, CO*
*TA-W-24,800B; Gillette, WY*
*TA-W-24,800C; Midland, TX*
*TA-W-24,800D; Okc, OK*
*TA-W-24,800E; Cushing, OK*
*TA-W-24,800F; Aztec, NM*

Increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations**

*TA-W-24,882; Randle Shake & Shingle, Randle, WA*

A certification was issued covering all workers separated on or after August 29, 1989.

*TA-W-24,791; Almet/Lawlite, Inc., Vernon, CA*

A certification was issued covering all workers separated on or after August 22, 1989.

*TA-W-24,831; Musebeck Shoe Co., Cedar Grove, WI*

A certification was issued covering all workers separated on or after August 27, 1989.

*TA-W-24,832; Musebeck Shoe Co., Oconomowoc, WI*

A certification was issued covering all workers separated on or after August 27, 1989.

*TA-W-24,924; Small A.C. Motors Co., Hendersonville, TN*

A certification was issued covering all workers separated on or after September 21, 1989.

*TA-W-24,823; The Gates Rubber Co., Denver, CO*

A certification was issued covering all workers separated on or after August 23, 1989.

*TA-W-24,928; Transco Exploration Co., Lake Charles, LA & Operating at Various Locations Locations in The Following States: TA-W-24,928A CO, TA-W-24,928C TX, TA-W-24,928B LA*

A certification was issued covering all workers separated on or after September 18, 1989.

*TA-W-24,864; Seismographic Service Corp., Tulsa, OK & Operating at Various Locations in The Following States: TA-W-24,864A CO, TA-W-24,864C TX, TA-W-24,864B OK*

A certification was issued covering all workers separated on or after September 11, 1989.

*TA-W-24,877; Mayer China Co., Beaver Falls, PA*

A certification was issued covering all workers separated on or after September 10, 1989.

*TA-W-24,877A; Shenango China, New Castle, PA*

A certification was issued covering all workers separated on or after September 10, 1989.

*TA-W-24, 877B; Syracuse China, Syracuse, NY*

A certification was issued covering all workers separated on or after September 10, 1989.

*TA-W-24,812; American Trim Products, South Boston, VA & Operating at The Other Following Locations: TA-W-24,812A Kenbridge, VA, TA-W-24,812B Putnam, CT*

A certification was issued covering all workers separated on or after August 28, 1989.

*TA-W-24,881; ABB kent, Inc., Edison, NJ*

A certification was issued covering all workers separated on or after September 17, 1990.

*TA-W-24,929; Tricor Drilling, Gaylord, MI*

A certification was issued covering all workers separated on or after September 17, 1989 and before November 1, 1990.

*TA-W-24,835; Raycord Co., Spartanburg, SC*

A certification was issued covering all workers separated on or after August 28, 1989.

*TA-W-24,836; Young Wireline Services, Inc., Charleston, WV*

A certification was issued covering all workers separated on or after January 1, 1990 and before November 1, 1990.

*TA-W-24,824; General Circuits, Inc., Rochester, NY*

A certification was issued covering all workers separated on or after September 1, 1989 and before July 31, 1990.

*TA-W-24,857; Magnetic Metal Corp., Camden, NJ*

A certification was issued covering all workers separated on or after September 6, 1989.

*TA-W-24,880; Oxford of Commerce, Oxford, GA*

A certification was issued covering all workers separated on or after September 10, 1989 and before July 31, 1990.

*TA-W-24,828; Litton Systems Encorder Div., Chatsworth, CA*

A certification was issued covering all workers separated on or after February 23, 1990.

*TA-W-24,818; Donenfeld Knitwear, Inc., Brooklyn, NY*

A certification was issued covering all workers separated on or after August 28, 1989.

*TA-W-24,834; Prime Technology, E.I. & S Div., Stoneham, MA*

A certification was issued covering all workers separated on or after August 16, 1989.

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*TA-W-24,806; U-Brand Corp., Ashland, OH*

A certification was issued covering all workers separated on or after August 17, 1989.

*TA-W-24,807; U-Brand Corp., Shelby, OH*

A certification was issued covering all workers separated on or after August 17, 1989.

*TA-W-24,729 and TA-W-24, 729A; American Trim Products, Inc., New York, NY and Great Neck, NY*

A certification was issued covering all workers separated on or after July 12, 1989.

*TA-W-24,736 and TA-W-24,736A; Douglas and Lomason Co., Newnan, GA and Carollton, GA*

A certification was issued covering all workers separated on or after August 1, 1989.

*TA-W-24,878; Oxford Industries, Atlanta, GA & Operating at The Other following Locations: TA-W-24,878A Cumming, GA, TA-W-24,878C Chester, SC, TA-W-24,878B Maiden, NC*

A certification was issued covering all workers separated on or after September 7, 1989.

I hereby certify that the aforementioned determinations were issued during the month of November 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 4, 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-28971 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-30-M

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## Pension and Welfare Benefits Administration

**[Application No. D-8437/D-8438 et al.]**

## Proposed Exemptions; Austin Radiological Money Purchase Pension Plan, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

**ADDRESS:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 25, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### Austin Radiological Money Purchase Pension Plan (the Money Purchase Plan) and Austin Radiological Profit Sharing Pension Plan (the Profit Sharing Plan; collectively the Plans) Located in Austin, TX

[Application No. D-8437 and D-8438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 25, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to certain interest-free extensions of credit in the form of overdrafts (the Loans) made during 1986 through 1987 to the Plans by NCNB Texas National Bank and is predecessors, fiduciaries of the Plans and parties in interest with respect to the Plans, provided that the terms and conditions of the Loans were at least as favorable to the Plans as those which the Plans would have received in similar transactions with unrelated parties.

**EFFECTIVE DATE:** If granted, the proposed exemption will be effective January 13, 1986.

*Summary of Facts and Representations*

1. Austin Radiological Association, a Texas professional association, is the sponsoring employer (the Employer) of the Plans. It is engaged in the practice of radiology at 4212 Medical Parkway, Austin, Texas. As of December 31, 1989, the Employer had 99 employees, consisting of doctors and support personnel.

The application for exemption is made by NCNB Texas National Bank (the Trustee), the current trustee of the Plans since July 1986, on behalf of itself, the predecessor Trustees, and the Plans.[1] The Trustee is a national bank regulated by the Comptroller of the Currency and the Federal Reserve System, of which it is a member bank. The Trustee provides a wide range of banking, trust, and other financial services throughout Texas. It is a wholly owned subsidiary of NCNB Corporation, a bank holding company organized under the laws of North Carolina with its headquarters in Charlotte, North Carolina. NCNB Corporation is subject to and regulated under the Bank Holding Company Act of 1956. NCNB Corporation also owns banks operating in Florida, North Carolina, South Carolina, Georgia, Maryland, and Virginia.

[1] The subject application was filed with the Department of the Trustee after discovering that the Loans constituted prohibited transactions. The applicants represent that the Loans were the result of a predecessor Trustee's subsidiary bank permitting the overdrafts during 1986 and 1987.



The preceding trustees of the Plans were First RepublicBank Austin, N.A., a national banking association operating in Austin, Texas, and regulated by the Federal Reserve System, of which it was a member. It also was a subsidiary of First RepublicBank Corporation, a Texas corporation and bank holding company subject to and regulated under the Bank Holding Company Act of 1956. The First RepublicBank Corporation sought "open bank" assistance during the second quarter of 1988 from the Federal Deposit Insurance Corporation, whereupon the Comptroller of the Currency appointed the Federal Deposit Insurance Corporation to be Receiver of First RepublicBank Corporation.

On July 29, 1988, the Trustee acquired certain assets from some of the subsidiaries of First Republic Bank Corporation and assumed trusteeship of employee benefit plans, including the Plans, formerly trusteed by First RepublicBank Austin, N.A. The trustee of the Plans during 1985, 1986, and the first half of 1987 was InterFirst Bank Austin, N.A., a national banking association operating in Austin, Texas and regulated by the Federal Reserve System, of which it was a member. It was a subsidiary of InterFirst Banking System, a Texas corporation and bank holding company subject to and regulated under the Bank Holding Company Act of 1956. InterFirst Banking System was acquired by First RepublicBank Austin, N.A. replaced InterFirst Bank Austin, N.A. as the Trustee of the Plans.

The Trustee (including its predecessors) and the Employer are represented to be independent of each other, having no common shareholders, officers, or directors and neither owning shares of the other. There has been a commercial banking relationship between the Trustee (including its predecessors) and the Employer which is represented to be less than one percent of the Trustee's and its predecessors' commercial banking business.

2. The Plans are defined contribution plans with an individual account for each participant. As of December 31, 1989, the Money Purchase Plan's assets had a value of $616,309.01 and the Profit Sharing Plan's assets had a value of $6,027,854.80. As of March 31, 1990, there were 37 participants in the Money Purchase Plan and 66 participants in the Profit Sharing Plan. Participation in the Plans has been voluntary and available to all employees of the Employer upon completion of a minimum service requirement. As of January 1, 1985, contributions to and accruals in the Money Purchase Plan were frozen and, as of December 31, 1988, it was terminated. Prior to January 1, 1985, the Employer contributed to the Money Purchase Plan an amount which, including forfeitures, was equal to 10 percent of the total compensation paid to all participants. In addition, voluntary contributions made by participants were allocated to their respective individual accounts. The Profit Sharing Plan receives annual contributions from the Employer which, during the past five years, has averaged 7.5 percent of annual compensation paid to the participants when combined with current forfeitures. Also, voluntary contributions from participants are added to their respective individual accounts in the Profit Sharing Plan.

3. The assets of the Plans have been held in trust by the Trustee to be invested in accordance with written instructions of each participant in the Plans. Participants direct the investment of certain percentage balances in their respective accounts in lieu of specifying certain dollar amounts to be invested. Participants may choose from ten different investment alternatives during each calendar quarter by communicating in writing to the Administrative Committee of each of the Plans.[2] In turn, the Administrative Committee forwards to the Trustee the investment instructions of the participant before the beginning of the succeeding calendar quarter. The method for directing investments can result in cash flow problems because the Trustee is compelled to estimate the dollar value of each individual account as of the beginning of every calendar quarter.

One of the investment options available to the participants of the Plans since April 1984 has been units of an open-end collective trust fund. This fund is designated as the Real Estate Collective Investment Fund (RECIF) and has been maintained and trusteed by the Trustee and its predecessors. In its early years, RECIF's assets grew to a sum in excess of $60,000,000. The assets of RECIF were invested solely in commercial real estate located in regions of the southwestern part of the United States that have experienced adverse economic problems, causing a decline in the value of assets of the Plans beginning in 1986. On September 23, 1988, RECIF was terminated and is in the process of being liquidated.

All real estate properties held by RECIF are appraised every three years by independent MAI appraisers and during interim years updates of the appraisals are obtained from the last appraiser. In addition to the use of appraisals to determine the value of the units in RECIF held by the Plans, there are short-term cash balances. The applicants represent that determining the amount of accruals and cash necessary to retain operating reserves is performed by the Trustee's property management department.

4. During 1985, 19 participants of the Profit Sharing Plan and 16 participants of the Money Purchase Plan directed that a certain percentage of their respective individual account balances be invested by the Trustee in units of RECIF. All 16 participants in the Money Purchase Plan who directed investments into RECIF units were also participants in the Profit Sharing Plan that had directed an investment of a percentage of their account balances in RECIF. Prior to December 31, 1985, 11 participants in the Profit Sharing Plan and 9 participants in the Money Purchase Plan directed that their investments in RECIF were to be reduced and the cash obtained from such actions be placed in alternative investments. Using historical data, the Trustee determined the previous quarterly balance in each participant's account in the Plans. When processing the transactions as directed by the participants during December 1985, in order to reduce their respective balances in units of RECIF and to move the cash obtained by the reductions to selected alternative investments, the Trustee discovered that the cash available from the RECIF units was insufficient for making the alternative investments chosen by the participants of the Plans. This cash flow shortage arose because of rapidly rising values in the securities markets at the same time that there were drastically decreasing values in the commercial real estate in which RECIF was invested. These changing cash values of the individual accounts for December 31, 1985, resulted in an adjusted cash flow shortage of $43,047.64 for the Profit Sharing Plan and $40,508.79 for the Money Purchase Plan (a total of $83,555.43 for the Plans).

Since RECIF had always funded previous withdrawal requests, the

[2] Each of the Plans is administered by an Administrative Committee appointed by the Employer. The Administrative Committee serves as the named fiduciary of each of the Plans.

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Trustee assumed that the additional $83,555.43 would be available from units of RECIF within two or three days. Also at the same time, the Trustee determined that the interests of the participants who were requesting withdrawal from RECIF would be best served by immediately providing funds for the change of investment media as requested. The assumption and determination by the Trustee caused it to allow an overdraft on January 13, 1986, for $83,555.43 in the form of an interest-free loan to the Plans from the Trustee, permitting 20 participants of the Plans to make their respectively chosen alternative investment for the calendar quarter ending March 31, 1986. During subsequent calendar quarters ending June 30, 1986, through March 31, 1987, additional overdrafts covered nine more extensions of credit by the Trustee to the Plans for changes of investments from RECIF to alternatives investments.[5]

5. As of March 31, 1987, the total sum of $227,343.42 had been extended as interest-free loans in the form of overdrafts by the Trustee to the Plans; this has included $122,668.39 to the Profit Sharing Plan and $104,644.83 to the Money Purchase Plan. Sixteen individuals were affected by the Loans, including 13 participants of the Money Purchase Plan, who were also the majority of the 16 participants of the Profit Sharing Plan involved in the transactions. Since March 31, 1987, the Trustee has not made any additional extensions of credit to the Plans.

As of December 31, 1989, there remained outstanding overdrafts in the sum of $74,288.17 to the Money Purchase Plan and the sum of $95,478.62 to the Profit Sharing Plan. The applicant represents that from March 31, 1986, the value of a unit in RECIF has declined from a high of $2,129.42 to a low of $705.18 on March 31, 1990. This decline is attributed primarily to the marked depreciation in the value of the real estate held by RECIF.

The applicants represent that the Trustee will continue to relinquish interest charges to the Plans on the Loans. The Loans have been formally documented by having the Plans execute non-interest bearing debentures with no security interest except the pro rata share of the liquidating proceeds received from RECIF. In order to retire the Loans from the Trustee, the debentures are structured so that 50 percent of the future liquidating distributions from RECIF that are distributed to the Profit Sharing Plan and 40 percent of future liquidating distributions that are distributed to the Money Purchase Plan are to be applied to retire the Loans. This partitioning structure was created because the Loans that were extended by the Trustee to the Profit Sharing Plan represent 50 percent of its RECIF investments and the Loans to the Money Purchase Plan represent 40 percent of its RECIF investments.

Initially, when liquidating distributions were received from RECIF beginning in September 1986, the predecessor Trustee would apply the entire distribution against the Loans.[6] In this regard, the applicants represent that the Trustee will return, with interest,[6] to the individual accounts of the participants who have remained invested in RECIF, the pro rata share of all the initial liquidating distributions that previously went to the Trustee to reduce the Loans.

Any excess proceeds received by the Trustee from the liquidation of RECIF will be allocated to the individual accounts in the Plans of participants who have remained invested in RECIF at the time of its termination. If the proceeds in liquidation of RECIF are less than the Loans to the Plans, no other assets of the Plans or the participants can be used to reimburse the Trustee for the Loans.

6. The applicants and the Administrative Committee represent that the Loans to the Plans from the Trustee resulted in no unrecoverable expense to the Plans and no risk to the participants of the Plans. The applicants and the Administrative Committee also represent that the Loans facilitated the participants and served their best interests by enabling them to obtain better investments for their respective individual accounts in the Plans. The applicants realize that the overdrafts should not have been allowed and represent that the Trustee will not permit any such overdrafts in the future.

7. In summary, the applicants represent that the proposed exemption satisfies the criteria of section 408(a) of the Act because (a) The Loans are evidenced in written documents which do not provide for payments of interest by the Plans; (b) the Loan transactions protect the participants and their beneficiaries of the Plans from possible declines in values of the RECIF properties and permit new, higher yielding investments without expense or penalty; (c) the terms for repayment of the Loans will be limited to cash proceeds received from liquidation of RECIF commercial properties and no other assets of the Plans or their participants and beneficiaries will be used or affected by the repayments of the Loans; and (d) upon liquidation of RECIF investments, any proceeds of the liquidation in excess of the Loans will be allocated to the individual accounts in the Plans remaining invested in RECIF at the time of its termination.

*For further information contact:* Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**First National Bank Employees Profit Sharing Plan (the Plan)**

Located in Killeen, TX

[Application No. D-8468]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of six secured promissory notes (the Notes) by the Plan to the First National Bank, a party in interest with respect to the Plan, for the greater of either the outstanding principal plus the accrued, unpaid interest owing on the Notes on the date of the Sale, or their fair market value as determined by a qualified, independent appraiser on the date of the Sale.

*Summary of Facts and Representations*

1. The application for an exemption is made by the First National Bank (the Bank) on behalf of itself and the Plan. The Bank is the sponsoring employer of the Plan. It is located in Killeen, Texas and is organized under the national banking laws of the United States as a national banking association and regulated by the Office of the Comptroller of the Currency. The Bank provides retail and commercial banking services to Killeen, Fort Hood, and other communities in Bell County in central Texas. It is a subsidiary of First Community Bancshares, Inc., which owns 83.33 percent of the outstanding shares of the Bank. First Community Bancshares, Inc., located in Houston, Texas is a bank holding company organized under the laws of Texas and the Bank Holding Company Act of 1956 and regulated by the Federal Reserve System.

The Bank has one banking affiliate, Fort Hood National Bank which is a national banking association located in Fort Hood, Texas. Also, the Bank has one non-banking affiliate, First Community Services, Inc., a Texas corporation, which provides data processing services to the Bank, its banking affiliate, and its parent holding company.

2. The Plan is a qualified profit sharing plan with 166 participants and total assets of $2,197,651, as of December 31, 1989. The Plan, which was established during 1960 by the Bank, covers employees of Fort Hood National Bank and First Community Services. The fiduciaries of the Plan exercising investment discretion for the Plan are Sylvan A. Gilliland, Senior Vice President and Chief Financial Officer of the Bank; James D. Dreibelbis, President of Conroe Center, a branch of the Bank; Lawrence Joe Padgett, President of First Community Services; Debra Norman, Vice President of Fort Hood National Bank; and Patricia L. Watts, Assistant Vice President of the Bank.

As of December 31, 1989, approximately 13 percent of Plan assets were invested in the Notes, having a total outstanding balance of $286,131.16. The Notes, in their original principal amounts, ranged from $25,000 to $125,000, having terms of 10 to 15 years, maturing between 1992 and 1996, and bearing fixed interest rates from 7.5 percent to 14 percent. None of the debtors or obligors under the Notes are parties in interest with respect to the Plan. No expenses or other fees with respect to the Notes were ever paid by the Plan. All costs incurred with respect to the Notes were paid by the Bank.

The Notes have been appraised by Dowling & Co. Consultants, an independent appraisal firm located in Austin, Texas. Mr. R. Dowling, the president of the firm, has determined that the Notes have a total fair market value of $253,103.54. The respective Notes were given the following individual values: Ernesto Hernandez—$73,002.06; Pranat, Inc.—$40,618.88; Purser Construction—$25,037.29; Carolyn Renegar—$5,696.96; Hayel and Nadia Safady—$101,383.09; and Skyline Baptist—$7,378.56.

3. Midway through 1988, new management took over the Bank. New fiduciaries were also appointed for the Plan at this time, resulting in a review of the investment portfolio of the Plan. Recognizing the depressed real estate market and generally languishing economy in Texas at that time, the newly appointed fiduciaries adopted a new investment policy, effective at the beginning of 1989, that excluded new commercial loans as investments for the Plan.

The Department began an examination of the Plan during March of 1989. During this examination, the Department questioned the prudence of the Plan continuing to hold two delinquent Notes issued by Messrs. Safady and Hernandez, respectively, and requested that they be removed from the Plan.[6] In addition, the Department encouraged the Bank to dispose of the remaining Notes by either selling them to unrelated third parties with respect to the Plan, or by the Bank purchasing them from the Plan pursuant to an exemption from the prohibited transaction provisions of the Act.

Based on the advice of legal counsel, the Bank determined that the Notes could not be sold to unrelated parties because such sale would require a release and reestablishment of the attendant security interests. The applicant represents that such action would jeopardize the credit position of the purchaser of the note; and, as to the Note involved in the bankruptcy proceedings, its sale would lower its priority in the bankruptcy proceedings. One of the other Notes is subject to a homestead exemption, and is represented by the applicant that a refinancing of such note would drastically lower the possibility of recovering the outstanding debt. In addition, the Bank represents that it would be difficult to impossible to sell the Notes to unaffiliated financial institutions in or out of the geographic area because of the generally depressed real estate market in Texas.

4. In order to resolve any issues with respect to the Notes, the Bank has agreed that upon obtaining the requested exemption it will purchase for cash all of the Notes held by the Plan. The Bank will pay the greater of the outstanding balance plus accrued interest owing on the Notes on the date of Sale, or the fair market value of the Notes on the date of Sale. The Bank represents that the Notes are now being paid down and are current, with the exception of the Hernandez Note. No expenses will be incurred by the Plan from the Sale.

The applicant represents that the Sale of the Notes to the Bank will facilitate compliance with the Department's suggestions to dispose of the Notes as investments for the Plan. At the same time the Sale will enable the Plan to comply with the changed investment policy adopted by the newly appointed fiduciaries. The applicant also represents that the Sale of the Notes to the Bank serves the best interests of the Plan and its participants and beneficiaries by ensuring an expedient sale and fair return.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because (a) The Sale of the Notes will be a one time sale for cash; (b) the Plan will not be required to pay any fees or commissions in connection with the Sale; (c) the Plan will sell the Notes to the Bank for an amount representing either the greater of the fair market value of the Notes as of the date of the Sale or the outstanding principal balance of the Notes plus accrued interest at the time the Sale is consummated; (d) the Notes will be appraised by a qualified, independent appraiser; and (e) the Sale of the Notes will permit the Plan to reinvest the proceeds of the Sale in improved and new income-producing assets.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

[5] The applicants represent that Prohibited Transaction Class Exemption 80-26 (PTE 80-26, 45 FR 28545, April 29, 1980) can not be relied upon with respect to the extension of credit by the Trustee to the Plans. PTE 80-26, in relevant part, provides exemptive relief where the proceeds of a loan are used only for payment of ordinary operating expenses of a plan, including payment of benefits and periodic premiums under an insurance or annuity contract, or for a period of no more than three days for a purpose incidental to the ordinary operation of the plan.

[6] The Department is proposing exemptive relief solely for the transactions as specified. No exemptive relief or opinion is provided herein concerning the application of all of the funds received from RECIF toward repayment of the loans.

[6] It is represented that the interest rate the Trustee will apply will be the prime rate that the Trustee charged its commercial customers at the time of each previous liquidating distribution.

[6] As of March 1, 1989, the Safady and Hernandez Notes were delinquent. The Safady Note had been renewed on February 10, 1988, with $80,706 principal outstanding and $24,770 in interest due on the Note. As of December 1987 Hernandez had filed under Chapter 13 of the Bankruptcy Act, which permits it to remain 90 days delinquent. Approximately $50,105 was due on the Hernandez Note at the time.

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duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not disruptive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 6th day of December 1990.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 90-28969 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-29-M

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[Prohibited Transaction Exemption 90-96; Exemption Application No. D-8305 et al.]

## Grant of Individual Exemptions; Kenosha Laborer's Local 237 Pension Plan; Carpenters Trust of Kenosha, WI, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the right of the participants and beneficiaries of the plans.

## Kenosha Laborer's Local 237 Pension Plan; Carpenter's Trust of Kenosha, WI; and Kenosha Building & Construction Trades Welfare Fund (together, the Plans) Located in Kenosha, Wisconsin

[Prohibited Transaction Exemption 90-96; Exemption Application No. D-8305]

### Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed acquisition by the Plans of limited partnership units in the Kenosha Civic Center II Associates, a limited partnership which is a party in interest with respect to the Plans, provided the Plans pay no more than the fair market value of the interests on the date of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1990 at 55 FR 37585.

*Written Comments:* The Department received one written comment with respect to the proposed exemption. The comment requested that the exemption not be granted because the proposed transaction was too risky an investment, and that security of the funds should have the highest priority.

Mr. Robert B. Schneider of Johnson Heritage Trust Company (JHTC), the Plan's independent fiduciary, responded to the comment. Mr. Schneider represents that JHTC has reviewed the proposed transaction thoroughly. Mr. Schneider states that given the worst case scenario (that is, assuming that no increase in value would occur to the housing development), the Plans would be receiving an annual cash return which would provide a desirable percentage return on their investments given the possible risks in the project. The cash flow return, together with the potential for capital appreciation in the value of the investment, makes the investment desirable. In his opinion, Mr. Schneider states that the investment imposes no great risk to the Plans and, in fact, could enhance each Plan's investment portfolio. Mr. Schneider also cited the small percentage of each Plan's assets (approximately 1-2%) to be invested in the proposed transaction. In addition, JHTC will monitor the investment by each Plan in the housing development and will take the steps necessary to protect the interest of each Plan in the investment.

The Department has considered the entire record, including the written comment and JHTC's response to the comment, and has determined to grant the exemption as proposed.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)



## United Artists Communications, Inc. (Rowley United Division) Retirement Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 90-97; Exemption Application No. D-8308]

### Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) from the Plan to United Artists Realty Corporation, a party in interest with respect to the Plan, provided that the Plan receives no less than either the sum of $165,000 or the fair market value of the Property at the time of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 17, 1990, at 55 FR 42066.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 6th day of December, 1990.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 90-28970 Filed 12-10-90; 8:45 am]

BILLING CODE 4510-29-M

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## NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

### Meetings

**AGENCY:** National Commission on Acquired Immune Deficiency Syndrome.

**ACTION:** Revision of notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

**DATE AND TIME:** Monday, December 17, 1990, 8:30 a.m. to 5:30 p.m.

Tuesday, December 18, 1990, 8:30 a.m. to 5:30 p.m.

**PLACE:** December 17, 1990, Carran Conference room, 4th floor, City Hall, 100 North Holliday Street, Baltimore, MD 21202.

December 18, 1990, Peabody Court Hotel, Second floor, 612 Cathedral Street, Baltimore, Maryland 21201.

**TYPE OF MEETING:** Open.

**FOR FURTHER INFORMATION CONTACT:** Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

**AGENDA:** On Monday, December 17, 1990 the Commission will discuss issues relating to HIV disease in African American communities. On Tuesday, December 18, 1990, the Commission will receive technical briefing on health care financing issues.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than December 11, 1990.

Dated: December 6, 1990.

**Maureen Byrnes,**

*Executive Director.*

[FR Doc. 90-28939 Filed 12-10-90; 8:45 am]

BILLING CODE 6820-CW-M

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## NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

### Adoption of Principles of Public Information

**AGENCY:** U.S. National Commission on Libraries and Information Science (NCLIS).

**ACTION:** Public notice.

### Principles of Public Information

*Preamble*

From the birth of our nation, open and uninhibited access to public information has ensured good government and a free society. Public information helps to educate our people, stimulate our progress and solve our most complex economic, scientific and social problems. With the coming of the Information Age and its many new technologies, however, public information has expanded so quickly that basic principles regarding its creation, use and dissemination are in danger of being neglected and even forgotten.

The National Commission on Libraries and Information Science, therefore, reaffirms that the information policies of the U.S. government are based on the freedoms guaranteed by the Constitution, and on the recognition of public information as a national resource to be developed and preserved in the public interest. We define *public information* as information created, compiled and/or maintained by the Federal Government. We assert that public information is information owned by the people, held in trust by their government, and should be available to the people except where restricted by law. It is in this spirit of public ownership and public trust that we offer the following Principles of Public Information.

*1. The public has the right of access to public information.* Government agencies should guarantee open, timely and uninhibited access to public information except where restricted by law. People should be able to access public information, regardless of its format, without any special training or expertise.

*2. The Federal Government should guarantee the integrity and preservation*

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*of public information, regardless of its format.* By maintaining public information in the face of changing times and technologies, government agencies assure the government's accountability and the accessibility of the government's business to the public.

*3. The Federal government should guarantee the dissemination, reproduction, and redistribution of public information.* Any restriction of dissemination or any other function dealing with public information must be strictly defined by law.

*4. The Federal Government should safeguard the privacy of persons who use or request information, as well as persons about whom information exists in government records.*

*5. The Federal Government should ensure a wide diversity of sources of access, private as well as governmental, to public information.* Although sources of access may change over time and because of advances in technology, government agencies have an obligation to the public to encourage diversity.

*6. The Federal Government should not allow cost to obstruct the people's access to public information.* Costs incurred by creating, collecting and processing information for the government's own purposes should not be passed on to people who wish to utilize public information.

*7. The Federal Government should ensure that information about government information is easily available and in a single index accessible in a variety of formats.* The government index of public information should be in addition to inventories of information kept within individual government agencies.

*8. The Federal Government should guarantee the public's access to public information, regardless of where they live and work, through national networks and programs like the Depository Library Program.* Government agencies should periodically review such programs as well as the emerging technology to ensure that access to public information remains inexpensive and convenient to the public.

**Conclusion**

The National Commission on Libraries and Information Science offers these Principles of Public Information as a foundation for the decisions made throughout the Federal Government and the nation regarding issues of public information. We urge all branches of the Federal Government, state and local governments and the private sector to utilize these principles in the development of information policies and in the creation, use, dissemination and preservation of public information. We believe that in so acting, they will serve the best interests of the nation and the people in the Information Age.

Adopted June 29, 1990.

For further information contact: Jane Williams, Research Associate, U.S. National Commission on Libraries and Information Science, 1111 16th Street NW., suite 310, Washington, DC 20036, (202) 254–3100.

Dated: December 6, 1990.

**Jane Williams,**

*Research Associate.*

[FR Doc. 90–29001 Filed 12–10–90; 8:45 am]

BILLING CODE 7527–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on December 15, 1990, from 9 a.m. 5 p.m. in the Windsor room at the Hay Adams Hotel, One LaFayette Square, NW., Washington, DC 20006.

This meeting will be open to the public on a space available basis. The topics for discussion will be policies and procedures for the implementation of programs authorized by the National Foundation on the Arts and the Humanities Act of 1965 as amended.

Any interested persons may attend this meeting as observes. Seating space for observers is limited.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 4, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90–28916 Filed 12–10–90; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Meeting Revision

The **Federal Register** notice previously published on November 27, 1990 (55 FR 49355) announcing the Advisory Committee on Nuclear Waste (ACNW) meeting scheduled for December 12–13, 1990 has been revised to include a closed session regarding the election of ACNW Officers for Calendar Year 1991. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6). All other items pertaining to this meeting remain the same as previously published.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: December 5, 1990.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 90–28969 Filed 12–10–90; 8:45 am]

BILLING CODE 7590–01–M



### Advisory Committee on Nuclear Waste Working Group on the Role of Expert Judgment in the Assessment of Strategies in Nuclear Waste Disposal; Meeting

The Working Group on the Role of Expert Judgment will hold a meeting on January 25, 1991, Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

*Friday, January 25, 1991, 8:30 a.m. until the conclusion of business.*

The Working Group will discuss the role and the extent of expert judgment in the site characterization and licensing process with respect to the disposal of nuclear waste. Discussions will include the results of studies supported by the Department of Energy and the Nuclear Regulatory Commission relating to the performance assessment for high-level waste repositories. Participants will present information and results on the role of expert judgment in the regulatory decision process, the clear identification of the extent to which such judgment is used, the minimization of reliance on such judgment, and strategies to deal with cascading effect (propagation of uncertainty) associated with the use of subjective judgment. In addition to the manner in which expert judgment is used, the discussion will also involve how such experts are identified and selected. Although the focus will be primarily directed to the assessment of performance for a high-level waste repository, the use of experts in other areas may factor in the discussions.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with the invited speakers from DOE, the Nuclear Waste Technical Review Board, the Electrical Power Research Institute (EPRI), National Laboratories, and other interested persons regarding this review.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Ms. Charlotte Abrams (telephone 301/492–8371 between 7:45 a.m. and 5:30 p.m.) or cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492–9851 between 6:15 a.m. and 6 p.m.). Persons planning to attend this meeting are urged to contact the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 4, 1990.

**Richard K. Major,**

*Chief, Nuclear Waste Branch.*

[FR Doc. 90–28960 Filed 12–10–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

### Sacramento Municipal Utility District, (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District (the licensee) is the holder of a Facility Operating License No. DPR–54, which authorizes the operation of the Rancho Seco Nuclear Generating Station (the Facility) at a steady-state reactor power level not in excess of 2772 megawatts thermal. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

In a letter on July 24, 1990, the licensee submitted a request for an exemption from performing an annual exercise of the emergency plan, activation of the alert and notification system, and distribution of public information brochures as required by 10 CFR 50.47 and 10 CFR part 50, appendix E.

The facility consists of a pressurized water reactor (PWR) located at the licensee's site in Sacramento County, California.

II

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

Section 50.12(a)(iii) of 10 CFR part 50 provides that special circumstances exist when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

Section 50.12(a)(2)(vi) of 10 CFR part 50 provides that special circumstances exist when there is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

By letter dated July 24, 1990, the licensee requested exemptions from the following requirements:

(1) 10 CFR 50.47(b)(14) requires periodic drills and exercises and 10 CFR part 50, appendix E, section IV.F, requires annual (onsite) emergency preparedness exercises and biennial (offsite) emergency preparedness exercises. The offsite exercises require State and local government participation. NUREG–0654/FEMA–REP–1, Rev. 1 titled, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," also recommends in Appendix 3 that a complete cycle test of the siren system be conducted at least annually and as required for formal exercises.

(2) 10 CFR 50.47(b)(7) requires the periodic dissemination of information to the public on actions to be taken in an emergency and 10 CFR part 50, appendix E, section IV.D.2, sets an annual frequency for dissemination of this information to the public within the plume exposure pathway (10-mile radius) emergency planning zone (EPZ).

In the same letter, the licensee supplied the following information in support of its request.

- The licensee states that Rancho Seco is permanently shut down and completely defueled and, therefore, the potential for postulated accidents are much less than those considered when the NRC promulgated the emergency preparedness regulation.
- The licensee points out that it has submitted the "Long Term Defueled

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Condition Emergency Plan" and the supporting accident analysis for NRC review. The licensee states that the Environmental Protection Agency (EPA) plume exposure protective action guides (PAGs) will not be exceeded (offsite) for any postulated event at Rancho Seco in the defueled condition.

- The licensee states that it successfully passed the 1989 annual exercise.
- The licensee provides letters from State and local officials which approve the licensee's decision to seek relief from the requirement for an exercise.
- The licensee concludes that activation of the alert and notification system, annual distribution of information to the public and full (State and local) participation exercises are not required for a shut-down, defueled facility.
- The licensee offers to perform communications drills in lieu of the annual exercise. The licensee states that the scope of the drills will include the annual communication drill necessary to ensure that State and local authorities are notified of emergencies in a timely manner.

III

The NRC staff is reviewing the licensee's defueled emergency plan, has examined the licensee's dose calculations supporting the defueled emergency plan, and has independently calculated the offsite doses resulting from a fuel handling accident. Both the licensee's and the staff's calculations show that the offsite doses resulting from a fuel handling accident would not exceed the EPA PAGs offsite. For example, the lower level EPA PAG for protective action is 1 Rem whole-body dose. The staff's calculations show that the accumulated whole-body radiation dose at the site boundary for the *30* days following a fuel handling accident would be approximately 0.14 Rem. Thus, the long times that are available permit *ad hoc* actions by State and local authorities to avoid exceeding EPA PAGs for the public. The NRC staff considers that onsite emergency plans for a defueled plant are required to provide for the protection of individuals on site and provide notifications and training for officials offsite. Exercises of offsite plans, testing of the alert and notification system, and distribution of public information materals are not required.

On September 23, 1988, the Commission promulgated new emergency preparedness regulations for fuel loading and low power testing. These regulations in 10 CFR 50.47(d) do not require exercises with offsite officials, prompt public notification systems (such as sirens), or the distribution of public information materials. This is precisely the relief sought by the licensee for the defueled condition.

The new (low-power) regulations were promulgated because:

- The fission product inventory during low power testing is much less than during full power operation.
- At low power there is a significant reduction in the required capacity of systems designed to mitigate the consequences of accidents.
- The time available for taking actions to identify accident causes and mitigate accident consequences at low power is much longer than at full power.

IV

Because the risk of a defueled nuclear power plant is significantly less than even that on a fueled plant operating at low power, the Commission concludes that the emergency preparedness requirements of 10 CFR 50.47(d) regarding offsite preparedness are more appropriate for the Rancho Seco Nuclear Generating Station than the requirements of 10 CFR 50.47(b). Therefore, it is not necessary for the Rancho Seco Nuclear Generating Station, in its defueled condition, to conduct biennial offsite exercises, test its sirens or distribute public information materials. Therefore, based on a consideration of the facts presented in section III above and as requested by the licensee, the Commission finds the following factors support the granting of the requested exemptions:

- The reactor has been shut down since June 1989, the fuel has been removed from the reactor vessel and is stored in the spent fuel pool. Consequently, EPA PAGs will not be exceeded offsite and no offsite public protective actions will be warranted in case of an accident.
- Emergency plans for a defueled plant were not contemplated when the regulation was adopted.
- Requiring offsite exercises, testing of sirens, and dissemination of public information would not significantly reduce the risk to the public from any credible accident that has been postulated for a defueled nuclear plant.

V

For these reasons the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), (a)(2)(ii), (iii), and (vi) the exemptions requested by the licensee's letter of July 24, 1990, and authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and special circumstances are present as contemplated in the regulation.

Accordingly, the Commission hereby approves the following exemptions, applicable to Rancho Seco in its defueled condition:

(1) "The Rancho Seco Nuclear Generating Station is exempt from the requirement of 10 CFR part 50, appendix E, Section IV.F.3, for the conduct of biennial offsite full-participation emergency preparedness exercises, including any testing of the siren system."

(2) "The Rancho Seco Nuclear Generating Station is exempt from the requirements of 10 CFR 50.47(b)(7) and 10 CFR Part 50, appendix E, Section Part IV.D, requiring the dissemination of public information materials.

Pursuant to 10 CFR 51.32, the Commission has previously determined that the granting of these Exemptions will have no significant impact on the quality of the human environment and an environmental) impact statement is not required (55 FR 35481 August 22, 1990).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30 day of November, 1990.

**Dennis M. Crutchfield, Director,**

*Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28894 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 30-28741; License No. 03-23185-01; EA 90-210]**

I

**Tumbleweed X-Ray Co., Greenwood, AR; Order Modifying License (Effective Immediately)**

Tumbleweed X-Ray Company (Licensee or Tumbleweed) is the holder of Materials License No. 03-23185-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34 on July 25, 1985 (Tumbleweed X-Ray Company previously held NRC Materials License No. 35-21425-01). The license authorizes the possession and use of sealed radioactive sources (iridium-192 and cobalt-60) in various industrial radiography devices. The license was due to expire on September 30, 1988, but remains active due to a timely renewal application having been submitted by the Licensee in August 1988.



II

Under 10 CFR 34.43, personnel performing licensed radiographic operations are required to perform a radiation survey of the camera and guide tube to determine that the sealed source has been returned to its shielded position after each exposure. Under 10 CFR 34.44, an assistant radiographer using radiographic exposure devices must be under the personal supervision of a radiographer. The personal supervision shall include watching the assistant's performance of operations.

On November 26, 1990, the Licensee informed NRC Region IV that David Martin, an assistant radiographer employed by Tumbleweed, may have received a radiation overexposure to his right hand. The Licensee believes the overexposure is connected to an incident that occurred on November 12, 1990, during radiography being performed at a facility in Burns Flat, Oklahoma. Kevin Hill was the radiographer conducting radiographic operations with Mr. Martin that day. The Licensee's radiation safety officer, who contacted NRC in regard to this incident, stated that he learned of the incident and apparent overexposure on November 25, 1990.

Based on information the Licensee submitted to NRC Region IV on November 28, 1990, and NRC Region IV's initial inquiry into this incident on November 29, 1990, NRC believes that: (1) On November 12, 1990, a serious radiation injury occurred to the right hand of David Martin; (2) on that day, David Martin failed to perform a radiation survey after exposing the source and attempting to retract it and prior to approaching the source and guide tube; and (3) during these events Kevin Hill, the radiographer, failed to properly supervise Mr. Martin and failed to watch his performance of operations and that these violations of NRC requirements of November 12, 1990, contributed to this occurrence. Additional violations may be identified as a result of our continuing review of this incident.

In a telephone discussion with NRC Region IV on November 29, 1990, the Licensee agreed to prohibit both the radiographer and assistant radiographer involved in this incident from conducting any activities that involve the use of licensed radioactive materials without prior NRC approval.

III

The circumstances surrounding the November 12, 1990, incident reflect inadequate regard by the individuals involved for NRC requirements designed to ensure the safe use of licensed radioactive material and raise significant concerns relative to adequate protection of the public health and safety. Pending completion of a review of this incident, the NRC does not have reasonable assurance that licensed activities will be properly conducted with these individuals present. Therefore, I have determined that the public health and safety require that this Order be issued. Pursuant to 10 CFR 2.204, I have also determined that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to section 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, 10 CFR part 30 and 10 CFR part 34, it is hereby ordered, effective immediately, that License No. 03-23185-01 is modified as follows:

1. Kevin Hill, a radiographer, is prohibited from conducting any activities involving licensed radioactive materials;

2. David Martin, an assistant radiographer, is prohibited from conducting any activities involving licensed radioactive materials.

The Regional Administrator, NRC Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

V

The Licensee, Kevin Hill, David Martin, or any person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within twenty days of its issuance. The answer shall set forth the matters of fact and law on which the Licensee, Kevin Hill, David Martin or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer filed within twenty days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Kevin Hill or David Martin requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee, Kevin Hill, David Martin, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

On the Licensee's, Kevin Hill's and David Martin's consent to the provisions set forth in section IV of this Order or on the failure of the Licensee or Kevin Hill, David Martin to file an answer within the specified time and in the absence of any request for a hearing within the specified time this Order shall be final without further Order or proceeding. A request for a hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated at Rockville, Maryland this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.*

[FR Doc. 90-28967 Filed 12-10-90; 8:45 am]

BILLING CODE 7590-01-M

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## POSTAL SERVICE

### International Postal Rates and Fees; Proposed Changes

**AGENCY:** Postal Service.

**ACTION:** Proposed changes in international postal rates and fees.

**SUMMARY:** Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates and fees to become effective simultaneously with changes to domestic rates and fees.

As required under the Postal Reorganization Act, the proposed changes would result in international postal rates that (i) did not apportion the costs of the services so as to impair the overall value of the service to the users, (ii) were fair and reasonable, and (iii) were not unduly or unreasonably discriminatory or preferential.

**DATES:** Comments on the proposed changes must be received on or before January 1, 1991.

BEST COPY AVAILABLE



**ADDRESSES:** Written comments should

necessary changes to international fees

| Weight steps not over * | All countries (other |
|---|---|



III. Other Articles (AO)

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**ADDRESSES:** Written comments should be directed to the Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5360. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 1140, 475 L'Enfant Plaza West, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John F. Alepa [202] 268-2350.

**SUPPLEMENTARY INFORMATION:** The proposed international rates and fees, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service. In addition the Postal Service believes that the proposed changes would result in improved international mail service.

Several changes in rate application/classification are proposed. They include:

1. Establishment of separate rates for surface Publishers Periodicals and surface Books and Sheet Music sent to Canada. The current rates for these types of Other Articles (AO) mail make no distinction between mail sent to Canada and mail sent to all other countries.

2. Establishment of a 38 cent bulk letter rate to Canada. The new bulk rate is restricted to pieces weighing one ounce or less. A 500 piece, per mailing, minimum requirement applies.

3. Establishment of new country groups for Air AO rate applications. The new groups are identified as the Western Hemisphere Group (except Canada and Mexico), the Pacific Rim Group, the European Group, and the Asian/African Group. As under current rate application, separate, ungrounded, Air AO rates apply to Canada and to Mexico.

The Postal Service proposes that the adjustments in international rates and fees become effective simultaneously with changes in domestic rates and fees. Coordination of changes in domestic and international rates and fees is more efficient for both the Postal Service and mailers. Changes to domestic rates and fees are expected to be adopted in the near future.

In the tables below, some international fees are marked with an asterisk. The asterisk indicates that the Postal Service is proposing an international fee which is the same as the corresponding proposed domestic fee. Once domestic fees are adopted, the Postal Service will publish any necessary changes to international fees in the Federal Register.

This proposal does not address rate changes for Express Mail International (EMIS), International Priority Airmail (IPA), or International Surface Air Lift (ISAL) service. New EMIS and IPA rates are under review. New rates for ISAL service are set forth in Federal Register 55 FR 45206.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written comments on the proposed changes.

**Stanley F. Mires,**

*Assistant General Counsel, Legislative Division.*

**I. Letters and Letter Packages**

*I. A. Canada and Mexico (Air)* [1]

| Weight steps not over | | Canada [2] | Mexico |
|---|---|---|---|
| Lbs. | Ozs. | | |
| 0 | .5 | — | $0.35 |
| 0 | 1 | $0.40 | 0.45 |
| 0 | 1.5 | — | 0.55 |
| 0 | 2 | 0.53 | 0.65 |
| 0 | 3 | 0.66 | 0.90 |
| 0 | 4 | 1.09 | 1.15 |
| 0 | 5 | 1.32 | 1.40 |
| 0 | 6 | 1.55 | 1.65 |
| 0 | 7 | 1.78 | 1.90 |
| 0 | 8 | 2.01 | 2.15 |
| 0 | 9 | 2.24 | 2.40 |
| 0 | 10 | 2.47 | 2.65 |
| 0 | 11 | 2.70 | 2.90 |
| 0 | 12 | 2.93 | 3.15 |
| 1 | 0 | 3.25 | 4.15 |
| 1 | 8 | 3.85 | 6.15 |
| 2 | 0 | 4.45 | 8.15 |
| 2 | 8 | 5.36 | 10.15 |
| 3 | 0 | 6.31 | 12.15 |
| 3 | 8 | 7.24 | 14.15 |
| 4 | 0 | 8.17 | 16.15 |

[1] Mail paid at these rates receives First-Class service in the U.S. and airmail service in Canada and Mexico.

[2] A 4 pound maximum applies except for registered items sent to Canada which may weigh up to 66 pounds. For Canada-bound registered items weighing over 4 pounds, the rate is $1.86 for each additional pound up to a 66 pound limit.

*I. B. Countries Other than Canada or Mexico (Surface)*

| Weight steps not over [1] | | All countries (other than Canada and Mexico) |
|---|---|---|
| Lbs. | Ozs. | |
| 0 | 1 | .70 |
| 0 | 2 | .95 |
| 0 | 3 | 1.20 |
| 0 | 4 | 1.45 |
| 0 | 5 | 1.70 |
| 0 | 6 | 1.95 |
| 0 | 7 | 2.20 |
| 0 | 8 | 2.45 |
| 0 | 12 | 3.95 |
| 1 | 0 | 5.55 |
| 1 | 8 | 7.85 |
| 2 | 0 | 9.75 |
| 2 | 8 | 11.85 |
| 3 | 0 | 13.95 |
| 3 | 8 | 16.05 |
| 4 | 0 | 18.15 |

[1] Pieces weighing one-half ounce or less will be accepted at the Air LC rate of 50 cents and accorded air service.

[2] A 4-pound maximum applies.

*I. C. Countries Other than Canada or Mexico (Air)*

| Ounces (up to and including) | All countries (other than Canada and Mexico) |
|---|---|
| .5 | $0.50 |
| 1.0 | .95 |
| 1.5 | 1.34 |

Rate is 39 cents for each additional .5 ounce up to and including 32 ounces; then 39 cents per additional ounce over 32 ounces. Maximum weight 64 ounces.

*I. D. Bulk Rate (to Canada only):* 38 cents per piece. Applies only to letters weighing 1 ounce or less. Mailers must present a minimum quantity of 500 pieces. All mail must bear the appropriate Canadian post code. The mail must be presorted by the first two characters of the Canadian post code and the pieces must be trayed in accordance with Postal Service distribution schemes for Canadian mail. Mail must be trayed and labeled to the destination specified by the Postal Service when there are at least 200 pieces in the mailing for one or more of those destinations. When there are less than 200 pieces for one or more of the destinations, mail must be trayed to the U.S. dispatching exchange office.

**II. Post/Postal Cards and Aerogrammes**

*II. A. Surface*

(1) Canada: 30 cents each.
(2) Mexico: 30 cents each.
(3) All other countries: 35 cents each.

*II. B. Air*

(1) Canada: 30 cents each.
(2) Mexico: 30 cents each.
(3) All countries (except Canada and Mexico): 40 cents each.

*II. C. Aerogrammes:* 45 cents each.



**III. Other Articles (AO)**

*III. A. Regular Printed Matter and Small Packets (Surface)*

| Weight steps not over | Canada | Mexico | All other countries |
|---|---|---|---|
| 1 oz. | $0.39 | $0.35 | $0.48 |
| 2 | 0.58 | 0.51 | 0.70 |
| 3 | 0.80 | 0.66 | 0.92 |
| 4 | 1.02 | 0.86 | 1.14 |
| 5 | 1.25 | 1.06 | 1.45 |
| 6 | 1.50 | 1.26 | 1.80 |
| 7 | 1.74 | 1.46 | 2.07 |
| 8 | 1.96 | 1.66 | 2.38 |
| 9 | 2.22 | 1.91 | 2.69 |
| 10 | 2.46 | 2.16 | 3.20 |
| 11 | 2.66 | 2.41 | 3.26 |
| 12 | 2.86 | 2.66 | 3.52 |
| 13 | 3.06 | 2.91 | 3.78 |
| 14 | 3.26 | 3.16 | 4.04 |
| 15 | 3.46 | 3.46 | 4.30 |
| 16 | 3.66 | 3.76 | 4.56 |
| 17 | 3.86 | 4.06 | 4.82 |
| 18 | 4.06 | 4.36 | 5.08 |
| 3 lbs. | 5.26 | 5.56 | 6.73 |
| 4 lbs. | 6.46 | 7.56 | 8.38 |
| Each add. 1 lb. | 1.20 | 1.50 | 1.65 |
| Maximum weight: [1] | | | |
| M-bag rate [2] | | | |
| Per pound or fraction | .96 | 1.20 | 1.32 |

[1] a. For regular printed matter maximum weight is 22 pounds to Mexico; 4 pounds to Canada and most other countries. b. For Small Packets, maximum weight, to Canada and Mexico, is 32 ounces; to most other countries, 4 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

*III. B. Publishers Periodicals (Surface)*

| Weight steps not over [1] | Canada | All other countries |
|---|---|---|
| 1 oz. | $0.30 | $0.30 |
| 2 | 0.34 | 0.38 |
| 3 | 0.44 | 0.46 |
| 4 | 0.54 | 0.54 |
| 5 | 0.65 | 0.69 |
| 6 | 0.76 | 0.82 |
| 7 | 0.87 | 0.96 |
| 8 | 0.96 | 1.10 |
| 9 | 1.09 | 1.24 |
| 10 | 1.20 | 1.36 |
| 11 | 1.31 | 1.48 |
| 12 | 1.42 | 1.60 |
| 13 | 1.53 | 1.72 |
| 14 | 1.64 | 1.84 |
| 15 | 1.75 | 1.96 |
| 16 | 1.86 | 2.08 |
| 17 | 1.97 | 2.20 |
| 18 | 2.08 | 2.32 |
| 3 lbs. | 2.86 | 3.22 |
| 4 lbs. | 3.68 | 4.12 |
| Each additional 1 lb. | 0.80 | 0.90 |
| M-bag rate [2] | | |
| Per pound or fraction | 0.64 | 0.72 |

[1] Weight limit to most countries is 4 pounds; some 22 pounds. If mailed by publisher or news agent weight limit to Canada is 20 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

*III. C. Books and Sheet Music (Surface)*

| Weight steps not over | Canada | All other countries |
|---|---|---|
| 1 lb. | $1.20 | 1.38 |
| 2 | 2.06 | 2.32 |
| 3 | 2.86 | 3.22 |
| 4 | 3.68 | 4.12 |
| 5 | 4.46 | 5.02 |
| 6 | 5.26 | 5.92 |
| 7 | 6.06 | 6.82 |
| 8 | 6.86 | 7.72 |
| 9 | 7.66 | 8.62 |
| 10 | 8.46 | 9.52 |
| 11 | 9.26 | 10.42 |
| Each additional pound | 0.80 | 0.90 |

| Weight steps not over | Canada | All other countries |
|---|---|---|
| M-bag rate [1] | | |
| Per pound or fraction | 0.64 | 0.72 |

[1] Weight limit to most countries is 11 pounds, some 22 pounds.

[2] Direct sacks to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

*III. D. 1. Printed Matter, Matter for the Blind, and Small Packets (Air)*

| Weight steps not over [1] | Canada | Mexico |
|---|---|---|
| .5 oz. | | $0.35 |
| 1 | $0.39 | 0.40 |
| 1.5 | | 0.53 |
| 2 | 0.60 | 0.63 |
| 3 | 0.82 | 0.86 |
| 4 | 1.04 | 1.07 |
| 5 | 1.25 | 1.29 |
| 6 | 1.46 | 1.51 |
| 7 | 1.70 | 1.73 |
| 8 | 1.82 | 1.95 |
| 9 | 2.14 | 2.17 |
| 10 | 2.36 | 2.39 |
| 11 | 2.58 | 2.61 |
| 12 | 2.80 | 2.83 |
| 16 | 3.12 | 3.55 |
| 24 | 3.72 | 4.40 |
| 32 | 4.32 | 5.25 |
| 2.5 lbs. | 5.12 | 6.10 |
| 3.0 lbs. | 5.92 | 6.95 |
| 3.5 lbs. | 6.72 | 7.80 |
| 4.0 lbs. | 7.52 | 8.65 |
| Each additional ½ pound over 4 pounds | 0.80 | 0.85 |
| M-bag rate [2] | | |
| Per pound or fraction | 1.28 | 1.36 |

[1] Maximum weight to Canada is 4 pounds; to Mexico 22 pounds.

[2] Direct sack to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

*III.D.2. Printed Matter, Matter for the Blind, and Small Packets (Air)*

AIR AO POSTAL RATE GROUPS [1]

| Weight steps [2] not over | Western hemisphere except Canada/Mexico | Europe | Asia/Africa | Pacific Rim |
|---|---|---|---|---|
| 1 oz. | $0.70 | $0.86 | $0.93 | $0.86 |
| 2 | 1.07 | 1.35 | 1.57 | 1.61 |
| 3 | 1.44 | 1.85 | 2.21 | 2.27 |
| 4 | 1.81 | 2.35 | 2.85 | 2.93 |
| 6 | 2.18 | 3.01 | 3.76 | 3.85 |
| 8 | 2.55 | 3.67 | 4.67 | 4.77 |
| 10 | 2.92 | 4.33 | 5.58 | 5.69 |
| 12 | 3.29 | 4.99 | 6.49 | 6.61 |
| 14 | 3.66 | 5.65 | 7.40 | 7.53 |
| 16 | 4.03 | 6.31 | 8.31 | 8.45 |
| 18 | 4.40 | 6.97 | 9.22 | 9.37 |
| 20 | 4.77 | 7.63 | 10.13 | 10.29 |
| 22 | 5.14 | 8.29 | 11.04 | 11.21 |
| 24 | 5.51 | 8.95 | 11.95 | 12.13 |
| 26 | 5.88 | 9.61 | 12.86 | 13.05 |
| 28 | 6.25 | 10.27 | 13.77 | 13.97 |
| 30 | 6.62 | 10.93 | 14.68 | 14.89 |
| 32 | 6.99 | 11.59 | 15.59 | 15.81 |
| 2.5 lbs. | 8.39 | 14.09 | 19.14 | 19.41 |
| 3.0 lbs. | 9.79 | 16.59 | 22.69 | 23.01 |
| 3.5 lbs. | 11.19 | 19.09 | 26.24 | 26.61 |

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AIR AO POSTAL RATE GROUPS [1]—Continued

| Weight steps [2] not over | Western hemisphere except Canada/ Mexico | Europe | Asia/Africa | Pacific Rim |
|---|---|---|---|---|
| 4.0 lbs. | 12.59 | 21.59 | 29.79 | 30.21 |
| Each additional ½ pound | 1.40 | 2.50 | 3.55 | 3.60 |
| M-Bag Rate [3] per pound or fraction | 2.24 | 4.00 | 5.68 | 5.76 |

[1] Weight limit to most countries is 4 pounds; some 22 pounds. If mailed by publisher or news agent weight limit is 30 pounds to Canada.
[2] See section III.D.3.
[3] Direct sack to one addressee. Minimum weight 15 lbs. Maximum weight 66 lbs.

*III.D.3. Air AO Postal Rate Groups*

| Pacific Rim Group | European Group | Asian/African Group | Asian/African Group | Western Hemisphere Group (Except Canada & Mexico) |
|---|---|---|---|---|
| Australia | Albania | Afghanistan | Malawi | Antigua & Barbuda |
| China | Andorra | Algeria | Maldives | Anguilla |
| Fiji | Austria | Angola | Mali | Argentina |
| Hong Kong | Azores | Ascension | Malta | Aruba |
| Indonesia | Belgium | Bahrain | Mauritania | Bahamas |
| Japan | Bulgaria | Bangladesh | Mauritius | Barbados |
| Korea, Democratic People Rep. | Corsica | Benin | Mongolia | Belize |
| Korea, Republic of (South) | Czechoslovakia | Bhutan | Morocco | Bermuda |
| Lao | Denmark | Botswana | Mozambique | Bolivia |
| Macao | Estonia | Brunei | Nauru | Brazil |
| Malaysia | Faroe Islands | Burkina Faso | Nepal | British Virgin Islands |
| New Zealand | Finland | Burma | New Caledonia | Cayman Islands |
| Papua New Guinea | France | Burundi | Niger | Chile |
| Philippines | Germany, Federal Republic of | Cameroon | Nigeria | Colombia |
| Singapore | Gibraltar | Cape Verde | Oman | Costa Rica |
| Taiwan | Great Britain & No. Ireland | Central African Republic | Pakistan | Cuba |
| Thailand | Greece | Chad | Pitcairn Islands | Dominica |
| Vietnam | Greenland | Comoros | Qatar | Dominican Republic |
| | Iceland | Cote D'Ivoire (Ivory Coast) | Rwanda | El Salvador |
| | Ireland | Cyprus | Sao Tome & Principe | Falkland Islands |
| | Italy | Djibouti | St. Helena | French Guiana |
| | Latvia | East Timor | Saudi Arabia | Grenada |
| | Liechtenstein | Egypt | Senegal | Guadaloupe |
| | Lithuania | Equatorial Guinea | Seychelles | Guatemala |
| | Luxembourg | Ethiopia | Sierra Leone | Guyana |
| | Madeira Islands | French Polynesia | Solomon Islands | Haiti |
| | Monaco | Gabon | Somalia | Honduras |
| | Netherlands | Gambia | South Africa | Jamaica |
| | Norway | Ghana | Sri Lanka | Martinique |
| | Poland | Guinea | Sudan | Montserrat |
| | Portugal | Guinea Bissau | Swaziland | Netherlands Antilles |
| | Romania | India | Syria | Nicaragua |
| | San Marino | Iran | Tanzania | Panama |
| | Spain | Iraq | Togo | Paraguay |
| | Sweden | Israel | Tonga | Peru |
| | Switzerland | Jordan | Tristan Da Cunha | Saint Christopher & Nevis |
| | Turkey | Kampuchea | Tunisia | Saint Lucia |
| | USSR | Kenya | Tuvalu | St. Pierre & Miquelon |
| | Vatican City State | Kiribati | Uganda | Saint Vincent & The Grenadines |
| | Yugoslavia | Kuwait | United Arab Emirates | Suriname |
| | | Lebanon | Vanuatu | Trinidad and Tobago |
| | | Lesotho | Wallis & Futuna Islands | Turks & Caicos Islands |
| | | Liberia | Western Samoa | Uruguay |
| | | Libya | Yemen, Rep. of | Venezuela |
| | | Madagascar | Zaire | |
| | | | Zambia | |
| | | | Zimbabwe | |



**IV. Parcel Post**

*IV.A.1. Canada (Surface)*

Rate is $4.85 for 1 pound and over, up to 2 pounds; then $1.45 for each additional pound or fraction. Maximum weight is 66 pounds; minimum weight one pound.

*IV.A.2. Countries Other than Canada (Surface)*

| Pounds (Up to and including) | Bahamas [1], Bermuda, Caribbean Islands, Central America, Mexico, St. Pierre & Miquelon | All other countries [2] |
|---|---|---|
| 2 | $5.00 | $5.55 |
| 3 | 7.85 | 8.65 |
| 4 | 9.70 | 10.75 |
| 5 | 11.55 | 12.85 |
| 6 | 13.40 | 14.95 |
| 7 | 15.25 | 17.05 |
| 8 | 17.10 | 19.15 |
| 9 | 18.95 | 21.25 |
| 10 | 20.80 | 23.35 |
| For each additional pound or fraction | 1.85 | 2.10 |

[1] Maximum weight 44 pounds.
[2] Maximum weight 50 pounds.

*IV.B.1. Canada (Air)*

Rate is $5.00 for 1 pound and over, up to 2 pounds; then $1.40 for each additional pound or fraction. Maximum weight is 66 pounds; except 22 pounds to Canadian Armed Forces; minimum weight is one pound.

*IV.B.2. Countries Other than Canada (Air)*

| Weight steps | Parcel post [1] rate groups | | | | |
|---|---|---|---|---|---|
| | A | B | C | D | E |
| First 1 pound | $6.00 | $7.75 | $9.25 | $10.70 | $12.90 |
| Each additional pound or fraction up to 5 pounds | 3.00 | 4.25 | 5.00 | 6.00 | 7.00 |
| Each additional pound or fraction over 5 pounds | 2.00 | 3.00 | 4.00 | 5.00 | 6.00 |

[1] See section IV.B.2. Air Parcel Post Rate Groups.

*IV. B. 2. Parcel Post Rate Groups*

| Country | Rate group | Maximum weight limits for air parcel post |
|---|---|---|
| Afghanistan | D | 44 |
| Albania | C | 44 |
| Algeria | D | 44 |
| Andorra | B | 44 |
| Angola | E | 22 |
| Anguilla | A | 22 |
| Antigua and Barbuda. | A | 22 |
| Argentina | D | 44 |
| Aruba | A | 44 |
| Ascension | No Air Service. | |
| Australia | D | 44 |
| Austria | B | 44 |
| Azores | C | 44 |
| Bahamas | A | 22 |
| Bahrain | D | 22 |
| Bangladesh | E | 22 |
| Barbados | B | 44 |
| Belgium | D | 44 |
| Belize | A | 44 |
| Benin | C | 44 |
| Bermuda | A | 44 |
| Bhutan | E | 22 |
| Bolivia | B | 44 |
| Botswana | E | 22 |
| Brazil | E | 44 |
| British Virgin Islands. | A | 44 |
| Brunei | D | 22 |
| Bulgaria | D | 44 |
| Burkina Faso | D | 44 |
| Burma | D | 22 |
| Burundi | E | 44 |
| Cameroon | D | 44 |
| Canada | Separate Rage Group. | 66 |
| Cape Verde | D | 22 |
| Cayman Islands | A | 44 |
| Central African Republic. | E | 44 |
| Chad | D | 44 |
| Chile | D | 22 |
| China (Peoples Republic of). | D | 44 |
| Colombia | B | 44 |
| Comoros | E | 44 |
| Congo | D | 44 |
| Corsica | E | 44 |
| Costa Rica | A | 44 |
| Cote d'Ivoire (Ivory Coast). | D | 44 |
| Cuba | No Parcel Post Service. | |
| Cyprus | C | 44 |
| Czecholowkia | C | 33 |
| Denmark | C | 44 |
| Djibouti | D | 44 |
| Dominica | A | 22 |
| Dominican Republic. | A | 44 |
| Est Timor | No Parcel Post Service. | |
| Ecuador | C | 44 |
| Egypt | D | 44 |
| El Salvador | B | 44 |
| Equatorial Guinea | D | 44 |
| Estonia | E | 22 |
| Ethiopia | D | 44 |
| Falkland Islands | D | 44 |
| Faroe Islands | C | 44 |
| Fiji | B | 44 |
| Finland | D | 44 |
| France | E | 44 |
| French Guiana | C | 44 |
| French Polynesia | D | 44 |
| Gabon | D | 44 |
| Gambia | B | 22 |
| Germany, Federal Republic of. | C | 44 |
| Ghana | D | 22 |
| Gibraltar | C | 44 |
| Great Britain and Northern Ireland. | C | 50 |
| Greece | C | 44 |
| Greenland | D | 44 |
| Grenada | A | 44 |
| Guadeloupe | A | 44 |
| Guatemala | A | 44 |
| Guinea | B | 44 |
| Guinea-Bissau | B | 22 |
| Guyana | B | 44 |
| Haiti | A | 44 |
| Honduras | B | 44 |
| Hong Kong | C | 44 |
| Hungary | C | 44 |
| Iceland | C | 44 |
| India | D | 44 |
| Indonesia | E | 22 |
| Iran | D | 44 |
| Iraq | D | 44 |
| Ireland (Eire) | C | 50 |
| Israel | C | 33 |
| Italy (including San Marino). | C | 44 |
| Jamaica | A | 22 |
| Japan | E | 44 |
| Jordan | C | 44 |
| Kampuchea | No Parcel Post Service. | |
| Kenya | D | 44 |
| Kiribati | B | 44 |
| Korea, Democratic People's Republic. | No Parcel Post Service. | |

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| Country | Rate group | Maximum weight limits for air parcel post |
|---|---|---|
| Korea, Republic of (South) | C | 44 |
| Kuwait | C | 44 |
| Lao | E | 44 |
| Latvia | E | 22 |
| Lebanon | C | 11 |
| Lesotho | E | 22 |
| Liberia | C | 22 |
| Libya | D | 44 |
| Liechtenstein | B | 44 |
| Lithuania | E | 22 |
| Luxembourg | B | 44 |
| Macao | C | 44 |
| Madagascar | E | 44 |
| Madeira Islands | B | 44 |
| Malawi | D | 22 |
| Malaysia | D | 22 |
| Maldives | D | 22 |
| Mali | C | 44 |
| Malta | C | 22 |
| Martinique | A | 44 |
| Mauritania | D | 44 |
| Mauritius | E | 22 |
| Mexico | A | 44 |
| Monaco | E | 44 |
| Mongolia | No Parcel Post Service. | |
| Montserrat | A | 44 |
| Morocco | C | 44 |
| Mozambique | E | 22 |
| Nauru | C | 44 |
| Nepal | D | 44 |
| Netherlands | C | 44 |
| Netherlands Antilles | A | 44 |
| New Caledonia | D | 44 |
| New Zealand | D | 44 |
| Nicaragua | B | 44 |
| Niger | D | 44 |
| Nigeria | C | 22 |
| Norway | D | 44 |
| Oman | D | 22 |
| Pakistan | D | 22 |
| Panama | A | 44 |
| Papua New Guinea | D | 44 |
| Paraguay | D | 44 |
| Peru | B | 44 |
| Philippines | D | 44 |
| Pitcairn Islands | B | 22 |
| Poland | B | 33 |
| Portugal | C | 22 |
| Qatar | C | 44 |
| Reunion | E | 44 |
| Romania | C | 44 |
| Rwanda | D | 44 |
| Saint Christopher & Nevis | A | 44 |
| Saint Helena | C | 44 |
| Saint Lucia | A | 44 |
| Saint Pierre & Miquelon | A | 44 |
| Saint Vincent & the Grenadines | A | 22 |
| San Marino | C | 44 |
| Sao Tome & Principe | D | 44 |
| Saudi Arabia | D | 22 |
| Senegal | D | 44 |
| Seychelles | D | 22 |
| Sierra Leone | D | 44 |
| Singapore | D | 22 |
| Solomon Islands | C | 44 |
| Somalia | D | 44 |
| South Africa (including South West Africa & Namibia) | D | 22 |
| Spain | C | 44 |
| Sri Lanka | D | 44 |
| Sudan | D | 44 |
| Suriname | B | 44 |
| Swaziland | D | 44 |
| Sweden | D | 44 |
| Switzerland | B | 44 |
| Syria | C | 44 |
| Taiwan | C | 44 |
| Tanzania | E | 22 |
| Thailand | D | 44 |
| Togo | D | 44 |
| Tonga | B | 22 |
| Trinidad & Tobago | B | 22 |
| Tristan da Cunha | E | 22 |
| Tunisia | C | 44 |
| Turkey | C | 44 |
| Turks and Caicos Islands | A | 22 |
| Tuvalu | B | 44 |
| Uganda | D | 22 |
| Union of Soviet Socialist Republics | E | 22 |
| United Arab Emirates | D | 44 |
| Uruguay | B | 44 |
| Vanuatu | B | 44 |
| Vatican City State | C | 44 |
| Venezuela | B | 44 |
| Vietnam | No Parcel Post Service. | |
| Wallis & Futuna Islands | D | 44 |
| Western Samoa | B | 22 |
| Yemen, Republic of | E | 44 |
| Yugoslavia | C | 33 |
| Zaire | E | 33 |
| Zambia | E | 44 |
| Zimbabwe | E | 44 |

### V. Fees for Special Mail Services

*V. A. Nonstandard Surcharge*

1. Letters (weighing one ounce or less): 10¢ cents.

2. Regular Printed Matter (weighing one ounce or less): 10¢ cents.

*V. B. Customs Clearance and Delivery Fee:* $3.40

*V. C. Inquiry Fees $3.00¢*

*V. D. Return Receipt (requested at time of mailing): $1.00¢*

*V. E. Registered Mail*

| Limit of indemnity | Fee |
|---|---|
| 1. Canada | |
| $000.00 to $100 | $4.50¢ |
| $100.01 to $500 | 4.85¢ |
| $500.01 to $1,000 | 5.25¢ |
| 2. All other countries | |
| $24.60 | 4.40 |

*V. F. Insured Mail*

Limit of Indemnity [1]

| Not over | Fees | |
|---|---|---|
| | Canada | All other countries |
| $0 | $0.75¢ | $1.60 |
| 100 | 1.90¢ | 2.40 |
| 200 | 2.40¢ | 3.50 |
| 300 | 3.50¢ | 4.60 |
| 400 | 4.60¢ | 5.40 |
| 500 | 5.40¢ | 6.20 |
| 600 | 6.20¢ | 6.80 |
| 700 | | 6.90 |
| 800 | | 7.20 |
| 900 | | 7.50 |
| 1,000 | | 7.80 |
| 1,100 | | 8.10 |
| 1,200 | | 8.40 |

[1] Limits vary by country.

*V. G. Money Orders*

1. Orders Issued on Domestic Form [1]

| Amount of money order | Fee |
|---|---|
| $0.01 to $700 | $.75¢ |

2. Orders Issued on International Form (when payable in the Dominican Republic, Japan, Mexico, or Sierra Leone): $3.00 per money order.

3. Charge for a photostat of a paid money order issued on a domestic form or pursuant to an international authorization form: $2.50¢.

*V. H. Special Handling*

| Weight | Fee |
|---|---|
| Not more than 10 pounds | $1.80¢ |
| More than 10 pounds | $2.50¢ |

*V. I. Special Delivery*

| Class of mail | Not over 2 pounds | Over 2 pounds |
|---|---|---|
| 1. Letters | $5.60¢ | $6.00¢ |
| 2. Post cards | 5.60¢ | 6.00¢ |
| 3. Other articles | 5.90¢ | 6.75¢ |

[1] Service is not available to all countries. See DMM for service availability. Where service is available, the maximum amount of a money order is $700, except that the limit is $300 when payable in Great Britian and $400 when payable in Norway



*V. J. Restricted Delivery* (Not Over 2 Pounds).—$2.50¢

*V. K. Recorded Delivery* (Not Over 2 Pounds).—$0.090

*V. L. Certificates of Mailing*

| | Fee |
|---|---|
| 1. Place Mailings | |
| a. Basic Service (Form 3817) | $0.50¢ |
| b. Firm Book Mailing (Form 3877) | 0.20¢ |
| 2. Bulk Mailings | |
| a. Up to 1,000 identical pieces | 2.50¢ |
| b. Each additional 1,000 pieces | 0.30¢ |
| 3. Duplicate Copy | 0.50¢ |

*V. M. Return Charges*

For returned publishers' periodicals originally mailed to Canada by publishers or registered news agents (IMM 761.5a).

| Weight [1] not over | Charges |
|---|---|
| 1 oz | $0.50¢ |
| 2 | 0.53¢ |
| 3 | 0.76¢ |
| 4 | 0.99¢ |
| 6 | 1.17¢ |
| 8 | 1.29¢ |
| 10 | 1.41¢ |
| 12 | 1.53¢ |
| 14 | 1.65¢ |
| 16 | 1.77¢ |

[1] For weights over 1 pound, use the domestic 6th zone fourth-class rate.

*V. N. International Reply Coupons*

Selling price for U.S. issued coupons: 95 cents.

*V. O. International Business Reply*

1. Envelopes (up to 2 oz.): $0.95.
2. Cards: $0.50.

[FR Doc. 90-28944 Filed 12-10-90; 8:45 am]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency clearance officer—Kenneth Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Form T-1, File No. 270-121
Form T-2, File No. 270-122
Form T-3, File No. 270-344

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval revisions to Forms T-1 and T-2, and new Form T-6 under the Trust Indenture Act of 1939 ("Act") which have been adopted to implement the amendments to the Act effected by the Trust Indentgure Reform Act of 1990. The forms are as follows: Form T-1, Statement of Eligibility Under the Trust Indenture Act of 1939 of a Corporation Designated to Act as Trustee, Form T-2, Statement of Eligibility Under the Trust Indenture Act of 1939 of the an Individual Designated to Act as Trustee, and Form T-6, Application Under section 310(a)(1) of the Trust Indenture Act for Determination of Eligibility of a Foreign Person to Act as Institutional Trustee.

In the usual case, the staff expects that the trustee will not be serving as trustee under an indenture that is in default. For that reason, the trustees would only have to provide minimal disclosure. The staff estimates that approximately 500 institutional trustees may avail themselves of Form T-1 per year at an estimated average burden of 15 hours per response. The staff estimates that approximately 36 individuals trustees may avail themselves of Form T-2 per year at an estimated average burden of 9 hourts per response. The staff estimates that approximately 15 instititutional trustees may avail themselves of Form T-6 per year at an estimated average burden of 17 hours per response.

In cases where indenture securities are in default, trustees would be required to respond to all of the items of the forms, and the staff estimates that the estimated average burgen would be 44 hours per response for the Form T-1, 28 hours for the Form T-2, and 48 hours for the Form T-6. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 5, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-28975 Filed 12-10-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28672; File No. SR-Amex-90-23]

### Self-Regulatory Organizations; Filing of Proposed Rule Change Relating to Specialist, Registered Options Trader and Registered Equity Market Maker Trading for Hedging Purposes.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 1, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex is proposing to amend Exchange Rule 950 to permit specialists and Registered Options Traders ("ROTs") to initiate proprietary orders from the floor in Amex-traded index warrants for the purpose of hedging positions in Amex-traded index options. The rule change also specifies that specialists and Registered Equity Market Makers ("REMM") registered in index warrants may initiate proprietary orders from the floor in Amex-traded options for the purpose of hedging their warrant positions. The text of the proposed rule change is attached as Exhibit A.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

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*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The Amex is proposing to add Commentary .04 to Exchange rule 950 to permit specialists and ROTs to initiate proprietary orders from the floor in Amex-traded index options. The rule change also specifies that specialists and REMMs registered in index warrants may initiate proprietary orders from the floor in Amex-traded options for the purpose of hedging their warrant positions.

This proposal is based on the fact that warrants derived from the same or a similar index as that from which a particular class of options is derived may be an appropriate instrument with which to offset the risk of positions in the options. This is of particular significance to specialists and ROTs making a market in such options, since they should have adequate assurance that, when necessary, they will be able to establish an appropriate hedge against positions acquired in connection with their market maker responsibilities.

Generally, under section 11(a)(1) of the Act and Exchange rules 110 and 111 (made applicable to Exchange options transactions by Exchange rule 950), no member, except under certain circumstances, may initiate transactions in any Exchange-traded security for an account in which he has an interest while on the floor of the Exchange. Except under certain circumstances, this prohibition has historically been interpreted to apply even to orders transmitted by a member from the floor to his or an unaffiliated member's upstairs offices and then routed to an unaffiliated broker on the floor for execution, since the original communication from the floor has been considered to be the action which actually initiated the order. Clearly, the liquidity of the marketplace will benefit if the members making a market in certain index options are readily able to use appropriate Amex-traded warrants as a hedge against their market maker positions, and vice-versa.

Section 11(a)(1) of the Act includes an exemption for transactions effected as bona fide hedges. Inasmuch as the nature of certain index options and index warrants may allow the use of an appropriate position in one to offset the risk of a position in the other, such complementary transactions would seem to satisfy the generally accepted requirements of a bona fide hedge, which, as stated by the SEC in a 1979 release adopting certain interpretations under section 11(a)(1) and expanding the applicability of the bona fide hedge exemption, involve an "appreciable offset of risk for all or part of the position being hedged." [1]

However, neither Exchange rules 110 nor 111 (nor Exchange Rule 950, which makes these rules applicable to Exchange options transactions) currently includes a general exemption for bona fide hedge transactions from the prohibition against initiating orders while on the floor. These rules, adopted many years ago, were based largely on concerns that allowing members to enter proprietary orders while on the floor would give them a time and place advantage over orders being entered from off the floor. Nevertheless, it has always been recognized that certain transactions, because of their particular nature and importance to the efficient operation of the marketplace, should not be subject to these restrictions. Thus, for example, exemptions have been established for transactions by a market maker in any security in which he is so registered, bona fide arbitrage transactions, and transactions effected to offset others made in error. In addition, rule 111 contains an exemption for transactions initiated by a specialist registered in rights in a security which is the subject of the rights for the purpose of acquiring or liquidating a hedge against the rights. It would seem appropriate to adopt similar exemptive language for specialists and ROTs wishing to hedge their positions in Amex-traded index options with positions in appropriate Amex-traded index warrants. Similarly, it seems appropriate to allow specialists and REMMs in the index warrants the same flexibility in hedging their positions with index options.

The concerns over the potential for a time and place advantage on which Exchange rules 110 and 111 were in large part based are, of course, countered by the general nature of the products on which the proposal focuses. Since neither product is derivative of the other, and both are derivative of market indices, there appears to be little possibility that activity in one would influence trading or prices in the other. Prices in each will change on the basis of their respective indices. While this in itself is sufficient to moot any concerns over a possible time and place advantage, certain products by their nature will offer additional assurances. For instance, with respect to options on the Japan Index, which recently commenced trading on the Exchange, and warrants on the Nikkei Index, which began trading on the Exchange earlier this year, the stocks composing the indices from which each product is derived do not even trade during Amex trading hours, further removing any possible time and place advantage for traders on the Amex floor. Finally, to ameliorate any remaining concerns over a possible time and place advantage, the proposed exemption requires that a hedging order initiated from the floor must be transmitted to an upstairs office or to a booth on the floor before being given to a broker for execution.

Since the exemption will generally involve options-related positions, it is proposed that it be adopted as Commentary .04 to Exchange rule 950, which, as noted above, makes Exchange rules 110 and 111 applicable to Exchange options transactions. Additional commentary will apply the exemption to any specialist or REMM registered in Amex-traded index warrants to the extent they wish to hedge their warrant positions by taking a position in appropriate Amex-traded index options.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it protects investors and the public interest by helping to foster liquidity in the marketplace for the securities on which it focuses.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-23 and should be submitted by January 2, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Exhibit A**

*American Stock Exchange, Inc.; Proposed Rule Changes*

It is proposed that the following provisions of the American Stock Exchange Rules be amended as set forth below. Brackets [ ] indicate material to be deleted; italics material to be added.

Rule 950. (a) The following Floor Rules shall apply to Exchange option transactions and other transactions on the Exchange in option contracts: 100, 101, 103, 104, 105, 106, 109, [110], 112, 117, 123, 129, 130, 135, 150, 151, 152, 153, 155, 157, 170, 172, 173, 174, 175, 176, 177, 180, 181, 183, 184, 185, 192 and 193. Unless the context otherwise requires, the term "stock" wherever used in the foregoing Rules shall be deemed to include option contracts. Except as otherwise provided in this Rule, all other Floor Rules (series 100 et seq.) shall not be applicable to Exchange option transactions.

(b) Unchanged.

(c) The provisions of Rules *110* and 111 and Commentary thereto, with the exception of paragraphs (a)(1), (b) and (e) of [such] Rule *111* and the Commentary insofar as it relates to such paragraphs, shall apply to Exchange option transactions. In addition, the following commentary shall also apply:

. . . Commentary

.01–.03 Unchanged.

*.04(a) Specialists registered in options on a broad-based market index, and Registered Options Traders, may, while on the Floor, initiate transactions in Exchange-traded warrants on the same or another broad-based market index for the purpose of acquiring or liquidating a bona fide hedge against such options, and the provisions of Rule 110 and of paragraphs (a) through (e) of Rule 111 shall not apply to such transactions.*

*(b) Specialists and Registered Equity Market Makers registered in warrants on a broad-based market index may, while on the Floor, initiate transactions in Exchange-traded options on the same or another broad-based market index for the purpose of acquiring or liquidating a bona fide hedge against such warrants, and the provisions of Rule 110 and of paragraphs (a) through (e) of Rule 111 shall not apply to such transactions. Nothing contained in this Commentary .04(b) shall be construed to limit the activities of Registered Options Traders.*

*(c) Any transaction initiated by a member while on the Floor for the purpose of acquiring or liquidating a bona fide hedge as described in Commentary .04(a) or (b) must be transmitted to an upstairs office or to a booth on the Floor, before being given to a broker for execution.*

[FR Doc. 90-8976 Filed 12-10-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 34-28571; International Series Rel. No. 202; File No. SR-Amex-90-22]**

**Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Foreign Issuers and Rights Offerings**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend sections 110 and 340 of the Amex *Company Guide* to modify the procedure for foreign issuers seeking relief under the "custom and tradition" rule and to allow listed companies to issue nontransferable rights.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Foreign Issuers. Several years ago, the Exchange amended its listing guidelines to provide added flexibility in listing the securities of a foreign issuer which did not satisfy corporate governance requirements such as (i) The election and composition of the board of directors; (ii) quarterly reporting; (iii) shareholder approval; and (iv) quorum. Pursuant to these so-called "custom and tradition" rules, a non-U.S. issuer is eligible to list, provided that it furnishes an opinion from foreign counsel that the nonconforming practice is consistent with the laws, customs and practices of its country of origin.[1] Similar rules were adopted by the NYSE [2] and the National Association of Securities Dealers ("NASD").[3]

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[1] *See* SEC Rel. No. 34-15930, 1979 Fed. Sec. L. Rep. (CCH) ¶ 21,888.

[1] *See* Securities Exchange Act Rel. No. 24634 (June 23, 1987), 52 FR 24230 (June 29, 1987) by which the Commission approved proposed rule changes submitted by the Amex and the New York Stock Exchange ("NYSE") to amend the Exchanges' listing standards for foreign companies (File Nos. SR-Amex-86-6 and SR-NYSE-86-14).

[2] *Id.*

[3] *See* Securities Exchange Act Rel. No. 24632 (June 23, 1987), 52 FR 24233 (June 29, 1987) (Order

Continued

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To further facilitate the listing process for non-U.S. issuers, it is proposed to amend the *Company Guide* to allow consideration of any nonconforming practice in the four corporate governance areas which is not prohibited by foreign law. A similar rule change was recently adopted by the NYSE.[4]

Nontransferable Rights. Companies issue subscription rights as an inexpensive means to raise new capital from their existing shareholders. In this process, whole or fractional rights, entitling the holders to subscribe for new shares at a discounted price, are distributed for each outstanding share of common stock. Subscription rights ordinarily expire within twenty to thirty days and usually trade at a price well below a dollar.

Section 340 of the *Company Guide* requires that subscription rights be freely transferable. This provision was originally adopted to assure that all shareholders—even those who do not choose to exercise their rights—are able to sell them and thereby receive some monetary value. This was particularly important since the price of the underlying stock would be reduced by the value of the right which was distributed.

In recent years, however, a number of Amex companies, citing tax [5] and other concerns—including the fact that neither the NYSE nor the NASD have such a policy—have sought to distribute nontransferable rights to their shareholders. When nontransferable rights are distributed, the price of the underlying security is not reduced by the value of the right, assuring that no shareholder suffers any economic loss. In view of these circumstances, and after considering that, as a practical matter, rising commission fees would discourage small investors from selling their rights, it is proposed that Section 340 and the related provision in the Form SD–1 Listing Agreement be amended to eliminate this restriction.

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approving File No. SR–NASD–86–37 relating to eligibility standards for issuers of NASDAQ National Market System ("NMS") securities). See also Securities Exchange Act Rel. Nos. 24623 (June 23, 1987), 52 FR 24234 (June 29, 1987) (Order approving amendments to the transaction reporting plan for NASDAQ/NMS securities) and 24634, *supra* note 1.

[4] *See* Securities Exchange Act Rel. No. 27584 (December 20, 1989), 54 FR 53227 (December 27, 1989) (File No. SR–NYSE–89–16).

[5] One such issue is the possibility that outside investors would subscribe to a sufficiently large enough number of shares so as to constitute (for tax purposes) a "change of control," thereby jeopardizing the company's ability to preserve its tax-loss carryforward.

2. Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) and 6(b)(6) in particular in that they are intended to remove impediments to and perfect the mechanism of a free and open market and a national market system, and assure that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will remove or lessen existing burdens on competition by facilitating the entry of foreign issuers to the U.S. capital markets and eliminating an outdated policy to which only Amex listed companies are subject.

*C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–90–22 and should be submitted by January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90–28873 Filed 12–10–90; 8:45am]

BILLING CODE 8010–01–M

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[Rel. No. 34–28970; International Series Rel No. 201; File No. SR–NYSE–90–55]

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Warrants Based on the European Index**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NYSE proposes to approve for listing and trading under § 703.17 of the Exchange's *Listed Company Manual* warrants based on the European Index ("European Index" or Index"), a stock index established by London & Bishopsgate International, Inc. and licensed by the NYSE, which includes 102 companies spanning 10 European countries and 26 industrial sectors.

**II. Self-Regulatory Organization's Statement of the Purpose of, and statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Commission recently approved an NYSE proposal to list index warrants based on established domestic and international stock indexes (hereinafter referred to as "Index Warrant Approval Order").[1] The NYSE now proposes to list index warrants based on the European Index, a capitalization-weighted index. The European Index includes 102 companies representing 10 European countries and 26 industrial sectors.[2] The market capitalization of the European Index on June 29, 1990 was about $950 billion.

Such Index warrant issues will conform to the listing guidelines under § 703.17, which provide that: The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in § 102.01 of the *Listed Company Manual*; (2) the term of the warrants shall be for a period of at least one year; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

European Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the European Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the European Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Pursuant to the Index Warrant Approval Order, the NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts that would be applicable to transactions in Index warrants. Specifically, rule 405, Supplementary Material .30 applies the options suitability standard in rule 723 to recommendations regarding index warrants, and recommends that index warrants be sold only to options-approved accounts. Rule 406, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the NYSE, prior to the commencement of trading in Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the European Index.

In the Index Warrant Approval Order, the Commission noted that, with respect to index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. In this regard, the Exchange notes that at the present time it has surveillance sharing agreements in the United Kingdom with the Securities Association, in France with the Societe des Bourses Francaises and in Germany with the Frankfuter Wertpapierborse (Frankfurt Stock Exchange).[3]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 4, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90–28974 Filed 12–10–90; 8:45 a.m.

BILLING CODE 8010–01–M

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[Rel. No. IC–17884; 812–7338]

**Equitable Capital Partners, L.P. et al.; Application**

December 5, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application under section 57(i) of the Investment Company Act of 1940 (the "1940 Act") and rule 17d–1 thereunder.

**APPLICANTS** Equitable Capital Partners, L.P. and Equitable Capital Partners (Retirement Fund), L.P. (the

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[1] *See* Securities Exchange Act Rel. No. 28158 (June 25, 1990), 55 FR 27734.

[2] The countries that have companies included in the Index are Belgium, France, Germany, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, and the United Kingdom. See Exhibit A to this filing for a list of the stocks included in the Index and the weighting of each country in the Index as of June 29, 1990.

[3] Based on the Index value on June 29, 1990, issues from the United Kingdom, Germany, and France represented 36.71%, 21.58%, and 18.02%, respectively, of the Index's value.

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"Partnerships"), Equitable Deal Flow Fund, L.P. ("Institutional Fund I"), and Equitable Capital Management Corporation ("Equitable Capital").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 57(i) and rule 17d-1.

**SUMMARY OF APPLICATION:** Applicants seek an amendment to an existing order (Investment Company Act Rel. No. 16522 (Aug. 11, 1988) (the "Existing Order")) to (i) Permit certain affiliated persons of the Equitable Life Assurance Society of the United States ("Equitable Life") or any of its subsidiaries to serve as directors of Equitable Capital; (ii) permit Equitable Life and its subsidiaries (other than Equitable Capital) and certain other affiliates of Equitable Capital to invest as limited partners in certain limited partnerships that will invest in entities in which the Partnerships also invest; and (iii) amend and restate all of the conditions and undertakings contained in the Existing Order.

**FILING DATES:** The application was filed on May 22, 1990, and amendments thereto were filed on June 12, 1990 and November 7, 1990. By letter dated December 4, 1990, counsel for applicants agreed to submit an additional amendment to the application, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 28, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1285 Avenue of the Americas, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

Each Partnership is a Delaware limited partnership that has elected to operate as a business development company under the 1940 Act. The Partnerships invest primarily in subordinated debt and related equity securities issued in conjunction with the "mezzanine financing" of privately-structured leveraged buyouts and other enhanced yield transactions ("Leveraged Transactions"). The securities in which the Partnerships invest are referred to as "Enhanced Yield Investments." The Partnerships have filed a joint registration statement on Form N-2 (File No. 33-20093) under the Securities Act of 1933 (the "1933 Act") with respect to an offering of limited partnership interests and have raised a total of $504.7 million in gross proceeds.

2. Equitable Capital, an independent, wholly owned subsidiary of Equitable Life, is the managing general partner of, and the investment adviser to, each of the Partnerships. Each Partnership has four independent general partners who are not "interested persons" of such Partnerships within the meaning of section 2(a)(19) of the 1940 Act (the "Independent General Partners"). *See* Investment Company Act Release No. 16444 (June 21, 1988). Institutional Fund I is a privately-offered Delaware limited partnership with an investment objective substantially similar to that of the Partnerships. It is excluded from the definition of "investment company" by section 3(c)(1) of the 1940 Act. The general partner of Institutional Fund I is a limited partnership of which Equitable Capital and Equitable Life are partners. Equitable Capital also serves as the investment adviser to Institutional Fund I. In addition, Equitable Capital serves as the general partner and manager of Equitable Capital Private Income and Equity Partnership II, L.P., also excluded from the definition of "investment company" by section 3(c)(1) of the 1940 Act (the "Institutional Fund II", and together with Institutional Fund I, the "Institutional Funds").

3. The Existing Order permits the Partnerships to purchase Enhanced Yield Investments in joint transactions with each other and/or with "Equitable Affiliates," a term that includes Equitable Life (and its subsidiaries other than Equitable Capital); Institutional Fund I; funds that may be organized or sponsored by Equitable Capital in the future and have investment objectives similar to the Partnerships (such as Equitable Capital Partners II, L.P. and Equitable Capitals Partners (Retirement Fund) II, L.P. both of which were recently formed (the "Equitable Capital Partners II Partnerships")); and Equitable Capital advisory accounts that have similar investment objectives. For purposes of this definition, a Partnership is not an Equitable Affiliate with respect to the other Partnership and a Sponsor Limited Partnership (as defined below) is not an Equitable Affiliate.

4. The application for the Existing Order sets forth certain guidelines to which the Partnerships' investments are subject (the "Guidelines").[1] The Guidelines relate to various aspects of the Enhanced Yield Investments and are designed, *inter alia*, to limit potential conflicts of interest between the Partnerships and Equitable Affiliates by delineating specific categories of eligible investments for the Partnerships. With respect to any proposed investment that does not meet the Guidelines, the Independent General Partners must make determinations as to several factors before the investment is made. In addition, the relief provided by the Existing Order is subject to several conditions that relate to the operations of the Partnerships and to coinvestments by the Partnerships with each other and with Equitable Affiliates.

5. Condition (ix) under the Existing Order is designed to ensure that neither Equitable Life nor any subsidiary of Equitable Life influences the identification, selection, or structure of any Enhanced Yield Investment. Condition (ix)(b) effectively prohibits certain persons who may be officers, directors, and/or employees of Equitable Life (or its subsidiaries) from serving on the board of directors of Equitable Capital. Applicants seek to amend the Existing Order to permit any such person to serve as a director of Equitable Capital. Applicants assert that the relief requested will not affect the Partnerships' policies or management structure, including the substantive obligations imposed on the Independent General Partners or the process by which Enhanced Yield Investments are evaluated, allocated, and disposed of by the Partnerships.

6. Equitable Life and other Equitable Affiliates now desire to invest indirectly in leveraged buyout transactions through limited partnerships organized by sponsors of such transactions ("Sponsor Limited Partnerships"). The Partnerships desire the ability to invest directly in securities of issuers in which such Sponsor Limited Partnerships also may invest. However, it is contemplated that a Sponsor Limited Partnership typically will purchase the common stock (together, in unusual instances, with a debt component) of the portfolio company, and the Partnerships will purchase Enhanced Yield Investments. Because the Existing Order contemplates joint transactions involving "parallel investments," i.e., it requires that the securities purchased by the Equitable Affiliates be of the same type as those purchased by the Partnerships, applicants seek to amend the Existing Order to permit the investments described above.

7. The Independent General Partners of the Partnerships have retained independent counsel to advise them in the performance of their duties. In addition, the Independent General Partners will cause the Partnerships to retain independent consultants (the "Independent Consultants"). The Independent Consultants will assist the Independent General Partners in making required findings as to fairness and absence of overreaching with respect to investments by the Partnerships in transactions involving certain Sponsor Limited Partnerships or any proposal to dispose or change the material terms of, or make a Follow On Investment (as defined in the application) in, such an investment. In addition, the Independent General Partners may consult with the Independent Consultants if the Partnerships or any Equitable Affiliate (other than the Equitable Capital Partners II Partnerships, which will be required to dispose of securities held by them as coinvestments with the Partnerships on a lock-step basis) propose to dispose of certain securities purchased in a coinvestment by the Partnerships with an Equitable Affiliate.

8. To ensure that the Independent Consultants are independent, no Independent Consultant will be an "affiliated person" of the Partnerships, Equitable Capital, any Equitable Affiliate, or the company which is the subject of the transaction, or an "affiliated person" of such "affiliated person," within the meaning of the 1940 Act, and no Independent Consultant will have had, at any time since the beginning of the last two fiscal years, a material business or professional relationship with the Partnerships or the Equitable Capital Partners II Partnerships (other than as Independent Consultant to the Independent General Partners thereof), any Equitable Affiliate, any portfolio company, or the sponsor or Sponsor Limited Partnership involved in the transaction for which the Independent Consultant is retained.[2] For these purposes, a material business or professional relationship will be deemed not to exist so long as the aggregate total revenues received by any Independent General Consultant from any of the entities above during the two most recent fiscal years (other than fees to be paid in connection with their assistance to the Independent General Partners thereof) represent no more than 10% (with respect to an entity) or 5% (with respect to an individual), as the case may be, of the aggregate total revenues earned by such Independent Consultant during the same period. In addition, an Independent Consultant with respect to a transaction will not be involved in such transaction as a sponsor or investor or in any other respect.

**Applicant's Legal Analysis**

1. Applicants submit that the requested modification of the Existing Order, to permit any person who serves as an officer, director, or employee of Equitable Life or any other Equitable Affiliate to serve on Equitable Capital's board of directors, is consistent with the provisions, policies, and purposes of the 1940 Act. Applicants state that the structure and organization of Equitable Capital will continue to provide substantial protection against the overreaching sought to be prevented by the Existing Order. Applicants submit that the detailed policies and procedures followed by the Partnerships and the Independent General Partners in considering the acquisition or disposition of Enhanced Yield Investments, which are the central concern of the Existing Order, would not be affected by the relief described above. In particular, the Independent General Partners will continue to determine whether each proposed Enhanced Yield Investment meets the Guidelines or otherwise is fair and reasonable, does not involve overreaching, and is consistent with the interests of the limited partners of the Partnerships.

2. Equitable Life is a controlling person of the Partnerships by virtue of its ownership of Equitable Capital. Persons who are copartners of Equitable Life or other Equitable Affiliates are subject to the prohibitions of section 57(a)(4) of the 1940 Act and rule 17d-1 thereunder. Thus, investments by Equitable Affiliates in Sponsor Limited Partnerships that invest in the common stock of companies in which the Partnerships purchase Enhanced Yield Investments may be prohibited. Moreover, such investments would not satisfy the Existing Order's Guideline requiring parallel investments by the Partnerships and the Equitable Affiliates. Applicants seek to modify the Existing Order to permit these investments.

3. Sponsors normally create Sponsor Limited Partnerships as the first step toward financing several leveraged transactions to be identified later by the sponsor. Investors, such as the Equitable Affiliates, invest in a "blind pool" and are completely dependent on the sponsor or the general partner to identify suitable investments for the Sponsor Limited Partnership. Although an Equitable Affiliate may hold the largest partnership interest in a Sponsor Limited Partnership, it will not, as a limited partner, be able to cause a Sponsor Limited Partnership to structure a transaction in a manner that would adversely affect an investment in the same company by the Partnerships. No Equitable Affiliate will have any rights with respect to the securities of any such company other than an indirect interest resulting from its status as a limited partner of a Sponsor Limited Partnership. In addition, applicants have agreed to certain conditions that are designed to minimize the potential for conflicts of interest among Equitable Affiliates and the Partnerships. For example, if a Partnership proposes to make an Enhanced Yield Investment in any company in which a Sponsor Limited Partnership is significantly invested (as specified in the conditions), then the Independent General Partners will be required to consult with the Independent Consultants and make specific findings with respect to the suitability of the investment.

4. Absent the requested relief, Equitable Affiliates would be prevented from participating in desirable investment opportunities without any demonstrable benefit to the Partnerships. Applicants submit that participation by an Equitable Affiliate as a limited partner in Sponsor Limited Partnerships, under the conditions set forth below, is consistent with the purposes of section 57(a) of the 1940 Act. Applicants assert that the requested relief is supported by prior orders permitting sponsors of leveraged transactions to coinvest directly with

[1] The Guidelines are summarized in the Notice of the Existing Order. See Investment Company Act Release No. 16403 (July 15, 1988).

[2] By letter dated December 5, 1990, counsel for the applicants represented to the staff of the Division of Investment Management that the applicants intend to amend the application during the notice period to provide that an Independent Consultant will not have a material business or professional relationship with the sponsor or Sponsor Limited Partnership involved in a transaction for which the Independent Consultant is retained. The relief described herein is contingent on such an amendment.

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public business development companies controlled by them. E.g., ML-Lee Acquisition Fund II, L.P., Investment Company Act Release No. 17123 (Sept. 1, 1989).

**Applicants' Conditions**

The relief granted pursuant to the Existing Order and the instant application will be subject to the following conditions:

(i) Other than Temporary Investments (as defined in the application for the Existing Order) and investments described below, each investment made by a Partnership will have to meet, in the determination of the Independent General Partners of such Partnership, as described below, the Guidelines or be approved by the Independent General Partners. However, deviation from Managed Company Guideline 1 [9] is permitted only in cases involving a Sponsor Limited Partnership, as described in the application.

(ii)(a) Equitable Capital will evaluate each proposed Enhanced Yield Investment opportunity to ascertain whether it may be an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will bring such investment to the attention of the Independent General Partners of each Partnership for review in the manner specified in the application for the Existing Order.

(b) If the Independent General Partners of a Partnership determine that the investment meets the applicable Guidelines, the investment will be eligible for investment by the Partnership, and, subject to items (iii) and (vi) below, each such investment will be acquired by the Partnership, unless the other Partnership is prevented from investing because of limitations imposed by its investment policies set forth in the Partnerships' registration statement, by federal income tax requirements that could result in unrelated business taxable income for its partners, or for any other similar reason. In a case where one Partnership is subject to such limitations, neither Partnership will invest. A Partnership will not acquire an Enhanced Yield Investment from the other Partnership or any Equitable Affiliate.

[9] Managed Company Guideline 1 requires parallel investments. It generally provides that if an Equitable Affiliate invests in securities of a portfolio company in which the Partnerships also invest, each Partnership will purchase the same class of securities acquired by the Equitable Affiliate and the terms of the purchase will be identical in all material respects to those obtained by the Equitable Affiliate.

(c) If there are presented to the Independent General Partners more investments than a Partnership has available funds to acquire, the Independent General Partners will have to determine, with the advice of Equitable Capital, the order of priority of such investments.

(d) If a proposed investment does not meet the Guidelines, the Independent General Partners will have to make the determinations specified in paragraph (iv) below in the manner specified in the application for the Existing Order.

(iii)(a) Each investment proposed as an Enhanced Yield investment will be allocated to the Partnerships and Equitable Affiliates investing therein according to a ratio based on the amount of capital that each such investor has indicated to Equitable Capital is available for investment (including all borrowings that have been committed but not yet drawn down) in Mezzanine, Other, Follow On, and Bridge Investments (all as defined in the application), as the case may be, provided that (1) With respect to each such proposed investment of at least $10 million in size, each Partnership and each Equitable Affiliate will be allocated a minimum amount of $1 million, (2) with respect to each such proposed investment of less than $10 million in size, neither a Partnership nor any Equitable Affiliate will be required to coinvest less than $1 million, and (3) a Follow On investment in a portfolio company in which the Partnerships and Equitable Affiliates have invested will be allocated according to the ratio of available capital that each such investor initially invested in Mezzanine, Bridge, or Other Investments in such portfolio company.

(b) The Equitable Capital Partners II Partnerships together will have the right to an allocation of at least 25% of any proposed Enhanced Yield Investment which meets the investment objective of such partnerships during the time that the Partnerships are entitled to a 25% allocation right of any proposed Enchanced Yield Investment. Under the terms of their respective Amended and Restated Agreements of Limited Partnership, the Partnerships together have the right to an allocation of at least 25% of any proposed Enhanced Yield Investment after each such Partnership has become at least 75% invested and prior to the time each has become fully invested. Each of the Partnerships is now 75% invested, so that their allocation right is equal to the right of the Equitable Capital Partners II Partnerships, i.e., at least 25% of any proposed Enhanced Yield Investment. Institutional Fund II has no allocation rights, although Equitable Capital may grant allocation rights to other Equitable Affiliates, subject to the rights of the Partnerships and provided that no Equitable Affiliates will have the right to an allocation that is greater than the allocation right in effect for the Partnerships.

(c) Proposed Enhanced Yield Investments will be allocated between the Partnerships based on the ratio of available capital which each Partnership has indicated is available for investment (including all borrowings that have been committed but not yet drawn down). With respect to Equitable Capital Partners, L.P., the determination of available capital during the first two years of the investment period will be made as if such Partnership has borrowed an amount equal to 50% of the net proceeds available for investment and thereafter will be made based on the actual percentage of borrowings made by such Partnership (including all borrowings that have been committed but not yet drawn down). This allocation formula is designed to ensure that the overall allocation of Enhanced Yield Investments to Equitable Capital Partners, L.P., which has the right to borrow up to 50% of the net proceeds available for investment, is made so that the allocation of investments between the Partnerships remains as constant as practicable throughout the term of the Partnerships and so that the portfolio investments made by each Partnership will be as similarly constituted as possible.

(d) Equitable Capital will provide the Independent General Partners with information concerning the amount of capital which Equitable Affiliates have available for investment (including all borrowings that have been committed but not yet drawn down) in order to assist the Independent General Partners with their review of the Partnerships' investment for compliance with these allocation procedures.

(iv) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners of a Partnership will be required to make findings recorded in the records of the Partnership that (a) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned and (b) the proposed transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the



policy of the Partnership as recited in filings made by such Partnership under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners. If a non-Guideline investment is deemed eligible for investment in accordance with the above procedure, then, subject to items (iii) and (vi), such investment will be acquired by the Partnership, unless the other Partnership is prevented from investing because of limitations imposed by its investment policies set forth in the registration statement, by federal income tax requirements that could result in unrelated business taxable income for its partners, or for any other similar reason. In a case where one Partnership is subject to such limitations, neither Partnership will invest. No Partnership will purchase a non-Guideline investment from the other Partnership or any Equitable Affiliate.

(v) Other than as permitted pursuant to the application, no Equitable Affiliate, Independent General Partner, or any other "affiliated person" of a Partnership (as defined in section 2(a)(3) of the 1940 Act) will participate in a transaction in which a Partnership invests unless such participation is permitted by the 1940 Act or any other separate exemption obtained thereunder. Neither Partnership will invest in any securities issued in transactions sponsored by any Equitable Affiliate, including Donaldson, Lufkin & Jenrette, Inc. or its subsidiaries, ("DLJ"), all subsidiaries of Equitable Life, or purchase securities in which DLJ is acting as a managing or lead underwriter.

(vi) If securities constituting an Enhanced Yield Investment are proposed to be purchased by a Partnership, coinvestments in such securities by the other Partnership or one or more Equitable Affiliates must be made in accordance with the lock-step provisions of Managed Company Guideline 1 and the terms of purchase (including terms as to purchase price, settlement date, registration rights, if any, and other rights provided to purchasers of such investments) will be identical.

(vii) Disposition of securities held by the Partnership will be as follows:

(a) The Partnerships will participate in the disposition of securities held by them as coinvestments on a proportionate basis and on the same terms and conditions (a "lock-step disposition"), except for a disposition resulting solely from actions taken in connection with a source of financing to Equitable Capital Partners, L.P.

(b) The Partnerships and the Equitable Capital Partners II Partnerships will participate in the disposition of securities held by them as coinvestments in a lock-step disposition, except for a disposition resulting solely from actions taken in connection with a source of financing to Equitable Capital Partners, L.P. or Equitable Capital Partners II, L.P.

(c) If the Partnerships or any Equitable Affiliate, other than the Equitable Capital Partners II Partnerships, propose to dispose of a security purchased in a coinvestment by the Partnership with an Equitable Affiliate, the Partnerships and any Equitable Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless, in the case of a sale proposed by an Equitable Affiliate, the Independent General Partners of a Partnership, who may consult with Independent Consultants, determine that a Partnership should not participate in such sale or not participate on a lock-step basis based on findings (to be recorded in the records of the Partnership) that the retention or sale, as the case may be, of the securities is fair to the Partnership and that such Partnership's participation or choice not to participate in the sale is not the result of overreaching by Equitable Capital or an Equitable Affiliate. If the Independent General Partners of both Partnerships do not make such a finding, then both Partnerships must participate with Equitable Affiliates in such sale on the basis of a lock-step disposition.

(d) If at any time the result of a proposed disposition of any portfolio security head by a Partnership would be to alter the proportionate holdings of each class of securities held by a Partnership and any Equitable Affiliate, then the Independent General Partners of the Partnership, who may consult with Independent Consultants, must determine that such a result is fair to the Partnership and is not the result of overreaching by an Equitable Affiliate.

(viii) The Independent General Partners of each Partnership will be provided quarterly for review all information concerning coinvestments made by the Partnerships including investments made by an Equitable Affiliate which one or more of the Partnerships declined to participate in, so that they may determine whether all investments made during the preceding quarter, including those investments such Independent General partners decline to make, comply with the conditions set forth above. The Independent General Partners of each Partnership will consider on a quarterly basis the continuing appropriateness of the standards established for investments by the Partnership. In this regard, the Independent General Partners will consider whether use of such standards continues to be in the best interests of the Partnership and the limited partners and does not involve overreaching of the Partnership or its limited partners on the part of any party concerned.

(ix) Equitable Capital has in place and will maintain the following policies and procedures to ensure that neither Equitable Life nor any subsidiary of Equitable Life influences or (other than the institutional Funds) participates in the identification, selection, arranging, negotiation, or documentation of any Enhanced Yield Investment:

(a) Equitable Capital will evaluate each proposed Enhanced Yield Investment Opportunity to ascertain whether it may be an appropriate investment for the Partnerships. If it determines that a proposed investment is appropriate, Equitable Capital will present such investment to the Independent General Partners of each Partnership, either certifying that such investment meets the Guidelines or, if it does not, seeking approval of such investment by the Independent General Partners, and the Independent General Partners shall either approve or disapprove such investment before Equitable Capital presents such proposed investment to Equitable Life or any Equitable subsidiary.

(b) All determinations by Equitable life whether to buy or sell Enhanced Yield Investments involving coinvestments with the Partnerships will be made by persons who are not officers or employees of Equitable Capital. All similar determinations by Equitable subsidiaries will be made by appropriate persons of such subsidiaries who are not officers or employees of Equitable Capital.

(c) Equitable Capital maintains separate books and records for its own affairs and has a capitalization and financial structure separate from Equitable Life and other Equitable subsidiaries.

(x) (a) Equitable Capital will notify promptly the Independent General Partners of the Partnerships of the identity of, and percentage ownership interest in, each Sponsor Limited Partnership in which an Equitable Affiliate is or becomes a limited partner. If at the time an Equitable Affiliate subscribes to become a limited partner in a Sponsor Limited Partnership the sponsor has already targeted a company

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for a Leveraged Transaction, the Partnerships will not provide financing for such transaction. All sponsors will be unaffiliated with Equitable Capital.

(b) If (1) Equitable Affiliates, in the aggregate, own as limited partners more than 5% of the total limited partner interests in a Spoor Limited Partnership (a "5% SLP") or (2) Equitable Affiliates, in the aggregate, have invested more than $20 million in a Sponsor Limited Partnership (a "$20 Million SLP), then any proposed Enhanced Yield Investment by the Partnerships in a transaction in which it is also proposed that a 5% SLP or a $20 Million SLP will also make an investment, and any proposed Enhanced Yield Investment by a Partnership in any entity in which a 5% SLP or a $20 Million SLP is then invested, will be submitted to the Independent General Partners for approval. In these cases, a Partnership will not make the proposed investment unless the Independent General Partners of such Partnership, who will consult with independent consultants, make the determinations in subparagraph (c) below.

(c) If a Partnership proposes to dispose of, waive, or amend the material terms or conditions of, or make a Follow On Investment in, securities of a portfolio company in which a 5% SLP or a $20 Million SLP has also invested, such transaction by the Partnership will have to be approved by the Independent General Partners, who will consult with Independent Consultants, on the basis that the terms thereof, including the consideration to be paid or received, are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of such Partnership or of its limited partners on the part of any person concerned, and the proposed transaction is consistent with the interests of the limited partners of the Partnership and is consistent with the policy of such Partnership as recited in filings made by such Partnership with the Commission under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners.

(xi) No changes will be made in the Guidelines or the conditions until an amendment of the order is obtained from the Commission.

(xii) If, under a Partnership Agreement, a Partnership is or becomes authorized to make in-kind distributions of portfolio securities to its partners, no such in-kind distributions will be made until such Partnership has either obtained a no-action letter from the staff of the SEC or, in the alternative, has obtained an order pursuant to section 206A of the Investment Advisers Act of 1940 permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28914 Filed 12-10-90; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petitions for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

**The Atchison, Topeka and Santa Fe Railway Co.**

Docket Number H-90-3

The Atchison, Topeka and Santa Fe Railway Company (ATSF) is granted a limited suspension of compliance from certain sections of 49 CFR part 231, Safety Appliance Standards, and 49 CFR part 232, Railroad Power Brakes and Drawbars, to allow it to perform rail tests of RoadRailer equipment. Participants in the test program will include the Norfolk Southern Corporation (NS), Mark VII Transportation Company, Triple Crown Services, Inc., a subsidiary of the (NS), and RoadRailer.

The RoadRailer semi-trailers, by design, cannot be subjected to traditional switching procedures that are conducted in railroad classification yards. The RoadRailer semi-trailer has no safety appliances and the limited suspension of compliance will permit non-compliance with all the provisions of the Safety Appliance Standards (49 CFR part 231). These regulatory standards include provisions for the number, location and dimensional specifications for the handholds, ladders, sill steps and hand brakes that are required for each railroad freight car. The RoadRailer coupler assembly will only couple to another RoadRailer vehicle or to a specially designed adaptor mechanism between the locomotive and a RoadRailer semi-trailer and is not of the standard height required in the Railroad Power Brakes and Drawbar Regulations (49 CFR 232.2).

The ATSF plans to operate a test train in December, 1990, in conjunction with the NS from Knoxville, Tennessee, to Los Angeles, California, via Kansas City, Missouri, and return to Ft. Wayne, Indiana. The purpose of the test is to determine the marketing and operational feasibility of such an operation on the ATSF.

In its operation of the RoadRailer test train, the ASTF intends to work with the NS and Triple Crown Services and to use its procedures and materials to assure a safe test operation. Approximately 40 RoadRailer units will be in the test train. The RoadRailers will be provided by Triple Crown Services from its existing fleet. The railroads will provide locomotives on their respective lines. In addition, certain business/inspection cars will be included in the test train consist.

The NS presently operates RoadRailers under conditional waivers, FRA Docket Numbers SA-87-2 and PB-87-4. One of the conditions of the NS waiver is that it may not interchange RoadRailers with any other railroad unless the condition is modified by the FRA. The test program will be subject to the following conditions:

1. That the test limited suspension of compliance shall expire on January 1, 1991;

2. That the test limited suspension of compliance shall include only the NS and the ATSF railroads;

3. That for the purpose of this test, the NS shall be permitted to interchange RoadRailers with the ATSF;

4. That the inspection, testing and maintenance of the RoadRailers while they are on the ATSF railroad shall be performed by, or under the direct supervision of, qualified Triple Crown Service employees;

5. That all train crews who are not familiar with, and are assigned to operate, the RoadRailer test train be provided with adequate instructions regarding train handling, or be accompanied by NS operating personnel who have experience in operating RoadRailer trains; and

6. That the FRA shall be notified when the test is completed, and if any unusual incidents occur.

**Gulf States Steel, Inc.**

Docket Numbers LI-90-3 and RSGM-90-12

Gulf States Steel, Incorporated (GSS) seeks waivers of compliance from certain sections of 49 CFR part 229, Locomotive Safety Standards, and 49 CFR part 223, Safety Glazing Standards, to permit operation of its eight locomotives. The locomotives are generally operated within the confines of the steel plant located in Gadsen, Alabama, but on regular occasions they come out of the plant and onto the yard tracks of the Norfolk Southern Corporation and the CSX Transportation.

The GSS is seeking a waiver of compliance with § 223.11 of the Safety Glazing Standards—Requirements for Existing Locomotives—for eight locomotives (RSGM-90-12). The justification for the waiver is based upon the fact that the locomotives are operated by use of a remote control device by an operator either standing on the ground or on the steps when one of the subject locomotives is being moved. Since the locomotive cab is rarely occupied, the company takes the position that the certified glazing is not necessary.

The GSS is also seeking a waiver of compliance with § 229.123 of the Locomotive Safety Standards—Pilots, snowplows, end plates—for eight locomotives. The GSS is requesting that it be permitted to increase the height of the end plate above the top of the rail from the maximum allowable 6 inches to 7 inches because the height if the 132 pound rail used in the railroad switching yard is 7 inches high.

**Texas, Oklahoma and Eastern Railroad Co.**

Docket Number PB-90-5

The Texas, Oklahoma and Eastern Railroad Company (TOE) is seeking a waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. The TOE is requesting that it be permitted to continue to operate 46 hopper cars used to transport wood chips without retainer valves as an integral part of each car's air brake system. The cars are used at all points from, to and between Valliant, Oklahoma, and Perkins, Arkansas, on the DeQueen and Eastern Railroad (DQE) as well as the TOE. The TOE and the DQE have run through operations between the two railroads.

Section 232.12(c) states in part—"Retaining valves and retaining valve pipes must be inspected and known to be in condition for service." The maximum load for each car is 110,000 pounds and they will be operated at a maximum speed of 35 mph. The maximum grade on the lines of the TOE and DQE is 1.5 percent for a distance of 800 feet. The TOE states that they have operated the subject cars without retainer valves for several years with no problems.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H-90-3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before February 1, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on November 27, 1990.

**Philip Olekszyk,**

*Acting Associate Administrator for Safety.*

[FR Doc. 90-28978 Filed 12-10-90; 8:45 am]

BILLING CODE 4910-06-M

## Maritime Administration

### Values for War Risk Insurance

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Determination of ship values for war risk insurance, effective July 1, 1990.

**SUMMARY:** Pursuant to the procedure stated at 46 CFR 308.1, the required biennual notice is hereby given of the stated valuations of individual vessels upon which interim binders for war risk hull insurance have been issued. The valuations set forth herein constitute just compensation for the vessels to which they apply, and have been computed in accordance with sections 902(b) and 1209(a)(2) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(b), and 1289(a)(2)). The authority to make these vessel valuations was delegated to the Maritime Administrator by the Secretary of Transportation by DOT Order 1100.60 (August 6, 1981). Such stated valuations apply to vessels covered by interim binders for war risk hull insurance, Form MA-184, prescribed by 46 CFR part 308. In accordance with Public Law 101-115, authority to issue such war risk insurance will expire on June 30, 1995.

The interim binders listed below shall be deemed to have been amended as of July 1, 1990, by inserting in the space provided therefor, or in substitution for any value appearing in such space, the stated valuations of the respective vessels that appear on the list. Such stated valuations shall apply with respect to insurance attached during the period July 1, 1990 to December 31, 1990 inclusive, subject to reservation by the Maritime Administration of the right to revise the values assigned herein. The assured shall have the, within 60 days after the date of publication of this notice, or within 60 days after the attachment of the insurance under the interim binder to which a specific valuation applies, whichever date is later, to reject such valuation and proceed as authorized by 46 App. U.S.C. 1289(a)(2).

(Catalog of Federal Domestic Assistance Program No. 20.803 War Risk Insurance)

By Order of the Maritime Administrator

Dated: December 6, 1990.

**Joel C. Richard,**

*Assistant Secretary.*

FEDERAL REGISTER LIST OF SHIP VALUATIONS

| Binder | Official | Vessel name | Valuation |
|---|---|---|---|
| 3721 | 660697 | 1ST LT. ALEX BONNYMAN | (*) |
| 3666 | 666348 | ADABELLE LYKES | $6,660,000.00 |
| 3344 | 533270 | ADMIRALTY BAY | 7,000,000.00 |
| 3537 | 513704 | ALISON C. | 1,825,000.00 |

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FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

| Binder | Official | Vessel name | Valuation |
|---|---|---|---|
| 3511 | 3048 | ALPHA SEA | 6,500,000.00 |
| 2764 | 563846 | AMERICA SUN | 7,000,000.00 |
| 3369 | 577348 | AMERICAN HERITAGE | 4,800,908.00 |
| 3548 | 612716 | AMERICAN RESOLUTE | 12,480,000.00 |
| 3442 | 517617 | AMERICAN TROJAN | 2,380,000.00 |
| 3495 | 614544 | ARCO ALASKA | 25,000,000.00 |
| 3049 | 549434 | ARCO ANCHORAGE | 14,000,000.00 |
| 1519 | 533291 | ARCO CALIFORNIA | 25,000,000.00 |
| 2154 | 559400 | ARCO FAIRBANKS | 14,000,000.00 |
| 3504 | 536933 | ARCO INDEPENDENCE | 31,000,000.00 |
| 2142 | 536886 | ARCO JUNEAU | 14,000,000.00 |
| 2909 | 536466 | ARCO PRUDHOE BAY | 6,500,000.00 |
| 2948 | 539313 | ARCO SAG RIVER | 6,500,000.00 |
| 3505 | 580245 | ARCO SPIRIT | 31,000,000.00 |
| 3561 | 548197 | ARCO TEXAS | 11,000,000.00 |
| 3469 | 601377 | ARGONAUT | 12,480,000.00 |
| 1716 | 292181 | ASHLEY LYKES | 2,295,000.00 |
| 3345 | 535367 | ASPEN | 7,000,000.00 |
| 3365 | 566129 | ATIGUN PASS | 19,000,000.00 |
| 3600 | 646349 | ATLANTA BAY | 5,500,000.00 |
| 3327 | 530141 | AUSTRAL RAINBOW | 5,000,000.00 |
| 1610 | 3234 | BALTIMORE SEA | 7,049,000.00 |
| 1915 | 582451 | BIEHL TRADER | 4,400,000.00 |
| 3216 | 594487 | BIEHL TRAVELER | 4,400,000.00 |
| 3638 | 603438 | BLUE RIDGE | 27,000,000.00 |
| 3400 | 586130 | BROOKS RANGE | 19,000,000.00 |
| 3623 | 543461 | CG—481 | 12,000.00 |
| 3624 | 543481 | CG—481 | 12,000.00 |
| 3625 | 543600 | CG—609 CG—861 | 22,000.00 |
| 3695 | 666349 | CHARLOTTE LYKES | 5,680,000.00 |
| 3213 | 562418 | CHELSEA | 3,000,000.00 |
| 3144 | 557503 | CHERRY VALLEY | 3,000,000.00 |
| 1734 | 699184 | CHESAPEAKE BAY | 27,500,000.00 |
| 3266 | 577738 | CHESTNUT HILL | 4,500,000.00 |
| 3364 | 598320 | CHEVRON ARIZONA | 8,200,000.00 |
| 2985 | 541569 | CHEVRON CALIFORNIA | 6,500,000.00 |
| 3308 | 577358 | CHEVRON COLORADO | 8,200,000.00 |
| 3372 | 594696 | CHEVRON LOUISIANA | 8,200,000.00 |
| 2962 | 542850 | CHEVRON MISSISSIPPI | 6,500,000.00 |
| 3300 | 566080 | CHEVRON OREGON | 8,200,000.00 |
| 3310 | 570788 | CHEVRON WASHINGTON | 8,200,000.00 |
| 3626 | 636709 | COAST RANGE | 27,000,000.00 |
| 3590 | 580243 | COHO | 2,650,000.00 |
| 3654 | 646470 | COLUMBIA BAY | 5,500,000.00 |
| 3526 | 580414 | CORNUCOPIA | 19,000,000.00 |
| 3748 | 678746 | COURIER | 7,200,000.00 |
| 3704 | 279638 | COVE LEADER | 4,100,000.00 |
| 3702 | 644295 | COVE LIBERTY | 4,100,000.00 |
| 870 | 279438 | COVE TRADER | 3,300,000.00 |
| 3722 | 671980 | CPL LOUIS J. HAUGE | (*) |
| 3544 | 632750 | CYGNUS | 11,250,000.00 |
| 3725 | 699193 | DELAWARE BAY | 27,500,000.00 |
| 2806 | 528567 | EDGAR M. QUEENY | 4,000,000.00 |
| 2098 | 500702 | ELIZABETH LYKES | 1,885,000.00 |
| 3658 | 667540 | ENERGY INDEPENDENCE | 43,700,000.00 |
| 2980 | 541414 | EXPORT FREEDOM | 6,240,000.00 |
| 3085 | 548442 | EXPORT PATRIOT | 6,240,000.00 |
| 2583 | 282272 | EXXON BALTIMORE | 3,300,000.00 |
| 3088 | 594619 | EXXON BATON ROUGE | 6,990,000.00 |
| 3983 | 658495 | EXXON BAYTOWN | 73,205,000.00 |
| 3405 | 600471 | EXXON BENICIA | 22,000,000.00 |
| 3585 | 283784 | EXXON BOSTON | 3,300,000.00 |
| 3888 | 658483 | EXXON CHARLESTON | 64,600,000.00 |
| 3411 | 598443 | EXXON GALVESTON | 2,500,000.00 |
| 3203 | 1758118 | EXXON JAMESTOWN | 3,000,000.00 |
| 3723 | 682987 | EXXON LONG BEACH | 80,000,000.00 |
| 3716 | 682986 | EXXON MEDITERRANEAN | 90,000,000.00 |
| 2808 | 286216 | EXXON NEW ORLEANS | 5,000,000.00 |
| 3460 | 600477 | EXXON NORTH SLOPE | 22,000,000.00 |
| 3057 | 526782 | EXXON PHILADELPHIA | 6,380,000.00 |
| 3068 | 623625 | EXXON SAN FRANCISCO | 6,380,000.00 |
| 2809 | 273996 | EXXON WASHINGTON | 3,000,000.00 |
| 1573 | 658494 | EXXON WILMINGTON | 54,650,000.00 |
| 3709 | 636860 | FALCON COUNTESS | 5,000,000.00 |
| 3710 | 636811 | FALCON DUCHESS | 5,000,000.00 |
| 3713 | 636811 | FALCON PRINCESS | 5,000,000.00 |
| 3999 | 640014 | FLORIDA BAY | 9,435,000.00 |
| 3640 | 514686 | FREEPORT I | 6,000,000.00 |
| 3641 | 616720 | FREEPORT II | 6,000,000.00 |
| 3636 | 282748 | GALE S. | 1,880,000.00 |



FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

| Binder | Official | Vessel name | Valuation |
|---|---|---|---|
| 2421 | 513140 | GENEVIEVE LYKES | 1,885,000.00 |
| 3610 | 643069 | GEORGIA BAY | 5,125,000.00 |
| 3348 | 526586 | GLACIER BAY | 7,000,000.00 |
| 3729 | 561433 | GOLDEN ENDEAVOR | 4,500,000.00 |
| 2791 | 526792 | GOLDEN GATE | 4,500,000.00 |
| 3512 | 586080 | GOLDEN MONARCH | 5,515,000.00 |
| 3739 | 660771 | GREAT LAKES | 4,500,000.00 |
| 3763 | 907999 | GREEN BAY | 7,050,000.00 |
| 3764 | 561453 | GREEN HARBOUR | 16,130,000.00 |
| 3790 | 562584 | GREEN ISLAND | 5,000,000.00 |
| 3787 | 907990 | GREEN LAKE | 5,000,000.00 |
| 3790 | 934702 | GREEN RIDGE | 16,500,000.00 |
| 3777 | 559623 | GREEN VALLEY | 7,400,000.00 |
| 3786 | 677648 | GREEN WAVE | 8,000,000.00 |
| 3745 | 684689 | GUS W. DARNELL | 7,400,000.00 |
| 367 | 280564 | JAMES LYKES | (*) |
| 1304 | 287103 | JEAN LYKES | 2,200,000.00 |
| 2366 | 500799 | JOE SEVIER | 2,200,000.00 |
| 369 | 282772 | JOHN LYKES | 320,000.00 |
| 990 | 261326 | JOSEPH LYKES | 2,200,000.00 |
| 3491 | 621042 | KAUAI | 2,200,000.00 |
| 3456 | 566127 | KENAI | 39,400,000.00 |
| 3398 | 566128 | KEYSTONE CANYON | 19,000,000.00 |
| 596 | 266730 | KEYSTONER | 19,000,000.00 |
| 3287 | 579572 | KITTANNING | 1,400,000.00 |
| 3746 | 684692 | LAWRENCE H. GIANELLA | 4,500,000.00 |
| 3622 | 550598 | LB-726 | (*) |
| 3623 | 550599 | LB-727 | 12,000.00 |
| 1352 | 287416 | LESLIE LYKES | 12,000.00 |
| 2400 | 512187 | LETITIA LYKES | 2,200,000.00 |
| 3915 | 572359 | LIBERTY BELLE | 1,885,000.00 |
| 3311 | 582506 | LNG AQUARIUS | 4,500,000.00 |
| 3371 | 588006 | LNG AQUARIUS | 85,000,000.00 |
| 3407 | 588006 | LNG CAPRICORN | 85,000,000.00 |
| 3429 | 595752 | LNG GEMINI | 85,000,000.00 |
| 3531 | 619531 | LNG LAKE CHARLES | 97,500,000.00 |
| 3454 | 595753 | LNG LEO | 85,000,000.00 |
| 3463 | 595756 | LNG LIBRA | 85,000,000.00 |
| 3532 | 619532 | LNG LOUISIANA | 97,500,000.00 |
| 3467 | 595754 | LNG TAURUS | 85,000,000.00 |
| 3475 | 595755 | LNG VIRGO | 85,000,000.00 |
| 2062 | 299938 | LOUISE LYKES | 1,885,000.00 |
| 3546 | 632749 | LYRA | 10,500,000.00 |
| 3730 | 2774 | M.P. GRACE | 3,400,000.00 |
| 3701 | 655330 | MAJ STEPHEN W. PLESS | (*) |
| 2783 | 524219 | MANUKAI | 12,500,000.00 |
| 2803 | 526400 | MANULANI | 12,500,000.00 |
| 3492 | 618705 | MAOI | 650,000.00 |
| 3687 | 668347 | MARGARET LYKES | 5,980,000.00 |
| 2914 | 529399 | MARINE CHEMIST | 4,500,000.00 |
| 2777 | 245851 | MARINE DUVAL | 2,270,000.00 |
| 2132 | 246836 | MARINE FLORIDIAN | 2,270,000.00 |
| 1513 | 299873 | MARJORIE LYKES | 2,295,000.00 |
| 3539 | 299786 | MARTHA B. | 2,550,000.00 |
| 3415 | 591709 | MAUI | 52,010,000.00 |
| 3740 | 650770 | MICHIGAN | 4,595,000.00 |
| 3152 | 542026 | MOBIL ARCTIC | 14,000,000.00 |
| 2442 | 296479 | MOBIL MERIDIAN | 3,300,000.00 |
| 3301 | 578298 | MORMACSKY | 3,145,000.00 |
| 3302 | 580257 | MORMACSTAR | 3,145,000.00 |
| 3303 | 573770 | MORMACSUN | 3,145,000.00 |
| 1243 | 286650 | NANCY LYKES | 2,200,000.00 |
| 3656 | 626783 | NEW YORK SUN | 20,000,000.00 |
| 3602 | 8093 | OCEAN CHALLENGER | 25,000,000.00 |
| 3601 | 6042 | OCEAN CONQUEROR | 29,000,000.00 |
| 3604 | 8197 | OCEAN EXPLORER | 48,335,000.00 |
| 3605 | 6259 | OCEAN NAVIGATOR | 48,335,000.00 |
| 3603 | 8157 | OCEAN VICTOR | 29,000,000.00 |
| 3508 | 5696 | OCEAN VOYAGER | 12,000,000.00 |
| 2745 | 523341 | OMI CHAMPION | 7,000,000.00 |
| 3470 | 522864 | OMI CHARGER | 7,000,000.00 |
| 3576 | 636699 | OMI DYNACHEM | 32,800,000.00 |
| 3577 | 642151 | OMI HUDSON | 32,800,000.00 |
| 3471 | 520639 | OMI LEADER | 7,000,000.00 |
| 2614 | 520729 | OMI WABASH | 7,000,000.00 |
| 2591 | 516738 | OMI WILLIAMETTE | 7,000,000.00 |
| 2827 | 529795 | OVERSEAS ALASKA | 5,515,000.00 |
| 3672 | 514626 | OVERSEAS ALICE | 6,455,000.00 |
| 2952 | 530677 | OVERSEAS ARCTIC | 5,515,000.00 |
| 3535 | 630050 | OVERSEAS BOSTON | 15,000,000.00 |

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FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

| Binder | Official | Vessel name | Valuation |
|---|---|---|---|
| 3378 | 583412 | OVERSEAS CHICAGO | 12,000,000.00 |
| 3409 | 590524 | OVERSEAS HARRIETTE | 5,500,000.00 |
| 3533 | 553137 | OVERSEAS JUNEAU | 14,000,000.00 |
| 3408 | 590523 | OVERSEAS MARILYN | 5,500,000.00 |
| 3718 | 556742 | OVERSEAS NEW ORLEAN | 33,000,000.00 |
| 3366 | 566001 | OVERSEAS NEW YORK | 12,000,000.00 |
| 3363 | 566947 | OVERSEAS OHIO | 12,000,000.00 |
| 3717 | 547470 | OVERSEAS PHILADELPHIA | 33,000,000.00 |
| 3671 | 577188 | OVERSEAS VALDEZ | 5,455,000.00 |
| 3490 | 518125 | OVERSEAS VIVIAN | 5,455,000.00 |
| 3369 | 566955 | OVERSEAS WASHINGTON | 12,000,000.00 |
| 3747 | 571048 | PATRIOT | 7,200,000.00 |
| 3743 | 564698 | PAUL BUCK | (*) |
| 3700 | 541084 | PFC EUGENE A. OBREGON | (*) |
| 3719 | 570513 | PFC JAMES ANDERSON, JR. | (*) |
| 3741 | 574286 | PFC WILLIAM B. BAUGH | (*) |
| 3665 | 536073 | PHILADELPHIA SUN | 20,000,000.00 |
| 3660 | 573003 | PRESIDENT EISENHOWER | 25,000,000.00 |
| 3669 | 574310 | PRESIDENT F.D. ROOSEVELT | 25,000,000.00 |
| 3463 | 530138 | PRESIDENT GRANT | 12,000,000.00 |
| 3726 | 530139 | PRESIDENT HARRISON | 12,000,000.00 |
| 3466 | 530137 | PRESIDENT HOOVER | 12,000,000.00 |
| 3000 | 544000 | PRESIDENT JEFFERSON | 6,000,000.00 |
| 3121 | 552109 | PRESIDENT JOHNSON | 6,000,000.00 |
| 3041 | 545725 | PRESIDENT MADISON | 6,000,000.00 |
| 3678 | 565397 | PRESIDENT MONROE | 28,500,000.00 |
| 3120 | 552106 | PRESIDENT PIERCE | 6,000,000.00 |
| 2388 | 511653 | PRESIDENT TAFT | 3,040,000.00 |
| 3484 | 530140 | PRESIDENT TYLER | 12,000,000.00 |
| 3679 | 563424 | PRESIDENT WASHINGTON | 26,500,000.00 |
| 3705 | 534621 | PRIDE OF TEXAS | 10,560,000.00 |
| 3398 | 570108 | PRINCE WILLIAM SOUND | 17,000,000.00 |
| 3720 | 564691 | PVT HARRY FISHER | (*) |
| 3748 | 573810 | RANGER | 7,200,000.00 |
| 3743 | 564691 | RICHARD G. MATHIESEN | (*) |
| 3607 | 544241 | RICHMOND BAY | 5,500,000.00 |
| 3147 | 557033 | ROBERT E. LEE | 6,000,000.00 |
| 3779 | 519102 | ROVER | 6,000,000.00 |
| 3750 | 577241 | ROVER | 7,200,000.00 |
| 2162 | 502926 | RUTH LYKES | 1,885,000.00 |
| 3178 | 559035 | SAM HOUSTON | 6,000,000.00 |
| 3744 | 564690 | SAMUEL L. COBB | (*) |
| 2918 | 535020 | SANSINENA II | 6,300,000.00 |
| 3423 | 504015 | SANTA ADELA | 1,885,000.00 |
| 2762 | 502736 | SANTA JUANA | 1,885,000.00 |
| 3731 | 1876 | SASSTOWN | 1,800,000.00 |
| 3734 | 3456 | SAVANNAH SEA | 7,040,000.00 |
| 3463 | 715572 | SEA ADVENTURE | 10,500,000.00 |
| 3778 | 599153 | SEA CAT | 150,000.00 |
| 3780 | 599561 | SEA HORSE | 150,000.00 |
| 3451 | 7155771 | SEA LEADER | 10,500,000.00 |
| 3781 | 557400 | SEA LION | 150,000.00 |
| 3782 | 530856 | SEA MULE | 150,000.00 |
| 3776 | 555604 | SEA OX | 150,000.00 |
| 3452 | 715570 | SEA PIONEER | 10,500,000.00 |
| 3785 | 555897 | SEA TIGER | 150,000.00 |
| 3795 | 515155 | SEA-LAND CHALLENGER | 4,000,000.00 |
| 3100 | 552818 | SEA-LAND CONSUMER | 10,000,000.00 |
| 3784 | 519444 | SEA-LAND CRUSADER | 4,000,000.00 |
| 3486 | 604246 | SEA-LAND DEFENDER | 20,000,000.00 |
| 3013 | 604247 | SEA-LAND DEVELOPER | 20,000,000.00 |
| 3795 | 518464 | SEA-LAND DISCOVERY | 4,000,000.00 |
| 3534 | 606062 | SEA-LAND ENDURANCE | 20,000,000.00 |
| 3797 | 544303 | SEA-LAND EXPEDITION | 6,000,000.00 |
| 3488 | 604429 | SEA-LAND EXPLORER | 20,000,000.00 |
| 3514 | 604249 | SEA-LAND EXPRESS | 20,000,000.00 |
| 3527 | 606065 | SEA-LAND FREEDOM | 20,000,000.00 |
| 3516 | 606061 | SEA-LAND INDEPENDENCE | 20,000,000.00 |
| 3529 | 606064 | SEA-LAND INNOVATOR | 20,000,000.00 |
| 3487 | 604245 | SEA-LAND LIBERATOR | 23,800,000.00 |
| 3526 | 606066 | SEA-LAND MARINER | 20,000,000.00 |
| 3480 | 593960 | SEA-LAND PACER | 7,800,000.00 |
| 3486 | 604244 | SEA-LAND PATRIOT | 20,000,000.00 |
| 3131 | 552819 | SEA-LAND PRODUCER | 19,800,000.00 |
| 3517 | 606063 | SEA-LAND VOYAGER | 29,000,000.00 |
| 3699 | 541083 | SGT. MATEJ KOCAK | (*) |
| 3686 | 555360 | SHELDON LYKES | 5,660,000.00 |
| 3627 | 541804 | SIERRA MADRE | 27,900,000.00 |
| 3611 | 545739 | SOUTH CAROLINA BAY | 8,250,000.00 |
| 3707 | 552210 | SPIRIT OF TEXAS | 10,560,000.00 |



FEDERAL REGISTER LIST OF SHIP VALUATIONS—Continued

| Binder | Official | Vessel name | Valuation |
|---|---|---|---|
| 3706 | 542934 | STAR OF TEXAS | 10,560,000.00 |
| 3146 | 557034 | STONEWALL JACKSON | 6,000,000.00 |
| 223 | 277623 | SYOSSET | 2,280,000.00 |
| 3606 | 540635 | TALLAHASSEE | 5,500,000.00 |
| 3507 | 3460 | TEXAS CITY SEA | 7,040,000.00 |
| 2927 | 283897 | TEXAS SUN | 3,300,000.00 |
| 3536 | 516158 | THERESA F | 1,885,000.00 |
| 405 | 283413 | THOMPSON LYKES | 2,230,000.00 |
| 3431 | 586131 | THOMPSON PASS | 10,000,000.00 |
| 3732 | 1775 | TIMBO | 1,800,000.00 |
| 3391 | 585629 | TONSINA | 10,000,000.00 |
| 3657 | 275563 | TROPIC SUN | 2,610,000.00 |
| 3727 | 560200 | ULTRAMAR | 6,200,000.00 |
| 3728 | 555146 | ULTRASEA | 6,200,000.00 |
| 2270 | 505786 | VALLEY FORGE | 6,175,000.00 |
| 3652 | 542492 | VIRGINIA BAY | 9,435,000.00 |
| 3361 | 551001 | WA-1-0001 | 12,000.00 |
| 3362 | 567451 | WA-2-0451 | 15,000.00 |
| 3621 | 606713 | WA-3-0576 | 22,000.00 |
| 3622 | 606714 | WA-3-0577 | 25,000.00 |
| 3735 | 3233 | YORKTOWN SEA | 7,040,000.00 |
| 411 | 282126 | ZOELLA LYKES | 2,200,000.00 |

"Casualty" value as defined and determined by each individual MSC charter agreement.

[FR Doc. 90-28979 Filed 12-10-90; 8:45 am]
BILLING CODE 4910-81-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date December 4, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0192.
*Form Number:* ATF F 5110.11, ATF REC 5110/02.
*Type of Review:* Extension.
*Title:* Distilled Spirits Plant (DSP) Warehousing Records and Reports.
*Description:* The information collected is used to account for the proprietor's tax liability adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 260.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 6,240 hours.

*OMB Number:* 1512-0216.
*Form Number:* ATF F 5120.17.
*Type of Review:* Extension.
*Title:* Monthly Report to Wine Cellar Operations.
*Description:* Report used to monitor wine operations, insure collection of wine tax revenue, and insure wine is produced in accordance with law and regulation. ATF F 5120.17 provides raw data for ATF's Monthly Statistical Release on Wine which is used by ATF and other Federal agencies, along with industry itself, as a tool in trend analysis and planning.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 1,573.
*Estimated Burden Hours Per Response:* 1 hour, 6 minutes.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 20,794 hours.

*OMB Number:* 1512-0392.
*Form Number:* ATF REC 5190/1.
*Type of Review:* Extension.
*Title:* Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.
*Description:* These records (bills or sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.
*Respondents:* Individuals or households, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Recordkeepers:* 12,665.
*Estimated Burden Hours Per Recordkeeper:* 1 hour.
*Frequency of Response:* Other (Recordkeeping).
*Estimated Total Recordkeeping Burden:* 1 hour.
*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*

[FR Doc. 90-28912 Filed 12-10-90; 8:45 am]
BILLING CODE 4810-31-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 1990.

The Department of Treasury has submitted the following public

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information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of the Public Debt**

*OMB Number:* 1535-0059.
*Form Number:* PD 1832.
*Type of Review:* Reinstatement.
*Title:* Special Form of Detached Assignment for United States Treasury Registered Securities.
*Description:* This form is used by individuals and court appointed representatives for an assignment for unsigned or incorrect assignments of United States registered Treasury securities.
*Respondents:* Individuals or households, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
*Estimated Number of Respondents:* 500.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 125 hours.
*Clearance Officer:* Rita DeNagy, (202) 447-1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239-0001.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*
[FR Doc. 90-28913 Filed 12-10-90; 8:45 am]
BILLING CODE 4810-40-M

## Public Information Collection Requirements Submitted to OMB for Review

Date: December 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0059.
*Form Number:* ATF F 5120.29.
*Type of Review:* Extension.
*Title:* Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.
*Description:* ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 800.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1,200 hours.
*OMB Number:* 1512-0163.
*Form Number:* ATF F 5210.5.
*Type of Review:* Extension.
*Title:* Manufacturer of Tobacco Products Monthly Report.
*Description:* ATF F 5210.5 (3068) documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of and statistical classes of large cigars. ATF examines and verifies entries on these reports so as to identify unusual activities, errors and omissions.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 129.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 1,548 hours.
*OMB Number:* 1512-0198.
*Form Number:* ATF F 5110.28, ATF REC 5110/03.
*Type of Review:* Extension.
*Title:* Distilled Spirits Plant (DSP) Processing Records and Reports.
*Description:* The information collected is necessary to account for and verify the processing of distilled spirits on bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 146.
*Estimated Burden Hours Per Response:* 2 hours.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 4,234 hours.
*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*
[FR Doc. 90-28933 Filed 12-10-90; 8:45 am]
BILLING CODE 4810-31-M

## Public Information Collection Requirements Submitted to OMB for Review

December 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0052.
*Form Number:* ATF F 5130.9.
*Type of Review:* Extension.
*Title:* Brewer's Monthly Report of Operations.
*Description:* ATF F 5130.9 is a periodic report detailing specific operations and activities to account for taxable commodities used in operations. For this reason, ATF F 5130.9 is a method to safeguard tax revenue. ATF F 5130.9 shows taxable and non-taxable removals, overages, shortages and losses at breweries. ATF can pinpoint problems at breweries on a timely basis and take steps to protect the revenue.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 245.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 2,940 hours.
*OMB Number:* 1512-0082.
*Form Number:* ATF F 5100.31.
*Type of Review:* Extension.
*Title:* Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.
*Description:* The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry and submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 6,060.
*Estimated Burden Hours Per Response:* 30 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 27,300 hours.
*OMB Number:* 1512-0307.
*Form Number:* ATF F 5110.43, ATF REC 5110/04.
*Type of Review:* Extension.
*Title:* Distilled Spirits Plant (DSP) Denaturation Records and Reports.
*Description:* The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
*Respondents:* Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents:* 97.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* Monthly.
*Estimated Total Reporting Burden:* 1,164 hours.
*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*
[FR Doc. 90-28934 Filed 12-10-90; 8:45 am]
BILLING CODE 4810-31-M





# Sunshine Act Meetings

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# Sunshine Act Meetings

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

December 5, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-40), U.S.C. 552B:

**DATE AND TIME:** December 12, 1990, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro, 828th Meeting—December 12, 1990, Regular Meeting (10:00 a.m.)**

CAH-1.
Docket No. E-7319-002, Wolverine Power Company
CAH-2.
Project Nos. 588-006 and 2683-007, James River II, Inc.
CAH-3.
Project Nos. 9040-004 and 005, Lawrence E. and Veronica P. Smith
CAH-4.
Project No. 4757-003, Cogeneration, Inc.
Project No. 5797-004, B & C Energy, Inc.
CAH-5.
Project Nos. 8435-010, 8466-012 and 8612-009, Independence Electric Corporation
CAH-6.
Project No. 7270-005, Northern Wasco County People's Utility District
CAH-7.
Project No. 2516-015, Potomac Edison Company
CAH-8.
Project No. 2088-019, Oroville-Wyandotte Irrigation District
CAH-9.
Project No. 10855-004, Manter Corporation
CAH-10.
Project No. 1887-004, Wisconsin Public Service Corporation
CAH-11.
Project No. 6221-000, Weyerhaeuser Company
CAH-12.
Project No. 4720-016, City of Farmington, New Mexico
CAH-13.
Project No. 3024-016, Malad Hydro Partners
CAH-14.
Project No. 3218-016, City of Orrville, Ohio
Project No. 4474-024, Borough of Cheswick, Pennsylvania, and Allegheny Valley North Council of Governments
Project No. 4675-014, Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 7041-013, Potter Township, Pennsylvania
Project No. 7307-011, City of Grafton, West Virginia
Project Nos. 7568-010 and 7909-011, County of Allegheny, Pennsylvania
Project No. 7660-014, Borough of Point Marion, Pennsylvania
Project No. 8654-014, Noah Corporation
Project No. 8908-015, Borough of Brownsville, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 8990-012, Noah Corporation
Project No. 9042-015, Gallia Hydro Partners
CAH-15.
Project No. 10860-000, L. B. Industries, Inc.
CAH-16.
Project No. 1651-010, Swift Creek Power Company, Inc.

**Consent Agenda—Electric**

CAE-1.
Docket Nos. ER90-402-000 through ER90-405-000, ER90-407-000 through ER90-410-000, ER90-414-000 through ER90-435-000 and ER90-440-000, Southern Company Services, Inc.
CAE-2.
Docket No. ER90-566-000, New England Power Pool
CAE-3.
Docket No. ER91-24-000, Northern States Power Company (Wisconsin)
CAE-4.
Docket No. RM84-9-001, Calculation of Cash Working Capital Allowance for Electric Utilities
CAE-5.
Docket No. ER85-477-007, Southwestern Public Service Company
CAE-6.
Docket No. ER90-355-001, Pacific Gas and Electric Company
Docket No. EL29-34-002, Northern California Power Agency v. Pacific Gas and Electric Company
CAE-7.
Docket Nos. ER88-630-008, ER88-631-008 and ER89-38-008, New England Power Company
CAE-8.
Docket No. EL89-10-001, Consumers Power Company
Docket No. ER89-256-002, Palisades Generating Company
CAE-9.
Docket No. EL89-55-001, New England Power Company
CAE-10.
Docket No. RM87-26-004, Revision of Rate Schedule Filings Under Sections 205 and 206 of the Federal Power Act
CAE-11.
Docket No. EL90-31-000, Missouri Basin Municipal Power Agency, Complainant v. Midwest Energy Company and Iowa Resources, Inc. Respondents
CAE-12.
Docket No. EL90-49-000, North Carolina Electric Membership Corporation v. Virginia Electric and Power Company
Docket No. EL90-51-000, Virginia Municipal Electric Association No. 1 v. Virginia Electric and Power Company
Docket No. EL90-52-000, Central Virginia Electric Cooperative, Inc. and Craig-Botetourt Electric Cooperative, Inc. v. Virginia Electric and Power Company
Docket No. ER90-540-000, Virginia Electric and Power Company
CAE-13.
Omitted
CAE-14.
Docket No. RM90-12-000, Generic Determination of Rate of Return on Common Equity for Public Utilities

**Consent Agenda—Oil and Gas**

CAG-1.
Docket No. RP91-24-000, Colorado Interstate Gas Company
CAG-2.
Docket Nos. RP91-23-000 and CP89-174-000, Northwest Pipeline Corporation
CAG-3.
Docket No. RP91-21-000, Florida Gas Transmission Company
CAG-4.
Docket No. RP91-26-000, El Paso Natural Gas Company
CAG-5.
Docket Nos. RP90-122-004, RP88-101-024 and RP85-178-071, Tennessee Gas Pipeline Company
CAG-6.
Docket Nos. TM91-3-28-001, 002, TM91-3-28-001 and 002, Panhandle Eastern Pipe Line Company
CAG-7.
Docket No. TM91-3-30-002, Trunkline Gas Company
CAG-8.
Docket No. GT91-9-000, Carnegie Natural Gas Company
CAG-9.
Docket No. PR90-11-000, Gulf States Pipeline Corporation
CAG-10.



Docket No. RP91-5-002, National Fuel Gas Supply Corporation
CAG-11.
Docket No. RP90-187-001, ANR Pipeline Company
CAG-12.
Docket No. RP89-185-005, Panhandle Eastern Pipe Line Company
CAG-13.
Docket Nos. CP90-2154-001, RP86-177-003, RP88-67-041, RP89-255-003, and RP90-119-005, Texas Eastern Transmission Corporation
Docket No. RP90-15-001, Equitrans, Inc. v. Texas Eastern Transmission Corporation
CAG-14.
Docket No. IS90-11-002, Amerada Hess Pipeline
Docket No. IS90-12-002, ARCO Pipe Line Company
Docket No. IS90-13-002, BP Pipeline (Alaska) Inc.
Docket No. IS90-14-002, Exxon Pipeline Company
Docket No. IS90-15-002, Mobil Alaska Pipeline Company
Docket No. IS90-16-002, Phillips Alaska Pipeline Corporation
Docket No. IS90-17-002, Unocal Pipeline Company
CAG-15.
Docket No. RP84-53-011, Ozark Gas Transmission System
CAG-16.
Docket Nos. RP90-139-003, RP89-224-002, and RP89-202-005, Southern Natural Gas Company
CAG-17.
Docket Nos. TA86-2-37-004, and FA84-9-000, Northwest Pipeline Corporation
CAG-18.
Docket Nos. IS86-3-001, IS87-1-002, and IS87-13-001, ARCO Pipe Line Company
CAG-19.
Omitted
CAG-20.
Docket No. RP88-228-000, Eastern Shore Natural Gas Company
Docket No. RM91-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
CAG-21.
Docket No. RM91-21-3-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket No. RP89-173-010, Northwest Pipeline Corporation
CAG-22.
Docket No. RM91-2-000, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket No. RP89-130-000, Michigan Gas Storage Company
CAG-23.
Docket No. RM91-2-000, Mecnanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-80-000, RP88-223-000, RP88-251-000, RP89-150-000, RP89-153-000, RP89-154-000, RP89-184-000, RP90-73-000, TM89-3-17-000, TM89-4-17-000, TM89-5-17-000, TM89-10-17-000, TM89-11-17-000, TM89-12-17-000, TM90-3-17-000, and TM90-7-17-000, Texas Transmission Corporation
CAG-24.
Docket No. RP89-80-000 and 010, Florida Gas Transmission Company
CAG-25.
Docket No. RP90-89-002, Colorado Interstate Gas Company
CAG-26.
Docket Nos. RP89-179-000, CP89-1458-000 and CP89-1459-000, Western Gas Interstate Company
CAG-27.
Docket Nos. RP84-43-000, RP72-133-000, TA80-1-11-000, TA80-3-11-000, TA81-1-11-000, TA83-1-11-000, TA82-1-11-000, TA82-3-11-000, TA83-1-11-000, TA83-3-11-001, TA84-1-11-000, TA84-3-11-000 (Phase I), United Gas Pipe Line Company
CAG-28.
Docket Nos. RP88-197-000 and RP88-236-000, Williston Basin Interstate Pipeline Company
CAG-29.
Docket No. ST91-236-000, Monterey Pipeline Company Docket No. ST91-230-000, Exxon Gas System, Inc.
CAG-30.
Docket No. CP89-1851-003, Altamont Gas Transmission Company
CAG-31.
Docket No. CP89-93-008, Williams Natural Gas Company
CAG-32.
Omitted
CAG-33.
Docket No. CP90-2049-000, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-34.
Docket No. CP90-134-000, Algonquin Gas Transmission Company
CAG-35.
Docket No. CP90-138-000, Mid Louisiana Gas Company
CAG-36.
Docket No. CP84-31-004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG-37.
Docket No. CP90-1537-000, Northern Natural Gas Company, Division of Enron Corp.
CAG-38.
Omitted
CAG-39.
Docket No. CI90-141-000, Ocean State Power
CAG-40.
Docket No. CP87-411-000, Pacific Interstate Transmission Company
CAG-41.
Docket Nos. CP89-637-001, 002, 004 and 005, ANR Pipeline Company
Docket Nos. CP88-178-000 and 001, Indiana Ohio Pipeline Company
Docket No. CP88-178-002, Trunkline Gas Company
Docket No. CP90-1726-000, Great Lakes Gas Transmission Company
Docket Nos. CP89-638-000, 001 and 002, CNG Transmission Corporation
Docket Nos. CP90-627-000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP90-888-000 and 001, Texas Gas Transmission Corporation
CAG-42.
Docket No. CP90-1777-000, Trans-Colorado Pipeline Company
CAG-43.
Docket Nos. CP90-1373-000, CP90-1375-000, CP90-1374-000 and CP90-1376-000, Altamont Gas Transmission Company
CAG-44.
Docket Nos. CP90-460-000, 001 and CP90-1-000, Pacific Gas Transmission Company
CAG-45.
Docket No. CP90-1369-000, Natural Gas Pipeline Company of America
CAG-46.
Docket No. CP90-2294-000, Transwestern Pipeline Company
CAG-47.
Docket No. CP90-1864-000, Cornerstone Pipeline Company
CAG-48.
Docket No. CP91-346-000, Pacific Offshore Pipeline Company
CAG-49.
Docket Nos. RP88-67-035 and CP90-186-001, Texas Eastern Transmission Corporation
CAG-50.
Docket Nos. RP89-231-010 and TA90-1-1-010, Alabama-Tennessee Natural Gas Company
CAG-51.
Docket No. RP91-11-001, Arkla Energy Resources
CAG-52.
Docket Nos. RP91-29-000 and 001, Tennessee Gas Pipeline Company
CAG-53.
Docket No. RP91-31-000, Natural Gas Pipeline Company of America
CAG-54.
Docket No. RP91-33-000, ANR Pipeline Company
CAG-55.
Docket Nos. CP90-154-001 and CP90-332-001, Tennessee Gas Pipeline Company
Docket No. CP90-910-001, Tennessee Gas Pipeline Company, United Gas Pipe Line Company and Midwestern Gas Transmission Company
CAG-56.
Docket No. CP88-166-001, MIGC, Inc.
CAG-57.
Docket No. CP89-2062-001, Overthrust Pipeline Company
CAG-58.
Docket No. CP91-155-000, Southwestern Gas Pipeline, Inc.
CAG-59.
Docket No. CP89-2114-001, United Gas Pipe Line Company
CAG-60.
Docket No. CP91-318-000, Transcontinental Gas Pipe Line Corporation
CAG-61.
Docket No. CP91-360-000, Tennessee Gas Pipeline Company

**Hydro Agenda**

H-1.
Project No. 9558-002, Kamargo Corporation
Project No. 9587-002, Black River Hydro Corporation
Project No. 9584-002, Norwood Hydro Corporation
Project No. 9585-002, Raymondville Hydro Corporation

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Project No. 2606-002, East Norfolk Hydro Corporation
Project No. 9583-002, School Street Hydro Corporation
Project No. 9582-002, Herrings Hydro Corporation
Project No. 9553-002, Deferiet Corporation
Project No. 9584-002, Colton Hydro Corporation
Project No. 9585-002, Higley Corporation
Project No. 9587-002, Hannawa Corporation
Project Nos. 2330-002, 2330-002, 2539-002, and 2569-002, Niagara Mohawk Power Corporation. Order on remand.

H-2.
Project No. 9584-002, Colton Hydro Corporation. Order on application for preliminary permit.

H-3.
Project No. 9585-002, Higley Corporation. Order on application for preliminary permit.

H-4.
Project No. 9553-002, Deferiet Corporation. Order on application for preliminary permit.

H-5.
Project No. 9587-002, Hannawa Corporation. Order on application for preliminary permit.

**Electric Agenda**

E-1.
Docket No. ER91-11-000, Nevada Sun-Peak Limited Partnership. Order on rate filing.

E-2.
Docket No. EC90-18-001, Kansas City Power & Light Company. Order on requests for rehearing.

E-3.
Docket Nos. ER83-427-000 and ER83-210-000, Southern California Edison Company. Opinion on exceptions to an initial decision.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR-1.
Docket No. RM91-3-000, Revisions to Regulations Governing Self Implementing Transportation Under Act 284 of the Commission's Regulations. Notice of Proposed Rulemaking.

PR-2.
Docket Nos. IS87-14-000, *et al.*, and OR88-3-000, Buckeye Pipe Line Company. Opinion and Order on initial decision.

PR-3.
Docket No. RM91-3-001, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP88-40-014, RP88-225-008, RP88-251-007, RP89-150-004, RP89-153-003, RP89-154-002, RP89-184-002, RP90-73-002, RP90-96-002, TM89-3-17-002, TM89-4-17-002, TM89-7-17-001, TM89-8-17-001, TM89-10-17-001, TM89-11-17-001, TM89-12-17-001, TM90-3-17-001 and TM90-7-17-002, Texas Eastern Transmission Corporation
Docket Nos. RP88-119-016, TA86-3-6-016 and TA85-3-6-006, Tennessee Gas Pipeline Company
Docket No. RP88-228-002, Eastern Shore Natural Gas Company
Docket No. RP88-208-008, Alabama-Tennessee Natural Gas Company
Docket Nos. RP85-203-031, RP86-93-012, RP89-158-014, CP88-324-007, RP87-24-014, TC89-6-013, RP88-6-014, RP89-27-026, RP88-92-024, RP85-205-009, RP88-203-017, RP89-224-022, RP84-43-010, RP89-136-011, CP89-6-009, CP86-229-010, CP85-475-005 and IN85-5-016, United Gas Pipe Line Company
Docket No. CP88-646-005, Southern Natural Gas Company
Docket No. CP87-524-012, Texas Gas Transmission Corporation. Order on rehearing of Order No. 528.

*II. Producer Matters*

PF-1.
Reserved

*III. Pipeline Certificate Matters*

PC-1.
Docket No. RM87-5-008, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Sunset date.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*
[FR Doc. 90-29036 Filed 12-6-90; 4:36 pm]
BILLING CODE 6717-01-M

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**FARM CREDIT ADMINISTRATION**

**Farm Credit Administration Board; Special Meeting**

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 13, 1990, from 10:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

**Closed Session ***

1. Special Orders

* Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(4), (5), (8), and (10).

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:30 A.M., Monday, December 17, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R.Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank holding company applications scheduled for the meeting.

Dated: December 7, 1990.
**Jennifer J. Johnson,**
*Associate Secretary of the Board.*
[FR Doc. 90-29136 Filed 12-7-90; 3:57 pm]
BILLING CODE 6210-01-M

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**INTERSTATE COMMERCE COMMISSION**

**Commission Voting Conference**

**TIME AND DATE:** 10:00 a.m., Tuesday, December 18, 1990.

**PLACE:** Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

**STATUS:** The purpose of the conference is for the Commission to discuss among



themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

**MATTERS TO BE DISCUSSED:**

Ex Parte No. 334 (Sub-No. 8), *Joint Petition for Rulemaking on Railroad Car Hire Compensation*, and Ex Parte No. 334 (Sub-No. 8A), *Joint Petition for Exemption of Arbitration Rule from Application of 49 U.S.C. 10706 and Motion to Dismiss.*

Ex Parte No. MC-194, *Limitation of Smoking on Interstate Passenger Carrier Vehicles.*

Ex Part No. MC-196, *Petition for Declaratory Order—Yellow Freight System, Inc.—Retention of Documents.*

Ex Parte No. MC-196, *Investigation of Motor Carrier Collective Ratemaking and Related Procedures and Practices.*

**CONTACT PERSON FOR MORE INFORMATION:** A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

**Sidney L. Strickland, Jr.,**
*Secretary.*
[FR Doc. 90-28949 Filed 12-6-90; 1:36pm]
BILLING CODE 7035-01-M

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**UNITED STATES PAROLE COMMISSION**

**Public Announcement**

**Pursuant To The Government in the Sunshine Act**

**(Public Law 94-409) [5 U.S.C. Section 552b]**

An additional item to be added to the agenda of the open meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction

**ACTION:** Notice of correction of previous published agenda.

**SUMMARY:** This notice corrects the agenda previously published in the Federal Register November 26, 1990 [55 FR 49199] by adding an additional item to be discussed at the open meeting of the Commission to be held in Chevy Chase, Maryland. The following item has been added to the agenda: Quorums for Original Jurisdiction Cases.

Dated: November 30, 1990
**Michael A. Stover,**
*General Counsel, U.S. Parole Commission.*
[FR Doc. 90-29092 Filed 12-7-90; 11:19 am]
BILLING CODE 4410-01-M

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**UNITED STATES PAROLE COMMISSION**

**Public Announcement**

**Pursuant to the Government in the Sunshine Act**

**(Public Law 94-409) [5 U.S.C. Section 552b]**

Time and date for the open meeting to be held at 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815; Correction

**ACTION:** Notice of correction of time and date.

**SUMMARY:** This notice corrects the time and date previously published in the Federal Register November 28, 1990 [55 FR 49590] for an open meeting of the Commission to be held in Chevy Chase, Maryland. The previous time and date for the open meeting was 9:00 a.m., Tuesday, December 4, 1990. The open meeting has been extended and set for 9:00 a.m., Tuesday, December 4, 1990 and 11:00 a.m. to 4:00 p.m., Wednesday, December 5, 1990.

Dated: November 30, 1990.
**Michael A. Stover,**
*General Counsel, U.S. Parole Commission.*
[FR Doc. 90-29093 Filed 12-7-90; 11:19 am]
BILLING CODE 4410-01-M

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**NATIONAL CREDIT UNION ADMINISTRATION**

**Notice of Meetings**

**TIME AND DATE:** 9:30 a.m., Monday, December 17, 1990.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

**STATUS:** Open.

**BOARD BRIEFINGS:**

1. Economic Commentary.
2. Central Liquidity Facility Report and Report on CLF Lending Rate.
3. Insurance Fund Report.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Open Meeting.
2. Community Development Revolving Loan Program for Credit Union.
3. NCUSIF Insurance Premium for 1991.
4. Appeal by Bell Federal Credit Union, Omaha, NE, of Field of Membership Expansion Denial.

**RECESS:** 10:45 a.m.

**TIME AND DATE:** 11:00 a.m., Monday, December 17, 1990.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meetings.
2. Personnel Policies. Closed pursuant to exemptions (2) and (6).
3. Request under Part 745, NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(B).
4. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).
5. Request for Special Assistance under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B)
6. Request for Special Assistance under Sections 116 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
7. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board. Telephone (202) 682-9600.

**Becky Baker,**
*Secretary of the Board.*
[FR Doc. 90-29116 Filed 12-7-90; 8:45 am]
BILLING CODE 7535-01-M

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:30 a.m., Monday, December 17, 1990.

**PLACE:** Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Marine Accident Report: Grounding of the Greek Tankship WORLD PRODIGY, off the Coast of Rhode Island, June 23, 1990.

**NEWS MEDIA CONTACT:** Ted Lopatkiewicz, 382-6600.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382-6525.

Dated: December 7, 1990.
**Bea Hardesty,**
*Federal Register Liaison Officer.*
[FR Doc. 90-29113 Filed 12-7-90 12:58 p.m.]
BILLING CODE 7533-01-M

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**PAROLE COMMISSION**

**Record of Vote of Meeting Closure**

**(Public Law 94-409) (5 U.S.C. Sec. 552b)**

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Wednesday, December 5, 1990 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 11:00 a.m. The purpose of the meeting was to decide approximately 9 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following

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Commissioners voted that the meeting be closed: Benjamin F. Bear, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, and Victor M.F. Reyes.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: December 5, 1990.

**Benjamin F. Bear,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 90-29091 Filed 12-7-90; 11:19 am]

BILLING CODE 4410-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

**Agency Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 10, 1990.

A closed meeting will be held on Tuesday, December 11, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 11, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Administrative proceeding of an enforcement nature.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272-2200.

Dated: December 5, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-29207 Filed 12-6-90; 4:37 pm]

BILLING CODE 8010-01-M



# Corrections

Federal Register
Vol. 55, No. 238
Tuesday, December 11, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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**FEDERAL COMMUNICATIONS COMMISSION**

**Public Information Collection Requirements Submitted to the Office of Management and Budget for Review**

*Correction*

In notice document 90-28212 appearing on page 49703, in the issue of Friday, November 30, 1990, in the second column, under "OMB Number: 3060-0176", in the next line "Section 73.150," should read "Section 73.1510,".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[ID-943-01-4212-13; IDI-23538]**

**Issuance of Land Exchange Conveyance Document; Idaho**

*Correction*

In notice document 90-27045 appearing on page 47930 in the issue of Friday, November 16, 1990, make the following correction:

In the third column, under **Boise Meridian**, in "Sec. 15", at the end of the first line just before "NW¼" insert "E½NW¼,".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[ID-943-01-4214-11; IDI-04319, IDI-014617, IDI-939]**

**Proposed Continuation of Withdrawals, Idaho**

*Correction*

In notice document 90-27037 beginning on page 47935 in the issue of Friday, November 16, 1990, make the following corrections:

1. On page 47935, in the second column, under **Boise Meridian**, in "Sec. 8","and" should read "to".

2. On the same page and column, in "Sec. 32", "W½W¼" should read "W½W½".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[ID-943-01-4214-11; IDI-2291, et al.]**

**Proposed Continuation of Withdrawals, Idaho**

*Correction*

In notice document 90-27038 beginning on page 47936 in the issue of Friday, November 16, 1990, make the following corrections:

1. On page 47936, in the second column, under "Hero Lake and Gnat Lake", in the second line, at "Sec. 21", the first part of the description (preceding "and") should read "S½S½S W¼NW¼".

2. On the same page and column, under "Mudd Lake", in the second line of "Sec. 29" a comma should precede " N½" and in the next line after the first "NE¼", the next description should read "E½NE¼SE¼NW¼".

BILLING CODE 1505-01-D

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[ID-943-90-4214-11; IDI-07547, et al.]**

**Proposed Continuation of Withdrawals, Idaho**

*Correction*

In notice document 90-27040 appearing on page 47938 in the issue of Friday, November 16, 1990, make the following correction:

In the second column in the fifth line from the bottom, the first half of the description (preceding "and")should read "NW¼SE¼NW¼"

BILLING CODE 1505-01-D

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application**

*Correction*

In notice document 90-28186 beginning on page 49646, in the issue of Friday, November 30, 1990, make the following corrections:

1. On page 49649, in the third column, the last signatory (preceding the Appendix), should read "Roberts T. Jones,".

2. On the same page, in the same column, in the Appendix, the first entry of the second column should read "890,819".

BILLING CODE 1505-01-D

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 27**

**[Docket No. 26352; Notice No. 90-24]**

**RIN 2120-AC68**

**Airworthiness Standards; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft**

*Correction*

In proposed rule document 90-23504 beginning on page 41000, in the issue of Friday, October 5, 1990, make the following correction:

**§ 27.952 [Corrected]**

On page 41010, in the third column, in § 27.952(e)(1)(v), in the third line, after "must" insert "not".

BILLING CODE 1505-01-D

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Part II

# Department of Agriculture

**Agricultural Marketing Service**

**7 CFR Parts 1001, 1002, and 1004**
**Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule**

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002 and 1004

[Docket Nos. AO-14-A82 and AO-14-A82-RO1, AO-71-A77 and AO-71-A77-RO1, and AO-160-A85 and AO-160-A85-RO1; AMS-89-105 and DA-89-028]

# Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the New England, New York-New Jersey, and Middle Atlantic Federal milk orders. For all three orders, the decision adopts 3-class pricing provisions that are uniform among the three northeast orders and between these orders and other Federal milk orders, and the same method of determining Class II prices that are used in other orders. These changes will assure greater equity in intermarket sales of milk.

For the New England order (Order 1), changes allow producer-handlers to receive diverted producer milk from pooled handlers and eliminate the postmark date as a basis for determining whether late payment charges are due on handler payments to the producer-settlement fund.

Changes in the New York-New Jersey order (Order 2) establish minimum Class I utilization requirements for pool plants and bulk tank units, and adopt proposals dealing with the qualification of producer milk for pooling. Amendments that adjust Order 2 transportation allowances to more closely relate the location value of milk to the costs incurred in transporting milk from farms and country plants to the market's major consumption centers are also adopted.

A change to the Middle Atlantic milk order (Order 4) prices diverted milk at the location to which it is diverted.

The changes being made to the three orders are based on industry proposals considered at a public hearing held June 27–July 21, 1988; continued November 14–16, 1988; and re-opened August 22, 1989. The amendments are necessary to reflect current marketing conditions and to maintain orderly marketing in the New England, New York-New Jersey and Middle Atlantic marketing areas.

Approval of the New York-New Jersey orders will be determined by a referendum of dairy farmers who were producers under the order during May 1990. Cooperative associations representing producers pooled under the New England and Middle Atlantic orders during May 1990 will be polled to determine approval.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in the proceeding:

Notice of Hearing: Issued June 7, 1988; published June 10, 1988 (53 FR 21825).

Supplemental Notice of Hearing: Issued September 29, 1988; published October 4, 1988 (53 FR 38983).

Notice of re-opened Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709). (To consider changes in Class II pricing for 40 orders.)

Partial Recommended Decision: Issued September 20, 1989; published September 26, 1989 (54 FR 39377).

Partial Final Decision: Issued December 12, 1989; published December 18, 1989 (54 FR 51749).

Order Amending the New York-New Jersey Order: Issued January 25, 1990; published January 31, 1990 (55 FR 3198).

Recommended Decision: Issued May 18, 1990; published May 25, 1990 (55 FR 21556).

Extension of Time for Filing Exceptions to the Recommended Decision: Issued July 10, 1990; published July 16, 1990 (55 FR 28918).

## Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Syracuse, New York, on June 27–July 1, July 5–8 and July 18–21, 1988; at Manchester, New Hampshire, on July 11–14, 1988; at Philadelphia, Pennsylvania, on November 14–16, 1988; and at Alexandria, Virginia, on August 22, 1989, pursuant to a notice of hearing issued June 7, 1988 (53 FR 21825), a supplemental notice of hearing issued September 29, 1988 (53 FR 38983), and a notice of re-opened hearing issued August 10, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on May 18, 1990, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1a. Adoption of 3-Class (uniform) classification.", seventeen paragraphs are added after paragraph 37, three paragraphs are added after paragraph 39, and two paragraphs are added after paragraph 41.

2. Under the heading "1b. Class I and the fluid milk product definition.", paragraphs 2, 7, 8 and 17 are revised, one paragraph is added after paragraph 8, two paragraphs are added after paragraph 17, and three paragraphs are added after paragraph 18.

3. Under the heading "1c. Fluid cream product definition.", two paragraphs are added after paragraph 4.

4. Under the heading "1d. Class II price.", the last paragraph is revised.

5. Under the heading "1e. Seasonal price adjustors.", 4 paragraphs are added at the end of the section.

6. Under the heading "2b. Minimum shipping requirements." one paragraph is added after paragraph 36, five paragraphs are added after paragraph 42, one paragraph is added after paragraph 62, and five paragraphs are added at the end of the section.

7. Under the heading "3. Seasonal payment plans.", six paragraphs are added after paragraph 43.

8. Under the heading "4a. Location pricing, zone pricing and transportation credits.", twenty-one paragraphs are added after paragraph 28, seven paragraphs are added after paragraph 42, nine paragraphs are added after paragraph 49, eight paragraphs are added after paragraph 52, and three paragraphs are added after paragraph 60.

Modifications have also been made to the following order language:

1. In § 1001.7 Pool plant, a section reference is corrected in paragraph (b)(2)(ii).

2. In § 1001.30 Reports of receipts and utilization, a phrase is added to the beginning of paragraph (d).

3. In § 1001.40 Classes of utilization, a new paragraph (a)(2) is added, a phrase is added in (b)(1), and phrases are deleted in (b)(4)(i), (c)(2) and (c)(6).

4. In § 1001.41 Shrinkage, a phrase is added to paragraph (b)(6).

5. In § 1001.44 Classification of producer milk, a new paragraph (a)(2)(iii) is added. Corresponding references are changed.

6. In § 1001.45 Market administrator's reports and announcements concerning classification, introductory text is added.

7. In § 1001.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (b).

8. In § 1001.73 Payments to producers, two words are changed.

9. In § 1002.41 Classes of utilization, a new paragraph (a)(2) is added, a reference in (a)(3) is changed, a phrase is added in (c)(1), and phrases are deleted in (c)(4)(i), (d)(2) and (d)(5).

10. In § 1002.42 Shrinkage, the introductory text is modified.

11. In § 1002.45 Allocation of skim milk and butterfat classified, a new paragraph (a)(4) is added, (a)(4) through (a)(19) are re-numbered as (a)(5) through (a)(20), and re-numbered paragraph (a)(9) is modified. References to these paragraphs are changed throughout the order.

12. In § 1002.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (c).

13. In § 1002.52 Transportation differentials, 5 zones are added in paragraph (c) and the instruction at the end of the paragraph is deleted.

14. In § 1002.56 Announcement of class prices and butterfat differential, a phrase is added to paragraph (b).

15. In § 1002.60 Net pool obligation of handlers, (d)(5) is removed.

16. In § 1004.40 Classes of utilization, a new paragraph (a)(2) is added, a phrase is added in (b)(1), and phrases are deleted in (b)(4)(i) and (c)(2).

17. In § 1004.44 Classification of producer milk, a new paragraph (a)(4) is added, (a)(4) through (a)(14) are re-numbered as (a)(5) through (a)(15), and a phrase is added to re-numbered paragraph (8)(v). References to these paragraphs are changed throughout the order.

18. In § 1004.50 Class prices, the words "Class III" are changed to "basic formula" in paragraph (b).

19. In § 1004.60 Handler's value of milk for computing uniform prices, a section reference is corrected in paragraph (e) and paragraph (g) is deleted.

20. In all three orders, language has been changed where needed to eliminate gender-specific pronouns without changing the orders' substance.

21. In all three orders, the language of § .51, Basic formula prices, has been changed to reflect the changes adopted in the national butterfat differential decision, issued November 9, 1990 and published November 19, 1990 (55 FR 48112).

The material issues on the record of the hearing relate to: Proposals to amend all three orders

1. Classes of utilization.

a. Adoption of 3-Class (uniform) classification.

b. Class I and the fluid milk product definition.

c. Fluid cream product definition

d. Class II price.

e. Seasonal price adjustors.

f. Uniform announcement of class prices and butterfat differential.

g. Conforming changes.

Proposals to amend Orders 1 and 2

2. Pooling standards.

a. Health authority approval.

b. Minimum shipping requirements.

c. Qualification of producer milk for pooling.

3. Seasonal payment plans.

4. Location pricing, zone pricing and transportation credits.

a. Order 2.

b. Order 1.

Proposals to amend Order 1 only

5. Producer-handler receipts of pool milk.

6. Charges on overdue accounts.

Proposals to amend Order 2 only

7. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made to accelerate payments to producers and accommodate economic conditions resulting from Pennsylvania and New York State law.

Proposals to amend Orders 2 and 4 only

8. Partial payments to producers and to cooperatives, and the dates by which certain reports, announcements and payments should be made for the purpose of further accelerating payments to producers.

Proposal to amend Order 4 only

9. Pricing diverted producer milk.

Issues Nos. 7 and 8 were dealt with in a partial recommended decision issued September 20, 1989 (54 FR 39377), a partial final decision issued December 12, 1989 (54 FR 51749), and a final order issued January 25, 1990 (55 FR 3198). Only Issues Nos. 1 through 6 and Issue No. 9 are addressed in this decision.

## Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

*1. Classes of utilization.*

*a. Adoption of 3-Class (uniform) classification.* Each of the three orders under consideration in this proceeding should provide for the same basic classification plan that exists in most other Federal order markets. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. As far as possible, and consistent with the idiosyncrasies of the orders, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to the handler's utilization to determine the classification of producer milk. Each order would use the same Class II and Class III price formulas, with Class III prices adjusted by each order's present seasonal adjustors. The classification provisions adopted in this decision were, with some minor differences, adopted for 39 Federal orders in 1974, and have been incorporated in a number of other orders during the intervening period.

The present classification provisions of the three orders provide for two classes of use, while nearly all of the other Federal milk orders classify milk in three classes. In the Northeast orders, as in other orders, Class I is composed primarily of fluid milk products, which are defined in part "b." under this issue. Under the New England, New York-New Jersey and Middle Atlantic orders (Orders 1, 2 and 4), all soft and hard manufactured products are grouped together in Class II. Under most other orders, however, cream products and soft manufactured products such as yogurt, cottage cheese and ice cream are considered Class II, while butter, milk powder and hard cheeses are classified as Class III.

The Northeast orders' Class I prices are determined, as are other orders' Class I prices, by adding a Class I price

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differential to the basic formula price for the second preceding month. The Class II prices for Orders 1, 2 and 4 currently are determined by adjusting the basic formula price for the month by seasonal adjusters, which range in value from a minus 13 cents to a plus 12 cents. In other orders, Class II prices are the same as the basic formula price, with no seasonal adjustment. Class II prices in other orders are computed pursuant to a formula intended to result in a Class II price that exceeds the Class III price level by an average of 70 cents. The computation of Class II prices for the Northeast orders will be discussed later under this issue in part "d". Class III prices for the three orders will be the same as the present Class II prices.

A group of cooperative associations that represent a majority of the producers whose milk is pooled under the New England and Middle Atlantic orders, and a substantial number of producers whose milk is pooled under the New York-New Jersey order, proposed that the classification provisions of the three orders be changed to incorporate three classes of use instead of two. Proponents of a three-class pricing system argued that the products currently classified as Class II under Orders 1, 2 and 4 do not all have the same time and form utility, and therefore should not have the same value. The cooperatives did not, however, agree on the appropriate classification of some products.

A witness representing Eastern Milk Producers, a cooperative association representing 3,400 northeast dairy farmers who supply milk to five Federal order markets; eight cooperative associations affiliated with Eastern; and Agri-Mark, Inc., the principal cooperative association representing producers whose milk is pooled under Order 1; testified as proponent of a three-class pricing system consistent with the uniform classification provisions in most other orders. The Eastern/Agri-Mark witness stated that 38 of the 43 Federal milk orders in effect at the time of the hearing classify milk as proposed by Eastern/Agri-Mark. According to the witness, the uniform classification provisions should also be incorporated into the three Northeast orders to assure competitive equity between the Northeast marketing areas and other Federal order marketing areas. The witness explained that the local character of the Northeast milk markets disappeared long ago, as intermarket and interregional distribution of nonfluid dairy products became common. He said that even soft manufactured products, which had been locally distributed, now compete with products classified and priced under other orders at a higher price.

The Eastern/Agri-Mark representative testified that milk used in the following products should be classified as Class II: Fluid cream products, any product with 6 percent nonmilk fat that resembles fluid cream products, and packaged inventory of those products; yogurt, cottage cheese, milkshake and ice cream mixes containing 20 percent total solids, and frozen dessert mixes containing 20 percent solids; sour cream products, concentrated milk in bulk fluid form, infant or dietary formula packaged in hermetically sealed or aseptic containers, custard, puddings, pancake mixes and buttermilk biscuit mixes; and bulk milk and cream disposed of to commercial food processing establishments. The witness explained that handlers demand high-quality milk on a regular basis for use in these manufactured products. Typically, he stated, these products are processed at fluid milk plants or in specialized plants distinct from those at which hard products are manufactured, and therefore should bear part of the cost necessary to attract an adequate supply of milk. The Eastern/Agri-Mark witness testified that there is little relationship between the amount of reserve milk on the market and the quantity of milk used to produce such products, due to the products' limited storage life and the need to process them on a regular basis.

The uses of milk proposed by Eastern/Agri-Mark for Class III are also the same as in most other Federal orders. These products and uses are: Cheese, butter, dry milk, concentrated milk used to produce Class III products, evaporated or condensed milk, inventories, livestock feed, dumped milk and shrinkage. The witness testified that the hard manufactured products absorb milk supplies produced for, or in excess of, the needs of the fluid market. Further, he stated, the products can be stored for long periods and therefore do not need to be made uniformly throughout the year. The Eastern/Agri-Mark representative concluded that, because the hard manufactured products compete on a national basis with similar products made from unregulated milk supplies, the price of milk used to make those products should be closely aligned with prices paid by processors of manufacturing grade milk.

A representative of Pennmarva, a federation of cooperative associations representing a majority of the producers whose milk is pooled under the Middle Atlantic order, testified that three-class pricing will recognize current marketing conditions in the Northeast and promote orderly marketing by providing a reasonable Class II differential to producers. In general, he stated, producer milk used to produce products that are relatively more perishable and less storable would tend to have a higher value under the proposed classification plans. The witness added that products that can be stored are more likely to compete over a greater geographical area, while products in liquid form or in consumer packages have more value than products in solid or bulk form.

The Pennmarva witness testified that, rather than follow the uniform classification provisions of most other orders, the three Northeast orders should classify only butter, nonfat dry milk and natural cheddar cheese as Class III. He explained that these products are eligible for open-ended purchases by the Commodity Credit Corporation (CCC) under the price support program, and described the products as balancing and providing an outlet for the reserve supplies of Orders 1, 2 and 4. The witness explained that adoption of Pennmarva's proposal would recognize that soft cheeses, Italian cheeses and whole milk powder have a greater value than the residual uses of milk, and should be priced in the new intermediate Class II. The Pennmarva witness justified such classification by noting that many of the products proposed for a new intermediate class are perishable, and that their production is much less seasonal than that of the market's truly residual products. Further, the witness argued, the classification and pricing provisions in other Federal orders were not implemented to address current marketing conditions in the Northeast milk marketing areas, and they do not address those conditions.

Two other proposals dealing with the classification of milk in the three Northeastern orders were contained in the hearing notice. One, from the Eastern Connecticut Dairy Committee, was similar to the Pennmarva proposal, and was not supported by any testimony. The other, by Oak Tree Farm Dairy, a proprietary distributing plant operator, was similar to the Eastern/Agri-Mark proposal, with the exception of classifying milk used in candy as Class III rather than Class II. There was no testimony from proponent supporting the proposal.

The proposals to adopt a three-class pricing system for the three Northeast marketing orders were supported by several handler representatives and witnesses representing dairy farmer



interests. A witness for Dean Foods, which operates manufacturing plants that receive milk from producers regulated under Order 2 and Order 4, testified that Dean competes with New York handlers for sales of cottage cheese and sour cream in the areas around its plants in Illinois, Kentucky, Indiana, Michigan, Florida and Tennessee, which are subject to the intermediate Class II price under their local orders. He conceded that the existence of two-class pricing in the three Northeast orders may not create disorderly marketing conditions in the Northeast, but asserted that it certainly does so in areas where local handlers are subject to higher costs for milk than are their competitors from the Northeast. The witness stated that any changes in the uniform classification provisions should be made on a nationwide basis, and not just in one region.

Several producers and a cooperative association representative testified in favor of a three-class pricing system, primarily because it would have the effect of enhancing producer income. Because adoption of the Pennmarva proposal would increase the classification and pool value of a large portion of the market's current Class II use, thereby increasing returns to producers to a greater degree than would the Eastern/Agri-Mark proposal, the producers generally favored the Pennmarva proposal. The cooperative association witness testified that adoption of the Pennmarva proposal should not cause competitive inequities between handlers manufacturing Italian cheeses in the Northeast and in other parts of the U.S. The witness pointed out that in April 1988 Italian cheese manufacturers in Wisconsin were paying 64 cents over the Minnesota-Wisconsin price (M-W), to buy milk while manufacturers in Minnesota were paying 51 cents over the M-W. He stated that a Class II 10-cent differential over the Class III price in the Northeast therefore would not unduly increase the cost of manufacturing Italian cheese in the Northeast over the cost of making such products elsewhere.

Representatives of Leprino Foods Company and Sorrento Cheese both supported adoption of a three-class pricing system that would be consistent with those of other orders, but opposed the classification proposals that would include soft cheeses and Italian cheese in Class II instead of Class III. Both witnesses testified that, contrary to the Pennmarva witness' testimony, the Leprino and Sorrento cheese plants experience wide variations in the supply of milk available to them, both seasonally and during the week. The Sorrento witness stated that Sorrento receives 60–70 percent of its milk supplies on weekends when demand for milk by fluid handlers is low, and purchases significantly increased amounts of milk during the spring flush. The Leprino representative testified that Leprino's plants experience a dramatic monthly variation in milk supply, with a seasonal low of 72.5 percent capacity and a seasonal high of 133.1 percent, and serve a major balancing role for the market.

Both of the cheese manufacturers' witnesses emphasized that their companies sell a large percentage of their output in areas of the U.S. outside the Northeast, and must compete with handlers who are subject to other orders' lowest class price (Class III). The Sorrento representative stated that 80 percent of the cheese manufactured by Sorrento is sold in 28 other states, including Florida and California. He pointed out that if the Pennmarva classification proposal were adopted Sorrento would be paying more for milk used in Mozzarella cheese than would any of its national competitors.

Witnesses representing Hershey Chocolate, U.S.A., and Nestle Company testified that three-class pricing for the Northeast orders should not be adopted if whole milk powder and milk used in the manufacture of milk chocolate were to be classified as Class II, rather than being left in the lowest-price classification, as those uses are at present. The witness for Hershey argued that in a three-class pricing system milk used to make milk chocolate should be classified as Class III because that use has characteristics of other products in the lowest use class. He stated that the manufacture of milk chocolate plays a significant role in balancing the market. Further, he explained, the seasonality of milk purchases for use in candy does not reflect seasonal consumer demand, milk chocolate is not produced near the market's consumption center, and intermediate products manufactured from milk, sugar and cocoa can be stored for more than one year before being manufactured into finished products. The Hershey representative testified that milk receipts used in the manufacture of milk chocolate must be classified with other hard products, such as nonfat dry milk and cheese, if the use of fluid milk in the manufacture of milk chocolate is to remain viable in the Northeast. He stated that such classification is necessary to maintain a competitive balance among milk chocolate and whole milk powder manufacturers, observing that milk chocolate is produced primarily in areas where the milk used to produce it is priced in the lowest class. The Hershey witness proposed amending the proposal to adopt the uniform classification provisions to include milk used to make milk chocolate in Class III instead of Class II, but testified that Hershey would prefer to retain the two-class pricing system in the Northeast.

A witness representing Nestle also testified in favor of a two-class pricing system, and stated that Nestle would be adversely affected by the adoption of either of the three-class proposals. The witness explained that an increase in the cost of the company's raw product would result in a competitive disadvantage because all but one of its competitors (Hershey), use dry milk powder in the manufacture of milk chocolate. A witness testifying on behalf of H.P. Hood agreed that milk used in candy manufacture should be classified in Class III because it competes with butter and milk powder for that use.

Representatives of a number of handlers, including two cooperative associations, opposed adoption of a three-class pricing system. A spokesman for Dairylea, a large Order 2 cooperative association, testified that there is a long tradition of two-class pricing in the Northeast and that milk handlers have planned their operations accordingly. He observed that the blend price enhancement resulting from three-class pricing would be minimal, and that it is more important to assure continued outlets for producer milk in the large regional soft products industry. The witness estimated that the Eastern/Agri-Mark proposal would increase producer returns by only 2 cents, while handler costs would increase by 8 cents per hundredweight. The Dairylea witness testified that if a three-class pricing system is to be adopted for the three Northeast orders, the Pennmarva proposal would be more appropriate to the region since milk purchases by cheddar cheese manufacturers are more seasonal than milk production, while purchases by Italian cheese manufacturers are less seasonal. A dairy farmer member of Lowville Milk Producers Dairy Cooperative testified that the three-class proposals for the Northeast orders should not be adopted because classified pricing is outdated and has outlived its usefulness.

Witnesses representing two distributing plant operators and the New Jersey Milk Dealers Association opposed the proposals to adopt three-class pricing. However, in the event of the adoption of three-class pricing, two

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of the witnesses favored the Pennmarva proposal. A witness for Crowley Foods, Inc., a handler operating two distributing plants and two manufacturing plants regulated under Order 2, stated that the effect of three-class pricing on the blend price paid to producers would be minimal. He also observed that the proposed Class II price computation has caused wide variations that he characterized as unacceptable in Class II prices under other orders. The witness stated that such price volatility would make it impossible for Federal order manufacturing plant operators to compete with handlers regulated under the two-class New York State order. The Crowley witness testified that of the two proposed three-class pricing proposals, the Pennmarva proposal would better enhance dairy farmers' income, and would put all cheese other than cheddar, which is market-clearing, in one category.

The president of Weeks Dairy Foods, a fluid milk handler located in Concord, New Hampshire, and pooled under Order 1, testified that three-class pricing would increase Weeks' costs of manufacturing ice cream and impair its competitive ability. The witness explained that two of its principal competitors in the ice cream business are located in the State of Maine and unregulated by both the Federal order and the Maine State order. He expressed concern that one or both of these competitors might gain a competitive advantage if Weeks Dairy were required to pay a higher intermediate Class II price for the milk and cream supply it needs for ice cream. The witness described the ice cream business as a seasonal use of milk, with significantly more sales in the months of May through September than during the rest of the year.

A witness representing the New Jersey Milk Dealers Association opposed the adoption of three-class pricing on the basis that it is unnecessary and would not improve milk marketing in the Northeast. He asserted that there is no need for the Northeast orders to adopt a three-class pricing system just because it has been incorporated in the other Federal orders. The Association's witness based most of his opposition to adoption of the uniformed classification provisions on the difficulties surrounding announcement of the Class II price during 1987 for the orders with uniform classification provisions. The witness testified that if three-class pricing were adopted, the Pennmarva proposal would be preferable to the Eastern/Agri-Mark proposal because the production and sales of Italian and soft cheeses more nearly follow production and sales patterns of cottage cheese, yogurt and sour cream than those of the market's truly surplus products. He described the Italian and soft cheeses as a very substantial part of the market that performs a very limited balancing function.

Witnesses representing four manufacturing plant operators opposed the proposals to adopt a three-class pricing plan for the Northeast orders. All four of the witnesses stressed the wide variations in the Class II formula price effective in the uniform classification markets as a major reason for opposing the proposals. The determination of an appropriate Class II price is discussed at length later under this issue in section "d."

A representative of Empire Cheese, Inc., a subsidiary of the H. P. Hood Company that operates manufacturing plants pooled under Orders 1 and 2, testified that Empire Cheese distributes Italian cheese nationally, competing with manufacturers located in the Upper Midwest and on the West Coast. The witness explained that pricing Italian cheeses in an intermediate Class II under the Northeast orders would seriously impair the ability of Empire Cheese to compete with handlers regulated under other orders, which price such products in Class III. He also expressed his opposition to three-class pricing on the basis that the Hood Company, which operates several distributing and manufacturing plants regulated under Order 1, produces ice cream mix and cottage cheese that would be subject to the proposed intermediate Class II price.

A witness representing Dietrich's Dairy testified that Dietrich's operates two Pennsylvania manufacturing plants that use reserve milk from Federal Orders 2 and 4 to make speciality whole milk powders that are used in the manufacture of milk chocolate. The witness opposed adoption of a three-class pricing system on the basis that it could be used by producer organizations to impose premiums on milk used in the proposed intermediate class in the same way that premiums currently are collected on milk used in Class I. He also asserted that provisions uniform with those of other orders should not be incorporated into the Northeast orders solely for the sake of uniformity, and that the unique marketing conditions of the local or regional market, such as farm point pricing under Order 2, should be considered.

The Dietrich's Dairy witness argued that if three-class pricing is adopted for the three Northeast orders, the Eastern/Agri-Mark proposal would be less onerous than the Pennmarva proposal, which would classify whole milk powder in the proposed intermediate Class II. The witness objected that the Pennmarva proposal would give skim milk powder manufacturers preferential price treatment over whole milk powder manufacturers despite the physical similarities of the two products and the fact that other orders price them in the same class. He also observed that Dietrich's use of much larger volumes of milk in the spring season of flush production and during the winter holidays than at times when milk supplies are scarcer is an indication that whole milk powder is one of the reserve uses of the market.

A representative of Friendship Dairies, Inc. (Friendship), testified that the Eastern/Agri-Mark proposal would be preferable to the Pennmarva proposal, but that both are completely unsuitable for the markets. He explained that in Federal Order 2, the manufacture of cottage cheese, sour cream and yogurt traditionally have balanced the market in the same way the proposed Class III products have, and should be priced in the same class. The witness stated that Friendship would be placed at a disadvantage in competing not only with non-federally regulated handlers, such as those pooled under the Western New York State order, but with handlers regulated under other Federal orders. He explained that the protein content of milk produced in the southern tier of counties in New York is inferior to other areas, and that the resulting yields of products such as cottage cheese would not allow the manufacturer to recover the increased costs associated with pricing the milk used in such products in the proposed higher intermediate Class II.

A witness representing Kraft, Inc., testified that Kraft produces cottage cheese, ice cream, yogurt, sour cream and cream cheese at its plants in the Northeast, and markets these products outside the region, as well as inside. According to the witness, two-thirds of the cottage cheese produced by Kraft at three plants in the Northeast is marketed outside the region. The witness stated that the purpose of the long tradition of only two classes in the Northeast orders has been to maintain a competitive manufacturing industry that assures a viable outlet for dairy farmers' milk. He stated that adoption of three-class pricing will place Northeast dairy product manufacturers at a competitive disadvantage with handlers regulated under the Western New York State order. He also observed that competitors from outside the region already compete effectively with Northeast handlers for sales in the Northeast. If the cost of manufacturing the proposed intermediate Class II products is increased, the witness testified, Northeast handlers would be operating at a competitive disadvantage compared to handlers in other regions.

The Kraft representative explained that the costs of accommodating seasonality of supply are higher in the Northeast than in the Upper Midwest because of the necessity of operating plants at less than capacity when production is tight. The Kraft witness also described milk produced in the Northeast as having a lower protein content than milk produced elsewhere, and stated that the greater product yield enjoyed by handlers in other regions would enable them to move their products great distances to compete with Kraft's products without using up that advantage. A further factor that operates to place Northeast handlers at a competitive disadvantage with other regions, he stated, are hauling costs. The witness explained that handlers transporting dairy products out of the Northeast have a freight disadvantage compared to handlers in other regions in addition to having to pay hauling subsidies in order to procure the milk of Order 2 producers.

Although both of the 3-class pricing proposals would classify milk used in buttermilk biscuit mix in Class II, an alternative proposal by a witness for the H. P. Hood Company, Inc., would classify milk used in such products as Class III. The witness explained that Class III would be the appropriate classification because dry milk powder could be used instead of fresh buttermilk to make biscuits.

The classification plans of the three Northeast Federal milk orders should be changed to better reflect changes that have taken place in the marketing of milk and dairy products since these orders were promulgated. When the three Northeast orders were promulgated, the classification plans adopted reflected the marketing conditions and practices prevailing in each of the local areas at the time the provisions were adopted. Because local conditions and practices differed somewhat between the three Northeast markets and between these markets and other Federal order markets at the times the orders were promulgated, the classification plans in the three orders differ from each other to some extent, and from the rest of the Federal milk orders to a greater extent. As long as the Northeast markets remained relatively isolated from other Federal order markets, marketing problems resulting from the differences in the various classification plans were minimal.

The record of this proceeding shows clearly that the "local" character of the Northeast milk markets has changed greatly. Movements of large volumes of dairy products between the three Northeast markets, and between these markets and others, have become commonplace as handlers and producers seek additional sources and outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can hauling to farm bulk tanks, development of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large specialized facilities. There are numerous examples in the record of handlers in one marketing area procuring milk supplies from producers in another, and of handlers selling their finished products not only throughout the Northeast, but throughout the United States.

Uniformity of classification and pricing provisions between milk orders is a valid reason for changing the classification provisions of the three Northeast orders. The purpose of such uniformity is to assure orderly marketing conditions through equity in intermarket competition between handlers and not uniformity for its own sake, as charged by several witnesses opposing adoption of the uniform classification provisions.

Handlers that are regulated under different orders that contain differing provisions for the classification and pricing of milk used in the production of dairy products distributed across a broad area in which the handlers all compete are certain to be given either a competitive advantage or disadvantage by those differing provisions. A situation in which all of the other Federal milk orders that classify milk used in manufactured dairy products do so in a uniform manner that differs from the Northeast orders is unacceptable.

Handlers that will be affected by the amended classification provisions expressed concern that paying a higher price than their unregulated competitors pay for milk used in cream products, ice cream and cottage cheese would disadvantage them competitively. The record contains no evidence of any large volume of unregulated milk in the Northeast available to allow unregulated competitors a significant competitive advantage. In fact, the record does reflect a level of competition between handlers for milk supplies that would make it very difficult for any unregulated handler to obtain an adequate supply of milk at a price lower than the order price. Similar concerns were expressed about competition with handlers regulated under the Western New York State order. As in the case of competition with unregulated handlers, it is likely that handlers regulated under the State order would find their supply of milk vulnerable if they did not pay a price for milk equivalent to that paid by Federal order handlers. In any case, the provisions appropriate for three Federal orders regulating milk used in manufactured products that are distributed over large portions of the United States should not be determined by the provisions of a State order effective over a limited area and regulating only a small fraction of the amount of milk regulated by the three Northeast Federal orders.

Opponents of uniform classification for the Northeast also complained that they would be disadvantaged in competition with handlers in the Midwest because of the relatively lower protein content of milk produced in the Northeast. Although the protein content of producer milk affects the amount of product yielded by the manufacturing process, the quality of the milk influences the ability of its protein content to increase product yield. There is some testimony in the record that the quality of milk in the Northeast is higher than in the Midwest. Further, the study that shows differences by region in the percentages of protein in producer milk also indicated that there are differences in protein content between areas of the Midwest. Presumably, these differences within the Midwest affect handlers who are close competitors, but who pay the same prices for milk used in the same products. However, there was no indication that such differences in the protein content of producer milk between the Midwest areas result in any competitive disruption.

In addition to equalizing intermarket competition, a primary reason for adopting the uniform classification provisions is that they better reflect the differing values for dairy products in terms of time and form utility. The findings and conclusions of the decisions adopting the uniform classification provisions for 30 Federal

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milk orders in 1974 were noticed officially during this proceeding, and are incorporated in full in this decision.

Class I milk is that disposed of in the form of fluid products used as beverages. These products have the shortest shelf life of all dairy products, and therefore must be processed and distributed on a fairly constant basis. An adequate supply of high-quality milk must be available for the processing of fluid products at all times in order to assure that consumers' demand for these products can be met. These qualities of the fluid milk market require that milk used in fluid milk products be priced at a higher level than other uses of milk.

Generally, the "soft" products, such as cream products, yogurt, ice cream and cottage cheese, are more perishable than the "hard" manufactured products such as butter, cheese and dry milk, and cannot be stored for long periods of time. For these reasons, the products to be classified in the intermediate Class II generally are distributed over a smaller geographical area than are the market's residual, or surplus, products. It is reasonable to recognize the higher value associated with the "soft" manufactured products because handlers require a more constant and generally higher-quality supply of milk for use in Class II or "soft" manufactured products than they do for the manufacture of Class III or "hard" manufactured dairy products.

Comments on the recommended decision filed by the New York State Grange and on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., opposed adoption of 3-class pricing. The Grange's comments stated that such a pricing plan would provide no benefits to producers in the long run. As explained above, the primary reason for adopting a uniform 3-class pricing plan is to assure handler equity between orders. In addition, producer prices should be enhanced slightly. The addition of an intermediate-priced class certainly would not cause producer returns to decline, either in the short run or the long run.

The exceptions filed on behalf of Kraft, Pollio and Friendship challenged the findings of the recommended decision on a number of points. The exceptions stated that the recommended decision, in adopting 3-class pricing, failed to consider adequately marketing conditions peculiar to the northeast which are not consistent with conditions described in the 1974 uniform classification decisions, and the effects on Order 2 handlers of competition with handlers regulated under the Western New York State order. Further, the exceptions stated that the Administrator failed to consider adequately the pricing standards of 7 U.S.C. 608c(18) and the requirements of 7 U.S.C. 608(c)(11)(c) which direct the Secretary to recognize differences in production and marketing conditions in prescribing differing terms to be applicable to different production areas or marketing areas.

The exceptors argued that the northeast markets cannot accurately be characterized as having been isolated from the uniform classification markets in 1974 because soft products from the northeast have been distributed in a southwesterly direction for some time. The exceptions further challenged the Administrator's findings that northeast soft product manufacturers enjoy a significant and disruptive competitive advantage over processors in other federally-regulated regions on the basis that the findings were based only on differences in minimum order class prices.

In additional exceptions to the adoption of 3-class pricing for the northeast markets, exceptors argued that milk used to produce soft products in the northeast is not of higher value than milk used to produce the market's surplus hard products because the hearing record shows that handlers in the northeast do not pay more for milk used to make soft products than for milk used to make hard products, as they were described as doing in the 1974 uniform classification decisions. The exceptions stated that a general finding of the uniform classification decisions that describes soft product manufacturing facilities as located with or near fluid milk plants in the urban market centers is supported only by testimony and not by evidence in this record, and is contradicted in the case of some major cottage cheese manufacturing plants.

Exceptors also included a reiteration of the regional difference in protein content between the northeast and the midwest. The comments stated that handlers in the midwest pay variable premiums based on protein or solids content, and therefore are not competitively disadvantaged in relation to each other by paying the same class prices, as northeast handlers would be in relation to handlers in the midwest.

The primary reasons given for the adoption of 3-class pricing in the 1974 uniform classification decisions (as determined by the relative prominence given the reasons in the decisions) included the observation that the local character of the marketing areas was changing. Some of the trends cited in those decisions as observable elsewhere in the nation in 1974, such as the declining effect of local health jurisdictions as barriers to widespread commerce in dairy products and the conversions from can handling to farm bulk tanks, have been apparent in the northeast only in recent years. Evidence in the record establishes that the State of New York maintained a restrictive licensing policy until 1987, and the Order 2 market administrator's statistics show declining numbers of producers whose milk is delivered in cans.

The 1974 decisions also cited growing distribution of products throughout multi-state regions from centralized processing facilities and resulting disruptive competitive relationships between handlers based on inter-order price differences as primary reasons for the adoption of a uniform 3-class pricing plan. Although it is not clear from the record of this proceeding how long the large centralized processing facilities operated by exceptors have been in operation, there is ample testimony in the record that soft products manufactured in the northeast are distributed along the entire length of the east coast and throughout the area east of the Mississippi. At the same time, the record is clear that intermarket competition for the sale of these products operates, with one or two minor exceptions, only in one direction—from the northeast to the south and southwest. If other order handlers market their soft manufactured products over areas comparable in extent with those over which northeast handlers market such products, northeast handlers must be competing with handlers regulated under most of the Federal milk orders in the United States. All of the other federally-regulated handlers are subject to a minimum class price for the milk they use in such products that exceeds by 10 cents per hundredweight the minimum class price paid by northeast handlers.

The success of northeast handlers in competing in distant marketing areas, coupled with the fact that handlers in other marketing areas do not (or have not been able to) compete for sales of soft manufactured products within the 3 northeast marketing areas, makes inescapable the conclusion that northeast handlers do have a competitive advantage in the basic cost of their raw milk supply which is unnecessary and should be eliminated. Record evidence about differences between actual prices paid for milk used to manufacture soft products in the northeast and midwest indicate that midwest handlers also pay significantly higher over-order prices for such milk.



Another principal reason for the adoption of 3-class pricing under the uniform classification decision, which was supported by testimony in this hearing record, is the need of handlers for adequate supplies of high-quality producer milk to be available at their plants at all times. "Although yogurt can be made from cream and nonfat dry milk, processors prefer milk. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk." (39 FR 9020, March 7, 1974).

This reason is clearly related to the requirement of the Agricultural Marketing Agreement Act of 1937 that milk and its products be priced according to their form and use. Clearly, in the northeast as elsewhere in the United States, products such as cottage cheese, yogurt, ice cream and cream products represent an intermediate use between fluid milk products and the market's truly surplus products in terms of handlers' ability to make the products when milk is available as opposed to when consumers wish to use them.

The uniform classification decisions recognized that "Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations of fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture." (39 FR 9020, March 7, 1974).

Despite the fact that cottage cheese is manufactured at large processing plants in outlying locations of the Order 2 marketing area, testimony in the record of this proceeding indicates that much of the market's soft products manufacture takes place at city fluid processing plants. In addition, it is clear from market statistics that a large share of the milk produced in zones close to the market's principal consumption areas is used in products other than fluid milk. Given the scarcity of manufacturing plants inside the 201–210 mile zone, it is most likely that the milk is used to make soft Class II products at the fluid milk processing plants to which it is customarily delivered.

A study included in the hearing record shows producer milk in some production areas of the northeast has a lower protein content than in most areas of the midwest. However, protein content has not been, and should not be, a basis for justifying different basic class prices paid under Federal orders by competing handlers for their supplies of raw milk unless actual differences in prices paid are directly related to specific variations in the components of milk and are reflected in payments to producers that also have a direct relationship between the level of producer milk components and the value of the components to handlers. Exceptors' citation of varying protein premiums between midwest handlers as a means of minimizing the effects of uneven levels of protein content within the midwest also could operate to equalize differences in value of milk related to unpriced components between the northeast and midwest. The testimony in the record relating to premiums paid for protein in the midwest indicates that midwest handlers are already paying for any extra protein or nonfat solids that may be contained in the milk they buy from producers.

Exceptions based on the price advantage expected to be enjoyed by Western New York State-regulated handlers in competing with Federally-regulated northeast handlers for sales of soft products stated that such competition is intense, and that product price is a significant factor of market share even under current levels of raw milk prices. Exceptors complain that competition for sales of soft manufactured products between northeast Federally-regulated handlers and Western New York State-regulated handlers is much more significant than is competition between Federally-regulated handlers in the northeast and other areas of the eastern U.S. because the Western New York manufacturers have plant location similar to Order 2 manufacturers in relation to the major city markets of New York.

As stated above, the Western New York State order covers a very limited area and regulates only a small fraction of the amount of milk regulated by the northeast Federal orders. Testimony in the hearing record describes how easily the price paid to producers whose milk is pooled under the State order can be manipulated by shifting relatively small amounts of milk between the State order and Order 2. Aside from limitations of plant capacity, the ability of handlers regulated under the State order to increase their sales of soft manufactured products at the expense of Federally-regulated handlers will be severely restricted by the effect that the addition of significant amounts of Class II use to the State pool would have on blend prices to producers.

In addition, several witnesses testified to the relative ease and speed with which the State order could be amended to reflect the price structure of the Federal order. Although it is possible that the cooperative association participants in that market would prefer to maintain a slight price advantage in the manufacture of soft products, the major Order 2 cooperative association that has a presence in the State market may find it necessary to initiate a corresponding pricing structure in the State order.

With regard to the legal requirements of the Act cited by exceptors, the Secretary considers, for these orders, the benefits of assuring competitive equity between handlers regulated under different orders and reflecting the greater value of milk used to produce soft manufactured products, as described above, to outweigh any purported or actual differences in production and marketing conditions between these and other marketing areas.

Proposals to adopt modified uniform classification provisions that would price Italian and soft cheeses and whole milk powder as Class II instead of Class III, and price milk used in the production of milk chocolate as Class III instead of Class II, should be denied. Regardless of some rather persuasive arguments that Italian and soft cheeses and whole milk powder are more perishable and have a greater value than butter, American cheese and nonfat dry milk which the Commodity Credit Corporation (CCC) purchases to operate the dairy price support program, these products compete in a national market. Therefore, the milk used to make such products in the Northeast should not be priced at a higher level than under all of the other Federal orders in the U.S. If such changes to the uniform classification provisions were to be made they should be made uniformly in all orders, not just on a regional basis.

The record of this proceeding does not support making an exception from the uniform classification provisions of milk disposed of to a commercial food processing establishment. The candy manufacturers who testified advocated Class III classification of milk used to make milk chocolate, rather than the Class II classification of the uniform provisions. Although the witnesses stated that nonfat dry milk and butter, which would be Class III products, may be used in candy-making instead of fresh whole milk, thereby eliminating a market for producers' milk, the

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witnesses overlooked the costs of manufacturing butter and dry milk powder from fresh milk. Those costs would have to be recovered by the manufacturers of the butter and powder, and would nearly always exceed the average difference between the Class II and Class III prices. Therefore, the candy manufacturers would be subject to lower costs if they continue to use fresh whole milk priced as an intermediate Class II product in the manufacture of milk chocolate than they would if they bought butter and nonfat dry milk for that purpose. Because Order 2 has some pool handlers who would be considered commercial food processors under other orders, it will be necessary to specify in the order's Class II definition that milk used to make candy, soup or other food items in pool plants will be Class II.

Hershey Chocolate U.S.A. (Hershey) filed an exception to the classification of fluid milk used to make milk chocolate as Class II rather than Class III. Hershey's comments cited testimony in the record stating that whole milk powder can be obtained at prices competitive with the current price of fluid milk plus manufacturing costs, giving users of fluid milk a substantial incentive to switch to supplies of whole milk powder. Also cited was testimony that milk chocolate manufacturers currently using fluid milk would be placed at a competitive disadvantage with other chocolate manufacturers who use only whole milk powder. Finally, the comments reiterated that milk used to produce milk chocolate shares the characteristics of Class III products on the basis of its significant role in balancing the market, and because the demand for milk to produce milk chocolate does not reflect consumer demand.

Although testimony was received that indicated that whole milk powder is available at the same price as an equivalent volume of fluid milk at the lowest class price, it is not reasonable to expect that a handler is able, on a sustained basis, to buy fluid milk at the lowest class price, manufacture it into powder, maintain a profit margin, and still be able to sell the powder to a candy manufacturer at a price equivalent to the value of the raw milk ingredient used to produce the powder. If Hershey is able to buy whole milk powder at the same price as the equivalent volume of fluid Class III milk would cost and is indifferent as to the use of either product in its candy-making operation, the handler should probably buy the powder. Class III classification of milk used to produce milk chocolate would make producers indifferent as to whether their milk was used to make whole milk powder or candy.

The argument that milk used to make milk chocolate has many of the characteristics traditionally associated with Class III products is more compelling, but in this case the factor of uniformity between orders outweighs such a consideration. Other chocolate makers who use milk pooled under other orders (or milk powder made from milk pooled under other orders) are subject to the same classification provisions that are adopted in this decision. Since the market for milk chocolate encompasses an area larger than Order 2, it is necessary that the milk used to produce the products is priced uniformly between the respective orders.

Skim milk and butterfat used to make buttermilk biscuit mix should likewise be classified as Class II rather than Class III. As in the case of dry milk powder used to make candy, the manufacture of dry milk from fresh milk classified as Class III for the purpose of making buttermilk biscuits would also involve a cost additional to the cost of the Class III milk. Although fast food restaurants of the kind that use buttermilk biscuit mix are not considered commercial food processors, their use of a milk product as an ingredient in making other food items is similar. Therefore, milk used in buttermilk biscuit mix should be classified as Class II.

Because of the large volume and variety of manufactured products produced in Order 2 pool plants, the list of products named in the Class II classification provision includes some products not listed in the "uniform" classification provisions. The classification of these additional products, however, will be no different under the three Northeast orders than it would be under a "uniform classification" order.

An exception filed on behalf of Kraft, Inc., Pollio Dairy Products Company, and Friendship Dairies, Inc., argued that "pot cheese" and "farmers cheese" should not be named as Class II products in the northeast orders because there is no indication that these products compete with identical products manufactured in other regions. In addition, the comments stated, milk used to manufacture such products would be classified as Class III in other orders where it is not specifically classified as Class II.

Some testimony in the hearing record argued that these products are very similar to cottage cheese and that milk used to produce them should be classified in the same class as cottage cheese. There was also evidence that the manufacture of these products is demand-driven, rather than made on the basis of when surplus milk is available. However, exceptors are correct in stating that milk used to manufacture these products under uniform classification orders would be classified as Class III. As stated in the exceptions, there is no indication that these products compete with similar products manufactured under other orders. Therefore, classification in Class II presumably would not result in any disruptive competition. In the interests of uniformity, however, the classification of milk used under the 3 northeast orders should not differ from classification under other orders.

b. *Class I and the fluid milk product definition.* Class I milk under the three Northeast Federal orders should include all products designated as "fluid milk products." The fluid milk product definitions of the orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains 6.5 percent nonfat milk solids and less than 10 percent butterfat. All flavored milk beverages, regardless of total solids content, should be considered fluid milk products under the language adopted for the three northeast orders in this decision.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any products that contain by weight less than 6.5 percent nonfat milk solids, or whey.

Class I milk should also include any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted a Class III classification.

Adoption of a uniform fluid milk product definition will not result in any significant changes in classification in the three Northeast orders. Most of the products listed above for inclusion in Class I are now included in the fluid milk product definitions under all three orders. However, Order 2 currently excludes "sterilized milk products in hermetically-sealed containers" from the fluid milk product definition, and therefore classifies ultra-high temperature (UHT) milk packaged in foil-lined containers as Class II. Under the fluid milk product definition adopted herein, UHT milk would be included in Class I.

Under the uniform classification plan as proposed to be adopted in the recommended decision, ending inventories of packaged fluid milk products would be Class III. As a result, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to its utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I price for the current month would apply to any reclassified inventory.

An exception to the recommended change in classification of ending inventories of packaged fluid milk products was filed on behalf of Eastern Milk Producers Cooperative Association, Inc. (Eastern). Eastern argued that the current procedure for classifying ending inventories of packaged fluid milk products in Class I avoids the necessity for subsequent reclassification and is a more efficient, less confusing and more acceptable procedure.

Because it is not expected that maintaining the Class I classification of packaged fluid milk products in inventory will cause any disruptive competition with the handlers of other orders under which such inventories are classified as Class III, it is not necessary to change the Class I inventory classification to which northeast handlers are accustomed to Class III. Class I classification of inventories of packaged fluid milk products will not require adjustments from one month to the next as would Class III classification of such inventories. For these reasons, the amended orders should classify packaged fluid milk products in inventory as Class I.

Proposals to amend the orders' fluid milk product definitions included a proposal by the marketing areas' principal cooperative associations to adopt the fluid milk product definition common to most other orders. The witness for the cooperatives testified that several products are classified differently between the three Northeast orders, creating competitive difficulties for the handlers regulated under one order but competing for sales with handlers regulated under another of the Northeast orders, or with handlers regulated under other Federal orders outside of the region. The cooperatives' spokesman stated that the form in which and purpose for which milk products are distributed is the most important consideration in determining their classification. The witness observed that additional criteria might be included in the definition to assure that products such as a lowfat (four percent butterfat) product resembling sour cream would be classified as a Class II product rather than Class I.

Several other proposals to amend the orders' fluid milk product definition were included in the hearing notice. Two of the proposals were not supported by any testimony, and will not be considered further. A proposal by Farmland Dairies, Inc., would include UHT milk, cream in consumer packages, and ice cream and milkshake mix in the Order 2 fluid milk product definition. The witness testifying on behalf of Farmland stated that these products are closer to fluid than not, and are not produced from reserve supplies. He pointed out that a product called "shake-ups", which would not fall within the uniform fluid milk product definition, is produced for fluid consumption, and should therefore be Class I.

Friendship Dairies, Inc., proposed that the Order 2 fluid milk product definition be amended to include products with a "ph" greater than 4.6. The Friendship witness testified that classifying products by the use of scientific means such as a test for acidity would allow and encourage the sale of new and innovative sour milk products without uncertainties about their classification. He stated that products intended to substitute for conventional Class I products should be classified as Class I. The witness explained that Friendship's proposal would result in changes in uniform classification of buttermilk from Class I to Class II, and of half-and-half from Class II to Class I.

Alternatives to the proposed uniform fluid milk product definition were suggested by a witness representing the H. P. Hood Company, a large handler regulated under the New England order. The alternatives would exclude lowfat sour cream, light (or lowfat) eggnog, and "shake-ups" from the fluid milk product definition. A brief filed by Hood supported the goal of uniformity in classification, observing that its lack has resulted in disorderly marketing conditions.

A brief filed on behalf of the Grocery and Specialty Products Division of Borden, Inc., stated that Borden processes ultra-high temperature (UHT) milk and packages it in hermetically sealed foil-lined paper containers. The handler is regulated under Order 2, where UHT milk is not considered a fluid milk product. The brief stated that UHT milk should not be considered a fluid milk product because it is storable, and therefore does not conform to the same "time utility" that characterizes fluid milk products. The brief further stated that the argument that UHT milk be considered fluid because it competes as a beverage with fluid milk products is invalid because formulas especially prepared for infant feeding or dietary use, milkshake and low-solids products are specifically excluded from the fluid milk product definition but also compete as beverages with fluid milk products.

Adoption of the Farmland proposal would place Northeast processors of soft manufactured products at a disadvantage with their competitors in other marketing areas. Ice cream mix and milkshake mixes containing 20 percent or more total solids generally are not considered fluid milk products and do not compete as beverages with the products typically classified as Class I. Therefore, they should not be included in the fluid milk product definitions of the Northeast orders.

Although the Friendship Dairy proposal would adopt the scientific means of a "ph" test to define fluid milk products, it also eliminates the scientific criteria of butterfat and solids-nonfat content that are included in the proposal for a uniform fluid milk product definition. The Friendship witness' concern about the time-consuming procedure required for USDA to consider appeals to the classification of a new product in Class I should be alleviated by specifying that fluid milk products be fluid. Those who testified relative to the proposal to include a product's "ph" factor in the criteria for defining fluid milk products agreed that a low "ph" (or high acidity) corresponds with a product that is semi-solid, rather



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than a beverage. However, buttermilk, which clearly is a liquid, apparently would be excluded from the fluid milk product definition on the basis of its "ph" factor.

If a milk product containing less than 20 percent solids and 10 percent butterfat is sold to be consumed as a beverage it can be considered to be in competition with other fluid milk products, and should be priced in the same class. Buttermilk, therefore, should continue to be considered a fluid milk product. Proponent's speculation that reducing the classification and price of buttermilk would help revive the product's consumption is not persuasive. The price reduction on a quart of buttermilk that would likely result from such a reduction in classification would be approximately 5 cents.

The alternatives to the uniform fluid milk product definition proposed by the Hood witness should be adopted in a modified form. Under the definition adopted herein, lowfat sour cream will be included in a description of products to be included in the intermediate Class II. "Shake-ups", according to the composition of the product described by the Hood witness, will exceed the order's maximum limit of 20 percent total solids in milkshake products, and therefore would be classified in Class II rather than Class I. Lowfat eggnog or eggnog drink, however, does not meet the description of a manufactured eggnog. It is a flavored milk drink, and should be classified as a fluid milk product, as are other flavored milk drinks.

An exception to the recommended decision filed by H. P. Hood, Inc., objected to the classification of lowfat eggnog as a Class I product. The comments stated that the lowfat eggnog processed by Hood differs from Class II manufactured eggnog only in its butterfat content. The handler differentiated between lowfat eggnog and eggnog drink by describing the lowfat eggnog as having a higher solids content (over 20 percent) and being consumed in smaller serving sizes than eggnog drink. Hood's comments argued further that a change in the classification of its lowfat eggnog (which currently is considered a Class II product) during the eggnog season of January through Easter would be disruptive, and that if such a change is made it should be delayed until after Easter.

While eggnog is excluded specifically from the fluid milk product definition, the lowfat eggnog produced by Hood does not meet the 6-percent minimum butterfat specification in the Food and Drug Administration's description of eggnog. Therefore, lowfat eggnog is classified under the uniform classification decisions as a fluid milk product, regardless of its solids content, and would be so classified in any of the marketing areas in which Hood might be competing with other handlers for sales of such a product. There is no basis on which to classify lowfat eggnog differently in the three orders affected by this decision than it would be classified in any other order. There is also no basis for waiting until mid-1991 to make the classification provisions of the amended order effective. Handlers affected by the provisions should be aware of the probable classification of their products well in advance of January 1991. Hood should have no need to change the pricing of its lowfat eggnog product part way through the coming eggnog season.

Although the proposed fluid milk product definition excludes milk "aseptically packaged and hermetically sealed in foil-lined paper containers", UHT milk should be included in the fluid milk product definition. The sterilization of fluid milk products may change their "time utility", but does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as beverages. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same customers.

Borden, Inc., excepted to the Class I classification of UHT milk on the basis that a change in its classification under Order 2 was not supported by any substantial evidence in the record. Borden's comments stated that if the classification of UHT milk is changed to Class I, the Department ought to "lock" the plant producing such products into regulation under the order for the marketing area in which the milk is obtained from producers, as has been done in two other orders. Such action would, according to Borden, avoid the plant's changing regulation each month depending on the area in which the bulk of its sales are distributed.

The testimony supporting uniformity of classification between milk orders is the basis for including UHT milk in the fluid milk product definition. Because sterilized and aseptically packaged milk products typically are sold over a wide geographical area (as indicated in Borden's comments), it is very likely that the UHT milk packaged by Borden under Order 2 will be sold in competition with similar products sold by plants regulated under other orders. Therefore, it should be priced in the same class as is milk used in UHT products in other marketing areas.

There is no testimony or evidence in the record of the hearing to support "locking in" the Borden plant under Order 2 regulation. In both of the other orders cited by Borden's comments in which such action has been taken, it resulted from hearings called to consider that specific issue. However, it is doubtful that a failure to "lock in" the Borden plant under Order 2 will result in its being regulated under any other order. In the first place, full regulation under nearly all Federal milk orders requires that a plant's route dispositions in the marketing area represent at least 10 percent of the plant's receipts, and a greater volume than the plant's dispositions in any other marketing area. Borden is most likely to distribute more of its UHT products in the Order 2 area than in any other order area, and would probably not distribute as great a volume as 10 percent of its receipts in any other order area. Secondly, as long as milk distributed within the marketing area has been priced under another order, all Federal orders except Orders 1 and 2 allow the handler to offset such sales with purchases of milk pooled under the other Federal order so as to incur no obligation as a partially regulated handler. Therefore, it is unlikely that a "lock-in" provision would be needed to keep an Order 2 UHT plant pooled under Order 2.

c. *Fluid cream product definition.* As proposed by Agri-Mark and Eastern Milk Producers, cooperative associations that represent a substantial number of producers whose milk is pooled under the three Northeast orders, the orders should include a fluid cream product definition, as is contained in most other Federal milk orders. "Fluid cream product" would mean cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat. The definition will help to assure that classification of such products is uniform between the three Northeast marketing areas and between these marketing areas and others regulated by other Federal orders.

The fluid cream definition proposed by proponents varies in some details from the uniform fluid cream product definition. Some of the items listed in the proposed definition are also listed in the description of the products proposed to be included in Class II milk, but are not included in the fluid cream product definitions of other orders. Although these products will not be included in the fluid cream definition, they will be listed as Class II uses. Because of



particular reporting and accounting requirements connected with the products listed in the fluid cream product definition, the definition adopted for the three Northeast orders will not include some of the products normally listed in the uniform fluid cream product definition. All of the products included in the proposed fluid cream product definition and in the uniform fluid cream product definition will be classified as Class II in the amended orders.

A brief filed by the H. P. Hood Company, Inc. supported the goal of uniformity and suggested that the fluid cream product definition include a reference to "skim milk and butterfat used to produce other products which resemble" the items specified as fluid cream products. A brief filed on behalf of Kraft, Inc., Pollio Dairy Products Corporation and Friendship Dairies, Inc., noted that the substitution of new artificial fat products for butterfat in products intended to compete with cream products should not result in those products being considered "fluid milk products."

It is unnecessary to add to the fluid cream product definition any language that would include in the definition products that resemble fluid cream products but contain a fat substitute. Such products would be included in Class II as products "containing 6 percent or more nonmilk fat (or oil) that resemble a fluid cream product."

An exception filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., argued that milk used in products resembling fluid cream products but containing fat substitutes that are made from egg and milk proteins should be classified the same as the skim milk and butterfat contained in the dairy products they resemble and for which they are intended to substitute. Further, the exception stated, the products in question would be made with a fat substitute rather than a nonmilk fat, and could not be considered "products containing 6 percent or more nonmilk fat or oil."

The intent of the recommended decision clearly was to classify the milk used to produce such products in Class II. The order language of the recommended decision describing as Class II used-to-produce items that are semi-solid products resembling a Class II product and containing less than 10 percent butterfat, with the addition of a few words to the order language describing Class II dispositions, should remedy any perceived deficiency.

d. *Class II price.* The price applied to milk classified in the intermediate Class II classification adopted for the Northeast orders in this decision should be the same as in almost all of the other orders, as recently amended. The Class II price for each month would be announced on or before the 15th day of the preceding month. The Class II price would be computed on the basis of a formula designed to result in an average price level 10 cents above the Class III, or basic formula, price.

The cooperative association proponents of three-class pricing (Eastern Milk Producers Association, Agri-Mark and the Pennmarva Federation), proposed that the provisions for determining the Class II price under the three Northeast orders be the same as the Class II price provisions for 36 other Federal orders. The provisions proposed at the time of the initial hearing would provide a procedure for determining a tentative Class II price for the month and announcing it on the 15th day of the previous month. To ensure that the Class II price is not less than the Class III price for that month, the procedure provides for an upward adjustment of the tentative Class II price to the level of the Class III price, if necessary, on the 5th day after the pricing month, when the Class III price is announced. The witnesses for the cooperatives testified that adoption of Class II price provisions that are uniform between orders is necessary to provide price alignment between marketing areas because the products to be priced are distributed over a number of Federal marketing order areas. The cooperative witnesses observed that the uniform Class II pricing provisions have resulted in prices that have exceeded significantly their intended differential of 10 cents over the Class III price. A witness representing Agri-Mark and Eastern testified that the cooperatives would not object to a Class II price determined by simply adding 10 cents to the basic formula price, or Minnesota-Wisconsin (M–W) price, and eliminating the advance announcement feature of the price. In the post-hearing brief filed by Pennmarva, the Order 4 cooperative federation also advocated a Class II price determined by adding 10 cents to the Class III price.

Two proposals to increase the level of Class II prices were included in the notice of hearing for this proceeding. The Eastern Connecticut Dairy Committee proposed that Class II prices be increased to more accurately reflect their true value to processors, but did not propose any specific price level or differential over the Class III price. There was no testimony supporting the Committee's proposal, and it will not be considered further in this decision. A proposal by Oak Tree Dairy would have provided for a Class II differential over the Class III price of at least 50 cents, but not more than 60 cents. The Dairy's witness explained that processors obtain a higher product yield in soft cheeses than in hard cheeses, and that the value of the additional product represents at least 40 cents per hundredweight of the milk used to produce it.

Many of the milk handlers that are regulated under the three Northeast orders protested that adoption of the uniform Class II pricing provisions would incorporate the same extreme variations from the M–W, and resulting adjustments to the tentative Class II price, in the three Northeast orders that have been experienced by other Federal orders. Handler representatives testified that the advantage of announcing the Class II price in advance of the month for which it is effective is outweighed by the unpredictability of the changes to the tentative Class II price when the M–W is changing rapidly.

A dairy farmer supported the proposal to increase the Class II differential to 50–60 cents over the Class III price on the basis that it would enhance returns to producers. A dairy plant operator opposed adoption of the proposal because it would misalign the prices of milk used in Class II products under the Northeast orders and under other Federal orders.

This proceeding to amend the three Northeast orders was reopened to include these orders in a proceeding that considered proposed changes to the uniform Class II pricing provisions of nearly all Federal orders. The hearing to consider industry proposals was held August 22, 1989, at Alexandria, Virginia. Most of the witnesses testified that some form of a proposal by the Milk Industry Foundation (MIF) and International Ice Cream Association (IICA) should be adopted in order to eliminate the upward revision of the tentative Class II price in months when the Class III price would otherwise exceed the Class II price. MIF is a national trade association representing some 1,000 dairy processing plants nationwide and accounts for about 80 percent of the fluid milk and related products produced in the United States. IICA is a trade association that represents about 210 member companies who distribute about 85 percent of the ice cream and related frozen desserts consumed in the United States.

The MIF/IICA witness stated that his testimony on the need for the proposed amendments did not refer to the three Northeast orders. However, a witness

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testifying on behalf of Agri-Mark, Dairylea and Eastern Milk Producers Association, cooperative associations that represent about 9,000 of the approximately 25,400 producers whose milk is pooled under Orders 1, 2 and 4, stated that amendments to the uniform Class II price provisions of the other 27 orders should be included in the three Northeast orders. The cooperatives' representative testified that it is necessary for the three Northeast orders to have the same Class II price provisions that exist in the other Federal orders for the purpose of achieving and maintaining competitive equity among all of the handlers marketing Class II manufactured dairy products over an area comprising a number of Federal milk marketing order areas.

The witness for the northeast cooperatives and a representative of the National Milk Producers' Federation, an organization representing most of the dairy farmer cooperatives in the United States, proposed a modification of the MIF/IICA proposal. The modification would include the entire difference between the announced Class II price and the Class III price for the month in the computation of the next Class II price to be determined. This modification was intended to minimize any impact upon producer returns that might result from elimination of the final Class II price announcement. With this change, there would be minimal delay in returning to producers the fall value of their milk at the prescribed Class II price level. Both the NMPF and Agri-Mark, et al., supported adoption of the MIF/IICA proposal if it was modified as they suggested.

A witness for Morningstar Foods, which operates a number of dairy plants including, at the time of the hearing, two distributing plants regulated under Order 4, testified in favor of the proposed change. A spokesman for the National Farmers Organization (NFO) stated that the proposal to amend the uniform Class II pricing provisions would result in Class II prices below Class III prices in some months, and advocated a higher level of Class II prices. A brief filed on behalf of Kraft, Inc., Pollio Dairy Products Corporation, Sorrento Cheese and Friendship Dairies, Inc., manufacturing plant operators under Order 2, stated that periods of substantial deviation from the Class II target level of the M–W price plus 10 cents would place Federal order handlers at a severe disadvantage to handlers regulated under the Western New York State order with respect to milk procurement, milk sales, or both. The brief argues that an advance Class II pricing formula should not be included in the three Northeast orders even if three-class pricing is adopted. A brief filed by Ready Food Products of Philadelphia, Pennsylvania, a partially regulated handler that processes cream products and obtains milk supplies from handlers fully regulated under Order 4, supported adoption of the MIF proposal.

The MIF/IICA proposal, as proposed to be modified by the National Milk Producers Federation, was adopted for 36 Federal orders in a recommended decision issued October 31, 1989 (54 FR 46904), a tentative decision issued November 8, 1989 (54 FR 47527) and an interim final order issued November 28, 1989 (54 FR 49865). A final decision was issued for the 36 orders on March 23, 1990 (55 FR 11389). The amended orders are now awaiting final producer approval. The same Class II pricing provisions should be incorporated in the three Northeast orders in order to assure milk handlers who compete between regions of the United States that they are paying the same price as their competitors for the raw milk used to produce their products. Although handlers regulated under the Western New York State order may be subject to lower prices for milk used in some products, it is not reasonable to allow the provisions of a local order that prices only three-fourths of a billion pounds of Class II milk per year to dictate the provisions of three Federal orders that annually price more than 12½ billion pounds of Class II milk that is distributed throughout the eastern one-third of the U.S.

The Class II pricing method adopted herein will place the same value on milk used in the new intermediate Class II under the three Northeast orders as Class II milk has under other orders. The Class II price will eliminate retroactive Class II milk pricing, but not, as many Northeast handlers feared, at the cost of having to adjust a tentative announced price to the level of the announced M–W price. The intended 10-cent average Class II differential over the average level of the Class III price should be achieved more consistently under the adopted Class II price provisions than under those originally proposed for the three orders. Because the seasonal adjustors to the Class III price in the three northeast areas will cause that price to vary around the level of the basic formula price, adjustments to the Class II price should be based on its relationship to the basic formula price rather than the Class III price. Use of the basic formula price in adjusting the Class II price will also maintain Class II price equity with other orders.

e. *Seasonal price adjustors.* The seasonal adjustors currently applied to Class II prices for producer milk should be retained, but only to adjust Class III prices. These price adjustors range from a minus 12 cents in May to a plus 10 cents in August in the New England and New York-New Jersey milk orders, and from a minus 10 cents in May to a plus 12 cents in August in the Middle Atlantic order. The seasonal price adjustors are intended to encourage manufacturing plant operators to buy more milk to use in making the market's surplus dairy products during the spring months when milk supplies are plentiful. The adjustors also encourage manufacturers to buy less milk, thereby releasing it for fluid use, during the fall months when milk production is seasonally low and demand for fluid products is high.

For the most part, those hearing participants who addressed the issue of seasonal price adjustors favored retaining them, but only on the lowest-priced class. The Pennmarva witness, however, proposed that the adjustors be applied to both the Class II and Class III prices on the basis that they should continue to be used to encourage the use of milk for other than fluid use in spring, rather than fall. He also noted that if the seasonal adjustors were used to adjust only Class III prices, the difference between Class II and Class III prices would widen in the spring and narrow in the fall.

Representatives of Eastern Milk Producers, Dairylea Cooperative, Inc., and Dietrich's Dairy favored the application of the seasonal adjustors only to the Class III price. The Eastern witness testified that the seasonal adjustments to the lowest-class price are necessary to encourage the appropriate use of seasonal variations in supply, and to complement the seasonality in producer prices to encourage supply patterns to conform to the fluid needs of the market. The witness explained that the seasonal price adjustors have been an integral part of the nonfluid price structure of the market for many years, and should be retained. The Eastern representative testified that the adjustors should apply only to the Class III price because the proposed Class II products do not balance the market's milk supply. The Dairylea witness testified that while it is logical to retain the seasonal adjustments to the Class III price because of the market-balancing nature of the proposed Class III products, production of the proposed Class II products reflects about the same seasonal pattern as milk production and



therefore should not be subject to seasonal price adjustments.

Witnesses favoring elimination of the seasonal price adjustors testified on behalf of the National Farmers Organization (NFO), a cooperative association representing producers whose milk is pooled on all three orders; the New Jersey Milk Industry Association, an organization representing a number of New Jersey distributing plants; and Leprino Cheese, a manufacturing plant operator. The NFO representative pointed out that the adjustors do not exist in any other Federal orders and observed that the seasonality of supply and demand is a factor in determining the Minnesota-Wisconsin price, upon which Federal order prices are based. He also stated that the adjustors reduce total returns to producers. The Leprino Cheese representative supported elimination of the adjustors for the purpose of competitive consistency between orders. A witness for Hershey Chocolate, U.S.A., found no fault with the existence of seasonal price adjustors in the order as long as the value of the affected class of milk is not altered over the course of the year.

A brief filed on behalf of Morningstar Foods, a handler that operated two pool distributing plants regulated under Order 4 at the time of the hearing, observed that the seasonal adjustments to the present Order 4 Class II price result in a price that is 2 cents higher all year than the Order 1 and Order 2 Class II prices. The brief characterized as absurd a change in the order for the purpose of making it uniform while leaving in place non-uniform prices for the lowest class of use.

The seasonal price adjustors should continue to apply to the markets' lowest-class price. The products classified in Class III under the uniform classification provisions are storable enough to allow their manufacture during the markets' seasons of surplus production and their sale during seasons when production is lower. The rates of adjustment are designed to average out over the course of a year so that the actual value of milk used in the markets' surplus products over the year is unchanged. For this reason, the seasonal adjustors do not reduce returns to producers by any significant amount over the course of a year. During 1987, for instance, the seasonal adjustments to the Order 2 Class II price reduced producer returns by sixteen one-hundredths of one cent.

If applied only to the proposed Class III products, the seasonal adjustors should have little, if any, effect on intermarket competition. The price of milk used in such products will, over the course of a year, be no different than the price manufacturers in other orders pay for milk used in the same products. Manufacturing plant operators in the Northeast will continue to be encouraged to use milk when supplies are abundant, and release it for use in the fluid market when milk production is seasonally low. Because of the relative perishability of the proposed Class II products, however, processors of those products must have a regular supply of milk and do not have the flexibility to make cottage cheese, for example, in May and sell it in October. Therefore, the seasonal price adjustors should not apply to Class II prices under the amended orders.

The current levels of seasonal adjustments in the three Northeast orders should be unchanged. The differences in seasonal adjustments between Orders 2 and 4 are longstanding, not having been amended since 1971. There is no testimony in the record of this proceeding to explain why the amounts of seasonal adjustment are not entirely uniform between the orders or to describe any marketing problems that have resulted from the differences. Because a number of products now included in the lowest-priced class will be reduced, it can be expected that the impact of the minor difference in seasonal adjustments will be reduced accordingly.

Comments were filed in response to the recommended decision by Dietrich's Milk Products and on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. Dietrich's comments observed that the application of seasonal adjustors to Class III prices only will result in differences between Class II and Class III prices being wider than 10 cents. Computing the Class II price on the basis of the basic formula price rather than on the (seasonally adjusted) Class III price should result in a Class II price that will average, over the course of the year, a level approximately 10 cents above the average level of the Class III price.

The exceptions filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., stated that, contrary to the findings of the recommended decision, intermarket competition would not be significantly affected by maintaining seasonal price adjustments for soft products as well as for hard manufactured products. The comments argued that, as with seasonally adjusted Class III prices, seasonally adjusted Class II prices would not differ from those in other orders over the course of a year. Exceptors stated that seasonal price adjustments are intended to encourage seasonal purchases of milk from producers rather than the storage of manufactured products over a period of months, and that soft product manufacturers tailor their production and sales promotions to meet milk supplies.

As stated above, processors of soft manufactured products must use producer milk to make their products when consumer demand for those products is high. Although some of the peak production months for these products coincide with the months of negative seasonal price adjustments, the later summer months of July and August, which are also months in which many of these products are produced heavily, are months in which seasonal price adjustments are positive. These products cannot be stored for months, as the hard manufactured products customarily are. Therefore, although it may be reasonable to consider the average Class III price level over the course of a year when comparing prices between different marketing areas, it would not be appropriate to consider annual average Class II price levels when comparing relative Class II prices between markets. The short time frame within which Class II products must be sold to consumers after being produced would make such comparisons meaningless. The average price over the course of a year could not be considered to apply to them.

Exceptors' motives for wanting to maintain the current seasonal price adjustors on milk used to produce Class II products is completely understandable. During some of the months of peak production and consumption of soft manufactured products, the price paid by northeast handlers for milk used in such products is less than the price paid by handlers regulated under other Federal orders by amounts ranging from 9 to 12 cents per hundredweight. This price advantage is equivalent, and additional to, the price advantage currently enjoyed by northeast handlers in the class price difference that exists because of the current 2-class pricing system of the 3 northeast orders. The seasonal adjustments applicable to prices for milk used in soft manufactured products should therefore be eliminated for some of the same reasons that 3-class pricing should be adopted for these markets.

f. *Uniform announcement of class prices and butterfat differential.* As proposed by Pennmarva Milk Producers Federation and supported by the witness representing Eastern Milk Producers Cooperative Association, Inc., and Agri-Mark, Inc., the three Northeast

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orders should contain uniform provisions instructing the market administrator to announce class prices and the butterfat differential. The announcement requirements would be the same as those in other orders to assure uniformity. There was very little testimony regarding the cooperatives' proposal, and none opposing it. In addition to including the announcement requirements for class prices and the butterfat differential in a separate new section under the New York-New Jersey order, the new section should also include the announcement requirements for product prices currently contained in the order. The announcement requirements for the uniform price should also be moved to a new section of the New York-New Jersey order, following the section describing computation of the uniform price. These changes will assist any persons dealing with all three orders to find these various price announcement provisions in a standard location.

*3. Conforming changes.* Adoption of the uniform classification provisions for the three northeast orders will require a number of conforming changes that were neither proposed nor specifically discussed in the record of this proceeding. However, a proposal by USDA to make any changes necessary to implement amendments resulting from the proceeding was included in the hearing record, and addressed at the hearing. The conforming changes necessary to implement uniform classification provisions in these orders vary significantly between the three orders involved, depending on the structure of the orders' provisions at the time of the hearing. In all three of the orders, provisions dealing with shrinkage and the classification of transfers and diversions were amended. These changes were necessary in order to accommodate 3-class pricing, and were part of the original uniform classification decisions. In addition, the allocation or assignment provisions of all three orders needed to be changed in accordance with 3-class pricing. Reporting provisions and price computation procedures were also changed as necessary to incorporate uniform classification.

The format of Order 4 is more easily adaptable to the uniform classification provisions than those of the other two orders, and conforming changes in Order 4 are therefore less extensive. The format of Order 1 is changed considerably in the attached order language. However, these changes are not intended to, and should not, result in any substantive changes, such as changes in the regulatory status of market participants or in obligations to the pool, beyond those required by 3-class pricing.

The provisions of Order 2 differ considerably from those of the other two orders, and from all other Federal orders, in terms of the adoption of 3-class pricing, the particular provisions of Order 2 that inhibit adoption of uniform provisions and format are the division of Class I into Classes I–A and I–B, farm point pricing, and delivery of most producer milk in bulk tank units. The hearing record contains no testimony on the need to change any of these provisions, and 3-class pricing can be adopted for Order 2 without making any such changes. However, some Order 2 section numbers are changed for the purpose of closer alignment of the format of Order 2 with other orders, and to correct the enumeration of sections such as §§ 1002.50a and 1002.88a. If there is any desire to further modify the provisions of Order 2 to bring it into closer conformity with other Federal orders, another amendatory proceeding will be necessary at a later date.

*2. Pooling Standards*

(a) *Health Authority Approval.* The New York-New Jersey order (Order 2) should be amended to provide for suspending in a timely manner the designations of regular pool plants that have lost their health approval. The decision also adopts provisions that establish a procedure to suspend the designations of regular pool plants that discontinue operations.

Currently, Order 2 provides that pool plant designations be automatically suspended on August 1 each year for plants that on June 15 are not approved by the appropriate regulatory agency as a source of milk for the marketing area. The order does not provide a method to remove the designations of regular pool plants that discontinue operations (quit receiving milk and/or remove the processing equipment).

The procedural changes adopted herein were proposed by three cooperatives (Agri-Mark, Dairylea and Eastern) that furnish more than 30 percent of the milk for the Order 2 market. There was no opposition to the proposed changes. Only one person, other than the witness for proponents, testified regarding this matter and his suggested modification will be dealt with at the end of the findings on this issue.

Proponents testified that the changes are needed to expedite the suspension of a plant's designated pool status if the plant loses its health approval. They also contended that the order should provide a procedure to remove pool plant designations for plants which are not functioning as milk plants on a current basis.

To demonstrate the need for its proposed changes, the witness for proponents cited the following two examples. The former Dairylea fluid milk plant at Goshen, New York, was closed for about two years before it was sold to Sorrento Cheese Company. The plant was used as a transfer station for several months after its processing operations were discontinued, but even those activities ceased prior to the sale of the property. When Dairylea sold the plant, it asked the New York State regulatory authorities to quit making inspections and the plant's health approval was terminated in December 1980. Since the plant did not have health approval on June 15, 1987, the plant's designated pool status was removed on August 1 of that year. However, since the plant's pool designation was not removed for quite some time after the plant had ceased operations, another person could have used the plant's designated status to operate as an Order 2 handler and qualify milk for pooling under the order.

Proponents' witness related a similar situation where a plant's designation for pool status was not removed even though the plant had gone out of business. Scheppe Cheese Company bought a plant located at West Burlington, Pennsylvania, which had been operated as a milk receiving station. Although the plant was closed and the milk handling equipment had been removed several years earlier, the plant's pool designation was continued because its health approval had not been removed by the Commonwealth of Pennsylvania. Since the plant's pool designation had not been terminated, Scheppe automatically became the operator of an Order 2 designated pool plant and was eligible to qualify milk for pooling under that order upon purchase of the plant.

Proponents were particularly concerned that small fluid milk operators could go out of business in the future and sell their plants to manufacturing processors who could use the designated pool status of such plants to qualify milk for pooling under Order 2. Proponent expressed the opinion that, although the order allows pool plant designations to be transferred from one person to another in certain circumstances, situations such as those identified in proponents' testimony could result in disorderly marketing. For these reasons, the cooperatives proposed that pool plant designations be



terminated when plants lose their health approval or quit operating as milk plants.

It is evident from the foregoing that the current Order 2 provisions lack sufficient guidelines in some cases with respect to removing the designations of regular pool plants. Although the adoption of minimum performance standards for Order 2 market suppliers, discussed under another issue in this decision, will resolve some of the concerns identified by proponents with respect to this issue, the proposal of Agri-Mark, Dairylea and Eastern to correct the deficiencies in the order's current provisions for removing the "regular pool plant" designation should be adopted. As proposed, such designations would be forfeited for any plant that fails to meet the order's plant definition, has not received pool milk during the immediately preceding 12 months, or does not have current health approval. Such changes will tend to assure a continuation of orderly marketing under Order 2.

Order 2 now allows 15 days' temporary lack of health authority approval as an exception to suspension of the regular pool plant designation in order to allow a handler time to correct temporary problems relating to health approval. This 15-day grace period was also included in proponents' proposal. A representative of Dietrich's Milk Products Company testified that 15 days is an inadequate period for regaining such approval. He cited the case of a load of unapproved milk that had lost its U.S. Public Health Service rating and therefore could not be received at his plant. The Dietrich's witness stated that it took almost 30 days to get the milk re-inspected and re-approved for marketing. Based on this experience, Dietrich suggested that handlers be allowed 30 days, rather than 15, to get health problems corrected and the plant re-inspected and re-approved as a source of milk for the marketing area. The Dietrich incident appears to concern the approval of milk produced by dairy farmers, which involves farm inspections, while the proposal by the three cooperatives relates to plant approvals. Since no testimony was presented to show that correcting temporary health problems in plants involves the same amount of time as rectifying similar farm problems, the record does not provide a basis to make the change advanced by Dietrich. Continuation of the shorter 15-day period should motivate handlers to correct health problems in their plants expeditiously.

(b) *Minimum shipping requirements.* Order 2 should be amended to require that handlers operating designated pool plants and bulk tank units dispose of minimum percentages of their associated milk supplies in Class I–A in the months of September through January in order to maintain their pooling designations. Specifically, such handlers would be required to dispose of 10 percent of their milk receipts for Class I purposes during each of the months of September through November and 5 percent in the months of December and January.

The proposal to establish uniform pooling standards for market suppliers under the New England order (Order 1) and Order 2 is denied, as is a proposal to lower the shipping standards for Order 1 supply plants. A related handler proposal that is designed to allow shipping handlers under Order 2 to recover their direct costs from receiving handlers when suppliers are making required shipments to fluid milk plants is also denied.

Under the terms of Order 1, in each of the months of August and December a supply plant is required to ship 15 percent of its receipts of milk from dairy farmers to pool distributing plants to qualify the supply plant as a pool plant. For each of the months of September through November, an Order 1 pool supply plant must ship 25 percent of its receipts to fluid milk plants. The order provides for unit pooling of supply plants whereby a group of plants may combine their operations for the purpose of meeting the applicable shipping percentages. It also includes a provision that permits cooperatives to operate supply/balancing plants that are located in the marketing area as pool plants without meeting monthly performance standards.

The qualification of milk for pool status under Order 2 differs significantly from Order 1 and from most other Federal milk orders. The milk produced by Order 2 dairy farmers is pooled primarily by designation rather than on the more traditional basis whereby plants qualify milk for pool status by meeting minimum monthly performance standards. The Order 2 milk supply is pooled by handlers who operate designated regular pool plants and declared pool units. Such designated plants and units are required to meet monthly performance standards for pooling only if the market administrator finds it necessary to establish temporary required Class I utilization percentages to assure that Order 2 handlers will supply sufficient quantities of bulk farm milk for the Class I fluid market. This determination by the market administrator is referred to as a "call".

Plants located in New York, New Jersey and Pennsylvania are designated "regular pool plants" under Order 2 on the basis of their geographic location, and then only after meeting performance standards as "temporary pool plants" for 12 consecutive months. In each of the months of January through March and July through December, a "temporary pool plant" must have 25 percent or more of its milk receipts from dairy farmers (including units) classified as Class I–A in the marketing area or on the basis of transfers to pool plants. For the months of April through June, varying Class I utilization percentages must be met by such a plant. Once "regular pool plant" status is attained, designated regular pool plants are not required to meet monthly performance standards in order to pool milk.

With certain exceptions, bulk tank units may be operated and pooled by regular pool plant operators and qualified cooperatives. If the dairy farms of the producers included on the handler's declared pool unit are located in New York, New Jersey, Pennsylvania or certain counties in Massachusetts and Vermont, the primary production area for Order 2, the unit is not required to meet monthly performance standards.

The Dairy Industry Institute of New York (the Institute), an organization of 10 fluid milk processors and distributors located in the New York City metropolitan area, proposed that, as a condition of maintaining designated pool status, regular pool plants and declared bulk tank units be required to assure that minimum percentages of their milk supplies be classified as Class I–A in the months when milk supplies are short relative to Class I needs. The Institute's proposal would require such plants and units to dispose of 25 percent of their milk receipts from dairy farmers as Class I–A in each of the months of September through November, and 15 percent of such receipts in each of the months of August, December and January. The Institute's representative testified that performance standards are needed to assure the orderly movement of farm milk from pooled supply plants, manufacturing plants and bulk tank units to distributing plants for processing into Class I fluid milk products. The handlers were hopeful that incorporating performance standards in Order 2 would reduce the handling or "give-up" charges presently being paid by fluid processors and would improve the position of fluid milk processors in competing for milk supplies with manufacturing plant

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operators whose payments for milk are subsidized with funds from the marketwide pool which are provided by fluid processors and, ultimately, by consumers.

Dellwood Foods, Inc., a member of the Institute, abandoned its hearing notice proposals to amend Order 2 by requiring handlers to comply with a 15-percent shipping standard and by eliminating the authority of the market administrator to require regular pool plants and pool units to meet specific Class I–A utilization percentages. Dellwood then supported the Institute's testimony and position on this issue.

Oak Tree Farm Dairy, Inc., an Order 2 handler whose fluid milk plant is located in the 1–10 mile zone, proposed performance standards that would apply year-round at higher percentage levels than those proposed by the Institute. Under the Oak Tree proposals, handlers operating regular pool plants, bulk tank units and temporary pool plants would be required to have 30 percent of their receipts from dairy farmers priced in Class I–A during the 3-month period of September through November, 20 percent in the months of January, February, July, August and December and 10 percent in the 4-month period of March through June. If the Class I–A utilization of the handler's dairy farmer receipts was 45 percent or more in the immediately preceding September through November period, the handler would not be required to meet the Class I utilization standard in the following months of March through June.

The Oak Tree witness testified that the handler has had problems buying milk at fair, reasonable and competitive prices for fluid packaging at his Long Island plant. The witness entered a recent billing invoice to show how much the handler had to pay to obtain milk. The witness expressed the handler's hope that the adoption of performance standards for Order 2 pool handlers would make more milk available to handlers who are packaging fluid milk products.

Several fluid milk processors supported the adoption of performance standards for Order 2 pool plants and bulk tank units. Spokesmen for the New Jersey Milk Industry Association, representing 16 distributing plant operators regulated under Orders 2 and 4, Dairylea Cooperative, Inc., and Farmland Dairies, Inc., supported the adoption of such standards. There was a consensus among the distributing plant operators that any handler which benefits from regulation under an order by receiving equalization payments from the producer-settlement fund, which are provided by Class I operators, should be required to demonstrate its responsibility to the fluid market by making certain that the fluid needs of such operators are fully satisfied, especially during periods when the market's milk production is low relative to Class I demand.

Adoption of mandatory performance standards for pooling milk under Order 2 was opposed by four Order 2 producer groups (Allied Federated Cooperatives, Lowville Milk Producers Cooperative, National Farmers Organization and Oneida-Lewis Milk Producers Cooperative, Inc.) and an individual dairy farmer whose milk is marketed by the National Farmers Organization (NFO). These producer representatives were particularly concerned that requiring pool plants and units to meet minimum Class I utilization standards in the short milk production months would make it difficult for them to negotiate over-order prices for their shipments to fluid plants in those months.

An Oneida-Lewis representative testified that the cooperative would have difficulty meeting the proposed performance standards because its milk is supplied to a Class II processor. The Lowville Milk Producers Cooperative witness contended that the adoption of mandatory performance standards is an inefficient way of furnishing milk for the fluid market and would result in extra handling costs that must be paid by consumers.

NFO and Allied took the position that the market's Class I needs are being furnished under the order's present order provisions, which have worked effectively. A witness for NFO also contended that adoption of minimum Class I utilization standards for plants and units would result in uneconomic movements of milk from distant zones simply to qualify the milk for pooling. In addition, he stated, such standards would create inequities because many major fluid processors also have large Class II manufacturing operations. NFO took the position that handlers with both Class I and Class II operations want other parties to supply the fluid milk needs for their Class I operations so that they will be able to keep more of their own milk supplies for their own (more lucrative) manufacturing plants. A post-hearing brief filed by NFO stated that these handlers can meet their own milk supply needs and should do so without artificial assistance from the order.

Dietrich's Milk Products, Inc., Empire Cheese Inc., Friendship Dairies, Inc., Kraft Inc., Leprino Foods Company and Pollio Dairy Products Corporation, six Order 2 proprietary handlers who primarily are engaged in manufacturing Class II dairy products, also testified in opposition to the adoption of mandatory performance standards for pooling milk under Order 2. The handlers took the position that Order 2 manufacturing handlers play a significant role of marketwide benefit by balancing the market's seasonal and weekend surpluses. They testified that such handlers receive unwanted excess milk at their manufacturing plants in the spring and provide supplemental milk to fluid milk plants in the fall.

Witnesses for the plant operators indicated that the present Order 2 pooling system of using plant and unit designations in conjunction with the provisions which authorize the market administrator to establish minimum Class I use standards is the most efficient method available to supply the market's fluid needs. Witnesses for the manufacturing plant operators testified that these provisions have served the market well over the years and that a continuation of such pooling procedures would be preferable to imposing mandatory performance requirements on handlers.

The manufacturing handlers contended that the performance levels proposed by the Institute and Oak Tree Farm Dairy exceed the market's needs and would therefore result in uneconomic milk handling practices. They also claimed that requiring market suppliers to meet minimum pooling standards would exert downward pressure on handling charges that suppliers would be able to pass on to fluid processors who buy supplemental milk, and that the proposed fixed mandatory performance requirements would not provide the necessary flexibility to meet the market's changing supply/demand conditions.

Some of the handlers advanced suggestions intended to improve any regulatory provisions concerning pooling standards that are adopted as a result of this hearing proceeding. The Dietrich witness suggested that the minimum standards apply only for the months of August through November. Representatives for Dietrich and Kraft also suggested that shipping percentages in the range of 5 to 8 percent would be more appropriate than 15 to 30 percent. Dietrich, Friendship and Kraft asked that groups of handlers be allowed to have their operations considered on a combined basis for the purpose of pool qualification. Witnesses for Dietrich and Kraft suggested that the market administrator or the Director of the Dairy Division be given the authority to adjust the performance standards if marketing conditions change.



In a post-hearing brief filed by Agri-Mark, the cooperative contended that the performance proposals advanced by the Institute and Oak Tree should be denied because proponents did not provide sufficient market evidence to justify the proposed changes. The cooperative claimed that proponents relied on decisions for the Chicago and Upper Midwest marketing areas, where proponents testified that shipping standards had replaced call provisions, to justify the proposed changes in Order 2. Agri-Mark also referred to proponents' testimony that the proposals were designed, at least in part, to eliminate differences between blend prices under the various orders in the northeast region by causing handlers to shift milk from regulation under Order 2 to Order 1. Such a shift would cause Order 2 producer prices to increase and Order 1 prices to producers to be reduced as a result of pooling some of the Order 2 surplus milk under Order 1. In Agri-Mark's opinion, these arguments advanced by proponents completely distort the purpose and justification for performance standards under Federal orders.

The New York-New Jersey order should be amended to require all handlers who operate designated pool plants and bulk tank units to dispose of minimum percentages of their receipts of milk from dairy farmers for Class I purposes in the months of short milk production (September through January). In addition, the market administrator would have the authority to "call" for a higher or lower level of shipments for Class I use if, on the basis of a handler meeting, the required percentages of Class I use were found to be inadequate or excessive for the purpose of supplying the market's fluid milk needs.

Under the order's current provisions, it is possible for manufacturing handlers to avoid providing any milk for Class I purposes unless the market administrator establishes temporary pooling standards for handlers by issuing a "call". A situation in which some pool plants and bulk tank units dispose of a percentage of their receipts from dairy farmers in Class I that significantly exceeds that marketwide average of Class I use while other pooled handlers do not have any of their milk associated with the Class I market is not an equitable arrangement for any of the market's participants. Distributing plant operators who must pay excessive handling or give-up charges to obtain supplemental milk to operate their plants are competitively disadvantaged relative to other distributing plant operators who are able to obtain adequate milk supplies, often from their own manufacturing operations, at reasonable and customary prices.

In addition, manufacturing handlers who ship milk to fluid packaging plants may incur costs of unused manufacturing capacity and transportation costs not covered by the order that are not incurred by those who retain all of their milk supplies for processing. As a result, shipping handlers are disadvantaged relative to their non-shipping counterparts, not only because of such higher costs, but also in terms of their ability to attract and retain an adequate supply of producer milk. Because handlers who carry the burden of supplying milk to the fluid market have higher costs than those who do not, their ability to pay producers as high a price as non-shipping handlers are able to pay is impaired. This situation results in inequitable returns to dairy farmers. It is evident from the record of this proceeding that such unfavorable marketing circumstances are prevalent in the Order 2 market.

Therefore, in order to continue participating in the marketwide pool, maintain their designated pool status and thus subsidize their payments to dairy farmers with the Order 2 blend price, handlers who operate designated pool plants and units should demonstrate their willingness and ability to supply milk on a continuing basis for the higher-valued uses which generate the blend price. Although the cost of shipping milk to a fluid processing plant may exceed the returns for such shipments in some cases, it is not a proper basis to allow handlers and producers who have no association with the fluid market to enjoy the benefits of participating in the marketwide pool and receiving the blend price that is generated by fluid milk sales.

In addition to fostering equitable treatment under regulation, the adoption of minimum performance standards for pooling should remove doubts that distributing plant operators may have about whether the milk associated with manufacturing plants will be available for shipment to distributing plants in the months of short milk production. Also, the changes adopted herein will encourage the development of new supply relationships and/or cultivate and extend those already existing between designated pool handlers and fluid milk plants serving the Order 2 market.

Minimum Class I utilization standards for handlers should apply during the months of September through January. The record evidence fails to demonstrate the need for year-round performance requirements, as proposed by Oak Tree Farm Dairy. The record does show, however, that milk supplies relative to the market's Class I needs are short during the months of September through January. Generally, the Class I utilization by Order 2 handlers in each of these five months exceeds the market's annual average Class I use and represents about 40 to 45 percent of the market's pooled milk.

For the months of February through August, information in the record shows that the Class I utilization by handlers is below the market's annual average Class I use and fluctuates generally in the range of 35 to 40 percent. Although both the Institute and Oak Tree Farm Dairy suggested that performance requirements apply in August, the market data do not demonstrate a need for imposing Class I requirements on handlers in August even though milk supplies may be somewhat tighter at the end of the month as the new school year begins. Actually, the percentage of pool milk used in Class I under Order 2 was greater in February than in August for each year of 1985–1988. In view of the foregoing, August is excluded from the performance period which most appropriately should be limited to the five months of September through January.

The evidence also shows that the market's supply/demand balance is tightest in the months of September through November, as witnesses for both Oak Tree and the Institute testified. For that reason, higher performance levels would apply in each of these three months. The required Class I use percentage for the months of September through November should be 10 percent, with a 5-percent requirement during the months of December and January. These levels of required shipments will assure that all milk suppliers in the New York-New Jersey market maintain some association with the market for fluid milk, but should not require large volumes of unnecessary and expensive shipments solely for the purpose of qualifying milk for pooling.

Some market suppliers contended that any performance standards adopted for this market should be established in terms of the percentage of a handler's milk that is shipped to fluid milk plants rather than as a percentage of a handler's receipts from dairy farmers that is used in Class I–A. They argued that since some handlers manufacture dairy products at their distributing plants in connection with their Class I operations, only part of the total amount of milk transferred to such plants would

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be assigned to Class I. If some of a handler's shipments to a distributing plant are classified as other than Class I–A, handlers supplying the milk would have to ship more than the required percentages of their dairy farmer receipts to distributing plants to assure that they meet the order's Class I utilization standard.

However, to the extent that the receiving distributing plant has sufficient Class I use, the milk received at such plant from a pool plant or pool unit may be assigned to Class I by the plant operator. The current Order 2 allocation provisions concerning such transfers give the receiving plant operators considerable discretion in classifying milk receipts from units and plants. Such flexibility also gives shipping handlers an opportunity to lock in a Class I classification with the receiving distributing plant operator when the terms of the sale are decided and prior to the time the milk is actually moved.

The ability of shipping handlers to gain the agreement of receiving handlers that the milk they transfer to distributing plants will be assigned to Class I should allay the concerns of such handlers in dealing with the minimum Class I use standards adopted herein. The current Order 2 performance standards for temporary pool plants specify a given level of Class I use. Also, handlers are familiar with standards based on Class I use because the minimum standards for designated plants and units are announced on that basis when the market administrator issues a "call" for additional milk shipments.

Most of the arguments advanced by those opposing the adoption of performance standards focused on the principle of efficiency. Opponents argued that it is inefficient to move milk from distant zones for fluid use when there are nearby supplies of milk available to meet such needs. However, one of the more significant costs of supplying the fluid market, according to both proponents and opponents of performance standards, is the opportunity cost of the milk when it is not available for processing at the manufacturing plant because of its delivery to a fluid milk plant. In such cases, the manufacturing plant must operate at a lower capacity level, increasing the plant's cost per unit of output. Such so-called "give-up" costs that are associated with shipping milk to fluid milk plants fall as heavily on a manufacturing plant operator located near the New York City metropolitan area as they do on a handler whose manufacturing plant is located in upstate New York and more than 350 miles from the city.

The transportation costs of moving such milk, of course, would be greater for the handler moving the milk from upstate New York. The changes adopted herein under issue 4, which increase the transportation rate for adjusting Class I prices for location, should enable handlers to recover more of the costs associated with transporting milk for Class I use. The increased transportation differential rate should ameliorate somewhat the differences in cost between furnishing milk to the plant of a fluid handler in New York City with milk from nearby sources and moving it to the city from more distant areas of the milkshed.

Opponents also argued that if manufacturing handlers are forced to ship milk to qualify it for pooling under Order 2, they will not be able to charge distributing plant operators as much for the milk that is shipped. Data in this record show that for the Class I milk purchased by Oak Tree Farm Dairy from Queensboro Farms, Inc., in January 1988, over-order charges (including handling and premiums) of $2.12 per hundredweight were applicable. Evidence adduced at the 1987 call meetings, which is also part of this record, shows that Order 2 handlers had been paying up to $2.50 per hundredweight in over-order charges for spot shipments of milk. However, handling charges effective in some other marketing areas, where handlers are required to meet performance standards, are not significantly lower. (Official notice is taken of the price data on Table 36 of Dairy Market Statistics 1988 Annual Summary.) This information would seem to imply that the existence of performance standards in a regulated market does not necessarily have the effect of depressing over-order handling charges.

Several handlers who testified against performance standards took the position that if pooling requirements are imposed on Order 2 handlers they should be allowed to combine their operations for the purpose of meeting the minimum standards. They stated that the order should give handlers the necessary flexibility to operate efficiently in marketing and pooling the milk of dairy farmers.

The flexibility afforded handlers under the bulk tank unit provisions of Order 2 will minimize most of the handling and hauling inefficiencies involved in requiring Order 2 handlers to meet minimum Class I utilization percentages. Nearly all of the Order 2 milk supply is pooled through bulk tank units. Such milk is received by the responsible handler when it is picked up at the farm. The current bulk tank unit provisions provide considerable flexibility for handlers who wish to establish, maintain and be responsible for pooling the milk received by such units.

The need for regular pool plant and pool unit operators to have their operations considered on a combined basis for the purpose of meeting the required utilization percentage will not be as important to handlers as they stated in testimony because the required performance levels adopted herein are considerably below those proposed. For instance, meeting minimum Class I use standards of 5 and 10 percent for five months rather than 15 and 25 percent for six months should make it considerably easier for handlers to qualify their milk for pooling. However, the order would allow handlers operating bulk tank units to combine the units and operate them as one unit under the direction of one of the handlers. In this way, handlers could use a form of combination for the purpose of meeting pooling requirements.

In comments filed in response to the recommended decision, National Farmers Organization (NFO) and Dietrich's Milk Products asked that the decision clarify the ability of individual handlers that operate multiple bulk tank units to have those units be considered on a combined basis for qualification purposes. No amendments made to order language would affect handlers' ability to have their multiple bulk tank units considered on a combined basis, and no changes in such a practice were intended.

As proposed, the designated pool status of plants and bulk tank units would be canceled if they fail to meet the performance standards adopted herein. The rules that handlers must follow to get the milk of such plants and units reinstated for pooling purposes would be the same as those which currently apply if one or more plants or units fails to meet the minimum Class I utilization percentage announced by the market administrator under the terms of the current Order 2 provisions.

If a designated pool plant fails to meet the minimum Class I utilization standard in any month, the plant's designation would be canceled and the plant would not be eligible for pool plant status through the following June 30. On July 1, the plant would be eligible for pooling as a temporary pool plant. If such plant met the performance requirements as a temporary pool plant for twelve consecutive months, the handler could apply to the market administrator to get the plant once again designated as a regular pool plant. Similarly, if a bulk tank unit fails to meet the minimum Class I utilization requirement the unit's pool designation would be canceled and the unit would be depooled through the following June 30. On July 1 the unit could be reinstated as a declared pool unit. During the period that the plant or bulk tank unit is depooled, any Class I milk of such plant or unit would be priced and equalized in accordance with the provisions relating to partial pool plants or partial pool units from the effective date of cancellation through the subsequent June 30.

The 5- and 10-percent levels of required Class I use by handlers adopted herein will assure that handlers will share more equitably the responsibility of furnishing milk for Class I purposes. At the same time, such percentages are not so high as to require that large volumes of milk be moved unnecessarily solely to qualify it for pooling.

It is evident from the hearing record that adoption of the minimum Class I use standards for handlers at the levels adopted herein will not provide adequate supplies of milk to the fluid market during the five qualifying months when more than 40 percent of the market's milk is normally needed for Class I purposes. However, much of the milk needed for fluid use is already controlled by the fluid milk processors who use the milk. In addition, it is expected that supply commitments between shippers and distributing plant operators will fill the gap between required and necessary shipments.

As a provision for occasions when such commitments do not assure needed levels of supply, the market administrator will retain the authority to issue a "call" for needed milk supplies. The authority for a "call", while effective for assuring that temporary needs for additional shipments are met, should not take the place of basic shipping requirements. The procedure for issuing a "call" requires the market administrator to hold meetings, usually on an urgent basis, involving all of the handlers in the market to determine the desirable utilization of all milk shipments. The use of this procedure on other than an irregular basis is unnecessarily burdensome and expensive. Adoption of minimal shipping requirements and the resulting relationships expected to form between suppliers and fluid processors should result in more orderly marketing conditions.

Dietrich and Kraft were concerned that adoption of mandatory performance standards would not provide the necessary flexibility to deal with changing supply/demand conditions. They suggested that the market administrator or the Director of the Dairy Division be given the authority to revise the performance standards if marketing circumstances change. The current provisions of Order 2 that give the market administrator the authority to establish a desirable level of Class I use of milk received from dairy farmers also give the market administrator the authority and discretion he needs to respond to changing supply/demand conditions by raising or lowering the minimum Class I utilization percentages adopted herein if he finds that an adjustment is warranted.

Two producer groups (Oneida-Lewis Milk Producers Cooperative and National Farmers Organization) and the New York State Grange filed exceptions to the adoption of minimum shipping standards as a qualification for pooling under Order 2. National Farmers Organization (NFO) referred to arguments in its post-hearing brief that were considered in the recommended decision, including an assertion that there is no evidence in the record that additional supplies of milk are needed for fluid use. Oneida-Lewis reiterated arguments that the shipping requirement will reduce fluid milk handlers' willingness to pay premiums for milk for Class I use, and therefore will reduce returns to producers. The comments argued further that the order's current provisions have more flexibility to meet fluid needs than those adopted, and that there is no reason to have both a required shipping percentage and a call provision. Exceptors again cited costly and inefficient movements of milk that would be required from distant zones to meet the shipping requirements. Oneida-Lewis suggested that if minimum shipping percentages are incorporated into the order bargaining cooperatives that do not own plants should be exempt from the requirements, stating that fluid processors who also own manufacturing plants should be required to meet their own fluid needs.

Farmland Dairies, Inc., excepted to the low level of shipping standards proposed in the recommended decision, stating that the market needs flexible and innovative shipping standards that require handlers having low Class I use that are located nearest to the fluid market to be the first to provide milk to fluid processing plants.

There is ample testimony and evidence in the record of this proceeding from which to conclude that some handlers are evading their responsibility to provide milk to supply the fluid milk market. The call meetings that were held in 1984 and 1985, a subsequent call for additional supplies of milk for fluid handlers, and the operations of an ad hoc group of Class II handlers that was formed to arrange for milk to be moved from suppliers to fluid handlers all reflect extra-ordinary steps that had to be taken to assure the market of adequate supplies of milk for fluid use.

The existence of fluid milk plant operators who control large supplies of producer milk for the purpose of supplying the needs of their fluid milk plants and auxiliary manufacturing operations does not relieve other handlers and producer groups of all responsibility for supplying the market's needs for fluid milk. Such handlers contribute their full share of milk for the market's Class I needs. Their use of milk for manufacturing uses should become a matter of concern only when the percentage of their milk supply used for Class I purposes falls below the marketwide average of Class I use.

All of the arguments included in the exceptions to the adoption of minimum shipping percentages were considered and responded to in the recommended decision. Because the existing call provisions of the order will be combined with very minimal required shipping percentages, Order 2 will have more flexibility in responding to the level of fluid processors' needs for milk supplies after the shipping requirements are incorporated than it had before. It will also have a measure of equity that has been lacking. A situation in which some handlers and producers are able to withhold their milk from the fluid market for their own, more profitable, uses and still expect to share fully in the benefits of the order's blend price, enhanced above the manufacturing milk price by the higher-valued fluid uses, is neither equitable nor orderly. The shipping requirements adopted in this decision are minimal, but will assure that all of the market's participants supply a small portion of the market's fluid needs in return for a share of the value of those sales.

It is not necessary to modify the required Class I utilization percentage for temporary pool plants to agree with the percentages adopted for regular pool plants, as proposed by Oak Tree. These temporary pool plant utilization percentages apply principally for an initial 12-month period during which handlers are qualifying their plants for designation as "regular pool plants". For that reason, the standards apply year-round at higher performance levels. The standards adopted in this decision apply during five months of each year only to

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handlers operating designated pool plants and units. The standards serve the purpose of maintaining handlers' permanent pool designations, and are set at considerably lower performance levels than the temporary pool plant standards. It is not necessary for regular and temporary pool plants to be subject to the same required Class I use percentage. Therefore, no changes are needed in the current performance requirements for temporary pool plants.

One additional proposal related to the pooling standards for Order 2 market suppliers was considered at the hearing. Friendship Dairies, Inc., an Order 2 handler primarily engaged in manufacturing Class II products, proposed that a handler's pool designation for plants and/or bulk tank units not be subject to suspension or cancellation for failure to meet the minimum pooling requirements if the handler is able to convince the market administrator that fluid operators refused to buy milk because they consider the price too high. The handler explained that a fair price for milk deliveries to fluid processing plants could be significantly higher than the order's Class I price because it would include allowances for certain handling costs.

Proponent contended that supplying handlers should be permitted to recover the entire direct cost of making required shipments of milk to fluid milk plants. To accomplish this, the witness for Friendship contended that the order should establish a basic "floor price" under which shipping handlers would be excused from meeting the order's minimum operating requirements without jeopardizing their pool designations. As proposed, the floor price would reflect the location value of milk at the purchasing fluid milk plant plus the shipping handler's extra expenses associated with gathering the milk, premiums that are paid to producers or cooperatives, and transporting costs not paid for by producers.

In support of its proposal, Friendship testified that during the fall of 1984 and the winter of 1985, all of the milk it offered for sale was accepted by fluid plants. However, the prices Friendship received for such milk were only slightly above the Order 2 minimum Class I prices and did not begin to compensate the handler for the related costs involved in making such shipments.

Proponent further argued that fluid handlers are using the present order provisions to obtain supplemental milk supplies from market shippers at prices that are below the cost of shipping the milk. It was Friendship's contention that fluid operators contract with suppliers for an amount of milk that will meet their absolute minimum needs during the spring months of high milk production and relatively low demand, and then depend on other handlers to balance their needs at times when more milk is needed. The witness stated that when the short milk production season occurs, fluid milk processors claim to have a supply shortage and ask the market administrator to impose Class I utilization requirements on handlers. He argued that fluid milk dealers tend to exaggerate their supply shortfalls, and that their estimates about how many loads of milk they will need far exceed what they actually buy. As a result, the Friendship representative stated, minimum performance standards for pooling are invoked, more milk becomes available, and fluid dealers are able to avoid high handling charges for their supplemental supplies.

Other than the information provided by Friendship, the testimony regarding this proposal is rather limited. Oneida-Lewis indicated its support for the proposal but provided no additional reasons why the changes are needed and identified no specific operational problems that the cooperative has encountered that would be corrected by the adoption of this proposal.

Although no one testified against the Friendship proposal at the hearing, several interested parties indicated their opposition to it in briefs. Those opposing the proposal generally contended that this proposal was an attempt on the part of a manufacturing handler to circumvent the intent of the performance requirements by avoiding shipments to fluid processors and reserving the handler's milk supply for processing at its own plant.

Several concerns about the adoption of such a proposal were identified at the hearing through cross examination of the proponent witness. One anticipated problem would result when handlers supplying the market determine the level of price at which a handler may avoid shipments based on his or her operating costs. In this case, other handlers would not offer to sell milk at any lower prices. There would be no reason for handlers to attempt to reduce their costs by operating more efficiently because the order would provide allowances to cover any costs incurred. It was generally agreed that prices at which supplemental milk would be offered in these circumstances would tend to gravitate to the level of the handler with the highest cost of operation.

The hearing participants also argued that adoption of the Friendship proposal would frustrate the intent of the pooling requirements by, in effect, establishing price ceilings for milk shipments based on whatever marketing costs handlers are able to justify. The opponents of Friendship's proposal argued that if the mechanism were adopted for Order 2, it would be possible for all handlers to justify the prices at which they offer to sell milk to fluid processors without being required to ship.

The Friendship proposal is denied. There should be no recognition of the costs of such activities as assembling the milk and premiums paid to producers in determining the shipping requirements. The compensation for such activities is best left outside the scope of the order provisions and determined on the basis of competition in the marketplace or through negotiations between the buyers and sellers of milk.

In addition to the problems identified at the hearing, proponent admitted that the administration of the order would be more complicated if his proposal were adopted. However, the witness took the position that the proposal is workable and should be adopted. The determinations required by the market administrator in identifying, defining and quantifying the appropriateness of a handler's cost figures for the activities for which Friendship proposes shipping handlers be compensated would involve extensive time and effort. Any additional costs to administer these additional rules would have to be paid for by regulated handlers.

The costs of performing the activities for which Friendship proposes assured re-imbursement vary widely among and within regulated markets. A determination of whether such cost figures, which cover several various aspects of milk marketing, are reasonable and therefore appropriate would be almost impossible in view of the extent of their variability, both on an intra- and inter-market basis. Such determinations would be overly burdensome.

Proponent implies in his testimony that handlers are forced to ship their milk to the fluid market and are required to meet the order's minimum performance standards. They are in fact forced to do neither. The decision to ship milk is left with the market supplier. A handler must meet the minimum performance standard by demonstrating an association with the market's Class I sales only if the shipper wishes to participate in the marketwide pool and share in its Class I sales. Although Friendship may not recover all of its direct costs on the portion (about 15 percent) of its milk that is sold to the fluid market, the benefits realized by the handler from being able to pool all of its milk and receiving credit for it at the Order 2 uniform prices should more than offset any losses associated with making shipments.

In addition to proposing that Order 2 handlers be required to meet performance requirements in certain months, the Institute submitted a corollary proposal that would provide uniform pooling standards for Order 1 and 2 market suppliers. To align the qualifying seasons under the two orders, the Institute modified its hearing notice proposal for Order 2 by dropping the month of January as a qualifying month. As modified, the same proposed qualifying season of August–December would apply to market suppliers under both Orders 1 and 2. Also, as proposed, the performance percentages under both orders would be identical: 15 percent in August and December and 25 percent for the months of September through November. The Institute asked that the Secretary review the record data and determine whether proponent's proposed performance levels were justified. Proponent requested that if the investigation shows that different percentage levels than those proposed appear to be more appropriate, identical percentages under both orders be adopted at levels different than those proposed.

A spokesman for the Institute argued that the performance requirements for Order 1 and 2 market shippers should be identical so that they will be more favorably aligned with the pooling requirements provided under the Middle Atlantic order, in addition to those included in other Federal milk orders. The witness also contended that these coordinating changes are needed to foster competition for milk supplies between Order 1 and 2 handlers in a procurement area that is common to both markets. Proponent claimed that the extensive overlap of the milk procurement areas for these two markets makes it very important that the performance requirements for all suppliers operating in the region be the same so that a shipper's decision to market the milk of dairy farmers under one order rather than the other would be based on economics rather than the relative ease of qualifying the milk for pool status under one market rather than the other.

Generally, the fluid milk processors identified in previous findings as supporters of the Institute's proposal to impose performance standards on Order 2 market suppliers also endorsed its proposal that shipping requirements in Orders 1 and 2 be the same, and gave the same reasons advanced by the Institute. In addition, the fluid milk processors' representatives suggested that adoption of uniform standards for shippers supplying these two markets may provide the benefit of equalizing the blend prices for the two markets as Order 2 handlers operating manufacturing plants and having equal access to both markets can be expected to shift the regulation of their plants to Order 1 to improve their pay prices to producers.

The dairy farmers, cooperatives and proprietary manufacturing plant operators identified earlier as opposing the adoption of mandatory performance standards for Order 2 shippers did not specifically address the Institute's proposal to make shipping standards for Orders 1 and 2 uniform.

In a post-hearing brief, Agri-Mark, Inc., a cooperative association that controls about one-half of the supply of milk for the Order 1 market, objected to the uniform shipping standard proposal for both Order 1 and Order 2 advanced by the Institute. The cooperative's representative contended that the level of performance required of Order 2 handlers should be based solely on the amount of milk needed to supply the Class I needs of that market. He rejected the idea that the level of shipping performance required of Order 1 handlers be determined in any way by the performance standards required of Order 2 handlers. Agri-Mark contended that if the pooling provisions of Orders 1 and 2 are not tailored to fit the unique needs of the individual markets, the orders will not be capable of responding to marketing conditions in each market.

The proposal by the Institute to provide uniform pooling standards for Orders 1 and 2 should not be adopted for two reasons. First, proponent's intent cannot be accomplished by adopting the changes proposed. As already indicated, there are wide structural differences in the pooling provisions of these two orders. Under Order 2 most of the milk is pooled by handlers operating designated pool plants and bulk tank units that are not required to meet minimum performance standards. Under Order 1, plants and cooperatives generally must meet minimum performance standards to qualify their milk for pooling each month. Regardless, uniformity cannot be achieved by adopting the same minimum percentage for supply plant operators under Order 1 and handlers operating pool plants and bulk tank units under Order 2. Order 1 supply plants qualify on the basis of shipments to distributing plants while Order 2 handlers generally are subject to minimum Class I utilization requirements only when the market administrator determines that fluid milk plants need more milk. Also, there are other pooling provisions in these two orders that affect the ability of market suppliers to qualify milk for pool status. There were no proposals considered at this hearing to eliminate these differences.

Furthermore, marketing conditions under these two orders do not justify uniform performance standards. The performance standards for market suppliers under a Federal milk order normally are dependent on the Class I utilization of producer milk. Usually, a market with a high percentage of Class I utilization has a relatively high shipping requirement for suppliers regulated under that order, while a market with a low percentage of Class I use has a lower minimum standard for such handlers. There is a significant difference in the percentage of Class I use of the milk produced by dairy farmers under these two orders. Record information shows that since 1986 the Class I utilization of pooled milk in Order 1 has been 12 to 15 percentage points higher than in Order 2, a situation which results in higher performance standards in Order 1 than in Order 2. Accordingly, the Institute's proposal for uniform performance standards for pool plants regulated under Orders 1 and 2 is denied.

The New Jersey Milk Industry Association and Dairylea Cooperative, Inc. filed exceptions to the Department's failure to adopt the same shipping requirements for Order 2 that are provided in Order 1. Both exceptors argued that pooling standards should be uniform between the orders to equalize the orders' utilization and blend prices. The Association stated that adoption of the Order 1 shipping requirements for Order 2 would guarantee an adequate supply of milk for fluid use under Order 2, and Dairylea asserted that Order 2 handlers are disadvantaged in relation to Order 1 handlers in buying milk for Class I use because of the blend price differences between the orders. The reasons for not adopting uniform pooling provisions for the two orders were thoroughly discussed in the recommended decision, and are repeated above. No reasons for adopting the proposal are given in the exceptions that have not been discussed.

The National Farmers Organization (NFO) proposed that the shipping standards for Order 1 supply plants be reduced. The cooperative modified its proposal at the hearing. Under the

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modified proposal, supply plants would be required to ship 10 percent of their receipts from dairy farmers to pool distributing plants in the months of August through December to qualify the supply plants as pool plants. The proposed changes would lower the performance standards for such plants by 15 percentage points (from 25 to 10 percent) in the months of September through November and by 5 percentage points (from 15 to 10 percent) for the months of August and December. NFO also proposed that Order 1 be amended to give the Director of the Dairy Division or the market administrator the authority to return the shipping percentages to their present levels if he finds that marketing conditions warrant such changes.

NFO contended that marketing conditions have changed since the present pooling standards for Order 1 supply plants were adopted. Proponent testified that since there are only half as many distributing plants regulated under Order 1 as there were 10 years ago and 75 percent of the market's Class I sales are accounted for by eight large distributing plants, there is less opportunity for small supply organizations to qualify their milk for pool participation. To qualify all of its Order 1 milk for pooling, proponent witness testified, NFO has from time to time sold milk to distributing plants and then bought some of it back from the distributing plant operators. Such inefficient milk handling practices could be avoided, the NFO representative claimed, if the shipping standards were lowered as the cooperative proposed.

There was no testimony to support NFO's proposal to reduce the shipping standards for supply plants. There was, however, considerable opposition to such a change. Agri-Mark, Inc., and the Green Mountain Federation, two producer organizations that supply about three-fourths of the milk pooled under Order 1, opposed NFO's proposal as did Cumberland Farms and Marcus Dairy, two Order 1 distributing plant operators. The Dairy Industry Institute of New York, which proposed uniform performance standards for market suppliers under Orders 1 and 2, also opposed NFO's proposal.

Opponents argued that it would be inappropriate to lower the Order 1 performance standards for supply plants because of declining milk production in the region and increasing Class I utilization of pool milk by handlers. They also contended that the proposed changes could jeopardize the ability of fluid milk operators to obtain an adequate supply of milk for fluid packaging.

The NFO proposal should not be adopted. As indicated by the opponents of such changes, the market's supply/demand situation does not support a reduction in the performance standards for supply plants at this time. Market data show that the annual average Class I use of pool milk by Order 1 handlers increased by one percentage point (from 52 percent) each year during the four-year period of 1985–1988. These data do not justify a reduction in the performance standards, and therefore the NFO proposal should be denied.

Since NFO's proposal to reduce the shipping standards for Order 1 supply plants is denied, the cooperative's complementary proposal to give the market administrator or the Director of the Dairy Division the discretionary authority to raise the shipping performance standards to the level of those currently in effect requires no further discussion or consideration.

A market's minimum pooling standards are not established to assure that all handlers are operating above the minimum levels. They represent the minimum levels at which handlers must operate if they wish to participate in the marketwide pool and share in the market's Class I sales. The minimum levels will affect the market's handlers differently. Some will operate far above the order's minimum requirements and others will have difficulty meeting the minimum levels. However, the inability of a single handler to meet the market's minimum standard does not automatically justify a reduction of the pooling standard. The order is not intended to guarantee handlers a market for their milk or participation in the marketwide pool. Rather, the minimum levels of performance establish standards which handlers must achieve to pool their milk. It is only when handlers choose to participate in the marketwide pool that they must meet the order's minimum performance standards.

Comments submitted by the National Farmers Organization (NFO) in response to the recommended decision excepted to the Administrator's failure to adopt NFO's proposed reduction in supply plant shipping percentages. NFO's comments stated that the recommended decision ignored data on the structural needs of the market in requiring supply plants to ship 25 percent of their receipts to pool distributing plants when only 12 percent of the milk so shipped is used in Class I.

The cooperative association reiterated its argument that many of the required shipments made by NFO are not needed, and must be repurchased by the cooperative and delivered elsewhere. NFO's exceptions asserted that the recommended decision was based solely on marketwide Class I use, and on a "hand count" of entrenched dominant Order 1 interests which wish to maintain barriers to pooling milk on Order 1 for the purpose of keeping the Order 1 blend price above the Order 2 blend. According to NFO's exceptions, consideration of marketwide Class I use is inappropriate for determining supply plant shipping percentages because those percentages should be determined only on the basis of the amount of milk needed from those plants rather than the amount of milk needed for Class I use for the whole market.

Supply plant shipments to distributing plants have been displaced in importance to some extent by direct shipments from producers' farms, as NFO states. However, the current provisions of the order allow such direct shipments by cooperative associations to be included with their qualifying shipments from supply plants for the purpose of determining pool plant qualification. This structural change in Order 1 marketing conditions should not affect any cooperative's ability to assure the pool status of its supply plants, although it certainly could cause the percentage of milk priced in Class I to be reduced in the zones in which supply plants are located.

Although the percentage of milk from supply plants allocated to Class I has clearly declined over the 10 years preceding the hearing, that percentage still exceeds the 10-percent level of qualification proposed by NFO. In addition, contrary to NFO's assertion that only milk needed for Class I use should be required to be shipped to distributing plants, some of the Class II use at distributing plants is unavoidable. Shrinkage, standardization of producer milk to a lower butterfat content, and the necessity of offering a full line of fluid products that includes fluid cream products, require that distributing plants receive at least 5 percentage points more of total producer milk than they use in Class I.

In a market such as the New England market, where the percentage of milk needed for Class I use clearly is increasing, however gradually, there is no justification for reducing the percentage of a cooperative association's milk supplies that must be delivered to fluid processing plants if the cooperative member producers are to share fully in the benefits of the blend price derived from the market's Class I sales. The 25-percent qualifying standard is effective only for the months of September through November, and that percentage is reduced to 15 percent for the months of December through August. There are no pool supply plant shipping standards for other months of the year if these percentages are met during the fall months when demand for fluid milk is strongest in comparison with the supply of producer milk. It is difficult to see these percentage requirements as excessive in a market in which nearly sixty percent of the milk produced is needed for Class I use in some months.

(c) *Qualification of producer milk for pooling.* Order 2 should be amended by replacing the requirement that each producer's milk be delivered to a pool plant or a plant from which Class I–A milk is distributed in the marketing area on one day during the first month the producer's milk is pooled with a requirement that each producer produces milk approved for fluid consumption by a duly constituted regulatory agency. A handler proposal which was neither supported by the proponent nor testified to by any other participant at the hearing, to include in the Order 2 pool any milk that does not qualify for pooling under another Federal order, is not considered further. A proposal by NFO to increase the amount of milk that may be moved directly from producers' farms to manufacturing plants and retain pool status under Order 1 is denied.

Order 2 currently requires that when a bulk tank handler adds a new producer to his or her pooled unit he or she must deliver the milk of that producer to a pool plant or a plant that has Class I–A route distribution in the marketing area on one day during the first month that the new producer's milk is pooled by the unit operator. This "touch-base" requirement also applies to producers who shift from one handler to another even though the dairy farmer's milk was pooled previously under Order 2 by a handler who was so regulated.

The changes relating to delivery requirements by milk producers were proposed by Agri-Mark, Dairylea and Eastern, three dairy farmer cooperatives that represent more than 30 percent of the producers whose milk is pooled under Order 2. Proponents testified that the producer delivery requirement should be deleted from the provisions relating to bulk tank units. At the same time, they stated, the producer definition should be expanded to include only the milk of dairy farmers that is approved for fluid consumption by a duly constituted regulatory agency, and the pool milk definition should be revised to exclude any milk that is not approved by such a regulatory authority. Proponents contended that the proposed changes will allow handlers to operate more efficiently by eliminating many uneconomic milk movements while accomplishing the objective served by the "touch-base" provision.

The hearing testimony on this issue is rather limited. Brief statements in support of the proposals were made at the hearing by three Order 2 handlers (NFO, Consesus Milk Producers Cooperative Association, Inc., and Empire Cheese, Inc.). These handlers testified in favor of the elimination of the touch-base requirement and contended that such action will give Order 2 handlers the flexibility to operate more efficiently. Several other interested parties supported the proposed changes in briefs filed after the hearing. There was no opposition to the proposals.

Proponents' witness, a Dairylea representative, testified that the touch-base requirement was included in Order 2 to demonstrate that a dairy farmer's milk had the necessary health approval to be sold and used in the marketing area for fluid purposes. He also indicated that the state regulations covering milk inspections have changed dramatically over the years and that now before a handler picks up a dairy farmer's milk the producer's milk must be approved by the regulatory agency which has jurisdiction over milk quality issues. Proponents contended that in certain cases the producer delivery requirement has caused economic hardships for Order 2 handlers. The cooperatives' witness cited two examples to indicate the types of economic problems marketing organizations have encountered because of the requirement.

In one example given by the witness, when Dairylea wishes to add to its bulk tank unit a new producer who is situated near its nonpool manufacturing plant at Adams, New York, the cooperative must deliver the milk of that dairy farmer on one day of the first month to its fluid processing plant in Syracuse or to some other pool plant. If the cooperative fails to do this, the producer's milk is not eligible for pooling. Such movements cost the association money both in terms of the time and extra hauling that is involved. In addition, failure to deliver the producer's milk to a pool plant in the first month the producer is on the market would be costly to the cooperative because Dairylea would lose the difference between the Order 2 blend price and the Class II price on the amount of milk that is not eligible for pooling.

The witness also testified that Dairylea has incurred similar losses because of this requirement when one of its affiliated member cooperatives, whose milk is reported to the market administrator and pooled by Dairylea, takes on a new producer but fails to notify the cooperative who is the responsible handler. Here again, Dairylea either loses the difference in the amount of money it costs to haul the producer's milk to a pool plant instead of a nearby manufacturing plant on one day during the first month, or loses the equalization payment on the milk that is not eligible for pool status if the producer's milk is not delivered to a pool plant during the month. Proponents hope to avoid such losses with the adoption of their proposed amendments.

The record shows that there are extensive State and Federal regulations in place to determine whether a dairy farmer's milk is eligible for fluid consumption and thus eligible to be pooled under Order 2. It shows that the States of New York, New Jersey, and Pennsylvania, which comprise most of the Order 2 procurement area, have extensive regulations to assure that only high-quality milk is being produced and shipped to the fluid market. All three states follow the Pasteurized Milk Ordinance issued by the U.S. Public Health Service (USPHS). Also, each of the states has a training program for its milk inspectors. Only after the successful completion of the training program are such persons certified as licensed milk inspectors for the respective state.

Another evaluation of the area's milk quality is done by the USPHS. These ratings are performed routinely about once every 18 months and may be performed randomly at any time. The milk regulations covering the three-state area also require that advance notice be given to the appropriate regulatory authorities if a producer shifts deliveries from one handler to another. In New York, the appropriate regulatory authorities must be notified at least 72 hours before a change in marketing agents occurs so that the responsible agency has enough time to complete its investigation. Pennsylvania and New Jersey only require 24-hour advance notice be given to the appropriate health authorities because they accept the health ratings issued by the other two states.

The evidence supporting the changes proposed by the cooperatives is overwhelming and those changes are

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adopted herein. As proponents contended, removal of the producer delivery requirement will eliminate the need for handlers to incur extra hauling costs merely to satisfy the producer touch-base requirement. Furthermore, the two corollary changes proposed by Agri-Mark, Dairylea and Eastern in the definitions of pool milk and producer will accomplish the intent of the touch-base requirement in that such changes will insure that only milk which meets the quality requirements of a duly constituted regulatory agency will be eligible for pooling under Order 2.

NFO proposed that Order 1 handlers be permitted to move a greater percentage of their milk supplies than is currently allowed under the order's producer milk definition directly from producers' farms to manufacturing plants. Specifically, the cooperative proposed that the percentage of a handler's receipts that may be delivered directly to nonpool plants be increased by 15 percentage points each month (from 35 to 50 percent in the months of September through November and from 45 to 60 percent during the months of December through August).

NFO testified that its proposal to increase the amount that handlers may ship directly from the farm to manufacturing plants is a complementary change to its proposal to decrease the shipping standards for Order 1 supply plants. The cooperative's witness testified that the order's present diversion limits are overly restrictive and cause market inefficiencies. To assure that all of its milk is eligible for pooling each month, the witness stated, NFO receives at its pool supply plants milk from dairy farmers that is ultimately destined for manufacturing plants. Proponent indicated that many, if not all, of such uneconomic movements and milk handling practices could be eliminated if the diversion allowances were increased as proposed by NFO.

As was the case with NFO's supply plant proposal, there was no support for the cooperative's proposal to increase the diversion allowances for Order 1 producer milk. The interested parties who opposed lower shipping requirements (Agri-Mark, the Green Mountain Federation, Cumberland Farms and Marcus Dairy) also opposed higher diversion allowances, primarily because such a change could jeopardize the availability of milk supplies at fluid plants.

Opponents to NFO's proposal stated that the current supply of milk in the New England market does not assure pooled handlers of all the milk they want, and that relaxation of diversion limits could create problems in assuring an adequate supply for the fluid milk market. Given the market's Class I utilization percentage of around 60 percent during the market's months of low production and relatively high demand for Class I use, it would not be reasonable to allow diversions of 50 percent of the market's milk supply to be diverted to nonpool manufacturing plants during the months of September through November.

Since marketing conditions in New England do not justify any increase in the limits on diversions of producer milk to nonpool plants and NFO's complementary proposal to reduce supply plant shipping requirements is denied earlier in this decision, the proposal to increase diversion limits is also denied.

3. *Seasonal payment plans.* No change should be made in the seasonal incentive plans for paying producers supplying the New England (Order 1) and New York-New Jersey (Order 2) markets on the basis of this record.

Presently, Orders 1 and 2 provide identical "Louisville", or "take-out pay-back", seasonal payment plans. Under these plans money is withheld from payments to producers supplying the markets during the relatively high production months through deductions in the computation of uniform prices. In both orders, the amounts deducted are 20 cents per hundredweight in March, 30 cents in April and 40 cents during May and June. The funds withheld for the months of March through June are returned to dairy farmers supplying the markets by means of additions to the marketwide pools during the months of relatively lower milk production. Twenty-five percent of the aggregate amount of money withheld is returned in August, 30 percent in September and October and the remaining funds plus accrued interest are paid back to dairy farmers in November. The plans were adopted under the two orders to encourage level milk production throughout the year.

Agri-Mark, Inc., Dairylea, Inc., and Eastern Milk Producers, Inc., three cooperatives whose members supply a large portion of the milk pooled under Orders 1 and 2, proposed that the current seasonal incentive plans for paying producers under the orders be replaced with seasonal base-excess plans. The cooperatives' spokesman testified that this change is needed because a seasonal base-excess plan would be more effective than the current payment plan in moderating seasonal variations in milk production in the two markets. The proposals considered at the hearing included detailed provisions to implement seasonal payment plans under the two orders. The proposals would establish August-November as the base-forming months and the other eight months as base-paying months, and define excess milk deliveries by individual dairy farmers. The proposals provide a method to compute bases for individual dairy farmers whose milk was received by pool handlers, by plants that become pool plants during or after the beginning of the base-forming period, and by handlers regulated under more than one of the three northeast orders. They also provide for a minimum base allocation for producers without established bases, and for those whose amount of higher-valued base milk would be greater if computed by using the minimum percentage allocation than by using their established bases.

Under the proposed seasonal base plan, a blended or uniform price would be computed by dividing the total value of the pool by the hundredweight of producer milk pooled. The excess price would then be determined by subtracting $1.00 from the blended or uniform price, and the value of excess milk in the pool would be calculated by multiplying the hundredweight of excess milk by the excess price. The base price would then be calculated by dividing the difference between the value of all of the producer milk in the pool at the blended or uniform price and the value of excess milk in the pool by the hundredweight of base milk. Accordingly, producers having a higher than average percentage of base milk would receive a higher price per hundredweight for their production than producers with a lower than average percentage of base milk.

The proposed base-excess payment plans also include various rules that relate to the establishment and transfer of bases. Briefly stated, an average daily base would be computed for a producer on the basis of milk deliveries to the market during the months of August through November. This base would be used to make payments to the dairy farmers during the months of January through July and December of the next year. For milk deliveries up to the amount of the average daily base computed for a dairy farmer, the producer would receive the higher uniform price for base milk. For deliveries in excess of assigned bases, producers would receive a lower uniform price.

In addition to proponents' basic contention that the proposed base-excess plans would be more effective than the current Louisville plans in leveling seasonal variations in milk production under Orders 1 and 2, the witness for proponent cooperatives offered several other reasons for supporting the proposals. He testified that since there is less milk available in these markets now, it is more important that the milk produced be made available for the highest class of use by providing a monetary incentive for dairy farmers to produce milk when the fluid demand for it is greatest. According to the witness, such an adjustment by producers would alleviate the problems Class I handlers have experienced in obtaining milk during the fall months. Proponent also claimed that leveling the seasonality of milk production would match more closely the amount of milk produced by dairy farmers with the amount demanded by processors, and thereby make the entire industry more efficient by lowering the cost of procuring additional supplies in the fall and disposing of surplus milk in the spring.

The proponent witness further argued that shifting production from spring to fall would increase the total income of dairy farmers because they would produce more milk in the fall, when milk prices are highest. In addition, he stated, by eliminating the current "take-out" from the uniform price computation in the spring, farmers' cash flow positions would be improved when farming expenses are greatest.

The spokesman for the three proponent cooperatives acknowledged that milk production for the New England market has leveled off considerably under the payment provisions of the current Louisville plan. He insisted, however, that the base-excess plan is needed in Order 1 as a maintenance program to assure that the market's milk production will continue its relatively level pattern rather than revert to a more seasonal pattern.

In a post-hearing brief filed by Agri-Mark, the cooperative argued that base-excess plans are needed more when milk supplies are scarce, as they are now, than when they are more than adequate, in order to distribute the available supplies evenly throughout the year.

The three cooperatives' base-excess proposals for Orders 1 and 2 were supported at the hearing by only one other producer group (Pennmarva Dairymen's Federation). Pennmarva consists of four individual cooperative associations: Atlantic Dairy Cooperative; Dairymen, Inc.; Maryland and Virginia Milk Producers Cooperative Association; and Valley of Virginia Milk Producers Association. These four cooperatives market most of their members' milk under the Middle Atlantic order (Order 4).

None of the Pennmarva cooperatives markets milk under Order 1, and only one of the member-cooperatives (Atlantic) markets a small amount of producer milk on Order 2 each month. For that reason, the Pennmarva spokesman limited his support to adoption of a base plan under Order 2. Pennmarva's witness testified that Order 4 producers have operated under a base-excess program since March 1971. He testified that the plan has been effective in leveling milk production throughout the year and by so doing has ensured orderly marketing. The witness contended that the same results would be achieved if the proposed base-excess plan were provided for Order 2 producers.

The National Farmers Organization (NFO), a national cooperative association which represents about 320 dairy farmers who supply 18 million pounds of milk per month for the Order 2 market and about 250 producers who supply 14 million pounds of milk per month to the Order 1 market, also testified with respect to the proposed base plan.

NFO agreed in principle that base-excess plans should be designed to encourage level milk deliveries by producers throughout the year, but objected to using such plans to penalize dairy farmers for producing too much milk. For these reasons, NFO testified that it could support the base plans proposed for Orders 1 and 2 only if two modifications were incorporated into the amendatory language. First of all, NFO proposed that handlers pay a 15-cent surcharge on all class uses of milk to be paid to producers for their base milk deliveries. NFO claimed that producers need this additional money to cover some of the expenses associated with gearing their dairy herds toward fall milk production.

Secondly, the cooperative proposed that new milk production units be assigned market average bases and that producers who have been delivering their milk to other markets be assigned full bases from their prior production histories rather than paying such producers on the basis of fixed percentages that vary by month. A New York dairy farmer whose milk is marketed by NFO testified in support of the Order 2 base plan proposal as modified by his association.

Another New York dairy farmer speaking on behalf of Canajoharie Milk Producers, Inc. (Canajoharie), which represents 70 family farmers who supply about 4 million pounds of milk per month for the Order 2 market, opposed the proposals to provide base-excess plans under Orders 1 and 2 and testified that replacing the present payment plans with base-excess plans would represent a dramatic change for producers covered under the two orders. He claimed that it would be inappropriate to change payment plans now and pay lower prices to producers for milk deliveries in excess of their assigned bases because such changes would tend to aggravate the deficit milk supply situation the region is experiencing.

The producer argued that a change to base-excess payment plans in these two markets would: (1) Impose extensive computational duties on the market administrator and thereby increase the cost to handlers of administering the order; (2) increase the breeding and feeding expenses of dairy farmers who attempt to increase fall production; (3) reduce or eliminate the present practice of handlers who pay premiums to dairy farmers for fall deliveries to attract greater volumes of milk; and (4) be the first step of a supply management system that ultimately would result in some type of quota program for the Northeast.

As an alternative to shifting from the present Louisville plans to base-excess plans in paying producers under Orders 1 and 2, the Canajoharie witness proposed that the current plans be updated so that the "take-out" rates reflect the same percentage of the blend prices now as they did when the rates were established at their present levels. In connection with its proposals, the cooperative witness suggested that the take-out rates be increased to the updated levels gradually over the next five years. At such time, he stated, the effectiveness of such modifications could be reviewed and the continuation of the programs evaluated at a public hearing.

A spokesman for Allied Federated Co-ops, Inc. (Allied), a federation of 22 individual cooperatives including Canajoharie that market the milk of some 1400 New York dairy farmers whose milk is pooled primarily under Order 2, also presented testimony opposing the proposed base-excess plans. He stated that there are no marketing problems associated with the present payment plans and that the supply/demand balance in these two markets has improved considerably since the present seasonal incentive plans were adopted. The Allied spokesman took the position that it would be inappropriate to adopt payment plans that would penalize dairy farmers for increasing production at a time when additional milk supplies are needed to furnish the fluid requirements of the markets' distributing

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plants. For these reasons, the witness supported Canajoharie's proposal to update the current payment plans by increasing the take-out rates.

Three other members of Allied (South New Berlin Milk Cooperative, Inc., Northern New York Bulk Milk Producers Cooperative, Inc., and Preble Milk Cooperative Association, Inc.) supported the testimony presented by Canajoharie.

A witness for Lowville Producers Dairy Cooperative, Inc. (Lowville), an independent New York cooperative representing about 287 dairy farmers who pool 23 million pounds of milk under Order 2 each month, testified in opposition to the base plan proposal of the three cooperatives and to the Canajoharie proposals to modify the present payment plan. Since Lowville's milk is marketed under Order 2, the witness' testimony focused on the changes proposed for that market. The cooperative opposed the changes because the rewards to its member dairy farmers would not be sufficient to offset the higher costs associated with trying to obtain greater fall milk production from their dairy herds. The Lowville witness took the position that the present payment plan has operated to promote seasonally level milk deliveries, and that handlers who need more milk in the fall months of the year may obtain it by offering premium prices to dairy farmers.

Another independent New York cooperative association, Oneida-Lewis Milk Producers Cooperative, Inc., which pools about 2.5 million pounds of milk per month produced by its 24 member dairy farmers under Order 2, also opposed the proposed changes in the current payment provisions of Order 2. The cooperative was primarily concerned with the proposals to amend Order 2 because Oneida-Lewis markets its milk under that order. The cooperative's witness gave several reasons for opposing the base plan. He contended that the proponent cooperatives did not educate producers adequately about the effect of the base program on their monetary returns. It was his opinion that dairy farmers should understand how a base plan works before they are paid under such a program. He also claimed that the cost to farmers who manage their herds to produce greater milk deliveries in the fall would be greater than the benefits they would receive by doing so. In that regard, he estimated that a typical Northeast dairy farmer who sells one million pounds of milk annually and whose marketings vary seasonally could lose as much as $1700 to $2000 a year under the proposed base-excess plan.

He argued that the three proponent cooperatives represent less than half of the producers supplying the two markets and contended that if any one of proponent cooperatives wants to reduce the seasonal variation of its members' milk production, the cooperative may operate its own base-excess plan without imposing such a program on all dairy farmers covered under the order. The Oneida-Lewis representative testified that the current payment plan has reduced the market's seasonal variation significantly over the years. He also indicated that in certain cases processors have paid premiums to dairy farmers in the fall months of the year to attract any additional milk they may need. The witness contended that the current payment plan supplemented with the optional payment practices that are available to handlers have served the market well in the past and should be adequate in the future. For these reasons, the Oneida-Lewis spokesman asked that the current payment provisions of Order 2 be continued without change.

A dairy farmer whose milk is marketed by Oneida-Lewis also testified on this issue at the hearing. Although she did not oppose the base plan specifically, she found no need for such a payment plan in Order 2. The witness took the position that New York dairy farmers need greater pooled values for their milk deliveries rather than a new method to divide the same amount of money. She was particularly concerned that processors might quit paying fall premiums to producers if the base-excess plan were adopted for the Order 2 market.

With respect to the New England market, the president of the Green Mountain Federation, which consists of four individual cooperatives (Cabot Farmers' Cooperative Creamery Company, Independent Dairymen's Cooperative Association, Massachusetts Cooperative Milk Producers Federation and St. Albans Cooperative Creamery) that market the milk of about 1200 dairy farmers whose milk is pooled under Order 1, presented the Federation's overall position with respect to the proposed base-excess plan for that market. In addition, spokesmen for three of the Federation's member cooperatives testified individually. Essentially, they opposed the proposals to replace the Louisville plan with a seasonal base-excess plan and the Canajoharie proposal to update the order's present payment plan. The Federation's witness asked that the current payment provisions continue to be used in paying Order 1 dairy farmers.

The Federation's witness testified that the order's present payment plan has been effective in leveling the market's milk production and that no changes in the payment provisions are necessary at this time. He testified that adoption of a base program for the Order 1 market would be an unwarranted extension of Federal regulation and would result in higher administrative costs to handlers. He contended that since this program would not increase the amount of milk produced, it would not be appropriate to adopt such a program for this particular market at the present time because supplies have been barely adequate to meet the needs of processors. The Federation opposed the Canajoharie proposal because such action would cause cash-flow problems for dairy farmers in the spring months of the year when farming expenses are higher and milk prices are lower.

Three witnesses representing St. Albans Cooperative, one of the Federation's member cooperatives, also testified in opposition to the proposed changes to the current payment provisions of Order 1. One witness testified that additional milk supplies are needed by Order 1 processors on a year-round basis to meet the market's increasing demand and contended that monetary incentives are needed now to encourage dairy farmers to produce more milk for the Order 1 market rather than applying lower prices to the excess milk deliveries of producers, as proposed.

A St. Albans' spokesman argued that this is not an appropriate time to adopt a base plan for the Order 1 market. The witness contended that since the proposed plan does not increase the market's pooled value of milk, it is ill-conceived because it provides no additional money to cover the extra breeding and feeding costs that dairy farmers would incur in gearing their herds toward greater milk production in the fall months of the year. Because of the higher costs that would be required, he stated, the net returns of some producers actually would be lower under the proposed base-excess plan than they would be if the present payment plan were continued. The cooperative spokesman contended that level milk production benefits manufacturing processors more than it does fluid milk operators. Since dairy farmers cannot make a profit producing milk at the lowest class price level, he explained, they actually would be better off if less of the market's milk supply were used for manufacturing purposes



because the blend prices they receive would be higher.

A St. Albans' witness further claimed that base plans can be operated more effectively if cooperative associations run their own programs because each cooperative can tailor its payment program to address the unique marketing conditions facing the organization. The witness stated that if the base plan is provided under the order, all of the market's producers would be included in its operation, even though individual cooperatives may face different operational problems. He also argued that it is much easier and faster for the cooperative to revise its own base plan at a board meeting in response to changes in marketing conditions than it is to amend the order's base-excess provisions under the required formal rulemaking procedures.

According to a St. Albans' witness, the cooperative adopted its own so-called "double Louisville" payment plan in 1979 to supplement the plan in the order. Under the supplemental plan, the cooperative deducted one dollar per hundredweight from payments to producers for the months of April through June, and about one-fourth of the total amount deducted was added back in paying producers during each of the following months of August through November. According to the witness, the cooperative discontinued its payment plan in 1987 to enhance the cash flow of its members during the spring months and to encourage additional milk production to meet the market's expanding demand. The witness stated that increasing the take-out amounts under the present Louisville plan, as Canajoharie proposed, would only discourage any potential increases in milk production and therefore should be denied.

A representative of Cabot Farmers' Cooperative Creamery Company opposed the base plan proposal for Order 1 and testified that the payment practices of handlers (cooperative and proprietary) in that market have created sufficient incentives to result in seasonally level milk production. He stated that these regulated parties have the ability to create and promote favorable marketing circumstances in the future. The witness contended that Order 1's existing Louisville payment plan, in conjunction with the payment practices of handlers, has established a stable regulatory environment for producers and handlers, and that the market's present supply-demand conditions do not warrant changing to the proposed base-excess plan advanced by the three proponent cooperatives or the higher take-out rates proposed by Canajoharie.

The representative of Massachusetts Cooperative Milk Producers Federation also opposed the base-excess plan and took the position that its adoption would force milk producers out of business. The cooperative primarily objected to the application of the one dollar penalty on excess milk and claimed that its application would result in lower overall prices to farmers, who would then decide to quit milking cows.

Four handlers (Cumberland Farms, Dietrich's Milk Products, Farmland Dairies and Marcus Dairy) who are regulated under Orders 1 and 2 testified with respect to the proposals to replace the present seasonal incentive plans in those markets with base-excess plans. For the most part, the handlers took the position that since these proposals affect returns to dairy farmers and do not affect the cost of milk to handlers, the viewpoints of milk producers are more relevant than those of processors.

Cumberland Farms operates distributing plants regulated under both Order 1 and Order 2, and opposed the proposals for a seasonal base-excess plan. The handler expressed concern primarily with the provision of the proposed base plan that penalizes dairy farmers one dollar per hundredweight for deliveries over their assigned bases and reduces their income in the months of the year when their expenses are highest. He contended that a lower net income in such months could ultimately force many producers out of business and jeopardize the handler's ability to attract and retain adequate milk supplies for his plants. He further claimed that since milk supplies under Orders 1 and 2 have not been excessive during the Spring months in any of the past four years there is no reason to penalize dairy farmers for producing more milk in such months.

A Dietrich's Milk Products witness testified that Orders 1 and 2 should provide strong seasonal incentive plans. The handler operates two manufacturing outlets, one of which is pooled under Order 2, that are used regularly to dispose of the reserve milk supplies associated with the Order 2 and Order 4 markets. The Dietrich's witness supported the base-excess plan proposed by the three cooperatives because the plan's eight month base-paying period would complement the payment program the handler uses. He stated that the proposed base plans are designed to allow dairy farmers to increase production during the base-forming months by paying producers the market's blended prices rather than base and excess prices in such months. The Dietrich's spokesman also supported, as an alternative, the Canajoharie proposal to update the take-out amounts under the present Louisville plans for the two markets if the Department found that such a change would be more effective than the base-excess plans in promoting level producer milk deliveries throughout the year.

Farmland Dairies, the operator of an Order 2 fluid milk plant at Wallington, New Jersey, did not take a position at the hearing either for or against the proposals to change the present payment plans under Orders 1 and 2. In a post-hearing brief, however, the handler cited the testimony of several dairy farmers and contended that the record shows that base-excess plans are not needed in these markets. The brief argued that if any changes in the present payment plans are found to be necessary, modification of the present Louisville plans should be adequate. The handler's brief stated that the record of this proceeding shows that the difficulties and expenses incurred by dairy farmers in attempting to increase milk production in the fall months of the year were underestimated by proponents, and that the proponent cooperatives did not adequately inform producers about the proposals and their impacts on dairy farmers.

A witness for Marcus Dairy, the operator of an Order 1 distributing plant, testified in support of some type of seasonal incentive plan to level out milk production. He claimed that adoption of a base-excess plan would complicate the mechanics of computing his producer payroll because numerous additional mathematical calculations would be involved. Since fewer such tasks are required under the Louisville plan, the Marcus witness favored the alternative proposal, advanced by Canajoharie, to update the take-out and pay-back amounts under the present Louisville plans for the two markets.

The evidence adduced at the hearing clearly indicates that there are wide differences of opinion among interested parties regarding the proposals to revise the producer payment provisions of Orders 1 and 2, either by replacing the Louisville plans with base-excess plans, or by updating the take-out amounts of the current Louisville plans in the orders. With the exception of the evidence presented by the three proponent cooperatives to support a change to seasonal base-excess plans for Orders 1 and 2, a number of interested parties, including individual dairy farmers, cooperatives and milk

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dealers, testified in opposition to such a change for numerous varying reasons, described above.

Both types of seasonal payment plans (Louisville and base-excess) provide incentives to attain a desired level pattern of milk production. Both types of payment plans are specifically authorized by the Agricultural Marketing Agreement Act. However, there is no conclusive evidence in the record of this proceeding from which to conclude that one plan would be more effective than the other in leveling out seasonal variations in milk deliveries under these two orders. In the final analysis, the question of which seasonal plan should be used must be decided primarily on the basis of the wishes of the producers affected. It is evident from the record that neither the base-excess plans proposed by the three cooperatives nor the alternate Canajoharie proposal revise the present Louisville plans is favored by an overwhelming majority of the producers supplying these markets. The three cooperatives proposing the change from the Louisville plans to the seasonal base-excess plans in these two markets represent less than 50 percent of the Order 1 market and only slightly more than 30 percent of the Order 2 market.

While the base plan opponents did not represent all of the remaining producers they represent a sizable percentage of the producers supplying each of the two markets. The Green Mountain Federation, which represents about one-fourth of the dairy farmers supplying the Order 1 market, opposed the change proposed by the three cooperatives for that market and Allied Federated Cooperatives, which represents about 10 percent of the Order 2 producers, opposed the change for that market. Although the degree of opposition to the base plan from Order 2 producers may not be enough to justify denying the base-excess proposal for Order 2, there is enough opposition from Order 1 producers to justify denying the proposal for that order. Given the overlapping procurement areas for the two orders and the competition for milk supplies between Order 1 and Order 2 handlers, the proposed base-excess plan should not be adopted for either order if it is not adopted for both.

The record of this proceeding does not support proponents' claim that the Order 4 seasonal base-excess plan is the cause of lower seasonal variations in milk production in the Middle Atlantic market than in the Order 1 and Order 2 markets. Although the degree of seasonal variation in the Middle Atlantic market is less than in the New England and New York-New Jersey markets, that difference existed before the adoption of either the Order 4 seasonal base-excess plan or the current rates of take-out in the Order 1 and Order 2 Louisville plans. In fact, as several witnesses opposing the proposed seasonal base-excess plans in these markets contended and the record establishes, the variations in seasonal production patterns in the Order 1 and Order 2 markets have declined markedly since the take-out rates were increased to the present level in 1972. The demonstrably lower degree of seasonal variation in Order 4, however, is as likely as not to be a result of institutional factors that were not considered in the analysis of this record or in the development of proponents' testimony. In any case, the record does not support a conclusion that a seasonal base-excess payment plan for Order 1 and Order 2 would be more effective in reducing seasonal production variations than the current Louisville payment plan.

The Canajoharie proposal to increase the take-out amounts under the current Louisville plans would cause cash-flow problems for dairy farmers in the spring months of the year when farming expenses are high, as several witnesses who objected to such proposed changes pointed out. If the take-out rates were adjusted to reflect the same percentage of present blend prices in these markets as they did when the rates became effective, the rates would have to be doubled because blend prices under these orders generally are about twice what they were in 1972.

Deductions of these magnitudes from payments to producers in certain months could be expected to cause cash-flow problems for some dairy farmers.

Also, such changes would create price alignment problems between Orders 1, 2 and 4 and the Eastern Ohio-Western Pennsylvania Order (Order 38). This issue has long been of great concern to both handlers and producers. Numerous hearings, including this one, have addressed the problem of interorder price alignment and its effect on orderly marketing through the shifting of producers between the three northeastern markets. Doubling the take-out and pay-back rates under the payment plans of Orders 1 and 2 would cause specific alignment problems in producer pay prices among neighboring dairy farmers in overlapping procurement areas involving the Middle Atlantic, New York-New Jersey and Eastern Ohio-Western Pennsylvania Federal orders. Also, if blend prices are reduced by 80 cents per hundredweight in May and June, blend prices paid to producers located in outlying zones of the Order 2 market could be less than the market's lowest class price.

For the reasons stated herein, it is concluded that the current seasonal payment plans under Orders 1 and 2 should not be revised. The proposals to replace the present Louisville plans with base-excess plans and to increase the Louisville payment plan "take-out" rates are hereby denied.

Agri-Mark, Inc., Dairylea, Inc., and Eastern Milk Producers Association filed exceptions to the Department's failure to adopt the proposed base-excess payment plan, and Pennmarva Dairymen's Federation expressed regret that the plan was not adopted. The comments argued that a majority of Order 1 producers favored the plan, while less than 25 percent opposed it. In addition, exceptors stated, opponents of the plan ship their milk primarily to manufacturing plant operators, who experience less impact from seasonal variations in production than fluid handlers, and do not serve the fluid market to the same extent as do proponents. Proponent's comments argued that the base-excess plan should be adopted for Order 2 even if it is not adopted for Order 1, citing the different payment plans existing in Order 2 and Order 4 even though those orders have a significant overlap in production areas. The cooperative(s) indicated that they had submitted substantial evidence on the effectiveness of the plan in distributing supplies more evenly throughout the year.

There is no question that more Order 1 producers were represented at the hearing in support of the proposed base-excess plan than in opposition to it. However, the twenty-five percent who did oppose it represent a very significant minority of dairy farmers whose concerns should be considered in determining the appropriate method of distributing pool returns to producers. The issue of whether leveling out seasonal production variations is more advantageous to distributing plant operators or to manufacturing handlers is less clear. In any event, the orders provide a means of assuring that fluid milk plants will get a certain level of milk shipments to fill their needs, especially during the short production season, by incorporating minimum shipping percentages and "call" provisions.

Although it is true that Order 2 and Order 4 have different producer payment plans and overlapping procurement areas, the record gives no indication that the degree of competition for supplies of producer milk that exists between Order 1 and Order 2 handlers is even approached between Order 2 and Order 4 handlers. On the other hand, there is abundant testimony about the difficulties experienced by Order 1 and Order 2 handlers who compete with each other in trying to maintain milk supplies in eastern New York State. Adoption of a base-excess payment plan for Order 2 under these competitive conditions would just add one more factor for producers to consider in determining where to ship their milk.

Finally, assertions as to the effectiveness of the proposed plan were by no means persuasive, nor was any significant problem of extreme seasonality of production shown to exist. A comparison of the three-year periods of 1968–1970 and 1985–1987 show that seasonality of production declined in Order 1 and Order 2 by 40 percent and 25 percent, respectively. During the same period, seasonal variability in Order 4 appears not to have changed at all.

In addition, it is unlikely that the proposed base plan would have the effect desired by proponents. Although producers initially might be impressed with the plan's $1.00 per hundredweight penalty ($1.00 less than the uniform price) for producing excess milk, they surely would realize quickly that the base "premium" would amount to no more than 22 cents over the market's uniform price.

According to calculations based on proponents' estimates and Order 2 market statistics, the average Order 2 producer would receive approximately 33 cents more per hundredweight under the proposed base-excess plan than under the current Louisville plan during the "take-out" months of March through June. In the fall "pay-back" months, however, such a producer would receive approximately 40 cents more per hundredweight under the Louisville payment plan than under the proposed base-excess plan. Given these differences, it is difficult to believe that producers would be more likely to shift their production from spring to fall under the proposed base-excess plan than they would under the current Louisville plan.

In connection with the base-excess plan proposals of Agri-Mark, Dairylea and Eastern, Pennmarva submitted a proposal to revise the method of computing bases for producers whose milk deliveries are split between Orders 2 and 4 during the base-forming period. Since the base-excess proposals are not adopted herein, Pennmarva's coordinating change is unnecessary and no further action on the proposal is warranted.

The three proponent cooperatives also asked that the dates by which handlers must submit producer payrolls be advanced by five days under Orders 1 and 2. The primary reason for moving the reporting deadlines ahead was so that the market administrator would have the information to compute bases for individual dairy farmers. Since the base-excess plans are not adopted herein, there is no real need to advance the date by which handlers must submit their producer payrolls, and the proposal is hereby denied.

A proposal by Canajoharie to require Order 1 and Order 2 handlers who are paying producers to furnish them with the rate of deductions and subsequent additions in the payments for the months when the Louisville plan is in operation should also be denied. Although several hearing participants supported the proposal by stating that not all producers are fully aware of how their payments are affected by the Louisville plan, such a requirement would place an unnecessary and burdensome reporting requirement on handlers.

The impact of the Louisville plan on the blend or uniform price paid to producers is included in the market administrator's market information bulletins in both orders. Since the information is already available to all producers, there is no reason to require handlers to supply it.

*4. Location pricing, zone pricing and transportation credits.*

*a. Order 2. Modification of transportation allowances.* The New York-New Jersey order provisions providing transportation allowances should be adjusted to more closely relate the location value of milk under the order to the costs incurred in transporting milk from farms and country plants to distributing plants in the major consumption centers of the market. The present transportation differential rates of 2.2 cents per hundredweight for each "inside" 10-mile zone that is less distant than the 201–210 mile zone and 1.5 cents per hundredweight for each "outside" 10-mile zone that is more distant than the 201–210 mile zone should be changed to 2.5 cents per hundredweight for each 10-mile zone inside and outside the 201–210 mile zone. In addition, the 15-cent fixed transportation differential on Class I and uniform prices applicable within the 1–70 mile zone should be increased to 22 cents. The present Class II transportation differential rate of 1 cent per 25-mile zone should remain unchanged inside the 201–210 mile zone and be eliminated outside the 201–210 mile zone. To compensate for the increased transportation allowance between the 201–210 mile zone and the New York City metropolitan area, the Class I price differential at the 201–210 mile zone should be reduced from $2.55 to $2.42.

A proposal that handlers located within the metropolitan New York City area be allowed a pool credit for Class I milk delivered to their plants for the purpose of defraying additional hauling charges should not be adopted.

A proposal by Kraft, Inc., to allow transportation credits to handlers who ship milk to fluid milk distributing plants was withdrawn by kraft at the hearing, and was not supported by any testimony. The proposal will not be considered further in this decision.

*Present transportation provisions.* The order currently provides that milk from bulk tank producers (99.8 percent of the milk in the market) is priced essentially at the location of the farms where it is picked up in a tank truck (and thereby received) by handlers. Farms in each township are included in a price zone based on the distance, in 10-mile increments, between the township and the nearest of several basing points in the metropolitan New York City area. For pooling, accounting and pricing purposes, handlers establish farms in bulk tank units. Milk transferred from a bulk tank unit is classified in the unit according to its use at the plants to which it is transferred during the month. The handler operating the bulk tank unit accounts for the milk in the unit at its classified use value for the location of the unit. The price zone location of the unit is the weighted average zone location of the volume of milk received from farms in the unit.

Separate transportation differential rates apply to Class I and Class II prices. Prices are adjusted from the 201–210 mile base zone. The Class I milk price is increased 2.2 cents for each 10-mile zone less distant than the 201–210 mile zone and reduced 1.5 cents for each 10-mile zone more distant than the 201–210 mile zone. The Class II milk price is increased 1 cent for each 25-mile zone less distant than the 201–210 mile zone and decreased 1 cent for each 25-mile zone more distant than the 201–225 mile zone, with the adjustment limited to minus 8 cents for all locations in the 401 and over mile zone. The uniform price to producers is adjusted the same as the Class I milk price.

In addition to the zone transportation differentials, a fixed transportation differential of 15 cents per hundredweight is applicable to milk

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received from farms in the 1–10 mile zone through the 61–70 mile zone, and to Class I milk received at plants in the 1–70 mile zone.

Transportation allowances are provided under the order for farm-to-first plant hauling of bulk tank milk. A pool transportation credit to handlers of 15 cents per hundredweight is provided on milk received by a handler in a bulk tank unit. Also, handlers are permitted to charge producers or their cooperatives a tank truck service charge for any farm-to-first plant hauling costs not recovered through other transportation allowances. Such a charge must be reduced by the amount that the class use location value of the milk at the plant of first receipt exceeds its class use location value at the location of the producer's bulk tank unit.

*Summary of hearing proposals.* Several proposals to adopt provisions that would relate more closely the location value of milk under the order to the actual cost of hauling milk, and allow handlers to more fully recover the cost of moving milk to city locations, were considered at the hearing. A witness for Friendship Dairies, Inc. (Friendship), a proprietary handler operating a manufacturing plant in the 301–310 mile zone, proposed that transportation differential rates to handlers for Class I milk be increased to 3.3 cents per hundredweight per 10-mile zone both inside and outside the 201–210 mile zone. He also proposed that the rates of adjustment to the uniform price paid to producers remain at 2.2 cents per hundredweight per 10-mile zone inside the 201–210 mile zone, and 1.5 cents outside the 201–210 mile zone. The witness testified that the 3.3-cent rate is derived from a price quotation given Friendship by a contract hauler for hauling milk from the 301–310 mile zone to the metropolitan New York City area. He emphasized that it is important for the order's transportation allowances to cover the handler's cost of hauling milk in order to assure that an adequate supply of milk can be brought into the metropolitan area. However, he stated, there is no need to change the relative value of producer milk in different zones. The witness noted that an increase in the transportation differentials applied to producers' uniform prices would result in a reduction in prices paid to producers located in zones remote from the center of the market's population.

The Friendship witness testified that; the handler's proposal would have the effect of increasing the Class I price at the 1–10 mile zone by 22 cents per hundredweight, an amount that he conceded might misalign Class I prices between Order 2 and the New England and Middle Atlantic milk order markets (Orders 1 and 4). However, he stated, he did not believe that a 22-cent difference would be substantial enough to cause alignment problems. The witness estimated that Friendship's proposal would cause a 1 cent per hundredweight increase in the uniform price paid to producers. He contrasted that result with the effect of using the same schedule of transportation differentials for both handlers and producers by stating that if Class I and uniform prices are adjusted by the same rates, the uniform price paid to near-in producers would increase, but by less than the net reduction in uniform prices to farther-out producers.

The witness commented that Friendship favors retention of the present zone adjustments on Class II milk. He stated that the plus differentials within the 201–210 mile zone enhance producer returns and create a disincentive for close-in handlers to manufacture Class II products. The witness also testified that the minus Class II differentials outside the 201–210 mile zone assist handlers in moving milk to the city from distant country locations, and that their removal would cause problems for Friendship in competing for sales of Class II products with plants regulated under the Western New York State order, which maintains its Class II price at 5 cents per hundredweight below the level of the Minnesota-Wisconsin price. Currently, the Class II price in the zone in which Friendship Dairy is located is 1 cent per hundredweight higher than the Western New York State order price.

Friendship Dairy proposed that the order be amended to require the market administrator to adjust annually the transportation differential rates applied to Class I milk to reflect the actual cost of shipping milk from farm locations to fluid milk plants, as that cost changes over time. The handler also proposed that the Class I price be announced at the city, or 1–10 mile zone, location rather than at the 201–210 mile zone. Friendship's witness stated that such a change would reduce confusion caused by pricing milk at the 201–210 mile zone under Order 2 while other orders price milk at the principal cities in the marketing area.

The New Jersey Milk Industry Association, Inc. (the Association), proposed changes to the order's location adjustment provisions that would increase the zone adjustment to 2.5 cents per hundredweight both inside and outside the 201–210 mile zone, eliminate zone differentials on Class II milk, and increase the fixed transportation differential from 15 cents to 22 cents, moving the effective area of the differential to the 1–150 mile zone. The Association is a trade association of handlers who distribute approximately 85 percent of the fluid milk consumed in New Jersey, and a substantial amount in Pennsylvania and New York State under Orders 2 and 4.

The witness representing the Association testified that the present location adjustment structure of Order 2 causes price disparities between Orders 1 and 2 that make it possible for Order 1 handlers to pay the same Class I prices for milk that Order 2 handlers pay while paying higher blend prices to producers located fairly close to metropolitan fluid milk consumption centers in Order 2. As a result of this misalignment between Order 1 and Order 2 pay prices, the witness stated, Order 2 handlers are forced to pay premiums over the minimum order prices to obtain a milk supply traditionally associated with Order 2.

The Association witness supported the proposed increase in the location adjustment rate to 2.5 cents per hundredweight per 10 miles by pointing out that it is slightly less than the actual variable hauling cost of 2.63 cents plus 25.87 cents per hundredweight fixed cost, as determined by the market administrator's office. Furthermore, he stated, extending the 2.5-cent rate beyond the 201–210 mile zone would align the location adjustment rates for Class I milk under Order 2 with those contained in Order 1 for the same area. The witness supported the Association's proposal that the fixed transportation differential be increased from 15 cents to 22 cents and be effective at all locations within the 1–150 mile zone rather than the 1–70 mile zone by stating that such a structure would be similar to the 22-cent break between the 131–140 and 141–150 mile zones under Order 1. He also testified that as a result of such a change, blend prices to Order 2 producers located within the 150-mile zone would increase, and be better aligned with blend prices paid to Order 1 producers in the same area. The witness stated that increasing the extent of the fixed transportation differential zone and the prices applicable to producers located within it would enable Order 2 fluid milk handlers to improve their procurement and maintenance of close-in sources of milk.

The Association witness supported the elimination of zone price differentials on Class II milk by observing that milk used for manufacturing in zones beyond the 201–210 mile zone is priced more attractively to handlers under Order 2 than milk located similarly but priced under Order 1 or Order 4. The witness stated that the minus differential on Class II milk may attract to the pool and retain some handlers operating manufacturing plants who otherwise might be regulated under another order.

The Dairy Institute of New York (the Institute), which consists of fluid milk processors and distributors with business interests centered in metropolitan New York City, proposed a pool credit to handlers on Class I milk delivered to locatjons within the metropolitan New York City area. The witness for the Institute testified that a credit would be appropriate because of additional transportation and other costs, such as labor, taxes and nsurance, that are incurred in moving milk into some parts of the 1–10 mile zone because of that area's heavily populated and congested nature. The witness described the area inside the 1–10 mile zone as about 40 by 100 miles, delineated by the 10 basing points which define the inner edge of the 1–10 mile zone. He stated that handlers at locations to which milk is delivered over the George Washington and Tappan Zee Bridges must pay 3 cents per hundredweight over the 1–10 mile zone price to cover transportation costs. In addition, he said, milk delivered to Queens, Brooklyn and Long Island incurs an additional 4-cent per hundredweight expense. According to the Institute's witness, these additional expenses, when combined with the costs of hauling milk past the 1–10 mile zone basing points to the locations of metro-area handlers' plants, should result in larger credits than those proposed by the Institute in the hearing notice. Instead of the proposed credits of 5 cents for locations in the Bronx and Westchester County, 10 cents for the rest of New York City and Nassau County, and 15 cents for Suffolk County locations, the witness advocated that the credits adopted for the respective areas be 7.5, 15 and 25 cents.

The Institute representative argued that because handlers whose plants are located in the inner metropolitan area currently pay over-order prices to cover the greater cost of hauling milk to their plants, a credit from the pool is needed to offset those additional hauling charges. The witness stated that competition from nearby handlers who are able to obtain milk supplies at lower cost makes such a pool credit necessary so that the metropolitan handlers' costs of procuring milk can be covered without being passed on to consumers. He explained that a change to less-restricted licensing of handlers allowed to sell milk in New York City has changed competitive relationships between handlers within the metropolitan area and those located just outside of the City. The witness estimated that the blend price paid to producers would be reduced by 2 cents per hundredweight if the originally-proposed pool credits were adopted, or by 3 cents if the amounts of pool credits proposed at the hearing were adopted.

Friendship Dairy's proposal to announce Class I and blend prices at the 1–10 mile zone instead of at the 201–210 mile zone was supported by a witness representing Oneida-Lewis Milk Producers, a small cooperative association whose members' milk is pooled under the order. The cooperative's witness stated that announcing the prices effective at the market's population center rather than where the milk is produced would make Order 2 more like other Federal orders, and would make Order 2 prices more easily comparable to prices announced under other orders. No other support for or opposition to the proposal was expressed.

Although prices under most Federal orders are announced at the location of the markets' population centers, the New York-New Jersey and New England orders have long been exceptions to that practice. Participants in both of these neighboring northeast markets are accustomed to seeing prices announced at the 201–210 mile zone (Zone 21 in New England), and comparing those prices rather than the prices effective at New York City and Boston. Given the overlapping nature of the two markets' supply areas, the present system makes it easier for producers to determine which order offers them the higher price (after considering the Order 2 15-cent transportation credit), and enables handlers to more readily compare the prices they are paying to producers with their competitors' pay prices. A change in the location for which prices are announced was proposed only for the New York-New Jersey order, and not for the New England order. Because these two marketing areas continue to share a large production area, it would not be reasonable to change the basis for announcing prices for one market without changing the other. In addition, market participants in the New York-New Jersey area have long been accustomed to having Order 2 prices announced at the 201–210 mile zone. Under these circumstances, a change of the base zone to the 1–10 mile zone would probably be more confusing than the present system, and should not be adopted at this time.

Friendship's proposal to update location adjustment rates on prices applicable to Class I milk to 3.3 cents per 10-mile zone while leaving the present adjustment rates on blend prices to producers at their present levels should not be adopted. The proposal was supported by witnesses representing Oneida-Lewis Milk Producers and the National Farmers Organization (NFO), cooperative associations representing dairy farmers whose milk is pooled under the order; and Kraft, Inc., a proprietary cheese plant operator with nonmember producers. The NFO witness expressed his organization's opposition to any proposal that would change farm zone prices in Order 2, and supported additional transportation allowances between handler locations for the purpose of recovering actual costs of moving milk to fluid processing plants. However, he stated, when the 15-cent hauling credit on all milk is considered, the proposed 3.3-cent location adjustment rate is too high. The Kraft witness supported the concept of increasing the adjustment rates to the Class I price without changing location adjustments on producer milk because such a change would facilitate the movement of milk directly from farms to the fluid market without changing historical producer price relationships.

A witness representing Farmland Dairies, Inc., opposed Friendship's proposal to amend the order's location adjustment provisions. The Farmland witness stated that Friendship's location pricing proposals would create an advantage for manufacturing plants to obtain milk from locations nearer the city than they currently do, and would require fluid plants to go to more remote locations to obtain adequate supplies of milk. He asserted that the allowed hauling deductions would be inadequate to reimburse the fluid handler for the negative economics of the situation.

The rates used to adjust Class I and uniform prices for location should be the same. In both instances, the location adjustment rate is used to approximate the cost of hauling milk and thereby reflect its relative value at different locations. There is no testimony or data in the record of this proceeding that suggests any economic basis for establishing different rates for adjusting the values of milk at handlers' and producers' locations. The only reason given for such differentiation was that updating adjustments to blend prices, as well as to Class I prices, would reduce

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prices paid to producers located far outside the market's consumption centers and thereby change historical producer price relationships. However, changes in the order's location adjustment rates are intended to reflect current costs of getting milk from farms to the fluid market, not to actually change those costs. Therefore, increases in the costs of marketing have already changed the relative location values of milk. Failure to reflect those changes by adjusting both prices paid by handlers and prices paid to producers would result in an inequitable redistribution of pool proceeds to producers distant from the market's center.

Friendship's proposed increase of the Class I location adjustment rate to 3.3 cents per hundredweight was supported by the witness representing Oneida-Lewis Milk Producers and opposed by the NFO witness. The NFO witness stated that the 3.3-cent rate is too high when the 15-cent hauling credit on all milk is considered. The witness expressed misgivings that, in some cases, location adjustments based on a 3.3-cent rate would exceed the actual hauling cost. The Kraft witness also characterized the proposed 3.3-cent rate as too high.

*Order modifications.* The 2.5-cent rate proposed by the New Jersey Milk Industry Association is much closer than Friendship's proposed rate to actual hauling costs as determined by the market administrator's office, and should be adopted. The market administrator's witness cited a 1984 study of hauling costs for the New York-New Jersey marketing area that showed a variable hauling cost of 2.63 cents per hundredweight per 10 miles, and a fixed hauling cost of 25.87 cents per hundredweight. The witness explained that hauling costs had not changed substantially between 1984 and 1988. A location adjustment rate increase from 2.2 cents to 2.5 cents per 10 miles, with an increase in the fixed transportation differential from 15 cents to 22 cents will cover most of the cost of hauling producer milk without overcompensating handlers for such movements. In addition, the increased rates will provide a more uniform impact on Order 2 and Order 1 producers relative to their distance from the consumption centers of their markets.

The 2.5-cent adjustment rate adopted for zones inside the 201–210 mile zone should be continued outside the 201–210 mile zone as well. Continuation of the full adjustment rate beyond the 201–210 mile zone was opposed by many of the persons and organizations represented at the hearing. Those witnesses opposing increased negative adjustments to producer blend prices represented Oneida-Lewis Milk Producers, Conesus Producers Cooperative, Lowville Producers Cooperative, Allied Federated Cooperatives, the Hood Company (Empire Cheese), Dietrich's Dairy, Kraft, Inc., and Friendship Dairies, Inc. These cooperative associations and proprietary handlers have members and producers located in the zones in which blend prices would be reduced. Most of the milk produced beyond the 201–210 mile zone is used in manufacturing plants and classified in the market's lowest class of use. However, marketwide statistics show that in 1987, 20 percent of the producer milk pooled in units located outside the 201–210 mile zone was used in Class I. The supply of milk pooled on units located within 200 miles of New York City could fulfill all of the Class I needs of the market, but it is apparent from the marketwide statistics that considerably less than all of the milk produced in the close-in zones is used in Class I. In fact, less than half of the milk pooled in units within 100 miles of the 1–10 mile zone is used in fluid milk.

There is no indication in the record of this proceeding that hauling costs decline outside the 201–210 mile zone, or beyond 400 miles. Milk clearly is customarily hauled from distant zones for fluid use, and the order currently fails to allow for the full cost of such hauling. Given the difficulty, documented in the hearing record, that distributing plants in the market have experienced in obtaining needed supplies of milk for fluid use, it is important to ensure that all of the provisions of the order that are intended to encourage the movement of milk to the fluid market will have that effect. Assuring that location adjustment rates from distant zones to the market's center are adequate to cover hauling costs will become imperative when shipping requirements for pool eligibility are adopted.

Although the impact on producer returns of increasing minus location adjustments outside the 201–210 mile zone will probably be negative, it is very unlikely that returns to producers located in the distant zones would decline as sharply as some witnesses testified. One producer, who indicated that the present adjustment at the location of his pool unit is −13 cents, stated that if a higher negative rate were adopted the adjustment to his blend price would increase to −30 cents. In fact, the change in negative zone adjustments would cause such a producer's adjustment to change from −13.5 cents to −22.5 cents, or a reduction of 9 cents in his blend price. At the same time, however, the amount of the allowable hauling charge that may be deducted from the producer's payout at the blend price would be reduced by 16 cents if his milk were delivered to a plant in the 1–10 mile zone.

A witness for Dietrich's Dairy testified against increasing the minus location adjustment rate outside the 201–210 mile zone on the basis that such an increase would cause a misalignment of blend prices paid to producers pooled under Order 2, and under Orders 1 and 36. The hearing record indicates that handlers regulated under Order 1 and Order 2 compete actively for milk supplies. Very little testimony was offered in reference to procurement competition between Order 2 and Order 36, and there is no evidence that Order 2 and Order 36 handlers obtain their supplies from milksheds that are intermingled to the degree the Order 1 and Order 2 milksheds are intermingled. Location adjustments are not an appropriate device to achieve equality of blend prices. However, between Order 2 and Order 1, blend price adjustments that depend on distance from the markets' consumption centers should be uniformly applied to assure that the order under which producer milk is pooled is the order under which it has the greater value. Producer prices under Order 1 have for some time been adjusted at the same rate per zone (2.5 cents) outside Zone 21 as have prices inside Zone 21. If the effect on producer prices of distance from the market center is to be uniform between the two adjoining orders, Order 2 should be amended to provide generally the same location adjustment schedule as the one that exists in Order 1.

Exceptions to the recommended decision filed by Eastern Milk Producers Cooperative Association, Inc., and Dietrich's Milk Products, Inc., stated that the location adjustment table in the amended order should not include a continuation of minus location adjustments beyond the 401–410 mile zone. The comments argued that there was no evidence in the record to support such a change, and that extension of the schedule would permit milk from distant areas to be moved to Order 2 pool plants at the expense of the pool. The note at the bottom of the schedule should be removed as exceptors suggest. In fact, the note is redundant because a later paragraph of the current "Transportation differentials" section of the order accomplishes the same end.



*Strenuous exceptions to an increase in the zone adjustment rate outside the 201–210 mile zone were received from and on behalf of dairy farmer cooperatives with members in the affected area (Oneida-Lewis Milk Producers Cooperative and 16 other Order 2 cooperative associations), over 300 individual producers, the New York State Grange, and from Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. The comments all declared a reduction in producer returns and predicted that dairy farming in the outer zones of the Order 2 marketing area would become economically unrewarding.*

In addition, two of the exceptions, those filed on behalf of 16 Order 2 cooperative associations and on behalf of Kraft, Inc., Pollio Dairy Products Company, Friendship Dairies, Inc., and 301 of those handlers' producers challenged the factual, economic and legal bases of the recommended decision. The comments argued that the principal reason given in the decision for increasing the minus location adjustment rates was the difficulty of city distributing plants in obtaining adequate supplies of milk for fluid use testified to by witnesses who would not or could not be specific about shortages of milk or alleged excessive prices charged for the supplies of milk that were obtained. The comments further stated that in addition to being unsupported by data, much of the testimony about milk shortages and unreasonable prices was exaggerated. Exceptors pointed to testimony that no request for milk supplies for Class I use went unfilled during the 1987–88 season of short production, and that one load was even rejected, as evidence that city distributing plants have no difficulty in obtaining adequate supplies of milk. The comments argued that fluid milk distributors exacerbated their own supply situation by using some of their milk supply for Class II use and then expecting other handlers to ship milk for Class I use.

One of the exceptions complained that the recommended decision failed to discuss the weight given to relative levels of premiums paid by fluid milk processors and manufacturing plant operators in formulating the decision. Exceptors apparently find this issue relevant because fluid processors claimed that manufacturing handlers pay higher premiums than fluid processors, while data gathered by the market administrator showed fluid milk processors generally paying higher producer premiums than manufacturing handlers.

The issue of intercounter alignment was addressed in exceptions. One exception described the recommended decision as claiming to improve price alignment between Orders 1 and 2, and stated that market misalignment is furthered by the proposed changes. The exception continued by describing changes caused by the proposed order amendments in differences in producer prices under the two orders at specific manufacturing plants located in distant zones. Changes in the differentials in Class I prices at some of the locations were also described. Exceptions further addressed alleged inequity between Order 2 and Orders 4 and 36 because Orders 4 and 36 would retain their 1.5-cent location adjustment rate. The exceptions stated that the transportation differential rates in other orders also should be examined if alignment of rates were a goal of the decision, and observed a lack of competition between distant-zoned distributing plants in different orders.

Further comments on the issue of alignment noted that the record contains no documentation of any competitive disruption between Orders 2 and 4 that would be caused in New Jersey as a result of increased Order 2 Class I prices at the 1–10 mile zone, and noted that Order 2 handlers receive the benefit of a 15-cent credit on some milk receipts, which Order 4 handlers do not. If there were any possibility of competitive inequities arising from an increase in Order 2 Class I prices to handlers located in the 1–10 mile zone, the exception observed, there would not have been proposals from New Jersey handlers to increase such prices.

One of the exceptions argued that milk from distant zones does not have to be shipped to city locations for fluid use, but is instead delivered to reload plants and fluid plants in distant zones. The exception pointed to testimony by a fluid handler that city handlers find that it does not make economic sense for them to develop milk supplies in the distant areas of the milkshed, and testimony from a witness representing a manufacturing plant operator that handlers who provide milk for Class I use in the city try to ship it from locations as near-in as possible. The comments observed further that it is not necessary to reduce prices on all of the milk produced in distant zones to enable the small percentage of such milk that is needed in the city for fluid use to move there.

The exceptions complained that the recommended decision did not address the intent of some proponents of the proposal to increase rates of transportation differentials for the purpose of removing some of the Order 2 market's distant milk supply. Exceptors claimed that this purpose would be accomplished by reducing distant producers' returns for their milk production to a level which would cause them to associate their milk with another Federal order, and stated that the goals of removing milk from the market and establishing incentives for producers and handlers to ship milk to the city from distant zones are incompatible.

Several fluid milk handlers who operate fluid milk processing plants in the market's 1–10 mile zone complained that they had experienced difficulties in obtaining adequate supplies of milk at reasonable prices. The accuracy of these reports was supported by the fact that "call" meetings were held in September and December 1987 to consider the need for mandatory shipment percentages by country manufacturing plants. In addition, the need for market participants to form an ad hoc group and enlist the services of a middleman to assure fluid milk handlers of an adequate milk supply is beyond the ordinary. The record clearly shows that the actions of this specially-formed group and the people who worked with them, rather than the provisions of the order, assured that no request for milk supplies went unfilled during the period of short production and relatively high Class I use that preceded the hearing.

Class II use by fluid milk handlers of some of their own milk supplies should not make them unentitled to supplementary supplies of milk from manufacturing plant operators and their suppliers. Manufacturing plant operators should not forget that it is the Class I price paid into the pool by fluid processors that generates the uniform price they depend upon to enhance payments to their producers. The "right" such handlers and producers have to share in the market's Class I sales derives from their at-least-occasional participation in supplying milk for fluid use. Assurance that the costs of transporting milk from production areas to consuming centers are reflected in the order's transportation differentials is necessary to make such movements possible.

Exceptors' arguments that fluid handlers testified that they cannot economically procure milk from the market's distant zones, and that handlers try to ship milk to the city from locations as near-in as possible, ignore the fact that inadequate transportation differential rates are a major factor in

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making long-distance movements of milk uneconomical. When the combination of milk prices at country locations and hauling costs to city processing plants significantly exceed the value of the milk at city locations under order prices, there can be no question that the procurement of distant supplies of milk is made uneconomical by the terms of the order. The higher premiums to which fluid handlers are subject in order to obtain adequate supplies of milk in the absence of adequate transportation differentials can only serve to create or exacerbate competitive problems. In applying unequally to fluid handlers similarly located, the high premium levels result in unequal costs to handlers who are close competitors.

The alignment of blend prices among orders is not intended to be a function of transportation differentials, and the recommended decision did not claim to have such a goal. However, in view of the active competition for supplies of producer milk between handlers regulated under Orders 1 and 2, it is important that neither of these orders convey inaccurate economic signals to producers regarding the relative value of their milk in the two markets on the basis of location. Therefore, the relative distance from New York City and Boston of the location at which a producer's milk is received by a handler should be reflected in equivalent transportation differentials for these two markets. Those wishing to compare prices paid to producers under Order 1 and Order 2 should bear in mind that the published Order 2 uniform price understates returns to producers by the amount of the 15-cent transportation credit.

The interorder alignment of Class I prices is an appropriate concern in formulating transportation differentials. Under the provisions adopted in this decision, the Class I price difference under Orders 1 and 2 at Pierrepont Manor, the only location used by exceptors as an example of interorder price misalignment at which milk is reloaded and transferred for Class I use, will be reduced by 8 cents. In the discussion of interorder alignment of Class I prices in New Jersey, the example of differing Class I prices under Orders 2 and 4 in the near-in zones referred to the 21–30 mile zone in New Jersey rather than the 1–10 mile zone. Although it is impossible to cite documentation of marketing disruption that has not yet occurred, the heavily populated nature of this primary consuming center and the fact that it is supplied by handlers regulated under both orders strongly suggests that a 13-cent Class I price difference would result in a loss of sales by Order 2 handlers to Order 4 handlers. The proposals by New Jersey handlers that would have resulted in Class I price increases in the 1–10 mile zone would have affected only those handlers processing fluid milk products in New York City, not their competitors located in New Jersey.

The "benefit" of the 15-cent credit to Order 2 handlers on some milk receipts cited by exceptors shows a basic lack of understanding of the workings of Order 2. Although New York-New Jersey handlers do receive a 15-cent credit in the computation of their net pool obligation, that credit is passed through to producers when they are paid. Therefore, the credit to handlers results in absolutely no reduction in their total obligations to the pool and their producers. The exceptions also indicate that exceptors apparently fail to understand the combined effect of the order provisions for determining handlers' pool obligations and payments to producers. Handlers pay for the total amount of Class I milk they use at the Class I price adjusted for the handlers' locations.

The 1.5-cent location adjustment rate effective under Orders 4 and 36 is irrelevant in determining the appropriate rate of transportation differentials for Order 2. There was no testimony in the record upon which this decision is based to indicate that handlers in Philadelphia (or in Pittsburgh or Cleveland, to whom this proceeding did not apply) have experienced any difficulty in obtaining adequate supplies of milk for fluid use under their orders' current location adjustment provisions.

The recommended decision did not address motives of proponents in proposing increased rates of transportation differentials because they were not considered appropriate bases for the adoption or rejection of the proposals. The increase in transportation differential rates is necessary to reflect the cost of moving milk from the distant zones of the market to the primary consumption center. The uniform prices paid to producers are a result of the Class I prices effective at the locations at which Class I milk is used and the percentage of Class I use in the market. Reductions in uniform prices paid to producers in those distant zones may occur as a result of the increased transportation differential rates, but that effect is not the purpose of the increase.

An exception filed on behalf of the 16 cooperative associations stated that the recommended decision was faulty in not adopting the Friendship proposal to apply different rates to prices paid by handlers and to producers for the purpose of adjusting the value of milk in accordance with the location at which delivery of the milk is made. The cooperatives' comments stated that the proposal would facilitate movements of milk for Class I use while avoiding drastic impact upon producers, and should have received more careful consideration. The comments also argue that there is no economic imperative in the statute (presumably the Agricultural Marketing Agreement Act of 1937) or in the Federal order system that demands that producer blend prices and handler Class I prices must be priced in equivalent zones. Other comments included the observation that the Administrator had adopted a sweeping remedy instead of a more refined one (i.e., the Friendship proposal).

As stated in the recommended decision, the record contains no economic justification for adopting different location adjustment rates for prices paid by handlers and to producers. The value of milk delivered to city consumption centers for fluid use is enhanced in proportion to the distance over which the milk must be moved. Therefore, the rate of adjustment, for both handlers and producers, should be directly related to the cost of moving the milk. At the same time, the value of milk delivered by producers should be adjusted according to the location to which it is delivered in proportion to the cost of moving the milk to that specific location.

Failure to adjust prices to producers at the same rate at which handler prices are adjusted will result in an inequitable transfer of the pool proceeds generated by high-valued fluid uses at city locations from the producers whose milk is delivered to city locations to producers whose milk is delivered to nearby country manufacturing plants at a lower hauling cost. The location adjustments in the order serve the purpose of compensating or rewarding producers and handlers for providing an economic service of benefit to handlers (delivery of milk to city locations). In the interests of equity, the producers who actually provide the service to handlers and to the market are the producers who should receive the compensation or reward for doing so.

The exception filed on behalf of Kraft, et al., cited several of the Department's decisions regarding location pricing in other marketing areas, and concluded that the recommended decision failed to follow principles of location pricing



expressed in those decisions. Official notice was taken of none of the decisions cited by exceptors. The only one of the cited decisions referred to in exceptors' brief in this proceeding was used to support arguments other than those made in exceptions. In any case, the marketing conditions existing in other marketing areas at other times cannot be used as the basis for a decision in this proceeding.

Finally, exceptors attacked the adoption of increased rates of minus transportation differentials because the analysis and findings required under 7 U.S.C. 608c(18) for the purpose of establishing prices were not performed on the basis of the record of this proceeding. Amendments to the transportation differential rates of Federal milk orders customarily are done, and were formulated under this proceeding, under the authority of section 608c(5) of the Agricultural Marketing Agreement Act of 1937, which clearly authorizes adjustments to prices paid to producers and charged to handlers on the basis of the locations at which delivery of milk is made to handlers, and not under section 608c(18).

The order should not be amended to require the market administrator to adjust the transportation differential rates annually, as Friendship proposed. If such adjustments were to be made without corresponding changes in the Class I price differential at the 201–210 mile zone, Class I price misalignment between the major consumption centers of Orders 1, 2 and 4 could create serious disorderly marketing conditions. Changes affecting price levels should be considered at public hearings, where all market participants have an opportunity to air their views.

The New Jersey Milk Industry Association's proposal to increase the amount of the 15-cent fixed transportation differential to 22 cents should be adopted. However, the Association's proposal to change the effective area of the differential from 70 miles to 150 miles from the basing points should not be adopted. The reasons given by proponent for increasing the rate and extending the area over which it is effective were improvements in the alignment of blend prices under Order 2 with those paid to producers under Orders 1 and 4, and in the resulting success of Order 2 fluid milk handlers in procuring supplies of milk.

The proposal to increase the Order 2 fixed transportation differential and expand the area over which it is effective was opposed by witnesses representing Marcus Dairy, an Order 1 pool distributing plant operator, and the National Farmers Organization (NFO), a cooperative association with members whose milk is pooled under Order 2. The Marcus Dairy witness opposed the Association proposal because it would attract milk supplies currently pooled under Order 1 to Order 2. He stated that such a result would be counter to the purpose of the order, which is to attract milk to the fluid market. The NFO representative explained that the cooperative would not object to an increase in the fixed transportation differential if it were paid only to dairy farmers actually shipping milk into the 1–150 mile zone for Class I use, but that not all producers merely located within 150 miles of the market's center should receive the benefit of the proposed increase.

The purpose of the present fixed transportation differential is to reflect the fixed cost of transportation in the Class I price for both direct-shipped and reloaded milk. The hauling cost analysis described by the market administrator's representative resulted in a fixed hauling cost of 25.87 cents. Therefore, an increase in the allowance for this component of total hauling costs to 22 cents will better enable milk to move from distant locations to the metropolitan area for use in fluid milk products. The fixed transportation differential should remain at a level slightly below the actual fixed hauling cost, however, to avoid encouragement of any unnecessary movements of milk. The 22-cent rate will also result in similar transportation allowances for producer milk moved from the common production areas of Order 1 and Order 2 to the consumption centers of those markets.

The area over which the fixed transportation differential is applicable should not be expanded to cover all of the area within 150 miles of the market's basing points. Contrary to proponent's testimony, there is no evidence that such an expansion would encourage greater Class I use of milk produced within the 1–150 mile zones. Producers located within 71–150 miles of metropolitan New York City would receive a higher blend price, but if they shipped milk to plants within the 0–70 mile zone they could be charged a like additional amount for hauling since the fixed hauling reflected in the Class I and blend prices would be moved out to 150 miles rather than at 70 miles.

In addition to failing to have the desired effect of attracting nearby supplies of producer milk, adoption of the proposed expansion of the area covered by the fixed transportation differential would have a deleterious impact on Class I price alignment between fluid milk handlers regulated under Order 2. Under the present location adjustment structure, fluid milk handlers included in the area covered by the fixed transportation differential are located at least 70 miles from the nearest fluid processing plant that is outside the 1–70 mile zone. The plants in the 11–20 and 31–40 mile zones are located in New Jersey, or south of the metropolitan area, while the next plant distant from the basing points is in the 71–80 mile zone directly north of metropolitan New York City at Kingston, New York. The fluid milk plants nearest to Kingston and inside the 1–70 mile zone, then, are in the 1–10 mile zone, or at least 66 miles away. The existence of the fixed transportation differential at the 70-mile zone apparently has worked well since the order was last amended in 1981.

Establishing a significant price difference at 150 miles, instead of 70 miles from the basing points would create a much different competitive situation. Fluid processing plants at Menands and Albany, New York, are located in the 131–140 mile zone, or inside the proposed effective area of the 22-cent fixed transportation differential. Processing plants located in Saratoga Springs and Amsterdam, New York, are located in the 161–170 mile zone, outside of the area proposed to be affected by the fixed transportation differential, but only about 30 miles from their probable competitors in the 131–140 mile zone. The Class I price difference between these locations that would result from the Association's proposal would be 29.5 cents per hundredweight, or almost 1 cent per mile. A price difference of nearly 30 cents over such a short distance clearly would lead to an unfair competitive situation and result in disorderly marketing. Therefore, the fixed transportation differential should not be moved to 150 miles from the basing points.

At the hearing, the Dairylea witness proposed that the fixed transportation differential be incorporated in the location adjustment schedule at 180 miles from the basing points. He supported the proposal by stating that while the 140-mile distance from Boston of the fixed transportation differential under Order 1 is appropriate for that market, a 180-mile distance from the Order 2 market's consumption center would include most fluid handlers and cover most of the area in which both Order 1 and Order 2 handlers procure milk. In addition, he stated, most of the Order 2 reloading facilities are located beyond 180 miles from the basing points.

The Dairylea modification of the New Jersey Milk Industry Association's

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proposal to increase the distance over which the fixed transportation differential is effective suffers from the same defect as the original proposal. The record shows that there are 7 fluid milk processing plants located outside the 171–180-mile zone, and some of these plants are located near enough to fluid processing plants in the 151–170-mile zones to result in competitive inequities due to Class I price differences. For instance, the distance from Amsterdam, New York, to Utica, New York, is 62 miles. Given a 22-cent fixed transportation differential in addition to the 5-zone difference in location at 2.5 cents per zone, there would be a 34.5-cent price difference between these two locations, or a transportation allowance of more than 5.5 cents per 10 miles.

The distance between Binghamton, New York, and Syracuse, New York, is 73 miles. There are 8 zones difference between the two locations, which would make a 20-cent difference in their applicable Class I prices when the 2.5-cents per 10-mile rate is applied. When added to a 22-cent fixed transportation differential, the Class I price difference between the two locations would become 42 cents, or a transportation allowance rate of approximately 5.75 cents per hundredweight per 10 miles.

Imposition of a 22-cent fixed transportation differential at 180 miles from the basing points would result in price differences at these actual pool plant locations that would cover more than twice the variable hauling cost of milk, and would almost certainly cause competitive disruptions for handlers whose plants are located just inside and just outside of the price break.

Under both the New England and New York-New Jersey orders, the fixed transportation differentials serve the same purpose of encouraging producer milk to move to fluid milk processing plants for use in the higher-valued Class I products. However, the differing structures of the two markets are bound to frustrate any attempt to incorporate the Order 1 location pricing structure in Order 2. In the New England marketing area, all of the distributing plants are located within the first 14 zones and most of the supply plants are located outside Zone 14. Therefore, any producer milk delivered to plants located within the first 14 zones, where the 22-cent fixed transportation differential is applicable, is delivered for use primarily in fluid milk processing plants.

In the New York-New Jersey marketing area, fluid milk processing plants are located throughout the marketing area, from the 1–10 mile zone to the 231–240 mile zone. Manufacturing plants and transferring plants are located between the 121–130 mile zone and the 361–370 mile zone. There is no clearcut dividing line between the two types of plants, as there is in New England. Because producers pooled under Order 2 are paid on the basis of the zone location of their bulk tank units (farm-point pricing) rather than according to the location at which their milk is delivered, placement of the 22-cent fixed transportation differential at any zone inside of which there are manufacturing plants would tend to offset the incentive for producer milk to be moved to fluid processing plants in the market's center. As noted earlier, placement of the differential at just about any zone other than its present location would cause severe competitive disruptions between fluid milk handlers in nearby zones. The only other effect of changing the fixed transportation differential to 150 or 180 miles from the basing points would be to enhance by 22 cents per hundredweight the prices paid to producers located within 70–150 or 70–180 miles of the basing points. If the 150-mile distance were selected, the value of over 17 percent of the producer milk pooled under the order would be enhanced. If the differential were moved to 180 miles from the basing points, the value of 33 percent of the producer milk in Order 2 would be subject to a 22-cent higher price. Since the total value of the pool would be unlikely to change very much, the value of producer milk located farther from the metropolitan area would decline by a comparable amount.

Therefore, because an expansion of the area affected by the fixed transportation differential would not provide any incentives to increase the flow of milk to fluid processing plants and would unnecessarily reduce payments to producers located outside the proposed area, the differential should remain effective within the 1–70 mile zones, at its new higher rate.

Comments on the recommended decision filed by the New Jersey Milk Industry Association and Dairylea Cooperative, Inc., included exceptions to the Department's failure to change the effective area of the fixed transportation differential from 70 miles to 150 or 180 miles from the basing points. The Association based its argument on the need to attract milk supplies to the New York City metropolitan area. The Association's comments also stated that the plants in Amsterdam and Saratoga that are just outside the 150-mile zone are either of little competitive consequence or part of a vertically integrated operation, and therefore would suffer little "disadvantage."

There is no guarantee that the extra 22 cents paid to producers located within the 1–150 mile zones would cause them to deliver their milk to a city distributing plant instead of to a nearby manufacturing plant. The farm-point pricing aspect of the New York-New Jersey order tends to make producers indifferent to the destination of their milk, but not to the amount of hauling costs that may be deducted for transportation.

Adoption of the proposal would, however, cause a significant transfer of income from producers located outside the 141–150 mile zone to producers located inside its outer limit. The cost to producers located more than 150 miles from the basing points of providing an additional 22 cents per hundredweight to producers located in the 71–150 mile zones would be approximately 5 cents per hundredweight. If the fixed transportation differential were established at the 171–180 mile zone, the cost to producers in the outer zones of providing an additional 22 cents to producers in the 71–180 mile zones of the basing points would be 11–12 cents. While the increase in the zone differential rate in the more distant location adjustment zones is an equitable reflection of the relative location value of milk produced in those zones, the extra reduction in price to distant producers for the purpose of distributing more money from the pool to closer-in producers would be unwarranted.

In addition, fluid milk processors located just outside the 150-mile zone would enjoy a significant competitive advantage in comparison with nearby plants subject to a 22-cent fixed transportation differential in addition to 2.5 cents per zone. While handlers located in New Jersey may not view such a price difference between close competitors located 150 miles from New Jersey as any cause for alarm, it is likely that the handlers affected would be more concerned.

Dairylea's exceptions argued that the hearing record furnished an adequate basis for expanding the application of the fixed transportation differential for the purpose of improving the alignment of producer pay prices under Orders 1 and 2. The comments urged that instead of setting the fixed transportation differential at a specific mileage zone, the differential be associated with particular southeastern New York counties in a zone pricing structure similar to that in the New England marketing area. Dairylea stated that the very limited movement of packaged fluid milk products between central and eastern New York State would eliminate the problem of competition between nearby handlers on opposite sides of the fixed transportation differential demarkation line. The comments explained that bringing the Albany/Capital District area into the fixed transportation differential area would affect all of the Order 2 producers supplying the substantial fluid market that exists in eastern New York State outside of the 70-mile zone, and thereby improve producer blend price alignment in the common supply area for Orders 1 and 2. Dairylea's exceptions also argued that use of the Order 1 zone 14 as a demarkation line ignores the existence of cooperative manufacturing plants in West Springfield, Massachusetts, and Newington, Connecticut, as well as nonpool fluid plants beyond Zone 14.



While there may be some merit in Dairylea's suggestion, a proposal for such a major restructuring of Order 2 transportation differentials should not be considered without other market participants having an opportunity to provide input. Also, a proposal for the type of zone pricing that exists in the New England market may be more appropriate for an order in which the determination of prices to producers is based on the locations of the plants to which their milk is delivered rather than the locations of the farms on which the milk is produced. The farm-point pricing provisions of Order 2 provide no incentive for a producer or cooperative association to deliver milk to fluid processing plants rather than to manufacturing plants. The order's provisions that require a handler to apply a credit to the producer's hauling deduction based on the difference in zones between the farm and the plant of first receipt only serve to assure that there is no disincentive to deliver milk to city locations for fluid use.

Although there is one pool manufacturing plant inside Zone 14 in Order 1, the structure of location adjustments in that order reflect the service provided by producers located at some distance from the market center in delivering milk inside Zone 14 better than a similar structure in Order 2 would do. The existence of nonpool fluid plants beyond Zone 14 should have no effect on the location adjustment structure of the order. There is no need to assure supplies of pool milk to such handlers. Also, since these handlers currently must have less than 10 percent of their receipts of milk delivered on routes within the marketing area, it is unlikely that they would represent a significant source of competition to pool distributing plants.

Although the New Jersey Milk Industry Association proposed that adjustments to Class II prices on the basis of location be eliminated, only the minus Class II location adjustments should be removed from the order. (References to Class II location adjustments in this discussion also refer to Class III under the amended order). The Association's witness stated that the minus Class II location adjustments allow manufacturing plant operators outside the 201–210 mile zone a regulated price advantage on the milk they use to make Class II products, and cause the pool to return to producers less than the full value of their milk. Furthermore, he stated, elimination of the zone differentials on Class II milk will result in better price alignment with Orders 1 and 4. In the event 3-class pricing were to be adopted for the New York-New Jersey order, the witness testified, there should be no zone differentials on either Class II or Class III milk.

The Association's proposal to eliminate Class II location differentials from the order was supported by Oneida-Lewis Milk Producers, Leprino Foods Company and Dietrich's Milk Products, Inc. The witnesses supporting the proposal testified that milk used in manufactured dairy products should be priced uniformly between orders to maintain inter-order competitive equity.

Elimination of the Class II location differentials was opposed by Dairylea Cooperative, Inc., Kraft, Inc., and Friendship Dairies, Inc. The Kraft, Inc., witness stated that the purpose of the Class II location differentials is to encourage manufacturing handlers to locate their plants in the market's outer zones and encourage milk produced in the inner zones to move to fluid processing plants. He testified that without minus Class II location differentials, manufacturing plant operators would experience a competitive disadvantage compared to close-in manufacturing plants because the Class II price difference between zones helps to cover the transportation cost of manufactured products.

The witness representing Friendship Dairies, Inc., opposed elimination of the Class II location differentials on the basis that such an action would enable fluid milk handlers to use supplies of milk close to the market's center for manufactured products while reaching further into the milkshed for Class I milk. The Dairylea representative stated that elimination of the Class II location differentials would disrupt the alignment of Class II milk prices between Order 2 and Order 4. As a remedy, he suggested that the 6-cent Order 4 direct delivery differential, applicable to all producer milk delivered to locations within 55 miles of Philadelphia, Pennsylvania, be changed to apply only to milk delivered for Class I use.

Most of the concerns relating to elimination of the Class II location differentials can be addressed by eliminating only the minus adjustments. Since the price of Class II (and Class III) milk used inside the 201–210 mile zone would still increase for locations closer to the metropolitan area, manufacturing plant operators would still have an incentive to locate their operations in the market's outer zones. At the same time, maintaining plus location differentials on Class II and Class III milk used inside the 201–210 mile zone will encourage the use of close-in supplies in fluid products instead of manufactured products. The plus Class II and Class III location adjustments will also assure price alignment between Orders 2 and 4 for milk used in manufactured products. The notice of hearing contained no proposal to amend the Order 4 direct delivery differential to apply only to milk used in Class I, and there is no information in the record of this proceeding upon which to base such a change. Therefore, it is appropriate to retain the portion of the Order 2 location adjustment schedule that assures that prices for Class II (and Class III) milk used at plants in the vicinities of New York City and Philadelphia will not place the handlers of either order at a competitive advantage or disadvantage with handlers regulated under the other order.

The argument that the minus Class II location differentials are necessary to maintain competitive equity between manufacturing operations in the areas outside the 201–210 mile zone and those inside the 201–210 mile zone is not persuasive. Locations inside the 201–210 mile zone will still be subject to higher prices for milk used in Class II and Class III. At any rate, Class II and Class III products are generally distributed over a much wider geographical area than are fluid milk products. The national nature of competition between handlers manufacturing Class III products, and the regional nature of competition between handlers manufacturing Class II products, dictates that milk used in those products be subject to comparable prices.

Although Class II prices under the nearby Western New York Marketing Area are currently 5 cents lower than Order 2 Class II prices, this difference should not result in any severe competitive problems for Order 2

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handlers. The volume of milk pooled under the Western New York order is only slightly more than 10 percent of the volume pooled under Order 2, with a corresponding percentage of milk used in Class II. Determining the provisions of Order 2 on the basis of the provisions of an order regulating marketing within a much smaller marketing area would be unreasonable.

An exception to the elimination of minus Class II transportation differentials was filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc. The comments argued that plants manufacturing cottage cheese and other soft products in Order 2 are located in the milkshed, and must pay for the transportation of their products over the distance between the plants and the market's consumption center. In other markets, the comments stated, cottage cheese and other soft products are located in or near the market centers, and do not have to be moved there after being processed. The exceptions claimed that the market-wide transportation savings obtained from processing milk at country plants benefits producers and the industry in general, and that the elimination of the minus differentials on Class II milk compounds the economic burden incurred by the adoption of 3-class pricing and the elimination of seasonal Class II price adjustments.

There is no justification for maintaining minus transportation differentials for milk used to produce manufactured products in the distant zones of the market. The location of cottage cheese and other soft product manufacturing plants in the milkshed benefits the operators of such plants at least as much as producers are saved in transportation costs. The manufacture of products such as cottage cheese has the effect of condensing the volume of producer milk that must be transported to the city. The supplies of milk for manufacturing such products in the market's distant zones are cheaper for handlers to obtain than in the near-in zones because the milk does not have to be moved as great a distance before it's volume has been reduced in the manufacturing process. Because the cost of hauling products such as cottage cheese to the market's primary consumption center after the milk's volume has been reduced is less than the cost of hauling the raw milk there to manufacture such products, manufacturing handlers in the distant zones should have an economic advantage over city handlers even without the minus adjustments.

In addition to their advantage in raw product costs, the plants manufacturing soft products in zones distant from the market's center are better-situated than their city counterparts for selling products across a broad geographical area. Contrary to exceptors' claim that producers are benefitted by the minus Class II transportation differentials, elimination of the minus adjustment will result in an increase of approximately 1 cent per hundredweight in the uniform price.

Exceptions filed on behalf of Kraft, Inc., and Pollio Dairy Products Company, and by the New Jersey Milk Industry Association and Dietrich's Milk Products stated that the plus Class II transportation differentials inside the 201–210 mile zone should not be retained if the minus Class II differentials are eliminated. One exception asserted that there is no need to assure inter-market competitive equity between plants regulated under Orders 2 and 4 in zones close to the centers of the marketing areas because there is no evidence of any such competition, and the record shows that there is little soft product manufacture near the city. The exception stated that because the Order 4 6-cent direct delivery differential is effective only within 55 miles of Philadelphia, the Order 2 plus adjustment should not apply outside the 70-mile zone without equivalent charges on milk received by manufacturers located at comparable distances from Philadelphia, Pittsburgh and Boston.

The Association commented that the recommended decision would leave Order 2 with provisions different from those elsewhere in the country, and that the principal Class II and Class III products produced in the affected area between Order 2 and Order 4 would be Class III products, with no effect on any significant amount of Class II products. Dietrich's stated that the plus Class II transportation differential had been removed from Order 1 long ago, and should also be removed from Order 2.

The record of this proceeding does not support the elimination of the plus transportation differentials on Class II and III milk used in the market's close-in zones. The market's statistics indicate that a significant percentage of the milk used in the near-in zones is used in fluid cream products and soft manufactured products in city plants. Testimony in the record places the volume of such use at approximately 20 million pounds of milk per month. In addition, the record shows that there is a nonpool manufacturing plant located in the 41–50 mile zone of the market that uses an equivalent volume of milk for nonfluid products.

The very minor transportation differential rate of 1 cent per hundredweight per 25 miles, which has not been updated for some years, should encourage handlers to move milk to the New York City metropolitan area only for Class I use and maintain manufacturing operations in the market's distant zones. At the same time, the small difference in Class II and Class III prices between the 1–10 and 201–210 mile zones will cover a token percentage of the variable cost of moving milk for unavoidable Class II uses at city plants.

There is no reason to change the location pricing structures of the Order 1, Order 4 or Order 36 marketing areas to match the structure of Order 2. The relative locations of milk supplies and consumption centers in those markets are not at all the same as the juxtaposition of and distances between production and consumption in the New York-New Jersey area. The gradual increase in the Class II and Class III price adjustment from the 201–210 mile zone will assure that there are no significant price differences between handlers located near each other who may be competing for producer milk supplies or for sales ofmanufactured products. It is not possible on the basis of the record of this proceeding to eliminate all Order 2 provisions that differ from other orders.

The Order 2 manufacturing plants located in the 71–200 mile zones are located nowhere near Boston or Pittsburgh. Consequently, there is no reason to consider Class II and Class III price alignment at the 71–200 mile zones with those markets. Order 2 manufacturing plants are, however, located near (and in) the Middle Atlantic market, and price alignment between handlers producing fluid cream products and soft manufactured products under Orders 2 and 4 should be maintained. The record shows only two Order 2 pool manufacturing plants located inside the 201–210 mile zone that are subject to the plus Class II and III transportation differentials. One is located in the 191–200 mile zone, and would be subject to only a 1-cent adjustment. The other is located either just inside or just outside the Order 4 6-cent differential zone and is subject to a 3-cent adjustment under Order 2. Elimination of the plus differential in this case clearly would not improve inter-order alignment.

The addition of 13 cents to the Class I price difference between the 201–210 and 1–10 mile zones would result in a $3.27 Class I price at the 1–10 mile zone instead of the current $3.14 Class I price unless the Class I price differential at the 201–210 mile zone is changed. Because it is important that the Class I price at the 1–10 mile zone not disrupt price alignment between Order 2 and Order 4, the Order 2 Class I price differential at the 201–210 mile zone should be reduced from $2.55 to $2.42

The current Class I price differential effective to handlers located within 55 miles of Philadelphia and regulated under Order 4 is $3.00, including the 6-cent direct delivery differential under that order. The nearest Order 2 basing point to Philadelphia is Elizabeth, New Jersey, 76 miles from Philadelphia. If the Order 2 Class I price differential were not reduced to compensate for the increased transportation allowance, the Order 2 Class I price differential at the 21–30 mile zone would be $3.22. The same location 21 miles south of Elizabeth, New Jersey, would be within 55 miles of Philadelphia, and subject to a $3.09 Class I price differential under Order 4. A 13-cent Class I price difference certainly would affect competitive relationships between handlers similarly located, and could cause fluid milk handlers to adopt changes in their operations that would assure them regulation under Order 4 rather than under Order 2. The loss of handlers with large volumes of Class I sales would have a significant negative impact on the blend prices paid to producers whose milk is pooled under Order 2.

A reduction of 13 cents in the Class I differential at the 201–210 mile zone will result in maintaining the present Class I price differential of $3.14 at the 1–10 mile zone. In addition, the Class I price differential at the 21–30 mile zone would be $3.09, or the same price that would be effective at a similar location under Order 4. A 10-cent increase in the Order 1 Class I differential was proposed by an Agri-Mark witness to assure continued alignment between Order 1 and Order 2. Failure to increase the Class I price level at the Order 2 1–10 mile zone would make unnecessary any change in the Order 1 Class I price differential.

A number of exceptions to the proposed 13-cent adjustment to the Class I price at the 201–210 mile zone were received. Agri-Mark, Inc., Eastern Milk Producers Cooperative Association, Inc., Dietrich's Milk Products and the 16 Order 2 cooperative associations protested that resulting reductions in producer blend prices in the distant zones of the market would worsen blend price misalignment between Orders 1 and 2. Agri-Mark's comments suggested that instead of adjusting Order 2 Class I price levels downward from the 1–10 mile zone, Class I prices at Boston and Philadelphia be increased by 13 cents, and Dietrich's proposed that the 201–210 mile zone Class I differential be reduced by only 8 cents so that consumers and producers would bear equal burdens of the increased rate of transportation differentials. Comments filed by Dairylea Cooperative, Inc., stated that the recommended decision's changes in transportation differential rates do nothing to enhance producer blend prices while reducing returns to producers located outside the 201–210 mile zone by a combination of the 13-cent reduction in the 201–210 mile zone Class I differential and the increased minus rate of adjustment in transportation differential.

Exceptions filed on behalf of the 16 Order 2 cooperative associations and on behalf of Kraft, Inc., Pollio Dairy Products Company, Friendship Dairies, Inc., and 302 individual dairy farmers who ship milk to those handlers challenged the recommended decision on the basis of other Federal order decisions, lack of notice, and legal requirements of the Agricultural Marketing Agreement Act of 1937 (the A".). The exceptions noted that location adjustments must reflect and be based on economic service of benefit to handlers, and cited a decision in the Texas market in which increases in the difference between the relative values of milk in production and consumption areas resulted in a price increase in the consumption area, rather than a price reduction in the production area.

The comments stated that the notice of hearing contained no proposals to reduce the Order 2 Class I price, and that the Department refused to hear proposals to increase the Class I price differential. The exceptions further took issue with the failure of the recommended decision to conduct an analysis of the factors required to be considered under section 608c(18) of the Act in any change in the level of prices determined by the order. The comments observed that the legal requirement of the Act to explain the changed marketing conditions that required a reduction in the level of the market's Class I price would be difficult in view of the tight supply-demand situation demonstrated in the hearing record.

The appropriate zone to be considered as the basis of the Class I price is the 1–10 mile zone. According to testimony in the record, the 1–10 mile zone is the location at which 80 percent of the Class I milk in the New York-New Jersey market is priced. The U.S. Congress, in revising Class I differentials in a number of different marketing areas in the Food Security Act of 1985, revised the Order 2 Class I differential at the 1–10 mile zone, not at the 201–210 mile zone. Therefore, the 13-cent adjustment of the 201–210 mile Class I price represents only a change in order language necessary to implement the increased rates of transportation differentials adopted in this decision. A similar change was included in a decision updating the Order 2 transportation differential rates in a 1981 decision (46 FR 33008).

The record of this proceeding does not establish any basis for increasing the market's Class I price level. The "tight" milk supply referred to by exceptors resulted in less than 45 percent of the milk pooled under the order during the peak shipping season of September, October and November 1987 being used in Class I. The record shows instead that ample supplies of milk are produced in the marketing area, generated by a blend price that is based on the $3.14 Class I price differential effective at the 1–10 mile zone. The solution to the tight supply of milk for Class I use is not to increase returns to producers, but instead to assure that producers and handlers of milk produced in the more distant zones of the market will find it economically possible to ship milk to the city, either directly from farms or from plants transferring bulk loads of milk.

A Class I price increase in the highest priced locations of all three northeast orders, as suggested by Agri-Mark, would result in a 6-cent per hundredweight increase in returns to producers pooled under the three orders. Such an increase is completely unnecessary. During October, the 1987 month of highest Class I use as a percentage of producer milk for all three orders combined, the percentage of producer milk used in Class I under the three orders was 51.4 percent.

Exceptors' estimates of the impact of the changes in zone transportation differentials are, for the most part, exaggerated. Several of the comments reflect the belief that the entire 13-cent change in the Class I price at the 201–210 mile zone would be passed through as a 13-cent reduction in the blend price to producers in that zone. Other comments refer to a 5-cent change resulting from the Class I price adjustment. The change in uniform prices to producers located in the 201–210 mile zone attributable solely to the 13-cent adjustment in the Class I price differential for that zone will be approximately 5 cents.

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However, approximately 3 cents of the impact on uniform prices at the 201–210 mile zone will be offset by the increase in plus zone adjustments on Class I milk and the elimination of minus adjustments on Class II milk outside the 201–210 mile zone, resulting in a net difference in blend prices to producers of approximately 2 cents. This amount represents less than .2 percent of the average uniform price to producers in 1987. During 1987, the basic formula price, upon which both the Class I and Class II prices are based, varied by 70 cents, or 6 percent of its average. Considering the much greater movements in the basic formula price, which reflects national supply and demand conditions for milk, any attempt to determine the effect of a 2-cent difference in blend prices on supply/demand conditions in the New York-New Jersey market would be an exercise in minutiae.

The attempt by exceptors to relate the findings and conclusions of this decision to the market structure and facts of the hearing record of another Federal order market is pointless. The Texas market is composed of several large and widely-dispersed consumption centers located at various distances from the market's primary production areas. The Texas market has limited manufacturing outlets, and a relatively high percentage of Class I use. The situation addressed in the decision referred to in exceptions is very different from the New York-New Jersey market, where one principal consumption center is located at a significant distance from the bulk of the milk supply, and numerous manufacturing plants are distributed throughout the production area. It is not reasonable to expect the Department to reach the same conclusions on two different records setting forth very different marketing conditions

A proposal by the Dairy Institute of New York to allow pool transportation credits to handlers located inside the 1–10 mile zone should not be adopted. The proposal would allow transportation credits to be paid out of the pool to handlers in metropolitan New York City to compensate them for additional transportation and other costs the Institute's witness stated are incurred in moving milk into the 1–10 mile zone. The amounts of the proposed credits, as modified at the hearing, are 7.5 cents for locations in the Bronx and Westchester County, 15 cents in the rest of New York City and Nassau County, and 25 cents in Suffolk County. The witness described these areas as heavily populated and congested, and stated that the cost of hauling milk within the areas proposed to be affected by pool credits is inflated by additional costs for insurance, taxes, labor, distribution costs and bridge tolls. He complained that handlers in the inner metropolitan area are currently paying over-order prices for hauling charges and transportation subsidies and therefore experience a competitive disadvantage in comparison with nearby handlers also located within the 1–10 mile zone but subject to lower costs in procuring milk.

The pool transportation credit was opposed by a number of handlers and an individual dairy farmer. Most of those commenting opposed the addition of such credits on the basis that they would reduce the blend price paid to producers. In addition, witnesses for Marcus Dairy, a distributing plant operator regulated under Order 1, and Farmland Dairies, Inc., an Order 2 handler, commented that adoption of the credits would create a trade barrier in the metropolitan area by reducing the cost of milk to metro-area handlers but not to their competitors located just outside the area over which pool credits would be effective. The Farmland witness added that deliveries of milk to northern New Jersey locations also involve unique transportation costs, since that area is highly congested, there are detours for bridges under repair, and toll costs apply in moving milk into northern New Jersey as well as into New York City. He also pointed out that producers would pay not only once for transporting milk to the metropolitan area, but would pay a second time through the reduction of their blend prices as a result of the proposed pool credit. The witness proposed that a direct delivery charge be imposed on all milk received at the locations specified in proponents' proposal, at the same rates proposed by proponent. Witnesses for Dietrich's Milk Products, Inc., and National Farmers Organization also commented that if higher costs are incurred in supplying a particular area of the market, those extra costs should be reflected in addition to the Class I price paid by handlers located in that area instead of being reduced through deductions from producer returns.

A witness representing Friendship Dairies, Inc., pointed out that the proposed pool credits would not benefit the producers who actually bear the cost of hauling. The handler also testified that some products such as concentrated fruit juices and liquid sugars may be back-hauled to outlying locations from the metropolitan area to defray the cost of transporting milk into the city. A dairy farmer who testified stated that additional costs to handlers should be covered by the marketplace, and not by producers.

Witnesses for two cooperative associations, Dairylea Cooperative, Inc., and Oneida-Lewis Milk Producers, testified that the proposed pool transportation credit had merit and should be considered. The Dairylea witness noted that the order currently ignores the extra cost of moving milk beyond the basing points, and that those extra costs should be considered. The Oneida-Lewis Milk Producers witness observed that cooperatives selling milk to the metropolitan area would benefit from such sales, while cooperatives which do not move their milk into the city for fluid use would still have to bear some of the cost of supplying the fluid market.

The proposed metropolitan-area pool transportation credit should not be incorporated in the New York-New Jersey milk order. Establishing such a credit on the additional costs of moving bulk milk inside the basing points of the metropolitan area would not be appropriate. If the order were to be changed to incorporate additional transportation costs to handlers located within a particular area, such a change would more logically be made by increasing transportation allowances between the market's production areas and those destinations with which the higher costs are associated.

Proponents' assertion that they are competitively disadvantaged by having to pay the same price for Class I milk as other handlers located within the 1–10 mile zone is not credible. The extra costs incurred in moving packaged milk into the metropolitan area by handlers located just outside the proposed pool credit zones would be the same extra costs referred to by proponents in support of the proposed pool transportation credit. Furthermore, the cost of moving packaged milk is generally higher than the cost of moving bulk milk and therefore would cause proponent's competitors to be subject to higher costs than proponents' for milk distributed within the metropolitan area.

The additional costs cited by proponents that exceed increased transportation costs, such as higher costs of labor and insurance at metropolitan locations, are not expenses that should be deducted from producer returns. Such costs are part of a handler's expense of continuing in business at a particular location and would more appropriately be recovered in prices charged to consumers for processed milk.

Although proponent's arguments and data in support of a pool credit would



justify increases in the transportation differentials effective at locations within the New York City metropolitan area, the record does not reflect just what those increases should be. Proponent witness amended the original proposal by increasing the proposed rates of the pool transportation credit significantly (by at least 50 percent). Aside from the costs of bridge tolls and mileage from Hackensack (the basing point characterized as the nearest to the milkshed for the metropolitan area), it is unclear just what costs are intended to be covered by the proposed pool credit. It is also unclear whether all bulk milk moves through the vicinity of Hackensack to reach metro-area handlers, or if the distance of the metropolitan plants from some other basing point(s) should also be considered. Accordingly, neither pool transportation credits nor additional transportation differentials for New York City locations should be adopted.

Exceptions to the recommended decision's proposed disposition of the Dairy Industry Institute's proposal were filed on behalf of the Institute and on behalf of Farmland Dairies, Inc. (Farmland). The Institute's comments asserted that in rejecting the Institute's proposal the recommended decision fails to relate the location value of milk to the costs incurred in transporting it to city locations, and that the minimum pool credit proposed was more than justified by the record evidence. Also, the comments stated, the record clearly shows that for the period prior to the hearing northern New Jersey handlers did not have access to the metropolitan New York segment of the market, and that New York City handlers had not been subject to competition with lower-cost milk from New Jersey. The exceptions urged the Secretary to adopt the pool credit rates originally proposed, and failed to mention the higher rates proposed at the hearing.

Farmland's exceptions stated that the recommended decision supports the adoption of plus adjustments to the Class I price at the city locations for which the Institute proposed pool credits. Farmland argued that the increased rate of transportation differentials adopted for the rest of the marketing area should also result in increased Class I prices at the proposed locations within the 1–10 mile zone.

As noted in the recommended decision, additional transportation costs would more logically (and equitably) be accommodated by increasing the order's transportation allowances effective within the metropolitan area. Adoption of a pool credit for metropolitan handlers would, in effect, give them a cost advantage over other handlers located within the 1–10 mile zone at the expense of all of the producers whose milk is pooled. Also, the extra costs of delivering milk to the New York City metropolitan area apparently are not unique to that area. According to testimony by a Farmland witness, road and bridge tolls, detours caused by bridge construction, and traffic congestion add significantly to the cost of procuring milk supplies for the northern New Jersey portion of the 1–10 mile zone. In addition, extra costs in these portions of the 1–10 mile zone currently incurred by handlers apparently result in those handlers paying prices equivalent to those of a higher-priced zone, with the benefits accruing to the producers who actually deliver the milk. There appears to be no reason for the cost of milk in the New York City metropolitan area to be any less, or any more, than in northern New Jersey. As a result, no change should be made in the relative pricing between these two portions of the 1–10 mile zone.

b. *Order 1.* Proposals to change the zone designation of portions of Fairfield and New Haven Counties, Connecticut, should not be adopted. Marcus Dairy, a proprietary handler pooled under the New England milk order and located at Danbury, Connecticut, proposed that locations in Fairfield County, Connecticut, that are within 15 miles of the New York-Connecticut border and north of the towns of Wilton, Weston, Easton and Trumbull, be redesignated from Zone 5 to Zone 10. Such action would result in a 12.5-cent per hundredweight reduction in the price Marcus Dairy would be obligated to pay for producer milk used in Class I. The blend price paid to dairy farmers delivering milk to Marcus Dairy would also be reduced by 12.5 cents per hundredweight on all of their deliveries to Danbury.

The Marcus Dairy witness stated that the distance from Danbury, Connecticut, to Boston, Massachusetts, is 165 miles and that Danbury therefore should be in Zone 17 rather than Zone 5. He characterized the proposed change to Zone 10 as a compromise. The handler advocated adoption of the proposal on the basis that Danbury is not really close to any population centers, and must distribute packaged milk over a distance of 30 to 80 miles to reach the closest population areas. He testified that, in contrast, milk travels only a short distance of 80 miles or so from farms to reach the plant. The witness argued that because Danbury is located relatively close to its production area, but not within a major population center, Danbury should be considered, and priced as, a country location. Further, the witness testified, earlier decisions that resulted in a Zone 5 designation for the Danbury location assumed that bulk milk moves solely from west to east. He stated that a lot of the milk pooled under Order 1 also moves from north to south.

The Marcus Dairy representative testified that approximately 50 percent of its producer milk receipts are from its own independent producers, located primarily in eastern New York State, with the other half of the handler's milk supply obtained from Eastern Milk Producers Association and the National Farmers Organization, two cooperative associations. He expressed little concern that reducing prices paid to producers by 12.5 cents per hundredweight would create any problems in attracting an adequate supply of milk to the Danbury location. The witness stated that the Order 1 blend prices paid by Marcus Dairy to its producers represent a premium over prices paid to Order 2 producers located in the same area as Marcus Dairy's producers. He indicated that it is possible that milk procured for the Danbury plant might continue to require payments in excess of the Order 2 price if the Order 1 price at Danbury were reduced, but stated that the existence of such premiums depends on variable supply and demand conditions.

Opposition to the Marcus Dairy proposal was widespread. The National Farmers Organization representative opposed the proposal because of its negative impact on prices paid to producers. A witness for Agri-Mark stated that adoption of the proposal would have an adverse effect on price alignment between handlers regulated under Order 1. A Dairylea witness stated that the same Class I price should prevail at Danbury under both Order 1 and Order 2 to assure price alignment since Marcus Dairy is soliciting customers in the Hudson Valley in competition with Order 2 handlers. A witness for Farmland argued that adoption of the proposal would distort price alignment between Order 1 and Order 2 handlers by reducing the cost of milk to Order 1 handlers competing with Order 2 handlers. A brief filed on behalf of the New York Dairy Industry Institute noted that, contrary to claims by the Marcus witness that the plant location is more of a country location than a city location, Danbury is part of the New York Metropolitan Area designated by the Census Bureau, and should be

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considered as part of that contiguous heavily populated area.

As in the previous instances in which representatives of Marcus Dairy have argued that Danbury, Connecticut, belongs in a lower-priced zone, the proposal to change the zoning of a very small portion of Fairfield County from Zone 5 to Zone 10 should be denied. Proponent has produced no new arguments or evidence that would warrant changing a decision that was issued in 1981 and re-examined in 1983 (in decisions of which official notice was taken in the record of this proceeding). Contrary to proponent's assertion that the previous decisions did not recognize that a large share of the market's producer milk moves from north to south, as well as from west to east, that fact is a prominent feature of both prior decisions. Before 1978, all of Connecticut, Massachusetts (except Berkshire County) and Rhode Island were included in a single price zone. A key finding in a 1978 decision on location pricing in Order 1 was that New York State (west of Boston/Providence) was becoming a significant source of production pooled under the New England order, in addition to production from Vermont (north of Boston/Providence). The decision concluded that the shift in the market's production area should be reflected in price adjustments westward as well as northward.

According to the 1983 decisions, which incorporated part of the 1978 decision, "Western Connecticut was established as a lower-priced zone than Boston/Providence because 'as the market shifts to greater dependence on supplies of milk from New York, it will become increasingly important to maintain a high enough price in the eastern consumption areas to attract this milk from beyond the consumption centers in the western portions of Connecticut and Massachusetts' (43 FR 45523). Greater downward price adjustments were found necessary for western Massachusetts as that area was closer than western Connecticut to the Vermont production area, as well as being much nearer than Boston/Providence to New York. There is no evidence in the present record to support a conclusion that the price difference between western Connecticut and Boston/Providence is not great enough to attract needed supplies of milk from beyond western Connecticut and Massachusetts to Boston/Providence." (48 FR 29528)

Although the percentage of milk produced in New York and pooled under the New England order has increased since 1981, the source of the New York milk in Order 1 has continued to shift to the north and west. Order 1 milk production from the eastern tier of counties on the border of New York State with Connecticut and Massachusetts declined by 23 percent from 1981 to 1987. At the same time, the amount of milk produced in New York counties located west of the eastern tier of counties and north of Delaware, Greene and Columbia Counties, and pooled under the New England order was 3 times greater in December 1987 than in December 1981. It is apparent from this shift in the production area for Order 1 that the New York State milk supply for New England handlers is increasingly coming from greater distances to the north and west of the New England market. Also during the time period of 1981 to 1987, milk production declined in every Connecticut county, for the state as a whole, and as a percentage of the total production pooled under Order 1.

These trends of declining production in the areas nearest Danbury make the argument that Danbury is a "country" location in the midst of a major milk-producing area even less persuasive than it has been in earlier proceedings dealing with this issue. As stated in the 1983 decision on this issue, "In prior decisions, Hartford, which is approximately 60 miles from Danbury, has been described as a population center in the sense of being the largest city in the heavily populated area of southwestern Connecticut. Hartford is, however, not located in the center of the area, but at its northeast corner. According to the 1980 Census, Fairfield County, in which Danbury is located, is the second most populous Connecticut county, after Hartford County, by only a very small margin. New Haven County, located between Fairfield and Hartford Counties, falls in third place by less than 50,000 people. Southwestern Connecticut is, as one witness described it, a fairly contiguous metropolitan area, and plants throughout southwestern Connecticut must compete for milk supplies produced in 'country' locations in Vermont and New York where the bulk of the market's milk supply is produced." (48 FR 29528)

A proposal by the Dairy Institute of New York to increase the Class I price at locations in the Connecticut counties of Fairfield and New Haven by changing the zone designation from Zone 5 to Zone 4 also should not be adopted. The Institute's witness predicated support for the proposal upon adoption of a proposed amendment to the Order 2 location adjustment schedule. As proposed, that amendment would have resulted in a nearly 12-cent increase in the Order 2 Class I price at the Danbury, Connecticut location. This increase would have caused a significant change in the Class I price relationships of Order 1 and Order 2 at Danbury. However, the Institute's proposal did not take into account the need to reduce the Order 2 Class I differential at the 201–210 mile zone in order to maintain inter-order price alignment between New York City, Philadelphia and Boston. Because the Class I differential at the 201–210 mile zone would be reduced as a result of this decision in order to avoid significant Class I price increases under Order 2 at the 1–10 mile zone, the Class I price differential for the Order 2 41–50 mile zone will not be increased by 11.8 cents, but will be reduced by 1.2 cents. The amount of this change in the difference between the Order 1 and Order 2 Class I price differentials in western Connecticut should result in no significant price misalignment. Therefore, the proposal to change the currently designated Zone 5 to Zone 4 is denied.

Two technical corrections of amendments made as a result of a 1981 decision concerning the location pricing provisions of Order 1 should be made at this time. The 1981 decision stated that "The zone location of any plant located outside the specific zones previously listed should be determined on the basis of its highway mileage from Boston. In general, this area encompasses the territory north and west of the zones specified. Since plants located outside the specified zones are generally on a direct line between the major production and consumption areas, they should be zoned on a straight mileage basis" (46 FR 55876). However, the order language accompanying that decision failed to implement completely the intent of the decision. Therefore, the language in § 1001.52 providing for the computation of location adjustments at Massachusetts plants located outside the designated zones on the basis of their mileage from Boston should be included at this time.

The January 1, 1982, amendments also omitted Warren Township in Worcester County, Massachusetts, from the definition of Zone 5. Geographically, Warren Township is situated in the middle of the Zone 5 territory in Massachusetts. There are no milk plants in Warren Township that would be affected by inclusion in Zone 5, but the territory obviously should be included in that zone. Therefore, the definition of Zone 5 is amended to include Warren Township.



5. *Producer-handler receipts of pool milk.* The New England order (Order 1) should be amended to allow producer-handlers to buy milk that is diverted to their plants directly from the farms of producers by cooperative association bulk tank handlers or by pool plant operators.

Generally, producer-handlers have been granted an exemption from the pricing and pooling provisions of Federal milk orders at least partially on the basis that they not purchase milk from other dairy farmers. Under the present Order 1 provisions, producer-handlers may supplement the milk produced on their own farms only with receipts of fluid milk products that are transferred to them from pool plants. This limitation on receipts by producer-handlers, which has been in effect under Order 1 since the inception of the merged order for the New England market on April 1, 1976, was provided to insure the integrity of regulation. Small producer-handlers (producing or distributing less than 4,300 pounds of milk per day) may buy unlimited amounts from pool plants. Purchases by larger operators may not exceed 2 percent of the milk produced on their own farms.

The proposal to allow producer-handlers to buy direct-shipped milk by diversion from pool handlers was advanced by Brookside Farm Dairy (Brookside), a small Order 1 producer-handler who is located in the vicinity of Westminister, Massachusetts. The Brookside spokesman modified his proposal as published in the hearing notice to allow cooperative associations and pool plant operators to divert producer milk to the plants of producer-handlers. He testified that allowing such handlers to deliver milk to producer-handlers directly from the farms of producers, rather than requiring the milk to be received at pool plants and then transferred to the plants of the producer-handlers, would eliminate costly plant handling and uneconomic milk movements.

Brookside's witness testified that certain aspects of marketing milk under Order 1 have changed over the years. In the past, he stated, milk picked up and delivered in cans from producers' farms was received at numerous country receiving and transfer plants that were used to assemble distant milk supplies for shipment to city bottling plants. The witness testified that milk needed to be moved in this way to establish accurate weights and butterfat tests for payment purposes. According to the witness, the widespread use of farm tank calibration charts and on-farm sampling have made it possible to establish weights and tests for each farmer's milk at the farm. In addition, he said, bulk tank hauling has resulted in the closure of many of the smaller country plants where milk was assembled and reloaded. The witness contended that the closure of these plants, combined with the trend toward fewer and larger processing plants, has limited his access to supplemental fluid milk products which he occasionally needs to satisfy his customers' demand in excess of his production.

The witness testified that, in effect, there is now only one plant from which he may buy supplemental milk. To so do, he said, he must pay to have small amounts of milk moved 75 miles, even though at least three milk trucks picking up the milk of individual farmers go by his farm each week. The witness stated that he is charged about $.70–$1.00 per hundredweight more for his supplemental milk receipts because they must be moved through transfer plants where the milk is unloaded, received and reloaded before it may be shipped to his plant. According to Brookside's witness, moving the milk through a transfer plant also causes the milk's quality to deteriorate because it takes longer to deliver the milk and the milk is pumped two more times than it would be if it were delivered directly to his plant.

The record evidence on this issue was limited to the information presented at the hearing by proponent (Brookside) and a statement of support for the proposal by Agri-Mark, a cooperative that supplies approximately half of the producer milk for the Order 1 market. There was no opposition to the proposed change.

The changes proposed by Brookside to allow producer-handlers to receive their supplemental milk needs by transfer or diversion should be adopted. These changes should eliminate costly plant handling and uneconomic milk movements without changing the total amounts of milk that such operators may buy.

Changing the way in which Order 1 handlers may supply supplemental milk to producer-handlers will not affect the marketwide pool because the milk will be classified in Class I regardless of whether it is moved by diversion or by transfer. Classifying all such milk movements in Class I compensates producers for carrying the necessary reserve milk supplies associated with such deliveries. Accordingly, it is appropriate to allow producer-handlers to receive milk that is moved directly from the farms of producers by pool plant operators or by cooperatives handling bulk tank milk up to the applicable limits specified on such purchases under Order 1.

6. *Charges on overdue accounts.* The New England order (Order 1) should be amended to eliminate the postmark date as a basis for determining whether handler payments to the producer-settlement fund have been made on time and thus are not subject to late payment charges.

Order 1 currently provides that handler payments which are received by the market administrator after the 20th day of the month in envelopes that are postmarked on or before the 18th day of such month shall be deemed to have been received by the 20th and paid on time. Therefore, payments mailed and postmarked by the 18th are not subject to late-payment fees regardless of when they are received by the market administrator.

The proposal to eliminate use of the postmark date for the purpose of making such determinations was advanced by Agri-Mark, Inc. (Agri-Mark), a cooperative association of dairy farmers who supply nearly half of the producer milk for the Order 1 market. A spokesman for the proponent cooperative testified that unless the market administrator has received all of the money due from handlers to pay their obligations to the producer-settlement fund by the 20th, he is unable to carry out certain of his assigned administrative duties. First, he is unable to effectuate marketwide pooling by making the required payments due to handlers from the producer-settlement fund on the 20th because he cannot be sure when moneys will be paid into the fund by the handlers from whom moneys are due. Second, he is not certain that payments which have not been received by the 20th will be considered past due and subject to late-payment charges, because they may have been mailed on the 18th but not received by the 20th.

The Order 1 market administrator supported the Agri-Mark proposal. He testified that the postmark deadline causes him administrative problems that are associated with clearing the pool. He also claimed that the mailing deadline causes enforcement problems that are unnecessarily burdensome in determining whether a handler's payment is late and thus subject to late-payment charges. He claimed that elimination of the mailing deadline, as Agri-Mark proposed, would greatly ease the performance of his administrative duties.

The market administrator further testified that when the mailing deadline

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was adopted under Order 1, it was reasonable to expect first-class mail to be delivered to the market administrator in two days from any location within the marketing area. Because of this, the administrative problems associated with enforcing the late-payment provisions and clearing the pool essentially were non-existent. He took the position that since two-day mail delivery can no longer be counted on, and faster and more efficient methods of payment are available to handlers, the postmark deadline should be deleted from the order provisions.

The record evidence on this issue was limited to the testimony offered by a witness for proponent and a supporting statement by the market administrator. There were no opposing views presented at the hearing or in briefs.

The uncontested Agri-Mark proposal to cease consideration of the postmark date in deciding whether handlers have made their producer-settlement fund payments on time should be adopted. This change will facilitate the administration of the order along the lines that were specifically addressed in testimony presented by proponent and the market administrator.

Elimination of the postmark date should encourage handlers to pay their pool obligations, which are due and payable by the 18th and subject to late charges if they are not received by the market administrator by the 20th, more promptly. To assure that their payments are received on time and not subject to late charges, handlers are likely to rely more often on the latest technology in making their payments (electronic bank transfers of money). These changes should speed up the flow of money to the producer-settlement fund and enable the market administrator to make the required payments from the producer-settlement fund by the specified deadline on the 20th. It also should make it easier for the market administrator to enforce the late payment provisions by removing the need to check postmark dates on envelopes containing handler payments.

Under the amended Order 1 provisions concerning late payments, handlers will be required to pay their producer-settlement fund obligations for the month, in addition to any adjustments resulting from the verification of their reports and payments for prior months, on or before the 18th day of the month. If these payments have not been received by the market administrator by the close of business on the 20th, they will be subject to late charges. Any such unpaid handler balances will be increased by 1 percent on that date and on the same day of each succeeding month until they are paid. The 1 percent increases in ensuing months will apply to unpaid account balances of handlers at close of business on the 20th, and will include any previously assessed late payment fees.

9. *Pricing diverted producer milk.* The Middle Atlantic order (Order 4) should be amended to provide that producer milk diverted from a pool plant to another plant (pool or nonpool) should be priced at the location of the plant where the milk being priced is received.

Under the current provisions of Order 4, diverted producer milk is priced at the location of the plant from which the milk is diverted, and where it is normally received. However, if lower adjusted prices apply at the location of the plants where the diverted producer milk is actually received, the milk is priced at the location of the plant to which diverted and the lower location values for such milk are credited to producers.

This pricing procedure for diverted milk has been provided under Order 4 since the inception of the Middle Atlantic order on August 1, 1970. It was adopted to discourage manufacturing plant handlers from associating as much milk as possible with city distributing plants and then regularly receiving the milk at the manufacturing plants as diverted milk. When the milk is priced at the city plant from which the milk is diverted, distant producers receive the uniform prices that apply at city plants when in fact their milk usually is moving to a nearby manufacturing plant. The current pricing technique of assigning the lower of the prices applicable at the divertee or divertor plant to diversions of producer milk was provided to insure that the pool would not subsidize the costs of transporting milk when, in fact, such costs were not incurred.

Pennmarva Dairymen's Federation (Pennmarva), an organization of cooperative associations that supply about 50 percent of the market's milk, proposed that the present method of pricing Order 4 diverted producer milk be changed. The witness for proponent claimed that the change is needed because milk is diverted from pool plants in various lower-priced zones, resulting in non-uniform pricing of Order 4 diverted milk at a number of nonpool plants. By pricing diverted milk at the location of the nonpool plant where the milk is received as Pennmarva proposes, uniform prices for diverted producer milk will apply at a given nonpool plant location.

In support of its proposal, Pennmarva's witness cited examples in which different prices apply to diverted producer milk that is received at the same nonpool plant. Under the current order provisions, producer milk that is diverted from a pool plant in Sunbury, Pennsylvania, subject to a location adjustment of minus 19.5 cents, to a nonpool plant at Reading, Pennsylvania, subject to a location adjustment of minus 9 cents, is priced at the plant from which diverted because the location value for milk at the divertor pool plant is lower than at the nonpool plant receiving the milk. Conversely, if the milk is diverted to the nonpool plant at Reading from a pool plant in the base zone at Fort Washington, Pennsylvania, the milk would be priced at the location of the nonpool plant to which the milk is diverted because a lower location value for milk applies at the receiving nonpool plant than at the diverting pool plant.

Pennmarva's witness contended that the order provisions for pricing diverted producer milk do not reflect current marketing conditions in the Order 4 market. In the past, he stated, the market's excess milk supplies associated with city distributing plants generally were disposed of at distant manufacturing plants in the market's outlying procurement areas, where lower location values for milk apply. However, the 1975 expansion of the Order 4 marketing area resulted in the full regulation of several fluid milk processing plants in the Harrisburg, York and Lancaster areas of Pennsylvania. The supplies of milk that are not needed for bottling purposes at these plants are sometimes disposed of at nearby manufacturing plants located closer to the Order 4 market center pricing points than the Class I plants from which the milk is diverted. Under the order's current location pricing provisions for diverted milk, the greater location values at the closer-in manufacturing plants where the milk is received are not reflected in the returns to dairy farmers. Pennmarva contended that such a pricing penalty does not facilitate the orderly disposition of the market's reserve milk supplies.

The Pennmarva proposal to price all milk diverted to nonpool plants at the location of the plant at which the milk is actually received should be adopted. There was no opposition to the proposed change, either at the hearing or in briefs. The testimony on this issue is limited to the data and arguments presented by proponent in support of its proposal at the hearing and in briefs. In addition, a statement was made at the hearing in support of the proposal by the operator of a nonpool manufacturing plant at Reading.

The Order 4 market structure and the operating practices of handlers have changed considerably since 1970 when this method for pricing diversions was adopted. There are fewer but larger fluid milk plants. Also, the larger plant operators receive most of their milk needs during the mid-week days of Tuesday through Thursday. Because of these changes, greater reserve milk supplies are now associated with the Order 4 market. Therefore, it is even more important now than in the past that the order provisions facilitate the orderly disposition of the market's milk supplies which exceed the needs of such Class I bottlers.

The order's location pricing provisions recognize the greater value of milk at plants in or near the principal population centers in the marketing area than at other plant locations. In view of the location value of milk, it is inconsistent to assign several different location values to producer milk received at a single nonpool plant for manufacturing during the same month, depending on the location of the plant from which it is diverted.

Although the Pennmarva proposal addressed only the pricing of diversions from pool plants to nonpool plants, all diversions from a pool plant to another plant (pool or nonpool) should be priced at the location of the plant where the milk being priced is received. Under the present provisions of Order 4, the same location pricing provisions apply to diversions to pool plants and nonpool plants. As discussed earlier, the current method of pricing diverted milk can result in different Class I and uniform prices applying to producer milk diverted to the same pool plant from pool plants located in various lower-priced zones during the same month. The proposed amendment should be applied to diversions to pool plants as well as to diversions to nonpool plants to remove the possibility of any such pricing inconsistencies.

Pennmarva asked that its pricing proposal for diverted milk be dealt with on an expedited basis so that the decision on this matter would not be delayed until all of the more controversial and non-technical issues are decided. It is evident that the situation of non-uniform prices for producer milk diverted to pool and nonpool plants has existed for several years. Hence, there is no basis to conclude from the information presented on this record that the pricing inconsistencies are resulting in disorderly marketing to such an extent that this matter needs to be dealt with on an emergency basis. Accordingly, proponent's request for expedited action is denied.



**Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the New England, New York-New Jersey and Middle Atlantic orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which hearings have been held.

**Ruling on Motions**

A motion submitted by counsel on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., requested that the transcripts and exhibits of three "call" meetings held by the market administrator of Order 2 after the hearing in this proceeding and before issuance of the recommended decision, and any related communications pertaining to the meetings and the desirability of mandated performance requirements, be placed in the public record as *ex parte* communications.

The motion is denied on the basis that the "call" meetings were held for the purpose of deciding whether to activate the "call" provisions of the New York-New Jersey order for a particular time period, and only for that purpose. The meetings, and whatever other communications occurred in the administration of the provisions of the order, were not intended to serve the purpose of amplifying the record and were not considered at all in developing the decision.

**Rulings on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

In addition to the exceptions addressed in this decision, Farmland Dairies, Inc., requested that the Secretary reconsider his decision not to hear proposals concerning a merger of Orders 1, 2 and 4; and the comments filed on behalf of Kraft, Inc., Pollio Dairy Products Company and Friendship Dairies, Inc., included a suggestion that the hearing be re-opened or that a revised recommended decision be issued.

Proposals to merge the three northeastern orders were not included in the notice of hearing for this proceeding and cannot be considered on the basis of this record. The exceptions and comments filed in response to the recommended decision provide no basis for re-opening the hearing or issuing a revised recommended decision. The record of the proceeding supports the actions taken in this decision in denying or adopting the proposals considered at the hearing.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and

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appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

**Determination of Producer Approval and Representative Period**

May 1990 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England and Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

**Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent**

It is hereby directed that a referendum be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached order as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

The representative period for the conduct of such referendum is hereby determined to be May 1990.

The agent of the Secretary to conduct such referendum is hereby designated to be Ronald C. Pearce.

**List of Subjects in 7 CFR Parts 1001, 1002 and 1004**

Milk marketing orders.

Signed at Washington, DC, on: November 30, 1990.

**Jo Ann R. Smith,**

*Assistant Secretary, Marketing and Inspection Services.*

**Order Amending the Orders Regulating the Handling of Milk in the New England, New York-New Jersey and Middle Atlantic Marketing Areas**

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

**Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. Public hearings were held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas. The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearings and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

**Order Relative to Handling**

It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England, New York-New Jersey and Middle Atlantic marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, Agricultural Marketing Service, on May 16, 1990, and published in the **Federal Register** on May 25, 1990, (55 FR 21556), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. The authority citation for 7 CFR parts 1001, 1002 and 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA**

2. Section 1001.5 is revised to read as follows:

**§ 1001.5 Distributing plant.**

*Distributing plant* means a processing and packaging plant.

3. Section 1001.6 is revised to read as follows:

**§ 1001.6 Supply plant.**

*Supply plant* means a plant at which facilities are maintained and used for washing and sanitizing cans and to which milk is moved from dairy farmers farms in cans and is there accepted, weighed or measured, sampled, and cooled, or it is a plant to which milk is moved from dairy farmers' farms in tank trucks.

4. Section 1001.7 is revised to read as follows:

**§ 1001.7 Pool Plant.**

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which:

(1) Not less than 40 percent of its total receipts of fluid milk products (except filled milk) in any month, or in either of the 2 preceding months, are disposed of as Class I (except filled milk); and

(2) Route disposition (except filled milk) in the marketing area in the month:

(i) Is not less than 10 percent of its total receipts of fluid milk products (except filled milk);

(ii) Exceeds its route disposition in any other Federal marketing area; and

(iii) Exceeds 700 quarts on any day or a daily average of 300 quarts.

(b) A supply plant which meets the conditions specified in (1), (2), or (3) of this paragraph. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this paragraph, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as having been received at that plant from dairy farmers' farms.

(1) It is a plant from which in any month of August and December at least 15 percent, and in any month of September through November at least 25 percent, of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(2) For any month of August through December, it is one of a group of plants that meets the conditions specified in this paragraph.

(i) The handler's written request for continuation of pool supply plant status, which the plant held under the handler's operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(ii) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b)(1) of this section.

(iii) To qualify as a pool supply plant under this paragraph in December of any year, the plant, considered individually, shall have shipped at least 5 percent of its total receipts of milk from dairy farmers' farms as fluid milk products, other than as diverted milk, to pool distributing plants in one of the months of August through December of that year.

(iv) In the event of the failure of a group of plants to meet fully the requirements of paragraph (b)(2)(ii) of this section, termination of pool supply plant status shall be limited to the least number of plants which will result in the remaining supply plants meeting the requirements of paragraph (b)(2)(ii) of this section. If such termination becomes necessary, the handler shall be permitted to designate which plants shall continue to have pool plant status for the month.

(v) For the purposes of this paragraph, any supply plant operated by a cooperative association that is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmers' farms shall be the total of such receipts by the association other than at any of its plants that is not one of the group, and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved by the association in its capacity as a handler under § 1001.9(d) from farms of its members to pool distributing plants.

(3) For any month of January through July, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants or it is a plant that meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plant status in any subsequent month of the current January through July period.

(i) The plant was a pool supply plant under this order in each of the preceding months of August through December; or

(ii) The plant was a pool supply plant under this order in at least two of the preceding months of August through December and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order.

(4) No plant shall be a pool supply plant in any month in which it is operated as:

(i) A pool distributing plant; or

(ii) A regulated plant under another Federal order if its Class I disposition of fluid milk products, except filled milk, in the marketing area regulated by that order exceeds its shipments of fluid milk products, except filled milk, to pool distributing plants under this order.

(c) Each plant, other than a plant operated as a pool distributing plant or a pool supply plant, that is located in the marketing area and operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

(d) The term "pool plant" shall not apply to the following plants:

(1) An exempt distributing plant under § 1001.8(e);

(2) The plant of a producer-handler under any Federal order;

(3) A plant designated as a regular pool plant under the New York-New Jersey Federal order; or

(4) Any plant for which the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of milk from other sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II or Class III use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

5. Section 1001.8 is revised to read as follows:

**§ 1001.8 Nonpool plant.**

*Nonpool plant* means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a regulated plant under another Federal order, a producer-handler plant, or an exempt distributing plant, and from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) *Exempt distributing plant* means:

(1) A plant, other than a pool supply plant or a regulated plant under another Federal order, that meets all the requirements for status as a pool distributing plant, except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

(2) A plant that is operated by a governmental agency and from which there is route disposition in the marketing area.

6. Section 1001.9 is amended by revising paragraph (d) to read as follows:

**§ 1001.9 Handler.**

* * * * *

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to nonpool plants for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and

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utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that he is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank.

7. Section 1001.10 is revised to read as follows:

**§ 1001.10 Producer-handler.**

*Producer-handler* means any person who, during the month, is both a dairy farmer and a handler and who meets all of the following conditions:

(a) Provides as the person's own enterprise and at the person's own risk the maintenance, care, and management of the dairy herd and other resources and facilities that are used to produce milk, to process and package such milk at the producer-handler's own plant, and to distribute it as route disposition.

(b) The person's own route disposition constitutes the majority of the route disposition from the plant.

(c) The quantity of route disposition in the marketing area from the person's plant is greater than in any other Federal marketing area.

(d) The producer-handler receives no fluid milk products except from such handler's own production and from pool handlers, either by transfer or diversion pursuant to § 1001.15. If the producer-handler's receipts from own production and the total route disposition from the producer-handler's plant each exceed 4,300 pounds per day for the month, the producer-handler's receipts from pool plants are not in excess of 2 percent of receipts from own production. For the purposes of this paragraph, the producer-handler's receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets that are located in a Federal marketing area and operated by the producer-handler, an affiliate, or any person who controls or is controlled by the producer-handler.

8. Section 1001.12 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 1001.12 Producer.**

* * * * *

(e) A dairy farmer who is a governmental agency that is operating an exempt distributing plant under § 1001.8(e)(2);

(f) A dairy farmer with respect to salvage product assigned under § 1001.44(a)(7)(ii);

* * * * *

9. Section 1001.14 is revised to read as follows:

**§ 1001.14 Other source milk.**

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1001.40(b)(1) from any source other than producers, handlers described in § 1001.9(d), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1001.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1001.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1001.40(b)(1)) for which the handler fails to establish a disposition.

10. Section 1001.15 is amended by revising the first sentence of the introductory text of paragraph (a) and the first sentence of the introductory text of paragraph (b) to read as follows:

**§ 1001.15 Diverted milk.**

* * * * *

(a) Milk that a handler in its capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which the handler caused to be moved from the farm to another plant, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. * * *

(b) Milk that a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a dairy farmer's farm to a nonpool plant if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragtaph (b) (1) or (2) of this section have been met. * * *

* * * * *

11. In § 1001.16, paragraphs (a) and (b) are revised to read as follows:

**§ 1001.16 Exempt milk.**

* * * * *

(a) Fluid milk products received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the nonpool plant operator's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the pool plant operator's control;

* * * * *

12. Section 1001.17 is revised to read as follows:

**§ 1001.17 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers or aseptically packaged and hermetically sealed in foil-lined paper containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

13. Section 1001.18 is revised to read as follows:

**§ 1001.18 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition of other ingredients.

14. A new § 1001.21 is added to read as follows:

**§ 1001.21 Product prices.**

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1001.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.



15. Section 1001.30 is revised to read as follows:

**§ 1001.30 Reports of receipts and utilization.**

On or before the 6th day after the end of each month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of the handler's pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Receipts of milk from cooperative associations in their capacity as handlers under § 1001.9(d);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1001.40(b)(1);

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1001.9(d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler shall report bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1001.9(d), if such milk was rejected by the handler subsequent to such handler's receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced with other milk from the association. Except for purposes of this paragraph and § 1001.31(b), such milk that was so removed from the handler's plant shall be treated for all other purposes of the order as though it had not been delivered to and received at the handler's plant.

(e) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to the handler's receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

16. Section 1001.31 is revised to read as follows:

**§ 1001.31 Other reports of receipts and utilization.**

(a) Each handler who dumps fluid milk products at a pool plant shall:

(1) Give the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler's intention to dump such products and the quantities involved; and

(2) Submit to the market administrator to the time and in the manner prescribed by the market administrator such detailed reports of dumpage as the market administrator requests.

(b) Each handler who intends to have a receipt of unmarketable milk replaced with other milk in the manner described under § 1001.30(d) shall give the market administrator, at the request and in accordance with instructions of the market administrator, advance notice of the handler's intention to have such milk replaced.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1001.30 and 1001.32, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

17. Section 1001.40 is revised to read as follows:

**§ 1001.40 Classes of utilization.**

Except as provided in § 1001.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1001.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

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(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil), that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and their by-products (whey);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers; and

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In fluid milk products or in any product specified in paragraph (b)(1) of this section that is destroyed or lost under extraordinary circumstances;

(6) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1001.17; and

(7) In shrinkage assigned pursuant to § 1001.41(a) to the receipts specified in § 1001.41(a)(2) and in shrinkage specified in § 1001.41 (b) and (c).

18. Section 1001.41 is revised to read as follows:

**§ 1001.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1001.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1001.9(d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1001.9(d) and in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts from dairy farmers for other markets and in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1001.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

19. Section 1001.42 is revised to read as follows:



**§ 1001.42 Classification of transfers and diversions.**

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1001.44(a)(12) and the corresponding step of § 1001.44(b).

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1001.44(a)(7) or the corresponding step of § 1001.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1001.44(a) (11) or (12) or the corresponding steps of § 1001.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1001.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted from a pool plant to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1001.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

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(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of milk for such nonpool plant; and

(B) To such nonpool plant's receipts of milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

20. Section 1001.43 is revised to read as follows:

**§ 1001.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1001.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1001.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1001.9(d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1001.40, 1001.41, and 1001.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1001.9(d) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(d) If receipts from more than one pool plant are to be assigned, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest-numbered zone for assignments to Class III milk; and

(e) Receipts of other source milk from more than one plant shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the lowest-numbered zone for assignments to Class I milk and beginning with the plant in the highest-numbered zone for assignments to Class III milk.

21. Section 1001.44 is revised to read as follows:

**§ 1001.44 Classification of producer milk.**

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1001.9(a) for each of the handler's pool plants separately and of each handler described in § 1001.9(d) by allocating the handler's receipts of skim milk and butterfat to the handler's utilization pursuant to paragraphs (a) through (c) of this section.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1001.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) Receipts of exempt milk;

(iii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1001.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1001.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(5) or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1001.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1001.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts from dairy farmers of fluid milk products which are rejected and segregated in the handler's normal operation for receiving milk, and which receipts are accepted and disposed of by the handler as salvage product rather than as milk;



(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(vii) Receipts of fluid milk products (other than exempt milk) from a local or State government which has elected nonproducer status for the month pursuant to § 1001.16(c); and

(viii) Receipts of fluid milk products from dairy farmers for other markets;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step (exclusive of transfers between pool plants of the same handler) at all pool plants of the handler;

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1001.40(b)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(iii), (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v) and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 1001.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of

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utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from other pool plants according to the classification of such products pursuant to § 1001.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and in receipts from handlers under § 1001.9(d), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

22. Section 1001.45 is revised to read as follows:

**§ 1001.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from a regulated plant or handler under another Federal order pursuant to § 1001.44(a)(12) and the corresponding step of § 1001.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1001.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

**§§ 1001.46, 1001.47 and 1001.48 [Removed and Reserved]**

23. Sections 1001.46, 1001.47 and 1001.48 are removed and reserved.

24. Section 1001.50 is revised to read as follows:

**§ 1001.50 Class prices.**

Subject to the provisions of § 1001.52, the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price in Zone 21 shall be the basic formula price for the second preceding month plus $2.52. The differential value for Zone 1 shall be $3.24.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1001.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1001.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1001.51(b).

(c) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

| Month | Amount |
|---|---|
| January | +$0.03 |
| February | +.02 |
| March | −.05 |
| April | −.09 |
| May | −.12 |
| June | −.11 |
| July | +.03 |
| August | +.10 |
| September | +.06 |
| October | +.06 |
| November | +.06 |
| December | +.06 |

25. Section 1001.51 is revised to read as follows:



**§ 1001.51 Basic formula prices.**

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1001.76(b) shall be used.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1001.21 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

26. Section 1001.52 is amended by revising paragraph (a)(4)(ii) and adding a new paragraph (d) to read as follows:

**§ 1001.52 Plant location adjustments.**

* * * * *

(a) * * *

(4) * * *

(ii) The Massachusetts counties of Hampden (only the townships of Brimfield, Holland, Monson, Palmer and Wales), Hampshire (only the township of Ware) and Worcester (only the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge, Warren and West Brookfield).

* * * * *

(d) The zone location of each plant in the State of Massachusetts (except Berkshire County) that is outside the areas specified in paragraph (a) of this section shall be based upon its highway mileage distance to Boston, Massachusetts. The distance for each plant shall be the mileage between Boston, Massachusetts, and the named point nearest to the plant, measured to the greatest extent possible over roads designated as principal roads, on the road maps specified in paragraph (e) of this section.

* * * * *

27. Section 1001.53 is amended by revising the introductory text, removing and reserving paragraph (e), and revising paragraphs (f), (g), and (h)(1) to read as follows:

**§ 1001.53 Determination of applicable zone locations for pricing purposes.**

In computing the value of fluid milk products at class prices under §§ 1001.80 and 1001.81, the handlers' producer-settlement fund debits and credits under § 1001.71, the minimum amounts payable to producers under § 1001.73, and the minimum amounts payable to cooperative associations under § 1001.74, the location adjustments specified in § 1001.52 for the zone location of the plant for which the computation is being made shall be used except that for the following items the adjustments for the zone locations specified shall be used:

* * * * *

(e) [Reserved]

(f) For receipts from unregulated supply plants assigned to Class I milk, the zone location of the plant from which the product was received;

(g) For any excess of beginning inventory assigned to Class I milk under § 1001.44(a)(2)(iii), (a)(5), (a)(7)(i), or (a)(9) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class II and Class III milk in the preceding month, the zone location of the pool plants from which an equivalent quantity of receipts of fluid milk products were assigned to Class II or Class III milk in the preceding month in sequence beginning with the plant in the lowest-numbered zone; and

(h) * * *

(1) After the allocation step of § 1001.44(a)(12) for the transferee-plant, multiply the remaining pounds of Class I skim milk by 110 percent and the remaining pounds of Class I butterfat by 150 percent;

* * * * *

28. Section 1001.54 is revised to read as follows:

**§ 1001.54 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

29. Section 1001.60 is revised to read as follows:

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**§ 1001.60 Handler's value of milk for computing basic blended price.**

For the purpose of computing the basic blended price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1001.9(d) with respect to milk that was not received at a pool plant, as directed in this section. The prices used shall be those for the applicable zone locations as determined under § 1001.53.

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1001.9(d) that were classified in each class as determined pursuant to § 1001.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1001.44(a)(14) and the corresponding step of § 1001.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1001.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1001.44(a)(9) and the corresponding step of § 1001.44(b).

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1001.44(a)(7)(i) through (iv), (vii), and (viii) and the corresponding step of § 1001.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1001.44(a)(7)(v) and (vi) and the corresponding step of § 1001.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1001.44(a)(11) and the corresponding step of § 1001.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) For the first month that this paragraph is effective:

(1) Subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any bulk fluid milk products or products specified in § 1001.40(b) that was included in the handler's inventory at the end of the preceding month and classified and priced as Class I milk; and

(2) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in packaged fluid milk products that were included in the handler's inventory at the end of the preceding month and classified and priced as Class II milk.

30. Section 1001.62 is redesignated as § 1001.63, and revised; § 1001.61 is redesignated as § 1001.62 and revised; and a new § 1001.61 is added, to read as follows:

**§ 1001.61 Partially regulated distributing plant operator's value of milk for computing basic blended price.**

For the purpose of computing the basic blended price, the market administrator shall determine for each month the value of milk distributed as route disposition in the marketing area by the operator of a partially regulated distributing plant, as follows:

(a) Subtract from the quantity of route disposition distributed in the marketing area by the partially regulated distributing plant operator the quantity of fluid milk products (except those described in paragraph (b) of this section) received at the plant during the month that is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and that is not used to offset route disposition in any other marketing area, and multiply the result by the applicable Class I price;

(b) Multiply by the difference between the applicable Class I price and the Class III price for the month the quantity of filled milk distributed as route disposition in the marketing area from the partially regulated distributing plant which is not proved to have been made from other fresh fluid milk products; and

(c) Add the values determined pursuant to paragraphs (a) and (b) of this section.

**§ 1001.62 Computation of basic blended price.**

The market administrator shall compute the basic blended price per hundredweight applicable to milk received at plants located in zone 21 and containing 3.5 percent butterfat as follows:

(a) Combine into one total the values computed pursuant to §§ 1001.60 and 1001.61 for all handlers from whom the market administrator has received at the market administrator's office prior to the 11th day after the end of the month the reports for the month prescribed in § 1001.30 and the payments for the preceding month required under § 1001.72(a);

(b) Deduct the amount of the plus adjustments, and add the amount of the minus adjustments, that are applicable under §§ 1001.52 and 1001.53;

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of producer milk included in these computations by 20 cents in March, 30 cents in April, and 40 cents in May and June;

(d) Add for the months of August, September, and October an amount representing 25 percent, 30 percent, and 30 percent, respectively, of the aggregate amount subtracted under paragraph (c) of this section for the prior period of March–June, and for November add the remainder of the amount subtracted under such paragraph (c) and the interest earned on the aggregate fund;

(e) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund at the close of business on the 10th day after the end of the month;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(f); and

(3) The total hundredweight for which a value is computed pursuant to § 1001.61(a); and

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund. The result shall be the basic blended price for the month.



**§ 1001.63 Announcement of blended prices and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the zone blended prices resulting from the adjustment of the basic blended price for such month, as computed under § 1001.62, by the location adjustments set forth in § 1001.52.

**§ 1001.70 [Amended]**

31. Section 1001.70 is amended by changing all references to "§ 1001.61" to "§ 1001.62."

32. Section 1001.71 is amended by revising paragraphs (a)(1), (2), (3), and (4) to read as follows:

**§ 1001.71 Handlers' producer-settlement fund debits and credits.**

* * * * *

(a) * * *

(1) Multiply the quantities of producer milk, the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d), the quantities of other source fluid milk receipts at pool plants that were allocated to Class I pursuant to § 1001.44, and the quantities of route disposition in the marketing area by partially regulated distributing plants for which a value was determined pursuant to § 1001.61(a) by the basic blended price computed under § 1001.62 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under § 1001.9(d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.62 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53; and to the result add the value determined under § 1001.60.

(3) If the value of fluid milk products, as determined under § 1001.60 for any pool plant, under § 1001.61 for any partially regulated distributing plant, or under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(4) If the value of fluid milk products, as determined under §§ 1001.60 or 1001.61 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

* * * * *

**§ 1001.73 [Amended]**

33. In § 1001.73, paragraph (a) is amended by changing the words "Class II" to "Class III", and paragraph (b) is amended by changing the reference to "§ 1001.61" to "§ 1001.62."

**§ 1008.74 [Amended]**

34. In § 1001.74, paragraph (d)(1) is amended by changing the words "Class II" to "Class III", paragraph (d)(2) is amended by changing the reference to "§§ 1001.44 and 1001.47" to "§ 1001.44", and paragraph (d)(3) is amended by changing the reference to "§ 1001.61" to "§ 1001.62."

35. Section 1001.78 is revised to read as follows:

**§ 1001.78 Charges on overdue accounts.**

Any producer-settlement fund account balance due from or to a handler under § 1001.72, § 1001.77, or § 1001.78, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day.

36. Section 1001.85 is amended by revising paragraph (c) to read as follows:

**§ 1001.85 Assessment for order administration.**

* * * * *

(c) The quantity distributed as route disposition in the marketing area from a partially regulated distributing plant for which a value is determined under § 1001.61.

## PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

37. Section 1002.6 is revised to read as follows:

**§ 1002.6 Producer.**

*Producer* means any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption and who delivers pool milk as specified in § 1002.14 to a pool plant, a pool unit, a plant specified in § 1002.28 (f)(2) which is a partial pool plant, or a partial pool unit whose pool designation was canceled for failure to meet the requirements specified in § 1002.28(a), except that it shall not include any such dairy farmer delivering to such partial pool plant or partial pool unit unless at least 50 percent of such dairy farmer's milk delivered to such plant or unit is pool milk pursuant to § 1002.14. Each dairy farmer delivering milk to a partial pool plant or a partial pool unit shall be considered to have delivered pool milk for such dairy farmer's proportionate share of total milk delivered by dairy farmers to such plant or unit.

38. Section 1002.14 is amended by revising paragraph (a) and adding paragraph (b) to read as follows:

**§ 1002.14 Pool milk.**

* * * * *

(a) Milk first received at a pool plant which otherwise would be considered producer milk under an other order if all of such milk is assigned to Class II or Class III pursuant to § 1002.45(a)(9) and the corresponding step of § 1002.45(b).

(b) Milk not approved by a duly constituted regulatory agency for fluid consumption.

* * * * *

39. Section 1002.15 is revised to read as follows:

**§ 1002.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

40. A new § 1002.16 is added to read as follows:

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**§ 1002.18 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition of other ingredients.

41. A new § 1002.19 is added to read as follows:

**§ 1002.19 Product prices.**

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1002.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

42. Section 1002.22 is revised to read as follows:

**§ 1002.22 Additional duties of the market administrator.**

In addition to the duties specified in § 1000.3(c) of this chapter, the market administrator shall perform the following duties:

(a) Maintain a main office and such branch offices as may be necessary;

(b) Promptly notify a handler, upon receipt of the handler's written request therefore, of the market administrator's determination: As to whether one or more plants exist at a specified location, as to whether any specified item constitutes a part of the handler's plant, or as to which plant a specified item is a part in the event that the particular premises in question constitutes more than one plant: *Provided,* That if the request of the handler is for revision or affirmation of a previous determination, there is set forth in the request a statement of what the handler believes to be the changed conditions which make a new determination necessary. If a handler has been notified in writing of a determination with respect to an establishment operated by him, any revision of such determination shall not be effective prior to the date on which such handler is notified of the revised determination;

(c) Place the sums deducted under § 1002.61(d) and retained pursuant to § 1002.70 in an interest-bearing account or accounts in a bank or banks duly approved as a Federal depository for such sums or invest them in short-term United States Government securities;

(d) For the purpose of allocating receipts from other Federal order plants under § 1002.45(a)(15) and the corresponding step of § 1002.45(b), publicly announce the market administrator's estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pool milk of all handlers. Such estimate shall be final for such purpose.

**§ 1002.25 [Amended]**

43. Section 1002.25 is amended by changing the reference "§ 1002.51" in the introductory text to "§ 1002.52", changing all references to "§ 1002.89" in paragraphs (a)(2) and (a)(3) to "§ 1002.77", changing the reference "§ 1002.3" in paragraph (c)(5) to "§ 1002.30", changing the words "Class II" in paragraph (k)(1) to "Class II and Class III", changing the reference "paragraph (c)(3)" in paragraph (l) to "paragraph (c)(2)", and revising paragraphs (c), (e)(1), and (h) to read as follows:

**§ 1002.25 Bulk tank units.**

* * * * *

(c) Except as set forth in paragraphs (c) (1) through (5) of this section, a handler may declare that a unit is to be operated as a pool unit and at any time may add a farm to a pool unit: *Provided,* That a handler pursuant to paragraph (a)(4) of this section may not add farms to a pool unit during the months of July through March unless such handler's Class I–A skim milk or butterfat utilization exceeds the total receipts of skim milk or butterfat, respectively, in milk from the pool unit, and in the latter case he may add only the smallest number of farms necessary to provide sufficient milk to cover such Class I–A utilization.

(1) If the unit is a declared nonpool unit or if the farm is a part of a declared nonpool unit of such handler, the unit or farm may be changed to a pool status, except as excluded from the pool milk definition pursuant to § 1002.14(d), only beginning the first day of a month upon notice to the market administrator by not later than the 10th day of such month. If the notice is filed after the 10th day of the month, the effective date shall be the first day of the following month except as specified in paragraph (c)(5) of this section.

* * * * *

(h) Each handler shall report by not later than the 10th day of the month any changes in units during the preceding month and as of the first day of such month.

* * * * *

44. Section 1002.26 is amended by revising paragraph (a) to read as follows:

**§ 1002.26 Operating requirements.**

* * * * *

(a) Be willing to dispose of as Class I–A milk in the marketing area milk received at the plant or on the unit from dairy farmers and agree that if a plant designation is canceled for failure to meet this requirement, the Class I–A and Class I–B milk of such plant through the partial pool plant and partial pool unit provisions shall be priced and equalized from the effective date of cancellation through the following June 30;

* * * * *

45. Section 1002.27 is amended by changing all references to "§ 1002.89" to "§ 1002.77", revising the language in paragraph (b) before the proviso, redesignating paragraphs (c) through (j) as paragraphs (d) through (k), revising redesignated paragraphs (d), (h) introductory text, (h) (2) and (3) and (i), and adding new paragraphs (c) and (l) to read as follows:



**§ 1002.27 Suspension and cancellation of designation.**

* * * * *

(b) The designation of any plant which in any month is not approved by a health authority as a source of milk for the marketing area shall be automatically suspended at the beginning of the second month following the month that the handler receives notice that the plant does not have health approval as a source of milk for the marketing area unless the absence of health approval is a temporary condition covering a period of not more than 15 days: * * *

(c) The designation of a plant pursuant to § 1002.24 shall be suspended at the beginning of the second month following any consecutive 12-month period in which the plant failed to receive any pool milk or at the beginning of the second month following a month in which there is a failure to maintain the facilities and equipment that constitute a plant pursuant to § 1002.8(a).

(d) The designation of any plant or unit shall be suspended, effective no sooner than 10 days nor later than 20 days after the date of mailing of notice, by registered letter, to the handler, whenever the market administrator, subject to the limitations set forth in paragraphs (h) and (j) of this section, finds on the basis of available information that the handler operating the plant or unit is not meeting the requirements set forth in § 1002.26: *Provided,* That, if the handler operating the plant or unit is not a cooperative association qualified pursuant to § 1002.77, the market administrator shall notify any qualified cooperative association which has any members who deliver milk to such plant or unit, and shall also notify individually all producers delivering to such plant or unit who are not members of such qualified cooperative association, of such suspension of designation.

* * * * *

(h) No pool plant or pool unit designation shall be suspended for failure to meet the requirements of § 1002.28(a) except under the following conditions or pursuant to paragraph (l) of this section:

(1) * * *

(2) There has been issued by the market administrator, following such meeting, and mailed to all handlers operating pool plants designated pursuant to § 1002.24 or pool units consisting of farms in the area specified in § 1002.25(e) the market administrator's determination of the desirable utilization of milk received from producers each month during all or a part of the period set forth in paragraph (h)(1) of this section. Such determination shall include a schedule setting forth, by months, the desired minimum percentage of pool milk received from producers to be utilized in specified classes. Such specified classes shall include Class I–A in the marketing area, and may include all or a part of other Class I–A and Class I–B.

(3) The market administrator finds on the basis of available information that the handler operating a plant or unit or the cooperative reporting a plant or unit is not utilizing milk received from producers in accordance with the minimum percentage set forth in the determination of the market administrator previously announced pursuant to paragraph (h)(2) of this section: *Provided,* That the suspension of the designation of a plant or unit may be made effective during the months of November and December if the market administrator finds that the handler is utilizing any milk received from producers in classes other than those set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

(i) The cancellation of pool plant or pool unit designation for failure to meet the requirements of § 1002.28(a) shall be subject to the following conditions:

(1) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized the milk received by the handler from producers during the month in which the suspension is made effective in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) or paragraph (l) of this section.

(2) No pool plant or pool unit designation shall be canceled if the handler operating the plant or unit utilized in the specified classes set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section a percentage of the total milk received by such handler from producers during the month in which the suspension is made effective which is not less than the percentage of the total pool milk reported by all handlers for such month to have been used in the specified classes.

(3) In the event that all milk received from producers at a plant or unit is reported to the market administrator by a cooperative association qualified pursuant to § 1002.77 and such association pays the producer for such milk, the pool plant or pool unit designation shall not be canceled if a percentage of all milk reported by such cooperative association is utilized in accordance with the minimum percentage set forth in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section, or in accordance with the percentage set forth in paragraph (i)(2) of this section.

(4) Cancellation of designations shall be limited to those plants or units necessary to result in a utilization of milk received at the remaining pool plants and pool units operated by the handler, or reported by the cooperative, as the case may be, in accordance with the minimum percentage set forth in paragraph (l) of this section, or in the determination of the market administrator announced pursuant to paragraph (h)(2) of this section.

* * * * *

(l) The designation of any pool plant pursuant to § 1002.24 or any pool unit pursuant to § 1002.25(e) shall be canceled unless 5 percent or more of the pool milk received from producers at such plant or by such unit during each of the months of December and January, and 10 percent during each of the months of September through November, is utilized as Class I–A milk unless the percentage has been revised pursuant to paragraph (h) of this section.

46. Section 1002.30 is amended by changing the reference "§ 1002.70" in paragraph (d) to "§ 1002.80", and by revising the first sentence of the introductory text and paragraph (b) to read as follows:

**§ 1002.30 Reports of receipts and utilization.**

Each handler, except a handler receiving own farm milk and not required to be listed pursuant either to § 1002.11 or 1002.12, shall report each month to the market administrator for the preceding month in the manner and on the forms prescribed by the market administrator with respect to each pool plant, partial pool plant, pool unit or partial pool unit operated by such person, the information set forth in paragraphs (a) through (d) of this section. * * *

* * * * *

(b) Inventories at the beginning and the end of the month of fluid milk

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products and products specified in § 1002.41(c)(1);

* * * * *

47. Section 1002.41 is revised to read as follows:

**§ 1002.41 Classes of utilization.**

Subject to the conditions set forth in §§ 1002.42 through 1002.46, the classes of utilization shall be as follows:

(a) *Class I–A milk.* Class I–A milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product, except as otherwise provided in paragraphs (c) and (d) of this section:

(i) Inside the marketing area;

(ii) As route disposition in an other order marketing area;

(iii) To an other order plant and assigned under such other order to Class I;

(iv) In packaged form to an other order plant if such product is not defined as a fluid milk product under such other order; and

(v) To a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market;

(2) In packaged inventory of fluid milk products at the end of the month;

(3) In shrinkage assigned to Class I–A pursuant to paragraph (d) of this section; and

(4) Not specifically accounted for as Class I–B, Class II or Class III milk.

(b) *Class I–B milk.* Class I–B milk shall be all skim milk and butterfat:

(1) Disposed of as a fluid milk product outside this or any other Federal order marketing area, except for:

(i) Milk moved to a partially regulated plant under an other order and there applied as an offset to Class I sales in any other order market; and

(ii) Inventory of packaged fluid milk products at nonpool plants that are not other order plants.

(2) In shrinkage assigned to Class I–B pursuant to § 1002.42(c).

(c) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil), that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (d) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (c)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and their by-products (whey);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (d)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers; and

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(d) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (c)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (c)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (c)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1002.15;

(6) Contained in fluid milk products and products specified in paragraph (c)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator; and

(7) In shrinkage assigned pursuant to § 1002.42(a) to the receipts specified in § 1002.42(a)(2) and in shrinkage specified in § 1002.42 (b) and (c).

48. Section 1002.42 is revised to read as follows:

**§ 1002.42 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1002.30, the following shall be determined:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (5) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (5) of this section, which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in pool milk received from producers, in milk received from pool units, and in milk received from units other than pool units, exclusive of the quantity for which Class II or Class III utilization was requested by the handler;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from other pool plants;

(3) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts of fluid milk products in bulk from plants other than those defined in § 1002.8 (b) or (d), excluding the quantity for which Class II or Class III classification is requested by the handler; and

(5) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1) through (4) of this section; and

(c) Shrinkage in excess of the amounts assigned to Class III pursuant to paragraphs (a) and (b) of this section shall be assigned pro rata to Class I–A and Class I–B in accordance with the respective volumes of skim milk and butterfat actually accounted for in each such class.

49. Section 1002.44 is revised to read as follows:



**§ 1002.44 Transfers.**

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I–A milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1002.45(a)(17) and the corresponding step of § 1002.45(b).

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1002.45(a)(8) or the corresponding step of § 1002.45(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1002.45(a) (13) or (15) or the corresponding steps of § 1002.45(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers to other order plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner.

(1) If transferred as packaged fluid milk products, classification shall be in the classes (either Class I–A, II or III) to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both the transferor and the transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I–A, subject to adjustment at a later date;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I–A milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1002.41.

(c) *Transfers to producer-handlers.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I–A milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers to other nonpool plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I–A milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I–A milk, if transferred in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) The transferring handler claims classification pursuant to the assignment set forth in paragraph (d)(3) of this section in the handler's report submitted to the market administrator pursuant to § 1002.30 for the month within which such transaction occurred;

(ii) The operator of such transferee plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification;

(iii) In determining the nonpool plant's utilization for purposes of this section, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a second nonpool plant shall be classified pursuant to the same assignment procedure with respect to receipts and utilization at such second nonpool plant, except that classification of such transfers in Class I–A and I–B shall not be less than the quantities which would be assigned to those classes if the transfer of such products had been directly from a pool plant or pool unit.

(3) Skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at the transferee plant pursuant to paragraph (d)(2)(ii) of this section:

(i) Packaged receipts of fluid milk products from Federal order sources shall first be assigned to route disposition in Federal order marketing areas (assigning receipts to sales in the same market to the extent possible) and any residual shall be assigned to Class I–B route sales.

(ii) Such bulk transfers and other bulk receipts of fluid milk products at each transferee plant from pool plants and units and from other order plants shall next be assigned to any remaining route disposition in any Federal order marketing area. For this purpose receipts from each Federal order market shall first be assigned to remaining route sales in such marketing area and any remainder of such receipts shall be prorated with all Federal order receipts to remaining route disposition in all Federal order marketing areas.

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(iii) Receipts from dairy farmers shall then be assigned to any remaining route sales in the marketing area.

(iv) Remaining receipts from dairy farmers and other unregulated other source receipts (excluding opening inventory) in the form of fluid milk products shall be assigned pro rata to Class I–B, Class II and Class III utilization at such plant to the extent of such utilization available at such plant and any remainder of such receipts shall be assigned pro rata to Class I–A bulk sales to plants regulated under this order and Class I bulk sales to plants regulated under other orders.

(v) Receipts of bulk fluid cream products from plants defined pursuant to § 1002.8(b) and (d) shall be assigned pro rata among such plants to any remaining Class II and Class III utilization on a pro rata basis, then to any remaining Class I–A disposition and finally any Class I–B disposition.

(vi) Any remaining receipts of fluid milk products or bulk fluid cream products being assigned pursuant to this paragraph shall be assigned pro rata with remaining receipts from other order plants, first to remaining Class I–A utilization, then to Class I–B utilization, then to Class II utilization, and finally to Class III utilization at such plant: *Provided*, That if on inspection of the books and records of such plant the market administrator finds that there is insufficient utilization to cover such receipts, the remainder shall be classified as Class I–A.

(vii) Any remaining Class I–A route disposition in any Federal marketing area shall be subject to the pricing specified in § 1002.60(d)(2).

50. Section 1002.45 is revised to read as follows:

**§ 1002.45 Allocation of skim milk and butterfat classified.**

The classification of milk received from producers at each pool plant or pool unit for each handler shall be determined each month pursuant to paragraphs (a), (b), and (c) of this section: *Provided*, That for the purpose of establishing the pool status of any plant with Class I–A route disposition in the marketing area which is not a pool plant pursuant to § 1002.24, skim milk and butterfat in milk received at such plant directly from dairy farmers or units up to an amount sufficient to qualify such plant as a pool plant pursuant to § 1002.28(a) or (b) shall be considered the source of such Class I–A route disposition of such plant and be subtracted from Class 1–A prior to the application of the allocation sequence set forth in paragraphs (a) and (b) of this section, unless at the time of filing the handler's report pursuant to § 1002.30 the handler elects not to have it so allocated.

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk classified as Class III pursuant to § 1002.42(b);

(2) Subtract the pounds of skim milk received in packaged form from a producer-handler for marketing as certified fluid milk products from the total pounds of skim milk in Class I–A and Class I–B milk, respectively, in accordance with its proportionate disposition in such classes;

(3) Subtract from the remaining pounds of skim milk in Class III, 2 percent of the pounds of skim milk in packaged fluid milk products received from other order plants, and subtract the balance from Class I–A;

(4) Subtract from the remaining pounds of skim milk in Class I–A the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(4) or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41(c)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1002.41(c)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in 1002.41(c), but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class I–A, Class II and Class III milk, in series beginning with Class III, the pounds of skim milk in:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1002.41(c)(1) that was not subtracted pursuant to paragraphs (a)(5), (6) and (7) of this section;

(ii) Receipts of fluid milk products not approved by a duly constituted health authority which are excepted from the pool milk definition pursuant to § 1002.14(b);

(iii) Receipts of fluid milk products from a producer-handler pursuant to an other order or a producer-handler defined pursuant to § 1002.12 (except pool milk designated in the preamble of § 1002.14).

(iv) Receipts of fluid milk products from a handler's plant at which milk is excepted from the pool milk definition pursuant to § 1002.14(h).

(v) Receipts of fluid milk products from a handler with own farm milk, which milk is excepted from the pool milk definition pursuant to § 1002.14(i).

(9) Subtract in series beginning with Class III from the pounds of skim milk remaining in Class II and Class III milk the pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants other than those defined in § 1002.8 (b) or (d) and units other than pool units for which the handler requests a Class II or Class III classification, but not in any case to exceed the pounds of skim milk remaining in such class;

(10) Subtract from the remaining pounds of skim milk in Class II or Class III milk the pounds of skim milk in bulk receipts of fluid milk products from other order plants not previously assigned and for which a Class II or Class III classification is requested by both the transferor and transferee handler in filing reports of receipts and utilization for the month with their respective market administrators, but not in any case to exceed the pounds of skim milk remaining in such class;

(11) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1002.41(c)(1), in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (4), (6) and (8)(i) of this section;

(12) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to paragraph (a)(1) of this section;

(13)(i) Subtract pro rata from the pounds of skim milk remaining in Class I–B, Class II and Class III milk the remaining pounds of skim milk in receipts of other source milk in the form of fluid milk products from plants not defined pursuant to § 1002.8 (b) or (d) and from units other than pool units: *Provided*, That if the pounds of skim milk to be assigned pursuant to this paragraph (a)(13)(i) exceed the available pounds of skim milk in Class I–B, Class II, and Class III the handler shall designate the priority of sources to be assigned to such classes;

(ii) No assignment shall be made pursuant to this paragraph with respect to milk received from a plant not defined pursuant to § 1002.8 (b) or (d) in the 401 miles and over freight zone at a plant from which 50 percent or more of the gross receipts of skim milk and butterfat leaves the plant in the form of fluid milk products in consumer packages or dispenser inserts and is classified as Class I–A;

(14) Subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts from dairy farmers and from the handler's own farm which are excepted from the pool milk definition pursuant to § 1002.14 (b) and (i);

(15) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products from other order plants not previously assigned pursuant to paragraph (a) (3) and (10) of this section:

(i) Subject to the provisions of this paragraph, such subtraction shall be pro rata to the pounds of skim milk in each class with respect to whichever of the following quantities represents the higher proportion of Class II and Class III milk combined:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1002.22(d); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in such class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(15)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I–A milk and Class I–B milk after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I–A milk and Class I–B milk combined shall be decreased by a like amount, pro rata to remaining utilization in each such class. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(15)(ii) of this section, should the computations pursuant to paragraph (a)(15) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I–A milk or Class I–B milk that exceeds the pounds of skim milk remaining in that class, the pounds of skim milk in such class shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount in sequence beginning with the nearest other pool plant of such handler at which Class I–A or Class I–B utilization is available;

(16) If the plant at which assignment is being made is a plant from which 50 percent or more of the gross receipts of skim milk and butterfat in the form of fluid milk products left the plant in the form of fluid milk products in consumer packages or dispenser inserts and was classified as Class I–A, subtract pro rata from the remaining pounds of skim milk in each class the pounds of skim milk in receipts of fluid milk products from plants in the 401 miles and over freight zone, not defined pursuant to § 1002.8 (b) or (d);

(17) Subtract from the remaining pounds of skim milk in Class I–A milk the pounds of skim milk in remaining receipts from plants (except other order plants) or units the pool status of which has not yet been established and which receipts have not previously been assigned pursuant to paragraph (a) (13) and (16) of this section;

(18) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk received in the form of fluid milk products and bulk fluid cream products from other pool plants and from pool units (not previously assigned pursuant to the preamble of this section), in accordance with the classification assigned by the transferee handler subject to the conditions of paragraph (a)(18) (i) through (iii) of this section:

(i) The skim milk so assigned to any class of utilization shall be limited to the amount thereof remaining in such class in the transferee plant;

(ii) If the transferor plant received during the month other source milk to be allocated pursuant to paragraph (a)(7) of this section the skim milk so transferred shall be classified so as to allocate the least possible Class I–A or I–B utilization to such other source milk; and

(iii) If the transferor handler received during the month other source milk to be allocated pursuant to paragraph (a)(13) of this section, the skim milk so transferred shall not be classified as Class I–A or I–B to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(19) Add to the remaining pounds of skim milk in Class I–A the pounds of skim milk received directly from dairy farmers or units which was deducted pursuant to the proviso in the preamble of this section;

(20) If the pounds of skim milk remaining in all classes exceeds the pounds of skim milk in receipts from producers subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

51. Section 1002.51 is redesignated as § 1002.52, § 1002.50 is redesignated as § 1002.51, and § 1002.50a is redesignated as § 1002.50.

52. Section 1002.50 is revised to read as follows:

**§ 1002.50 Class prices.**

For pool milk received during each month from dairy farmers or cooperative

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associations of producers, each handler shall pay per hundredweight not less than the prices set forth in this section, subject to the differentials and adjustments in §§ 1002.52 and 1002.81. Any handler who purchases or receives milk during any month from a cooperative association of producers but does not operate the plant or unit receiving this milk from producers shall pay the cooperative association on or before 2 days before the last day of the month if paid by check, or the last day of the month if paid in cash or cash equivalent, at not less than the lowest class price pursuant to this section for the preceding month for milk received from such cooperative during the first 15 days of the month, and shall pay the cooperative association on or before the 15th day of the following month the balance due for milk received during the month from such cooperative at not less than the class prices pursuant to this section subject to the differentials and adjustments set forth in §§ 1002.52 and 1002.81 applicable at the plant at which the milk is first received from the cooperative association. Such payments to a cooperative association shall be deemed not to have been made until the payments have been received by the cooperative association.

(a) *Class I–A price.* For Class I–A milk the Class I price in the 201–210 mile freight zone shall be the basic formula price for the second preceding month plus $2.42. The differential value in the 1–10 mile freight zone shall be $3.14.

(b) *Class I–B price.* For Class I–B milk the price shall be the price for Class I–A milk.

(c) *Class II price.* For Class II milk, the price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1002.51(b) for the month plus the amount that the value computed pursuant to paragraph (c)(1) of this section exceeds the value computed pursuant to paragraph (c)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (c)(1) and (c)(2) of this section, was less than the basic formula price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1002.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (c)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1002.51(b).

(d) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

| Month | Amount |
|---|---|
| January | +.03 |
| February | +.02 |
| March | −.05 |
| April | −.09 |
| May | −.12 |
| June | −.11 |
| July | +.03 |
| August | +.10 |
| September | +.06 |
| October | +.08 |
| November | +.08 |
| December | +.06 |

53. Section 1002.51 is revised to read as follows:

**§ 1002.51 Basic formula prices.**

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1002.81 shall be used.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b) (1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1002.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3) (i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

54. Newly redesignated Section 1002.52 is amended by changing the reference "§ 1002.50a" in the introductory text to "§ 1002.50", changing the word "0.1" in paragraph (d) to "0.5", changing the words "Class I" in paragraph (e) to "Class III", and



revising paragraph (c) to read as follows:

**§ 1002.52 Transportation differentials.**

* * * * *

(c) The differential rates applicable at plants shall be as set forth in the following schedule:

| Freight zone Miles | Cents per cwt. Classes I–A and I–B | Classes II and III |
|---|---|---|
| 1–10 | + 72.0 | + 8 |
| 11–20 | + 69.5 | + 8 |
| 21–25 | + 67.0 | + 8 |
| 26–30 | + 67.0 | + 7 |
| 31–40 | + 64.5 | + 7 |
| 41–50 | + 62.0 | + 7 |
| 51–60 | + 59.5 | + 6 |
| 61–70 | + 57.0 | + 6 |
| 71–75 | + 32.5 | + 6 |
| 76–80 | + 32.5 | + 5 |
| 81–90 | + 30.0 | + 5 |
| 91–100 | + 27.5 | + 5 |
| 101–110 | + 25.0 | + 4 |
| 111–120 | + 22.5 | + 4 |
| 121–125 | + 20.0 | + 4 |
| 126–130 | + 20.0 | + 3 |
| 131–140 | + 17.5 | + 3 |
| 141–150 | + 15.0 | + 3 |
| 151–160 | + 12.5 | + 2 |
| 161–170 | + 10.0 | + 2 |
| 171–175 | + 7.5 | + 2 |
| 176–180 | + 7.5 | + 1 |
| 181–190 | + 5.0 | + 1 |
| 191–200 | + 2.5 | + 1 |
| 201–210 | 0.0 | 0 |
| 211–220 | − 2.5 | 0 |
| 221–225 | − 5.0 | 0 |
| 226–230 | − 5.0 | 0 |
| 231–240 | − 7.5 | 0 |
| 241–250 | − 10.0 | 0 |
| 251–260 | − 12.5 | 0 |
| 261–270 | − 15.0 | 0 |
| 271–275 | − 17.5 | 0 |
| 276–280 | − 17.5 | 0 |
| 281–290 | − 20.0 | 0 |
| 291–300 | − 22.5 | 0 |
| 301–310 | − 25.0 | 0 |
| 311–320 | − 27.5 | 0 |
| 321–325 | − 30.0 | 0 |
| 326–330 | − 30.0 | 0 |
| 331–340 | − 32.5 | 0 |
| 341–350 | − 35.0 | 0 |
| 351–360 | − 37.5 | 0 |
| 361–370 | − 40.0 | 0 |
| 371–375 | − 42.5 | 0 |
| 376–380 | − 42.5 | 0 |
| 381–390 | − 45.0 | 0 |
| 391–400 | − 47.5 | 0 |
| 401 and over | − 50.0 | 0 |

* * * * *

55. Section 1002.53 is revised to read as follows:

**§ 1002.53 Producer-handler price differential.**

For skim milk and butterfat received from a handler who is a producer-handler under this or any other order and is assigned to Class I–A pursuant to § 1002.45(a)(8)(iii), the transferee handler shall pay a differential equal to the difference between the Class I–A price and the Class III price both appropriately adjusted for differentials pursuant to § 1002.52.

56. Section 1002.55 is revised to read as follows:

**§ 1002.55 Transportation credit on bulk unit pool milk.**

For pool milk received by a handler in a pool or partial pool unit, a transportation credit at the rate of 15 cents per hundredweight shall be computed.

57. A new § 1002.56 is added to read as follows:

**§ 1002.56 Announcement of class prices and butterfat differential.**

The market administrator shall announce publicly:

(a) On or before the fifth day of each month, the following:

(1) The Class I price for the following month applicable at the 201–210 mile zone and at the 1–10 mile zone.

(2) The Class III price for the preceding month applicable at the 201–210 mile zone and at the 1–10 mile zone;

(3) The butterfat differential for the preceding month;

(4) The average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, as reported by the United States Department of Agriculture for the preceding month;

(5) The simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago, as reported by the United States Department of Agriculture for the preceding month; and

(6) The weighted average of carlot prices per pound for nonfat dry milk solids, spray process, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published by the United States Department of Agriculture for the period from the 26th day of the second preceding month through the 25th day of the preceding month.

(b) On or before the fifteenth day of each month, the Class II price for the following month applicable at the 201–210 mile zone and at the 1–10 mile zone.

**§ 1002.70 [Redesignated as § 1002.60]**

58. Section 1002.70 is redesignated as § 1002.60, and amended by changing all references to § 1002.51 to § 1002.52", changing the reference "§ 1002.45(a)(17)" in paragraph (a) to § 1002.45 (a)(20)", and revising paragraph (d) to read as follows:

**§ 1002.60 Net pool obligation of handlers.**

* * * * *

(d) Add the amounts computed in paragraph (d) (1) through (4) of this section:

(1) Multiply the pounds of overage deducted from each class pursuant to § 1002.45(a)(20) and the corresponding step of § 1002.45(b) by the applicable class price adjusted by the differentials pursuant to §§ 1002.52 and 1002.81;

(2) Multiply the difference between the applicable Class I–A and Class III prices, both adjusted by the applicable differential pursuant to § 1002.52, by the pounds of skim milk and butterfat in other source milk subtracted from Class I–A pursuant to § 1002.45(a)(8)(i) and the corresponding step of § 1002.45(b) and by the pounds of skim milk and butterfat specified in § 1002.44(d)(3)(vii);

(3) Multiply the producer-handler price differential by the pounds of skim milk and butterfat subtracted from Class I–A pursuant to § 1002.45(a)(8)(iii) and the corresponding step of § 1002.45(b);

(4) Multiply the difference between the Class III price for the preceding month and the Class I–A price or the Class II price, as the case may be, for the current month, both applicable at the location of the nearest plant or unit from which an equivalent quantity of Class III milk was received in the preceding month, by the pounds of skim milk and butterfat subtracted from Class I–A and Class II pursuant to § 1002.45(a)(11) and the corresponding step of § 1002.45(b).

* * * *

**§ 1002.71 [Redesignated as § 1002.61]**

59. Section 1002.71 is redesignated as § 1002.61 and amended by changing the reference "§ 1002.84" in the introductory text to "§ 1002.71", changing the reference "§ 1002.70" in paragraph (a) to "§ 1002.60", changing the reference "§ 1002.89" in paragraph (b) to "§ 1002.77", and redesignating paragraphs (b–1) through (g) as paragraphs (c) through (h). In paragraph (e), the references to "paragraph (c)" are changed to "paragraph (d)", and in paragraph (h) the reference to "paragraph (f)" is changed to "paragraph (g)".

60. A new § 1002.62 is added to read as follows:

**§ 1002.62 Announcement of uniform price.**

The market administrator shall publicly announce on or before the 14th day of each month the uniform price for the preceding month pursuant to § 1002.61 applicable at the 201–210 mile zone and at the 1–10 mile zone pursuant to § 1002.62.

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~~§§ 1002.83 through 1002.89 (Redesignated as §§ 1002.70 through 1002.77)~~

61. Sections 1002.83 through 1002.89 are redesignated as §§ 1002.70 through 1002.77. The centered heading preceding § 1002.83 will now precede § 1002.70.

62. Section 1002.70 is revised to read as follows:

**§ 1002.70 Producer settlement fund.**

The market administrator shall establish and maintain a separate fund known as the "producer settlement fund" into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 1002.72 through 1002.77. All amounts subtracted under § 1002.61(d), inclusive of interest earned thereon, shall remain therein as an obligated balance until it is withdrawn for the purpose of effectuating § 1002.61(e).

**§ 1002.71 [Amended]**

63. Section 1002.71 is amended by changing the reference "§ 1002.90" to "§ 1002.85".

**§ 1002.72 [Amended]**

64. Section 1002.72 is amended by changing the reference "§ 1002.84" to "§ 1002.71".

**§ 1002.73 [Amended]**

65. In Section 1002.73, paragraph (a) is amended by changing the reference "§ 1002.84" to "§ 1002.71", and the reference "§ 1002.85" to "§ 1002.72".

**§ 1002.76 [Amended]**

66. Section 1002.76 is amended by changing the reference "§§ 1002.85 and 1002.86" to "§§ 1002.72 and 1002.85".

**§ 1002.77 [Amended]**

67. Section 1002.77 is amended by removing paragraph (l).

68. Section 1002.82 is revised to read as follows:

**§ 1002.82 Transportation differentials.**

The transportation differential shall be plus or minus the appropriate differential shown in column B of the schedule in § 1002.82(c) for the zone of the plant to which the milk is delivered or in the case of farms included in units the zone of the township in which the milk is received.

**§ 1002.90 [Redesignated as § 1002.85]**

69. Section 1002.90 is redesignated as § 1002.85 and amended by changing the reference "§ 1002.85" to "§ 1002.72", and changing the reference "§ 1002.70(d)(2)" to "§ 1002.60(d)(2)". The centered heading preceding § 1002.90 will now precede § 1002.85.

## PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

70. Section 1004.10 is amended by revising paragraph (d) to read as follows:

**§ 1004.10 Producer-handler.**

* * * * *

(d) Sections 1004.40 through 1004.45, 1004.50 through 1004.54, 1004.60 through 1004.62, 1004.70 through 1004.76, 1004.95 and 1004.86, and 1004.90 through 1004.95 shall not apply to a producer-handler.

71. Section 1004.11 is revised to read as follows:

**§ 1004.11 Dairy farmer.**

*Dairy farmer* means any person who produces milk which is delivered in bulk to a plant. A dairy farmer shall be a "dairy farmer for other markets" with respect to milk reported pursuant to § 1004.7(d)(4).

72. Section 1004.12 is amended by revising paragraphs (a), (e) and (f)(5) to read as follows:

**§ 1004.12 Producer.**

* * * * *

(a) A dairy farmer with respect to milk which is received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

* * * * *

(e) Milk which is diverted in accordance with the provisions of this section shall be deemed to have been received by the handler for whose account it is diverted at a pool plant at the location of the plant from which it is diverted, except that, for the purpose of applying location adjustments pursuant to §§ 1004.52 and 1004.75 and the direct-delivery differential pursuant to § 1004.79, milk which is diverted shall be considered to be received at the location of the plant to which the milk is diverted.

* * * * *

(f) * * *

(5) Dairy farmer with respect to milk physically received at a pool plant as diverted milk from an other order plant if all of the milk so received from such dairy farmer is assigned to Class II or Class III and the milk is treated as producer milk under the provisions of such other order.

73. Section 1004.13 is amended by revising paragraph (a) to read as follows:

**§ 1004.13 Producer milk.**

* * * * *

(a) Received at a pool plant pursuant to § 1004.7(a), (b), or (e) directly from the farm.

* * * * *

74. Section 1004.14 is revised to read as follows:

**§ 1004.14 Other source milk.**

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts in the form of fluid milk products and bulk products specified in § 1004.40(b)(1) from any source other than producers, handlers described in § 1004.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1004.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1004.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1004.40(b)(1)) for which the handler fails to establish a disposition.

75. Section 1004.15 is revised to read as follows:

**§ 1004.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers or aseptically packaged and hermetically sealed in foil-lined paper containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

76. A new § 1004.16 is added to read as follows:



**§ 1004.16 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream) or a mixture of cream and milk or skim milk containing 10 percent or more butterfat, with or without the addition of other ingredients.

77. A new § 1004.21 is added to read as follows:

**§ 1004.21 Product prices.**

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price pursuant to § 1004.51(b), and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) *Butter price* means the simple average of the prices per pound of approved (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) *Cheddar cheese price* means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40-pound blocks on the National Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) *Nonfat dry milk price* means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and approved nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in paragraph (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in paragraph (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) *Edible whey price* means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

78. In § 1004.30, paragraphs (a)(1), (2) and (3) are revised to read as follows:

**§ 1004.30 Reports of receipts and utilization.**

(a) * * * *

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production) and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c);

(ii) Receipts of fluid milk products and bulk fluid cream products from other pool plants; and

(iii) Receipts of other source milk;

(2) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1004.40(b)(1); and

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the area;

* * * * *

79. Section 1004.40 is revised to read as follows:

**§ 1004.40 Classes of utilization.**

Subject to the conditions set forth in §§ 1004.41 through 1004.44, all skim milk and butterfat required to be reported by a handler pursuant to §§ 1004.30 and 1004.32 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged inventory of fluid milk products at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, and any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil), that resembles a fluid cream product or eggnog, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and their by-products (whey);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, anhydrous milkfat, aerated cream, sour cream and sour half and half, and sour cream mixtures containing nonmilk items;

(v) Custards, puddings, pancake mixes and buttermilk biscuit mixes, yogurt and any other semi-solid product resembling a Class II product and containing less than 10 percent butterfat;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers; and

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese) and its by-products (whey);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given

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the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1004.15; and

(6) In shrinkage assigned pursuant to § 1004.41(a) to the receipts specified in § 1004.41(a)(2) and in shrinkage specified in § 1004.41 (b) and (c).

80. Section 1004.41 is revised to read as follows:

**§ 1004.41 Shrinkage.**

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1004.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (8) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (8) of this section, which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1004.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1004.9(c) and in milk diverted to such plant from another pool plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk tank lots of fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in receipts from dairy farmers for other markets pursuant to § 1004.11 and receipts of bulk fluid milk products from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk tank lots of fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1004.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

81. Section 1004.42 is revised to read as follows:

**§ 1004.42 Classification of transfers and diversions.**

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1004.44(a)(13) and the corresponding step of § 1004.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1004.44(a)(8) or the corresponding step of § 1004.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1004.44(a) (12) or (13) or the corresponding steps of § 1004.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or the divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraphs (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as



Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to another order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1004.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants operated by governmental agencies.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not another order plant, a producer-handler plant, or an exempt distributing plant operated by a governmental agency shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in its report of receipts and utilization filed pursuant to § 1004.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of milk for such nonpool plant; and

(B) To such nonpool plant's receipts of milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

82. Section 1004.43 is revised to read as follows:

**§ 1004.43 General classification rules.**

(a) Each month, the market administrator shall correct for mathematical and other obvious errors, the reports of receipts and utilization submitted pursuant to § 1004.30 (a), (b) and (d) by each handler and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler, and the total pounds of skim milk and butterfat in each class which was received from producers by a cooperative association handler pursuant to § 1004.9 (b) and (c) and was not received at a pool plant.

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such products plus all the water originally associated with such solids.

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1004.9 (b) or (c) shall be determined separately from the operations of any pool plant

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operated by such cooperative association.

83. Section 1004.44 is revised to read as follows:

**§ 1004.44 Classification of producer milk.**

After making the computations pursuant to § 1004.43, the market administrator each month shall determine the classification of milk received from producers by each cooperative association handler pursuant to § 1004.9 (b) and (c) which was not received at a pool plant, and the classification of milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at each pool plant for each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1004.41(b);

(2) Subtract from the total pounds of skim milk in Class I, the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) Receipts of exempt milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(8)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining, or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(5) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1004.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1004.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph (a)(6) or comparable provisions of another Federal milk order in the immediately preceding month;

(7) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1004.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(8) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(6) of this section applies, packaged inventory at the beginning of the month of products specified in § 1004.40(b)(1) that was not subtracted pursuant to paragraph (a) (5), (6), and (7) of this section;

(ii) Receipts of fluid milk products from dairy farmers for other markets pursuant to § 1004.11 and from unidentified sources;

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(iv) Receipts (other than exempt milk) of fluid milk products from a handler pursuant to § 1004.9(c);

(v) Receipts of reconstituted skim milk in filled milk from unregulated supply plants that were not subtracted pursuant to paragraph (a)(2) of this section;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling to the extent that reconstituted skim milk is allocated to Class I at the transferor plant and is not assigned under this step at a plant regulated under another market pool order;

(9) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i) and (8)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a) (2)(i), (8)(v) and (9)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(9)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(A) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, from a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and in receipts of bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(8)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(8)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;



(10) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1004.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a) (4), (6) and (8)(i) of this section;

(11) Add to the remaining pounds of skim milk in Class III, the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants and from other order plants if not classified or priced pursuant to the order regulating such plants, that were not subtracted pursuant to paragraphs (a) (2)(i), (8)(v) and (9) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(12) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(12) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in remaining receipts of bulk fluid milk products from other order plants (except receipts from other order plants not classified and priced pursuant to the order regulating such plants) that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a) (8)(vi) and (9)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(13) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class, as announced for the month pursuant to § 1004.45(b); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(13)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available; and

(iv) Except as provided in paragraph (a)(13)(ii) of this section, should the computations pursuant to paragraph (a)(13) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(14) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a cooperative association in its capacity as a handler pursuant to § 1004.9(c) according to the classification assigned pursuant to § 1004.42(a); and

(15) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(15) of this section and the corresponding step of paragraph (b) of this section.

84. In Section 1004.45, paragraph (b) is amended by changing the reference to "§ 1004.44(a)(10)" to "§ 1004.44(a)(13)", and paragraphs (c) and (d) are revised to read as follows:

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**§ 1004.45 Market administrator's reports and announcements concerning classification.**

* * * * *

(c) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1004.44 on the basis of such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(d) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant, the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler; and, as necessary, any changes in such classification arising from the verification of such report.

85. Section 1004.50 is revised to read as follows:

**§ 1004.50 Class prices.**

Subject to the provisions of § 1004.52 the class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.03.

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1004.51(b) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1004.51(a) and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1004.51(b).

(c) *Class III price.* Subject to the adjustment set forth below for the applicable month, the Class III price shall be the basic formula price for the month.

| Month | Amount |
|---|---|
| January | +$0.05 |
| February | +.04 |
| March | −.03 |
| April | −.07 |
| May | −.10 |
| June | −.09 |
| July | +.05 |
| August | +.12 |
| September | +.08 |
| October | +.06 |
| November | +.06 |
| December | +.06 |

86. Section 1004.51 is revised to read as follows:

**§ 1004.51 Basic formula prices.**

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1004.74 shall be used.

(b) The "basic Class II formula price" for the month shall be the basic formula price for the second preceding month plus or minus the amount computed pursuant to paragraphs (b)(1) through (4) of this section.

(1) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1004.21 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(i) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(A) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(B) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(C) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(ii) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(A) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(B) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(2) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(3) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b)(2) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (b)(3)(i) and (ii) of this section:

(i) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(ii) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the National Agricultural Statistics Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(4) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b)(2) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (b)(3) of this section.

**§ 1004.52 [Amended]**

87. Section 1004.52 is amended by removing the word "pool" from paragraph (a).

88. Section 1004.53 is revised to read as follows:



**§ 1004.53 Announcement of class prices and producer butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day of each month, the following:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month; and

(3) The producer butterfat differential for the preceding month.

(b) The fifteenth day of each month, the Class II price for the following month.

89. Section 1004.60 is revised to read as follows:

**§ 1004.60 Handler's value of milk for computing uniform prices.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1004.9(b) and (c) as follows:

(a) Multiply the quantity of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b) and the quantity of producer milk in each class, as computed pursuant to § 1004.44(c), by the applicable class prices (adjusted pursuant to § 1004.52);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1004.44(a)(15) and the corresponding step of § 1004.44(b) by the applicable class prices adjusted by the applicable differentials pursuant to §§ 1004.52, 1004.74 and 1004.79;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(8)(i) through (iv) and the corresponding step of § 1004.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant (but not less than the Class III price) and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(8)(v) and (vi) and the corresponding step of § 1004.44(b); and

(f) Add an amount equal to the value at the Class I price of skim milk and butterfat assigned to Class I pursuant to § 1004.44(a)(12) and the corresponding step of § 1004.44(b) (excluding receipts from partially-regulated distributing plants for which disposition a specific allocation is made to Federal order receipts from this or any other order) adjusted for the location of the nearest plant from which such types of receipts were received.

90. Section 1004.61 is amended by changing the reference to "§ 1004.60(e)" in paragraph (a) (4)(ii) to "§ 1004.60(f)" revising paragraphs (a)(5) and (b) to read as follows, and by changing the reference "(b)(7)" in paragraph (c) to "(b)(5)".

**§ 1004.61 Computation of weighted average price and uniform prices for base milk and excess milk.**

(a) * * *

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure shall be the weighted average price for the month.

(b) Subject to paragraph (c) of this section, for each month the market administrator shall compute the uniform prices per hundredweight for base milk and excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III milk price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II milk by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and round to the nearest cent. The result shall be the uniform price for excess milk.

(3) From the amount resulting from the computations of paragraphs (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the aggregate value of excess milk determined in paragraph (b)(1) of this section;

(5) Divide the result obtained in paragraph (b)(4) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the uniform price for base milk.

* * * * *

91. In § 1004.71, paragraph (b)(2) is amended by changing the reference "§ 1004.60(e)" to "§ 1004.60(f)", and paragraph (c)(2) is revised to read as follows:

**§ 1004.71 Payments to the producer-settlement fund.**

* * * * *

(c) * * *

(2) Compute the value of the quantity assigned in paragraph (c)(1) of this section to Class I disposition in this area, at the Class I price under this part applicable at the location of the other order plant and subtract its value at the Class III price.

92. In § 1004.73, paragraph (a)(1) is amended by changing the words "Class II" to "Class III".

93. Section 1004.75 is revised to read as follows:

**§ 1004.75 Location differentials to producers and on nonpool milk.**

(a) For milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at a plant located 55 miles or more from the city hall in Philadelphia, PA, and also at least 75 miles from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, MD (all distances to be the shortest highway distance as determined by the market administrator), the uniform price for base milk computed pursuant to § 1004.61(b) shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.73 the weighted average price shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted

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weighted average price shall not be less than the Class III price.

94. Section 1004.76 is amended by revising paragraphs (a)(1)(i) and (b)(5) to read as follows:

**§ 1004.76 Payments by a handler operating a partially regulated distributing plant.**

* * * * *

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1004.60 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant, a cooperative association as a handler pursuant to § 1004.9(b), or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class III milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk except that reconstituted skim milk in filled milk shall be valued at the Class III price. There shall be included in the obligation so computed a charge in the amount specified in § 1004.60(f) and a credit in the amount specified in § 1004.71(b)(2) with respect to receipts from an unregulated supply plant, except that the credit for receipts of reconstituted skim milk in filled milk shall be at the Class III price, unless an obligation with respect to such plant is computed as specified below in paragraph (a)(1)(ii) of this section; and

* * * * *

(b) * * *

(5) From the value of such milk at the Class I price, subtract its value at the weighted average price, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the Class I price less the value of such milk at the Class III price (except that the Class I price and the weighted average price shall be adjusted for the location of the nonpool plant and shall not be less than the Class III price).

95. Section 1004.85 is amended by revising paragraph (a) to read as follows:

**§ 1004.85 Assessment for order administration.**

* * * * *

(a) Each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1004.9(c), and a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant) with respect to the handler's receipts of producer milk (including such handler's own-farm production, milk received from a cooperative association pursuant to § 1004.9(c), and milk transferred in bulk from a pool plant owned and operated by a cooperative association) and other source milk allocated to Class I pursuant to § 1004.44(a) (8) and (12) and the corresponding step of § 1004.44(b), except such other source milk that is excluded from the computations pursuant to § 1004.60 (d) and (f);

* * * * *

**§ 1004.92 [Amended]**

96. Section 1004.92 is amended by removing the last sentence of paragraph (a) and removing and reserving paragraph (e).

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the (name of order) marketing area [7 CFR part [2]] which is annexed hereto; and

**II. The following provisions**

§ [2] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of _____, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [2] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, the contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)

(Seal)

(Name)

By (Title)

(Address)
Attest:
Date:

[FR Doc. 90-28686 Filed 12-10-90; 8:45 am]
BILLING CODE 3410-02-M

[1] First and last sections of order.

[2] Appropriate part number.

[3] Next consecutive section number

federal register

Tuesday,
December 11, 1990

Part III

# Environmental Protection Agency

**40 CFR Part 60**

**Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[FRL-3752-2]**

**RIN 2060-AA37**

# Standards of Performance For New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly-(ethylene terephthalate) Manufacturing Industry

**AGENCY:** Environmental Protection Agency (EPA or the Agency).
**ACTION:** Final rule.

**SUMMARY:** Standards of performance to limit volatile organic compound (VOC) emissions from new, modified, and reconstructed process sections at certain polymer manufacturing plants were proposed in the Federal Register on September 30, 1987 (52 FR 36678). A new approach for determining which process emissions from polypropylene and polyethylene production would be subject to the proposed standards was presented for public comment in the Federal Register on January 10, 1989 (54 FR 890). This action promulgates these standards of performance for polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) (PET) plants. These standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that emissions from these polymer manufacturing facilities cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed process sections at these polymer manufacturing plants to achieve emission levels that reflect the best demonstrated system of continuous emission reduction considering costs, non-air quality health, and environmental and energy impacts.

**EFFECTIVE DATES:** December 11, 1990. These standards of performance become effective upon promulgation but apply to affected facilities for which construction, modification, or reconstruction commenced after either September 30, 1987, or January 10, 1989, as identified in the final rule.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. *Incorporation by Reference:* The incorporation by reference of certain publications in these standards is approved by the Director of the Office of the Federal Register as of December " 1990.

**ADDRESSES:** *Background information document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Polymer Manufacturing Industry—Background Information for Promulgated Standards of Performance" (EPA-450/3-88-019b). The BID contains (1) A summary of all the public comments made on the proposed standards and the Administrator's responses to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

*Docket.* A docket number A-82-19, containing information considered by EPA in the development of the promulgated standards is available for public inspection between 8:30 a.m. and 3:30 p.m. Monday through Friday at EPA's Air Docket (LE-131) room M-1500 1st Floor Waterside Mall 401 M Street SW. Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For further information and official interpretations of applicability compliance requirements, and reporting aspects of the promulgated standards, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background of the regulatory decisions in the promulgated standards, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone 919) 541-5263. For further information on the technical aspects of the promulgated standards, contact Mr. Les Evans, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5410. For further information on the testing and monitoring requirements of the promulgated standards, contact Mr. Bill Grimley, Emission Measurement Branch, Technical Support Division (MD-14), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1065.

**SUPPLEMENTARY INFORMATION:**

## I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> • • • application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology," or "BDT."

As prescribed by Section 111, promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49220, dated August 21, 1979) that segments of the polymer manufacturing industry contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare and for which standards are to be promulgated. Segments of the polymer manufacturing industry identified include polypropylene, polyethylene, polystyrene, and polyester resins.

The promulgated standards limit VOC emissions from certain process sources in new, modified, and reconstructed affected facilities within polymer manufacturing plants that produce the following basic polymers: polypropylene, polyethylene, polystyrene, and PET. In addition, the promulgated standards apply to certain sources in polymer manufacturing plants that produce copolymers consisting of at least 50 percent weight of ethylene, propylene, or bis-(2-hydroxylethyl)-terephthalate, or at least 80 percent by weight of styrene. The promulgated standards also cover VOC emissions from equipment leaks in all of these plants except those producing PET or PET copolymers. The promulgated standards do not cover manufacturers of elastomers or synthetic rubber.

As in the proposed standards, the limits in the final rule are expressed in terms of total organic compounds (TOC) minus methane and ethane rather than in terms of VOC. As explained in the September 30, 1987, Federal Register notice (52 FR 36698), the best systems of continuous emission reduction applicable to polymer manufacturing operations do not selectively control VOC, but rather these control technologies control all organic compounds. Moreover, the numerical values of the emission limits were based on total organic data (excluding methane and ethane). Therefore, to reflect accurately the performance of technologies selected as the best systems of continuous emission reduction and to make the emission limits consistent with the data and test methods from which the limits were derived, the standards are expressed in terms of TOC (minus methane and ethane). For the same reason, the test procedures prescribe measurement of TOC (minus methane and ethane). In short, the standards rely on controlling TOC (minus methane and ethane) as the best demonstrated surrogate for controlling VOCs, which react to form ozone in the atmosphere.

The affected facility for process sources of VOC emissions is the "process section" and for equipment leaks of VOC emissions, the "process unit." These are the same affected facility designations as were proposed, although the definitions of the various process sections have been revised for purposes of clarification.

### *Process Emissions*

*Background.* On September 30, 1987, standards to control VOC emissions from certain polymer manufacturing facilities were proposed (52 FR 36678). The standards proposed were based on an analysis of the environmental, energy, and economic impacts of various levels of emission reduction achieved through the application of various control technologies to reduce emissions. The technologies analyzed for controlling process emissions were selected based on the particular characteristics of the emission streams being controlled. For example, waste gas streams from polypropylene and polyethylene production processes are characterized by the presence of low boiling components, polymerizable materials, and a mixture of VOC's. These characteristics tend to make recovery techniques, such as condensers, impractical. Controlling these streams is more likely to involve combustion techniques. Therefore, combustion technologies, such as flares and incinerators, were analyzed for reducing VOC emissions from these polymer production processes.

To analyze the impacts of applying the various levels of emission reductions, process sections and model plants were developed as representative of production steps and processes found in the polymer industry. A total of five generic process sections and twelve model plants were developed for the four major polymers. In general, increasing levels of control of process emissions were obtained by controlling additional emission streams from process sections or, in the case of condensers, increasing the efficiency of the control device. For each level of control, the Agency calculated VOC emission reduction impacts, annual and capital costs, secondary air quality, energy, and economic impacts, and cost-effectiveness values. Based on these factors, the Agency identified which process emissions from process section in each model plant would be required to be controlled and the level of control reflecting BDT. Such process emissions and process section were then proposed for control in the September 30, 1987, Federal Register notice.

The public comment period on the September 30, 1987, Federal Register notice closed February 8, 1988. Fourteen comment letters were received, all from industry sources. A wide range of comments were received. Numerous comments focused on the use of model plants as the basis for determining which process emissions from the polypropylene and polyethylene segments of the industry would be subject to the proposed standards. Most of these comments expressed concern over the inflexibility of standards, determined thorugh the analysis of model plants, for dealing with process changes in these two segments of the industry. According to the commenters, such process changes significantly affect the emission stream characteristics. As a result, controls that were identified as BDT for model plants would, in some cases, be unreasonable for processes that did not correspond to the models. Similarly, other processes or streams for which control is reasonable may not be affected by the standards. As a result of information received in these comments, the Agency examined alternative approaches that would ensure that emission streams, for which reasonable controls are available, are required to be controlled. This need existed primarily for polypropylene and polyethylene production processes. The Agency did not propose to extend this new approach to polystyrene or PET production processes. Polystyrene and PET processes are more mature and significant changes are not expected. As such, the model plant approach is a less complex, more direct regulatory approach. A generic approach would be more complicated and potentially less effective for these processes due to the use of recovery-type controls and the difficulty in applying these to combined streams.

On January 10, 1989, the Agency reopened the public comment period for the limited purpose of allowing public comment on a new approach for determining which process emissions from polypropylene and polyethylene production processes would be subject to the proposed standards (54 FR 890). The new approach was developed considering the same types of control techniques as for the model plant approach. Under the new approach, generic emission stream characteristics would be used to make the control determination rather than rely on a fixed set of emission stream characteristics based on model plants. For continuous process emissions, the control determination would be based on either the VOC concentration or annual emissions or both. For intermittent emissions, it would be based on the type of release alone.

Comments received on the January 10, 1989, Federal Register notice were generally favorable, although several significant concerns were raised. These concerns were on identifying which intermittent releases would be exempt from control; the VOC weight percent exemption suggested for individual emission streams from modified and reconstructed affected facilities, but not for emission streams from new affected facilities; and the definition of "concurrent" by which emission streams from affected facilities constructed, modified, or reconstructed would be combined in making the control determination. These and other comments resulted in changes to the proposed standards and are discussed below.

*Polypropylene and polyethylene.* The promulgated process emission standards for polypropylene and polyethylene plants apply to all new, modified, and reconstructed process sections involved in the manufacture of polypropylene, polyethylene, or a polypropylene or polyethylene copolymer. Because of the new approach for determining which process emissions are to be controlled, some polypropylene and polyethylene affected facilities have a September 30, 1987, applicability date and others have a January 10, 1989, applicability date.

The promulgated standards implement the new approach presented in the January 10, 1989, Federal Register notice, with several important changes. The basic procedure for determining which continuous process emissions are to be controlled requires combining emission streams within one of three VOC weight percent ranges, calculating the combined stream's weight percent VOC and total annual emissions, calculating a

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threshold emission level based on the combined stream's VOC concentration, and comparing the combined stream's total annual emissions with the calculated threshold emission (CTE) level. If the combined stream's total annual emissions are equal to or greater than the CTE level, then all of the individual emission streams that made up the combined stream are to be controlled by 98 percent reduction or to 20 ppm by volume (ppmv), whichever is less stringent. If the combined stream's total annual emissions are less than the CTE level, then only those individual streams with individual flows of 8 scfm or less and with annual emissions of at least 1.6 Mg/yr are required to be controlled at that time. Control of these streams, however, does not need to be by 98 percent reduction or to 20 ppmv. These streams may be controlled in any existing control device. Individual streams with annual emissions less than 1.6 Mg/yr or with VOC concentrations of less than 0.1 weight percent VOC are exempt from control and are not used in any of the above procedures.

The above procedures are essentially the same as that presented in the January 10, 1989, **Federal Register** notice with the following exceptions:

1. The individual weight percent VOC cutoff has been extended to new affected facilities. It was proposed that only emission streams from existing sources that are modified or reconstructed could use this exemption.

2. The specific term "concurrent" has been eliminated in the final rule. However, the final rule requires all emission streams to be subject to potential control if sufficient emissions become available to require control under the new approach regardless of when one affected facility is constructed, modified, or reconstructed relative to another.

3. Emission streams that become subject to BDT under this standard and that are already controlled by a control device that is required as a result of a Federally enforceable rule do not need to be controlled by 98 percent or to 20 ppmv until the existing control device is modified or reconstructed or replaced.

For intermittent emissions from polypropylene and polyethylene sources, the promulgated rule requires control of all intermittent emissions except emergency releases. For purposes of this rule, emergency releases involve, in part, those intermittent releases that are necessary to prevent catastrophic equipment damage or personnel safety hazards, including those necessary to minimize the adverse effects of a runaway reaction such as may occur in a low pressure process, and those releases that occur as a result of decompositions and of attempts to prevent decompositions, such as occur in high pressure processes. Intermittent releases that occur as part of specific system features designed to maintain normal operating conditions in the process vessel are to be controlled. The promulgated rule for intermittent emissions follows more closely the proposed rule in the September 30, 1987, **Federal Register** notice than that rule presented in the January 10, 1989, **Federal Register** notice.

The promulgated standards for polypropylene and polyethylene sources allow affected facilities that are constructed, modified, or reconstructed between September 30, 1987, and January 10, 1989, to be exempt from control if their uncontrolled emission rates are below those uncontrolled threshold emission rates presented in the September 30, 1987, **Federal Register** notice. Emissions from such affected facilities, however, become subject to the standards if the process section's uncontrolled emission rate becomes greater than the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.

If the uncontrolled emission rate of an existing facility with a control device is greater than the uncontrolled threshold emission rate and control by 98 percent or to 20 ppmv has been determined to be required under the new approach, the promulgated rule allows such stream to continue to be controlled in its present control device. At such time that the existing control device is modified, reconstructed, or replaced, the vent stream is then required to be controlled by 98 percent or to 20 ppmv.

The promulgated standards for polypropylene and polyethylene contain fairly complex procedures for determining which process emissions are subject to the standards. This is the result of adopting a generic approach. Commenters requested that the Agency clarify this procedure and the standards that are to be met. To meet this request, the Agency developed a series of five flow diagrams, which are presented as Figures 1 through 3. The purpose of these figures is to provide only an overview of the determination procedure for polypropylene and polyethylene process emissions, and do not contain specific details found in the final rule. The following paragraphs summarize the purpose of each figure.

Figure 1 initiates the determination procedure for each process section. Through this figure, affected facilities are identified and separated according to their applicability date (between September 30, 1987, and on or before January 10, 1989, and after January 10, 1989). This figure also includes the exemption step provided to affected facilities with an applicability date between September 30, 1987, and January 10, 1989, and identifies how these emissions can become subject to the rule at a later date (see Block 1.6). For process sections that are identified as affected facilities subject to the standard, Figure 1 directs the user to Figure 2A for continuous emissions and to Figure 3 for intermittent emissions.

Figure 2A is the first of three flow diagrams applicable to continuous emissions. The first step in Figure 2A separates those continuous emissions that are uncontrolled from those that are controlled in an existing control device. This is necessary as the determination procedure is different depending on whether the emissions are already being controlled. If they are, the flow diagram directs the user to Figure 2C. For uncontrolled continuous emissions, Figure 2A continues by showing the exemptions provided for individual emission streams (see Block 2A.5). (Note that an individual stream that is exempted based on its annual emissions or its VOC weight percent becomes subject to the standards at a later date if its annual emissions become 1.6 Mg/yr or greater (if it had been exempted on the basis of the annual emissions exemption) or its VOC concentration becomes 0.10 weight percent or greater (if it had been exempted on the basis of the VOC concentration exemption) (see Block 2A.6).) Once qualifying individual emission streams are exempted, the user is directed to Figure 2B.

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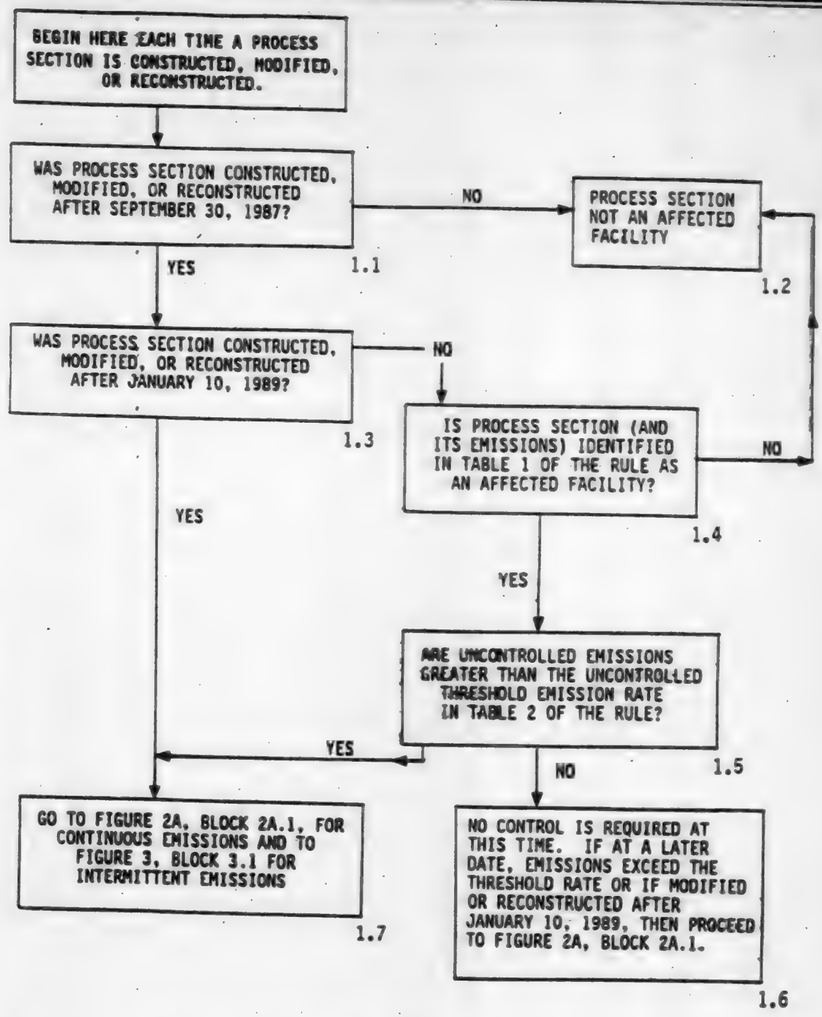



Figure 1. Initial Decisionmaking for Determining Which Polypropylene and Polyethylene Process Sections Are Affected Facilities Subject to the Standards

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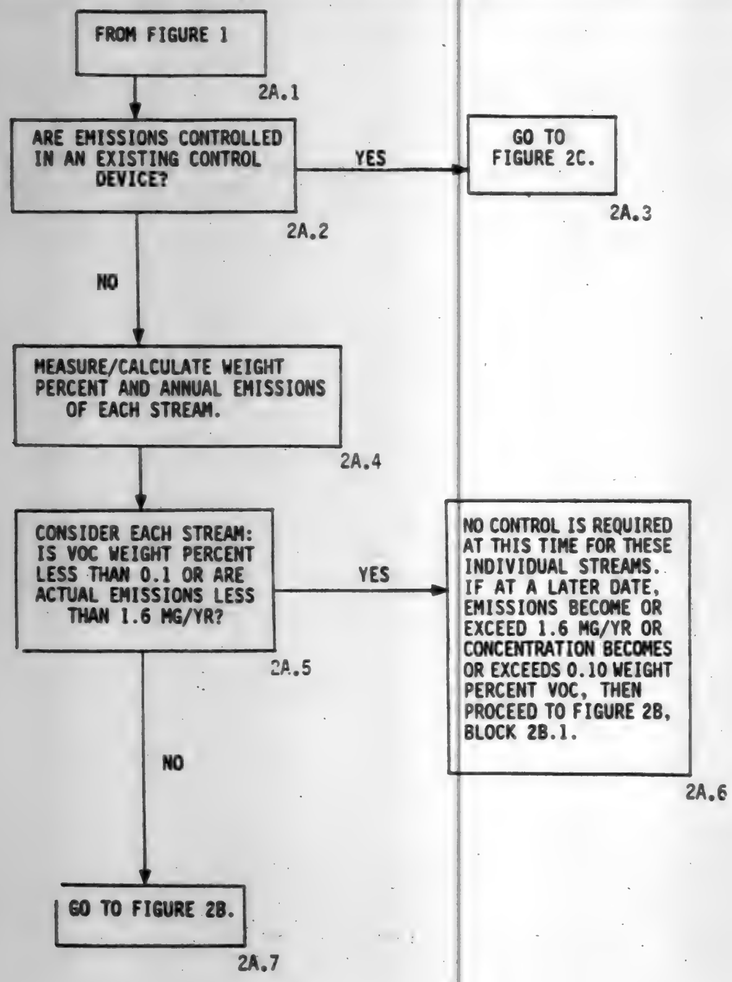



Figure 2A. Continuous Emissions - Separation of Controlled from Uncontrolled Emissions and Individual Stream Exemptions





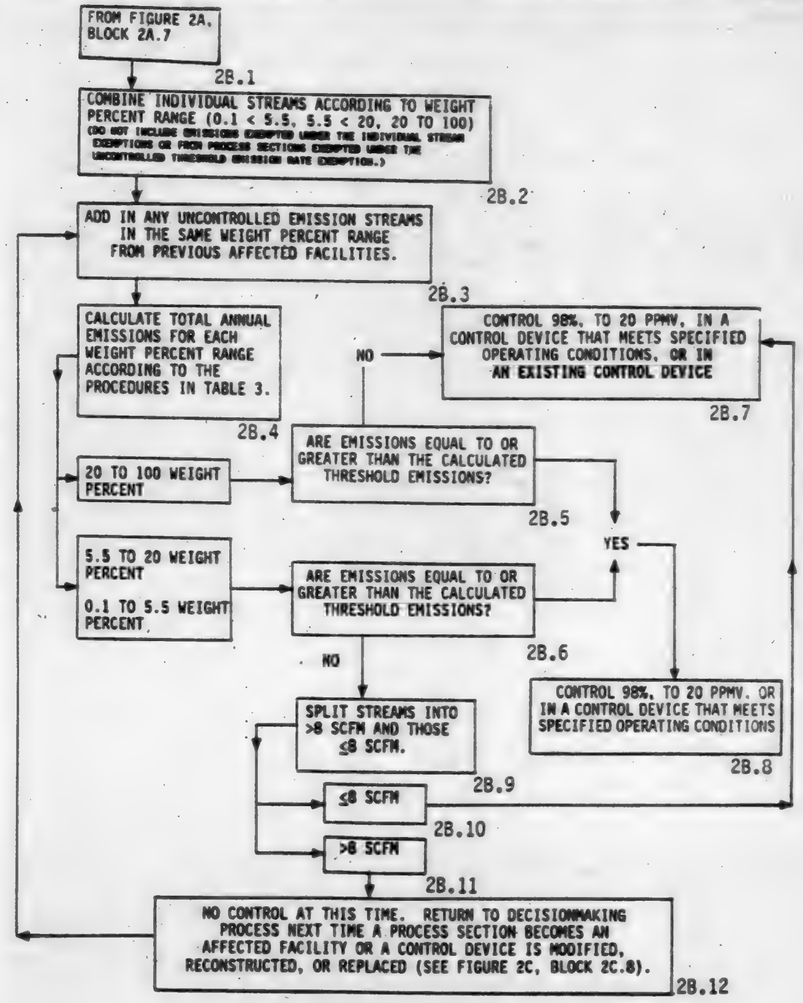
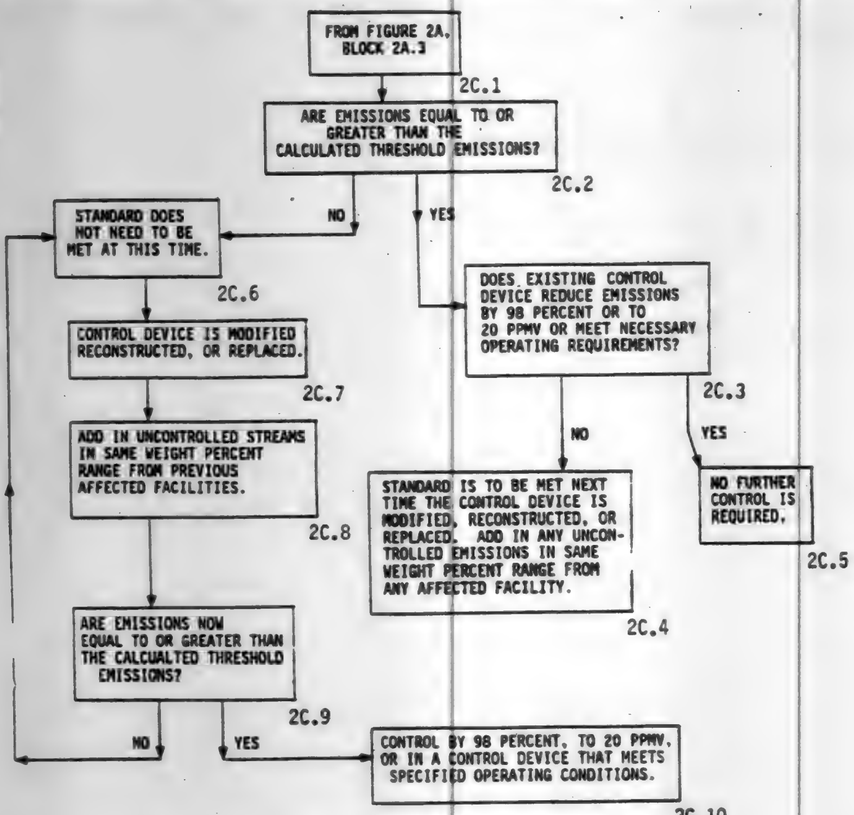



Figure 2B. Decisionmaking Process for Uncontrolled Continuous Emissions from Polypropylene and Polyethylene Affected Facilities

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NOTE: THERE ARE NO INDIVIDUAL STREAM EXEMPTIONS FOR EMISSIONS ALREADY CONTROLLED BY EXISTING CONTROL DEVICES

Figure 2C. Decisionmaking Process for Continuous Emissions Already Controlled at Polypropylene and Polyethylene Affected Facilities





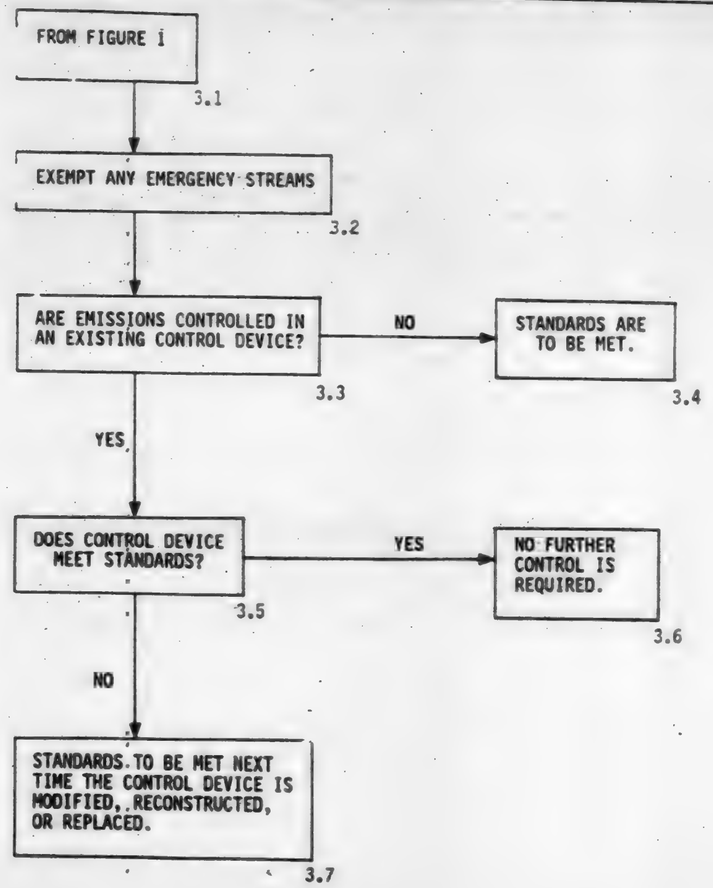



Figure 3. Decisionmaking Process for Intermittent Emissions at Polypropylene and Polyethylene Affected Facilities

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Figure 2B outlines the procedures for combining nonexempt uncontrolled continuous emissions and determining which emissions are to be controlled. This figure corresponds to the steps detailed in Table 3 in the final rule. An important feature of the rule is the "loop" provided between Blocks 2B.12 and 2B.3. In the final rule, uncontrolled emissions that remain uncontrolled after passing through this determination procedure are still subject to control in the future as new process sections become affected facilities.

Figure 2C outlines the procedure for handling emissions that are already being controlled. Note that for these emissions there are no individual stream exemptions as for uncontrolled emissions. The stream characteristics of the inlet stream to the control device are used first to calculate the CTE level and second to compare with the CTE level (Block 2C.2). Also note that uncontrolled emissions are combined with the controlled emissions in one of two ways. First, if the controlled stream is to meet the standards the next time the control device is modified, reconstructed, or replaced (Block 2C.4), any uncontrolled emissions in the same weight percent range as the controlled stream are also to be controlled to meet the standards. Second, if the controlled stream's emissions are less than the CTE level, any uncontrolled emissions in the same weight percent range are combined with the controlled stream (Block 2C.8) if and when the control device is modified, reconstructed, or replaced (Block 2C.7).

Lastly, Figure 3 outlines the determination procedure for intermittent emissions. This procedure is much simpler than for continuous emissions as it is based on stream type rather than stream characteristics. This figure shows the exemption for emergency vent streams and the timing for when the standards are to be met, which depends on whether the intermittent streams are uncontrolled or controlled in an existing control device.

*Polystyrene.* The promulgated process emission standards for polystyrene plants apply to certain new, modified, and reconstructed facilities producing general purpose (crystal) or impact polystyrene or polystyrene copolymers. The standards apply only to certain facilities in those plants producing general purpose or impact polystyrene using a continuous process. These standards do not affect process emissions from facilities that produce general purpose (crystal) or impact polystyrene or polystyrene copolymers using a batch production process or for facilities that produce expandable polystyrene using either an in-situ suspension process or a post-impregnation suspension process.

For plants producing general purpose or impact polystyrene using a continuous process, the affected facility is each material recovery section. The promulgated process emission standards limit the emissions of total organic compounds (minus methane and ethane) (TOC) from each new modified, or reconstructed material recovery section to 0.0036 kilograms (kg) of TOC per megagram (Mg) of product (0.0036 lbs TOC/1,000 lbs product) or the outlet gas temperature from each final condenser in the material recovery section to −25 °C (−13 °F). An owner or operator may also elect to comply with these standards by reducing emissions by 98 weight percent or to 20 ppmv If an owner or operator elects to comply with the outlet temperature standard, the promulgated rule requires a temperature monitor equipped with a continuous recorder to calculate the average exit temperature measured at least every 15 minutes and average over the performance test period. Each 3-hour period constitutes a performance test.

*Poly(ethylene terephthalate)* The promulgated process emission standards for PET plants apply to certain new, modified, or reconstructed facilities producing PET or PET copolymers using either the dimethyl terephthalate (DMT) process or the terephthalic acid (TPA) process. The standards apply only to certain facilities in those plants using a continuous production process. The promulgated standards do not apply to process emissions from facilities that use a batch production process.

For plants producing PET using the DMT process, the affected facilities are each material recovery section and each polymerization reaction section. These standards limit TOC to the atmosphere from each new modified, or reconstructed material recovery section (i.e., methanol recovery) to 0.018 kg of TOC per Mg of product (0.018 lbs TOC/1,000 lbs product) or the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to +3 °C (+37 °F). The promulgated process emission standards limit TOC to the atmosphere from each new modified, or reconstructed polymerization reaction section to 0.02 kg TOC per Mg of product (0.02 lbs TOC/1,000 lbs product) This limit includes emissions from any equipment used to recover further the ethylene glycol for reuse in the process or sale offsite, but does not include organic compound emissions released to the atmosphere from the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction section. If steam-jet ejectors are used to provide the vacuum in the polymerization reaction section, the standards also limit the ethylene glycol concentration in either the liquid effluent exiting the vacuum system servicing the polymerization reaction section or in the cooling water in the cooling tower used to provide the cooling water to the vacuum system servicing the polymerization reaction. If either a low viscosity PET product is being produced using one or more end finishers per process line or a high viscosity PET product is being produced using a single end finisher per process line, the ethylene glycol concentration in the liquid effluent exiting the vacuum system is limited to 0.35 percent by weight based on a 14-day rolling average on a daily basis. If a high viscosity product is being produced using multiple end finishers, the ethylene glycol concentration in the cooling water in the cooling tower is limited to 6.0 percent by weight based on a 14-day rolling average on a daily basis.

For plants producing PET using the TPA process, the affected facilities are each raw materials preparation section and each polymerization reaction section. The standards limit TOC from each new, modified, or reconstructed raw materials preparation section (i.e., the esterifiers) to 0.04 kg of TOC per Mg of product (0.04 lbs TOC/1,000 lbs product). The promulgated process emission standards for each new, modified, or reconstructed polymerization reaction section in which the terephthalic acid process is being used are the same as for the polymerization reaction section in PET plants using the dimethyl terephthalate process.

For determining compliance with the ethylene glycol concentration standards, ASTM–D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Chromatography," is used. At lease one sample per operating day is to be collected with an average ethylene glycol concentration by weight calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test. The promulgated standards allow an owner or operator to institute a reduced testing program if the concentration of the ethylene glycol meets certain criteria.



As an alternative to demonstrating compliance with the 98 percent emission reduction requirements contained in any of the standards outlined above, affected facilities may demonstrate compliance with a TOC emission limit of 20 ppmv. Flares may be used to comply with the promulgated standards, provided the flares are operated under conditions, as specified in § 60.18 of the General Provisions, that have been shown to result in a 98 percent reduction in TOC.

*Fugitive Emissions*

The promulgated standards of performance cover certain equipment leaks of VOC emissions within polypropylene, polyethylene, polystyrene (including expandable polystyrene), polypropylene copolymer, polyethylene copolymer, and polystyrene copolymer manufacturing plants. The equipment leak standards do not cover equipment in PET or PET copolymer manufacturing plants.

The promulgated standards require owners and operators of affected facilities in the plants identified above to comply with 40 CFR part 60—subpart VV—"Standards of Performance for Equipment leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry" (SOCMI) and apply to pumps, valves, sampling connections, pressure relief devices, open-ended valves, and compressors in VOC service within each new, modified, and reconstructed process unit. "In VOC service" means that a fugitive emission source contains or contacts a fluid containing 10 or more percent by weight VOC.

The SOCMI standards that are made applicable to the affected facilities in the plants specified above require: (1) A leak detection and repair program for valves in gas or light liquid service and for pumps in light liquid service; (2) certain equipment for compressors, sampling connection systems, and open-ended valves; and (3) no detectable emissions from pressure relief devices in gas service during normal operation. "In gas service" means that a fugitive emission source contains VOC fluids in the gaseous or vapor state. "In light liquid service" means that a fugitive emission source contains a liquid in which the vapor pressure of one or more of the components is greater than 0.3 kPa at 20 degrees Centigrade, as obtained from standard reference texts or as determined by ASTM Method D–2879, and the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 degrees Centigrade is equal to or greater than 20 percent by weight.

The SOCMI standards allow the use of "leakless" equipment for valves, pumps, compressors and sampling connection systems as an alternative to the required equipment and work practices. In addition, the SOCMI standards for valves provide for the use of alternative leak detection and repair programs. The SOCMI standards also contain a procedure for determining the equivalency of alternative leak detection and repair programs.

One change to the proposed application of subpart VV to polymer manufacturing plants has occurred since proposal. In § 60.482–2(b), there are two definitions of when a leak is detected: (1) "If an instrument reading of 10,000 ppm or greater is measured" and (2) "If there are indications of liquids dripping from the pump seal." Certain polymer pumps are designed to purge polymer fluid from bleed ports, thereby allowing small quantities of VOC emissions to escape to the atmosphere. These pumps must use the polymer fluid to provide lubrication and/or cooling of the pump shaft. While the Agency believes that "indications of liquids dripping from the pump seal" should not be applied to such pumps, the 10,000 ppm or greater definition should be retained to ensure these pumps are not emitting significant quantities of VOC. Further, the Agency does not believe that this exemption should be applied to "new" or replaced pumps, because there are pumps available that do not have this designed-in purge. Therefore, the final rule exempts purging from bleed ports in existing pumps that must have such ports from the "indications of liquid dripping" definition until the pump is replaced or reconstructed.

*Monitoring*

Where an incinerator, a boiler or heater with a heat input design capacity of less than 150 million Btu/hr, or a condenser is used to comply with these standards, a temperature monitor is required. Where a flare is used to comply with these standards, a thermocouple, an ultraviolet sensor, an infrared beam sensor, or similar monitoring device is required to indicate the continuous presence of either the flare flame or each pilot light flame, depending on the types of emission streams being controlled. Where an adsorber is used, a scrubbing liquid temperature monitor and a specific gravity monitor are required. For absorbers, condensers, and adsorbers, an organic monitoring device that indicates the concentration level of organic compounds may be used instead.

The promulgated standards also require owners or operators using a vent system that contains valves that could divert a vent stream from a control device either to: (1) Install a flow indicator, equipped with a recorder, immediately downstream of each valve that if opened would divert the vent stream to the atmosphere or (2) implement monitoring, recordkeeping, and reporting requirements concerning the position of such valves and their car seals.

*Exemption and Threshold Levels*

These standards contain various types of cutoffs. Some of these cutoffs exempt individual process emission streams and groups of process emission streams from control. Other cutoffs identify threshold emission levels, which are used for determining when process emissions from certain affected facilities are to be controlled. The factors considered in selecting these various cutoff levels are specific to the Polymer Manufacturing NSPS, and would not necessarily be appropriate for other source categories. Likewise, the various cutoff levels selected should not be viewed as benchmarks for other standards. Cutoffs found to be necessary for other source categories will be based on factors relevant to those categories, and may or may not resemble those for the polymer manufacturing processes covered under these standards.

## II. Environmental Impacts

The promulgated standards are based on the application of BDT to control VOC emissions from certain polymer manufacturing facilities. To estimate the impacts of the promulgated standards, EPA projected that 85 newly constructed, modified, and reconstructed polymer manufacturing process lines, which is approximately equal to 27 plants, would be affected by the standards during the first 5 years after the effective date of the standards. The EPA estimates that VOC emissions would be reduced in the fifth year following implementation of the promulgated standards by 2.9 to 3.2 gigagrams ($G_g$) (3,200 to 3,500 tons), an emission reduction of approximately 42 percent from projected emission levels under the regulatory baseline. This range results from assumptions as to how new growth in the industry will occur. These estimates are essentially the same as estimated at proposal.

Solid waste impacts are projected to be minimal. The promulgated standards are projected to result in the first five years in less than 0.1 cubic meter ($m^3$) (1.2 cubic feet) per year of solid waste, which would be generated through the use of catalytic incinerators at high density polyethylene (HDPE), slurry

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process plants. As process sections are modified and reconstructed over time, more catalytic incinerators are likely to be installed accompanied by an increase in solid waste. Solid waste generated by VOC equipment leak detection and repair programs include mechanical seals, seal packing, rupture disks, and valves. The solid waste impact of these programs are not anticipated to be significant because of the ability to recycle metal solid wastes and the small quantity of wastes generated.

Noise impacts attibutable to the promulgated standards is also expected to be minimal. Flares can be a source of noise pollution. Noise generated during flaring results from unsteadiness in the combustion process and steam injection. Almost all polymer production processes already have flares located on site. Many of these flares may be used to meet the promulgated standards. For new flares, by employing proper flare design and site selection, potential noise impacts on community areas surrounding each affected plant should be minimal.

No adverse water impact and radiation impacts are expected to occur as a result of the promulgated standards.

### III. Energy Impacts

The promulgated standards would increase energy consumption slightly in most polymer plants through the application of BDT for process emissions. Nationwide, total energy consumption due to process VOC controls is estimated to increase between 11 and 30 terajoules (TJ) per year. The 11 TJ estimate is based upon assumptions concerning how new growth in the industry will occur and the sharing of control devices by individual affected facilities. The 30 TJ estimate is a worst-case estimate in which all growth is assumed to occur as individual process sections and each process section has its own control device. These estimates of increased energy consumption represent small amounts of energy compared to that required to produce a polymer. For example, a HDPE solution process model plant comprised of three process lines would use approximately 24,000 TJ per year. Thus, total nationwide energy consumption is estimated to be between 0.05 and 0.13 percent of the energy consumed in this one model plant.

Application of BOT for equipment leaks of VOC emissions is estimated to reduce VOC emissions that have a total energy value of approximately 66 TJ per year. By taking into account this energy value, the promulgated standards are estimated to result in a net decrease in energy consumption of between 36 and 55 TJ per year in the fifth year after these standards are in place.

### IV. Cost Impacts

The costs for these standards have changed slightly since proposal. Capital costs have increased for polystyrene plants and PET plants reflecting revised condenser costs, which, in part, took into account potential freezing problems that required a different condenser system. The annual costs were also revised to reflect revised unit price costs for natural gas and electricity. The net effect of these changes was marginal. Total nationwide capital costs in the fifth year following the promulgation of these standards is estimated to be approximately $4.3 to $4.5 million (compared to $4.5 million at proposal) and annual costs to be approximately $1.3 million (down from $1.4 million at proposal) (reported in June 1980 dollars).

Under the promulgated standards, increased capital expenditures over the baseline range from approximately $4,600 per process line-equivalent in a PET plant using a DMT process to approximately $273,000 per process line-equivalent in a polypropylene plant using a liquid phase process. Annualized cost increases range from about $1,400 per process line-equivalent in a PET plant using a DMT process to approximately $92,000 per process line-equivalent in a polypropylene plant using a liquid phase process.

### V. Economic Impacts

Adverse impacts would be minor. If all costs are passed through to the customer, maximum price increases range from less than 0.2 percent, for plants producing PET using a DMT process, to approximately 0.44 percent, for polypropylene plants using a liquid phase process. The Agency has determined that the costs of these promulgated standards will not have any significant impacts on the industry.

The environmental, energy, and economic impacts are discussed in greater detail in the background information document for the proposed standards, "Polymer Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–83–019a, and in Docket Items IV–B–13 and IV–B–22.

In addition, the incremental cost effectiveness of alternative levels of control were also evaluated in order to determine the reasonableness of control in light of the costs to reduce emissions and to ensure that the controls required by this rule are reasonable relative to other regulations. Additional details on costs can be found in the BID for the proposed standards.

### VI. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (48 FR 12825), March 28, 1983, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for polymer manufacturing plants recommended for proposal. This meeting was held on April 26, 27, and 28, 1983. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and published in the **Federal Register** on September 30, 1987 (52 FR 36678) and January 10, 1989 (54 FR 890). The preamble to the proposed standards discussed the availability of the BID, "Polymer Manufacturing Industry—Background Information for Proposed Standards," EPA–450/3–019a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on November 16, 1987, at Research Triangle Park, North Carolina. The hearing was open to the public; however, no one presented any comments.

The public comment period was from September 30, 1987, to February 8, 1988 for the September 30, 1987, **Federal Register** notice and from January 10, 1989, to February 21, 1989, for the January 10, 1989, **Federal Register** notice. Some 14 comment letters were received on the first **Federal Register** notice and 11 comment letters on the second notice. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

### VII. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Basis for the Standards, Control Technology-Process Emissions, Control Technology-Equipment Leaks of VOC, Modification/Reconstruction, Monitoring Requirements, Test Methods and Procedures, Reporting and Recordkeeping Requirements, and Miscellaneous.



#### Basis for the Standards

*Coverage of Processes*

*Comment:* Two commenters (IV–D–2, IV–D–14) were concerned that processes that produce certain elastomers and rubber products would be covered by the proposed standards, and that this would be inappropriate. Commenter IV–D–2 felt that the assumption made by EPA that as long as the proportion of propylene used in the production of polypropylene copolymers is at least 50 percent by weight in the copolymer product, the production processes used to manufacture both the polymer and the copolymer are essentially the same, and the resulting definition of polypropylene would include inappropriately their copolymer production facilities that produced ethylene-propylene terpolymers rubber products, which are considered "elastomers" under industry definitions. This commenter stated that the intent of these regulations is to cover thermoplastics and their manufacturers, and that there appears to be a lack of documentation evidencing studies of the processes of rubber manufacturers in the Agency's published documentation. Thus, this commenter concluded, any regulation of their facilities without a more comprehensive study that includes the specific nature of design and manufacture of synthetic rubber producers in premature and could harm any further expansion projects now under consideration.

Commenter IV–D–14 stated that several of their member companies produce synthetic rubbers using processes entirely unlike those used for production of plastics composed of polyethylene, polypropylene, polystyrene or polybis(2-hydroxyethyl)terephthalate. The commenter noted that the composition and physical arrangement of compounds in the polymer molecule result in physical characteristics that are clearly those of a rubber rather than a "thermoplastic." The commenter pointed out that none of their member companies' ethylene/propylene/diene monomers (EDPM) production facilities were included in the surveys conducted by EPA prior to proposal of these rules. In view of the major differences between the polymerization and finishing operations of the EPDM rubber plants and those of the thermoplastic resin plants, this commenter requested that the proposed standards for polyethylene and polypropylene apply to certain sources in polymer manufacturing plants that produce copolymers consisting of at least 80 percent (rather than 50 percent) by weight of ethylene or propylene, respectively.

*Response:* The intent of these standards is to cover certain producers of thermoplastic or thermoset resins and copolymers of these resins that are in turn themselves thermoplastic or thermoset resins. The Agency does not intend for these standards to cover synthetic rubber producers, including manufacturers of thermoplastic or thermoset elastomers, such as ethylene-propylene copolymers and terpolymers that are elastomers or rubbers. Resins are thermoplastic or thermoset polymers that are essentially synonymous with the term plastic. Elastomers are also thermoplastic or thermoset polymers, but are capable of returning the their initial form following deformation. Synthetic rubber and elastomer producers, however may still be regulated in the future under this standard or a new standard should the Agency decide such regulation is warranted.

The Agency agrees that the definition of polypropylene in the September 30, 1987, **Federal Register** notice would have subjected certain elastomer and synthetic rubber producers to these standards, because the definition did not contain the clarifying term "thermoplastic". Therefore, the Agency has revised the definition of polypropylene to include the term "thermoplastic." The Agency believes that the revision to the definition of polypropylene limits the scope of these standards appropriately.

*Comment.* One commenter (IV–D–1) stated that there are more alternative polypropylene technologies than the two listed in BID Vol. I and in the proposed regulations. This commenter assumed that the new source performance standards (NSPS) should be applicable to all polypropylene processes. The commenter then concluded that the NSPS should be amended to include, at least, the "bulk (liquid-phase) polymerization technology." The commenter stated that bulk plant technology, although in principle a liquid-phase polymerization process, is unlike the "traditional" slurry process and hence, conclusions drawn on the basis of the "slurry process" do not apply directly to the bulk process.

Commenter IV–D–45 also noted that in order to determine applicability dates for affected facilities (using Tables 1 and 2 of the proposed regulation), one must still have a clear understanding of which "production process" applies (the applicable model plant) and the definition of "process section" (which equipment falls into which process section), especially where plants have commenced construction, modifications, or reconstruction between the two proposed regulation dates.

*Response:* The commenter is correct in assuming that the standards proposed in the September 30, 1987, **Federal Register** notice were to be applicable to all polypropylene processes. At that time, the Agency understood that all such processes could be described as either liquid phase or gas phase processes and that the model plants described in BID Vol. I were reasonable representations of those processes upon which to base standards. Comments received on the September 30, 1987, **Federal Register** notice, however, indicated that the polypropylene model plants may not be adequate representations of all processes. As a result of this and other comments, the Agency undertook an analysis to examine alternative ways to determine which process emissions from polypropylene (and polyethylene) plants should be controlled. The results of this analysis were presented in a January 10, 1989, **Federal Register** notice for public comment. The approach selected by the Agency and incorporated into the final rule is independent of the particular process technology used to produce polypropylene or polyethylene. Thus, the non-representatives of the polypropylene, liquid phase model plant presented in BID Vol. I as it applies to the bulk process is no longer a concern.

For polypropylene facilities that are constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989, the owner or operator of such facilities must still determine which process—liquid phase or gas phase—his or her facility falls under for purposes of determining the affected facilities. The final rule requires an owner or operator to select one of the production processes listed in Table 1 of the final rule to apply to his or her facility. The determination of which emissions from these affected facilities

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would be controlled are made using the new approach, which is independent of process type, rather than the control/no control decisions that were based on the model plant. However, an owner or operator can still use the uncontrolled threshold emission rates proposed in the September 30, 1987, **Federal Register** notice to exempt these affected facilities from control, if he or she so elects.

*Definition of Affected Facility*

*Comment:* One commenter (IV–D–13) stated that the selection of process sections as affected facilities results in unreasonable cost and gives unfair trade advantage to patent holders of these processes which the Agency selected as model plants. The commenter stated that the proposed standards will require companies with existing polymer plants to divide up their plants into process sections and process lines, creating a need to develop expensive new accounting and recordkeeping methods and procedures to determine if modifications occur. The commenter stated that plants are not designed, estimated, justified and built, and cost centers are not usually set up by process sections. A large polypropylene or polyethylene polymer plant may have as many as 10 to 15 affected facilities, according to the commenter, and over the course of a year many small changes may be made to these plants. To evaluate whether a modification that has been made falls under the proposed rules, the commenter stated that completely new accounting systems must be developed and implemented. For existing polypropylene and polyethylene plants, the commenter believes a more reasonable choice would be to designate each process line as the affected facility. The commenter stated that a problem recognized by EPA concerning the choice of process units, i.e., "a process line cannot be determined clearly" (52 FR 36863), is even more of a problem with the selection of process section as the affected facility. Specifically, the commenter pointed out, material recovery is being utilized more and more by the industry as a means of reducing overall emissions. According to the commenter, in the model plants studied by the Agency, material recovery occurred primarily after the reaction section, while modern plants continue the recovery of raw materials throughout the process line, wherever it can be done economically. The commenter concluded that the standards need to be revised to a process line concept.

*Response:* The main considerations in selecting the definition of affected facility are the application of best demonstrated technology and the degree to which replacement equipment is brought under the standards. As a result, narrower definitions are preferred. This preference can be overcome if analysis concludes that a broader designation would result in greater emission reductions or avoid unreasonable impacts (i.e., costs, energy, or other environmental impacts). The commenter's main point for changing the definition of affected facility is the need by industry to develop and implement completely new accounting systems to track costs for as many as 10 to 15 affected facilities in a large polypropylene or polyethylene plant. The commenter also believes that defining process sections is even more difficult than defining a process line and refers to changing practices of material recovery in the industry.

The Agency disagrees with the commenter on both points. The imposition of new regulations on the industry would likely require some plants to develop new accounting systems to track modifications and reconstructions whether the definition of affected facility is "process section" or "process line." Furthermore, under either definition, the owner or operator would still need to track all changes. The only difference is the number of affected facilities that would be tracked. On this issue, the commenter claims that 10 to 15 affected facilities is too many. The Agency simply disagrees with this statement. The Agency rejected designating each individual emission point as an affected facility because a typical plant may have as many as 40 individual process emission points; a large plant may have substantially more. In terms of process sections, the commenter notes that a large plant may have 10 to 15 process sections; a typical plant would likely have fewer. The number of process lines at any plant will always be less than the number of process sections; but, the Agency is not convinced that at large plants 10 to 15 affected facilities is unreasonable.

With regard to the second point, the commenter claims that the definition of "process section" is even more of a problem than that of a "process line." The Agency again disagrees. The example provided by the commenter may not match the material recovery section of the model plant, but that is irrelevant to the definition. The concept of material recovery is the key aspect of identifying the material recovery process section or material recovery process sections at a plant. (The Agency has revised the definitions of the process sections to help clarify the placement of equipment in the appropriate process section (see § 60.561, Definitions, of the final rule and § 2.2, Definition of Affected Facility in the BID for the promulgated standards).) Further, the Agency identified a major conceptual problem with trying to define a "process line," where equipment was shared between two otherwise distinct process lines. The commenter offered no suggestions as to how to deal with that problem.

In summary, the Agency finds no reason to change the definition of affected facility for process emissions.

*Model Plant vs. Generic Approach*

The majority of comments received dealt with the appropriateness of using model plants as the basis for determining which process emissions from polypropylene and polyethylene plants would be subject to the standards. Based on these comments, the Agency has adopted a "generic" approach in the final rule, which is basically the same as that approach presented in the January 10, 1989, **Federal Register** notice reopening the public comment period.

*Comment:* Several commenters (IV–D–6, IV–D–7, and IV–D–8) stated that, in many cases, the model plants used to develop this standard do not adequately reflect current operation of manufacturing plants. For example, Commenter IV–D–7 referred to the model plant for low density polyethylene (LDPE) based on the UNIPOL process. This commenter noted that the model plant did not consider the modified UNIPOL process that has a pelletizer section added and the linear low density polyethylene (LLDPE) solution process. The commenter stated that emission characteristics differ significantly from the model plant, but are controlled the same. The commenter then stated that the gas phase process for polypropylene failed to consider emergency atmospheric vents that are used on newer plants. Therefore, Commenter IV–D–8 suggested that these model plants be reviewed to ensure that they are representative of operating plants throughout the industry. Similarly, Commenters IV–D–6 and IV–D–8 stated that there are several aspects of the fluid bed gas phase polyethylene process model plant (used to describe the LDPE low pressure and HDPE gas phase processes) that do not reflect actual current operations. A number of specific discrepancies (and the changes suggested by Commenter IV–D–8) were identified by the commenters.



Commenter IV–D–8 also stated that by using reaction mechanisms as the models for developing the NSPS control requirements EPA has tailored the rule to these particular patented processes and that this provides an unfair advantage for both the licensors and licensees of those technologies because the sale of licenses is due, in part, to the ability of a process to comply with applicable environmental standards. The commenter pointed to the low pressure, LDPE process as the best example. The commenter stated that when the model plant for this process was developed, the only process in use was a fluid bed gas phase facility licensed by a major U.S. chemical company. Since that time, the commenter continues, both a slurry and a solution process have been revised to produce the linear low density product, and a new gas phase facility licensed by a major British petrochemical company is currently under construction. According to the commenter, these newer processes differ greatly from the low pressure process that the Agency considers state-of-the-art. The commenter notes that if the NSPS is promulgated as written, it will require that similar new installations, as well as existing units that are modified or reconstructed, be equipped with emission controls designed specifically for the fluid bed gas phase facility. The commenter suggests that the economic penalty resulting from this action be considered before the regulation is finalized.

This commenter then suggested that it might be more appropriate for EPA to establish control requirements based on the system pressure and process type rather than the specific technology used because system pressure (not reaction mechanism) is the primary factor influencing emissions from polyolefin manufacturing facilities and will determine the relative ease at which unreacted raw materials are removed from reacted mixtures. The commenter also stated that system pressure will also be a factor in defining the process step from which the unreacted raw material will be emitted, noting that the higher pressure processes tend to hold on to the unreacted materials longer, thereby yielding greater emissions in later process steps (i.e., product storage).

The commenter illustrated this suggestion by breaking the polyethylene processes into two broad classes—high and low pressure. Under the low pressure classification, the commenter indicated that there are presently three commercial processes—(1) Gas phase, (2) liquid slurry and (3) liquid solution. According to the commenter, each of these processes in the newer and more recently modified plants has the capability of manufacturing both HDPE and LDPE. Under the high pressure classification, the commenter indicated that there are presently two commercial processes—(1) tubular and (2) autoclave—both of which manufacture conventional LDPE.

The commenter pointed out that under the proposed regulation, if these low pressure solution or slurry process plants manufacture LLDPE, then they are grouped with the gas phase model plant, while if they manufacture HDPE, they are grouped with either the HDPE solution model or the HDPE slurry model. The problem or inconsistency with this result, according to the commenter, is that from a product, process, and emissions point of view, when a solution plant manufactures LLDPE it actually more closely resembles the HDPE solution model and when a slurry plant manufactures LLDPE, it more closely resembles the HDPE slurry model than the gas phase model plant. Finally, the commenter pointed out that the product finishing areas of modern solution and slurry LDPE plants resemble the HDPE solution and HDPE slurry model plants much more than they do the gas phase model plant.

Commenter IV–D–8 stated that there are no intermittent (non-emergency) vents from the product finishing and product storage process sections in high pressure, LDPE plants. This commenter pointed out that continuous emissions from these two process sections were not proposed for control and felt, therefore, that these sections should not be considered as affected facilities.

*Response:* These comments were made in response to the September 30, 1987, **Federal Register** notice. The Agency took these comments under consideration and as a result of extensive analysis presented in the January 10, 1989, **Federal Register** notice, a new approach for determining which process emissions from all polypropylene and polyethylene plants would be subject to control. The new approach encompasses all emission streams and process sections in these types of polymer plants as an integral part of the new approach. The new approach does away with the need to define model plants and the Agency determined it was unnecessary to revise the model plants. Under the new approach, it may be possible that certain processes do not have one type of emissions from certain process sections or lack one of the basic process sections. It is not the intent of the new approach to identify such specific situations, thereby potentially limiting its applicability, if not now, then in the future as processes change. Therefore, the Agency has retained as designated affected facilities under the new approach all process sections and emissions from polypropylene and polyethylene plants, as was presented in the January 10, 1989, **Federal Register** notice.

*Low VOC Concentration Streams*

*Comment:* Three commenters (IV–D–6, IV–D–8, IV–D–13) expressed concern over requiring control of dilute streams. Commenters IV–D–6 and IV–D–8 stated that the Agency has not demonstrated that using a device that is 98 percent efficient or reducing the TOC concentration to 20 ppmv on a dry basis (corrected to three percent oxygen content) is either possible or economically reasonable for dilute gas streams. The commenters noted that control of dilute streams has become much more significant since the industry now relies more heavily on material recovery for control and, as a result, the extent to which low concentration (TOC) streams now exist in these processes was not anticipated and the difficulty and expense involved in controlling these streams was not considered by EPA. Commenters IV–D–8 and IV–D–13 concluded, that, unless EPA can establish the availability and cost effectiveness of controls for dilute gas streams, controls should not be required.

Commenter IV–D–8 also stated that if BID Vol. I did in fact establish that 20 ppmv is the lowest VOC concentration achievable by combustion of gas streams containing less than 2,000 ppmv VOC, then the lowest achievable VOC concentration is controlled far greater than the best technology system called for by Section 111 of the Clean Air Act.

Finally, the commenters suggested that EPA should also establish a procedure in the regulation that would exempt any dilute concentration stream in any affected facility from control if it can be shown that control of that stream is not cost effective. Commenter IV–D–8 suggested as one possible way to do this is to consider the application of a Total Resource Effective (TRE) Index to the subject vent streams. This was also suggested by the other two commenters. If a suitable alternative test cannot be provided, the commenter (IV–D–8) continued, EPA should exempt all low concentration streams from control in this standard using the same rationale it

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used to exempt the continuous vent streams from the product storage bins.

*Response:* The BID for the proposed standards summarized information contained in Docket Items II–B–4 and II–B–5. These docket items contain the conclusions reached by EPA concerning thermal incinerator performance over a number of tests. The Agency believes that the conclusions reached in those docket items are still valid and support the proposed standard. Furthermore, the new approach presented in the January 10, 1989, **Federal Register** notice and adopted in the final rule considers a wide range of low VOC concentration streams and the cost of their control for determining the level of emissions necessary for control to be cost effective. The final rule incorporates a low VOC concentration exemption for new and existing affected facilities.

With regard to specific points raised by the commenters, one commenter (IV–D–8) suggested that 20 ppmv is more stringent than the best technology system called for by Section 111 of the Clean Air Act (presumably calculating 99 percent reduction (2000–20/2000=0.99)], which is more stringent than the 98 percent destruction. The commenter is incorrect, but the Agency understands the confusion. In evaluating the performance capabilities of incinerators, the Agency examined a large number of streams that had combustion air added to them prior to being combusted. For these streams, the tests showed a leveling off at 20 ppmv at the outlet when the concentration of streams with combustion air fell below 1,000 ppmv. In other words, 98 percent destruction was still being achieved by emission streams with combustion air that had VOC concentrations down to 1,000 ppmv. Many of the streams examined, however, required combustion air to be added to them. The amount of combustion air required typically reduced the VOC concentration by one-half. Thus, 2,000 ppmv of VOC before combustion air is required could be incinerated by 98 percent (on a weight basis). In summary, the 20 ppmv standard does not require a greater degree of control than the best technology system, which is 98 percent destruction by weight.

*Comment:* Four commenters (IV–D–39, IV–D–43/IV–D–50, IV–D–44, IV–D–45) expressed concern over the lack of an exemption for streams with less than 0.1 weight percent VOC from new affected facilities. The commenters noted that the Agency's reason for excluding new affected facilities from the low VOC concentration exclusion was to preclude operators from purposefully diluting streams to benefit from the exemption. Commenter IV–D–39 pointed out that "intentional dilution is circumvention of control, which is already forbidden." The commenters all believed that the lack of this exemption would result in the imposition of controls that were not cost effective. Commenter IV–D–43/50 identified several reasons as to why very low VOC concentrations (0 to 5 percent of the lower explosive level (LEL)) are found in the industry and stated that EPA should not require companies to compromise safety by requiring higher VOC concentrations when history has led industry to use more dilute levels to ensure employee safety.

As a group, the commenters recommended that EPA use the same procedures for determining control of dilute VOC streams (<5.5 weight percent VOC) for new affected facilities as it did for modified and reconstructed facilities, and the EPA promulgate the same provisions for determining control required for new facilities as it has proposed for modified and reconstructed facilities. Commenter IV–D–45 stated that not to do so would subject the proposal to allegations that it is not representative of all affected facilities in the categories being regulated, hence defective.

*Response:* The Agency has carefully considered this issue. The Agency is still concerned that new facilities could be designed so as to "take advantage" of a low VOC concentration cutoff, and at less expense than the cost of controlling the streams. One commenter (IV–D–43/50) indicated that the Agency could compare the purge air rates of a new facility with existing rates. The Agency agrees that this could be a useful mechanism to evaluate whether a company is trying to intentionally dilute the stream to circumvent the rule. The Agency is concerned that this is not necessarily applicable in all cases, either because it is a first time facility for an owner or operator or because its technology is sufficiently different from the technology at existing facilities that a comparison is inappropriate. Another commmenter (IV–D–45) pointed out that the nature of storage bin purges are such that the VOC concentration is initially high and drops over time, and that such equipment and air purges are designed so that the maximum concentration would be between 20 and 25 of the LEL. The Agency believes that recognition of this design feature is a useful tool for evaluating whether "to much" dilution is taking place. This again is somewhat limited in that not all dilute streams will have VOC concentrations that vary as dramatically as might occur in storage bins. On the other hand, designing storage bin air purge rates so as to have maximum VOC concentrations at 20 and 25 percent of the LEL makes it more difficult to justify streams that are diluted so that the maximum VOC concentration is significant below this level. By examining these and other items (e.g., design criteria for pneumatic conveyors), the Agency now believes that there are a sufficient number of indicators that can be used to judge whether intentional circumvention is being practiced at new facilities. Therefore, the Agency has extended both the VOC concentration exemption and the calculated threshold emission equations used for existing affected facilities to new affected facilities.

*Applicability of Generic Approach*

*Comment:* One commenter (IV–D–44) stated that the model plant approach, contained in the September 30, 1987, proposal, excluded certain process sections from being affected facilities for both continuous and intermittent emissions, and that the January 10, 1989, proposal appears to provide an exemption for only facilities exempted by Table 1. According to the commenter, it would be unfair to penalize projects which commenced construction, modification, or reconstruction under this September 30, 1987, guidance and on or before the January 10, 1989, proposal, which were not designated as affected facilities in the September 30, 1987, proposal. The commenter then stated that the Agency recognized (54 FR 906) that certain emissions and process sections not required to be controlled under the standards proposed on September 30, 1987, may be required to be controlled under the new approach and therefore, the Agency proposed to resolve this potential compliance problem by proposing a new applicability date (i.e., January 10, 1989) for those facilities that would have been excluded under the original proposal, but subject under the new approach. The commenter recommended that the model plant approach (September 30, 1987, proposal) should be the governing standard for polypropylene and polyethylene construction, modification, and reconstruction projects which can be shown to have commenced after September 30, 1987, but on or before January 10, 1989.

*Response:* The January 10, 1989, **Federal Register** notice does what the commenter recommends in Table 2 of the regulation portion of that notice. Table 2 lists all the emission and process sections that were excluded as



affected facilities in the September 30, 1987, notice and applies a January 10, 1989, applicability date to these emissions and process sections. Thus, as indicated in the January 10, 1989, **Federal Register** notice and as provided for in the final rule, only those process sections identified in the September 30, 1987, **Federal Register** notice are affected facilities when constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989, for the appropriate continuous or intermittent emissions. It should be noted that the procedure for determining control or no control of the emissions from these process sections is the "generic" or new approach. The uncontrolled threshold emission rates proposed in the September 30, 1987, **Federal Register** notice, however, can still be used for these affected facilities, if an owner or operator so elects, to exempt individual process sections from control. (Note: Process sections that are exempted on the basis of an uncontrolled threshold emission rate become subject to the standards if the uncontrolled emissions exceed the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.)

*Comment:* One commenter (IV–D–5) stated that it is possible for equipment to be designed to produce more than one of the polymers covered by the proposed standards. The commenter pointed out that the preamble indicates that merely switching production from one type of polymer to another would not be classified as a "modification" as long as the original equipment was designed to accommodate both products. The commenter requested clarification as to which category of polymer process (and thus standards) would be applicable to new facilities that are designed to produce more than one polymer using the same process equipment

*Response:* The situation described by the commenter had not been envisioned by the Agency when the standards were proposed on September 30, 1987. Where a new facility is constructed, modified, or reconstructed after January 10, 1989, the situation described by the commenter does not exist because the same procedure is applied for determining control regardless of whether a LDPE, HDPE, or polypropylene product is being produced. However if a facility is built after September 30, 1987, and on or before January 10, 1988, the standards to be met could be different where that facility is designed to produce more than one polymer (e.g., HDPE and LDPE) as different process sections (and their emissions) were designated as affected facilities depending upon whether HDPE or LDPE was being produced. As presented in the January 10, 1989, **Federal Register** notice, the new approach did not guide an operator or owner in determining which process sections are to be considered affected facilities for those process sections constructed, modified, or reconstructed on or before January 10, 1989, where two types of polymers (e.g., LDPE and HDPE) are produced in the same equipment.

In addition, the uncontrolled threshold emission rate to be applied in exempting emissions from control differ depending on whether HDPE or LDPE is being produced. The January 10, 1989, **Federal Register** notice allowed owners or operators the option to exempt from control emissions that under the new approach would require control, but could be shown under the model plant approach to be exempt from control through the use of the uncontrolled threshold emission rate exemption. (Note: Process sections that are exempted on the basis of an uncontrolled threshold emission rate become subject to the standards if the uncontrolled emissions exceed the uncontrolled threshold emission rate at a later date or if the process section is modified or reconstructed after January 10, 1989.)

The Agency considered several options to clarify which process sections and uncontrolled threshold emission rates are to be used where a facility is designed to produce more than one polymer using the same process equipment. Of the options considered, the Agency selected the option that would allow the owner/operator to select one model plant (presumably the one that most closely matches the hybrid facility) for the purpose of determining the affected facilities with a September 30, 1987, applicability date and use the uncontrolled threshold emission rates for those process sections as identified in the September 30, 1987, **Federal Register** notice.

*Comment:* Three commenters (IV–D–7, IV–D–8, IV–D–13) recommended that any existing facility which becomes modified should not have to meet the requirements of section 60.562–1 if the facility's existing emissions (controlled or uncontrolled) are already equal to or less than the rates in Table 1 of the proposed standards. The commenters stated that proposed exemption rates failed to consider that there are some existing facilities, which will become modified, that are already achieving significant emission reductions through existing State and prevention of significant deterioration permits, and that additional controls are likely to be installed on existing facilities as a result of State Implementation Plan revisions for ozone nonattainment areas.

Another commenter (IV–D–47) stated that the criteria for determining applicability should not be termed "uncontrolled emissions," but "Federally enforceable emissions limits" in order to allow credit for the emissions controls that have already been required by State Air Pollution Control Agencies.

*Response:* The Agency agrees that the regulation needs to take into account emission streams that are already controlled as a result of State regulations, especially those that are Federally enforceable. The promulgated regulation requires an owner or operator to examine the uncontrolled emissions (i.e., those that would be emitted to the atmosphere in the absence of an add-on control device). Where an emission stream in an affected facility is controlled by an existing control device (i.e., one that was operating before September 30, 1987, or one that was operating between September 30, 1987, and January 10, 1989, on emissions from a process section that was not identified as an affected facility in the September 30, 1987, **Federal Register** notice), the inlet conditions to the control device would be examined to determine whether that emission stream is required to be controlled by BDT. Individual streams that are vented to the same control device constitute a single stream. The following describes how control determinations are to be made for controlled streams.

For polypropylene and polyethylene affected facilities with an applicability date of September 30, 1987, but before January 10, 1989, the inlet emission rate is compared to the uncontrolled threshold emission rate for the appropriate process section and type of emission (i.e., continuous or intermittent). If the inlet emission rate is equal to or less than the corresponding uncontrolled threshold emission rate, no further control is required. However, if the inlet emission rate were to exceed the uncontrolled threshold emission rate at some time in the future, then the new approach for determining which process emissions are required to meet the standards, as discussed in the following paragraphs, would be used to redetermine whether these emissions need to be controlled to meet the standards in the final rule. The new approach would also be used in those instances where the inlet emission rate

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is greater than the corresponding uncontrolled threshold emission rate.

For polypropylene and polyethylene affected facilities with a January 10, 1989, applicability date and for those facilities identified above, the new approach would be used. Under the new approach, the annual emissions of the inlet emission stream would be compared to the CTE level, which would be calculated based on the TOC weight percent of the inlet stream.

If the emissions (Mg/yr) of the stream entering the control device are greater than or equal to the CTE level, then that stream is subject to BDT (98 percent reduction, 20 ppmv, control in flare meeting the specified operating conditions). If the existing control device is meeting BDT, then no further control of the stream (or combined streams) is required. If the existing control device is not meeting BDT (e.g., only achieves 90 percent reduction), then the emission stream is required to be controlled to BDT at the next available opportunity. The Agency considers this to be a reasonable approach because the cost of immediately retrofitting the control device would be high compared to the incremental emission reduction obtained during the interim period. The next available opportunity constitutes the next time the existing control device is reconstructed or replaced or its operation is changed as the result of changes in State or local requirements. At such time, any uncontrolled emissions in the same weight percent range from any affected facility are also required to be controlled.

If the emissions (Mg/yr) of the stream entering the control device are less than the CTE level, BDT is not required at that time. Whenever the existing control device is reconstructed, replaced, or changed (as discussed above), the controlled stream is reevaluated to see if BDT is required by combining its annual inlet emissions with the annual emissions of any uncontrolled vent stream within the same weight percent range and comparing the combined emissions to the CTE level, which is calculated based on the TOC weight percent of the combined emissions. If these combined emissions are now equal to or greater than the CTE level, BDT is required for the controlled and uncontrolled vent streams.

It is important to note that the "delay" in applying BDT to a controlled stream does not affect the timing for applying BDT to uncontrolled emission streams. Application of BDT is required for all uncontrolled emissions as soon as the total annual emissions for a combined stream (or single stream) are equal to or greater than the corresponding uncontrolled threshold emission rate.

For all polystyrene and PET affected facilities, if the inlet emission rate is less than or equal to the uncontrolled threshold emission rate, then the existing control does not need to be BDT. If the inlet emission rate is greater than the uncontrolled threshold emission rate, then the stream is required to meet BDT at the next available opportunity (as discussed above).

### Control Technology—Process Emissions

#### Intermittent Emissions

*Comment:* Commenters identified several concerns related to the January 10, 1989, **Federal Register** notice regarding the proposed generic approach for determining which intermittent emissions from polyethylene and polypropylene plants would be required to be controlled. Commenter IV–D–43 pointed out that the regulation presented in the January 10, 1989, **Federal Register** notice, which now requires that intermittent vents in an affected facility be combusted by a flare, allows an exemption for decompositions, but no longer exempts emergency intermittent streams [§ 60.562–1(a)(2)] as was provided for in the September 30, 1987, **Federal Register** notice. The commenter stated that the exemption for emergency vents should be retained for reasons of personal safety, lack of available technology, and cost. Primarily for these reasons, the commenters also expressed concern over the definition of decomposition.

The following paragraphs summarize these comments into one of three categories: (1) The availability and adequacy of technology for controlling all intermittent releases other than decompositions; (2) the cost of controlling emergency releases other than decompositions; and (3) the definition of "decomposition". For additional detail, please refer to section 2.6.6, Emergency Stream Exemption, in Chapter 2, and section 3.3, Intermittent Emissions, in Chapter 3 of BID Vol. II.

*Control technology.* Several commenters questioned the availability of controls for non-decomposition emergency releases and the safety of requiring controls for such releases. Commenters made this comment primarily in reference to high pressure releases from the LDPE, high pressure process.

Commenter IV–D–48 stated that facilities required to capture non-decomposition emergency releases in a high pressure plant would likely have to design to criteria for facilities designed to capture decomposition emissions, because decomposition emissions are going to exit through the same emergency release system (i.e., open dump valves or blown rupture discs). According to the commenter, a containment system to capture a high pressure emergency release would create an undesirable safety risk because of the enormous size of the system and the possibility of overpressurization or internal ignition that could cause a catastrophic explosion. To minimize these problems, the commenter stated that an enormous vent collection system would be required to collect the emergency release and feed it to a flare, and each emergency vent collection system would require a sophisticated polymer filtering system that would not create backpressure in the system. The commenter stated that they were not aware of any such system in this service. Commenter IV–D–47 stated that, until technology to control such releases is developed, safety concerns should mandate venting such releases to the air.

More generally, Commenter IV–D–44 stated that the requirement that each intermittent vent stream other than decompositions be controlled does not take into account that some intermittent streams for safety reasons cannot be controlled in a flare system. This commenter pointed out that relief valves are extensively used in the chemical industry for protecting pressure vessels from the over-pressurization which may occur for a number of reasons (i.e., fire, exothermic reaction, inadequate cooling). The commenter noted that, based on the definition of "Intermittent Emissions" (52 FR 36707), the emissions from relief valves would be included as an intermittent emission source, thus requiring control. This commenter stated that relief valves in the polyethylene industry are primarily vented to flare systems and secondary relief devices that vent emissions to the atmosphere are only used when normal venting to flare is too slow to protect plant personnel from injury or prevent mechanical damage to the plant. As an example, the commenter noted that should for any reason the flare header become plugged (which has happened) and a plant experiences an emergency situation, the secondary relief valve would be the only avenue of process relief to protect personnel and equipment. In the commenter's opinion, requiring these to be controlled would compromise the safety and integrity of the process unit.



*Costs.* Most commenters (IV–D–39, IV–D–42, IV–D–43, IV–D–44, 45, 46, 47, 48) expressed concern over the costs of controlling certain intermittent streams that would be incurred because of the way the types of intermittent streams were defined in the January 10, 1989, **Federal Register** notice. Commenter IV–D–39 pointed out that their HDPE and polypropylene plants do not contain decomposition streams, but they do have runaway reactions. The commenter pointed out that they have in the past installed rupture discs under pressure safety valves to vent to the atmosphere emissions from these runaway reactions. According to the commenter, these emissions would not be allowed to be vented to the atmosphere under the proposed rule presented in the January 10, 1989, **Federal Register** notice, and significantly higher equipment costs (e.g., flare header size) would be incurred.

Commenter IV–D–44 stated that routing of other emergency vent streams, which currently utilizes an automatic control mechanism for atmospheric venting, to a control device may be significantly different in cost for retrofit of an existing unit versus cost for a new unit, that the cost for retrofitting the control and associated hardware would be excessive, and therefore the regulation should allow for a cost effective-justification review for retrofit requirements.

Commenter IV–D–46 stated the cost of controlling high pressure emergency releases, as would be required by the proposed procedure outlined in the January 10, 1989, **Federal Register** notice, would be prohibitive, if achievable. This commenter stated that the control facilities required to capture a high pressure, non-decomposition emergency release or a high pressure decomposition emergency release would be similar in design and cost, the control of either would be not cost effective; and, therefore, all emergency releases should be excluded from the need to be controlled.

Two commenters (IV–D–42 and IV–D–48) expressed concern that the proposed standards as presented in the January 10, 1989, **Federal Register** notice would require control of the UNIPOL emergency reactor blowdown. These commenters indicated that these emergency blowdowns are very infrequent and occur as a result of a runaway reaction. The commenters stated that the consequences of not having an emergency blowdown are quite costly (because of a resin meltdown in the reaction). Commenter IV–D–42 stated that the alternative of using a very large flare to handle these very short duration emergency blowdowns is extremely expensive and has been documented in their comments to the September 30, 1987, proposed rule.

*Definition.* Several commenters expressed concern that the definition of decomposition, which was proposed in the January 10, 1989, **Federal Register** notice, would exclude certain intermittent streams that should also be exempted from control requirements under these standards. Commenter IV–D–47 stated that the distinction between decomposition releases and planned releases to prevent decomposition is a matter of semantics more than a technical difference as the technological difficulties for controlling each release are similar. The commenter pointed out that the time interval between detection of a need to release and the time that decomposition actually occurs is on the order of one second. According to Commenter IV–D–44, there is no system that can distinguish between an out-of-control condition and a false indication, therefore the same preventative measures must be taken quickly in either case to protect equipment and personnel.

Another type of comment concerning the definition of decomposition was that certain facilities did not experience decompositions, but had other types of runaway reactions or upset conditions that should also be excluded from control because of the high costs of controlling such releases. As noted earlier, two commenters (IV–D–42 and IV–D–48) were concerned that the definition of decomposition did not appear to include the UNIPOL emergency reactor blowdowns. Due to the cost of control, these commenters recommended that UNIPOL emergency reactor blowdowns be excluded from control in the same manner as "decompositions."

Commenter IV–D–47 stated that the Agency's proposed rules should provide an exemption for upset operations emissions in the polypropylene process. Commenters IV–D–47 noted that current polypropylene technology is such that runaway reactions do not occur. In the event of a power failure affecting the recirculation compressors, the commenter stated that the reactor beds would no longer be fluidized and unless the reactor is vented the reaction will continue to the point of making one large polymer "chunk" in the reactor. According to the commenter, the clean up procedure following such an occurrence would require personnel to enter the reactor vessel where potential pockets of decomposition gas remain. The polymer "chunk" would have to be cut into small blocks using air-driven saws. The downtime required for this situation may take two weeks and be very labor intensive and costly. The commenter pointed out that while such an occurrence is very infrequent, upset operations emissions do occur and requested that they be addressed in the proposed regulations.

*Response:* The Agency partially agrees with the commenters. The Agency agrees that the definition of "decomposition" was (unintentionally) too narrow and would have resulted in costly applications of the technology. On the other hand, the Agency has found control systems available and demonstrated for all types of intermittent emissions, although such systems are not used uniformly throughout the industry. The Agency has found that process design is an important factor in the particular control system used at a plant. Thus, some intermittent emissions are released to the atmosphere because they are a part of the process design for maintaining normal operations, for preventing more serious process upsets, or for relieving process equipment when process conditions exceed the design capacity of the system. Regardless of the particular set of intermittent emissions a particular system was found to control, in every case, each system can be designed and operated in a safe manner. However, the Agency agrees with the commenters that some types of intermittent releases may not be reasonable to control on the basis of the costs and emission reduction involved. The following paragraphs focus the Agency's response to this set of comments in the same three general areas as used above: Control technology, costs, and definition.

*Control technology.* The commenters were primarily concerned with the availability of technology for controlling non-decomposition emissions from LDPE, high pressure plants. These emissions can be very similar to decompositions emissions in terms of the length of release (very short) and the magnitude of the volume of the release (very large). The commenters also mentioned the control of relief valves that protect process vessels during times of fire, exothermic reactions, and inadequate cooling. The commenters felt that the definition of decomposition in the January 10, 1989, **Federal Register** notice would require control of these streams, and that such control technology was unavailable for the safe control of such streams. The Agency understands and concurs with the need to provide safe operations and does not

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expect that operators would do anything unsafe in response to these standards. There is always the possibility of safety concerns with any manufacturing process, including its air pollution control equipment. The Agency expects operators to act prudently when complying with the standards by designing and operating air pollution control equipment properly. In selecting BDT and drafting standards, EPA considers only demonstrated technologies, as required by the Clean Air Act, and, therefore, only requires technologies that can be properly designed and operated.

Intermittent releases from polymer manufacturing plants can be among the largest sources of VOC emissions at a plant. Some of these releases have high volumes released in very short periods of times. During the development of these standards, the Agency has collected much information on a variety of polypropylene and polyethylene processes and their emission control systems. The control of decomposition emissions was found to have occurred at a single LDPE, high pressure facility (see Docket Item II–D–7). None of the other LDPE, high pressure facilities controlled decomposition emissions. The control of non-decomposition emergency releases varies from among facilities and types of processes. At least two LDPE, high pressure plants control some of the non-decomposition releases, which include safety valve discharges, and releases from various process upsets and certain types of equipment malfunctions (e.g., seal and gasket "blow outs"). Other types of plants (polypropylene; LDPE, low pressure or gas phase; and HDPE) control similar types of emissions, although one type of emissions controlled at one plant may not be controlled at another. Those emissions that generally are uncontrolled throughout the industry include releases that occur as a result of fire, power failure, and other unexpected events that could lead to severe equipment or personnel injury if not vented to the atmosphere. However, even some of these emissions are controlled at certain plants. For example, most of the polypropylene, liquid phase plants for which information has been gathered control all emergency-type releases. The following two paragraphs describe, in detail, the intermittent control systems employed at two different facilities.

One company (see Docket Item II–B–75) sends pressure relief emissions from the compressors at a LDPE, high pressure plant to the plant's flare. These safety relief valves regulate the pressure in the system around the compressors. When pressures go "too high," these valves open and relieve the pressure. This pressure relief system protects the equipment from internal problems. At this plant, seals, gaskets, or some other equipment will occasionally "blow out," creating a hazardous situation unless brought under immediate control. A "block and dump" valve system is employed to handle this situation. Combustible gas alarms signal an operator that an explosive situation has arisen. The operator will activate the block and dump system. Valves are opened to evacuate the ethylene in the system at the point where the leak has occurred and dump it to the flare. At the same time, the main ethylene feed to the area is blocked off, the reaction is stopped, and the catalyst feed is shut off. This block and dump system is designed to protect the equipment from external problems. Decompositions are accidents, unplanned runaway reactions that occur due to bearing failure, too much catalyst, or some unknown cause. This company does not attempt to recognize and prevent decompositions. When one does occur, they review the incident to try to determine the cause. Once the cause is found, the company tries to implement whatever may be necessary to reduce the likelihood of the triggering cause from recurring. The only emissions at this plant that are not vented to the flare are the decompositions. This company stressed that to require the venting of decompositions to a flare would be outside their safety practices.

Another company (see Docket Item IV–D–55) uses a multi-stage relief system to protect plant equipment against overpressure in two stages. This company uses a system of automatically controlled vents, operator activated vents, and relief devices to discharge vents that result from normal plant upsets and equipment malfunctions to a closed system, such as a flare or incinerator. Relief vents that result from emergency conditions, such as fires, total loss of power, and runaway reactions, are discharged to the atmosphere through relieving devices, which are set slightly above the set pressure of the first stage relieving device. More specifically, for this company's polypropylene and polyethylene flash chambers, the relief valves discharging to the flare provides overpressure protection for the flash chamber for typical process upsets, whereas the additional relief valves discharge to the atmosphere in the event of an emergency condition resulting from a plant power failure or fire, and in the case of the polypropylene flash chambers, from a runaway reaction in the polypropylene reactor. In the case of the polyethylene reactor, the relief valve discharging to the atmosphere provides overpressure protection for the reactor in the event of fire in the polyethylene reactor. Both reactor systems are designed to withstand all other possible causes of overpressure.

In summary, the Agency believes that the control technology exists for the safe control of any intermittent release that may occur at a facility subject to these standards. However, the cost of achieving such control may be sufficiently high as not to warrant control under these standards. The following section of this response addresses the costs of control.

*Costs.* The Agency has costed flame systems for controlling the various types of emergency releases identified by the commenters (see Docket Items II–D–105, IV–B–11, and IV–B–12). Generally, the cost of controlling decomposition emissions exceeded $7,000/Mg of VOC reduction and was as high as $200,000/Mg of VOC reduction. The cost of controlling runaway reaction releases from UNIPOL polypropylene and polyethylene process were generally around $9,000/Mg of VOC reduction. Based on these findings, the Agency believes that the cost of controlling high volumes of flow that are released over short periods of time under the circumstances described by the commenters are unreasonable given the resulting emission reduction. Based on the information provided by the commenters and previously by the industry as a whole, these releases are related to operating conditions that are abnormal and abnormal to the point that the design of the process cannot return conditions to normal operations. In at least one instance, in the case of emissions during attempts to prevent decompositions, these releases are triggered to prevent a decomposition from occurring although there is no guarantee that a decomposition would actually have occurred if the release was not made. However, the explosive nature of a decomposition and the rapidity with which it occurs makes it virtually impossible to distinguish between situations. Thus, the Agency decided to "broaden" the definition of decomposition emissions to include those emissions that occur as a result of attempts to prevent decompositions.

In contrast, some polymer producers use pressure relief valves or other mechanisms to vent emissions from process vessels as part of the process design for operating the vessels under normal operating conditions and certain upset conditions, and for maintaining normal process conditions. Examination of the information available indicates that these emissions have been controlled and can be controlled cost effectively. The costs of controlling intermittent emissions from polypropylene and polyethylene plants were estimated based on the model plants presented in BID Vol. I (see Docket Item IV–B–12). The cost of control for routine and non-decomposition, emergency-type releases in a flare ranged from $70 to $1,890 per Mg of VOC reduction for single process lines and between $45 and $885 per Mg for whole plants. These intermittent releases are designed to keep the process vessel in normal operating conditions; they are not releases that occur because of abnormal operating conditions (e.g., fire or loss of power) or because releases are necessary to prevent equipment damage or personnel safety hazardous because the operating conditions can no longer be returned to normal operating conditions.

*Definition.* While the Agency would like to relate the decision on whether to require control for all intermittent releases in the same manner as has been done for continuous emissions, that approach is not feasible (54 FR 903). Therefore, the promulgated standard continues to require control of appropriate intermittent releases by defining the types of intermittent releases that are exempt from the standards. As noted earlier in this response, the January 10, 1989, Federal Register notice defined too narrowly those intermittent releases that could be exempted from control by using the term "decomposition." In the promulgated standard, the definition of "emergency vent stream" has been revised and is used for exempting individual intermittent releases from control requirements. The definition exempts intermittent streams in a very similar way as the September 30, 1987, Federal Register notice. The final definition of emergency vent stream covers those intermittent vents that occur from process equipment where normal operating parameters are exceeded such that the process equipment cannot be returned to normal operating conditions using the design features of the system and venting must occur to avoid equipment failure or adverse safety personnel consequence. Releases of this nature include emissions that occur during a decomposition event, during attempts to prevent decompositions, and during reactor dumps to minimize the adverse consequences of a runaway reaction (other than a decomposition). In addition, the definition of "decomposition emissions" has been revised to include those emissions that occur as a result of attempts to prevent decompositions.

*Condensers*

*Comment:* One commenter (IV–D–8) stated that the use of refrigeration condensers are not technically feasible for polystyrene processes and do not meet the criteria for standards of performance as stated in the BID: "standards of performance must (1) Realistically reflect best demonstrated control practices; (2) adequately consider the cost, the nonair quality, health and environmental impacts, and the energy requirement of such control; (3) be applicable to existing sources that are modified or reconstructed as well as new installations; and (4) meet the conditions of all variations of operating conditions being considered anywhere in the country."

The commenter wrote that the Agency is correct in stating in the BID that condensers are cost effective for recovery of compounds with relatively high boiling points like styrene and that a refrigerated condenser is not feasible when moisture is present in the stream which might cause freezing in the condenser. The commenter then pointed out that the latter holds true for continuous polystyrene processes.

The commenter then gave a number of reasons why freezing will occur. First and most important, according to the commenter, is the water in the vent. The commenter noted that the Agency assumed that when plants switched from steam ejectors to vacuum pumps, the freezing problem associated with water disappeared with the steam. However, the commenter stated, there is water entering with the raw materials and with the air leakage into the system (especially true in hot, humid climates). The commenter pointed out that most of the water comes from the water content of the styrene and the rubber used in the manufacture of high impact polystyrene (HIPS). Another potential problem with using a refrigerated condenser, according to the commenter, is the presence of additives in the process, some of which have high freezing points. One company reports freezing of the primary condensers coming off the devolatilizer when they ran the condenser's glycol system at −2 to −4°C. Thus, if certain additives are present, the freezing is more likely to take place.

*Response:* After further investigation, the Agency agrees that freezing may be a problem at sub-zero temperatures. Therefore, the Agency has reanalyzed the regulatory alternatives for polystyrene plants using spared heat exchangers with defrost capabilities and a refrigeration system for sub-zero applications. This reanalysis is presented in Docket Item IV–B–16.

*Comment:* Two commenters (IV–D–6, IV–D–8) expressed concern over the costs basis used to select refrigerated condensers as the basis of the proposed standards for polystyrene plants.

Commenter IV–D–8 stated that the Agency did not adequately determine the costs and cost-effectiveness associated with using refrigerated condensers in the polystyrene continuous process. Commenter IV–D–6 stated the cost of the refrigeration condenser system for the model plant in the BID appears to be totally unrealistic and grossly underestimated and the cost of the specified technology to achieve the indicated reductions does not appear to justify the additional control above 0.12 kg/Mg of product. The commenter pointed out the following cost factors they felt might have been overlooked:

1. Moisture content of the stream would require drying systems;
2. Poor heat transfer coefficients due to the high nitrogen and noncondensible content of the stream;
3. Explosion-proof requirements must be Class I division 2;
4. Refrigeration system would be non-standard (probably propylene) due to the temperature requirements;
5. Higher metallurgy (stainless steel) required due to the low temperature requirement; and
6. Cost for new process condenser and associated piping appears not to have been considered in development of the proposal. Existing chilled water condensers are not rated for this low temperature application and refrigeration service. Therefore, new process condensers would be required.

On the basis of these comments regarding the cost and cost-effectiveness of refrigerated condensers, as well as the questionable viability of the technology due to the presence of water, Commenter IV–D–8 stated that EPA must redetermine the best technology system for polystyrene continuous processes.

*Response:* The commenters have brought up a number of points concerning the use of and cost estimates for refrigerated condensers on emission streams from polystyrene plants using continuous processes. For the response to these comments, the reader is referred to Docket Item IV–B–16. The following summarizes the Agency's response to the commenters concerns.

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The Agency agrees that consideration of subzero condenser applications requires dealing with moisture level. Based on conversations with a number of vendors, the Agency has reevaluated control below 32 °F using a system composed of two heat exchangers each equipped with a defrost unit and a refrigeration unit to service both heat exchangers. This system now incorporates stainless steel construction. The system previously considered noncondensibles and, thus, the Agency feels proper heat transfer coefficients have been used. Vendor contacts indicated that ethylene glycol-water solutions and Freon 502 coolants would suffice; non-standard refrigerants would not be needed. In addition, the explosion proof requirements, which refer to electrical wiring requirements, have been directly considered. Based on these assumptions, the Agency has recalculated the costs of the control alternatives.

Commenter IV–D–8 suggested that the Agency establish a new baseline to determine cost effectiveness before determining the final rule. The Agency provides for an uncontrolled emission rate threshold level that protects against non-cost effective control of facilities referred to by the commenter. Therefore, the Agency has retained the baseline as presented in BID Vol. I.

*Comment:* One commenter (IV–D–6) stated that the uncontrolled emission rate of 0.016 kg VOC/Mg of product for continuous polystyrene plants needs to be reconsidered to take into account the presence of water in the material recovery condenser vent stream. The commenter stated further that it appears inappropriate that the newest facilities built with the latest devolatilizing vacuum and refrigeration technologies cannot meet this uncontrolled emission level. The commenter suggested that this value, if appropriate at all, needs to be in the 0.050 kg VOC/Mg product range.

*Response:* The uncontrolled emission rate for the material recovery section from polystyrene plants has been recalculated based on the new data concerning water in the material recovery condenser vent stream. The new uncontrolled threshold emission rate has increased to 0.05 kg TOC/Mg product. This increase reflects the use of a spared condenser system to bypass the potential freezing problem of using subfreezing temperatures in the condenser.

The commenter refers to the inappropriateness of the proposed uncontrolled emission rate by referring to the newest facilities with the latest devolatizing vacuum and refrigeration technologies not being able to meet that level. The commenter appears to presume a relationship between the level of uncontrolled emissions from a facility that installs the latest process equipment and the level of emissions that can be achieved when air pollution control is sought. The Agency disagrees with this apparent assumption. The uncontrolled emissions from an industrial facility in the absence of environmental regulation is typically determined by a different set of economic and cost criteria than the criteria used in setting environmental standards. The lower level of emissions required by the standards does not say anything about the technical capabilities of the latest equipment installed by industry, but reflects the use of emission control equipment that allows further reduction in emissions. As noted above, the Agency reevaluated the appropriateness of the control technique used and as a result of this reevaluation has increased the uncontrolled emission rate.

*Poly(ethylene terephthalate) Standards*

*Comment:* One commenter (IV–D–12) stated that the vapor streams from the material recovery (methanol recovery) section of PET processes both high and low viscosity DMT are laden with water vapor. The commenter pointed out that the concentration of TOC emissions and condenser temperature are regulated in sections 60.562–1(c)(1) (i) and (ii) and 60.562–1(c)(4)(iv) of the September 30, 1987, **Federal Register** notice. According to the commenter, if a refrigerated condenser were used as the final condenser in the material recovery section, the vapor stream would have to be dried before entering the condenser or the condenser would freeze and plug. The commenter stated that such a drier for that large a flow and concentration would be prohibitively expensive in terms of capital and operating cost and should be excluded.

*Response:* The Agency has reevaluated the regulator alternatives for the material recovery section from PET/DMT processes to taken into account potential freezing problems. However, rather than using a drier on the stream, the Agency used a lower cost approach of analyzing the potential emission reduction and cost using a spared condenser system. This has resulted in a revision to the standard for this process section. Based on the revised analysis, the final rule sets an emission limit of 0.018 kg TOC/Mg product for material recovery sections. Alternatively, an owner or operator of an affected facility may limit the outlet temperature of the final condenser to +3 °C (+37 °F). At proposal, these limits were 0.0027 kg TOC/Mg product and −24 °C (−11 °F), respectively. In addition, the uncontrolled threshold emission rate increased to 0.12 kg TOC/Mg product.

*Comment:* One commenter (IV–D–11) stated that the limit of 0.04 kg TOC/Mg product from esterification vessels for high viscosity PET using multiple end finishers (Section 60.562–1(c)(4)(iii) of the September 30, 1987, **Federal Register** notice) appears to be in error and is not supported by BID Vol. I. The commenter stated that the appropriate limit should be 0.15 kg TOC/Mg product.

*Response:* The Agency reviewed the information in BID Vol. I and the docket concerning this comment. The sources show inconsistent treatment of esterifiers from high viscosity PET plants using multiple end finishers. For example, Chapter 8 states that baseline control costs for these facilities were estimated assuming reflux condensers on the esterifiers, which are associated with an emission rate of 0.04 kg TOC/Mg of product. The commenter, who uses a different type of condenser on their esterfiers, has stated that they would expect their condenser to be as efficient as reflux condensers. While a previous estimate based on sampling conducted in 1978 at the commenter's facility showed an estimated emission rate of 0.15 kg TOC/Mg product, a more recent test conducted by the commenter shows that the controlled emissions from the esterifiers are below 0.04 kg TOC/Mg product. In developing the baseline control costs, the Agency incorporated reflux condensers as baseline control. Unfortunately, this was not shown in Chapter 6, where the contradictory, and erroneous, statement that distillation columns with an emission rate of 0.15 kg TOC/Mg product are shown. For new plants, it was the Agency's judgment that reflux condensers represented best available technology and should serve as baseline for new, grass roots plants. As noted above, the more recent test by the commenter shows that their condensers are achieving equivalent levels of control. The Agency also conducted a new analysis specifically estimating the cost of controlling the commenter's 0.15 kg TOC/Mg product stream to 0.04 kg TOC/Mg product (see Docket Item IV–B–20). This analysis showed the cost of control to be reasonable. Thus, while the commenter is correct in pointing out discrepancies in the BID for the proposed standards, the final rule retains the proposed standard of 0.04 kg TOC/Mg product.

*Comment:* Two commenters (IV–D–8, IV–D–13) stated that while the control technology exists to achieve final condenser outlet temperatures of −24 °C during steady state operation of a poly(ethylene terephthalate) plant, there are routine stages of the operation of a plant which make this temperature unachievable. The commenters pointed out that the composition of the vent stream during startup, shutdown, and process upsets varies to the point that maintaining an outlet temperature of −24 °C would lead to freeze ups and further process upsets. The water content, polymer carryover and other contaminants in the stream during startup or shutdown, the commenter continued, will affect the temperature at which the condenser outlet can be operated without freezing during this portion of the processing. Therefore, the commenters stated, if a gas temperature is specified in the standard and is included as a permit parameter, there will be times when the process must perforce violate the permit and adequate recognition that the standards do not apply during startup, shutdown, or malfunction conditions must be given.

The commenters then suggested that the regulatory language be changed to reflect that if refrigerated condensers are used for control, then when the process runs at steady state the outlet gas temperature should be −24 °C.

*Response:* Periods of startup, shutdown, and malfunction are not considered to be in violation if they exceed the expressed emission limits, as provided for in the General Provisions, section 60.8(c):

"* * * nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard."

Since the proposed standards do not specify otherwise, the General Provision section was assumed to be prevailing. However, the alternative temperature standard does not necessarily fall within the definition of "emission limit" as used in § 60.8(c). The Agency intends the same treatment to be accorded the alternative temperature standard as for a true emission limit. Owners and operators are still required to maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions, to the extent practicable, at all times including periods of startup, shutdown, and malfunction (General Provisions, § 60.11(d)). Therefore, the promulgated standard includes the commenter's suggestion.



**Modification/Reconstruction**

*Comment:* One commenter (IV–D–47) referred to 54 FR 893 in which is stated: "Under the new approach, any existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards. Similarly, any newly constructed process section at an existing plant or a new plant would be an affected facility * * *." The commenter then stated that the impact of these statements is unclear where an existing process section that is modified or reconstructed becomes an affected facility subject to the proposed standards, yet that modification or reconstruction results in increased emissions only in another section. The commenter asked how the standards are to be applied in this situation.

*Response:* Modification or reconstruction to a process section only affects that process section regardless of the effect on emissions in other process sections. A process section is "modified" if a physical change occurs to the facility or there is an operational change to the facility either of which results in an in increase in the emission rate. In the example provided by the commenter, the modified process section would not become an affected facility because there is no increase in emissions from that process section. Assuming the other process section is not modified, as defined, then it is not considered to be an affected facility because there is no increase in emissions from that process section. Assuming the other process section is not modified, as defined, then it is not considered to be an affected facility even though there is an increase in emissions.

A process section is "reconstructed" if the replacement of components in the existing facility occurs so that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new process section and it is technologically and economically feasible to meet the applicable standards. The definition of reconstruction does not depend on an increase in emissions. Thus, in the example provided by the commenter, if the first process section is reconstructed, then it becomes an affected facility subject to the standards regardless of the fact there has been no increase in emissions. (Note: This is also true even if a decrease in emissions occurs.) As before, if the process section in which emissions do increase does not undergo replacement of components so as to constitute a reconstruction, then that process section is not an affected facility and is not subject to the standards.

**Miscellaneous**

*Comment:* Several commenters (IV–D–39, IV–D–44, IV–D–50) expressed concern over the definition of "concurrent" in the January 10, 1989, **Federal Register** notice and the concept of concurrently constructed, modified, and reconstructed affected facilities. Commenter IV–D–39 suggested that the word "concurrent" be deleted. This commenter stated that its purpose is unclear and that it appears to require that modifications to existing facilities occurring within two years of each other would be treated as new facilities with the stricter low VOC concentration requirements being applied.

Commenter IV–D–44 suggested that the two-year time frame in the definition of "concurrent" be replaced with a six-month period. This commenter stated that the definition of concurrent as proposed could impose retroactive additional control measures and costs to projects already completed or near completion. Commenter IV–D–44 believes that no additional requirements should ever be imposed on projects already completed or which have initiated construction. This commenter illustrated their concern by stating that major projects could be vulnerable for additional control requirements and incurred costs up to five years (three years from commencement to completion plus two-year concurrent period) from date of commencement. Commenter IV–D–44 stated that this was "totally unreasonable and not cost effective." The commenter believes that all control decisions for concurrent projects should be made during their common planning/design phase and that projects should not be considered concurrent unless they have a common planning time frame. According to this commenter, two years is too long a time frame for the definition of concurrent and is longer than most planning cycles.

Commenter IV–D–44 also stated that the proposed use of concurrent does not appear to exempt projects under construction, modification, or reconstruction prior to January 10, 1989, from additional control requirements. The commenter recommended that projects started prior to January 10, 1989, be excluded from being considered concurrent with other projects begun after January 10, 1989.

Commenter IV–D–50 stated that the wording of the definition of concurrent is confusing (54 FR 895). According to this commenter, the definition as stated

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now would lead to the following scenario: when a plant commences a project "B" within two years of the commencement of a previous project "A" at the same plant, and it commences a project "C" within two years of the commencement of project "B," then "B" can be concurrent with "A" and "C" can be concurrent with "B" while "C" may not be concurrent with "A". Commenter IV–D–50 then stated that this situation could foreseeably go on for years and makes the completion date of each successive project irrelevant. Commenter IV–D–50 recommended that the EPA eliminate the concept of concurrent control, but that if the EPA feels this definition is absolutely necessary, suggested as an alternative to the statement in the revised proposal (54 FR 886) the following language:

"* * * construction, modification, or reconstruction within a process unit (replacing, "of affected facilities") which has commenced in the two year period prior to the commencement date of the construction, modification, or reconstruction of an affected facility."

*Response:* Under the generic approach for determining which process emission streams are to be controlled from polypropylene and polyethylene facilities, the Agency proposed in the January 10, 1989, **Federal Register** notice that emissions from all concurrently constructed, modified, and reconstructed affected facilities be combined (according to the procedures outlined in that notice) for purposes of determining which emission streams would be controlled. When a new plant is built, all of the process sections are (obviously) concurrent, and the generic approach requires combining emission streams in the same weight percent range across all process sections. This procedure formed the basis for the development of the calculated threshold emission levels proposed in the January 10,1989, **Federal Register** notice.

The Agency extended this concept of concurrent construction to modified and reconstructed affected facilities. If two process sections are modified at the same time, the Agency knows of no reason not to combine streams across the two process sections for control determinations. In fact, the generic approach is specifically designed to reach more reasonable control/no control determinations when this is done than when each process section is considered individually. Further, the Agency believes that reasonable control decisions can be made even for affected facilities that are not "concurrent," as defined in the January 10, 1989, **Federal Register** notice.

The Agency has decided that the term "concurrent" is unnecessary to implement the generic approach and has eliminated it from the final rule. However, the Agency has replaced it with a different and more expansive procedure. This new procedure requires uncontrolled emission streams from an affected facility to be examined for pollutant control whenever a process section at the plant site is constructed, modified, or reconstructed regardless of the time interval between the commencement or completion dates of the affected facilities. Once an emission stream is controlled as a result of these standards, it is never again considered for determining the control of other emission streams.

In implementing this new procedure, the Agency disagrees with the commenters that it is unreasonable to require control of emissions from an affected facility that has begun operation (i.e., after it has been completed). The generic approach was designed to identify that level of annual emissions for a given weight percent of VOC in a single or combined emission stream above which control is deemed to be reasonable, regardless of the number of emission streams, the period of time when they became subject to the standards, or the planning phases or periods at a plant site. In addition, the Agency disagrees that there is a need to distinguish between those process sections that became affected facilities on or before January 10, 1989, and those that became affected facilities after January 10, 1989. Reasonable control determinations can be made regardless of an affected facility's applicability date.

To illustrate how this new procedure works, the following example is provided.

**Example:** At a polypropylene plant, Process Section A is reconstructed. There are three continuous emission streams (1, 2, and 3), one in each of the three weight percent ranges. Stream 3, which is in the 20 to 100 weight percent VOC range, has emissions greater than the CTE level and, thus, control is required. Emissions from Streams 1 and 2 are below their respective CTE's and, thus, no control is required. Process Section B is modified, and has two emission streams, 4 and 5. Emission Stream 4 is in the same weight percent range as Emission Stream 1, and Emission Stream 5 is in the same weight percent range as Emission Stream 2. These emission streams would now be combined (4 with 1 and 5 with 2) to determine whether emissions in each weight percent range are greater than their respective CTE's. Suppose the total emissions from Emission Streams 5 and 2 are greater than the CTE level for their weight percent. These two streams would now be controlled. Suppose the other two streams (4 and 1) remain uncontrolled (i.e., their total annual emissions are less than the CTE level for their weight percent.

Finally, Process Section C is constructed at the plant site. Process Section C has two emission streams, 6 and 7. Emission Stream 6 is in the same weight percent range as Emission Streams 4 and 1. Since the latter two steams are still uncontrolled, they would be combined with Emission Stream 6 from Process Section C to determine whether control is required of all three streams. Suppose the total emissions now exceed the CTE level for the combined weight percent, then all three streams would be controlled. Emission Stream 7, which is in the 20 to 100 weight percent range, would be evaluated on its own, since there are no uncontrolled streams from an affected facility in this weight percent range. If the annual emissions of Emission Stream 7 are less than the CTE level, no control is required. (Note: In all cases where control is not required, streams with flow less than or equal to 8 scfm are still required to be controlled.)

**Monitoring Requirements**

*Comment:* Four commenters (IV–D–5, IV–D–6, IV–D–7, IV–D–8) questioned the need and desirability of requiring flow measuring devices on vents to control equipment. According to the commenters, this will add significant cost, provide no useful data, and add to the burden of recordkeeping. One commenter (IV–D–6) specifically wondered how the flow monitoring data would affect the control of emissions. This commenter also stated that the flare requirement portion of the fugitive emission standard (40 CFR part 60—subpart VV) does not require flow monitoring devices.

Two commenters (IV–D–7, IV–D–8) maintained that flow measurement on intermittent vents will be especially valueless since it will be difficult to differentiate between true no-flow situations and instrument problems. Two of the commenters (IV–D–7, IV–D–8) stated that installation of flow devices in a process flare system that also serves as a safety flare is not a good practice from a maintenance or safety standpoint. One commenter (IV–D–8) stated further than the temperature, density, pressure, and fouling or corrosive characteristics of flared gases tend to cause maintenance and reliability problems on flow measuring elements that are placed into the flare gas line. Commenter IV–D–8 noted that while external measurement devices are available, they are expensive and certainly should not be required on each individual vent stream into the flare gas header. This commenter also claimed that measuring every flare gas vent stream flow is not possible, with even single stream flare gas flow measurements being notoriously difficult to measure.

One commenter (IV–D–6) stated that technical problems exist for retrofit of modified facilities where emergency vent systems are integrated with normal process vent streams, because the range of flow rates makes accurate measurement of lower flows impossible without causing excessive restrictions to emergency ventings.

Commenter (IV–D–8) suggested that paragraphs 60.563(a)(2), (b)(2), and (c)(2) of the September 30, 1987, **Federal Register** notice, which require the installation of a flow indicator to provide a record of the vent stream flow to the incinerator or flare, be deleted. All four commenters felt that engineering estimates and design calculations of the vent flows should be adequate to ascertain compliance with flare flow allowable ranges.

One commenter (IV–D–5) recommended that a requirement for an engineering piping report be substituted for the flow instrument requirements for flares. This commenter believes that an engineering report describing the piping arrangement for the vent streams would provide assurance that these streams will be continuously flared. Such a report, the commenter said, would achieve the same objective as the flow instrument requirement by showing that the vent streams are "hard wired" (no physical possibility of an atmospheric release prior to the flare) without the burden of installing, operating, and maintaining a large number of flow recorders.

*Response:* The EPA considers it very important to ensure that vent streams are continuously vented to the flare (or other control device). The primary intent of the flow monitoring requirement was to provide a means for indicating when vent streams were bypassing the flare or other control device. In the September 30, 1987, **Federal Register** notice, flow indicators were proposed. Flow indicators envisioned by the Agency would simply provide an indication of flow/no flow, and need not provide quantitative estimates of flow rates. The Agency has reevaluated the use of flow indicators as proposed and in light of the comments received. This reevaluation has led the Agency to the following conclusions.

1. Flow meters, which provide quantitative estimates for flow rates, could be one way to ensure emissions are vented to a control device. However, as pointed out by the commenters, there may be technical problems and less expensive ways to achieve the same goal.

2. Flow indicators located on the vent pipe between the emission source and the control device by themselves may be insufficient to meet the intent (even though this was what was proposed).

3. Engineering reports that show an emission stream is "hard piped" to a control device is a less expensive method than flow meters to ensure the entire flow will be vented to the control device. Other piping arrangements can be used, but car seals on valves or flow indicators located immediately downstream of each valve that could divert a portion of the flow to the atmosphere, either directly or indirectly, become necessary.

Considering the above conclusions, the Agency is now requiring an engineering report that describes the piping arrangement for venting the affected emission streams to the control device. If any valves are present in the line between the source and the control device, the rule requires them to be car-sealed opened. In addition, all valves that allow emissions to bypass the control device are required to be car-sealed closed. The monitoring requirements have been revised now that this engineering report is required. An owner or operator may elect to follow one of two methods for monitoring the vent system. One method would require monthly inspection of the valves to inspect the car seals, the reporting and recording of any time the car seals are broken, and the recording and reporting of any time the valve position has changed. The other method would require the installation of a flow indicator, which gives an indication of flow/no flow, at the closest downstream point of each valve that is required to be car-sealed closed. The owner or operator is to record all periods of flow (which indicates a portion of the emission stream is bypassing the control device) and report such periods of flow.

*Comment:* The commenters (IV–D–6, IV–D–8) pointed out that the preamble clearly states that thermocouples is the only acceptable monitor, while the standard allows for a thermocouple or similar device. The commenters requested that this confusion be eliminated from the rule.

Four commenters (IV–D–6, IV–D–7, IV–D–8, IV–D–49) requested that a provision for any other equivalent devices capable of detecting a flame be allowed with the regulations (§§ 60.563 (b)(1) and (c)(1) of the September 30, 1987, **Federal Register** notice). One commenter (IV–D–8) suggested that visual inspection combined with an assessment of the reliability of the fuel supply to the pilot be allowed as an equivalent pilot flame detection system. The commenters stated that the final rule should allow individual plants to select alternate flame sensors as the point of the regulation should be to require a pilot detection system (i.e., thermocouples, flame ionization detectors and remote infrared scanners) capable of detecting a flame.

*Response:* The preamble for the proposed rule should not have stated so distinctly that thermocouples were the only acceptable monitor. Other similar devices are acceptable provided they provide the necessary recordkeeping requirements.

The presence of a flame is obviously critical to the operation of a flare as a control device. The intent of the flare monitoring regulation is to require a reliable monitoring device on the flare that will indicate there is no flame present and, thus, when the flare is not operating; or in the case of intermittent emissions, not in a ready state to control emissions. For flares controlling continuous emissions, monitoring of the flare flame or pilot light flames is appropriate to ensure the vent stream is being destroyed. For flares controlling intermittent emissions, a flare flame will not always be present. Thus, for these flares, it is important to monitor the pilot light flames.

Thermocouples are generally accepted as the most reliable means to monitor the presence of a pilot flame. For flares controlling intermittent emissions alone, it is important to ensure that the pilot lights are lit (i.e., have a flame present). Thus, the standards require such flares to monitor the pilot light flames using a thermocouple or equivalent monitoring device. For flares controlling both intermittent and continuous emissions or continuous emissions alone, EPA has decided that the use of certain optical devices is also acceptable to indicate the presence of a flame (either the flare flame or pilot light flames). Ultra-violet or infrared beam sensors may be used in lieu of thermocouples for these flares. These devices offer an advantage over thermocouples because they may be installed remote from the flare tip thereby allowing maintenance to be done without shutting down the flare. It is important that these optical devices be installed properly to minimize the effects of solar radiance. Although these devices may have difficultly in distinguishing the pilot flame from the main flame, the detection of a flame fulfills the intent of the regulation for flares used to control both continuou and intermittent emissions or continuous emissions alone.

The detection of flame presence by visual means or by remote video camera is not a suitable method of monitoring. ' a flame is operating smokelessly, it car.

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be difficult to determine if a flame is present.

Flame ionization detectors are not considered as reliable as other monitoring technologies. The experience of one flare manufacturer (see Docket Item IV-D-54) showed major problems with the accumulation of moisture on the flame rod, which tended to ground the flame rod and then lock up the system. Further, this manufacturer found that the formation of small amounts of carbon in the pilot flame and its accumulation around the base of the flame rod also tended to "ground out" the flame rod and lock up the system.

The EPA is willing to take into consideration any operating records or test data for alternative monitoring devices.

*Comment:* Four commenters (IV-D-6, IV-D-7, IV-D-8, IV-D-49) stated that thermocouples are known to be unreliable when placed in the severe operating environment at the top of a flare and that the flare tip maintenance period can typically be much longer than the service period for a thermocouple. The commenters then asked what needs to be done when a pilot flame thermocouple burns out. Is the flare to be shut down prior to the regular maintenance to replace the pilot thermocouple? The commenters pointed out that since flares are emergency relief devices, taking a flare out of service can not usually be done without taking the entire process which the flare services out of services and that more emissions would undoubtedly result from premature flare maintenance related to thermocouple burnout. Commenter IV-D-49 also stated that thermocouples can be difficult to replace.

*Response:* Recent improvements in thermocouple installation technology have extended the operating life of thermocouples in flare monitoring service. If a thermocouple is sheathed within a thermowell, the thermocouple is protected from the severe flame environment, and the thermocouple operating life can be extended to approximately the same length of time as the flare tip maintenance period. Installing a thermocouple with thermowell will reduce significantly the number of times an operator must decide whether to shut down upon thermocouple failure.

Any breakdown or malfunction of the thermocouple should be repaired as soon as practicable as stated in § 61.14(b) of the General Provisions. The operator is expected to determine the best time to shut the flare down after considering how to minimize emissions both for safety and environmental reasons.

*Comment:* Two commenters (IV-D-44, IV-D-50) stated that language in the January 10, 1990, Federal Register notice appears to require monitoring of existing continuous emission streams prior to any modifications or reconstructions. The commenters believe that a monitoring requirement would raise the following concerns or questions:

- Determination of emissions prior to modification by sampling is not appropriate because emissions may vary with product runs, and the worse case product may not be available for monitoring within a reasonable time. These emissions can be calculated with reasonable accuracy. [IV-D-44]
- What is the economic justification/basis for requiring testing of existing streams as opposed to calculating? (IV-D-44, IV-D-50)
- What test method, duration, frequency and monitoring are contemplated? (IV-D-50)
- For processes that make a wide variety of products, what product line emissions (different hydrocarbon constituents, product densities, etc.) should be measured? (IV-D-50)
- What is the environmental benefit of requiring testing of existing streams? (IV-D-50)

The commenters pointed out that Table 4 "Procedure for Determining Control and Applicable Standard for Continuous Emission Streams from Modified or Reconstructed Polypropylene and Polyethylene Affected Facilities" (Ref: 54 FR 908) specifies in Step 3 that calculations of VOC concentration in the applicable weight percent range should be made before and after any modification or reconstruction. The commenters requested clarification of this issue (monitoring vs. calculation) and recommended engineering calculations as specified in Table 4 be used in the procedural step in determining control requirements of emissions before and after any modification or reconstruction. The word "measure" on page 54 FR 896 should be changed to "calculate," according to Commentar IV-D-44.

*Response:* The language in the preamble to the January 10, 1990, Federal Register notice did not intend to imply that monitoring of existing continuous emissions was being required, although the language was not as precise as it should have been. In that notice, the Agency intended that measurements rather than calculations be used to obtain the VOC concentrations of each applicable VOC stream. Measurement of the applicable stream would occur after a modification or reconstruction determination has been made by the appropriate enforcement agency, but before any actual changes have been undertaken. This clarification narrows the language in the preamble from "any changes to an existing process section that could conceivably be a modification or reconstruction" to only those that are determined to be modification or reconstruction.

In the final rule, the requirement to measure the VOC concentration or the annual emission rate rather than calculate these values is applied to only those individual streams that an owner or operator seek to exempt from control through either the VOC weight percent exemption or the low annual emissions exemption. As provided in the General Provisions, if an owner or operator believes that an alternative procedure is an accurate as a measurement, then the owner or operator may still petition the Administrator for approval.

While the Agency would prefer actual test data, the final rule allows an owner or operator to submit calculations calculating the weight percent and annual emissions of each nonexempt vent stream in lieu of actual test data, provided such calculations can be demonstrated to be sufficiently accurate as to preclude the necessity of a test.

In testing or calculating the weight percent and annual emissions of a vent stream, an owner or operator is required to evaluate the stream under conditions representative of normal operation. This may require an owner or operator to make assumptions or estimates of how the affected facility will be operated or how emission streams will vary during production of various products. The period during which testing of a stream occurs, thus, need not be a "worst case" product, but preferably a representative product. Where affected facilities are used to produce a wide variety of products, then an owner or operator would calculate (or measure) the emission streams that would occur during the course of a year for each of the products. The resulting data would be combined to identify composite streams and their weighted average VOC concentrations and total annual emissions. Each composite stream's VOC concentration would then be used to calculate the threshold emission rate and a control/no control determination would be made by comparing the calculated (or measured) annual emissions with the threshold emission rate.

Where an owner or operator tests an emission stream, the final rule requires the use of Test Method 18 to determine the VOC concentation and Test Method 2, 2A, 2C or 2D, as appropriate, to determine the volumetric flow rate. Each test shall consist of three 1-hour runs in which either an integrated sample or four grab samples shall be taken.



In determining whether a test or calculation is to be required, the Agency considers a number of factors such as the use of the information, the relative cost of conducting the tests, and the availability of alternative procedures. Because the individual stream exemptions allow an individual stream to be exempt from control under this NSPS, the Agency believes this decision needs to be made based on test data. (Note: If the annual emissions become 1.6 Mg/yr or greater (if using the annual emissions exemption) or the VOC concentration becomes 0.10 weight percent or higher (if using the VOC concentration exemption) at a later date, then the individual stream is no longer exempt from the standards.) For nonexempt streams, a no control decision may change to a control decision as more facilities at a plant are constructed, modified, or reconstructed. Thus, while test data are preferable for determining the VOC weight percent concentrations, the Agency has decided that calculations showing the VOC concentrations can be an acceptable alternative to testing, and at greatly reduced costs.

## VIII. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is December 11, 1991. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to certain affected facilities of which the construction or modification was commented after the date of proposal, September 30, 1987, and for other affected facilities, after January 10, 1989.

As prescribed in section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that polypropylene, polyethylene, polystyrene, and polyester resin plants contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, unforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining the best demonstrated technology. The economic impact assessment is included in the BID for the proposed standards.

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart DDD) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0145).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Plastic materials, synthetic resins, and nonvulcanizable elastomers (SIC 2821), and Reporting and recordkeeping requirements.

Dated: November 7, 1990.

William K. Reilly,

*Administrator.*

## PART 60—[AMENDED]

40 CFR part 60 is amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601.)

2. By adding a new subpart DDD to read as follows:

### Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry

Sec.

60.560 Applicability and designation of affected facilities.
60.561 Definitions.
60.562-1 Standards: Process emissions.
60.562-2 Standards: Equipment leaks of VOC.
60.563 Monitoring requirements.
60.564 Test methods and procedures.
60.565 Reporting and recordkeeping requirements.
60.566 Delegation of authority.

### Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry

### § 60.560 Applicability and designation of affected facilities.

(a) *Affected facilities.* The provisions of this subpart apply to affected facilities involved in the manufacture of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate) as defined in § 60.561 of this subpart. The affected facilities designated below for polypropylene and polyethylene are inclusive of all equipment used in the manufacture of these polymers, beginning with raw materials preparation and ending with product storage, and cover all emissions emanating from such equipment.

(1) For process emissions from any polypropylene and polyethylene manufacturing process that uses a continuous process, the affected

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facilities are each of the following process sections: each raw materials preparation section, each polymerization reaction section, each material recovery section, each product finishing section, and each product storage section. These process sections are affected facilities for process emissions that are emitted continuously and for process emissions that are emitted intermittently.

(2) For process emissions from polystyrene manufacturing processes that use a continuous process, the affected facilities are each material recovery section. These process sections are affected facilities for only those process emissions that are emitted continuously.

(3) For process emissions from poly(ethylene terephthalate) manufacturing processes that use a continuous process, the affected facilities are each polymerization reaction section. If the process uses dimethyl terephthalate, then each material recovery section is also an affected facility. If the process uses terephthalic acid, then each raw materials preparation section is also an affected facility. These process sections are affected facilities for only those process emissions that are emitted continuously.

(4) For VOC emissions from equipment leaks from polypropylene, polyethylene, and polystyrene (including expandable polystyrene) manufacturing processes, the affected facilities are each group of fugitive emissions equipment (as defined in § 60.561) within any process unit (as defined in § 60.561). This subpart does not apply to VOC emissions from equipment leaks from poly(ethylene terephthalate) manufacturing processes.

(i) Affected facilities with a design capacity to produce less than 1,000 Mg/yr shall be exempt from § 60.562–2.

(ii) Addition or replacement of equipment for the purposes of improvement which is accomplished without a capital expenditure shall not by itself be considered a modification under § 60.562–2.

(b) *Applicability dates.* The applicability date identifies when an affected facility becomes subject to a standard. Usually, a standard has a single applicability date. However, some polypropylene and polyethylene affected facilities have a September 30, 1987, applicability date and others have a January 10, 1989, applicability date. The following paragraphs identify the applicability dates for all affected facilities subject to this subpart.

(1) *Polypropylene and polyethylene.* Each process section in a polypropylene or polyethylene production process is a potential affected facility for both continuous and intermittent emissions. The applicability date depends on when the process section was constructed, modified, or reconstructed and, in some instances, on the type of production process.

(i) The applicability date for any polypropylene or polyethylene affected facility that is constructed, modified, or reconstructed after January 10, 1989, regardless of the type of production process being used, is January 10, 1989.

(ii) Only some polypropylene or polyethylene process sections that are constructed, modified, or reconstructed on or before January 10, 1989, but after September 30, 1987, are affected facilities. These process sections (and the type of emissions to be controlled) are identified by an "x" in Table 1. The applicability date for the process sections (and the emissions to be controlled) that are identified by an "x" in Table 1 is September 30, 1987. Since the affected facilities that have a September 30, 1987, applicability date are determined by the type of production process (e.g., liquid phase, gas phase), each owner or operator shall identify the particular production process that applies to his or her particular process.

TABLE 1.—POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES WITH SEPTEMBER 30, 1987, APPLICABILITY DATE

| Polymer | Production process | Process section | Emissions | |
|---|---|---|---|---|
| | | | Continuous | Intermittent |
| Polypropylene | Liquid phase | Raw Materials Preparation | X | — |
| | | Material Recovery | X | — |
| | | Polymerization Reaction | X | X |
| | | Product Finishing | X | — |
| | | Product Storage | — | — |
| Polypropylene | Gas Phase | Raw Materials Preparation | — | — |
| | | Polymerization Reaction | — | X |
| | | Material Recovery | X | — |
| | | Product Finishing | — | — |
| | | Product Storage | — | — |
| Low Density Polyethylene | High Pressure | Raw Materials Preparation | — | X |
| | | Polymerization Reaction | — | X |
| | | Material Recovery | — | X |
| | | Product Finishing | — | X |
| | | Product Storage | — | X |
| Low Density Polyethylene | Low Pressure | Raw Materials Preparation | X | X |
| | | Polymerization Reaction | — | X |
| | | Material Recovery | — | — |
| High Density Polyethylene | Gas Phase | Product Finishing | X | — |
| | | Product Storage | — | — |
| High Density Polyethylene | Liquid Phase Slurry | Raw Materials Preparation | — | X |
| | | Polymerization Reaction | — | — |
| | | Material Recovery | X | — |
| | | Product Finishing | X | — |
| | | Product Storage | — | — |
| High Density Polyethylene | Liquid Phase Solution | Raw Materials Preparation | X | X |
| | | Polymerization Reaction | — | X |
| | | Material Recovery | X | X |
| | | Product Finishing | — | — |
| | | Product Storage | — | — |

NOTE: "X" denotes that that process section is an affected facility for continuous or intermittent emissions or both, as shown, which has a September 30, 1987, applicability date.

"—" denotes that that process section is not considered an affected facility for continous or intermittent emissions or both, as shown, if the process section is constructed, modified, or reconstructed after September 30, 1987, and on or before January 10, 1989. These process sections are affected facilities if they are constructed, modified, or reconstructed after January 10, 1989.



(2) *Polystyrene.* The applicability date for each polystyrene affected facility is September 30, 1987.

(3) *Poly(ethylene terephthalate).* The applicability date for each poly(ethylene terephthalate) affected facility is September 30, 1987.

(c) Any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after its applicability date as identified under paragraph (b) of this section is subject to the requirements of this subpart, except as provided in paragraphs (d) through (f) of this section.

(d) Any polypropylene or polyethylene affected facility with a September 30, 1987, applicability date that commenced construction, modification, or reconstruction after September 30, 1987, and on or before January 10, 1989, with an uncontrolled emission rate (as defined in footnote a to Table 2) at or below those identified in Table 2 is not subject to the requirements of § 60.562–1 unless and until its uncontrolled emission rate exceeds that rate listed for it in Table 2 or it is modified or reconstructed after January 10, 1989. At such time, such facility becomes subject to § 60.562–1 and the procedures identified in § 60.562–1(a) shall be used to determine the control of emissions from the facility.

TABLE 2.—MAXIMUM UNCONTROLLED THRESHOLD EMISSION RATES [a]

| Production process | Process section | Uncontrolled emission rate, kg TOC/mg product |
|---|---|---|
| Polypropylene, liquid phase process. | Raw Materials Preparation. | 0.15 [b] |
| | Polymerization Reaction. | 0.14 [b], 0.24 [c] |
| | Material Recovery. | 0.19 [b] |
| | Product Finishing | 1.57 [b] |
| Polypropylene, gas phase process. | Polymerization Reaction. | 0.12 [c] |
| | Material Recovery. | 0.02 [b] |
| Low Density Polyethylene, high pressure process. | Raw Materials Preparation. | 0.41 [c] |
| | Polymerization Reaction. | [d] |
| | Material Recovery. | [d] |
| | Product Finishing | [d] |
| | Product Storage | [d] |

TABLE 2.—MAXIMUM UNCONTROLLED THRESHOLD EMISSION RATES [a]—Continued

| Production process | Process section | Uncontrolled emission rate, kg TOC/mg product |
|---|---|---|
| Low Density Polyethylene, high pressure process. | Raw Materials Preparation. | 0.05 [f] |
| | Polymerization Reaction. | 0.03 [e] |
| | Production Finishing. | 0.01 [b] |
| High Density Polyethylene, liquid phase slurry process. | Raw Materials Preparation. | 0.25 [e] |
| | Material Recovery. | 0.11 [b] |
| | Product Finishing | 0.41 [b] |
| High Density Polyethylene, liquid phase solution process. | Raw Materials Preparation. | 0.24 [f] |
| | Polymerization Reaction. | 0.16 [e] |
| | Material Recovery. | 1.68 [f] |
| High Density Polyethylene, gas phase process. | Raw Materials Preparation. | 0.05 [f] |
| | Polymerization Reaction. | 0.03 [e] |
| | Product Finishing | 0.01 [b] |
| Polystyrene, continuous process. | Material Recovery. | 0.05 [b, h] |
| Poly(ethylene terephthalate), dimethyl terephthalate process. | Material Recovery. | 0.12 [b, h] |
| | Polymerization Reaction. | 1.80 [b, h, i] |
| Poly(ethylene terephthalate), terephthalic acid process. | Raw Materials Preparation. | [j] |
| | Polymerization Reaction. | 1.80 [b, h, i, m]<br>3.92 [b, h, i, m] |

[a] "Uncontrolled emission rate" refers to the emission rate of a vent stream that vents directly to the atmosphere and to the emission rate of a vent stream to the atmosphere that would occur in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.

[b] Emission rate applies to continuous emissions only.

[c] Emission rate applies to intermittent emissions only.

[d] Total emission rate for non-emergency, intermittent emissions from raw materials preparation, polymerization reaction material recovery, product finishing, and product storage process sections.

[e] See footnote d.

[f] Emission rate applies to both continuous and intermittent emissions.

[g] Emission rate applies to non-emergency intermittent emissions only.

[h] Applies to modified or reconstructed affected facilities only.

[i] Includes emissions from the cooling water tower.

[j] Applies to a process line producing low viscosity poly(ethylene terephthalate).

[k] Applies to a process line producing high viscosity poly(ethylene terephthalate).

[l] See footnote m.

[m] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw materials preparation section (i.e., the esterifiers).

(e)(1) Modified or reconstructed affected facilities at polystyrene and poly(ethylene terephthalate) plants with uncontrolled emission rates at or below those identified in Table 2 are exempt from the requirements of § 60.562–1 unless and until its uncontrolled emission rate exceeds that rate listed for it in Table 2. This exemption does not apply to new polystyrene or poly(ethylene terephthalate) affected facilities.

(2) Emissions from modified or reconstructed affected facilities that are controlled by an existing control device and that have uncontrolled emission rates greater than the uncontrolled threshold emission rates identified in Table 2 are exempt from the requirements of § 60.561 unless and until the existing control device is modified, reconstructed, or replaced.

(f) No process section of an experimental process line is considered an affected facility for continuous or intermittent process emissions.

(g) Individual vent streams that emit continuous emissions with uncontrolled annual emissions of less than 1.6 Mg/yr or with a weight percent TOC of less than 0.10 percent from a new, modified, or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1(a)(1). If at a later date, an individual stream's uncontrolled annual emissions become 1.6 Mg/yr or greater (if the stream was exempted on the basis of the uncontrolled annual emissions exemption) or VOC concentration becomes 0.10 weight percent or higher (if the stream was exempted on the basis of the VOC concentration exemption), then the stream is subject to the requirements of § 60.562–1.

(h) Emergency vent streams, as defined in § 60.561, from a new, modified, or reconstructed polypropylene or polyethylene affected facility are exempt from the requirements of § 60.562–1(a)(2).

(i) An owner or operator of a polypropylene or polyethylene affected

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facility that commenced construction, modification, or reconstruction after September 30, 1987, and on or before January 10, 1989, and that is in a process line in which more than one type of polyolefin (i.e., polypropylene, low density polyethylene, high density polyethylene, or their polymers) is produced shall select one of the polymer/production process combinations in Table 1 for purposes of determining applicable affected facilities and uncontrolled threshold emissions rates.

(Note: The numerical emissions limits in these standards are expressed in terms of total organic compounds, measured as total organic compounds less methane and ethane.)

**§ 60.561 Definitions.**

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act, in subpart A of part 60, or in subpart VV of part 60, and the following terms shall have the specific meanings given them.

*Boiler* means any enclosed combustion device that extracts useful energy in the form of steam.

*Capital expenditure* means, in addition to the definition in 40 CFR 60.2, an expenditure for a physical or operational change to an existing facility that exceeds P, the product of the facility's replacement cost, R, and an adjusted annual asset guideline repair allowance, A, as reflected by the following equation: $P = R \times A$, where

(a) The adjusted annual asset guideline repair allowance, A, is the product of the percent of the replacement cost, Y, and the applicable basic annual asset guideline repair allowance, B, as reflected by the following equation: $A = Y \times (B + 100)$;

(b) The percent Y is determined from the following equation: $Y = 1.0 - 0.57 \log X$, where X is 1986 minus the year of construction; and

(c) The applicable basic annual asset guideline repair allowance, B, is equal to 12.5.

*Car-sealed* means, for purposes of these standards, a seal that is placed on the device used to change the position of a valve (e.g., from opened to closed) such that the position of the valve cannot be changed without breaking the seal and requiring the replacement of the old seal once broken with a new seal.

*Closed vent system* means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

*Continuous emissions* means any gas stream containing VOC that is generated essentially continuously when the process line or any piece of equipment in the process line is operating.

*Continuous process* means polymerization process in which reactants are introduced in a continuous manner and products are removed either continuously or intermittently at regular intervals so that the process can be operated and polymers produced essentially continuously.

*Control device* means an enclosed combustion device, vapor recovery system, or flare.

*Copolymer* means a polymer that has two different repeat units in its chain.

*Decomposition* means, for the purposes of these standards, an event in a polymerization reactor that advances to the point where the polymerization reaction becomes uncontrollable, the polymer begins to break down (decompose), and it becomes necessary to relieve the reactor instantaneously in order to avoid catastrophic equipment damage or serious adverse personnel safety consequences.

*Decomposition emissions* refers to those emissions released from a polymer production process as the result of a decomposition or during attempts to prevent a decomposition.

*Emergency vent stream* means, for the purposes of these standards, an intermittent emission that results from a decomposition, attempts to prevent decompositions, power failure, equipment failure, or other unexpected cause that requires immediate venting of gases from process equipment in order to avoid safety hazards or equipment damage. This includes intermittent vents that occur from process equipment where normal operating parameters (e.g., pressure to temperature) are exceeded such that the process equipment can not be returned to normal operating conditions using the design features of the system and venting must occur to avoid equipment failure or adverse safety personnel consequences and to minimize adverse effects of the runaway reaction. This does not include intermittent vents that are designed into the process to maintain normal operating conditions of process vessels including those vents that regulate normal process vessel pressure.

*End finisher* means a polymerization reaction vessel operated under very low pressures, typically at pressures of 2 torr or less, in order to produce high viscosity poly(ethylene terephthalate). An end finisher is preceded in a high viscosity poly(ethylene terephthalate) process line by one or more polymerization vessels operated under less severe vacuums, typically between 5 and 10 torr. A high viscosity poly(ethylene terephthalate) process line may have one or more end finishers.

*Existing control device* means, for the purposes of these standards, an air pollution control device that has been in operation on or before September 30, 1987, or that has been in operation between September 30, 1987, and January 10, 1989, on those continuous or intermittent emissions from a process section that is marked by an "—" in Table 1 of this subpart.

*Existing control device is reconstructed* means, for the purposes of these standards, the capital expenditure of at least 50 percent of the replacement cost of the existing control device.

*Existing control device is replaced* means, for the purposes of these standards, the replacement of an existing control device with another control device.

*Expandable polystyrene* means a polystyrene bead to which a blowing agent has been added using either an in-situ suspension process or a post-impregnation suspension process.

*Experimental process line* means a polymer or copolymer manufacturing process line with the sole purpose of operating to evaluate polymer manufacturing processes, technologies, or products. An experimental process line does not produce a polymer or resin that is sold or that is used as a raw material for nonexperimental process lines.

*Flame zone* means that portion of the combustion chamber in a boiler occupied by the flame envelope.

*Fugitive emissions equipment* means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by subpart VV of this part.

*Gas phase process* means a polymerization process in which the polymerization process is carried out in the gas phase; i.e., the monomer(s) are gases in a fluidized bed of catalyst particles and granular polymer.

*High density polyethylene (HDPE)* means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of greater than 0.940 g/cm³.

*High pressure process* means the conventional production process for the manufacture of low density polyethylene in which a reaction pressure of about 15,000 psig or greater is used.



*High viscosity poly(ethylene terephthalate)* means poly(ethylene terephthalate) that has an intrinsic viscosity of 0.9 or higher and is used in such applications as tire cord and seat belts.

*Incinerator* means an enclosed combustion device that is used for destroying VOC.

*In-situ suspension process* means a manufacturing process in which styrene, blowing agent, and other raw materials are added together within a reactor for the production of expandable polystyrene.

*Intermittent emissions* means those gas streams containing VOC that are generated at intervals during process line operation and includes both planned and emergency releases.

*Liquid phase process* means a polymerization process in which the polymerization reaction is carried out in the liquid phase; i.e., the monomer(s) and any catalyst are dissolved, or suspended in a liquid solvent.

*Liquid phase slurry process* means a liquid phase polymerization process in which the monomer(s) are in solution (completely dissolved) in a liquid solvent, but the polymer is in the form of solid particles suspended in the liquid reaction mixture during the polymerization reaction; sometimes called a particle form process.

*Liquid phase solution process* means a liquid phase polymerization process in which both the monomer(s) and polymer are in solution (completely dissolved) in the liquid reaction mixture.

*Low density polyethylene (LDPE)* means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight and having a density of 0.940 g/cm³ or less.

*Low pressure process* means a production process for the manufacture of low density polyethylene in which a reaction pressure markedly below that used in a high pressure process is used. Reaction pressure of current low pressure processes typically go up to about 300 psig.

*Low viscosity poly(ethylene terephthalate)* means a poly(ethylene terephthalate) that has an intrinsic viscosity of less than 0.75 and is used in such applications as clothing, bottle, and film production.

*Material recovery section* means the equipment that recovers unreacted or by-product materials from any process section for return to the process line, off-site purification or treatment, or sale. Equipment designed to separate unreacted or by-product material from the polymer product are to be included in this process section, provided at least some of the material is recovered for reuse in the process, off-site purification or treatment, or sale, at the time the process section becomes an affected facility. Otherwise such equipment are to be assigned to one of the other process sections, as appropriate. Equipment that treats recovered materials are to be included in this process section, but equipment that also treats raw materials are not to be included in this process section. The latter equipment are to be included in the raw materials preparation section. If equipment is used to return unreacted or by-product material directly to the same piece of process equipment from which it was emitted, then that equipment is considered part of the process section that contains the process equipment. If equipment is used to recover unreacted or by-product material from a process section and return it to nother process section or a different piece of process equipment in the same process section or sends it off-site for purification, treatment, or sale, then such equipment are considered part of a material recovery section. Equipment used for the on-site recovery of ethylene glycol from poly(ethylene terephthalate) plants, however, are not included in the material recovery section, but are covered under the standards applicable to the polymerization reaction section (§ 60.562–1(c)(1)(ii)(A) or (2)(ii)(A)).

*Operating day* means, for the purposes of these standards, any calendar day during which equipment used in the manufacture of polymer was operating for at least 8 hours or one labor shift, whichever is shorter. Only operating days shall be used in determining compliance with the standards specified in § 60.562–1(c)(1)(ii)(B), (1)(ii)(C), (2)(ii)(B), and (2)(ii)(C). Any calendar day in which equipment is used for less than 8 hours or one labor shift, whichever is less, is not an "operating day" and shall not be used as part of the rolling 14-day period for determining compliance with the standards specified in § 60.562–1(c)(1)(ii)(B), (1)(ii)(C), (2)(ii)(B), and (2)(ii)(C).

*Polyethylene* means a thermoplastic polymer or copolymer comprised of at least 50 percent ethylene by weight; see low density polyethylene and high density polyethylene.

*Poly(ethylene terephthalate) (PET)* means a polymer or copolymer comprised of at least 50 percent bis-(2-hydroxyethyl)-terephthalate (BHET) by weight.

*Poly(ethylene terephthalate) (PET) manufacture using dimethyl terephthalic* means the manufacturing of poly(ethylene terephthalate) based on the esterification of dimethyl terephthalate (DMT) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to PET.

*Poly(ethylene terephthalate) (PET) manufacture using terephthalic acid* means the manufacturing of poly(ethylene terephthalate) based on the esterification reaction of terephthalic acid (TPA) with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate (BHET) that is subsequently polymerized to form PET.

*Polymerization reaction section* means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization, e.g., esterification vessels. For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from poly(ethylene terephthalate) plants, however, are included in this process section, rather than in the material recovery process section.

*Polypropylene (PP)* means a thermoplastic polymer or copolymer comprised of at least 50 percent propylene by weight.

*Polystyrene (PS)* means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

*Post-impregnation suspension process* means a manufacturing process in which polystyrene beads are first formed in a suspension process, washed, dried, or otherwise finished and then added with a blowing agent to another reactor in which the beads and blowing agent are reacted to produce expandable polystyrene.

*Process heater* means a device that transfers heat liberated by burning fuel to fluids contained in tubular coils, including all fluids except water that is heated to produce steam.

*Process line* means a group of equipment assembled that can operate independently if supplied with sufficient raw materials to produce polypropylene, polyethylene, polystyrene, (general purpose, crystal, or expandable) or poly(ethylene terephthalate) or one of their copolymers. A process line consists of the equipment in the following process sections (to the extent

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that these process sections are present at a plant): raw materials preparation, polymerization reaction, product finishing, product storage, and material recovery.

*Process section* means the equipment designed to accomplish a general but well-defined task in polymer production. Process sections include raw materials preparation, polymerization reaction, material recovery, product finishing, and product storage and may be dedicated to a single process line or common to more than one process line.

*Process unit* means equipment assembled to perform any of the physical and chemical operations in the production of polypropylene, polyethylene, polystyrene, (general purpose, crystal, or expandable), or poly(ethylene terephthalate) or one of their copolymers. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product. Examples of process units are raw materials handling and monomer recovery.

*Product finishing section* means the equipment that treats, shapes, or modifies the polymer or resin to produce the finished end product of the particular facility, including equipment that prepares the product for product finishing. For the purposes of these standards, the product finishing section begins with the equipment used to transfer the polymerized product from the polymerization reaction section and ends with the last piece of equipment that modifies the characteristics of the polymer. Product finishing equipment may accomplish product separation, extruding and pelletizing, cooling and drying, blending, additives introduction, curing, or annealing. Equipment used to separate unreacted or by-product material from the product are to be included in this process section, provided the material seperated from the polymer product is not recovered at the time the process section becomes an affected facility. If the material is being recovered, then the separation equipment are to be included in the material recovery section. Product finishing does not include polymerization, the physical mixing of the pellets to obtain a homogenous mixture of the polymer (except as noted below), or the shaping (such as fiber spinning, molding, or fabricating) or modification (such as fiber stretching and crimping) of the finished end product. If physical mixing occurs in equipment located between product finishing equipment (i.e., before all the chemical and physical characteristics have been "set" by virtue of having passed through the last piece of equipment in the product finishing section), then such equipment are to be included in this process section. Equipment used to physically mix the finished product that are located after last piece of equipment in the product finishing section are part of the product storage section.

*Product storage section* means the equipment that is designed to store the finished polymer or resin end product of the particular facility. For the purposes of these standards, the product storage section begins with the equipment used to transfer the finished product out of the product finishing section and ends with the containers used to store the final product. Any equipment used after the product finishing section to recover unreacted or by-product material are to be considered part of a material recovery section. Product storage does not include any intentional modification of the characteristics of any polymer or resin product, but does include equipment that provide a uniform mixture of product, provided such equipment are used after the last product finishing piece of equipment. This process section also does not include the shipment of a finished polymer or resin product to another facility for further finishing or fabrication.

*Raw materials preparation section* means the equipment located at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of these standards, this process section begins with the equipment used to transfer raw materials from storage and recovered material from material recovery process sections, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that accomplishes purification, drying, or other treatment of raw materials or of raw and recovered materials together, activation of catalysts, and esterification including the formation of some short polymer chains (oligomers), but does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

*Recovery system* means an individual unit or series of material recovery units, such as absorbers, condensers, and carbon adsorbers, used for recovering volatile organic compounds.

*Total organic compounds (TOC)* means those compounds measured according to the procedures specified in § 60.564.

*Vent stream* means any gas stream released to the atmosphere directly from an emission source or indirectly either through another piece of process equipment or a material recovery device that constitutes part of the normal recovery operations in a polymer process line where potential emissions are recovered for recycle or resale, and any gas stream directed to an air pollution control device. The emissions released from an air pollution control device are not considered a vent stream unless, as noted above, the control device is part of the normal material recovery operations in a polymer process line where potential emissions are recovered for recycle or resale.

*Volatile organic compounds (VOC)* means, for the purposes of these standards, any reactive organic compounds as defined in § 60.2 Definitions.

**§ 60.562-1 Standards: Process emissions.**

(a) Polypropylene, low density polyethylene, and high density polyethylene. Each owner or operator of a polypropylene, low density polyethylene, or high density polyethylene process line containing a process section subject to the provisions of this subpart shall comply with the provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup whichever comes first.

(1) *Continuous emissions.* For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1), the owner or operator shall use the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section for determining which continuous emissions are to be controlled and which level of control listed in paragraph (a)(1)(i) of this section is to be met. The owner or operator shall use the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section each time a process section is constructed, modified, or reconstructed at the plant site.

(i) *Level of control.* Continuous emission streams determined to be subject to control pursuant to the procedures identified in paragraphs (a)(1) (ii) and (iii) of this section, as applicable, shall meet one of the control levels identified in paragraphs (a)(1)(i)



(A) through (D) of this section. The procedures in paragraphs (a)(1) (ii) and (iii) of this section identify which level of control may be met. The level of control identified in paragraph (a)(1)(i)(D) of this section is limited to certain continuous emission streams, which are identified through the procedures in paragraphs (a)(1) (ii) and (iii) of this section.

(A) Reduce emissions of total organic compounds (minus methane and ethane) (TOC) by 98 weight percent, or to a concentration of 20 parts per millions by volume (ppmv) on a dry basis, whichever is less stringent. The TOC is expressed as the sum of the actual compounds, not carbon equivalents. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the vent stream.

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater by introducing the vent stream into the flame zone of the boiler or process heater. (Note: A boiler or process heater of lesser design heat capacity may be used, but must demonstrate compliance with paragraph (a)(1)(i)(A) of this section.)

(C) Combust the emissions in a flare that meets the conditions specified in § 60.18. If the flare is used to control both continuous and intermittent emissions, the flare shall meet the conditions specified in § 60.18 at all times (i.e., which controlling continuous emissions alone or when controlling both continuous and intermittent emissions).

(D) Vent the emissions to a control device located on the plant site.

(ii) *Uncontrolled Continuous Emissions.* For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1) and that is not controlled in an existing control device, the owner or operator shall use the procedures identified in Table 3 to identify those continuous emissions from each constructed, modified, or reconstructed affected facility that are to be controlled. The owner shall include in the procedure all uncontrolled continuous vent streams from previously constructed, modified, or reconstructed affected facilities at the plant site each time a process section is constructed, modified, or reconstructed at the plant site. In applying the procedures shown in Table 3, the stream characteristics may be either measured or calculated as specified in § 60.564(d). For modified or reconstructed affected facilities, these stream characteristics are to be determined after a modification or reconstruction determination has been made by the Administrator, but before any actual changes have been undertaken, and then again after the actual changes have been made. Figure 1 provides a summary overview of the control determination procedure described in Table 3.

TABLE 3.—PROCEDURE FOR DETERMINING CONTROL AND APPLICABLE STANDARD FOR CONTINUOUS EMISSION STREAMS FROM NEW, MODIFIED, OR RECONSTRUCTED POLYPROPYLENE AND POLYETHYLENE AFFECTED FACILITIES

| Procedure /a/ | Applicable TOC weight percent range | Control/no control criteria | Applicable standard |
|---|---|---|---|
| 1. Sum all uncontrolled streams with TOC weight percent within the applicable weight percent range from all affected facilities at a plant site. | 0.10 < 5.5 | 1. If total combined uncontrolled emissions are equal to or greater than the calculated threshold emissions (CTE) /b/, control. | 1. § 60.562-1(a)(1)(i) (A), (B), or (C). |
| | | 2. If total combined uncontrolled emission are less than the CTE /b/, control only individual streams with volume flow rates of 8 scfm or less. | 2. § 60.562-1(a)(1)(i) (A) through (D). |
| 2. Calculate total uncontrolled annual emissions for each weight percent range. For modified or affected facilities, use the total uncontrolled emissions after modification or reconstruction. | | | |
| 3. Calculate composite TOC concentration (weight percent) for streams in the 0.10 to less than 5.5 weight percent range and for streams in the 5.5 to less than 20 weight percent range. For modified or reconstructed affected facilities, calculate the composite VOC concentration before and after modification and reconstruction. | 5.5 < 20 | 1. If total combined uncontrolled emissions are equal to or greater than CTE, control. | 1. § 60.562-1(a)(1)(i) (A), (B), or (C). |
| | | 2. If total combined uncontrolled emissions are less than the CTE /b/, control only individual streams with volume flow rates of 8 scfm or less. | 2. § 60.562-1(a)(1)(i) (A) through (D). |
| 4. Select the higher of the two TOC concentrations for each weight percent range for vent streams from a modified or reconstructed affected facility. | 20 to 100 | 1. If total combined uncontrolled emissions are equal to or greater than 18.2 Mg/yr, control. | 1. § 60.562-1(a)(1)(i) (A), (B), or (C). |
| 5. Calculate the threshold emissions for the 0.10 to less than 5.5 weight percent range and for the 5.5 to less than 20 weight percent range using the respective composite TOC concentration selected above. | | 2. If total combined uncontrolled emissions are less than 18.2 Mg/yr, control. | 2. § 60.562-1(a)(1)(i) (A) through (D). |

a Individual streams excluded under paragraph § 60.560(g) from the requirements of § 60.562-1 are to be excluded from all calculations in this table. This paragraph exempts all individual emission streams with individual uncontrolled annual emission rates of less than 1.8 Mg/yr and all individual emission streams with individual TOC concentrations of less than 0.10 percent TOC by weight.

b For the 0.10 to less than 5.5 weight percent range, the following equations are used:

| If the percent composite TOC concentration is | Use this equation to calculate threshold emissions |
|---|---|
| 0.10<0.12 | (a×7.5×10⁹)+226 |
| 0.12<0.2 | (b×58.3)+116.8 |
| 0.2<0.3 | (c×3020)+71.8 |
| 0.3<0.4 | (d×547)+54.5 |

| If the percent composite TOC concentration is | Use this equation to calculate threshold emissions |
|---|---|
| 0.4<0.6 | 46.3+31 (0.6−weight percent TOC) |
| 0.6<5.5 | 46.3 |

where: $a = (0.12 - \text{weight percent TOC})^{2.5}$

$$\left[\frac{0.18}{\text{weight percent TOC}}\right]^{0.5} - 1$$

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$$b = \frac{}{\text{weight percent TOC}}$$

$c = (0.3 - \text{weight percent TOC})^3$

$d = (0.4 - \text{weight percent TOC})^{1.5}$

For the 5.5 to less than 20 weight percent range, the following equations are used.

| If the percent composite TOC concentration is | Use this equation to calculate threshold emissions |
|---|---|
| 5.5<7.0 | (e×740)+21 |
| 7.0<9.0 | (f×324)+25.0 |
| 9.0<20 | (g×125)+18.2 |

where:

$$e = \frac{\left[\frac{7.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

$$f = \frac{\left[\frac{9.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

$$g = \frac{\left[\frac{20.0}{\text{weight percent TOC}}\right]^{0.5} - 1}{\text{weight percent TOC}}$$

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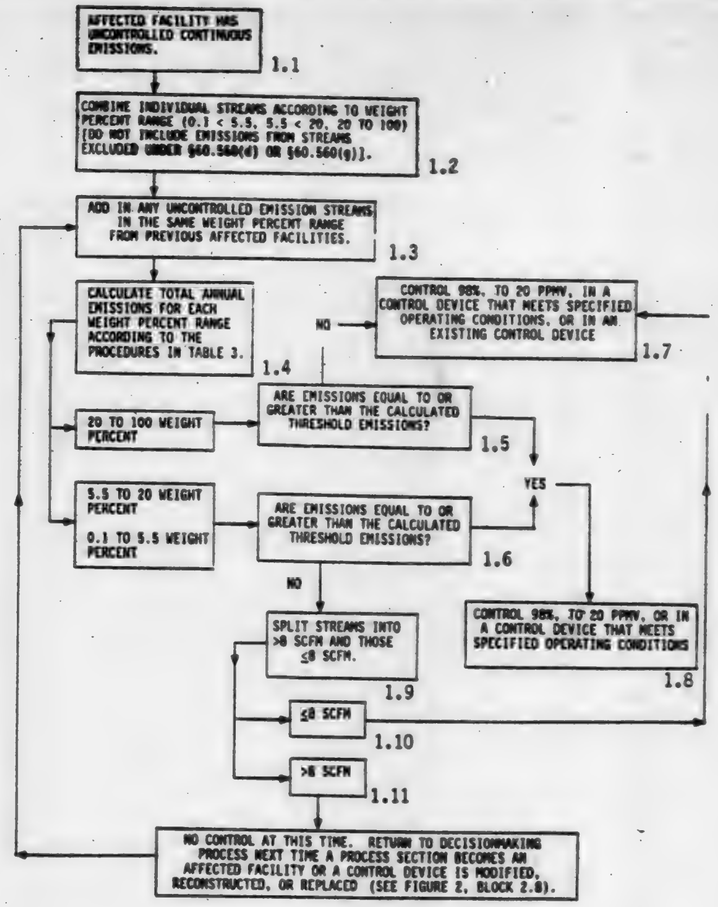



Figure 1. Decisionmaking Process for Uncontrolled Continuous Emissions from Polypropylene and Polyethylene Affected Facilities



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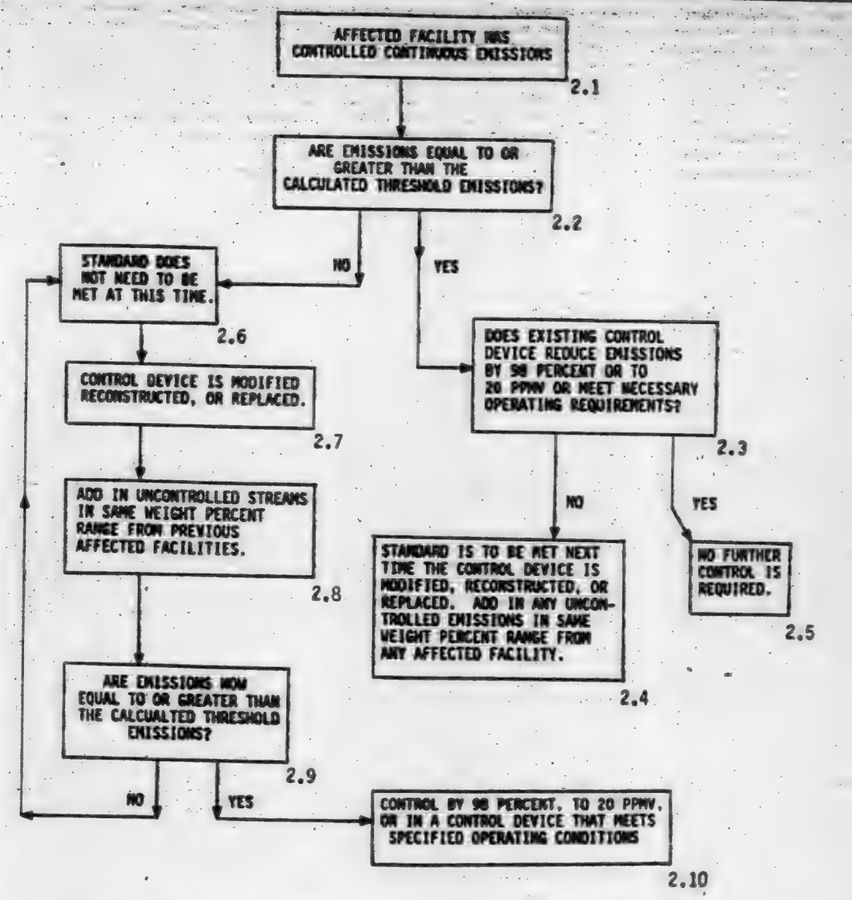
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(iii) Controlled Continuous Emissions. For each vent stream that emits continuous emissions from an affected facility as defined in § 60.560(a)(1) and that is controlled in an existing control device, each owner or operator shall determine whether the emissions entering the control device are greater than or equal to the calculated threshold emissions (CTE) level, which is to be calculated using the TOC concentration of the inlet vent steam and the equations in footnote b of Table 3. If the inlet stream's TOC concentration is equal to or less than 20 weight percent, the calculated threshold emissions level is 18.2 Mg/yr. If multiple emission streams are vented to the control device, the individual streams are not to be separated into individual weight percent ranges for calculations purposes as would be done for uncontrolled emission steams. Emissions vented to an existing control device are required to be controlled as described in paragraphs (a)(1)(iii) (A) and (B) of this section. Figure 2 illustrates the control determination procedure for controlled continuous emissions.

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NOTE: There are no individual stream exemptions for emissions already controlled by existing control devices.

Figure 2. Decisionmaking Process for Continuous Emissions Already Controlled at Polypropylene and Polyethylene Affected Facilities



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(A) If the annual emissions of the steam entering the control device are equal to or greater than the CTE levels, then compliance with one of the requirements identified in § 60.562–1(a)(1)(i) (A), (B), or (C) is required at such time the control device is reconstructed or replaced or has its operating conditions modified as a result of State or local regulations (including changes in the operating permit) including those instances where the control device is reconstructed, replaced, or modified in its operation at the same time the existing process section is modified or reconstructed and becomes an affected facility. If the existing control device already complies with one of the requirements identified in § 60.562–1(a)(1)(i) (A), (B), or (C), no further control is required.

(B) If the annual emissions of the stream entering the control device are less than the CTE level, then the requirements of § 60.562–1(a)(1)(i) (A), (B), or (C) are not applicable at that time. However, if the control device is replaced, reconstructed, or modified at a later date, each owner or operator shall reevaluate the applicability of these standards. This is done by combining with the vent stream entering the control device any uncontrolled vent steams in the same weight percent range as the controlled vent steam and determining whether the annual emissions of the stream entering the control device plus the applicable uncontrolled vent steams are greater than or equal to the CTE level, which is based on the weighted TOC concentration of the controlled vent stream and the uncontrolled vent streams. If the annual emissions entering the control device (including the applicable uncontrolled vent streams) are greater than or equal to the CTE level, then compliance with one of the requirements identified in § 60.562–1(a)(1)(i) (A), (B), or (C) is required at that time for both the controlled and uncontrolled vent steams. If the annual emissions are less than the CTE level, compliance with these standards is again not required at such time. However, if the control device is again replaced, reconstructed, or modified, each owner or operator shall repeat this determination procedure.

(2) *Intermittent emissions.* The owner or operator shall control each vent steam that emits intermittent emissions from an affected facility as defined in § 60.560–1(a)(1) by meeting one of the control requirements specified in paragraphs (a)(2) (i) and (ii) of this section. If a vent stream that emits intermittent emissions is controlled in an existing flare, incinerator, boiler,or process heater, the requirements of this paragraph are waived until such time the control device is reconstructed or replaced or is modified in its operating conditions as a result of State or local regulation, including changes in the operating permit. This paragraph does not apply to emergency vent streams exempted by § 60.560(h) and as defend in § 60.561.

(i) Combust the emissions in a flare that is:

(A) Designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours,

(B) Operated with a flame present at all times, and

(C) Designed to maintain a stable flame.

(ii) Combust the emissions in an incinerator, boiler, or process heater. Such emissions shall be introduced into the flame zone of a boiler or process heater.

(b) *Polystyrene.* Each owner or operator of a polystyrene process line containing process section subject to the provisions of this subpart shall comply with the provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first. East owner or operator of a polystyrene process line using a continuous process shall:

(1) Limit the continuous TOC emissions from the material recovery section by complying with one of the following:

(i) Not allow continuous TOC emissions to be greater than 0.0036 kg TOC/Mg product; or

(ii) Not allow the outlet gas stream temperature from each final condenser in the material recovery section to exceed −25 °C (−13 °F). For purposes of this standard, temperature excursions above this limit shall not be considered a violation when such excursions occur during periods of startup, shutdown, or malfunction; or

(iii) Comply with § 60.562–1(a)(1)(i) (A), (B), or (C).

(2) If continuous TOC emissions from the material recovery section are routed through an existing emergency vapor recovery system, then compliance with these standards is required when the emergency vapor recovery system undergoes modification, reconstruction, or replacement. In such instances, compliance with these standards shall be achieved no later than 180 days after completion of the modification, reconstruction, or replacement.

(c) *Poly(ethylene terephthalate).* Each owner or operator of a poly(ethylene terphthalate) process line containing process sections subject to the provisions of this subpart shall comply with provisions in this section on and after the date on which the initial performance test required by § 60.8 is completed but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

(1) Each owner or operator of a PET process line using a dimethyl terphthalate process shall:

(i) Limit the continuous TOC emissions from the material recovery section (i.e., methanol recovery) by complying with one of the following:

(A) Not allow the continuous TOC emissions to be greater than 0.018 kg TOC/Mg product; or

(B) Not allow the outlet gas temperature from each final condenser in the material recovery section (i.e., methanol recovery) to exceed +3 °C (+37 °F). For purposes of this standard, temperature excursions above this limit shall not be considered a violation wher. such excursions occur during periods of startup, shutdown, or malfunction.

(ii) Limit the continuous TOC emissions and, if steam-jet ejectors are used to provide vacuum to the polymerization reactors, the ethylene glycol concentration from the polymerization reaction section by complying with the appropriate standard set forth below. The ethylene glycol concentration limits specified in paragraphs (c)(1)(ii) (B) and (C) of this section shall be determined by the procedures specified in § 60.564(j).

(A) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product; and

(B) If steam-jet ejectors are used as vacuum producers and a low viscosity product is being produced using single or multiple end finishers or a high viscosity product is being produced using a single end finisher, maintain the concentration of ethylene glycol in the liquid effluent exiting the vacuum system servicing the polymerization reaction section at or below 0.35 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days; or



(C) If steam-jet ejectors are used as vacuum producers and a high viscosity product is being produced using multiple end finishers, maintain an ethylene glycol concentration in the cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days.

(2) Each owner or operator of a PET process line using a terephthalic acid process shall:

(i) Not allow the continuous TOC emissions from the esterification vessels in the raw materials preparation section to be greater than 0.04 kg TOC/Mg product.

(ii) Limit the continuous TOC emissions and, if steam-jet ejectors are used to provide vaccum to the polymerization reactors, the ethylene glycol concentration from the polymerization reaction section by complying with the appropriate standard set forth below. The ethylene glycol concentration limits specified in paragraphs (c)(2)(ii) (B) and (C) of this section shall be determined by the procedures specified in § 60.564(j).

(A) Not allow continuous TOC emissions from the polymerization reaction section (including emissions from any equipment used to further recover the ethylene glycol, but excluding those emissions from the cooling tower) to be greater than 0.02 kg TOC/Mg product; and

(B) If steam-jet ejectors are used as vacuum producers and a low viscosity product is being produced using single or multiple end finishers or a high viscosity product is being produced using a single end finisher, maintain the concentration of ethylene glycol in the liquid effluent exiting the vacuum system servicing the polymerization reaction section at or below 0.35 percent by weight, averaged on a daily basis over a rolling 14-day period of operating days; or

(C) If steam-jet ejectors are used as vacuum producers and a high viscosity product is being produced using multiple end finishers, maintain an ethylene glycol concentration in the cooling tower at or below 6.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days.

(d) Closed vent systems and control devices used to comply with this subpart shall be operated at all times when emissions may be vented to them.

(e) Vent systems that contain valves that could divert a vent stream from a control device shall have car-sealed opened all valves in the vent system from the emission source to the control device and car-sealed closed all valves in vent system that would lead the vent stream to the atmosphere, either directly or indirectly, bypassing the control device.

**§ 60.563–2 Standards: Equipment leaks of VOC.**

(a) Each owner or operator of an affected facility subject to the provisions of this subpart shall comply with the requirements specified in § 60.482–1 through § 60–482–10 as soon as practicable, but no later than 180 days after initial startup, except that indications of liquids dripping from bleed ports in existing pumps in light liquid service are not considered to be a leak as defined in § 60.482–2(b)(2). For purposes of this standard, a "bleed port" is a technologically-required feature of the pump whereby polymer fluid used to provide lubrication and/or cooling of the pump shaft exits the pump, thereby resulting in a visible leak of fluid. This exemption expires when the existing pump is replaced or reconstructed.

(b) An owner or operator may elect to comply with the requirements specified in § 60.483–1 and § 60.483–2.

(c) An owner or operator may apply to the Administrator for a determination of equivalency for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in this subpart. In doing so, the owner or operator shall comply with requirements specified in § 60.484.

(d) Each owner or operator subject to the provisions of this subpart shall comply with the provisions specified in § 60.485 except an owner or operator may use the following provision in addition to § 60.485(e): Equipment is in light liquid service if the percent evaporated is greater than 10 percent at 150 °C as determined by ASTM Method D86–78 (incorporated by reference as specified in § 60.17).

(e) Each owner or operator subject to the provisions of this subpart shall comply with § 60.486 and § 60.487.

**§ 60.563 Monitoring requirements.**

(a) Whenever a particular item of monitoring equipment is specified in this section to be installed, the owner or operator shall install, calibrate, maintain, and operate according to manufacturer's specifications that item as follows:

(1) A temperature monitoring device to measure and record continuously the operating temperature to within 1 percent (relative to degrees Celsius) or ± 0.5 °C (± 0.9 °F), whichever is greater.

(2) A flame monitoring device, such as a thermocouple, an ultraviolet sensor, an infrared beam sensor, or similar device to indicate and record continuously whether a flare or pilot light flame is present, as specified.

(3) A flow monitoring indicator to indicate and record whether or not flow exists at least once every fifteen minutes.

(4) An organic monitoring device (based on a detection principle such as infrared, photoionization, or thermal conductivity) to indicate and record continuously the concentration level of organic compounds.

(5) A specific gravity monitoring device to measure and record continuously to within 0.02 specific gravity unit.

(b) The owner or operator shall install, as applicable, the monitoring equipment for the control means used to comply with § 60.562–1, except § 60.562–1(a)(1)(i)(D), as follows:

(1) If the control equipment is an incinerator:

(i) For a noncatalytic incinerator, a temperature monitoring device shall be installed in the firebox.

(ii) For a catalytic incinerator, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalytic bed.

(2) If a flare is used:

(i) A flame monitoring device shall be installed to indicate the presence of a flare flame or a flame for each pilot light, if the flare is used to comply with § 60.562–1(a)(1), including those flares controlling both continuous and intermittent emissions.

(ii) A thermocouple or equivalent monitoring device to indicate the presence of a flame at each pilot light, if used to comply with § 60.562–1(a)(2).

(3) If a boiler or process heater is used:

(i) If the boiler or process heater has a heat input design capacity of less than 150 million Btu/hr, a temperature monitoring device shall be installed between the radiant section and the convection zone for watertube boilers and between the furnace (combustion zone) and the firetubes for firetube boilers.

(ii) If the boiler or process heater has a heat input design capacity of 150 million Btu/hr or greater, such records to indicate the periods of operation of the boiler or process heater shall be maintained. The records must be readily available for inspection.

(4) If an absorber is the final unit in a system:

(i) A temperature monitoring device and a specific gravity monitoring device for the scrubber liquid shall be installed, or

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(ii) An organic monitoring device shall be installed at the outlet of the absorber.

(5) If a condenser is the final unit in a system:

(i) A temperature monitoring device shall be installed at the condenser exist (product side), or

(ii) An organic monitoring device shall be installed at the outlet of the condenser.

(6) If a carbon adsorber is the final unit in a system, an organic monitoring device shall be installed at the outlet of the carbon bed.

(c) Owners or operators of control devices used to comply with the provisions of this subpart, except § 60.562–1(a)(1)(i)(D), shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.

(d) Owners or operators using a vent system that contains valves that could divert a vent stream from a control device used to comply with the provisions of this subpart shall do one or a combination of the following:

(1) Install a flow indicator immediately downstream of each valve that if opened would allow a vent stream to bypass the control device and be emitted, either directly or indirectly, to the atmosphere. The flow indicator shall be capable of recording flow at least once every fifteen minutes.

(2) Monitor the valves once a month, checking the position of the valves and the condition of the car seal, and identify all times when the car seals have been broken and the valve position has been changed (i.e., from opened to closed for valves in the vent piping to the control device and from closed to open for valves that allow the stream to be vented directly or indirectly to the atmosphere).

(e) An owner or operator complying with the standards specified under § 60.562–1, except § 60.562–1(a)(1)(i)(D), with control devices other than an incinerator, boiler, process heater, flare, absorber, condenser, or carbon adsorber or by any other means shall provide to the Administrator information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may request further information and will specify appropriate monitoring procedures or requirements.

**§ 60.564 Test methods and procedures.**

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures specified in this section, except as provided under § 60.8(b). Owners or operators complying with § 60.562–1(a)(1)(i)(D) need not perform a performance test on the control device, provided the control device is not used to comply with any other requirement of § 60.562–1(a).

(1) Whenever changes are made in production capacity, feedstock type or catalyst type, or whenever there is replacement, removal, or addition of a control device, each owner or operator shall conduct a performance test according to the procedures in this section as appropriate, in order to determine compliance with § 60.562–1.

(2) Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used, the requirement for an initial performance test is waived, in accordance with § 60.8(b). However, the Administrator reserves the option to require testing at such other times as may be required, as provided for in § 114 of the Act.

(3) The owner or operator shall determine the average organic concentration for each performance test run using the equipment described in § 60.563(a)(4). The average organic concentration shall be determined from measurements taken at least every 15 minutes during each performance test run. The average of the three runs shall be the base value for the monitoring program.

(4) When an absorber is the final unit in the system, the owner or operator shall determine the average specific gravity for each performance test run using specific gravity monitoring equipment described in § 60.563(a)(5). An average specific gravity shall be determined from measurements taken at least every 15 minutes during each performance test run. The average of the three runs shall be the base value for the monitoring program.

(5) When a condenser is the final unit in the system, the owner or operator shall determine the average outlet temperature for each performance test run using the temperature monitoring equipment described in § 60.563(a)(1). An average temperature shall be determined from measurements taken at least every 15 minutes during each performance test run while the vent stream is normally routed and constituted. The average of the three runs shall be the base value for the monitoring program.

(b) The owner or operator shall determine compliance with the emission concentration standard in § 60.562–1 (a)(1)(i)(A) or (b)(1)(iii) if applicable [if not, see paragraph (c) of this section] as follows:

(1) The TOC concentration is the sum of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{j=1}^{n} C_j$$

where:

$C_{TOC}$ = Concentration of TOC (minus methane and ethane), dry basis, ppmv.

$C_j$ = the concentration of sample component j, ppm.

n = Number of components in the sample.

(i) Method 18 shall be used to determine the concentration of each individual organic component ($C_j$) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site at the outlet of the control device. Method 4 shall be used to determine the moisture content, if necessary.

(ii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(2) If supplemental combustion air is used, the TOC concentration shall be corrected to 3 percent oxygen and shall be computed using the following equation:

$$C_{corr} = C_{meas} \times \left( \frac{17.9}{20.9 - \%O_{2d}} \right)$$

where:

$C_{corr}$ = Concentration of TOC corrected to 3 percent oxygen, dry basis, ppm by volume.

$C_{meas}$ = Concentration of TOC (minus methane and ethane), dry basis, ppm by volume, as calculated in paragraph (b)(1) of this section.

$\%O_{2d}$ = Concentration of $O_2$, dry basis, percent by volume.

The emission rate correction factor, integrated sampling and analysis procedure of Method 3 shall be used to determine the oxygen concentration ($\%O_{2d}$). The sampling site shall be the same as that of the TOC sample and the samples shall be taken during the same time that the TOC samples are taken.

(c) If paragraph (b) of this section is not applicable, then the owner or operator shall determine compliance with the percent emission reduction standard in § 60.562–1 (a)(1)(i)(A) or (b)(1)(iii) as follows:



(1) The emission reduction of TOC (minus methane and ethane) shall be determined using the following equation:

$$P = \frac{E_{inlet} - E_{outlet}}{E_{inlet}} \times 100$$

where:

P = Percent emission reduction, by weight.

$E_{inlet}$ = Mass rate of TOC entering the control device, kg TOC/hr.

$E_{outlet}$ = Mass rate of TOC, discharged to the atmosphere, kg TOC/hr.

(2) The mass rates of TOC ($E_i$, $E_o$) shall be computed using the following equations:

$$E_i = K_1 \left( \sum_{j=1}^{n} C_{ij} M_{ij} \right) Q_i$$

$$E_o = K_1 \left( \sum_{j=1}^{n} C_{oj} M_{oj} \right) Q_o$$

where:

$C_{ij}, C_{oj}$ = Concentration of sample component "j" of the gas stream at the inlet and outlet of the control device, respectively, dry basis, ppmv.

$M_{ij}, M_{oj}$ = Molecular weight of sample component "j" of the gas stream at the inlet and outlet of the control device respectively, g/g-mole (lb/lb-mole).

$Q_i, Q_o$ = Flow rate of the gas stream at the inlet and outlet of the control device, respectively, dscm/hr (dscf/hr).

$K_1 = 4.157 \times 10^{-8}$ [(kg)/g-mole))/[(g)(ppm)(dscm)] {5.711 × $10^{-18}$ [(lb)/(lb-mole)]/(lb)(ppm)(dscf)]}

(i) Method 18 shall be used to determine the concentration of each individual organic component ($C_{ij}$, $C_{oj}$) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the inlet and outlet sampling sites. The inlet site shall be before the inlet of the control device and after all product recovery units.

(ii) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the volumetric flow rates ($Q_i$, $Q_o$). If necessary, Method 4 shall be used to determine the moisture content. Both determinations shall be compatible with the Method 18 determinations.

(iii) Inlet and outlet samples shall be taken simultaneously. The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(d) An owner or operator shall determine compliance with the individual stream exemptions in § 60.560(g) and the procedures specified in Table 3 for compliance with § 60.562–1(a)(1) as identified in paragraphs (d)(1) and (2) of this section. An owner or operator using the procedures specified in § 60.562–1(a)(1) for determining which continuous process emissions are to be controlled may use calculations demonstrated to be sufficiently accurate as to preclude the necessity of actual testing for purposes of calculating the uncontrolled annual emissions and weight percent of TOC. Owners or operators seeking to exempt streams under § 60.560(g) must use the appropriate test procedures specified in this section.

(1) The uncontrolled annual emissions of the individual vent stream shall be determined using the following equation:

$$E_{ann} = K_1 \left( \sum_{j=1}^{n} C_j M_j \right) Q \times 8{,}600 \times \frac{1\ Mg}{1{,}000\ kg}$$

where:

$E_{ann}$ = uncontrolled annual emissions, Mg/yr

$C_j$ = concentration of sample component "j" of the gas stream, dry basis, ppmv.

$M_j$ = Molecular weight of sample component "j" of the gas stream, g/g-mole (lb/lb-mole).

Q = Flow rate of the gas stream, dscm/hr (dscf/hr).

$K_1 = 4.157 \times 10^{-8}$ [(kg)/g-mole)]/[(g)(ppm)(dscm)] {5.711 × $10^{-18}$ [(lb)/(1b-mole)]/(1b)(ppm)(dscf)]}

8,600 = operating hours per year

(i) Method 18 shall be used to determine the concentration of each individual organic component ($C_j$) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site. If the gas stream is controlled in an existing control device, the sampling site shall be before the inlet of the control device and after all product recovery units.

(ii) Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the volumetric flow rate (Q). If necessary, Method 4 shall be used to determine the moisture content. Both determinations shall be compatible with the Method 18 determinations.

(iii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(2) The weight percent VOC of the uncontrolled individual vent stream shall be determined using the following equation:

$$\text{weight \% TOC} = \frac{\sum_{j=1}^{n} C_j M_j}{MW_{avg} \times 10^6} \times 100$$

where:

$C_j$ = concentration of sample TOC component "j" of the gas stream, dry basis, ppmv.

$M_j$ = Molecular weight of sample TOC component "j" of the gas stream, g/g-mole (1b/1b-mole).

$MW_{avg}$ = Average molecular weight of the entire gas stream, g/g-mole (1b/1b-mole).

(i) Method 18 shall be used to determine the concentration of each individual organic component ($C_j$) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site. If the gas stream is controlled in an existing control device, the sampling site shall be before the inlet of the control device and after all product recovery units. If necessary, Method 4 shall be used to determine the moisture content. This determination

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shall be compatible with the Method 18 determinations.

(ii) The average molecular weight of the gas stream shall be determined using methods approved by the Administrator. If the carrier component of the gas stream is nitrogen, then an average molecular weight of 28 g/g-mole (lb/lb-mole) may be used in lieu of testing. If the carrier component of the gas stream is air, then an average molecular weight of 29 g/g-mole (lb/lb-mole) may be used in lieu of testing.

(iii) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(e) The owner or operator shall determine compliance of flares with the visible emission and flare provisions in § 60.562–1 as follows:

(1) Method 22 shall be used to determine visible emission. The observation period for each run shall be 2 hours.

(2) The monitoring device of § 60.563(b)(2) shall be used to determine whether a flame is present.

(f) The owner or operator shall determine compliance with the net heating value provisions in § 60.18 as referenced by § 60.562–1(a)(1)(i)(C). The net heating value of the process vent stream being combusted in a flare shall be computed as follows:

$$H_T = K_2 \left( \sum_{j=1}^{n} C_j H_j \right)$$

where:

$H_T$ = Net heating value of the sample based on the net enthalpy per mole of offgas combusted at 25 °C and 760 mmHg, but the standard temperature for determining the volume corresponding to one mole is 20 °C, MJ/scm.

$K_2$ = Conversion constant, $1.740 \times 10^{-7}$

$$\frac{\text{(1)}}{\text{ppm}} \frac{\text{(g mole)}}{\text{scm}} \frac{\text{(MJ)}}{\text{kcal}}$$

where standard temperature for

$\frac{\text{(g mole)}}{\text{scm}}$ is 20 °C;

$C_j$ = Concentration of sample component j in ppm on a wet basis.

$H_j$ = Net heat of combustion of sample component j, at 25 °C and 760 mm Hg, kcal/g-mole.

(1) Method 18 shall be used to determine the concentration of each individual organic component ($C_j$) in the gas stream. Method 1 or 1A, as appropriate, shall be used to determine the sampling site to the inlet of the flare. Using this same sample, ASTM D1946–77 (incorporated by reference—see § 60.17) shall be used to determine the hydrogen and carbon monoxide content.

(2) The sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at 15 minute intervals.

(3) Published or calculated values shall be used for the net heats of combustion of the sample components. If values are not published or cannot be calculated, ASTM D2382–76 (incorporated by reference—see § 60.17) may be used to determine the net heat of combustion of component "j."

(g) The owner or operator shall determine compliance with the exit velocity provisions in § 60.18 as referenced by § 60.562–1(a)(1)(i)(C) as follows:

(1) If applicable, the net heating value ($H_T$) of the process vent shall be determined according to the procedures in paragraph (f) of this section to determine the applicable velocity requirements.

(2) If applicable, the maximum permitted velocity ($V_{max}$) for steam-assisted and nonassisted flares shall be computed using the following equation:

where:

$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$

$V_{max}$ = Maximum permitted velocity, m/sec.

28.8 = Constant.

31.7 = Constant.

$H_T$ = The net heating value as determined in paragraph (f) of this section.

(3) The maximum permitted velocity, $V_{max}$, for air-assisted flares shall be determined by the following equation:

where:

$V_{max} = 8.706 + 0.7084(H_T)$

$V_{max}$ = Maximum permitted velocity, m/sec.

8.706 = Constant.

0.7084 = Constant.

$H_T$ = The net heating value as determined in paragraph (f) of this section.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(h) The owner or operator shall determine compliance with the mass emission per mass product standards in §§ 60.560 (d) and (e) and in §§ 60.562–1 (b)(1)(i), (c)(1)(i)(A), (c)(1)(ii)(A), (c)(2)(i), and (c)(2)(ii)(A). The emission rate of TOC shall be computed using the following equation:

$$ER_{TOC} = \frac{E_{TOC}}{\frac{1\ Mg}{P_p \times 1{,}000\ kg}}$$

where:

$ER_{TOC}$ = Emission rate of total organic compounds (minus methane and ethane), kg TOC/Mg product.

$E_{TOC}$ = Emission rate of total organic compounds (minus methane and ethane) in the sample, kg/hr.

$P_p$ = The rate of polymer produced, kg/hr.

(1) The mass rate of TOC, $E_{TOC}$, shall be determined according to the procedures, as appropriate, in paragraph (c)(2) of this section. The sampling site for determining compliance with §§ 60.560 (d) and (e) shall be before any add-on control devices and after all product recovery devices. Otherwise, the sampling site shall be at the outlet of the control device.

(2) The rate of polymer produced, $P_p$ (kg/hr), shall be determined by dividing the weight of polymer pulled in kilograms (kg) from the process line during the performance test by the number of hours (hr) taken to perform the performance test. The polymer pulled, in kilograms, shall be determined by direct measurement or, subject to prior approval by the Administrator, computed from materials balance by good engineering practice.

(i) The owner or operator shall determine continuous compliance with the temperature requirements in §§ 60.562–1(b)(1)(ii) and 60.562–1(c)(1)(i)(B) by using the temperature monitoring equipment described in § 60.563(a)(1). An average temperature shall be determined from measurements taken at least every 15 minutes every three hours while the vent stream is normally routed and constituted. Each three-hour period constitutes a performance test.

(j) For purposes of determining compliance with § 60.562–1(c) (1)(ii)(B), (1)(ii)(C), (2)(ii)(B), or (2)(ii)(C), the ethylene glycol concentration in either the cooling tower or the liquid effluent from steam-jet ejectors used to produce a vacuum in the polymerization reactors, whichever is applicable, shall be determined:

(1) Using procedures that conform to the methods described in ASTM D2908–74, "Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography" (incorporated by reference—see § 60.17), except as provided in paragraph (j)(2) of this section:

(i) At least one sample per operating day shall be collected using the grab sampling procedures of ASTM D3370–78, "Standard Practices for Sampling Water" (incorporated by reference—see § 60.17). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days, except as provided in paragraphs (j)(1) (ii) and (iii) of this section. Each daily average ethylene glycol concentration so calculated constitutes a performance test. Exceedance of the standard during the reduced testing program specified in paragraphs (j)(1) (ii) and (iii) of this section is a violation of these standards.

(ii) For those determining compliance with § 60.562–1(c) (1)(ii)(B) or (2)(ii)(B), the owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 0.10 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced testing period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 0.10 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. A reduced sampling program can be reinstituted if the requirements specified in this paragraph are met.

(iii) For those determining compliance with § 60.562–1 (c)(1)(ii)(C) or (c)(2)(ii)(C), the owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.8 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results 14-day in which no one 14-day average exceeded 1.8 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. A reduced program can be reinstituted if the requirements specified in this paragraph are met.

(iv) The upper 95 percent confidence interval shall be calculated using the equation:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + t \sqrt{\frac{n\sum X^2 - (\sum X)^2}{n(n-1)}}$$

where:

$X_i$ = daily ethylene glycol concentration for each day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (j)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

**§ 60.565 Reporting and recordkeeping requirements.**

(a) Each owner or operator subject to the provisions of this subpart shall keep an up-to-date, readily-accessible record of the following information measured during each performance test, and shall include the following information in the report of the initial performance test in addition to the written results of such performance tests as required under § 60.8. Where a control device is used to comply with § 60.562–1(a)(1)(i)(D) only, a report containing performance test data need not be submitted, but a report containing the information in § 60.565(a)(11) is required. Where a boiler or process heater with a design heat input capacity of 150 million Btu/hour or greater is used to comply with § 60.562–1(a), a report containing performance test data need not be submitted, but a report containing the information in § 60.565(a)(2)(i) is required. The same information specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device or the outlet concentration of TOC (minus methane and ethane) is determined.

(1) When an incinerator is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) The average firebox temperature of the incinerator (or the average temperature upstream and downstream of the catalyst bed), measured at least every 15 minutes and averaged over the performance test period, and

(ii) The percent reduction of TOC (minus methane and ethane) achieved by the incinerator, the concentration of TOC (minus methane and ethane) (ppmv, by compound) at the outlet of the control device on a dry basis, or the emission rate in terms of kilograms TOC (minus methane and ethane) per megagram of product at the outlet of the control device, whichever is appropriate. If supplemental combustion air is used, the TOC concentration corrected to 3 percent oxygen shall be recorded and reported.

(2) When a boiler or process heater is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) A description of the location at which the vent stream is introduced into the boiler or process heater, and

(ii) For boiler or process heaters with a design heat input capacity of less than 150 million Btu/hr, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (50°F) below the average combustion temperature during the most recent performance test at which compliance was determined.

(3) When a flare is used to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2):

(i) All visible emission readings, heat content determination, flow rate measurements, and exit velocity determinations made during the performance test,

(ii) Continuous records of the pilot flame heat-sensing monitoring, and

(iii) Records of all periods of operations during which the pilot flame is absent.

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(4) When an incinerator, boiler, or process heater is used to demonstrate compliance with § 60.562–1(a)(2), a description of the location at which the vent stream is introduced into the incinerator, boiler, or process heater.

(5) When a flare is used to demonstrate compliance with § 60.564–1(a)(2):

(i) All visible emission readings made during the performance test;

(ii) Continuous records of the pilot flame heat-sensing monitoring, and

(iii) Records of all periods of operation during which the pilot flame is absent.

(6) When an absorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2), the specific gravity (or alternative parameter that is a measure of the degree of absorbing liquid saturation, if approved by the Administrator), and average temperature, measured at least every 15 minutes and averaged over the performance test period, of the absorbing liquid (both measured while the vent stream is normally routed and constituted).

(7) When a condenser is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2), the average exit (product side) temperature, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted.

(8) Daily measurement and daily average 14–day rolling average of the ethylene glycol concentration in the liquid effluent exiting the vaccum system servicing the polymerization reaction section, if an owner or operator is subject to § 60.562–1(c) (1)(ii)(B) or (2)(ii)(B), or of the ethylene glycol concentration in the cooling water in the cooling tower, if subject to § 60.562–1(c) (2)(ii)(C) or (2)(iii)(C).

(9) When a carbon adsorber is the final unit in a system to demonstrate compliance with § 60.562–1, except § 60.562–1(a)(2): the concentration level or reading indicated by the organics monitoring device at the outlet of the adsorber, measured at least every 15 minutes and averaged over the performance test period while the vent stream is normally routed and constituted.

(10) When an owner or operator seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in §§ 60.560 (d) and (e) or with the individual stream exemptions in § 60.560(g), each process operation variable (e.g., pressure, temperature, type of catalyst) that may result in an increase in the uncontrolled emission rate, if § 60.560(d) or (e) is applicable, or in an increase in the uncontrolled annual emissions or the VOC weight percent, as appropriate, if § 60.560(g) is applicable, should such operating variable be changed.

(11) When an owner or operator uses a control device to comply with § 60.564–1(a)(1)(i)(D) alone: all periods when the control device is not operating.

(b)(1) Each owner or operator subject to the provisions of this subpart shall submit with the initial performance test or, if complying with § 60.564–1(a)(1)(i)(D), as a separate report, an engineering report describing in detail the vent system used to vent each affected vent stream to a control device. This report shall include all valves and vent pipes that could vent the stream to the atmosphere, thereby bypassing the control device, and identify which valves are car-sealed opened and which values are car-sealed closed.

(2) If a vent system containing valves that could divert the emission stream away from the control device is used, each owner or operator subject to the provisions of this subpart shall keep for at least two years up-to-date, readily accessible continuous records of:

(i) All periods when flow is indicated if flow indicators are installed under § 60.583(d)(i).

(ii) All times when maintenance is performed on car-sealed valves, when the car seal is broken, and when the valve position is changed (i.e., from open to closed for valves in the vent piping to the control device and from closed to open for valves that vent the stream directly or indirectly to the atmosphere bypassing the control device).

(c) Where an incinerator is used to comply with § 60.562–1, except §§ 60.562(a)(1)(i)(D) and (a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The temperature measurements specified under § 60.563(b)(1).

(2) Records of periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as follows:

(i) For noncatalytic incinerators, all 3–hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test to which compliance was demonstrated.

(ii) For catalytic incinerators, all 3–hour periods of operation during which the average temperature of the vent stream immediately before the catalyst bed is more than 28 °C (50 °F) below the average temperature of the vent stream during the most recent performance test at which compliance was demonstrated. The owner or operator also shall record all 3–hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test at which compliance was demonstrated.

(d) Where a boiler or process heater is used to comply with § 60.562–1, except §§ 60.562–1 (a)(1)(i)(D) and (a)(2), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) Where a boiler or process heater with a heat input design capacity of 150 million Btu/hr or greater is used, all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements), and

(2) Where a boiler or process heater with a heat input design capacity of less than 150 million Btu/hr is used, all periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Periods of operation during which the parameter boundaries established during the most recent performance test are exceeded are defined as all 3–hour periods of operation during which the average combustion temperature was more than 28 °C (50 °F) below the average combustion temperature during the most recent performance test at which compliance was demonstrated.

(e) Where a flare is used to comply with § 60.562–1, except § 60.562–1(a)(1)(i)(D), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily accessible continuous records of:

(1) The flare or pilot light flame heat sensing monitoring specified under § 60.563(b)(2), and

(2) All periods of operations in which the flare or pilot flame, as appropriate, is absent.

(f) Where an adsorber, condenser, absorber, or a control device other than a flare, incinerator, boiler, or process heater is used to comply with § 60.562–1, except § 60.562–1(a)(1)(i)(D), each owner or operator subject to the provisions of this subpart shall keep for at least 2 years up-to-date, readily-accessible continuous records of the periods of operation during which the parameter boundaries established during the most recent performance test are exceeded. Where an owner or operator seeks to comply with § 60.562–1, periods of operation during which the parameter boundaries established during the most recent performance tests are exceeded are defined as follows:

(1) Where an absorber is the final unit in a system:

(i) All 3-hour periods of operation during which the average absorbing liquid temperature was more than 11 °C (20 °F) above the average absorbing liquid temperature during the most recent performance test, and

(ii) All 3-hour periods of operation during which the average absorbing liquid specific gravity was more than 0.1 unit above, or more than 0.1 unit below, the average absorbing liquid specific gravity during the most recent performance test (unless monitoring of an alternative parameter than is a measure of the degree of absorbing liquid saturation is approved by the Administrator, in which case he or she will define appropriate parameter boundaries and periods of operation during which they are exceeded).

(2) Where a condenser is the final unit in a system, all 3-hour periods of operation during which the average condenser operating temperature was more than 6 °C (10 °F) above the average operating temperature during the most recent performance test.

(3) Where a carbon adsorber is the final unit in a system, all 3-hour periods of operation during which the average organic concentration level in the carbon adsorber gases is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring system during the most recent performance test.

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.562–1 shall keep up-to-date, readily accessible records of:

(1) Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal or addition of product recovery equipment; and

(2) The results of any performance test performed pursuant to the procedures specified by § 60.564.

(h) Each owner or operator of an affected facility that seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in §§ 60.560 (d) and (e) or with the individual stream exemptions in § 60.560(g) shall keep for at least 2 years up-to-date, readily accessible records of any change in process operation that increases the uncontrolled emission rate of the process line in which the affected facility is located, if § 60.560 (d) or (e) is applicable, or that increase the uncontrolled annual emissions or the VOC weight percent of the individual stream, if § 60.560(g) is applicable.

(i) Each owner and operator subject to the provisions of this subpart is exempt from § 60.7(c) of the General Provisions.

(j) The Administrator will specify appropriate reporting and recordkeeping requirements where the owner or operator of an affected facility complies with the standards specified under § 60.562–1 other than as provided under § 60.565 (a) through (e).

(k) Each owner or operator that seeks to comply with the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision of §§ 60.560 (d) and (e), the individual stream exemptions of § 60.560(g), or the requirements of § 60.562–1 shall submit to the Administrator semiannual reports of the following recorded information, as applicable. The initial report shall be submitted within 6 months after the initial start-up date.

(1) Exceedances of monitored parameters recorded under §§ 60.565 (c), (d)(2), and (f).

(2) All periods recorded under § 60.565(b) when the vent stream has been diverted from the control device.

(3) All periods recorded under § 60.565(d) when the boiler or process heater was not operating.

(4) All periods recorded under § 60.565(e) in which the flare or pilot flame was absent.

(5) All periods recorded under § 60.565(a)(8) when the 14-day rolling average exceeded the standard specified in § 60.562–1(c) (1)(ii)(B), (1)(ii)(C), (2)(ii)(B), or (2)(ii)(C), as applicable.

(6) Any change in process operations that increases the uncontrolled emission rate of the process line in which the affected facility is located, as recorded in § 60.565(h).

(7) Any change in process operations that increases the uncontrolled annual emissions or the VOC weight percent of the individual stream, as recorded in § 60.565(h).

(l) Each owner or operator subject to the provisions of this subpart shall notify the Administrator of the specific provisions of § 60.562, § 60.560(d), or § 60.560(e), as applicable, with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3). If an owner or operator elects at a later date to use an alternative provision of § 60.562 with which he or she will comply or becomes subject to § 60.562 for the first time (i.e., the owner or operator can no longer meet the requirements of this subpart by complying with the uncontrolled threshold emission rate cutoff provision in § 60.560 (d) or (e)), then the owner or operator shall notify the Administrator 90 days before implementing a change and, upon implementing a change, a performance test shall be performed as specified in § 60.564.

(m) The requirements of this subsection remain in force until and unless EPA, in delegating enforcement authority to a State under section 111(c) of the Act, approves alternative reporting requirements or means of compliance surveillance adopted by such State. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with the requirements established by the State.

**§ 60.566 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authority contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 60.562–2(c).

3. Section 60.17(a) is amended by revising paragraphs (a)(6), (a)(38), and (a)(40) and by adding paragraphs (a)(60) and (a)(61) to read as follows:

**§ 60.17 Incorporations by reference.**

* * * * *

(a) * * *

(6) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.45(f)(5)(i), 60.18(f), 60.614(d)(2)(ii), 60.614(d)(4), 60.664(d)(2)(ii), 60.664(d)(4) and 60.564(f).

(38) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved for §§ 60.18(f), 60.485(g), 60.614(d)(4), 60.664(d)(4), and 60.564(f).

(40) ASTM D86–78, Distillation of Petroleum Products, IBR approved for § 60.593(d), § 60.633(h), and § 60.562–2(d).

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(60) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(61) ASTM D3370–76, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

[FR Doc. 90–28755 Filed 12–10–90; 8:45 am]
BILLING CODE 6560–50–M

federal register

Tuesday
December 11, 1990

Part IV

# Office of Science and Technology Policy

National Security Council

47 CFR Part 201, et al.

National Communications System; Final Rule

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**OFFICE OF SCIENCE AND TECHNOLOGY POLICY**

**National Security Council**

**47 CFR Parts 201, 202, 212, 214, 215 and 216**

**National Communications System**

**AGENCIES:** Office of Science and Technology Policy and National Security Council.

**ACTION:** Notice of amendments to final rules.

**SUMMARY:** Executive Order 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193) redefined the functions and organization of the National Communications System, and established the responsibilities of executive offices for both wartime and non-wartime national security and emergency preparedness (NS/EP) telecommunications services. These amendments to 47 CFR chapter II document the policy changes embodied in the Executive Order, and otherwise revise parts 201, 202, 212, 214, 215 and add part 216 consistent with current NS/EP telecommunications procedures.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, Office of the Assistant Secretary of Defense (Command, Control, Communications & Intelligence), Pentagon, Washington, DC [202] 697–7628.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects**

*47 CFR Parts 201 and 202*

Civil defense, Communications common carriers, Defense communications, Emergency powers, National Communications System, Telecommunications.

*47 CFR Part 212*

Civil defense, Communications common carriers, Defense communications, Emergency powers, Science and technology, Telecommunications.

*47 CFR Part 214*

Civil defense, Defense communications, Emergency powers, Radio, Science and technology.

*47 CFR Part 215*

Civil defense, Defense communications, Research, National Communications System, Science and technology, Telecommunications.

*47 CFR Part 216*

Civil defense, Defense communications, National Communications System, Organization and functions (Government agencies), Radio, Telecommunications.

Parts 201, 202, 212, 214 and 215 of 47 CFR chapter II are revised and part 216 is added to read as set forth below.

Dated: June 14, 1990.

**D. Allan Bromley,**

*Director, Office of Science and Technology Policy.*

Dated: October 8, 1990.

**Brent Scowcroft,**

*Assistant to the President for National Security Affairs.*

## PART 201—EXECUTIVE POLICY

Sec.

201.0 Background.
201.1 Authority.
201.2 Definitions.
201.3 Policy.

**Authority:** 61 Stat. 496 (50 U.S.C. 401); 64 Stat. 798 (50 U.S.C. app. 2061); 64 Stat. 1245 (50 U.S.C. app. 2251); 80 Stat. 463 (42 U.S.C. 6611); E.O. 12046, March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158); E.O. 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193); E.O. 12656, November 18, 1988 (53 FR 47491; 3 CFR, 1988 Comp., p. 585).

**§ 201.0 Background.**

National policy with respect to the conservation, allocation and use of the Nation's telecommunications resources during crises and emergencies is set forth in Executive Order 12472. The following parts of this chapter address specific responsibilities with respect to management of telecommunications resources and related procedures which bear upon provision, restoration and continuity of telecommunications services during crises and emergencies. In doing so, the chapter encompasses both national security and emergency preparedness activities, consistent with Executive Order 12472. This concept of national security and emergency preparedness telecommunications services (as defined in § 201.2(g)) includes crises that do not necessarily entail serious degradation of, or serious threats to, national security. It therefore is a broader concept than the term "national security emergency preparedness activities" in Executive Order 12656, which concerns only national security emergencies, and preparedness activities necessarily related to such emergencies.

**§ 201.1 Authority.**

(a) Authorities and responsibilities related to and bearing upon national security and emergency preparedness telecommunications matters are set forth in:

(1) Section 706 of the Communications Act of 1934 (48 Stat. 1104, 47 U.S.C. 606), as amended.

(2) The National Security Act of 1947, as amended (61 Stat. 496, 50 U.S.C. 402).

(3) The Federal Civil Defense Act of 1950, as amended (50 U.S.C. app. 2251 *et seq.*).

(4) The Disaster Relief Act of 1974 (42 U.S.C. 5121 *et seq.*).

(5) The National Science and Technology Policy, Organization, and Priorities Act of 1976 (90 State. 463, 42 U.S.C. 6611).

(6) Executive Order 12046, "Relating to the Transfer of Telecommunications Functions," March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158).

(7) Executive Order 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

(b) Authorities to be exercised in the execution and performance of emergency functions are subject to the provisions of the National Emergencies Act of 1976 (90 Stat. 1255, 50 U.S.C. 1601).

**§ 201.2 Definitions.**

The following definitions apply herein:

(a) *Communications common carrier, specialized carrier,* or *carrier* means any individual, partnership, association, joint stock company, trust, or corporation subject to Federal or State regulation engaged in providing telecommunications facilities or services, for use by the public, for hire.

(b) *Government* means Federal, State, county, municipal, and other local government authority. Specific qualification will be provided whenever reference to a particular level of government is intended.

(c) *Joint Telecommunications Resources Board (JTRB)* means that organization established by the Director, Office of Science and Technology Policy, pursuant to Executive Order 12472 to assist the Director, OSTP, in exercising the non-wartime emergency telecommunications functions assigned by Executive Order 12472.

(d) *The National Communications System (NCS)* means that organization established by Executive Order 12472 consisting of the telecommunications assets of the entities represented on the NCS Committee of Principals and an administrative structure consisting of the Executive Agent, the NCS Committee of Principals and the Manager. The NCS Committee of Principals consists of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security and emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security and emergency preparedness telecommunications capabilities. The NCS is a confederative arrangement in which member Federal agencies participate with their owned and leased telecommunications assets to provide necessary communications services for the Federal Government, under all conditions, including nuclear war.

(e) *National Coordinating Center (NCC)* refers to the joint industry-government telecommunications entity established by the NCS pursuant to Executive Order 12472 to assist in the initiation, coordination, restoration and reconstitution of national security and emergency preparedness telecommunications services or facilities under all conditions of crisis or emergency.

(f) *National priorities* means those essential actions and activities in which the government and the private sector must become engaged in the interests of national survival and recovery.

(g) *National security and emergency preparedness* (NS/EP) *telecommunications services,* or *NS/EP services,* means those telecommunication services which are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NS/EP posture of the United States.

(h) *NS/EP treatment* refers to the provisioning of a telecommunications service before others based on the provisioning priority level assigned by the Executive Office of the President.

(i) *National Telecommunicotions Management Structure (NTMS)* means a survivable and enduring management structure which will support the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

(j) *Private sector* means those sectors of non-government entities that are users of telecommunications services.

(k) *Telecommunications* means any transmission, emission, or reception of signs, signals, writing, images, graphics, and sounds or intelligence of any nature by wire, radio, optical, or other electromagnetic systems.

(l) *Telecommunicotions resources* include telecommunications personnel, equipment, material, facilities, systems, and services, public and private, wheresoever located within the jurisdiction of the United States.

(m) *Wartime emergency* means a crisis or event which permits the exercise of the war power functions of the President under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

**§ 201.3 Policy.**

(a) The Federal Government is responsible for resources mobilization, including determination of the need for and the extent of mobilization necessary in all crises and emergencies, wartime and non-wartime.

(b) The President has limited non-wartime NS/EP telecommunications functions, and wartime NS/EP functions under the Communications Act of 1934 (as amended), which have been delegated to Federal agencies under Executive Order 12472. Federal, State, and local governments share the responsibility for conservation of the Nation's telecommunications resources.

(1) The achievement of survival and recovery during a crisis or emergency would establish an unavoidable interdependence between and among Federal, State, and local authorities; therefore, there should be no barriers between Federal and State levels of authorities and between State and local levels of authorities which would impede, obstruct, or otherwise hinder effective conservation and equitable allocation of telecommunications resources and services to the needs of the Nation.

(2) The Federal Government will rely upon State governments and their telecommunications management organizations for management or control of intrastate carrier services and continuity of interconnectivity with interstate carriers to assure that national objectives and priorities are properly served. Applicable regulations of the Federal Communications Commission govern the extent of the allocation of responsibility between Federal and State authorities for the management of NS/EP intrastate carrier services and the interconnectivity of intrastate services for NS/EP telecommunications functions.

(c) A system of telecommunications service priorities will be established which facilitates the provisioning and early restoration of services considered vital to national interests during those events or crises which warrant NS/EP treatment.

(d) The President is authorized during, or in anticipation of, an emergency or major disaster (as defined in the Disaster Relief Act of 19/4) to establish temporary telecommunications systems and to make such telecommunications available to State and local government officials and such other persons as deemed appropriate (42 U.S.C. 5185).

(e) The President also is authorized, during war, when necessary in the interest of national defense and security, to direct or establish priorities for essential communications with any commercial or governmental carrier and to prevent obstruction of telecommunications. The President may also suspend or amend rules and regulations, close stations and facilities, and authorize U.S. government use and control of telecommunications resources with regard to:

(1) Radio communications (during war, or Presidentially declared threat of war, public peril, disaster or national emergency or a need to preserve the neutrality of the U.S.) and

(2) Wire communications (during war or threat of war).

(f) During an attack on the United States by an aggressor nation, and in an immediate postattack period, all decisions regarding the use of telecommunications resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and response, and economic activities essential to continued economic survival and recovery.

(g) The Director of the Office of Science and Technology Policy will serve as the central authority to control, coordinate, and direct the activities of the Nation's telecommunications facilities, systems, and services during periods of wartime emergency as determined under section 706 of the Communications Act of 1934 (47 U.S.C. 606), as amended.

(h) Telecommunications resources of the Federal Government will be employed, as required, to best serve the continuity of government and national interests.

(i) Federal agencies will, in the development of emergency operational plans, minimize, to the extent feasible, dependence upon telecommunications services for continuity of essential operations.

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## PART 202—NATIONAL SECURITY AND EMERGENCY PREPAREDNESS PLANNING AND EXECUTION

Sec.
202.0 Objectives.
202.1 Policies.
202.2 Criteria and guidance.
202.3 Plans preparation and execution.

Authority: 61 Stat. 496 (50 U.S.C. 401); 64 Stat. 798 (50 U.S.C. app. 2061); 64 Stat. 1245 (50 U.S.C. app. 2251); 80 Stat. 463 (42 U.S.C. 6611); E.O. 12046, March 27, 1978 (43 FR 13349; 3 CFR, 1978 Comp., p. 158); E.O. 11021, May 7, 1962 (27 FR 4409; 3 CFR, 1959–1963 Comp., p. 600); E.O. 13472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

### § 202.0 Objectives.

(a) During, or in anticipation of, a non-wartime emergency or natural disaster, a telecommunications capacity must exist to provide temporary telecommunications service to State and local government officials and other persons deemed appropriate by the President.

(b) In the event of a general war and attack upon the Nation, a national telecommunications capability must exist that will support telecommunications requirements with respect to national security, survival and recovery. The development of survivable telecommunications to support essential functions (including an emergency broadcasting system), and technical compatibility of signaling methods, transmission modes, switching facilities, and terminal devices to permit exchange of communications over the surviving media of all systems, government or commercial, are crucial elements of such a national capability. In addition, a survivable national telecommunications management structure is necessary to manage initiation, coordination and restoration of telecommunications services. The management structure must include the following:

(1) Legal authority for telecommunications management.

(2) A control mechanism to manage the initiation, coordination and restoration of telecommunications services.

(3) Procedures to ensure timely damage assessment and allocation of residual resources and controlled restoration of services based on national policy/direction.

(4) The capability to execute a telecommunications recovery plan based on national policy/guidance.

(c) Notwithstanding any provision regarding NS/EP Planning and Execution, nothing in this Part shall be deemed to affect the authorities or responsibilities of the Director of the Office of Management and Budget, or any Office or official thereof; or reassign any function assigned any agency under the Federal Property and Administrative Services Act of 1949, as amended, or under any other law, or any function vested by law in the Federal Communications Commission.

### § 202.1 Policies.

(a) The telecommunications resources of the Nation will be available for government use during crises and emergencies, wartime and non-wartime, and to satisfy the needs of the public welfare and safety.

(b) The National Plan for Telecommunications Support in Non-Wartime Emergencies provides procedures for planning and using National telecommunications assets and resources in support of non-wartime emergencies, including those covered by the Disaster Relief Act of 1974, in Presidentially declared Emergencies and Major Disasters, Extraordinary Situations, and other emergencies.

(c) An NS/EP Telecommunications Service Priority (TSP) System will provide procedures to authorize priority treatment for the provisioning and restoration of NS/EP telecommunications services for wartime and non-wartime emergencies.

(d) In wartime emergencies, facilities management will remain decentralized to the extent feasible to assure continued flexibility of operational response to critical needs, subject to the management direction and overriding authority of those officials delegated to act for and with the consent of the central point of authority within the Federal Government.

(1) Federally owned, leased, and/or operated telecommunications facilities, systems, and networks will be managed during such an emergency by the agency normally controlling the facility, system, or network except that all operations will be subject to the management direction and authority of the officials delegated overall management responsibility for Federal Government systems.

(2) Facilities other than those of the Federal Government, with the exception of radio stations in the Aviation Services and certain classes of radio stations in the Maritime Services, will be managed by the authorized common carrier or other person owning and operating such facilities subject to Federal Communications Commission (FCC) guidance and direction or in accordance with State or local plans if not subject to FCC jurisdiction.

(3) Radio stations in the Aviation Services and those aboard vessels in the Maritime Service will be subject to the control of the Secretary of Defense during a national emergency.

(e) The Director of the Office of Science and Technology Policy is the single point of authority within the Federal Government for the wartime emergency functions under section 706 of the Communications Act (47 U.S.C. 606) with respect to the allocation and use of surviving resources in support of national objectives enunciated by the President. Authority may be redelegated as necessary and when it can be exercised within boundaries established by Presidential authority.

(f) Radio frequency utilization during a wartime emergency will be in accordance with authorizations, assignments, and mobilization plans in existence at the onset of the emergency. Subject to the overriding control of the Director, OSTP, under the President's War Emergency Powers, spectrum management regarding the authorization and assignment of radio frequencies will be made by the National Telecommunications and Information Administration (NTLA) for the Federal Government, and the Director, OSTP, through the FCC, for all other entities subject to the Commission's jurisdiction. Radio stations are subject to closure if considered a threat to national security.

(g) Section 706 of the Communications Act of 1934, as amended, confers authority to the President in the matter of suspension of all rules and regulations pertaining to the use and operation of telecommunications facilities, public or private during wartime emergencies.

### § 202.2 Criteria and guidance.

NS/EP planning in government and industry with respect to effective conservation and use of surviving telecommunications resources in a disaster, emergency or postattack period must provide for orderly and uninhibited restoration of services by the carriers and authoritative control of services allocation which will assure that priority will be afforded the most critical needs of government and the private sector with respect to these objectives.

(a) The preservation of the integrity of characteristics and capabilities of the Nation's telecommunications systems and networks during wartime or non-wartime emergencies is of the utmost importance. This can best be accomplished by centralized policy development, planning, and broad direction. Detailed operations management will remain decentralized in order to retain flexibility in the use of individual systems in responding to the needs of national security, survival and recovery. Each Federal agency responsible for telecommunications systems operations, and the carriers, are responsible for planning with respect to emergency operations. Guidance in this matter has been issued from a number of sources and contained in:

(1) Annex C–XI (Telecommunications), Federal Emergency Plan D (Classified).

(2) National Plan for Telecommunications Support in Non-wartime Emergencies.

(3) The National Communications System Management Plan for Annex C–XI (Telecommunications) Federal Emergency Plan D (Classified).

(b) The continuity of essential communications services will be maintained through the use of controls and operational procedures to assure that priority is given to vital services. NS/EP telecommunications services entail policies, procedures and responsibilities as described in parts 211 and 213 of this chapter.

(c) The Nation's telecommunications systems facilities are vulnerable to physical and radiological damage. Planning factors with respect to the resumption of services in a disaster or postattack period must consider the probable loss of facilities which formerly provided direct and/or alternate i[illegible]city services among surviving p[illegible]lation centers. Since surviving areas and population centers would serve as the sources of support to crippled areas of the Nation, the resumption of services between and among surviving metropolitan areas will be a high priority with the carriers.

### § 202.3 Plans preparation and execution.

Federal authority, substantive provisions, and functional responsibilities of the executive office are summarized in the following:

(a) Wartime Emergency Functions. (1) The Assistant to the President for National Security Affairs (the National Security Advisor) shall provide general policy direction for the exercise of the war power functions of the President under section 706 of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(2) The Director of the Office of Science and Technology Policy shall direct the exercise of the war power functions of the President under section 706(a), (c)–(e) of the Communications Act (47 U.S.C. 606), as amended, should the President issue implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601).

(b) Non-wartime Emergency Functions. (1) The National Security Advisor shall:

(i) Advise and assist the President in coordinating the development of policy, plans, programs and standards within the Federal Government for the identification, allocation and use of the Nation's telecommunications resources by the Federal Government, and by State and local governments, private industry and volunteer organizations, upon request, to the extent practicable and otherwise consistent with the law, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Provide policy oversight and direction of the activities of the NCS.

(2) The Director of the Office of Science and Technology Policy shall:

(i) Provide information, advice, guidance and assistance, as appropriate, to the President and to those Federal departments and agencies with responsibilities for the provision, management or allocation of telecommunications resources during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(ii) Establish a Joint Telecommunications Resources Board (JTRB) to assist the Director in providing information, advice, guidance and assistance, as appropriate, to the President and to those Federal Departments and agencies with responsibilities for the provision, management, or allocation of telecommunications resources, during those crises or emergencies in which the exercise of the President's war power functions is not required or permitted by law.

(c) Planning and Oversight Responsibilities.

(1) The National Security Advisor shall advise and assist the President in:

(i) Coordination and development of policy, plans, programs and standards for the mobilization and use of the Nation's commercial, government, and privately owned telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(ii) Providing policy oversight and direction of the activities of the NCS; and

(iii) Providing policy oversight and guidance for the execution of the responsibilities assigned to the Federal departments and agencies by Executive Order 12472.

(2) The Director of the Office of Science and Technology Policy (or a designee) shall:

(i) Advise and assist the President in the administration of a system of radio spectrum priorities for those spectrum dependent telecommunications resources of the Federal government which support national security and emergency preparedness telecommunications functions.

(ii) Certify or approve priorities for radio spectrum use by the Federal government, including the resolution of any conflicts in or among priorities under all conditions or crisis or emergency.

(3) The National Security Advisor, the Director of the Office of Science and Technology Policy and the Director of the Office of Management and Budget shall, in consultation with the Executive Agent for the NCS and the NCS Committee of Principals, determine what constitutes national security and emergency preparedness telecommunications requirements.

(4) The Director of the Office of Management and Budget, in consultation with the National Security Advisor and the NCS, will prescribe general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating agencies.

(d) Performance of essential government and public services during a national emergency, as defined in section 706 of the Communications Act (47 U.S.C. 606), as amended, will require a means for communications between government and the private sector, communications essential to operations of elements of the national economy, and communications for national defense and civil defense purposes. The needs of the private sector and those of government should be properly coordinated to ensure that responses to each of these communities of interest, government and private sector, are appropriately balanced. For this reason, with regard to wartime emergency functions, the Director, Office of Science and Technology Policy (OSTP), has delegated the responsibility for the private sector to the Chairman, Federal Communications Commission (FCC), and responsibility for the needs of government to the Executive Agent, National Communications System (NCS). A parity of level of authority of these officials is established. They will coordinate and negotiate telecommunications conflicts with respect to the allocation and use of the Nation's telecommunications resources,

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reporting to the Director on unresolved issues which are within the domain of their respective responsibilities and authorities.

(e) In order to support the NS/EP telecommunications needs of the Federal government, State and local governments, private industry and volunteer organizations, under all circumstances, including those of crisis or emergency, the following functions shall be performed:

(1) The Secretary of Commerce, for all conditions of crisis or emergency, shall:

(i) Develop plans and procedures concerning radio spectrum assignments, priorities and allocations for use by Federal departments, agencies and entities; and

(ii) Develop, maintain and publish policy, plans and procedures for the control and assignment of radio frequencies, including the authority to amend, modify or revoke such assignments, in those parts of the electromagnetic spectrum allocated to the Federal Government.

(2) The Director of the Federal Emergency Management Agency shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities, as part of its National Emergency Management System, adequate to support its assigned emergency management responsibilities.

(ii) Advise and assist State and local governments and volunteer organizations, upon request and to the extent consistent with law, in developing plans and procedures for identifying and satisfying their NS/EP telecommunications requirements.

(iii) Ensure, to the maximum extent practicable, that national security and emergency preparedness telecommunications planning by State and local governments and volunteer organizations is mutually supportive of and consistent with the planning of the Federal Government.

(iv) Develop, upon request and to the extent consistent with law and in consonance with regulations promulgated by and agreements with the Federal Communications Commission, plans and capabilities for, and provide policy and management oversight of, the Emergency Broadcast System, and advise and assist private radio licensees of the Commission in developing emergency communications plans, procedures and capabilities.

(v) Act as sponsor for State and local governments' requests for telecommunications service priority (TSP) in accordance with the Federal Communications Commissions regulations and with procedures in approved NCS issuances.

(3) The Secretary of State, in accordance with assigned responsibilities within the Diplomatic Telecommunications Service, shall plan for and provide, operate and maintain rapid, reliable and secure telecommunications services to those Federal entities represented at United States diplomatic missions and consular offices overseas. This responsibility shall include the provision and operation of domestic telecommunications in support of assigned national security and emergency preparedness responsibilities.

(4) The Secretary of Defense shall:

(i) Plan for and provide, operate and maintain telecommunications services and facilities adequate to support the National Command Authorities and to execute responsibilities assigned by Executive Order 12333, December 4, 1981 (46 FR 59941; 3 CFR, 1981 Comp., p. 200).

(ii) Ensure that the Director of the National Security Agency provides the technical support necessary to develop and maintain plans adequate to provide for the security and protection of national security and emergency preparedness telecommunications.

(iii) Provide protection for interstate or foreign communication as directed by the President when the public interest requires under section 706(b) of the Communications Act (47 U.S.C. 606(b)).

(iv) In consultation with the Secretary of Transportation, develop policy, plans and procedures adequate to enable a transfer of control over radio stations in the Aviation Service and aboard vessels in the Maritime Service to the Department of Defense during a national emergency pursuant to § 202.1(b)(3) of these regulations.

(5) The Attorney General shall, as necessary, review for legal sufficiency, including consistency with the antitrust laws, all policies, plans or procedures developed pursuant to these regulations.

(6) The Director, Central Intelligence Agency, shall plan for and provide, operate and maintain telecommunications services adequate to support the Agency's assigned responsibilities, including the dissemination of intelligence within the Federal government.

(7) Except as otherwise assigned pursuant to these regulations, the Administrator of General Services shall ensure that Federally owned or managed domestic communications facilities and services meet the NS/EP requirements of Federal civilian departments, agencies and entities. The Administrator shall perform these responsibilities consistent with policy guidance of the Director of the Office of Management and Budget.

(8) The Secretary of the Interior shall develop and execute emergency plans with respect to the administration of telecommunications activities in the territorial and trusteeship areas under the jurisdiction of the United States and within the responsibility previously assigned to him by appropriate laws and other authority.

(9) The Federal Communications Commission, consistent with its statutory authority, shall:

(i) Review the policies, plans and procedures of all entities licensed or regulated by the Commission that are developed to provide national security and emergency preparedness telecommunications services to ensure that such policies, plans and procedures are consistent with the public interest, convenience and necessity.

(ii) Perform such functions as required by law with respect to all entities licensed or regulated by the Commission, including (but not limited to) the extension, discontinuance or reduction of common carrier facilities or services; the control of common carrier rates, charges, practices and classifications; the construction, authorization, activation, deactivation or closing of radio stations, services and facilities; the assignment of radio frequencies to Commission licensees; the investigation of violations of pertinent law and regulation; and the initiation of appropriate enforcement actions.

(iii) Develop policy, plans and procedures adequate to execute the responsibilities assigned pursuant to these regulations under all conditions of crisis or emergency.

(iv) Consult as appropriate with authorized officials of the NCS to ensure continued coordination of their respective NCS activities.

(10) The National Communications System (comprised of the Executive Agent for the NCS, the NCS Committee of Principals, and the Manager, NCS) shall assist the President, the Director of the Office of Science and Technology Policy, National Security Advisor and the Director of the Office of Management and Budget in the exercise of national security and emergency preparedness telecommunications functions and responsibilities and in the coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack recovery and reconstitution.



(11) The Executive Agent for the NCS shall:

(i) Ensure that the NCS conducts unified planning and operations, in order to coordinate the development and maintenance of an effective and responsive capability for meeting the domestic and international national security and emergency preparedness needs of the Federal government.

(ii) Ensure that the activities of the NCS are conducted in conjunction with the emergency management activities of the Federal Emergency Management Agency.

(12) The Manager, NCS shall:

(i) Develop for consideration by the NCS Committee of Principals and the Executive Agent:

(A) A recommended evolutionary telecommunications architecture designed to meet current and future Federal government national security and emergency preparedness telecommunications requirements.

(B) Plans and procedures for the management, allocation and use, including the establishment of priorities or preferences, of Federally owned or leased telecommunications assets under all conditions of crisis or emergency.

(C) Plans, procedures and standards for minimizing or removing technical impediments to the interoperability of government-owned and/or commercially provided telecommunications systems.

(D) Test and exercise programs and procedures for the evaluation of the capability of the Nation's telecommunications resources to meet national security and emergency preparedness telecommunications requirements.

(E) Alternative mechanisms for funding, through the budget review process, NS/EP telecommunications initiatives which benefit multiple Federal departments, agencies or entities. Those mechanisms recommended by the NCS Committee of Principals and the Executive Agent shall be submitted to the Executive Office of the President.

(ii) Implement and administer any approved plans or programs as assigned, including any system of priorities and preferences for the provision of telecommunications service, in consultation with the NCS Committee of Principals and the Federal Communications Commission, to the extent practicable or otherwise required by law or regulation.

(iii) Implement, with the assistance of appropriate Federal agencies, a decentralized National Telecommunications Management Structure (NTMS) capable of functioning independently in support of appropriate authority within the terms and guidelines delineated in the White House approved Implementation Concept.

(iv) Conduct technical studies or analyses, and examine research and development programs, for the purpose of identifying, for consideration by the NCS Committee of Principals and the Executive Agent, improved approaches which may assist Federal entities in fulfilling national security and emergency preparedness telecommunications objectives.

(v) Develop an NCS Issuance System of official documents to implement, establish, guide, describe or explain organizational responsibilities, authorities, policies and procedures.

(13) The NCS Committee of Principals shall:

(i) Serve as the forum in which each member of the Committee may review, evaluate and present views, information and recommendations concerning ongoing or prospective national security and emergency preparedness telecommunications programs of the NCS and the entities represented on the Committee.

(ii) Serve as the forum in which each member of the Committee shall report on and explain ongoing or prospective telecommunications plans and programs developed or designed to achieve national security and emergency preparedness telecommunications objectives.

(iii) Provide comments or recommendations, as appropriate, to the National Security Council, the Director of the Office of Science and Technology Policy, the Director of the Office of Management and Budget, the Executive Agent, or the Manager of the NCS, regarding ongoing or prospective activities of the NCS.

(14) All Federal departments and agencies shall:

(i) Prepare policies, plans and procedures concerning telecommunications facilities, services, or equipment under their management or operational control to maximize their capability to respond to the national security and emergency preparedness needs of the Federal Government. Such plans will be prepared, and the operations will be executed, in conjunction with the emergency management activities of the Federal Emergency Management Agency, and in regular consultation with the Executive Agent for the NCS and the NCS Committee of Principals.

(ii) Cooperate with and assist the Executive Agent for the NCS, the NCS Committee of Principals, the Manager of the NCS, and other departments and agencies in the execution of the functions set forth in this regulation, furnishing them such information, support and assistance as may be required.

## PART 212—PROCEDURES FOR OBTAINING INTERNATIONAL TELECOMMUNICATION SERVICE FOR USE DURING A WARTIME EMERGENCY

Sec.

212.0 Authority.
212.1 Purpose.
212.2 Scope.
212.3 Responsibilities.
212.4 Other requirements.

Authority: E.O. 12046, 43 FR 13349, Mar. 29, 1978 (3 CFR, 1978 Comp., p. 158); E.O. 12472, April 3, 1984, (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

### § 212.0 Authority.

(a) Authority to establish arrangements to ensure that the NS/EP telecommunications needs of all Federal government entities are met in a manner consistent, to the maximum extent practicable, with other telecommunications policies is contained in Executive Order 12472 and Executive Order 12046.

(b) These procedures are applicable to the communications common carriers and non-Federal Government users under the President's authority contained in subsection 706(a)–(d) of the Communications Act of 1934 (47 U.S.C. 606(a)–(d)), as amended. The authority under subsection 706(a) has been delegated by Executive Order 12472 to the Director of the Office of Science and Technology Policy, contingent upon issuance by the President of implementing instructions in accordance with the National Emergencies Act (50 U.S.C. 1601). This authority may be exercised only during wartime emergencies.

### § 212.1 Purpose.

The purpose of this part is to provide specific guidance to Government and private entities who may have requirements for international telecommunication service during wartime emergencies.

### § 212.2 Scope.

The procedures in this part provide guidance for the submission of emergency requirements for telecommunication channels from the United States to overseas or foreign points. Guidance on this subject was previously contained in Annex 2 of DMO 3000.1 and Mobilization Plan IX-3.

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Mobilization Plan IX-3 has been canceled.

**§ 212.3 Responsibilities.**

(a) Executive departments and agencies of the United States, whether or not components of the National Communications System, (NCS), shall, to the extent permissible by law and consistent with national security, submit their international emergency telecommunications requirements to the Executive Agent, NCS, for coordination and consolidation of mobilization requirements.

(b) The Department of Defense shall coordinate NATO requirements in consonance with approved NATO/U.S. procedures for subsequent processing by the Executive Agent, NCS.

(c) The Department of State shall coordinate and approve foreign government telecommunications requirements and forward them to the Executive Agent, NCS, for further processing.

**§ 212.4 Other requirements.**

(a) Government, other than Executive departments and agencies of the United States, having need for emergency international telecommunication service, shall present their requirements through the appropriate sponsor to NCS.

(b) The private sector, including carriers, having need for emergency international telecommunication service, shall present their requirements to the Federal Communications Commission (FCC).

## PART 214—PROCEDURES FOR THE USE AND COORDINATION OF THE RADIO SPECTRUM DURING A WARTIME EMERGENCY

Sec.
214.0 Authority.
214.1 Purpose.
214.2 Scope.
214.3 Assumptions.
214.4 Planned actions.
214.5 Responsibilities.
214.6 Postattack procedures and actions.

Authority: 84 Stat. 2083 and E.O. 12472, April 3, 1984, (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

**§ 214.0 Authority.**

The provisions of this part 214 are issued pursuant to Reorganization Plan No. 1 of 1977, 42 FR 56101, 91 Stat. 1633, as amended (5 U.S.C. appendix) and Executive Order 12472. This part 214 replaces Annex 1 of DMO 3000.1, dated November 8, 1963, 28 FR 12273.

**§ 214.1 Purpose.**

The purpose of this part is to provide guidance for the use of the radio spectrum in a period of war, or a threat of war, or a state of public peril or other wartime emergency.

**§ 214.2 Scope.**

This part covers procedures for the use of radio frequencies upon proclamation by the President that there exists war, or a threat of war or a state of public peril or other wartime emergency or in order to preserve the neutrality of the United States. These procedures will be applied in the coordination, application for, and assignment of radio frequencies upon order of the Director, OSTP. These procedures are intended to be consistent with the provisions and procedures contained in emergency plans for use of the radio spectrum.

**§ 214.3 Assumptions.**

When the provisions of this part become operative, Presidential emergency authority, including Executive Order 12656, 12472, 12046 (3 CFR, 1966–1970 Comp., p. 820), and other emergency plans regarding the allocation and use of national resources will be in effect. During an attack, and in a postattack period, the Director, OSTP, will have authority to make new or revised assignments of radio frequencies in accordance with authority delegated by the President.

**§ 214.4 Planned actions.**

(a) Whenever it is determined necessary to exercise, in whole or in part, the President's emergency authority over telecommunications, the Director, OSTP, will exercise that authority as specified in Executive Order 12472 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

(b) In this connection, and concurrently with the war or national emergency proclamation by the President, the Director will:

(1) Authorize the continuance of all frequency authorizations issued by the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC), except as they may otherwise be modified or revoked by the Director, OSTP, in the national interest;

(2) Redelegate to the Secretary of Defense the authority necessary to control the use of the radio spectrum in areas of active combat, where such control is necessary to the support of U.S. military operations;

(3) Close all non-government radio stations in the international broadcasting service as defined in the FCC rules and regulations, except those carrying or scheduled to carry U.S. Government-controlled radio broadcasts.

**§ 214.5 Responsibilities.**

(a) The Director, OSTP, will issue such policy guidance, rules, regulations procedures, and directives as may be necessary to assure effective frequency usage during wartime emergency conditions.

(b) The FCC, in coordination with NTIA, shall issue appropriate rules, regulations, orders, and instructions and take such other actions not inconsistent with the actions of the Director, OSTP, and the NTIA Emergency Readiness Plan for Use of the Radio Spectrum as may be necessary to ensure the effective use of those portions of the radio spectrum shared by Government and non-governments users.

(c) The FCC shall assist the Director in the preparation of emergency plans pursuant to section 3(h)(3) of Executive Order 12472.

(d) Each Federal Government agency concerned shall develop and be prepared to implement its own plans, and shall make necessary preemergency arrangements with non-government entities for the provision of desired facilities or services, all subject to the guidance and control of the Director.

**§ 214.6 Postattack procedures and actions.**

(a) The frequency management staff supporting the Director, OSTP, comprised of predesignated personnel from the frequency management staffs of the government user agencies, NTIA and the FCC, will have proceeded to the OSTP relocation site in accordance with alerting orders in force.

(b) Government agencies having need for new radio frequency assignments or for modification of existing assignments involving a change in the frequency usage pattern shall, unless otherwise provided, submit applications therefor to the Director, OSTP, by whatever means of communication are available and appropriate, together with a statement of any preapplication coordination accomplished. The Director, OSTP, will review such applications accomplish the necessary additional coordination insofar as practicable, consider all pertinent views and comments, and grant or deny, as he shall determine, the assignment of such frequencies. All concerned will be informed promptly of his decisions.

(c) Non-Government entities having need for new radio frequency assignments or for modifications of existing assignments will continue to submit applications therefor to the FCC, or in accordance with FCC instructions. Such applications shall be coordinated with the Director, OSTP, and granted



subject to the approval of the Director, OSTP, or his delegate.

(d) All changes of radio frequency usage within U.S. military theaters of operation will be coordinated with the Director, OSTP, where harmful interference is likely to be caused to stations authorized to operate within the United States and its possessions.

(e) Where submission to the Director, OSTP, is impracticable, the applicant shall:

(1) Consult the NTIA Emergency Readiness Plan for use of the Radio Spectrum and the Government Master File;

(2) Accomplish such coordination as appropriate and possible;

(3) Act in such manner as to have a minimum impact upon established services, accepting the responsibility entailed in taking the temporary action required;

(4) Advise the Director, OSTP, as soon as possible of the action taken, and submit an application for retroactive approval.

## PART 215—FEDERAL GOVERNMENT FOCAL POINT FOR ELECTROMAGNETIC PULSE (EMP) INFORMATION

Sec.
215.0 Purpose and authority.
215.1 Background.
215.2 Assignment of responsibilities.

Authority: 84 Stat. 2083, and E.O. 12472, April 3, 1984 (49 FR 13471 *et seq.*).

**§ 215.0 Purpose and authority.**

The purpose of this part is to designate a focal point within the Federal Government for electromagnetic pulse (EMP) information concerning telecommunications. It is issued pursuant to the authority of Reorganization Plan No. 1 of 1977, 42 FR 56101, 91 Stat. 1633, as amended (5 U.S.C. appendix), Executive Order 12472, (49 FR 13471; 3 CFR, 1984 Comp., p. 193), "Assignment of National Security and Emergency Preparedness Telecommunications, April 3, 1984 and Executive Order 12046, 43 FR 13349, "Relating to the Transfer of Telecommunications Functions," May 27, 1978, as amended by Executive Order 12472.

**§ 215.1 Background.**

(a) The nuclear electromagnetic pulse (EMP) is part of the complex environment produced by nuclear explosions. It consists of transient voltages and currents which can cause malfunctioning and serious damage to electrical and electronic equipment.

(b) The Defense Nuclear Agency (DNA) is the overall technical coordinator for the Army, Navy, Air Force, and DOE laboratories on matters concerning nuclear weapons, nuclear weapons effects, and nuclear weapons testing. It acts as the focal point between the service laboratories and other agencies. The National Communications System (NCS), with the Defense Communications Agency (DCA), maintains a data base for telecommunications. DCA also provides the primary capability for the NCS to conduct telecommunications survivability studies for civil and military departments and agencies.

(c) In order to disseminate among affected Federal agencies information concerning the telecommunications effects of EMP and available protective measures, and in order to avoid duplication of research efforts, it is desirable to designate a focal point within the Federal Government for telecommunications EMP matters.

**§ 215.2 Assignment of responsibilities.**

The Executive Agent, NCS, shall be the focal point within the Federal Government for all EMP technical data and studies concerning telecommunications. It shall provide such data and the results of such studies to all appropriate agencies requesting them. It shall coordinate and approve EMP telecommunications tests and studies, and shall keep the National Security Advisor informed regarding such tests and studies being conducted and planned.

## PART 216—NATIONAL COMMUNICATIONS SYSTEM ISSUANCE SYSTEM

Sec.
216.1 NCS Directives.
216.2 Publication of Directives.

Appendix to Part 216—NCS Directives.

Authority: E.O. 12472, April 3, 1984 (49 FR 13471; 3 CFR, 1984 Comp., p. 193).

**§ 216.1 NCS Directives.**

In accordance with § 202.3(c)(12)(v), the Manager, NCS, has developed a system of official documents of a referential nature. The documents include NCS Directives, which establish and implement organizational responsibilities, authorities, policies and procedures of a continuing nature. The Directives are issued by the Executive Office of the President after approval and/or consideration by the NCS Committee of Principals, the Executive Agent for the NCS and the Assistant to the President for National Security Affairs.

**§ 216.2 Publication of Directives.**

(a) We believe, for public awareness and internal administrative purposes, that publication of the current directives is worthwhile. The appendix to this part includes all current NCS Directives.

(b) The Directives are arranged numerically. The first of the hyphenated letters indicates the subject category: "1" for "Organization, Membership and Administration;" "2" for "Plans, Programs and Fiscal Management;" "3" for "Telecommunications Operations;" and "4" for "Technology and Standards." The second number indicates the sequence of issuance.

(c) In some instances, the appendixes to the directives consist of documents readily accessible elsewhere in the public domain. In the interests of brevity, these documents are referenced rather than reprinted in full.

**Appendix to Part 216—NCS Directives**

NCS Directive 1–1—Organization, Membership and Administration—National Communications System (NCS) Issuance System
NCS Directive 1–3—Organization, Membership and Administration—National Communications System (NCS) Membership
NCS Directive 2–1—Plans, Programs, and Fiscal Management—National Security Emergency Preparedness (NSEP) Telecommunications Planning Process
NCS Directive 2–3—Plans, Programs, and Fiscal Management—National Level NSEP Telecommunications Program (NLP) Funding
NCS Directive 3–1—Telecommunications Operations—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)
NCS Directive 3–3—Telecommunications Operations—Shared Resources (SHARES) High Frequency (HF) Radio Program

Note: NCS Directives and their appendices are available from National Communications System Joint Secretariat (NCS–NJ), Defense Communications Agency, Washington, DC 20305–2000

[NCS Directive 1–1]

*Organization, Membership and Administration—National Communications System (NCS) Issuance System*

November 30, 1987.

1. *Purpose.* This directive establishes the National Communications System (NCS) Issuance System, describes the documents comprising the NCS Issuance System, and assigns responsibilities and delegates authority for implementing and managing that System.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

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3. *Authority.* Pursuant to the Constitution of the United States and other laws cited in Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984; 49 FR 13471 (1984) (see appendix A to this directive), the President has established the NCS, which is subject to rules issued pursuant to the NCS Issuance System. This directive is issued under the authority of Executive Order No. 12472.

4. *References.* Executive Order No. 12472.

5. *Cancellation.* NCS Memorandum 1–83, "National Communications System Publications," December 10, 1983, is hereby cancelled.

6. *Definitions.*

a. *Binding.* Imposing one or more obligations, responsibilities, or duties upon affected parties, subject to any overriding Federal statutes, executive orders, or other Federal law.

b. *Issue.* To put into effect, publish, and distribute an NCS issuance after final approval by proper authority.

c. *NCS Issuances.* Documents (i.e., NCS directives, circulars, manuals, handbooks, and notices; and Office of the Manager, NCS (OMNCS) office orders), generally of referential value and broad distribution, that implement, establish, guide, describe, or explain organizational responsibilities, authorities, policies, and procedures. Appendix B [1] provides abbreviated descriptions of types of issuances.

d. *NCS Directive.* An issuance used to establish and implement organizational responsibilities, authorities, policies, and procedures of a continuing nature. Directives are issued by the Director, Office of Science and Technology Policy and/or Director, Office of Management and Budget, after consideration of the proposed text by the NCS Committee of Principals, Executive Agent, NCS, and Assistant to the President for National Security Affairs. Directives are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Directives remain in effect until superseded or cancelled.

e. *NCS Circular.* An issuance used for dissemination of subject matter either pending incorporation into an NCS directive or requiring one-time action. Circulars are issued by the Director, Office of Science and Technology Policy and/or Director, Office of Management and Budget, after consideration of the proposed text by the NCS Committee of Principals, Executive Agent, NCS, and Assistant to the President for National Security Affairs. Circulars are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Circulars will expire after (1) incorporation into a directive, (2) one year from the date of issuance, or (3) a specified time period, whichever occurs first.

f. *NCS Manual.* An issuance used to provide detailed description, explanation, or procedural or technical guidance concerning matters addressed in NCS directives or circulars. Manuals are issued by the Manager, NCS, subject to the provisions of paragraphs 9 d and e of this directive. Manuals are binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities. Manuals remain in effect until superseded or cancelled.

g. *NCS Handbook.* An issuance used to provide detailed description, explanation, or procedural or technical guidance concerning matters addressed in NCS directives, circulars, or manuals. Handbooks are issued by the Manager, NCS, normally without consideration by the NCS Committee of Principals or Executive Agent. Handbooks are not binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals or member organizations; or other affected Executive entities. Handbooks remain in effect until superseded or cancelled.

h. *NCS Notice.* An issuance used for immediate dissemination of subject matter, usually informational, and either pending incorporation into an NCS handbook or of transitional interest. Notices are issued by the Manager, NCS, or authorized designee, normally without consideration by the NCS Committee of Principals or Executive Agent. Notices are not binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals or member organizations; or other affected executive entities. Notices will expire after (1) incorporation into a handbook, (2) one year from the date of dissemination, or (3) a specified time period, whichever occurs first.

i. *OMNCS Office Order.* An issuance used to implement and provide procedural guidance supplementary to NCS and other directives, manuals, or authority and outline managerial requirements. Office orders are limited to and binding upon the internal operation, administration, and personnel of the OMNCS. They are issued by the Manager, NCS, who may delegate further this authority, and they remain in effect until superseded or cancelled.

7. *Policy.* The NCS Issuance System governs the issuance of rules and guidance concerning the internal organization, policies, procedures, practices, management, and/or personnel of NCS. Such rules and guidance will be issued in the form of NCS issuances or changes thereto. Proposed changes to an NCS issuance will be processed in the same manner as the issuance to which they pertain.

8. *Responsibilities.*

a. NCS member organizations:

(1) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(2) May review and provide comments regarding proposed NCS directives, circulars, and manuals, as desired or authorized by paragraph 9c below.

(3) May consider and comment upon NCS handbooks and notices.

b. The NCS Committee of Principals and Executive Agent:

(1) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(2) Will review and provide comments as needed to the Executive Office of the President regarding proposed NCS directives and circulars.

(3) Will consider and approve, and may comment upon, NCS manuals, as specified in paragraph 9 below.

(4) May consider and comment upon NCS handbooks and notices.

c. The Manager, NCS:

(1) Will maintain and administer the NCS Issuance System.

(2) May propose subjects for and develop new issuances, and propose changes in existing issuances.

(3) Will consider, issue, and comment upon, as needed, NCS manuals (as specified in paragraph 9 below), handbooks, notices, and OMNCS office orders.

(4) Will forward NCS issuances and any comments thereon to the NCS Committee of Principals; Executive Agent, NCS; and/or Executive Office of the President, as required.

9. *Delegations of Authority.*

a. The NCS Committee of Principals and Executive Agent are hereby delegated the authority to approve NCS manuals, subject to the conditions specified below in paragraphs 9 d and e.

b. The Manager, NCS, is hereby delegated the authority to issue NCS manuals, handbooks, and notices.

c. The Manager, NCS, is hereby delegated the authority to approve and issue OMNCS office orders. The Manager may further delegate this authority.

d. NCS manuals will be issued 30 calendar days following notification to the NCS Committee of Principals of approval by the Committee of Principals and Executive Agent, but only (1) if authorized by an NCS directive or circular, and (2) subject to the condition specified in paragraph 9e below.

e. Upon either approval or disapproval of an NCS manual by the Committee of Principals and/or Executive Agent, the NCS Executive Agent, Manager, Committee of Principals, and member organizations may, within 30 calendar days after notification to the Committee of Principals of such action, submit a written request for review of the manual to the Director, Office of Science and Technology Policy; Director, Office of Management and Budget; or Assistant to the President for National Security Affairs. Any such request will include reasons. Copies of the request shall be provided concurrently to the NCS Committee of Principals, Executive Agent, and Manager, as necessary. For a period of 30 calendar days thereafter, any NCS entity may submit comments to the Director, Office of Science and Technology Policy; Director, Office of Management and Budget; or Assistant to the President for National Security Affairs. Any manual under such review may not be issued until resolution of the matter in question by (1) direction from the Director, Office of Science and Technology Policy, and/or Director, Office of Management and Budget, after consideration by the Assistant to the President for National Security Affairs; or (2) withdrawal of each request for review.

10. *Authorizing Provisions.* NCS manuals implementing this directive are authorized.

11. *Effective Date.* This directive is effective immediately.

12. *Expiration.* This directive will remain in effect until superseded or cancelled.

2 Appendices [2]

A. Executive Order No. 12472

*Director, Office of Science and Technology Policy.*
Dated: November 30, 1987.
*Director, Office of Management and Budget.*
Dated: November 17, 1987.
*Assistant to the President for National Security Affairs.*
Dated: September 18, 1987.

Note: Appendix A to NCS Directive 1–1, Executive Order No. 12472 of April 3, 1984, is not published in full in the appendix to part 216. The text of Executive Order 12472 appears in 49 FR 13471, April 5, 1984, and in 3 CFR, 1984 Comp., p. 193.

[NCS Directive 1–2]

*Organization, Membership, and Administration—National Communications System (NCS) Membership*

November 30, 1987.

1. *Purpose.* This directive identifies the membership of the National Communications System (NCS) as designated by the President and assigns associated responsibilities.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984; 49 FR 13471 (1984), and NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984). (The text of this Executive Order is included as appendix A to NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.) [1]

b. NCS Directive 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

c. White House Memoranda, subject "The National Communications System," dated July 13, 1984 (appendices A and B).[2]

d. White House Memoranda, subject "Application of the Department of Health and Human Services (HHS) for Membership in the National Communications System (NCS)," dated May 7, 1987 (appendix C).[2]

e. NCS Manual 1–3–1, "Bylaws of the National Communications System (NCS) Committee of Principals," November 30, 1987.

5. *Cancellation.* NCS Memorandum 2–83, "Approval of Initial NCS Tasks 1 and 2," December 13, 1983; and NCS Memorandum 2–84, "Additional Networks Approval for Inclusion in the National Communications System," December 11, 1984, are hereby cancelled.

6. *Definitions.*

a. Full Member. A representative on the NCS Committee of Principals of an organization entitled to unqualified participation, subject to Committee bylaws (reference 4e) and prevailing legal authority. Organizations represented by full members will be bound by rules and other legal authority governing the NCS.

b. Liaison member. A representative on the NCS Committee of Principals of an organization invited by the President to participate, without the right to vote on matters before the Committee.

7. *Policy.* Active participation in NCS activities by organizations represented on the Committee of Principals is critical to effective national security emergency preparedness telecommunications. Accordingly, each organization represented by a full member should detail at least one full-time employee to serve either on the staff of the Manager, NCS, or as a resident representative to the NCS' National Coordinating Center. Exceptions to this policy may be authorized on a case-by-case basis by the Assistant to the President for National Security Affairs.

8. *Designated Full Members.* The President has designated the following Federal entities to participate in the NCS and be represented by full members on the Committee of Principals: Department of State; Department of the Treasury; Department of Defense; Department of Justice; Department of the Interior; Department of Agriculture; Department of Commerce; Department of Health and Human Services; Department of Transportation; Department of Energy; Central Intelligence Agency; Office of the Joint Chiefs of Staff; General Services Administration; United States Information Agency; National Aeronautics and Space Administration; Veterans Administration; Federal Emergency Management Agency; National Security Agency; and National Telecommunications and Information Administration.

9. *Invited Participants.* The President has invited the Federal Communications Commission, Nuclear Regulatory Commission, U.S. Postal Service, and Federal Reserve System to participate in the NCS and be represented on the Committee of Principals by either liaison or full members. Invited participants choosing to be represented by full members will be bound by NCS issuances promulgated pursuant to reference 4b.

10. *Responsibilities.*

a. Each organization represented by a full member on the NCS Committee of Principals:

(1) Will accredit the full member as the organization's authorized representative in matters before the Committee, including matters involving policy, budget, and resources.

(2) Will participate in all activities of the Committee.

(3) Should execute a Memorandum of Agreement with the Executive Agent or Manager, NCS, to provide personnel and staff support to the Office of the Manager, NCS, in accordance with section 3 (i) (3) of Executive Order No. 12472 and policy established in this directive.

b. Each organization represented by a liaison member on the Committee of Principals:

(1) May participate as desired in Committee activities.

(2) Should execute a Memorandum of Agreement with the Executive Agent or Manager, NCS, describing the nature and extent of participation in the NCS.

c. The Executive Agent or Manager, NCS, will prepare and execute Memoranda of Agreement as described in paragraphs 10 a and b above.

11. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

12. *Effective Date.* This directive is effective immediately.

13. *Expiration.* This directive is in effect until superseded or cancelled.

*Director, Office of Science and Technology Policy.*
Dated: November 30, 1987.
*Director, Office of Management and Budget.*
Dated: November 17, 1987.
*Assistant to the President for National Security Affairs.*
Dated: September 18, 1987.

[NCS Directive 2–1]

*Plans, Programs, and Fiscal Management—National Security Emergency Preparedness (NSEP) Telecommunications Planning Process*

September 30, 1988.

1. *Purpose.* This directive establishes the interagency process by which unified planning is conducted within the National Communications System (NCS) to ensure the coordinated development of a responsive and survivable national telecommunications infrastructure to meet the NSEP telecommunications needs of the Federal Government.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; Manager, NCS; NCS Committee of Principals and Member Organizations; and other affected Executive entities.

3. *Authority.* This directive is issued under the provisions of Executive Order (E.O.) No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications," April 3, 1984, 49 FR 13471 (1984), and NCS Directive (NCSD) No. 1–1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. E.O. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. NCS Directive 3–2, "National Level NSEP Telecommunications Program (NLP) Funding," November 30, 1987.

c. "National Security Emergency Preparedness (NSEP) Telecommunications

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[1] Editorial Note: See § 216.2(c) and the note following the table of contents for the appendix to part 216.

[2] Editorial Notes:

[1] See the note at the end of Directive 1–1.

[2] See § 216.2(c) and the note following the table of contents for the appendix to part 216.

[3] See § 216.2(c) and the note following the table of contents for the appendix to part 216.

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Planning Process," March 27, 1986, NCS 238/8.[1]

d. White House Memorandum, "National Communications System (NSEP) Telecommunications Planning Process," October 21, 1988, (appendix).[2]

5. *Cancellation.* NCS Memorandum No. 3-89, "Interim Procedures for Application of Planning—Programming—Budgeting System (PPBS) Features in the NCS Planning Process," October 31, 1989, is hereby cancelled.

6. *Definitions.*

a. The National Level NSEP Telecommunications Program (NLP). Those NSEP telecommunications programs benefiting multiple departments and agencies that are to be undertaken within the NCS structure, and the accompanying provisions for their shared funding and implementation.

b. Capability Objectives. That key Planning Process element which defines the set of capabilities needed to meet the NSEP telecommunication requirements of the Federal Government.

c. Deficiencies and Priorities. That key Planning Process element which identifies shortcomings or shortfalls in existing capabilities that inhibit or preclude the satisfaction of Federal NSEP telecommunications requirements.

d. Candidate Initiatives. That key Planning Process element which describes actions selected to mitigate identified deficiencies and achieve the overall enhancement of NSEP telecommunications capabilities.

e. Evolutionary NSEP Telecommunications Architecture. That Planning Process element which describes the overall structure of telecommunications capabilities and resources to support Federal government NSEP requirements and the framework for the design, evaluation, and integration of NSEP telecommunications initiatives.

7. *Policy.* The mission of the NCS is to assist the President, the National Security Council (NSC), the Director of the Office of Science and Technology Policy (OSTP), and the Director of the Office of Management and Budget (OMB) in the exercise of the telecommunications functions and responsibilities assigned to them by E.O. 12472, and to coordinate the planning for and provision of NSEP telecommunications for the Federal government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution.

a. To support the performance of this mission, a unified planning process for NSEP telecommunications will be implemented to:

(1) Establish, on an evolutionary basis, a NSEP telecommunications planning mechanism that facilitates the integration of Federal government, commercial/private sector, and State/local government activities and capabilities;

(2) Define the capabilities required to support NSEP telecommunications needs;

(3) Identify a set of feasible near- and long-term national level NSEP telecommunications initiatives for the achievement of those capabilities; and

(4) Develop, and provide for the effective implementation of, approved national level NSEP telecommunications programs.

b. These planning functions will be carried out within the framework of an overall process involving the design and maintenance of an evolutionary NSEP telecommunications architecture, and the annual development, documentation, review, and approval of capability objectives, deficiencies and priorities, candidate initiatives, and a National Level Program.

8. *Responsibilities.*

a. Executive Office of the President (EOP).

(1) Within the EOP, the NSC, in conjunction with OSTP and OMB, will:

(a) Provide overall policy and program direction for NSEP telecommunications planning;

(b) Provide, after appropriate consultation with the Director of Central Intelligence and the Attorney General, a definition of the threat for planning purposes;

(c) Review and validate Capability Objectives;

(d) Review and provide program planning guidance to the NCS regarding Deficiencies and Priorities and Candidate Initiatives; and

(e) Provide direction for the implementation of the National Level Program.

(2) In addition, the OSTP will also:

(a) Provide recommendations regarding, and the results of tests, exercises, and evaluations;

(b) Provide recommendations relating to the enhancement of plans and procedures for the management of Federal telecommunications resources in crises or emergencies.

(3) As provided for in E.O. 12472, OMB, "* * * will, in conjunction with the National Security Council, provide general guidelines and procedures for reviewing the financing of the NCS within the budgetary process and for preparation of budget estimates by participating organizations. These guidelines and procedures may provide for mechanisms for funding, through the budget review process, NSEP telecommunications initiatives which benefit multiple departments and agencies.

(4) The NSC, OSTP, OMB and the Executive Agent, NCS, will:

(a) Review and approve or modify the proposed National Level Program developed by the NCS.

b. The Executive Agent, NCS, will:

(1) Provide direction for the conduct of NSEP telecommunications planning activities and serve as the principal interface between the NCS and the EOP;

(2) Review the Capability Objectives, Deficiencies and Priorities, Candidate Initiatives, and the proposed National Level Program and forward them, with NCS COP and Executive Agent recommendations, for the consideration of the EOP;

(3) Transmit NSEP Telecommunications planning guidance and direction received from the EOP to the Manager, NCS; and

(4) Oversee the overall planning activities of the NCS.

c. Individual NCS member organizations * will:

(1) Identify their essential emergency functions (EEFs) and NSEP telecommunications needs and requirements;

(2) Describe initiatives being implemented within their organizations to improve NSEP telecommunications capabilities;

(3) Provide any information ** regarding their telecommunications operating systems, networks, facilities, plans, and procedures that is required for effective NSEP telecommunications planning; and

(4) Recommend and provide budget estimates for candidate national level NSEP telecommunications initiatives.

d. The NCS Committee of Principals (COP) will:

(1) Review, consider, and provide recommendations regarding NSEP Telecommunications Requirements, Capability Objectives, Deficiencies and Priorities, Candidate Initiatives, and the proposed National Level Program to the Executive Agent and the EOP;

(2) Assist in the coordination of NSEP telecommunications planning activities with other related planning activities and processes; and

(3) Serve as forum for the evaluation of the National Level Program and assessment of the effectiveness of the NSEP Telecommunications Planning Process.

e. The Manager, NCS, will:

(1) Ensure the annual development and documentation for NSEP Telecommunications Planning Process elements based upon NSEP telecommunications requirements and threat and policy guidance provided by the EOP;

(2) Develop, for consideration by the NCS COP, the Capability Objectives, Deficiencies and Priorities, and Candidate Initiatives and forward them for the consideration of the Executive Agent and the EOP;

(3) Provide annually a proposed National Level Program for the consideration of the NCS COP and the Executive Agent;

(4) Design and maintain the evolutionary NSEP Telecommunications Architecture;

(5) Coordinate planning activities within the NCS structure and provide staff support and technical assistance for the overall planning effort; and

(6) Obtain the NSEP telecommunications recommendations of the U.S.

[1] Editorial Note: See § 216.2(c) and the note following the table of contents for the appendix to part 216.

* Certain NCS member organizations are also assigned special telecommunications planning responsibilities within the Federal Government, e.g. spectrum planning, telecommunications security and protection, and diplomatic and intelligence communications planning. These organizations will work with the Manager, NCS, to assure that their special areas of responsibility are reflected in the National Level Program to the maximum extent practicable. For example, FEMA will ensure that State/local NSEP telecommunications concerns, activities, and capabilities are considered, to the maximum extent practicable, within the Planning Process.

** Such information from NCS members organizations will be provided to the extent permitted by law and regulation, and with due regard for the need to protect classified or otherwise sensitive national security or intelligence information.



telecommunications industry through the National Security Telecommunications Advisory Committee (NSTAC).

9. *Procedures.*

a. Key NSEP Telecommunications Planning Process elements will be developed and considered on an annual basis as follows:

(1) Capability Objectives will be presented for NCS COP consideration by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS COP and Executive Agent recommendations to the NSC, OSTP, and OMB for validation.

(2) Deficiencies and Priorities will be presented to the NCS COP by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS COP and Executive Agent recommendations to the NSC, OSTP, and OMB for information and reference.

(3) Candidate Initiatives will be presented to the NCS COP by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS, OSTP, and OMB for information and reference.

(4) A proposed National Level Program will be presented for NCS COP consideration in March by the Manager, NCS; forwarded with NCS COP recommendations to the Executive Agent, NCS; and transmitted with NCS and Executive Agent recommendations to the NSC, OSTP, and OMB for review in May.

b. Preparation of the final National Level Program completes the annual planning cycle. However, it does not complete the budgetary cycle, which continues until budget requests are submitted to OMB for inclusion in the President's Budget. It is anticipated that, following consideration and approval of the National Level Program by the EOP, approved recommendations will be provided to OMB and the NCS member organizations for use in preparation of the President's Budget.

c. As necessary, the EOP will also provide specific program funding and budgetary guidance to the NCS member organizations for the development of NSEP telecommunications budget requests.

10. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

11. *Effective Date.* This directive is effective immediately.

12. *Expiration.* This directive will remain in effect until superseded or cancelled.

Appendix:

White House Memorandum, October 11, 1988 [4]

*Director, Office of Science and Technology Policy.*

Dated: January 27, 1988.

*Director, Office of Management and Budget.*

Dated: January 19, 1989.

*Assistant to the President for National Security Affairs.*

Dated: January 19, 1988.

[4] Editorial note: See § 216.2(c), and the note following the table of contents for the appendix to part 216.

[NCS Directive 2-2]

*Plans, Programs, and Fiscal Management—National Level NSEP Telecommunications Program (NLP) Funding*

November 30, 1987.

1. *Purpose.* This directive establishes policies and procedures and assigns responsibilities for the shared funding of approved national level national security emergency preparedness (NSEP) telecommunications programs and for the preparation and execution of National Level NSEP Telecommunications Program (NLP) Funding Memoranda of Agreement and funding agreements between NCS member organizations and the Manager, NCS.

2. *Applicability.* This directive is binding upon the Executive Agent, NCS; NCS Committee of Principals; Manager, NCS; those NCS member organizations required to share costs of approved NLP programs; and other affected Executive entities.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984), Section 2(e), and NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *Policy.* The President has directed that implementation and recurring costs for national level NSEP telecommunications programs shall be shared on a pro rata basis. Each NCS organization's share of such costs shall be determined by its share of NSEP telecommunications requirements. The Department of Defense shall fund all development costs associated with approved national level NSEP telecommunications programs. Agreements shall be executed to govern NLP funding. Compliance with this policy is subject to the authorization and appropriation of funds by the Congress.

5. *References.*

a. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. National Security Decision Directive (NSDD) 201, "National Security Emergency Preparedness Telecommunications (NSEP) Funding," December 17, 1985 (appendix A).[1]

c. NCS Directive 3-1, "National Security Emergency Preparedness (NSEP) Telecommunications Planning Process," (presently in process).

6. *Definitions.*

a. Shared Funding. The pro rata distribution among NCS member organizations of the implementation and recurring costs of approved national level NSEP telecommunications programs on the basis of each organization's NSEP telecommunications requirements.

b. NSEP Telecommunications Requirements. Initially, those telecommunications requirements identified by NCS member organizations as part of the NSEP Telecommunications Requirements Analysis directed by the Executive Office of the President. Alternative methods for determining requirements may be used, subject to approval as prescribed in Executive Order No. 12472, section 2(c) (4).

c. The National Level NSEP Telecommunications Program (NLP). That document developed as part of the NSEP Telecommunications Planning Process that identifies national level NSEP telecommunications programs and accompanying provisions for their shared funding and implementation.

d. National Level NSEP Telecommunications Programs. Those programs that benefit multiple Federal departments, agencies, or entities and:

(1) Directly enhance national telecommunications infrastructure and service capabilities within the framework outlined in Executive Order No. 12472, and

(2) Are undertaken within the administrative structure of the NCS, i.e., by the Manager, NCS, NCS Committee of Principals (COP), and Executive Agent, NCS, via the NSEP Telecommunications Planning Process, and

(3) Involved acquisition and operations/maintenance costs of sufficient magnitude to warrant shared funding.

e. Development Costs. Those costs (e.g., research, pre-production engineering, proof of concept studies and demonstrations, and specification development) incurred prior to contract award leading to an operational capability.

f. Implementation Costs. Those costs (e.g., acquisition/procurement, production engineering, installation, and nonrecurring lease) incurred after contract award leading to an operational capability and prior to operational capability being achieved.

g. Recurring Costs. Those costs (e.g., recurring lease, maintenance, operational testing, and termination liability) incurred in support of the continuing operations and maintenance associated with national level programs.

h. NLP Funding Memorandum of Agreement (MOA). A memorandum of agreement developed between an NCS member organization and the Manager, NCS, to implement the provisions of this directive.

i. Funding Agreements. Funding documents e.g., Interagency Funding Agreements and Vouchers, executed between the Manager, NCS, and NCS member organizations to provide for the payment of NLP funds to the Manager, NCS.

7. *Responsibilities.*

a. The Office of Management and Budget will provide guidance annually to NCS member organizations regarding the incorporation of funding for approved national level NSEP telecommunications programs in the President's Budget.

b. The Department of Defense will provide funding for the development costs associated with approved national level NSEP telecommunications programs.

c. The Manager, NCS, will:

(1) Negotiate and execute NLP Funding Memoranda of Agreement and Interagency Funding Agreements with those NCS member organizations required to share the costs of

[1] Editorial note: See § 216.2(c) and the note following the table of contents for the appendix to part 216.

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approved national level NSEP telecommunications programs, and

(2) Oversee the program and financial management of approved national level NSEP telecommunications programs, reporting quarterly on program status and the expenditure of funds to the NCS Committee of Principals.

d. Each NCS member organization required to share the costs of the NLP will:

(1) Incorporate its respective funding share of approved national level NSEP telecommunications programs in its annual budget submission;

(2) Execute with the Manager, NCS, an NLP Funding Memorandum of Agreement after review by the organization's NCS Principal; and

(3) Execute with the Manager, NCS those funding agreements required for payment of funds for approved national level NSEP telecommunications programs to the Manager, NCS.

8. *Procedures.*

a. NLP Funding Guidance. The NLP funding guidance required by paragraph 7a(1) of this directive will be provided to the NCS entities annually by August 1.

b. NLP Funding Agreements. The shared funding of approved national level NSEP telecommunications programs will be accomplished through the execution, between NCS member organizations and the Manager, NCS of the following:

(1) An NLP Funding Memorandum of Agreement that, as outlined in the model MOA at Appendix B, provides for incorporation of the NLP funding share in an NCS member organization's budget submission; preparation and execution of an Interagency Funding Agreement; and reporting of the NLP status. Those NCS organizations required to share the costs of the NLP as of the effective date of this directive shall execute such Memoranda by September 30, 1987.

(2) An Interagency Funding Agreement that outlines the scope of work to be undertaken as part of the NLP, the associated period of performance, the estimated maximum costs, and procedures for submission of vouchers for transfers between appropriated funds. This agreement, which does not constitute an obligation of funds, shall be executed by August 31 each year to provide for the payment of NLP funds for the following fiscal year.

(3) Vouchers for Transfers Between Appropriations And/Or Funds (Standard Form 1080) forwarded by the Manager, NCS, to the NCS member organizations prior to the start of the fiscal year in which NLP funds are to be expended. Organizations will effect the payment of funds upon receipt of appropriated funds (or Continuing Resolution(s)), subject to OMB apportionment of those funds.

c. NLP Funding Shortfalls. If an NCS member organization is not authorized and appropriated the amount of funds necessary to pay its share of approved national level NSEP telecommunications programs, the Manager, NCS, should also be notified as soon as possible.

9. *Authorizing Provisions.* NCS manuals implementing this directive are authorized.

10. *Effective Date.* This directive is effective immediately.

11. *Expiration Date.* This directive will remain in effect until superseded or cancelled.

2 Appendices

A. NSDD 201, December 17, 1985 [2]

B. Model NLP MOA

*Director, Office of Management and Budget.*

Dated: November 17, 1987.

**Appendix B—Model National Level NSEP Telecommunications Program (NLP) Funding Memorandum of Agreement (MOA)**

1. *Purpose:* This Memorandum of Agreement (MOA) defines the relationship between and responsibilities of the (*name of NCS member organization*) and the Office of the Manager, NCS (OMNCS), with respect to the financial management of national level national security emergency preparedness (NSEP) telecommunications programs approved by the Executive Office of the President (EOP) in the National Level NSEP Telecommunications Program (NLP).

2. *Scope:* This MOA is limited to the implementation and recurring costs of approved national level NSEP telecommunications programs, including termination liability costs, if applicable. Development costs will be funded by the Department of Defense.

3. *Background:* In April 1984, Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," established a framework for the funding of NSEP telecommunications initiatives by the NCS, providing for:

a. The prescription, by the Office of Management and Budget (OMB) in consultation with the National Security Council (NSC) and the NCS, of general guidelines and procedures for reviewing the financing of the NCS within the budgetary process, and for the preparation of budget estimates by participating agencies.

b. The determination, by the NSC, the Office of Science and Technology Policy (OSTP), and OMB in consultation with the Executive Agent, NCS, and the NCS Committee of Principals (COP), of what constitutes NSEP telecommunications requirements, and

c. The determination, by Federal departments and agencies, of their NSEP telecommunications requirements and the provision, after consultation with the Office of Management and Budget (OMB), of resources to support their respective requirements for NSEP telecommunications.

To implement the provisions of Executive Order No. 12472, the President directed in National Security Decision Directive (NSDD) 201, that "implementation and recurring costs for national level NSEP telecommunications programs (i.e., those which benefit multiple Federal departments, agencies or entities) shall be shared on a pro rata basis determined by each organization's share of NSEP telecommunications requirements." The Director, OMB, subsequently instructed the NCS member organizations to work with the Manager, NCS, to develop the necessary agreements for the payment of member funds to the Office of the Manager, NCS (OMNCS).

4.0 *Responsibilities*

4.1 *The Office of the Manager, NCS, shall:*

a. Serve as the Office of Primary Responsibility for the financial and program management of approved national level NSEP telecommunications programs.

b. Upon approval of national level NSEP telecommunications programs and receipt of funding guidance from the EOP, prepare an Interagency Funding Agreement necessary to effect the payment of (*name of NCS member organization*) funds to the Manager, NCS. This agreement shall be executed by August 31 each year.

c. Prepare and provide vouchers for transfers between appropriations and/or funds (Standard Form 1080) for (*name of NCS member organization*)

d. Provide technical, programmatic, and financial management support for individual national level NSEP telecommunications programs, including the maintenance of financial records and accounting system and the update of program plans.

e. Report quarterly to the NCS COP on the programmatic and financial status of approved national level NSEP telecommunications programs.

f. Advise the (*name of NCS member organization*) of any significant programmatic or financial adjustments/modifications.

4.2 The (*name of NCS member organization*) will:

a. Incorporate its respective funding share of approved national level NSEP telecommunications programs in its annual budget submission.

b. Execute with the Manager, NCS, by August 31 each year the Interagency Funding Agreement required for the transfer, payment and/or reimbursement of funds for the NLP.

c. Upon receipt of appropriations (or Continuing Resolution(s)) for each applicable fiscal year and subject to OMB apportionment of those funds, effect the payment of funds to the Manager, NCS, in accordance with Standard Form 1080.

5.0 *Implementation:* This MOA is effective upon the date of the latest signature. This MOA is subject to periodic review and update as circumstances warrant and will terminate upon the mutual agreement of the parties. Compliance with this MOA is subject to the authorization and appropriation of funds by the Congress.

(*Signature*)
(Name of Manager, NCS)
(Title of Manager, NCS)
Date:

(*Signature*)
(Name of Authorized Official)
(Title of Authorized Official)
(Name of NCS Organization)
Date:

[2] **Editorial note:** See § 216.2(c) and the note following the table of contents for the appendix to part 216.



[NCS Directive 3-1]

*Telecommunication Operations—Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)*

July 5, 1990.

1. *Purpose.* This directive implements policy, explains legal and regulatory basis, assigns responsibilities, and prescribes procedures for the Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP).

2. *Applicability.*

a. This directive is binding upon the Executive Agency, NCS; Manager, NCS; NCS Committee of Principals and member organizations; and other affected Executive entities.

b. This directive applies to NSEP telecommunication services:

(1) For which initial or revised priority level assignments are requested pursuant to paragraph 12 of this directive.

(2) Which were assigned restoration priorities under the provisions of 47 CFR part 64, appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services," 47 CFR part 211, "Emergency Restoration Priority Procedures for Telecommunications Services," and NCS Memorandum 1-88 and are being resubmitted for priority level assignments pursuant to paragraph 14 of this directive. (Such services will retain assigned restoration priorities until a resubmission for a TSP assignment is completed or until the existing RP rules are terminated.)

3. *Authority.* This directive is issued under the authority of section 706 of the Communications Act of 1934, *as amended* (47 U.S.C. 606); Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984); NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987; and 47 CFR part 64, appendix A, "Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)."

4. *References.*

a. Communications Act of 1934, *as amended* (47 U.S.C. 151, *et seq.*).

b. Defense Production Act of 1950, *as amended* (50 U.S.C. appendix, section 2061, *et seq.*).

c. Disaster Relief Act (42 U.S.C. 5121 *et seq.*).

d. Foreign Intelligence Surveillance Act (50 U.S.C. 1801, *et seq.* and 18 U.S.C. 2511, 2518, and 2519).

e. Title 47, Code of Federal Regulations, part 64, Appendix A, "Priority System for the Restoration of Common Carrier Provided Intercity Private Line Services," 47 CFR part 64, appendix A (1990).

f. Title 47, Code of Federal Regulations, part 64, Appendix A, "Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP)."

g. Defense Priorities and Allocation System (15 CFR part 350).

h. Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

i. NCS Memorandum 1-88, "National Communications System (NCS) Circuit Restoration Priority System," July 18, 1988.[1]

5. *Cancellation and/or Supersession.* NCS Memorandum 1-88, "National Communications System (NCS) circuit Restoration Priority System," July 18, 1988; NCS circular 55-1, "Processing Requests for Temporary Adjustments to NCS circuit Restoration Priority Assignments," July 8, 1970; and NCS Circular 55-2, "NCS Data Base," November 21, 1977, with Change 1, May 30, 1978; are hereby superseded by, and cancelled under the authority of this directive on its effective date.

6. *Definitions.* See Appendix.

7. *Scope of the NSEP TSP System.*

a. *Domestic NSEP Services.* The NSEP TSP System and procedures established in 47 CFR part 64 and in this directive authorize priority treatment to the following domestic telecommunication services (including portions of U.S. international telecommunication services provided by U.S. vendors) for which provisioning or restoration priority levels are requested, assigned, and approved in accordance with this directive and any implementing manuals:

(1) Common carrier services which are:

(a) Interstate or foreign telecommunication services.

(b) Intrastate telecommunication services inseparable from interstate or foreign telecommunications services, and intrastate telecommunication services to which priority levels are assigned pursuant to paragraph 13 of this directive.

(Note: Initially, the NSEP TSP System's applicability to public switched services is limited to (a) provisioning of such services (e.g., business, centrex, cellular, foreign exchange, Wide Area Telephone Service (WATS) and other services that the selected vendor is able to provision), and (b) restoration of services that the selected vendor is able to restore.)

(2) Services which are provided by government and/or non-common carriers and are interconnected to common carrier services assigned a priority level pursuant to paragraph 13 of this directive.

b. *Control Services and Orderwires.* The NSEP TSP System and procedures implemented in this directive are not applicable to authorize priority treatment to control services or orderwires owned by a service vendor and needed for provisioning, restoration, or maintenance of other services owned by that vendor. Such control services and orderwires shall have priority of provisioning and restoration over all other telecommunication services (including NSEP services) and shall be exempt from preemption. However, the NSEP TSP System and procedures implemented in this directive are applicable to control services or orderwires leased by a service vendor or user from another service vendor.

c. *Other Services.* The NSEP TSP System may apply, at the discretion of and upon special arrangements by the entities involved, to authorize priority treatment to the following telecommunication services:

(1) Government or non-common carrier services which are not connected to common carrier provided services assigned a priority level pursuant to paragraph 13 of this directive.

(2) Portions of U.S. international services which are provided by foreign correspondents. (Subject to pertinent law, including references 4a, 4c, and 4f, U.S. telecommunication service vendors are encouraged to ensure that relevant operating arrangements are consistent to the maximum extent practicable with the NSEP TSP System. If such agreements do not exist, U.S. telecommunication service vendors should handle service provisioning and/or restoration in accordance with any system acceptable to their foreign correspondents which allows provisioning and restoration in the manner most comparable to the procedures established in this directive.) In addition, the U.S. government, acting through the Department of State, may enter into the following types of agreements to ensure that priority provisioning and restoration procedures consistent with those governing domestic services within the NSEP TSP System are in place: (a) Bilateral agreements for reciprocal priority treatment for critical foreign government telecommunication services in the U.S., and (b) multilateral agreements within such international telecommunication organizations as the North Atlantic Treaty Organization's Allied Long Lines Agency or Civil Communications Planning Committee, which have or are conducive to having a provisioning and restoration priority system.

d. *Subpriority and Precedence Systems.* Service users may implement subpriority and/or precedence systems that are consistent, and do not conflict with, the NSEP TSP System.

8. *Policy.* The NSEP TSP System is the regulatory, administrative, and operational system authorizing and providing for priority treatment (i.e., provisioning, and restoration) of NSEP telecommunication services (see definition in Appendix). As such, it establishes the framework for NSEP telecommunication service vendors to provision, restore, or otherwise act on a priority basis to ensure effective NSEP telecommunication services. The NSEP TSP System allows the assignment of priority levels to any NSEP service across three time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. All requests for priority level assignments will be processed through the Manager, NCS. Although priority levels normally will be assigned by the Manager, NCS, and retained by service vendors, only for the current time period, they may also be preassigned for the other two time periods at the request of service users who are able to identify and justify, in advance, their wartime or post-attack NSEP telecommunication requirements. Absent such preassigned priority levels for the Attack/War and Post-Attack/Recovery periods, priority level assignments for the Peacetime/Crisis/Mobilization period will remain in effect. At

[1] **Editorial Note:** See Section 216.2(c).

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all times, priority level assignments will be subject to revision by the Federal Communications Commission (FCC); or, on an interim basis, the Director, Office of Science and Technology Policy (OSTP); and the Manager, NCS, based upon changing NSEP needs. No other system of telecommunication service priorities which conflicts with the NSEP TSP System is authorized.

3. *Legal Basis for the NSEP TSP System.* The laws and regulations authorizing the NSEP TSP System are those cited above in paragraphs 3 and 4.

a. *Communications Act.* Sections 1, 4(i), and 201 thru 205 of the Communications Act of 1934 (47 U.S.C., 151, 154(i), and 201 thru 205) grant to the FCC the authority over assignment and approval of priorities for provisioning and restoration of common carrier-provided telecommunication services. Under section 706 of the Communications Act, this authority may be superseded, and expanded to include privately owned telecommunication services, by the war emergency powers of the President of the United States.

b. *Executive Order No. 12472.* In Executive Order No. 12472, the President tasked the NCS to assist the Director, OSTP, in the exercise of the President's war emergency powers. Executive Order No. 12472 also directs the Manager, NCS, to assist the Director, OSTP, in executing those functions by developing plans and procedures for the management, allocation and use (including the establishment of priorities and preferences) of federally owned or leased telecommunication assets.

c. *Federal Rules.* The FCC and Executive Office of the President (EOP) have used their respective authorizations to develop and establish the NSEP TSP System as the one uniform system of priorities for the provisioning and restoration of NSEP telecommunication services, both before and after invocation of the section 706 Presidential war emergency powers. The Federal rules governing the NSEP TSP System have been promulgated by the FCC and OSTP (on behalf of the EOP) in title 47 of the Code of Federal Regulations. In those rules, the FCC has requested the EOP to administer the NSEP TSP System before the invocation of section 706 of the Communications Act, Presidential war emergency powers. In this directive, the EOP assigns to the Manager, NCS, both this administrative authority to administer the NSEP TSP System before, and the President's statutory authority to administer the NSEP TSP System after, the invocation of the section 706 Presidential war emergency powers.

d. *Defense Production Act.* The Defense Production Act of 1950 authorizes the President to require the priority performance of contracts and orders necessary to promote national defense. It also authorizes the President to allocate materials and facilities as necessary to promote national defense. Pursuant to the Defense Production Act, regulations promulgated by the Department of Commerce in the Defense Priorities and Allocations System (DPAS) permit the assignment of "priority ratings" to equipment associated with NSEP telecommunication services warranting priority treatment, if they support authorized programs under Schedule I of the DPAS.

e. *Contracts.* NSEP telecommunication service users may also employ contractual mechanisms to obtain the priority provisioning or restoration of service, including customer premises equipment and wiring. However, any such contractual arrangements must be consistent with NSEP TSP System rules and regulations, including any priority order of provisioning and restoration assigned in accordance with the NSEP TSP System.

10. *Responsibilities.*

a. *Federal Communications Commission.* As authorized by the Communications Act the FCC will:

(1) Provide regulatory oversight of implementation of the NSEP TSP System.

(2) Enforce NSEP TSP System rules and regulations which are contained in 47, CFR, part 64.

(3) Act as final authority for approval, revision, or disapproval of priority actions by the Manager, NCS, and adjudicate disputes regarding either priority actions or denials of requests for priority actions by the Manager, NCS, until superseded by the President's war emergency powers under section 706 of the Communications Act.

(4) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

b. *Director, Office of Science and Technology Policy.* The Director, OSTP, EOP, will:

(1) During exercise of the President's war emergency powers under section 706 of the Communications Act, act as the final approval authority for priority actions or denials of requests for priority actions, adjudicating any disputes.

(2) Provide oversight of Executive branch activities associated with the NSEP TSP System, including assignment of priority levels for telecommunications service provisioning and restoration across all time periods.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

c. *Manager, NCS.* The Manager, NCS, will:

(1) Implement the NSEP TSP System under the oversight of the FCC and Director, OSTP, in consultation with the NCS Committee of Principals.

(2) Administer the NSEP TSP System, which includes:

(a) Receiving, processing, and evaluating requests for priority actions from service users, or sponsoring Federal government organizations on behalf of service users (e.g., Departments of State or Defense on behalf of foreign governments, Federal Emergency Management Agency on behalf of state and local governments, and any Federal organization on behalf of private industry entities). Action on such requests will be completed within 30 days of receipt.

(b) Assigning, revising, revalidating, or revoking priority levels as necessary or upon request of service users concerned, and denying requests for priority actions as necessary, using paragraph 16 of this directive. Under circumstances short of exercise of Presidential war emergency powers under section 706 of the Communications Act and time permitting, coordinate such changes in priority level assignments in advance with requesting and/or affected parties. Action on such requests will be completed within 30 days of receipt.

(c) Maintaining data on priority level assignments.

(d) Periodically forwarding to the FCC and Director, OSTP, lists of priority actions for review and approval.

(e) Periodically initiating reconciliation.

(f) Testing and evaluating the NSEP TSP System for effectiveness.

(g) Conducting audits as necessary. Any Telecommunications Service Priority (TSP) System user may request the Manager, NCS to conduct an audit. (See the definition of an "audit" in appendix A.)

(h) Issuing, subject to review by the FCC, procedures supplemental to and consistent with this directive regarding operation and use of the NSEP TSP System.

(i) Serving as a centralized point-of-contact for collecting and disseminating to all interested parties (consistent with requirements for treatment of classified and proprietary material) information concerning use and abuse of the NSEP TSP System.

(j) Establishing and assisting a TSP System Oversight Committee to identify and review any problems developing in the system and recommending actions to correct them or prevent recurrence. In addition to representatives of the EOP, representatives from private industry (including telecommunication service vendors), state and local governments, the FCC, and other organizations may be appointed to the committee.

(k) Reporting at least quarterly to the FCC; Director, OSTP; and TSP System Oversight Committee, together with any recommendations for action, the operational status of and trends in the NSEP TSP System, including:

(i) Numbers of requests processed for the various priority actions, and the priority levels assigned.

(ii) Relative percentages of services assigned to each priority level under each NSEP category and subcategory.

(iii) Any apparent serious misassignment or abuse of priority level assignments.

(iv) Any existing or developing problem.

(l) Submitting semi-annually to the FCC; Director, OSTP; and TSP System Oversight Committee a summary report identifying the time and event associated with each invocation of NSEP treatment under paragraph 13c of this directive and section 10c of 47 CFR part 64; whether the NSEP service requirement was adequately handled; and whether any additional charges were incurred. These reports will be due by April 30th for the preceding July through December and by October 31st for the preceding January through June time periods.

(3) Function (on a discretionary basis) as a sponsoring Federal organization. (See paragraph 10d below.)

d. *Sponsoring Federal Organizations.* Sponsoring Federal organizations will:



(1) Review and decide whether to sponsor private industry (including telecommunication service vendors) requests for priority actions. Federal organizations will forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting private industry entities, for disposition.

(3) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

e. *Departments of State and Defense.* The Departments of State and Defense will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor requests for priority level assignments from foreign governments and forward sponsored requests to the Manager, NCS, with recommendations for disposition. Recommendations will be based on paragraph 16 of this directive and whether or not priority treatment is afforded to U.S. NSEP telecommunication service requirements in the foreign country concerned.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting foreign government entities, for disposition.

f. *Department of Energy.* The Department of Energy will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor public and private interstate power utility company requests for priority actions and forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive. This does not preclude public and private power utility companies from obtaining sponsorship elsewhere.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting public and private power utility companies for disposition.

g. *Federal Emergency Management Agency.* The Federal Emergency Management Agency will, in addition to the responsibilities listed in paragraph 10h below:

(1) Review and decide whether to sponsor state and local government requests for priority actions and forward sponsored requests with recommendations for disposition to the Manager, NCS. Recommendations will be based on paragraph 16 of this directive.

(2) Forward notification of priority actions or denials of requests for priority actions to the requesting state and local government entities, for disposition.

h. *Federal Organizations.* Federal organizations will:

(1) Ensure that NSEP TSP System users within each organization comply with their obligations under the NSEP TSP System.

(2) Provision and restore government-provided services (which are interconnected with commercially provided services assigned a priority level pursuant to paragraph 13 of this directive) in accordance with NSEP TSP System rules and regulations. (See paragraph 7a(2) of this directive.)

(3) Function (on a discretionary basis) as sponsoring Federal organizations for private sector service users (e.g., government contractors).

(4) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

i. *Service Users.* Service users, or entities acting on their behalf, will:

(1) Identify services requiring priority level assignments and request and justify priority level assignments in accordance with this directive and any supplemental NCS issuances.

(2) Justify and revalidate all priority level assignments at least every three years.

(3) For services assigned priority levels, ensure (through contractual means or otherwise) availability of customer premises equipment and wiring necessary for end-to-end service operation by the service due date, and continued operation; and, for such services in the Emergency NSEP category, by the time that vendors are prepared to provide the services. Additionally, designate the organization responsible for the service on an end-to-end basis.

(4) Be prepared to accept services assigned priority levels by the service due dates or, for services in the Emergency NSEP category, when they are available.

(5) Pay vendors any authorized costs associated with services that are assigned priority levels.

(6) Report to vendors any failed or unusable services that are assigned priority levels.

(7) Designate a 24-hour point-of-contact for matters concerning each request for priority action and apprise the Manager, NCS.

(8) Upon termination of services that are assigned priority levels, or circumstances warranting revisions in priority level assignment (e.g., expansion of service), request and justify revocation or revision.

(9) When NSEP treatment is invoked under paragraph 13c of this directive, within 90 days following provisioning of the service involved, forward to the Manager, NCS complete information identifying the time and event associated with the invocation and regarding whether the NSEP service requirement was adequately handled and whether any additional charges were incurred.

(10) Cooperate with the Manager, NCS, during reconciliation, revalidation, and audits.

j. *Service Vendors.* Service vendors will comply with the provisions of 47 CFR part 64. When those provisions are superseded by the President's war emergency powers under section 706 of the Communications Act, vendors will continue to comply with 47 CFR part 64, subject to further direction by Director, OSTP.

11. *Preemption of Existing Services.* When necessary to provision or restore NSEP services, service vendors may preempt services they provide as specified below. "User," as used in this section, means any user of a telecommunications service, to include both NSEP and non-NSEP services. Prior consent by a preempted user is not required.

a. The sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority level "E" or restore NSEP services assigned a restoration priority level from "1" through "5":

(1) Non-NSEP services: If suitable spare services are not available, then, based on the considerations in 47 CFR part 64 and the service vendor's best judgement, non-NSEP services will be preempted. After ensuring a sufficient number of public switched services will remain available for public use, based on the service vendor's best judgement, such services may be used to satisfy a requirement for provisioning or restoring NSEP services.

(2) NSEP Services: If no suitable spare or non-NSEP services are available, then existing NSEP services may be preempted to provision or restore NSEP services with higher priority level assignments. When this is necessary, NSEP services will be selected for preemption in the inverse order of priority level assignment.

(3) Service vendors who are preempting services will ensure their best effort to notify the service user of the preempted service and state the reason for and estimated duration of the preemption.

b. Service vendors may, based on their best judgement, determine the sequence in which existing services may be preempted to provision NSEP services assigned a provisioning priority of "1" through "5." Preemption is not subject to the consent of the user whose service will be preempted.

12. *Requests for Priority Actions.* All service users are required to submit requests for priority actions through the Manager, NCS, in the format and following the procedures prescribed by the Manager.

13. *Assignment, Approval, Use, and Invocation of Priority Levels.*

a. *Assignment and Approval of Priority Levels and Priority Actions.*

(1) Priority level assignments or other priority actions will be based upon section 16, NSEP TSP System Categories, Criteria, and Priority Levels, of this directive. A priority level assignment or other priority action made by the Manager, NCS, will serve as the recommendation of the Director, OSTP (on behalf of the EOP) to the FCC. If the Director, OSTP does not approve the priority level assignment or other priority action made by the Manager, NCS, then the Director can direct the Manager, NCS, to revise or revoke the priority level assignment or other priority action.

(2) Until the President's war emergency powers under Section 706 of the Communications Act are invoked, priority level assignments or other priority actions must be approved by the FCC. (If the FCC does not approve the priority level assignment or other priority action, then it can direct the Manager, NCS, to revise or revoke the priority level assignment or other priority action.) However, the FCC has instructed service vendors to implement any priority level assignments or other priority actions that are pending FCC approval.

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(3) After invocation of the President's war emergency powers, the requirement for FCC approval of priority level assignments or other priority actions may be superseded by other procedures issued by the Director, OSTP.

b. *Use of Priority Level Assignments.*

(1) All provisioning and restoration priority level assignments for services in the Emergency NSEP category will be included in initial service orders to vendors. Provision priority level assignments for Essential NSEP services, however, will not usually be included in initial service orders to vendors. NSEP treatment for Essential NSEP services will be invoked and provisioning priority level assignments will be conveyed to service vendors only if the vendors cannot meet needed service dates through the normal provisioning process.

(2) Any revision or revocation of either provisioning or restoration priority level assignments will also be transmitted to vendors.

(3) Service vendors shall accept priority levels and/or revisions only after assignment by the Manager, NCS. (Note: Service vendors acting as prime contractors for NSEP services will accept assigned NSEP priority levels only when they are accompanied by the Manager, NCS designated service identification (i.e., TSP Authorization Code). However, service vendors are authorized to accept priority levels and/or revisions from users and contracting activities before assignment by the Manager, NCS when service vendors, users, and contracting activities are unable to communicate with either the FCC, Director, OSTP, or the Manager, NCS. Processing of Emergency NSEP service requests will not be delayed for verification purposes.

c. *Invocation of NSEP Treatment.* To invoke NSEP treatment for the priority provisioning of an NSEP telecommunications service, an authorized Federal official either within, or acting on behalf of, the service user's organization must make a written or oral declaration to concerned service vendor(s) and the Manager, NCS, that NSEP treatment is being invoked. Authorized Federal officials include the head or director of a Federal agency, commander of a unified/specified military command, chief of a military service, or commander of a major military command; the delegates of any of the foregoing; or any other officials as specified in supplemental procedures issued by the Manager, NCS. The authority to invoke NSEP treatment may be delegated only to a general or flag officer of a military service, civilian employee of equivalent grade (e.g., Senior Executive Service member), Federal Coordinating Officer or Federal Emergency Communications Coordinator/Manager, or any other such officials specified in supplemental procedures issued by the EOP. Delegates must be designated as such in writing, and written or oral invocations must be accomplished, in accordance with supplemental procedures issued by the Manager, NCS.

14. *Readmission of Circuits Presently Assigned Restoration Priorities.* All circuits assigned restoration priorities must be reviewed for eligibility for initial restoration priority level assignment under the provisions of this directive. Circuits assigned restoration priorities, and for which restoration priority level assignments are requested under paragraph 12 of this directive, will be resubmitted to the Manager, NCS. To resubmit such circuits, service users will comply with applicable provisions of paragraphs 10i and 13 of this directive.

15. *Appeal.* Service users or sponsoring Federal organizations may appeal any priority level assignment, denial, revision, revocation, approval, or disapproval to the Manager, NCS within 30 days of notification to the service user. The appellant must use the form or format required by the Manager, NCS and must serve the FCC with a copy of its appeal. The Manager, NCS will act on the appeal within 90 days of receipt. Service users and sponsoring Federal organizations may only then appeal directly to the FCC. Such FCC appeal must be filed within 30 days of notification of the Manager, NCS' decision on appeal. Additionally, the Manager, NCS may appeal any FCC revisions, approvals or disapprovals to the FCC. All appeals to the FCC must be submitted using the form or format required. The party filing its appeal with the FCC must include factual details supporting its claim and must serve a copy on the Manager, NCS and any other party directly involved. Such party may file a response within 20 days, and replies may be filed within 10 days thereafter. The Commission will not issue public notices of such submissions. The Commission will provide notice of its decision to the parties of record. Any appeals to the Manager, NCS that include a claim of new information that has not been presented before for consideration may be submitted at any time.

16. *NSEP TSP System Categories, Criteria, and Priority Levels.*

a. *General.* NSEP TSP System categories and criteria, and permissible priority level assignments, are defined and explained below.

(1) The Essential NSEP category has four subcategories (i.e., National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; and Public Welfare and Maintenance of National Economic Posture). Each subcategory has its own criteria. Criteria are also shown for the Emergency NSEP category, which has no subcategories.

(2) Priority levels of "1," "2," "3," "4," and "5" may be assigned for provisioning and/or restoration of Essential NSEP telecommunication services. However, for Emergency NSEP telecommunication services, a priority level "E" is assigned for provisioning. A restoration priority level from "1" through "5" may be assigned if an Emergency NSEP service also qualifies for such a restoration priority level under the Essential NSEP category.

(3) The NSEP TSP System allows the assignment of priority levels to any NSEP telecommunications service across time periods, or stress conditions: Peacetime/Crisis/Mobilization, Attack/War, and Post-Attack/Recovery. Priority levels will normally be assigned only for the first time period. These assigned priority levels will apply through the onset of any attack, but it is expected that they would later be revised by surviving authorized telecommunication resource managers within the Executive Office of the President based upon specific facts and circumstances arising during the Attack/War and Post-Attack/Recovery time periods.

(4) Service users may, for their own internal use, assign subpriorities to their services assigned priority levels. Receipt of and response to any such subpriorities is optional for service vendors.

(5) The following paragraphs provide a detailed explanation of the categories, subcategories, criteria, and priority level assignments, beginning with the Emergency NSEP category.

b. *Emergency NSEP.* Telecommunication services in the Emergency NSEP category are those new services so critical as to be required to be provisioned at the earliest possible time, without regard to the costs of obtaining them.

(1) Criteria. To qualify under the Emergency NSEP category, the service must meet the criteria of directly supporting or resulting from at least one of the following NSEP functions:

(a) Federal government activity responding to a Presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122).

(b) State or local government activity responding to a Presidentially, state, or locally declared disaster or emergency.

(c) Response to a state of crisis declared by the National Command Authorities (e.g., exercise of presidential war emergency powers under Section 706 of the Communications Act, supra).

(d) Efforts to protect endangered U.S. personnel or property.

(e) Response to an enemy or terrorist action, civil disturbance, natural disaster, or any other unpredictable occurrence that has damaged facilities whose uninterrupted operation is critical to NSEP or the management of other ongoing crises.

(f) Certification by the head or director of a Federal agency, commander of a unified/specified command, chief of a military service, or commander of a major military command, that the telecommunications service is so critical to protection of life and property or to NSEP that it must be provided immediately.

(g) A request from an official authorized pursuant to the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 *et seq.* and 18 U.S.C. 2511, 2518, 2519).

(2) Priority Level Assignment.

(a) Services qualifying under the Emergency NSEP category are assigned priority level "E" for provisioning.

(b) After 30 days, assignments of provisioning priority level "E" for Emergency NSEP services are automatically revoked unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

(c) For restoration, Emergency NSEP services may be assigned priority levels under the provisions applicable to Essential NSEP services (see paragraph 16.c.).



Emergency NSEP services not otherwise qualifying for restoration priority level assignment as Essential NSEP may be assigned a restoration priority level "5" for a 30-day period. Such 30-day restoration priority level assignments will be revoked automatically unless extended for another 30-day period. A notice of any such revocation will be sent to service vendors.

c. *Essential NSEP.* Telecommunication services in the Essential NSEP category are those required to be provisioned by due dates specified by service users, or restored promptly, normally without regard to associated overtime or expediting costs. They may be assigned priority levels of "1," "2," "3," "4," or "5" for both provisioning and restoration, depending upon the nature and urgency of the supported function, the impact of a lack of service or service interruption upon the supported function, and, for priority access to public switched services, the user's level of responsibility. Priority level assignments will be valid for no more than three years unless revalidated. To be categorized as Essential NSEP, a telecommunications service must qualify under one of the four subcategories described below: National Security Leadership; National Security Posture and U.S. Population Attack Warning; Public Health, Safety, and Maintenance of Law and Order; or Public Welfare and Maintenance of the National Economic Posture. (Note: Under emergency circumstances, Essential NSEP telecommunication services may be recategorized as Emergency NSEP and assigned a priority level "E" for provisioning.)

(1) National Security Leadership. This subcategory will be strictly limited to only those telecommunication services essential to national survival if nuclear attack threatens or occurs, and critical orderwire and control services necessary to ensure the rapid and efficient provisioning or restoration of other NSEP telecommunication services. Services in this subcategory are those for which a service interruption of even a few minutes would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must be at least one of the following:

(i) Critical orderwire, or control service, supporting other NSEP functions.

(ii) Presidential communications service critical to continuity of government and national leadership during crisis situations.

(iii) National Command Authority communications service for military command and control critical to National survival.

(iv) Intelligence communications service critical to warning of potentially catastrophic attack.

(v) Communications service supporting the conduct of diplomatic negotiations critical to arresting or limiting hostilities.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority level "1" for provisioning and restoration.

(2) National Security Posture and U.S. Population Attack Warning. This subcategory covers those minimum additional telecommunication services essential to maintaining an optimum defense, diplomatic, or continuity-of-government posture before, during, and after crisis situations. Such situations are those ranging from national emergencies to international crises, including nuclear attack. Services in this subcategory are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Threat assessment and attack warning.

(ii) Conduct of diplomacy.

(iii) Collection, processing, and dissemination of intelligence.

(iv) Command and control of military forces.

(v) Military mobilization.

(vi) Continuity of Federal government before, during, and after crisis situations.

(vii) Continuity of state and local government functions supporting the Federal government during and after national emergencies.

(viii) Recovery of critical national functions after crisis situations.

(ix) National space operations.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "2," "3," "4," or "5" for provisioning and restoration.

(3) Public Health, Safety, and Maintenance of Law and Order. This subcategory covers the minimum number of telecommunication services necessary for giving civil alert to the U.S. population and maintaining law and order and the health and safety of the U.S. population in times of any national, regional, or serious local emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP functions.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Population warning (other than attack warning).

(ii) Law enforcement.

(iii) Continuity of critical state and local government functions (other than support of the Federal government during and after national emergencies).

(iv) Hospitals and distribution of medical supplies.

(v) Critical logistic functions and public utility services.

(vi) Civil air traffic control.

(vii) Military assistance to civil authorities.

(viii) Defense and protection of critical industrial facilities.

(ix) Critical weather services.

(x) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "3," "4," or "5" for provisioning and restoration.

(4) Public Welfare and Maintenance of National Economic Posture. This subcategory covers the minimum number of telecommunication services necessary for maintaining the public welfare and national economic posture during any national or regional emergency. These services are those for which a service interruption ranging from a few minutes to one day would have serious adverse impact upon the supported NSEP function.

(a) Criteria. To qualify under this subcategory, a service must support at least one of the following NSEP functions:

(i) Distribution of food and other essential supplies.

(ii) Maintenance of national monetary, credit, and financial systems.

(iii) Maintenance of price, wage, rent, and salary stabilization, and consumer rationing programs.

(iv) Control of production and distribution of strategic materials and energy supplies.

(v) Prevention and control of environmental hazards or damage.

(vii) Transportation to accomplish the foregoing NSEP functions.

(b) Priority Level Assignment. Services under this subcategory will normally be assigned, during Peacetime/Crisis/Mobilization, priority levels "4" or "5" for provisioning and restoration.

d. *Limitations.* Priority levels will be assigned only to the minimum number of telecommunication services required to support an NSEP function. Priority levels will not normally be assigned to back-up services on a continuing basis, absent additional justification (e.g., a service user specifies a requirement for physically diverse routing or contracts for additional continuity-of-service features). The Executive Office of the President may also establish limitations upon the relative numbers of services which may be assigned any restoration priority level. These limitations will not take precedence over laws or executive orders. Such limitations shall not be exceeded absent waiver by the Executive Office of the President.

e. *Non-NSEP Services.* Telecommunication services in the non-NSEP category will be those which do not meet the criteria for either Emergency NSEP or Essential NSEP.

17. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

18. *Effective Date.* This directive is effective immediately.

19. *Expiration.* This directive is in effect until superseded or cancelled.

Appendix:

A. Definitions

*Director, Office of Science and Technology Policy.*

Dated: July 5, 1990.

*Director, Office of Management and Budget.*

Dated: July 5, 1990.

*Assistant to the President for National Security Affairs.*

Dated: July 5, 1990.

*Summary of Changes:* Initial publication

**Appendix A.—Definitions**

For the purposes of this Directive:

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*Assignment*

The designation of priority level(s) for a defined NSEP telecommunications service for a specified time period.

*Audit*

A quality assurance review in response to identified problems.

*Committee of Principals (COP)*

As specified by Executive Order 12472, a committee consisting of representatives from those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and, to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities of importance to national security or emergency preparedness telecommunications capabilities.

*Government*

The Federal government or any foreign, state, county, municipal, or other local government agency or organization. Specific qualifications will be supplied whenever reference to a particular level of government is intended (e.g., "Federal government," "state government"). "Foreign government" means any non-U.S. sovereign empire, kingdom, state, or independent political community, including foreign diplomatic and consular establishments and coalitions or associations of governments (e.g., North Atlantic Treaty Organization (NATO), Organization of American States (OAS), and United Nations (UN); and associations of governments or government agencies or organizations (e.g., Pan American Union, International Postal Union, and International Monetary Fund).

*National Communications System (NCS)*

The National Communications System (NCS) is a confederation of Federal departments, agencies and entities established by Presidential Memorandum of August 21, 1963 and reaffirmed by Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984.

*National Coordinating Center (NCC)*

The joint telecommunications industry—Federal government operation established by the NCS to assist in the initiation, coordination, restoration and reconstitution of NSEP telecommunication services or facilities.

*National Security Emergency Preparedness (NSEP) Telecommunication Services or NSEP Services*

Telecommunication services that are used to maintain a state of readiness or to respond to and manage any event or crisis (local, national, or international) that causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States. These services fall into two specific categories: Emergency NSEP and Essential NSEP and are assigned priority levels.

*National Security Emergency Preparedness (NSEP) Treatment*

The provisioning of a telecommunications service before others based on the provisioning priority level assigned by the Manager, NCS, in accordance with this directive.

*Priority Action*

The assignment, revision, revocation, or revalidation by the Manager, NCS, in accordance with this directive, of a priority level associated with an NSEP telecommunications service.

*Priority Level*

The level that may be assigned to an NSEP telecommunications service specifying the order in which provisioning or restoration of the service is to occur relative to other NSEP and/or non-NSEP telecommunication services. Authorized priority levels are designated (highest to lowest) "E," "1," "2," "3," "4," and "5" for provisioning and "1," "2," "3," "4," and "5" for restoration.

*Priority Level Assignment*

The priority level(s) designated for the provisioning and/or restoration of a particular NSEP telecommunications service.

*Private NSEP Telecommunication Services*

Those non-common carrier telecommunication services including private line, virtual private line, and private switched network services.

*Provisioning*

The act of supplying telecommunications service to a user, including all associated transmission, wiring, and equipment. As used herein, "provisioning" and "initiation" are synonymous and include altering the state of an existing priority service or capability.

*Public Switched NSEP Telecommunication Services*

Those NSEP telecommunication services utilizing public switched networks. Such services may include both interexchange and intraexchange network facilities (e.g., switching systems, intercoffice trunks and subscriber loops).

*Reconciliation*

The comparison of NSEP service information and the resolution of identified discrepancies.

*Restoration*

The repair or returning to service of one or more telecommunication services that have experienced a service outage or are unusable for any reason, including a damaged or impaired telecommunications facility. Such repair or returning to service may be done by patching, rerouting, substitution of component parts or pathways, and other means, as determined necessary by a service vendor.

*Revalidation*

The rejustification by a service user of a priority level assignment. This may result in extension by the Manager, NCS, in accordance with this directive, of the expiration date associated with the priority level assignment.

*Revision*

A change in priority level assignment for an NSEP telecommunications service. This includes any extension of an existing priority level assignment to an expanded NSEP service.

*Revocation*

The elimination of a priority level assignment when it is no longer valid. All priority level assignments for an NSEP service are revoked upon service termination.

*Service Identification*

Information uniquely identifying an NSEP telecommunications service to the service vendor and/or service user.

*Service User*

Any individual or organization (including a service vendor) supported by a telecommunications service for which a priority level has been requested or assigned.

*Service Vendor*

Any person, association, partnership, corporation, organization, or other entity (including common carriers and government organizations) that offers to supply any telecommunication equipment, facilities, or services (including customer premises equipment and wiring) or combination thereof. The term includes resale carriers, prime contractors, subcontractors, and interconnecting carriers.

*"Spare" Circuits or Services*

Circuits or services not being used or contracted for by any customer.

*Telecommunication Services*

The transmission, emission, or reception of signals, signs, writing, images, sounds, or intelligence of any nature, by wire, cable, satellite, fiber optics, laser, radio, visual, or other electronic, electric, electromagnetic, or acoustically coupled means, or any combination thereof. The term can include necessary telecommunication facilities.

*Telecommunications Service Priority (TSP) System User*

Any individual, organization, or activity that interacts with the TSP System.

[NCS Directive 3-3]

*Telecommunications Operations—Shared Resources (SHARES) High Frequency (HF) Radio Program*

September 30, 1988.

1. *Purpose.* This directive establishes National Communications System (NCS) policies pertaining to operation and use of the Shared Resources (SHARES) High Frequency (HF) Radio Program.

2. *Applicability.* This directive is binding upon NCS and other Executive entities who voluntarily elect to participate in the SHARES HF Radio Program.

3. *Authority.* This directive is issued under the authority of Executive Order No. 12472, "Assignment of National Security and Emergency Preparedness



Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984); and NCS Directive 1-1, "National Communications System (NCS) Issuance System," November 30, 1987.

4. *References.*

a. Executive Order (E.O.) No. 12472, "Assignment of National Security and Emergency Preparedness Telecommunications Functions," April 3, 1984, 49 FR 13471 (1984).

b. National Telecommunications & Information Administration (NTIA), "Manual of Regulations and Procedures for Federal Radio Frequency Management," May, 1988 Edition as revised May, 1987 or current edition/revision.

5. *General.*

a. E.O. No. 12472 established national policy guidance in support of National Security Emergency Preparedness (NSEP) objectives. Executive Order No. 12472 mandates that action be taken to ". . . ensure that a national telecommunications infrastructure is developed . . .". Consistent with the Executive Order, functionally similar government telecommunications networks should be designed to interchange traffic in support of national leadership requirements.

b. The SHARES HF Radio Program will provide a backup capability to exchange critical information among Federal entities to support NSEP. Federally controlled HF radio resources will be shared to establish a robust NSEP HF radio communications infrastructure. The program involves a collection of existing Federally controlled HF radio stations that inter-operate to transmit NSEP messages when normal means of communication are not available.

6. *Policy.*

a. Any participating Federal entity will accept, to the extent that acceptance does not interfere with the mission responsibilities of the entity, emergency messages of other Federal entities, or other components of the same entity, for transmission by HF radio to the addressee or to another participant for relay to the addressee.

b. A SHARES message is an emergency message to be sent via the SHARES network. It consists of information that must be communicated to a Federal entity and is of critical importance to the Federal Government, the entity's mission, and/or involves the preservation of life and the protection of property.

c. Transmission of SHARES messages will be guided by the policy of the agency accepting the message. Advice that a "SHARES Message" is to be transmitted will serve to notify operating personnel that a critical NSEP message requirement exists, and implicitly, that normal communication paths are not available.

7. *Responsibilities.*

a. NCS entities participating in the SHARES HF Radio Program will, to the maximum extent possible:

(1) Identify HF stations under their control for participation in the SHARES Program.

(2) Maintain the operational readiness of their SHARES HF stations.

(3) Provide updated information as necessary for inclusion in a SHARES HF Radio Program Directory. Use of Federal frequencies for SHARES traffic shall be in accordance with National Telecommunications and Information Administration (NTIA) "Manual of Regulations and Procedures for Federal Radio Frequency Management."

(4) Ensure participation of available stations in scheduled exercises.

(5) Provide representation, as required, at meetings, briefings, conferences, and other official SHARES HF Radio Program activities.

b. The Manager, NCS, will administer the SHARES HF Radio Program and perform the management functions defined below:

(1) Publish and periodically update, as NCS issuances, a User Manual, giving detailed procedures for using SHARES HF Radio Program capabilities, and HF Directory of participating Federally controlled HF radio stations.

(2) Develop, schedule, and administer periodic exercises of the SHARES HF Radio Program capabilities.

(3) Perform other functions, as necessary, to improve SHARES capabilities.

8. *Authorizing Provision.* NCS manuals implementing this directive are authorized.

9. *Effective Date.* This directive is effective immediately.

10. *Expiration.* This directive is in effect until superseded or cancelled.

*Director, Office of Science and Technology Policy.*

Dated: January 27, 1989.

*Director, Office of Management and Budget.*

Dated: January 19, 1989.

*Assistant to the President for National Security Affairs.*

Dated: January 6, 1989.

[FR Doc. 90-25066 Filed 12-10-90; 8:45 am]

BILLING CODE 3810-01-M

VOL
55

ISS
238

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1990

UMI

federal register

Tuesday
December 11, 1990

Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 121**

**Protective Breathing Equipment; Amendment of Effective Date and Request for Comment; Final Rule**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amdt No. 121-220]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; amendment of effective date and request for comment.

SUMMARY: This amendment revises the compliance date for training air carrier crewmembers in the use of protective breathing equipment (PBE). The compliance date is postponed from January 31, 1990, to July 31, 1992. This amendment is necessary due to a misunderstanding concerning the requirement to fight an actual fire during the firefighting drill required for PBE training. In addition, the amendment will give the FAA time to reconsider and clarify the PBE training requirements.

DATES: This rule is effective December 11, 1990. Comments must be received by February 11, 1991.

ADDRESSES: Comments on this amendment may be mailed in duplicate or delivered to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24792, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

The requirements for PBE training are contained in § 121.417(c), which was adopted by Amendment 121-193, issued May 28, 1987 (52 FR 20950; June 3, 1987). In the preamble to that amendment, the FAA responded to several commenters who objected to the proposed requirement that crewmembers fight an actual fire during their initial training. These commenters cited the hazards to flight attendants of fighting an actual fire and stated that the use of realistic training aids (simulated fires) would better train flight attendants to cope with actual airplane fires.

The FAA did not agree with these commenters and stated in the preamble to Amendment 121-193 that "Demonstrations and training aids, no matter how realistic, cannot provide the training benefits and confidence that actual firefighting experience will give to all crewmembers * * *." The FAA noted that this requirement is a one-time exercise for crewmembers and further stated that there is nothing in the rule to preclude carriers from developing recurrent training that uses training aids and instructors to supplement the initial training.

On March 14, 1989, after the rule was issued, the FAA issued Advisory Circular (AC) No. 121-31, Training on Protective Breathing Equipment. The AC described a method of compliance with § 121.417(c) that allowed the use of a simulated fire during the PBE portion of the emergency training. However, the FAA has determined that to comply with § 121.417(c) crewmember trainees must wear the PBE and use the appropriate firefighting equipment while fighting an actual fire. Thus, the AC's method that allows PBE training to be conducted using a simulated fire is inconsistent with the rule language. The FAA has rescinded AC 121-31.

Subsequent to the issuance of Amendment 121-193 and AC 121-31, the FAA has been informed by principal operations inspectors and air carriers that a wide variety of training drills and exercises are actually being utilized to fulfill the training requirements of § 121.417(c). The FAA has discovered, in a sampling of the air carrier industry, that most of these training drills consist of PBE and fire extinguisher equipment operation drills using a variety of simulated fire scenarios rather than a firefighting drill using an actual fire. Therefore, a large number of carriers have not properly complied with this regulation. The FAA believes that this lack of compliance is due to confusion created by the publication of AC 121-31 which provided a method of compliance using a simulated fire during the § 121.417(c) firefighting drill.

After reviewing the rule and advisory circular, the agency has determined that the fire fighting drill requirement in § 121.417(c) should be reconsidered. Although the agency continues to believe that a firefighting drill using an actual fire is essential during crewmember training, it may not be necessary to combine the crewmember's actual firefighting experience with the PBE training. Therefore, the agency intends to review the PBE training requirements to determine whether air carriers should be allowed to use simulated fires as an alternative to actual fires during PBE training.

Because of the lack of compliance with § 121.417(c) due to the confusion created by the publication of AC No. 121-31 and the agency's intent to review the regulation, the FAA finds that it is in the public interest to postpone the compliance date for 2½ years. Thus, the date by which air carriers must comply with the training requirements in § 121.417(c) is postponed until July 31, 1992.

Good Cause Justification for Immediate Adoption

This amendment is being adopted without notice and public comment procedure because delay could have a significant impact on air carrier service In this case, the compliance problem is a result of a misunderstanding of the requirement to put out an actual fire during the firefighting drill required by § 121.417(c)(1). Thus, air carrier non-compliance is an industry wide problem making the exemption process impractical and rulemaking necessary. However, issuance of a notice of proposed rulemaking would delay the establishment of a new compliance date and perpetuate non-compliance. Continued non-compliance would require air carriers to remove all crewmembers who have not been properly trained from service with the air carrier, which would result in grounding aircraft because of staffing shortages. Furthermore, the FAA has determined that § 121.417(c) should be reviewed and possibly amended. Therefore, to avoid widespread disruption of air carrier service and to allow the agency time to review the training requirements, the FAA finds that the compliance date should be postponed until July 31, 1992. Accordingly, I find that notice and public procedure are impracticable and contrary to the public interest. In addition, since this amendment relieves a restriction, I find it may be made effective in less than 30 days.

Interested persons are invited to submit such comments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.



Economic Assessment

This spot amendment does not impose any costs to air carriers. The cost for this training was determined in the original PBE rule. Many air carriers are now complying with the current PBE training regulations by conducting fire fighting training drills that include putting out an actual fire while wearing PBE. Other air carriers are conducting their training using a split drill, i.e., putting out a real fire with the fire extinguishing equipment and using the PBE with a simulated fire. Although this split drill is not in compliance with the current rule, the benefits of the split drill are comparable to those that would be achieved by compliance with the rule. For the few carriers that are using simulation alone, the full potential benefits could not be achieved due to the current confusion surrounding interpretation of the rule.

Some air carriers that were not conducting an actual fire in the training drill have recently incorporated an actual fire into their training program. The FAA believes that neither the air carriers that are in compliance with the rule nor those few carriers that are using split drills would go to the expense of altering their training programs because of the postponement of the compliance date contained in this amendment. Therefore, delay will not result in a diminution of aviation safety from current levels. Thus, a full regulatory evaluation is unnecessary.

Federalism Implications

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

This amendment will not have an economic effect on the public. The postponed compliance date will allow air carriers to remain fully operational so that air carrier service will not be disrupted. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities would be affected by the rule, it is certified that under the criteria of the Regulatory Flexibility Act the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs attendant with the amendment, the FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Drug abuse, Narcotics, Safety, Transportation.

Adoption of the Amendment

Accordingly, part 121 of the Federal Aviation Regulations (14 CFR part 121) is amended as follows:

PART 121—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. By revising § 121.417(d) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(d) After July 31, 1992, no crewmember may serve in operations under this part unless that crewmember has performed the firefighting drill prescribed by paragraph (c)(1)(i) of this section.

* * * * *

Issued in Washington, DC on December 4, 1990.

James B. Busey,

*Administrator.*

[FR Doc. 90-28872 12-10-90; 8:45 am]

BILLING CODE 4910-13-M

VOL
55
ISS
238
DE
11
1990
UMI

federal register

Tuesday
December 11, 1990

Part VI

# Department of Health and Human Services

**Family Support Administration**

**45 CFR Part 402**

**State Legalization Impact Assistance Grants (SLIAG); Notice of Proposed Rulemaking**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Family Support Administration**

**45 CFR Part 402**

**RIN 0970-AA79**

**State Legalization Impact Assistance Grants (SLIAG)**

**AGENCY:** Family Support Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule amends regulations implementing the State Legalization Impact Assistance Grant (SLIAG) program, 45 CFR part 402. This amendment implements changes made to section 204 of the Immigration Reform and Control Act of 1986 (IRCA) by Public Law 101–238. This law allows, but does not require, limited amounts of SLIAG funds to be used for two new purposes—Phase II outreach and employment discrimination education and outreach. The amendment also simplifies administrative requirements by reducing the amount of information that States must submit in their SLIAG applications. Finally, the proposed amendment makes technical and conforming changes.

**DATES:** Comments must be received on or before January 10, 1991.

**ADDRESSES:** Comments may be mailed to: Family Support Administration, Attention: Karen Guy, Mail Stop: ORR/SLIAG, 370 L'Enfant Promenade SW., Washington, DC 20447.

**FOR FURTHER INFORMATION CONTACT:** David Smith, Director, Division of State Legalization Assistance, Office of Refugee Resettlement, U.S. Department of Health and Human Services, at 202–401–9355 (FTS 441–9355).

**SUPPLEMENTARY INFORMATION:** Section 204 of the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603), as amended, establishes State Legalization Impact Assistance Grants (SLIAG) for States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam for fiscal years 1988 through 1992. (The term "State" is used hereinafter to include all eligible SLIAG grantees.) States may use (obligate) SLIAG grant funds through September 30, 1994. The purpose of SLIAG is to lessen the financial impact on State and local governments that may result from the legalization of aliens under the Immigration Reform and Control Act of 1986 (IRCA).

On March 10, 1988, the Department published a final rule, 45 CFR part 402, implementing section 204 of IRCA. This regulation was amended at 54 FR 23963 (June 5, 1989), and 55 FR 26206 (June 27, 1990).

**Phase II Outreach**

*Background*

IRCA provided for the legalization of three categories of aliens. For these aliens, achieving lawful permanent resident status—the ability to remain indefinitely in this country on a legal basis—is a two-step process. The initial step—obtaining lawful temporary resident status—is commonly called Phase I of the legalization program. The subsequent adjustment to lawful permanent resident status is commonly called Phase II. The process is somewhat different for each of these three groups of aliens.

Aliens who had been in the U.S. illegally prior to January 1, 1982 were given the opportunity to apply for lawful temporary resident status under section 245A of the Immigration and Nationality Act (INA) between May 5, 1987 and May 4, 1988. After being in lawful temporary resident status for 18 months, aliens granted lawful temporary resident status under this section must apply a second time to INS in order to obtain permanent resident status. This process is commonly called Phase II of the legalization process. If aliens granted lawful temporary resident status under section 245A do not apply for permanent resident status within 30 months of the date they were granted temporary resident status, they will lose their lawful resident status.

In order to become lawful permanent residents, these aliens must meet certain requirements imposed by IRCA. These requirements include demonstration of minimal understanding of ordinary English and knowledge of the history and government of the U.S., or satisfactory progress toward that goal in courses recognized by the Attorney General.

Aliens who had performed seasonal agricultural services for certain minimum periods could apply for lawful temporary resident status between June 1, 1987 and November 30, 1988 under section 210 of the INA. These "special agricultural workers" or "SAWs" automatically become lawful permanent residents either one or two years after the effective date of lawful temporary resident status. (The length of time between temporary and permanent status depends upon which of two subsections of the INA an alien qualified under.) SAWs are not required to demonstrate a minimal understanding of English or knowledge of the history and government of the U.S. in order to obtain lawful permanent resident status.

Section 210A of the INA provides for admission of replenishment agricultural workers (RAWs), beginning in FY 1990, if the Secretaries of the U.S. Departments of Agriculture and Labor jointly determined that a shortage of agricultural labor exists. To date, no such certification has occurred, so there are no lawful temporary residents under section 210A of the INA.

If a shortage is declared and aliens are granted lawful temporary resident status under section 210A, these "replenishment agricultural workers" or "RAWS" will have to demonstrate that they worked in agriculture a specified number of days for each of three consecutive years to remain in lawful temporary resident status and to qualify for lawful permanent residence. Like SAWs, RAWs do not have to demonstrate proficiency in the English language or knowledge of the history and government of the U.S. in order to obtain lawful permanent resident status.

In order to ensure that RAWs could be made available soon after the determination of a shortage, INS allowed aliens to register for the RAW program in late 1989. Over 600,000 aliens have registered. These aliens have no legal status as a result of that registration. In particular, they are *not* lawful temporary residents for purposes of determining the allowability of SLIAG-related costs. If a shortage number is announced, an appropriate number of registrants randomly selected by priority category will be allowed to petition for admission as RAWs. Those aliens whose petitions are granted by INS will be lawful temporary residents.

*Outreach Activities Authorized*

New section 204(c)(1)(D) of IRCA authorizes States to use SLIAG funds for certain kinds of outreach to lawful temporary residents. Specifically, new section 204(c)(1)(D) of IRCA allows States to use SLIAG funds to make payments for public education and outreach (including the provision of information to individual applicants) to inform temporary resident aliens regarding:

(1) The requirements of sections 210, 210A, and 245A of the Immigration and Nationality Act regarding the adjustment of resident status;

(2) Sources of assistance for such aliens' obtaining the adjustment of status described in clause (1), including educational, informational, referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence;

(3) The identification of health, employment, and social services; and,

(4) The importance of identifying oneself as a temporary resident alien to service providers.

This proposed amendment defines "Phase II outreach" in § 402.2 using language that closely parallels the statute.

*Certain Activities Not Allowable*

The statute explicitly prohibits use of SLIAG funds for "client counseling or any other service which would assume responsibility for the alien's application for the adjustment of status * * *." New § 402.11(i) adds this limitation to the regulation. This paragraph reflects our interpretation that this prohibition also precludes the use of SLIAG funds to assist aliens in appealing INS decisions or to represent aliens before any administrative or judicial body.

*Use Limited to Temporary Residents*

New IRCA section 204(c)(1)(D) authorizes the use of SLIAG funds for public education and outreach only for lawful *temporary* residents. The statute also explicitly permits the provision of information to "individual applicants." We interpret this to mean that SLIAG funds may be used to provide information to aliens who have been granted lawful temporary resident status, as well as aliens who have applied for such status and whose applications are pending with INS at the time the information was provided.

The proposed regulation stipulates that the cost of public education and outreach activities directed to specific individuals may not be charged to SLIAG if the individuals are lawful permanent residents or aliens with any other status except that of lawful temporary resident granted under sections 245A, 210, or 210A of the INA, or applicants under those sections. SLIAG funds may not be used for outreach directed to lawful permanent residents, even if they still are "eligible legalized aliens (ELAs)."

States would have to document that services were provided to lawful temporary residents (or applicants) in order to charge costs associated with those services to their SLIAG grants. For public education or outreach activities that are *not* directed to specific individuals, e.g., posters or brochures, this statutory provision means that the material must be targeted to or intended primarily for lawful temporary residents.

*Relationship to Other Activities*

Public Law 101–238 allows the use of SLIAG funds to "identify" health, employment, and social service programs to lawful temporary residents. This authority does not allow States to use SLIAG funds to provide such services to aliens, merely to inform temporary residents of the availability of such services.

Public Law 101–238 does not affect the allowability under the current regulations of States' charging a portion of the costs of public assistance and public health assistance program general outreach activities (i.e., outreach activities not directed to ELAs) to SLIAG. Under current regulations, the cost of such outreach is allowable if it (1) is part of a program of public assistance or public health assistance that is included in a State's approved application, and (2) is "generally available," i.e., not intended solely or primarily for ELAs. Such costs generally are considered "program administrative costs" and may be apportioned to SLIAG in accordance with §402.22(b), which this rule proposes to revise and redesignate as § 402.21(c)(6)(A). Such costs would not be counted in computing the maximum amount of SLIAG funds that may be expended for Phase II outreach.

Outreach designed to inform ELAs (not just temporary residents) of the availability of SLIAG-funded educational services is an allowable activity under the current regulation and is not affected by Public Law 202–238. The costs of such educational services outreach activities, performed by educational service providers under their educational service contracts with States education agencies, do not have to be counted toward the statutory ceiling on Phase II outreach activities. However, such educational services outreach activities continue to be subject to the funding limitations that IRCA and the regulation at 45 CFR 402.11(e) impose on spending for educational services.

Activities beyond those intended to make ELAs aware of the availability of SLIAG-funded classes are not allowable under the current regulation, but may be allowable under the new authority of Public Law 101–238 if those activities are targeted to temporary residents. Such activities would be subject to the spending limitation in § 402.11(k).

*Use of Other Organizations*

Public Law 101–238 is silent on such issues as which State agency will be responsible for conducting Phase II outreach activities and what, if any, other organizations must or may be involved, consulted with, or receive funding. We have not proposed regulations in these areas as such decisions, in the absence of statutory guidance, are appropriately left to the State, subject to section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) which require that the State provide a fair method, as determined by the State, to allocate SLIAG funds among State and local agencies, and Federal grant management regulations at 45 CFR part 92.

**Employment Discrimination Education and Outreach**

*Background*

IRCA established sanctions against employers who knowingly hire aliens not authorized to work in this country. IRCA requires that employers verify the identity and work authorization of all new employees. During debate on IRCA, Congress foresaw the possibility that employers, fearful of sanctions, would refuse employment to individuals who looked or sounded foreign. Responding to that concern, Congress created section 102 of IRCA. Section 102 made it unlawful, with specified exceptions, for employers to discriminate in hiring, firing, or recruiting and referring labor for a fee because of a person's national origin and, in the case of a citizen or intending citizen, citizenship status.

Congress also created the Office of the Special Counsel for Immigration Related Unfair Employment Practices (hereafter "Office of the Special Counsel") to enforce IRCA's anti-discrimination provision. The Office of the Special Counsel is responsible for investigating discrimination charges and, when appropriate, filing complaints with a specifically designated administrative tribunal.

The Office of the Special Counsel, located in the U.S. Department of Justice, has established a record of vigorous enforcement. However, studies by the U.S. General Accounting Office and local authorities have raised serious concerns about the general lack of knowledge and misunderstanding of IRCA's requirements. Enforcement of the anti-discrimination provision will serve little purpose if workers are not aware of their rights. Moreover, discrimination will not be eradicated as long as employers are unaware of their duty not to discriminate.

*Anti-Discrimination Efforts Authorized*

Congress addressed these problems by enacting section 6 of Pub. L. 101–238. This statute adds new section

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204(c)(1)(E)(i) to IRCA which allows, but does not require, States to use SLIAG funds.

> • • • to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

The legislative history states that this provision is intended to fund education and outreach efforts to inform workers of their rights under the anti-discrimination provision of IRCA and to inform employers of how to comply with their anti-discrimination responsibilities under IRCA. (Congressional Record, S 16442, Nov. 20, 1989)

This regulation proposes to adopt the statutory language of new section 204(c)(1)(E)(i) of IRCA in defining "employment discrimination education and outreach" in § 402.2. The statute and regulation permit a broad range of activities, including, but not limited to: The development, production and distribution of informational literature; production and publication of advertisements in the electronic or print media; conducting meetings, seminars or other public functions; awarding grants, contracts or cooperative agreements, as appropriate, to local government agencies (including local education agencies), employee and employer groups, or other public or private organizations, including community-based organizations or for-profit concerns; and, providing referral services regarding employment discrimination prohibited by IRCA.

*Use of Other Organizations*

The statute states that SLIAG funds may be used for "education and outreach efforts by State agencies • • •" (new section 204(c)(1)(E)(i) of IRCA, emphasis added). We interpret this to mean that employment discrimination education and outreach activities in which SLIAG-related costs may be incurred must be under the direction of or coordinated by State agencies.

The statute does not specify which State agency or agencies may conduct employment discrimination education and outreach activities. We are not proposing to regulate in this area, as this decision is appropriately left to each State. However, we encourage States to confer with appropriate agencies and organizations and to create or enhance ongoing contacts with local public and private entities already conducting such activities. By using existing community networks, States will be able to develop "bottom up" outreach strategies, thereby extending the scope and range of the educational campaign. Also, the use of existing community networks will facilitate audience targeting and may enhance the access and credibility of the message.

The statute is silent regarding State agencies' conducting employment discrimination education and outreach activities through other organizations. (However, section 204(d)(1)(B)(ii) of IRCA and 45 CFR 402.41(a)(2) require that the State assure that it will provide a fair method, as determined by the State, of allocating SLIAG funds among State and local agencies.) We have not proposed regulations in this area. Within the confines of Federal and State procurement principles and the assurance noted above, States have discretion in deciding what, if any, other organizations to use in implementing SLIAG-funded employment discrimination education and outreach efforts. (Federal grants management regulations at 45 CFR part 92 apply to this use, as well as other uses, of SLIAG funds.) If otherwise permissible, States may implement their SLIAG-funded employment discrimination education and outreach through grants, contracts or cooperative agreements with other units of government, other public agencies, non-profit, or for-profit organizations.

*Activities That Are Not Allowable*

Although the statute permits a wide range of allowable uses of SLIAG funds for employment discrimination education and outreach, there are several limitations inherent in the statutory language and legislative history. For example, we believe that Public Law 101–238 does not allow the use of SLIAG funds to investigate or prosecute discrimination complaints beyond initial intake and referral. Nor does it allow for the payment of legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination or to represent parties before any administrative or judicial body. This proposed regulation makes these exclusions explicit in new § 402.11(j).

*Not Limited to "Eligible Legalized Aliens"*

New section 204(c)(1)(E) does not limit the use of SLIAG funds for employment discrimination education and outreach to aliens legalized by IRAC. (Other uses of SLIAG funds generally are limited to services provided to "eligible legalized aliens," as that term is defined in the Act and 45 CFR 402.2.) SLIAG funds may be used for employment discrimination education and outreach efforts targeted to ELAs, permanent residents, asylees, refugees, U.S. citizens, and all others protected under IRCA's anti-discrimination provision. These efforts may also be directed to employers and to persons or other entities that recruit or refer labor for a fee.

*Prior Consultation Required*

New section 204(c)(1)(E)(ii) of IRCA stipulates that States

> • • • shall not initiate such efforts until after such consultation with the Office of the Special Counsel for Immigration Related (Unfair) Employment Practices as is appropriate to ensure, to the maximum extent feasible, a uniform program.

We believe the most straightforward reading of this language is that States may not use SLIAG funds to reimburse the costs of activities that occurred prior to consultation with the Office of the Special Counsel. Under the proposed rule, new activities to be funded with a State's SLIAG allotment may not be started until after consultation has occurred. For activities begun prior to consultation (i.e., those funded with State or local funds), SLIAG reimbursement would be available only for costs associated with activities that occur after consultation.

*Consultation Process*

This proposed regulation combines the statutorily required consultation with the Office of the Special Counsel and the process of States' submitting applications for SLIAG funds (or amendments to approved applications.) This combined process involves the following steps:

(1) A State submits to the Department an application, or amendment to an approved application, including as detailed a description as possible of the employment discrimination education and outreach efforts the State plans to undertake, including, if available, copies or drafts of the text of public information materials it intends to use in those efforts. (See "Content of required submission," below.)

(2) The Department transmit a copy of the State's submission to the Office of the Special Counsel for review.

(3) The Office of the Special Counsel reviews the State's submission to ascertain whether it meets certain criteria, discussed below. (The Office of the Special Counsel has indicated that it anticipates its review will take no longer than 15 working days, unless discussions or correspondence with a State extend this time.) Simultaneously, the Department reviews the submission to ascertain the allowability of costs and the reasonableness of cost estimates. (See "Review criteria," below.)

(4) Upon completion of its review, the Office of the Special Counsel certifies to the Department whether the State's submission meets the specified criteria. The Department then notifies the State that the section(s) of the State's application or amendment related to employment discrimination education and outreach have been approved or notifies the State of the reasons for disapproval. This notification will include additional comments, if any, provided by the Office of the Special Counsel.

HHS' notification informs the State that the statutory requirement for prior consultation with the Office of the Special Counsel has been met. Upon receiving notification from the Department that its application is approved, a State may initiate the SLIAG-funded employment discrimination education and outreach activities described in its approved application. We have included in the proposed regulation new § 402.11(n) which prohibits the use of SLIAG funds to reimburse the costs of employment discrimination education and outreach activities that occur prior to this notification. We believe that we could not allow reimbursement of such costs without contravening the clear intent of the statute. (However, see "Prior consultation waived for dissemination of certified materials," below.)

Unlike other programs or activities where prior approval of applications or amendments by the Department is not required, this process requires States to submit and receive approval for planned employment discrimination education and outreach activities before initiating those activities, or before beginning to reimburse the costs of ongoing activities. However, we believe that this consolidated approach will be simpler to administer at both the State and Federal level than separate consultation and application processes.

We have separated the formal consultation process from ongoing information exchange an technical assistance activities with the Office of the Special Counsel, as well as other Federal agencies (e.g., the INS Office of Employer and Labor Relations, the Department of Labor, the Equal Employment Opportunity Commission, and the Small Business Administration). We expect that States will have ongoing contacts with these Federal agencies and other States to enhance and coordinate their employment discrimination education and outreach activities. We strongly encourage this informal exchange of information, ideas, and technical assistance, but have not included it in the formal consultation process in the interest of expediting States' implementation of employment discrimination education and outreach efforts.

*Content of Required Submission*

New § 402.41(d)(1)(B) of the proposed regulation specifies the information regarding planned employment discrimination education and outreach efforts that States must include in their applications or amendments to approved applications. States' applications must contain a description of the planned education and outreach activities, including:

—Descriptions of the kinds of State or local government agencies, or other entities, to be involved in each activity;
—Brief descriptions of the targeted audience(s) for each activity; and,
—Pre-production copies or text of any material to be dissemination to the public, if available at the time the application is submitted. (See "Certification of material for public distribution," below.)

These requirements reflect: (1) The level of information the Office of the Special Counsel has informed us it needs to carry out its statutory consultation requirement; and, (2) the information needed by the Department to determine the allowability of the activities and reasonableness of the estimated costs. Because of the statutory requirement for prior consultation and a strong Federal interest in ensuring that Federal funds are used efficiently to provide the public with accurate information, the application requirements concerning employment discrimination education and outreach activities are more detailed than those for other uses of SLIAG funds.

We urge States to be as specific as possible in describing their activities, including the kinds of organizations they intent to use, the audience to be targeted, the media mix to be used, and the nature and content of the information to be disseminated. This will assist the Office of the Special Counsel in serving as a clearinghouse for information, by sharing with other States innovative education and outreach ideas. However, we do not envision States submitting highly detailed operational plans. Further, we recognized that States may not have complete plans developed for their SLIAG-funded education and outreach activities. We recommend the States submit their application in whatever level of detail is possible, and thereby satisfy the prior consultation requirement, as soon as they have at least a preliminary idea of the activities they want to undertake, the audience, and the types of organizations they will use. This will allow the State to begin to spend SLIAG funds for employment discrimination education and outreach. As States more fully develop their plans, applications can be amended. (If a State plans to undertake activities beyond those described in its approved application, the proposed rule would require the application to be amended *prior to* its initiating those new activities.)

As with other uses of SLIAG funds, the application must also contain an estimate of the SLIAG-related costs the State expects to incur in its employment discrimination education and outreach efforts and describe the methodology used to make the estimate.

*Review Criteria*

HHS will review States' applications and amendments to determine the allowability of costs and the reasonableness of cost estimates. This review will be conducted in the same manner and employ the same criteria as the Department's review of other activities included in States' applications. While States are required by statute to consult with the Office of the Special Counsel, accountability for SLIAG funds, including determination of the allowability of costs, rests with the Department.

By statute, the purpose of consultation with the Office of the Special Counsel is to "ensure, to the maximum extent feasible, a uniform program." Accordingly, under the proposed rule, the Office of the Special Counsel will review States' submission to determine that SLIAG-funded, State-administered efforts do not conflict with or unnecessarily duplicate other education and outreach efforts. (The Office of the Special Counsel will also review public information material submitted with a State's application or amendment. See "Certification of material for public distribution," below.)

When the Office of the Special Counsel determines that the activities described in a State's submission do not conflict with or unnecessarily duplicate other anti-discrimination efforts, it will certify to the Department that consultation has taken place. Any conflicts with other anti-discrimination efforts identified by the Office of the Special Counsel will have to be resolved prior to completion of consultation. Resolution of such conflicts would likely require that a State amend the

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application or amendment submitted to the Department to remove the conflict.

The Office of the Special Counsel will also provide any additional comments and suggestions it has regarding a State's planned employment discrimination education and outreach activities. The Office of the Special Counsel will transmit those commments to HHS. HHS in turn will forward those comments to the State for consideration.

*Certification of Material for Public Distribution*

The proposed regulaion at new § 402.11(o) provides that SLIAG funds may be used to reimburse costs associated with material intended for public dissemination only if that material is certified by the Office of the Special Counsel. Certification of public information material involves the Office of the Special Counsel's determining that:

—The information to be produced and disseminated to the public with Federal funds is legally accurate; and,

—Such information identifies the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin and includes that Office's address and telephone numbers, including toll-free and TDD numbers for the hearing impaired.

Material which a State wishes to have certified may be transmitted to the Office of the Special Counsel in either of two ways.

1. If such material (e.g., drafts or pre-production copy) is available when a State prepares its application or amendment, that material must be included in its submission. HHS will transmit that material to the Office of the Special Counsel.

2. Material developed after approval of a State's application or amendment should be submitted directly to the Office of the Special Counsel. (The Department does not require that such materials be submitted to it for review. However, if a State submits public information directly to the Office of the Special Counsel for review and use of that material is not described in its approved application, then the proposed rule would require the State to amend its application prior to producing and disseminating that material.)

We strongly encourage States to submit material for review by the Office of the Special Counsel before incurring significant production and distribution costs in order to avoid potential disallowances.

The following is a list of public information material already certified by the Office of the Special Counsel:

1. Office of the Special Counsel and Immigration and Naturalization Service (Form M–279) "Immigration Reform and Control Act of 1986 (IRCA): Your Job and Your Rights," in Spanish and English.

2. One-page notice titled "The Immigration Reform and Control Act (IRCA) Prohibits Employment Discrimination: What You Should Know."

3. Form M–322, "Important Notice Concerning Immigration—Related Unfair Employment Practices," in English, Spanish, Polish, Creole, Arabic, Chinese, Japanese, and Korean.

4. Equal Employment Opportunity Commission publication, "National Origin Discrimination in Employment is Unlawful: Employers' Obligations Under Title VII and IRCA."

5. Equal Employment Opportunity Commission publication, "National Origin Discrimination in Employment is Unlawful: The Rights of Employees and Job Applicants Under Title VII and IRCA."

6. Immigration and Naturalization Service poster, "Looking For a Job."

7. Thirty-second television public service announcements with Jimmy Smits, in Spanish and English.

8. Thirty-second television public service announcements with Edward James Olmos, in Spanish and English.

9. Sixty-second radio public service announcements, in Spanish and English, produced by the Department of Justice.

The Office of the Special Counsel will update this list periodically and provide updated versions of the list to States and the Department. The Office of the Special Counsel will also provide States with additional, pre-approved language upon request.

*Prior Consultation Waived for Dissemination of Certified Materials.*

The Federal government has a strong interest in expediting States' SLIAG-funded employment discrimination education and outreach efforts. States may want to get started by reproducing and distributing already available public information material that has been certified by the Office of the Special Counsel. (See list, above.)

States that elected to use SLIAG funds for this limited purpose would not need first to submit an application or amendment to HHS or the Office of the Special Counsel. We would deem consultation to have taken place for this limited use. However, States would be required to reproduce the text of certified material verbatim (but could add the name of the State agency or other appropriate entity, its address and telephone number). Only the costs of such activities undertaken after December 18, 1989, the date of enactment of Public Law 101–238, Public Law could be reimbursed with SLIAG funds.

Although States would not be required to submit an application or amendment to HHS before distributing certified public information material, States would have to include descriptions and cost estimates of such activities when they did submit their applications or amendments. (Amendments for FY 1990 are due to HHS no later than 90 days after the end of the fiscal year.) Prior consultation, and prior approval of a State's application or amendment, would be required for any other employment discrimination education and outreach activity.

*Subsequent Amendments*

The current regulation at § 402.45(a) requires that, if, during the course of a fiscal year, a State adds a program or activity for which it intends to claim SLIAG reimbursement or make payment with SLIAG funds, it must amend its application. For employment discrimination education and outreach activities, this means that States will have to amend their applications before they initiate or seek SLIAG reimbursement for activities beyond those described in their approved applications. The process for consulting with the Office of the Special Counsel described above would be followed for each amendment.

*Amendments to Prior Years' Applications*

Public Law 101–238 is effective with allotments made for FY 1989. Because of this effective date and the statutory requirement for prior consultation with the Office of the Special Counsel, there will be no costs incurred in either FY 1988 or FY 1989 for such activities which can be reimbursed with SLIAG grants. Thus, States will have no need to amend their FY 1988 or FY 1989 applications for this purpose.

However, as noted in "Limitations on Use of SLIAG Funds," below, subject to statutory limits, States may use funds from their FY 1989 SLIAG allotments for the costs of activities which occur after consultation (e.g., in FY 1990 or subsequent fiscal years). This is in accordance with the general provision in IRCA and the SLIAG regulation that funds allotted for a fiscal year remaining unobligated at the end of that fiscal year



continue to be available for use until September 30, 1994.

States which elect to use SLIAG funds for employment discrimination education and outreach activities that occur in FY 1990 must amend their FY 1990 applications. Except as noted above, under the proposed rule, our prior approval of such amendments is required before States may initiate SLIAG-funded employment discrimination education and outreach efforts or begin to reimburse the costs of ongoing activities.

**Limitations on Use of SLIAG Funds**

New sections 204(c)(2)(D) (i) and (ii) of IRCA, established by Public Law 101–238, limit the amount of their SLIAG allotments that States may use for Phase II outreach and employment discrimination education and outreach activities. New § 402.11 (k) and (l) of this proposed regulation include these restrictions. For each of these two new activities, a State may make payments, i.e., for contracts, interagency agreements, etc., totalling no more than an amount equal to the greater of 1 percent of its allotment for each fiscal year beginning with FY 1989, or $100,000. Costs associated with the administration of these payments by the State single point of contact are considered SLIAG administrative costs, as that term is defined in this Part.

For example, assume that a State's FY 1989 SLIAG allotment was $15 million and its FY 1990 allotment is $9 million. That State could use up to $150,000 of its FY 1989 allotment (1 percent of $15 million) and $100,000 of its FY 1990 allotment (because 1 percent of its allotment—$90,000—is less than $100,000) for Phase II outreach and up to the same amount for employment discrimination education and outreach.

Those funds, if unobligated by the State at the end of the fiscal year, would remain available for use through FY 1994, as is the case with SLIAG funds generally. For example, States will not have any FY 1989 costs for employment discrimination education and outreach that can be reimbursed with SLIAG funds. This is because the required prior consultation with the Office of the Special Counsel could not have been accomplished in FY 1989. However, 1 percent of the State's allotment for FY 1989 (or $100,000, if greater), if not otherwise obligated, remains available to reimburse costs incurred in subsequent fiscal years.

States' use of SLIAG funds for either Phase II outreach or employment discrimination education and outreach is optional. There is no minimum amount of SLIAG funds which States are required to use for these activities. This regulation proposes to amend § 402.11(d) to clarify application of the statutory requirement that States use at least 10% of their SLIAG allotments for public assistance, public health assistance, and educational services.

The statutory provisions authorizing use of SLIAG funds for these purposes are effective with States' FY 1990 allotments. Costs incurred prior to October 1, 1989 may not be reimbursed with SLIAG funds. (FY 1988 allotments may not be used for Phase II outreach or for employment discrimination education and outreach. FY 1988 allotments are the only funds available to reimburse costs incurred in FY 1988.) States' FY 1988 allotments are not included in computing the maximum amount of SLIAG funds that may be used for these purposes.

As noted above, States may use SLIAG funds to pay otherwise allowable costs incurred through FY 1994. However, States should bear in mind that there will be a minimal number of aliens adjusting status under sections 210 or 245A of the INA still in lawful temporary resident status after FY 1992. Therefore, we would not expect States to incur significant costs for Phase II outreach activities in FY 1993 or FY 1994 unless aliens are granted lawful temporary resident status under section 210A of the INA (pertaining to replenishment agricultural workers).

New §§ 402.11 (i) through (l), (n), and (o) of this proposed regulation include additional restrictions that apply to these new uses of SLIAG funds. These were described previously under "Phase II Outreach" and "Employment Discrimination Education and Outreach."

Sections 402.11(a), 402.11(c) and 402.21(b) describe which funds are permitted for costs associated with SLIAG-reimbursable activities.

**Proposed Simplification of Application Requirements**

This proposed regulation simplifies States' preparation of SLIAG applications by deleting the requirement that applications contain both cost estimates for the upcoming fiscal year and updated estimates for the prior fiscal year. A key element is our changing the due date for applications in § 402.43 from July 15 preceding the fiscal year for which application is made to October 1 of that fiscal year. (See 55 FR 26206, which changed the due date for FY 1991 applications from July 15, 1990 to October 1, 1990. This regulation also changed the date by which applications must be rendered approvable by the Secretary from October 1 to December 15.) This proposed regulation would adopt those dates for all applications.

This proposed change would allow us to simplify States' SLIAG applications. Under the current regulation, State applications must contain estimates of SLIAG-related costs for the year for which funds are sought, plus updated estimates for the prior fiscal year. For example, under the current regulation, States' applications for FY 1991 must include cost estimates for FY 1991 and updated estimates for FY 1990.

Under the new time schedule, we will complete our review and approval of States' applications, including the cost estimates they contain, by the end of the calendar year. This is the same time that States must submit end-of-year reports containing actual cost data for the prior fiscal year. (Subpart F of the regulation requires States to submit to the Department a report with actual cost data for FY 1990 no later than 90 days after the end of the fiscal year.) Thus, we will have actual cost data for the prior year available to us when we compute States' allocations. Therefore, there is no need for updated cost estimates for the prior year in States' applications. We therefore are proposing to eliminate the requirement that State applications contain updated cost estimates for the prior fiscal year.

The current regulation calls for the Department to hold 25% of the FY 1991 appropriation (the final year for which funds were appropriated at the time the regulation was published) for allocation in late FY 1991, after we receive States' end-of-year reports for FY 1990. (These reports are due by December 29, 1990 and, under the schedule in the current regulation, would not have been available in time to be included in computing States' FY 1991 allocations.)

We included provision for a final adjustment to States' allocations late in FY 1991 so that final allocations would be based as much as possible on actual, rather than estimated, costs. With the proposed October 1 application deadline, this final adjustment will not be necessary. Actual cost data for FY 1990 will be available when we compute States' FY 1991 allocations for the first time. Therefore, there is no need for a second allocation in FY 1991. We propose to allocate all FY 1991 funds as soon as cost data are received from States and reviewed by the Department.

**Technical and Conforming Changes**

In referring to activities for which SLIAG funds may be used, § 402.10(a) lists the three categories of programs/activities for which SLIAG funds could be used prior to enactment of Public



Law 101–238: Public assistance, public health assistance, and educational

may employ to determine program

**Required Consultations with State and**



Dated: July 19, 1990.

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Law 101-238: Public assistance, public health assistance, and educational services. Two other allowable uses—SLIAG administrative costs and program administrative costs—were provided for in §§ 402.10(c) and 402.22. In addition, categories of activities for which SLIAG funds may be used are listed in numerous other places in the regulation, including § 402.11.

With the addition of two new categories of activities for which SLIAG funds may be used—employment discrimination education and outreach and Phase II outreach—listing all seven of the allowable uses of SLIAG funds at each reference is unwieldy. Therefore, the proposed amendment defines "SLIAG-reimbursable activity" to include all allowable uses of SLIAG funds:

—Public assistance;
—Public health assistance;
—Educational services;
—Employment discrimination education and outreach;
—Phase II outreach;
—SLIAG administrative costs; and,
—Program administrative costs.

The terms "SLIAG administrative costs" and "program administrative costs" are defined in §§ 402.22 (a) and (b), respectively, and § 402.10(c) of the current regulation. Because these are "SLIAG-reimbursable activities," defined by this proposed amendment, we have moved the definitions of "SLIAG administrative costs" and "program administrative costs" to § 402.2, "Definitions." We believe that it is clearer and more consistent to define all allowable uses of SLIAG funds in that section.

The definition of "SLIAG administrative costs" in § 402.2 does not differ substantively from that in the current regulation at § 402.22(a). This amendment proposes to substitute the term "conferring" for "consultation" (i.e., with local officials) to prevent confusion between this reference and the consultation with the Office of the Special Counsel required as a prerequisite for initiating employment discrimination education and outreach activities.

The definition of "program administrative costs" included in § 402.2 does not differ substantively from the current definition in §§ 402.10(c) and 402.22(b). It is modified only to clarify that program administrative costs are those costs associated with administering any of the five categories of programs or activities for which SLIAG funds may be used.

This proposed amendment moves the description of the methodologies States may employ to determine program administrative costs from §§ 402.22(b) to 402.21(c)(5)(A). This locates all cost documentation requirements and guidance in the same section of the regulation.

The current regulation limits SLIAG-related costs for educational services to the amount that can be paid with SLIAG funds. The amended definition of "SLIAG-related costs" in § 402.2 of this proposed rule applies the same restriction to SLIAG-related costs for Phase II outreach and employment discrimination education and outreach. The effect of this would be to prevent the inclusion of costs that could not be reimbursed with SLIAG funds in the computation of States' allocations.

The proposed rule adds a provision to § 402.45(a) that requires a State to submit amendments to its approved application for a fiscal year by the due date for that fiscal year's cost report under § 402.51. This change codifies current policy.

The proposed rule removes and reserves § 402.10(c) of the current regulation. That paragraph permits SLIAG funds to be used for program and SLIAG administrative costs. Because the regulation now defines these uses in § 402.2 and includes them in the list of SLIAG-reimbursable activities in §§ 402.2 and 402.10(a), 402.10(c) would be superfluous.

The current SLIAG regulation addresses State allocations and application requirements for each year from FY 1988 through FY 1991. The change in application requirements, due date, and allocation schedule for FY 1991 (discussed above) eliminates the need to list requirements and procedures separately for each year. Therefore, this proposed regulation eliminates unnecessary references to specific fiscal years.

INS regulations require that physical examinations for applicants for adjustment of status under sections 210, 210A, and 245A of the INA be at no expense to the government. The current SLIAG regulation prohibits use of SLIAG funds to pay the cost of physical examinations only for applicants under sections 245A and 210. Section 402.11(h) of the proposed regulation corrects this oversight and prohibits use of SLIAG funds to pay the cost of physical examinations required of petitioners for status under section 210A (replenishment agricultural workers), should any aliens become eligible to petition for adjustment of status under that section.

**Required Consultations with State and Local Officials**

Section 204(i) of IRCA requires the Secretary to consult with representatives of State and local governments in establishing regulations and guidelines for SLIAG. On January 16, 1990 we transmitted information regarding Public Law 101-238 to SLIAG contacts and other interested parties. In that transmittal, we requested comments and suggestions for regulations regarding temporary resident education and outreach and employment discrimination education and outreach activities. We received comments from four States and one national organization. Those comments were considered in developing this proposed rule.

**Required Consultation with States and the Comptroller General**

Section 204(e) of IRCA requires that the Secretary consult with States and the Comptroller General in developing reporting requirements for SLIAG. As this proposed rule does not establish new reporting requirements, but merely eliminates now unnecessary reporting, we determined that prior consultation was not necessary. However, copies of this proposed rule have been transmitted to State SLIAG single points of contact and the Comptroller General for comment.

**Regulatory Procedures**

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

**Paperwork Reduction Act**

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalogue of Federal Domestic Assistance Program No. 13.786, State Legalization Impact Assistance Grants)

**List of Subjects in 45 CFR Part 402**

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.



Dated: July 19, 1990.
**Jo Anne B. Barnhart,**
*Assistant Secretary, Family Support Administration.*
Approved: September 27, 1990.
**Louis W. Sullivan,**
*Secretary of Health and Human Services.*

For the reasons set forth in the preamble, 45 CFR part 402 is amended as follows:

## PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 continues to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.1 is revised to read as follows:

**§ 402.1 General.**

(a) These regulations implement section 204 of Public Law 99-603, the Immigration Reform and Control Act of 1986 (IRCA), as amended. This act establishes a temporary program of State Legalization Impact Assistance Grants (SLIAG) for States. The purpose of SLIAG is to lessen the financial impact on State and local governments resulting from the adjustment of immigration status under the Act of certain groups of aliens residing in the States, the district of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) Funds appropriated by section 204 may be applied by States with approved applications to certain State and local government costs incurred: (a) In providing public assistance and public health assistance to eligible legalized aliens, (2) for making payments to State educational agencies for the purpose of assisting local educational agencies in providing certain educational services to eligible legalized aliens, (3) to provide public education and outreach to lawful temporary resident aliens concerning the adjustment to lawful permanent resident status and other matters, (4) to make payments for education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status, and (5) to administer the funds provided under this Part.

3. Section 402.2 is amended by revising the first two sentences of and adding a sentence to the definition of "SLIAG-related costs," and by adding definitions of "Employment discrimination education and outreach," "Phase II outreach," "Program administrative costs," "SLIAG administrative costs," and "SLIAG-reimbursable activity," to read as follows:

**§ 402.2 Definitions.**

* * * * *

*Employment discrimination education and outreach* means education and outreach efforts by State agencies regarding unfair discrimination in employment practices based on national origin or citizenship status.

* * * * *

*Phase II outreach* means public education and outreach (including the provision of information to individuals) to inform temporary resident aliens under section 210, 210A, 245A of the INA and aliens whose applications for such status are pending with the Immigration and Naturalization Service regarding: (1) The requirements of sections 210, 210A, and 245A of the INA regarding the adjustment of resident status; (2) sources of assistance for such aliens obtaining the adjustment of status described in paragraph (1) of this definition, including educational, informational, and referral services, and the rights and responsibilities of such aliens and aliens lawfully admitted for permanent residence; (3) the identification of health, employment, and social services; and, (4) the importance of identifying oneself as a temporary resident alien to service providers.

*Program administrative costs* means those costs associated with administering public assistance, public health assistance, educational services, Phase II outreach, and employment discrimination education and outreach activities.

* * * * *

*SLIAG administrative costs* means the direct and indirect costs related to administration of funds provided under this part, including: Planning and conferring with local officials, preparing the application, audits, allocation of funds, tracking and recordkeeping, monitoring use of funds, and reporting.

*SLIAG-reimbursable activity* means programs of public assistance, programs of public health assistance, educational services, employment discrimination education and outreach, Phase II outreach, program administrative costs, and SLIAG administrative costs, as those terms are defined in this part, that are included in a State's application approved pursuant to subpart E of this part.

*SLIAG-related costs* means expenditures made (1) to provide public assistance, public health assistance, or educational services, as defined in this part, to eligible legalized aliens; (2) to provide public health assistance to aliens applying on a timely basis to become lawful temporary residents under sections 210, 210A, or 245A of the INA during such time as that alien's application with INS is pending approval; (3) to provide employment discrimination education and outreach, as defined in this part; (4) to provide Phase II outreach, as defined in this part; and, (5) for SLIAG administrative costs, as defined in this part. SLIAG-related costs include all allowable expenditures, including program administrative costs determined in accordance with § 402.21(c), regardless of whether those expenditures actually are reimbursed or paid for with funds allotted to the State under this part. SLIAG-related costs for educational services, Phase II outreach, and employment discrimination education and outreach are limited to the amount of payment that can be made under the Act for those activities, as described in §§ 402.11(e), (k) and (l), respectively.

* * *

4. Section 402.10 is amended by revising paragraphs (a) and (d) and removing and reserving paragraph (c) to read as follows:

**§ 402.10 Allowable use of funds.**

(a) Funds provided under this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, subject to §§ 402.11 and 402.28(a), for the following activities, as defined in this part: (1) Public assistance; (2) Public health assistance; (3) Educational services; (4) Employment discrimination education and outreach; (5) Phase II outreach; (6) SLIAG administrative costs; and, (7) Program administrative costs;

* * * * *

(c) [Removed and Reserved]

(d) Except as provided for in § 402.11(n), funds awarded under this part may be used to reimburse or pay SLIAG-related costs incurred prior to the approval of a State's application or amendment to its application, pursuant to subpart E of this part, provided that such reimbursement or payment is consistent with the Act and this part.

5. Section 402.11 is amended by revising paragraphs (a) and (c), revising the last sentence of paragraph (d), revising paragraph (h), adding paragraphs (i), (j), (k), (l), adding and reserving paragraph (m), and adding paragraphs (n) and (o), to read as follows:

**§ 402.11 Limitations on use of SLIAG funds.**

(a) Funds provided under this pr[illegible] may be used only for SLIAG-

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reimbursable activities that (1) meet the definitions of § 402.2, above, and (2) are otherwise consistent with the rules and procedures governing such activities.

* * * * *

(c) The amount of reimbursement or payment may not exceed 100% of SLIAG-related costs, as defined in this part, associated with SLIAG-reimbursable activities.

(d) * * * In the event that a State does not require use of a full 10% in one of the above categories, it must allocate the unused portion equally among the remaining categories listed in this paragraph.

* * * * *

(h) Funds provided under this part shall not be used to reimburse or pay costs incurred by any public or private entity or any individual, in the conduct of a medical examination as required for application for adjustment to lawful temporary resident status under 8 CFR 245a.2(i), 8 CFR 210.2(d), or 8 CFR 210a.8(f).

(i) Funds provided under this part shall not be used for client counselling or any other service which would assume responsibility for the adjustment of status of aliens to that of lawful temporary or permanent residence. This prohibition includes assisting an alien to appeal INS decisions or representation of an alien before any administrative or judicial body.

(j) Funds under this part shall not be used to investigate or prosecute discrimination complaints beyond initial intake and referral, to pay legal fees or other expenses incurred to provide legal counsel to a party alleging discrimination, or to represent such parties before any administrative or judicial body.

(k) A State may use funds to make payments for Phase II outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use for this purpose from a fiscal year's allotment is the greater of 1% of its allotment for that fiscal year or $100,000.

(l) A State may use funds to make payments for employment discrimination education and outreach activities, including related program administration, from allotments made to it under this part for FY 1989 and succeeding fiscal years. The maximum amount that a State may use from a fiscal year's allotment for this purpose is the greater of 1% of the State's allotment for that fiscal year or $100,000.

(m) [Reserved]

(n)(1) Except as provided for in paragraph (n)(2) of this section, a State may use SLIAG funds allotted to it for a fiscal year to reimburse or pay only those SLIAG-related costs for employment discrimination education and outreach activities which occurred after approval by the Department of an application or amendment describing those activities, as required by § 402.41(d).

(2) Costs incurred in FY 1990 prior to approval by the Department of an application or amendment containing the information required by § 402.41(d), but after December 19, 1989, for reproduction and dissemination of public information material certified by the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, Department of Justice (hereafter, "Office of the Special Counsel"), pursuant to paragraph (o) of this section may be reimbursed with funds allotted under this part.

(o)(1) With respect to employment discrimination education and outreach, a State shall not use SLIAG funds to pay for the cost of producing or distributing materials prepared for public dissemination unless the Office of the Special Counsel has certified that those materials meet the criteria in paragraph (o)(2) of this section.

(2) Certification of materials described in paragraph (o)(1) of this section shall consist of a finding by the Office of the Special Counsel that information contained in such materials relating to the discrimination provision of the Act is legally accurate and that those materials include reference to the Office of the Special Counsel as a source of information and referral for complaints of discrimination based on citizenship status or national origin. Information regarding the Office of the Special Counsel shall include its address and telephone number, including the toll-free number and toll-free TDD number for the hearing impaired.

8. Section 402.12 is amended by revising paragraph (c) to read as follows:

**§ 402.12 Use of SLIAG funds for costs incurred prior to October 1, 1987.**

* * * * *

(c) A State may use funds provided under this part for costs incurred prior to October 1, 1987, but after November 6, 1986, in providing public health assistance to eligible legalized aliens and to applicants for lawful temporary residence under sections 210, 210A and 245A of the INA, in conformity with the provisions of § 402.10(a).

7. Section 402.21 is amended by revising the third sentence of paragraph (b), revising paragraph (c)(2), adding paragraphs (c) (4) and (5), revising § 402.22(b) and redesignating it as paragraph (c)(6)(i), and redesignating § 402.22(c) as paragraph (c)(6)(ii), to read as follows:

**§ 402.21 Fiscal control.**

* * * * *

(b) * * * States must demonstrate that SLIAG-related costs, as defined in this part, incurred in SLIAG-reimbursable activities, equal or exceed the amount of SLIAG funds expended with respect to costs incurred in those activities. * * *

(c) * * *

(2) For public health assistance, States may establish allowability by accounting for actual expenditures made to or on behalf of identifiable eligible legalized aliens, or applicants for lawful temporary resident status under sections 210, 210A, or 245A of the INA, who qualify for and receive such assistance and/or services, by use of statistically valid sampling of clients in the public health system of the State or local government, or by using the ratio of eligible legalized aliens in a service population to all members of the relevant service population.

* * * * *

(4) With respect to Phase II outreach, as defined in this part, a State must demonstrate that the costs of activities that provide information directly to specific individuals are attributable only to lawful temporary residents under sections 210, 210A, or 245A of the INA, and applicants for such status whose applications were pending with the Immigration and Naturalization Service at the time information is provided. For Phase II outreach activities that do not involve the provision of information directly to specific individuals, States must demonstrate that such activities are targeted predominantly to or intended primarily for lawful temporary residents under sections 210, 210A, or 245A of the INA or applicants for such status whose applications are pending with the Immigration and Naturalization Service at the time information is provided. The State must demonstrate that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(k) and was consistent with the limitations of § 402.11(i).

(5) With respect to employment discrimination education and outreach, as defined in this part, the State must demonstrate that funds were expended only for activities described in the State's approved application pursuant to § 402.41(d) and the limitations of § 402.11(i), (n), and (o) and that the amount of any fiscal year's allotment used for this purpose did not exceed the amount described in § 402.11(f).

(6)(i) For program administrative costs, as defined in this part, a State may establish allowability by use of the proportion of eligible legalized aliens provided assistance and/or services allowable under this part by a recipient, as defined in this part, relative to all persons provided such assistance and/or services; by use of the proportion of program or service costs actually incurred in providing assistance and/or services allowable under this part by a recipient, relative to all costs of providing the same assistance and/or services allowable under this part by the recipient; or, by use of such other basis as will document that administrative costs incurred in providing such assistance and/or services and reimbursed under this part are allowable, allocable to SLIAG, and reasonable.

(ii) Consistent with section 604 of the Emergency Immigrant Education Act, of the amount paid to a State educational agency for educational services, only 1.5 percent may be used for administrative costs incurred by the State educational agency in carrying out its function under this part.

**§ 402.22 [Removed and Reserved]**

8. Section 402.22 is removed and reserved.

9. Section 402.31 is amended by revising the introductory text of paragraph (b) and removing paragraphs (b)(1) through (6,) to read as follows:

**§ 402.31 Determination of allocations.**

* * * * *

(b) *Calculation of allocations.* Each time the Department calculates State allocations, it will use the best data then available to the Secretary on the distribution of eligible legalized aliens by State. The Department will determine each State's SLIAG-related costs to be included in the computation of its allocation for a fiscal year by adding to the sum of SLIAG-related costs reported for all previous fiscal years by that State, pursuant to §§ 402.51(e)(1) and (2), the total amount of estimated SLIAG-related costs included in the State's approved application for that fiscal year, pursuant to § 402.41(c)(1) and (2). In the event that a State has not submitted an approved report for a fiscal year, the Department will include no costs for that fiscal year in its calculation.

10. Section 402.32 is revised to read as follows:



**§ 402.32 Determination of State allocations.**

Except as noted below, a State's allotment is the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State. In the event that the amount determined under § 402.31(b) is less than the cumulative amount previously allotted to a State, that State's allotment will be zero. The allotments of the remaining States would be calculated by multiplying the difference between the amount determined under § 402.31(b) of this regulation and the cumulative amount previously allotted to the State by the ratio of the amount of funds available for grants to States to the sum of the differences between the amounts determined under § 402.31(b) and the amounts previously awarded to those States.

11. Section 402.41 is amended by redesignated paragraph (c)(1) as paragraph (c) and revising the second sentence of newly redesignated paragraph (c), removing paragraph (c)(2), revising paragraph (d)(1) and redesignating it as paragraph (d)(1)(i), adding new paragraph (d)(1)(ii), adding a sentence at the end of paragraph (d)(2), and adding a sentence at the end of paragraph (f), to read as follows:

**§ 402.41 Application content.**

* * * * *

(c) * * * Programs and activities must be identified by the purposes listed in § 402.10(a). * * *

(d) * * *

(1)(i) Descriptions of the programs and activities for which SLIAG-related costs will be incurred; and,

(ii) If a State elects to use its allotment for employment discrimination education and outreach, a description of the State's planned education and outreach activities, including: descriptions of the kinds of government or private agencies or other entities, if any, through which these activities will be conducted; brief descriptions of the targeted audience(s) for these activities; and, preproduction copies or the text of any material intended for distribution to the public to be produced or disseminated with SLIAG funds, if available at the time the application is submitted.

(2) * * * For SLIAG administrative costs, Phase II outreach, and employment discrimination education and outreach, the descriptions must instead include the basis for the estimates of SLIAG-related costs, as defined in this part.

(f) * * * If the State elects to use SLIAG funds for employment discrimination education and outreach, it must also designate in its application a contact person for this activity, if different from the single point of contact.

* * * * *

12. Section 402.43 is amended by revising paragraph (a) and removing the first sentence and revising the second sentence of paragraph (b) to read as follows:

**§ 402.43 Application deadline.**

(a) An application from a State for SLIAG funds for any Federal fiscal year must be received by the Department by October 1 of that fiscal year. If a State fails to submit an application by this date, funds which it may otherwise have been eligible to receive shall be distributed among States submitting timely approved applications in accordance with § 402.33 of this part.

(b) In order to receive funds under this part, a State's application for a fiscal year must be approvable by the Secretary by December 15 of that fiscal year. * * *

13. Section 402.44 is amended by adding paragraphs (d)(1) and (2) to read as follows:

**§ 402.44 Basis for approval.**

* * * * *

(d)(1) The Department will forward to the Office of Special Counsel information provided by a State pursuant to § 402.41(d).

(2) The Office of the Special Counsel will review information forwarded to it by the Department pursuant to paragraph (d)(1) of this section to determine whether the activities described therein conflict with or unnecessarily duplicate other employment discrimination education and outreach efforts. Certification to the Department by the Office of the Special Counsel that the State's submission meets this criterion is a prerequisite for approval by the Department.

14. Section 402.45 is amended by revising paragraph (a) and redesignating it as paragraph (a)(1), adding paragraph (a)(2), and revising the first sentence of paragraph (b), to read as follows:

**§ 402.45 Amendments to applications.**

(a)(1) If, during the course of a fiscal year, a State adds a program or activity for which it intends to claim reimbursement or make payment in that fiscal year, it must submit an amendment [containing appropriate information pursuant to § 402.41(c)] to its approved application for that fiscal year prior to the due date for reports required by § 402.51 of this part.

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(2) If, during the course of a fiscal year, a State plans to initiate employment discrimination education and outreach activities not described in its application pursuant to § 402.41(d), it must submit an application amendment, which shall be reviewed in accordance with procedures described in § 402.44(d) of this part. The Department's approval of such an amendment is a prerequisite for the initiation of such new activities, except as provided for in § 402.11(n)(2).

(b) Except as provided for in §§ 402.11(k) and (n), a State may use SLIAG funds received for a fiscal year to reimburse or pay SLIAG related costs for programs or activities described in paragraph (a) of this section retroactive to the date the activity began, but no earlier than the first day of the fiscal year and only to the extent described in § 402.10(d). * * *

15. Section 402.51 is amended by redesignating the first two sentences of paragraph (e) as paragraph (e)(1) and revising the second sentence of newly redesignated paragraph (e)(1), redesignating the third sentence of paragraph (e) as paragraph (e)(2), and redesignating the last sentence of paragraph (e) as paragraph (e)(3) to read as follows:

**§ 402.51 Reporting.**

* * * * *

(e)(1) * * * The report must provide, for each program or activity identified in the State's application, the amount of SLIAG-related costs, as defined in this part, incurred in that program or activity, identified as public assistance, public health assistance, educational services, Phase II outreach, employment discrimination education and outreach, and SLIAG administrative costs, as defined in this part, the amount of SLIAG funds obligated for that program or activity, and the time period for which the funds were obligated. * * *

(2) The report must contain a description of the methodology used to determine actual SLIAG-related costs, if different from the description provided in the State's application pursuant to § 402.41(d)(2) of this part.

(3) Federal and State costs of providing assistance under a State plan approved under title XIX of the Social Security Act to aliens whose status has been adjusted under sections 245A and 210A of the INA by virtue of the exceptions to the bar to Medicaid eligibility (sections 245A (h)(2) and (3) of the INA) must be shown separately in State's reports.

[FR Doc. 90-28743 Filed 12-10-90; 8:45 am]
BILLING CODE 4150-04-M

federal register

Tuesday
December 11, 1990

Part VII

## The President

Proclamation 6236—National Poison Prevention Week, 1991
Proclamation 6237—Wright Brothers Day, 1990

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# Presidential Documents

Title 3—

The President

**Proclamation 6236 of December 6, 1990**

## National Poison Prevention Week, 1991

By the President of the United States of America

A Proclamation

As we mark the 30th observance of National Poison Prevention Week, we can take pride in the success of this important annual public awareness campaign. Since our first observance of National Poison Prevention Week in 1962, the number of deaths by poisoning among children under the age of five has declined significantly. The U.S. Consumer Product Safety Commission reports that in 1961, poisoning claimed the lives of 450 youngsters. By 1987, that number had dropped to 31. Nevertheless, because the death of even one child by accidental poisoning is intolerable, we must continue efforts aimed at education and prevention.

The Poison Prevention Week Council, a coalition of 36 national organizations that are determined to stop accidental poisonings, coordinates National Poison Prevention Week activities. In addition to distributing valuable information, the Council encourages local poison control centers, pharmacies, public health departments, and other concerned parties to conduct poison prevention programs in their communities. The Consumer Product Safety Commission, which each year provides a member to serve as Secretary of the Poison Prevention Week Council, helps to lead this important public health campaign. Thus, it is a truly national campaign, enlisting the combined energy and resources of government officials, health care professionals, educators, business and industry leaders, media representatives, and members of private voluntary organizations.

Poison prevention activities such as those highlighted this week have helped to save lives, but there is more to do. Each year more than half a million children are exposed to potentially poisonous medicines or household chemicals. It is therefore vital that we continue to remind parents, grandparents, and other adults about the risks of childhood poisoning and the ways tragic accidents can be prevented. Simple safety measures—such as using child-resistant closures and keeping potentially harmful substances out of the reach of children—can save lives.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventative measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 17, 1991, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and activities and by learning how to prevent accidental poisonings among children.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-28155
Filed 12-10-90; 8:00 am]
Billing code 3195-01-M



## Presidential Documents

**Proclamation 6237 of December 7, 1990**

### Wright Brothers Day, 1990

**By the President of the United States of America**

**A Proclamation**

When Orville and Wilbur Wright's hand-crafted airplane lifted off the wind-swept beach near Kitty Hawk, North Carolina, on December 17, 1903, only a handful of men and perhaps a few startled sea gulls witnessed the world's first controlled, manned flight in a heavier-than-air, mechanically propelled aircraft. Nevertheless, this brief bold flight changed the course of history. With the success of their daring experiment, Orville and Wilbur Wright ushered in the age of aviation.

From the time they experimented with airplane models and wind tunnels at their small workshop in Dayton, Ohio, until the end of their celebrated careers, the Wright brothers demonstrated qualities shared by all great pioneers and inventors. Eager to learn and determined to succeed, they engaged in hours of intense study and painstaking trial, calculation, and design. As individuals they were confident, methodical, and brilliantly intuitive engineers.

Shortly after the Wrights began their experiments, they found that the small amount of data previously collected by others was unreliable. Consequently, they conducted their own basic research, literally writing the book on fundamental aerodynamics. Eventually, the Wrights used their carefully acquired knowledge to build a machine so far ahead of its day that they even had to design and build their own motor, one that was both powerful and lightweight.

The Wrights' diligent and enlightened approach to their work was the key to their success. Wilbur once remarked: "If a man is in too big a hurry to give up an error, he is liable to give up some truth with it, and in accepting the arguments of the other man, he is sure to get some error with it. . . . After I get a hold of a truth I hate to lose it again, and I like to sift all the truth out before I give up an error." Such intellectual openness and tenacity—coupled with courage, creativity, and perseverance—enabled the Wright brothers to defy both the skepticism of friends and the force of gravity as they launched the age of controlled human flight.

We live in a world transformed by the work of the Wright brothers, and in this age of sophisticated air and space travel, their first flight still stands as one of the most extraordinary achievements of the 20th century. With optimism and daring, restless ingenuity and hard work, Orville and Wilbur Wright broke the tethers binding man to Earth and joined the ranks of those great pioneers and inventors who have helped to make the United States a mighty and prosperous Nation. As we recall the Wrights' seminal contributions to aviation, each of us can take inspiration from their example.

The Congress, by a joint resolution approved December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the 17th day of December of each year as "Wright Brothers Day" and requested the President to issue annually a proclamation commemorating this day.

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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim December 17, 1990, as Wright Brothers Day. I call upon the people of the United States to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-29186
Filed 12-10-90; 11:22 am]
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Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102nd Congress, which convenes on January 3, 1991.

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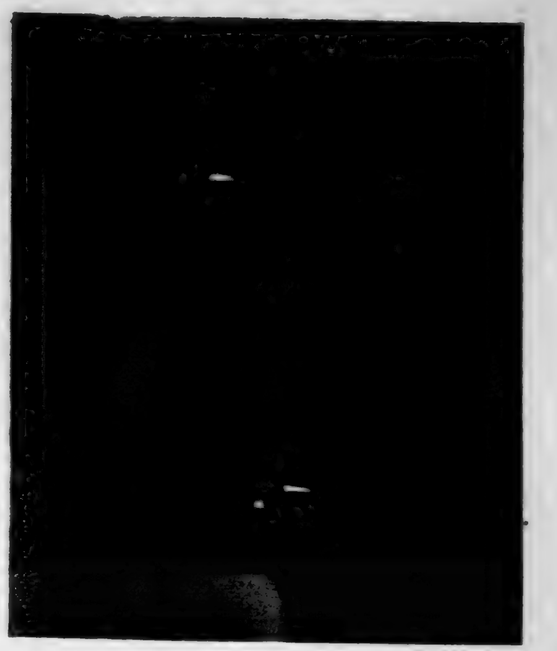
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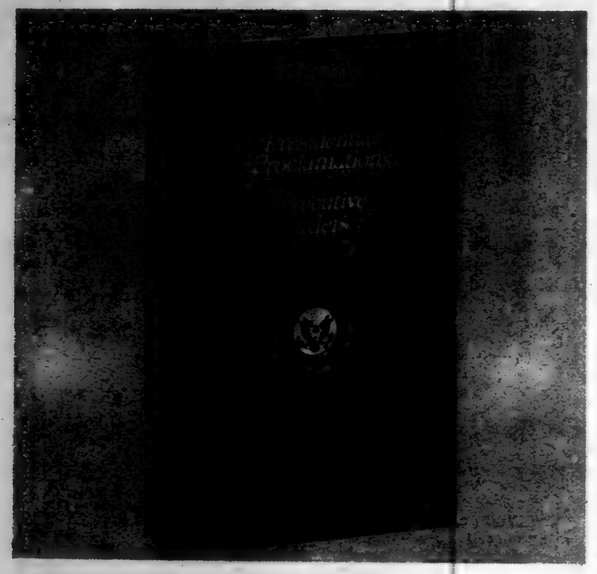
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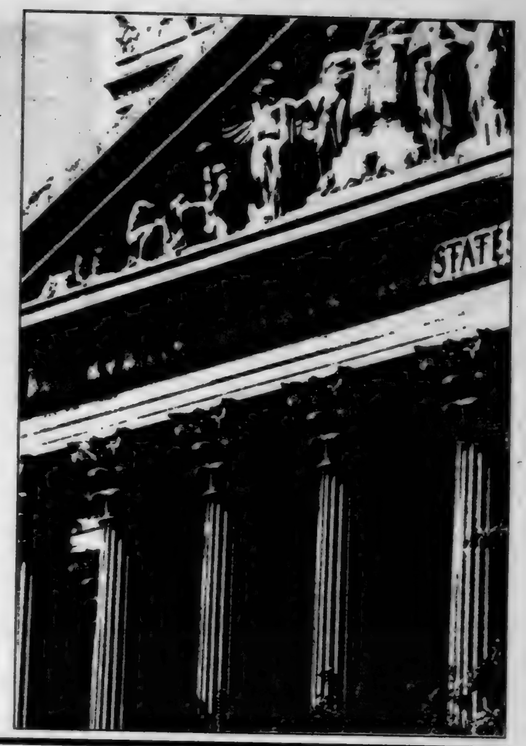
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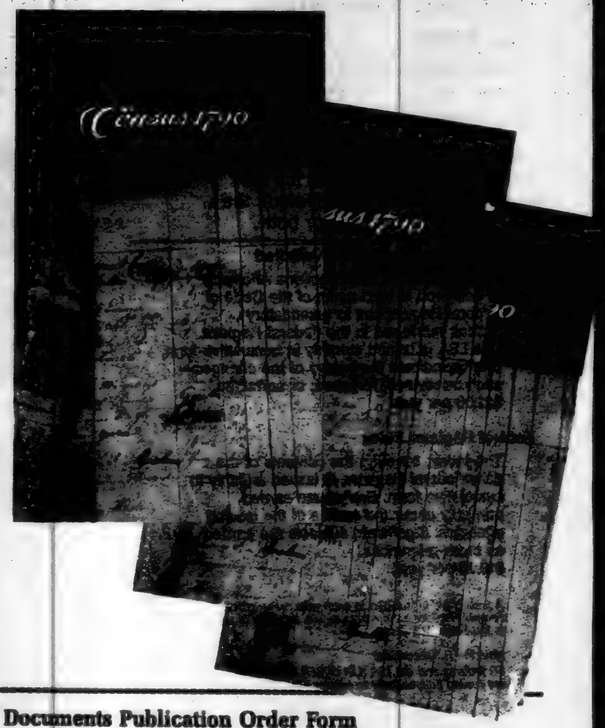
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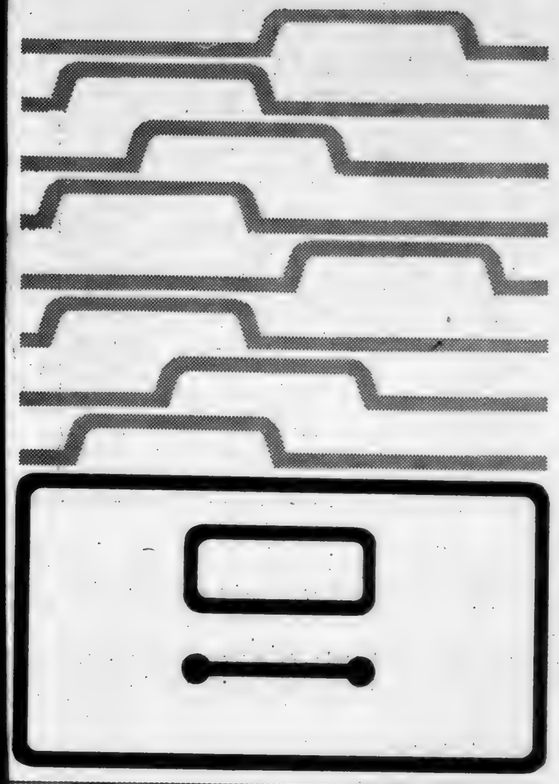
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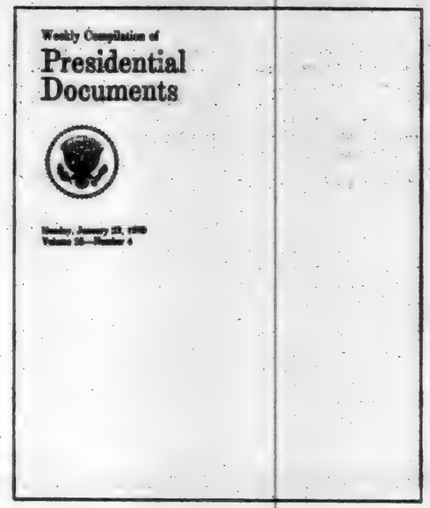
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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA,
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**WHO:** The Office of the Federal Register.

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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### ATLANTA, GA

**WHEN:** January 11, at 9:00 a.m.
**WHERE:** Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
**RESERVATIONS:** 1-800-347-1997.



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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

**5 CFR Part 1650**

### Methods of Withdrawing Funds From the Thrift Savings Plan

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Executive Director is revising §§ 1650.20 and 1650.21. Sections 8351 and 8435 of Title 5, United States Code, provide that in certain circumstances when a participant is withdrawing his or her Thrift Savings Plan (TSP) account balance a notice must be sent to a spouse (including a separated spouse) or former spouse, or a joint waiver of the right to a joint and survivor annuity must be obtained from a participant and spouse. This statute also requires the TSP to notify some participants' spouses when participants are applying for loans from their accounts, and requires other participants to obtain the consent of their spouses before obtaining such loans. These revised regulations provide more explicit guidance concerning the content of qualifying affidavits and court orders which serve as the basis for requests to waive the notice, waiver, or spousal consent requirements.

**DATES:** Revised interim rules are effective December 12, 1990. Comments must be received on or before January 2, 1991.

**ADDRESSES:** Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Gray, (202) 523-6367.

**SUPPLEMENTARY INFORMATION:** Section 1650.20 provides that the Executive Director may waive the requirement of notice to a spouse or former spouse if the participant presents evidence that the spouse's or former spouse's whereabouts are unknown. This regulation is being amended to provide further explanation of the requirement that the participant make an effort to locate the spouse or former spouse. Also, this section is being revised to state that a declaration may be substituted for a notarized affidavit.

Section 1650.21 provides that the Executive Director may waive the requirement for a spouse's signature in situations where a joint waiver of the right to a joint and survivor annuity or consent to a loan is required, if it is shown that the spouse's whereabouts are unknown or that there are exceptional circumstances that warrant such a waiver. This regulation is being revised to give examples of the kind of exceptional circumstances that would qualify for a waiver. Also, this section is being revised to provide for waiver of the "spouse's signature" rather than "consent". This is because in withdrawal situations it is the spouse's signature on the joint waiver of the joint and survivor annuity that is being waived, whereas, in the case of a loan it is the spouse's signature consenting to the loan, which is being waived. Because the standards for waiver are the same in both instances, however, these regulations use the term "spouse's signature" to refer to both.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will only clarify existing requirements for certain participants who submit waiver applications to the Board.

### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

### Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary that these revised regulations be in place at the earliest date for the direction and guidance of participants.

### List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.
**Francis X. Cavanaugh,**
*Executive Director.*

Part 1650 of chapter VI of title 5 of the Code of Federal Regulations is hereby amended as follows:

## PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

**Authority:** 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8435(b), 8467, 8474(b)(6), and 8474(c)(1).

2. Sections 1650.20 and 1650.21 are revised to read as follows:

**§ 1650.20 Executive Director's waiver of requirement to notify the spouse or former spouse.**

Wherever in these regulations it is required that the Executive Director give notice of an action to a spouse or former spouse of a participant, the notice may be waived in cases where the participant establishes to the satisfaction of the Executive Director that the spouse's or former spouse's whereabouts cannot be determined. A Request for Waiver (Form TSP-16) on this basis must be submitted to the Executive Director accompanied by either—

(a) A judicial, police or governmental agency determination that the spouse's or former spouse's whereabouts cannot be determined; or both

(b) An affidavit or declaration by the participant declaring or attesting to the inability of the participant to locate the spouse or former spouse and stating the efforts made by the participant to locate the spouse or former spouse; and

(c) Affidavits or declarations from two other persons, at least one of whom is not related to the participant, supporting

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the participant's statement that the participant does not know the whereabouts of the spouse or former spouse.

(1) The efforts attempted by the participant must be described. Negative statements such as "I have not seen or heard from him/her" or "I have had no contact with him/her" are not sufficient. Examples of attempting to locate the spouse or former spouse include checking with relatives and mutual friends or through telephone directories or directory assistance for city of last known address.

(2) An affidavit must be sworn to before a notary public. An alternative to an affidavit is a declaration. A declaration need not be sworn to before a notary public; however, it must bear the words "I declare under penalty of perjury that the foregoing is true and correct" following the person's statement and immediately above the person's signature.

**§ 1650.21 Executive Director's waiver of the requirement to obtain the spouse's signature.**

Wherever in these regulations a spouse's signature is required, the Executive Director may waive the requirement if the participant can show that:

(a) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.20; or

(b) Due to exceptional circumstances, requiring the spouse's signature would otherwise be inappropriate.

(1) The spousal signature requirement will be waived based on exceptional circumstances only when the participant presents a judicial or governmental agency determination which contains a recitation of such exceptional circumstance regarding the spouse as would warrant waiver of the signature requirement.

(2) "Exceptional circumstances" is narrowly construed and includes such circumstances as when a court order: places a restriction on contact between the spouses which precludes the participant from obtaining the spouse's signature; indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years; or indicates that the spouse abandoned the participant but, for religious or similarly compelling reasons, the parties chose not to divorce.

[FR Doc. 90-29078 Filed 12-11-90; 8:45 am]
BILLING CODE 6760-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

### Determining Disability and Blindness; Extension of Expiration Date for Musculoskeletal System Listing

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** We are extending the date on which the musculoskeletal system listings found in appendix 1 of part 404, subpart P (listing of impairments with regard to disability determinations) will no longer be effective from December 6, 1990, to June 6, 1992. We have made no revisions in the medical criteria in the musculoskeletal listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in the listings, and any revised criteria will be published as proposed rules when we have completed our review. Under this final rule extending the expiration date of the existing criteria, we will continue to use the existing criteria until any revised criteria are published as final rules.

**EFFECTIVE DATE:** This final rule will be effective December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-0512.

**SUPPLEMENTARY INFORMATION:** On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent an adult from performing any gainful activity (part A), or in the case of children under the age of 18, impairments which compare in severity to impairments that would make an adult disabled (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security and Supplemental Security Income programs set out in titles II and XVI of the Social Security Act (the Act).

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1990, was established for the musculoskeletal system listings in part A to no longer be effective. The musculoskeletal system listings in part B will no longer be effective on December 6, 1993.

In May 1984, the Social Security Administration (SSA) convened an expert medical panel to review the current musculoskeletal listings and propose revisions to SSA based upon the latest advances in medical knowledge and technology. The Musculoskeletal Panel was comprised of representatives from national medical professional groups and Federal and State representatives with expertise in the evaluation of disability claims involving musculoskeletal impairments.

The panel met five times and submitted to SSA its final recommendations regarding part A on February 12, 1987 and its recommendations regarding part B on June 15, 1987, for consideration as the basis for listing changes. Panel deliberations were very thorough due to the need to consider significant medical advances with respect to the evaluation and treatment of musculoskeletal impairments. The recommendations are advisory only and require careful study as we review the existing listings and consider the development of new regulations. The potential program impact of the changes recommended by the panel requires careful analysis and consideration within the agency. So that we will have an opportunity to consider these recommended changes thoroughly, we are extending the expiration date of part A of the musculoskeletal listings.

**Regulatory Procedures**

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because opportunity for public comment is unnecessary. Prior notice and comment before publication are unnecessary because this regulation only extends the expiration date of part A of the musculoskeletal listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing musculoskeletal listings is completed, proposed revisions to the existing criteria will, of course, be published for public comment.

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

*Paperwork Reduction Act*

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: November 15, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: December 7, 1990.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

**PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE**

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P—is amended as follows:



1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b) and (d)–(h), 416(i), 421 (a) and (j), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

**Appendix 1 to Subpart P—[Amended]**

2. Appendix 1 to subpart P is amended by revising the second paragraph of the introductory text to read as follows:

*Musculoskeletal system* (1.00) within 6½ years. Consequently, the listings in this body system will no longer be effective on June 6, 1992.

[FR Doc. 90-29181 Filed 12-10-90; 10:53 am]
BILLING CODE 4190-29-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD 05-90-84]

### Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of implementation of 33 CFR 100.501.

**SUMMARY:** This notice implements 33 CFR 100.501 for the New Year's Eve Celebration Fireworks Display. The fireworks display will be launched from the Town Point Park Fireworks-Mast Area, Town Point Park, Norfolk, Virginia, on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 are effective from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 6 p.m. to 8 p.m., January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Regulation**

Norfolk Festevents, Ltd. submitted an application on January 19, 1990 to hold a fireworks display from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. The fireworks display will be launched from the Town Point Park Fireworks-Mast Area, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The fireworks will be launched from within the regulated area. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: December 3, 1990.

**P.A. Welling,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 90-29086 Filed 12-11-90; 8:45 am]
BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region II Docket No. 106; FRL-3868-6]

### Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of temporary approval.

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**SUMMARY:** This action provides notice of the Environmental Protection Agency's (EPA's) extension of its temporary approval of a special emission limitation allowing Orange and Rockland Utilities, Inc. to burn coal at units 4 and 5 of the Lovett Generating Station in Stony Point, New York. This extension, not to exceed six months, will continue until such time that EPA completes its review and takes final action in the **Federal Register** on New York State's request for permanent revision of its State Implementation Plan with respect to this facility.

**DATES:** This action is effective December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Plaza, Room 1118, New York, New York 10278, (212) 264-2517.

**SUPPLEMENTARY INFORMATION:** On May 30, 1985 (50 FR 23004), the Environmental Protection Agency (EPA) published in the **Federal Register** a Notice of Final Rulemaking (NFR) concerning revisions to the New York State Implementation Plan (SIP) for Sulfur Dioxide ($SO_2$). These revisions sought to allow Orange and Rockland Utilities, Inc. (ORU) to reconvert two units at its Lovett two units at its Lovett Generating Station in Stony Point, New York from oil to coal. This action entailed relaxing the normal emission limit of 0-4 pounds of $SO_2$ per million British thermal units (lbs/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all.

In order to approve such a request, EPA needed a demonstration that the conversion would not adversely affect the environment. As such, EPA approved the State's request for a period of 42 months during which ORU was required to meet specific conditions relating to coal burning and conduct air quality and model evaluation studies in order to assess the effect of the conversions on the environment. At the end of this 42-month period EPA would evaluate ORU's studies and decide whether the conversions should be allowed on a permanent basis. The 42-month period, as approved, expires on December 9, 1990.

In its May 30, 1985 NRF, EPA noted the possibility that at the end of the 42-month trial period, ORU could be left in a regulatory dilemma because of delays in processing an approvable State-submitted permanent SIP revision request. In the event of such delays, EPA gave itself the option to grant an extension of the period during which its temporary approval of the special limitation would apply until all processing is completed (See 40 CFR 52.1675). Such an extension could be allowed only if the following conditions were met:

- The final dispersion model report has been submitted on schedule by ORU.
- A permanent SIP revision request for limiting fuel sulfur content at the Lovett plant has been submitted to EPA by New York State.
- This SIP revision request permits the use of 0.7 percent sulfur content coal or coal of a higher sulfur content.
- ORU has agreed to continue the full operation of its air quality monitoring network as established for the study and to abide by the terms of its agreement with EPA concerning corrective action in the event of monitored violations of the matinal ambient air quality standards.

On September 18, 1990, New York State submitted its SIP revision request for the permanent conversion of the Lovett Power Plant from oil to coal based upon the results of the 42-month test period. However, because of the late date on which it was submitted and the volume of material included in the submittal, it will not be possible for EPA to review and take full administrative action on the request before the December 9, 1990 expiration date of the 42-month special limitation. Based upon these factors, and the fulfillment of the four necessary conditions, EPA is extending the special limitation until such time that a final action is published in the **Federal Register** concerning this facility. This extension will not exceed more than six months from the date of today's notice.

Authority: 42 U.S.C. 7401–7642.

Dated: November 21, 1990.

**Constantine Sidamon-Eristoff,**

*Regional Administrator, Region II.*

[FR Doc. 90-29110 Filed 12-11-90; 8:45 am]

BILLING CODE 6560-50-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 45 CFR Part 1180

### Regulations Under Section 504 of the Rehabilitation Act of 1973, Nondiscrimination on Basis of Handicap in Federally Assisted Programs and Activities

**AGENCY:** Institute of Museum Services, NFAH.

**ACTION:** Final Rule.

**SUMMARY:** The Institute of Museum Services issues regulations under section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap in Federally assisted programs of IMS). These regulations do not implement the Americans with Disabilities Act.

**EFFECTIVE DATES:** This rule is effective on or before January 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536 (Voice) or (202) 786-9136 (TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

**1. General Background**

The Museum Services Act ("the Act"), which is title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976. As subsequently amended, it appears in 20 U.S.C. 961–68.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

It is the purpose (of the Museum Services Act) to encourage and assist museums in their educational role, in conjunction with formal systems or elementary, secondary, post-secondary education and with programs on nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (Board) and a Director. IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). 20 U.S.C. 962.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During fiscal year 1990 IMS provides four types of grant assistance to museums: (1) General operating support; (2) conservation assistance; (3) museum assessment assistance; and (4) assistance to professional museum organizations.



**2. Need for the Regulations**

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, provides in pertinent part:

No otherwise qualified individual with handicaps in the United States, as defined in (section 706(8) of Title 29), shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.* * *

Prior regulations of IMS have specified the applicability of section 504 to programs of assistance administered by IMS. Compare 45 CFR 1180.44 48 FR 27733 (June 17, 1983) with former 45 CFR 64.17, 45 FR 53419 (August 11, 1980), See also 45 FR 53415 (Aug. 11, 1980). Thus, formulation by the Board of rules regarding the applicability of section 504 does not establish a new statutory requirement for IMS recipients. Prior to the transfer of IMS to the National Foundation, regulations of the Education Department (of which IMS was then a part) governed the operation of section 504 as it related to programs of IMS. With the transfer of IMS to the National Foundation it is necessary to establish regulations governing the administration of section 504 as it pertains to these programs in the context of the status of IMS as an agency within the National Foundation.

In 1986 IMS issued regulations under section 504 relating to the enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Institute itself. 45 CFR part 1181. These regulations implement section 119 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 and apply to all programs or activities conducted by the agency. 45 CFR 1181.102. It is now appropriate for IMS to issue revised regulations pertaining to nondiscrimination on the basis of handicap in federally assisted programs carried out by museums or other recipients under the Museum Services Act through grants or other financial assistance provided by IMS.

**3. Description**

A purpose for the transfer of IMS to the National Foundation was to improve coordination of the policies of IMS with those of other agencies in the National Foundation. The Board has determined that, in formulating regulations under section 504, it would be consistent with this purpose for IMS to look to analogous rules adopted by the National Endowment for the Humanities (NEH), which is also an agency within the National Foundation. A number of reasons support this determination. (1) By inter-agency agreement, IMS looks to NEH for administrative services with respect to section 504 matters. Making the NEH regulations applicable to IMS programs will facilitate a more efficient administration of section 504 to meet the needs of handicapped visitors to museums served by IMS.

(2) The Board desires to minimize the degree to which museums assisted both by IMS and by the Endowments, as well as members of the affected target population, must look to different sets of regulations to govern the same cross-cutting issue.

(3) The NEH regulations have been developed in light of particular questions which cultural institutions face in achieving compliance with section 504.

(4) Many museums which participate in programs administered by IMS are presumably familiar with the NEH regulations under section 504 and thus will more readily understand their responsibilities under its provisions.

For these reasons the Board determined to make applicable to IMS programs the NEH regulations under section 504 which are found in 45 CFR part 1170, 46 FR 55897 (Nov. 12, 1981).

Part 1170 was issued by NEH in 1981 and was based on the regulation for federally assisted programs issued by the Department of Health, Education, and Welfare (HEW) in 1977 (42 FR 22676) and later transferred to the Department of Health and Human Services (45 CFR part 84). Since 1977 a number of significant court opinions have been issued interpreting section 504 and the regulations implementing it. Because of this developing case law, regulations implementing section 504 in federally conducted programs issued in recent years by the IMS and more than 40 other agencies explicitly provide, unlike part 1170, that, in communicating with individuals with handicaps and ensuring that a program or activity is accessible, the Federal agency is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or activity or in undue financial and administrative burdens (45 CFR 1181.150(a), 1181.160(d) (IMS); see also, e.g., 28 CFR 39.150(a) 39.160(d) (Department of Justice); 45 CFR 1175.150(a), 1175.160(d) (NEH). These provisions, which were upheld in *Department of Justice Handicapped Employees Association* v. *Meese*, No. 84-5645 (E.D. Pa., Oct. 9, 1987), are based on the Supreme Court's ruling in *Southeastern Community College* v. *Davis*, U.S. 397 (1979), that section 504 and the HEW regulations implementing it do not require actions that would have such effects. These provisions are also supported by *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court noted that section 504 and its implementing regulations at the time require "reasonable adjustments in the nature of the benefit offered * * * to assure meaningful access" (469 U.S. at 301 n. 21), but do not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alterations(s) in the nature of a program' " *Id.* at n. 20 (citations omitted). Thus although the NEH regulation that IMS proposes to adopt does not include the language found in the more recently issued regulations for federally conducted programs, it does provide recipients, by virtue of judicial interpretation, the same fundamental alteration/undue burdens defenses. (See e.g., *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir., 1983); *Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir., 1981).

Numerous section 504 regulations for federally conducted programs, including the final rule issued by the Advisory Council on Historic Preservation, also contain a clarification of the requirements of the statute as applied to historic preservation programs (36 CFR 812.150(a)(2), (b)(2) (Advisory Council on Historic Preservation)); see also e.g., 45 CFR 1153.150(a)(2), (b)(2) (NEA); 45 CFR 2104.150 (a)(2), (b)(2) (Commission of Fine Arts)). In order to avoid a possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, these regulations provide that in historic preservation programs the agency is not required to take any action would result in a substantial impairment of significant historic features of an historic property (i.e., a property that is listed or eligible for listing in the National Register of Historic Places or designated as historic under a statute of the appropriate State or local government body).

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, the regulations require the agency to give priority to methods of providing program accessibility that permit individuals

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with handicaps to have physical access to the historic property. When such access cannot be provided, however, the regulations permit the agency to adopt alternative methods for providing program accessibility. Such methods include using audio-visual materials to depict those portions of an historic property that cannot otherwise be made accessible, assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible, or adopting other innovative methods. IMS will follow this approach in applying 45 CFR part 1170 to programs that have preservation of historic properties as a primary purpose.

**4. Public participation**

A notice of proposed rulemaking setting forth the rule and accompanying discussion was published on September 1, 1989 at 54 FR 36330. No comments were received in response to the notice of proposed rulemaking and the rule is being issued in final form without changes in the text that appeared in the September 1 **Federal Register** document.

**5. Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

**6. Regulatory Flexibility Act Certification**

The Director certifies that these regulations will not have a significant economic impact on a substantial number on small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

**List of Subjects in 45 CFR Part 1180**

Blind; Buildings; Civil Rights; Employment; Equal employment opportunity; Equal education opportunity; Handicapped; Historic places; Historic preservation; Museums; National boards.

**Daphne Wood Murray,**

*Director Institute of Museum Services.*

**PART 1180—[AMENDED]**

The Institute of Museum Services amends subchapter E of chapter XI of title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 1180 is revised to read as follows:

**Authority:** 20 U.S.C. 961–968; Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994; 29 U.S.C. 794.

2. Part 1180 is amended by revising § 1180.44 to read as follows:

**§ 1180.44 Federal statutes and regulations on nondiscrimination.**

(a) Each grantee shall comply with the following statutes:

| Subject | Statute |
|---|---|
| Discrimination on the basis of race, color or national origin. | Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4) |
| Discrimination on the basis of sex. | Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683). |
| Discrimination on the basis of handicap. | Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). |
| Discrimination on the basis of age. | The Age Discrimination Act (420 U.S.C. 6101 et. seq). |

(b)–(c) [reserved]

(d) *Regulations under section 504 of the Rehabilitation Act of 1973.* The Institute applies the regulations in 45 CFR Part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance of museums with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the "Endowment" of the "agency" shall be deemed to be references to the Institute and references to the "Chairman" shall be deemed to be references to the Director.

FR Doc. 90–29002 Filed 12–11–90; 8:45 am]

BILLING CODE 7036–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 90–104; RM–7165]**

**Radio Broadcasting Services; Berryville, AR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 296C3 for Channel 296A at Berryville, Arkansas, and modifies the license of KTHS/KSCC, Inc., for Station KSCC(FM), as requested, to specify operation on the higher powered channel. See 55 FR 9488, March 14, 1990. Coordinates used for Channel 296C3 at Berryville are 36–20–00 and 93–20–00. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–104, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 296A and adding Channel 296C3 at Berryville.

Federal Communications Commission.

**Beverly McKittrick**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29120 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M



**47 CFR Part 73**

**[MM Docket No. 90–65; RM–7086]**

**Radio Broadcasting Services; Emporia, KS, et al.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 269C2 for Channel 269A at Emporia, Kansas, and modifies the license of Station KEGS(FM) to specify Channel 269C2, in response to a petition filed by Communications Group, Inc. See 55 FR 7745, March 5, 1990. The coordinates for Channel 269C2 are 38–07–04 and 96–11–41. To accommodate the upgrade at Emporia, substitutions will be made at Fort Scott and Independence, Kansas. We shall substitute Channel 284A for Channel 269A at Fort Scott and modify the license of Station KVCY to specify operation on Channel 284A at coordinates 37–47–47 and 94–42–20. We shall also substitute Channel 275A for Channel 269A at Independence and modify the license for Station KIND(FM) to specify operation on Channel 275A at coordinates 37–15–42 and 95–45–59.

**EFFECTIVE DATES:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–65, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 269A and adding Channel 269C2 at Emporia, by removing Channel 269A and adding Channel 284A at Fort Scott, and by removing Channel 269A and adding Channel 275A at Independence.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29121 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–378; RM–6823]**

**Radio Broadcasting Services; Leesville, LA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Stannard Broadcasting Company, Inc., substitutes Channel 289C3 for Channel 288A at Leesville, Louisiana, and modified its license to specify operation on the higher powered channel. *See* 54 FR 37134, September 7, 1989. Channel 289C3 can be allotted to Leesville, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) south of Leesville to accommodate petitioner's desired transmitter site. The coordinates for Channel 289C3 are North Latitude 30–59–30 and West Longitude 93–13–00. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 632–6302.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89–378, adopted November 8, 1990, and released December 6, 1990. The full text of this Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 288A and adding Channel 289C3 at Leesville.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29003 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–522; RM–6967]**

**Radio Broadcasting Services; Jackson, TN, and Caruthersville, MO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of C R Broadcasting, Inc., substitutes Channel 276C2 for Channel 276A at Jackson, Tennessee, and modifies its license for Station WMXX(FM) to specify operation on the higher powered channel. Also Channel 286A is substituted for Channel 276A at Caruthersville, Missouri, and the license of Pemiscot Broadcasting, Inc., for Station KLOW(FM) is modified to specify operation on Channel 286A. *See* 54 FR 48775, November 27, 1989. Channel 276C2 can be allotted to Jackson, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.1 miles) south of Jackson. The coordinates for Channel 276C2 are North Latitude 35–30–00 and West Longitude 88–50–00. Channel 286A can be allotted to Caruthersville in compliance with the Commission's minimum distance separation requirements and can be used at Station KLOW(FM)'s licensed transmitter site. The coordinates for Channel 286A are North Latitude 36–12–50 and West Longitude 89–41–25. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 632–6302.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89–522, adopted November 19, 1990, and released December 6, 1990. The full text of this Commission decision is available

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for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140 Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 276A and adding Channel 276C2 at Jackson. The Table of FM Allotments under Missouri is amended by removing Channel 276A and adding 286A at Caruthersville.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29004 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 90-393; RM-7213]**

**Radio Broadcasting Services; Tomahawk, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 223C3 for Channel 224A at Tomahawk, Wisconsin, in response to a petition filed by Gregory A. Albert and Margaruite S. Albert, d/b/a Albert Broadcasting. See 55 FR 35910, September 4, 1990. We shall also modify the license of Station WJJQ-FM, Tomahawk, to specify operation on Channel 223C3. Canadian concurrence has been obtained at coordinates 45-29-27 and 89-43-33.

**EFFECTIVE DATES:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-393, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 224A and adding Channel 223C3 at Tomahawk.

Federal Communications Commission

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29122 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB31**

**Endangered and Threatened Wildlife and Plants; Reclassification of the Aleutian Canada Goose From Endangered to Threatened Status**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) concludes that the Aleutian Canada goose (*Branta canadensis leucopareia*) should be reclassified from endangered to threatened status under the authority of the Endangered Species Act (the Act) of 1973, as amended in 1988. Aleutian geese currently nest on six islands of the Aleutian Archipelago and on one island in the Semidi Island Group, southward of the Alaska Peninsula, Alaska. Aleutian geese are particularly vulnerable to severe storms and disease. Additionally, Aleutian geese are subject to markedly increased social and economic pressures to develop their winter habitat and to the continued presence of introduced arctic foxes (*Alopex lagopus*) on many former nesting islands. Delisting is not justified at this time. This change in classification from endangered to threatened status reflects an improvement in population status, and will not diminish the protection of Aleutian Canada geese under the Act.

**EFFECTIVE DATE:** January 11, 1991.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following offices: U.S. Fish and Wildlife Service, Ecological Services Anchorage, 605 W. 4th Avenue, Room 62, Anchorage, Alaska 99501; or Portland Regional Office, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon, 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Anderson (see ADDRESSES section/Alaska) at 907/271-2888 or FTS 868-2888 or Mr. Robert Ruesink (see ADDRESSES section/Oregon) at 503/231-6131, FTS 429-6131.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Branta canadensis leucopareia* is one of 11 currently recognized subspecies of the large and diverse *Branta canadensis* group (Bellrose 1976). It is the only subspecies in this group whose range once included both the North American and the Asian continents (Amaral 1985). The Aleutian Canada goose is currently known to nest on remote islands southward of the Alaska Peninsula and in the Aleutian Archipelago of Alaska. Aleutian geese can be distinguished from most other Canada geese by their small size (only cackling Canada geese, *B. c. minima*, are smaller) and a ring of white feathers at the base of the neck in birds older than eight months. Most Aleutian geese migrate from their breeding grounds in Alaska during September. They may stop along the Washington and Oregon coast en route to the wintering grounds in California, where they begin arriving in mid-October. Geese from Kaliktagik Island winter in coastal Oregon near Pacific City. Aleutian geese depart the wintering areas in April and return to Alaska to nest and rear young during May through September.

The decline in numbers of Aleutian geese and the reduction of their breeding range is attributed to predation by arctic fox, which were introduced on many Aleutian islands during the period 1836-1930. Aleutian geese were also hunted recreationally and for food in the Pacific Flyway, particularly California,



until 1975. The Aleutian Canada goose was added to the U.S. Department of the Interior's list of native endangered species on March 11, 1967 (32 FR 4001) and to the list of foreign endangered species (i.e. Japan) on June 2, 1970 (35 FR 8495).

At the time of listing, Aleutian Canada goose population estimates were based upon sparse data. Kenyon (1963) speculated that only 200-300 individuals of this species remained. Nesting was believed to be restricted to Buldir Island in the western Aleutians, and the migratory routes and wintering habits of Aleutian geese were largely unknown. Introduced arctic foxes persisted on many islands throughout the Aleutian chain—islands that formerly provided nesting habitat for a large number of Aleutian Canada geese. Surveys in the Aleutian Islands in the late 1930's showed that geese were rare or extirpated in locations where foxes had been introduced (Murie 1959).

Prior to listing, the Service began efforts to eliminate fox populations from islands formerly occupied by nesting geese. By 1965, arctic fox were eradicated from Amchitka Island, and by the late 1970's, Nizki-Alaid and Agattu Islands were also fox free. More recently, Amukta and Rat Islands were cleared of introduced foxes. Apparently, all foxes were eliminated from Kiska Island following experimental fox control efforts in 1987, but additional surveys are needed to verify the island is fox free.

While fox control efforts in Alaska made former breeding habitat once again suitable for nesting geese, hunting closures on key wintering areas in California and Oregon are primarily responsible for Aleutian goose population increases, from 790 birds in 1975 to about 6,000 birds in fall 1989. Annual increases in numbers of Aleutian Canada geese on the California wintering grounds have averaged 16 percent (McNab and Springer 1989; Springer and Gregg 1988) during this 14-year period (Table 1).

TABLE 1.—PEAK NUMBER OF ALEUTIAN CANADA GEESE WINTERING IN CALIFORNIA, 1975–1989

| Year | Peak count | Increase (percent) |
|---|---|---|
| 1975 (spring) | 790 | |
| 1975-76 | 900 | 15 |
| 1976-77 | 1,200 | 33 |
| 1977-78 | 1,500 | 25 |
| 1978-79 | 1,590 | 6 |
| 1979-80 | 1,740 | 9 |
| 1980-81 | 2,000+ | 15 |
| 1981-82 | 2,700 | 35 |
| 1982-83 | 3,500 | 30 |

TABLE 1.—PEAK NUMBER OF ALEUTIAN CANADA GEESE WINTERING IN CALIFORNIA, 1975–1989—Continued

| Year | Peak count | Increase (percent) |
|---|---|---|
| 1983-84 | 3,800 | 9 |
| 1984-85 | 4,250 | 11 |
| 1985-86 | 4,350 | 2 |
| 1986-87 | 4,900+ | 12 |
| 1987-88 | 5,460 | 12 |
| 1988-89 | 5,800 | 7 |
| 1989-90 | 6,200 | 7 |

The 1977 Aleutian Canada Goose Recovery Plan, which was revised in 1982, includes the following three primary subobjectives for reclassification and delisting the species:

1. Maintain the wild population of Aleutian Canada goose at a level of 1,200 or greater.
2. Reestablish self-sustaining populations of geese (50 breeding pairs/area) on three former breeding areas in addition to Buldir Island.
3. Continue an active public relations program.

Specific criteria for reclassifying and delisting are:

> After self-sustaining populations of 50 or more breeding pairs have been reestablished on each of 2 areas or *a total of 100 or more pairs have been reestablished on 3 areas (with 10 pairs the minimum colony size)*, recommendations for reclassifying the Aleutian Canada goose to threatened status will be sent to the Director, U.S. Fish and Wildlife Service. When 50 or more breeding pairs are reestablished on each of 3 areas, recommendations for removal from the list of threatened and endangered species will be sent to the Director (emphasis added).

These requirements are subject to the wild population maintaining a level of 1,200 birds or greater and the "reestablished populations" being considered additional to and not inclusive of the Buldir Island nesting colony.

Based on the best current estimates available, the primary remnant breeding population on Buldir Island numbers between 1,100-1,500 pairs. The remnant nesting population on Kliktagik Island of the Semidi Islands Group numbers between 20-22 pairs. The remnant nesting population on Chagulak Island of the Islands of Four Mountains Group numbers between 20-25 pairs. One pair was observed on Amukta Island in the Islands of Four Mountains Group for the second year in a row, and two pair were observed on Little Kiska Island of the Rat Islands Group during the 1990 field season. Agattu and Nizki-Alaid Islands of the Near Islands Group sustain +55 and 7 pairs, respectively.

**Summary of Comments and Recommendations**

In the September 28, 1989, proposed rule (54 FR 40142-40146) and associated notifications, all interested parties were requested to submit comments for use in preparing a final rule. Appropriate State and Federal agencies, Native groups, scientific organizations, and other interested parties were contacted and requested to comment. Notices were published in Alaska's Anchorage Daily News and the Aleutian Eagle on October 15, 1989. On December 8, 1989, notices were published in three California newspapers, the San Francisco Chronicle, the Sacramento Bee, and the Colusa County Sun Herald; one notice was published in an Oregon newspaper, the Oregonian. Each notice invited general public comment.

To ensure notification and comment opportunity over this large area, the normal 60-day comment period was extended an additional 60 days, for a total of 120 days. During this period, 40 written and oral comments were received. Two Federal agencies, one State agency, and two hunting-advocacy organizations expressed support for the proposal. Opposition was expressed by one state agency, six environmental organizations, and 28 individuals.

Requests for a public hearing were received from three environmental organizations and one individual. A public hearing was held on January 17, 1990, at the San Francisco Bay National Wildlife Refuge office in Fremont, California. Nine persons presented oral statements at the public hearing.

All comments received during the public hearing and comment period are summarized below. Comments of a similar nature or point are grouped into several general issues. These issues, and the Service's response to each, are discussed below.

*Comment:* Eight comments suggested that the reclassification criteria, as specified in the 1982 Aleutian Canada Goose Recovery Plan, had not been achieved. Some comments indicated that estimates of breeding pair numbers on Chagulak Island are unreliable, being based on incomplete, dated surveys.

*Response:* Because of remote and widely separated locations, it is not logistically possible to survey all nesting areas in any one year. In addition, the difficult working conditions associated with these islands often prevent

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thorough surveys. In such instances population estimates are extrapolations based on the best available data. Following publication of the original proposal, the Service conducted 1990 nesting surveys on five of the seven nesting islands, including Chagulak Island where quantitative nesting data were lacking. As discussed in the previous section, the 1990 preliminary data affirm that the reclassification criteria have been achieved.

*Comment:* Twenty-two comments express concern that winter/migration habitat for the species is threatened by development or pollution. The El Sobrante area of California is cited as an example of Aleutian goose winter habitat currently threatened by residential development.

*Response:* Although the availability of winter/migration habitat has been sufficient to allow an average 16 percent growth per year in the Buldir segment of the Aleutian Canada goose population over a 14-year period, the potential future shortage of adequate winter/migration habitat is one of the more serious obstacles to full recovery of the species. Current threats to winter habitat include urbanization, changing agricultural practices, and pollution. The Service continues to implement its program to protect winter habitat for the Aleutian Canada goose and other waterfowl through fee simple and easement acquisition. Recent accomplishments include acquisition of habitat in the San Joaquin Valley as part of the newly-formed San Joaquin National Wildlife Refuge. The already approved and funded acquisition of important winter habitat at the Faith and Mapes Ranches near Modesto is being negotiated. Traditional migration areas have been acquired in the Sacramento Valley, including areas within the Butte Sink. Other areas used by this species continue to be protected by existing units of the Sacramento National Wildlife Refuge. As part of the continuing recovery effort, the Service intends to prepare a ranked list of Aleutian goose use areas to be protected. Such a list will guide the Service in developing habitat protection programs.

The State of California is taking an active role in habitat protection using funding generated through bond initiatives. California is also participating with the Service in a joint venture program under the North America Waterfowl Management Plan, working toward achieving an 80,000-acre habitat protection goal for the Central Valley.

*Comment:* Nine commentors state that the Service initiated this action contrary to the recommendations of the Aleutian Canada Goose Recovery Team.

*Response:* The consensus at the 1989 meeting of the recovery team was that the status of the species had improved to the point that it was no longer in imminent danger of extinction. At that time, the recovery team could not confirm that the reclassification criteria had been met, based on the lack of quantitative nesting data for Chagulak Island. Preliminary results of the 1990 nesting survey confirm that the reclassification criteria have been achieved.

*Comment:* Seven comments were received contending that the Aleutian Canada goose population is still too small, and that the reclassification criteria are inadequate.

*Response:* The reclassification criteria based on the best professional judgment of species experts and Service staff. These criteria were developed to help measure the progress of the recovery program. The Service believes, based on the best information currently available, that the species status has markedly improved and that it is no longer in imminent danger of extinction. We emphasize that this is a reclassification action, which acknowledges the improved status of the species. Reclassification to threatened status does not remove protection now afforded it under the Act.

*Comment:* Eleven commenters express concern that this action would allow hunting of Aleutian Canada geese to resume, thereby endangering the species.

*Response:* The action to reclassify the Aleutian Canada goose from endangered to threatened status will not permit legal hunting for this species. The species will continue to receive full protection under the Act. The Service recognizes the positive contribution that hunting closures have made in the progress of Aleutian goose recovery and will continue the closures of the important Aleutian goose use areas in California to Canada goose hunting.

*Comment:* Six comments warn of the potential for a natural or man-made disaster that could endanger the species.

*Response:* The Service shares this concern. At the current Aleutian goose population level and distribution, threats of disaster are great enough to justify a threatened classification. Natural disasters include storms and disease that could result in the loss of large numbers of Aleutian Canada geese during nesting, over-wintering or migration. The Service will continue to expand the goose's nesting distribution to reduce the potential impacts of a natural disaster. The effects of man-made disasters, such as hazardous material spills, could be lessened through prevention and response planning. The Recovery Team recently updated the Aleutian Canada Goose Disease and Contamination Hazard Contingency Plan.

*Comment:* Three commenters argue that the widely separated breeding populations of Aleutian Canada geese may actually represent separate subspecies of *Branta canadensis*. These comments are based upon the great distances, approximately 600 miles, which separate each breeding population at Buldir, Chagulak, and Kiliktagik Islands, and the differences in migrational and wintering behavior exhibited by these nesting populations.

*Response:* The Service is not aware of evidence sufficient to warrant further taxonomic division of *Branta canadensis leucopareia*. Based on physical (Johnson et al. 1979) and genetic (Shields and Wilson 1987) analyses, the Service believes that the available evidence sustains the view that the remnant population segments from Buldir, Chagulak, and Kiliktagik Islands are part of a once continuous insular nesting population formerly nesting from the western Gulf of Alaska to the Kurile Islands of the Soviet Union.

It is not anticipated that this action will have an adverse effect on any of the remnant breeding segments of the Aleutian goose population. Behavioral differences among the remnant populations will be recognized in the revised species recovery plan and will be taken into account during development of management strategies for full recovery of the Aleutian goose population.

**Summary of Factors Affecting the Species**

After thorough review and consideration of all information available, the Service has determined that the Aleutian Canada goose *Branta canadensis leucopareia*) should be reclassified from endangered to threatened status. The Service's listing regulations (50 CFR Part 424) provide for a review of the five following factors when reclassifying (or listing or delisting) a species (sec. 424.11). The Service has studied the relevant information available for the Aleutian Canada goose and summarizes this information for each of the five factors below:



*1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Historically, Aleutian Canada geese are known to have bred on most of the larger islands of the Aleutian Chain, as well as the Commander and northern Kurile Islands (U.S. Fish and Wildlife Service 1962). At the time of listing, the known remnant breeding range for the species was restricted to 4,914-acre (1,900 hectare) Buldir Island, which, because of its small size and inhospitable topography, was spared the introduction of foxes. The wintering range was sought to have included Japan and the coastal areas of British Columbia to California (Delacour 1954). The wintering area of the Buldir Island nesting population was unknown.

In addition to the introduction of foxes on many islands, other disturbances to the historical breeding range of the Aleutian Canada goose existed, for example, private inholdings, military activity, and the introduction of other mammals (i.e. cattle, rats, voles, and ground squirrels). Islands where Aleutian geese are currently known to next are inhabited and relatively undisturbed. Current nesting islands include Buldir, Little Kiska, Agattu, Nizki-Alaid, Chagulak, and Amukta of the Aleutian Archipelago; and Kiliktagik Island off the Alaska Peninsula. All nesting islands are within the boundaries of the Alaska Maritime National Wildlife Refuge.

The wintering range for this species has been the focus of study from 1974 to the present. Areas in California and Oregon essential to the winter survival of this species have been identified and partially protected. For example, the Service has added lands to the National Wildlife Refuge System in western Oregon; acquired Castle Rock, California; acquired habitat and protective easements in the San Joaquin and Sacramento Valleys; and recently approved habitat acquisitions that will be added to the new San Joaquin River National Wildlife Refuge. Other areas important to the wintering flock in Del Norte County were acquired by the State of California and are part of its Wildlife Area and State Park systems. The above actions notwithstanding, one of the greatest obstacles to the future recovery of the Aleutian goose is the dwindling availability of sufficient wintering habitat. Some privately owned agricultural areas currently used by wintering Aleutian geese are being converted from row crops or pasture-land to crops of little or no food value to geese. Winter habitat is also being lost completely to commercial development.

*2. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Historically, Aleutian geese were harvested for food by Aleuts, a people indigenous to the Aleutian Islands. Aleutian geese were also taken by market hunters on the wintering grounds. In the recent past, Aleutian geese were hunted recreationally and to some extent for food within the Pacific Flyway, particularly in California. Although it is generally recognized that predation by introduced arctic fox on the nesting grounds caused the initial near extinction of Aleutian geese, hunting during migration and on the goose's wintering areas have kept their numbers depressed. Management of the Canadian goose harvest in California was complicated by three factors: (1) specific areas important to Aleutian geese were not identified; (2) several subspecies of Canada geese wintered in the Central Valley of California; and (3) most hunters are unable to readily differentiate between Canada goose subspecies.

The area west of Unimak Pass, Alaska, was closed in 1973 to the hunting of Canada geese. In contrast, little was known about the wintering behavior of Aleutian geese, and as a result, a great deal of field work was needed in order to learn which areas were important. Sightings and band return data helped biologists to determine movements and distribution of Aleutian geese. Subsequently, a comprehensive effort ensued to protect wintering flocks from hunting and to secure roosting and feeding habitat. Three areas in California—Del Norte and Humboldt Counties; areas near Colusa; and areas near Modesto and Los Banos—have been closed to Canada goose hunting since 1975. In Oregon, portions of Coos, Curry and Tillamook Counties have been closed, since 1982. More recently, Aleutian Canada geese in Washington, Oregon, and California have also benefited indirectly from hunting closures to protect wintering dusky Canada geese (*B. c. occidentalis*) and cackling Canada geese.

Cooperation and support among federal, state, county, and municipal governments and various interest groups have made the effort to protect Aleutian geese on the wintering grounds easier. The effectiveness and success of the hunting closures are clearly demonstrated in two ways: (1) available data indicate that annual mortality to illegal hunting is usually far less than one percent of the total population; and (2) the wild population has increased from 790 birds in 1975, when the closures in California were implemented, to nearly 6,000 birds in 1989 (McNab and Springer 1989). It is anticipated that key migration and wintering areas in Alaska, Oregon, and California will continue to be closed to Aleutian Canada goose hunting until this species is delisted.

*3. Disease or Predation*

Predation by introduced arctic fox throughout the Aleutian Archipelago has a severe impact on this species as well as on all ground nesting birds. In the period, 1949 to the present, the Service eliminated introduced arctic fox from Amchitka (73,024 acres; 29,552 hectares), Agattu (55,535 acres; 22,475 hectares), Nizki-Alaid (3,175 acres; 1,285 hectares), Rat (6,861 acres; 2,777 hectares), and Amukta Islands (12,425 acres; 5,028 hectares). Fox removal apparently succeeded on Kiska Island (69,596 acres; 28,166 hectares); however additional surveys are needed to verify that foxes no longer occur on this island. Together with several small islands (e.g. Little Kiska) that either escaped fox introductions or where fox populations died out, more than 244,000 acres (98,785 hectares) are currently fox free in the Aleutians. This represents, however, less than 15 percent of the habitat that once was used by nesting geese prior to fox introductions.

Concurrent with the fox removal program, the Service began to reintroduce Aleutian geese on fox-free islands. Reintroductions of captive-raised geese on Amchitka Island were unsuccessful. In 1980, family groups of Aleutian geese from Buldir Island were transplanted to several islands. In 1984, the Service confirmed that a small population of nesting geese was reestablished on Agattu island. This marked the first nesting of wild Aleutian Canada geese on Agattu since the 1930's. Although more than 450 Aleutian geese were released on Amchitka, no confirmed nesting has been observed on this island. Service efforts also have resulted in the return of Aleutian geese to Nizki-Alaid Island where a small breeding population was confirmed in 1986. During the 1990 field season, two pairs were observed nesting on Little Kiska Island.

It is fortunate for the recovery effort that no other major mammalian predators, except fox, were introduced in the Aleutian Archipelago. The Service intends to continue fox eradication on specified islands. However, several species of small mammals, such as ground squirrels and Norway rats, which were introduced on numerous islands throughout the Aleutian

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Archipelago, are common predators of avian eggs, hatchlings, goslings and young birds. On Kiska Island, for example, when foxes were eradicated, the insular small mammal population exhibited a significant numerical increase. This population eruption in turn prompted loss of vegetative cover. Loss of vegetative cover affects the survival rate of various species of birds, and ultimately increases the vulnerability of nesting geese to avian predators, such as bald eagles.

In general, Aleutian goose mortality due to avian predators (e.g., common ravens, parasitic jaegers, glaucous-winged gulls, and peregrine falcons) on nesting islands are not a significant threat. Similarly, peregrine falcons, prairie falcons, eagles, and coyotes on the wintering grounds in Oregon and California may occasionally prey on Aleutian Canadian geese. Predation of Aleutian geese on the wintering grounds is not a significant mortality factor. Conversely, bald eagles may kill large numbers of Aleutian geese on the island groups eastward of Buldir Island, such as in the Rat Islands Group (Amchitka, Kiska, and Little Kiska) where bald eagle predation is an on-going problem associated with the release of transplanted geese.

Low level bacterial and parasitic infestations were detected in geese from Buldir Island, but losses to these and other diseases in the nesting range are not believed to be significant. In contrast, the Aleutian goose wintering flock in California is often concentrated with other subspecies of Canada geese in areas where food, water or roosting sites are available; under these circumstances considerable mortality to disease has occurred. In 1967, for example, approximately 50 Aleutian Canada geese succumbed during an outbreak of avian cholera that also killed several hundred waterfowl in the Modesto area. Cholera is a chronic problem in San Joaquin Valley, and, while geese can be hazed from locations where cholera is prevalent, few safe alternative roosting areas are currently available.

The threat of large losses of Aleutian geese to disease will increase as the population grows and the available wintering habitat sustains correspondingly greater concentrations of geese. To address this issue, the Aleutian Canada Goose Recovery Team prepared "A Disease and Contamination Hazard Contingency Plan" (Wilbur, S., *et al.* 1987). The purpose of this plan is to minimize losses of geese through establishing a protocol for responding to disease outbreaks or contaminants.

*4. The Inadequacy of Existing Regulatory Mechanisms*

This species is protected by the Endangered Species Act of 1973, as amended, 1988; The Migratory Bird Treaty Act; and the Convention on International Trade in Endangered Species as Appendix I species. Captive-raised *B. C. leucopareia* are treated as if listed in Appendix II. It is also currently designated as endangered by the Alaska Department of Fish and Game, and is recognized as endangered by the Oregon Department of Fish and Wildlife and the Washington Department of Wildlife. The Service does not believe that reclassification to threatened status will result in substantive change in the protection afforded this species under these regulatory mechanisms. Regulatory mechanisms deemed necessary to protect this species and its essential habitat will remain in effect.

*5. Other Natural or Man-Made Factors Affecting its Continued Existence*

The discovery of a remnant breeding population of Aleutian Canada geese in 1962 on Chagulak Island (2,082 acre, 842 hectare) greatly benefited the recovery program (Bailey and Trapp 19). Another apparent remnant breeding population was discovered in 1979 on Kiliktagik Island (93 hectares) south of the Alaska Peninsula (Hatch and Hatch 1983). The Kiliktagik Island nesting location is approximately 600 miles east of what was previously considered the historical breeding range for the species (U.S. Fish and Wildlife Service 1982). Physical measurements of geese from Kiliktagik Island show that they are intermediate between Aleutian Canada geese and a slightly larger mainland subspecies, *B. c. taverneri* (Johnson *et al.* 1979). Shields and Wilson (1987) examined samples of mitochondrial DNA from these and other Aleutian-type geese (*leucopareia* from Buldir and Chagulak Islands, and two mainland-occurring subspecies, *taverneri* and *minima*. They concluded that geese from Kiliktagik Island showed a clear affinity to *leucopareia* from Buldir and Chagulak and are separable from both *taverneri* and *minima*. This information, together with morphological and behavioral similarities, as well as historical accounts of geese observed in the Semidi Island Group as early as 1790, support the conclusion that the Aleutian geese on Kiliktagik Island are a remnant population. This population segment apparently is part of a continuous insular form of Aleutian Canada goose that extended from the western Gulf of Alaska and Alaska Peninsula region to the Commander and Kurile Islands of the Soviet Union (Hatch and Hatch 1983).

Aleutian geese, using coastal areas during winter and periods of migration, traditionally roost on off-shore islands such as Castle Rock near Crescent City, California and on rocky islands such as Chief Kiwanda Rock near Pacific City, Oregon. The use of these sites exposes Aleutian geese to storm systems that sometimes drive the birds into the sea. Storm-related drownings killed 43 Aleutian Canada geese near Crescent City in 1984, and 23 Aleutian geese near Pacific City in 1987 (Springer *et al.* 1989; Lowe 1987). A small number of Aleutian geese have also died as a result of collisions with man-made structures such as powerlines, and from lead poisoning due to ingestion of spent lead shot. Man-made structures probably do not pose a significant collision hazard for the species, and mortality from lead poisoning in the future should be negligible as the use of lead shot is phased out.

Animal populations when reduced to very small numerical levels may exhibit a reduced genetic variability. Such populations may lack the ability to adapt to events that jeopardize their existence (Brussard 1986). At their lowest level, early estimates placed the world's population of Aleutian geese, between 200–600, and the total population nested on a single island. Subsequent field work, however, showed that three remnant populations persisted on three widely separate islands. It is unlikely, therefore, due to the separation of three nesting segments and the relatively large minimum population size of Aleutian geese that the present populations suffers deleterious effects from lost genetic variability and, hence, fitness.

**Summary of Status**

The Aleutian goose has been the focus of a comprehensive 20-year recovery program. The species benefits from many management and research accomplishments, both on the breeding and on the wintering grounds. From the initial core population on Buldir Island, the wild population has increased an average of 16 percent annually since 1975 and now exceeds 6,000 birds. Aleutian geese translocated from Buldir Island now breed on Agattu and Nizki-Alaid Islands of the Near Islands Group and Little Kiska Island of the Rat Islands Group. During the course of recovery efforts, biologists discovered remnant populations on Chagulak and Kiliktagik Islands.

Translocation of adults and their young from Buldir Island facilitates the reestablishment of breeding populations extirpated by introduced foxes. This strategy proved effective on Agattu and Little Kiska Islands, and in the near future it will be used on Kiska Island. All current nesting islands and most of the historic breeding habitat for this species in North America occur within the Alaska Maritime National Wildlife Refuge.

In California and Oregon, efforts to acquire or protect key wintering habitat have been partially successful. Several important areas, including Castle Rock, were acquired and are now part of the National Wildlife Refuge System. Other important wintering areas are not currently protected and are threatened with conversion from pasture or agricultural lands to other uses such as housing, highway, and commercial development. Recent authorization for a 10,300 acre (4,170 hectare) addition to the National Wildlife Refuge System west of Modesto may alleviate some of the threats to the wintering population in this region (Helvie 1967).

Chronic outbreaks of avian cholera and botulism pose additional threats to wintering waterfowl populations. Cumulatively, fewer than 100 Aleutian geese are known to have succumbed to disease since 1975. Although documented mortality to date has been low, the potential for catastrophic losses is present. Hence, geese are routinely hazed from areas where cholera is prevalent. Hazing, however, forces geese to use less preferred roosting sites, travel greater distances to feeding areas and increases the potential for hunting mortality. The recent development of a Disease and Contaminant Hazard Contingency Plan (Wilber *et al.* 1987) will improve agency response and minimize losses to these potential threats. The Service's Madison National Wildlife Health Research Center has developed an effective vaccine for immunizing Canada geese from avian cholera. Although no wild Aleutian geese have been inoculated, the capability exists. The methodology for raising this species in captivity is also well established. More than 140 *leucopareia* are currently being held by zoos and waterfowl propagators in the United States and Canada. This captive flock ensures a separate and secure gene pool should the wild population suffer severe losses from disease or natural calamity.

Some pertinent definitions from 50 CFR 424.02 are as follows:

(e) *Endangered species* means a species which is in danger of extinction throughout all or a significant portion of its range.

(k) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature . . .

(m) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Population increases, current nesting on seven fox free islands, and protection of the wintering flock through hunting closures and habitat acquisition have significantly reduced the degree of threat to this species. In reviewing the progress toward recovery that this species has made since listing, the Service concludes that the Aleutian Canada goose is no longer in imminent danger of extinction. However, due to the small size of reestablished breeding populations, the continued presence of introduced arctic fox on many former nesting islands, and threats to the species on the wintering grounds from habitat alteration and disease, the Service finds that delisting is premature.

Based on a careful assessment of the best scientific and commercial information available regarding past, present and future threats faced by this species, the preferred action is to reclassify the Aleutian Canada goose from endangered to threatened status. The Service will recommend that this species be delisted when recovery criteria as outlined in the revised recovery plan are achieved.

**Available Conservation Measures**

This rule changes the status of the Aleutian Canada goose at 50 CFR 17.11 from endangered to threatened. This rule acknowledges that the populations of Canada geese breeding on Kiliktagik Island in the Semidi Islands and wintering in Tillamook County, Oregon, are *Branta canadensis leucopareia*. Furthermore, this rule formally recognizes the relative security of this subspecies from no longer being in danger of extinction throughout a significant portion of its range. This change in classification does not significantly alter the protection of this species under the Endangered Species Act. Anyone taking, attempting to take, or otherwise possessing an Aleutian Canada goose in an illegal manner would be subject to penalty under Section 11 of the Act. There are no differences in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from federal actions that would jeopardize the continued existence of the species.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

**Literature Cited**

In addition to the list of references provided below, species experts, numerous other scientific papers, letters, and unpublished field and administrative reports were consulted in preparation of this document. Persons interested in examining these materials may do so at the Ecological Services Anchorage field office (see ADDRESSES section) by appointment during normal business hours (907/271–2888).


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Wilbur, S., P. Springer, F. Lee, T. Rothe, and C. Zeillemaker. 1987. Disease and Contamination Hazard Contingency Plan. Unpub. U.S. Fish and Wildlife Service Report. Anchorage, Alaska. 15 pp.

### Author

The primary author of this rule is Mr. Brian Anderson, Endangered Species Specialist, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room 62, Anchorage, Alaska 99501 (907/271–2888).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

### Regulation Promulgation

### PART 17—[AMENDED]

Accordingly, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

### § 17.11 [Amended]

2. To amend the table § 17.11(h) under BIRDS for the entry of "Goose, Aleutian Canada" by revising the entries under "Status" to read "T" and under "When listed" to read "1, 3, 410."

Dated: November 28, 1990.

Constance B. Harriman

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 90-29006 Filed 12-11-90; 8:45 am]

BILLING CODE 4310-55-M

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### 50 CFR Part 17

RIN 1018-AB36

## Endangered and Threatened Wildlife and Plants; Final Rule to Delist the Dusky Seaside Sparrow and Remove Its Critical Habitat Designation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service removes the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) from the List of Endangered and Threatened Wildlife and also removes its critical habitat designation. All available information indicates that this bird is extinct. The dusky seaside sparrow is known to have occurred only on Merritt Island and the upper St. Johns River marshes of Brevard County, Florida. It has been extirpated by the conversion of salt marshes to mosquito impoundments and by drainage, land use changes, and unsuitable fire regimes. This action removes the protection of the Endangered Species Act from the dusky seaside sparrow and its critical habitat.

**EFFECTIVE DATES:** January 11, 1991.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

**FOR FURTHER INFORMATION CONTACT:** Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

**SUPPLEMENTARY INFORMATION:**

### Background

The dusky seaside sparrow was described by Ridgway in 1873, as *Ammodromus maritimus* var. *nigrescens* (Baird and Ridgway 1873). The bird had been discovered by Charles Maynard in 1872 and described by him in 1875, but Ridgway's description preceded Maynard's. The species was subsequently transferred to the genus *Ammospiza*. It was retained as a full species until 1973, when it was reduced to subspecific status under the seaside sparrow, *Ammospiza maritima* (American Ornithologists' Union 1973). In 1982, seaside sparrows were placed in the genus *Ammodramus* (American Ornithologists' Union 1982).

The dusky seaside sparrow is distinguished from other subspecies of the seaside sparrow by its dark coloration and by characteristics of its song (McDonald 1988). Avise and Nelson (1989) found that the mitochondrial DNA of the dusky seaside sparrow was virtually indistinguishable from other Atlantic coast populations of *Ammodramus maritimus*, and implied that the subspecific status of the subspecies was not merited. McDonald (1988), however, supported the validity of the taxon and the dusky seaside sparrow is expected to continue to be recognized as a valid subspecies in the next American Ornithologists' Union check-list.

The subspecies has never been found outside its limited range of cordgrass (*Spartina bakeri*) marshes on Merritt Island and the adjacent St. Johns River basin in Brevard County, Florida. Historically, the dusky seaside sparrow occurred in marshes along the Indian River on the northwest coast of Merritt Island from the Moore Creek-Banana Creek area to Dinsmit Creek; and on the mainland in marshes on the east side of the St. Johns River from just south of Salt Lake south to the vicinity of Cocoa. The mainland range was entirely confined to areas between State Routes 46 and 520, within a 10-mile radius of Titusville.

Howell (1932) considered dusky seaside sparrows to be common throughout their range on Merritt Island, but less common in the St. Johns River Basin. Trost (1968) reported that the construction of mosquito control impoundments, beginning in 1956, caused the tidal salt marsh vegetation to change to fresh water species. He believed that these alterations had resulted in a marked population decline in the dusky seaside sparrow. He also stated that the field notes of D.J. Nicholson reported an estimated 70 percent decline in populations from 1942 to 1953, following widespread use of DDT for mosquito control on Merritt Island.

Service actions concerning the dusky seaside sparrow began with its listing as an endangered species, pursuant to the Endangered Species Preservation Act of 1966. This listing was published in the Federal Register on March 11, 1967 (32 FR 4001). This listing was maintained under the Endangered Species Act of 1973, as amended.

Merritt Island National Wildlife Refuge was established in 1963, and



efforts were made to restore one of the mosquito impoundments to salt marsh (Sykes 1980). A notice of intent to determine critical habitat for the dusky seaside sparrow was published May 10, 1975 (40 FR 21499). Critical habitat was proposed for the bird on December 3, 1976 (41 FR 53074) and was designated on September 22, 1977 (42 FR 47840). Subsequently, much of the critical habitat in the St. Johns River marshes was acquired as the St. Johns National Wildlife Refuge. Despite these conservation efforts, dusky seaside sparrow populations continued to decline as salt marsh vegetation deteriorated.

Sharp (1970a) estimated that 2,000 pairs had originally occurred on Merritt Island, but if Nicholson's (in Trost 1968) estimate of a 70 percent reduction was accurate, only about 600 pairs were left by 1957. Sharp also quotes an estimate by Trost of 70 pairs in 1961–1963. Sharp's (1970a) 1966 spring survey found only 33–34 singing males remaining on Merritt Island. Subsequent surveys (Sykes 1980) found the following numbers of singing males on Merritt Island: 1969, 30; 1970, 18; 1971, 6; 1972, 11; 1973–1975, 2 each year; 1976, none; 1977, 2. No dusky seaside sparrows were found on Merritt Island after 1977.

The earliest available population estimate of the dusky seaside sparrow for the St. Johns River marshes is Sharp's (1970a) 1968 figure of 864 singing males. Sharp subsequently (1970b) found 143 singing dusky seaside sparrows on the proposed St. Johns National Wildlife Refuge lands in 1970. Baker (1978) reported a continuing decline in singing male surveys in the St. Johns River marshes: 1972, 110; 1973, 54; 1974, 37; 1975, 47; 1976, 11; 1977, 28; 1978, 24; 1979, 13. An extensive survey effort in 1980 (Delany et al. 1981) found only four singing males; no dusky seaside sparrows were found in 1981 (Delany et al. 1981).

Three male birds were taken into captivity in 1979, and three more in 1980, to begin a captive breeding program. The Service, the Florida Game and Fresh Water Fish Commission, the Florida State Museum (now the Florida Museum of Natural History), the Florida Audubon Society, the Santa Fe Community College Teaching Zoo, and the Walt Disney World Discovery Island were involved in the project at various points. When it became apparent that no female dusky seaside sparrows were likely to be found, some work was done crossing the dusky males with females of Scott's seaside sparrow (*Ammodramus maritimus peninsulae*), a subspecies found on the west coast of Florida; several birds were produced as the result of crosses and subsequent backcrosses. In 1982, however, the Service decided that because such hybrid offspring were not listed under the Endangered Species Act, such progeny should not be released on the refuge. However, the Service agreed to give custody of the birds to another party. The ultimate custodian of the male duskies and their offspring was Discovery World, assisted by the Florida Audubon Society. The advanced age of the captive dusky males resulted in difficulties with the cross breeding program, and the last dusky male died of natural causes on June 16, 1987. All offspring also died or were lost by accident by the summer of 1989.

Following the death of the last captive dusky seaside sparrow in 1987, representatives of the Service, the Florida Game and Fresh Water Fish Commission, and the Florida Audubon society agreed that it would be appropriate to carry out another survey for the dusky seaside sparrow prior to a proposal to delist the bird. Accordingly, participants from the above organizations carried out a survey in the spring of 1989 (Bentzien 1989). Suitable habitat for the bird appeared to have decreased greatly since the 1980–1981 surveys, and no dusky seaside sparrows were detected.

The decline of the birds in the St. Johns National Wildlife Refuge and in adjacent marshes was due to drainage, highway construction, burning of marshes to improve pasture, and wildfire. Wildfires were particularly severe in 1973 and in 1975–1976. Although fire is a natural feature in the St. Johns marshes, the lowered water tables and deliberate man-caused burns in the already fragmented habitat meant that the dusky seaside sparrow had very little available habitat following extensive burning.

On June 21, 1990 (55 FR 25588), the Service proposed to delist the dusky seaside sparrow and to remove its critical habitat designation.

### Summary of Comments and Recommendations

In the June 21, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, required by section 4(b)(5)(D) of the Act, were published in the Melbourne, Florida, Florida Today on May 12, 1990, and the Orlando Sentinel on May 13, 1990. Only one comment was received: The Florida Game and Fresh Water Fish Commission stated that it concurred with the rationale for delisting the dusky seaside sparrow, and did not oppose that action.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the dusky seaside sparrow should be removed from the List of Endangered Species and that its critical habitat designation should be removed. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more factors described in section 4(a)(1). These factors and their application to the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.* The dusky seaside sparrow was known to occur only in a small area near Titusville, Brevard County, Florida. The marsh habitat to which this bird was restricted has been destroyed or modified by flooding marshes for mosquito control, and by drainage, development, and fire. The dusky seaside sparrow is believed to be extinct.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

*C. Disease or predation.* Not applicable.

*D. The inadequacy of existing regulatory mechanisms.* Not applicable.

*E. Other natural or manmade factors affecting its existence.* The last captive dusky seaside sparrow died on June 16, 1987.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that enough evidence exists to declare the dusky seaside sparrow extinct.

### Effect of Rules

This final rule removes the dusky seaside sparrow from the List of Endangered and Threatened Wildlife, and removes its critical habitat designation. Federal agencies no longer need to consult with the Secretary to insure that any action authorized,

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funded, or carried out by such agency is not likely to jeopardize the continued existence of the dusky seaside sparrow or adversely modify its critical habitat. Federal restrictions on taking of this species no longer apply. The Service's Division of Wildlife Resources will reevaluate management options for the St. Johns National Wildlife Refuge.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (49 FR 49244).

### References Cited

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### Author

The primary author of this final rule is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

### Regulations Promulgation

### PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

### § 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for the "Sparrow, dusky seaside * * * *Ammodramus (=Ammospiza) maritimus nigrescens*" under BIRDS from the List of Endangered and Threatened Wildlife.

### § 17.95 [Amended]

3. Amend § 17.95(b) for animals by removing the critical habitat entry for the dusky seaside sparrow (*Ammospiza maritima nigrescens*).

Dated: October 14, 1990.

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90-28006 Filed 12-11-90; 8:45 am]

BILLING CODE 4310-55



# Proposed Rules

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Ch. XIV

### Processing Representation and Unfair Labor Practice Cases

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice of opportunity to file recommendations on modifications to the representation and unfair labor practice regulations.

**SUMMARY:** The Authority and the General Counsel invite all agencies, unions and interested persons to submit written recommendations on modifications to the Authority and General Counsel representation, unfair labor practice and related miscellaneous regulations.

The Authority and the General Counsel intend to examine existing unfair labor practice, representation and related miscellaneous regulations to determine whether modifications should be made to improve case processing procedures and promote the earliest resolution of disputes. The Authority and General Counsel also intend to identify any portion of the regulations that could be rewritten so that the processing of unfair labor practice charges and complaints and representation petitions can be more easily understood by persons who are not practitioners in labor-management relations or the law.

This review process will be comprehensive and pertain to all phases of the processing of unfair labor practice charges and complaints and representation petitions. Recommendations are solicited on the filing, investigation and settlement of unfair labor practice charges, and on the litigation and settlement of unfair labor practice complaints. Suggestions which promote the earliest resolution of disputes and the expedition of unfair labor practice hearings are encouraged.

The review also will cover all procedures employed to process representation issues. Recommendations are solicited on the filing and investigation of the various representation petitions, as well as the hearing, decision-making and election processes.

Proposed regulations which may result from the review will be published for comment at a later date.

**DATES:** Recommendations in response to this notice will be considered if received by February 15, 1991. Requests for extensions of time will not be granted absent extraordinary circumstances.

**ADDRESSES:** Mail recommendations to David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, Federal Labor Relations Authority, 500 C Street, SW., Room 326, Washington, DC 20424, Attn: "Regulation Review."

**FOR FURTHER INFORMATION CONTACT:** David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, 500 C Street, SW., Room 326, Washington, DC 20424, Telephone: (202) 382–0834.

**SUPPLEMENTARY INFORMATION:** The Authority and the General Counsel of the Federal Labor Relations Authority intend to review and, where appropriate, revise the unfair labor practice and representation regulations. These rules of practice and procedure were last reviewed in a study started in 1984 (49 FR 25243 and 35096), culminating in minor amendments to the regulations in December 1986 (51 FR 45751).

Part 2422 of chapter XIV of title 5 of the Code of Federal Regulations (1990) contains the current regulations governing the processing of representation petitions. The unfair labor practice regulations are contained in part 2423. Part 2429 contains miscellaneous and general regulatory requirements which also govern the processing of representation petitions and unfair labor practice charges and complaints.

All of these regulations and rules of practice and procedure governing the processing of representation and unfair labor practice matters are subject to this review. The Authority and the General Counsel will, as determined appropriate, undertake a thorough review of existing regulations and rules of practice and procedure and will review all written recommendations. The Authority and the General Counsel will, as determined appropriate, issue proposed amendments to the existing representation, unfair labor practice and miscellaneous regulations. All agencies, unions and interested persons will be afforded an opportunity to submit comments on any proposed modifications to the existing regulations.

All submissions should contain proposed regulatory language in addition to comments supporting the recommended regulatory change. This review is limited to modifications to the existing regulations and rules of practice and procedure. Recommendations which seek to overrule substantive interpretations of the Statute by the Authority and the circuit courts of appeals concerning the rights and obligations of agencies, unions and employees under the terms of the Statute will not be considered.

### Format

All submissions should contain separate headings and citations for each section of the existing regulations discussed. An original and (2) copies of each set of comments, with any enclosures, should be submitted only on 8½ by 11 inch paper.

### List of Subjects in 5 CFR Ch. XIV

Administrative practice ad procedure, Government employees, Labor-management relations.

Dated: December 4, 1990.

For the Authority.

**Solly Thomas,**

*Executive Director.*

For the General Counsel.

**Michael Dobony,**

*Deputy General Counsel.*

[FR Doc. 90-28940 Filed 12-11-90; 8:45 am]

BILLING CODE 6727-01-M

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1951

### Recapture of Section 502 Rural Housing Subsidy

**AGENCY:** Farmers Home Administration, USDA.

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**ACTION:** Proposed rule; correction.

**SUMMARY:** The Farmers Home Administration corrects a proposed rule published October 25, 1990 (55 FR 42987). In the proposed rule a sentence was inadvertently omitted that could possible affect the public comment process. This action is taken to correct this ovrsight. The intended effect is to nake the proposed rule read as intended.

**DATES:** Comments on the proposed rule must be received on or before December 24, 1990.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Regulation, Analysis and Control Branch, FmHA, room 6346, South Agriculture Building, Washington, DC, 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Phil Girad, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, FmHA, room 5309, South Agriculture Building, Washington, DC, telephone (202) 382–1452.

**SUPPLEMENTARY INFORMATION:** The sentence "The PRAS adjustment is not appealable." was omitted from § 1951.410.

Accordingly, the Farmers Home Administration is correcting its proposed revisions to title 7, chapter XVIII, part 1951, Code of Federal Regulations, as follows:

## PART 1951—SERVICING AND COLLECTIONS

### Subpart I—Recapture of Section 502 Rural Housing Subsidy

On page 42990, § 1951.410 is correctly revised to read as follows:

**§ 1951.410 Elimination of principal reduction attributed to subsidy.**

Principal reduction attributed to subsidy (PRAS) will be eliminated on new accounts under the Agency's new accounting method of applying the borrower's reduced payment at the note rate with a monthly non cash credit for the amount of interest credit. For borrowers who accrued PRAS prior to FmHA's conversion to the note rate subsidy method of granting interest assistance, FmHA will make a one-time adjustment by adding the accumulated PRAS to the unpaid principal balance. This adjustment will not increase the monthly installment and will allow the account to pay out over the full term rather than ahead of schedule. Affected borrowers will be notified of the amount and date of the adjustment. The PRAS adjustment is not appealable.

Dated: December 5, 1990.

**Leigh Nalley,**

*Acting Administrator Farmers Home Administration.*

[FR Doc. 90–29025 Filed 12–11–90; 8:45 am]

BILLING CODE 3410–07–M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

### 10 CFR Part 430

**[Docket No. CE–RM–90–201]**

### Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Nine Types of Consumer Products

**AGENCY:** Office of Conservation and Renewable Energy, Department of Energy.

**ACTION:** Extension of comment period for clothes washers.

**SUMMARY:** The Department of Energy (DOE) hereby extends the comment period on the Advance Notice of Proposed Rulemaking (ANOPR) for energy conservation standards for clothes washers only (Docket No. CE–RM–90–201) from December 12, 1990, to April 12, 1991. DOE's receipt of comments on all other aspects of the ANOPR, including product-specific comments pertaining to the other eight appliance types, remains unchanged at December 12, 1990; in addition, interested parties are also encouraged to provide preliminary comments on the clothes washer product type by December 12, 1990.

**DATES:** Written comments in response to this ANOPR must be received by DOE by December 12, 1990; in the case of the clothes washer product, type-written comments must be received by DOE by April 12, 1991.

**ADDRESSES:** Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CE–RM–90–201, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3012.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

**Discussion**

On September 28, 1990, the DOE published an ANOPR on energy conservation standards for nine types of consumer products, including clothes washers. (55 FR 39624).

In the ANOPR, DOE stated that further consideration of amended standard levels for clothes washers, the subject of a pending final rule, would be included in this rulemaking. This would enable DOE to obtain information concerning the economic justification and technical feasibility of a design option—a top-loading, horizontal axis clothes washer—manufactured and marketed in Europe but not available in the United States, and which appears to have the potential for saving significant amounts of energy and water.

Because that clothes washers design option is unknown to most U.S. manufacturers, Maytag Company, by letter dated November 2, 1990, and the Association of Home Appliance Manufacturers (AHAM), by letter dated November 5, 1990, petitioned the Department to extend the closing date of the comment period of the ANOPR for clothes washers for six months from December 12, 1990, the scheduled close of the comment period, in order for manufacturers to have time to provide full and complete comments. A meeting at AHAM's request was held on November 6, 1990, between representatives of DOE and AHAM at which AHAM further articulated the reasoning upon which the requests were based.

The ANOPR requested comment on the economic justification and technical feasibility of the top-loading, horizontal axis clothes washer as a "design option." The manufacturers' concern was that the potential economic consequences of such a standard are so great that sufficient time must be allowed to thoroughly examine all aspects of this proposal. Manufacturers, it was stated, are now in the process of obtaining a representative sample of the top-loading, horizontal axis machine from Europe so that their comments may be based on fact rather than speculation.

DOE concludes that a six-month delay in the ANOPR comment period for clothes washers would jeopardize the Congressionally mandated date of



January 1, 1992, for the final rule for seven of the products included in this rulemaking. However, by readjusting its schedule of analytical work to be performed for the products in this rulemaking, DOE finds that a four-month extension of the close of the comment period for clothes washers can be accommodated. DOE hereby extends the comment period for clothes washers to April 12, 1991. The additional time will allow all interested parties to provide full and complete comments. The close of the comment period for all other matters pertaining to this rulemaking remains December 12, 1990.

Issued in Washington, DC, on December 7, 1990.

**B. Reid Detchon,**

*Principal Deputy Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 90–29185 Filed 12–10–90; 11:35 am]

BILLING CODE 6450–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 333

**RIN 3064–AA55**

### Extension of Corporate Powers

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").

**ACTION:** Proposed rule.

**SUMMARY:** The FDIC is proposing to amend its regulations to provide that state savings banks that are members in the Savings Association Insurance Fund ("SAIF") i.e., savings banks that convert from savings associations, will be subject to the same activity and investment restrictions, transactions with affiliates restrictions and loan to one borrower limits that are applicable to savings associations. In addition, under the regulation SAIF member savings banks would be required: (1) To provide the FDIC with the same prior notice before the acquisition or establishment of a subsidiary, or initiating the conduct of any new activity in an existing subsidiary, that is required for savings associations, (2) to deduct investments in, and extensions of credit to, subsidiaries from the bank's capital to the same extent as is the case for a savings association, (3) to file with the FDIC a copy of any application requesting approval of the conversion that is filed with another or state agency, and (4) to file a capital plan with the FDIC within 30 days of conversion if as of the conversion the bank does not meet the capital requirements set out in the FDIC's regulations.

**DATES:** Comments must be received by January 11, 1991.

**ADDRESSES:** Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F St., NW., Washington, DC 20429 on business days between 8:30 a.m. and 5:00 p.m. comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838].

**FOR FURTHER INFORMATION CONTACT:** Pamela E.F. LeCren, Counsel, (202) 898–3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC. 20429.

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The application and notice requirements set forth in section 303.13 of the FDIC's regulations (12 CFR 303.13) shall apply to any SAIF member state savings bank that was formerly a savings association to the same extent as though the savings bank had not converted. The application and notice requirements of § 303.13 of 12 CFR part 303 have been reviewed and approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064–0104. The estimated average annual burden associated with these application and notice requirements is approximately 5 hours per response. Submission to the FDIC of capital plans has been reviewed and approved by OMB in connection with the Paperwork Reduction Act under control number 0364–0075. The estimated average annual burden associated with the capital plan is 42 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F–400, Federal Deposit Insurance Corporation, Washington, DC, 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0104, 3064–0075), Washington, DC, 20503.

**Discussion of Proposed Regulation**

*Background*

On August 9, 1989 President Bush signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Pub. L. No. 101–73, 103 Stat. 183 (1989)) into law. Among other things, FIRREA established the Savings Association Insurance Fund ("SAIF") to replace the Federal Savings and Loan Insurance Corporation ("FSLIC") (the entity that had previously insured savings and loan associations) and placed SAIF under the administration of the FDIC. All previously FSLIC insured savings associations were made members of SAIF. The statute also provides that all future state or federal savings associations are to be members of SAIF.

One of the announced Congressional purposes of FIRREA is to "curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds." Section 101 of FIRREA, 103 Stat. 187. It is clear that Congress concluded that the best way to remove unacceptable risks presented to SAIF as a result of activities and investments undertaken by SAIF members is to limit the activities and investments a state savings association can make to those activities and investments that are permissible for a federal savings association. This was accomplished by an amendment to the Federal Deposit Insurance Act ("FDI Act") (new section 28 (12 U.S.C. 1831(e), see discussion below). Congress also saw fit to impose a limit on loans to one borrower for all savings associations (see section 5(u) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(u)). The decision by Congress to do so evidences a conclusion that making loans to any one borrower in excess of the limits set by section 5(u) of HOLA presents an unacceptable risk to SAIF. It is also apparent that the activities of certain subsidiaries of savings associations were found to be a potential source of risk to SAIF from which the parent association (and thus SAIF) should be insulated. Section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) provides that a savings association's investment in, and loans to, a subsidiary engaged in activities not permissible for a national bank shall be deducted form the savings association's capital. In addition, Congress not only chose to make SAIF institutions subject to the loan to affiliate restrictions contained in section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) it imposed additional restrictions on transactions with affiliates. (See section 11(a)(1) of HOLA, 12 U.S.C. 1468). Finally, Congress specifically required SAIF member savings associations to provide the FDIC with prior notice before establishing or acquiring a subsidiary or conducting any new activity through a subsidiary. (Section

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18(m)(1) of the FDI Act, 12 U.S.C. 1828(m)(1)). Thus, the agency given the responsibility of administering SAIF was given the opportunity to review in advance the proposed establishment or acquisition of a subsidiary by a SAIF member institution and the conduct of new activities by an existing subsidiary of a SAIF member institution.

The FDIC is aware that a growing number of states have enacted, or are considering enacting, legislation to allow a SAIF member savings association to become a savings bank. To date eleven states (California, Texas, Florida, Illinois, Ohio, Alabama, Indiana, Louisiana, North Carolina, Wisconsin, and Tennessee) fall into this category. These states are not among those which have traditionally allowed for savings banks. Additionally, in some instances states that have had savings banks for many years are interpreting their existing statutes to allow a savings association to become a savings bank. All of these institutions would retain their membership in SAIF.

Whether any particular institution becomes a savings bank for the purposes of the FDI Act pursuant to any of these statutes depends upon the particular state legislation. Section 3(g) of the FDI Act (12 U.S.C. 1813(g)) defines a savings bank as "a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business." Thus, whether any savings association has in fact become a savings bank under the FDI Act (i.e., is no longer a savings association) is a question that can only be answered after reviewing the particular enabling legislation. In some cases there may be little or no substantive difference between the rights and powers granted state savings associations by a particular state and the savings bank charter which the SAIF member institution would pick up. In short, the legislation may do no more than allow a savings association to change its name to a savings bank. In such instances the new entity may not be considered a savings bank for the purposes of the FDI Act. (The FDIC is interested in receiving comment on what criteria should be used, or considered relevant, by the FDIC in determining whether the requirements of section 3(g) of the FDI Act are met.)

Depending upon the specifics of the legislation, a savings association that does become a SAIF member savings bank may be authorized to engage in activities, and make investments (including investments in noninvestment grade corporate debt securities, i.e., "junk bonds") that Congress specifically found to pose an unacceptable risk to SAIF. These new SAIF member savings banks may be able to make loans to any one borrower in excess of that which would have been permitted the institution as a SAIF member had it not become a state savings bank and may be able to enter into transactions with affiliates that Congress judged to create an unacceptable risk to SAIF. There may be no requirement to deduct investments in and loans to subsidiaries from the institution's capital (assuming that the state law establishes specific capital requirements) and there may be no requirement to provide the FDIC with advance notice before establishing or acquiring a subsidiary or conducting any new activity in an existing subsidiary. In short, the very safeguards Congress determined to be necessary to protect SAIF from risk would no longer apply to institutions that continue to be SAIF members and which may be able to exercise powers and make investments previously exercised by state savings associations that Congress found to contribute so heavily to the savings and loan crisis. Cong. Rec. H2714, June 15, 1989 (remarks of Rep. Glickman); Cong. Rec. S4090–4092, April 18, 1989; Cong. Rec. S3996, April 17, 1989.

The FDIC is of the belief that potential harm is posed to SAIF if SAIF member institutions side step the FIRREA restrictions by changing their status to savings banks. There is ample evidence that investing in junk bonds and real estate and making excessive loans to any one borrower, etc. raise safety and soundness concerns and that such concerns pose a serious threat to SAIF.

The financial soundness of a savings association is in large part determined by the amount of equity capital the institution holds and the quality of its investment portfolio. Capital serves two purposes: (1) It provides a buffer against potential losses, and (2) it reduces risk taking (investors with more of their own funds at risk tend to manage an institution more conservatively). As asset portfolios are funded by insured deposits, it is important to carefully supervise investment policies of thrift institutions. A thrift's investment portfolio should be appropriately diversified and the quality of the assets therein must be maintained. Today, as a result of the passage of FIRREA, the ability of savings associations to hold noninvestment grade corporate debt securities and equities is limited, loans to any one borrower are limited, and a savings association's investments in certain subsidiaries are deducted from the association's capital. These restrictions are vital in helping to ensure diversification, maintaining good asset quality, and ensuring an adequate level of capital.

Thrift acquisition of noninvestment grade corporate debt securities and equities present significant risks. The potential impact of price volatility associated with such speculative investments is illustrated by recent experiences in the junk bond market. Numerous junk bonds are now in default; such bonds typically trade, if at all, at only a fraction of their original price. Examples of such bonds held by thrifts include Gillett Holding Corp. bonds which have been trading at approximately 18 cents on the dollar and Federated Department Stores Inc. bonds also in default and currently quoted at three cents on the dollar. At the peak of junk bond issues in the 1980's, savings and loan associations had ivnested an estimated $15.1 billion in junk bonds. By July 1990 the Resolution Trust Company held $3.7 billion in high-yield bonds acquired from 26 institutions.

Equity prices are more volatile than either corporate earnings or dividends. Equities involve speculation in asset price movements unrelated to the earnings potential of the firm. The drop of 22.6% (508 points) in the Dow Jones Industrial Average (DJIA) on October 19, 1987, the largest one-day decline in history, provides a recent example of the potential variability of equity portfolios. In foreign markets, recent Japanese stock market declines have created capital problems for Japanese banks holding large investments in equities. Price fluctuations of less diversified portfolios may exhibit even greater volatility than broad market indexes.

The market volatility of noninvestment grade debt securities and equities has two negative effects on the portfolios of thrift institutions. First, as asset values vary, the net worth (and equity capital) of savings associations experience wide swings. An institution holding these assets may become insolvent in a short period of time as assets decline in value. Second, these financial instruments may become difficult or even impossible to market, particularly when the firms default on their debt. This is likely to exacerbate liquidity problems for an institution at the time when liquidity is needed most.

Similar problems are likely to be associated with deviations from the one-borrower rule. The safety of an institution is compromised if a thrift asset portfolio is not properly diversified. When loans to a single borrower exceed a relatively small proportion of the overall investment portfolio, the risks born by the financial institution increase. In a properly diversified loan portfolio, losses from any one source will have a small impact on the institution. Increased concentration, however, makes an institution more susceptible to failure should a single borrower default.

Subsidiaries represent a different level of risk to thrift institutions. Subsidiaries tend to concentrate in relatively high-risk, competitive industries such as real estate development. These activities are generally relegated to subsidiaries precisely because they are too hazardous to permit in the thrift. Losses from subsidiary activities may easily exceed capital levels, a situation which would cause the thrift institution to fail and subsequently impose costs on the FDIC. The requirement that savings associations deduct investments in and extensions of credit to a subsidiary is appropriate to protect thrift capital against potential subsidiary failures. The capital deduction rule ensures that thrifts invest (either directly or indirectly) no more in a subsidiary than they can afford to lose. This maintains the capital base for protection against potential asset losses within the thrift institution itself.

The restrictions discussed above were imposed in savings associations under FIRREA because these institutions, for a number of reasons, have been more likely to engage in such high risk activities. Conversion from a savings institution to a state savings bank does not eliminate the need for these restrictions. The FDIC is both empowered and obligated to protect SAIF from harm. Likewise the FDIC is obliged to give effect to the intent of Congress to protect SAIF from undue risk. Therefore, the Board of Directors has determined that the FDIC should clearly establish by regulation that SAIF member savings banks will continue to be subject to the safeguards enacted by FIRREA designed to protect SAIF from harm.

The Board of Directors recognizes that the restrictions that would be imposed by the proposed regulation may address safety and soundness and risk concerns of such general application that they may warrant being extended to FDIC insured entities in general. Some of the activities and investments that would be prohibited under the proposed regulation for SAIF member state savings banks may be inconsistent with the purposes of federal deposit insurance and as such should be prohibited for insured institutions in general. FDIC staff is currently studying the issue of "expanded bank powers"and plans to make recommendations to the Board of Directors on whether insured institutions should be permitted to engage in activities beyond those traditionally associated with banks. Depending upon the results of that study, the FDIC may determine that it is appropriate to extend the same type of restrictions set forth in this proposed regulation to a broader group of insured institutions.The action being proposed at this time is in effect an emergency measure to maintain the status quo regarding the powers and activities of SAIF member institutions.

*Description of Proposed Regulation*

The proposed regulation amends part 333 of the FDIC's regulations by adding a new section 333.3. Section 333.3 is applicable to any savings association that converts to a state savings bank and retains its membership in SAIF. For the purposes of § 333.3, a conversion refers to a change in status from a savings association to a SAIF member state savings bank regardless of the manner in which the change in status occurs. The FDIC is aware that there are in existence several federally chartered savings banks that are members of SAIF that are able to exercise certain grandfathered powers pursuant to seciton 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)). These institutions are not presently subject to the FIRREA restrictions on activities, etc. To our knowledge, none of these institutions have converted to state savings banks. If they do, however, they would be subject to the regulation. Although Congress did not impose the FIRREA restrictions on these institutions, the FDIC has safety and soundness concerns about the activities in question. The FDIC has therefore determined that it would be appropriate to impose the FIRREA restrictions should these institutions convert. Comment is invited on this determination. Commenters who are of the opinion that doing so is ill advised should provide comment on why such activities if conducted by these institutions should not be viewed as posing a risk to SAIF.

Paragraph (a) of the proposed regulation provides that section 303.13 of the FDIC's regulations shall apply to a SAIF member state savings bank to the same extent as though the savings bank were a state savings association. Section 303.13 implements section 18(m)(1) and sections 28(a), 28(b), 28(c), and 28(d) of the FDI Act. Section 28 of the FDI Act as added by FIRREA (12 U.S.C. 1831(e)): (1) Prohibits a state savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to SAIF and the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(t)) (section 28(a)); (2) provides that a state savings association may engage in activities that are permissible for a federal association but in an amount that would not be permissible for a federal savings association if the state savings association meets the fully phased-in capital requirements set out in section 5(t) of HOLA and the FDIC has not determined that conducting the activity to such an extent poses a significant risk to SAIF (section 28(b)); (3) prohibit a state savings association from making any equity investments that are not permissible for a federal savings association with the exception of an investment in service corporations if the FDIC grants approval. (The FDIC may approve an investment in an impermissible service corporation if the savings association meets the fully phased-in capital requirements of section 5(t) of HOLA and the FDIC determines that the investment does not pose a significant risk to SAIF.) (Section 28(c)); and (4) prohibits state and federal savings associations from acquiring noninvestment grade corporate debt securities (section 28(d)). A savings association that acquired an equity investment or a noninvestment grade corporate debt security prior to the passage of FIRREA that is now an impermissible investment must divest that investment by July 1, 1994. (Sections 28(c) and (d)). Section 18(m)(1) (12 U.S.C. 1828(m)(1)) provides that state as well as federal savings associations (with certain exceptions) must provide the FDIC with 30 days prior notice before acquiring or establishing a subsidiary or conducting any new activity through an existing subsidiary.

Section 303.13 establishes application and notice requirements designed to implement the above described provisions of law. The effect of the cross reference to section 303.13 is that any SAIF member state savings bank that converts from a savings association, be it a state or federal savings association, will be subject to the prohibitions

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recited in section 303.13 and must file the applications and/or notices required by that section. For example, if a state savings association has filed a plan of divestiture pursuant to section 303.13(d) with respect to an impermissible equity investment, a change of status to a SAIF member state savings bank will not remove the institution's obligation to divest the equity investment. Likewise, a SAIF member state savings bank must continue to apply for the FDIC's permission under 303.13(b)(1) if it intends to engage in an activity not permissible for a federal savings association.

If a federal savings association becomes a state SAIF member savings bank, the savings bank will be treated for the purposes of § 303.13 as though it is a state savings association. In several instances applications may or may not be necessary under § 303.13 based upon whether an institution meets the fully phased-in capital requirements prescribed by section 5(t) of HOLA. For the purposes of § 333.3 the references to fully phased-in capital as per HOLA should be understood to refer to meeting the capital requirements of part 325 of the FDIC's regulations.

Paragraph (b) of the proposed regulation prohibits a SAIF member state savings bank that converts from a savings association from making loans to any one borrower to an extent greater than the bank could have done under federal law had the bank not converted. Thus, a converted savings bank will continue to be subject to the loans to one borrower limits set forth in section 5(u) of HOLA. However, if the limit under state law is more restrictive, the state limit shall apply. If the savings bank made any loans since its conversion that would have been in violation of the federal limit had it not converted, those loans need not be divested. (See paragraph (e)(3) of the proposal.)

Paragraph (c)(1) of the proposal provides that the investment in, and extensions of credit to, a subsidiary by a SAIF member state savings bank that has converted from a savings association shall be deducted from the bank's capital to the same extent that such deduction would be required under federal law had the bank not converted from a savings association. Thus, a converted state savings bank will continue to be subject to the capital deduction requirements set out in section 5(t)(5) of HOLA. This provision results in a deduction from capital if a savings bank invests in a subsidiary that engages in activities that a national bank cannot conduct.

Paragraph (c)(2) provides that any savings bank that converts from a savings association and is under capitalized as of the conversion must file a plan with the appropriate FDIC regional director within 30 days of the conversion describing the means and timing by which the bank will achieve its minimum capital requirements under the FDIC's regulations. Any under capitalized savings bank that converts from a savings association that fails to submit a plan, or whose plan is not approved, will be deemed to be engaged in an unsafe or unsound practice in accordance with part 325 of the FDIC's regulations. The requirement to file a capital plan has been included in the proposal as the FDIC is concerned that some states may allow severely under capitalized savings associations to convert to savings banks. If this occurs, the FDIC needs to be in a position to see that prompt, appropriate supervisory measures are taken to correct the capital deficiency.

Paragraph (d) of the proposed regulation concerns transactions with affiliates. Section 11(a)(1) of HOLA (12 U.S.C. 1468(a)(1)) makes savings associations subject to the restrictions on transactions with affiliates established by sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1). That provision of HOLA, however, imposes two additional restrictions on transactions with affiliates: (1) No loan or other extension of credit may be made to any affiliate by a savings association unless that affiliate is engaged only in activities which the Board of Governors of the Federal Reserve System has determined are permissible for bank holding companies, and (2) no savings association can purchase or invest in securities issued by an affiliate other than shares of a subsidiary. Paragraph (d) reimposes these restrictions on SAIF member state savings banks. The term affiliate shall for the purposes of this paragraph have the same meaning as applicable for the purposes of section 23A of the Federal Reserve Act.

Paragraph (e) of the proposed regulation covers savings banks that converted prior to the adoption of the regulation. Under paragraph (e)(1)(i) such institutions that are engaged in an activity, or that have an investment, of the type covered by § 303.13 of the FDIC's regulations are prohibited from continuing the activity or retaining the investment without the FDIC's consent. The application procedures set forth in § 303.13 are to be followed when requesting consent to continue the activity or retain the investment. Requests for consent must be filed within 30 days after the regulation becomes effective. If a request for consent is filed, the institution will not be considered to be in violation of the regulation pending approval of the regional director.

Consent will not be granted unless to do so is consistet with § 303.13. Thus, for example, consent to continue an impermissible activity will not be granted if the FDIC determines that the activity poses a significant risk to SAIF or if the savings bank does not meet the capital requirements of part 325. If a savings bank purchased junk bonds, their retention is not consistent with § 303.13. The bonds must be divested as quickly as prudently possible but in no event later than July 1, 1994. If the institution acquired an impermissible equity investment, it must be divested by July 1, 1994 unless retention is approved. If consent to conduct an activity is denied, the institution must phase out the activity as quickly as prudently possible.

Under paragraph (e)(3), an institution that converted prior to the adoption of the regulation that established or acquired a subsidiary after its conversion (but prior to the effective date of the regulation) and any institution that initiated any new activity in an existing subsidiary after its conversion (but prior to the effective date of the regulation) must file the notice required by § 303.13(f) pertaining to subsidiaries.

The proposed regulation does not provide any special treatment for institutions that converted prior to the regulation's adoption insofar as the deduction of investments in, and loans to, subsidiaries is concerned. Thus, for example, a savings association that converted to a savings bank prior to the adoption of the regulation and which also prior to the adoption of the regulation established a subsidiary that is engaged in an activity prohibited to a national bank will still be required to deduct its investment in the subsidiary from its capital. Institutions that do not meet the FDIC's capital requirements as of the effective date of the regulation must file a capital plan within 30 days.

SAIF member savings banks that converted piror to the adoption of the regulation are not required under the proposal to divest loans made in that interim period to affiliates which engage in activities that are not permissible for bank holding companies. (See paragraph (e)(3)). If, however, a converted SAIF member savings bank purchased or invested in securities issued by any of its affiliates in the interim period, the



institution must request the FDIC's consent to retain the securities. The procedures for seeking consent are the same as described above. (See paragraph (e)(5)).

Paragraph (f) of the proposal provides that it should be unlawful for a SAIF member savings bank to have converted from a savings association unless the FDIC was given advance notice of the intended conversion and a follow-up notice that the conversion did in fact occur is filed with the FDIC within 10 days after the conversion. The follow-up notice only needs to confirm that the conversion took place and the date thereof. The proposal requires that a copy of any application, notice etc. that is required by statute or regulation to be filed seeking approval of the conversion must also be filed with the FDIC simultaneously with the submission of the application to the appropriate state or federal agency. If the conversion application was filed with the appropriate agency before the regulation became effective, the institution must file a copy of the application with the FDIC as soon as possible after the effective date of the regulation. The copy (as well as the follow-up notice) is to be submitted to the FDIC regional director for supervision for the region in which the bank's principal office is located. The regional director may, for good cause, accept a notice in lieu of a copy of the conversion application, etc. Such notice only needs to indicate that it is the institution's present intent to convert.

Paragraph (f) further provides that any SAIF member state savings bank that converted from a savings association prior to the adoption of the regulation must notify the FDIC of its conversion within 30 days after the effective date of the regulation. Receiving this information will enhance the FDIC's ability to assess the risks posed to SAIF by the conversion of the particular institution given the state enabling legislation and will allow for advance planning on the scheduling of examinations, etc. (The FDIC is the appropriate federal supervisory agency with respect to state savings banks.)

*Statutory Authority*

As discussed above, the FDIC's Board of Directors has determined that certain acts and practices by SAIF member state savings banks present a threat to SAIF and that the deduction of such an institution's investment in, and loans to, certain subsidiaries is necessary to further prevent risk to SAIF. Likewise the Board of Directors has determined that in order to prevent risks to the fund the FDIC should receive prior notice from such institutions before a subsidiary is acquired or established or an existing subsidiary initiates any new activity. The Board of Directors has also determined that advance notice of a conversion is necessary if the FDIC is to properly discharge its responsibilities under the FDI Act. Finally, consistent with existing regulations, the Board of Directors has determined that as it is unsafe and unsound for an under capitalized institution to operate without a capital plan. SAIF member savings banks that do not meet the FDIC's capital requirements must file a capital plan after their conversion.

Based upon these determinations, the FDIC is proposing to adopt the regulation more fully described above. The FDIC's action in doing so is fully consistent with the FDIC's purpose and is authorized by sections 6, 8, 9, and 18(m)(3)(A) of the FDI Act (12 U.S.C. 1816, 1818, 1819 (Tenth), 1828(m)(3)(A)).

The FDIC has the broad general authority to adopt this regulation under section 9 of the FDI Act which authorizes the FDIC to issue whatever regulations "it may deem necessary to carry out the provisions of the (Federal Deposit Insurance Act) or of any other law which it has the responsibility of administering or enforcing * * *". 12 U.S.C. 1819 (Tenth). Pursuant to this authority the FDIC may adopt substantive regulations designed to further the purposes for which the federal deposit insurance system was established. It is settled that binding legislative rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durhan*, 393 U.S. 268, 280–281 (1969)). It is clear from the legislative history of the FDI Act that in the shadow of the banking collapse Congress sought to restore public confidence in the banking system, promote safe and sound banking practices, eliminate runs on banks by depositors, and safeguard deposits. It did so through the mechanism of providing for a system of federal deposit insurance and creating the FDIC to administer the deposit insurance program. *FDIC* v. *Allen*, 584 F.Supp. 386 (E.D. Tenn. 1984). More recently, with the enactment of FIRREA, the FDIC was given the responsibility of administering the federal deposit insurance system for savings associations as well as banks. FIRREA placed the savings and loan insurance fund under the FDIC's administration, established an elaborate funding mechanism designed to rehabilitate the fund, and established safeguards designed to protect savings associations and SAIF. The legislative history of FIRREA is replete with statements that Congress sought to correct the problems which lead to the failure of so many savings and loan associations and the savings and loan insurance system. In some measure those failures were attributed to activities, investments and practices authorized for state savings associations; activities etc. that federally chartered entities could not do.

Administering the SAIF fund means, among other things, taking action to protect the solvency of SAIF. As the safety and soundness of SAIF is inextricably linked with the safety and soundness of SAIF member institutions and the risks those institutions undertake, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n. 6 (8th Cir. 1942), and the FDIC is directed under section 11(f) of the FDI Act to pay insured deposits whenever an insured depository institution is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f), the FDIC must preserve the solvency of SAIF in order to fulfill its mandate when called upon. Any practice by an insured institution that may jeopardize its safety and soundness, or in some other manner present a risk to SAIF, is therefore a proper target of the FDIC's regulatory oversight.[1]

Section 6 of the FDI Act (12 U.S.C. 1816) represents an additional source of authority for the regulation apart from that derived from the FDIC's general rulemaking authority. Section 6 provides the FDIC with express authority to determine what activities are appropriate for financial institutions in light of the federal deposit insurance safety net and what activities, if

[1] Any SAIF member institution that was FSLIC insured prior to the enactment of FIRREA and which fails prior to August 9, 1992 is the responsibility of the Resolution Trust Corporation ("RTC"). Funds expended in the resolution of such failures do not come from SAIF. That fact does not mean, however, that there is no need for the FDIC to act now to prevent SAIF member savings banks from engaging in the practices covered by the regulation. The ill effects associated with these investments, etc. may not necessarily result in failures in the short term but will certainly accumulate over the long term. In the meantime, imposing the restrictions should help reduce the number of failures RTC needs to resolve. This perhaps unintended "by product" of the regulation is consistent with the FDIC's statutory responsibilities as the manager of RTC. As such, it is yet another reason why the regulation is within the scope of the FDIC's authority.

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conducted by an insured institution, will pose an unacceptable risk to the funds. Before an institution receives deposit insurance the FDIC must be satisfied that the institution will exercise its corporate powers properly, that those powers are not inconsistent with the purposes for which the deposit insurance system was established, and that the institution if permitted to join the deposit insurance system will not pose an unacceptable risk to the fund. The FDIC's ability to determine what corporate powers are consistent with the purposes of the FDI Act and what powers pose a risk to the fund in essence creates a fundamental, and continuing, condition of deposit insurance. This provision of the FDI Act confers an important power and responsibility on the FDIC to assess its insurance risk and the corollary responsibility and authority to take steps to limit that risk. In doing so the FDIC is not limited to announcing its determinations on a case-by-case basis but may adopt a regulation of general applicability setting forth what powers, practices, etc. are considered to pose a risk to the fund of such magnitude as to warrant prohibiting those activities to institutions currently in the fund and conditioning entry into the fund on not engaging in such practices. *Independent Bankers Association* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979, *cert. denied*, 449 U.S. 823 (1980).

The FDIC also derives authority for the regulation from section 8 of the FDI Act (12 U.S.C. 1818). The FDIC was given the authority, and the responsibility, under section 8 of the FDI Act to ensure that banks observe safe and sound banking practices. This was done so that the FDIC might act to ensure that the banking system will function properly; that the public confidence in the banking system does not falter; and that the solvency of the deposit insurance fund is not endangered due to bank failures. Over the years the FDIC's enforcement powers have been strengthened by Congress in an ever increasing recognition that the FDIC needs strong tools to accomplish its p poses. A wide latitude of discretion was given to the FDIC "in filling in and administering the details embodied by the general standard" in the FDI Act to promote safe and sound banking practices. *Heimann*, 1168. What is and is not an unsafe or unsound banking practice and what constitutes an unsafe or unsound condition is left to the FDIC to determine in its expertise as "* * * one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of [unsafe and unsound banking] practices to the expertise of the appropriate regulatory agencies." *Gross National Bank* v. *Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978). The FDIC may do so either by order or regulation. It was established by the court in *Heimann* that the Office of the Comptroller of the Currency, which has the authority to initiate a cease-and-desist action against a national bank, is not confined to initiating individual enforcement actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice and what practices involve the violation of particular statutes or regulations.

[A] regulation giving advance notice of conduct which the Comptroller disapproves as threatening to the safety and soundness of the banks he regulates is wholly consistent with the statutory scheme * * *. His ability to forewarn by specifying and clarifying the nature and scope of his concerns will at the same time minimize the necessity for recurrent and costly investigation into the conduct of the many individual banks under his supervision. *Heimann*, 1168–1169.

That the principle in *Heimann* applies equally in the case of other federal financial regulators which were given cease-and-desist authority over the insitutions they supervise was made clear in *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558, 1563 (DC Cir. 1988). The *Lincoln* court citing *Heimann* as precedent equally applicable to the FHLBB found that the FHLBB's power to issue an order to cease and desist engaging in an unsafe and unsound banking practice carries with it the authority to announce by regulation what constitutes an unsafe or unsound banking practice. Like the Comptroller of the Currency and the FHLBB, the FDIC can rely upon the provisions of the FDI Act granting it authority to issue cease-and-desist orders (section 8(b)) and to promulgate rules with respect to such proceedings (section 8(n)) as authority for this regulation.

The proposed regulation is also authorized by section 8(a) of the FDI Act. As indicated above, section 8(a) permits the FDIC to terminate deposit insurance when it is determined that an institution is in an unsafe or unsound condition. That provision provides the authority for the adoption of substantive rules designed to protect bank safety and soundness and protect the deposit insurance fund in much the same way that section 8(b) authorizes the adoption of substantive regulations. The FDIC is permitted to announce by regulation the banking practices which it has determined to be unsafe and unsound and thereby forewarn of the circumstances in which termination of deposit insurance may be sought. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.D.C. 1987).

Finally, in addition to the authority conferred on the FDIC to adopt this regulation based on sections 6, 8 and 9 of the FDI Act, the FDIC is granted the express authority to do so under section 18(m)(3)(A) of the FDI Act (12 U.S.C. 1828(m)(3)(A)). Section 18(m)(3)(A) expressly provides that the FDIC may adopt regulations prohibiting any specific activity that poses a serious threat to SAIF. The Board of Directors has herein determined that if the restrictions imposed by this regulation are not observed a serious threat will be posed to SAIF. Furthermore, the Board of Directors has determined that receiving advance notice of a conversion of a SAIF member state savings bank will enhance the FDIC's ability to protect SAIF from serious threats and will allow for the more timely and orderly discharge of the FDIC's responsibilities to examine and supervise state savings banks.

**Regulatory Flexibility Analysis**

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the FDIC is not required to conduct a regulatory flexibility act analysis pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Compliance with the proposal will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers. It is therefore not expected that compliance with the regulation will have a disparate economic impact on institutions depending upon their size. In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement is not required.

**List of Subjects in 12 CFR Part 333**

Banks, Banking.

In consideration of the foregoing, the FDIC hereby proposes to amend part 333 of title 12 of the Code of Federal Regulations as follows:



**PART 333—EXTENSION OF CORPORATE POWERS**

1. The authority citation for part 333 is revised to read as follows:

**Authority:** 12 U.S.C. 1816, 1818, 1819, 1828(m).

2. Part 333 is amended by adding new § 333.3 to read as follows:

**§ 333.3 Savings Association Insurance Fund ("SAIF") member savings banks formerly savings associations.**

(a) *Activities, investments, prior notice on subsidiaries.* The prohibitions and application and notice requirements set forth in § 303.13(a) through § 303.13(f) of this chapter shall apply to all SAIF member state savings banks to the same extent as though the savings bank is a state savings association. Any FDIC employee who has been delegated the authority to act on notices and applications filed pursuant to § 303.13 shall have the same delegated authority to act on an application or notice filed pursuant to the requirements of this section. For the purposes of administering this section, all references in § 303.13 of this chapter to the fully phased-in capital requirements prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(5)(t)) shall be understood to refer to the capital requirements prescribed by part 325 of the FDIC's regulations.

(b) *Loans to one borrower.* No SAIF member state savings bank may make loans to any one borrower to a greater extent than a savings association is permitted under section 5(u) of HOLA (12 U.S.C. 1464(u)).

(c) *Capital.* (1) The investment in, and extensions of credit to, a subsidiary by a SAIF member state savings bank shall be deducted from the savings bank's capital to the same extent that would be required under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) in the case of a savings association.

(2) Any SAIF member state savings bank that converts from a savings association that does not meet the minimum capital requirements set out in part 325 of this chapter as of the date of its conversion must file a plan describing the means and timing by which the savings bank will achieve its minimum capital requirements. The plan must be filed with the FDIC regional director for supervision for the region in which the savings bank's principal office is located no later than 30 days after its conversion. For the purposes of § 333.3, any savings association that changes its status to a SAIF member state savings bank regardless of the manner in which the status change occurs will be considered to have converted from a savings association to a savings bank.

(d) *Affiliate transactions.* No SAIF member state savings bank may engage in any transaction with any of its affiliates if such transaction would be prohibited under section 11(a)(1) of HOLA (12 U.S.C. 1468) in the case of a savings association.

(e) *SAIF member state savings banks that converted prior to [insert effective date of regulation].* (1) Section 333.3(a) notwithstanding,

(i) Any SAIF member state savings bank that converted from a savings association prior to [insert effective date of regulation] which as of that date is engaged in a activity, or has an investment, of the type covered by § 303.13 of this chapter, may not continue the activity, or retain the investment, without the FDIC's consent. Requests for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after [insert effective date of regulation]; and

(ii) No SAIF member state savings bank that files a request for consent pursuant to § 333.3(e)(1)(i) shall be found in violation of § 333.3 pending aproval from the regional director. Consent will only be granted if the FDIC determines that the activity or the retention of the investment is consistent with § 303.13 of this chapter. If consent is denied, the bank must divest the investment in accordance with § 303.13 of this chapter. In the case of a denial of a request to continue an activity, the bank shall cease the activity as quickly as prudently possible.

(2) Any SAIF member state savings bank that converted from a savings association prior to [insert effective date of regulation] that established or acquired a subsidiary since its conversion but prior to [insert effective date of regulation], or which initiated the conduct of new activities in an existing subsidiary since such conversion but prior to [insert effective date of regulation], must file the notice required by § 303.13(f) of this chapter.

(3) Section 333.3(b) and 333.3(d) notwithstanding, a SAIF member state savings bank that coverted from a savings association prior to [insert effective date of regulation] shall not be required by this section to divest any loans made prior to that date that would have at that time been in violation of the federal loans to one borrower limit or the federal restriction on transactions with affiliates had the savings bank not converted.

(4) Any SAIF member state savings bank that converted from a savings association prior to [insert effective date of regulation] that does not meet the minimum capital requirements set out in part 325 of this chapter as of [insert effective date of regulation] must file a plan describing the means and timing by which the savings bank will achieve its minimum capital requirments. The plan must be filed with the FDIC regional director for supervision for the region in which the savings bank's principal office is located not later than 30 days after [insert effective date of regulation].

(5) Any SAIF member state savings bank that converted from a savings association prior to [insert effective date of regulation] that after its conversion but prior to such date purchased or invested in securities issued by an affiliate (other than shares issued by a subsidiary) cannot retain those securities without the FDIC's consent. Request for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after [insert effective date of regulation]. No SAIF member state savings bank that files a request for consent pursuant to this section shall be found in violation of § 333.3 pending approval from the regional director. If consent is denied, the bank must divest the securities in accordance with § 303.13 of this chapter.

(f) *Notice of conversion.* (1) It shall be unlawful for any SAIF member state savings bank to have converted from a savings association unless prior to the conversion the bank filed with the FDIC a copy of any application, notice, etc. required by statute or regulation to be filed with any other federal or state agency seeking approval for the conversion. The copy shold be sent to the FDIC regional director for supervision for the region in which the bank's principal office is located at the same time it is submitted to the appropriate agency for approval. If a conversion application was submitted prior to [insert effective date or regulation], a copy of the application should be filed with the FDIC regional director as soon as possible after [insert effective date of regulation]. If the conversion takes place, the savings bank must file a follow-up notice with the regional director not later than 10 days after the conversion confirming that the conversion did occur and the date thereof.

(2) Section 333.3(f)(1) notwithstanding, when the regional director determines that there is good cause to do so, the regional director may accept a letter notice in satisfaction of the requirement to file with the FDIC a copy of the conversion applicaiton or notice.

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(3) A SAIF member savings bank that converted from a savings association prior to (insert effective date of regulation) must notify the FDIC regional director for supervision for the region in which the bank's principal office is located not later than (insert a date 30 days from the effective date of the regulation) that the conversion took place and the date thereof.

By order of the Board of Directors. Dated at Washington, DC this 29th day of November, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90-28920 Filed 12-11-90; 8:45 am]

BILLING CODE 6714-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 5h

**[FI-91-86]**

**RIN 1545-AJ31**

## Bad Debt Reserves of Banks

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed income tax regulations relating to the repeal of bad debt reserves for large banks. The proposed regulations implement section 585(c) of the Internal Revenue Code.

**DATES:** Written comments and requests for a public hearing must be received by February 11, 1991.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-91-86), Room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Bernita L. Thigpen, telephone 202-566-3297 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in § 1.585-8. This information is required by the Internal Revenue Service in connection with making or revoking an election. This information will be used to monitor elections made by respondents. The likely respondents are banks.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total reporting burden: 625 hours.

The estimated burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

*Estimated number of respondents:* 2,500.

*Estimated number of responses per respondent:* 1.

### Background

This document provides proposed regulations on the repeal, for large banks, of the reserve method of accounting for bad debts that is allowed by section 585 of the Internal Revenue Code. These regulations reflect Code section 585(c), which was added by section 901 of the Tax Reform Act of 1986, Public Law No. 99-514, 100 Stat. 2085, 2375-2380 (1986), and amended by section 1009(a) of the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100-647, 102 Stat. 3342, 3445 (1988). When finalized, these proposed regulations will supersede related portions of 26 CFR 5h. 5, which provides temporary regulations on the time and manner of making various elections under the Tax Reform Act of 1986.

### Explanation of Provisions

New Code section 585(c) provides that large banks may not use the reserve method of section 585 for taxable years beginning after December 31, 1986. After this debate, large banks must use the specific charge-off method of accounting for bad debts. Section 585(c) also provides procedures for changing from the reserve method of section 585 to the specific charge-off method. Section 585(c)(3) provides a recapture method of change, and section 585(c)(4) provides an elective cut-off method of change.

The regulations contained in this document propose to implement section 585(c) by adding new §§ 1.585-5 through 1.585-8 and by making conforming amendments in §§ 1.585-1, 1.585-2 and 1.585-3. Proposed § 1.585-5 states the general rule of denial of bad debt reserves for large banks and provides guidance on determining whether an institution is a large bank. Proposed §§ 1.585-6, 1.585-7 and 1.585-8 provide guidance for large banks on changing from the reserve method of section 585 to the specific charge-off method. The regulations are proposed to be effective for taxable years beginning after December 31, 1986.

*Section 1.585-5 Denial of Bad Debt Reserves for Large Banks*

Proposed § 1.585-5(a) states the general rule of denial of bad debt reserves for large banks. This section also requires a large bank to change in its "disqualification year" to the specific charge-off method of accounting for bad debts. Proposed § 1.585-5(d)(1) defines the term "disqualification year" for this purpose.

Pursuant to proposed § 1.585-5(a), a large bank that maintained a bad debt reserve under section 585 for the taxable year immediately before its disqualification year must follow the rules prescribed in proposed § 1.585-6 or § 1.585-7 for changing to the specific charge-off method. However, these rules do not apply to a large bank that maintained a reserve under section 593 for the taxable year immediately before its disqualification year.

Proposed § 1.585-5(b) provides rules for determining whether an institution is a large bank. Proposed § 1.585-5(b)(1) states the $500 million test of section 585(c)(2). Under this test, a bank is a large bank if—for the current taxable year or for any preceding taxable year beginning after December 31, 1986—the bank has average total assets in excess of $500 million or the bank is a member of a parent-subsidiary controlled group that has average total assets in excess of $500 million.

Proposed § 1.585-5(c) provides rules for determining the average total assets of a bank or group for any taxable year. Under proposed § 1.585-5(c)(1), this average is based on the total assets held by the bank or group on each "report date" during the year. Proposed § 1.585-5(c)(2) defines the term "report date" for this purpose. Proposed § 1.585-5(c)(3) provides that the amount of assets held by a bank or group is the adjusted bases of the assets for Federal income tax purposes. Proposed § 1.585-5(c)(4) provides a method of estimating the adjusted tax bases of assets for this purpose.

Proposed §§ 1.585-5(b)(2) and 1.585-5(b)(3) also provide rules for determining whether an institution is a large bank. Under proposed § 1.585-5(b)(2), certain banks that receive assets from a large bank and remain under that bank's control are treated as large banks. Under proposed § 1.585-5(b)(3), certain banks that acquire substantially all of the assets of a large bank also are treated as large banks. Comments are requested on a scope of these rules.



*Section 1.585-6 Recapture Method of Change*

Proposed § 1.585-6 provides guidance on using the recapture method set forth in section 585(c)(3). Under this method, a bank includes the balance of its bad debt reserve in income over a four-year period, and recapture is suspended for any taxable years in which the bank is financially troubled.

Proposed § 1.585-6(a) provides general rules for using the recapture method. If a bank follows the rules prescribed in proposed § 1.585-6, its change to the specific charge-off method will be treated as made with the consent of the Commissioner. Proposed § 1.585-6(b) specifies the portion of the reserve to be included in income in each year of the recapture period.

Proposed § 1.585-6(c) explains the consequences of a disposition of loans by a large bank that is using the recapture method. Pursuant to proposed § 1.585-6(c)(1), such a disposition generally does not affect the bank's obligation to recapture its reserve under proposed § 1.585-6. However, if the bank ceases to engage in the business of banking before it completes recapture of its reserve, it must include the remaining amount of the reserve in income at that time. Pursuant to proposed § 1.585-6(c)(3), if a bank transfers loans to another corporation in a section 381 transaction, the acquiring corporation steps into the transferor's shoes with respect to completing the recapture method.

Proposed § 1.585-6(d) provides guidance for financially troubled banks. Proposed § 1.585-6(d)(1) requires suspension of recapture for any taxable year in which a bank is financially troubled. Proposed § 1.585-6(d)(2) allows a bank that is financially troubled for its disqualification year to elect to recapture more than 10 percent of its reserve. This election may be made for the bank's disqualification year, for the first taxable year after the disqualification year in which the bank is not financially troubled, or for any intervening taxable year. Proposed § 1.585-6(d)(3) explains when a bank is considered financially troubled.

Proposed § 1.585-6(d)(4) implements section 585(c)(3)(C), which provides relief from certain penalties for failure to pay estimated tax. Essentially this section waives the penalty for failure to pay estimated tax in cases where a bank that is financially troubled in one quarter (and therefore does not pay quarterly estimated tax attributable to recapture) is not financially troubled for the year as a whole (and thus has underpaid its estimated tax). In effect, proposed § 1.585-6(d)(4) provides that the determination of whether a bank is financially troubled, for purposes of waiving the penalty for failure to pay an installment of estimated tax, is to be made as of the last day prescribed for payment of the installment, based on the portion of the taxable year that precedes and includes that day.

*Section 1.585-7 Elective Cut-Off Method of Change*

Proposed § 1.585-7 provides guidance on using the cut-off method set forth in section 585(c)(4). Under this method, a bank continues to maintain its reserve for loans that it held when it became a large bank ("pre-disqualification loans"), but it may not deduct new additions to the reserve. If the reserve balance at the end of any taxable year exceeds the amount of the bank's outstanding pre-disqualification loans, the bank must include the amount of the excess in income for that year.

Proposed § 1.585-7(a) provides general rules for using the cut-off method. Proposed § 1.585-7(b) provides guidance on maintaining the reserve for pre-disqualification loans, and proposed § 1.585-7(c) provides guidance on including excess amounts of the reserve in income.

Proposed § 1.585-7(d) explains the consequences of a disposition of loans by a large bank that is using the cut-off method. Generally the bank reduces the balance of its outstanding pre-disqualification loans by the amount of the loans disposed of. However, proposed § 1.585-7(d)(2) provides a special rule for section 381 transactions, and proposed § 1.585-7(d)(3) addresses dispositions that are intended to change the status of pre-disqualification loans.

*Section 1.585-8 Making and Revoking Elections*

Proposed § 1.585-8 provides rules on making and revoking the elections allowed under section 585(c). These are the election to recapture more than 10 percent of a bank's bad debt reserve and the election to use the cut-off method of change instead of the recapture method.

Proposed § 1.585-8(a) provides rules on the time of making elections. Under proposed § 1.585-8(a)(1), any election under section 585(c) must be made by the later of the date that is 60 days after the proposed regulations are published as final regulations, or the due date (taking extensions into account) of the electing bank's tax return for the year for which the election is made. Proposed § 1.585-8(a)(2) waives the penalty for certain failures to pay estimated tax that result from making or revoking an election.

Proposed § 1.585-8(b) provides rules on the manner of making elections. For tax returns filed after the proposed regulations are published as final regulations, proposed § 1.585-8(b)(1) requires an election to be made by attaching a statement to the electing bank's tax return for the year for which the election is made. This section also describes the information to be included in the statement.

Proposed § 1.585-8(c) provides rules on revoking elections. An election allowed under section 585(c) may be revoked without the consent of the Commissioner on or before the final date for making the election. After this date, the election may be revoked only with the Commissioner's consent. Proposed § 1.585-8(c) also provides rules on the manner of revoking an election.

Proposed § 1.585-8(d) addresses elections relating to banks that are members of parent-subsidiary controlled groups. Such an election is to be made by the bank. An election made by one member of a group is not binding on any other member.

### Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

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**Comments and Request for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

**List of Subjects**

*26 CFR 1.581–1 through 1.601–1*

Banks, Income taxes.

*26 CFR Part 5h*

Elections under various public laws, Income taxes.

**Proposed Amendments to the Regulations**

Accordingly, title 26, chapter 1, parts 1 and 5h of the Code of Federal Regulations are proposed to be amended as follows.

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 * * * Sections 1.585–5 through 1.585–8 also issued under 26 U.S.C. 585(b)(4).

**Par. 2.** Section 1.585–1 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The seventh sentence of paragraph (a) is amended by removing "166(c) and the regulations thereunder" and inserting in lieu thereof "585 (or, for taxable years beginning before January 1, 1987, section 166(c)) and the regulations under section 166".

3. The tenth sentence of paragraph (a) is amended by removing "(a), (b), and (c)".

4. The following new sentence is added at the end of paragraph (a): "For rules relating to large banks, see §§ 1.585–5 through 1.585–8.".

5. Paragraph (b) is revised to read as follows:

**§ 1.585–1 Reserve for losses on loans of banks.**

* * * * *

(b) *Application of section*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, section 585 and this section apply to the following financial institutions:

(i) Any bank (as defined in section 581 and the regulations thereunder) other than a mutual savings bank, domestic building and loan association, or cooperative bank, to which section 593 applies, and

(ii) Any corporation to which paragraph (b)(1)(i) of this section would apply except for the fact that it is a foreign corporation and in the case of any such foreign corporation, the rules provided by section 585, this section, §§ 1.585–2, 1.585–3, and 1.585–4 apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.

(2) *Exception.* For taxable years beginning after December 31, 1986, section 585 (a) and (b) and this section do not apply to any large bank (as defined in § 1.585–5(b)). For these years, a large bank may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts.

**§ 1.585–2 [Amended]**

**Par. 3.** In § 1.585–2, the last sentence of paragraph (d)(3) is amended by adding "585(a)(1) or former section" immediately before "166(c)".

**§ 1.585–3 [Amended]**

**Par. 4.** Section 1.585–3 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The first sentence of paragraph (b) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

3. The second and third sentences of paragraph (b) are amended by removing "166(c)" and inserting in lieu thereof "585(a) (or former section 166(c))".

**Par. 5.** New §§ 1.585–5, 1.585–6, 1.585–7 and 1.585–8 are added to read as follows:

**§ 1.585–5 Denial of bad debt reserves for large banks.**

(a) *General rule.* For taxable years beginning after December 31, 1986, a large bank (as defined in paragraph (b) of this section) may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts. However, for these years, except as provided in § 1.585–7, a large bank may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part. Any large bank that maintanined a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in paragraph (d)(1) of this section) must follow the rules prescribed in § 1.585–6 or § 1.585–7 for changing from the reserve method of accounting for bad debts that is allowed by section 585, to the specific charge-off method of accounting for bad debts, in its disqualification year. However, the rules prescribed in §§ 1.585–6 and 1.585–7 do not apply to a large bank that maintained a reserve for bad debts under section 593 for the taxable year immediately preceding its disqualification year.

(b) *Large bank*—(1) *General definition.* For purposes of this section, a large bank is any institution described in § 1.585–1(b)(1) (i) or (ii) if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(i) The average total assets of the institution [determined under paragraph (c) of this section) exceed $500,000,000, or

(ii) The institution is a member of a parent-subsidiary controlled group (as defined in paragraph (d)(2) of this section) and the average total assets of the group exceed $500,000,000.

(2) *Large bank resulting from transfer by large bank where control is retained.* If a large bank (as defined in paragraph (b)(1) or (b)(3) of this section) transfers a significant portion of its assets directly or indirectly to another corporation (the "transferee") and, after the transfer, more than 50 percent (in voting power or value) of the outstanding stock of the tranferee is owned by the bank, the tranferee is treated as a large bank for any taxable year ending after the date of the transfer in which it is an institution described in § 1.585–1(b)(1) (i) or (ii). For this purpose, stock of a transferee is considered owned by a transferor bank if it is owned by any member of a parent-subsidiary controlled group (as defined in paragraph (d)(2) of this section) of which the bank is a member, by any related party within the meaning of section 267(b) or 707(b), or by any person that received the stock in a transaction to which section 355 applies.

(3) *Large bank resulting from transfer of substantially all the assets of large bank*—(i) *In general.* If a corporation acquires substantially all of the assets of a large bank (as defined in paragraph (b)(1) or (b)(2) of this section) and the acquiring corporation's method of accounting for bad debts with respect to its banking business (determined under



paragraph (b)(3)(ii) of this section) immediately after the acquisition is the method used immediately before the acquisition by the large bank whose assets are acquired, the acquiring corporation is treated as a large bank for any taxable year ending after the date of the acquisition in which it is an institution described in § 1.585–1(b)(1) (i) or (ii). See §§ 1.585–6(c)(3) and 1.585–7(d)(2) for rules on the treatment of assets acquired from large banks in section 381(a) transactions.

(ii) *Determination of method.* An acquiring corporation's method of accounting for bad debts, determined under this paragraph (b)(3)(ii), is the method determined by applying § 1.381(c)(4)–1, regardless of whether section 381(a) applies to the acquisition. In applying § 1.381(c)(4)–1 for this purpose, the following rules apply: (1) a large bank whose assets are acquired is considered to be on the specific charge-off method with respect to all of its assets immediately before the acquisition; (2) if an acquiring corporation has more than one banking business immediately after the acquisition, all such businesses are treated as one integrated business; and (3) if an acquiring corporation's banking business does not have a principal method of accounting for bad debts under § 1.381(c)(4)–1, the business's method is considered to be the method used immediately before the acquisition by the bank whose assets are acquired.

(4) *Example.* The following examples illustrate the principles of this paragraph (b):

*Example 1.* Bank M, a calendar year taxpayer, is an institution described in § 1.585–1(b)(1)(i). For its taxable year beginning on January 1, 1987, M has average total assets of $600 million. Since M's average total assets for 1987 exceed $500 million, M is a large bank for that year. Pursuant to § 1.585–5(d)(1), 1987 is M's disqualification year. If M maintained a bad debt reserve under section 585 for its immediately preceding taxable year (1986), M must change in 1987 to the specific charge-off method of accounting for bad debts, in accordance with § 1.585–6 or § 1.585–7.

*Example 2.* Assume the same facts as in Example 1. Also assume that in 1988 M disposes of a portion of its assets and, as a result, M's average total assets for taxable year 1988 fall to $400 million. M remains a large bank for taxable year 1988 and succeeding taxable years, since its average total assets for a preceding taxable year (1987) beginning after December 31, 1986, exceeded $500 million.

*Example 3.* Bank P, a calendar year taxpayer, is an institution described in § 1.585–1(b)(1)(i). P has average total assets of $300 million for its taxable year beginning on January 1, 1988. For the same year, P is a member of a parent-subsidiary controlled group (within the meaning of § 1.585–5(d)(2)) that has average total assets of $800 million. In February 1989, the group sells its stock in P to several individual investors. P is a large bank for taxable year 1988 because it is a member of a group described in § 1.585–5(b)(1)(ii) for that year. P also is a large bank for taxable year 1989 and succeeding taxable years because it was a member of a group described in § 1.585–5(b)(1)(ii) for a preceding taxable year (1988) beginning after December 31, 1986.

*Example 4.* Bank Q is a large bank, within the meaning of § 1.585–5(b)(1), for its taxable year beginning on January 1, 1988, and hence for all later years. On March 1, 1989, Q transfers $200 million of its $600 million of assets to Bank R, a newly created subsidiary, in a transaction to which section 351 applies; these assets are R's only assets. On the same day, Q then spins off R in a transaction to which section 355 applies. After these transactions, the shareholders of Q own more than 50 percent of R's outstanding stock. Although R's average total assets do not exceed $500 million, R becomes a large bank on March 1, 1989, pursuant to § 1.585–5(b)(2). These transactions do not affect Q's status as a large bank.

*Example 5.* Bank S is a large bank, within the meaning of § 1.585–5(b)(1)(ii), for its taxable year beginning on January 1, 1987. As a result, S changes to the specific charge-off method of accounting for bad debts in that year. Bank T, which is not a large bank under § 1.585–5(b)(2), uses the reserve method of accounting for bad debts. On June 30, 1988, T acquires substantially all of S's assets in a transaction to which section 381(a) does not apply. Immediately before the acquisition, S's banking business has total assets of $200 million, and T's has total assets of $250 million. To determine whether T is a large bank under § 1.585–5(b)(3), it is necessary to determine under § 1.585–5(b)(3)(ii) T's method of accounting for bad debts with respect to its banking business immediately after the acquisition. This determination requires an application of § 1.381(c)(4)–1. For this purpose, T's original and acquired banking businesses are treated as an integrated business. Applying § 1.381(c)(4)–1(c)(2)(iii), it is determined that the business's principal method of accounting for bad debts immediately after the acquisition is the reserve method. Hence, the acquisition does not cause T to become a large bank under § 1.585–5(b)(3).

(c) *Average total asset*—(1) *In general.* For purposes of paragraph (b)(1) of this section, the average total assets of an institution or group for any taxable year are determined by—

(i) Computing, for each report date (as defined in paragraph (c)(2) of this section) within the taxable year, the amount of total assets (as defined in paragraph (c)(3) of this section) held by the institution or group as of the close of business on the report date;

(ii) Adding these amounts; and

(iii) Dividing the sum of these amounts by the number of report dates within the taxable year.

(2) *Report date*—(i) *Institutions.* A report date for an institution generally is the last day of the regular period for which the institution must report to its primary Federal regulatory agency. However, an institution that is required to report to its primary Federal regulatory agency more frequently than quarterly may choose the last day of the calendar quarter as its report date, and an institution that is required to report to its primary Federal regulatory agency less frequently than quarterly must choose the last day of the calendar quarter as its report date. If an institution does not have a Federal regulatory agency, its primary State regulatory agency is considered its primary Federal regulatory agency for purposes of this paragraph (c)(2)(i). In the case of a short taxable year that does not otherwise include a report date, the last day of the taxable year is the institution's report date for the year.

(ii) *Groups.* A report date for a parent-subsidiary controlled group is the report date, determined under paragraph (c)(2)(i) of this section, for any one member of the group that is an institution described in § 1.585–1(b)(1)(i) or (ii). The same report date must be used in applying paragraph (b)(1)(ii) of this section to all members of a parent-subsidiary controlled group for a taxable year.

(iii) *Member of group for only part of taxable year.* If an institution is a member of a parent-subsidiary controlled group for only part of a taxable year, paragraph (b)(1)(ii) of this section is applied to the institution for that year on the basis of the group's average total assets for the portion of the year that the institution is a member of the group. This, only the group's report dates that are included in that portion of the year are taken into account in determining the group's average total assets for purposes of applying paragraph (b)(1)(ii) to the institution. If no report date of the group is included in that portion of the year, the first or last day of that portion of the year must be treated as the group's report date for purposes of this paragraph (c)(2)(iii).

(3) *Total assets.* The amount of total assets held by an institution or group is the amount of cash, plus the sum of the adjusted bases of all other assets, held by the institution or group. For this purpose, the adjusted basis of an asset is its basis for Federal income tax purposes, determined under sections 1012, 1016 and other applicable sections of the Internal Revenue Code. In determining the amount of total assets held by a group, any asset of a member

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of the group that is an interest in another member of the group is not to be counted.

(4) *Estimated adjustment tax bases*—(i) *In general.* The amount of the adjusted Federal income tax bases ("tax bases") of assets held on a report date may be estimated, for purposes of applying paragraph (c)(3) of this section. This estimate must be based on the adjusted bases of the assets on that date as determined by reference to the asset holder's books and records maintained for financial reporting purposes ("book bases"). The estimate must reflect any change in the ratio between the asset holder's tax and book bases of assets that occurs during the taxable year, and the estimate must assume that this change occurs ratably. If an institution or group member estimates the tax bases of assets held on any report date during a taxable year, it must do so for all assets (other than cash) held on that report date, and it must do so for all other report dates during the year. However, the tax bases of assets may not be estimated for any report date that is the first or last day of the taxable year.

(ii) *Formulas.* The estimated amount of the tax bases of assets held on any report date during a taxable year is based on the following variables: the total book bases of the assets on the report date ("B"); the asset holder's "tax/book ratio" as of the close of the preceding taxable year ("R"); and the result (whether positive or negative) obtained when R is subtracted from the asset holder's "tax/book ratio" as of the close of the current taxable year ("Y"). For purposes of determining R and Y, an asset holder's "tax/book ratio" is the ratio of (1) the total tax bases of all of the holder's assets (other than cash) to (2) the total book book bases of those assets. If an asset holder's taxable year is the calendar year and its report date is the last day of the calendar quarter, its estimated tax bases of assets held on the first three report dates of the year are determined under the following formulas:

1st Report Date = B × (R + ¼Y)
2nd Report Date = B × (R + ½Y)
3rd Report Date = B × (R + ¾Y)

For an example illustrating the application of these formulas, see Example 2 in paragraph (c)(5) of this section.

(5) *Examples.* The following examples illustrate the principles of this paragraph (c):

*Example 1.* Bank U is a fiscal year taxpayer, and its fiscal year ends on January 31. U reports to its primary Federal regulatory agency as of the last day of the calendar quarter. Thus, U's report dates under § 1.585–5(c)(2)(i) are March 31, June 30, September 30, and December 31. For its taxable year beginning on February 1, 1987, U has total assets (within the meaning of § 1.585–5(c)(3)) of $480 million on March 31, $490 million on June 30, $510 million on September 30, and $540 million on December 31. Thus, pursuant to § 1.585–5(c)(1), U's average total assets for its taxable year beginning on February 1, 1987, are $505 million.

*Example 2.* Bank W is a calendar year taxpayer, and its report date (within the meaning of § 1.585–5(c)(2)(i)) is the last day of the calendar quarter. The adjusted tax bases of all of W's assets (other than cash) are $450z on December 31, 1989, and $460z on December 31, 1990. The book bases of those assets are $500z on December 31, 1989; $520z on March 31, 1990; $540z on June 30, 1990; $560z on September 30, 1990; and $600z on December 31, 1990. Applying the formulas provided in § 1.585–5(c)(4)(ii), W's "tax/book ratio" as of the close of 1989 ("R"), is 0.9 (450z/500z). W's "tax/book ratio" as of the close of 1990 is 0.8 (460z/600z). Thus, "Y" is −0.1. The estimated adjusted tax bases of all of W's assets (other than cash) on the first three report dates of 1990 are as follows:

1st
= B × (R + ¼Y)
= $520z × [0.9 + ¼(−0.1)]
= $455z
2nd
= B × (R + ½Y)
= $540z × [0.9 + ½(−0.1)]
= $459z
3rd
= B × (R + ¾Y)
= $560z × [0.9 + ¾(−0.1)]
= $462z

(d) *Definitions.* The following definitions apply for purposes of this section and §§ 1.585–7 and 1.585–8:

(1) *Disqualifications year.* A bank's disqualification year is its first taxable year beginning after December 31, 1986, for which the bank is a large bank within the meaning of paragraph (b) of this section.

(2) *Parent-subsidiary controlled group.* A parent-subsidiary controlled group includes all of the members of a controlled group of corporations described in section 1563(a)(1). The members of such a group are determined without regard to whether any member is an "excluded member" described in section 1563(b)(2), a foreign entity, or a commercial bank.

**§ 1.585–8 Recapture method of changing from the reserve method of section 585.**

(a) *General rule.* This section applies to any large bank (as defined in § 1.585–5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585–5(d)(1)) and that does not elect the cut-off method set forth in § 1.585–7. Except as otherwise provided in paragraphs (c) and (d) of this section, any bank to which this section applies must include in income the amount of its net section 481(a) adjustment (as defined in paragraph (b)(3) of this section) over the four-year period beginning with the bank's disqualification year. If a bank follows the rules prescribed in this section, its change to the specific charge-off method of accounting for bad debts in its disqualification year will be treated as a change in accounting method that is made with the consent of the Commissioner. Paragraph (b) of this section specifies the portion of the net section 481(a) adjustment to be included in income in each year of the recapture period; paragraph (c) provides rules on the effect of disposing of loans; and paragraph (d) provides rules on the suspension of recapture by financially troubled banks.

(b) *Four-year spread of net section 481(a) adjustment*—(1) *In general.* If a bank to which this section applies does not make the election allowed by paragraph (b)(2) of this section, the bank must include in income the following portions of its section 481(a) adjustment in each year of the four-year recapture period: 10 percent in the bank's disqualification year; 20 percent in the first taxable year after its disqualification year; 30 percent in the second taxable year after its disqualification year; and 40 percent in the third taxable year after its disqualification year.

(2) *Election to include more than 10 percent in disqualification year.* A bank to which this section applies may elect to include in income, in its disqualification year, any percentage of its net section 481(a) adjustment that is large than 10 percent. Any such election must be made at the time and in the manner prescribed by § 1.585–8. If a bank makes such an election, the bank must include in income the remainder, if any, of its net section 481(a) adjustment in the following portions: ⅘ of the remainder in the first taxable year after the bank's disqualification year; ⅓ of the remainder in the second taxable year after its disqualification year; and ½ of the remainder in the third taxable year after its disqualification year. For this purpose, the remainder of a bank's net section 481(a) adjustment is any portion of the adjustment that the bank does not elect to include in income in its disqualification year.

(3) *Net section 481(1) adjustment.* For purposes of this section, the amount of a bank's net section 481(a) adjustment is the amount of the bank's reserve for bad debts as of the close of the taxable year immediately preceding its disqualification year. Since the change from the reserve method of section 585 is initiated by the taxpayer, the amount of the bank's bad debt reserve for this purpose is not reduced by amounts attributable to taxable years beginning before 1954.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

*Example 1.* Bank M is a large bank within the meaning of § 1.585–5(b). M's disqualification year is its taxable year beginning on January 1, 1989, and M maintained a bad debt reserve under section 585 for the preceding taxable year. Pursuant to § 1.585–5(a), M must change from the reserve method of accounting for bad debts to the specific charge-off method in its disqualification year. M does not elect the cut-off method set forth in § 1.585–7. Thus M must follow the recapture method set forth in this § 1.585–8. M's net section 481(a) adjustment, as defined in § 1.585–8(b)(3), is $2 million. M does not make the election allowed by § 1.585–8(b)(2). Pursuant to § 1.585–8(b)(1), M must include the following amounts in income: $200,000 in taxable year 1989; $400,000 in 1990; $600,000 in 1991; and $800,000 in 1992.

*Example 2.* Assume the same facts as in Example 1, except that M elects under § 1.585–8(b)(2) to recapture 55 percent of its net section 481(a) adjustment in its disqualification year. Pursuant to § 1.585–8(b)(2), M must include the following amounts in income: $1,100,000 in taxable year 1989; $200,000 in 1990; $300,000 in 1991; and $400,000 in 1992.

(c) *Effect of disposing of loans*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, if a bank to which this section applies sells or otherwise disposes of any of its outstanding loans on or after the first day of its disqualification year, the disposition does not affect the bank's obligation under this section to include in income the amount of its net section 481(a) adjustment, and the disposition does not affect the amount of this adjustment.

(2) *Cessation of banking business.* If a bank to which this section applies ceases to engage in the business of banking before it is otherwise required to include in income the full amount of its net section 481(a) adjustment, the bank must include in income the remaining amount of the adjustment in the taxable year in which it ceases to engage in the business of banking. For this purpose, a bank is not considered to have ceased engaging in the business of banking if the cessation is the result of a transaction to which section 381(a) applies.

(3) *Section 318 transactions.* If a bank to which this section applies transfers outstanding loans to another corporation on or after the first day of the bank's disqualification year (and before it has included in income the full amount of its net section 481(a) adjustment) in a transaction to which section 381(a) applies, the acquiring corporation steps into the shoes of the transferor with respect to using the recapture method prescribed in this § 1.585–8. The unrecaptured balance of the transferor's net section 481(a) adjustment carries over in the transaction to the acquiring corporation, and this corporation must complete the four-year recapture procedure begun by the transferor. In the section 381(a) transaction, the acquiring corporation assumes all of the transferor's rights and obligations under paragraph (b) of this section. However, if an acquiring corporation that is not a large bank (within the meaning of § 1.585–5(b)) establishing a bad debt reserve for loans received in the section 381(a) transaction, the section 481(a) adjustment carried over in the transaction is at least partially offset by a new negative section 481(a) adjustment attributable to the reserve. See § 1.381(c)(4)–1.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c):

*Example 1.* Bank P is a bank to which this § 1.585–8 applies. P's disqualification year is its taxable year beginning on January 1, 1989, and P recaptures 10 percent of its net section 481(a) adjustment in that year pursuant to § 1.585–8(b)(1). In 1990 P disposes of a portion of its loan portfolio in a transaction to which section 381(a) does not apply, and P continues to engage in the business of banking. Pursuant to § 1.585–8(c)(1), the disposition does not affect P's obligation under § 1.585–8(b)(1) to recapture the remainder of its net section 481(a) adjustment in 1990, 1991 and 1992. Nor does the disposition affect the amount of the adjustment.

*Example 2.* Assume the same facts as in Example 1, except that P ceases to engage in the business of banking in 1990, and this cessation is not the result of a transaction to which section 381(a) applies. Pursuant to § 1.585–8(c)(2), in 1990 P must include in income the remaining 90 percent of its net section 481(a) adjustment.

*Example 3.* Assume the same facts as in Example 1, except that P's 1990 disposition of loans is a transaction to which section 381(a) applies. Thus, in the transaction, P transfers substantially all of its loans to an acquiring corporation (Q). Q may be treated as a large bank, pursuant to § 1.585–5(b)(2) or § 1.585–5(b)(3), for taxable years ending after the date of the transaction. If so, and if Q was on the reserve method of accounting immediately before the section 381(a) transaction, it must change to the specific charge-off method for all of its loans. Regardless of whether Q is a large bank, pursuant to § 1.585–8(c)(3) Q steps into P's shoes with respect to using the recapture method prescribed in § 1.585–8. The unrecaptured balance of P's net section 481(a) adjustment carries over to Q in the section 381(a) transaction, and Q must complete the four-year recapture procedure begun by P. However, if Q is not a large bank and Q establishes a bad debt reserve for loans received in the transaction, the section 481(a) adjustment that is carried over is at least partially offset by a new negative section 481(a) adjustment.

(d) *Suspension of recapture by financially troubled banks*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for any taxable year shall not include any amount in income under paragraphs (a) and (b) of this section for that taxable year and must disregard that taxable year in applying paragraphs (a) and (b) to other taxable years. See paragraph (d)(4) of this section for rules on determining estimated tax payments of financially troubled banks, and see paragraph (d)(5) for examples illustrating this paragraph (d).

(2) *Election to recapture.* A bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for its disqualification year may elect to include in income, in one taxable year, any percentage of its net section 481(a) adjustment that is greater than 10 percent. This election may be made for the bank's disqualification year, for the first taxable year after the disqualification year in which the bank is not financially troubled (within the meaning of paragraph (d)(3) of this section), or for any intervening taxable year. Any such election must be made at the time and in the manner prescribed by § 1.585–8. A bank that makes this election shall include an amount in income under paragraphs (a) and (b) of this section in the year for which the election is made ("election year") and shall not disregard this year in applying paragraphs (a) and (b) to other taxable years. Such a bank must follow the rules of paragraph (b)(2) of this section in applying paragraph (b) to later taxable years, treating the election year as the disqualification year for purposes of applying paragraph (b)(2). However, if the bank is financially troubled for any year after its election year, the bank shall not include any amount in income under paragraphs (a) and (b) of this section for the later year and must disregard the later year in applying paragraphs (a) and (b) to other taxable years.

(3) *Definition of financially troubled*—(i) *In general.* For purposes of this section, a bank is considered financially

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troubled for any taxable year if the bank's nonperforming loan percentage for that year exceeds 75 percent. For this purpose, a bank's nonperforming loan percentage is the percentage determined by dividing (1) the sum of the outstanding balances of the bank's nonperforming loans (as defined in paragraph (d)(3)(iii) of this section) as of the close of each quarter of the taxable year, by (2) the sum of the amounts of the bank's equity (as defined in paragraph (d)(3)(iv) of this section) as of the close of each such quarter. If a taxable year consists of less than 3 months, the last day of the taxable year is treated as the last day of a quarter. In lieu of determining its nonperforming loan percentage on the basis of loans and equity as of the close of each taxable quarter, a bank may, for all years, determine this percentage on the basis of loans and equity as of the close of each report date (as defined in § 1.585–5(c)(2)). In the case of a bank that is a foreign corporation, all nonperforming loans and equity of the bank are taken into account, including loans and equity that are not effectively connected with the conduct of a banking business within the United States.

(ii) *Parent-subsidiary controlled groups.* If a bank is a member of a parent-subsidiary controlled group (as defined in § 1.585–5(d)(2)) for the taxable year, the nonperforming loans and the equity of all members of the group that are financial institutions within the meaning of section 265(b)(5) (or comparable foreign financial institutions) are treated as the nonperforming loans and the equity of the bank for purposes of paragraph (d)(3)(i). However, any asset of a member financial institution that represents an equity interest in another member financial institution is not to be counted. Likewise, any nonperforming loan of a member financial institution that is a loan to another member financial institution is not to be counted.

(iii) *Nonperforming loan.* For purposes of this section, a nonperforming loan is any loan that is considered to be nonperforming by the holder's primary Federal regulatory agency (or, if the holder does not have a Federal regulatory agency, any loan that would be considered nonperforming under the standards prescribed by the Federal Financial Institutions Examination Council).

(iv) *Equity.* For purposes of this section, the equity of a bank or other financial institution is its equity (*i.e.*, assets minus liabilities) as determined by the institution's primary Federal regulatory agency (or, if the institution does not have a Federal regulatory agency, by its primary State regulatory agency). The balance in a reserve for bad debts is not treated as equity.

(4) *Estimated tax payments of financially troubled banks.* If a bank is financially troubled (within the meaning of paragraph (d)(3) of this section) for any quarter of a taxable year, it must be determined, for purposes of applying section 6655(e)(2)(A)(i) with respect to the installment of estimated tax for the quarter (and any later quarter of the taxable year), whether the bank is required to include an amount in income under paragraphs (a) and (b) of this section for the taxable year. This determination is to be made as of the last day prescribed for payment of the installment, based on the portion of the taxable year that precedes and includes that day. That is, the determination is to be made as if the last day prescribed for payment were the last day of the taxable year.

(5) *Examples.* The following examples illustrate the principles of this paragraph (d):

*Example 1.* Bank R is a bank to which this § 1.585–6 applies. R's disqualification year is its taxable year beginning on January 1, 1987. R is not financially troubled (within the meaning of § 1.585–6(d)(3)) for taxable year 1987 or for any taxable year after 1989, but it is financially troubled for taxable years 1988 and 1989. Since R is not financially troubled for its disqualification year, R must include an amount in income under § 1.585–6 (a) and (b) for that year (taxable year 1987). R may make the election allowed by § 1.585–6(b)(2) for that year. Since R is financially troubled for taxable years 1988 and 1989, pursuant to § 1.585–6(d)(1) R does not include any amount in income under § 1.585–6 (a) and (b) for these years, and it treats taxable years 1990, 1991 and 1992 as the first, second and third taxable years after its disqualification year for purposes of applying § 1.585–6 (a) and (b).

*Example 2.* Assume the same facts as in Example 1, except that R is financially troubled for taxable year 1987 (its disqualification year). R may make the election allowed by § 1.585–6(d)(2) for 1987 (the disqualification year), for 1990 (the first year after the disqualification year in which R is not financially troubled), or for 1988 or 1989 (the intervening years). R elects to include 60 percent of its net section 481(a) adjustment in income in 1987. Thus the remainder of the adjustment, for purposes of applying the rules of § 1.585–6(b)(2), is 40 percent. R must include in income ⅝ of the remainder in 1990, ⅓ of the remainder in 1991, and ⅛ of the remainder in 1992.

**§ 1.585–7 Elective cut-off method of changing from the reserve method of section 585.**

(a) *General rule.* Any large bank (as defined in § 1.585–5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585–5(d)(1)) may elect to use the cut-off method set forth in this section. Any such election must be made at the time and in the manner prescribed by § 1.585–6. If a bank makes this election, the bank must maintain its bad debt reserve for its pre-disqualification loans, as prescribed in paragraph (b) of this section, and the bank must include in income any excess balance in this reserve, as required by paragraph (c) of this section. The bank may not deduct, for its disqualification year or any subsequent taxable year, any amount allowed under section 166(a) for pre-disqualification loans (as defined in paragraph (b)(2) of this section) that become worthless in whole or in part, except as allowed by paragraph (b)(1) of this section. However, except as provided in paragraph (d)(3) of this section, the bank may deduct, for its disqualification year or any subsequent taxable year, amounts allowed under section 166(a) for loans that the bank originates or acquires on or after the first day of its disqualification year and that become worthless in whole or in part. If a bank makes the election allowed by this paragraph (a), its change to the specific charge-off method of accounting for bad debts in its disqualification year is not a change in accounting method to which the provisions of section 481 apply.

(b) *Maintaining reserve for pre-disqualification loans*—(1) *In general.* A bank that makes the election allowed by paragraph (a) of this section must maintain its bad debt reserve for its pre-disqualification loans (as defined in paragraph (b)(2) of this section). Except as provided in paragraph (d)(3) of this section, the bank must charge against the reserve the amount of any losses resulting from these loans (including losses resulting from the sale or other disposition of these loans), and the bank must add to the reserve the amount of recoveries with respect to these loans. In general, the reserve must be maintained in the manner provided by former section 166(c) of the Internal Revenue Code and the regulations thereunder. However, after the balance in the reserve is reduced to zero, the bank is to account for any losses and recoveries with respect to outstanding pre-disqualification loans under the specific charge-off method of accounting for bad debts, as if the bank always had accounted for these loans under this method. See paragraph (d)(2) of this section for rules on the obligation to maintain a reserve under this paragraph (b) when a bank transfers loans in a section 381 transaction.



(2) *Definition of pre-disqualification loans.* For purposes of this section, a pre-disqualification loan of a bank is any loan that the bank held on the last day of its taxable year immediately preceding its disqualification year (as defined in § 1.585–5(d)(1)).

(c) *Amount to be included in income when reserve balance exceeds loan balance.* If, as of the close of any taxable year, the balance in a bank's reserve that is maintained under paragraph (b) of this section exceeds the balance of the bank's outstanding pre-disqualification loans, the bank must include in income the amount of the excess for the taxable year. The balance in the reserve is then reduced by the amount of this excess. See paragraph (d) of this section for rules on the application of this paragraph (c) when a bank disposes of loans.

(d) *Effect of disposing of loans*—(1) *In general.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, if a bank that makes the election allowed by paragraph (a) of this section sells or otherwise disposes of any of its outstanding pre-disqualification loans, the bank is to reduce the balance of its outstanding pre-disqualification loans by the amount of the loans disposed of, for purposes of applying paragraph (c) of this section.

(2) *Section 381 transactions.* If a bank that makes the election allowed by paragraph (a) of this section transfers outstanding pre-disqualification loans to another corporation in a transaction to which section 381(a) applies, the acquiring corporation steps into the shoes of the transferor with respect to using the cut-off method of change, unless the acquiring corporation is not a large bank (within the meaning of § 1.585–5(b)) and uses a reserve method of accounting for bad debts attributable to the pre-disqualification loans received in the transaction. If an acquiring corporation steps into the transferor's shoes with respect to using the cut-off method, the transferor's bad debt reserve immediately before the section 381(a) transaction carries over to the acquiring corporation, and this corporation must complete the cut-off method begun by the transferor. For purposes of completing the transferor's cut-off method, the acquiring corporations' balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loans that it receives in the transaction, and the acquiring corporation assumes all of the transferor's rights and obligations under this section. See § 1.381(c)(4)–1.

(3) *Dispositions intended to change the status of pre-disqualification loans.* This paragraph (d)(3) applies if a bank that makes the election allowed by paragraph (a) of this section sells, exchanges, or otherwise disposes of a significant amount of its pre-disqualification loans (as defined in paragraph (b)(2) of this section) and the transaction has as one of its principal purposes the avoidance of the provisions of this section by increasing the amount of loans for which deductions are allowable under the specific charge-off method. If this paragraph (d)(3) applies, the District Director may disregard the disposition for purposes of paragraphs (b)(1) and (d)(1) of this section or treat the replacement loans as pre-disqualification loans. If loans are so treated as pre-disqualification loans, no deductions are allowable under the specific charge-off method for the loans, except as provided in paragraph (b)(1) of this section, and the disposition that causes the loans to be so treated may be disregarded for purposes of paragraphs (b)(1) and (d)(1) of this section. For purposes of paragraph (d)(3) if a bank sells pre-disqualification loans and uses the proceeds of the sale to originate new loans, this paragraph (d)(3) does not apply to the transaction.

(e) *Examples.* The following examples illustrate the principles of this section:

*Example 1.* Bank M is a bank that properly elects to use the cut-off method set forth in this § 1.585–7. M's disqualification year is its taxable year beginning on January 1, 1987. On December 31, 1986, M had outstanding loans of $700 million (pre-disqualification loans), and the balance in its bad debt reserve was $10 million. M must maintain its reserve for its pre-disqualification loans in accordance with § 1.585–7(b), and it may not deduct any addition to this reserve for taxable year 1987 or any later year. For these years, M may deduct amounts allowed under section 166(a) for loans that it originates or acquires after December 31, 1986, and that become worthless in whole or in part.

*Example 2.* Assume the same facts as in Example 1. Also assume that in 1987 M collects $150 million of its pre-disqualification loans, M determines that $2 million of its pre-disqualification loans are worthless, and M recovers $1 million of pre-disqualification loans that it had previously charged against the reserve as worthless. On December 31, 1987, the balance in M's bad debt reserve is $9 million ($10 million − $2 million + $1 million), and the balance of its outstanding pre-disqualification loans is $548 million ($700 million − $150 million − $2 million).

*Example 3.* Assume the same facts as in Examples 1 and 2. Also assume that on December 31, 1990, the balance in M's bad debt reserve is $5 million and the balance of its outstanding pre-disqualification loans is $25 million. In 1991 M collects $21 million of its outstanding pre-disqualification loans and determines that $1million of its outstanding pre-disqualification loans are worthless. Thus, on December 31, 1991, the balance in M's bad debt reserve is $4 million ($5 million − $1 million), and the balance of its outstanding pre-disqualification loans is $3 million ($25 million − $21 million − $1 million). Accordingly, M must include $1 million ($4 million − $3 million) in income in taxable year 1991, pursuant to § 1.585–7(c). On January 1, 1992, the balance in M's reserve is $3 million ($3 million − $1 million).

*Example 4.* Assume the same facts as in Examples 1 through 3. Also assume that in 1992 M transfers substantially all of its assets to another corporation (N) in a transaction to which section 381(a) applies, and N is treated as a large bank under § 1.585–5(b)(3) for taxable years ending after the date of the transaction. Pursuant to § 1.585–7(d)(2), N step into M's shoes with respect to using the cut-off method. M's bad debt reserve immediately before the section 381(a) transaction carries over to N, and N must complete the cut-off procedure begun by M. For this purpose, N's balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loan that it receives from M.

**§ 1.585–8 Rules for making and revoking elections under §§ 1.585–6 and 1.585–7.**

(a) *Time of making elections*—(1) *In general.* Any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) must be on or before the later of—

(i) [*Insert date that is 60 days after this regulation is published as a final regulation in the* **Federal Register**], or

(ii) The due date (taking extensions into account) of the electing bank's original tax return for its disqualification year (as defined in § 1.585–5(d)(1)) or, for elections under § 1.585–6(d)(2), the year for which the election is made.

(2) *No extension of time for payment.* Payments of tax due must be made in accordance with Chapter 62 of the Internal Revenue Code. However, if an election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) is made or revoked on or before [*Insert date that is 60 days after this regulation is published as a final regulation in the* **Federal Register**] and the making or revoking of the election results in an underpayment of estimated tax (within the meaning of section 6655(a)) with respect to an installment of estimated tax due on or before the date the election was so made or revoked, no addition to tax will be imposed under section 6655(a) with respect to the amount of the underpayment attributable to the making or revoking of the election.

(b) *Manner of making elections*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, an electing bank must make any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) by attaching a statement to its tax return (or amended return) for its

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disqualification year or, for elections under § 1.585–6(d)(2), the year for which the election is made. This statement must contain the following information:

(i) The name, address and taxpayer identification number of the electing bank;

(ii) The nature of the election being made (*i.e.*, whether the election is to include in income more than 10 percent of the bank's net section 481(a) adjustment under § 1.585–6 (b)(2) or (d)(2) or to use the cut-off method under § 1.585–7); and

(iii) If the election is under § 1.585–6 (b)(2) or (d)(2), the percentage being elected.

(2) *Certain tax returns filed before [Insert date that this regulation is published as a final regulation in the* **Federal Register***].* A bank is deemed to have made an election under § 1.585–6 (b)(2) or (d)(2) if the bank evidences its intent to make an election under section 585(c)(3)(A)(iii)(I) or section 585(c)(3)(B)(ii) for its disqualification year (or, for elections under § 1.585–6(d)(2), the election year), by designating a specific recapture amount on its tax return or amended return for this year (or attaching a statement in accordance with § 5h.5(a)(3)(i)), and this return is filed before [*Insert date that this regulation is published as a final regulation in the* **Federal Register**]. A bank is deemed to have made an election under § 1.585–7(a) if the bank evidences its intent to make an election under section 585(c)(4) for its disqualification year by attaching a statement in accordance with § 5h.5(a)(3)(i) to its tax return or amended return for this year, and this return is filed before [*Insert date that this regulation is published as a final regulation in the* **Federal Register**].

(c) *Revocation of elections*—(1) *On or before final date for making election.* An election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) may be revoked without the consent of the Commissioner on or before the final date prescribed by paragraph (a)(1) of this section for making the election. To do so, the bank that made the election must file an amended tax return for its disqualification year (or, for elections under § 1.585–6(d)(2), the year for which the election was made) and attach a statement that—

(i) Includes the bank's name, address and taxpayer identification number;

(ii) Identifies and withdraws the previous election; and

(iii) If the bank is making a new election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a), contains the information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(2) *After final date for making election.* An election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) may be revoked only with the consent of the Commissioner after the final date prescribed by paragraph (a)(1) of this section for making the election. The Commissioner will grant this consent only in extraordinary circumstances, such as circumstances that would justify granting an extension of time under § 1.9100–1 for making an election. See Revenue Procedure 79–63, 1979–2 C.B. 578, for factors considered in applying § 1.9100–1.

(d) *Elections by banks that are members of parent-subsidiary controlled groups.* In the case of a bank that is a member of a parent-subsidiary controlled group (as defined in § 1.585–5(d)(2)), any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) with respect to the bank is to be made separately by the bank. An election made by one member of such a group is not binding on any other member of the group.

**PART 5h—[AMENDED]**

**Paragraph 6.** The authority for Part 5h is amended by removing the following citations: "585(c)(3)(A)(iii)(I), 585(c)(4),".

**§ 5h.5 [Amended]**

**Par. 7.** Section 5h.5 is amended as follows:

1. The table in paragraph (a)(1) is amended by removing each line, from each column, that relates to section 901(a) of the Act and to section 585(c)(3)(A)(iii)(I) or 585(c)(4) of the Code.

2. Paragraph (a)(4)(ii) is amended by removing "901(a) (Code sections 585(c)(3)(B)(ii) and 585(c)(4)),".

**Fred T. Goldberg, Jr.,**

*Commissioner of Internal Revenue.*

[FR Doc. 90–29011 Filed 12–11–90; 8:45 am]

BILLING CODE 4830–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 90–592, RM–7506]**

### Radio Broadcasting Services; Mountain Home, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Mountain Home Radio Station, licensee of Station DPFM(FM), Mountain Home Arkansas, seeking the substitution of Channel 288C2 for Channel 288A and modification of its license accordingly. Coordinates for this proposal are 36–20–55 and 92–24–01.

**DATES:** Comments must be filed on or before January 28, 1991; and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100—17th Street, NW., Suite 900, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–598, adopted November 15, 190 and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29123 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M



### 47 CFR Part 73

**[MM Docket No. 90–582, RM–7074]**

### Radio Broadcasting Services; Oak Grove and Bastrop, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposal rule.

**SUMMARY:** The Communication requests comments on a petition by 96.7 FM Radio, Inc., licensee of Station KWCL(FM), Oak Grove, Louisiana, requesting substitution of Channel 244C2 for Channel 244C3 at Oak Grove and the modification of its license to specify operation on the higher channel. In order to accommodate this request, petitioner also requests that Channel 248A be substituted for proposed Channel 247A at Bastrop, Louisiana. The coordinates for Channel 244C2 at Oak Grove are 32–41–25 and 91–36–41, with a site restriction of 28.4 kilometers (17.6 miles), at petitioner's request site. The coordinates for Channel 248A at Bastrop are 32–46–48 and 91–54–48.

**DATES:** Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner's counsel, as follows: Denise B. Moline, Esq., McCabe & Allen, P.O. Box 2126, Manassas Park, Virginia 22111.

**FOR FURTHER INFORMATION CONTACT:** Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–592, adopted October 31, 1990 and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of this public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29006 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 90–594, RM–7250]**

### Radio Broadcasting Services; Oakdale, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Oakdale Limited Partnership, licensee of Station KICR–FM, Oakdale, Louisiana, seeking the substitution of Channel 254C1 for Channel 254C2 and modification of its license accordingly. Coordinates for this proposal are 30–57–47 and 92–35–02.

**DATES:** Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901—15th Street, NW., suite 1100, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–594, adopted November 8, 1990, and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29008 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 90–593, RM–7536]**

### Radio Broadcasting Services; Boyne City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Biederman Investments, Inc., proposing the substitution of Channel 228C2 for Channel 228A at Boyne City, Michigan, and modification of the license for Station WCLX(FM) to specify the higher class channel. Canadian concurrence will be requested for this allotment at coordinates 45–10–44 and 85–05–42.

**DATES:** Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis J. Kelly, Cordon and Kelly, Second Floor, 1920 N Street, NW., Washington, DC 20036, (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–593, adopted November 8, 1990, and

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released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commision's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29007 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 90–595, RM–7539]**

**Radio Broadcasting Services; North East, Pennsylvania, and Olean, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Rambaldo Communications, Inc., seeking the substitution of Channel 285B1 for Channel 285A at North East, Pennsylvania, and the modification of the license of Station WRKT–FM to specify operation on the higher power channel. To accommodate the allotment at North East, Rambaldo Communications also requests the substitution of Channel 268A for Channel 285A at Olean, New York, and the modification of Station WMXO's license to specify the alternate Class A channel. Channel 285B1 can be allotted to North East in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 2.9 kilometers (1.8 miles) east to avoid a short-spacing to Stations WZPR, Channel 282B, Meadville, Pennsylvania, and WHOT–FM, Channel 286B, Youngstown, Ohio. The coordinates for Channel 285B1 at North East are North Latitude 42–12–30 and West Longitude 79–48–00. Channel 268A can be allotted to Olean in compliance with the Commission's minimum distance separation requirements and can be used at Station WMXO's licensed transmitter site. The coordinates for Channel 268A at Olean are North Latitude 42–06–24 and West Longitude 78–23–28. Canadian concurrence is required since North East and Olean are each located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joel Bernstein, Esq., Fletcher, Herald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036–2679 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–595, adopted November 16, 1990, and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29009 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 90–597, RM–7357]**

**Radio Broadcasting Services; Ingram, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Richman Phipps requesting the allotment of Channel 296A to Ingram, Texas, as that community's first local broadcast service. Since Ingram is located with 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested. The coordinates for Channel 296A are 30–05–10 and 99–15–27.

**DATES:** Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richman Phipps, 836G Sidney Baker, Kerrville, Texas 78028 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–597, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.



Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29124 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 90–596, RM–7454]**

**Radio Broadcasting Services; Dayton, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Peanut Whistle Broadcasting ("petitioner"), permittee of Station KZHR(FM), Channel 223A, Dayton, Washington, seeking the substitution of Channel 223C1 for 223A at Dayton, Washington, and modification of its construction permit to specify operation on the higher class channel. The coordinates for the proposed allotment are 46–19–14 and 117–58–46. Since Dayton is located with 320 kilometers (200 miles) of the Canadian border, we have requested the concurrence of the Canadian government in this allotment.

**DATES:** Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd, Simpson & Miller, P.C., 1233 20th Street, NW., Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–596, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037. .

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissable *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29125 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

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# Notices

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

**AGENCY:** ACTION.

**ACTION:** SSI-adjusted income eligibility levels for the Foster Grandparent and Senior Companion Program.

**SUMMARY:** This Notice adjusts the 1990 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in the Federal Register, March 20, 1990 (55 FR 54).

This adjustment is based on the 1990 state supplementations to Supplemental Security Income (SSI) disseminated by the Social Security Administration in June 1990. The revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplementation to SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose income met the eligibility levels published on March 20, 1990, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this Notice shall apply to persons enrolling in the Programs on or after the effective date.

Schedules of Income Eligibility Level: Foster Grandparent Program and Senior Companion Program.

FOR THE FOLLOWING SSI-ADJUSTED STATES

| State | One | Two | Three | Four | Five | Six | Seven | Eight |
|---|---|---|---|---|---|---|---|---|
| AK | $11,815 | $16,530 | $19,010 | $21,890 | $24,370 | $27,050 | $29,730 | $32,410 |
| CA | 10,025 | 17,110 | 19,250 | 21,390 | 23,530 | 25,670 | 27,810 | 29,950 |
| CO | 7,850 | 12,130 | 14,270 | 16,410 | 18,550 | 21,225 | 23,900 | 26,575 |
| CT | 10,675 | 14,720 | 16,660 | 19,000 | 21,140 | 23,280 | 25,420 | 27,560 |
| MA | 7,990 | 10,840 | 13,200 | 15,875 | 18,550 | 21,225 | 23,900 | 26,575 |

(For household units with more than eight members, add $2,660 in Alaska, add $2,140 in California and Connecticut, and add $2,675 in Colorado and Massachusetts for each additional member.)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the March 20, 1990 Federal Register and remain in effect. The levels apply to all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Colorado, Connecticut, and Massachusetts.

HOUSEHOLD UNITS OF

| States | One | Two | Three |
|---|---|---|---|
| All | $7,850 | $10,525 | $13,200 |
| Hawaii | 9,040 | 12,115 | 15,190 |

(For household units with more than three members, add $2,675 in "All" states and $3,075 in Hawaii for each additional member.)

**EFFECTIVE DATES:** December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Rey Tejada, Program Officer, Foster Grandparent Program 1100 Vermont Avenue, NW., Suite 6100—Washington, DC 20525 or telephone (202) 634–9349.

**SUPPLEMENTARY INFORMATION:** ACTION programs are authorized pursuant to section 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended Public Law 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Signed in Washington, DC on December 4, 1990.

Jane A. Kenny,
*Director.*

[FR Doc. 90–29090 Filed 12–11–90; 8:45 am]
BILLING CODE 6050–28–M

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### Housing Preservation Grants

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates.

**DATES:** FmHA hereby announces that it will begin receiving preapplications on December 17, 1990. The closing date for acceptance by FmHA of preapplications is March 18, 1991. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before the closing date.

**ADDRESSES:** Submit preapplications to FmHA field offices; applicants must contact their State FmHA Office for this information.

**FOR FURTHER INFORMATION CONTACT:** Sue M. Harris, Senior Loan Officer, Multi-family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1660 (this is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entites.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.443–Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR part 1944, §§ 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1989 and FY 1990 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for 1 year proposal. For FY 1991, $23,000,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds.

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: December 5, 1990.

Leigh Nalley,
*Acting Administrator, Farmers Home Administration.*

[FR Doc. 90–29024 Filed 12–11–90; 8:45 am]
BILLING CODE 3410–07–M



## Forest Service

### Environmental Impact Statement and Land and Resource Management Plan; Six Rivers National Forest; Del Norte, Humboldt, Siskiyou, and Trinity Counties, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to revise a Draft Environmental Impact Statement.

**SUMMARY:** The Six Rivers National Forest is withdrawing its existing Draft Environmental Impact Statement (EIS) and Land and Resource Management Plan (LRMP) and will reissue a new draft EIS and LRMP. This action is the result of three major changes affecting the Forest: (1) The June 22, 1990 listing of the northern spotted owl as threatened by the U.S. Fish and Wildlife Service; (2) The Secretary's announcement published in the Oct. 3, 1990 Federal Register of the decision to vacate the Spotted Owl Habitat Area (SOHA) network requirement and require that the Forest not be inconsistent with the Interagency Scientific Committee (ISC) recommendations; and (3) The Nov. 16, 1990 Presidental signature on legislation creating the Smith River National Recreation Area with the Six Rivers National Forest. The agency invites written comments and suggestions on the scope of the analysis in addition to that already received as a result of previous public participation activities.

**DATES:** Comments concerning the scope of the analysis must be received on or before January 11, 1991.

**ADDRESSES:** Send written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Six Rivers National Forest, 500 5th Street, Eureka, California 95501.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and Environmental Impact Statement to Gail Grifantini, Forest Planner, phone (707) 442–1721.

**SUPPLEMENTARY INFORMATION:** An Environmental Impact Statement (EIS) and Land and Resource Management Plan (LRMP) are required by section 6. of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600–1614). The Draft EIS will identify and present a range alternatives for management of the Six Rivers National Forest for the next ten years, including: a "no action" alternative and one alternative which will display a program reflective of the 1990 RPA program. Other alternatives will be designed to reflect different management issues from public scoping. The LRMP will present the preferred alternative for management of the Six Rivers, including specific management direction and standards and guidelines. The Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be expecially imporant at several points during the analysis. The first point is during the scoping process (40 CRF 1501.7). As discussed above, public comment will be used to develop alternatives for the Draft EIS. The scoping process will include:

1. Identifying potential issues in addition to those (listed below) developed in the previous DEIS:
   a. Timber Harvest Levels.
   b. Management of Blue Creek.
   c. Fisheries Habitat Improvement Needs.
   d. Use of Herbicides.
   e. Native American Cultural Activities.
   f. Recreation Uses.
   g. Relationship of Activities on Private Land.
   h. Soil Productivity.
   i. Water Quality.
   j. Wildlife.
   k. Smith River Watershed.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues.
4. Identifying potential environmental effects of the plan and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1991. At the time, EPA will publish a notice of availability of the Draft EIS in the Federal Register. The comment period on the Draft EIS will be 90 days from the date the EPA publishes the notice of availability in the Federal Register. Public comment on the Draft EIS will be used if necessary to make changes in a Final EIS.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022(9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and

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objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement and Land and Resource Management Plan. The Final EIS is scheduled to be completed by September 1992. In the Final EIS the Forest Service is required to respond to the comments, responses, environmental consequences discussed in the DEIS and Plan, and applicable laws, regulation, and policies in making a decision regarding this Plan. The responsible official will document the decision and reasons for the decision; in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: November 30, 1990.

**James L. Davis, Jr.,**

*Forest Supervisor.*

[FR Doc. 90-29065 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-11-M

## Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Targhee National Forest will prepare an environmental impact statement which will analyze a proposal by Grand Targhee Ski Resort for a new Master Development Plan. The concept plan proposes further development of the existing resort to a four-season ski resort facility of a regional-destination scale of development. The resort's proposed Master Plan concept outlines significant additional development of resort facilities within the existing permit area. A slight increase in the permit area is also proposed to allow development of private, residential lots on land which would be acquired by land exchange.

**DATE:** Comments concerning the scope of the analysis should be received in writing by February 15, 1991.

**ADDRESSES:** Send written comments to: James L. Caswell, Forest Supervisor; Targhee National Forest; PO Box 208; St. Anthony, Idaho, 83445.

**FOR FURTHER INFORMATION CONTACT:** Lynn Ballard, Project Coordinator; Teton Basin Ranger District; PO Box 777; Driggs, Idaho, 83422; (208-354-2431).

**SUPPLEMENTARY INFORMATION:** The Draft Environmental Impact Statement will analyze a proposal by Grand Targhee Resort, Inc. for a new, conceptual Master Development Plan to replace the current plan which was approved in 1973. The conceptual Development Plan recently submitted by Grand Targhee describes proposed, additional development of the existing facilities to create a regional-destination, four-season ski resort. The concept Plan would allow development of a total of eight ski lifts; parking; and convention and support/lodging facilities for 6,490 skiers-at-one-time (SAOT). The present capacity of the resort is approximately 2,000 SAOT. The Master Plan proposal recommends phased development (4 additional phases) within the financial capability of the resort over the next 5-10 year period, or possibly longer.

The analysis will address the scope of development (size in permitted area, facilities, and number of SAOT) and required permit terms and tenure. The analysis would also address a variety of issues and alternative development concepts which would include the potential of land exchange for portions of the existing base area lands for the resort. An alternative which reflects the present operation will also be considered.

Public meetings will be held throughout the analysis, with initial public scoping meetings to be held in Jackson, Wyoming; Driggs, Idaho; and Idaho Falls, Idaho in January, 1991. A public scoping statement will be released in mid-December, 1990. The scoping statement will provide information on preliminary issues and alternatives identified.

A proposed schedule of approximate dates of public meetings and key steps in the analysis process will be made available with the initial public scoping statement. Several public meetings will also be conducted throughout the analysis process. Federal, State, and local officials will be asked to participate in a joint review process for the analysis. Copies of the Executive Summary of the concept Master Plan and the entire proposed Master Development Plan will also be made available at the beginning of public scoping.

The responsible federal agency is the Forest Service, USDA. The responsible official is James L. Caswell, Forest Supervisor; Targhee National Forest. Comments on this proposed action and analysis are encouraged and should be submitted to James Caswell, Forest Supervisor at the address previously stated. To be considered, comments must be received by February 15, 1991.

The estimated publication date for the Draft Environmental Impact Statement is October 1, 1991 and the estimated completion and publication date for the Final Environmental Impact Statement is May 1, 1992.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register. The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period (on the DEIS) so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.



Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: December 5, 1990.

**Robert G. Williams,**

*Acting Forest Supervisor.*

[FR Doc. 90-29088 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

## Tomhannock Reservoir Watershed, NY

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tomhannock Reservoir Watershed, Rensselear County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, room 771, Syracuse, New York 13260, telephone (315) 423-5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project concerns a plan for accelerated conservation treatment of farmland in the Tomhannock Reservoir Lake Watershed. Conservation practices will be implemented on an estimated 4,000 acres of farmland and 27 livestock barnyards. The planned practices include crop residue management, contour stripcropping, intensive rotational grazing systems, diversions, waterways, and waste management systems that address manure management, barnyard water management, and milking center waste management.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until January 11, 1991.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: December 3, 1990.

**Paul A. Dodd,**

*State Conservationist.*

[FR Doc. 90-29013 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than December 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

| Antidumping Duty Proceedings | Period |
|---|---|
| BRAZIL: Certain Carbon Steel Butt-Weld Pipe (A-351-602) | 12/01/89-11/30/90 |
| CANADA: Elemental Sulphur (A-122-047) | 12/01/89-11/30/90 |
| HONG KONG: Photo Albums and Filler Pages (A-582-601) | 12/01/89-11/30/90 |
| ITALY: Clear Sheet Glass (A-475-026) | 12/01/89-11/30/90 |
| JAPAN: Certain Small Business Telephone Systems and Subassemblies Thereof (A-588-809) | 06/02/89-11/30/90 |
| JAPAN: Cellular Mobile Telephones and Subassemblies (A-588-405) | 12/01/88-11/30/90 |
| JAPAN: Certain Electric Motors of 150-500 HP (A-588-081) | 12/01/88-11/30/90 |
| JAPAN: Drafting Machines and Parts Thereof (A-588-811) | 06/25/89-11/30/90 |
| JAPAN: Polychloroprene Rubber (A-588-046) | 12/01/89-11/30/90 |
| JAPAN: Steel Wire Strand for Prestressed Concrete (A-588-088) | 12/01/88-11/30/90 |
| JAPAN: Tuners (of the type used in consumer electronic products) (A-488-014) | 12/01/89-11/30/90 |
| MEXICO: Porcelain-On-Steel Cooking Ware (A-201-504) | 12/01/89-11/30/90 |
| NETHERLANDS: Animal Glue and Inedible Gelatin (A-421-080) | 12/01/89-11/30/90 |
| NEW ZEALAND: Low-Fuming Brazing Copper Rod and Wire (A-614-502) | 12/01/89-11/30/90 |
| SWEDEN: Animal Glue and Inedible Gelatin (A-401-081) | 12/01/89-11/30/90 |
| SWEDEN: Certain Carton-Closing Staples and Staple Machines (A-401-004) | 12/01/89-11/30/90 |
| SWEDEN: Seamless Stainless Steel Hollow Products (A-401-603) | 12/01/89-11/30/90 |
| TAIWAN: Certain Small Business Telephone Systems and Subassemblies Thereof (A-583-606) | 07/26/89-11/30/90 |
| TAIWAN: Certain Carbon Steel Butt-Weld Pipe Fittings (A-583-605) | 12/01/89-11/30/90 |
| TAIWAN: Porcelain-On-Steel Cooking Ware (A-583-508) | 12/01/89-11/30/90 |
| THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-On-Steel Cooking Ware (A-570-506) | 12/01/89-11/30/90 |
| THE REPUBLIC OF KOREA: Photo Albums and Filler Pages (A-580-501) | 12/01/89-11/30/90 |
| VENEZUELA: Aluminum Sulfate (A-307-801) | 08/14/89-11/30/90 |
| WEST GERMANY: Animal Glue and Inedible Gelatin (A-428-082) | 12/01/89-11/30/90 |
| YUGOSLAVIA: Animal Glue and Inedible Gelatin (A-479-063) | 12/01/89-11/30/90 |

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| Countervailing Duty Proceeding | Period |
|---|---|
| MEXICO: Litharge and Red Lead (C-201-005) | 01/01/89-12/31/89 |
| MEXICO: Porcelain-On-Steel Cooking Ware (C-201-505) | 01/01/90-12/31/90 |
| VENEZUELA: Aluminum Sulfate (C-307-802) | 10/25/89-12/31/89 |

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by December 31, 1990.

If the Department does not receive by December 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 6, 1990.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 90-29119 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-805]

## Preliminary Determination of Sales at Less Than Fair Value: Sodium Thiosulfate From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that imports of sodium thiosulfate from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the Customs Service to suspend liquidation of all entries of sodium thiosulfate from the PRC, as described in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is February 18, 1991. However, we may expedite this determination.

**EFFECTIVE DATE:** December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3630 or (202) 377-1776, respectively.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

We preliminarily determine that imports of sodium thiosulfate from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is February 18, 1991. However, we may expedite this determination.

### Case History

We initiated this investigation under the name "Certain Sulfur Chemicals from the People's Republic of China" (55 FR 32116 August 7, 1990). At that time, we also initiated investigations on imports of the same product from the Federal Republic of Germany, the United Kingdom, and Turkey. The scope of investigation, defined in the notices of initiation, included both sodium thiosulfate and sodium metabisulfite.

On August 29, 1990, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the Federal Republic of Germany, the United Kingdom and the PRC of sodium thiosulfate that are alleged to be sold in the United States at less than fair value (55 FR 35373). The ITC also determined that there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Turkey of sodium thiosulfate that are alleged to be sold in the United States at less than fair value. In addition, the ITC determined that there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from the Federal Republic of Germany, the United Kingdom, Turkey, and the PRC of sodium metabisulfite that are alleged to be sold in the United States at less than fair value.

As a result, the investigations of sodium metabisulfite from the Federal Republic of Germany, the United Kingdom, Turkey, and the PRC, and the investigation of sodium thiosulfate from Turkey were terminated, and the remaining investigations were renamed "Sodium Thiosulfate from the Federal Republic of Germany, the United Kingdom, and the People's Republic of China."

On September 7, 1990, the Department's questionnaire was presented to the Embassy of the PRC (the Embassy). The Embassy stated that it forwarded this questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, the trade association representing the exporters of the subject merchandise.

Because no response had been received to section A of the questionnaire by the September 21, 1990, deadline, a meeting was held with Embassy officials on September 27, 1990, at which the Department requested that the Embassy contact the trade association in the PRC again to see if (1) The respondent had been identified and (2) a response would be submitted.

On October 5, 1990, the Department sent a letter to the Embassy reminding it that the deadline for submission of a response to sections C and D of the questionnaire was October 9, 1990, and affording the Embassy an opportunity to request an extension of that deadline. No extension was requested.

On October 17, 1990, the Department faxed a letter to the trade association identified by the Embassy asking if a response to the questionnaire would be submitted. The Department informed the association that if no reply was received by October 22, 1990, the Department would assume that no response would be forthcoming.

On October 27, 1990, the trade association, rather than filing a response to our questionnaire of behalf of its members, submitted only limited information concerning volume and value of sodium thiosulfate exports from the PRC for the years 1987 through 1989. The trade association gave no indication at that time that it had not received the Department's questionnaire. Therefore, on November 2, 1990, the Department faxed a letter to the trade association



asking whether a response to the Department's questionnaire would be submitted. The letter indicated that if no reply was received by November 6, 1990, the Department would assume that a response would not be forthcoming.

On November 3, 1990, the trade association informed the Department that it had not received the copy of the questionnaire provided to the Embassy and requested an additional copy. The trade association also requested an additional unspecified amount of time in which to submit its response.

On November 6, 1990, the Department denied the trade association's request for additional time to respond to the questionnaire. (See the "Best Information Available" section of this notice for further discussion.)

### Scope of Investigation

The products covered by this investigation are all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water. The chemical composition of sodium thiosulfate is $Na_2S_2O_3$. Sodium thiosulfate is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 2832.30.1000. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

### Period of Investigation

The period of investigation is February 1, 1990, through July 31, 1990.

### Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent is able to produce information requested in a timely manner and in the form required. In this case, exporters of sodium thiosulfate from the PRC have not done so.

During the course of this investigation, the Department encountered serious problems in obtaining the price and production data needed for its analysis. These problems were due to the fact that neither the Department nor the PRC Embassy in Washington, DC, was able to identify the universe of potential respondents in the PRC. However, the PRC Embassy in Washington did inform the Department that it had transmitted the questionnaire to the trade association representing the exporters of the subject merchandise. No response was received by the deadlines specified in the questionnaire, nor was an extension of time requested until almost a month after the deadline had passed for the submission of a complete response.

The only information received in the context of this investigation was information from the trade association consisting of limited aggregate data on exports to the United States and total exports to all markets for the years 1987 through 1989. Although the trade association finally indicated on November 3, 1990, that it would respond to the questionnaire, it stated that it would need additional time to do so because it had not received the questionnaire.

On November 8, 1990, the Department denied the trade association's request for additional time. Due to the fact that the statutory deadline for the preliminary determination in this case is December 17, 1990, allowing the trade association additional time to submit a complete response would not have given the Department sufficient time to analyze the response, identify deficiencies, and collect the surrogate data necessary to value the factors of production before the preliminary determination.

In addition, we do not consider the trade association's claim that it did not receive the questionnaire to be adequate justification for extending the deadline for submission of a response. As we stated in our letter dated November 8, 1990, we consider the date that the questionnaire was presented to the Embassy to be the official date of receipt. Given the difficulty that we experienced in identifying potential respondents, and given the Embassy's statement that it forwarded the questionnaire to the appropriate trade association, in this case we hold the Embassy responsible for the transmission of the questionnaire to the proper producers/exporters of sodium thiosulfate.

Moreover, we have no assurance that a response from the trade association could represent a complete response to the questionnaire.

Consequently, we are basing our preliminary determination in this investigation on best information available. As best information available, we used the only margin listed in the petition for sodium thiosulfate for the period of investigation.

### Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class of kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because no responses were received in this investigation, we have relied upon best information available for determining whether there have been massive imports of sodium thiosulfate. As best information available, we used the Commerce Department's import statistics for sodium thiosulfate from the PRC for each month in the second and third quarters of 1990.

Pursuant to § 353.16(g) of the Department's regulations, in making critical circumstances determinations the Department normally considers the period beginning on the date the proceeding begins and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of their knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552, April 15, 1988.) For purposes of this preliminary determination, however, we are using as our comparison period the two months following the month of the filing of the petition (i.e., August and September 1990) because: (1) We recognize that, due to the lag between export and import, the import statistics for July reflect exports made prior to the date on which the proceeding began (i.e., July 9, 1990) and (2) we only have available two months of import data.

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Assuming that additional data becomes available by the time of our final determination, we will reexamine our analysis using a three-month comparison period.

Based on our analysis of the available monthly Commerce Department import statistics, we have preliminarily found that there is no reasonable basis to believe or suspect that imports of sodium thiosulfate have been massive over a relatively short period of time. Although the Commerce Department statistics show an aggregate increase in the volume and value of imports during August and September when compared to the volume and value of imports in the preceding period of equal duration (i.e., June and July), this increase is wholly attributable to a drop in imports in July. An examination of the August/September statistics in the context of the import statistics for the second and third quarters of 1990 shows that the level of imports remained constant throughout the period, with the exception of the decrease of imports in July. Therefore, we find that the requirements of section 733(e)(1)(B) have not been met with respect to sodium thiosulfate from the PRC.

Since we do not find that there have been massive imports of sodium thiosulfate from the PRC, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of sodium thiosulfate from the PRC.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of sodium thiosulfate from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to 25.57 percent (the estimated preliminary dumping margin) on all entries of sodium thiosulfate from the PRC. The suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 4, 1991, and rebuttal briefs no later than January 9, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on January 11, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: December 5, 1990.

**Francis J. Sailer,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29116 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DS-M

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**[Application No. 90-00014]**

## Export Trade Certificate of Review; American Textile Export Co., Inc.

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 90-00014.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to American Textile Export Company, Inc. ("AMTEC"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-12) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

Products

Products of the textile industry, including but not limited to, spun yarn (SIC 2281), textured filament yarn (SIC 2282), thread (SIC 2284), cordage and twine (SIC 2298), and dyed yarn (SIC 2269).

Export Trade Facilitation Services (as They Relate to the Export of Products)

Technical service; international market research; marketing and trade promotion; trade show participation; insurance, legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).



*Members (in Addition to Applicant)*

Artee Industries, Inc.; The Borden Manufacturing Co.; Fashion Spun (Brodnax); Carolina Mills, Inc.; Cheraw Yarn Mills, Inc.; Cross Mills, Inc.; Dixie Yarns, Inc.; Dominion Yarn Corporation; Doran Textiles, Inc.; Elk Yarn Mills; Glen Raven Mills, Inc.; Graniteville Trading Company; Grover Industries; Hadley-Peoples Mfg. Co.; Harriet & Henderson Yards, Inc.; Jones Companies, Ltd; The Kent Manufacturing Co.; Kindley Yarns, Inc.; LaFar Industries; Little Cotton Manufacturing Co.; North Carolina Spinning Mills; Parkdale Mills, Inc.; Pioneer Yarn Mills, Inc.; SCT Yarns, Inc.; Shuford Mills, Inc.; Spray Cotton Mills; R. L. Stowe Mills, Inc.; Stowe-Pharr Mills; Swift Spinning Mills; Thomaston Mills; Trio Manufacturing Co.; Tultex Yarns; United Merchants Sales; Vintage Yarns; Waverly Mills, Inc.; Wehadkee Yarn Mills; and Wiscassett Mills Company.

*Export Trade Activities and Methods of Operation*

1. AMTEC and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Members to sell their Products or offer their Export Trade Facilitation Services through the certified activities of AMTEC and/or its Members;

g. Coordinate with respect to the servicing of Products in Export Markets;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product requirements of specific export customers or Export Markets.

2. AMTEC and/or its Members may enter into agreements wherein AMTEC and/or one or more Members agree to act in certain countries or Export Markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or Export Market. In such agreements, Members may agree that they will export for sale in the relevant country or Export Market only through AMTEC acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. AMTEC and/or its Members when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its Services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such services.

3. AMTEC and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, sources, ability to supply products in quantities sufficient to meet an export sales opportunity, and delivery dates of Products available from Members for export, provided however, that exchanges of information and discussions as to Product quantity, source, export prices, ability to supply products in quantities sufficient to meet an export sales opportunity, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export and involve only those Members who are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by AMTEC and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about AMTEC or its Members' export operations, including without limitation sales and distribution networks established by AMTEC or its Members in Export Markets, and prior export sales by Members (including export price information).

4. AMTEC may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by AMTEC itself, or by agreement with Members or other parties.

5. AMTEC and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. AMTEC and/or its Members may make available to non-Members the Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-Members.

7. AMTEC and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

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*Definitions*

1. An *Export Intermediary* means a person who acts as a distributor, representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells Products and/or Export Trade Facilitation Services, whether a Member or non-Member.

**Abbreviated Amendment Procedure**

New Members may be incorporated in the Certificate through an abbreviated amendment procedure. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying such proposed Member or Members and certifying for each such proposed Member so identified its sales of individual Products in its prior fiscal year. Notice of the proposed Members so identified shall be published in the **Federal Register**. However, AMTEC may withdraw one or more individual proposed Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these proposed Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such proposed Members effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 6, 1990.

George Muller,

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 90-29079 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DR-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 7, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 8, 1987, as amended, between the Governments of the United States and India, establishes import limits for the 1991 agreement year.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3899.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 7, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 8, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following restraint limits:

| Category | 12-Mon. restraint limit |
|---|---|
| Levels in Group I: | |
| 218 | 7,969,477 square meters. |
| 219 | 30,633,642 square meters. |
| 313 | 21,376,883 square meters. |
| 314 | 4,979,206 square meters. |
| 315 | 6,363,070 square meters. |
| 335 | 209,155 dozen. |
| 336/636 | 927,451 dozen. |
| 338/339/340 | 1,416,823 dozen. |
| 341 | 3,101,114 dozen of which not more than dozen 1,860,668 shall be in blouses made from fabrics with two or more colors in the warp and/or filling in Category 341-Y.[1] |
| 342 | 479,761 dozen. |
| 347/348 | 343,669 dozen. |
| 363 | 28,215,920 numbers. |
| 369pt.[2] | 6,473,266 kilograms of which not more than 622,926 kilograms shall be in Category 369-O [3] and not more than 452,304 kilograms shall be in Category 369-S.[4] |



| Category | 12-Mon. restraint limit |
|---|---|
| Group II: 200, 201, 220-229, 237, 239, 300/301, 317, 326, 330-334, 345, 349-352, 359-362, 600-607, 611-635, 638-652, 659, 665-O [5], 666-670 and 831-859, as a group. | 113,524,576 square meters equivalent. |
| Sublevels within Group II: | |
| 237 | 112,643 dozen. |
| 300/301 | 3,288,391 kilograms. |
| 640 | 157,866 dozen. |
| 641 | 934,147 dozen. |
| 642 | 293,674 dozen. |
| 647/648 | 401,126 dozen |

[1] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[2] Category 369pt.: all HTS numbers except 5702.10.9020, 5702.49.1010 and 5702.99.1010 (rugs exempt from the Bilateral Agreement).

[3] Category 369-O: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369-S: only HTS number 6307.10.2005.

[5] Category 665-O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the Bilateral Agreement).

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29117 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Military Traffic Management Command; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

*Name of committee:* Military Personal Property Symposium.

*Date:* January 17, 1991.

*Place:* Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia.

*Time:* 0930-1600.

*Proposed Agenda:* The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number 756-1600, between the hours of 0800-1630. Topics to be discussed should be received on or before 12 December 1990.

Kenneth L. Denton,

*Alternate Army Liaison Officer With the Federal Register.*

[FR Doc. 90-29019 12-11-90; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 382-008 California]**

### Southern California Edison Co.; Availability of Environmental Assessment

December 6, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of Exhibit R for the Borel Hydroelectric Project to allow Southern California Edison Company (licensee) to fund construction of a recreation area at Sandy Flat. Sandy Flat is approximately one quarter mile from the Borel powerhouse, near the Kern River in Kern County, California. The proposed facilities are to be located entirely on U.S. Forest Service lands. The proposal will allow the licensee to meet its obligations for recreational development under article 34 of the Borel Project license. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29028 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA91-1-1-001]**

### Alabama-Tennessee Natural Gas Co., Proposed PGA Rate Adjustment

December 6, 1990

Take notice that on November 30, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Twenty Third Revised Sheet No. 4
First Revised Alternate Twenty Third Revised Sheet No. 4
Second Revised Twenty Third Revised Sheet No. 4
Second Revised Alternate Twenty Third Revised Sheet No. 4

The tariff sheets are proposed to become effective January 1, 1991. Alabama-Tennessee states that the purpose of the instant filing is to correct the current surcharge and to reflect the possible implementation of a volumetric surcharge by Tennessee Gas Pipeline Company.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

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filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29029 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-2-49-000]

**ANR Pipeline Company; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that ANR Pipeline Company ("ANR") on November 30, 1990, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of Thirty-Fifth Revised Sheet No. 18, to be effective January 1, 1991.

Thirty-Fifth Revised Sheet No. 18 reflects a net increase of $0.0018 per dekatherm ("dth") in the gas cost component of the commodity rate of ANR's CD-1/MC-1, SGS-1 and OS-1 Rate Schedules. This change is a result of an increase in the GRI Adjustment to $0.0142 per dth, as approved by the Commission in its Opinion No. 355, issued at Docket No. RP90-120-000 on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29030 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-39-003]

**ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

December 6, 1990.

Take notice that on November 29, 1990 ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Second Substitute Fifth Revised Sheet No. 570 under Rate Schedule X-64 of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund purposes for the period January 1, 1989 through December 31, 1989.

ANR states that this compliance filing is being made to reduce the rate of return and depreciation under Rate Schedule X-64, to the approved rate of return underlying the settlement agreement in ANR's Docket No. RP86-169, and depreciation expense based on the High Island Offshore System's (HIOS) remaining book life utilizing the final depreciation rate approved in HIOS' Docket No. RP89-37, in compliance with the Commission's Letter Order dated January 29, 1990 in Docket RP89-39-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29031 Filed 12-11-90; 8:45am]
BILLING CODE 6717-01-M

[Docket No. RP90-53-001]

**ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff**

December 6, 1990.

Take notice that on November 29, 1990 ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Substitute Sixth Revised Sheet No. 570, under Rate Schedule X-64, of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund and billing purposes for the period January 1, 1990 through December 31, 1990.

ANR states that this compliance filing is being made to reduce the depreciation rate, underlying Rate Schedule X-64, based on the High Island Offshore System's (HIOS) remaining book life underlying the final depreciation rate approved in HIOS' Docket No. RP89-37-000, in compliance with the Commission's Letter Order dated December 29, 1989 in Docket No. RP90-53-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29032 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP90-159-003 et al.]

**Blue Dolphin Pipeline Co.; Filing of Pipeline Refund Report**

December 6, 1990

Take notice that Blue Dolphin Pipeline Company (Blue Dolphin) on November 5, 1990 submitted for filing a Refund Report for the period October 4, 1988 through September 4, 1990 in compliance with the Commission's Order Approving Uncontested Settlement issued August 2, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29033 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M



[Docket No. TM91-6-21-000]

**Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 5, 1990

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1991:

Seventh Revised Sheet No. 26
Seventh Revised Sheet No. 26A
Seventh Revised Sheet No. 26B
Seventh Revised Sheet No. 26C

Columbia states that the aforementioned tariff sheets are being filed to reflect an increase in the Gas Research Institute (GRI) funding unit to 1.42¢ per Dth as authorized by Opinion No. 355, issued by the Federal Energy Regulatory Commission (Commission) on October 1, 1990, in Docket No. RP90-120-000. Ordering Paragraph (B) of such Opinion approves the GRI funding requirement for the year 1991 and provides that members of GRI shall collect from their applicable customers a general R&D funding unit of 1.42¢ per Dth during 1991 for payment to GRI.

Columbia states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29034 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM91-2-70-000]

**Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on November 30, 1990, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1991:

Third Revised Sheet No. 21

This revised tariff sheet is submitted to reflect the Gas Research Institute (GRI) funding unit of 1.42¢ per Dth as authorized by Opinion No. 355 issued by the Federal Energy Regulatory Commission (Commission) on October 1, 1990, in Docket No. RP90-120-000. Ordering Paragraph (B) of the Commission's Opinion approves the GRI funding requirement for the year 1991 and provides that members of GRI shall collect from their applicable customers, a general R&D funding unit of 1.42¢ per Dth during 1991 for payment to GRI.

Columbia Gulf states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29035 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TQ91-3-33-000 and TM91-3-33-000]

**El Paso Natural Gas Co.; Proposed Change in Rates**

December 5, 1990.

Take notice that on November 30, 1990, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, Second Revised Volume No. 1; and

(ii) An increase in the Gas Research Institute ("GRI") funding unit adjustment component of El Paso's rates for certain sales and transportation services subject to sections 20 and 18, Gas Research Institute General Research, Development and Demonstration Funding Unit Adjustment Provision, contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1-A, respectively.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective January 1, 1991.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.0115 per dth in the gas cost component of its jurisdictional sales rates below the rates reflected in El Paso's last Quarterly Adjustment in Rates at Docket No. TQ91-1-33-000, effective October 1, 1990.

By Opinion No. 355, issued October 1, 1990 at Docket No. RP90-120-000, the Commission approved the GRI's application for advance approval of its 1991 research and development program and related five- (5) year plan for 1991-1995. In so doing, the Commission approved the GRI's 1991 funding requirement which is to be raised through a funding unit of 1.42 cents per dth. Accordingly, El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will increase the GRI funding unit adjustment component of its rates for certain sales and transportation services from the currently effective 1.26 cents per dth to 1.42 cents per dth as approved by the Commission in Opinion No. 355.

El Paso notes that copies of the filing were served upon all of El Paso's interstate pipeline system sales and transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be

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taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29036 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM91-2-26-000]

## Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Equitrans, Inc. (Equitrans), on November 30, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1991.

*Original Volume No. 1*

Twenty-Second Revised Sheet No. 10
Seventh Revised Sheet No. 23

*Original Volume No. 3*

Seventh Revised Sheet No. 4
Seventh Revised Sheet No. 5

Pursuant to Opinion No. 355 in Docket No. RP90-120-000 issued on October 1, 1990, the Commission has authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1991 GRI unit surcharge approved by the Commission is $.0142 per dekatherm (Dth).

Pursuant to § 154.51 of the Commission's Regulation, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective January 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29037 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP89-50-015]

## Florida Gas Transmission Co.; Compliance Filing

December 6, 1990.

Take notice that Florida Gas Transmission Company (FGT) on November 30, 1990 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

*Effective December 1, 1990*

Second Revised Sheet No. 8C

### Statement of Purpose, Nature and Reason for Filing

FGT states that on June 15, 1990 the Federal Energy Regulatory Commission issued the "Order Approving and Rejecting Settlements, Granting Abandonments and Issuing Certificates" ("Order") in RP89-50 *et al.* which accepted, subject to certain modifications, FGT's October 17, 1989 stipulation and Agreement that resolved issues from thirty dockets including a service restructuring and the implementation of open access transportation. As part of the October 17 Stipulation and Agreement, FGT provided for the conversion of sales service to transportation service under section 16A of the General Terms and Conditions ("section 16A"). In accordance with section 16A, customers have provided FGT with the appropriate notice of conversion including a designation of their D-2 levels reflecting the conversions. Because of the elections made pursuant to section 16A, FGT is filing the attached Sheet No. 8C to reflect the conversions.

Accordingly, Second Revised Sheet No. 8C has been modified to reflect customers' first year conversions to Rate Schedule FTS-1 which have occurred since November 1, 1990.

FGT respectfully requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheet described above to become effective as stated above.

FGT notes a copy of this filing was mailed to all holders on FGT's FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions. A copy of the instant filing is also available for inspection at FGT's offices in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29038 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. TA91-1-51-001, TQ91-2-51-000, and TM91-2-51-000]

## Great Lakes Gas Transmission Co. Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 5, 1990

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on November 30, 1990 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1:

*First Revised Volume No. 1*

Substitute Thirty-First Revised Sheet No. 57(i)
Substitute Thirty-First Revised Sheet No. 57(ii)
Substitute Seventeenth Revised Sheet No. 57(v)

Item 2:

*First Revised Volume No. 1*

Thirty-Second Revised Sheet No. 57(i)
Thirty-Second Revised Sheet No. 57(ii)
Eighteenth Revised Sheet No. 57(v)

Item 3:

*First Revised Volume No. 1*

Thirty-Third Revised Sheet No. 57(i)
Thirty-Third Revised Sheet No. 57(ii)
Nineteenth Revised Sheet No. 57(v)

The tariff sheets in Item 1 were filed to reflect the appropriate current purchased gas cost adjustment for Great Lakes' quarterly PGA for the period November 1, 1990 through January 31, 1991.

The tariff sheets in Item 2 were filed to reflect revised current PGA rates for



the months of November 1990 through January 1991. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

The tariff sheets in Item 3 were filed to reflect the Gas Research Institute's 1991 Research and Development Program and GRI funding unit of 1.46 cents (Mcf) approved pursuant to the Commission's Opinion No. 355 issued on October 1, 1990. These tariff sheets are proposed to be effective January 1, 1991.

Great Lakes requested waiver of the notice requirements so as to permit the tariff sheets in Item 1 and Item 2 to become effective November 1, 1990, as described, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis. Great Lakes requested that the tariff sheets in Item 3 become effective January 1, 1991, in order to implement the revised GRI funding unit rate.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1990. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29039 Filed 12-11-90; 8:45am]

BILLING CODE 6717-01-M

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[Docket No. PR91-6-000]

## KansOk Partnership; Petition for Rate Approval

December 6, 1990

Take notice that on November 30, 1990, KansOk Partnership filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable the following maximum rates for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978. KansOk proposes a firm reservation charge of $2.33 per MMBtu and a firm commodity charge of $0.2106 per MMBtu and a maximum interruptible rate of $0.2373 per MMBtu for transportation on its East Leg and a maximum interruptible rate of $0.1554 per MMBtu for transportation on its West Leg.

KansOk's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and that it owns and operates approximately 114 miles of pipeline solely within the state of Oklahoma. The petition also states that the KansOk system is made up of two geographically discrete systems. KansOk proposes to offer firm service on its East Leg which includes 14 miles of 8-inch pipeline and 44 miles of 12-inch pipeline. The West Leg is comprised of 56 miles of 8-inch pipeline with no compression and KansOk does not propose to offer firm transportation on this leg. KansOk states that concurrent with the filing of this petition it is conducting an open season until December 12, 1990 for NGPA section 311(a)(2) firm transportation on its East Leg.

Pursuant to 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 28, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29040 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM91-2-53-000]

## K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 6, 1990

Take notice that K N Energy, Inc. ("K N") on December 4, 1990, tendered for filing proposed changes in its FERC Gas Tariff. The proposed changes will adjust K N's commodity rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (section 21) of K N's FERC Gas Tariff, Original Volume No. 1-B. Such adjustment is to track the 0.16¢ per Mcf increase in the GRI rate, effective January 1, 1991, per Opinion No. 335 issued on October 1, 1990. K N states that copies of the filing were served upon K N jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before December 13, 1990, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29041 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TQ91-2-5-000]

## Midwestern Gas Transmission Company; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 5, 1990.

Take notice that on November 30, 1990, Midwestern Gas Transmission Company (Midwestern) filed Twentieth Revised Sheet No. 5 (Primary) and Twentieth Revised Sheet No. 5 (Alternate) and Fifteenth Revised Sheet No. 6 (Primary) and Fifteenth Revised Sheet No. 6 (Alternate) to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1991.

Midwestern states that the purpose of this filing is to reflect a quarterly PGA rate adjustment to its sales rates for the period January 1 through March 31, 1991. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 (Primary) consist of a $(.194) per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $.52 per

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dekatherm adjustment applicable to the D-1 component. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 (Alternate) consist of a $.0634 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $(.06) per dekatherm adjustment applicable to the D-1 component. The adjustments to Midwestern's Gas Rates reflect the changes in the rates charged by Tennessee Gas Pipeline Company in Docket No. TA91-1-9. Midwestern seeks waiver of the Commission's Regulations to the extent necessary for acceptance of this filing effective January 1, 1991.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29042 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP90-85-000]

## MIGC, Inc.; Informal Settlement Conference

December 6, 1990.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on Thursday, December 13, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, room 3400-C, 825 North Capitol Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c) (1990), or any participant, as defined by 18 CFR 385.102(b) (1990), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214) (1990).

For additional information, contact Robert L. Woods (202) 208-0563 or Anja Clark at (202) 208-2034.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29043 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA91-1-16-002]

## National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 30, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below which are proposed to become effective January 1, 1990.

Substitute Fortieth Revised Sheet No. 4
First Alternate Substitute Fortieth Revised Sheet No. 4
Second Alternate Substitute Fortieth Revised Sheet No. 4
Third Alternate Substitute Fortieth Revised Sheet No. 4

The purpose of this filing is to reflect an update to the Current Adjustment shown in National's Annual Purchased Gas Cost Adjustment ("PGA") filed on October 31, 1990, Docket TA91-1-16-000 as permitted at § 154.305(c)(4) of the Commission Regulations. In addition, National states that its proposed Surcharge Adjustment reflects elimination of the storage revaluation adjustment used to calculate the carrying charges on its Account No. 191 balance.

National's primary filing reflects a current adjustment of 10.15 cents per dekatherm to the commodity rate and $0.33 to the demand rate and assumes the Commission will deny Tennessee's "as billed" treatment and reject the volumetric surcharge.

On the First Alternate sheet, National reflects a current adjustment of 19.40 cents per dt to the commodity rate and $0.33 to the demand rate and assumes the Commission will deny "as billed" treatment but permit the volumetric surcharge.

On the Second Alternate sheet, National reflects a current adjustment of 6.22 cents per dt to the commodity rate and $0.47 to the demand rate and assumes "as billed" treatment and denial of the volumetric surcharge.

The Third Alternate sheet reflects a current adjustment of 9.63 cents per dt to the commodity rate and $0.47 to the demand rate and assumes approval of both the "as billed" treatment and the volumetric surcharge.

National states that its alternate tariff sheets are due to the alternate tariff sheets filed by Tennessee in the proceedings at Docket Nos. TA91-1-9-000 and RP91-29-000.

These adjustments are calculated based upon a comparison with the rates included in National's previous quarterly filing in Docket No. TQ91-1-16-001 filed October 5, 1990.

In addition, National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29044 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM91-4-25-000]

## Natural Gas Pipeline Co. of America; Changes in Rates

December 5, 1990.

Take notice that on November 30, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, to be effective January 1, 1991.

Natural states that the revised tariff sheets reflect the reduced GRI surcharge related to the Gas Research Institute's 1991 Research and Development Program as approved by Commission Opinion No. 355 (Docket No. RP90-120-000) issued October 1, 1990. The rate authorized by the October 1 order is 1.42¢ per Dekatherm.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1991.



Natural notes that a copy of the filing is being mailed to Natural's jurisdiction customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29045 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP91-32-001]

## Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 29, 1990, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Substitute Tenth Revised Sheet No. 157
Substitute Eighth Revised Sheet No. 158
Substitute First Revised Sheet No. 159

On November 21, 1990, Northern Border filed in Docket No. RP91-32-000 to revise certain tariff sheets. The issue date and effective date were inadvertently omitted from those tariff sheets and are hereby resubmitted to correct that oversight.

As before, Northern Border proposes to (1) Revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1 as called for by Northern Border's tariff every six months, (2) revise the form but not the substance of the calculation of the Minimum Revenue Credit as it appears in the tariff, and (3) revise the computation of the debt repayment obligation to be consistent with the new loan financing secured earlier this year.

Substitute Tenth Revised Sheet No. 157 and Substitute Eighth Revised Sheet No. 158 reflect the revised Maximum Rate and Minimum Revenue Credit effective January 1, 1991 through June 30, 1991 in accordance with Northern Border's tariff provisions under Rate Schedule IT-1. Northern Border proposes to decrease the Maximum Rate from 4.908 cents per 100 Dekatherm-Miles to 4.778 cents per 100 Dekatherm-Miles and decrease the Minimum Revenue Credit from 2.956 cents per 100 Dekatherm-Miles to 2.831 cents per 100 Dekatherm-Miles. These revisions do not produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Substitute Eighth Revised Sheet No. 158 has also been changed to correct the presentation of the calculation of the Minimum Revenue Credit as shown in section 3.33. During the conversion of the tariff sheet into ASCII format, certain underscoring meant to designate division, was lost. To avoid this problem in the future, a ÷ symbol will be used in place of the underscore.

Substitute First Revised Sheet No. 159 has been changed to reflect a revision in the debt repayment obligation as a result of new debt financing secured earlier this year. Under Northern Border's old loan agreement, the debt repayment obligation was determined by multiplying 65.22857% times the total depreciaiton and deferred taxes for the month. Under the new loan agreement, Northern Border's debt repayment obligation is calculated by multiplying 65% times the total monthly depreciation and deferred taxes. Section 3.33 has been revised to reflect the change in the percentage.

Northern Border has requested that these revised tariff sheets be effective January 1, 1991. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29046 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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## Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP88-259-039, RP90-124-005, CP88-1227-008 and RP89-136-022]

December 5, 1990.

Take notice that on November 30, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Eighty-eighth Revised Sheet No. 4B
Fifty-sixth Revised Sheet No. 4B.1
First Revised Fourteenth Sheet No. 4G
First Revised Seventeenth Sheet No. 4G.2
Fifth Revised Sheet No. 4G.3
Ninth Revised Sheet No. 4H
First Revised Sheet No. 52D
Second Revised Sheet No. 52D.1
Second Revised Sheet No. 52F.1
Original Sheet No. 74K
Original Sheet No. 74L
Original Sheet No. 74M
Original Sheet No. 74N
Original Sheet No. 74O
Ninety-fifth Revised Sheet No. 1C
Original Sheet No. 1W
Original Sheet No. 1X
Original Sheet No. 1Y
Original Sheet No. 1Z
Original Sheet No. 1Z.1

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order Accepting Settlement With Modifications dated November 19, 1990, in this proceeding. An effective date of December 1, 1990 has been requested for this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29047 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

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[Docket No. TQ91-2-37-000]

## Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

December 5, 1990.

Take notice that on November 30, 1990, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, Second Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending March 31, 1991.

The current PGA adjustment for which notice is given herein, aggregates to an increase of 15.47¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the first quarter of 1991 would increase sales revenues by approximately $2,755,062. The instant filing also provides for an increase in the demand components of Northwest's gas sales rates to reflect changes to the estimates of Canadian demand rates and to reflect a revised Canadian exchange rate factor. The current PGA adjustment is reflected on Sheet Nos. 10 and 11 below, while all other tariff sheets listed herein are filed to reflect the revised GRI surcharge of 1.42¢ per MMBtu effective January 1, 1991.

Northwest hereby tenders the following tariff sheets to be effective January 1, 1991:

*Second Revised Volume No. 1*

Second Revised Sheet No. 10
Second Revised Sheet No. 11

*First Revised Volume No. 1-A*

First Revised Sheet No. 201

*Original Volume No. 2*

Tenth Revised Sheet No. 2.2

Northwest notes that a copy of the filing is being served upon each person designated in the official service list compiled by the Secretary in Docket No. TA90-1-37 and upon all jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29048 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-41-002]

## Paiute Pipeline Co.; Compliance Filing

December 6, 1990.

Take notice that on November 30, 1990, Paiute Pipeline Company (Paiute) tendered for filing Second Substitute Sixteenth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1, in order to comply with the Commission's order issued October 31, 1990 in Docket No. TA91-1-41-000.

Paiute states that the Commission's October 31, 1990 order accepted for filing, effective November 1, 1990, Sixteenth Revised Sheet No. 10 reflecting Paiute's annual purchased gas cost adjustment (PGA) rate change, subject to certain conditions. Paiute states that it was directed to file a corrected tariff sheet and a revised FERC Form No. 542 and to provide additional information concerning specific matters identified in the order.

In response to the Commission's order, Paiute has filed Second Substitute Sixteenth Revised Sheet No. 10, as well as a revised FERC Form No. 542 and the requested supplemental information. Paiute indiciates that the revisions and corrections made to its original PGA filing in this proceeding in response to the Commission's order result in reducing the annual surcharge adjustment rate of $(0.1869) per dekatherm set forth in its original filing to $(0.2359) per dekatherm.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29049 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-28-000]

## Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that on November 30, 1990 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

*FERC Gas Tariff, Original Volume No. 1*

Eighty-Second Revised Sheet No. 3-A
Fifty-Ninth Revised Sheet No. 3-B
Sixth Revised Sheet No. 3-B.1
Eleventh Revised Sheet No. 3-F
Sixth Revised Sheet No. 3-G
Fourth Revised Sheet No. 3-H
Fourth Revised Sheet No. 3-I

*FERC Gas Tariff, Original Volume No. 2*

Fourteenth Revised Sheet No. 2731
Twelfth Revised Sheet No. 2827
Twelfth Revised Sheet No. 2850
Tenth Revised Sheet No. 3010

Panhandle states that such filing reflects a rate adjustment pursuant to Opinion No. 355 issued October 1, 1990 in Docket No. RP90-120-000, Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Panhandle, may file a general R&D cost adjustment to be effective January 1, 1991. This adjustment will permit the collection of 1.42 cents per Dt of Program Funding Services for payment to GRI.

Panhandle states that copies of its filing have been served on all affected customers subject to the tariff sheets an applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29050 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. TQ91-1-38-000]

## Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on December 3, 1990, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed a Fourth Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR 154.308.

Ringwood states that copies of the filing were served upon Ringwood jurisdictional customers and interested state agencies.

Ringwood's Quarterly PGA filing reflects an estimated $1.6612 per Mcf cost of gas, a current adjustment of zero per Mcf; and cumulative adjustment of $.1734 per Mcf; a credit surcharge adjustment of $.0012 per Mcf and a total sales rate of $1.9930 per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29051 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-6-000]

## Tennessee Gas Pipeline Co.; Tariff Filing

December 5, 1990.

Take notice that on November 30, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to be effective December 1, 1990:

Item A:

*Third Revised Volume No. 1*

Substitute First Revised Sheet No. 22

Item B:

*Original Volume No. 2*

Second Substitute Twenty-First Revised Sheet No. 5
Second Substitute Twentieth Revised Sheet No. 8

The purpose of the filing is to reflect an out-of-cycle PGA rate adjustment to Tennessee's current Gas Rate and certain transportation rate schedules whose fuel rates track the Gas Rate (Item B). Due to an increase in spot prices above those reflected in Tennessee's quarterly filing in Docket No. TQ-91-1-9, Tennessee is increasing its Current Average Purchased Gas Cost Rate (sales WACOG) $.2296 to $2.6803 per dth.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29052 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FR91-5-000]

## Texas-Ohio Pipeline, Inc.; Petition for Rate Approval

December 6, 1990.

Take notice that on November 30, 1990, and amended December 4, 1990, Texas-Ohio Pipeline, Inc. filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum firm reservation charge of $1.4485 per MMBtu per month and a firm commodity charge of $0.0125 per MMBtu and a maximum interruptible rate of $0.0501 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Texas-Ohio's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates solely within the state of Kentucky. The pipeline is located five miles northeast of Lancaster, Garrard County, Kentucky and it currently provides service to a local distribution company and an end-user in Kentucky.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 26, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29053 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-17-000]

## Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

December 5, 1990

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1990, tendered for filing as part of its FERC Gas Tariffs, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the following tariff sheets:

*Fifth Revised Volume No. 1*

Twenty-sixth Revised Sheet No. 50.1
Twenty-sixth Revised Sheet No. 50.2
Seventeenth Revised Sheet No. 51
Second Revised Sheet No. 51.1
Second Revised Sheet No. 51.2
First Revised Sheet No. 51.3

*Original Volume No. 2*

First Revised Sheet No. 1J
First Revised Sheet No. 1K
First Revised Sheet No. 1L

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Texas Eastern states that the above listed tariff sheets are being filed pursuant to section 23 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, to include in Texas Eastern's rates the current GRI surcharge of 1.42 cents per dekatherm approved by the Commission in Opinion No. 355 issued on October 1, 1990 in Docket No. RP90-120-000.

The proposed effective date of the tariff sheets listed above is January 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Copies of this filing have also been mailed to all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29054 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA91-1-17-000; TM91-2-17-000]

**Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1990 tendered for filing as part of its FERC Gas Tariff, six copies each of the tariff sheets:

*Fifth Revised Volume No. 1*

Twenty-Seventh Revised Sheet No. 50.1
Twenty-Seventh Revised Sheet No. 50.2
Nineteenth Revised Sheet No. 50A.1
Nineteenth Revised Sheet No. 50B.1
Nineteenth Revised Sheet No. 50C.1
Nineteenth Revised Sheet No. 50D.1
Eighteenth Revised Sheet No. 51
Third Revised Sheet No. 51.1
Third Revised Sheet No. 51.2
Second Revised Sheet No. 51.3
Eleventh Revised Sheet No. 51A
Second Revised Sheet No. 51A.1
Eleventh Revised Sheet No. 51B
Second Revised Sheet No. 51B.1
Eleventh Revised Sheet No. 51C
Second Revised Sheet No. 51C.1
Eleventh Revised Sheet No. 51D
Second Revised Sheet No. 51D.1

*Original Volume No. 2*

Second Revised Sheet No. 1J
Second Revised Sheet No. 1K

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's Regular Annual PGA filing to be effective February 1, 1991 pursuant to 18 CFR 154.305.

Texas Eastern states that the PGA changes proposed in this filing consist of Current Adjustments and Surcharge Adjustments as follows for the components of Texas Eastern's sales rates:

| Rate component | Current adjustment | Surcharge adjustment |
|---|---|---|
| Demand | $0.000/dth | $(0.231)/dth. |
| Commodity | ($0.0639)/dth | $0.0357/dth. |

Texas Eastern states that these Current Adjustments represent the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's out-of-cycle PGA filing of November 20, 1990 in Docket No. TQ91-2-17. The Surcharge Adjustments are designed to amortize the Current Deferral Subaccount Balance in Account 191 as of September 30, 1990 over the 12-month period beginning on February 1, 1991.

Texas Eastern also states that this filing constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to Section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1991 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1990.

Texas Eastern states that the projected cost of gas included in this filing contains no cost of purchased gas from Texas Gas Transmission Corporation (Texas Gas). In accordance with Order No. 490 (Docket No. RM87-16-000) Texas Eastern has exercised its option as a purchaser of natural gas to abandon its gas purchase agreement dated October 17, 1962 with Texas Gas. The projected cost of gas in the instant filing includes amounts attributable to the impact of the resolution of certain gas purchase contract pricing disputes which have been under litigation. In addition to the prospective impact included in the projected cost of gas, there is also included in the calculation of the commodity surcharge approximately $20 million representing amounts attributable to gas taken during the deferral period, October, 1989 through September, 1990.

Texas Eastern also states that its underlying rates during the applicable deferral period are based upon Texas Eastern's May 31, 1989 Stipulation and Agreement in Docket No. RP88-67, *et al.* The storage working capital allowance included in such underlying rates has been calculated in accordance with the North Penn methodology. By order issued November 1, 1990 in National Fuel Gas Supply Corporation's Docket No. RP88-136-000, *et al.* (mimeo at page 44) the Commission stated that the PGA regulations do not require a pipeline company to adjust its storage pricing to a rolling weighted average pricing if the pipeline properly applies the North Penn methodology. Accordingly, Texas Eastern has included no storage revaluation adjustment for the purposes of computing the PGA carrying charges during the deferral period.

The proposed effective date of the above tariff sheets is February 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29055 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M



[Docket Nos. RP88-67-000, RP88-91-000, RP88-221-000, and RP90-119-001 (Phase I/ Rates)]

**Texas Eastern Transmission Corp.; Informal Settlement Conference**

December 6, 1990.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on December 19 and 20, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of several issues remaining in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208-0042 or Arnold H. Meltz (202) 208-0737.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29056 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA91-1-58-000]

**Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that on November 30, 1990, Texas Gas Pipe Line Corporation (TGPL) tendered a final Purchased Gas Adjustment filing in abbreviated form.

Specifically, the filing consisted of historical data for the fifteen (15) month period July, 1989 through September, 1990 when natural gas deliveries ceased. The Commission by order issued October 30, 1990 granted TGPL's request to abandon its facilities predicated on the termination of all jurisdictional services to its two customers. The subject order directed TGPL, *inter alia*, to refund the balance in Account No. 191 within 120 days of the effective date of the abandonment.

TGPL states copies of its abbreviated filing were served upon its former customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before December 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29057 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP90-104-004]

**Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that on November 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2, and Original Volume No. 2-A. This filing is being made to move the tariff sheets listed below into effect on November 1, 1990, in compliance with the Commission's Order issued May 31, 1990, in Docket No. RP90-104 at 51 FERC Para. 61,251.

*Original Volume No. 1*

Second Substitute Twenty-ninth Revised Sheet No. 10
Second Substitute Twenty-ninth Revised Sheet No. 10A
Second Substitute Tenth Revised Sheet No. 11
Second Substitute Original Sheet No. 11A
Second Substitute Original Sheet No. 11B
Thirtieth Revised Sheet No. 10
Thirtieth Revised Sheet No. 10A
Eleventh Revised Sheet No. 11
First Revised Sheet No. 11A
First Revised Sheet No. 11B
Substitute Fourth Revised Sheet No. 107
Substitute Third Revised Sheet No. 108
Substitute Third Revised Sheet No. 178
Substitute Third Revised Sheet No. 179
Substitute Third Revised Sheet No. 180
Substitute Third Revised Sheet No. 181
Substitute Third Revised Sheet No. 182
Substitute Third Revised Sheet No. 183
Second Substitute Fourth Revised Sheet No. 184
Substitute Second Revised Sheet No. 185

*Original Volume No. 2*

Substitute Eleventh Revised Sheet No. 82
Second Substitute Twenty-seventh Revised Sheet No. 333
Substitute Twelfth Revised Sheet No. 547
Second Substitute Fourteenth Revised Sheet No. 982
Second Substitute Twelfth Revised Sheet No. 1005
Sixth Revised Sheet No. 1085

*Original Volume No. 2-A*

Substitute Original Sheet No. 16
Substitute Original Sheet No. 16A
Substitute Original Sheet No. 11
Substitute Original Sheet No. 12
Substitute Original Sheet No. 13
Substitute Original Sheet No. 14
Substitute Original Sheet No. 197
Substitute Original Sheet No. 208

Texas Gas requests an effective date of November 1, 1990, for the proposed Tariff Sheets. Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29058 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA91-1-18-000]

**Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on November 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Thirty-third Revised Sheet No. 10
Thirty-third Revised Sheet No. 10A
Fourteenth Revised Sheet No. 11
Fourth Revised Sheet No. 11A
Fourth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas

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year pursuant to the Commission's Opinion No. 355 at Docket No. RP90-120-000. The GRI Surcharge of $0.142/dth as determined by Commission order dated October 1, 1990, reflects an increase of $0.0016/dth from the currently effective GRI Surcharge of $0.0126/dth. Transwestern herein respectfully requests that the revised GRI Surcharge as set forth on the above referenced tariff sheets become effective January 1, 1991.

Transwestern states the copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29063 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TM91-4-30-000]**

**Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that on November 30, 1990 Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

*FERC Gas Tariff, Original Volume No. 1*

Eighty-First Revised Sheet No. 3-A
Twelfth Revised Sheet No. 3-A.3
Twelfth Revised Sheet No. 3-A.4

*FERC Gas Tariff, Original Volume No. 2*

Thirteenth Revised Sheet No. 3725
Twelfth Revised Sheet No. 3881
Twelfth Revised Sheet No. 3920
Eleventh Revised Sheet No. 3960

Trunkline states that such filing reflects a rate adjustment pursuant to Opinion No. 355 issued October 1, 1990 in Docket No. RP90-120-000. Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Trunkline, may file a general R&D cost adjustment to be effective January 1, 1991. This adjustment will permit the collection of 1.42 cents per Dt of Program Funding Services for payment to GRI.

Trunkline states that copies of its filing have been served on all affected customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29063 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TQ91-1-11-000, Docket No. TM91-2-11-000]**

**United Gas Pipe Line Co.; Filing of Revised Tariff Sheets**

December 5, 1990.

Take Notice that on November 30, 1990, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of January 1, 1991:

*Second Revised Volume No. 1*

Ninth Revised Sheet No. 4
Ninth Revised Sheet No. 4A
Ninth Revised Sheet No. 4B
Seventh Revised Sheet No. 4D
Ninth Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect an increase of 8.79 cents per Mcf to $2.1437 per Mcf in gas commodity costs compared to the gas commodity cost level filed in Docket No. TA91-1-11-001.

United also states that the above mentioned tariff sheets include the current GRI surcharge of 1.46 cents per Mcf (1.42 cents per Dth) as approved by the Commission in Opinion No. 355 issued on October 1, 1990 in Docket No. RP90-120-000.

United states that the revised tariff sheets supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before December 12, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29064 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TQ91-1-35-000]**

**West Texas Gas, Inc.; Filing**

December 5, 1990.

Take notice that on November 30, 1990, West Texas Gas, Inc. ("WTG") filed Twenty-Second Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective January 1, 1991. Twenty-Second Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 214 (1990). All such motions or protests should be filed on or before



Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1991. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0975 per MMBtu, a D-1 demand rate increase of $.02 per MMBtu, and a D-2 demand rate increase of $.0003 per MMBtu from the rates set forth in the quarterly PGA filed September 28, 1990 (Docket No. TQ91-1-18).

Texas Gas notes that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29059 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP90-122-002]**

**Texas Gas Transmission Corp.; Tariff Filing**

December 6, 1990.

Take notice that on November 30, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the tariff sheets listed below, to be effective November 1, 1990:

*FERC Gas Tariff, First Revised Volume No. 2-A*

Substitute Original Sheet Nos. 22-36
Original Sheet Nos. 37-38
Substitute Original Sheet Nos. 47-59
Original Sheet Nos. 60-61
Substitute Original Sheet Nos. 90-92
Substitute Original Sheet No. 101

This filing is being made in compliance with the Commission's October 26, 1990, "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, and Consolidating Proceedings for Hearing" at 53 FERC Para. 61,110 (1990). Texas Gas submits this filing resolves all issues in and is in full compliance with the October 26 order. The referenced docket contained a revised Volume No. 2-A tariff, which contains the conditions under which Texas Gas performs transportation service under its Rate Schedule FT and IT.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1990)). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29060 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP88-68-029]**

**Transcontinental Gas Pipe Line Corp.; Tariff Filing**

December 6, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 29, 1990 the following revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

| Tariff Sheet | Proposed effective date |
|---|---|
| Revised Substitute Sixth Revised Sheet No. 20.1-A. | October 1, 1990. |
| Revised Substitute Sixth Revised Sheet No. 20.3-A. | October 1, 1990. |
| Substitute Seventh Revised Sheet No. 20.1-A. | October 12, 1990. |
| Substitute Seventh Revised Sheet No. 20.3-A. | October 12, 1990. |

Transco states that the purpose of the instant filing is to eliminate, effective October 1, 1990, the rate reference to the FERC Account No. 191 commodity surcharge contained in the Rate Schedule FT rate sheet, which surcharge applied to all quantities delivered under the limited term Rate Schedule FT service agreements during the period November 1, 1989 through September 30, 1990.

Transco states that copies of the instant filing are being mailed to all parties to Docket Nos. RP88-68 *et al.*

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29061 Filed 12-11-90; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TM91-3-42-000]**

**Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that Transwestern Pipeline Company (Transwestern) on November 30, 1990 tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

*Effective January 1, 1991*

82nd Revised Sheet No. 5
46th Revised Sheet No. 6
13th Revised Sheet No. 37

**Reason For Filing**

The above referenced tariff sheets are being filed to adjust Transwestern's Gas Research Institute (GRI) Surcharge rate pursuant to section 21 of the General Terms and Conditions in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the GRI Surcharge is determined each fiscal

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December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29065 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket Nos. RP91-43-000 and TM91-3-43-000]**

**Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

December 5, 1990.

Take notice that Williams Natural Gas Company (WNG) on November 30, 1990, tendered for filing and acceptance a complete First Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date is January 1, 1991.

WNG states that the purpose of this filing is to resubmit its tariff on electronic media pursuant to Order Nos. 493, *et seq.*, to reflect the revised GRI surcharge to be effective January 1, 1991 and to make certain tariff revisions to provide additional flexibility to WNG's customers and to improve administrative efficiency.

WNG states that copies of this filing have been served on all jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29066 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TM91-2-49-000]**

**Williston Basin Interstate Pipeline Co.; Gas Research Institute Funding Unit Adjustment Filing**

December 5, 1990.

Take notice that on November 30, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

*First Revised Volume No. 1*

Thirtieth Revised Sheet No. 10

*Original Volume No. 1-A*

Twenty-third Revised Sheet No. 11
Twenty-ninth Revised Sheet No. 12

*Original Volume No. 1-B*

Eighteenth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11

*Original Volume No. 2*

Twenty-fourth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is January 1, 1991.

Williston Basin states that the instant filing reflects the inclusion of the Gas Research Institute funding unit of 1.42 cents per Dkt as authorized by the Commission in its "Opinion No. 355; Opinion Approving Gas Research Institute's 1991 Research, Development, and Demonstration Program and Related Five-Year Plan for 1991-1995," issued on October 1, 1990 in Docket No. RP90-120-000.

Williston Basin further states that the instant filing reflects the rate revisions contained in the Company's November 13, 1990 compliance filing in Docket Nos. TQ91-1-49-000, 001 and TM91-1-49-001 and does not incorporate any rate revisions which may be made in compliance with the Commission's November 23, 1990 Order in Docket No. RP90-2-001.

Any person desiring to be heard or to protest said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such petitions or protest should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29067 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**Public Information Collection Requirement Submitted to Office of Management and Budget for Review**

December 6, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

*OMB number:* 3060-0440.

*Title:* Fee Processing Form.

*Form Number:* FCC Form 155.

*Action:* Extension.

*Respondents:* Individuals or households, and businesses or other for-profit (including small businesses)

*Frequency of response:* On occasion.

*Estimated annual burden:* 620,000 responses; 10 minutes (.166) average burden per response; 102,920 hours total annual burden.

*Needs and uses:* FCC 155 is required of applicants to obtain certain licenses or other authorization from the FCC. The form accompanies payment of fees and requests data used in the accounting, verification, control and audit of fee collections and for the efficient processing of collections by a lockbox bank. The data will be used by the Commission's lockbox bank to verify that the amount remitted by the payee for Commission services or licenses is correct, as stated on the FCC Form 155

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 90-29126 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M



**Nugget Broadcasting Co. et al.; Applications**

1. The Commission has before it the following mutually exclusive applications for 6 new FM stations:

| Applicant | City/State | File No. | MM Docket No. |
|---|---|---|---|
| **I.** | | | |
| A. Nugget Broadcasting Company | Dahlonega, GA | BPH-890726MD | 90-503 |
| B. Georgia Mountains Communications, Inc. | ...do | BPH-890726ME | |
| C. Kevin C. Croom | ...do | BPH-890726MG | |
| D. GJ Communications | ...do | BPH-890731MK | |
| *Issue heading and Applicants* | | | |
| 1. Air Hazard: A, B | | | |
| 2. Comparative: A, B, C, D | | | |
| 3. Ultimate: A, B, C, D | | | |
| **II.** | | | |
| A. Kate F. Thomas | Union, MS | BPH-890424MC | 90-501 |
| B. Timothy Z. Barber d/b/a/ Double B Broadcasting | ...do | BPH-890424MD | |
| C. Mary L. Hooper and Carolyn B. Tinsley | ...do | BPH-890424ME | |
| D. Lady Bug Broadcasting Company, Inc. | ...do | BPH-890424MF | |
| E. Chunky Creek Radio | ...do | BPH-890424MH | |
| *Issue heading and Applicants* | | | |
| 1. Comparative: A, B, C, D, E | | | |
| 2. Ultimate: A, B, C, D, E | | | |
| **III.** | | | |
| A. Michelle Elaine Hules, *et al.* | Chandler, IN | BPH-890526MG | 90-502 |
| B. Ben L. Umberger | ...do | BPH-890530MI | |
| C. Geyer Broadcasting Co., Inc. | ...do | BPH-890530MJ | |
| *Issue heading and Applicant* | | | |
| 1. Air Hazard: A, B, C | | | |
| 2. Comparative: A, B, C | | | |
| 3. Ultimate: A, B, C, | | | |
| **IV.** | | | |
| A. Montauk Communications, Limited Partnership | Montauk, NY | BPH-890913MP | 90-506 |
| B. Catherine Broadcasting Incorporated | ...do | BPH-890921ND | |
| C. Eileen Farbman | ...do | BPH-890921NE | |
| D. Women Broadcasters, Inc. | ...do | BPH-890921NF | |
| *Issue heading and Applicant* | | | |
| 1. Comparative: A, B, C, D | | | |
| 2. Ultimate: A, B, C, D | | | |
| **V.** | | | |
| A. Danny M. Watson | Greenfield, Ohio | BPH-880601NA | 90-508 |
| B. Hometown Broadcasting of Greenfield, Inc. | Greenfield, Ohio | BPH-880602MW | |
| *Issue heading and Applicant* | | | |
| 1. Comparative: A and B | | | |
| 2. Ultimate: A and B | | | |
| **VI.** | | | |
| A. Dale A. Ganske | Waunakee, WI | BPH-881212MB | 90-507 |
| B. WIBU, Inc. | ...do | BPH-881214ML | |
| C. Waunakee Parque Broadcasting Co. | ...do | BPH-881215MD | |
| *Issue heading and Applicant* | | | |
| 1. Air Hazard: A, B, C | | | |
| 2. Comparative: A, B, C | | | |
| 3. Ultimate: A, B, C | | | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

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headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 90-29010 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.:* 224-200184-003.

*Title:* The Port of Oakland/CMB N.V. (Compagnie Maritime Belge)/Norsul Internacional S.A. Terminal Agreement.

*Parties: The Port of Oakland CMB N.V. (Compagnie Maritime Belge) Norsul Internacional S.A. (NI).*

*Synopsis:* The Agreement amends the basis agreement to: (1) Add NI as a joint user and evidence Naviera Pacifico C.A.'s withdrawal as a joint user; (2) provide certain options for the user's operation to be transferred to other container terminals; (3) modify the dockage cap and wharfage cap provisions; (4) provide an acreage use factor of 3060 twenty foot equivalent units per acre per year; and (5) reduce the percentage of wharfage payable for certain unitized breakbulk cargo.

Dated: December 7, 1990.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29127 Filed 12-11-90; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License; Applicants; Encore Forwarding, Inc., et al.

Notice is hereby given that the following applications have filed with the Federal Maritime Commission applicants for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Encore Forwarding, Inc., Building #75—Suite 240, No. Hangar Rd., JFK Int'l. Airport, Jamaica, NY 11430, Officer: Teresa E. Saccone, President.

Foreign Freight Forwarding Services of Oregon, Inc., 1322 S.E. 14th Ave., Portland, Oregon 97204, Officers: Denise Stone, President, Douglas D. Parks, Vice President/Treasurer, Kathryn M. Parks, Secretary.

Rose International Inc. dba Rose Maritime Container-Line, 128 Bloomfield St., Hoboken, NJ 07030, Officers: Martin Koenig, President, Sascha Eske, Vice President.

Evans International, 2330 West Sherman, Phoenix, AZ 85009, Officer: Charlotte Hardwick, Sole Proprietor.

Andreani Corp., 7331 N.W. 35th St., Miami, FL 33122, Officers: Oscar A. Andreani, President/Director, Miguel Andreani, Director.

KCS Kowatli Car Sales, 1025 N. Hwy. 17-92, Longwood, FL 32750, Officer: Riad Kowatli, Sole Proprietor.

Dated: December 7, 1990.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29128 Filed 12-11-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Bancorp III, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 31, 1990.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Bancorp III, Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Bank of Polo, Polo, Missouri.

Board of Governors of the Federal Reserve System, December 7, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29075 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

### Lehigh Financial BanCorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The



listed company has also applied under § 225.23(a)(2) of Regulation V (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair, competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. Lehigh Financial BanCorp*, Union, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Lehigh National Bank, Union, New Jersey, a *de novo* bank.

In connection with this application, Applicant also proposes to acquire Lehigh Financial Corporation, Union, New Jersey, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29076 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

### Manufacturers Hanover Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1990.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. Manufacturers Hanover Corporation*, New York, New York; to engage through The CIT Group Holdings, Inc., New York, New York, in acquiring certain commercial finance assets of Fidelcor Business Credit Corporation, Commercial Capital Corporation and Comwest Capital Corporation and thereby engage in making, acquiring, and servicing loans and other extensions of credit to businesses for its own account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29077 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Drug Use and Alcohol Abuse Prevention Demonstration Grants in Community Partnership Program

**OFFICE:** Office for Substance Abuse Prevention.

**ACTION:** Request for application.

The Office for Substance Abuse Prevention (OSAP) is reannouncing the grant program: Drug Use and Alcohol Abuse Prevention Demonstration Grants in the Community Partnership Program. Applications for this announcement will be accepted for a single receipt date of April 24, 1991.

Under the authority of section 508(b)(10)(A) of the Public Health Service Act, OSAP will accept applications from local governments, or local nonprofit private entities acting on behalf of a larger community coalition to demonstrate approaches for communities to plan and implement comprehensive long-term strategies for the prevention of substance abuse using public-private sector partnerships. The focus of this program is developing effective, board based community coalitions involving health, human service, law enforcement, education and housing organizations, as well as family/parent/youth groups and the business, community and neighborhood sectors. Approximately $22 million will be available to support approximately 65 grants at an average award amount of $300,000. The Catalog of Federal Domestic Assistance number for this program is 93.194.

Application kits which include the complete Request for Applications and

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guidance for submission are available from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20852, (301) 468–2600.

For additional information regarding the program and/or application procedures, contact:

Division of Community Prevention & Training, Office for Substance Abuse Prevention, ADAMHA, Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0369.

**Richard Kopanda,**

*Deputy Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 90–29094 Filed 12–11–90; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 90P–0380]**

### Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Marcus Dairy, Inc., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identify for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

**DATES:** This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 12, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sheilee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0343.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identify promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Marcus Dairy, Inc., 3 Sugar Hollow Rd., Danbury, CT 06810.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identify for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 10 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "½ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 12,000 quarts (11,356 liters) of the test product. The product will be manufactured at Marcus Dairy, Inc., Three Sugar Hollow Rd., Danbury, CT 06810, and distributed in Connecticut and New York.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 12, 1991.

Dated: December 3, 1990.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90–29080 Filed 12–11–90; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

### Statement of Organization, Functions and Delegations of Authority

Part F. of the statement of organization, functions and delegations of authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 49, No. 228, pp. 46501–46502, dated Monday, November 26, 1984) is amended to reflect a change within the Office of the Associate Administrator, Office of Budget and Administration, Division of Medicare Operations Support (DMOS). The change reorganizes the division and subordinate components within DMOS. Specifically, DMOS is combining the personnel and functions of the existing Adjustment, Enrollment, Premium Modules into two sections, Transaction Sections I and II within the Transaction Branch. A new Operations Analysis and Support Branch is established to assume activities previously performed in the Correspondence Analysis Staff and the Transaction Analysis Staff.

**The Specific Amendments to Part F. Are Described Below**

• Section FH.20.A.3.c., Division of Medicare Operations Support (FHA53) is deleted in its entirety and replaced with the following new section FH.20.A.3.c., Division of Medicare Operations Support (FHA53):

c. Division of Medicare Operations Support (FHA53).

• Oversees clerical operations and manages work requests from the Bureau of Data Management and Strategy to resolve data errors.

• Oversees receipt, resolution and response to correspondence concerning Health Insurance questions from a wide variety of sources including beneficiaries, Congressional Offices, Social Security Administration (SSA) Offices, States, the Railroad Retirement Board (RRB) and others.

• Directs review of Part B payment records and reconciliation related to Medicare billing exceptions and a multitude of exceptions created between SSA, HCFA and RRB exchange of data.

• Provides clerical support to process accretions and deletions for State Buy-In and third party beneficiaries; ensures investigation of Medicare premium problem cases.

• Directs the processing of applications for enrollment of individuals to receive Supplemental Medical Insurance benefits.

• Coordinates the planning, design and implementation of major work processes involving outside division and office components. Resolves problems related to Medicare insurance with other HCFA components, regional offices and SSA components.

Dated: November 21, 1990.

**Robert A. Streimer,**

*Associate Administrator for Management, Health Care Financing Administration.*

[FR Doc. 90–29097 Filed 12–11–90; 8:45 am]

BILLING CODE 4120-03-M



### Privacy Act of 1974; System of Records

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Amendment of an Existing System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to amend our system of records entitled, "Payments for Interns and Residents," HHS/HCFA/BPO No. 09–70–0524. The amendment will expand the information contained in the system to include the information on interns and residents required in 42 CFR 413.86 (Direct Graduate Medical Education Payments). We have provided information about this amendment in the "Supplementary Information" section below.

**DATES:** HCFA filed an amended system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 7, 1990. This proposed amendment will become effective February 11, 1991, unless HCFA receives comments which would necessitate further changes to the system.

**ADDRESS:** The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 108, Security Office Park, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Miller, Acting Chief, Legislative Planning and Special Projects Branch, Office of Financial Operations, Division of Provider Audits, Bureau of Program Operations, Health Care Financing Administration, Room 1–C–7, Meadows East Building, P.O. Box 26679, 6325 Security Boulevard, Baltimore, Maryland 21207.

**SUPPLEMENTARY INFORMATION:** In 1985, HCFA established a new system of records under the authority of section 1886(d)(5)(B) of the Social Security Act (the Act) as amended by section 2307(b) of Public Law 98–369 (The Deficit Reduction Act of 1984). This system was established to ensure that interns and residents are not counted by the Medicare program as more than one full-time equivalent employee in the calculation of Medicare payments for indirect medical education costs under the prospective payment system. The information contained in the system is obtained from an annual report submitted by hospitals to their intermediaries in accordance with regulations at 42 CFR 412.118. This information includes the names and social security numbers of the interns and residents in approved teaching programs that worked at the hospital on September 1. In addition, the hospitals are required to report each intern's or resident's speciality, and the unit or department of the hospital where they worked. Notice of this system, "Payments for Interns and Residents"; HHS/HCFA/BPO, No. 09–70–0524, was published in the **Federal Register** on February 15, 1985 (50 FR 6395).

On September 29, 1989, regulations at 42 CFR 413.86 were issued to implement section 1886(h) of the Act ("Payments for Direct Graduate Medical Education Costs"). Section 1886(h) of the Act requires that Medicare program payments to hospitals for direct graduate medical education costs be determined by multiplying a prospectively calculated per resident amount times the number of full-time equivalent interns and residents, in approved teaching programs, that worked at the hospital during the cost reporting period. (Section 1886(h) of the Act is effective for cost reporting periods beginning on or after July 1, 1985).

In order for HCFA to determine the number of full-time equivalent interns and residents that worked at each hospital in accordance with section 1886(h) of the Act, 42 CFR 413.86 requires hospitals to furnish specific information to their intermediary on each intern and resident that worked at the facility. Some of this information, such as the name and social security number of the interns and residents and their specialty, is the same information collected in the Payments for Interns and Residents system.

To facilitate the collection of all of the intern and resident data required by 42 CFR 413.86, and to determine the number of full-time equivalent interns and residents at each hospital for direct graduate medical education, HCFA proposes to add the data required by 42 CFR 413.86 into the Payments for Interns and Residents system. This modification will expand the data requirements of the annual reports submitted by hospitals for indirect medical education to include data on interns and residents assigned to all areas of the hospital complex, or other freestanding providers, and nonprovider settings for the entire academic year.

The following changes are being made to the system in addition to the added data requirements:

• The "Name" of the system will be changed to "Intern and Resident Information System" to depict more accurately the comprehensive nature of the data collected.

• The "Routine Uses" for which the information contained in the system may be used will be expanded to include individuals or organizations for research, demonstrations, evaluations, etc., pursuant to conditions established by HCFA. This modification is being made to make the data available in conformity with data contained in other HCFA systems.

• The name and address of the "System Manager" will be changed to provide the current name and location.

The first annual report will cover all interns and residents assigned to the hospitals for the academic year beginning July 1, 1990, and ending June 30, 1991.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses", that is, disclosures for purposes that are compatible with the purpose for which we collected the information. The proposed amendment to the routine uses of the system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 4, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

**09–70–0524**

**SYSTEM NAME:**

Intern and Resident Information System, HHS/HCFA/BPO.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Health Care Financing Administration, 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of computerized records.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Interns and residents in programs approved under 42 CFR 413.85, working in all areas of the hospital complex, or

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other freestanding providers, as well as nonprovider settings on or after July 1, 1987.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain each intern's or resident's name, social security number, name of medical, osteopathic, dental or podiatric school graduated and date of graduation, type of residency program and medical specialty, number of years completed in all types of residency programs, foreign medical graduate status or certification status, name of the entity (e.g., hospital, university, corporation) paying salary, the portion of time spent working in either the inpatient or outpatient areas of the hospital, the dates assigned to the hospital and any hospital-based providers, the dates assigned to other hospitals and any nonprovider settings for the academic year, and whether or not the assignments are full or part time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1886(h) of the Social Security Act, 42 U.S.C. section 1395 ww(h).

PURPOSE OF THE SYSTEM:

To ensure that no intern or resident is counted as more than one full-time equivalent employee in the calculation of payments for indirect medical education, and to determine the number of full-time equivalent interns and residents needed to calculate payments for direct graduate medical education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made:

1. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of Title XVIII.

2. To third-party contacts where necessary to establish or verify information provided on or by interns and residents.

3. To a contractor when the Department contracts with a private firm for the purpose of collating, compiling, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor, and the contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

5. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity (when the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee); or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components), is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. An individual or organization for research, demonstration, or evaluation, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) Demonstrates a reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physcial safeguards to prevent unauthorized use or disclosure of the record; and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by the intern's or resident's name and social security number.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. For computerized records, safeguards established in accordance with guidelines in the DHHS ADP Systems Manual, Part 6, "Automated Information System Security," (e.g., security codes, use of passwords) will be used, limiting access to unauthorized personnel.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the last action on the hospital's cost report, and should be coordinated with disposal of the reports.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address indicated above and specify name and social security number.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the System Manager named above, and reasonably identify the record and specify the information to be contested. State the reason for contesting the information (e.g., why it is inaccurate, irrelevant, incomplete, or not current).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from interns and residents as transmitted by the providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-29086 Filed 12-11-90; 8:45 am]

BILLING CODE 4120-03-M



## DEPARTMENT OF THE INTERIOR

### National Park Service

### General Management Plan, Kaloko-Honokohau National Historical Park; Intent to Prepare an Environmental Impact Statement

SUMMARY: Under the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is undertaking the preparation of an environmental impact statement to assess the impacts of proposals and alternatives that will be developed in a general management plan for Kaloko-Honokohau National Historical Park, Island of Hawaii.

Authorized in 1978, Kaloko-Honokohau now has a land base sufficient for the National Park Service to manage resources and provide for visitor use. Management of park resources, the nature and location of development, visitor use, and other important issues are to be dealt with through the development of a general management plan. Plan preparation will be guided by findings and recommendations contained in the 1974 study, *The Spirit of Kaloko-Honokohau*.

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft plan and environmental impact statement are expected to be released and available for public review in fall 1991. The final plan and environmental statement and Record of Decision are expected to be completed by spring 1992.

The Superintendent, Kaloko-Honokohau National Historical Park, will be scheduling public meetings to receive scoping comments on plan/environmental statement issues and alternatives. These meetings are expected to take place in mid-January 1991 and advance notice of these meetings will be provided by the Superintendent. More detailed information will be included in these notifications. Persons wishing to otherwise comment on the scoping of the plan and environmental statement or receive additional information should address such comments or inquiries to the Superintendent, Kaloko-Honokohau National Historical Park, 73-4786 Kanalani St. 14, Kailua, Kona, HI 96740. Comments should be received no later than February 28, 1991.

Dated: November 29, 1990.

John D. Cherry,

*Acting Regional Director, Western Region.*

[FR Doc. 90-29020 Filed 12-11-90; 8:45 am]

BILLING CODE 4310-70-M

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 1, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 27, 1990.

Carol D. Shull,

*Chief of Registration, National Register.*

COLORADO

Jefferson County

*Camvina Park, O'Fallon Park, Pence Park (Denver Mountain Parks MPS)*, Roughly, area SE of jct. of Kittredge & Myers Gulch Rds., Evergreen vicinity, 90001708.

GEORGIA

Troup County

*Hawkes Children's Library of West Point*, 100 W. 8th St., West Point, 90001956.

IOWA

Jackson County

*Spring Side*, Jct. of US 52 and Ensign Rd., Bellevue vicinity, 90001955.

KENTUCKY

Larue County

*Atherton, Aaran, House (Larue County MPS)*, US 31E S of Athertonville, Hodgenville vicinity, 90001963.

*Basler, Darsey, House (Larue County MPS)*, Edlin Rd. E of Lyons, Hodgenville vicinity, 90001965.

*Brown House (Larue County MPS)*, KY 462 W of Gleanings, Hodgenville vicinity, 90001964.

*Burch, Walter, House (Larue County MPS)*, Spaulding Rd., Hodgenville vicinity, 90001965.

*Carter, Nicholas, House (Larue County MPS)*, Carter Brothers Rd., Hodgenville vicinity, 90001966.

*Ferrill, Edward S., House (Larue County MPS)*, KY 470 N of jct. with KY 61, Buffalo vicinity, 90001967.

*Goodin, Albert, House (Larue County MPS)*, KY 64 NE of Tonieville, Hodgenville vicinity, 90001968.

*Hodgenville Women's Club (Larue County MPS)*, Public Square, Hodgenville vicinity, 90001969.

*Kirkpatrick Joseph, Springhouse (Larue County MPS)*, US 31E W of jct. with Co Rd. 1632, Hodgenville vicinity, 90001970.

*Larue County Jail (Larue County MPS)*, E High Ave. S of jct. with US 31E, Hodgenville vicinity, 90001971.

*Lincoln, Abraham, Statue (Larue County MPS)*, Public Square, Hodgenville, 90001972.

*Lincoln, Nancy, Inn (Larue County MPS)*, US 31E, Lincoln Memorial National Historic Park, Hodgenville vicinity, 90001973.

*McClain Hotel (Larue County MPS)*, KY 470 S of jct. with KY 61, Buffalo vicinity, 90001974.

*Miller, William, House (Larue County MPS)*, 211 W. Water St., Hodgenville vicinity, 90001975.

*Miller-Blanton House (Larue County MPS)*, Blanton Rd. E of Athertonville, New Haven vicinity, 90001976.

*Nolynn Baptist Church (Larue County MPS)*, KY 22 SE of jct. with McCubbin-Harned Rd., Hodgenville vicinity, 90001977.

*Patterson, Thomas, House (Larue County MPS)*, KY 84 W of Mathers Mill, Hodgenville vicinity, 90001978.

*Phillips, William, House (Larue County MPS)*, KY 84 E of jct. with Co. Rd. 1512, Hodgenville vicinity, 90001979.

*Saunders-Boyd House (Larue County MPS)*, 118 Forrest Ave., Hodgenville vicinity, 90001980.

*School #20 (Larue County MPS)*, Stark Rd., Hodgenville vicinity, 90001981.

*School #24 (Larue County MPS)*, McCubbin-Harned Rd. N of jct. with KY 222, Hodgenville vicinity, 90001982.

*Smith, David H., House (Larue County MPS)*, 223 Greensburg Ave., Hodgenville vicinity, 90001983.

*Thomas, R.H., House (Larue County MPS)*, Brooks Rd. W of jct. with KY 470, Hodgenville vicinity, 90001984.

*Tonieville Store (Larue County MPS)*, Tonieville-Glendale Rd., N of jct. with KY 84, Hodgenville vicinity, 90001985.

*Walters, Thomas, House (Larue County MPS)*, US 31E N of Magnolia, Hodgenville vicinity, 90001986.

MARYLAND

Harford County

*Best Endeavor*, 1612 Calvary Rd., Churchville vicinity, 90001987.

Washington County

*Huckleberry Hall*, Charles Mill Rd. W of jct. with MD 64, Leitersburg vicinity, 90001988.

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**MASSACHUSETTS**

**Suffolk County**

*Sears Roebuck and Company Mail Order Store*, 309 Park Dr. and 301 Brookline Ave., Boston, 90001992

**MICHIGAN**

**Ionia County**

*VanderHeyden, William H., House*, 925 W. Main St., Ionia, 90001959

**Kalamazoo County**

*Kendall, Silas W., House*, 7340 W. Michigan Ave., Oshtemo Township, Kalamazoo vicinity, 90001958

**Kent County**

*Grand Rapids Savings Bank Building*, 60 Monroe Center, NW, Grand Rapids, 90001956

**Washtenaw County**

*Bell-Spalding House*, 2117 Washtenaw Ave., Ann Arbor, 90001957

**NORTH CAROLINA**

**Rowan County**

*Phifer, John, Farm*, Jct. of Phifer Rd. and SR 1978, Cleveland vicinity, 90001991

**Warren County**

*Watson, John, House*, Petway Burwell Rd., ¼ mi. W of NC 401, Warrenton vicinity, 90001954

**TEXAS**

**Hudspeth County**

*Archeological Site No. 41 HZ 1 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002015

*Archeological Site No. 41 HZ 7 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002016

*Archeological Site No. 41 HZ 181 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002017

*Archeological Site No. 41 HZ 182 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002018

*Archeological Site No. 41 HZ 183 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002019

*Archeological Site No. 41 HZ 184 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002020

*Archeological Site No. 41 HZ 190 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002021

*Archeological Site No. 41 HZ 200 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002022

*Archeological Site No. 41 HZ 220 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002023

*Archeological Site No. 41 HZ 227 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002024

*Archeological Site No. 41 HZ 228 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002025

*Archeological Site No. 41 HZ 253 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002026

*Archeological Site No. 41 HZ 294 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002027

*Archeological Site No. 41 HZ 295 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002028

*Archeological Site No. 41 HZ 296 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002029

*Archeological Site No. 41 HZ 297 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002030

*Archeological Site No. 41 HZ 298 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002031

*Archeological Site No. 41 HZ 299 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002032

*Archeological Site No. 41 HZ 300 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002033

*Archeological Site No. 41 HZ 291 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002034

*Archeological Site No. 41 HZ 292 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002035

*Archeological Site No. 41 HZ 293 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002036

*Archeological Site No. 41 HZ 294 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002037

*Archeological Site No. 41 HZ 295 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002038

*Archeological Site No. 41 HZ 296 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002039

*Archeological Site No. 41 HZ 297 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002040

*Archeological Site No. 41 HZ 298 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002041

*Archeological Site No. 41 HZ 299 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002042

*Archeological Site No. 41 HZ 300 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002043

*Archeological Site No. 41 HZ 301 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002044

*Archeological Site No. 41 HZ 302 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002045

*Archeological Site No. 41 HZ 303 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002046

*Archeological Site No. 41 HZ 304–305 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002047

*Archeological Site No. 41 HZ 306 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002048

*Archeological Site No. 41 HZ 307 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002049

*Archeological Site No. 41 HZ 308 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002050

*Archeological Site No. 41 HZ 309 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002051

*Archeological Site No. 41 HZ 311 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002052

*Archeological Site No. 41 HZ 312 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002053

*Archeological Site No. 41 HZ 313 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002054

*Archeological Site No. 41 HZ 339 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002055

*Archeological Site No. 41 HZ 340 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002056

*Archeological Site No. 41 HZ 409 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002057

*Archeological Site No. 41 HZ 410 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002058

*Archeological Site No. 41 HZ 411 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002059

*Archeological Site No. 41 HZ 412 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002060

*Archeological Site No. 41 HZ 413 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002061

*Archeological Site No. 41 HZ 414 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002062

*Archeological Site No. 41 HZ 415 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002063

*Archeological Site No. 41 HZ 416 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002064

*Archeological Site No. 41 HZ 417 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002065

*Archeological Site No. 41 HZ 418 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002066

*Archeological Site No. 41 HZ 419 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002067

*Archeological Site No. 41 HZ 420 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002068

*Archeological Site No. 41 HZ 421 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002069

*Archeological Site No. 41 HZ 422 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002070

*Archeological Site No. 41 HZ 423 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002071

*Archeological Site No. 41 HZ 424 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002072

*Archeological Site No. 41 HZ 425 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002073

*Archeological Site No. 41 HZ 426 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002074

*Archeological Site No. 41 HZ 427 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002075

*Archeological Site No. 41 HZ 428 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002076



*Archeological Site No. 41 HZ 429 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002077

*Archeological Site No. 41 HZ 430 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002078

*Archeological Site No. 41 HZ 431 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002079

*Archeological Site No. 41 HZ 432 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002080

*Archeological Site No. 41 HZ 433 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002081

*Archeological Site No. 41 HZ 434 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002082

*Archeological Site No. 41 HZ 435 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002083

*Archeological Site No. 41 HZ 436 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002084

*Archeological Site No. 41 HZ 437 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002085

*Archeological Site No. 41 HZ 438 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002086

*Archeological Site No. 41 HZ 439 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002087

*Archeological Site No. 41 HZ 440 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002088

*Archeological Site No. 41 HZ 441 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002089

*Archeological Site No. 41 HZ 442 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002090

*Archeological Site No. 41 HZ 443 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002091

*Archeological Site No. 41 HZ 445 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002093

*Archeological Site No. 41 HZ 448 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002094

*Archeological Site No. 41 HZ 464 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002095

*Archeological Site No. 41 HZ 465 (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002096

*Indian Hot Springs Health Resort Historic District (Indian Hot Springs MPS)*, Address Restricted, Sierra Blanca vicinity, 90002092

**VIRGINIA**

**Albemarle County**

*Casa Maria*, VA 601 S of jct. with US 250, Greenwood vicinity, 90001999

*Gallison Hall*, 24 Farmington Dr., Charlottesville vicinity, 90002013

*Mount Fair*, Jct. of VA 673 and VA 810, Browns Cove vicinity, 90001997

*Walker House*, VA 627 S of jct. with VA 726, Warren vicinity, 90002001

**Clarke County**

*Scaleby*, Co. Rd. 723 S of jct. with US 340, Boyce vicinity, 90002000

**Cumberland County**

*Morven*, VA 45, ½ mi. S of Cartersville, Cartersville vicinity, 90002014

**Franklin County**

*Greer House*, 206 E. Court St., Rocky Mount, 90002011

**King George County**

*Woodlawn Historic and Archeological District*, Between VA 625 and the Rappahannock R., E of US 301, Port Conway, 90002012

**Loudoun County**

*Much Haddam*, US 50 W of jct. with VA 628, Middleburg, 90001986

**Louisa County**

*Louisa County Courthouse*, Jct. of Main St. and VA 208, Louisa, 90001996

**Montgomery County**

*Cambria Historic District (Montgomery County MPS)*, 500–600 blocks Depot St., 500–600 block Montgomery St., 900–1000 blocks Cambria St., and railroad depots, Christiansburg, 90002002

*East Main Street Historic District (Montgomery County MPS)*, E. Main St. from Roanoke and Pepper Sts. to the old high school and Park St. from E. Main to Lester St., Christiansburg, 9002008

*Lafayette Historic District (Montgomery County MPS)*, Roughly, High St. from Main to Washington Sts., Main from High to Water Sts. and Church St. from Main to Washington, Lafayette, 90002005

*Piedmont Camp Meeting Grounds Historic District (Montgomery County MPS)*, Jct. of VA 637 and VA 602, Piedmont, 90002003

*Prices Fork Historic District (Montgomery County MPS)*, Prices Fork Rd. from VA 737 roughly to VA 654, Prices Fork, 90002004

*Riner Historic District (Montgomery County MPS)*, Roughly, E and S of jct. of Main St. and Franklin Sts., Riner, 90002006

*Shawsville Historic District (Montgomery County MPS)*, Main St. E and W of jct. with VA 637, Shawsville, 90002009

*South Franklin Street Historic District (Montgomery County MPS)*, 100–308 S. Franklin St., Christiansburg, 90002007

**Powhatan County**

*Paxton*, 3032 Genito Rd., Powhatan vicinity, 90001987

**Rappahannock County**

*Caledonia Farm*, Jct. of VA 628 and VA 606, Flint Hall, 90001998

*Miller, John W., House*, Jct. of VA 707 and VA 604, Boston vicinity, 90002010

**Richmond County**

*Grove Mount*, Jct. of VA 635 and VA 624, Warsaw vicinity, 90001995

**WEST VIRGINIA**

**Mingo County**

*Price, R.T., House*, 2405 W. Third Ave., Williamson, 90001989

**WISCONSIN**

**Columbia County**

*Chadbourn, F.A., House*, 314 S. Charles St., Columbus, 90001961

**Door County**

*Whitefish Dunes—Bay View Site*, Address Restricted, Sevastopol, 90001990

The following property was listed under Caroline County, Marvland, in the list dated 11/30/90:

**MAINE**

**Kennebec County**

*Maine Archeological Survey Site 83-36* Address Restricted, Winslow vicinity, 90001901

The following property was listed under Marlboro County, South Carolina, in the list dated 12/4/90:

**NORTH CAROLINA**

**Franklin County**

*Franklinton Depot* 201 E. Mason St. Franklinton, 90001941

[FR Doc. 90–29015 Filed 12–11–90; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[332–292]**

### California Pesticide Residue Initiative: Probable Effects on U.S. International Trade in Agricultural Food Products

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Stephen Burket (202–252–1318), or David Ingersoll (202–252–1309), Office of Industries. Hearing-impaired persons can obtain information by contacting our TDD terminal on (202–252–1810).

**SUPPLEMENTARY INFORMATION:** On May 29, 1990, at the request of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–292, California Pesticide Residue Initiative: Probable Effects on U.S. International Trade in Agricultural Food Products. The USTR requested that the Commission provide an interim report on the results of its investigation not later than September 30, 1990, and a final report not later than December 31, 1990. Notice of institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of June 7, 1990 (55 FR 23307).

The Commission's interim report was submitted in confidence to the USTR on September 28, 1990. The initiative, the California Environmental Protection Act of 1990, was on the California ballot on November 6, 1990, and did not pass.

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On November 28, 1990, the Commission received a letter from Ambassador Carla A. Hills, the United States Trade Representative, stating that "We have concluded that we do not need further information on this subject at this time. Therefore, in the interest of conserving the Commission's resources, the investigation may be terminated at this time. A final report will not be needed."

Issued: December 3, 1990.

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-29114 Filed 12-11-90; 8:45 am]

BILLING CODE 7020-02-M

[332-226]

**Quarterly Report on the Status of the Steel Industry**

**AGENCY:** United States International Trade Commission.

**ACTION:** Change in publication frequency of reports on the status of the steel industry.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Mascola (202-252-1428), Minerals and Metals Division, U.S. International Trade Commission, Washington, DC 20436.

**Background**

In response to a letter on November 9, 1990, from the Chairman, Committee on Ways and Means, U.S. House of Representatives, the Commission approved a change in the frequency of publication of the reports on the status of the steel industry [investigation No. 332-226] from monthly to quarterly.

To reflect this change, the report's title will be changed to "Quarterly Report on the Status of the Steel Industry." The report will contain the same annual information, and year-to-date cumulative data for the current and past year. Under the quarterly publication schedule, reports will be published in March, June, September, and December during 1991, and in March and June during 1992.

The Committee has noted that if at any time it determines that monthly publication is again required, it will make a request to that effect to the Commission in writing.

Notice of the institution of the investigation and of the initial series of reports was published in the **Federal Register** on April 23, 1986 (51 FR 15390). Notice of continuation of the investigation was published in the **Federal Register** on January 4, 1990 (55 FR 372).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

Issued: November 30, 1990.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-29115 Filed 12-11-90; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31778]

**Dallas Area Rapid Transit; Control Exemption, Dallas Area Rapid Transit Property Acquisition Corp.**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.* Dallas Area Rapid Transit's continuance in control of Dallas Area Rapid Transit Property Acquisition Corporation, subject to standard labor protective conditions.

**DATES:** The exemption will be effective December 15, 1990. Petitions for reconsideration must be filed by January 2, 1991.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31778 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) DART's representatives:
Lonnie E. Blaydes, Jr., Dallas Area Rapid Transit, 601 Pacific Area, Dallas, TX 75202
Peter A. Gilbertson, Kevin M. Sheys, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of that decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: December 6, 1990.

By the Commission, Chairman, Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90-29196 Filed 12-11-90; 8:45 am]

BILLING CODE 7035-01-M

[No. 37063 [1]]

**Increased Rates in Coal, L&N RR**

October 31, 1978.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of reasons for denying a petition to begin a rulemaking proceeding.

**SUMMARY:** On July 25, 1990 Southern Electric System, a group of six southern electric power companies, included a request for rulemaking with an appeal about a discovery ruling in this coal rate reasonableness proceeding. In the appeal decision we are denying the request to begin a rulemaking proceeding. We are publishing our reasons for the denial as required by 49 U.S.C. 10328(a).

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar; (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

**SUPPLEMENTARY INFORMATION:** Petitioner asked us to begin a rulemaking proceeding for the purpose of adopting discovery rules that will not allow disclosure of shipper-specific revenue information without the consent of the shipper, claiming that 49 U.S.C. 11910(a) mandates such an approach. However, section 11910(a) must be read in conjunction with 49 U.S.C. 11165 and 11166(a), which, respectively, authorize the release of cost data and authorize the ICC to obtain expense and revenue information for regulatory purposes. Petitioners contend that authorization to release "cost data" does not include release of revenue information. The last sentence of section 11166(a), however, reflects Congressional recognition that both expense and revenue information can be necessary for determining railroad costs in regulatory proceedings. Moreover, the constrained market pricing standards adopted in *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985); aff'd *Consolidated Rail Corp.* v. *U.S.*, 812 F.2d 1444 (3rd Cir. 1987),

[1] Includes that portion of Ex Parte No. 557, *Increased Freight Rates and Charges, Nationwide—8 Percent*, involving a requested 13-percent increase on coal rates on L&N and its connections. Also embraces No. 38025S, *The Dayton Power and Light Company* v. *Louisville and Nashville Railroad Company.*



include a form of railroad costing in regulatory proceedings, known as stand-alone costing methodology, that requires use of both expense and revenue data.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: November 30, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90-29108 Filed 12-11-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**Training and Education Grants for Improving Employee Understanding of MSDS's**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice of grant program.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) awarded five grants in fiscal year 1990 to nonprofit organizations to demonstrate training and education approaches to improving the technical literacy of employees so that they may more readily understand the scientific terminology of material safety data sheets and/or to develop methods for simplifying some of the information contained in MSDS's.

This notice announces the availability of funds for additional grants, describes the scope and objectives of the program, and provides information about obtaining a grant application. Applications should not be submitted without first obtaining the detailed grant application package mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

**DATES:** Applications must be received by February 8, 1991.

**ADDRESSES:** Grant applications must be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

**Background**

Material safety data sheets (MSDS's) are technical bulletins or summaries of information regarding hazardous chemicals. The information contained in MSDS's includes chemical identity, hazards, and recommended protective measures. Under OSHA's hazard communication standard (29 CFR 1910.1200, 29 CFR 1915.99, 29 CFR 1917.28, 29 CFR 1918.90, and 29 CFR 1928.59), these documents are to be made available to employers obtaining products containing hazardous chemicals, exposed employees, and designated representatives of employees, such as physicians providing medical treatment related to exposure. In addition to their role in workplace hazard communication, MSDS's are also being used by emergency response personnel and other members of the community under laws administered by the Environmental Protection Agency, the Superfund Amendment and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*). Since MSDS's are being used for multiple purposes, much of the information is presented in technical, scientific or legal terminology. There are indications that some employees and other members of the community have difficulty using some of the information because of the technical or legal language.

**Program Description**

This notice announces a second round of demonstration grants being funded by OSHA to address improving the technical literacy of employees through education so that employees may more readily understand the scientific terminology of MSDS's and to make the technical aspects of MSDS's more understandable by employees.

Grant recipients will develop an education program to improve the ability of employees to comprehend technical information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's. The program may involve providing training to employees or developing educational aids to assist employees or a combination of both. It may also involve reorganization or rewriting sections of the MSDS's so that information important to employees can be more readily identified and understood. Among the approaches grant applicants may propose are:

1. Redesigning required training to ensure that employees can access and understand appropriate information;

2. Developing supplemental materials for employees to consult when using MSDS's, such as glossaries to define terms;

3. Including a summary of important information in lay language on the MSDS; and

4. Reorganizing or rewriting MSDS's so that they are more readily understood by employees.

Grant recipients will develop criteria to determine what information the employee needs to understand the MSDS and how much of that information is being adequately conveyed. The criteria will be used to measure program effectiveness through objective means, such as pre-tests and post-tests.

Grant recipients will be expected to pilot test their programs and to refine them during the grant period. Copies of final curriculums, training aids, tests, and other educational materials or simplified MSDS information will be provided to OSHA at the end of the grant period. The materials will be in the public domain and it is anticipated that they will also be made available to members of the community upon request. Grant recipients will prepare a final report on their programs, including a description of how technical literacy was improved based upon test scores or other objective data and a description of how the program increased employee awareness of hazards in the workplace.

This program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

The grant program will be administered in compliance with 41 CFR part 29-70 and OMB Circulars A-110 and A-122. All applicants will be required to certify to a drug-free workplace in accordance with 20 CFR part 98 and to comply with the New Restrictions on Lobbying published at 29 CFR part 93.

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**Eligible Applicants**

Any organization which is a joint labor-management safety and health trust fund is eligible to apply. Joint labor-management trust funds are those organizations described in title III section 302(c) (5)–(9) of the Taft Hartley Act (29 U.S.C. 186(c) (5)–(9)). Joint labor-management safety and health trust funds are otherwise eligible trust funds which have as their primary function the prevention of occupational injuries and illnesses.

**Unallowable Activities**

The following activities are prohibited under this grant program.

1. Program activities which do not address improving employee understanding of technical aspects of MSDS's or simplifying some of the information contained in MSDS's.
2. Program activities involving workplaces largely precluded from enforcement actions under section 4(b)(1) of the Occupational Safety and Health Act.
3. Activities for the benefit of State, county or municipal employees.
4. Production, publication or reproduction of training and educational materials or modified MSDS's which have not been approved by OSHA.

**Review Procedures and Criteria**

Applications for grants solicited in this notice will be reviewed on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from technical staff.

The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

*1. Program Design*

*a. Potential impact of the program as evidenced by:* i. The applicability of the program to a broad segment of the workforce,

ii. The number of employees to be reached by the program and

iii. The number of workplaces in which these employees are employed.

*b. Soundness of the program as evidenced by:* i. The plan to develop an educational program to improve the technical literacy of employees as it relates to understanding information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's, including the description of its component parts;

ii. The plan to field test the program with employees; and

iii. Plans for program evaluation for effectiveness in achieving its objectives.

*c. The use of innovative approaches to achieve program goals*

*2. Program Experience*

a. Prior occupational safety and health experience of the organization.

b. Previous and current training or education programs conducted by the organization.

c. Technical and professional expertise of present or proposed project staff in relation to the proposed training and/or educational aids development.

*3. Administrative*

a. Managerial expertise of the applicant as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. Financial management capability of the applicant as evidenced by a recent report from an independent audit firm or a recent report from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS, and of its status as a joint labor-management safety and health trust fund, preferably from its articles of incorporation.

d. The completeness of the application, including forms, budget detail, narrative and workplan, and required attachments.

*4. Budget*

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles and with OSHA requirements contained in the grant application instructions.

**Availability of Funds**

There is approximately $440,000 available for this program in fiscal year 1991. Grants will be awarded for a twelve-month period.

**Application Procedures**

Those organizations meeting the eligibility requirements that are interested in developing programs to improve the technical literacy of employees so that they may more readily understand the scientific terminology of MSDS's may request a grant application package from the OSHA Office of Training and Education, Division of Training Educational Programs, 1555 Times Drive, Des Plaines, IL 60018.

All applications must be received no later than 4:30 p.m. local time, February 8, 1991.

**Notification of Selection**

Following review and selection, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 6th day of December 1990.

**Gerard F. Scannell,**

*Assistant Secretary of Labor.*

**Appendix**

To assist potential applicants, OSHA has assembled the following questions and answers.

*Q. Can we get an extension of the deadline?*

A. No. Waivers for individual applications cannot be granted, regardless of the circumstances. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications.

*Q. Will you help us prepare our application?*

A. No. We will answer specific questions about application requirements and evaluation criteria and any other subjects which will help potential applicants understand the application package.

*Q. How long should an application narrative be?*

A. There is no specified length. Generally 10 to 15 pages is sufficient. However, the most important thing to remember when completing the narrative is to address all items requested in the application package and to provide enough description of proposed program activities so that reviewers have a thorough understanding of the proposal.

*Q. How many copies of the application should I submit?*

A. Submit one original and three copies. Please do not bind them.



*Q. When will I find out if I am going to be funded?*

A. You can expect to receive notification about two months after the application closing date.

*Q. Can I obtain copies of the reviewers' comments?*

A. Copies of reviewers' comments will be mailed to unsuccessful applicants upon written request.

*Q. Can we budget for the lost time wages of employees participating in the educational program?*

A. No. OSHA does not fund lost time wages in its grant programs.

*Q. You request a copy of a recent audit but our organization has not had an audit. What do I submit?*

A. Explain in the narrative when you expect an audit to be conducted. Submit a copy of your most recent IRS tax return for a nonprofit organization instead.

[FR Doc. 90-29023 Filed 12-11-90; 8:45 am]
BILLING CODE 7510-01-M

**Wage and Hour Division**

**[[Administrative Order No. 660]: Amendment]**

**Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing**

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949–53 Comp., p. 1004) and 29 CFR part 511, I hereby appoint special Industry Committee No. 19 for American Samoa.

2. Pursuant to sections 5, 6(a)(3) and 8 of FLSA, as amended (29 U.S.C. 205, 206(a)(3), and 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR part 511, I hereby:

(a) Convene the above-appointed industry committee;

(b) Refer to the industry committee the question of the minimum rate or rates for all industries in American Samoa to be paid under section 6(a)(3) of FLSA, as amended; and,

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industries, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and function under FLSA.

The committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on January 14, 1991, in Pago Pago, American Samoa. The hearing for Industry Committee No. 19 was originally scheduled to commence on June 4, 1990, but was postponed by the Department after consideration of motions and requests for postponement submitted by the American Samoa Government, representatives of various businesses and members of Congress.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by section 6(a) or 6(b) of FLSA, as amended by the Fair Labor Standards Amendments of 1989, of $3.80 an hour effective April 1, 1990, and $4.25 an hour effective April 1, 1991.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend the minimum wage rates prescribed in section 6(a) or 6(b) unless there is evidence in the record that establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR part 511.10, that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following:

(a) Competitive conditions as affected by transportation, living, and production costs;

(b) Wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and,

(c) Wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information that has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Upon request, the Wage and Hour Division will mail copies to interested persons. To facilitate mailing, such persons should make advance written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of title 29, Code of Federal Regulations, part 511. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each prehearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than January 4, 1991. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

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Signed at Washington, DC, this 6th day of December 1990.

**Roderick A. DeArment,**

*Acting Secretary of Labor.*

[FR Doc. 90-29062 Filed 12-11-90; 8:45 am]

BILLING CODE 4510-27-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (90-103)]**

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Informal Executive Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting change.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 55 FR 49723, Notice Number 90-102, November 30, 1990.

**PREVIOUSLY ANNOUNCED DATES, TIMES AND ADDRESS OF MEETING:** December 14, 1990, 9 a.m. to 4 p.m.; National Federation of International Business, Staff Room, 600 Maryland Avenue, SW., suite 700, Washington, DC 20024.

**CHANGES IN THE MEETING:** Date changed to December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

Dated: December 6, 1990.

**John W. Gaff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 90-29083 Filed 12-11-90; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

### Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On October 18 and 23, 1990, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on December 3, 1990.

**Charles E. Myers,**

*Permit Office, Division of Polar Programs.*

[FR Doc. 90-29018 Filed 12-11-90; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[License No. SNM-42; Docket No. 70-27]**

### Finding of No Significant Impact and Opportunity for a Hearing Amendment of Special Nuclear Material; Babcock & Wilcox Naval Nuclear Fuel Division; Lynchburg, VA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM-42 for the operation of a supercompactor for Babcock & Wilcox, Naval Nuclear Fuel Division (NNFD) located in Lynchburg, Virginia.

**Summary of the Environmental Assessment**

*Identification of the Proposed Action:* The proposed action is amendment of NNFD's license to authorize operation of a supercompactor for the purpose of reducing the volume of low-level waste that is sent to burial. The facility will only process waste generated at the NNFD. The compacted 55-galllon drums, called pucks, will be placed in overpacks. The overpacks will then be shipped to a licensed burial facility. In 1989, NNFD sent 45,750 ft $^3$ or 6,100 55-gallon containers to disposal sites. This amount is not expected to increase by more than 20 percent in the next few years.

The drums will be delivered by conveyor to the in-feed air lock. The inner door of the in-feed chamber is then opened admitting drums to the controlled area cell where four holes are punched in the sides of each drum, two at the top and two at the bottom. Any liquid in the drum will drain out through the holes or be squeezed out during compaction. The liquid would be collected in catch pans and then transferred to bottles for removal from the supercompactor facility. These liquids will be disposed of through the hot drain system to the Waste Treatment Facility (WTF) or further processed for uranium recovery.

The drum would then be moved to the press where a press mold is lowered over the drum. The main press ram then crushes the drum against a fixed bottom platen. The mold is raised with the ram still down, thereby stripping the compacted drum or puck from the mold. When the ram is raised, the puck is pushed off the bottom platen onto the six-position out-feed table where the thickness of the puck is measured. The pucks are lifted off the out-feed table, rotated, and lowered through an exit port into the appropriate overpack by a robot arm. The number of pucks fitting into the overpack is determined by the puck thickness and the amount of U-235. The loaded overpack is then moved to a machine which swages a top on the overpack. The overpack is then ready for offsite shipment.

The piercing operation, the main press, and the out-feed table are housed in a separate enclosure (compactor cell). This enclosure is constructed of steel walls with viewing windows. The supercompactor is controlled by an operator housed in a control room that is adjacent to but separated from the compactor cell. The operator may view the operations in the compactor cell through the viewing windows. The operator controls the supercompactor through a computer console which provides status information from all the system sensors, allowing him to move the system through its sequence in a step-by-step mode.

Air quality will be monitored in the cell and around the cell exits to determine contamination levels. The cell is kept at a negative pressure relative to the surrounding area by a 1,000 cfm exhaust system which discharges through a pre-filter and a HEPA (High Efficiency Particulate Air) filter into the exhaust stack.

*The Need For The Proposed Action:* With the lack of new low-level waste disposal sites and an increasing volume of wastes being generated, the need for waste volume minimization and reduction is apparent. Supercompacting of the waste will extend the operational lifetime of the existing commercial disposal sites and will help to reduce the number of waste shipments to waste disposal sites.

*Environmental Impacts of the Proposed Action:* There should not be any liquid effluents from the compactor operation because the waste should be dry. However, NNFD has addressed the possibility that some of the drums may contain small amounts of liquid. The drum will be punctured at the bottom to allow any liquid contained in the waste to be expelled during compaction. The liquids would be collected in a collection pan and then transferred to bottles. The bottles are removed from the facility, and the liquid would either be returned to recovery for further processing or sent to the waste treatment facility. NNFD has very conservatively assumed that 0.01 percent of the volume of each container would be released as liquid. If the liquid was sent to waste treatment, it would go through normal treatment where NNFD estimates that approximately 95 percent of the uranium should be removed. Using these conservative assumptions, the increase in liquids to be processed by the WTF would be about 155 liters; this compares to 1.92E8 liters processed by the WTF in 1989. The increase in the radiological content of the effluent would increase by less than 0.1 percent. This small increase in effluents would not cause significant impact to the environment.

The source of airborne radioactive material would be entrainment of the material in the air that is expelled from a container during compaction. NNFD has conservatively assumed that 0.01 percent of the volume of each container is released to the cell atmosphere and pulled into the ventilation system. The ventilation system discharges through a pre-filter and a HEPA filter and then into the exhaust stack. The prefilters have a 60 percent efficiency, and the HEPAs have a 99.9 percent efficiency for 0.3 micron or larger particles. Based on these assumptions, the release for 1 year would be: 1.1E-1 microcuries U-234, 2.3E-3 microcuries U-235, 9.0E-6 microcuries U-236, and a 4.2E-6 microcuries U-238. This is a small fraction of the releases from all other NNFD operations (less than 0.02 percent). Offsite radiological doses due to airborne effluents from the supercompactor operations (assuming worst cause conditions) would be about 0.1 millirem per year to the lung and 1.2E-2 mrem whole body for a hypothetical individual at the site boundary (400 meters SSW). The dose to the nearest resident would be 1.8E-2 mrem to the lung and 2.1E-3 mrem whole body, again assuming worst case conditions. The actual dose would be expected to be much less. According to NNFD, the whole body dose (site boundary) resulting from the release from all NNFD operations in 1989 was estimated to be 2.1 mrem. The additional dose resulting from operations of the supercompactor does not significantly increase the dose from NNFD operations. The total dose is a small fraction of the dose limit (500 mrem/yr) for unrestricted areas specified in 10 CFR 20.105(a) of the Commission's regulations, and it is also a small fraction of the limits for release of radionuclides specified by the Environmental Protection Agency in its regulation, 40 CFR part 61, subpart I (25 mrem/yr for whole body, 75 mrem/yr for body organs). (Note that 40 CFR part 61, subpart I, published in the **Federal Register** on March 7, 1989, on page 9652 has not become effective.) Using the NNFD 1989 dose for the site boundary, the cumulative whole body dose to the nearest resident (including the dose due to operations at the Research Lab and the Commercial plant) would be 2.1 mrem. The cumulative dose from the three facilities are well below the 25 mrem permitted by 10 CFR part 20, § 20.105(c), which incorporates the provisions of EPA's standards in 40 CFR part 190 (the Commercial plant is subject to 40 CFR 190). Therefore, the staff concludes there is no adverse impact to the maximally exposed individual from the release of radioactivity due to operations of the plant.

NNFD has not committed in the license condition portion of the application that the stack from the supercompactor building will be sampled. This stack should be continuously sampled and added to the air monitoring program contained in section IV, chapter 4, of the license application.

NNFD has postulated three types of accidents in the supercompactor building which could result in the release of radioactive material. These accidents were a criticality, fire, and an explosion. None of these scenarios would result in potential releases greater than that which would result from a similar accident that occurred from current operations. The supercompactor cell will be provided with a wet pipe automatic sprinkler system. Automatic fire detection will also be provided throughout the building to provide early warning in the event of a fire.

*Conclusion:* Potential exposures are well within acceptable limits, and the staff concludes that there will be no significant impact associated with operation of the supercompactor. The staff recommends that the supercompactor building stack be continuously sampled when the supercompactor is operating.

*Alternatives to the Proposed Action:* The principal alternative would be to take no action or deny the use of the compactor. By taking no action, the benefit of extending the operational lifetime of existing disposal sites would be lost. Also, the savings in the number of shipments to disposal sites would be lost.

*Agencies and Persons Consulted:* In performing this assessment, the staff utilized the amendment application dated September 19, 1990. The staff also contacted the Commonwealth of Virginia, Department of Air Pollution Control, in connection with the preparation of this environmental assessment.

*Finding of No Significant Impact:* The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-42. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above document related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492-3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**Opportunity for a Hearing**

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Babcock & Wilcox Company, Naval Nuclear Fuel Division, P.O. Box 785, Lynchburg, VA 24505-0785); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." These requirements, which the requester must describe in detail, are:

1. The interest of the requestor in the proceeding;

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2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request of hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**John P. Roberts,**

*Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 90-29089 Filed 12-11-90; 8:45 am]

BILLING CODE 7590-01-M

## Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 16, 1990, through November 30, 1990. The last biweekly notice was published on November 20, 1990 (55 FR 49444).

### Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 11, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

**Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of amendment request:* November 8, 1990

*Description of amendment request:* The proposed amendment upgrades the Safety Limit Minimum Critical Power Ratio and revises the Operating Limit Minimum Critical Power Ratio of the technical specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

*Determination of No Significant Hazards Considerations*

The Code of Federal Regulations (10 CFR 50.91) requires licensees requesting an amendment to provide an analysis, using the standards in 10 CFR 50.92, that determines whether a significant hazard consideration exists. The following analysis is provided in accordance with 10 CFR 50.91 and 10 CFR 50.92 for the proposed amendment to Pilgrim's Minimum Critical Power Ratio.

1. Upgraded Safety Limit MCPR

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the Safety Limit MCPR does not change plant equipment, operating procedures, or governing design criteria used to protect the plant against the initiation of any analyzed accident or used to mitigate the consequences of any analyzed accident.

B. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed because the proposed change does not change plant equipment, operating procedures, or governing design criteria and the change to the Safety Limit MCPR provides the same level of protection as the existing Safety Limit MCPR against fuel cladding failure during an abnormal operational transient. The proposed Safety Limit MCPR therefore provides equal assurance against a release of radioactive material in excess of 10 CFR 20 limits during abnormal operational transients and a new event sequence leading to an accident is not created.

C. The following design requirement ensures an adequate safety margin is maintained:

Abnormal operational transients caused by a single operator error or equipment malfunction shall be limited such that, considering uncertainties in manufacturing and monitoring the core operating state, more than 99.9% of the fuel rods would be expected to avoid boiling transition.

The proposed change does not involve a significant reduction in the margin of safety because this design requirement, which governs fuel cladding integrity and maintains the defense-in-depth philosophy, has not changed.

2. Revised Operating Limited MCPR

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the Operating Limit MCPR does not change plant equipment, operating procedures, or governing design criteria used to protect the plant against the initiation of any analyzed

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accident or used to mitigate the consequences of any analysed accident.

B. The proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change plant equipment, operating procedures, or governing design criteria and the changes to Operating Limit MCPRs provide the same level of assurance that the Safety Limit MCPR will not be exceeded during an abnormal operational transients and a new event sequence leading to an accident has not been created.

C. The proposed change does not involve a significant reduction in the margin of safety because the conservative Operating Limit MCPR ensures the most limiting transient will not violate the Safety Limit MCPR.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

*Attorney for licensee:* W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

*NRC Acting Project Director:* Curtis J. Cowgill, III

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of application for amendments:* November 30, 1988, as supplemented May 30, 1990 and June 4, 1990

*Description of amendments request:* These amendments propose a change to Technical Specification 4.0.2 and its associated bases, based on the guidance provided in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The current Byron and Braidwood Technical Specification 4.0.2 allows a surveillance interval to be extended by up to 25 percent of the interval. However, the combined interval for any three consecutive surveillances cannot exceed 3.25 times the original surveillance interval. This Technical Specification change request proposes to remove the 3.25 limitation for consecutive surveillances. The revised specification would allow a maximum of 25 percent extension for each surveillance period. The intent of this change is not to increase the time between the performance of surveillances. Rather, the purpose of this change is to allow for more operational flexibility when scheduling surveillances.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards.

*A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The accident analyses assume that required equipment will be operable in the event of an accident. Surveillances are performed to verify the ability of the equipment to operate as designed. Deletion of the 3.25 criteria will allow additional flexibility in the scheduling of surveillances so that they may be conducted at times when plant conditions are conducive to their performance. No change is being proposed in the surveillance frequency, and therefore, this change will have no impact on the probability of an occurrence.

The B/B UFSAR Chapter 15 analyses assume that equipment required by the proposed Specifications be capable of performing when required. The proposed change does not alter the operability requirements of any equipment. As stated in NRC Generic Letter 89-14, the most probably result of any particular surveillance is the verification of continued operability, as opposed to the detection of inoperable equipment. Additionally, the 3.25 limitation being deleted was not considered in the evaluation of the probability of consequences of accidents considered in the B/B UFSAR.

There is a slight possibility of inoperable equipment remaining undetected for slightly longer period the time than currently allowed, but this possibility arises only if the current 1.25 allowable extension is routinely utilized. The base frequency of the surveillances remains unchanged, and every effort is made to perform these surveillances as close as possible to the due date.

*B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

There is no new equipment being introduced, and installed equipment is not being operated in a new or different manner. No specific attributes verified during the conduct of the surveillances are being changed or deleted.

*C. The proposed change does not involve a significant reduction in a margin of safety.*

The proposed change will allow the surveillances to be performed when plant conditions are conducive to their completion. The current allowable extension of up to 25% per surveillance interval remains unchanged. The proposed changed will allow the scheduling flexibility necessary to prevent a unit shutdown for the purpose of performing a surveillance. This increased scheduling flexibility will result in a net safety benefit.

Based on the above, Commonwealth Edison concludes that this change will not increase the probability or consequences of a previously analyzed accident, introduce the possibility of an accident not previously evaluated, or decrease the margin of safety. Therefore, this change does not involve a significant hazards consideration.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

*Attorney to licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

*NRC Project Director:* Richard J. Barrett

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of amendment request:* October 31, 1990

*Description of amendment request:* The request is for the extension of surveillance intervals for the Reactor Protection System and Engineered Safety Features Actuation System analog channel operational tests from monthly to quarterly, and to allow routine analog channel testing in a bypassed instead of a tripped condition. These changes are among those proposed by the Westinghouse Owners Group and approved by NRC's Safety Evaluations of February 21, 1985, and February 22, 1989.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.



The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

*1. Involve a significant increase in the probability or consequences of an accident previously evaluated:*

Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System and Engineered Safety Features yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS. The increase also results in a small increase in Core Damage Frequency (CDF) due to unavailability of the ESF signals.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance testing. This reduction of inadvertent core melt probability is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS and ESF, but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

*2. Create the possibility of a new or different kind of accident from any previously evaluated:*

The proposed changes do not result in a change in the manner in which the RPS and ESF provide plant protection. No change is being made which alters the functioning of the RPS or ESF (other than in a test mode). Rather, the likelihood or probability of the RPS or ESF functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in the margin of safety as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes, except those necessary to implement testing in bypass. Some existing instrumentation is designed to be tested in bypass, and the current Technical Specifications do not prohibit testing in bypass. Testing in bypass is also recognized by IEEE Standards. Therefore, testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not alter the functioning of the RPS or ESF, and so the possibility of a new or different kind of accident from any previously evaluated has not been created.

*3. Involve a significant reduction in margin of safety:*

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience at two Westinghouse plants with extended surveillance intervals has shown the initial uncertainty assumptions to be valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. 0.5 fewer inadvertent reactor trips per unit per year. This is due to less frequent testing and testing in bypass, which minimizes the time spent in a partial trip condition.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrument testing.

*Conclusions*

The foregoing analysis demonstrates that the proposed amendment to the Indian Point 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new and different kind of accident and does not involve a significant reduction in a margin of safety. Additionally, fewer inadvertent reactor trips are expected, and operator effectiveness is expected to improve. Based upon the preceding analysis, Con Edison [Consolidated Edison Company of New York] concludes that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. The staff also notes that these changes were among those proposed on a generic basis by the Westinghouse Owners Group and approved by the staff's Safety Evaluations of February 21, 1985, and February 22, 1989. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

*Attorney for licensee:* Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

*NRC Project Director:* Robert A. Capra

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of amendment request:* October 22, 1990

*Description of amendment request:* The proposed amendment would revise the Palisades Plant Technical Specification 4.14, "Augmented Inservice Inspection Program for Steam Generators," to become consistent with the inspection program described in Standard Technical Specifications. This change would delete the augmented inservice inspection requirements associated with the present steam generators, which are being replaced during the present outage, and revise Technical Specification 4.14 to permit an augmented inservice inspection of the new steam generators.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

1. not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed augmented inservice inspection program will continue to provide assurance that the steam generators are capable of performing their design function as a Primary Coolant System (PCS) boundary under both normal operating and postulated accident conditions and that the release limits of 10 CFR Part 100 will not be exceeded. Under the proposed change, the current inservice inspection program will be replaced by a program that is consistent with the Standard Technical Specifications.

The same principal provisions from the existing inservice inspection program are also reflected in the proposed inservice inspection program. Therefore, the reliability and integrity of those portions of the PCS boundary associated with the steam generator tubes will not be degraded. Additionally, the proposed inspection program will direct tube repairs under conditions that are no less conservative than those stated in the existing specification. Consequently, the probability or consequences of an accident will not be increased following implementation of the revised inspection program.

2. not create the possibility of a new or different kind of accident from any accident previously evaluated.

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The proposed change does not alter the assumptions used in existing accident analyses and embodies each of the principal attributes of the current Technical Specifications program for inservice inspection of steam generators. The tube plugging limits and principal attributes contained in the proposed Technical Specifications inspection program are no less restrictive than those in the existing inservice inspection program, and assurance of steam generator tube integrity will continue to be provided through a periodic and formalized inspection program. Therefore, a new or different kind of accident is not created by the proposed change.

3. not involve a significant reduction in the margin of safety.

The margin of safety relative to this change request involves the reliability and integrity of the PCS under normal and accident conditions. The proposed change will not adversely affect the ability of the steam generator tubes to withstand the design pressure, temperature, and seismic effects that are expected under either normal or postulated accident operating conditions, nor will the change result in a condition that could exceed the release limits of 10 CFR Part 100. The margin of safety associated with the structural integrity of those portions of the PCS that are associated with the steam generator tubes will be maintained following implementation of the proposed change through our continued use of Technical Specifications limits on primary-to-secondary leakage and a formalized inservice inspection program. Consequently, there is no decrease in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director:* Robert Pierson.

**Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan**

*Date of amendments request:* August 7, 1990

*Description of amendments request:* The proposed amendments would change Unit 1 and Unit 2 surveillance requirements for pumps and valves to be consistent with the approved Inservice Testing (IST) Program for pumps and valves at D. C. Cook Units 1 and 2. Specifically, the proposed changes requested are as follows:

*RHR Pumps*

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from T/S 4.5.2.f to allow testing of the RHR pumps on a quarterly basis as endorsed by the ASME Code.

*SI Pumps*

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from Unit 1 T/S 4.5.2.f to allow testing of the SI pumps on a quarterly basis as endorsed by the ASME Code.

*CCPs*

The licensee is proposing to delete the phrase "at least once per 31 days" from T/S 4.1.2.3.1 and the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from T/S 4.1.2.4 and 4.5.2.f to allow testing of the CCPs on a quarterly basis as endorsed by the AMSE Code.

*CTS Pumps*

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from T/S 4.6.2.1.b to allow testing of the CTS pumps on a quarterly basis as endorsed by the AMSE Code.

*ESW Pumps*

The licensee is proposing to change T/S 4.7.4.1.c to state "By verifying pump performance pursuant to Specification 4.0.5" to allow testing of the ESW pumps on a quarterly basis as endorsed by the ASME Code.

*CCW Pumps*

The licensee is proposing to change T/S 4.7.3.1.c to state "By verifying pumps performance pursuant to Specification 4.0.5" to allow testing of the CCW pumps on a quarterly basis as endorsed by the ASME Code.

*BAT Pumps*

The licensee is proposing to replace the existing provisions of T/S 4.1.2.5 and 4.1.2.6 with a provision referencing Specification 4.0.5. This will allow testing of the BAT pumps on a quarterly basis as endorsed by the ASME Code. Except for the change in testing frequency, this change is consistent with those changes approved for the CCPs, RHR pumps, SI pumps, and CTS pumps in Amendment 98 to the Unit 1 T/Ss.

*AFW Pumps*

The licensee is proposing to delete the phrases, "At least once per 31 days by:" and "At least once per 18 months during shutdown by:" and add the phrase "when tested pursuant to Specifications 4.0.5 by:" to T/S 4.7.1.2 to allow testing of the AFW pumps on a quarterly basis as endorsed by the ASME Code.

The licensee has performed reliability studies in support of the proposed changes to ensure that no evidence of pump degradation has been experienced for these pumps.

The licensee has also proposed changes to valve cycling requirements. The change proposed in this section are similar to the changes approved for T/Ss 4.5.2, 4.6.2.1, 4.7.3.1, and 4.7.4.1 in Amendment 98 to the Unit 1 T/Ss.

This existing provisions of Specifications 4.1.2.1.a.1, 4.1.2.2.a.1, and 4.6.2.2.a.1 require that each testable power-operated or automatic valve in the subject flow path be cycled through at least one complete cycle of full travel at least once per 7 or once per 31 days. This requirement is redundant to the Valve IST Program and the AMSE Code except that the IST Program and the AMSE Code only require testing on a quarterly, rather than weekly or monthly, basis.

The licensee is proposing to delete these specific requirements and allow the valve cycling for these valves to be done quarterly in accordance with the IST Program, the ASME Code, and Specification 4.0.5.

The existing provisions of Specifications 4.1.2.2.c and 4.6.2.2.c.1 require that each power-operated valve in the flow path that is not testable during plant operation be cycled through at least one complete cycle of full travel at least once per 18 month during shutdown. This requirement is redundant to provisions in the licensee's Valve IST Program, the ASME Code, and Specification 4.0.5. The licensee is proposing to delete the specific requirements from the T/Ss.

The Unit 2 provisions for the boron injection flow paths include a requirement to verify that each automatic valve in the flow path actuates to its correct position on an RWST sequencing signal every 18 months. The licensee has proposed including this requirement in Unit 1 as Specifications 4.1.2.2.c.

The existing provisions of Specification 4.7.1.5 require part-stroke exercising of the steam generator stop valves on a quarterly basis and verifying full closure within 5 seconds while in hot standby with $T_{avg}$ greater than or equal to 541° F during each reactor shutdown except that verification need not be done more often than once per 92 days. The licensee has proposed deleting the specific requirement to allow testing in accordance with Specification 4.0.5.

The licensee is also updating their surveillance program to the standards set out in the 1983 edition of the ASME Code. Specification 4.0.5 requires that they test in accordance with 10 CFR 50.55a; however, some of their T/Ss still reference the 1974 edition of the ASME Code rather than Specification 4.0.5. They are updating their T/Ss by making the following changes.



The existing provisions of Specification 4.4.3 require that each pressurizer code safety valve be demonstrated operable in accordance with the 1974 edition of the ASME Code. The licensee is proposing to update their T/S to the 1983 edition of the code by deleting the current wording and referencing Specification 4.0.5. The Bases for Specification 4.4.3 also reference the 1974 edition of the code and thus a similar change is being proposed for the Bases.

The provisions of Specification 4.4.9.3.3 require that each PORV and the RHR safety valve be demonstrated operable in accordance with the 1974 edition of the ASME Code. The licensee is proposing to update their T/Ss to the 1983 edition of the code by deleting the current wording and referencing Specification 4.0.5. The lift settings and orifice sizes in Table 4.7-1 are not included as part of the ASME Code and the licensee has therefore retained this table and moved its reference to the LCO.

The licensee is also proposing several editorial changes such as writing out what currently appears as mathematical symbols on the submitted T/S pages, e.g., "greater than or equal to" instead of greater than or equal to.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided the following discussion relating to the above three criteria:

*Criterion 1*

Quarterly testing of the subject Unit 1 pumps is endorsed by the ASME Code and has been approved for Unit 2 and the Westinghouse Standard T/Ss (STS) (NUREG-0452, Rev. 4. In addition, we believe that the results of our reliability study have shown that quarterly testing would not have had a negative impact on trending past degradation and in ensuring pump reliability. Quarterly testing should be sufficient to adequately assess the operational readiness of these pumps during their service life and will actually improve their reliability by eliminating unnecessary cycling. We therefore believe that the proposed changes will not result in a significant increase in the probability or consequences of any accident previously analyzed.

The purpose of the proposed changes to valve cycling requirements is to make our Unit 1 T/Ss more consistent with our Unit 2 T/Ss, the STS, and ASME Code requirements. The requirements of the ASME Code, the Unit 2 T/Ss, and the STS have previously been found acceptable and no relevant Unit 1 specific parameters differ significantly from Unit 2. In addition, we believe that testing these valves more frequently than quarterly does not improve safety but does create more opportunity for the tested valves be inadvertently left in the wrong position. We therefore believe these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to update from the 1974 Code to the 1983 Code are intended to update certain Unit 1 T/Ss to reference Specification 4.0.5 rather than the 1974 edition of the ASME Code. These changes thereby allow testing of the subject components to be done in accordance with the 1983 edition of the ASME Code as required by 10 CFR 50.55a. The subject Unit 2 T/Ss already reference Specification 4.0.5 and this change therefore makes the Unit 1 T/Ss more consistent with the Unit 2 T/Ss. The 1983 edition of the ASME Code and its application to the subject Unit 2 T/Ss has previously been found acceptable. No relevant Unit 1 specific parameters differ significantly from Unit 2. We therefore believe the proposed changes of this section will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*Criterion 2*

Extending the surveillance intervals for pump surveillances will not result in a change in plant configuration or operation, and we therefore believe that the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

The proposed changes to valve cycling requirements introduce no new plant configurations or operating conditions and do not create a condition that has not been previously analyzed; therefore, we believe the changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

The proposed changes to update from the 1974 to 1983 edition of the Code introduce no new plant configurations or operating conditions and do not create a condition that has not been previously analyzed; therefore, we believe the changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

*Criterion 3*

Quarterly testing of the subject Unit 1 pumps is endorsed by the ASME Code and has been approved for Unit 2 and the Westinghouse Standard T/Ss (NUREG-0452, Rev. 4). In addition, we believe that the results of our reliability study have shown that quarterly testing would not have had a negative impact on trending past degradation and in ensuring pump reliability. Quarterly testing should be sufficient to adequately assess the operational readiness of these pumps during their service life and will actually improve their reliability by eliminating unnecessary cycling. Therefore, we believe that the proposed changes will not result in a significant reduction in the margin of safety.

Lastly, we not that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve a significant hazards consideration. This change is similar to the sixth example, which refers to changes that might result in some increase in the probability of occurrence or consequences of a previously analyzed accident, but the results of which are clearly within limits established as acceptable. We believe these changes are clearly within acceptable limits since they are endorsed by Section XI of the ASME Code, and based on past history, there is no reason to believe that quarterly testing would have a negative impact on pump reliability. In addition, quarterly testing has been approved for Unit 2 and the Westinghouse Standard Technical Specifications (NUREG-0452, Rev. 4) (STS). Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

Since testing the valves more frequently than quarterly will not improve safety and only create more opportunity for leaving the valves in the wrong position and since the level of safety previously approved for Unit 2 will be maintained, we believe that these changes will not involve a significant reduction in a margin of safety.

The changes to update from the 1974 to 1983 edition of the Code update the Unit 1 T/Ss to the edition of the ASME Code required by the federal regulations and will maintain the level of safety previously approved for Unit 2. Therefore, we believe that these changes will not involve a significant reduction in a margin of safety.

Lastly, we not that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve a significant hazards consideration. This change is similar to the sixth example, which refers to changes that might result in some increase in the probability of occurrence or consequences of a previously analyzed accident, but the results of which are clearly within limits established as acceptable. We believe this changes is clearly within acceptable limits since the 1983 edition of the ASME Code and its application to the subject Unit 2 T/Ss has been previously approved and no relevant Unit 1 parameters differ significantly from Unit 2. Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The remaining changes are editorial changes and therefore we believe they will not involve a significant increase in the probability or consequences of a previously analyzed accident, create the possibility of a new or different kind of accident, or involve a significant reduction in a margin of safety.

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In addition, we note that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments not considered likely to involve a significant hazards consideration. This change is similar to the first example, which refers to a change which is purely an administrative change to the technical specifications: for example, a change to achieve consistency throughout the T/Sc, correction of an error, or a change in nomenclature. This change is like this example since it is an editorial change intended to correct an error. Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

We have reviewed the licensee's discussion of the above three criteria and concur in their finding. Therefore, the staff proposes to determine that the proposed amendments involve no significant hazards considerations.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Robert Pierson.

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York**

*Date of amendment request:* February 28, 1990, as superseded on October 26, 1990.

*Description of amendment request:* The proposed amendment would revise Nine Mile Point Unit 1 Technical Specifications to remove a restriction that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. This change is based on the guidance provided in Generic Letter (GL) 89-14, "Line Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

The following changes would be made: Section 3.0.2 (a new section) and the associated Bases would address the maximum allowable extension to surveillance intervals in accordance with guidelines provided in GL 89-14. Section 1.15 would be revised to delete the requirements of the 3.25 limit and only retain the definition of surveillance. In addition, the Section entitled "Operability Requirements" would be numbered 3.0.1. A new page, 25a, will be added due to space limitations on page 25.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated. The removal of the 3.25 limit on extending normal and refueling outage (24 months) surveillance intervals does not impact plant design or the operation of plant systems. It is not intended that this provision be routinely used to extend surveillance intervals beyond that specified in Technical Specifications. The provision is intended for use when plant conditions are not suitable for the conduct of surveillances due to safety systems being out-of-service for maintenance or due to other ongoing surveillance activities. In such cases, the safety benefit of extending a surveillance interval up to 25 percent would exceed the risk reduction derived by conforming to the 3.25 limitation. The removal of the "minus 25 percent adjustment" to surveillance intervals does not impact plant design or the operation of plant systems. This is an administrative change which will revise NMP1's definition of "Surveillance" to the guidelines provided in Generic Letter 89-14.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation nor do they require physical modification to the plant.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Surveillance testing performed in accordance with Definition 1.15 and the maximum 25 percent interval extension criteria will continue to ensure adequate system reliability. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. The staff also notes that deletion of the subject restriction (limitation of the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval) has been approved on a generic basis by NRC Generic Letter 89-14. The licensee's proposed amendment is consistent with the guidance provided in Generic Letter 89-14. Therefore, the staff proposes that this proposed change will not involve a significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell & Reynolds, 1400 L. Street, N.W., Washington, DC 20005-3502.

*NRC Project Director:* Robert A. Capra

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York**

*Date of amendment request:* March 21, 1990, as amended November 13, 1990.

*Description of amendment request:* The proposed amendment would revise Technical Specification 3/4.4.6, Pressure/Temperature (P/T) Limits, and associated Bases. These changes are in accordance with Generic Letter (GL) 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and Its Impact on Plant Operations." This generic letter requested that licensees use the methodology in Regulatory Guide 1.99, Revision 2, to calculate the nil-ductility reference temperature of reactor vessel beltline materials. The reference temperature relates to P/T limits. As anticipated in GL 88-11, the use of Revision 2 methodology requires modification of the P/T limits in Nine Mile Point Unit 2 Technical Specifications. The proposed revision provides up-to-date P/T limits for the operation of the reactor coolant system during heat up, cooldown, criticality, and hydrotest. The revised P/T limits would be valid for 12.8 effective full power years (EFPY). In addition to the changes to Technical Specification 3/4.4.6, the index would be revised to incorporate page changes and added figures.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates the use of Revision 2 to Regulatory Guide 1.99 in calculating updated P-T curves for Nine Mile Point Unit 2. The Regulatory Guide 1.99 model is based on current understanding of radiation induced embrittlement in pressure vessel steels. The net effect of using the new model is to shift the existing P-T curves in a more conservative direction.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the integrated neutron dose. The proposed amendment incorporates (1) calculation of stress intensity factors according to Appendix G of Section III of the ASME [American Society of Mechanical Engineers] Boiler and Pressure Code 1980 Edition with Winter 1982 Addenda, (2) the Regulatory Guide 1.99 (Revision 2) method for extrapolation of the Charpy transition temperature shift, and (3) Appendix G to 10CFR50 approach to preparation of P-T curves.

Operation of Nine Mile Point Unit 2 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure are in accordance with those specified in 10CFR50 Appendix G and Appendix G of the ASME Code.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment incorporates pressure/temperature operating limits based on analysis using Revision 2 to Regulatory Guide 1.99. No modification to the plant is required in order to implement the proposed amendment. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel materials, since safety margins specified in 10CFR50 Appendix G and the ASME Code Appendix G will be maintained.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell & Reynolds, 1400 L Street, N. W., Washington, DC 20005.

*NRC Project Director:* Robert A. Capra

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of amendment request:* November 14, 1990

*Description of amendment request:* The proposed amendment would revise the Administrative Controls section of the facility Technical Specifications to provide for the use, by an individual or group of individuals in a high radiation area, of either an integrating alarming dosimeter or a qualified escort who maintains positive control over activities in the area, as alternatives to use of a device which continuously indicates the radiation dose rate. Also, qualified health physics personnel following approved procedures would be exempted from the requirement for Radiation Work Permit coverage in the performance of their duties. Minor editorial changes would be made for improved consistency with the Standard Technical Specifications (NUREG-0123).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Based on the staff's review the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. Because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

(2) involve the possibility of a new or different kind of accident from any accident previously evaluated because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

(3) involve a significant reduction in a margin of safety because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

For the reasons stated above, the staff believes the proposed amendment involves no significant hazards consideration determination.

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Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Robert C. Pierson.

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* April 2, 1990

*Description of amendment request:* The proposed amendment would change Technical Specification 6.4 for both Units 1 and 2. The phrase "and Appendix 'A' of 10 CFR 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter to all licensees, and shall include familiarization with relevant industry operational experience" is being deleted. Instead, the phrase "except that the licensed operator initial training and requalification programs shall meet or exceed the requirements of 10 CFR 55 and utilize the guidance in Regulatory Guide 1.8, Rev. 2" is being added.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident form any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its April 2, 1990 submittal.

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These changes are provided to clarify the training requirements of licensed operators. These changes delete those references superseded by revised rulemaking and incorporate commitments made in our response to the Notice of Violation. Therefore, the proposed change is purely administrative in nature and cannot involve an increase in the probability or consequences of an accident previously evaluated.

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. These changes are administrative in nature. See Item I above.

III. Does the proposed change involve a significant reduction in a margin of safety?

No. These changes are administrative in nature. See Item I above.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* July 27, 1990

*Description of amendment request:* The proposed amendments would change the Technical Specifications by requiring that the LOCA/False LOCA interlocks be tested every 18 months and by incorporating language which allows the tests to be successfully completed by any series of sequential, overlapping or total channel steps such that the entire channel is tested.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its July 27, 1990 submittal.

The proposed changes do not involve a significant increase in the probability or consequences of accident(s) previously evaluated. The proposed changes ensure the LOCA/False LOCA interlocks are tested, and tested more frequently than presently required. This increases the probability that the diesel generators will not be overloading and that the utilization voltage limitation is not exceeded. In turn reliability of components is increased.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The LOCA/False LOCA test is not being modified rather it will be performed more frequently utilizing more than one surveillance procedure. There are no new test methods or activities which could be postulated to cause a new or different type of accident.

The proposed changes do not involve a reduction in the margin of safety. The margin is actually increased because testing of the interlocks will occur more frequently thereby increasing their reliability.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* August 2, 1990

*Description of amendment request:* The proposed amendment would change License Condition 2.C.(26) of the Susquehanna SES Unit 1 Operating License (No. NPF-14) and License Condition 2.C.(9) of the Susquehanna SES Unit 2 Operating License (No. NPF-22) by designating these issues as closed.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consieration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following



basis and conclusion provided by the licensee in its August 2, 1990 submittal.

Based on PP&L's documented commitments (References 1 and 2) to comply with the applicable requirements of IE Bulletin 79-26, Revision 1, the closure of the subject license conditions is entirely administrative in nature and therefore, this action will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated;
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

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*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania**

*Date of amendment request:* September 24, 1990

*Description of amendment request:* The proposed amendment would change the Technical Specifications in support of the ensuing Cycle 5 reload. Changes to the following Technical Specifications and Bases are requested:

Index
1.0 Definitions
2.0 Safety Limits and Limiting Safety System Settings
B 2.1 Safety Limits
3/4.2.3 Minimum Critical Power Ratio
3/4.4.1 Recirculation System
B 3/4.1 Reactivity Control System
B 3/4.2 Power Distribution Limits B3/4.4.1 Recirculation System
5.3.1 Fuel Assemblies
5.3.2 Control Rod Assemblies

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its September 24, 1990 submittal. References cited below are provided by the licensee in its September 24, 1990 submittal.

The following three questions are addressed for each of the proposed Technical Specification changes:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?
2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?
3. Does the proposed change involve a significant reduction in a margin of safety?

*Specifications 1.0 - Definitions, and 3/4.2.3, Minimum Critical Power Ratio*

The changes to these specifications support new MCPR operating limits based on the PP&L reactor analysis methods described in Reload Summary Report Reference 3. The limits calculated for Unit 2 Cycle 5 (U2C5) will be a function of scram speed. Therefore, the format for Specification 3/4.2.3 has changed significantly and the new definition is required.

1. No. The MCPR operating limits for U2C5 were generated with the PP&L reactor analysis methods described in PL-NF-90-001 (See Reload Summary Report Reference 3). The U2C5 MCPR operating limits are presented as MCPR versus Percent of Rated Core Flow and MCPR versus Percent Core Thermal Power. These limits cover the allowed operating range of power and flow. As specified in PL-NF-90-001, six major events were analyzed. These events can be divided into two categories: core-wide transients and local transients. The core-wide transient events analyzed were:

1) Generator Load Rejection Without Bypass (GLRWOB),
2) Feedwater Controller Failure (FWCF),
3) Recirculation Flow Controller Failure - Increasing Flow (RFCF), and
4) Loss of Feedwater Heating (LOFWH)

As discussed in PL-NF-90-001, the other core-wide transients are non-limiting (i.e., would produce lower calculated delta CPRs than one of the four events analyzed). The local transient events analyzed were:

1) Rod Withdrawal Error (RWE), and
2) Fuel Loading Error (FLE).

The fuel loading error evaluation includes analysis for both rotated and mislocated fuel bundles.

Sufficient analyses were performed to define the MCPR operating limits as a function of core power and core flow. Analyses were also performed to determine MCPR operating limits for three plant equipment availability conditions: 1) Turbine Bypass and EOC-RPT operable, 2) Turbine Bypass inoperable, and 3) EOC-RPT inoperable.

*Core-Wide Transients*

The PP&L RETRAN model and methods described in PL-NF-89-005 and PL-NF-90-001 (See Reload Summary Report References 2 and 3) were used to analyze the GLRWOB, FWCF, and RPCF events. The delta CPRs were evaluated using the XN-3 Critical Power Correlation (See Reload Summary Report Reference 28) and the methodology described in PL-NF-90-001 (See Reload Summary Report Reference 3). The GLRWOB and FWCF events were analyzed in two different ways (as described in PL-NF-90-001):

1) Deterministic analyses using the Technical Specification scram speed (minimum allowed);
2) Statistical Combination of Uncertainty (SCU) analyses at an average scram speed of 4.2 feet/second.

Thus, the Technical Specification MCPR operating limits calculated for U2C5 will be a function of scram speed.

The LOFWH event was conservatively analyzed by PP&L using the steady state core physics methods and process described in Reload Summary Report References 1 and 3, and the LOFWH event results were found to be bounded by results of the other three core-wide transients. The minimum MCPR operating limit required for the U2C5 LOFWH event is 1.17.

Summary Report Tables 3, 4, and 5, respectively.

*Local Transients*

The fuel loading error (rotated and mislocated bundle) and the Rod Withdrawal Error (RWE) were analyzed using the methodology described in PL-NF-90-001. The results of these analyses apply to all three plant equipment availability conditions previously described, and the results are independent of scram speed. The RWE analysis supports the use of both the Duralife 160C control blades and a Rod Block Monitor setpoint of 108%. The MCPR operating limits that result from the analyses of these events are presented in Reload Summary Report Table 6. These events are non-limiting for U2C5.

Based on the above, the methodology used to develop the new MCPR operating limits for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.
3. No. Based on 1. above, the methodology used to generate the MCPR operating limits for U2C5 is both sufficient and conservative. Furthermore, although the methodology (PL-NF-90-001) is still undergoing NRC review, PP&L believes it meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

*Specification 2.1.2 - Thermal Power, High Pressure and High Flow*

1. No. The PP&L Statistical Combination of Uncertainties (SCU) methods are described in

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Reload Summary Report Reference 2. When using the SCU methodology, the transient delta CPR and traditional MCPR safety limit analyses are combined through a single unified analysis. As a result, the Thermal Power, High Pressure and High Flow safety limit is not represented as a single MCPR value, but rather as a condition such that at least 99.9% of the fuel rods in the core are expected to avoid boiling transition. As described in Appendix B of Reload Summary Report Reference 3, this combined analysis and compliance with the resulting safety limit condition are supported by "MCPR Safety Limit type" calculations. The "MCPR Safety Limit type" calculations were performed by ANF using the same methods and assumptions as the traditional MCPR Safety Limit analysis.

As shown in Reload Summary Report Table 1, a MCPR value of 1.06 in two loop operation assures that less than 0.1% of the fuel rods are expected to experience boiling transition. The methodology and generic uncertainties used in the "MCPR Safety Limit type" calculations are provided in XN-NF-80-19(P)(A), Volume 4 Revision 1 (Reload Summary Report Reference 6). The uncertainties used for SSES U2C5 "MCPR Safety Limit type" calculations are the same as for U2C4 and are presented in Reload Summary Report Reference 18. The results are presented in Reload Summary Report Table 1.

During U2C5, as in the previous cycle, the ANF 9x9 fuel will be monitored using the XN-3 critical power correlation. ANF has determined that this correlation provides sufficient conservatism to preclude the need for any penalty due to channel bow during U2C5. Susquehanna SES is a C-lattice plant and uses channels for only one fuel bundle lifetime. The conservatism has been evaluated by ANF to be greater than the maximum expected delta CPR (0.02) due to channel bow in C-lattice plants using channels for only one fuel bundle lifetime. Therefore, the monitoring of the MCPR limit is conservative with respect to channel bow and addresses the concerns of NRC Bulletin No. 90-02. The details of the evaluation performed by ANF have been reported generically to the NRC (Reload Summary Report Reference 17).

Based on the above, the methodology used to develop the new safety limit condition for the Technical Specification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analysed events; they cannot create new ones. The consequences of analysed events were evaluated in 1. above.
3. No. Based on 1. above, the methodology used to generate the Thermal Power, High Pressure and High Flow safety limit condition for U2C5 is both sufficient and conservative. Furthermore, although the methodology (PL-NF-90-001) is still undergoing NRC review, PP&L believes it meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

*Specification 3/4.4.1, Recirculation System - Two Loop Operation*

The changes to this specification (i.e., Figure 3/4.1.1.1-1) reflect cycle-specific stability analyses.

1. No. COTRAN core stability calculations were performed for Unit 2 Cycle 5 to determine the decay ratios at predetermined power/flow conditions. The resulting decay ratios were used to define operating regions which comply with the interim requirements of NRC Bulletin No. 88-07, Supplement 1 "Power Oscillations in Boiling Water Reactors". As in the previous cycle, Regions B and C of the NRC Bulletin have been combined into a single region (i.e., Region II), and Region A of the NRC Bulletin corresponds to Region I.

Region I has been defined such that the decay ratio for all allowable power/flow conditions outside of the region is less than 0.90. To mitigate or prevent the consequences of instability, entry into this region requires a manual reactor scram. Region I for Unit 2 Cycle 5 is slightly different than Region I for the previous cycle.

Region II has been defined such that the decay ratio for all allowable power/flow conditions outside of the region (excluding Region I) is less than 0.75. For Unit 2 Cycle 5, Region II must be immediately exited if it is inadvertently entered. Similar to Region I, Region II is slightly different than in the previous cycle.

In addition to the region definitions, PP&L has performed stability tests in SSES Unit 2 during initial startup of Cycles 2, 3 and 4 to demonstrate stable reactor operation with ANF 9x9 fuel. The test results for U2C2 (See Reload Summary Report Reference 20) show very low decay ratios with a core containing 324 ANF 9x9 fuel assemblies. Figure 3/4.1.1.1-1 is also referenced by Specification 3/4.4.1.1.2, which governs Single Loop Operation (SLO). The evaluation above applies under SLO conditions as well.

Based on the above, operation within the limits specified by the proposed changes will ensure that the probability and consequences of unstable operation will not significantly increase.

2. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in 1. above.
3. No. PP&L believes that the use of Technical Specifications that comply with NRC Bulletin 88-07, Supplement 1, and the tests and analyses described above, will provide assurance that SSES Unit 2 Cycle 5 will comply with General Design Criteria 12, Suppression of Reactor Power Oscillation. This approach is consistent with the SSES Unit 2 Cycle 4 method for addressing core stability (see Reload Summary Report References 4 and 5).

*Specification 3/4.4.1, Recirculation System - Single Loop Operation*

The changes to this specification are either evaluated above or are editorial in nature. The reference to Specification 2.1.2 is deleted because the new limit (see Evaluation of Specification 2.1.2 above) will not change for Single Loop Operation. The additional figures referenced from Specification 3.2.3 are the result of the MCPR operating limit analyses evaluated above.

The other two changes to Surveillance Requirements 4.4.1.1.2.6, correct inadvertent typographical errors that occurred during the issuance of Amendment 60 to the Unit 2 Technical Specifications.

1. No. The changes are either evaluated elsewhere in this No Significant Hazards Considerations evaluation, or are entirely editorial in nature.
2. No. See 1. above.
3. No. See 1. above.

*Specification 5.3.1 - Fuel Assemblies*

This section has been changed to describe the actual core configuration for U2C5, which includes one inert (i.e., solid zircaloy-2) rod.

1. No. The inert rod was used to repair a fuel assembly that failed during U2C2. This repaired assembly was analyzed and found to be acceptable in support of U2C4 operation, which was approved by the NRC (See Reload Summary Report Reference 8). Based on the above, use of the repaired assembly does not involve a significant increase in the probability or consequences of an accident previously evaluated.
2. No. See 1 above.
3. No. See 1 above.

*Specification 5.3.2 - Control Rod Assemblies*

The changes to this specification are provided in order to recognize the replacement control blade design being utilized in U2C5.

1. No. The main differences between the replacement Duralife 160C control blades and the original equipment control blades are:

a) the Duralife 160C control blades utilize three solid hafnium rods at each edge of the cruciform to replace the three $B_4C$ rods that are most susceptible to cracking and to increase control blade life.

b) the Duralife 160C control blades utilize improved $B_4C$ tube material (i.e. high purity stainless steel vs. commercial purity stainless steel) to eliminate cracking in the remaining $B_4C$ rods during the lifetime of the control blade;

c) the Duralife 160C control blades utilize GE's crevice-free structure design, which includes additional $B_4C$ tubes in place of the stiffeners, and increased sheath thickness, a full length weld to attach the handle and velocity limiter, and additional coolant holes at the top and bottom of the sheath;

d) the Duralife 160C control blades utilize low cobalt-bearing pin and roller materials in place of stellite which was previously utilized;

e) the Duralife 160C control blades handles are longer by approximately 3.1 inches in order to facilitate fuel moves within the reactor vessel during refueling outages at Susquehanna SES; and

f) the Duralife 160C control blades are approximately 16 pounds heavier as a result of the design changes described above.

The Duralife 160C control blade has been evaluated to assure it has adequate structural margin under loading due to handling, and normal, emergency, and faulted operating modes. The loads evaluated include those due to normal operating transients (scram and jogging), pressure differentials, thermal gradients, seismic deflection, irradiation growth, and all other lateral and vertical loads expected for each condition. The Duralife 160C control blade stresses, strains, and cumulative fatigue have been evaluated and result in an acceptable margin to safety. The control blade insertion capability has been evaluated and found to be acceptable during all modes of plant operation within the limits of plant analyses. The Duralife 160C control blade coupling mechanism is equivalent to the original equipment coupling mechanism, and is therefore fully compatible with the existing control rod drives in the plant. In addition, the materials used in the Duralife 160C are compatible with the reactor environment. The impact of the increased weight of the control blades on the seismic and hydrodynamic load evaluation of the reactor vessel and internals has been evaluated and found to be negligible.

With the exception of the crevice-free structure and the extended handle, the Duralife 160C blades are equivalent to the NRC approved Hybrid I Control Blade Assembly (See Reload Summary Report Reference 9). The mechanical aspects of the crevice-free structure were approved by the NRC for all control blade designs in Reload Summary Report Reference 10. A neutronics evaluation of the crevice-free structure for the Duralife 160C design was performed by GE using the same methodology as was used for the Hybrid I control blades in Reload Summary Report Reference 9. These calculations were performed for the original equipment control blades and the Duralife 160C control blades described above assuming an infinite array of ANF 9x9 fuel. The Duralife 160C control blade has a slightly higher worth than the original equipment design, but the increase in worth is within the criterion for nuclear interchangeability. The increase in blade worth has been taken into account in the appropriate U2C5 analyses. However, as stated in Reload Summary Report Reference 9, the current practice in the lattice physics methods is to model the original equipment all $B_4C$ control blade as non-depleted. The effects of control blade depletion on core neutronics during a cycle are small and are inherently taken into account by the generation of a target k-effective for each cycle. As discussed above, the neutronics calculations of the crevice-free structure show that the non-depleted Duralife 160C control blade has direct nuclear interchangeability with the non-depleted original equipment all $B_4C$ design. The Duralife 160C also has the same end-of-life reactivity worth reduction limit as the all $B_4C$ design. Therefore, the Duralife 160C can be used without changing the current lattice physics model as previously approved for the Hybrid I control blades (Reload Summary Report Reference 9).

The extended handle and the crevice-free structure features of the Duralife 160C control blades result in a one pound increase in the control blade weight over that of the Hybrid I blades, and a sixteen pound increase over the Susquehanna SES original equipment control blades. In Reload Summary Report Reference 9, the NRC approved the Hybrid I control blade which weighs less (by more than one pound) than the D lattice control blade. The basis of the Control Rod Drop Accident analysis continues to be conservative with respect to control rod drop speed since the Duralife 160C control blade weighs less than the D lattice control blades, and the heavier D lattice control blade speed is used in the analysis. In addition, GE performed scram time analyses and determined that the Duralife 160C control blade scram times are not significantly different than the original equipment control blade scram times. The current Susquehanna SES measured scram times also have considerable margin to the Technical Specification limits. Since the increase in weight of the Duralife 160C control blades does not significantly increase the measured scram speeds and the safety analyses which involve reactor scrams utilize either the Technical Specification limit scram times or a range of scram times up to and including the Technical Specification scram times, the operating limits are applicable to U2C5 with Duralife 160C control blades.

Since the Duralife 160C control blades contain solid hafnium rods in locations where the $B_4C$ tubes have failed, and the remaining $B_4C$ rods are manufactured with an improved tubing material (high purity stainless steel vs commercial purity stainless steel), boron loss due to cracking is not expected. Therefore, the requirements of IE Bulletin 79-26, Revision 1 do not apply to the Duralife 160C control blades. However, PP&L plans to continue tracking the depletion of each control blade and discharge any control blade prior to a ten percent loss in reactivity worth.

Based on the discussion above, the new control blades proposed to be utilized in U2C5 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The replacement blades can only be evaluated for their effectiveness as part of the overall reactivity control system, which is evaluated in terms of analytical consequences in 1. above. Since they do not cause any significant change in system operation or function, no new events are created.
3. No. The analyses described in 1. above indicate that the replacement blades meet all pertinent regulatory criteria for use in this application, and are expected to eliminate the boron loss concerns expressed in IE Bulletin 79-26, Revision 1. Therefore, the proposed change does not result in a significant decrease in any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

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*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania**

*Date of amendment request:* October 2, 1990

*Description of amendment request:* The proposed amendment would change the Technical Specifications in order to add several new containment isolation valves to Table 3.6.3-1 "Primary Containment Isolation Valves." These valves are being added in support of upcoming modifications which will separate the Containment Radiation Monitors (CRM's) from the Hydrogen/Oxygen Analyzers and Post Accident Sampling System (all three systems currently share common containment penetrations).

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its October 2, 1990 submittal.

The proposed changes do not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

This modification installs piping into penetrations similar or identical to designs already in place in the plant. It is designed to requirements enveloping all design basis accidents and malfunctions for the SSES containment. While in an absolute sense, the addition of any amount of additional equipment can be said to increase the probability of occurrence of an accident, the addition of this equipment does not increase the probability of an accident by an amount greater than the uncertainty in the original accident probability analyses and thus no significant licensing-basis change in probability can be said to have occurred due to this modification.

There is no specific condition of this modification or its location on containment that would affect any accident analysis

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evaluated in the FSAR and the small size (1') line is represented by numerous other cases in the containment design that have been thoroughly evaluated previously.

The Technical Specification change itself simply lists the new isolation valves. No change in operational requirements are proposed for the new valves.

Based on the above, no significant increase in the probability or consequences of an accident previously evaluated will occur due to the proposed change.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in I above, nothing in the design of this modification is different from existing Susquehanna containment design or design practice. No features of the design or the locations for installation have been identified by any design criterion that would indicate the existence of any mechanism for creation of an accident or malfunction of a different type than previously analyzed in the FSAR.

III. Involve a significant reduction in a margin of safety.

As specified in I above, the new design will meet all applicable design standards and is therefore consistent with the established margin of safety that is defined by containment integrity requirements.

The Technical Specifications directly affected by this modification, 3.6.1.1 "Primary Containment Integrity," 3.6.1.2 "Primary Containment Leakage," and 3.6.3 "Primary Containment Isolation Valves," will be satisfied by having the isolation valves meet all applicable surveillance requirements. Meeting these requirements will show that the modification has no significant adverse impact on any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* October 19, 1990

*Description of amendment request:* The proposed amendment would change the Technical Specifications. The degraded voltage setpoints would be revised in Technical Specification Table 3.3.3-2, "Emergency Core Cooling System Actuation Instrumentation Setpoints". The degraded voltage setpoint would be increased from 64% to 93%. Technical Specification Tables 3.3.3-1, "Emergency Core Cooling System Actuation Instrumentation," and 3.3.3-3, "Emergency Core Cooling System Response Times," would also be changed to be consistent with the new setpoint.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The degraded voltage setpoints were addressed in FSAR Question 40.6. The proposed change enhances safety by raising the level of assurance that safety-related equipment will receive adequate operating voltage. As seen [from the] analyses, the raising of the setpoints does not increase the probability or consequences of an accident through the introduction of spurious actuations.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, nothing in the design of the Degraded Voltage Protection Scheme has been changed except the setpoint. No features of raising that setpoint have been identified that would indicate the existence of any mechanism for creating an accident or malfunction of a different type than previously analyzed.

III. Involve a significant reduction in a margin of safety.

As discussed above, the proposed action increases the margin of safety. The proposed setpoints provide an increased assurance that adequate voltage will be provided to connected 4.16kV, 480V, and 120V loads.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

*NRC Project Director:* Walter R. Butler

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of amendment request:* October 15, 1990

*Description of amendment request:* The proposed amendment would remove Containment Isolation Valve Table 3.6-1 from Technical Specifications. The subject table will be replaced by references to Ginna UFSAR Table 6.2-13. Temporary notes associated with the containment purge and mini-purge systems are also removed from the Technical Specifications. Appropriate surveillance testing changes are made in Section 4.4.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. All additions and deletions to the table are also acceptable and do not increase the consequences of an accident as discussed in Sections 3.3.1.3, 3.3.2.1, 3.3.2.7, and 3.3.2.8. Thus, the function and capability of the containment isolation system to isolate any radiological release within containment is not degraded.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated. The additions and deletions to the table are acceptable as discussed in Sections 3.3.1.3, 3.3.2.1, 3.3.2.7, and 3.3.2.8. The changes do not degrade the containment isolation or associated parent systems. There are no adverse affects upon other systems, nor any new failure modes induced.



(3) Use of the modified specification would not involve a significant reduction in a margin of safety. The functions and characteristics of the containment isolation system remain unchanged. However, changes are made to valve isolation times and the valves listed for specific penetrations. These changes will be addressed in the amendment request to remove Table 3.6-1 from the Technical Specifications and reference this updated UFSAR table.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610

*Attorney for licensee:* Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Acting Project Director:* Curtis J. Cowgill, III

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment requests:* November 20, 1990 (TS 90-16)

*Description of amendment requests:* The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes are to revise the Limiting Condition for Operation (LCO) 3.6.2.1 for the containment spray system to clarify the operability requirements for containment spray (CS) and residual heat removal (RHR) spray. This clarification is to ensure that an entire train of CS and RHR spray (i.e., all A Train or all B Train CS and RHR spray components) is operable when in the action for LCO 3.6.2.1. The action statement associated with this LCO would be revised to support a subsystem approach (similar to TS 3.5.1 for emergency core cooling system) that requires two independent subsystems comprised of a pump, heat exchanger, and flow path for both CS and RHR spray. In addition, the index and bases have been revised to reflect the title of "Containment Spray Subsystems."

*Basis for proposed no significant hazards consideration determination:* In its application, TVA provided the following information to support its proposed changes to the TSs:

The present wording for LCO 3.6.2.1 has led to confusion as to which pumps are allowed to be operable and be within the action statement requirements. The wording has caused Operations' personnel to be unsure of when TS 3.0.3 would be applicable. This revision will resolve this confusion.

By implementing this revision, assurance will be provided that an entire containment spray subsystem is available when in the action statement for LCO 3.6.2.1. The requirements of TS 3.0.3 will be complied with for loss of equipment in both subsystems. This clarification ensures that the required CS system components are available as assumed in the accident analysis to supply a spray flow of 6,750 gallons per minute (gal/min). This flow is achieved by having at least one complete subsystem with a CS pump capable of delivering 4,750 gal/min of spray and an RHR pump capable of delivering 2,000 gal/min of spray. The title changes in the index and bases have been made to provide consistency with the LCO. This change does not alter the operation, testing, or maintenance of the CS system or compromise nuclear safety.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This clarification to Limiting Condition for Operation (LCO) 3.6.2.1 will provide operators the requirements to ensure SQN's accident analysis is maintained by the containment spray (CS) system. There is no change to the equipment or method of operation, but only wording enhancements are utilized to ensure proper application of the TSs. These changes to LCO 3.6.2.1 requirements are explicitly consistent with the SQN design criteria and the Final Safety Analysis Report (FSAR) design basis loss of coolant accident analysis. The index and bases changes to use the title "Containment Spray Subsystems" have been made to ensure consistency with the LCO. This revision will not increase the probability or consequence of an accident but will ensure adequate CS capabilities to support the analysis.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No changes to plant design, testing, or operation are involved and therefore no possibility exists for a new or different kind of accident being created. This clarification will ensure proper application of LCO 3.6.2.1 action requirements.

3. Involve a significant reduction in a margin of safety.

By clarifying the operability requirements, this revision ensures that two independent containment spray subsystems are delineated, each with the ability to supply spray flow of 6,750 gallons per minute (gal/min). While under LCO 3.6.2.1 action requirements, at least one complete subsystem will be maintained or the requirements of TS 3.0.3 will be applicable. The 6,750 gal/min spray flow meets the required capacity for the FSAR accident analysis, and therefore the margin of safety for containment integrity is maintained without any reduction. The index and bases revision provides consistency for the "Containment Spray Subsystems" title.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

*NRC Project Director:* Frederick J. Hebdon

**Notice of Issuance of Amendment to Facility Operating License**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

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to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* March 11, 1988

*Brief description of amendments:* The amendments modify the Technical Specifications to clarify Table 3.3-9 by adding the "Auxiliary Shutdown Control Panel(s)" as one of two available locations to read instrumentation for steam generator pressure, steam generator level, and auxiliary feedwater flow rate, and correcting the name of the "Auxiliary Feedwater Pump Turbine Control Panels."

*Date of issuance:* November 13, 1990

*Effective date:* November 13, 1990

*Amendment Nos.:* 79 and 73

*Facility Operating License Nos. NPF-35 and NPF-52.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 12, 1989 (54 FR 29405) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* August 30, 1990

*Brief description of amendments:* The amendments replace the existing McGuire Units 1 and 2 reactor coolant system heatup and cooldown limit curves with revised curves (TS Figures 3.4-2, 3.4-3, 3.4-4 and 3.4-5), as well as revise the reactor vessel surveillance capsule withdrawal schedule (TS Table 4.4-5).

*Date of issuance:* November 15, 1990

*Effective date:* November 15, 1990

*Amendment Nos.:* 115 & 97

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 19, 1990 (55 FR 38599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* September 4, 1990

*Brief description of amendments:* The amendments reduce the required measured reactor coolant system flow rate by one percent from 97220 GPM/loop to 96250 GPM/loop. Additionally, an administrative change removes references to the resistance temperature detector bypass manifold system. This system was removed from both McGuire units and previously approved by the NRC in Facility Operating License Amendment Nos. 64 (Unit 1) and 65 (Unit 2).

*Date of issuance:* November 20, 1990

*Effective date:* November 20, 1990

*Amendment Nos.:* 116 & 98

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 3, 1990 (55 FR 40465) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1990. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* September 20, 1990, as supplemented October 19, 1990

*Brief description of amendment:* The amendment changed Technical Specification Surveillance Requirement 4.6.1.5 by replacing the existing requirement to periodically (once every 18 months) verify the charging capability of each Emergency Diesel Generator (EDG) starting air compressor with a requirement to periodically (once every 31 days) verify that the starting air receiver tanks are at or above the required minimum pressure.

*Date of issuance:* November 21, 1990

*Effective date:* November 21, 1990

*Amendment No.:* 139

*Facility Operating License No. DPR-51.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 17, 1990 (55 FR 42095) The October 19, 1990 supplement provided clarifying information and did not change the proposed finding of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana.**

*Date of amendment request:* October 12, 1990

*Brief description of amendment:* The amendment revised Technical Specification Table 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protection Devices," Sections C.1 and C.4 to reflect the removal of a load from Section C.1 and the addition of the load to Section C.4. The new circuit breaker in Section C.4 will provide primary containment penetration conductor overcurrent protection for the larger Reactor Water Cleanup (RWCU) precoat pump which is being installed to improve RWCU filter and system performance.

*Date of issuance:* November 20, 1990

*Effective date:* November 20, 1990

*Amendment No.:* 51

*Facility Operating License No. NPF-47.* The amendment revised the Technical Specifications.



*Date of initial notice in* **Federal Register:** October 18, 1990 (55 FR 42295). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* August 22, 1990, and supplemented by letter dated October 17, 1990.

*Brief description of amendment:* The amendment revised the Technical Specifications (TSs) regarding operation in the steam condensing mode (SCM) of the residual heat removal (RHR) system. The licensee has determined that the SCM is not required for safe operation of River Bend Station and plans on permanently disabling the SCM of RHR. The amendment deleted maintenance and surveillance requirements for three valves associated with the SCM and established a final trip setpoint for the High RHR/Reactor Coolant Isolation Cooling (RCIC) steam line flow for RCIC isolation.

*Date of issuance:* November 23, 1990

*Effective date:* November 23, 1990

*Amendment No.:* 52

*Facility Operating License No. NPF-47.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 19, 1990 (55 FR 38602) and October 24, 1990 (55 FR 42921) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of application for amendment:* August 7, 1990

*Brief description of amendment:* The amendment changes Technical Specification 3.9.3.2 to add a requirement that the Spent Fuel Pool (SFP) bulk temperature be maintained below 140 degrees F at all times and remove the current requirement that the SFP cooling trains be operable in Modes 5 and 6 whenever the most recent 1/8 core off-load has decayed less than 21 days (504 hours) from subcriticality and the shutdown cooling is not being used to cool the SFP. Action statements are added to require (1) immediate actions to restore the temperature below 140 degrees F, (2) within one hour suspension of fuel movement within the SFP, (3) within one hour isolation of the SFP cleanup demineralizers, and (4) recording SFP temperature at least once per 4 hours if the Limiting Condition for Operation is not satisfied. The surveillance requirement is also revised to monitor the SFP temperature every 12 hours.

*Date of issuance:* November 26, 1990

*Effective date:* November 26, 1990

*Amendment No.:* 150

*Facility Operating License No. DPR-65.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 19, 1990 (55 FR 38604) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* July 31, 1990

*Brief description of amendment:* The amendment changes Millstone Unit 3 Technical Specification (TS) 3.7.12.3, "$CO_2$ Systems" to clarify the remedial actions to be taken when one or more $CO_2$ fire suppression systems become inoperable.

*Date of issuance:* November 15, 1990

*Effective date:* November 15, 1990

*Amendment No.:* 58

*Facility Operating License No. NPF-49.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 19, 1990 (55 FR 38606) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* September 6, 1990, as supplemented September 17, 1990.

*Brief description of amendment:* The amendment made administrative changes to the Fort Calhoun Station's Technical Specifications.

*Date of issuance:* November 19, 1990

*Effective date:* November 19, 1990

*Amendment No.:* 134

*Facility Operating License No. DPR-40.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 17, 1990 (55 FR 42099) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of application for amendments:* March 16, 1990, as revised April 2, 1990

*Brief description of amendments:* The amendments changed the Technical Specifications for emergency diesel generator surveillance testing.

*Date of issuance:* November 19, 1990

*Effective date:* November 19, 1990

*Amendment Nos.:* 103 and 69

*Facility Operating License Nos. NPF-14 and NPF-22.* These amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 14150 dated April 16, 1990). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 16, 1990. The staff has found three of the requested changes to be unacceptable and has issued a Notice of Partial Denial. On April 4, 1990, the staff granted a Temporary Waiver of Compliance which was immediately effective and remained in effect until these license amendments were issued. The Commission's related evaluation is contained in a Safety Evaluation dated November 15, 1990.



**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado**

*Date of application for amendment:* October 1, 1990

*Brief description of amendment:* The amendment changes the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 97

*Facility Operating License No. DPR-34.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado 80631

**Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* October 1, 1990

*Brief description of amendments:* The amendments revise the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment Nos.:* 104 and 83

*Facility Operating License Nos. DPR-70 and DPR-75.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* October 1, 1990

*Brief description of amendments:* The amendments revise the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment Nos.:* 104 and 83

*Facility Operating License Nos. DPR-70 and DPR-75.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079



**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* October 1, 1990

*Brief description of amendment:* The amendment changes the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 54

*Facility Operating License No. DPR-18.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14604

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* October 1, 1990

*Brief description of amendment:* The amendment changes the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 54

*Facility Operating License No. DPR-18.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14604

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama**

*Date of application for amendments:* October 1, 1990

*Brief description of amendments:* The amendments revise the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment Nos.:* 208, 230, and 189

*Facility Operating License Nos. DPR-33, DPR-52, and DPR-68.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611

**Tennessee Valley Authority, Docket No. 50-327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee**

*Date of application for amendment:* October 1, 1990

*Brief description of amendment:* The amendment changes the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 169

*Facility Operating License No. DPR-77.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

**Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee**

*Date of application for amendment:* October 1, 1990

*Brief description of amendment:* The amendment changes the Technical Specifications to allow the use of a temporary modification to the Fuel Handling Machine.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 159

*Facility Operating License No. DPR-79.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 31, 1990 (55 FR 45911) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Dated at Rockville, Maryland, this 5th day of December 1990.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-28844 Filed 12-11-90; 8:45 am]

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*Attorney for Licensee:* Jay Silberg, Esq., Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

**Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of application for amendment:* October 7, 1988, supplemented by letter dated December 23, 1988 (LCA-170)

*Brief description of amendment:* The amendment revises the security plan by allowing the use of dedicated observers in lieu of security officers to compensate for certain safeguards degradations. The amendment also describes the conformance to the Code of Federal Regulations, Part 73.55(c)(6) of Title 10 regarding electrical cable penetrations in the control room floor.

*Date of issuance:* November 27, 1990

*Effective date:* November 27, 1990

*Amendment No.:* 166

*Facilities Operating License No. NPF-1:* Amendment changed the Technical Specifications.

*Dated of initial notice in* **Federal Register:** May 30, 1990 (55 FR 21976) The Commission's related evaluation of the amendment is contained in the staff's letter to Portland General Electric Company dated November 27, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Branford Price Millar Library, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* June 11, 1990

*Brief description of amendment:* The amendment deletes the reference to Regulatory Guide 1.129 in Surveillance Requirements 4.9E. "Station Batteries" and 4.9.F, "LPCI MOV Independent Power Supplies." The result is application of an equalizing charge to the batteries prior to conducting the performance discharge (capacity) test. Also consistent terminology and the latest industry standard related to the battery systems are incorporated. The latest industry standard is identified in a change to the Bases section.

*Date of issuance:* November 13, 1990

*Effective date:* November 13, 1990

*Amendment No.:* 167

*Facility Operating License No. DPR-59:* Amendment revised the Technical Specification.

*Date of initial notice in* **Federal Register:** September 5, 1990 (55 FR 36348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

**Public Service Electric & Gas Company, Docket No. 50-272, Salem Generating Station, Unit No. 1, Salem County, New Jersey**

*Date of application for amendment:* January 22, 1990

*Brief description of amendment:* This amendment changed Surveillance Requirements specified in Table 4.3-13, Table Notation, of Technical Specification 3.3.3.9. This change consisted of adding the statement to item (1) 3. "(Indication on the instrument drawer in Control Equipment Room only for 1-R12A)." The clarifying statement changed the CHANNEL FUNCTIONAL TEST response requirements associated with radiation monitor 1-R12A to match the monitor's actual design.

*Date of issuance:* November 21, 1990

*Effective date:* Unit No. 1 is effective as of the date of issuance to be implemented within 60 days of the date of issuance.

*Amendment No.* 116

*Facility Operating License No. DPR-70:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 7, 1990 (55 FR 8236) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* July 3, 1990, as supplemented by letters dated August 22 and September 10, 1990, and by the design calculation that was submitted on July 30, 1990.

*Brief description of amendment:* The amendment revises the basis for Technical Specification 3.4.3 to establish auxiliary feedwater system flow requirements of 175 gpm per train for maximum flow, and 100 gpm per train for minimum flow. Additionally, the amendment corrects an error in the applicability section of Technical Specification 3.4.3.

*Date of issuance:* November 15, 1990

*Effective date:* November 15, 1990

*Amendment No.:* 138

*Provisional Operating License No. DPR-13:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 10, 1990 (55 FR 37273) The supplementary information which was not specifically referenced in the initial **Federal Register** notice was provided to correct an existing error in the applicability section of Technical Specification 3.4.3 and to facilitate NRC review efforts and, therefore, did not alter the proposed action that was initially noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Main Library, University of California, P.O. Box 19557, Irvine, California 92713

**Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California**

*Date of application for amendment:* August 22, 1990

*Brief description of amendment:* The amendment revises Technical Specification 6.4, "Training," to reference the correct edition of the National Fire Protection Association Standard No. 27 concerning the licensee's fire brigade training program.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.:* 139

*Provisional Operating License No. DPR-13:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 3, 1990 (55 FR 40476) The Commission's related evaluation of the amendment is contained in a letter dated November 16, 1990.

*No significant hazards consideration comments received:* No.

*Local Public Document Room location:* Main Library, University of California, P.O. Box 19557, Irvine, California 92713



**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* March 9, 1990 (TS 90-03)

*Brief description of amendments:* The amendments revise Sections 1, Definitions; 3/4.3, Instrumentation; 3/4.11, Radioactive Effluents; 3/4.12, Radiological Environmental Monitoring; and 6, Administrative Controls, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. The changes implement NRC's recommended alternatives for the Radiological Effluent Technical Specifications as contained in Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Sections of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program," dated January 31, 1989.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment Nos.:* 148, 134

*Facility Operating Licenses Nos. DPR-77 and DPR-79.* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 4, 1990 (55 FR 12801) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of application for amendment:* August 5, 1988, supplemented September 1, 1988.

*Brief description of amendment:* The amendment revised the designation of Instrument No. 7 in Table 3.3-9, Remote Shutdown Monitoring Instrumentation, and Table 4.3-6, Remote Shutdown Monitoring Instrumentation Surveillance Requirements, from Control Rod Position Limit Switches to the correct designation as Control Rod Position Switches. Additionally, in Table 4.3-6, the requirement to perform a channel calibration of these switches every 18 months is deleted.

The deletion of the footnote in Table 4.3-6 was previously implemented in Amendment No. 135.

*Date of issuance:* November 21, 1990

*Effective date:* November 21, 1990

*Amendment No.* 150

*Facility Operating License No. NPF-3.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 22, 1990 (55 FR 34384) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

*No significant hazards consideration comments received:* No

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

**Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

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The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 11, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania**

*Date of application for amendment:* October 25, 1990

*Brief description of amendment:* The amendment modifies the Appendix A Technical Specifications (TSs) relating to the required river water flow through the Recirculation Spray (RSS) heat exchangers and the allowable containment internal air partial pressure. Specifically, the amendment modifies Surveillance Requirement 4.6.2.2.e.3 by the addition of a footnote indicating that the minimum RSS heat exchanger flow may be 6000 gpm vice 8000 gpm provided additional operating restrictions are applied to containment internal air partial pressure. Limiting Condition for Operation 3.6.1.4 and Figure 3.6-1 are modified to incorporate an additional limit line applicable to the containment internal air partial pressure . This additional limit line is applicable when river water flow through the RSS heat exchangers is 6000 gpm or more but less than 8000 gpm.

*Date of issuance:* November 16, 1990

*Effective date:* November 16, 1990

*Amendment No.* 156

*Facility Operating License No. DPR-66.* Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 16, 1990.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.



*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

*NRC Project Director:* John F. Stolz

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas**

*Date of application for amendment:* November 21, 1990

*Brief description of amendment:* This amendment revised the Operating License to increase the peak fuel pin rod average burnup limit to 60 megawatt-days/kilogram (MWd/kg). The previous limit had been 52 MWd/kg.

*Date of issuance:* November 27, 1990

*Effective date:* November 27, 1990

*Amendment No.:* 111

*Facility Operating License No. NPF-6.* Amendment revised the license. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 27, 1990.

*Attorney for licensee:* Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

*NRC Project Director:* Theodore R. Quay

Dated at Rockville, Maryland, this 5th day of December 1990.

For the Nuclear Regulatory Commission

**Steven A. Varga,**

*Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation*

[Doc. 90-28968 Filed 12-11-90; 8:45 am]

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## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Nonresident Questionnaire.

(2) *Form(s) submitted:* RRB-1001.

(3) *OMB Number:* 3220-0145.

(4) *Expiration date of current OMB clearance:* Three years from date of approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion and Quarterly.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 1,200.

(9) *Total annual responses:* 1,200.

(10) *Average time per response:* .0833 hours.

(11) *Total annual reporting hours:* 77.

(12) *Collection description:* Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98-21 and 98-76. The form obtains the information needed to determine the amount to be withheld.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**Dennis Eagan,**

*Clearance Officer.*

[FR Doc. 90-29012 Filed 12-11-90; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[34-28579; File No. SR-MCC-90-07]

### Self-Regulatory Organizations; Midwest Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participants' Transaction Recording Fees

December 6, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 11, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MCC-90-07) described in Items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. SRO's Statement of the Terms of Substance of the Proposed Rule Change**

MCC proposes to amend its Trade Recording Fee Schedule by waiving trade recording fees for Tape B eligible issues.[2] This waiver will only apply to firms sending orders in Tape B eligible securities to the floor of the Midwest Stock Exchange ("MSE") and will be limited in time to the period beginning with the effectiveness of this change and ending on December 31, 1990.

**II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the SRO included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. SRO's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed waiver of trade recording fees for transactions in Tape B eligible securities is to implement part of a program to promote additional order flow in Tape B eligible securities to the MSE and to attract additional clearing business to MCC. The proposed fees that MCC will charge to its participants are equitably allocated and reasonable in accordance with section 17A(b)(3)(D) of the Act.

[1] 15 U.S.C. 78s(b)(1)

[2] The term "Tape B" refers to the Consolidated Tape's Network B, which reports price and volume data for round-lot trades in American Stock Exchange ("Amex") listed stocks whether executed at the Amex, at a regional exchange, or over-the-counter. *See* D. Scott, *Wall Street Words*, 70,230 [1988].

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*B. SRO's Statement on Burden on Competition*

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*C. SRO Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act, in that it changes a fee imposed by MCC, and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR–MCC–90–07 and should be submitted by January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[FR Doc. 90-29107 Filed 12-11-90; 8:45 am]

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[9] 17 CFR 200.30-3(a)(12).

[Release No. 34-28676; File No. SR-NASD-90-50; International Series Release No. 203]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the PORTAL Market Rules**

**I. Introduction**

On August 24, 1990, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to amend Schedule I to the NASD By-Laws ("PORTAL Rules"). The proposed rule change amends the PORTAL Rules to delete the requirement that a PORTAL dealer, PORTAL broker or PORTAL qualified investor ("PORTAL participant") maintain at its agent, who provides it access to a PORTAL depository organization, a segregated account for PORTAL Market transactions only.[2] The Commission did not receive any comments in response to its notice of the proposed rule change.[3] This order approves the proposal.

**II. Description**

The PORTAL Rules [4] were approved by the Commission on the same day that it approved Rule 144A under the Securities Act of 1933.[5] In its filing the NASD stated that the approved PORTAL Rules were based on an earlier version of Rule 144A. Accordingly, the NASD structured PORTAL to limit the possibility that unregistered securities enter the U.S. retail market. The PORTAL Rules, for example, require PORTAL participants to maintain PORTAL securities in a segregated account at a PORTAL depository organization [6] and PORTAL dealers and brokers are required to clear PORTAL transactions through a segregated account at the PORTAL clearing organization.[7] PORTAL securities must remain in the investor's segregated PORTAL account at the PORTAL depository until the securities are (1) sold or transferred to another PORTAL account in the PORTAL Market or (2) sold or transferred to a non-PORTAL account in a qualified exit transaction [8] or qualified exit transfer.[9] Previously, the PORTAL Rules also required PORTAL participants to maintain an account for PORTAL transactions at their agent who is providing them access to the services of a PORTAL depository organization and clearing organization that is segregated from all other non-PORTAL accounts they may have at the agent. Because PORTAL securities are maintained in a segregated account at the PORTAL depository and PORTAL transactions are required to be cleared through a segregated account at a PORTAL clearing organization, the account at an agent bank providing access to the PORTAL depository does not hold physical securities for PORTAL Market transactions. The account at a broker/dealer acting as a clearing broker for a PORTAL dealer or broker similarly does not hold securities for the PORTAL Market transactions of the dealer or broker.

**III. Discussion**

The NASD's existing rules would require the custodian bank to establish a special account for each PORTAL participant, which must be limited to only PORTAL securities. Because Rule 144A does not require this segregated accounting, the NASD's proposal will conform its rules to Rule 144A as adopted by the Commission. Accordingly, PORTAL participants will be permitted to commingle their PORTAL securities with other securities held for them by the custodian bank. This will provide the participants greater flexibility in establishing accounts and in their relationship with the custodian banks. This change should not affect significantly the NASD's ability to conduct routine and special surveillance activities consistent with its statutory responsibilities under the Act because the NASD will continue to require that PORTAL participants permit NASD access to the account, whether PORTAL securities are segregated or not. Under the amended rules, PORTAL participants still will be required to be members or have their agents be members of a PORTAL depository organization and direct that their accounts for PORTAL securities be segregated from all other accounts they may have at the PORTAL depository.[10]

PORTAL participants also will continue to be required to deposit and maintain all PORTAL securities in segregated PORTAL accounts at the PORTAL depository organization until such securities are sold or transferred to another PORTAL account or sold or transferred to a non-PORTAL account in an exit transaction permitted under the PORTAL Rules.[11] In addition, PORTAL participants will continue to be required to authorize and direct the relevant PORTAL depository organization (or authorize its agent to authorize and direct the relevant PORTAL depository organization) to release information on its PORTAL account activity to the NASD or its designee.[12] Further, a PORTAL dealer or broker that executes a qualified exit transaction or a qualified exit transfer in a PORTAL security is required to enter in the PORTAL Market a PORTAL transaction report.[13] By comparing the daily reports from the PORTAL depository organizations with the exit reports filed by participants, the NASD is able to track the exit of securities from the PORTAL system. The NASD also will conduct examinations of each PORTAL dealer and broker every six months to review, among other things, the member's compliance with the qualified exit transaction and transfer restrictions of the PORTAL Rules. The proposed rule change, therefore, should not significantly affect the NASD's surveillance of PORTAL Market transactions.

The Commission has determined to approve the NASD's proposed rule change because it is consistent with the provisions of section 15A(b)(6) of the Act,[14] in that the proposed amendments to the PORTAL Rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

**IV. Conclusion**

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 6, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29068 Filed 12-11-90; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Specifically, the NASD proposed deleting section 1(b)(3) to Part III and section 1(b)(3) to part IV and amending section 1(b)(6) to part III and section 1(b)(7) to part IV.

[3] The proposal was noticed in Securities Exchange Act Release No. 28430, September 12, 1990, 55 FR 38625.

[4] *See* Securities Exchange Act Release No. 27956 (April 27, 1990) 55 FR 18781.

[5] 17 CFR 230.144A (1990). Securities Act Release No. 6862, April 23, 1990, 55 FR 17933.

[6] The NASD initially has designated two depository organizations to perform the functions of a securities depository with respect to PORTAL securities. These organizations are the Depository Trust Company ("DTC") for U.S. securities and Centrale de Livraison de Valuers Mobilieres, S.A. Luxembourg ("CEDEL"), for foreign securities.

[7] The PORTAL clearing organizations are DTC and the International Securities Clearing Corporation.

[8] The PORTAL Rules permit the sale of PORTAL securities to an account outside the PORTAL Market in a transaction registered under section 5 of the Securities Act or not subject to such registration by reason of compliance with Regulation S, Rule 144, or Rule 144 or with Rule 144A, as determined by the Association, upon submission of an opinion of counsel prior to the transaction. In addition, exit transactions are permitted where the issuer is repurchasing its securities and where the seller has demonstrated to the NASD on a pre-exit basis that the transaction is exempt from Commission registration and the purchaser will acquire securities that can be freely resold without registration under the Securities Act.

[9] A qualified exit transfer is: (1) A return of borrowed securities to a non-PORTAL account; or (2) a transfer by a PORTAL participant from its PORTAL account to an account of the PORTAL participant outside the PORTAL Market.

[10] Section 1(b)(5) of part III and section 1(b)(2) of part IV of the PORTAL Rules.

[11] Section 1(b)(6) to part III and section 1(b)(7) to part IV of the PORTAL Rules.

[12] Section 1(b)(7) to part III and section 1(b)(4) to part IV of the PORTAL Rules.

[13] Daily reports from the PORTAL depository organizations will identify PORTAL dealers and brokers that effect exit transactions in PORTAL securities without an entry of a transaction report.

[14] U.S.C. 78o-3 (1982).



[Rel. No. IC-17990; 812-7844]

**Cypress Fund Inc.; Application**

December 5, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANT:** Cypress Fund Inc.

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 17(b) from the provisions of section 17(a).

**SUMMARY OF APPLICATION:** Applicant seeks an order permitting affiliated shareholders and affiliated persons of such shareholders to participate in a tender offer whereby shareholders may redeem Applicant's shares at net asset value. Redemption proceeds would be in-kind, consisting of a pro rata share of Applicant's portfolio assets.

**FILING DATE:** The application was filed on November 29, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 31, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicant, 1285 Avenue of the Americas, 18th Floor, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant, a Maryland corporation, is registered as a non-diversified, closed-end management investment company under the 1940 Act. Its investment objective is long-term capital appreciation, and, in accordance with its investment policies, Applicant has invested in a limited number of issuers that are selected on the basis of having two or more of the following characteristics: (a) A balance sheet containing little or no debt, (b) significant ownership by company founders or management, (c) a strong market position, and (d) limited institutional ownership. Applicant's shares have been publicly traded on the American Stock Exchange since late 1986. As is typical of many closed-end companies, Applicant's shares trade at a discount from net asset value.[1]

2. Applicant's investment adviser is Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins"), a wholly-owned subsidiary of PaineWebber Incorporated, which is in turn a subsidiary of Paine Webber Group, Inc., a publicly-traded financial services holding company.

3. As of November 23, 1990, Applicant had approximately 6,213,816 shares outstanding. NAV Partners, L.P. ("NAV Partners"), owns approximately 32.4% of the outstanding shares.[2] William J. Reik,

[1] As of November 23, 1990, that discount was approximately 4.2%.

[2] The number of outstanding shares has declined since the most recent Schedule 13D filed by NAV Partners as of the filing of the application. Therefore, the reported ownership of 31.4% by NAV Partners in its Schedule 13D is incorrect. NAV Partners is a Delaware limited partnership whose

Continued

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Jr., Applicant's former portfolio manager and managing director of Mitchell Hutchins, owns approximately 9.4% of the outstanding shares.[3] By virtue of their stock ownership of Applicant, NAV Partners and Mr. Reik are affiliated persons of Applicant as defined under section 2(a)(3) of the 1940 Act, but neither party is in a managerial or decision-making position with respect to Applicant. Affiliated persons of Applicant also include its investment adviser, and members of its board of directors and officers some of whom also own shares of Applicant.

4. On November 29, 1990, Applicant's board of directors announced a tender offer for any or all of its shares pursuant to section 23(c)(2) of the 1940 Act and in accordance with Rules 13e-3 and, if applicable, 13e-4 under the Securities Exchange Act of 1934. Consideration for shares tendered will consist of pro rata distributions "in kind" (cash and portfolio securities in the same proportion as in Applicant's portfolio) [4] the value of which will equal the aggregate net asset value of shares so tendered and valued as of the Valuation Data further described in the application.

5. The tender offer, which expires on January 2, 1991, is conditioned on a least 30% of the shares being tendered and on receipt of the exemptive order requested in the application.[5] Shareholders wishing to participate must tender all of their shares. Unless the tender offer is withdrawn or the conditions are not met, Applicant will accept all shares tendered and shareholders will receive their pro rata portion of (a) each of Applicant's portfolio securities (other than fixed income securities with maturities of less than one year) held as of the Valuation Date, and (b) the cash value of Applicant's Other Net Assets.

6. While NAV Partners, Mr. Reik, and two of Applicant's directors [6] have expressed their intent to tender their shares, none of them is committed to do so and Applicant has no agreement, understanding or arrangement with any of them regarding the tender offer.

7. Upon completion of the tender offer, Applicant expects to continue its operations consistent with its investment objectives and the board of directors will consider various alternatives to realize net asset value for the remaining shareholders. Such alternatives, which are further discussed in Applicant's Issuer Tender Offer Statement, include: (a) Merger of Applicant into an open-end investment company; (b) liquidation of Applicant's assets followed by a pro rata distribution of the proceeds to remaining shareholders; and (c) conversion of Applicant into an open-end investment company. All of these alternatives would require shareholder approval. If the tender offer statement is not consummated, the board of directors is expected to continue to explore alternatives to realize net asset value for shareholders.

### Application's Legal Conclusion

8. Section 17(a)(2) of the 1940 Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, to purchase from such investment company any security or other property (except securities of which the seller is the issuer). Applicant requests an exemption from this prohibition pursuant to section 17(b) to the extent that participation of affiliated shareholders, or affiliated persons of such shareholders, would involve the purchase of portfolio securities from Applicant.

9. Applicant contends that the terms of the proposed transactions under the tender offer meet the standards set forth in section 17(b) for the following reasons. The tender offer gives all shareholders, affiliated or not, the same choice of remaining invested in Applicant or receiving the net asset value of their shares in an in-kind distribution and does not give any offeree an advantage over other shareholders. Thus, there is no overreaching on the part of any person and the consideration to be paid is reasonable and fair. Furthermore, if affiliated shareholders, such as NAV Partners and Mr. Reik, tender their shares, Applicant may be a more feasible candidate for merger into an open-end investment company or for conversion into an open-end company because the risk and costs associated with large-scale redemptions would be reduced. Large-scale redemptions could depress the value of portfolio securities because the unexpected liquidation of portfolio securities can negatively affect the price for such securities.

10. Applicant submits that the proposed transactions are consistent with its investment policies as set forth in its registration statement and as announced by Applicant's board of directors in September 1989 to pursue alternatives to realize net asset value for Applicant's shareholders. Applicant also asserts that proposed transactions are consistent with the general purpose of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

FR Doc. 90-29069 Filed 12-11-90; 8:45 am]

BILLING CODE 8010-01-M

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sole general partner is NAV Corporation, a wholly-owned subsidiary of Twenty-First Holdings, Inc. ("TFH"), which is wholly-owned by Robert N. Gordon. Mr. Gordon is the president of NAV Corporation and of Twenty-First Securities Corporation, a registered broker-dealer also owned by TFH.

[3] Mr. Reik may be deemed to own beneficially another 1.4% of the shares held in discretionary accounts of clients of Mitchell Hutchins because Mr. Reik has dispositive, but not voting, power over such shares.

[4] According to Applicant's Issuer Tender Offer Statement, 70% of its assets consist of portfolio securities. Cash will be paid for assets represented by cash, cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets (including receivables and prepaid expenses), net of all liabilities ("Other Net Assets"). Fractional shares of a portfolio company attributable to a shareholder also will be paid in cash.

[5] The tender offer is a result of a policy adopted by the board of directors in September 1989 to achieve net asset value for Applicant's shares. In April 1990, NAV Partners launched a tender offer in an attempt to gain voting control of Applicant. Applicant commenced a competing tender offer in June 1990. A proxy contest ensued in which NAV Partners sought the election of its own candidates to the board of directors. At a shareholders' meeting in December 1990 51% of the shares entitled to vote rejected NAV Partners' proposal.

[6] Clifford M. Hardin owns 2,008 shares and Robert E. Kresko owns 10,978 shares. In addition, 31,500 shares are held by trusts for the benefit of Mr. Kresko's children and 2,099 shares are held by his wife.

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[Rel. No. IC-17855; 811-486]

## Seaboard Associates, Inc.; Application

December 5, 1990.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANT:** Seaboard Associates, Inc.

**RELEVANT 1940 ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

**FILING DATE:** The application was filed on November 14, 1990 and an amendment thereto was filed on December 4, 1990.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1776 Broadway, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Carroll, Staff Attorney, (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### *Applicant's Representations*

1. On July 29, 1943, applicant was formed under the name Associated Motion Picture Industries, Inc. for the purpose of purchasing the assets of Setay Company, Incorporated ("Setay"). Setay was formed in 1927, and its shares were originally sold in private transactions to employees of Consolidated Film Industries, Inc. Applicant purchased the assets of Setay in consideration of the assumption of certain of Setay's liabilities and the issuance of 94,735.8 shares of stock of applicant. Setay then liquidated and made a private distribution in kind of applicant's shares to Setay stockholders, who thereupon became shareholders of applicant.

2. On April 22, 1944, applicant filed a registration statement on Form N-8B-1 under the 1940 Act. Applicant has been unable to ascertain, from either its files or the records of the Commission, the exact date on which the registration statement was declared effective, but believes that such action was taken early in 1945. In 1960, applicant changes its name to Seaboard Associates, Inc.

3. Applicant is duly incorporated, validly existing, and in good standing under the laws of the State of Delaware. Applicant is engaged, and proposes to continue to engage, in the business of investing in or holding interests in oil and gas, marketable securities, and interests in real estate. Applicant owns a 97% interest in Metropolitan Royalty Corporation ("Metropolitan"), which is engaged in the oil and gas business.

4. On May 2, 1990, in light of the substantial costs of compliance with the 1940 Act and administration of the accounts of numerous small shareholders, applicant's board of directors determined to seek shareholder approval to effect a 1-for-20 reverse split of its common stock and to repurchase fractional stock interests. A significant purpose of the transaction was to reduce the number of beneficial owners below 100 and thereby enable applicant to seek to deregister under the 1940 Act.

5. Applicant solicited and obtained approval of the proposed transaction from its stockholders pursuant to a Proxy Statement prepared and filed pursuant to Regulation 14A, which described the transaction and the board's deliberations. Immediately before the transaction, applicant had 191 beneficial owners of its 151,501.8 shares of common stock, held by 172 holders of record. Of these, there were one hundred eleven beneficial owners who held fewer than 20 shares. On August 31, 1990, applicant effected the reverse stock split. Shareholders holding fewer than 20 shares before the split became holders of fractional shares immediately thereafter. Applicant then repurchased the fractional shares.

6. Rule 23c-1 permits a registered closed-end investment company to purchase for cash securities of which it is the issuer, subject to certain conditions. Applicant represents that it complied with Rule 23c-1 in connection with the repurchases of its shares. In accordance with the Rule, the holders of the newly-created fractional shares were paid based on the net asset value per share of the applicant's shares as of the date of the transaction. Checks were mailed to all shareholders on September 10, 1990, immediately following applicant's calculation of net asset value and a review of such calculation by applicant's independent accountants.

7. The vast majority of applicant's assets consist of oil interests, which applicant owns indirectly through Metropolitan. The most recent appraisal of such assets was as of August 31, 1990. This appraisal updated an extensive appraisal of such assets performed as of January 1, 1990. Another updated appraisal also had been performed as of July 31, 1990 because applicant had anticipated effecting the reverse stock split in early August, rather than at the end of the month. The transaction was deferred for a few weeks so that applicant's board of directors could better assess the impact of the invasion of Kuwait on the price of oil and, hence, the value of applicant's assets.

8. At the time of filing of the application and the amendment thereto applicant had 75 holders of record of its common stock, which represent 79 beneficial owners, as calculated pursuant to section 3(c)(1) of the 1940 Act. Applicant has not filed a registration statement pursuant to the Securities Act of 1933 with respect to any securities issued by it and has not made, and does not propose to make, a public offering of its securities. For these reasons, applicant believes it has ceased to be within the definition of "investment company" by virtue of the exclusion provided in section 3(c)(1) of the 1940 Act, and seeks to deregister as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29070 Filed 12-11-90; 8:45 am]

BILLING CODE 8010-01-M

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## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**ACTION:** Notice of Reporting Requirements Submitted for Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATE:** Comments should be submitted on or before January 11, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*Agency clearance officer:* William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6538.

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*OMB reviewer:* Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* SBIR Mailing List and Confirmation Request.

*Form No.:* SBA Form 1386.

*Frequency:* On occasion.

*Description of respondents:* Small Businesses interested in participating in the SBIR solicitation process.

*Annual responses:* 30,000.

*Annual burden:* 250.

William Cline,

*Chief, Administrative Information Branch.*

[FR Doc. 90-29102 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2470]**

**Republic of Palau (Trust Territory of the Pacific Islands); Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on November 28, 1990, I find that the Republic of Palau constitutes a disaster area as a result of damages caused by Super Typhoon Mike which occurred on November 10, and 11, 1990. Applications for loans for physical damage may be filed until the close of business on January 28, 1991, and for loans for economic injury until the close of business on August 28, 1991, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795; or other locally announced locations.

The interest rates are:

| | |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 8.000% |
| Homeowners without Credit Available Elsewhere | 4.000 |
| Businesses with Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (including Non-Profit Organizations) with Credit Available Elsewhere | 9.25 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 247006 and for ecomonic injury the number is 719500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 3, 1990.

Alfred E. Judd,

*Acting Assistant Administrator, for disaster Assistance.*

[FR Doc. 90-29103 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

**[License No. 01/01-0316]**

**Advent IV Capital Co.; Surrender of License**

Notice is hereby given that Advent IV Capital Company, 75 State Street, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). Advent IV Capital Company was licensed by the Small Business Administration on July 27, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on November 28, 1990, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 5, 1990.

Bernard Kulik,

*Associate Administrator for Investment.*

[FR Doc. 90-29101 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

**[Public Notice No. 1302]**

**Delegation of Authority No. 185**

**Secretary of State**

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to the Assistant Secretary of State for Consular Affairs the functions and responsibilities that are conferred upon the Secretary of State by section 599C of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513, "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon".

Dated: November 29, 1990.

Lawrence S. Eagleburger,

*Acting Secretary of State.*

[FR Doc. 90-29014 Filed 12-11-90; 8:45 am]

BILLING CODE 4710-10-M

## DEPARTMENT OF TRANSPORTATION

**Order Tentatively Awarding Certificates in Miami-Cancun Service Proceeding**

**AGENCY:** Department of Transportation, Office of the Secretary.

**ACTION:** Tentative award of primary certificate authority to Pan American World Airways, Inc., and backup certificate authority to American Airlines, Inc. to serve Miami-Cancun, Order 90-12-11, Docket 47223.

**SUMMARY:** By Order 90-10-31, the Department instituted a proceeding to select one additional primary and one backup air carrier to provide scheduled foreign air transportation between Miami and Cancun, Mexico. The Department is proposing to award to Pan American World Airways, Inc., a certificate for primary authority and to American Airlines, Inc., a certificate for backup authority to both Pan American and Eastern Air Lines, Inc./Continental Airlines, Inc., which already has primary authority on the route.

**DATES:** Responses to the Department of Transportation's tentative awards should be filed by December 17, 1990. Answers should be filed by December 24, 1990.

**ADDRESSES:** Responses and answers should be filed in Docket 47223, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20490 and should be served on all parties in Docket 47223 and Mr. Robert Goldner, Room 9216, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Goldner, Room 9216, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4826.

Dated: December 6, 1990.

Patrick V. Murphy, Jr.,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 90-29071 Filed 12-11-90; 8:45 am]

BILLING CODE 4910-62-M

**Office of the Secretary**

**Fitness Determination of Great Western Aviation Company**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Commuter Air Carrier Fitness Determination—Order 90-12-10, Order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find Great Western Aviation Company fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

**RESPONSES:** All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: December 5, 1990.

Patrick V. Murphy, Jr.,

*Deputy Assistant Secretary for Policy and International Affairs.*

[FR Doc. 90-29072 Filed 12-11-90; 8:45 am]

BILLING CODE 4910-62-M



**Coast Guard**

**[CGD 90-069]**

**Chemical Transportation Advisory Committee (CTAC) Meeting, CTAC Subcommittee on Tank Filling Limits, and CTAC Subcommittee on Inert Gas Systems Meeting**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** A. CTAC will hold a meeting on Wednesday, January 23, 1991 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. U.S. Coast Guard Remarks.
4. Introduction of new members.
5. General interest topics.
6. Subcommittee reports:
   a. Marine Occupational Safety and Health
   b. Tank Filling Limits
   c. Inert Gas Systems
7. Future Subcommittee Tasks.
8. International Activities.
9. Any other business.
10. Closing Remarks.
11. Adjournment.

B. The Subcommittee on Tank Filling Limits of CTAC will hold a meeting on Thursday, January 24, 1991 in Room 1301, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee was formed to develop recommendations for safe filling limits for liquefied gas ships. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. This will be the Subcommittee's first meeting. The Subcommittee will address questions remaining regarding the IACS/SIGTTO study in filling limits for liquefied gas ships.

C. The Subcommittee on Inert Gas Systems of CTAC will hold a meeting on Thursday, January 24, 1991 in Room 3319, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee was formed to develop guidelines for the safe operation and maintenance of inert gas systems. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The Subcommittee will develop recommendations to address problems associated with the maintenance of existing inert gas systems in which the manufacturer of the system is either no longer in business or the specific system design is no longer produced and major components are not readily available.

Attendance to the meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

**FOR FURTHER INFORMATION CONTACT:** Dr. M.C. Parnarouskis or Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC, 20593, (202) 267-1217.

Dated: December 5, 1990.

J.D. Sipes,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90-29100 Filed 12-11-90; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE TREASURY

**Public Information Collection Requirements Submitted to OMB for Review**

December 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Office of Thrift Supervision**

*OMB Number:* 1550-0027.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Earnings-Based Accounts.

*Description:* The rule is necessary in order to prevent overreliance on earnings-based accounts as fundraising tools by savings associations, which, in turn, represents a significant risk to the savings association and the Savings Association Insurance Fund.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 80.

*Estimated Burden Hours Per Response:* 25 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,000 hours.

Clearance Officer: John Turner (202) 906-6025, Office of Thrift Supervision, 1700 G Street NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 90-29087 Filed 12-11-90; 8:45 am]

BILLING CODE 4810-25-M

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# Sunshine Act Meetings

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-90-37]

**TIME AND DATE:** Monday, December 17, 1990 at 2 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Soft Drinks and their Containers (D/N 1000)
5. Inv. Nos. 701-TA-305 & 306, and 731-TA-476-482 (P) (Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, The People's Republic of China, Taiwan, and Thailand)—briefing and vote.
6. Inv. Nos. 731-TA-483 & 484 (P) (Certain Personal Word Processors from Japan and Singapore)—briefing and vote.
7. Any items left over from previous agenda

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: December 7, 1990.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 90-29157 Filed 12-10-90; 9:45 am]
BILLING CODE 7020-02-M

**MARINE MAMMAL COMMISSION**

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 25, 1991, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 25, from 10:00 a.m. to 5:30 p.m., on Friday, April 26, from 9:00 a.m. to 5:30 p.m., and on Saturday, April 17, from 9:00 a.m. to 1:00 p.m.

**PLACE:** The Red Lion Hotel, 300 112th Avenue S.E., Bellevue, Washington 98004.

**STATUS:** The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: national and international response plans for marine mammal die-offs; high seas driftnet fisheries; the status of marine mammals in Alaska; the status (preparation, review, approval, and implementation of research and management programs) of recovery and conservation plans; and ongoing negotiations and activities pursuant to international agreements.

**CONTACT PERSON FOR MORE INFORMATION:** John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 Connecticut Avenue N.W., Room 512, Washington, DC 20009, 202/653-6237.

Dated: December 6, 1990.

John R. Twiss, Jr.,
*Executive Director.*

[FR Doc. 90-29176 Filed 12-10-90; 11:12 am]
BILLING CODE 6820-31-M

**NUCLEAR REGULATORY COMMISSION**

**DATES:** Weeks of December 10, 17, 24, and 31, 1990.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of December 10**

*Thursday, December 13*

8:30 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
10:00 a.m.
Affirmation/Discussion and Vote (PUBLIC MEETING)
a. Final Rule, Part 20—Revised Standards for Protection Against Radiation (Tentative)

**Week of December 17—Tentative**

*Monday, December 17*

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
10:0 a.m.
Briefing on EEO Program (Public Meeting)

*Tuesday, December 18*

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

*Wednesday, December 19*

9:00 a.m.
Briefing by NUMARC on Level of Design Detail for Part 52 (Public Meeting)
10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of December 24—Tentative**

There are no meetings scheduled for the Week of December 24.

**Week of December 31—Tentative**

*Thursday, January 3*

1:30 p.m.
Briefing on NRC Technical Training Center (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: December 10, 1990.

William M. Hill, Jr.,
*Office of the Secretary.*

[FR Doc. 90-29209 Filed 12-10-90; 8:45 am]
BILLING CODE 7590-01-M

**TENNESSEE VALLEY AUTHORITY**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** To be published.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m. (EDT), Tuesday, October 23, 1990.

**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

**CHANGES IN THE MEETING:** Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:



A—Budget and Financing

2. Repurchase of TVA Bond Held by the Federal Financing Bank and Sale of Portion of Investments in Decommissioning Fund.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichiel, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call 615-632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-479-4412.

William L. Osteen, Jr.,
*Associate General Counsel and Assistant Secretary.*

[FR Doc. 90-29182 Filed 12-10-90; 12:53 pm]
BILLING CODE 8120-02-M

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# Corrections

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**Environmental Impact Statement; Washington County, RI**

*Correction*

In notice document 90-27458 appearing on page 48949 in the issue of Friday, November 23, 1990, make the following correction:

In the second column, in the second complete paragraph, in the fourth line, after the last word, insert "not be analyzed. Initially, all feasible alternatives will".

BILLING CODE 1505-01-D

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 6**

**RIN 2900-AD74**

**Authority of Fiduciaries To Conduct Insurance Transactions**

*Correction*

In proposed rule document 90-19103 beginning on page 33140 in the issue of Tuesday, August 14, 1910, make the following correction:

**§ 6.211 [Corrected]**

On page 33141, in the first column, in § 6.211(a), in the fourth line "Office" should read "Officer".

BILLING CODE 1505-01-D

federal register

Wednesday
December 12, 1990

Part II

# Department of Health and Human Services

**Social Security Administration**

**20 CFR Parts 404 and 416**

**Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Final Rules**

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AC35

# Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Addition of Down Syndrome and Other Serious Hereditary, Congenital or Acquired Disorders to the Listing of Impairments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These amendments revise the criteria we use when we determine whether children's impairments meet or equal the severity of the impairments found in the multiple body system disorders listings. These final rules add new listings to the multiple body system category of impairments in part B of appendix 1, Listing of Impairments, to subpart P of part 404 of Title 20 of the Code of Federal Regulations. They provide separate listings for Down syndrome and for the evaluation of other hereditary, congenital, and acquired syndromes.

The Supreme Court's February 20, 1990, decision in *Sullivan* v. *Zebley, et al.*, ____ U.S. ____, 110 S.Ct. 885 (1990), requires us to provide an individual assessment of the functional impact of any child's impairment(s) when the impairment(s) does not meet or equal the severity of the impairments found in the Listing of Impairments. Since the Court's decision did not preclude the use of the listings as a basis for a decision that a child is disabled, the listings contained in these final rules will be used to determine that a child is disabled based on an impairment(s) that meets or equals the severity of a listed impairment. However, consistent with the Supreme Court's holding in *Zebley*, we will not deny any child's claim for Social Security or supplemental security income benefits based only on a finding that the child's impairment(s) does not meet or equal these, or any other, listings.

DATES: These rules are effective December 12, 1990.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1759.

SUPPLEMENTARY INFORMATION: Throughout this preamble and the regulatory text we refer to "Down syndrome" rather than "Down's syndrome." "Down" without the apostrophe "s" is the term currently being used by the National Down Syndrome Congress and the National Down Syndrome Society and is the term used in several major texts on childhood disability.

These final rules add new listings to the multiple body system category of impairments in Part B of the Listing of Impairments. They provide separate listings for Down syndrome and for the evaluation of other hereditary, congenital, and acquired syndromes.

These regulations were published in the **Federal Register** (52 FR 37161) as a Notice of Proposed Rulemaking (NPRM) on October 5, 1987. Interested parties were given 60 days to submit comments. We received comments from State government agencies, national organizations, and special interest organizations which deal with persons with disabilities.

Pursuant to public comments on the NPRM and our experience in administering the disability programs, we have made an important revision in the final rules. We have added a new final listing 110.08, solely for children who have non-mosaic Down syndrome, which provides that any child who has a medically established diagnosis of Down syndrome will be found to meet the listing. Final listing 110.07 is the listing we proposed as listing 110.06 in the NPRM. It is to be used to evaluate hereditary, congenital, and acquired conditions other than Down syndrome that have multiple body system effects similar to Down syndrome, and for cases of mosaic Down syndrome.

The primary purpose of establishing these new listings is to update the evaluation process under the Listing of Impairments. Part A of Appendix 1, Listing of Impairments, describes, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity, absent evidence to the contrary. Part B of Appendix 1 contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18.

Until the publication of this rule, we did not have a specific listing for Down syndrome. Instead, most children with Down syndrome were evaluated under the criteria of listing 112.05—Mental Retardation—which requires measurement of intellectual functioning or of the failure to attain expected developmental milestones. Although this policy identified disability in most children with Down syndrome, it was not always adequate for assessing the impairments of the youngest children, especially infants from birth to 6 months of age, in whom the multiple manifestations of impairment cannot be easily evaluated. As a consequence, we have been following a procedure whereby we have deferred the evaluation of the impairments of infants until they attained 6 months of age in those cases in which we were unable to find the applicant disabled or to evaluate properly the effects of the impairment.

However, after more than 2 years of applying the procedure, it has become apparent to us that virtually all infants who have Down syndrome of the Trisomy 21, regular and translocation types, (i.e., all except those who have mosaic Down syndrome) will be found disabled when the effects of their impairments can be properly documented and evaluated. In a recent study we conducted of 152 claims filed on behalf of infants and children with Down syndrome, we found that all children with non-mosaic Down syndrome could establish that they met or equaled our listings by the age of 6 months. In addition, 77 percent of 4-to-5-month-old infants could be found to meet or equal a listing. Consequently, we have changed our regulations to reflect these new data and our new policy.

We have also made this change in response to interest in the evaluation of childhood disability from some members of Congress, the public, advocacy groups, and others. During the past 2 years, legislation has been introduced in both Houses of Congress which, if enacted, would establish a rebuttable presumption of disability for children under age 4 with congenital or genetic impairments, including Down syndrome. Two of the commenters on the NPRM suggested that we have a separate listing for Down syndrome. We have also recently met with advocates for the rights of disabled children, who urged us to consider creating a category of disability for infants based on the diagnosis of Down syndrome. Finally, as we draft new rules to comply with the Supreme Court's decision in *Zebley*, we have been consulting with experts in childhood disability. All of the experts who addressed the subject supported the idea that infants with Down syndrome should be found disabled by virtue of the diagnosis and its well-established medical and functional implications.

Other conditions, including mosaic Down syndrome, that can affect several



body systems in ways similar to Down syndrome, will be evaluated under listing 110.07, which we originally proposed as listing 110.06. Conditions to be evaluated under this listing (for example, PKU and fetal alcohol syndrome) can certainly be disabling, but are not as invariably disabling as non-mosaic Down syndrome. The new listing 110.07 will facilitate and expedite adjudication and help to ensure that proper consideration is given to the variety of possible manifestations of these disorders.

Mosaic Down syndrome is a rare form of the condition which manifests a wide range of impairment severity. The condition can be profound and disabling, but it can also be so slight as to go undetected. Therefore, we do not believe that it would be appropriate to find that individuals meet the listing based solely on this diagnosis. However, we want to stress that children with mosaic Down syndrome can still be found disabled if they meet or equal final listing 110.07; furthermore, under the new policy we follow pursuant to the Supreme Court's decision in *Zebley*, we may also find such children disabled based upon an individualized assessment of their functioning, even if they do not have an impairment that meets or equals these new listings, or any other listings.

Listing 110.07 will also be used to evaluate those claims of children with mental retardation of known causes associated with impairments of other body systems. However, listing 112.05, relating to mental retardation, is being retained because it will continue to be needed to evaluate the large number of claims in which mental retardation is alleged but in which the medical cause cannot be medically identified.

We are also revising the introductory material in 110.00 to identify better what is meant by the term "catastrophic congenital abnormalities or diseases" and to describe a level of severity which is considered sufficient to find a person disabled by these abnormalities or diseases. We have expanded the introduction by including several major congenital abnormalities that do not fall into the "catastrophic" category described in listing 110.08. We believe these changes will help ensure greater uniformity and equity in the adjudicative process for children with conditions that usually affect more than one body system.

In response to other concerns expressed by the commenters, we have also revised the documentation requirements in proposed 110.00C (110.00B in the final regulations) to indicate that medical evidence that is persuasive that a positive diagnosis of non-mosaic Down syndrome has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory findings. Paragraph A of final listing 110.07 (proposed listing 110.06) has also been revised to include additional neurological and developmental criteria to assure wider application to other impairments that are intended to be covered, and the documentation requirements in 110.00B (previously in proposed 110.00C) have been revised to prevent any possible conflicts between the documentation of Down syndrome and other impairments evaluated under this listing.

The comments we received and the changes we have made are addressed in more detail in the following discussion. We condensed, summarized, or paraphrased many of the written comments we received. We received several comments which did not pertain to the proposed changes in the listings; we have referred them to the appropriate Social Security office for reply.

## Discussion of General Comments

*Comment:* Two commenters expressed the belief that the proposed listing did not adequately address the major adjudicative problem with Down syndrome; that is, of children less than a year old. These comments expressed the view that the listing should define appropriate developmental milestones in early life and provide guidelines for testing younger infants with Down syndrome. One of the commenters suggested that we consider such claimants as presumptively disabled and subsequently evaluate the claim.

*Response:* The comment has been adopted in part. We have provided in final listing 110.06 that when non-mosaic Down syndrome is established by clinical and laboratory findings the child will be considered disabled from birth. Although some older claimants will benefit from the new listing, we expect that the greatest benefit of this new listing will be in its application to young infants, especially from birth to 6 months. With regard to the comment on defining milestones and providing guidelines for testing, the discussion in 112.00B applies to evaluating milestones and age-appropriate activities in children with any impairment. We will also provide additional guidance in the revised childhood mental listings and in the new regulations we are now preparing in response to the Supreme Court's decision in *Zebley*.

*Comment:* Another comment noted that the proposed listing included other hereditary and congenital conditions as well as Down syndrome. The commenter suggested that a separate listing be established for Down syndrome. A similar comment expressed concern that the combining of Down syndrome with other impairments could result in conflicts regarding documentation.

*Response:* We agree with the comments. We have, therefore, added a separate listing 110.06 for non-mosaic Down syndrome, and redesignated the listing we proposed as 110.06 as final listing 110.07. Proposed listing 110.00 was developed primarily to address evaluation considerations specific to Down syndrome; however, there are many other conditions that manifest similar multisystem impairments for which final listing 110.07 can ensure a more accurate evaluation of disability. We have also revised this listing to clarify the documentation requirements to ensure that conflicts regarding documentation between Down syndrome and other impairments will not result.

## Discussion of Specific Comments

### *110.00 Multiple Body Systems*

*Comment:* One commenter stated that the criteria we proposed in 110.00B were not clear as to whether anencephaly and Tay-Sachs disease should be evaluated under proposed listing 110.06, which required functional limitations, or under listing 110.08, which provides for an allowance on the basis of diagnosis and prognosis alone.

*Response:* We agree with the comment and have clarified the criteria that were in proposed 110.00B. Catastrophic conditions such as anencephaly and Tay-Sachs disease where early death or profound development impairment is reasonably certain, should continue to be adjudicated according to listing 110.08. We have revised paragraphs A and B of 110.00 to make this clear. A new paragraph A incorporates in the final regulation the major features previously found in the paragraphs A and B of the proposed regulations.

*Comments:* One commenter suggested that the phrases "fetal alcohol syndrome" and "severe chronic neonatal infection" in proposed 110.00B be omitted because they did not describe any specific diagnostic entities. Another reason the commenter recommended that "fetal alcohol syndrome" should be omitted was that there was no specific diagnostic test as required by proposed 110.00C.

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*Response:* The comment was not adopted. "Fetal alcohol syndrome" is a medical term used to describe the triad of specific dysmorphic facial features, growth deficiency, and central nervous system dysfunction including hypotonia, interference with motor coordination, and mental retardation. The term "severe chronic neonatal infection" refers primarily to those diagnostic conditions such as toxoplasmosis, rubella, cytomegalic inclusion disease, herpes encephalitis, and other serious infectious processes that can result in long-term impairment in infants and young children. Further, the intent of 110.00C was to require definitive tests in only those instances where appropriate, i.e., such a test is available and usually performed in accordance with accepted medical practice in order to confirm the presence of a medical condition. In response to the commenter, the explanatory material in the final 110.00B has been revised to make this clear.

*Comment:* Another commenter pointed out that "fetal alcohol syndrome" may be suspected by clinical findings but cannot be confirmed by laboratory methods, whereas other conditions such as Down syndrome can be clearly diagnosed through laboratory studies, thus making a clinical description redundant and superfluous. The commenter recommended that proposed 110.00C be revised to require definitive laboratory tests or a clinical description, whichever is appropriate.

*Response:* The comment was not adopted because a positive diagnosis of Down syndrome cannot be established through the results of laboratory testing alone. The use of laboratory tests is limited to confirmation of a diagnosis that has been suggested on the basis of clinical descriptive evidence. Therefore, the documentation must include a clinical description of the physical findings as well as definitive laboratory tests where appropriate.

*Comment:* A commenter expressed concern that the material in parenthesis in 110.00B was not as clear as the developmental milestone discussion in the third paragraph of 112.00B and suggested that the discussion in the third paragraph of 112.00B be repeated or referred to in 110.00B.

*Response:* We agree with the comment and have revised the final rule. A reference to the discussion of developmental criteria that appears in 112.00 has been added to final 110.00A. This will clarify that the parenthetical material was not meant to be discussion of developmental milestone criteria but to provide specific guidance as to what would constitute a significant interference with age-appropriate activities.

*Comment:* One commenter stated that the discussion of age-appropriate activities in 110.00B appeared in conflict with the description in proposed paragraph A of listing 110.06. In 110.00B, we define significant limitation of age-appropriate activities in an infant as developmental milestone age not exceeding two-thirds of chronological age at the time of evaluation. That criterion was not included in paragraph A of proposed listing 110.06, where age-appropriate activities stand alone, but did appear in paragraph B of proposed listing 110.06, where an additional impairment was required to meet the listing.

*Response:* We disagree. The definition that we proposed in 110.00B (110.00A2 in the final regulation), of what constitutes a significant interference with age-appropriate activities in an infant, is to be used in evaluating claims under both paragraphs A and B of final listing 110.07 (proposed listing 110.06). A severity level has been established under paragraph A of listing 110.07 in the final regulations which is internally consistent with that required under paragraph B of listing 110.07 in the final regulations. The additional impairment in paragraph A of listing 110.07, which corresponds to the additional impairment required under paragraph B of listing 110.07, is the hypotonia or other cause of motor dysfunction. To ensure that the level of severity is understood, the definition is repeated in paragraph B of listing 110.07 of the final rules.

*Comment:* One commenter indicated that proposed 110.00D (110.00C in the final regulations), which stated that the combined impairments must be evaluated together to determine if they are equal in severity to a listed impairment, was unnecessary because equivalency is inherent in the sequence of evaluation.

*Response:* We agree with the commenter that equivalency is part of the sequential evaluation process. However, because the listings in 110.00 are somewhat different from the other listed impairments in Part B in that they often involve combinations of impairments, we do not agree that 110.00D is unnecessary. We want to be very clear in explaining that the impairments described in 110.00 rarely involve single physical or mental manifestations and that one shoud not assume that the failure of any single manifestation to meet a listing is the end of the inquiry at the listing level. Children who have the conditions contemplated by final listing 110.07, but who do not meet the listing, may nevertheless have combinations of impairments that are equivalent in severity to listing 110.07.

*110.08 Multiple Body Dysfunction*

*Comment:* One commenter noted that there was no mention of the upper age limit which applies to proposed listing 110.06; whereas, in the American Association of Mental Deficiency (AAMD) manual the 18th birthday is given as the upper limit of the developmental period.

*Response:* In our judgment it is not necessary to state an age limit in the listing itself because §§ 404.1525 and 416.925 of our regulations state that Part B of the Listing of Impairments applies only to the evaluation of impairments of persons under age 18.

*Comment:* One commenter expressed concern with the format used in proposed listing 110.06 for making reference to other listings and suggested that we revise the format. The commenter indicated that the format in the proposed listing was not consistent with the format of other reference listings in the Listing of Impairments, such as listings 109.09, 104.03, or 12.09.

*Response:* The comment was adopted in part. With the exception of the format proposed for paragraph B of final listing 110.07, the format is similar to, if not the same as in the other listings cited. We have revised the format of paragraph B of final listing 110.07 to conform with the other listings.

*Comment:* One commenter requested that we clarify what we meant by "infant" in paragraph A of proposed listing 110.06.

*Response:* We adopted the comment in part. We have added the phrase "or young child" after the word "infant" to clarify that the term was not meant to exclude the young child. There is no universally accepted definition of infancy according to upper age limit, developmental milestones or activities. For example, "Dorland's Illustrated Medical Dictionary," 26th Edition (W.B. Saunders Co., 1981), defines infancy as the time from the termination of the newborn period (i.e., the first 28 days of life) to the time of assumption of erect posture at 12 to 14 months of age. Some sources make reference to children as "infants" when below the age of 18 months, and thereafter as "children." Others, however, extend infancy to the end of the first 24 months. We are using the phrase "infant or young child" to avoid the situation of having the criteria inadvertently restricted in application to an arbitrary definition based on chronological age. The criteria can and are meant to be applied to a child of any age where there may be some interference in developmental tasks such as those listed.



*Comment:* A commenter suggested that since proposed listing 110.06 was not limited to Down syndrome, the listing should also include neurological deficits. The same commenter also suggested that additional examples of age-appropriate developmental activities for young infants, such as following, recognition, and smiling, need to be included.

*Response:* We agree in part with the commenter's suggestions. We have revised final listing 110.07 to include neurological deficits and have added swallowing, following, reaching, and grasping to the example of age-appropriate major daily or personal care activities. We did not add recognition and smiling in the final listing, even though we agree that they are additional examples of age-appropriate behavior. Normal milestones, in the first year of life, include turning toward stimuli and simple causal mean-ends interactions with the inanimate and animate world. However, recognition and smiling are difficult activities to define and measure. The other age-appropriate major daily or personal activities included in the final listing are easier to define and measure.

*Comment:* Two commenters considered the format for paragraph B2 of proposed listing 110.06 to be confusing. Both commenters suggested an alternate format. One of the commenters also expressed concern that the two-thirds milestone criteria would complicate adjudication.

*Response:* The comment was adopted in part. We agree that the format may have been somewhat difficult to understand and have revised it to improve its clarity. However, we believe it is important to have a measurement of milestone performance; i.e., two-thirds of chronological age, which corresponds to an IQ of 60–69 for those infants and young children who cannot be evaluated with standardized intelligence tests. Methods for determining developmental age relative to chronological age, using milestone criteria, have been well established, and the procedure for determining two-thirds age milestones are no different than longstanding procedures for determining one-half age milestones.

*Comment:* One commenter requested that we include a further explanation of our definition of mental retardation in paragraph B of proposed listing 110.06. The commenter asked how the definition in this listing related to the definition found in the AAMD manual, "Classification in Mental Retardation" (1983).

*Response:* The comment was not adopted. We believe that the definition in paragraph B of final listing 110.07 is consistent with the definition in the AAMD manual even though the definition in listing 110.07 would not require us to use formal testing where a description of adaptive deficits could be satisfactorily evaluated according to established developmental norms, as indicated in 112.00B. We do not believe that it is necessary to add the requirement of formal testing to the listing and we have not done so in the final rules.

*Comment:* The same commenter questioned the cutoff IQ score presented in paragraph B of proposed listing 110.06 (i.e., 69) since the AAMD manual and the "Diagnostic and Statistical Manual of Mental Disorders", third edition, revised (DSM–III–R) mention 70 as the upper limit for IQ scores in the range of mental retardation.

*Response:* The cutoff IQ score of 69 is consistent with other listings in the current Listing of Impairments.

*Comment:* One commenter raised the question why the standards in proposed listing 110.06 were different than in listing 112.05.

*Response:* We intended a similar level of severity under paragraph B2 of proposed listing 110.06 as currently exists under paragraph C of listing 112.05. In the final rules, we have revised paragraph B of listing 110.07 to make it clear that the standard under these criteria is consistent with the standard established under paragraph C of listing 112.05 regarding the IQ criterion.

*Comment:* One commenter indicated that to be consistent with listing 110.02, the wording "growth failure" in paragraph C of listing 110.06 should be changed to "growth impairment."

*Response:* The recommendation was accepted and the listing had been revised to reflect it.

*Comment:* The same commenter recommended that to be consistent with the wording in 102.00 the word "impairments" should be substituted for the word "defects" in paragraph D of proposed listing 110.06.

*Response:* We agree with the recommendation and have made this change.

*Comment:* One commenter raised the question whether the speech defect described in paragraph D of proposed listing 110.06 included only those speech conditions due to a hearing defect, as required under listing 102.08. The commenter recommended that speech defects attributable to other causes, such as those under listing 111.09, should also be included.

*Response:* The comment was adopted. We agree that neurological disorders as a cause of speech and language impairments as described under listing 111.09 should be included in addition to those referred to under 102.00. In the final rules we have revised the sentence to read, "Significant interference with communication due to speech, hearing, or visual impairments as described under the criteria in 102.00 and 111.09."

*Comment:* One commenter noted that in paragraph F of proposed listing 110.06 the reference listing included listing 111.02, major motor seizures, but excluded listing 111.03, minor motor seizures. In the commenter's opinion this did not appear appropriate, and the commenter recommended that we include minor motor seizures in paragraph F of proposed listing 110.06.

*Response:* The comment was adopted. Multisystem disorders when manifested by seizures are more often associated with the major motor type than the minor motor type. However, we have included minor motor seizures in paragraph F of listing 110.07 in the final regulations.

**Regulatory Procedures**

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because the changes we have made will have little, if any, impact on costs. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect only individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

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Dated: July 26, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: October 4, 1990.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

Part 404 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

**PART 404—[AMENDED]**

1. The authority citation for subpart P of part 404 is revised to read as follows:

**Authority:** Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), (5), (6), and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1806.

**Appendix 1 to Subpart P—[Amended]**

2. Listing 110.00, Multiple Body Systems, of Part B of Appendix 1 (Listing of Impairments), of subpart P is amended by revising the text of paragraphs A and B, by adding a new paragraph C and by adding new listings 110.06 and 110.07 to read as follows:

**110.00 Multiple Body Systems**

A. This section refers to those life-threatening catastrophic congenital abnormalities and other serious hereditary, congenital, or acquired disorders that usually affect two or more body systems and are expected to:

1. Result in early death or developmental attainment of less than 2 years of age as described in listing 110.08 (e.g., anencephaly or Tay-Sachs); or

2. Produce long-term, if not life-long, significant interference with age-appropriate major daily or personal care activities as described in listings 110.06 and 110.07. (Significant interference with age-appropriate activities is considered to exist where the developmental milestone age did not exceed two-thirds of the chronological age at the time of evaluation and such interference has lasted or could be expected to last at least 12 months.) See 112.00B for a discussion of developmental milestone criteria and evaluation of age-appropriate activities.

Down syndrome (except for mosaic Down syndrome, which is to be evaluated under listing 110.07) established by clinical findings, including the characteristic physical features, and laboratory evidence is considered to meet the requirement of listing 110.06 commencing at birth. Examples of disorders that should be evaluated under listing 110.07 include mosaic Down syndrome and chromosomal abnormalities other than Down syndrome, in which a pattern of multiple impairments (including mental retardation) is known to occur, phenylketonuria (PKU), fetal alcohol syndrome, and severe chronic neonatal infections such as toxoplasmosis, rubella syndrome, cytomegalic inclusion disease, and herpes encephalitis.

B. Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis, where appropriate (e.g., Down syndrome). Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report. Documentation of immune deficiency disease must be submitted and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measures of cellular immunity mediators.

C. When multiple body system manifestations do not meet one of the established criteria of one of the listings, the combined impairments must be evaluated together to determine if they are equal in severity to a listed impairment.

* * * * *

*110.06 Down syndrome (excluding mosaic Down syndrome)* established by clinical and laboratory findings, as described in 110.00B. Consider the child disabled from birth.

*110.07 Multiple body dysfunction* due to any confirmed (see 110.00B) hereditary, congenital, or acquired condition with one of the following:

A. Persistent motor dysfunction as a result of hypotonia and/or musculoskeletal weakness, postural reaction deficit, abnormal primitive reflexes, or other neurological impairment as described in 111.00C, and with significant interference with age-appropriate major daily or personal care activities, which in an infant or young child include such activities as head control, swallowing, following, reaching, grasping, turning, sitting, crawling, walking, taking solids, feeding self; or

B. Mental retardation as evidenced by one of the following:

1. Mental retardation as described in 112.05A, B, or C; or

2. Achievement of only those developmental milestones generally acquired by children no more than two-thirds of the child's chronological age, and a physical or other mental impairment imposing additional and significant restrictions of function or developmental progression; or

C. Growth impairment as described under the criteria in 100.02A or B; or

D. Significant interference with communication due to speech, hearing, or visual impairments as described under the criteria in 102.00 and 111.00; or

E. Cardiovascular impairments as described under the criteria in 104.00; or

F. Other impairments such as, but not limited to, malnutrition, hypothyroidism, or seizures should be evaluated under the criteria in 105.08, 109.02 or 111.02 and 111.03, or the criteria for the affected body system.

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[FR Doc. 90-28745 Filed 12-11-90; 8:45 am]

BILLING CODE 4190-29-M

**20 CFR Parts 404 and 416**

**[Regulations No. 4 and 16]**

**RIN 0960-AB96**

## Disability Insurance and Supplemental Security Income; Mental Disorders in Children

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** These amendments revise the medical criteria in the Listing of Impairments that are used to evaluate mental disorders in children under age 18 for the disability programs in title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating mental disorders in children and provide up-to-date criteria for use in the evaluation of disability claims based on childhood mental disorders.

These amendments revise the criteria we use when determining whether children's impairments meet or equal the severity of the impairments found in the mental disorders listings. The Supreme Court's February 20, 1990, decision *Sullivan* v. *Zebley et al.*, ——— U.S. ———, 110 S.Ct. 885 (1990), requires us to provide an individual assessment of the functional impact of a child's impairments when the severity of the impairments does not meet or equal the severity of the impairments found in the Listing of Impairments. Since the Court's decision did not preclude the use of the listings as a basis for a decision that a child is disabled, the listings contained in these final rules will be used to determine that a child is disabled based on an impairment that meets or equals the severity of a listed impairment. We currently are developing standards to implement the Supreme Court's decision in *Zebley*. Until these standards are implemented, disability claims filed on behalf of children with impairments will not be denied based only on our finding that the severity of their impairments does not meet or equal the criteria set out in these final rules.

**DATES:** These rules are effective December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1759.

**SUPPLEMENTARY INFORMATION:** The criteria for evaluating the severity of mental disorders in children are found in 112.00 of Part B of the Listing of Impairments in Appendix 1 of subpart P of part 404 of title 20 of the Code of Federal Regulations (CFR). Appendix 1 is divided into Part A and Part B. The criteria in Part A describe impairments that are severe enough to prevent a person from doing any gainful activity, absent evidence to the contrary. Part B of Appendix 1 contains additional criteria that only apply to the evaluation of impairments of persons under age 18. Part B was initially included only in Appendix 1 of subpart I of part 416 in 1977, subsequent to the enactment of the Supplemental Security Income (SSI) program. While Part B applies mainly to claims by children for SSI benefits based on disability under title XVI of the Act, it also applies to some claims for disability insurance benefits and child's insurance benefits under title II. In recodifying the title II and title XVI disability regulations on August 20, 1980 (45 FR 55566), we took the criteria used in making disability determinations out of part 416 and placed them only in Appendix 1 of subpart P of part 404. This was done to eliminate repetition in the regulations, since the criteria contained in Appendix 1 apply to both the title II and title XVI disability programs. (See 20 CFR 404.1525 and 416.925.).

When parts of the Listing were revised and published in **Federal Register** on December 6, 1985 (50 FR 50068), we indicated in the preamble that medical advancements in disability evaluation and treatment, and our increased program experience would require us to review and update the Listing periodically. Accordingly, we published termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory paragraphs of the Listing; the expiration date for Part B of the listings for mental disorders in children was December 5, 1993. We are now updating the mental disorders listings in 112.00 (Part B) and extending the effective date of these revised listings for 5 years from the date of their publication. We intend to carefully monitor these regulations over the 5-year period by providing ongoing evaluation of the medical evaluation criteria. Therefore, 5 years after publication of the final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

These regulations were published in the **Federal Register** (54 FR 33238) as a Notice of Proposed Rulemaking (NPRM) on August 14, 1989. Interested persons, organizations, and groups were invited to submit comments pertaining to the proposed amendments within a period of 60 days from the date of publication of the NPRM. The comment period ended on October 13, 1989. After carefully considering the comments contained in the 145 letters we received regarding the proposed rules, we are adopting the proposed rules with modifications explained later in this preamble.

### Explanation of the Final Rules

We have updated the medical terms we use to describe the major mental disorders of childhood, their characteristics, and symptoms to conform to the terminology currently used by psychiatrists, psychologists, pediatricians, and other professionals who treat children who have mental disorders. The terminology we proposed in the NPRM in the **Federal Register** of August 14, 1989 (54 FR 33238) was based on the third edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM–III), published by the American Psychiatric Association (APA) in 1980. We have revised these final listings so that they are based on the terminology used in the revised third edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM–III–R), published by the APA in 1987. This edition, as the previous edition, gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability. In most instances, any differences between the terminology in the DSM–III–R and the DSM–III do not have a substance effect on the rules from the way we proposed them; we describe any important changes below and in the "Public Comments" section of this preamble.

The listings are also more specifically related to distinct types of mental disorders. Thus, we have included fewer disorders under the same listing than were grouped together under the former listings. The result is an increase in the number of listings from four to eleven. The organization of mental disorders is based on the DMS–III–R, which provides a more realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing.

In the NPRM, we proposed to confine the use of the Psychiatric Review Technique to those cases in which we used the criteria of the adult mental listings to evaluate children's claims. However, in response to several public comments, we reconsidered using a technique to assist in the evaluation of claims filed on behalf of children with mental disorders. We are now preparing revisions to the technique and plan to publish these revisions in an NPRM.

We have also revised the terminology used to describe the various age groups. The term "newborn and younger infants" is used to describe children from birth to attainment of age 1, and the term "older infants and toddlers" means children age 1 to attainment of age 3; the term "infants and toddlers" refers to both groups together, that is, from birth to attainment of age 3.

One of the major changes from the NPRM is in the way we will apply the paragraph B criteria. Many public commenters questioned why certain listings required children to meet more of the paragraph B criteria than others. They stated that if the paragraph B criteria represented functional measures of listing-level severity, it should follow that the same number of paragraph B criteria would be disabling under all of the listings. We agree with the commenters and have revised the listings so that all listings that employ paragraph B criteria have the same number of functional requirements.

Another major change in the way we apply the paragraph B criteria is that we will require children aged 3 to attainment of age 18 to meet two of the age-appropriate paragraph B criteria. In some listings, this is an increase from the proposed listings, whereas in others it is a decrease. We explain the reasons for these changes below. Older infants and toddlers, age 1 to attainment of age 3, will have to meet only one of the age-appropriate paragraph B criteria; similarly, final listing 112.12 (proposed listing 112.10), the listing for newborn and younger infants from birth to attainment of age 1, also requires only one criterion.

The final listings also include a significantly revised listing 112.08 and two new listings, which we added in response to numerous public comments. In the NPRM, we proposed a listing 112.08, Personality Disorders, that did not provide specific criteria for the evaluation of these disorders in children. Instead, it was a reference listing to listing 12.08 in Part A of Appendix 1 to subpart P of the Regulations No. 4, the adult listings. In response to comments, we have replaced the reference listing with a complete listing, which includes paragraph A and paragraph B criteria specific to children.

We also agreed with the many commenters who urged us to add new listings for psychoactive substance dependence disorders (final listing

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112.09) and attention deficit hyperactivity disorder (final listing 112.11). We describe both of these listings in the summary below and address the public comments in the public comment section of this preamble. We have renumbered two of the listings to reflect the addition of these two new listings. Autistic Disorder and Other Pervasive Developmental Disorders, proposed as listing 112.09, is now final listing 112.10, and Developmental and Emotional Disorders of Newborn and Younger Infants (originally called "Developmental and Emotional Disorders of Infancy" in the proposed rules at 112.10) is now listing 112.12.

The following is a summary of the listings we are adopting in these final rules and some of the more extensive changes we have made from the text of the proposed rules. We describe other changes in the public comments section of this preamble.

*112.00 Preface*

In 112.00A of the preface, Introduction, we explain the basic approach used in the listings. In this section, we explain that each listing begins with an introductory statement (capsule definition) that describes the disorder or disorders addressed by the listing. If a child has a mental disorder described by this capsule definition, the listing is used to evaluate the disorder to determine whether the child "meets" the listing. Most of the listings then continue with a dual approach, which divides each listing into two paragraphs. The first paragraph (the paragraph A criteria) describes the characteristics necessary to substantiate the existence of a listed mental disorder, while the second paragraph (the paragraph B criteria) describes the applicable restrictions and functional limitations which may result from the disorder in children and the number of paragraph B criteria needed to satisfy the severity requirement of the listing.

In response to public comments, we have added a new paragraph at the end of 112.00A to emphasize that the impairments in the listings are examples of some of the most common disabling mental disorders that may affect children. The new paragraph provides that when a child has a medically determinable impairment that is not listed or a combination of impairments, no one of which meets a listing, we will make a medical equivalency determination in accordance with §§ 404.1526 and 416.926 of our regulations.

In 112.00B of the preface, Need for Medical Evidence, we describe the need for medical evidence to substantiate the existence of a medically determinable impairment. Although we have not made any substantive changes in this paragraph, we have revised the first sentence so that it contains language that is the same as language in §§ 404.1525, 404.1526, 404.1528, 416.925, 416.926, and 416.928 of our regulations. The change is intended to clarify our meaning of the term "laboratory findings" and to make the language of the listings consistent with the regulations.

In 112.00C of the preface, Assessment of Severity, we describe in detail the multiple factors in the paragraph B criteria of listing 112.02 which we use for assessing the degree of functional limitations required to meet the severity of the listing in various age groups in children. We reorganized the text and made several changes to clarify terminology; we describe these changes in the public comments section. We also made several additions in response to public comments. These additions are intended to provide further detail on the importance of parents and others as sources of information about a child's day-to-day functioning in medical evaluations of mental disorders and in our adjudications of the cases. Other revisions provide specific detail about sources of evidence of the various areas of functioning at different age levels. Related to these additions is an important change of terminology. We have replaced the word "clinical" with the word "medical" in this section and throughout the remainder of the preface and the listings to underscore our intent that all determinations, including those that ultimately rely on the results of standardized testing, must be based on consideration of all medical evidence, which generally incorporates information supplied by parents and others. We provide a detailed explanation for this change, including why we chose the word "medical," in our responses to the public comments.

Finally, we have added a statement in the second paragraph to explain that older infants and toddlers (that is, children from age 1 to attainment of age 3) may present the same problems of diagnosis as younger infants because of insufficient developmental differentiation. When such children have impairments that do not meet the listings, we will consider whether the impairments are equivalent to any listed impairment, including the impairments in listing 112.12 when appropriate to the particular facts of a child's case.

In 112.00D of the preface, Documentation, we discuss the evidence needed to document mental disorders in children. In the final rules, we have expanded the first paragraph to include discussion of the importance of evidence from parents and other sources who have knowledge of a child's day-to-day functioning in medical evaluations and in our adjudications. Beginning with the seventh paragraph, we have added more detail about the use of standardized testing, including a new tenth paragraph which codifies our longstanding policies on how long IQ test results remain valid at different ages. A new eleventh paragraph specifies that standardized intelligence tests are essential to adjudications under final listings 112.05C, D and E, and that listings 112.05A, B, and F provide alternatives to testing. In the 16th paragraph, we have incorporated additional detail on the evaluation of children whose principal language is not English; these are also longstanding policies. Throughout 112.00D we have also added references to pediatricians as expert sources of evidence about children's mental disorders.

In 112.00E, Effect of Hospitalization or Residential Placement, and 112.00F, Effects of Medication, we explain that evaluation of mental disorders in children must include consideration of the fact that medications, hospitalizations, and other highly structured living arrangements may minimize the overt indications of severe, chronic mental disorders without necessarily affecting the functional limitations imposed by the disorder. Section 112.00F also acknowledges that medications may sometimes produce side effects that add to the functional limitations resulting from mental disorders in children. The only change we have made from the language we proposed for both of these sections is the addition of a sentence at the end of the first paragraph of 112.00E, to provide more guidance on how to assess functional impairment when structured settings ameliorate the overt indications of a mental disorder.

*112.02 Organic Mental Disorders*

We incorporated ten factors that are characteristic of organic mental disorders in children in the paragraph A criteria of the final listing; this is one more criterion than we proposed in the NPRM. We have also revised the language of the capsule definition to incorporate the description we had originally proposed as the opening statement to the paragraph A criteria and to make the capsule definition consistent with the DSM–III–R. In paragraph A, we have provided more



examples of medical findings associated with the various A criteria.

Paragraph B contains the restrictions or functional limitations used to assess the severity of these disorders and, by reference, the disorders in most of the other listings. Mental disorders do not manifest themselves in the same way in children of different ages. Therefore, paragraph B provides criteria for the assessment of impairment severity for two age groups, "older infants and toddlers," age 1 to attainment of age 3, and "children," age 3 to attainment of age 18.

The criteria used to assess impairment severity in older infants and toddlers (age 1 to attainment of age 3) are based upon functional deficits in the following areas: Gross and fine motor development, cognitive/communicative function, and social functioning. The criteria used to assess impairment severity in children (age 3 to attainment of age 18) are based upon functional deficits in the following areas: Cognitive/communicative function, social functioning, personal/behavioral function, and concentration, persistence, and pace.

The criteria in paragraph 112.02B1 recognize the difficulty of assessing specific areas of functional impairment in older infants and toddlers. Therefore, each of the first three criteria under this paragraph is based on a comparison of a child's functioning in one of the major milestone domains with children who are one-half the child's chronological age. We believe that a disorder of such functional impact in a child age 1 to attainment of age 3 is sufficient to establish listing-level severity and have, therefore, provided that when an older infant or toddler, age 1 to attainment of age 3, demonstrates functional deficits or restrictions in one of the first three areas to the degree specified in the paragraph B1 criteria, the child will satisfy the requirements of listing 112.02. We have also provided a fourth criterion which states that a child who is somewhat less impaired in the major milestone domains, but who demonstrates this lesser degree impairment in at least two of the major milestone domains, will be found to be disabled.

We have revised the language of paragraph 112.02B1 to replace the language "50 percent or less of the anticipated developmental norm," with the more straightforward language "generally acquired by children no more than one-half the child's chronological age," in the first three B1 criteria; this is not a change in meaning, but a clarification of our intent.

We have made an important change in paragraph 112.02B2. A number of commenters pointed out that there were inconsistencies in the proposed rules, especially in the numbers of paragraph B criteria applied throughout the listings. As we have already stated, we agree with the comment that the functional criteria should be uniform, that is, that each listing should require the same number of paragraph B criteria.

Five commenters asked us to adopt a system whereby a child with "marked" impairment of functioning in two of the domains of the paragraph B criteria, or "extreme" impairment in one domain, would meet the severity level of the listings. The commenters stated that this was the "clinically appropriate" solution and that it would "render the listings in harmony with professional opinion."

In a different context, though clearly relevant, the American Psychiatric Association (APA) has provided professional support for this position in connection with its study of our adult mental criteria. The APA concluded that the usefulness of functional domains, each of which taps complex phenomena, is enhanced by requiring demonstrated impact in more than just one domain. We believe that, although the functional domains for children age 3 to attainment of age 18 are not identical to those for adults, there is some overlaps and they do tap similarly complex phenomena.

Furthermore, when we compared the paragraph B1 criteria (that is, the criteria for older infants and toddlers, age 1 to attainment of age 3) with the paragraph B2 criteria (the criteria for children age 3 to attainment of age 18), we realized that we had proposed inconsistent systems of rating function at the two age levels. In paragraph B1 we had, in effect, proposed a system very much like the system the five commenters proposed. That is, the first three criteria, requiring milestones of 50 percent of the expected norm in any of the functional domains, described such functional impairment that they could be characterized as extreme, and any one of them in an older infant or toddler could alone establish disability. This was underscored by our fourth criterion in paragraph B1, which recognized that a child who was somewhat less impaired in two of the three domains—which means a combination of two paragraph B criteria at the marked level—would be disabled.

On the other hand, the paragraph B2 criteria were not based on measurable milestones but were based on a standard of "marked" impairment. It was clear to us that it would have been inconsistent with the scheme in paragraph B1 to provide that a marked impairment in only one functional domain would meet the severity of the listing; perhaps more importantly, it would have contradicted our intent in placing the term "marked" on a continuum between moderate and extreme, that is, that a child's impairment could meet or equal the severity of a listed impairment without being profoundly debilitated.

Therefore, we decided to require that children age 3 to attainment of age 18 would have to meet two of the paragraph B criteria. We believe that our decision is consistent with the APA's research findings about the adult paragraph B criteria, that it is "clinically appropriate" and that it will make our listings internally consistent and more understandable. We further believe that this change will clarify that the requirements in listing 112.02B2 are comparable to the requirements in listing 112.02B1d and thus provide a more realistic frame of reference for the evaluation of functional impairment in children for both age groups.

*112.03 Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders*

This listing groups psychotic disorders that are more closely related than in the former listing. Mood disorders are to be evaluated under listing 112.04.

In the final listing, we have revised the title, capsule definition, and the paragraph A criteria to reflect DSM–III–R terminology. In the new NPRM, we had proposed requiring that there be an abnormality of affect (blunt, flat, or inappropriate affect) associated with signs of disrupted thought (incoherence, loosening of associations, illogical thinking, or poverty of content of speech) under criterion 112.03A3. In final paragraph 112.03A4, we have made abnormal affect a separate paragraph A criterion, consistent with DSM–III–R criteria.

To fulfill the requirements of listing 112.03, it must be demonstrated that an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria also has functional deficits or restrictions in one of the areas to the degree specified in the criteria of listing 112.02B1; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in listing 112.02B2.

*112.04 Mood Disorders*

We have changed the title (from "Affective Disorders") to reflect current terminology. We have also revised the

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capsule definition and the paragraph A criteria of each of the three types of syndromes in the listing to be consistent with the DSM–III–R and to provide criteria that are specific to these disorders in children.

In the former organization of the childhood mental listings, mood disorders were evaluated under listing 112.03 ("Psychosis of Infancy and Childhood") or listing 112.04 ("Functional Nonpsychotic Disorders"). The new listing includes only those disorders that are characterized by a disturbance of mood. In paragraph A of the listing, we describe the characteristics of mood disorders in much greater detail than they were described in the former listings.

To fulfill the requirements of listing 112.04, it must be demonstrated that an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria also has functional deficits or restrictions in one of the areas to the degree specified in the criteria of listing 112.02B1; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in listing 112.02B2.

*112.05 Mental Retardation*

Listing 112.05 now contains six separate paragraphs instead of the three in the former listing, any one of which is a basis for meeting the listing. In response to public comments, we have revised the language of paragraph A; however, it remains the same in concept as former listing 112.05A. Instead of using the less specific reference to developmental milestones of the former listings, we now assess the functional impact of mental retardation in the specific functional domains of listing 112.02B.

Paragraph B contains a new set of criteria patterned after adult listing 12.05A. These criteria are applicable when the child requires assistance for personal needs which is grossly in excess of what is ordinarily expected and the use of standardized IQ testing is precluded.

Paragraph C is the former paragraph B and remains unchanged. Paragraph D corresponds to paragraph C of the former listing; the only significant change is that we have increased the upper IQ limit from 69 to 70 to accord with the upper limit of mild mental retardation in the DSM–III–R. (We have changed all other references in Parts A and B of these listings to conform to this change. See the descriptions of "Other Changes" at the end of this preamble.)

Paragraph E corresponds to proposed paragraph D and was not a part of the former listings. It provides an alternative to the assessment of children with IQ's of 60 through 70. Instead of requiring a coexisting physical or mental impairment, listing 112.05E can be met with specified levels of dysfunction in the domains of listing 112.02B.

Paragraph F is new. We added it in response to comments that pointed to new rules for evaluating children with serious hereditary, congenital or acquired disorders that we had proposed in a separate notice and subsequently published as listing 110.07B2.

Paragraph F of listing 112.05 provides another alternative to paragraph D. It is to be used when a child has mental retardation which coexists with another physical or mental impairment but valid IQ test results are lacking. Instead of demonstrating an IQ of 60 through 70, the child must demonstrate a specified level of dysfunction in the cognitive/communicative domains of 112.02B; the specified level corresponds to developmental milestones normally attained by children who are two-thirds of a child's chronological age.

We have also deleted the discussion about standardized testing we proposed in the opening paragraph of 112.05. As we explain in greater detail in the responses to public comments, we have provided clearer and more comprehensive discussions in 112.00D in lieu of the statement we proposed to head the listing itself. Finally, we have made minor editorial revisions throughout the listing.

*112.06 Anxiety Disorders*

We have revised the title (from "Anxiety-Related Disorders") to reflect current DSM–III–R terminology. In the former organization of the listings, anxiety disorders were grouped with similar mental disorders in a single listing (112.04). New listing 112.06 exclusively covers disorders related to anxiety. Items 3, 4, and 6 in paragraph A of this listing are similar to items covered in the former listing. New paragraph A1 gives significance to separation anxiety. New paragraph A2 gives significance to avoidance behavior of childhood. New paragraph A5 gives significance to frequent panic attacks. New paragraph A7 provides for the inclusion of anxiety disorders resulting from traumatic experiences. We have also made revisions to the capsule definition and the third and fifth A criteria to update the terminology consistent with the DSM–III–R and to make the listing more comprehensive.

As in listings 112.02, 112.03, and 112.04, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.06 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

*112.07 Somatoform, Eating, and Tic Disorders*

These disorders were previously evaluated along with nonpsychotic disorders under former listing 112.04. The new listing now includes under one heading various mental disorders which have physical manifestations. To make this fact clear, we have revised the title and the capsule definition from the language we proposed in the NPRM to state more explicitly the kinds of impairments that are to be evaluated under this listing. We have also revised paragraph 112.07A1, the criterion for eating disorders, to provide more specific guidance for the evaluation of certain eating disorders; this includes a reference to average weight tables for children in the most recent edition of the "Nelson Textbook of Pediatrics", Richard E. Behrman and Victor C. Vaughan, III, editors, Philadelphia: W. B. Saunders Company.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.07 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

*112.08 Personality Disorders*

These disorders were previously evaluated under listing 112.04. In the NPRM, we proposed a reference listing which referred the evaluator to listing 12.08 of the adult mental disorders listings in Part A of the Listing of Impairments. We reasoned that reference to the adult listings was appropriate because personality disorders do not usually manifest themselves until later in childhood.

We received many comments urging us to include a specific listing for personality disorders in children. Some commenters pointed out that mental disorders that affect both children and adults do not necessarily manifest themselves in the same way in children as they do in adults. Almost all of the commenters also pointed out that even if the paragraph A criteria of adult listing 12.08 were applicable to children, the adult paragraph B criteria would rarely be applicable because two of those criteria are work-related.



Because we agree with the commenters that there will be only rare cases in which it will be appropriate to use any of the adult mental disorders criteria, we have replaced the proposed reference listing with a listing for children. The listing contains a full complement of paragraph A and paragraph B criteria. We have not, however, adopted all of the public recommendations for the criteria we should include in the listing; we provide responses to specific comments later in the public comments section of this preamble.

Final listing 112.08 provides a capsule definition based on the DSM–III–R definition, but tailored specifically to children. There are seven paragraph A criteria, six of which are the same as the paragraph A criteria of adult listing 12.08; the seventh is a new criterion which incorporates obsessive compulsive personality disorder into the listings.

The functional criteria are the same as in most of the other childhood mental disorders listings. An older infant or toddler, age 1 to attainment of age 3, who satisfied the paragraph A criteria will fulfill the requirements of listing 112.08 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

*112.09 Psychoactive Substance Dependence Disorders*

We have added this new listing in response to numerous public comments with which we agreed. We have redesignated proposed listing 112.09, originally assigned to autism and other pervasive developmental disorders in the proposed rules, to 112.10 in the final rules, so that the numerical designation for the childhood listing for psychoactive substance dependence disorders (112.09) will correspond to the adult listing for these disorders (12.09).

The new listing is based on criteria for psychoactive substance dependence in the DSM–III–R. However, we have consolidated several of the criteria in the DSM–III–R so that we have six paragraph A criteria. We did this to eliminate some overlap in the DSM–III–R criteria.

A child will satisfy paragraph A of the listing if he or she demonstrates at least four of the specified paragraph A criteria. As in most of the other listings, an older infant or toddler, age 1 to attainment of age 3, will fulfill the requirements of listing 112.09 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02. If a child does not meet the listing because he or she does not satisfy the specific paragraph A criteria—as, for instance, might happen if the child has a substance abuse rather than a substance dependence disorder—the child will generally still be evaluated under this listing to determine whether he or she has an impairment equivalent in severity and duration to this listing.

The listing is not intended for the evaluation of children who have fetal alcohol syndrome (FAS) or other similar psychoactive substance syndromes. Because these impairments typically involve more than one body system, children who are born with FAS or other such syndromes will be evaluated under listing 110.07 which includes specific criteria for evaluating these impairments.

*112.10 Autistic Disorder and Other Pervasive Developmental Disorders*

In the final listings, we have revised the number designation from proposed 112.09 to final 112.10 because we assigned listing 112.09 to the new psychoactive substance dependence disorders listing. We have also revised the title, capsule definition and the paragraph A criteria to be consistent with the DSM–III–R. The former listings did not specifically include autistic disorder and other pervasive developmental disorders. Instead, the disorders were evaluated under listings 112.02, 112.03, or 112.05, depending on the individual facts of the case.

The final listing requires an autistic child to demonstrate qualitative deficits in all three of the following areas: Social interaction, verbal and nonverbal communication and imaginative activity, and repertoire of activities and interests. Children with other pervasive developmental disorders are required to demonstrate qualitative deficits in only the first two of the areas. Because the DSM–III–R lists so many examples under each of these categories, we decided to list only the broad categories as paragraph A criteria in order to avoid giving the impression that we would disregard any appropriate findings.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.10 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

*112.11 Attention Deficit Hyperactivity Disorder*

We have added a new listing for the evaluation of children with attention deficit hyperactivity disorder (ADHD). One of the most frequent public comments was that we should have included a separate listing for ADHD, a category that was recommended by experts that helped us to formulate the proposed revisions. We omitted the listing from the NPRM because, as several commenters pointed out, only a minority of children with ADHD will be disabled, and we thought that the children who were disabled because of ADHD could be found to have an impairment that equalled one of the listings we proposed. However, in reconsidering the matter in light of the public comments, we agree with the commenters who stated that children with ADHD comprise a well-defined group, and that the specific guidance of a listing will ensure the most fair, accurate, and uniform adjudications possible. We summarize the specific comments and provide our responses later in this preamble.

The language of the capsule definition and the paragraph A criteria in new listing 112.11 are nearly identical to the experts' proposal. The major difference between the final rule and the experts' proposal is that the capsule definition in the experts' proposal stated that the disorder had to be manifested in a school setting. Since we recognize that some children who are not in school may have the disorder, we have not included this language in the final rule. We have also ensured that the terminology of the listing is consistent with the DSM–III–R. The criteria in the new listing, however, are less specific and, therefore, somewhat broader than the DSM–III–R criteria. They provide that a child who demonstrates developmentally inappropriate inattention, impulsiveness, and hyperactivity to a marked degree will

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satisfy the paragraph A criteria of the listing.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.11 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

*112.12 Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to Attainment of Age 1)*

The former listings provided only minimal guidance for the special problems of evaluating developmental and emotional disorders in children from birth to attainment of age 1, who often have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. This new listing provides such guidance, including criteria for evaluating functional loss in all infants of this age group.

Because we added two new listings at 112.09 and 112.11, we have revised the number designation of the final listing from proposed 112.10 to final 112.12. We have also revised the title to incorporate our new terminology for describing infants from birth to attainment of age 1 and made minor editorial changes for the sake of clarity and in response to a public comment that we summarize later in the public comments section. The only substantive change from the proposed rule is that we have added a fifth criterion to reflect the new rules in paragraph B1d of listing 112.02. As in paragraph B1d in listing 112.02, new paragraph E of listing 112.12 provides that a newborn or younger infant may be found to meet the severity of the listing when he or she has attained development or function generally acquired by children no more than two-thirds of the child's chronological age in two or more of the following areas: cognitive/communicative, motor, and social.

*Explanation of Changes to Regulations §§ 404.1520a and 416.920a*

We are amending §§ 404.1520a(a) and 416.920a(a) to provide that the special procedure described in those regulations must be applied to persons under age 18 when Part A of the Listing of Impairments is used to evaluate mental impairments in these persons.

**Public Comments**

Subsequent to the publication of the NPRM in the **Federal Register** (54 FR 33238) on August 14, 1989, we mailed copies to organizations, associations, and other professionals whose responsibilities and interests require them to have some expertise in the evaluation of mental impairments in children. We also sent copies to State agencies (including State disability determination services), national organizations, and other parties interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from national organizations representing people who are mentally ill, advocates of people who are mentally ill, and service providers. We also invited comments from various health and medical associations, as well as from law and legal service organizations.

We received 145 letters containing comments pertaining to the changes we proposed. The majority of the comments were from organizations and groups that represent people interested in specific mental impairments. Many were from sources with specialized backgrounds in psychiatry, psychology, pediatrics, and other specialties involving childhood mental health. Many of the comments concerned the specific evaluation criteria for the proposed listed mental disorders. Other comments questioned the reasons for not including other childhood mental disorders in the Listing of Impairments.

We have carefully considered the comments and have adopted many of the recommendations. We provide our reasons for adopting or not adopting the recommendations in the summaries of the comments and our responses below. A few of the comments, however, pertained to Social Security matters that were not within the purview of the proposed regulations. We have referred these comments to the appropriate components of the Social Security Administration; therefore, we have not addressed them in this preamble.

A number of the comments were quite long and detailed. Of necessity, we had to condense, summarize, or paraphrase them. However, we have tried to express everyone's views adequately and to respond to all of the relevant issues raised by the commenters.

Finally, several of the commenters referred to the recommendations of the experts that helped us to prepare the proposed listings, and we refer to these experts in our responses below in the same terms. The experts are almost the same as those medical, legal, and other professionals who helped us to prepare the adult mental listings published in August 1985.

*General Comments*

*Comment:* Several commenters pointed out that the proposed listings were based on the DSM–III, but that this manual had been replaced by the DSM–III–R. The commenters urged us to reevaluate carefully the proposed listings to make sure that they were completely compatible with the revised manual.

*Response:* We adopted the comment. We have carefully reevaluated the terminology and criteria of the proposed listings and have made revisions to update the language of the final listings.

*Comment:* Several commenters offered examples of specific disorders in the DSM–III–R that were not in the listings. Some of these commenters also noted that we had not included all of the DSM–III and DSM–III–R diagnostic criteria for the impairments that were in the listings. Some recommended specific signs and symptoms for inclusion in several of the listings; one commenter systematically catalogued examples of omissions in each of the listings.

*Response:* The listings are not intended to be all encompassing; rather, they are examples of some of the most common major childhood mental disorders. However, we have tried to accommodate as many of the recommendations as possible, and have made substantial additions and revisions in the final listings. These include the addition of two new listings categories, psychoactive substance dependence disorders (112.09) and attention deficit hyperactivity disorder (112.11), as well as a specific listing for personality disorders instead of the reference to adult listing 12.08 we had originally proposed. We have also revised and expanded the capsule definitions of final listings 112.02, 112.03, 112.04, 112.06, 112.07, 112.08, and 112.10, and many of the paragraph A criteria throughout the listings in response to the comments. However, it is not the purpose of the listings to include all mental impairments or every sign and symptom listed in the DSM–III–R. This does not mean that a child who has an unlisted impairment cannot be found to be disabled with use of the listings. Such a child will be found disabled if his or her impairment(s) is medically equivalent to a listed impairment.

*Comment:* One commenter questioned the appropriateness of the DSM–III as the basis of these listings. The commenter supported the direction we took in incorporating DSM–III diagnostic



categories in the rules, but expressed the opinion that this standard should not be considered the best or the only source for evaluating mental disorders in children. The commenter urged us to be flexible and to provide our adjudicators with the most reliable and equitable methods for determining mental disability in children.

*Response:* We believe that we have provided the most reliable and equitable methods for assessing mental disability in children. We chose the DSM–III, and now the DSM–III–R, as the source of the categories and terminology in our listings because, based upon our experience with thousands of claims involving childhood mental impairments, it was the most widely used and accepted resource in the psychiatric and psychological communities. The experts, which included a pediatrician and specialists in the treatment of mental disorders in children, concurred. Also, as demonstrated by the previous comment, most commenters who addressed this issue not only supported our use of the DSM–III DSM–III–R, but urged us to include more terminology and criteria from the manual. Nevertheless, our main interest is in providing the most current, useful and widely understandable rules we can; therefore, we will remain flexible and consider other accepted sources as appropriate in the future.

Furthermore, we want to stress that the DSM–III–R was not the source of our rules on determining severity. We, with the assistance of the experts, devised the crucial rules in 112.00 for the evaluation of mental impairments, and established the functional criteria for listing-level severity in 112.00 and the listings. We used the DSM–III–R only for the descriptions of the impairments and categories of impairments in the listings. We adopted its terminology and categories as a convention for determining and classifying the existence of common mental disorders in children—that is, as the source of our capsule definitions and paragraph A criteria—because it is widely used, widely accepted, and familiar to most professionals who deal with mental impairments. Moreover, we believe that even those professionals who rely on or give greater credence to other manuals are nevertheless generally aware of the DSM–III–R criteria, whereas the converse is not always true.

*Comment:* One commenter stated that the DSM–III was developed by psychiatrists and was most frequently used by psychiatrists. The commenter noted that other medical specialists, such as pediatricians, did not contribute to the manual. The commenter stated that the criteria in the DSM–III were not used as a norm by other professionals, including nonpsychiatrist clinicians and "SSI disability adjudicators."

*Response:* Although the comment may have been somewhat true of the DSM–III (there were, in fact, psychologists involved in the drafting), the advisory committees that prepared the DSM–III–R were composed of professionals with varying backgrounds, including psychologists, educators, and a doctor of social work. Furthermore, virtually all of the diagnostic terms of the DSM–III were included in the ninth revision of the "International Classification of Diseases, Clinical Modification" (the ICD–9–CM), which has been the official system in this country for recording all diagnoses and diseases since 1979; the DSM–III–R maintained consistency with the ICD–9–CM. As we stated in the last response, we believe that the DSM–III–R is very widely used, its terminology well-known, and that it is used by many professionals besides psychiatrists.

We disagree with the comment about "SSI disability adjudicators." These individuals are either employed by State agencies who make disability determinations for us using our rules or work directly for us. They are required by sections 221(a) and 1633 of the Act to use evaluative criteria we provide through regulations (including these listings), rulings, and internal operating instructions. Therefore, we provide the rules used by SSI disability adjudicators.

*Comment:* Many advocates of the rights of mentally impaired people commented that the listings did not include all impairments from which a child might suffer. The commenters recommended that we provide a "catchall" listing, which would include all impairments that were not included in the other childhood mental listings. The commenters stated that the law requires us to consider "any" impairment that could cause a child to be disabled, but that the listings approach results in our overlooking many medically determinable impairments or denying the claims of those children who do not have impairments that specifically "meet" the listings. One commenter recommended that a catchall listing should also include children with combinations of impairments, no one of which meets a listing; the commenter also suggested that such a listing would serve to keep the childhood mental listings up-to-date, because any currently recognized impairment would automatically be included. Many commenters also suggested that we could make clear in our rules that the listings are only examples of impairments that could make a child disabled.

In related comments, many of the same commenters stated that our policies on determining equivalency were inadequate to assess the impairments of all disabled children, that we do not provide an individualized assessment of the impairments of those children who do not meet or equal the listings, and that we should revise the disability rules to provide for a determination of residual functional capacity in the case of every child who does not have an impairment or combination of impairments that meets or equals the listings. Some commenters asserted, moreover, that we frequently deny the cases of children who do not have impairments that meet the listings. One group stated that they had often represented children with severe functional impairments that did not meet or equal the listings even though the children were nonetheless in their opinion disabled.

*Response:* We have not adopted the recommendation to add a generic, all-inclusive listing; however, we have provided additional text in 112.00A regarding the importance of equivalency determinations and clarified that the listings are examples of impairments that could disable a child. In addition, we are currently developing standards to implement the Supreme Court's decision in *Sullivan* v. *Zebley et al.* These new standards will provide guidance on how to evaluate the functional impact of children's impairments when the severity of their impairments does not meet or equal the severity of a listed impairment.

Our intent in revising these listings and in issuing all of our listings is to provide specific examples of some of the most common mental impairments upon which we will find a child disabled. The listings are not a list of every possible mental disorder that a child might have. This does not mean that we do not consider impairments that are not listed. Our policy of equivalency is intended to provide an assessment of claims filed on behalf of children with any impairments.

In addition, we have made it clear in the revisions to the final listings and in the responses we give below that individualized assessment is vital to the proper use of these rules. We have emphasized that direct observation by professionals and, in most cases, evidence from parents and others who are aware of a child's day-to-day functioning are critical to the evaluation of mental disorders in children. We have

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also provided paragraph B criteria that are based on functioning over time, again a determination that must be made individually in each case. We believe that the kind of comprehensive guidance we have provided within these listings and their introductory paragraphs, especially the detailed guidance we have provided on case development and the assessment of functional impairment, is an appropriate response to some of the problems raised by the commenters.

Although we have not adopted the recommendation to add a generic, all-inclusive listing for children age 1 and older, we recognize in these final rules, as in the proposed rules, the need for such a listing for newborn and younger infants (birth to attainment of age 1). The reason is that it is often difficult, if not impossible, to permit a specific and appropriate diagnosis for newborn and younger infants. Therefore, we believe that a general listing is necessary to evaluate these difficult cases.

Even though the listings do not specifically name every impairment, we believe that with the addition of listings for psychoactive substance dependence disorders and attention deficit hyperactivity disorder, and the other additions and revisions to the final listings we have made in response to public comments, the listings relate to the vast majority of children who have mental impairments. Those children who have mental disorders that are not described by these listings—whether because their impairments are not listed or because they have combinations of impairments, no one of which meets a listed impairment—will have their cases evaluated to determine whether their impairments are medically equivalent to any listed impairment.

To underscore our commitment, we have added language in the last paragraph of 112.00A stressing and restressing the importance of equivalency determinations. We have provided, both at the beginning and the end of the paragraph, that adjudicators must assess equivalency in any case in which a finding cannot be made that a child has an impairment that meets a listing. In direct response to one of the recommendations, we have also provided that the disorders in the listings are examples of impairments which are severe enough to find a child disabled.

*Comment:* Several commenters asked about our statements in the NPRM regarding the use of the Psychiatric Review Technique Form (PRTF) to evaluate children. Most commenters expressed support for the PRTF and recommended that we consider developing a separate form for use with children.

*Response:* As we explained in the summary at the beginning of this preamble, we agree with the commenters and we will be proposing a new PRTF and revisions to §§ 404.1520a and 416.920a. When we wrote our explanation in the NPRM, we had in mind the PRTF, that is, the form we now use to evaluate mental disorders in adults. Since the form contains only the adult mental criteria, it is clearly not useful for the vast majority of evaluations under these new listings. Nevertheless, in those rare instances in which the adult listings will apply to children we will require adjudicators to complete an adult PRTF. We have revised the language in these rules to clarify that the technique is applicable to children only when Part A of the Listing of Impairments is used to evaluate their impairments.

112.00A Introduction

*Comment:* One commenter who was familiar with the experts' proposals asked why the fourth sentence of the second paragraph of 112.00A used only one example instead of the three examples the experts proposed. The commenter suggested that our intent was to narrow the types of clinical behavior on which adjudicators should focus and reduce the weight to be assigned to findings that could have grave prognostic implications.

*Response:* This was certainly not our intent. On the contrary, our intent was to strengthen the sentence. The original sentence proposed by the experts stated that findings such as separation anxiety, failure to mold or bond with parents, and withdrawal "may have grave prognostic implications and may be comparable in severity to the findings that mark mental disorders in adults." In contract, the sentence we proposed stated that the finding of failure to mold or bond with parents "has grave prognostic implications and serves as a finding comparable in severity to the findings that mark mental disorders in adults." Our intent, therefore, was to give one imperative example (failure to mold or bond is a grave prognostic finding) instead of three conditional examples that might or might not apply and, therefore, did not provide useful, concrete guidance.

Upon further consideration, however, we have realized that any discussion of severity is out of place in the second paragraph of 112.00A. The simple intent of the paragraph is to explain that the signs and symptoms of mental disorders in children can be different from those that define mental disorders in adults; we believe this is clear from the third sentence in the paragraph, which states that the "presentation of mental disorders in children . . . may be subtle and of a character different from the signs and symptoms found in adults." Therefore, in response to the comment we have revised the fourth sentence to include the three examples proposed by the experts, but to make the examples consistent with the intent of the paragraph we have also deleted the language about their severity. The revised sentence now reads: "For example, findings such as separation anxiety, failure to mold or bond with the parents, or withdrawal may serve as findings comparable to findings that mark mental disorders in adults."

*Comment:* One commenter objected to the last sentence of the seventh paragraph of proposed 112.00A (the sixth paragraph in the final listing), which states that "[t]he functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the clinical findings in paragraph A." The commenter believed that this meant that "[i]n order for a child to be found disabled . . . the medically determinable impairment causing one or more of the functional limitations must meet or equal the "A" criteria of a listed impairment." The commenter suggested that we delete the sentence and provide that children can equal a listing if they meet one or more of the paragraph B criteria due to any of the mental impairments included in the DSM–III or DSM–III–R.

*Response:* We did not adopt the comment, but we have added a new paragraph at the end of 112.00A to emphasize the importance of equivalency determinations. The sentence cited by the commenter occurs only in the context of our discussion of how we will determine whether a child meets a given listing. Our regulations in §§ 404.1526 and 416.926 already provide that a child may equal a listing as the result of any medically determinable impairment or combination of impairments.

The system we adopted in these listing is the same as the system we use in the adult mental listings. Each listing begins with an introductory statement that describes the disorder or disorders addressed by the listing. In most listings, the introductory statement is followed by clinical signs and symptoms (the paragraph A criteria) which, if satisfied, lead to an assessment of the functional limitations in the paragraph B criteria. If a child satisfies all three of these elements in most listings, he or she is found to "meet" the requirements of the



listing. Our only intent in the last sentence of the sixth paragraph of final 112.00A is to establish that, in order to meet the listing, the functional restrictions, in the paragraph B criteria must be the result of the listed mental disorder rather than extraneous causes unrelated to the impairment.

Our policy on equivalency provides that any unlisted impairment or a combination of impairments, no one of which individually meets or equals a listing, may be equivalent to a listing. In §§ 404.1526(a) and 416.926(a) of the regulations, we provide that the test is one of "severity and duration." Hence, under these childhood mental listings, we may find any medically determinable impairment that does not meet a listing to be equivalent to a listed impairment. This would include all of the medically determinable impairments in the DSM–III–R.

In response to this comment and other comments that we describe elsewhere in this preamble, we have added a new paragraph to the end of 112.00A to stress the importance of determining whether a child has an impairment or combination of impairments that is equivalent in severity to a listed impairment whenever we find that the child does not have an impairment that meets a listing. We share the concerns of this commenter and several others that diagnosis of mental disorders in children can be quite difficult, especially in young children. Therefore, we want to be very clear that one should not assume that the failure of a child to present evidence of a particular listed impairment ends the inquiry into whether the child is disabled. This new language is consistent with language we recently added in 110.00C, to stress that children with multiple impairment syndromes often suffer from combinations of impairments and may have impairments that are equivalent to a listing even if they do not meet a listing.

*112.00B Need for Medical Evidence*

*Comment:* Two commenters commented on our use of the terms "medical," "sources of medical evidence," "psychiatric signs," and "psychological test results." With regard to the first three terms, the commenters were concerned that the choice of language precluded or limited the type of acceptable evidence from psychologists; one of the commenters thought that the fourth term could not describe "medical" information because it described psychological evidence.

*Response:* We do not believe that there is any need to revise the language of these listings in the way the commenters suggested since it is consistent with language we use throughout the regulations. However, we have revised the first sentence of 112.00B because we agree that it was unclear.

The terms cited by the commenters are terms of art that are defined elsewhere in the regulations. Sections 404.1513 and 416.913 define the term "acceptable medical sources," and specifically include licensed or certified psychologists. Similarly, §§ 404.1528 and 416.928 state that "medical findings consist of symptoms, signs, and laboratory findings." They further define "signs" as including "psychological abnormalities," and later explain that this includes psychiatric signs. "Laboratory findings" include "psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques," including "psychological tests." Therefore, our regulations provide that licensed or certified psychologists are sources of medical evidence, including the kinds of psychiatric findings that are a part of their practice, and that medical evidence includes the results of psychological testing.

However, in considering this comment we noted that the first sentence of 112.00B did not state our policy clearly because it seemed to state that psychological and developmental test findings were not "laboratory findings." We have revised the sentence to make it consistent with the remainder of the regulations.

*Comment:* One commenter thought that the definition of "symptoms" in 112.00B was too narrow. The definition we gave was "complaints presented by the child," and the commenter pointed out that, even though a symptom is experienced by the child, the child may not always "present" the symptom; a parent or other person may note the symptom, rather than the child.

*Response:* In these regulations, the word "symptom" is a term of art, defined in §§ 404.1528(a) and 416.928(a) as "your own description of your physical or mental impairment." Therefore, our definition of the term in the proposed rules was correct in the context of our regulations. However, this does not mean that we do not consider information from parents, teachers, caretakers, and any other individuals who observe and report what they perceive as the child's experience of a symptom. On the contrary, these final rules make it clear that we consider such observations to be very important evidence. They just do not fall within the regulatory definition of "symptoms."

112.00C Assessment of Severity

*Comment:* Two commenters suggested that we provide definitions of terms used in these listings. One commenter recommended that we define all of the terms, because clear and concise definitions of the terms would eliminate subjectivity. The other commenter suggested that we provide definitions for the terms "cognitive/communicative" and "personal/behavioral," which we introduced in 112.00C. The commenter was concerned that, without such definition, nonprofessional adjudicators would not apply the terms uniformly. Both commenters asked us to define the term "marked," and one asked us to provide examples to illustrate how we would use the term.

*Response:* We have not adopted the comments. Most of the terms cited by the first two commenters are standard medical terminology, well-known to all professionals who make use of them. We do not generally provide definitions for any such terminology anywhere in our listings unless we intend to use a term as a term of art.

Furthermore, even though we have not specifically defined all of the terms cited by the commenters, we have provided guidance in the subparagraphs of 112.00C that is tantamount to a definition of some of the terms. For example, with regard to the second commenter's recommendations, 112.00C1b of the final rule provides that:

> Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for measure of such function are discussed in 112.00D * * *.

It also states that:

> For older infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs are provided.

Similarly, 112.00C2a provides:

> In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is * * *.

We believe that it is this kind of guidance that will minimize subjectivity and ensure that our adjudicators apply the rules uniformly.

For the measure of listing-level functional restriction, we provided he same definition for the term "marked" as in the adult mental listings, i.e., more than moderate but less than extreme. We decided not to provide examples of "marked" impairment in the listings because we believe that it is impossible

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to devise a single example, or even two or three examples, that would uniformly illustrate the definition of the term. Any example we devised would have to be as clear and unambiguous as we could possibly make it; we believe that an unambiguous example would have to be so obvious that it would not provide useful guidance. We are also concerned about the possibility of misinterpretation. We do not want to create a situation in which some people might assume that our examples were the only examples of the level of marked impairment of functioning and apply the rules too narrowly.

*Comment:* Several commenters were concerned about the provision in the first paragraph of proposed 112.00C which provided that, when we assess the functional limitations caused by a disorder, we give preference to the results of standardized testing over clinical findings. One commenter thought that the proposed rules placed a much stronger emphasis on objective test scores that the experts originally proposed. Another commenter suggested that we adopt as a model a recent final regulation of the U.S. Department of Education ("Early Intervention Program for Infants and Toddlers With Handicaps," 34 CFR part 303), which requires every evaluation and assessment to be based on informed clinical opinion and also discusses the special importance of clinical opinion when standardized measures are unavailable or inappropriate. The Department of Education regulation was first published at 54 FR 26306, June 22, 1989. All of the commenters were concerned that the emphasis on standardized testing in the proposed rules could imply an intent to downplay the importance of clinical findings or result in inappropriate use or purchase of testing.

*Response:* We have partially adopted the comments. We believe that the results of a valid, reliable test, as defined in 112.00D, are the best evidence of a child's ability to function and will ensure to the greatest extent possible that we assess functioning accurately, fairly, and uniformly. However, inherent in our definition of what constitutes a valid, reliable test is the understanding that the clinician has considered other medical findings (including clinical signs and the claimant's symptoms, as defined in §§ 404.1528 and 416.928) and any other information that could have a bearing on the assessment of the validity of the results. This would include historical information and information about daily activities, socialization, etc., from both medical and nonmedical sources. Therefore, we did not intend that these rules downplay the importance of clinical evidence; on the contrary, our intent was to build in recognition of the importance of clinical findings in every adjudication.

Nevertheless, we agree with the commenters that the proposed language was not as clear as it could have been. We have, therefore, made changes throughout final 112.00D, the paragraph B criteria of listing 112.02, and in final listing 112.12 (proposed listing 112.10), to clarify our intent and to address the commenters' concerns. In listings 112.02B and 112.12A and B, we have replaced the word "clinical" with the terms "medical" or "other medical" wherever it occurred. We used the word "medical" because it is the terminology we use in §§ 404.1525, 404.1528, 416.925, and 416.928 when we explain that decisions under the listings must be based on "medical findings" consisting of "symptoms, signs and laboratory findings." We provide the same definition of medical findings in §§ 404.1528 and 416.928.

We added explanations to the first paragraph of 112.00D to indicate that, whenever a medical source provides information about functioning, whether it be from medical examinations or standardized testing, we expect that the medical source will have followed standard clinical practice and considered medical history and any relevant information from parents and other individuals. We further provided that adjudicators may request information from nonmedical sources to supplement the record of the child's functioning.

In addition, 112.00B of the former listings contained a clause that was intended to convey our policy on consistency of the findings with the whole record with respect to measures of intellectual functioning. The clause stated that, "any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved." In response to the comments, we have restored this provision to the final rules and have placed it in the seventh paragraph of 112.00D to indicate that we have broadened it to include any kind of psychological test.

We have not added specific language to 112.00C to reflect these principles. Instead, we have added a cross-reference to 112.00D in the first paragraph of 112.00C so that it will be understood that the explanations in 112.00D apply to the instructions in 112.00C. We also modified the first paragraph in 112.00C to indicate that in most functional areas other standardized testing or other medical findings may be used to document severity, although valid test results are still preferred when they are available.

Finally, we have reviewed the Department of Education regulations and the attendant discussions in the Federal Register cited by the commenters. We do not believe that our regulations serve the same purpose, and this fact limits comparison with standards used by other agencies. However, we also believe that these revisions and other revisions described in a later response make clear that our policy is consistent with the Department of Education's insofar as it can be compared to the disability programs administered by the Social Security Administration.

*Comment:* Three commenters noted that there were inconsistencies in the terminology used to describe children from birth to 1 year and 1–3 years in 112.00C, 112.00D and listing 112.10.

*Response:* We agree. We have therefore standardized the terminology used to describe these age groups in the final regulations. The term "newborn and younger infants" now refers to children from birth to attainment of age 1, while "older infants and toddlers" now refers to children age 1 to attainment of age 3. The term "infants and toddlers" refers to both groups as a whole; that is, from birth to attainment of age 3.

*Comment:* Two commenters noted that 112.00C provides guidance for assessing severity in five different age groups (birth to attainment of age 1, age 1 to attainment of age 3, age 3 to attainment of age 6, age 6 to attainment of age 12, and age 12 to attainment of age 18) but that the paragraph B criteria of the listings recognize only two categories (age 1 to attainment of age 3 and age 3 to attainment of age 18). One of the commenters pointed out that the paragraph B criteria also do not include newborn and younger infants, up to age 1. Both commenters recommended that we adopt the same age category for the paragraph B criteria as we included in 112.00C.

*Response:* We have not adopted the comments. We believe, as did the experts that helped us formulate the paragraph B criteria, that it is appropriate to group ages 3 to 18 together under the same functional domains in the B paragraphs because these criteria are relevant to the entire age group. However, we recognize that the impairment manifestations and the methods of evaluating these manifestations vary from different age



levels within the group. This is why we have provided three subdivisions of the age-3-to-18 group in 112.00C2, 3, and 4.

The functional domains provided in listing 112.02B generally are applicable to the age group of birth to attainment of age 1; however, they do not address all of the domains pertinent to this age group. therefore, we provided a new, separate listing 112.12 (112.10 in the proposed listings) that is specifically tailored to the assessment of severity of this group's impairments. We believe this listing will provide a more realistic assessment of very young children and help to ensure uniform adjudications. However, the functional domains in the paragraph B criteria that are applicable to these children are incorporated in final listing 112.12.

*Comment:* One commenter thought that our statement in the first paragraph of proposed 112.00C1 that, "[i]n infancy, much of what we can discern about mental function comes from observation of the degree of fine and gross motor function," was in error. The commenter pointed out that there are standardized tests to measure cognitive skills and language ability in infants and very small children.

*Response:* We agree with the commenter. We did not mean to give the impression that there are no tests to measure these abilities in infants and toddlers. We were only indicating in 112.00C1 that, despite the existence of these tests, we would not ordinarily expect to find them in the evidence of record. Hence, our basic thrust in the first paragraph of 112.00C1 was to describe the kind of existing evidence we would expect to find: Assessments of a child's gross and fine motor function. We have, therefore, revised the language of 112.00C1 and reorganized 112.00C to clarify our intent.

*Comment:* Another commenter asked us to revise the rules to reflect the fact that in some cases abnormalities on screening tests may be so severe that further testing is unnecessary.

*Response:* We agree with the commenter and have modified the last sentence of the first paragraph of 112.00C1b and the twelfth paragraph in 112.00D of the final rules to reflect the recommendation. The new language indicates that, while screening tests performed during clinical examinations generally do not have high validity and reliability and are not considered appropriate primary evidence for disability determinations, there will be cases in which the results of screening tests show such severe abnormalities that further testing will be unnecessary.

*Comment:* One commenter stated that the use of age-appropriate social functioning as a severity criterion could be problematic because there is no one standard of social functioning. This could result in wide variations in adjudication.

*Response:* We recognize that there are a number of tests which measure various aspects of social functioning, and that not all tests yield identical findings. However, we believe tests that satisfy our requirements for validity and reliability generally assess the same or similar behavioral spheres. We also believe that any variations among the tests will not have a substantive effect on determinations under these rules.

Furthermore, in 112.00C we have provided guidance for assessing social functioning in children at four separate age levels. We provided this kind of detail to ensure against the variations in adjudication that the commenter was concerned about.

In considering the comment, however, we noted that proposed 112.00C2 (preschool children) and 112.00C3 (primary school children) did not provide as much detail on assessing social functioning as their counterparts in 112.00C1 (older infants and toddlers) and 112.00C4 (adolescents). We have therefore added language to final 112.00C2b and 112.00C3 to provide similar guidance.

*Comment:* One commenter expressed concern over our ability to document properly maladaptive or avoidant behaviors and limitations in social function for preschool children, age 3 to attainment of age 6. The commenter stated that most information for this age group will necessarily come from parents, who "at times prove to be either unreliable or poor historians."

*Response:* A hallmark of these listings is the emphasis on professional evaluations, with standardized testing whenever possible. In any case, standardized testing should be associated with an assessment of the consistency of the findings with the medical and other evidence, especially evidence from parents and other interested adults who have knowledge of the child's day-to-day functioning.

In most psychiatric and psychological evaluations, clinical assessment implies more than the examiner's own observations of the child; it also includes careful probing of the child's history and current functioning outside of the clinical setting. Clinicians are well aware that they have a duty to evaluate the accuracy and consistency of any information received from third parties, or for that matter, from the patient himself or herself, before they use the information in formulating a clinical judgment.

We acknowledge that some preschool-age children will have fewer sources of evidence that school-age children, although this phenomenon is becoming increasingly rare. However, and aside from the fact that we do not agree with the comment that "parents" as a group are any less reliable witnesses of their children's symptoms and behavior than other people who might give evidence, we also do not believe that there will generally be any greater difficulty in evaluating the claims of these children than of older children who are also still primarily in the care of their parents.

Nevertheless, to clarify the intent of these rules, we have modified final 112.00C2b (the second paragraph of 112.00C2 in the proposed rules) to indicate that social function is measured by assessment of a child's relationships with parents, other adults, and peers. This will mirror the discussion already in 112.00C2c (the third paragraph of 112.00C2 in the proposed rules), regarding the assessment of maladaptive or avoidant behaviors. However, we have also provided additional guidance on sources of information about children's functioning to underscore our policy that nonmedical sources of information frequently are very important to a valid assessment of functioning outside the clinical setting both in the present and over time. We have similarly expanded 112.00C2c to include the same sources of information for evidence of personal and behavioral functioning.

*Comment:* One commenter was concerned about the reference in 112.00C3 to standardized measures of academic achievement. The commenter stated that the instruments used by school districts varied so widely that we should provide more definitive guidance on how to measure this criterion.

*Response:* We agree with the comment that the reference in proposed 112.00C3 regarding the use of standardized measures of academic achievement requires clarification. Standardized measures of academic achievement are generally designed and used to measure the effects of a specific program of instruction or training. They are not designed to measure function in the domains contained in 112.02B, particularly cognitive function. Poor performance on such measures may or may not be indicative of functional impairment causally related to a medically determinable mental impairment. Therefore, we have deleted the second sentence of proposed 112.00C3, which stated that poor performance on standardized measures

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of academic achievement directly correlates with impairment in function. In its place, we now state that "standardized measures of academic achievement may be helpful in assessing the cognitive impairment." The presence of cognitive impairment, if any, can only be determined by the specific facts of each case.

*Comment:* We received many comments about the proposed statement in the first paragraph of 112.00C4 that, in the cases of adolescents, "if, based on the description of the disorder by the clinician, the adjudicator believes the medical criteria of part B do not apply, the adult listing crite[r]ia will be used." All of the commenters expressed concern that this would require adjudicators to apply the adult paragraph B criteria to children whether or not the children had work histories; many of these commenters recommended that we use this rule only for children who had work histories or histories of work attempts. Other commenters recommended that we require adjudicators to use the childhood paragraph B criteria, even when they used the adult paragraph A criteria.

Several commenters also pointed out that the phrase "the description of the disorder by the clinician" was vague because it did not provide a clear standard by which adjudicators could judge whether to use the adult listings instead of the childhood listings. The commenters reminded us that adolescents are still children, and that the presentation and effects of mental disorders in adolescents are not the same as in adults, even though they may appear similar. Therefore, some commenters urged us to clarify the language to permit use of the adult listings only when a clinician has determined that the symptoms and characteristics of a child's disorder represent early onset of a condition properly diagnosed as an adult disorder. One commenter suggested that we provide that the adjudicator could not turn to the adult listings unless none of the childhood listings could apply; the commenter believed that in this circumstance we should require consideration of the adult listings.

*Response:* We agree with the commenters that the intent of this language was unclear as proposed, and we have deleted the sentence. Our intent was only to reflect the policies in §§ 404.1525 and 416.925, and the introductions to Parts A and B of the listings, that the adult listings will be used whenever the criteria in the childhood listings do not apply. These are general policies, intended for use with all the listings, not just the mental listings. However, we believe that they will rarely apply to childhood mental disorders because we have provided so much guidance for the evaluation of mental impairments in children, in recognition of the fact that mental disorders in children usually require different considerations than in adults, that most childhood mental disorders will be covered.

*Comment:* Two commenters pointed to the language in the third paragraph of proposed 112.00C4, which explained that school grades and the need for placement in special education "are relevant factors which must be considered in reaching a decision under paragraph B2d" but "are not conclusive." The commenters thought that this language would be confusing to adjudicators because it appeared inconsistent with statements in proposed 112.00C3 and the fourth paragraph of 112.00D, both of which emphasized the importance of information from school records. One of the commenters was concerned that adjudicators would give little weight to grades or placement in special education unless we provided more detailed instructions. The commenter requested that we clarify how we will assign "weight" to information from school records.

*Response:* We have not adopted the comments. The language in proposed 112.00C4 (which we have moved to the second paragraph of 112.00C3 in these final rules) states plainly that grades or the fact of placement in special education alone is insufficient to establish that a child has met the paragraph B2d criterion. It explains that this is because the criteria for grading and for special education placement vary too widely among school districts for us to be able to make any reliable generalization. This does not mean that we will not consider such evidence; only that, by itself, the evidence is insufficient to establish conclusively that the child has met one, particular paragraph B criterion.

This is not inconsistent with the two other provisions cited by the commenters. Both sections provide that school records can be a rich source of information about functioning, of test data, and of longitudinal evidence to complete a record. Inasmuch as these passages clearly address a much broader subject than the discussion now in the second paragraph of final 112.00C3, we do not agree that adjudicators will believe them to be in conflict.

We also did not adopt the comment asking us to provide clarification on how an adjudicator should "weigh" evidence from school records. In a sense, the provision in the second paragraph of final 112.00C3 is an instruction on how to assign weight to one kind of school evidence; that is, it provides that evidence of a child's grades or placement in special education cannot alone be given conclusive weight on the issue of whether the child meets the paragraph B2b criterion. Beyond that, we do not believe that it would be appropriate to provide additional guidance on "weighing" this or any other evidence in the context of the listings, just as we do not provide guidance in any listing on how adjudicators should "weigh" credibility or opinion evidence, or any other evidence that requires careful consideration of the individual facts of the case in the context of the entire record.

112.00D Documentation

*Comment:* One commenter stated that pediatricians are frequently more knowledgeable about children's developmental disorders, such as developmental delay, learning disabilities, and attentional problems, and that they have important expertise which differs from that of many child psychiatrists. The commenter recommended that we include the term "pediatrician" wherever we used the words "psychiatrist" and "psychologist."

*Response:* We have adopted the comment. The phrase "psychiatrist and psychologist" appears only in 112.00D. We have replaced the phrase with the phrase "psychiatrist, psychologist, or pediatrician" in the fifth paragraph, and "psychologist, psychiatrist, pediatrician, of other physician specialist" in the sixth, eighth, and fifteenth paragraphs. We used the second phrase in the paragraphs that discuss psychological testing because some tests may properly be administered by other kinds of physicians as well.

We did not change other terms in 112.00D, such as "medical sources," "physician," and "treating source," because they are nonspecific and will be understood to include pediatricians.

*Comment:* One commenter stated that our current regulations recognize only Ph.D. clinical psychologists as acceptable sources of medical evidence and that evidence from school psychologists who do not have doctorates "is not admissible by the SSA." The commenter requested that we revise the regulations to include both clinical psychologists and school psychologists.

*Response:* Current §§ 404.1513 and 416.913 provide that we will recognize as acceptable medical sources any licensed or certified psychologists; this includes school psychologists who are licensed or certified. We do not require psychologists who submit evidence to us to have doctorates in clinical psychology. We do have more stringent rules for psychologists who work for us as adjudicators. These rules are set forth in Subpart Q of Part 404 and Subpart J of Part 416 of these regulations.

We would also like to clarify for the commenter that we do not refuse evidence from any source, even if the source is not an "acceptable" medical source under §§ 404.1513 and 416.913 of our regulations. Other provisions in these regulations state that we consider information from other sources. These any information may be submitted and will be considered in our assessment even though it is not evidence from an "acceptable" medical source.

*Comment:* One commenter was concerned that we did not provide a paragraph similar to the second paragraph of 12.00D in the adult mental listings to describe the various medical and nonmedical sources of evidence. The commenter further noted that the paragraph B criteria seemed to "undercut" the value of sources like parents and other concerned adults by requiring documentation in the form of appropriate standardized tests or clinical findings. In addition, the commenter stated that the paragraph B criteria should include a category of evidence from parents and other concerned adults among the acceptable documentation of functional limitation.

*Response:* We agree that the language we proposed could have been misinterpreted and that it did not include sufficient discussion of important sources of evidence, such as parents. As we explained in an earlier response, we have made changes throughout 112.00D and provided a cross-reference in 112.00C to 112.00D; the changes are intended to address this comment as well as the earlier comment. Furthermore, we have revised the criteria in listings 112.02B and 112.12 to be consistent with the discussions in 112.00D and to replace the word "clinical" with the word "medical" or the phrase "other medical," consistent with our regulations. However, the term "medical" is not meant to imply objective signs alone. It also includes assessment of a child's symptoms and thorough evaluation of all the available evidence.



To assure that the word "medical" is not misunderstood, we have provided new discussions stressing the importance of information from other sources and the role of such evidence both in the medical source's findings and in our development and evaluation of evidence in the case. To clarify how we used the term "medical," we have provided a parenthetical restatement of the regulatory definition of "medical findings" in the first paragraph of 112.00D. We have also provided parenthetical explanations in three of the paragraphs B criteria to serve as reminders of the principles in 112.00D. We believe that these extensive revisions should address the commenter's concerns, while they also clarify our policies.

*Comment:* Several commenters, again referring to the recent Department of Education regulations, questioned our position that there are standardized instruments for measuring developmental delay in infants and toddlers. These commenters recommended that we place greater emphasis on "informed clinical opinion" when we determine the degree of delay.

*Response:* Insofar as our rules can be compared to the rules of another agency, we believe that our rules are consistent with the rules promulgated by the Department of Education. However, we have revised the language of the final rules to make absolutely clear that informed clinical judgment is important in all evaluations, including those that ultimately rely on the results of standardized testing. Of course, when standardized test results are not available, other medical findings—which include clinical findings and, generally consideration of information from other sources, such as the claimant's parents, teachers and caregivers—become the sole means of assessing functional impact.

Furthermore, because we believe that our proposed use of the term "clinical" throughout these listings did not convey our intent to include all of the aforementioned important sources of information, we have revised both the preface and final listings 112.02B and 112.12 to remove the term and clarify our intent.

*Comment:* One commenter asked us to indicate the "weight or value" to be given to tests that rely on self-reports or reports of caretakers, as these are often important sources of valid information.

*Response:* We believe that we have clarified our intent in the preceding responses. It would obviously be impossible for us to provide absolute rules on the "weight or value" of every test, not only because there are so many different kinds of tests, but also because each child's case will be unique and must be evaluated on its own merits. The foregoing responses essentially explain that the "weight or value" we will give to any test results will depend on numerous factors. Certainly, statements by the claimant and others who know the claimant are very important factors in this consideration. For this reason, we provided discussions in the opening paragraphs of proposed 112.00D to describe various possible sources of information about the claimant and to underscore the importance of obtaining information from them. We have now revised 112.00C and 112.00D to emphasize this policy in the final rules. We also emphasize the importance of this kind of evidence in establishing a longitudinal record. In addition, we have provided that any test results should be correlated with the clinical findings and other evidence.

*Comment:* Two commenters expressed concern about the language in the second paragraph of 112.00D, which provides that we may hold the cases of some infants until they attain age 3 months in order to obtain adequate observations of behavior or emotional affect. The commenters suggested that this section should clearly state that development of medical evidence continue while a case is being held, and that any delay in securing evidence not adversely affect a child's date of eligibility for SSI payments. In addition, they recommended that we provide more definitive guidelines for the length of time that a premature infant's case can be held.

*Response:* We agree with the commenters that the paragraph was not clear and have, therefore, revised it to make it clearer. Our intent in this paragraph is not to delay the development of a case or to delay any child's eligibility for benefits. Rather, we want to prevent an inappropriate denial when there is evidence that a child has a developmental impairment but, because of the child's young age, the severity of his or her impairment cannot be determined.

We did not adopt the suggestion to provide "definitive" guidelines for the length of time a premature infant's case may be held because each infant's case will be different. Prematurity in and of itself does not establish impairment severity or guarantee that an infant will meet the 12-month duration requirement, and in the first months of a premature infant's life medical attention is often focused primarily on ensuring the

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infant's survivial, not on measuring his or her abilities. Therefore, the amount of time a premature infant's case can be held will necessarily depend on a careful judgment based on the specific facts of the case. To clarify this principle, we have added language to the paragraph to indicate that the decision to extend the 3-month period will depend on the degree of prematurity and the adequacy of documentation of the child's development and emotional status.

We did not adopt the suggestion to add a discussion about the date on which eligibility for SSI should be established. We believe that our existing policies on establishing dates of onset and eligibility for SSI (ordinarily, the date of filing of the application) are adequate to address this issue and are inappropriate in the context of specific listings because they are not unique to childhood mental disorders.

*Comment:* A commenter questioned the language in the fifth paragraph of 112.00D, which provides that "[i]n some cases . . . it may be necessary" to obtain evidence from a consulting psychiatrist or psychologist when a claimant's treating source lacks expertise in dealing with mental disorders in children. The commenter stated that we should not make the rule optional, but require development with consulting specialists in every case in which the claimant's treating source is not an expert in mental disorders.

*Response:* We did not adopt the comment. Our policy is that when a treating source provides us with sufficient evidence for us to make our decision (which also means that we have no good reason to question the evidence), we will not obtain a consultative examination solely to confirm or refute the treating source's evidence. If a treating source cannot supply the kinds of information we need to evaluate a case properly under these listings, we will of course develop the evidence further.

We, therefore, intentionally provided in the fifth paragraph of 112.00D for the situation in which a claimant's treating source, though not an expert in the evaluation of mental disorders, nevertheless provides sufficient clinical and laboratory findings (including psychological testing, as necessary), opinions and other relevant evidence for us to make a decision under these rules. We think that such cases are likely to be rare, both because many children with significant mental disorders will have treating sources who are experts in the treatment of mental disorders and because treating sources who are not experts in mental disorders will not ordinarily be able to supply information that is complete enough for us to make a final determination or decision; however, we want to provide for the possibility.

*Comment:* Several commenters stated that more discussion was needed on the availability, applicability, and usefulness of standardized testing in connection with assessing the functional impact of mental disorders occurring during childhood. Specifically, they asked us to include a list of the tests we will use, or examples of some of the tests we will use, for assessing these areas. Two commenters recommended that we include a list of tests developed by the experts who assisted in the development of the proposed rules.

*Response:* We have not adopted the comments. We agree with the commenters that these listings do not identify all tests that may be useful in evaluating the functional impact of mental disorders. However, we do not believe that the regulations are the appropriate forum for providing this guidance.

Because of the large number of tests available, it would be practically impossible for us to publish and maintain a list of all available acceptable tests. Moreover, any list that included only examples of tests, such as the list prepared by the experts, could give the misleading impression that we have given our exclusive support to certain instruments. Furthermore, we would expect most professionals to follow standard practices in choosing the tools for evaluation, and we are confident that the mental health professionals we employ are aware of the available instruments.

For all these reasons, we decided that instead of naming additional specific tests, we would provide in the seventh paragraph of 112.00D a detailed description of our criteria for judging whether a test is "good," based upon its validity, reliability, and whether it is based on appropriate normative data. Any test that meets these standards constitutes acceptable documentation for the purposes of these listings.

When we promulgate any listing revisions, we routinely consider the need to update our supplemental training materials and other guidelines to ensure that our adjudicators have an appropriate and uniform understanding of the new rules and how to apply them. We believe that these are the appropriate vehicles for listing any additional examples of acceptable tests.

*Comment:* One commenter stated that our proposal to base listing 112.05 on IQ scores obtained from the Wechsler Intelligence Scale for Children-Revised (WISC–R), and our failure to mention other well-recognized tests included in the DSM–III–R would place the burden of establishing the validity of these other tests on the claimant.

*Response:* The proposed language was intended only to codify our existing policy. The IQ scores in both the former listing 112.05 and these final listings were derived from the WISC–R, which is one of the best known and most widely used scales. It was not our intent to place the burden of establishing the validity of other test results on the claimant; as we have always done, we will recognize the validity of other tests that meet our standards for validity and reliability.

For this reason, we included the discussion in the eighth paragraph of proposed 112.00D, now the ninth paragraph in the final rules, which recognizes the validity of other tests, but explains that identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function because they may be based on a different mean and standard deviation. We, therefore, caution our adjudicators that it may be necessary to find a common denominator—percentile rank in the general population—in order to compare IQ scores from other valid tests with the standard in the listing. However, in response to the comment, we have expanded the ninth paragraph of final 112.00D to explain how we chose the IQ scores we use in 112.05 and to provide additional information about the mean and standard deviation of the Wechsler scales for purposes of comparison. In view of these revisions, we have also deleted the similar language we proposed in the opening paragraph of listing 112.05.

*Comment:* Another commenter stated that the language in the eighth paragraph of proposed 112.00D was confusing, although the commenter did not specify what about the language was confusing. The commenter suggested that it either be deleted or that we provide conversion charts to show the corresponding percentile ranks in the general population of IQs obtained on some of the more common tests that are not based on the same mean and standard deviation as the Wechsler scales.

*Response:* The language in the eighth paragraph of proposed 112.00D (the ninth paragraph in the final rule) reflected our longstanding, uniform policy for use of non-Wechsler series intelligence tests, which is currently found in Part A, in the seventh paragraph of 12.00D and listing 12.05, and in Social Security Ruling 83–54. However, as we explain above, we have added more detail about our policy in the paragraph to clarify our policy for this commenter.

We did not adopt the recommendation to publish conversion charts as a part of these rules. The paragraph does not announce a change in policy, nor have we experienced any difficulties in adjudicating cases using these rules under either the childhood or adult listings. The conversions are not a matter of substantive policy but of fact: Any properly trained psychologist can determine the corresponding percentile rank to a given IQ score in a given test. Moreover, we do not include such factual medical detail in any of our other listings.

In addition, there are so many possible alternative tests that any chart that attempted to provide the detail requested by the commenter would be cumbersome and of necessity incomplete. In the unlikely event that there are widespread difficulties converting test results in the future, we will provide guidance to our adjudicators.

*Comment:* A commenter suggested that we either incorporate our internal operating instructions on evaluating psychological testing into these listings or obsolete them.

*Response:* Our internal operating instructions, e.g., the "Program Operations Manual System," have their basis in the Act and our regulations. The purpose of our internal operating instructions is to provide guidance to our adjudicators for a uniform understanding and use of the policies contained in the Act and regulations. It would be inappropriate for us to include all of these instructions in the regulations or to rescind those that we have not included.

However, we have reviewed our internal operating procedures again, and we believe that it is appropriate to add a new tenth paragraph to 112.00D to emphasize the importance of considering the recency of IQ tests and the consistency of the results of the tests with the child's behavior when evaluating claims under listing 112.05. The new language provides that the currency of IQ test results depends both on the child's age at the time of testing and the actual IQ scores, and includes our longstanding guidelines for making this assessment.

*Comment:* One commenter stated that the twelfth paragraph of proposed 112.00D (now the 13th paragraph in the final rule) conflicted with 112.00C1. The proposed paragraph used the Gesell Developmental Screening Test as an example, whereas the second sentence of the second paragraph of proposed 112.00C1 cautioned against the use of developmental screening devices when assessing cognitive/communicative function in children aged 1 to 3.

*Response:* We have adopted the comment, even though there was no conflict between the two sections. Standardized tests are more reliable measures of function than are gross screening devices and, in spite of its name, the Gesell Developmental Screening Test is a standardized test that meets the salient characteristics of a "good" test as explained in the seventh paragraph of 112.00D. However, since this test is no longer in widespread use, we have deleted it from the examples in the 13th paragraph of final 112.00D.

*Comment:* Several commenters addressed the statement in the 15th paragraph of proposed 112.00D (now the 16th paragraph of final 112.00D), that any required psychological tests be administered in the child's principal language. They expressed concern that this may not be possible in all situations. Two of the commenters also pointed out that there were other related situations that these provisions could include. For example, one commenter suggested that the situation in which a bilingual child's principal language was not English but the child could be tested in English if a test in the principal language was not available. The commenter proposed that we add language that would permit alternative testing in appropriate circumstances, provided that the child would not be otherwise disadvantaged.

Another commenter asked us to provide information about acceptable workups for non-English-speaking claimants "since existing standardized tests would generally be precluded."

*Response:* We have adopted most of the comments by clarifying the language of the 16th paragraph of final 112.00D. We did not intend to state or imply that a determination based on the listings could not be made without testing in a child's principal language. We also agree that there will be situations in which we will not be able to test in the child's principal language but could appropriately test in English (or even another language) without disadvantaging the child. To clarify our intent, we have added language similar to that in the fifteenth paragraph of final 112.00D to indicate when testing in the child's principal language is unavailable, we will use appropriate medical, historical, social, and other information when we make our determination. The rule will apply whether or not the child can be tested; however, it should be understood that this information could, in the proper circumstances, include testing that is not in the child's principal language.

We do not agree completely with the generalization about the availability of standardized tests in other languages. There are some languages, such as Spanish, in which such tests are available. We have, however, provided additional guidance in the 16th paragraph of final 112.00D to explain that the best indicators of severity in children from different cultures are often adaptive functioning, activities of daily living, and social functioning, based on reports from treating sources, parents, or others who are familiar with the child.

**112.00E Effect of Hospitalization or Residential Care**

*Comment:* Two commenters, who noted that these listings did not include paragraph C criteria comparable to 12.03C of the adult listings, suggested that we provide more detailed guidance in 112.00E for the evaluation of children who may not be able to function outside of structured settings or highly supportive living arrangements.

*Response:* We agree with the commenters that highly structured or supportive living arrangements may minimize the overt indications of mental disorders. Thus, we have added language to the first paragraph of 112.00E to explain that, when a child is in a structured setting, evaluation of mental disorders must include an assessment of the degree to which the child can function independently, appropriately, and effectively on a sustained basis outside the structured setting.

**112.00F Effects of Medication**

*Comment:* One commenter stated that 112.00F should require that attention be paid to the stabilizing effect of medication. The commenter further stated that this should include the likelihood of the individual continuing to take the medication and whether the individual would be disabled if he or she stopped taking the medication.

*Response:* We did not adopt the comment. Section 112.00F already emphasizes the need to address the stabilizing effects of medication. It points out that, although medication may ameliorate overt symptomatology, the child may nevertheless be functionally impaired and that, furthermore, side effects of the medication may themselves affect the child's ability to function. We do not agree that it is necessary to address the

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likelihood that a child will fail to take his or her medication or the possible consequences of such failure in these listings. We have separate policies on failure to follow prescribed treatment, in which we make special provisions for children and for all individuals who have mental disorders.

112.02 Organic Mental Disorders

*Comment:* One commenter suggested that we define the word "persistence" in listing 112.02A.

*Response:* We did not adopt the comment. The term has the same meaning as in common parlance and does not have any special meaning in these rules. It merely establishes a criterion that the organic mental disorders in the listing must be chronic, rather than acute. Therefore, we believe that it need not be defined.

*Comment:* One commenter suggested that we combine proposed listings 112.02, 112.09, and 112.10 into a listing labeled "developmental and emotional disorders of childhood." The commenter stated that there was no need to distinguish organicity, autism, and environment as separate etiological entities, that there was overlapping of the listings, and that a combined listing would "then handle learning disabilities and behavior disorders appropriately." The commenter also recommended that the new listing recognize three age groups instead of the two age groups we proposed for the paragraph B criteria.

*Response:* We did not adopt the comments. While it is certainly true that organic mental disorders, developmental disorders, and developmental and emotional disorders of infancy, as described in the DSM–III–R, cannot always be clearly distinguished, we have nevertheless tried to maintain the distinctions in the DSM–III–R as far as possible in order to conform our rules to current diagnostic criteria and nomenclature. Furthermore, the listings, like the DSM–III–R, are primarily descriptive, largely reflect signs and symptomatology, and do not espouse any particular theories of etiology.

As we explained in an earlier response, we do not believe that it is necessary to have more than two age categories for assessing functional impairment under the paragraph B criteria. The critical areas of function for evaluating children aged 3 to 18 are the same, although the manifestations will vary at different ages; this is why we provided guidance for evaluating three age groups within the age-3-to-18 category in 112.00C.

*Comment:* Many commenters questioned why certain listed impairments required a greater number of paragraph B criteria than other listings. They pointed out that the paragraph B criteria are the functional measures of listing-level severity; therefore, it should follow that all listings should be met by satisfying the same number of paragraph B criteria.

*Response:* We agree with the commenters, and have therefore revised all of the listings that have paragraph B criteria. For reasons we explain in detail in the "Explanation of Revisions" section of this preamble, we now require that an older infant or toddler, age 1 to attainment of age 3, must demonstrate functional deficits or restrictions to the degree specified in one of the paragraph 112.02B1 criteria, and that a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions to the degree specified in two of the paragraph 112.02B2 criteria.

*Comment:* A commenter expressed concern about how we will determine whether a child has achieved only one-half of the expected milestones in listing 112.02B and other listings. The commenter asserted that the State agencies have denied claims in which children have demonstrated milestone achievement slightly more than one-half for their age in one area of development even though they met the criteria for milestone achievement in all other areas. The commenter believed that this application of the rule was too narrow.

*Response:* As a result of this comment and other technical reasons we have explained in the "Explanation of Revisions" section of this preamble, we have revised all of the rules that referred to "a pattern" of milestones, or achievement of "50 percent" of anticipated milestones, or other similar language to explicitly state the number of functional domains in which the child must demonstrate deficiency. We have also revised the language of these rules so that it is more straightforward and less open to interpretation. The criteria now all use uniform language which refers to achievement of milestones generally acquired by children no more than one-half or two-thirds (as appropriate to the specific rule) of the child's chronological age.

112.03 Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders

*Comment:* One commenter stated that the proposed 6-month standard for the persistence of symptoms in 112.03A seemed unnecessarily long if the point of the standard was to make sure that the symptomatology would not be temporary. The commenter stated that the symptoms described in the listing would be "very uncommon" in children, and thought that a 3-month standard would be enough to establish that the problem was severe. The commenter also stated that exceptions, such as drug-related symptoms, should never last 3 months.

*Response:* We did not adopt the comment. As in the adult mental listings, the intent of the paragraph A criteria is to describe certain mental syndromes or clusters of syndromes, without any inferences as to severity. Although we have not included every criterion that is in the DSM–III–R, we have based nearly all of the paragraph A criteria on the DSM–III–R, descriptions of syndromes or categories of syndromes.

Listing 112.03A uses the DSM–III–R criterion for chronicity of psychotic symptoms—6 months—applicable both to children and adults. We want to stress, however, that this does not imply, per se, any judgments about the severity of the impairments of children who do not satisfy this paragraph A criterion, nor does it mean that such children cannot be disabled. When a child does not satisfy the specific paragraph A criteria of this, or any other listing, this means only that the child can not meet a listed impairment. The child may still be found disabled under our current rules of medical equivalency or under the rules we are developing to implement the Supreme Court's February 20, 1990, decision in *Sullivan* v. *Zebley et al.* The determination will always depend on the facts of each case.

The comment about drug-related symptoms was unclear to us. Certainly, there are acute symptoms of drug intoxication that the temporary and that may not recur. However, we do not agree with the blanket statement of the commenter that drug-related symptomatology should "never" last 3 months. For this reason, and in response to numerous comments we summarize below, we have added a separate listing 112.09 to address the special problems of evaluating psychoactive substance dependence disorders.

112.04 Mood Disorders

*Comment:* One commenter thought that the word "currently" in the phrase "currently characterized" in 112.04A3 could imply that symptoms of bipolar disorder must be currently active.

*Response:* We agree with the commenter that the word "currently" could be confusing. We have, therefore, revised the language in parentheses to more closely follow the language of the DSM–III–R. The statement in parentheses will not read: "* * * (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes)." The changes address two problems. First, in response to the comment, the new language clarifies that a child need not be currently symptomatic in order to meet the paragraph A criteria. Second, it clarifies that the current or most recent episode need not have been manifested by the full symptomatic picture of manic or depressive syndrome, as long as there is a history of the full symptomatic pictures of both syndromes sometime in the past.



112.05 Mental Retardation

*Comment:* Several commenters noted that we did not include Down syndrome in the proposed listings. Two of the commenters were aware that we had proposed a separate listing for Down syndrome (see 52 FR 37161, October 5, 1987), to be added to 110.00, Multiple Body Systems, but noted that we would not have a listing for the impairment until the new listing was published as a final rule. One group submitted a copy of the comments they made on the NPRM that included the Down syndrome listing.

*Response:* We now have a separate listing for evaluating Down syndrome; see listing 110.06. We have not responded here to the duplicate comments on the NPRM for Down syndrome since we responded to the comments in the preamble to those final rules.

*Comment:* One commenter suggested that we define the phrase "developmental period" in the first sentence of listing 112.05. The commenter noted that the corresponding adult listing, 12.05, defines the term as the period prior to age 22.

*Response:* We did not define the term in 112.05 because in our judgment it is not necessary to provide an age limit in the context of the childhood listings. Sections 404.1525 and 416.925 of our regulations state that part B of the Listing of Impairments applies only to the evaluation of impairments of persons under age 18. Therefore, we have deleted the text in question from the opening of listing 112.05 because it is unnecessary; cases evaluated under 112.05 represent impairments that began before the end of the developmental period.

*Comment:* One commenter recommended that the IQ range in proposed 112.05C and 112.05D be "60 to 70" instead of "60 to 69" because the DSM–III–R defines mental retardation as involving an IQ of 70 or less.

*Response:* We concur with the commenter's recommendation and have changed the IQ ranges in final listings 112.05D (proposed listing 112.05C) and 112.05E (proposed listing 112.05D) to read "60 to 70." We have also changed the upper IQ range from 69 to 70 in adult listings 11.07A, 12.00D, and 12.05C and D and childhood listings 109.02B1, 111.02B1, 111.07B1 and 111.08B2.

*Comments:* Many commenters were concerned that listing 112.05 relied too heavily on IQ scores and failed to take into account all of the possible deficits in adaptive behavior, e.g., meeting standards of maturation, learning, personal independence, and social responsibility that are expected for a child's age level and cultural group. These commenters recommended that we substitute the phrase "marked deficits in adaptive behavior" for the phrase "marked impairment in personal/behavioral function" in section D2 of proposed listing 112.05. One commenter suggested that both sections A and D of proposed listing 112.05 should contain the more flexible language of the DSM–III–R regarding adaptive behavior, as opposed to the more rigid "developmental" limitations set forth in the proposed listings.

*Response:* We concur with the commenters that deficits in adaptive behavior can serve as a useful alternative to IQ scores. Therefore, as we stated previously in the section of the preamble explaining these final rules, we have added two new paragraph to listing 112.05, paragraphs B and F, which use deficits in adaptive behavior as an alternative to IQ scores, and have revised paragraph A to clarify its use of deficits in adaptive behavior. We have also revised paragraph E, which was proposed as paragraph D, to expand our use of deficits in adaptive behavior in conjunction with IQ scores in the 60 to 70 range.

*Comments:* One commenter noted that in the NPRM for the listings that included Down syndrome and other similar syndromes we have proposed a fourth criterion for mental retardation to be included in proposed listing 110.06, but that we had not proposed the same rule in the childhood mental listings. The commenter supported the additional rule, which was an alternative to the criteria in former listing 112.05C. The rule provided that a child would meet the listing if he or she had achieved only those developmental milestones generally acquired by children no more than two-thirds of the child's chronological age, and also had a physical or other mental impairment imposing additional and significant restrictions of function or developmental progression. The commenter urged that we make the childhood mental listings consistent with the listings under 110.00.

*Response:* We have adopted the comment. We have added the rule as 112.05F. We describe the new listing in the summary at the beginning of this preamble. We have also modified final listing 112.05E to include the two-thirds-milestone achievement criterion.

112.07 Somatoform, Eating, and Tic Disorders

*Commenter:* Two commenters thought that we had not included a listing for eating disorders.

*Response:* We included eating disorders in 112.07A1 of the proposed listings. We have changed the title of listing 112.07 to "Somatoform, Eating, and Tic Disorders" and added a reference to eating disorders in the capsule definition so that our intent will be clear. In addition, as part of our review of the listings to conform them to the terminology of the DSM–III–R, we have completely revised the language of 112.07A1. We believe that the revision more clearly indicates that this set of A criteria describes eating disorders.

*Comment:* One commenter thought that Tourette's disorder would not be covered by these listings. Another commenter asked us to provide guidance on which listing to use when evaluating the disorder.

*Response:* Tourette's Disorder is defined in the DSM–III–R as a tic disorder. We provided criteria in 112.07A2 which can be used for evaluating Tourette's Disorder and other tic disorders. As explained in the previous response, we have revised the title of listing 112.07 to "Somatoform, Eating, and Tic Disorders." We have also added a reference to tic disorders in the capsule definition. These revisions should clarify that Tourette's Disorder and other tic disorders are to be evaluated under this listing.

112.08 Personality Disorders

*Comment:* Many commenters were concerned about our proposal to include a listing for personality disorders in children that merely referred to the corresponding adult listing, 12.08. One of the most frequent comments was that a reference to the adult criteria would omit psychopathology and certain recognized disorders that are specific to children. In support of their assertion, many of the commenters directed our attention to a statement in the introduction to the chapter on personality disorders in the DSM–III–R. The statement explains that certain disorders of childhood—specifically, conduct disorder, avoidant disorder of childhood or adolescence, and identity disorder—are related to corresponding

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diagnostic categories in the chapter on personality disorders. The commenters recommended that we include these disorders and all of their associated diagnostic criteria under listing 112.08. In the alternative, several commenters suggested that we include the phrase "disruptive behavior" in the listing to convey the idea that a full-blown personality disorder is not required for the listing.

Nearly every commenter also questioned our proposal to use the adult paragraph B criteria to evaluate these impairments. The commenters pointed out that, inasmuch as two of the adult criteria are work-related, proposed listing 112.08 would be based on a much stricter standard than the other childhood listings and that it would be unlikely that many children would be able to satisfy the criteria.

*Response:* As we have stated in the summary section of this preamble, we have adopted the comments to include a specific listing for personality disorders in children, instead of a reference listing. We agree with the commenters that it is inappropriate to relate the functional criteria of the listing to the adult paragraph B criteria, which we acknowledge most children will not be able to satisfy.

We did not, however, adopt the comments that asked us to include conduct, avoidant, and identity disorders as listed impairments under 112.08. The listings are examples of some common impairments that we use to find a child disabled. Although the childhood impairments in the DSM–III–R called "conduct disorder" and "identity disorder" could cause significant functional limitations in individual cases, we did not include them as separate listed impairments because we believe that they generally are not comparable in severity to other listed impairments. In fact, the passage in the DSM–III–C cited by the commenters states that conduct disorder in childhood or adolescence corresponds to the impairment called "antisocial personality disorder" in adults, and we do not list antisocial personality disorder in adult listing 12.08 either. Conduct disorder and antisocial disorder, unlike the other disorders, primarily represent conflicts between the individual and society. Although not listed as separate impairments, conduct disorder and identity disorder would not be excluded from consideration as disabling impairments.

Therefore, we have provided that a child must have a "full-blown" personality disorder in order to meet this listing. This does not mean that we will approach the evaluation of other related impairments with any preconceived notions about their severity in individual cases; only that we believe that these kinds of childhood mental disorders should not be listed impairments. As always, the decision whether any impairment meets or equals a listed impairment will depend on the individual facts of each case.

We did not include avoidant disorder of childhood or adolescence under listing 112.08 only because we had already included it under listing 112.06. Criterion 112.06A2 is intended to capture any disorders that are characterized by avoidance behavior.

For a similar reason, we also did not adopt the comment to include the phrase "disruptive behavior" as a paragraph A criterion in listing 112.08. The reason we did not is that we had already built it into our paragraph B criteria. Paragraph B2c(2) of listing 112.02—that is, the second paragraph in the third B criterion for children age 3 to attainment of age 18—describes "persistent maladaptive behaviors destructive to self, others, animals, or property, requiring protective intervention." As one of the commenters noted in arguing for the use of the childhood B criteria under listing 112.08, these criteria "refer to the very behaviors that are manifest in these disorders."

112.09 Psychoactive Substance Dependence Disorders

*Comment:* Many commenters asked us to add to the final listings a category of impairment for substance addiction disorders, as originally recommended by the experts. Several of the commenters stated that the listing should be a listing for substance abuse.

*Response:* We have adopted the majority of the comments and added a listing for substance addiction disorders, now called "psychoactive substance dependence disorders" in the DSM–III–R. We describe the new listing, which we have designated 112.09 to maintain correspondence with the numbering system in the adult listings, in the summary of the listings at the beginning of this preamble.

We have not adopted the comments that recommended that we include psychoactive substance abuse disorders among the listed impairments in listing 112.09. There is too much variability in the manifestations and severity of substance abuse disorders to permit a meaningful description in the listings. Children who have psychoactive substance abuse disorders as their primary mental impairment should be evaluated under this listing using our rules of medical equivalency.

*Comment:* Several of the commenters who asked us to include a listing for psychoactive substance dependence mentioned that they thought that having such a listing would be valuable because it could be applied to babies who were born with the conditions known as "fetal alcohol syndrome," "fetal cocaine syndrome," or other similar psychoactive substance syndromes.

*Response:* We consider fetal alcohol syndrome, fetal cocaine syndrome, and other similar syndromes to be multiple body system impairments because they typically present themselves as a constellation of impairments affecting more than one body system and involving more than substance dependence alone. We therefore have promulgated a separate listing 110.07, which includes these disorders. The listing recognizes the profound effect on development the combined impairments associated with these disorders can have.

112.10 Autistic Disorder and Other Pervasive Developmental Disorders

*Comment:* One commenter stated that proposed listing 112.09 (final listing 112.10), "Autism and Other Pervasive Developmental Disorders," omitted many of the criteria in the DSM–III–R for determining the existence of these disorders. The commenter was concerned that the proposed criteria could cause us to overlook many children who had the disorders.

*Response:* We have adopted the comment. The proposed criteria were based on the DSM–III, which did not include as much detail as the DSM–III–R. We have revised final listing 112.10 to reflect the more recent criteria.

112.11 Attention Deficit Hyperactivity Disorder

*Comment:* One of the most frequent comments was that we should have included a separate listing for Attention Deficit Hyperactivity Disorder (ADHD), a category that was recommended by the experts. Most commenters stressed that ADHD is a common impairment in children, that it is well-recognized and clearly defined, and that it is not appropriately captured by any of the listings we proposed. Hence, they believed that ADHD would be best evaluated under its own, separate listing. Three commenters stated their opinion that ADHD will rarely be disabling; however, two of these commenters still thought that a separate listing was necessary because the remaining listings were inadequate to evaluate the conditions of children who have the impairment.



Many commenters expressed concern that if we did not include a separate listing for ADHD we would never find children with this impairment disabled. One commenter, who is the parent of a child with ADHD, was concerned that we had changed our rules so that children with ADHD could not qualify for benefits; many commenters, echoing this commenter's belief, stated that we had violated the law by eliminating from the listings a medically determinable impairment known to the medical community, and that we had "decreed that no matter how disabled a child with one of the excluded impairments is, his or her eligibility for benefits cannot be established."

Another commenter recommended that any listing for ADHD should not include a paragraph B functional requirement. Finally, one commenter recommended that we include the two other disruptive behavior disorders described in the DSM–III–R, conduct disorder and oppositional defiant disorder, in the listing that included ADHD.

*Response:* After carefully considering these comments, we agree with the majority of the commenters that we should include a listing for ADHD. We describe the listing in the summary at the beginning of this preamble. However, we want to emphasize that the fact that we do not list a particular disorder does not mean that we will not consider an unlisted disorder or that we would not find a child disabled by an unlisted disorder.

We did not adopt the recommendation to omit the paragraph B requirement from this listing. Children with ADHD exhibit a wide spectrum of impairment, ranging from slight to disabling. Therefore, it is imperative that any listing for ADHD include specific guidance for assessing the severity of the disorder in addition to criteria which establish its existence. We believe that the paragraph B criteria of listing 112.02, applicable in most of the other listings, appropriately describe the kinds of functional impairment associated with ADHD, and have therefore decided to include them in this listing as well.

We also did not adopt the recommendation to include the other disorders described in the DSM–III–R under the heading "Disruptive Behavior Disorders." We have explained our reasons for not including conduct disorder in the listings in our responses to the comments asking that we include it under listing 112.08. For the same reasons, we decided not to include "oppositional defiant disorder," the only other disorder named in this section of the DSM–III–R. Children who have either of these impairments may be evaluated under listing 112.08 or listing 112.11, depending upon the particular facts of their cases, using our medical equivalency rules.

112.12 Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1)

*Comment:* Many commenters commented favorably on our proposal to add a listing (proposed listing 112.10, final listing 112.12) specifically for the evaluation of newborn and younger infants, from birth to attainment of age 1. However, they noted that the problems of diagnosing mental impairments can extend to older infants and toddlers, age 1 to attainment of age 3. They urged us to extend the listing to include older infants and toddlers.

*Response:* We have not adopted the comments, but we have added language to 112.00A and 112.00C to address the commenters' concerns.

Although we agree with the commenters that diagnosis of older infants and toddlers can be just as difficult as in newborn and younger infants, we believe that the problem is not as pervasive in the older group as it is in the younger group. Furthermore, the infant-specific criteria for assessing severity in final listing 112.12 become progressively less appropriate as infants become older. We have, therefore, decided to leave listing 112.12 as we proposed it; that is, as a listing designed specifically for the special problems associated with the evaluation of children from birth through attainment of age 1.

This is not to say that children who are older than 1 cannot be found to have an impairment which is equal to the severity of listing 112.12. As we emphasize throughout these responses, any child who does not have a listed impairment can still be found disabled if he or she has an impairment or combination of impairments that is equivalent to any listed impairment. Children older than 1 whose impairment manifestations are identical or sufficiently similar to the requirements of 112.12 could, in certain situations, be evaluated using the new listing.

In response to this and other comments we have already described, we have added language to 112.00A and 112.00C to stress the importance of deciding whether a child has an equivalent impairment or combination of impairments. In direct response to this comment, we have also added statements in the last paragraph of 112.00A and the second paragraph of 112.00C to indicate that children aged 1 to attainment of age 3 may exhibit similar problems of insufficient developmental differentiation to newborn and younger infants and that it is, therefore, vital to assess equivalency in such cases.

*Comment:* Several commenters offered suggestions for provisions that permitted presumptions of disability in the cases of the very youngest infants (from birth through the first weeks or months of life). Two of these commenters prefaced their suggestions with remarks about the proposed 50 percent developmental delay rules for newborn and younger infants in paragraphs A and B of proposed listing 112.10. One of these commenters was concerned because he believed that validated instruments for such young children are lacking. This commenter was also concerned that in some impairments, such as Down syndrome, developmental delays are not always immediately apparent. The commenter thought that we might deny such children at or near birth, even when there was a high probability that we would eventually find them disabled. The other commenter stated that under current regulations a finding of disability in children with genetic or congenital impairments cannot be made until the disability has manifested itself in 50 percent developmental delay.

With regard to the suggested provisions for presumption of disability, several commenters provided examples of some of the hereditary and congenital conditions they would include, based upon the likelihood that children with these impairments would eventually be found disabled when they were older. One of these commenters also suggested that this would be an equitable rule because most of the children who have one of these conditions would eventually be found disabled and eligible for benefits when they were older. Therefore, such a rule, in the view of the commenters, would only serve to provide such children with their rightful benefits in a more timely fashion.

*Response:* We disagree with the comment about the existence of valid tests for children from birth through attainment of age 1. As we state in the 13th paragraph of 112.00D, there are validated instruments appropriate to newborn and younger infants, such as the Bayley Scales of Infant Development and the Cattell Infant Intelligence Scale. Furthermore, all of the listings provide alternative criteria to testing; the criteria in final listing 112.12A and B (proposed listing 112.10A and B) are only two

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criteria of five, which can be used to meet the listing.

Nevertheless, we share these commenters' concerns that some impairments can be especially difficult to evaluate in the very youngest infants. One of our major goals in devising these listings and the new rules in 110.00 and listings 110.06 and 110.07 was to address the problems of evaluating both mental and physical impairments in newborn and younger infants. Even though it is not true, as two commenters suggested, that we had no provision in our policy for finding disability in infants who did not demonstrate 50 percent developmental delay, we have been keenly aware of the difficulty of performing these evaluations. Final listing 112.12 is an innovation in our childhood listings: It is a rule that provides criteria specifically for children in their first 12 months. Similarly, new listing 110.07 recognizes the special problems associated with the assessment of severity in the children who have confirmed hereditary, congenital, or acquired conditions that usually affect two or more body systems. In addition, we have established certain listings under which a child can be found disabled by virtue of a medically documented diagnosis and its well-established medical and functional implications. New listing 110.06, which covers Down syndrome (except for the mosaic form), is one of these. This listing provides for a finding of disability based on Down syndrome established by clinical and laboratory findings.

In our view, new listing 112.12 and the new listings in 110.00 go a long way toward resolving the problems raised by the commenters. These new rules provide considerably more detail for evaluating impairments in newborn and younger infants than we have previously provided to our adjudicators; they provide for more timely assessments of claims; and they provide alternative criteria to the rule for 50 percent developmental delay. In addition, we will provide further guidance in the new regulations we are now preparing in response to the Supreme Court's decision in *Zebley*.

*Comment:* One commenter thought that the rule in proposed listing 112.10 for a developmental delay of 50 percent was inappropriately low because it did not equate with the requirement in proposed listings 112.05C or D, which recognized disability in older children who had IQs as high as 69. The commenter suggested that we increase the milestone rule from 50 percent or less to 69 percent or less.

*Response:* We have not adopted the specific suggestion, but have added a new rule that we believe responds to the comment.

Our intent in proposed listing 112.10, now final listing 112.12, was to create a listing for newborn and younger infants that would equate with the severity threshold in listings 112.05A and 112.05B, not proposed listings 112.05C and 112.05D. Proposed listing 112.05A and B (final listing 112.05A and C) result in a finding of "meets" based soley on a finding that a child who is mentally retarded demonstrates either the failure to attain specific developmental milestone or an IQ not greater than 59.

As we have indicated previously, we have added a new criterion to listing 112.12 to provide a standard that is comparable to the rules in paragraph B1d of listing 112.02.

Also, in response to this comment and earlier comments which addressed the need for comparable severity thresholds across all age groups, we replaced the phrase "marked impairment" in proposed listing 112.10C (now final listing 112.12C) to ensure comparability within that listing. We did not intend for "marked" in proposed listing 112.10C to be of a different severity threshold than that of the other paragraphs within that listing, e.g., the one-half chronological age cognitive/communicative functioning threshold in proposed 112.10A. However, with the definition of marked in the fourth paragraph of final listing 112.00C, it could be concluded that proposed listing 112.10C had a different severity threshold than the remaining paragraphs in that listing. Therefore, in final listing 112.12C, we replaced "marked impairment" with "an absent or grossly excessive response" to clarify its original intent.

*Comment:* One commenter stated that proposed listing 112.10 (final listing 112.12) did a "credible job" of tracking DSM–III–R criteria. However, the commenter suggested that some of the language, such as that in subsection D2, could be simplified to more accurately reflect an infant's behavior.

*Response:* We agree with the commenter. We have therefore revised the language of 112.12D to be simpler and to use terms more specific to infant behavior.

*Additional Comments*

*Comment:* One commenter was concerned about the evidence needed to establish a diagnosis under these listings. The commenter stated that we had provided "little room for clinical impressions" but "a lot of room to disqualify a case because the treating source did not know the precise way to support the diagnosis." The commenter recommended that we provide each treating source with clear instructions needed to make a determination under the listings. Similarly, the commenter asked if we would find a child disabled based upon a diagnosis submitted by a treating source unsupported by findings in the paragraphs A and B criteria of any listing. The commenter gave examples of specific impairments that were not mentioned by name in the listings and wondered if children with these disorders could be found disabled.

*Response:* The kinds of issues raised by this commenter are not specific to the childhood mental listings, but arise in connection with all disability cases. We are in the process of preparing for final publication a separate group of regulations which address, among other things, the responsibilities of our adjudicators in developing the specific information needed from treating sources to complete a record, how and when to obtain information from consultative examinations, and mechanisms for disseminating appropriate information about our evidentiary needs to the medical community.

Our policy, stated in §§ 404.1525(d) and 416.925(d) of the regulations, is that we will not consider an impairment to be a listed impairment solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the listings. On the other hand, we again want to assure this commenter that we will not deny any case simply because a child does not have a listed impairment or because a treating source who is unaware of our evidentiary needs has failed to submit the evidence we need, even though he or she has this information and is willing to provide it. We make every effort to assist claimants—especially children—in obtaining evidence.

*Comment:* One commenter asked us to include a statement of the "reasons or philosophy for giving disability payments to children." The commenter also expressed concern about whether the payment of benefits to children could be countertherapeutic and a disincentive to the child's family to seek treatment for the child. In a related comment, the commenter asked how we would evaluate cases of children who have treatable impairments but are disabled because they do not receive treatment.

*Response:* We rejected the recommendation to state in these regulations the "reasons or philosophy" behind the various payments available to children under the Social Security Act. We pay benefits to children pursuant to laws enacted by the Congress and signed by the President of the United States. Our regulations implement the laws and explain in a practical way how we will abide by them; any statements of "philosophy," such as the commenter suggested, are beyond the purview of these regulations.

When we determine whether a child is disabled, we do not consider matters extraneous to the statute and regulations, such as whether paying benefits will be in the child's best interests. If the medical and other evidence establish that a child is disabled and the child meets all other statutory requirements, we will pay benefits.

With regard to the question of whether we would find a child disabled even if we knew, or thought, that the child could be successfully treated, the answer is that we will, unless the child has failed to follow prescribed treatment and does not have good cause for such failure. We have promulgated specific rules elsewhere in our regulations (see §§ 404.1530 and 416.930) about this issue to direct our adjudicators on how to evaluate such cases.



**Other Changes**

In view of the changes we are making in 112.00, Mental and Emotional Disorders, of Part B of Appendix 1 of the Listing of Impairments, we are also making a number of conforming and technical changes to other listings in both Parts A and B of the Listing of Impairments.

We are adding a paragraph to the Introduction to Appendix 1 of Subpart P of the Listing of Impairments to indicate that the childhood mental disorders listings will cease to be effective 5 years after publication as a final rule, unless extended by the Secretary or revised and promulgated again.

We are changing the phrase "IQs of 60" to "IQs of 70" in the seventh paragraph of 12.00D.

We are changing the phrase "IQ of 60 to 69 inclusive" to "IQ of 60 through 70" in the 12.05C and 12.05D.

We are changing the phrase "IQ of 69 or less" to "IQ of 70 or less" in listings 11.07A, 109.02B1, 111.02B1, 111.07B1, and 111.08B2.

We are changing the reference in the last sentence of the first paragraph of listing 110.00A2 from "See 112.00B" to "See 112.00C."

We are changing listing 110.07B to read "Mental impairment as described under the criteria in 112.05 or 112.12; or."

**Regulatory Procedures**

*Executive Order 12291*

The costs of this regulation are estimated to be as follows:

| | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|
| Additional SSI recipients | 1,000 | 2,000 | 2,000 | 3,000 | 3,000 |
| Program costs: | | | | | |
| Supplemental Security Income | $2 | $8 | $9 | $12 | $14 |
| Medicaid | (1) | $5 | $5 | $10 | $10 |
| Medicare | (1) | (1) | (1) | (1) | (1) |
| Disability Insurance | (1) | (1) | (1) | (1) | (1) |
| Administrative savings | (1) | (1) | (1) | (1) | (1) |

[1] Negligible

Therefore, the Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability Insurance.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 3, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: August 9, 1990.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, part 404, subpart P, of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–_____)

1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 442(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 96–480, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1520a is amended by revising the second sentence of paragraph (a) introducing text to read as follows:

**§ 404.1520a Evaluation of mental impairments.**

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, a special procedure must be followed by us at each level of adminstrative review. * * *

* * * * *

**Appendix 1 to Subpart P—[Amended]**

3. Appendix 1 to subpart P (Listing or Impairments) is amended by adding a new paragraph before the last paragraph of the introductory text to read as follows:

The mental disorders listing in Part B (112.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 12, 1995, unless extended by the Secretary or revised and promulgated again.

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4. Part A of the Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph A of listing 11.07 *Cerebral Palsy* to read as follows:

A. IQ of 70 or less; or

5. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising the second sentence of the seventh paragraph of 12.00D (*Documentation*) to read as follows:

* * * In this connection, it must be noted that on the WAIS, for example, IQs of 70 and below are characteristic of approximately the lowest 2 percent of the general population. * * *

6. Part A of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph C of listing 12.05 *Mental Retardation and Autism* to read as follows:

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function;

*OR*

7. Part A of Appendix 1 (Listing of Impairments) of subpart P is amended by revising the introductory text of paragraph D of listing 12.05 *Mental Retardation and Autism* to read as follows:

D. A valid verbal, performance, or full scale IQ of 60 through 70, or in the case of autism, gross deficits of social and communicative skills, with either condition resulting in two of the following:

8. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 109.02 to read as follows:

1. IQ of 70 or less, or

9. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising the last sentence of the first paragraph of A2 of 110.00 (Multiple Body Systems) to read as follows:

2.1 * * * See 112.00C for a discussion of developmental milestone criteria and evaluation of age-appropriate activities.

10. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B of introductory text of listing 110.07 Multiple Body Dysfunction to read as follows:

B. Mental impairment as described under the criteria in 112.05 or 112.12; or

11. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 111.02 to read as follows:

1. IQ of 70 or less; or

12. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 111.07 *Cerebral Palsy* to read as follows:

1. IQ of 70 or less; or

13. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B2 of listing 111.06 to read as follows:

2. IQ of 70 or less; or

14. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising 112.00, Mental and Emotional Disorders, to read as follows:

**112.00 Mental Disorders**

A. *Introduction:* The structure of the mental disorders listings for children under age 18 parallels the structure for the mental disorders listings for adults but is modified to reflect the presentation of mental disorders in children. The listings for mental disorders in children are arranged in 11 diagnostic categories: Organic mental disorders (112.02); schizophrenic, delusional (paranoid), schizoaffective, and other psychotic disorders (112.03); mood disorders (112.04); mental retardation (112.05); anxiety disorders (112.06); somatoform, eating, and tic disorders (112.07); personality disorders (112.08); psychoactive substance dependence disorders (112.09); autistic disorder and other pervasive developmental disorders (112.10); attention deficit hyperactivity disorder (112.11); and developmental and emotional disorders of newborn and younger infants (112.12).

There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults; hence, the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. For example, findings such as separation anxiety, failure to mold or bond with the parents, or withdrawal may serve as findings comparable to findings that mark mental disorders in adults. The activities appropriate to children, such as learning, growing, playing, maturing, and school adjustment, are also different from the activities appropriate to the adult and vary widely in the different childhood stages.

Each listing begins with an introductory statement that describes the disorder or disorders addressed by the listing. This is followed (except in listings 112.05 and 112.12) by medical findings (paragraph A criteria), which, if satisfied, lead to an assessment of impairment-related functional limitations (paragraph B criteria). An individual will be found to have a listed impairment when the criteria of both paragraphs A and B of the listed impairment are satisfied.

The purpose of the criteria in paragraph A is to substantiate medically the presence of a particular mental disorder. Specific symptoms and signs under any of the listings 112.02 through 112.12 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings.

Paragraph A of the listings is a composite of medical findings which are used to substantiate the existence of a disorder and may or may not be appropriate for children at specific developmental stages. However, a range of medical findings is included in the listings so that no age group is excluded. For example, in listing 112.02A7, emotional liability and crying would be inappropriate criteria to apply to older infants and toddlers, age 1 to attainment of age 3, whereas in 112.02A1, developmental arrest, delay, or regression are appropriate criteria for older infants and toddlers. Whenever the adjudicator decides that the requirements of paragraph A of a particular mental listing are satisfied, then that listing should be applied regardless of the age of the child to be evaluated.

The purpose of the paragraph B criteria is to describe impairment-related functional limitations which are applicable to children. Standardization tests of social or cognitive function and adaptive behavior are frequently available and appropriate for the evaluation of children and, thus, such tests are included in the paragraph B functional paramaters. The functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the medical findings in paragraph A.

We have not included separate C criteria for listings 112.03 and 112.06, as are found in the adult listings, because for the most part we do not believe that categories like residual schizophrenia or agoraphobia are commonly found in children. However, in unusual cases where these disorders are found in children and are comparable to the severity and duration found in adults, the adult 12.03C and 12.06C criteria may be used for evaluation of the cases.

The structure of the listings for Mental Retardation (112.05) and Developmental and Emotional Disorders of Newborn and Younger Infants (112.12) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains six sets of criteria, any one of which, if satisfied, will result in a finding that the child's impairment meets the listing. Listing 112.12 (Developmental and Emotional Disorders of Newborn and Younger Infants) contains five criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

It must be remembered that these listings are examples of common mental disorders which are severe enough to find a child disabled. When a child has a medically determinable impairment that is not listed or a combination of impairments no one of which meets a listing, we will make a medical equivalency determination. (See §§ 404.1525 and 416.926.) This determination can be especially important in older infants and toddlers (age 1 to attainment of age 3), who may be too young for identification of a specific diagnosis, yet demonstrate serious



functional limitations. Therefore, the determination of equivalency is necessary in the evaluation of any child's case when the child does not have an impairment that meets a listing.

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of symptoms, signs, and laboratory findings (including psychological or developmental test findings). Symptoms are complaints presented by the child. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation, development, and contact with reality, as described by an appropriate medical source. Symptoms and signs generally cluster together to constitute recognizable mental disorders described in paragraph A of the listings. These findings may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of Severity:* In childhood cases, as with adults, severity is measured according to the functional limitations imposed by the medically determinable mental impairment. However, the range of functions used to assess impairment severity for children varies at different stages of maturation. The functional areas that we consider are: Motor function; cognitive/communicative function; social function; personal/behavioral function; and concentration, persistence, and pace. In most functional areas, there are two alternative methods of documenting the required level of severity: (1) Use of standardized tests alone, where appropriate test instruments are available, and (2) use of other medical findings. (See 112.00D for explanation of these documentation requirements.) The use of standardized tests is the preferred method of documentation if such tests are available.

Newborn and younger infants (birth to attainment of age 1) have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. We have, therefore, assigned listing 112.12 for Developmental and Emotional Disorders of Newborn and Younger Infants for the evaluation of mental disorders of such children. Severity of these disorders is based on measures of development in motor, cognitive/communicative, and social functions. When older infants and toddlers (age 1 to attainment of age 3) do not clearly satisfy the paragraph A criteria of any listing because of insufficient developmental differentiation, they must be evaluated under the rules of equivalency. The principles for assessing the severity of impairment in such children, described in the following paragraphs, must be employed.

In defining the severity of functional limitations, two different sets of paragraph B criteria corresponding to two separate age groupings have been established, in addition to listing 112.12, which is for children who have not attained age 1. These age groups are: older infants and toddlers (age 1 to attainment of age 3) and children (age 3 to attainment of age 18). However, the discussion below in 112.00C1, 2, 3, and 4, on the age-appropriate areas of function, is broken down into four age groupings: older infants and toddlers (age 1 to attainment of age 3), preschool children (age 3 to attainment of age 6), primary school children (age 6 to attainment of age 12), and adolescents (age 12 to attainment of age 18). This was done to provide specific specific guidance on the age group variances in disease manifestations and methods of evaluation.

Where "marked" is used as a standard for measuring the degree of limitation it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, so long as the degree of limitation is such as to interfere seriously with the ability to function (based upon age-appropriate expectations) independently, appropriately, effectively, and on a sustained basis. When standardized tests are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.

1. *Older infants and toddlers (age 1 to attainment of age 3).* In this age group, impairment severity is assessed in three areas: (a) Motor development, (b) cognitive/communicative function, and (c) social function.

a. *Motor development.* Much of what we can discern about mental function in these children frequently comes from observation of the degree of development of fine and gross motor function. Developmental delay, as measured by a good developmental milestone history confirmed by medical examination, is critical. This information will ordinarily be available in the existing medical evidence from the claimant's treating sources and other medical sources, supplemented by information from nonmedical sources, such as parents, who have observed the child and can provide pertinent historical information. It may also be available from standardized testing. If the delay is such that the older infant or toddler has not achieved motor development generally acquired by children no more than one-half the child's chronological age, the criteria are satisfied.

b. *Cognitive/communicative function.* Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for the measure of such function are discussed in 112.00D. Care should be taken to avoid reliance on screening devices, which are not generally considered to be sufficiently reliable instruments, although such devices may provide some relevant data; however, there will be cases in which the results of such tests show such severe abnormalities that further testing will be unnecessary.

For older infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs are provided.

c. *Social function.* Social function in older infants and toddlers is measured in terms of the development of relatedness to people (e.g., bonding and stranger anxiety) and attachment to animate or inanimate objects. Criteria are provided that use standard social maturity scales or alternative criteria that describe marked impairment in socialization.

2. *Preschool children (age 3 to attainment of age 6).* For the age groups including preschool children through adolescence, the functional areas used to measure severity are: (a) Cognitive/communicative function, (b) social function, (c) personal/behavioral function, and (d) deficiencies of concentration, persistence, or pace resulting in frequent failure to complete tasks in a timely manner. After 36 months, motor function is no longer felt to be a primary determinant of mental function, although, of course, any motor abnormalities should be documented and evaluated.

a. *Cognitive/communicative function.* In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence, although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is a valid verbal, performance, or full scale IQ of 70 or less. The listings also provide alternative criteria, consisting of tests of language development or bizarre speech patterns.

b. *Social function.* Social function is measured by an assessment of a child's relationships with parents, other adults, and peers. These relationships are often observed not only at home but also in preschool programs, where the child's interactions with other children and teachers come under daily scrutiny.

c. *Personal/behavioral function.* This function may be measured by a standardized test of adaptive behavior or by careful description of maladaptive or avoidant behaviors. These behaviors are often observed not only at home but also in preschool programs.

d. *Concentration, persistence, and pace.* This function may be measured through observations of the child in the course of standardized testing and in the course of play.

3. *Primary school children (age 6 to attainment of age 12).* The measures of function here are similar to those for preschool children except that the test instruments may change and the capacity to function in the school setting is supplemental information. Standardized measures of academic achievement, e.g., Wide Range Achievement Test-Revised, Peabody Individual Achievement Test, etc., may be helpful in assessing cognitive impairment. Problems in social functioning, especially in the area of peer relationships, are often observed firsthand by teachers and school nurses. As described in 112.00D, *Documentation*, school records are an excellent source of information concerning function and standardized testing and should always be sought for school-age children.

As it applies to primary school children, the intent of the functional criterion described in paragraph B2d, i.e., deficiencies of concentration, persistence, or pace resulting in failure to complete tasks in a timely manner, is to identify the child who cannot adequately function in primary school because of a mental impairment. Although grades and the need for special education

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placement are relevant factors which must be considered in reaching a decision under paragraph B2d, they are not conclusive. There is too much variability from school district to school district in the expected level of grading and in the criteria for special education placement to justify reliance solely on these factors.

4. *Adolescents (age 12 to attainment of age 18).* Functional criteria parallel to those for primary school children (cognitive/communicative; social; personal/behavioral; and concentration, persistence, and pace) are the measure of severity for this age group. Testing instruments appropriate to adolescents should be used where indicated. Comparable findings of disruption of social function must consider the capacity to form appropriate, stable, and lasting relationships. If information is available about cooperative working relationships in school or at part-time or full-time work, or about the ability to work as a member of a group, it should be considered when assessing the child's social and personal/behavioral functioning. Markedly impoverished social contact, isolation, withdrawal, and inappropriate or bizarre behavior under the stress of socializing with others also constitute comparable findings.

In adolescents, the intent of the functional criterion described in paragraph B2d is the same as in primary school children. However, other evidence of this functional impairment may also be available, such as from evidence of the child's performance in work or work-like settings.

D. *Documentation:* The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical evidence. See §§ 406.1513 and 416.913. Descriptions of functional limitations may be available from these sources, either in the form of standardized test results in other medical findings supplied by the sources, or both. (Medical findings consist of symptoms, signs, and laboratory findings.) Whenever possible, a medical source's findings should reflect the medical source's consideration of information from parents or other concerned individuals who are aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations, as well as the medical source's findings and observations on examination, consistent with standard clinical practice. As necessary, information from nonmedical sources, such as parents, should also be used to supplement the record of the child's functioning to establish the consistency of the medical evidence and longitudinality of impairment severity.

For some newborn and younger infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary to defer making a disability decision until the child attains 3 months of age in order to obtain adequate observation of behavior or affect. See, also, 110.00 of this part. This period could be extended in cases of premature infants depending on the degree of prematurity and the adequacy of documentation of their developmental and emotional status.

For infants and toddlers, programs of early intervention involving occupational, physical, and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of these children. This information is valuable and can complement the medical examination by a physician or psychologist. A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source is considered acceptable medical evidence rather than supplemental data.

In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

In some cases where the treating sources lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist, psychologist, or pediatrician with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every reasonable effort must be made to obtain the records of the treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

A reference to standardized psychological testing indicates the use of a psychological test that has appropriate characteristics of validity, reliability, and norms, administered individually by psychologist, psychiatrist, pediatrician, or other physician specialist qualified by training and experience to perform such an evaluation. Psychological tests are best considered as sets of tasks or questions designed to elicit particular behaviors when presented in a standardized manner.

The salient characteristics of a good test are: (1) Validity, i.e., the test measures what it is supposed to measure, as determined by appropriate methods; (2) reliability, i.e., the consistency of results obtained over time with the same test and the same individual; and (3) appropriate normative data, i.e., individual test scores must be comparable to test data from other individuals or groups of a similar nature, representative of that population. In considering the validity of a test result, any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved.

Tests meeting the above requirements are acceptable for the determination of the conditions contained in these listings. The psychologist, psychiatrist, pediatrician, or other physician specialist administering the test must have a sound technical and professional understanding of the test and be able to evaluate the research documentation related to the intended application of the test.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in listing 112.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15, e.g., the Wechsler series and the Revised Stanford-Binet scales. Thus, IQ's below 60 reflect a level of intellectual functioning below 99.5 percent of the general population, and IQ's of 70 and below are characteristic of approximately the lowest 2 percent of the general population. IQ's obtained from standardized tests that deviate significantly from a mean of 100 and standard deviation of 15 require conversion to the corresponding percentile rank in the general population so that the actual degree of impairment reflected by the IQ scores can be determined. In cases where more than one IQ is customarily derived from the test administered, e.g., where verbal, performance, and full scale IQ's are provided, as on the Wechsler series, the lowest of these is used in conjunction with listing 112.05.

IQ test results must also be sufficiently current for accurate assessment under 112.05. Generally, the results of IQ tests tend to stabilize by the age of 16. Therefore, IQ test results obtained at age 16 or older should be viewed as a valid indication of the child's current status, provided they are compatible with the child's current behavior. IQ test results obtained between ages 7 and 16 should be considered current for 4 years when the tested IQ is less than 40, and for 2 years when the IQ is 40 or above. IQ test results obtained before age 7 are current for 2 years if the tested IQ is less than 40 and 1 year if at 40 or above.

Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of listings 112.05A, 112.05B, and 112.05F. Listings 112.05A 112.05B, and 112.05F may be the bases for adjudicating cases where the results of standardized intelligence tests are unavailable, e.g., where the child's young age or condition precludes formal standardized testing.

In conjunction with clinical examinations, sources may report the results of screening tests, i.e., tests used for gross determination of level of functioning. These tests do not have high validity and reliability and generally are not considered appropriate primary evidence for disability determinations. These screening instruments may be useful in uncovering potentially serious impairments, but generally must be supplemented by the use of formal, standardized psychological testing for the purposes of a disability determination, unless the determination is to be made on the basis of findings other than psychological test data; however, there will be cases in which the results of screening tests show such obvious abnormalities that further testing will clearly be unnecessary.

Where reference is made to developmental milestones, this is defined as the attainment of particular mental or motor skills at an age-appropriate level, i.e., the skills achieved by an infant or toddler sequentially and within a given time period in the motor and manipulative areas, in general understanding and social behavior, in self-feeding, dressing, and toilet training, and in language. This is sometimes expressed as a developmental quotient (DQ), the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Formal tests of the attainment of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

Formal psychological tests of cognitive functioning are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

Exceptions to formal standardized psychological testing may be considered when a psychologist, psychiatrist, pediatrician, or other physician specialist who is qualified by training and experience to perform such an evaluation is not readily available. In such instances, appropriate medical, historical, social, and other information must be reviewed in arriving at a determination.

Exceptions may also be considered in the case of ethnic/cultural minorities where the native language or culture is not principally English-speaking. In such instances, psychological tests that are culture-free, such as the Leiter International Performance Scale or the Scale of Multi-Culture Pluralistic Assessment (SOMPA) may be substituted for the standardized tests described above. Any required tests must be administered in the child's principal language. When this is not possible, appropriate medical, historical, social, and other information must be reviewed in arriving at a determination. Furthermore, in evaluating mental impairments in children from a different culture, the best indicator of severity is often the level of adaptive functioning and how the child performs activities of daily living and social functioning.

"Neuropsychological testing" refers to the administration of standardized tests that are reliable and valid with respect to assessing impairment in brain functioning. It is intended that the psychologist or psychiatrist using these tests will be able to evaluate the following functions: Attention/concentration, problem-solving, language, memory, motor, visual-motor and visuel-perceptual, laterality, and general intelligence (if not previously obtained).

E. *Effect of Hospitalization or Residential Placement:* As with adults, children with mental disorders may be placed in a variety of structured settings outside the home as part of their treatment. Such settings include, but are not limited to, psychiatric hospitals, developmental disabilities facilities, residential treatment centers and schools, community-based group homes, and workshop facilities. The reduced mental demands of such structured settings may attenuate overt symptomatology and superficially make the child's level of adaptive functioning appear better than it is. Therefore, the capacity of the child to function outside highly structured settings must be considered in evaluating impairment severity. This is done by determining the degree to which the child can function (based upon age-appropriate expectations) independently, appropriately, effectively, and on a sustained basis outside the highly structured setting.

On the other hand, there may be a variety of causes for placement of a child in a structured setting which may or may not be directly related to impairment severity and functional ability. Placement in a structured setting in and of itself does not equate with a finding of disability. The severity of the impairment must be compared with the requirements of the appropriate listing.

F. *Effects of Medication:* Attention must be given to the effect of medication on the child's signs, symptoms, and ability to function. While psychoactive medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychoactive medications, particular attention must be focused on the functional limitations which may persist. These functional limitations must be considered in assessing impairment severity.

Psychotropic medicines used in the treatment of some mental illnesses may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity.

112.01 Category of Impairments, Mental

112.02 *Organic Mental Disorders:* Abnormalities in perception, cognition, affect, or behavior associated with dysfunction of the brain. The history and physical examination or laboratory tests, including psychological or neuropsychological tests, demonstrate or support the presence of an organic factor judged to be etiologically related to the abnormal mental state and associated deficit or loss of specific cognitive abilities, or affective changes, or loss of previously acquired functional abilities.

The required level of severity for those disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence of at least one of the following:

1. Developmental arrest, delay or regression; or

2. Disorientation to time and place; or

3. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or

4. Perceptual or thinking disturbance (e.g., hallucinations, delusions, illusions, or paranoid thinking); or

5. Disturbance in personality (e.g., apathy, hostility); or

6. Disturbance in mood (e.g., mania, depression); or

7. Emotional liability (e.g., sudden crying); or

8. Impairment of impulse control (e.g., disinhibited social behavior, explosive temper outbursts); or

9. Impairment of cognitive function, as measured by clinically timely standardized psychological testing; or

10. Disturbance of concentration, attention, or judgment;

AND

B. Select the appropriate age group to evaluate the severity of the impairment:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the following:

a. Gross or fine motor development at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings (see 112.00C); or

b. Cognitive/communicative function at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings of equivalent cognitive/communicative abnormality, such as the inability to use simple verbal or nonverbal behavior to communicate basic needs or concepts; or

c. Social function at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings of an equivalent abnormality of social functioning, exemplified by serious inability to achieve age-appropriate autonomy as manifested by excessive clinging or extreme separation anxiety; or

d. Attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in two or more areas covered by a., b., or c., as measured by an appropriate standardized test or other appropriate medical findings.

2. For children (age 3 to attainment of age 18), resulting in at least two of the following:

a. Marked impairment in age-appropriate cognitive/communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication; or

b. Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests; or

c. Marked impairment in personal/behavioral function, as evidenced by:

(1) Marked restriction of age-appropriate activities of daily living, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, appropriate standardized tests; or

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(2) Persistent serious maladaptive behaviors destructive to self, others, animals, or property, requiring protective intervention; or

d. Deficiencies of concentration, persistence, or pace resulting infrequent failure to complete tasks in a timely manner.

112.03 *Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders:* Onset of psychotic features, characterized by a marked disturbance of thinking, feeling, and behavior, with deterioration from a previous level of functioning or failure to achieve the expected level of social functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, for at least 6 months, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic, bizarre, or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech; or

4. Flat, blunt, or inappropriate affect; or

5. Emotional withdrawal, apathy, or isolation;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.04 *Mood Disorders:* Characterized by a disturbance of mood (referring to a prolonged emotion that colors the whole psychic life, generally involving either depression or elation), accompanied by a full or partial manic or depressive syndrome.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Major depressive syndrome, characterized by at least five of the following, which must include either depressed or irritable mood or markedly diminished interest or pleasure:

a. Depressed or irritable mood; or

b. Markedly diminished interest or pleasure in almost all activities; or

c. Appetite or weight increase or decrease, or failure to make expected weight gains; or

d. Sleep disturbance; or

e. Psychomotor agitation or retardation; or

f. Fatigue or loss of energy; or

g. Feelings of worthlessness or guilt; or

h. Difficulty thinking or concentrating; or

i. Suicidal thoughts or acts; or

j. Hallucinations, delusions, or paranoid thinking;

OR

2. Manic syndrome, characterized by elevated, expansive, or irritable mood, and at least three of the following:

a. Increased activity or psychomotor agitation; or

b. Increased talkativeness or pressure of speech; or

c. Flight of ideas or subjectively experienced racing thoughts; or

d. Inflated self-esteem or grandiosity; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high potential of painful consequences which are not recognized; or

h. Hallucinations, delusions, or paranoid thinking;

OR

3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes);

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.05 *Mental Retardation:* Characterized by significantly subaverage general intellectual functioning with deficits in adaptive functioning.

The required level of severity for this disorder is met when the requirements in A, B, C, D, E, or F are satisfied.

A. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02;

OR

B. Mental incapacity evidenced by dependence upon others for personal needs (grossly in excess of age-appropriate dependence) and inability to follow directions such that the use of standardized measures of intellectual functioning is precluded;

OR

C. A valid verbal, performance, or full scale IQ of 59 or less;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant limitation of function;

OR

E. A valid verbal, performance, or full scale IQ of 60 through 70 and:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in either paragraphs B1a or B1c of 112.02; or

2. For children (age 3 to attainment of age 18), resulting in at least one of paragraphs B2b or B2c or B2d of 112.02;

OR

F. Select the appropriate age group:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in paragraph B1b of 112.02, and a physical or other mental impairment imposing additional and significant limitations of function;

OR

2. For children (age 3 to attainment of age 18), resulting in the satisfaction of 112.02B2a, and a physical or other mental impairment imposing additional and significant limitations of function.

112.06 *Anxiety Disorders:* In these disorders, anxiety is either the predominant disturbance or is experienced if the individual attempts to master symptoms, e.g., confronting the dreaded object or situation in a phobic disorder, attempting to go to school in a separation anxiety disorder, resisting the obsessions or compulsions in an obsessive compulsive disorder, or confronting strangers or peers in avoidant disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. Excessive anxiety manifested when the child is separated, or separation is threatened, from a parent or parent surrogate; or

2. Excessive and persistent avoidance of strangers; or

3. Persistent unrealistic or excessive anxiety and worry (apprehensive expectation), accompanied by motor tension, autonomic hyperactivity, or vigilance and scanning; or

4. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

5. Recurrent severe panic attacks, manifested by a sudden unpredictable onset of intense apprehension, fear, or terror, often with a sense of impending doom, occurring on the average of at least once a week; or

6. Recurrent obsessions or compulsions which are a source of marked distress; or

7. Recurrent and intrusive recollections of a traumatic experience, including dreams, which are a source of marked distress;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.07 *Somatoform, Eating, and Tic Disorders:* Manifested by physical symptoms for which there are no demonstrable organic findings or known physiologic mechanisms; or eating or tic disorders with physical manifestations.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of one of the following:

1. An unrealistic fear and perception of fatness despite being underweight, and persistent refusal to maintain a body weight which is greater than 85 percent of the average weight for height and age, as shown in the most recent edition of the *Nelson Textbook of Pediatrics*, Richard E. Behrman and Victor C. Vaughan, III, editors, Philadelphia: W. B. Saunders Company; or

2. Persistent and recurrent involuntary, repetitive, rapid, purposeless motor movements affecting multiple muscle groups with multiple vocal tics; or

3. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures); or

f. Sensation (diminished or heightened); or

g. Digestion or elimination; or

4. Preoccupation with a belief that one has a serious disease or injury;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.08 *Personality Disorders:* Manifested by pervasive, inflexible, and maladaptive personality traits, which are typical of the child's long-term functioning and not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior, associated with one of the following:

1. Seclusiveness or autistic thinking; or

2. Pathologically inappropriate suspiciousness or hostility; or

3. Oddities of thought, perception, speech, and behavior; or

4. Persistent disturbances of mood or affect; or

5. Pathological dependence, passivity, or aggressiveness; or

6. Intense and unstable interpersonal relationships and impulsive and exploitative behavior; or

7. Pathological perfectionism and inflexibility;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.09 *Psychoactive Substance Dependence Disorders:* Manifested by a cluster of cognitive, behavioral, and physiologic symptoms that indicate impaired control of psychoactive substance use with continued use of the substance despite adverse consequences.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least four of the following:

1. Substance taken in larger amounts or over a longer period than intended and a great deal of time is spent in recovering from its effects; or

2. Two or more unsuccessful efforts to cut down or control use; or

3. Frequent intoxication or withdrawal symptoms interfering with major role obligations; or

4. Continued use despite persistent or recurring social, psychological, or physical problems; or

5. Tolerance, as characterized by the requirement for markedly increased amounts of substance in order to achieve intoxication; or

6. Substance taken to relieve or avoid withdrawal symptoms;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.10 *Autistic Disorder and Other Pervasive Developmental Disorders:* Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

a. Qualitative deficits in the development of reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

c. Markedly restricted repertoire of activities and interests;

OR

2. For pervasive developmental disorders, both of the following:

a. Qualitative deficits in the development of social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraphs B2 of 112.02.

112.11 *Attention Deficit Hyperactivity Disorders:* Manifested by developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of all three of the following:

1. Marked inattention; and

2. Marked impulsiveness; and

3. Marked hyperactivity;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.12 *Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1):* Developmental or emotional disorders of infancy are evidenced by a deficit or lag in the areas of motor, cognitive/communicative, or social functioning. These disorders may be related either to organic or to functional factors or to a combination of these factors.

The required level of severity for these disorders is met when the requirements of A, B, C, D, or E are satisfied.

A. Cognitive/communicative functioning generally acquired by children no more than one-half the child's chronological age, as documented by appropriate medical findings (e.g., in infants 0–6 months, markedly diminished variation in the production or imitation of sounds and severe feeding abnormality, such as problems with sucking swallowing, or chewing) including, if necessary, a standardized test;

OR

B. Motor development generally acquired by children no more than one-half the child's chronological age, documented by appropriate medical findings, including if necessary, a standardized test;

OR

C. Apathy, over-excitability, or fearfulness, demonstrated by an absent or grossly excessive response to one of the following:

1. Visual stimulation; or

2. Auditory stimulation; or

3. Tactile stimulation;

OR

D. Failure to sustain social interaction on an ongoing, reciprocal basis as evidenced by:

1. Inability by 6 months to participate in vocal, visual, and motoric exchanges (including facial expressions); or

2. Failure by 9 months to communicate basic emotional responses, such as cuddling or exhibiting protest or anger; or

3. Failure to attend to the caregiver's voice or face or to explore an inanimate object for a period of time appropriate to the infant's age;

OR

E. Attainment of developmental or function generally acquired by children no more than two-thirds of the child's chronological age in two or more areas (i.e., cognitive/communicative, motor, and social), documented by appropriate medical findings, including if necessary, standardized testing.

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

15. The authority citation for subpart I continues to read as follows:

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Authority: Secs. 1102, 1614(a), 1168, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

16. Section 416.920a is amended by revising the second sentence of paragraph (a) introductory text to read as follows:

**§ 416.920a Evaluation of mental impairments**

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when part A of the Listing of Impairments is used, a special procedure must be followed by us at each level of administrative review. * * *

* * * * * *

[FR Doc. 90-28744 Filed 12-11-90; 8:45 am]
BILLING CODE 4190-29-M

federal register

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December 12, 1990

Part III

# Department of Education

34 CFR Part 222

**Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Education; Final Rule**

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 222**

**RIN 1810-571**

## Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Impact Aid maintenance and operations assistance program (sections 2, 3, and 4 of Pub. L. 81-874). These final regulations implement one of the technical amendments made to Pub. L. 81-874 by the 1992 National Assessment of Chapter 1 Act, Pub. L. 101-305. These provisions may affect the amount of a school district's payment.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Hansen, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2077, Washington, DC 20202-6272. Telephone: (202) 401-3637.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations governing the Impact Aid maintenance and operations assistance program are in 34 CFR part 222. On May 30, 1990, the President signed into law the 1992 National Assessment of Chapter 1 Act, Public Law 101-305, which also contains a number of amendments to Public Law 81-874. The final regulations in this document implement one of the changes made by the amendments in Pub. L. 101-305.

### Section Requiring Changes as a Result of Public Law 101-305

Technical changes to § 222.12 of the regulations as a result of Public Law 101-305 are described below. In addition, other minor editorial and technical revisions to that section and to §§ 222.10 and 222.16 are made.

*Section 222.12 Applications under Sections 2, 3, and 4 Received after Deadlines*

A new paragraph (b) is added to implement that portion of section 3(c) of Public Law 101-305 that authorizes the Secretary, beginning with fiscal year 1991, to accept an otherwise approvable application received up to 60 days after the established deadline for the receipt of applications, but requires the Secretary to reduce the payment based on such a late application by 10 percent of the amount that would otherwise be paid.

### Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes and make minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These amendments merely conform the existing regulations to new statutory requirements and make other minor editorial and technical revisions.

### Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

### List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid—Maintenance and Operation)

Dated: November 7, 1990.

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary amends Part 222 of title 34 of the Code of Federal Regulations as follows:

## PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for part 222 continues to read as follows:

**Authority:** 20 U.S.C. 236-241-1 and 242-244, unless otherwise noted.

**§ 222.10 [Amended]**

2. In § 222.10 the introductory text in paragraph (f) is amended by removing "must be" and adding in its place, "must", and paragraph (f)(1) is amended by removing "Received" and adding, in its place, "Be received".

3. Section 222.12 is revised to read as follows:

**§ 222.12 Applications under sections 2, 3, and 4 received after deadlines.**

(a) Except as provided in paragraph (b) of this section, the Secretary does not accept or approve for payment any application for assistance under sections 2, 3, and 4 of the Act that is not timely filed with the Secretary in accordance with the applicable filing dates established by §§ 222.10 and 222.11.

(b)(1) Beginning with fiscal year 1991, the Secretary accepts and approves for payment any otherwise approvable application filed within 60 days after January 31 of the fiscal year for which assistance is sought.

(2) Such a late application must be received on or before the 60th day after January 31, or bear a U.S. Postal Service postmark dated on or before the 60th day after that date, unless the 60th day falls on a Saturday, Sunday, or Federal holiday, in which case the deadline referred to in this paragraph is the next succeeding business day.

(3) For any application accepted under paragraph (b)(1) of this section, the Secretary reduces the payment based on the application by 10 percent of the amount that would have been paid if the application had been filed by January 31.

(Authority: 20 U.S.C. 240(a)(2))



**§ 222.16 [Amended]**

4. Section 222.16 is amended by removing "§ 222.111(b)(1)" in paragraph (d) and adding, in its place, "§ 222.11(b)(1).".

[FR Doc. 90-29022 Filed 12-11-90; 8:45 am
BILLING CODE 4000-01-M

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Part IV

# Department of Education

## Regional Resource Centers Program for Fiscal Year 1991; Notice Inviting Applications for New Awards

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**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**[CFDA No.: 84.028]**

**Notice Inviting Applications for New Awards for the Regional Resource Centers Program for Fiscal Year 1991**

**PURPOSE OF PROGRAM:** To provide Federal support for a variety of activities designed to assist State and local entities in providing early intervention, special education, and related services for infants, toddlers, children, and youth with disabilities and their families. Activities include technical assistance, training, and consultation.

**DEADLINE FOR TRANSMITTAL OF APPLICATIONS:** February 15, 1991.

**DEADLINE FOR INTERGOVERNMENTAL REVIEW:** April 16, 1991.

**APPLICATIONS AVAILABLE:** December 14, 1990.

**AVAILABLE FUNDS:** $6,400,000.

**ESTIMATED RANGE OF AWARDS:** $800,000–1,200,000.

**ESTIMATED AVERAGE SIZE OF AWARDS:** $1,000,000.

**ESTIMATED NUMBER OF AWARDS:** 6.

**NOTE:** The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

**PROJECT PERIOD:** Up to 24 months.

**APPLICABLE REGULATIONS:** (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 305, except that, with regard to 34 CFR 305.40(c), each Regional Resource Center is not required to assure that services provided are consistent with the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Individuals with Disabilities Education Act. This change is a result of the Education of the Handicapped Act Amendments of 1990, Public Law 101–476, enacted on October 30, 1990.

**PRIORITY:** This priority supports six Regional Resource Centers (RRC) designed to provide consultation, technical assistance, and training, as requested, to State educational agencies, and through such agencies to local educational agencies and to other appropriate public agencies who provide special education, related services, and early intervention services.

The Secretary particularly invites applications that address new and emerging issues, such as (1) meeting the needs of a diverse group of students with disabilities including but not limited to, minority and medically fragile children, (2) the retention and recruitment of special education personnel, and (3) improving the outcomes for students with disabilities as they make the transition from school to the work place, i.e., employment, independent living. The Secretary also invites applications that propose to network with other Regional Resource Centers, technical assistance providers, clearinghouses, and dissemination projects regarding sound educational practices. Regional Resource Centers activities may be determined in part by conducting an annual needs assessment and technical assistance activity plan in conjunction with appropriate Federal officials and each State educational agency in the region served by a RRC.

However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

**FOR FURTHER INFORMATION CONTACT:** Marie Roane, Division of Assistance to States, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3630–2644), Washington, DC 20202. Telephone: (202) 732–1051.

**Program Authority:** 20 U.S.C. 1421

Dated: December 6, 1990.

**Robert R. Davila,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 90–29021 Filed 12–11–90; 8:45 am]

BILLING CODE 4000–01–M

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Part V

# Department of Transportation

**Coast Guard**

**46 CFR Part 67**

**Documentation of Vessels; Controlling Interest; Final Rule**



**DEPARTMENT OF TRANSPORTATION**

comments in response to the SNPRM,

requirements for corporations and



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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 89-031]

RIN 2115-AC99

## Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations regarding citizenship requirements for vessel owning individuals, or entities, applying to document vessels or qualify for certain trade endorsements. The amended regulations implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, and conform the controlling interest requirements for partnerships to those for corporations. Other amendments will result in regulations which are more informative and will assist vessel owners in understanding the applicable citizenship requirements.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Willis, Chief, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267-1492.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on October 20, 1988 (53 FR 41211), proposing to amend the vessel documentation regulations to implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239, 101 Stat. 1778 (1988)) (the "Anti-Reflagging Act"). The rulemaking also proposed conforming controlling interest requirements for partnerships to the Anti-Reflagging Act's requirements for corporations. A total of 7 comments were received in response to the NPRM. Based on those comments, and its own administrative experience, the Coast Guard determined that a complete revision of subpart 67.03, concerning citizenship requirements for vessel documentation, was needed. The proposed revision of subpart 67.03, and related amendments, were published on October 13, 1989 (54 FR 41992), in a Supplemental Notice of Proposed Rulemaking (SNPRM), followed by a comment period through December 12, 1989. The Coast Guard has received 9 comments in response to the SNPRM, eight of which were received during the comment period. A public hearing was not held, nor was one requested.

### Drafting Information

The principal persons involved in drafting this regulation are Commander Robert Bruce, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

### Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in specified trades. The evidence of nationality is the Certificate of Documentation. One or more endorsement on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in the specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of application is eligible for documentation generally and eligible for the endorsement or endorsements requested; and (c) issues Certificates of Documention to eligible vessels.

Eligibility requirements for documentation are set out at 46 U.S.C. Chapter 121. One of the eligibility requirements for documentation is United States citizenship. For corporation and partnerships, citizenship requirements include certain American control provisions. For example, the earliest American control provisions applied to corporations seeking to document vessels for coastwise trade. A requirement that at least 75 percent of its stock be owned by U.S. citizens, found in 46 U.S.C. app. 802, was made applicable to such corporations by 46 U.S.C. app. 883. Coastwise trade is, more or less, domestic transportation of passengers and merchandise.

Until 1982, this American control requirement had little practical effect on partnerships because unless all of the partners, general or limited, were U.S. citizens the partnership was not eligible to document vessels. This requirement was relaxed by section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97-136) which amended 46 U.S.C. 12102(a)(3), permitting partnerships to document vessels if all general partners were U.S. citizens and the controlling interest in the partnership was owned by U.S. citizens. The 75 percent American control requirement for a coastwise endorsement remained and, to this extent, the American control requirements for corporations and partnerships were already alike. As a matter of administrative practice, the Coast Guard took the position that, when it was reasonable to do so, the same meaning would be given to "controlling interest" in both the corporate and partnership contexts. A final rule was published (53 FR 17469, May 17, 1988) revising 46 CFR 67.03-5 to implement the American control requirements for partnerships in 46 U.S.C. 12102(a)(3).

On January 11, 1988, the President signed the Anti-Reflagging Act into law. Among other things, this law adds a new American control provision for corporations seeking to document fishing vessels. The new requirement is retroactively effective from July 28, 1987, but includes savings provisions exempting many vessels operating, or under contract for purchase, as fishing industry vessels prior to that date. The statue superseded certain regulations in 46 CFR part 67 that were directly in conflict with it and, to carry out the purpose of the statute, the Coast Guard has been applying the standards in the statute as a matter of administrative practice. All of the changes to documentation regulations mandated by the Anti-Reflagging Act, not relating to controlling interest, have been implemented by prior rulemaking (53 FR 41166, October 20, 1988).

### Discussion of Comments

Eight comments regarding the SNPRM were received during the comment period. Comments were received from an association of fishing vessel owners, members of the committee on marine financing of an association of maritime lawyers, a shipping company, and five law firms. None of the comments expressed dissatisfaction with the rulemaking as a whole. All the comments focused on one or more specific items of concern to the submitter. The comments related to (1) the way "control" is defined in § 67.03-2(a)(1); (2) the practice explained in § 67.03-2(b) of counting only the share of an entity's stock or equity and belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship; (3) the difference between the controlling interest requirements in § 67.03-5 for a partnership seeking to document a vessel for recreation or registry and a partnership seeking to document a vessel for the fishery trade; (4) the meaning of "minority" in § 67.03-9(a)(4); (5) the requirement in § 67.03-9(d)(2)



that more than 50 percent of all the stock, not just voting stock, be owned by citizens; (6) the exceptions in § 67.03-9(f) to the requirement for evidence of Maritime Administration approval in § 67.03-9(e); (7) the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03-15 should run with the vessel; (8) possible modification of the requirements for qualification by partnerships for the citizenship savings provisions in § 67.03-15; and, (9) the statement in § 67.17-9(d) of the circumstances under which a vessel may temporarily lose fishery privileges.

a. *Section 67.03-2(a)(1).* Comments from members of the committee on marine financing of an association of maritime lawyers, and from a law firm, expressed concern that the Coast Guard's explanation of control in proposed § 67.03-2(a)(1) is inconsistent with the definition of control in 46 CFR 221.13(a)(2)(i), which was published by the Maritime Administration (MARAD) as an interim final rule (54 FR 5380, February 2, 1989), and will deter non-citizen lenders from investing in the U.S. flag merchant marine. Both comments cite common covenants included in loan agreements for the protection of the lender that might be construed as granting a non-citizen lender control.

The Coast Guard does not agree that the regulation should be changed. The Coast Guard and MARAD have differing statutory responsibilities with respect to documented vessels. As a result, each agency must define control in a way suggested by its experience and expertise in carrying out its own responsibilities.

The definition of control, for purposes of the Coast Guard regulations, properly encompasses control of the vessel owning entity and not just control of the vessel. The Coast Guard must be concerned with whether the vessel owning entity meets the American control requirements. The citizenship provisions in 46 U.S.C. chapter 121 require that vessel owning entity be American controlled to be eligible to document vessels or to qualify for certain trading privileges. Therefore, control of the entity itself, and not just the vessels it owns, is relevant for purposes of the Coast Guard rule.

On the other hand, the Coast Guard's definition of control generally applies only to parties with an ownership interest in a vessel. For purposes of documentation, citizenship requirements apply to those parties having an ownership interest in a vessel or the entity that owns the vessel. Agreements that vessel owners may have with third parties without any ownership interest are not normally of concern to the Coast Guard, unless the agreement grants so many incidents of ownership to the third party that it must be considered a *de facto* owner. The MARAD definition of control, however, may apply to non-citizens whether or not they have an ownership interest in a vessel because, for certain U.S. vessels, any transfer of control over the vessel to non-citizens may require MARAD approval.

The Coast Guard definition of control will not prevent non-citizen lenders from including common covenants for their protection in loan agreements, unless the lender has an ownership interest in a vessel or a vessel owning entity. The Coast Guard must be concerned about agreements which grant control over the vessel or the vessel owning entity to non-citizens have an ownership interest. In some cases this may mean that certain covenants that grant control to protect the non-citizen's investment will be inconsistent with the non-citizen's participation in the ownership of vessels. However, that limitation is what the law requires.

b. *Section 67.03-2(a)(1).* Comments from members of the committee on marine financing of an association of maritime lawyers, and from a shipping company, suggested that the Coast Guard adopt the "fair inference" test of 46 CFR part 335—pursuant to which MARAD permits corporations to establish that they meet the citizen stock ownership requirements of 46 U.S.C. app. 802—or some similar rule. They assert that it would be difficult for corporations whose stock is publicly traded to establish that 75 percent or more of their stock is owned by U.S. citizens.

The Coast Guard does not agree that a "fair inference" test should be adopted for purposes of vessel documentation. Minimizing the paperwork burden associated with documentation of vessels is a goal supported by the Coast Guard. Accordingly, vessel owning corporations are not routinely required to provide evidence that their stock is owned by U.S. citizens, even to establish eligibility for coastwise or fisheries endorsements. The application for documentation (Form CG-1258), requires only that a vessel owner state, within broad ranges, the amount of stock owned by U.S. citizens.

In the relatively few cases where corporations are required to provide evidence establishing their eligibility, because the Coast Guard has reason to suspect they do not meet stock interest requirements, a presumption in favor of eligibility would not fully satisfy the purpose of the documentation laws. Those laws are meant to be restrictive; they are intended to limit the persons who are eligible to document vessels under U.S. flag and acquire trading privileges. The restrictive purpose of the law would not be well served by a presumption or inference that a corporation is eligible for documentation although it cannot establish that it actually meets all the statutory requirements. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, and any corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard should not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes, and none have been incorporated in the final rule.

c. *Section 67.03-2(b).* Two law firms commented that the Coast Guard should modify its practice of counting only the share of an entity's stock or equity that belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship. They assert that the statutory citizenship requirements do not expressly require the Coast Guard to follow the practice described in § 67.03-2(b). Additionally, House Report 101-487, 101st Congress, 2d Session at 11-12, contains a statement questioning the legal basis for the Coast Guard's practice as it applies to partnership stockholders of a vessel owning corporation.

The comments and the statement in House Report 101-487 only take issue with the rule in question as it applies to corporations seeking to document vessels for the coastwise trade. The comments suggest that the citizenship requirements of proposed subpart 67.03 should be applied only to corporations which own vessels directly, and not to corporations or partnerships which own stock in the vessel owning corporation. With respect to the corporations or partnerships without a direct ownership interest in the vessel, they suggest that only the applicable requirement for citizen ownership of stock or equity should apply.

These suggestions are based on the fact that, for purposes of documenting vessels for coastwise trade, a corporation must meet two distinct statutory citizenship tests. In order to document vessels for any purpose, a corporation must meet the citizenship requirements of 46 U.S.C. 12102. By virtue of provisions in 46 U.S.C. 12106 and 46 U.S.C. app. 883, to document

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vessels for coastwise trade the corporation must also meet the citizenship requirements of 46 U.S.C. app. 802. House Report 101–487 asserts that 46 U.S.C. 12102 applies only to the vessel owning entity, but that the proposed rule improperly mixes the requirements of 46 U.S.C. 12102 with the requirements of 46 U.S.C. app. 802. The comments take essentially the same position.

One of the comments states, in effect, that a corporation, 75 percent of the stock of which is owned by U.S. citizens as 46 U.S.C. app. 802(c) requires, but which otherwise does not meet the citizenship requirements for documentation of vessels for coastwise trade in 46 U.S.C. 12102 and 46 U.S.C. app. 802(a), should be able to own stock in a vessel owning corporation that would count toward meeting the vessel owner's controlling interest requirements. The other comment states that a partnership which is owned 75 percent by citizens, as required by 46 U.S.C. 802(a), but does not qualify to document vessels for coastwise trade because its general partners are not all citizens as required by 46 U.S.C. 12102(a)(3), should be able to own stock in a vessel owning corporation that would count toward meeting the vessel owner's controlling interest requirements.

The Coast Guard does not agree with the assertion that it should not require the corporations owning stock that counts toward meeting American control requirements of a vessel owning corporation to meet citizen officer and director requirements. The Coast Guard does not agree with the assertions that it should not require the partnerships owning stock that counts toward meeting American control requirements of a vessel owning corporation to meet citizen general partner requirements. The Coast Guard does not agree that its practice in this respect is contrary to either 46 U.S.C. 12102 or 46 U.S.C. app. 802.

The fact that, under Coast Guard practice, the citizenship requirements based on 46 U.S.C. app. 802 are essentially the same as the citizenship requirements based on 46 U.S.C. 12102, for corporations documenting vessels for coastwise trade, does not mean that one of the statutes is being misapplied. This is equally true with regard to the citizenship requirements for partnerships documenting vessels for coastwise trade. Although the terms of the two statutory provisions are different, each provides authority for the citizenship requirements contained in the Coast Guard's implementing regulations, which apply equally to a vessel owning corporation and to the owners of the corporation's stock that is counted toward meeting American control requirements. With respect to corporate stockholders, 46 U.S.C. app. 802 expressly requires that they meet officer and director requirements that are the same as those in 46 U.S.C. 12102(a)(4), in addition to the controlling interest test. Regarding partnership stockholders, 46 U.S.C. app. 802 does not expressly require that all general partners of a partnership be citizens of the United States, as 46 U.S.C. 12102(a)(3) does, but it includes general provisions that authorize such a requirement.

According to 46 U.S.C. app. 802(a), no corporation or partnership "shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States." Moreover, "no corporation * * * shall be deemed a citizen of the United States * * * unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are non-citizens." Therefore, the terms of 46 U.S.C. app. 802(a) clearly support application of the officer, director, and controlling interest requirements to the parent corporation of a vessel owning corporation. Accordingly, for the controlling interest in a subsidiary corporation to be owned by a citizen of the United States, the parent corporation must meet both the controlling interest and the officer and director requirements. That is exactly the result achieved by the Coast Guard regulation at issue.

With respect to partnerships, 46 U.S.C. app. 802(a) provides less detailed guidance than it does for corporations. It specifies only a controlling interest test. The controlling interest test for partnerships is not defined as it is for corporations in 46 U.S.C. app. 802 (b) and (c). Therefore, the statute grants the administrating agencies considerable discretion to decide how the controlling interest test should be applied to partnerships, to ensure American control. Although not expressly applicable to partnerships, 46 U.S.C. 802 (b) and (c) are generally helpful in determining how the controlling interest requirements should be applied to partnerships.

In its discretion, the Coast Guard has determined that the factors which may appropriately be considered in deciding if a partnership meets the controlling interest test are not limited to legal ownership of equity. A partnership that, as a matter of form, meets the requirement for 75 percent ownership of equity by citizens may still fail the controlling interest test because, in substance, control is vested in non-citizens. As with the definition of controlling interest for purposes of corporations in 46 U.S.C. app. 802(c), which affirmatively requires consideration of factors other than legal ownership of stock, the definition of controlling interest for purposes of partnerships may properly include consideration of factors other than legal ownership of equity. In the case of a corporation, the Coast Guard must consider "if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States" or "if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States." 46 U.S.C. app. 802(c). The Coast Guard construes the controlling interest requirement for partnerships in 46 U.S.C. app. 802(a) as similarly limiting noncitizen control. Considering the degree of control general partners can exercise in a partnership, there is a rational basis for the Coast Guard's rule that a partnership with a noncitizen general partner exceeds these limits on noncitizen control.

The rule that a partnership, even a partnership that only owns stock in a vessel owning corporation, does not qualify as a citizen if there are any noncitizen general partners, is not a new Coast Guard position. A final rule published May 17, 1988 (53 FR 17467) stated that a partnership would qualify to document vessels for coastwise trade if "all its general partners are citizens and the controlling interest in the partnership is owned by citizens of the United States" and "at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who, if applying for a license to engage in (that trade), would each qualify as a citizen under this subpart." 53 FR 17470. In substance, that regulation—which is presently in effect (see 46 CFR 67.03–5(a) (1989))—is identical to the rule in question. The preamble to that rulemaking states:

> The final rule makes it clear that a coastwise or Great Lakes license will not be granted for a vessel owned by a partnership unless all of the general partners are U.S. citizens and at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who could each qualify for a coastwise license in their own right. This approach does not detract from the requirements of 46 app. U.S.C. 802 in any way and *reflects the same policy which the Coast Guard and its predecessor agency have followed since the Shipping Act of 1916, as amended, was enacted.*

53 FR 17468 (emphasis added). This final rule, therefore, is consistent with the Coast Guard's longstanding construction of 46 U.S.C. app. 802 and is the same, in substance, as the regulation it supersedes.

In addition to the fact that these citizenship requirements are consistent with longstanding practice and are not contrary to 46 U.S.C. app. 802, they prevent easy circumvention of the requirements of 46 U.S.C. 12102. Were the Coast Guard to adopt the position the comments suggest, a corporation with 75 percent of its stock owned by citizens, that is ineligible to document vessels for any purpose because it does not meet the citizen officer and director requirements of 46 U.S.C. 12102(a)(4), would be able to document vessels for coastwise trade by the simple expedient of setting up a wholly owned subsidiary corporation that meets the citizen officer and director requirements. Similarly, a partnership with 75 percent of its equity owned by citizens, that is ineligible to document vessels for any purpose because all of its general partners are not citizens as required by 46 U.S.C. 12102(a)(3), would be able to document vessels for coastwise trade by the simple expedient of setting up a wholly owned subsidiary corporation that meets the requirements of 46 U.S.C. 12102. Such a loophole would make the citizenship requirements of 46 U.S.C. 12102(a)(3) and 12102(a)(4) so easy to evade that they would be virtually meaningless as a practical matter. Neither the comments nor the statement in House Report 101–487 provides good reasons for the Coast Guard to change ist longstanding practice in favor of a practice which would render these provisions largely ineffective.

The final rule will continue to adhere to the Coast Guard's practice of counting only the share of an entity's stock or equity that belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship.

d. *Section 67.03–5.* A comment from a law firm questioned the small difference between the controlling interest test partnerships must meet to qualify as a citizen for documentation purposes generally, and the controlling interest test partnerships must meet to qualify as a citizen that may document vessels for the fisheries. As § 67.03–5(a)(1) states, at least 50 percent of the equity in a partnership must be owned by citizens for it to be eligible to document vessels for any purpose. However, to document vessels for the fisheries, § 67.03–5(a)(3) requires that more than 50 percent of the equity in the partnership be owned by citizens. The comment suggests that there is no good reason for this small difference.

The Coast Guard considered changing the controlling interest requirement for partnerships generally to more than 50 percent in this rulemaking. It is a change the Coast Guard is likely to propose in the future. However, the at least 50 percent controlling interest rule is an existing rule that has been in effect since May 17, 1988 (53 FR 17469). This rulemaking was intended to make only substantive changes required, or suggested, by the Anti-Reflagging Act. The Anti-Reflagging Act suggested the more than 50 percent controlling interest test for partnerships seeking to document vessels for the fisheries, because it prescribed a similar test for stock ownership of corporations. It did not address the broader issue of controlling interest beyond eligibility for a fisheries endorsement. Therefore, the Coast Guard determined not to propose other changes to the controlling interest tests for partnerships in this rulemaking.

e. *Section 67.03–9(a)(4).* An association of fishing vessel owners commented that under one meaning of the word "minority" § 67.03–9(a)(4) might be construed to permit up to one-half the total number of directors to be non-citizens. The comment encourages the Coast Guard to change the rule to avoid any possibility of misinterpretation. The Coast Guard does not agree that the rule should be changed. A corporation will qualify as a citizen if it meets other requirements and, as § 67.03–9(a)(4) states, "[n]o more of its directors are non-citizens than a minority of the number necessary to constitute a quorum." This language was taken verbatim from 46 U.S.C. 12102(a)(4) and is sufficient to inform the public of what the statute requires. The statute and the regulation are both based on the premise that the board of directors, and any quorum, will consist of a group of citizens and a group of non-citizens. When a quorum is made up from these two groups, the group which is smaller in number will constitute a minority. If the two groups are equal there is no minority. Therefore, whatever number is required for a quorum, less than half that number will constitute a minority of the number required for a quorum. For example, if the number required for a quorum is six, a minority of the number required for a quorum is two. If there were three directors in each group their numbers would be even and there would be no minority. Consequently, for the citizenship requirments to be met in such a case, no more than two directors of the corporation could be non-citizens. In the context in which it applies, the rule is clear.

f. *Section 67.03–9(d).* A comment from a law firm states that § 67.03–9(d) is confusing because while it emphasizes the requirement for citizen ownership of a majority of voting stock, it also requires citizen ownership of a majority of all categories of stock; voting and non-voting. Addtionally, § 67.03–2 states that the stock interest requirements apply to all categories of stock. The comment asserts that only voting shares should be subject to the requirement for majority ownership by citizens, in this instance.

The Coast Guard does not agree. Section 67.03–9(d) is intended to require that more than 50 percent of the stock interest in the corporation be owned by citizens, and it states this requirement clearly. In accordance with § 67.03–2(a), stock interest includes all classes of stock as a whole, not just voting stock. As the comment suggests, 46 U.S.C. 12102(c)(1) and (2)—the provisions this regulation implements—are contradictory on this point. Section 12102(c)(1) suggests that the requirement for majority ownership of stock applies only to voting stock. However, section 12102(c)(2) requires application of restrictions on non-citizen stock ownership that include all classes of stock as a whole. The Coast Guard has concluded that the intent of sections 12102(c)(1) and (2) can be effectuated by requiring that both a majority of voting stock and a majority of the stock of the corporation as a whole be owned by citizens. The Coast Guard recognizes that Congress could have achieved this result without including the parenthetical language in section 12102(c)(1), which suggests a type of qualified controlling interest that only requires citizen ownership of a majority of voting stock. On the other hand, the Coast Guard would not be applying "the restrictions on controlling interest in (46 U.S.C. app. 802(b))", as section 12102(c)(2) requires, if it read out the provisions dealing with ownership of all stock. The Coast Guard has determined that 46 U.S.C. 12102(c) can reasonably be interpreted to require compliance with both the qualified controlling interest standard of section 12102(c)(1) and the longstanding controlling interest

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standard of 46 U.S.C. app. 802(b). Proposed § 67.03–9(d) reflects this determination and no change is made in the final rule.

g. *Sections 67.03–9(e) and (f).* A comment from a law firm stated that the exceptions in § 67.03–9(f) to the requirement for evidence of MARAD approval in § 67.03–9(e) give little guidance and leave many issues unresolved. The intent, of § § 67.03–9(e) and (f), is to ensure that statutory requirements for MARAD approval of certain vessel transactions are being complied with. MARAD has regulations in 46 CFR part 221 which fully explain these requirements. Therefore, the Coast Guard has determined that it is more appropriate to reference the MARAD regulations than to try to restate them. Moreover, the requirements for MARAD approval are not limited to transactions involving corporations. The Coast Guard's policy of obtaining evidence of MARAD approval, whenever required, is better served by a rule applicable to all types of vessel ownership. Accordingly, in the final rule § § 67.03–9(e) and (f) have been combined, revised, and moved to a new § 67.03–17.

h. *Section 67.03–15.* Comments from two law firms agreed with the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03–15 should run with the vessel. Comments from another law firm disagreed with that position. The comments are similar to those received on this subject in response to the NPRM published October 20, 1988 (53 FR 41211). The Coast Guard's reasons for adhering to its position were explained at length in the SNPRM published October 13, 1989 (54 FR 41992, 41993–94), and are still valid. The Coast Guard is continuing to adhere to its position, because it remains convinced that the straightforward language of the Anti-Reflagging Act's citizenship savings clause correctly reflects Congress' intent and is determinative of the issue. In addition to being disputed in the rulemaking process, the Coast Guard's position has been challenged in court and is the subject of on-going litigation.

The plain language of the American control savings provision provides no basis for concluding that its protection should terminate because of a change of ownership or control, but the comment which disagrees with the Coast Guard's position asserts that the Coast Guard should not be guided by the provision's plain meaning. Instead, the Coast Guard is urged to read between the lines and administratively adopt a rule that the savings provision's protection terminates when there is a change of ownership or control. The comment states that the Coast Guard's interpretation of the American control savings provision is not a permissible construction because it makes no sense in light of the legislative purpose; that being to increase domestic control over U.S. fisheries resources and encourage displacement of foreign fishing activity. The comment also suggests that the legislative history does not permit the Coast Guard's position.

There are several reasons why the Coast Guard is unpersuaded by these arguments. In the first place, it is not proper to invoke the broad purposes of a statute to overrule a specific provision of that statute. This should be particularly true in the case of a grandfather provision. Grandfather provisions are intended to mitigate new statutory requirements and, by their nature, typically conflict with the broad purposes of the statutes they affect. Moreover, even if the Coast Guard had determined that it could not accurately discern the intent of Congress from the plain language of the American control savings provision, but needed to consider the legislative history as well, its position would still be reasonable. The legislative history does not compel the conclusion that Congress intended the protection of the savings provision to terminate when there is a change of ownership or control. The Coast Guard could also reasonably conclude from the legislative history that the protection should run with the vessel, in keeping with the plain language of the American control savings provision.

Although the Coast Guard has based its position on the plain language of the American control savings provision, it is very familiar with the legislative history of the Anti-Reflagging Act. The Coast Guard responded to questions at Senate Hearings on April 28, 1987, testified at House Hearings on April 29, 1987, and followed the progress of this legislation through to final enactment. The purpose of the Anti-Reflagging Act is not as clear cut as the comment which disagrees with the Coast Guard's position would make it seem. As Congressman Young of Alaska, one of the sponsors of the Anti-Reflagging Act stated, "this bill is a carefully crafted compromise between diverse interests in the fishing and maritime industries." 133 Cong. Rec. H9811 (daily ed. Nov. 9, 1987). There certainly were differences of opinion about what "Americanization" of the fishing industry meant and how it could best be achieved.

The need for an American control provision for fishing vessels was one of the most controversial issues. The bill considered in the Senate Hearing contained no American control provision. At the House Hearing, on a bill that included an American control provision which did not apply to vessels documented before November 1, 1986, the testimony included strong reservations about the need for an American control provision. Since the legislative history shows that the Anti-Reflagging Act was a carefully crafted compromise, the Coast Guard does not agree with the assertion that the plain language of the American control savings provision is necessarily inconsistent with the broad purposes of the statute, even though it would permanently exempt many existing U.S. fishing vessels from the new American control requirement.

The legislative history of the Anti-Reflagging Act does not require the Coast Guard to change its position. While it is true that the House Report states in one place that exemption from the American control requirements should terminate on a change of ownership or control, H.R. Rep. 423, 100th Cong., 1st Sess. 17 (1987), the legislative history also contains material which supports the plain language of the American control savings provision. For instance, the House Report states that a "Date Certain" Amendment was adopted which essentially established the effective date of the Anti-Reflagging Act as July 28, 1987. All of the savings provisions in the Anti-Reflagging Act reflect the choice of that date as the time from which the new law would take effect. Congressman Young described the purpose of the "Date Certain" Amendment as follows: "The Committee on Merchant Marine and Fisheries chose the date of July 28, 1987, as a cutoff in order to avoid any semblance of a taking of a vessel-owner's privileges under the law." 133 Cong. Rec. H9812 (daily ed. Nov. 9, 1987).

The original purpose of the Anti-Reflagging Act was to prevent foreign-built fish processing vessels from changing from foreign flag to U.S. flag, but the "Date Certain" Amendment makes it clear that the prohibition against documentation of foreign-built fish processing vessels only applies to vessels newly documented after July 27, 1987. Foreign-built processing vessels which were documented prior to July 28, 1987 are exempt from the new U.S.-built requirement, and that exemption does not terminate on a change of ownership or control. In this instance it is clear that when Congress limited the application of the new U.S.-built requirement to "newly documented" vessels it intended to include only vessels documented under U.S. law for the first time after July 27, 1987. Vessels which had previously been documented under U.S. law, even if they were redocumented later—because of a change of ownership for example—are not subject to the new U.S.-built requirement. Similarly, the new American control requirements should be understood as applying only to "newly documented" vessels, and not to vessels that have qualified for grandfathering but later change ownership.



Statements made on the House floor, after the House Report was issued, indicate that, despite the contrary language in the House Report, the American control requirement would only apply to vessels that were newly documented after July 27, 1987. Congressman Young stated that the American control provision "requires as a condition of new documentation that a fishing industry vessel be owned in the majority by individuals who are citizens of the United States." 133 Cong. Rec. H9812 (daily ed. Nov. 9, 1987). Congressman Jones stated that "as a condition of new documentation [H.R. 2598] requires majority ownership of fishing industry vessels by individuals who are citizens of the United States." *Id.* at H9813.

The clearest exception to the "Date Certain" Amendment's rule that vessels documented before July 28, 1987 are exempt from the provisions of the Anti-Reflagging Act is the provision penalizing foreign rebuilding. In that case, there is support, both in the text of the rebuilding savings provision and in the legislative history, for the position that the new rebuilding requirements apply to all fishing vessels regardless of when they were first documented under U.S. flag, and only grandfathered rebuilding projects are exempt. The suggestion that there is an unexplained disparity between the Coast Guard's position on the rebuilding savings provision and the American control savings provision is answered by the fact that, in the case of the rebuilding savings provision, there is clear support in both the plain language of the provision and its legislative history for the limited scope of the exemption. That is not the case with the American control savings provision, and the difference in interpretation is, therefore, justified.

The explicit and detailed limitations on grandfathered rebuilding projects contained in the text of the rebuilding savings provision contrasts starkly with the lack of explicit language in the American control savings provision indicating that its protection is limited. Moreover, the legislative history for the rebuilding savings provision clearly limits its protection to "those who have relied on current laws and who have made certain identifiable commitments toward rebuilding fishing, fish processing, and fish tender vessels in foreign yards." H.R. Rep. 423, 100th Cong., 1st Sess. 12 (1987). This limiting language does not apply to the American control savings provision, although the comment disputing the Coast Guard's position seems to imply that it does.

Based on the plain language of the American control savings provision the Coast Guard's position that the exemption from the new American control requirement runs with the vessel is reasonable. It would be reasonable, even if the intent of Congress could not be accurately discerned from the plain language of the American control savings provision. Neither the broad purpose of the legislation, nor the legislative history, compels a different position. Therefore, it remains the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03–15 runs with the vessel, and does not terminate because of a change in ownership or control.

i. *Section 67.03–15.* A comment from a law firm suggested that the criteria for eligibility for the savings provision in § 67.03–15 should be modified for vessels owned by partnerships, to reflect the date of publication of the final rule. If the suggestion were adopted, a vessel owned by a partnership would qualify for grandfathering under the regulation if it was documented and engaged in the U.S. fishery, or under contract for purchase for that use, when the final rule was published rather than as of July 28, 1987.

The Coast Guard does not agree that the regulation should be modified. Unlike corporations, partnerships seeking to document vessels for any purpose are required to meet a controlling interest test. This controlling interest requirement for partnerships pre-dates the Anti-Reflagging Act. Therefore, the controlling interest requirement for partnerships seeking to document vessels with a fisheries endorsement is not something newly imposed by the Anti-Reflagging Act. It is true, however, that with the Anti—Reflagging Act in mind the Coast Guard is changing the required citizen ownership of equity in a partnership for purposes of eligibility for fisheries endorsements from 50 percent to more than 50 percent. The Coast Guard has also proposed to exempt partnerships which own grandfathered vessels from the new requirement in the same manner that the Anti-Reflagging Act provides an exemption for corporations.

Since the controlling interest requirement for partnerships is not new, and the Coast Guard is merely reinterpreting a requirement that has been imposed on partnerships since 1962, there is no requirement for grandfather protection. The agency decision to reinterpret this statutory requirement in light of subsequent legislative developments is nothing so extraordinary that the new interpretation should not be applied to partnerships generally. The new regulatory requirement properly can, and will, apply from the effective date of this final rule. However, because the new requirement involves a change of less than one percent, the Coast Guard expects very few partnerships to have to restructure or surrender vessel documents as a result of the change. Partnerships, generally, will have to meet the requirements of the new controlling interest regulations. Only partnerships owning a vessel that qualifies for grandfathering under § 67.03–15 will be exempt from the new requirement.

Another law firm commented that a partnership owning a vessel that qualifies for grandfathering under § 67.03–15 should be able to document that vessel for the fisheries, even if one of the entities contributing to the equity interest requirements is a corporation whose stock is 100 percent foreign owned. The comment suggests that § 67.03–2(b) be changed to explicitly address this situation. The Coast Guard does not agree that this change is needed. Section 67.03–2(b) already states that an entity which is a citizen eligible to document a vessel in its own right with the endorsement sought can contribute to meeting equity interest requirements. In the case of a vessel grandfathered under § 67.03–15, the corporation certainly could be a citizen eligible to document the vessel with a fisheries endorsement. If it is, the corporation can contribute to meeting the partnership's equity interest requirements.

The final rule includes a minor change to § 67.03–05. This regulation was never intended to permit vessels to be documented without establishing that the vessel qualifies for the exemption. The change makes it clear that the section only applies if the Secretary of Transportation or the Secretary's delegate has determined that the vessel meets the specified requirements.

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j. *Section 67.17–9(d).* A comment from a law firm stated that § 67.17–9(d) could be made more specific. That section is intended to describe the circumstances under which a vessel may temporarily lose its eligibility for a fisheries endorsement. That occurs when the vessel is owned by an entity which does not meet the citizenship requirements for documenting a vessel for the fisheries trade. However, the proposed regulation referred generally to the citizenship requirements of subpart 67.03, which include other unrelated citizenship requirements. The Coast Guard agrees that § 67.17–9(d) should be changed to more specifically identify the citizenship requirements to which it refers, and the final rule incorporates such a change.

k. A comment was received well after the comment period closed, from an attorney whose practice includes maritime issues. This comment asserts that the Coast Guard has provided no reason for its decision to propose a complete revision of subpart 67.03, and that the revision constitutes a reconsideration by the Coast Guard of all the citizenship requirements. The comment states that this raises questions about why the revision is needed, and requires review of all of the laws on which the citizenship requirements are based. The comment also suggests that in many instances the citizenship regulations do not properly interpret or implement statutory requirements. The comment also proposes several specific changes. This comment has been considered even though it was not received during the comment period.

Regarding the comment's general assertions, the Coast Guard has previously explained why a revision of subpart 67.03 was needed. In the SNPRM (54 FR 41992, 41995, October 13, 1989), the Coast Guard stated in response to a comment on the NPRM (53 FR 41211, October 20, 1988) that it had "determined that a thorough revision of subpart 67.03 is needed to better explain the American control requirements." Subpart 67.03 has not been comprehensively revised since 1982 (47 FR 35488, August 16, 1982), although there have been several statutory changes in the intervening period. The comments received in response to the NPRM, and the Coast Guard's own administrative experience, indicated that revision of the subpart could make the rules more informative and uniform.

By and large, the Coast Guard did not reconsider or make substantive changes to existing regulations. The changes made, and the reasons for them, were fully explained in the preamble to the SNPRM. The substantive changes made are those necessary to implement the Anti-Reflagging Act and some conforming changes suggested by the Anti-Reflagging Act's new requirements. Non-substantive revisions were made so that the regulations would better explain the Coast Guard's existing practice, to improve the organization of the subpart, and to make the regulations more uniform. Therefore, the broad assertion that the Coast Guard has reconsidered and changed citizenship requirements without any corresponding statutory changes is incorrect. The Coast Guard does not agree with the assertion that in many instances the proposed regulations do not properly interpret or implement the underlying statutes.

The comment suggests that § 67.03–1 should be changed to refer to "citizen of the United States" rather than "United States citizens" and to more clearly indicate that in subpart 67.03 "citizen" means a "United States citizen." The Coast Guard does not agree that the regulation needs to be changed. The documentation laws establish unique citizenship requirements. Those requirements are defined in subpart 67.03. If a person or entity meets the applicable requirements of subpart 67.03 it will be eligible to document vessels and obtain certain trading privileges, regardless of whether it is labelled a "citizen of the United States", a "United States citzen" or a "citizen." In fact, general use of the term "citizen of the United States" in this context might create confusion with other laws. For instance, a corporation whose stock is owned 100 percent by non-citizens may be a citizen for documentation purposes, although it would not qualify as a "citizen of the United States" for purposes of 46 U.S.C. App. 802. "Citizen" is generally used throughout subpart 67.03 to indicate a person or entity which meets the requirements of subpart 67.03.

The comment raises several objections to the guidance in § 67.03–2. The Coast Guard does not agree that this section needs to be changed. Some of the comments are similar to comments regarding the definition of control in § 67.03–2(a)(1) received during the comment period that have previously been addressed. Another comment is based on the mistaken impression that the guidance in § 67.03–2 would be repeated in other sections.

The definition of control in § 67.03–2(a)(1) does not simply repeat the pertinent parts of 46 U.S.C. chapter 121 verbatim, because the regulation is intended to give a fuller explanation of the controlling interest requirements. The Coast Guard interprets controlling interest, to the extent it reasonably can, in a manner that is consistent with 46 U.S.C. app. 802. That interpretation is properly reflected in the definition of control in § 67.03–2(a)(1).

The comment suggested changing § 67.03–3 to eliminate the catch-all phrase "or otherwise qualifies as a United States citizen" and replace it with other specific instances in which an individual may be a citizen of the United States. The Coast Guard prefers the current rule. The catch-all language permits the Coast Guard to determine, on a case-by-case basis, if an individual qualifies as a citizen, otherwise than as a native-born, naturalized or derivative citizen.

The comment raises several objections to the requirements of § 67.03–5. The comment suggests that equity owned by limited partners should not be considered in determining if the partnership meets American control requirements. That would be inconsistent with § 67.03–2(a) which states that the stock or equity interest requirements encompass ownership of equity, without exceptions. The Coast Guard does not agree that § 67.03–5 should be changed. The Coast Guard's interpretation of controlling interest is proper.

The comment suggests eliminating the requirement that the beneficiaries of a trust be citizens for the trust to qualify as a citizen. The Coast Guard does not agree. This has been Coast Guard's position on trusts since at least 1982 (47 FR 27490, 27496; 48 FR 56318, 56319). The comment presents no persuasive reasons for changing this longstanding rule.

The comment approves § 67.03–9(a)(2) but not the Coast Guard's position that if a corporation has both a president and a chief executive officer both must be citizens. This requirement is based on 46 U.S.C. 12102(a)(4) which is properly construed as encompassing both the corporation's president and its chief executive officer, if there is a chief executive officer other than the president. The comment states that the regulation does not clearly encompass both. The Coast Guard agrees that the final rule should be changed to clearly state that if a corporation has both a president and chief executive officer, then both must be citizens for the corporation to meet citizenship requirements.

The comment suggests that § 67.03–9(b)(2) be changed to specifically include voting stock in the stock interest requirement. However, § 67.03–2(a) already defines stock interest as including voting stock. Therefore, the suggested change would be redundant. The comment includes suggested changes to the stock interest requirements of § 67.03–9(d)(2) which are similar to changes suggested in comments received during the comment period that have previously been addressed.

The comment suggests adding to §§ 67.17–5(c)(1) and § 67.17–7(c)(1) language regarding the effect of placing a vessel under foreign registry. However, the additional language would be redundant with §§ 67.17–5(c)(2) and 67.17–7(c)(2). Otherwise, the suggested changes do not improve these sections and they have not been incorporated in the final rule.



### E.O. 12291 and DOT Regulatory Policies and Procedures

The Coast Guard considers this rulemaking to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The only significant substantive changes in this rulemaking are changes in American control requirements for vessel documentation mandated by statute.

### Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Regulatory Flexibility Act

Since the impact of this rulemaking is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of these regulations. There is no significant economic impact, however, because this rulemaking implements the Anti-Reflagging Act's American control savings provisions. The savings provisions protect those who were operating fishing industry vessels under documentation in the United States fisheries, or who made verifiable commitments to purchase vessels for use as fishing industry vessels in the United States fisheries, based on the laws and regulations in existence prior to enactment of the Anti-Reflagging Act.

### Paperwork Reduction Act

This rulemaking contains no collection of information requirements.

### Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that under section 2–B–2.1. of Commandant Instruction M16475.1B this rulemaking is categorically excluded from further environmental documentation. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

### List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR part 67 is amended as follows:

## PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103; 46 U.S.C. App. 841a, 876; 49 U.S.C. 322; 49 CFR 1.46.

2. Subpart 67.03 is revised to read as follows:

### Subpart 67.03—Citizenship Requirements for Vessel Documentation

Sec.


67.03–1 Requirement for citizen owner.
67.03–2 Stock or equity interest requirements.
67.03–3 Individual.
67.03–5 Partnership, association, or joint venture.
67.03–7 Trust.
67.03–9 Corporation.
67.03–11 Governmental entity.
67.03–13 Evidence.
67.03–15 Citizenship savings provision for fishing vessels.
67.03–17 Evidence of Maritime Administration Approval.


### Subpart 67.03—Citizenship Requirements for Vessel Documentation

#### § 67.03–1 Requirement for citizen owner.

Certificates of Documentation are available only to vessels which are wholly owned by United States citizens. For purposes of obtaining a Certificate of Documentation, the persons and entities discussed in §§ 67.03–3 through 67.03–9 of this subpart are citizens.

#### § 67.03–2 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: Title to all classes of stock as a whole; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: Stock is subject to trust or fiduciary obligations in favor of [non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power, or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(1) For the purpose of this section, control includes an absolute right to direct corporation or partnership business, to limit the actions of or replace the chief executive officer, a majority of the board of directors or any general partner, to direct the transfer or operations of any vessel owned by the corporation or partnership, or otherwise to exercise authority over the business of the corporation or partnership, but not the right to simply participate in these activities or the right to receive a financial return, i.e., interest or the equivalent of interest, on a loan or other financing obligations.

(b) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

#### § 67.03–3 Individual.

An individual is a citizen if he is a native-born, naturalized, or derivative citizen of the United States, or otherwise qualifies as a United States citizen.

#### § 67.03–5 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or a recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise or Great Lakes endorsement, at least 75 percent of the equity interest in the partnership is owned by citizens;

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(3) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

**§ 67.03-7 Trust.**

A trust arrangement fulfills the citizenship requirements if each of its trustees and each of its beneficiaries is a citizen.

**§ 67.03-9 Corporation.**

(a) A corporation is a citizen for the purposes of obtaining a registry or a recreational endorsement if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its president and, if the president is not the chief executive officer, its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) A corporation is a citizen for the purposes of obtaining a coastwise or Great Lakes endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the requirements of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of subpart 68.01 of this subchapter.

(d) A corporation is a citizen for the purposes of obtaining a fishery endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

**§ 67.03-11 Governmental entity.**

A governmental entity is regarded as a citizen if it is a government of the United States as defined in § 67.01-1 of this part.

**§ 67.03-13 Evidence.**

An original Form CG-1258 establishes a rebuttable presumption that the applicant is a United States citizen.

**§ 67.03-15 Citizenship savings provision for fishing vessels.**

A corporation that meets the requirements of paragraph (d)(1) of § 67.03-9 of this subpart but does not meet the requirements of paragraph (d)(2) of that section, or a partnership that meets the requirements of paragraph (a)(1) of § 67.03-5 of this subpart but does not meet the requirements of paragraph (a)(3) of that section, may nonetheless be eligible to obtain a fishery endorsement for a vessel if the Secretary of Transportation, or the Secretary's delegate, determines that, prior to July 28, 1987, the vessel:

(a) Was documented under 46 U.S.C. chapter 121 and operating as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a); or

(b) Was contracted for purchase for use as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a), if the purchase is shown by the contract or similarly reliable evidence to have been made for the purpose of using the vessel in the fisheries.

**§ 67.03-17 Evidence of Maritime Administration Approval.**

Although meeting the citizenship requirements of this subpart, a vessel's owner may not document a vessel which is documented, or was last documented, under the laws of the United States if, since the vessel was last documented, any transaction requiring Maritime Administration approval in accordance with 46 CFR part 221 has occurred, unless it evidences that the Maritime Administration has approved the transaction.

3. Section 67.17-5 is amended by revising paragraph (c)(1) to read as follows:

**§ 67.17-5 Coastwise license.**

* * * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as defined in §§ 67.03-3; 67.03-5(a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

4. Section 67.17-7 is amended by revising paragraph (c)(1) to read as follows:

**§ 67.17-7 Great Lakes license.**

* * * * *

(c) * * *

(1) It is thereafter sold in while or in part to an owner that is not a citizen as defined in §§ 67.03-3; 67.03-5(a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

5. Section 67.17-9 is amended by adding a new paragraph (d) to read as follows:

**§ 67.17-9 Fishery license.**

* * * * *

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of subpart 67.03 of this part for purposes of obtaining a fishery endorsement, except that a vessel eligible for a fishery endorsement in accordance with § 67.03-15 of this part does not lose its eligibility for a fishery endorsement during any period it is owned by an entity that fails to meet the stock or equity interest requirements of §§ 67.03-5(a)(3) or 67.03-9(d)(2) of this part but otherwise qualifies as a citizen.

6. Section 67.23-9 is amended by revising paragraph (a)(3) to read as follows:

**§ 67.23-9 Requirement for deletion.**

(a) * * *

(3) Any owner of the vessel ceases to be a citizen within the meaning of §§ 67.03-3; 67.03-5(a)(1) (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

Dated: June 18, 1990.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90-29073 Filed 12-11-90; 8:45 am]

BILLING CODE 4910-14-M

federal register

Wednesday
December 12, 1990

Part VI

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 800**

**Medical Devices; Patient Examination and Surgeon's Gloves; Adulteration; Final Rule**

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 88N-0443]

## Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to: (1) Define adulteration for patient examination and surgeons' gloves; and (2) establish the sample plans and test method the agency will use to determine if these gloves are adulterated as defined by the rule. With the prevalence of human immunodeficiency virus (HIV) infection and the risk of clinical transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection in health care settings is crucial. The public health will benefit through improved quality control of these protective barriers.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 8600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: On November 21, 1989 (54 FR 48218), FDA published in the Federal Register a proposed rule to: (1) Define adulteration for patient examination gloves and surgeons' gloves; and (2) establish the sample plans and the test method the agency will use to determine if these gloves are adulterated as defined in the proposed rule. FDA invited interested persons to comment on the proposed rule by December 21, 1989. FDA received 10 comments. A summary of these comments and FDA's response to them is set forth below.

It is estimated that between 1 and 1.5 million persons in the United States are infected with the human immunodeficiency virus (HIV) (Ref. 1). HIV is transmitted primarily through sexual contact; however, nonsexual transmission has occurred in health care settings as a result of contact with infected blood. Additionally, HIV has been isolated from other body fluids in addition to blood. With the prevalence of HIV infection and the risk of clinical transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection in health care settings is crucial.

The expectation of health care workers, as expressed by the Surgeon General, the Centers for Disease Control (CDC), and health professional organizations such as the American Medical Association, is that patient examination and surgeons' gloves, collectively referred to as medical gloves, will provide effective protection against exposure to the microorganisms in blood and other body fluids. Such reasonable expectations of barrier protection cannot be met if medical gloves contain rips, tears, small holes, or other defects, which allow the passage of fluids and fluid-borne microorganisms, and which ultimately permit exposure to health care workers and patients to pathogens that wearing of the gloves is intended to avoid.

On August 21, 1987, CDC published a report that emphasized the need for all health care workers to routinely use appropriate precautions when contact with blood or other body fluids of any patient is anticipated (Ref. 2). The CDC report recommends that health care workers wear medical gloves (1) when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients, (2) in handling items or surfaces soiled with blood or other body fluids, and (3) in performing venipuncture and other vascular access procedures (Ref. 2).

Data are inconclusive regarding the relationship between leakage defects in medical gloves and transmission of HIV infection; however, the CDC recommendations clearly show that leakage defects in medical gloves have the potential for transmission of HIV between patients and health care workers.

Because of the emphasis in the CDC recommendations on medical gloves as a barrier to HIV, as well as to Hepatitis B virus and other blood-borne infectious agents, and the general need for greater assurance against transmission of pathogens between patients and health care workers, FDA believes it is imperative that the gloves worn by health care workers, including operating room personnel, provide an effective barrier to the transmission of infectious agents. Because medical gloves are intended as an effective barrier against the transmission of disease and because gloves labeled as medical gloves communicate that intended use to user, manufacturers should strive to produce medical gloves which are free from defects.

FDA has determined that glove defects, such as holes, which may not be readily detectable by the users of the gloves, can compromise the effectiveness of the glove barrier and result in patients and health care workers being exposed to infection. Articles written by health professionals who have studied the quality of gloves and their role as a barrier to infectious agents note that, although clinicians expect gloves to protect them, and routine appropriate use of gloves can reduce the risk of infections by blood or other body fluid-borne agents, this protection may not be provided by gloves with defects (Refs. 3 through 7).

Lots of gloves that are rejected based on FDA's sample plans and testing using the method in 21 CFR 800.20 would be adulterated within the meaning of section 501(c) of the act, and would be subject to regulatory action, such as detention of imported products, administrative detention of imported products held domestically, seizure, injunction, or criminal prosecution of manufacturers and individuals responsible for such adulterated products.

### I. Acceptable Quality Level

1. One comment said that FDA should use the statistical lot tolerance per cent method (LTPD) series in MIL–STD–19500 as the basis of establishing the acceptance/rejection criteria. The comment suggested that this would provide greater protection to the consumer than acceptable quality levels (AQL).

Because the probability of acceptance for lots of a given quality can be determined from the operating characteristic curve, the consumer's risk for a given plan can be calculated. The limits were chosen in such a way that the results of FDA testing in its field laboratories would be reproducible. Medical gloves are a more heterogeneous product than some others which are being tested and the inherent variability is such that lower testing criteria are not reproducible. The limits chosen are intended to provide a standard level of quality which FDA can support through reproducible testing. Because the primary failure mode for gloves is a tear or puncture from external causes and because the percentage of such failures is much larger than the probability of leakage, FDA intends to test for leakage at a given rate to establish a baseline level of quality. The industry is encouraged to improve these limits as much as practical.

2. One comment said that the 4 percent AQL for examination gloves is too high and that it should be 2.5 percent. Another comment said that the AQL should be reduced to 1 or 1.5 percent and that it should be the same for surgeons' and patient examination gloves.

As stated in the preamble to the proposed rule, FDA believes that the difference in the AQL for the two types of gloves is justified by the greater exposure of surgeons and their gloves to blood and the internal areas of the body and the longer periods of exposure to these conditions. FDA believes that the AQL's established by the proposed rule are appropriate at this time, when balancing the need for defect-free gloves against the need for continued availability of gloves. FDA will continue to monitor the situation and may change the AQL's in the future, if appropriate.

### II. Sampling Plan

3. Several comments questioned the choice of a sampling plan. One comment asked generally what the basis was for the sampling plan chosen; another questioned what the basis was for choosing a multiple sampling plan. Another comment said that FDA should use the S–4 inspection level and one more said that level II should be used for visual defect inspection only, while level S–4 should be used for the watertight inspection.

FDA believes that it chose the sampling plan which provided the lowest probability of accepting defective lots. The probability of accepting lots far in excess of the AQL is much higher for inspection level S–4 than for inspection level II. The lower sample sizes of S–4 would increase the consumer risk. Multiple sampling plans frequently require less testing than single or double sampling plans because acceptance and rejection decisions may be made at the first, second, or third sample and so on. Sequential sampling plans, on the other hand, require extensive field work on the part of the FDA representative who gathers the samples. While the decisionmaking process is similar to the multiple sampling scheme, it is more time-consuming because test results from prior samples should be known before taking additional samples which becomes cumbersome in the sample gathering process. Also, in the sequential sampling process, the determination of consumer risk and average lot quality is more difficult than with multiple sampling plans. Therefore, FDA has retained the sampling plan as proposed. However, FDA has revised the regulation to reflect the updated MIL–STD–105E dated May 10, 1989. That update does not affect the sample plan and the AQL, which therefore remain unchanged.

### III. Defects

4. One comment said that there should be a clear definition of a visual defect.

Section 800.20(b) says: "Defects are defined as leaks, tears, mold, embedded foreign objects, etc." FDA believes that this is a sufficiently clear definition.

5. One comment said that visual defects should include only those which would adversely affect the integrity of the glove and that defects which are only aesthetic or cosmetic in nature should not be counted.

"Defects", as defined in § 800.20 (set forth above), necessarily "affect the integrity of the glove." Therefore, no change in the rule is necessary.

6. One comment said that visual defects should also be subject to the water test.

FDA disagrees. It is not necessary for a glove to leak in order for it to be defective. The visual defects defined above are sufficient grounds for rejecting a glove.

7. One comment said that visual defects found in the top 1 and ½ inches of a glove should not be counted.

FDA agrees with this comment. Visual defects in the top 1 and ½ inches do not heighten the risk of transmission of HIV and other blood-borne infectious diseases. The rule (§ 800.20(b)(2)) has been revised accordingly.

### IV. Test Method

8. Several comments questioned the appropriateness of certain aspects of the test method. One comment said that using 1,000 milliliters (mL) of water for the test is too stringent and suggested using 450 mL of water. One comment said that the test method is inappropriate for vinyl gloves because water pressure may be greater in vinyl gloves. Another comment said that the test should be based on a maximum water height rather than water volume.

FDA reviewed various existing test methodologies for medical gloves. From the review, FDA concluded that, while lesser volumes of water were moderately sensitive and relatively simple to perform, they were inadequate to evaluate the integrity of the entire glove, i.e., the palm and back surfaces. For that reason, FDA developed and validated a more sensitive 1,000 mL test method. Because latex is more compliant (i.e., vinyl stretches less), the water height in vinyl gloves may be greater causing higher pressure at the fingertips. Nevertheless, based on its review of test methods, FDA believes that the test method in the rule is appropriate for vinyl as well as latex gloves. FDA chose a specified water volume over a maximum water height, because differences in size and materials would make it difficult to define a maximum water height.

9. One comment suggested that there should not be a specified cylinder size for the water fill test.

FDA uses the 2 and ⅝-inch cylinder size in the water-fill test because it accommodates the various cuff diameters and any water above the glove. When necessary, other fill tubes may be used to test gloves. However, the tubes should accommodate both cuff diameter and any water in excess of glove capacity. The rule (§ 800.20(b)(1)) has been revised accordingly.

10. One comment said that the test method does not allow for new or different existing films.

The comment did not demonstrate a need to revise the regulation to accommodate any materials presently used. If necessary, FDA will revise the regulation to accommodate any new materials.

### V. Other Comments

11. One comment said that the rule should state that manufacturers are required to pass a current good manufacturing practice (CGMP) inspection as well as pass the water-fill test.

FDA believes that such a requirement is neither necessary nor appropriate. Surgeons' gloves and patient examination gloves are class I (general controls) devices. Manufacturers of both devices must comply with the CGMP requirements and manufacturers will be inspected in the ordinary course of business.

12. One comment said that the rule should prohibit manufacturers from stating in their labeling that the product is FDA approved or making any similar claim.

Section 301(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(l)) prohibits, among other things, using on the labeling of a device, any representation or suggestion that an approval of an application under section 515 (a premarket approval application) is in effect for the device. In addition, section 502(a) of the act (21 U.S.C. 352(a)), provides that a device is misbranded if its labeling is false or misleading in any particular. These provisions provide the protection suggested by the comment and therefore, the change suggested by the comment is not necessary.

13. One comment questioned how the agency planned to implement the rule fairly.

FDA has both a domestic and a foreign inspection program. Patient

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examination and surgeons' gloves are a high priority. The regulations are applied equally to domestic and foreign products. The FDA field staff conducts foreign and domestic inspections. The testing procedures are the same for medical gloves of both foreign and domestic origin. Current field guidance directs sampling coverage of medical gloves in proportion to whether they are of domestic or foreign origin. When issuing future assignments, FDA will continue to ensure that the rule is fairly applied.

### VI. Economic Impact

One company said that the rule would result in an increased labor cost of $35,000 for them with no increased public health benefit.

First, FDA disagrees that there is no public health benefit to the rule. The public health benefit of reducing the risk of transmission of HIV and other blood and fluid-borne infectious agents through improved quality control of protective barriers is well established in the preamble to the proposed rule and is outlined in paragraph (a) of the rule.

FDA believes that the economic assessment set forth in the preamble to the proposed rule is a reasonable assessment. The comment did not set forth the basis for its estimate of an increased labor cost of $35,000 or otherwise refute the agency's assessment. Based on a threshold assessment the agency determined that the economic effects of this action does not meet the criteria for a major rule in Executive Order 12291. Further, the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. At the time the proposed rule was published, FDA filed a copy of this threshold assessment, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number appearing in the heading of this document.

### VII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### VIII. Effective Date

Several comments addressed the proposed effective date of 30 days after publication of the final rule. Two comments noted that there is a potential for "dumping" of foreign gloves on the market, because foreign gloves are considered "in commercial distribution" as soon as they are imported. One of these comments suggested that the effective date should apply to the date of manufacture and not the date the device is placed in commercial distribution. One comment suggested that sufficient notice should be given in advance of the effective date. Another comment suggested that the final rule should be effective immediately.

Independent of these comments, FDA has reconsidered and has determined that the rule should become effective for devices placed in commercial distribution 90 days after the date of publication of this final rule. FDA believes that this effective date, along with the publication of the proposed rule on November 21, 1989, constitute sufficient notice of FDA's intent to require improved quality of gloves and provide sufficient time for market adjustment.

With regard to the comments on the effective date, FDA notes that domestic manufacturers as well as foreign manufacturers have an opportunity to "dump" gloves on the market before the effective date. While the rule would not apply to gloves introduced into commercial distribution before the effective date, these gloves, whether of foreign or domestic manufacture, are still subject to the adulteration provisions of section 501 of the act (21 U.S.C. 351) and may be subject to seizure. Because section 301(a) of the act (21 U.S.C. 331(a)) prohibits "the introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded," FDA believes that it would be inappropriate to link the effective date to the date of manufacture. FDA also believes that it would be inappropriate and unnecessary to make the rule effective immediately. Therefore, § 800.20 is added to subpart B as set forth below.

### IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. CDC, "AIDS and Human Immunodeficiency Virus Infection in the United States: 1988 Update," Morbidity and Mortality Weekly Report Supplement, Vol. 38, No. S–4, May 12, 1989.

2. CDC, "Recommendations for Prevention of HIV Transmission in Health-Care Settings," Morbidity and Mortality Weekly Report, Vol. 36, No. 25, August 21, 1987, and "Update: Universal Precautions for Prevention of Transmissions of Human Immunodeficiency Virus, Hepatitis B Virus and Other Blood-Borne Pathogens in Health-Care Settings", Morbidity and Mortality Weekly Report, Vol. 37, No. 24, June 24, 1988.

3. Paulsen, J., T. Eiden, and R. Kristiansen, "Perforations in Surgeon's Gloves," *The Journal of Hospital Infections*, 11:63–65, January 1988.

4. Matta, H., A.M. Thompson and J.B. Rainey, "Does Wearing Two Pairs of Gloves Protect Operating Theater Staff from Skin Contamination?," *British Medical Journal*, 297:597–598, September 3, 1988.

5. Gonzalez, E., and C. Naleway, "Assessment of the Effectiveness of Glove Use as a Barrier Technique in the Dental Operatory," *Journal of the American Dental Association*, 117:407–409, September 1988.

6. Dalgleish, A.G., and M. Malkovsky, "Surgical Gloves as a Mechanical Barrier against Human Immunodeficiency Viruses," *British Journal of Surgery*, 75:171–172, February 1988.

7. Daeschner, D., and H. Habel, Letter to the Editor, Infection Control and Hospital Epidemiology, 9:184, 188, May 1988.

### List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 800 is amended as follows:

## PART 800—GENERAL

1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: Secs. 201, 304, 501, 502, 505, 506, 507, 515, 519, 521, 601, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371).

2. New § 800.20 is added to subpart B to read as follows:

**§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.**

(a) *Purpose.* The prevalence of human immunodeficiency virus (HIV), which causes acquired immune deficiency syndrome (AIDS), and its risk of transmission in the health care context, have caused the Food and Drug Administration (FDA) to look more closely at the quality control of barrier devices, such as surgeons' gloves and patient examination gloves (collectively known as medical gloves) to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The Centers for Disease Control (CDC) recommend that health care workers wear medical gloves to reduce the risk



of transmission of HIV and other blood-borne infectious deseases. The CDC recommends that health care workers wear medical gloves when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients; when handling items or surfaces soiled with blood or other body fluids; and when performing venipuncture and other vascular access procedures. Among other things, CDC's recommendation that health care providers wear medical gloves demonstrates the proposition that devices labeled as medical gloves purport to be and are represented to be effective barriers against the transmission of blood- and fluid-borne pathogens. Therefore, FDA, through this regulation, is defining adulteration for patient examination and surgeons' gloves as a means of assuring safe and effective devices.

(1) For a description of a patient examination glove, see § 880.6250. Finger cots, however, are excluded from the test method and sample plans in paragraphs (b) and (c) of this section.

(2) For a description of a surgeons' glove, see § 878.4460 of this chapter.

(b) *Test method.* For the purposes of this regulation, FDA's analysis of gloves for leaks will be conducted by a water leak method, using 1,000 milliliters (mL) of water. Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed. A defect on one of the gloves is counted as one defect; a defect in both gloves is counted as two defects. Defects are defined as leaks, tears, mold, embedded foreign objects, etc. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure. Leaks within 1 and ⅛ inches of the cuff are to be disregarded.

(1) The following materials are required for testing: A 2⅝-inch by 15-inch (clear) plastic cylinder with a hook on one end and a mark scored 1⅛ inches from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity); elastic strapping with velcro or other fastening material; automatic water-dispensing apparatus or manual device capable of delivering 1,000 mL of water; a stand with horizontal rod for hanging the hook end of the plastic tube. The support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 11 pounds.

(2) The following methodology is used: Examine the sample and identify code/lot number, size, and brand as appropriate. Examine gloves for defects as follows: carefully remove the glove from the wrapper, box, etc., visually examining each glove for defects. Visual defects in the top 1⅛ inches of a glove will not be counted as a defect for the purposes of this rule. Visually defective gloves do not require further testing but are to be included in the total number of defective gloves counted for the sample. Attach the glove to the plastic fill tube by bringing the cuff end to the 1⅛-inch mark and fastening with elastic strapping to make a watertight seal. Add 1,000 mL of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(3) Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimal manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking. If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring). Make a second observation for leaks 2 minutes after addition of the water to the glove. Use only minimal manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sample plans.* FDA will collect samples from lots of gloves to perform the test for defects described in paragraph (b) of this section in accordance with FDA's sampling inspection plans which are based on the tables of MIL–STD–105E (the military sampling standard, "Sampling Procedures and Tables for Inspection by Attributes," May 10, 1989). Based on the acceptable quality levels found in this standard, FDA has defined adulteration as follows: 2.5 or higher for surgeons' gloves and 4.0 or higher for patient examination gloves at a general inspection level II. FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. For convenience, the sample plans (sample size and accept/reject numbers) are shown in the following tables:

ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES

| Lot size | Sample | Sample size | Number examined | Number defective | |
|---|---|---|---|---|---|
| | | | | Accept | Reject |
| 35,001 and above | First | 125 | 125 | 2 | 9 |
| | Second | 125 | 250 | 7 | 14 |
| | Third | 125 | 375 | 13 | 19 |
| | Fourth | 125 | 500 | 19 | 25 |
| | Fifth | 125 | 625 | 25 | 29 |
| | Sixth | 125 | 750 | 31 | 33 |
| | Seventh | 125 | 875 | 37 | 38 |
| 35,000 to 10,001 | First | 80 | 80 | 1 | 7 |
| | Second | 80 | 160 | 4 | 10 |
| | Third | 80 | 240 | 8 | 13 |
| | Fourth | 80 | 320 | 12 | 17 |
| | Fifth | 80 | 400 | 17 | 20 |
| | Sixth | 80 | 480 | 21 | 23 |
| | Seventh | 80 | 560 | 25 | 26 |
| 10,000 to 3,201 | First | 50 | 50 | 0 | 5 |
| | Second | 50 | 100 | 3 | 8 |
| | Third | 50 | 150 | 6 | 10 |
| | Fourth | 50 | 200 | 8 | 13 |
| | Fifth | 50 | 250 | 11 | 15 |
| | Sixth | 50 | 300 | 14 | 17 |
| | Seventh | 50 | 350 | 16 | 19 |

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ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES—Continued

| Lot size | Sample | Sample size | Number examined | Number defective: Accept | Number defective: Reject |
|---|---|---|---|---|---|
| 3,200 to 1,201 | First | 32 | 32 | 0 | 4 |
| | Second | 32 | 64 | 1 | 5 |
| | Third | 32 | 96 | 3 | 8 |
| | Fourth | 32 | 128 | 6 | 10 |
| | Fifth | 32 | 160 | 7 | 11 |
| | Sixth | 32 | 192 | 10 | 12 |
| | Seventh | 32 | 224 | 13 | 14 |
| 1,200 to 501 | Single sample | | 80 | 5 | 6 |
| 500 to 281 | Single sample | | 80 | 3 | 4 |
| 280 to 151 | Single sample | | 32 | 2 | 3 |
| 150 to 91 | Single sample | | 20 | 1 | 2 |
| 90 to 0 | Single sample | | 5 | 0 | 1 |

ADULTERATION LEVEL AT 4.0 FOR PATIENT EXAMINATION GLOVES

| Lot size | Sample | Sample size | Number examined | Number defective: Accept | Number defective: Reject |
|---|---|---|---|---|---|
| 10,001 and above | First | 80 | 80 | 2 | 9 |
| | Second | 80 | 160 | 7 | 14 |
| | Third | 80 | 240 | 13 | 19 |
| | Fourth | 80 | 320 | 18 | 25 |
| | Fifth | 80 | 400 | 25 | 29 |
| | Sixth | 80 | 480 | 31 | 33 |
| | Seventh | 80 | 560 | 37 | 38 |
| 10,000 to 3,201 | First | 50 | 50 | 1 | 7 |
| | Second | 50 | 100 | 4 | 10 |
| | Third | 50 | 150 | 8 | 13 |
| | Fourth | 50 | 200 | 12 | 17 |
| | Fifth | 50 | 250 | 17 | 20 |
| | Sixth | 50 | 300 | 21 | 23 |
| | Seventh | 50 | 350 | 25 | 28 |
| 3,200 to 1,201 | First | 32 | 32 | 0 | 6 |
| | Second | 32 | 64 | 3 | 8 |
| | Third | 32 | 96 | 6 | 10 |
| | Fourth | 32 | 128 | 8 | 13 |
| | Fifth | 32 | 160 | 11 | 15 |
| | Sixth | 32 | 192 | 14 | 17 |
| | Seventh | 32 | 224 | 18 | 19 |
| 1,200 to 501 | Single sample | | 80 | 7 | 8 |
| 500 to 281 | Single sample | | 50 | 5 | 6 |
| 280 to 151 | Single sample | | 32 | 3 | 4 |
| 150 to 91 | Single sample | | 20 | 2 | 3 |
| 90 to 26 | Single sample | | 13 | 1 | 2 |
| 25 to 0 | Single sample | | 5 | 0 | 1 |

(d) Lots of gloves which are tested and rejected using the test method according to paragraph (b) of this section, are adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act, and are subject to regulatory action, such as detention of imported products and seizure of domestic products.

Dated: June 6, 1990.

James S. Benson,

*Acting Commissioner of Food and Drugs.*

[FR Doc. 90-28001 Filed 12-11-90; 8:45 am]

BILLING CODE 4160-01-M

# federal register

Wednesday
December 12, 1990

Part VII

## The President

Proclamation 6238—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1990

Proclamation 6239—American Red Cross Month, 1991

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# Presidential Documents

Title 3—

The President

Proclamation 6238 of December 10, 1990

## Human Rights Day, Bill of Rights Day, and Human Rights Week, 1990

By the President of the United States of America

A Proclamation

The first ten amendments to our Constitution, collectively known as the Bill of Rights, were intended as an additional safeguard to the liberty of Americans, which the Constitution already afforded great protection through its ingenious structure. As we enter the bicentennial year of our Bill of Rights, we celebrate more than the great freedom and security this document symbolizes for the American people—we also celebrate its seminal role in the advancement of respect for human dignity and individual liberty around the world.

In its Universal Declaration of Human Rights, adopted on December 10, 1948, the United Nations General Assembly affirmed to all mankind the noble ideals enshrined in our Bill of Rights. Noting that "recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world," signatories to the Declaration agreed to respect freedom of thought, freedom of association, as well as freedom of religion and belief. They also recognized an individual's right to own property, either alone or in association with others, and declared that "everyone has the right to participate in his government, directly or through freely chosen representatives." Stating that "human rights should be protected by the rule of law," signatories to the Declaration proclaimed this historic document "a common standard of achievement for all peoples and all nations."

That standard was reaffirmed and strengthened in 1975, when the United States, Canada, and 33 European states joined in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE). Participating states also recognized the right of self-determination and agreed to grant ethnic minorities equality before the law.

Recent events testify to the CSCE's effectiveness in advancing our goal of universal compliance with the human rights and humanitarian provisions of the Helsinki Final Act. The elimination of physical and ideological barriers that once divided postwar Europe dramatically illustrates the progress that has been made in promoting respect for human rights, building mutual trust, reducing the risk of conflict, and encouraging the development of democracy. Last month, the signing of the Charter of Paris—which added to existing CSCE principles new and sweeping commitments to political pluralism, free elections, free enterprise, and the rule of law—underscored its signatories' determination to consolidate and to build upon recent gains. Indeed, with the Charter of Paris we welcomed the emergence of a new transatlantic partnership of nations based on a mutual commitment to upholding human rights and the rule of law.

However, while we celebrate the remarkable developments reflected in the recent Charter of Paris, we must resist the notion that our work is now virtually finished. Tragically, in some countries, persecution of ethnic minorities, religious oppression, and restrictions on freedom of speech, information, and travel violate fundamental standards of morality and the letter and spirit of international human rights agreements.

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The United States will continue to denounce contraventions of the Universal Declaration of Human Rights and will press for constructive change. And, at times, it is necessary to take a stand against aggression. Iraq's brutal subjugation and despoiling of Kuwait constitute an assault on the basic human values and freedoms we commemorate this week; thus the United States and other members of the world community are coalesced in an effort to achieve the complete and unconditional withdrawal of Iraqi forces from Kuwait. The United States also continues to assist the world's emerging democracies, not only in Europe, but also in Asia, Africa, and Latin America.

The documents we celebrate this week—the Bill of Rights, the Universal Declaration of Human Rights, and the more recent Helsinki accords—derive their value and promise from the timeless, immutable truths they contain and our solemn commitment to upholding them. As we reflect on the historic significance of these documents, let us vow to ensure that they remain meaningful guarantees of individual dignity and liberty.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1990, as Human Rights Day and December 15, 1990, as Bill of Rights Day and call upon all Americans to observe the week beginning December 10, 1990, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

Attest:

Warren E. Burger

[FR Doc. 90-29328
Filed 12-11-90; 11:27 am]
Billing code 3195-01-M

**Editorial note:** For the President's remarks of December 10 on signing Proclamation 6238, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 50). After signing the Proclamation, the President invited Warren E. Burger, Chairman of the Commission on the Bicentennial of the United States Constitution and former Chief Justice of the United States, to sign it as well



## Presidential Documents

**Proclamation 6239 of December 10, 1990**

### American Red Cross Month, 1991

**By the President of the United States of America**

**A Proclamation**

Millions of people around the Nation and the world take comfort in knowing that, wherever the bright banner of the American Red Cross flies, help is close at hand. For well over a century, this respected humanitarian organization has enabled individuals and their communities to cope with crisis.

While the Red Cross is most often associated with major emergencies such as those caused by floods, earthquakes, and military conflict, it also brings aid to those whose plight may never make the headlines—such as victims of industrial accidents, hunger, and house fires. The lifesaving activities of the Red Cross may vary, but in every case its staff and volunteers bring swift, compassionate assistance to needy persons without regard to race, religion, or national origin.

During a typical year, the Red Cross may respond to some 50,000 disastrous incidents, helping people not only to survive but also to rebuild.

While the work of the Red Cross in the face of disaster has been outstanding, its day-to-day efforts aimed at emergency prevention and preparedness have been equally remarkable. Today some 1.1 million trained Red Cross volunteers work at more than 2,700 chapters throughout the United States. These dedicated men and women help to instruct youths and adults alike in first aid, cardiopulmonary resuscitation, and water safety. In addition, the Red Cross is a leader in the campaign to stop the spread of AIDS. Across the country, trained Red Cross volunteers are teaching the public about this deadly disease and how it is prevented.

The Red Cross is also helping to prevent the spread of AIDS by ensuring the safety of our blood supply. Each year the Red Cross collects more than 6 million units of blood—half of the Nation's blood supply. Every unit of blood must pass seven tests to ensure its safety for transfusion. As a result of such careful screening, the Nation's blood supply is safer now than it has ever been.

The Red Cross, which formed the National Bone Marrow Donor Registry in 1986, also maintains a national registry of more than 20,000 volunteer donors of rare blood types and conducts vital research on blood at its Holland laboratory. The Red Cross also renders vital tissue transplantation services to help some 49,000 Americans a year live longer, fuller lives.

With so many American service men and women currently stationed abroad, the importance of the Red Cross' work in behalf of U.S. military personnel is more apparent than ever. For members of the Armed Services at both domestic and overseas military installations, the Red Cross provides valuable information, referral services, and emergency communications.

Through its outstanding humanitarian services, the American Red Cross has earned the respect and appreciation of millions of people throughout the United States and around the world. This month we gratefully salute its dedicated staff and volunteers.



NOW, THEREFORE, I, GEORGE BUSH, President of the United States of



## Reader Aids

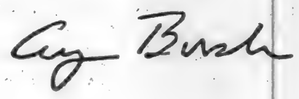
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NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1991 as American Red Cross Month. I urge all Americans to continue their generous support of the Red Cross and its chapters nationwide.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-28929
Filed 12-11-90; 11:20 am]
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A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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**WHEN:** January 11, at 9:00 a.m.
**WHERE:** Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
**RESERVATIONS:** 1–800–347–1997.



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# Presidential Documents

**Title 3—**

**The President**

**Presidential Determination No. 90-42 of September 30, 1990**

## Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1961, as Amended

**Memorandum for the Secretary of State**

Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1961, as amended, 22 U.S.C. 2601(b)(1), I hereby designate persons fleeing Kuwait and Iraq due to the current military crisis in the Persian Gulf as qualifying for assistance under Section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are directed to inform the appropriate committees of the Congress of this determination and the obligations of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
*September 30, 1990.*

[FR Doc. 90-29400
Filed 12-11-90; 3:12 pm]
Billing code 3195-01-M

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## Presidential Documents

**Presidential Determination No. 91–9 of December 4, 1990**

### Determination Pursuant to Section 545 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991

**Memorandum for the Secretary of State**

Pursuant to Section 545 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, (the "Act") (Public Law 101–513), I hereby certify that the withholding of funds to the multilateral development banks and other international organizations and programs, pursuant to the limitation contained therein prohibiting the obligation of funds appropriated by the Act to finance indirectly any assistance or reparations to certain specified countries, is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
*December 4, 1990.*

[FR Doc. 90-29425
Filed 12-11-90; 4:48 pm]
Billing code 3195-01-M

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Parts 5 and 7

[Docket No. 90-21]

### Rules, Policies, and Procedures for Corporate Activities; Payment of Dividends

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending two interpretive rulings in 12 CFR part 7, and promulgating them as regulations as part of 12 CFR part 5. The amendments revise and clarify certain OCC interpretations of statutes that principally govern the payment of dividends by national banks (12 U.S.C. 56 and 60). The purpose of these amendments is to make the calculation of the dividend-paying capacity of national banks consistent with regulatory reporting and generally accepted accounting principles (GAAP) with respect to the treatment of the allowance for loan and lease losses (ALLL). Specifically, the amendments clarify that (1) neither the ALLL nor provisions to the ALLL is considered an element of either "undivided profits then on hand" or "net profits," (2) a portion of the capital surplus account may be used as "undivided profits then on hand," depending on the composition of that account, and (3) the dividends on preferred stock are not subject to the limitations of 12 U.S.C. 56 but are subject to the constraints of 12 U.S.C. 60. In addition, the OCC clarifies that in computing "net profits" under 12 CFR 5.62(c) of the final rule a national bank should continue to use the net income amount reported in its Reports of Condition and Income. While the final rule is effective December 13, 1990, with respect to the dividend calculations under § 5.62(c) implementation may be delayed as provided in § 5.62(f).

**EFFECTIVE DATE:** December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ronald Shimabukuro, Senior Attorney, Legal Advisory Services Division, (202) 447-1883; Mariette Perkins, National Bank Examiner, Office of the Chief National Bank Examiner (202) 447-0488; or William J. Lewis, Professional Accounting Fellow, Office of the Chief Accountant, (202) 447-0471, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:**

#### Background

The OCC published in the Federal Register a notice of proposed rulemaking (NPRM) on August 16, 1989 (54 FR 33711), and a supplemental notice of proposed rulemaking (supplemental NPRM) on October 16, 1989 (54 FR 42306). In the August 16 NPRM, the OCC proposed to amend Interpretive Rulings 7.6125 (12 CFR 7.6125) and 7.6100 (12 CFR 7.6100) which concern the limitations on the payment of dividends by national banks. The October 16 supplemental NPRM extended the initial comment period for 30 days and proposed to implement certain provisions in the NPRM on a prospective basis beginning January 1, 1990.

The OCC believes capital adequacy is critical to the safety and soundness of national banks. Major factors which contribute to bank capital are the quality of earnings and the amount of earnings that are retained as an addition to capital. Earnings paid out to stockholders in the form of cash dividends reduce the level of capital support available to a national bank. Two sections of the National Bank Act must be satisfied before a national bank can declare a dividend—12 U.S.C. 56 and 60.

While both sections 56 and 60 place limitations on the ability of a bank to pay cash dividends; these two sections serve different functions. Section 56 is a limitation on capital impairment and provides, in pertinent part:

> No association * * * shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association * * * to an amount greater than its net profits then on hand * * *.[1]

Section 60(b) contains an earnings limitation and provides:

> The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus * * *.

Thus, sections 56 and 60 establish a two-part test for determining the extent to which national banks may pay dividends. If a proposed dividend would violate the provisions of section 56, then the constraints imposed by section 60 are irrelevant, because section 56 poses an absolute bar to the payment of dividends in excess of net profits then on hand. However, if a bank has the requisite unimpaired capital under section 56, then only the recent-earnings test of section 60(b) applies. Furthermore, if a proposed dividend is payable under section 56, but fails the test of section 60, the bank may still be allowed to pay the dividend, but only with "the approval of the Comptroller of the Currency."

The OCC has issued interpretive rulings on both sections 56 and 60. Interpretive Ruling 7.6125 interprets the provisions of section 56, and focuses exclusively on "statutory bad debt." Section 56 requires that a bank deduct "losses and bad debts" from "net profits then on hand." While section 56 provides some guidance as to what constitutes bad debts, Interpretive Ruling 7.6125 provides further explanation regarding a debt that is "well secured and in the process of collection." Interpretive Ruling 7.6100 primarily is a recitation of section 60 but also relates to portions of 12 U.S.C. 51b (authority of national banks to issue

[1] As used in section 56, the term "capital" is defined in 12 U.S.C. 51c and 12 CFR 3.100 to mean unimpaired common and perpetual preferred stock outstanding. Additionally, certain paid-in capital in the form of surplus cannot be withdrawn pursuant to 12 U.S.C. 60. Therefore, section 56 effectively operates to restrict dividends to "net profits then on hand" which has been taken to mean undivided profits or retained earnings.

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preferred stock) and 1828(b) (restriction on the payment of dividends by national banks in default on assessments due to the Federal Deposit Insurance Corporation).

Both sections 56 and 60 were passed as part of the National Bank Act of 1864. Since that time section 56 never has been amended. Section 60 was amended in 1935 and again in 1959.[2] In addition to Interpretive Rulings 7.6100 and 7.6125, the OCC has issued a number of formal and informal interpretations of sections 56 and 60 in the approximately 125 years since these sections became law.

**Purpose**

This final rule clarifies OCC interpretations and promulgates formal regulations governing the payment of dividends by national banks. In addition to promoting consistent interpretation, these amendments establish standards more consistent with regulatory reporting and GAAP with respect to the treatment of the ALLL. Moreover, the promulgation of these interpretive rulings as regulations clarifies that the requirements are legally binding on national banks. The new regulations are codified in 12 CFR part 5.

**Issues**

Sections 56 and 60 were enacted long before the development of modern accrual accounting. The terms used in these statutes are not precise in the context of current accounting principles. As a result, ambiguities and uncertainties concerning several accounting issues arise when applying these statutes to specific fact situations. In the NPRM, the OCC solicited comment on three specific issues:

1. What portion of a bank's "capital surplus" account should be available for the payment of dividends?
2. How should the ALLL be treated for purposes of calculating a national bank's dividend-paying capacity?
3. Should dividends on a bank's preferred stock be subject to the same limitations as dividends on its common stock?

In addition to these issues, the OCC solicited further comment in the supplemental NPRM on whether the provisions relating to the calculation of dividend-paying capacity under section 60 should be applied on a prospective basis beginning January 1, 1990.

In response to the NPRM and the supplemental NPRM, the OCC received 27 comments. The commenters represented a cross-section of financial institutions of various sizes and locations. In addition, comments were also received from industry trade associations. While individual commenters may have disagreed on specific aspects of the NPRM, most commenters support the position of the OCC in adopting regulatory reporting and GAAP with respect to the treatment of the ALLL in the implementation of the dividend regulations.

*I. Capital Surplus*

Pursuant to section 60(a), a national bank must maintain a surplus fund equal to its common capital.[3] At one time retained earnings (or undivided profits) did not qualify as capital for computing the total amount a bank could lend to one borrower. One way a national bank could increase its lending limit was to transfer retained earnings to the surplus fund. Consequently, most banks have surplus in excess of the amount required by section 60(a). The portion of the surplus fund in excess of what is required by section 60(a) generally is referred to as "surplus surplus."

A bank with losses in excess of its undivided profits then on hand that returns to profitability may want to pay dividends out of current earnings notwithstanding a negative balance in its retained earnings account. If the surplus fund of a bank were considered part of undivided profits then on hand,[4] a bank could legally pay a dividend since the surplus fund would, in most cases, more than offset the negative retained earnings.[5]

The OCC believes that only the portion of the surplus fund which represents prior earnings should be available for the payment of dividends. The portion of the surplus required by section 60(a) essentially represents bank capital and, therefore, should not be available for the payment of dividends. Similarly, some portions of surplus surplus may also represent capital paid in by shareholders or created by stock dividends. As such, the portion of surplus surplus representing capital should not be available for payment of dividends. Therefore, this final rule provides that only earned surplus surplus qualifies as undivided profits then on hand.

This final rule revises the OCC position to achieve consistent interpretation of this issue. This final rule permits the payment of dividends on the portion of surplus surplus which represents earnings, while prohibiting a bank from paying dividends out of paid-in capital—which would be a return of capital requiring OCC and shareholder approval under 12 U.S.C. 59.

Seven commenters agreed with the OCC that only earned surplus surplus should qualify as undivided profits then on hand. However, two commenters maintained that all of the surplus surplus should be available for the payment of dividends. These commenters reasoned that permitting all of the surplus surplus to be available for dividends would be less complicated than requiring segregation of the earned surplus surplus. While the OCC agrees that permitting all of the surplus surplus to be available as dividends would be simpler, such a rule would not be consistent with the basic rationale underlying the payment of dividends. As explained previously, permitting all of the surplus surplus to be available for dividends would result in the possibility that dividends could be paid which constituted a return of capital.

In the NPRM, the OCC also proposed that a bank must receive prior OCC approval before surplus surplus could be "unbundled" and transferred back to undivided profits. Four commenters agreed that prior approval should be required. However, one commenter asserted that prior approval would result in inequitable treatment of banks which voluntarily transferred amounts from undivided profits to surplus. Those banks would need prior OCC approval to pay dividends on that amount, while a bank which did not transfer any amounts from undivided profits to surplus could pay the dividend without any approval. Additionally, one commenter suggested a procedure to expedite the approval process in which requests to transfer earned surplus surplus back to undivided profits would be considered approved unless the OCC objected within 30 days.

The OCC realizes that requiring prior OCC approval for the transfer of earned surplus surplus to undivided profits may result in somewhat different treatment of national banks. However, the OCC believes that prior approval is necessary to ensure that national banks do not inadvertently transfer amounts to undivided profits in excess of actual earned surplus surplus. However, to facilitate the approval process, the final rule adopts the procedure in 12 CFR 5.46.

*II. The Allowance for Loan and Lease Losses*

The treatment of the ALLL is pertinent to both sections 56 and 60. For purposes of section 56, the issue is whether the ALLL should be included when calculating undivided profits then on hand. Under section 60, the issue is whether the provisions to the ALLL should be included when determining the net profits of the bank.

A. 12 U.S.C. 56

Section 56 is a capital impairment test based on the capital and retained earnings of a bank. Pursuant to section 56, a national bank cannot pay a dividend if the dividend would impair the capital of the bank.

Under regulatory reporting and GAAP, the ALLL is a contra-asset account reflecting the losses inherent (but unidentified on a loan-by-loan basis) in the loan and lease portfolio. The OCC believes that the ALLL should be available when the losses are specifically identified or actually realized. Therefore, the ALLL should not be available for distribution to the shareholders in the form of dividends. Moreover, permitting the ALLL to be included in undivided profits then on hand would have the undesirable result of allowing a bank with a negative balance in retained earnings to legally pay a dividend.[6]

In the NPRM, the OCC proposed to prohibit national banks from including the ALLL in undivided profits then on hand when calculating the amount of dividends which could be paid under section 56. Ten commenters generally agreed that the ALLL should not be included in undivided profits then on hand under section 56. However, four commenters maintained that excluding the ALLL from undivided profits then on hand provides a disincentive for national banks to maintain an adequate ALLL. One commenter further suggested that including the ALLL in undivided profits is acceptable for most healthy banks and that the rule should apply only to institutions with capital below a certain level.

The OCC is concerned that excluding the ALLL from undivided profits then on hand under section 56 might provide a disincentive for some banks to maintain an adequate ALLL. Nothwithstanding this concern, the final rule prohibits national banks from adding the ALLL to undivided profits then on hand when calculating dividend-paying capacity under section 56. The OCC strongly believes that the ALLL must be available when loan losses are identified or actually realized. Therefore, the ALLL may not be available for distribution to the shareholders in the form of dividends.

The OCC will exercise whatever supervisory authority is necessary to ensure that all national banks maintain an adequate ALLL. As to the suggestion that the application of this rule be contingent upon the capital level of a bank, the OCC believes that uniform application of the regulation to all national banks is the most equitable approach.

A related issue concerns the requirement in section 56 that a bank deduct "losses and bad debts" from undivided profits then on hand. As explained in the NPRM, the "statutory bad debt" provision was probably Congress' proxy for the ALLL. At the time section 56 was enacted, the ALLL as used under current accounting principles did not exist.

In the NPRM, the OCC proposed to permit banks to net statutory bad debts against the ALLL in computing dividend-paying capacity under section 56. To the extent a bank has statutory bad debt in excess of its ALLL, the excess would be deducted from undivided profits then on hand. However, a bank with an ALLL greater than its statutory bad debt could not include the remaining ALLL in its undivided profits then on hand.

Four commenters agreed with the OCC that statutory bad debt should be netted against the ALLL. However, two commenters believed that any amount of the ALLL in excess of statutory bad debt should be included in undivided profits then on hand.

After careful consideration of these comments, the OCC is adopting the final rule as proposed in the NPRM. The OCC believes that the netting of statutory bad debt against the ALLL is necessary to prevent any double counting which might otherwise result from requiring both statutory bad debt and the ALLL to be deducted from undivided profits then on hand. However, the OCC is not convinced that the amount of the ALL in excess of statutory bad debt should be included in undivided profits then on hand. To allow any part of the ALLL in excess of statutory bad debt to be included in the undivided profits would limit the amount of the ALLL which would be available to cover loan losses as they are identified or actually realized.

B. 12 U.S.C. 60

The issue of whether provisions to the ALLL should be considered part of "net profits" is more complex in the earnings test of section 60. Section 60(c) provides:

> For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.

While this definition of "net profits" explicitly provides for the deduction of operating expenses, losses, accrued dividends on preferred stock, and State and Federal taxes, the statute makes no mention of provisions to the ALLL.[7] When section 60 was written a majority of banks were on a cash basis of accounting, rather than an accrual basis. Therefore, the issue presented centers upon the proper treatment of loan loss provisions, charge-offs and recoveries in determining the dividend-paying capacity of a bank under the earnings test of section 60.

According to regulatory reporting and GAAP, the loan loss provision is a current operating expense charged against current earnings. As a current operating expense, provisions to the ALLL represent a reduction in the amount of net income available to shareholders. Furthermore, under regulatory reporting and GAAP actual losses and recoveries do not directly affect the earnings of a bank, since the ALLL, not earnings, is decreased when actual loan losses are incurred and increased when actual recoveries are made.

In the NPRM, the OCC proposed to interpret section 60 in a manner

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[2] *See* Act of August 23, 1935, ch. 614, section 315, 49 Stat. 712; and Pub. L. 86-230, section 21(a), 73 Stat. 465.

[3] In pertinent part, section 60(a), provides:

> The directors of any national banking association may, quarterly, semiannually or annually, declare a dividend of so much of the net profits of the association as they shall judge expedient, except that until the surplus fund of such association shall equal its common capital, no dividend shall be declared unless * * *.

The term "common capital" as used in section 60(a), means the total outstanding shares of common stock times the par value per share.

[4] Although 12 U.S.C. 56 uses the terms "undivided profits then on hand" and "net profits then on hand" in the same sentence, the OCC has, for a number of years, considered these terms interchangeable. *See Digest of Opinions of the OCC*, No. 6305 (1980 ed.). There is no case law that defines or distinguishes these terms, and the legislative history to the National Bank Act provides no instruction as to their meaning. Furthermore, "net profits" as used in § 60 has a different meaning from "net profits then on hand" as used in § 56. Thus, when discussing § 56, the OCC will use the term "undivided profits then on hand."

[5] *See e.g.*, OCC No Objection Letter No. 88-10, December 8, 1988, *reprinted in Fed. Banking L. Rep.* ¶ 83,002 (CCH 1989).

[6] In such a situation, regulatory reporting and GAAP would not preclude a bank from paying out cash to its shareholders; however, the payment would be a return of capital, not a dividend. For national banks, such a return of capital requires shareholder and OCC approval. *See* 12 U.S.C. 59.

[7] Section 60(c) was added in 1959 by Public Law 86-230; however, the legislative history does not shed any light on the treatment of the ALLL or provisions to the ALLL. *See* 1959 U.S. Code Cong. and Adm. News, 2232.

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consistent with regulatory reporting and GAAP with respect to the treatment of the ALLL. Accordingly, loan loss provisions charged to earnings would not be added back to earnings when computing the net profits of the bank. In addition, net charge-offs (actual losses minus actual recoveries) would not be deducted from net profits since they represent adjustments to the ALLL.

Six comments were received on this issue and all commenters agreed with the position of the OCC.

As noted previously, the ALLL represents losses inherent in the loan and lease portfolio. As such, the OCC believes provisions to the ALLL should not be available to shareholders for cash dividends. Accordingly, the OCC adopts a final rule consistent with regulatory reporting and GAAP with respect to the treatment of the ALLL. Provisions to the ALLL charged to earnings by a bank cannot be added back to earnings when computing net profits pursuant to section 60. Similarly, net charge-offs (actual losses minus actual recoveries) are not deducted from net profits.

Section 5.62(c) of the proposed rule, in pertinent part, provided: "When computing its net profits for the purpose of 12 U.S.C. 60, a national bank must use generally accepted accounting principles, and may not add back provisions made to its allowance for loan and lease losses." The language of this section could have been misconstrued to mean that net income calculated under GAAP would become the basis for computing net profits for the purposes of 12 U.S.C. 60. The reference to GAAP in the proposed rule applied only to the accounting treatment of the ALLL. The OCC did not intend to change its longstanding practice of requiring national banks to use the net income amount reported in their Reports of Condition and Income in determining compliance with section 60. See Interpretive letter dated January 17, 1985 (unpublished). Therefore, national banks must continue to use the net income amount reported in their Reports of Condition and Income in calculating their dividend-paying capacity under section 60. To clarify this point, section 5.62(c) of the final rule contains no reference to GAAP.

*III. Preferred Stock*

Neither sections 56 nor 60 is limited by its terms to common stock dividends. Therefore, the issue arises as to whether the limitations of those sections are also applicable to preferred stock dividends.

In relevant part, 12 U.S.C. 51b provides:

> (a) Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends * * * as may be provided in the articles of association with the approval of the Comptroller of the Currency * * *.
>
> (b) No dividends shall be declared or paid on common stock until the cumulative dividends on the preferred stock shall have been paid in full * * *.

Thus, the literal language of section 51b(a) indicates that cumulative dividends on preferred stock are not restricted by the terms of sections 56 and 60. Nonetheless, when the provisions of section 51b are read in the context of the overall statutory scheme, the meaning of that section is less clear.

Section 51b was enacted as part of the Emergency Banking Act of 1933, which was intended to rehabilitate banks with impaired capital by authorizing them to issue preferred stock to the public or to the Reconstruction Finance Corporation (RFC).

As originally enacted, section 51b provided, in pertinent part:

> The holders of such preferred stock shall be entitled to cumulative dividends at a rate not exceeding 6 per centum per annum * * *. Notwithstanding any other provision of law, the holders of such preferred stock shall have such voting rights, and such stock shall be subject to such retirement in such manner and on such terms and conditions, as may be provided in the articles of association with the approval of the Comptroller of the Currency.

Emergency Banking Act, March 9, 1933, ch. 1, Title III section 302, 48 Stat. 5.

According to the RFC, section 51b originally placed the RFC "in the position of either having to refuse assistance [to banks whose common stock was impaired], or having to take preferred stock * * * with no possibility of receiving dividends."[9] Therefore, at the request of the RFC, the provisions of the Emergency Banking Act that dealt with preferred stock dividends were amended in June of 1933 to authorize the payment of cumulative dividends "[n]otwithstanding any other provision of law."

A. 12 U.S.C. 56

In the NPRM, the OCC proposed to exclude from the limitations of section 56 the payment of dividends on preferred stock. As explained, this position is based on a review of the legislative history which indicates that the limitations of section 56 are not applicable to cash dividends on preferred stock.

[9] S. Rep. No. 43, 73rd Cong., 1st Sess. 1–3 (1933).

Six commenters generally supported the OCC proposal that dividend payments on preferred stock not be subject to the limitations in section 56. Three other commenters believed that dividends on preferred stock should be subject to the same limitations as dividends on common stock. In particular, two commenters expressed concern that absent the limitations imposed by section 56, dividend payments on preferred stock could be excessive and result in the dissipation of needed capital.

The OCC shares the concerns of these commenters. However, the OCC is bound to interpret section 56 in a manner consistent with the intent of Congress as indicated by the language of section 51b and the legislative history. Consequently, this final rule provides that preferred stock dividends are not subject to the limitations of section 56.

Moreover, the OCC believes that sufficient statutory safeguards exists to prevent any undue dissipation of capital which could result from the payment of dividends on preferred stock. Where a bank does not have sufficient undivided profits to cover a proposed dividend on preferred stock, the payment of that dividend would constitute a reduction of capital pursuant to section 59. As a result, prior OCC approval would be necessary before any dividend could be paid on the preferred stock. To make this position explicit, the final rule clarifies that any payment of dividends on preferred stock where the bank does not have sufficient amounts in undivided profits to cover the proposed dividend constitutes a reduction of capital requiring prior OCC approval under section 59.

B. 12 U.S.C. 60

Section 60 has been amended twice since its enactment as part of the National bank Act of 1864. The legislative history of these amendments, when read in conjunction with the legislative history of the June 1933 amendments to section 51b, indicates that the recent-earnings limitation of 12 U.S.C. 60(b) applies to preferred stock dividends.

The legislative history of the 1959 amendments to section 60 is particularly important. Although preferred stock is not covered expressly by the provisions of the section, the amendment added the recent-earnings limitation for "[t]he purpose of * * * prevent[ing] excessive dividends to shareholders where such payments would result in the dissipation of needed capital funds * * *."[10] The clear Congreasional intent of the 1959 amendments to section 60 is served by applying the recent-earnings test to preferred stock dividends.

This interpretation of section 60 also is consistent with the policy and the legislative history of section 51b. Statements in the legislative history indicating that the March 1933 version of section 51b prevented the payment of dividends "even though current earnings are sufficient for such payment" support the conclusion that the RFC was seeking dividends only from current earnings.[10]

Based on this reasoning, in the NPRM the OCC proposed that dividends on preferred stock be subject to the recent-earnings limitation of section 60(b). Six commenters agreed with the position of the OCC. Three commenters, however, had different views. One commenters asserted that imposing limitations on the payment of dividends on preferred stock would decrease the marketability of preferred stock and increase the cost of funds to banks. The two other commenters maintained that preferred stock is more like debt securities, and therefore, should not be subject to any dividend limitations.

Although imposing the recent-earnings limitation of section 60 could negatively affect the marketability of preferred stock issued by national banks, the OCC is required to interpret section 60 in a manner consistent with Congressional intent. As explained, the legislative history indicates that Congress intended that any dividend payments on preferred stock be subject to the recent-earnings limitations of section 60. As for the similarity between preferred stock and debt securities, the OCC acknowledges that, theoretically, preferred stock has some characteristics of debt; however, this distinction does not justify disregarding Congressional intent.

*IV. Implementation*

As proposed in the NPRM, the provision concerning the calculation of net profits pursuant to section 60 would result in the retroactive application of the rule. Pursuant to section 60, net profits are calculated for the current period plus the previous two calendar years. This retroactive aspect of section 60 raises the issue of whether the proposed rule should be applied retrospectively to require the recalculation of all prior periods, or only prospectively, to the periods going forward.

[9] 105 Cong. Rec. 15396, August 24, 1959 (statements of Representative Brown of Georgia.)
[10] S. Rep. No. 43 at 2.



As explained in the Supplemental NPRM, the OCC believes that the application of the proposed rule on a prospective basis would facilitate the transition process for national banks. Therefore, the OCC proposed to implement the regulation concerning the calculation of net profits under section 60 on a prospective basis only, beginning January 1, 1990. In this way, national banks would not be required to recompute their dividend-paying capacity for periods prior to January 1, 1990.

The OCC received seven comments on this issue. All commenters were in favor of some form of prospective application of the rule. However, three commenters suggested longer implementation periods. Specifically, one commenter proposed postponing implementation of the rule until the third quarter of 1990. Another commenter proposed following the risk-based capital guidelines implementation schedule, while yet another commenter proposed that extensions be granted by the OCC on a case-by-case basis.

After considering these proposed alternatives, the OCC has decided to implement the final rule on a prospective basis as of January 1, 1991, rather than January 1, 1990 as proposed. Delaying the implementation period to January 1, 1991 will facilitate the implementation process for national banks. Also, this approach avoids complicated split-year accounting calculations that would otherwise be required with a mid-year implementation date.

To further facilitate the implementation process, the final rule makes clear that a national bank may adopt and use the revised method of computing "net profits" under 12 CFR 5.62(c) prior to January 1, 1991. However, if a national bank decides on this early adoption, the final rule must be applied on a full calendar year to date basis and must be applied to each subsequent calendar year.

To illustrate, under the final rule a national bank which decides on early adoption of the revised method of computing "net profits" may apply the final rule to 1990 on a full calendar year to date basis. Alternatively, a national bank may apply the revised method of computing "net profits" to calendar years 1989 and 1990. Likewise, a national bank may decide to apply the revised method of computing "net profits" to calendar year 1988 in which case the bank must also apply the revised method of computing "net profits" to calendar years 1989 and 1990. Finally, if the bank decides against early adoption of the final rule, then the final rule will automatically apply beginning January 1, 1991.

Pursuant to 12 U.S.C. 553(d)(1) and (3), the Administrative Procedure Act, the OCC is making this final rule effective immediately. This final rule provides additional flexibility for national banks and the immediate effective date permits national banks to take full advantage of the more flexible requirements. An immediate effective date is in the public interest since delay of the effective date of the final rule could make compliance by national banks more difficult and costly, and require additional accounting adjustments and disclosures.

*V. Miscellaneous Issues*

In addition to comments on the specific issues raised in the NPRM and the supplemental NPRM, the OCC received a few comments on other related issues. A number of commenters proposed, in one manner or another, that the dividend regulations be tied to the risk-based capital guidelines. Specifically, some commenters suggested the payment of dividends should be based on the capital adequacy of the bank, while another commenter suggested that dividend restrictions should be related to the classification of the capital instruments under the risk-based capital guidelines. The OCC believes that these suggestions have merit; however, adoption of these proposals would not be possible under the current statutory scheme.

A few commenters also suggested that the OCC provide examples illustrating the application of the dividend rules. The OCC agrees that examples might be a useful guide for the implementation of these regulations. Therefore, the OCC is planning to publish examples illustrating the application of the dividend restrictions in a banking circular to be issued following publication of this final rule.

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The OCC anticipates that these regulations may have some future impact on the dividend paying capacity of nearly all national banks; however, that impact will not be significant and will not involve a substantial number of small banks. While national banks will be required to deduct provisions to the ALLL from net income and undivided

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profits, this requirement will have the same relative effect on all national banks regardless of size. Moreover, the requirements concerning the payment of dividends on preferred stock will not affect a substantial number of small banks because national banks in general do not have a significant amount of preferred stock outstanding. Finally, the OCC believes that this final rule will result in a net benefit to the banking industry by virtue of better capitalized institutions and reduced risk to the federal deposit insurance fund.

**Executive Order 12291**

The Comptroller of the Currency certifies that this final rule does not constitute a "major rule" within the meaning of Executive Order 12291 and, therefore, does not require the preparation of a regulatory impact analysis on the grounds that this regulation (1) will not have an annual effect on the economy of $100 million or more, (2) will not result in a major increase in the cost of bank operations or governmental supervision, and (3) will not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation.

The OCC does not anticipate that this final rule will have any significant impact on the economy. While the final rule does impose limits on the payment of dividends applicable to all national banks, the final rule does not impact financially sound institutions. Additionally, the OCC does not believe that the final rule will result in any major increase in the cost of bank operations or OCC supervision of national banks because the regulations only require slight adjustment to existing accounting procedures. Further, by limiting application of the rule relating to section 60, to January 1, 1991, the OCC has permitted national banks to avoid recomputing their dividend-paying capacity for the prior two years. Finally, the final rule does not have a significant adverse effect on competition, employment, investment, productivity or innovation. To the contrary, the final rule will result in a stronger, better capitalized banking system by insuring that select banks retain needed capital rather than dissipating their funds through excessive dividends.

**Paperwork Reduction Act**

The collections of information contained in §§ 5.61(c)(4)(ii), 5.61(d)(3)(iii), and 5.62(e) of this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557-0189. The estimated annual burden per respondent/recordkeeper varies from one to ten or more hours, depending on individual circumstances, with an estimated average of 3.2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Ford Barrett, Assistant Director, Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219, and to the Office of Management and Budget, Paperwork Reduction Project (1557-0189), Washington, DC 20503.

**List of Subjects**

*12 CFR Part 5*

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 7*

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

**Authority and Issuance**

For the reasons set forth in the preamble, parts 5 and 7 of Chapter I of Title 12 of the Code of Federal Regulations are amended as set forth below:

**PART 5—[AMENDED]**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

2. A new § 5.61 is added to read as follows:

**§ 5.61 Payment of dividends; capital limitation.**

(a) *Law.* 12 U.S.C. 56 provides that: No association, or any member thereof, shall, during the time it shall continue its banking operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by any association, while it continues its banking operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any association, on which interest is past due and unpaid for a period of six months, unless the same are well secured, and in the process of collection, shall be considered bad debts within the meaning of this section. But nothing in this section shall prevent the reduction of the capital stock of the association under section 59 of this title.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Statutory bad debt.* Pursuant to 12 U.S.C. 56, bad debts must be deducted from net profits then on hand in computing funds available for the payment of dividends on common stock Bad debts, as that term is used in the statute, means matured obligations due a national bank on which interest is past due and unpaid for six months unless the debts are well secured and in the process of collection. Every type of overdue indebtedness owing to the bank must be considered, including loans and investment securities. The six month period of default of interest may begin at any time, regardless of when the debt matures.

(1) *Matured debt.* Whether a debt has matured for purposes of the statute usually is determined by applicable contract law. Generally, a debt has matured when all or part of the principal is due and payable as the result of demand, arrival of the stated maturity date, or acceleration by contract or by operation of law. Nevertheless, any demand debt of which the payment of interest is six months past due is considered matured even though payment of the debt has not been demanded. Installment loans on which any payment is six months past due will be considered matured even though acceleration of the total debt has not occurred.

(2) *Well secured debt.* A debt is well secured within the meaning of the statute if it is secured by collateral in the form of liens on, or pledges of, real or personal property, including securities having realizable value sufficient to discharge the debt in full, or by the guaranty of a financially responsible party. In the even that the loan is partially secured, only that portion not property secured is considered a statutory bad debt.

(3) *Debt in the process of collection.* A debt is in the process of collection if collection of the debt is proceeding in due course, either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal actions which reasonably are expected to result in repayment of the debt or in its restoration to current status. In any case, the bank should have a plan of collection setting forth the reason for the selected method of collection, the responsibilities of the bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.



(4) *Miscellaneous*—(i) *Debts of bankrupt or deceased debtors.* A claim duly filed against the estate of a bankrupt or deceased debtor is considered as being in the process of collection. The obligation is considered well secured if it meets the criteria set forth in paragraph (c)(2) of this section or the claim of the bank against the estate has been duly filed, the statutory period for filing has expired and the assets of the estate are adequate to discharge all obligations in full.

(ii) *Documentation.* The bank must maintain in its files documentation adequate to support its evaluation of the security. In addition, the bank must retain, at a minimum, monthly progress reports on its collection efforts, noting and explaining any deviation from the collection plan.

(d) *Undivided profits.* For purposes of 12 U.S.C. 56, the terms "undivided profits then on hand" and "net profits then on hand" have the same meaning, and are referred to herein, as undivided profits then on hand.

(1) *Allowance for loan and lease losses.* When calculating the amount of dividends a bank legally can pay under 12 U.S.C. 56, the bank is not permitted to add the balance in its allowance for loan and lease losses account to its undivided profits then on hand.

(2) *Statutory bad debt.* When deducting its statutory bad debt from its undivided profits then on hand, a bank is allowed first to net the sum of its statutory bad debts against the balance in its allowance for loan and lease losses account. If the sum of a bank's statutory bad debts is greater than its allowance for loan and lease losses, the excess statutory bad debt must be deducted from the bank's undivided profits then on hand.

(3) *Surplus surplus.* Pursuant to the provisions of 12 U.S.C. 60(a), a national bank's surplus fund must equal its common capital. To the extent a bank has capital surplus in excess of what is required by section 60(a), this amount, commonly known as "surplus surplus", is considered undivided profits then on hand and available for the payment of dividends, provided:

(i) The bank can demonstrate that the surplus came from the earnings of prior periods, excluding the effect of any stock dividend;

(ii) The bank's board of directors has approved the transfer of the funds from capital surplus to undivided profits then on hand; and

(iii) The bank has requested and received the approval of the OCC before transferring funds from capital surplus to undivided profits then on hand. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking pursuant to the procedures in § 5.46.

(e) *Preferred stock.* The provisions of 12 U.S.C. 56 do not apply to dividends on preferred stock. However, if the undivided profits then on hand of the bank are not sufficient to cover a proposed dividend on preferred stock, the proposed dividend constitutes a reduction in capital subject to 12 U.S.C. 59 and § 5.46.

(Approved by the Office of Management and Budget under control number 1557-0155)

3. A new § 5.62 is added to read as follows:

**§ 5.62 Payment of dividends; earnings limitation.**

(a) *Law.* 12 U.S.C. 60 (a), (b), and (c) provide that:

(1) The directors of any national banking association may, quarterly, semiannually or annually, declare a dividend of so much of the net profits of the association as they shall judge expedient, except that until the surplus fund of such association shall equal its common capital, no dividends shall be declared unless there has been carried to the surplus fund not less that one-tenth part of the association's net profits of the preceding half year in the case of quarterly or semiannual dividends, or not less than one-tenth part of its net profits of the preceding two consecutive half-year periods in the case of annual dividends: *Provided*, That for the purposes of this section, any amounts paid into a fund for the retirement of any preferred stock of any such association out of its net profits for such period or periods shall be deemed to be additions to its surplus if, upon the retirement of such preferred stock, the amounts so paid into such retirement fund may then be properly carried to surplus. In any such case the association shall be obligated to transfer to surplus the amounts so paid into such retirement fund on account of the preferred stock as such stock is retired.

(2) The approval of the Comptroller of the Currency shall be required if the total of all dividends declared by such association in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock.

(3) For the purpose of this section the term "net profits" shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all current operating expenses, actual losses, accrued dividends on preferred stock, if any, and all Federal and State taxes.

(b) *Rules of general applicability.* The rules of general applicability contained in subpart A of this part do not apply to applications under this section.

(c) *Allowance for loan and lease losses.* When computing its "net profits" for purposes of 12 U.S.C. 60, a national bank may not add back provisions made to its allowance for loan and lease losses. Furthermore, a national bank should not deduct net charge-offs (actual losses minus recoveries) from its earnings for purposes of computing net profits.

(d) *Preferred stock.* The recent-earnings limitations set forth in 12 U.S.C. 60 apply to dividends on preferred stock.

(e) *Approval of dividends.* A bank must receive the approval of the OCC before declaring a dividend if the amount of all dividends (common and preferred), including the proposed dividend, declared by the bank in any calendar year exceeds the total of the bank's net profits of that year to date, combined with its retained net profits of the preceding two years, less any required transfers to surplus or a fund for the retirement of any preferred stock. Requests for the OCC's approval should be submitted to the appropriate District Deputy Comptroller or the Deputy Comptroller for Multinational Banking.

(f) *Implementation.* For the purpose of computing "net profits" under U.S.C. 60, a national bank must apply paragraph (c) of this section no later than January 1, 1991; however, paragraph (c) is not required to be applied retrospectively to the two prior calendar years 1989 and 1990. A national bank may apply paragraph (c) prior to January 1, 1991, provided that paragraph (c) must be applied on a full calendar year to date basis and is limited in application to one of the following alternatives:

(1) Calendar year to date 1990 only,

(2) The calendar years 1989 and 1990, or

(3) To the calendar years 1988, 1989, and 1990.

(Approved by the Office of Management and Budget under control number 1557-0155).

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**PART 7—[AMENDED]**

4. The authority citation for part 7 is revised to read as follows:

**Authority:** 12 U.S.C. 1 *et seq.*; 12 U.S.C. 93a.

**§ 7.6100 [Removed]**

5. Section 7.6100 is removed.

**§ 7.6125 [Removed]**

6. Section 7.6125 is removed.

Dated: December 7, 1990.

**Robert L. Clarke,**

*Comptroller of the Currency.*

[FR Doc. 90-29156 Filed 12-12-90; 8:45 am]

BILLING CODE 4810-33-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-CE-19-AD; Amendment 39-6782]**

### Airworthiness Directives; Piper Models PA23, PA23-150, PA23-160, PA23-235, PA23-250, and PA23-250(6) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; suspension of effectiveness.

**SUMMARY:** This document suspends the effectiveness of airworthiness directive AD 90-23-18, Amendment 39-6782, for certain Piper PA 23 airplanes, published in the **Federal Register** on Wednesday, November 7, 1990 (55 FR 46787). The Federal Aviation Administration has received a petition for reconsideration of this action, and has concluded that the issues raised by the petition warrant further consideration.

**EFFECTIVE DATE:** December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** W.H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

**SUPPLEMENTARY INFORMATION:** AD 90-23-18, Amendment 39-6782, that is applicable to certain Piper PA23 aircraft was published in the **Federal Register** on Wednesday, November 7, 1990 (55 FR 46787), with an effective date of December 10, 1990.

The FAA has received a petition for reconsideration of this action, and believes that the issues raised by that petition warrant further consideration before compliance is mandated.

This rule became effective December 10, 1990. Since a situation exists that requires immediate public notice that the effective date has been suspended, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by suspending until further notice the effectiveness of AD 90-23-18, Amendment 39-6782 (55 FR 46787, November 7, 1990) effective December 13, 1990.

This amendment becomes effective on December 13, 1990.

Issued in Washington, DC, on December 7, 1990.

**Daniel P. Salvano,**

*Acting Director, Aircraft Certification Service.*

[FR Doc. 90-29131 Filed 12-7-90; 4:12 pm]

BILLING CODE 4910-13-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1245

### Patents and Other Intellectual Property Rights

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** 14 CFR part 1245, subpart 2, "Licensing of NASA Inventions," provides policies and procedures applicable to the licensing of federally owned inventions in the custody of the National Aeronautics and Space Administration, and implements Public Law 96-517. The object of subpart 2 is to use the patent system to promote the utilization of inventions arising from NASA supported research and development.

**EFFECTIVE DATE:** December 13, 1990.

**ADDRESSES:** Office of General Counsel, Code GP, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Harry Lupuloff, 202-453-2430.

**SUPPLEMENTARY INFORMATION:** 14 CFR part 1245, subpart 2 is amended by revising NASA position titles in § 1245.208(a), (b), and (c). Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1245**

Administrative practice and procedure, Authority delegations (Government agencies), Inventions and patents.

For reasons set out in the Preamble, 14 CFR part 1245 is amended as follows:

**PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

1. The authority citation for 14 CFR part 1245, subpart 2 continues to read as follows:

**Authority:** 35 U.S.C. 207 and 208, 94 Stat. 3023 and 3024.

2. Section 1245.208 is revised to read as follows:

**§ 1245.208 Processing applications.**

(a) Applications for licenses will be initially reviewed by the Patent Counsel of the NASA installation having responsibility for the invention. The Patent Counsel shall make a preliminary recommendation to the Director of Licensing, NASA Headquarters, whether to:

(1) Grant the license as requested,

(2) Grant the license with modification after negotiation with the licensee, or

(3) Deny the license.

The Director of Licensing shall review the preliminary recommendation of the Patent Counsel and make a final recommendation to the NASA Associate General Counsel (Intellectual Property). Such review and final recommendation may include, and be based on, any additional information obtained from applicant and other sources that the Patent Counsel and the Director of Licensing deem relevant to the license requested. The determination to grant or deny the license shall be made by the Associate General Counsel (Intellectual Property) based on the final recommendation of the Director of Licensing.



(b) When notice of a prospective exclusive or partially exclusive license is published in the **Federal Register** in accordance with § 1245-206(a)(1)(iii)(A) or § 1245-208(b)(1)(i), any written objections received in response thereto will be considered by the Director of Licensing in making the final recommendation to the Associate General Counsel (Intellectual Property).

(c) If the requested license, including any negotiated modifications, is denied by the Associate General Counsel (Intellectual Property), the applicant may request reconsideration by filing a written request for reconsideration within 30 days after receiving notice of denial. This 30-day period may be extended for good cause.

(d) In addition to, or in lieu of requesting reconsideration, the applicant may also appeal the denial of the license in accordance with § 1245.211.

Dated: November 23, 1990.

**Richard H. Truly,**

*Administrator.*

[FR Doc. 90-29084 Filed 12-12-90; 8:45 am]

BILLING CODE 7510-01-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Parts 770, 773, and 774

**[Docket No. 901215-0315]**

### Exports to Sweden: Shorter Processing Time Frames, Permissive Reexports From Sweden to the People's Republic of China, Higher Level Computers Under the Distribution License

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** As part of the Department of Commerce initiative to streamline export licensing requirements for exports to countries that are demonstrating increased ability to safeguard reexports of U.S.-origin strategic goods and technology, the Bureau of Export Administration (BXA) is extending to Sweden additional export licensing benefits available under the provisions of section 5(k) of the Export Administration Act of 1979, as amended. This action will lessen the administrative burden on U.S. exporters and their foreign customers.

Specifically, BXA is:

- Amending § 770.14 to provide shorter processing times for license applications for Sweden,
- Removing the requirement for specific U.S. reexport authorization for reexports from Sweden to the People's Republic of China of commodities described in Advisory Notes for the People's Republic of China or Country Groups QWY, and
- Amending the Distribution License procedure to authorize exports of higher level computers.

**EFFECTIVE DATE:** This rule is effective December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-2440.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under Control Numbers 0694-0005, 0694-0010, and 0694-0015.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. The rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 770, 773 and 774**

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 770, 773, and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 773, and 774 is revised to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 98-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

**PART 770—[AMENDED]**

2. Section 770.14 is amended by revising the introductory text of paragraph (a) and by revising paragraph (a)(3)(ii) to read as follows:

**§ 770.14 Processing license applications for COCOM participating countries and other selected countries.**

(a) *General.* Section 10(o) of the Act provides for different processing time frames for license applications for exports of COCOM controlled items to countries participating in COCOM, the multilateral Coordinating Committee that cooperates in maintaining strategic export controls; these special processing time frames also apply to license applications for shipments to Austria, Finland, Korea (Republic of), Sweden, and Switzerland. The procedures and time limits set forth in this section apply to license applications received in the Office of Export Licensing on or after the date that each country's eligibility was published in the **Federal Register**. License applications to one of the above countries received prior to that country's eligibility date will be processed under the previous time frames. Applications subject to nuclear non-proliferation controls that are referred to the interagency Subgroup on Nuclear Export Coordination are not subject to the time limits in this section, but will be processed in accordance with § 770.13(g). As used in this section:

* * * * *

(3) * * *

(i) * * *

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(ii) "Other selected countries" means Austria, Finland, Korea (Republic of), Sweden, and Switzerland.

* * * * *

**PART 773—[AMENDED]**

3. In Supplement No. 8 to part 773, "Sweden" is added immediately before "Switzerland".

**PART 774—[AMENDED]**

4. In § 774.2, paragraph (j) is amended by adding the word ", Sweden" immediately before the words "or Switzerland".

Dated: December 10, 1990.

James M. LeMunyon,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 90-29234 Filed 12-12-90; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 141

[Docket No. RM90-5-000; Order No. 531]

### Modification of Regulations on Form No. EIA-714, Annual Electric Power System Report

Issued December 5, 1990.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations on Form No. EIA-714, Annual Electric Power System Report (18 CFR 141.51). The amendments involve retiling of the Form and changing who must submit the Form. The title is changed to "Annual Control Area and Electric System Report." The amendments also require submission of data by control areas and electric utilities with a peak load greater than 200 MW.

The purpose of the changes is to provide consistent reporting of electric utility industry operational data to better support current regulatory responsibilities of the Commission.

**EFFECTIVE DATE:** The final rule is effective January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:**

Ann E. Gorton, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2137.

William Booth, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0849.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Jerry J. Langdon and Branko Terzic.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations on Form No. EIA-714, Annual Electric Power System Report (Form EIA-714).[1] The final rule requires that: (1) Individual electric utilities or groups of utilities, called "control areas," report the appropriate schedules; [2] and (2) individual electric utilities or groups of electric utilities that constitute a planning area and that have a peak load greater than 200 megawatts (MW) report the appropriate schedules. The final rule also changes the title of the report to reflect these changes.

The Commission's regulations have required reporting by individual electric utilities, not by control areas. In light of the fact that control areas are the basic operating units of the electric utility industry, this final rule will allow the collection of comprehensive, accurate, and consistent statistics on electric power industry operations.

The purpose of the changes is to provide consistent reporting of electric utility industry operational data (*e.g.*, power generation, energy transfers, load distribution, and peak load and energy forecasts) to obtain a better overall picture of annual power generation in the United States. Such reporting will support the Commission's regulatory efforts. The Energy Information Administration (EIA) of the Department of Energy is responsible for the design and administration of the form.[3]

The Commission received comments from five utilities subject to its jurisdiction in response to the Notice of Proposed Rulemaking (NOPR).[4] The Commission has considered all of these comments in developing the final rule.[5] The Commission is issuing the final rule herein in substantial conformity with the NOPR. Some minor changes and explanations have been made in order to clarify the regulatory text. Specific comments are discussed below where appropriate.

## II. Reporting Burden

### A. Estimate

The annual public reporting burden for collection of information, as revised herein, is estimated to be 86 hours per response for the Form No. EIA-714. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of Information Resources Management, (202) 208-1415); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

[1] 18 CFR 141.51 (1990).

[2] The definition of control area contained in the final rule is consistent with the Operating Manual of the North American Electric Reliability Council (NERC) of April 1, 1990.

[3] On July 9, 1990, the **Federal Register** published a notice wherein EIA solicited comments on proposed revisions and extension of Form EIA-714. 55 F.R. 28,085 (July 9, 1990). The notice states that comments will be addressed in EIA's request for Office of Management and Budget (OMB) approval of the form.

[4] 55 F.R. 32,641 (August 10, 1990); IV FERC Stats. & Regs. ¶ 32,475 (1990).

[5] Comments were received from: Southern Company Services, Inc.; Pacific Gas and Electric Company; West Texas Utilities Company; Southwestern Public Service Company; and Public Service Company of Colorado and Cheyenne Light Fuel & Power Company jointly.



### B. Comments

Southwestern Public Service Company (Southwestern) claims that it would require 700 hours to complete the revised form, at a cost of $30,000.[6] Pacific Gas & Electric Company (PG&E) estimates that it would require a minimum of 200 hours to complete the revised form. The other commenters do not address the issue of reporting burden.

### C. Conclusion

The Commission believes that Southwestern and PG&E have overstated the reporting burden imposed by the final rule. Both Southwestern's and PG&E's reporting burden estimates include one-time, start-up time and cost estimates. Also, Southwestern and PG&E both assume that, in collecting "control area" data, they will be held responsible for collecting data from entities over which they have no control. Southwestern states that the collection of control area data "is based on the assumption that an electric utility running a control area has the power, the authority, and the means to obtain data available only to other electrical systems within its control area." [7] PG&E states that reporting much of the data would require obtaining from other utilities detailed data not normally required for daily system operations.

Southwestern and PG&E misconstrue the requirements of the final rule. As defined in the NOPR and the final rule, a control area is an integrated electric system capable of regulating its generation in order to maintain its interchange schedule with other systems and capable of contributing to the frequency regulation of the regional interconnection grid. Under this definition, control area data required by Form EIA-714 is readily available from the energy management system [8] operated by those respondents who operate a control area.[9]

Although the reporting burden for some individual respondents may increase due to the final rule's changes, all respondents will no longer have to complete all schedules.[10] On balance, therefore, the Commission believes the overall burden on the industry will be lessened by the final rule's changes.

## III. Background and Discussion

### A. Purpose and Objectives

The requirements that the final rule replaces are inadequate for the Commission because the basic operating arrangement of the industry, a control area, is not necessarily equivalent to the previous reporting unit, which was a "system" meeting certain threshold criteria.[11] The inconsistency between a control area, as defined by the industry, and a system, as defined in the Commission's previous regulations, made it difficult for utilities to report some of the necessary data and for the Commission and EIA to obtain a comprehensive picture of electric industry operations.

The final rule requires that applicable operational information on Form EIA-714 be reported by control area. The final rule also requires load (peak load and energy projections and hourly load data) and transmission data (transmission system maps and line data) to be reported by planning areas; that is, individual electric utilities or groups of electric utilities which assume load responsibility.[12] The final rule requires that planning areas with peak loads greater than 200 MW submit the appropriate schedules on Form No. EIA-714.

The final rule also changes the title of the form to "Annual Electric Control and Planning Area Report," in order to make the title descriptive of the revised form.

### B. Comments

#### 1. General

Southern Company Services, Inc. (Southern Company) states that its five member entities currently file Form EIA-714 separately, and that Southern Company also files the form for its coordinated system. Southern Company's system operates as a single control area. Southern Company concludes that the proposed rule change will eliminate reporting duplication by allowing it to file only one form for its entire control area. Southern Company requests guidance from the Commission about the proposed requirement to have load and transmission data reported by planning areas. Southern Company asks whether each of its five operating companies must continue to provide such information separately, or if one filing by Southern Company will suffice. As stated in the NOPR, the entity or entities that assume load responsibility must submit a form. The obligation to submit a form will vary from system to system. Some holding companies assume load responsibility, while others do not. The Commission recognizes these variations in the organization of utilities. Consequently, it has not specified which entity should submit the form for each electric utility. The final rule merely requires the entity that assumes load responsibility to file Form EIA-714.

Public Service Company of Colorado and Cheyenne Light & Fuel Company (collectively, Colorado) expressed general support for the Commission's intent to improve the consistency in reporting electric utility industry operational data.

#### 2. System Lambda

Colorado objects to reporting system lambda data because it claims that such reporting will impair the competitive ability of all utilities to respond. Colorado requests that the requirement for system lambda data be deleted, or that respondents be given the chance to request waiver of that reporting requirement. Colorado states that such data is proprietary and confidential and has a direct effect upon each entity's competitive advantage. Colorado adds that overall system lambda data do not exist for its entire control area. Colorado claims that such data would likely be invalid or inconsistent because certain types of non-dispatch transactions would not be included.[13] Southern Company asks why system lambda is needed and who will have access to this data. Also, Southern Company states that system lambda and total monthly energy do not belong on the same schedule.

Although the collection of system lambda data is beyond the scope of this

[6] Southwestern states that it has neither the ability nor the authority to collect control area data, and it estimates that the cost for submitting data on its own behalf would be $6,000-$8,000.

[7] Southwestern comments at 1.

[8] The energy management system is the computer system that performs economic dispatch of the control area's generating units.

[9] Generation-related data should include information on only those plants controlled by or metered by the control area operator, or for which the required information is otherwise available to the control area operator. Information on municipal generation and other generation under direct or indirect control of the utility operating the control area should be reported. The Commission understands that the control area operator may not have access to information on certain plants in its control area which are presumably treated as negative load (*i.e.*, a reduction in demand). Information concerning this generation is not required on Form EIA-714. This clarification should significantly reduce the burden estimates of Southwestern and PG&E.

[10] Most of the reporting requirements for this form only apply to control areas. There are fewer than half as many control areas as there are electric utilities that submitted the form under the previous regulations (and that now will report the reduced amount of information for planning areas).

[11] See n. 18, *infra*.

[12] Assuming load responsibility means being obligated to forecast system load demands and to provide resources to serve those demands.

[13] For example, system lambda does not take into account either manually controlled generating units or purchased power.

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final rule,[14] the Commission notes that system lambda is ordinarily computed in the course of control area operations with economic dispatch of thermal generation. System lambda is simply a function of fuel costs and plant efficiencies. It does not involve proprietary contractual information. Public availability of system lambda data will assist the Commission in carrying out its regulatory responsibilities and may serve to enhance competition in bulk power markets. Finally, Form EIA–714 is not confidential and, therefore, system lambda data reported on it will be available to the public.

3. Date for submission of Form EIA–714

Southern Company and West Texas Utilities Company (West Texas) ask the Commission to extend the annual due date for submission of Form EIA–714 from May 1 until June 1. Southern and West Texas seek this extention because they claim that most of the information required on Form EIA–714 is also reported on FERC Form 1.[15] The Commission declines to grant the request. The Commission does not accept the contention that Form EIA–714 substantially duplicates FERC Form 1. Moreover, the reporting entities already have most of the data required by Form EIA–714. Therefore, four months is sufficient time in which to gather and submit the data on Form EIA–714.

For 1991, however, because of the substantial nature of the changes to Form EIA–714 and the fact that OMB may not approve changes to the form until March 1991, the Commission will extend the deadline until July 1, 1991 for submitting the Form EIA–714 covering 1990.

4. Alternative Sources of Data

Southwestern states that the Commission, the Securities and Exchange Commission and the NERC, as well as the regulatory authorities in each state, already collect, on an individual utility basis, various portions of the data required by the revised form. As noted above, PG&E states that FERC Form 1 contains much of the data required by the revised Form EIA–714. PG&E adds that the Western System Coordinating Council (WSCC), of which PG&E is a member system, already provides the Commission with two copies of the Department of Energy (DOE) Form IE–411, entitled "Coordinated Bulk Power Supply Program" (DOE form), which contains some of the data required by the revised Form EIA–714. Also, according to PG&E, the WSCC provides the NERC with an assessment of reliability and adequacy for summer and winter operating conditions twice a year, which information is available to the Commission. Finally, PG&E asserts that it annually prepares a Uniform Statistical Report for the Edison Electric Institute which contains detailed information similar to that submitted on FERC Form 1. PG&E suggests that if utilities were to submit the above reports to the Commission instead of Form EIA–714, the reporting burden on the utilities would be substantially reduced.

There are several distinctions between Form EIA–714 and the other sources of data mentioned by the commenters. Although some of the data on the DOE form and Form EIA–714 may be similar, the DOE form is aggregated for domestic members of the nine Regional Electric Reliability Councils of the NERC. It is possible that certain information requested on the DOE form can be eliminated where such information can be derived from Form EIA–714. The Commission is working with the NERC and the DOE to eliminate any unnecessary duplication in this area which may result from the revisions herein.

Further, in contrast to Form EIA–714, FERC Form 1 collects primarily financial and accounting information. FERC Form 1 is submitted by major privately-owned utilities. Form EIA–714 is to be completed by control and planning areas. The reporting of monthly peak load data on Form EIA–714 and page 401 of the FERC Form 1 may appear duplicative. However, monthly load data required for Form 1 is carefully defined to support Commission cost-of-service analyses and is likely to differ from the planning area monthly load data required on Form EIA–714. In addition, the DOE form is a voluntary form submitted by Regional Electric Reliability Councils to the Office of Energy Emergencies of the DOE. Form EIA–714, by contract is a mandatory form necessary to assist the Commission in carrying out its regulatory responsibilities.

## IV. Changes

The final rule amends the previous regulation as follows:

(a) *Inclusion of "Control Areas" as entities required to file Form EIA–714.*

Under the previous regulation, Form EIA–714 was filed by any "electric utility," as defined under section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602 (1988).[16] The amended regulation requires that Form EIA–714 be filed by any electric utility, or group of electric utilities, that operates as a "control area." For purposes of determining who must file Form EIA–714, the meaning of "electric utility" remains unchanged. "Control area" means an integrated electric system [17] capable of regulating its generation in order to maintain its interchange schedule with other systems and capable of contributing to the frequency regulation of the regional interconnected grid.

(b) *Inclusion of "Planning Areas" as entities required to file a Form EIA–714 when their peak load is greater than 200 megawatts.*

The amended regulation requires that Form EIA–714 be filed by any electric utility, or group of electric utilities, that constitutes a planning area and that has a peak load greater than 200 MW based on net energy for load for the reporting year.[18] For purposes of determining who must file Form EIA–714, the meaning of "electric utility" remains unchanged, and "planning area" means an electric system comprising an electric utility, or group of electric utilities, that assumes responsibility for serving the area loads.

(c) *Change in title of the regulation and title of Form EIA–714.*

Form EIA–714 was previously titled "Annual Electric Power System Report." The amended regulation retitles both the form and the authorizing regulation as "Annual Electric Control and Planning Area Report." This change reflects the content of Form EIA–714, as amended, and highlights the new requirement imposed upon control and planning areas.

## V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA),[19] generally requires a description and analysis of proposed rules that will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such an analysis if a rule would not have such an effect. The Commission does not believe that this final rule will have such an impact on small entities. Most electric utilities do not fall within the RFA's definition of small entity.[20] Therefore, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

## VI. Environmental Statement

The Commission concludes that issuance of this final rule would not represent a major federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[21] This rule would be procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[22]

## VII. Information Collection Statement

The OMB's regulations require that OMB approve certain information and record keeping requirements imposed by an agency.[23] This amended regulation, titled Form EIA–714, Annual Electric Control and Planning Area Report, replaces the previous regulation codified at 28 CFR 141.51, Annual electric Power System Report, and is being submitted to OMB for its review. This amended regulation provides comprehensive, accurate, and consistent statistics on electric power industry operations to assist the Commission in fulfilling its regulatory responsibilities under the Federal Power Act.[24] This amended regulation applies to individual electric utilities and groups of electric utilities operating either as control areas or as planning areas. It involves the aggregation by some utilities, "control areas," of data on electrical systems that were previously filed in a disaggregative format. The Commission estimates that there will be approximately 144 control area respondents and 300 planning area respondents. Due to overlap between control areas and planning areas, the Commission estimates that either the control area, the planning area, or both parts of the form will be completed by approximately 320 respondents, with an estimated annual average response burden of 86 hours. The total estimated annual average response burden will be 27,520 hours.

## VIII. Effective Date

This final rule is effective January 14, 1991.

## List of Subjects in 18 CFR Part 141

Electric power.

Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 141 in chapter I, title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Linwood A. Watson, Jr.,

*Acting Secretary.*

## PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 is revised to read as follows:

**Authority:** 42 U.S.C. 7102–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 16 U.S.C. 791a–828c; 16 U.S.C. 2601–2645.

2. Section 141.51 is revised to read as follows:

### § 141.51 Form No. EIA–714, Annual Electric Control and Planning Area Report.

(a) *Who must file.* (1) Any electric utility, as defined under section 3(4) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2602, operating a control area, and any group of electric utilities, which by way of contractual arrangements operates as a single control area, must complete and file the applicable schedules in Form No. EIA–714 with the Energy Information Administration.

(2) Any electric utility, or group of electric utilities, that constitutes a planning area and that has a peak load greater than 200 megawatts (MW) based on net energy for load for the reporting year must complete applicable schedules in Form No. EIA–714.

(b) *When to file.* Form No. EIA–714 must be filed on or before May 1 for the preceding calendar year, beginning with data covering calendar year 1991, which must be filed on or before May 1, 1992. Data covering calendar year 1990 must be filed on or before July 1, 1991.

(c) *What to file.* An original and three conformed copies of Form No. EIA–714, "Annual Electric Control and Planning Area Report," must be filed with the Energy Information Administration, in accordance with the instructions in that form and in this section.

[FR Doc. 90–29150 Filed 12–12–90; 8:45 am]

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[14] The collection of system lambda data will be addressed separately in EIA's request for OMB's approval of Form EIA–714.

[15] FERC Form 1 is due on April 30.

[16] See also 18 CFR 141.51(a) (1988).

[17] For purposes of Form EIA–714, an electric system is the physically connected generation, transmission, distribution, and other facilities operated as an integral unit under one control, management, or operating supervision.

[18] 18 CFR 141.51 provided that the electric utility must report "for every system that: * * * (2) [o]wns and/or operates operable generating capacity of more than 25 megawatts (MW); and (3) [h]as net system and firm sales for resale in excess of 100,000 megawatthours (MWh) for the reporting year."

[19] 5 U.S.C. 601–612 (1988).

[20] 5 U.S.C. 601(3), citing section 3 of the Small Business Act, 15 U.S.C. 632 (1988). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[21] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[22] See 18 CFR 380.4(a)(1) (1990).

[23] 5 CFR 1320.13 (1990).

[24] 16 U.S.C. 824 *et seq.* (1988).



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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 14

### Advisory Committees; Establishment and Termination

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment by the Commissioner of Food and Drugs of the Medical Devices Advisory Committee and the termination of the existing devices panels. This document revises the agency's list of standing advisory committees to show these actions.

**EFFECTIVE DATE:** December 13, 1990. Authority for the Medical Devices Advisory Committee will remain in effect until amended or terminated by the Commissioner of Food and Drugs.

**FOR FURTHER INFORMATION CONTACT:**

Patsy Trisler, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1186.

**SUPPLEMENTARY INFORMATION:** Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 and 21 CFR 14.40(b)), FDA announces the establishment by the Commissioner of Food and Drugs of the Medical Devices Advisory Committee (the Committee). The Committee consists of 16 panels. Each panel, according to its specialty area, will review and evaluate available data concerning the safety and effectiveness of marketed and investigational devices and advise the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification of these devices into one of three regulatory categories: Class I (general controls), class II (performance standards), or class III (premarket approval); recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category; advise on any possible risks to health associated with the use of devices; advise on formulation of product development

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protocols and review premarket approval applications for those devices classified in the premarket approval category; review classification as appropriate; recommend exemptions to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advise on the necessity to ban a device; and respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

The Committee, through its Dental Products Panel, also will function at times as an over-the-counter (OTC) drug advisory panel. As such, the Committee will receive and evaluate data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use and the adequacy of their labeling, and will advise the Commissioner on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded. The Committee will evaluate data and make recommendations concerning the approval of new drug products for human use and whether various prescription drug products should be changed to OTC status.

Because this is a technical amendment to 21 CFR part 14, the Commissioner finds under 21 CFR 10.40(e), (d), and (e) that notice, public procedure, and delayed effective date are unnecessary and contrary to the public interest.

Concurrently with the establishment of this Committee, the Commissioner terminated the following advisory committees: Anesthesiology and Respiratory Therapy Devices Panel; Circulatory System Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Dental Products Panel; Ear, Nose, and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel; General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Immunology Devices Panel; Microbiology Devices Panel; Neurological Devices Panel; Obstetrics-Gynecology Devices Panel; Ophthalmic Devices Panel; Orthopedic and Rehabilitation Devices Panel; and Radiologic Devices Panel.

**List of Subjects in 21 CFR Part 14**

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

## PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b–263n, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising paragraph (d)(1) to read as follows:

**§ 14.100 List of standing advisory committees.**

* * * * *

(d) * * *

(1) *Medical Devices Advisory Committee.*

(i) *Data established:* October 27, 1990.

(ii) *Function:* Reviews and evaluates data on marketed and investigational devices and makes recommendations for their regulation.

* * * * *

Dated: December 7, 1990.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29165 Filed 12-12-90; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 602**

**[T.D. 8323]**

**RIN 1545-AL06**

## Information Reporting on Real Estate Transactions

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary and final regulations.

**SUMMARY:** This document contains temporary and final regulations relating to the information reporting requirements for real estate transactions contained in section 6045(e). The final regulations supersede § 1.6045-3T on the effective date and affect persons required to make returns of information under section 6045(e). The final regulations provide these persons with the guidance necessary to comply with the law.

**DATES:** The final regulations are effective on January 1, 1991, and apply to real estate transactions with dates of closing on or after January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Davis III, 202-377-9581 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1085.

The estimated annual burden per respondent/recordkeeper varies from .10 to 1.00 hours depending on individual circumstances, with an estimated average of .28 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

On April 18, 1990, the Federal Register published a Notice of Proposed Rulemaking (55 FR 14428) under section 6045(e) of the Internal Revenue Code of 1986, relating to information reporting on real estate transactions. Section 6045(e) was added to the Code by section 1521 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2746). Section 6045(e) was amended by section 1015(e) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342).

After issuance of the proposed regulations, the Internal Revenue Service received public comments on the proposed regulations and held a public hearing on September 24, 1990. Four commentators spoke at the public hearing. After fully considering the comments and the statements made at the hearing, the Service adopts the proposed regulations as revised by this Treasury decision. Descriptions of the revisions to the proposed regulations are included in the discussion of the public comments below.



**Exceptions to Reporting Rules**

*FIRPTA Transactions*

The proposed regulations provided no exception to the reporting requirements under section 6045(e) for transactions also subject to sections 897 and 1445, enacted by the Foreign Investment Real Property Tax Act of 1980 (FIRPTA). Several commentators agreed with the position in the proposed regulations and asked that such transactions not be excepted for reasons of administrative convenience to the reporting person. Other commentators suggested that an exception be provided for such transactions because information provided under section 6045(e) would duplicate information provided under the FIRPTA provisions.

Providing such an exception would require an additional certification procedure to allow reporting persons to determine whether transactions are subject to FIRPTA. This procedure would greatly increase the administrative burden the regulations impose on reporting persons. In addition, if the regulations do not provide an exception for FIRPTA transactions, the information the Service receives will be useful in monitoring taxpayer compliance with the FIRPTA requirements and exemptions (e.g., the exemption from FIRPTA withholding under section 1445(b)(5), relating to the disposition of a residence where the amount realized does not exceed $300,000). Accordingly, the final regulations do not provide an exception to the reporting requirements for transactions subject to FIRPTA.

*Transactions Subject to Either Section 351 or 721*

Under the proposed regulations, the reporting requirements of section 6045 (e) generally apply to all real estate transactions, whether or not gain or loss is realized and/or recognized. Thus, no exception was provided for transfers qualifying for nonrecognition of gain under either section 351 or 721 of the Code. Several commentators have suggested that such transactions be excepted because they do not result in current gain recognition.

Transfers to a corporation or partnership in exchange for an interest in the corporation or partnership are not always tax-free. See, for example, sections 357 and 752 of the Code. In addition, if, for example, any liability of the transferor is assumed by the corporation or partnership or the real estate is transferred subject to a liability, there will be gross proceeds to report with respect to the transaction. Finally, as stated above, the reporting requirements generally apply without regard to whether gain or loss is realized or recognized.

As with the FIRPTA issue described above, an exception for transactions under sections 351 and 721 (or, for that matter, for any other category of transactions in which gain or loss is not realized or recognized) would necessitate additional certification requirements which would increase the administrative burden imposed by the regulations. Moreover, if an exemption were provided only for those section 351 and 721 transactions in which no gain is recognized, the burden would be even greater because the transferor would also have to certify that no gain is recognized and reporting would still be required for transactions in which gain is recognized. In a number of instances, a transferor would be required to seek advice concerning the tax treatment of a transaction before being able to provide the required certifications.

Accordingly, the final regulations do not provide an exception for transactions falling under either section 351 or 721.

**Gross Proceeds**

The proposed regulations provided rules for determining the amount of gross proceeds to be reported with respect to a real estate transaction. Several commentators requested clarification of the application of the proposed rules to exchanges of real estate. The final regulations provide clarifications including examples that illustrate the amount of gross proceeds to be reported.

Several commentators also requested clarification of the rules involving contingent payments. The final regulations clarify the rules for determining the amount of gross proceeds to be reported in the case of contingent payments and provide examples of the application of those rules. These rules are summarized as follows:

(a) If a real estate transaction is a "contingent payment transaction," gross proceeds include the "maximum determinable proceeds," if any.

(b) The term "contingent payment transaction" means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash or consideration treated as cash is subject to a contingency.

(c) The term "maximum determinable proceeds" means the gross proceeds determined by assuming that all of the contingencies contemplated by the documents available at closing are met or otherwise resolved in a manner that will maximize the gross proceeds. Where, using this approach, the maximum gross proceeds cannot be determined with certainty (because, for example, they are based on a percentage of profits not limited by a ceiling), the maximum determinable proceeds are the greatest amount that can be determined with certainty using this approach. In addition, the regulations provide rules for the information that must be included on the required Form 1099 in cases in which, assuming all contingencies are met or otherwise resolved, the maximum gross proceeds cannot be determined with certainty.

**Timber Transactions**

The proposed regulations provided an exception from the reporting requirements for transactions involving natural resources, including standing timber. Section 6050N of the Code requires reporting for certain royalty payments, including timber royalties, but not for other transactions involving timber. The Service believes that the disparity in the reporting requirements for different forms of timber transactions may be inappropriate. However, this issue was not addressed in the Pubic comments and was not considered at the public hearing. Accordingly, the final regulations contain the exception for natural resource transactions, including standing timber. The Service will open a new regulations project to consider the expansion of the reporting requirements to include sales and exchanges of standing timber. Any requirements for the reporting of standing timber will apply only to transactions occurring after the issuance of such requirements.

**Federally-Subsidized Indebtedness**

Sections 6045(a) and 6045(e)(4) of the Code authorize the Secretary to require reporting with respect to any financing of the seller that is federally-subsidized indebtedness (as defined in section 143(m)(3) of the Code). The final regulations reserve on this issue and do not require the reporting person to provide this information. Under Notice 90-70, 1990-46 I.R.B. 6, the issuer of federally-subsidized financing is required to report specified information at the time the financing is provided. The Service believes this information will be more useful and easier to

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provide at such time. In the event the Service determines that reporting at the time of the sale, under section 6045(e), should also be required, such reporting will only apply to transactions with dates of closing occurring after the issuance of such requirements.

**Exception for de Minimis Transactions**

The proposed regulations contained an exception for transfers in which the total gross proceeds are less than $250. Commentators suggested that the amount be increased. The final regulations provide for a de minimis level of $600. This level will be the same as the statutory threshold established for several other information reporting provisions (sections 6041, 6041A and 6050H of the Code).

Several commentators indicated that it was unclear whether the de minimis amount is based on total gross proceeds and is determined without regard to the allocation of such gross proceeds among multiple transferors. The final regulations clarify that the $600 limitation is based on total gross proceeds and is determined without regard to the allocation of such gross proceeds among multiple transferors.

**Allocation of Gross Proceeds**

Based on the suggestion of several commentators, the final regulations clarify that the reporting person generally must report the entire gross proceeds with respect to each and every transferor where no allocation of gross proceeds is received. Specifically, the final regulations provide that the reporting person generally must report the gross proceeds in accordance with any allocation received at or before the time of closing.

The reporting person may (but is under no obligation to) report in accordance with any allocation of gross proceeds received during the period that occurs after the time of closing and before the date on which the information returns must be filed with the Service (determined without regard to extensions).

The reporting person may not, however, report in accordance with any allocation received on or after the date on which the information returns must be filed with the Service (determined without regard to extensions).

**Effective Date**

As stated in the proposed regulations, the final regulations (§ 1.6045–4) are effective for real estate transactions with dates of closing on or after January 1, 1991. Thus § 1.6045–3T applies only to transactions with dates of closing between January 1, 1987 and December 31, 1990, inclusive.

**Special Analyses**

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretative. Therefore a final Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6). In accordance with section 7805 (f) of the Internal Revenue Code, the proposed regulations were submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Arthur E. Davis III of the Office of Assistant Chief Counsel, Income Tax & Accounting. However, personnel from other offices of the Treasury Department and from the Internal Revenue Service participated in developing the regulations on matters of both substance and style.

**List of Subjects**

*26 CFR 1.6001–1 through 1.6109–2*

Income taxes, Administration and procedure, Filing requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

For the reasons set forth in the preamble, title 26, chapter I, subchapter A, part 1, and subchapter H, part 602, of the Code of Federal Regulations is amended as set forth below:

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

**Paragraph 1.** The authority for part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.6045–4 also issued under 26 U.S.C. 6045.

**Par. 2.** Section 1.6045–3T is amended by revising the heading and revising paragraph (p) as follows:

**§ 1.6045–3T Information reporting on real estate transactions with dates of closing that occur after December 31, 1986, and prior to January 1, 1991 (Temporary).**

* * * * *

(p) *Effective date*—This section shall be effective for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur after December 31, 1986, and prior to January 1, 1991. No penalty will be imposed with respect to a transaction with a date of closing that occurs before May 4, 1987.

**Par. 3.** The following new § 1.6045–4 is added in the appropriate place.

**§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.**

(a) *Requirement of reporting.* Except as otherwise provided in paragraphs (c) and (d) of this section, a real estate reporting person ("reporting person") must make an information return with respect to a real estate transaction and, under paragraph (m) of this section, must furnish a statement to the transferor. A reporting person may also report with respect to transactions otherwise excepted in paragraphs (c) and (d) of this section. However, if the reporting person so elects, the return must be filed and the statement furnished in accordance with the provisions of this section. For the definition of a real estate transaction for purposes of these reporting requirements, see paragraph (b) of this section. For rules for determining the reporting person with respect to a real estate transaction, see paragraph (e) of this section.

(b) *Definition of real estate transaction*—(1) *In general.* A transaction is a "real estate transaction" under this section if the transaction consists in whole or in part of the sale or exchange of "reportable real estate" (as defined in paragraph (b)(2) of this section) for money, indebtedness, property other than money, or services. The term "sale or exchange" shall include any transaction properly treated as a sale or exchange for Federal income tax purposes, whether or not the transaction is currently taxable. Thus, for example, a sale or exchange of a principal residence is a real estate transaction under this section even though the transferor is entitled to defer recognition under section 1034 (relating to rollover of gain on sale of principal residence), or the transferor is entitled to the special one-time exclusion of gain from the sale of a principal residence provided by section 121 to certain persons who have attained age 55.



(2) *Definition of reportable real estate.* Except as otherwise provided in paragraph (c)(2) of this section, the term "reportable real estate" means any present or future ownership interest in—

(i) Land [whether improved or unimproved], including air space;

(ii) Any inherently permanent structure, including any residential, commercial or industrial building;

(iii) Any condominium unit, including appurtenant fixtures and common elements (including land); or

(iv) Any stock in a cooperative housing corporation (as defined in section 216).

For purposes of this section, the term "ownership interest" includes fee simple interests, life estates, reversions, remainders, and perpetual easements. In addition, the term "ownership interest" includes any previously created rights to possession or use for all or a portion of any particular year (*i.e.*, a leasehold, easement, or "timeshare"), with a remaining term of at least 30 years, including any period for which such rights may be renewed at the option of the holder of the rights, as determined on the date of closing (as defined in paragraph (h)(2)(ii) of this section). Thus, for example, a pre-existing leasehold on a building with an original term of 99 years is an ownership interest in real estate for purposes of this section if it has a remaining term of 35 years as of the date of closing, but not if it has a remaining term of only 10 years as of the date of closing. However, the term "ownership interest" does not include an option to acquire otherwise reportable real estate.

(c) *Exception for certain exempt transactions*—(1) *Certain transfers.* No return of information is required with respect to—

(i) A transaction that is not a sale or exchange (such as a gift (including a transaction treated as a gift under section 1041) or bequest, or a financing or refinancing that is not related to the acquisition of reportable real estate), even if the transaction involves reportable real estate, as defined in paragraph (b)(2) of this section;

(ii) A transfer in full or partial satisfaction of any indebtedness secured by the property so transferred including a foreclosure, a transfer in lieu of foreclosure or an abandonment; or

(iii) A transaction (a "de minimis transfer") in which it can be determined with certainty that the total consideration (in money, services and property), received or to be received in connection with the transaction is less than $600 in value (determined without regard to any allocation of gross proceeds among multiple transferors under paragraph (i)(5) of this section) as of the date of the closing (as defined in paragraph (h)(2)(ii) of this section), even if the transaction involves reportable real estate. Thus, for example, if a contract for sale of reportable real estate recites total consideration of "$1.00 plus other valuable consideration," the transfer is not a de minimis transfer unless the reporting person can determine that the "other valuable consideration" received or to be received is less than $599 in value as measured on the date of closing.

(2) *Certain property.* Notwithstanding the provisions of paragraph (b)(2) of this section, no return of information is required with respect to a sale or exchange of an interest in any of the following property—provided the sale or exchange of such property is not related to the sale or exchange of reportable real estate—

(i) An interest in surface or subsurface natural resources (*i.e.*, timber, water, ores and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land;

(ii) A burial plot or vault; or

(iii) A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, at the date of closing (as defined in paragraph (h)(2)(ii) of this section), to a foundation. Thus, a transfer of an unaffixed mobile home that is unrelated to the sale or exchange of reportable real estate is excepted from the reporting requirements of this section.

(d) *Exception for certain exempt transferors*—(1) *General rule.* No return of information is required with respect to a transferor that is a corporation under section 7701(a)(3) or section 7704(a) or is considered under paragraph (d)(2) of this section to be—

(i) A corporation;

(ii) A governmental unit; or

(iii) An exempt volume transferor.

In the case of a real estate transaction with respect to which there is one or more exempt transferor(s) and one or more non-exempt transferor(s), the reporting person is required to report with respect to any non-exempt transferor. The special rule for allocation of gross proceeds, as provided in paragraph (i)(5) of this section, applies to such a transaction.

(2) *Treatment as exempt transferor.* Absent actual knowledge to the contrary, a reporting person may treat a transferor as—

(i) A corporation if—

(A) The name of the transferor contains an unambiguous expression of corporate status, such as Incorporated, Inc., Corporation, Corp., or P.C. (but not Company or Co.);

(B) The name of the transferor contains the term "insurance company," "reinsurance company," or "assurance company"; or

(C) The transfer or loan documents clearly indicate the corporate status of the transferor;

(ii) A governmental unit if the transferor is—

(A) The United States or a state, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing; or

(B) A foreign government, a political subdivision thereof, an international organization, as defined in section 7701(a)(18), or any wholly-owned agency or instrumentality of the foregoing; or

(iii) An exempt volume transferor if, and only if, the reporting person receives a certification of exempt status under paragraph (d)(3) of this section.

(3) *Certification of exempt status*—(i) *In general.* A certification of exempt status must contain—

(A) The name, address, and taxpayer identification number of the transferor (the address must be that of the permanent residence (in the case of an individual), that of the principal office (in the case of a corporation or partnership), or that of the permanent residence or principal office of any fiduciary (in the case of a trust or estate));

(B) Sufficient information to identify any otherwise reportable real estate not reported by virtue of the exempt status of the transferor; and

(C) A declaration that the transferor has sold or exchanged during either of the prior two calendar years, or previously sold or exchanged during the current calendar year, or, as of the date of closing (as defined in paragraph (h)(2)(ii) of this section), reasonably expects to sell or exchange during the current calendar year at least 25 separate items of reportable real estate (as defined in paragraph (b)(2) of this section) to at least 25 separate transferees, and that each such item, at the date of closing of the sale of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business. For example, the declaration may be worded as follows:

---

[Insert name of transferor]
[check one or more]:

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(1) ___ has sold or exchanged during either of the prior two calendar years,

(2) ___ previously sold or exchanged during the current calendar year,

(3) ___ on the date of closing expects to sell or exchange during the current calendar year,

at least 25 separate items of reportable real estate to at least 25 separate transferees and such such item, at the date of closing of such item was or will be held primarily for sale or resale to customers in the ordinary course of a trade or business.

(ii) *Additional requirements.* A certification of exempt status must be—

(A) Signed under penalties of perjury by the transferor or any person who is authorized to sign a declaration under penalties of perjury in behalf of the transferor as described in section 6061 and the regulations thereunder;

(B) Received by the reporting person no later than the time of closing; and

(C) Retained by the reporting person for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs.

(iii) *Reporting person may accept or disregard certification.* A reporting person may solicit or merely accept a certification of exempt status. Moreover, notwithstanding a transferror's furnishing of such certification, a reporting person may disregard the certification and, instead, report with respect to the transaction. See paragraph (a) of this section for the requirement that such elective reporting must be in compliance with the provisions of this section.

(e) *Person required to report*—(1) *In general.* Although there may be other persons involved in a real estate transaction, only the reporting person is required to report with respect to any real estate transaction. Except as provided in a designation agreement under paragraphs (e)(5) of this section, the reporting person with respect to a real estate transaction is—

(i) The person responsible for closing the transaction, as defined in paragraph (e)(3) of this section; or

(ii) If there is no person responsible for closing the transaction, the person determined to be the reporting person under paragraph (e)(4) of this section.

A person may be the reporting person with respect to a transaction whether or not such person performs or is licensed to perform real estate brokerage services for a commission or fee.

(2) *Employees, agents, and partners.* For purposes of this paragraph (e), if an employee, agent, or partner (other than an employee, agent, or partner of the transferor or the transferee) acting within the scope of such person's employment, agency, or partnership participates in a real estate transaction—

(i) Such participation shall be attributed to such person's employer, principal, or partnership; and

(ii) Only the employer, principal, or partnership (and not such person) may be the reporting person with respect to such transaction as a result of such participation.

However, the participation of a person described in paragraph (e)(3)(i) of this section (*i.e.*, a person listed on the Uniform Settlement Statement as the settlement agent) acting as an agent of another is not attributed to the principal.

(3) *Person responsible for closing the transaction*—(i) *Uniform Settlement Statement used.* If a Uniform Settlement Statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. 2601 *et seq.* (a "Uniform Settlement Statement"), is used with respect to the real estate transaction and a person is listed as settlement agent on the statement, such person is the person responsible for closing the transaction. For purposes of this section, a Uniform Settlement Statement shall include any amendments or variations thereto, or substitutions therefore that may hereafter be prescribed under RESPA, provided that any such amended, varied, or substituted form requires disclosure of the parties to the transaction, the application of the proceeds of the transaction, and the identity of the settlement agent or other person responsible for preparing the form.

(ii) *Other closing statement used.* If a Uniform Settlement Statement is not used, or if a Uniform Settlement Statement is used, but no person is listed as settlement agent, the person responsible for closing the transaction is the person who prepares a closing statement presented to the transferor and transferee at, or in connection with, the closing of the real estate transaction. For purposes of this section, a closing statement is any closing statement, settlement statement (including a Uniform Settlement Statement), or other written document that identifies the transferor and transferee, reasonably identifies the transferred real estate, and describes the manner in which the proceeds payable to the transferor are to be (or were) disbursed at, or in connection with, the closing.

(iii) *No closing statement used or multiple closing statements used.* If no closing statement is used or multiple closing statements are used, the person responsible for closing the transaction is the first-listed of the persons that participate in the transaction as—

(A) The attorney for the transferee who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate;

(B) The attorney for the transferor who is present at the occasion of the delivery of either the transferee's note or a significant portion of the cash proceeds to the transferor, or who prepares or reviews the preparation of the document(s) transferring legal or equitable ownership of the real estate; or

(C) The disbursing title or escrow company that is most significant in terms of gross proceeds disbursed.

If more than one attorney would be the person responsible for closing the transaction under the preceding sentence, the person among such attorneys who is considered responsible for closing the transaction under this paragraph (e)(3)(iii) is the person whose involvement in the transaction is most significant.

(4) *Determination of the real estate reporting person in the absence of a person responsible for closing the transaction.* If no person is responsible for closing the transaction (within the meaning of paragraph (e)(3) of this section), the reporting person with respect to the real estate transaction is the person first-listed below of the persons that participate in the transaction as—

(i) The mortgage lender (as defined in paragraph (e)(6)(i) of this section);

(ii) The transferor's broker (as defined in paragraph (e)(6)(ii) of this section);

(iii) The transferee's broker (as defined in paragraph (e)(6)(iii) of this section); or

(iv) The transferee (as defined in paragraph (e)(6)(iv) of this section).

(5) *Designation agreement*—(i) *In general.* If a written designation agreement executed at or prior to the time of closing designates one of the persons described in paragraph (e)(5)(ii) of this section as the reporting person with respect to the transaction and the designated person is a party to the agreement, the designated person is the reporting person with respect to the transaction. It is not necessary that all parties to the transaction (or that more than one party) be parties to the agreement.

(ii) *Persons eligible.* A person may be designated as the reporting person under this paragraph (e)(5) only if the person is—

(A) The person responsible for closing the transaction (as defined in paragraph (e)(3) of this section);

(B) A person described in paragraph (e)(3)(iii) (A), (B) or (C) of this section (whether or not such person is responsible for closing the transaction); or

(C) The mortgage lender (as defined in paragraph (e)(6)(i) of this section).

(iii) *Form of designation agreement.* A designation agreement may be in any form that is consistent with the requirements of this paragraph (e)(5), and may be included on a closing statement with respect to the transaction. The designation agreement must, however, include the name and address of the transferor and transferee and the address and any additional information necessary to identify the real estate transferred. The agreement must identify, by name and address, the person designated as the reporting person with respect to the transaction, and all other parties (if any) to the agreement. All parties to the agreement must date and sign the agreement and must retain the agreement for four years following the close of the calendar year in which the date of closing (as determined under paragraph (h)(2)(ii) of this section) occurs. Upon request by the Internal Revenue Service, or any person involved in the transaction who did not participate in the designation agreement, the agreement must be made available for inspection.

(6) *Meaning of terms*—(i) *Mortgage lender.* For purposes of this paragraph (e), the term "mortgage lender" means the person who lends new funds in connection with the transaction, but only if the repayment of such funds is secured in whole or in part by the real estate transferred. If new funds are advanced by more than one person, the mortgage lender is the person who advances the largest amount of new funds. If two or more persons advance equal amounts of new funds and no other person advances a greater amount of new funds, the mortgage lender among the persons advancing such equal amounts is the person with the security interest that is most senior in terms of priority. For purposes of this paragraph (e)(6)(i), any amounts advanced by the transferor are not treated as new funds.

(ii) *Transferor's broker.* For purposes of this paragraph (e), the term "transferor's broker" means only the broker that contracts with the transferor and is compensated in connection with the transaction.



(iii) *Transferee's broker.* For purposes of this paragraph (e), the term "transferee's broker" means only the broker that participates to a significant extent in the preparation of the transferee's offer to acquire the real estate or that presents such offer to the transferor. If more than one person is so described, the transferee's broker is the person whose participation in the preparation of the transferee's offer to acquire the real estate is most significant or, in the event there is no such person, the person whose participation in the presentation of the offer is most significant.

(iv) *Transferee.* For purposes of this paragraph (e), the term "transferee" means the person who acquires the greatest interest in the real estate. If there is no such person, the transferee is the person listed first on the document(s) transferring legal or equitable ownership of the real estate.

(f) *Multiple transferors*—(1) *General rule.* In the case of multiple transferors, each of which transfers an interest in the same reportable real estate, the reporting person shall make a separate information return with respect to each transferor. Paragraph (i)(5) of this section provides rules for the determination of gross proceeds to be reported in the case of multiple transferors.

(2) *Rules for spouses.* Transferors who are husband and wife at the time of closing and hold the reportable real estate as tenants in common, joint tenants, tenants by the entirety, or community property are treated as a single transferor for purposes of paragraphs (f)(1), (h)(1)(i), (i)(5) and (l)(1)(i) of this section, unless the reporting person receives, at or prior to the time of closing, an uncontested allocation of gross proceeds between them. In the case of a husband and wife treated as a single transferor, the reporting person may treat either as the transferor for purposes of paragraphs (h)(1)(i) and (l)(g)(1) of this section, relating to reporting and soliciting taxpayer identification numbers.

(g) *Prescribed form.* Except as otherwise provided in paragraph (k) of this section, the information return required by paragraph (a) of this section shall be made on Form 1099.

(h) *Information required*—(1) *In general.* The following information must be set forth on the Form 1099 required by this section:

(i) The name, address, and taxpayer identification number (TIN) of the transferor (see also paragraph (f)(2) of this section);

(ii) A general description of the real estate transferred (in accordance with paragraph (h)(2)(i) of this section);

(iii) The date of closing (as defined in paragraph (h)(2)(ii) of this section);

(iv) To the extent required by the Form 1099 and its instructions, the entire gross proceeds with respect to the transaction (as determined under the rules of paragraph (i) of this section), and, in the case of multiple transferors, the gross proceeds allocated to the transferor (as determined under paragraph (i)(5) of this section);

(v) To the extent required by the Form 1099 and its instructions, an indication that the transferor—

(A) Received (or will, or may, receive) property (other than cash and consideration treated as cash in computing gross proceeds) or services as part of the consideration for the transaction,

(B) May receive property (other than cash) or services in satisfaction of an obligation having a stated principal amount, or

(C) May receive, in connection with a contingent payment transaction, an amount of gross proceeds that cannot be determined with certainty using the method described in paragraph (i)(3)(iii) of this section and is therefore not included in gross proceeds under paragraphs (i)(3)(i) and (i)(3)(iii) of this section;

(vi) The real estate reporting person's name, address, and TIN;

(vii) [Reserved]; and

(viii) Any other information required by the Form 1099 or its instructions.

(2) *Meaning of terms*—(i) *General description of the real estate transferred.* A general description of the real estate transferred includes the complete address of the property. If the address would not sufficiently identify the property, a general description of the real estate also includes a legal description (*e.g.*, section, lot, and block) of the property.

(ii) *Date of closing.* In the case of a real estate transaction with respect to which a Uniform Settlement Statement is used, the date of closing shall be the date (if any) properly described as the "Settlement Date" on such statement. In all other cases, the date of closing shall be the earlier of the date on which title is transferred or the date on which the economic burdens and benefits of ownership of the real estate shift from the transferor to the transferee.

(i) *Gross proceeds*—(1) *In general.* Except as otherwise provided in this paragraph (i), the term "gross proceeds" means the total cash received or to be received by or on behalf of the

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transferor in connection with the real estate transaction. For purposes of this paragraph (i), the following amounts are treated as cash received or to be received by or on behalf of the transferor in connection with the real estate transaction:

(i) The stated principal amount of any obligation to pay cash to or for the benefit of the transferor in the future (including any obligation having a stated principal amount that may be satisfied by the delivery of property (other than cash) or services);

(ii) The amount of any liability of the transferor assumed by the transferee as part of the consideration for the transfer or of any liability to which the real estate acquired is subject (whether or not the transferor is personally liable for the debt); and

(iii) In the case of a contingent payment transaction, as defined in paragraph (i)(3)(ii) of this section, the maximum determinable proceeds, as defined in paragraph (i)(3)(iii) of this section.

Gross proceeds does not include the value of any property (other than cash and consideration treated as cash) or services received by, or on behalf of, the transferor in connection with the real estate transaction. See paragraph (h)(1)(v) of this section for the information that must be included on the Form 1099 required by this section in cases in which the transferor receives (or will, or may, receive) property (other than cash and consideration treated as cash) or services as part of the consideration for the transfer.

(2) *Treatment of sales commissions and similar expenses.* In computing gross proceeds, the total cash received or to be received by or on behalf of the transferor shall not be reduced by expenses borne by the transferor (such as sales commissions, expenses of advertising the real estate, expenses of preparing the deed, and the cost of legal services in connection with the transfer).

(3) *Special rules for contingent payments*—(i) *In general.* If a real estate transaction is a contingent payment transaction, gross proceeds consist of the maximum determinable proceeds, if any.

(ii) *Contingent payment transaction.* For purposes of this section, the term "contingent payment transaction" means a real estate transaction with respect to which the receipt, by or on behalf of the transferor, of cash or consideration treated as cash under paragraph (i)(1)(i) of this section is subject to a contingency.

(iii) *Maximum determinable proceeds.* For purposes of this section, the term "maximum determinable proceeds" means the gross proceeds determined by assuming that all of the contingencies contemplated by the documents available at closing are met or otherwise resolved in a manner that will maximize the gross proceeds. If the maximum amount of gross proceeds cannot be determined with certainty using this method, the maximum determinable proceeds are the greatest amount that can be determined with certainty using this method. See paragraph (h)(1)(v)(C) of this section for the information that must be included on the Form 1099 required by this section in cases in which the maximum amount of gross proceeds cannot, by using the method described in this paragraph (i)(3)(iii), be determined with certainty.

(4) *Uniform Settlement Statement used.* If a Uniform Settlement Statement is used with respect to a real estate transaction involving a transfer of reportable real estate solely for cash and consideration treated as cash in computing gross proceeds, the gross proceeds generally will be the same amount as the contract sales price properly shown on that statement.

(5) *Special rules for multiple transferors*—(i) *General rules.* In the case of multiple transferors (within the meaning of paragraph (f) of this section) each of which transfers an interest in the same reportable real estate, the reporting person must request the transferors to provide an allocation of the gross proceeds among the transferors. The request must be made at or before the time of closing. Neither the request nor the response is required to be in writing. The reporting person must make a reasonable effort to contact all transferors of whom the reporting person has actual knowledge. The reporting person may, however, rely on the unchallenged response of any transferor and need not make additional efforts to contact other transferors after at least one complete allocation (whether or not contained in a single response) is received. Except as otherwise provided in this paragraph (i)(5), the reporting person shall report the gross proceeds in accordance with any allocation received at or before the time of closing. The reporting person may (but is not required to) report the gross proceeds in accordance with any allocation received after the time of closing and before the date (determined without regard to extensions) the Forms 1099 are required to be filed. The reporting person may not report the gross proceeds in accordance with any allocation received on or after the date (determined without regard to extensions) the Forms 1099 are required to be filed. If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received by the reporting person, the reporting person shall report the entire unallocated gross proceeds (if any) on the return of information made with respect to such transferor. If the reporting person receives conflicting allocations from the transferors, the reporting person shall report the entire gross proceeds on each return of information made with respect to the transaction.

(ii) *Rules for spouses.* The reporting person need not request an allocation of gross proceeds if the only transferors are husband and wife at the time of closing. If there are other transferors, the reporting person need only make a reasonable effort to contact either the husband or wife in connection with the request for an allocation. See paragraph (f)(2) of this section for rules that treat a husband and wife as multiple transferors if an uncontested allocation of gross proceeds is received by the reporting person at or prior to the time of closing.

(6) *Multiple asset transactions.* In the case of a real estate transaction reportable under this section that involves the transfer of reportable real estate and other assets, the amount attributable to both the real estate and other assets is treated as the gross proceeds with respect to that real estate transaction. No allocation of gross proceeds is made among the assets.

(j) *Time and place for filing.* A reporting person shall file the information returns required by this section with respect to a real estate transaction after December 31 of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section) and on or before February 28 of the following calendar year. The returns shall be filed with the appropriate Internal Revenue Service Center at the address listed in the Instructions to Form 1099.

(k) *Use of magnetic media and substitute forms*—(1) *Magnetic media*—(i) *General rule.* A reporting person that is required to make a return of information under this section shall, except as otherwise provided in paragraph (k)(1) (ii) or (iii) of this section, submit the information required by this section on magnetic media (within the meaning of 26 CFR 301.6011–2). Returns on magnetic media shall be made in accordance with 26 CFR 301.6011–2) and applicable revenue procedures.

(ii) *Exception for low-volume filers.* For rules allowing a reporting person to make the information returns required by this section on the prescribed paper Form 1099 if the reporting person is required by this section to file fewer than 250 returns during the calendar year, see section 6011(e) and guidance issued by the Internal Revenue Service thereunder.

(iii) *Undue hardship.* The Commissioner may authorize a reporting person to file information returns on the prescribed paper Form 1099 instead of on magnetic media if undue hardship is shown either on Form 8508, Request for Waiver From Filing Information Returns on Magnetic Media, or on a written statement requesting a waiver for undue hardship filed with the Martinsburg Computing Center, Martinsburg, West Virginia in accordance with applicable revenue procedures.

(2) *Substitute forms.* A reporting person that is described in paragraph (k)(1)(ii) of this section or that receives permission to file returns on the prescribed paper Form 1099 under paragraph (k)(1)(iii) of this section may prepare and use a form that contains provisions identical with those of Form 1099 if the reporting person complies with all applicable revenue procedures relating to substitute Form 1099, including any requirement relating to the use of machine-readable paper forms.

(l) *Requesting taxpayer identification numbers (TINS)*—(1) *Solicitation*—(i) *General requirements.* A reporting person who is required to make an information return with respect to a real estate transaction under this section must solicit a TIN from the transferor at or before the time of closing. The solicitation may be made in person or in a mailing that includes other items. Any person whose TIN is solicited under this paragraph (l) must furnish such TIN to the reporting person and certify that the TIN is correct. See paragraph (f)(2) of this section for rules that treat a husband and wife as a single transferor (and provide for the TIN solicitation of either) in the absence of an allocation of gross proceeds under paragraph (i)(5) of this section.

(ii) *Content of solicitation.* The solicitation shall be made by providing to the person from whom the TIN is solicited a written statement that the person is required by law to furnish a correct TIN to the reporting person, and that the person may be subject to civil or criminal penalties for failing to furnish a correct TIN. For example, the solicitation may be worded as follows:

> You are required by law to provide [insert name of reporting person] with your correct taxpayer identification number. If you do not provide [insert name of reporting person] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

The solicitation shall contain space for the name, address, and TIN of the person from whom the TIN is solicited and for the person to certify under penalties of perjury that the TIN furnished is that person's correct TIN. The wording of the certification must be substantially similar to the following: "Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number." The requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of Form W–9. In the case of a real estate transaction for which a Uniform Settlement Statement is used, the requirements of this paragraph (l)(1)(ii) may be met by providing to the transferor a copy of such statement that is modified to conform to the requirements of this paragraph (l)(1)(ii).

(iii) *Retention requirement.* The solicitation shall be retained by the reporting person for four years following the close of the calendar year that includes the date of closing (as determined under paragraph (h)(2)(ii) of this section). Such solicitation must be made available for inspection upon request by the Internal Revenue Service.

(2) *No TIN provided.* A reporting person that does not receive the transferor's TIN will not be subject to any penalty cross-referenced in paragraph (n) of this section by reason of failure to report such TIN if the reporting person has complied with the requirements of paragraph (l)(1) of this section in good faith (determined with proper regard for a course of conduct and the overall results achieved for the year).

(m) *Furnishing statements to transferors*—(1) *Requirement of furnishing statements.* A reporting person who is required to make a return of information under paragraph (a) of this section shall furnish to the transferor whose TIN is required to be shown on the return a written statement of the information required to be shown on such return. The written statement must bear either the legend shown on the recipient copy of Form 1099 or the following:

> This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

This requirement may be satisfied by furnishing to the transferor a copy of a completed Form 1099 (or substitute Form 1099 that complies with current revenue procedures). In the case of a real estate transaction for which a Uniform Settlement Statement is used, this requirement also may be satisfied by furnishing to the transferor a copy of a completed statement that is modified to comply with the requirements of this paragraph (m), and by designating on the Uniform Settlement Statement the items of information (such as gross proceeds or allocated gross proceeds) required to be set forth on the Form 1099. For purposes of this paragraph (m), a statement shall be considered furnished to a transferor if it is given to the transferor in person, either at the closing or thereafter, or is mailed to the transferor at the transferor's last known address.

(2) *Time for furnishing statement.* The statement required under this paragraph (m) shall be furnished to the transferor on or after the date of closing and before February 1 of the following calendar year.

(n) *Cross-reference to penalties.* See the following sections regarding penalties for failure to comply with the requirements of section 6045(e) and this section:

(1) Section 6721 for failure to file a correct information return;

(2) Section 6722 for failure to furnish a correct statement to the transferor;

(3) Section 6723 for failure to comply with other information reporting requirements (including the requirement to furnish a TIN);

(4) Section 6724 for definitions and rules relating to waiver and payment; and

(5) Section 7203 for willful failure to supply information (including a taxpayer identification number).

(o) *No separate charge.* A reporting person may not separately charge any person involved in a real estate transaction for complying with any requirements of this section.

(p) *Backup withholding requirements.* [Reserved.]

(q) *Federally-subsidized indebtedness.* [Reserved].

(r) *Examples.* The following examples illustrate the application of this section:

*Example (1)—Sale or exchange.* (i) On June 1, 1991, A, an individual, buys a house from B, an individual, for $200,000. The entire $200,000 is financed by B under an "installment land contract," whereby A takes possession and assumes all significant economic benefits and burdens of ownership of the house, and B retains legal title to the property until A fully performs under the contract. On June 1, 1994, A refinances his purchase of the house with Z, a financial institution. The balance owed to B is repaid

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and B relinquishes title to the house. A retains possession and the benefits and burdens of ownership of the house.

(8) For federal income tax purposes, the transaction occurring on June 1, 1991 is considered a sale of the house by B, notwithstanding his retention of legal title to the property. B's sale is subject to information reporting under this section. However, the transaction occurring on June 1, 1994 is not a sale or exchange for federal income tax purposes, and notwithstanding the change in legal title upon the deeding over of the property, that transaction is not subject to information reporting under this section.

*Example (2)—Sale or exchange.* On August 10, 1991, C, an individual, accepts an offer from Y, a corporation that acts on behalf of T (C's employer) to facilitate moves of T's transferred employees from one part of the country to another. Under the offer, C transfers his residence to Y for $250,000 by executing a deed to the property in blank and giving Y a power of attorney to dispose of the residence. C also immediately vacates the residence, whereupon Y begins paying all costs associated with the residence and is entitled to all income from the residence, including sales proceeds. On October 1, 1991, Y sells the residence to D and inserts C's name in the deed previously executed by J. Thus, neither Y nor T ever become record owners of the residence. C's transfer of the residence to Y on August 10, 1991 is a sale of reportable real estate and is subject to information reporting under this section; however, the sale on October 1, 1991 is not required to be reported because Y (the transferor in that sale) is a corporation. See paragraph (d) of this section.

*Example (3)—Definition of ownership interest.* E, an individual, owns a perpetual timeshare interest in a residential unit of real property at an oceanfront resort. For consideration, on November 15, 1991, E sells her rights in the property for the period January 1, 1992 through December 31, 1992 to F. The transfer of E's property interest is not the transfer of an ownership interest, as defined in paragraph (b)(2) of this section and therefore is not reportable real estate under paragraph (b)(2) of this section. Accordingly, the transfer is not a real estate transaction under section (b)(1) of this section, and no return of information is required with respect to E's property transfer.

*Example 4—Gross proceeds (exchange).* (i) G, an individual, agrees to transfer Blackacre, which has a fair market value of $100,000, plus $20,000 cash to H, an individual, in exchange for Whiteacre, which as a fair market value of $120,000. No liabilities will be assumed in the transaction and neither property is subject to any liabilities. P is the reporting person with respect to both sides of the transaction.

(ii) With respect to the transfer of Blackacre by G to H, P must report gross proceeds of $-0- (even though the exchange agreement may recite total exchange value of $120,000). See paragraph (i)(1) of this section. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that G will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

(iii) With respect to the transfer of Whiteacre by H to G, P must report gross proceeds of $20,000 (the cash received by H). No other amount is reported under paragraph (i)(1) of this section even though the exchange agreement may recite total exchange value of $120,000. In addition, (to the extent required by the Form 1099 and its instructions) P must indicate that H will receive property as part of the consideration for the transaction. See paragraph (h)(v)(A) of this section.

*Example (5). Gross proceeds (deferred exchange).* [Reserved]

*Example (6). Gross proceeds (contingencies).* K, an individual, sells an unencumbered apartment building to L for $500,000, payable at closing, plus an amount equal to 2% of gross rents from the apartment building for each of the next 5 years, the contingent payments to be made annually with adequate stated interest. The agreement provides that the maximum amount K may receive (including the downpayment but excluding the interest) is $600,000. Under paragraph (i)(3)(ii) of this section the real estate transaction is a "contingent payment transaction." Under paragraph (i)(3)(iii) of this section, the maximum amount of gross proceeds determined by assuming all contingencies are satisfied is $600,000. Thus, $600,000 is the "maximum determinable proceeds" and is the amount reported.

*Example (7). Gross proceeds (contingencies).* The facts are the same as in example (6), except that the agreement does not provide for adequate stated interest. The result is the same as in example (6).

*Example (8). Gross proceeds (contingencies).* The facts are same as in example (6), except that no maximum amount is stated in the agreement (or any other document available at closing). Under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is $500,000, the cash downpayment. Therefore, $500,000 is the "maximum determinable proceeds" under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

*Example (9). Gross proceeds (contingencies).* The facts are the same as in example (8), except that the agreement provides that the minimum amount K will receive (including the downpayment) is $570,000. Thus, under paragraph (i)(3)(iii) of this section, assuming all contingencies are satisfied, the maximum amount of gross proceeds cannot be determined with certainty. The greatest amount that can be determined with certainty at the time of the closing, assuming all contingencies are satisfied, is $570,000, the minimum amount stated in the agreement. Therefore, $570,000 is the "maximum determinable proceeds" under paragraph (i)(3)(iii) of this section and is the amount reported. In addition, (to the extent required by the Form 1099 and its instructions) the reporting person must indicate that the gross proceeds cannot be determined with certainty. See paragraph (h)(1)(iv)(C) of this section.

(s) *Effective date.* This section is effective for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991.

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.6045–4 . . . 1545–1065".

Approved: November 27, 1990.

**Kenneth W. Gideon,**

*Assistant Secretary of the Treasury.*

[FR Doc. 90–29239 Filed 12–12–90; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD–05–90–85]**

### COTP Hampton Roads, Regulation 90–RFR 085; Security Zone Regulations; Chesapeake Bay, James River, Port of Hampton Roads, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a security zone encompassing the grounds, piers and waterside of Newport News Marine Terminal, Newport News, Virginia. This zone is needed to prevent destruction, loss or injury to military equipment and supplies while military operations are being carried out at Newport News Marine Terminal. The Capitain of the Port, Hampton Roads, Virginia will enforce a security zone consisting of the Newport News Marine Terminal property enclosed within the perimeter fence and extending southwesterly from the shoreline at position 36–58–09.2N latitude, 76–25–43.OW longitude to a point at 36–58–00.ON latitude, 76–25–58.1W longitude, thence northwesterly



to a point at 36–56–19.5N latitude, 76–25–13.1W longitude, and returning northeasterly to the shoreline at position 36–58–27.ON latitude, 76–25–58.4W longitude. Individuals or vessels will not be allowed to approach within 200 yards of the Newport News Marine Terminal, except as permitted by the Captain of the Port or his designated representataive. Movement of individuals and vehicles within Newport News Marine Terminal may be restricted or prohibited.

**EFFECTIVE DATE:** This regulation is effective begining December 4, 1990 and terminates on or about December 31, 1990, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

**FOR FURTHER INFORMATION CONTACT:** LTJG W.J.P. Westphal II, Project Officer, at USCG Marine Safety Office Hampton Roads. TEL: (804) 441–3294, (FTS) 827–3294. Normal working hours are 7:30 a.m. to 4 p.m. weekdays except for holidays.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss or injury to resources involved in the military operations taking place in the vicinity of the Newport News Marine Terminal.

**Drafting Information**

The drafter of this regulation is LTJG W.J.P. Wesphal II, project officer for the Captain of the Port, Hampton Roads.

**Discussion of Regulation**

A security zone is being established encompassing the grounds, piers and waterside of Newport News Marine Terminal, Newport News, Virginia from December 4, 1990 until the completion of military operations taking place there. This zone is needed to safeguard materials and persons in the vicinity from sabatoge or other subversive acts, accidents, or other causes of a similar nature while military operations are being conducted. This security zone will encompass the Virginia Port Authority property known as Newport News Marine Terminal, at Warick Blvd. Newport News, Virginia, 23607, that is enclosed by a perimeter fence. The security zone will also include the waters of the James River within 200 yards of the piers of Newport News Marine Terminal, bounded by a line extending southwesterly from the shoreline at position 36–58–09.2N latitude, 76–25–43.OW longitude to a point at 36–58–00.ON latitude, 76–25–58.1W longitude, thence northwesterly to a point at 36–58–19.5N latitude, 76–25–13.1W longitude, and returning northeasterly to the shoreline at position 36–58–27.ON latitude, 76–25–58.4W longitude. The security zone will be enforced from December 4, 1990 until approximately December 31, 1990. Coast Guard personnel will be on the scene at all times while the security zone is in effect. Coast Guard vessels will enforce the security zone over the water whenever a vessel involved in the military operations is inside the security zone. Commercial and recreational boats will not be permitted to enter the security zone, except as permitted by the Captain of the Port.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Final Regulation**

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. In part 165, a new § 165.T0585 is added as follows:

**§ 165.T0585 Security Zone: Chesapeake Bay, James River, Port of Hampton Roads, Virginia**

(a) *Location.* The following area is a security zone: The grounds of the Newport News Marine Terminal, Newport News, Virginia, enclosed by a fence surrounding the perimeter, and the waters of the James River within 200 yards of the piers of Newport News Marine Terminal, encompassed by a line drawn southwesterly from the shorelize at position 36–58–09.2N latitude, 76–25–43.OW longitude to a point at 36–58–00.ON latitude, 76–25–58.1W longitude, thence northwesterly to a point at 36–58–19.5N latitude, 76–26–13.1W longitude, and returning northeasterly to the shoreline at position 36–58–27.8N latitude, 76–25–58.4W longitude.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: the senior Coast Guard boarding officer on each vessel enforcing the security zone, the senior member of each Coast Guard maritime Security Patrol, the Coast Guard Officer of the Day at Newport News Marine Terminal and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at telephone number (804) 441–3307.

(2) The senior boarding officer on each vessel enforcing the security zone can be contacted on VHF–FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in 165.33 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any individual inside the perimeters of the fence surrounding Newport News Marine Terminal shall be subject to the direction and control of any commissioned, warrant or petty officer of the United States Coast Guard.

(d) *Effective date.* This regulation is effective from December 4, 1990 and shall terminate on or about December 31, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: December 4, 1990.

**M.F. Pettingill,**

*Commander, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 90–29184 Filed 12–12–90; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[MB-012-F]

RIN 0938-AD31

# Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements statutory changes which expressly made certain Health Insuring Organizations (HIOs) subject to Medicaid Health Maintenance Organization (HMO) rules. The statute implemented in this rule requires that an HIO which became operational on or after January 1, 1986, and arranges for comprehensive health services for Medicaid recipients on a risk basis be subject to HMO requirements. The statute also provides that exemptions from certain HMO rules are permitted for HIOs which began operation on or after January 1, 1986, if the HIOs are operating under a section 1915(b) waiver obtained prior to that date, or if an HIO is otherwise identified in the law. The exemptions continue as long as the waiver under section 1915(b) of the Social Security Act remains in effect.

The statutory provisions implemented in this rule were enacted in section 9517(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 9435(e) of the Omnibus Budget Reconciliation Act of 1986, and section 1895(c)(4) of the Tax Reform Act of 1986.

EFFECTIVE: These rules are effective January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Jane McClard, (301) 966-5321.

SUPPLEMENTARY INFORMATION:

## I. Background

### *A. Health Insuring Organizations—General*

For a number of years, the Medicaid regulations have expressly permitted States to contract with entities the regulations have called health insuring organizations (HIOs). An HIO is an entity which assumes the risk for the costs of medical services provided to Medicaid recipients in exchange for a fixed premium paid by the State agency. HIOs are paid a negotiated, fixed amount per beneficiary per month and, in return, pay for costs actually incurred in providing Medicaid covered services to the beneficiary in that month.

The original regulations providing for State contracts with HIOs were promulgated pursuant to the Secretary's broad authority under section 1902(a)(4)(A) of the Social Security Act (the Act), to provide for "such methods of administration * * * as are found by the Secretary to be necessary for the proper and efficient operation of the plan," and under section 1903(a)(1)(C) of the Act (dealing with Federal sharing of Medicaid costs) that makes available funds with certain restrictions (amount, duration, scope) for sharing the costs for "insurance premiums for medical or any other type of remedial care or the cost thereof".

An HIO differs from a health maintenance organization (HMO) in that HIOs generally pay for services whereas an HMO generally provides or arranges for most services. In recent years, some HIOs have made arrangements through contracts with community providers, including HMOs, doctors, hospitals, and others, for the provision of Medicaid services in a given area for groups of recipients.

Regulations containing the only Medicaid requirements for HIOs that were in effect prior to the statutory changes implemented in this rule are currently set forth at 42 CFR 434.14 (redesignated at 42 CFR 434.40 in this rule).

### *B. Relationship of HIOs to Other Program Activities*

Under section 1915(b) of the Act, the Secretary has the authority to waive provisions of section 1902 of the Act, if such waivers are determined to be cost effective, provided the waivers, (1) do not substantially impair recipient access to services of adequate quality where medically necessary, (2) do not restrict a recipient's access to emergency services, and (3) are not inconsistent with the purposes of title XIX. Waivers requested by States under section 1915(b) of the Act must be for one or more of the following: Use of primary care case management systems; specialty physicians' services arrangements; use of localities as central broker of health service; sharing with recipients of cost savings from the use of more cost effective care; or restriction on the providers from whom recipients can obtain covered services to those selected on the basis of demonstrated effectiveness or efficiency. Only section 1902 provisions may be waived. The requirements for statewideness in section 1902(a)(1), comparability of services in section 1902(a)(10), and freedom of choice in section 1902(a)(23) of the Act are the most frequently waived provisions under section 1915(b).

Several States requested and received waivers under section 1915(b)(1) in order to implement primary care case management systems in which HIOs arrange for recipients' health care services through contracts with providers and assume risk for the cost of these services.

### *C. Current Regulations*

The existing regulations expressly governing HIOs at 42 CFR 434.14 (redesignated at 42 CFR 434.40 in this rule) require an HIO to meet specified requirements if it wishes to contract with a State agency to serve as a payer for medical services provided to Medicaid recipients. These include requirements that capitation fees paid by the State cannot exceed the cost of the same services for a group of recipients receiving those services on a fee-for-service basis; that capitation fees paid to the HIO can only be renegotiated annually (in most cases), and place the HIO at risk; that capitation fees will not include amounts to enable the HIO to recover specific losses for risks it assumes during a contract period; that the underwriting risks assumed by the HIO must be specified in the contract between the State and the HIO; that the contract must state how any savings which remain after allowable costs are deducted from capitation fees are to be handled; that the contract must specify the extent to which an HIO may obtain reinsurance of its underwriting risk; and that the actuarial basis for computation of capitation fees must be specified.

In addition, the current regulations expressly require that HIOs meet requirements in regulations at 42 CFR 434.6 that apply to State agency contracts generally. These regulations specify contract requirements relating to recipients served; enrollment rules; covered services; inspections and evaluation of services provided; contract termination procedures; record systems; confidentiality; third party liability and subcontracting. Subcontractors, though not directly contracting with the State, must meet all Medicaid requirements appropriate to their delegated service activity. In addition, as the result of the legislation described in section II. A. below, regulatory requirements applicable to HMOs also currently apply to HIOs to the extent applicable.

## II. New Legislation

### *A. Consolidated Omnibus Budget Reconciliation Act of 1985*

Section 9517(c) of Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), amended section 1903(m)(2)(A) of the Act by identifying HIOs as organizations subject to HMO requirements under section 1903(m) of the Act, if they are involved in the delivery of services themselves or through arrangements with providers of services. This amendment is effective for HIOs which became operational on or after January 1, 1986, with one exception. HIOs that operate under the authority of a section 1915(b) waiver granted a State prior to that date, but which did not become operational until after it, are exempt from the HMO requirements at section 1903(m)(2)(A)(ii) and (vi) of the Act, which pertain to composition of enrollment and the right to terminate enrollment freely at any time.

Note: Section 9517(C)(2)(B) of COBRA erroneously identified the exception clauses as (ii) and (iv). These should have been (ii) and (vi). Section 1895(c)(4)(B) of Public Law 99-514, the Tax Reform Act of 1986 (TRA) corrected this error.

The conference report accompanying section 9517(c) of COBRA specifically noted the absence in our existing regulations of: Minimum qualifications expressly applicable to an HIO that arranges for provisions of services; quality assurance methods that HIOs must employ; standard to assure access to services; amounts of savings that may be retained; and frequency or content of utilization or financial reports (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550-551). The report also noted that these HIOs were not subject to specific regulatory requirements regarding financial reporting or ownership information.

The effect of the revision made by COBRA is to subject HIOs that do more than merely act as a payer of services to regulatory requirements applicable to HMOs. The conference report accompanying COBRA clarified that:

> where an HIO does more than simply act as a fiscal agent to review and process claims for payment, but actually arranges with other providers (through subcontract or otherwise) for delivery of services to Medicaid eligibles (even though the HIO does not itself deliver services), it is subject to all of the regulatory requirements to which any health maintenance organization or similar prepaid entity is subject under current law. (H. Conf. Rep. No. 453, 99th Cong., 1st Sess. (1985), pp. 550-551.)

The COBRA amendment exempts HIOs in operation before January 1, 1986 from HMO requirements, and permits HIOs which operate under the authority of a section 1915(b) waiver granted a State prior to January 1, 1986 to be exempt during the period of the waiver from the HMO provisions requiring that membership be less than 75 percent Medicare/Medicaid and that enrollees may terminate enrollment without cause at any time.

### *B. Omnibus Budget Reconciliation Act of 1986*

Section 9435(e) of Public Law 99-509, the Omnibus Budget Reconciliation Act of 1986 (OBRA 86), amended section 9517(c)(2) of COBRA by adding a new subparagraph (D). This change stated that "nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring an HIO to be organized under the HMO laws of a State". The conference report pertaining to section 9435(e) of OBRA 86 stated that in order to meet the requirement in section 1903(m)(2)(A)(i) of the Act, the HIO is only required to be organized under the laws of the State in which it does business, including the State's corporation law. The report states an HIO organized under the corporation law in the State in which it operates, which makes services accessible as required by section 1903(m)(1)(A)(ii) of the Act, and which has made adequate provision against the risk of insolvency as required by section 1903(m)(1)(A)(ii) of the Act, has met the requirement of section 1903(m)(1)(A)(i) of the Act (H. Rep. No. 1012, 99th Cong. 2d Sess. (1986) pp. 411-412)).

### *C. Tax Reform Act of 1986*

Section 1895(c)(4)(A) of Public Law 99-514, the Tax Reform Act of 1986 (TRA), amended section 9517(c)(2) of COBRA by adding that a health insuring organization is not considered operational until the date on which it first enrolls patients. Under an earlier HCFA interpretation (given to State agency), operational meant the date an HIO began administrative processes to carry out the provision of Medicaid services. In addition, section 1895(c)(4)(C) of TRA provided that the Hartford Health Network, Inc., is exempt from clauses (ii) and (vi) of section 1903(m)(2)(A) of the Act (concerning composition of enrollment and disenrollment without cause) during the period it has a section 1915(b) waiver in effect (if the request for a waiver under section 1915(b) of the Act was submitted before January 1, 1986 and is subsequently approved by the Secretary).

## III. Notice of Proposed Rulemaking

On August 25, 1988 we published a proposed rule with a 60 day comment period (53 FR 32406) that would revise 42 CFR part 434 by redesignating subparts D and E as subparts E and F respectively, and adding a new subpart D. Briefly these proposed changes to the regulations would:

- Incorporate changes made by legislation by expressly setting forth in regulations the scope of responsibilities for an HIO under Medicaid.
- Describe the requirements for contracts with HIOs.
- Specify special rules for certain HIOs.
- Reflect the statutory requirement that an HIO that becomes operational on or after January 1, 1986 and arranges with other providers (through subcontract or through other arrangements) for the delivery of services to Medicaid enrollees on a prepaid capitation risk basis, be subject to requirements for HMOs and be organized under the appropriate laws, including corporation laws, of the State in which it operates.
- Provide that any HIO subject to the special rules that operates under a section 1915(b) waiver obtained by the State prior to January 1, 1986, is exempt from the requirements for composition of enrollment and disenrollment without cause during the effective period of the waiver.

## IV. Analysis of and Responses to Public Comments

In response to the August 25, 1988 proposed rule, we received two timely items of correspondence. The comments were from a State agency and an HIO operating under a section 1915(b) waiver. A summary of these comments and our responses to them are discussed below:

*Comment:* One commenter expressed the view that the proposed rules imposed upon an HIO which arranges for the provision of services are excessively restrictive, will deprive recipients of the opportunity to benefit from such HIO programs, and will prevent the implementation of similar HIO programs in the future.

*Response:* The proposal concerning operation of an HIO program which (in addition to normal bill processing and paying services) arranges for the provision of services reflects statutory provisions included in COBRA. The aim of the legislation was to increase recipient protection by subjecting an HIO which arranges for services to the same rules which any HMO or similar organization that performs similar activities must meet. The change assures recipients who enroll in an HIO that the organization meets standard Medicaid requirements.

*Comment:* One commenter felt the new regulations deprive the States of flexibility in using HIOs to serve

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Medicaid recipients. The commenter suggested that publication of a final rule should be delayed until the law could be amended to restore the lost flexibility.

*Response:* This regulation, which incorporates a change in the Medicaid statute, only removed one type of capitation arrangement from those which States may use for Medicaid recipients. Although we agree that the elimination of one type of program reduces States flexibility in programs it may offer recipients, the changes reflected in this rule were made by section 9517(c) of COBRA, which was effective January 1, 1988. In view of this, we do not agree that delay of publication of a final rule is warranted.

*Comment:* One commenter expressed concern that an HIO which was operational prior to January 1, 1988 and participated in a Federal demonstration project under section 1115 of the Act would not be permitted to participate in a section 1915(b) waiver that began after that date.

*Response:* An HIO which was in operation prior to January 1, 1988, and which arranges for the provision of services to its Medicaid enrollees, is not subject to the COBRA amendments reflected in these regulations. The Conference Report which accompanied section 9517 of COBRA explicitly stated that the new rule only "applies to entities that first become operational after January 1, 1988". (In the actual amendment of the law, section 9517(c) of COBRA, the phrase "on or after January 1, 1988", is used. This date was also used in the proposed rule.) Consequently, it is irrelevant whether an HIO that became operational before January 1, 1988 participated in a section 1115 demonstration project or a section 1915(b) Freedom of Choice program prior to January 1, 1988. (If the HIO became operational on or after January 1, 1988, however, it would be subject to the COBRA amendments implemented in this rule even if it operated under a section 1115 demonstration project that began prior to January 1, 1988.)

Upon reviewing § 434.44(b), as a result of this comment, we found that the language was not clear with respect to the role of the State in a section 1915(b) waiver application. As noted below, we are revising our § 434.44(b) to clarify that a section 1915(b) waiver is granted to the State and not to an organization which contracts with the State.

## V. Provisions of the Regulations

After consideration of the comments received and our further analysis of specific issues, we are publishing as final the August 25, 1988 rule as proposed with several technical revisions.

In § 434.2, we have revised the definition of health insuring organization (HIO) to encompass HIOs that arrange for services. This revision reflects the reality recognized by Congress in COBRA.

In § 434.2, we also have revised the definition of a PHP by replacing the phrase "does not qualify as an HMO" with "is not subject to the requirements in section 1903(m)(2)(A)". This revision more clearly articulates what was meant by the original language, and does not change existing law, or HCFA's interpretation thereof.

In § 434.20, we have added a new paragraph (a)(4) to reflect the fact that a State may have a comprehensive risk contract with an HIO that became operational before January 1, 1988.

In § 434.21(b), we have added the words "or arranges" to reflect the statutory requirement that entities that "arrange for" services are subject to HMO requirements.

In § 434.40, we are revising introductory language to clarify that these contract requirements apply to HIOs which are not subject to section 1903(m)(2)(A).

We have also combined the proposed § 434.40 with proposed § 434.42 in order to make it clear that the later rules apply only when HMO rules do not.

As noted above in response to a comment, we have revised § 434.44(b) to clarify that section 1915(b) waivers are granted to States.

Finally, in analyzing the issues raised by this final rule, we have determined that further revisions to the regulations are warranted. We believe that it would be inconsistent with Congressional intent to permit an HIO which arranges for services, yet is not subject to HMO rules, to remain subject only to the original HIO rules now in § 434.40. Due to our oversight, however, we set forth in the proposed regulations published on August 25, 1988, proposed rules which would permit an HIO that arranges to provide less than comprehensive services on a risk basis or comprehensive services on a cost basis, to be subject only to the rules governing HIOs which perform the original basic HIO services of bill payer and processor. We believe this situation is not appropriate in light of the COBRA changes implemented in this rule. Therefore, we intend to publish in a separate proposed rule revisions to the regulations that would make HIOs that arrange for services subject to PHP rules if they are exempt from section 1903(m)(2)(A).

## VI. Regulatory Impact Statement

### *A. Executive Order 12291*

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any regulation that is likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all HIOs as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if the final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis also must conform to the provision of section 604 of the RFA.

This final rule generally reflects current implementation of previous statutory changes and serves only to codify in regulations those practices that already have been implemented. This rule, in itself, will have no effect on Medicaid program expenditures.

We believe that the changes reflected in this rule ensure consistency in the treatment of organizations which provide or arrange for the provision of services and will not result in significant increased costs. Currently, there are seven HIOs with State Medicaid contracts, three of which have been extended 1915(b) waivers and four that are not engaged in either arranging or providing services. Therefore, we do not expect a significant economic impact on these entities.

For these reasons, we have determined that the threshold criteria of E.O. 12291 will not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

Therefore, we have not prepared analyses under the RFA or under section 1102(b) of the Act.

## VII. Information Collection Requirements

Section 434.40 of this final rule contains information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Section 434.40 requires State Medicaid contracts to specify required contractual information. It also requires that capitation fee information be specified in the contract. Public reporting burden for this collection of information is estimated at 1 hour per response. A notice will be published in the **Federal Register** when approval is obtained.

## List of Subjects in 42 CFR Part 434

Grant programs-health, Health maintenance organizations (HMO), Medicaid, Reporting and recordkeeping requirements.

42 CFR part 434 is amended as set forth below:

## PART 434—CONTRACTS

1. The authority citation for part 434 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The heading for subpart B is revised to read as follows:

### Subpart B—Contracts With Fiscal Agents and Private Nonmedical Institutions

3. Section 434.2 is amended by revising the definitions of "health insuring organization (HIO)" and "prepaid health plan (PHP)" to read as follows:

**§ 434.2 Definitions.**

* * * * *

*Health insuring organization (HIO)* means an entity that—

(a) Covers (through payments or arrangements with providers) services for recipients in exchange for a premium or subscription charge paid; and

(b) Assumes risk for the costs of services it covers.

* * * * *

*Prepaid health plan (PHP)* means an entity that provides medical services to enrolled recipients, under contract with the Medical agency and on the basis of prepaid capitation fees, but is not subject to requirements in section 1903(m)(2)(A) of the Act.

* * * * *

**§ 434.14 [Removed and Reserved]**

4. Section 434.14 is removed and reserved.

### Subpart C—Contracts With HMOs and PHPs: Contract Requirements

5. In § 434.20, paragraphs (a) and (e) are revised to read as follows:

**General Requirements**

**§ 434.20 Basic rules.**

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21, only with an entity that—

(1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;

(3) Is one of several entities identified in section 1903(m)(B) (i), (ii) and (iii) of the Act, and considered as PHDs; or

(4) Is an HIO that arranges for services and becomes operational before January 1, 1988.

* * * * *

(e) *Requirements for all contracts.* For all contracts with HMOs or PHOs—

(1) The contract must meet the requirements of § 434.6;

(2) The Medicaid agency must carry out the responsibilities specified in subpart E of this part; and

(3) The contract must provide that any cost-sharing requirements imposed for services furnished to recipients are in accordance with §§ 447.50 through 447.58 of this chapter.

**§ 434.21 [Amended]**

6. In § 434.21(b) introductory text, the phrase "or arranging for" is inserted after the word "furnishing."

### Subpart E and F—[Redesignated From Subparts D and E]

7. Subparts D and E are redesignated as subparts E and F, respectively, and a new subpart D is added to read as follows:

### Subpart D—Contracts With Health Insuring Organizations

434.40 Contract requirements.
434.44 Special rules for certain health insuring organizations.

**§ 434.40 Contract requirements.**

(a) Contracts with health insuring organizations that are not subject to the requirements in section 1903(m)(2)(A) must:

(1) Meet the general requirements for all contracts and subcontracts specified in § 434.6;

(2) Specify that the contractor assumes at least part of the underwriting risk and;

(i) If the contractor assumes the full underwriting risk, specify that payment of the capitation fees to the contractor during the contract period constitutes full payment by the agency for the cost of medical services provided under the contract;

(ii) If the contractor assumes less than the full underwriting risk, specify how the risk is apportioned between the agency and the contractor;

(3) Specify whether the contractor returns to the agency part of any savings remaining after the allowable costs are deducted from the capitations fees, and if savings are returned, the apportionment between agency and the contractor; and

(4) Specify the extent, if any, to which the contractor may obtain reinsurance of a portion of the underwriting risk.

(b) The contract must—

(1) Specify that the capitation fee will not exceed the limits set forth under part 447 of this chapter.

(2) Specify that, except as permitted under paragraph (b) of this section, the capitation fee paid on behalf of each recipient may not be renegotiated—

(i) During the contract period if the contract period is 1 year or less; or

(ii) More often than annually if the contract period is for more than 1 year.

(3) Specify that the capitation fee will not include any amount for recoupment of any specific losses suffered by the contractor for risks assumed under the same contract or a prior contract with the agency; and

(4) Specify the actuarial basis for computation of the capitation fee.

(c) The capitation fee may be renegotiated more frequently than annually for recipients who are not enrolled at the time of renegotiation or if the renegotiation is required by changes in Federal or State law.

**§ 434.44 Special rules for certain health insuring organizations.**

(a) A health insuring organization that first enrolls patients on or after January 1, 1988, and arranges with other providers (through subcontract, or

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through other arrangements) for the delivery of services (as described in § 434.21(b)) to Medicaid enrollees on a prepaid capitation risk basis is—

(1) Subject to the general requirements set forth in § 434.20(d) concerning services that may be covered and § 434.20(e) which set forth the requirements for all contracts, the additional requirements set forth in §§ 434.21 through 434.38 and the Medicaid agency responsibilities specified in §§ 434.50 through 434.55; and

(2) To be organized under the appropriate laws, including corporation laws, of the State in which it operates. There is no Federal requirement that an HIO be organized under a State's HMO law, if it has one. However, the health insuring organization must meet the State plan definition requirements in § 434.20(c) (1), (2) and (3) of this chapter.

(b) *Special exemption.* Any health insuring organization subject to the requirements in paragraph (a) of this section, that is operating under the authority of a waiver granted to a State under section 1915(b) of the Act prior to January 1, 1986, is exempt from those requirements relating to composition of enrollment and disenrollment without cause in §§ 434.28 and 434.27(b), during the effective period of the waiver, including extensions and renewals.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: August 23, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

Approved: October 15, 1990.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 90-29162 Filed 12-12-90; 8:45 am]

BILLING CODE 4120-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 89-344; RM-6674, RM-7157]**

### Radio Broadcasting Services; Rosamond and California City, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 228A to Rosamond, California, as that community's second local FM service, in response to a petition for rule making filed on behalf of P. Dale Ware (RM-6674). See 54 FR 33249, August 14, 1989.

Additionally, Channel 295A is allotted to California City, California, as that community's first local broadcast service, in response to a counterproposal filed on behalf of California City Radio (RM-7157). Coordinates used for Channel 228A at Rosamond are 34-58-56 and 118-14-07. Coordinates used for Channel 295A at California City are 35-11-13 and 117-58-14. (See **SUPPLEMENTARY INFORMATION**, *infra*.) With this action, the proceeding is terminated.

**DATES:** Effective January 24, 1991; the window period for filing applications for Channel 228A at Rosamond, California, and for Channel 295A at California City, California, will open on January 25, 1991, and close on February 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-344, adopted November 15, 1990, and released December 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making at Rosamond was filed prior to October 2, 1989, and, therefore, applicants for Channel 228A at that community may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. See 47 CFR 73.213(c). The California City proposal was filed after October 2, 1989. Applications for Channel 295A at that community must conform with the minimum distance separation requirements specified in § 73.207(b) of the Commission's Rules.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 295A at California City and by adding Channel 228A at Rosamond.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29251 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-498; RM-6921]**

### Radio Broadcasting Services; Sparta and Saint Robert, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 243C2 for Channel 243A at Sparta, Missouri, and modifies the license for Station KLTQ to specify operation on Channel 243C2, in response to a petition by James L. Gardner. The coordinates for Channel 243C2 are 36-56-23 and 93-17-15. To accommodate the upgrade at Sparta, we shall substitute Channel 255A for vacant Channel 243A at Saint Robert. The applicant for Channel 243A at Saint Robert, Neil A. Rones and Luann C. Dahl, will be permitted to amend their application to a non-short spaced site and retain cut-off protection. The coordinates for Channel 255A are 37-49-41 and 92-10-39.

**EFFECTIVE DATES:** January 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-498, adopted November 15, 1990, and released December 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:



**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 243A and adding Channel 243C2 at Sparta, and removing channel 243A and adding Channel 255A at Saint Robert.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29252 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-171]**

### Radio Broadcasting Services; Alamogordo, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of New West Broadcasting Co., substitutes Channel 232C3 for Channel 232A at Alamogordo, New Mexico, and modifies the license for Station KYEE to specify operation on the higher powered channel. See 54 FR 26220, June 22, 1989. Channel 232C3 can be allotted to Alamogordo in compliance with the Commission's minimum distance separation requirements and can be used at Station KYEE's licensed transmitter site. The coordinates for Channel 232C3 at Alamogordo are North Latitude 32-56-42 and West Longitude 105-56-47. Mexican concurrence has been received since Alamogordo is located within 320 miles (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-171, adopted November 15, 1990, and released December 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 232A and adding Channel 232C3 at Alamogordo.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29253 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 90-304; RM-7295]**

### Radio Broadcasting Services; Nyssa, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Robert M. Mason, substitutes Channel 254C1 for Channel 254A at Nyssa, Oregon, and modifies his construction permit for Station KGZH to specify operation on the higher powered Channel. See 55 FR 24908, June 19, 1990. Channel 254C1 can be allotted to Nyssa in compliance with the Commission's minimum distance separation requirements with a site restriction of 52.8 kilometers (32.8 miles) south to avoid short-spacings to Stations KUBQ(FM), Channel 254C2, La Grande, Oregon, and KWEI-FM, Channel 257A, Weiser, Idaho, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 254C1 at Nyssa are North Latitude 43-25-01 and West Longitude 116-50-38. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-304, adopted November 14, 1990, and released December 10, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 254A and adding Channel 254C1 at Nyssa.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29254 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 90-371; RM-7215]**

### Radio Broadcasting Services; Exmore, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Seashore Broadcasting Company, substitutes Channel 291B1 for Channel 291A at Exmore, Virginia, and modifies its construction permit (BPH-880324MP) for station WPHG(FM) to specify operation on the higher class channel. See 55 FR 33946, August 20, 1990. Channel 291B1 can be allotted to Exmore, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) north of Exmore to accommodate petitioner's desired transmitter site. The coordinates for Channel 291B1 are North Latitude 37-33-15 and West Longitude 75-49-38. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 24, 1991.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-371, adopted November 15, 1990, and released December 10, 1990. The full text

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of this Commission decision is available for inspection and copying during normal business hours in the FCC Dookets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 291A and adding Channel 291B1 at Exmore.

Federal Communications Commission.

Beverly McKittrick,

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29255 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M



# Proposed Rules

Federal Register
Vol. 55, No. 240
Thursday, December 13, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 919

[Docket No. AO-102-A6; FV 88-132]

### Peaches Grown in Mesa County, Colorado; Termination of Proposed Amendment Proceeding

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rulemaking and termination of proceeding.

**SUMMARY:** This action terminates amendment proceedings on proposed changes to the marketing order for peaches grown in Mesa County, Colorado. None of the proposed amendments were favored by the required two-thirds majority of growers voting or the required two-thirds volume produced by those voting in the referendum. The proposed changes would have: (1) Authorized the regulation of shipments of fresh peaches grown in Mesa County to locations within the State; (2) amended six existing definitions and added three new definitions to the order; (3) reapportioned membership on the Administrative Committee (committee) and added informal rulemaking authority to reapportion committee membership and change committee size and composition; (4) revised the committee nomination and selection process, added informal rulemaking authority to make changes in the process, and established limits on the tenure of committee members; (5) increased the amount of committee compensation, added rulemaking authority to revise that compensation, and revised the voting procedures of the committee; (6) authorized late payment and interest charges on overdue assessments; (7) consolidated provisions regarding the regulation of shipments; (8) authorized the establishment and funding of production research projects; (9) added provisions for verification of reports and records and for maintaining confidentiality of handler records; (10) added informal rulemaking authority to change the minimum quantity of peaches per shipment exempt from regulation and included an additional requirement that peaches purchased under such exemption be removed from the sellers' premises on the day of the sale; (11) required periodic referenda; and (12) made necessary conforming changes. The first ten changes were proposed by the committee and the last two changes were proposed by the Agricultural Marketing Service (AMS). All proposed amendments were designed to improve the administration, operation, and functioning of the marketing order.

**DATES:** This withdrawal is effective December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone: (202) 475-3919, or Joseph C. Perrin, Northwest Marketing Field Office, 1220 SW Third Ave., room 369, Portland, Oregon 97204, telephone: (503) 326-2724.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued November 1, 1988, and published in the **Federal Register** on November 3, 1988 (53 FR 44407); Recommended Decision issued November 20, 1989, and published in the **Federal Register** on November 24, 1989 (54 FR 48619); Extension of Comment Period issued February 13, 1990, and published in the **Federal Register** on February 20, 1990 (55 FR 5852); Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 919 issued August 31, 1990, and published in the **Federal Register** September 7, 1990 (55 FR 36825).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore is not subject to the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

The proposed amendments to the order were formulated on the record of a public hearing held at Palisade, Colorado, on November 16 and 17, 1988, to consider proposed further amendment of Marketing Agreement and Order No. 919 (7 CFR part 919), both as amended, regulating the handling of peaches grown in Mesa County, Colorado, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the committee which locally administers the order.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, AMS, on November 20, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto. At the request of one peach grower, the comment period was extended two months to February 28, 1990. The Deputy Assistant Secretary, on August 31, 1990, issued a final decision setting forth the proposed amendments as a means of further effectuating the declared policy of the Act. The final decision directed that a referendum be conducted among producers in the production area to determine whether or not the required percentage of producers favored issuance of the proposed amendments.

It is hereby determined on the basis of the referendum conducted during the period September 14 through October 11, 1990, that all of the proposed amendments failed to receive the required two-thirds vote by count and by volume, and therefore, the proposed amendments to the marketing order should not be made effective. Accordingly, the proposed rule issued September 7, 1990, is hereby withdrawn and the proceedings with respect to the proposed amendments are terminated.

List of Subjects in 7 CFR Part 919

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

The authority citation for 7 CFR part 919 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

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Dated: December 5, 1990.

John E. Frydenlund,

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 90-29204 Filed 12-12-90; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Ch. VII

[Docket No. 901113-0313]

### Request for Comments on Effects of Foreign Policy-Based Export Controls

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Request for comments on foreign policy-based export controls.

**SUMMARY:** The Bureau of Export Administration (BXA) is reviewing the foreign policy-based export controls in the Export Administration Regulations (15 CFR parts 730 through 799) to determine whether they should be modified, rescinded or extended. To help BXA make this determination, BXA is seeking comments on how existing foreign policy-based export controls contained in the Export Administration Regulations have affected exporters and the general public.

**DATES:** Comments must be received by December 21, 1990 to assure full consideration in the formulation of export control policies.

**ADDRESSES:** Written comments (six copies) should be sent to Patricia Muldonian, Regulations Branch (room 1622), Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** John Bolstein, Country Policy Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-4830.

**SUPPLEMENTARY INFORMATION:** The foreign policy controls maintained by the BXA apply to human rights (776.14); South Africa (785.4(a)); embargoed communist countries (785.1); anti-terrorism (785.4(d) and 785.4(e); Libya (785.7); regional stability (776.16); equipment and technical data used for missile technology purposes (776.18); and chemical and biological agents (776.19). The licensing policies for these control programs are described in parts 776 and 785 of the Export Administration Regulations.

On January 19, 1990, the Secretary of Commerce submitted a report to Congress extending for another year, with one exception, all foreign policy controls then in effect. One control, on exports to the Soviet Union's Kama River and ZIL truck plants, was not extended. That report also contained a newly imposed foreign policy export control, on certain propellant batch mixers pertinent to the Missile Technology Control Regime. Since that last report no new foreign policy controls have been imposed.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy controls for another year. Among the criteria BXA considers in determining whether to continue or revise U.S. foreign policy export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose in light of such other factors as the availability from other countries of the goods or technology proposed for such controls;

2. That the foreign policy purpose of such controls cannot be achieved through negotiations or other alternative means;

3. The compatibility of the proposed controls with the foreign policy objectives of the United States and with overall United States policy toward the country to which exports are to be subject to the proposed controls;

4. The likelihood that the reaction of other countries to the extension of such controls by the United States will not render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. Whether the effect of the proposed controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology, or the economic well-being of individual United States companies and their employees and communities exceeds the benefit to United States foreign policy objectives; and

6. The ability of the United States to enforce the proposed controls effectively.

BXA is particularly interested in the experience of individual exporters in complying with these controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BXA is also interested in comments relating to the effects of foreign policy controls on exports of replacement and other parts.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BXA in reviewing the controls and developing the report to Congress.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". BXA will either accept the submission in confidence, or if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law.

Communication between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will be also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 377-5653.

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-445 of December 29, 1981, Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 91 Stat. 1625, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of



September 9, 1985 (50 FR 36861 of September 10, 1985); E.O. 12730 of September 30, 1990 (55 FR 40373 of October 2, 1990).

Dated: December 7, 1990.

James M. LeMunyon,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 90-29148 Filed 12-12-90; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 701 and 702

[IA-74-90]

RIN 1545-AP21

### Financing of Presidential Election Campaigns

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under new Part 701, Presidential Election Campaign Fund ("Fund"), and new Part 702, Presidential Primary Matching Payment Account, of title 26 of the CFR, relating to the financing of presidential election campaigns. The proposed regulations clarify issues arising under sections 9006, 9008, and 9037 of the Internal Revenue Code of 1986, including the timing of certain transfers to the Fund, the establishment of certain accounts within the Fund, the transfer of certain amounts to such accounts, and the allocation of amounts where the amounts are insufficient to fully satisfy all valid claims for payment. The proposed regulations are necessary, because it is anticipated that, for the 1992 and subsequent presidential elections, there will not be sufficient amounts in the Fund to satisfy all valid claims for payment at the time such claims are presented. The proposed regulations affect all eligible recipients of amounts from the Fund.

**DATES:** Written comments must be received by February 11, 1991.

**ADDRESSES:** Send comments to: Internal Revenue Service, Attn. CC:CORP:T:R (IA-74-90), Room 4429, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Joel S. Rutstein of the Office of Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn. CC:CORP:T:R (IA-74-90)) or telephone 202-566-4430 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under section 9006, individuals whose income tax liability for the taxable year is $1 or more may designate $1 for the Fund on their tax returns. Section 9006(a), establishes the Fund and requires the Secretary to transfer monies—not in excess of the sum of the amounts designated—to the Fund. Three types of payments are made from the Fund: payments to the national committee of each major and minor party, payments to the eligible candidates of a political party for President and Vice President, and payments to eligible candidates seeking nomination for election to be President.

Section 9008 requires the Secretary to maintain a separate account in the Fund for payments to the national committee of each major and minor party for their presidential nominating conventions, to be made upon receipt of certification by the Federal Election Commission ("Commission"). The Secretary is required to fund this account before providing for payments to eligible candidates for President and Vice President as specified in section 9006(b). Section 9037(a) directs the Secretary to establish within the Fund an additional separate account, the Presidential Primary Matching Payment Account. The Secretary is directed to make deposits into this account only after determining that amounts for the payments under sections 9006(b)(3) and 9006(b) "are available." Section 9037(b) requires the Secretary to transfer amounts certified by the Commission from the Presidential Primary Matching Payment Account to candidates seeking nomination for President. Code section 9037(b) also provides that "[i]n making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which . . . certifications [from the Commission] are received."

Section 9008(e) provides that the national committees of major and minor parties may receive their payments beginning on July 1 of the calendar year immediately prior to their nominating conventions. Under sections 9008(b) and 9005(a), no payments can be made to the candidates of a major or minor party until they are nominated. Finally, section 9032(6) provides that primary candidates may receive payments under section 9037(b) beginning on the first day of the calendar year of the presidential election.

It is anticipated that, for the 1992 and subsequent presidential elections, there will not be sufficient amounts in the Fund to satisfy all valid claims for payment at the time such claims are presented. Therefore, regulations prescribing methods for allocating payments are necessary.

#### Explanation of Provisions

Proposed § 701.9006-1(a) provides that the Secretary shall promptly determine at least once a month the amounts designated to the Fund by individuals under section 6096 and promptly transfer those amounts to the Fund. Amounts transferred to the Fund after September 30 of the year following a presidential election shall only be used to satisfy certifications relating to future presidential elections.

Proposed § 701.9006-1(b) provides that the Secretary shall establish, within the Fund, three separate accounts, to be known as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

Proposed § 701.9006-1(c) provides that the Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9006(b)(3).

Proposed § 701.9006-1(d), provides that after making the transfers prescribed by § 701.9006-1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9006(b).

Proposed § 702.9006-1(e) provides that, after making the transfers prescribed by § 701.9006-1(c) to the Presidential Nominating Convention Account and § 701.9006-1(d) to the Presidential and Vice Presidential Nominee Account, the Secretary shall not make any additional deposits to those accounts until October 1 of the year after the presidential election.

Proposed § 702.9037-1 provides that, after making the transfers prescribed by § 701.9006-1(c) and § 701.9006-1(d), the Secretary shall deposit any amounts in the Fund into the Presidential Primary Matching Payment Account. The Secretary shall base this transfer only on amounts that have been actually transferred to the Presidential Election

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Campaign Fund under proposed § 701.9006–1(a). Finally, any amount remaining in this account after October 31 of the year following a presidential election shall be re-transferred to the Fund.

Proposed § 702.9037–2(a) provides that, except as provided in proposed § 702.9037–2(b), upon receipt of certification from the Federal Election Commission for payment to candidates under section 9036, but not before the matching payment period described in section 9032(6), the Secretary shall promptly pay candidates amounts to which they are entitled. In addition, the Secretary shall promptly notify the Federal Election Commission of the amount of payments made to each candidate.

Proposed § 702.9037–2(b) provides that if the total amount certified by the Federal Election Commission in a calendar month exceeds the total amount in the Presidential Primary Matching Payment Account as of the last day of such month, the amount to be paid to a candidate will be an amount equal to the amount certified by the Commission for the candidate in the calendar month multiplied by the ratio of the amount in the account as of the last day of the calendar month over the total amount certified by the Commission for all the candidates in the calendar month. In addition, any amount certified by the Commission, but not paid to a candidate because of proposed § 702.9037–2(b), is treated as an amount certified by the Commission for the candidate in the succeeding calendar month.

Proposed § 702.9037–2(c) provides an example illustrating the rules in proposed § 702.9037–2(b).

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Comments and Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing has been scheduled for February 11, 1991. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Joel S. Rutstein, Office of the Assistant Chief Counsel (Income Tax and Accounting), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

**List of Subjects**

*26 CFR Part 701*

Campaign funds, Political candidates, Elections.

*26 CFR Part 702*

Campaign funds, Administrative practice and procedure, Political candidates.

**Proposed Amendments to the Regulations**

**Paragraph 1.** Part 701 is added to read as follows:

**PART 701—PRESIDENTIAL ELECTION CAMPAIGN FUND**

Sec.
701.9006–1 Presidential Election Campaign Fund.

Authority: 26 U.S.C. 7805.

**§ 701.9006–1 Presidential Election Campaign Fund.**

(a) *Transfer of amounts to the Presidential Election Campaign Fund.* The Secretary shall promptly determine at least once a month the amount designated by individuals under section 6096 to the Presidential Election Campaign Fund ("Fund") established under section 9006(a). The Secretary shall then promptly transfer from the general fund of the Treasury that amount to the Fund. Only amounts transferred to the Fund on or before September 30 following a presidential election shall be used to satisfy certifications relating to that presidential election.

(b) *Creation of separate accounts within the Presidential Election Campaign Fund.* The Secretary shall establish, within the Presidential Election Campaign Fund, three separate accounts, to be known as the Presidential Nominating Convention Account, the Presidential and Vice Presidential Nominee Account, and the Presidential Primary Matching Payment Account.

(c) *Transfer of amounts to the Presidential Nominating Convention Account.* The Secretary shall deposit in the Presidential Nominating Convention Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9008(b)(3).

(d) *Transfer of amounts to the Presidential and Vice Presidential Nominee Account.* After making the transfers prescribed by § 701.9006–1(c), the Secretary shall deposit in the Presidential and Vice Presidential Nominee Account such amounts as the Secretary determines, in consultation with the Federal Election Commission, are required to make the payments prescribed by section 9006(b).

(e) *Limits on additional deposits.* After making the transfers prescribed by § 701.9006–1(c) and § 701.9006–1(d) for a presidential election, the Secretary shall not make any additional deposits to those accounts until October 1 of the year after that presidential election.

(f) *Transfer of amounts to the Presidential Primary Matching Payment Account.* See § 702.9037–1 for rules relating to transfers of amounts to the Presidential Primary Matching Payment Account.

**Par. 2.** Part 702 is added to read as follows:

**PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT**

Sec.
702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.
702.9037–2 Payments from the Presidential Primary Matching Payment Account.

Authority: 26 U.S.C. 7805.

**§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.**

The Secretary shall deposit amounts into the Presidential Primary Matching Payment Account only to the extent that there are amounts in the Presidential Election Campaign Fund after the transfers prescribed by § 701.9006–1 (c) and (d). The Secretary shall base this deposit only on amounts that have been actually transferred to the Presidential Election Campaign Fund under § 701.9006–1(a). Any amounts in the account after October 31 following a presidential election shall be transferred back to the Presidential Election Campaign Fund for the purpose of making the transfers prescribed by § 701.9006–1 (c), (d), and (f) for the subsequent presidential election.

**§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.**

*(a) In general.* Except as provided in paragraph (b) of this section, upon receipt of a certification from the Federal Elected Commission ("Commission") for payment to a candidate under section 9036, but not before the beginning of the matching payment period under section 9032(6), the Secretary shall promptly transfer the amount certified by the Commission from the Presidential Primary Matching Payment Account to the candidate. The Secretary shall promptly notify the Commission of the transfers.

*(b) Reductions of payments to candidates.* If the total amount certified by the Commission in a calendar month exceeds the total amount in the Presidential Primary Matching Payment Account as of the last day of the calendar month, the amount paid to a candidate shall be an amount equal to the amount certified by the Commission for the candidate during the calendar month multiplied by the ratio of the amount in the account as of the last day of the calendar month over the total amount certified by the Commission for all the candidates during the calendar month. Any amount certified by the Commission, but not paid to a candidate because of this paragraph (b), will be treated as an amount certified by the Commission for that candidate during the succeeding calendar month.

(c) *Example.* The provisions of paragraph (b) of this section may be illustrated by the following example.

*Example.* X, Y, and Z are eligible candidates. On February 11, 1992, the Secretary receives certifications by the Commission for X in the amount of $2000x and Y in the amount of $500x. There is no certification for Z. The Secretary does not receive any other certifications during February 1992. On February 29, 1992, the amount in the Presidential Primary Matching Payment Account is $1500x. Under paragraph (b) of this section, X's payment for February 1992 will be $1200x ($2000x (the amount certified by the Commission for X during February 1992) multiplied by $1500x (the amount in the account as of the last day of February 1992) over $2500x (the total amount certified by the Commission for all candidates during February 1992)). The amount not paid to X, $800x ($2000x minus $1200x), is treated as certified by the Commission for X during March 1992, the succeeding calendar month. Under paragraph (b) of this section, Y's payment for February 1992 will be $300x ($500x multiplied by $1500x over $2500x). The amount not paid to Y, $200x ($500x minus $300x), is treated as certified by the Commission for Y during March 1992. On March 10, 1992, no certifications are received for X and Y, but the Secretary receives a certification by the Commission for Z in the amount of $2800x. The Secretary does not receive any other certifications during March 1992. On March 31, 1992, the amount in the account is $900x. Under paragraph (b) of this section, X's payment for March 1992 will be $200x ($900x (the amount treated as certified by the Commission for X during March 1992) multiplied by $900x (the amount in the account as of the last day of March 1992) over $3600x (the total amount treated as certified or actually certified by the Commission for all candidates during March 1992)). Under paragraph (b) of this section, Y's payment for March 1992 will be $50x ($200x multiplied by $900x over $3600x). Under paragraph (b) of this section, Z's payment for March 1992 will be $650x ($2800x multiplied by $900x over $3600x). The amounts not paid to X, Y, and Z for March 1992 are treated as certified by the Commission during April 1992.

**Fred T. Goldberg, Jr.,**
*Commissioner of Internal Revenue.*

[FR Doc. 90–29240 Filed 12–12–90; 8:45 am]
BILLING CODE 4830–01–M



**26 CFR Parts 701 and 702**

**[IA–74–90]**

**RIN 1545–AP21**

**Financing of Presidential Election Campaigns**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of public hearing on proposed regulations relating to financing of presidential election campaigns.

**DATES:** The public hearing will be held on Monday, February 11, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Monday, January 28, 1991.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA–74–90), room 4427, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–343–0232 or 202–566–3935, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 9006, 9008, 9037 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, January 28, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Cynthia E. Grigsby,**
*Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 90–29241 Filed 12–12–90; 8:45 am]
BILLING CODE 4830–01–M

**DEPARTMENT OF DEFENSE**

**Corps of Engineers, Department of the Army**

**33 CFR Part 325**

**RIN 0710–AA23**

**Proposal to Amend Permit Regulations for Controlling Certain Activities in Waters of the United States**

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** We are hereby extending the comment period on the proposed regulations to amend the fee structure for the Corps of Engineers regulatory program which were published in the **Federal Register**, Vol. 55, No. 197, Thursday, October 11, 1990. The

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comment period was to close December 10, 1990. We have received several requests for an extension and have decided to accept comments until December 31, 1990.

**DATES:** Written comments must be received by 31 December 1990.

**ADDRESSES:** Office of the Chief of Engineers, ATTN: CECW-OR, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Chowning, Regulatory Branch, (202) 272-1781.

Dated: December 10, 1990.

**Andrew M. Perkins, jr.,**

*Colonel, U.S. Army, Acting Executive, Director of Civil Works.*

[FR Doc. 90-29179 Filed 12-12-90; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Office of Vocational and Adult Education

### 34 CFR Ch. IV

### The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990

**AGENCY:** Office of Vocational and Adult Education, Department of Education.

**ACTION:** Notice of meeting to conduct a negotiated rulemaking session.

**SUMMARY:** The Assistant Secretary for Vocational and Adult Education of the U.S. Department of Education (Department) will convene a negotiating group—including Federal, State, and local education administrators, a representative of State councils on vocational education, members of local boards of education, representatives of parents and teachers, and special populations—to participate in a negotiated rulemaking process. This group will review draft proposed regulations developed following recent regional meetings at which selected issues were discussed related to the content of proposed regulations to be issued under the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, Public Law 101-392, 104 STAT. 753 (Perkins Amendments). The Department has arranged with the Federal Mediation and Conciliation Service to provide mediation for the negotiated rulemaking. The mediators will not be involved with the substantive development of the regulations. Their role will be to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define issues and reach consensus. The meeting is open to the public for individuals who wish to observe the process. Seating for observers will be limited to 40 chairs and provided on a first-come, first-served basis.

**DATES:** The meeting is scheduled for December 17-18, 1990. The meeting will begin at 8:30 a.m. on both days.

**ADDRESSES:** The meeting will be held at the St. James Hotel, 950 24th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Persons desiring additional information on the session should contact Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 732-2237; TDD (202) 732-2235.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 504 of the Perkins Amendments contains procedural requirements for developing and issuing regulations. In particular, section 504(b) directs the Secretary to "prepare draft regulations and submit regulations on at least two key issues to a negotiated rulemaking process." The Secretary is to follow the guidance provided by the Administrative Conference of the United States in Recommendations 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations" (1 CFR 305.83-4 and 85-5). Section 504(a)(1) also requires that, prior to publishing proposed regulations, the Secretary convene regional meetings "to obtain public involvement in the development of proposed regulations" and that these meetings include "representatives of groups involved in vocational education programs under the Act, such as Federal, State, tribal and local administrators, parents, teachers, members of local boards of education and special populations." The statute requires that participants in the negotiated rulemaking process be selected from among those attending the regional meetings. As announced in the **Federal Register** on October 12, 1990 (55 FR 41642), the Department conducted regional meetings in Philadelphia, Pennsylvania; Atlanta, Georgia; San Francisco, California; and Kansas City, Missouri between October 30-November 15, 1990.

### Issues Selected for Negotiations

The issue areas listed below have been selected for the negotiated rulemaking process. These issues areas include specific issues discussed at the regional meetings that generated considerable discussion and interest and the Department judges to be of significant interest and importance as follows:

1. Evaluations under Standards and Measures.
2. Services and Activities for Special Populations.
3. Requirements for the Use of Funds.

### Participants

The following is a list of the participants who have been invited by the Department to participate in the negotiated rulemaking process. The participants are representatives, as appropriate, of those groups specified in the statute (section 504(b)) and of ten geographical regions across the country:

*Response:*

Federal Administrator:
- Betsy Brand, Assistant Secretary for Vocational and Adult Education

State Administrators:
- Trudy Anderson, Idaho State Director for Vocational Education
- Marguerite Beardsley, Acting Director, Office of Community Colleges, New Jersey Department of Higher Education
- Douglas Call, Vice Chancellor for Community Colleges, West Virginia
- Phyllis Herriage, Iowa State Director for Vocational Education

Local Administrators:
- Kay Clayton, Professor and Chair, Home Economics Department, Texas A & I University
- Dr. Norval L. Wellsfry, Dean, Instruction/Occupational Ed., Sacramento City College, California
- Dr. Roland J. Werner, Asst. Dir., Special Education, St. Louis Public Schools, Missouri

Representative for State Councils on Vocational Education:
- Larry Barnhardt, Executive Director, North Dakota Council on Vocational Education

Parent:
- Pam Wittke, Department Chairperson for General Education and Development Studies, Augusta Technical Institute, Georgia

Teacher:
- Charles House, Coordinator, Coordinated Vocational Academic Education, Telfair County Schools, Georgia

Local Board Member:
- Elaine Sweeney, Vice Chair, School Committee, Minuteman Regional Voc-Tech, Massachusetts

Special Populations Representatives:
- Sharon Fall, State Consultant, Division of Voc-Tech Education, Illinois Dept. of Education
- Leonard Rieser, Attorney, Education Law Center, Pennsylvania



Dated: December 7, 1990.

**Betsy Brand,**

*Assistant Secretary, Vocational and Adult Education.*

[FR Doc. 90-29159 Filed 12-12-90; 8:45 am]

BILLING CODE 4000-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 90-599, RM-7523]**

### Radio Broadcasting Services: Fort Bragg, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Susan I. Waters, permittee and assignor of Station KZPB(FM), Channel 244A, Fort Bragg, California, and The Henry Radio Company, assignee, seeking the substitution of Channel 244B for Channel 244A and modification of the construction permit for Station KZPB(FM) accordingly. Coordinates for this proposal are 39-27-53 and 123-45-27.

**DATES:** Comments must be filed on or before January 31, 1991, and reply comments on or before February 15, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In additional to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Richard J. Hayes, Jr., Esq. 1359 Black Meadow Road, Spotsylvania, VA 22553.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-599 adopted November 15, 1990 and released December 10, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29256 Filed 12-12-90; 8:45 am]

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# Notices

Federal Register
Vol. 55, No. 240
Thursday, December 13, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

December 7, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

**Revision**

• Agriculture Stabilization and Conservation Service, 7 CFR part 1475, Emergency Feed Program, CCC–642, 652, 640, 651, 658, 651B, 657, 659, ASCS–648, CCC–653A, 651, Appendix, CCC–640A, On occasion, Farms; 383,000 responses; 82,832 hours, Clarence Domire, (202) 447–7673.

**New Collection**

• Food and Nutrition Service, WIC Program Regulations—Reporting and Recordkeeping Burden—Addendum 1 Recordkeeping; Annually; Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 1,290 responses; 91,122 hours, Michael T. Buckley, (703) 756–3790.

• Food Safety and Inspection Service, Additional Methods for Destroying Trichinae in Dry-Cured Ham and Sausage, Recordkeeping, State or local governments; Businesses or other for-profit; Small businesses or organizations; 9 responses; 144 hours, Roy Purdie, Jr. (202) 447–5372.

**New Collection**

• Food and Nutrition Service, 7 CFR part 210—National School Lunch Program—Addendum 1, Recordkeeping; Monthly; Quarterly; Annually; Biennially, State or local governments; Federal agencies or employees; Non-profit institutions; 375 responses; 6129 hours, Marian L. Stroud, (703) 756–3598.

**Reinstatement**

• Forest Service, Collection and Analysis of Timber Purchasers Costs and Sales Data Annually, Businesses or other for-profit; Small businesses or organizations 104 responses; 392 hours; Douglas Mac Cleery, (202) 475–3753.

Larry K. Roberson,
*Acting Departmental Clearance Officer.*

[FR Doc. 90–29144 Filed 12–12–90; 8:45 am]
BILLING CODE 3410–01–M

## Packers and Stockyards Administration

### Amendment to Certification of Central Filing System—Louisiana

The Statewide central filing system of Louisiana has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for specified farm products produced in that State (51 FR 47036, December 30, 1986; 53 FR 15722, May 3, 1988; 53 FR 24755, June 30, 1988; and 54 FR 10031, March 9, 1989).

The Certification is hereby amended on the basis of information submitted by W. Fox McKeithen, Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C.; 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 7, 1990.

Calvin W. Watkins,
*Acting Administrator, Packers and Stockyards Administration.*

[FR Doc. 90–29145 Filed 12–12–90; 8:45 am]
BILLING CODE 3410–KD–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket No. 48–90]

### Foreign-Trade Zone 43—Battle Creek, MI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting authority to expand its zone to include a site in Texas Township, Kalamazoo County, Michigan, adjacent to the Battle Creek Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 3, 1990.

FTZ 43 was approved on October 19, 1978 (Board Order 138, 43 FR 50233, 10/27/78). It currently involves two warehouses within the Fort Custer Industrial Park. An application is pending to expand the zone at the Fort Custer park (FTZ Docket 8–89, 54 FR 19581, 5/8/89).

The grantee now requests authority to further expand FTZ 43 to include a site (23 acres) located in Texas Township, at 6677 Beatrice Drive near the intersection of 9th St. and Interstate 94, some 25 miles west of Battle Creek. The site involves a warehouse facility owned and operated by TLC Warehousing Services, Inc. No manufacturing authority is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. DaPonte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, Patrick V. McNamara Bldg., 477 Michigan Avenue, Detroit, Michigan 48226–2568; and Colonel John D. Glass, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231–1037.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 23, 1990.

A copy of the application is available for public inspection at each of the followng locations:

Port Director's Office, U.S. Customs Service, 4950 West Dickman Road, Battle Creek, Michigan 49106.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, room 4213, Washington, DC 20230.

Dated: December 5, 1990.

John J. Da Ponte, Jr.,
*Executive Secretary.*

[FR Doc. 90–29235 Filed 12–12–90; 8:45 am]
BILLING CODE 3510–DS–M

## International Trade Administration

[A–412–806]

### Initiation of Antidumping Duty Investigation: Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof From the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce (the "Department"), we are initiating an antidumping duty investigation to determine whether imports of certain gene amplification thermal cyclers and subassemblies thereof (GATCs) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value.

**EFFECTIVE DATE:** December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5288.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On November 14, 1990, we received a petition filed in proper form by M.J. Research, Inc. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of GATCs from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from the United Kingdom of GATCs.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**United States Price and Foreign Market Value**

Petitioner based its estimates of United States price on price quotes from an unrelated distributor to end users. Petitioner made deductions for estimated distributor markup, movement charges, and U.S. duty.

Petitioner based its estimates of foreign market value on a price quote to an unrelated distributor. Petitioner made adjustments for differences in merchandise, packing, and credit. We have recalculated the credit adjustment using the Department's standard methodology.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 50.36 to 59.81 percent. Based on our recalculations, these margins range from 46.21 to 55.15 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of GATCs from the United Kingdom.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition and found that is complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of GATCs from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 23, 1991.

**Scope of Investigation**

The products covered by this investigation are certain gene amplification thermal cyclers, consisting of Peltier-effect *in vitro* GATCs, whether assembled or unassembled, and the subassemblies thereof specified below. GATCs are microprocessor-based reaction controllers that regulate temperatures of biologic reagents through a programmed and highly controlled thermal regime. GATCs incorporate a metal sample block, one or more thermoelectric modules, one or more electronic thermal sensors, a heat exchanger, power supply circuitry, microprocessor-based logic circuitry, software, and a housing or enclosure. GATCs are used in a variety of biotechnology applications, such as *in vitro* gene amplification, and sequencing and radionucleodide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for cooling the biologic samples, and the thermoelectric modules and/or electric resistive heaters for heating the biologic samples. Excluded from this investigation are vapor compression thermal cyclers, which use a reversed Rankine cycle apparatus, and heat-only thermal cyclers.

The following subassemblies are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use in a GATC as defined in the preceding paragraph: (a) The sample block/thermoelectric

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sensor/heat exchanger subassembly, which consists of the sample block, one or more thermoelectric modules, one or more electronic thermal sensors, and a heat exchanger, and which can include an electric resistive heater; (b) the housing or enclosure, whether finished or unfinished, or the GATC; (c) the membrane keypad used to program and control a GATC; and (d) the software to operate the GATC.

GATCs are currently classifiable under the Harmonized Tariff Schedule (HTS) subheading 8419.89.5075. GATC subassemblies are currently classifiable under HTS subheading 8419.90.9060. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

**Notification of International Trade Commission**

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

**Preliminary Determination by ITC**

The ITC determine by December 31, 1990, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of GATCs from the United Kingdom. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: December 4, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29236 Filed 12-12-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-054]

## Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioner and the respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on tapered roller bearings four inches or less in outside diameter and certain components thereof from Japan. The review covers three manufacturers/exporters of the subject merchandise to the United States during the period August 1, 1987 through July 31, 1988. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATES:** December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes, Laurel LaCivita or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 8, 1988, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (53 FR 29755). The petitioner in this case, the Timken Company, and one respondent requested an annual review. We initiated the review on September 27, 1988 (53 FR 37617) covering the period August 1, 1987 through July 31, 1988. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on September 20, 1990 (55 FR 38720).

**Scope of the Review**

Imports covered by the review are sales or entries of tapered roller bearings (TRBs) four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. During the review period such merchandise was classifiable under items 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers three manufacturers/exporters of TRBs, Koyo Seiko, K.K (Koyo), Nachi-Fujikoshi, and Nippon Seiko, K.K (NSK), during the period August 1, 1987 through July 31, 1988.

**United States Price**

The Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act, to calculate United States price. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, were applicable, for foreign inland freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, rebates and discounts, packing expenses incurred in the United States and indirect selling expenses. No other adjustments were claimed or allowed.

**Foreign Market Value**

The Department used the home market price, as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV). If sufficient quantities of such or similar merchandise were not sold in the home market to allow a comparison between the U.S. price and foreign market value, we used constructed value as the basis for FMV.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of home market sales involved in this review, we compared the monthly weighted-average home market price for each product with its annual weighted-average price. Because the annual weighted-average price of each model did not vary greatly from its monthly weighted-average price, we consider the annual weighted-average price to be representative of the transactions under consideration. Therefore, we calculated the FMV for each model on an annual weighted-average basis, in accordance with section 777A(a) of the Tariff Act.

When we used home market sales as the basis of comparison, we based FMV on the packed, F.O.B., ex-factory or delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland, freight, credit, discounts, rebates and differences in physical characteristics. We adjusted FMV for indirect selling expenses in the home market to offset indirect selling expenses in the U.S. We limited selling expenses incurred on home market sales by the amount of the indirect selling expenses incurred in the U.S. We added packing expenses incurred in Japan for U.S. sales to FMV.

Petitioner alleged that both NSK and Koyo sold merchandise covered by the finding in the home market at prices below the cost of production. Therefore, in accordance with section 773(b) of the Tariff Act, we used constructed value as the basis for FMV when we determined that substantial quantities of sales below cost were made in the home market over an extended period of time in the normal course of trade.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included that cost of materials, labor, and factory overhead in our calculations. Koyo's actual selling, general and administrative expenses (SG&A) and profit were less than the statutory minimums of ten and eight percent, respectively, of the cost of manufacture. Therefore, we used the statutory minimums in our calculation of constructed value. NSK's actual SG&A was greater than the statutory minimum of ten percent. Therefore, we used actual SG&A in our calculation of constructed value. NSK's actual profit was less than the statutory minimum of eight percent. Therefore, we used the statutory minimum of eight percent profit in our calculation of constructed value.

**Preliminary Results of Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period August 1, 1987 to July 31, 1988:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Koyo Seiko, K.K. | 54.01 |
| Nippon Seiko, K.K. | 20.34 |
| Nachi-Fujikoshi | 18.07* |

*No shipments during the period; margin from last review in which there were shipments.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required on shipments of TRBs from Japan. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms.

For any future entries of this merchandise from an exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after July 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 54.01 percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 4, 1990.

**Majorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29237 Filed 12-12-90; 8:45 am]

BILLING CODE 3510-DS-M



## Short-Supply Determination: Certain Continuous Cast Steel Slabs

**AGENCY:** Import Administration/International Trade Administration, Commerce.

**ACTION:** Notice of short-supply determination on certain continuous cast steel slabs.

**SHORT-SUPPLY REVIEW NUMBER:** 32.

**SUMMARY:** The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 40,000 net tons of certain continuous cast steel slabs for the first quarter of 1991 under Article 8 of the U.S.-Brazil steel arrangement and paragraph 8 of the U.S.-Mexico steel arrangement.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1390 or (202) 377-0159.

**SUPPLEMENTARY INFORMATION:** On November 9, 1990, the Secretary received an adequate short-supply petition from Oregon Steel Mills ("OSM") requesting a short-supply allowance for 55,000 net tons per quarter of certain continuous cast steel slabs for each quarter of 1991 under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products, and Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States Concerning Trade in Certain Steel Products. OSM alleges that it will experience a supply shortfall for this product in 1991 because it has recently obtained several 1991 contracts for large pipeline projects, which will more than double its slab requirements from 1990. OSM states that it has limitations on the quantity of this material it can supply from its Portland, Oregon facility, and that domestic producers either have no available capacity or are unable to meet OSM's specifications. OSM also states that it will be able to purchase some quantity of slabs under regular export licenses, but must obtain this tonnage under a short-supply allowance.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.102 of the Department of

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Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

*Dimensions:*

Gauge: 200 mm—230 mm
Width: 1700 mm—1800 mm
Length: 7300 mm—7620 mm

*Tolerances:*

Gauge: ±4mm
Width: ±10mm
Length: ±50mm
Camber: 0.67% max.
Crossbow: 10mm max.
Squareness: 90 ± 3

*Chemical Composition:*

C—0.09% to 0.11%
MN—1.35% to 1.55%
P—0.015% max.
S—0.007% max.*
Si—0.15% to 0.30%
Cb—0.025 to 0.050%
V—0.020% max.
Ti—0.005% max.
Al—0.020% to 0.050%
Cu—0.25% max.
Ni—0.15% max.
Cr—0.15% max.
Mo—0.05% max.
Sn—0.008% max.
Ca—**
N—0.008% max.
Al/N ratio >4.0

*Prefer 0.002% maximum sulfur
**Liquid steel to be calcium treated for inclusion shape control.

**Action**

On November 9, 1990 the Secretary established an official record on this short-supply request (Case Number 32) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. A notice of this short-supply review and request for comments was published in the **Federal Register** on November 21, 1990, and all comments from interested parties concerning the review were due November 28, 1990. Replies to those comments were to be filed no later than December 3, 1990. On November 28, 1990 we received comments from Bethlehem Steel Corporation (Bethlehem) in response to the **Federal Register** notice, and on December 3, 1990 we received reply comments from OSM.

**Questionnaires**

Questionnaires were sent to 14 companies, as follows: Armco Inc. (Armco), Bethlehem, Citisteel USA, Inc. (Citisteel), Geneva Steel Company (Geneva), Gulf States Steel (Gulf States), Inland Steel Industries (Inland), LTV Steel Company (LTV), Lukens Steel Company (Lukens), McLouth Steel (McLouth), National Steel Corporation (National), Rouge Steel Company (Rouge), Sharon Steel Company (Sharon), USX Corporation (USX) and Wheeling-Pittsburgh Corporation (Wheeling-Pittsburgh). Adequate questionnaire responses were received from 10 of the 14 potential suppliers. Seven of these companies (Citisteel, Gulf States, Lukens, Inland, McLouth, Rouge, and Sharon) were not able to produce slabs meeting the specifications requested. National indicated that it could supply 5,000 net tons per month of slabs which differ slightly from OSM's specifications starting in January 1991. Bethlehem indicated it could supply at least 10,000 net tons per quarter of slabs meeting OSM's exact specifications starting in the second quarter of 1991. LTV indicated that, due to the uncertain market conditions predicted for 1991, it is possible that LTV would be in a position to supply the requested slabs in the second through fourth quarters. On November 21, 1990, we contacted OSM to convey this information and to request further clarification concerning domestic and foreign suppliers.

**Analysis**

Questionnaire responses indicate that the slabs subject to this request are produced by a number of domestic producers. Therefore, determining whether short supply will exist throughout 1991 is difficult at this time because our determination must be based on domestic market conditions which may change dramatically throughout the year. For example, Bethlehem has indicated that it could supply at least 10,000 net tons per quarter during the second through fourth quarters of 1991, and LTV has indicated that, depending on market conditions, it also may be in a position to supply OSM with slabs during April through December. In addition, there is some uncertainty on whether certain pipeline projects that are the basis of OSM's short-supply request may be delayed. Therefore, due to the current volatile nature of the semi-finished steel and large diameter pipe markets, the Secretary must make a determination on this request on a quarter-by-quarter basis, and consider only OSM's needs for the first quarter at this time. Should OSM continue to experience a supply shortfall, it may request that the Secretary consider its second quarter needs in early 1991.

With regard to OSM's first quarter needs, the only producer offering to supply a quantity of these slabs is National. National has offered to supply 5,000 net tons per month of slabs that meet OSM's specifications with the exceptions of thickness (National can provide slabs 241 mm in thickness; OSM has specified slabs in the 200–230 mm range) and possible variations in internal quality specifications.

Although OSM requests slabs in the 200–230 mm range, they have in the past year used slabs ranging up to 280 mm in thickness. OSM states that it is requesting slabs in the 200–230 mm range because slabs in the 240–280 mm range require additional passes during rolling to reduce the thickness. OSM contends this can cause severe flatness problems, which result in a higher rejection rate. However, OSM has provided no information on the record to support this allegation. OSM subsequently states that using slabs in the 200–230 mm range allows its plate mill to attain a higher production rate and far better slab to plate yields. Therefore, OSM's thickness specification is not based upon physical limitations of the mill, but rather it represents the desire for a product that optimizes efficiency of its production facility. OSM has not provided any information to substantiate that National's slabs would not be usable in OSM's facilities. In fact, in its December 3, 1990 response, OSM indicates that it would be willing to purchase the slabs offered by National. Therefore, National's offer of 5,000 net tons per month during the first quarter of 1991 represents a legitimate supply of the product.

OSM claims, however, that the tonnage offered by National should not be counted against OSM's shortfall. OSM states that in estimating its shortfall, it made allowances for some tonnage to be supplied by unnamed domestic producers and/or foreign producers under regular export licenses. OSM contends that the tonnage offered by National has effectively been included in OSM's estimate of its 1991 supplies.

However, the Secretary has no basis to regard National's offer of 5,000 net tons per month as other than a new source of supply. Accordingly, the Secretary is deducting 15,000 net tons (5,000 net tons per month) from OSM's expected shortfall of 55,000 net tons in the first quarter, leaving a net shortfall of 40,000 net tons for the first quarter of 1991.

**Conclusion**

Because OSM requires 55,000 net tons of continuous cast material to meet its production needs during the first quarter of 1991, and because one domestic producer has offered to supply up to 15,000 net tons of the needed material, the Secretary determines that short supply exists for 40,000 net tons of continuous cast steel slabs meeting Rouge's specifications. Pursuant to section 4(b)(4)(a) of the Act, and section 357.102 of Commerce's Short-Supply Procedures, the Secretary grants OSM's request for a short-supply allowance of 40,000 net tons of certain continuous cast steel slabs for the fourth quarter of 1990 and the first and second quarters of 1991. Should OSM require additional material during the second quarter of 1991, it should submit a new request in early 1991.

Dated: December 7, 1990.

**Majorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90–29238 Filed 12–12–90; 8:45 am]

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## National Oceanic and Atmospheric Administration

### Endangered Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, DOC.

**ACTION:** Withdrawal of correction to permit application (P470) and issuance of scientific research permit No. 719.

**SUMMARY:** On Wednesday, October 24, 1990, notice was published in the **Federal Register** (55 FR 42869–42870) that an application (P470) had been filed by Dr. Walter H. Munk, Scripps Institution of Oceanography (A–025), Institute of Geophysics and Planetary Physics, La Jolla, California 92093, to take endangered marine mammals. Type of take involves acoustic harassment in the course of an experiment to assess potential impacts on marine mammals of acoustic signals designed to detect global ocean warming. Vocalization rates will be measured as well as respiration and direction of swimming to determine whether the behavior of the animals changes in response to the acoustic signal. On Tuesday, November 20, 1990, a notice of correction to the application was published in the **Federal Register** (55 FR 48287) adding two additional species to the list of animals to be harassed.

Notice is given that the Correction (55 FR 48287) to the Application for Scientific Research Permit, Walter H. Munk, Scripps Institution of Oceanography (P470) is hereby withdrawn.

Notice is hereby given that on December 7, 1990, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), the National Marine Fisheries Service Regulations Governing Endangered Fish and Wildlife permits (50 CFR parts 217–222), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Environmental Assessment is available from the following office: Virginia Tippie, Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1825 Connecticut Avenue, NW., room 611, Washington, DC 20235.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396.

Dated: December 10, 1990.

**David S. Crestin,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 90–29233 Filed 12–12–90; 8:45 am]

BILLING CODE 3510–22–M

## National Technical Information Service

### Prospective Grant of Exclusive Patent License; Thomas A. Fermar

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application SN 7/351,347, Monoclonal Antibodies Which Discriminate Between Strains of Citrus Tristeza Virus, to Thomas A. Fermar, having a place of business at Altemonte Springs, Florida. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to murine hybridoma cell lines and monoclonal antibodies produced therefrom which may be used to detect severe forms of the citrus tristeza virus in citrus plant tissue by immunological assay.

The availability of the invention for licensing was published in the **Federal Register** Vol. 54, No. 142, p. 31067, July 26, 1989. A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Property filed competing applications received by NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

**Douglas J. Campion,**

*Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.*

[FR Doc. 90–29183 Filed 12–12–90; 8:45 am]

BILLING CODE 3510–04–M

## COMMODITY FUTURES TRADING COMMISSION

### New York Mercantile Exchange: Proposed Amendments Relating the Minimum Purity Standard for the Platinum and Palladium Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

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**SUMMARY:** The New York Mercantile Exchange (NYMEX or Exchange) has submitted proposed amendments to its platinum and palladium futures contracts that will upgrade, to 99.95% from 99.90%, the minimum purity standard for deliverable platinum and palladium. The amendments will apply only to newly listed futures contract months under an implementation plan that provides for the phase-out of delivery of 99.90% pure metal over a period of about five years. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

**DATES:** Comments must be received on or before January 14, 1991.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed changes to the purity standard for the NYMEX platinum and palladium futures contracts.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** The platinum and palladium futures contracts currently provide that the minimum purity for deliverable platinum and palladium is 99.90% pure metal.[1] The proposal would upgrade the minimum purity standard to 99.95% pure metal. In justification of the proposal, the NYMEX stated that:

The world platinum and palladium physical markets require a minimum purity standard of 99.95%. There are a few industrial applications where 99.9% metal is acceptable, for example, jewelry; however, the vast majority of metal must be 99.95% pure in order to be useful to industrial end-users of platinum and palladium. In addition, long-term contracts with South African and Russian producers and the majority of cash market trading in New York, London, Zurich and Tokyo is for 99.95% metal.

* * * By introducing 99.95% purity, it is the Exchange's intention to better serve the world PGM [platinum group metal] market by: Bringing the NYMEX Platinum and Palladium Futures contracts into line with international commercial standards; improving the liquidity of deliverable supplies; enhancing the integrity of the NYMEX PGM contracts by improving the integration of the NYMEX and cash markets; and potentially improving volume and liquidity by attracting more commercial and international participation (specifically from Europe and Japan) to the Exchange.

99.95% purity is the international commercial standard in the platinum and palladium cash markets. The London Platinum and Palladium Market, a group of eight market makers responsible for the London morning and afternoon Fixings, trades metal of 99.95% purity. In addition, most refiners and fabricators maintain pool accounts of 99.95% purity.

Bringing the contracts into line with the standards of the cash market * * * is likely to result in more metal being potentially deliverable against the contracts at par. While it is true that prior to the upgrade 99.95% pure metal *could* be delivered against contracts (the specifications only require 99.9% *minimum*), it was unlikely that any significant amount of metal of the higher purity would be delivered since the seller could be giving away value as the Exchange price was only capturing 99.9% purity.

With a 99.95% contract, the Exchange stands to facilitate the delivery of a greater proportion of world supplies. By aligning the contract with the largest segment of the cash market—that comprising 99.95% purity—deliverable supplies should increase. This gain would exceed the marginal losses of supply of 99.9% metal that will no longer be deliverable * * *.

Regarding implementation, the Exchange stated that it proposes to introduce the 99.95% purity specification and phase out the deliverability of the lower purity metal for both contracts beginning with the first contract month to be listed after Commission approval, as described below. Thus, all existing contract months with open interest at the time of Commission approval will be unaffected by the amendments. In that regard, the NYMEX currently lists platinum and palladium futures out as much as 15 months. Details of the NYMEX's proposed implementation procedure as set forth in the amended rules for both contracts are as follows:

(A) Upon Commission approval, the NYMEX Board of Directors will establish platinum and palladium delivery months no earlier than sixteen months following the date of approval of the rule amendments. Beginning with that specified delivery month and from then on, only 99.95% pure metal may be delivered *at par* on the contracts.

(B) For all contract months expiring prior to the contract month established pursuant to (A) above, 99.5% and 99.9% platinum and 99.8% and 99.9% palladium would continue to be deliverable with the existing discounts for the lower purity of each metal as noted in footnote 1 above.

(C) For 36 months following the expiration of the contract month established pursuant to (A) above, platinum of 99.5% and 99.9% purity and palladium of 99.8% and 99.9% purity would continue to be deliverable at the discounts set forth in (D) and (E) below. After this 36-month period, only platinum and palladium of minimum 99.95% purity metal may be delivered.

(D) Platinum and palladium assayed and certified prior to the expiration of the contract month established pursuant to (A) above as 99.9% purity may be delivered during the 36-month phase-out period set forth in (C) above at a discount of $8.00 per ounce for platinum and $7.50 per ounce for palladium.

(E) Platinum assayed and certified prior to October 29, 1982, as 99.5% purity may be delivered during the time period set forth in (C) at a discount of $16.50 per ounce. Palladium assayed and certified prior to March 28, 1985, as 99.8% purity may be delivered during this time period at a discount of $13.50 per ounce.

As noted, during the phase-out period, the Exchange proposes to allow metal of 99.90% purity—the current minimum purity metal—to be delivered at a discount of $8.00 for platinum and $7.50 for palladium. According to the NYMEX, "* * * these discount rates reflect the actual cost to upgrade the metal [to 99.95% pure platinum or palladium], and, at the same time, will provide an incentive for market participants to remove this metal from NYMEX depositories and upgrade to the highest deliverable standard." Similarly, according to the Exchange, "* * * metal of 99.5% and 99.8% metal will continue to be deliverable against the 99.95% contract at discounts of $16.50 for platinum (the current rate of $7.50 for the 99.5% to 99.9% differential plus the additional proposed discount of $9.00) and $13.50 for palladium (the current rate of $6.00 for the 99.8% to 99.9% differentials plus the additional proposed discount of $7.50)." Under the proposed implementation plan, the Exchange noted that market participants will have three years from the date that delivery against the 99.95% contract begins—approximately 5 years from now—to make arrangements for disposing of or upgrading the lower purity metal currently deliverable on the contracts. The Exchange stated that this is "* * * ample time to ensure a smooth transition."

The Division is requesting comment on the consistency of the proposed higher minimum purity standard with cash market production practices. Also, the Division requests comment on the NYMEX's proposed implementation plan, including the appropriateness of the proposed futures discounts for the delivery of currently deliverable lower purity metal during the transition period.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, at the above address. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the same address or by telephone at (202) 254-6314.

The materials submitted by the NYMEX in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, at the above address by the specified date.

Issued in Washington, DC on December 7, 1990.

Gerald Gay,
*Director.*

[FR Doc. 90-29151 Filed 12-12-90; 8:45 am]
BILLING CODE 6351-01-M

[1] The platinum and palladium futures contracts also provide for the delivery of lower purity metal at a discount if certain special conditions are met. Specifically, lower purity (99.5%) platinum is deliverable at a $7.50 per ounce discount if such product was assayed and certified as deliverable prior to October 29, 1982. Lower purity (99.8%) palladium is deliverable at a $6.00 per ounce discount if such product was assayed and certified as deliverable prior to March 28, 1985. These dates represent the last dates such lower purity metal could have been certified for delivery on the contracts under implementation procedures approved in the early 1980s designed to phase out the deliverability of such lower purity metal by adopting a higher, 99.90%, minimum purity standard—the current standard for both contracts.



## DEPARTMENT OF DEFENSE

### Department of the Navy

### CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet January 9, 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

**FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT:** Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 4, 1990.

G.B. Roberts,
*LtCol, USMC, Federal Register Liaison Officer.*

[FR Doc. 90-29141 Filed 12-12-90; 8:45 am]
BILLING CODE 3810-AE-M

### CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Shallow Water Antisubmarine Warfare Task Force will meet January 10-11, 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy shallow water antisubmarine warfare long term strategies. The entire agenda for the meeting will consist of discussions of key issues related to shallow water antisubmarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

**FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT:** Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 4, 1990.

G.B. Roberts,
*LtCol, USMC, Register Liaison Officer.*

[FR Doc. 90-29142 Filed 12-12-90; 8:45 am]
BILLING CODE 3810-AE-M

### CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel U.S. Navy-Soviet Navy Exchanges Task Force will meet January 8, 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss of key issues regarding U.S. Navy-Soviet Exchanges. The entire agenda for the meeting will consist of discussions on how to implement a long-range, comprehensive, follow-on program. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: December 4, 1990.

G.B. Roberts,
*LtCOL, USMC, Federal Register Liaison Officer.*

[FR Doc. 90-29143 Filed 12-12-90; 8:45 am]
BILLING CODE 3810-AE-M

## DEFENSE LOGISTICS AGENCY

### Cooperative Agreements Revised Procedures

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Cooperative Agreements; Proposed Revised Procedures.

**SUMMARY:** This proposed revised procedure implements chapter 142, title 10, United States Code, as amended, which authorizes the Secretary of

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Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements to support procurement technical assistance programs established by state and local governments, private nonprofit organizations, Tribal organizations, and Indian-owned economic enterprises. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by DLA to enter into such agreements for this purpose.

**DATES:** Comments will be accepted until January 14, 1991. Proposed effective date: January 21, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sim Mitchell, Program Manager, Office of Small and Disadvantaged Business Utilization (DLA–UM), Defense Logistics Agency, Alexandria, VA 22304–6100, Telephone (703) 274–647).

## I. Background Information

The Department of Defense (DoD) has developed programs designed to expand its industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition in the private sector have been supplemented by many state and local governments and other entities where the interest in improving the business climate and economic development in their communities is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program was established in which DoD shares the cost of supporting existing procurement technical assistance (PTA) programs being conducted by state and local governments, private nonprofit entities, Tribal organizations, and Indian-owned Economic Enterprises to encourage the establishment of similar programs in their communities or on Indian reservations.

The Cooperative Agreement Program was established by the Fiscal Year (FY) 1985 DoD Authorization Act, Public Law 98–525. It amended title 10, United States Code, by adding chapter 142 and authorizing the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing cooperative agreements with state and local governments, other nonprofit entities, Tribal organizations and Indian economic enterprises (hereafter referred to as eligible entities as defined in section 3 of this procedure) to establish and conduct PTA programs during FY 86. The Cooperative Agreement Program continues under title 10, United States Code, as amended.

The U.S. Congress authorized a total of $9 million to support the program during FY 91. Of this total, $900,000 is available for Indian programs only.

In cases where the area being or to be serviced by the eligible entity encompasses more than one Defense Contract Management District's (DCMD) area of geographic cognizance, eligible entities will submit their proposals to the DCMD having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The names, addresses and state or geographic areas under the cognizance of the DCMD Associate Directors of Small Business are at Encl 1.

Additional limitations placed on these funds are:

(a) DoD cost sharing shall not exceed 50% of the net cost of a single program, excluding any Federal funds and other income. In no event shall the DoD share of the net program cost (NPC) exceed $150,000 for programs providing less than statewide coverage and $300,000 for programs providing statewide coverage. Funding limitations for the Indian Program will be announced in each year's solicitation.

(b) Eligible entities cannot subcontract more than 10% of their total program costs for private profit and/or nonprofit consulting services to support the program.

(c) These limitations may be modified by the Headquarters (HQ) DLA Policy Committee as necessary to comply with legislative or other requirements.

DoD presently provides PTA to business firms through its network of Small Business Specialists located in industrial centers around the country. To the extent resources are available, the DCMD Associate Directors of Small Business located in these industrial centers, will be available to provide: (1) Eligible entities such assistance as necessary to facilitate full understanding of the solicitation requirements; (2) general guidance in preparing proposals; and (3) orientation and training assistance to PTA cooperative agreement recipients' staff during program implementation.

PTA given to clients for marketing their goods and services to Federal agencies other than DoD and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include these Federal marketing opportunities for business firms located in the area being or to be serviced.

The purpose of the proposed revised procedure is to make available to all eligible entities the prerequisites, policies and procedures which will govern the award of cooperative agreements by DLA. Also, this procedure establishes the guidelines which will govern the administration of cooperative agreements.

Although this procedure will affect all eligible entities desiring to enter into a DLA awarded cooperative agreement, DLA has determined that this procedure does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that the proposed cooperative agreement procedure implements policies already published by the Office of Management and Budget pursuant to chapter 63, title 31, United States Code, Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA cooperative agreements will be entered into pursuant to the authorities and restrictions contained in the annual DoD Authorization and Appropriation Acts. Therefore, public hearings were not conducted.

## II. Other Information

The language contained in the current cooperative agreement procedure limited the period of coverage to the FY 90 Program in that it addressed the FY 90 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. The proposed revision to the procedure will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the FY 91 program.

Comments are invited on the procedure. Comments should be submitted to the Defense Logistics Agency, ATTN: DLA–UM, Cameron Station, Alexandria, VA 22304–6100. Comments received after January 14, 1991 may not be considered in formulating revisions to the Procedure.

*Cooperative Agreement Procedure*

## III. Proposed Revision to DLA Procedure—Cooperative Agreements

*3–1 Policy*

A. Proposals for cooperative agreements are obtained through the issuance of a DLA Solicitation for Cooperative Agreement Proposals, hereafter referred to as a SCAP. The contents of this procedure shall be incorporated, in whole or in part, into the solicitation to establish administrative requirements to execute and administer DLA awarded cooperative agreements. The SCAP may include additional administrative requirements required by legislation that are not included in this procedure.

B. Cooperative agreements will be awarded on a competitive basis as a result of the SCAP. It is DLA's policy to encourage fair and open competition when awarding cooperative agreements. However, DoD through DLA, reserves the right to make or deny an award to an applicant if competition for DoD goods and services would be enhanced.

C. Letters of support and recommendation from Members of Congress are not necessary and will not be considered in the evaluation and selection of proposals to receive cooperative agreement awards.

D. The solicitation inviting the submission of proposals shall be given the widest practical dissemination. All known eligible entities and those that request copies after the solicitation is issued will be provided a copy. All eligible entities that have advised DCMD of their interest in submitting a proposal under the SCAP will be invited to participate in preproposal conferences.

The preproposal conferences will be held at the locations designated in the solicitation approximately 90 calendar days prior to the SCAP's closing date.

E. Proposals will not be accepted from applicants who apply as co-equal partners or co-equal joint ventures. Only one organization can take the lead and primary responsibility for the program.

F. The SCAP shall not be considered to be an offer made by DoD. It will not obligate DoD to make any awards under this Program. DoD is not responsible for any monies expended or expense incurred by applicants prior to the award of a cost sharing cooperative agreement.

G. DoD's share of an eligible entity's proposal and award recipient's net program cost (NPC) shall not exceed 50%, unless the eligible entity/recipient proposes to cover a distressed area. If the eligible entity/recipient proposes to cover a distressed area (as defined in paragraph 3–3, subparagraph K below), the DoD share may be increased to an amount not to exceed 75%. In no event shall DoD's share of NPC exceed $150,000 for programs providing less than statewide coverage or servicing one BIA service area, and $300,000 for programs providing statewide coverage (defined in paragraph 3–3, subparagraph AE below) or servicing 100% of one BIA service area and at least 30% of one other BIA service area.

H. During each fiscal year (FY) for which funding is authorized for the PTA program, at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographical cognizance of each DCMD. If the area being or to be serviced by an eligible entity encompasses more than one DCMD's area of geographical cognizance, the eligible entity should submit its application to the DCMD having cognizance over the majority of the area it is servicing or proposes to service. Only one application will be accepted from a single eligible entity.

I. The award of a cooperative agreement shall not in any way obligate DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of a DLA cooperative agreement recipient.

J. The period of performance for a cooperative agreement shall cover a twelve month period.

K. To assist DoD in achieving its socioeconomic goals, applicants and cooperative agreement recipients must give special emphasis to assisting small disadvantaged business (SDB) firms which are participating or will be participating in DoD contracting opportunities. A concerted effort must be made by recipients to identify SDB firms and provide them with marketing and technical assistance, particularly where such firms are referred for assistance by a DoD component.

L. The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and describe the rights and obligations of parties in Federal procurement transactions. Although the FAR is not applicable to cooperative agreements, some of the provisions contained in the FAR may be suitable for inclusion in cooperative agreement solicitation and award documents. Therefore, the clauses and provisions contained in the FAR may be made a part of all cooperative agreement solicitation and award documents if not otherwise covered under the Office of Management and Budget (OMB) Circulars A–102 (Grants and Cooperative Agreements with State and Local Governments) and A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations). Where appropriate, the language of the clause(s) will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary.

M. Award recipients are not required to obtain or retain private profit and/or nonprofit consulting services. Any costs being proposed for such services shall not exceed 10% of the total program cost (TPC). Costs in excess of 10% included in the eligible entity's proposal will cause the proposal to be rejected.

N. Reasonable quantities of government publications, such as "Selling to the Military," may be furnished to award recipients at no cost, subject to availability. All requests for such publications must be submitted to the cognizant DCMD.

O. For the purpose of executing cooperative agreements, the HQ DLA Cooperative Agreement Program Manager (hereafter referred to as Program Manager) and the DCMD Associate Director of Small Business (hereafter referred to as Associate Director) are delegated the authority to execute cooperative agreements.

P. Each cooperative agreement recipient's area of performance will be limited to the geographical area specified in its cooperative agreement award, including modifications thereto.

Q. To the extent that the annual DoD authorization and appropriation acts provide for restricting some part of the total funds authorized to accommodate special socioeconomic requirements, any specific requirements related to the restricted funds which differ from this procedure will be identified in the SCAP.

*3–2 Scope*

This procedure implements Chapter 142 of Title 10, United States Code, as amended, and establishes procedure and guidelines for the award and administration of Cost Sharing Cooperative Agreements entered into between DLA and eligible entities. Under these agreements, financial assistance provided by DoD to recipients will cover the DoD share of the cost of establishing new and/or maintaining existing PTA programs for furnishing PTA to business entities.

*3–3 Definitions*

The following definitions apply for the purpose of this procedure.

A. *Act.* The enabling legislation that authorizes the establishment and continuation of the PTA Cooperative Agreement Program each fiscal year.

B. *Agency.* A field of one of the twelve service area offices, as published by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior.

C. *Civil jurisdiction.* All cities with a population of at least 25,000 and all counties. Townships of 25,000 or more

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population are also considered as civil jurisdictions in 4 States (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico and Rhode Island where counties have very limited or no government functions, the classifications are done for individual towns.

D. *Client.* A recognized business entity, including a corporation, partnership, or sole proprietorship, organized for profit or nonprofit, which is small or other than small, that has the potential or is seeking to market its goods or services to DoD and other Federal agencies.

E. *Consultant services.* Marketing and technical assistance offered by private nonprofit and/or profit seeking individuals, organizations or otherwise qualified business entities directly to cooperative agreement recipients.

F. *Cooperative agreement.* A binding legal instrument reflecting a relationship between DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient to accomplish the requirements described in the agreement. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between DLA and the recipient during performance of the agreement.

G. *Cooperative agreement offer/application/proposal.* An eligible entity's response to the SCAP describing its existing or planned PTA program. The offer binds the eligible entity to perform the services described in the offer if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

H. *Cost matching.* The portion of NPC not borne by the Federal Government. Usually, a maximum percentage of the Government's matching share is prescribed by the Act.

I. *Cost sharing.* Any situation wherein the Government does not fully fund the participant's total allowable costs required to accomplish the defined project or effort. The term encompasses concepts such as cost participation, cost matching, cost limitations (direct or indirect), and in-kind contributions/donations.

J. *Direct cost.* Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

K. *Distressed area.* The geographical area being or to be serviced by an eligible entity in providing PTA to business firms physically located within an area that:

(1) Has a per capita income of 80% or less of the State average; or

(2) Has an unemployment rate that is one percent greater than the national average for the most recent 24-month period in which statistics are available.

(3) Is a "Reservation" which includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.

L. *DoD Cooperative Agreement Program.* Provides assistance to eligible entities (defined by subparagraph N below) in establishing or maintaining PTA activities to help business firms market their goods and services to the DoD and other government activities.

M. *Duplicate coverage.* A situation caused by two or more applicants offering to provide marketing and technical assistance to clients located within the same geographical area.

N. *Eligible entities.* Are organizations qualifying to submit a proposal under the PTA program, including:

(1) *State government.* A State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local government.* A unit of government in a State, a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(3) *Private, nonprofit organizations.* Any corporation, trust, foundation, or institution which is exempt or entitled to exemption under section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(4) *Indian economic enterprise.* Any Indian-owned (as defined by the Secretary of the Interior) commercial, industrial, or business activity established or organized, whether or not such economic enterprise is organized for profit or nonprofit purposes; *Provided,* That such Indian ownership shall constitute not less than 51 per centum of the enterprise.

(5) *Tribal organization.* The recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided,* That in any case where a contract is let or grant made to an organization to perform benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making such contract or grant.

O. *Existing program.* Any PTA program that was the recipient of a cooperative agreement with DLA during FYs 89 and 90.

P. *Federal funds authorized.* The total amount of Federal funds obligated by the Federal government for use by the recipient. When authorized by statute, Federal funds received from other sources, including grants, may be used as cost sharing and/or cost matching contribution.

Q. *Indian.* A person who is a member of any Indian tribe, band, group, pueblo, or community which is recognized by the Federal Government is eligible for services from the BIA and any "Native" as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

R. *Indian organization.* The governing body of any Indian tribe (as defined in subparagraph S below) or entity established or recognized by such governing body.

S. *Indian tribe.* Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized by the Federal Government as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

T. *Indirect cost.* Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives of an intermediate cost objective. An indirect cost is not subject to treatment as a direct cost.

U. *In-kind contributions/donations.* Represent the value of noncash contributions provided by the eligible entity and non-Federal parties. Only when authorized by Federal legislation may property or services purchased with Federal funds be considered as in-kind contributions/donations. In-kind contributions/donations may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.



V. *Net program cost.* The total program cost (TPC) (including all authorized sources) less any program income and/or other federal funds not authorized to be shared.

W. *New start.* An eligible entity that is not an existing program (see subparagraph O above for definition of an existing program).

X. *Other Federal funds.* Include Federal funds such as that provided by the Job Training Partnership Act, and Federal agencies other than DoD.

Y. *Per capita income.* The estimated average amount per person to total money income received during a calendar year for all persons residing in a given political jurisdiction as published by the U.S. Department of Commerce, Bureau of the Census.

Z. *Procurement technical assistance (PTA).* A program organized to generate employment and improve the general economy of a locality by assisting business firms in obtaining defense contracts.

AA. *Program income.* The gross income earned by the recipient from cooperative agreement supported activities. Such earnings exclude interest earned on advances. It includes training fees received from other PTA centers and organizations. It may also include, but is not limited to, income from service fees, reimbursement for expenses incurred in conducting the program, sale of commodities, usage initial fees, and royalties on patents and copyrights. It may be reported by the recipient on a cash or accrual basis. Whichever is used for reporting outlays.

AB. *Reservation.* Includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

AC. *Service area.* Any of the twelve geographical regions, as published by the U.S. Department of the Interior, BIA to include: Aberdeen, Albuquerque, Anardako, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento.

AD. *Solicitation for cooperative agreement proposals (SCAP).* A document issued by DLA/DCMDs containing provisions and evaluation factors applicable to all applicants which apply for a PTA coopesative agreement.

AE. *Statewide coverage.* A PTA program which proposes to service at least 50% of the State's civil jurisdictions and 75% of State's labor force.

AF. *Total Program cost (TPC).* All allowable costs set forth in appliesable OMB Circulars from all sources, to include in-kind contributions/donations and all income received from all sources, as a result of operating the program. Any Federal funds proposed for use in establishing or conducting the program must have prior approval for such use.

*3–4 Program Description*

A. The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to business firms/ clients in selling their goods and services to DoD. Thus, the PTA program assists DoD in its acquisition goals. At the same time, it enhances the business climate and economies of the communities being served.

B. Program requirements to accomplish this objective will vary depending on location, the types of industries and business firms within the community, the level of economic activity in the community, and other factors.

C. A comprehensive PTA program should generally include the following minimum features:

(1) *Personnal.* Professional personnel qualified to counsel and advise business firms/clients regarding DoD procurement policies and procedures as they apply to both prime and subcontract opportunities. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid and proposal preparation, and specialized acquisition requirements for such areas as construction, research and development, and data processing.

(2) *Counseling tools.* Should include, as a minimum, the Commerce Business Daily, FAR, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards, and other Federal Government publications.

(3) *Method for providing PTA.* Should include networking throughout the area being or to be serviced. Examples of networking include: (a) Locating assistance offices in areas of industrial concentration; (b) establishing data links with other organizations; and (c) creating data exchanges.

(4) *Fees and service charges.* In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for the amount of the fee or service charge must be described. Also, recipients shall not charge a commission, percentage, brokerage or other fee that is contingent upon the success of the client securing a Government contract. Any fees earned under the program are to be included as part of the TPC.

(5) *Performance measurement.* The program shall include a means of periodically measuring effectiveness in achieving its goals. Factors to consider in establishing time phased goals and techniques for measuring performance against proposed goals shall include as a minimum: (a) The total number of procurement outreach conferences sponsored/participated; (b) the total number of initial and follow-up counseling sessions and types of clients to be assisted, including size (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses); (c) the total number of client applications submitted to Federal agency bidders' mailing list(s); and (d) the total number and value of DoD and other than DoD prime contract and subcontract awards, and Federal agencies other than DoD prime contract and subcontract awards received by clients, including size (small businesses and other than small businesses) and socioeconomic status (small disadvantaged and women-owned businesses) resulting from assistance received through the recipient's program.

*3–5 Procedures*

A. The Program Manager will develop and prepare the SCAP. He/she will be responsible for ensuring that adequate funds are made available to the DCMDs.

B. The SCAP will be approved by the HQ DLA Cooperative Agreement Policy Committee (hereafter referred to as Policy Committee) and will be issued by DLA through each DCMD. The Policy Committee will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Policy Committee will be responsible for reviewing the evaluations and recommendations of the Program Manager and the Evaluation Panel.

C. The Staff Director, Small and Disadvantaged Business Utilization will serve as the Policy Committee's Chairman. The Policy Committee is the final appeal authority for disagreements

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between the Program Manager, Associate Director and the eligible entity and/or cooperative agreement recipient.

D. The evaluation of proposals submitted in response to the SCAP and the selection of award recipients will be conducted as detailed below:

(1) Proposals will be evaluated by a specially constituted evaluation panel established at HQ DLA. The Evaluation Panel will be comprised of representatives from the DCMD offices of small business, contract management, and other offices deemed appropriate by the Policy Committee. However, the Program manager and the Associate Director, who are delegated the authority to execute cooperative agreements, shall not serve as panel members. A member of the office of Counsel, HQ DLA, will provide legal assistance to the Evaluation Panel, as needed.

(2) The Associate Director will perform an initial evaluation of each proposal received to determine if the proposal contains sufficient technical, cost and other information; has been signed by a responsible official authorized to bind the eligible entity; and generally meets all requirements of the SCAP. If the proposal does not meet all of these requirements, the Associate Director will remove the applicant's proposal from further consideration and promptly notify the applicant of the reason(s) for removal. The proposal will be retained with other unsuccessful proposals by the Associate Director. The Associate Director will forward all accepted proposals, along with his/her recommendations, to the Program Manager at HQ DLA.

(3) Under existing programs only, the applicant's PTA Performance Report (RCS Number DLA (Q) 2545) will be attached to the proposal by the cognizant Associate Director if it is not included in the application by the eligible entity.

(4) Revised proposals will not be accepted from applicants unless the revised proposal is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal which is unsigned or otherwise rejected will not be given additional evaluation consideration and will be retained with other unsuccessful applications by the Associate Director.

(5) As part of the initial evaluation of an otherwise acceptable proposal, the Associate Director will review and verify the accuracy of the classification of the proposal concerning the entity's stated program status as "existing" or a "new start." If the Associate Director considers the proposal status misclassified, the matter will be reviewed with the applicant. If there is disagreement, the Associate Director's decision regarding the program classification is final and is not subject to further review.

(6) Proposals which pass the initial evaluation phase are subjected to a comprehensive evaluation by the Evaluation Panel. The purpose of the comprehensive evaluation is to assess the merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. The Evaluation Panel will conduct its evaluations in accordance with stated criteria and rank proposals in order of excellence to determine which will best further specific program goals. All findings and recipient selections will be documented, signed by the panel members, and retained by the Program Manager to provide an adequate record to support the Evaluation Panel's decisions. Upon completion of its review, the Evaluation panel will submit its results and its recommendations to the Program Manager.

(7) The Program Manager or designated representative will review the Evaluation Panel's recommendations and results for completeness, and will determine whether sufficient funds have been allocated to the DCMDs to cover DoD's share of NPC, whether any of the dollar limitations have been exceeded, and for duplicate program coverage. The Program Manager will forward his/her comments and the Evaluation Panel's recommendations to the Policy Committee.

(8) The Policy Committee will review the Evaluation Panel's award recommendations along with the program Manager's comments. The results of the Policy Committee's review and its recommendations will be forwarded to the appropriate DCMD Commander for approval.

F. After approval of the award selections by the DCMD Commander and congressional notification is provided, the cooperative agreements will be executed by the Associate Director.

*3–6 Evaluation Factors*

A. The evaluation factors for new starts and existing programs, with their relative importance, will be specified in the SCAP.

B. The following evaluation factors (which may be subject to change) will be considered:

(1) Program development, performance and effectiveness. (Existing Programs only.)

(2) Types and qualifications of personnel assigned or to be assigned to the program. (Existing Programs and New Starts.)

(3) Quality of the PTA Program being planned for developing clients, to include providing assistance to small disadvantaged business firms. (New Starts only.)

(4) Potential number of business firms/clients in the geographical area being or to be serviced. (Existing Program and New Starts.)

(5) The amount and percentage of net program costs to be shared by DoD. (Existing Programs and New Starts.)

(6) The level of unemployment in the area being or to be serviced. (Existing Programs and New Starts.)

(7) The amount of subcontracting to private consultants for consultant services. (Existing Programs only.)

C. As this program applies both to existing PTA Programs and to those being proposed, certain of these evaluation factors will be evaluated based upon stated implementing policy for programs being planned. For example, the types and qualifications of personnel assigned will require applicants that do not presently have an established program, but are planning to establish a program, to identify the standards to be used in selecting personnel.

D. The amount of subcontracting to private consultants for consultant services is limited to no more than 10% of total program costs for both existing programs and new starts.

However, in evaluating this factor for existing programs, the smaller the amount of subcontracting for consultant services the greater the weight that will be given. In the case of new starts, all offers will be weighted equally subject only to the 10% limitation.

*3–7 DoD Funding*

A. Any funds authorized by Congress for the PTA program will be allocated equitably among the DCMDs to cover the DoD share of the PTA's program costs for existing programs and for new starts.

B. If there is an insufficient number of satisfactory proposals in a DCMD to allow effective use of the funds allocated, the Program Manager will reallocate the funds among the DCMDs based upon the DCMD Commanders' approval of the award recommendations made by the Evaluation Panel and Policy Committee.



*3–8 Cost Sharing Criteria and Limitations*

A. The DoD share of NPC shall not exceed 50%, except in a case where an eligible entity meets the criteria of a distressed area. When the prerequisite conditions to qualify as a distressed area are met, the DoD share may be increased to an amount not to exceed 75%.

B. In no event shall the DoD share of NPC exceed $150,000 for programs providing less than statewide coverage and $300,000 for programs providing statewide coverage. For the Indian Program, a request for DoD share shall not exceed 75% of NPC or $150,000 for a program providing service on reservations within one BIA service area, or $300,000 for a program providing multi-area coverage.

C. Cost contributions may be either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

D. The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions/donations, any fees and service charges to be earned under the program, and any other Federal Agency funding (including grants, loans, and cooperative agreements) authorized to be used for this program.

E. The type and value of third-party in-kind contributions/donations will be limited to no more than 25% of TPC.

F. Any fees, service charges or Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity. Although the fees, service charges and other authorized Federal funds must be included in the annualized estimated budget, they cannot be included for cost sharing purposes. Inclusion of other Federal funds in the program is subject to the terms of the award instrument containing such funds or written advice being obtained from the awarding Agency(s) authorizing such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

G. In those cases where distressed area funding (greater than 50%) is requested and where the geographic area being or to be serviced includes both distressed areas and non-distressed areas, the budget must: (1) Be divided based on a reasonable and logical distribution of TPC between these two distinct areas; and (b) submitted as a single proposal. In such cases, the recipient's accounting system must be capable of segregating and accumulating costs in each of the two budget areas.

H. Recipients of cooperative agreements will be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

I. The SCAP will also provide that indirect costs are not to exceed 100% of direct costs.

J. In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly identified in the proposed budget and shall be included as part of TPC.

K. The following OMB Circulars will be used to determine allowable costs in performance of the program:

(1) OMB Circular No. A–21, Cost Principles for Educational Institutions;

(2) OMB Circular No. A–87, Cost Principles for State and Local Governments; and

(3) OMB Circular No. A–122, Cost Principles for Nonprofit Organizations.

*3–9 Duplicate Coverage Limitation*

To be considered for an award, an applicant's proposal shall not duplicate on an individual or cumulative basis more than 25% of the geographic area or coverage proposed by a higher ranked applicant(s) as established by the Evaluation Panel.

*3–10 Administration*

A. Cooperative Agreements will be assigned to the cognizant DCMD for postaward administration.

B. The Associate Director at the cognizant DCMD will be responsible for performing in-depth reviews. These in-depth reviews will be performed annually for existing programs and semiannually for new starts during the effective period of each cooperative agreement. The review will include budgeted versus actual expenditures, performance factors, and quarterly performance report data. The result of the review will be furnished to the recipient and a copy will be provided to the Program Manager no later than 30 calendar days after its completion.

C. For eligible entities covered by OMB Circular No. A–102, Grants and Cooperative Agreements with State and Local Governments, or OMB Circular No. A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

DCMD Procurement Technical Assistance Cooperative Agreement Program Managers

| State or area | DCMD | Associate director for small business |
|---|---|---|
| Delaware, District of Columbia, Kentucky, Maryland, Michigan (inclusive of Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Iosco, Jackson, Lapeer, Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw, Sconda, Saginaw, St. Clair, Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), New Jersey, Ohio, Pennsylvania, Virginia and West Virginia. | DCMD Mid-Atlantic, 2800 South 20th St., P.O. Box 7478, Philadephia, PA 19101–7478. | Mr. Tom B. Corey, Telephone (215) 737–4008, Toll Free (PA only) 1–800–843–7894, Toll Free (Others) 1–800–258–95023. |
| Colorado, Illinois, Indiana, Iowa, Kansas, Michigan (except Alcona, Arenac, Bay, Genesee, Hillsdale, Huron, Iosco, Jackson, Lapeer, Lenawee, Macomb, Midland, Monroe, Oakland, Ogemaw, Oscoda, Saginaw, St. Clair, Sanilac, Tuscola, Washtenaw, Gladwin and Wayne counties), Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wisconsin and Wyoming. | DCMD North Central, O'Hare Int'l Airport, 10601 West Higgins Rd., P.O. Box 66926, Chicago, IL 60666–0926. | Mr. James L. Kleckner, Telephone (312) 825–6020, Toll Free 1–800–826–1046. |
| Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. | DCMD Northeast, 495 Summer Street, 8th Floor, Boston, MA 02210–2184. | Mr. Edward J. Fitzgerald, Telephone (617) 451–4317/8, Toll Free (MA) 1–800–348–1011, (Outside MA) 1–800–321–1861. |

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DCMD PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM MANAGERS—Continued

| State or area | DCMD | Associate director for small business |
|---|---|---|
| Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas (except El Paso, Hudspeth, and Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties or Zip Codes 798xx and 799xx), and Puerto Rico. | DCMD South, 805 Walker Street, Marietta, GA 30060-2789. | Mr. Howard Head, Jr., Telephone (404) 590-6185/6, Toll Free 1-800-331-6415, (GA Only) 1-800-551-7801. |
| Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Texas (exclusive of El Paso, Hudspeth and Presidio counties and portions of Culberson, Jeff Davis, Brewster and Terrell counties or counties in the 798xx or 799xx Zip Codes), and Washington. | DCMD West, 222 N. Sepulveda Blvd., El Segundo, CA, 90245-4394. | Ms. E. Renee Deavers, Telephone (213) 335-3260, Toll Free (CA only) 1-800-233-6521, Toll Free (Others) 1-800-624-7373. |

Sim C. Mitchell,

*Cooperative Agreement Program Manager, Small and Disadvantaged Business Utilization.*

[FR Doc. 90-29180 Filed 12-12-90; 8:45 am]

BILLING CODE 3820-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER91-25-000, et al.]

### Tampa Electric Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

December 4, 1990.

Take notice that the following filings have been made with the Commission:

**1. Tampa Electric Company**

[Docket No. ER91-25-000]

Take notice that on November 28, 1990, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its October 12, 1990 submittal of a Letter of Commitment between Tampa Electric and Seminole Electric Cooperative, Inc. (Seminole). The Letter of Commitment provides for the sale by Tampa Electric to Seminole of 150 megawatts of capacity and energy.

Tampa Electric proposes an effective date of October 13, 1990, for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on Seminole and the Florida Public Service Commission.

*Comment date:* December 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

**2. Minnesota Power & Light Company**

[Docket No. ER91-110-000]

Take notice that on November 8, 1990, Minnesota Power & Light Company (MP&L) tendered for filing the following notices of cancellation:

| City | Rate schedule No. | Effective date |
|---|---|---|
| Proctor, Minnesota | FERC No. 115 | 12/31/89 |
| Nashwauk, Minnesota | FERC No. 116 | 12/31/89 |
| Biwabik, Minnesota | FERC No. 103 | 12/31/89 |

*Comment date:* December 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

**3. Canal Electric Company**

[Docket No. ER91-121-000]

Take notice that on November 21, 1990, Canal Electric Company tendered for filing a Notice of Termination for Supplement 18 to Rate Schedule FERC No. 21 and Rate Schedule FERC No. 34.

*Comment date:* December 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

**4. West Penn Power Company**

[Docket No. ER91-61-000]

Take notice that on November 16, 1990, West Penn Power Company ("West Penn") tendered for filing in this docket a settlement agreement with the Borough of Mont Alto and a statement of consent of the Pennsylvania Power and Light Company regarding the rate filing by West Penn in this docket.

*Comment date:* December 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

**5. Panther Creek Partners**

[Docket No. QF87-50-004]

On November 29, 1990, Panther Creek Partners, c/o Constellation Energy, Inc., 250 West Pratt Street, 23rd floor, Baltimore, MD 21201, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the Borough of Nesquehoming, near the Town of Jim Thorpe, Carbon County, Pennsylvania. The facility will consist of two circulating fluidized bed boilers and an extraction/condensing steam turbine generator. The primary energy source is waste anthracite culm. In addition, the facility includes 33 miles of 69 KV transmission line. The original certification was issued on May 21, 1987, 39 FERC ¶ 61,190. The instant recertification is requested due to change in ownership and a change in design resulting in an increase in the net electric power production capacity from 79.5 MW to 83 MW. Applicant states that CD Panther Partners, L.P., an indirect subsidiary of Baltimore Gas and Electric Company, an electric utility, will have a 50% ownership interest in the facility.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**6. Interstate Power Company**

[Docket No. ER91-136-000]

Take notice that on November 26, 1990, Interstate Power Company (Interstate) tendered for filing the First Amendment, dated May 17, 1989, to the Municipal Electric Wholesale Agreement dated August 21, 1974 with the City of St. Charles, Minnesota. This amendment revises the language concerning the point of delivery to St. Charles and adds a new provision requiring the City to reimburse Interstate for any FERC filing fees related to the Agreement.

*Comment date:* December 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

**7. Kentucky Utilities Company**

[Docket No. ER91-123-000]

Take notice that on November 16, 1990, Kentucky Utilities Company (Kentucky) tendered for filing Rate Schedules inclusive of executed contracts for electric service with 10 municipally-owned electric systems, Berea College and Old Dominion Power Company.



Kentucky states that the filing of these rate schedules is the last step of FERC Docket No. ER78-417 and is a compliance filing.

*Comment date:* December 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

**8. Consolidated Edison Company of New York, Inc.**

[Docket No. ES91-9-000]

Take notice that on November 28, 1990, Consolidated Edison Company of New York, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, for authority to issue and sell not more than $250 million of unsecured evidences of indebtedness during the period January 1, 1991 through December 31, 1992, maturing not more than nine months after their date of issuance.

*Comment date:* December 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90-29149 Filed 12-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-500-000, et al.]

### El Paso Natural Gas Co., and Western Gas Interstate Co., et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. El Paso Natural Gas Co. and Western Gas Interstate Co.**

[Docket No. CP91-500-000]

December 4, 1990.

Take notice that on November 21, 1990, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, and Western Gas Interstate Company (WGI), 9130 Jollyville Road, Suite 150, Austin, Texas 78758, jointly referred to as Applicants, filed a joint application in Docket No. CP91-500-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval for El Paso to abandon certain facilities and for a certificate of public convenience and necessity for WGI authorizing: the acquisition and operation of certain of these facilities owned and operated by El Paso, the sale for resale of natural gas, the self-implementing transportation of natural gas for others under Order Nos. 436 and 500, *et seq.*; and pregranted authorization to abandon self-implementing transportation services and jurisdictional sales services, such authorizations being necessary for El Paso and WGI to facilitate the implementation of the "El Paso Area Project", all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The joint application states that the El Paso Area Project represents an overall joint effort between El Paso, WGI and Southern Union Gas Company (SUG) [1] that will assist El Paso in disposing of certain facilities no longer compatible with the operation of El Paso's interstate system. It is stated that the facilities to be transferred serve a local function like a distribution system, not a function like an interstate mainline transmission facility. El Paso requests authorization to abandon by sale and conveyance: (1) To WGI certain pipeline, metering and tap facilities, with appurtenances, constituting the El Paso Area System, which system consists of facilities located in Dona Ana County, New Mexico, and El Paso County, Texas; and (2) to SUG certain pipeline, with appurtenances, constituting the Dell City System, which system consists of facilities located in Hudspeth County, Texas.

While El Paso states that it does not propose to abandon any service as a part of the application, certain sales and transportation services will no longer be rendered by El Paso through specific use of the abandoned facilities. El Paso states that it will make sales and transportation deliveries to WGI at master meter locations for transportation by WGI to the appropriate El Paso customer delivery point. El Paso states that if the Commission deems this to represent an abandonment of service, then El Paso requests such authority as may be necessary.

It is stated that the El Paso Area Project is designed to permit: (1) The resolution of certain operational problems in the affected service areas; (2) the identification of realistic natural gas service levels; (3) the conveyance of certain natural gas facilities by El Paso to WGI and SUG; and (4) cooperation towards the overall enhanced utilization of natural gas as the primary energy source in the SUG and Gas Company of New Mexico (Gas Company) service areas surrounding the facilities.

Pursuant to an agreement dated July 2, 1987, as amended, between El Paso and WGI, El Paso states that it has agreed to sell to WGI and WGI has agreed to purchase certain pipeline, metering and tap facilities, currently being utilized by El Paso in providing natural gas service to SUG and Gas Company for resale in and about the City of El Paso, Texas and the Town of Anthony, New Mexico, and their environs and for direct sale to certain industrial customers. The facilities to be transferred serve customers at numerous delivery points and will, upon transfer, be utilized by WGI with SUG's existing distribution system in the El Paso, Texas area and Gas Company's existing distribution system in the Anthony, New Mexico area. It is stated that such facilities are typical of the other facilities owned and operated by WGI to render service to SUG and Gas Company. El Paso states that it presently utilizes the facilities to be sold to WGI to deliver gas at approximately 67 separate locations in southwest New Mexico and west Texas. Following the proposed transfer of facilities, El Paso states that it will deliver gas to WGI at three new delivery points, for subsequent transportation and delivery of the gas by WGI to any customers El Paso may have the requirement to serve.[2]

It is stated that the facilities are classified in three categories of pipeline lateral, meter stations and sales taps and described as follows: (1) Pipeline laterals—a total of approximately 61.7

[1] SUG, an operating division of Southern Union Company, is a distributor customer of El Paso, which owns and operates facilities for the distribution and sale of natural gas to consumers situated in various communities and areas in the States of Texas and Arizona

[2] It is stated that the new delivery points, referred to as the Anthony City Gate Meter Station and the El Paso City Gate No. 2 Meter Station will be the subject of a prior notice request to be filed by El Paso under § 157.211(b) of the Commission's Regulations with an effective date to coincide with the effectiveness of the proposal herein. The El Paso City Gas No. 1 meter station will be relocated pursuant to § 157.208(a) of the Commission's Regulations.

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miles of 16, 12¾, 10¾, 8⅝, 6⅝, 4½, 3½, 2⅜ and 1¼ inch pipeline located in Dona Ana County New Mexico and El Paso County, Texas; (ii) meter stations—14 meter stations situated on the pipeline facilities to be abandoned by sale; and (iii) sales taps—33 sales taps, also located on the pipeline facilities to be abandoned.

The joint application further states that pursuant to an agreement dated February 8, 1988, between El Paso and SUG, El Paso has agreed to sell to SUG and SUG has agreed to purchase certain pipeline facilities, currently being utilized by El Paso in providing natural gas service to SUG for resale in and about Dell City, Texas. These facilities also primarily provide a local function like a distribution system, rather than a transmission function. It is stated that upon transfer, these facilities will be utilized directly by SUG as an integrated part of SUG's existing natural gas distribution system presently serving the Dell City, Texas area. Upon completion of the proposed transfer of the Dell City System, El Paso states that it will deliver gas to SUG at the point of interconnection between the Dell City line and El Paso's mainline transmission system. It is further stated that the existing delivery point will be relocated by El Paso pursuant to § 157.208(a) of the Commission's Regulations. The facilities comprising the Dell City System proposed to be abandoned consist of a total of approximately 7 miles of 4½-inch pipeline lateral located in Hudspeth County, Texas.

El Paso states that it presently utilizes the El Paso Area System to perform three different services, which are: (1) Providing sales for resale to SUG and Gas Company; (2) delivery of gas for direct sale to certain industrial customers; [5] and (3) providing non-discriminatory open-access transportation when requested. As to the Dell City System, El Paso states that it presently utilizes this system to provide a sale for resale service to SUG, as well as non-discriminatory open-access transportation service. Upon the abandonment and sale to WGI as proposed herein, El Paso states that volumes of natural gas, equivalent to those El Paso presently sells and delivers to SUG and Gas Company in the area served by said facilities, will be delivered at the three new sales meter locations. El Paso states that there will be no abandonment of service to the customers involved in the proposed transaction.

In this regard, to the extent deemed necessary by the Commission, El Paso seeks authorization to abandon the related sales for resale service to SUG and Gas Company using El Paso facilities. The proposed sales of natural gas by El Paso to SUG and Gas Company will be made pursuant to the provisions of the currently effective service agreements between the parties. El Paso further states that the rates it will charge to SUG and Gas Company will be rates under El Paso's rate schedules for the sales of gas made in the states of Texas and New Mexico, respectively, in El Paso's FERC Gas Tariff, Second Revised Volume No. 1, at the time the instant proposal becomes effective. It is stated that there will be no reduction in operating pressures or throughput in the El Paso Area System as a result of the proposed abandonment.

It is stated that direct sales are presently being made by El Paso utilizing the El Paso Area System under three separate gas sales agreements between, respectively, El Paso and ASARCO dated May 1, 1963; El Paso and EPEC dated July 1, 1967; and El Paso and Southwestern dated April 1, 1983. El Paso states that the primary terms of each of these agreements has terminated and each agreement is on a month-to-month basis. El Paso states that future direct sales service to these parties are the subject of ongoing negotiations and of El Paso continues to make such sales, it will deliver gas to WGI for transportation to each direct sale customer. If such sales cease, El Paso states that it will seek any authority necessary to abandon the transportation and delivery of gas.

El Paso states that it currently provides self-implementing open-access transportation service for various parties from existing points of receipt on El Paso's interstate transmission system to existing points of delivery located on the El Paso Area System, pursuant to subparts B and G of part 284 of the Commission's Regulations. Upon grant of the authorizations sought herein, El Paso states that it will file subsequent reports with the Commission, under § 284.106(b) of the Regulations, reflecting the necessary changes to each subpart B arrangement due to the conveyance of the El Paso Area System to WGI. El Paso states that it understands that WGI will continue, as appropriate, such transportation as may be authorized by the Commission.

Upon grant of the abandonment and sale to SUG proposed herein, El Paso states that the total volume of natural gas which it is presently obligated to sell to SUG for the Dell City, Texas area will be provided by El Paso at one new master meter location referred to as the Dell City Meter Station. El Paso states that it will relocate the existing meter station under Section 157.208(a) of the Regulations, and that there will be no abandonment of service involved in the proposed transaction. El Paso states that it currently provides self-implementing open-access transportation service for various parties from existing points of receipt on El Paso's interstate transmission system to existing points of delivery located on the Dell City System, pursuant to subparts B and G of part 284 of the Commission's Regulations. Upon grant of the authorizations sought herein, El Paso states that it will file subsequent reports with the Commission, under § 284.106(b) of the Regulations, reflecting the necessary changes to each Subpart B arrangement due to the conveyance of the Dell City System to SUG. El Paso states that it understands that WGI will continue, as appropriate, such transportation as may be authorized by the Commission.

It is stated that WGI's proposed acquisition of the facilities located in Dona Ana County, New Mexico, referred to as the Valley Division facilities is prompted by, among other things, El Paso's transition from the merchant function to operating primarily as a long distance transporter; WGI's existing service affiliation with SUG and Gas Company; and WGI's desire and ability to offer customers the kinds of services that are most required in the distribution and industrial sales markets, and to encourage development of additional markets in the service area. As part of this joint application, WGI also seeks authorization required to construct certain appurtenant facilities and to purchase certain equipment that is necessary in order to provide the proposed services. WGI's estimated total costs for the acquisition, regulatory and administrative cost and costs to construct appurtenant facilities is $1,063,005, which will come from internally generated funds.

As part of its acquisition of the El Paso facilities, WGI requests authorization to render firm sales service, blanket certificate service and pregranted abandonment.[6] In regard to

[5] El Paso states that the industrial customers are ASARCO Incorporated (ASARCO), El Paso Electric Company (EPEC) and Southwestern Portland Cement Company (Southwestern).

[6] WGI states that it currently holds certificate authorization to render jurisdictional sales for resale service for SUG on WGI's Northern Division and to SUG and Gas Company on its Southern Division.



the firm sales service, WGI intends to offer a general jurisdictional sales service pursuant to a proposed Rate Schedule CD–V. For such service, it is stated that WGI's customers will pay, each month a demand and commodity charge. It is stated that the monthly demand charge is $.0953/MMBtu and the per unit commodity charge is $2.6875/MMBtu. The commodity charge includes gas costs of $2.6820/MMBtu that are based on WGI's current cost of acquiring gas for its existing sales service in its Southern Division and which are subject to a Purchased Gas Adjustment Division and which are subject to a Purchased Gas Adjustment clause as defined in Original Volume No. 1–A General Terms and Conditions. It is stated that the non-gas portion of these rates has been derived on an incremental basis based solely on the cost of service associated with the acquisition of facilities from El Paso, the cost of new facilities and the costs associated with operating the facilities. Further, the allocation of fixed costs between demand and commodity charges is based on the Modified-Fixed Variable cost classification methodology. In addition, costs have been allocated to WGI's proposed sales service and the rates are designed based on projected peak day and annual volumes.

Pursuant to the General Terms and Conditions of Volume No. 1–A to WGI's FERC Gas Tariff proposed herein, WGI will accord prospective sales customers with an open nomination period, which will close 30 days following WGI's acceptance of the various authorizations sought by the joint application herein. WGI, therefore, states that it is seeking the requisite certificate authorization to render the foregoing contract demand sales services pursuant to the terms and rates set forth herein. The gas supplies which underlie this service will be purchased from El Paso under Rate Schedule ABD–S, or superceding rate schedule. In addition, WGI states that it will seek to purchase other gas supplies in order to offer its customers the best competitively priced gas supplies available.

As to the blanket certificate service, WGI seeks issuance of a certificate authorizing it to engage in self-implementing transportation of natural gas for others under the Commission's open-access program pursuant to Order Nos. 436, *et seq.* and 500, *et seq.*[5] As part of such request, WGI seeks authorization to provide firm and interruptible transportation services for shippers on a non-discriminatory basis under proposed Rate Schedules FT–V and IT–V, respectively, and pursuant to the proposed Volume No. 1–A General Terms and Conditions. It is stated that the firm transportation service will be provided under a two part demand-commodity rate with a monthly reservation charge of $.0953/MMBtu and a commodity charge of $.0055/MMBtu. WGI states that, as with the derivation of the non-gas portion of the rates under Rate Schedule CD–V, these rates have also been derived on an incremental basis based solely on the cost of service associated with the acquisition of facilities from El Paso, the cost of new facilities and the costs associated with operating the facilities.

WGI further states that no costs associated with its existing services under Rate Schedules G–N (Northern Division) and G–S (Southern Division) have been allocated to the new service to be provided under Rate Schedule CD–V. According to WGI, the allocation of fixed costs between demand and commodity charges is based on the Modified-Fixed Variable cost classification methodology. In addition, costs have been allocated to WGI's proposed firm transportation service and the rates are designed based on projected peak day and annual volumes.

WGI states that its proposed maximum interruptible transportation rate is $.0086/MMBtu, which is equivalent to the firm transportation rates at a 100 percent load factor. WGI's proposed minimum interruptible transportation rate is $.0055/MMBtu. In addition to the cost based firm and interruptible transportation rates, WGI proposes to retain 2 percent of all transportation volumes to compensate for lost and unaccounted for gas.

It is stated that customers desiring transportation services will be accorded an open nomination period which will close 30 days after the Commission issues the various authorizations sought by the joint application herein. At the close of the nomination period, WGI state that it will tender service agreements under the applicable rate schedule to those customers making such nominations, and file such with the Commission. In the event industrial customers request purchases from WGI, WGI states that it will use its best efforts to meet such requests, making appropriate filings with the Commission as may be required.

WGI also states that its proposal contains provisions whereby customers served under Rate Schedule CD–V will be permitted to convert part or all of their firm sales entitlements to firm transportation service under Rate Schedule FT–V. These customers will retain a higher priority for service and curtailment purposes than customers receiving service pursuant to Rate Schedule IT–V. It is stated that such conversion rights will be pursuant to provisions of § 20.5 of the General Terms and Conditions proposed herein, and will commence with WGI's acceptance of the blanket certificate.

In conjunction with its open-access blanket certificate, WGI requests pregranted abandonment authorization permitting it to abandon self-implementing transportation services and sales services under Rate Schedule CD–V in cases where the latter customers convert their sales entitlements to firm transportation.

Applicants state that the proposed sale of the subject facilities will be beneficial to the respective local distribution companies, SUG and Gas Company, as well as to the natural gas customers in the respective service areas affected. Insofar as El Paso and its present customers are concerned, it is stated that the abandonment of facilities will allow El Paso to cease its participation in a local service function and instead to continue its transition to that of an interstate transporter of natural gas. Further, the sale will eliminate the operating and maintenance expenses of El Paso now associated with the facilities, and El Paso will not need to own, maintain or operate pipeline facilities within congested areas of population encroachment. In addition, it is stated that the new meter stations will provide El Paso with a greater degree of control over and increased efficiency in measuring and regulating natural gas delivered to El Paso and Dell City, Texas and Anthony, New Mexico and their environs.

It is stated that approval of the proposed abandonment of the El Paso Area System and the Dell City System and approval of the acquisition and operation of said facilities by WGI and SUG will benefit El Paso, WGI and SUG and the customers served by the systems. It is further stated that no interruption, reduction or termination of natural gas service to any El Paso's customers will result after the proposed abandonment. El Paso states that the original cost of all facilities proposed to

[5] WGI states that it currently has pending before the Commission an uncontested settlement in Docket No. RP89-178-000, *et al.*, which involves, among other things, a request for a blanket certificate, and rates, involving WGI's two other divisions. WGI further states that, to its knowledge and belief, the settlement does not affect the instant application.

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be abandoned is $3,266,490, and WGI and SUG will purchase such facilities from El Paso for a total price of $770,000.[6]

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

**2. Southern Natural Gas Co., et al.**

[Docket Nos. CP91-508-000, CP91-509-000, CP91-510-000, CP91-511-000, and CP91-512-000]

December 4, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] It is stated that WGI's purchase price for the El Paso Area System is $738,048 and SUG's purchase price for the Dell City System is $31,955.

[7] These prior notice requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day [1] avg., annual | Points of Receipt | Points of Delivery | Start up date, rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| CP91-506-000 11-27-90 | Southern Natural Gas Company. | Phillips Petroleum Co. | 50,000 50,000 18,250,000 | Offshore TX, LA, MS, AL. | GA, SC | IT, Interruptible, 9/25/90 | CP88-316-000, ST91-2336-000. |
| CP91-509-000 11-27-90 | Southern Natural Gas Company. | Cullman-Jefferson Counties Gas District. | 4,301 4,301 1,568,805 | AL | FT, Firm, 9/25/90 | CP88-316-000, ST91-2338-000 | |
| CP91-510-000 11-27-90 | Viking Gas Transmission Company. | Canadian Occidental Marketing Co. | 100,000 100,000 36,500,000 | WI, MN, ND | MN, IL, WI, MI | IT-2, Interruptible, 11/10/90 | CP90-273-000, ST91-3603-000. |
| CP91-511-000 11-27-90 | Tennessee Gas Pipeline Co. | Citizens Gas Supply Corp. | 10,000 10,000 3,650,000 | Offshore LA | TN, MS, WV | FT, Firm, 11/1/90 | CP87-115-000, ST91-3605-000. |
| CP91-512-000 11-27-90 | Florida Gas Transmission Company. | City of Gainesville Fla. d/b/a Gainesville Regional Util. | 4,852 1,956 967,072 | FL | FL | FTS-1, Firm, 10/1/90 | RP89-50, et al., ST91-1951-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**3. Columbia Gulf Transmission Co.**

[Docket No. CP91-496-000]

December 5, 1990.

Take notice that on November 21, 1990, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP91-496-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states by Commission order issued April 29, 1961, in Docket No. CP60-318-000, it is authorized to transport for Southern on a contract-demand basis, 6,250 Mcf per day of natural gas volumes produced from Vermilion Block 287, offshore Louisiana which Southern makes available to Columbia Gulf at an underwater side tap on its jointly owned 16-inch pipeline in Vermilion Block 287, offshore Louisiana. Columbia Gulf transports the gas through its capacity in the Blue Water Project west lateral and mainline systems and delivers such gas to Southern at the interconnection of the mainline facilities of Columbia Gulf and the measurement facilities of Southern in Carroll Parish, Louisiana. Columbia Gulf states that it performs such transportation service pursuant to a transportation agreement dated January 21, 1960, as amended, on file in said docket.

It is further stated that Columbia Gulf requests authorization to abandon this transportation service pursuant to a letter from Southern cancelling the agreement under which the gas is transported, effective March 2, 1991. Columbia Gulf further states that no facilities are proposed to be abandoned.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

**4. Columbia Gulf Transmission Co.**

[Docket No. CP91-495-000]

December 5, 1990.

Take notice that on November 21, 1990, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP91-495-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states by Commission order issued August 14, 1978, in Docket No. CP78-382-000, it is authorized to transport for Transco on a contract-demand basis, 3,000 Mcf per day of natural gas volumes which is produced in the Orange Grove/Humphreys Field, Terrebonne Parish, Louisiana. Transco makes these volumes available to Columbia at a point in Terrebonne Parish, Louisiana. Columbia Gulf redelivers the gas to Transco at an interconnection with Transco's pipline in Evangeline Parish, Louisiana.

It is further stated that Columbia Gulf requests authorization to abandon this transportation service pursuant to a letter from Transco cancelling the agreement under which the gas is transported, effective August 13, 1990. Columbia Gulf further states that no facilities are proposed to be abandoned.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of this notice.



**5. K N Energy, Inc.**

[Docket Nos. CP91-523-000, CP91-524-000, CP91-525-000]

December 5, 1990.

Take notice that K N Energy, Inc., P.O. Box 150265, Lakewood, Colorado 80215, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1043-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Comission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual Mcf | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-525-000 (11-29-90) | Sunrise Energy Company. | 20,000 20,000 7,300,000 | CO, KA, NE, WY | CO, KA, WY | 10-31-90, IT, Interruptible. | ST91-3602-000, 11-1-90. |
| CP91-524-000 (11-29-90) | City of Wisner, Nebraska. | 248 95 34,800 | Ford County, KS | Cuming County, NE | 09-01-90, FT, Firm | ST91-3599-000, 11-1-90. |
| CP91-525-000 (11-29-90) | Tex/Con Gas Marketing Company (Mesiwise). | 50,000 50,000 18,250,000 | TX, OK | TX, OK | 09-10-90, IT, Interruptible. | ST91-3601-000, 11-1-90. |

**6. ANR Pipeline Co.**

[Docket Nos. CP91-514-000,[9] CP91-515-000, CP91-516-000, CP91-517-000, CP91-518-000 and CP91-519-000]

December 5, 1990.

Take notice that on November 28, 1990, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by ANR and is included in the attached appendix.

ANR also states that it would provide the service for each shipper under an executed transportation agreement, and that ANR would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

| Docket number | Shipper name | Peak day [1] Avg. Annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related [2] Dockets |
|---|---|---|---|---|---|---|
| CP91-514-000 | Herbert Oil and Gas Company. | 50,000 50,000 16,250,000 | IL, WI, IN, OH, MI, TX, LA, KY, Off LA | LA, IN, MI, OH, IL, KS | 9-29-90, ITS | ST91-3663-000. |
| CP91-515-000 | NGC Transportation, Inc. | 10,000 10,000 3,650,000 | OK | OK | 10-1-90, ITS | ST91-3204-000. |
| CP91-516-000 | Odeco Oil and Gas Company. | 50,000 50,000 16,250,000 | LA, TX, OK, KS, Off TX, Off LA. | KY, IN, MI, OH, IL, Off LA. | 9-27-90, ITS | ST91-3661-000. |

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| Docket number | Shipper name | Peak day [1] Avg. Annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related [2] Dockets |
|---|---|---|---|---|---|---|
| CP91-517-000 | Northwestern Mutual Life Insurance Co. | 50,000<br>50,000<br>18,250,000 | LA, TX, Off LA, Off TX | MI | 10-3-90, ITS | ST91-2713-000. |
| CP91-518-000 | Howard Energy Gas Company. | 100,000<br>100,000<br>36,500,000 | MI, KY, LA, OK, WI, KS, TX, LA, Off LA, Off TX. | MI, IL, IN, OH | 10-1-90, ITS | ST91-2206-000. |
| CP91-519-000 | Interstate Gas Marketing Inc. | 4,061<br>4,061<br>1,482,265 | LA, Off LA | OH | 10-1-90, FTS-1 | ST91-2202-000. |

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**7. Northern Natural Gas Co., Division of Enron Corp**

[Docket No. CP91-521-000]

December 5, 1990.

Take notice that on November 29, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-521-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for West Point Services, Inc., a marketer, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that, pursuant to an agreement dated October 17, 1990, under its Rate Schedule IT-1, it proposes to transport up to 1,000 MMBtu per day equivalent of natural gas. Northern indicates that the gas would be transported from Texas, Kansas, and Oklahoma, and would be redelivered in Iowa. Northern further indicates that it would transport 750 MMBtu on an average day and 365,000 MMBtu annually.

Northern advises that service under § 284.223(a) commenced November 1, 1990, as reported in Docket No. ST91-3036.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**8. Lone Star Gas Co., a Division of ENSERCH Corp.**

[Docket No. CP87-190-011]

December 5, 1990.

Take notice that on November 28, 1990, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-190-011 a petition to further amend the certificate issued in Docket No. CP87-190-000, as amended, to add a new receipt point for its authorized transportation service for Coastal States Gas Transmission Company (Coastal), pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is indicated that on November 1, 1990, Lone Star and Coastal amended their transportation agreement to add a receipt point located at an existing metering facility at the interconnection of Lone Star's Line TCA-A-10 and Arkla Energy Resources' pipeline facilities in McClain County, Oklahoma. Lone Star states that it needs the proposed new receipt point because of unforseen operational problems which have resulted in reduced deliveries by Natural Gas Pipeline Company of America at the existing point of receipt on Lone Star's Line T1 in Stephens County, Oklahoma.

Lone Star states that no new facilities would be required to implement the modified service. No other changes are proposed.

*Comment date:* December 26, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**9. Ohio River Pipeline Corp. and Indiana Gas Co. Inc.**

[Docket No. CP91-455-000]

December 5, 1990.

Take notice that on November 19, 1990, Ohio River Pipeline Corporation (Ohio River) and Indiana Gas Company, Inc. (Indiana Gas) (collectively referred to as Applicants), 1630 North Meridian Street, Indianapolis, Indiana 46202-1496, filed in Docket No. CP91-455-000 an application pursuant to section 7(f) of the Natural Gas Act, requesting a service area determination for the area in which Ohio River currently operates and subject to the conditions and waivers requested, Indiana Gas would operate in the future, and that the Commission waive regulatory requirements that would otherwise apply to Indiana Gas if Ohio River is merged or otherwise combined with Indiana Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is averred that Ohio River is a wholly-owned subsidiary of Indiana Gas and was created to provide Indiana Gas with access to Texas Gas Transmission Corporation's (Texas Gas) pipeline in Kentucky without rendering Indiana Gas to be a "natural gas company" subject to the Commission's jurisdiction. It is alleged that Ohio River serves as a conduit between two discrete portions of Indiana Gas' service areas located in Indiana and a Texas Gas pipeline located immediately south of the Indiana border within Kentucky. Ohio River's two pipelines cross the Ohio River and total approximately twenty five miles in length.

It is stated that the Applicants seek all the authorizations and relief necessary to enable Indiana Gas to eliminate Ohio River, through a merger or other combination, and to assume the operational functions currently performed by Ohio River without rendering Indiana Gas subject to the full panoply of requirement incident to Commission regulation as a "natural gas company".

The Applicants claim that currently and historically, Indiana Gas has maintained Ohio River as a separate provider of natural gas service so that Indiana Gas could access supplies from Texas Gas without rendering Indiana Gas a "natural gas company" subject to the Commission's jurisdiction. The Applicants also claim that this relationship does, and has, posed burdens upon Ohio River, Indiana Gas, and the Commission because of the necessary complaince by Ohio River with the regulatory requirements imposed upon a "natural gas company". It is averred that to the extent that Indiana Gas can assume the operation functions currently performed by Ohio River without becoming subject to the Commission's jurisdiction, there would be a substantial reduction in regulatory and administrative compliance from the Applicant's perspective. The Applicants contend that the deletion of Ohio River from the Commission's jurisdiction would lessen the pressure placed on the Commission's resources and would enable the Commission to increase its focus upon regulatory compliance by major pipelines.

The Applicants propose to eliminate Ohio River through a merger or other combination with Indiana Gas, provided that Indiana Gas receives a service area determination from the Commission limited to (a) The two discrete portions of Indiana Gas' service area served currently by Ohio River and (b) the rights of way traversed by Ohio River's facilities. The Applicants further request that the order be conditioned so that Indiana Gas receive the waiver requested in this application and a companion proposal filed by Ohio River in Docket No. CP91-454-000 to abandon sales service to Indiana Gas, its purchase obligation to Texas Gas, and its part 157 blanket certificate. The Applicants indicate that following the occurrences of the required conditions and the integration of Ohio River's operations into Indiana Gas, Indiana Gas would continue to function as a local distribution company within Indiana. The sole difference would be that Indiana Gas' facilities would then extend beyond the Indiana-Kentucky border in order to interconnect with Texas Gas' pipeline. It is alleged that Indiana Gas would not use its Commission-determined service area to provide natural gas service to the public directly or indirectly within Kentucky.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of the notice.

**10. Ohio River Pipeline Corp.**

[Docket No. CP91-454-000]

December 5, 1990.

Take notice that on November 19, 1990, Ohio River Pipeline Corporation (Ohio River), 1630 North Meridian Street, Indianapolis, Indiana 46202-1496, filed in Docket No. CP91-454-000, an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon sales service to Indiana Gas Company, Inc. (Indiana Gas), abandon Ohio River's purchase obligation to Texas Gas Transmission Corporation (Texas Gas), and abandonment of Ohio River's part 157 blanket certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is averred that Ohio River and Indiana Gas have entered into an agreement under which Ohio River would be merged or otherwise combined with Indiana Gas. Ohio River seeks authority to abandon its purchase obligation from Texas Gas and its part 157 blanket certificate at that time. Ohio River requests that the proposed authority become effective on the merger into or other combination of Ohio River and Indiana Gas.

It is alleged that Ohio River serves as a conduit between two discrete portions of Indiana Gas' service areas located in Indiana and a Texas Gas pipeline located immediately south of the Indiana border within Kentucky. Ohio River's two pipelines cross the Ohio River and total approximately twenty five miles in length. It is averred that Ohio River has no full time employees and its personnel requirements are primarily satisfied through the part-time efforts of Indiana Gas' employees. Ohio River is a wholly-owned subsidiary of Indiana Gas and was created to provide Indiana Gas access to Texas Gas' pipeline in Kentucky without rendering Indiana Gas to be a "natural gas company" subject to the Commission's jurisdiction.

Ohio River contends that it purchases natural gas only from Texas Gas. Pursuant to an order issued July 25, 1952, 11 FPC 227, Texas Gas and Ohio River were initially issued certificates of public convenience and necessity authorizing their respective sale and purchase of natural gas in an amount up to 14,153 Mcf per day. Texas Gas currently provides natural gas service to Ohio River pursuant to a service agreement dated July 23, 1982.

It is averred that Ohio River's only sales customer is Indiana Gas. Pursuant to orders issued November 15, 1967, 38 FPC 1015, and July 9, 1981, 16 FERC ¶ 62,034, Ohio River was authorized to sell natural gas to Indiana Gas. It is further averred that Ohio River was issued a part 157 blanket certificate by order issued January 8, 1986, 34 FERC ¶ 62,003. Ohio River currently provides natural gas service to Indiana Gas pursuant to a service agreement dated November 1, 1969.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

**11. Transwestern Pipeline Co.**

[Docket No. CP91-507-000]

December 5, 1990.

Take notice that on November 27, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-507-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove a field compressor station located at Transwestern's South Vici gathering system in Woodward County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of the notice.

**12. Columbia Gas Transmission Corp.**

[Docket No. CP91-520-000]

December 5, 1990.

Take notice that on November 28, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed an application with the Commission in Docket No. CP91-520-000 pursuant to section 7(b) of the Natural Gas Act (NGA), requesting permission and approval to abandon a natural gas transportation service for ANR Pipeline Company (ANR) and a natural gas exchange service with ANR, all as more fully set forth in the application which is open to public inspection.

Columbia states that it proposes to abandon its daily natural gas transportation service of 4,950 Mcf for ANR under its FERC Rate Schedule X-40, effective March 1, 1990. Columbia also proposes to terminate its daily transportation of the remaining 10,050 Mcf effective November 28, 1990, the expiration date of the exchange agreement between Columbia and ANR. Columbia also asserts that the proposed abandonment would not detrimentally impact its customers. No facilities are proposed to be abandon herein.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

**13. Florida Gas Transmission Company.**

[Docket No. CP91-522-000]

December 5, 1990.

Take notice that on November 29, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-522-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company, a marketer, under

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the blanket certificate issued in Docket No. RP89-50 *et al.*, pursuant to Order 509, section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that, pursuant to an agreement dated September 25, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas. FGT indicates that it would transport 11,280 MMBtu on an average day and 5,475,000 MMBtu annually.

FGT advises that service under § 284.223(a) commenced October 1, 1990, as reported in Docket No. ST91-2316.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protests, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-29137 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP90-22-000]**

## Algonquin Gas Transmission Co.; Informal Settlement Conference

December 7, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, January 9, 1991, at 10 a.m., at the office of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or David R. Cain (202) 208-0917.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29136 Filed 12-12-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP91-44-000]**

## Carnegie Natural Gas Company; Request for Waiver of Refund Regulations

December 7, 1990.

Take notice that on November 30, 1990, Carnegie Natural Gas Company (Carnegie) pursuant to rule 212 of the Commission's Rules of Practice and Procedure, filed requests of waiver 18 CFR 154.305(i)(1)(i)(A) and section 23.9 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 (Section 23.9) so that it may credit its Account No. 191.7 (Current Deferral Subaccount) rather than Account No. 191.102 (Refund Subaccount) with $124,134.07 in refunds received by Carnegie from Texas Eastern Transmission Corporation (Texas Eastern).

Carnegie states that on October 30, 1990, Texas Eastern refunded to Carnegie $1,357,241.08 in accordance with the Stipulation and Agreement approved by the Commission in Texas Eastern Transmission Corp., Docket Nos. RP88-67. Carnegie states that the refund includes amounts attributable to services purchased by Carnegie from Texas Eastern under Texas Eastern's Rate Schedules CD-1, DCQ, FT-1 and SS-2. Carnegie further states that $694,310.34 of the $1,357,241.08 is allocable to service provided by Carnegie to its FERC-jurisdictional customers.

Carnegie proposes to credit its FERC Accounts No. 191 Refund Subaccount with $570,176.27 of the $694,310.34 allocable to the FERC jurisdictional customers. Carnegie requests limited waiver of § 154.305(i) and its tariff, so that it may credit the remaining refund $124,134.07 to its Current Deferral Subaccount.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29135 Filed 12-12-90; 8:45 am]

BILLING CODE 6717-01-M



**[Docket No. RP91-34-000]**

## KN Energy, Inc.; Change in FERC Gas Tariff

December 7, 1990.

Take notice that on November 28, 1990, KN Energy, Inc. (KN) filed with the Commission the following tariff sheets:

Original Volume No. 1-B Fourth Revised Sheet No. 43, with the proposed effective date of May 1, 1990

Original Volume No. 1-B, Fifth Revised Sheet No. 43, with the proposed effective date of October 1, 1990

KN states that the sole purpose of fourth revised sheet No. 43 is to reallocate the D2 billing demand volume nominations for Minnegasco, Inc. and the sole purpose of fifth revised Sheet No. 43 is to adjust the D2 billing demand volume nominations for Public Service Company of Colorado.

KN states that copies of the filing have been mailed to all jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29134 Filed 12-12-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP86-136-010, RP89-49-012, RP90-14-002, and CP89-1582-004]**

## National Fuel Gas Supply Corp. Tariff Filing

December 7, 1990.

Take notice that on December 3, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume Nos. 1 and 2, and Second Revised Volume No. 1, six copies of the tariff sheets listed at appendix A hereto.

National states that these tariff sheets are filed to comply with the Commission's "Order Approving Settlement as Modified and Consolidating Proceedings" issued on November 1, 1990 in the above-captioned proceeding ("Order"),[1] and describe the terms and conditions under which National will provide "openaccess" transportation service, pursuant to the blanket certificate issued, *inter alia*, under part 284 of our Regulations (18 CFR) National further states that these tariff sheets restate its base tariff rates at Docket Nos. RP86-136-000, RP89-49-000 and RP90-14-000 to comply with the settlement rates approved in our Order.

The tariff sheets are proposed to become effective on the dates shown at appendix A hereto.

National states that a copy of this filing was posted pursuant to § 154.16 of the Commission's Regulations and copies served on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey, and on all other parties to these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90-29133 Filed 12-12-90; 8:45 am]

BILLING CODE 6717-01-M

[1] *National Fuel Gas Supply Corporation*, 53 FERC ¶ 61,157 (1990).

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## Office of Fossil Energy

**[FE Docket No. 90-93-NG]**

## Poco Petroleum, Inc.; Application for Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application for long-term authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Poco Petroleum, Inc. (Poco) to import up to 7.3 million MMBtu (approximately 7,300,000 Mcf) of natural gas annually from Canada beginning on the effective date of the authorization through October 31, 1999, and thereafter on a year-to-year basis if the underlying gas purchase contract between IGI Resources, Inc. (IGI) and Poco Petroleums Ltd. (Poco Ltd) is extended in accordance with its terms. Poco would act as agent for its parent company, Poco Ltd., in importing the gas and arranging transportation for it. The gas would be purchased by IGI from Poco Ltd. and would enter the U.S. either at the import point near Sumas, Washington (Huntington, British Columbia), or at Eastport, Idaho (Kingsgate, British Columbia). Transportation of the gas from the Sumas and Eastport import points to IGI would be via the existing facilities of Northwest Pipeline company and Pacific Gas Transmission Company, respectively.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 14, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585

**FOR FURTHER INFORMATION CONTACT:**

Stanley Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353-3168

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Poco is a natural gas marketer acting as agent for its parent company, Poco Ltd. IGI is also a marketer and a wholly owned subsidiary of Intermountain Gas Industries, Inc., a public holding company with headquarters in Boise, Idaho. The imported gas purchased by IGI would be resold to industrial customers on a direct sales basis and to local distribution companies serving residential, commercial and industrial

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customers in the states of Idaho, Washington, Oregon, Utah, Nevada, California and Colorado.

Under the gas sales contract between Poco Ltd. and IGI dated May 1, 1990, the delivered contract price for the imported gas consists of three components: A demand charge of $.90 per MMBtu for transportation of the gas to the international border; a stand-by component of $.05 per MMBtu to compensate Poco for the costs of maintaining readiness to deliver up to 20,000 MMBtu per day; and a commodity component of $1.12 per MMBtu for gas actually purchased. The stand-by and commodity components of the gas contract price are subject to annual redetermination. If IGI and Poco Ltd. cannot agree upon a redetermined price, the IGI/Poco Ltd. gas supply contract provides for binding arbitration in which the arbitrator, in making a final decision, must take into account the prices of substitutable energy sources and the price of other gas sold under similar terms and conditions which competes in the same or similar markets being served by IGI or Poco Ltd.

IGI is obligated to pay the demand charge and the negotiated stand-by component of the contract price whether any gas is taken or not. The applicant asserts that although there is no other take-or-pay or minimum bill provision in the IGI/Poco Ltd. gas supply contract, the contract does contain a take-or-release provision. Under this provision, if IGI fails to take 85 percent of the annual contract quantities for two consecutive years, Poco Ltd. may reduce the annual contract quantity to the average volumes of gas actually taken during that two-year period.

In support of its application, Poco asserts that the competitiveness of the gas is assured by the annual price renegotiation provisions, the arbitration process and by the provision for reduction of contract volumes if sales under the contract do not meet expected levels. According to the applicant, the IGI/Poco Ltd. contract strikes a balance between the need for flexibility as gas markets evolve and the need for a long-term economic gas supply arrangement.

The decision on Poco's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas, and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-29189 Filed 12-12-90; 8:45 am]

BILLING CODE 6450-01-M

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[FE Docket No. 87-11-NG]

## Thermal Exploration, Inc.; Application To Amend Authorization to Import Natural Gas From Canada

**AGENCY:** Department of Energy, Office of Fossil Energy.

**ACTION:** Notice of application to amend blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 7, 1990, of an application filed by Thermal Exploration, Inc. (Thermal) to amend its blanket import authorization in DOE/ERA Opinion and Order No. 168 (Order 168), 1 ERA Para. 70,697, which authorized Thermal to import up to 73 Bcf of natural gas over a two year period using existing pipeline facilities. Thermal requests an expedited amendment to enable it to import from Canada by truck approximately 9,000 Mcf of liquefied natural gas (LNG) for an experimental program to determine the feasibility of using LNG to power locomotives.



The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 24, 1990.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION:**

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9560.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Thermal, a natural gas marketing company, is a Washington corporation with its principal place of business in Seattle and a wholly owned subsidiary of Washington Energy Company. Thermal seeks to expand authority granted by Order 168 to permit importation by truck. Under the proposed import arrangement, Thermal will act as import agent for Burlington Northern Railroad (Burlington), who will purchase the gas from B.C. Gas. B.C. Gas is a Canadian corporation located in the Province of British Columbia, Canada. The LNG will be transported from Vancouver, British Columbia, to the delivery point at Tacoma, Washington. The point of importation will be Sumas, Washington, but the test program will be conducted by Burlington in the vicinity of Tacoma, Washington.

In submitting the application to amend its existing blanket authorization, Thermal states that a shortened comment period is required to afford it the opportunity to participate in the experimental program being conducted on or before January 1, 1991. Thermal states that the experimental test could lead to long-term environmental benefits through substitution of cleaner-burning LNG instead of diesel fuel or other gasoline products.

The decision on the application for amendment of Thermal's import authority will be made consistent with section 3 of the NGA and DOE's gas import policy. Parties that may oppose this amendment should comment in their responses on regulatory and policy considerations. Given the relatively minor proposed amendment to its existing import authorization to allow transportation by truck, the comment period on this application has been reduced to 10 days.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in this proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Thermal's application and informational filing are available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 10, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-29297 Filed 12-12-90; 8:45 am]

BILLING CODE 6450-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3869-2]

## CSXT Middleton Train Derailment Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the CSXT Middleton Train Derailment Site, Middleton, Elbert County, Georgia, with CSX Transportation, Incorporation. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation

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Support Assistant, Cost Recovery Section, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments may be submitted to the person above by thirty days from the date of publication.

Dated: November 19, 1990.

**Donald J. Gainyard,**

*Acting Director, Waste Management Division.*

[FR Doc. 90–29213 Filed 12–12–90; 8:45 am]

BILLING CODE 6560–50–M

**[OPTS–51756; FRL 3943–9]**

**Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 109 such PMNs and provides a summary of each.

**DATES:** Close of Review Periods:

P 90–1617, September 30, 1990.
P 91–31, January 7, 1991.
P 91–53, January 12, 1991.
P 91–81, 91–82, 91–83, 91–84, 91–85, 91–86, 91–87, January 20, 1991.
P 91–88, 91–89, 91–90, January 21, 1991.
P 91–91, 91–92, 91–93, January 22, 1991.
P 91–94, January 21, 1991.
P 91–95, 91–96, January 22, 1991.
P 91–97, 91–98, 91–99, January 23, 1991.
P 91–100, 91–101, January 26, 1991.
P 91–105, 91–106, January 27, 1991.
P 91–108, January 20, 1991.
P 91–113, 91–114, January 27, 1991.
P 91–115, January 28, 1991.
P 91–116, January 29, 1991.
P 91–117, 91–118, 91–119, 91–120, 91–121, 91–123, 91–124, 91–125, January 28, 1991.
P 91–126, 91–127, 91–128, 91–129, 91–130, 91–131, 91–132, January 29, 1991.
P 91–133, January 30, 1991.
P 91–134, 91–135, 91–136, 91–137, 91–138, 91–139, February 2, 1991.
P 91–140, 91–141, 91–142, 91–143, 91–144, 91–145, 91–146, 91–147, February 3, 1991.
P 91–148, 91–149, 91–150, February 4, 1991.
P 91–151, 91–152, 91–153, 91–154, 91–155, 91–156, 91–157, 91–158, 91–159, 91–160, 91–161, 91–162, 91–163, 91–164, 91–165, 91–166, 91–167, 91–168, 91–169, February 5, 1991.
P 91–170, 91–171, 91–172, February 6, 1991.
P 91–173, 91–174, 91–175, 91–176, 91–177, 91–178, 91–179, 91–180, 91–181, 91–182, 91–183, 91–184, February 10, 1991.
P 91–186, 91–187, 91–188, February 13, 1991.
P 91–190, February 10, 1991.
P 91–191, February 11, 1991.
P 91–192, February 10, 1991.
P 91–193, 91–194, 91–195, 91–196, February 11, 1991.
P 91–197, February 12, 1991.

Written comments by:

P 90–1617, August 31, 1990.
P 91–31, December 8, 1990.
P 91–53, December 13, 1990.
P 91–81, 91–82, 91–83, 91–84, 91–85, 91–86, 91–87, December 21, 1990.
P 91–88, 91–89, 91–90, December 22, 1990.
P 91–91, 91–92, 91–93, December 23, 1990.
P 91–94, December 22, 1990.
P 91–95, 91–96, December 23, 1990.
P 91–97, 91–98, 91–99, December 24, 1990.
P 91–100, 91–101, December 27, 1990.
P 91–105, 91–106, December 28, 1990.
P 91–108, December 21, 1990.
P 91–113, 91–114, December 28, 1990.
P 91–115, December 29, 1990.
P 91–116, December 30, 1990.
P 91–117, 91–118, 91–119, 91–120, 91–121, 91–123, 91–124, 91–125, December 29, 1990.
P 91–126, 91–127, 91–128, 91–129, 91–130, 91–131, 91–132, December 30, 1990.
P 91–133, December 31, 1990.
P 91–134, 91–135, 91–136, 91–137, 91–138, 91–139, January 3, 1991.
P 91–140, 91–141, 91–142, 91–143, 91–144, 91–145, 91–146, 91–147, January 4, 1991.
P 91–148, 91–149, 91–150, January 5, 1991.
P 91–151, 91–152, 91–153, 91–154, 91–155, 91–156, 91–157, 91–158, 91–159, 91–160, 91–161, 91–162, 91–163, 91–164, 91–165, 91–166, 91–167, 91–168, 91–169, January 6, 1991.
P 91–170, 91–171, 91–172, January 7, 1991.
P 91–173, 91–174, 91–175, 91–176, 91–177, 91–178, 91–179, 91–180, 91–181, 91–182, 91–183, 91–184, January 11, 1991.
P 91–186, 91–187, 91–188, January 14, 1991.
P 91–190, January 11, 1991.
P 91–191, January 12, 1991.
P 91–192, January 11, 1991.
P 91–193, 91–194, 91–195, 91–196, January 12, 1991.
P 91–197, January 13, 1991.

**ADDRESSES:** Written comments, identified by the document control number "(OPTS–51756)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC, 20460, (202) 382–3532.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8 a.m. and noon, and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

**P 90–1617**

*Manufacturer.* Confidential.
*Chemical.* (G) Polymer latex.
*Use/Production.* (G) Product will be used as a coating, sealant, binder, adhesive, flame retardant, or compatibilizer. Prod. range: Confidential.

**P 91–31**

*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Disubstituted naphthalene carboxylic acid.
*Use/Production.* (S) Fiber reactive dye for cellulose and nylon. Prod. range: 2,500–7,500 kg/yr.

**P 91–53**

*Importer.* Mitsubishi Gas Chemical America, Inc.
*Chemical.* (S) Polymerized naphthalene.
*Use/Import.* (S) Raw material of high density graphite. Import range: 500–5,000 kg/yr.

**P 91–81**

*Manufacturer.* Confidential.
*Chemical.* (G) Heterocyclic sulfide.
*Use/Production.* (G) Industrial oil additive. Prod. range: Confidential.



*Toxicity Data.* Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Mutagenicity: negative. Skin irritation: slight species (Rabbit).

**P 91–82**

*Manufacturer.* Confidential.
*Chemical.* (G) Isocyanate functional urethane polymer.
*Use/Production.* (G) Polymer for coating plastics. Prod. range: Confidential.

**P 91–83**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyamide.
*Use/Production.* (G) Printing ink resin. Prod. range: Confidential.

**P 91–84**

*Manufacturer.* Confidential.
*Chemical.* (G) Dimer modified polyester resin with aliphathic polyol and dicarboxylic acids.
*Use/Production.* (G) Resin for coatings (productive & decorative). Prod. range: Confidential.

**P 91–85**

*Importer.* Quest International Fragrances Company.
*Chemical.* (S) 3-(1-methylethyl)-bicyclo(2.2.1)hept-5-ene-2 carboxylic acid, ethyl ester; mixture of( 2-exo-,3-endo) and 2-endo, 3-oxo.
*Use/Import.* (G) Fragrance ingredients. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5.0 ml/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Mutagenicity: negative. Skin irritation: slight species (Rabbit).

**P 91–86**

*Manufacturer.* Sherex Chemical Company, Inc.
*Chemical.* (G) Fatty amide.
*Use/Production.* (G) Asphalt additive. Prod. range: Confidential.

**P 91–87**

*Manufacturer.* Sherex Cheemical Company, Inc.
*Chemical.* (G) Fatty amide.
*Use/Production.* (G) Asphalt additive. Prod. range: Confidential.

**P 91–88**

*Manufacturer.* Confidential.
*Chemical.* (G) Polymeric product of epoxy reaction with organic acid and organic anhydrides.
*Use/Production.* (G) Polymer for use in coatings for metallic and/or polymeric substances. Prod. range: Confidential.

**P 91–89**

*Manufacturer.* Confidential.
*Chemical.* (G) Polyurethane polyures.
*Use/Production.* (G) Dispesively applied coating. Prod. range: 35,000–100,000 kg/yr.

**P 91–90**

*Manufacturer.* E.I. Du Pont De Nemours & Co., Inc.
*Chemical.* (G) Glycol half ester of mhhp/hhp acid.
*Use/Production.* (G) Reactive diluent. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 5,000 mg/kg species (Rat). Eye irritation: strong species (Rabbit).

**P 91–91**

*Importer.* Confidential.
*Chemical.* (G) Alkylimidazoline derivative.
*Use/Import.* (S) Raw material for textile softener. Import range: 8,000–20,000 kg/yr.

**P 91–92**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer.
*Use/Production.* (G) Polymer additive in an open nondispersive use. Prod. range: Confidential.

**P 91–93**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic copolymer intermediate.
*Use/Production.* (G) Polymer intermediate in a contained use. Prod. range: Confidnetial.

**P 91–94**

*Manufacturer.* Confidential.
*Chemical.* (G) Metallic chelate complex.
*Use/Production.* (G) Additive to polymerics systems. Prod. range: Confidential.

**P 91–95**

*Manufacturer.* Confidential.
*Chemical.* (G) Metallic chelate complex.
*Use/Production.* (G) Additive to polymeric systems. Prod. range: Confidential.

**P 91–96**

*Manufacturer.* Bedoukian Research, Inc.
*Chemical.* (S) 5-Dodecen-1-ol, acetate, (1Z)-.
*Use/Production.* (S) Active ingredient in traps to monitoring traps. Prod. range: Confidential.

**P 91–97**

*Manufacturer.* Confidential.
*Chemical.* (G) Castor oil molified alkyd resin.
*Use/Production.* (G) Resin for lacquer paint. Prod. range: Confidential.

**P 91–98**

*Importer.* Confidential.
*Chemical.* (G) Vegetable oil modified alkyd resin.
*Use/Import.* (G) Resin for lacquer paint. Import range: Confidential.

**P 91–99**

*Manufacturer.* Confidential.
*Chemical.* (G) Styrene-acrylic resin.
*Use/Production.* (S) Binder for general metal coating. Prod. range: Confidential.

**P 91–100**

*Manufacturer.* Confidential.
*Chemical.* (G) Alpha olefin sulfonate, potassium salt.
*Use/Production.* (G) Used as an additive in enery production. Prod. range: Confidential.

**P 91–101**

*Importer.* Confidential.
*Chemical.* (G) 2-Imino-1,3-thiazin-4-one-5,6-dihydromonohydrochloride.
*Use/Import.* (G) Open use. Import range: Confidential.

**P 91–105**

*Manufacturer.* Confidential.
*Chemical.* (G) Organometallic compound.
*Use/Production.* (G) Catalyst. Prod. range: Confidential.

**P 91–106**

*Manufacturer.* Confidential.
*Chemical.* (G) Organometallic compound.
*Use/Production.* (G) Catalyst. Prod. range: Confidential.

**P 91–108**

*Importer.* Confidential.
*Chemical.* (G) Amidinothiopropionic acid hydrochloride.
*Use/Import.* (G) Open use. Import range: Confidential.

**P 91–113**

*Manufacturer.* Olin Corporation.
*Chemical.* (G) Polycarboxylated surfactant.
*Use/Production.* (G) Open use. Prod. range: Confidential.

**P 91–114**

*Importer.* Marubeni America Corporation.
*Chemical.* (G) Ethylene acrylate copolymer.
*Use/Import.* (G) Open, nondispersive use. Import range: Confidential.

**P 91–115**

*Importer.* AGFA Corporation.

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*Chemical.* (G) Benzyl ester of an aliphatic substituted butanedioic acid.
*Use/Import.* (G) Binding agent used in photographic paper. Import range: Confidential.

**P 91-116**
*Manufacturer.* Minnesota Mining & Manufacturing (3M).
*Chemical.* (G) Biphenol salt.
*Use/Production.* (G) Accelerator. Prod. range: Confidential.

**P 91-117**
*Importer.* Confidential.
*Chemical.* (G) Acrylate derivative polymer.
*Use/Import.* (G) Open, nondispersive. Import range: Confidential.

**P 91-118**
*Importer.* Huls America Inc.
*Chemical.* (G) Oligomeric silicic acid ester compound with an hydroxyalkylamine.
*Use/Import.* (S) Binder for paints. Import range: 20,000–100,000 kg/yr.

**P 91-119**
*Manufacturer.* Confidential.
*Chemical.* (G) Diphenylmethante prepolymer.
*Use/Production.* (G) Isocyante component. Prod. range: Confidential.

**P 91-120**
*Manufacturer.* Confidential.
*Chemical.* (G) Diphenylamine diisocyanate prepolymer.
*Use/Production.* (G) Isocyante component. Prod. range: Confidential.

**P 91-121**
*Importer.* Confidential.
*Chemical.* (G) Zinc carboxylate.
*Use/Import.* (G) Catalyst. Import range: Confidential.

**P 91-123**
*Importer.* Confidential.
*Chemical.* (G) Fatty acid amine preparation.
*Use/Import.* (S) Softener for textile materials. Import range: 20,000–60,000 kg/yr.

**P 91-124**
*Importer.* Confidential.
*Chemical.* (G) Fatty acid amide.
*Use/Import.* (S) Softener for textile materials. Import range: 60,000–200,000 mg/kg.
*Toxicity Data.* Acute oral toxicity: LD50 > 5 ml/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

**P 91-125**
*Importer.* Basf Corporation.
*Chemical.* (G) Metal salt of monoazo dye.
*Use/Import.* (G) Colorant. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Inhalation toxicity: LC50 15.1 mg/l species (Rat). Static acute toxicity: time EC50 24H166.09 mg/l species (Daphnia). Eye irritation: slight species (/species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

**P 91-126**
*Manufacturer.* E.I. Du Pont & De Nemours and Co., Inc.
*Chemical.* (G) Copolymer.
*Use/Production.* (G) General purpose molding resin. Prod. range: Confidential.

**P 91-127**
*Importer.* Hoechst Celanese Corporation.
*Chemical.* (G) Hydroxy functional acrylic copolymer.
*Use/Import.* (S) Binder for paints. Import range: 10,000–30,000 kg/yr.

**P 91-128**
*Manufacturer.* Confidential.
*Chemical.* (G) Amylopectin, 2-(heteromonocyclic ethyl ether.
*Use/Production.* (G) Starch for external paper size and coating. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2.0 g/kg species (Rat). Static acute toxicity: time LC50 > 1,000 mg/l species (Fathead Minnows). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-129**
*Manufacturer.* Confidential.
*Chemical.* (G) Amylopectin, 2-(heteromonocyclic) ethyl ether.
*Use/Production.* (G) Starch for external paper size and coating. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 2.0 g/kg species (Rat). Static acute toxicity: time LC50 > 1,000 mg/l species (Fathead Minnows). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-130**
*Importer.* Confidential.
*Chemical.* (G) Triazinyl reactive mono azo dye.
*Use/Import.* (S) Dyestuff for cellulosic fiber. Import range: Confidential.

**P 91-131**
*Importer.* Confidential.
*Chemical.* (G) Triazinyl reactive mono azo dye.
*Use/Import.* (S) Dyestuff for cellulosic fiber. Import range: Confidential.

**P 91-132**
*Manufacturer.* Henkel Corporation, Emery Group.
*Chemical.* (S) Pentaerythritol, complex ester with adipic acid and isopentanoic acid.
*Use/Production.* (S) Lubricant basestock for refrigeration compound. Prod. range: 5,000–80,000 kg/yr.

**P 91-133**
*Manufacturer.* Confidential.
*Chemical.* (G) Alkoxyaminoalkane.
*Use/Production.* (G) Petroleum products additive. Prod. range: Confidential.

**P 91-134**
*Manufacturer.* Confidential.
*Chemical.* (G) Arylheterarylalkylamine.
*Use/Production.* (G) Petroleum products additive. Prod. range: Confidential.

**P 91-135**
*Manufacturer.* Confidential.
*Chemical.* (G) Arylheterarylalkylamine.
*Use/Production.* (G) Petroleum products additive. Prod. range: Confidential.

**P 91-136**
*Manufacturer.* Confidential.
*Chemical.* (G) Arylhetersarylalkylamine.
*Use/Production.* (G) Petroleum products additive. Prod. range: Confidential.

**P 91-137**
*Manufacturer.* Confidential.
*Chemical.* (G) Arylheterarylalkylamine.
*Use/Production.* (G) Petroleum products additive. Prod. range: Confidential.

**P 91-138**
*Manufacturer.* Confidential.
*Chemical.* (G) Isocyanate prepolymer solution.
*Use/Production.* (G) Intermediate isocyanate resin. Prod. range: 1,000–9,000 kg/yr.

**P 91-139**
*Manufacturer.* Confidential.
*Chemical.* (G) Urethane modified epoxy resin.
*Use/Production.* (G) Coating for open, nondispersive use. Prod. range: 14,000–146,000 kg/yr.

**P 91-140**
*Manufacturer.* Bedoukian Research, inc.



*Chemical.* (S) 7-Tetradecan-1-ol, acetate, (Z)-.
*Use/Production.* (S) Agricultral pheromone. Prod. range: Confidential.

**P 91-141**
*Manufacturer.* E. I. Du Pont De Nemours & Co., Inc.
*Chemical.* (G) Copolyester.
*Use/Production.* (G) General purpose molding resin. Prod. range: Confidential.

**P 91-142**
*Manufacturer.* Confidential.
*Chemical.* (G) Modified ethylene polymer.
*Use/Production.* (S) Tie coat for coexistruded files. Prod. range: Confidential.

**P 91-143**
*Importer.* Confidential.
*Chemical.* (G) Methylalkylpolysiloxane modified.
*Use/Import.* (G) Additive, nondispersive use. Import range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-144**
*Importer.* Confidential.
*Chemical.* (G) Organtion compound.
*Use/Import.* (S) Hardening catalyst sealants and adhesives. Import range: Confidential.

**P 91-145**
*Manufacturer.* Athens Corporation.
*Chemical.* (S) Peroxydisulfuric acid.
*Use/Production.* (S) Precursor to oxidative cleanser. Prod. range: 16,000–40,000 kg/yr.

**P 91-146**
*Manufacturer.* Ciba-Geigy Corporation.
*Chemical.* (G) Aromatic sulfonic acid.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 91-147**
*Manufacturer.* Ciba-Geigy Corporation.
*Chemical.* (G) Aromatic sulfonic acid calcium salt.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

**P 91-148**
*Importer.* Confidential.
*Chemical.* (G) Azo dyestuff.
*Use/Import.* (S) Ink jet inks. Import range: 670–1,005 kg/yr.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-149**
*Importer.* Confidential.
*Chemical.* (G) Azo dyestuff.
*Use/Import.* (S) Ink jet inks. Import range: 330–494 kg/yr.
*Toxicity Data.* Acute oral toxicity: LD50 > 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

**P 91-150**
*Manufacturer.* Confidential.
*Chemical.* (G) Alkyl amine salt.
*Use/Production.* (G) Biturmine emulsifier. Prod. range: Confidential.

**P 91-151**
*Manufacturer.* Confidential.
*Chemical.* (G) Alcohol, alkali metal salt.
*Use/Production.* (S) Alkoxylation catalyst. Prod. range: Confidential.

**P 91-152**
*Manufacturer.* Confidential.
*Chemical.* (G) Polyalphaolefin (PAO).
*Use/Production.* (G) Functional fluid. Prod. range: Confidential.

**P 91-153**
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Disubstituted benzoic acid salt.
*Use/Production.* (S) Intermediate for dyestuff synthesis. Prod. range: 25,000–50,000 kg/yr.
*Toxicity Data.* Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

**P 91-154**
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Cuprate(3-),((2-(((substituted)azo)-4-substituted benzoato(5-)-, salt.
*Use/Production.* (S) Intermediate for dyestuff synthesis. Prod. range: 25,000–50,000 kg/yr.

**P 91-155**
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Substituted aniline.
*Use/Production.* (S) Site-limited intermediate for dyestuff synthesis. Prod. range: 25,000–50,000 kg/yr.

**P 91-156**
*Manufacturer.* Hoechst Celanese Corporation.
*Chemical.* (G) Cupate (3-),(2-(((substanced)azo)phenylmethyl)azo-4-sulfobenzoato(5-)),salt.
*Use/Production.* (S) Dyestuff for cellulose. Prod. range: 25,000–50,000 kg/yr.

**P 91-157**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Phenolic alkali salt.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-158**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Halogenated aliphatic aromatic ether.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-159**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Halogenated aliphatic aromatic ether.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-160**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Halogenated aromatic polymer.
*Use/Production.* (G) Thermoplastic for molding articles. Prod. range: Confidential.

**P 91-161**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Alkali salt of phenolic.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-162**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Halogenated aliphatic aromatic ether.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-163**
*Manufacturer.* The Dow Chemical Comany.
*Chemical.* (G) Halogenated aromatic ether.
*Use/Production.* (G) Chemical intermediate. Prod. range: Confidential.

**P 91-164**
*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Halogenated aromatic oligomer.
*Use/Production.* (G) Polymer for electronic applications. Prod. range: Confidential.

**P 91-165**
*Manufacturer.* Confidential.

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*Chemical.* (G) Saturated aromatic aliphatic polyol.
*Use/Production.* (S) Polyester for production of urethane paints. Prod. range: Confidential.

P 91-169
*Manufacturer.* Ciba-Geigy Corporation.
*Chemical.* (G) Acrylic sulfenic-acid sodium salt.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 91-167
*Manufacturer.* Confidential.
*Chemical.* (G) Modified polyisocyanate.
*Use/Production.* (S) Encapsulation of electronic component. Prod. range: 30,000–100,000kg/yr.

P 91-168
*Importer.* Confidential.
*Chemical.* (G) Aqueous polyurethane dispersion.
*Use/Import.* (S) Glass fiber sizing. Import range: 91,000–228,000 kg/yr.

P 91-169
*Manufacturer.* Confidential.
*Chemical.* (G) Hydroxy functional acrylate metacrylate styrenatedpolymer.
*Use/Production.* (G) Polymer having a disperive use. Prod. range: 5,000–10,000 kg/yr.

P 91-170
*Importer.* AGFA Corporation.
*Chemical.* (G) Iron of salt a B-Alanine derivative.
*Use/Import.* (G) A photographic processing chemistry chemical. Import range: 5,000–15,000 kg/yr.

P 91-171
*Manufacturer.* E. I. Du Pont De Nemours & Co., Inc.
*Chemical.* (G) Substituted butadiene copolymer.
*Use/Production.* (G) Polymer for belts, mounts, adhesives. Prod. range: Confidential.

P 91-172
*Manufacturer.* Confidential.
*Chemical.* (G) Metal alkyl dione diaquo.
*Use/Production.* (G) Compounding ingredient for a mixture in dispersive use. Prod. range: Confidential.

P 91-173
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-174
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-175
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-176
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-177
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-178
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-179
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functinal epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-180
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-181
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-182
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-183
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-184
*Manufacturer.* Confidential.
*Chemical.* (G) Amine functional epoxy resin salt.
*Use/Production.* (S) Coatings. Prod. range: Confidential.

P 91-186
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted ethyl alkyl ester.
*Use/Production.* (G) Component of consumers product. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Mutagenicity: negative. Skin irritation: moderate species (Rabbit). Skin sensitization: positive species (Guinea Pig).

P 91-187
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted ethyl alkyl ester.
*Use/Production.* (G) Component of consumers product. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Mutagenicity: negative. Skin irritation: moderate species (Rabbit). Skin sensitization: positive species (Guinea Pig).

P 91-188
*Manufacturer.* Confidential.
*Chemical.* (G) Substituted ethyl alkyl ester.
*Use/Production.* (G) Component of consumers product. Prod. range: Confidential.
*Toxicity Data.* Acute oral toxicity: LD50 > 20 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Mutagenicity: negative. Skin irritation: moderate species (Rabbit). Skin sensitization: positive species (Guinea Pig).

P 91-190
*Importer.* AGFA Corporation.
*Chemical.* (G) Substituted propionic acid.
*Use/Import.* (G) Stabilizer for photographic bleach. Import range: 1,000–5,000.

P 91-191
*Manufacturer.* Hercules Incorporated.
*Chemical.* (G) Aromatic hydrocarbon resin.



*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 91-192
*Manufacturer.* Hercules Incorporation.
*Chemical.* (G) Aromatic hydrocarbon resin.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 91-193
*Manufacturer.* Confidential.
*Chemical.* (G) Silanydrocarbon.
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 91-194
*Manufacturer.* Confidential.
*Chemical.* (G) Polyurethane.
*Use/Production.* (G) This is a polyurethane for the plastic and textile industry. Prod. range: Confidential.

P 91-195
*Manufacturer.* Confidential.
*Chemical.* (G) Polyurethane.
*Use/Production.* (G) This is a polyurethane for the plastic and textile industry. Prod. range: Confidential.

P 91-196
*Manufacturer.* Confidential.
*Chemical.* (G) Alkanedioic acid, polymer with N,N-dialkylalkanamine, 3-hydroxy-2-(hydroxymethyl)-2-alkylpropanoate, alkylpropanoate, alkanediol, alkanediamine and 1,1'-methylene bispecies (4-isocycanatocyclohexane).
*Use/Production.* (G) Open, nondispersive use. Prod. range: Confidential.

P 91-197
*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Amine reacted polymer of an aliphatic isocyanate with a polyester polyol.
*Use/Production.* (G) A polyurethane to be used in an open, nondispersive manner. Prod. range: Confidential.

Dated: December 7, 1990.

**Steve Newburg-Rinn.**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-29212, Filed 12-12-90; 8:45 am]

BILLING CODE 6560-50-F

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**[FRL-3869-1]**

## Decision Pursuant to Section 304(l) of the Clean Water Act

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of decision and response to comments.

**SUMMARY:** EPA, Region IX, has issued its final decision on the lists of impaired waters, point sources, and pollutants; and individual control strategies (ICSs) for the State of Arizona developed pursuant to section 304(l) for the Clean Water Act. Copies of this decision and EPA's response to comments can be obtained from the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Laura Tom by telephone at (415) 744-2006 or by mail at: Environmental Protection Agency, Region IX (W-3-2), 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:** Section 304(l) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires every state to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each point source.

On 31 July 1989, EPA issued a decision on the lists of waters, point sources and amounts of pollutants, and on ICSs submitted by the State of Arizona. At that time, EPA solicited comments from the public on its decision. EPA, pursuant to section 304(l)(1)(3), also solicited petitions from the public to make additions to the waters already listed under section 304(l)(1). Notice of these actions appeared in the **Federal Register** on 22 August 1989 (54 FR 34816).

The public comment and petition period was originally scheduled to close on 29 December 1989. EPA, however, extended the public comment and petition period to close on 1 February 1990. Notice of this action appeared in the **Federal Register** on 24 January 1990 (55 FR 2407).

EPA received 6 comments and petitions on the 304(l) lists and ICSs for Arizona during the public comment and petition period. EPA has prepared a written response to these comments and petitions.

The administrative record containing EPA's decision, response to comments, and supporting documentation on the lists and ICSs for Arizona is on file and may be inspected at the EPA, Region IX, office between the hours of 9 a.m. and 5 p.m., Monday through Friday, except holidays. To make arrangements to examine the record, or to obtain copies of the decision and response to comments, contact the person named above.

Dated: December 4, 1990.

**Keith Takata,**

*Acting Director, Water Management Division, U.S. EPA Region IX.*

[FR Doc. 90-29214 Filed 12-12-90; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 6, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

*OMB Number:* None.
*Title:* Amendment of parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz *Bands Affecting:* Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service and Cable Television Relay Service.
*Action:* New collection.
*Respondents:* Individuals or households, and businesses or other for-profit (including small businesses).
*Frequency of Response:* On occasion and annually.
*Estimated Annual Burden:* 17,510 responses; 18.498 hours average burden per response; 323,866 hours total annual burden.
*Needs and Uses:* In fulfilling its obligation under the Communications Act of 1934, as amended, the Commission collects information from applicants and licensees for Multichannel Multipoint Distribution Service stations to determine eligibility and to ensure compliance with this Act and the FCC's regulations. The information collected pursuant to the attached Report and

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Order will be used by the Commission to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies. The annual reporting requirement is used for detecting anticompetitive practices and can assist in monitoring the development of wireless cable.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90-29257 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Radio Associates, Inc., et al

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

| Applicant, City and state | File No. | MM Docket No. |
|---|---|---|
| I | | |
| A. Radio Associates, Inc.; Brownsburg, IN. | BPH-880726MQ | 90-515 |
| B. DOXA, Inc.; Brownsburg, IN. | BPED-880722MB | |
| C. Anthony J. Bove, Jr.; Brownsburg, IN. | BPH-880722MJ | |
| D. Hoosier Aurora Broadcasting Co.; Brownsburg, IN. | BPH-880722ML | |
| E. Helen Sparks Quinn; Brownsburg, IN. | BPH-880722MP | |
| F. Brownsburg Broadcasting Corporation; Brownsburg, IN. | BPH-880722MQ | |
| G. The Moody Bible Institute of Chicago; Brownsburg, IN. | BPED-880725MB | |
| H. Bulldog Broadcasting, Inc.; Brownsburg, IN. | BPH-880725MD | |
| I. Sharpe Communications Limited Partnership; Brownsburg, IN. | BPH-880725ME | |
| J. Pamela R. Jones; Brownsburg, IN. | BPH-880725MF | |
| *Issue Heading and Applicants* | | |
| 1. Financial Qualification, A | | |
| 2. Air Hazard, A, E, J | | |
| 3. Comparative, A-K | | |
| 4. Ultimate, A-K | | |
| II | | |
| A. Gerald Perovich; Tice, Florida. | BPH-880519MA | 90-505 |
| B. Anderson Broadcasting Co., Ltd.; Tice, Florida. | BPH-880546MK | |
| C. Paradise Communications Limited Partnership; Tice, Florida. | BPH-880551MC | |
| D. Prize Broadcasting, Inc.; Tice, Florida. | BPH-880519MM | |
| E. Cheriene Radio Partners; Tice, Florida. | BPH-880519MN | |
| F. Minority Broadcasting Development, Inc.; Tice, Florida. | BPH-880519MO | |
| G. Birdsong Broadcasting; Tice, Florida. | BPH-880519MP | |
| H. Palm Broadcasting Limited Partnership; Tice, Florida. | BPH-880519MW | |
| I. Billie J. Lazzara; Tice, Florida. | BPH-880519NB | |
| J. Linda Giles; Tice, Florida. | BPH-880519NC | |
| K. Press Broadcasting Company; Tice, Florida. | BPH-880519NK | |
| L. Female Frequency; Tice, Florida. | BPH-880519NM | |
| M. Pam Gooderham and Charlene Swartley, General Partners, d/b/a Gooderham/ Swartley Tice Limited; Tice, Florida. | BPH-880519NP | |
| N. TiceComm, Inc.; Tice, Florida. | BPH-880519NY | |
| *Issue Heading and Applicants* | | |
| 1. Financial Qualifications, G | | |
| 2. See Appendix, C | | |
| 3. See Appendix, C | | |
| 4. See Appendix, C | | |
| 5. See Appendix, F | | |
| 6. Air Hazard, D | | |
| 7. Comparative, A11 | | |
| 8. Ultimate, A11 | | |
| III | | |
| A. Jewell Schaeffer Broadcasting Co.; Manchester, OH. | BPH-880222ME | 90-514 |
| B. George C. Helton and Gerald E. Davis d/b/a Manchester Broadcasting Company; Manchester, OH. | BPH-880223MG | |
| *Issue Heading and Applicants* | | |
| 1. Comparative, A, B | | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division.*

### Appendix (Tice, Florida)

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of C (Paradise).

3. To determine whether C's (Paradise) organizational structure is a sham.

4. To determine, from the evidence adduced pursuant to issues 1 and 2 above, whether C (Paradise) possesses the basic qualifications to be a licensee of the facilities sought herein.

5. To determine (a) whether 105.3 Ltd.'s principal, Darie D. Hamilton, withheld information and answered questions untruthfully during discovery in the Solana, Florida proceeding (MM Docket No. 464(b)), whether 105.3 Ltd. avoided compliance with the reporting requirements, and (c) from the evidenced adduced pursuant to Issues 5(a) and 5(b) above, whether Minority possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-29258 Filed 12-12-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

SeaEscape Cruises Limited, 1060 Port Blvd., Miami, FL 33132

Vessel: Scandinavian Song

Dated: December 7, 1990.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29160 Filed 12-12-90; 8:45 am]

BILLING CODE 6730-01-M



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Screening Tests for Animal Drug Residues in Raw Milk

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is asking for information on commercially available screening tests to detect animal drug residues in raw milk. The agency is also announcing its intention to conduct a limited evaluation of such tests.

**DATES:** Information and written comments by February 11, 1991.

**ADDRESSES:** Information and written comments to the Office of Science (HFV-500), Center for Veterinary Medicine, Food and Drug Administration, Rm. 8-88, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Norris E. Alderson, Center for Veterinary Medicine (HFV-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6510.

**SUPPLEMENTARY INFORMATION:** Recently, FDA released the results of analysis of 70 retail milk samples from 14 U.S. cities. The analysis revealed the presence of low levels of drug residues in some of the milk samples. As a result of these findings, organizations representing dairy farmers, milk cooperatives, veterinarians, and state milk officials have requested that the agency encourage the development and evaluation of reliable screening tests that can be used to expand current residue monitoring programs for milk and to support on-farm milk testing. This **Federal Register** notice solicits information concerning methods of analysis that could be used to rapidly screen raw milk for animal drug residues and announces that the agency will conduct a limited evaluation of such tests.

Rapid screening tests are defined here as technically uncomplicated analytical methods that can respond in a relatively short time to the presence of drug residues above a specified level in a specific matrix. The types of tests of interest include, but are not limited to, ligand binding tests. Rapid screening tests can provide for inexpensive and timely testing of a large number of samples rather than using longer and more technically complex chemical methods. However, screening tests are designed to provide a presumptive indication that a drug residue may be present in the sample. Further analysis usually would be required to confirm a positive screening test result.

The agency is requesting manufacturers of screening tests to furnish information concerning scientific principles of the test and the stability of test components, descriptions of packaging, copies of labeling, instructions for using and operating the tests, and any available data demonstrating the performance characteristics. Such information and written comments should be submitted to the contact person above.

For those screening tests for which manufacturers provide the requested information, the agency intends to conduct a limited evaluation of the performance of these tests for animal drug residues in raw milk. FDA will not approve or certify any screening tests based on the results of this limited evaluation. However, the results will be available for public inspection. It is anticipated that the results will provide useful information for potential users. Future evaluations will be conducted for a specific drug based on agency assessment of needs of milk monitoring programs.

The milk samples used in this evaluation will consist of control raw milk, drug fortified control raw milk, and raw milk containing incurred drug residues in samples taken from animals dosed with the test drug. All test samples will be initially analyzed using a quantitative analytical method selected by FDA. The results of these analyses will serve as standards against which the results of the screening assays will be evaluated. The screening tests will be used to analyze the raw milk samples according to the manufacturer's labeling instructions.

The agency is aware that both approved and unapproved drugs are used in lactating dairy cattle. For the approved drugs, title 21 of the Code of Federal Regulations, part 556 (21 CFR part 556) provides a tolerance for drug residues. For gentamicin, tetracycline, chlortetracycline, and oxytetracycline, which are approved for use in certain food-producing animals but not in lactating dairy cows, the agency has estimated the desired limits of detection based on available safety information. For certain unapproved sulfonamides and for chloramphenicol, also unapproved in cows, the agency has estimated the desired limits of detection based on the lowest level that can be accurately and reproducibly detected and confirmed.

The first group of animal drugs selected for evaluation are the sulfonamide drugs. The desired limit of detection for a screening test for sulfadimethoxine residues in milk is 10 parts per billion (ppb), the tolerance specified in 21 CFR 556.640. A tolerance of 10 ppb for residues of sulfabromomethazine in milk is specified in 21 CFR 556.620. A zero tolerance for residues of sulfaethoxypyridazine is specified in 21 CFR 556.650. However, these sulfonamides are no longer marketed. No other sulfonamides are approved for use in lactating dairy cattle. The desired limit of detection of tests for these sulfonamides is 5 to 10 ppb. This is the current level that can be accurately and reproducibly detected.

Drugs under consideration for future study and the desired limits of detection are gentamicin, 30 ppb; tetracycline, 60 ppb; chlortetracycline, 30 ppb; and oxytetracycline, 30 ppb.

Chloramphenicol is also of interest but is not approved for use in any food-producing animal. The desired limit of detection of chloramphenicol by screening tests should be at a level that can be confirmed by appropriate analytical methods, about 5 ppb. Additional drugs may be added in the future.

FDA regards screening tests for animal drugs to be useful tools for excluding the presence of violative residues in milk. However, since positive screening test results usually determine the disposition of milk by the farmer or dairy and may lead to regulatory actions, FDA considers the capability to confirm positive screening test results to be an important part of the effective use of screening tests for milk monitoring. The need for that capability should not be construed to mean that the manufacturer of a screening test is required to provide a confirmatory test. The agency does want to imply that any analytical method, including a screening test, that cannot be verified is of limited use in decisionmaking.

Dated: December 5, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29169 Filed 12-12-90; 8:45 am]

BILLING CODE 4160-01-M

BEST COPY AVAILABLE

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[Docket No. 76D-0394]

## Revised Drug Stability Guidelines; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the "Drug Stability Guidelines," fourth revision, prepared by the Center for Veterinary Medicine (CVM). This guideline may be used as an aid in designing and conducting studies to meet stability requirements for the manufacture of veterinary finished dosage form products (pharmaceutical and medicated feed) as submitted in new animal drug applications (NADA's) and abbreviated NADA's (ANADA's) and manufactured in conformance with the corresponding current good manufacturing practice (CGMP) regulations (21 CFR parts 211, 225, and 226).

**DATES:** Comments may be submitted at any time.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the fourth revision of "Drug Stability Guidelines," to the Division of Chemistry (HFV-142), Center for Veterinary Medicine, Food and Drug Administration, Rm. 6B-03, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of the "Drug Stability Guidelines," fourth revision, prepared by CVM. A notice of availability of the first edition of the Drug Stability Guideline was announced in the **Federal Register** of November 2, 1976 (41 FR 48150) (Docket No. 76D-0394). This publication announces the availability of the fourth edition of the guideline.

The guideline applies to finished dosage form drugs for veterinary purposes and to drugs used in medicated feed products. The guideline may be used as an aid in designing and conducting stability studies to meet the requirements of 21 CFR 514.1(b)(5)(x) and the appropriate CGMP regulations for veterinary products (21 CFR 211.166 and 226.58). Section 514.1 specifies the proper format and the information required for NADA approval under section 512(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)).

The guideline, as revised, includes the following changes:

1. Editorial revisions throughout the document.
2. Revisions in medicated feed product testing.
3. Provisions for product stress testing.
4. A new section on drug substances stability testing.
5. An alphabetical index listing the specific sections.

These changes incorporate comments received in response to the publication of the notice of availability of the third edition of the guideline published in the **Federal Register** of December 5, 1988 (53 FR 48990). The comments, CVM's responses, and previous editions of the guideline are available at the Dockets Management Branch (address above).

Interested persons may, at any time, submit written comments on the revised guideline to the Dockets Management Branch. Such comments will be considered in determining if further revisions are warranted. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. Comments and all related materials may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 5, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29167 Filed 12-12-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90D-0112]

## Draft Guideline on the Application of the Current Medical Device GMP's to Computerized Devices and Manufacturing Processes—Medical Device GMP Guidance for FDA Investigators; Availability; Request for Public Comments

**AGENCY:** Food and Drug Administration HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guideline on current good manufacturing practices (CGMP's) entitled "Application of the Medical Device GMP's to Computerized Devices and Manufacturing Processes—Medical Device GMP Guidance for FDA Investigators" and requesting public comment. The draft guideline is intended to assist FDA investigators in applying the CGMP regulations to manufacturers using computerized production processes and manufacturers of computer products that are medical devices or components of medical devices. These regulations at 21 CFR part 820 are intended to assure that devices will be safe and effective.

**DATES:** Comments by March 13, 1991.

**ADDRESSES:** Submit written requests for single copies of the draft guideline "Application of the Medical Device GMP's to Computerized Devices and Manufacturing Processes—Medical Device GMP Guidance for FDA Investigators" to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597 (toll-free outside MD, 800-638-2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Fred Hooten, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1131.

**SUPPLEMENTARY INFORMATION:** FDA, through the Center for Devices and Radiological Health (CDRH), develops and carries out a national program to ensure the safety and effectiveness of medical devices. Under authority of the Federal Food, Drug, and Cosmetic Act (the act), including section 520(f) (21 U.S.C. 360j(f)), the agency has promulgated the CGMP regulations at 21 CFR part 820. Section 520(f) of the act and the CGMP regulations require that the methods used in, and the facilities and the controls used for, the manufacture, packaging, storage, and installation of a device conform to CGMP, as prescribed in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

Under 21 CFR 10.90(b), FDA is announcing the availability of draft FDA investigator guidance entitled "Application of the Medical Device GMP's to Computerized Devices and Manufacturing Processes—Medical Device GMP Guidance for FDA Investigators." The document is designed to illustrate how the CGMP regulations apply to software and hardware intended to control an automated device manufacturing process, including automated quality assurance and automated recordkeeping. The draft also applies to the manufacture of computer products intended for a medical purpose, as defined in section 201(h) (21 U.S.C. 321(h)). However, the draft does not contain information on how to validate computer software.



The CGMP regulations are written in general terms in order that they may apply to the broad diversity of medical devices and manufacturing processes found in the medical device industry. Because of this, FDA investigators sometimes benefit from guidance in applying the CGMP regulations to certain segments of the industry. Two areas in which investigators will find such guidance to be of assistance are to manufacturers of automated devices and manufacturers who utilize automated manufacturing systems.

This document is intended to assist investigators in properly interpreting and applying the CGMP regulations to these areas. However, investigators should understand that while the procedures and controls described in this document describe those that generally are acceptable to FDA, they may not be the only procedures and controls acceptable to FDA. Manufacturers are free to use other approaches as long as they can provide assurance that they are adequate in meeting the applicable CGMP requirements in accordance with the CGMP regulations.

This document applies to manufacturers who utilize automated manufacturing processes, automated quality assurance, automated recordkeeping, and who manufacture medical devices that are driven or controlled by software.

Interested persons may, on or before March 13, 1991, submit written comments to the Dockets Management Branch (address above) on this draft guideline. Comments will be considered in determining if changes to the draft guidelines are warranted.

Dated: December 5, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29168 Filed 12-12-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0241]

## 1990 Revision of the National Shellfish Sanitation Program Manual of Operations, Part I "Sanitation of Shellfish Growing Areas" and Part II "Sanitation of the Harvesting, Processing, and Distribution of Shellfish"; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the 1990 revision of the National Shellfish Sanitation Program (NSSP) Manual of Operations, part I, "Sanitation of Shellfish Growing Areas" and part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish." This project was initiated in cooperation with the Interstate Shellfish Sanitation Conference (ISSC) to help assure that only safe and sanitary shellfish are offered for sale in interstate commerce.

**ADDRESSES:** Submit written requests for single copies of the manual (free of charge) to the Food and Drug Administration, Shellfish Sanitation Branch (HFF-344), 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive mailing labels to assist that office in processing your requests. The Manual is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** David M. Dressel, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-485-0149.

**SUPPLEMENTARY INFORMATION:** FDA is responsible for the Federal administration of the NSSP, which is a voluntary program involving State shellfish control agencies, the shellfish industry, FDA, and other Federal agencies. Five foreign countries also actively participate in the NSSP through international bilateral agreements.

The NSSP is concerned with the sanitary control of fresh and frozen molluscan shellfish (oysters, clams, and mussels) offered for sale in interstate commerce. The program has been in existence since 1925. In the interest of assuring uniform administrative and technical controls, the NSSP has developed and maintained recommended shellfish control practices. These control practices have been published in the form of a Manual of Operations, parts I and II.

In 1982, interested State officials and members of the shellfish industry formed the ISSC, the purpose of which is to provide a formal structure wherein State regulatory authorities can establish updated guidelines for improving shellfish sanitation and safety. The ISSC has established uniform procedures for the development and adoption of new guidelines. Those persons interested in obtaining additional information about the ISSC should contact Kenneth Moore, Chairman, Interstate Shellfish Sanitation Conference, c/o South Carolina Department of Health and Environmental Control, 2600 Bull Street., Columbia, SC 29202.

FDA and the ISSC entered into a memorandum of understanding (MOU) in March 1984 (49 FR 12751, March 30, 1984). This agreement states, among other things, that FDA will provide technical assistance to the ISSC, including participating in the cooperative efforts of the Conference, to develop or revise program criteria and guidelines.

Based on the MOU, FDA developed draft revisions of the NSSP Manual of Operations, parts I and II, in cooperation with the ISSC. FDA announced the availability of the 1986 revision of part I on June 5, 1987 (52 FR 21375). The initial working draft of part II was made available for comment on September 11, 1985 (50 FR 37055), with a revised second draft being made available for further comment on July 11, 1986 (51 FR 25261). Based on the comments received, and in consideration of the comments and views on parts I and II expressed by State regulatory officials, industry representatives, and other interested parties at the ISSC 1987 and 1988 annual meetings in Austin, TX, and Denver, CO, respectively, FDA announced the availability of the 1988 revision of the completed Manual of Operations on February 17, 1989 (54 FR 7281). FDA announced the availability of the 1988 revision on April 25, 1990 (55 FR 17503).

Continuing with this successful alliance, FDA and the ISSC now announce the availability of the 1990 revision of the NSSP Manual of Operations, part I, "Sanitation of Shellfish Growing Areas" and part II, "Sanitation of the Harvesting, Processing, and Distribution of Shellfish." The 1990 revision contains changes and improvements to the NSSP considered and passed at the 1990 ISSC meeting held in Costa Mesa, CA.

The revised manual includes: (1) Newly adopted temperature

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requirements for shellfish and shellfish products shipped in interstate commerce; and (2) procedures for the closure of shellfish growing waters following an outbreak of foodborne illness related to shellfish. Major topics include: general administrative and laboratory procedures; growing area surveys and classification; contingency plans for the control of marine biotoxins; and the accepted sanitary procedures for the harvesting, handling, shucking, and packing of shellfish.

Dated: December 5, 1990.

Ronald G. Chesemore,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29100 Filed 12-12-90; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

[OPA-2-N]

## Medicare and Medicaid Programs, Freedom of Information (FOI) Guidelines

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** In accordance with the settlement agreement reached in the case of *Home Health Line* v. *HCFA*, District Court of District of Columbia, Civil Action (D.D.C., C.A.) No. 90-1006 LFO, HCFA is publishing in the **Federal Register** a notice describing and clarifying HCFA's guidelines concerning expedited processing of Freedom of Information (FOI) requests.

**FOR FURTHER INFORMATION CONTACT:** Rosario Cirrincione, (301) 966-5352.

**SUPPLEMENTARY INFORMATION:** As part of the settlement agreement in the case of *Home Health Line* v. *HCFA*, District Court of District of Columbia, Civil Action (D.D.C., C.A.) No. 90-1006 LFO, HCFA is required to publish in the **Federal Register** by December 13, 1990 a notice describing and clarifying HCFA's guidelines concerning expedited processing of Freedom of Information (FOI) requests, and to disseminate the notice to all relevant agency personnel.

The text of the notice, as set forth in the settlement agreement follows:

The Health Care Financing Administration ("HCFA") states, for the benefit of the public, its guidelines with respect to the order for processing requests under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, where the records sought are all HCFA records.

The HCFA Office of Public Affairs ("OPA") is the HCFA central office responsible for administering the FOIA. The authority for granting or denying FOIA requests for HCFA records is vested in the Director of OPA and his or her designee. When OPA receives a FOIA request for HCFA records, it refers that request to the unit(s) within HCFA that is most likely to have the requested records. When such a request is received by another unit within HCFA, that unit is to forward the request to OPA, except to the extent that the unit has, or obtains, authority to release the requested records directly to the requester, as discussed in the following two paragraphs.

Because of the large volume of FOIA requests that HCFA receives and processes annually, OPA has established a list of certain categories of documents that may be directly released to requesters by program offices (including HCFA central and regional office components and Medicare contractors). The documents on this list are requested frequently, and OPA has previously reviewed them and has determined that they do not need to be forwarded to OPA for further review.

When documents gathered in response to a request are determined to be "directly releasable" documents, the appropriate program office is authorized to release those items directly to the requester; it then forwards any remaining documents to OPA for processing in the normal order. In some cases, where a document seems clearly non-exempt but is not directly releasable, the program office may consult with OPA; if OPA determines that the document should be released, it may instruct the program office to release it rather than forward it to OPA. OPA reviews the records forwarded to it and makes the determination whether to release or deny, and it sends out the letter informing the requester of the decision and, when the request is denied in full or in part, of the requester's right to an administrative appeal.

For those requests that are processed by OPA, it processes them in the order in which it receives the responsive documents from the program office. OPA may make exceptions to this first-in/first-out practice, and expedite the processing of a request, on a case-by-case basis, where certain actors exist. These factors fall into two categories: "administrative circumstances" and "requester circumstances."

### Administrative Circumstances

There are certain administrative circumstances in which HCFA generally expedites the processing of a request. Typically, the reason is that the request can be processed (or partly processed) easily and quickly, so that there is no need to make the requester wait. These circumstances include the following:

(1) The records located in response to the request include records that have been designated as directly releasable documents. If the program office erroneously forwards directly releasable documents to OPA, then OPA may similarly expedite the processing of the directly releasable documents and leave any remaining documents for processing in the normal order. In making requests for records, requesters may identify a category of records of the same type and ask OPA to designate that category of records as directly releasable. Whether to so designate the category of records is in HCFA's sole discretion.

(2) The records located in response to the request include records that do not require review against the FOIA exemptions even though they have not been designated as directly releasable documents. Where OPA's initial examination of the records located in response to a request suggests that the records are all clearly not exempt under the FOIA, even though they are not designated for direct release, it may expedite the processing of the request. However, when only some of the documents gathered in response to a request are releasable without review, OPA will not necessarily expedite the processing because the mixed nature of the documents would still require a review to segregate them.

(3) OPA recognizes that all of the records located in response to the request are clearly protectible. There are certain categories of records that OPA, or the Department of Health and Human Services ("HHS") Office of the Assistant Secretary for Public Affairs, has determined will always be withheld in response to a FOIA request. When OPA receives a request limited to such records, it prepares an expedited response because staff review of the records is not required.

(4) The request is not processed under FOIA. Where a request would require creation of a record and does not seek existing records, or where the request asks for materials that are prepared specifically for public distribution by an HHS program office, the request is not processed under the FOIA, and OPA prepares a response in an expeditious manner.

(5) The request seeks records of other HHS components as well as those of HCFA. Where a request seeks records of other components in addition to HCFA records, the HHS FOI Officer is the official with the authority to determine whether to disclose or deny records, and with the overall responsibility for processing the request. When OPA receives such a request, either directly from the requester or on referral from the HHS FOI Officer, OPA performs its portion of the processing expeditiously, and submits to that official its recommendations concerning disclosure.

(6) OPA recognizes that all of the records have previously been the subject of review and determination by OPA. Where the file on the previous request is available, review of the documents may not be necessary.

(7) No documents are located in response to the request.

OPA may expedite processing of a request for similar administrative circumstances on a case-by-case basis.

### Requester Circumstances

Aside from the administrative circumstances as described above, HCFA follows its first-in/first-out practice for processing requests except where the requester demonstrates exceptional need or urgency.

There are three categories of requester circumstances which HCFA has determined frequently satisfy this criterion, and in these circumstances, it ordinarily expedites the processing of the request. The first is where disclosure of the records is necessary because there is a substantial showing of a danger to life, health, or safety. The second is where the requester needs the specific records in question to meet a deadline in litigation, either in a court or before an administrative tribunal. The third is where the requester needs the records in order to meet a deadline imposed by a governmental agency for commenting on a proposed regulation.

In any situation that does not fall within these three categories but where the requester believes that there is an exceptional need or urgency justifying expedited processing, the requester may ask for expedited processing and explain in writing how the circumstances constitute exceptional need or urgency. OPA will consider such expedited processing requests from any FOIA requester, including, but not limited to, representatives of the news media. OPA will consider such requests on a case-by-case basis, and will determine, and inform the requester, whether the request will be expedited. OPA can not determine or prescribe in advance which factors will be relevant in showing exceptional need or urgency in the case of a request by a representative of the news media, or in the case of a request by any other category of requester. OPA anticipates that in the case of requests by representatives of the news media, it will frequently consider any showing by the requester as to the nature and degree of the loss that will be suffered by the consumers of the news medium if processing is not expedited, and any such showing as to the degree of reliance by the consumers of the news medium. Representatives of the news media who request expedited processing may address these factors, where appropriate, and any other factors that may be appropriate. OPA will not treat any category of requester as automatically or presumptively entitled to such expedited processing.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; No. 93.774, Medicare—Supplemental Medical Insurance; and No. 93.778, Medical Assistance Program)

Dated: December 10, 1990.

Gail R. Wilensky,

*Administrator, Health Care Financing Administration.*

[FR Doc. 90-29297 Filed 12-12-90; 8:45 am]

BILLING CODE 4120-01-M



## Indian Health Service

## Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of technical assistance workshops for prospective IHS grantees.

**SUMMARY:** The Indian Health Service (IHS) announces that technical assistance workshops for the Tribal Management Grant Program to include grant proposal writing will be conducted for American Indian/Alaska Native Tribal Organizations as defined by Public Law 93-638, as amended.

**DATES:** Technical assistance workshops are scheduled for January 15-17, 1991, in Albuquerque, New Mexico and Sioux Falls, South Dakota; and January 29-31, 1991, in San Francisco, California and Billings, Montana.

**FOR FURTHER REGISTRATION INFORMATION CONTACT:** Beulah Bowman, Director, Division of Community Services, Office of Tribal Activities, room 6A-05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5840; M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, suite 6-03, 2101 E. Jefferson, Maxima Building, Rockville, Maryland 20852, (301) 443-5204. (These are not Toll-Free Numbers)

**SUPPLEMENTARY INFORMATION:** The Office of Tribal Activities, Division of Community Services; and Division of Acquisition and Grants Operations, Grants Management Branch will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: December 7, 1990.

Everett R. Rhoades,

*Assistant Surgeon General, Director.*

[FR Doc. 90-29250 Filed 12-12-90; 8:45 am]

BILLING CODE 4160-16-M

## Social Security Administration

## Agreement on Social Security Between the United States and the Netherlands; Entry into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and the Netherlands social security programs entered into force on November 1, 1990. The agreement with the Netherlands, which was signed on December 8, 1987, is similar to U.S. social security agreements already in force with 11 other countries—Belgium, Canada, France, Germany, Italy, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Netherlands agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Netherlands agreement, a worker who is sent by an employer in the United States to work in the Netherlands for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Netherlands coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided

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their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Netherlands benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, P.O. Box 17741, Baltimore, MD 21235.

Dated: December 5, 1990.

Gwendolyn S. King,

*Commissioner of Social Security.*

[FR Doc. 90-29130 Filed 12-12-90; 8:45 am]

BILLING CODE 4190-29-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3036; FR-2729-N-02]

### Funding Awards Under the Supportive Housing Demonstration Program and Transitional Housing Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** Under section 102(a)(4)(C) of the Department Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Supportive Housing Demonstration Program and the Transitional Housing Program. This announcement contains the names and addresses of the award winners and the amounts of the awards.

**FOR FURTHER INFORMATION CONTACT:** Mr. James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4300; for hearing and speech-impaired persons, (202) 708-2565. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Supportive Housing Demonstration Program (SHDP) was authorized by the Stewart B. McKinney Homeless Assistance Act of 1987. The purpose of the demonstration is to develop innovative approaches to providing housing and supportive services to the homeless, especially to deinstitutionalized homeless individuals, homeless families with children, homeless individuals with mental disabilities and other handicapped homeless persons. The demonstration consists of two programs: transitional housing, and permanent housing for the handicapped homeless.

### A. Permanent Housing for the Handicapped Homeless

On April 2, 1990, HUD published an announcement in the **Federal Register** (55 FR 12312) that notified the public of the availability of $15 million for the permanent housing for the handicapped homeless program. The funds are available for assistance in the form of: (1) Advances for acquisition and substantial rehabilitation, or acquisition and substantial rehabilitation of existing structures; (2) advances for new construction (under limited circumstances); (3) grants for moderate rehabilitation of existing structures; and (4) grants for annual operating costs and supportive services (up to two years).

The application deadline was July 2, 1990. A total of $15.3 million was awarded to applicants for 104 projects in 21 states.

Under section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and amounts of the awards made for the permanent housing for the handicapped homeless program, as follows:

*Alaska:*

Mat-Su Community Counseling Center
Anchorage, Alaska ..... $127,940.00
Central Peninsula Counseling Service
Kenai, Alaska ..... $150,270.00
Association for Retarded Citizens of
Anchorage, Alaska ..... $279,300.00
Contact: Ms. Myra M. Munson, Commissioner of Health and Social Services, Pouch H-01, Juneau, Alaska 99811; Telephone (907) 488-3030

*California:*

California Living Homes, Inc.,
Norwalk, California ..... $49,377.00
Interim, Inc., Salinas, California ..... $175,130.00
Bay Area Community Services, Inc.,
Pleasanton, California ..... $309,750.00
Housing for Independent People, Inc.,
Gilroy, California ..... $332,147.00
Educational Resource and Services
Center, Inc., Culver City,
California ..... $352,848.00
Baker Places, Inc., San Francisco,
California ..... $360,000.00
Contact: Ms. Maureen Higgins, Director, P.O. Box 952054, Sacramento, California 94252-2054; Telephone (916) 445-4775

*Georgia:*

Hall Family Initiative Residences, Inc.,
Cumming, Georgia ..... $262,275.00
Mental Health Association of Georgia,
Columbus, Georgia ..... $462,462.00
Contact: Mr. Henry M. Hackaby, Executive Director, 60 Executive Parkway South, Suite 250; Atlanta, Georgia 30329; Telephone (404) 320-4640

*Hawaii:*

Steadfast Housing Development
Corporation, Maui, Hawaii ..... $372,960.00
Contact: Mr. Joseph K. Conant, Executive Director, Seven Waterfront Plaza, No. 300; Honolulu, Hawaii 96813

*Illinois:*

Belleville Mental Health, Inc.,
Belleville, Illinois ..... $197,947.00
Pioneer Center of Mutteny County,
McHenry, Illinois ..... $307,223.00
Contact: Mr. Bobby J. Wilkerson, Acting Deputy Director, 401 William G. Stratton Building, Springfield, Illinois 62765

*Kansas:*

Bert Nash Community Mental Health
Center, Inc., Kansas ..... $108,534.00
Class, Ltd., Columbus, Kansas ..... $171,480.00
Contact: Mr. D.W. Zimmerman, Acting Secretary, 400 S.W. 8th Street, Suite 500, Topeka, Kansas 66603-3957

*Kentucky:*

Kentucky Housing Corporation,
Louisville, Kentucky ..... $20,633.00
Teresa Hatton Foundation, Frankfort,
Kentucky ..... $27,420.00
Schizophrenia Foundation, Kentucky,
Inc., Louisville, Kentucky ..... $37,611.00
Short-Long Term Residential Care,
Inc., Covington, Kentucky ..... $74,188.00
Contact: Mr. John G. Martinez, Executive Director, 1231 Louisville Road, Frankfort, Kentucky 40601; Telephone (502) 564-7630

*Massachusetts:*

Comprehensive Mental Health System,
Inc., North Dartmouth,
Massachusetts ..... $52,501.00
Comprehensive Mental Health
Systems, Inc., New Bedford,
Massachusetts ..... $180,013.00
Suffolk Mental Health Association,
Inc., Chelsea, Massachusetts ..... $249,273.00
Cambridge Housing Authority,
Cambridge, Massachusetts ..... $335,000.00
Vinfren Corporation, Brookline,
Massachusetts ..... $407,467.00
Contact: Ms. Marcia I. Lamb, Assistant Secretary for Housing, 100 Cambridge Street, 16th Floor, Boston, Massachusetts 02202; Telephone (617) 727-7130

*Maine:*

Shalom House, Inc., Portland, Maine
$182,365.00
Contact: Ms. Lynn Wachtel, Commissioner, 219 Capital Street, Augusta, Maine 04333; Telephone (207) 289-3554

*Michigan:*

David Reece Fund, Midland,
Michigan ..... $34,225.00
Saginaw Housing Commission,
Saginaw, Michigan ..... $78,742.00
Association for Retarded Citizens,
Owosso, Michigan ..... $115,849.00
Synod Residential Services, Monroe,
Michigan ..... $123,632.00
Community Homes, Inc., Southfield,
Michigan ..... $134,720.00
Contact: Mr. Terrence R. Duvernay, Executive Director, 401 S. Washington, Square, Lansing, Michigan 48909; Telephone 373-6022

*Missouri:*

Comprehensive Mental Health
Services, Inc., Missouri ..... $159,272.00
Contact: Dr. Keith Shafer, Director, P.O. Box 1643, Jefferson City, Missouri, 65102
S.A.V.E. Foundation, Kansas City,
Missouri ..... $57,477.00
Interfaith Network d/b/a Doorways,
St. Louis, Missouri ..... $204,338.00
Contact: Dr. John R. Bagby, Director, Missouri Department of Health, 1730 East Elm, Jefferson City, Missouri, 65102; Telephone (314) 751-6001

*New Hampshire:*

Central New Hampshire Community
Mental Health Services, New
Hampshire ..... $5,488.00
William J. Moore Regional Services,
Inc., Manchester, New
Hampshire ..... $31,974.00
Seacoast Mental Health Center,
Portsmouth ..... $113,983.00
Strafford Guidance Center, Inc., Dover,
New Hampshire ..... $217,080.00
Harber Homes, Inc., Nashua, New
Hampshire ..... $488,178.00
Contact: Mr. Donald L. Schumway, Director, 105 Pleasant Street, Concord, New Hampshire 03301; Telephone (603) 271-5007

*New Jersey:*

Association for Advancement of the
Mentally Handicapped, Elizabeth,
Plainfield and Roselle, New
Jersey ..... $1,175,475.00
Contact: Mr. Melvin R. Primas, Jr., Commissioner, 101 South Broad Street, Trenton, New Jersey 08625-0051

*New York:*

Mercy Haven, Inc., Amityville, New
York ..... $251,754.00
Argus Community, Inc., Bronx, New
York ..... $436,180.00
Northern Manhattan Improvement
Corporation, New York, New
York ..... $955,775.00
West Side Federation for Senior
Housing, Inc., New York, New
York ..... $1,172,705.00
Contact: Mr. Peter R. Brest, Action Associate Commissioner, 40 North Pearl Street 16-A, Albany, New York 12243; Telephone (212) 804-1295

*Ohio:*

The Community Action Program,
Marietta, Ohio ..... $70,337.00
Del-Mor Dwellings Corporation,
Delaware, Ohio ..... $138,132.00
AIDS Housing Council of Greater
Cleveland, Cleveland, Ohio ..... $172,422.00
Contact: Ms. Roberta F. Garber, Deputy Director, 77 South High Street, Columbus, Ohio 43266-0101; Telephone (614) 466-5603

*Rhode Island*

Blackstone Valley Chapter, Pawtucket,
Rhode Island ..... $207,498.00
Contact: Mr. Charles R. Masolillo, Director, State House, Providence, Rhode Island 02903; Telephone (401) 277-2850

*Texas:*

Austin Travis County Mental Health
Center, Austin, Texas ..... $110,323.00
Contact: Mr. Willie Scott, Executive Director, 8317 Cross Park Drive, Austin, Texas 78754-5134; Telephone (512) 834-6010

*Utah:*

Provo City Housing Authority, Provo,
Utah ..... $90,247.00
Contact: Ms. Alice Shearer, Director, 324 South State Street, Salt Lake City, Utah 84111; Telephone (801) 538-0723

*Virginia:*

Community Alternatives Management
Group, Inc., Virginia Beach,
Virginia ..... $1,680,000.00
Robert E. Rose Memorial Foundation,
Inc., Winchester, Virginia ..... $53,724.00
Presbyterian Home and Family
Services, Inc., Fredericksburg,
Virginia ..... $147,000.00
Pleasant View Homes, Inc., Harrisburg,
Virginia ..... $343,696.00
Contact: Mr. Neal J. Barber, Director, 205 North 4th Street, Richmond, Virginia 23319-1747; Telephone (804) 780-1575

*Washington:*

Community Psychiatric Clinic, Seattle,
Washington ..... $142,613.00
Community Psychiatric Clinic, Seattle,
Washington ..... $173,552.00
Community Home Health Care,
Seattle, Washington ..... $313,707.00
Contact: Mr. Chuck Clark, Director, Ninth and Columbia Bldg., MS: GH-51, Olympia, Washington 98504-4151

*Wisconsin:*

South Community Organization,
Milwaukee, Wisconsin ..... $232,349.00
The Ranch, Inc., Menomonee Falls,
Wisconsin
Contact: Mr. Tommy G. Thompson, Governor, One South Pinckney Street, Suite 500, Madison, Wisconsin 53701-1728; Telephone (608) 266-1212

### B. Transitional Housing

On March 5, 1990, HUD published an announcement in the **Federal Register** (55 FR 7872) that informed the public of the availability of $115 million for transitional housing. The funds are available for assistance in the form of: (1) Advance acquisition, substantial rehabilitation, or acquisition and substantial rehabilitation of existing structures; (2) advances for new construction (under limited circumstances); (3) grants for moderate rehabilitation of existing structures; (4) grants for annual operating costs and supportive services costs (up to five years); (5) grants for establishing and operating employment assistance programs (up to five years).

The application deadline was May 21, 1990. A total of $119.5 million was awarded to applicants for 143 projects.

Under section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names, addresses, and amounts of the awards for transitional housing as follows:

*Alaska:*

Women's Resource and Crisis Center,
Kenai, Alaska ..... $460,688.00
Contact: Ms. Joanne F. Lopez, Executive Director, 315 S. Spruce Street, Kenai, Alaska 99611; Telephone: (907) 283-9479
Mat-Su Community Mental Health
Services, Inc., Wasilla, Alaska
$478,161.00
Contact: Mr. Robert Irvine, Executive Director, 230 East Paulson, Suite 68, Wasilla, Alaska 99687; Telephone: (907) 376-2411

*Arkansas:*

Our House, Inc., Little Rock,
Arkansas ..... $1,006,273.00
Contact: Mr. Joe Flaherty, Executive Director, 822 South Louisiana Street, Little Rock, Arkansas 72201; Telephone: (501) 375-2416
Counseling Associate, Inc.,
Russellville, Arkansas ..... $2,482,180.00
Contact: Ms. Mary A. Schreiber, Executive Director, 110 Skyline Drive, Russellville, Arkansas 72801; Telephone: (501) 968-1256

*Arizona:*

Phoenix South Community Mental
Health Centers, Phoenix, Arizona
$1,139,541.00
Contact: Mr. Steve B. Scott, Ph.D., Executive Director, 1424 South 7th Avenue, Phoenix, Arizona; Telephone: (602) 257-9339

*California:*

Contra Costa County, Concord,
California ..... $2,197,318.00
Contact: Mr. James A Rydingsword, Director, Social Service Department, P.O. Box 5466, Concord, California 94524; Telephone: (415) 646-5100
Alpha Project, El Cajon, California
$2,496,875.00
Contact: Mr. Robert McElroy, Executive Director, 154 Rea Street, El Cajon, California 92020; Telephone: (619) 579-7119
St. Clare's Home, Inc., Escondido,
California ..... $630,414.00
Contact: Sister Clare Frawley, Executive Director, 2302 South Orange Street, Suite 120, Escondido, California 92025; Telephone: (619) 741-0122
Fresno Young Women's Christian
Association, Fresno, California
$392,744.00

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Contact: Ms. Jody Palmer, Executive Director, 1600 M. Street, Fresno, California 93721; Telephone: (209) 237-4706

The Salvation Army, A California Corporation, Glendale, California ..... $254,170.00

Contact: Lt. David P. Riley, Divisional Commander, 801 South Central Avenue, Glendale, California 91204; Telephone: (213) 627-5571

Bethlehem House Project, Inc., Highland, California ..... $422,692.00

Contact: Ms. Clare Lord, Chief Executive Director, 29803 Canal Street, Highland, California 92346; Telephone: (714) 862-9027

Innovative Housing for Community, Larkspur, California ..... $766,928.00

Contact: Ms. Anne Howell, Executive Director, 325 Doherty Drive, Larkspan, California 94939; Telephone: (415) 924-6600

The Salvation Army; A California Corporation, Los Angeles, California ..... $2,307,615.00

Contact: Mr. David P. Riley, Divisional Commander, 900 West 9th Street, Los Angeles, California 90015-0699; Telephone: (213) 627-5571

Gay and Lesbian Community Services, Los Angeles, California ..... $2,229,633.00

Contact: Ms. Torie Osborn, Executive Director, 1213 N. Highland Avenue, Los Angeles, California 90038-1292; Telephone (213) 464-7400

The Bridge Counseling Center, Inc., Morgan Hill, California ..... $235,171.00

Contact: Mr. Armando X. Mendoza, Executive Director P.O. Box 546, Morgan Hill, California 95038-0546; Telephone (408) 779-5773

L.A. Family Housing Corporation, North Hollywood, California ..... $2,380,345.00

Contact: Mr. Arnold Stalk, Executive Director, 7843 Lankershim Boulevard, North Hollywood, California; Telephone: (818) 982-4091

Hope Housing Development Corporation, Oakland, California ..... $1,552,039.00

Contact: Dr. Ernestine C. Reese, President, P.O. Box 5370, Oakland, California 94605; Telephone: (415) 568-5716

Diocese of San Diego Education and Welfare Corp., San Diego, California ..... $2,138,074.00

Contact: Rev. Joseph A. Carroll, President, 1501 Imperial Avenue, San Diego, California 92101

San Diego Youth and Community Services, San Diego, California ..... $311,250.00

Contact: Ms. Liz Shear, Executive Director, 3878 Old Town Avenue, Suite 200 B, San Diego, California 92110; Telephone: (619) 297-3310

Housing for Independent People, Inc., San Diego, California ..... $304,942.00

Contact: Mr. Al Diludovico, Executive Director, 25 East Hedding Street, San Jose, California 95112; Telephone: (408) 294-9750

Emergency Housing Consortium, San Jose, California ..... $1,060,750.00

Contact: Mr. Bary Del Buono, Executive Director, P.O. Box 2348, San Jose, California 95109; Telephone: (408) 298-9657

Marin Abused Women's Services, San Rafael, California ..... $558,987.00

Contact: Ms. Donna Carske, Executive Director, 1717 Fifth Avenue, San Rafael, California 94901; Telephone: (415) 457-2464

*Colorado*

Mental Health Housing Corporation of Denver, Denver, Colorado ..... $1,130,418.00

Contact: Ms. Sandra B. Goldhaber, President, 455 Sherman Street, Suite 460, Denver, Colorado 80203; Telephone (303) 777-1443

Family Tree, Inc., Wheat Ridge, Colorado ..... $511,400.000

Contact: Mr. Paul N. Alison, President-Elect Board of Directors, 3805 Marshall Street, #100, Wheat Ridge, Colorado 80033; Telephone: (303) 422-2133

*Connecticut*

Friendship Service Center of New Britain, Inc., New Britain, Connecticut ..... $962,500.00

Contact: Ms. Maria R. Simao, Executive Director, P.O. Box 1611, New Britain, Connecticut 06050; Telephone (203) 225-0211

*Delaware*

Ministry of Caring, Inc., Wilmington, Delaware ..... $351,744.00

Contact: Mr. Ronald Giannone, Executive Director, 506 N. Church Street, Wilmington, Delaware 19801; Telephone: (302) 652-5523

*District of Columbia*

Marshall Community Development, Washington, DC ..... $725,251

Contact: Mr. Lloyd D. Smith, Executive Director, 3017 Minnesota Avenue, NE., Washington, DC 20019; Telephone: (202) 398-1200

Community Family Life Services, Washington, DC ..... $856,533.00

Contact: Rev. Thomas J. Knoll, Executive Director, 305 E. Street, N.W., Washington, DC 20001; Telephone: (202) 347-0511

The D.C. Coalition for the Homeless, Washington, DC ..... $1,228,930.00

Contact: Ms. Jack M. White, Executive Director, 2824 Sherman Avenue, NW., Washington, D.C. 20001; Telephone: (202) 328-1184

*Florida*

Alachua County Housing Authority, Gainsville, Florida ..... $1,552,499.00

Contact: Mr. Gail Monahan, Executive Director, 636 Northeast 1st Street, Gainesville, Florida 32601; Telephone: (904) 373-2549

YWCA of Jacksonville, Jacksonville, Florida ..... $1,200,000.00

Contact: Ms. Sandra W. Beard, Chief Executive Officer, 325 East Duval Street, Jacksonville, Florida 32202; Telephone: (904) 390-2298

The Salvation Army/A Georgia Corporation, Lakeland, Florida ..... $339,014.00

Contact: Mr. Wesley Faulkner, Treasurer, 630 N. Massachusetts Avenue, Lakeland, Florida 33802-0662; Telephone: (813) 682-8179

Anchorage Children's Home of Bay Co., Panama City, Florida ..... $437,913.00

Contact: Ms. Barbara A. Cloud, Executive Director, 707 North Cove Boulevard, Panama City, Florida 32401; Telephone: (904) 763-7102

The Salvation Army, Tampa Area Command, Tampa, Florida ..... $1,073,815.00

Contact: Mr. Wesley Faulkner, Treasurer, 1603 Florida Avenue, Tampa, Florida 33602-2614; Telephone: (813) 223-3781

*Georgia*

Progress Point, Inc. dba Bright Beginnings, Atlanta, Georgia ..... $1,230,714.00

Contact: Ms. J. M. George, Executive Director, 786 Confederate Avenue, Southeast, Atlanta, Georgia 30312; Telephone: (404) 627-1750

Child Service and Family Counseling Center, Inc., Atlanta, Georgia ..... $845,585.00

Contact: Mr. Robert M. Weaver, Executive Director, 1105 West Peachtree Street, Northeast, Atlanta, Georgia 30357; Telephone: (404) 853-2300

Saint Jude's House, Inc., Atlanta, Georgia ..... $914,257.00

Contact: Ms. Marjorie Bush, Executive Director, 95 Renaissance Parkway, Atlanta, Georgia 30308; Telephone: (404) 874-2224

Comprehensive Addition Rehabilitation Programs of Georgia, Inc., Decatur, Georgia ..... $1,279,940.00

Contact: Mr. John W. Malone, President, 2145 Candler Road, Decatur, Georgia 30032; Telephone: (404) 284-5129

Chatham County Board of Health, Savannah, Georgia ..... $304,273.00

Contact: Dr. Richard I. Stalman, District Health Director, P.O. Box 23407, Savannah, Georgia 31403-3407; Telephone: (912) 356-2108

*Hawaii*

Institute for Human Services, Honolulu, Hawaii ..... $691,892.00

Contact: Mr. Richard Rowe, Managing Director, 350 Sumner Street, Honolulu, Hawaii 96817; Telephone: (808) 537-4944

Steadfast Housing Development Corp., Honolulu, Hawaii ..... $840,050.00



Contact: Mr. Marvin B. Awaya, Executive Director, 677 Ala Moana Boulevard, Suite 506, Honolulu, Hawaii 96813; Telephone: (808) 599-6230

Steadfast Housing Development Corp., Honolulu, Hawaii ..... $840,050.00

Contact: Mr. Marvin B. Awaya, Executive Director, 677 Ala Moana Boulevard, Suite 506, Honolulu, Hawaii 96813; Telephone: (808) 599-6230

Steadfast Housing Development Corp., Honolulu, Hawaii ..... $840,050.00

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Steadfast Housing Development Corp., Honolulu, Hawaii ..... $840,050.00

Contact: Mr. Marvin B. Awaya, Executive Director, 677 Ala Moana Boulevard, Suite 506, Honolulu, Hawaii 96813; Telephone: (808) 599-6230

*Iowa*

Hawkeye Area Community Action Program, Inc., Cedar Rapids, Iowa ..... $2,071,242.00

Contact: Mr. Don Maniccia, Executive Director, P.O. Box 789, Cedar Rapids, Iowa 52406; Telephone: (319) 366-7631

*Illinois*

Community and Economic Development Association of Cook County, Inc., Chicago, Illinois ..... $28,875.00

Contact: Mr. Charles D. Hughes, Jr., Executive Director, 224 North Des Plaines Street, Chicago, Illinois 60606; Telephone: (312) 207-5444

Casa Central, Chicago, Illinois ..... $184,519.00

Contact: Ms. Ann R. Alvarez, President, 1401 N. California Avenue, Chicago, Illinois 60622; Telephone: (312) 276-1902

Methodist Youth Services, Inc., Chicago, Illinois ..... $516,432.00

Contact: Dr. H. F. Brown, Ph.D., Executive Director, P.O. Box 17319, Chicago, Illinois 60617; Telephone: (312) 728-1616

The Barnabas Project, Chicago, Illinois ..... $289,419.00

Contact: Ms. Mary N. Bruce, Executive Director, P.O. Box 17319, Chicago, Illinois 60617; Telephone: 698-2614

Adult Community Outreach Network, Evanston, Illinois ..... $1,504,758.00

Contact: Mr. E. V. Gordy, III, Board President, 909 Foster Street, Evanston, Illinois 60201; Telephone: (708) 491-0434

Catholic Charities, Diocese of Joliet, Illinois, Joliet, Illinois ..... $290,100.00

Contact: Ms. Mary Ellen Durbin, Director of Emergency Services, 411 Scott Street, Joliet, Illinois 60432; Telephone: (708) 485-2008

Youth Services Network, Inc., Rockford, Illinois ..... $1,230,800.00

Contact: Ms. Arlene jackson, Executive Director, 4302 N. Main Street, Rockford, Illinois 61213; Telephone: (815) 987-7575

City of Urbana, Urbana, Illinois ..... $194,244

Contact: May. Jeffrey T. Markland, Mayor, 400 South Vine Street, Urbana, Illinois 61801; Telephone: (217) 384-2456

*Indiana*

South Central Community Mental Health Centers, Inc., Bloomington, Indiana ..... $1,269,000.00

Contact: Mr. John L. Werner, Ed.D., Executive Director, 945 South Rogers Street, Bloomington, Indiana 47403-2353; Telephone: (812) 339-1691

The Salvation Army/An Illinois Corporation, Indianapolis, Indiana ..... $812,182.00

Contact: Col. Edward J. Johnson, Chief Secretary, 540 North Alabama Street, Indianapolis, Indiana 46204-1507; Telephone: (312) 440-4600

Lafayette Transitional Housing Center, Inc., Lafayette, Indiana ..... $300,850.00

Contact: Mr. Paul Shireman, President, 118 North 8th Street, Lafayette, Indiana 47901; Telephone: (317) 743-4852

Community Mental Health Center, Inc., Lawrenceburg, Indiana ..... $1,966,381.00

Contact: Mr. Joseph D. Stephens, Executive Director, 285 Bielby Road, Lawrenceburg, Indiana 47025; Telephone: (812) 537-1302

*Kentucky*

Chrysalis House, Lexington, Kentucky ..... $724,148.00

Contact: Ms. Cornelia Vaughan, President of the Board, 251 East Maxwell Street, Lexington, Kentucky 40508; Telephone: (606) 253-8690

St. Vincent DePaul Society, Louisville, Kentucky ..... $200,895.00

Contact: Mr. Paul J. Willenbrink, Executive Director, 1015-C South Preston Street, Louisville, Kentucky 40203; Telephone: (502) 584-2450

Home of the Innocents, Inc., Louisville, Kentucky ..... $626,640

Contact: Mr. David A. Graves, Executive Director, 485 East Gay Street, Louisville, Kentucky 40202; Telephone: (502) 561-6600

*Louisiana*

Volunteers of America, Greater Baton Rouge, Inc., Baton Rouge, Louisiana ..... $410,565.00

Contact: Mr. William M. Coffey, Chief Executive Officer, 144 Maxmillian Street, Baton Rouge, Louisiana 70802; Telephone: (504) 387-0061

*Massachusetts*

Pine Street Inn, Inc., Boston, Massachusetts ..... $3,387,139.00

Contact: Mr. Ralph W. Hughes, Assistant Executive Director, 444 Harrison Avenue, Boston, Massachusetts 02118; Telephone: (617) 482-4944

Valley Programs, Inc., Northampton, Massachusetts ..... $946,935.00

Contact: Ms. Susan L. Stubbs, Executive Director, 129 King Street, Northampton, Massachusetts; Telephone: (413) 584-7329

*Maryland*

State of Maryland, Annapolis, Maryland ..... $1,880,208.00

Contact: Ms. Jacqueline H. Rogers, Secretary DHCD, 45 Calvert Street, Annapolis, Maryland 21401-1907; Telephone: (301) 974-3176

Prince George's County Government, Hyattsville, Maryland ..... $798,745.00

Contact: Ms. Mary Godfrey, Dep. Chief Admin. Officer, 6111 Ager Road, Hyattsville, Maryland 20782; Telephone: (301) 952-3620

Housing Opportunities Commission of Montgomery County, Kensington, Maryland ..... $1,305,650.00

Contact: Mr. Melvin J. Adams, Acting Executive Director, 10400 Detrick Avenue, Kensington, Maryland 20895; Telephone: (301) 933-9750.

*Maine*

Young Women's Christian Association of Portland, Maine, Inc., Portland, Maine ..... $782,813.00

Contact: Ms. Elizabeth H. Hunt, President, Board of Directors, 87 Spring Street, Portland, Maine 04101; Telephone: (207) 874-1130

Community Concepts, Inc., South Paris, Maine ..... $512,676.00

Contact: Mr. Matthew M. Smith, Director of Administration, P.O. Box 278, South Paris, Maine 04281; Telephone: (207) 743-7716

*Michigan*

Coalition on Temporary Shelter (COTS), Detroit, Michigan ..... $842,476.00

Contact: Ms. Peggy Posa, Executive Director, 28 Peterboro, Detroit, Michigan 48201; Telephone (313) 831-0521

YWCA of Greater Flint, Flint, Michigan ..... $933,844.00

Contact: Ms. Charlotte L. Williams, President, 310 East Third Street, Flint, Michigan 48502; Telephone: (313) 238-7821

Dwelling Place of Grand Rapids, Inc., Grand Rapids, Michigan ..... $734,179.00

Contact: Mr. Larry L. Bratschie, Board President, 363 South Division Avenue, Grand Rapids, Michigan 49503; Telephone: (616) 454-0928

Center for Women in Transition, Holland, Michigan ..... $472,032.00

Contact: Ms. Madlyn Perkins, Executive Director, 304 Garden Avenue, Holland, Michigan 49424; Telephone: (616) 392-2829

Salvation Army Michigan Division, Southfield, Michigan ..... $1,240,314.00

Contact: Lt. Clarence W. Harvey, Lt. Col., Divisional Commander, 16130 Northland Drive, Southfield, Michigan 48075; Telephone: (313) 443-5500.

*Minnesota*

Union City Mission, Inc., Plymouth, Minnesota ..... $122,535.00

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Contact: Ms. Patricia J. Murphy, Executive Director, 3409 E. Medicine Lake Blvd., Plymouth, Minnesota 55441

*Missouri*

Families Assisted in Transitional Housing Inc., Clinton, Missouri $436,783.00

Contact: Mr. Grover Parks, Board Secretary, 1007–1011 South Second, Clinton, Missouri 55441; Telephone: (816) 885–5853

Economic Security Corporation of S.W. Area, Joplin, Missouri $446,165.00

Contact: Mr. Daryl Andrews, Executive Director, P.O. Box 207, Joplin, Missouri 64803–0207; Telephone: (417) 781–0352

The Salvation Army, St. Louis, Missouri $506,023.00

Contact: Major M. L. McLaren, General Secretary, 10740 Page Boulevard, St. Louis, Missouri 63132; Telephone: (314) 533–6667

Pine Belt Mental Health and Retardation Services, Hattiesburg, Missouri $186,000

Contact: Dr. Charles Main, Ph.D., Executive Director, P.O. Box 1030, Hattiesburg, Missouri 39401; Telephone: (601) 544–4641

*Montana*

Poverello Center, Inc., Missoula, Montana $492,634.00

Contact: Sis. Anne Kovis, S.P., Director, P.O. Box 7644, Missoula, Montana 59802; Telephone: (406) 728–1809

*North Carolina*

Durham Presbyterian Council, Durham, North Caroline $492,634.00

Contact: Rev. Haywood Holderness, Treasury, Durham Presbyterian Cou./ Comm., P.O. Box 51404, Durham, N.C. 27717–1404; Telephone: (919) 489–4974

City of Raleigh, Raleigh, North Carolina L$536,814.00

Contact: Mr. Dempsey E. Benton, City Manager, P.O. Box 590, Raleigh, North Carolina 27602; Telephone: (919) 890–3170

*North Dakota*

Fargo-Moorhead YWCA, Fargo, North Dakota $347,161.00

Contact: Ms. Jan Gabriel, Executive Director, 1616 12th Avenue North, Fargo, North Dakota 58102; Telephone: (701) 232–2347

Family Crisis Shelter, Williston, North Dakota $50,400.00

Contact: Ms. Janet Zander, President, FACs, Box 1853, Williston, North Dakota 58801; Telephone: (701) 572–0757

*Nebraska*

Lincoln Lancaster Drug Projects, Inc., Lincoln, Nebraska $1,804,978.00

Contact: Ms. Valdeen Nelson, Executive Director, 3200 "O" Street, Suite 1, Lincoln, Nebraska 68503; Telephone: (402) 475–5161

Catholic Social Services, Lincoln, Nebraska $420,951.00

Contact: Father Thomas L. Holoman, Executive Director, 335 North 27th Street, Lincoln, Nebraska 68503; Telephone: (402) 474–1600

*New Jersey*

C/O Concerned Families for Improved Mental Health, Inc., East Orange, New Jersey $1,497,926.00

Contact: Mr. Richard McDonnell, Consultant, 424 Main Street, East Orange, New Jersey 07017; Telephone: (609) 924–7174

Association for Advance of the Mentally Handicapped, Elizabeth, New Jersey $257,250.00

Contact: Mr. Sidney Blanchard, Executive Director, 60 Prince Street, Elizabeth, New Jersey 07208; Telephone: (201) 354–3040

Bergen County Community Action Program, Inc., Hackensack, New Jersey $862,465.00

Contact: Mr. Robert F. Halsh, Jr., Executive Director, 214 State Street, Hackensack, New Jersey 07601; Telephone: (201) 488–5100

Bonnie Brae, Millington, New Jersey $1,789,754.00

Contact: Dr. Susan G. Roth, Executive Director, Valley Road, Millington, New Jersey 07946; Telephone: (201) 647–0680

New Community Harmony House Corp., Newark, New Jersey $464,137.00

Contact: Ms. Jeanette Page-Hawkins, Administrator, 278–282 South Orange Avenue, Newark, New Jersey 07103; Telephone: (201) 623–8555

Alternatives, Inc., Somerville, New Jersey $775,152.00

Contact: Ms. Nancy Good, President, P.O. Box 338, Somerville, New Jersey 08876–0338; Telephone: (201) 685–1444

N.J. Department of Community Affairs, Trenton, New Jersey $452,481.00

Contact: Mr. Roy Ziegler, Chief, 101 South Board Street—CN 051, Trenton, New Jersey 08625–0051; Telephone: (609) 633–6150

*Nevada*

Women's Development Center, Las Vegas, Nevada $516,033.00

Contact: Ms. Barbara Buckley, Member, Executive Board, 2002 10th Street, Las Vegas, Nevada 89104; Telephone: (702) 386–1059

Committee to Aid Abused Women, Sparks, Nevada $780,769.00

Contact: Ms. Joni A. Kaiser, Executive Board, CAAW, 101 15th Street, Sparks, Nevada 89431; Telephone: (702) 358–4150

*New York*

Albany Housing Coalition, Inc., Albany, New York $337,929.00

Contact: Ms. Gloria C. Wexler, Executive Director, 151 Clinton Avenue, Albany, New York 12210; Telephone: (518) 465–3251

Steuben Churchpeople Against Poverty, Inc., Bath, New York $199,426.00

Contact: Ms. Lynn Reid Perkins, Executive Director, 106 Liberty Street, Bath, New York 14810; Telephone: (607) 776–7684

BASICS, Inc., Bronx, New York $2,166,120.00

Contact: Ms. Carmello Zumatto, Executive Director, 1466 Stadium Avenue, Bronx, New York 10465; Telephone: (212) 589–1096

Fordham Bedford Housing Corp., Bronx, New York $321,686.00

Contact: Mr. John J. Janik, President, 2751 Grand Concourse, Bronx, New York 10468; Telephone: (212) 367–3200

People, Services to the Developmentally Disabled, Inc., Buffalo, New York $883,037.00

Contact: Mr. James M. Boles, Ed.D., Executive Director, 737 Delaware Avenue, Buffalo, New York 14209; Telephone: (716) 883–4444

Elmcor Youth & Adult Activities, Inc., East Elmhurst, New York $747,300.00

Contact: Ms. Elwanda Young, Executive Director, 98–04 Astoria Boulevard, East Elmhurst, New York 11369; Telephone: (718) 446–6010

Fountain House, Inc., New York, New York $1,386,771.00

Contact: Mr. James R. Schmidt, Executive Director, 425 West 47th Street, New York, New York 10036; Telephone: (212) 582–0876

Phase: Piggy Back, Inc., New York $1,856,895.00

Contact: Mr. Abukarriem Shabazz, Executive Director, 507 West 145th Street, New York, New York 10031; Telephone: (212) 234–1660

BRC Human Services Corp., New York, New York $1,931,737.00

Contact: Mr. Eric Roth, Acting Executive Director, Acting Executive Director, 191 Chrystie Street, New York, New York 10002; Telephone: (212) 533–5700

Homes Away from Home, New York, New York $330,750.00

Contact: Mr. Ralph Nunez, President, 44 Cooper Square, Suite 3R, New York, New York 10003; Telephone: (212) 529–5252

Volunteers of America of Western N.Y., Rochester, New York $343,715.00

Contact: Ms. Loretta Darling, CEO/President, 175 Ward Street, Rochester, New York 14605; Telephone: (719) 454–1150

*Ohio*

Tom Geiger Guest House, Inc., Cincinnati, Ohio $297,791.00

Contact: Mr. Thomas Bokenkotter, Acting Director, 2631 Gilbert Avenue, Cincinnati, Ohio 45206; Telephone: (513) 961–3242

New Life Youth Services, Inc., Cincinnati, Ohio $1,388,228.00

Contact: Mr. Robert C. Mecum, Executive Director, 6128 Madison Road, Cincinnati, Ohio 45227; Telephone: (513) 561–0100

Community Action Commission of Fayette County, Washington, Ohio $205,899.00



Contact: Mr. Jack M. Hagerty, Executive Director, 324 East Court Street, Washington, Ohio 43160; Telephone: (614) 335–7282

*Oklahoma*

Peachtree Landing, Inc., Ponca City, Oklahoma $63,172.00

Contact: Mr. Matt Auld, President, 105 West Hazel, Ponca City, Oklahoma 75601; Telephone: (405) 762–3208

Mental Health Association in Tulsa, Inc., Tulsa, Okiahoma $463,306.00

Contact: Ms. Sharon Bartlett, President, 1502 South Denver, Tulsa, Oklahoma 74106; Telephone: (918) 492–5135

*Oregon*

Coast Rehabilitation Service, Astoria, Oregon $496,279.00

Contact: Mr. Mark Terranova, Executive Director, 340 15th Street, Astoria, Oregon 97103; Telephone: (503) 325–7059

Housing Authority of County of Clackamas, Inc., Oregon City, Oregon $458,243.00

Contact: Ms. Susan Wagner, Executive Director, 13930 South Gain, Oregon City, Oregon 97045; Telephone: (503) 655–8267

Central City Concern, Inc., Portland, Oregon $1,419,010.00

Contact: Ms. Deborah J. Wood, Executive Director, 709 Northwest Everett, Portland, Oregon 97209; Telephone: (503) 294–1661

*Pennsylvania*

Trevor's Campaign, Inc., Ardmore, Pennsylvania $729,620.00

Contact: Ms. Karen J. Miller, Ph.D., Executive Director, 137–139 East Spring Avenue, Ardmore, Pennsylvania 19003; Telephone: (215) 642–6452

Hospitality House Services for Women, Inc., Erie, Pennsylvania $340,833.00

Contact: Ms. Linda L. King, Executive Director, P.O. Box 1436, Erie, Pennsylvania 16512; Telephone: (814) 455–1774

Council on Chemical Abuse, Reading, Pennsylvania $367,286.00

Contact: Mr. George J. Vogel, Jr., Executive Director, 220 North 5th Street, Reading, Pennsylvania 19601; Telephone: (215) 376–8669

*Puerto Rico*

Municipality of Aguadilla, Aguadilla, Puerto Rico $1,116,937.00

Contact: Mr. Ramon C. Bermudez, Mayor, P.O. Box 520 V.S., Aguadilla, Puerto Rico 00605; Telephone: (809) 891–3955

*South Carolina*

Berkeley-Charleston-Dorchester Regional Development Corp., Charleston, South Caroline $515,015.00

Contact: Mr. Thomas L. Hansen, Executive Director, Business & Technology Center I–548, 701 East Bay Street, Charleston, South Carolina 29403; Telephone: (803) 577–8390

*Tennessee*

The Salvation Army, Nashville, Tennessee $1,511,882.00

Contact: Mr. Wesley Faulkner, Treasurer, 114 North First Street, Nashville, Tennessee 37213; Telephone: (615) 242–0411

*Texas*

City of Amarillo, Amarillo, Texas $32,445.00

Contact: Mr. John Q. Ward, City Manager, P.O. Box 1971, Amarillo, Texas 79186; Telephone: (806) 378–3011

Phoenix House, Inc., Dallas, Texas $629,452.00

Contact: Ms. Melodie Clemons, Executive Director, 722 1/2 Tenison Memorial, Dallas, Texas 75223; Telephone: (214) 821–7036

City of El Paso, Texas, El Paso, Texas $761,250.00

Contact: Ms. Suzanne Azar, Mayor, #2 Civic Center Plaza, El Paso, Texas 79901; Telephone: (915) 541–4145

Paraclete Foundation, Houston, Texas $811,660.00

Contact: Ms. Thelma Tapiador, R.N., Executive Director, 9611 Marlive Lane, Houston, Texas 77025; Telephone: (713) 664–0902

City of San Antonio, San Antonio, Texas $1,246,763.00

Contact: Mr. Kevin C. Moriarty, Director, P.O. Box 839966, San Antonio, Texas 78283–3966; Telephone: (512) 299–7200

*Utah*

Your Community Connection of Ogden, Ogden, Utah $363,852.00

Contact: Ms. Gaye D. Littleton, Executive Director, 2261 Adams Avenue, Ogden, Utah 84401; Telephone: (801) 394–9456

*Virginia*

Fairfax County Department of Human Development, Fairfax, Virginia $1,400,100.00

Contact: Ms. Suzanne C. Menzo, Director, 10680 Main Street, Fairfax, Virginia 22030; Telephone: (804) 218–2909

Virginia Beach Community Development Corp., Virginia Beach, Virginia $786,971.00

Contact: Ms. Mary K. Horoszewski, Executive Director, 397 Little Neck Road, 3300 Bldg., Suite 202, Virginia Beach, Virginia 23452; Telephone: (804) 463–6616

*Washington*

Housing Hope, Everett, Washington $220,523.00

Contact: Ms. Amy Youngstrom, Board President, P.O. Box 7823, Everett, Washington 98201; Telephone: (206) 258–2314

Kent Valley Youth Services, Kent, Washington $360,726.00

Contact: Mr. Hans M. Rasmussen, Executive Director, 232 2nd Avenue Suite 201, Kent, Washington 98032; Telephone: (206) 859–0300

Pathways for Women, Lynnwood, Washington $676,560.00

Contact: Ms. Anne Gordon, Executive Director, P.O. Box 5627, Lynnwood, Washington 98046; Telephone: (206) 774–9542

Lutheran Compass Center, Seattle, Washington $60,546.00

Contact: Ms. Pat Champion, President of the Board, 77 South Washington, Seattle, Washington 98104; Telephone: (206) 441–1925

Catholic Community Services, Seattle, Washington $866,425.00

Contact: Mr. Len Bell, Executive Director, P.O. Box 22808, Seattle, Washington 98122; Telephone: (206) 328–5761

El Centro de la Raza, Seattle, Washington $366,783.00

Contact: Mr. Roberto Maestas, Executive Director, 2524 16th Avenue, South Seattle, Washington 98144; Telephone: (206) 329–9442

Central Area Community Alcohol and Substance Abuse Center, Seattle, Washington $606,190.00

Contact: Mr. Mike Tretton, Executive Director, 1401 E. Jefferson Street, Suite 300, Seattle, Washington 98122; Telephone: (206) 322–2970

Volunteers of America of Spokane, Spokane, Washington $276,497.00

Contact: Mr. Kenneth M. Trent, President/ Executive Director, North 507 Howard Street, Spokane, Washington 99207; Telephone: (509) 325–6268

KJNW Enterprises, Inc., Spokane, Washington $341,873.00

Contact: Mr. Frank W. Howe, Executive Director, P.O. Box 7228, Spokane, Washington 99207; Telephone: (509) 325–9268

Clark County Board of Commissioners, Vancouver, Washington $302,582.00

Contact: Mr. David W. Sturdevant, Chairman, Board of Commissioners, P.O. Box 5000, Vancouver, Washington 98668–5000; Telephone: (206) 699–2232

Central Wisconsin Community Action Council, Lake Delton, Wisconsin $236,212.00

Contact: Mr. Robert D. Jones, Executive Director, 205 East Lake Avenue, Box 570, Lake Delton, Wisconsin 53940; Telephone: (608) 254–8353

Transitional Housing, Inc., Madison, Wisconsin $528,777.00

Contact: Ms. Ann Haney, Designated Signator, Board of Directors, 116 West Washington Avenue, Madison, Wisconsin 53703; Telephone: (608) 255–2960

Milwaukee Housing Assistance Corporation, Milwaukee, Wisconsin $325,000.00

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Contact: Mr. Scott Lancelot, Executive Director, 152 West Wisconsin Avenue, Suite 203, Milwaukee, Wisconsin 53203; Telephone: (414) 277–9630

*West Virginia*

Ohio County Youth Services System, Inc., Wheeling, West Virginia...$314,900.00

Contact: Mr. Ronald Mulholland, Executive Director, 1000 Chapline Street, Wheeling, West Virginia 26003; Telephone: (304) 233–9627

Dated: December 6, 1990.

**Anne Kondratas,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 90–29154 Filed 12–12–90; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Wapato Irrigation Project, Washington

**AGENCY:** Bureau of Indian Affairs, Department of the Interior.

**ACTION:** Proposed operation and maintenance rates.

**SUMMARY:** The purposes of this notice is to change the assessment rates for operating and maintaining the Wapato Irrigation Project. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

**EFFECTIVE DATE:** Interested parties may submit written comments on or before January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232–4169, telephone FTS 429–6750; commercial (503) 231–6750.

**SUPPLEMENTARY INFORMATION:** This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary—Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1991 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583), and March 7, 1928 (45 Stat. 210).

The purpose of this notice is to announce an increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The proposed assessment rates for 1991 will amount to an increase of 8% for the Wapato Satus unit 15%, for B lands due to increased storage charges and a 28% increase for the Toppenish-Simcoe & Ahtanum Units, which have not had an increase for eight years. The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views and arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232–4169, no later than 30 days after publication of this notice in the Federal Register.

### Wapato Irrigation Project—General

*Administration*

The Wapato Irrigation Project, which consists of the Ahtanum Unit Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in part 171, Operation and Maintenance, title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

*Irrigation Season*

Water will be available for irrigation purposed from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

*Request for Water Delivery and Changes*

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules.

Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

*Charges for Special Services*

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1991 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report.....$15.00
(2) Requests for Verification of Account Delinquency Status, Per Report.....$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill.....$10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill.....$10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report.....$10.00
(0) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee ($10.00).
(7) Review of subdivision plats.....$10.00

### Ahtanum Unit

*Charges*

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1991 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

### Toppenish-Simcoe Unit

*Charges*

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1991 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land for which an application for water is approved by the Project Engineer.



(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

### Wapato-Satus Unit

*Charges*

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1991 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts..... $29.60
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands..... $29.60
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre..... $5.54
(4) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands..... $32.56

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

*Payments*

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

*Interest and Penalty Fees*

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

*Assessable Lands*

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(b) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

**Ronald Brown,**

*Acting Portland Area Director.*

[FR Doc. 90–29161 Filed 12–12–90; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

**[CO–932–01–4212; COC–51078, 50786, 49631, 51891, 51892, 51893]**

### Opening of Public Land; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and opening order.

**SUMMARY:** This action serves to inform the public of the conveyance out of Federal ownership of 307.46 acres of public land together with all minerals and 280.00 acres with all mineral reserved to the United States and the acquisition of 1,450.23 acres by the United States. This notice will open all of the 1,450.23 acres of reconveyed lands to surface entry. Minerals in 522.30 acres will be opened to the general mining laws and the mineral leasing laws. Minerals in the remaining 927.93 acres are federally owned by reservations in earlier patents and have been open to operation of the mining and mineral leasing laws.

**DATES:** Lands are open at 9 a.m. on January 18, 1991.

**ADDRESSES:** Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Senti, Bureau of Land Management, Colorado State Office (303) 239–3713.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of the completion of exchanges of land between the United States and parties listed below. The Bureau of Land Management transferred title to the following described land under section 206 of the Federal Land Policy and Management Act of October 21, 1976:

**Sixth Principal Meridian, Colorado**

T. 20 S., R. 73 W., Patentee: Irvin Story
Sec. 29, SW¼SW¼
Sec. 31, SE¼SE¼;
Sec. 32, W½W½ and NE¼NW¼;

**New Mexico Principal Meridian, Colorado**

T. 47 N., R. 12 E.,
Sec. 25, lot 2 and E½SW¼;
370.12 acres.

**Sixth Principal Meridian, Colorado**

T. 5 S., R. 77 W., Patentees: Michael T. and Mary E. Bush
Sec. 7, lot 135—6.20 acres;
T. 9 S., R. 85 W., Patentee: Carol Craig
Sec. 14, lot 10,
Sec. 23, lot 6—3.23 acres
T. 9 S., R. 86 W., Patentee: Peter Heineman
Sec. 28, lot 8—1.57 acres;
T. 7 S., R. 89 W., Patentee: Eugene M. and Glaphy A. Spear
Sec. 15, lots 4 and 6—6.34 acres.

**Sixth Principal Meridian, Colorado**

T. 15 S., R. 73 W., Patentees: Bud L. and Betty M. Chess
Sec. 24, SW¼ and SW¼SE¼—200.00 acres.

In exchange, the following described lands were reconveyed to the United States:

By Shepard and Associates:

**Sixth Principal Meridian, Colorado**

T. 5 S., R. 85 W.,
Sec. 10 and 15: A tract of land being a portion of Tract 79, Lot 6 and a portion of Tract 80 more particularly described as Lot 2, O.R.E.O. ACRES according to the Plat thereof filed for record August 22, 1987 in Book 466 at Page 263. 42.30 acres.
T. 6 S., R. 87 W.,
Sec. 22, West Sopris Ranch, Parcel No. 12, beginning at the NW corner of Sec. 22, by metes and bounds, thence S. 88 degrees 53'16"E. 1,319.54 feet, thence S. 01 degrees 00'46" W. 1,169.50 feet, thence N. 88 degrees 54'42" W. 1,318.94 feet, thence N. 00 degrees 59'02" E. 1,170.10 feet to the TRUE POINT OF BEGINNING—35.43 acres.
T. 7 S., R. 88 W.,
Sec. 21, SE¼SE¼ and SW¼SE¼—80.00 acres.
T. 5 S., R. 91 W.,
Sec. 35, SE¼SW¼—40.00 acres
T. 7 S., R. 100 W.,
Sec. 16, NW¼NE¼,
Sec. 20, NE¼NW¼ and NW¼NE¼—120.00 acres.

**New Mexico Principal Meridian, Colorado**

T. 38 N., R. 12 E.,
Sec. 17, exclusive of right-of-way for canal;
Sec. 18 lots 1, 2, E½NE¼, SW¼NE¼ and E½NW¼—392.50 acres

**Sixth Principal Meridian, Colorado**

T. 17 S., R. 89 W.,
Sec. 33, N½N½;

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Sec. 24, N½NW¼—160.00 acres.

At 9 a.m. on January 18, 1991, the reconveyed lands described above will be open to operation of the public land laws generally, subject to valid existing withdrawals and the requirements of applicable law.

At 9 a.m. on January 18, 1991, the reconveyed lands described above in T. 5 S., R. 85 W., T. 7 S., R. 98 W., T 5 S., R. 91 W., T. 7 S., R. 100 W., and T. 17 S., R. 69 W. will open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38, shall vest no rights against the United States.

Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for determination in local courts.

At 9 a.m. on January 18, 1991, the reconveyed lands described above in T. 5 S., R. 85 W., T. 7 S., R. 98 W., T. 5 S., R. 91 W., T. 7 S., R. 100 W., and T. 17 S., R. 69 W. will be open to applications and offers under the mineral leasing laws.

All applications received at or prior to 9 a.m. on January 18, 1991, will be considered as simultaneously filed as of that time and date, and a drawing will be held in accordance with 43 CFR 1821.2-3, if necessary. Applications and offers received thereafter shall be considered in the order of filing.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of public lands and acquisition of nonfederal land by the Federal Government. These exchanges enabled private parties to obtain title to lands that were needed by them for use with contiguous lands they owned, and enabled the United States to obtain title to lands containing high multiple resource values. The exchanges were based on equal values of the properties exchanged, and payment of cash equalization to the United States to make up the difference in the estimated fair market value between the government and nongovernment lands.

Dated: December 4, 1990.

Robert S. Schmidt,

*Chief, Branch of Realty Programs.*

[FR Doc. 90-29190 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-00-4212-13; IDI-23537]

## Order Providing for Opening of Public Land; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Opening order.

**SUMMARY:** This order opens lands received in a private exchange to the land laws.

**EFFECTIVE DATE:** January 9, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 6 S., R. 16 E.,
Sec. 16, S½.

The area described contains 320.00 acres in Lincoln County.

2. At 9 a.m. on January 9, 1991, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on January 9, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: December 3, 1990.

William E. Ireland,

*Chief, Realty Operations Section.*

[FR Doc. 90-29191 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-GG-M

[CA-050-99-43-7122-10-0051; CA 24020]

## Realty Actions; Sales, Leases, Etc.; California

**AGENCY:** Department of the Interior, Bureau of Land Management.

**ACTION:** Notice of realty action; noncompetitive sale of public lands in Trinity County, California.

**SUMMARY:** The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at not less than the estimated fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32N., R. 9 W.
Section 31: Lot 8

Containing 0.97 acre, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Robert Barone to resolve an inadvertent, survey-related trespass. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously.

**DATES:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

**ADDRESSES:** Detailed information concerning this action is available for review at the office listed above.

**FOR FURTHER INFORMATION CONTACT:** Patricia Cook, Realty Specialist, Redding Resource Area, at the above address.

**SUPPLEMENTARY INFORMATION:** The patent, when issued, will contain a reservation to the United States for ditches and canals.

Dated: November 27, 1990.

Mark T. Morse,

*Area Manager.*

[FR Doc. 90-29140 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-01-5440-10-2888; CA-21672]

## Realty Action; Exchange of Public and Private Lands, Riverside County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction of notice of realty action: Exchange of public and private lands.

**SUMMARY:** This notice corrects an error in the description of the selected lands described in the notice of realty action published on Tuesday, August 14, 1990, in Vol. 55, No. 157, pages 33178 and 33179.

The land description should read:

### Selected Public Lands

All remaining public lands located in:

*San Bernardino Meridian*

Township 3 South, Range 14 East, Sections: 25 through 36.



Township 3 South, Range 15 East, Sections: 30 through 31.
Township 4 South, Range 14 East, Sections: 1, 2, 3, 6, 11, and 12.
Township 4 South, Range 15 East, Sections: 4, 5, 6, and 7.

**FOR FURTHER INFORMATION CONTACT:** Marianne Wetzel, BLM Palm Springs-South Coast Resource Area, 400 S. Farrell Dr., Palm Springs, CA 92262, (619) 323-4421.

December 3, 1990.

Richard E. Crowe,

*Acting District Manager.*

[FR Doc. 90-29188 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-5410-10-8004; CACA 27443]

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, aggregating 245.68 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non mineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2845, Sacramento, California 95825 (916) 978-4820.

**Serial No. CACA 27443**

*T. 11 N., R. 13 W., San Bernardino Meridian*

Sec. 4, E½E½ lot 1 NE¼, E½SW¼E½ lot 1 NE¼, E½SW¼ W½ lot 1 NE¼, W½NE¼E½ lot 1 NW¼, E½NW¼E½ lot 1 NW¼, W½SW¼E½ lot 1 NW¼, NW¼W½ lot 1 NW¼, E½SW¼W½ lot 1 NW¼, W½E½ lot 2 NE¼, E½SE¼W ¼ lot 2 NE¼, NE¼NE¼SW¼, E½NW¼NE¼SW¼, W½SE¼N E¼SW¼ E½NW¼SW½, W½NE¼S W¼, W½NW¼SW¼, SW¼SW¼, W½SE¼SW¼, W½SE¼SE¼SW¼, W¼NE¼SE¼, E½NW¼NW¼SE¼, W½NW¼SE¼SE¼, E½NE¼S W½SE¼, SE¼SW¼SE¼,N½SE¼SE¼, E½SW¼SE¼SE¼.

*County—Kern*

*Minerals Reservation*—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the applications shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: December 5, 1990.

Nancy J. Alex,

*Chief, Lands Section.*

[FR Doc. 90-29194 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-43-7122 08 1016) (CA 27555)

## Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Exchange of public lands, San Bernardino County, California.

**SUMMARY:** BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership. The following described public lands, located in San Bernardino County are being considered for disposal by exchange pursuant to section 206 of the Federal Policy and Management Act of October 21, 1976, (43 U.S.C. 1716):

San Bernardino Meridian, CA

T. 6 N., R. 4 W.,
Sec. 27: NE¼SW¼.

Comprising 40 acres, more or less.

In exchange or these lands the United States will acquire from the City of Victorville, California, the following offered private lands within the Western Mojave Land Tenure Adjustment Area:

San Bernardino Meridian, CA

T. 10 N., R. 6 W.,
Sec. 13: N½S½.

The offered non-Federal lands are comprised of 160.00 acres, more or less.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

**EFFECTIVE DATE:** December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** For a period of forty-five (45) days, interested parties may submit comments to Karla Swanson, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311.

**SUPPLEMENTARY INFORMATION:** The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

The disposal of the aforementioned public lands has been analyzed in the environmental impact statement/ environmental impact report for the Western Mojave Land Tenure Adjustment Project and are all consistent with the proposed amendment to the California Desert Conservation Area Plan. Land exchanges are the main means of implementation of the Western Mojave Land Tenure Adjustment Project.

Multiple Agency objectives are part of the project purpose and need. Existing checkerboard ownership causes scattered development with threats to resource management by BLM, airspace use by the Air Force, and logical and orderly development of private lands as overseen by the County. Consolidation of public lands through exchange for isolated public lands reduces these threats.

The exchanges will be on an equal value basis. Appraisals, will establish the fair market value of the public and private lands. Acreage of the public land will be adjusted to approximate equal values. Full equalization of value will be achieved by a cash payment not to exceed 25% of the value of the public lands.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way.

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States: Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for the construction, operation and maintenance of a 138 kV electric transmission line granted June 21, 1933 to the Southern Sierra Power Company, its successors or assigns (now

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Southern California Edison Company), by right-of-way Serial No. CARI 01730, pursuant to the Act of December 21, 1928 (43 U.S.C. 617d).

3. Those rights for the construction, operation and maintenance of an underground natural gas pipeline granted August 21, 1959 to the Southern California Gas Company, its successors or assigns, by right-of-way Serial No. CALA 0153666, pursuant to the Act of February 25, 1920, as amended (30 U.S.C. 185).

Dated: November 30, 1990.

**Gerald E. Hiller,**

*District Manager.*

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[OR 44409; OR-020-4212-13; GP1-061]

**Realty Action; Land Exchange; Oregon**

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by land exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716:

T. 39 S., R. 37 E., W.M. Oregon,
Sec. 2, S½NW¼, SW¼, SW¼SE¼;
Sec. 3, SE¼;
Sec. 10, E½, E½NW¼, NE¼SW¼, S½SW¼;
Sec. 11, NW¼NE¼, NW¼, NW¼SW¼;
Sec. 15, NW¼NE¼, N½NW¼.

The area described above aggregates approximately 1,320 acres.

In exchange for these lands, the Federal Government will acquire the following described private land from Gary R. Defenbaugh and Doris I. Defenbaugh:

T. 39 S., R. 37 E., W.M., Oregon
Sec. 14, N½NW¼NE¼;
Sec. 16, N½N½;
Sec. 35, NE¼NW¼;
Sec. 36, NW¼NW¼, S½NW¼, NE¼SW¼, W½/SE¼.

The area described above aggregates approximately 480 acres.

The purpose of this exchange is to acquire important riparian habitat within the Mahogany Ridge Wilderness Study Area, and to Acquire access along the major route into the Trout Creek Mountains.

The land values will be equal, or the proponent may equalize values by purchasing a portion of the public land.

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement, or lease of record.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental assessment is available for review at the Burns District Office, HC 74-12533, Highway 20 West, Hines, Oregon 97738.

For a period of 45 days from the date of publication of this notice in the Federal Register interested parties may submit comments to the Burns District Manager at the above address.

Objection will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action may become the final determination of the Department of the Interior.

Dated: December 5, 1990.

**Donald R. Cain,**

*Acting District Manager.*

[FR Doc. 90-29187 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-33-M

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[ID-942-01-4730-12]

**Filing of Plats of Survey; Idaho**

The official filing of the following described land was to be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 14, 1990. The official filing of these two plats is hereby stayed pending final resolution of a protest of the survey.

The plat representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines, and the subdivision of section 1, T. 2 S., R. 37 E., Boise Meridian, Idaho, Group No. 788, was accepted October 24, 1990.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines, and original meanders of the right bank of the Blackfoot River, and the subdivision of certain sections, T. 2 S., R. 38 E., Boise Meridian, Idaho, Group No. 788, was accepted October 24, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 American Terrace, Boise, Idaho, 83706.

Dated: December 4, 1990.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 90-29198 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-GG-M

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[OR-943-01-4214-11; GP1-060; ORE-03949, et al.]

**Proposed Continuation of Withdrawals, Oregon and Washington**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Reclamation, proposes that all of the eight separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to surface entry and mining.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Bureau of Reclamation proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

1. ORE-03949, Bureau of Land Management Order dated April 25, 1956. Umatilla Project, 160 acres located in Section 12, T. 4 N., R. 25 E., W.M., in Morrow County, approximately 3 miles east of Boardman, Oregon.

2. OR-20271, Secretarial Order dated March 17, 1904. Umatilla Project, 700.38 acres located in Section 22, T. 5 N., R. 26 E., W.M., in Morrow County, approximately 3 miles west of the town of Irrigon, and Sections 18, 20, and 28, T. 5 N., R. 28 E., W.M., in Morrow County, approximately 3 miles south of the town of Umatilla, Oregon.

3. OR-20274, Secretarial Order dated August 16, 1905. Umatilla Project, 280 acres in Umatilla County, located in Section 3, T. 4 N., R. 28 E., Sections 22 and 34, T. 5 N., R. 29 E., and Section 31, T. 5 N., R. 30 E., W.M., approximately 5 miles east of Hermiston, Oregon.

4. OR-20275, Secretarial Order dated January 5, 1906. Umatilla Project, 1,468.20 acres located in Sections 2, 3, and 12, T. 4 N., R. 29 E., and Section 34, T. 5 N., R. 29 E., W.M., in Umatilla County, approximately 5 miles east of Hermiston, Oregon.



5. OR-20276, Secretarial Order dated February 14, 1906. Umatilla Project, 199.95 acres located in Section 3, T. 4 N., R. 29 E., Section 34, T. 5 N., R. 29 E., and Section 31, T. 5 N., R. 30 E., W.M., in Umatilla County, approximately 5 miles east of Hermiston, Oregon.

6. OR-20277, Secretarial Order dated August 16, 1906. Umatilla Project, 700.38 acres in Morrow County, located in Section 22, T. 5 N., R. 26 E., W.M., approximately 3 miles west of the town of Irrigon, and Sections 18, 20, and 28, T. 5 N., R. 28 E., W.M., approximately 3 miles south of the town of Umatilla, Oregon.

7. OR-20280, Secretarial Order dated June 2, 1915. Umatilla Project, 5 acres located in Section 32, T. 5 N., R. 29 E., W.M., in Umatilla County, approximately 4 miles northeast of Hermiston, Oregon.

8. OR-22211(WASH), Secretarial Order dated May 23, 1933. Yakima Project, 40 acres in Section 20, T. 19 N., R. 17 E., W.M., in Kittitas County, located approximately 6 miles northwest of Ellensburg, Washington.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: December 4, 1990.

**Robert E. Mollohan,**

*Chief, Branch of Lands, and Minerals Operations.*

[FR Doc. 90-29192 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-33-M

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**Office of Surface Mining Reclamation and Enforcement**

**Request for Determination of Valid Existing Rights Within the Monongahela National Forest, WV; Ernest J. Van Gilder**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of request for determination and invitation for interested persons to participate.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination that Ernest J. Van Gilder has valid existing rights (VER) to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual material on the matter. OSM intends to develop a complete administrative record and will render a final agency decision on whether Ernest J. Van Gilder has VER.

**DATES:** OSM will accept written materials on this request for a VER determination until 5 p.m. local time on January 28, 1991.

**ADDRESSES:** Hand deliver or mail written materials to Carl C. Close, Assistant Director, Eastern Support Center at the address listed below. Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Eastern Support Center, room 246, Ten Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937-2897.

Office of Surface Mining Reclamation and Enforcement Charleston Field Office, 603 Morris Street, Charleston, WV 25301, Telephone: (304) 347-7158.

**SUPPLEMENTARY INFORMATION:** Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977.

The term "VER" is not defined in SMCRA. On September 14, 1983 (48 FR 41312-41356), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative procedures Act and remanded the definition to the Secretary of the Interior (*IN RE: Permanent Surface Mining Regulation Litigation II* No. 79-1144).

In the November 20, 1990, Federal Register (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands within the boundaries of national forests using the VER definition contained in the appropriate state regulatory program.

The term VER is defined in § 2.126 of the West Virginia Surface Mining Reclamation Regulations. Section 2.126 provides that VER exists, except for haulroads, in each case in which a person demonstrates that the limitation provided for in section A-3-22(d) of the West Virginia Surface Coal Mining and Reclamation Act would result in the unconstitutional taking of that person's rights.

On November 13, 1990, Ernest J. Van Gilder requested that OSM make a determination of VER for his planned surface coal mining operation on Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia. Mr. Van Gilder purchased from Walter E. Helmick on August 3, 1990, certain mineral rights to the properties in question. Mr. Helmick acquired these mineral rights from the estate of Cecil E. Nichols who prior to his death had requested a determination of VER which was announced by OSM in the January 22, 1990, Federal Register (55 FR 2163). Mr. Van Gilder's request for VER incorporates as part of the administrative record all supporting documents and public comments received by OSM in response to the Nichols' request for VER.

Mr. Van Gilder alleges that he owns mineral rights on two adjacent tracts of land, the surface of which is owned by the United States of America and managed by the United States Forest Service. Tract 574 contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia on the waters of Hills Creek and the waters of Robins Run, a tributary of Spring Creek. The second track, known as the Killingsworth Tract, contains 179 acres and is situated on the headwaters of Spruce Run, a tributary of the

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Greenbrier River. Both properties are located on Briery Knob. They each were mined during the 1940's by surface mining methods. A face-up area for an underground coal mine under permit by the West Virginia Department of Energy is located on Tract 574.

In order to establish that the requestor has VER for surface coal mining on the properties in question, OSM must first determine that the requestor has demonstrated all necessary rights to mine the coal. OSM particularly invites interested persons to provide factual information as to whether the requestor has the property right to mine by the proposed method, and other factual information concerning whether the requestor has VER under the applicable standards.

OSM will make a final decision on Ernest J. Van Gilder's VER request as soon as it is practicable following completion of the administrative record. If OSM determines that Ernest J. Van Gilder has VER, he may apply to the West Virginia Department of Energy for a permit authorizing the surface and auger mining of coal on the two tracts in question. If it is determined that Mr. Van Gilder does not have VER, no surface or auger mining will permitted.

Dated: November 30, 1990.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 90-29177 Filed 12-12-90; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-290]**

### Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Termination of Formal Enforcement Proceeding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to terminate the formal enforcement proceeding instituted on June 13, 1990 *see* 55 FR 25182 (June 20, 1990), and deny respondents' emergency petition of June 19, 1990, as moot.

**ADDRESSES:** Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: 202-252-1000.

**FOR FURTHER INFORMATION CONTACT:** Craig L. McKee, Esq., Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

**SUPPLEMENTARY INFORMATION:** On June 13, 1990, the Commission instituted a formal enforcement proceeding in connection with the above-captioned investigation. The formal enforcement proceeding was for the purpose of determining whether respondents Sodick, Ltd., Sodick, Inc., KGK International Co., Yamazen USA, Inc., and Bridgeport Machines, Inc. ("Sodick") had imported newly-designed wire electrical discharge machining apparatus ("wire EDMs") that infringe claims 1, 7, 9, 20, and/or 22 of U.S. Letters Patent 3,928,163 (the '163 patent) in violation of Commission cease and desist orders.

Following the Commission action, respondents on June 19, 1990, filed an "emergency petition" seeking withdrawal of the Commission order instituting the formal enforcement proceeding. The petition alleged generally that the enforcement complaint failed adequately to apprise respondents of the grounds upon which the Commission's orders were violated, and it requested a Commission ruling by June 21, 1990, threatening court action unless the order were withdrawn by that date. On June 21, 1990, respondents moved for an extension of the deadline for filing their response to the complaint filed by the Commission's Office of Unfair Import Investigations (OUII) until 15 days after the Commission ruled on their petition. On June 27, 1990, the Commission granted Sodick's motion for extension of the response deadline.

On October 5, 1990, Judge Milton I. Shadur of the U.S. District Court for the Northern District of Illinois granted Sodick's motion for partial summary judgment, holding that Sodick's newly-designed wire EDMs do not infringe the five claims of the '163 patent covered by the Commission's cease and desist orders.

On October 12, 1990, respondents filed a letter requesting, *inter alia*, that the Commission withdraw its June 13, 1990, order instituting a formal enforcement proceeding, dismiss OUII's complaint, and terminate the present enforcement proceeding based upon the district court's grant of partial summary judgment.

On October 18, 1990, the Commission investigative attorney (IA) filed a motion seeking termination of the formal enforcement proceeding in view of the ruling issued by Judge Shadur.

On October 26, 1990, complainants filed a response to the IA's motion to terminate, arguing that if termination is warranted, it should be based upon the IA's withdrawal of its complaint.

The Commission determined to terminate the formal enforcement proceeding without prejudice to the institution of a new enforcement proceeding on the adjudicated issues should the district court's judgment be vacated or reversed on appeal, and to deny respondents' emergency petition as moot.

Issued: December 7, 1990.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-29156 Filed 12-12-90; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 338 (Sub 14)]**

### Intrastate Rail Rate Authority—Michigan

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of recertification.

**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Interstate Commerce Commission recertifies the State of Michigan to regulate intrastate rail rates, classification, rules, and practices for 5-year period.

**DATES:** Recertification will be effective January 12, 1991, and will expire February 10, 1996.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: December 5, 1990.



By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90-29198 Filed 12-12-90; 8:45 am]

BILLING CODE 7035-01-M

**[Docket No. AB-55 (Sub-No. 368)]**

### CSX Transportation, Inc.—Abandonment—In Ben Hill and Irwin Counties, GA; Findings

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. (CSXT) to abandon its rail line between Wiggins (milepost SLA-663.31) and Ocilla (milepost SLA-667.12) in Ben Hill and Irwin Counties, Georgia. The abandonment application was denied in all other respects.

The abandonment certificate will become effective January 12, 1990, unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR part 1152.

*Decided:* December 4, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald. Vice Chairman Phillips commented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary*

[FR Doc. 90-29197 Filed 12-12-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Senior Executive Service; Appointment of Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to three-year terms, effective November 15, 1990:

Thomas C. Komarek
Janet L. Norwood

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry K. Goodwin, Director of Personnel Management, Room C-5328, Department of Labor, Frances Perkins Building, Washington, DC 20210, Telephone Number (202) 523-6551.

Signed at Washington, DC, this 7th day of December 1990.

**Roderick A. DeArment,**

*Acting Secretary.*

[FR Doc. 90-29242 Filed 12-12-90; 8:45 am]

BILLING CODE 4510-23-M

## Employment and Training Administration

### Asea Brown Bouveri, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 24, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 24, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of December 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/workers/firm— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Asea Brown Bouveri (workers) | Orange, CT | 12/03/90 | 11/25/90 | 25,123 | Motor Controls. |
| Belden Wire & Cable (workers) | Shrewsbury, MA | 12/03/90 | 11/10/90 | 25,124 | Telephone & Cable Wires (USWA). |
| Bio-Stims Trend Corp. (workers) | Opa Locka, FL | 12/03/90 | 11/26/90 | 25,125 | Shoes. |
| Bright Star Industries (workers) | Clifton, NJ | 12/03/90 | 11/21/90 | 25,126 | Flashlights & Batteries. |
| Cedar Creek Forest Products (workers) | Ocean Shores, WA | 12/03/90 | 11/26/90 | 25,127 | Shingles & Lumber. |
| Champlin Refining & Chemicals, Inc. (workers) | Irving, TX | 12/03/90 | 11/16/90 | 25,128 | Gasoline & Diesel Fuel. |
| CNG Producing Co. (workers) | Tulsa, OK | 12/03/90 | 10/27/90 | 25,129 | Oil & Gas. |
| Cyclamp Specialty Steel Co. (USWA) | Pittsburgh, PA | 12/03/90 | 11/09/90 | 25,130 | Steel Sheeting, Plates & Wire. |
| Delmet Corp. (IAW) | Walton, NY | 12/03/90 | 11/01/90 | 25,131 | Auto Accessories. |
| Dot Togs, Inc. (workers) | Rockland, MA | 12/03/90 | 11/09/90 | 25,132 | Sportswear. |
| Eastman Christensen (workers) | Houston, TX | 12/03/90 | 11/20/90 | 25,133 | Oil & Gas. |
| EECO Inc./Maxi-Switch (workers) | Tucson, AZ | 12/03/90 | 11/16/90 | 25,134 | Keyboards. |
| Gerber Childrenswear, Inc | Yadkinville, NC | 12/03/90 | 10/30/90 | 25,135 | Sleepwear. |
| Gerber Childrenswear, Inc | Salisbury, NC | 12/03/90 | 10/30/90 | 25,136 | Sleepwear. |
| Gerber Childrenswear, Inc. (ACTWU) | Greensboro, NC | 12/03/90 | 10/30/90 | 25,137 | Sleepwear. |

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APPENDIX—Continued

| Petitioner: Union/workers/firm— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| H.D. Lee Co.—Plant #13 (UGWA) | Lebanon, MO | 12/03/90 | 11/16/90 | 25,138 | Apparel. |
| Harvey Industries, Sara Inc. (workers) | Athens, TX | 12/03/90 | 11/19/90 | 25,139 | TV & Component. |
| Hoover Co. (IBEW) | N Canton, OH | 12/03/90 | 11/20/90 | 25,140 | Vacuum Cleaners. |
| Malcolm Nicol/IGI Epoxies Adhesives (OCAW) | Lyndhurst, NJ | 12/03/90 | 11/11/90 | 25,141 | Water Based. |
| Mr. Nick's Trucking Co., Inc. (workers) | Seekonk, MA | 12/03/90 | 10/08/90 | 25,142 | Oil & Fuel. |
| Mutterperl Group LTD (workers) | New York, NY | 12/03/90 | 11/20/90 | 25,143 | Belts & Handbags. |
| N.C.R. Corp. (IBEW) | Cambridge, OH | 12/03/90 | 11/15/90 | 25,144 | Terminals. |
| National Lock (workers) | Sikeston, MO | 12/03/90 | 11/15/90 | 25,145 | Door Locks. |
| Nightway Inc. (workers) | New York, NY | 12/03/90 | 11/16/90 | 25,146 | Dresses. |
| P.P.G. Industries, Inc. (workers) | Tipton, PA | 12/03/90 | 11/07/90 | 25,147 | Auto Lites. |
| Pyke Manufacturing Co. (workers) | Salt Lake City, UT | 12/03/90 | 11/14/90 | 25,148 | Apparel. |
| Sedro Woolley Lumber (workers) | Sedro Woolley, WA | 12/03/90 | 11/20/90 | 25,149 | Lumber. |
| Sewell Co. (workers) | Bremen, GA | 12/03/90 | 11/14/90 | 25,150 | Suits & Coats. |
| SKW Alloys Inc. (workers) | Calvert City, KY | 12/03/90 | 11/12/90 | 25,151 | Silicone. |
| Timken Co. (USWA) | Canton, OH | 12/03/90 | 11/12/90 | 25,152 | Bearings. |
| Tycho Technology, Inc. (workers) | Boulder, CO | 12/03/90 | 11/19/90 | 25,153 | Devices. |
| Whirlpool Corp. (UAW) | Mt. Sterling, KY | 12/03/90 | 11/20/90 | 25,154 | Trash Compactor. |

[FR Doc. 90-29243 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24,840]

**Cedarroth OR Medical; Termination of Investigation**

Pursuant to section 221 (a) of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), an investigation was initiated on October 15, 1990 in response to a worker petition which was filed on behalf of workers at Cedarroth OR Medical, Buffalo, New York.

An active certification covering the petitioning group of workers remains in effect (TA-W-22,541). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 5th day of December 1990.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 90-29244 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,522]

**General Electric Co.; Consumer Electronics Business Operations; Negative Determination on Reconsideration**

Pursuant to a remand in *Former Employees of General Electric Company* v. *Secretary of Labor,* (USCIT 87-08-00823) new findings on reconsideration were obtained to determine whether plaintiffs were production workers engaged in temporary "phase-out" activities related to General Electric's 1985 decision to cease production at Portsmouth and whether the decision to produce televisions in Japan contributed importantly to the worker separation within the meaning of 19 U.S.C. 2272.

Findings on reconsideration support the Department's denial of eligibility to apply for adjustment assistance benefits for the CEBO workers of GE in Portsmouth. The denial was based on the fact that there was no production at Portsmouth in 1987 when the workers were separated and a corporate restructuring took place which transferred or merged the headquarters functions at Portsmouth with that at Indianapolis.

Findings on reconsideration confirm the fact that all production at Portsmouth ceased on October 31, 1986. All employees directly involved in television production and warehousing were laid off by March 31, 1987 well within the 2-year coverage period of certification TA-W-15,701. That certification was issued on April 9, 1985 and continued in force until April 9, 1987. The certification was published in the **Federal Register** on April 23, 1985 (50 FR 15990-91).

Other findings show that the import sourcing agreement with Matsushita Electric Industrial Company Ltd. (MEI) was cancelled in late 1986 and production of GE brand televisions began at RCA's Bloomington plant in 1987 as the result of GE's purchase of RCA. Accordingly, the plaintiffs were not engaged in phase-out activities related to GE's 1985 decision to cease production at Portsmouth but were headquarters personnel whose functions were transferred to Indianapolis as a result GE's purchase of RCA. Further, the cancellation of the MEI contract in late 1986 would not adversely affect the remaining headquarters employees at Portsmouth in 1987.

The petitioning workers at Portsmouth had the responsibility of removing and disposing of television production equipment or worked for the Comband Product Operations (CPO). CPO was a group within the Consumer Electronics Division that was started to develop and market a line of products for the cable television industry and was not part of the initial investigation. Several of the petitioners were employees of CPO including Mr. John Graham.

In any event, the remaining workers would have been terminated much earlier had it not been for the generous benefits provided for in GE's plant closing package. These workers were guaranteed six months additional employment through GE's internal plant closing guidelines. The guidelines provided a six-month notification period, which in this instance became August 5, 1987, before the affected workers could be laid off. A few workers, however, found other employment or left voluntarily before the six month period ended.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers of the Consumer Electronic Business Operations of General Electric Company, Portsmouth, Virginia. Signed at Washington, DC, this sixth day of December 1990.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 90-29245 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-30-M



**Mine Safety and Health Administration**

[Docket No. M-90-177-C]

**Jeff Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Jeff Coal Company, R.D. 1, Box 12A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1405-1 (automatic couplers, haulage equipment) to its Tracy Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that track haulage cars be equipped with automatic couplers.

2. Petitioner states that the installation of automatic couplers on the track haulage cars would result in a diminution of safety to the miners affected due to the sharp radius curves in the track, the undulating pitch of the slopes, the different types of small lighweight cars, and the systems of haulage.

3. For these reasons, petitioner request a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 1991. Copies of the petition are available for inspection at that address.

Dated: December 6, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-29246 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-90-174-C]

**Rawl Sales and Processing Co.; Petition for Modification of Application of Mandatory Safety Standard**

Rawl Sales and Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Tall Timber Mine (I.D. No. 15-13720) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to deteriorating roof conditions, the seals in the Northwest Mains section cannot be safely examined. To require weekly examinations of the seals would expose miners to hazardous conditions and result in a diminution of safety.

3. As an alternate method, the petitioner proposes to establish a monitoring station where the air quantity and quality would be measured.

4. In support of this request, the petitioner states that—

(a) All measuring stations and travelways would be maintained in a safe condition at all times;

(b) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(c) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 1991. Copies of the petition are available for inspection at that address.

Dated: December 6, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-29247 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-43-M

(Docket No. M-90-175-C)

**Rawl Sales and Processing Co.; Petition for Modification of Application of Mandatory Safety Standard**

Rawl Sales and Processing Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.329 (bleeder systems) to its Tall Timber Mine (I.D. No. 15-13720) located in Mingo County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that abandoned areas be ventilated or sealed.

2. Due to hazardous roof conditions it is not possible to repair seals No. 1 through 6 or gain access to seals Nos. 7 and 8. Efforts to rehabilitate the area would unnecessarily expose miners to hazardous roof conditions and result in a diminution of safety.

3. In lieu of repairing the seals or restoring ventilation, petitioner proposes to monitor the return air from a measuring station.

4. In support of this request, the petitioner states that—

(a) All measuring stations and travelways would be maintained in a safe condition at all times;

(b) Tests for methane and the quantity of air would be determined weekly by a certified person at each station; and

(c) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 14, 1991. Copies of the petition are available for inspection at that address.

Dated: December 6, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-29248 Filed 12-12-90; 8:45 am]
BILLING CODE 4510-43-M

**NATIONAL SCIENCE FOUNDATION**

**Division of Biotic Systems and Resources Special Emphasis Panel; Meetings**

**SUMMARY:** In accordance with the Federal Advisory Committee Act Pub. L.

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92-463, as amended), the National Science Foundation announces the following meeting

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

*Name:* Special Emphasis Panel in Biotic Systems and Resources.

*Dates:* January 7–8, 1991; January 29–30, 1991.

*Times:* 8:30 a.m. to 5 p.m. each day.

*Place:* Rooms 536 and 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

*Type of Meeting:* Closed.

*Agenda:* Review and evaluate Presidential Young Investigator Applications and Faculty Awards for Woman Applications, January 7–8, 1991 (room 536); Review and evaluate Conservation and Restoration Biology Proposals, January 29–30, 1991 (Room 543).

*Contact:* Dr. Joann Roskoski, Program Manager, Cross-Directorate Programs, Division of Biotic Systems and Resources, National Science Foundation, room 215, Washington, DC 20550 (202/357-7332).

Dated: December 7, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-29170 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Design and Manufacturing Systems; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Design and Manufacturing Systems (DDM.)

*Date and time:* January 7–8, 1991; 9 a.m.–5 p.m., January 7; 9 a.m.–4 p.m., January 8.

*Place:* Radisson Plaza Hotel at Austin Centre, 700 San Jacinto, Austin, TX.

*Type of meeting:* Open.

*Contact person:* Ms. Carol Guido, Administrative Officer, DDM, room 1125, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7508.

*Summary minutes:* Ms. Carol Guido.

*Purpose of meeting:* To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design and Manufacturing Systems.

*Summarized agenda:* Discussion on issues, opportunities and future directions for the Division of Design and Manufacturing Systems; discussion of the DDM budget for FY 91, as well as other items.

Dated: December 7, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-29171 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Division of Earth Sciences; Special Emphasis Panel, Meetings

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

*Name:* Special Emphasis Panel in Earth Sciences.

*Date:* January 7, 1991.

*Time:* 9 a.m. to 5 p.m.

*Place:* Room 248, National Science Foundation, 1800 G Street NW., Washington, DC.

*Type of meeting:* Closed.

*Agenda:* Review and evaluate Presidential Young Investigator Applications.

*Contact:* Dr. Arnold Silverman, Program Director, Education and Human Resources Program, National Science Foundation, room 602, Washington, DC 20550 (202-357-7958).

M. Rebecca Winkler,

*Committee Management Officer.*

Dated: December 7, 1990.

[FR Doc. 90-29174 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Division of Earth Sciences; Special Emphasis Panel, Meetings

**SUMMARY:** In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

*Name:* Special Emphasis Panel in Earth Sciences.

*Date:* January 9, 1991.

*Time:* 9 a.m. to 5 p.m.

*Place:* Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

*Type of Meeting:* Closed.

*Agenda:* Review and evaluate Research Experiences for Undergraduates Site Applications.

*Contact:* Dr. Arnold Silverman, Program Director, Education and Human Resources Program National Science Foundation, room 602, Washington, DC 20550 (202-357-7958).

Dated: December 7, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-29175 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Special Emphasis Panels; Meetings

**SUMMARY:** In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street NW., Washington, DC 20550 (except where otherwise indicated).

**SUPPLEMENTARY INFORMATION:** The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

**CONTACT PERSON:** M. Rebecca Winkler, Committee Management Officer, room 208, 257-7363.

Dated: December 7, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*



| Committee name | Date(s) and time | Location |
|---|---|---|
| Special Emphasis Panel in Instrumentation and Resources. Agenda: Res. Exper. for Undergrad. | 01/07/91 7:00 pm; 01/09/91 5:00 pm | River Inn Hotel, 924 Twenty-Fifth Street, NW, Washington, DC. |
| Special Emphasis Panel in Teacher Preparation and enhancement. Agenda: Statewide Sys. Initiative. | 01/04/91 8:00 am–5:00 pm; 01/05/91 8:00 am–3:00 pm. | State Plaza Hotel, 2117 E Street NW., Washington, DC. |
| Special Emphasis Panel in Research Career Development. Agenda: NSF–NATO Postdoc. Panel. | 01/03/91 7:30 pm–9:00 pm; 01/05/91 8:00 am–5:00 pm. | Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA. |

| Committee name | Agenda | Date(s) | Time | Room [1] |
|---|---|---|---|---|
| Special Emphasis Panel in Behavioral and Neural Sciences | Prin. Young Invest. Panel | 01/07/91 | 8:30 am–5:00 pm | 1242 |
| Special Emphasis Panel in Behavioral and Neural Sciences | Faculty Awards for Women | 01/08/91 | 8:30 am–5:00 pm | |
| Special Emphasis Panel in Biological and Critical Systems | PYI Panel | 01/10/91 | 8:30 am–5:00 pm | 1243 |
| | | 01/11/91 | 8:30 am–5:00 pm | |
| | | 01/06/91 | 8:30 am–5:00 pm | 1133 |

[1] At 1800 G Street NW., Washington, DC.

[FR Doc. 90-29176 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Mathematical Sciences Postdoctoral Research Fellowship Panel; Meeting

The National Science Foundation announces the following meeting:

*Name:* Mathematical Sciences Postdoctoral Research Fellowship Panel.

*Date and time:* January 4, 1991 (8:30 a.m. to 10 p.m.) and January 5, 1991 (8:30 a.m. to noon).

*Place:* American Mathematical Society, 201 Charles Street, Providence, RI 02904.

*Type of meeting:* Closed.

*Contact person:* Dr. Deborah F. Lockhart, Office of Special Projects, Division of Mathematical Sciences, National Science Foundation, room 339, 1800 G Street, NW., Washington, DC 20550, (202) 357-7438.

*Purpose of meeting:* To evaluate applications and provide recommendations on those applications as part of the selection process for the NSF Mathematical Science Postdoctoral Research Fellowship program.

*Agenda:* Discussion and evaluation of and recommendations for applications for Mathematical Sciences Postdoctoral Research Fellowships.

*Reason for closing:* The applications being reviewed include information of a confidential nature, including technical information and personal information concerning individuals associated with the applications. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

December 7, 1990.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 90-29173 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Mechanical and Structural Systems; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Committee for the Division of Mechanical and Structural Systems.

*Date and time:* January 7, 1991, 1 p.m. to 5 p.m.; January 8, 1991, 8:30 a.m. to 4 p.m.

*Place:* Radisson Plaza Hotel, 700 San Jacinto Blvd, Austin, TX.

*Type of meeting:* Open.

*Contact person:* Ms. Hope Duckett, National Science Foundation, Room 1108, Washington, DC 20550, Telephone (202) 357-9542.

*Summary of minutes:* May be obtained from Contact Person.

*Purpose of meeting:* To advise the Division in the areas of Mechanical and Structural Systems.

*Agenda:*

**Monday, January 7, 1991**

1–5 p.m.—General Mechanical and Structural Systems Review

**Tuesday, January 8, 1991**

8:30–12 Noon—Joint Meeting with Division of Design and Manufacturing Systems
12–1:30 p.m.—Lunch
1:30–4 p.m.—General Discussion Draft Report Review Plans for Next Meeting
4—Adjourn.

Dated: December 7, 1990.

M. Rebecca Winkler,

*Committee Management Office.*

[FR Doc. 90-29172 Filed 12-12-90; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

## Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*1. Type of submission, new, revision, or extension:* Revision.

*2. The title of the information collection:* 10 CFR parts 2, 40, 70, and 74 Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance.

*3. The form number if applicable:* NRC Form 327.

*4. How often is the collection required:* Collection of a Fundamental Nuclear Material Control (FNMC) plan, 2 years prior to facility startup; NRC Form 327, 60 days after the start of an inventory six times per year; Report of theft, loss, unlawful diversion of special nuclear material, or unauthorized production of enriched uranium, within 1 hour of discovery. Reports of excessively large inventory differences are collected at the same estimated frequency.

*5. Who will be required or asked to report:* Applicants for license or

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licensees authorized to possess equipment capable of enriching uranium or to operate an enrichment facility and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance.

*6. An estimate of the number of responses:* 11.

*7. An estimate of the number of hour annually needed to complete the requirement or request:* 19,954 hours (1,814 hours per response).

*8. An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

*9. Abstract:* The proposed rule would require an applicant for license or a licensee authorized to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance, to develop, document, and maintain a material control and accounting program. The program will be subject to NRC approval.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

*Comments and questions can be directed by mail to the OMB reviewer:* Ronald Minsk, Paperwork Reduction Project (3150–0123, and 3150–0009), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 6th day of December, 1990.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Designated Senior, Official for Information Resources Management.*

[FR Doc. 90–29202 Filed 12–12–90; 8:45 am]

BILLING CODE 7590–01–M

## Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC)

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission:* Extension.

2. *The title of the information collection:* Proposal Preparation Instructions.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Once during the solicitation process.

5. *Who will be required or asked to report:* NRC Contractors.

6. *An estimate of the number of responses:* 750.

7. *An estimate of the total number of hours needed to complete the requirement or request:* 100.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not Applicable.

9. *Abstract:* Proposal Preparation Instructions are included in Section L of NRC solicitations for research and technical assistance to inform offerors of proposal content, presentation and format required by NRC. These instructions serve as a guide for offerors in preparing a technical and management proposal, and a cost proposal. These instructions also establish uniformity and facilitate proposal evaluation.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0118), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 90–29203 Filed 12–12–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–315]

## Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 151 to Facility Operating License No. DPR–58, issued to the Indiana Michigan Power Company, (the licensee), which revised the Technical Specifications (TS) for operation of the Donald C. Cook Nuclear Plant, Unit No. 1, located in Berrien County, Michigan. The amendment is effective as of the date of issuance.

The amendment permits the use of approved sleeves to repair defective steam generator tubes. The TS previously required that all defective tubes be plugged and removed from service.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act, and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 19, 1990 (55 FR 42528). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated June 27, 1990 and supplemented by letter dated October 9, 1990, (2) Amendment No. 151 to License No. DPR–58, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V.

Dated at Rockville, Maryland this 5th day of December 1990.



For the Nuclear Regulatory Commission.

**Timothy G. Colburn,**

*Senior Project Manager, Project Directorate III–1 Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.*

[FR Doc. 90–29208 Filed 12–12–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–280]

## Virginia Electric and Power Co.; Surry Power Station, Unit 1; Exemption

I

The Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR–32, which authorizes operation of the Surry Power Station, Unit 1. The licensee provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The Surry facility consists of two pressurized water reactors at the licensee's site located in Surry County, Virginia. This exemption addresses only Surry, Unit 1.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and appendix R became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these 15 subsections, III.O., is the subject of this exemption request. Specifically, subsection III.O. requires that each reactor coolant pump (RCP) have an oil collection system capable of collecting oil from potential pressurized and non-pressurized leakage sites and routing it to a vented, closed container of sufficient capacity to hold the entire lube oil system inventory.

III

By letter dated November 14, 1990, the licensee requested a one-time exemption from the requirements of Subsection III.O of appendix R, for one of the three RCPs at Surry, Unit 1.

Prior to the shutdown for refueling at the end of Operating Cycle 10 on October 8, 1990, the Surry, Unit 1 RCP motor oil collection system satisfied the requirements of Subsection O. The Unit 1 "C" RCP motor required a routine, 5-year refurbishment at the end of Operating Cycle 10. This required that the RCP motor be shipped to an offsite facility. A replacement motor was purchased for the "C" pump; however, certain components of the new RCP motor have a different physical configuration than the motor which was removed. Because of the configurational differences, the RCP oil collection system from the original "C" motor cannot be fitted to the new motor without extensive modifications, which cannot be made available within the current Cycle 10 refueling outage. Consequently, a one-time exemption was requested from Subsection III.O to permit an interim oil collection method in conjunction with other compensatory measures to mitigate the consequences should an oil fire occur. The exemption would be effective through Operating Cycle 11, which is currently scheduled to commence on December 5, 1990 and end in February 1992.

The acceptability of the exemption request is addressed below. More details are contained in the NRC staff's related Safety Evaluation dated December 6, 1990.

*Reactor Coolant Pump Oil Collection System*

The licensee, for this cycle of operation, has proposed an interim oil collection method for the "C" pump motor. This Method consists of implementing certain fire protection modifications in the "C" RCP/steam generator cubicle in conjunction with compensatory measures. Through implementation of this method, the licensee with detect potential lube oil system leakage in the spare RCP motor by an increase in motor temperature and any leakage which does occur will be confined and contained in the "C" RCP/steam generator cubicle.

The "C" cubicle is located southeast of the reactor vessel. The cubicle has a concrete base at the minus 3 ft. 6 in. elevation with the concrete walls extending up to the 47 ft. 4 in. elevation. The access doors to this cubicle are located at the minus 3 ft. 6 in. and the 18 ft. 6 in. elevations. In addition, there are penetrations in the walls and the floor of the cubicle. This cubicle is located adjacent to the cable penetrations from the cable vault. The licensee, in order to contain any potential oil leakage from the "C" motor or a fire condition in the "C" cubicle, has implemented the following additional interim fire protection modifications:

—Four-inch oil-tight dikes have been installed at the door openings;

—Pipes which penetrate the cubicle floor are sleeved. The piping sleeves extend 4 in. above the floor of the cubicle. The pipes which extend from the sleeves are provided with either a spray cover or the penetration is filled with a liquid-tight fire-rated penetration sealant material;

—A heat detector has been installed above the "C" RCP motor. This detector is annunciated in the control room;

—The "C" cubicle is separated from the cable penetration area by the crane wall. The open penetration in the crane wall will be sealed with fire-rated penetration sealant material; and

—Spray shields will be installed as necessary to prevent high pressure oil spray from impinging on hot reactor coolant system (RCS) piping.

In addition to the above fire protection modifications, the licensee will maintain the following compensatory measures during the operation phase of Cycle 11:

—RCP motor bearing temperature increase is an indication of an oil leak. Therefore, the licensee will conduct more frequent surveillance of the "C" RCP motor temperature-related parameters;

—Plant procedures will be revised prior to startup to address operator actions and their expected response to adverse motor temperature conditions (e.g., containment entry to assess the reason for the temperature condition, shutdown of the pump, response of the fire brigade);

—Additional fire brigade briefings will be held on the potential for a fire in the "C" cubicle and on the means to mitigate a fire in this area; and

—Additional foam fire suppression equipment will be maintained outside the containment. This equipment, to be used by the fire brigade in the event of a lube oil fire, will be located near the containment access hatch.

Based on our evaluation of the licensee's proposed interim oil collection method and compensatory measures, we agree that if a lube oil system failure leading to a leak and a subsequent fire were to occur in the "C" RCP motor, the consequences of the fire would be mitigated and the plant's ability to achieve safe shutdown conditions would not be affected.

Therefore, the staff concludes that the licensee's interim oil collection method, consisting of temporary fire protection modifications, compensatory measures, and the partially installed oil collection system as described above, results in an acceptable fire hazard level which is essentially equivalent to that which existed with the permanent oil collection system. The staff also concludes that this method provides reasonable assurance that any potential

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lube oil leakage from the "C" RCP motor will be adequately controlled and contained within the "C" RCP/steam generator cubicle. The staff finds the licensee's request to operate the "C" RCP, with an interim oil collection method in place for Cycle 11 to be acceptable and, therefore, the licensee's request for exemption is granted.

IV

Pursuant to 10 CFR 50.12(a)(2)(v), the licensee must have made good faith efforts to comply with the regulation. The NRC staff believes that VEPCO could not have reasonably foreseen the configurational incompatibility between the existing and replacement "C" pump motors and has taken appropriate measures to mitigate the effects of this incompatibility.

Based on our evaluation, the NRC staff has concluded that special circumstances as described in 10 CFR 50.12(a)(2)(v) exist, in that the exemption would provide only temporary relief from the applicable regulation, and VEPCO has made good faith efforts to comply with the requirements of appendix R.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or common defense and security and is otherwise in the public interest, and hereby grants an exemption from the requirements of Subsection III.O of Appendix R to 10 CFR Part 50 to the extent discussed in Section III above. This exemption will be effective for the duration of Operating Cycle 11 for Surry, Unit 1, which is currently scheduled to end in February 1992.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this exemption will not result in any significant environmental impact (55 FR 50256).

A copy of the licensee's request for exemption dated November 14, 1990, as well as the staff's associated Safety Evaluation dated December 6, 1990, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC., and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

This exemption is effective upon issuance and will expire at the end of Operating Cycle 11.

Dated at Rockville, Maryland this 6th day of December, 1990.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-29199 Filed 12-12-90; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-482]**

**Wolf Creek Nuclear Operating Corp. (Wolf Creek Generating Station); Exemption**

I

The Wolf Creek Nuclear Operating Corporation (WCNOC) is the holder of Operating License No. NPF-42, which authorizes the operation of the Wolf Creek Generating Station. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor at the licensee's site located in Coffey County, Kansas.

II

Pursuant to 10 CFR 55.59(a)(1), "each licensee shall successfully complete a requalification program developed by the facility licensee that has been approved by the Commission. This program shall be conducted for a continuous period not to exceed 24 months in duration."

III

By letter dated September 18, 1990, the licensee requested an exemption from the requirement to extend the WCNOC licensed Operator Requalification Training Program cycle to be better aligned with the National Exam Schedule. The exemption from the requirements of the regulation would therefore be for a period of about 2 months.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Currently, the WCNOC Licensed Operator Requalification Training Program begins on October 1 of even years. This one-time exemption would permit the current requalification program that began in October 1988 to be extended to 26 months so that operator examinations could be aligned with the National Exam Schedule promulgated in Generic Letter 89-03. An April and an October examination date was established for Wolf Creek. This exemption will also result in a permanent adjustment of the WCNOC requalification training program starting date to December 1 of even years.

V

The staff has concluded that issuance of this exemption will not endanger life or property and will have no significant effect on the safety of the public or the plant.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the Federal Register on November 7, 1990 (55 FR 46878). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this exemption will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in Section III is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The Wolf Creek Nuclear Operating Corporation is exempt from the requirements of 10 CFR 55.59(a)(1) for a period of October 1990 to December 1990 with respect to the 24-month requalification program.

For further details with respect to this action, see the licensee's request dated September 18, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC; at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801; and at the Washburn University School of Law Library, Topeka, Kansas 66621.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 6th day of December 1990.

For the Nuclear Regulatory Commission.

**Bruce A. Boger,**

*Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-29201 Filed 12-12-90; 8:45 am]

BILLING CODE 7590-01-M

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**OFFICE OF PERSONNEL MANAGEMENT**

**Request for Expedited Review of OPM Form 1417 Submitted to OMB for Clearance**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed information collection, Combined Federal Campaign Results Code Sheet, OPM Form 1417. This form is completed annually by the local principal combined fund organizations, and is used by the Office of Personnel Management to compute the campaign contributions.

Approximately 500 forms are completed annually, each requiring an estimated one hour to complete, for a total public burden of 500 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

**DATES:** Comments on this proposal should be received within 5 calendar days from the date of this publication.

**ADDRESS:** Send or deliver comments to—Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jeremiah J. Barrett, (202) 606-2564.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

[FR Doc. 90-29206 Filed 12-12-90; 8:45 am]

BILLING CODE 6325-01-M

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**PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS**

**Mid-Year Meeting of Commissioners**

**AGENCY:** President's Commission on White House Fellowships.

**ACTION:** Notice of mid-year meeting of the President's Commission on White House Fellowships, closed to the public.

**SUMMARY:** Notice is hereby given that the mid-year Meeting of the President's Commission on White House Fellowships will be held at the Mayflower Hotel, Washington, DC, on January 28, 1991, beginning at 9 a.m.

The mid-year Meeting is convened for one day to review the overall operation of the program, including budgetary, recruitment and publicity issues, and to provide the Commissioners an opportunity to discuss new initiatives that will further improve the program.

It has been determined by the Director of the Office of Personnel Management that because of the confidential nature of the meeting, where criteria for the selection of future candidates is discussed, as well as the progress of members of the current class of White House Fellows, which, if revealed to the public would constitute a clear invasion of the individual's professional privacy, the content of this meeting falls within the provisions of section 552b(c) of title 5 of the United States Code. Accordingly, this meeting is closed to the public.

**DATES:** The date of the mid-year Meeting of the President's Commission on White House Fellowships, which is closed to the public, is January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Byrne, Associate Director, President's Commission on White House Fellowships, 712 Jackson Place, NW., Washington, DC 20503, (202) 395-4522.

Dated: December 19, 1990.

**Marcy L. Head,**

*Director, President's Commission on White House Fellowships.*

[FR Doc. 90-29207 Filed 12-12-90; 8:45 am]

BILLING CODE 6325-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

**(Rel. No. 34-28570; File No. SR-OCC-90-11)**

**Self-Regulatory Organizations; the Options Clearing Corporation; Proposed Rule Change Relating to Defining New Types of Market-Maker, Specialist, and Registered Trader Accounts**

December 4, 1990.

Pursuant to section 19(b)(1), of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 11, 1990, The Options Clearing Corporation ("OCC"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which terms have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

OCC proposes to amend its By-Laws and Rules to add several new definitions relating to types of accounts maintained by clearing members on behalf of market-makers, specialists, or registered traders. Under this proposal, OCC would add to its current account structure a "Proprietary Market-Maker Account." The proposed rule change makes other conforming changes to OCC's By-Laws relating to maintenance of accounts and OCC's Rules relating to margin requirements, pledge accounts, and liquidations. The proposed rule change additionally makes conforming changes to several existing account agreements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In General

The purpose of the proposed rule change is to exclude from the combined market-makers' account the exchange transactions and positions of market-makers, specialists, or registered traders who are directly or indirectly related to or associated with the carrying clearing member ("Associated Market-Makers"). The exclusion of Associated Market-Makers from the combined market-makers' account will increase the likelihood that OCC will be able to transfer rather than liquidate the positions of unrelated market-makers in such an account in the event of default by the carrying clearing member. An Associated Market-Maker that is excluded from a combined market-maker's account would be permitted to maintain a separate market-maker's account limited to the market-maker's own positions and transactions. The rule change would also permit an Associated Market-Maker to be included in a "Proprietary Market-Maker Account" under certain circumstances as described below.

The proposed rule change adds definitions in Article I of OCC's By-Laws, amends section 3 of article VI of OCC's By-Laws, and makes conforming changes to OCC's Rules relating to margin requirements, pledge accounts, and liquidation procedures.

*Exclusion of Associated Market-Makers From the Combined Market-Makers' Account*

Section 3(c) of article VI of OCC's By-Laws presently permits a clearing member to maintain a combined market-makers' account. A combined market-makers' account is confined to the exchange transactions and positions of market-makers who have consented to the commingling of their positions with those of other market-makers. Section 3(c) specifically excludes the participation of the clearing member in a combined market-makers' account, and

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OCC's form of account agreement also excludes any other "non-customer" of the clearing member from the combined market-makers' account.

"Non-customer" is defined in article I of OCC's By-Laws to include, in addition to the clearing member itself, only those categories of persons who are specifically enumerated as excluded from the definition of customer in the Commission's hypothecation rules.[1] Under OCC's definition, non-customer includes "any general or special partner of the Clearing Member, any officer or director of the Clearing Member, or any participant, as such, in any joint, group, or syndicate account with the Clearing Member or with any partner, officer or director thereof." Because the definition of "no-customer" is so narrow, OCC's current rules permit a market-maker that is closely related to a clearing member to include its positions in a combined market-makers' account with the positions of unrelated market-makers.

In light of its recent experience in the 1987 market break, OCC believes that the commingling of positions of Associated Market-Makers with those unrelated market-makers significantly increases risks to unrelated market-makers, to OCC, and to the options markets. Such Associated Market-Makers may be financially dependent upon the clearing member or under common direction with respect to trading strategies and risk management. In the event of the failure of the clearing member, the conditions which led to such failure may also lead to the insolvency of the Associated Market-Maker. If the Associated Market-Maker's positions are maintained in a combined market-makers' account, OCC may be unable to transfer the unrelated market-makers' positions, even though they continue to be viable, because it may be unable to separate the collateral supporting the positions in the combined account. This situation increases risk to OCC. OCC believes that the segregation of such accounts will decrease the risk exposure of the unrelated market-makers in the event of a failure of a clearing member and will facilitate OCC's ability to transfer expeditiously viable accounts to other clearing members.

Accordingly, OCC is proposing to add a definition of Associated Market-Maker to article I of the By-Laws and to amend paragraph (c) of section 3 of article VI of the By-Laws to both exclude such Associated Market-Makers from the combined market-makers' account and to make clear OCC's existing interpretation that all non-customers of the clearing member are also excluded. A parallel change is being made in paragraph (e) of section 3 of article VI with respect to combined registered traders' accounts. The definition of Associated Market-Maker includes market-makers, specialists, stock market-makers, stock specialists, and registered traders who are closely related to the clearing member but who are neither defined as "non-customers" under OCC's By-Laws nor expressly excluded from the definition of "customer" under the hypothecation rules. The definition includes affiliated entities of the clearing member (*i.e.*, subsidiaries, parents, and collateral affiliates) as well as certain individuals closely associated with the clearing member's business. Each entity included in the definition is an entity that would be defined as the holder of a "proprietary account" under paragraph (y) of § 1.3 of the General Regulations of the Commodity Futures Trading Commission ("CFTC").

[1] 17 CFR 240.3c-1 and 240.15c1-1.

Other Changes

Each Associated Market-Maker that is excluded from the combined market-makers' account as a result of the proposed rule change would be eligible to maintain its positions in a separate market-maker's account established under paragraph (b) of section 3 of article VI of OCC's By-Laws or, in the case of a registered trader, in a separate registered trader's account under paragraph (e) of section 3 thereof. Unless the Associated Market-Maker elects to be treated as a "Proprietary Market-Maker" as discussed below, the position of an Associated Market-Maker that are maintained in a separate market-maker's account would not be commingled with positions of other market-makers or of the firm.

The disadvantage to the clearing member of maintaining positions in separate market-maker's accounts rather than in the combined market-makers' account is the clearing member's margin requirements at OCC may be substantially increased because of the resulting inability to offset one market-maker's positions against those of another market-maker for the purpose of calculating the clearing member's margin requirements. The clearing member's higher margin costs may in turn be passed on to the Associated Market-Maker. Accordingly, some clearing members and their Associated Market-Makers may prefer to have the Associated Market-Maker's positions treated as proprietary and, therefore, potentially reduce margin requirements. OCC proposes to accomplish this by including Associated Market-Maker positions in a separate Market-Maker's account that is designated as a Proprietary Market-Maker Account. Paragraph (b) of section 3 of article VI currently provides that a clearing member may maintain any number of separate market-maker's accounts, each of which is confined to the transactions of a single market-maker and, therefore, does not ordinarily result in the commingling of positions. If, however, a separate market-maker's account is maintained for positions of the clearing member acting in its capacity as market-maker or specialist, the clearing member may elect to have the positions in that account combined for margin purposes with the positions carried in the clearing member's firm account. Such a market-maker's account is defined in paragraph (uuuu) of section 1 of VI of OCC's By-Laws. Amendments are made to rules 601, 602A, and 1105 to incorporate the Proprietary Market-Maker Account.

Although such commingling of firm and Associated Market-Maker positions would ordinarily be prohibited under the hypothecation rules because of the narrow definition of non-customer, the Commission's Division of Market Regulation has indicated to OCC that it would probably take a "no action" position with respect to such commingling under circumstances where the Associated Market-Maker: (i) Is not a "customer" of the clearing member for purposes of rule 15c3-3; [2] (ii) does not carry the accounts of customers; and (iii) consents to having its account treated as the account of a non-customer. Accordingly, the proposed new definition of Proprietary Market-Maker would include certain Associated Market-Makers who meet the conditions specified above and would also make explicit OCC's existing interpretation that a Proprietary Market-Maker Account can be maintained by any non-customer of the clearing member as well as by the clearing member itself. Paragraph (b) of section 3 of article VI is proposed to be amended to clarify OCC's lien on such Proprietary Market-Maker Account.

An additional advantage of allowing Associated Market-Makers to elect to be treated as Proprietary Market-Makers is that such persons might otherwise be excluded from participation in the cross-margining programs. A market-maker whose account is defined as "proprietary" under CFTC regulations but who is nevertheless a "customer" for purposes of the hypothecation rules might be excluded from participation in the proprietary cross-margining program.[3] The proposed rule change would, therefore, facilitate cross-margining. Changes to paragraph (e) of section 3 regarding accounts of registered traders and changes to pertinent rules relating to margin requirements (rules 601 and 602A), pledge accounts (rule 614), and liquidations (rule 1105) are simple conforming changes.

[2] 17 CFR 240.15c3-3.

Conforming changes also are made to the following existing agreements: market-maker's, specialist's, or registered trader's account agreement; joint account agreement for market-makers, specialists, and registered traders; combined market-makers', specialists, or registered traders' account agreement; and pledge account agreement. OCC is also proposing to use a new form entitled "Associated Market-Maker Consent" which would be executed by those Associated Market-Makers who are eligible and elect to combine their positions with the clearing member's proprietary market-maker positions. Market-makers who are affected by this proposed rule change would be required to submit new market-maker account agreements to OCC. Market-makers who are not affected by this rule change would not be required to execute new forms of agreements. These agreements further are amended to permit OCC to engage in certain "hedging transactions" with respect to all accounts provided for therein. This last amendment conforms to SR-OCC-87-22 which the Commission approved on August 6, 1989.[4]

OCC believes that the proposed rule change is consistent with the purposes and requirements of section 17A of the Act, as amended, because it promotes the protection of public investors and the public interest by enhancing OCC's liquidation procedures and by affording increased protection to market-makers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

[3] Securities Exchange Act Rel. No. 27236 (September 26, 1989), 54 FR 41196. OCC has filed a proposal that would expand the OCC/Chicago Mercantile Exchange cross-margining program to include the accounts of market-makers, specialists, and floor traders. Securities Exchange Act Rel. No. 27717 (February 21, 1990), 55 FR 7398.

[4] Securities Exchange Act Rel. No. 27104 (August 8, 1989), 54 FR 33842.



*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and have not been received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR-OCC-90-11 and should be submitted by January 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29205 Filed 12-12-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28677; File No. SR-PTC-90-04]

December 4, 1990.

**Self-Regulatory Organizations; Participants Trust Co.; Order Approving Proposed Rule Change Relating to the Rebate of Fees**

**I. Introduction**

On October 3, 1990, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-90-04) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on October 24, 1990, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

**II. Description of the Proposal**

PTC's proposal adopts a policy pertaining to the rebate of revenues. Specifically, the proposal provides that PTC may return revenues [3] to its participants should its Board of Directors deem it appropriate. Generally, a decision to rebate revenues will be based upon fiscal considerations such as whether PTC will show positive, post-rebate earnings, whether post-rebate revenues will cover sufficiently PTC's financial needs, and whether PTC should pay dividends on its outstanding capital stock. As proposed, any category of PTC participant may be eligible for a revenue rebate. However, once PTC makes a decision to rebate revenues, the rebate formula pertaining to each individual participant will be based upon the amount of fees and other charges the participant has remitted to PTC.

The text of the proposed rule change, which will exist in the form of a Board of Director's Resolution, is as follows:

The Board of Directors of Participants Trust Company may decide from time to time to return revenues received from its Participants, Limited Purpose Participants or participants of any other category of participant to those participants based upon such considerations as the Board of Directors deems relevant, including projected earnings of PTC in the event of the return of revenues or in the absence thereof, the projected financial needs of PTC and the desirability of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Rel. No. 28552 (October 15, 1990), 55 FR 42227.

[3] The term "revenues" includes all fees and charges that PTC collects from its participants plus interest generated from holding funds received. For purposes of is proposal, PTC uses the terms "fees" and "revenues" interchangeably.

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paying dividends on PTC's outstanding capital stock.

**III. PTC's Rationale for the Proposal**

PTC has indicated that since it cannot predict the volume of its business, it may, during periods of higher than anticipated activity or for other reasons, have revenues in excess of its needs. PTC believes that it should have the ability to return the excess revenues to its participants should the Board of Directors decide it is appropriate. Additionally, PTC believes that returning revenues to its participants in this manner is consistent with the requirement under section 17A(b)(3)(D) of the Act that the rules of a registered clearing agency provide for the equitable allocation of dues, fees, and other charges.

IV. Discussion

The Commission believes that PTC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act. Accordingly, for the reasons discussed below, the Commission is approving the proposal.

The Commission concurs with PTC's opinion that the proposal is consistent with section 17A(b)(3)(D) of the Act. As noted above, that section provides that a registered clearing agency must provide for the equitable allocation of dues, fees, and other charges among its participants. A PTC is essentially a not-for-profit entity,[4] it need not accumulate revenues in excess of that needed to maintain positive earnings, remain solvent, pay its bills when due, and pay reasonable dividends. Revenues generated that exceed these fundamental requirements should be returned to PTC's participants. The Commission believes that the proposal will aide PTC in providing an equitable allocation charges among PTC participants in accordance with the Act.

It should be noted, though, the Commission believes in order for the proposal to be consistent with section 17A(b)(3)(D), the size of an individual participant's rebate should be rationally related to is level of participation. Thus, individual rebates should be calculated using a formula that applies equitably to all of PTC's participants. The Commission believes that the formula proposed by PTC (i.e., using the amount of fees and other charges a participant has remitted to PTC as a basis for that participant's rebate) represents such an equitable method for the allocation of revenue rebates to individual participants.

V. Conclusion

For the reasons stated above, the Commission finds that PTC's proposal is consistent with section 17A of the Act.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that PTC's proposed rule change (SR–PTC–90–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[FR Doc. 90–29200 Filed 12–12–90; 8:45 am]

BILLING CODE 8010–01–M

[4] Registered clearing agencies are service companies owned by members of the financial industry. The primary mission of a clearing agency is to reduce the cost of services offered to the public by its participants. Hence, the "not-for-profit" designation.

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Chicago Board Option Exchange, Incorporated

December 7, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Societe Generale
CAC–40 (File No. 7–6429)
Paine Webber
CAC–40 Call Warrant (File No. 7–6430)
Paine Webber
CAC–40 Put Warrant (File No. 7–6431)
Salomon, Inc.
SFT.WS—FT–SE Put Warrant (File No. 7–6432)
Salomon, Inc.
FTP.WS—FT–SE Put Warrant (File No. 7–6435)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90–29146 Filed 12–12–90; 8:45 am]

BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

December 7, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Centura Banks, Inc.
Common Stock, No. Par Value (File No. 7–6434)
CIPSCO, Inc.
Common Stock, No. Par Value (File No. 7–6435)
Frontier Insurance Group, Inc.
Common Stock, $0.01 Par Value (File No. 7–6436)
NWNL Companies, Inc.
Common Stock, No. Par Value (File No. 7–6437)
Robertson Ceco, Corp.
Common Stock, $.01 Par Value (File No. 7–6438)
Alliance Tech Systems, Inc.
Common Stock, $0.01 Par Value (File No. 7–6439)
American Government Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–6440)
Church & Dwight Co., Inc.
Common Stock, $1.00 Par Value (File No. 7–6441)
Colonial High Income Municipal Trust
Common Stock, No. Par Value (File No. 7–6442)
ESCO Electronic Corp.
Common Stock, No. Par Value (File No. 7–6443)
Latin American Investment Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–6444)
Mexico Equity & Income Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–6445)
MFS Government Markets Income Trust
Common Stock, No. Par Value (File No. 7–6446)
Nuveen California Muncipal Market Opportunity Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–6447)



Patriot Select Dividend Trust
Common Stock, No. Par Value (File No. 7–6449)
Prudential Strategic Income Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–6450)
Singapore Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–6451)
Strum Ruger & Co., Inc.
Common Stock, $1.00 Par Value (File No. 7–6452)
Vintgage Petroleum, Inc.
Common Stock, $0.01 Par Value (File No. 7–6453)
Western Union Company
Preferred A Stock, No. Par Value (File No. 7–6454)
American Realty Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–6455)
Conner Peripherals, Inc.
Common Stock, No. Par Value (File No. 7–6456)
Micron Technology, Inc.
Common Stock, $0.10 Par Value (File No. 7–6457)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 31, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90–29147 Filed 12–12–90; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

[Public Notice 1303]

## Exports of Defense Articles to Germany

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** In light of the unification of Germany on October 3, 1990, the Department of State is revising its policy regarding applications for exports of defense articles and defense services to the geographical region previously known as East Germany.

**EFFECTIVE DATE:** November 15, 1990.

**FOR FURTHER INFORMATION CONTACT:** Rose Biancaniello, Chief, Licensing Division, Office of Defense Trade Controls, Center for Defense Trade, Department of State (703–875–6644).

**SUPPLEMENTARY INFORMATION:** In light of the unification of Germany on October 3, 1990, the Department of State has decided to revise its policy regarding applications for exports of defense articles and defense services to the geographical region previously known as the German Democratic Republic or East Germany.

As provided in § 126.1 of the International Traffic in Arms Regulations, it has been the policy of the Department of State to deny license applications and other approvals with respect to defense articles and defense services destined for or originating in certain countries, including East Germany. Since East Germany as a sovereign entity ceased to exist on October 3, 1990, the Department of State is now considering applications for exports to end users and uses throughout the newly unified Germany. Circumstances require, however, that applications involving end use/end users in the former GDR be reviewed with particular attention to export control mechanisms in place in that territory.

With respect to licenses previously granted for exports to the Federal Republic of Germany, the Department of State notes that such licenses were issued for a stated end use and end user. Any proposed change in end use/end user therefore requires the prior approval of the Department of State.

The Department of State is currently reviewing all outstanding licenses and approved manufacturing license and technical assistance agreements involving the FRG. Any additional provisos or restrictions deemed necessary for such license or approvals will be notified directly to the individual exporters concerned.

Dated: December 4, 1990.

Charles A. Duelfer,
*Director, Center for Defense Trade, Bureau of Politico-Military Affairs.*

[FR Doc. 90–29184 Filed 12–12–90; 8:45 am]

BILLING CODE 4710–25–M

## DEPARTMENT OF TRANSPORTATION

**Office of the Secretary**

## Secretarial Determination; Provision of Aviation Insurance Coverage for Commercial Air Carrier Service.

December 7, 1990.

By virtue of the authority vested in me by Presidential Determination No. 90–29, issued August 14, 1990, and Presidential Determination 90–32, issued August 17, 1990, and by virtue of the authority set forth in section 1302 of the Federal Aviation Act of 1958, as amended. 49 U.S.C. App. 1532,

I hereby:

1. Determine, on behalf of the President, that continuation of commercial air services to and from Saudi Arabia, Turkey, Syria, Jordan, Egypt, Yemen, Oman, United Arab Emirates, Israel, Bahrain, Qatar, and Cyprus, and to and from Iraq and Kuwait to the extent permitted by Executive Orders Nos. 12724 and 12725, is necessary to carry out the foreign policy of the United States. Such commercial air services facilitate, in particular, actions in support of the United States and international response to the Iraqi invasion of Kuwait and the evacuation of American citizens from areas affected by the invasion. These services facilitate, in addition, the maintenance of normal political and commercial exchange with the countries of the region.

2. Approve, on behalf of the President, the Department of Transportation's provision of insurance against loss of damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in title XIII of the Act, 49 U.S.C. App. 1531, *et seq.*, whenever I have determined that such insurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States.

These actions are taken in consultation with the Secretary of State with respect to section 1302 (a) and (c) of the Act, 49 U.S.C. App. 1532 (a) and (c), and in consultation with the Director of the Office of Management and Budget with respect to section 1302(c) of the Act, 49 U.S.C. App. 1532(c). Pursuant to section 1302(c) of the Act, 49 U.S.C. App. 1532(a), this Determination is effective for sixty days.

This Determination shall be brought to the attention of all air carriers within the meaning of section 101(3) of the Act, 49

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U.S.C. App. 1301(3), and published in the Federal Register.

Samuel K. Skinner,

*Secretary of Transportation.*

[FR Doc. 90-29210 Filed 12-12-90; 8:45 am]

BILLING CODE 4910-62-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Treasury, Fiscal Service, Bureau of the Public Debt.

**ACTION:** Notice of proposed amendment to the routine uses for the system of records Treasury/BPD .001—Personnel and Administrative Records.

**SUMMARY:** The Bureau of the Public Debt, Department of the Treasury, proposes to amend routine use number five of its system of records Treasury/BPD .001—Personnel and Administrative Records, last published on March 1, 1988, at 53 FR 6469.

**DATES:** The proposed amended routine use will become effective, without further notice, 30 days from the date of this publication (January 14, 1991) unless comments dictate otherwise.

**ADDRESSES:** Comments may be sent to D. Louise Bennett, Disclosure Officer, Room 553, E Street Building, Bureau of the Public Debt, Washington, DC 20239-0001. Copies of all written comments will be available for public inspection and copying at the Department of the Treasury Library, Room 5030, Main Treasury Building, Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** D. Louise Bennett, Disclosure Officer, (202) 376-4307.

**SUPPLEMENTARY INFORMATION:** The Bureau of the Public Debt proposes to amend this routine use, which now states that a record or information from a record maintained in system Treasury/BPD .001 may be disclosed to creditors or potential creditors to verify debt complaints or employment data. By this amendment Public Debt will clarify the language and expand the categories of entities to which information may be disclosed to include landlords and potential landlords. In addition, Public Debt will make clear that the disclosures under this routine use include information about salary. These types of disclosures are made when inquiries are made by a bank, loan company, landlord, or other such entity or individual to Public Debt's Personnel Offices requesting information needed by the entity or individual because the Public Debt employee is involved in the securing of a loan, mortgage, apartment rental, etc., from the entity or individual. The amended routine use will not infringe upon any individual's privacy rights because of the security protections and the disclosure restrictions imposed by the Privacy Act.

Dated: December 5, 1990.

Linda M. Combs,

*Assistant Secretary of the Treasury (Management).*

**Treasury/BPD .001**

*System name:*

Personnel and Administrative Records—Treasury/BPD.

* * * * *

Description of the change: Change routine use (5) to read as follows:

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

* * * * *

(5) To creditors, potential creditors, landlords and potential landlords when they request employment data or salary information for purposes of processing the employee's loan, mortgage, or apartment rental application. When information is requested by telephone, only verification of information supplied by the caller will be provided.

* * * * *

[FR Doc. 90-29132 Filed 12-12-90; 8:45 am]

BILLING CODE 4810-40-M

## Office of Thrift Supervision

### Atascosa Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Atascosa Federal Savings Bank, Jourdanton, Texas, on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29215 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### Edison Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Edison Federal Savings Association, New York, New York on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29216 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings Association of Nacogdoches; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Nacogdoches, Nacogdoches, Texas on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29217 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Southwest Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Southwest Federal Savings and Loan Association, Tyler, Texas on November 29, 1990.

Dated: December 6, 1990.



By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29218 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Savings Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Savings Association, F.A., Paragould, Arkansas, on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29219 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### Liberty Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Liberty Federal Savings Bank, Montebello, California on November 16, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington.

*Executive Secretary.*

[FR Doc. 90-29220 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### Tuskegee Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Tuskegee Savings and Loan Association, F.A., Tuskegee, Alabama, on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29221 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### Charter Savings Bank, F.S.B.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Charter Savings Bank, F.S.B., Newport Beach, California with the Resolution Trust Corporation as sole Receiver for the Association on November 30, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29222 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### Edison Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision had duly appointed the Resolution Trust Corporation as sole Receiver for Edison Federal Savings and Loan Association, New York, New York on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29223 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings and Loan Association, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association, Paragould, Arkansas, Docket No. 3495, on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29224 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings and Loan Association of Nacogdoches; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Nacogdoches, Nacogdoches, Texas on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29225 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

### First Louisiana Federal Savings Bank, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Louisiana Federal Savings Bank, F.A., Lafayette, Louisiana, Docket No. 8691, with the Resolution Trust Corporation as sole Receiver for the Association on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29226 Filed 12-12-90; 8:45 am]

BILLING CODE 6720-01-M

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**First Savings Association of Southeast Texas; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Association of Southeast Texas, Silsbee, Texas, Docket No. 7486, on November 30, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29227 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M

**First Southwest Savings and Loan Association; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Southwest Savings and Loan Association, Tyler, Texas, OTS Docket No. 7510, on November 29, 1990.

Dated: December 6, 1990.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29228 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M

**Liberty Federal Bank, F.S.B.; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Liberty Federal Bank, F.S.B., Montebello, California on November 16, 1990.

Dated: December 6, 1990.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29229 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M

**Madison Guaranty Savings and Loan Association; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Madison Guaranty Savings and Loan Association, McCrory, Arkansas, Docket No. 7601, on November 29, 1990.

Dated: December 6, 1990.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29230 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M

**Tuskegee Federal Savings and Loan Association; Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Tuskegee Federal Savings and Loan Association, Tuskegee, Alabama, Docket No. 4793, on November 29, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29231 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M

**Western Gulf Savings and Loan Association; Replacement of Conservator With a Receiver**

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Western Gulf Savings and Loan Association, Bay City, Texas with the Resolution Trust Corporation as sole Receiver for the Association on November 15, 1990.

Dated: December 6, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
*Executive Secretary.*

[FR Doc. 90-29232 Filed 12-12-90; 8:45 am]
BILLING CODE 6720-01-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 240
Thursday, December 13, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, December 18, 1990, 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Correction and Approval of Minutes
Election of Officers for 1991
A. Election of Chairman
B. Election of Vice Chairman
Advisory Opinion 1990-14—Michael A. Nemeroff on behalf of the American Telephone & Telegraph Company and its subsidiary, AT&T Communications, Inc.
Regulations: Public Financing of Presidential Primary and General Election Candidates: Notice of Proposed Rulemaking
Proposed Revisions to Directive 3, Debt Settlement Procedures
Administrative Matters

**DATE AND TIME:** Tuesday, December 18, 1990, to Convene After Open Meeting.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,
*Administrative Assistant, Office of the Secretariat.*

[FR Doc. 90-29384 Filed 12-11-90; 3:08 pm]
BILLING CODE 6715-01-M

**FEDERAL TRADE COMMISSION**

**TIME AND DATE:** 2:00 p.m., Tuesday, December 18, 1990.

**PLACE:** Federal Trade Commission Building, room 532, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Portions Open to Public

(1) Oral Argument in AHS West and Ukiah Adventist Hospital, Docket 9234.

**Portions Closed to the Public**

(2) Executive Session to follow Oral Argument in AHS West and Ukiah Aventist Hospital, Docket 9234.

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Ticknor, Office of Public Affairs: (202) 326-2179, Recorded Message: (202) 326-2711.

Donald S. Clark,
*Secretary.*

[FR Doc. 90-29362 Filed 12-11-90; 1:19 pm]
BILLING CODE 6750-01-M

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Part II

# Department of the Interior

**Bureau of Indian Affairs**

## Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe**

November 28, 1990.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (Formerly 25 CFR 54.8(a)) notice is hereby given that the:

Yuchi Tribal Organization, Inc., c/o Al Rolland, P.O. Box 1990, 30 N. Water Street, Sapulpa, Oklahoma 74067.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 5, 1990, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.6(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's file. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

**Eddie F. Brown,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 90–29139 Filed 12–12–90; 8:45 am]

BILLING CODE 4310–02–M

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Part III

# Environmental Protection Agency

**40 CFR Part 60**

**Amendments to Standards of Performance for New Stationary Sources; Reporting Requirements; Final Rule**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD-FRL-3779-1]**

## Amendments to Standards of Performance for New Stationary Sources; Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Revisions to the reporting requirements for certain facilities subject to 40 CFR Part 60, Standards of Performance for New Stationary Sources (in particular subparts A, D, EE, MM, RR, SS, TT, WW, and HHH) were proposed in the Federal Register on September 29, 1987 (52 FR 36440). Today's action promulgates revisions to the affected subparts in order to be consistent with the current EPA reporting frequency policy. Today's action also amends Subpart A to require the submission of a summary excess emission and monitoring system performance (MSP) report form. Amending these subparts will not change monitoring or recordkeepiang requirements of the affected facilities. The effect of the amendments is to reduce the reporting burden and to provide EPA sufficient information to carry out effective monitoring and enforcement.

**DATES:** Effective Date: December 13, 1990.

*Judicial Review:* Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this notice is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** *Docket.* A docket, number A–85–01, containing information considered by EPA in the development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Room M–1500, first floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Bell or Ms. Amanda Agnew, Standards Development Branch, Emission Standards Division, (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5566 or (919) 541–5288.

**SUPPLEMENTARY INFORMATION:**

### I. Background for Final Amendment

*Rationale for Revised Reporting Frequencies*

In 1985, EPA reviewed the information collection requirements and reporting frequencies for new source performance standards (NSPS). As a result of that review, the policy under which EPA determines reporting frequencies for NSPS was developed and published in the Federal Register as part of the preamble for proposed standards of performance for fluid catalytic cracking unit regenerators (November 8, 1985 50 FR 46464). The policy deals with three types of continuous monitoring system (CMS) information collected by the enforcing agency: Direct compliance information, monitored parameter data, and excess emission data as measured by CMS. Direct compliance information is most useful to an enforcement agency because the sources' compliance status is evident from the information itself, and no further testing is necessary for documentation. Direct compliance includes the CMS data collected by NSPS sources pursuant to regulations specifying CMS as the compliance method. Direct compliance also includes data collected where the State implementation plan (SIP) or a federally-enforceable permit or order specifies CMS as the compliance method. In these situations, EPA can use CMS data to directly enforce the governing regulation. Because the most current data available are useful for enforcement purposes, sources will be required to report direct compliance information to EPA on a quarterly basis. However, as provided for in the individual subparts, if no exceedances of the standard have occurred nor any CMS downtimes have occurred during the reporting period (quarterly or semiannually), only a statement to that effect (negative declaration) is needed. This new policy helps focus the resources both of the industry and of EPA sources where remedial action is warranted.

The other types of CMS information (*i.e.*, the monitored parameter data and the CMS excess emission data) can be used by EPA in enforcement actions to prove violations of the operating and maintenance (O&M) and monitor performance requirements (*e.g.*, 60.11 (d)) and, among other things, to issue notices of violation or as indicators of the magnitude and duration of emissions violations. The new policy states that reporting frequencies of these data should be reviewed regulation-by-regulation and without evidence for more frequent reporting, semiannual reporting will be required.

In order to implement the new policy, amendments to subparts A, D, EE, MM, RR, SS, TT, WW, and HHH were proposed for comment in the Federal Register on September 29, 1987. The amendments are described below.

### II. The Standards

*Amendment to General Provisions*

The EPA is amending the General Provisions (subpart A) of 40 CFR part 60. The General Provisions specify procedures and definitions that apply to all owners and operators of air pollution sources covered by NSPS. Currently, under 40 CFR 60.7(c), owners and operators of certain affected facilities required to install and operate CMS must submit a written report of excess emissions and MSP to the Administrator every calendar quarter. Generally, except for Subpart D, today's action reduces the frequency of submission of excess emission and MSP reports required by paragraph 60.7(c) from quarterly to semiannually. It is EPA's judgment that less frequent reporting will have no effect upon the utility of the data which may be obtained from such reports and that the effects upon enforcement of NSPS would be minimal. However, if the Administrator or his designated agent judges that more frequent reporting is needed from owners or operators of some affected facilities, he may so require, either by requests or administrative orders for particular sources, or by regulation for classes or categories of sources.

This revision also reduces to semiannual the excess emission and MSP reporting requirements for the following subparts and affected facilities: Subpart G—Nitric Acid Plants; Subpart H—Sulfuric Acid Plants; Subpart J—Petroleum Refineries (except $SO_2$ excess emission data); Subpart AA—Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983; Subpart BB—Kraft Pulp Mills; Subpart CC—Glass Manufacturing Plants; Subpart GG—Stationary Gas Turbines; Subpart HH—Lime Manufacturing Plants; and Subpart NN—Phosphate Rock Plants.

Two additional changes to § 60.7 have been made since proposal to assist EPA in its report evaluations. These are the requirements to report process operating time during the reporting period and to submit a summary excess emission and



MSP report form in lieu of the more detailed report currently required in § 60.7(c). These changes are discussed in section III of this preamble.

*Clarification in Applicability Provisions of General Provisions*

A paragraph has been added to the applicability provisions of the general provisions for NSPS. The added provisions simply clarify that sources which commenced construction or modification before a revised standard became applicable (usually the publication date of the proposed revised standard) are not subject to the revised NSPS.

This clarification is being made to the applicability provisions (40 CFR 60.1) of the NSPS General Provisions as part of a settlement agreement between EPA and the Portland Cement Association (PCA), American Iron and Steel Institute, and American Mining Congress (*Portland Cement Association* vs. *EPA*, D.C. Cir. No. 89–1004). This provision clarifies EPA's position that it is not asserting authority under section 111 to apply new or more stringent emission limitations or emission controls to sources which commenced construction prior to the proposal of such new or more stringent emission limitations or controls.

On February 10, 1989, PCA, *et al.*, filed an administrative petition with EPA requesting reconsideration of a final rule amending the NSPS for Portland cement plants [December 14, 1988 (53 FR 50354)]. The revisions were related to the monitoring, recordkeeping and reporting requirements associated with the NSPS, but no changes were made to the emission limits for Portland cement plants. The revisions required that each owner or operator subject to the NSPS install and operate a continuous opacity monitoring system within 180 days of promulgation of the revisions, *i.e.*, June 12, 1989. These requirements were imposed on existing NSPS sources [plants constructed, modified, or reconstructed after August 17, 1971 (36 FR 15704)] under the authority of section 114 of the CAA. Section 114 gives EPA broad authority to impose monitoring, recordkeeping, and reporting requirements on a broad category of emission sources, including existing sources. The petitioners' arguments that EPA was unjustified in applying the revisions to the existing Portland cement plants were not supported by new information of central relevance. Therefore, the petition for reconsideration of the December 1988 revisions to the NSPS was denied [June 28, 1989 (54 FR 27116)].

The EPA has agreed, however, to promulgate the clarification in the applicability provisions of the General Provisions for NSPS as discussed earlier. This language follows closely the existing applicability language for NSPS and is consistent with section 111(a)(2) of the CAA.

*Amendment to Subpart D*

The EPA is also amending Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971. The facilities affected by subpart D are large sources of sulfur dioxide and nitrogen oxides emissions and MSP. Section 60.45(g) currently requires quarterly reporting of excess emissions. The previously discussed amendment § 60.7(c) of the General Provisions will change the reporting to semiannual. However, since facilities affected by subpart D are some of the largest individual sources of sulfur dioxide, nitrogen oxides, and particulates, anything less than quarterly reporting may result in an unreasonably high level of emissions or poor MSP before corrective action can be taken. Also, quarterly reporting will involve only a minor burden on the source, since, in almost all cases, excess emission and MSP reports will be stored in a computer system and analyzed automatically. Therefore, EPA has determined that quarterly reporting is appropriate for those sources affected by subpart D. Consequently, EPA is amending subpart D, § 60.45(g) so that current requirements for quarterly excess emission and MSP reports remain the same.

*Amendment to Surface Coating Standards*

In order to be consistent with the new reporting policy, EPA is also amending several standards of performance for surface coatings (i.e., subparts EE, MM, RR, SS, TT, WW, and HHH). These subparts currently require monthly compliance tests and monitoring of control device parameters, but the reporting requirements vary from reporting initial performance test results to monthly reporting of exceedances. The data resulting from the monthly compliance tests are direct compliance information which may be used by the enforcement agency as the sole or direct evidence of a violation of the emission standard; therefore, it is important to have the most recent data available. As a result, sources should report these data quarterly if an exceedance of the standard has occurred and semiannually otherwise. Monitored parameter data, which can be used as proof of non-emissions violations (*e.g.*, § 60.11(d)) and also to indicate the magnitude and duration of emissions violations, need to be submitted semiannually unless otherwise required by the Administrator.

Therefore, EPA is amending the surface coating standards to require quarterly reporting when the results of the monthly compliance tests show emissions exceeding the standard, and to require semiannual reporting if no exceedances or monitoring deficiencies occur, and to require semiannual reporting of monitored parameter data.

### III. Changes Since Proposal

Two revisions have been added to the September 29, 1987 proposal. These revisions further enhance EPA's enforcement ability and reduce the burden to the industry.

*Duration of Operation*

The reporting requirements of 40 CFR 60.7 do not require a source to report the duration of operation of the process during the reporting period. This information is used by agencies to determine the percentage of total operating time that a source was not in compliance and is essential for determining follow-up action. For example, if two sources have the same period of excess emissions during a reporting period, but Source A was operating for half the time of Source B, this indicates that Source A may have more serious emission control or operation problems and merits more timely attention by the regulatory agency. This information is readily available to sources and is essential to meaningful agency analysis and use of CMS data. Therefore, § 60.7 is revised to require submittal of the process operating time during the reporting period.

*Summary Report Form*

Agency experience has shown that source submittal of summary CMS data may benefit the source, agencies, and the environment. A summary form simplifies the reporting requirement for the source and makes the source analyze its overall compliance status prior to the agency analysis and compliance evaluation. This action should result in better response to the control of emissions or MSP by the source under its obligations of 40 CFR 60.11(d) through early detection and follow-up to violations. Therefore, § 60.7 has been revised to allow sources to submit a summary excess emission and MSP report form as follows:

Sources shall submit one summary report form per pollutant monitored at each affected facility if the total duration of excess

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emissions is less than 1 percent of the total operating time for the reporting period and if the total duration of CMS downtime is less than 5 percent of the total operating time for the reporting period. If either one of these stipulations is not met, sources are required to submit the summary report form and the complete excess emission report as is currently required in § 60.7(c). If necessary, the appropriate enforcement agency has the authority to request and obtain additional data at any time, including the more complete reports.

Figure 1 has been added to § 60.7 and should be used as the summary report form unless otherwise specified by the appropriate enforcement agency.

Sources have been required to submit the data (excess emissions and MSP data) since 1975. However, the report had previously been called an "excess emission report." Because of its name, many source and agency personnel assumed that it was supposed to include only excess emissions and not monitor performance data. In order to minimize the possibility that such misunderstandings will continue to occur, the report's name is hereby changed to "Excess Emissions and Monitoring Systems Performance Report," and the report title and definition will be added to § 60.2 (definitions).

## IV. Public Participation

The standards were proposed and published in the **Federal Register** on September 29, 1987 (52 FR 36440). Public comments were solicited at the time of proposal, and the docket was made available for inspection. The comment period ended on October 28, 1987. Four letters were received, but did not result in significant changes to the recommended standards.

## V. Significant Comments

All comments and responses have been summarized below. The numbers in parentheses with each comment are the docket numbers. These numbers locate the comment letter in Docket No. A–85–01.

One commenter recommended extending the reporting deadline from 30 days to 60 days after the reporting interval.

As a result of this revision, § 60.7(c) of the Code of Federal Regulations states that "* * * All semiannual reports shall be postmarked by the 30th day following the end of each calendar half * * *" The EPA feels that 30 days is an adequate amount of time to prepare and submit the report. This is particularly true since, in most cases, the owner or operator can begin preparing the report whenever the excess emissions or poor MSP occurs and would not have to wait until the 6-month period has ended.

Another commenter wants EPA to clearly identify whether CMS data constitutes a violation of the standard. The commenter cites a State program where fines through settlement agreements are based on CMS reporting. The commenter also states that certain enforcement agency representatives have alleged that a violation must be determined by stack testing in accordance with published EPA procedures adopted into State programs.

The EPA can apply CMS data to a variety of important enforcement issues, irrespective of whether the legal requirements being enforced specify CMS as the compliance method. Where CMS is the specified compliance method in the regulations, permits, orders, or established in the SIP, EPA uses CMS data alone to: (1) Devise a priority list for inspections; (2) issue Notices of Violation (NOV's) to SIP sources or Findings of Violation (FOV's) to non-SIP sources; (3) document a SIP violation extending 30 days beyond the date of the NOV; (4) quantify the magnitude and/or duration of a violation or exceedance; (5) issue an administrative order under section 113(a); (6) issue a notice of noncompliance under section 120; (7) refer a case to the Justice Department for civil or criminal prosecution; or (8) prove a violation in civil or criminal litigation.

Where CMS is not the specified emissions compliance method, EPA utilizes the data collected in any of the first four enforcement uses outlined in the preceding paragraph. If, on the basis of CMS data alone, EPA issues an NOV and the source then fails to come into compliance, a second NOV is not necessary provided that a sufficient relationship exists between the CMS data and the compliance method data. For enforcement actions against sources affected by a regulation which specifies a compliance method other than CMS, EPA would rely on compliance method tests or inspections and other information available to the Agency, to prove a violation of the emissions limit.

Whether or not a compliance method is stated in the regulations, EPA can use CMS data alone to enforce non-emissions requirements, such as O&M, monitoring, recordkeeping, and reporting requirements of NSPS regulations, SIP's, and federally-enforceable orders and permits. For example, 40 CFR 60.11(d) establishes a general "good practices" O&M requirement which identifies no specific compliance method, but states that "the determination of whether acceptable * * * procedures are being used will be based on information * * * which may include, but is not limited to, monitoring results * * *".

With regard to the commenter's citation of a State program where settlement agreements assess fines based on CMS reporting, EPA affirms that States have the authority through their SIP programs to choose alternative compliance options, including basing fines on CMS reports.

The same commenter also wants EPA to revisit the concept of revising the 100 percent compliance requirement even during startup and malfunction.

The EPA realizes that, in certain circumstances, sources which ordinarily would comply with the standards may unavoidably release pollutants in excess of the standards. Thus, unless specified otherwise in a particular subpart, EPA does not require 100 percent compliance during startup, shutdown, or malfunction periods. For the purposes of a performance test conducted in accordance with § 60.8, EPA set forth three limited exceptions to full compliance: "operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test nor shall emissions in excess of the level of the applicable emission limit during periods of startup, shutdown, and malfunction be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard."

This language does not imply, however, that a source can continue to operate after a malfunction, as defined in 40 CFR 60.2, is detected. Under 40 CFR 60.11(d), a source is required to, "at all times, including periods of startup, shutdown, and malfunction * * * to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions." The preamble to the promulgation of § 60.11(d), 38 FR 28565, addressed the concern that this section may permit sources to continue operating after malfunctions were detected: "The provision (of this section) requires that good O&M practices be followed, and thereby, precludes continued operation in a malfunctioning condition."

One commenter encourages EPA to examine all required periodic reports to see if their frequency of submission can also be reduced.

The EPA is required by section 111(b)(1)(B) of the CAA to review NSPS every 4 years. During these reviews, EPA examines all aspects of the standards for possible revision. This includes a review of the reporting and recordkeeping requirements of the standards. Any revisions to the reporting and recordkeeping requirements resulting from these reviews would be proposed and then promulgated in the **Federal Register**.



Another commenter is concerned with EPA's claim that in the future, EPA may determine that CMS excess emission data may also be used for direct enforcement. They stress that before such a rulemaking, EPA would need to examine the original technical basis and intent for the NSPS at issue and then develop an averaging time for the standard that reflects that original basis and intent. They feel EPA should only change current regulatory requirements through notice and comment rulemaking.

If EPA policy concerning the use of excess emissions data were to be changed, EPA would notify the public through a **Federal Register** notice. The notice would provide the rationale for any modifications made to the existing policy.

Another commenter urges EPA to reconsider the need for quarterly reporting by the utility industry. They write that many utility sources are located in rural areas and the potential for severe adverse impacts from excess emissions or poor MSP would be minimal. They state that the utility industry has an excellent record in minimizing excess emissions and operating monitoring systems. They feel there is no reason to single out all subpart D sources and impose more burdensome reporting requirements on those sources than on other sources regulated under 40 CFR part 60.

As stated in the preamble to the proposed revision, EPA feels that since subpart D sources are some of the largest individual sources of sulfur dioxide, nitrogen oxides, and particulates, quarterly reporting is more appropriate for these facilities. However, EPA has not singled out subpart D sources. As NSPS for other source categories are developed or reviewed, each source category will be examined to determine if that source category also warrants quarterly excess emissions reporting.

## VI. Administrative

The docket is an organized and complete file of all the information submitted to, or otherwise considered in the development of this proposed rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of these amendments is December 12, 1990. Section 111 of the CAA provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities described herein.

Frequency of reporting requirements will be reviewed with each subpart as they are reviewed every 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in CMS technology, and reporting requirements.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2060–0106, 0034, 0004, 0108, 0107, 0001, and 0059 for subparts EE, MM, RR, SS, TT, WW and HHH respectively.

Public reporting burden resulting from this rulemaking is estimated to decrease a total of 17,860 hours for those facilities regulated under subparts G, H, J, AA, BB, CC, GG, HH, MM, and NN where the frequency of reporting is changed from quarterly to semiannual. Other standards (subparts EE, RR, SS, TT, WW, and HHH) will experience a total increase of 18,000 hours due to a change from no reporting to semi-annual. All standards affected by this rulemaking will experience a marginal increase in burden to prepare the summary report form (a total of 1,075 hours across all facilities and subparts). Time required to record total process operating time is considered a "usual and customary" burden as defined under 5 CFR 1320.7 and, as such, is not factored into our estimates of public recordkeeping and reporting burden. The net change in burden from these changes is an increase of 1,214 hours. A specific breakdown of these changes is provided in the Information Collection Request (ICR) (EPA ICR #998) and is available from EPA by calling Sandy Farmer at (202) 382–2740.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs (Paperwork Reduction Project (2060–0106, 0034, 0004, 0108, 0107, 0001, and 0059)), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis (RIA). The EPA has determined that these amendments to the General Provisions and subparts D, EE, MM, RR, SS, TT, WW, and HHH would result in none of the adverse economic effects set forth in section 1 of the Executive Order as grounds for finding a regulation to be a "major rule." The EPA has, therefore, concluded that this regulation is not a "major rule" under the Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The CAA specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

## List of Subjects in 40 CFR Part 60

Air pollution control, Electric power plants, Intergovernmental relations, Reporting and recordkeeping requirements, Can surface coating, Fossil-fuel-fired steam generators, Synthetic fibers.

Dated: November 20, 1990.

**William K. Reilly,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 60 is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by designating the existing introductory paragraph as paragraph (a) and adding paragraph (b) to read as follows:

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**§ 60.1 Applicability.**

* * * * *

(b) Any new or revised standard of performance promulgated pursuant to section 111(b) of the Act shall apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of such new or revised standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

3. By adding in alphabetical order to § 60.2 the definition "Excess Emissions and Monitoring Systems Performance Report" to read as follows:

**§ 60.2 Definitions.**

* * * * *

*Excess Emissions and Monitoring Systems Performance Report* is a report that must be submitted periodically by a source in order to provide data on its compliance with stated emission limits and operating parameters, and on the performance of its monitoring systems.

* * * * *

4. In § 60.7: 1. Paragraph (c) introductory text is revised. 2. Paragraph (c)(1) is revised. 3. Paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g) respectively. 4. Paragraph (d) is added. 5. Add figure 1 at the end of § 60.7(d).

**§ 60.7 Notification and recordkeeping.**

* * * * *

(c) Each owner or operator required to install a continuous monitoring system (CMS) or monitoring device shall submit an excess emissions and monitoring systems performance report (excess emissions are defined in applicable subparts) and/or a summary report form (see paragraph (d) of this section) to the Administrator semiannually, except when: more frequent reporting is specifically required by an applicable subpart; or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or the Administrator, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. All reports shall be postmarked by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

(1) The magnitude of excess emissions computed in accordance with § 60.13(h), any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.

* * * * *

(d) The summary report form shall contain the information and be in the format shown in figure 1 unless otherwise specified by the Administrator. One summary report form shall be submitted for each pollutant monitored at each affected facility.

(1) If the total duration of excess emissions for the reporting period is less than 1 percent of the total operating time for the reporting period and CMS downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report form shall be submitted and the excess emission report described in § 60.7(c) need not be submitted unless requested by the Administrator.

(2) If the total duration of excess emissions for the reporting period is 1 percent or greater of the total operating time for the reporting period or the total CMS downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, the summary report form and the excess emission report described in § 60.7(c) shall both be submitted.

**Figure 1—Summary Report—Gaseous and Opacity Excess Emission and Monitoring System Performance**

Pollutant (Circle One—$SO_2$/$NO_x$/TRS/$H_2S$/CO/Opacity)
Reporting period dates: From _____ to _____
Company:
Emission Limitation _____
Address:
Monitor Manufacturer and Model No. _____
Date of Latest CMS Certification or Audit _____
Process Unit(s) Description:
Total source operating time in reporting period [1] _____

| Emission data summary [1] | CMS performance summary [1] |
|---|---|
| 1. Duration of excess emissions in reporting period due to: | 1. CMS downtime in reporting period due to: |
| a. Startup/shutdown | a. Monitor equipment malfunctions |
| b. Control equipment problems | b. Non-Monitor equipment malfunctions |
| c. Process problems | c. Quality assurance calibration |
| d. Other known causes | d. Other known causes |
| e. Unknown causes | e. Unknown causes |
| 2. Total duration of excess emission | 2. Total CMS Downtime |
| 3. Total duration of excess emissions × (100) [Total source operating time]. % [2] | 3. [Total CMS Downtime] × (100) [Total source operating time] % [2] |

[1] For opacity, record all times in minutes. For gases, record all times in hours.
[2] For the reporting period: If the total duration of excess emissions is 1 percent or greater of the total operating time or the total CMS downtime is 5 percent or greater of the total operating time, both the summary report form and the excess emission report described in § 60.7(c) shall be submitted.

On a separate page, describe any changes since last quarter in CMS, process or controls. I certify that the information contained in this report is true, accurate, and complete.

Name _____

Signature _____

Title _____

Date _____

* * * * *

5. By revising paragraph (g) introductory text of § 60.45 to read as follows:

**§ 60.45 Emission and fuel monitoring.**

* * * * *

(g) Excess emission and monitoring system performance reports shall be submitted to the Administrator for every calendar quarter. All quarterly reports shall be postmarked by the 30th day following the end of each calendar quarter. Each excess emission and MSP report shall include the information required in § 60.7(c). Periods of excess emissions and monitoring systems (MS) downtime that shall be reported are defined as follows:

* * * * *

6. In § 60.315: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d). 3. New paragraph (c) is added. 4. OMB control number is added to the end of the section.

**§ 60.315 Reporting and recordkeeping requirements.**

* * * * *



(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.312. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit at the frequency specified in § 60.7(c) the following:

(1) Where compliance with § 60.312 is achieved through the use of thermal incineration, each 3-hour period when metal furniture is being coated during which the average temperature of the device was more than 28 °C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.313.

(2) Where compliance with § 60.312 is achieved through the use of catalytic incineration, each 3-hour period when metal furniture is being coated during which the average temperature of the device immediately before the catalyst bed is more than 28 °C below the average temperature of the device immediately before the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.313. Additionally, when metal furniture is being coated, all 3-hour periods during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.313 will be recorded.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall state this in the report.

* * * * *

(Approved by the Office of Management and Budget under control number 2060-0108)

7. In § 60.395: 1. Paragraph (b) is revised. 2. Paragraph (c) is revised. 3. OMB control number is added to the end of the section.

**§ 60.395 Reporting and recordkeeping requirements.**

* * * * *

(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.392. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually. Where compliance is achieved through the use of a capture system and control device, the volume-weighted average after the control device should be reported.

(c) Where compliance with § 60.392 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for thermal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. The owner or operator shall submit a written report at the frequency specified in § 60.7(c) and as defined below.

* * * * *

(Approved by the Office of Management and Budget under control number 2060-0034)

8. In § 60.447: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d). 3. New paragraph (c) is added.

**§ 60.447 Reporting requirements.**

* * * * *

(b) Following the initial performance test, the owner or operator of each affected facility shall submit quarterly reports to the Administrator of exceedances of the VOC emission limits specified in § 60.442. If no such exceedances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) The owner or operator of each affected facility shall also submit reports at the frequency specified in § 60.7(c) when the incinerator temperature drops as defined under § 60.443(e). If no such periods occur, the owner or operator shall state this in the report.

* * * * *

9. In § 60.455: 1. Paragraph (b) is revised. 2. Paragraph (c) is redesignated as paragraph (d). 3. New paragraph (c) is added. 4. OMB control number is added to the end of the section.

**§ 60.455 Reporting and recordkeeping requirements.**

* * * * *

(b) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the total mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.452. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit at the frequency specified in § 60.7(c) the following:

(1) Where compliance with § 60.452 is achieved through use of thermal incineration, each 3-hour period of coating operation during which the average temperature of the device was more than 28 °C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.453.

(2) Where compliance with § 60.452 is achieved through the use of catalytic incineration, each 3-hour period of coating operation during which the average temperature recorded immediately before the catalyst bed is more than 28 °C below the average temperature at the same location during the most recent performance test at which destruction efficiency was determined as specified under § 60.453. Additionally, all 3-hour periods of coating operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.453 will be recorded.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall state this in the report.

* * * * *

(Approved by the Office of Management and Budget under control number 2060-0108)

10. In § 60.465: 1. Paragraph (c) is redesignated as paragraph (e). 2. New paragraphs (c) and (d) are added. 3. OMB control number is added to the end of the section.

**§ 60.465 Reporting and recordkeeping requirements.**

* * * * *

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record,

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and submit a written report to the Administrator every calendar quarter of each instance in which the volume-weighted average of the local mass of VOC's emitted to the atmosphere per volume of applied coating solids (N) is greater than the limit specified under § 60.482. If no such instances have occurred during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(d) The owner or operator of each affected facility shall also submit reports at the frequency specified in § 60.7(c) when the incinerator temperature drops as defined under § 60.484(c). If no such periods occur, the owner or operator shall state this in the report.

* * * * *

(Approved by the Office of Management and Budget under control number 2060-0167)

11. In § 60.493: 1. Paragraph (b) is revised. 2. Paragraphs (c) and (d) are redesignated as (d) and (e).

3. New paragraph (c) is added.

**§ 60.495 Reporting and recordkeeping requirements.**

* * * * *

(b) Following the initial performance test, each owner or operator shall identify, record, and submit quarterly reports to the Administrator of each instance in which the volume-weighted average of the total mass of VOC per volume of coating solids, after the control device, if capture devices and control systems are used, is greater than the limit specified under § 60.492. If no such instances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

(c) Following the initial performance test, the owner or operator of an affected facility shall identify, record, and submit at the frequency specified in § 60.7(c) the following:

(1) Where compliance with § 60.492 is achieved through the use of thermal incineration, each 3-hour period when cans are processed, during which the average temperature of the device was more than 28°C below the average temperature of the device during the most recent performance test at which destruction efficiency was determined as specified under § 60.493.

(2) Where compliance with § 60.492 is achieved through the use of catalytic incinerator, each 3-hour period when cans are being processed, during which the average temperature of the device immediately before the catalyst bed is more than 28°C below the average temperature of the device immediately before the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.496 and all 3-hour periods, when cans are being processed, during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test at which destruction efficiency was determined as specified under § 60.494.

(3) For thermal and catalytic incinerators, if no such periods as described in paragraphs (c)(1) and (c)(2) of this section occur, the owner or operator shall state this in the report.

* * * * *

12. In § 60.604: 1. Paragraph (e)(2) is revised.

**§ 60.604 Reporting requirements.**

* * *

(e) * * *

(2) The results of subsequent performance tests that indicate that VOC emissions exceed the standards in § 60.602. These reports shall be submitted quarterly at 3-month intervals after the initial performance test. If no exceedances occur during a particular quarter, a report stating this shall be submitted to the Administrator semiannually.

* * * * *

[FR Doc. 90-29111 Filed 12-12-90; 8:45 am]

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A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

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# federal register

Friday
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# Presidential Documents

Title 3—

The President

## Executive Order 12736 of December 12, 1990

## Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 703 and 704 of Public Law 101–194; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509; section 618 of Public Law 101–509; section 601 of Public Law 101–510; section 321 of Public Law 101–520; and section 5382 of title 5, United States Code, it is hereby ordered as follows:

**Section 1.** *Statutory pay systems.* The rates of basic pay or salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Services and Research Administration of the Department of Veterans Affairs (38 U.S.C. 4107) at Schedule 3.

**Sec. 2.** *Senior Executive Service.* Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

**Sec. 3.** *Executive salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, and 252) at Schedule 7.

**Sec. 4.** *Uniformed services.* Pursuant to section 601 of Public Law 101–510, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

**Sec. 5.** *Interim geographic adjustments.* (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, employees under the statutory pay systems covered under section 1 of this order who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which schedule is attached hereto and made a part hereof.

(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, geographic adjustment shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Services and Research Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

**Sec. 6.** *Effective dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1991. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1991.

**Sec. 7.** Executive Order No. 12698 of December 23, 1989, is superseded.

THE WHITE HOUSE,
*December 12, 1990.*

Billing code 3195-01-M

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## SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| GS-1 | $11,015 | $11,383 | $11,749 | $12,114 | $12,482 | $12,697 | $13,058 | $13,422 | $13,439 | $13,776 |
| 2 | 12,385 | 12,679 | 13,090 | 13,439 | 13,590 | 13,990 | 14,390 | 14,790 | 15,190 | 15,590 |
| 3 | 13,515 | 13,966 | 14,417 | 14,868 | 15,319 | 15,770 | 16,221 | 16,672 | 17,123 | 17,574 |
| 4 | 15,171 | 15,677 | 16,183 | 16,689 | 17,195 | 17,701 | 18,207 | 18,713 | 19,219 | 19,725 |
| 5 | 16,973 | 17,539 | 18,105 | 18,671 | 19,237 | 19,803 | 20,369 | 20,935 | 21,501 | 22,067 |
| 6 | 18,919 | 19,550 | 20,181 | 20,812 | 21,443 | 22,074 | 22,705 | 23,336 | 23,967 | 24,598 |
| 7 | 21,023 | 21,724 | 22,425 | 23,126 | 23,827 | 24,528 | 25,229 | 25,930 | 26,631 | 27,332 |
| 8 | 23,284 | 24,060 | 24,836 | 25,612 | 26,388 | 27,164 | 27,940 | 28,716 | 29,492 | 30,268 |
| 9 | 25,717 | 26,574 | 27,431 | 28,288 | 29,145 | 30,002 | 30,859 | 31,716 | 32,573 | 33,430 |
| 10 | 28,322 | 29,266 | 30,210 | 31,154 | 32,098 | 33,042 | 33,986 | 34,930 | 35,874 | 36,818 |
| 11 | 31,116 | 32,153 | 33,190 | 34,227 | 35,264 | 36,301 | 37,338 | 38,375 | 39,412 | 40,449 |
| 12 | 37,294 | 38,537 | 39,780 | 41,023 | 42,266 | 43,509 | 44,752 | 45,995 | 47,238 | 48,481 |
| 13 | 44,348 | 45,826 | 47,304 | 48,782 | 50,260 | 51,738 | 53,216 | 54,694 | 56,172 | 57,650 |
| 14 | 52,406 | 54,153 | 55,900 | 57,647 | 59,394 | 61,141 | 62,888 | 64,635 | 66,382 | 68,129 |
| 15 | 61,643 | 63,698 | 65,753 | 67,808 | 69,863 | 71,918 | 73,973 | 76,028 | 78,083 | 80,138 |
| 16 | 72,298 | 74,708 | 77,118 | 79,528 | 81,396 | 82,697 | 85,060 | 87,424 | 89,787 | |
| 17 | 83,032 | 85,800 | 88,568 | 91,336 | 94,104 | | | | | |
| 18 | 97,317 | | | | | | | | | |

## SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| Step | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 7 | Class 8 | Class 9 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | $61,643 | $49,949 | $40,473 | $32,795 | $26,574 | $23,756 | $21,238 | $18,986 | $16,973 |
| 2 | 63,492 | 51,447 | 41,687 | 33,779 | 27,371 | 24,469 | 21,875 | 19,556 | 17,482 |
| 3 | 65,397 | 52,991 | 42,938 | 34,792 | 28,192 | 25,203 | 22,531 | 20,142 | 18,007 |
| 4 | 67,359 | 54,581 | 44,226 | 35,836 | 29,038 | 25,959 | 23,207 | 20,747 | 18,547 |
| 5 | 69,380 | 56,218 | 45,553 | 36,911 | 29,909 | 26,738 | 23,904 | 21,369 | 19,103 |
| 6 | 71,461 | 57,905 | 46,919 | 38,018 | 30,807 | 27,540 | 24,621 | 22,010 | 19,676 |
| 7 | 73,605 | 59,642 | 48,327 | 39,159 | 31,731 | 28,366 | 25,359 | 22,670 | 20,267 |
| 8 | 75,813 | 61,431 | 49,777 | 40,334 | 32,683 | 29,217 | 26,120 | 23,350 | 20,875 |
| 9 | 78,088 | 63,274 | 51,270 | 41,544 | 33,663 | 30,093 | 26,904 | 24,051 | 21,501 |
| 10 | 80,138 | 65,172 | 52,808 | 42,790 | 34,673 | 30,996 | 27,711 | 24,772 | 22,146 |
| 11 | 80,138 | 67,127 | 54,392 | 44,074 | 35,713 | 31,926 | 28,542 | 25,516 | 22,810 |
| 12 | 80,138 | 69,141 | 56,024 | 45,396 | 36,785 | 32,884 | 29,398 | 26,281 | 23,495 |
| 13 | 80,138 | 71,215 | 57,705 | 46,758 | 37,888 | 33,870 | 30,280 | 27,069 | 24,199 |
| 14 | 80,138 | 73,352 | 59,436 | 48,161 | 39,025 | 34,886 | 31,189 | 27,882 | 24,925 |

## SCHEDULE 3—VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION SCHEDULES, DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

### Section 4103 Schedule

| | |
|---|---|
| Deputy Chief Medical Director | $104,689 |
| Associate Deputy Chief Medical Director | 100,272 |
| Assistant Chief Medical Director | 97,317 |

| | Minimum | Maximum |
|---|---|---|
| Medical Director | $83,032 | $94,104 |
| Director of Nursing Service | 83,032 | 94,104 |
| Director of Podiatric Service | 72,298 | 89,787 |
| Director of Chaplain Service | 72,298 | 89,787 |
| Director of Pharmacy Service | 72,298 | 89,787 |
| Director of Dietetic Service | 72,298 | 89,787 |
| Director of Optometric Service | 72,298 | 89,787 |

### Physician and Dentist Schedule

| | | |
|---|---|---|
| Director Grade | $72,298 | $89,787 |
| Executive Grade | 66,758 | 85,082 |
| Chief Grade | 61,643 | 80,138 |
| Senior Grade | 52,406 | 68,129 |
| Intermediate Grade | 44,348 | 57,650 |
| Full Grade | 37,294 | 48,481 |
| Associate Grade | 31,116 | 40,449 |

### Clinical Podiatrist and Optometrist Schedule

| | | |
|---|---|---|
| Chief Grade | $61,643 | $80,138 |
| Senior Grade | 52,406 | 68,129 |
| Intermediate Grade | 44,348 | 57,650 |
| Full Grade | 37,294 | 48,481 |
| Associate Grade | 31,116 | 40,449 |

### Nurse Schedule

| | | |
|---|---|---|
| Entry Grade | $18,919 | $28,773 |
| Intermediate Grade | 25,717 | 40,449 |
| Senior Grade | 37,294 | 57,650 |
| Director Grade | 52,406 | 80,138 |

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## SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| | |
|---|---|
| ES-1 | $87,000 |
| ES-2 | 91,200 |
| ES-3 | 95,300 |
| ES-4 | 100,500 |
| ES-5 | 104,600 |
| ES-6 | 108,300 |

## SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| | |
|---|---|
| level I | $138,900 |
| level II | 125,100 |
| level III | 115,300 |
| level IV | 108,300 |
| level V | 101,300 |

## SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| | |
|---|---|
| Vice President | $160,600 |
| Senators | 101,900 |
| Members of the House of Representatives | 125,100 |
| Delegates to the House of Representatives | 125,100 |
| Resident Commissioner from Puerto Rico | 125,100 |
| President pro tempore of the Senate | 113,400 |
| Majority leader and minority leader of the Senate | 113,400 |
| Majority leader and minority leader of the House of Representatives | 138,900 |
| Speaker of the House of Representatives | 160,600 |

## SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| | |
|---|---|
| Chief Justice of the United States | $160,600 |
| Associate Justices of the Supreme Court | 153,600 |
| Circuit Judges | 132,700 |
| District Judges | 125,100 |
| Judges of the Court of International Trade | 125,100 |
| Judges of the United States Claims Court | 125,100 |

## SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

(Effective on January 1, 1991)

### PART I—MONTHLY BASIC PAY

| PAY GRADE | YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205) | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 26 |
| **COMMISSIONED OFFICERS** | | | | | | | | | | | | | | |
| O-10** | $6159.00 | $6375.60 | $6375.60 | $6375.60 | $6375.60 | $6620.10 | $6620.10 | $6987.00 | $6987.00 | $7486.80 | $7486.80 | $7988.10 | $7988.10 | $8485.80* |
| O-9 | 5458.50 | 5601.30 | 5720.70 | 5720.70 | 5720.70 | 5866.20 | 5866.20 | 6110.40 | 6110.40 | 6620.10 | 6620.10 | 6987.00 | 6987.00 | 7486.80 |
| O-8 | 4944.00 | 5092.20 | 5212.80 | 5212.80 | 5212.80 | 5601.30 | 5601.30 | 5866.20 | 5866.20 | 6110.40 | 6375.60 | 6620.10 | 6783.30 | 6783.30 |
| O-7 | 4107.90 | 4387.20 | 4387.20 | 4387.20 | 4584.00 | 4584.00 | 4849.80 | 4849.80 | 5092.20 | 5601.30 | 5986.80 | 5986.80 | 5986.80 | 5986.80 |
| O-6 | 3045.00 | 3345.30 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3564.60 | 3685.50 | 4258.10 | 4486.20 | 4584.00 | 4849.80 | 5259.90 |
| O-5 | 2435.10 | 2859.30 | 3057.00 | 3057.00 | 3057.00 | 3057.00 | 3149.40 | 3318.90 | 3541.50 | 3806.70 | 4024.80 | 4146.60 | 4291.50 | 4291.50 |
| O-4 | 2052.60 | 2499.60 | 2666.40 | 2666.40 | 2715.90 | 2835.60 | 3029.10 | 3199.20 | 3345.30 | 3492.00 | 3588.60 | 3588.60 | 3588.60 | 3588.60 |
| O-3*** | 1907.40 | 2132.70 | 2280.00 | 2522.70 | 2643.30 | 2738.10 | 2886.30 | 3029.10 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 | 3103.50 |
| O-2*** | 1663.20 | 1816.50 | 2182.50 | 2255.70 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 | 2302.80 |
| O-1*** | 1444.20 | 1503.30 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 | 1816.50 |
| **COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER** | | | | | | | | | | | | | | |
| O-3 | - | - | - | $2522.70 | $2643.30 | $2738.10 | $2886.30 | $3029.10 | $3149.40 | $3149.40 | $3149.40 | $3149.40 | $3149.40 | $3149.40 |
| O-2 | - | - | - | 2255.70 | 2302.80 | 2375.70 | 2499.60 | 2595.30 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 | 2666.40 |
| O-1 | - | - | - | 1816.50 | 1940.70 | 2012.10 | 2085.00 | 2157.60 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 | 2255.70 |

* Basic pay is limited to the rate of basic pay for level V of Executive Schedule, which is $8,441.70 per month.

** While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $9,363.30*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

| PAY GRADE | YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205) 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **WARRANT OFFICERS** | | | | | | | | | | | | | | |
| W-4 | $1943.40 | $2085.00 | $2085.00 | $2132.70 | $2229.60 | $2328.00 | $2425.50 | $2595.30 | $2715.90 | $2811.00 | $2886.30 | $2979.60 | $3079.20 | $3318.90 |
| W-3 | 1766.40 | 1916.10 | 1916.10 | 1940.70 | 1963.20 | 2106.90 | 2229.60 | 2302.80 | 2375.70 | 2446.50 | 2522.70 | 2620.80 | 2715.90 | 2811.00 |
| W-2 | 1546.80 | 1673.70 | 1673.70 | 1722.60 | 1816.50 | 1916.10 | 1988.70 | 2061.60 | 2133.70 | 2207.70 | 2280.00 | 2352.00 | 2446.50 | 2446.50 |
| W-1 | 1288.80 | 1477.80 | 1477.80 | 1601.10 | 1673.70 | 1745.70 | 1816.50 | 1891.50 | 1963.20 | 2036.40 | 2106.90 | 2182.50 | 2182.50 | 2182.50 |
| **ENLISTED MEMBERS** | | | | | | | | | | | | | | |
| E-9* | - | - | - | - | - | - | $2260.80 | $2311.50 | $2364.00 | $2418.00 | $2472.30 | $2520.30 | $2652.60 | $2910.60 |
| E-8 | - | - | - | - | - | $1896.00 | 1950.00 | 2001.60 | 2053.50 | 2107.80 | 2156.10 | 2209.20 | 2338.80 | 2599.20 |
| E-7 | $1323.60 | $1428.90 | $1482.00 | $1533.60 | $1585.80 | 1636.50 | 1689.00 | 1741.50 | 1820.40 | 1872.00 | 1924.20 | 1949.10 | 3079.90 | 2338.80 |
| E-6 | 1139.10 | 1241.10 | 1293.00 | 1347.90 | 1398.30 | 1448.70 | 1502.10 | 1579.50 | 1629.00 | 1681.80 | 1707.30 | 1707.30 | 1707.30 | 1707.30 |
| E-5 | 999.30 | 1087.80 | 1140.60 | 1190.10 | 1268.40 | 1320.00 | 1372.50 | 1422.90 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 | 1448.70 |
| E-4 | 932.10 | 984.30 | 1042.20 | 1122.90 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 | 1167.30 |
| E-3 | 878.10 | 926.40 | 963.30 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 | 1001.40 |
| E-2 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 | 845.10 |
| E-1** | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 | 753.90 |
| E-1*** | 697.20 | - | - | - | - | - | - | - | - | - | - | - | - | - |

* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,537.90, regardless of cumulative years of service computed under Section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8—PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

PART II--BASIC ALLOWANCE FOR QUARTERS RATES

| PAY GRADE | Without dependents | | With dependents |
|---|---|---|---|
| | Full rate* | Partial rate** | |
| **COMMISSIONED OFFICERS** | | | |
| O-10 | $661.50 | $50.70 | $813.90 |
| O-9 | 661.50 | 50.70 | 813.90 |
| O-8 | 661.50 | 50.70 | 813.90 |
| O-7 | 661.50 | 50.70 | 813.90 |
| O-6 | 606.90 | 39.60 | 733.20 |
| O-5 | 584.40 | 33.00 | 706.50 |
| O-4 | 541.50 | 26.70 | 623.10 |
| O-3 | 434.10 | 22.20 | 515.70 |
| O-2 | 344.40 | 17.70 | 440.10 |
| O-1 | 289.80 | 13.20 | 393.30 |
| **COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER** | | | |
| O-3 | $468.60 | $22.20 | $553.80 |
| O-2 | 398.40 | 17.70 | 499.80 |
| O-1 | 342.60 | 13.20 | 461.70 |
| **WARRANT OFFICERS** | | | |
| W-4 | $488.70 | $25.20 | $551.10 |
| W-3 | 410.70 | 20.70 | 505.20 |
| W-2 | 364.50 | 15.90 | 464.70 |
| W-1 | 305.40 | 13.80 | 402.00 |
| **ENLISTED MEMBERS** | | | |
| E-9 | $401.40 | $18.60 | $528.90 |
| E-8 | 368.70 | 15.30 | 487.50 |
| E-7 | 314.70 | 12.00 | 453.00 |
| E-6 | 284.70 | 9.90 | 418.50 |
| E-5 | 262.50 | 8.70 | 376.20 |
| E-4 | 228.60 | 8.10 | 327.30 |
| E-3 | 224.40 | 7.80 | 304.50 |
| E-2 | 182.40 | 7.20 | 289.80 |
| E-1 | 162.00 | 6.90 | 289.80 |

---

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by title 37, United States Code, and Part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(c)(2) and Part IV of Executive Order 11157, as amended.

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## SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

### PART III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

| | |
|---|---|
| Officers (per month) | 129.00 |

Enlisted Members (per day):

| | E-1 (less than 4 months' active duty) | All Other Enlisted |
|---|---|---|
| When on leave or authorized to mess separately | $5.68 | $6.15 |
| When rations in-kind are not available | 6.41 | 6.94 |
| When assigned to duty under emergency conditions where no messing facilities of the United States are available | 8.50 | 9.20 |

### Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, is $543.90.

## SCHEDULE 9--INTERIM GEOGRAPHIC ADJUSTMENTS FOR CERTAIN EMPLOYEES IN SPECIFIED AREAS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1991)

| AREA | ADJUSTMENT RATE |
|---|---|
| New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area | 8% |
| San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area | 8% |
| Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area | 8% |

[FR Doc. 90-29508
Filed 12-12-90; 4:33 pm]
Billing code 3195-01-C

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## Presidential Documents

**Presidential Determination No. 90-39 of September 7, 1990**

### Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

**Memorandum for the Secretary of State**

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), in order to meet unexpected urgent refugee and migration needs, I hereby determine that it is important to the national interest that $10,000,000 be made available from the United States Emergency Refugee and Migration Assistance Fund (Emergency Fund) to respond to the appeals of international organizations engaged in assisting those persons displaced by the crisis in the Persian Gulf. Of this $10,000,000, $7,500,000 will be contributed to the International Organization for Migration to be used to transport those displaced persons stranded in Jordan and throughout the region to their home countries, and $2,500,000 will be contributed to other international organizations and private voluntary organizations working in the region to meet the urgent relief needs.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
*Washington, September 7, 1990.*

[FR Doc. 90-29489
Filed 12-12-90; 2:53 pm]
Billing code 3195-01-M

**Editorial note:** For a statement by Press Secretary Fitzwater, dated Sept. 7, on emergency assistance for Persian Gulf refugees, see the *Weekly Compilation of Presidential Documents* (vol. 26, p. 1341).

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# Rules and Regulations

Federal Register
Vol. 55, No. 241
Friday, December 14, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 907**

**[Navel Orange Regulation 720, Amdt. 2]**

## Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulation for the 1990–91 Season

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Navel Orange Regulation 720 (55 FR 50157) by revising the percentage allocation between districts regulated under the marketing order for California-Arizona navel oranges during the period from December 14 through December 20, 1990. Consistent with program objectives, such action is needed to maintain orderly marketing conditions for fresh California-Arizona navel oranges and to enhance producer returns. This action was recommended by the Navel Orange Administrative Committee (Committee) which locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

**EFFECTIVE DATE:** Regulation 720, Amendment 2 (7 CFR part 907) is effective for the period from December 14 through December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

**SUPPLEMENTARY INFORMATION:** This amendment is issued under Marketing Order No. 907 (7 CFR part 907) as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

The Committee met publicly on December 11, 1990, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended, with seven members voting in favor, three opposing, and one abstaining, an amendment to Navel Orange Regulation 720 (55 FR 50157) which will revise the percentage allocation between districts for the week ending on December 20, 1990. The Committee recommended allotments of 1,687,000 cartons (93.7 percent) for District 1 and 113,000 cartons (6.3 percent) for District 3 for that week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

At the meeting, Committee members reported that the current demand for navel oranges is good, especially for the larger sizes. Bookings through next Monday (December 17) were reported as good while bookings for Tuesday and beyond were unknown at this time. The majority of Committee members were uncertain as to what the market would be like next week. Committee members discussed the pros and cons of implementing volume regulation at this time. Seven Committee members favored the scheduled 1,800,000 carton allotment level as contained in Navel Regulation 720; three members opposed, favoring a higher allotment level.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy and as previously established in Navel Orange Regulation 720. The recommended amount of 1,800,000 cartons is the same as that specified for all districts in Navel Orange Regulation 720. Handlers in Districts 2 and 4 are not regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 8, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,888,000 cartons

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compared with 1,937,000 cartons shipped during the week ending on December 7, 1989. Export shipments totaled 227,000 cartons compared with 222,000 cartons shipped during the week ending on December 7, 1989. Processing and other uses accounted for 379,000 cartons compared with 437,000 cartons shipped during the week ending on December 7, 1989.

Fresh domestic shipments to date this season total 7,271,000 cartons compared with 8,704,000 cartons shipped by this time last season. Export shipments total 818,000 cartons compared with 1,197,000 cartons shipped by this time last season. Processing and other use shipments total 1,407,000 cartons compared with 2,173,000 cartons shipped by this time last season.

For the week ending on December 6, 1990, regulated shipments of navel oranges to fresh domestic markets were 1,858,000 cartons on an adjusted allotment of 1,749,000 cartons which resulted in net overshipments of 109,000 cartons. Regulated shipments for the current week (December 7 through December 13, 1990), are estimated at 2,255,000 cartons on an adjusted allotment of 1,993,000 cartons. Thus, overshipments of 262,000 cartons could be carried forward into the week ending on December 20, 1990.

The average f.o.b. shipping point price for the week ending on December 6, 1990, was $8.73 per carton based on a reported sales volume of 1,369,000 cartons compared with last week's average of $8.82 per carton on a reported sales volume of 1,277,000 cartons. The season average f.o.b. shipping point price to date is $9.43 per carton. The average f.o.b. shipping point prices for the week ending on December 7, 1989, was $7.45 per carton; the season average f.o.b. shipping point price at this time last year was $8.23.

The Department's Market News Service reported that, as of December 11, demand for California-Arizona navel oranges was good and the market was steady for all grades and sizes.

According to the National Agricultural Statistics Service, the 1989-90 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 94 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990-91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990-91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 14 through December 20, 1990, to 1,800,000 cartons would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990-91 season was published in the September 6, 1990, issue of the Federal Register (55 FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990-91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations. A final rule concerning this action was published in the Federal Register on December 5, 1990 (55 FR 50157) implementing the shipping schedule, as revised, for the season. Amendments may be warranted to that final rule throughout the season based on analysis of the prevailing marketing conditions and available data.

Accordingly, this final rule amends Navel Orange Regulation 720 (55 FR 50157) by revising the percentage allocation between districts regulated under the marketing order for California-Arizona navel oranges during the period from December 14 through December 20, 1990.

Moreover, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this amendment and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 11, 1990, and this action needs to be effective for the regulatory week which begins on December 14, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.1020 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1020 Navel Orange Regulation 720, Amendment 2.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

| Week Ending | District 1 | | District 2 | | District 3 | | District 4 | | Total cartons (000) |
|---|---|---|---|---|---|---|---|---|---|
| | Cartons (000) | Percent | Cartons (000) | Percent | Cartons (000) | Percent | Cartons (000) | Percent | |
| (b) Dec. 20, 1990 | 1,687.0 | 93.7 | | | 113.0 | 6.3 | | | 1,800 |



Dated: December 12, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-29479 Filed 12-13-90; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 73, 110 and 171

Miscellaneous Amendments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document makes minor corrections to the January 1, 1990, Code of Federal Regulations (CFR) volumes that comprise 10 CFR chapter I. This action is necessary to correct errors and omissions in the codification of 10 CFR parts 0-50 and 10 CFR parts 51-199.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-7758.

SUPPLEMENTARY INFORMATION: Make the following corrections to the January 1, 1990, Code of Federal Regulations volumes that comprise 10 CFR chapter I.

§ 2.1011 [Amended]

1. In the first line of § 2.1011(f)(1)(ii), "or" is corrected to read "on".

2. In § 73.2, paragraph (3) is reinserted in the definition of "Physical barrier" to read as follows:

§ 73.2 Definitions.

* * * * *

*Physical Barriers*

* * * * *

(3) Any other physical obstruction constructed in a manner and of materials suitable for the purpose for which the obstruction is intended.

* * * * *

§ 110.30 [Amended]

3. In § 110.30(a), "1717 H" is corrected to read "2120 L".

4. In § 171.15, paragraph (c) is reinserted to read as follows:

§ 171.15 Annual fee: Power Reactor Operating Licenses.

* * * * *

(c) If the basis for the annual fee is greater than 45 percent of the NRC budget, less the sum of moneys estimated to be collected from the High Level Waste (HLW) fund administered by the Department of Energy and the total estimated fees chargeable under part 170 of this chapter, then the maximum annual fee for each nuclear power reactor that is licensed to operate shall be calculated as follows: (NRC FY Budget x .45) minus Sum of HLW moneys and estimated part 170 fees equals fees to be collected under part 171. Part 171 fees to be collected on a schedule based on the total from categories shown in the following table:

PART 171—FEES BY REACTOR CATEGORY-SUMMARY: WITH MINOR ADJUSTMENTS FOR PLANTS WEST OF ROCKIES OR WESTINGHOUSE PLANTS WITH ICE CONDENSERS. THE FOLLOWING APPLY TO PLANT/CONTAINMENT

[Fees in millions]

| Type | Number | Budget base (x .45) | Fee | Total collected |
|---|---|---|---|---|
| GE Mark I | (24) | $1.349 | $1.157 | $27.76 |
| GE Mark II | (7) | 1.448 | 1.212 | 8.48 |
| GE Mark III | (4) | 1.373 | 1.153 | 4.61 |
| B&W | (8) | 1.696 | 1.582 | 12.74 |
| CE | (15) | 1.369 | 1.186 | 17.79 |
| Westinghouse | (40) | 1.352 | 1.139 | 54.48 |
| | (105) | | | $125.02 |

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 11th day of December 1990.

Donnie H. Grimsley,

*Director, Division of Freedom of Information and Publications Services, Office of Administration.*

[FR Doc. 90-29350 Filed 12-13-90; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-192-AD; Amdt. 39-6838]

Airworthiness Directives; Boeing Model 747 Series of Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires a one-time external detailed visual and external high-frequency eddy current inspection to detect cracks at certain stringer fastener locations; repair, if necessary; and reporting of cracks detected. This action requires repetitive inspections and a modification in certain areas where

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reports indicate that cracking was prevalent. This amendment is prompted by reports of cracks submitted in response to the existing AD. This condition, if not corrected, could result in rapid decompression of the airplane.

**EFFECTIVE DATE:** January 22, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-23-53, Amendment 39-6524 (55 FR 7896, March 5, 1990), applicable to Boeing Model 747 series airplanes, to require repetitive inspections for cracking of the fuselage skin panels; repair, if necessary, and modification, was published in the **Federal Register** on August 14, 1990 (55 FR 33123).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer and members of the Air Transport Association (ATA) of American commented that the mandatory modification should be limited to airplanes with manufacturing line numbers 001 through 200, in order to be consistent with the recommendations of the Model 747 Working Group of the Airworthiness Assurance Task Force. The FAA concurs. Although the structure of airplanes with line numbers 201 through 430 is similar to the earlier-numbered airplanes, no cracks have been reported on this group of airplanes. The FAA has revised paragraph C. of the final rule to delete the modification requirements for this group of airplanes; the repetitive inspection requirement, however, is retained. The FAA may consider further rulemaking for airplanes with line numbers 201 through 430 to mandate the modification if inspection results show extensive cracking.

The manufacturer requested that the rule can be revised to shorten the initial inspection intervals for high cycles airplanes and lengthen the initial inspections for low cycles airplanes. The FAA does not concur. The initial inspections for airplanes that have accumulated more than 15,000 cycles were accomplished in accordance with the requirements of AD T89-23-53. The FAA has determined that the 1,000 cycle initial compliance is a reasonable period for airplanes that have accumulated less than 15,000 cycles and were not previously inspected.

The manufacturer further requested that the rule be revised to allow an alternate skin panel modification for those airplanes which has the frames modified in accordance with AD 88-23-06-R1. The FAA does not concur, since this alternate modification has not been defined. However, when such a modification becomes available, the FAA may consider it as an alternate means of compliance in accordance with paragraph G. of the final rule.

The manufacturer also requested that the inspections defined in proposed paragraph A. be revised to exclude the stringer (S)-6 and S-14 lap joints. The FAA concurs. The proposed inspections of these areas would be redundant to those required by other airworthiness directives (reference AD 90-15-06, AD 90-23-14, and AD 90-21-17). Paragraph A. of the final rule has been revised accordingly.

The manufacturer and one ATA member requested that the rule be revised to delete the inspection and modification requirements aft of body station (BS) 340 for airplanes which have new structure installed during the stretched upper deck modification, described in Boeing Master Change (MC) -42360 since the panels are identical (in so far as its bonding process) to those installed after line number 430. The FAA does not concur. The rule, as written, allows "credit" for previously installed skin panels which meet the requirements of paragraph C.

The manufacturer further requested that the rule be revised to delete the proposed modification requirements for the left side of the airplane aft of BS 340 for those airplanes that have been modified (after production) to install a left-hand crew door. The manufacturer stated that the skin panel at this location on those modified airplanes is identical (in so far as its bonding process) to that installed on airplanes with line numbers 201 through 430. The FAA does not concur that a revision to the rule is necessary. Since that modification is limited to a very small number of airplanes, the affected operators may apply for "relief" through an alternate means of compliance, as provided by paragraph G. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 430 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD, that it will take approximately 800 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required parts are estimated to cost $20,000 per airplane for airplanes specified in paragraph C. of the final rule. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,168,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:



**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by superseding AD 89-23-53, Amendment 39-6524 (55 FR 7896, March 5, 1990), with the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, line numbers 001 through 430, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Prior to the accumulation of 12,000 flight cycles or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 1,000 flight cycles, conduct an external detailed visual and external high frequency eddy current inspection for cracks of the fuselage skin from body station (BS) 220 to BS 520, left and right hand side of the airplane between stringers (S)-5 and S-14, excluding the skin lap joints, in accordance with Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989. Repeat the inspections thereafter at intervals not to exceed 2,000 flight cycles.

B. If cracks are detected, repair prior to further flight, in accordance with the Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989.

C. For airplanes line numbers 001 through 200, prior to the accumulation of 20,000 flight cycles, or within the next 6 years after the effective date of this AD, whichever occurs later, perform the terminating modification of the skin panel from BS 340 to BS 520, S-5 to S-14, in accordance with Boeing Alert Service Bulletin 747-53A2321, dated October 31, 1989. (The modification consists of replacing the skin panel with a new skin panel which was manufactured utilizing the improved hot phosphoric anodize bonding process.)

D. Replacement of the skin panel required by paragraph C. of this AD constitutes terminating action for the inspections from BS 340 to BS 520 required by paragraph A. of this AD. The inspections from BS 220 to BS 340 required by paragraph A. of this AD are to be continued.

E. Flight cycles conducted at 2.0 PSI or less cabin differential pressure need not be counted for the purpose of this airworthiness directive.

F. For Model 747SR airplanes only, the threshold and repetitive inspection intervals specified herein may be multiplied by the 1.2 adjustment factor based on continued mixed operation at lower cabin pressure differentials.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6524, AD 89-23-53.

This amendment becomes effective January 22, 1991.

Issued in Seattle, Washington, on December 3, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28309 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 90-NM-42-AD; Amdt. 39-6835]**

## Airworthiness Directives: Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which requires inspection and repair, if necessary, of the fuselage skin circumferential joint bonded doubler at body station (BS) 259, 360, 441, 481, and 661. This amendment is prompted by reports of delamination, corrosion, and/or cracking. This condition, if not corrected, could result in loss of cabin pressure.

**EFFECTIVE DATE:** January 22, 1991.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 727 series airplanes, which requires inspection and repair, if necessary, of the fuselage skin circumferential joint bonded doubler at body station (BS) 259, 360, 441, 481, and 661, was published in the **Federal Register** on April 12, 1990 (55 FR 13801).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the internal inspection at body station (BS) 259.5 be eliminated from the proposed rule. The commenter considered this request to be justified because a similar AD for the Boeing Model 737 airplane deleted inspection at this body station. The FAA does not concur with this comment. There have been reports of cracking at this body station. This service history indicates a need to inspect the area.

Another commenter requested that a temporary repair scheme be permitted if corrosion is found that does not exceed 10% of the material thickness. The FAA does not concur with this comment. The FAA does not consider that a temporary repair for corrosion less than 10% in these circumferential joints is acceptable.

Several comments were received which requested clarification as to when sealing of the circumferential joint must be accomplished. The FAA agrees that clarification is necessary. The circumferential joint only needs to be resealed when the existing sealant has deteriorated and if the joint is repaired or modified. The final rule has been changed to clarify when the sealing must be accomplished.

One commenter requested that the rule include an optional ultrasonic inspection to verify corrosion depth. Another commenter requested that the rule permit the use of blind protruding head fasteners with a life limit as a temporary repair. The FAA does not concur that it is necessary to include these unique requests as part of the final rule. These commenters may request an alternative means of compliance in accordance with paragraph F. of the AD provided that they provide data demonstrating that such alternatives provide an acceptable level of safety.

Another commenter stated that the internal visual inspection is the most difficult, most time consuming, and

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probably least effective circumferential joint inspection. The commenter suggested that the final rule be revised to permit resealing the inside of the circumferential joint as terminating action for the internal inspections. The FAA does not concur that sealing can be considered as terminating action for the internal visual inspection. The FAA concurs that the internal visual inspection is difficult and time consuming, but considers that it is effective in detecting corrosion. Based upon the requirement for on-going external visual and low frequency eddy current (LFEC) inspections, the FAA has determined that the internal visual inspection can be extended from 30 to 48 months without degrading safety. The final rule has been changed to incorporate this change.

Another commenter stated that the current service bulletin provides incorrect information concerning the areas to be inspected. The FAA has reviewed the service bulletin in response to this comment and considers the service bulletin to be correct. Therefore, no changes to the AD or service bulletin are warranted/relative to this comment.

The manufacturer commented that the latest revision to the Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990, should be cited in the final rule. This revision clarifies the instructions for replacement of steel fasteners, and revises the recommended interval for the internal close visual inspection from 30 months to 48 months. The FAA has reviewed and approved this revision to the service bulletin, and concurs that it should be referenced as the appropriate service information source. The final rule has been revised accordingly.

Paragraph F. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 493 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 378 airplanes of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,024,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990, certified in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of cabin pressurization due to delamination, cracking, and/or corrosion of fuselage skin circumferential joints, accomplish the following:

A. Within the next 15 months after the effective date of this AD, accomplish an external visual inspection in accordance with part II.A. of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990, and a low frequency eddy current (LFEC) inspection in accordance with part II.B. in the Accomplishment Instructions of the service bulletin.

1. If no corrosion is detected:

a. Repeat the external visual inspection at intervals not to exceed 15 months; and

b. Repeat the LFEC inspection at intervals not to exceed 30 months; and

c. Within 48 months after the effective date of this AD, conduct an internal close visual inspection in accordance with part II.C. in the Accomplishment Instructions of the service bulletin. Repeat this inspection at intervals not to exceed 48 months.

2. If corrosion is detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

B. Within the next 3,000 landings or 30 months after the effective date of this AD, whichever occurs first, accomplish a high frequency eddy current (HFEC) inspection in accordance with part II.D. of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990.

1. If no cracking is detected, repeat the inspection at intervals not to exceed 4,000 landings or 48 months, whichever occurs first.

2. If cracking is detected, repair before further flight, in accordance with part III in the Accomplishment Instructions of the service bulletin.

C. If the sealant has deteriorated but no cracking or corrosion is detected as a result of the inspections required by paragraphs A. and B. of this AD, reseal in accordance with Figure 5 or 6, as applicable, of Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990.

D. Modification in accordance with part III in the Accomplishment Instructions if Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990, constitutes terminating action for the inspections required by this AD for the area modified.

E. Modification in accordance with part IV in the Accomplishment Instructions of Boeing Service Bulletin 727-53-0084, Revision 4, dated August 2, 1990, constitutes terminating action for the inspections required by paragraph B. of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA,



Northwest Mountain Region Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 22, 1991.

Issued in Renton, Washington, on December 3, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29310 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-252-AD; Amdt. 39-6831]**

## Airworthiness Directives; Boeing Model 747-400 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires wiring modifications to correct the suppression of the aural and master warning indication systems of the fire detection system. This amendment is prompted by a report which indicated that, with certain Integrated Display System (IDS) software installed, the aural and master systems of the fire detection system are not operative. This condition, if not corrected, could result in the failure of these systems to annunciate a fire in the auxiliary power unit (APU), engines, wheel wells, or cargo compartments.

**EFFECTIVE DATE:** December 26, 1990.

**ADDRESSES:** The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

**SUPPLEMENTARY INFORMATION:** The manufacturer has reported that certain Boeing Model 747-400 series airplanes that incorporate certain IDS software updates have a latent failure mode which renders the aural and master warning systems of the fire detection system inoperative. This failure cannot be identified during normal system checks. If this condition exists and is not identified and repaired, a fire in the auxiliary power unit (APU), engine, wheel well, or cargo compartment will not be annunciated to the crew by the aural or master caution systems. Other indicators may annunciate the fire; however, the aural and master caution systems provide the primary warning of a fire to the flight crew. If these systems are inoperative, the crew may not be immediately alerted to a fire and, as a result, may delay required procedures.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-28A2171, dated October 4, 1990, which describes procedures to accomplish certain wiring modifications to correct the operation of the fire detection system.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires modification of the wiring of the aural and master warning indication systems of the fire detection system, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747-400 series airplanes, listed in Boeing Alert Service Bulletin 747-28A2171, dated October 4, 1990, certificated in any category. Compliance is require within 45 days after the effective date of this airworthiness directive, unless previously accomplished.

To prevent the failure of the fire detection warning system to annunciate a fire, accomplish the following:

A. Modify the wiring of the aural and master warning indication systems of the fire detection system, in accordance with Boeing Alert Service Bulletin 747-28A2171, dated October 4, 1990.

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

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This amendment becomes effective December 28, 1990.

Issued in Renton, Washington, on November 30, 1990.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29312 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-ASW-15; Amdt. 39-6840]

## Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 212 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections of the main rotor drag brace assembly on BHTI Model 212 helicopters. The AD is needed to detect a crack in the drag brace assembly which could result in failure of the main rotor system and, as a result, loss of control of the helicopter.

**EFFECTIVE DATE:** January 18, 1991.

**ADDRESSES:** The applicable AD-related material may be obtained from Bell Helicopter, Inc., P.O. Box 482, Fort Worth, TX 76101, or may be examined at the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Henry, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring inspection of certain main rotor drag brace assemblies at intervals of 1,200 hours' time in service on Model 212 helicopters was published in the Federal Register on July 3, 1990, (55FR 27470)..

The proposal was prompted by eight reports of cracked drag brace assemblies on certain BHTI Model 212 helicopters. The cracks are attributed to high cycle, low stress fatigue with slow progression. The cracks had gone undetected during the daily visual inspections and were not actually detected until after hub assembly overhaul. Consequently, the notice proposed mandatory repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 770 helicopters at an added cost of $70 per aircraft per year, for a total estimated fleet cost of $53,900 for the inspections. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**Bell Helicopter Textron, Inc. (BHTI):** Amendment 39-6840. Docket No. 90-ASW-15.

Applicability: All Bell Model 212 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent fatigue failure of the main rotor drag brace assembly which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, determine if drag brace assemblies, part numbers (P/N) 204-011-140-003 or -005, are installed in the main rotor hub assembly, P/N 204-012-101-009. For helicopters equipped with drag brace assembly, P/N 204-011-140-003 or -005, comply with the requirements of paragraph (b).

(b) For main rotor hub assemblies, P/N 204-012-101-009, with 1,200 or more hours' time in service, since new or since the last overhaul, comply with the following within the next 100 hours' time in service after the effective date of this AD. Thereafter, comply at intervals of 1,200 hours' time in service from the last inspection—

(1) Remove the main rotor drag brace assemblies, P/N 204-011-140-003 or -005. Inspect for corrosion and mechanical damage. Magnetic particle inspect all parts (as specified in BHTI Component Repair and Overhaul Manual, BHT-212-CR&O-1);

(2) If cracks are found, or if corrosion or mechanical damage is present which cannot be removed within the rework limits of BHT-212-CR&O-1, replace with serviceable parts; and

(3) Assemble the drag brace assemblies as specified in BHTI Component Repair and Overhaul Manual, BHT-212-CR&O-1, with the following additions:

(i) Apply a soft film corrosion preventive compound to the barrel threads prior to assembly.

(ii) Install the drag brace assemblies and torque the locking nuts to 275-325 foot pounds.

(iii) After first flight confirm the torque of 275-325 floor pounds and apply a hard film corrosion preventive compound to the exposed threads.

(c) An alternative method of compliance, or adjustment of compliance times, which provides an equivalent level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170.

(d) Bell Helicopter, Inc., Alert Service Bulletin 212-90-36, dated February 5, 1990, provides an acceptable means of compliance with this AD.

Amendment 39-6840 becomes effective on January 18, 1991.

Issued in Fort Worth, Texas, on December 5, 1990.

Henry A. Armstrong,

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 90-29315 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 90-ASW-27; Amdt. 39-6841]

## Airworthiness Directives; Sikorsky Aircraft Model S-64E Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires frequent checks of main rotor blades to detect possible spar cracks on Sikorsky Model S-64E helicopters. The AD is needed to detect fatigue cracks in the main rotor blade spar which could result in separation of the main rotor blade and loss of the helicopter.



**EFFECTIVE DATE:** January 18, 1991.

**ADDRESSES:** The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring frequent checks of main rotor blades to detect possible spar cracks on Sikorsky Model S-64E helicopters was published in the Federal Register on July 3, 1990 (55 FR 27473).

There have been six reports of cracks in main rotor blade spars on the Sikorsky Model S-64E helicopter, which could lead to blade failure and separation. Since this condition is likely to exist or develop on other helicopters of the same type design, the FAA is issuing this AD which requires checks of the blade inspection method (BIM) systems on Sikorsky Model S-64E helicopters. The interval between the checks depends on the primary operational use of the helicopter.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in response to the Notice of Proposed Rulemaking (NPRM). The commenter agrees with the proposed AD but recommends that the applicability statement be expanded to include Sikorsky Model S-64A and S-64F helicopters. While the main rotor blades of these models are similar to the Model S-64E blades, there are no U.S. registered Model S-64A or S-64F helicopters. Further, there is no adverse service history for the Model S-64A or F helicopter blades. The FAA, therefore, does not concur with the comment and it is not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves seven aircraft at an approximate cost of $1,750 per aircraft for every 100 hours' time in service, for a total fleet cost of $12,250. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new AD:

**Sikorsky Aircraft:** Amendment 39-6841. Docket No. 90-ASW-27.

*Applicability:* All Model S-64E helicopters, certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent operation with a crack in the main rotor blade spar, which could result in possible loss of the helicopter, accomplish the following:

(a) Within the next 3 hours' time in service after the effective date of this AD, visually check the BIM pressure indicators of the main rotor blades for black or red color indication.

(b) Before further flight, replace any blade with black or red indication visible in the BIM pressure indicator with an airworthy part of the same part number unless the black or red indication is found to be the result of BIM system malfunction.

Note: Sikorsky Service Bulletin 64B15-4C pertains to operation, maintenance, and check of the main rotor blade with BIM.

(c) The checks required by this AD may be performed by the pilot and must be recorded in accordance with FAR section 43.9. The record must be maintained as required by FAR sections 91.173, 121.380, or 135.439.

(d) Repeat the check required by paragraph (a) of this AD prior to the first flight of each day and thereafter at intervals not to exceed either—

(1) Three hours' time in service from the last check for helicopters engaged in seven or more external lifts per hour; or

(2) Five hours' time in service from the last check for helicopters engaged in either less than seven external lifts per hour or operation without external cargo.

(e) Prior to the first flight of each day, check the BIM pressure indicator for proper functioning as follows:

(1) Press in and hold the manual test lever (grenade-type handle) on the raised area of the handle over the pin-type actuation plunger.

Note: The indicator glass bulb should not be handled since the heat of the hand may change the internal reference pressure and result in an erroneous indicator reading.

(2) Depress the actuation plunger fully to shut off the pressure completely from the blade into the indicator. If necessary, press with the thumbs of both hands to overcome the plunger spring force.

Note: If pressure is applied to the end of the lever on the flat area, the actuation plunger will not fully depress.

(3) Verify proper operation of the indicator by observing that a full-black or full-red (unsafe) indication appears in not less than 10 or more than 30 seconds after depressing the plunger for a temperature of −6.7 degrees C (20 degrees F) or above. At lower temperatures, extend the upper limit to the corresponding time listed below:

| Temperature | Time |
|---|---|
| −7.2 to −17.8 degrees C (19 to 0 degrees F) | [1] 25 |
| −18.3 to −28.9 degrees C (−1 to −20 degrees F) | [1] 40 |
| −29.4 to −40.0 degrees C (−21 to −40 degrees F) | [1] 50 |
| −40.5 to −51.1 degrees C (−41 to −60 degrees F) | [1] 60 |

[1] Seconds.

(4) Release the lever and observe that the black or red indication snaps back immediately, leaving an all-white or all-yellow (safe) indication.

(5) If the indicator does not meet the specified requirements, then either identify and correct the malfunction or replace the suspect main rotor blade with an airworthy blade of the same part number prior to further flight.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New

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England Executive Park, Burlington, Massachusetts 01803.

Amendment 39-6841 becomes effective on January 18, 1991.

Issued in Fort Worth, Texas, on December 6, 1990.

Henry A. Armstrong,

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 90-28911 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 73

[Airspace Docket No. 90-AEA-19]

## Change to Controlling Agency for Restricted Area R-5206; West Point, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the controlling agency for Restricted Area R-5206 West Point, NY, to FAA, New York Approach Control. This change is required because instrument flight rules (IFR) airspace in the vicinity has been redelegated to the New York Terminal Radar Approach Control.

**EFFECTIVE DATE:** 0901 U.T.C., February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

### The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the controlling agency for R-5206, West Point, NY, from FAA, New York Air Route Traffic Control Center (ARTCC) to FAA New York Approach Control. IFR airspace in the vicinity has been redelegated from New York ARTCC to New York Terminal Radar Approach Control. New York Approach Control is now the controlling agency for the restricted area. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.52 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 73.52 is amended as follows:

**R-5206 West Point, NY [Amended]**

By removing the existing Controlling agency and substituting the following: Controlling agency. FAA, New York Approach Control.

Issued in Washington, DC, on December 10, 1990.

William C. Davis,

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90-29314 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 75

[Airspace Docket No. 90-ANM-6]

## Establishment of Jet Route J-240

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes new Jet Route J-240 located between Myton, UT, and Blue Mesa, CO. This jet route will improve the flow of traffic arriving the Salt Lake City terminal area. This new jet route will provide a more precise means of navigation and reduce controller workload.

**EFFECTIVE DATE:** 0901 utc, February 7, 1991.

**FOR FURTHER INFORMATION CONTACT:** Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

**SUPPLEMENTARY INFORMATION:**

### History

On August 31, 1990, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish Jet Route J-240 located between Myton, UT, and Blue Mesa, CO (55 FR 35651). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

### The Rule

This amendment to part 75 of the Federal Aviation Regulations designates new Jet Route J-240 located between Myton, UT, and Blue Mesa, CO. This jet route will improve the flow of traffic arriving the Salt Lake City terminal area. A future standard terminal arrival route (STAR) into Salt Lake City is planned as a result of this route. This route is designed to establish the optimum use of the airspace and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.



### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

## PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

2. Section 75.100 is amended as follows:

**J-240 [New]**

From Myton, UT, to Blue Mesa, CO.

Issued in Washington, DC, on December 3, 1990

William C. Davis,

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90-29315 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

## 21 CFR Part 133

[Docket No. 85P-0584]

## Cheeses; Amendment of Standards of Identity To Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and To Update the Formats of Several Standards; Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that amended standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing (August 4, 1989; 54 FR 32050). In publishing the amendment to § 133.127(a)(1) (21 CFR 133.127(a)(1)), "60 percent by weight," rather than the correct "80 percent by weight," was published. This document corrects that error.

**EFFECTIVE DATE:** October 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0130.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of August 4, 1989 (54 FR 32050), FDA published a final rule that amended the standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing. In amending § 133.127 (21 CFR 133.127) the maximum moisture content was inadvertently given as "60" instead of "80". This document is amending § 133.127 by removing "60" and replacing it with "80" as determined by the method described in 21 CFR 133.5.

Notice and public procedure on this correction is unnecessary because FDA is merely correcting a typographical error.

### List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards, Food labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 133 is amended as follows:

## PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR part 133 continues to read as follows:

**Authority:** Secs. 201, 401, 403, 409, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 378).

**§ 133.127 [Amended]**

2. Section 133.127 is amended in paragraph (a) by removing "60" and replacing it with "80".

Dated: December 10, 1990.

Alan L. Hasting,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29305 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 510

## Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor name from Anaquest, a Division of BOC, Inc., to Anaquest, Inc.

**EFFECTIVE DATE:** December 14, 1990.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

**SUPPLEMENTARY INFORMATION:** Anaquest, a Division of BOC, Inc., has advised FDA of a change of sponsor name from Anaquest, a Division of BOC, Inc., to Anaquest, Inc. The agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect this change.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure; Animal drugs; Labeling; Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 378).

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Anaquest, a Division of BOC, Inc.," and in the table in paragraph (c)(2) in the entry for "010019" by removing "Anaquest, a Division of BOC, Inc.," and replacing it with "Anaquest, Inc."

Dated: November 27, 1990.

Robert C. Livingston,

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 90-29306 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-01-M

## PENSION BENEFIT GUARANTY CORPORATION

## 29 CFR Part 2619

## Valuation of Plan Benefit in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

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**SUMMARY:** This amendment to the regulation of Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning January 1, 1991. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after January 1, 1991 and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since December 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after January 1, 1991, which set reflects a decrease of ¼ percent in the immediate interest rate from 7⅛ to 7¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after January 1, 1991, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 89 of appendix B is revised and Rate Set 90 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

**Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities**

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$ are defined in § 2619.45.

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| . | . | . | . | . | . | . | . | . |
| 89 | Dec. 1, 1990 | Dec. 31, 1990 | 7.50 | 1.0675 | 1.0550 | 1.0400 | 7 | 8 |
| 90 | Jan. 1, 1991 | | 7.25 | 1.0650 | 1.0525 | 1.0400 | 7 | 8 |

James B. Lockhart III,
*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90-29416 Filed 12-13-90; 8:45 am]
BILLING CODE 7708-01M



## 29 CFR Part 2619

**Valuation of Plan Benefits in Single-Employer Plans; Expected Retirement Age**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) by adding a new Table I–91 to appendix D. Table I–91 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC, with a valuation date falling in 1991, and is used to determine expected retirement ages for plan participants. This Table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202–778–8850 (202–778–8859 for TTY and TDD). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** The regulation of the Pension Benefit Guaranty Corporation ("PBGC") on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments of title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act (part II of subtitle D of title IX of the Omnibus Budget Reconciliation Act of 1987) change significantly the rules for terminating single-employer plans, the rules for valuing benefits in such plans are much the same. Under ERISA section 4041(c), plans wishing to terminate in a distress termination generally must value guaranteed benefits and benefit liabilities under the plan using formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Under § 2619.48, early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Subpart D of part 2619 sets forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendices D and E of part 2619 contain tables and examples to be used in determining the expected early retirement ages.

There are two sets of tables in appendix D. The first set, Selection of Retirement Rate Category (I–79 through I–90), is used to determine whether a participant has a low, medium, or high probability of retiring early. The second set of tables, Expected Retirement Ages for Individuals in the Low/Medium/High Categories (II–A, II–B, and II–C), is used to determine the expected retirement age after the probability of early retirement has been determined.

The first set of tables determines the probability of early retirement based on the year a participant would reach normal retirement age and the participant's monthly benefit at normal retirement age. The second set of tables establishes, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the normal retirement age under the plan. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

Tables I–79 through I–90 in appendix D establish retirement rate categories for the calendar years 1979 through 1990. The table for each year applies only to plans with valuation dates in that year. This document amends appendix D to add Table I–91 in order to provide an updated correlation, appropriate for calendar year 1991, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–91 will be used to value benefits in plans with valuation dates that occur during calendar year 1991.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest.

Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For that purpose, if a plan has a valuation date in 1991, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1991. Moreover, because of the need to provide immediate guidance for the valuation of benefits under such plans, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291 because it will not result in an annual effect on the company of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

**List of Subjects in 29 CFR Part 2619**

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, appendix D to part 2619 of subchapter C of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Appendix D to part 2619 is amended by adding Table I–91 as follows:

**Appendix D—Tables Used to Determine Expected Retirement Ages**

. . . . . .

TABLE I–91—SELECTION OF RETIREMENT RATE CATEGORY [FOR PLANS WITH VALUATION DATES AFTER DECEMBER 31, 1990, AND BEFORE JANUARY 1, 1992]

| Participant reaches NRA in year | Participant's retirement rate category is | | | |
|---|---|---|---|---|
| | Low [1] if monthly benefit at NRA is less than | Medium [2] if monthly benefit at NRA is | | High [3] if monthly benefit at NRA is greater than |
| | | From | To | |
| 1992 | 343 | 343 | 1,444 | 1,444 |
| 1993 | 355 | 356 | 1,499 | 1,499 |
| 1994 | 369 | 369 | 1,551 | 1,551 |
| 1995 | 380 | 380 | 1,601 | 1,601 |
| 1996 | 391 | 391 | 1,648 | 1,648 |
| 1997 | 402 | 402 | 1,695 | 1,695 |
| 1998 | 414 | 414 | 1,745 | 1,745 |
| 1999 | 426 | 426 | 1,795 | 1,795 |
| 2000 | 438 | 438 | 1,847 | 1,847 |
| 2001 or later | 451 | 451 | 1,901 | 1,901 |

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

Issued at Washington, DC, this 7th day of December, 1990.

James B. Lockhart III,
*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90-29413 Filed 12-13-90; 8:45 am]
BILLING CODE 7708-01-M

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29 CFR Part 2621

## Limitation on Guaranteed Benefits in Single-Employer Plans

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends appendix A of the limitation on Guaranteed Benefits regulation of the Pension Benefit Guaranty Corporation ("PBGC") by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1991. The maximum guaranteeable benefit is computed in accordance with the formula in section 4022(b)(3) of the Employee Retirement Income Security Act of 1974, which provides that the maximum guaranteeable benefit is based on the contribution and benefit base determined under section 230 of the Social Security Act. The latter number is adjusted annually, and that adjustment automatically changes the dollar amount of the maximum guaranteeable benefit paid by PBGC. The effect of this amendment is to advise plan participants and beneficiaries of the increased maximum paranteeable benefit for 1991.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8823 (202–778–8859 for TTY and TTD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Section 4022(b) of the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") provides for certain limitations on benefits guaranteed by the Pension Benefit Guaranty Corporation ("PBGC") in terminating single-employer pension plans covered under title IV of ERISA. One of the limitations set forth in section 4022(b)(3) is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant by the PBGC. Subparagraph (B) of section 4022(b)(3) provides that the amount of monthly benefit payable in the form of a life annuity beginning at age 65 shall not exceed "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]". This formula is also set forth in § 2621.3(a)(2) of the PBGC's regulation entitled Limitation on Guaranteed Benefits in Single-Employer Plans (29 CFR part 2621).

The Social Security Amendments of 1977 added special increases to the contribution and benefit base. However, the amended Social Security Act specifically states that, for the purpose of section 4022(b)(3)(B) of ERISA, the contribution and benefit base for each year after 1976 will be the base that would have been determined for each year if the law in effect immediately before the amendment had remained in effect without change (the "old-law contribution and benefit base"). 42 U.S.C. 430(d) (1982). Section 10208 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, enacted December 19, 1989) ("OBRA '89") amended section 230 of the Social Security Act to provide for the inclusion of certain deferred compensation in the determination of the contribution and benefit base for 1990 and future years. Each year the Social Security Administration determines, and notifies the PBGC of, the old-law contribution and benefit base to be used by the PBGC under these provisions.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act as amended by OBRA '89, $39,600 is the old-law contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1991. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR 2621.3(a)(2) is: $750 multiplied by $39,600/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1991 is $2,250.00 per month in the form of a life annuity beginning at age 65. If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount will be the actuarial equivalent of $2,250.00 per month.

Appendix A to part 2621 lists the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in each year from 1974 through 1990. This amendment updates appendix A for plans that terminate in 1991.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and this amendment makes no change in its method of calculation but simply lists the 1991 maximum guaranteeable benefit amount for the public's knowledge, general notice of proposed rulemaking is not required. Moreover, because the 1991 maximum guaranteeable benefit is effective, under the statute, at the time that the Social Security contribution and benefit base is effective, *i.e.*, January 1, 1991, and is not dependent on the issuance of this regulation, the PBGC finds that good cause exists for making this amendment effective less than 30 days after publication (5 U.S.C. 553).

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

**List of Subjects in 29 CFR Part 2621**

Employee benefit plans, Pension insurance, and Pensions.

## PART 2621—LIMITATION ON GUARANTEED BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 2621 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b.

2. Appendix A to part 2621 is amended by adding a new entry to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

**Appendix A to Part 2621—Maximum Guaranteeable Monthly Benefit**

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 2621.3(a)(2) to a participant in a plan that terminated in that year:

| Year | Maximum guaranteeable monthly benefit |
|---|---|
| • • • • • | |
| 1991 | $2,250.00 |



Issued at Washington, DC this 7th day of December, 1990.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90–29417 Filed 12–13–90; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

## Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of January 1991.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before beginning of the period to which they apply. (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the Economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 29 CFR Part 2676**

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

## PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation of part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

• • • • •

(c) *Interest rates.*

| For valuation dates occurring in the month: | The values for $i_t$ are: | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_n$ |
| • | | | • | | | • | | | • | | | • | | | • | |
| January 1991 | .0625 | .06 | .0775 | .075 | .0725 | .07 | .07 | .07 | .07 | .07 | .065 | .065 | .065 | .065 | .065 | .05875 |

Issued at Washington, DC, on this 7th day of December 1990.

**James B. Lockhart III,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 90–29414 Filed 12–13–90; 8:45 am]

BILLING CODE 7708–01–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Parts 202, 203, and 206

### Oil and Gas Product Valuation Regulations

December 5, 1990.

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of training seminars.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it will present training seminars at the locations and on the dates identified below, on oil and gas transportation and gas processing allowance regulations that were published in the **Federal Register** on January 15, 1988 (53 FR 1184 and FR 1230, respectively). The seminars will address specific issues regarding transportation and processing allowances and the reporting problems encountered since the regulations became effective March 1, 1988.

**DATES:** Seminars will be held on January 23, 1991; January 30, 1991; and February 5, 1991 See Supplementary Information.

**ADDRESSES:** Seminars will be held in Denver, CO; New Orleans, LA; and Dallas, TX. See Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** Mr. James P. Morris, Chief, Allowance Accounting Section, Transportation and Processing Valuation Branch, Royalty Valuation and Standards Division (303) 231–3729, or (FTS) 326–3729, or Mr. Stanley J. Brown, Chief, Transportation and Processing Valuation Branch, Royalty Valuation and Standards Division (303) 231–3063 or (FTS) 326–3063.

**SUPPLEMENTARY INFORMATION:** The oil and gas product valuation regulations that were published in the **Federal Register** on January 15, 1988, amended and clarified existing regulations governing the valuation of oil and gas for royalty computation purposes. The regulations govern the methods by which value is determined when computing oil or gas royalties under Federal (onshore or Outer Continental

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Shelf) and Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

The training seminars will include discussions on the following topics:

- Specific issues contained in the transportation and processing allowance regulations.
- The reporting problems encountered.
- Systems development and billing procedures.
- Information collection requirements and reporting forms (MMS–4109, "Gas Processing Allowance Summary Report," MMS–4110, "Oil Transportation Allowance Report," and MMS–4295 "Gas Transportation Allowance Report") required to support oil and gas transportation and processing allowance deductions from royalties due. Assistance will be provided on how to properly complete the forms.

**Location and Dates**

The seminars will be held from 8:30 a.m. to 4 p.m. each day on the dates and at the locations shown below:

| Dates | Locations |
|---|---|
| January 23, 1991 | Embassy Suites, 7525 East Hampden Avenue, Denver, Colorado 80231, (303) 696–8644. |
| January 30, 1991 | Holiday Inn Crown Plaza, 333 Poydras, New Orleans, Louisiana 70130, (504) 525–9444. |
| February 5, 1991 | Richardson Hilton Tower, 61 North Central Expressway, Dallas, Texas 75080, (214) 644–4000. |

**Registration and Reservations**

Persons interested in attending one of these seminars should contact Ms. LuCinda Rood of our office at (303) 231–3396 or (FTS) 326–3396 on or before January 16, 1991. Due to space limitations, the number of attendees may be limited at each seminar location and will be provided on a first-come-first-served basis. Persons interested in hotel reservations should contact the hotel directly at the telephone number(s) identified above.

If insufficient interest is shown in attending any of the individual training sessions, such sessions may be cancelled and alternate arrangements will be made for those who expressed interest.

Dated: December 10, 1990.

Jerry D. Hill,

*Associate Director for Royalty Management.*

[FR Doc. 90–29336 Filed 12–13–90; 8:45 am]

BILLING CODE 4310–MR–M

**30 CFR Part 250**

**RIN 1010–AB51**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This notice of final rulemaking modifies 30 CFR part 250, subpart A—General, to reference later editions of two documents previously incorporated by reference into the regulatory program of the Minerals Management Service (MMS). In addition, a correction to MMS regulations is made to reflect a reorganization within one of these documents. This action serves as a notice to the public of the changes MMS is making to its regulatory program. Comments from the public based on the proposed rule and the agency's responses are also contained within the notice.

**EFFECTIVE DATES:** January 14, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Gerald D. Rhoden, Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, telephone (703) 787–1600 or (FTS) 393–1600.

**SUPPLEMENTARY INFORMATION:** The MMS regulatory program incorporates by reference at 30 CFR 250.1 a number of documents published by various industry standard setting institutes. New editions of two of these documents have been published. The MMS, in accordance with 1 CFR part 51, is issuing this rulemaking to incorporate both of these later editions.

The MMS published a notice of proposed rulemaking (NPR) on August 2, 1990 (55 FR 31405). That notice proposed updating references within the MMS regulatory program to American Petroleum Institute (API) Recommended Practices (RP) 2A—Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms (18th Edition), and 500B—Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms (3rd Edition).

The MMS received one response to the NPR. The response expressed no concerns with the updating of the two documents that were the subjects of the rulemaking.

The response did, however, raise one specific and several general concerns. These concerns and MMS's responses to them are discussed in detail in the following sections.

**General Concerns**

*Comment*—One comment received in response to the proposed rule expressed concern that the two documents proposed for incorporation by reference were merely recommended practices and that incorporation, in effect, converts them to requirements. Further, the comment suggested the procedure of incorporation by reference would not comply with the Administrative Procedure Act because the documents themselves could not be modified in response to comments received under the proposed rule.

*Response*—The MMS does not agree with this argument. Procedures have been developed by the Office of the Federal Register (1 CFR part 51) that clearly identify the process to be used by Federal agencies to incorporate documents by reference into their regulatory programs. This rulemaking fully complies with those procedures. It is true that the proposed rulemaking is unlikely to directly result in modification to the documents proposed for incorporation. However, if substantive comments received in response to the proposed rulemaking warranted it, MMS retains the right to: (1) Not incorporate the subject documents, (2) incorporate only portions of the subject documents, or (3) excerpt portions of the documents directly into its regulatory program. Lastly, MMS has membership on many of the committees that develop these industry standards, and concerns with standards can be addressed in those forums by MMS, as well as by those affected by them.

*Comment*—One comment notes that there are many small entities that can be indirectly affected economically by any rules governing Outer Continental Shelf (OCS) operations. The comment indirectly appears to disagree with the assertion by MMS that this rulemaking does not qualify as a "major rule" as defined by Executive Order (E.O.) 12291.

*Response*—The MMS asserts that this rulemaking does not exceed the three criteria identified in E.O. 12291 that define a major rule: (1) It will not have an annual effect on the economy of $100 million or more; (2) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The MMS also asserts that the majority of its rulemakings, including this particular one, do not directly affect small business entities because offshore activities by their nature are so complex and expensive as to exclude them. We recognize that a major rule potentially could indirectly affect small business entities and would therefore have to be carefully scrutinized. This rulemaking, however, merely updates existing requirements and does not qualify as a major rule.

**Section-Specific Comments**

*Section 250.142 Periodic Inspection and Maintenance*

*Comment*—Paragraph (a) establishes a minimum requirement of 5 years for the interval between inspections conducted in accordance with API RP 2A. The comment asserts that this minimum interval is arbitrary.

*Response*—The minimum inspection requirement of § 250.142(a) is not the subject of this rulemaking. This rule merely corrects the citation within API RP 2A under which inspections are conducted because of a reorganization of that document. Section 250.142(a) does allow for variance from the minimum inspection interval where an operator or lessee can show the Regional Supervisor that there is good cause.

**Author**

The principal author of this final rule is Jeff Wiese, Offshore Rules and Operations Division, MMS.

**E.O. 12291**

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under E.O. 12291 because: (1) It will not have an annual effect on the economy of $100 million or more; (2) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The decision to incorporate selected industry standards was part of the decision to restructure and consolidate all OCS oil and gas and sulphur operating rules into 30 CFR part 250 and was analyzed fully at that point. Most of the provisions of this rulemaking were contained in previous editions and do not represent new or added requirements. Those new or added requirements are generally considered to be incremental improvements.

**Regulatory Flexibility Act**

The DOI has determined that this final rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect OCS lessees and operators; entities that are not considered small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effects of this rulemaking on small entities that provide support for offshore activities have also been determined to be small.

**Paperwork Reduction Act**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

(OMB approval No. 1010–0030).

**Takings Implication Assessment**

The DOI certifies that this final rule does not represent a governmental action capable of interference with constitutionality protected property rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionality Protected Property Rights, is not required.

**National Environmental Policy Act**

The MMS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: November 1, 1990.

**Barry Williamson,**

*Director, Minerals Management Service.*

For the reasons set forth in the preamble, 30 CFR part 250 is amended as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.1 is amended by revising paragraphs (d)(2) and (d)(15) to read as follows:

**§ 250.1 Documents incorporated by reference.**

* * * * *

(d) * * *

(2) API RP 2A, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms, 18th Edition, September 1, 1989, API Stock No. 811–00200, Incorporated by Reference at: §§ 250.130(g) and 250.142(a).

* * * * *

(15) API RP 500B, Recommended Practice for Classification of Locations for Electrical Installations at Drilling Rigs and Production Facilities on Land and on Marine Fixed and Mobile Platforms, Third Edition, October 1, 1987, API Stock No. 811–08000, Incorporated by Reference at: §§ 250.53(b), 250.122(e)(4)(i), and 250.123(b)(9)(i).

* * * * *

3. Section 250.142 is amended by revising paragraph (a) to read as follows:

**§ 250.142 Periodic inspection and maintenance.**

(a) All platforms installed in the OCS shall be inspected periodically in accordance with the provisions of API RP 2A, section 14, Surveys. However, use of an inspection interval which exceeds 5 years shall require prior approval by the Regional Supervisor. Proper maintenance shall be performed to assure the structural integrity of the platform as a workbase for oil and gas operations.

* * * * *

[FR Doc. 90–29016 Filed 12–13–90; 8:45 am]

BILLING CODE 4310–MR–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL-3869-3]**

## State of Florida; Final Authorization of Revisions to State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revision. Florida's application for program revision is available for public review and comment.

**DATES:** Final authorization for Florida's program revision shall be effective February 12, 1991, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business January 14, 1991.

**ADDRESSES:** Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Phone 904/488-0300; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone 404/347-4216, Priscilla Pride, Librarian. Written comments should be sent to Narindar Kumar at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone (404) 347-2234.

**SUPPLEMENTARY INFORMATION:**

### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter -"HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-268 and 124 and 270.

### B. Florida

Florida initially received final authorization for its base RCRA program on February 12, 1985 (50 FR 3908, January 29, 1985). On July 31, 1990, Florida submitted a program revision application for additional program approval. Today, Florida is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modification to Florida. The public may submit written comments on EPA's immediate final decision until January 14, 1991. Florida's application for program revision is available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Florida's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In order to obtain final authorization for radioactive mixed waste, the State of Florida has demonstrated and certified that its authority to regulate the hazardous components of radioactive mixed wastes, as specified at §§ 403.703(13), 403.703(23), 403.7045(1)(a) and 404.031(13), F.S. (1989) and at FAC Rule 17-730.030 as amended through January 25, 1990, is equivalent to the federal requirements of the RCRA at 40 CFR 261.4(a)(4) and section 1004(27) of RCRA.

On the effective date of final authorization, Florida will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the Federal program.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

### c. Decision

I conclude that Florida's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 90-29211 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M



**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

**[Docket No. FEMA 6897]**

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the fourth column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

### List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

### PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

**§ 64.6 List of Eligible Communities.**

| State | Location | Community no. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|---|
| New Eligibles—Emergency Program: | | | | |
| New Mexico | Rio Rancho, City of, Sandoval County | 350146 | Nov. 14, 1990 | — |
| Iowa | Warren County, Unincorporated Areas | 190912 | Nov. 19, 1990 | 2-7-78 |
| South Carolina | [1] Lee County, Unincorporated Areas | 450126 | Nov. 19, 1990, Emerg | 3-3-78 |
| Iowa | Sheffield, City of, Franklin County | 190132 | Nov. 21, 1990 | 6-28-74 |
| Do. | Fayette County, Unincorporated Areas | 190866 | Nov. 27, 1990 | 8-16-77 |
| Reinstatements—Regular Program: | | | | |
| Pennsylvania | Woodcock, Township of, Crawford County | 421578 | July 9, 1975 Emerg.<br>June 18, 1990 Reg.<br>June 18, 1990 Susp.<br>Nov. 14, 1990 Rein. | 6-18-90 |
| Do. | Croyle, Township of, Cambria County | 421436 | Dec. 22, 1975 Emerg.<br>Aug. 15, 1990 Reg.<br>Aug. 15, 1990 Susp.<br>Nov. 14, 1990 Rein. | 8-15-90 |
| Alaska | Juneau, City and Borough of, Juneau Division | 020008 | May 22, 1970 Emerg.<br>Feb. 4, 1981 Reg.<br>Sept. 28, 1990 Susp.<br>Nov. 16, 1990 Rein. | 9-28-90 |

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| State | Location | Community no. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|---|
| North Carolina | Gatesville, Town of, Gates County | 370104 | July 8, 1975 Emerg. May 13, 1977 Reg. Feb. 4, 1988 Susp. Nov. 20, 1990 Rein. | 5-13-77 |
| Ohio | Huron County, Unincorporated Areas | 390770 | Aug. 3, 1979 Emerg. Aug. 1, 1987 Reg. Aug. 1, 1987 Susp. Nov. 23, 1990 Rein. | 8-1-87 |
| Region I: Connecticut | Goshen, Town of, Litchfield County | 090177 | Nov. 16, 1990 Suspension Withdrawn. | 11-16-90 |
| Region III: Pennsylvania | Bigler, Township of, Clearfield County | 421514 | do | 11-16-90 |
| Do. | Butler, Township of, Schuylkill County | 421099 | do | 11-16-90 |
| Do. | Decatur, Township of, Clearfield County | 421189 | do | 11-16-90 |
| Do. | Everett, Borough of, Bedford County | 420119 | do | 11-16-90 |
| Do. | Gulich, Township of, Clearfield County | 421524 | do | 11-16-90 |
| Do. | Osceola Mills, Borough of, Clearfield County | 420313 | do | 11-16-90 |
| Do. | Rush, Township of, Centre County | 421468 | do | 11-16-90 |
| Virginia | Suffolk, City of, Independent City | 510156 | do | 11-16-90 |
| Region V: Michigan | Adrian, Township of, Lenawee County | 260635 | do | 11-16-90 |
| Do. | Northfield, Township of, Washtenaw County | 260732 | do | 11-16-90 |
| Wisconsin | Adams County, Unincorporated Areas | 550001 | do | 11-16-90 |
| Do. | Blair, City of, Trempealeau County | 550440 | do | 11-16-90 |
| Do. | Friendship, Village of, Adams County | 550003 | do | 11-16-90 |
| Do. | La Farge, Village of, Vernon County | 550456 | do | 11-16-90 |
| Do. | Montello, City of, Marquette County | 550286 | do | 11-16-90 |
| Do. | Whitehall, City of, Trempealeau County | 550449 | do | 11-16-90 |
| Do. | Readstown, Village of, Vernon County | 550458 | do | 11-16-90 |
| Do. | Vernon County, Unincorporated Areas | 550450 | do | 11-16-90 |
| Region VI: Texas | Alpine, City of, Brewster County | 480085 | do | 11-16-90 |
| Do. | Burnet County, Unincorporated Areas | 481209 | do | 11-16-90 |
| Do. | Granite Shoals, City of, Burnet County | 481149 | do | 11-16-90 |
| Do. | Marble Falls, City of, Burnet County | 480093 | do | 11-16-90 |
| Do. | Meadowlakes, City of, Burnet County | 481613 | do | 11-16-90 |
| Region VIII: Nebraska | Indianola, City of, Red Willow County | 310382 | do | 11-16-90 |
| All Zone D Conversions: Region VIII: Utah | Tooele County, Unincorporated Areas | 490140 | do | 11-16-90 |

[1] Lee County, South Carolina will be converted to the Regular Program effective *December 15, 1990* the date of the effective FIRM.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: November 30, 1990.

**C. M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29346 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-21-M

## 44 CFR Part 64

**[Docket No. FEMA 6898]**

### List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1988. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

**EFFECTIVE DATE:** As shown in fifth column.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street Southwest, room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.



The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

**List of Subjects in 44 CFR Part 64**

Flood insurance and floodplains.

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to reads as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

**§ 64.6 List of Eligible Communities.**

| State and community name | County | Community No. | Effective date | |
|---|---|---|---|---|
| Regular Program Communities | | | | |
| Colorado: Archuleta County | Unincorporated Areas | 080273 | Nov. 2, 1990 | Suspension withdrawn |
| Bayfield, Town of | La Plata | 080096 | Do. | |
| Brush, City of | Morgan | 080120 | Do. | |
| Craig, City of | Moffat | 080119 | Do. | |
| Gunnison, City of | Gunnison | 080080 | Do. | |
| Hayden, Town of | Routt | 080157 | Do. | |
| Limon, Town of | Lincoln | 080109 | Nov. 16, 1990 | |
| Manitou Springs, City of | El Paso | 080063 | Do. | |
| Pierce, Town of | Weld | 080188 | Do. | |
| Wellington, Town of | Larimer | 080104 | Do. | |
| Montana: Miles City, City of | Custer | 300014 | Do. | |
| North Dakota: Grand Forks, City of | Grand Forks | 385366 | Do. | |
| West Virginia: Paw Paw, Town of | Morgan | 540252 | Do. | |
| Pratt, Town of | Kanawha | 540082 | Do. | |
| Quinwood, Town of | Greenbrier | 540244 | Do. | |
| Reedy, Town of | Roane | 540184 | Do. | |

Issued: November 30, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29347 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-21-M

## 44 CFR Part 65

**[Docket No. FEMA-7009]**

### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Interim rule.

**SUMMARY:** This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

**DATES:** These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change

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any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations, listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance and floodplains.

**PART 65—[AMENDED]**

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

**§ 65.4 [Amended]**

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State and County | Location | Date and Name of Newspaper Where Notice Was Published | Chief Executive Officer of Community | Effective Date of Modification | Community Number |
|---|---|---|---|---|---|
| Florida: Orange | Unincorporated areas | November 16, 1990<br>November 23, 1990<br>The Orlando Sentinel | The Honorable Hal Marston, Chairman, Orange County Board of Commissioners, 201 Rosalind Avenue, P.O. Box 1393, Orlando, Florida 32809. | October 31, 1990 | 120179 |
| Illinois: DuPage | Village of Lisle | November 8, 1990<br>November 15, 1990<br>Lisle Sun | The Honorable Ronald Ghilardi, Mayor, Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532. | October 26, 1990 | 170211 |
| Nebraska: Unincorporated areas | Dakota County | December 6, 1990<br>December 13, 1990<br>South Sioux City Star | The Honorable James Huggenberger, Chairman, Dakota County Board of Commissioners, P.O. Box 38, Dakota City, Nebraska 68731. | November 21, 1990 | 310429 |
| Ohio: Licking | City of Heath | November 28, 1990<br>December 5, 1990<br>The Ace News | The Honorable John C. Geller, Mayor, City of Heath, 1287 Hebron Road, Heath, Ohio 43056. | November 15, 1990 | 390332 |
| South Carolina: Lexington | City of Cayce | November 23, 1990<br>November 30, 1990<br>The State-Record Company | The Honorable Archie G. Moore, Mayor, City of Cayce, 1800 Twelfth Street, P.O. Box 2004, Cayce, South Carolina 29171. | November 9, 1990 | 450131 |
| Tennessee: Shelby | Unincorporated areas | November 8, 1990<br>November 15, 1990<br>Memphis Daily News | The Honorable Phillip Wittenberg, Chief Administrative Officer, Shelby County, 160 North Mid-America Mall, Suite 850, Memphis, Tennessee 38103. | October 26, 1990 | 470214 |
| Texas: Fort Bend | Unincorporated areas | October 22, 1990<br>October 29, 1990<br>The Herald Coaster | The Honorable Jodie E. Stavinoha, Fort Bend County Judge, P.O. Box 369, Richmond, Texas 77469. | October 16, 1990 | 480228 B |
| Texas: Tarrant and Denton | City of Fort Worth | November 21, 1990<br>November 28, 1990<br>The Fort Worth Star-Telegram | The Honorable Bob Bolen, Mayor of the City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102. | November 14, 1990 | 480596 D |
| Washington: Clallam | City of Port Angeles | November 16, 1990<br>November 23, 1990<br>Peninsula Daily News | The Honorable Joan Sergent, Mayor, City of Port Angeles, City Hall, 321 East Fifth Street, Port Angeles, Washington 98362. | November 9, 1990 | 530023 |

Issued: December 3, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29345 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-03-M

**44 CFR Part 65**

**Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.



**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevation on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participating in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains.

**PART 65—[AMENDED]**

1. The authority citation for part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

**§ 65.4 [Amended]**

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State and county | Location | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Illinois, Cook (Docket No. FEMA-8995). | Unincorporated Areas | July 19, 1990, July 26, 1990, *Chicago Tribune.* | The Honorable George W. Dunne, President, Cook County Board of Commissioners, County Building, 118 N. Clark Street, Chicago, Illinois 60602. | July 10, 1990 | 170054 |
| Tennessee, Shelby (Docket No. FEMA-8999). | City of Memphis | July 27, 1990, August 3, 1990, *The Daily News.* | The Honorable Richard C. Hackett, Mayor, City of Memphis, 125 N. Mid-American Mall, Memphis, Tennessee 38103. | July 16, 1990 | 470177 |

Issued: December 3, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29341 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-03-M

**44 CFR Part 67**

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

**ADDRESSES:** See table below:

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of flood elevation for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Action 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.





PROPOSED BASE (100-YEAR) FLOOD

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The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

**List of Subjects in 44 CFR Part 67**

Flood insurance, Floodplains.

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.**

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| State, city/town/county, source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD). Modified |
|---|---|
| **COLORADO** | |
| **Pagosa Springs (town), Archuleta County (FEMA Docket No. 6996)** | |
| *McCabe Creek:* | |
| Below bicycle path to San Juan River | *7,069 |
| Approximately 280 feet downstream of San Juan Street | *7,070 |
| Just upstream of 6th Street | *7,078 |
| Approximately 240 feet upstream of Florida Street | *7,090 |
| Approximately 60 feet upstream of Junita Street | *7,105 |
| *West Fork McCabe Creek:* | |
| Approximately 225 feet downstream of 7th Street | *7,078 |
| At downstream edge of 7th Street | *7,086 |
| Approximately 130 feet upstream of Frontage Road | *7,096 |
| Approximately 910 feet upstream of the intersection of San Juan Street and 9th Street | *7,122 |
| Approximately 250 feet upstream of the upstream crossing of San Juan Street | *7,135 |
| **Maps available for review at Town Hall, 466 San Juan Street, Pagosa Springs, Colorado.** | |
| **CONNECTICUT** | |
| **Lebanon (town), New London County (FEMA Docket No. 6996)** | |
| *Amston Lake:* Entire length within the community | *527 |
| **Maps available for inspection at the Town Hall, 579 Exeter Road, Lebanon, Connecticut.** | |
| **IOWA** | |
| **Rock Rapids (city), Lyon County (FEMA Docket No. 6996)** | |
| *Rock River:* | |
| About 1 mile downstream of Illinois Central Railroad | *1,339 |
| About 3,000 feet upstream of Oklahoma, Kansas and Texas Railroad | *1,347 |
| **Maps available for inspection at the City Office, 310 South Third Avenue, Rock Rapids, Iowa.** | |
| **MONTANA** | |
| **Yellowstone County (unincorporated areas) (FEMA Docket No. 6996)** | |
| *Clarks Fork Yellowstone River:* | |
| Just downstream of Thiel Road | *3,247 |
| At confluence of Devis Creek | *3,255 |
| Approximately 1 mile downstream of Byam Road | *3,270 |
| At Byam Road | *3,284 |
| Approximately 5,000 feet upstream of Byam Road | *3,298 |
| **Maps available for review at the Yellowstone County Courthouse, Surveyor's Office, 217 North 27th Avenue, Room 312, Billings, Montana.** | |
| **NEW YORK** | |
| **Berlin (town), Tioga County (FEMA Docket No. 6996)** | |
| *Susquehanna River:* At upstream corporate limits | *783 |
| *Cayuta Creek:* | |
| At downstream corporate limits | *800 |
| Approximately 1,080 feet upstream of upstream corporate limits | *806 |
| *Chemung River:* | |
| At downstream corporate limits | *791 |
| At upstream corporate limits | *792 |
| **Maps available for inspection at the Town Hall, Waverly, New York.** | |
| **OKLAHOMA** | |
| **Newcastle (city), McClain County (FEMA Docket No. 6996)** | |
| *Canadian River:* | |
| Interstate Highway 35 | *1,105 |
| Approximately 1.2 miles upstream of confluence of Tributary D of the Canadian River | *1,172 |
| *Tributary A of Canadian River:* | |
| At confluence with Canadian River | *1,120 |
| Approximately 0.5 mile upstream of confluence | *1,125 |
| *Tributary B of Canadian River:* | |
| At confluence with Canadian River | *1,127 |
| Approximately .2 mile upstream of confluence with Canadian River | *1,136 |
| *Pond Creek:* | |
| At confluence with Canadian River | *1,131 |
| Approximately 0.6 mile upstream of confluence | *1,132 |
| *Tributary D of Canadian River:* | |
| At confluence with Canadian River | *1,169 |
| Approximately 50 feet downstream of State Route 37 | *1,181 |
| *Tributary No. 6 of Pond Creek:* | |
| Approximately 350 feet upstream of its confluence with Pond Creek | *1,183 |
| Approximately 0.4 mile upstream of its confluence with Pond Creek | *1,190 |
| *Tributary A.1 of Canadian River:* | |
| Approximately 200 feet upstream of the confluence of Tributary A.1.1 of the Canadian River | *1,154 |
| Approximately 0.5 mile upstream of the confluence of Tributary A.1.1 of the Canadian River | *1,175 |
| *Tributary A.1.1 of the Canadian River:* | |
| Approximately 450 feet upstream of its confluence with Tributary A.1 of the Canadian River | *1,156 |
| Approximately 0.5 mile upstream of its confluence with Tributary A.1 of the Canadian River | *1,181 |
| **Maps available for inspection at the Map Room, City Hall, 5 North Main, Newcastle, Oklahoma.** | |
| **PENNSYLVANIA** | |
| **Bryn Athyn (borough), Montgomery County (FEMA Docket No. 6992)** | |
| *Pennypack Creek:* | |
| Approximately 1,850 feet downstream of the downstream corporate limits | *126 |
| At the confluence of Southampton Creek | *177 |
| *Huntingdon Valley Creek:* | |
| Approximately 1.7 miles upstream of the confluence with Pennypack Creek | *155 |
| Approximately 1.9 miles upstream of the confluence with Pennypack Creek | *159 |
| **Maps available for inspection at the Borough President's Residence, 2738 Alnwick Road, Bryn Athyn, Pennsylvania.** | |
| **TEXAS** | |
| **Killeen (city), Bell County (FEMA Docket No. 6996)** | |
| *Site Tributary 7:* | |
| Upstream side of Dam No. 7 | *797 |
| Approximately 4,060 feet upstream of Westcliff Road | *854 |
| *Tributary of Site Tributary 7:* | |
| At the confluence with Site Tributary 7 | *837 |
| Approximately 1,540 feet upstream of its confluence | *852 |
| **Maps available for inspection at the City Hall, 200 East Avenue D, Killeen, Texas.** | |
| **New Braunfels (city), Comal and Guadalupe Counties (FEMA Docket No. 6996)** | |
| *North Guadalupe Tributary:* | |
| Immediately upstream of Kuebler Avenue | *584 |
| Approximately 150 feet upstream of FM 1044 | *579 |
| *South Guadalupe Tributary:* | |
| Approximately 40 feet upstream of confluence with North Guadalupe Tributary | *596 |
| Upstream corporate limits | *655 |
| *Dry Comal Creek:* | |
| Approximately 160 feet downstream of State Loop 337 | *969 |
| Approximately .5 mile downstream of the Missouri-Kansas—Texas Railroad | *643 |
| **Maps available for inspection at the City Engineer's Office, 424 S. Castell, New Braunfels, Texas.** | |
| **VIRGINIA** | |
| **Alexandria (city) (FEMA Docket No. 6996)** | |
| *Holmes Run:* | |
| Confluence with Backlick Run and Cameron Run | *49 |
| Upstream side of Duke Street | *59 |
| *Backlick Run:* | |
| Confluence with Holmes Run and Cameron Run | *49 |



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| State, city/town/county, source of flooding and location | #Depth in feet above ground. Elevation in feet (NGVD). Modified |
|---|---|
| Approximately 1,600 feet downstream of South Van Dorn Street | *84 |
| *Cameron Run:* | |
| Confluence with Potomac River | *11 |
| Approximately 300 feet downstream of South Patrick Street | *11 |
| Upstream side of Richmond Fredericksburg Potomac Railroad | *49 |
| Confluence of Holmes Run and Backlick Run | *49 |
| *Potomac River:* | |
| Approximately 0.4 mile downstream of I-95 (Woodrow Wilson Bridge) | *11 |
| Approximately 2.3 miles upstream of I-95 (Woodrow Wilson Bridge) | *11 |
| **Maps available for inspection at the City Hall, Room 2300, 301 King Street, Alexandria, Virginia.** | |
| **WASHINGTON** | |
| **Clark County (unincorporated areas) (FEMA Docket No. 6996)** | |
| *Lacamas Creek:* | |
| About 500 feet downstream of NE Goodwin Road | *157 |
| Just upstream of NE Goodwin Road | *163 |
| At confluence of Spring Branch | *195 |
| At confluence of Big Ditch | *199 |
| Just downstream of Fourth Plain Road | *212 |
| About 500 feet upstream of Fourth Plain Road | *216 |
| **Maps available for review at the Clark County Assessor's Office, Clark County Courthouse, 1200 Franklin Street, Vancouver, Washington.** | |
| **WEST VIRGINIA** | |
| **Hancock County (unincorporated areas) (FEMA Docket No. 6996)** | |
| *Harmon Creek:* | |
| At downstream corporate limits | *681 |
| At upstream corporate limits | *701 |
| **Maps available for inspection at the County Courthouse, Court Street, New Cumberland, West Virginia.** | |

Issued: December 3, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29342 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 65

**[Common Carrier Docket No. 89-624; FCC 90-315]**

### Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; prescription of authorized rate of return for interstate access services of local exchange carriers.

**SUMMARY:** This action was undertaken in accordance with part 65 of the Commission's Rules, which requires that the Commission shall periodically determine the cost of capital for interstate access service and prescribe an authorized overall rate of return for the interstate access services of local exchange carriers. The action prescribes an authorized overall rate of return of 11.25% for the interstate access services of local exchange carriers. Carriers subject to rate base, rate of return regulation use the prescribed rate of return to calculate the cost of capital component of the interstate access revenue requirement. They are allowed to earn a maximum return that is .25% higher than the prescribed rate. Carriers that will be subject to price cap regulation beginning January 1, 1991, are required to target their initial price caps rates so as to earn the prescribed rate of return. The previously authorized rate of return was 12%. All local exchange carriers will be required to reduce their interstate access rates in order to comply with the action.

**DATES:** The rate of return prescription takes effect January 1, 1991. It continues in effect until replaced or superseded.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jane Jackson, Telephone (202) 632-7500.

**SUPPLEMENTARY INFORMATION:**

**Background**

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T and Local Exchange Carriers, CC No. Docket 87-463, and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 5 FCC Rcd 197 (1989), 55 FR 4820 (1990).

Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T and Local Exchange Carriers, CC No. Docket 87-463, and Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, 55 FR 10788 (1990). Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 55 FR 42375 (October 19, 1990).

**Summary of Order**

This is a summary of the Commission's Order in Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers, CC Docket No. 89-624, FCC No. 90-315, adopted September 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

By this Order we prescribe for the interstate access services of local exchange carriers an authorized, overall rate of return on investment of 11.25%. Since January 1, 1987, local exchange carriers (LECs) have been authorized to earn a 12% rate of return. The new prescription will take effect January 1, 1991, and will remain in effect until it is replaced or superseded. All LECs, including those subject to price cap regulation, will be required to file revised access service tariffs reflecting this represcription.

The rulemaking record in this proceeding is extensive. Of 40 parties who filed Notices of Appearance, 31 have submitted one or more pleadings. The seven Regional Holding Companies (RHCs) and the United States Telephone Association (USTA) filed Initial Submissions on February 16, 1990. Nineteen parties filed Responsive Submissions March 27, 1990; the RHCs, USTA, and four other parties filed Rebuttals April 17, 1990. Proposed Findings, filed July 2, 1990, were offered by 18 parties, and Reply Findings were filed on July 16, 1990, by 13 parties. In addition to these pleadings, the record includes carrier responses to a Common Carrier Bureau (Bureau) data request; six monthly updates to those responses; a massive amount of material submitted in response to three discovery requests; several written ex parte presentations; and notices describing numerous oral ex parte presentations.

Part 65 of the Commission's Rules establishes procedures and data requirements for LEC rate of return represcription proceedings. The rules provide a framework for determining a single, or unitary, rate of return for the entire LEC industry based on data supplied by the Regional Bell Holding Companies (RHCs). Each RHC is required to file an initial rate of return submission containing three kinds of evidence of its cost of capital for interstate access service: (1) State public utility commission determinations of the cost of capital for the RHC's intrastate operations; (2) weighted average cost of capital calculations for the RHC, with the cost of equity components estimated

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using each of several "historical" discounted cash flow (DCF) formulas and (3) weighted average cost of capital calculations for firms having risk characteristics comparable to those of interstate access service ("comparable firms"), with the cost of equity components calculated using the "historical" DCF formulas. The rules also allow RHCs and other parties to submit other relevant evidence; in addition, the Common Carrier Bureau may require parties to submit any data or studies needed for a full and fair record.

In previous proceedings the Commission had concluded that the methods specified in part 65 for choosing comparable firms and for calculating the weighted average costs of capital of such firms were not likely to produce useful estimates of the interstate access cost of capital, and that a "classic" DCF formula would in many circumstances produce more accurate results for both RHCs and comparable firms than the "historical" versions of the formula. Therefore, at the time that we initiated this docket, we took the following two steps to assure creation of a full, fair, and useful record: First, we waived the rules governing the required comparable firms showing and invited parties to propose alternative comparable firms studies. Second, acting through the Bureau, we required the RHCs to submit with their initial rate of return submissions a series of "classic" DCF cost of equity calculations for the RHCs, for the Standard & Poors Industrials firms (the S&P 400), and for a large group of electric utilities. These data were to be updated monthly during the pendency of the proceeding.

The RHCs submitted all of the required evidence with their initial submissions. However, they, along with the other LEC parties to the proceeding, took the position that none of the required evidence should be relied on in reaching a decision in this representation proceeding. They argued that state cost of capital determinations are irrelevant; that our DCF formulas are all incorrect; that the DCF method cannot be used to determine the cost of equity of the RHCs; and that the RHCs are not proper surrogates for the interstate access business. They also contended that the cost of debt and capital structure components of the RHC weighted average cost of capital calculations should not be used in determining an overall cost of capital for the LEC industry. Instead, they proposed that we use the cost of debt and capital structure of the Bell Operating Companies (BOCs). They offered a variety of alternative studies of the interstate access cost of equity. Their cost of equity estimates ranged from 14.75% to 18.25%. Their final recommendations for the overall unitary rate of return ranged from 12.25%–14.3%.

Non-LEC parties supported use of the required evidentiary submissions as the bases for our decision. They generally took the position that the average of the weighted average costs of capital of the RHCs, calculated using the classic DCF formula, should be considered to be the highest reasonable estimate of the cost of capital for interstate access service. Most of these parties recommended cost of equity findings in the range 11.1%–12.5% and overall unitary rates of return between 10.25%–10.8%.

In this Order we analyze the cost of debt and capital structure issues separately from the cost of equity issues. From these analyses we determine an embedded cost of debt, a debt/equity ratio, and a range of reasonable estimates of the cost of equity. We combine these components to determine a range of reasonable estimates of the overall weighted average cost of capital for interstate access service. After identifying this "zone of reasonableness," we then decide, based on policy considerations, where within that zone to prescribe the unitary rate of return.

*Cost of debt and capital structure.* We find that the capital structure of the BOCs should not be used in determining the overall interstate access cost of capital because the capital structure of those entities is subject to manipulation by the holding companies. We therefore adopt for this represcription proceeding the approach, embodied in the part 65 rules, of using the composite cost of debt and capital structure of the RHCs in calculating the overall unitary rate of return. We find that the embedded cost of debt is 8.8% and the capital structure is 44.2% debt/55.8% equity.

*Cost of equity.* We examine the LECs' objections to the part 65 cost of equity methodologies and conclude that we must reject their core contention that DCF estimates of the RHC cost of equity cannot be used as estimates of the cost of capital for interstate access service. We accord the most weight to a series of monthly classic DCF estimates of the RHCs' costs of equity for the period January 1990–July 1990. We examine the range and variability of those estimates, both among companies and across time, and conclude that a fair estimate of the industry-wide cost of equity is somewhat above the average of the RHC estimates. We also conclude that (1) our DCF formula might somewhat understate the RHC cost of equity due to the influence of investor expectations about cellular telephone, but (2) the RHC cost of equity is probably higher than the cost of equity for interstate access service due to the participation of RHCs in riskier nonregulated activities. Taking all these factors into consideration, we conclude that the range of reasonable estimates of the LEC interstate access cost of equity is 12.5%–13.5%.

This finding of a range of reasonable estimates based on the DCF-estimated costs of equity of the RHCs is corroborated by the cost of equity findings contained in recent rate of return determinations by state public utility commissions. It is also corroborated by a series of equity market benchmarks derived from the DCF estimates for the S&P Industrial and for electric utilities.

We examine each of the comparable firms studies offered by the LECs and conclude that no weight can be given to these studies. We also accord no weight to RHC cost of equity estimates made using the capital assets pricing model (CAPM), although we do not in principle reject that methodology. We reject the contention that increases in certain interest rates since the time of our last represcription proceeding require that we increase the authorized rate of return.

*Overall cost of capital.* Based on our cost of debt, cost of equity, and capital structure findings, we calculate a range of reasonable estimates of the interstate access cost of capital of 10.85%–11.4%.

*Prescription of the unitary rate of return.* After finding the "zone of reasonableness," we address the arguments of the parties concerning the relationship between the prescribed rate of return and such factors as telecommunications infrastructure development, and competition and bypass. We conclude that, because of our concerns about infrastructure development, we should exercise our judgment to select a unitary rate of return that is toward the upper end of the zone of reasonableness. Accordingly, we prescribe an authorized rate of return for the interstate services of local exchange carriers of 11.25 percent.

Accordingly, *It is ordered*, pursuant to sections 1, 4(i), 4(j), and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j),



and 201–205, that the authorized rate of return for the interstate access services of the local exchange carriers is prescribed to be at an annual rate of 11.25 percent.

**List of Subjects in 47 CFR Part 65**

Communications common carriers, rate of return.

Federal Communications Commission.

**Donna Searcy,**

*Secretary.*

[FR Doc. 90-29374 Filed 12-13-90; 8:45 am]

BILLING CODE 6712-01-M

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# Proposed Rules

Federal Register
Vol. 55, No. 241
Friday, December 14, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-240-AD]**

### Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Model 747 series airplanes, which would require the installation of shields to prevent entry of unwanted materials into the internal space of the mid and aft drain mast assemblies. This proposal is prompted by two reports of fires which may have been caused by the contact of foreign material with drain mast heater elements. This condition, if not corrected, could result in structural damage to the fuselage skin, frame, and stringers, and possible uncontrolled fire.

**DATES:** Comments must be received no later than February 4, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-240-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-240-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

Two operators have reported incidents of fires occurring in the drain mast areas on Boeing Model 747 airplanes. In the first incident, the operator reported detection of an in-flight fire that occurred in the aft lower lobe cargo compartment, near the mid drain mast. This fire caused structural damage to the fuselage skin, frames, and stringers, and also damaged the insulation blankets and the cargo ballmat. In the second incident, evidence of a fire was noticed in the mid drain mast area of the airplane fuselage by a ground mechanic during line check. Damage included a burned wire bundle, heater tape, and insulation blankets, and heat damage to a floor beam web. No fire or overheat condition had been previously reported by the flight or ground crews. In both incidents, ignition of foreign material by contact with the heating element in the drain mast inner space could have triggered the fires.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-38A2077, dated August 30, 1990, which describes procedures for the installation of shield plates on the mid and aft drain masts to prevent foreign material from entering the drain mast inner space and contacting the heating element.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of shields in accordance with the service bulletin previously described.

There are approximately 712 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts may be fabricated locally at a nominal cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.



#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747-38A2077, dated August 30, 1990, certificated in any category. Compliance required within 12 months of the effective date of this AD, unless previously accomplished.

To prevent a fire caused by ignition of foreign material in the drain mast internal space, accomplish the following:

A. Install shields to protect the drain mast heater elements in accordance with Boeing Alert Service Bulletin 747-38A2077, dated August 30, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 3, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29317 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 39

**[Docket No. 90-NM-256-AD]**

### Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 and MD-88 series airplanes, which would require inspections and modification of the electrical connectors containing sidewall fluorescent lighting wires to preclude overheating the connectors and damaging the associated wiring located above the forward cabin ceiling panel. This proposal is prompted by two reports of smoke emanating from the passenger forward cabin ceiling area. This condition, if not corrected, could result in damage to the associated systems wires and possible in-flight fire in the passenger forward cabin ceiling area.

**DATES:** Comments must be received no later than February 5, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-256-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information maybe examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kirk Baker, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5345.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-256-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

An operator of a McDonnell Douglas Model DC-9-80 series airplane reported smoke emanating from the forward cabin ceiling panel in the passenger compartment. Some oxygen masks were deployed, and the sidewall lighting circuit breakers were tripped. The airplane returned to the gate, where passengers deplaned normally. Investigation revealed fire and smoke damage to connectors containing sidewall fluorescent lighting wires. Fire/heat destroyed the connector and burned through approximately 6 inches of the wiring. There was no reported damage to the airplane's structure or the airplane's exterior skin. The same operator inspected two other Model DC-9-80 airplanes in its fleet and both airplanes exhibited signs of arcing and melting in this same area. A similar occurrence of fire and smoke damage to these electrical connectors was reported by another operator of these airplanes. Further investigations have revealed that the connectors containing sidewall fluorescent lighting wires located above the forward passenger ceiling are overheating the causing "hot spots" within the connector. This is due to the high current on fluorescent lighting wires in close proximity to the connector, caused by voltage spikes during power switching. This condition,

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if not corrected, could soften or deform the dielectric, cause burn-through of the connector shell, burn the sidewall lighting wires, damage the associated systems wires, and cause an in-flight fire.

The FAA has reviewed and approved McDonnell Douglas MD–80 Alert Service Bulletin A33–62, dated October 22, 1990, which describes procedures to inspect and modify the connector installations of the sidewall fluorescent lighting above the forward cabin ceiling panel.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections and modification of the connectors containing sidewall fluorescent lighting wires located above the forward cabin ceiling panel, in accordance with the service bulletin previously described.

There are approximately 845 McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. It is estimated that 495 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7.2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts are estimated to cost $70.10 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $177,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and MD–88 airplanes; fuselage Numbers 909 through 1825; certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate a potential fire ignition source in the forward cabin ceiling panel area, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the electrical connectors located above the forward cabin ceiling panel for damage, in accordance with paragraph B. of the "Accomplishment Instructions" of McDonnell Douglas Alert Service Bulletin A33–62, dated October 22, 1990 (hereinafter referred to as "the Service Bulletin").

1. If damage is found, prior to further flight, modify the connectors and wires in accordance with paragraph B, Condition I, of the "Accomplishment Instructions" of the Service Bulletin.

2. If no damage is found, reinstall the connectors and reinspect the connectors in accordance with paragraph A. of this AD at intervals not to exceed 6 months.

B. Within 2 years after the effective date of this AD, modify the connectors in accordance with paragraph B, Condition I or Condition II, Option 2, of the Service Bulletin. Accomplishment of these modifications constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note:** This request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; ATTN: Business Unit Manager, Technical Publications C1–HCW (54–60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

Issued in Renton, Washington, on December 4, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90–29318 Filed 12–13–90; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 90–ANE–29]**

## Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain PW100 series engines, which would require rework of the high pressure turbine front cover, vane ring segments and cooling air nozzle housing, and rework of the low pressure turbine stator assembly. This proposal is prompted by two events where an engine failed to start following an inflight shutdown. This condition, if not corrected, could result in the inability to restart the engine in flight.

**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–ANE–29, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Marc J. Bouthillier, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7085.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal will be filed in the Rules Docket.

Comments wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90–ANE–29." The postcard will be date/time stamped and returned to the commenter.

**Discussion**

There have been two incidents where an engine failed to start following an inflight shutdown. The problem is caused by differential cooling (thermal) effects in the high pressure turbine region, which causes a temporary seizure between the high pressure rotor and the front or rear air seals. This condition, if not corrected, could result in the inability to restart the engine in flight.

The FAA has reviewed and approved the following Pratt & Whitney Canada Service Bulletins (SB): SB No. 20341, dated March 30, 1989; SB No. 20417, Revision 1, dated July 6, 1989; SB No. 20419, dated May 19, 1989; SB No. 20436, dated March 6, 1989; SB No. 20456, Revision 1, dated October 12, 1989; SB No. 20742, Revision 1, dated May 28, 1990; and SB No. 20886, dated June 25, 1990. These service bulletins describe the required turbine section rework.

Since this condition is likely to exist or develop in other engines of the same type design, and AD is proposed which would require rework of the high pressure turbine front cover, vane ring segments and cooling air nozzle housing, and rework of the low pressure turbine stator assembly, to ensure clearance and thus restore in flight restart capability.

There are approximately 558 PWC PW100 series engines of the affected design in the U.S. fleet. It is estimated that it would take approximately 6 manhours per engine to accomplish the required actions at next part exposure, and that the average labor cost would be $40 per manhour. It is also estimated that the cost of replacement parts would be approximately $24,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,525,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "money rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

**Pratt & Whitney Canada:** Applies to Pratt & Whitney Canada (PWC) PW115, PW118, PW118A, PW118A, PW120, PW120A, PW121, PW123, PW124, PW124A, PW124B, PW125B, and PW126A model turboprop engines with specific engine serial numbers noted in the applicable service bulletins (SB). Affected engines are installed in, but not limited to, the Aerospatiale ATR–42 and ATR–72, British Aerospace ATP, DeHavilland of Canada DHC–8, Embraer EMB–120, Canadair CL–215T, and Fokker 50 Aircraft.

Compliance is required within 18 months after the effective date of the AD, unless previously accomplished.

To prevent seizure of the high pressure rotor, and subsequent inability to start the engine following an inflight shutdown, accomplish the following:

(a) Rework the high pressure turbine front cover in accordance with PWC SB 20417, Revision 1, dated July 6, 1989.

(b) Rework the low pressure turbine stator vane assembly in accordance with PWC SB 20456, Revision 1, dated October 12, 1989.

(c) For engines incorporating the "triple segmented," high pressure vane ring segment assembly (Part Number (P/N) 3036871 for models PW115, PW118, PW118A, PW120, PW120A, and PW121; P/N 3037071 for models PW123, PW124A, PW125B and PW126A), rework or replace the cooling air nozzle housing assembly in accordance with either PWC SB 20341, dated March 30, 1989, or SB No. 20436, dated March 6, 1989, respectively.

(d) For engines incorporating the "triple segmented", high pressure vane ring segment assembly identified in paragraph (c) of this AD, rework or replace the high pressure vane segments in accordance with any of the following: SB No. 20419, dated May 19, 1989; SB No. 20742R1, dated May 28, 1990; or SB No. 20886, dated June 25, 1990.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine and Propeller Directorate, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the

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manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on December 5, 1990.

**Herschel C. Jones,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 90-28216 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 90-ASW-51]**

**Proposed Establishment of Transition Area: Hugo, OK**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a transition area at Hugo, OK. The development of a new standard instrument approach procedure (SIAP) to the Stan Stamper Municipal Airport, utilizing the new Hugo Nondirectional Radio Beacon (NDB), has made this proposal necessary. The intended effect of this proposal is to provide adequate airspace for aircraft executing the new NDB RWY 35 SIAP. If adopted, this proposal would change the status of the Stan Stamper Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR)

**DATES:** Comments must be received on or before January 25, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 90-ASW-51, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5581.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decision on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-51" The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM'S**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Hugo, OK. The development of a new NDB RWY 35 SIAP to the Stan Stamper Municipal Airport, utilizing the new Hugo NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing the NDB RWY 35 SIAP. If this proposal is adopted, the status of the Stan Stamper Municipal Airport would change from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Hugo, OK [New]**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Stan Stamper Municipal Airport (Latitude 34°02'05" N., longitude 95°32'30" W.) and within 1.5 miles each side of the 187° bearing of the Hugo NDB (latitude 34°02'27" N., longitude 95°32'21" W.), extending from the 6.5-mile radius area to 7.5 miles south of the airport, excluding that airspace which overlies the Antlers, OK, 700-foot Transition Area.



Issued in Fort Worth, TX on November 28, 1990.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-29323 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 90-AWP-8]**

**Proposed Alteration of VOR Federal Airway V-291; AZ**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of VOR Federal Airway V-291 located in the state of Arizona. The realignment of this airway is necessary to improve the flow of traffic along the Albuquerque Air Route Traffic Control Center (ARTCC) and Los Angeles ARTCC border. This action would improve traffic flow in this area, reduce the flying time of overflights, and reduce controller workload.

**DATES:** Comments must be received on or before January 23, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 90-AWP-8, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Alton Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWP-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to substantially increase the efficiency of operations along the Albuquerque and Los Angeles ARTCC border by reducing the flying time between Winslow and Peach Springs, AZ, and eliminating some of the congestion over the Drake, AZ, VORTAC. The adjustment of this route is designated to alleviate congestion of air traffic and to establish optimum use of the airspace. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR federal airways.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V-291 [Amended]**

By removing the words "to Flagstaff, AZ." and substituting the words "Flagstaff, AZ; to Peach Springs, AZ. The airspace within R-2302 is excluded."

Issued in Washington, DC, on November 29, 1990.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90-29322 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 90-AWP-9]**

**Proposed Alteration of VOR Federal Airways V-208 and V-442; CA**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

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**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the descriptions of VOR Federal Airways V–208 and V–442 located in the state of California. This notice would remove the exclusion of V–208 and V–442 contained within the Turtle Military Operations Area (MOA). This action would increase the amount of navigable airspace available when the Turtle MOA is inactive. This action would improve traffic flow in the area while reducing the time required to overfly the MOA and reducing controller workload.

**DATES:** Comments must be received on or before January 25, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 90–AWP–8, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Alton Scott, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9252.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–AWP–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affiars, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of V–208 and V–442. This notice would remove the exclusion of V–208 and V–442 contained within the Turtle MOA. During periods when the Turtle MOA is inactive, this route is virtually unusable and requires the issuance of preferential routes by controllers, which adds a substantial number of miles to the routes of aircraft overflying this area, thus increasing controller workload. The adjustment of this route is designed to alleviate congestion and compression of air traffic and to establish optimum use of the airspace. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR federal airways.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V–208 [Amended]**

By removing the words "excluding the airspace above 10,000 feet MSL between Twentynine Palms and Needles"

**V–442 [Amended]**

By removing the words "The airspace above 10,000 feet MSL between Parker and a point 45 miles northwest is excluded."

Issued in Washington, DC, on December 3, 1990.

William C. Davis,

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 90–29319 Filed 12–13–90; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 4**

**Negligence as a Casualty Within the Meaning of the Vessel Repair Statute**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Proposed interpretative rule.

**SUMMARY:** The current position of Customs regarding negligence as a basis for relief under the vessel repair statute is that absent any evidence of owner direction or inducement, negligence causing vessel damage is considered a casualty within the meaning of the statute (see C.S.D. 82–42). This interpretation, however, does not reflect the congressional intent of formulating a narrow provision which protects U.S. shipyards. Customs is proposing to revoke C.S.D. 82–42 and re-adopt the doctrine of foreseeability, albeit in a more limited scope, in assessing claims for relief from the duties assessed pursuant to the vessel repair statute. The negligence of regular crew members and other parties, for example stevedores, if proven by the vessel owner or his authorized agent, would still be considered a casualty within the meaning of section 1466(d)(1); however, no relief will be granted where the repairs resulted from conditions arising from: (1) Violations of the U.S. Coast Guard or other applicable regulations; and/or (2) failure to correct, at the earliest opportunity, hazardous or potentially hazardous situations reported in any of the vessel logs, surveys, or transmittals to, from or between the vessel's operators, owners or other parties with direct knowledge of such situations. Because a change in the current interpretation of negligence in this area will have an effect on the domestic shipping industry, comments are invited with respect to this proposal.

**DATES:** Comments must be submitted on or before January 14, 1991.

**ADDRESSES:** Written comments (preferably in triplicate) may be submitted to an inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Glen E. Vereb, Carrier Rulings Branch, (202) 566–5706.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title 19, Unites States Code, section 1466, provides in pertinent part for payment of duty in the amount of 50 percent ad valorem on the cost of foreign repairs to vessels documented under the laws of the U.S. to engage in foreign or coastwise trade, or intended to engage in such trade. Section 1466(d)(1) provides for remission of the above duties in instances where good and sufficient evidence is furnished to show that foreign repairs were compelled by "stress of weather or other casualty" and necessary to secure the safety and seaworthiness of the vessel to enable her to reach port of destination. Regulations implementing the statute are set forth in § 4.14, Customs Regulations (19 CFR 4.14).

Customs has modified its approach over the years with regard to the concept of negligence constituting an "other casualty" within the meaning of section 1466(d)(1). The doctrine of foreseeability was first enunciated in C.I.E. 488/47. The test at that time was whether or not the negligent act or acts (or the damages resulting therefrom) could have been foreseen and guarded against by the officers of the ship. This approach was found not to be conclusive in determining whether an occurrence which is not the consequence of extrinsic fore is a casualty. C.I.E. 1161/62 (See also C.I.E. 688/72 and T.D. 55670(2)).

A line of cases subsequent to C.I.E. 1161/62 exists, however, holding that single negligent acts of officers of ships (as opposed to regular crew) preclude relief under the "other casualty" provisions of section 1466(d)(1) (C.S.D. 79–33, 81–154 and rulings cited therein). In C.S.D. 82–42 the distinction between officer and crew was eliminated. Negligent acts, whether committed by crew members or officers, were considered to be "other casualties" within the meaning of section 1466(d)(1) where owner direction or inducement is not in evidence.

The current position of Customs is that negligence committed by any party, absent owner direction or inducement, resulting in damage to the vessel constitutes a "casualty" within the meaning of section 1466(d)(1). This position, however, is in contravention of the interpretation of "casualty" by the Customs Court and ordinary English usage. Dictionaries uniformly define "casualty" as involving an accident and define "accident" as involving something unexpected or unforeseeable. Customs believes, for example, that if a vessel's chief engineer stores oily waste rags near a furnace, the resulting fire is foreseeable and therefore not a casualty.

In *Dollar Steamship Lines Inc.* v. *United States*, 5 Cust. Ct. 23, 28–29, C.D. 362 (1940), the court reasoned that:

> the word "casualty" is to be considered together with the phrase "stress of weather." The phrase "or other casualty" is supplemental to and qualifies the phrase "stress of weather" broadening the term to include other similar casualties * * *. A casualty similar to "stress of weather" would include such as is violently exerted; that which comes with unexpected force or violence, such as that of a fire, or a collision, or an explosion. We are of the opinion that a casualty similar to "stress of weather" should be of necessity a happening that comes with the violence of the turbulent forces of nature.

See also *International Navigation Co., Inc.* v. *United States*, 38 Cust. Ct. 5, 11, C.D. 1836; *Suwannee Steamship Co.* v. *United States*, 79 Cust. Ct. 19, 27, C.D. 4708.

Customs is of the opinion that the approach articulated in C.S.D. 82–42 is incorrect as a matter of law and that the doctrine of foreseeability should once again be implemented, albeit in a more limited scope, regarding claims for relief under the vessel repair statute based on the negligence of officers of a ship. The negligence of regular crew members and other parties, for example stevedores, if proven by the vessel owner or his authorized agent, would still be considered an unforeseeable casualty within the meaning of section 1466(d)(1); however, no relief will be granted where the repairs resulted from conditions arising from: (1) Violations of U.S. Coast Guard or other applicable regulations; and/or (2) failure to correct, at the earliest opportunity, hazardous or potentially hazardous situations reported in any of the vessel's logs, surveys, or transmittals to, from or between the vessel's operators, owners, or the other parties with direct knowledge of such situations.

**Comments**

Prior to making a determination on these matters and revoking C.S.D. 82–42, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC.

**Drafting Information**

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnal from other offices participated in its development.

Carol Hallett,

*Commissioner of Customs.*

Approved: December 10, 1990.

Peter K. Nunez,

*Assistant Secretary of Treasury.*

[FR Doc. 90–29323 Filed 12–13–90; 8:45 am]

BILLING CODE 4820–02–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 124**

**[0905-AD27]**

## Grants for Hospital Construction and Modernization; Federal Right of Recovery and Waiver of Recovery

**AGENCY:** Public Health Service, DHHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Public Health Service proposes to amend its regulations relating to the waiver of the Federal right of recovery for good cause to include instances where a facility has been acquired from an agency of the United States. The Department is of the view that it is in the best interest of the United States to have the waiver available in appropriate circumstances where facilities are purchased from Federal agencies, which have acquired title to the facilities in the course of carrying out their responsibilities under Federal law, and have made reasonable effort to dispose of the facility for operation as a public or nonprofit health care facility.

**DATES:** Comments on the proposed rule must be received on or before January 14, 1991.

**ADDRESSES:** Address comments in writing to: Donald B. Sylvain, Chief, Medical Facilities Branch, Division of Facilities Assistance and Recovery, Bureau of Health Resources Development (BHRD), Health Resources and Services Administration, room 11A-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be available for public inspection at the above address on Monday through Friday of each week from 8:30 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Donald B. Sylvain, (301-443-5786).

**SUPPLEMENTARY INFORMATION:** On March 7, 1986, the Secretary of Health and Human Services added a new subpart H to part 124 of title 42, CFR, to implement sections 609 and 1622 of the Public Health Service Act (42 U.S.C. 291i, 300e-1a) as amended (51 FR 7935). The regulations provide for recovery of funds by the United States when a health care facility that was constructed with the aid of a grant under title VI (The Hill-Burton Act) or title XVI of the Public Health Service Act is, within 20 years, sold or transferred to an entity that would not have been qualified to receive a grant. The regulations also provide for recovery where, within the same 20-year period, an assisted facility ceases to be a health care facility to which a grant could have been made. In a "cease to be" situation, the statutes and regulations authorize the Secretary to waive the recovery rights of the United States if the Secretary determines, in accordance with applicable regulations, that there is good cause for waiving such rights with respect to a facility. The provisions relating to the good cause waiver are set out in § 124.708.

The Department proposes to amend this section to take into consideration in determining good cause for a waiver that the facility has been acquired from an agency of the United States (e.g. The Federal Housing Administration under its mortgage insurance commitment program) which has made a reasonable effort to dispose of it for operation as a public or nonprofit health care facility.

The Department is of the view that it is in the best interest of the United States to have the waiver available in appropriate circumstances where facilities are purchased from Federal agencies, which have acquired title to the facilities in the course of carrying out their responsibilities under Federal law.

### Executive Order 12291

The Secretary concludes that the amendment is not a major rule within the meaning of the Executive Order because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

### Regulatory Flexibility Act and Executive Order 12291

The Department of Health and Human Services has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, and therefore an initial regulatory flexibility analysis is not required.

The Department also has determined that this proposed regulation is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required.

### Paperwork Reduction Act

This proposed rule contains no new additional information collection or record keeping requirements.

### List of Subjects in 42 CFR Part 124

Grant Programs—Health, Health facilities Low income persons.

Accordingly, the Department of Health and Human Services proposes to amend § 124.708 in subpart H of 42 CFR part 124 as set forth below:

Dated: October 10, 1990.

James O. Mason,

*Assistant Secretary for Health.*

Approved: November 26, 1990.

Louis W. Sullivan,

*Secretary.*

### PART 124—MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION

#### Subpart H—Recovery of Grant Funds

1. The authority citation for subpart H of part 124 continues to read as follows:

Authority: 42 U.S.C. 291i and 300e-1a.

2. Section 124.708 is amended by adding paragraph (c) as follows:

**§ 124.708 Waiver of Recovery—good cause for other use of facility.**

* * * * *

(c) The facility has been acquired from an agency of the United States (e.g. the Federal Housing Administration under its mortgage insurance commitment program) which has made a reasonable effort to dispose of it for operation as a public or nonprofit health care facility.

[FR Doc. 90-29276 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-15-M

**Health Care Financing Administration**

**42 CFR Parts 401 and 488**

**[HSQ-159-P]**

**RIN 0938-AF17**

## Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to implement section 1865(a) of the Act, as amended by sections 2345 and 2346 of Public Law 98-369 and section 6019 of Public Law 101-239. The amendments expand the types of providers and suppliers of services that we may consider to meet conditions of participation or certification or conditions for coverage by virtue of their accreditation by a national accreditation program; these providers and suppliers would also be subject to validation surveys. The rule would also extend confidentiality to accreditation surveys, other than home health agency surveys, done by accreditation programs in addition to the Joint Commission on Accreditation of Healthcare



Organizations, except that the Secretary may disclose survey and related information to the extent that such information relates to an enforcement action taken by the Secretary. The rule would also provide for: (1) The release to and use by the Secretary of all accreditation surveys and other relevant information even if a provider or supplier is not subject to a validation survey; and (2) the removing of deemed status of a facility based on a validation survey, an accreditation survey, or other information related to either.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 12, 1991.

**ADDRESSES:** Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-159-P, P.O. Box 26676, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If you prefer, you may deliver your comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-159-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:** Irene Gibson, (301) 966-6768.

**SUPPLEMENTARY INFORMATION:**

### Background

In order to participate in the Medicare program, providers and most types of suppliers of health care services, such as hospitals, rural health clinics, and laboratories, must meet requirements specified in the Social Security Act (the Act) and any others specified by the Secretary of Health and Human Services. These requirements are called conditions of participation for providers, conditions for coverage for suppliers or conditions of certification for rural health clinics (RHCs). Any provider or supplier who does not meet these requirements is considered out of compliance and risks having its participation in the Medicare program terminated.

State health departments or similar agencies under contract with HCFA (in accordance with section 1864 of the Act) survey health care facilities and some types of suppliers to ascertain compliance with the conditions of participation or conditions for coverage and to certify their findings to HCFA. On the basis of these State survey agency certifications, HCFA decides whether the provider or supplier qualifies, or continues to quality, for participation in the Medicare program, whether deficiencies exist, and if they are corrected.

Section 1865(a) of the Act provides that a hospital that is accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) is deemed to meet, by virtue of that accreditation, the Medicare conditions of participation, except those on utilization review, discharge planning and any requirement promulgated by the Secretary under section 1861(e)(9) that is higher than Joint Commission requirements for accreditation unless the Secretary determines that the Joint Commission process in these areas is at least equivalent to the standards promulgated by the Secretary. This eliminates the need for State survey agencies to determine routinely whether these "deemed" hospitals comply with the requirements of section 1861(e).

Section 1864(c) of the Act authorizes the Secretary to enter into agreements with the State survey agencies to determine, through validation surveys, whether hospitals participating in Medicare on the basis of Joint Commission accreditation are in fact meeting the conditions of participation. In order for a Joint Commission accredited hospital to be deemed to meet the Medicare conditions of participation, the hospital must agree, if it is included in a validation survey, to authorize the Joint Commission to release (and the Joint commission must release), to HCFA or a designated State agency, on a confidential basis, a copy of the most current Joint Commission accreditation survey together with any other information related to the survey (including corrective action plans) that the Secretary requires.

Section 1865(b) provides that if a hospital is found to have significant deficiencies, based on a validation survey or any other information, it will no longer be deemed to meet the Medicare conditions of participation.

Section 1865(a) of the Act, until July 18, 1984, provided that if the Secretary found that accreditation of an institution or agency by the American Osteopathic Association (AOA) or another national accreditation organization provided reasonable assurance that any or all of the conditions of sections 1861(e) (for hospitals), 1861(j) (for skilled nursing facilities (SNFs)), and 1861(o) (for home health agencies (HHAs)), as the case may be, were met, to the extent he deemed it appropriate, he could treat the entity as meeting the conditions of participation. On July 18, 1984, legislation expanded the types of entities that could be deemed. (See the section entitled "LEGISLATION", below.) Up to the present, we have not determined that any accreditation organization except AOA (for hospitals) has provided these assurances.

The majority of hospitals are accredited by either the Joint Commission or the AOA. No providers other than hospitals are currently-deemed to meet our conditions of participation or conditions for coverage. That is, although the Joint Commission accredits many other types of providers, such as SNFs, hospices,ambulatory surgical centers (ASCs), and RHCs, no members of these other provider categories have been granted deemed status.

Section 1864(c) of the Act authorizes the Secretary to enter into an agreement with the State survey agency to survey Joint Commission-accredited hospitals, either on a selective-sample basis or in response to a substantial allegation that significant deficiencies exist. In a previous rule, under the authority provided in sections 1865(a) and 1871 of the Act, we extended these surveys to AOA-accredited hospitals in order to provide reasonable assurance that an AOA-accredited hospital meets the requirements of section 1861 of the Act. In this rule, also under the authority of section 1865(a) and 1871 of the Act, we would extend validation surveys to all providers and suppliers deemed to meet Medicare conditions through the process of accreditation. This is done to provide reasonable assurance that deemed entities meet the applicable Medicare conditions of participation or for coverage.

Under section 1865(a) of the Act, we may deem as meeting conditions of participation a Joint Commission-accredited hospital only if the hospital authorizes the Joint Commission to release to us, and the Joint Commission releases to us, its most current accreditation survey together with any other information directly related to the survey (including corrective action plans) as the Secretary requires. This survey and other information is, in

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general, confidential. However, the survey and other information may be disclosed by us to the extent that it relates to an enforcement action we have taken.

There is no similar specific statutory statement for requiring entities accredited by another accreditation organization to authorize release of accreditation surveys to us. However, under the general authority of section 1865(a) of the Act, we also have required AOA-accredited hospitals to authorize release of their surveys in order to provide reasonable assurance that all the conditions of section 1861(e) (the statutory definition of "hospital") are met. Until July 18, 1984, other than for the Joint Commission's accreditation findings there was no statutory authority to keep any accreditation finding confidential.

Current regulations at 42 CFR 488.5 (53 FR 22850, June 17, 1988) implement the statutory requirements of section 1865 of the Act insofar as the Joint Commission and AOA are concerned. Section 488.5, which applies to both Joint Commission and AOA accredited hospitals, implements section 1864(c) of the Act. This section discusses the basis for selecting a provider for a validation survey, what the provider must do if selected and the effect if it refuses to cooperate.

**Legislation**

On July 18, 1984, the Deficit Reduction Act of 1984 (DEFRA, Pub. L. 98-369) was enacted. Section 2345 of DEFRA amended section 1865(a) of the Social Security Act to require the Secretary to keep confidential the accreditation survey released to us by any accreditation body for any entity accredited by that body.

Section 2346 of DEFRA also amended section 1865(a) of the Act. This amendment allows us to find that if the accreditation of the following additional types of entities by any national accreditation organization provide reasonable assurance that the conditions of participation or certification (for rural health clinics) or conditions for coverage are met for these entities, then we may deem these entities as meeting these conditions. These additional entities are: psychiatric hospitals; ASCs; RHCs; laboratories; hospices; comprehensive outpatient rehabilitation facilities (CORFs); and clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy (which includes speech pathology services) or occupational therapy services.

Section 411 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360) also amended section 1865(a) of the Act. This amendment requires the Secretary to keep confidential the accreditation survey released to us by any accreditation organization for any entity other than a survey with respect to a home health agency.

However, section 6019 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239), enacted December 19, 1989, further amended section 1865(a) of the Act to allow the Secretary to disclose an accreditation survey and information related to it to the extent the survey and information are related to an enforcement action taken by the Secretary. This provision was effective December 19, 1989. Section 6019 of OBRA '89 also amended section 1865(a), effective June 19, 1990, to require JCAHO-accredited hospitals to authorize the JCAHO to release to the Secretary upon request any other information (in addition to the accreditation survey) directly related to the survey as the Secretary may require (including corrective action plans), if they are to be deemed to meet the conditions of participation. Also effective June 19, 1990, the JCAHO must release the survey and other information to the Secretary in order for the hospital to be deemed to meet the conditions of participation.

**Provisions of the Proposed Regulations**

*1. Confidentiality and Disclosure Provisions*

We propose to revise 42 CFR 401.126(b)(2), which concerns information or records that are not available upon public request. Currently, this paragraph extends confidentiality to accreditation surveys and related materials furnished to us under section 1865(a)(2) of the Act by the Joint Commission or by any of its hospitals. We would extend the confidentiality to any national accreditation program recognized by the Secretary under section 1865 of the Act that accredits the specified providers or suppliers other than home health agencies (hospitals; psychiatric hospitals; SNFs; hospices; ASCs; RHCs; CORFs; laboratories; and clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy services, speech pathology services, or occupational therapy services).

We would also simultaneously amend § 401.126 (b)(2) and add a paragraph (d) to § 401.133, Availability of official reports on providers of services, State agencies, intermediaries, and carriers under Medicare, to indicate that we will disclose any survey and related information released to us by an accreditation organization to the extent they are related to an enforcement action taken by HCFA and the accreditation survey of any HHA. We would add a paragraph (e) to § 401.133 to show that home health agency surveys are available without regard to reason for disclosure. We would also revise the title of § 401.133 to include suppliers.

We would also revise § 488.5, Effect of JCAHO and AOA accreditation, to show that hospitals accredited by JCAHO or AOA must authorize the release to HCFA of the most current accreditation surveys and any other related information (including corrective action plans) HCFA requires. We would also repeat the provision in revised § 401.126 (b)(2) and new § 401.133(d) that accreditation surveys and related information may be disclosed to the extent they relate to an enforcement action taken by HCFA. In addition, the accreditation survey of any HHA can be disclosed. We would state that we may determine, based on a validation survey, the accreditation survey or other related information, that the hospital does not meet Medicare conditions of participation. (Our interpretation of the latter provision is explicitly supported by the Conference Committee report to OBRA '89 concerning the miscellaneous technical provisions of the bill relating to part A. The report states that the OBRA '89 provisions permit the Secretary to determine that a hospital does not meet participation requirements on the basis of information other than information derived from a validation survey. (H.R. Rep. No. 386, 101st Cong., 1st Sess. 736 (1989)).

Based on the provisions of sections 1865(a) and 1871 of the Act, we are extending the confidentiality and disclosure provisions and the provisions concerning expansion of types of accreditation organizations (see section immediately below) to providers and suppliers other than hospitals accredited by the Joint Commission. Under the disclosure provisions of section 1865(a), an institution accredited by the Joint Commission must authorize the Joint Commission to release to the Secretary a copy of its most current accreditation survey, and in accordance with OBRA '89, any other information directly related to the survey as the Secretary may require. Under section 1865(a) of the Act, we must keep confidential any accreditation survey and related information (except for those of home health agencies) of accrediting organizations in addition to those of the Joint Commission, except to the extent that the survey or related information



relate to an enforcement action the Secretary takes.

By this rule, we propose to extend these disclosure requirements to the other types of providers and suppliers for which we are permitting deeming. We have interpreted the "reasonable assurance" and other provisions of section 1865(a) to extend not only to the confidentiality of surveys and related information that we require a provider or supplier to authorize its accreditation organization to release to us, but also to the disclosure provision as well. It would be inconsistent with the reasonable operations of our program to single out only one organization's providers as having to authorize the release of surveys and related information. In addition, we do not believe that Congress intended to extend the confidentiality provisions of OBRA '89 without simultaneously extending the disclosure provisions as well. Therefore, we are proposing that the confidentiality and disclosure provisions apply to all providers and suppliers.

We would also extend to providers (other than those hospitals accredited by the Joint Commission or AOA) and suppliers, by the same reasoning, the Conference Committee's intention that we be able to determine that a hospital does not meet program requirements based on an accreditation survey or related information.

*2. Expansion of Types of Accredited Entities*

We propose to redesignate § 488.6, Validation survey, as § 488.7 and add a new § 488.6, Other national accreditation programs. This new section would amend the regulations to conform to the statute, which permits HCFA to deem entities other than hospitals to meet the conditions of participation or certification or conditions for coverage, if HCFA finds that a national accreditation organization has provided reasonable assurance that these conditions are met. (Hospitals accredited by the Joint Commission or the AOA would continue to have to meet the requirements in § 488.5 to be deemed to meet conditions of participation.) The accreditation organization would have to provide HHS with reasonable assurance that the requisite conditions of participation or certification or conditions for coverage are met by the entities the accrediting body has accredited.

We propose to revise the regulations to reflect our current policy of publishing in the **Federal Register** any change in organizations whose specified providers or suppliers may be deemed as meeting conditions of participation or certification or conditions for coverage.

We would include a parallel provision to that in § 488.5 regarding the release and use of hospital accreditation surveys. That is, we would disclose the most current accreditation survey and related information to the extent they are related to an enforcement action taken by HCFA; the provider or supplier must authorize its accreditation organization to release to us a copy of its most current accreditation survey; and we may determine that a provider or supplier does not meet Medicare conditions, based on its accreditation survey or related information

*3. Validation Surveys*

The redesignated § 488.7, Validation survey, would be revised to extend the validation survey to the specified types of providers and suppliers accredited by accreditation organizations other than the Joint Commission and AOA.

In § 488.7(a), we would make a distinction between a survey done on the basis of a selective sample and one done on the basis of a substantial allegation of significant deficiencies. The first is comprehensive and addresses all conditions of participation or certification or conditions for coverage; the latter is initially directed solely at the requirements related to the allegation. If the State survey agency substantiates the allegation, and HCFA determines that the provider or supplier is out of compliance with one or more conditions of participation or conditions for coverage, the survey agency then conducts a complete survey.

Paragraphs (b), (c), (d) and (e) would be revised to substitute "provider or supplier" for "hospital" so that our rules would apply to any approved accreditation organization that accredits providers or suppliers other than hospitals. We would also revise paragraph (b) to extend confidentiality to an accreditation survey of any accredited entity other than a home health agency.

*4. Review of Accrediting Bodies*

In a new section, § 488.9, Federal review of accreditation organizations, we propose the standards for evaluating a deeming authority. We plan to evaluate an accreditation organization's accreditation requirements to determine whether they are equivalent to ours; the organization's survey process to determine the composition of the survey team, its qualifications and its ability to continue surveyor training; the comparability of survey procedures; the organization's monitoring procedures for providers or suppliers found out of compliance; the ability to provide HCFA with electronic data and reports necessary for effective validation and assessment of the survey process; the adequacy of staff and other resources; and the organization's ability to provide adequate resources for performing required surveys.

We would include in HCFA's review of a national accreditation organization the organization's agreement with HCFA to allow the organization to release the most current accreditation survey to us with any information related to the survey that we may require, including corrective action plans.

We also indicate that we would publish a notice in the **Federal Register** to notify the public of any organizations whose accredited, specified types of providers or suppliers are deemed to meet Medicare participation requirements. The notice would describe how the accreditation organization's accreditation program provides reasonable assurance that an entity accredited by the organization meets the Medicare requirements.

In this section, we also establish the criteria and procedures for removing the deeming authority. At the end of a validation review period, HCFA would identify any accreditation programs for which validation survey results indicate a rate of disparity between certifications of the accreditation organization and those of the State agency validating the accreditations of 20 percent or more. We would also identify validation survey results of accreditation programs that indicate a patterns over two years or more of increasing disparity between the certifications of the accreditation organization and those of the State agency. In addition, we would assess the equivalency of the accreditation organization's accreditation requirements compared to our comparable requirements if an accreditation organization changes its requirements. If an organization adopts less stringent requirements, we would allow it 60 days to notify us.

We would provide written notification to an accreditation organization indicating its approval to be an accreditation organization may be in jeopardy based on documentation identified through the validation review. We would include in the notification a statement concerning the discrepancies found; information explaining our deeming authority review; a description of the procedure the accreditation organization may follow to explain or justify findings made during validation review; and a description of what we

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may do as a result of the findings from the validation review.

If we find an accreditation organization to have a disparity rate of 20 percent or more between its accreditation determinations and the certification determinations of the State survey agency or if we find validation survey results over a period of two or more years show a pattern of increasing disparity between the certifications of the accreditation organization and certifications of the State agency, we would conduct a deeming authority review. We would reevaluate whether the accreditation organization meets all the criteria we have for initial determinations that an organization's specified providers or suppliers are deemed to meet conditions of participation. We define "rate of disparity" and include an example in the definitions section, § 488.1, as follows.

"Rate of disparity" is the percent total validation surveys represented by the number of surveys for which the survey agency finds noncompliance with one or more Medicare conditions and no comparable condition level deficiencies were cited by the accreditation organization.

*Example:* Assume the State survey agency performs validation surveys at 300 facilities during a validation review period and finds that 60 of the 200 facilities had one or more conditions of participation out of compliance. HCFA compares the validation surveys with the accreditation surveys of the validated facilities and determines that the accreditation organization has found no condition level deficiencies comparable to those found by HCFA in 36 of the 60 facilities and it is reasonable to assume that the deficiencies were present at the time of the accreditation organization's survey. This would indicate a rate of disparity of 19 percent because 36 divided by 200 equals 19 percent.

If we determine, following the deeming authority review, that the organization's requirements are not comparable to ours, we may give the organization a conditional approval of its deeming authority for a probationary period of up to 180 days, to adopt comparable requirements. If we determine that the rate of disparity identified during the validation review indicates poor performance, we may: (1) Give conditional approval of its deeming authority for a period of up to one year, effective 30 days after the determination; (2) require the accreditation organization to release to us any facility-specific data we require for continued monitoring; (3) require the organization to provide us with a survey schedule for the purpose of intermittent onsite monitoring (by HCFA, State surveyors, or both) of the accreditation organization's survey process; and (4) publish in the Medicare Annual Report to Congress the name of any accreditation organization we give a probationary period.

Within 60 days after the conclusion of the probationary period, we would determine whether the organization continues to meet the criteria necessary for its accredited providers or suppliers to be deemed to meet conditions of participation and issue an appropriate notice. The determination would be based on any or all of the following:

(1) The evaluation of the most recent validation findings. For an organization to continue to have its providers or suppliers deemed to meet conditions of participation, the evaluation would have to show a significant reduction (from the prior two or more years) in the rate of disparity between the certifications of the State agency and the accreditation organization, and show a disparity rate of less than 20 percent;

(2) The evaluation of facility-specific data, as necessary, as well as other information;

(3) The evaluation of an accreditation body's surveyors in terms of qualifications, ongoing training, composition of survey team, etc.;

(4) The evaluation of survey procedures; and

(5) The evaluation of accreditation requirements.

If the accreditation organization has made no significant improvements during the probationary period, we would remove recognition of deemed authority, effective 30 days after we provide written notice to the organization that its deeming authority is removed. We would also publish a notice in the Federal Register giving the basis for removing the deeming authority from the accreditation organization and providing the reasons the organization's accreditation program no longer meets our requirements.

The regulations would state that the existence of any validation review, deeming authority review, probationary period, or any other action by HCFA does not affect or limit the conducting of any validation survey.

*5. Other Clarifying Revisions*

a. We propose to revise the definition of "accredited hospital" in § 488.1, Definitions, to "accredited provider or supplier" in order to include other providers and suppliers and to include accreditation programs other than the Joint Commission and AOA.

b. We propose to revise the definition of "substantial allegation" in § 488.1 in order to show that such an allegation may be a complaint from a variety of sources. We would clarify that a complaint need not be formal, directed to HCFA or the survey agency, or as a result of first-hand experiences.

c. We propose to add to § 488.1 a definition of "conditions of participation" in order to clarify that the requirements include conditions of certification for RHCs and a definition of "conditions for coverage". We would also define "Medicare condition" as any condition of participation or for coverage, or, long term care requirement, in order to avoid repeating the latter phrase every place it is applicable. We also propose to add definitions of "rate of disparity" (previously given) and "validation review period." The "validation review period" would be the period after the end of a fiscal year during which HCFA conducts a review of the previous year's validation surveys.

d. We propose to add parts 416 and 485 to the list of applicable conditions of participation or conditions for coverage a provider must meet in order to participate in the Medicare program. These parts contain the conditions for ASCs and CORFs. Part 488 has inadvertently not been updated to include these parts.

e. We would revise redesignated § 488.7(d) to parallel paragraph (c) of that section; i.e., we would add that a provider found out of compliance with Medicare conditions following a full State agency survey may be subject to termination of its provider agreement under § 489.53.

f. We would delete current § 488.6(d)(2) concerning when a significant deficiency will be determined not to exist and revise redesignated § 488.7(b)(3). These paragraphs, which may have caused some confusion, currently allow the Joint Commission or AOA to monitor the progress of a hospital's correction of deficiencies found during a validation survey, unless it is determined that follow-up by the State agency is necessary. We believe it is in the public interest to clarify the necessity for the State agency to follow-up any flaw serious enough to threaten the hospital's participation in the Medicare and Medicaid programs; therefore, this regulatory revision would clarify our current policy and eliminate any confusion that our current regulation may have caused in some cases. We also need to monitor progress ourselves to assure that the provider or supplier meets our requirements. Therefore, any accredited provider or supplier that fails to meet a condition of participation or certification or for coverage would be subject to the same adverse action procedures as an unaccredited provider or supplier that fails to meet a condition.

We would make a conforming change to redesignated § 488.7 by removing paragraph § 488.6(e)(3), which allows a hospital to regain its deemed status if it withdraws a prior refusal to authorize its accreditation organization to release periodic status reports of correction progress since the accreditation organization would no longer monitor its correction progress.

g. We also propose to delete the informal review procedures now specified in § 488.6(f). Under these procedures, a hospital may request an informal review if it is dissatisfied with a finding that it is not in compliance with a condition of participation. We do not believe it is necessary or fair to unaccredited providers to afford accredited providers and suppliers a step in the appeals process not granted to unaccredited providers and suppliers. Eliminating this procedure for accredited providers and suppliers would assure that the appeals process is applied uniformly for all facilities participating in the program regardless of accreditation status. Moreover, we do not wish to encourage participation in an accreditation program by virtue of our appeals procedures. All providers and suppliers are entitled to a formal review (see part 498).

h. We would also amend § 488.10, State survey agency review; Statutory provisions, to include the additional types of providers and suppliers in the statutory provision in paragraph (d) that concerns treating accredited entities as meeting conditions of participation or conditions for coverage.

i. We would update the cross-reference in § 488.11, which refers to validation surveys, from § 488.6 to § 488.7.

**Regulatory Impact Statement**

*A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would implement section 1865(a) of the Act, as amended by sections 2345 and 2346 of Public Law 98–369 and section 411 of Public Law 100–360 and section 6019 of Public Law 101–239. The amendments would—

- Extend confidentiality to accreditation surveys and related materials furnished to us by any accreditation program (other than home health agencies) and to its providers and suppliers;
- Permit HHS to deem as meeting conditions of participation, certification, or coverage, specified types of providers and suppliers accredited by accreditation organizations, including the Joint Commission and AOA; and
- Extend the validation survey to the specified types of providers and suppliers accredited by accreditation organizations other than the Joint Commission and AOA.

We do not believe that the provisions of this proposed rule would have an effect on the economy because they would not specify the accrediting organization(s) we would recognize. Should we decide in the future to recognize the Joint Commission or AOA for a purpose for which it is not currently recognized or to recognize any other accrediting authority, we would issue a notice in the Federal Register. The notice would include consideration of the economic impact of recognizing these organizations and, if appropriate, we would prepare a regulatory impact analysis.

Therefore, we conclude that this proposed rule, in itself, would have no effect on the economy and no threshold criteria under E.O. 12291 would be exceeded. Consequently, a regulatory impact analysis is not required.

*B. Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. As discussed above, we believe that the provisions of this regulation would not, in themselves, have an economic impact. Indirectly, this proposed rule may result in future issuances whereby small entities might be affected. However, in each of these cases, producers consistent with the RFA will be followed and a regulatory flexibility analysis performed, if warranted. Therefore, we conclude, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*C. Rural Hospital Impact Statement*

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this proposed rule, in itself, would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

**Paperwork Burden**

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.).

**Response to Comments**

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

**List of Subjects**

*42 CFR Part 401*

Claims, Freedom of information, Health facilities, Medicare, Privacy.

*42 CFR Part 488*

Health facilities, Survey and certification, Forms and guidelines.

Title 42 of the Code of Federal Regulations would be amended as follows:

## PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

A. Part 401, subpart B is amended as follows:

1. The authority citation for subpart B is revised to read as follows:

Authority: Secs. 205, 1102, 1106, 1865, and 1871 of the Social Security Act (42 U.S.C. 405, 1302, 1306, 1395bb, and 1395hh); the Freedom

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of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a).

2. Section 401.126(b)(2) is revised to read as follows:

**§ 401.126 Information or records that are not available.**

* * * * *

(b) *Materials exempt from disclosure by statute.* * * *

(2)(i) Except as specified in paragraph (b)(2)(ii) of this section, the Secretary may not disclose any accreditation survey or any information directly related to the survey (including corrective action plans) made by and released to it by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association or any other national accreditation organization that meets the requirements of § 488.6 of this chapter. Materials that are confidential include accreditation letters and accompanying recommendations and comments prepared by an accreditation organization concerning the entities it surveys.

(ii) *Exceptions.* (A) The Secretary may release the accreditation survey of any home health agency; and

(B) The Secretary may release the accreditation survey and other information directly related to the survey (including corrective action plans) to the extent the survey and information relate to an enforcement action taken by the Secretary; and

* * * * *

3. In § 401.133, the introductory text is republished, the section heading is revised and the section is amended by adding new paragraphs (d) and (e) to read as follows:

**§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.**

The following shall be made available to the public under the conditions specified:

* * * * *

(d) *Accreditation surveys.* Upon written request, the Secretary may release the accreditation survey and related information from an accreditation organization meeting the requirements of § 488.5 or § 488.6 of this chapter to the extent the survey and information relate to an enforcement action taken by the Secretary..

(e) The Secretary may release the accreditation survey of any home health agency.

## PART 488—SURVEY AND CERTIFICATION PROCEDURES

B. Part 488 is amended as follows:

1. The authority citation continues to read as follows:

**Authority:** Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395z, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

2. The table of contents to part 488 is amended by redesignating the title of § 488.6 as § 488.7, revising the title of § 488.5, adding a new title for § 488.6 and adding a new § 488.9 to read as follows:

**Subpart A—General Provisions**

Sec.

* * * * *

488.5 Effect of JCAHO or AOA accreditation of hospitals.

488.6 Other national accreditation programs for hospitals and other providers and suppliers.

488.7 Validation survey.

* * * * *

488.9 Federal review of accreditation organizations.

* * * * *

3. Section 488.1 is amended by revising the definition of "Substantial allegation", removing "Accredited hospital" and adding definitions for "Accredited provider or supplier", "Conditions for coverage", "Conditions of participation", "Medicare condition", "Rate of disparity" and "Validation review period" to read as follows:

**§ 488.1 Definitions.**

As used in this part—

*Accredited provider or supplier* means a provider or supplier accredited by a national accreditation program meeting the requirements of and approved by HCFA in accordance with § 488.5 or § 488.6.

* * * * *

*Conditions for coverage* means the requirements suppliers must meet to participate in the Medicare program.

*Conditions of participation* means the requirements providers must meet to participate in the Medicare program and includes conditions of certification for rural health clinics.

* * * * *

*Medicare condition* means any condition of participation or for coverage or long-term care requirements.

* * * * *

*Rate of disparity* means the percent of total validation surveys represented by the number of surveys for which the survey agency finds noncompliance with one or more Medicare conditions and no comparable condition level deficiencies were cited by the accreditation organization.

**Example:** Assume the State survey agency performs validation surveys at 200 facilities during a validation review period and finds that 60 of the 200 facilities had one or more conditions of participation out of compliance. HCFA compares the validation surveys with the accreditation surveys of the validated facilities and determines that the accreditation organization has found no condition level deficiencies comparable to those found by HCFA in 38 of the 60 facilities and it is reasonable to assume that the deficiencies were present at the time of the accreditation organization's survey. This would indicate a rate of disparity of 19 percent because 38 divided by 200 equals 19 percent.

* * * * *

*Substantial allegation* means a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles), that reflects on the health and safety of patients and raises doubts as to a provider's or supplier's compliance with any Medicare condition.

* * * * *

*Validation review period* is the period after the end of a Federal fiscal year during which HCFA conducts a review on the validation surveys for the previous fiscal year.

4. Section 488.3(a) is revised to read as follows:

**§ 488.3 Conditions of participation: Conditions for coverage and requirements for SNFs and ICFs.**

(a) *Basic rules.* In order to be approved for participation in or coverage under the Medicare program, a prospective provider or supplier must:

(1) Meet the applicable statutory definition in section 1861 or section 1881 of the Act; and

(2) Be in compliance with the applicable conditions or level A requirements (for SNFs) prescribed in subpart Q or U of part 405, part 416, subpart C of part 418, part 482, part 483, part 484, part 485, subpart A of part 491, or subparts G through N of part 493 of this chapter.

* * * * *

5. Section 488.5 is revised to read as follows:

**§ 488.5 Effect of JCAHO or AOA accreditation of hospitals.**

(a) *Deemed to meet.* Institutions accredited as hospitals by the JCAHO or AOA are deemed to meet all of the Medicare conditions of participation for hospital, except:

(1) The requirement for utilization review as specified in section 1861(e)(6) of the Act and in § 482.30 of this chapter.



(2) The additional special staffing and medical records requirements that are considered necessary for the provision of active treatment in psychiatric hospitals (section 1861(f) of the Act) and implementing regulations; and

(3) Any requirements under section 1861(e) of the Act and implementing regulations which the Secretary, after consulting with JCAHO or AOA, identifies as being higher or more precise than the requirements for accreditation (section 1865(a)(4) of the Act).

(b) *Release and use of hospital accreditation surveys.* (a) A hospital deemed to meet program requirements must authorize its accreditation organization to release to HCFA a copy of its most current accreditation survey together with any other information related to the survey that HCFA may require (including corrective action plans).

(2) HCFA may use a validation survey, an accreditation survey or other information related to the survey to determine that a hospital does not meet the Medicare conditions of participation.

(3) HCFA may disclose the survey and information related to the survey to the extent that the accreditation survey and related survey information related to an enforcement action taken by HCFA.

6. Section 488.6 is redesignated as § 488.7, and is revised to read as follows:

**§ 488.7 Validation survey.**

(a) *Basis for survey.* HCFA may require a survey of an accredited provider or supplier to validate its Organization's accreditation process. These surveys will be conducted on a selective-sample basis, or in response to substantial allegations of significant deficiencies.

(1) When conducted on a selective sample basis, the survey is comprehensive and addresses all Medicare conditions.

(2) When conducted in response to a substantial allegation, the State survey agency surveys for any condition that HCFA determines is related to the allegation. If the State survey agency substantiates a deficiency and HCFA determines that the provider or supplier is out of compliance on any Medicare condition, the State survey agency conducts a full Medicare survey.

(b) *Effect of selection for survey.* A provider or supplier selected for a validation survey must: (1) Authorize its accreditation organization to release to HCFA or the State survey agency a copy of the provider's or supplier's most current full accreditation survey and any subsequent partial survey. (For the rules on confidentiality, see 42 CFR 401.126(b)(2))

(2) Authorize carrying out the validation survey; and

(3) Authorize the State survey agency to monitor the correction of any deficiencies found through the validation survey.

(c) *Refusal to cooperate with survey.* If a provider or supplier selected for a validation survey fails to comply with the requirements specified in paragraph (b) of this section, it will no longer be deemed to meet the Medicare conditions but will be subject to full review by the State survey agency in accordance with § 488.11 and may be subject to termination of its provider agreement under § 489.53 of this chapter.

(d) *Consequences of finding of non-compliance.* If a validation survey results in a finding that the provider or supplier is out of compliance with one or more Medicare conditions the provider or supplier will no longer be deemed to meet the Medicare conditions. Specifically, the provider or supplier will be subject to the requirements applied to unaccredited providers or suppliers that are found out of compliance following a State agency survey under § 488.28, and to full review by a State agency survey in accordance with § 488.11 and may be subject to termination of the provider agreement under § 489.53 of this chapter.

(e) *Reinstating effect of accreditation.* An accredited provider or supplier will be once again deemed to meet the Medicare conditions in accordance with this section if:

(1) It withdraws any prior refusal to authorize its accreditation organization to release a copy of the provider's or supplier's current accreditation survey;

(2) It withdraws any prior refusal to allow a validation survey; and

(3) HCFA finds that the provider or supplier hospital meets all the Medicare conditions.

If HCFA finds that an accredited facility meets the Life Safety Code Standard by virtue of a plan of correction, the State survey agency will continue to monitor the facility until it is in compliance with the Life Safety Code Standard.

7. A new § 488.6 is added to read as follows:

**§ 488.6 Other national accreditation programs for hospitals and other providers and suppliers.**

(a) A national accreditation program for hospitals; psychiatric hospitals; SNFs; HHAs; ASCs; RHCs; CORFs; hospices; laboratories; or clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy, occupational therapy or speech pathology services may provide reasonable assurance to the Secretary that it requires the providers or suppliers it accredits to meet any or all of the Medicare conditions. In such a case, the Secretary may deem the providers or suppliers the program accredits to be in compliance with the appropriate Medicare conditions.

These providers and suppliers are subject to validation surveys under § 488.7 of this subpart. The Secretary will publish a notice in the Federal Register identifying the programs and describing the basis for granting deeming authority of any national accreditation program and the providers or suppliers it accredits. The notice will describe how the accreditation organization's accreditation program provides reasonable assurance that entities accredited by the organization meet Medicare requirements. [See § 488.5 for requirements concerning hospitals accredited by the Joint Commission or AOA.)

(b)(1) A provider or supplier deemed to meet program requirements under paragraph (a) of this section must authorize its accreditation organization to release to HCFA a copy of its most current accreditation survey, together with an information related to the survey that HCFA may require (including corrective action plans).

(2) HCFA may determine that a provider or supplier does not meet the Medicare conditions on the basis of its own investigation of the accreditation survey or any other information related to the survey.

(3) Upon written request, HCFA may disclose the survey and information related to the survey—

(i) Of any HHA; or

(ii) Of any other provider or supplier specified at paragraph (a) of this section if the accreditation survey and related survey information relate to an enforcement action taken by HCFA.

8. a new § 488.9 is added to read as follows:

**§ 488.9 Federal review of accreditation organizations.**

(a) *Review and approval of national accreditation organizations.* (1) HCFA's review of a national accreditation organization will include, but will not necessarily be limited to, an evaluation of the following—

(i) The equivalency of an accreditation organization's accreditation requirements of an entity to the comparable HCFA requirements for the entity;

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(ii) The organization's survey process to determine—

(A) The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training;

(B) The comparability of survey procedures to those of State survey agencies, including survey frequency, and the ability to investigate complaints against accredited facilities;

(C) The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are to be used only when the organization identifies noncompliance. If noncompliance is identified through validation surveys, the State survey agency monitors corrections as specified at § 488.7(b)(3);

(D) The ability of the organization to provide HCFA with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization survey process;

(E) The adequacy of staff and other resources; and

(F) The organization's ability to provide adequate funding for performing required surveys; and

(iii) The accreditation organization's agreement to provide HCFA with a copy of the most current accreditation survey together with any other information related to the survey as HCFA may require (including corrective action plans);

(2) HCFA will publish a notice in the Federal Register identifying and describing the accreditation organization and the basis for granting an accreditation organization deeming authority of any national accreditation program and the providers or suppliers it accredits. The notice will describe how the accreditation organization's accreditation program provides reasonable assurance that entities accredited by the organization meet Medicare requirements.

(b) *Effects of approval of accreditation organization.* HCFA will deem providers and suppliers accredited by an approved accreditation organization to meet all of the conditions of participation or conditions of coverage except for any condition that HCFA identifies as being more stringent or more precise than the requirements for accreditation.

(c) *Removal of approval of accreditation organization authority.* This paragraph establishes specific criteria and procedures for removing the approval of a national accreditation organization.

(1) Comparability review. HCFA will compare the equivalency of an accreditation organization's accreditation requirements to the comparable HCFA requirements if:

(i) HCFA imposes new requirements; or

(ii) An accreditation organization proposes to adopt new requirements. An accreditation organization must provide written notification to HCFA at least 30 days in advance of the effective date of any proposed changes in its accreditation requirements.

(2) Validation review. Following the end of a validation review period, HCFA will identify any accreditation programs for which—

(i) Validation survey results indicate a rate of disparity between certifications of the accreditation organization and certification of the State agency of 20% or more; or

(ii) Validation survey results over a period of two or more years indicate a pattern of increasing disparity between the certifications of the accreditation organization and certifications of the State agency.

(3) If validation review reveals documentation that an accreditation organization is not meeting the requirements of this subpart, HCFA will provide written notice to the organization indicating that its approval to be an accreditation organization may be in jeopardy. The notice provides the following information—

(i) A statement of the requirements, instances, rates and/or patterns of discrepancies that were found as well as other related documentation;

(ii) An explanation of HCFA's deeming authority review on which the final determination is based;

(iii) A description of the process available if the accreditation organization wishes an opportunity to explain or justify the findings made during the validation review; and

(iv) A description of the possible actions that may be imposed by HFCA based on the findings from the validation review.

(4) Deeming authority review. (i) HCFA will conduct a review of an accreditation organization's accreditation program if the comparability or validation review produces findings as described at paragraph (c)(1) or (2), respectively, of this section, HCFA will review, as appropriate, either or both—

(A) The requirements of the accreditation organization; or

(B) The criteria described in paragraph (a)(1) of this section to reevaluate whether the accreditation organization continues to meet all these criteria.

(ii) If HCFA determines, following the deeming authority review, that the accreditation organization has failed to adopt requirements comparable to HCFA's or submit new requirements timely, the accreditation organization may be given a conditional approval of its deeming authority for a probationary period of up to 180 days, to adopt comparable requirements.

(iii) If HCFA determines, following the deeming authority review, that the rate of discrepancies identified during the validation review indicates poor performance by an accreditation program, HCFA—

(A) May give the accreditation organization conditional approval of its deeming authority during a probationary period of up to one year (whether or not there are also noncomparable requirements) that will be effective 30 days following the date of this determination;

(B) Will require the accreditation organization to release to HCFA any facility-specific data that is required by HCFA for continued monitoring;

(C) Will require the accreditation organization to provide HCFA with a survey schedule for the purpose of intermittent onsite monitoring by HCFA staff, State surveyors, or both; and

(D) Will publish in the Medicare Annual Report to Congress the name of any accreditation organization given a probationary period by HCFA.

(iv) Within 60 days after the end of any probationary period, HCFA will make a final determination as to whether or not an accreditation program continues to meet the criteria described at paragraph (a)(1) of this section and will issue an appropriate notice (including reasons for the determination) to the accreditation organization and affected providers or suppliers. This determination will be based on any of the following—

(A) The evaluation of the most current validation survey and review findings. In order for the specified providers or suppliers to continue to be deemed as meeting the criteria in paragraph (a)(1) of this section, the results of the evaluation must indicate a significant reduction in the rate of disparity between the certifications of the accreditation organization and the certifications of the State agency as described at paragraph (c)(2) of this section, and a rate of less than 20 percent;

(B) The evaluation of facility-specific data, as necessary, as well as other related information;



(C) The evaluation of an accreditation organization's surveyors in terms of qualifications, ongoing training, composition of survey team, etc.;

(D) The evaluation of survey procedures; or

(E) The accreditation requirements.

(v) If the accreditation program has not made improvements acceptable to HCFA during the probationary period, HCFA may remove recognition of deemed authority effective 30 days from the date that it provides written notice to the organization that its deeming authority will be removed.

(vi) The existence of any validation review, deeming authority review, probationary period, or any other action by HCFA, does not affect or limit the conducting of any validation survey.

(vii) HCFA will publish a notice in the Federal Register containing a justification of the basis for removing the deeming authority from an accreditation organization. The notice will provide the reasons the accreditation organization's accreditation program no longer meets Medicare requirements.

8. Section 488.10(d) is revised to read as follows:

**§ 488.10 State survey agency review; Statutory provisions.**

* * * * *

(d) Section 1865(a) of the Act also provides that if the Secretary finds that accreditation of a hospital; psychiatric hospital; SNF; HHA; hospice; ASC; RHC; CORF; laboratory; or clinic, rehabilitation agency, or public health agency provider of outpatient physical therapy, occupational therapy, or speech pathology services by any national accreditation organization provides reasonable assurance that any or all Medicare conditions are met, HHS may treat the provider or supplier as meeting the conditions.

**§ 488.11 [Amended]**

10. In § 488.11(b), the reference to § 488.6 is revised to read "§ 488.7".

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Supplementary Medical Insurance)

Dated: August 1, 1990.

Gail R. Wilensky,

*Administration, Health Care Financing Administration.*

Approved: September 27, 1990.

Louis W. Sullivan,

*Secretary.*

[FR Doc. 90-29163 Filed 12-13-90; 8:45 am]

BILLING CODE 4120-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA-7008]**

### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**DATES:** The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

**List of Subjects in 44 CFR Part 67**

Flood Insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Alabama | City of Madison, Madison County. | Bradford Creek | Just downstream of Joe Wheeler Highway | None | *614 |

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground ^Elevation in feet (NGVD) Existing | Modified |
|---|---|---|---|---|---|
| | | | About 1.3 miles upstream of Joe Wheeler Highway. | None | ^631 |
| | | Bradford-Sullivan Ditch | At mouth | None | ^615 |
| | | | Just downstream of Wall-Triana Highway | None | ^634 |
| Maps are available for inspection at the City Hall, 100 Hughes Road, Madison, Alabama. | | | | | |
| Send comments to The Honorable Teague Cuddeback, Mayor, City of Madison, 100 Hughes Road, Madison, Alabama 34758. | | | | | |
| Arizona | Town of Eagar, Apache County. | Wash A | At Eighth Street | None | ^7,169 |
| | | | Approximately 775 feet upstream of Eighth Street. | None | ^7,195 |
| | | | At 10th Street | None | ^7,260 |
| | | | Approximately 150 feet upstream of Pine Street. | None | ^7,305 |
| Maps are available for review at Town Hall, Town of Eagar, Arizona. | | | | | |
| Send comments to The Honorable Art Eagar, Mayor, Town of Eagar, P.O. Box 1300, Eagar, Arizona 85925. | | | | | |
| Arkansas | Bay, City of Craighead County | Ditch No. 6 | Flooding controlled by Gum Slough Ditch downstream corporate limits. | None | ^227 |
| | | | Upstream corporate limits | None | ^226 |
| Maps are available for inspection at the City Hall, 222 Elder Street, Bay, Arkansas. | | | | | |
| Send comments to The Honorable Billy McMasters, Mayor of the City of Bay, Craighead County, P.O. Box 99, Bay, Arkansas 72411. | | | | | |
| Arkansas | Conway, City of Faulkner County. | Stone Dam Creek | Upstream side of State Route 365 | None | ^275 |
| | | | Approximately 2,530 feet upstream of State Route 286. | ^297 | ^299 |
| | | Railroad Creek | At confluence with Stone Dam Creek | None | ^276 |
| | | | Downstream side of American Transportation Building. | None | ^290 |
| | | Stone Dam Tributary | At confluence with Stone Dam Creek | None | ^281 |
| | | | Approximately 180 feet upstream of Hardy Street. | None | ^399 |
| | | Gold Creek (East) | Approximately 500 feet downstream of Wiggle Worm Road. | ^260 | ^278 |
| | | | Approximately 1,600 feet downstream of U.S. Route 64. | ^286 | ^285 |
| | | Tucker Creek | Upstream side of State Route 286 | None | ^265 |
| | | | Approximately 1,560 feet downstream of Salem Road. | None | ^299 |
| | | Tucker Creek Tributary | At the confluence with Tucker Creek | None | ^285 |
| | | | Approximately 110 feet upstream of West Tyler Street. | None | ^314 |
| | | Unnamed Tributary to Tucker Creek Tributary. | At confluence with Tucker Creek Tributary | None | ^285 |
| | | | Approximately 770 feet upstream of State Route 60. | None | ^295 |
| | | Tributary 1 to Tucker Creek Tributary. | At confluence with Tucker Creek Tributary | None | ^296 |
| | | | Approximately 130 feet upstream of W. Tyler Street. | None | ^306 |
| | | Tributary 2 to Tucker Creek Tributary. | At confluence with Tucker Creek Tributary | None | ^299 |
| | | | Approximately 130 feet upstream of W. Tyler Street. | None | ^306 |
| | | Arkansas River | Approximately 100 feet downstream of Lake Carol Dam. | None | ^287 |
| | | Lake Conway | At the Amity Road | None | ^272 |
| | | Little Creek | At the confluence with Lake Conway | None | ^272 |
| Maps are available for inspection at the City Hall, 1201 Oak, Conway, Arkansas. | | | | | |
| Send comments to The Honorable David Kinley, Mayor of the City of Conway, Faulkner County, 1201 Oak, Conway, Arkansas 72032. | | | | | |
| Arkansas | Greenbrier, City, Faulkner County. | Greenbrier Creek | Approximately 1,660 feet downstream of State Route 25. | None | ^324 |
| | | | Approximately 500 feet upstream of State Route 225. | None | ^355 |
| | | Tributary 1 | Approximately 1,110 feet downstream of U.S. Route 65. | None | ^322 |
| | | | Approximately 700 feet upstream of Linder Road. | None | ^336 |
| | | Tributary A | At confluence with Tributary 1 | None | ^327 |
| | | | Approximately 1,300 feet upstream of U.S. Route 65. | None | ^332 |



PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground ^Elevation in feet (NGVD) Existing | Modified |
|---|---|---|---|---|---|
| Maps available for inspection at the City Hall, U.S. Highway 65, Greenbrier, Arkansas. | | | | | |
| Send comments to The Honorable Melton Cotton, Mayor of the City of Greenbrier, Faulkner County, P.O. Box 233, Greenbrier, Arkansas 72058. | | | | | |
| Arkansas | Jonesboro, City, Craighead County. | Whiteman's Creek | Approximately 317 feet upstream of Union Pacific Railroad. | None | ^251 |
| | | | Approximately 739 feet downstream of Caraway Road. | None | ^266 |
| | | Lateral No. 3 | Approximately 1,058 feet downstream of County Route 46 (Parker Road). | None | ^232 |
| | | | At the Commerce Drive | None | ^236 |
| | | Moore's Ditch | At the confluence with Moore's Ditch | None | ^237 |
| | | | Approximately 53 feet upstream of Union Pacific Railroad. | None | ^250 |
| | | Higginbottom Creek | Upstream side of Union Pacific Railroad | ^265 | ^253 |
| | | | At the Parker Road | None | ^252 |
| | | Butlers Ditch | At the County Route 49 | None | ^235 |
| | | | At State Route 18 | None | ^235 |
| | | Little Bay Ditch | Approximately 1,320 feet downstream of County Route 46. | None | ^232 |
| | | | At State Route 18 | None | ^235 |
| | | Maple Slough Ditch | At the County Route 46 | None | ^253 |
| | | | At the State Route 18 | None | ^255 |
| | | Christian Creek | Approximately 422 feet downstream of Wood Springs Road. | None | ^314 |
| | | | Approximately 211 feet downstream of Covey Road. | None | ^339 |
| | | Turtle Creek | Approximately 106 feet downstream of St. Louis Southwestern Railway. | None | ^257 |
| | | | At the St. Louis Southwestern Railway | None | ^267 |
| Maps available for inspection at the City Hall, 314 W. Washington, Jonesboro, Arkansas. | | | | | |
| Send comments to The Honorable Hubert Bordell, Mayor of the City of Jonesboro, Craighead County, P.O. Box 1845, Jonesboro, Arkansas 72403. | | | | | |
| California | City of La Quinta Riverside County. | Bear Creek | At Calle Nogales extended across Bear Creek | ^146 | None |
| | | | At the intersection of Calle Yucatan and Avenida Obreson. | ^55 | None |
| | | | On Eisenhower Drive 200 feet north of the intersection of Calle Tampico and Eisenhower Drive. | ^43 | #1 |
| | | | On Avenida Bermudas 200 feet north of the intersection of Avenida Bermuda and 52 Avenue. | None | #1 |
| | | | At the intersection of Calle Tampico and Washington Street. | ^40 | #1 |
| | | | At the intersection of Adams Street and 52 Avenue. | None | #1 |
| Maps are available for review at the City Engineering Department, 78105 Calle Estado, La Quinta, California. | | | | | |
| Send comments to The Honorable John Pena, Mayor, City of La Quinta, P.O. Box 1504, La Quinta, California 92253. | | | | | |
| Colorado | City of Manitou Springs El Paso County | Beckers Lane Tributary | At confluence with Fountain Creek | ^6,200 | ^6,200 |
| | | | Approximately 50 feet upstream of Via San Miguel. | None | ^6,204 |
| | | | Just downstream of Via Chula Vista | None | ^6,212 |
| | | | Approximately 370 feet upstream of Via Chula Vista. | None | ^6,223 |
| Maps are available for review at the Manitou Springs Planning Department, 606 Manitou Avenue, Manitou Springs, Colorado. | | | | | |
| Send comments to The Honorable Chris Daly, Mayor, City of Manitou Springs, 606 Manitou Avenue, Manitou Springs, Colorado 80829. | | | | | |
| Delaware | Delaware City, City New Castle County. | Delaware River | Along entire shoreline | ^12 | ^9 |
| | | | At intersection of Washington and Harbor Streets. | ^10 | ^9 |
| Maps available for inspection at the City Hall, 407 Clinton Street, Delaware City, Delaware. | | | | | |
| Send comments to Ms. Carol Boyer, Manager of the City of Delaware City, New Castle County, 407 Clinton Street, P.O. Box 4159, Delaware City, Delaware 19706. | | | | | |
| Delaware | Wilmington, City New Castle County. | Christina River | At confluence with the Delaware River | ^11 | ^10 |
| | | | At upstream corporate limits | ^9 | ^10 |
| | | Brandywine | At confluence with Christina River | ^9 | ^10 |
| | | Downstream side of Amtrak Railroad | ^9 | ^10 | |
| | | Little Mill Creek | Approximately 100 feet east of intersection of 5th Avenue and Duncan Street. | ^9 | ^^6 |

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) Existing | Modified |
|---|---|---|---|---|---|
| Maps available for inspection at the City/County Building, 800 French Street, Wilmington, Delaware. | | | | | |
| Send comments to The Honorable Daniel S. Frawley, Mayor of the City of Wilmington, New Castle County, City/County Building, 800 French Street, Wilmington, Delaware 19801–3537. | | | | | |
| New Hampshire | Gilford, Town Belknap County. | Gunstock Brook | Approximately 250 feet upstream of State Route 11B. | *506 | *507 |
| | | | Approximately .4 mile upstream of Alvah Wilson Road. | *749 | *750 |
| | | Gunstock Brook Tributary Tributary. | At confluence with Gunstock Brook | *516 | *517 |
| | | | At upstream side of State Route 11B | *536 | *537 |
| Maps Available for inspection at the Selectmen's Office, 47 Cherry Valley Road, Gilford, New Hampshire, and Department of Public Works, 55 Cherry Valley Road, Gilford, New Hampshire. | | | | | |
| Send comments to Mr. David R. Caron, Town of Gilford Administrative Assistant, Belknap County, 47 Cherry Valley Road, Gilford, New Hampshire 03246. | | | | | |
| Indiana | Unincorporated Areas of Vanderburgh County. | Pond Flat Ditch | At mouth | None | *424 |
| | | | About 0.5 mile upstream of U.S. Route 41 | None | *438 |
| | | Pond Flat Ditch Lateral "A" | At mouth | None | *432 |
| | | | Just downstream of Boyle Land | None | *440 |
| | | Pond Flat Ditch lateral "B" | At mouth | None | *432 |
| | | | About 0.54 mile upstream of mouth | None | *438 |
| | | Pond Flat Ditch Lateral "C" | At mouth | None | *430 |
| | | | At confluence of Pond Flat Ditch Lateral "E" | None | *435 |
| | | Pond Flat Ditch Lateral "D" | At mouth | None | *431 |
| | | | About 0.33 mile upstream of Volkman Road | None | *439 |
| | | Pond Flat Ditch Lateral "E" | At mouth | None | *435 |
| | | | About 0.332 mile upstream of mouth | None | *435 |
| | | Rushgr Creek | At mouth | None | *435 |
| | | | About 0.7 mile upstream of CSX railroad | None | *446 |
| | | Locust Creek | About 0.74 mile downstream of U.S. Route 66 | None | *376 |
| | | | At Wimberg Road | None | *388 |
| | | Little Pigeon Creek | At Petersburg Road | None | *390 |
| | | | About 0.18 mile upstream of Hillsdale Road | None | *404 |
| Maps Available for inspection at the Building Commissioner's Office, Civic Center Complex, Room 310, 1 NW Seventh Street, Evansville, Indiana. | | | | | |
| Send comments to The Honorable Robert Willner, President, Vanderburgh County Commissioners, Civic Center Complex, 305 Administration Building, Evansville, Indiana 47708. | | | | | |
| Iowa | City of Elgin, Fayette County | Turkey River | About 1650 feet downstream of Center Street | None | *802 |
| | | | About 0.3 mile upstream of Center Street | None | *809 |
| | | Otter Creek | At mouth | None | *804 |
| | | | About 1600 feet upstream of County Road | None | *831 |
| Maps available for inspection at the City Attorney's Office, P.O. Box 275, Elgin, Iowa, Attention: T. David Katsumas. | | | | | |
| Send comments to The Honorable Virgil Miles, Mayor, City of Elgin, City Hall, Route 2, Elgin, Iowa 52141. | | | | | |
| Massachusetts | Fitchburg, City Worcester County. | North Nashua River | Approximately 150 feet downstream of Bemis Road. | *361 | *362 |
| | | | Approximately 1,300 feet upstream of Bemis Road. | *379 | *378 |
| | | Baker Brook | Approximately 50 feet upstream of Boston and Maine Railroad. | None | *364 |
| | | | Approximately 40 feet downstream of Summer Street. | None | *365 |
| Maps available for inspection at the City Hall, 718 Main Street, Fitchburg, Massachusetts. | | | | | |
| Send comments to The Honorable Jeffrey A. Bean, Mayor of the City of Fitchburg, Worcester County, 718 Main Street, Fitchburg, Massachusetts 01420. | | | | | |
| Massachusetts | Wenham, Town Essex County | Ipswich River | Approximately 0.5 mile downstream of corporate limits. | None | *37 |
| | | | At confluence of Salem Beverly Waterway Canal. | None | *37 |
| Maps available for inspection at the Town Hall, 138 Main Street, Wenham, Massachusetts. | | | | | |
| Send comments to The Honorable William L. Shailor, Chairman of the Town of Wenham Board of Selectmen, Essex County, 138 Main Street, Wenham, Massachusetts 01984. | | | | | |
| Missouri | City of Crestwood, St. Louis County. | Gravois Creek | Just upstream of Pardee Road | *509 | *506 |
| | | | Just downstream of Union Pacific Railroad | *529 | *533 |
| | | | Just downstream of Big Bend Road | *561 | *564 |
| | | Kirkwood Creek | At mouth | *526 | *530 |
| | | | Just downstream of Holmes Road | *568 | *566 |
| | | | Just downstream of Big Bend Road | *572 | *578 |



PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) Existing | Modified |
|---|---|---|---|---|---|
| Maps available for inspection at the City of Crestwood, Public Works Department, #1 Detjen Drive, Crestwood, Missouri. | | | | | |
| Send comments to The Honorable Patrica A. Killoren, Mayor, City of Crestwood, #1 Detjen Drive, Crestwood, Missouri. | | | | | |
| Nebraska | Village of Howells, Colfax County. | East Fork Maple Creek | About 500 feet downstream of State Highway 91. | None | *1453 |
| | | | About 1,600 feet upstream of Third Street | None | *1467 |
| | | East Fork Creek—Landward of Levee. | About 1,800 feet downstream of Main Street | None | *1458 |
| | | | About 1,550 feet upstream of Third Street | None | *1464 |
| Maps available for inspection at the Village Hall, Village Clerk's Office, P.O. Box 351, Howells, Nebraska. | | | | | |
| Send comments to The Honorable Paul A. Pekarek, Chairman of the Board of Trustee, Village Hall, P.O. Box 351, Howells, Nebraska 68641. | | | | | |
| New Jersey | Moorestown, Township Burlington County | Pompeston Creek | At downstream corporate limits | *33 | *34 |
| | | | Approximately 450 feet upstream of Maple Avenue. | None | *54 |
| Maps available for inspection at the Community Development Office, Town Hall, 111 West Second Street, Moorestown, New Jersey. | | | | | |
| Send comments to Mr. John T. Terry, Moorestown Township Manager, Burlington County, 111 West Second Street, Moorestown, New Jersey 08057. | | | | | |
| Oklahoma | Durant, City Bryan County | Mineral Bayou | Approximately 140 feet upstream of Chuckwa Creek. | None | *596 |
| | | | Approximately 120 feet upstream of confluence of Mineral Bayou Tributary 6. | None | *654 |
| | | Mineral Bayou Tributary 5 South Branch. | At the confluence with Mineral Bayou | None | *621 |
| | | | At U.S. Routes 69 and 75 | None | *671 |
| | | Mineral Bayou Tributary 5 | At the confluence with Mineral Bayou | None | *621 |
| | | | Approximately 100 feet northwest of Missouri-Kansas-Texas Railroad. | None | *638 |
| | | Mineral Bayou Tributary 6 | At the confluence with Mineral Bayou | None | *653 |
| | | | Approximately 120 feet upstream of confluence with Mineral Bayou. | None | *654 |
| | | Chuckwa Creek | Approximately 125 feet upstream of confluence with Mineral Bayou. | None | *596 |
| | | | Approximately 25 feet upstream of Missouri-Kansas-Texas Railroad. | None | *597 |
| | | Chuckwa Creek Tributary 2 | At the confluence with Chuckwa Creek | None | *625 |
| | | | Approximately 0.4 mile upstream of confluence | None | *641 |
| Maps available for inspection at the City Hall, Durant, Oklahoma. | | | | | |
| Send comments to The Honorable Joe Bullard, Mayor of the City of Durant, Bryan County, 1625 Larkspur, Durant, Oklahoma 74701. | | | | | |
| Pennsylvania | Coolbaugh, Township Monroe County. | Dresser Lake | For entire shoreline within community | None | *2,093 |
| | | Lake Carobeth | For entire shoreline within community | None | *1,999 |
| Maps available for inspection at the Coolbaugh Municial Center, 5550 Memorial Boulevard, Tobyhanna, Pennsylvania. | | | | | |
| Send comments to Mr. Clency Dennis, Chairman of the Township of Coolbaugh Board of Supervisors, Monroe County, 242 Laurel Drive, Tobyhanna, Pennsylvania 18466. | | | | | |
| Puerto Rico | (Commonwealth) Rio Guanajibo Basin. | Quebrada Mendoza | Approximately 1.2 kilometers downstream of Puerto Rico Highway 102. | **13.9 | **13.8 |
| | | | At confluence of Quebrada Las Tunas | **22.1 | **19.1 |
| | | Quebrada Las Tunas | At confluence with Quebrada Mendoza | **22.1 | **19.1 |
| | | | Approximately 1 kilometer upstream of P.R. Highway 306. | None | **24.9 |
| | | Qubrada Pilets | Approximately 950 meters downstream of P.R. Highway 102. | **13.9 | **13.8 |
| | | | Approximately 50 meters upstream of Calle Baldoriott. | **22.1 | **18.5 |
| | | Concepción Channel | At confluence with Quebrada Mendoza | **22.1 | **19.1 |
| | | | Approximately 750 meters upstream of confluence with Quebrada Mendoza. | **24.5 | **20.1 |
| **Elevation in meters (Mean Sea Level). | | | | | |
| Maps available for inspection at the Minillas Governmental Center, 13th Floor, North Building, De Diego Avenue, Stop 22, San Juan, Puerto Rico, Monday-Friday between 8–12 and 1–4:30. | | | | | |
| Send comments to Ms. Patria G. Custodio, Chairperson of the Puerto Rico, Planning Board, Minillas Governmental Center, North Building, De Diego Avenue, Stop 22, P.O. Box 41119, San Juan, Puerto Rico 00940–9985. | | | | | |
| Texas | Bryan, City Brazos County | Burton Creek Tributary D | At confluence with Burton Creek | *289 | *288 |
| | | | At approximately 600 feet upstream of confluence with Burton Creek. | *292 | *290 |

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

| State | City/Town/County | Source of Flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) Existing | Modified |
|---|---|---|---|---|---|
| | | Turkey Creek | Approximately 1.2 miles downstream from the downstream side of Villa Maria Road. | None | *255 |
| | | | At the downstream side of Villa Maria Road | None | *271 |
| Maps available for inspection at the City Hall, 300 S. Texas Avenue, Bryan, Texas. | | | | | |
| Send comments to The Honorable Marvin Tate, Mayor of the City of Bryan, Brazos County, P.O. Box 1000, Bryan, Texas 77805. | | | | | |
| Texas | College Station, City, Brazos County. | Wolf Pen Creek | Approximately 0.3 mile upstream of confluence with Carter's Creek. | *246 | *247 |
| | | | Approximately 680 feet upstream of Anderson Street. | None | *305 |
| | | Wolf Pen Creek Tributary A | At confluence with Wolf Pen Creek | *273 | *275 |
| | | | Approximately 50 feet upstream of Dominik Drive. | None | *290 |
| | | Wolf Pen Creek Tributary B | At confluence with Wolf Pen Creek | *280 | *286 |
| | | | Approximately 0.2 mile upstream of State Route 30. | None | *291 |
| | | Wolf Pen Creek Tributary C | At confluence with Wolf Pen Creek | None | *292 |
| | | | Approximately 100 feet upstream of Jersey Street. | None | *298 |
| | | Lick Creek | Approximately 1.7 miles upstream of Peach Creek Road. | None | *210 |
| | | | Approximately 3.5 miles upstream of confluence of Spring Creek. | None | *276 |
| | | Alum Creek | At confluence with Lick Creek | None | *217 |
| | | | Approximately 0.9 mile upstream of confluence with Lick Creek. | None | *226 |
| | | Stream AC-1 | Approximately 1.0 mile upstream of confluence with Alum Creek. | None | *244 |
| | | | Approximately 1.8 miles upstream of confluence with Alum Creek. | None | *277 |
| Maps available for inspection at the City Hall, 1101 Texas Avenue, College Station, Texas. | | | | | |
| Send comments to The Honorable Larry J. Ringer, Mayor of the City of College Station, Brazos County, P.O. Box 9960, College Station, Texas 77840. | | | | | |
| Texas | Greenville, City, Hunt County | Farber Creek | Approximately 3.8 miles upstream of Interstate Route 30 and U.S. Route 67. | None | *560 |
| | | | Approximately 3.9 miles upstream of Interstate Route 30 and U.S. Route 67. | None | *561 |
| Maps available for inspection at the City Hall, Greenville, Texas. | | | | | |
| Send comments to The Honorable Bill F. Morgan, Mayor of the City of Greenville, Hunt County, P.O. Box 1049, Greenville, Texas 75401. | | | | | |
| Texas | Oak Ridge North, City Montgomery County. | Sam Bell Gully | Approximately 325 feet downstream of Maplewood Drive. | None | *121 |
| | | | Approximately 800 feet upstream of Robinson Road. | *134 | *135 |
| Maps available for inspection at the City Secretary's Office, 27326 Robinson Road, Suite 115, Conroe, Texas. | | | | | |
| Send comments to The Honorable Richard Derr, Oak Ridge North City Administrator, Montgomery County, 27326 Robinson Road, suite 115, Conroe, Texas 77386. | | | | | |
| West Virginia | Greenbrier County, Unincorporated Areas. | Greenbrier River | At corporate limits of Town of Alderson | None | *1,553 |
| | | | At Interstate Route 64 | None | *1,696 |
| | | Howard Creek | At confluence with Greenbrier River | None | *1,690 |
| | | | At downstream side of State Route 63 (Monroe Draft Road). | *1,689 | *1,690 |
| Maps available for inspection at the Greenbrier County Courthouse, Planning Commission Office, Lewisburg, West Virginia. | | | | | |
| Send comments to Mr. Joe Feamster, President of the Greenbrier, County Commission, c/o County Planning Commission, P.O. Box 265, Lewisburg, West Virginia 24901. | | | | | |
| West Virginia | Kanawha County Unincorporated Areas. | Big Coal River | Approximately 1.4 miles downstream of confluence of Dry Branch. | None | *844 |
| | | | Approximately 1,850 feet upstream of confluence of Dry Branch. | None | *848 |
| Maps available for inspection at the Kanawha County Courthouse, 409 Virginia Street East, Charleston, West Virginia. | | | | | |
| Send comments to Mr. Don Joe Hunt, President of the Kanawha County Commissioners, P.O. Box 3627, Charleston, West Virginia 25336. | | | | | |



C.M. "Bud" Schauerte,
*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29344 Filed 12-13-90; 8:45 am]
BILLING CODE 6718-03-M

## 44 CFR Part 67

[Docket No. FEMA-7007]

## Federal Insurance Administration; Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** See table below.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

### List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

### PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of flooding and location | #Depth in feet above ground *Elevation in feet (NGVD) |
|---|---|
| **ARKANSAS** | |
| Craighead County (unincorporated areas) | |
| *Little Bay Ditch:* | |
| At the County Route 751 | *234 |
| At the County Route 64 | *246 |
| *Williams Creek:* | |
| At the confluence with Little Bay Ditch | *227 |
| Approximately 100 feet downstream of Union Pacific Railroad | *249 |
| *Gum Slough Ditch:* | |
| At the confluence with Big Bay Ditch | *225 |
| At the County Route 61 | *252 |
| *Maple Slough Ditch:* | |
| At the confluence with Gum Slough Ditch | *232 |
| Approximately 1.0 mile upstream of County Route 79 | *239 |
| *Viney Slough Ditch:* | |
| At the County Route 751 | *227 |
| At the confluence of Higginbottom Creek | *247 |
| *Christian Creek:* | |
| At the confluence with Lost Creek | *287 |
| Downstream of Oakhurst Street | *295 |
| *Christian Creek Lateral:* | |
| At the confluence with Christian Creek | *286 |
| Approximately 317 feet downstream of Clubhouse Street | *294 |
| *Lateral No. 3:* | |
| At the confluence with Little Bay Ditch | *232 |
| Approximately 1,500 feet upstream of Commerce Drive | *237 |
| *Lost Creek:* | |
| Approximately 1,056 feet downstream of U.S. Route 63 | *262 |
| At the County road | *279 |
| *Moore's Ditch Lateral:* | |
| Approximately 156 feet upstream of confluence with Moore's Ditch | *227 |
| Approximately 156 feet upstream of Commerce Drive | *236 |
| *Higginbottom Creek:* | |
| At the confluence with Viney Slough Ditch | *247 |
| At the downstream side of Parker Road | *262 |
| *Turtle Creek:* | |
| At the St. Louis Southwestern Railway | *267 |
| Downstream side of State Route 1 | *287 |
| *Turtle Creek Lateral:* | |
| At the confluence with Turtle Creek | *268 |
| Approximately 264 feet upstream of confluence with Turtle Creek | *269 |
| *Tributary to Maple Slough Ditch:* | |
| Approximately 93 feet downstream of Rural Road bridge | *248 |
| Approximately 0.4 mile upstream of County Route 74 (Stephens Avenue) | *271 |
| *Whaley Slough Ditch:* | |
| Approximately 1,300 feet downstream of State Route 226 | *255 |
| Approximately 900 feet downstream of U.S. Route 63 | *258 |
| *Bluffey Ditch:* | |
| At the confluence with Little Bay Ditch | *232 |
| Downstream side of County Route 64 | *238 |

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Maps available for inspection at the County Courthouse, 511 South Main Street, Room 100, Jonesboro, Arkansas.** | |
| Send comments to The Honorable Roy Searden, Craighead County Judge, 511 South Main, Room 106, Jonesboro, Arkansas 72401. | |
| **Faulkner County (unincorporated areas)** | |
| *Arkansas River:* | |
| At downstream County boundary with Pulaski County | *286 |
| At confluence of Cadron Creek | *288 |
| *Palarm Creek:* | |
| At confluence with Arkansas River | *269 |
| Just downstream of Lake Conway Dam | *270 |
| *Lake Conway:* Entire shoreline within community | *272 |
| *Gold Creek (South):* | |
| At confluence with Lake Conway | *272 |
| At confluence of Gold Creek South Tributary | *315 |
| *Gold Creek South Tributary:* | |
| At confluence with Gold Creek (South) | *315 |
| At approximately 860 feet upstream of County Route 14 | *320 |
| *Gold Creek (East):* | |
| At confluence with Little Creek | *277 |
| At approximately 2,270 feet upstream of Wiggle Worm Road | *285 |
| *Little Creek:* | |
| At the confluence with Lake Conway | *272 |
| Approximately 130 feet upstream of the upstream crossing of State Route 286 | *279 |
| *Tucker Creek:* | |
| Approximately 2.5 miles upstream of confluence with Tupelo Bayou | *295 |
| Approximately 100 feet upstream of Country Club Road (extended) | *298 |
| *Tucker Creek Tributary:* | |
| At confluence with Tucker Creek | *295 |
| Approximately 1,700 feet upstream of State Route 60 | *296 |
| Unnamed Tributary to Tucker Creek Tributary: At State Route 60 | *285 |
| *Stone Dam Creek:* | |
| At confluence with Lake Conway | *272 |
| Downstream side of Sturges Road | *276 |
| *Greenbrier Creek:* Approximately 500 feet upstream of State Route 225 | *295 |
| **Maps available for inspection at the Faulkner County Courthouse, Conway, Arkansas.** | |
| Send comments to The Honorable Gerald Ward, Faulkner County Judge, Faulkner County Courthouse, Conway, Arkansas 72032. | |
| **Mayflower (city), Faulkner County** | |
| *Arkansas River:* Backwater approximately 400 feet north of Old Sandy Road | *271 |
| *Lake Conway:* Entire shoreline within community | *272 |
| *Palarm Creek:* | |
| At Interstate Route 40 and U.S. Route 65 | *270 |
| Just downstream of Lake Conway Dam | *270 |
| **Maps available for inspection at the City Hall, #2 Ashmore, Mayflower, Arkansas.** | |
| Send comments to The Honorable William Logan, Mayor of the City of Mayflower, Faulkner County, P.O. Box 186, Mayflower, Arkansas 72106. | |
| **KANSAS** | |
| **Jefferson County (unincorporated areas)** | |
| *Kansas River:* | |
| About 0.6 mile downstream of confluence of Buck Creek | *837 |
| At confluence of Little Muddy Creek | *875 |
| *Stone House Creek:* | |
| At mouth | *841 |
| Just downstream of U.S. Highway 59 | *877 |
| *Big Muddy Creek:* | |
| At mouth | *867 |
| Just downstream of State Highway 4 | *895 |
| *Little Muddy Creek:* | |
| At mouth | *875 |
| Just upstream of State Highway 4 | *901 |
| **Maps available for inspection at the County Courthouse, Oskaloosa, Kansas. Send comments to The Honorable Rollin A. Clark, Chairman, Board of Commissioners, Jefferson County, P.O. Box 321, Oskaloosa, Kansas 66066.** | |
| **KENTUCKY** | |
| **Hopkins County (unincorporated areas)** | |
| *Pleasant Run:* | |
| At mouth | *401 |
| About 850 feet upstream of Illinois Central Railroad | *428 |
| *Otter Creek:* | |
| Just upstream of State Route 1033 | *381 |
| About 1,350 feet upstream of Wolf Hollow Road | *435 |
| *Flat Creek:* | |
| Just upstream of Free Henry Road | *402 |
| Just downstream of CSX railroad (downstream crossing) | *413 |
| Just upstream of CSX railroad (downstream crossing) | *420 |
| About 1.4 miles upstream of U.S. Route 41A | *434 |
| *Green River:* | |
| At northern county boundary | *387 |
| At confluence of Pond River | *388 |
| *Drakes Creek:* | |
| At confluence of Pleasant Run | *401 |
| About 1.46 miles upstream of confluence of Craborchard Creek | *413 |
| *Craborchard Creek:* | |
| At mouth | *409 |
| About 1,300 feet upstream of Pennyrile Parkway | *412 |
| **Maps available for inspection at the County Courthouse, Madisonville, Kentucky. Send comments to The Honorable O.T. Rudd, Judge/Executive, Hopkins County, County Courthouse, Madisonville, Kentucky 42431.** | |
| **MAINE** | |
| **Norway (town) Oxford County** | |
| *Pennesseewassee Stream:* | |
| At confluence with Little Androscoggin River | *327 |
| Approximately 600 feet upstream of Highland Avenue Bridge | *380 |
| *Bird Brook:* | |
| At confluence with Pennesseewassee Stream | *375 |
| Approximately 75 feet upstream of Elm Hill Road Bridge | *382 |
| *Little Androscoggin River:* | |
| At downstream corporate limits | *326 |
| At upstream corporate limits | *329 |
| **Maps available for inspection at the Town Clerk's Vault, Town Office, 26 Danforth Street, Norway, Maine.** | |
| Send comments to Mr. David Holt, Manager of the Town of Norway, Oxford County, Town Office, 26 Danforth Street, Norway, Maine 04268. | |
| **MICHIGAN** | |
| **Hersey (village), Osceola County** | |
| *Muskegon River:* | |
| About 1500 feet downstream of Fourth Street | *959 |
| About 1600 feet upstream of Fourth Street | *962 |
| *Hersey River:* | |
| At mouth | *961 |
| Just downstream of Hersey Dam | *973 |
| Just upstream of Hersey Dam | *978 |
| About 2500 feet upstream of Hersey Dam | *979 |
| **Maps available for inspection at the Village Hall, 306 East Third Street, Hersey, Michigan.** | |
| Send comments to The Honorable John Calebrese, Village President, Village of Hersey, 306 East Third Street, Hersey, Michigan 49639. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| At mouth | *575 |
| Just upstream of State Highway 4 | *901 |
| **Maps available for inspection at the County Courthouse, Oskaloosa, Kansas. Send comments to The Honorable Rollin A. Clark, Chairman, Board of Commissioners, Jefferson County, P.O. Box 321, Oskaloosa, Kansas 66066.** | |
| **KENTUCKY** | |
| **Hopkins County (unincorporated areas)** | |
| *Pleasant Run:* | |
| At mouth | *401 |
| About 850 feet upstream of Illinois Central Railroad | *428 |
| *Otter Creek:* | |
| Just upstream of State Route 1033 | *381 |
| About 1,350 feet upstream of Wolf Hollow Road | *435 |
| *Flat Creek:* | |
| Just upstream of Free Henry Road | *402 |
| Just downstream of CSX railroad (downstream crossing) | *413 |
| Just upstream of CSX railroad (downstream crossing) | *420 |
| About 1.4 miles upstream of U.S. Route 41A | *434 |
| *Green River:* | |
| At northern county boundary | *387 |
| At confluence of Pond River | *388 |
| *Drakes Creek:* | |
| At confluence of Pleasant Run | *401 |
| About 1.46 miles upstream of confluence of Craborchard Creek | *413 |
| *Craborchard Creek:* | |
| At mouth | *409 |
| About 1,300 feet upstream of Pennyrile Parkway | *412 |
| **Maps available for inspection at the County Courthouse, Madisonville, Kentucky. Send comments to The Honorable O.T. Rudd, Judge/Executive, Hopkins County, County Courthouse, Madisonville, Kentucky 42431.** | |
| **MAINE** | |
| **Norway (town) Oxford County** | |
| *Pennesseewassee Stream:* | |
| At confluence with Little Androscoggin River | *327 |
| Approximately 600 feet upstream of Highland Avenue Bridge | *380 |
| *Bird Brook:* | |
| At confluence with Pennesseewassee Stream | *375 |
| Approximately 75 feet upstream of Elm Hill Road Bridge | *382 |
| *Little Androscoggin River:* | |
| At downstream corporate limits | *326 |
| At upstream corporate limits | *329 |
| **Maps available for inspection at the Town Clerk's Vault, Town Office, 26 Danforth Street, Norway, Maine.** | |
| Send comments to Mr. David Holt, Manager of the Town of Norway, Oxford County, Town Office, 26 Danforth Street, Norway, Maine 04268. | |
| **MICHIGAN** | |
| **Hersey (village), Osceola County** | |
| *Muskegon River:* | |
| About 1500 feet downstream of Fourth Street | *959 |
| About 1600 feet upstream of Fourth Street | *962 |
| *Hersey River:* | |
| At mouth | *961 |
| Just downstream of Hersey Dam | *973 |
| Just upstream of Hersey Dam | *978 |
| About 2500 feet upstream of Hersey Dam | *979 |
| **Maps available for inspection at the Village Hall, 306 East Third Street, Hersey, Michigan.** | |
| Send comments to The Honorable John Calebrese, Village President, Village of Hersey, 306 East Third Street, Hersey, Michigan 49639. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **James (township), Saginaw County** | |
| *Shiawassee River:* Within community | *504 |
| *Tittabawassee River:* | |
| Just upstream of Center Road | *505 |
| About 0.84 mile upstream of Conrail | *506 |
| **Maps available for inspection at the Township Hall, 6060 Swan Creek Road, James, Michigan.** | |
| Send comments to The Honorable Gerald Wienske, Supervisor, Township of James, 6060 Swan Creek Road, James, Michigan 48603. | |
| **Lincoln (township), Newaygo County** | |
| *White River:* | |
| About 3.0 miles downstream of State Highway 20 | *762 |
| About 2.7 miles upstream of Baldwin Avenue | *794 |
| **Maps available for inspection at the Township Hall, Wiener Road, White Cloud, Michigan.** | |
| Send comments to The Honorable Virginia Wunsch, Township Supervisor, Township of Lincoln, 2780 Mundy, White Cloud, Michigan 49349. | |
| **Port Huron (township), St. Clair County** | |
| *Black River:* | |
| About 2150 feet downstream of Interstate 94 | *586 |
| About 8.6 miles upstream of Interstate 94 | *595 |
| **Maps available for inspection at the Township Hall, 3600 Lapeer Road, Port Huron, Michigan.** | |
| Send comments to The Honorable C. Robert Lewandowski, Township Supervisor, Township of Port Huron, 3600 Lapeer Road, Port Huron, Michigan 48060. | |
| **MISSISSIPPI** | |
| **Itawamba County (unincorporated areas)** | |
| *Tombigbee River:* | |
| About 2500 feet downstream of Barre Ferry Road | *242 |
| Just downstream of Walker Road | *300 |
| *Tennessee-Tombigbee Waterway:* | |
| At southern county boundary | *249 |
| Just downstream of Lock C | *255 |
| Just upstream of Lock C | *270 |
| Just downstream of Lock D | *271 |
| Just upstream of Lock D | *300 |
| Just downstream of Lock E | *300 |
| About 4300 feet upstream of Lock E | *330 |
| *Twentymile Creek:* | |
| At mouth | *260 |
| Just downstream of Natchez Trace Parkway | *300 |
| **Maps available for inspection at the Chancery Clerk's Office, County Courthouse, 201 West Main Street, Fulton, Mississippi.** | |
| Send comments to The Honorable Danny Holley, President, Board of Supervisors, Itawamba County, 201 West Main Street, Fulton, Mississippi 38843. | |
| **NEW YORK** | |
| **Flower Hill (village), Nassau County** | |
| *Hempstead Harbor:* | |
| Approximately 200 feet east of West Shore Road | *15 |
| Southern corporate limits | *17 |
| **Maps available for inspection at the Village Hall, Manhasset, New York.** | |
| Send comments to The Honorable John W. Walker, Mayor of the Village of Flower Hill, Nassau County, 1 Bonnie Height Row, Manhasset, New York 11030. | |



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **Greenwich (town), Washington County** | |
| *Batten Kill:* | |
| Approximately 0.95 mile downstream of State Route 29 | |
| Approximately 1.2 miles upstream of confluence of Whitaker Brook | *157 |
| **Maps available for inspection at the Town Hall, 2 Academy Street, Greenwich, New York.** | *416 |
| Send comments to Mr. Michael Kerp, Supervisor of the Town of Greenwich, Washington County, Town Hall, 2 Academy Street, Greenwich, New York 12834. | |
| **Woodstock (town), Ulster County** | |
| *Saw Kill:* | |
| At downstream corporate limits | |
| Approximately 110 feet upstream of MacDaniel Road | *268 |
| *Beaver Kill:* | *957 |
| At downstream corporate limits | |
| Approximately 0.5 mile upstream of Sickler Road | *763 |
| *East Branch Tannery Brook:* | *1,084 |
| At the confluence with West Branch Tannery Brook | |
| Approximately 140 feet upstream of State Route 212 (Glasco Turnpike) | *536 |
| *West Branch Tannery Brook:* | *717 |
| At the confluence with Saw Kill | |
| Approximately 120 feet upstream of State Route 212 (Glasco Turnpike) | *520 |
| **Maps available for inspection at the Town Hall, 81 Tinker Street, Woodstock, New York.** | *581 |
| Send comments to Mr Brian Hollander, Woodstock Town Supervisor, Ulster County, 81 Tinker Street, Woodstock, New York 12498. | |
| **PENNSYLVANIA** | |
| **Armagh (Township), Mifflin County** | |
| *Laurel Creek:* | |
| At confluence with Laurel Creek Overflow Channel | |
| At upstream crossing of U.S. Route 32 | *983 |
| *Laurel Creek Overflow Channel:* | *927 |
| At confluence with Honey Creek | |
| At confluence with Laurel Creek | *969 |
| *Honey Creek:* | *993 |
| At downstream corporate limits | |
| Approximately 240 feet upstream of the abandoned railroad bridge near Nagney Quarrey | *922 |
| **Maps available for inspection at the Township Office, 2nd Floor Mellon Bank Building, Main Street, Milroy, Pennsylvania.** | *570 |
| Send comments to The Honorable Otis Rider, Jr., Chairman of the Township of Armagh Board of Supervisors, Mifflin County, P.O. Box 366, Milroy, Pennsylvania 17063. | |
| **Hawley (Borough), Wayne County** | |
| *Lackawaxen River:* | |
| Downstream corporate limits | *894 |
| Upstream side of Church Street | *897 |
| Approximately 1,450 feet upstream of Church Street | *899 |
| Approximately 190 feet upstream of U.S. Route 6 | *899 |
| Upstream corporate limits | *906 |
| **Maps available for inspection at the Borough Building, Hawley, Pennsylvania.** | |
| Send comments to The Honorable Robert Jones, President of the Borough of Hawley Council, Wayne County, P.O. Box 187, Hawley, Pennsylvania 18428. | |
| **Jackson (Township), Venango County** | |
| *Sugar Creek:* | |
| Approximately .6 mile downstream of State Route 427 | *1,006 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 1.0 mile upstream of TR 607 | *1,202 |
| *East Branch Sugar Creek:* | |
| At the confluence with Sugar Creek | *1,135 |
| Approximately 1.3 miles upstream of TR-583 | *1,184 |
| *Lake Creek:* | |
| Approximately 100 feet downstream of Borough of Cooperstown corporate limits | *1,145 |
| At TR 605 | *1,238 |
| **Maps available for inspection at the Jackson Township Municipal Building, R.D. 1, Cooperstown, Pennsylvania.** | |
| Send comments to Mr. Homer Bray, Chairman of the Township of Jackson Board of Supervisors, Venango County, R.D. 1 Cooperstown, Pennsylvania 16317. | |
| **Masontown (Borough), Fayette County** | |
| *Monongahela River:* | |
| At downstream corporate limits | *786 |
| At upstream corporate limits | *786 |
| **Maps available for inspection at the Borough Building, Two Court Street, Masontown, Pennsylvania.** | |
| Send comments to Mr. David A. Smith, President of the Masontown Borough Council, Fayette County, Two Court Avenue, Masontown, Pennsylvania 15461. | |
| **Nicholson (Township), Fayette County** | |
| *Monongahela River:* | |
| At confluence of Cats Run | *797 |
| At confluence of Georges Creek | *801 |
| **Maps available for inspection at the Nicholson Township Building, Old Frazee, Pennsylvania.** | |
| Send comments to Mr. John E. Black, Supervisor of the Township of Nicholson, Fayette County, R.D. 2, Box 66, Smithfield, Pennsylvania 15478. | |
| **Salisbury (Township), Crawford County** | |
| *Conneaut Lake:* | |
| Entire shoreline within community | *1,075 |
| **Maps available for inspection at the Salisbury Township Municipal Building, Conneaut Lake, Pennsylvania.** | |
| Send comments to Ms. Linda Boyd, Chair of the Township of Salisbury Board of Supervisors, Crawford County, R.D. 2, Box 1021 A, Conneaut Lake, Pennsylvania 16316. | |
| **Shenango (Township), Mercer County** | |
| *Shenango River:* | |
| At the downstream corporate limits | *818 |
| Approximately 0.46 mile upstream of State Route 718 | *836 |
| **Maps available for inspection at the Shenango Township Building, R.D. 1, West Middlesex—Hubbard Road, West Middlesex, Pennsylvania.** | |
| Send comments to Mr. T. Scott Campbell, Chairman of the Township of Shenango Board of Supervisors, Mercer County, R.D. 1, West Middlesex—Hubbard Road, West Middlesex, Pennsylvania 16148. | |
| **Shippingport (Borough), Beaver County** | |
| *Ohio River:* | |
| At downstream corporate limits | *694 |
| At upstream corporate limits | *697 |
| **Maps available for inspection at the Municipal Building, Secretary's Office, P.O. Box 76, State Route 3016, Shippingport, Pennsylvania.** | |
| Send comments to Mr. Richard Kiss, Chairman of the Borough of Shippingport Board of Supervisors, Beaver County, P.O. Box 298, Shippingport, Pennsylvania 15077. | |
| **Sterling (Township), Wayne County** | |
| *West Branch Wallenpaupack Creek:* | |
| Approximately 5,250 feet downstream of State Routes 191 and 196 | *1,256 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| At confluence of Wilcox Creek and upstream corporate limits | *1,260 |
| **Maps available for inspection at the Township Building, Spring Hill Road, Sterling, Pennsylvania.** | |
| Send comments to The Honorable Bob Bird, Chairman of the Township of Sterling Board of Supervisors, Wayne County, P.O. Box 160, Sterling, Pennsylvania 18462. | |
| **West Middlesex (Borough), Mercer County** | |
| *Shenango River:* | |
| Approximately 160 feet downstream of the downstream corporate limits | *827 |
| Approximately 240 feet upstream of the upstream corporate limits | *835 |
| **Maps available for inspection at the corner of Erie and Walnut, P.O. Box 562, West Middlesex, Pennsylvania.** | |
| Send comments to Mr. Charles O. Strawder, President of the Borough of West Middlesex Council, Mercer County, P.O. Box 343, 318 Garfield Street, West Middlesex, Pennsylvania 16159. | |
| **TENNESSEE** | |
| **Bradley County (unincorporated areas)** | |
| *Hiwassee River:* | |
| About 2.93 miles downstream of confluence of Candies Creek | *698 |
| About 11.70 miles upstream of Norfolk Southern Railway | *711 |
| *Candies Creek:* | |
| About 800 feet downstream of Lower River Road | *690 |
| About 2,900 feet upstream of Black Fox Road | *765 |
| *South Mouse Creek:* | |
| About 0.94 mile downstream of Charleston Access Road | *696 |
| Just downstream of Charleston Access Road | *705 |
| Just upstream of Charleston Access Road | *706 |
| About 1.14 miles upstream of Mapleton Drive | *776 |
| *Clahulia Creek:* | |
| About 3,650 feet downstream of confluence of West Branch | *699 |
| About 1,150 feet upstream of Patterson Road | *699 |
| *Wolf Branch:* | |
| At mouth | *695 |
| About 1,480 feet upstream of Hunt Road | *746 |
| *Tributary C:* | |
| At mouth | *826 |
| About 2,800 feet upstream of mouth | *831 |
| *Goodwell Branch:* | |
| At mouth | *804 |
| Just upstream of Goodwell Road | *821 |
| *Waterville Branch:* | |
| At mouth | *811 |
| About 0.63 mile upstream of mouth | *839 |
| **Maps available for inspection at the County Courthouse, Cleveland, Tennessee.** | |
| Send comments to The Honorable Donna J. Hubbard, County Executive, Bradley County, P.O. Box 1167, Cleveland, Tennessee 37364–1467. | |
| **McMinn County (unincorporated areas)** | |
| *Hiwassee River:* | |
| At county boundary | *699 |
| At county boundary | *716 |
| *Costanaula Creek:* | |
| About 2,800 feet downstream of confluence of Black Branch | *846 |
| About 1,500 feet upstream of confluence of Black Branch | *846 |
| *Black Branch:* | |
| At mouth | *843 |
| At confluence of Walker Branch | *845 |
| *Walker Branch:* | |
| At confluence with Black Branch | *845 |
| About 350 feet upstream of confluence with Black Branch | *847 |
| *North Mouse Creek:* | |

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Just upstream of Rocky Mount Road | *795 |
| Just downstream of County Route 258 | *851 |
| *Little North Mouse Creek:* | |
| At mouth | *831 |
| Just downstream of Shoemaker Road | *882 |
| Just upstream of Shoemaker Road | *899 |
| About 0.63 mile upstream of County Route 260 | *920 |
| *Tributary No. 1 to North Mouse Creek:* | |
| At mouth | *863 |
| About 0.3 miles upstream of mouth | *908 |

Maps available for inspection at the County Courthouse, Athens, Tennessee.

Send comments to The Honorable Ron Banks, County Executive, McMinn County, County Courthouse, Athens, Tennessee 37303.

**Monroe County (unincorporated areas)**

| | |
|---|---|
| *Sinkhole Creek:* | |
| Just upstream of Cagle Road | *894 |
| Just downstream of confluence of Tributary B | *1,013 |
| *Bat Creek:* | |
| About 600 feet upstream of confluence of Tributary C | *903 |
| About 3,000 feet upstream of confluence with Bat Creek Tributary | *924 |
| *Bat Creek Tributary:* | |
| At confluence of Bat Creek | *910 |
| About 3,600 feet upstream of confluence of Bat Creek | *922 |

Maps available for inspection at the County Courthouse, Madisonville, Tennessee.

Send comments to The Honorable Allen Watson, County Executive, Monroe County, County Courthouse, Madisonville, Tennessee 37354.

**Rhea County (unincorporated areas)**

| | |
|---|---|
| *Tennessee River:* | |
| At downstream county boundary | *698 |
| Just downstream of Watts Bar Dam | *698 |
| *Watts Bar Lake:* Within community | *746 |
| *Piney River:* | |
| About 1,080 feet downstream of Toestring Road | *746 |
| About 3,100 feet upstream of State Route 68 | *825 |
| *Town Creek:* | |
| About 400 feet upstream of Kenmer Road | *767 |
| Just downstream of J Lon Foust Highway | *777 |
| *Little Richland Creek:* | |
| About 400 feet downstream of Walnut Grove Road | *696 |
| About 120 feet downstream of Norfolk Southern Railway, upstream of confluence of Yarborough Branch | *781 |
| *Tributary to Little Richland Creek:* | |
| About 450 feet downstream of Hidden Valley Road | *725 |
| About 300 feet upstream of Back Valley Road | *745 |
| *Roaring Creek:* | |
| At mouth | *717 |
| Just downstream of Brayton Mountain Road | *857 |
| Just upstream of Brayton Mountain Road | *876 |
| About 1,570 feet upstream of Brayton Mountain Road | *894 |
| *Sale Creek:* | |
| At confluence of Roaring Creek | *717 |
| About 1.4 miles upstream of Norfolk Southern Railway | *740 |
| *McGill Creek:* | |
| At mouth | *717 |
| About 1,330 feet upstream of Walker Road | *787 |
| *Hickman Branch:* | |
| At mouth | *731 |
| About 2,000 feet upstream of County Road | *748 |
| *Whitaker Creek:* | |
| About 2.5 miles downstream of J Lon Foust Highway | *748 |
| About 0.48 miles upstream of Norfolk Southern Railway | *791 |

Maps available for inspection at the County Courthouse, Dayton, Tennessee.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Send comments to The Honorable Robert Alderman, County Executive, Rhea County, County Courthouse, Room 103, Dayton, Tennessee 37321. | |
| **TEXAS** | |
| **Hunt County (unincorporated areas)** | |
| *South Fork Sabine River:* | |
| Approximately 3,200 feet downstream of State Route 34 | *446 |
| Approximately 1,200 feet upstream of County boundary | *494 |
| *Greasy Creek:* | |
| At the confluence with South Fork Sabine River | *451 |
| Approximately 200 feet upstream of County boundary | *474 |
| *Sharpen Creek:* | |
| At the confluence with South Fork Sabine River | *458 |
| Approximately 0.95 mile upstream of Interstate Route 30 and U.S. Route 67 | *552 |
| *Brushy Creek:* | |
| At the confluence with West Caddo Creek | *477 |
| Approximately 350 feet upstream of State Route 6 | *534 |
| *Lower Caddo Creek:* | |
| Approximately 300 feet downstream of State Route 34 | *446 |
| At the confluence of West Caddo Creek | *463 |
| *West Caddo Creek:* | |
| At the confluence with Lower Caddo Creek | *463 |
| At the confluence of Brushy Creek | *477 |
| *Jones Creek:* | |
| Approximately 0.50 mile downstream of State Route 34 | *447 |
| Approximately 300 feet downstream of State Route 276 | *486 |
| *Farber Creek:* | |
| Approximately 100 feet downstream of FM 1903 | *486 |
| Approximately 3.8 miles upstream of Interstate Route 30 and U.S. Route 67 | *560 |

Maps available for inspection at the Hunt County Courthouse, Greenville, Texas.

Send comments to The Honorable Mike Farris, Hunt County Judge, P.O. Box 1097, Greenville, Texas 75403.

**Llano County (unincorporated areas)**

| | |
|---|---|
| *Colorado River:* | |
| Approximately 1,800 feet downstream of the downstream Llano County boundary | *828 |
| At the upstream Llano County boundary | *1,029 |
| *Llano River:* | |
| At the confluence with the Colorado River | *839 |
| At the downstream corporate limits of the City of Llano | *1,010 |

Maps available for inspection delineation are available for review at the County Courthouse, 801 Ford Street, Llano, Texas.

Send comments to The Honorable J. Howard Coleman, Llano County Judge, County Courthouse, 801 Ford Street, Llano, Texas 78643.

**Quinlan (city), Hunt County**

| | |
|---|---|
| *Jones Creek:* | |
| Approximately 200 feet downstream of State Route 276 | *486 |
| At the State Route 276 | *488 |

Maps available for inspection at the City Hall, Quinlan, Texas.

Send comments to The Honorable Sherry O'Neill, Mayor of the City of Quinlan, Hunt County, P.O. Box 3A, Quinlan, Texas 75074.

**VERMONT**

**Granville (town), Addison County**

| | |
|---|---|
| *White River:* | |
| At downstream corporate limits | *822 |
| Approximately 1,100 feet upstream of confluence of Alder Meadow Brook | *1,023 |
| *Alder Meadow Brook:* | |
| At confluence with White River | *980 |
| Approximately 600 feet upstream of upstream crossing of State Route 100 | *1,008 |

Maps available for inspection at the Town Clerk's Vault, Granville, Vermont.

Send comments to Mr. Guy Chrissie, Chairman of the Town of Granville Board of Selectmen, Addison County, P.O. Box 66, Granville, Vermont 05747.

**Hancock (town), Addison County**

| | |
|---|---|
| *White River:* | |
| At the downstream corporate limits | *873 |
| At the upstream corporate limits | *922 |
| *Hancock Branch:* | |
| At the confluence with White River | *905 |
| Approximately 0.87 mile upstream of State Route 125 | *1,116 |

Maps available for inspection at the Town Clerk's Vault, Hancock, Vermont.

Send comments to Mr. Frank Curtis, Chairman of the Town of Hancock Board of Selectmen, Addison County, P.O. Box 132, Hancock, Vermont 05748.

**Pittsfield (town), Rutland County**

| | |
|---|---|
| *Tweed River:* | |
| Downstream corporate limits | *797 |
| At the confluence of West Branch Tweed River and South Branch Tweed River | *806 |
| *South Branch Tweed River:* | |
| At the confluence with Tweed River | *806 |
| Upstream corporate limits | *1,110 |
| *West Branch Tweed River:* | |
| At the confluence with Tweed River | *809 |
| Upstream corporate limits | *1,095 |
| *Guernsey Brook:* | |
| Downstream corporate limits | *826 |
| Approximately 1,900 feet upstream of State Route 100 | *903 |

Maps available for inspection at the Town Clerk's Vault, Pittsfield, Vermont.

Send comments to Mr. Robert Lincoln, Chairman of the Town of Pittsfield Board of Selectmen, Rutland County, P.O. Box 617, Pittsfield, Vermont 05762.

**VIRGINIA**

**Isle of Wight County (unincorporated areas)**

| | |
|---|---|
| *Blackwater River:* | |
| Approximately 1.9 miles downstream of CSX Transportation | *14 |
| Approximately 1.2 miles upstream of State Route 620 | *33 |
| *James River:* | |
| Adjoining Estuaries | *3.5 |
| Shoreline along Mogarts Beach | *12 |

Maps available for inspection at the Department of Community Development, County Courthouse, Isle of Wight, Virginia.

Send comments to The Honorable Myles E. Standish, Isle of Wight County Administrator, P.O. Box 80, Isle of Wight, Virginia 23397.

**Page County (unincorporated areas)**

| | |
|---|---|
| *Dry Run:* | |
| At confluence with Hawksbill Creek | *785 |
| Approximately 1,000 feet upstream of State Route 611 | *1,001 |
| *Pass Run:* | |
| At confluence with Hawksbill Creek | *702 |
| At confluence of Rocky Branch | *976 |
| *Rocky Branch:* | |
| At confluence with Pass Run | *976 |



PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| Approximately 70 feet upstream of State Route 612 | *1,214 |
| *Hawksbill Creek:* | |
| Approximately 1,200 feet downstream of State Route 642 | *800 |
| Approximately 1,300 feet upstream of State Route 642 | *902 |

Maps available for inspection at the Administrative Building, 108 South Court Street, Luray, Virginia 22835.

Send comments to Mr. Ron Wilson, Page County Administrator, 108 South Court Street, Luray, Virginia 22835.

**WISCONSIN**

**Elroy (city), Juneau County**

| | |
|---|---|
| *Baraboo River:* | |
| About 1,000 feet downstream of Main Street | *942 |
| About 2,500 feet upstream of Academy Street | *949 |

Maps available for inspection at the City Hall, 225 Main Street, Elroy, Wisconsin.

Send comments to The Honorable Don Picha, Mayor, City of Elroy, 225 Main Street, Elroy, Wisconsin 53929-1251.

**Juneau County (unincorporated areas)**

| | |
|---|---|
| *Yellow River:* | |
| Just upstream of County Highway G | *963 |
| At northern county boundary | *966 |
| *Lemonweir River:* | |
| At mouth | *855 |
| Just downstream of County Highway C | *858 |
| Just upstream of Lemonweir Dam | *864 |
| Just downstream of County Highway M | *886 |
| *Cranberry Creek:* | |
| At mouth | *826 |
| Just downstream of County Highway F | *947 |
| *Little Yellow River:* | |
| At mouth | *862 |
| Just downstream of 30th Street | *900 |
| *Baraboo River:* | |
| About 2,200 feet upstream of Hillsboro Street | *914 |
| Just downstream of Hillsboro and Northeastern Railway | *918 |
| *West Branch Baraboo River:* | |
| At mouth | *918 |
| Just upstream of Smith Road | *924 |
| *Wisconsin River:* | |
| At southern county boundary | *845 |
| Just downstream of Castle Rock Dam | *864 |
| Just upstream of Castle Rock Dam | *883 |
| Just downstream of Petenwell Dam | *925 |
| Just upstream of Petenwell Dam | *925 |
| At northern county boundary | *929 |
| *Black Hawk Divergence:* | |
| At mouth | *846 |
| At divergence with Wisconsin River | *849 |

Maps available for inspection at the Courthouse Annex, Room 20, Mauston, Wisconsin.

Send comments to The Honorable C.F. Saylor, Chairman, County Board, Juneau County, County Courthouse, Mauston, Wisconsin 53948.

**Mauston (city), Juneau County**

| | |
|---|---|
| *Lemonweir River:* | |
| About 0.8 mile downstream of Union Street | *857 |
| About 2.3 miles upstream of Union Street | *874 |

Maps available for inspection at the City Hall, 303 Mansion Street, Mauston, Wisconsin.

Send comments to The Honorable Larry Taylor, Mayor, City of Mauston, 303 Mansion Street, Mauston, Wisconsin 53948.

**Necedah (village), Juneau County**

*Yellow River:*

| | |
|---|---|
| About 0.9 mile downstream of Chicago and North Western railroad | *908 |
| About 0.9 mile upstream of State Highway 21 | *936 |

Maps available for inspection at the Village Hall, 100 Center Street, Necedah, Wisconsin.

Send comments to The Honorable Dwayne Hays, Village President, Village of Necedah, Box 371, 100 Center Street, Necedah, Wisconsin 54646.

**New Lisbon (city), Juneau County**

| | |
|---|---|
| *Lemonweir River:* | |
| About 0.9 mile downstream of Soo Line Railroad | *899 |
| About 1,100 feet upstream of Interstate 90 | *962 |

Maps available for inspection at the City Hall, 218 E. Bridge Street, New Lisbon, Wisconsin.

Send comments to The Honorable Kenneth Southworth, Mayor, City of New Lisbon, Box 8, 218 E. Bridge Street, New Lisbon, Wisconsin 53950.

**Union Center (village), Juneau County**

| | |
|---|---|
| *Baraboo River:* | |
| About 3,200 feet downstream of confluence of West Branch Baraboo River | *918 |
| Just downstream of Hillsboro and Northeastern railway | *918 |

Maps available for inspection at the Village Hall, Union Center, Wisconsin.

Send comments to The Honorable Gerald A. Nohsinger, Village President, Village of Union Center, Box 5, Union Center, Wisconsin 53962.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-Year) FLOOD ELEVATIONS

| State | City/town/county | Source of flooding | Location | Depth in feet above ground *Elevation in feet (NGCV) Existing | Modified |
|---|---|---|---|---|---|
| California | City of Grass Valley, Nevada County. | Wolf Creek | Just downstream of Idaho-Maryland Road near intersection of Sutton Way. | *2,525 | *2,528 |
| | | | Just upstream of confluence of White Water Creek. | None | *2,558 |
| | | Little Wolf Creek | Just upstream of State Highway 49 | *2,379 | *2,389 |
| | | | Just upstream of South Auburn Street | *2,411 | *2,407 |
| | | | Just above a private drive, 1,000 feet upstream of South Auburn Street. | *2,447 | *2,451 |
| | | | Approximately 350 feet upstream of a private drive. | *2,448 | *2,452 |

Maps are available for review at City Hall, 125 East Main Street, Grass Valley, California.

Send comments to The Honorable Gerard Tassone, Mayor, City of Grass Valley, City Hall, 125 East Main Street, Grass Valley, California 95945.

| | | | | | |
|---|---|---|---|---|---|
| Louisiana | Tangipahoa Parish, Unincorporated Areas. | Chappepeela Creek | Approximately .6 mile upstream of confluence with Tangipahoa River. | None | *41 |
| | | | Approximately 1.1 miles upstream of Zemurry Lodge Road. | None | *69 |
| | | Bedico Creek | Approximately 5.2 miles upstream of confluence with Tangipahoa River. | None | *9 |
| | | | Approximately 0.7 mile upstream of U.S. Route 190. | None | *39 |
| | | Washley Creek | At confluence with Tangipahoa River | None | *39 |
| | | | Approximately 2.0 miles upstream of U.S. Route 190. | None | *37 |
| | | Yellow Water River | Approximately .6 miles upstream of confluence with Ponchetoula Creek. | None | *8 |
| | | | Upstream side of Parish Road 134 | None | *58 |

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PROPOSED MODIFIED BASE (100-Year) FLOOD ELEVATIONS—Continued

| State | City/town/county | Source of flooding | Location | Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Little Chappepeela Creek | Approximately 1.1 miles upstream of Zemurry Lodge Road. | None | *68 |
| | | | At upstream side of Terrase Road | None | *112 |
| Maps available for inspection at the Courthouse Building, Amite, Louisiana. | | | | | |
| Send comments to Mr. Gordon Burgess, President of the Tangipahoa, Parish Police Jury, P.O. Box 215, Amite, Louisiana 70422. | | | | | |
| North Dakota | City of Harwood, Cass County. | Sheyenne River | At northernmost corporate limit and between the Burlington Northern Railroad and Interstate Highway 29. | None | *891 |
| | | | Intersection of Bender Boulevard and Bender Lane. | None | *891 |
| | | | Just upstream of County Highway 22 and west of Interstate Highway 29. | None | *893 |
| | | | At southern corporate limit and between Burlington Northern Railroad and Interstate Highway 29. | None | *891 |
| | | Red River of the North | At northernmost corporate limit and east of Burlington Northern Railroad. | *891 | *890 |
| | | | Just downstream of County Highway 22 | *891 | *890 |
| | | | At southernmost corporate limit and east of Burlington Northern Railroad. | *892 | *891 |
| Maps are available for review at Harwood City Office, Main Street, Harwood, North Dakota. | | | | | |
| Send comments to The Honorable John Woolery, Mayor, City of Harwood, Route 1, Box 482, Harwood, North Dakota 58042. | | | | | |
| Texas | Hamilton, City, Hamilton County. | Pecan Creek | Approximately 1,600 feet downstream of East Gentry Street. | None | *1,128 |
| | | | At upstream corporate limits | None | *1,180 |
| | | Tributary A | At confluence with Pecan Creek | None | *1,146 |
| | | | At upstream corporate limits | None | *1,211 |
| | | Tributary B | At confluence with Tributary A | None | *1,162 |
| | | | At upstream corporate limits | None | *1,207 |
| Maps available for inspection at the City Hall, 200 East Main, Hamilton, Texas 76531. | | | | | |
| Send comments to The Honorable Joe M. Crane, Mayor of the City of Hamilton, Hamilton County, 200 East Main, Hamilton, Texas 76531. | | | | | |
| Wisconsin | Village of Wonewoc, Juneau County. | Baraboo River | About 1.4 miles downstream of Gehri Road | None | *912 |
| | | | About 0.8 miles upstream of Hillsboro Street | None | *915 |
| Maps available for inspection at Village Hall, 103 Washington Street, Wonewoc, Wisconsin. | | | | | |
| Send comments to The Honorable Robert Smith, Village President, Village of Wonewoc, Box 303, 103 Washington Street, Wonewoc, Wisconsin 53968. | | | | | |

Issued: December 7, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90-29343 Filed 12-13-90; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 1 and 90**

**[PR Docket No. 90-481]**

### Construction, Licensing, and Operation of Private Land Mobile Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule: Order extending comment period.

**SUMMARY:** In response to a Motion for Extension of Time filed by the Special Industrial Radio Service Association, the Commission adopted an Order extending the time period in which to file comments and reply comments in this proceeding. The intended effect of this action is to ensure a complete record by giving all interested parties an opportunity to participate.

**DATES:** Comments to the Notice of Proposed Rule Making and reply comments are due by January 8, 1991 and January 24, 1991, respectively.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

**SUPPLEMENTARY INFORMATION:** A summary of the Notice of Proposed Rule Making was published on November 7, 1990 at 55 FR 46834.

[PR Docket No. 90-481; RM-6910]

### Order Extending Comment Period

In the matter of amendment of part 90 of the Commission's rules concerning the construction, licensing, and operation of private land mobile radio stations.

Adopted: December 4, 1990.

Released: December 11, 1990.

By the Chief, Private Radio Bureau:

1. On October 11, 1990, the Commission adopted a Notice of Proposed Rule Making in the above-captioned matter. The specified deadlines for comments and reply comments are December 24, 1990 and January 8, 1991, respectively.

2. On November 29, 1990, the Special Industrial Radio Service Association, Inc. (SIRSA) filed a motion requesting an extension of the deadlines for comments and reply comments by approximately two weeks. SIRSA is concerned that the proximity of the current filing dates to the holiday season may prevent some businesses from participating due to competing commitments.



3. Extensions of time are not routinely granted, and the proximity of a filing date to a holiday is generally not a sufficient reason for an extension. See 47 CFR 1.46(a). *Cf.* 47 CFR 1.4(b). In this proceeding, however, the time conflicts affecting interested parties during the holiday season are particularly significant. The rules proposed in this proceeding have a potential impact on virtually every private radio licensee and, in some instances, could result in a loss of operating authority. Many of the potentially affected licensees are small businesses that, faced with other commitments, might find it difficult to participate within current deadlines. The length of the extension requested would ensure the development of a complete record in this proceeding without causing undue delay. We therefore find good cause to grant the extension requested.

4. Accordingly, *It is ordered*, pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, 47 CFR 0.331, that all interested parties will have until January 8, 1991 to file comments and until January 24, 1991 to file reply comments.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 90-29375 Filed 12-13-90; 8:45 am]

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# Notices

Federal Register
Vol. 55, No. 241
Friday, December 14, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ARMS CONTROL AND DISARMAMENT AGENCY

### The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

*Name:* General Advisory Committee on Arms Control and Disarmament.

*Date:* January 14–15, 1991.

*Time:* 8:30 a.m.

*Place:* State Department Building, Washington, DC.

*Type of Meeting:* Closed.

*Contact:* Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5937, Washington, DC, 20451, (202)–647–5178.

*Purpose of Advisory U.S. Committee:* To advise the President, the Secretary of State, and Director, of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.

*Agenda:* The Committee will review specific national security policy and arms control issues. Members will be briefed on current START and CFE negotiations, missile proliferation, status of the nuclear weapons production complex and nuclear testing. An Executive Session will be held.

*Reason for Closing:* The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

*Authority to Close Meeting:* The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated December 5, 1990, made pursuant to the provisions of section 10 (d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,
*Committee Management Officer.*

[FR Doc. 90-29327 Filed 12-13-90; 8:45 am]
BILLING CODE 6820-32-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Teton Village Land Exchange; Bridger-Teton National Forest, Teton, County, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability of draft environmental impact statement.

**SUMMARY:** The Forest Service has prepared an environmental impact statement on a proposed land exchange of approximately 80 acres of National Forest located adjacent to Teton Village for approximately 160 acres of non-Federal land known as the Diamond L Ranch located near the town of Moran.

**DATES:** Comments concerning the scope of the analysis should be received in writing by February 22, 1991.

**ADDRESSES:** Send written comments to District Ranger, Jackson Ranger District, Bridger-Teton National Forest, Box 1689, Jackson, WY 83001.

**FOR FURTHER INFORMATION CONTACT:** Pete Mourtsen, Realty Specialist (307) 733–4755.

**SUPPLEMENTARY INFORMATION:** The draft environmental impact statement compares three alternatives for conducting this land exchange, including a no action alternative. Preliminary concerns have been expressed regarding effects on the Jackson Hole Ski Area, administrative problems for Teton County, impacts on Grand Teton National Park and visual quality. If completed, this exchange will be made under the authority of the General Exchange Act of March 20, 1922 and the Federal Land Policy and Management Act of October 21, 1976. A public meeting is scheduled for January 17, 1991 in Jackson, Wyoming to discuss this proposal. The lead agency for this proposal is the USDA Forest Service. Written suggestions and comments are invited. The responsible official is Stan Tixier, Regional Forester, Intermountain Region, USDA Forest Service.

The comment period on the draft environmental impact statement will be 75 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: December 7, 1990.

Brian E. Stout,
*Forest Supervisor, Bridger-Teton National Forest.*

[FR Doc. 90-29263 Filed 12-13-90; 8:45 am]
BILLING CODE 3410-11-M

### Noon Timber Sale, Dixie National Forest, Garfield County, Utah

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement for a proposal to harvest timber, construct or reconstruct associated roads, and perform other related resource management activities in the Noon Lake area of Boulder Mountain on the Teasdale Ranger District, Dixie National Forest. The area is located approximately 12 miles south of Teasdale, Utah.

Considerable scoping and a number of public meetings have been conducted concerning this proposals, and numerous comments have been received. The agency is seeking additional information and comments from Federal, State and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be added to that already received and will be used in preparing the Draft Environmental Impact Statement.

**DATES:** Comments concerning the proposed action should be received in writing by February 1, 1991.

**ADDRESSES:** Submit written comments to Marvin R. Turner, District Ranger, Teasdale Ranger District, PO Box 99, Teasdale, Utah 84773.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and EIS to Joseph A. Colwell, Resource Officer, Teasdale Ranger District, (801) 425-3702.

**SUPPLEMENTARY INFORMATION:** The proposal is an implementation action of the Dixie National Forest Land and Resource Management Plan and the attainment of the desired future conditions specified in the Plan. The proposed action will be accomplished in coordination with other resources and uses, and will provide a flow of timber from National Forest land.

Management activities under consideration would occur in an area encompassing approximately 5,000 acres of National Forest system lands. The area is located on a high plateau which contains stands of Engelmann spruce, open areas of brush and grass, and scattered lakes and wet meadows mostly in closed drainage basins. Logging of the dead spruce, killed during a 1920 insect epidemic, has occurred during the past 40 years. The area is grazed by permitted livestock and the small lakes which support fish are popular for fishing; some big game hunting, hiking, and recreation vehicle use also occurs. Roads in varying degrees of development, use and stability abound throughout the area.

The EIS will tier to the EIS for the Dixie National Forest Land and Resource Management Plan. The Forest Plan provides the overall guidance for management activities by specifying the goals and objectives, desired future condition, management area direction, and standards and guidelines. The proposal is mostly within Management Area—2B Roaded Natural Recreation, and Management Area 7A—Wood Production and Utilization. Small areas also exist in Management Areas 2A—Semi Primitive Recreation, 4A—Fish and Aquatic Habitat, and 9A—Riparian Management. The management direction for the Roaded Natural Recreation areas includes emphasis for rural and roaded-natural recreation opportunities, and the management of visual resources so that management activities maintain or improve the quality of recreation opportunity. Management direction for the Wood Production and Utilization areas includes emphasis on wood-fiber production and utilization of large roundwood of a size and quality suitable for sawtimber. The desired future condition includes objectives of creating and maintaining stands that will minimize growth loss and mortality from insects and diseases. The direction for Management Area 2A is management emphasis on semi-primitive recreation opportunities; the direction and goals for Fish and Aquatic Habitat and Riparian areas is to provide healthy, self-perpetuating plant communities, meet water quality standards, provide habitats for viable populations of wildlife and fish, and provide stable stream channels and still water body shorelines.

A reasonable range of alternatives will be considered. One of these will be the "no action" alternative in which the proposed action would not be implemented, but current management activities would continue (i.e., salvage logging, dispersed recreation, livestock grazing, etc.). Other alternatives will examine various silvicultural and management options designed to achieve integrated resource management goals. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. The EIS will also include site specific mitigation measures.

Public participation is important during the analysis. Scoping and public involvement to date have identified issues and concerns involving: the development of the transportation system, the level of the timber harvest, the protection and enhancement of the fishery and riparian areas, provisions for dispersed recreation, the management of the domestic grazing and the forage resource, and the project costs and effects on dependent communities. Information gained during this step of scoping will be combined with information and comments already received. The combined input will be used in the preparation of the draft environmental impact statement (DEIS). Additional written comments should be submitted by February 1, 1991 to be considered in the DEIS. Public involvement is planned throughout the process.

The Draft Environmental Impact statement (DEIS) is expected to be available for public review by May 1991. The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court ruling related to public participation in the environmental review process. First, reviewers of draft environmental impact statements (DEIS) must structure the participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 53 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F2d1016, 1002 (9th Cir1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day DEIS comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Final Environmental Impact Statement is expected to be published by September 1991.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.



BEST COPY AVAILABLE

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Dated: December 6, 1990.
Hugh C. Thompson,
*Forest Supervisor, Dixie National Forest.*
[FR Doc. 90-29264 Filed 12-13-90; 8:45 am]
BILLING CODE 3410-11-M

## Timber Management and Road Construction in the Le Perron Compartment (Jake T.S.), Humboldt County, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the USDA, Forest Service will prepare an Environmental Impact Statement for Jake Timber Sale which proposes timber management and road construction in the Le Perron compartment of the Orleans Ranger District, Six Rivers National Forest, Humboldt County, California.

**DATES:** Interested and affected individuals should make their input by March 18, 1991.

**ADDRESSES:** Written comments and suggestions concerning the analysis should be sent to John Larson, District Ranger, Orleans Ranger District, Six Rivers National Forest, Drawer B, Orleans, California, 95556.

**FOR FURTHER INFORMATION CONTACT:** Gene Graber, Timber Management Officer, Orleans Ranger District, Drawer B, Orleans, CA, 95556, phone (916) 627-3291.

**SUPPLEMENTARY INFORMATION:** The Le Perron compartment is located south of the Klamath River in the southern portion of the Orleans Ranger District and outside of the proposed Habitat Conservation Area for the Northern Spotted Owl. The compartment contains approximately 6000 acres and includes many historic mining claims, trails, and a fawning area at Le Perron Flat which is important to the local deer herd. The project area contains Red Cap Creek and Boise Creek, two main tributaries to the Klamath River. Red Cap Creek provides high quality spawning habitat for summer steelhead, winter steelhead, and fall run chinook salmon. The proposal would regenerate up to 179 acres of suitable forest land while maintaining the diverse structure of the forest landscape. In preparing the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives for this project. One of these will be no action. Other alternatives will consider the harvest of approximately 3.3 to 6.1 million board feet of timber using various silvicultural prescriptions and constructing various amounts of forest road.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7).

Federal, State, and local agencies; local property owners, and other individuals or organizations who may be interested in, or affected by the decision are hereby invited to participate in the scoping process. Previous scoping under the environmental analysis process included:

1. Open house meeting at the District.
2. Letters mailed to individuals, organizations, and agencies inviting comments about the project proposal.
3. Notice posted at local store soliciting comments regarding the proposal.

The input will be used in preparation of the draft environmental impact statement and will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives.

The District Ranger will hold an additional public scoping meeting in the conference room located at the Orleans Ranger District office on Ishi Pishi Road, Orleans, California, at 1 p.m., Tuesday, April 2, 1991.

James L. Davis, Jr., Forest Supervisor, Six Rivers National Forest, is the responsible official.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 31, 1991. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the DEIS will be 45 days from the date the EPA's Notice of Availability appears in the Federal Register. It is very important that those interested in the management of the Le Perron Compartment participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends for the DEIS, the comments received will be analyzed and considered by the Forest Service in the preparation of the FEIS. The FEIS is scheduled to be completed by September 1991. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217

Dated: December 3, 1990.
George Lottritz,
*Timber Management Officer.*
[FR Doc. 90-29265 Filed 12-13-90; 8:45 am]
BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket No: 901107-0307]

### National Voluntary Laboratory Accreditation Program (NVLAP)

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of change—NVLAP Commercial Products Testing Program.

**SUMMARY:** The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST) announces a change in the scope of laboratory accreditation for the Commercial Products Testing Program (CPT) to include laboratories that test plumbing products and devices.



**SUPPLEMENTAL INFORMATION:**

**Background**

This notice is issued in accordance with § 7.18 of the NVLAP procedures (15 CFR part 7).

The commercial Products Testing Program (CPT) was established in 1984 at the request of the International Coalition for Procurement Standards (ICPS). The purpose of the program was to develop a list of accredited laboratories so that purchasing authorities could specify in their purchase contracts that vendors have the products tested by an accredited laboratory. The ICPS request identified a number of standards and test methods for paints and related coatings, paper and paper products and mattresses for initial inclusion in the program.

The scope of the CPT program established in 1984 was defined as those products important to the purchasing community listed in "Selected ASTM Standards for the Purchasing Community" First Edition 1983; published by the American Society for Testing and Materials (ASTM). The program initially included paint and related materials, paper and paper products, and mattresses. Other products could be added in response to written requests; either as listed in the ASTM Book, or for test methods in standards other than ASTM (48 FR 45448-45453, dated October 5, 1983). NVLAP announced the expansion of the scope of the Commercial Products Testing Program on April 2, 1990 to include plumbing—plastics, fixture fittings and fixtures as identified in plumbing standards for test methods listed below, so that purchase contracts can specify that these products be tested in a NVLAP accredited laboratory.

Test methods listed for which laboratories may apply are from the following standards.

Plumbing—Plastics (Application Codes 19/P01-19/P12) (Other current Plastic Test Methods are offered under CPL Codes 15/A01-15/A21):
- ANSI Z124.1 Plastic Bathtub Units
- ANSI Z124.2 Plastic Shower Receptors—Stalls
- ANSI Z124.3 Plastic Lavatories
- ANSI Z124.4 Plastic Water Closet Bowls and Tanks

Plumbing Fixture Fittings and Fixtures (Application Codes 19/F00-19/F15, and 19/W01-19/W05):
- ASME/ANSI A112.18.1 Plumbing Fixture Fittings
- ASME/ANSI A112.19.2 Vitreous China Plumbing Fixtures

Provisions for plumbing laboratory accreditation are responsive to inquiries and requests initially related to the need for energy and water conservation programs by the California Energy Commission (52 FR 18582-18593, dated May 18, 1987) and subsequently supported by responses from public review. Newer needs for plumbing testing accreditation were requested in letters which specifically designated ANSI Z124 plastic plumbing fixtures standards series by: HUD concerning application to the requirements for data from test laboratories in HUD Use of materials Bulletin 73 for product certification; the national plumbing consultant/Chairman of ASME/ANSI A112 Committee.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Galowin, Project Leader, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, A124, Gaithersburg, MD 20899 (301) 975-4022.

Need for Change: The purpose of the Commercial Products Testing Program was initially intended to support purchasing agents in procurement for products as announced in 1984 (since that time the ASTM Book has not been updated). NVLAP has responded to other information requests for inclusion of different products through expansion of the Commercial Products Testing Program; accreditation for testing other listed products has since been added to the CPT program. This announcement provides for laboratories to apply for accreditation for testing plumbing products.

Purchasing authorities, agencies, and other jurisdictional officials may request laboratory accreditation for testing products covered by voluntary standards writing organizations. Written requests for testing laboratories accreditation for other procured products under the CPT program may be made following NVLAP procedures.

John W. Lyons,
*Director.*
[FR Doc. 90-29364 Filed 12-13-90; 8:45 am]
BILLING CODE 3510-13-M

### Announcement of Workshop for Users and Implementors of Integrated Services, Digital Network (ISDN)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Computer Systems Laboratory (NCSL) at the NIST announces a meeting of the North American ISDN Users' Forum (NIU-FORUM). The NIU-FORUM was formed under the Federal Technology Transfer Act of 1986 and is a consortium of businesses interested in creating a strong user voice in the implementation of Integrated Services Digital Network (ISDN) and to ensure that the emerging ISDN services meet users' application needs. Membership in the NIU-FORUM remains open to interested United States businesses, and such businesses should contact NIST for further information at the address shown below.

Tutorials focusing on ISDN-related topics will be conducted on the first day of each NIU-FORUM. These FORUMs will consist of joint workshops for the Users' (IUW) and Implementors' (IIW). The IUW will continue to work identifying, defining, and prioritizing user applications of ISDN. The IIW will continue defining implementation agreements for ISDN. Working group meetings will discuss issues related to the use and implementation of ISDN technology. Manufacturers and service providers are invited to participate in these workshops.

**DATES:** The North American ISDN Users' Forum (NIU-FORUM) will be held at the Town & Country Hotel in San Diego, California, February 26 through March 1, 1991.

**ADDRESSES:** To obtain registration forms for the workshop, companies may contact: ISDN Workshop, Attn: Ellen Parker, NIST, Administration Building, room A903, Gaithersburg, MD 20899; 301/975-4858. Upon receipt of the completed registration form, additional information will then be mailed to the registrant.

**FOR FURTHER INFORMATION CONTACT:** Dawn Hoffman, NIST, Building 223, room B364, Gaithersburg, MD 20899; 301/975-2937.

**SUPPLEMENTARY INFORMATION:** The registration fee for the February 26-March 1, 1991, NIU-FORUM will be $275. NIST reserves the right to cancel any part of the workshop.

Dated: December 10, 1990.
John Lyons,
*Director.*
[FR Doc. 90-29366 Filed 12-13-90; 8:45 am]
BILLING CODE 3510-CM-M

### NIST Workshop for Implementers of OSI; 1992 Meeting Dates

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice.

**SUMMARY:** The NIST announces four (4) workshop sessions to reach implementor agreements on Open Systems Interconnection (OSI) computer network protocols.

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**DATES:** The 1992 meeting dates for the workshops have been established and are as follows:

March 9–13, 1992
June 8–12, 1992
September 21–25, 1992
December 14–18, 1992

The meetings will be hosted by NIST and will be held at Gaithersburg, Maryland.

**ADDRESSES:** To register for the workshops, companies may contact: OSI Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, room B–217, Gaithersburg, MD 20899, Telephone: (301) 975–3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant.

**FOR FURTHER INFORMATION CONTACT:** For technical questions contact, Tim Boland (301) 975–3606.

**SUPPLEMENTARY INFORMATION:** The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis. A registration fee will be charged for attending the workshops. Participants and expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: December 10, 1990

John W. Lyons,
*Director.*

[FR Doc. 90–29365 Filed 12–13–90; 8:45 am]
BILLING CODE 3510–CN–M

## Improving Acceptance of U.S. Products in International Markets; Opportunity for Interested Parties to Attend and Observe

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of workshop.

**SUMMARY:** This is to advise the public that the National Institute of Standards and Technology (NIST) is cosponsoring a Pressure Vessel workshop with The American Society of Mechanical Engineers. This is the first of a series of workshops in various product sectors. The purpose is to gather information, insights, and comments to determine conformity assessment related activities (testing, certification, accreditation, quality assessment, etc.) in which the U.S. Government can assist U.S. industry in gaining product acceptance within other markets such as the European Community (EC). Suggestions for future workshops are invited.

**DATES:** The Pressure Vessel workshop will be held at 9:30 a.m. on Thursday, January 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A–603, Gaithersburg, MD 20899 (301–975–4000).

Consistent with the growing importance of international standardization to the United States, NIST is cosponsoring a Pressure Vessel Workshop with The American Society of Mechanical Engineers to solicit views and recommendations on how the U.S. Government can assist this sector of U.S. industry in gaining product acceptance within international markets such as the EC.

Tentative topics for discussion at all workshops are listed below. Sponsors of individual workshops may identify specific issues focussed on their sectors.

1. Which EC requirements for conformity assessment are applicable to your sector?

2. Do the European regional standards (CEN/CENELEC/ETSI) or international standards (ISO, IEC, CCITT) that apply to your sector differ from U.S. standards?

3. To what extent do you feel that U.S. conformity assessment systems relating to your sector are adequate for acceptance of test data or other attestations of conformity by the EC member states?

4. Would your sector benefit from developing mutual recognition agreements between U.S. laboratories or product certifiers and their EC counterparts?

5. How can the U.S. Government better utilize private sector input when developing official positions with regard to possible negotiations with the EC for your sector for regulated products?

6. Should "CE" marks of conformity be made acceptable in the U.S. marketplace? What are the liability implications of such acceptance?

7. Does your sector need a recognizable mark of conformity? Is a U.S. mark needed?

The Pressure Vessel workshop will be held at 9:30 a.m. on January 31, 1991, in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. To guarantee space, persons who wish to attend and observe the workshop should submit a notice in writing to Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A–603, Gaithersburg, MD 20899. Requests should contain the person's name, address, telephone and facsimile numbers, and affiliations. Requests should be received by January 18, 1991

Dated: December 10, 1990.

John W. Lyons,
*Director.*

[FR Doc. 90–29367 Filed 12–13–90; 8:45 am]
BILLING CODE 3510–13–M

## National Oceanic and Atmospheric Administration

## Committees; Establishment, Renewal, Termination, etc.; Sea Grant Review Panel

**AGENCY:** National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice of solicitation for Sea Grant Review Panelists.

**SUMMARY:** This notice responds to section 209(c) of the National Sea Grant College Program Act, 33 U.S.C. 112, which requires the Secretary of Commerce to solicit nominations for membership on the Sea Grant Review Panel at least once a year. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

**DATES:** Résumés should be sent to the address specified and must be received by January 14, 1991.

**ADDRESSES:** Mr. Robert D. Wildman, Director, National Sea Grant College Program, 1335 East-West Highway, room 5465, (BH) Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert J. Shephard of the National Sea Grant College Program at the address given above; telephone (301) 427–2431, (FTS) 427–2431.

**SUPPLEMENTARY INFORMATION:** Section 209 of the Act establishes a national review panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under section 205 and 206, and section 3 of the Sea Grant Program Improvement Act of 1976;



(c) The designation and operation of sea grant colleges and sea grant regional consortia; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under section 203 (a) and (c)(1); and,

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of fifteen voting members composed as follows:

Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension services, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of, any grant or contract under section 205 or 206; or, (c) a full-time officer or employee of the United States.

The Director of the National Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Three positions on the panel will become vacant during 1991. Candidates who are selected to fill these vacancies will be appointed for a three-year term.

Dated: December 10, 1990.

Ned A. Ostenso,
*Assistant Administrator, OAR.*

[FR Doc. 90–29262 Filed 12–13–90; 8:45 am]
BILLING CODE 3510–12–M

## Marine Mammals; Appl. for Modification; Dr. Daniel Costa (P227H)

Notice is hereby given that Dr. Daniel P. Costa, University of California, Institute of Marine Sciences, 100 Shaffer Road, Santa Cruz, CA 95060, has requested a modification to Permit No. 700, issued on March 23, 1990 (55 FR 12254), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 700 authorizes the take and importation of blood, milk and tissue samples from Australia, New Zealand, Mexico, Argentina, Ecuador, and Chile from 12 species of pinniped: California sea lion (*Zalophus californianus*), Galapagos fur seal (*Zalophus californianus wollebaeki*), Australian sea lion (*Neophoca cinerea*), Southern sea lion (*Otaria flavescens*), Hookers sea lion (*Phocartos hookeri*), Galapagos fur seal (*Artocephalus galapagoensus*), Guadelupe fur seal (*A. townsendi*), Antarctic fur seal (*A. gazella*), South American fur seal (*A. australis*), New Zealand fur seal (*A. forsteri*), South African fur seal (*A. pusillus pusillus*), and Australian fur seal (*A. pusillus doriferus*).

The Permit Holder requests authorization to add the Southern Elephant Seal (*Mirounga leonina*) and the Weddell seal (*Leptonychotes weddelli*) to the list.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., suite 7324, Silver Spring, MD 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: December 7, 1990.

Richard H. Schaefer,
*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–29279 Filed 12–13–90; 8:45 am]
BILLING CODE 3510–22–M

## Marine Mammals; Modification of Permit; Marine World Foundation

**Modification No. 1 to Permit No. 632**

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 632 issued to the Marine World Foundation, Marine World Parkway, Vallejo, California 94589, on April 27, 1988 (55 FR 15864) is modified in the following manner:

Section B.6 is deleted and replaced by:

6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1992. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: December 7, 1990.

Richard H. Schaefer,
*Director, Office of Fisheries Management and Conservation, National Marine Fisheries Service.*

[FR Doc. 90–29280 Filed 12–13–90; 8:45 am]
BILLING CODE 3510–22–M

## Endangered Marine Mammals

**AGENCY:** National Marine Fisheries Service, NOAA, DOC.

**ACTION:** Request for modification to scientific research permit no. 719.

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**SUMMARY:** Notice is hereby given that Dr. Walter H. Munk, Scripps Institution of Oceanography (A-025), Institute of Geophysics and Planetary Physics, La Jolla, California 92093, has requested a modification to NMFS Permit No. 719, pursuant to the provisions of § 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and § 220.24 of the Regulations Governing Endangered Species (50 CFR part 217-222).

Permit No. 719, issued December 7, 1990, and published in the Federal Register on December 13, 1990, authorized taking by harassment no more than 100 pinnipeds or 10 cetaceans, all sizes, sex and age classes of baleen whales, killer whales, dolphins, porpoises, beaked whales, Antarctic fur seals, southern elephant seals, and adult male sperm whales, in the vicinity of Heard Island in the Southern Indian Ocean. The marine mammal research project is in conjunction with the project "Acoustic Global Warming Feasibility Experiment," to measure global ocean warming in the presence of very large natural ocean variability.

This modification would add to the list of marine mammals to be harassed the following additional species: spectacled porpoise (*Australophocoena dioptrica*); strap-toothed whale (*Mesoplodon layardi*); Andrew's beaked whale (*M. bowdoini*); Arnoux's beaked whale (*Berardius arnuxii*); and hourglass dolphin (*Lagenorhynchus cruciger*). In addition, the Permit Holder requests authority to take by harassment additional species of marine mammals that have previously not been reported in the study area, but which may be sighted in the vicinity of Heard Island during the experiment.

Modification is requested to include all marine mammals that occur in the ensonified area (to include all surface waters to waters of 80m depth where sound levels exceed 120 dB re 1 microPa). Sound levels are expected to attenuate to 120 dB or less at depths between the surface and 80m within 100 km of the sound source. Additionally, modification is requested to take a maximum of 15,000 Antarctic fur seals, 100,000 southern elephant seals, 8000 sei whales, 42,100 fin whales, 103,300 minke whales, 54,700 killer whales, 1500 blue whales, 1000 humpback whales, 1000 southern right whales, 23,700 sperm whales, and an unspecified number of other species. Take numbers are not specified for those species where population estimates for sectors III and IV of the southern ocean do not exist. The Permit Holder wishes to note that they do NOT anticipate actually harassing this large number of animals. Rather, the above numbers represent their best estimates of the number of animals from each species in sectors III and IV of the southern ocean. Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All Statements and opinions contained in this modification request are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Administrator, Western Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822-2396.

Dated: December 11, 1990.

David S. Crestin,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 90-29370 Filed 12-13-90; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** January 14, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** On August 3 and October 19, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices [55 FR 31620 and 42428] of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 52-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:



Bag, Storage, 1430-01-133-8435, (Remaining Government Requirement)

Strap, Webbing, 1430-01-174-5095, 4935-00-922-2480, (Remaining Government Requirement)

Strap Set, Webbing, 4935-00-824-5409, (Remaining Government Requirement)

Strap, Set, 4935-00-888-7206, (Remaining Government Requirement)

Strap Assembly, 4935-00-888-7207, (Remaining Government Requirement)

Liner, Parka, Night Camouflage, 8415-01-102-4481, 8415-01-102-4482, 8415-01-102-4483, 8415-01-102-4484, 8415-01-102-4485.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E. R. Alley, Jr.,

*Deputy Executive Director.*

[FR Doc. 90-29368 Filed 12-13-90; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** January 14, 1991.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to the Procurement List:

Janitorial/Custodial, Naval Aviation Supply Officer, Buildings 3A thru D, 4A, 5A, 5B, 36/1, 36/2, 36/3 and 11 Trailers, Philadelphia, Pennsylvania

Mailroom Service, Food and Drug Administration, Federal Building 8, 200 C Street SW., Washington, DC.

E.R. Alley, Jr.,

*Deputy Executive Director.*

[FR Doc. 90-29369 Filed 12-13-90; 8:45 am]

BILLING CODE 6820-33-M

## COMMODITY FUTURES TRADING COMMISSION

### New York Mercantile Exchange: Proposed Amendments Relating to Maximum Daily Price Fluctuation Limits for Crude Oil, Gasoline and Heating Oil Futures and Option Contracts and the Propane Futures Contract and Amendments to the Strike Price Listing Procedure for the Crude Oil Option Contract

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The New York Mercantile Exchange (NYMEX or Exchange) has submitted proposed amendments that would revise the maximum daily price limit provisions of the Exchange's light sweet crude oil, New York Harbor heating oil, New York Harbor unleaded regular gasoline and liquefied propane futures (collectively, energy futures) contracts by: (1) Setting a price limit for the nearby contract month, which now trades without price limits, (2) raising the existing price limit for the second nearby contract month of each of the energy futures to the same level proposed for the nearby contract month, and (3) establishing procedures for one-hour trading halts applicable to all listed futures and option months for a particular energy commodity, when the proposed price limit for the nearby or second nearby futures contract month for that commodity is hit. In addition, the proposal would amend the strike-price listing procedures for the crude oil option contract to provide that, in addition to the strike prices listed pursuant to the existing rules at $1.00-per-barrel increments, up to three additional strike prices, both above and below the relevant futures settlement price, will be listed at $5.00-per-barrel increments.

In accordance with Section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96(b), 55 FR 35897 (Sept. 4, 1990), the Director of the Division of Economic Analysis (Division) of the Commodity Futures Trading Commission (Commission) has determined, on behalf of the Commission, that publication of the proposed rule amendments is in the public interest and will assist the Commission in considering the views of interested persons. On behalf of the Commission, the Division is requesting comment on this proposal.

**DATES:** Comments must be received on or before January 14, 1991.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed changes to the maximum daily price limits for the NYMEX energy futures and option contracts or the changes to the strike price listing procedures for the crude oil option contract.

**FOR FURTHER INFORMATION CONTACT:** Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** For each subject futures contract, the existing rules establish a system of daily maximum price limits and provisions for expansion of such limits, except the rules further specify that "there shall be no maximum limit on price fluctuations for the contract nearest delivery" (*i.e.*, the nearby month). For all non-nearby months, existing rules provide for base price limits equal to $1.50 per barrel for crude oil futures and $0.04 per gallon for heating oil, gasoline and propane futures. Existing rules provide for expansion of the daily limit to $3.00 per barrel for crude oil and $0.06 per gallon for the three other subject futures contracts. With respect to the NYMEX's crude oil, heating oil and gasoline futures option contracts, no price limits are specified.

The Exchange is proposing to establish a price limit for the nearby future for the subject energy futures contracts and to raise the limit applicable to the second nearby futures month. The existing expansion provisions generally will not be changed under the proposal, except that they will no longer apply to the second nearby future, and the expanded limits will be higher in the event of trading halts as discussed below. The NYMEX's existing base daily price limits and the maximum expanded limits as well as the proposed base and expanded limits for the subject energy contracts are shown below.

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DAILY BASE (EXPANDED) PRICE LIMITS*

[In dollars]

| Futures contract | Existing limits (all but nearby) | Proposed limits | |
|---|---|---|---|
| | | Nearby & 2nd nearby | All other months |
| Crude Oil | 1.50 (3.00) | 7.50 | 1.50 (3.00) (7.50**) |
| NY Heat Oil | 0.04 (0.08) | 0.20 | 0.04 (0.08) (0.20**) |
| NY Gasoline | 0.04 (0.08) | 0.20 | 0.04 (0.08) (0.20**) |
| Propane | 0.04 (0.08) | 0.20 | 0.04 (0.08) (0.20**) |

*Limits are stated in terms of dollars per barrel for crude oil and dollars per gallon for heating oil, gasoline and propane.
**These higher expanded limits are applicable only if a trading halt(s) is declared for the future contract. Otherwise, the expanded limit remains the same as that provided under existing rules.

In addition to the prosed changes in the daily price limits for the nearby and second nearby futures months, the Exchange proposes to adopt procedures by which a one-hour trading halt would be instituted. Such a cessation of trading would be based exclusively upon price movements for these two nearby futures (these two futures are termed the "special limit month contracts" in the proposed rules). Whenever there are trades, bids or offers in the nearby or second nearby futures months which are for a period of five minutes exclusively at the proposed limit ($7.50 for crude oil and $0.20 for heating oil, propane, and gasoline), trading in all futures and option months for that commodity would cease for one hour commencing two minutes after the end of this five-minute period.[1] Trading in all months would resume after the one-hour trading halt, and trading in all futures months would then be subject to the same limit ($7.50 for crude oil and $0.20 for gasoline, heating oil and propane) that applied only to the nearby and second nearby futures prior to the halt.[2] For the nearby and second nearby months, as well as for all other months, the permissible price range after the first halt will be based on the maximum (in the case of price increases) or minimum (in the case of price decreases) price allowed for that month prior to the halt.

There are no provisions for a second trading halt in those cases where prices continue to move in a single direction and hit the limit. Therefore, following a first trading halt, for the remainder of that day, prices can continue to move in the same direction only as much as the applicable limit for each contract month that was established after the first trading halt.

The NYMEX also has proposed to adopt procedures for a second halt in those cases where there is a significant reversal of prices following a first trading halt. Specifically, after the first halt, if prices reverse to such an extent that the nearby or second nearby futures month trades, is bid or is offered for a period of five minutes at the maximum or minimum allowable price (which is the same as the level of the prior day's settlement price), trading in all futures and option months for that commodity again would cease for a second one-hour period commencing two minutes after the end of the five-minute period.[3] After the second one-hour halt, trading in the futures and option contracts for that commodity would them resume. The same price limits of $7.50 for crude oil and $0.20 for heating oil, gasoline and propane applicable after the first halt will continue to apply to all months after the second halt. For the nearby and second nearby months, the permissible price range will be based on the futures settlement price for the previous day, *i.e.*, the original price limit basing points. For all other months, the permissible price range will continue to be the same price range established after the first halt. Trading for the remainder of the day after the second halt would be subject to the price limits noted immediately above, as there is no provision for a third halt under the proposal.

As noted above, under the proposal the Exchange's existing price-limit expansion provisions would be altered in the event of a trading halt.[4]

Specifically, the price limit of $7.50 per barrel for crude oil and $0.20 per gallon for heating oil, gasoline and propane above or below the previous day's settlement price will remain in effect for all deferred months until the day following two consecutive trading sessions in which the futures settlement price fluctuates by less than the price limits that were in effect at the time when the trading halt took effect.

Under the proposal, for each energy futures contract if, after the resumption of trading following a first or second halt, there is less than one-half hour prior to the regularly scheduled closing time, the trading hours for that commodity will be expanded such that there shall be a half hour of trading after trading is resumed. Also, if a halt is imposed during the closing range on the last day of trading in the expiring contract month, the closing range for that contract shall include the portion of the closing range prior to the halt plus the half hour of trading after trading is resumed.

The NYMEX justified its price limit and trading halt proposal by noting that:

> These proposed amendments to energy futures contracts are primarily intended to improve the Exchange's ability to fulfill its price discovery function. Due to current energy market conditions, the Exchange seeks to prepare for the potential that there may be periods of unprecedented market turbulence. Recently, for instance, there has been a substantial increase in price volatility. This has caused energy contracts to reach their price limits on numerous occasions since August 2, 1990. With prices so often being locked at their limit, it has occasionally become difficult for market participants to be able to gauge futures fundamental price levels. This lack of price information in turn interferes with the ability of market participants to assess their overall risk exposure, especially those with positions and commitments in underlying cash markets.
> * * * [T]he Exchange seeks under this proposal to institute temporary, intra-day trading cessations during trading sessions of extraordinary volatility. The Exchange recognizes that during such trading sessions, a temporary one-hour trading cessation could allow for more orderly trading if market participants are given some additional time to assess the flow of information coming into the market. Upon the resumption of trading, the Exchange seeks to place an absolute one-day price limit on its energy contracts to minimize financial strain that could ensue on such days from the necessity to meet variation margin requirements. Under this proposed new rule, the temporary trading cessations will also help insure the financial integrity of its energy contracts by allowing its Compliance and Clearing Departments time to ascertain the degree of financial strain various market participants are being subjected to. In addition, it would provide opportunity for clearing members to contact customers pertaining to the financing agencies; the Exchange to contact appropriate Government agencies; and the Exchange and traders and brokers to prepare staffs for a potential increase in trading and order flow.
>
> In addition, the special expansion of price limits on the Exchange's more distant month contracts on days when the two front month contracts attain their special limits, would allow for a more equitable mark-to-market settlement process. The current structure of limits can act to incur administrative burdens on spread traders, who may, for example, incur losses on their spot month positions, yet are not able to recognize gains on their offsetting back month positions.
> * * * When prices are restricted from moving freely, options markets also become less than perfect substitutes for hedging price risks. * * * If the underlying futures market is locked at its limit, * * * market-makers are forced to use the spot-month futures contract to hedge their own risk exposure. Consequently, they incur a basis risk that will be at least partially offset through wider bid/ask spreads. This in turn results in more expensive, less liquid options markets to hedge in the back-months.
> * * * This proposal also places restrictions on price movements in the event either of the Special Limit Month contracts experiences sharp fluctuations in price in both directions. . . . Under such circumstances, the Exchange chooses to reduce the potential for self-reinforcing price movements in a time of rapid and severe volatility.

With regard to the listing of crude oil option strike prices, current NYMEX Rule 310.05 specifies the following initial strike prices (for both puts and calls) listed in increments of $1.00 per barrel: One strike price nearest the previous day's settlement price for the underlying futures contract, plus the next five higher and lower strike prices. In addition, these rules provide that after initial listing the Exchange will maintain five strike prices above and below the at-the-money strike price.

The Exchange is proposing to amend these rules to provide for up to three additional crude oil strike prices at $5.00 intervals above and below the previous day's settlement price. These strikes will be always at whole intervals of $5.00.

The NYMEX stated in its submission that:

> Under the current listing rules, newly added strike prices can at most be $2.50 above and below the last settlement price. While the Exchange believes that this rule has served the needs of most market participants, current market conditions have apparently led to the demand for strike prices which entail a much higher degree of dispersion. For example, currently on the NYMEX, strike prices $40.00 or greater account for only about 3.5% of the total number of option series for crude oil. However, open-interest on these contracts represents 8.4%. If only call options are taken into account, the proportion of open-interest for strike prices above $40 rises to 16% of the total, even though these options are currently deep out-of-the-money.
>
> Since August 2, 1990, implied volatilities of these options have risen dramatically. For example, on July 30, 1990, implied volatilities on at-the-money options were about 27%. By November 7, these had risen to 182%. One of the major impacts of such a change in the trading environment is that options prices have risen in proportion * * *.
>
> By purchasing a deep out-of-the-money option, * * * the trader can considerably lower his insurance premium * * *.

The Exchange proposes to apply all of the proposed amendments to existing and newly listed contracts on the business day following the day of Commission approval.

The Division is requesting comment on the proposed price limit provisions and trading halt procedures on the energy futures and option contracts and the proposed strike price provision for the crude oil option contract. Also, the Division requests comment on the appropriateness of the NYMEX's proposed implementation plan.

Copies of the proposed amendments are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the amended rules can be obtained through the Office of the Secretariat by mail at the above address or phone at (202) 254-6314.

Other materials submitted by the NYMEX in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the amended rules, or with respect to other materials submitted by the NYMEX in support of the proposals, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on December 11, 1990.

Gerald Gay,

*Director.*

[FR Doc. 90-29486 Filed 12-13-90; 8:45 am]

BILLING CODE 6351-01-M

[1] The only exception to this proposed trading halt provision is that, if the price limit is hit during the closing range on any day other than the last trading day in the expiring future, there will be no cessation of trading for that day.

[2] However, if trading has been halted sometime during a day that is the last trading day for an expiring future, the price limit in effect for that expiring contract month will be removed during the last half hour of trading.

[3] Except that if this price limit is hit during the closing range on any day other than the last day of trading for an expiring future, then there will be no cessation of trading.

[4] For the nearby and second nearby months, the same base price limits ($7.50 for crude oil and $0.20 for heating oil, gasoline and propane) would apply on all days whether or not a halt occurs—*i.e.*, there is no expansion provision for these two nearby months.



## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form and Applicable OMB Control Number:* DoD National Media Pool Accreditation Form, SD Form X079 and DoD National Media Pool Personal Data Form, SD Form X080 OMB Control number is pending.

*Type of Request:* Existing Collection in Use Without an OMB Control Number.

*Average Burden Hours/Minutes per Response:* .23 hours.

*Responses per Respondent:* 1.

*Number of Respondents:* 84.

*Annual Burden Hours:* 55.

*Annual Responses:* 84.

*Needs and Uses:* The Assistant Secretary of Defense (Public Affairs) is responsible for operating the DoD National Media Pool. This pool of media representatives, comprised of radio, TV, print, and photographic journalists, is designed to be deployed to any location in the world at the direction of the President or the Secretary of Defense to provide media coverage of U.S. military contingency operations. Each quarter, nine national media organizations are placed on an "alert list" to provide journalists should there be a need to deploy the media pool during that quarter. The information collected allows the Media Pool Plans Officer to review passport and inoculation information for each representative identified by the respective bureau chief prior to activation of the media pool, and allows the Media Pool Administrative NCO to prepare orders and accreditation documents during processing immediately prior to deployment of the pool.

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*Affected Public:* Business or other for profit.

*Frequency:* Quarterly.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

Dated: December 10, 1990.

L.M. Bynum,

*Alternate Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29294 Filed 12-13-90; 8:45 am]

BILLING CODE 3810-01-M

## Office of the Secretary

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1991 Updates

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of updated mental health per diem rates.

**SUMMARY:** This notice revises the updated FY 1991 mental health per diem rates of the CHAMPUS Mental Health Per Diem Payment System that were established in a previous notice which was published on October 18, 1990.

**EFFECTIVE DATES:** The rates contained in this notice are effective for services occurring on or after October 1, 1990.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900. For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Stan Regensberg, Office of Program Development, OCHAMPUS, telephone (303) 361-3572.

To obtain copies of this document, see the **"ADDRESSES"** section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on pages 34285 through 34294 on September 6, 1988, set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. Included in this final rule were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rule, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. In the **Federal Register** of September 4, 1990, on page 36078, Medicare recommended to Congress an update factor of 5.3 percent for federal fiscal year 1991 for hospitals and units excluded from the prospective payment system. In a notice published in the **Federal Register** on October 18, 1990, on pages 42241 and 42242, CHAMPUS stated that the Medicare recommended update factor of 5.3 percent would be adopted unless a different percent was finally adopted in the Federal budget for fiscal year 1991. The approved FY 1991 budget has caused the Medicare update factor to be reduced to 4.2545 percent. Therefore, as previously stated in the notice of October 18, 1990, the update factor of 4.2545 percent is the one which will be used by CHAMPUS. This means, that for all days of care rendered under the mental health per diem payment system on or after October 1, 1990, reimbursement is to be made on per diems updated from FY 1990 by the update factor of 4.2545 percent. Hospitals and units with hospital-specific rates (hospitals and units with high CHAMPUS volume) will have their FY 1990 CHAMPUS per diem rates updated by 4.2545 percent for FY 1991.

The following reflect an update of 4.2545 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW CHAMPUS VOLUME

| United States Census Region | Rate [1] |
|---|---|
| Northeast | |
| New England | $434 |
| Mid-Atlantic | 415 |
| Midwest: | |
| East North Central | 360 |
| West North Central | 340 |
| South: | |
| South Atlantic | 429 |
| East South Central | 455 |
| West South Central | 390 |
| West: | |
| Mountain | 369 |
| Pacific | 460 |

[1] The wage portion of the rate, subject to the area wage adjustment, is 71.40 percent.

*Beneficiary Cost-Share:* Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $114 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1990.

*Cap Amount:* Cap amount for hospitals and units with high CHAMPUS volume is $641 per day.

The CHAMPUS contractors were previously instructed to update FY 1990 per diem rates using the 5.3 percent factor for services rendered on or after October 1, 1990. They have not been advised of the revised update factor and the revised per diem rates. They have been instructed to begin processing claims at the revised rates immediately, and to identify all claims that were paid based on the update factor of 5.3 percent for reprocessing and/or recoupment.

Dated: December 10, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29290 Filed 12-13-90; 8:45 am]

BILLING CODE 3810-01-M

## DIA Advisory Board Meeting

**AGENCY:** Defense Intelligence Agency Advisory Board.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

**DATES:** Wednesday and Thursday, 30-31 January 1991 (8 a.m. to 5 p.m.) each day.

**ADDRESSES:** The DIAC, Bolling AFB, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical intelligence matters.

Dated: December 10, 1990.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29291 Filed 12-13-90; 8:45 am]

BILLING CODE 3810-01-M



## Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 5, 1991; Tuesday, March 12, 1991; Tuesday, March 19, 1991; and Tuesday, March 26, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: December 10, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29292 Filed 12-13-90; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Privacy Act of 1974; Amend Record Systems

**AGENCY:** Department of the Army, DOD.

**ACTION:** Amend Privacy Act Record Systems.

**SUMMARY:** The Department of the Army proposes to amend sixteen record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

**DATES:** The proposed action will be effective without further notice on January 14, 1991 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP), Ft. Huachuca, AZ 85613-5000.

**SUPPLEMENTARY INFORMATION:** The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22000, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, June 30, 1986
51 FR 30900, Aug 29, 1986
51 FR 40479, Nov 7, 1986
51 FR 44351, Dec 9, 1986
52 FR 11847, Apr 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul 9, 1987
52 FR 32329, Aug 27, 1987
52 FR 43932, Nov 17, 1987
53 FR 12971, Apr 20, 1988
53 FR 16575, May 10, 1988
53 FR 21500, Jun 8, 1988
53 FR 28247, Jul 27, 1988
53 FR 28249, Jul 27, 1988
53 FR 28430, Jul 28, 1988
53 FR 34576, Sep 7, 1988
53 FR 49586, Dec 8, 1988
53 FR 51560, Dec 22, 1988
54 FR 10034, Mar 9, 1989
54 FR 11790, Mar 22, 1989
54 FR 14835, Apr 13, 1989
54 FR 46945, Nov 8, 1989
54 FR 50268, Dec 5, 1989
55 FR 13935, Apr 13, 1990
55 FR 21697, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct 15, 1990
55 FR 45797, Nov 6, 1990
55 FR 46708, Nov 6, 1990
55 FR 46871, Nov 21, 1990
55 FR 48078, Nov 21, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below followed by the record system notices published in their entirety, as amended.

Dated: December 10, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Amendments

**A0027DAJA**

*System name:*

Civil Process Case Files (50 FR 22141 May 29, 1985)

*Changes:*

* * * * *

Authority for maintenance of the system:

Delete entry and replace with "10 U.S.C. 3013; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement)."

*Storage:*

Add "computer disk-packs and computerized database" to the end of the entry.

* * * * *

**A0027DAJR**

**SYSTEM NAME:**

Civil Process Case Files.

**SYSTEM LOCATION:**

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, APO New York 09403-5000; segments exist at other Army Judge Advocate Offices in the Federal Republic of Germany. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom services is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between U.S. Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement).

PURPOSE(S):

To ensure that U.S. Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of U.S. Government employees are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Defense military and civilian personnel. Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in steel filing cabinets; computer disk-packs and computerized database.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefore in the performance of their duties. Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; German authorities; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–1DAJA

*System name:*

General Legal Files (50 FR 22135, May 29, 1985)

*Changes:*

* * * * * *

*Categories of records in the system:*

At the end of the second paragraph add the words "matters pertaining to attorney professional responsibility inquiries."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add the following paragraphs "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system.

* * * * *

*Retention and disposal:*

Delete the words "Office of the General Counsel OSA".

* * * * *

A0027–1DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of nonappropriated fund instrumentalities including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3037 and 3072.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General and Office of the Chief Counsel, Office, Chief of Engineers are permanent; at all other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (1), (2), (5), (6), and (7) as applicable.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027–3DAJA

*System name:*

Legal Assistance Files (50 FR 22136, May 29, 1990)

*Changes:*

* * * * * *

*System location:*

Change the words "Legal Assistance Office" to "Army Legal Assistance."

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Delete entry and replace with "Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system."

* * * * *

*Retention and disposal:*

Delete the words "by shredding."

*System manager(s) and address:*

Change the words "Legal Assistance Office" to "Army Legal Assistance."

* * * * *

A0027–3DAJA

SYSTEM NAME:

Legal Assistance Files

SYSTEM LOCATION:

Army Legal Assistance, Office of the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200; Staff Judge Advocate offices at Army commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty or retired military personnel and/or their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade/rank, SSN, organization, and details of problem/incident/matter on which legal assistance is sought. Records may be in the form of correspondence, memoranda, opinions of legal assistance officers, and may include interviews.

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SUMMARY of problems considered, advice rendered, referrals made, and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To respond to inquiries and settle issues; for management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By client's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Destroyed 1 year from the closing date of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Army Legal Assistance, Office of the Judge Advocate General, HQDA (DAJA-LA), Washington, DC 20310-2200; and the Staff Judge Advocates of organizations listed in the address directory published as an appendix to the Army's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, SSN, and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, SSN, and any details that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027-10aDAJA

*System name:*

Prosecutorial Files (50 FR 22135, May 29, 1985).

*Changes:*

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system."

* * * * *

A0027-10aDAJA

SYSTEM NAME:

Prosecutorial Files.

SYSTEM LOCATION:

Decentralized at Staff Judge Advocate Offices. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is pending trial by courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Witness statements; pretrial advice; documentary evidence; exhibits, evidence of previous convictions; personnel records; recommendations as to the disposition of the charges; explanation of any unusual features of the case; charge sheet; and criminal investigation reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11476, June 19, 1969, Manual for Courts-Martial, United States; as revised by Executive Order 12473, effective August 1, 1984.

PURPOSE(S):

To prepare for prosecution before courts-martial.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in file cabinets accessible only to authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2210.

Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished correspondence to the individual, other personnel identifying data that would assist in locating the records. The inquiry must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2210.



Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished correspondence to the individual, other personal identifying data that would assist in locating the records. The inquiry must be signed.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official Army records and reports, investigative documents, law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. § 552a(j)(2) as applicable.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027-10bDAJA

*System name:*

Courts-Martial Files (50 FR 22139, May 29, 1985)

*Changes:*

* * * * *

Categories of individuals covered by the system: Delete entry and replace with "All Army personnel tried by courts-martial and certain trial or appellate participants such as counsel and military judges."

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Subparagraph which begins "Information from these records * * *", in the last line, change the words "criminal of civil law" to "criminal or civil law."

Add the following paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system."

* * * * *

*Storage:*

Add to the end of the entry "; and on a computer database."

*Retention and disposal:*

In lines 2 and 3, change the "1 to 4" to "1 to 5"; the words "bad conduct" to "bad-conduct"; add a comma after "MD"; change the word "Article(s)" to "Articles." At the end of the paragraph, add the words "or in the computer database."

* * * * *

A0027-10bDAJA

SYSTEM NAME:

Courts-Martial files

SYSTEM LOCATION:

U.S. Army Legal Services Agency, Falls Church, VA 22041-5013; Washington National Records Center, Suitland, MD 20409; National Personnel Records Center, St. Louis, MO 63132; and offices of Staff Judge Advocates of subordinate commands and installations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army personnel tried by courts-martial and certain trial or appellate participants such as counsel and military judges.

CATEGORIES OF RECORDS IN THE SYSTEM:

Certain general and all special (BCD) courts-martial records of trial include a verbatim transcript of the trial and allied papers relating to the charged offenses and legal review of the case. General courts-martial examined pursuant to Article 69 and special (non-BCD) and summary courts-martial records of trial include only a summarized transcript of the trial as well as allied papers relating to the charged offenses, but do not necessarily include all records of review pursuant to Articles 69 or 73, Uniform Code of Military Justice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 801-940 (Uniform Code of Military Justice) and Executive Order 9397.

PURPOSE(S):

This record system is maintained because a verbatim transcript of all general courts-martial trials (except those examined pursuant to Article 69) and special courts-martial trials in which a bad conduct discharge (BCD), was approved, and a summarized transcript of all other courts-martial proceedings is required by law.

Records of trial are required by each office and individual responsible for reviewing the legality of the courts-martial findings and sentence, determining whether clemency consideration is warranted, and answering inquiries from offices and individuals concerning the status of a particular case.

Statistical data obtained from records of trial are used in determining jurisdiction and Army-wide trends on disciplinary infraction in the Armed Forces and serve as a guide for officials responsible for making local and Army-wide policy decisions regarding military justice activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Courts-martial records reflect criminal proceedings ordinarily open to the public; therefore, they are normally releasable to the public pursuant to the Freedom of Information Act.

Information from these records may be disclosed to the Department of Justice, the Veterans Administration, and federal, state, and local law enforcement agencies for determination of rights and entitlements of the individuals concerned and for use in the enforcement of criminal or civil law.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders; index cards; computer disk-packs; courts-martial coding sheets; and on a computer database.

RETRIEVABILITY:

By individual's name and Social Security Number, by courts-martial number assigned to the case.

SAFEGUARDS:

All records are protected by systems of personnel screening and hand receipts. During non-duty hours, military police or contract guard patrols ensure protection against unauthorized access.

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**RETENTION AND DISPOSAL:**

With respect to each courts-martial, there is an original record and from 1 to 5 copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows:

All records of trial by general courts-martial and those special courts-martial records in which a bad-conduct discharge (BCD) was approved are retained in the Office of the Clerk of the Court, US Army Judiciary, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, Suitland, MD, for permanent storage.

Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for 1 year after completion of supervisory review. Thereafter the records are held for 2 years in the record holding area or overseas records center. Records are then sent to National Personnel Records Center (Military Records), St. Louis, MO 63132, where they are retained for 7 years. Thereafter, the records are destroyed and the remaining evidence of conviction is the special (non-BCD) and summary courts-martial promulgating orders maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Articles 69 or 73, UCMJ.

The original reviews of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials, US Army Judiciary, Falls Church, VA. They are retained an additional 7 years at the Washington National Records Center, Suitland, MD, and destroyed.

Statistical data obtained from general and special (BCD) permanently on some of the master index cards which serve as a means of listing records of trial sent to storage or in the database.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

**NOTIFICATION PROCEDURE:**

Requests from individuals as to whether there are any general or special [BCD] courts-martial records in the system pertaining to them should be addressed to the Clerk of the Court (JALS–CC), US Army Judiciary, Nassif Building, Falls Church, VA 22041–5013.

Requests for information as to special (non-BCD) and summary courts-martial records should be addressed to the staff judge advocate of the command where the record was reviewed or, if no longer there, to the National Personnel Records Center (Military Records), 9700 Page Boulevard, St. Louis, MO 63132–5200.

Requests for information concerning reviews pursuant to Articles 69 or 73, UCMJ, should be addressed to the Chief, Examination and New Trials Division, US Army Judiciary, Nassif Building, Falls Church, VA 22041–5013.

Written requests should include individual's full name, SSN, the record file number if available, and any other personal information which would assist in locating the records. Personal visits may be made to the Office of the Clerk of the Court or Chief, Examination and New Trials Division; individual must provide identification such as a valid driver's license or verbal information sufficient to permit locating the records.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this system should address inquiries to the Clerk of the Court (JALS–CC), U.S. Army Judiciary, Nassif Building, Falls Church, VA 22041–5013, if the type of courts-martial or reviewing command is unknown.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information from almost any source may be included in the record if it is relevant and material to courts-martial proceedings.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

**A0027–10cDAJA**

*System name:*

Witness Appearance Files (52 FR 32331, Aug. 27, 1987)

*Changes:*

* * * * *

*System location:*

Change to read, "Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210."

*Categories of individuals covered by the system:*

Delete entry and replace with "Present and former military personnel and civilian employees requested to appear as witnesses before civil courts, administrative tribunals, and regulatory bodies."

*Categories of records in the system:*

Delete entry and replace with "Name and address of the witness and official requesting same; name and location of trial or other proceeding."

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add the following paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

* * * * *

*Record source categories:*

Change the words "opposing Counsel" to "civilian counsel".

* * * * *

**A0027–10cDAJA**

**SYSTEM NAME:**

Witness Appearance Files.

**SYSTEM LOCATION:**

Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Present and former military personnel and civilian employees requested to appear as witnesses before civil courts, administrative tribunals, and regulatory bodies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name and address of the witness and official requesting same; name and location of trial or other proceeding.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.



**PURPOSE(S):**

To locate and provide witnesses to U.S. attorneys conducting trials on behalf of the Department of the Army.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.'

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and magnetic tapes/discs.

**RETRIEVABILITY:**

Retrieved by individual's surname.

**SAFEGUARDS:**

Records are accessible only to authorized personnel who are properly instructed in the permissible use thereof; building housing records are protected by security guards.

**RETENTION AND DISPOSAL:**

Destroyed after 2 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Judge Advocate General, Chief, Litigation Division (DAJA–LT), Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide his/her full name, current address and telephone number, case number appearing on correspondence, and any other personal identifying data that will assist in locating the record.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this record system should address inquiries to the Judge Advocate General, Chief, Litigation Division (DAJA–LT), Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide his/her full name, current address and telephone number, case number appearing on correspondence, and any other personal identifying data that will assist in locating the record.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, Army records and reports, Department of Justice, U.S. attorneys, civilian counsel, and similar pertinent sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0027–20aDAJA**

*System name:*

US Army Claims Service Management Information System (50 FR 22136, May 29, 1985)

*Changes:*

* * * * *

*Purpose(s):*

In the first sentence, after the word "against" add "or in favor of."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

In the second paragraph change the words "assistance to" to "assistance in". After the word "against" add "or in favor of."

In the third paragraph after the words "US Claims" add "Court."

Delete eighth paragraph and replace with "Civilian and Government experts for assistance in evaluating the claim. Private insurers with a legal interest in the same case."

Add three new paragraphs: "Potential joint tortfeasors or their representatives for the purpose of prosecuting or defending claims for contribution or indemnity.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The Army's "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this record system."

* * * * *

*Retrievability:*

After the word "name" add the words "Social Security Number or claim number."

* * * * *

*Retention and disposal:*

Delete entry and replace with "Destroyed when no longer needed (claims reports); after 5 years (claims journals); after 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files)."

*Notification procedure:*

After "20755" add "–5360."

* * * * *

**A0027–20aDAJA**

**SYSTEM NAME:**

U.S. Army Claims Service Management Information System

**SYSTEM LOCATION:**

U.S. Army Claims Service, Office of the Judge Advocate General, ATTN: JACS–Z, Ft. Meade, MD 20755–5360. Segments exist at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 939, 2733, 2734, 2734A, 2734B, 2737; 28 U.S.C. 2671–2680; 31 U.S.C. 3711 and 3721; 32 U.S.C. 715; Executive Order 9397.

**PURPOSE(S):**

To develop and preserve all relevant evidence about incidents which generate claims against or in favor of the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims

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operations at subordinate commands worldwide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Internal Revenue Service for tax purposes.

To the Department of Justice for assistance in deciding disposition of claims filed against or in favor of the Government and for considering criminal prosecution, civil court action or regulatory orders.

To the U.S. Claims Court and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party.

To Foreign governments, for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements.

To the State governments for use in defending or prosecuting claim by the state or its representatives.

To the Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation.

To civilian and Government experts for assistance in evaluating the claim.

To the Office of Management and Budget for preparation of private relief bills for presentation to the Congress.

To Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract.

To Federal and state workmen's compensation agencies for use in adjudicating claims. To private insurers with a legal interest in the same case.

To potential joint tortfeasors or their representatives for the purpose of prosecuting or defending claims for contribution or indemnity.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, paper records in file folders, computer disc.

RETRIEVABILITY:

By last name, Social Security Number, or claim number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal business hours.

RETENTION AND DISPOSAL:

Destroyed when no longer needed (claims reports); after 5 years (claims journals); after 6 years, 3 months (investigative reports, except those relating to medical malpractice); or 10 years (medical malpractice investigative reports, claims files)."

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Commander, U.S. Army Claims Service, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data which would assist in determining location of the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves in this system of records should write to the Commander, U.S. Army Claims Service, Fort Meade, MD 20755–5360.

Individual should provide full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data which would assist in determining location of the records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, state, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

**A0027–20bDAJA**

*System name:*

Tort Claim Files (52 FR 18800, May 19, 1987]

*Changes:*

* * * * *

*System location:*

Delete entry and replace with "Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210."

* * * * *

*Purpose(s):*

Delete entry and replace with "To defend the Army in civil suits filed against it in state or federal courts."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

* * * * *

**A0027–20bDAJA**

SYSTEM NAME:

Tort Claim Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed a complaint against the U.S. Army in the U.S. District Court under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material, including claims investigation, reports and files involved in representing the U.S. Army in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 2671–2680.



PURPOSE(S):

To defend the Army in civil suits filed against it in state or federal courts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is disclosed to the Department of Justice and United States Attorneys' offices handling the particular case. Most of the information is filed in some manner in the courts in which the litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are available to individuals with access to a law library.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

See "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.]

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

Retrieved by claimant's surname and court docket number.

SAFEGUARDS:

Records are maintained in file cabinets within secured buildings and available only to designated authorized individuals who have official need for them.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves exists in this record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquires to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

**A0027–20cDAJA**

*System name:*

Army Property Claim Files (52 FR 18800, May 19, 1987)

*Changes:*

* * * * *

*System location:*

Delete entry and replace with "Staff Judge Advocate Offices at Army commands, field operating agencies, installations, and activities. A segment of the system is locatad at U.S. Army Claims Service, Ft. Meade, MD 20755–5300."

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

* * * * *

*Retrievability:*

After the word "surname" add "Social Security Number".

Safeguards:

Delete last sentence.

* * * * *

**A0027–20cDAJA**

SYSTEM NAME:

Army Property Claim Files

SYSTEM LOCATION:

Staff Judge Advocate Offices at Army commands, field operating agencies, installations, and activities. A segment of the system is located at U.S. Army Claims Service, Fort Meade, MD 20755–5360.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, having damaged Government property, were not subject to the collection activities of other agencies or organizations and therefore require litigation on behalf of the Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports from the claim investigator, accident and police reports relating to damage, and pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material involved in representing the U.S. Army.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711 and Executive Order 9397.

PURPOSE(S):

To negotiate with, or to sue, as appropriate, the individual or entity, including insurance carriers, responsible for loss or damage of US Army property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice, U.S. Attorney, and opposing parties and their attorneys as deemed necessary in litigating property claims.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file orders; magnetic tapes/discs.

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**RETRIEVABILITY:**

By individual's surname, Social Security Number, and court docket number.

**SAFEGUARDS:**

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information.

**RETENTION AND DISPOSAL:**

Records at the Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation of determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves exists in this records system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this record system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individualsshould provide their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorney, opposing counsel, and similar pertinent sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0027–20dDAJA**

*System name:*

Medical Expense Claim Files (52 FR 18800, May 19, 1987)

*Changes:*

* * * * *

*System location:*

In the last sentence, change the words "HQDA (DAJA–LT), The Pentagon, Washington, DC 20310–2210" to "U.S. Army Claims Service, Ft. Meade, MD 20755–5360."

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

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*Retrievability:*

After the word "surname" add "Social Security Number".

*Safeguards:*

Delete last sentence.

* * * * *

**A0027–20dDAJA**

**SYSTEM NAME:**

Medical Expense Claim Files

**SYSTEM LOCATION:**

Staff Judge Advocate Offices at Army commands, field operating agencies, installations and activities. A segment of the system is located at U.S. Army Claims Service, Fort Meade, MD 20755–5360.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have received medical treatment at the expense of the U.S. Army as a result of a tortuous or negligent act of a third party; third parties causing medical care to be furnished to individuals entitled to medical care at Government expense.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of medical and personnel records of individuals injured by a third party from whom the U.S. Army is seeking to recover the costs of medical care furnished the injured party; accident and police reports relating to the injury, claims investigation files; correspondence with attorneys representing the Army's interest; court documents; and similar pertinent documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

42 U.S.C. 2651–3; Executive Orders 9397 and 11060; and 28 CFR part 43.

**PURPOSE(S):**

To negotiate with the tortfeasor or an insurance carrier, or to sue the same to collect the value of medical care furnished the injured party.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information may be disclosed to the Department of Justice, appropriate U.S. Attorneys, civilian attorneys representing the injured party who agree also to represent the U.S. Army's claim, and opposing parties and their attorneys.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic tapes/discs.

**RETRIEVABILITY:**

By individual's surname, Social Security Number, and court docket number.

**SAFEGUARDS:**

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information.

**RETENTION AND DISPOSAL:**

Records at the Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine of information about themselves is contained in this records system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorneys, opposing counsel, and similar pertinent sources.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0027–40DAJA**

*System name:*

Litigation Case Files (50 FR 22143, May 29, 1985)

*Changes:*

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*System location:*

Delete entry and replace with "Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210, legal offices of other HQDA staff agencies, field operating agencies, major commands, and installations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices."

*Categories of individuals covered by the system:*

Delete entry and replace with "Any individual who has filed a complaint against the U.S. Army or its personnel in the state or federal courts; military and civilian personnel in the Department of the Army who are named defendants, in their individual or official capacity, in civil litigation initiated by or against the Army."

* * * * *

*Purpose(s):*

Change the words "Federal Court System" to "state or federal courts."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add two new paragraphs "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices."

* * * * *

*Retention and disposal:*

Change the words "the Judge Advocate General's Office" to "The Office of the Judge Advocate General."

* * * * *

**A0027–40DAJA**

**SYSTEM NAME:**

Litigation Case Files

**SYSTEM LOCATION:**

Office of the Judge Advocate General, Headquarters, Department of the Army, Litigation Division (DAJA–LT), Washington, DC 20310–2210; legal offices of other HQDA staff agencies, field operating agencies, major commands, and installations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any individual who has filed a complaint against the U.S. Army or its personnel in the state or federal courts; military and civilian personnel in the Department of the Army who are named defendants, in their individual or official capacity, in civil litigation initiated by or against the Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied materials involved in representing the U.S. Army in the Federal Court System.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

**PURPOSE(S):**

To defend the Army in civil suits filed against it in the state or federal courts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information is disclosed to Department of Justice and U.S. Attorney's offices handling a particular case. Most of the information is filed in some manner in the courts in which the litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in Federal Reporter System under the name or style of the case and are available to individuals with access to a law library.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; magnetic tapes/discs.

**RETRIEVABILITY:**

By individual's surname and court docket number.

**SAFEGUARDS:**

Records are maintained in file cabinets within secured buildings and available only to designated authorized individuals who have official need therefor.

**RETENTION AND DISPOSAL:**

Records at the Office of the Judge Advocate General and the Chief of Engineers' office (for civil works) are destroyed after 30 years, except that those cases determined to have precedential, policy, or otherwise significant, value are permanent. Records in other legal offices are destroyed 6 years after completion of litigation.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

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NOTIFICATION PROCEDURE:

Individuals seeking to know if information about themselves is contained in this record system should address written inquiries to the Judge Advocate General or the Chief of Engineers (for civil works cases), Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Judge Advocate General or the Chief of Engineers (for civil works cases), Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 35 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of the Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–58DAJA

*System name:*

Foreign Jurisdiction Case Files (50 FR 22140, May 29, 1985)

*Changes:*

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

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A0027–58DAJA

SYSTEM NAME:

Foreign Jurisdiction Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army, International Affairs Division, Washington, DC 20310–2210. (Copy of record will exist for shorter periods in Office of the Staff Judge Advocate at the command where case originated.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army; civilians employed by, serving with, or accompanying the U.S. Army Abroad; and dependents of such individuals who have been subject to the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies and/or sentenced to unsuspended confinement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual case reports concerning the exercise of jurisdiction by foreign tribunals, trial observer reports, requests for provision of counsel, records of trials, requests for local authorities to refrain from exercising their jurisdiction; communications with other lawyers, officials within the Department of the Army and/or Defense, diplomatic missions; other selected relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To monitor development and status of each individual case to ensure that all rights and protection to which U.S. personnel abroad and their dependents are entitled under pertinent international agreements are accorded such personnel; to obtain information to answer queries regarding the status and disposition of individual cases involving the exercise of civil or criminal jurisdiction by foreign courts or foreign administrative agencies to render management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Individual case files are retained for 30 years following completion of the case. Consolidated and summary reports are permanent records at the Office of the Judge Advocate General.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address inquiries to either the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, current address and telephone number, case number and office symbol appearing on official correspondence concerning the matter, any other identifying information and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address inquiries to either the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210 or the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, current address and telephone number, case number and office symbol appearing on official correspondence concerning the matter, any other identifying information and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, foreign government agencies, Department of State, law enforcement jurisdictions, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–60aDAJA

*System name:*

Patent, Copyright, Trademark, and Proprietary Data Files (52 FR 1880, May 19, 1987).

*Changes:*

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army."

* * * * *

A0027–60aDAJA

SYSTEM NAME:

Patent, Copyright, Trademark, and Proprietary Data Files

SYSTEM LOCATION:

Primary: JALS–PC, Nassif Building, Falls Church, VA 22041–5013.

Secondary: Office of the Staff Judge Advocate at major Army commands, field operating agencies, and installations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted inventions to the Government; inventors with patents or applications for patents procured on behalf of the Department of the Army or in which the government has an interest; authors of copyrightable or copyrighted material in which the government has an interest; and government employees to whom copyright assistance has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to; disposition of rights in Government employees' inventions; foreign patent filings; licensing of government-owned patents, copyrights, and service marks; government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To determine the rights in government employee inventions, and to maintain evidence and record of: documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright licensing and assignments; and copyright assistance rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The U.S. Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress.

In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice.

For foreign patent filings records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada.

Parties to a licensing arrangement have access to the specific files involved.

Concerned contractors and/or Government agencies have access in order to conduct patent investigations and evaluations.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in buildings protected by secured guards, and are accessible only to authorized persons having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

At the primary location: records pertaining to patent matters are retained for 20 to 25 years depending on the specific case; those concerning copyright matters are retained either for 56 years or an expiration of copyright not renewed, after which they are destroyed by shredding.

Records at the secondary locations are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210; senior patent attorney at each secondary location.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records systems should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide full name, current address and telephone number, the case number or other identifying information on correspondence emanating from the Army.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide full name, current address and telephone number, the case number or other identifying information on correspondence emanating from the Army.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, the government agency interested in the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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A0027-60bDAJA

*System name:*

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files (50 FR 22142, May 29, 1985)

*Changes:*

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add a new paragraph "Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

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A0027-60bDAJA

SYSTEM NAME:

Patent, Copyright, and Data License Proffers, Infringement Claims, and Litigation Files

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Army, Patents, Copyrights, and Trademarks Division, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041-5013.

Segments of this system may exist at the Office, Chief of Engineers, Headquarters, U.S. Army Materiel Command, and/or its major subordinate field commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants or defendants in administrative proceedings or litigation with the government for improper use, infringement, enforcement of agreements, or comparable claims concerning patents or copyrights; individuals having copyrights in material in which the Department of the Army is interested; individuals who own patents which they offer to license to Department of the Army; individuals seeking private relief before the Congress because of right in inventions, patents, copyrights, or data licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the administrative assertion of claims by and against the government and to ligitation with the government for alleged misuse of patents, copyrights, trademarks, and data, including inquiries, investigations, settlements, communications with claimants or defendants, and related correspondence; documents relating to advice and assistance provided in obtaining licenses for Department of the Army use of copyright material; documents relating to the investigation and disposition of patent license offers; documents relating to investigations in connection with processing proposed legislation or bills for private relief of individuals because of rights of individuals in inventions, patents, copyrights, or data, including reports of investigations, comments or recommendations, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To maintain evidence and record of claims and litigation involving Department of the Army concerning patents, trademarks, copyrights, and data; to maintain evidence and record of Department of the Army attempts to use copyrighted material and to receive the copyright owner's permission for such use; to maintain record and evidence of patent license offers received and investigations and reports pursuant thereto; and to maintain record and evidence of investigations of proposed legislation or bills for private relief.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Government agencies involved in the claims or litigation and the Civil Division, Department of Justice, have access to the records to determine the validity of allegations and to properly prosecute or defend the case; government agencies potentially interested have access to the records of offered licenses to determine actual interest; Congress receives reports on Department of the Army's position on particular bills for private relief.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of information therein.

RETENTION AND DISPOSAL:

Destroyed after 25, 30, or 35 years depending on the specific case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2200.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves is contained in this record system should address inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310-2200.

Individual should provide full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, the Army organizational element interested in the copyrighted material or offered license, employment records, pertinent government patent files, Department of Justice and/or the government agencies involved in the claims or litigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0215CFSC

*System name:*

Morale, Welfare, Recreational and Entertainment Records (50 FR 22204, May 29, 1985).

*Changes:*

*System name:*

Delete entry and replace with "General Morale, Welfare, Recreation and Entertainment Records"



*System location:*

Delete entry and replace with "Major Army commands, field operating agencies, installations and activities, Army-wide."

Categories of individuals covered by the system:

Delete entry and replace with "Military personnel, their families, other members of the military community, certain DOD civilian employees and their families overseas, certain military personnel of foreign nations and their families, personnel authorized to use Army-sponsored Morale, Welfare, Recreation (MWR) services, youth services, athletic and recreational services, Armed Forces Recreation Centers, Army recreation machines, and/or to participate in MWR-type activities; professional entertainment groups recognized by the Armed Forces Professional Entertainment Office; Army athletic team members; ticket holders of athletic events; units of national youth groups such as Boy Scouts, Girl Scouts, and 4-H Clubs."

*Categories of records in the system:*

Delete entry and replace with "Name, address, and other pertinent information of members, participants, patrons, and other authorized users. Other ancillary information such as travel vouchers, security check results and orders will be kept in the system."

*Authority for maintenance of the system:*

Add "Executive Order 9397" to the end of the entry.

*Purpose(s):*

Delete entry and replace with "To administer programs devoted to the mental and physical well-being of Army personnel and other authorized users; to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the Army. Relevant information on an individual may be disclosed for bona fide purposes such as marketing and promoting MWR, entertainment programs, and to sports, educational, athletic, and similar-related organizations conducting equivalent MWR-type activities."

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Delete entry and replace with "None."

* * * * *

*Retrievability:*

Delete entry and replace with "By name, Social Security Number, or other individual identifying characteristics."

*Safeguards:*

Delete entry and replace with "Records are kept in building secured during non-duty hours and accessed by only designated persons having official need therefor."

*Retention and disposal:*

Delete entry and replace with "All documents are destroyed after 2 years, unless required for current operation."

*System manager(s) and address:*

Delete entry and replace with "Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331-0521."

*Notification procedure:*

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this record system should address inquiries to the Morale and Welfare office at the installation or activity where assigned."

*Record access procedure:*

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address inquiries to the Morale and Welfare office at the installation or activity where assigned.

Individuals must provide name, rank, SSN, proof of identification, and any other pertinent information necessary."

* * * * *

A0215CFSC

SYSTEM NAME:

General Morale, Welfare, Recreation and Entertainment Records

SYSTEM LOCATION:

Major Army commands, field operating agencies, installations and activities, Army-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their families, other members of the military community, certain DoD civilian employees and their families overseas, certain military personnel of foreign nations and their families, personnel authorized to use Army-sponsored Morale, Welfare, Recreation (MWR) services, youth services, athletic and recreational services, Armed Forces Recreation Centers, Army recreation machines, and/or to participate in MWR-type activities; professional entertainment groups recognized by the Armed Forces Professional Entertainment Office; Army athletic team members; ticket holders of athletic events; units of national youth groups such as Boy Scouts, Girl Scouts, and 4-H Clubs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other pertinent information of members, participants, patrons, and other authorized users. Other ancillary information such a travel vouchers, security check results and orders will be kept in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To administer programs devoted to the mental and physical well-being of Army personnel and other authorized users; to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the Army. Relevant information on an individual may be disclosed for bona fide purposes such as marketing and promoting MWR, entertainment programs, and to sports, educational, athletic, and similar-related organizations conducting equivalent MWR-type activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards, magnetic tapes, discs, computer printouts, and similar media.

RETRIEVABILITY:

By name, social security number, or other individual identifying characteristics.

SAFEGUARDS:

Records are kept in buildings secured during non-duty hours and accessed by only designated persons having official need therefor.

RETENTION AND DISPOSAL:

All documents are destroyed after 2 years, unless required for current operation.

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SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331-0521.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address inquiries to the Morale and Welfare office at the installation or activity where assigned.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address inquiries to the Morale and Welfare office at the installation or activity where assigned.

Individuals must provide name, rank, SSN, proof of identification, and any other pertinent information necessary.

CONTESTING RECORD PROCEDURE:

The army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 343-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual or group receiving the service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

**A0715DAJA**

*System name:*

Procurement Misconduct Files (50 FR 22245, May 29, 1985)

*Changes:*

* * * * *

*System location:*

Delete entry and replace with "HQDA (DAJA-PF), The Pentagon, Washington, DC 20310-2217."

* * * * *

*Categories of records in the system:*

Delete entry and replace with "Criminal and administrative investigations of fraudulent, criminal or other misconduct in connection with government procurement activities and the List of Parties Excluded from Procurement Programs."

* * * * *

*Purpose(s):*

Delete entry and replace with "To determine whether criminal, administrative, or civil proceedings should be initiated against the contractor with the government or government procurement officials for criminal conduct in connection with procurement activities and to maintain and distribute a list of contractors determined to be ineligible to participate in Government procurement activities."

* * * * *

*Notification procedure:*

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address inquiries to the Office of the Judge Advocate General, Chief, Procurement Fraud Division, HQDA, DAJA-PF, Washington, DC 20310-2217.

Individual should provide full name, current address and telephone number, specific details that will enable locating the record, and signature."

* * * * *

**A715DAJA**

SYSTEM NAME:

Procurement Misconduct Files

SYSTEM LOCATION:

HQDA (DAJA-PF), The Pentagon, Washington, DC 20310-2217.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or legal entities investigated for alleged procurement misconduct, such as fraudulent activities in securing or performing a government contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal and administrative investigations of fraudulent, criminal or other misconduct in connection with government procurement activities and the List of Parties Excluded from Procurement Programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To determine whether criminal, administrative, or civil proceedings should be initiated against the contractor with the government or government procurement officials for criminal conduct in connection with procurement activities and to maintain and distribute a list of contractors determined to be ineligible to participate in Government procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice and United States attorneys.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name.

SAFEGUARDS:

Records are maintained in file cabinets accessible only by authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Destroyed 15 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310-2210.

NOTIFICATION PROCEDURE:

Indivduals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Chief, Procurement Fraud Division, HQDA, DAJA-PF, Washington, DC 20310-2217.

Individual should provide full name, current address and telephone number, specific details that will enable locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Chief, Procurement Fraud Division, HQDA, DAJA-PF, Washington, DC 20310-2217.

Individual should provide full name, current address and telephone number, specific details that will enable locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of the Army staff agencies, Army records and reports, Department of Justice, U.S. Attorneys,



opposing counsel, and similar relevant sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-28280 Filed 12-13-90; 8:45 am]
BILLING CODE 3810-01-M

## Defense Logistics Agency

## Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice of a computer matching program between the Department of Veterans Affairs (VA) and the Department of Defense (DoD) for any public comment.

**SUMMARY:** The DoD, as the matching agency under the Privacy Act of 1974, as amended (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The record subjects are VA delinquent debtors who are current or former military members or current DoD employees receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by VA so as to permit VA to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

**DATES:** This proposed action will become effective January 14, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), VA and DoD have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by VA under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that VA can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefor concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between VA and DoD is available to the public upon request. Requests should be submitted to the address caption above or to the Chief, Debt Management Section (20S), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is a pubic notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 30, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: December 10, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Debt Management section (20S) of the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). VA is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify the locate VA delinquent debtors who are current or former military members or current DoD employees receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by VA so as to permit VA to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716-3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101-550.1108 Collection by Offset from Indebted Government Employees (OPM); 38 U.S.C. 3006 Furnishing of Information by Other Agencies; 38 CFR 1.980-1.994 (VA).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, is amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. VA will use records from a system of records identified as 58 VA 21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA", appearing at page 908 of the document entitled Privacy Act Issuances, 1987 Comp., Volume V, and as amended at 52 FR 4078, February 9, 1987; 54 FR 36933, September 5, 1989; and 55 FR 28508, July 11, 1990. The first cited amendment changed the identification of the record system to 58 VA 21/22. The exchange of data under this agreement is consistent with routine uses 9 and 12 of 58 VA 21/22. VA will also use records from a system of records identified as 55 VA 26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records—VA", appearing at page 604 of the document

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entitled Privacy Act Issuances, 1987 Comp., Volume V, and as amended at 53 FR 49618, December 9, 1988. The exchange of data under this agreement is consistent with routine use 19 of 55 VA 26.

2. DMDC will use records from a system of records identified as S322.10 DMDC, entitled "Defense Manpower Data Center Data Base", last published at 55 FR 42755 on October 23, 1990.

The categories of records in the VA systems are delinquent debtors. The categories of records in the DoD system to be used consists of active and retired military members, including the Reserve and Guard, and current DoD civilian employees. The record systems contain appropriate routine use disclosure provisions required by the Privacy Act permitting the interchange of the affected personal information between VA and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record system.

E. *Description of computer matching program:* A magnetic computer page provided by VA will contain data elements of the debtor's name, SSN, date of birth, and total amount owed on approximately 500,000 delinquent debtors. The DMDC computer category database file contains approximately 6 million records of active duty and retired military members, including the Reserve and the Guard, and current DoD civilian employees. DMDC will match the SSN on the VA tape by computer against the DMDC database. Matching records, hits based on SSNs, will automatically produce data elements of the individual's name, SSN, date of birth, service or agency, and current work or home address on each hit.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by VA to those individuals matched (hits) consisting of VA's verification of debt. VA will always seek voluntary payment of a debt before considering enforced collection. Before salary offset is sought, at least three separate attempts will be made by VA to notify debtors of their obligations and their rights to seek waiver of collection, compromise or otherwise dispute the debt. Provisions are also made for payment of a debt on an installment plan. If a matching subject requests a waiver of collection, compromise of the debt amount, exercises his or her appellate rights or enters into a voluntary repayment plan, literally years may pass before VA seeks offset of salary or retired pay if the waiver request or compromise offer is denied, an appeal is unsuccessful or if the debtor fails to continue to fulfill his or her voluntary obligation under a repayment agreement.

If the voluntary collection effort is unsuccessful, VA will send the matching subject 30-day written notice of VA's intent to request offset of salary or retired pay. That notice will include an explanation of the debtor's rights and opportunity for a hearing before an individual who is not under the supervision or control of VA. The notice gives the debtor a toll-free telephone number to call VA for further information.

If the notice of intent to request offset is returned by the Postal Service as undeliverable, VA does not request offset, but will enter an indicator in the debtor's record that the listed address may not be current. Periodically, VA will send DMDC a computer listing of those matching subjects whose addresses are unknown. DMDC will conduct a match under this agreement for the purpose of updating debtors' locations in VA's debtor file. After completion of the match, VA may attempt a second delivery of notice of intent to offset. If this attempt is unsuccessful, VA will seek other means of locating the debtor or alternative resolution of the debt.

Only when all of the steps indicated above have been taken will VA make a disclosure pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies VA otherwise within 30 days from the date of the notice, VA will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as acquiescence on the part of the debtor as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

After independent verification and notice under subsection (p) of the Privacy Act, VA will make all final determinations as to the specific amount of the debt owed, whether offset is feasible and not otherwise prohibited. VA will establish the standards and procedures applicable to the offset from disposable pay of current or retired military members or current DoD employees, or from amounts payable from the Federal retirement account of former Federal employees, to recover a debt owed the United States through VA. Prior to requesting that an employing agency take action to offset the salary of an employee identified through the match, VA will certify, over signature of an authorized VA official, that all due process procedures prescribed by the Debt Collection Act have been followed.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated to an annual basis, unless OMB or the Treasury Department requests a match more often. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between VA and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 90-29296 Filed 12-13-90; 8:45 am]
BILLING CODE 3810-01-M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

**[Recommendation 90-6]**

### Implementation Plan for Recommendation 90-6 at the Department of Energy's (DOE) Rocky Flats Plant, CO

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Implementation plan; acceptance.

**SUMMARY:** The Defense Nuclear Facilities Safety Board has received DOE's implementation plan for Recommendation 90-6 and has concluded that it satisfies the Board's criteria for judging the adequacy of DOE's implementation plan and that the plan is acceptable (55 FR 23584).

**FOR FURTHER INFORMATION CONTACT:** Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, or telephone (202) 208-6387, (FTS) 268-6387.

Dated: December 11, 1990.

**Robert M. Andersen,**

*General Counsel.*

December 3, 1990

The Honorable James D. Watkins,
*Secretary of Energy, Washington, DC 20585*

Dear Mr. Secretary: By letter dated November 29, 1990, you forwarded the Department of Energy's (DOE) implementation plan for Recommendation 90-6 which calls for preparation of a written program to address accumulation of fissile materials in ventilation ducts and related systems at the Rocky Flats Plant. The Board has carefully considered DOE's proposed implementation plan for Recommendation 90-6. We have concluded that it satisfies the Board's criteria for judging the adequacy of DOE's implementation plan and that the plan is acceptable.

We understand that, because the execution of this plan is expected to extend beyond one year, you will communicate the schedule to the appropriate congressional committees.

Sincerely,

John T. Conway,

*Chairman.*

[FR Doc. 90-29372 Filed 12-13-90; 8:45 am]
BILLING CODE 6820-KD-M



## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Teleconference Meeting

**AGENCY:** National Assessment Governing Board; Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Reporting and Dissemination Committee of the National Assessment Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** January 10, 1991.

**TIME:** 11 a.m. e.s.t.

**PLACE:** National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005-4013. Telephone: [202] 357-6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 USC 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. It is responsible for developing specifications for test design and methodology and for developing guidelines and standards for analysis plans and for reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, identifying achievement goals for each age and grade tested, and establishing standards and procedures for interstate, regional, and national comparisons. The Reporting and Dissemination Committee of the National Assessment Governing Board will meet via teleconference on January 10, 1991, from 11 a.m. e.s.t., until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to approve a plan submitted by the Commissioner for Education Statistics for reporting and dissemination of the 1990 NAEP mathematics results, including state-by-state data.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: December 10, 1990.

**Christopher T. Cross,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 90-29321 Filed 12-13-90; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Morgantown Energy Technology Center; Cooperative Research and Development Agreements

**AGENCY:** Morgantown Energy Technology Center, Department of Energy (DOE).

**ACTION:** Notice of desire to enter into Cooperative Research and Development Agreements.

**FOR FURTHER INFORMATION CONTACT:** L. Carol Roberson, Technology Communications Manager, Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0000.

**SUMMARY:** The Morgantown Energy Technology Center (METC), a federally operated fossil energy research and development facility of the U.S. Department of Energy, is seeking offers from private industry, educational institutions and other organizations as a basis for entering into joint research and development projects which would result in the transfer of fossil energy technologies into the private sector for commercial deployment. Joint projects would be formulated by a Cooperative Research and Development Agreement under the authority of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502). Under this law, METC may contribute personnel, equipment and facilities—but no direct funding—to the cooperative research program. Contributions from the participating partner(s) are required and may include funding, personnel, facilities and equipment.

The Federal Technology Transfer Act encourages joint research and development projects and is quite flexible regarding disposition of rights to inventions made under such agreements. METC is expected to be able to negotiate directly with the partners on intellectual property issues including the exclusive licensing of METC inventions, protection of proprietary data, and allocation of patent rights developed under the agreement. Patented METC inventions that are available for further development and commercialization are listed at the end of this announcement. METC resources and expertise are available to assist partners in further research and development of their ideas. METC's lead areas of fossil energy research and development include coal gasification, hot gas cleanup, shale oil, "mild" gasification to produce liquids and high value solid products, instrumentation, solid waste recovery/disposal, fluidized-bed combustion, coal-fueled combustion turbines and diesel engines, clean-up systems for coal-fueled cells, and unconventional gas recovery. METC's facilities include specialized engineering test facilities as well as extensive research and development laboratories and state-of-the-art instrumentation.

METC will consider the role of the proposed project in achieving METC's goal of commercializing technologies which utilize domestic fossil fuel supplies cleanly, economically and efficiently. Special consideration will be given to small business firms. Preference will be given to business units located in the United States which agree that

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products embodying the METC inventions and/or inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States. In the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, METC will take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

**SUPPLEMENTARY INFORMATION:** METC is under no obligation to accept projects which are proposed in response to this announcement. Projects will be undertaken based on factors which include, but are not limited to, the considerations identified above, resources offered, METC resources available and the specific contribution of the project to METC's R&D program.

Issued: December 6, 1990.

**John S. Wilson,**

*Deputy Director, METC.*

**METC ISSUED PATENTS**

| Title | Number | Issue date |
|---|---|---|
| Underground gasification of coal | 3,993,447 | 01/29/76 |
| Method for removal of methane from coalbeds | 3,994,549 | 01/30/76 |
| Automatic control and detector for three-terminal resistance measurement | 3,998,669 | 10/26/76 |
| Multiple channel coincidence detector and controller for microseismic data analysis | 3,992,672 | 11/16/76 |
| High voltage pulse generator | 4,011,463 | 03/08/77 |
| Apparatus for providing directional permeability measurements in subterranean earth formations | 4,043,192 | 08/23/77 |
| Electromagnetic wave method for mapping subterranean earth formations | 4,045,724 | 08/30/77 |
| Portable device and method for determining permeability characteristics of earth formations | 4,052,895 | 10/11/77 |
| Method for describing fractures in subterranean earth formations | 4,057,780 | 11/08/77 |
| Method for in situ combustion | 4,062,404 | 12/13/77 |
| Cyclic flow underground coal gasification process | 4,066,867 | 01/14/78 |
| Regenerable sorbent and method for removing hydrogen sulfide from hot gas mixtures | 4,089,809 | 05/16/78 |
| Method for increasing the calorific value of gas produced by the in situ combustion of coal | 4,095,650 | 06/20/78 |
| In situ gasification process for producing product gas enriched in carbon monoxide and hydrogen | 4,122,897 | 10/31/78 |
| Catalytic hydrotreating process | 4,128,473 | 12/05/78 |
| Apparatus and method for feeding coal into a coal gasifier | 4,153,427 | 05/08/79 |
| Wellbore pressure transducer | 4,157,528 | 06/05/79 |
| Solid handling valve | 4,173,327 | 11/06/79 |
| Single transmission line interrogated multiple channel data acquisition system | 4,196,417 | 04/01/80 |
| Signal processor for processing ultrasonic receiver signals | 4,213,184 | 07/15/80 |
| Method for enhanced oil recovery | 4,224,992 | 09/30/80 |
| Energy recovery system | 4,234,423 | 11/18/80 |
| Coal-feeding mechanism for a fluidized bed combustion chamber | 4,270,468 | 06/02/81 |
| Aperture for installing condition-sensing means in subterranean earth formations | 4,279,299 | 07/21/81 |
| Capacitance-level density monitor for fluidized-bed combustor | 4,360,040 | 09/21/82 |
| Oil shale retorting and combustion system | 4,373,454 | 02/15/83 |
| Combined fluidized bed retort and combustor | 4,447,297 | 05/08/84 |
| Single transmission line data acquisition system | 4,451,826 | 05/29/84 |
| Air-flow regulation system for a coal gasifier | 4,453,948 | 06/12/84 |
| Ash bed level control system for a fixed-bed coal gasifier | 4,454,949 | 06/12/84 |
| Coal gasification system with a modulated on/off control system | 4,459,950 | 06/12/84 |
| Fire flood method for recovering petroleum from oil reservoirs of low permeability and temperature | 4,465,135 | 08/14/84 |
| Loop-bed combustion apparatus | 4,469,360 | 09/12/84 |
| Ash level meter for a fixed-bed coal gasifier | 4,466,747 | 08/21/84 |
| Reversed flow fluidized-bed combustion apparatus | 4,475,884 | 10/09/84 |
| Wireless remote liquid level detector and indicator for well testing | 4,523,466 | 06/18/85 |
| Sliding-gate valve for use with abrasive materials | 4,524,798 | 06/25/85 |
| Optical emission line monitor with background observation and cancellation | 4,618,137 | 10/07/86 |
| Compensated vibrating optical fiber pressure measuring device | 4,667,097 | 05/19/87 |
| Pulse-excited, gate-zeroing multiple channel data transmission system | 4,680,595 | 07/14/87 |
| Method and apparatus for the selective separation of gaseous coal gasification products by pressure swing adsorption | 4,696,680 | 09/29/87 |
| Low temperature pyrolysis of coal or oil shale in the presence of calcium compounds | 4,747,936 | 05/31/88 |
| Method for the desulfurization of hot product gases from coal gasifier | 4,769,045 | 09/06/88 |
| Method for increasing steam decomposition in a coal gasification process | 4,786,218 | 11/22/88 |
| Method for enhancing the desulfurization of hot coal gas in a fluid-bed gasifier | 4,832,704 | 05/23/89 |
| Method of inducing surface ensembles on a metal catalyst | 4,840,931 | 06/20/89 |
| Combustor with multistage internal vortices | 4,867,079 | 09/19/89 |
| Hydrogen production with coal using a pulverization device | 4,876,080 | 10/24/89 |
| Method and apparatus for hydrocarbon recovery from tar sands | 4,880,526 | 11/14/89 |
| Decoking of coal or oil shale during pyrolysis in the presence of iron oxides | 4,886,521 | 12/12/89 |
| Real-time alkali monitoring system | 4,898,995 | 01/30/90 |
| Combined coal gasifier and fuel cell system and method | 4,921,765 | 05/01/90 |
| 3-D capacitance density imaging system | 4,926,112 | 05/15/90 |
| Light collection device for flame emission detectors | 4,939,376 | 07/31/90 |
| An in-bed tube bank for a fluidized-bed combustor | 4,965,942 | 09/11/90 |



**Office of Conservation and Renewable Energy**

**[Case No. F-023]**

## Energy Conservation Program for Consumer Products; Decision and Order Granting; Waiver from Furnace Test Procedures to Inter-City Products Corporation

**AGENCY:** Office of Conservation and Renewable Energy, Department of Energy.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. F-023) granting Inter-City Products Corporation (Inter-City) a waiver for its model NUGV(-) condensing gas furnaces from existing Department of Energy (DOE) test procedures regarding blower time delay for determining the model's energy efficiency.

**FOR FURTHER INFORMATION CONTACT:**
Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order Inter-City has been granted a waiver for its model NUGV(-) condensing gas furnaces, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, December 10, 1990.

**J. Michael Davis,**

*Assistant Secretary, Conservation and Renewable Energy.*

### Decision and Order

In the matter of: Inter-City Products Corporation (Case No. F-023).

The Energy Conservation program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3206, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Inter-City filed a "Petition for Waiver" dated May 1, 1990, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on July 31, 1990, Inter-City's petition and solicited comments, data and information respecting the petition. 55 FR 31099. Inter-City also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on July 23, 1990. 55 FR 31099, July 31, 1990.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with Federal Trade Commission (FTC) concerning the Inter-City petition. The FTC did not have any objections to the issuance of a waiver to Inter-City.

### Assertions and Determinations

Inter-City's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Inter-City requests the allowance to test using a 30-second blower time delay when testing its NUGV(-) series condensing gas furnaces. Inter-City states that since the 30-second delay is indicative of how this model actually operates and since such a delay results in an improvement in efficiency of approximately 1.0 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Inter-City indicates that it is unable to take advantage of any of these exceptions for the NUGY(-) series.

Since the blower controls incorporated on the Inter-City furnace are designated to imposes a 30-second blower delay in every instance of start-up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the inter-City NUGV(-) series furnace. Accordingly, with regard to testing the NUGV(-) series furnace only, today's Decision and Order exempts Inter-City from the existing provisions regarding blower controls and allows testing with the 30-second delay.

*It is therefore, ordered:* that—

(1) The "Petition for Waiver" filed by the Inter-City Products Corporation (Case No. F-023) is hereby granted set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Not withstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, the Inter-City Products Corporation shall be permitted to test its NUGV(-) series condsening gas furnace on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

*3.0 Test Procedure.* Testing and measurements shall be a specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

*3.10 Gas- and Oil-Fueled Central Furnaces.* The following paragraph is in lieu of the requirement specified in section 9.3.1 in ANSI/ASHRAE 103-82. After equilibrium conditions are

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achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t–), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t–), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth in subparagraph (ii) above, Inter-City Products Corporation shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430 subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the NUGV(–) series condensing gas furnace manufactured by Inter-City Products Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective [Insert Date of Issuance], this Waiver supersedes the Interim Waiver Granted Inter-City Products on July 23, 1990. 55 FR 31099, July 31, 1990. (Case No. F–023).

Issued in Washington, DC, December 10, 1990.

J. Michael Davis,

*Assistant Secretary, Conservation and Renewable Energy.*

[FR Doc. 90–28902 Filed 12–13–90; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket Nos. ER90–577–000, et al.]

### Montaup Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Montaup Electric Co.**

[Docket No. ER90–577–000]

December 6, 1990.

Take notice that on November 28, 1990, Montaup Electric Company (Montaup) filed a letter agreement for the sale of Canal No. 2 and Millstone No. 3 capacity and energy to Boston Edison Company (Boston Edison) for the period November 1, 1989 through April 30, 1990. The enclosed letter agreement supersedes a letter agreement filed by Montaup on September 6, 1990 in Docket No. ER90–577–000 for the sale of capacity and energy from the Canal No. 2 oil-fired unit covering the same period.

The demand charge in the new agreement is reduced from $120 per kw/year to $114.19 per kw/year, which will result in a total dollar reduction in Montaup's demand revenues from the six-month sale of $44,100. The new letter agreement leave the amount of capacity negotiated in the original letter agreement unchanged; however, instead of consisting of 15 megawatts of Canal No. 2 capacity and energy and 1.32 megawatts of Millstone No. 3 capacity and energy. The inclusion of Millstone No. 3 nuclear energy in the sale reduces Montaup's energy revenues from the sale by approximately $62,000 and reduces Boston Edison's energy costs by the same amount.

Montaup requests that the notice requirement be waived in order to permit the agreement to become retroactively effective.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**2. Dayton Power and Light Co.**

[Docket No. ER91–140–000]

December 6, 1990.

Take notice that the Dayton Power and Light Company (DP&L) tendered for filing on November 30, 1990, a proposed modification to the Interconnection Agreement dated as of May 10, 1972, between DP&L and the City of Piqua, Ohio (Piqua).

The proposed modification revises Piqua Wheeling Agreement Schedule E to increase contract demand from 1,000 KW to 2,000 KW. Piqua has consented to the modification. A December 1, 1990, effective date has been requested.

A copy of the filing was served upon Piqua and the Public Utilities Commission of Ohio.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**3. Catalyst Old River Hydroelectric Limited Partnership**

[Docket No. ER91–138–000]

December 6, 1990.

Take notice on November 30, 1990, Catalyst Old River Hydroelectric Limited Partnership (Catalyst) tendered for filing, in accordance with 18 CFR 35.11, 35.13 and 385.207 (1990) of the Commission's Rules and Regulations, an Application to Supplement Filed Rate Schedules and for Waiver of Filing and Notice Requirements. Catalyst's filing seeks to supplement its filed rate schedules with Louisiana Power & Light Company and the Town of Vidalia, Louisiana, by submitting a supplement to the Vidalia power sales agreement, an assignment of contracts, permits and licenses executed in connection with a construction loan financing, as well as the consents, assignments and municipal ordinances executed, ratified or enacted in connection with the sale and leaseback of the Old River Hydroelectric Project No. 2854, that was authorized by the Commission on August 20, 1990. Catalyst requests effective dates in accordance with the terms of the filed documents. Thus, the rate schedules would be deemed to have been amended as of June 28, 1988, to reflect the supplement to the Vidalia power sales agreement and the construction financing assignment and consents, and then further amended to reflect the documents executed in connection with the closing of the sale and leaseback transaction as of August 25, 1990.

Copies of this filing have been served upon the Louisiana Public Service Commission, the Louisiana Power & Light Company and the Town of Vidalia, Louisiana.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**4. Tucson Electric Power Co.**

[Docket No. ER91–137–000]

December 6, 1990.

Take notice that on November 29, 1990, Tucson Electric Power Company (Tucson) tendered for filing pursuant to 18 CFR 35.12, an agreement entitled "1991 Power Sale Agreement Between Tucson Electric Power Company And Imperial Irrigation District."

The parties request an effective date of January 1, 1991, and therefore request waiver of the Commission's regulations regarding filing.

Copies of this filing have been served upon all parties affected by this proceeding.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**5. Travis H. Petty**

[Docket No. ID–2515–000]

December 6, 1990.

Take notice that on November 30, 1990, Travis H. Petty (Applicant) tendered for filing an application under section 305(b) to hold the following positions:

Director—Texas Commerce Bancshares, Inc.

Director—Texas Commerce Bank, N.A., El Paso

Director—El Paso Electric Company

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**6. Wisconsin Power and Light Co.**

[Docket No. ER91–139–000]

December 6, 1990.

Take notice that on November 30, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated November 7, 1990, between the City of Schullsburg and WPL. WPL states that this new Wholesale Power Agreement revises the previous agreement between the two parties which was dated June 6, 1978, and designated Rate Schedule No. 120 by the Commission.

The purpose of this new agreement is to revise the terms of service. Terms of service for this customer will be on a similar basis to the terms of service for other W–3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Schullsburg and the Wisconsin Public Service Commission.

*Comment date:* December 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

**7. South Carolina Electric & Gas Co.**

[Docket No. ES91–10–000]

December 7, 1990.

Take notice that on December 4, 1990, South Carolina Electric & Gas Company ("Applicant") filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, for authority to issue up to $160 million of unsecured promissory notes in the form of bank loans and commercial paper during the period commencing January 1, 1991 and ending December 31, 1992.

*Comment date:* December 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

**8. JMC West Lynn, Inc.**

[Docket No. QF91–16–000]

December 7, 1990.

On November 20, 1990, JMC West Lynn, Inc., of One Bowdoin Square, Boston, Massachusetts, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lynn, Massachusetts. The facility will consist of a combustion turbine generator, a supplementary fired heat recovery boiler and a non-condensing steam turbine generator. The net electric power production capacity of the facility will be approximately 122.8 MW. The primary source of energy will be natural gas. Construction of the facility is expected to begin on or about January 15, 1991, with completion expected by January, 1993.

*Comment date:* Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 90–29281 Filed 12–13–90; 8:45 am]

BILLING CODE 6717–01–M



Dockets Nos. CP90–316–000, and CP90–317–000, et al.

### Empire State Pipeline, et al.; Intent To Prepare an Environmental Assessment for the Proposed Empire State Project and Request for Comments on Its Scope

December 7, 1990.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the natural gas facilities proposed in the above-referenced dockets. The proposal will be referred to as the *Empire State Project.*

The Empire State Project, as currently configured, is a joint proposal by Empire State Pipeline (Empire), Great Lakes Gas Transmission Corporation (Great Lakes), and National Fuel Gas Supply Corporation (NFG) as explained in detail below. NFG's present filing, in coordination with Empire, replaces its previous alternative to a portion of the Empire proposal. Overall the proposal involves 176.46 miles of pipeline, both jurisdictional and nonjurisdictional, in the states of Michigan and New York.

**The Empire State Project**

*Empire State Pipeline*

Pursuant to § 153.10 through 153.12 of the Commission's regulations, Empire State Pipeline (Empire) seeks the issuance of a Presidential Permit to connect a natural gas facility at a point of entry on the United States/Canadian border near the town of Grand Island, New York. Empire also seeks Natural Gas Act section 3 authorization from the Commission to construct, operate, and maintain such facilities at the point of entry for the importation of natural gas.

The jurisdictional point of importation into the United States would be located on the Chippewa Channel of the Niagara River in the town of Grand Island, midway between Staley Road and Love Road, Erie County, New York. A meter station would be constructed east of and adjacent to West River Parkway Road on land owned by ANR Pipeline Company, an Empire affiliate.

The proposed facilities would consist of 24-inch-diameter pipeline designed to transport an average daily volume of 150,000 Mcf of natural gas with a peak day delivery capacity of 270,000 Mcf. Both domestic and Canadian gas supplies would be transported to various "shippers" within the state of New York. The proposed facilities are summarized in table 1. Other proposed facilities, filed as alternatives to the

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Empire proposal, are summarized in table 2.

Maps showing the location of the pertinent facilities are contained in appendix 1.[1]

The shippers for whom Empire would be transporting gas consist of one local distribution company (Rochester Gas and Electric), two industrial users (Alcan Rolled Products and U.S. Gypsum), six cogenerators (Fulton Cogeneration Associates, Kamine/Besicorp Carthage LP, Kamine-LCP, Pentech Energy Inc., PG&E/Bechtel, and Hydra-Co.), four marketers (Appalachian Gas Sales, Bishop, Goetz Energy Corp., and Harrison Energy), and the three "cogeneration customers" served by National Fuel Gas Supply Corporation as discussed below.

*Additional Facilities Required by Empire*

Additional nonjurisdictional facilities related to this proposal would consist of 155 miles of 24-inch-diameter pipeline (Empire Pipeline) which would be connected to the proposed point of importation and would be constructed, owned and operated by Empire. This proposed pipeline would be used to transport natural gas for the shippers listed above for ultimate consumption within the state of New York. Certain unspecified nonjurisdictional facilities would also be required to transport the gas from the proposed Empire Pipeline to the various customers' facilities.

The Empire Pipeline would cross 8 counties and 27 municipalities in the state of New York, beginning at Grand Island in Erie County and ending in Schroeppel, Oswego County. In order to avoid duplication, any state or local approval or ongoing environmental analysis of the nonjurisdictional facilities will be utilized by the Commission staff in conducting its National Environmental Policy Act review. See appendix 2 for additional information on Empire's facilities and on facilities required by TransCanada Pipelines Limited (TransCanada).

*National Fuel Gas Supply Corporation (NFG)*

In Docket No. CP90-854-001, NFG proposes to provide firm transportation service of 38.8 MMcf of gas per day for three "cogeneration customers" not served by Empire—Encogen, Four Partners, LP (EDC-4); Indeck Energy Services of Ilion, Inc. (Indeck-Ilion); and Indeck Energy Services of Corinth, Inc. (Indeck-Corinth). In order to provide the proposed transportation service, NFG would utilize a portion of Empire's proposed pipeline that crosses Grand Island and construct a total of 5.46 miles of pipeline in two segments.

The northern pipeline segment (Line XM-5-1) would connect NFG's existing Line X at Nash Road in Wheatfield with the Empire Pipeline. The segment would be 3.24 miles long and be located in Niagara County, New York.

The southern pipeline segment (Line XM-5-2) would connect the Empire Pipeline on Grand Island with NFG's existing Line UM-2 in the town of Tonawanda. This segment would be 2.22 miles long.

NFG also proposes to establish a delivery point to its distribution affiliate, National Fuel Gas Distribution Company (NFG Distribution), off of its proposed Line XM-5-2 on Grand Island which would include valves, meters, and regulators. NFG also proposes to establish a delivery point to this affiliate at the existing Fire Tower Lane Regulator Station (where Line XM-5-2 and existing Line UM-2 would interconnect). Additional metering and regulating equipment would be required.

*Great Lakes Gas Transmission Company*

To facilitate the upstream transportation of natural gas, Great Lakes Gas Transmission Company (Great Lakes) proposes to construct a total of 16 miles of 36-inch-diameter pipeline looping in two sections within the state of Michigan. The requested facilities and the requested transportation service of 102,500 Mcf of natural gas per day would be used to provide Rochester Gas and Electric Corporation (RG&E) with natural gas needed to meet its system supply needs.

RG&E has requested that Great Lakes receive the requested volume of natural gas from ANR Pipeline Company (ANR) at various points of interconnection between the facilities of ANR and Great Lakes in Michigan. The gas would be transported through the facilities of Great Lakes and delivered to TransCanada at the St. Clair delivery point in St. Clair County, Michigan for the account of RG&E. The gas would then flow through the facilities of TransCanada for redelivery to Empire at the proposed interconnection with Empire at Grand Island.

**Alternatives to the Empire Proposal**

The staff's EA will analyze alternatives to the Empire proposal filed by NFG and CNG Transmission Corporation (CNG). The EA will also analyze system alternatives developed by the Commission staff.

*National Fuel Gas Supply Corporation*

NFG as noted above, originally filed a competitive alternative to the westernmost 32 miles of the Empire pipeline. That alternative proposal was filed by NFG in Docket Nos. CP90-854-000, CP90-920-000, CP90-967-000, and CP90-968-000 as further discussed below. At present NFG has requested to withdraw these applications in lieu of its joint facilities with Empire. This EA will evaluate the reasonableness of this alternative as it was originally proposed.

NFG was proposing 22.5 miles of pipeline in 3 segments to replace part of the Empire proposal. A portion of this alternative also serves the purpose of connecting NFG's Line X in Wheatfield, to its Line UM-2 in Tonawanda, which would improve the integrity of its system and provide added capacity for load growth in the Buffalo and Grand Island areas.

The previously proposed segments were 9.9 miles of pipeline in Docket No. CP90-854-000 (Line XM-5 from Wheatfield to Tonawanda) and two sections of pipeline in Docket No. CP90-920-000 (Lines XM-6, 5.0 miles long, from the St. Lawrence River border crossing to Grand Island and XM-7, 7.6 miles long, from Royalton to Clarence).

The currently proposed Lines XM-5-1 (3.24 miles) and XM-5-2 (2.22 miles) are the same as the northern and southern segments of the originally proposed Line XM-5.

*CNG Gas Transmission Corporation*

In conjunction with NFG's original alternative proposal discussed above CNG filed an alternative to the easternmost 122 miles of the Empire pipeline.

In Docket No. CP90-1989-000, CNG proposes, pursuant to section 7 of the NGA and the Commission's regulations, to construct various facilities, transport 235,104 Dt of natural gas per day for the Empire shippers, and to transport 24,467 Dt per day for Indeck-Ilion and Indeck-Corinth (two of the three shippers proposed to be served by NFG in Docket No. CP90-920-000 not served by Empire). CNG states that this filing should be considered in conjunction with NFG's filing in Docket No. CP90-920-000 as they are integrated as one complete project.

CNG's proposal in Docket No. CP90-1989-000 would replace the need for the 122 miles of the Empire Pipeline that is not obviated by NFG's proposal in Docket No. CP90-920-000. In place of the 122 miles of 24-inch-diameter pipeline CNG would be required to construct 52.6 miles of pipeline looping, 16.1 miles of new pipeline on new right-of-way, and add various compression and metering facilities. See table 2 for a detailed summary of the facilities requested by CNG.

The 16.1 miles of new 24-inch-diameter pipeline was previously studied in the FERC staff's *SS-2 Storage Service Project Environmental Assessment*, issued by the Commission in July 1989. The subject 16.1 miles of pipeline was a portion of an alternative filed by CNG in Docket No. CP88-183-000 to NFG's storage service facilities in that proceeding. CNG's facilities were never built and will be re-addressed in this EA.

**Current Environmental Issues**

The Commission's EA will address the environmental concerns that have been and will be identified by the FERC staff, interveners, and by concerned resource agencies and individuals. Subject to the condition noted under *Comment Procedures*, the EA will address the entire 155 miles of the Empire Pipeline. In addition, the EA will address the potential environmental impact of the alternatives that have been proposed by NFG and CNG. The following issues have been identified for consideration in the EA:

Cultural Resources
- —Effect of the project on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources
- —Impact of the project on threatened and endangered species.
- —Impact on wetlands and fisheries.
- —Habitat alteration.

Land Use
- —Utilization of existing right-of-way.
- —Consistency with approved coastal zone management plans.
- —Impact of the facilities at the point of importation on land use and aesthetics.

Alternatives
- —Alternative import points and route variations to avoid environmentally sensitive areas.
- —Filed alternatives to the Empire proposal.
- —Staff-developed system alternatives.
- —An Empire Pipeline border crossing at Lewiston, NY near Tennessee's Niagara Spur right-of-way.

**Comment Procedures**

Comments from Federal, state, and local agencies and the public are requested to help identify significant issues or concerns related to the proposed action, to determine the scope of issues that need to be analyzed, and to identify and eliminate from detailed review the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale.

If no significant issues are raised concerning Empire State Pipeline facilities and the cogeneration facilities associated with these facilities, which are mostly nonjurisdictional, and the facilities have been approved or are under environmental review at the state or local level, the Commission staff intends to rely on such analyses in order to take advantage of existing data and not duplicate effort. However, in this case, the review would still address the potential effects on federally listed or proposed threatened and endangered species, cultural resources, and consistency with approved coastal zone management plans.

Comments should be submitted on or before *January 8, 1991*, reference Docket Nos. CP90-316-000, *et al.* and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Howard Wheeler, Project Manager, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 7312, Washington, DC 20426.

The EA will be based on the FERC staff's independent analysis of the proposal and together with the comments received will comprise part of the record to be considered by the Commission in this proceeding.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Linwood A. Watson, Jr.,
*Acting Secretary.*

[1] The appendices are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, telephone [202] 208-1371.



TABLE 1.—SUMMARY OF PROPOSED PIPELINE FACILITIES

| Proposed facilities | Pipe diameter (inches) | Approximate length (miles) | State | County |
|---|---|---|---|---|
| Empire: | | | | |
| Docket Nos. CP90-316-000 and CP90-317-000 | 24 | 1 | NY | Erie. |
| Related nonjurisdictional facilities | 24 | 155 | NY | Erie, Niagara, Genesee, Monroe, Ontario, Wayne, Cayuga, Onondaga, Oswego. |
| Great Lakes (Docket No. CP90-1389-000): | | | | |
| Loop 1 | 36 | 9.2 | MI | Saginaw, Genesee. |
| Loop 2 | 36 | 6.8 | MI | St. Clair, Macomb. |
| NFG (Docket No. CP90-854-001): | | | | |
| Line XM5-1 | 24 | 3.24 | NY | Niagara. |
| Line XM5-2 | 16 | 2.22 | NY | Erie. |

[1] Border facilities consisting of a short section of pipeline, valves, pig launcher, and a meter station to be used for the importation of natural gas.

TABLE 2—PROPOSED ALTERNATIVES TO THE EMPIRE STATE FACILITIES

| Proposed facilities | Pipe diameter (inches) | Approximate length (miles) | State | County |
|---|---|---|---|---|
| NFG (would replace the westernmost 32 miles of the Empire proposal—however, as stated in this notice, NFG no longer proposes this alternative): | | | | |
| Docket Nos. CP90-967-000 and CP90-968-000 | 24 | (1) | NY | Erie. |
| Docket No. CP90-854-000, Line XM-5 (new) | 24 | 9.9 | NY | Niagara, Erie. |
| Docket No. CP90-920-000, Line XM-6 (new) | 24 | 5.0 | NY | Erie. |

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TABLE 2—PROPOSED ALTERNATIVES TO THE EMPIRE STATE FACILITIES—Continued

| Proposed facilities | Pipe diameter (inches) | Approximate length (miles) | State | County |
|---|---|---|---|---|
| Line XM-7 (new) | 24 | 7.6 | NY | Niagara. |
| CNG (would replace the easternmost 122 miles of the Empire proposal): | | | | |
| Docket No. CP90-1969-000, TL-478 (parallel to Niagara Spur) | 24 | 17.7 | NY | Erie. |
| TL-456 (looping) | 20 | 28.4 | NY | Erie, Wyoming. |
| TL-453 (new) | 24 | 16.1 | PA | Potter. |
| | | | NY | Steuben. |
| TL-475, Extension 3 (looping) | 30 | 6.5 | NY | Chemung. |
| TL-Syracuse Compressor Station (existing metering site) | | 4,390 hp | NY | Onondaga. |
| Genesee Compressor Station (new) | | 4,500 hp | NY | Genesee. |

[1] Border facilities consisting of 24-inch-diameter pipeline at the international border to be used for the importation of gas.

[Docket No. CP89-1281-000]

## Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 30, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1 and First Revised Volume No. 1A, to be effective December 1, 1990.

Natural states that the tariff sheets are submitted in compliance with the Commission's order issued November 19, 1990, at the Docket Nos. CP89-1281-000 and TA90-1-28-000. The order authorized Natural to implement a Gas Inventory Demand Charge tariff provision and other tariff changes effective December 1, 1990.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective December 1, 1990.

Natural notes copy of the filing is being mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service lists at Docket Nos. CP89-1281-000 and TA90-1-28-000.

Any person desiring to protest said filing should file a protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29282 Filed 12-13-90; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[FE Docket No. 90-102-NG]

## CanStates Petroleum Marketing; Application to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Application for blanket authorization to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on November 28, 1990, and amended December 3, 1990, by CanStates Petroleum Marketing (CanStates), for blanket authority to import up to 180 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery. CanStates intends to utilize existing pipeline facilities for the transportation of the proposed imports and states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction. CanStates also requests that an import authorization be granted on an expedited basis.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 14, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0503.

**SUPPLEMENTARY INFORMATION:**

CanStates is a partnership formed under the laws of the State of Michigan between Rankin Petroleum, Inc., and Polysar Hydrocarbons, Inc., both Michigan Corporations, with its principal place of business in Port Huron, Michigan. CanStates is engaged in the business of purchasing, marketing and reselling hydrocarbons, including natural gas. Under the instant proposal, CanStates intends to purchase up to 250,000 Mcf per day of natural gas from various Canadian suppliers for resale to local distribution companies and other end-users in the U.S. under contracts of two years or less. In support of its application, CanStates states that the proposed blanket import will provide it the opportunity to bring competitively priced Canadian gas supplies to U.S. markets for the benefit of U.S. customers.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming the assertion.

All parties should be aware that DOE may permit the import of gas at any entry point on the international border where existing pipeline facilities are located and that a total term volume may be designated, rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. With respect to CanStates' request for expedited treatment of its application, no decision will be made until all responses of this notice have been received and evaluated.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CanStates' application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 10, 1990.

Clifford P. Tomaszewski,

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-29303 Filed 12-13-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-97-NG]

## City of Warroad, MN; Application to Import Natural Gas from Canada

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application to import natural gas from Canada.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 13, 1990, of an application filed by the City of Warroad, Minnesota (Warroad) to import from Canada up to 550 MMcf of natural gas annually (365 MMcf on a firm basis and 185 MMcf for overrun supplies) gas from the date on which gas flows under the unbundling of Inter-City Minnesota Pipelines Ltd. (Inter-City) sales and transportation service through October 31, 1995. The gas will be imported at a point on the international border near Sprague, Manitoba. Existing facilities would be used for the importation and transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 14, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586-7249

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6667

**SUPPLEMENTARY INFORMATION:**

Warroad, which is a municipal corporation of the State of Minnesota, owns and operates gas distribution facilities. It presently purchases all of its gas supply from Inter-City pursuant to a gas purchase contract dated November 1, 1970. Warroad is filing this application for authority to import natural gas to replace the authorization previously granted to Inter-City [1], which is in the process of unbundling its gas sales arrangements to become solely a transporter rather than a reseller of gas.

Warroad has entered into a precedent agreement to purchase gas with Western Gas Marketing Limited (WGML), a subsidiary of TransCanada Pipelines Limited (TransCanada). The agreement requires WGML to supply Warroad with a daily firm contract quantity of 1000 Mcf per day together with overrun volumes on an "if and as available" basis. The contract will become effective on the date that all governmental approvals for sales and

[1] The Federal Power Commission granted Minnesota Pipelines authority to import natural gas on August 10, 1970 (44 FPC 262), as amended 50 FPC 866 (1973), 54 FPC 191 (1975), 54 FPC 301 (1975), 59 FPC 1462 (1977) and 1 ERA paragraph 70.555 (1983).

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transportation are received and will terminate on October 31, 1995.

The price to be paid by Warroad for the gas consists of a demand and commodity charge. The demand charge will be the sum of the National Energy Board of Canada's (NEB) approved monthly demand toll per Mcf for transportation on TransCanada's system and the demand charge equivalent per Mcf for transportation by NOVA Corporation of Alberta. The agreement imposes a minimum bill equal to the total monthly demand charge.

The initial commodity charge under the agreement will be $1.99/MMBtu, subject to annual renegotiation. If renegotiation, other than renegotiation concerning the price for overrun gas, does not result in resolution, the agreement provides for arbitration to determine whether the price of the gas should be modified in order to achieve a price that is competitive with the price of comparable supplies available to Warroad and with prices paid by purchasers in other North American gas markets for gas service from Alberta supplies. The total charge for deliveries of overrun gas are to be agreed upon from time to time.

Warroad also has entered into a transportation agreement with ICG Transmission Holdings Ltd. (ICG) to transport the gas from the interconnection with TransCanada at Spruce, Manitoba, to a point on the international border near Sprague, Manitoba. Inter-City will transport the gas from its interconnection with ICG at Sprague to Warroad.

The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR section 590.316.

A copy of Warroad's application is available for inspection and copying in the Office of Fuels Programs docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC on December 6, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-29301 Filed 12-13-90; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearing and Appeals

### Cases Filed During the Week of September 21 through September 28, 1990

During the Week of September 21 through September 28, 1990, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 10, 1990.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*



LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 21 through September 28, 1990]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| July 21, 1990 | Economic Regulatory Administration, Washington, D.C. | LRZ-0009 | Interlocutory Order. If granted: The Economic Regulatory Administration would receive documents and file a supplemental Response to the Statement of Objections filed by Robert J. Martin *et al.* (Case No. LRO-0001). |
| September 28, 1990. | Erickson Refining Corporation, Washington, D.C. | LEF-0023 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the May 7, 1990 Settlement Agreement that the DOE entered into with Erickson Refining Corporation. |
| September 26 1990. | Kern Oil & Refining and Larry D. Delpit, Washington, D.C. | LEF-0022 | Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the April 19, 1990 Consent Order that the DOE entered into with Kern Oil & Refinery and Larry D. Delpit. |
| September 26, 1990. | Texaco/Mac's Texaco, Ballwin, Missouri | RR321-19 | Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The September 12, 1990 Decision and Order (Case Nos. RF321-5250 and RF321-7220) issued to Mac's Texaco would be modified regarding the firm's application for refund in the Texaco refund proceeding. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/name of refund application | Case No. |
|---|---|---|
| 9/21/90 thru 09/28/90 | Crude oil refund, applications received | RF272-81886 thru RF272-82203 |
| 9/21/90 thru 09/28/90 | Texaco refund, applications received | RF321-9706 thru RF321-9900 |
| 9/21/90 thru 09/28/90 | Gulf oil refund, applications received | RF300-12280 thru RF300-12456 |
| 9/24/90 | Williamson's ARCO | RF304-12024 |
| 9/24/90 | Alaimo Fuel Co. | RF323-26 |
| 9/24/90 | C.W.&P.J. Brown Oil | RF313-323 |
| 9/24/90 | Perimeter Petroleum | RF313-324 |
| 9/24/90 | B.E.&H. Oil | RF313-325 |
| 9/24/90 | Lawley Oil Company | RF313-326 |
| 9/24/90 | Gene's ARCO #1 | RF304-12025 |
| 9/24/90 | Dan's Shell | RF315-10051 |
| 9/24/90 | Pine Brook Service Centers | RF315-10052 |
| 9/25/90 | Lopilato & Chioccariello | RF315-10053 |
| 9/25/90 | Hometown, Inc. | RF304-12026 |
| 9/25/90 | Shannon Oil Company, Inc. | RF304-12027 |
| 9/25/90 | Keplers Fuel Company | RF304-12028 |
| 9/25/90 | C&L Super Shell | RF315-10054 |
| 9/26/90 | Universe Oil | RF324-5 |
| 9/26/90 | Cedar Lane Corp. | RF324-6 |
| 9/26/90 | Clarks Petroleum Service, Inc. | RF324-7 |
| 9/26/90 | Schmitt Sales, Inc. | RF324-8 |
| 9/26/90 | Arrow Marts, Inc. | RF32400-9 |
| 9/26/90 | Griffith Oil | RF324-10 |
| 9/26/90 | F.P. Young Co. | RF324-11 |
| 9/26/90 | Highway Petroleum Sales | RF324-12 |
| 9/26/90 | Canard Oil Co., Inc. | RF324-13 |
| 9/26/90 | Etheridge Oil Co., Inc. | RF324-14 |
| 9/26/90 | Blue Flame Fuels, Inc. | RF324-15 |
| 9/26/90 | Mooring Oil Co. | RF324-16 |
| 9/26/90 | Dilmar Oil Co., Inc. | RF324-17 |
| 9/26/90 | Gorin & Lobb Oil Co., Inc. | RF324-18 |
| 9/28/90 | O'Glan Oil Company | RF304-12029 |
| 9/28/90 | 8 Mile Wyoming Shell | RF315-10055 |
| 9/28/90 | 6 Mile Wyoming Shell | RF315-10056 |

[FR Doc. 90-29298 Filed 12-13-90; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Cases Filed During the Week of September 28 Through October 5, 1990

During the week of September 28 through October 5, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 10, 1990.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 28 through October 5, 1990]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| October 1, 1990 | Surface Mining Research Library, Charleston, WV | LFA-0072 | Appeal of an information request denial. If granted: The August 27, 1990 Freedom of Information Request Denial issued by the Office of Placement and Administration would be rescinded and the Surface Mining Research Library would receive access to site plans and alternative site plans for proposals submitted by CRSS, Inc. and Westmoreland Energy/Energotechnology Corporation. |
| October 1, 1990 | Texaco/Dixon's Texaco, Pine Bluff, AR | RR321-21 | Request for modification/rescission in the Texaco Refund Proceeding. If granted: The August 28, 1990 Decision and Order (Case Nos. RF321-976 and RF321-8420) issued to Dixon's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |
| October 10, 1990 | Texaco/Turnwater Texaco, Olympia, WA | RR321-20 | Request for modification/rescission in the Texaco Refund Proceeding. If granted: The September 10, 1990 Decision and Order (Case Nos. RF321-3672 and RF321-6087) issued to Turnwater Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |
| October 2, 1990 | Bill J. Graham, Midland, TX | LEF-0024 | Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, Subpart V, in connection with the March 28, 1990 Remedial Order issued to Bill J. Graham (Case No. DRO-0216). |
| October 2, 1990 | Texaco/Baker's Texaco, Baton Rouge, LA | RR321-22 | Request for modification/rescission in the Texaco refund proceeding. If granted: The September 13, 1990 Decision and Order (Case Nos. RF321-4248 and RF321-4567) would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding. |

REFUND APPLICATIONS RECEIVED

[Week of September 28 to October 5, 1990]

| | | |
|---|---|---|
| 9/28/90 thru 10/5/90 | Gulf oil refund, applications received | RF300-12457 thru RF300-12619 |
| 9/28/90 thru 10/5/90 | Crude oil refund, applications received | RF272-82204 thru RF272-82408 |
| 9/28/90 thru 10/5/90 | Texaco refund, applications received | RF321-9901 thru RF321-9988 |
| 10/02/90 | Robert W. McGee, Inc | RF304-12030 |
| 10/02/90 | Dodge County Highway Dept | RA272-31 |
| 10/02/90 | Reid Petroleum Corporation | RF324-19 |
| 10/04/90 | Mills Service Station | RF324-20 |
| 10/04/90 | New Lakewood Truck Stop | RF324-21 |
| 10/04/90 | Terrell Bait Shop | RF324-22 |
| 10/04/90 | Eddie's Service Station | RF324-23 |
| 10/04/90 | Wood's Service Station | RF324-24 |
| 10/04/90 | Gib's Service | RF324-25 |
| 10/04/90 | Sharlow's Service Station | RF324-26 |
| 10/04/90 | Asaro's Service Station | RF324-27 |
| 10/04/90 | Davis Oil Co | RF324-28 |
| 10/04/90 | Jessie Watts' Service | RF324-29 |
| 10/04/90 | Mull's Service Station | RF324-30 |
| 10/04/90 | Pennell's Service | RF324-31 |
| 10/04/90 | Bryant's Market | RF324-32 |
| 10/04/90 | Andrew Gulledge | RF324-33 |
| 10/04/90 | Trexler Grocery | RF324-34 |
| 10/04/90 | 901 Gran Prix Fuels | RF324-35 |
| 10/04/90 | Surplus & Salvage | RF324-36 |
| 10/04/90 | Harrington Service Station | RF324-37 |
| 10/04/90 | Dwight Elmore | RF324-38 |
| 10/04/90 | Wooten's Grocery | RF324-39 |
| 10/04/90 | Coward's Service Station | RF324-40 |
| 10/04/90 | Tommy's Market | RF324-41 |
| 10/04/90 | Aldridge & Love Service | RF324-42 |
| 10/04/90 | Sam's Hi-Val-U | RF324-43 |
| 10/04/90 | Little Farm Market | RF324-44 |
| 10/04/90 | V-Point Service | RF324-45 |
| 10/04/90 | Brooks Hi-Val-U | RF324-46 |
| 10/04/90 | Solon Prevette | RF324-47 |
| 10/04/90 | Pine Ridge Grocery | RF324-48 |
| 10/04/90 | Stan's Shell Service | RF315-10057 |
| 10/05/90 | Krupe Oil Co | RF323-27 |
| 10/05/90 | Carlos R. Leffler, Inc | RF325-2 |

[FR Doc. 90-29299 Filed 12-13-90; 8:45 am]

BILLING CODE 6450-01-M



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3859-6]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Solid Waste and Emergency Response**

*Title:* Trade Secret Claims for Community Right-to-Know and Emergency Planning Information (EPA) ICR# 1428.02; OMB# 2050-0078). This ICR requests renewal of the existing clearance.

*Abstract:* Section 322 of the Emergency Planning and Community Right-to-Know Act (EPCRA) allows a facility to withhold the specific chemical identity from the EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. Facilities requesting trade secrecy protection must submit to EPA, in conjunction with their EPCRA report, an explanation showing that their claim for the chemical identity meets the four statutory criteria for trade secrecy enumerated in section 322(b)(1)-(4):

- The facility has not disclosed the chemical identity to any other person not bound by a confidentiality agreement (except for certain Federal, State or local government officials);
- The information is not required to be disclosed or otherwise made available to the public under any other Federal or State law;
- Disclosure of the information is likely to cause substantial harm to the competitive position of the facility; and
- The chemical identity is not readily discoverable through reverse engineering.

A standardized claim substantiation form was developed to help submitters more easily determine if they have sufficient bases to make the trade secrecy claim, and to ensure that all submissions are evaluated on the basis of comparable information.

Section 322(d) of EPCRA also provides for a public petition process to request the disclosure of the chemical identities claimed as trade secret. The necessary elements for a petition are described in the information collection.

*Burden Statement:* The estimated public reporting burden for this collection of information is 36 hours per facility to prepare a trade secrecy substantiation. This estimate includes time to read the instructions, gather existing information, and prepare and submit the form. The estimated burden for the public petition process is 10 hours per petitioner and includes time to identify the facility, chemical and submission the petitioner is concerned with.

*Respondents:* Owners/operators of fixed facilities required to report to State and local authorities, and EPA the presence, use and release of extremely hazardous substances (described in sections 302 and 304) and hazardous and toxic chemicals (described in sections 311, 312 and 313).

*Estimated no. of Respondents:* 797 (787 facilities, 10 petitioners).

*Estimated Total Annual Burden on Respondents:* 29,831 hours.

*Frequency of Collection:* On occasion, when needed to protect the chemical identity of an EPCRA submission.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530

Dated: December 7, 1990.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 90-29331 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3869-8]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 26, 1990 through November 30, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 15989).

**Draft EISs**

ERP No. D-BLM-K61111-CA Rating EC2, South Fork Eel Wild and Scenic River Management Plan, Implementation, Arcata Resource Area, Ukiah District, Mendocino County, CA.

*Summary:* EPA expressed environmental concerns with two alternatives and the proposed action due to potential adverse impacts to water quality, anadromous fisheries, and threatened and endangered species from timber harvesting activities, the use of the herbicides, and other multiple use actions on lands adjacent to the Eel Wild and Scenic River. EPA also expressed concerns with the impacts of prescribed burns on air quality in designated wilderness areas.

ERP No. D-USN-L11012-WA Rating EC2, Naval Station Puget Sound (NSPS) Sand Point Realignment to NSPS Everett, Implementation, City of Seattle, WA.

*Summary:* EPA has environmental concerns based on the potential degradation of the ambient air quality at Sand Point. Additional information and clarification is needed on quantification of project-related emissions and associated ambient impacts for both present and future conditions.

**Final EISs**

*ERP No. F-BLM-J60007-MT*

Bull Mountains Land Exchange, Federal Coal Lands for High Values Recreational and Wildlife Lands, Carbon County, MT.

*Summary:* EPA has no objections to the preferred alternative (A).

*ERP No. F-BLM-J61062-WY*

Grass Creek/Cody Resource Area Wilderness Designation, Suitability or

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Nonsuitability, Owl Creek, Bobcat Draw Badlands, Sheep Mountain, Red Butte and McCullough Peaks WSAs, Several Counties, WY.

*Summary:* EPA has no objections to the proposed actions.

*ERP No. F–MMS–K67007–00*

Hawaiian Archipelago and Johnston Island Exclusive Economic Zones, Marine Mineral Sale (Non-Oil and Gas Minerals), Leasing, Possible 404 Permit, Hawaii and Pacific.

*Summary:* Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

*ERP No. F–SCS–K36095–CA*

Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA.

*Summary:* Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

*ERP No. F–USN–K11039–CA*

San Diego Navy Broadway Complex Redevelopment, Implementation, CA.

*Summary:* Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

*ERP No. FS–AFS–K61092–CA*

MT. Shasta Ski Area Development Selecting National Forest System Land for Alpine Skiing, Implementation, Siskiyou County, CA.

*Summary:* EPA expressed continuing concerns with indirect and cumulative impacts to groundwater, air quality and noise levels. EPA requested that the Forest Service reconsider the selection of a preferred alternative to one which would be more protective of wetlands, riparian areas and air quality.

*ERP No. FS–NOA–K90007–00*

Pacific Coast Groundfish Fishery Management Plan (FMP), Approval and Implementation of FMP Amendment No. 4, CA, OR and WA.

*Summary:* Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: December 11, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90-29377 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3868-4]

## Intent to Prepare an Environmental Impact Statement (EIS) on the Pulp Processing/rayon Manufacturing Facility Proposed by Formosa Plastics Corp., USA Near Wallace, LA in St. John the Baptist Parish

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Issuance of a new source National Pollutant Discharge Elimination System (NPDES) permit to Formosa Plastics Corporation, USA for the proposed pulp/rayon facility near Wallace, Louisiana.

**PURPOSE:** EPA has determined that the issuance of an NPDES permit to Formosa Plastics (PE4) to operate the proposed pulp/rayon facility represents a major Federal action that may significantly affect the quality of the human environment. Therefore, an EIS will be prepared to assess the potential environmental consequences of EPA's permit action.

**FOR FURTHER INFORMATION OR TO BE PLACED ON THE PROJECT MAILING LIST CONTACT:** Mr. Norm Thomas; Chief, Federal Activities Branch; U.S. EPA, Region VI (E–FF); 1445 Ross Avenue; Dallas, Texas 75202–2733. Telephone: (Commercial) 214–655–2260 or (FTS) 255–2260.

**SUMMARY:** The proposed facility will produce 1000 metric tons per day of rayon grade pulp. The raw materials will consist of hardwood chips and chemicals to convert the wood to pulp. The proposed acid bisulfite process will use the latest technology and state of the art equipment. Proposed facilities include the processing plant on approximately 1,740 acres and a docking facility on the Mississippi river for shipment of materials.

**ALTERNATIVES:** Alternatives available to EPA are to issue the NPDES permit for the project; to issue the NPDES permit for the project with certain modifications to minimize adverse impacts; or to deny the permit.

**SCOPING:** EPA encourages agency and public participation in the decisionmaking process on this proposed permit action. Federal, State and local agencies and the public are invited to participate in the process for determining the scope of issues to be addressed and for identifying the major issues related to the proposed action. A public meeting to receive input to this scoping process will be held at 7:00 p.m. on January 3, 1991 in the St. John the Baptist Parish Courthouse located on East 3rd Street in Edgard, Louisiana.

**ESTIMATED DATE OF DRAFT EIS RELEASE:** July, 1991.

**RESPONSIBLE OFFICIAL:** Robert E. Layton Jr., P.E. Regional Administrator.

Dated: December 7, 1990.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 90-29379 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3868-5]

## Designation of an Ocean Dredged Material Disposal Site (ODMDS) Offshore Port Isabel, Texas; Intent to Prepare an Environmental Impact Statement (EIS)

**AGENCY:** U.S. Environmental Protection Agency, Region 6.

**ACTION:** Notice of Intent to prepare an EIS on the designation of an ODMDS offshore Port Isabel, Texas.

**PURPOSE:** In accordance with section 102 of the Marine Protection, Research and Sanctuaries Act of 1972 and 40 CFR 228 (Criteria for the Management of Disposal Sites for Ocean Dumping), the Environmental Protection Agency (EPA) will prepare a Draft Environmental Impact Statement (EIS) on the designation of an ODMDS offshore Port Isabel, Texas

**FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT:** Mr. Norm Thomas, Chief, Federal Activities Branch (6E–F), EPA, 1445 Ross Avenue; Dallas, Texas 75202–2733. Telephone: 214/655–2260 or FTS 255–2260.

**SUMMARY:** The Corps of Engineers (COE), Galveston District, proposes to enlarge the Brazos Island Harbor (BIH) Entrance Channel. The main channel and turning basin would be deepened and widened generating approximately 1,325,000 cubic yards of construction material to be discharged offshore. This proposal is called the BIH 42-Foot Project.

**NEED FOR ACTION:** The COE has requested that EPA designate an offshore disposal site for the one-time disposal of virgin construction material from the proposed BIH project when ocean disposal is the preferred disposal alternative. An EIS is required to provide the necessary information to evaluate alternatives and designate an ocean disposal site.

**ALTERNATIVES:** Alternatives to be considered in the Draft EIS include no action, upland disposal and ocean disposal.



**SCOPING:** A scoping meeting will not be held. However, EPA encourages Federal, state and local agencies as well as interested parties to identify significant issues to be addressed in the EIS at this time. Comments and concerns should be sent to Norm Thomas at the above address.

**ESTIMATED DATE OF RELEASE:** The Draft EIS should be available in February 1991.

**RESPONSIBLE OFFICIAL:** Mr. Robert E. Layton Jr., P.E. Regional Administrator.

Dated: December 7, 1990.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 90-29378 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3865-7]

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements iled December 03, 1990. Through December 07, 1990 Pursuant to 40 CFR 1506.9.

*EIS No. 900915*, FINAL EIS, AFS, WY, Little Bighorn River, Wild and Scenic River Study, National Wild and Scenic Rivers System, Designation, Bighorn National Forest, Sheridan County, WY, Due: January 14, 1991, Contact: Arthur Bauer (307) 672–0751. Published FR 8–31–90. This final statement was inadvertently filed with EPA 8–23–90.

*EIS No. 900446*, DRAFT EIS, FHW, CA, I–880 Cypress Replacement, I–880 Interchange to I–80/I–580/I–880 Cypress Structure, Funding and Section 404 Permit, City of Oakland, Alameda County, CA, Due: January 28, 1991, Contact: C. Glenn Clinton (916) 551–1314.

*EIS No. 900447*, FINAL EIS, AFS, CO, Willow Mountain Area, Multiple-Use Management Projects, Implementation, Special Use Permit, Rio Grande National Forest, CO, Due: January 14, 1991, Contact: James Webb (719) 852–5941.

*EIS No. 900448*, SECOND DRAFT SUPPLE, COE, OR, Elk Creek Lake Project, Construction and Operation, Implementation, Rogue River, Jackson County, OR, Due: January 28, 1991, Contact: David Kurkoski (503) 326–6094.

*EIS No. 900449*, SECOND FINAL EIS, BLM, CO, UT, San Juan and San Miguel Planning Area Wilderness Recommendation, Designation or Nondesignation, Cahone Canyon, Cross Canyon, Dolores River Canyon, McKenna Peak, Menefee Mountain, Squaw/Papoose Canyons, Tabequache Creek and Weber Mountain WSAs', Montezuma, Dolores, San Miguel and Montrose Counties, CO and San Juan County, UT, Due: January 14, 1991, Contact: Allen Belt (303) 249–6047.

EIS No. 900450, DRAFT EIS, FHW, PA, Morgantown Connector Construction, I–176 between Pennsylvania Turnpike at relocated I–22, Funding, Berks County, PA, Due: January 28, 1991, Contact: Manuel A. Marks (717) 782–2222.

EIS No. 900451, FINAL EIS, COE, KY, Mayfield Creek Flood Damage Reduction Plan, Implementation, Graves, McCracken, Ballard and Carlisle Counties, KY Due: January 14, 1991, Contact: Richard Hite (901) 544–3867.

### Amended Notices

*EIS No. 900445*, DRAFT EIS, FHW, OR, Salem-Dayton Highway/OR–221/ Wallace Road Widening, Orchard Heights Road to Oakcrest Drive, Funding, Section 404 Permit, Polk County, OR, Due: January 31, 1991, Contact: Al Steger (503) 399–5749. Published FR 12–07–90—EIS status correction and change of contact person.

Dated: December 11, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities*

[FR Doc. 90-29380 Filed 12-13-90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

December 7, 1990.

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

*OMB Number:* 3060–0288.

*Title:* Section 78.33, Special Temporary Authority (Cable Television Relay Stations).

*Action:* Revision.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 125 responses; 4 hours average burden per response; 500 hours total annual burden.

*Needs and Uses:* Section 78.33 permits Cable Television Relay Service stations to file informal requests for special temporary authority to install and operate equipment in a manner different from that authorized in the station license. Special temporary authority may also be filed to conduct equipment, program, service and path tests. The data is used by FCC staff to assure that grant of temporary authority would not cause interference to established stations and meets Commission standards.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90-29376 Filed 12-13-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Type:* New Collection.

*Title:* Survey of Flood Victims Regarding the Usefulness of the Flood Recovery Handbook "Following a Flood: Steps to Recovery".

*Abstract:* A major aspect of reducing flood losses is to make the general public aware of the steps that they can take to make their homes less vulnerable to flood damage. A handbook has been drafted that will provide homeowners with information on how to clean up and repair a flooded house. Other topics covered include the usefulness of flood insurance; preparing for an imminent flood and for evacuation; financial assistance available; and ways that future flood

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damage can be reduced by individuals and the community.

During the spring of 1991, copies of the draft flood recovery handbook "Following a Flood: Steps to Recovery" will be distributed to flood victims who show an interest in looking over the handbook and a willingness to participate in the survey. Distribution of the handbooks will be made at Red Cross disaster service facilities following a flood event. Eight hundred flood victims will be asked to read the handbook. Of the 800, 150 will be surveyed by telephone. A written survey will be included in each handbook to give those victims who are not included in the telephone survey a means of providing their feedback. The number of respondents for the written survey is estimated to be 228. Both the telephone and written survey forms will test the usefulness of the handbook to flood victims. The information will be used to determine (a) if the information in the handbook is presented well, and (b) what additional needs flood victims have that the handbook could meet. The results of the survey will be used to revise and publish the handbook.

*Type of Respondents:* Individuals or households.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 918 Hours.

*Number of Respondents:* Handbook Reviewers—600; Telephone Survey Respondents—150; Written Survey Respondents—228.

*Estimated Average Burden Hours Per Response:* Handbook Reviewers—65 minutes; Telephone Survey—10 minutes; Written Survey—7 minutes.

*Frequency of Response:* One-time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: December 4, 1990.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 90–29335 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–884–DR]

## Arizona; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–884–DR), dated December 6, 1990, and related determinations.

**DATES:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

### Notice

Notice is hereby given that, in a letter dated December 6, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from severe storms and flooding on July 8 through September 14, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William M. Medigovich of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

The counties of Coconino, Gila, Graham, Maricopa, Mohave, Pima, Pinal, and Yavapai, and the Havasupai and Gila River Indian Reservations for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90–29336 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–885–DR]

## Indiana; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–885–DR), dated December 6, 1990, and related determinations.

**DATES:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

### Notice

Notice is hereby given that, in a letter dated December 6, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms and flooding beginning on November 27, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if damage assessments warrant. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.



The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Lake County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90–29337 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–881–DR]

## South Carolina; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Carolina (FEMA–881–DR), dated October 22, 1990, and related determinations.

**DATES:** December 4, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

### Notice

The notice of a major disaster for the State of South Carolina, dated October 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 22, 1990:

Lancaster County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90–29338 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–883–DR]

## Washington; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA–883–DR), dated November 26, 1990, and related determinations.

**DATES:** December 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

### Notice

The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

The countries of Grays Harbor, Lewis, Mason, Pacific, Pierce, Thurston, and Wahkiakum for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90–29339 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–02–M

## Fee Charge System for Flood Maps; Correction

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of intent; correction.

**SUMMARY:** This document corrects a clerical error in the notice of intent published in the **Federal Register** on November 29, 1990 (55 FR 49573).

**FOR FURTHER INFORMATION CONTACT:** John Matticks, Telephone (202) 646–2767.

This technical amendment corrects a clerical error which appeared in the Summary section, line 6. The date should read October 1, 1991 instead of October 1, 1992.

Issued: November 30, 1990.

**C.M. "Bud" Schauerte,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 90–29340 Filed 12–13–90; 8:45 am]

BILLING CODE 6718–03–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–011290–004

*Title:* Vessel Operators Hazardous Materials Association Agreement

*Parties:*

America-Africa-Europe Line GmbH
Atlantic Container Line B.V.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hamburg-Sudamerikanische Dampfshifffahrts Gesellschaft Eggert & Amsinck (Columbus Line)
Hapag-Lloyd AG
Independent Container Line Ltd.
Kawasaki Kisen Kaisha Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Nedlloyd Lijnen B.V.
Nippon Yusen Kaisha Line
P&O Containers, Ltd.
Sea-Land Service, Inc.
Wilh. Wilhelmsen Ltd. AS
Zim Israel Navigation Shipping Co., Ltd.

*Synopsis:* The proposed amendment would add Compagnie Generale Maritime and A/S Ivarans Rederi as parties to the Agreement. The parties have requested a shortened review period.

Dated: December 10, 1990.

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By order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29288 Filed 12-13-90; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed; Alabama State Docks Department/Cooper/T. Smith Stevedoring Terminal

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-200451.

*Title:* Alabama State Docks Department/Cooper/T. Smith Stevedoring Terminal Agreement.

*Parties:* Alabama State Docks Department, Cooper/T. Smith Stevedoring (CTSS).

*Synopsis:* The Agreement provides that CTSS will handle 350,000 short tons of export steel cargo during the 1-year term of the Agreement and receive certain wharfage incentive rates.

Dated: December 10, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29281 Filed 12-13-90; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

SeaEscape Cruises Limited and Ferry Charter Florida, Ltd., 1000 Port Blvd., Miami, FL 33132.

Vessel: SCANDINAVIAN SONG

Dated: December 10, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29287 Filed 12-13-90; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

*License Number:* 2616R.

*Name:* Kerr International Limited.

*Address:* P.O. Box 18065, Philadelphia, PA 19114-0065.

*Date Revoked:* November 13, 1990.

*Reason:* Surrendered license voluntarily.

*License Number:* 3297.

*Name:* Daniel C. Griffith (Samplers & Analysts) U.S.A., Inc.

*Address:* P.O. Box 1536, Pasadena, TX 77501.

*Date Revoked:* November 14, 1990.

*Reason:* Surrendered license voluntarily.

*License Number:* 153.

*Name:* Fillette, Green & company, Inc.

*Address:* 3323 West Highway 98, suite 115, Panama City, FL 32401.

*Date Revoked:* November 15, 1990.

*Reason:* Failed to furnish a valid surety bond.

*License Number:* 2170R.

*Name:* Toomey International, Inc.

*Address:* P.O. Box 571856, Houston, TX 77257.

*Date Revoked:* November 19, 1990.

*Reason:* Surrendered license voluntarily.

Bryant L. VanBrakle,

*Acting Director, Bureau of Domestic Regulation.*

[FR Doc. 90-29286 Filed 12-13-90; 8:45 am]

BILLING CODE 6730-01-M

[Fact Finding Investigation No. 19]

### Passenger Vessel Financial Responsibility Requirements; Erratum to Order of Investigation

The Federal Maritime Commission is correcting the Order of Investigation of Fact Finding Investigation No. 19, Passenger Vessel Financial Responsibility Requirements, published August 23, 1990, 55 FR 34,610, to invoke section 43 of the Shipping Act, 1916, and section 3(d) of Public Law 89-777 for authority to implement regulations.

Accordingly, the first ordering paragraph of the Order of Investigation in the above-captioned proceeding is corrected to begin as follows:

*Therefore, it is ordered,* That pursuant to section 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a, section 3(d) of Public Law 89-777, 46 U.S.C. app. 817e(d), and subpart R, part 502 of title 46 of the Code of Federal Regulations, * * *.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29280 Filed 12-13-90; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Scientific Workshop on the Health Effects of Electromagnetic Radiation on Workers; Meeting

*Name:* Scientific Workshop on the Health Effects of Electromagnetic Radiation on Workers.

*Time and date:* 8 a.m.-12:30 p.m., January 31, 1991.

*Place:* Omni Netherland Plaza Hotel, 5th and Race Streets, Cincinnati, Ohio 45202.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates 250 people.

*Purpose:* To review current data and new findings regarding electromagnetic radiation which may have relevance for occupational exposures; identify knowledge gaps that might be filled by directed research; and recommend a national research agenda which, if implemented, would close the gaps and permit reliable recommendations for protecting workers. The workshop will emphasize electric and magnetic fields of frequencies up to 100kHz, excluding static fields; and carcinogenic, reproductive, and neurologic health effects.

*Additional information and registration forms may be obtained from:* Electromagnetic Workshop, Project Coordinator, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-2, Cincinnati, Ohio 45226, telephone 513/841-4321 or FTS 684-4321.

Dated: December 7, 1990.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 90-29387 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-18-M



### Current Status of the Restructured Vessel Sanitation Program and Experience to Date with Program Operations; Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

*Name:* Current Status of the Restructured Vessel Sanitation Program and Experience to Date with Program Operations.

*Time and date:* 9 a.m.-12 noon, Tuesday, January 15, 1991. If warranted, the meeting will continue until 5 p.m.

*Place:* Miami Port Authority Passenger Terminal No. 10, 1007 North America way, Miami, Florida 33132.

*Status:* Open to the public, limited only by the space available, for participation, comment, and observation. The meeting room accommodates approximately 100 people.

*Matters to be discussed:* Current status of the restructured Vessel Sanitation Program and experience to date with program operations, during the past 4 years, as part of the revised Vessel Sanitation Program, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is a continuation of that series of public meetings.

For a period of 15 days following the meeting, through January 30, 1991, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

*Contact person for further information:* Linda W. Anderson, Chief, Special Programs Group (F29) CEHIC, CDC, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/488-4595 or FTS 236-4505.

Dated: December 10, 1990.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 90-29358 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-18-M

### Health Resources and Services Administration

### Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1991:

*Name:* National Advisory Committee on Rural Health.

*Date and Time:* February 4-6, 1991, 8:15 a.m.

*Place:* Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC.

The meeting is open to the public.

*Purpose:* The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

*Agenda:* During this meeting, the Committee intends to follow-up on many of the issues raised in its first two years. Thus, it will continue to monitor implementation of hospital, physician, and mid-level practitioner payment reform. The Committee will issue recommendations as appropriate. Some portion of the meeting is expected to be devoted to an examination of the Medicaid program.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, telephone (301) 443-0835.

Agenda Items are subject to change as priorities dictate.

Dated: December 10, 1990.

Jackie E. Baum,

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 90-29304 Filed 12-13-90; 8:45 am]

BILLING CODE 4160-15-M

### Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 7, 1990.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Marital Relationship Questionnaire—0960-0460—The information collected on the form SSA-4178 is used by the Social Security Administration to determine whether or not two unrelated individuals of the opposite sex who are living together are considered married and qualify for Supplemental Security Income (SSI) benefits as a couple. The affected public is comprised of applicants for and recipients of SSI benefits who hold themselves out to be married under the doctrine of common law.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

2. Letter To Employer Requesting Wage Information—0960-0138—The information collected on the form SSA-L-4201 is used by the Social Security Administration to verify earnings information for applicants seeking benefits under the provisions of the Supplemental Security Income program when he/she does not have the necessary evidence. The affected public consists of employers who verify the applicants eligibility by completing the wage information.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 5½ minutes.

Estimated Annual Burden: 12,192.

*OMB Desk Officer:* Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 10, 1990.

Ron Compston,

*Social Security Administration, Reports Clearance Officer.*

[FR Doc. 90-29259 Filed 12-13-90; 8:45 am]

BILLING CODE 4190-11-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2994-N-03]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**EFFECTIVE DATE:** December 14, 1990.

**ADDRESSES:** For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; *GSA:* Ronald Rice, Federal Property Resources Service; GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; *U.S. Air Force:* Bob Menke, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191; *Dept. of Energy:* Tom Knox, Facility Management Specialist, MA222, room 5B020, 1000 Independence Ave. SW., Washington, DC 20303; (202) 586-1191. (These are not toll-free numbers.)

Dated: December 8, 1990.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Economic Development.*

**Suitable Land (by State)**

*Guam*

Anderson Admin Annex
AKA Andy South
Yigo, GU, Co: (See City)
Location: Located 8 miles from AAFB proper
Landholding Agency: Air Force
Property Number: 189040869
Status: Underutilized
Comment: Portion of 80 acres; most recent use—recreational activities and training exercises; access restriction.

*Kansas*

Parcel 5
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenwort
Location: Area located in the center of the installation in training Area A
Landholding Agency: Army
Property Number: 219040422
Status: Underutilized
Comment: 250+ acres; steep/wooded area; selected periods are reserved for military training exercises.

*New York*

Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040881
Status: Excess
Comment: 3.27 acres; black top; easement restrictions.
GSA NO. 2-U-NY-799

**Suitable Buildings (by State)**

*Georgia*

Bldg. 4617
Fort Benning
Fort Benning, GA, Co: Muscogee
Landholding Agency: Army
Property Number: 219040434
Status: Unutilized
Comment: 1770 sq. ft.; 2 story; needs major rehab; most recent use—barracks.

Bldg. 4619
Fort Benning
Fort Benning, GA, Co: Muscogee
Landholding Agency: Army
Property Number: 219040435
Status: Unutilized
Comment: 764 sq. ft.; 1 story; needs major rehab; most recent use—storehouse.

Bldg. 4622
Fort Benning
Fort Benning, GA, Co: Muscogee
Landholding Agency: Army
Property Number: 219040436
Status: Unutilized
Comment: 784 sq. ft.; 1 story; needs major rehab; most recent use—storehouse.

Bldg. 4810
Fort Benning
Fort Benning, GA, Co: Muscogee
Landholding Agency: Army
Property Number: 219040437
Status: Unutilized
Comment: 810 sq. ft.; 1 story; needs major rehab; most recent use—storehouse.

*Guam*

Harmon VOR Site (Portion)
Dededo, GU, Co: (See City)
Location: Approximately 12 miles southwest of AAFB proper
Landholding Agency: Air Force
Property Number: 189040868
Status: Excess
Comment: 550 sq. ft.; 1 story concrete bldg; needs rehab; on 71 acres.

*Idaho*

Storage and Training Facility
INEL DOE-ID
Idaho Falls, ID, Co: Bonneville
Landholding Agency: Energy
Property Number: 419040001
Status: Excess
Comment: 2072 sq. ft.; 1 story wood frame; needs major rehab; off-site use only.

*Maine*

Ellsworth Federal Building
Corner of Main and Water Streets
Ellsworth, ME, Co: Hancock
Landholding Agency: GSA
Property Number: 549040008
Status: Excess
Comment: 4904 sq. ft.; 1 story steel frame/brick concrete exterior; most recent use—office; scheduled to be vacated in 6 months.
GSA NO. 2-G-ME-622

*New York*

Dwelling #1
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040862
Status: Excess
Comment: 480 sq. ft.; 2 story wood frame; good condition; lease restrictions.
GSA NO. 2-U-NY-799
Dwelling #2,
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040863
Status: Excess.
Comment: 380 sq. ft.; 2 story wood frame; good condition; lease restrictions.
GSA NO. 2-U-NY-799
Barn,
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040864
Status: Excess
Comment: 204 sq. ft.; 1 story wood frame; good condition; lease restriction.
GSA NO. 2-U-NY-799.
3-Car Garage,
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040865
Status: Excess
Comment: 660 sq. ft.; 1 story wood frame; good condition; lease restrictions.
GSA NO. 2-U-NY-799.
Paint Locker,
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040866
Status: Excess
Comment: 56 sq. ft.; 1 story metal on concrete slab; most recent use tool shed; lease restriction.
GSA NO. 2-U-NY-799.
Fog Signal Building
Tibbetts Point Light Station
Cape Vincent, NY, Co: Jefferson
Landholding Agency: Air Force
Property Number: 189040867
Status: Excess
Comment: 782 sq. ft.; 1 story brick; most recent use—power house; lease restriction.
GSA NO. 2-U-NY-799.

*Texas*

Bldg. 1128,
Fort Hood,
Old Park Avenue.
Fort Hood, TX, Co: Bell.
Landholding Agency: Army.
Property Number: 219040429.
Status: Unutilized.
Comment: 3150 sq. ft.; 2 story; potential utilities; needs major rehab; most recent use—storage.

Bldg. 2232
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219040430
Status: Unutilized
Comment: 3378 sq. ft.; 1 story; potential utilities; needs major rehab; most recent use—office/classroom.

Bldg. 2335,
Fort Hood,
Battalion Avenue.
Fort Hood, TX, Co: Coryell.
Landholding Agency: Army.
Property Number: 219040431.
Status: Unutilized.
Comment: 1575 sq. ft.; 1 story; potential utilities; needs major rehab; most recent use—storage.

Bldg. 2336,
Fort Hood,
Battalion Avenue.
Fort Hood, TX, Co: Coryell.
Landholding, Agency: Army.
Property Number: 219040432.
Status: Unutilized.
Comment: 2025 sq. ft.; 1 story; potential utilities; needs major rehab; most recent use—storage.

**Universe of Properties:**

Total=33.
Suitable=20.
Suitable Buildings=17.
Suitable Land=3.
Unsuitable=13.
Unsuitable Buildings=13.
Unsuitable Land=0.
Number of Resubmissions=0.

[FR Doc. 90-29153 Filed 12-13-90; 8:45 am]

BILLING CODE 4210-29-M



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-010-00-4332-09; FES 90-36]

### Availability of Final Wilderness Environmental Impact Statement (EIS), Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of Rock Springs Final Wilderness Environmental Impact Statement, Wyoming.

**SUMMARY:** The Rock Springs Wilderness Environmental Impact Statement assesses the environmental consequences of managing 13 wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area; (2) an "All Wilderness Alternative" for each wilderness study area; and (3) a "Partial Wilderness Alternative for three wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

Lake Mountain—13,865 acres, 13,865 acres nonsuitable.
Raymond Mountain—32,936 acres, 13,936 acres suitable.
Buffalo Hump—10,300 acres, 6,080 acres suitable, 4,220 acres nonsuitable.
Sand Dunes—27,109 acres, 21,304 acres suitable, 5,805 acres nonsuitable.
Alkali Draw—16,990 acres, 16,990 acres nonsuitable.
South Pinnacles—10,800 acres, 10,800 acres nonsuitable.
Alkali Basin/East Sand Dunes—12,800 acres, 12,800 acres nonsuitable.
Red Lake—9,515 acres, 9,515 acres nonsuitable.
Honeycomb Buttes—41,188 acres, 37,287 acres suitable, 3,901 acres nonsuitable.
Oregon Buttes—5,700 acres, 5,700 acres suitable.
Whitehorse Creek—4,002 acres, 4,002 acres nonsuitable.
Devils Playground/Twin Buttes—23,841 acres, 23,841 acres suitable.

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Red Creek Badlands—8,020 acres, 8,020 acres nonsuitable.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and by the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

**SUPPLEMENTARY INFORMATION:** Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Rock Springs District, P.O. Box 1869, Rock Springs, Wyoming 82902.

Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, Office of Public Affairs, 1849 C Street, NW., Washington, DC 20240.

Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Bureau of Land Management, Rock Springs District Office, U.S. 191 North, Rock Springs, Wyoming 82902.

Bureau of Land Management, Pinedale Resource Area, 431 West Pine Street, Pinedale, Wyoming 82941.

Bureau of Land Management, Kemmerer Resource Area, Kemmerer, Wyoming 83101.

Bureau of Land Management, Green River Resource Area, 79 Winston Drive, P.O. Box 1170, Rock Springs, Wyoming 82901.

**FOR FURTHER INFORMATION CONTACT:** Alan Stein, EIS Team Leader, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902 (307) 382–5350.

Dated: November 28, 1990.

**John H. Fanell,**

*Acting Director, Office of Environmental Affairs.*

[FR Doc. 90-28946 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-22-M

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**[CO-010-01-4332-09, FES 90-36]**

## Availability of Final Wilderness Environmental Impact Statement (EIS) for the Uncompahgre Basin Resource Area and the San Juan Resource Area, Montrose District, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the San Juan/San Miguel Planning Area Final Wilderness Environmental Impact Statement, Colorado.

**SUMMARY:** The San Juan/San Miguel Planning Area Wilderness Environmental Impact Statement assesses the environmental consequences of managing eight wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area; (2) an "All Wilderness Alternative" for each wilderness study area; and (3) a "Partial Wilderness Alternative" for six wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

| Wilderness study area | Total acres | Acres recommended suitable | Acres recommended nonsuitable |
|---|---|---|---|
| Cahone Canyon | 8,960 | 0 | 8,960 |
| Cross Canyon | 12,588 | 0 | 12,588 |
| Dolores River Canyon | 28,668 | [1] 29,415 | 200 |
| McKenna Peak | 19,398 | 0 | 19,398 |
| Menefee Mountain | 7,129 | 0 | 7,129 |
| Squaw/Paposose Canyon | 11,287 | 0 | 11,287 |
| Tabeguache Creek | 7,743 | [2] 7,748 | 21 |
| Weber Mountain | 6,303 | 0 | 6,303 |

[1]—Includes 947 acres recommended as suitable outside the WSA.
[2]—Includes 26 acres recommended as suitable outside the WSA.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and by the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

**SUPPLEMENTARY INFORMATION:** Copies of the environmental impact statement may be obtained from the Area Manager, San Juan Resource Area, Bureau of Land Management, 701 Camino del Rio, Durango, Colorado 81301 or the Area Manager, Uncompahgre Basin Resource Area, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401.

Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, Office of Public Affairs, 1849 C Street, NW., Washington, DC 20240.

Department of the Interior, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

**FOR FURTHER INFORMATION CONTACT:** Alan Kesterke, District Manager, Bureau of Land Management, Montrose District Office, 2465 Townsend Avenue, Montrose, Colorado 81401.

Dated: December 5, 1990.

**Jonathan P. Deason,**

*Director, Office of Environmental Affairs.*

[FR Doc. 90-28945 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-JB-M

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**[CA-940-01-5410-10-B010; CACA 27692]**

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, aggregating 15.00 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2845, Sacramento, California 95825, (916) 978–4820. Serial No. CACA 27692.

T. 11 N., R. 13 W., San Bernardino Meridian
Sec. 4, W½NW¼NW¼SE¼, SE¼SE¼ SE¼.
County—Kern.

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the applications shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: December 5, 1990.

Nancy J. Alex,

*Chief, Lands Section.*

[FR Doc. 90-29271 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-40-M

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**[CA-940-01-5410-10-B011; CACA 27689]**

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, aggregating 130.65 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2845, Sacramento, California 95825, (916) 978–4820. Serial No. CACA 27689.

T. 11 N., R. 13 W., San Bernardino Meridian
Sec. 4, E½W½ lot 1 NW¼, E½E½E½ lot 1 NW¼, E½E½ lot 2 NE¼, W½E½W¼ lot 2 NE¼, E½NE¼SW¼SW¼, SE¼ SW¼SW¼, NE¼SE¼SW¼, E½SE¼ SE¼SW¼, E½NE¼SE¼, E½NW¼ SE¼.
County—Kern.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: December 5, 1990.

Nancy J. Alex,

*Chief, Lands Section.*

[FR Doc. 90-29272 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-40-M

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**[CA-940-01-5410-10-B006; CACA 27687]**

## Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** The private lands described in this notice, aggregating 22.70 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2845, Sacramento, California 95825, (916) 978–4820. Serial No. CACA 27687.

T. 11 N., R. 13 W., San Bernardino Meridian
Sec. 4, NW¼,NW¼W½ lot 2 NE¼, SW¼SE¼E¼ lot 2 NW¼, NW¼ SE¼W½ lot 2 NW¼, W½NW¼ E½ lot 1 NW¼, E½SW¼E½ lot 1 NW¼, W½NE¼SW¼SE¼.
County—Kern.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: December 5, 1990.

Nancy J. Alex,

*Chief, Lands Section.*

[FR Doc. 90-29273 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-40-M

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**[NM-030-01-4212-14]**

## Sale of Public Land in Sierra County, NM

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value shown. The parcels are isolated, difficult and uneconomical to manage as part of the public land, and are not suitable for management by another Federal department or agency. The sale is consistent with the BLM's planning efforts, and the public interest will be served by offering this land for sale.

### Sale Method

Parcels 1, 2, 3, and 5 will be offered through direct sale procedures (43 CFR 2711.3–3). Parcel 4 will be offered for sale using competitive bidding procedures (43 CFR 2711.3–1).

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| Parcel No. | Serial No. | Legal description | Acreage | Appraised value | Method of sale |
|---|---|---|---|---|---|
| 1 | NM NM 77537 | T. 11 S., R. 6 W., sec. 2, lot 7 | 0.29 | $300.00 | Direct. |
| 2 | NM NM 77536 | T. 11 S., R. 6 W., sec. 2, lot 8 | 0.77 | 800.00 | Direct. |
| 3 | NM NM 77538 | T. 11 S., R. 6 W., sec. 2, lot 9 | 1.78 | 1,800.00 | Direct. |
| 4 | NM NM 77592 | T. 11 S., R. 6 W., sec. 2, lot 5 | 36.95 | 11,100.00 | Competitive. |
| 5 | NM NM 77606 | T. 11 S., R. 6 W., sec. 2, lot 6 | 0.21 | 25.00 | Direct. |

**Sales Procedures**

The sale of Parcel 4 will be by competitive sealed bids. Sealed bids will be considered only if received in the BLM Caballo Resource Area Office, 1800 Marquess, Las Cruces, New Mexico 88005, before 10 a.m. MST on March 4, 1991, the date of the sale. Bids of less than fair market value will be rejected. In the event that two or more sealed bids are received containing valid bids of the same amount, the determination of which is to be considered the highest designated bid will be by supplemental bidding. In such a case, the high bidders will be allowed to submit sealed bids as designated by the Authorized Officer. Bidders must be 18 years of age or over and United States citizens. Corporations must be subject to the laws of any state or of the United States. Apparent high bidders must submit proof of these requirements within 15 days after the sale date. Bids must be made by the principal or his duly qualified agent.

Each sealed bid must be written or typed and accompanied by certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM, for not less than 10 percent or more than 30 percent of the amount of the bid. Successful bidders will be required to pay the remainder of the sale price prior to expiration of 180 days from the date of the sale. Failure to submit the full sale price within the above specified time will result in cancellation of the sale of the specific parcel and the deposit will be forfeited and disposed of as other receipts of sale. The sealed bid envelope containing the bid and the required amount must be marked in the lower left-hand corner as follows:

Public Sale Bid Parcel 4
Serial No. NM NM 77592
Sale held March 4, 1991

All sealed bids will be either returned, accepted, or rejected within 30 days of the sale date. If the parcel is not sold on the day of the sale, it will be offered every first Tuesday of each month, same time and place, on a competitive sealed bid basis until sold, or until June 14, 1991.

Parcels 1, 2, 3, and 5 will be offered directly as listed below not less than 60 days from date of this notice. If unsold, they will be offered for sale by the competitive procedure.

Parcel 1—Catholic Diocese of Las Cruces, P.O. Box 16086, Las Cruces, New Mexico 88004.

Parcel 2—Cora Bierner, 2528 Camelia Court, SW., Albuquerque, New Mexico, 87105.

Parcel 3—James L. Markel, Jr., 8 Date Street, Truth or Consequences, New Mexico 87901.

Parcel 5—Sierra County, 300 Date Street, Truth or Consequences, New Mexico 87901.

**EFFECTIVE DATES:** Interested parties may submit comments regarding the proposed action to the Caballo Resource Area Manager on or before January 28, 1991.

**ADDRESSES:** Comments should be sent to BLM, Caballo Resource Area, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Bernie Creager at the above address or at 505–525–8228 (FTS 476–6200).

**SUPPLEMENTARY INFORMATION:** The land will be conveyed subject to:

1. Reservations to the United States for ditches and canals and all minerals, together with the right to prospect for, mine, and remove same.

2. All patents will be issued subject to valid existing rights.

3. On parcel 4, the patent will be issued subject to right-of-way NM NM 44852 to Continental Telephone Company of the West for buried telephone cable.

Comments must reference specific parcel numbers. Adverse comments received on specific parcels will not affect the sale of any other parcel. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Upon publication in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The BLM may accept or reject any or all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with FLPMA or other applicable law.

Dated: December 6, 1990.

**H. James Fox,**
*District Manager.*

[FR Doc. 90–29274 Filed 12–13–90; 8:45 am]
BILLING CODE 4310–FB–M

[WY–060–4212–14; WYW–115073]

## Realty Action; Direct Sale, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, direct sale of public lands in Johnson County.

**SUMMARY:** The following public surface estate has been determined to be suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713). The Bureau of Land Management (BLM) is required to receive fair market for the land sold and any amount for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

**Sixth Principal Meridan**

T. 43 N., R. 79 W.,
Section 8, S½NE¼SW¼

The above land aggregates 20.00 acres, more or less.

**FOR FURTHER INFORMATION CONTACT:** Richard Zander, Acting Area Manager, Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

**SUPPLEMENTARY INFORMATION:** This sale is consistent with Bureau of Land Management policies and the Buffalo Resource Area management plan. The purpose of this proposed action is to settle an occupancy trespass on Federal land. The direct sale to William and Lorrene Collins would be made at fair market value. The publication of this notice segregates the public land described above from settlement, sale, location, and entry under the public land laws including the mining laws. Any subsequent application shall not be accepted, shall not be considered as filed, and shall be returned to the applicant if the notice segregates the land from the use applied for in the application. The segregative effect of this notice will terminate upon issuance of a conveyance of document, 270 days, or when a cancellation notice is published, whichever comes first.

Sale Procedures include the following conditions:

(1) The "total" purchase amount must be received in the Buffalo Resource Area Office on Wednesday, January 30, 1991, by 4 p.m. Full payment must be by certified check, money order, bank drafts, or cashier's check made payable to the Department of the Interior, BLM.

(2) To successfully purchase the land, the purchaser must be a U.S. citizen, 18 years of age or older, a corporation authorized to own real estate in the state of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

Any patent issued will be subject to all valid existing rights to include oil and gas lease WYW–86772.

Specific patent reservations include:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove minerals. A more detailed description of this reservation, which will be incorporated into the patent document, is available for review at the BLM, Buffalo Resource Area Office.

For a period of forty-five (45) days from the date of issuance of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, District Manager, Casper, 1701 East "E" Street, Casper, Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: December 7, 1990.

**James W. Monroe,**
*District Manager.*

[FR Doc. 90–29363 Filed 12–13–90; 8:45 am]
BILLING CODE 4310–22–M



[ID–943–01–4214–11; I–05283, I–4982]

## Proposed Continuation of Withdrawals; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals for four sites in the Kaniksu, St. Joe, and Coeur d'Alene National Forests continue for an additional 50 years. The lands are now being used for research and natural areas and as a garnet collecting area for both recreational and commercial use. The lands would remain closed to surface entry and mining in the natural areas and to entry under the mining laws for non-mettaliferous locatable minerals in the Garnet Area. All of the lands have been used would remain open to mineral leasing.

**DATES:** Comments should be received on or before March 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** William E. Ireland, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1597.

The U.S. Forest Service proposes that the existing land withdrawals made by public land order nos. 2377 and 5523 be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

**Boise Meridan**

*Deception Creek Experimental Forest*

T. 50 N., R. 1 W.,
Sec. 5, lots 1, and 2;
Sec. 6, lot 4.
T. 51 N., 1 W.,
Sec. 19, E½SW¼, E 20 acres of lot 4, and SE¼;
Sec. 20, S½N½, SW¼and all public land in SE¼;
Sec. 28, S½NW¼and SW¼;
Sec. 29 and 30;
Sec. 31, lots 1, 2, 3, 6 and 7, NE¼, E½NW¼, N½SE¼, and NE¼SW¼;
Sec. 32, N½, SW¼, and NW¼SE¼;
Sec. 33, NW¼.
T. 51 N., R. 2 W.,
Sec. 25;
Sec. 26, E½NE¼, SW¼NE¼, N½SE¼, and SE¼SE¼;
Sec. 36, N½NE¼, SE¼NE¼, and NE¼NW¼.

**Priest River Experimental Forest**

T. 56 N., R. 3 W.,
Sec. 17, S½SW¼, and SW¼SE¼;
Sec. 18, S½S½;
Sec. 19 and 20;
Sec. 21, W½SW¼, and SE¼SW¼;
Sec. 28, NW¼, N½SW¼, and NW¼SE¼;
Sec. 29, N½and N½S½;
Sec. 30.
T. 56 N., R. 4 W.,
Sec. 23, E½NE¼, S½N½NW¼NE¼, S½NW¼NE¼, SW¼NE¼, SE¼NE¼NW¼, E½SE¼NW¼ and S½;
Secs. 24, 25, and 26;
Sec. 27, lot 2, E½, and E½W½SW¼SW¼;
Sec. 33, lots 1 and 4;
Sec. 34, lots 1, 3, 4, and 6, SE¼NW¼ and E½SW¼.

**Teepee Creek Natural Area**

T. 62 N., R. 4 W.,
Sec. 8, SE¼SE¼;
Sec. 9, SE¼SE¼;
Secs. 16 and 17;
Sec. 20, W½NW¼NE¼ and NE¼NW¼.

**East Fork Emerald Creek Garnet Area**

T. 42 N., R. 1 W.,
Sec. 1, S½SE¼SE¼SE¼;
Sec. 11, S½NE¼SE¼SW¼, SE¼SE¼SW¼, E½SW¼SE¼SW¼, E½NW¼SE¼SW¼, S¼SE¼SW¼, SW¼SE¼SE¼, S½NW¼SW¼SW¼, NW¼NE¼SE¼, SE¼NE¼SE¼, E½SW¼NE¼SE¼, NE¼SE¼SE¼, E½NE¼NW¼SE¼, and E½SE¼SE¼SE¼;
Sec. 12, NW¼NE¼NE¼, N½NE¼NE¼NE¼, SE¼NE¼NE¼, E½SW¼NE¼NE¼, N½NE¼SE¼NE¼, E½NE¼NW¼NE¼, and SW¼SW¼SW¼;
Sec. 13, SW¼SE¼NE¼, N½NW¼NW¼NW¼, W½NE¼NW¼NW¼, SE¼NE¼NW¼, SE¼SE¼NW¼, W¼SW¼, NE¼SW¼NW¼, E½SE¼NE¼SE¼, SW¼SW¼NW¼, N½NW¼NW¼SW¼, N½NE¼NE¼SW¼, N½NW¼SE¼, and S½SW¼SW¼SE¼;
Sec. 14, SW¼NW¼NE¼, E¼NE¼SE¼NE¼, S½SE¼NE¼, E½NW¼SW¼NE¼, NE¼SW¼NE¼, SE¼SW¼NE¼, NE¼NW¼NW¼, S½NW¼NE¼NW¼, E½NE¼NE¼NW¼, N½SW¼NE¼NW¼, NW¼NE¼SW¼, N½SE¼NE¼SE¼, SW¼SW¼NW¼, N½NW¼NW¼SW¼, N½NE¼NE¼SW¼, N½NW¼SE¼, and NE¼NE¼SE¼;
Sec. 15, S½SE¼SW¼SE¼ and SW¼SW¼SE¼;
Sec. 23, E½NW¼NE¼, N½NE¼NE¼NE¼, and S½SW¼NE¼NE¼;
Sec. 24, NW¼NW¼NE¼, N½NE¼NW¼NE¼, S½NW¼NE¼, E¼NW¼SW¼NE¼, W½NE¼SW¼NE¼, W½SE¼SW¼NE¼, E½SW¼SW¼NE¼, NW¼NW¼NW¼, S½NE¼NW¼NW¼, E½SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NE¼NW¼, SE¼NE¼NW¼, E½SW¼NE¼NW¼, N½SE¼NW¼, W½SE¼SE¼NW¼, W½SW¼SE¼NW¼, N¼NW¼NW¼SW¼, N½NE¼NW¼SW¼, W¼NE¼NE¼SW¼, E½SE¼NE¼SW¼, NW¼NW¼SE¼, and N¼SW¼NW¼SE¼.

The areas described aggregate 12,779.23 acres in Bonner, Latah, Boundary, Kootenai, and Shoshone Counties.

The withdrawals are essential for protection of natural area and recreational values on the sites. The withdrawals closed the land to surface entry and mining in the research and natural areas and to the location of non-mettaliferous minerals in the Garnet collecting area, but not to mineral leasing. No changes in the segregative

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effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: December 5, 1990.

William E. Ireland,

*Chief, Reality Operations Section.*

[FR Doc. 90-29268 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-09-M

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[C-910-01-4404-4214-10; NMNM 84801]

**Proposed Withdrawal and Opportunity for Public Meeting; New Mexico**

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture (USDA), Forest Service, has filed an application to withdraw approximately 4,886.58 acres of National Forest System land for protection of the East Fork of the Jemez Wild and Scenic River and to protect high recreation values. This notice closes the land for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights.

**DATES:** Comments and requests for a public meeting will be received by March 14, 1991.

**ADDRESSES:** Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence F. Hougland, BLM, New Mexico State Office, 505-988-6071.

**SUPPLEMENTARY INFORMATION:** On November 2, 1989, the USDA filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

**New Mexico Principal Meridian**

*Santa Fe National Forest*

T. 18 N., R. 3 E.,
Sec. 1, lots 5 to 16, inclusive S½NE¼, and SE¼SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308 of June 6, 1990);
Sec. 2, lot 1, S½NE¼, E½SW¼NW¼, SE¼NW¼SW¼NW¼, SW¼SW¼NW¼, SE¼NW¼, N½SW¼, E½E½SE¼SW¼, E½SE¼, N½NW¼SE¼, N½S½NW¼SE¼, SW¼SW¼NW¼SE¼, W½W½SW¼SE¼, SE¼SW¼SW¼SE¼, and S½SE¼SW¼SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 3, lot 6, SW¼NW¼, W½SE¼NW¼, W½SW¼, W½E½SW¼, and NE¼SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 4, lots 3 to 6, inclusive, S½N½, SW¼, NE¼SE¼, and S½SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Secs. 5, lots 8 to 10, inclusive, S½NE¼, and SE¼(excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 10, S½NW¼NE¼, SW¼NE¼, NW¼NE¼NW¼, S½NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, SW¼NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼, W½SE¼, and SE¼SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 12, E½;
Sec. 13, N½N½;
Sec. 14, lots 1 and 2, and N½NW¼.
T. 18 N., R. 4 E.,
Sec. 3, lots 17 and 18, and lots 22 to 24, inclusive (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 4, lots 9 to 16, inclusive, and lots 19 to 24, inclusive (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 5, lots 9 to 17, inclusive, and lots 21 to 28, inclusive (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 6, lot 7, and lots 12 to 16, inclusive (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 7, lots 2, 3, 4, 6, and 7, E½, and E½W½;
Sec. 8, SE¼SE¼NE¼NE¼, NW¼NW¼NW¼NE¼, SE¼NE¼, NE¼NE¼NE¼NW¼, S½NE¼NE¼NW¼, NW¼NW¼, S½NW¼, SW¼, SW¼NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼, SE¼SE¼NE¼SE¼, W½SE¼, and SE¼SE¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 9, E½, NE¼NW¼, SE¼NE¼NW¼NW¼, S½NW¼NW¼, S½NW¼, and SW¼ (excluding that portion designated as the East Fork of the Jemez Wild and Scenic River as described in Pub. L. 101-308);
Sec. 10, NW¼:
Sec. 17, N½N½;
Sec. 18, lot 1, N½NE¼ and NE¼NW¼

The areas described aggregate approximately 4,886.58 acres in Sandoval County.

The purpose of the proposed withdrawal is for the protection of the East Fork of the Jemez Wild and Scenic River and to protect high recreational values.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard, on the proposed withdrawal, must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 90 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

The temporary segregation of the land in connection with this withdrawal application or proposal shall not affect the administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the USDA.

Dated: December 6, 1990.

Larry L. Woodard,

*State Director.*

[FR Doc. 90-29270 Filed 12-13-90; 8:45 am]

BILLING CODE 4310-FB-M



**INTERSTATE COMMERCE COMMISSION**

**[Ex Parte No. 388 (Sub 9)]**

**Intrastate Rail Rate Authority—Iowa**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of recertification.

**SUMMARY:** Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Iowa to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

**DATES:** Recertification will be effective January 13, 1991, and will expire January 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: December 7, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29359 Filed 12-13-90; 8:45 am]

BILLING CODE 7035-01-M

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**[Finance Docket No. 31779]**

**Michigan Southern Railroad Co., Inc.; Operation Exemption**

The Michigan Southern Railroad Company, Inc. (MSR), a non-carrier, has filed a notice of exemption to operate a line of railroad owned by the Branch & St. Joseph Counties Rail Users Association, Inc. (B&SJ), in Branch and St. Joseph Counties, MI. The line extends approximately 24.34 miles between milepost 382.5, at or near Coldwater, MI, and milepost 406.84, at or near Sturgis, MI, and was acquired by B&SJ after its abandonment by Consolidated Rail Corporation. MSR has entered into an agreement with B&SJ to replace Southwestern Michigan Railroad Company, Inc. (SMR), as operator of the line.[1] This change of operators is exempt under 49 CFR 1150.31(a)(3). The transaction was to be consummated November 22, 1990.

MSR shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, 901 15th Street NW., suite 700, Washington, DC 20005-2301.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: December 10, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29360 Filed 12-13-90; 8:45 am]

BILLING CODE 7035-01-M

[1] Under an agreement with B&SJ, SMR has operated the line for approximately the last year. Finance Docket No. 31525, *Southwestern Michigan Railroad Company, Inc.—Acquisition and Operation Exemption—Branch & St. Joseph Counties Rail Users Association, Inc.* (not printed), served and published September 15, 1989 (54 FR 38293). MSR is also the assignee of this agreement.

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**[Finance Docket No. 31775]**

**Soo Line Railroad Co. & Chicago and North Western Transportation Co.; Joint Relocation Project Exemption**

On November 29, 1990, Soo Line Railroad Company (Soo) and Chicago and North Western Transportation Company (CNW), filed a notice of exemption under 49 CFR 1180.2(d)(5) for their joint project to relocate a line of railroad. The joint project consists of a relocation of Soo's "bridge" trackage rights over CNW's line between Hopkins and Shakopee, MN, to an alternative CNW line between Cliff, MN, and Shakopee.[1]

The joint track is over that portion of CNW's main line between the point of switch of the connection at milepost 4.18, at St. Paul (Cliff), MN, and the point of switch of the connection at milepost 29.0, at Shakopee, a distance of 24.82 miles. This includes all sidings now extant or hereafter constructed along the joint track to be jointly used and includes other appurtenances and facilities, signals, switches, jointly used connecting tracks, interlocking devices and plants, signal and communication lines, and all improvements required for operations over the joint track. The proposed relocation project will permit Soo to realize substantial operating economies in providing service to Shakopee, as it will permit the termination of the subsidy agreement and will enable CNW to complete the abandonment of segments otherwise authorized or exempted.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers as Soo does not serve shippers over the present "bridge" rights and does not serve shippers along the CNW lines, except at Shakopee which will not be affected by the relocation. There will be no expansion into new territory for Soo because it already serves the shippers at Shakopee, and there will be no change in the existing competitive situation. The joint relocation qualifies under the class exemption procedures at 49 CFR 1180.2(d)(5).

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Larry D. Starns, Administrative Law and Contracts, Soo Line Railroad Company, Soo Line Building, Box 530, Minneapolis, MN 55440, and on Robert T. Opal, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

Dated: December 10, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29361 Filed 12-13-90; 8:45 am]

BILLING CODE 7035-01-M

[1] The present routing includes a segment between milepost 21.0, at Hopkins, and milepost 32.0, at Chaska, MN. Soo is subsidizing CNW's retention of this line for Soo trackage rights operations under a 49 U.S.C. 10905 subsidy agreement approved by the Commission in Docket No. AB-1 (Sub-No. 200) *Chicago and North Western Transportation Company—Abandonment and Discontinuance of Trackage Rights—Between Hopkins and Chaska, MN* (not printed), served April 5, 1988. Issuance of a certificate for CNW to abandon the line and for Soo to discontinue trackage rights over the line was postponed for as long as the subsidy agreement was in effect. The subsidy agreement is being terminated as part of the proposed relocation. The present routing also includes another segment (between mileposts 19.85 and 21.0), abandonment of which was exempted in Docket No. AB-1 (Sub-No. 231X), *Chicago and North Western Transportation Company—Abandonment Exemption—In Hennepin Co., MN* (not printed), served June 28, 1990.

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[Docket No. AB-346 (Sub-No. 1X)]

**Lenawee County Railroad Company, Inc.—Abandonment Exemption—in Lenawee County, MI**

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* to abandon its 3.8-mile line of railroad between milepost Bimo and milepost Leaf in Lenawee County, MI.[1]

Applicant has certified that: (1) No local traffic has moved over the line for at least two years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 15, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 26, 1990.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 7, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Clyne W. Durst, Jr., 245 N. Winter Street, Adrian, MI 49221.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by December 21, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE at (202) 275-275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 29, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29109 Filed 12-13-90; 8:45 am]

BILLING CODE 7035-01-M

[1] Applicant had originally filed a petition for exemption under 49 U.S.C. 10505. By letter and supporting affidavit filed November 26, 1990, applicant requested that the matter be handled under the exempt abandonment procedures of 49 CFR 1152.50.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

## DEPARTMENT OF LABOR

### Office of the Secretary

**Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)**

**Background**

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**List of Recordkeeping/Reporting Requirements Under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Extension**

Occupational Safety and Health Administration
Gear Certification
1218-0002

Recordkeeping:
Business or other for-profit;
130 respondents; 27,530 total burden hours; 11,989 responses; 2.5 average number hours per response;

OSHA is requiring this information to be collected by accredited agencies to determine the condition of certain cargo handling gear and other material handling devices to ensure the safety of those employees working in the maritime industry while using such equipment.

**Reinstatement**

Department of Labor/Bureau of Labor Statistics, and Department of Commerce/Bureau of the Census
May 1991 CPS Supplement on Multiple Jobholding and Work Schedules
(Was 1220-0129)—CPS-1, CPS-260

| Form | Affected public | Respondents | Frequency | Average time per response |
|---|---|---|---|---|
| CPS-1, CPS-260 | Individuals or households | 57,000 | One-time | 4.5 minutes per response. 4,275 total burden hours. |

This supplement will provide data on multiple jobholding and work schedules for individuals age 15 years or older. This information will be used to provide a more detailed analysis of the Nation's labor force than is available from basic CPS data or other data sources.

Signed at Washington, DC this 11th day of December, 1990.

Paul E. Larson,

*Departmental Clearance Officer.*

[FR Doc. 90-29354 Filed 12-13-90; 8:45 am]

BILLING CODE 4510-24-M

## Employment Standards Administration, Wage and Hour Division

**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

**Modification to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Georgia:
GA90-4 (Jan. 5, 1990)..... p. 221, p. 222
GA90-22 (Jan. 5, 1990)..... p. 261, p. 262
GA90-37 (Jan. 5, 1990)..... p. 280k
New York:
NY90-2 (Jan. 5, 1990)..... p. 736, pp. 742, 750
NY90-40 (Jan. 5, 1990)..... p. 831, pp. 834, 837
Index ..... p. xxiii
Index ..... p. lxi
Iowa, IA90-2 (Jan. 5, 1990).. p. 23, p. 24
Michigan:
MI90-2 (Jan. 5, 1990)..... p. 441, p. 443
MI90-7 (Jan. 5, 1990)..... p. 495, pp. 496, 495-516
MI90-16 (Jan. 5, 1990)..... p. 544a
Minnesota:
MN90-7 (Jan. 5, 1990)..... p. 563, p. 566
MN90-8 (Jan. 5, 1990)..... p. 585, p. 588
Ohio:
OH90-29 (Jan. 5, 1990) ..... p. 873
OH90-35 (Jan. 5, 1990) ..... p. 916c, p. 916d
Alaska, AK90-1 (Jan. 5, 1990). p. 1, p. 3
California, CA90-4 (Jan. 5, 1990). p. 71, pp. 72-86, pp. 88-94
Idaho, ID90-1 (Jan. 5, 1990). p. 147, p. 148
Montana:
MT90-1 (Jan. 5, 1990)..... p. 171, pp. 172-173, 175
MT90-3 (Jan. 5, 1990)..... p. 211, p. 212-214
MT90-8 (Jan. 5, 1990)..... p. 226g, p. 226h

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Oregon, OR90-1 (Jan. 5, 1990): p. 309, pp. 311, 314
Washington:
WA90-1 (Jan. 5, 1990): p. 369, p. 371
WA90-2 (Jan. 5, 1990): p. 395, p. 397
WA90-3 (Jan. 5, 1990): p. 405, p. 406
WA90-7 (Jan. 5, 1990): p. 419, p. 420
WA90-8 (Jan. 5, 1990): p. 425, p. 428

**General Wage Determination Publication**

General wage determinations issued Under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This public is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of December 1990.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 90-29152 Filed 12-13-90; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

**[TA-W-24, 784]**

### Olin Hunt Specialty Products, Inc. Limerock, RI; Affirmative Determination Regarding Application for Reconsideration

By a letter dated November 20, 1990, Local #251 of the Teamsters Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Olin Hunt Specialty Products, Inc., Limerock, Rhode Island. The Negative Determination was issued on October 25, 1990 and published in the **Federal Register** on November 14, 1990 (55 FR 47550).

The union claims that a Japanese firm has purchased the company and is importing the intermediate chemicals formerly produced at Limerock.

*Conclusion*

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of December 1990.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 90-29355 Filed 12-13-90; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 90-104]**

### NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

**DATES:** January 8, 1991, 8:30 a.m. to 5:30 p.m.; and January 9, 1991, 8:30 a.m. to 1:15 p.m.

**ADDRESSES:** National Council on the Aging, room 141 A & B, 600 Maryland Avenue, suite 100, West Wing SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1525).

**SUPPLEMENTARY INFORMATION:** The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss the status of OSSA and Life Sciences; receive reports on the Space Station Freedom; review the Biospheric Research Program and Lifesat. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 22 members. The meeting will be closed on Wednesday, January 9, 1991, from 12:15 p.m. to 1:15 p.m. to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 45 including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

*Type of Meeting:* Open—except for a closed session as noted in the agenda below.

*Agenda*

Tuesday, January 8

8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Office of Space Science and Applications Status.
9:30 a.m.—Life Sciences Status.
10:45 a.m.—Discussion of Advisory Committee Activities.
11:15 a.m.—Summary of Life Sciences Activities.
1:30 p.m.—Report on Space Station Freedom.
2:30 p.m.—Search for Extraterrestrial Intelligence Program Overview.
3:30 p.m.—Biospheric Research Program Report.
4:30 p.m.—Lifesat Update.
5:30 p.m.—Adjourn.

Wednesday, January 9

8:30 a.m.—New Life Sciences Strategic Plan.
10:15 a.m.—Subcommittee Discussion.
11:15 a.m.—Subcommittee Strategy and Actions.
12:15 p.m.—Closed Session.
1:15 p.m.—Adjourn.

Dated: December 11, 1990.

**John W. Gaff,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 90-29330 Filed 12-13-90; 8:45 am]

BILLING CODE 7510-01-M



## THE NATIONAL EDUCATION GOALS PANEL

**Meeting**

**AGENCY:** The National Education Goals Panel.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Education Goals Panel was formed by joint Statement of the President and the nation's governors on July 31, 1990 to determine appropriate indicators for measuring the national education goals and a format for reporting annually to the nation on progress. This will be the second meeting of the Panel.

**TENTATIVE AGENDA ITEMS:** The tentative agenda for the meeting includes a report on activities since the last meeting; a discussion of activities and timeline for the Panel's work; and a discussion on work in progress that relates to measurement issues pertinent to the national education goals.

**DATES:** The second meeting will be held on December 19, 1990.

**ADDRESSES:** The meeting is currently scheduled from 1:30-4:00 p.m. at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Charles Kolb at the White House Office of Policy Development. The phone number is (202) 456-6515.

December 7, 1990.

**Roger B. Porter,**

*Assistant to the President for Economic and Domestic Policy.*

[FR Doc. 90-29320 Filed 12-13-90; 8:45 am]

BILLING CODE 3187-01-M

## NUCLEAR REGULATORY COMMISSION

**Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review**

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission: Revision.
2. The title of the information collection: "Contract Clauses".
3. The form number if applicable: N/A.
4. How often the collection is required: One time.
5. Who will be required or asked to report: NRC Contractors.
6. An estimate of the number of responses: 4,380.
7. An estimate of the total number of hours needed to complete the requirement or request: 14,020 (3.2 hrs. per response).
8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.
9. Abstract: The NRC Division of Contracts and Property Management uses clauses other than those in the Federal Acquisition Regulation (FAR) to ensure that agency policies, procedures, and roles directed by the Atomic Energy Act with regard to Contractor Organizational Conflicts of Interest and Security are adhered to.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document room 2120 L Street NW, Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0112), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 4th day of December 1990.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Designated Senior Official For Information Resources Management.*

[FR Doc. 90-29349 Filed 12-13-90; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 50-348-CivP and 50-364-CivP, ASLBP 91-626-02-CivP]**

### Alabama Power Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2, Facility Operating License Nos. NPF-2 and NPF-8, E.A. 88-40.

This Board is being designated pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research, dated August 21, 1990, entitled "Order Imposing Civil Monetary Penalty". (55 FR 35203, August 28, 1990.)

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following administrative judges:

Administrative Judge John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Administrative Judge Peter A. Morris, 10825 South Glen Road, Potomac, MD 20854.

Issued at Bethesda, Maryland, this 7th day of December, 1990.

**Robert M. Lazo,**

*Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 90-29351 Filed 12-13-90; 8:45 am]

BILLING CODE 7590-01-M

**[Docket No. 72-10, 50-282/306-RS, ASLBP No. 91-627-01-RS]**

### Northern States Power Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Northern States Power Company, Prairie Island Nuclear Generating Plant, Independent Spent Fuel Storage Installation (ISFSI).

This Board is being established pursuant to a notice published by the Commission on October 19, 1990, in the **Federal Register** (55 FR 42527) entitled, "Notice of Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Notice of Opportunity for a Hearing". The proposed license would authorize the Nuclear Generating Plant, Units 1 and 2, in dry storage casks at an ISFSI to be constructed at the applicant's Prairie Island Nuclear

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Generating Plant site. (Operating Licenses DPR–2013 and 2014.) Pursuant to the provisions of 10 CFR part 72, the term of the license for the ISFSI would be twenty (20) years.

The Board is comprised of the following administrative judges:

Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

George C. Anderson, 7719 Ridge Drive, NE., Seattle, WA 98115.

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 7th day of December, 1990.

Robert M. Lazo,

*Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 90–29352 Filed 12–13–90; 8:45 am]

BILLING CODE 7590–01–M

[License No. 24–18959–02, ASLBP No. 91–628–01–SC]

**Rhodes-Sayre & Associates Inc.; Establishment of Atomic Safety and Licensing Board**

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Rhodes-Sayre & Associates Inc., Byproduct Material License 24–18959–02

This Board is being established pursuant to the request by Mr. Richard G. Rhodes, P.E., the Licensee, for a hearing regarding an Order issued by the Acting Director, Division of Accounting and Finance, Office of the Controller, dated September 19, 1990, entitled "Order to Show Cause". Mr. Rhodes was ordered to show cause why the Licensee should not be required to cease all operations involving the licensed material, place the material in secured storage, dispose of the material within 10 days, and decontaminate facilities and equipment in accordance with 10 CFR 30.36 and thereafter have its License 24–18959–02 revoked permanently for non-peyment of the inspection fee.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 7th day of December, 1990.

Robert M. Lazo,

*Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 90–29353 Filed 12–13–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–338 and 50–339]

**Virginia Electric and Power Company; Withdrawal of Application for Amendments to Facility Operating Licenses**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its March 18, 1988 application for proposed amendments to Facility Operating License Nos. NPF–4 and NPF–7 for the North Anna Power Station, Units 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have modified the surveillance requirements of Technical Specification 3/4.7.13.1, "Groundwater Level-Service Water Reservoir."

The Commission has previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on May 26, 1988 (53 FR 19072). However, by letter dated October 17, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 18, 1988, and the licensee's letter dated October 17, 1990, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 29 day of November 1990.

For the Nuclear Regulatory Commission.

**Leon B. Engle,**

*Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90–29348 Filed 12–13–90; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR WASTE TECHNICAL REVIEW BOARD

**Meeting**

**ACTION:** Notice of meetings.

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the full Board will meet January 16 and 17, 1991, at the Rosslyn Westpark Hotel, 1900 N. Fort Myer Drive, Arlington, Virginia 22209; (703) 527–4814.

On January 16, 1991, the Board will hear presentations from representatives of industry, environmental organizations, public policy groups, and state organizations. Among those scheduled to speak on the disposal of high-level waste (HLW) are Mr. Michael Martinez, Southern States Energy Board; Mr. Michael Wilson, Chairman of the NARUC Subcommittee on Nuclear Issues of the Florida Pubic Service Commission; Mr. Dan Reicher, Natural Resources Defense Council; Mr. Leon Lowery, Environmental Action; Ms. Susan Wiltshire, J.K. Associates; and Dr. Colin Heath, an expert on radioactive waste management. In addition, Mr. David Leroy, who was confirmed in July 1990 as Nuclear Waste Negotiator, has been invited to make a statement. As Nuclear Waste Negotiator, Mr. Leroy will be working with governors, Native Americans, and others in an effort to find a host state for a monitored retrievable storage facility for HLW, and possibly for a repository. Presentations will begin at 9 a.m. A brief question and discussion period will follow each statement.

The Board will meet on January 17, 1991, from 9 a.m.–12 noon to hear from Dr. John W. Barlett, Director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM), and Mr. Dwight Shelor, Associate Director of Systems and Compliance for the OCRWM. Dr. Bartlett has been invited to provide the Board with an overview of the OCRWM program including priorities and strategies, budget allocation, program staffing and integration, and the effects of litigation on site-evaluation activities at Yucca Mountain. Mr. Shelor has been asked to comment on systems integration and on his plans for interacting with the Board in the coming year.

Members of the public are welcome to attend as observers. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, NWTRB librarian, beginning February 7, 1991.

The NWTRB was established in the NWPAA of 1987 to evaluate the scientific and technical validity of activities undertaken by the DOE's civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for spent nuclear fuel and defense HLW.

For further information, contact Karyn Severson, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: December 10, 1990.

**William D. Barnard,**

*Executive Director, Nuclear Waste Technical Review Board.*

[FR Doc. 90–29286 Filed 12–13–90; 8:45 am]

BILLING CODE 6820–AM–M



## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–28686; File No. SR–CBOE–90–30)**

**Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing of Long-Term Options on Reduced Value Standard & Poor's 100 and 500 Indexes**

Pursuant to sections 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 19, 1990, the Chicago Board Options Exchange "(CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to modify Exchange Rule 5.8 to provide for the listing of long-term options on broad-based stock indexes that expire up to 36 months from the date of issuance. Currently, the CBOE may list long-term stock index options having up to 24 months to expiration. The Exchange also proposes to list long-term reduced value index options that will be computed at one-tenth of the value of the Exchange's Standard and Poor's 100 and 500 Indexes ("OEX" and "SPX", respectively). These long-term options on reduced value indexes, which the CBOE will call OEX LEAPS and SPX LEAPS,[1] will trade independent of and in addition to regular OEX and SPX options traded on the Exchange and will be subject to the same rules that govern the trading of Exchange index options except that the interval between strike prices will be no less than $2.50 instead of $5.00. As a result of CBOE rounding procedures, however, after dividing the OEX and SPX indexes by 10, the reduced value indexes may vary slightly from one-tenth of the full value indexes.[2]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The CBOE has been trading OEX and SPX options for several years. Both are broad-based stock indexes. The Exchange states that its policy has been to ensure that four consecutive near-term expiration months are available for OEX options at any given time. *e.g.* July, August, September, and October. SPX options are listed with two consecutive near-term months and either two or three additional months from the March quarterly cycle. The Exchange currently lists long-term options on the SPX, those having up to 24 months to expiration, which were designated as SPL Options. The Exchange also trades SPX options which settle based on the opening value of the SPX on the last business day before expiration, using the symbol NSX. NSX options have three expiration months based on the March cycle.

The Exchange now proposes to list three-year long-term options based on reduced value OEX and SPX indexes, termed OEX LEAPS and SPX LEAPS, respectively. These reduced value index options will be computed at one-tenth the level of the OEX and the SPX. Other than the reduced value, all other specifications and calculations for OEX and SPX LEAPS will remain the same as for the OEX and SPX options. As noted herein, these new options will have expirations up to 36 months from the time of their introduction.

Based in part on the experience gained from the trading of the 24 month SPL long-term options, the Exchange believes that the listing of 36 month long-term options on a reduced value index will better satisfy the investment needs of retail investors. Among other things, the Exchange believes that the reduced dollar values of the underlying indexes and the relative long-term duration of the proposed options will combine to offer investors the opportunity to obtain long-term portfolio protection at an affordable price.

The Exchange proposes that the new long-term reduced value options will be subject to the same rules that presently govern the trading of index options. In particular, options sales practice rules, margin requirements, floor trading procedures and position and exercise limits will apply. With regard to position limits, the Exchange will aggregate positions in the OEX and SPX LEAPS with those in OEX or SPX, SPL and NSX as applicable.

Like all options on the SPX, SPX LEAPS will feature European-style exercise (restricting exercise only to the last day of trading). Similarly, like OEX options, OEX LEAPS will feature American-style exercise. In addition, the Exchange, pursuant to Rule 24.3, will continuously calculate and disseminate the reduced underlying index values.

[1] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[2] The CBOE, in a letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Thomas R. Gira, Branch Chief, Division of Market Regulation, Commission, dated December 7, 1990, states that the Exchange shall use the following procedure in rounding the reduced value indexes. The Exchange states that it will divide the calculated value, provided by Standard and Poor's Corporation, by 10 and round the resulting quotient to the nearest one-hundredth. The Exchange states that the digits one through four will be rounded down to the next number and the digits five through nine will be rounded up to the next number.

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The Exchange proposes to retain flexibility in the listing of new strike prices which would be listed near or bracketing the then current reduced index value. The Exchange proposes to add additional strike prices only when the reduced value indexes (and thus, the overall market) make significant moves of approximately 10 to 15%, but a new expiration month will not be added more than every six months. The Exchange believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating any confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange further expects that the reduced value indexes coupled with its proposed policy for listing strike prices on reduced value index options, as described below, will permit the offering of long-term options at premiums between $2 and $6 ($200 to $600 per contract) based on current market volatility and normal pricing considerations. The Exchange states that such premiums appear to be in the desired range of prices that investors have favored. The Exchange believes that such premiums could not be achieved for long-term options by using "full size" OEX or SPX options without the listing of strike prices so deep out-of-the-money as to offer investors limited ability to participate in the market or protect their portfolios.

The Exchange believes that the change to Rule 24.5, which reduces the strike price intervals for reduced value index options, is warranted because otherwise new strike prices would only be added after extraordinary market moves. For example, the OEX currently moves approximately one point for every seven point move in the Dow Jones Industrial Average ("DJIA"). Therefore, the Exchange adds a new strike price for every 35 point move in the DJIA. For OEX LEAPS, this ratio would be 70 to 1 and require a DJIA move of 350 points (70×5) before the Exchange would add a new strike price. Accordingly, the Exchange has proposed a $2.50 interval for reduced value index options, so that new strike prices will be added after a 175 point move in the DJIA.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will facilitate transactions in securities and protect investors and the public interest while promoting just and equitable principles of trade.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose an inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action.**

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] First, the Commission believes that the proposal to list long-term options on broad-based stock indexes that expire up to 36 months from the date of issuance is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Specifically, institutional customers currently use index options to, among other things, hedge the risks associated with holding diversified equity portfolios. The Commission believes that the Exchange's proposal to provide longer-term index options, which allows investors to lock in their hedges for up to three years, will permit institutions to protect better their portfolios from adverse long-term market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost.

Second, the Commission believes that the Exchange's proposal to list reduced value index options, computed at one-tenth of the value of the OEX and SPX, will facilitate transactions in options by providing investors with additional means to hedge equity portfolios against long-term market risk.[5] In particular, the Commission believes that options on reduced value indexes will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a reduced cost. This may result in options premiums more affordable to retail investors.

The Commission also believes that trading in options on the reduced value OEX and SPX indexes will not have an adverse market impact or be susceptible to manipulation. Previously, the Commission has determined that the OEX and the SPX are broad-based indexes. The Commission does not believe that merely changing these indexes by dividing their value by 10 will change this determination. OEX and SPX LEAPS will contain the same stocks with the same weightings as the full value index on which they are based (*i.e.* the OEX or the SPX) and will be calculated in the same manner as those indexes (with the exception of being 1/10th their value). In addition, the Commission believes that any potential manipulation concerns raised by options on the reduced value indexes are minimized by the fact that positions in these options will be aggregated with positions in options on the full value indexes for position and exercise limit purposes.[6] Moreover, the Commission notes that the same Exchange surveillance procedures for OEX and SPX options will be used for the OEX and SPX LEAPS. Finally, the Commission believes that reducing the strike price intervals for the reduced value index options is reasonable given the fact that any changes in value of the reduced value indexes will occur at a rate which is 1/10th of the rate at which the indexes on which they are based will change.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The CBOE's proposal to list options on reduced value indexes is identical to a proposal by the American Stock Exchange, Inc. ("AMEX") to trade options on a reduced value Major Market Index that was approved on November 14, 1990.[7] In addition, the CBOE's proposal to list long-term index options with up to 36 months until expiration is identical to a proposal by the AMEX that was approved on October 16, 1987.[7] Both proposals were subject to the full notice and comment period and did not receive any comments, and the Commission does not find any different regulatory issues arising out of the CBOE proposals. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis in order to facilitate competition between the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 4, 1991.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act [8] that the proposed rule change (SR-CBOE-90-30) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: December 10, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-28278 Filed 12-13-90; 8:45 am]

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[4] 15 U.S.C. 78f(b)(5)(1982);

[5] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[6] For example, positions in OEX LEAPS and positions in OEX options will be aggregated, and positions in SEX LEAPS and positions in SPX, SPL, and NSX options will be aggregated.

[7] See Securities Exchange Act Release No. 28813 (November 14, 1990) 55 FR 48307 (November 20, 1990) (order approving SR-AMEX-90-14).

[7] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR-AMEX-87-22).

[8] 15 U.S.C. 78s(b) (1982).

[9] 17 CFR 200.30-3(a)(12) (1990).



**[Release No. 35-25202]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

December 7, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 2, 1991, to the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549, and serve a copy on the relevant application(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**National Fuel Gas Company, et al. (70-7091)**

National Fuel Gas Company ("NFG"), 30 Rockefeller Plaza, suite 4545, New York, New York 10112, a registered holding company, and its wholly owned subsidiary companies, Data-Track Account Services, Inc. ("Data-Track"), 10 Lafayette Square, Buffalo, New York 14203 and Seneca Resources Corporation ("Seneca"), 333 Clay Street, suite 4150, Houston, Texas 77002, have filed a post-effective amendment with the additional section 13 of the Act and Rules 90 and 91 thereunder, to this application-declaration filed with the Commission under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45, and 50(a)(5) thereunder.

Pursuant to an order of this Commission dated December 27, 1989 (HCAR No. 25013) ("Order"), Seneca is authorized to borrow up to $125 million from the NFG System Money Pool ("Money Pool") through December 31, 1991.

Seneca now proposes to borrow up to an additional $20 million aggregate principal amount from the Money Pool to make oil and gas investments in the gulf coast and southwest regions of the United States. NFG also proposed that Data-Track join the Money Pool and be authorized to make borrowings from the Money Pool of up to $500,000 aggregate principal amount outstanding at any one time. Data-Track will use its Money Pool borrowings as working capital, which will permit it to increase its collection activities for the NFG system companies. The proposed borrowings will run through December 31, 1991, and all the terms and conditions that apply to Seneca's additional borrowings and Data-Track's borrowings are the same as stated in the Order.

**Granite State Electric Company, et al. (70-7765)**

Granite State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company ("Narragansett"), New England Transmission Corporation, New England Electric Inc., New England Hydro-Transmission Electric Company, Inc., New England Hydro-Transmission Corporation, New England Power Company, New England Power Service Company, subsidiary companies of New England Electric System ("NEES"), a registered holding company, and NEES, each located at 25 Research Drive, Westborough, Massachusetts 01582,[1] have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior order, the Commission authorized, *inter alia*, Narragansett to lend money in the NEES Money Pool and, through October 31, 1993, to borrow from the NEES Money Pool and/or banks in an aggregate principal amount not to exceed $70 million. (HCAR No. 25156, Sept. 21, 1990).

Narragansett now proposes to issue and sell up to $70 million in commercial paper ("Commercial Paper"), through October 31, 1993, under an exception

[1] On November 7, 1990, NEES sold its energy management services subsidiary, NEES Energy, Incorporated ("NEES Energy"), to Northeast Energy Services, Inc. pursuant to Commission order (HCAR No. 25121, July 20, 1990). Consequently, NEES Energy is no longer a party to this filing.

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from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, in the form of unsecured promissory notes having varying maturities of not in excess of 270 days, as an additional short term borrowing vehicle. The aggregate principal amount of all borrowings by Narragansett, either from the NEBS Money Pool, banks or the issuance of Commercial Paper, will not exceed $70 million through October 31, 1993.

Narragansett has requested, pursuant to Rule 59(a)(3), that it be authorized to carry out negotiations for the terms and conditions of the placement of the Commercial Paper. It may do so:

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-29227 Filed 12-13-90; 8:45 am]

BILLING CODE 8010-01-M

## TENNESSEE VALLEY AUTHORITY

### Paperwork Reduction Act of 1980; Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Information collection under review by the Office of Management and Budget (OMB).

**SUMMARY:** The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions on comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-3084.

*Agency Clearance Officer:* Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751-2523.

*Type of Request:* Regular submission.

*Title of Information Collection:* Annual Report on Distribution and Use of TVA Fertilizers.

*Frequency of Use:* Annually.

*Type of Affected Public:* Businesses or other for-profit, small businesses or organizations.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 452.

*Estimated Number of Annual Responses:* 200.

*Estimated Total Annual Burden Hours:* 215.

*Estimated Average Burden Hours Per Response:* 1.08.

*Need For and Use of Information:* The information requested from distributors is needed to complete contractual requirements by distributors, to report on the use of TVA fertilizers and on the use of new manufacturing processes, and to provide feedback for program evaluation and direction.

Louis S. Grande,

*Vice President, Information Services-Senior Agency Official.*

[FR Doc. 90-29206 Filed 12-13-90; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice Space Center Executive Airport Titusville, FL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Titusville-Cocoa Airport Authority for the Space Center Executive Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is November 28, 1990.

**FOR FURTHER INFORMATION CONTACT:** Pablo G. Auffant, P.E., Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, FL 32827-5397, telephone (407) 648-6583.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Space Center Executive Airport are in compliance with applicable requirements of part 150, effective November 28, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR), part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Titusville-Cocoa Airport Authority. The specific maps under consideration are 1990 "Existing Conditions" Noise Exposure Map and 1995 "Future Conditions" Noise Exposure Map (UNABATED) in the submission. The FAA has determined that these maps for the Space Center Executive Airport are in compliance with applicable requirements. This determination is effective on November 28, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities



are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32827

Mack R. LaZenby, P.E., A.A.E., Executive Director, TICO Airport Authority, 355 Golden Knights Boulevard, Titusville, Florida 32780.

Questions may be directed to the individual named above under the heading "FOR FURTHER INFORMATION CONTACT".

Issued in Orlando, Florida, November 28, 1990.

James E. Sheppard,

*Manager, Orlando Airports District Office.*

[FR Doc. 90-29324 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

### Receipt of Noise Compatibility Program and Request for Review Pal-Waukee Municipal Airport, Wheeling/Prospect Heights, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Pal-Waukee Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Pal-Waukee Municipal Airport Commission (operator) and the city of Prospect Heights and the village of Wheeling (co-owners). This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Pal-Waukee Municipal Airport were in compliance with applicable requirements effective July 26, 1988. The proposed noise compatibility program will be approved or disapproved on or before May 28, 1991.

**EFFECTIVE DATES:** The effective date of the FAA's start of its review of the associated noise compatibility program is November 30, 1990. The public comment period ends January 29, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jerri L. Horst, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-640.8, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7524. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program for that Pal-Waukee Municipal Airport which will be approved or disapproved on or before May 29, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Pal-Waukee Municipal Airport, effective on November 30, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 29, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 268, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 268, Des Plaines, Illinois 60018.

Pal-Waukee Municipal Airport Commission, Pal-Waukee Airport, Wheeling, Illinois 60090.

Village of Wheeling, 255 West Dundee Road, Wheeling, Illinois 60090.

City of Prospect Heights, 4 East Camp McDonald Road, Prospect Heights, Illinois 60070.

Questions may be directed to the individual named above under the heading, "FOR FURTHER INFORMATION CONTACT".

Issued in Des Plaines, Illinois, November 30, 1990.

Louis H. Yates,

*Manager, Chicago Airports District Office, Great Lakes Region.*

[FR Doc. 90-29825 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement: Tuolumne County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Tuolumne County, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. John R. Schultz, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812-1915, telephone: (916) 551-1140.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation, will prepare an

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environmental impact statement (EIS) on a proposal to improve approximately 4.9 miles of State Route 108 in Tuolumne County, California.

The existing facility is a two-lane conventional highway through a rapidly developing rural area. Because of commercial development along the existing highway, and a high volume of recreational traffic, there is a great deal of congestion. The proposed project will be designed to eliminate the congestion and provide a safer facility.

The alternatives under consideration are: (1) No action, and (2) construct a four-lane expressway on new alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, as well as to private organizations and citizens who have previously expressed interest in this proposal. Public notice will be given with the time and place of meetings and a public hearing. The draft EIS will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are address, and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program.)

Issued on: December 7, 1990.

**Mr. John R. Schultz,**

*District Engineer, Sacramento, California.*

[FR Doc. 90-29287 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-22-M

## Maritime Administration

### Approval of Applicant as Mortgagee

Notice is hereby given that The Bank of California, N.A., with offices at 400 California Street, San Francisco, California, has been approved as Mortgagee pursuant to Public Law 100-710 and 46 CFR part 221.

Dated: December 10, 1990.

By Order of the Maritime Administrator.

**James E. Saari,**

*Secretary.*

[FR Doc. 90-29283 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-81-M

## Research and Special Programs Administration

### Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before January 14, 1991.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10507-N | PVS Chemicals, Inc., Wyandotte, MI | 49 CFR 174.67(i) | To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without being attended by an unloader. (mode 2). |
| 10508-N | Jet Propulsion Laboratory, Pasadena, CA. | 49 CFR 173.145, 173.276 | To authorize the transportation of flammable liquids in 3AAX stainless steel cylinders (not to exceed 20 pounds per shipment) overpacked in non-DOT specification wooden boxes transported in private-owned vehicles. (mode 1). |
| 10509-N | IRECO Incorporated, Salt Lake City, UT. | 49 CFR 173.154(a)(17) | To authorize shipment of ammonium nitrate solution (containing 35% or less water) in DOT-Specification stainless steel 111A1OOW6 tank cars. (mode 2). |
| 10510-N | CMB Enterprises, Inc., Verona, NJ | 49 CFR 173.1200(a)(3), 173.306(a), (b), (c), 173.34(d)(3)(ii), 173.34(e), (f). | To manufacture, mark and sell non-DOT specification metal containers comparable to DOT Specification 2Q, for shipment of certain flammable and nonflammable compressed gases, and an insecticide, liquified gas containing no poison A or B material. (modes 1, 2, 3, 4). |
| 10511-N | Schlumberger Well Services, Houston, TX. | 49 CFR 173.304 | To authorize shipment of sulfur hexafluoride, classed as a nonflammable gas, in a non-DOT specification device contained in a specially designed shipping vessel. (modes 1, 2, 3, 4, 5). |
| 10512-N | Albright & Wilson Americas, Richmond, VA. | 49 CFR 173.263(a)(12) | To authorize the construction of tank cars fabricated of ASTM A240 type 316 Ti alloy steel without post weld heat treatment for shipment of 42% sodium chloride solution, classed as corrosive material. (mode 2). |
| 10513-N | Great Lakes Chemical Corporation, West Lafayette, IN. | 49 CFR 173.154 | To authorize shipment of flammable solids, organic peroxide solids, and oxidizers not specifically provided for in non-DOT specification bulk bags overpacked in either a fiberboard box or drum in less than truckload quantities in non-dedicated trailers. (mode 1). |
| 10514-N | Liquid Air, Walnut Creek, CA | 49 CFR 174.67(i), (j) | To authorize carbon dioxide filled tank cars to stand with unloading connections attached during unloading without being attended by an unloader. (mode 2). |



NEW EXEMPTIONS—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 10515-N | Queen City Barrel Co., Cincinnati, OH. | 49 CFR 178.118 | To manufacture, mark and sell a DOT Specification 17H drum with plastic removable head for transportation of those solids as presently authorized in 17H drums or UN1A2 packaging Group II Packagings. (modes 1, 2, 3). |
| 10516-N | S.A.F.E. Systems, Inc., Decatur, GA | 49 CFR 173.306(c)(3) | To authorize shipment of approximately 49,571 non-DOT specification cylinders (fire extinguishers), which exceed 35 cubic inches containing a liquified compressed gas (Bromotrifluoromethane). (mode 1). |
| 10517-N | Nalco Chemical Company, Naperville, IL. | 49 CFR 173.32(e)(1)(ii) | To authorize the retesting of DOT-Specification 57 portable tanks fabricated of stainless steel at five-year intervals. (modes 1, 2, 3). |
| 10519-N | Canadian Liquid Air Limited, Montreal, Quebec, Canada. | 49 CFR 173.119, 173.245, 173.246, 173.247, 173.251, 173.273, 173.302, 173.304, 173.325, 173.24, 173.345. | To authorize use of a non-DOT specification containment unit for the transportation of leaking or defective gas cylinders containing certain pressurized nonpressurized hazardous materials. (mode 1). |
| 10520-N | Schlumberger Well Services, Houston, TX. | 49 CFR 172.101, 173.53(d), 173.60 | To authorize the transport of oil well jet perforating guns with a booster attached to the detonating cord classed as Class C explosives. (mode 1, 3). |

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on December 10, 1990.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 90-29307 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-60-M

### Notice of Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for renewal or modification of exemptions or application to become a party to an exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before December 31, 1990.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 2582-X | Matheson Gas Products, Inc., Secaucus, NJ | 2582 |
| 3867-X | Greendyke Transport, Inc., Enid, OK | 3867 |
| 4453-X | W.A. Murphy, Inc., El Monte, CA | 4453 |
| 4453-X | Brandywine Explosives & Supply, Inc., Paris, KY | 4453 |
| 4719-X | Dow Chemical Company, Freeport, TX | 4719 |
| 4719-X | Allied-Signal, Inc., Morristown, NJ | 4719 |
| 4719-X | Halocarbon Products Corporation, North Augusta, SC | 4719 |
| 5206-X | Geenen Explosives, Inc., Kaukauna, WI | 5206 |
| 6530-X | GenEx, Ltd., Des Moines, IA | 6530 |
| 6557-X | U.S. Department of Defense, Falls Church, VA | 6557 |
| 6658-X | U.S. Department of Defense, Falls Church, VA | 6658 |
| 6658-X | U.S. Department of Energy, Washington, DC (see footnote 1) | 6658 |
| 6971-X | Alltech Associates, Deerfield, IL | 6971 |
| 6974-X | General Dynamics Corporation, San Diego, CA | 6974 |
| 7007-X | Allied Universal Corporation, Miami, FL | 7007 |
| 7286-X | Liquid Carbonic Specialty Gas Corporation, Chicago, IL | 7286 |
| 7546-X | Grumman Aircraft Systems, Bethpage, NY | 7546 |
| 7546-X | National Aeronautics & Space Administration (NASA) | 7546 |
| 7605-X | General Dynamics Corporation—Fort Worth Division, Fort Worth, TX | 7605 |
| 7605-X | U.S. Department of Defense, Falls Church, VA | 7605 |
| 7616-X | Union Pacific Railroad Company, Omaha, NE | 7616 |
| 7616-X | Atchison, Topeka and Santa Fe Railway Company, Topeka, KS | 7616 |

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| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 7616–X | Norfolk Southern Corporation, Norfolk, VA | 7616 |
| 7616–X | Chicago and North Western Transportation Company, Chicago, IL | 7616 |
| 7616–X | Soo Line Railroad Company, Milwaukee, WI | 7616 |
| 7616–X | Southern Pacific Transportation Company, San Francisco, CA | 7616 |
| 7616–X | Consolidated Rail Corporation (CONRAIL), Philadelphia, PA | 7616 |
| 7835–X | Lincoln Big Three, Inc., Baton Rouge, LA | 7835 |
| 7943–X | Action Chemical Company, Phoenix, AZ | 7943 |
| 8115–X | Acurex Corporation, Mountain View, CA | 8115 |
| 8168–X | Smurfit Plastic Packaging Inc., Wilmington, DE | 8168 |
| 8184–X | Trojan Corporation, Spanish Fork, UT | 8184 |
| 8184–X | Austin Powder Company, Cleveland, OH | 8184 |
| 8214–X | Nissan Motor Corporation in U.S.A. Gardena, CA | 8214 |
| 8214–X | General Motors Corporation, Warren, MI | 8214 |
| 8214–X | Subaru of America, Cherry Hill, NJ | 8214 |
| 8230–X | J.T. Baker, Inc., Phillipsburg, NJ | 8230 |
| 8387–X | FMC Corporation, Philadelphia, PA | 8387 |
| 8426–X | Rich-Sand Service Co., Orcutt, CA | 8426 |
| 8445–X | Waste Conversion, Inc., Hatfield, PA | 8445 |
| 8465–X | Chase Packaging Corporation, Greenwich, CT (see footnote 2) | 8465 |
| 8540–X | U.S. Department of Defense, Falls Church, VA | 8540 |
| 8554–X | Olson Explosives, Inc., Decorah, IA | 8554 |
| 8554–X | ECONEX Incorporated, Wheaton, IL | 8554 |
| 8554–X | Wampum Hardware Company, New Galilee, PA | 8554 |
| 8554–X | Geenen Explosives, Inc., Kaukauna, WI | 8554 |
| 8579–X | Explosives Technologies International, Inc. (ETI), Wilmington, DE | 8579 |
| 8582–X | Iowa Northern Railway Company, Greene, IA | 8582 |
| 8582–X | Cedar Valley Railroad Company, Osage, IA | 8582 |
| 8582–X | Cedar Rapids and Iowa City Railway Company, Cedar Rapids, IA | 8582 |
| 8614–X | Arrowhead Airways, Inc., Blaine, MN | 8614 |
| 8693–X | Matheson Gas Products, Inc., Secaucus, NJ | 8693 |
| 8706–X | Prairie State Equipment, Inc., Corsica, SD | 8706 |
| 8723–X | Econex Incorporated, Wheaton, IL | 8723 |
| 8747–X | Coppe Industries, Inc., Menomonee Falls, WI | 8747 |
| 8885–X | Coppe Industries, Inc., Menomonee Falls, WI | 8885 |
| 8938–X | Cryogenic Services, Inc., Canton, GA | 8938 |
| 8966–X | GPS Industries, City of Industry, CA | 8966 |
| 8966–X | Action Chemical Company, Phoenix, AZ | 8966 |
| 8966–X | All Pure Chemical Company, Inc., Tracy, CA | 8966 |
| 8966–X | Oil-Air Hydraulic, Inc., Houston, TX | 8966 |
| 8995–X | Polyfoam Products, Inc., Spring, TX | 8995 |
| 9059–X | Air Products and Chemicals, Inc., Allentown, PA | 9059 |
| 9059–X | Cryogenic Rare Gas Laboratories, Inc., Hanahan, SC | 9059 |
| 9059–X | U.S. Department of Defense, Falls Church, VA | 9059 |
| 9059–X | Boeing Aerospace Company, Seattle, VA | 9059 |
| 9108–X | Trojan Corporation, Spanish Fork, UT | 9108 |
| 9108–X | Austin Powder Company, Cleveland, OH | 9108 |
| 9108–X | E.I. DuPont De Nemours & Company, Wilmington, DE | 9108 |
| 9120–X | Western Atlas International, Inc., Houston, TX | 9120 |
| 9222–X | Terra First, Inc., Vernon, AL | 9222 |
| 9309–X | Organic Peroxides Div. of Atochem North America, Buffalo, NY | 9309 |
| 9372–X | Halliburton Logging Services, Inc., Houston, TX | 9372 |
| 9388–X | Cominco American, Incorporated, Spokane, WA | 9388 |
| 9393–X | Sexton Can Company, Inc., Cambridge, MA (see footnote 3) | 9393 |
| 9431–X | U.S. Department of Defense, Falls Church, VA | 9431 |
| 9579–X | IRECO, Incorporated, Salt Lake City, VT | 9579 |
| 9672–X | Ethyl Corporation, Baton Rouge, LA | 9672 |
| 9677–X | Allied Universal Corporation, Miami, FL | 9677 |
| 9683–X | Meter Engineers, Inc., Wichita, KS | 9683 |
| 9696–X | Fluoroware, Inc., Chaska, MN | 9696 |
| 9797–X | National Aeronautics & Space Administration (NASA), Washington, DC | 9797 |
| 9833–X | Wacker Chemie, GmbH, Munich, West Germany | 9833 |
| 9833–X | Wacker Chemical (USA), Inc., Canaan, CT | 9833 |
| 9843–X | Bruin Engineered Parts Inc., Midland, Ontario, Canada | 9843 |
| 9970–X | Hercules, Inc., Wilmington, DE | 9970 |
| 10001–X | Linde Gases of the Great Lakes, Inc., Cleveland, OH | 10001 |
| 10007–X | Coppe Industries, Inc., Menomonee Falls, WI | 10007 |
| 10062–X | Callery Chemical Company, Pittsburgh, PA | 10062 |
| 10084–X | Composite Trailer, Inc., Corona, CA | 10084 |
| 10178–X | Eveready Battery Company, Inc., Westlake, OH (see footnote 4) | 10178 |
| 10249–X | E.I. du Pont de Nemours and Company, Inc., Wilmington, DE | 10249 |
| 10373–X | Day & Zimmermann, Inc., Parsons, KS | 10373 |
| 10449–X | Tren-Fuels, Inc., Austin, TX (see footnote 5) | 10449 |

[1] To renew, and modify exemption to provide for cargo-only aircraft as an additional mode of transportation.
[2] To renew, and modify exemption to provide for additional commodities classed as oxidizer for transportation in polyethylene plastic bags.
[3] To authorize cargo aircraft as additional mode of transportation for shipment of certain nonflammable gases in non-DOT specification cylinder.
[4] To modify exemptions to provide for alternative type packaging for transportation of lithium batteries.
[5] To reissue exemption originally issued on an emergency basis to authorize shipment of compressed natural gas, classed as a flammable gas in DOT specification 3AA X cylinders.



| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 4453–P | Olson Explosives, Inc., Decorah, IA | 4453 |
| 4453–P | Van Amburgh/Alamo, Inc., Dallas, TX | 4453 |
| 4453–P | Econex, Wheaton, IL | 4453 |
| 6805–P | Air Products and Chemicals, Inc., Allentown, PA | 6805 |
| 7052–P | Northrop Corporation Aircraft Division, Newbury Park, CA | 7052 |
| 7052–P | LSM International, Houston, TX | 7052 |
| 7052–P | Lockheed Advanced Development Company, Burbank, CA | 7052 |
| 8009–P | Natural Gas of America, Inc., Clearwater, FL | 8009 |
| 8236–P | Du-Laur Products Inc., Vasser, MI | 8236 |
| 8723–P | Mt. State Bit Service, Inc., Morgantown, WV | 8723 |
| 9275–P | Olympic Energy, Inc., Whitesburg, GA | 9275 |
| 9275–P | E.I. DuPont De Nemours & Company, Wilmington, DE | 9275 |
| 9498–P | TRW Safety Systems/Mesa, Mesa, AZ | 9498 |
| 9579–P | Wampum Hardware Co., New Galilee, PA | 9579 |
| 9623–P | Alpha Explosives, Lincoln, CA | 9623 |
| 9632–P | Compagnie Des Containers Reservoirs, Paris, France | 9632 |
| 10001–P | Randall-Graw Company, Inc., La Crosse, WI | 10001 |
| 10001–P | GenEx, Ltd., Des Moines, IA | 10001 |
| 10001–P | III-Mo Products Co., Jacksonville, IL | 10001 |
| 10291–P | Compagnie Des Containers Reservoirs, Paris, France | 10291 |

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 CFR 1.53(e)).

Issued in Washington, DC, on December 10, 1990.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 90–29308 Filed 12–13–90; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: December 7, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Departmental Offices

*OMB Number:* 1505–0024.

*Form Number:* International Capital Forms CQ–1 and CQ–2.

*Type of Review:* Extension.

*Title:* Treasury International Capital Form CQ–1, "Financial Liabilities to, and Claims on, Unaffiliated Foreigners"; and Treasury International Capital Form CQ–2, "Commercial Liabilities to, and Claims on, Unaffiliated Foreigners".

*Description:* This report is required by law and is designed to collect timely and accurate information on international capital movements including data on financial and commercial liabilities to, and claims on, unaffiliated foreigners held by U.S. non-banking business enterprises, nonprofit institutions and other U.S. specified persons.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 475.

*Estimated Burden Hours Per Response:* 4 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Reporting Burden:* 7,600 hours.

*Clearance Officer:* Dale A. Morgan (202) 566–2693, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 90–29275 Filed 12–13–90; 8:45 am]

BILLING CODE 4810–25–M

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# Sunshine Act Meetings

Federal Register
Vol. 55, No. 241
Friday December 14, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 55, page 50636, December 7, 1990.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** December 13, 1990.

**CHANGES:** The following item has been added to the Agenda:

*Election of Vice Chairman*

The Commission will elect a Vice Chairman for the term beginning on January 1, 1991 and ending on December 31, 1991.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: December 11, 1990.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 90-29448 Filed 12-12-90; 11:17 am]

BILLING CODE 6355-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, December 18, 1990, to consider the following matters:

Memorandum and resolution re: Lawsuits Brought By the Corporation, FSLIC, or Resolution Trust Corporation ("RTC") Against Firms Seeking to Provide Services to the Corporation or the RTC.

FDIC Study of the feasibility of establishing a risk-based deposit insurance premium rate structure.

Corporation's 1991-1992 Business Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: December 11, 1990.

Federal Deposit Insurance Corporation.

**M. Jane Williamson,**

*Assistant Executive Secretary.*

[FR Doc. 90-29459 Filed 12-12-90; 1:47 pm]

BILLING CODE 6714-01-M

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., December 19, 1990.

**PLACE:** Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573-0001

**STATUS:** Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

**Portion Open to the Public**

1. Docket No. 90-23—*Automated Tariff Filing and Information System (ATFI)—Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce.*

**Portion Closed to the Public**

1. Proposed Investigation of Shipping Act of 1984, violations.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29449 Filed 12-12-90; 11:24 am]

BILLING CODE 6730-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, December 19, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Proposal to establish an all-electronic Automated Clearing House (ACH) service.
2. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: December 12, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29432 Filed 12-12-90; 10:31 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** Approximately 10:30 a.m., Wednesday, December 19, 1990, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a closed meeting on December 17, 1990.)
2. Consumer Advisory Council appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 12, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29443 Filed 12-12-90; 10:31 am]

BILLING CODE 6210-01-M

**RESOLUTION TRUST CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session on Tuesday, December 18, 1990 following the Federal Deposit Insurance Corporation open session beginning at 2:00 p.m. to consider the following matters:



*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors request that an item be moved to the discussion agenda.

Quarterly Report of Actions Taken Under Delegated Authority by the Resolution Trust Corporation Committee on Management and Disposition of Assets for the period January 1, 1990 through March 31, 1990.

*Discussion Agenda*

A. *Memorandum re:*

Proposed revisions to Resolution Trust Corporation Statement of Policy regarding firms in litigation with the RTC, FDIC, or FSLIC.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: December 11, 1990.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Executive Secretary.*

[FR Doc. 90-29407 Filed 12-12-90; 1:46 pm]

BILLING CODE 6714-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 17, 1990.

A closed meeting will be held on Tuesday, December 18, 1990, at 2:30 p.m. An open meeting will be held on Thursday, December 20, 1990, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel to the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 18, 1990, at 2:30 p.m., will be:

Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Formal order of investigation.
Institution of injunctive actions.
Opinion.

The subject matter of the open meeting scheduled for Thursday, December 20, 1990, at 10:00 a.m., will be:

Consideration of whether to issue a Memorandum Opinion and Order with respect to an application-declaration filed by Northeast Utilities, a registered holding company under the Public Utility Holding Company Act of 1935, proposing the acquisition of Public Service Company of New Hampshire, a publicly owned electric utility company that is a debtor-in-possession in reorganization proceedings under Chapter 11 of the United States Bankruptcy Code pursuant to a plan of reorganization, and related corporate and financing transactions. For further information, please contact Yvonne M. Hunold at (202) 272-2678.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272-2000.

Dated: December 11, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-29455 Filed 12-12-90; 12:47 pm]

BILLING CODE 8010-01-M

VOL 55 ISS 241 DE 14 1990 UMI



# Corrections

Federal Register
Vol. 55, No.
Friday, December 14, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**9 CFR Parts 92, 94, 98, 151**

**[Docket No. 90-023]**

**RIN 0579-AA83**

### Importation of Certain Animals, Poultry, Animal and Poultry Products, and Animal Embryos

*Correction*

In the correction to rule document 90-17541 appearing on page 34797 in the issue of Friday, August 24, 1990, make the following corrections:

1. In the first column, the CFR heading should appear as set forth above.

2. Also in the first column, item 1 is corrected to read as follows:

"1.On page 31486, in the eighth column, under the heading "Semen", the last two entries corresponding with "92.4(a)(2)" and "92.4(a)(3)" of the first column, should read "98.24(a)(2)" and "98.24(a)(3)" respectively."

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 90N-0378]**

### Martec Pharmaceutical, Inc. et al.; Withdrawal of Approval of Abbreviated New Drug Applications

*Correction*

In notice document 90-27886 beginning on page 49427 in the issue of Wednesday, November 28, 1990, make the following correction:

On page 49428, in the table, in the Drug column corresponding to the ANDA no. 88-940 "Chlorthiazide" should read "Chlorothiazide".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Abandoned Shipwreck Act Guidelines

*Correction*

In notice document 90-26350 beginning on page 50116 in the issue of Tuesday, December 4, 1990, make the following corrections:

1. At the top of each page of the document, in the dateline, the date should read "Tuesday, December 4, 1990".

2. On page 50116, in the third column, in the fourth paragraph, in the ninth line, the first "and" should be deleted.

3. On page 50117, in the third column, in the second full paragraph, in the first line, "State" should read "States".

4. On page 50118, in the first column, in the third full paragraph, in the first line, "that" should read "the".

5. On page 50119, in the third column, following the signatory information and preceding the CONTENTS insert:

**ABANDONED SHIPWRECK ACT GUIDELINES**

6. On page 50122, in the first column, in the first full paragraph, in the eighth line, "state" should read "State".

7. On the same page, in the third column, in paragraph (a) of "Guideline 3", in the fifth line, "an" should read "and".

8. On page 50123, in the second column, in the third paragraph, in the third line, "Currently" should be spelled with a lowercase "c".

9. On the same page, in the second column, in the introductory paragraph, of "Guideline 6" in the 11th line, "contract" should read "contact".

10. On the same page, in the third column, in paragraph (f) of "Guideline 6", in the first line, add "and" after "agency".

11. On page 50128, in the second column, under "Guideline 3", in the third line, "Historic" should be spelled with a capital "H" and add "Fund" after "Preservation".

12. On the same page, in the same column, in the same paragraph, in the 14th line, add a comma after "States".

13. On page 50130, in the third column, under "Guideline 7", in the fourth line, "shipwreck" should read "shipwrecks".

14. On page 50131, in the first column, in paragraph (b) of "Guideline 7", in the fifth line, add "and" after "Navy,".

15. On the same page in the third column, under "Guideline 2", in the eighth line, delete "recreational and educational" and add "historical".

16. On page 50132, in the third column, in the 13th line from the bottom, "Recovery" should read "Recovering".

17. On page 50133, in the first column, in the eighth line, "coal" should read "local" and "business" should read "businesses".

18. In the same paragraph, in the 14th line, "shipwrecks" should read, "shipwreck".

19. On the same page, in the second column, in paragraph (d)(1) of "Guideline 1", in the fifth line, add "to" after "not".

20. On the same page, in the third column, in paragraph (e)(1) of "Guideline 2", in the ninth line, "that" should read "the".

21. On page 50134, in the third column, in the fourth line from the bottom, add "private" after "to".

22. On page 50135, in the first column, the paragraph designated, "(b1)" of "Guideline 6", should read "(b)".

23. On the same page, in the same column, on the last line, "for" should read "or".

24. On page 50136, in the first column, in paragraph (e), in the 6th line, "instruction" should read "instructions", and in the 15th line, "individual" should read "individuals".

25. On the same page, in the same column, in the seventh line from the bottom, 'historic" should read "historical".

26. On the same page, in the second column, under "Guideline 3", in the ninth line, add "at" after "as".

27. On the same page, in the same column, in the 11th line from the bottom, "*Guidelines 4*" should read "*Guideline 4*".

28. On page 50137, in the second column, in the second line, delete the open parenthesis.

29. On page 50139, in the second column, at section 7 of the Act, in the heading, "Relationship" should be one word.

30. On the same page, in the third column, in the fifth line from the bottom, "is" should read "are".

31. On page 50140, in the third column, under *Georgia*, in the eighth line, insert a period after "immunity.".

32. On the same page, in the same column, in the sixth line from the bottom, "(ex-*Rajasan*)" should read "(ex-*S.S.Rajasan*)".

33. On page 50141, in the first column, under *Indiana*, in the seventh line, "regional" should read "regionally".

34. On page 50142, in the last line of the third column, add "snag" after "stern-wheel".

35. On page 50143, in the third column, in the second full paragraph, in the fifth and sixth lines, delete "U.S. Government, Department of the Navy." and add "State of North Carolina.".

36. On page 50144, in the first column, under *Nebraska*, at *Bertrand*, add "Listed in the National Register as nationally significant." to the end of the paragraph.

37. On the same page, in the third column, under *Oregon*, in the last three lines, delete "part of an archeological district of national significance" and add "nationally significant.".

38. On the same page, in the same column, under *Rhode Island* delete, "nationally significant" and add "part of an archeological district of national significance.".

39. On page 50145, in the third column, in the file line, the document number should read "90-28350".

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## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 213**

### Excepted Service-Schedule A Authority for Employment of Students

*Correction*

In proposed rule document 90-28708 appearing on page 50560 in the issue of Friday, December 7, 1990, in the first column under DATES in the second line, "February 5, 1990" should read "February 5, 1991."

BILLING CODE 1505-01-D

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-28644; File No. SR-PSE-90-39; International Series Release No. 195]**

### Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Exchange Rules To Provide for the Listing and Trading of Currency Warrants

*Correction*

In notice document 90-28333 beginning on page 50060 in the issue of Tuesday, December 4, 1990, the docket number should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**14 CFR Part 75**

**[Airspace Docket No. 90-AWA-4]**

### Establishment of Jet Routes

*Correction*

In final rule document 90-24786 appearing on page 42364 in the issue of Friday, October 19, 1990, make the following correction:

In the first column, under HISTORY, in the first line "22" should read "2".

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federal register

Friday
December 14, 1990

Part II

# Environmental Protection Agency

40 CFR Part 300
Hazard Ranking System; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-3730-8]

RIN 2050 AB73

# Hazard Ranking System

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is adopting revisions to the Hazard Ranking System (HRS), the principal mechanism for placing sites on the National Priorities List (NPL). The revisions change the way EPA evaluates potential threats to human health and the environment from hazardous waste sites and make the HRS more accurate in assessing relative potential risk. These revisions comply with other statutory requirements in the Superfund Amendments and Reauthorization Act of 1986 (SARA).

**DATES:** Effective date March 14, 1991. As discussed in Section III H of this preamble, comments are invited on the addition of specific benchmarks in the air and soil exposure pathways until January 14, 1991.

**ADDRESSES:** Documents related to this rulemaking are available at and comments on the specific benchmarks in the air and soil exposure pathways may be mailed to the CERCLA Docket Office, OS-245, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street, SW, Washington, DC 20460, phone 202-382-3046. Please send four copies of comments. The docket is available for viewing by appointment only from 9:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays. The docket number is 105NCP-HRS.

**FOR FURTHER INFORMATION CONTACT:** Steve Caldwell or Agnes Ortiz, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response, OS-230, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the Superfund Hotline at 800-424-9346 (in the Washington, DC area, 202-382-3000).

**SUPPLEMENTARY INFORMATION:**

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## I. Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), commonly called the Superfund, in response to the dangers posed by uncontrolled releases of hazardous substances, contaminants, and pollutants. To implement section 105(8)(A) of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981), the U.S. Environmental Protection Agency (EPA) revised the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, on July 16, 1982 (47 FR 31180), with later revisions on September 16, 1985 (50 FR 37624), November 20, 1985 (50 FR 47912), and March 8, 1990 (55 FR 8666). The NCP sets forth guidelines and procedures for responding to releases or potential release of hazardous substances, pollutants, or contaminants.

Section 105(8)(A) of CERCLA (now section 105(a)(8)(A)) requires EPA to establish:

> Criteria for determining priorities among releases or threatened releases [of hazardous substances] throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities * * * shall be based upon the relative risk or danger to public health or welfare or the environment * * * taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, [and] the potential for destruction of sensitive ecosystems * * *.

To meet this requirement and help set priorities, EPA adopted the Hazard Ranking System (HRS) as appendix A to the NCP (47 FR 31180, July 16, 1982). The HRS is a scoring system used to assess the relative threat associated with actual or potential releases of hazardous substances at sites. The HRS is the primary way of determining whether a site is to be included on the National Priorities List (NPL), the Agency's list of sites that are priorities for long-term evaluation and remedial response, and is a crucial part of the Agency's program to address the identification of actual and potential releases. (Each State can nominate one site to the NPL as a State top priority regardless of its HRS score; sites may also be added in response to a health advisory from the Agency for Toxic Substances and Disease Registry (see NCP, 40 CFR 300.425(c)(3)).) Under the original HRS, a score was determined for a site by evaluating three migration pathways—ground water, surface water, and air. Direct contact and fire and explosion threats were also evaluated to determine the need for emergency actions, but did not enter into the decision on whether to place a site on the NPL.

In 1986, Congress enacted the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), which added section 105(c)(1) to CERCLA, requiring EPA to amend the HRS to assure "to the maximum extent feasible, that the hazard ranking system accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." Congress, in its Conference Report on SARA, stated the substantive standard against which HRS revisions could be assessed:

> This standard is to be applied within the context of the purpose for the National Priorities List; i.e., identifying for the States and the public those facilities and sites which appear to warrant remedial actions. * * * This standard does not, however, require the Hazard Ranking System to be equivalent to detailed risk assessments, quantitative or qualitative, such as might be performed as part of remedial actions. The standard requires the Hazard Ranking System to rank sites as accurately as the Agency believes is feasible using information from preliminary assessments and site inspections * * * Meeting this standard does not require long-term monitoring or an accurate determination of the full nature and extent of contamination at sites or the projected levels of exposure such as might be done during remedial investigations and feasibility studies. This provision is intended to ensure that the Hazard Ranking System performs with a degree of accuracy appropriate to its role in expeditiously identifying candidates for response actions. [H.R. Rep. No. 962, 99th Cong., 2nd Sess. at 199-200 [1986]]

Section 105(c)(2) further specifies that the HRS appropriately assess the human health risks associated with actual or potential contamination of surface waters used for recreation or drinking water and that this assessment should take into account the potential migration of any hazardous substance through surface water to downstream sources of drinking water.

SARA added two criteria for evaluating sites under section 105(a)(8)(A): Actual or potential contamination of the ambient air and threats through the human food chain. In addition, CERCLA section 118, added by SARA, requires EPA to give a high priority to facilities where the release of hazardous substances has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply. Finally, CERCLA section 125, added by SARA, requires revisions to the HRS to address facilities that contain substantial volumes of wastes specified in section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA). These wastes include fly ash wastes, bottom ash wastes, slag wastes, and flue gas emission control wastes generated primarily from the combustion of coal or other fossil fuels. Specifically, section 125 requires EPA to revise the HRS to assure the appropriate consideration of each of the following site-specific characteristics of such facilities:

- The quantity, toxicity, and concentrations of hazardous constituents that are present in such waste and a comparison with other wastes;
- The extent of, and potential for, release of such hazardous constituents into the environment; and
- The degree of risk to human health and the environment posed by such constituents.

EPA published an advance notice of proposed rulemaking (ANPRM) on April 9, 1987 (52 FR 11513), announcing its intention to revise the HRS and requesting comments on a number of issues. After a comprehensive review of the original HRS, including consideration of alternative models and Science Advisory Board review, EPA published a notice of proposed rulemaking (NPRM) for HRS revisions on December 23, 1988 (53 FR 51962). The NPRM contains a detailed preamble, which should be consulted for a more extensive discussion of CERCLA, SARA, the HRS, and the proposed changes to the HRS.

Today, EPA is publishing the revised HRS, which will supersede the HRS previously in effect as appendix A to the NCP. CERCLA section 105(c)(1) states that the revised HRS shall be applied to any site newly listed on the NPL after its effective date; as specified in section 105(c)(3), sites scored with the original HRS prior to that effective date need not be reevaluated.

The HRS is a scoring system based on factors grouped into three factor categories. The factor categories are multiplied and then normalized to 100 points to obtain a pathway score (e.g., the ground water migration pathway score). The final HRS score is obtained by combining the pathway scores using a root-mean-square method. The proposed HRS revised every factor to some extent. A few factors were replaced, and several new factors were added. The major proposed changes included:

(1) Consideration of potential as well as actual releases to air;
(2) Addition of mobility factors;
(3) Addition of dilution and distance weightings for the water migration pathways and modification of distance weighting in the air migration pathway;
(4) Revisions to the toxicity factor;
(5) Additions to the list of covered sensitive environments;
(6) Addition of human food chain and recreation threats to the surface water migration pathway;
(7) Revision of the hazardous waste quantity factor to allow a tiered approach;
(8) Addition of health-based benchmarks for evaluating population factors and ecological-based benchmarks for evaluating sensitive environments;
(9) Addition of factors for evaluating the maximally exposed individual; and
(10) Inclusion of a new onsite exposure pathway.

EPA conducted a field test of the proposed HRS to assess the feasibility of implementing the proposed HRS factors, to determine resources required for specific tasks, to assess the availability of information needed for evaluation of sites, and to identify difficulties with the use of the proposed revisions. To meet the objectives, site inspections were performed at 29 sites nationwide. The sites were selected either because work was already planned at the site or because the sites had specific features EPA wanted to test using the proposed revisions to the HRS. The major results of the field test were summarized on September 14, 1989 (54 FR 37949), when the field test report was made available for public review and comment.

## II. Overview of the Final Rule

The rule being promulgated today incorporates substantial changes to revisions proposed in December 1988. EPA has changed the rule for three reasons: (1) To respond to the general comment submitted by many commenters that the factor categories and pathways need to be consistent with each other; (2) to respond to specific recommendations made by commenters; and (3) to respond to problems identified during the field test and discussed in the field test report. Major changes affecting multiple pathways include:

- Multiplication of hazardous waste quantity factor, toxicity, and other waste characteristics factors;
- Uncapping of population factors (i.e., no limit is placed on maximum value);
- Revised criteria for establishing an observed release;
- Capping of potential to release at a value less than observed release;
- Revision of the toxicity evaluation to select carcinogenic and non-cancer chronic values in preference to acute toxicity values;
- Elimination of Level III concentrations and extension of weighting based on levels of exposure to nearest individual (well/intake; formerly maximally exposed individual) factors;
- Modification of the weights assigned to Level I and Level II concentrations;
- Revisions to the benchmarks used and methods for determining exceedance of benchmarks;
- Use of ranges to assign values for potentially exposed populations;
- Inclusion of factors assessing exposures of the nearest individual in all pathways;
- Revisions to distance and dilution weights in all pathways except ground water migration;
- Replacement of the use factors with less heavily weighted resources factors;
- Evaluation of wetlands based on size or surface water frontage; and
- Specific instructions for the evaluation of radionuclides at radioactive waste sites and sites with radioactive and other hazardous substances wastes.

The major changes in the ground water migration pathway include:

- Replacement of depth to aquifer/hydraulic conductivity and sorptive capacity factors with travel time and depth to aquifer factors; and
- Revision of the mobility factor, including consideration of distribution coefficients.

In the surface water migration pathways, the major changes include:

- Elimination of the separate recreational use threat;
- Addition of a ground water to surface water component;

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- Incorporation of bioaccumulation into the waste characteristics factor category rather than the targets factor category for the human food chain threat;
- Revision to allow use of additional tissue samples in establishing Level I concentrations for the human food chain threat; and
- Addition of ecosystem bioaccumulation potential factor for sensitive environments.

The major changes in the soil exposure pathway (formerly the onsite exposure pathway) include:

- Elimination of separate consideration of the high risk population;
- Inclusion of hazardous waste quantity in the waste characteristics factor category;
- Consideration of workers in the resident threat's targets factor category; and
- Revisions to scoring of terrestrial sensitive environments.

The major changes in the air migration pathway include:

- Separate evaluation of gas and particulate potential to release; and
- Consideration of actual contamination in evaluating sensitive environments.

Figures 1 to 4 show the differences between the pathways in the original HRS and in the final rule.

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Figure 1

# Ground Water Migration Pathway

ORIGINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release<br>or<br>Route Characteristics<br>Depth to Aquifer of Concern<br>Net Precipitation<br>Permeability of Unsaturated Zone<br>Physical State<br>Containment | | Toxicity/Persistence<br>Hazardous Waste Quantity | | Ground Water Use<br>Distance to Nearest Well/ Population Served |

FINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release<br>or<br>Potential to Release<br>Containment<br>Net Precipitation<br>Depth to Aquifer<br>Travel Time | | Toxicity/Mobility<br>Hazardous Waste Quantity | | Nearest Well<br>Population<br>Resources<br>Wellhead Protection Area |

Figure 2

# Surface Water Migration Pathway

ORIGINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release | | Toxicity/Persistence | | Surface Water Use |
| or | | Hazardous Waste Quantity | | Distance to Sensitive Environment |
| Route Characteristics | | | | Population Served/Distance to Nearest Intake Downstream |
| Facility Slope/Intervening Terrain | | | | |
| 1-Year, 24-Hour Rainfall | | | | |
| Distance to Nearest Surface Water | | | | |
| Physical State | | | | |
| Containment | | | | |

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Figure 2

# Surface Water Migration Pathway (continued)

**FINAL HRS**

**Likelihood of Release:**
**Overland Flow/Flood Component**

| |
|---|
| Observed Release |
| or |
| Potential to Release |
| By Overland Flow |
| Containment |
| Runoff |
| Distance to Surface Water |
| By Flood |
| Containment |
| Flood Frequency |

or

**Likelihood of Release:**
**Ground Water to Surface Water Component**

| |
|---|
| Observed Release |
| or |
| Potential to Release |
| Containment |
| Net Precipitation |
| Depth to Aquifer |
| Travel Time |

**Drinking Water Threat**

| Waste Characteristics | x | Targets |
|---|---|---|
| Toxicity/Mobility[1]/Persistence | | Nearest Intake |
| Hazardous Waste Quantity | | Population |
| | | Resources |

+

**Human Food Chain Threat**

| Waste Characteristics | x | Targets |
|---|---|---|
| Toxicity/Mobility[1]/ Persistence/Bioaccumulation | | Food Chain Individual Population |
| Hazardous Waste Quantity | | |

X

+

**Environmental Threat**

| Waste Characteristics | x | Targets |
|---|---|---|
| Ecosystem Toxicity/Mobility[1]/ Persistence/Bioaccumulation | | Sensitive Environments |
| Hazardous Waste Quantity | | |

[1] Mobility is only applicable to the Ground Water to Surface Water Component.

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Figure 3

## Soil Exposure Pathway[1]

FINAL HRS

**Resident Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Contamination | | Toxicity<br>Hazardous Waste Quantity | | Resident Individual<br>Resident Population<br>Workers<br>Resources<br>Terrestrial Sensitive Environments |

+

**Nearby Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Attractiveness/Accessibility<br>Area of Contamination | | Toxicity<br>Hazardous Waste Quantity | | Population Within 1 Mile<br>Nearby Individual |

[1] New pathway.



Figure 4

## Air Migration Pathway

ORIGINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release | | Reactivity and Incompatibility<br>Toxicity<br>Hazardous Waste Quantity | | Population Within 4-Mile Radius<br>Distance to Sensitive Environment<br>Land Use |

FINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release<br>or<br>Potential to Release<br><br>Gas<br>Gas Containment<br>Gas Source Type<br>Gas Migration Potential<br>Particulate<br>Particulate Containment<br>Particulate Source Type<br>Particulate Migration Potential | | Toxicity/Mobility<br>Hazardous Waste Quantity | | Nearest Individual<br>Population<br>Resources<br>Sensitive Environments |

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Section III of this preamble summarizes and responds to major issues raised by commenters. These issues are organized so that issues that affect multiple pathways are covered first, followed by discussions of individual pathway issues. Section IV provides a section-by-section discussion of the final rule. All substantive changes not discussed in section III are identified in section IV. Because the rule has been substantially rewritten to clarify the requirements, editorial changes are not generally noted.

## III. Discussion of Comments

About 100 groups and individuals submitted comments on the ANPRM and NPRM. Nineteen of these also submitted comments on the field test report; two other groups submitted comments only on the field test report. The commenters included more than 20 State agencies, several Federal agencies, companies, trade associations, Indian tribes, environmental groups, technical consultants, and individuals. This section summarizes and responds to the major issues raised by commenters. A description of the comments and EPA's response to each issue raised in the comments are available in *Responses to Comments on Revisions to the Hazard Ranking System (HRS)* in the EPA CERCLA docket (see **ADDRESSES** section above).

### *A. Simplification*

In response to SARA, EPA proposed revisions to the HRS so that, to the maximum extent feasible, it accurately assesses the relative risks posed by hazardous waste sites to human health and the environment. Consequently, the proposed rule required more data than did the original HRS.

A number of commenters stated that the data collection requirements of the proposed rule were excessive given its purpose as a screening tool. These commenters expressed concern that the data requirements were too extensive for a screening process; specifically, that the data requirements would lengthen the time needed to score sites with the HRS, increase the cost of listing sites, and, therefore, limit the money available for remedial actions. Most commenters—even those who considered that the revisions increased the accuracy of the model—stated that the resources required to evaluate sites under the proposed HRS were excessive.

One commenter suggested the proposed HRS would be so expensive to implement that EPA would need to develop a new screening tool to determine whether a site should undergo an HRS evaluation. Another commenter suggested that because of the complexity of the proposed revisions, preliminary scoring of a site during the site assessment process would be impractical because sites would advance too far in the site assessment process before they were determined not to be NPL candidates. Several commenters stated that, with the additional requirements, the proposed HRS is more of a quantitative risk-assessment tool than the screening tool it is supposed to be. Another suggested that the increased accuracy of the proposed rule over the original HRS is of marginal value relative to the amount of time and money involved, and that the HRS is no longer a quick and inexpensive method of assessing relative risks associated with sites.

Several commenters expressed concern that the increased data requirements of the proposed HRS would affect the schedule of the entire site assessment process. They suggested that these requirements would create a backlog of sites to be evaluated, slow the process of listing sites, and delay cleanup. Some noted that this would be contrary to the goal of identifying and evaluating sites expeditiously.

In response, the Agency believes the requirements of the final rule are within the scope of the site assessment process and that a new screening tool to determine whether a site should undergo an HRS evaluation will not be needed. To assist in screening sites, the site assessment process is divided into two stages:

- A preliminary assessment (PA), which focuses on a visual inspection, collection of available local, State, and Federal permitting data, site-specific information (e.g., topography, population), and historical industrial activity; and
- A site inspection (SI), where PA data are augmented by additional data collection, including sampling of appropriate environmental media and wastes, to determine the likelihood of a site receiving a high enough HRS score to be considered for the NPL.

The field test identified a best estimate of the average and range of costs incurred to support the data requirements of the proposed HRS. These cost estimates represented the entire site assessment process from PA to SI, and comprehensive evaluations for all pathways at most sites. As such, the Agency believes these cost estimates overstate the costs associated with site assessments occurring on the greater universe of CERCLA sites. The amount of data collected during an SI varies from site to site depending on the complexity of the site and the number of environmental media believed to be contaminated. Some SIs may be limited in scope if data are easy to obtain, while others require more substantial resource commitments. The most important factors in determining costliness of an SI are (1) the presence or absence of ground water monitoring wells in situations where ground water is affected, and (2) the number of affected media, which determines the number of samples taken and analyzed. The Agency believes the greater universe of CERCLA sites will not require the more substantial resource commitments.

Finally, EPA does not agree that the requirements of the final rule will delay the listing of sites. The site assessment process screens sites at each stage, thereby limiting the number of sites that require evaluation for scoring. The Agency believes that it will be possible to score sites expeditiously with the revised HRS.

The Agency believes the additional data requirements of the final rule will make it more accurately reflect the relative risks posed by sites, but also that the HRS should be as simple as possible to make it easier to implement and to retain its usefulness as a screening device. This approach responds to the majority of commenters who recommended that EPA simplify the proposed HRS to make it easier and less expensive to implement. In response to these comments, the rule adopted today includes a number of changes from the proposed rule that simplify the HRS. These simplifying changes were based largely on EPA's field test of the proposed rule, sensitivity studies, and issue analyses undertaken by EPA in response to comments.

- In the surface water migration pathway, the proposed recreation threat has been eliminated as a separate threat. Instead of requiring a separate set of detailed calculations and data, the final rule accounts for recreational use exposures through resources factors, where points may be added for recreation use.
- In the ground water migration pathway, the proposed potential to release has been simplified by dropping "sorptive capacity," by revising "depth to aquifer" and making it a separate factor, and by eliminating the requirement to consider all geological layers between the hazardous substance and the aquifer in evaluating travel time to the aquifer. The "travel time" factor (the depth to aquifer/hydraulic conductivity factor in the proposed rule) is now based on the layer(s) with the lowest hydraulic conductivity.
- In the three migration pathways (i.e., ground water, surface water, and air), the use factors in the proposed rule—"land use" in the air migration pathway, "drinking water use" and "other water use" in the ground water migration pathway, and "drinking water use" and "other water use" in the surface water migration pathway—have been replaced by "resources" factors. The "fishery use" factor has been dropped from the surface water migration pathway. A resources factor has been added to the soil exposure pathway.
- In the soil exposure pathway, the requirement that children under seven be counted as a separate population has been dropped. The "accessibility/frequency of use" factor has been replaced by a simpler "attractiveness/accessibility" factor.
- In the surface water migration pathway, the "runoff curve number," which required determining the predominant land use within the drainage area, has been replaced by a simpler factor, "soil group," which only requires classifying the predominant soil group in the drainage area into one of four categories.
- In the air migration pathway, the maps used to assign values of particulate migration potential (formerly particulate mobility under potential to release) have been simplified.
- In all pathways, potentially exposed populations are assigned values based on ranges rather than exact counts, reducing documentation requirements.
- In the surface water and ground water migration pathways, Level III benchmarks have been dropped.
- In all pathways, hazardous waste quantity values are based on ranges, which will reduce documentation requirements. The methodology and explanation for evaluating the hazardous waste quantity factor have been simplified.
- Containment tables have been simplified in the air, ground water, and surface water migration pathways.

A number of the simplifications, such as the changes to the travel time and hazardous waste quantity factors, better reflect the uncertainty of the underlying site data and, therefore, do not generally affect the accuracy of the HRS. In addition, EPA notes that some revisions that may appear to make the HRS more complex actually make it more flexible. For example, the hierarchy for determining hazardous waste quantity allows using data on the quantity of hazardous constituents if they are available or can be determined; additionally, data on the quantity of hazardous wastestreams, source volume, and source area can be used, depending on the completeness of data within the hierarchy. The hierarchy allows a site to be scored at the most precise level for which data are reasonably available, but does not require extensive data collection where available data are less precise.

In response to comments on the complexity of the rule language, the presentation of the HRS has been reorganized and clarified. Factors that are evaluated in more than one pathway are explained in a separate section of the final rule (§ 2) to eliminate the repetition of instructions. The proposed HRS included descriptive background material that, while useful, made the HRS difficult to read. Much of this descriptive material has been removed from the rule.

### *B. HRS Structure Issues*

Although the proposed rule retained the basic structure of the original HRS, a number of commenters felt that the HRS should provide results consistent with the results of a quantitative risk assessment. Several commenters identified this issue explicitly, while others identified specific aspects of the proposed rule that they believed to be inconsistent with basic risk assessment principles. The commenters maintained that if the HRS is to reflect relative risks to the extent feasible, as required by the statute, its structure should be modified to better reflect the methods employed in quantitative risk assessments. Commenters stressed the need for EPA to follow the advice of the EPA Science Advisory Board (SAB) as expressed in the SAB review of the HRS:

> Revisions to the HRS should begin with the development of a chain of logic, without regard for the ease or difficulty of collecting data, that would lead to a risk assessment for each site. This framework, but not the underlying logic, would be simplified to account for the very real difficulties of data collection.
>
> This chain of logic * * * should lead to a situation in which an increased score reflects an increased risk presented by a site.

In response to the structural issues raised by commenters and to the statutory mandate to reflect relative risk to the extent feasible, EPA made a number of changes to the final rule. These structural changes affect how various factors are scored and how scores are combined, but do not involve changes in the types or amount of data required to score a site with the HRS. The Agency stresses that the limited data generated at the SI stage are designed to support site screening, and are not intended to provide support for a quantitative risk assessment.

*General structural changes.* While the final rule retains the basic structure of the proposed rule in that three factor categories (likelihood of release, waste characteristics, and targets) continue to be multiplied together to obtain pathway scores, the structure has been changed in certain respects to make the underlying logic of the HRS more consistent with risk assessment principles.

The key structural changes to the waste characteristics factor category were to make use of consistent scales and to multiply the hazardous waste quantity and toxicity (or, depending on the pathway and threat, toxicity/mobility, toxicity/persistence, or toxicity/persistence/bioaccumulation) factors. Within the waste characteristics factor category, factors have been modified so they are on linear scales. These modifications make the functional relationships between the HRS factors more consistent with the toxicity and exposure parameters evaluated in risk assessments.

Where possible, the final rule assigns similar maximum point values to factor categories across pathways. The likelihood of release (likelihood of exposure) factor category is assigned a maximum value of 550; the waste characteristics factor category is assigned a maximum value of 100 (except for the human food chain and environmental threats of the surface water migration pathway); the targets factor category is not assigned a maximum. EPA determined that in general targets should be a key determinant of site threat because the data on which the targets factors are based are relatively more reliable than most other data available at the SI stage.

*Likelihood of release.* Except in the air migration pathway, the proposed rule assigned the same maximum value to observed release and potential to release. In the final rule, an observed release is assigned a value of 550 points and potential to release has a maximum value of 500 in all pathways. This relative weighting of values reflects the greater confidence (the association of risks with targets) when reporting an observed release as opposed to a potential release. As a result of this change in point values at the factor category level, as well as the new maximums for most pathways, the values assigned to individual potential to release factors have been adjusted.

*Waste characteristics.* The proposed rule assigned a maximum point value to

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hazardous substance quantities of 1,000 pounds. Because some sites have hazardous substance quantities far in excess of that amount and because it is reasonable to assume that these sites present some additional risk, all else being equal, the final rule elevates the maximum value to quantities in excess of 1,000,000 pounds. Even when hazardous waste quantity is documented with precision, EPA concluded that there are diminishing returns in considering quantities above this amount.

Although the HRS does not employ the same type and quality of information that would be used to support a risk assessment (e.g., pounds of waste and mobility are combined in the ground water pathway as a surrogate for long-term magnitude of releases), as waste characteristics values rise, contamination resulting from conditions at the sites in general should be worse. As a result of using linear scales and incorporation of a multiplicative relationship between hazardous waste quantity, toxicity, and other waste characteristics factors, the influence of the waste characteristics factor category could be disproportionately large relative to the likelihood of release and targets factor categories in determining overall pathway scores. Therefore, EPA is limiting—through use of a scale transformation—the values assigned to the waste characteristics factor category, shown in Table 2-7 of the final HRS, to limit the effect of waste characteristics on the pathway scores.

While the waste characteristics factor values are limited to values of 0 to 100 in most cases, the waste characteristics factor category may reach values of up to 1,000 for both the human food chain and environmental threats in the surface water migration pathway. These exceptions have been made to accommodate the bioaccumulation factor (or ecosystem bioaccumulation factor), applied in these threats but not in other pathways or threats, which can add up to four orders of magnitude to the waste characteristics factor values before reduction to the scale values of 0 to 1,000.

*Targets.* The final rule includes two major structural changes to the targets factor category. Population factor values are not capped as they were in the proposed rule. This change allows a site with a large population but a low waste characteristics value to receive scores similar to a site with a smaller population but larger waste characteristics value (as would be done in a risk assessment). A second change in the targets factors involves the nearest individual (or intake or well) factors (i.e., the maximally exposed individual factors in the proposed rule). These factors are now assigned values based on exposure to Level I and Level II contamination (50 and 45 points, respectively). Potentially exposed nearest individuals are assigned a maximum of 20 points in all pathways. EPA changed the assigned values for these factors to give more relative weight to individuals that are exposed to documented contamination.

*C. Hazardous Waste Quantity*

In the NPRM, EPA proposed to change the hazardous waste quantity factor to allow the use of four levels of data depending on what data are available and how complete they are. Hazardous waste quantity for a source could be based on (a) hazardous constituent quantity, (b) the total quantity of hazardous wastes in the source, (c) the volume of the source, or (d) the area of the source. Each source at the site would be evaluated separately, based on data available for the source.

EPA received numerous comments relating to changes in the hazardous waste quantity factor. Several commenters agreed that allowing use of waste constituent data, when available, was an improvement over the original HRS. Several also supported the tiered approach to scoring hazardous waste quantity when constituent data were incomplete or unavailable.

Two commenters stated that the emphasis on hazardous constituent data will require more extensive and expensive site investigations. These commenters have misunderstood the revisions. The rule does not require the scorer to determine hazardous constituent quantities in all instances, but simply encourages use of those data when they are available. This approach allows a scorer the flexibility to use different types of available data for scoring hazardous waste quantity. At a minimum, the scorer need only determine the area of a source (or the area of observed contamination), which is routinely done in site inspections. Where better data are available, they may be used in scoring the factor. This approach is in keeping with the intent of Congress that the HRS should act as a screening tool for identifying sites warranting further investigation.

Several commenters stated that the methodology for determining hazardous waste quantity was too complex and time consuming, and that its administrative costs outweighed its benefits. Others found the proposed rule instructions and tables confusing and hard to follow.

EPA strongly disagrees with the claim that the costs of the revised approach to scoring waste quantity outweigh its benefits. The amount of hazardous substances present at a site is an important indicator of the potential threat the site poses. At the same time, EPA recognizes that cost is an important consideration. In revising the hazardous waste quantity factor, however, the Agency believes it has established an appropriate balance between time and cost required for scoring this factor and the degree of accuracy needed to evaluate the relative risk of the site properly.

In response to comments, EPA has modified the hazardous waste quantity scoring methodology to make it easier to understand and to use. The changes include elimination of proposed rule Table 2-13, Hazardous Waste Quantity Factor Evaluation Methodology and Worksheet. In addition, the scale for the hazardous waste quantity factor has been divided into ranges that span two orders of magnitude (100x) to reflect the uncertainty inherent in estimates of hazardous waste quantities at typical sites. The practical effect of this scale change is to reduce the data collection and documentation requirements. See §§ 2.4.2–2.4.2.2. The final rule also clarifies the treatment of wastes classified as hazardous under RCRA. Under CERCLA, any RCRA hazardous waste stream is considered a hazardous substance. If this definition were strictly applied in evaluating hazardous waste quantity of RCRA hazardous wastestreams, hazardous constituent quantity and hazardous wastestream quantity would be the same because the entire wastestream would be considered a hazardous substance. The final rule makes clear that only the constituents in a RCRA wastestream that are CERCLA hazardous substances should be evaluated for determining hazardous constituent quantity; for the other three tiers, however, the entire RCRA wastestream is considered as is any other wastestream.

As discussed in section III Q, EPA will consider removal actions when calculating waste quantities. EPA believes consideration of removal actions is likely to increase incentives for rapid actions. If there has been a removal at a site, and the hazardous constituent quantity for all sources and associated releases is adequately determined, the hazardous waste quantity factor value will be based only on the amount remaining after the removal. This will result in lowering some hazardous waste quantity factor values.



Where an adequate determination of the hazardous constituent quantity remaining after the removal cannot be made, EPA has established minimum hazardous waste quantity factor values in order to ensure that the HRS score reflects any continuing risks at the sites. In this case, the assigned hazardous waste quantity factor value will be the current hazardous waste quantity factor value (as derived in Table 2-6), or the minimum value, whichever is greater.

The proposed rule assigned a minimum hazardous waste quantity factor value of 10 when data on hazardous constituent quantity was not complete. In the final rule, for migration pathways (i.e., not the soil exposure pathway), if the hazardous constituent quantity is not adequately determined, and if any target is subject to Level I or II contamination, the minimum hazardous waste quantity factor value will be 100.

If the hazardous constituent quantity for all sources is not adequately determined, and none of the targets are subject to Level I or II contamination, the minimum factor value assigned for hazardous waste quantity depends on whether there has been a removal action, and what the hazardous waste quantity factor value would have been without consideration of the removal action. If there has not been a removal action, the minimum hazardous waste quantity factor value will be 10. If there has been a removal action and if a factor value of 100 or greater would have been assigned without consideration of the removal action, a minimum hazardous waste quantity factor value of 100 will be assigned. If the hazardous waste quantity factor value was less than 100 prior to consideration of the removal action, a minimum hazardous waste quantity factor value of 10 will be assigned. This will ensure that the Agency provides an incentive for removal actions and that in no case will consideration of removal actions result in an increased hazardous waste quantity factor value score.

*D. Toxicity*

The proposed HRS substantially changed the basis for evaluating toxicity. The major change was that hazardous substance toxicity would be based on carcinogenicity, chronic non-cancer toxicity, and acute toxicity. For each migration pathway and each surface water threat except human food chain and recreation, toxicity was combined with mobility or persistence factors to select the hazardous substance with the highest combined value for toxicity and the applicable mobility or persistence factor. For the human food chain threat, only substances with the highest bioaccumulation values were evaluated for toxicity/persistence. For the recreation threat, only substances with the highest dose adjusting factor values were evaluated for toxicity/persistence. In addition, ecosystem toxicity rather than human toxicity was evaluated for the environmental threat of the surface water migration pathway.

Several commenters expressed concern about or opposition to using the single most hazardous substance at a site to score toxicity, stating that the approach seems overly conservative and unlikely to distinguish sites on the basis of hazard. Some commenters suggested that EPA allow flexibility in weighting the toxicity values of multiple substances either by concentration, waste quantity, or proportion information, whenever such information is available. One commenter suggested basing toxicity on a fixed percentage of the hazardous substances known to be present at a site.

The Agency agrees that, for purposes of accurately assessing the risk to human health and the environment posed by a site, it would be preferable to evaluate the overall toxicity by considering all hazardous substances present, based on some type of dose- (or concentration-) weighted toxicity approach. EPA believes, however, that this approach is not feasible because the data requirements would be excessive. Such an approach would be feasible only when relative exposure levels of multiple substances are known or can reasonably be estimated; however, these data can be obtained only by conducting a comprehensive risk assessment. Extensive concentration data would be required to be confident that comparable concentrations are being used for the various substances, and that the multi-substance toxicity of the contaminants is not, in fact, being underestimated. Use of inadequate data could result in underestimating or overestimating the toxicity of substances in a pathway.

EPA considered a number of alternatives to the use of a single hazardous substance to score toxicity (mobility/persistence) and tested some of these on several real and hypothetical sites. The analyses included comparisons between the single most toxic substance and the average toxicity value for all substances, the average toxicity value for the 10 most toxic substances, and the concentration-weighted average value of all substances. These alternatives were also tested using toxicity/mobility values. The results of these analyses showed that using a single substance approach usually resulted in an assigned value (either toxicity or toxicity/mobility) that was within one interval in the scale of values of the alternatives tested; for example, the single substance approach would assign a value of 1,000 for toxicity whereas averaging the toxicities would assign a value of 1,000 or 100, the next lower scale value. (The final rule uses linear scales to assign values for toxicity, mobility, and persistence. The scales for toxicity now range from 0 to 10,000 rather than 0 to 5; consequently, the default value for toxicity is now 100 rather than 3.) The Agency recognizes the uncertainty in the use of the single substance approach, but concludes that it is a reasonable approach for a screening model, especially given the general unavailability of information to support alternatives. In making this judgment, the Agency notes that the single substance approach to evaluating the toxicity factor was not identified in SARA as a portion of the HRS requiring further examination, even though it had been used in the original HRS and EPA had received criticism similar to the above comments prior to the enactment of SARA.

Several commenters suggested that additive, synergistic, or antagonistic effects among substances be considered in scoring toxicity when several substances are found at a site. In particular, one commenter suggested increasing the scores for sites with a large number of hazardous substances to account for additive or synergistic effects.

As noted in EPA's 1986 *Technical Support Document for the Proposed Revisions to the Hazard Ranking System*, quantitative consideration of synergistic/antagonistic effects between hazardous substances is generally not possible even in RI/FS risk assessments because appropriate data are lacking for most combinations of substances. Interactive effects have been documented for only a few substance mixtures, and the Agency's risk assessment guidelines for mixtures (51 FR 34014, September 24, 1986) emphasize that although additivity is a theoretically sound concept, it is best applied for assessing mixtures of similar acting components that do not interact. Thus, the Agency believes that consideration of interactive effects in evaluating toxicity in the HRS is not feasible, nor is it necessary to allow use of the HRS as a screening model. The Agency rejects the suggestion that scores should simply be raised for sites

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with numerous substances because this approach ignores the technical complexities related to interactions (i.e., the possibility of antagonistic effects.)

One commenter suggested that a waste's toxicity should be assessed in terms of its "degree of risk," and that this could be measured by comparing constituent concentrations at the point of exposure to appropriate toxicity reference levels. Two commenters stated that toxicity should be measured at a likely point of human exposure rather than at the waste site.

The toxicity of a substance, as used in the HRS, is an inherent property, often expressed quantitatively as a dose or exposure concentration associated with a specific response (i.e., a dose-response relationship). These toxicity values, in general, are independent of expected environmental exposure levels; many are based on laboratory tests on animals. Risk, on the other hand, is a function of toxicity, the concentration of a substance in environmental media to which humans may be exposed, and the likelihood of exposure to that medium (and the population likely to be exposed). The toxicity factor in the waste characteristics factor category of the HRS is intended to reflect only the inherent toxicity (i.e., the basic dose-response relationship) of substances found at the site. The HRS as a whole is intended to evaluate, to the extent feasible, relative risks posed by sites by including factors for likelihood of release, waste quantity, toxicity, and the proximity of potentially exposed populations. If actual contamination (for example, of drinking water) has been detected at a site, the measured environmental concentration of each substance is compared with its appropriate health-based or ecological-based concentration limit (i.e., its benchmark). If these environmental concentrations equal or exceed a benchmark, certain target factors are assigned higher values than if environmental concentrations are less than benchmarks.

Two commenters suggested using Cancer Potency Factors to score toxicity only for Class A and B1 carcinogens, and using reference doses (RfDs) for scoring Class B2 and C carcinogens (i.e., substances for which there is inadequate or no direct human evidence of carcinogenicity).

In response, EPA believes that because the HRS is a screening tool, it should maintain a conservative (i.e., protective) approach to evaluation of potential cancer risks. EPA's 1986 *Guidelines for Carcinogen Risk Assessment* (51 FR 34014, September 24, 1986) provide for substances in Class A and Class B (both B1 and B2) to be regarded as suitable for quantitative human risk assessment. In general, according to EPA's 1989 *Risk Assessment Guidance for Superfund: Human Health Evaluation Manual*, Class C substances are evaluated for cancer risks within the Superfund risk assessment process. Thus, the use of cancer risk information for Class B2 and C substances in the HRS is consistent with the objective of maintaining a conservative approach and with other Agency and Superfund program risk assessment guidelines.

In response to comments that the best available data should be used to score sites, that accepted Agency practices be relied on, and that consistency across pathways be encouraged, the Agency has modified slightly the way the toxicity value for a substance is selected. The final rule requires the use of carcinogenicity and chronic toxicity data, when available, over acute toxicity data. If both slope factors and RfDs are available, the higher of the values assigned for these types of toxicity parameters is used. If neither is available, but acute toxicity data are available, the acute toxicity data are used to assign toxicity factor values. EPA decided to give preference to slope factors and RfD values because these undergo more extensive Agency review and are based on long-term exposure studies.

*E. Radionuclides*

The proposed HRS assigned radionuclides a maximum toxicity value, but included no other procedures specific to radionuclides.

One commenter, the U.S. Department of Energy (DOE), asserted that the proposed HRS "* * * contains an inequitable bias regarding radionuclides * * *" DOE specifically criticized assigning maximum toxicity factor values to radionuclides, "* * * where, in fact, the health impact associated with radionuclides is associated with the type of decay, the level of decay energy, the half-life, the mobility, the concentration of the radionuclide, internal biological factors, and external pathway factors." DOE proposed using concepts for evaluating radionuclides that were included in its Modified Hazard Ranking System (mHRS). In its subsequent comments on the HRS field test report, DOE stated that it considered the "* * * method of handling radionuclides in the proposed revised HRS to be a serious flaw in the evaluation system."

In the final rule, EPA has clarified and significantly changed how radionuclides are evaluated. Instead of using or adapting the mHRS directly, however, EPA modified the proposed HRS to account more fully for radionuclides based on EPA's own methods for evaluating them, which are similar to and generally consistent with the radiation analysis concepts underlying the mHRS.

The final rule evaluates radionuclides within the same basic structure as other hazardous substances, and the evaluation of many individual HRS factors is the same whether radionuclides are present or not. Table 7-1 of the final rule lists HRS factors and indicates which are evaluated differently for radionuclides. Essentially, radionuclides are simply treated as additional hazardous substances with certain special characteristics that are accounted for by separate scoring rules for some HRS factors. For sites containing only radionuclides, the scoring process is very similar to the process at other hazardous substance sites, except that different scoring rules are applied to a number of substance-specific factors and a few other factors. For sites containing both radionuclides and other hazardous substances, both types of substances are scored for all HRS factors that are substance-specific, with overall factor values based either on combined values or the higher of the values, as appropriate.

EPA notes that, although some radioactive substances are statutorily excluded from the definition of "hazardous waste" in both CERCLA and RCRA (specifically, source, special nuclear, and byproduct material as defined in the Atomic Energy Act of 1954), such substances may be, and generally are, "hazardous substances" as defined in section 101(14) of CERCLA and therefore may be addressed under CERCLA. Radioactive substances should be included in HRS scoring and section 7 of the final rule is intended to facilitate that analysis. It also should be noted that two narrow categories of releases (either from "nuclear incidents" or from sites designated under the Uranium Mill Tailings Radiation Control Act of 1978) are excluded from CERCLA's definition of the term "release" (CERCLA section 101(22)), and such releases should not be scored using the HRS.

The major changes to the HRS in the evaluation of radionuclides apply to establishing observed releases, to factors in the waste characteristics category, and to determining the level of actual contamination in the targets factor category. The HRS components that have been modified are briefly described below.



The criteria for establishing an observed release through analysis of samples for radionuclides differ considerably from the criteria used for other hazardous substances. These criteria are divided into three groups: radionuclides that occur naturally or are ubiquitous in the environment; manmade radionuclides that are not ubiquitous in the environment; and gamma radiation (soil exposure pathway only). (See § 7.1.1.)

The hazardous waste quantity factor for sources (and areas of observed contamination) containing radionuclides has been modified to reflect the different units used to measure the amount of radiation (curies, a measure of activity) versus the units used for other hazardous substances (pounds, a measure of mass). EPA believes it is preferable to use activity units rather than mass units because activity is the standard measure of radiation quantity and is a better indicator of energy released and potential to cause human health damage than is mass. In addition, the hierarchy for evaluating the waste quantity factor for sources (and areas of observed contamination) containing radionuclides is limited to Tiers A and B. Tiers C and D, based on source volume and source area, respectively, are not used because adequate data to derive their quantitative relationship to Tier A were unavailable. Thus, the waste quantity factor is based either on radionuclide constituent quantity (Tier A) or radionuclide wastestream quantity (Tier B).

For sites containing only radionuclides, hazardous waste quantity is calculated based on the activity content of the radionuclides or radionuclide wastestreams associated with each source. For sites with both radionuclides and other hazardous substances, hazardous waste quantity is evaluated separately for the two types of hazardous substance for each source, and the values are then summed in determining the hazardous waste quantity value. The scale for scoring radionuclide waste quantity was derived based on concepts of risk equivalence between radionuclides and other hazardous substances.

In the proposed rule, all radionuclides were automatically assigned a maximum default value for the toxicity factor. The final rule evaluates radionuclides individually on the basis of human toxicity, across a range of factor values based on the potential to cause cancer (i.e., cancer slope factors). Non-cancer effects are not considered for radionuclides because cancer is generally the most significant toxic effect. Incorporated in the development of cancer slope factors are the type of radioactive decay; energy emitted during decay; biological uptake, distribution, and retention; and radiation dose-response relationship. Thus, across the set of scoring ranges used, radionuclides that are more potent carcinogens per unit activity now receive higher toxicity factor values than those that are less potent. The new toxicity scoring scale for radionuclides was derived in a manner consistent with the derivation of the existing carcinogenicity scale for other hazardous substances. Taken together, the new toxicity and hazardous waste quantity scales for radionuclides result in a risk equivalence between radionuclides and other hazardous substances.

Mobility of radionuclides in both the air and ground water migration pathways is evaluated in the same way as mobility for other hazardous substances; that is, on the basis of the chemical and physical characteristics of the radionuclide. Similarly, the bioaccumulation (and ecosystem bioaccumulation) potential factor is evaluated in the same way for radionuclides as for other hazardous substances. The final rule clarifies that radionuclides should be scored for these factors in all relevant pathways.

The persistence factor in the surface water migration pathway has been modified so that radionuclides are evaluated solely on the basis of half-life, which for HRS purposes is based on both radioactive half-life and volatilization half-life. Sorption to sediments is not considered, nor are hydrolysis, photolysis, or biodegradation. Other than this change in the processes considered to estimate surface water half-life, the scoring of the persistence factor is the same for radionuclides as for other hazardous substances.

The final rule extends to radionuclides the benchmark concept used throughout the HRS for weighting certain targets factor values. Measured levels of specific radionuclides at potential exposure points are compared to benchmark levels, and additional weight is given to targets subject to actual contamination (Levels I and II). This approach for weighting target factors using benchmarks is similar for radionuclides and for other hazardous substances, although both the specific benchmark values used for radionuclides and the methods for deriving the values are different. Benchmarks for evaluating radionuclide contamination parallel those used for other hazardous substances in that available Federal standards and screening concentrations are used when applicable. At sites with both radionuclides and other hazardous substances, each radionuclide and other substance is evaluated separately. If no individual substance equals or exceeds its benchmark, the ratios of the measured concentrations to the screening concentrations for cancer for radionuclides and other hazardous substances are added. Radionuclides are not evaluated using screening concentrations for non-cancer effects.

Specific benchmark values for radionuclides are in activity units instead of mass units, however, to reflect the appropriate measurement units for the level of radionuclide contamination. Radionuclide benchmarks include drinking water maximum contaminant levels (MCLs) for both the ground water and the surface water/drinking water threat pathways; Uranium Mill Tailings Radiation Control Act (UMTRCA) standards for the soil exposure pathway; and screening levels corresponding to $10^{-6}$ individual cancer risk for inhalation or oral exposures, as derived from cancer slope factors, for all pathways and threats incorporating human health benchmarks. The radionuclide benchmarks are consistent with EPA's radionuclide risk assessment methods in that they incorporate standard data or assumptions about contact/consumption rates for various environmental media and radiation dose-response, as well as the specific radionuclide's type of decay, decay energy, biological absorption, and biological half-life. Furthermore, radionuclide benchmarks for the soil exposure pathway account for external exposure (i.e., exposure to radiation originating outside the human body) from gamma-emitting radioactive materials in surficial material as well as from ingestion, which is the sole basis for non-radioactive hazardous substance benchmarks for the soil exposure pathway, because external exposure from gamma-emitting radionuclides can be an extremely important exposure route.

*F. Mobility/Persistence*

The proposed rule added mobility factors to both the ground water and air migration pathways and modified the persistence factor in the surface water migration pathway to consider a greater number of potential degradation mechanisms.

The Agency received a large number of comments critical of several aspects

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of the ground water mobility factor. The most common issues included:

- Concern about the use of coefficients of aqueous migration to establish mobility values for inorganic cations and anions;
- Suggestions that solubility values, distribution coefficients, and other measures be used to establish mobility values for anions and cations; and
- Requests that the same measures of mobility be used for organics and inorganics.

Criticism of the use of the coefficients of aqueous migration focused on its obscurity; except for geochemists, few scientists are familiar with the measure. In response to these comments and because coefficients of aqueous migration are not available for all hazardous substances and radionuclides, the Agency decided to replace coefficients of aqueous migration.

The majority of commenters stated a preference for using parameters related either to hazardous substance release (solubility) or to transport (distribution coefficients) as measures of mobility. The ground water mobility factor is intended to reflect the fraction of a hazardous substance expected to be released from sources, migrate through porous media, and contaminate aquifers and the drinking water wells that draw from them. Because mobility is concerned with both release and transport, the Agency concluded that mobility for all hazardous substances in ground water will be evaluated using both solubility and distribution coefficient values. A default value is assigned when none of the hazardous substances eligible to be evaluated can be assigned a mobility factor value based on available data.

A number of commenters raised questions about the persistence factor in the surface water migration pathway. In general, the commenters were divided between those who wanted more degradation mechanisms considered and those who believed the equation in the proposed rule for calculating half-lives was too complex. Several commenters suggested including sorption of substances by sediments.

In response to these comments, EPA has made several changes to the persistence factor. The free-radical oxidation half-life has been dropped from the equation used to calculate half-life because the data on which its half-life values are based are typically derived from ideal, laboratory conditions that differ greatly from conditions found in nature; few field validation studies have been conducted to provide a basis for extrapolating these laboratory values to natural environments. Thus, EPA concluded that including free-radical oxidation in the persistence equation resulted in an overemphasis of the influence of free-radical oxidation as a degradation mechanism. For hazardous substances that sorb readily to particulates found in natural water bodies, the persistence equation as proposed overemphasized the importance of degradation mechanisms that occur in the liquid phase. Log $K_{ow}$, the logarithm of the n-octanol-water partition coefficient, has been added to account for sorption to sediments.

The Agency received several comments concerning the mobility factors in the air migration pathway. The most significant of the issues raised by commenters were:

- Whether consideration of mobility in both the likelihood of release factor category and the waste characteristics factor category counts mobility twice;
- Whether the approach used in the proposed rule properly reflected the dynamics of releases of gases from sources into the atmosphere; and
- Whether the Thornthwaite P-E Index was sufficient as the sole measure of particulate mobility and whether particle size should be included.

In response to these and other related structural and air migration pathway comments, the Agency thoroughly re-assessed the adequacy of the mobility factors in the likelihood of release and waste characteristics factor categories. Based on this review, EPA has made several changes to the mobility factors in the final rule. In response to the "double counting" issue, the Agency believes there are differences between mobility in the context of likelihood of release and mobility in the context of waste characteristics. The potential to release mobility factor is a measure of the likelihood that a source at a site will release a substance to the air; the waste characteristics mobility factor, together with the hazardous waste quantity factor, is a measure of the magnitude of release. To highlight these differences, the names of the likelihood of release mobility factors have been changed to gas (or particulate) migration potential.

In response to comments on air migration pathway mobility and structure, EPA reviewed gas and particulate release rate models to develop revised mobility factors that improve evaluations of release magnitude and duration. The gas and particulate mobility factors in the final rule are a result of that review. The gas mobility factor is based on a simplified release model and is determined by the vapor pressure of the most toxic/mobile hazardous substance available for migration to the atmosphere at the site. The particulate mobility factor is based on a simplified fine-particle wind-erosion model and reflects the combined effects of differing wind speeds and soil moisture. Analyses indicated that soil moisture was dominant over both wind speed and particle size, which are essentially equal in effect. Because of the comparative difficulty of determining particle sizes in an SI, a single particle size was assumed to apply to all sites. This constant particle size value was factored into the simplified model yielding the factor in the final rule.

*G. Observed Release*

The proposed HRS described how to determine whether an observed release was significantly above background levels based on multiples of detection limits and background concentrations.

Some commenters stated that the proposed revisions treated observed release in an overly complex manner. A number of commenters, primarily from the mining industries, were concerned about the consideration of background concentration in determining an observed release. (See Section III P below for a summary of their concerns and EPA's response.)

As in the proposed rule, observed releases may be established based on either direct observation or chemical analysis of samples. In the case of direct observation, material (e.g., particulate matter) containing hazardous substances must be seen entering the medium directly or must have been deposited in the medium.

EPA has replaced the proposed rule criteria for establishing an observed release by chemical analysis with simpler criteria. In the final HRS, an observed release is established when a sample measurement equals or exceeds the sample quantitation limit (SQL) and is at least three times above the background level, and available information attributes some portion of the release of the hazardous substance to the site. (The SQL is the quantity of a hazardous substance that can be reasonably quantified, given the limits of detection for the methods of analysis and sample characteristics that may affect quantitation (e.g., dilution, concentration).) When a background concentration is not detected (i.e., below detection limits), an observed release is established when the sample measurement equals or exceeds the SQL. Any time the sample measurement is less than the SQL, no observed release is established. Table 2-3 of the final rule provides the criteria for determining when analytic sampling information is sufficient for establishing an observed release (or observed contamination in the soil exposure pathway). The final rule also provides procedures to be followed when the SQL is unavailable and defines various types of detection and quantitation limits in the context of the HRS. (See § 2.3 of the final rule.)



*H. Benchmarks*

SARA requires that EPA give high priority to sites that have led to closing of drinking water wells or contamination of principal drinking water supplies. To respond to this mandate, the proposed rule added health-based benchmarks to the ground water and surface water migration pathways; in addition, ecological-based benchmarks were added to evaluate sensitive environments targets in surface water. In the proposed rule, population factors were evaluated at Level I if a health-based benchmark had been exceeded. If actual contamination was present, but the benchmark was not exceeded, populations were evaluated based on two levels of contamination (i.e., Level II and Level III). Sensitive environments in the surface water migration pathway were evaluated based on two levels of actual contamination (exceeding benchmark or not exceeding benchmark). Where several hazardous substances were present below benchmarks, the percentages of their concentrations relative to their benchmarks were added to determine which level was used to assign values.

Of the commenters on this issue, most supported EPA's proposal to give extra weighting to sites where measured exposure-point concentrations exceed benchmarks. One commenter who dissented suggested giving extra weighting to sites where actual contamination is documented; documentation of an observed release (or observed contamination) would be the only criterion for assigning higher values to target factors, and the relationship of the concentration of hazardous substances to benchmarks would not be used. The other dissenting commenter suggested that EPA re-evaluate the role of health-based benchmarks in the HRS because common sense, and other laws, will discourage people from drinking water contaminated above benchmark levels, and because evaluating this factor will entail large resource expenditures for marginal gains in discrimination.

The final rule weights most targets based on actual and potential exposure to contamination across all pathways and threats, including those for which benchmarks were not originally proposed, because EPA believes that this approach both improves the ability of the HRS to identify sites that pose the greatest threat to human health and the environment and increases the internal consistency of the HRS. (See §§ 2.5, 2.5.1, 2.5.2, 3.3.1, 3.3.2, 4.1.2.3.1, 4.1.2.3.2, 4.1.3.3.1, 4.1.3.3.2, 4.1.4.3.1, 4.2.2.3.1, 4.2.2.3.2, 4.2.3.3.1, 4.2.3.3.2, 4.2.4.3.1, 5.1.3.1, 5.1.3.2, 6.3.1, 6.3.2, 6.3.4, 7.3.1, 7.3.2.) In the final rule, both the population factors and the factors reflecting the hazard to the nearest individual (or well or intake) are evaluated in relation to health-based benchmarks in all pathways. The sensitive environment factor in the surface water environmental threat is weighted in relation to ecological-based benchmarks; however, in the soil exposure and air migration pathways, the sensitive environment factor is weighted simply on the basis of exposure to actual contamination, and no benchmarks are used.

The Agency chose to use benchmarks in all pathways in response to comments that specifically suggested such a change; it is also responding to comments that the HRS should better reflect relative risks and that the approaches in all pathways should be consistent. The Agency has concluded that the concerns expressed by commenters outweigh the concerns about uncertainties in the evaluation of samples collected in air and soil and about the lack of regulatory standards and criteria on which to base soil or air benchmarks that led the Agency not to include benchmarks for those pathways in the proposed rule. In short, EPA carefully considered this point and concluded that the consistent application of benchmarks across all pathways provides for the most reasonable use of data given the purpose of the HRS as a screening tool.

EPA generally selected specific criteria based on applicable or relevant and appropriate requirements (ARARs), excluding State standards, that have been selected for the protection of public health and the environment as outlined in the NCP (55 FR 8666, March 8, 1990). In the HRS NPRM, EPA proposed to use MCLs, maximum contaminant level goals (MCLGs), and screening concentrations (SCs) based on cancer slope factors as drinking water benchmarks, and Food and Drug Administration (FDA) Action Levels as benchmarks for the human food chain threat. EPA also proposed to use Ambient Water Quality Criteria (AWQC) as ecological-based benchmarks for the environmental threat. EPA received 21 comments from 12 commenters on which benchmarks the HRS should use and whether additional information should be considered in establishing benchmarks. Opinion was divided on the use of specific types of benchmarks: three commenters supported the use of MCLs; three did not. Two commenters supported the use of MCLGs, two opposed such use, and one suggested that EPA consider the economic impact of using the value of 0 (i.e., the MCLG for a carcinogen) as a health-based benchmark. Two commenters suggested including relevant State drinking water standards, and one suggested including concentrations based on RfDs. One commenter expressed concern that the current lack of water quality standards for many substances might make the benchmark system ineffective in identifying sites that pose a significant threat to human health. Two commenters suggested that carcinogen weight of evidence should be used in establishing SCs (e.g., the individual risk level should be lower for a Class A carcinogen than for a Class B2 carcinogen). Two commenters suggested considering other important routes of exposure (e.g., inhalation of hazardous substances volatilized from water, or dermal contact with contaminated water) in establishing drinking water benchmarks.

EPA conducted a number of analyses on specific benchmarks and on the modification of factors to consider in establishing HRS benchmarks. As a result of public comments and these analyses, EPA has concluded that the HRS is improved by including concentrations based on nationally uniform standards, criteria, or toxicity values as health-based or ecological-based benchmarks in all pathways and threats. EPA's conclusion is based on several considerations. First, the addition of benchmarks across all pathways and the use of ARARs for those benchmarks improves linkages with the RI/FS process. That is, the HRS benchmarks will be those used most frequently during RI/FSs, and the additional points provided by equalling or exceeding a benchmark will aid in identifying areas requiring follow-up in the RI/FS. Second, the internal consistency of the HRS is improved by using benchmarks because concentrations measured at or above benchmark levels are treated in a parallel manner across all pathways, allowing more consistent and fuller use of the relatively costly sampling data

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collected during the SI. Third, the number of hazardous substances for which at least one health-based or ecological-based benchmark is available is increased, allowing for more uniform assessment of sites nationwide.

The benchmark criteria that the Agency has concluded are most appropriate for each pathway and threat are listed below. As discussed above, EPA agrees with comments suggesting that benchmarks also be used in the soil exposure and air migration pathways and has selected criteria for these pathways based upon the kinds of factors discussed above. While EPA believes the criteria for the soil exposure and air migration pathways in the final rule are appropriate, it is open to any comments that members of the public may wish to submit regarding these criteria and specifically solicits such comments at this time. EPA asks that any such comments be submitted on or before (30 days after the date of publication in the Federal Register).

For the final rule, EPA has selected the following types of benchmarks in each pathway and threat, subject to any revisions in the criteria for air and soil exposure that may be made in response to comments. (Benchmarks for radionuclides are discussed in Section III E of this preamble.)

- Benchmarks in the ground water migration pathway and the surface water drinking water threat include MCLs, non-zero MCLGs, screening concentrations (SCs) for non-cancer effects based on RfDs for oral exposures, and SCs for cancer based on slope factors for oral exposures and $10^{-6}$ individual cancer risk (see Table 3–10). Because SCs based on RfDs and slope factors are used as drinking water benchmarks, MCLGs with a value of 0 have been dropped as HRS benchmarks.
- Benchmarks in the surface water human food chain threat include FDA Action Levels for fish or shellfish, SCs for non-cancer effects based on RfDs for oral exposures, and SCs for cancer based on slope factors for oral exposures and $10^{-6}$ individual cancer risk (see Table 4–17).
- Benchmarks in the surface water environmental threat include AWQC and Ambient Aquatic Life Advisory Concentrations (AALACs); AALACs will be considered as they become available (see Table 4–22).
- Benchmarks in the soil exposure pathway include SCs for non-cancer effects based on RfDs for oral exposures, and SCs for cancer based on slope factors for oral exposures and $10^{-6}$ individual cancer risk (see Table 5–3).
- Benchmarks in the air migration pathway include National Ambient Air Quality Standards, National Emission Standards for Hazardous Air Pollutants (NESHAPs) that are expressed in ambient concentration units, SCs for non-cancer effects based on RfDs for inhalation exposures, and SCs for cancer based on slope factors for inhalation exposures and $10^{-6}$ individual cancer risk (see Table 6–14).

Several commenters suggested technical refinements for deriving health-based benchmarks. Although qualifying information is useful and important and is, in fact, used extensively in the RI/FS process, the benefits of including such information in the HRS must be balanced against its limited scope and purpose as well as the limited data available to determine concentration at the point of exposure. Consequently, in the final rule:

- All health-based benchmarks are set in reference to the major exposure concern for each pathway or threat (e.g., benchmarks in the air migration pathway are set in reference to inhalation only; benchmarks in drinking water, the human food chain threat, and the soil exposure pathway are set in reference to ingestion), except for radionuclides for which external exposure is also considered in the soil exposure pathway;
- All benchmarks are set in reference to uniform exposure assumptions that are consistent with RI/FS procedures (e.g., water consumption is assumed to be two liters per day; body weight is assumed to be 70 kg);
- State water quality standards and other State or local regulations are not included as benchmarks because they would introduce regional variation in the HRS;
- A hierarchy has been developed to provide a single benchmark concentration for each hazardous substance by pathway and threat; and
- Qualitative weight-of-evidence is not used in deriving SCs for carcinogens.

In the NPRM, EPA requested comments on how many tiers (levels) of actual contamination to consider when weighting populations relative to benchmarks (i.e., which of three alternative methods presented should be adopted). EPA received two comments on this issue and three related comments regarding the weighting factors for each level. One commenter supported Alternative 2 (i.e., use of two levels of observed contamination and one level of potential contamination). Another commenter suggested that Level II and Level III concentrations be combined to include the range of contaminant levels above background, but below health-based benchmarks. A third commenter suggested that the weighting factors for each level be reconsidered. A fourth commenter suggested that $\frac{1}{1000}$ of a benchmark factor is inappropriate because it is excessively conservative and difficult to detect. The fifth commenter suggested that because Level III represents concentrations with cancer risks below $10^{-7}$, populations exposed to Level III concentrations should not be considered in the population category of drinking water threats.

EPA conducted a number of analyses on the subject of benchmark tiers and has dropped Level III contamination. In the final rule, Level I contamination is defined as concentration levels for targets which meet the criteria for actual contamination (see § 2.5 of the final rule) and are at or above media-specific benchmark levels: Level II contamination is defined as concentration levels for targets which either meet the criteria for actual contamination but are less than media-specific benchmarks, or meet the criteria for actual contamination based on direct observation; and potential contamination is defined as targets that are potentially subject to releases (i.e., targets that are not associated with actual contamination for that pathway or threat). These three tiers are used to assign values to both the nearest individual (or well or intake) and the population factors. As a result of EPA's analyses of benchmark issues, the weighting assigned to Level I and Level II contamination has been changed and made consistent across pathways. For example, Level I populations are now multiplied by a factor of 10 in all pathways. As in the proposed rule, potentially contaminated populations and nearest individuals (or wells or intakes) are distance or dilution weighted.

The proposed rule summed the ratios of all hazardous substances to their individual benchmarks as a means of defining the level of actual contamination, and EPA requested comments on the appropriateness of this approach to scoring multiple substances detected in drinking water. Of the 10 comments in response to this proposal, nine strongly opposed the proposed approach, particularly when applied to drinking water standards (i.e., MCLs), MCLGs, and noncarcinogens. One commenter supported the proposed approach.

EPA has decided to retain the summing of ratios of hazardous substances to their individual benchmarks, but in a modified form. The final rule sums measures of carcinogenic and noncarcinogenic effects separately;



concentrations specified in regulatory limits (e.g., NAAQS, MCLs, or FDA Action Levels) are not included in the summing algorithm. EPA recognizes that a more precise estimate of relative risk would be obtained by summing the ratios of hazardous substances to their individual RfD-based concentrations by segregating substances according to major effect, target organ, and mechanism of action. In fact, such a segregation is recommended during the RI/FS. However, health-based benchmarks are used in the HRS to provide a higher weight to populations exposed to hazardous substances at levels that might result in adverse health effects. As a consequence, EPA believes that use of the summed ratios of hazardous substances within pathways and threats to their individual RfD-based benchmark levels is appropriate for the screening purpose of the HRS.

EPA proposed and solicited comments on a range of $10^{-4}$ to $10^{-7}$ for individual cancer risk levels of concern in establishing levels of actual contamination with respect to health-based benchmarks. EPA received eight comments concerning this risk range. Four commenters suggested restricting the range to $10^{-4}$ to $10^{-6}$, primarily because this range would be consistent with risk levels identified in the NCP and used by other EPA regulatory programs. Three commenters said the SCs for carcinogens should be the $10^{-6}$ individual cancer risk level. One commenter stated that $10^{-4}$ to $10^{-7}$ generally is the risk range considered for Superfund response. The final rule defines only two levels of actual contamination: significantly above background and equal to or above benchmark, and significantly above background but less than benchmark. When an applicable or relevant and appropriate requirement does not exist for a carcinogen, EPA selects remedies resulting in cumulative risks that fall within a range of $10^{-4}$ to $10^{-6}$ incremental individual lifetime cancer risk based on the use of reliable cancer potency information. EPA has selected the $10^{-6}$ screening risk level in defining the HRS benchmark level for cancer risk because it is the lower end of the cancer risk range (i.e., $10^{-4}$ to $10^{-6}$) identified in the NCP and used by other EPA regulatory programs.

Two commenters objected to assigning releases of substances with no benchmarks to Level II as a default value. One suggested assigning unknowns to Level III because substances that are frequently released or are known or suspected to cause health problems are studied before those that are not. The other objected because "the absence of data is not data."

Because EPA has decided to adopt a benchmark system incorporating only two levels of actual contamination, the default level is Level II. If none of the hazardous substances eligible to be evaluated at a sampling location has an applicable benchmark, but actual contamination has been established, the actual contamination at the location is assigned to Level II.

*I. Use Factors*

The proposed HRS included factors to assign values to uses of potentially affected resources in the three migration pathways: ground water use (drinking water and other) in the ground water migration pathway, drinking water and other use and fishery use in the surface water migration pathway, and land use in the air migration pathway.

EPA received a number of comments on each of these factors. The commenters raised specific objections to distinctions drawn among various potential uses and to the weights assigned to those uses. For example, for the ground water use factor, some commenters asserted that the HRS should not delineate between private and public water supply contamination. For the surface water use factors, a commenter recommended a range of assigned values for irrigation of commercial food or forage crops because of variations in rates of uptake of hazardous substances. For the land use factor, two commenters urged giving greater consideration to institutional land use because of the sensitive populations that would be exposed.

Partly in response to these comments, and in an effort to simplify the HRS, EPA has substantially revised the method of incorporating resource use information in targets factor categories. The field test indicated that collecting data on each of the use factors involved considerable effort at many sites. In addition, because of weighting factors applied to potentially contaminated populations, at sites with no actual contamination, use factors were contributing more to the targets value than were large populations. As some commenters pointed out, the use factors mixed concerns about human health with concerns about the value of the resource and, therefore, were partially redundant with population factors. To avoid redundancy with human health concerns as evaluated through the population factor, EPA has made major changes in how resource uses are evaluated and scored in the final rule.

In each migration pathway, the use factors have been replaced by a resources factor that assigns values to resources appropriate for the pathway. In addition, a resources factor has been added to the soil exposure pathway. The resources factor for a pathway is assigned a maximum of five points if any of the resource uses for that pathway exists within the target distance limit in the ground water or surface water migration pathway, within one-half mile of a source in the air migration pathway, or within an area of observed contamination in the soil exposure pathway. If none of the uses exists, the factor is assigned a value of 0.

The resources factor in the ground water migration pathway assigns a value of 5 for wells supplying water for irrigation of commercial food or commercial forage crops (five-acre minimum), watering of commercial livestock, as an ingredient in commercial food preparation, or as a supply for commercial aquaculture or for a major or designated water recreation area (excluding drinking water use)—for example, water parks (see § 3.3.3). A value of 5 is also assigned if the water in the aquifer is usable for drinking water, but not used.

The resources factor in the drinking water threat of the surface water migration pathway assigns a value of 5 if the surface water is designated by a State for drinking water use but not used, or is usable but not used for drinking water. In addition, points may be assigned for intakes supplying water for irrigation of commercial food or commercial forage crops (five-acre minimum), watering of commercial livestock, as an ingredient in commercial food preparation, or if the water body is used as a major or designated water recreation area (see § 4.1.2.3.3). The fishery use factor has been deleted to avoid double-counting of fisheries.

In the air migration pathway, the resources factor is assigned a value of 5 if there is commercial agriculture or commercial silviculture, or a major or designated recreation area within a half mile of a source (see § 6.3.3). The distance of one-half mile for the agricultural, silvicultural, and recreational areas was determined by the distance weighting factors for the air migration pathway, which reflect the rapid diminishing of air contaminant concentrations beyond one-half mile from a source. Therefore, resources beyond this distance are not considered in this pathway.

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A resources factor has also been added to the resident population threat of the soil exposure pathway. The factor is assigned a value of 5 if there is commercial agriculture, commercial silviculture, or commercial livestock production or grazing on an area of observed contamination at the site.

*J. Sensitive Environments*

The proposed rule expanded the list of sensitive environments considerably and, for the surface water and air pathways, counted all sensitive environments within the target distance limit, rather than just the one with the highest assigned value; for the soil exposure pathway, only the sensitive environment assigned the highest value was counted. Potentially contaminated sensitive environments were distance/dilution weighted; in the surface water environmental threat, actual contamination of sensitive environments was evaluated on the basis of ecological-based benchmarks.

EPA received relatively few comments on issues related to sensitive environments. However, participants in the field test requested clarification of three categories of sensitive environments involving spawning areas, migratory pathways, and feeding areas critical for the maintenance of a fish species within a river system, coastal embayment, or estuary. In particular, critical migratory pathways and feeding areas were difficult to identify and seemed to provide little discrimination among surface waters in some areas of the country.

EPA has redefined critical spawning areas to include shellfish beds, and has limited the areas to those used for intense or concentrated spawning by a given species. Critical migratory pathways and feeding areas have been combined into a single category and limited to anadromous fish (i.e., fish that ascend from the ocean to spawn), which face special problems in migrating substantial distances between the ocean and their spawning areas. These feeding areas are further restricted to only those areas in which the fish spend extended periods of time. Examples include areas where juveniles of anadromous species feed for prolonged periods (e.g., weeks) as they prepare to migrate from fresh water to the ocean, and holding areas along the adult migratory pathways.

Terrestrial areas used for breeding by large or dense aggregations of vertebrates (e.g., heron rookery, sea lion breeding beach) have been added to the list of sensitive environments to parallel the spawning areas listed for fish species. Water segments designated by a State as not attaining toxic water quality standards have been removed because these environments are already degraded and thus are not analogous to the other sensitive environments listed. Also, the assigned value for State designated areas for protection or maintenance of aquatic life has been changed from 50 points to 5 points (see Table 4–23 in final rule) to be consistent with the points assigned under the resources factor for State designated areas for drinking water use.

In response to public comment, National Monuments have been added to the 100-point category on the list of terrestrial sensitive environments considered under the soil exposure pathway. "State designated natural areas" and "particular areas, relatively small in size, important to the maintenance of unique biotic communities" were also added to the list of terrestrial sensitive environments in response to public comment. These latter two categories were already considered in the air and surface water pathway evaluation of sensitive environments. (See Table 5–5.)

The method for evaluating wetlands has been revised, partially because participants in the field test had difficulty identifying discrete wetlands. Some wetlands were patchy and could be classified as one large or many small wetlands. Other wetlands were divided by rivers or roads, or changed from one type of wetland to another, making it unclear whether more than one wetland should be counted. To eliminate these difficulties, wetlands are now evaluated on the basis of size and level of contamination. In the air migration pathway, wetlands are evaluated based on acreage and level of contamination (see § 6.3.4); in the surface water migration pathway, wetlands are evaluated by linear frontage along the surface water hazardous substance migration path and level of contamination (see § 4.1.4.3.1). Distinguishing among wetlands on the basis of size and level of contamination should improve the discriminating ability of the sensitive environments factor. In the drier portions of the country, where even small wetlands (e.g., prairie potholes) are very important, small wetlands may also qualify as "particular areas, relatively small in size, important to the maintenance of unique biotic communities."

Sensitive environments other than wetlands are not evaluated on the basis of size for several reasons. Most other HRS sensitive environments tend to be less common and less widely distributed nationally than wetlands (e.g., see EPA's 1989 *Field Test of the Proposed Revised HRS*) and, therefore, their numbers and boundaries tend to be easier to identify. In addition, the value of many sensitive environments is independent of size; for example, the size of a critical habitat of an endangered species may vary solely due to the type of species present. Furthermore, potential or actual contamination of even a small portion of many sensitive environments—for example, a wildlife refuge—tends to be viewed as unacceptable.

An ecosystem bioaccumulation potential factor has been added to the waste characteristics factor category of the surface water environmental threat in response to comments that hazardous substances that demonstrate an ability to bind to sediments and/or to bioaccumulate (e.g., PCBs, mercury) tend to pose the greatest long-term threats to aquatic organisms. The accumulation of hazardous substances in the aquatic food chain can result in adverse effects in aquatic species and in other animals that ingest aquatic species (e.g., waterfowl). The ecosystem bioaccumulation potential factor differs slightly from the bioaccumulation potential factor in the human food chain threat, primarily in that all BCF data are considered in deriving it and not just BCF data for human food chain organisms.

The EPA ambient aquatic life advisory concentrations (AALACs) have been added to the data hierarchy used to assign the ecosystem toxicity value (see § 4.1.4.2.1.1). The Natural Heritage Program alternative sensitive environment rating factors have been removed from the rule because of problems that arose during the field tests; field test participants found that the availability of information varied substantially among States. However, a Natural Heritage Program Data Center can assist in identifying many of the sensitive environment types listed in Tables 4–23 and 5–5.

*K. Use of Available Data*

A number of commenters stated that all available data should be used when scoring a site. Several cited the tiered approach to hazardous waste quantity as a model that could be applied to other factors. Under this method, where data are available, they would be used; where data are not available, defaults or more generalized approaches would be applied. Several commenters specifically suggested using this approach for ground water flow direction and for scoring mining sites. These commenters argued that it would be less expensive and time-consuming to use available data when scoring a site than to wait until the remedial investigation to consider the additional information.

EPA considered modifying the HRS to allow the use of additional data, but determined that further expanding the HRS to account for varying levels of data availability is inconsistent with the HRS's role as an initial screening tool. Adding tiers to various factors to accommodate the use of all available data would make the HRS considerably more difficult to apply and could lead to substantial inconsistencies in how sites are investigated and evaluated. EPA Regions and States would have to determine, for each set of data presented, whether the data quality was good enough for the data to be considered. Debates over decisions on data quality could delay scoring and, ultimately, delay cleanup at sites. Therefore, the Agency believes that the limited use of tiers in the final HRS represents a reasonable tradeoff between the need to limit the complexity of the system and the desire to accommodate risk-related information that is generally outside the scope of a site inspection.

*L. Ground Water Migration Pathway*

The proposed rule included a number of significant changes in the ground water migration pathway: new hydrogeologic factors were added; populations were distance weighted unless exposed to actual contamination; a maximally exposed individual (MEI) factor was added; the target distance limit was extended; a mobility factor was added and combined with toxicity; and a wellhead protection area factor was added. Figure 5 shows the proposed ground water migration pathway and the final rule pathway.

*Ground water flow direction.* Neither the original HRS nor the proposed HRS directly considered ground water flow direction in evaluating targets. The proposed HRS indirectly considered ground water flow direction by weighting populations based on actual and potential contamination of drinking water wells.

EPA received 50 letters from 40 commenters on this issue; 27 letters responded to the ANPRM, 21 to the NPRM, and two to the field test report. Commenters included eight States, three Federal agencies, the mining, petroleum, chemical, and cement industries, utilities, and professional engineers. The commenters supported the consideration of ground water flow direction data, at least in some circumstances. Numerous commenters urged the use of ground water flow direction data when they are either available or easily obtained. They suggested several methods to incorporate flow direction, including:

- Considering use of a radial impact area when directional release routes can be determined. Only a half circle with a three-mile radius for the downgradient portion (and a half-mile radius for the rest of the circle) should be considered when scoring;
- Differentiating between upgradient and downgradient areas using topographic maps, evaluating water levels at wells, and noting the presence of major surface water bodies;
- Expending the effort to obtain accurate data and considering selected upgradient locations as a precaution against unanticipated anomalies;
- Excluding drinking water wells where analytical data prove no contamination is present;
- Having a "professional" review available information and conduct a site visit;
- Using available flow direction data and developing regionally based defaults when no data are available;
- Installing piezometers to determine flow direction in the PA/SI phase and when no ground water flow data are available;
- Incorporating ground water flow direction into the "depth to aquifer" and "distance to nearest well/population served" scores; and
- Affording responsible parties the opportunity to determine flow direction.

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Figure 5

## Ground Water Migration Pathway

PROPOSED HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release | | Toxicity/Mobility | | Maximally Exposed Individual |
| or | | Hazardous Waste Quantity | | Population |
| Potential to Release | | | | Ground Water Use |
| Containment | | | | Wellhead Protection Area |
| Net Precipitation | | | | |
| Depth to Aquifer/ Hydraulic Conductivity | | | | |
| Sorptive Capacity | | | | |

FINAL HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release | | Toxicity/Mobility | | Nearest Well |
| or | | Hazardous Waste Quantity | | Population |
| Potential to Release | | | | Resources |
| Containment | | | | Wellhead Protection Area |
| Net Precipitation | | | | |
| Depth to Aquifer | | | | |
| Travel Time | | | | |

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Commenters suggested that data on ground water flow are either readily available or can be easily obtained at reasonable cost and are no more imprecise than other aspects of the HRS. Some commenters stated that the level of effort required to estimate the direction of ground water flow is no greater than that required to determine other hydrogeologic parameters in the HRS.

EPA reviewed a range of options for considering ground water flow direction in evaluating targets. For the reasons discussed above under "Use of Available Data," the Agency decided that it was not feasible to adopt a tiered approach in the targets factors for evaluating ground water flow direction. EPA does not agree that increased accuracy warrants the increased complexity of accounting for ground water flow direction, because this level of accuracy is not required for a screening tool that is intended to assess relative risk. This level of accuracy, however, is needed to determine the extent of remedial action and, therefore, is appropriate at the time of the RI.

EPA disagrees with the argument that determining ground water flow direction is no more difficult than determining other ground water factors. Aquifer interconnections and discontinuities as well as hydraulic conductivity and depth to aquifer, which are evaluated in the final rule, are geologic features that are unlikely to change over the short-term. In contrast, ground water flow direction can be influenced by factors such as seasonal flows and pumping from well fields. In addition, the ground water flow direction may be different in each aquifer at the site, and the direction of hazardous substance migration is not always the same as the direction of ground water flow. Therefore, data on ground water flow direction would need to be considerably more extensive than would the data required to document the other hydrogeologic factors. EPA notes that in the final rule, many of the other hydrogeologic factors considered have been simplified and the sorptive capacity factor has been dropped. EPA also notes that ground water flow direction was not identified in SARA as a portion of the HRS requiring further examination, even though ground water flow direction was not considered in the original HRS and the Agency had received criticism similar to the above comments prior to enactment of SARA.

Although the final rule does not consider ground water flow direction directly in evaluating targets, it does consider flow direction indirectly in the method used to evaluate target populations. If wells have not been contaminated by the site, as the commenters assume upgradient wells would not be, the population drawing from those wells is distance weighted and, thus, populations drawing from the wells would have to be substantial before a large number of points could be assigned. Moreover, in addition to providing a measure of the population at risk from the site, the target factors afford a measure of the value of the ground water resources in the area of the site and of the potential need for expanded uses of the ground water.

*Aquifer interconnections.* Aquifer interconnections facilitate the transfer of ground water or hazardous substances between aquifers. The final rule specifies that if aquifer interconnections occur within two miles of the sources at the site (or within areas of observed ground water contamination attributed to sources at the site that extend beyond two miles from the sources), the interconnected aquifers are treated as a single aquifer for the purposes of scoring the site. Thus, for example, when an observed release to a shallow aquifer has been identified, targets using deeper aquifers interconnected to the shallow aquifer are included in the evaluation of the combined aquifer. This approach is common to the original as well as the revised HRS.

In practice, EPA has found that studies in the field to determine whether aquifers are interconnected in the vicinity of a site will generally require resources more consistent with remedial investigations than SIs, especially where installation of deep wells is necessary to conduct aquifer testing. Thus, EPA has in the past relied largely on existing information to make such determinations and the Agency finds it necessary to continue that approach. Examples of the types of information useful in identifying aquifer interconnections were given in the proposed rule. This information includes literature or well logs indicating that no lower relative hydraulic conductivity layer or confining layer separates the aquifers being assessed (e.g., presence of a layer with a hydraulic conductivity lower by two or more orders of magnitude); literature or well logs indicating that a lower relative hydraulic conductivity layer or confining layer separating the aquifers is not continuous through the two-mile radius (i.e., hydrogeologic interconnections between the aquifers are identified); evidence that withdrawals of water from one aquifer (e.g., pumping tests, aquifer tests; well tests) affect water levels in another aquifer; and observed migration of any constituents from one aquifer to another within two miles. For this last type of information, the mechanism of vertical migration does not have to be defined, and the constituents do not have to be attributable to the site being evaluated. Other mechanisms that can cause interconnection (e.g., boreholes, mining activities, faults, etc.) will also be considered. While the descriptive text has been removed from the rule, the approaches mentioned in the proposed rule will be used in making aquifer interconnection determinations. In general, EPA will base such determinations on the best information available; in the absence of definitive studies and where costs of field studies are prohibitive, the Agency will rely on expert opinion (e.g., U.S. Geological Survey staff or State geologists). In the absence of such information, EPA assumes that aquifers are not interconnected.

*Ground water potential to release factors.* EPA proposed replacing the depth to the aquifer of concern and permeability factors of the original HRS with depth to aquifer/hydraulic conductivity and sorptive capacity factors. EPA received more than 75 comments on these factors, in addition to general comments on evaluating ground water potential to release in response to the ANPRM.

Several commenters supported consideration of depth to aquifer in evaluating the ground water migration pathway. One commenter stated that use of a depth to aquifer/hydraulic conductivity matrix, which was intended to reflect travel time to ground water, was an improvement over considering these two parameters individually and additively. Concerns were raised, however, about how to determine depth to aquifer. In addition, commenters stated that the two-mile radius for evaluating hydrogeologic factors should be extended to four miles, while others commented that the distance should be measured from vertical points as near to the source as possible.

Commenters generally supported the proposal to include hydraulic conductivity, although many believed that the proposed method was too complicated; several commenters suggested that the single least conductive layer(s) should be used. Another concern was the lack of data for determining hydraulic conductivity. One commenter stated that unless data can confirm that the geologic strata

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extend throughout the entire area of a site, assigning a hydraulic conductivity value is highly questionable.

Some commenters offered alternative approaches to evaluating hydraulic conductivity. These included replacing the proposed method with:

- Assigned "confidence levels" tied to professional estimates based on regional data and judgment;
- Consideration of actual travel time in the unsaturated zone; or
- An assumption of maximum hydraulic conductivity among the various geological layers below the site.

More than 20 comments were received on the sorptive capacity factor, but there was little consensus among the commenters. A number of commenters agreed that the factor should be added, but stated that the approach was not detailed enough and that more waste- and site-specific information should be required. Other commenters agreed that the factor was an improvement, but said that sorptive capacity should be dropped because the waste- and site-specific information needed for an accurate evaluation cannot be collected during a screening process. Others said that it was too complex as proposed and should be dropped.

Based on these comments and the field test results, EPA examined the depth to aquifer/hydraulic conductivity and sorptive capacity factors. The examination showed that the lowest hydraulic conductivity layer(s) accounted for almost all of the travel time to the aquifer if a one-foot or three-foot minimum layer thickness was used. Accordingly, in the final rule, the depth to aquifer/hydraulic conductivity factor has been replaced with a simpler factor, travel time, which is determined using a matrix of the hydraulic conductivity and thickness of the lowest hydraulic conductivity layer(s) with at least a three-foot thickness. (See § 3.1.2.4 and Table 3-7 of the final rule.)

To conform with the change limiting the travel time factor to the least conductive layer(s), and to meet the goal of simplification, a change to the sorptive capacity factor was necessary. The proposed rule evaluated this factor using all layers between the source and the aquifer. In reexamining this factor, EPA concluded that depth to aquifer is one of the major parameters affecting total sorbent content, at least within the HRS ranges for the factor. Depth to aquifer also indirectly reflects geochemical retardation mechanisms because, all else being equal, the effect of these retardation mechanisms increases as the depth to aquifer increases. At the field test sites, using only the layer(s) of lowest hydraulic conductivity decreased the calculated sorbent content between 10 and 99 percent. For these reasons, EPA has decided to replace the sorptive capacity factor with a depth to aquifer factor. (See § 3.1.2.3 and Table 3-5 of the final rule).

*M. Surface Water Migration Pathway*

The proposed rule made major changes to the evaluation of releases or threatened releases to surface water. The pathway was divided into four threats: drinking water, human food chain, recreational use, and environmental. Other changes included consideration of flood potential; revision of potential overland flow; addition of dilution weights for potentially contaminated populations; extension of the target distance limit to 15 miles; revision of the persistence factor to consider more degradation mechanisms; addition of a bioaccumulation factor for evaluation of human food chain toxicity/persistence and populations; addition of ecosystem toxicity to evaluate the environmental threat; and addition of a maximally exposed individual factor (MEI) factor to the drinking water threat. Figure 6 shows the proposed rule and the overland flow/flood migration component of the surface water migration pathway in the final rule.

*Recreational use threat.* SARA stated that the HRS should consider threats to surface water used for recreation and drinking water, and the proposed HRS included a recreational use threat in the surface water migration pathway. A number of States, several companies and trade associations, and two Federal agencies identified problems with the proposed recreational use threat. Some commenters objected to weighting it as heavily as the drinking water threat, while others suggested that evaluating the threat was too complicated for use in a screening tool. Many commenters said that proposed methods for assigning values to recreation areas were too broadly drawn and that a limited number of recreation areas should be considered. Two commenters suggested using actual attendance data, and one commenter suggested that recreational uses be considered in other pathways as well.

EPA's field test indicated that the recreational use threat evaluation was too complex for HRS purposes and, at the same time, was not very accurate. Several field test participants commented that the recreation target population was difficult to evaluate and that the approach for determining population was inaccurate and time-consuming. In addition, the population factor did not provide meaningful discrimination among sites. The proposed rule used the physical characteristics (e.g., capital improvements) of a recreational site as the basis for determining the distance limit used to evaluate population, but because major and minor sites may have the same types of capital improvements (e.g., boat ramps, picnic facilities), the same distance limit could be associated with a minor recreation area and a major recreation area. The alternative approach would be to require actual use data to evaluate targets; however, site-specific population data are not available for many recreation areas, making it difficult to obtain accurate estimates of the population at risk. The target distance limits, which ranged from 10 to 125 miles, also contributed to the problems with evaluating targets. The Agency invited comments on refining these calculations; no alternative approaches were suggested, and EPA did not identify viable alternatives.

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Figure 6

## Surface Water Migration Pathway

PROPOSED HRS

**Likelihood of Release** X **Drinking Water Threat**

Observed Release
or
Potential to Release

By Overland Flow
- Containment
- Runoff
- Distance to Surface Water

By Flood
- Containment
- Flood Frequency

**Waste Characteristics** X **Targets**
Toxicity/Persistence — Maximally Exposed Individual
Hazardous Waste Quantity — Population
Surface Water Use

+

**Human Food Chain Threat**

**Waste Characteristics** X **Targets**
Toxicity/Persistence/Bioaccumulation — Population
Hazardous Waste Quantity — Fishery Use

+

**Recreational Use Threat**

**Waste Characteristics** X **Targets**
Toxicity/Persistence/Dose Adjusting Factor — Population
Hazardous Waste Quantity

+

**Environmental Threat**

**Waste Characterisitics** X **Targets**
Ecosystem Toxicity/Persistence — Sensitive Environments
Hazardous Waste Quantity

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Figure 6

## Surface Water Migration Pathway - Overland Flow/Flood Component

FINAL HRS

**Likelihood of Release** X **Drinking Water Threat**

| Likelihood of Release | | Waste Characteristics | | Targets |
|---|---|---|---|---|
| Observed Release or Potential to Release | X | Toxicity/Persistence | X | Nearest Intake Population Resources |
| By Overland Flow: Containment, Runoff, Distance to Surface Water | | Hazardous Waste Quantity | | |
| By Flood: Containment, Flood Frequency | | | | |

+

**Human Food Chain Threat**

| Waste Characteristics | | Targets |
|---|---|---|
| Toxicity/Persistence/ Bioaccumulation | X | Food Chain Individual Population |
| Hazardous Waste Quantity | | |

+

**Environmental Threat**

| Waste Characteristics | | Targets |
|---|---|---|
| Ecosystem Toxicity/ Persistence/Bioaccumulation | X | Sensitive Environments |
| Hazardous Waste Quantity | | |

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EPA is also concerned that many qualities of recreation areas (e.g., uniqueness, attractiveness, value) cannot be readily quantified or measured, which poses significant problems for a screening tool. Therefore, the recreational use threat has been removed from the final rule. Instead, factors related to recreational use are being included in the assessment of resource factors in the air, surface water, and ground water migration pathways. (See the discussion of resources factors above and §§ 3.3.3, 4.1.2.3.3, 4.2.2.3.3, and 6.3.3 of the rule.) Recreational use is also a major component of the evaluation of the attractiveness/accessibility factor in the soil exposure pathway (see § 5.2.1.1 of the rule).

*Human food chain.* SARA requires that EPA consider "the damage to natural resources which may affect the human food chain * * *" Accordingly, the surface water migration pathway of the proposed rule included evaluation of threats to human health via the aquatic food chain.

A number of commenters suggested that terrestrial food chain threats should also be evaluated because most of the food eaten in the United States originates on land, and the terrestrial human food chain is, therefore, more important than the aquatic human food chain. Commenters specifically stated that the HRS should account for human food chain threats involving irrigated crops, livestock, and game animals. One commenter stated that the SARA mandate would not be fulfilled if only aquatic human food chain threats were evaluated.

After conducting an investigation into possible methods, EPA determined that it would not be practical to include a separate evaluation of terrestrial human food chain threats in the HRS. The terrestrial food chain is more complex and site-specific and is less understood than the aquatic food chain, and its assessment requires considerably more data. These factors render evaluation of the relative risks associated with the terrestrial human food chain well beyond the capability of a screening system such as the HRS. The final rule, therefore, does not separately evaluate terrestrial human food chain threats. These threats are, however, considered indirectly under the resources target components in the air migration pathway, ground water migration pathway, soil exposure pathway, and drinking water threat portion of the surface water migration pathway.

The proposed rule required the estimation of bioaccumulation potentials for hazardous substances posing threats via the human food chain. One commenter stated that the estimation of bioaccumulation potentials requires excessive time and resources, and that this step should be dropped from the HRS.

EPA disagrees and considers the bioaccumulation potentials of hazardous substances to be among the most important factors determining the degree of human health threat posed by substances via the human food chain. Substances that do not bioaccumulate pose less of a threat via the human food chain than substances that bioaccumulate, all else being equal. Conversely, substances with high bioaccumulation potentials can pose very significant threats via the human food chain even if they are only moderately toxic, or are present in modest quantities. EPA believes that compiling bioaccumulation potential tables will reduce the effort and resources required to score this factor.

EPA received several comments stating that bioaccumulation potential was not given sufficient weight in the evaluation of human food chain threats. EPA evaluated the use of bioaccumulation potential during the field test and determined that there was considerable uncertainty related to this factor, in part because of major differences in uptake associated with different species in different environments. In addition, bioconcentration values have been computed for only a few species for most substances. In light of this uncertainty, EPA decided that bioaccumulation potential should not be given additional weight in the HRS. In addition, as part of the structural changes discussed in Section III B, the bioaccumulation potential factor was moved from the targets factor category to the waste characteristics factor category so that it is evaluated consistently with the other waste characteristics factors that reflect exposure. As part of these changes, the use of the bioaccumulation potential factor in selecting the substance posing the greatest hazard also has been modified.

The final rule broadens the definition of actual contamination of the human food chain by modifying one criterion and adding a new criterion defining actual contamination. The proposed rule defined a fishery as actually contaminated if (1) the fishery was closed as a result of contamination and a substance for which the fishery was closed had been documented in an observed release from the site, or (2) a tissue sample from a human food chain organism from the fishery was found to contain a hazardous substance at a concentration level exceeding the FDAAL for that substance in fish tissue and the substance had been documented in an observed release from the site. In both cases, at least a portion of the fishery must be within the boundaries of the observed release.

Under the final rule, the former criterion (closed fishery) remains essentially unchanged. The latter criterion (tissue contamination) has been modified: A fishery is considered actually contaminated if the concentration of a hazardous substance in tissue of an essentially sessile benthic human food chain organism from the watershed is at a level that meets the criteria for an observed release from the site and at least a portion of the fishery is within the boundaries of the observed release. A new criterion has also been added: A fishery is considered actually contaminated if a hazardous substance having a bioaccumulation potential factor value of 500 or greater either is present in an observed release established by direct observation or is present in a surface water or sediment sample at a level that meets the criteria for an observed release from the site and at least a portion of the fishery is within the boundaries of the observed release. Only the portion of a fishery within the boundaries of an observed release is considered actually contaminated.

EPA broadened the definition of actually contaminated fisheries on the basis of field test results. With the more narrow definition in the proposed rule, few actually contaminated fisheries were identified because:

(1) Closed fisheries did not exist at most sites;

(2) Hazardous substance concentration data from tissues of applicable organisms were available for only a small portion of fisheries; and

(3) FDAALs exist for only a relatively small number of hazardous substances.

The final rule also introduces two levels of actually contaminated fisheries or portions of fisheries:

- Level I: Applicable when concentrations of site-related hazardous substances meeting the criteria for actual contamination of the fishery equal or exceed the benchmark concentration levels established in the final rule based on FDAALs, screening concentrations corresponding to elevated cancer risks, and screening concentrations corresponding to elevated chronic, non-cancer toxicity risks via oral exposures. The final rule allows Level I contamination to be established based on hazardous

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substance concentrations in tissue samples from "organisms other than essentially sessile benthic organisms" (e.g., fish, lobsters, crabs), even though these organisms cannot be used to establish observed releases or actual contamination.

• Level II: Applicable to all actually contaminated fisheries (or portions of actually contaminated fisheries) not meeting Level I criteria.

The final rule assigns human food chain populations associated with Level I concentrations tenfold greater weight than those associated with Level II concentrations. The final rule also describes the procedures for determining, where applicable, the part of a fishery subject to Level I concentrations, the part subject to Level II concentrations, and/or the part subject to potential contamination.

EPA received several comments suggesting that, to be consistent with the other threats, a maximally exposed individual factor should be incorporated into the human food chain threat. The Agency agrees, and to provide this consistency the final rule incorporates a maximally exposed individual factor (the food chain individual) into the human food chain targets factor category. As with similar factors in other pathways and threats, the food chain individual is assigned points according to the level of contamination. Where actual contamination of a fishery is documented, the food chain individual factor is assigned 50 points for Level I and 45 points for Level II concentrations. Where no actual contamination of a fishery is documented, but there is documentation of an observed release of a hazardous substance having a bioaccumulation potential factor value of 500 or greater to a watershed containing a fishery within the target distance limit, the food chain individual is assigned a value of 20 points. Where there are no observed releases to surface water or no observed release of a hazardous substance with a bioaccumulation potential factor value of 500 or greater, but a fishery is present (i.e., there is a potentially contaminated fishery) within the target distance limit, the food chain individual is assigned points ranging from 0 to 20, depending on the dilution weight assigned to the associated surface water body.

The proposed rule estimated human food chain production of actually contaminated or potentially contaminated fisheries based on harvest data or stocking data for those fisheries, if available. Where such data were not available, production estimates were based on productivity of the surface water body or the estimated standing crop of aquatic biota in the fisheries. The proposed rule included a table of standing crop default values for estimating human food chain production of the fishery.

EPA received numerous comments to the effect that the standing crop default table was difficult to use, provided several different values for some water bodies and none for others, and provided unreliable data. Several commenters stated that standing crop values are not an appropriate basis for estimating aquatic human food chain production. One commenter pointed out that standing crop estimates do not correlate well with harvest for various water body types. Another commenter stated that estimates of harvest from fish and game officials are preferable to standing crop default values because standing crop is a measure of biomass (weight of all edible living organisms in the water body) rather than productivity.

EPA agrees with the commenters. In the final rule, estimates of fishery human food chain production are based on fish harvest data (including stocking data) as opposed to standing crop data. When site-specific data are not available, harvest rates are to be estimated based on the average harvest per unit area for the particular water body type under assessment and the geographic area in which the water body is located.

*Ground water discharge to surface water.* A number of commenters and field test participants suggested that the HRS should consider the potential impact of ground water discharges to surface water because contaminated ground water can be a significant source of surface water contamination. Field test participants noted that some sites have no overland flow route, but surface water can be contaminated through ground water discharges.

EPA agrees and has added a ground water to surface water migration component to the surface water migration pathway. Figure 7 shows the structure of this component. The surface water migration pathway, therefore, now includes two components: The overland flow/flood migration component, which retains the structure of the surface water migration pathway as proposed (except for the changes discussed in this preamble), and the new ground water to surface water migration component. Either or both components may be scored; if both are scored, the surface water migration pathway score is the higher of the two scores. EPA selected the higher of the two scores rather than combining them because, if scores were combined, the amount of hazardous substances at the site available to migrate via each component would have to be apportioned between the two components. The site-specific data needed to determine the appropriate apportionment are rarely available.

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Figure 7

## Surface Water Migration Pathway - Ground Water to Surface Water Component[1]

FINAL HRS

**Likelihood of Release** X **Drinking Water Threat**

| Likelihood of Release | | Drinking Water Threat | | |
|---|---|---|---|---|
| Observed Release<br>or<br>Potential to Release<br>Containment<br>Net Precipitation<br>Depth to Aquifer<br>Travel Time | X | Waste Characteristics<br>Toxicity/Mobility/Persistence<br>Hazardous Waste Quantity | X | Targets<br>Nearest Intake<br>Population<br>Resources |

+

**Human Food Chain Threat**

| Waste Characteristics | | Targets |
|---|---|---|
| Toxicity/Mobility/Persistence/<br>Bioaccumulation<br>Hazardous Waste Quantity | X | Food Chain Individual<br>Population |

+

**Environmental Threat**

| Waste Characteristics | | Targets |
|---|---|---|
| Ecosystem Toxicity/Mobility/<br>Persistence/Bioaccumulation<br>Hazardous Waste Quantity | X | Sensitive Environments |

[1] New component.

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The ground water to surface water migration component evaluates three threats: drinking water, human food chain, and environmental. The component is scored only if: (1) A portion of the surface water is within one mile of any source at the site that could release to ground water; (2) there is no discontinuity in the uppermost aquifer between the source and the portion of the surface water within one mile of the source; and (3) the bottom of the surface water is at or below the top of the aquifer. The target distance limit for the component is determined the same way as for the overland flow/flood component. For each threat, likelihood of release is based on either observed release or potential to release. An observed release is established if, and only if, there is an observed release to the uppermost aquifer, while potential to release is based on ground water potential to release factors, except that only the uppermost aquifer is considered. (See § 4.2.2.1.2.)

The hazardous waste quantity factor is scored in the same way it is scored for the overland flow/flood migration component, except that only sources that could release to ground water are considered (see § 4.2.2.2.2). Toxicity, ground water mobility, and surface water persistence are considered in selecting the substance potentially posing the greatest hazard in drinking water (see § 4.2.2.2.1). By considering ground water mobility, the final rule reflects the fraction of a hazardous substance expected to be released from the sources and to migrate through ground water to the surface water body. For human food chain and environmental threats, bioaccumulation (or ecosystem bioaccumulation) potential is also considered in selecting the substance potentially posing the greatest hazard (see § 4.2.3.2.1).

The targets factors in this component are evaluated in the same way as targets factors in the overland flow/flood migration component, except that a dilution-weight adjustment is combined with the surface water dilution weights for populations potentially exposed to contamination. The dilution-weight adjustment was added because the HRS assumes that hazardous substances migrate via ground water in all directions from a site. Under this assumption, except in those instances where the surface water body completely surrounds the site, only a portion of the hazardous substances can be assumed to reach the surface water through the ground water. The dilution-weight adjustment accounts for the portion of the hazardous substances assumed to be available to migrate to surface water through ground water. The probable point of entry is defined as the shortest straight-line distance, within the aquifer boundaries, from the sources at the site to the surface water body. Therefore, the actual targets considered may differ somewhat from targets evaluated in the overland flow/flood migration component because the two probable points of entry may differ. This approach might allow evaluation of intakes, fisheries, and sensitive environments that may be exposed to contamination from a site but are upstream from the point of overland flow entry.

*N. Soil Exposure Pathway*

The onsite exposure pathway, which was added to the HRS in the proposed rule, has been renamed the soil exposure pathway in the final rule. The pathway was primarily designed to assess the potential threats posed by direct exposure to wastes and contaminated surficial materials at a site. It evaluated two threats—the resident population and the nearby population. In the proposed rule, the resident population threat included three types of targets: High risk population on a property with observed contamination, all other residents and people attending school or day care on a property with observed contamination, and terrestrial sensitive environments in which there is observed contamination. The nearby population was based on people who live or attend school within a one-mile travel distance and who did not meet the criteria for resident population. Figure 8 summarizes the proposed and final rules.

A number of commenters supported the inclusion of the pathway, but raised issues related to its evaluation. For example, commenters objected to evaluating the waste characteristics factor category solely on toxicity. Three commenters objected to limiting the high risk population to children under seven. Other commenters stated that collecting data on the high risk population would be difficult. A number of commenters questioned how the onsite area and area of contamination would be defined and how accessibility of the site was evaluated.

In response to these comments and to the field test results, EPA has made a number of changes to the soil exposure pathway. The name of the pathway has been changed to be more consistent with terminology used in the Superfund human health evaluation process.

As suggested by commenters, the final rule limits the area within which human targets are evaluated for the resident population threat to locations within property boundaries and within a distance limit of 200 feet from an area of observed contamination. The 200-foot limit accounts for those situations where the property boundary is very large, and exposure to contaminated surficial materials is unlikely or infrequent because of the distance of residences, schools, or work places from an area of observed contamination on the same property.

To make the pathway consistent with the other pathways and in response to comments, the final rule includes hazardous waste quantity in the waste characteristics factor category and multiplies it by the factor value for toxicity. New factors, resident individual and nearby individual, have been added to make the pathway consistent with the other pathways, all of which assign values for the maximally exposed individual (e.g., nearest individual or intake). Population is evaluated using two levels of actual contamination based on health-based benchmarks. Separate consideration of the high risk population (children under seven) has been eliminated because the field test indicated that this factor could greatly add to the time and expense of scoring a site yet resulted in little discrimination among sites. This change also makes the soil exposure pathway more consistent with the other pathways.

In the nearby population threat, the hazardous waste quantity factor in the likelihood of exposure factor category has been renamed "area of contamination" to reflect both the intent of the factor and how it is evaluated. The accessibility/frequency of use factor has been revised and renamed the "attractiveness/accessibility" factor. The revised factor emphasizes recreational uses of areas of observed contamination because they are most likely to result in exposures to contaminated surficial materials. In addition, the weighting of the nearby population relative to the resident population has been reduced to better reflect the relative levels of exposure for those threats.

A number of commenters questioned whether workers should be counted when evaluating target populations in the soil exposure pathway. One commenter suggested that soil exposure scoring should "not include activities at facilities that presently are regulated under the Occupational Safety and Health Administration (OSHA)." Other commenters, however, stated that workers should be counted in the target population. One commenter argued that not counting a facility's work force is inconsistent with other population counting techniques. Another commenter said that workers should be included in the resident population because the proposed method of calculating soil exposure pathway scores can result in inappropriately low scores when onsite workers are exposed to wastes or contaminated soil.

In response to these comments, the Agency investigated statutory, regulatory, and policy conditions that might restrict the inclusion of workers in the target population for the soil exposure pathway. This analysis found no broad statutory or regulatory authority for excluding workers covered by OSHA regulations from consideration as targets in the HRS. Although the definition of a release under CERCLA section 101(22) excludes "any release which results in exposure to persons solely within a workplace * * *" it only does so for purposes of claims by workers who are already covered by State worker compensation laws. The legislative history of section 101(22) specifically anticipated that authority under CERCLA might, in appropriate cases, be used to respond to releases within a workplace. Thus, the Agency concludes that there are no broad statutory or regulatory restrictions against consideration of activities at OSHA-regulated facilities.

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Figure 8

## Soil Exposure Pathway

PROPOSED HRS

**Resident Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Contamination | | Toxicity | | High Risk Population<br>Total Resident Population<br>Terrestrial Sensitive Environments |

+

**Nearby Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Waste Quantity<br>Accessibility/Frequency of Use | | Toxicity | | Population Within 1 Mile |

FINAL HRS

**Resident Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Contamination | | Toxicity<br>Hazardous Waste Quantity | | Resident Individual<br>Resident Population<br>Workers<br>Resources<br>Terrestrial Sensitive Environments |

+

**Nearby Population Threat**

| Likelihood of Exposure | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Attractiveness/Accessibility<br>Area of Contamination | | Toxicity<br>Hazardous Waste Quantity | | Population Within 1 Mile<br>Nearby Individual |

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The soil exposure pathway is designed to account for exposures and health risks resulting from ingestion of contaminated surficial materials. Because ingestion exposures are comparable for some types of workers and residents, the Agency has decided to include workers in the resident population threat. However, substantial variability in the kinds of workers and work activities at sites (e.g., indoor and outdoor) leads to considerable variability in exposure potential. The Agency believes that determining specific categories or types of workers is beyond the scope of HRS data collection. Thus, workers are assigned target points on a prorated basis: 5 points are assigned for sites with up to 100 workers; 10 points for sites with 101 to 1,000 workers, and 15 points for greater than 1,000 workers. Prorating workers will reduce the data collection effort. Evaluation of workers is not affected by health-based benchmarks. (See § 5.1.3.3.) Nearby workers are not counted in the nearby population because the Agency considers it unlikely that workers from nearby workplaces would regularly visit contaminated areas outside the property boundary of their workplace during the workday, and because there is no way to estimate accurately the number of workers who might.

*O. Air Migration Pathway*

The proposed rule made several significant changes to the air migration pathway in the original HRS. In response to the SARA mandate to consider potential as well as actual releases to air, the proposed rule included an evaluation of the potential to release. The proposed rule also added a mobility factor to the waste characteristics factor category and an MEI factor to the targets category. Finally, the proposed rule added explicit distance weighting factors for evaluating all factors in the targets category. Figure 9 shows the proposed air migration pathway and the final rule pathway.

The public provided numerous comments on these changes and raised new issues as well. The most significant new issue concerned the structural inconsistency in the treatment of gases and particulates in the proposed air migration pathway. For example, commenters observed that in the potential to release evaluation, it was possible to assign a high containment value to a source with good gas containment and poor particulate containment while assigning high source type and mobility values based on the presence of gaseous hazardous substances. This combination would yield an inappropriately high potential to release value. This concern was also noted in discussions with field test personnel.

The Agency agrees with these commenters and investigated methods to better reflect the differences between gases and particulates. As a result of these analyses, EPA has made several changes to the final rule in both the likelihood of release and waste characteristics factor categories.

In the likelihood of release factor category, the final rule evaluates source potential to release separately for gases and particulates. Only those sources containing gaseous hazardous substances are evaluated for gas potential to release, and only those sources containing hazardous substances that can be released as particulates are evaluated for particulate potential to release. This change in potential to release structure necessitated other changes in the scoring of potential to release including development of separate gas and particulate source type factors and migration potential factors. The names of these latter factors were also changed to highlight the differences between potential to release "mobility" and waste characteristics "mobility." (See §§ 6.1.2.1.3, 6.1.2.2.3.)

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Figure 9

## Air Migration Pathway

PROPOSED HRS

| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release<br>or<br>Potential to Release<br>Source Containment<br>Source Type<br>Source Mobility | | Toxicity/Mobility<br>Hazardous Waste Quantity | | Maximally Exposed Individual<br>Population<br>Land Use<br>Sensitive Environments |

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| Likelihood of Release | X | Waste Characteristics | X | Targets |
|---|---|---|---|---|
| Observed Release<br>or<br>Potential to Release<br><br>Gas<br>Gas Containment<br>Gas Source Type<br>Gas Migration Potential<br>Particulate<br>Particulate Containment<br>Particulate Source Type<br>Particulate Migration Potential | | Toxicity/Mobility<br>Hazardous Waste Quantity | | Nearest Individual<br>Population<br>Resources<br>Sensitive Environments |

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In addition to these changes in the basic structure of the potential to release factors, the final rule includes several additional changes in the source type list, migration potential factors, and containment factors. Based on the experience gained in the field test, EPA added several source types to the source type list. Some of these additions (e.g., surface impoundment (not buried/backfilled); dry) simply clarify classifications that were implied in the proposed source type list. Other additions, such as source types involving biogas release, were considered early in the development of the proposed HRS but were not included originally in the interest of simplicity. Field test experience, however, indicated that their inclusion in the final rule was necessary. Finally, new distinctions within some source types (e.g., the various types of piles) were added partly in response to comments and partly as a result of field test experience. As applicable, source type values were also revised. (See §§ 6.1.2.1.2, 6.1.2.2.2 and Table 6–4.)

The revised gas and particulate migration potential factors are very similar to the proposed likelihood of release gas and particulate mobility factors. Several commenters questioned the need for including dry relative soil volatility in the final gas migration factor. A simplification analysis indicated that dry relative soil volatility was redundant, as it was almost completely determined by vapor pressure. Hence, the final gas migration potential factor includes only vapor pressure and Henry's law constant. The particulate migration potential factor in the final rule is simply the particulate component of the proposed potential to release mobility factor.

The containment factors were also changed as a result of the field test, a review of recent information on covering systems, the examination of air release rate models, and the public comments on the need for simplicity in the final rule. The final list of containment descriptions eliminated many redundant descriptions and changed others, retaining only those distinctions that are necessary based on type of source. (See §§ 6.1.2.1.1, 6.1.2.2.1 and Tables 6–3, 6–9.) As discussed in Section III F above, two new mobility factors were developed for the waste characteristics factor category.

Commenters generally supported the concept of distance weighting target factors. However, several disagreed with the approach used to develop the proposed factor values. Some commenters suggested basing the factor values on long-term meteorology and the size of the site, while others suggested that additional atmospheric phenomena (e.g., particulate deposition) be reflected in the final values. As a result of these comments, EPA has revised the distance weighting factors used in the final rule to reflect long-term atmospheric phenomena. Analyses indicated that particulate deposition and other similar phenomena as well as site size were not sufficiently significant within four miles of a site to warrant their inclusion in the final factor values. EPA also notes that the distance weighting factor values are now incorporated in the population factor value table. (See § 6.3.2.4 and Table 6–17.)

*P. Large Volume Wastes*

*Mining waste sites.* A number of commenters representing mining companies, trade associations, and State and Federal agencies commented on how the proposed HRS would score mining waste sites; commenters representing waste management facilities raised similar issues in regard to their sites. This section summarizes and addresses the major issues addressed by these commenters.

Commenters raised several concerns regarding the appropriate consideration of background levels of metals in documenting direct or indirect releases from mining waste sites. One commenter recommended that in determining direct releases from a mining waste site, EPA should consider the natural characteristics of the site prior to mining and the changes in migration rates resulting from mining. The commenter explained that the concentration of metals in a mining waste pile may be similar to or less than natural concentrations in soil or rocks below and adjacent to the pile. To document indirect releases, the commenter suggested that EPA require collection of detailed information on site geology and hydrological gradients to ensure proper consideration of background levels. Finally, the commenter asserted that although it is appropriate to weight observed releases more heavily than potential releases at sites with synthetic organic hazardous substances, the criteria used to define observed release are not valid at sites with natural sources of metals. Another commenter agreed and suggested that because of background levels of inorganic elements, the proposed HRS could identify as an observed release concentrations unrelated to mining activities.

EPA recognizes that natural background concentrations of metals in soil or rocks can affect the measured concentration necessary to establish an observed release at a mining waste site. This consideration is reflected in the requirement that concentrations significantly above background be shown to establish an observed release. Moreover, EPA has clarified the observed release criteria in the final rule to explain that they specify minimum differences necessary to establish an observed release by chemical analysis.

Several commenters questioned the treatment of metals in the ground water mobility factor. One commenter stated that the proposed HRS is biased against mining waste sites because it gives greater consideration to the accurate assessment of the mobility of organic substances than to that of naturally occurring metals. The commenter noted that the proposed persistence factor for the surface water migration pathway accounts for the degradation of hazardous substances in the environment through four processes. None of these processes, according to the commenter, applies to metallic elements, which received a default value of 3 (the highest possible score for persistence). Another commenter stated that decreased mobility was considered only for organic compounds, even though inorganic compounds are immobile in some situations.

One commenter stated that adding a metals mobility factor, as EPA's Science Advisory Board (SAB) recommended, would allow the HRS to reflect more accurately the potential for metallic elements to migrate in the aqueous phase. Two commenters were concerned that metals would be assigned a "worst-case" default value for mobility. On the other hand, another commenter stated that consideration of the mobility of metals in the revised HRS would at least partially rectify the bias in the current HRS against high-volume, low-concentration mining wastes.

A number of these commenters appear to have misunderstood the proposed rule. Metals were not automatically assigned the maximum value as a default in the ground water mobility factor, but rather were assigned values based on their coefficient of aqueous migration. The final rule automatically assigns the maximum value for mobility only to metals establishing an observed release by chemical analysis, which is the same way organics and nonmetallic inorganics are evaluated. For metals and metal compounds not establishing an observed release by chemical analysis, mobility is based on water solubility and distribution coefficient ($K_d$), the same as for organics and nonmetallic

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inorganics. If none of the hazardous substances (including metals, organics, and nonmetallic inorganics) eligible to be evaluated for the site can be assigned a mobility factor value based on available data, § 3.2.1.2 of the final rule assigns a mobility factor value of 0.002 for all of the hazardous substances. This value was selected based on a review of the range of mobility factor values assigned to those hazardous substances (including metals) for which data were available for assigning mobility factor values. The value of 0.002 is clearly not a worst-case default (which would be 1.0).

EPA believes that the persistence factor is not biased against metals. Elemental metals do not degrade and, therefore, should receive higher scores for persistence than other substances subject to degradation processes.

One commenter claimed that the soil exposure pathway is likely to bias the HRS scores of mining waste sites toward higher values because such sites contain large volumes of waste covering large surface areas, and because of geographic factors, these large areas are seldom secured against direct public access. In addition, according to the commenter, the public may be attracted to mining waste sites. The commenter suggested that the soil exposure pathway incorrectly assumes there is an exposure because there is access to mining waste sites.

EPA does not agree that the soil exposure pathway is biased against mining waste sites. The pathway evaluates exposures of people via contact with surficial hazardous substances. The Agency believes that, all else being equal, large contaminated surface areas with public access, including those associated with mining waste sites, should receive higher scores for the soil exposure pathway than smaller sites with more restricted access. Even sites with large contaminated surface areas are unlikely to be assigned high scores except when they are near residential areas or include a listed sensitive environment. As some commenters representing mining-related activities have noted in the past, most mines are located some distance from inhabited areas.

Three commenters stated that the original HRS was biased against sites such as mining waste sites that are characterized by high volumes of waste with relatively low concentrations of toxic constituents. Two of these commenters suggested that mining wastes would be appropriate for hazardous constituent quantity determination because such wastes are relatively homogeneous (compared to other wastes) and, therefore, have fairly consistent concentrations. One of these two commenters also stated that the hazardous waste quantity factor equations in Table 2–14 of the proposed rule should be revised to be less conservative. The remaining commenter suggested that the proposed HRS was still biased against mining waste sites because they are still scored based on the quantity of waste rather than on the concentration of the waste at the point of exposure.

EPA does not agree that the HRS is biased against high-volume, low-concentration waste sites. The final rule incorporates concentration data in three factors: (1) Likelihood of release (concentration data can be used for establishing an observed release); (2) hazardous waste quantity (concentration data, if available and adequate, can be used for calculating hazardous constituent quantity); and (3) targets (concentrations of hazardous substances present in drinking water wells or at other exposure points can be used to determine weightings for nearest individuals (or wells or intakes), populations, and sensitive environments factors). EPA has not explicitly required concentration data for all sites because of the substantial costs for obtaining these data and the very high degree of uncertainty associated with data collected during SIs.

EPA requested that the SAB review issues related to large-volume waste sites before the NPRM was published. The SAB final report is available in the CERCLA docket. Two commenters stated that the Agency did not adequately consider the SAB's recommendations for revising the HRS, specifically those concerning the use of mobility data.

The SAB, in its review of the original HRS, examined whether large-volume waste sites (e.g., mining waste sites) had been treated differently than other waste sites and concluded that insufficient data were presented to demonstrate that the original HRS was biased against mining waste sites. However, the SAB noted that the original HRS had the potential for such a bias, particularly when scoring potential to release, because the original HRS did not consider mobility, concentration of hazardous constituents, and transport. The SAB suggested several possible modifications to improve the application of the HRS to mining waste sites.

Based in part on the SAB suggestions, EPA proposed several changes to the overall scoring process to make the HRS more accurately reflect risks associated with mining waste sites, notably, addition of a mobility factor to the air and ground water migration pathways, changes in the persistence factor, incorporation of a tiered hazardous waste quantity factor that can account for waste concentration data, and addition of health-based benchmarks for evaluating population. As explained in the NPRM, determining speciation of metals and pH, as the SAB had suggested, is not feasible given the temporal and spatial variations at hazardous waste sites and the limitations on SI data collection. Moreover, determining speciation is not feasible for most substances given EPA's current analytical procedures; requiring speciation analyses would add substantially to the cost of data collection.

Two commenters stated that the proposed HRS can significantly overestimate risks associated with mining waste sites that consist of high-volume, low-concentration wastes. One of these commenters recommended a "preliminary evaluation system" to more accurately reflect the actual risks associated with such sites and remove any bias in the HRS relative to other types of sites. This commenter also suggested that in proposing the HRS revisions, EPA had ignored the results of its own studies under RCRA sections 3001 and 8002, which the commenter believed to be more focused efforts to quantify risks from mining waste sites than the HRS revisions.

EPA does not believe that a separate "preliminary evaluation system" for scoring mining waste sites would be appropriate. A single HRS can be applied uniformly to all sites, allowing the Agency to evaluate sites relative to each other with respect to actual and potential hazards. The Agency examined the RCRA studies cited by the commenter before proposing HRS revisions. Those studies, which focus on the management of wastes at active facilities, concluded that many special study waste sites (e.g., mining) do not present very high risks, while others may present substantial risks. EPA believes that the conclusions of these studies and the Agency's subsequent regulatory determinations (i.e., not to regulate most mining wastes under RCRA Subtitle C) are not inconsistent with a determination that some mining waste releases can require Superfund response actions. Furthermore, the HRS is designed so that it can be applied to closed and abandoned sites as well as active sites.

*Other large volume waste sites.* Several commenters suggested that the proposed HRS did not meet CERCLA section 125 requirements for sites



involving fossil fuel combustion wastes. These commenters generally agreed that section 125 requires EPA to consider the quantity and concentration of hazardous constituents in fossil fuel combustion wastes and that the proposed HRS had not adequately addressed this requirement.

One commenter supported the Agency's proposal to allow consideration of concentration data when such data are available. Three commenters stated that the proposed HRS would often assign fossil fuel combustion waste sites high scores in part because of the worst-case assumptions or "default values" for certain factors (i.e., hazardous waste quantity, toxicity, target populations). The commenters claimed that fossil fuel combustion waste sites receive high scores merely because of the large quantity of waste, although this waste presents no significant adverse environmental effects, and that these high scores are inconsistent with EPA's findings in the RCRA section 8002 study. One of the three commenters suggested that the proposed HRS retained certain deficiencies of the original HRS, such as assuming that all hazardous substances in the waste consist of the single most toxic constituent in the waste.

EPA does not believe that the approach taken in the final rule creates a bias against fossil fuel combustion wastes. Partly because concentration data are considered in the final rule, fossil fuel combustion waste sites are not expected to score disproportionately high when compared with other types of sites. The HRS assumes that it is not possible to determine in a consistent manner the relative contribution to risk of all hazardous substances found at sites. Given this assumption, EPA has determined that basing the toxicity of the combination of substances at a site on the toxicity of the substance posing the greatest hazard is a reasonable and appropriately conservative approach. In many cases, the substance posing the greatest hazard is not several orders of magnitude more toxic than other hazardous substances at the site. Therefore, the effect of this approach on the toxicity factor value—which is evaluated in one order of magnitude scoring categories—is not as great as some commenters have suggested (see also section III D). In addition, as noted above, worst-case defaults are not assigned for mobility; population factors have no default values.

Two commenters suggested that because CERCLA section 125 contains no statutory deadlines, EPA should take as much time as necessary to adequately respond. These commenters recommended that EPA extend the tiered approach of the hazardous waste quantity factor to other factors to take advantage of the extensive data on fossil fuel combustion wastes generated by the electric utility industry.

The Agency does not agree that the tiered approach used in the hazardous waste quantity factor should be extended to other factors for fossil fuel combustion waste sites (see also section III K). EPA believes that creating a separate HRS to score certain types of sites would not allow the Agency to provide a uniform measure of relative risk at a wide variety of sites, as Congress intended.

One commenter recommended that EPA consider using fate and transport models currently under development to incorporate quantitative representations of specific processes and mechanisms into the HRS. EPA carefully examined this possibility and concluded that although the use of fate and transport models could conceivably increase the accuracy of the HRS for some pathways, collection of the required site-specific data would be far too complex and costly. Fate and transport models are appropriate for a comprehensive risk assessment, but not for a screening tool such as the HRS. In addition, EPA's review suggested that it would be more difficult to achieve consistent results among users of such models than with the HRS. EPA points out that it used fate and transport models to develop the distance weighting factors used in the HRS target calculations, and also that the HRS incorporates several hazardous substance parameters (e.g., mobility) and site parameters (e.g., travel time) that are components of fate and transport models.

Two commenters expressed concern that the proposed HRS fails to account for the leachability of hazardous constituents as required by CERCLA section 125. According to the commenters, some hazardous constituents pose no risk via ground water because they will never be released to that medium. Thus, even if hazardous waste quantity and concentration are considered adequately, hazardous waste quantity scores for fossil fuel combustion sites will be erroneously high unless leachability is considered as well.

EPA examined the availability of leachate data and the feasibility of using such data for calculating hazardous substance quantity for all types of sources and wastes. The Agency decided against using leachate concentrations because:

- Leachate data are not available for all sources and wastes, and available leachate data on high-volume wastes and some landfills have limited applicability for estimating the quantity of leachable hazardous substances;
- Leachate data derived from lab studies are limited and do not realistically represent the universe of field conditions such as heterogeneity of wastes, chemistry of leachate, and density and pore volume of disposed wastes; and
- Any method for using leachate data could not be consistently or uniformly applied to all sites.

EPA also examined the feasibility of developing site-specific leachate data for estimating leachable hazardous substance quantity for the ground water migration pathway. EPA decided against this option because reliable estimation of leachable hazardous substance quantity requires comprehensive sampling of site-specific heterogeneous waste, which would be prohibitively expensive and not feasible. In some cases, such sampling would be technically unfeasible and unsafe.

EPA evaluated alternatives for developing a surrogate for estimating leachable hazardous substance quantity. The Agency found that adding the mobility factor to the ground water migration pathway, based both on solubilities and distribution coefficients ($K_d$s) of hazardous substances, and multiplying it by the hazardous waste quantity factor would be a feasible alternative for approximating the fraction of hazardous substance quantity expected to be released to ground water.

*Q. Consideration of Removal Actions (Current Versus Initial Conditions)*

The original HRS based the evaluation of factors on initial conditions. In the preamble to the proposed rule, EPA specifically requested comments on whether sites should be scored on the basis of initial or current conditions. The principal question is whether the effect of response actions, such as the removal of some quantity of the waste, should be considered when sites are scored. Initial conditions are defined by the timing of the response action; that is, initial conditions are the conditions that existed prior to any response action. For sites where no response action has occurred, initial and current conditions are the same for evaluating sites.

Of the 25 commenters responding to this issue, 15—including all industry commenters—supported scoring on current conditions. In the preamble of

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the proposed rule, EPA presented two approaches for considering response actions in HRS scores: (1) Consider these actions only for those pathways and factors for which they are most appropriate; and (2) consider these actions in all pathways, but make exceptions at sites where initial conditions more accurately reflect risks.

Those who stated a preference favored the second, specifying that the exceptions should be clearly defined in the final rule. These commenters stated that scoring all pathways on current conditions would encourage responsible parties to clean up sites quickly. They reasoned that if cleanups are delayed, the threat of migration of the hazardous substances increases; therefore, scoring on current conditions is consistent with the intent of CERCLA because it encourages rapid remedial action. One commenter said that scoring on initial conditions made little sense when, as a result of the cleanup, the level of residual contamination was below the level required by CERCLA.

Several proponents of scoring on current conditions stated that EPA's concern that responsible parties would clean up sites just enough to avoid being listed on the NPL was unfounded. They argued that the proposed scoring system is too complicated to manipulate, and that predicting the effect of partial cleanups on the final score would be difficult. Others suggested that where contamination remains, sampling during an SI will discover it.

Ten commenters did not fully support scoring on current conditions. Only one opposed any consideration of current conditions. Several commenters supported scoring the soil exposure and air migration pathways on current conditions. Others stated that response actions should be considered only when the actions are conducted under Federal or State direction, or when the action constitutes a complete cleanup. Several added that State actions should not be considered because it would penalize States with active remedial programs. One commenter suggested scoring sites on both current and initial conditions; if the response action had addressed all hazards, then the current conditions score should be used.

Based on public comment, EPA has decided to change its policy on consideration of removal actions. The Agency agrees that consideration of such actions in HRS scores is likely to increase incentives for rapid actions by responsible parties, reducing risks to the public and allowing for more cost effective expenditure of the Fund. In making this decision, EPA tried to balance the benefits of considering removal actions in HRS scores (e.g., increased incentives for rapid actions) while also ensuring that the HRS score reflects any continuing risks at sites where contamination occurred prior to any response action.

Therefore, EPA will calculate waste quantities based on current conditions. However, EPA believes the accuracy of this approach depends on being able to determine with reasonable confidence the quantity of hazardous constituents remaining in sources at the site and the quantity released into the environment. As a consequence, where the Agency does not have sufficient information to estimate the quantity of hazardous constituents remaining in the sources at the site and in the associated releases, a minimum factor value may be assigned to the hazardous waste quantity factor value. Thus, removal actions may not reduce waste quantity factor values unless the quantity of hazardous constituents remaining in sources and in releases can be estimated with reasonable confidence.

In addition to providing incentives for early response, this approach also provides incentives for potentially responsible parties to ascertain the extent of the remaining contamination at sites. Potentially responsible parties undertaking removal actions will have the primary responsibility for collecting any data needed to support a determination of the quantity of hazardous constituents remaining. EPA expects responsible parties may need to conduct sampling and analyses to determine the extent of hazardous substance migration in soils and other media in order to estimate with reasonable confidence the quantity of hazardous constituents remaining.

EPA decided not to limit the consideration of response actions to certain pathways (e.g., the soil exposure pathway) because this would overstate the risk at sites where removal of wastes has eliminated threats in all pathways. Moreover, a more limited approach to consideration of response actions would provide less incentive for rapid response action.

EPA will evaluate a site based on current conditions provided that response actions actually have removed wastes from the site for proper disposal or destruction in a facility permitted under the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), or by the Nuclear Regulatory Commission. HRS scoring will not consider the effects of responses that do not reduce waste quantities such as providing alternate drinking water supplies to populations with drinking water supplies contaminated by the site. In such cases, EPA believes that the initial targets factor should be used to reflect the adverse impacts caused by contamination of drinking water supplies; otherwise, a contaminated aquifer could be artificially shielded from further remediation. This decision is consistent with SARA section 118(a), which requires that EPA give high priority to sites where contamination from the site results in closed drinking water wells. Similarly, if residents are relocated or if a school is closed because of contamination due to the site, EPA will consider the initial targets in scoring the site.

As noted in the proposed rule preamble, EPA would only consider removals conducted prior to an SI. EPA believes that the SI is the appropriate time to evaluate conditions, because it is the source of most of the data used to score a site. Because response action at sites may be an ongoing process, it would be burdensome to recalculate scores continually to reflect such actions.

In response to commenters, EPA also considered whether response actions should be considered in HRS scores only if they are performed under a State or EPA order. EPA decided not to choose this approach for two reasons. First, it would diminish the incentive for an expeditious response at the site if a signed order were required. Second, because a response action must be conducted before the SI to be considered in the HRS score, there would be little information on site conditions upon which this order could be based.

EPA has also decided not to differentiate between response actions initiated by States and those conducted by other parties. The Agency believes this approach will help ensure consistent application of the HRS by avoiding situations where two similar sites are scored using different sets of rules. Moreover, although the Agency is sympathetic to concerns about disincentives to States for initiating actions, it believes that such cases will be rare. Many State (and Federal) removal actions are interim measures designed to stabilize conditions at the site. Given the more limited definition of response action noted above (e.g., removal of waste from the site for disposal or destruction in a RCRA-permitted facility), many actions conducted by States would not be considered in HRS scoring. In addition, in many cases, State and Federal removal actions are undertaken after an SI has been conducted. As noted above, EPA will only consider removals conducted before the SI in the HRS score.



*R. Cutoff Score*

In the NPRM preamble, EPA proposed that the cutoff score for the revised HRS be functionally equivalent to the current cutoff score of 28.5. The Agency also requested comment on three proposed options for determining functional equivalence:

- Option 1: Score sites using both the original and final rule, then use statistical analysis to determine what revised HRS score best corresponds to 28.5;
- Option 2: Choose a score that would result in an NPL of the same size as the NPL that would be created by using the original HRS; and
- Option 3: Identify the risk level that would correspond to 28.5 in the original HRS and then determine what revised HRS score corresponds to that risk level.

Some commenters stated that there cannot be a functional equivalence if the revisions have any meaning. They argued that if the revisions meet the statutory mandate to make the HRS more accurate, the scores should be different and, therefore, cannot be related. Several commenters supported the use of a functional equivalent, but were divided about which option should be used. One commenter stated that the 28.5 score should be evaluated to determine whether it reflected minimum risk levels. If it did, the commenter suggested that a functional equivalent would be appropriate and should be determined using equivalent risk levels (option 3), but also with an eye toward keeping the NPL to a manageable size (option 2).

Commenters not supporting the use of a functional equivalent suggested a variety of alternative approaches, including:

- Establish the cutoff score based on risk, without regard to the current cutoff level or a functional equivalent;
- Leave the score at 28.5;
- Propose a new cutoff score and a description of methodology in a public notice with a 60-day public comment period;
- Lower the cutoff score to provide an incentive to responsible parties to undertake remedial efforts and make it possible for sites where a removal action has taken place to make the NPL, thus reducing the controversy over whether to score sites based on current conditions;
- Raise the cutoff score by at least 20 points;
- Eliminate the present cutoff score by creating categories of sites instead of individual ranks as a means of prioritizing NPL sites;
- Amend the NPL annually to include only those sites that deserve priority attention (e.g., orphaned sites) and are likely to receive Superfund financing; or
- Rank all sites showing any degree of public health and/or environmental risk on a relative scale and perform remedial activities based on available funding.

In addition, four commenters felt that the cutoff score for the final rule should not be fixed until the technical merits and potential scores of representative sites are tested and compared using both the current and proposed HRS. Further, one commenter noted that the field test did not indicate the relationship between the revised HRS score for a given site and the current score; another added that until this equivalency issue is clarified, meaningful comment on any proposed revisions cannot be made.

Based on an analysis of 110 test sites, EPA has decided not to change the cutoff score at this time. This conclusion was reached after applying all three approaches to setting a cutoff score that would be functionally equivalent to 28.5. In its analysis, the Agency scored field test sites with both the original and revised HRS. The data from these test sites show that few sites score in the range of 25 to 30 with the revised HRS model. The Agency believes that this range may represent a breakpoint in the distribution of site scores and that the sites scoring above the range of 25–30 are clearly the types of sites that the Agency should capture with a screening model. Because the analysis did not point to a single number as the appropriate cutoff, the Agency has decided to continue to employ 28.5 as a management tool for identifying sites that are candidates for the National Priorities List.

EPA believes that the cutoff score has been, and should continue to be, a mechanism that allows it to make objective decisions on national priorities. Because the HRS is intended to be a screening system, the Agency has never attached significance to the cutoff score as an indicator of a specific level of risk from a site, nor has the Agency intended the cutoff to reflect a point below which no risk was present. The score of 28.5 is not meant to imply that risky and non-risky sites can be precisely distinguished. Nevertheless, the cutoff score has been a useful screening tool that has allowed the Agency to set priorities and to move forward with studying and, where appropriate, cleaning up hazardous waste sites. The vast majority of sites scoring above 28.5 in the past have been shown to present risks. EPA believes that a cutoff score of 28.5 will continue to serve this crucial function.

## IV. Section-by-Section Analysis of Rule Changes

Besides the changes discussed above, EPA has made substantial editorial revisions in the rule being adopted today. Source characterization is discussed in section 2 of the final rule, along with factors that are evaluated in each pathway. These factors include hazardous waste quantity, toxicity, and evaluation of targets based on benchmarks. The order of presentation of the pathways has been changed to ground water, surface water, soil exposure, and air. Following the four sections describing the pathways, a section has been added explaining how to evaluate sites that have radionuclides either as the only hazardous substances at the site or in combination with other hazardous substances.

In general, descriptive text that provided background information has been removed as have references and data sources; the sections have been rewritten to make the rule easier to read and to apply. The figures presenting overviews of the pathways and the scoring sheets have been revised throughout to reflect changes in the rule and assigned values.

This section describes, for each section of the rule and each table, the specific substantive changes; editorial changes that do not affect the content of the rule are not generally noted.

*Section 1 Introduction*

The text explaining the background of the HRS and describing the rule has been removed. Definitions of a number of additional terms used in the rule have been added for clarity. The definition of "hazardous substance" has been revised for clarification. The definition of "site" has been clarified and now indicates that the area between sources may also be considered part of the site. The definition of "source" has been revised to explain that those volumes of air, ground water, surface water, or surface water sediments that become contaminated by migration of hazardous substances are not considered a source, except contaminated ground water plumes or contaminated surface water sediments may be considered a source if they cannot be attributed to an identified source. In addition, the definition of source now includes soils contaminated by migration of hazardous substances.

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Under the original HRS, the Agency took the approach that all feasible efforts should be made to identify sources before listing a site on the NPL. If, after an appropriate effort has failed to identify a source, the Agency believed that the contamination was likely to have originated at the type of source that would be addressed under Superfund, such sites were listed. Subsequent investigations after listing have generally identified a specific source. In some cases, EPA has not listed contaminated media without clearly identified sources because it appeared the source of pollution would not be addressed by Superfund programs; an example of such a source would be extensive, low-level contamination of surface water sediments caused by pesticide applications. EPA has found this approach to be generally workable and will continue to evaluate, on a case-by-case basis, whether sites with no identified sources should be listed.

Where contaminated media with no identified sources exist, the final rule generally assigns a hazardous waste quantity factor value to such contamination, with the value depending on whether there are any targets subject to Level I or Level II concentrations. For contaminated sediments in the surface water migration pathway, if there is a clearly defined direction of flow, target distances are measured from the point of observed sediment contamination that is farthest upstream. For ground water plumes and for contaminated sediments where there is no clear direction of flow, the center of the observed ground water or sediment contamination is used for the purpose of measuring target distance limits.

*Section 2 Evaluations Common to Multiple Pathways*

This section covers factors and evaluations common to multiple pathways. The major changes to these factors include: observed release criteria have been revised; the toxicity factor has been changed to a linear rather than a log scale; scales for hazardous waste quantity have been made linear and expanded, and the hazardous waste quantity minimum value has been changed; the waste characteristics factor category score is now obtained by multiplying the factor values and using a table to assign the final score; use of benchmarks has been extended to all pathways and to the nearest individual (well/intake) factor; and the methods for comparisons to benchmarks have been changed as have the benchmarks used. The purpose of this part is to make the rule less repetitious by presenting full explanations of the evaluation of certain factors only once rather than in each pathway in which they occur. Exceptions related to radionuclides are noted throughout the rule and referenced to Section 7.

*Section 2.1 Overview.* Introduces the pathways and threats included in HRS scoring.

*Section 2.1.1 Calculation of HRS site score.* Provides the equation used to calculate the final HRS score.

*Section 2.1.2 Calculation of pathway score.* Indicates, in general, how pathway scores are calculated and includes a sample pathway score sheet (Table 2–1).

*Section 2.1.3 Common evaluations.* Lists evaluations common to all pathways.

*Section 2.2 Characterize sources.* Introduces source characterization and references Table 2–2, the new sample source characterization worksheet.

*Section 2.2.1 Identify sources.* Explains that for the three migration pathways, sources are identified, and for the soil exposure pathway, areas of observed contamination are identified.

*Section 2.2.2 Identify hazardous substances associated with a source.* Covers information previously provided in the introduction to the waste characteristics factor category.

*Section 2.2.3 Identify hazardous substances available to a pathway.* Explains which hazardous substances may be considered available to each pathway. For the three migration pathways, the primary limitation on availability of a hazardous substance to a pathway is that the substance must be in a source with a containment factor value, for that pathway, greater than 0; that is, the hazardous substance must be available to migrate from its source to the medium evaluated. For the soil exposure pathway, the primary limitation is that the substance must meet the criteria for observed contamination and, for the nearby threat, it must also be accessible.

*Section 2.3 Likelihood of release.* Specifies the criteria for establishing an observed release (discussed in section III G of this preamble) and explains that potential to release factors are evaluated only when an observed release cannot be documented. Table 2–3, which replaces Table 2–2 in the proposed rule, provides the revised observed release criteria for chemical analyses for the migration pathways. Table 2–3 is also used in establishing observed contamination for the soil exposure pathway.

*Section 2.4 Waste characteristics.* Defines the waste characteristics factor category.

*Section 2.4.1 Selection of substance potentially posing greatest hazard.* Explains how to select the substance potentially posing the greatest hazard.

*Section 2.4.1.1 Toxicity factor.* Explains how to assign toxicity values. Changes in the approach to scoring toxicity are discussed in section III D of this preamble. Table 2–4 (proposed rule Table 2–11) has been revised to make the assigned factor values linear rather than logarithmic values; however, the relationship among the values has not changed. A provision to always assign lead (and its compounds) an HRS toxicity factor value of 10,000 was added as a result of changes since the time of the proposed rule in the way EPA develops chronic toxicity values for lead (i.e., reference doses, in units of intake (mg/kg-day), are no longer developed for lead).

*Section 2.4.1.2 Hazardous substance selection.* Lists which factors are combined, in each pathway or threat, to select the hazardous substance potentially posing the greatest hazard. For each migration pathway, each substance eligible for consideration is evaluated based on the combination of toxicity (human or ecosystem) and/or mobility, persistence, and bioaccumulation (or ecosystem bioaccumulation) potential. The substances selected for each pathway or threat are those with the highest combined values. For the soil exposure pathway, the substance with the highest toxicity value is selected from among substances that meet the criteria for observed contamination for the threat being evaluated. The use of bioaccumulation in the selection of substances in the human food chain threat has changed as a result of the structural changes discussed above. In the proposed rule, only substances with the highest bioaccumulation values were evaluated for toxicity/persistence; in the final rule, the substance with the highest combined toxicity/persistence/bioaccumulation value is selected in the human food chain threat of the overland flow/flood migration component. For the ground water to surface water migration component, mobility is also considered. This revised method better reflects the overall threat.

*Section 2.4.2 Hazardous waste quantity.* Describes how to calculate the hazardous waste quantity factor value, as explained in section III D of this preamble. The explanation has been simplified from that presented in the proposed rule, and a discussion of unallocated sources has been added. A discussion clarifying the method for evaluating hazardous waste quantity in the soil exposure pathway was also added, and clarifying language on this point was inserted throughout the subsections of § 2.4.2. Table 2–13 from the proposed rule has been eliminated.



*Section 2.4.2.1 Source hazardous waste quantity.* Details the measures that may be considered in evaluating hazardous waste quantity for a source or area of observed contamination.

*Section 2.4.2.1.1 Hazardous constituent quantity.* Explains how to assign a value to the hazardous constituent quantity factor. An explanation of the treatment of RCRA hazardous wastes has been added to clarify the scoring of these wastes. Table 2–5, Hazardous Waste Quantity Evaluation Equations (proposed rule Table 2–14), has been revised in several ways. The constant divisor of 10 has been moved from these equations and is now incorporated into the factor values assigned using Table 2–6. Two types of surface impoundments are now listed to ensure that buried surface impoundments are treated appropriately. The term "tanks" has been added to containers other than drums to clarify how tanks should be evaluated. Also, equations for calculating hazardous waste quantity based on area have been revised based on a study of waste sites. The study indicated that new depth assumptions should be used for some sources; the land treatment equation was revised based on data from the same study about typical loading rates in land treatment operations.

*Section 2.4.2.1.2 Hazardous wastestream quantity.* Explains how to assign a value for hazardous wastestream quantity based on the mass of the wastestream. An explanation of the treatment of RCRA hazardous wastes has been added to clarify the scoring of these wastes.

*Section 2.4.2.1.3 Volume.* Explains how to assign a value for source volume.

*Section 2.4.2.1.4 Area.* Explains how to assign a value for source area.

*Section 2.4.2.1.5 Calculation of source hazardous waste quantity value.* Explains how to assign a value to source hazardous waste quantity.

*Section 2.4.2.2 Calculation of hazardous waste quantity factor value.* Explains how to assign a factor value to hazardous waste quantity using Table 2–6. The values in Table 2–6 include several changes. The cap applied to the factor value (i.e., the lowest hazardous waste quantity value required to assign the maximum factor value) has been increased to reflect more accurately the range of hazardous substance quantities found at waste sites. The cap is set based on the maximum quantity found at current NPL sites. Rather than being assigned a maximum of 100, as in the proposed rule, the assigned factor values range to 1,000,000. Each factor value less than the cap is assigned for quantities that range across two orders of magnitude. The two-order-of-magnitude ranges reflect the uncertainty in estimates of both quantity and concentration of the hazardous substances in sources and associated releases as well as uncertainty in identifying all sources and associated releases. Using the ranges also simplifies documentation requirements. Non-zero values below 1 are rounded to 1 to ensure that sites with small amounts of hazardous substances will receive a non-zero score for waste characteristics. When hazardous constituent quantity data are incomplete, the minimum hazardous waste quantity factor value is 10, except for: (1) Migration pathways that have any target subject to Level I or II concentrations; and (2) migration pathways where there has been a removal action and the hazardous waste quantity factor value would be 100 or greater without consideration of the removal action. In these cases, the minimum hazardous waste quantity factor value has been changed to 100 (see sections III C and III Q above for further discussion of the new minimum values).

*Section 2.4.3 Waste characteristics factor category value.* Explains how to assign a value to the waste characteristics factor category. As discussed above, the final waste characteristics factor value is capped at 100 (1,000 with bioaccumulation potential). Values are assigned by placing the product of the waste characteristics factors into ranges of one order of magnitude, to a cap of $10^8$ ($10^{12}$ if bioaccumulation potential is considered).

*Section 2.4.3.1 Factor category value.* Explains how to use Table 2–7 to assign a value to waste characteristics when bioaccumulation (or ecosystem bioaccumulation) potential is not considered.

*Section 2.4.3.2 Factor category value, considering bioaccumulation potential.* Explains how to use Table 2–7 to assign a value to waste characteristics when bioaccumulation (or ecosystem bioaccumulation) potential is considered.

*Section 2.5 Targets.* Explains how targets factors are evaluated. This approach generally involves three levels of evaluation (Level I, Level II, and Potential) and the use of media-specific concentration benchmarks, as discussed in section III H of this preamble. Level III has been dropped; use of benchmarks has been extended to all pathways and to factors that assign values to the nearest individual (well/intake). Also discusses assigning level based on direct observation and describes when tissue samples that do not establish actual contamination may be used in comparisons to benchmarks.

*Section 2.5.1 Determination of level of actual contamination at a sampling location.* Explains the approach used for evaluating the level of actual contamination at a sampling location; changes have been made to allow the level of actual contamination in the human food chain threat to be based on tissue samples from aquatic food chain organisms that cannot be used to establish an observed release.

*Section 2.5.2 Comparison to benchmarks.* Lists benchmarks and explains how to determine whether benchmarks have been equalled or exceeded (see section III H of this preamble); changes have been made to allow the level of actual contamination in the human food chain threat to be based on tissue samples from aquatic food chain organisms that cannot be used to establish an observed release.

*Section 3 Ground Water Migration Pathway*

The ground water migration pathway evaluates threats resulting from releases or potential releases of hazardous substances to aquifers. The major changes specific only to this pathway include replacement of the depth to aquifer/hydraulic conductivity and sorptive capacity factors with travel time and depth to aquifer factors; a revised approach for assigning mobility values; removal of the ground water use factors and their replacement by a resources factor; evaluation of the nearest well factor based on benchmarks; and revisions to scoring of sites having both karst and non-karst aquifers present.

*Section 3.0 Ground Water Migration Pathway.* Descriptive text has been removed. Figure 3–1 has been revised to reflect revisions to the factors evaluated, and Table 3–1 has been revised to reflect the new factor category values throughout.

*Section 3.0.1 General considerations.* The title has been changed.

*Section 3.0.1.1 Ground water target distance limit.* An explanation of the treatment of contaminated ground water plumes with no identified source has been added. For these plumes, measurement of the target distance limit begins at the center of the area of observed ground water contamination;

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the center is determined based on available data.

*Section 3.0.1.2 Aquifer boundaries.* Descriptive text has been removed.

*Section 3.0.1.2.1 Aquifer interconnections.* Descriptive text has been removed as have examples of information useful for identifying aquifer interconnections.

*Section 3.0.1.2.2 Aquifer discontinuities.* Descriptive text has been removed.

*Section 3.0.1.3 Karst aquifer.* Descriptive text has been removed, and references to factors have been revised to reflect changes in factors. Text was added to clarify that karst aquifers underlying any portion of the sources at a site are given special consideration.

*Section 3.1 Likelihood of release.* Descriptive text has been removed.

*Section 3.1.1 Observed release.* Description of the criteria for establishing an observed release has been revised as discussed in Section III G of this preamble.

*Section 3.1.2 Potential to release.* Text has been revised to reflect changes in the factors evaluated and to clarify that karst aquifers underlying any portion of the sources at a site are given special consideration in evaluating depth to aquifer and travel time.

*Section 3.1.2.1 Containment.* Explanatory text has been removed and the ground water containment table is referenced. Only sources that meet the minimum size requirement (i.e., that have a source hazardous waste quantity value of 0.5 or higher) are used in assigning containment factor values. This requirement has been added to ensure that very small, uncontained sources do not unduly influence the score. For example, a site might have a large, but highly contained source and a very small, uncontained source; without a minimum size requirement, potential to release could be assigned the maximum value based on the very small source, which could overestimate the potential hazard posed by the site. If no source meets the minimum size requirement, the highest ground water containment factor value assigned to the sources at the site is used as the factor value. Table 3–2—Containment Factor Values for Ground Water Migration Pathway, has been simplified by combining repetitious items and has been moved from an attachment to the proposed rule into the body of the rule.

*Section 3.1.2.2 Net precipitation.* A new map has been added as Figure 3–2 to assign net precipitation factor values. The equation for calculating monthly potential evapotranspiration was clarified. Descriptive text has been removed.

*Section 3.1.2.3 Depth to aquifer.* As described in section III L of this preamble, the depth to aquifer factor has replaced the sorptive capacity factor and is no longer combined in a matrix with hydraulic conductivity for scoring. Table 3–5 is new and provides the factor values. The depth to aquifer factor reflects the geochemical retardation capacity of the subsurface materials, which generally increases as the depth increases. Depth to aquifer factor values are assigned to three depth ranges. Clarifying language was added related to karst aquifers.

*Section 3.1.2.4 Travel time.* As discussed in section III L of this preamble, this factor replaces the depth to aquifer/hydraulic conductivity factor and is based on the least conductive layer(s) rather than on the conductivities of all layers between the hazardous substances and the aquifer. Table 3–7 has been revised to reflect these changes. Table 3–5 from the proposed rule has been renumbered as Table 3–6. Text on how to obtain information to score this factor has been removed. Clarifying language was added related to karst aquifers.

*Section 3.1.2.5 Calculation of potential to release factor value.* Text has been revised to reflect new factor names.

*Section 3.1.3 Calculation of likelihood of release factor category value.* New maximum value of 550 based on observed release has been added.

*Section 3.2 Waste characteristics.* Descriptive text has been removed.

*Section 3.2.1 Toxicity/mobility.* Descriptive text has been removed.

*Section 3.2.1.1 Toxicity.* References § 2.4.1.1.

*Section 3.2.1.2 Mobility.* As discussed in sections III F and III P of this preamble, the method for assigning mobility values to hazardous substances has been revised. Table 3–8 has been revised. Mobility values are now linear rather than categorical place holders and are assigned in a matrix combining water solubility and distribution coefficients. Mobility values may now vary by aquifer for a specific hazardous substance. The maximum mobility value is no longer assigned based on observed release by direct observation. A factor value of 0 is no longer assigned for mobility, as had been the case under the proposed rule, where categorical place-holder values were used; because mobility is now multiplied by toxicity and hazardous waste quantity, assigning a 0 value would result in a pathway score of 0. This result could understate the risk posed by a site with a large volume of highly toxic hazardous substances with low mobility. Furthermore, given the uncertainties about estimates of mobility in ground water and their applicability in site-specific situations, EPA determined that a 0 value should not be assigned to the mobility factor under any conditions.

*Section 3.2.1.3 Calculation of toxicity/mobility factor value.* Text has been simplified. Table 3–9 (proposed rule Table 3–10), the matrix for assigning factor values, has been revised to reflect the linear nature of the assigned values. Values for a specific hazardous substance may now vary by aquifer.

*Section 3.2.2 Hazardous waste quantity.* References § 2.4.2.

*Section 3.2.3 Calculation of waste characteristics factor category value.* Text has been revised to indicate the multiplication of the factors, the new maximum value, and the table used to assign the factor category value.

*Section 3.3 Targets.* Text has been revised to reflect the new names for factors. Descriptive text has been removed. Table 3–10 (Table 3–12 in the proposed rule) has been modified to list the revised benchmarks in this pathway.

*Section 3.3.1 Nearest well.* Title has been changed from maximally exposed individual. Text has been added to explain how to evaluate nearest wells with documented contamination (at Level I and II) and those potentially contaminated. Text was added to assign Level II contamination to any drinking water well where an observed release was established by direct observation. This section also explains how to evaluate wells drawing from karst aquifers. Table 3–11 has been renamed and the factor values have been changed. See section III B of this preamble for a discussion of the changes to assigned values for this factor.

*Section 3.3.2 Population.* As discussed in section III H, population is evaluated using health-based benchmarks for drinking water. For populations potentially exposed, population ranges are used to evaluate the factor. This section explains whom to count for population. Populations served by wells whose water is blended with that from other drinking water sources are to be apportioned based on the well's relative contribution to the total blended system. The rule includes instructions on the type of data to use when determining relative contributions of wells and intakes. This change is intended to reflect more accurately the exposure to populations through blended systems. The rule also includes instructions on how to apportion population for systems with standby wells or standby surface water intakes.



*Section 3.3.2.1 Level of contamination.* Explains how to evaluate population based on concentrations of hazardous substances in samples. Text was added to assign Level II contamination to any drinking water wells where there is an observed release by direct observation.

*Section 3.3.2.2 Level I concentrations.* Explains how to evaluate populations exposed to Level I concentrations. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 10.

*Section 3.3.2.3 Level II concentrations.* Explains how to evaluate populations exposed to Level II concentrations. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 1.

*Section 3.3.2.4 Potential contamination.* Explains how to assign values to populations potentially exposed to contamination from the site. The formula for calculating population values has been modified to reflect both the revised method for evaluating karst aquifers (see below) and the use of distance-weighted population values from Table 3–12, which has been added to assign distance-weighted values for populations in each distance category. The values are determined for each distance category and are then added across distance categories, and the sum is divided by 10 to derive the factor value for potentially contaminated population. The assigned values in Table 3–12 were determined by statistical simulation to yield the same population value, on average, as the use of the formulas in the proposed rule. The use of range values has been adopted as part of the simplification discussed in section III A. The rounding rules have also changed. The method for evaluating karst aquifers has been simplified and is explained in this section. Table 3–14 in the proposed rule, which included dilution weighting factors for the general case and for two special cases, has been removed, and the two special karst cases are no longer evaluated. (The generally applicable dilution factors for karst have not changed and are all incorporated into the distance-weighted population values in Table 3–12.) The scoring cap was eliminated, and the multiplier (i.e., weight) is now 0.1.

*Section 3.3.2.5 Calculation of population factor value.* Has been revised to reflect the changes in the evaluation of actually contaminated wells. The rounding rule has also been changed, and the scoring cap was eliminated.

*Section 3.3.3 Resources.* Describes how points are assigned to resource uses of ground water. Points may be assigned if there are no drinking water wells within the target distance limit, but the water is usable for drinking water. This scoring allows for consideration of potential future uses of the aquifers. (See section III I of this preamble for a discussion of the relative weighting of these factors.)

*Section 3.3.4 Wellhead protection area.* Explains how to assign values to this factor. The maximum value is assigned when a source or an observed release lies partially or fully within a wellhead protection area applicable to the aquifer being evaluated, and this value has been changed from 50 to 20 to adjust for scale changes. A new criterion for scoring this factor has been added. If a wellhead protection area applicable to the aquifer being evaluated is within the target distance limit and neither of the other conditions is met, a value of five is assigned. This change allows the HRS to place a value on the resource.

*Section 3.3.5 Calculation of targets factor category value.* Has been revised to reflect changes in the factor names. The rounding rule has been changed, and the scoring cap was eliminated.

*Section 3.4 Ground water migration score for an aquifer.* Text has been revised to reflect the new divisor for normalizing pathway scores.

*Section 3.5 Calculation of ground water migration pathway score.* Text has been simplified.

In addition to the above noted changes, the sorptive capacity factor has been eliminated and replaced by the depth to aquifer factor, as have the tables used to assign values to this factor (Tables 3–6 and 3–7 in the proposed rule). The ground water use factors have also been eliminated as have the tables used to assign their values (Tables 3–15 and 3–16 in the proposed rule). Figures 3–2, 3–3, and 3–4 and Tables 3–4, 3–8, 3–9, 3–13 of the proposed rule have been removed.

*Section 4 Surface Water Migration Pathway*

The surface water migration pathway evaluates threats resulting from releases or potential releases of hazardous substances to surface water bodies. One major change to this pathway is the addition of a new component for scoring ground water discharge to surface water; either this component or the overland flow/flood migration component or both may be scored. For each component, three threats are evaluated: drinking water threat, human food chain threat, and environmental threat. Other major changes specific to this pathway include elimination of the recreational use threat; simplification of overland flow potential to release factors; modifications to the human food chain threat including addition of a food chain individual; modifications to the treatment of bioaccumulation potential and addition of a similar factor, ecosystem bioaccumulation potential, to the evaluation of the environmental threat; modifications to the persistence factor; revisions to the dilution weights; additions of benchmarks, extension of benchmarks to evaluation of the nearest intake, and addition of levels of contamination to the human food chain targets; modifications to criteria for establishing actual food chain contamination; elimination of the surface water use factor; addition of a resources factor to the targets evaluation in the drinking water threat; and revisions to sensitive environments.

*Section 4.0 Surface Water Migration Pathway.* New structure of the pathway is explained. Descriptive text has been removed. Figure 4–1 has been revised to reflect revisions to the factors evaluated, and Table 4–1 has been revised to reflect the new factor category values throughout.

*Section 4.0.1 Migration components.* Explains how to score the two migration components.

*Section 4.0.2 Surface water categories.* A definition of coastal tidal waters has been added. Some surface water bodies that belong in this new category were listed in other categories in the proposed rule (e.g., bays and wetlands contiguous with oceans). Isolated perennial wetlands have been added to the definition of lakes; salt water harbors largely protected by seawalls have been removed from the definition of lakes. Ocean has been defined more precisely as areas seaward from the baseline of the Territorial Sea. Contiguous bays have been removed from, and wetlands contiguous to the Great Lakes have been added to ocean and ocean-like bodies. These definitional changes/clarifications more accurately reflect the different characteristics of the water bodies.

*Section 4.1 Overland flow/flood migration component.* As discussed in section III M of this preamble, the surface water migration pathway has been divided into two components. The overland flow/flood component is essentially the surface water migration pathway as proposed except that the recreational use threat has been eliminated.

*Section 4.1.1 General considerations.* Consists of several subsections.

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*Section 4.1.1.1 Definition of the hazardous substance migration path for overland flow/flood migration component.* Text has been simplified.

*Section 4.1.1.2 Target distance limit.* Explains target distance limits for sites in general and adds an explanation of how to calculate the target distance limit for contaminated sediments with no identified source. For these latter sources only, when there is a clearly defined direction of flow, the target distance limit is measured beginning at the observed sediment contamination farthest upstream; when there is no clearly defined direction of flow, the target distance limit is measured from the center of the area of observed sediment contamination. Discusses the determination of whether surface water targets are subject to actual or potential contamination. Also, text was added to assign Level II to targets subject to actual contamination based on direct observation.

*Section 4.1.1.3 Evaluation of the overland flow/flood migration component.* Explains that for multiple watersheds, highest score assigned to a watershed is used instead of summing watershed scores as proposed.

*Section 4.1.2 Drinking water threat.* Descriptive text has been removed.

*Section 4.1.2.1 Drinking water threat—likelihood of release.* Text has been simplified to clarify when potential to release factors need to be evaluated.

*Section 4.1.2.1.1 Observed release.* Text has been revised to reflect the changed maximum value.

*Section 4.1.2.1.2 Potential to release.* Text has been revised to reflect the changed maximum value and has been simplified.

*Section 4.1.2.1.2.1 Potential to release by overland flow.* Explains when overland flow potential to release is not evaluated.

*Section 4.1.2.1.2.1.1 Containment.* Text has been revised to reflect changes in the numbering of the containment table. Only sources that meet the minimum size requirement (i.e., that have a source hazardous waste quantity value of 0.5 or higher) are used in assigning containment values. This requirement has been added to ensure that very small, uncontained sources do not unduly influence the score. For example, a site might have a large, but highly contained source and a very small, uncontained source; without a minimum size requirement, the potential to release could be assigned the maximum value based on the very small source, which could overestimate the potential hazard posed by the site. If no source meets the minimum size requirement, the source with the highest surface water containment factor value is used. Descriptive text has been removed. Table 4–2, Containment Factor Values for Surface Water Migration Pathway, has been simplified by combining repetitious items and has been moved from an attachment to the proposed rule into this section of the final rule.

*Section 4.1.2.1.2.1.2 Runoff.* Text on evaluating rainfall has been simplified by removing explanatory references. The runoff curve number has been simplified by substituting a soil group designation in its place. Table 4–4 (proposed rule Table 4–2) has been revised to list only the soil group designations. Based on analyses of runoff and actual drainage area sizes, Table 4–3 (proposed rule Table 4–3) has been revised by changing the divisions of drainage area size. Table 4–5 (proposed rule Table 4–4) has been revised to reflect the changes related to the use of soil group designations. Table 4–6 (proposed rule Table 4–5) has been revised so that the heading in the table reads Rainfall/Runoff Value; the values assigned have been adjusted on the basis of both the higher maximum value assigned to the factor category and the analyses described above. Explanatory text has been removed.

*Section 4.1.2.1.2.1.3 Distance to surface water.* Values assigned to distance to surface water factor values in Table 4–7 (proposed rule Table 4–6) have been revised to adjust for the higher maximum assigned to the factor category.

*Section 4.1.2.1.2.1.4 Calculation of the factor value for potential to release by overland flow.* Has not been changed except for assigned value.

*Section 4.1.2.1.2.2 Potential to release by flood.* Descriptive text has been removed.

*Section 4.1.2.1.2.2.1 Containment (flood).* Text in Table 4–8 (proposed rule Table 4–7) has been revised to incorporate new language on required documentation on containment. The requirement for certification by an engineer has been dropped. The new documentation requirements have been added to make the rule consistent with RCRA requirements.

*Section 4.1.2.1.2.2.2 Flood frequency.* Values assigned to this factor by Table 4–9 (proposed rule Table 4–8) have been revised to better reflect probabilities and to adjust for the higher maximum assigned to the factor category. Descriptive text has been removed.

*Section 4.1.2.1.2.2.3 Calculation of the factor value for potential to release by flood.* Has been revised to reflect a minimum size requirement for sources.

*Section 4.1.2.1.2.3 Calculation of potential to release factor value.* Text has been simplified, and the assigned value has been changed.

*Section 4.1.2.1.3 Calculation of drinking water threat—likelihood of release factor category value.* Text has been simplified. The maximum value has been changed, and the maximum for potential to release is no longer equal to the maximum for observed release.

*Section 4.1.2.2 Drinking water threat—waste characteristics.* Descriptive text has been removed.

*Section 4.1.2.2.1 Toxicity/persistence.* Editorial changes have been made.

*Section 4.1.2.2.1.1 Toxicity.* References § 2.4.1.1.

*Section 4.1.2.2.1.2 Persistence.* As discussed in section III F of this preamble, several changes have been made to this factor, including the deletion of free-radical oxidation as a decay process and the inclusion of consideration of $K_{oc}$ to account for sorption to sediments. Table 4–10 (proposed rule Table 4–9) has been revised to change the values assigned from categorical numbers to linear scales. The divisions among the half-lives for rivers, oceans, coastal tidal waters, and Great Lakes have changed based on a study of travel time, and the text has been modified to clarify the procedure for determining whether to base the persistence factor on lakes or on rivers, oceans, coastal tidal waters, and Great Lakes. A factor value of 0 is no longer assigned for persistence, as had been the case under the proposed rule, where categorical place-holder values were used; because persistence is now multiplied by toxicity and hazardous waste quantity, assigning a 0 value would result in a pathway score of 0. This result could understate the risk posed by a site with a large volume of highly toxic hazardous substances with low persistence. Furthermore, given the uncertainties about half-life estimates and their applicability in site-specific situations, EPA determined that a 0 value should not be assigned to the persistence factor under any conditions. The text has been modified to clarify selection of an appropriate default value. Table 4–11—Persistence Values—Log $K_{oc}$, has been added. Descriptive text has been removed.

*Section 4.1.2.2.1.3 Calculation of toxicity/persistence factor value.* Table reference has been changed to reflect the change in numbering. Table 4–12 (proposed rule Table 4–10) has been changed to reflect the multiplicative relationship.



*Section 4.1.2.2.2 Hazardous waste quantity.* References § 2.4.2.

*Section 4.1.2.2.3 Calculation of drinking water threat—waste characteristics factor category value.* Text has been revised to indicate the multiplication of the factors, the new maximum value, and the table used to assign the factor category value.

*Section 4.1.2.3 Drinking water threat—targets.* Descriptive text has been removed. Text was added to assign Level II to actual contamination based on direct observation.

*Section 4.1.2.3.1 Nearest intake.* Title and the factor name have been changed. As discussed in Section III B of this preamble, this factor is now assigned values based on health-based benchmarks. Instructions for how to assign dilution weights to closed lakes and lakes with no surface flow entering have been added. Table 4–13, Surface Water Dilution Weights (proposed rule Table 4–11), has been revised to add more types of surface water bodies and to change the dilution weights. These changes have been made to reflect more accurately the flow ranges of water bodies and are based on analysis of data on flow rates and dilution.

*Section 4.1.2.3.2 Population.* As explained above, population is evaluated based on two levels of actual contamination. Targets potentially contaminated are dilution weighted and are assigned values based on ranges. Populations served by intakes which are blended with water from other drinking water sources are to be apportioned based on the intake's relative contribution to the total blended system. The rule includes instructions on the type of data to use when determining relative contributions of intakes and wells. This change is intended to reflect more accurately the exposure of populations through blended systems. The rule also includes instructions on how to apportion population for systems with standby wells or standby surface water intakes.

*Section 4.1.2.3.2.1 Level of contamination.* Explains how to evaluate population based on the level of contamination to which they are exposed.

*Section 4.1.2.3.2.2 Level I concentrations.* Descriptive text has been removed. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 10.

*Section 4.1.2.3.2.3 Level II concentrations.* Text has been simplified and revised to reflect the changes discussed above. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 1.

*Section 4.1.2.3.2.4 Potential contamination.* Equation used to calculate this factor has been revised as discussed above. A new table, Table 4–14, Dilution-Weighted Population Values for Potential Contamination Factor for Surface Water Migration Pathway, has been added to assign values, which are then added across different surface water body types and divided by 10 to derive the value for potentially contaminated population. The assigned values in Table 4–14 for each population range category were determined by statistical simulation to yield the same population value, on average, as the use of the formulas in the proposed rule. The use of range values has been added as part of the simplification discussed in section III A. The rounding rule has also been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 0.1.

*Section 4.1.2.3.2.5 Calculation of population factor value.* Explains how to combine values assigned to the three population groups. The rounding rule has also been changed, and the scoring cap was eliminated.

*Section 4.1.2.3.3 Resources.* As discussed in section III J of this preamble, this factor has been added to account for the potential impact of surface water contamination on resource uses.

*Section 4.1.2.3.4 Calculation of drinking water threat—targets factor category value.* Has been revised to reflect the changes in this factor category. The rounding rule has also been changed, and the scoring cap was eliminated.

*Section 4.1.2.4 Calculation of drinking water threat score for a watershed.* Text has been simplified. The divisor has changed.

*Section 4.1.3 Human food chain threat.* Descriptive text has been removed.

*Section 4.1.3.1 Human food chain threat—likelihood of release.* Section references have been changed.

*Section 4.1.3.2 Human food chain threat—waste characteristics.* Text has been simplified.

*Section 4.1.3.2.1 Toxicity/persistence/bioaccumulation.* Text has been simplified and modified because of the change in the use of bioaccumulation potential in selecting the substance potentially posing the greatest hazard.

*Section 4.1.3.2.1.1 Toxicity.* Has been changed to reference § 2.4.1.1. Also changed so that evaluation of toxicity is not limited to substances with the highest bioaccumulation potential.

*Section 4.1.3.2.1.2 Persistence.* Clarifies how to evaluate persistence for contaminated sediment sources, and adds coastal tidal waters as a category of surface water. Also changed so that evaluation of persistence is not limited to substances with the highest bioaccumulation potential.

*Section 4.1.3.2.1.3 Bioaccumulation potential.* As described in section III M of this preamble, the method of accounting for bioaccumulation potential in the selection of the substance potentially posing the greatest hazard has been changed. In the final rule, bioaccumulation potential is considered together with toxicity and persistence rather than as a primary selection criterion. This change was made because all three factors are now scored on linear scales. In addition, where data exist, separate bioconcentration factor values are assigned for salt water and fresh water; the text now clarifies that the higher of these values is used for fisheries in brackish water and for sites with fisheries present in both salt water and fresh water. The adjustment for biomagnification has been dropped because it tended to double count bioaccumulation. Both Table 4–15 (Table 4–14 in the proposed rule) and the text have been modified to clarify the data hierarchy for assigning bioaccumulation potential factor values. Also, Table 4–15 now makes it clear that the assigned values for bioaccumulation potential are on a linear scale.

*Section 4.1.3.2.1.4 Calculation of toxicity/persistence/bioaccumulation factor value.* Explains how to calculate a toxicity/persistence/bioaccumulation value. Table 4–16, Toxicity/Persistence/Bioaccumulation, has been added to assign the factor value.

*Section 4.1.3.2.2 Hazardous waste quantity.* References § 4.1.2.2.2.

*Section 4.1.3.2.3 Calculation of human food chain threat—waste characteristics factor category value.* Text has been revised to indicate the multiplication of the toxicity/persistence and hazardous waste quantity factor values, subject to a maximum, and the further multiplication of that product by the bioaccumulation potential factor value, subject to a maximum for this second product, and to reference the table for assigning the factor category value.

*Section 4.1.3.3 Human food chain threat—targets.* Has been revised to reflect addition of the new food chain individual and the deletion of the fishery use factor. As discussed in section III M of this preamble, criteria for establishing a fishery subject to actual contamination have been revised. Text was added to describe the additional

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tissue samples that can be used to establish Level I contamination.

*Section 4.1.3.3.1 Food chain individual.* As discussed in section III M of this preamble, this factor is new. This section explains how to assign a value to the factor.

*Section 4.1.3.3.2 Population.* Has been changed as discussed in section III M of this preamble.

*Section 4.1.3.3.2.1 Level I concentrations.* The approach to calculating this factor value has been revised as discussed in section III M of this preamble. The rounding rule has been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 10.

*Section 4.1.3.3.2.2 Level II concentrations.* Explains how to assign values as discussed in section III M of this preamble. The rounding rule has been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 1.

*Section 4.1.3.3.2.3 Potential human food chain contamination.* The approach to calculating this factor value has been revised as discussed in section III M of this preamble. The rounding rule has been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 0.1.

*Section 4.1.3.3.2.4 Calculation of the population factor value.* Text has been revised to omit the maximum. The rounding rule has been changed, and the scoring cap was eliminated.

*Section 4.1.3.3.3 Calculation of human food chain threat—targets factor category value.* Explains how to calculate the targets value. The rounding rule has been changed, and the scoring cap was eliminated.

*Section 4.1.3.4 Calculation of human food chain threat score for a watershed.* Text has been simplified. The divisor has changed.

*Section 4.1.4 Environmental threat.* Descriptive text has been removed.

*Section 4.1.4.1 Environmental threat—likelihood of release.* Section references have been changed.

*Section 4.1.4.2 Environmental threat—waste characteristics.* Descriptive text has been removed.

*Section 4.1.4.2.1 Ecosystem toxicity/persistence/bioaccumulation.* Text has been revised to include the addition of ecosystem bioaccumulation potential as a multiplicative factor.

*Section 4.1.4.2.1.1 Ecosystem toxicity.* The approach for evaluating ecosystem toxicity has been revised. Additions have been made to the data hierarchy (see section III J of this preamble), and a default value of 100 was added to cover the situation where appropriate aquatic toxicity data were unavailable for all of the substances being evaluated. Table 4–19 (proposed rule Table 4–23) has been revised to make the factor linear and to eliminate the rating category of 0 (except when data are unavailable for a given substance); these changes make the ecosystem toxicity factor more consistent with the toxicity factor in the other pathways and threats. Text was added to clarify the evaluation of ecosystem toxicity for brackish water.

*Section 4.1.4.2.1.2 Persistence.* Section references have been changed. Clarifies how to evaluate persistence for contaminated sediment sources, and adds coastal tidal waters as a category of surface water.

*Section 4.1.4.2.1.3 Ecosystem bioaccumulation potential.* As explained in section III J of this preamble, this factor is new for this threat and is evaluated similarly to (but with several key differences from) the bioaccumulation potential factor in the human food chain threat.

*Section 4.1.4.2.1.4 Calculation of ecosystem toxicity/persistence/bioaccumulation factor value.* Section references have been changed. Table 4–20 (proposed rule Table 4–24) has been changed to reflect the changes in the values for the factors. Table 4–21, Ecosystem Toxicity/Persistence/Bioaccumulation Values, is new and assigns values for the combined toxicity/persistence/bioaccumulation factor.

*Section 4.1.4.2.2 Hazardous waste quantity.* Section references have been changed.

*Section 4.1.4.2.3 Calculation of environmental threat—waste characteristics factor category value.* Text has been revised to indicate the multiplication of the ecosystem toxicity/persistence and hazardous waste quantity factor values, subject to a maximum, and the further multiplication of that product by the ecosystem bioaccumulation potential factor value, subject to a maximum for this second product, and to reference the table for assigning the factor category value.

*Section 4.1.4.3 Environmental threat—targets.* Descriptive text has been removed.

*Section 4.1.4.3.1 Sensitive environments.* Explains how to evaluate sensitive environments. Table 4–22, Ecological-Based Benchmarks for Hazardous Substances in Surface Water, has been revised as described in section III H of this preamble. The rounding rule has also been changed.

*Section 4.1.4.3.1.1 Level I concentrations.* Explains the new method of evaluating wetlands based on wetland frontage, or, in some situations, wetland perimeter. Table 4–23, Sensitive Environments Rating Values, has been revised as discussed in section III J of this preamble. Table 4–24, Wetlands Rating Values for Surface Water Migration Pathway, has been added to assign values to wetlands based on the total length of wetlands. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 10.

*Section 4.1.4.3.1.2 Level II concentrations.* Has been revised to reflect the method of evaluating wetlands. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 1.

*Section 4.1.4.3.1.3 Potential contamination.* Has been revised to reflect the method of evaluating wetlands. The rounding rule has also been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 0.1.

*Section 4.1.4.3.1.4 Calculation of environmental threat—targets factor category value.* Has been revised to remove the maximum from the targets factor category. The rounding rule has also been changed.

*Section 4.1.4.4 Calculation of environmental threat score for a watershed.* Divisor for the threat has changed. A cap of 60 was explicitly placed on the environmental threat score, which results in the same maximum possible threat score as in the proposed rule. (In the proposed rule, environmental threat targets were capped at 120, which resulted in an environmental threat score maximum of 60.) However, in the final rule the targets category is uncapped and can score higher than 120 to compensate for low scores in other factor categories.

*Section 4.1.5 Calculation of overland flow/flood migration component score for a watershed.* Explains how to calculate the score for the watershed.

*Section 4.1.6 Calculation of overland flow/flood migration component score.* Explains how to calculate the score for the component based on the highest watershed score (in the proposed rule watershed scores were summed).

*Section 4.2 Ground water to surface water migration component.* As discussed in section III M of this preamble, this component has been added to the rule to account for contamination of surface water bodies through ground water migration of hazardous substances. Thus, all sections referring to this component are new.

*Section 4.2.1 General considerations.*

*Section 4.2.1.1 Eligible surface waters.* Explains the conditions that must apply before this component is scored. In general, this component is scored only when there is a surface water within one mile of a source, the top of the uppermost aquifer is at or above the bottom of the surface water, and no aquifer discontinuity is established between the source and the portion of surface water within one mile of the source. Exceptions are also explained.

*Section 4.2.1.2 Definition of the hazardous substance migration path for ground water to surface water migration component.* Explains that the migration path is defined as shortest straight-line distance, within the aquifer boundary, from a source to surface water.

*Section 4.2.1.3 Observed release of a specific hazardous substance to surface water in-water segment.* Explains that before an observed release of an individual hazardous substance can be established to the surface water in-water segment, the substance must meet the criteria for an observed release both to ground water and to surface water (this requirement does not affect the actual scoring of observed release). Also clarifies the use of samples from the surface water in-water segment.

*Section 4.2.1.4 Target distance limit.* Explains the criteria for determining the target distance limit and for establishing whether targets are subject to actual or potential contamination.

*Section 4.2.1.5 Evaluation of the ground water to surface water migration component.* Explains the general approach for evaluating this component. Figure 4–2, Overview of Ground Water to Surface Water Migration Component, is new. Table 4–25, which is new, provides the scoring sheets for this component.

*Section 4.2.2 Drinking water threat.* Explains the general approach for evaluating this threat.

*Section 4.2.2.1 Drinking water threat—likelihood of release.* Explains the general approach for evaluating this factor category.

*Section 4.2.2.1.1 Observed release.* Explains that scoring an observed release is based on releases to ground water.

*Section 4.2.2.1.2 Potential to release.* Explains that scoring is based on the scoring of potential release to uppermost aquifer.

*Section 4.2.2.1.3 Calculation of drinking water threat—likelihood of release factor category value.* Explains how to assign the factor category value.

*Section 4.2.2.2 Drinking water threat—waste characteristics.* Explains the general approach for evaluating this factor category.



*Section 4.2.2.2.1 Toxicity/mobility/persistence.* Explains the approach for evaluating these factors.

*Section 4.2.2.2.1.1 Toxicity.* Explains that toxicity values are assigned to all hazardous substances available to migrate to ground water.

*Section 4.2.2.2.1.2 Mobility.* Explains that the mobility value is assigned to all hazardous substances available to migrate to ground water.

*Section 4.2.2.2.1.3 Persistence.* Explains that this factor value is assigned as in the drinking water threat for the overland flow/flood migration component for all hazardous substances available to migrate to ground water.

*Section 4.2.2.2.1.4 Calculation of toxicity/mobility/persistence factor value.* Explains that the factor value is the highest value assigned to any hazardous substance evaluated using Table 4–26, which is new.

*Section 4.2.2.2.2 Hazardous waste quantity.* Explains that hazardous waste quantity is calculated for hazardous substances available to migrate to ground water.

*Section 4.2.2.2.3 Calculation of drinking water threat—waste characteristics factor category value.* Explains how to calculate the factor category value.

*Section 4.2.2.3 Drinking water threat—targets.* Explains the general approach for evaluating this factor category.

*Section 4.2.2.3.1 Nearest intake.* Explains how to determine the dilution weight adjustment using Table 4–27, which was added, and how to assign factor values. Figure 4–3 was added to illustrate determination of the ground water to surface water angle. (See section III O of this preamble for a discussion of this adjustment.)

*Section 4.2.2.3.2 Population.* This section parallels other population factor sections.

*Section 4.2.2.3.2.1 Level I concentrations.* Parallels the population factor sections in the overland flow/flood migration component.

*Section 4.2.2.3.2.2 Level II concentrations.* Parallels the population factor sections in the overland flow/flood migration component.

*Section 4.2.2.3.2.3 Potential contamination.* Parallels the population factor sections in the overland flow/flood migration component, except for addition of the dilution weight adjustment.

*Section 4.2.2.3.2.4 Calculation of population factor value.* Parallels other population factor sections.

*Section 4.2.2.3.3 Resources.* Parallels other resources factor sections.

*Section 4.2.2.3.4 Calculation of the drinking water threat—targets factor category value.* Explains how to calculate the factor category value.

*Section 4.2.2.4 Calculation of drinking water threat score for a watershed.* Explains how to calculate the score for a watershed.

*Section 4.2.3 Human food chain threat.* Lists the factors evaluated.

*Section 4.2.3.1 Human food chain threat—likelihood of release.* Explains how to assign the factor category value.

*Section 4.2.3.2 Human food chain threat—waste characteristics.* Lists the factors evaluated.

*Section 4.2.3.2.1 Toxicity/mobility/persistence/bioaccumulation.* Explains how to calculate these factor values using Table 4–28, which is new.

*Section 4.2.3.2.1.1 Toxicity.* Explains how to calculate this factor value.

*Section 4.2.3.2.1.2 Mobility.* Explains how to calculate this factor value.

*Section 4.2.3.2.1.3 Persistence.* Explains how to calculate this factor value.

*Section 4.2.3.2.1.4 Bioaccumulation potential.* Explains how to calculate this factor value.

*Section 4.2.3.2.1.5 Calculation of toxicity/mobility/persistence/bioaccumulation factor value.* Explains how to calculate this value using Tables 3–9, 4–28, and 4–28.

*Section 4.2.3.2.2 Hazardous waste quantity.* Explains how to assign the factor value.

*Section 4.2.3.2.3 Calculation of human food chain threat—waste characteristics factor category value.* Explains how to calculate this factor category value.

*Section 4.2.3.3 Human food chain threat—targets.* Explains the factors to be evaluated.

*Section 4.2.3.3.1 Food chain individual.* Explains how to assign the factor value.

*Section 4.2.3.3.2 Population.* Explains how to calculate this factor value.

*Section 4.2.3.3.2.1 Level I concentrations.* Parallels the population factor in the human food chain threat for the overland flow/flood migration component.

*Section 4.2.3.3.2.2 Level II concentrations.* Parallels the population factor in the human food chain threat for the overland flow/flood migration component.

*Section 4.2.3.3.2.3 Potential human food chain contamination.* Parallels the population factor in the human food chain threat for the overland flow/flood component, except for addition of the dilution weight adjustment.

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*Section 4.2.3.3.2.4 Calculation of the population factor value.* Explains how to calculate this factor value.

*Section 4.2.3.3.3 Calculation of human food chain threat—targets factor category value.* Explains how to calculate this factor category value.

*Section 4.2.3.4 Calculation of human food chain threat score for a watershed.* Explains how to calculate the score for a watershed.

*Section 4.2.4 Environmental threat.* Lists the factors evaluated.

*Section 4.2.4.1 Environmental threat—likelihood of release.* Explains how to calculate this factor category value.

*Section 4.2.4.2 Environmental threat—waste characteristics.* Explains how to calculate this factor category value.

*Section 4.2.4.2.1 Ecosystem toxicity/mobility/persistence/bioaccumulation.* Explains how to calculate these factor values.

*Section 4.2.4.2.1.1 Ecosystem toxicity.* Explains how to calculate this factor value.

*Section 4.2.4.2.1.2 Mobility.* Explains how to calculate this factor value.

*Section 4.2.4.2.1.3 Persistence.* Explains how to calculate this factor value.

*Section 4.2.4.2.1.4 Ecosystem bioaccumulation potential.* Parallels the ecosystem bioaccumulation evaluation in the overland flow/flood component, except expands the species considered as discussed in section III J.

*Section 4.2.4.2.1.5 Calculation of ecosystem toxicity/mobility/persistence/bioaccumulation factor value.* Explains how to calculate this factor value using Tables 3–9, 4–29, and 4–30, which were added.

*Section 4.2.4.2.2 Hazardous waste quantity.* Explains how to calculate this factor value.

*Section 4.2.4.2.3 Calculation of environmental threat—waste characteristics factor category value.* Explains how to calculate this factor category value.

*Section 4.2.4.3 Environmental threat—targets.* Explains how to calculate this factor category value.

*Section 4.2.4.3.1 Sensitive environments.* Explains how to calculate this factor value.

*Section 4.2.4.3.1.1 Level I concentrations.* Parallels factor sections in the overland flow/flood migration component.

*Section 4.2.4.3.1.2 Level II concentrations.* Parallels factor sections in the overland flow/flood migration component.

*Section 4.2.4.3.1.3 Potential contamination.* Parallels factor sections in the overland flow/flood migration component, except for addition of the dilution weight adjustment.

*Section 4.2.4.3.1.4 Calculation of environmental threat—targets factor category value.* Explains how to calculate the value for the factor category.

*Section 4.2.4.4 Calculation of environmental threat score for a watershed.* Explains how to calculate this threat score for a watershed.

*Section 4.2.5 Calculation of ground water to surface water migration component score for a watershed.* Explains how to calculate a watershed score for this component.

*Section 4.2.6 Calculation of ground water to surface water migration component score.* Explains how to calculate this score based on the scores for watersheds evaluated for this component.

*Section 4.3 Calculation of surface water migration pathway score.* Explains how to assign the pathway score.

In addition to the above noted changes, the recreational use threat has been eliminated. The drinking water use and other use factors have also been eliminated as have the tables (4–12 and 4–13 in the proposed rule) that related to scoring these factors. Figures 4–1, 4–2, and 4–3 as well as Tables 4–15, and 4–17 through 4–22 from the proposed rule have been eliminated.

*Section 5 Soil Exposure Pathway*

The soil exposure pathway evaluates threats resulting from contamination of surface material. The major changes specific to this pathway include revision of the name of the pathway; elimination of children under seven as a population that must be counted and evaluated separately; addition of hazardous waste quantity to the waste characteristics factor category; inclusion of workers in the evaluation of resident population targets; weighting of resident population based on benchmarks; inclusion of the nearest individual factor in both the resident and nearby targets factor category; inclusion of a resources factor in the resident population evaluation; and revisions to the sensitive environments factor.

*Section 5.0 Soil Exposure Pathway.* The name of the pathway has been changed from onsite exposure to soil exposure. Descriptive text has been removed. Figure 5–1 has been revised to reflect revisions to the factors evaluated. Table 5–1 has been revised to reflect the new factor category values throughout, which were made more consistent with the other pathways.

*Section 5.0.1 General considerations.* Has been revised to reflect the redefinition of source, discussed in section III N of this preamble. The methods for establishing areas of observed contamination and for determining the hazardous substances associated with an area of observed contamination have been clarified. The instructions have been revised to make clear that any part of a site that is covered by a permanent or otherwise maintained impermeable material such as asphalt is not considered in evaluating the pathway.

*Section 5.1 Resident population threat.* Has been revised to specify when the resident population threat should be evaluated. The requirements state that this threat is scored when there is an area of observed contamination within the property boundary and within 200 feet of a residence, school, day care center, or workplace, or within the boundaries of terrestrial sensitive environments and specified resources.

*Section 5.1.1 Likelihood of exposure.* Text has been simplified.

*Section 5.1.2 Waste characteristics.* Evaluation of waste characteristics has been changed to include hazardous waste quantity as well as toxicity. Hazardous waste quantity was added to the factor category in response to comments that the pathway did not consider the dose relationship; the combination of hazardous waste quantity and toxicity is a surrogate for that relationship and makes the pathway more consistent with the rest of the rule. The text has been revised to reflect the change.

*Section 5.1.2.1 Toxicity.* References the section explaining how to assign toxicity factor values.

*Section 5.1.2.2 Hazardous waste quantity.* This section is new and explains how to assign a value to this factor. Table 5–2, Hazardous Waste Quantity Evaluation Equations for Soil Exposure Pathway, is a revision of Table 2–14 from the proposed rule. This table differs from Table 2–5 of the final rule because generally only the top two feet of an area of observed contamination are considered in evaluating the pathway. Landfills, contaminated soils, waste piles, land treatment areas, dry surface impoundments, and buried/backfilled surface impoundments, which can be evaluated based on their volume in Table 2–5, are evaluated for this pathway using the area measure because the area measure now has a two-foot depth built into the equation. Surface impoundments containing



hazardous substances present as liquids, tanks, and containers may be evaluated based on volume because it is possible that a person could wade, swim, reach, or fall to a depth greater than two feet.

*Section 5.1.2.3 Calculation of waste characteristics factor category value.* Explains how to combine the toxicity and hazardous waste quantity factor values, subject to the new maximum.

*Section 5.1.3 Targets.* This factor category has been revised substantially. As discussed in section III N above, the high-risk target population has been eliminated, and workers have been added as targets. Table 5–3, Health-Based Benchmarks for Hazardous Substances in Soils, has been added to list benchmarks appropriate for this pathway.

*Section 5.1.3.1 Resident individual.* The resident individual factor has been added for consistency with other pathways.

*Section 5.1.3.2 Resident population.* Explains how to evaluate the resident population using health-based benchmarks, described in section III H above, and how to estimate this population.

*Section 5.1.3.2.1 Level I concentrations.* Explains how to assign a value for this new factor.

*Section 5.1.3.2.2 Level II concentrations.* Explains how to assign a value for this new factor.

*Section 5.1.3.2.3 Calculation of resident population factor value.* Explains how to calculate this factor value.

*Section 5.1.3.3 Workers.* Explains how to evaluate workers.

*Section 5.1.3.4 Resources.* Explains how to assign values if the area of observed contamination includes land used for commercial agriculture, commercial silviculture, or commercial livestock grazing or production.

*Section 5.1.3.5 Terrestrial sensitive environments.* The value assigned for this factor has been revised so that the value is based on the sum of the values assigned to terrestrial sensitive environments in areas of observed contamination, rather than on the highest scoring terrestrial sensitive environment. The maximum value that can be assigned to this factor is limited, but is higher than under the proposed rule. The limit is determined by scoring the pathway with only sensitive environments in the targets factor category; the pathway score under these conditions may not exceed 60 points. The sensitive environments listed in Table 5–5 have been modified. The text has been simplified and references changed to correspond to changes in the rule. The rounding rule has been changed.

*Section 5.1.3.6 Calculation of resident population targets factor category value.* Explains how to calculate the factor category value from the revised factors. The rounding rule has been changed.

*Section 5.1.4 Calculation of resident population threat score.* Has only minor editorial changes.

*Section 5.2 Nearby population threat.* Introductory text has been clarified.

*Section 5.2.1 Likelihood of exposure.* Lists the factors evaluated.

*Section 5.2.1.1 Attractiveness/accessibility.* As explained in section III N of this preamble, the name of this factor has changed as have the criteria used to assign values. This factor now emphasizes the use of the area by the general public. Descriptive text has been removed. Table 5–6 (proposed rule Table 5–4) has been changed by redefining the criteria and the assigned values, and by adding a value of 0 for sites that are physically inaccessible to the public.

*Section 5.2.1.2 Area of contamination.* The title of this section has been changed. This factor is now based solely on area of contamination, which relates to the likelihood of exposure, unlike hazardous waste quantity, which serves as part of the surrogate for dose. Values are assigned using Table 5–7, which is new.

*Section 5.2.1.3 Likelihood of exposure factor category value.* Text has been revised to reflect the new names of the factors. Table 5–8 (proposed rule Table 5–5) has been revised in response to the changes noted above for the attractiveness/accessibility and area of contamination factors.

*Section 5.2.2 Waste characteristics.* Text has been revised to reflect changes in the factor category.

*Section 5.2.2.1 Toxicity.* Explains how to evaluate the toxicity factor for the nearby population threat.

*Section 5.2.2.2 Hazardous waste quantity.* This section is new, as is consideration of this factor in this threat. As discussed above, this factor has been added in response to comments and to make the pathway more consistent with the other pathways. The section explains how to assign the factor value.

*Section 5.2.2.3 Calculation of waste characteristics factor category value.* Explains how to combine the toxicity and hazardous waste quantity factor values, subject to the new maximum.

*Section 5.2.3 Targets.* Descriptive text has been removed.

*Section 5.2.3.1 Nearby individual.* This section is new and explains how to assign a value to the nearby individual (i.e., resident or student with shortest travel distance) if there is no resident individual. The factor has been added to make the nearby threat consistent with other pathways. Table 5–8, Nearby Individual Factor Values, is new.

*Section 5.2.3.2 Population within one mile.* This section is new and includes the text that previously appeared under the Targets section. The section explains how to assign a value using Table 5–10. The text has been revised for clarity. Table 5–10, Distance-Weighted Population Values for Nearby Population Threat, is new. The table assigns distance-weighted values for population in each travel distance category. The values in the table were determined by statistical simulation to yield the same population, on average, as the use of the formulas in the proposed rule. The distance weights have been modified as follows: for travel distance of >0 to ¼ mile, the assigned distance weight is 0.025; for >¼ to ½ mile, 0.0125, and for >½ to 1 mile, 0.00625. The use of population ranges has been adopted as part of the simplification discussed in section III A.

*Section 5.2.3.3 Calculation of nearby population targets factor category value.* Text has been revised to reflect the changes in the targets factor category and in the rounding rule.

*Section 5.2.4 Calculation of nearby population threat score.* Minor editorial changes only.

*Section 5.3 Calculation of the soil exposure pathway score.* Has been changed to reflect the change in the value used as a divisor.

In addition to the above noted changes, Figures 5–2 and 5–3 and Tables 5–4 and 5–6 from the proposed rule have been removed.

*Section 6 Air Migration Pathway*

The air migration pathway evaluates the relative threat resulting from releases or potential releases of hazardous substances, either as gases or particulates, to the air. The major changes specific to this pathway include separate evaluation of gas and particulates in the likelihood to release factor category; inclusion of benchmarks to evaluate population and the nearest individual; weighting of sensitive environments based on actual or potential contamination; revision of the distance weights; deletion of the land use factor and inclusion of a resources factor in the evaluation of population; and revisions to the mobility factor.

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*Section 6.0 Air Migration Pathway.* Descriptive text has been removed. Figure 6–1 has been revised to reflect revisions to the factors evaluated, and Table 6–1 has been revised to reflect the new factor category values throughout.

*Section 6.1 Likelihood of release.* Has been revised to eliminate explanatory text and to add instructions about which factors to evaluate for this factor category.

*Section 6.1.1 Observed release.* As discussed in section III G of this preamble, the specific criteria have been revised.

*Section 6.1.2 Potential to release.* As explained in section III O of this preamble, the method for evaluating this factor has been revised. Gas potential to release and particulate potential to release are evaluated separately. The explanatory text has been removed.

*Section 6.1.2.1 Gas potential to release.* Explains how this factor is evaluated. Table 6–2 (proposed rule Table 2–3) has been revised to apply only to the gas potential to release factors.

*Section 6.1.2.1.1 Gas containment.* Descriptive text has been removed. Table 6–3 (proposed rule Table 2–5) has been simplified. The depth requirements and other containment requirements have been revised based on public comment, the field test, and a review of recent information on covering systems. Consideration of biogas releases has been added. Assigned values have been revised and also reflect the revised maximum value for the factor.

*Section 6.1.2.1.2 Gas source type.* New source types have been added to Table 6–4 (proposed rule Table 2–6), and the assigned values have been revised. As explained in section III O of this preamble, new source types and subgroups for specific types have been added, in response to comments and the field test, to make this factor easier to evaluate. Treatment of sources when no source meets the minimum size has been clarified.

*Section 6.1.2.1.3 Gas migration potential.* As explained in section III O of this preamble, this section has been renamed and the approach for assigning values changed slightly. This section explains how to assign values to each substance and subsequently to the source using Tables 6–5, 6–6, and 6–7. Dry soil relative volatility has been removed as a measure of gas migration potential. The footnotes have been removed from Table 6–5 (proposed rule Table 2–7) and the name has been changed to "Values for Vapor Pressure and Henry's Constant." The titles of Tables 6–6 and 6–7 have been changed. The values assigned have also been changed to reflect the revised maximum value for the factor category. Descriptive text has been removed.

*Section 6.1.2.1.4 Calculation of gas potential to release value.* Explains how to calculate this value.

*Section 6.1.2.2 Particulate potential to release.* Explains how this factor is evaluated. Table 6–8 (proposed rule Table 2–3) has been revised to apply only to the particulate potential to release factors.

*Section 6.1.2.2.1 Particulate containment.* References Table 6–9 (Table 2–5 from the proposed rule). The criteria and values assigned using this table have been changed, as discussed in section III O of this preamble. Considerations of depth have been added for particulates.

*Section 6.1.2.2.2 Particulate source type.* In response to comments, new kinds of source types and subgroups of source types have been added to make this factor easier to score. The values assigned have been revised to reflect the changed factor category maximum. Treatment of sources when no source meets the minimum size has been clarified.

*Section 6.1.2.2.3 Particulate migration potential.* Has been renamed. Descriptive text has been removed. Proposed rule Figure 2–3 has been simplified, expanded, and renumbered as Figure 6–2. Proposed rule Table 2–9 has been renumbered as Table 6–10.

*Section 6.1.2.2.4 Calculation of particulate potential to release value.* Describes how to calculate this value.

*Section 6.1.2.3 Calculation of potential to release factor value for the site.* Text has been simplified and modified to account for gas and particulate potential to release.

*Section 6.1.3 Calculation of likelihood of release factor category value.* Describes calculation procedure.

*Section 6.2 Waste characteristics.* Descriptive text has been removed.

*Section 6.2.1 Toxicity/mobility.* Text has been simplified.

*Section 6.2.1.1 Toxicity.* Descriptive text has been removed and § 2.4.1.1 is referenced.

*Section 6.2.1.2 Mobility.* As explained in section III F of this preamble, the scoring of this factor has changed. Gas mobility is now based only on vapor pressure. The maximum value assigned for particulate mobility is no longer the same as the maximum assigned for gas mobility. The particulate mobility values are assigned based on Figure 6–3 or the equation in the text along with Table 6–12. The values assigned have been put on linear scales to be consistent with the new structure of the waste characteristics factor category. The text has been simplified.

*Section 6.2.1.3 Calculation of toxicity/mobility factor value.* Table 6–13, proposed rule Table 2–12, the matrix for assigning toxicity/mobility factor values has been revised to reflect the changes in values assigned to both factors.

*Section 6.2.2 Hazardous waste quantity.* Descriptive text has been removed and § 2.4.2 is referenced.

*Section 6.2.3 Calculation of waste characteristics factor category value.* The text has been revised to indicate the multiplication of the component factors, the new maximum value, and the table used to assign the factor category value.

*Section 6.3 Targets.* The target distance limit has been modified to include targets beyond four miles when an observed release extends beyond that distance. Text has been added to explain how to evaluate populations and sensitive environments exposed to actual contamination. Text was added to clarify that actual contamination based on an observed release established by direct observation should be considered Level II. Table 6–14, Health-Based Benchmarks for Hazardous Substances in Air, has been added to list the benchmarks used for this pathway. Table 6–15, Air Migration Pathway Distance Weights (proposed rule Table 2–16), has been revised to reflect changes in the distance weights discussed in section III O of this preamble.

*Section 6.3.1 Nearest individual.* The title has been changed from maximally exposed individual. As discussed above, this factor is now evaluated based on actual contamination and potential contamination. The name of Table 6–16 (proposed rule Table 2–15) has been changed and the values have been revised based on changes to the distance weights. Descriptive text has been removed.

*Section 6.3.2 Population.* Evaluation of population based on health-based benchmarks has been added as discussed in section III H of this preamble.

*Section 6.3.2.1 Level of contamination.* Explains how to evaluate population based on concentrations of hazardous substances in samples.

*Section 6.3.2.2 Level I concentrations.* Explains how to evaluate populations exposed to Level I concentrations. The scoring cap was eliminated, and the multiplier (i.e., weight) is now 10.

*Section 6.3.2.3 Level II concentrations.* Explains how to evaluate populations exposed to Level II concentrations.

*Section 6.3.2.4 Potential contamination.* Explains how to assign values to populations potentially exposed to contamination from the site. The formula for calculating population values has been revised. Table 6–17, which assigns distance-weighted values for populations in each distance category, has been added. The values in the table were determined by statistical simulation to yield the same population, on average, as the use of the formulas in the proposed rule. The use of population ranges has been adopted as part of the simplification discussed in section III A. The rounding rule has been changed, the scoring cap was eliminated, and the multiplier (i.e., weight) is now 0.1.

*Section 6.3.2.5 Calculation of the population factor value.* Explains how to calculate the factor value. The scoring cap was eliminated.

*Section 6.3.3 Resources.* Explains how to assign points to resources, which in this pathway is based on the presence of commercial agriculture, commercial silviculture, and major or designated recreation areas.

*Section 6.3.4 Sensitive environments.* Explains how sensitive environments are evaluated based on actual and potential contamination. The maximum value that can be assigned to this factor is limited, but is greater than in the proposed rule. The limit is determined by scoring the pathway with only sensitive environments in the targets factor category; the pathway score under these conditions may not exceed 60 points.

*Section 6.3.4.1 Actual contamination.* Explains how to assign factor values for sensitive environments subject to actual contamination and how to assign values to wetlands based on total acreage. A new Table 6–18, Wetlands Rating Values for the Air Migration Pathway, has been added to assign values to wetlands based on acreage.

*Section 6.3.4.2 Potential contamination.* Explains how to calculate the factor value for potentially contaminated sensitive environments and how to assign values to wetlands based on total acreage within each distance category. The rounding rule has been changed.

*Section 6.3.4.3 Calculation of sensitive environments factor value.* Explains how to calculate the factor value. The rounding rule has been changed.

*Section 6.3.5 Calculation of targets factor category value.* Text has been revised to reflect the new names for factors.

*Section 6.4 Calculation of air migration pathway score.* Text has been revised to reflect the new divisor.

In addition to the above noted changes, the land use factor, Figure 2–2, and Tables 2–2, 2–3, 2–13, 2–17, and 2–19 in the proposed rule have been removed.

*Section 7 Sites Containing Radioactive Substances*

This entire part of the rule is new. As discussed in section III E of the preamble, this section has been added to provide direction on evaluating sites containing radioactive substances. Table 7–1 lists factors evaluated differently for such sites.

*Section 7.1 Likelihood of release/likelihood of exposure.* Explains the approach to evaluating the factor category.

*Section 7.1.1 Observed release/observed contamination.* Explains how to evaluate observed release (observed contamination) for radionuclides. The evaluation differs for radionuclides that occur naturally or are ubiquitous in the environment, for man-made radionuclides without ubiquitous background concentrations in the environment, and for gamma-emitting radionuclides in the soil exposure pathway. This section also explains the appropriate procedures for sites with mixed radioactive and other hazardous substances.

*Section 7.1.2 Potential to release.* Explains that potential to release factors are evaluated on the physical and chemical properties of radionuclides, not their radioactivity.

*Section 7.2 Waste characteristics.* Lists the factors evaluated.

*Section 7.2.1 Human toxicity.* Explains how to assign toxicity values to radioactive substances and describes appropriate procedures for sites containing mixed radionuclides and other hazardous substances.

*Section 7.2.2 Ecosystem toxicity.* Explains that ecosystem toxicity for radionuclides is assigned a value in the same way as is human toxicity except that the default value is 100 rather than 1,000.

*Section 7.2.3 Persistence.* Explains that radioactive substances are assigned persistence values based solely on half-life—radioactive half-life and volatilization half-life. Explains how to evaluate persistence for mixed radioactive and other hazardous substances.

*Section 7.2.4 Selection of the substance potentially posing greatest hazard.* The section explains how to select the substance potentially posing the greatest hazard.

*Section 7.2.5 Hazardous waste quantity.* Explains how to evaluate the hazardous waste quantity factor for sites containing radioactive substances.

*Section 7.2.5.1 Source hazardous waste quantity for radionuclides.* Describes differences between the migration pathways and the soil exposure pathway.

*Section 7.2.5.1.1 Radionuclide constituent quantity (Tier A).* Explains how to evaluate radionuclide constituent quantity for radionuclides.

*Section 7.2.5.1.2 Radionuclide wastestream quantity (Tier B).* Explains how to evaluate radionuclide wastestream quantity for radionuclides.

*Section 7.2.5.1.3 Calculation of source hazardous waste quantity value for radionuclides.* Explains how to assign a source value.

*Section 7.2.5.2 Calculation of hazardous waste quantity factor value for radionuclides.* Explains how to calculate the hazardous waste quantity factor value for radionuclides and describes use of the minimum value, which is either 10 or 100 (as described in section 2.4.2.2 above).

*Section 7.2.5.3 Calculation of hazardous waste quantity factor value for sites containing mixed radioactive and other hazardous substances.* Explains how to calculate the factor value for these sites.

*Section 7.3 Targets.* Explains how to evaluate targets at sites containing radioactive substances and sites containing radioactive and other hazardous substances.

*Section 7.3.1 Level of contamination at a sampling location.* Explains how to determine the appropriate level of contamination.

*Section 7.3.2 Selection of benchmarks and comparisons with observed release/observed contamination.* This section lists the benchmarks and explains how they are used in determining the level of contamination.

## V. Required Analyses

### *A. Executive Order No. 12291*

Under Executive Order No. 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement of a Regulatory Impact Analysis. The rule published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will

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not significantly disrupt domestic and export markets.

To estimate the costs associated with the final rule, a final economic analysis entitled "Economic Impact Analysis of the Revised Hazard Ranking System" was prepared as an addendum to the December 1987 economic impact analysis (EIA) to incorporate new data. As in the January 1988 EIA, the total annual cost of implementing the final rule is estimated as a function of the number of Screening SIs (SSI) and Listing SIs (LSI) that will be conducted annually and the unit cost of each. In the January 1988 EIA, estimates of total costs were developed assuming 1,130 SSIs and 100 LSIs would be conducted annually. The Agency now estimates that 1,100 SIs will be conducted annually (EPA is no longer using the terms SSI and LSI). The total annual cost is estimated to be $78.8 million, the sum of the cost of conducting 1,000 SIs at a unit cost of $55,000, 70 SIs for NPL sites (without monitoring wells) at a unit cost of $100,000, and 30 SIs for NPL sites (with monitoring wells) at a unit cost of $160,000.

To estimate the incremental cost of implementing the final revised version of the HRS, the unit cost of conducting all preremedial listing activities using the current HRS from the January 1988 EIA is updated. That cost was estimated to be $58,200 in the January 1988 EIA, and was developed assuming the PA had already been conducted. The 1988 estimate is a function of 480 hours of Field Investigation Team (FIT) technical time valued at $40 per hour and 30 samples being evaluated at a unit cost of $1,300 per sample. To compare the costs of the current HRS to those developed above for the final revised version of the HRS, the FIT technical time is valued at $50 per hour and each sample evaluation is estimated to cost $1,000. The revised total cost of conducting all listing activities beyond the PA for the current HRS, therefore, is estimated to be $54,000. In addition, the average level of effort for a PA under the current HRS is estimated to be 60 hours, and the unit cost of the PA, assuming a $50 FIT hourly rate, is estimated to be $3,000.

Based on these revisions, the annual cost of using the current HRS is estimated to be $65.4 million, the sum of the cost of conducting 2,000 PAs at a unit cost of $3,000 ($6 million) and the cost of conducting 1,100 SIs at a unit cost of $54,000 ($59.4 million). Compared to the current HRS, the annual incremental cost of using the final revised version of the HRS is estimated to be $13.4 million. On the basis of this evaluation, implementing the final revised version of the HRS would not constitute a major rule, because the annual incremental cost of the final rule is less than $100 million. No negative economic effects are anticipated from this rule.

*B. Regulatory Flexibility Determination*

Appendix A of the December 1987 EIA includes an assessment of the ability of responsible parties to pay the costs of HRS scoring under the current HRS and the three alternative scoring mechanisms considered at that time. That analysis evaluated the impact of HRS costs under each ranking methodology on the financial viability of 15 sample companies. Under that analysis, only the smallest sample firm (one with an average net income of $53,700) was expected to have difficulty in paying the costs of conducting a complete SI under each of the alternative ranking scenarios. The new unit cost of a complete SI developed during the Phase I field test and used in this economic analysis falls within the range of costs already evaluated in appendix A of the December 1987 EIA. Given the previous analysis, EPA concludes that most sample firms are healthy enough financially to be able to afford the expenditures associated with HRS site inspections. Responsible Parties (RPs) that are financially similar to the smallest firm (Firm 15 in appendix A of the December 1987 RIA), however, do not have the assets or the income to enable them to assume payments similar to the estimates derived for the SI done under the current HRS or the final revised version of the HRS.

The Regulatory Flexibility Act of 1980 requires that Federal agencies explicitly consider the effects of proposed and existing regulations on small entities and examine alternative regulations that would reduce significant adverse impacts on small entities. The small entities that could be affected by the revisions to the HRS are small businesses and small municipalities that are responsible for hazardous wastes at a site. Based on the updated analysis presented here, EPA concludes that using the final rule is unlikely to result in a significant impact on a substantial number of small entities. As discussed in the December 1987 EIA, this conclusion is drawn because small firms are no more or less likely to be responsible parties than are large firms. In addition, when they are RPs, small firms usually are one of several companies responsible for a site and probably would not bear the full burden of liability for HRS expenditures and other cleanup costs.

*C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2050–0095.

Public reporting burden for this collection of information is estimated to be 620 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM—U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

*D. Federalism Implications*

E.O. 12612 requires agencies to assess whether a regulation will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPA has determined that this regulation does not have federalism implications and that, therefore, a Federalism Assessment is not required.

**List of Subjects in 40 CFR Part 300**

Air pollution controls, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: November 9, 1990.

**William K. Reilly,**

*Administrator.*

40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9605; 33 U.S.C. 1321(c)(2); E.O. No. 11735, 38 FR 21243; E.O No. 12580, 52 FR 2923.

2. Part 300, appendix A is revised to read as follows:



**Appendix A to Part 300—The Hazard Ranking System**

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*1.0 Introduction*

The Hazard Ranking System (HRS) is the principal mechanism the U.S. Environmental Protection Agency (EPA) uses to place sites on the National Priorities List (NPL). The HRS serves as a screening device to evaluate the potential for releases of uncontrolled hazardous substances to cause human health or environmental damage. The HRS provides a measure of relative rather than absolute risk. It is designed so that it can be consistently applied to a wide variety of sites.

*1.1 Definitions*

*Acute toxicity:* Measure of toxicological responses that result from a single exposure to a substance or from multiple exposures within a short period of time (typically several days or less). Specific measures of acute toxicity used within the HRS include lethal dose$_{50}$ ($LD_{50}$) and lethal concentration$_{50}$ ($LC_{50}$), typically measured within a 24-hour to 96-hour period.

*Ambient Aquatic Life Advisory Concentrations (AALACs):* EPA's advisory concentration limit for acute or chronic toxicity to aquatic organisms as established under section 304(a)(1) of the Clean Water Act, as amended.

*Ambient Water Quality Criteria (AWQC):* EPA's maximum acute or chronic toxicity concentrations for protection of aquatic life and its uses as established under section 304(a)(1) of the Clean Water Act, as amended.

*Bioconcentration factor (BCF):* Measure of the tendency for a substance to accumulate in the tissue of an aquatic organism. BCF is determined by the extent of partitioning of a substance, at equilibrium, between the tissue of an aquatic organism and water. As the ratio of concentration of a substance in the organism divided by the concentration in water, higher BCF values reflect a tendency for substances to accumulate in the tissue of aquatic organisms. [unitless].

*Biodegradation:* Chemical reaction of a substance induced by enzymatic activity of microorganisms.

*CERCLA:* Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Pub. L. 96-510, as amended).

*Chronic toxicity:* Measure of toxicological responses that result from repeated exposure to a substance over an extended period of time (typically 3 months or longer). Such responses may persist beyond the exposure or may not appear until much later in time than the exposure. HRS measures of chronic toxicity include Reference Dose (RfD) values.

*Contract Laboratory Program (CLP):* Analytical program developed for CERCLA waste site samples to fill the need for legally defensible analytical results supported by a high level of quality assurance and documentation.

*Contract-Required Detection Limit (CRDL):* Term equivalent to contract-required quantitation limit, but used primarily for inorganic substances.

*Contract-Required Quantitation Limit (CRQL):* Substance-specific level that a CLP laboratory must be able to routinely and reliably detect in specific sample matrices. It is not the lowest detectable level achievable, but rather the level that a CLP laboratory should reasonably quantify. The CRQL may or may not be equal to the quantitation limit of a given substance in a given sample. For HRS purposes, the term CRQL refers to both the contract-required quantitation limit and the contract-required detection limit.

*Curie (Ci):* Measure used to quantify the amount of radioactivity. One curie equals 37 billion nuclear transformations per second, and one picocurie (pCi) equals $10^{-12}$ Ci.

*Decay product:* Isotope formed by the radioactive decay of some other isotope. This newly formed isotope possesses physical and chemical properties that are different from

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those of its parent isotope, and may also be radioactive.

*Detection Limit (DL):* Lowest amount that can be distinguished from the normal random "noise" of an analytical instrument or method. For HRS purposes, the detection limit used is the method detection limit (MDL) or, for real-time field instruments, the detection limit of the instrument as used in the field.

*Dilution weight:* Parameter in the HRS surface water migration pathway that reduces the point value assigned to targets as the flow or depth of the relevant surface water body increases. [unitless].

*Distance weight:* Parameter in the HRS air migration, ground water migration, and soil exposure pathways that reduces the point value assigned to targets as their distance increases from the site. [unitless].

*Distribution coefficient ($K_d$):* Measure of the extent of partitioning of a substance between geologic materials (for example, soil, sediment, rock) and water (also called partition coefficient). The distribution coefficient is used in the HRS in evaluating the mobility of a substance for the ground water migration pathway. [ml/g].

*$ED_{10}$ (10 percent effective dose):* Estimated dose associated with a 10 percent increase in response over control groups. For HRS purposes, the response considered is cancer. [milligrams toxicant per kilogram body weight per day (mg/kg-day)].

*Food and Drug Administration Action Level (FDAAL):* Under section 406 of the Federal Food, Drug and Cosmetic Act, as amended, concentration of a poisonous or deleterious substance in human food or animal feed at or above which FDA will take legal action to remove adulterated products from the market. Only FDAALs established for fish and shellfish apply in the HRS.

*Half-life:* Length of time required for an initial concentration of a substance to be halved as a result of loss through decay. The HRS considers five decay processes: biodegradation, hydrolysis, photolysis, radioactive decay, and volatilization.

*Hazardous substance:* CERCLA hazardous substances, pollutants, and contaminants as defined in CERCLA sections 101(14) and 101(33), except where otherwise specifically noted in the HRS.

*Hazardous wastestream:* Material containing CERCLA hazardous substances (as defined in CERCLA section 101(14)) that was deposited, stored, disposed, or placed in, or that otherwise migrated to, a source.

HRS *"factor":* Primary rating elements internal to the HRS.

HRS *"factor category":* Set of HRS factors (that is, likelihood of release [or exposure], waste characteristics, targets).

HRS *"migration pathways":* HRS ground water, surface water, and air migration pathways.

HRS *"pathway":* Set of HRS factor categories combined to produce a score to measure relative risks posed by a site in one of four environmental pathways (that is, ground water, surface water, soil, and air).

HRS *"site score":* Composite of the four HRS pathway scores.

*Henry's law constant:* Measure of the volatility of a substance in a dilute solution of water at equilibrium. It is the ratio of the vapor pressure exerted by a substance in the gas phase over a dilute aqueous solution of that substance to its concentration in the solution at a given temperature. For HRS purposes, use the value reported at or near 25° C. [atmosphere-cubic meters per mole (atm-$m^3$/mol)].

*Hydrolysis:* Chemical reaction of a substance with water.

*Karst:* Terrain with characteristics of relief and drainage arising from a high degree of rock solubility in natural waters. The majority of karst occurs in limestones, but karst may also form in dolomite, gypsum, and salt deposits. Features associated with karst terrains typically include irregular topography, sinkholes, vertical shafts, abrupt ridges, caverns, abundant springs, and/or disappearing streams. Karst aquifers are associated with karst terrain.

*$LC_{50}$ (lethal concentration, 50 percent):* Concentration of a substance in air [typically micrograms per cubic meter ($\mu g/m^3$)] or water [typically micrograms per liter ($\mu g/l$)] that kills 50 percent of a group of exposed organisms. The $LC_{50}$ is used in the HRS in assessing acute toxicity.

*$LD_{50}$ (lethal dose, 50 percent):* Dose of a substance that kills 50 percent of a group of exposed organisms. The $LD_{50}$ is used in the HRS in assessing acute toxicity [milligrams toxicant per kilogram body weight (mg/kg)].

*Maximum Contaminant Level (MCL):* Under section 1412 of the Safe Drinking Water Act, as amended, the maximum permissible concentration of a substance in water that is delivered to any user of a public water supply.

*Maximum Contaminant Level Goal (MCLG):* Under section 1412 of the Safe Drinking Water Act, as amended, a nonenforceable concentration for a substance in drinking water that is protective of adverse human health effects and allows an adequate margin of safety.

*Method Detection Limit (MDL):* Lowest concentration of analyte that a method can detect reliably in either a sample or blank.

*Mixed radioactive and other hazardous substances:* Material containing both radioactive hazardous substances and nonradioactive hazardous substances, regardless of whether these types of substances are physically separated, combined chemically, or simply mixed together.

*National Ambient Air Quality Standards (NAAQS):* Primary standards for air quality established under sections 108 and 109 of the Clean Air Act, as amended.

*National Emission Standards for Hazardous Air Pollutants (NESHAPs):* Standards established for substances listed under section 112 of the Clean Air Act, as amended. Only those NESHAPs promulgated in ambient concentration units apply in the HRS.

*Octanol-water partition coefficient ($K_{ow}$ [or P]):* Measure of the extent of partitioning of a substance between water and octanol at equilibrium. The $K_{ow}$ is determined by the ratio between the concentration in octanol divided by the concentration in water at equilibrium. [unitless].

*Organic carbon partition coefficient ($K_{oc}$):* Measure of the extent of partitioning of a substance, at equilibrium, between organic carbon in geologic materials and water. The higher the $K_{oc}$, the more likely a substance is to bind to geologic materials than to remain in water. [ml/g].

*Photolysis:* Chemical reaction of a substance caused by direct absorption of solar energy (direct photolysis) or caused by other substances that absorb solar energy (indirect photolysis).

*Radiation:* Particles (alpha, beta, neutrons) or photons (x- and gamma-rays) emitted by radionuclides.

*Radioactive decay:* Process of spontaneous nuclear transformation, whereby an isotope of one element is transformed into an isotope of another element, releasing excess energy in the form of radiation.

*Radioactive half-life:* Time required for one-half the atoms in a given quantity of a specific radionuclide to undergo radioactive decay.

*Radioactive substance:* Solid, liquid, or gas containing atoms of a single radionuclide or multiple radionuclides.

*Radioactivity:* Property of those isotopes of elements that exhibit radioactive decay and emit radiation.

*Radionuclide/radioisotope:* Isotope of an element exhibiting radioactivity. For HRS purposes, "radionuclide" and "radioisotope" are used synonymously.

*Reference dose (RfD):* Estimate of a daily exposure level of a substance to a human population below which adverse noncancer health effects are not anticipated. [milligrams toxicant per kilogram body weight per day (mg/kg-day)].

*Removal action:* Action that removes hazardous substances from the site for proper disposal or destruction in a facility permitted under the Resource Conservation and Recovery Act or the Toxic Substances Control Act or by the Nuclear Regulatory Commission.

*Roentgen (R):* Measure of external exposures to ionizing radiation. One roentgen equals that amount of x-ray or gamma radiation required to produce ions carrying a charge of 1 electrostatic unit (esu) in 1 cubic centimeter of dry air under standard conditions. One microroentgen ($\mu R$) equals $10^{-6}$ R.

*Sample quantitation limit (SQL):* Quantity of a substance that can be reasonably quantified given the limits of detection for the methods of analysis and sample characteristics that may affect quantitation (for example, dilution, concentration).

*Screening concentration:* Media-specific benchmark concentration for a hazardous substance that is used in the HRS for comparison with the concentration of that hazardous substance in a sample from that media. The screening concentration for a specific hazardous substance corresponds to its reference dose for inhalation exposures or for oral exposures, as appropriate, and, if the substance is a human carcinogen with a weight-of-evidence classification of A, B, or C, to that concentration that corresponds to its $10^{-6}$ individual lifetime excess cancer risk for inhalation exposures or for oral exposures, as appropriate.



*Site:* Area(s) where a hazardous substance has been deposited, stored, disposed, or placed, or has otherwise come to be located. Such areas may include multiple sources and may include the area between sources.

*Slope factor (also referred to as cancer potency factor):* Estimate of the probability of response (for example, cancer) per unit intake of a substance over a lifetime. The slope factor is typically used to estimate upper-bound probability of an individual developing cancer as a result of exposure to a particular level of a human carcinogen with a weight-of-evidence classification of A, B, or C. [(mg/kg-day)$^{-1}$ for non-radioactive substances and ($pC_i$)$^{-1}$ for radioactive substances].

*Source:* Any area where a hazardous substance has been deposited, stored, disposed, or placed, plus those soils that have become contaminated from migration of a hazardous substance. Sources do not include those volumes of air, ground water, surface water, or surface water sediments that have become contaminated by migration, except: in the case of either a ground water plume with no identified source or contaminated surface water sediments with no identified source, the plume or contaminated sediments may be considered a source.

*Target distance limit:* Maximum distance over which targets for the site are evaluated. The target distance limit varies by HRS pathway.

*Uranium Mill Tailings Radiation Control Act (UMTRCA) Standards:* Standards for radionuclides established under sections 102, 104, and 108 of the Uranium Mill Tailings Radiation Control Act, as amended.

*Vapor pressure:* Pressure exerted by the vapor of a substance when it is in equilibrium with its solid or liquid form at a given temperature. For HRS purposes, use the value reported at or near 25° C. [atmosphere or torr].

*Volatilization:* Physical transfer process through which a substance undergoes a change of state from a solid or liquid to a gas.

*Water solubility:* Maximum concentration of a substance in pure water at a given temperature. For HRS purposes, use the value reported at or near 25° C. [milligrams per liter (mg/l)].

*Weight-of-evidence:* EPA classification system for characterizing the evidence supporting the designation of a substance as a human carcinogen. EPA weight-of-evidence groupings include:

Group A: Human carcinogen--sufficient evidence of carcinogenicity in humans.
Group B1: Probable human carcinogen--limited evidence of carcinogenicity in humans.
Group B2: Probable human carcinogen--sufficient evidence of carcinogenicity in animals.
Group C: Possible human carcinogen--limited evidence of carcinogenicity in animals.
Group D: Not classifiable as to human carcinogenicity--applicable when there is no animal evidence, or when human or animal evidence is inadequate.
Group E: Evidence of noncarcinogenicity for humans.

*2.0 Evaluations Common to Multiple Pathways*

2.1 *Overview.* The HRS site score (S) is the result of an evaluation of four pathways:

- Ground Water Migration ($S_{gw}$).
- Surface Water Migration ($S_{sw}$).
- Soil Exposure ($S_s$).
- Air Migration ($S_a$).

The ground water and air migration pathways use single threat evaluations, while the surface water migration and soil exposure pathways use multiple threat evaluations. Three threats are evaluated for the surface water migration pathway: drinking water, human food chain, and environmental. These threats are evaluated for two separate migration components--overland/flood migration and ground water to surface water migration. Two threats are evaluated for the soil exposure pathway: resident population and nearby population.

The HRS is structured to provide a parallel evaluation for each of these pathways and threats. This section focuses on these parallel evaluations, starting with the calculation of the HRS site score and the individual pathway scores.

2.1.1 *Calculation of HRS site score.* Scores are first calculated for the individual pathways as specified in sections 2 through 7 and then are combined for the site using the following root-mean-square equation to determine the overall HRS site score, which ranges from 0 to 100:

$$S = \sqrt{\frac{S_{gw}^2 + S_{sw}^2 + S_s^2 + S_a^2}{4}}$$

2.1.2 *Calculation of pathway score.* Table 2-1, which is based on the air migration pathway, illustrates the basic parameters used to calculate a pathway score. As Table 2-1 shows, each pathway (or threat) score is the product of three "factor categories": likelihood of release, waste characteristics, and targets. (The soil exposure pathway uses likelihood of exposure rather than likelihood of release.) Each of the three factor categories contains a set of factors that are assigned numerical values and combined as specified in sections 2 through 7. The factor values are rounded to the nearest integer, except where otherwise noted.

2.1.3 *Common evaluations.* Evaluations common to all four HRS pathways include:

- Characterizing sources.
  - –Identifying sources (and, for the soil exposure pathway, areas of observed contamination [see section 5.0.1]).
  - –Identifying hazardous substances associated with each source (or area of observed contamination).
  - –Identifying hazardous substances available to a pathway.

TABLE 2-1.—SAMPLE PATHWAY SCORESHEET

| Factor category | Maximum value | Value assigned |
|---|---|---|
| **Likelihood of Release** | | |
| 1. Observed Release | 550 | |
| 2. Potential to Release | 500 | |
| 3. Likelihood of Release (higher of lines 1 and 2) | 550 | |
| **Waste Characteristics** | | |
| 4. Toxicity/Mobility | (a) | |
| 5. Hazardous Waste Quantity | (a) | |
| 6. Waste Characteristics | 100 | |
| **Targets** | | |
| 7. Nearest Individual | | |
| 7a. Level I | 50 | |
| 7b. Level II | 45 | |
| 7c. Potential Contamination | 20 | |
| 7d. Nearest Individual (higher of lines 7a, 7b, or 7c) | 50 | |
| 8. Population | | |
| 8a. Level I | (b) | |
| 8b. Level II | (b) | |
| 8c. Potential Contamination | (b) | |
| 8d. Total Population (lines 8a+8b+8c) | (b) | |
| 9. Resources | 5 | |
| 10. Sensitive Environments | (b) | |
| 10a. Actual Contamination | (b) | |
| 10b. Potential Contamination | (b) | |
| 10c. Sensitive Environments (lines 10a+10b) | (b) | |
| 11. Targets (lines 7d+8d+9+10c) | (b) | |
| 12. **Pathway Score** is the product of Likelihood of Release, Waste Characteristics, and Targets, divided by 82,500. Pathway scores are limited to a maximum of 100 points. | | |

(a) Maximum value applies to waste characteristics category. The product of lines 4 and 5 is used in Table 2-7 to derive the value for the waste characteristics factor category.
(b) There is no limit to the human population or sensitive environments factor values. However, the pathway score based solely on sensitive environments is limited to a maximum of 60 points.

- Scoring likelihood of release (or likelihood of exposure) factor category.
  - –Scoring observed release (or observed contamination).
  - –Scoring potential to release when there is no observed release.
- Scoring waste characteristics factor category.
  - –Evaluating toxicity.
  - –Combining toxicity with mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential, as appropriate to the pathway (or threat).
  - –Evaluating hazardous waste quantity.
  - –Combining hazardous waste quantity with the other waste characteristics factors.
  - –Determining waste characteristics factor category value.
- Scoring targets factor category.
  - –Determining level of contamination for targets.

These evaluations are essentially identical for the three migration pathways (ground water, surface water, and air). However, the



evaluations differ in certain respects for the



- Soil exposure—resident population

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evaluations differ in certain respects for the soil exposure pathway.

Section 7 specifies modifications that apply to each pathway when evaluating sites containing radioactive substances.

Section 2 focuses on evaluations common at the pathway and threat levels. Note that for the ground water and surface water migration pathways, separate scores are calculated for each aquifer (see section 3.0) and each watershed (see sections 4.1.1.3 and 4.2.1.5) when determining the pathway scores for a site. Although the evaluations in section 2 do not vary when different aquifers or watersheds are scored at a site, the specific factor values (for example, observed release, hazardous waste quantity, toxicity/mobility) that result from these evaluations can vary by aquifer and by watershed at the site. This can occur through differences both in the specific sources and targets eligible to be evaluated for each aquifer and watershed and in whether observed releases can be established for each aquifer and watershed. Such differences in scoring at the aquifer and watershed level are addressed in sections 3 and 4, not section 2.

2.2 *Characterize sources.* Source characterization includes identification of the following:

- Sources (and areas of observed contamination) at the site.
- Hazardous substances associated with these sources (or areas of observed contamination).
- Pathways potentially threatened by these hazardous substances.

Table 2–2 presents a sample worksheet for source characterization.

2.2.1 *Identify sources.* For the three migration pathways, identify the sources at the site that contain hazardous substances. Identify the migration pathway(s) to which each source applies. For the soil exposure pathway, identify areas of observed contamination at the site (see section 5.0.1).

TABLE 2–2.—SAMPLE SOURCE CHARACTERIZATION WORKSHEET

Source: _____

A. Source dimensions and hazardous waste quantity.

Hazardous constituent quantity: _____

Hazardous wastestream quantity: _____

Volume: _____

Area: _____

Area of observed contamination: _____

B. Hazardous substances associated with the source.

| Hazardous substance | Available to pathway | | | | | | |
|---|---|---|---|---|---|---|---|
| | Air | | Ground water (GW) | Surface water (SW) | | Soil | |
| | Gas | Particulate | | Overland/flood | GW to SW | Resident | Nearby |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

2.2.2 *Identify hazardous substances associated with a source.* For each of the three migration pathways, consider those hazardous substances documented in a source (for example, by sampling, labels, manifests, oral or written statements) to be associated with that source when evaluating each pathway. In some instances, a hazardous substance can be documented as being present at a site (for example, by labels, manifests, oral or written statements), but the specific source(s) containing that hazardous substance cannot be documented. For the three migration pathways, in those instances when the specific source(s) cannot be documented for a hazardous substance, consider the hazardous substance to be present in each source at the site, except sources for which definitive information indicates that the hazardous substance was not or could not be present.

For an area of observed contamination in the soil exposure pathway, consider only those hazardous substances that meet the criteria for observed contamination for that area (see section 5.0.1) to be associated with that area when evaluating the pathway.

2.2.3 *Identify hazardous substances available to a pathway.* In evaluating each migration pathway, consider the following hazardous substances available to migrate from the sources at the site to the pathway:

- Ground water migration.
  - –Hazardous substances that meet the criteria for an observed release (see section 2.3) to ground water.
  - –All hazardous substances associated with a source with a ground water containment factor value greater than 0 (see section 3.1.2.1).
- Surface water migration—overland/flood component.
  - –Hazardous substances that meet the criteria for an observed release to surface water in the watershed being evaluated.
  - –All hazardous substances associated with a source with a surface water containment factor value greater than 0 for the watershed (see sections 4.1.2.1.2.1.1 and 4.1.2.1.2.2.1).
- Surface water migration—ground water to surface water component.
  - –Hazardous substances that meet the criteria for an observed release to ground water.
  - –All hazardous substances associated with a source with a ground water containment factor value greater than 0 (see sections 4.2.2.1.2 and 3.1.2.1).
- Air migration.
  - –Hazardous substances that meet the criteria for an observed release to the atmosphere.
  - –All gaseous hazardous substances associated with a source with a gas containment factor value greater than 0 (see section 6.1.2.1.1).
  - –All particulate hazardous substances associated with a source with a particulate containment factor value greater than 0 (see section 6.1.2.2.1).
- For each migration pathway, in those instances when the specific source(s) containing the hazardous substance cannot be documented, consider that hazardous substance to be available to migrate to the pathway when it can be associated (see section 2.2.2) with at least one source having a containment factor value greater than 0 for that pathway.

In evaluating the soil exposure pathway, consider the following hazardous substances available to the pathway:



- Soil exposure—resident population threat.
  - –All hazardous substances that meet the criteria for observed contamination at the site (see section 5.0.1).
- Soil exposure—nearby population threat.
  - –All hazardous substances that meet the criteria for observed contamination at areas with an attractiveness/accessibility factor value greater than 0 (see section 5.2.1.1).

2.3 *Likelihood of release.* Likelihood of release is a measure of the likelihood that a waste has been or will be released to the environment. The likelihood of release factor category is assigned the maximum value of 550 for a migration pathway whenever the criteria for an observed release are met for that pathway. If the criteria for an observed release are met, do not evaluate potential to release for that pathway. When the criteria for an observed release are not met, evaluate potential to release for that pathway, with a maximum value of 500. The evaluation of potential to release varies by migration pathway (see sections 3, 4 and 6).

Establish an observed release either by direct observation of the release of a hazardous substance into the media being evaluated (for example, surface water) or by chemical analysis of samples appropriate to the pathway being evaluated (see sections 3, 4, and 6). The minimum standard to establish an observed release by chemical analysis is analytical evidence of a hazardous substance in the media significantly above the background level. Further, some portion of the release must be attributable to the site. Use the criteria in Table 2–3 as the standard for determining analytical significance. (The criteria in Table 2–3 are also used in establishing observed contamination for the soil exposure pathway, see section 5.0.1.) Separate criteria apply to radionuclides (see section 7.1.1).

TABLE 2–3.—OBSERVED RELEASE CRITERIA FOR CHEMICAL ANALYSIS

**Sample Measurement < Sample Quantitation Limit [a]**

No observed release is established.

**Sample Measurement ≥ SAMPLE QUANTITATION LIMIT [a]**

An observed release is established as follows:

- If the background concentration is not detected (or is less than the detection limit), an observed release is established when the sample measurement equals or exceeds the sample quantitation limit.[a]
- If the background concentration equals or exceeds the detection limit, an observed release is established when the sample measurement is 3 times or more above the background concentration.

[a] If the sample quantitation limit (SQL) cannot be established, determined if there is an observed release as follows:

—If the sample analysis was performed under the EPA Contract Laboratory Program, use the EPA contract-required quantitation limit (CRQL) in place of the SQL.

—If the sample analysis is not performed under the EPA Contract Laboratory Program, use the detection limit (DL) in place of the SQL.

2.4 *Waste characteristics.* The waste characteristics factor category includes the following factors: hazardous waste quantity, toxicity, and as appropriate to the pathway or threat being evaluated, mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential.

2.4.1 *Selection of substance potentially posing greatest hazard.* For all pathways (and threats), select the hazardous substance potentially posing the greatest hazard for the pathway (or threat) and use that substance in evaluating the waste characteristics category of the pathway (or threat). For the three migration pathways (and threats), base the selection of this hazardous substance on the toxicity factor value for the substance, combined with its mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factor values, as applicable to the migration pathway (or threat). For the soil exposure pathway, base the selection on the toxicity factor alone.

Evaluation of the toxicity factor is specified in section 2.4.1.1. Use and evaluation of the mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factors vary by pathway (or threat) and are specified under the appropriate pathway (or threat) section. Section 2.4.1.2 identifies the specific factors that are combined with toxicity in evaluating each pathway (or threat).

2.4.1.1 *Toxicity factor.* Evaluate toxicity for those hazardous substances at the site that are available to the pathway being scored. For all pathways and threats, except the surface water environmental threat, evaluate human toxicity as specified below. For the surface water environmental threat, evaluate ecosystem toxicity as specified in section 4.1.4.2.1.1.

Establish human toxicity factor values based on quantitative dose-response parameters for the following three types of toxicity:

- Cancer– –Use slope factors (also referred to as cancer potency factors) combined with weight-of-evidence ratings for carcinogenicity. If a slope factor is not available for a substance, use its $ED_{10}$ value to estimate a slope factor as follows:

$$\text{Slope factor} = \frac{1}{6\ (ED_{10})}$$

- Noncancer toxicological responses of chronic exposure– –use reference dose (RfD) values.
- Noncancer toxicological responses of acute exposure– –use acute toxicity parameters, such as the $LD_{50}$.

Assign human toxicity factor values to a hazardous substance using Table 2–4, as follows:

- If RfD and slope factor values are both available for the hazardous substance, assign the substance a value from Table 2–4 for each. Select the higher of the two values assigned and use it as the overall toxicity factor value for the hazardous substance.
- If either an RfD or slope factor value is available, but not both, assign the hazardous substance an overall toxicity factor value from Table 2–4 based solely on the available value (RfD or slope factor).
- If neither an RfD nor slope factor value is available, assign the hazardous substance an overall toxicity factor value from Table 2–4 based solely on acute toxicity. That is, consider acute toxicity in Table 2–4 only when both RfD and slope factor values are not available.
- If neither an RfD, nor slope factor, nor acute toxicity value is available, assign the hazardous substance an overall toxicity factor value of 0 and use other hazardous substances for which information is available in evaluating the pathway.

TABLE 2–4.—TOXICITY FACTOR EVALUATION

**Chronic Toxicity (Human)**

| Reference dose (RfD) (mg/kg-day) | Assigned value |
|---|---|
| RfD < 0.0005 | 10,000 |
| 0.0005 ≤ RfD < 0.005 | 1,000 |
| 0.005 ≤ RfD < 0.05 | 100 |
| 0.05 ≤ RfD < 0.5 | 10 |
| 0.5 ≤ RfD | 1 |
| RfD not available | 0 |

**Carcinogenicity (Human)**

| Weight-of-evidence[a]/slope factor (mg/kg-day)$^{-1}$ | | | Assigned value |
|---|---|---|---|
| A | B | C | |
| 0.5 ≤ SF[b] | 5 ≤ SF | 50 ≤ SF | 10,000 |
| 0.05 ≤ SF < 0.5 | 0.5 ≤ SF < 5 | 5 ≤ SF < 50 | 1,000 |
| SF < 0.05 | 0.05 ≤ SF < 0.5 | 0.5 ≤ SF < 5 | 100 |
| — — — | SF < 0.05 | SF < 0.5 | 10 |
| Slope factor not available. | Slope factor not available. | Slope factor not available. | 0 |

[a] A, B, and C refer to weight-of-evidence categories. Assign substances with a weight-of-evidence category of D (inadequate evidence of carcinogenicity) or E (evidence of lack of carcinogenicity) a value of 0 for carcinogenicity.

[b] SF = Slope factor.

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TABLE 2-4.—TOXICITY FACTOR EVALUATION—CONCLUDED

Acute Toxicity (Human)

| Oral $LD_{50}$ (mg/kg) | Dermal $LD_{50}$ (mg/kg) | Dust or mist $LC_{50}$ (mg/l) | Gas or vapor $LC_{50}$ (ppm) | Assigned value |
|---|---|---|---|---|
| $LD_{50} < 5$ | $LD_{50} < 2$ | $LC_{50} < 0.2$ | $LC_{50} < 20$ | 1,000 |
| $5 \leq LD_{50} < 50$ | $2 \leq LD_{50} < 20$ | $0.2 \leq LC_{50} < 2$ | $20 \leq LC_{50} < 200$ | 100 |
| $50 \leq LD_{50} < 500$ | $20 \leq LD_{50} < 200$ | $2 \leq LC_{50} < 20$ | $200 \leq LC_{50} < 2,000$ | 10 |
| $500 \leq LD_{50}$ | $200 \leq LD_{50}$ | $20 \leq LC_{50}$ | $2,000 \leq LC_{50}$ | 1 |
| $LD_{50}$ not available | $LD_{50}$ not available | $LC_{50}$ not available | $LC_{50}$ not available | 0 |

If a toxicity factor value of 0 is assigned to all hazardous substances available to a particular pathway (that is, insufficient toxicity data are available for evaluating all the substances), use a default value of 100 as the overall human toxicity factor value for all hazardous substances available to the pathway. For hazardous substances having usable toxicity data for multiple exposure routes (for example, inhalation and ingestion), consider all exposure routes and use the highest assigned value, regardless of exposure route, as the toxicity factor value.

For HRS purposes, assign both asbestos and lead (and its compounds) a human toxicity factor value of 10,000.

Separate criteria apply for assigning factor values for human toxicity and ecosystem toxicity for radionuclides (see sections 7.2.1 and 7.2.2).

2.4.1.2 *Hazardous substance selection.* For each hazardous substance evaluated for a migration pathway (or threat), combine the human toxicity factor value (or ecosystem toxicity factor value) for the hazardous substance with a mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factor value as follows:

- Ground water migration.
  - –Determine a combined human toxicity/mobility factor value for the hazardous substance (see section 3.2.1).
- Surface water migration-overland/flood migration component.
  - –Determine a combined human toxicity/persistence factor value for the hazardous substance for the drinking water threat (see section 4.1.2.2.1).
  - –Determine a combined human toxicity/persistence/bioaccumulation factor value for the hazardous substance for the human food chain threat (see section 4.1.3.2.1).
  - –Determine a combined ecosystem toxicity/persistence/bioaccumulation factor value for the hazardous substance for the environmental threat (see section 4.1.4.2.1).
- Surface water migration-ground water to surface water migration component.
  - –Determine a combined human toxicity/mobility/persistence factor value for the hazardous substance for the drinking water threat (see section 4.2.2.2.1).
  - –Determine a combined human toxicity/mobility/persistence/bioaccumulation factor value for the hazardous substance for the human food chain threat (see section 4.2.3.2.1).
  - –Determine a combined ecosystem toxicity/mobility/persistence/bioaccumulation factor value for the hazardous substance for the environmental threat (see section 4.2.4.2.1).
- Air migration.
  - –Determine a combined human toxicity/mobility factor value for the hazardous substance (see section 6.2.1).

Determine each combined factor value for a hazardous substance by multiplying the individual factor values appropriate to the pathway (or threat). For each migration pathway (or threat) being evaluated, select the hazardous substance with the highest combined factor value and use that substance in evaluating the waste characteristics factor category of the pathway (or threat).

For the soil exposure pathway, select the hazardous substance with the highest human toxicity factor value from among the substances that meet the criteria for observed contamination for the threat evaluated and use that substance in evaluating the waste characteristics factor category.

2.4.2 *Hazardous waste quantity.* Evaluate the hazardous waste quantity factor by first assigning each source (or area of observed contamination) a source hazardous waste quantity value as specified below. Sum these values to obtain the hazardous waste quantity factor value for the pathway being evaluated.

In evaluating the hazardous waste quantity factor for the three migration pathways, allocate hazardous substances and hazardous wastestreams to specific sources in the manner specified in section 2.2.2, except: consider hazardous substances and hazardous wastestreams that cannot be allocated to any specific source to constitute a separate "unallocated source" for purposes of evaluating only this factor for the three migration pathways. Do not, however, include a hazardous substance or hazardous wastestream in the unallocated source for a migration pathway if there is definitive information indicating that the substance or wastestream could only have been placed in sources with a containment factor value of 0 for that migration pathway.

In evaluating the hazardous waste quantity factor for the soil exposure pathway, allocate to each area of observed contamination only those hazardous substances that meet the criteria for observed contamination for that area of observed contamination and only those hazardous wastestreams that contain hazardous substances that meet the criteria for observed contamination for that area of observed contamination. Do not consider other hazardous substances or hazardous wastestreams at the site in evaluating this factor for the soil exposure pathway.

2.4.2.1 *Source hazardous waste quantity.* For each of the three migration pathways, assign a source hazardous waste quantity value to each source (including the unallocated source) having a containment factor value greater than 0 for the pathway being evaluated. Consider the unallocated source to have a containment factor value greater than 0 for each migration pathway.

For the soil exposure pathway, assign a source hazardous waste quantity value to each area of observed contamination, as applicable to the threat being evaluated.

For all pathways, evaluate source hazardous waste quantity using the following four measures in the following hierarchy:

- Hazardous constituent quantity.
- Hazardous wastestream quantity.
- Volume.
- Area.

For the unallocated source, use only the first two measures.

Separate criteria apply for assigning a source hazardous waste quantity value for radionuclides (see section 7.2.5).

2.4.2.1.1 *Hazardous constituent quantity.* Evaluate hazardous constituent quantity for the source (or area of observed contamination) based solely on the mass of CERCLA hazardous substances (as defined in CERCLA section 101(14), as amended) allocated to the source (or area of observed contamination), except:

- For a hazardous waste listed pursuant to section 3001 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901 et seq., determine its mass for the evaluation of this measure as follows:
  - –If the hazardous waste is listed solely for Hazard Code T (toxic waste), include only the mass of constituents in the hazardous waste that are CERCLA hazardous substances and not the mass of the entire hazardous waste.
  - –If the hazardous waste is listed for any other Hazard Code (including T plus any other Hazard Code), include the mass of the entire hazardous waste.
- For a RCRA hazardous waste that exhibits the characteristics identified under section 3001 of RCRA, as amended, determine its mass for the evaluation of this measure as follows:
  - –If the hazardous waste exhibits only the characteristic of toxicity (or only the characteristic of EP toxicity), include only the mass of constituents in the hazardous waste that are CERCLA hazardous substances and not the mass of the entire hazardous waste.
  - –If the hazardous waste exhibits any other characteristic identified under section 3001 (including any other characteristic plus the characteristic of toxicity [or the characteristic of EP toxicity]), include the mass of the entire hazardous waste.

Based on this mass, designated as C, assign a value for hazardous constituent quantity as follows:

- For the migration pathways, assign the source a value for hazardous constituent quantity using the Tier A equation of Table 2-5.
- For the soil exposure pathway, assign the area of observed contamination a value using the Tier A equation of Table 5-2 (section 5.1.2.2).

If the hazardous constituent quantity for the source (or area of observed contamination) is adequately determined (that is, the total mass of all CERCLA hazardous substances in the source and releases from the source [or in the area of observed contamination] is known or is estimated with reasonable confidence), do not evaluate the other three measures discussed below. Instead assign these other three measures a value of 0 for the source (or area of observed contamination) and proceed to section 2.4.2.1.5.

If the hazardous constituent quantity is not adequately determined, assign the source (or area of observed contamination) a value for hazardous constituent quantity based on the available data and proceed to section 2.4.2.1.2.

TABLE 2-5.—HAZARDOUS WASTE QUANTITY EVALUATION EQUATIONS

| Tier | Measure | Units | Equation for assigning value [a] |
|---|---|---|---|
| A | Hazardous constituent quantity (C) | lb | C |
| B [b] | Hazardous wastestream quantity (W) | lb | W/5,000 |
| C [b] | Volume (V) | | |
| | Landfill | $yd^3$ | V/2,500 |
| | Surface impoundment | $yd^3$ | V/2.5 |
| | Surface impoundment (buried/backfilled) | $yd^3$ | V/2.5 |
| | Drums [c] | gallon | V/500 |
| | Tanks and containers other than drums | $yd^3$ | V/2.5 |
| | Contaminated soil | $yd^3$ | V/2,500 |
| | Pile | $yd^3$ | V/2.5 |
| | Other | $yd^3$ | V/2.5 |
| D [b] | Area (A) | | |
| | Landfill | $ft^2$ | A/3,400 |
| | Surface impoundment | $ft^2$ | A/13 |
| | Surface impoundment (buried/backfilled) | $ft^2$ | A/13 |
| | Land treatment | $ft^2$ | A/270 |
| | Pile [d] | $ft^2$ | A/13 |
| | Contaminated soil | $ft^2$ | A/34,000 |

[a] Do not round to nearest integer.
[b] Convert volume to mass when necessary: 1 ton = 2,000 pounds = 1 cubic yard = 4 drums = 200 gallons.
[c] If actual volume of drums is unavailable, assume 1 drum = 50 gallons.
[d] Use land surface area under pile, not surface area of pile.

2.4.2.1.2 *Hazardous wastestream quantity.* Evaluate hazardous wastestream quantity for the source (or area of observed contamination) based on the mass of hazardous wastestreams plus the mass of any additional CERCLA pollutants and contaminants (as defined in CERCLA section 101[33], as amended) that are allocated to the source (or area of observed contamination). For a wastestream that consists solely of a hazardous waste listed pursuant to section 3001 of RCRA, as amended or that consists solely of a RCRA hazardous waste that exhibits the characteristics identified under section 3001 of RCRA, as amended, include the mass of that entire hazardous waste in the evaluation of this measure.

Based on this mass, designated as W, assign a value for hazardous wastestream quantity as follows:

- For the migration pathways, assign the source a value for hazardous wastestream quantity using the Tier B equation of Table 2-5.
- For the soil exposure pathway, assign the area of observed contamination a value using the Tier B equation of Table 5-2 (section 5.1.2.2).

Do not evaluate the volume and area measures described below if the source is the unallocated source or if the following condition applies:

- The hazardous wastestream quantity for the source (or area of observed contamination) is adequately determined—that is, total mass of all hazardous wastestreams and CERCLA pollutants and contaminants for the source and releases from the source (or for the area of observed contamination) is known or is estimated with reasonable confidence.

If the source is the unallocated source or if this condition applies, assign the volume and area measures a value of 0 for the source (or area of observed contamination) and proceed to section 2.4.2.1.5. Otherwise, assign the source (or area of observed contamination) a value for hazardous wastestream quantity based on the available data and proceed to section 2.4.2.1.3.

2.4.2.1.3 *Volume.* Evaluate the volume measure using the volume of the source (or the volume of the area of observed contamination). For the soil exposure pathway, restrict the use of the volume measure to those areas of observed contamination specified in section 5.1.2.2.

Based on the volume, designated as V, assign a value to the volume measure as follows:

- For the migration pathways, assign the source a value for volume using the appropriate Tier C equation of Table 2-5.
- For the soil exposure pathway, assign the area of observed contamination a value for volume using the appropriate Tier C equation of Table 5-2 (section 5.1.2.2).

If the volume of the source (or volume of the area of observed contamination, if applicable) can be determined, do not evaluate the area measure. Instead, assign the area measure a value of 0 and proceed to section 2.4.2.1.5. If the volume cannot be determined (or is not applicable for the soil exposure pathway), assign the source (or area of observed contamination) a value of 0 for the volume measure and proceed to section 2.4.2.1.4.

2.4.2.1.4 *Area.* Evaluate the area measure using the area of the source (or the area of the area of observed contamination). Based on this area, designated as A, assign a value to the area measure as follows:

- For the migration pathways, assign the source a value for area using the appropriate Tier D equation of Table 2-5.
- For the soil exposure pathway, assign the area of observed contamination a value for area using the appropriate Tier D equation of Table 5-2 (section 5.1.2.2).

2.4.2.1.5 *Calculation of source hazardous waste quantity value.* Select the highest of the values assigned to the source (or area of observed contamination) for the hazardous constituent quantity, hazardous wastestream quantity, volume, and area measures. Assign this value as the source hazardous waste quantity value. Do not round to the nearest integer.

2.4.2.2 *Calculation of hazardous waste quantity factor value.* Sum the source hazardous waste quantity values assigned to all sources (including the unallocated source) or areas of observed contamination for the pathway being evaluated and round this sum to the nearest integer, except: if the sum is greater than 0, but less than 1, round it to 1. Based on this value, select a hazardous waste quantity factor value for the pathway from Table 2-6.

TABLE 2-6.—HAZARDOUS WASTE QUANTITY FACTOR VALUES

| Hazardous waste quantity value | Assigned value |
|---|---|
| 0 | 0 |
| 1 [a] to 100 | 1 [b] |
| Greater than 100 to 10,000 | 100 |
| Greater than 10,000 to 1,000,000 | 10,000 |
| Greater than 1,000,000 | 1,000,000 |

[a] If the hazardous waste quantity value is greater than 0, but less than 1, round it to 1 as specified in text.
[b] For the pathway, if hazardous constituent quantity is not adequately determined, assign a value as specified in the text; do not assign the value of 1.

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For a migration pathway, if the hazardous constituent quantity is adequately determined (see section 2.4.2.1.1) for all sources (or all portions of sources and releases remaining after a removal action), assign the value from Table 2–6 as the hazardous waste quantity factor value for the pathway. If the hazardous constituent quantity is not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action) assign a factor value as follows:

- If any target for that migration pathway is subject to Level I or Level II concentrations (see section 2.5), assign either the value from Table 2–6 or a value of 100, whichever is greater, as the hazardous waste quantity factor value for that pathway.
- If none of the targets for that pathway is subject to Level I or Level II concentrations, assign a factor value as follows:

–If there has been no removal action, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value for that pathway.

–If there has been a removal action:

- –Determine values from Table 2–6 with and without consideration of the removal action.
- –If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the pathway.
- –If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the pathway.

For the soil exposure pathway, if the hazardous constituent quantity is adequately determined for all areas of observed contamination, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the hazardous constituent quantity is not adequately determined for one or more areas of observed contamination, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value.

2.4.3 *Waste characteristics factor category value.* Determine the waste characteristics factor category value as specified in section 2.4.3.1 for all pathways and threats, except the surface water-human food chain threat and the surface water-environmental threat. Determine the waste characteristics factor category value for these latter two threats as specified in section 2.4.3.2.

2.4.3.1 *Factor category value.* For the pathway (or threat) being evaluated, multiply the toxicity or combined factor value, as appropriate, from section 2.4.1.2 and the hazardous waste quantity factor value from section 2.4.2.2, subject to a maximum product of $1\times10^8$. Based on this waste characteristics product, assign a waste characteristics factor category value to the pathway (or threat) from Table 2–7.

TABLE 2–7.—WASTE CHARACTERISTICS FACTOR CATEGORY VALUES

| Waste characteristics product | Assigned value |
|---|---|
| 0 | 0 |
| Greater than 0 to less than 10 | 1 |
| 10 to less than $1\times10^2$ | 2 |
| $1\times10^2$ to less than $1\times10^3$ | 3 |
| $1\times10^3$ to less than $1\times10^4$ | 6 |
| $1\times10^4$ to less than $1\times10^5$ | 10 |
| $1\times10^5$ to less than $1\times10^6$ | 18 |
| $1\times10^6$ to less than $1\times10^7$ | 32 |
| $1\times10^7$ to less than $1\times10^8$ | 56 |
| $1\times10^8$ to less than $1\times10^9$ | 100 |
| $1\times10^9$ to less than $1\times10^{10}$ | 180 |
| $1\times10^{10}$ to less than $1\times10^{11}$ | 320 |
| $1\times10^{11}$ to less than $1\times10^{12}$ | 560 |
| $1\times10^{12}$ | 1,000 |

2.4.3.2 *Factor category value, considering bioaccumulation potential.* For the surface water-human food chain threat and the surface water-environmental threat, multiply the toxicity or combined factor value, as appropriate, from section 2.4.1.2 and the hazardous waste quantity factor value from section 2.4.2.2, subject to:

- A maximum product of $1\times10^{12}$, *and*
- A maximum product exclusive of the bioaccumulation (or ecosystem bioaccumulation) potential factor of $1\times10^8$.

Based on the total waste characteristics product, assign a waste characteristics factor category value to these threats from Table 2–7.

2.5 *Targets.*

The types of targets evaluated include the following:

- Individual (factor name varies by pathway and threat).
- Human population.
- Resources (these vary by pathway and threat).
- Sensitive environments (included for all pathways except ground water migration).

The factor values that may be assigned to each type of target have the same range for each pathway for which that type of target is evaluated. The factor value for most types of targets depends on whether the target is subject to actual or potential contamination for the pathway and whether the actual contamination is Level I or Level II:

- Actual contamination: Target is associated either with a sampling location that meets the criteria for an observed release (or observed contamination) for the pathway or with an observed release based on direct observation for the pathway (additional criteria apply for establishing actual contamination for the human food chain threat in the surface water migration pathway, see sections 4.1.3.3 and 4.2.3.3). sections 3 through 6 specify how to determine the targets associated with a sampling location or with an observed release based on direct observation. Determine whether the actual contamination is Level I or Level II as follows:

–Level I:

- –Media-specific concentrations for the target meet the criteria for an observed release (or observed contamination) for the pathway and are at or above media-specific benchmark values. These benchmark values (see section 2.5.2) include both screening concentrations and concentrations specified in regulatory limits (such as Maximum Contaminant Level (MCL) values), or
- –For the human food chain threat in the surface water migration pathway, concentrations in tissue samples from aquatic human food chain organisms are at or above benchmark values. Such tissue samples may be used in addition to media-specific concentrations only as specified in sections 4.1.3.3 and 4.2.3.3.

–Level II:

- –Media-specific concentrations for the target meet the criteria for an observed release (or observed contamination) for the pathway, but are less than media-specific benchmarks. If none of the hazardous substances eligible to be evaluated for the sampling location has an applicable benchmark, assign Level II to the actual contamination at the sampling location, or
- –For observed releases based on direct observation, assign Level II to targets as specified in sections 3, 4, and 6, or
- –For the human food chain threat in the surface water migration pathway, concentrations in tissue samples from aquatic human food chain organisms, when applicable, are below benchmark values.

–If a target is subject to both Level I and Level II concentrations for a pathway (or threat), evaluate the target using Level I concentrations for that pathway (or threat).

- Potential contamination: Target is subject to a potential release (that is, target is not associated with actual contamination for that pathway or threat).

Assign a factor value for individual risk as follows (select the highest value that applies to the pathway or threat):

- 50 points if any individual is exposed to Level I concentrations.
- 45 points if any individual is exposed to Level II concentrations.
- Maximum of 20 points if any individual is subject to potential contamination. The value assigned is 20 multiplied by the distance or dilution weight appropriate to the pathway.

Assign factor values for population and sensitive environments as follows:

- Sum Level I targets and multiply by 10. (Level I is not used for sensitive environments in the soil exposure and air migration pathways.)
- Sum Level II targets.
- Multiply potential targets by distance or dilution weights appropriate to the pathway, sum, and divide by 10. Distance or dilution weighting accounts for diminishing exposure with increasing distance or dilution within the different pathways.
- Sum the values for the three levels.

In addition, resource value points are assigned within all pathways for welfare-related impacts (for example, impacts to agricultural land), but do not depend on whether there is actual or potential contamination.

2.5.1 *Determination of level of actual contamination at a sampling location.* Determine whether Level I concentrations or Level II concentrations apply at a sampling location (and thus to the associated targets) as follows:

- Select the benchmarks applicable to the pathway (or threat) being evaluated.
- Compare the concentrations of hazardous substances in the sample (or comparable samples) to their benchmark concentrations for the pathway (or threat), as specified in section 2.5.2.
- Determine which level applies based on this comparison.
- If none of the hazardous substances eligible to be evaluated for the sampling location has an applicable benchmark, assign Level II to the actual contamination at that sampling location for the pathway (or threat).

In making the comparison, consider only those samples, and only those hazardous substances in the sample, that meet the criteria for an observed release (or observed contamination) for the pathway, except: tissue samples from aquatic human food chain organisms may also be used as specified in sections 4.1.3.3 and 4.2.3.3 of the surface water-human food chain threat. If any hazardous substance is present in more than one comparable sample for the sampling location, use the highest concentration of that hazardous substance from any of the comparable samples in making the comparisons.

Treat sets of samples that are not comparable separately and make a separate comparison for each such set.

2.5.2 *Comparison to benchmarks.* Use the following media-specific benchmarks for making the comparisons for the indicated pathway (or threat):

- Maximum Contaminant Level Goals (MCLGs)—ground water migration pathway and drinking water threat in surface water migration pathway. Use only MCLG values greater than 0.
- Maximum Contaminant Levels (MCLs)—ground water migration pathway and drinking water threat in surface water migration pathway.
- Food and Drug Administration Action Level (FDAAL) for fish or shellfish—human food chain threat in surface water migration pathway.
- EPA Ambient Water Quality Criteria (AWQC) for protection of aquatic life—environmental threat in surface water migration pathway.
- EPA Ambient Aquatic Life Advisory Concentrations (AALAC)—environmental threat in surface water migration pathway.
- National Ambient Air Quality Standards (NAAQS)—air migration pathway.
- National Emission Standards for Hazardous Air Pollutants (NESHAPs)—air migration pathway. Use only those NESHAPs promulgated in ambient concentration units.

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- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for inhalation exposures (air migration pathway) or for oral exposures (ground water migration pathway; drinking water and human food chain threats in surface water migration pathway; and soil exposure pathway).
- Screening concentration for noncancer toxicological responses corresponding to the RfD for inhalation exposures (air migration pathway) or for oral exposures (ground water migration pathway; drinking water and human food chain threats in surface water migration pathway; and soil exposure pathway).

Select the benchmark(s) applicable to the pathway (or threat) being evaluated as specified in sections 3 through 6. Compare the concentration of each hazardous substance from the sampling location to its benchmark concentration(s) for that pathway (or threat). Use only those samples and only those hazardous substances in the sample that meet the criteria for an observed release (or observed contamination) for the pathway, except: tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of any applicable hazardous substance from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations for that pathway (or threat). If more than one benchmark applies to the hazardous substance, assign Level I if the concentration of the hazardous substance equals or exceeds the lowest applicable benchmark concentration.

If no hazardous substance individually equals or exceeds its benchmark concentration, but more than one hazardous substance either meets the criteria for an observed release (or observed contamination) for the sample (or comparable samples) or is eligible to be evaluated for a tissue sample (see sections 4.1.3.3 and 4.2.3.3), calculate the indices I and J specified below based on these hazardous substances.

For those hazardous substances that are carcinogens (that is, those having a carcinogen weight-of-evidence classification of A, B, or C), calculate an index I for the sample location as follows:

$$I = \sum_{i=1}^{n} \frac{C_i}{SC_i}$$

where:

$C_i$ = Concentration of hazardous substance i in sample (or highest concentration of hazardous substance i from among comparable samples).

$SC_i$ = Screening concentration for cancer corresponding to that concentration that corresponds to its $10^{-6}$ individual cancer risk for applicable exposure (inhalation or oral) for hazardous substance i.

n = Number of applicable hazardous substances in sample (or comparable samples) that are carcinogens and for which an $SC_i$ is available.

For those hazardous substances for which an RfD is available, calculate an index J for the sample location as follows:

$$J = \sum_{j=1}^{m} \frac{C_j}{CR_j}$$

where:

$C_j$ = Concentration of hazardous substance j in sample (or highest concentration of hazardous substance j from among comparable samples).

$CR_j$ = Screening concentration for noncancer toxicological responses corresponding to RfD for applicable exposure (inhalation or oral) for hazardous substance j.

m = Number of applicable hazardous substances in sample (or comparable samples) for which a $CR_j$ is available.

If either I or J equals or exceeds 1, consider the sampling location to be subject to Level I concentrations for that pathway (or threat). If both I and J are less than 1, consider the sampling location to be subject to Level II concentrations for that pathway (or threat). If, for the sampling location, there are sets of samples that are not comparable, calculate I and J separately for each such set, and use the highest calculated values of I and J to assign Level I and Level II.

See sections 7.3.1 and 7.3.2 for criteria for determining the level of contamination for radioactive substances.

*3.0 Ground Water Migration Pathway*

Evaluate the ground water migration pathway based on three factor categories: likelihood of release, waste characteristics, and targets. Figure 3–1 indicates the factors included within each factor category.

Determine the ground water migration pathway score ($S_{gw}$) in terms of the factor category values as follows:

$$S_{gw} = \frac{(LR)\ (WC)\ (T)}{SF}$$

where:

LR = Likelihood of release factor category value.

WC = Waste characteristics factor category value.

T = Targets factor category value.

SF = Scaling factor.

Table 3–1 outlines the specific calculation procedure.

Calculate a separate ground water migration pathway score for each aquifer, using the factor category values for that aquifer for likelihood of release, waste characteristics, and targets. In doing so, include both the targets using water from that aquifer and the targets using water from all overlying aquifers through which the hazardous substances would migrate to reach the aquifer being evaluated. Assign the highest ground water migration pathway score that results for any aquifer as the ground water migration pathway score for the site.

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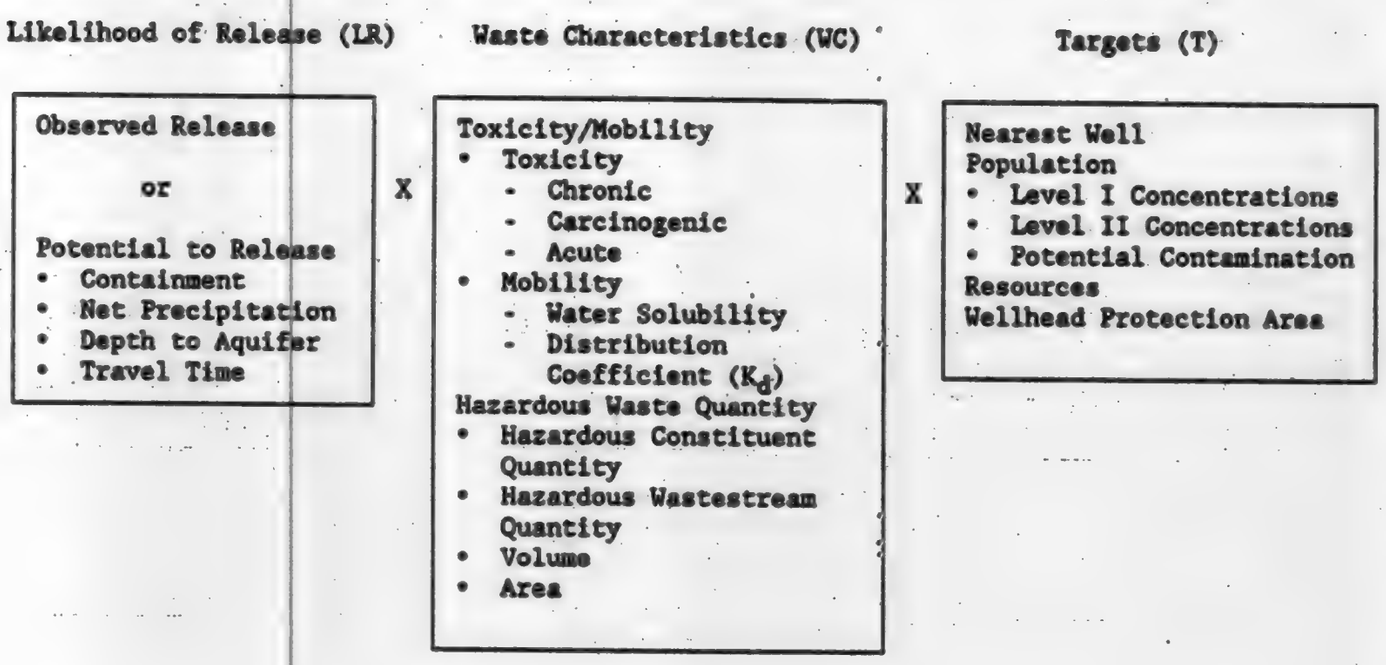



FIGURE 3-1
OVERVIEW OF GROUND WATER MIGRATION PATHWAY

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TABLE 3–1.—GROUND WATER MIGRATION PATHWAY SCORESHEET

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Likelihood of Release to an Aquifer:** | | |
| 1. Observed Release | 550 | — |
| 2. Potential to Release: | | |
| 2a. Containment | 10 | — |
| 2b. Net Precipitation | 10 | — |
| 2c. Depth to Aquifer | 5 | — |
| 2d. Travel Time | 35 | — |
| 2e. Potential to Release [lines 2a(2b+2c+2d)] | 500 | — |
| 3. Likelihood of Release (higher of lines 1 and 2e) | 550 | — |
| **Waste Characteristics:** | | |
| 4. Toxicity/Mobility | (a) | — |
| 5. Hazardous Waste Quantity | (a) | — |
| 6. Waste Characteristics | 100 | — |
| **Targets:** | | |
| 7. Nearest Well | 50 | — |
| 8. Population: | | |
| 8a. Level I Concentrations | (b) | — |
| 8b. Level II Concentrations | (b) | — |
| 8c. Potential Contamination | (b) | — |
| 8d. Population (lines 8a+8b+8c) | (b) | — |
| 9. Resources | 5 | — |
| 10. Wellhead Protection Area | 20 | — |
| 11. Targets (lines 7+8d+9+10) | (b) | — |
| **Ground Water Migration Score for an Aquifer:** | | |
| 12. Aquifer Score [(lines 3 x 6 x 11)/82,500] [c] | 100 | — |
| **Ground Water Migration Pathway Score:** | | |
| 13. Pathway Score ($S_{gw}$), (highest value from line 12 for all aquifers evaluated)[c] | 100 | — |

[a] Maximum value applies to waste characteristics category.
[b] Maximum value not applicable.
[c] Do not round to nearest integer.

3.0.1 *General considerations*

3.0.1.1 *Ground water target distance limit.* The target distance limit defines the maximum distance from the sources at the site over which targets are evaluated. Use a target distance limit of 4 miles for the ground water migration pathway, except when aquifer discontinuities apply (see section 3.0.1.2.2). Furthermore, consider any well with an observed release from a source at the site (see section 3.1.1) to lie within the target distance limit of the site, regardless of the well's distance from the sources at the site.

For sites that consist solely of a contaminated ground water plume with no identified source, begin measuring the 4-mile target distance limit at the center of the area of observed ground water contamination. Determine the area of observed ground water contamination based on available samples that meet the criteria for an observed release.

3.0.1.2 *Aquifer boundaries.* Combine multiple aquifers into a single hydrologic unit for scoring purposes if aquifer interconnections can be established for these aquifers. In contrast, restrict aquifer boundaries if aquifer discontinuities can be established.

3.0.1.2.1 *Aquifer interconnections.* Evaluate whether aquifer interconnections occur within 2 miles of the sources at the site. If they occur within this 2-mile distance, combine the aquifers having interconnections in scoring the site. In addition, if observed ground water contamination attributable to the sources at the site extends beyond 2 miles from the sources, use any locations within the limits of this observed ground water contamination in evaluating aquifer interconnections. If data are not adequate to establish aquifer interconnections, evaluate the aquifers as separate aquifers.

3.0.1.2.2 *Aquifer discontinuities.* Evaluate whether aquifer discontinuities occur within the 4-mile target distance limit. An aquifer discontinuity occurs for scoring purposes only when a geologic, topographic, or other structure or feature entirely transects an aquifer within the 4-mile target distance limit, thereby creating a continuous boundary to ground water flow within this limit. If two or more aquifers can be combined into a single hydrologic unit for scoring purposes, an aquifer discontinuity occurs only when the structure or feature entirely transects the boundaries of this single hydrologic unit.

When an aquifer discontinuity is established within the 4-mile target distance limit, exclude that portion of the aquifer beyond the discontinuity in evaluating the ground water migration pathway. However, if hazardous substances have migrated across an apparent discontinuity within the 4-mile target distance limit, do not consider this to be a discontinuity in scoring the site.

3.0.1.3 *Karst aquifer.* Give a karst aquifer that underlies any portion of the sources at the site special consideration in the evaluation of two potential to release factors (depth to aquifer in section 3.1.2.3 and travel time in section 3.1.2.4), one waste characteristics factor (mobility in section 3.2.1.2), and two targets factors (nearest well in section 3.3.1 and potential contamination in section 3.3.2.4).

3.1 *Likelihood of release.* For an aquifer, evaluate the likelihood of release factor category in terms of an observed release factor or a potential to release factor.

3.1.1 *Observed release.* Establish an observed release to an aquifer by demonstrating that the site has released a hazardous substance to the aquifer. Base this demonstration on either:

- Direct observation—a material that contains one or more hazardous substances has been deposited into or has been observed entering the aquifer.
- Chemical analysis—an analysis of ground water samples from the aquifer indicates that the concentration of hazardous substance(s) has increased significantly above the background concentration for the site (see section 2.3). Some portion of the significant increase must be attributable to the site to establish the observed release, except: when the source itself consists of a ground water plume with no identified source, no separate attribution is required.

If an observed release can be established for the aquifer, assign the aquifer an observed release factor value of 550, enter this value in Table 3–1, and proceed to section 3.1.3. If an observed release cannot be established for the aquifer, assign an observed release factor value of 0, enter this value in Table 3–1, and proceed to section 3.1.2.

3.1.2 *Potential to release.* Evaluate potential to release only if an observed release cannot be established for the aquifer. Evaluate potential to release based on four factors: containment, net precipitation, depth to aquifer, and travel time. For sources overlying karst terrain, give any karst aquifer that underlies any portion of the sources at the site special consideration in evaluating depth to aquifer and travel time, as specified in sections 3.1.2.3 and 3.1.2.4.

3.1.2.1 *Containment.* Assign a containment factor value from Table 3–2 to each source at the site. Select the highest containment factor value assigned to those sources with a source hazardous waste quantity value of 0.5 or more (see section

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2.4.2.1.5). (Do not include this minimum size requirement in evaluating any other factor of this pathway.) Assign this highest value as the containment factor value for the aquifer being evaluated. Enter this value in Table 3-1.

If no source at the site meets the minimum size requirement, then select the highest value assigned to the sources at the site and assign it as the containment factor value for the aquifer being evaluated. Enter this value in Table 3-1.

3.1.2.2 *Net precipitation.* Assign a net precipitation factor value to the site. Figure 3-2 provides computed net precipitation factor values, based on site location. Where necessary, determine the net precipitation factor value as follows:

- Determine monthly precipitation and monthly evapotranspiration:
  - –Use local measured monthly averages.
  - –When local data are not available, use monthly averages from the nearest National Oceanographic and Atmospheric Administration weather station that is in a similar geographic setting.

TABLE 3-2.—CONTAINMENT FACTOR VALUES FOR GROUND WATER MIGRATION PATHWAY

| Source | Assigned value |
|---|---|
| **All Sources (Except Surface Impoundments, Land Treatment, Containers, and Tanks)** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures). | 10 |
| No liner | 10 |
| No evidence of hazardous substance migration from source area, a liner, *and*: | |
| (a) None of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) functioning leachate collection and removal system immediately above liner. | 10 |
| (b) Any one of the three items in (a) present | 9 |
| (c) Any two of the items in (a) present | 7 |
| (d) All three items in (a) present plus a functioning ground water monitoring system | 5 |
| (e) All items in (d) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area. | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, functioning ground water monitoring system, *and*: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | 0 |
| **Surface Impoundment** | |
| Evidence of hazardous substance migration from surface impoundment | 10 |
| No liner | 10 |
| Free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, *and*: | |
| (a) Liner | 9 |
| (b) Liner with functioning leachate collection and removal system below liner, and functioning ground water monitoring system. | 5 |
| (c) Double liner with functioning leachate collection and removal system between liners, and functioning ground water monitoring system. | 3 |
| No evidence of hazardous substance migration from surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues). | Evaluate using **All sources** criteria (with no bulk or free liquid deposited). |
| **Land Treatment** | |
| Evidence of hazardous substance migration from land treatment zone | 10 |
| No functioning, maintained, run-on control and runoff management system | 10 |
| No evidence of hazardous substance migration from land treatment zone *and*: | |
| (a) Functioning and maintained run-on control and runoff management system | 7 |
| (b) Functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area. | 5 |
| (c) Land treatment area maintained in compliance with 40 CFR 264.280 | 0 |



TABLE 3-2.—CONTAINMENT FACTOR VALUES FOR GROUND WATER MIGRATION PATHWAY—Continued

| Source | Assigned value |
|---|---|
| **Containers** | |
| All containers buried | Evaluate using **All sources** criteria. |
| Evidence of hazardous substance migration from container area (i.e., container area includes containers and any associated containment structures). | 10 |
| No liner (or no essentially impervious base) under container area | 10 |
| No diking (or no similar structure) surrounding container area | 10 |
| Diking surrounding container area unsound or not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from container area, container area surrounded by sound diking that is regularly inspected and maintained, *and*: | |
| (a) Liner (or essentially impervious base) under container area | 9 |
| (b) Essentially impervious base under container area with liquids collection and removal system | 7 |
| (c) Containment system includes essentially impervious base, liquids collection system, sufficient capacity to contain 10 percent of volume of all containers, and functioning and maintained run-on control; plus functioning ground water monitoring system, and spilled or leaked hazardous substances and accumulated precipitation removed in timely manner to prevent overflow of collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed. | 5 |
| (d) Free liquids present, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, single liner under container area with functioning leachate collection and removal system below liner, and functioning ground water monitoring system. | 5 |
| (e) Same as (d) except: double liner under container area with functioning leachate collection and removal system between liners. | 3 |
| Containers inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any unsealed or ruptured containers, liquids or materials containing free liquids not deposited in any container, and functioning and maintained run-off control present. | 0 |
| No evidence of hazardous substance migration from container area, containers leaking, and all free liquids eliminated at closure (either by removal of liquid or solidification of remaining wastes and waste residues). | Evaluate using **All sources** criteria (with no bulk or free liquid deposited). |
| **Tank** | |
| Below-ground tank | Evaluate using **All sources** criteria. |
| Evidence of hazardous substance migration from tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any associated containment structures). | 10 |
| Tank and ancillary equipment not provided with secondary containment (e.g., liner under tank area, vault system, double wall). | 10 |
| No diking (or no similar structure) surrounding tank and ancillary equipment | 10 |
| Diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, *and*: | |
| (a) Tank and ancillary equipment provided with secondary containment | 9 |
| (b) Tank and ancillary equipment provided with secondary containment with leak detection and collection system. | 7 |
| (c) Tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of volume of largest tank within containment area, spilled or leaked hazardous substances and accumulated precipitation removed in timely manner, at least weekly inspection of tank and secondary containment system, all leaking or unfit-for-use tank systems promptly responded to, and functioning ground water monitoring system. | 5 |
| (d) Containment system has sufficient capacity to hold volume of all tanks within tank containment area and to provide adequate freeboard, single liner under that containment area with functioning leachate collection and removal system below liner, and functioning ground water monitoring system. | 5 |
| (e) Same as (d) except: double liner under tank containment area with functioning leachate collection and removal system between liners. | 3 |
| Tank is above ground, and inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from tank, liquids or materials containing free liquids not deposited in any tank, and functioning and maintained run-on control present. | 0 |

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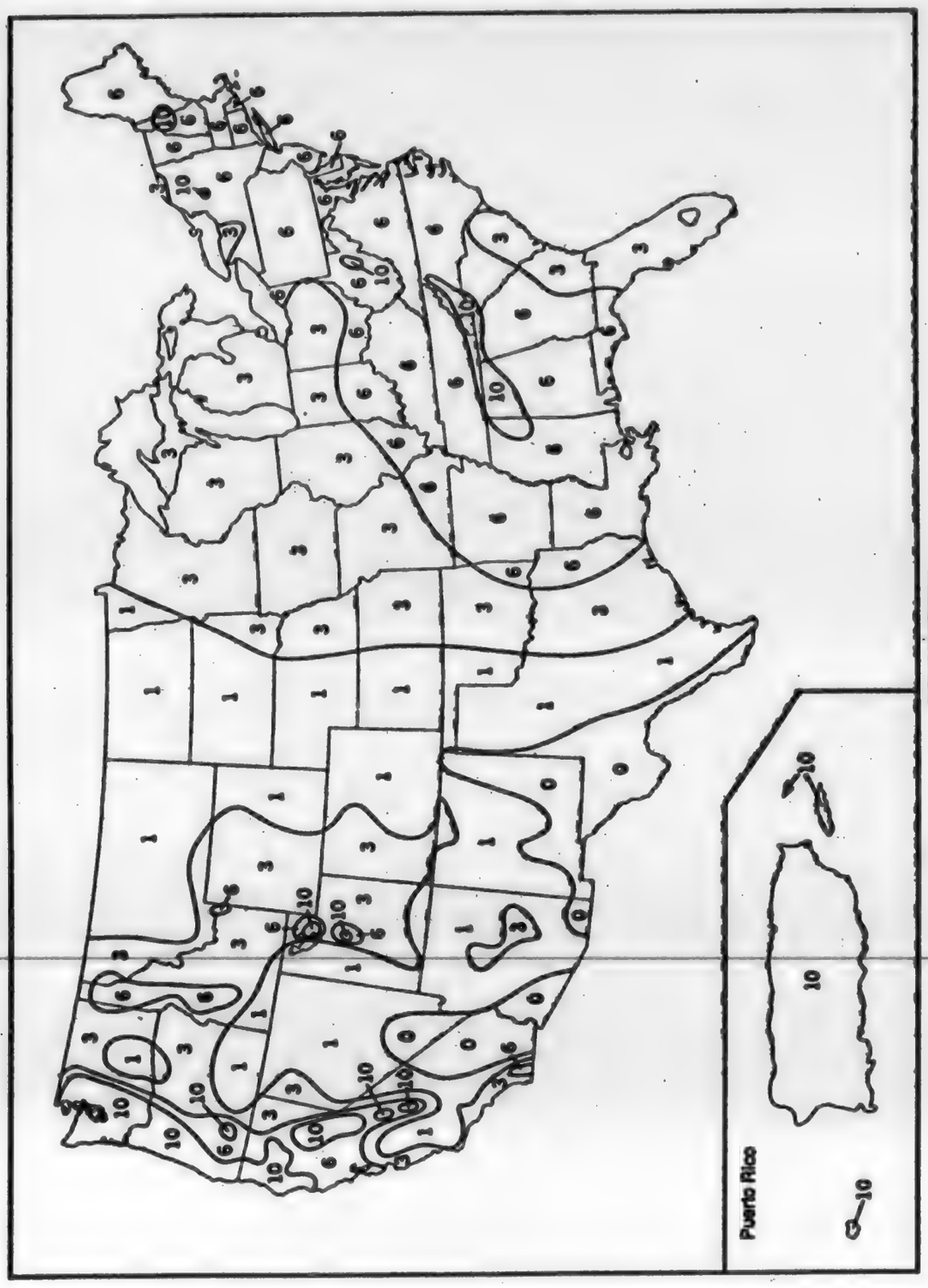



FIGURE 3-2
NET PRECIPITATION FACTOR VALUES

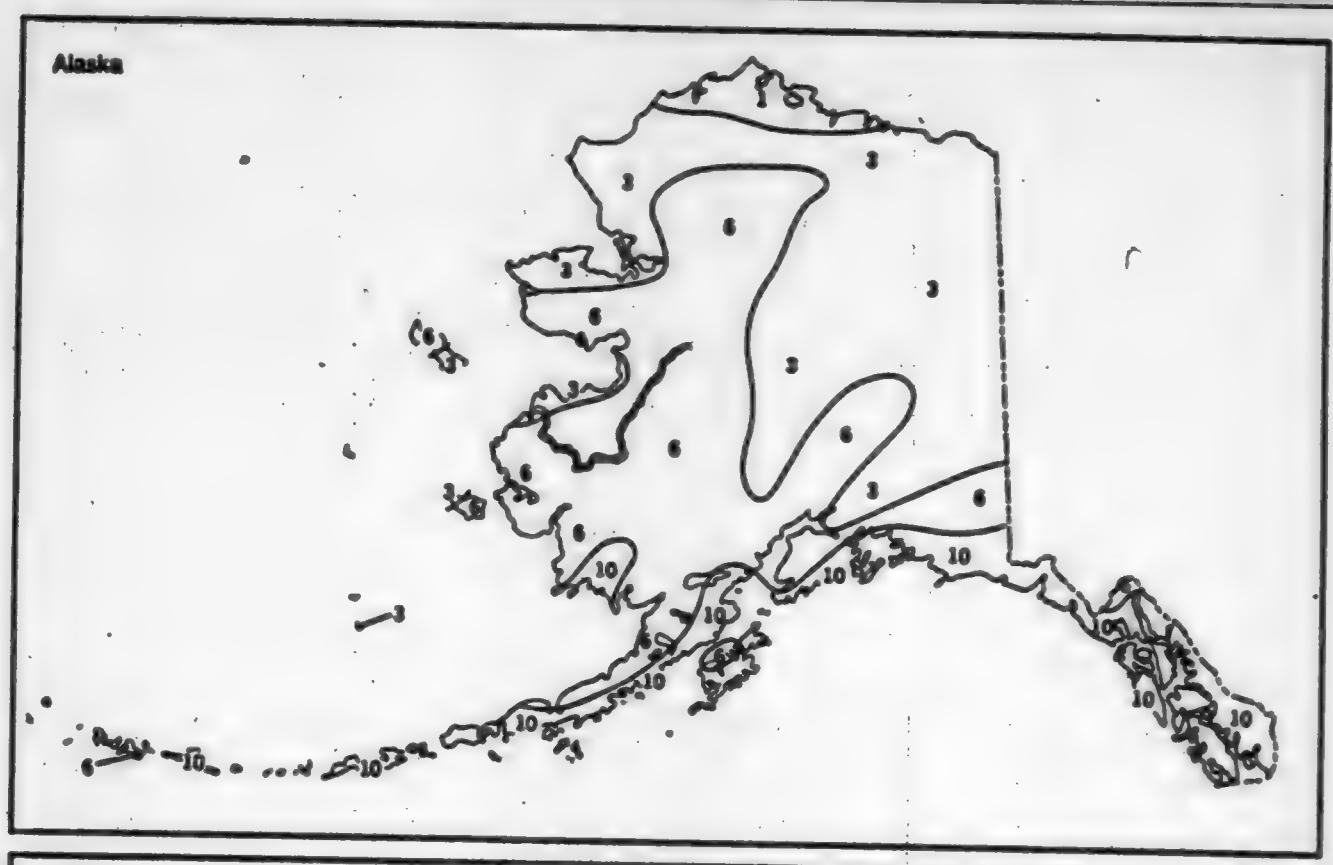



**FIGURE 3-2**
**NET PRECIPITATION FACTOR VALUES**
**(CONCLUDED)**



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–When measured monthly evapotranspiration is not available, calculate monthly potential evapotranspiration ($E_t$) as follows:

$E_t = 0.6\ F_i\ (10\ T_i/I)^a$

where:

$E_t$ = Monthly potential evapotranspiration (inches) for month i.

$F_i$ = Monthly latitude adjusting value for month i.

$T_i$ = Mean monthly temperature (°C) for month i.

$$I = \sum_{i=1}^{12} (T_i/5)^{1.514}$$

$$a = 6.75 \times 10^{-7} I^3 - 7.71 \times 10^{-5} I^2 + 1.79 \times 10^{-2} I + 0.49239$$

Select the latitude adjusting value for each month from Table 3–3. For latitudes lower than 50° North or 20° South, determine the monthly latitude adjusting value by interpolation.

• Calculate monthly net precipitation by subtracting monthly evapotranspiration (or monthly potential evapotranspiration) from monthly precipitation. If evapotranspiration (or potential evapotranspiration) exceeds precipitation for a month, assign that month a net precipitation value of 0.

• Calculate the annual net precipitation by summing the monthly net precipitation values.

• Based on the annual net precipitation, assign a net precipitation factor value from Table 3–4.

Enter the value assigned from Figure 3–2 or from Table 3–4, as appropriate, in Table 3–1.

TABLE 3–3.—MONTHLY LATITUDE ADJUSTING VALUES[a]

| Latitude [b] (degrees) | Month | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Jan. | Feb. | March | April | May | June | July | August | Sept. | Oct. | Nov. | Dec. |
| ≥50 N | 0.74 | 0.78 | 1.02 | 1.15 | 1.33 | 1.36 | 1.37 | 1.25 | 1.06 | 0.92 | 0.76 | 0.70 |
| 45 N | 0.80 | 0.81 | 1.02 | 1.13 | 1.28 | 1.29 | 1.31 | 1.21 | 1.04 | 0.94 | 0.79 | 0.75 |
| 40 N | 0.84 | 0.83 | 1.03 | 1.11 | 1.24 | 1.25 | 1.27 | 1.18 | 1.04 | 0.96 | 0.83 | 0.81 |
| 35 N | 0.87 | 0.85 | 1.03 | 1.09 | 1.21 | 1.21 | 1.23 | 1.16 | 1.03 | 0.97 | 0.86 | 0.85 |
| 30 N | 0.90 | 0.87 | 1.03 | 1.06 | 1.18 | 1.17 | 1.20 | 1.14 | 1.03 | 0.98 | 0.89 | 0.88 |
| 20 N | 0.95 | 0.90 | 1.03 | 1.05 | 1.13 | 1.11 | 1.14 | 1.11 | 1.02 | 1.00 | 0.93 | 0.94 |
| 10 N | 1.00 | 0.91 | 1.03 | 1.03 | 1.08 | 1.06 | 1.06 | 1.07 | 1.02 | 1.02 | 0.98 | 0.99 |
| 0 | 1.04 | 0.94 | 1.04 | 1.01 | 1.04 | 1.01 | 1.04 | 1.04 | 1.01 | 1.04 | 1.01 | 1.04 |
| 10 S | 1.08 | 0.97 | 1.05 | 0.99 | 1.00 | 0.96 | 1.00 | 1.02 | 1.00 | 1.06 | 1.05 | 1.09 |
| 20 S | 1.14 | 0.99 | 1.05 | 0.97 | 0.96 | 0.91 | 0.95 | 0.99 | 1.00 | 1.08 | 1.09 | 1.15 |

[a] Do not round to nearest integer.
[b] For unlisted latitudes lower than 50° North or 20° South, determine the latitude adjusting value by interpolation.

TABLE 3–4.—NET PRECIPITATION FACTOR VALUES

| Net precipitation (inches) | Assigned value |
|---|---|
| 0 | 0 |
| Greater than 0 to 5 | 1 |
| Greater than 5 to 15 | 3 |
| Greater than 15 to 30 | 6 |
| Greater than 30 | 10 |

3.1.2.3 *Depth to aquifer.* Evaluate depth to aquifer by determining the depth from the lowest known point of hazardous substances at a site to the top of the aquifer being evaluated, considering all layers in that interval. Measure the depth to an aquifer as the distance from the surface to the top of the aquifer minus the distance from the surface to the lowest known point of hazardous substances eligible to be evaluated for that aquifer. In evaluating depth to aquifer in karst terrain, assign a thickness of 0 feet to a karst aquifer that underlies any portion of the sources at the site. Based on the calculated depth, assign a value from Table 3–5 to the depth to aquifer factor.

Determine the depth to aquifer only at locations within 2 miles of the sources at the site, except: if observed ground water contamination attributable to sources at the site extends more than 2 miles beyond these sources, use any location within the limits of this observed ground water contamination when evaluating the depth to aquifer factor for any aquifer that does not have an observed release. If the necessary geologic information is available at multiple locations, calculate the depth to aquifer at each location. Use the location having the smallest depth to assign the factor value. Enter this value in Table 3–1.

TABLE 3–5.—DEPTH TO AQUIFER FACTOR VALUES

| Depth to aquifer [a] (feet) | Assigned value |
|---|---|
| Less than or equal to 25 | 5 |
| Greater than 25 to 250 | 3 |
| Greater than 250 | 1 |

[a] Use depth of all layers between the hazardous substances and aquifer. Assign a thickness of 0 feet to any karst aquifer that underlies any portion of the sources at the site.

3.1.2.4 *Travel time.* Evaluate the travel time factor based on the geologic materials in the interval between the lowest known point of hazardous substances at the site and the top of the aquifer being evaluated. Assign a value to the travel time factor as follows.

• If the depth to aquifer (see section 3.1.2.3) is 10 feet or less, assign a value of 35.

• If, for the interval being evaluated, all layers that underlie a portion of the sources at the site are karst, assign a value of 35.

• Otherwise:

–Select the lowest hydraulic conductivity layer(s) from within the above interval. Consider only layers at least 3 feet thick. However, do not consider layers or portions of layers within the first 10 feet of the depth to the aquifer.

–Determine hydraulic conductivities for individual layers from Table 3–6 or from in-situ or laboratory tests. Use representative, measured, hydraulic conductivity values whenever available.

–If more than one layer has the same lowest hydraulic conductivity, include all such layers and sum their thicknesses. Assign a thickness of 0 feet to a karst layer that underlies any portion of the sources at the site.

–Assign a value from Table 3–7 to the travel time factor, based on the thickness and hydraulic conductivity of the lowest hydraulic conductivity layer(s).



TABLE 3–6.—HYDRAULIC CONDUCTIVITY OF GEOLOGIC MATERIALS

| Type of material [a] | Assigned hydraulic conductivity [a] (cm/sec) |
|---|---|
| Clay; low permeability till (compact unfractured till); shale; unfractured metamorphic and igneous rocks | $10^{-6}$ |
| Silt; loesses; silty clays; sediments that are predominantly silts; moderately permeable till (fine-grained, unconsolidated till, or compact till with some fractures); low permeability limestones and dolomites (no karst); low permeability sandstone; low permeability fractured igneous and metamorphic rocks | $10^{-4}$ |
| Sands; sandy silts; sediments that are predominantly sand; highly permeable till (coarse-grained, unconsolidated or compact and highly fractured); peat; moderately permeable limestones and dolomites (no karst); moderately permeable sandstone; moderately permeable fractured igneous and metamorphic rocks | $10^{-2}$ |
| Gravel; clean sand; highly permeable fractured igneous and metamorphic rocks; permeable basalt; karst limestones and dolomites | $10^{0}$ |

[a] Do not round to nearest integer.

TABLE 3–7.—TRAVEL TIME FACTOR VALUES [a]

| Hydraulic conductivity (cm/sec) | Thickness of lowest hydraulic conductivity layer(s) [b] (feet) | | | |
|---|---|---|---|---|
| | Greater than 3 to 5 | Greater than 5 to 100 | Greater than 100 to 500 | Greater than 500 |
| Greater than or equal to $10^{-2}$ | 35 | 25 | 15 | 25 |
| Less than $10^{-2}$ to $10^{-4}$ | 35 | 25 | 15 | 15 |
| Less than $10^{-4}$ to $10^{-6}$ | 15 | 15 | 5 | 5 |
| Less than $10^{-6}$ | 5 | 5 | 1 | 1 |

[a] If depth to aquifer is 10 feet or less or if, for the interval being evaluated, all layers that underlie a portion of the sources at the site are karst, assign a value of 35.
[b] Consider only layers at least 3 feet thick. Do not consider layers or portions of layers within the first 10 feet of the depth to the aquifer.

Determine travel time only at locations within 2 miles of the sources at the site, except: if observed ground water contamination attributable to sources at the site extends more than 2 miles beyond these sources, use any location within the limits of this observed ground water contamination when evaluating the travel time factor for any aquifer that does not have an observed release. If the necessary subsurface geologic information is available at multiple locations, evaluate the travel time factor at each location. Use the location having the highest travel time factor value to assign the factor value for the aquifer. Enter this value in Table 3–1.

3.1.2.5 *Calculation of potential to release factor value.* Sum the factor values for net precipitation, depth to aquifer, and travel time, and multiply this sum by the factor value for containment. Assign this product as the potential to release factor value for the aquifer. Enter this value in Table 3–1.

3.1.3 *Calculation of likelihood of release factor category value.* If an observed release is established for an aquifer, assign the observed release factor value of 550 as the likelihood of release factor category value for that aquifer. Otherwise, assign the potential to release factor value for that aquifer as the likelihood of release value. Enter the value assigned in Table 3–1.

3.2 *Waste characteristics.* Evaluate the waste characteristics factor category for an aquifer based on two factors: toxicity/mobility and hazardous waste quantity. Evaluate only those hazardous substances available to migrate from the sources at the site to ground water. Such hazardous substances include:

• Hazardous substances that meet the criteria for an observed release to ground water.

• All hazardous substances associated with a source that has a ground water containment factor value greater than 0 (see sections 2.2.2, 2.2.3, and 3.1.2.1).

3.2.1 *Toxicity/mobility.* For each hazardous substance, assign a toxicity factor value, a mobility factor value, and a combined toxicity/mobility factor value as specified in the following sections. Select the toxicity/mobility factor value for the aquifer being evaluated as specified in section 3.2.1.3.

3.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in Section 2.4.1.1.

3.2.1.2 *Mobility.* Assign a mobility factor value to each hazardous substance for the aquifer being evaluated as follows:

• For any hazardous substance that meets the criteria for an observed release by chemical analysis to one or more aquifers underlying the sources at the site, regardless of the aquifer being evaluated, assign a mobility factor value of 1.

• For any hazardous substance that does not meet the criteria for an observed release by chemical analysis to at least one of the aquifers, assign that hazardous substance a mobility factor value from Table 3–8 for the aquifer being evaluated, based on its water solubility and distribution coefficient ($K_d$).

• If the hazardous substance cannot be assigned a mobility factor value because data on its water solubility or distribution coefficient are not available, use other hazardous substances for which information is available in evaluating the pathway.

TABLE 3–8.—GROUND WATER MOBILITY FACTOR VALUES [a]

| Water solubility (mg/l) | Distribution coefficient ($K_d$) (ml/g) | | | |
|---|---|---|---|---|
| | Karst [c] | ≤ 10 | >10 to 1,000 | >1,000 |
| Present as liquid [b] | 1 | 1 | 0.01 | 0.0001 |
| Greater than 100 | 1 | 1 | 0.01 | 0.0001 |
| Greater than 1 to 100 | 0.2 | 0.2 | 0.002 | $2 \times 10^{-6}$ |
| Greater than 0.01 to 1 | 0.002 | 0.002 | $2 \times 10^{-4}$ | $2 \times 10^{-7}$ |
| Less than or equal to 0.01 | $2 \times 10^{-4}$ | $2 \times 10^{-4}$ | $2 \times 10^{-7}$ | $2 \times 10^{-9}$ |

[a] Do not round to nearest integer.
[b] Use if the hazardous substance is present or deposited as a liquid.
[c] Use if the entire interval from the source to the aquifer being evaluated is karst.

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• If none of the hazardous substances eligible to be evaluated can be assigned a mobility factor value, use a default value of 0.002 as the mobility factor value for all these hazardous substances.

Determine the water solubility to be used in Table 3–8 for the hazardous substance as follows (use this same water solubility for all aquifers):

• For any hazardous substance that does not meet the criteria for an observed release by chemical analysis, if the hazardous substance is present or deposited as a liquid, use the water solubility category "Present as Liquid" in Table 3–8 to assign the mobility factor value to that hazardous substance.

• Otherwise:

–For any hazardous substance that is a metal (or metalloid) and that does not meet the criteria for an observed release by chemical analysis, establish a water solubility for the hazardous substance as follows:

– –Determine the overall range of water solubilities for compounds of this hazardous substance (consider all compounds for which adequate water solubility information is available, not just compounds identified as present at the site).

– –Calculate the geometric mean of the highest and the lowest water solubility in this range.

– –Use this geometric mean as the water solubility in assigning the hazardous substance a mobility factor value from Table 3–8.

–For any other hazardous substance (either organic or inorganic) that does not meet the criteria for an observed release by chemical analysis, use the water solubility of that hazardous substance to assign a mobility factor value from Table 3–8 to the hazardous substance.

For the aquifer being evaluated, determine the distribution coefficient to be used in Table 3–8 for the hazardous substance as follows:

• For any hazardous substance that does not meet the criteria for an observed release by chemical analysis, if the entire interval from a source at the site to the aquifer being evaluated is karst, use the distribution coefficient category "Karst" in Table 3–8 in assigning the mobility factor value for that hazardous substance for that aquifer.

• Otherwise:

–For any hazardous substance that is a metal (or metalloid) and that does not meet the criteria for an observed release by chemical analysis, use the distribution coefficient for the metal or (metalloid) to assign a mobility factor value from Table 3–8 for that hazardous substance.

–For any other inorganic hazardous substance that does not meet the criteria for an observed release by chemical analysis, use the distribution coefficient for that inorganic hazardous substance, if available, to assign a mobility factor value from Table 3–8. If the distribution coefficient is not available, use a default value of "less than 10" as the distribution coefficient, except: for asbestos use a default value of "greater than 1,000" as the distribution coefficient.

–For any hazardous substance that is organic and that does not meet the criteria for an observed release by chemical analysis, establish a distribution coefficient for that hazardous substance as follows:

– –Estimate the $K_d$ range for the hazardous substance using the following equation:

$$K_d = (K_{oc})(f_s)$$

where:

$K_{oc}$ = Soil-water partition coefficient for organic carbon for the hazardous substance.

$f_s$ = Sorbent content (fraction of clays plus organic carbon) in the subsurface.

– –Use $f_s$ values of 0.03 and 0.77 in the above equation to establish the upper and lower values of the $K_d$ range for the hazardous substance.

– –Calculate the geometric mean of the upper and lower $K_d$ range values. Use this geometric mean as the distribution coefficient in assigning the hazardous substance a mobility factor value from Table 3–8.

3.2.1.3 *Calculation of toxicity/mobility factor value.* Assign each hazardous substance a toxicity/mobility factor value from Table 3–9, based on the values assigned to the hazardous substance for the toxicity and mobility factors. Use the hazardous substance with the highest toxicity/mobility factor value for the aquifer being evaluated to assign the value to the toxicity/mobility factor for that aquifer. Enter this value in Table 3–1.

TABLE 3–9.—TOXICITY/MOBILITY FACTOR VALUES [a]

| Mobility factor value | Toxicity factor value | | | | | |
|---|---|---|---|---|---|---|
| | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 1.0 | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 0.2 | 2,000 | 200 | 20 | 2 | 0.2 | 0 |
| 0.01 | 100 | 10 | 1 | 0.1 | 0.01 | 0 |
| 0.002 | 20 | 2 | 0.2 | 0.02 | 0.002 | 0 |
| 0.0001 | 1 | 0.1 | 0.01 | 0.001 | $1x10^{-4}$ | 0 |
| $2x10^{-4}$ | 0.2 | 0.02 | 0.002 | $2x10^{-4}$ | $2x10^{-5}$ | 0 |
| $2x10^{-7}$ | 0.002 | $2x10^{-4}$ | $2x10^{-6}$ | $2x10^{-6}$ | $2x10^{-7}$ | 0 |
| $2x10^{-9}$ | $2x10^{-6}$ | $2x10^{-6}$ | $2x10^{-7}$ | $2x10^{-8}$ | $2x10^{-9}$ | 0 |

[a] Do not round to nearest integer.

3.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value for the ground water pathway (or aquifer) as specified in section 2.4.2. Enter this value in Table 3–1.

3.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity/mobility and hazardous waste quantity factor values, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 3–1.

3.3 *Targets.* Evaluate the targets factor category for an aquifer based on four factors: nearest well, population, resources, and Wellhead Protection Area. Evaluate these four factors based on targets within the target distance limit specified in section 3.0.1.1 and the aquifer boundaries specified in section 3.0.1.2. Determine the targets to be included in evaluating these factors for an aquifer as specified in section 3.0.

3.3.1 *Nearest well.* In evaluating the nearest well factor, include both the drinking water wells drawing from the aquifer being evaluated and those drawing from overlying aquifers as specified in section 3.0. Include standby wells in evaluating this factor only if they are used for drinking water supply at least once every year.

If there is an observed release by direct observation for a drinking water well within the target distance limit, assign Level II concentrations to that well. However, if one or more samples meet the criteria for an observed release for that well, determine if that well is subject to Level I or Level II concentrations as specified in sections 2.5.1 and 2.5.2. Use the health-based benchmarks from Table 3–10 in determining the level of contamination.

Assign a value for the nearest well factor as follows:



• If one or more drinking water wells is subject to Level I concentrations, assign a value of 50.

• If not, but if one or more drinking water wells is subject to Level II concentrations, assign a value of 45.

• If none of the drinking water wells is subject to Level I or Level II concentrations, assign a value as follows:

–If one of the target aquifers is a karst aquifer that underlies any portion of the sources at the site and any well draws drinking water from this karst aquifer within the target distance limit, assign a value of 20.

–If not, determine the shortest distance to any drinking water well, as measured from any source at the site with a ground water containment factor value greater than 0. Select a value from Table 3–11 based on this distance. Assign it as the value for the nearest well factor.

Enter the value assigned to the nearest well factor in Table 3–1.

TABLE 3–10.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN DRINKING WATER

- Concentration corresponding to Maximum Contaminant Level (MCL).
- Concentration corresponding to a nonzero Maximum Contaminant Level Goal (MCLG).
- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for oral exposures.
- Screening concentration for noncancer toxicological responses corresponding to the Reference Dose (RfD) for oral exposures.

TABLE 3–11.—NEAREST WELL FACTOR VALUES

| Distance from source (miles) | Assigned value |
|---|---|
| Level I concentrations [a] | 50 |
| Level II concentrations [a] | 45 |
| 0 to ¼ | 20 |
| Greater than ¼ to ½ | 18 |
| Greater than ½ to 1 | 9 |
| Greater than 1 to 2 | 5 |
| Greater than 2 to 3 | 3 |
| Greater than 3 to 4 | 2 |
| Greater than 4 | 0 |

[a] Distance does not apply.

3.3.2 *Population.* In evaluating the population factor, include those persons served by drinking water wells within the target distance limit specified in section 3.0.1.1. For the aquifer being evaluated, count those persons served by wells in that aquifer and those persons served by wells in overlying aquifers as specified in section 3.0. Include residents, students, and workers who regularly use the water. Exclude transient populations such as customers and travelers passing through the area. Evaluate the population based on the location of the water supply wells, not on the location of residences, work places, etc. When a standby well is maintained on a regular basis so that water can be withdrawn, include it in evaluating the population factor.

In estimating residential population, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

In determining the population served by a well, if the water from the well is blended with other water (for example, water from other ground water wells or surface water intakes), apportion the total population regularly served by the blended system to the well based on the well's relative contribution to the total blended system. In estimating the well's relative contribution, assume each well and intake contributes equally and apportion the population accordingly, except: if the relative contribution of any one well or intake exceeds 40 percent based on average annual pumpage or capacity, estimate the relative contribution of the wells and intakes considering the following data, if available:

• Average annual pumpage from the ground water wells and surface water intakes in the blended system.

• Capacities of the wells and intakes in the blended system.

For systems with standby ground water wells or standby surface water intakes, apportion the total population regularly served by the blended system as described above, except:

• Exclude standby surface water intakes in apportioning the population.

• When using pumpage data for a standby ground water well, use average pumpage for the period during which the standby well is used rather than average annual pumpage.

• For that portion of the total population that could be apportioned to a standby ground water well, assign that portion of the population either to that standby well or to the other ground water well(s) and surface water intake(s) that serve that population; do not assign that portion of the population both to the standby well and to the other well(s) and intake(s) in the blended system. Use the apportioning that results in the highest population factor value. (Either include all standby well(s) or exclude some or all of the standby well(s) as appropriate to obtain this highest value.) Note that the specific standby well(s) included or excluded and, thus, the specific apportioning may vary in evaluating different aquifers and in evaluating the surface water pathway.

3.3.2.1 *Level of contamination.* Evaluate the population served by water from a point of withdrawal based on the level of contamination for that point of withdrawal. Use the applicable factor: Level I concentrations, Level II concentrations, or potential contamination.

If no samples meet the criteria for an observed release for a point of withdrawal and there is no observed release by direct observation for that point of withdrawal, evaluate that point of withdrawal using the potential contamination factor in section 3.3.2.4. If there is an observed release by direct observation, use Level II concentrations for that point of withdrawal. However, if one or more samples meet the criteria for an observed release for the point of withdrawal, determine which factor (Level I or Level II concentrations) applies to that point of withdrawal as specified in sections 2.5.1 and 2.5.2. Use the health-based benchmarks from Table 3–10 in determining the level of contamination. Evaluate the point of withdrawal using the Level I concentrations factor in section 3.3.2.2 or the Level II concentrations factor in section 3.3.2.3, as appropriate.

For the potential contamination factor, use population ranges in evaluating the factor as specified in section 3.3.2.4. For the Level I and Level II concentrations factors, use the population estimate, not population ranges, in evaluating both factors.

3.3.2.2 *Level I concentrations.* Sum the number of people served by drinking water from points of withdrawal subject to Level I concentrations. Multiply this sum by 10. Assign this product as the value for this factor. Enter this value in Table 3–1.

3.3.2.3 *Level II concentrations.* Sum the number of people served by drinking water from points of withdrawal subject to Level II concentrations. Do not include those people already counted under the Level I concentrations factor. Assign this sum as the value for this factor. Enter this value in Table 3–1.

3.3.2.4 *Potential contamination.* Determine the number of people served by drinking water from points of withdrawal subject to potential contamination. Do not include those people already counted under the Level I and Level II concentrations factors.

Assign distance-weighted population values from Table 3–12 to this population as follows:

• Use the "Karst" portion of Table 3–12 to assign values only for that portion of the population served by points of withdrawal that draw drinking water from a karst aquifer that underlies any portion of the sources at the site.

–For this portion of the population, determine the number of people included within each "Karst" distance category in Table 3–12.

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TABLE 3-12.—DISTANCE-WEIGHTED POPULATION VALUES FOR POTENTIAL CONTAMINATION FACTOR FOR GROUND WATER MIGRATION PATHWAY [a]

| Distance category (miles) | Number of people within the distance category | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 to 10 | 11 to 30 | 31 to 100 | 101 to 300 | 301 to 1,000 | 1,001 to 3,000 | 3,001 to 10,000 | 10,001 to 30,000 | 30,001 to 100,000 | 100,001 to 300,000 | 300,001 to 1,000,000 | 1,000,001 to 3,000,000 |
| **Other Than Karst [b]:** | | | | | | | | | | | | | |
| 0 to ¼ | 0 | 4 | 17 | 53 | 164 | 522 | 1,633 | 5,214 | 16,325 | 52,137 | 163,246 | 521,360 | 1,632,455 |
| Greater than ¼ to ½ | 0 | 2 | 11 | 33 | 102 | 324 | 1,013 | 3,233 | 10,122 | 32,325 | 101,213 | 323,243 | 1,012,122 |
| Greater than ½ to 1 | 0 | 1 | 5 | 17 | 52 | 167 | 523 | 1,669 | 5,224 | 16,684 | 52,239 | 166,835 | 522,385 |
| Greater than 1 to 2 | 0 | 0.7 | 3 | 10 | 30 | 94 | 294 | 939 | 2,939 | 9,385 | 29,384 | 93,845 | 293,842 |
| Greater than 2 to 3 | 0 | 0.5 | 2 | 7 | 21 | 66 | 212 | 678 | 2,122 | 6,778 | 21,222 | 67,777 | 212,219 |
| Greater than 3 to 4 | 0 | 0.3 | 1 | 4 | 13 | 42 | 131 | 417 | 1,306 | 4,171 | 13,060 | 41,709 | 130,596 |
| **Karst [c]:** | | | | | | | | | | | | | |
| 0 to ¼ | 0 | 4 | 17 | 53 | 164 | 522 | 1,633 | 5,214 | 16,325 | 52,137 | 163,246 | 521,360 | 1,632,455 |
| Greater than ¼ to ½ | 0 | 2 | 11 | 33 | 102 | 324 | 1,013 | 3,233 | 10,122 | 32,325 | 101,213 | 323,243 | 1,012,122 |
| Greater than ½ to 1 | 0 | 2 | 9 | 26 | 82 | 261 | 817 | 2,607 | 8,163 | 26,068 | 81,623 | 260,680 | 816,227 |
| Greater than 1 to 2 | 0 | 2 | 9 | 26 | 82 | 261 | 817 | 2,607 | 8,163 | 26,068 | 81,623 | 260,680 | 816,227 |
| Greater than 2 to 3 | 0 | 2 | 9 | 26 | 82 | 261 | 817 | 2,607 | 8,163 | 26,068 | 81,623 | 260,680 | 816,227 |
| Greater than 3 to 4 | 0 | 2 | 9 | 26 | 82 | 261 | 817 | 2,607 | 8,163 | 26,068 | 81,623 | 260,680 | 816,227 |

[a] Round the number of people present within a distance category to nearest integer. Do not round the assigned distance-weighted population value to nearest integer.
[b] Use for all aquifers, except karst aquifers underlying any portion of the sources at the site.
[c] Use only for karst aquifers underlying any portion of the sources at the site.

–Assign a distance-weighted population value for each distance category based on the number of people included within the distance category.

• Use the "Other Than Karst" portion of Table 3–12 for the remainder of the population served by points of withdrawal subject to potential contamination.

–For this portion of the population, determine the number of people included within each "Other Than Karst" distance category in Table 3–12.

–Assign a distance-weighted population value for each distance category based on the number of people included within the distance category.

Calculate the value for the potential contamination factor (PC) as follows:

$$PC = \frac{1}{10} \sum_{i=1}^{n} (W_i + K_i)$$

where:

$W_i$ = Distance-weighted population from "Other Than Karst" portion of Table 3–12 for distance category i.

$K_i$ = Distance-weighted population from "Karst" portion of Table 3–12 for distance category i.

n = Number of distance categories.

If PC is less than 1, do not round it to the nearest integer; if PC is 1 or more, round to the nearest integer. Enter this value in Table 3–1.

3.3.2.5 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and potential contamination. Do not round this sum to the nearest integer. Assign this sum as the population factor value for the aquifer. Enter this value in Table 3–1.

3.3.3 *Resources.* To evaluate the resources factor, select the highest value specified below that applies for the aquifer being evaluated. Assign this value as the resources factor value for the aquifer. Enter this value in Table 3–1.

Assign a resources value of 5 if water drawn from any target well for the aquifer being evaluated or overlying aquifers (as specified in section 3.0) is used for one or more of the following purposes:

• Irrigation (5-acre minimum) of commercial food crops or commercial forage crops.

• Watering of commercial livestock.

• Ingredient in commercial food preparation.

• Supply for commercial aquaculture.

• Supply for a major or designated water recreation area, excluding drinking water use.

Assign a resources value of 5 if no drinking water wells are within the target distance limit, but the water in the aquifer being evaluated or any overlying aquifers (as specified in section 3.0) is usable for drinking water purposes.

Assign a resources value of 0 if none of the above applies.

3.3.4 *Wellhead Protection Area.* Evaluate the Wellhead Protection Area factor based on Wellhead Protection Areas designated according to section 1428 of the Safe Drinking Water Act, as amended. Consider only those Wellhead Protection Areas applicable to the aquifer being evaluated or overlying aquifers (as specified in section 3.0). Select the highest value below that applies. Assign it as the value for the Wellhead Protection Area factor for the aquifer being evaluated. Enter this value in Table 3–1.

Assign a value of 20 if either of the following criteria applies for the aquifer being evaluated or overlying aquifers:

• A source with a ground water containment factor value greater than 0 lies, either partially or fully, within or above the designated Wellhead Protection Area.

• Observed ground water contamination attributable to the sources at the site lies, either partially or fully, within the designated Wellhead Protection Area.

If neither criterion applies, assign a value of 5, if, within the target distance limit, there is a designated Wellhead Protection Area applicable to the aquifer being evaluated or overlying aquifers.

Assign a value of 0 if none of the above applies.

3.3.5 *Calculation of targets factor category value.* Sum the factor values for nearest well, population, resources, and Wellhead Protection Area. Do not round this sum to the nearest integer. Use this sum as the targets factor category value for the aquifer. Enter this value in Table 3–1.

3.4 *Ground water migration score for an aquifer.* For the aquifer being evaluated, multiply the factor category values for likelihood of release, waste characteristics, and targets, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum value of 100, as the ground water migration pathway score for the aquifer. Enter this score in Table 3–1.

3.5 *Calculation of ground water migration pathway score.* Calculate a ground water migration score for each aquifer underlying the sources at the site, as appropriate. Assign the highest ground water migration score for an aquifer as the ground water migration pathway score ($S_{gw}$) for the site. Enter this score in Table 3–1.

4.0 *Surface Water Migration Pathway.*

4.0.1 *Migration components.* Evaluate the surface water migration pathway based on two migration components:

• Overland/flood migration to surface water (see section 4.1).

• Ground water to surface water migration (see section 4.2).

Evaluate each component based on the same three threats: drinking water threat, human food chain threat, and environmental threat.

Score one or both components, considering their relative importance. If only one component is scored, assign its score as the surface water migration pathway score. If both components are scored, select the higher of the two scores and assign it as the surface water migration pathway score.

4.0.2 *Surface water categories.* For HRS purposes, classify surface water into four categories: rivers, lakes, oceans, and coastal tidal waters.

Rivers include:

• Perennially flowing waters from point of origin to the ocean or to coastal tidal waters, whichever comes first, and wetlands contiguous to these flowing waters.

• Aboveground portions of disappearing rivers.

• Man-made ditches only insofar as they perennially flow into other surface water.

• Intermittently flowing waters and contiguous intermittently flowing ditches only in arid or semiarid areas with less than 20 inches of mean annual precipitation.

Lakes include:

• Natural and man-made lakes (including impoundments) that lie along rivers, but excluding the Great Lakes.

• Isolated, but perennial, lakes, ponds, and wetlands.

• Static water channels or oxbow lakes contiguous to rivers.

• Small rivers, without diking, that merge into surrounding perennially inundated wetlands.

• Wetlands contiguous to water bodies defined here as lakes.

Ocean and ocean-like water bodies include:

• Ocean areas seaward from the baseline of the Territorial Sea. (This baseline represents the generalized coastline of the United States. It is parallel to the seaward limit of the Territorial Sea and other maritime limits such as the inner boundary of Federal fisheries jurisdiction and the limit of States jurisdiction under the Submerged Lands Act, as amended.)

• The Great Lakes.

• Wetlands contiguous to the Great Lakes.

Coastal tidal waters include:

• Embayments, harbors, sounds, estuaries, back bays, lagoons, wetlands, etc. seaward from mouths of rivers and landward from the baseline of the Territorial Sea.

4.1 *Overland/flood migration component.* Use the overland/flood migration component to evaluate surface water threats that result from overland migration of hazardous substances from a source at the site to surface water. Evaluate three types of threats for this component: drinking water threat, human food chain threat, and environmental threat.

4.1.1 *General considerations.*

4.1.1.1 *Definition of hazardous substance migration path for overland/flood migration component.* The hazardous substance migration path includes both the overland segment and the in-water segment that hazardous substances would take as they migrate away from sources at the site:

• Begin the overland segment at a source and proceed downgradient to the probable point of entry to surface water.

• Begin the in-water segment at this probable point of entry.

–For rivers, continue the in-water segment in the direction of flow (including any tidal flows) for the distance established by the target distance limit (see section 4.1.1.2).

–For lakes, oceans, coastal tidal waters, or Great Lakes, do not consider flow direction. Instead apply the target distance limit as an arc.

–If the in-water segment includes both rivers and lakes (or oceans, coastal tidal waters, or Great Lakes), apply the target distance limit to their combined in-water segments.

For sites that consist of contaminated sediments with no identified source, the hazardous substance migration path consists solely of the in-water segment specified in section 4.1.1.2.

Consider a site to be in two or more watersheds for this component if two or more hazardous substance migration paths from the sources at the site do not reach a common point within the target distance limit. If the site is in more than one watershed, define a separate hazardous substance migration path for each watershed. Evaluate the overland/flood migration component for each watershed separately as specified in section 4.1.1.3.

4.1.1.2 *Target distance limit.* The target distance limit defines the maximum distance over which targets are considered in evaluating the site. Determine a separate target distance limit for each watershed as follows:

• If there is no observed release to surface water in the watershed or if there is an observed release only by direct observation (see section 4.1.2.1.1), begin measuring the target distance limit for the watershed at the probable point of entry to surface water and extend it for 15 miles along the surface water from that point.

• If there is an observed release from the site to the surface water in the watershed that is based on sampling, begin measuring the target distance limit for the watershed at the probable point of entry; extend the target distance limit either for 15 miles along the surface water or to the most distant sample point that meets the criteria for an observed release to that watershed, whichever is greater.

In evaluating the site, include only surface water targets (for example, intakes, fisheries, sensitive environments) that are within or contiguous to the hazardous substance migration path and located, partially or wholly, at or between the probable point of entry and the target distance limit applicable to the watershed:

• If flow within the hazardous substance migration path is reversed by tides, evaluate upstream targets only if there is documentation that the tidal run could carry substances from the site as far as those upstream targets.

• Determine whether targets within or contiguous to the hazardous substance migration path are subject to actual or potential contamination as follows:

–If a target is located, partially or wholly, either at or between the probable point of entry and any sampling point that meets the criteria for an observed release to the watershed or at a point that meets the criteria for an observed release by direct observation, evaluate that target as subject to actual contamination, except as otherwise specified for fisheries in section 4.1.3.3 and for wetlands in section 4.1.4.3.1.1. If the actual contamination is based on direct observation, assign Level II to the actual contamination. However, if the actual contamination is based on samples, determine whether the actual contamination is at Level I or Level II concentrations as specified in sections 4.1.2.3, 4.1.3.3, and 4.1.4.3.1.

–If a target is located, partially or wholly, within the target distance limit for the watershed, but not at or between the probable point of entry and any sampling point that meets the criteria for an observed release to the watershed, nor at a point that meets the criteria for an observed release by direct observation, evaluate it as subject to potential contamination.

For sites consisting solely of contaminated sediments with no identified source, determine the target distance limit as follows:

• If there is a clearly defined direction of flow for the surface water body (or bodies) containing the contaminated sediments, begin measuring the target distance limit at the point of observed sediment contamination that is farthest upstream (that is, at the location of the farthest available upstream sediment sample that meets the criteria for an observed release); extend the target distance limit either for 15 miles along the surface water or to the most distant downstream sample point that meets the criteria for an observed release to that watershed, whichever is greater.

• If there is no clearly defined direction of flow, begin measuring the target distance limit at the center of the area of observed sediment contamination. Extend the target distance limit as an arc either for 15 miles along the surface water or to the most distant sample point that meets the criteria for an observed release to that watershed, whichever is greater. Determine the area of observed sediment contamination based on available samples that meet the criteria for an observed release.

Note that the hazardous substance migration path for these contaminated sediment sites consists solely of the in-water segment defined by the target distance limit; there is no overland segment.

For these contaminated sediment sites, include only those targets (for example, intakes, fisheries, sensitive environments) that are within or contiguous to the hazardous substance migration path and located, wholly or partially, within the target distance limit for the site. Determine whether these targets are subject to actual or potential contamination as follows:

• If a target is located, partially or wholly, within the area of observed sediment contamination, evaluate it as subject to actual contamination, except as otherwise specified for fisheries in section 4.1.3.3 and wetlands in section 4.1.4.3.1.1.

–If a drinking water target is subject to actual contamination, evaluate it using Level II concentrations.

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–If a human food chain target or environmental target is subject to actual contamination, evaluate it using Level I or Level II concentrations, as appropriate (see sections 4.1.3.3 and 4.1.4.3.1).

• If a target is located, partially or wholly, within the target distance limit for the watershed, but not within the area of observed sediment contamination, evaluate it as subject to potential contamination.

4.1.1.3 *Evaluation of overland/flood migration component.* Evaluate the drinking water threat, human food chain threat, and environmental threat for each watershed for this component based on three factor categories: likelihood of release, waste characteristics, and targets. Figure 4–1 indicates the factors included within each factor category for each type of threat.

Determine the overland/flood migration component score ($S_{of}$) for a watershed in terms of the factor category values as follows:

$$S_{of} = \frac{\sum_{i=1}^{3} (LR_i)(WC_i)(T_i)}{SF}$$

where:

$LR_i$ = Likelihood of release factor category value for threat i (that is, drinking water, human food chain, or environmental threat).

$WC_i$ = Waste characteristics factor category value for threat i.

$T_i$ = Targets factor category value for threat i.

SF = Scaling factor.

Table 4–1 outlines the specific calculation procedure.

If the site is in only one watershed, assign the overland/flood migration score for that watershed as the overland/flood migration component score for the site.

BILLING CODE 6560-50-M



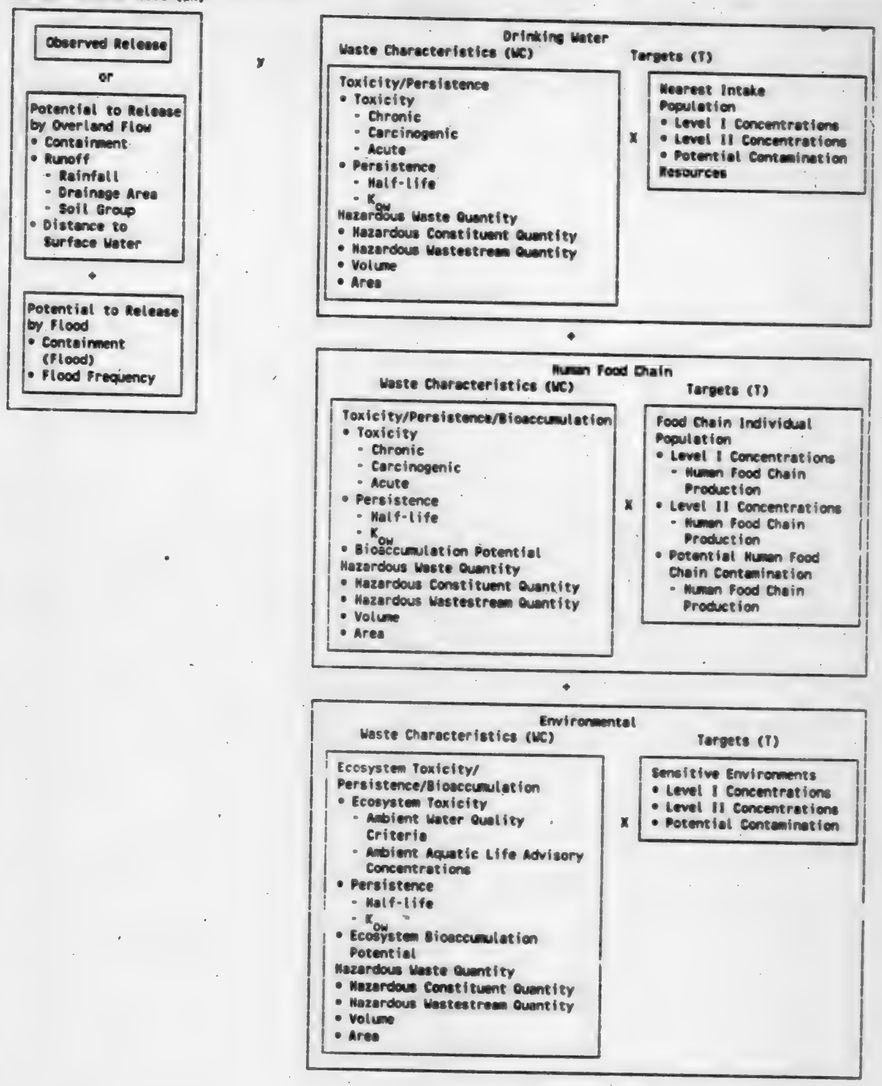



FIGURE 4-1
OVERVIEW OF SURFACE WATER OVERLAND/FLOOD MIGRATION COMPONENT



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TABLE 4–1.—SURFACE WATER OVERLAND/FLOOD MIGRATION COMPONENT SCORESHEET

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Drinking Water Threat** | | |
| **Likelihood of Release:** | | |
| 1. Observed Release | 550 | |
| 2. Potential to Release by Overland Flow: | | |
| 2a. Containment | 10 | |
| 2b. Runoff | 25 | |
| 2c. Distance to Surface Water | 25 | |
| 2d. Potential to Release by Overland Flow (lines 2a[2b+2c]) | 500 | |
| 3. Potential to Release by Flood: | | |
| 3a. Containment (Flood) | 10 | |
| 3b. Flood Frequency | 50 | |
| 3c. Potential to Release by Flood (lines 3a×3b) | 500 | |
| 4. Potential to Release (lines 2d+3c, subject to a maximum of 500) | 500 | |
| 5. Likelihood of Release (higher of lines 1 and 4) | 550 | |
| **Waste Characteristics:** | | |
| 6. Toxicity/Persistence | (a) | |
| 7. Hazardous Waste Quantity | (a) | |
| 8. Waste Characteristics | 100 | |
| **Targets:** | | |
| 9. Nearest Intake | 50 | |
| 10. Population | | |
| 10a. Level I Concentrations | (b) | |
| 10b. Level II Concentrations | (b) | |
| 10c. Potential Contamination | (b) | |
| 10d. Population (lines 10a+10b+10c) | (b) | |
| 11. Resources | 5 | |
| 12. Targets (lines 9+10d+11) | (b) | |
| **Drinking Water Threat Score:** | | |
| 13. Drinking Water Threat Score ([lines 5×8×12]/82,500, subject to a maximum of 100) | 100 | |
| **Human Food Chain Threat** | | |
| **Likelihood of Release:** | | |
| 14. Likelihood of Release (same value as line 5) | 550 | |
| **Waste Characteristics:** | | |
| 15. Toxicity/Persistence/Bioaccumulation | (a) | |
| 16. Hazardous Waste Quantity | (a) | |
| 17. Waste Characteristics | 1,000 | |
| **Targets:** | | |
| 18. Food Chain Individual | 50 | |
| 19. Population | | |
| 19a. Level I Concentrations | (b) | |
| 19b. Level II Concentrations | (b) | |
| 19c. Potential Human Food Chain Contamination | (b) | |
| 19d. Population (lines 19a+19b+19c) | (b) | |
| 20. Targets (lines 18+19d) | (b) | |
| **Human Food Chain Threat Score:** | | |
| 21. Human Food Chain Threat Score ([lines 14×17×20]/82,500, subject to a maximum of 100) | 100 | |
| **Environmental Threat** | | |
| **Likelihood of Release:** | | |
| 22. Likelihood of Release (same value as line 5) | 550 | |
| **Waste Characteristics:** | | |
| 23. Ecosystem Toxicity/Persistence/Bioaccumulation | (a) | |
| 24. Hazardous Waste Quantity | (a) | |
| 25. Waste Characteristics | 1,000 | |
| **Targets:** | | |
| 26. Sensitive Environments | | |
| 26a. Level I Concentrations | (b) | |
| 26b. Level II Concentrations | (b) | |
| 26c. Potential Contamination | (b) | |
| 26d. Sensitive Environments (lines 26a+26b+26c) | (b) | |
| 27. Targets (value from line 26d) | (b) | |
| **Environmental Threat Score:** | | |
| 28. Environmental Threat Score ([lines 22×25×27]/82,500, subject to a maximum of 60) | 60 | |
| **Surface Water Overland/Flood Migration Component Score for a Watershed** | | |
| 29. Watershed Score [c] (lines 13+21+28, subject to a maximum of 100) | 100 | |
| **Surface Water Overland/Flood Migration Component Score** | | |
| 30. Component Score ($S_{of}$) [c] (highest score from line 29 for all watersheds evaluated, subject to a maximum of 100) | 100 | |

[a] Maximum value applies to waste characteristics category.
[b] Maximum value not applicable.
[c] Do not round to nearest integer.



If the site is in more than one watershed:

- Calculate a separate overland/flood migration component score for each watershed, using likelihood of release, waste characteristics, and targets applicable to each watershed.
- Select the highest overland/flood migration component score from the watersheds evaluated and assign it as the overland/flood migration component score for the site.

4.1.2 *Drinking water threat.* Evaluate the drinking water threat for each watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.1.2.1 *Drinking water threat—likelihood of release.* Evaluate the likelihood of release factor category for each watershed in terms of an observed release factor or a potential to release factor.

4.1.2.1.1 *Observed release.* Establish an observed release to surface water for a watershed by demonstrating that the site has released a hazardous substance to the surface water in the watershed. Base this demonstration on either:

- Direct observation:
  - –A material that contains one or more hazardous substances has been seen entering surface water through migration or is known to have entered surface water through direct deposition, or
  - –A source area has been flooded at a time that hazardous substances were present, and one or more hazardous substances were in contact with the flood waters, or
  - –When evidence supports the inference of a release of a material that contains one or more hazardous substances by the site to surface water, demonstrated adverse effects associated with that release may also be used to establish an observed release.
- Chemical analysis:
  - –Analysis of surface water, benthic, or sediment samples indicates that the concentration of hazardous substance(s) has increased significantly above the background concentration for the site for that type of sample (see section 2.3).
  - –Limit comparisons to similar types of samples and background concentrations—for example, compare surface water samples to surface water background concentrations.
  - –For benthic samples, limit comparisons to essentially sessile organisms.
  - –Some portion of the significant increase must be attributable to the site to establish the observed release, except: when the site itself consists of contaminated sediments with no identified source, no separate attribution is required.

If an observed release can be established for a watershed, assign an observed release factor value of 550 to that watershed, enter this value in Table 4–1, and proceed to section 4.1.2.1.3. If no observed release can be established for the watershed, assign an observed release factor value of 0 to that watershed, enter this value in Table 4–1, and proceed to section 4.1.2.1.2.

4.1.2.1.2 *Potential to release.* Evaluate potential to release only if an observed release cannot be established for the watershed. Evaluate potential to release based on two components: potential to release by overland flow (see section 4.1.2.1.2.1) and potential to release by flood (see section 4.1.2.1.2.2). Sum the values for these two components to obtain the potential to release factor value for the watershed, subject to a maximum value of 500.

4.1.2.1.2.1 *Potential to release by overland flow.* Evaluate potential to release by overland flow for the watershed based on three factors: containment, runoff, and distance to surface water.

Assign potential to release by overland flow a value of 0 for the watershed if:

- No overland segment of the hazardous substance migration path can be defined for the watershed, or
- The overland segment of the hazardous substance migration path for the watershed exceeds 2 miles before surface water is encountered.

If either condition applies, enter a value of 0 in Table 4–1 and proceed to section 4.1.2.1.2.2 to evaluate potential to release by flood. If neither applies, proceed to section 4.1.2.1.2.1.1 to evaluate potential to release by overland flow.

4.1.2.1.2.1.1 *Containment.* Determine the containment factor value for the watershed as follows:

- If one or more sources is located in surface water in the watershed (for example, intact sealed drums in surface water), assign the containment factor a value of 10 for the watershed. Enter this value in Table 4–1.
- If none of the sources is located in surface water in the watershed, assign a containment factor value from Table 4–2 to each source at the site that can potentially release hazardous substances to the hazardous substance migration path for this watershed. Assign the containment factor value for the watershed as follows:
  - –Select the highest containment factor value assigned to those sources that meet the minimum size requirement described below. Assign this highest value as the containment factor value for the watershed. Enter this value in Table 4–1.
  - –If, for this watershed, no source at the site meets the minimum size requirement, then select the highest containment factor value assigned to the sources at the site eligible to be evaluated for this watershed and assign it as the containment factor value for the watershed. Enter this value in Table 4–1.

A source meets the minimum size requirement if its source hazardous waste quantity value (see section 2.4.2.1.5) is 0.5 or more. Do not include the minimum size requirement in evaluating any other factor of this surface water migration component, except potential to release by flood as specified in section 4.1.2.1.2.2.3.

4.1.2.1.2.1.2 *Runoff.* Evaluate runoff based on three components: rainfall, drainage area, and soil group.

TABLE 4–2.—CONTAINMENT FACTOR VALUES FOR SURFACE WATER MIGRATION PATHWAY

| Source | Assigned value |
|---|---|
| **All Sources (Except Surface Impoundments, Land Treatment, Containers, and Tanks)** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures) | 10 |
| No evidence of hazardous substance migration from source area and: | |
| (a) Neither of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system. | 10 |
| (b) Any one of the two items in (a) present | 9 |
| (c) Any two of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) liner with functioning leachate collection and removal system immediately above liner. | 7 |
| (d) All items in (c) present | 5 |
| (e) All items in (c) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, and: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | |



TABLE 4–2.—CONTAINMENT FACTOR VALUES FOR SURFACE WATER MIGRATION PATHWAY—Concluded

| Source | Assigned value |
|---|---|
| **Surface Impoundments** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures) | 10 |
| No evidence of hazardous substance migration from source area and: | |
| (a) Neither of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system. | 10 |
| (b) Any one of the two items in (a) present | 9 |
| (c) Any two of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) liner with functioning leachate collection and removal system immediately above liner. | 7 |
| (d) All items in (c) present | 5 |
| (e) All items in (c) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, and: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | |
| **Land Treatment** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures) | 10 |
| No evidence of hazardous substance migration from source area and: | |
| (a) Neither of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system. | 10 |
| (b) Any one of the two items in (a) present | 9 |
| (c) Any two of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) liner with functioning leachate collection and removal system immediately above liner. | 7 |
| (d) All items in (c) present | 5 |
| (e) All items in (c) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, and: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | |
| **Containers** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures) | 10 |
| No evidence of hazardous substance migration from source area and: | |
| (a) Neither of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system. | 10 |
| (b) Any one of the two items in (a) present | 9 |
| (c) Any two of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) liner with functioning leachate collection and removal system immediately above liner. | 7 |
| (d) All items in (c) present | 5 |
| (e) All items in (c) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, and: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | |
| **Tanks** | |
| Evidence of hazardous substance migration from source area (i.e., source area includes source and any associated containment structures) | 10 |
| No evidence of hazardous substance migration from source area and: | |
| (a) Neither of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system. | 10 |
| (b) Any one of the two items in (a) present | 9 |
| (c) Any two of the following present: (1) maintained engineered cover, or (2) functioning and maintained run-on control system and runoff management system, or (3) liner with functioning leachate collection and removal system immediately above liner. | 7 |
| (d) All items in (c) present | 5 |
| (e) All items in (c) present, plus no bulk or non-containerized liquids nor materials containing free liquids deposited in source area | 3 |
| No evidence of hazardous substance migration from source area, double liner with functioning leachate collection and removal system above and between liners, and: | |
| (f) Only one of the following deficiencies present in containment: (1) bulk or noncontainerized liquids or materials containing free liquids deposited in source area, or (2) no or nonfunctioning or nonmaintained run-on control system and runoff management system, or (3) no or nonmaintained engineered cover. | 3 |
| (g) None of the deficiencies in (f) present | 0 |
| Source area inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate is generated, liquids or materials containing free liquids not deposited in source area, and functioning and maintained run-on control present. | |



Drainage area. Determine the drainage

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TABLE 4-2.—CONTAINMENT FACTOR VALUES FOR SURFACE WATER MIGRATION PATHWAY—Concluded

| Source | Assigned value |
|---|---|
| **Surface Impoundment** | |
| Evidence of hazardous substance migration from surface impoundment | 10 |
| Free liquids present with either no diking, unsound diking, or diking that is not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from surface impoundment, free liquids present, sound diking that is regularly inspected and maintained, adequate freeboard, *and:* | |
| (a) No liner | 9 |
| (b) Liner | 7 |
| (c) Liner with functioning leachate collection and removal system below liner | 5 |
| (d) Double liner with functioning leachate collection and removal system between liners | 3 |
| No evidence of hazardous substance migration from surface impoundment and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues). | Evaluate using All Sources criteria (with no bulk or free liquids deposited). |
| **Land Treatment** | |
| Evidence of hazardous substance migration from land treatment zone | 10 |
| No functioning and maintained run-on control and runoff management system | 10 |
| No evidence of hazardous substance migration from land treatment zone *and:* | |
| (a) Functioning and maintained run-on control and runoff management system | 7 |
| (b) Functioning and maintained run-on control and runoff management system, and vegetative cover established over entire land treatment area. | 5 |
| (c) Land treatment area maintained in compliance with 40 CFR 264.280 | 0 |
| **Containers** | |
| All containers buried | Evaluate using All Sources criteria. |
| Evidence of hazardous substance migration from container area (i.e., container area includes containers and any associated containment structures). | 10 |
| No diking (or no similar structure) surrounding container area | 10 |
| Diking surrounding container area unsound or not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from container area and container area surrounded by sound diking that is regularly inspected and maintained. | 9 |
| No evidence of hazardous substance migration from container area, container area surrounded by sound diking that is regularly inspected and maintained, *and:* | 9 |
| (a) Essentially impervious base under container area with liquids collection and removal system | 7 |
| (b) Containment system includes essentially impervious base, liquids collection system, sufficient capacity to contain 10 percent of volume of all containers, and functioning and maintained run-on control; and spilled or leaked hazardous substances and accumulated precipitation removed in timely manner to prevent overflow of collection system, at least weekly inspection of containers, hazardous substances in leaking or deteriorating containers transferred to containers in good condition, and containers sealed except when waste is added or removed. | 5 |
| (c) Free liquids present, containment system has sufficient capacity to hold total volume of all containers and to provide adequate freeboard, and single liner under container area with functioning leachate collection and removal system below liner. | 5 |
| (d) Same as (c) except: double liner under container area with functioning leachate collection and removal system between liners | 3 |
| Containers inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any unsealed or ruptured containers, liquids or materials containing free liquids not deposited in any container, and functioning and maintained run-on control present. | 0 |
| No evidence of hazardous substance migration from container area, containers leaking, and all free liquids eliminated at closure (either by removal of liquids or solidification of remaining wastes and waste residues). | Evaluate using All Sources criteria (with no bulk or free liquids deposited). |
| **Tank** | |
| Below-ground tank | Evaluate using All Sources criteria |
| Evidence of hazardous substance migration from tank area (i.e., tank area includes tank, ancillary equipment such as piping, and any associated containment structures). | 10 |
| No diking (or no similar structure) surrounding tank and ancillary equipment | 10 |
| Diking surrounding tank and ancillary equipment unsound or not regularly inspected and maintained | 10 |
| No evidence of hazardous substance migration from tank area and tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained. | 9 |
| No evidence of hazardous substance migration from tank area, tank and ancillary equipment surrounded by sound diking that is regularly inspected and maintained, *and:* | |
| (a) Tank and ancillary equipment provided with secondary containment (e.g., liner under tank area, vault system, double-wall) with leak detection and collection system. | 7 |
| (b) Tank and ancillary equipment provided with secondary containment system that detects and collects spilled or leaked hazardous substances and accumulated precipitation and has sufficient capacity to contain 110 percent of volume of largest tank within containment area, spilled or leaked hazardous substances and accumulated precipitation removed in a timely manner, at least weekly inspection of tank and secondary containment system, and all leaking or unfit-for-use tank systems promptly responded to. | 5 |
| (c) Containment system has sufficient capacity to hold total volume of all tanks within the tank containment area and to provide adequate freeboard, and single liner under tank containment area with functioning leachate collection and removal system below liner. | 5 |
| (d) Same as (c) except: double liner under tank containment area with functioning leachate collection and removal system between liners. | 3 |
| Tank is above ground, and inside or under maintained intact structure that provides protection from precipitation so that neither runoff nor leachate would be generated from any material released from tank, liquids or materials containing free liquids not deposited in any tank, and functioning and maintained run-on control present. | 0 |

**Rainfall.** Determine the 2-year, 24-hour rainfall for the site. Use site-specific, 2-year, 24-hour rainfall data if records are available for at least 20 years. If such site-specific data are not available, estimate the 2-year, 24-hour rainfall for the site from a rainfall-frequency map. Do not round the rainfall value to the nearest integer.



**Drainage area.** Determine the drainage area for the sources at the site. Include in this drainage area both the source areas and the area upgradient of the sources, but exclude, any portion of this drainage area for which runoff is diverted from entering the sources by storm sewers or run-on control and/or runoff management systems. Assign a drainage area value for the watershed from Table 4-3.

**Soil group.** Based on the predominant soil group within the drainage area described above, assign a soil group designation for the watershed from Table 4-4 as follows:

- Select the predominant soil group as that type which comprises the largest total area within the applicable drainage area.
- If a predominant soil group cannot be delineated, select that soil group in the drainage area that yields the highest value for the runoff factor.

**Calculation of runoff factor value.** Assign a combined rainfall/runoff value for the watershed from Table 4-5, based on the 2-year, 24-hour rainfall and the soil group designation. Determine the runoff factor value for the watershed from Table 4-6, based on the rainfall/runoff and drainage area values. Enter the runoff factor value in Table 4-1.

TABLE 4-3.—DRAINAGE AREA VALUES

| Drainage area (acres) | Assigned value |
|---|---|
| Less than 50 | 1 |
| 50 to 250 | 2 |
| Greater than 250 to 1,000 | 3 |
| Greater than 1,000 | 4 |

TABLE 4-4.—SOIL GROUP DESIGNATIONS

| Surface soil description | Soil group designation |
|---|---|
| Coarse-textured soils with high infiltration rates (for example, sands, loamy sands). | A |
| Medium-textured soils with moderate infiltration rates (for example, sandy loams, loams). | B |
| Moderately fine-textured soils with low infiltration rates (for example, silty loams, silts, sandy clay loams). | C |
| Fine-textured soils with very low infiltration rates (for example, clays, sandy clays, silty clay loams, clay loams, silty clays); or impermeable surfaces (for example, pavement). | D |

TABLE 4-5.—RAINFALL/RUNOFF VALUES

| 2-Year, 24-hour rainfall (inches) | Soil group designation | | | |
|---|---|---|---|---|
| | A | B | C | D |
| Less than 1.0 | 0 | 0 | 2 | 3 |
| 1.0 to less than 1.5 | 0 | 1 | 2 | 3 |
| 1.5 to less than 2.0 | 0 | 2 | 3 | 4 |
| 2.0 to less than 2.5 | 1 | 2 | 3 | 4 |
| 2.5 to less than 3.0 | 2 | 3 | 4 | 4 |
| 3.0 to less than 3.5 | 2 | 3 | 4 | 5 |
| 3.5 or greater | 3 | 4 | 5 | 6 |

TABLE 4-6.—RUNOFF FACTOR VALUES

| Drainage area value | Rainfall/runoff value | | | | | | |
|---|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 | 6 |
| 1 | 0 | 0 | 0 | 1 | 1 | 1 | 1 |
| 2 | 0 | 0 | 1 | 1 | 2 | 3 | 4 |
| 3 | 0 | 0 | 1 | 3 | 7 | 11 | 15 |
| 4 | 0 | 1 | 2 | 7 | 17 | 25 | 25 |

4.1.2.1.2.1.3 *Distance to surface water.* Evaluate the distance to surface water as the shortest distance, along the overland segment, from any source with a surface water containment factor value greater than 0 to either the mean high water level for tidal waters or the mean water level for other surface waters. Based on this distance, assign a value from Table 4-7 to the distance to surface water factor for the watershed. Enter this value in Table 4-1.

4.1.2.1.2.1.4 *Calculation of factor value for potential to release by overland flow.* Sum the factor values for runoff and distance to surface water for the watershed and multiply this sum by the factor value for containment. Assign the resulting product as the factor value for potential to release by overland flow for the watershed. Enter this value in Table 4-1.

4.1.2.1.2.2 *Potential to release by flood.* Evaluate potential to release by flood for each watershed as the product of two factors: containment (flood) and flood frequency. Evaluate potential to release by flood separately for each source that is within the watershed. Furthermore, for each source, evaluate potential to release by flood separately for each category of floodplain in which the source lies. (See section 4.1.2.1.2.2.2 for the applicable floodplain categories.) Calculate the value for the potential to release by flood factor as specified in 4.1.2.1.2.2.1.

4.1.2.1.2.2.1 *Containment (flood).* For each source within the watershed, separately evaluate the containment (flood) factor for each category of floodplain in which the source is partially or wholly located. Assign a containment (flood) factor value from Table 4-8 to each floodplain category applicable to that source. Assign a containment (flood) factor value of 0 to each floodplain category in which the source does not lie.

4.1.2.1.2.2.2 *Flood frequency.* For each source within the watershed, separately evaluate the flood frequency factor for each category of floodplain in which the source is partially or wholly located. Assign a flood frequency factor value from Table 4-9 to each floodplain category in which the source is located.

4.1.2.1.2.2.3 *Calculation of factor value for potential to release by flood.* For each source within the watershed and for each category of floodplain in which the source is partially or wholly located, calculate a separate potential to release by flood factor value. Calculate this value as the product of the containment (flood) value and the flood frequency value applicable to the source for the floodplain category. Select the highest value calculated for those sources that meet the minimum size requirement specified in section 4.1.2.1.2.1.1 and assign it as the value for the potential to release by flood factor for the watershed. However, if, for this watershed, no source at the site meets the minimum size requirement, select the highest value calculated for the sources at the site eligible to be evaluated for this watershed and assign it as the value for this factor.

TABLE 4-7.—DISTANCE TO SURFACE WATER FACTOR VALUES

| Distance | Assigned value |
|---|---|
| Less than 100 feet | 25 |
| 100 feet to 500 feet | 20 |
| Greater than 500 feet to 1,000 feet | 18 |
| Greater than 1,000 feet to 2,500 feet | 8 |
| Greater than 2,500 feet to 1.5 miles | 6 |
| Greater than 1.5 miles to 2 miles | 3 |

TABLE 4-8.—CONTAINMENT (FLOOD) FACTOR VALUES

| Containment criteria | Assigned value |
|---|---|
| Documentation that containment at the source is designed, constructed, operated, and maintained to prevent a washout of hazardous substances by the flood being evaluated. | 0 |
| Other | 10 |

TABLE 4-9.—FLOOD FREQUENCY FACTOR VALUES

| Floodplain category | Assigned value |
|---|---|
| Source floods annually | 50 |
| Source in 10-year floodplain | 50 |
| Source in 100-year floodplain | 25 |
| Source in 500-year floodplain | 7 |
| None of above | 0 |

Enter this highest potential to release by flood factor value for the watershed in Table 4-1, as well as the values for containment (flood) and flood frequency that yield this highest value.

4.1.2.1.2.3 *Calculation of potential to release factor value.* Sum the factor values assigned to the watershed for potential to release by overland flow and potential to release by flood. Assign this sum as the potential to release factor value for the watershed, subject to a maximum value of 500. Enter this value in Table 4-1.

4.1.2.1.3 *Calculation of drinking water threat-likelihood of release factor category value.* If an observed release is established for the watershed, assign the observed release factor value of 550 as the likelihood of release factor category value for that watershed. Otherwise, assign the potential to release factor value for that watershed as the likelihood of release factor category value for that watershed. Enter the value assigned in Table 4-1.

4.1.2.2 *Drinking water threat-waste characteristics.* Evaluate the waste characteristics factor category for each

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watershed based on two factors: toxicity/persistence and hazardous waste quantity. Evaluate only those hazardous substances that are available to migrate from the sources at the site to surface water in the watershed via the overland/flood hazardous substance migration path for the watershed (see section 4.1.1.1). Such hazardous substances include:

- Hazardous substances that meet the criteria for an observed release to surface water in the watershed.
- All hazardous substances associated with a source that has a surface water containment factor value greater than 0 for the watershed (see sections 2.2.2, 2.2.3, 4.1.2.1.2.1.1, and 4.1.2.1.2.2.1).

4.1.2.2.1 *Toxicity/persistence.* For each hazardous substance, assign a toxicity factor value, a persistence factor value, and a combined toxicity/persistence factor value as specified in sections 4.1.2.2.1.1 through 4.1.2.2.1.3. Select the toxicity/persistence factor value for the watershed as specified in section 4.1.2.2.1.3.

4.1.2.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

4.1.2.2.1.2 *Persistence.* Assign a persistence factor value to each hazardous substance. In assigning this value, evaluate persistence based primarily on the half-life of the hazardous substance in surface water and secondarily on the sorption of the hazardous substance to sediments. The half-life in surface water is defined for HRS purposes as the time required to reduce the initial concentration in surface water by one-half as a result of the combined decay processes of biodegradation, hydrolysis, photolysis, and volatilization. Sorption to sediments is evaluated for the HRS based on the logarithm of the n-octanol-water partition coefficient (log $K_{ow}$) of the hazardous substance.

Estimate the half-life ($t_{1/2}$) of a hazardous substance as follows:

$$t_{1/2} = \frac{1}{\frac{1}{h}+\frac{1}{b}+\frac{1}{p}+\frac{1}{v}}$$

where:

h = Hydrolysis half-life.
b = Biodegradation half-life.
p = Photolysis half-life.
v = Volatilization half-life.

If one or more of these four component half-lives cannot be estimated for the hazardous substance from available data, delete that component half-life from the above equation. If none of these four component half-lives can be estimated for the hazardous substance from available data, use the default procedure indicated below. Estimate a half-life for the hazardous substance for lakes or for rivers, oceans, coastal tidal waters, and Great Lakes, as appropriate.

If a half-life can be estimated for a hazardous substance:

- Assign that hazardous substance a persistence factor value from the appropriate portion of Table 4–10 (that is lakes; or rivers, oceans, coastal tidal waters, and Great Lakes).
- Select the appropriate portion of Table 4–10 as follows:
  - –If there is one or more drinking water intakes along the hazardous substance migration path for the watershed, select the nearest drinking water intake as measured from the probable point of entry. If the in-water segment between the probable point of entry and this selected intake includes both lakes and other water bodies, use the lakes portion of Table 4–10 only if more than half the distance to this selected intake lies in lake(s). Otherwise, use the rivers, oceans, coastal tidal waters, and Great Lakes portion of Table 4–10. For contaminated sediments with no identified source, use the point where measurement begins (see section 4.1.1.2) rather than the probable point of entry.
  - –If there are no drinking water intakes but there are intakes or points of use for any of the resource types listed in section 4.1.2.3.3, select the nearest such intake or point of use. Select the portion of Table 4–10 based on this intake or point of use in the manner specified for drinking water intakes.
  - –If there are no drinking water intakes and no specified resource intakes and points of use, but there is another type of resource listed in section 4.1.2.3.3 (for example, the water is usable for drinking water purposes even though not used), select the portion of Table 4–10 based on the nearest point of this resource in the manner specified for drinking water intakes.

TABLE 4–10.—PERSISTENCE FACTOR VALUES—HALF-LIFE

| Surface water category | Substance half-life (days) | Assigned value [a] |
|---|---|---|
| Rivers, oceans, coastal tidal waters, and Great Lakes | Less then or equal to 0.2 | 0.0007 |
| | Greater than 0.2 to 0.5 | 0.07 |
| | Greater than 0.5 to 1.5 | 0.4 |
| | Greater than 1.5 | 1 |
| Lakes | Less than or equal to 0.02 | 0.0007 |
| | Greater than 0.02 to 2 | 0.07 |
| | Greater than 2 to 20 | 0.4 |
| | Greater than 20 | 1 |

[a] Do not round to nearest integer.

If a half-life cannot be estimated for a hazardous substance from available data, use the following default procedure to assign a persistence factor value to that hazardous substance:

- For those hazardous substances that are metals (or metalloids), assign a persistence factor value of 1 as a default for all surface water bodies.
- For other hazardous substances (both organic and inorganic), assign a persistence factor value of 0.4 as a default for rivers, oceans, coastal tidal waters, and Great Lakes, and a persistence factor value of 0.07 as a default for lakes. Select the appropriate value in the same manner specified for using Table 4–10.

Use the persistence factor value assigned based on half-life or the default procedure unless the hazardous substance can be assigned a higher factor value from Table 4–11, based on its Log $K_{ow}$. If a higher value can be assigned from Table 4–11, assign this higher value as the persistence factor value for the hazardous substance.

TABLE 4–11.—PERSISTENCE FACTOR VALUES—LOG $K_{ow}$

| Log $K_{ow}$ | Assigned value [a] |
|---|---|
| Less then 3.5 | 0.0007 |
| 3.5 to less than 4.0 | 0.07 |
| 4.0 to 4.5 | 0.4 |
| Greater than 4.5 | 1 |

[a] Use for lakes, rivers, oceans, coastal tidal waters, and Great Lakes. Do not round to nearest integer.

4.1.2.2.1.3 *Calculation of toxicity/persistence factor value.* Assign each hazardous substance a toxicity/persistence factor value from Table 4–12, based on the values assigned to the hazardous substance for the toxicity and persistence factors. Use



the hazardous substance with the highest toxicity/persistence factor value for the watershed to assign the toxicity/persistence factor value for the drinking water threat for the watershed. Enter this value in Table 4–1.

4.1.2.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value for the watershed as specified in section 2.4.2. Enter this value in Table 4–1.

4.1.2.2.3 *Calculation of drinking water threat-waste characteristics factor category value.* Multiply the toxicity/persistence and hazardous waste quantity factor values for the watershed, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the drinking water threat-waste characteristics factor category for the watershed. Enter this value in Table 4–1.

TABLE 4–12.—TOXICITY/PERSISTENCE FACTOR VALUES [a]

| Persistence factor value | Toxicity factor value | | | | | |
|---|---|---|---|---|---|---|
| | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 1.0 | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 0.4 | 4,000 | 400 | 40 | 4 | 0.4 | 0 |
| 0.07 | 700 | 70 | 7 | 0.7 | 0.07 | 0 |
| 0.0007 | 7 | 0.7 | 0.07 | 0.007 | 0.0007 | 0 |

[a] Do not round to nearest integer.

4.1.2.3 *Drinking water threat-targets.* Evaluate the targets factor category for each watershed based on three factors: nearest intake, population, and resources.

To evaluate the nearest intake and population factors, determine whether the target surface water intakes are subject to actual or potential contamination as specified in section 4.1.1.2. Use either an observed release based on direct observation at the intake or the exposure concentrations from samples (or comparable samples) taken at or beyond the intake to make this determination (see section 4.1.2.1.1). The exposure concentrations for a sample (that is, surface water, benthic, or sediment sample) consist of the concentrations of those hazardous substances present that are significantly above background levels and attributable at least in part to the site (that is, those hazardous substance concentrations that meet the criteria for an observed release).

When an intake is subject to actual contamination, evaluate it using Level I concentrations or Level II concentrations. If the actual contamination is based on an observed release by direct observation, use Level II concentrations for that intake. However, if the actual contamination is based on an observed release from samples, determine which level applies for the intake by comparing the exposure concentrations from samples (or comparable samples) to health-based benchmarks as specified in sections 2.5.1 and 2.5.2. Use the health-based benchmarks from Table 3–10 (section 3.3.1) in determining the level of contamination from samples. For contaminated sediments with no identified source, evaluate the actual contamination using Level II concentrations (see section 4.1.1.2).

4.1.2.3.1 *Nearest intake.* Evaluate the nearest intake factor based on the drinking water intakes along the overland/flood hazardous substance migration path for the watershed. Include standby intakes in evaluating this factor only if they are used for supply at least once a year.

Assign the nearest intake factor a value as follows and enter the value in Table 4–1:

- If one or more of these drinking water intakes is subject to Level I concentrations as specified in section 4.1.2.3, assign a factor value of 50.
- If not, but if one or more of these drinking water intakes is subject to Level II concentrations, assign a factor value of 45.
- If none of these drinking water intakes is subject to Level I or Level II concentrations, determine the nearest of these drinking water intakes, as measured from the probable point of entry (or from the point where measurement begins for contaminated sediments with no identified source). Assign a dilution weight from Table 4–13 to this intake, based on the type of surface water body in which it is located. Multiply this dilution weight by 20, round the product to the nearest integer, and assign it as the factor value.

Assign the dilution weight from Table 4–13 as follows:

TABLE 4–13.—SURFACE WATER DILUTION WEIGHTS

| Type of surface water body [a] | | Assigned dilution weight [b] |
|---|---|---|
| Descriptor | Flow characteristics | |
| Minimal stream | Less than 10 cfs [c] | 1 |
| Small to moderate stream | 10 to 100 cfs | 0.1 |
| Moderate to large stream | Greater than 100 to 1,000 cfs | 0.01 |
| Large stream to river | Greater than 1,000 to 10,000 cfs | 0.001 |
| Large river | Greater than 10,000 to 100,000 cfs | 0.0001 |
| Very large river | Greater than 100,000 cfs | 0.00001 |
| Coastal tidal waters [d] | Flow not applicable, depth not applicable | 0.0001 |
| Shallow ocean zone [e] or Great Lake | Flow not applicable, depth less than 20 feet | 0.0001 |
| Moderate depth ocean zone [e] or Great Lake | Flow not applicable, depth 20 to 200 feet | 0.00001 |
| Deep ocean zone [e] or Great Lake | Flow not applicable, depth greater than 200 feet | 0.000005 |
| 3-mile mixing zone in quiet flowing river | 10 cfs or greater | 0.5 |

[a] Treat each lake as a separate type of water body and assign a dilution weight as specified in text.
[b] Do not round to nearest integer.
[c] cfs = cubic feet per second.
[d] Embayments, harbors, sounds, estuaries, back bays, lagoons, wetlands, etc., seaward from mouths of rivers and landward from baseline of Territorial Sea.
[e] Seaward from baseline of Territorial Sea. This baseline represents the generalized U.S. coastline. It is parallel to the seaward limit of the Territorial Sea and other maritime limits such as the inner boundary of the Federal fisheries jurisdiction and the limit of States jurisdiction under the Submerged Lands Act, as amended.

- For a river (that is, surface water body types specified in Table 4–13 as minimal stream through very large river), assign a dilution weight based on the average annual flow in the river at the intake. If available, use the average annual discharge as defined in the U.S. Geological Survey Water Resources Data Annual Report. Otherwise, estimate the average annual flow.
- For a lake, assign a dilution weight as follows:
  - –For a lake that has surface water flow entering the lake, assign a dilution weight based on the sum of the

average annual flows for the surface water bodies entering the lake up to the point of the intake.

–For a lake that has no surface water flow entering, but that does have surface water flow leaving, assign a dilution weight based on the sum of the average annual flows for the surface water bodies leaving the lake.

–For a closed lake (that is, a lake without surface water flow entering or leaving), assign a dilution weight based on the average annual ground water flow into the lake, if available, using the dilution weight for the corresponding river flow rate in Table 4–13. If not available, assign a default dilution weight of 1.

• For the ocean and the Great Lakes, assign a dilution weight based on depth.

• For coastal tidal waters, assign a dilution weight of 0.0001; do not consider depth or flow.

• For a quiet-flowing river that has average annual flow of 10 cubic feet per second (cfs) or greater and that contains the probable point of entry to surface water, apply a zone of mixing in assigning the dilution weight:

–Start the zone of mixing at the probable point of entry and extend it for 3 miles from the probable point of entry, except: if the surface water characteristics change to turbulent within this 3-mile distance, extend the zone of mixing only to the point at which the change occurs.

–Assign a dilution weight of 0.5 to any intake that lies within this zone of mixing.

–Beyond this zone of mixing, assign a dilution weight the same as for any other river (that is, assign the dilution weight based on average annual flow).

–Treat a quiet-flowing river with an average annual flow of less than 10 cfs the same as any other river (that is, assign it a dilution weight of 1).

In those cases where water flows from a surface water body with a lower assigned dilution weight (from Table 4–13) to a surface water body with a higher assigned dilution weight (that is, water flows from a surface water body with more dilution to one with less dilution), use the lower assigned dilution weight as the dilution weight for the latter surface water body.

4.1.2.3.2 *Population.* In evaluating the population factor, include only persons served by drinking water drawn from intakes that are along the overland/flood hazardous substance migration path for the watershed and that are within the target distance limit specified in section 4.1.1.2. Include residents, students, and workers who regularly use the water. Exclude transient populations such as customers and travelers passing through the area. When a standby intake is maintained on a regular basis so that water can be withdrawn, include it in evaluating the population factor.

In estimating residential population, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

In estimating the population served by an intake, if the water from the intake is blended with other water (for example, water from other surface water intakes or ground water wells), apportion the total population regularly served by the blended system to the intake based on the intake's relative contribution to the total blended system. In estimating the intake's relative contribution, assume each well or intake contributes equally and apportion the population accordingly, except: if the relative contribution of any one intake or well exceeds 40 percent based on average annual pumpage or capacity, estimate the relative contribution of the wells and intakes considering the following data, if available:

• Average annual pumpage from the ground water wells and surface water intakes in the blended system.

• Capacities of the wells and intakes in the blended system.

For systems with standby surface water intakes or standby ground water wells, apportion the total population regularly served by the blended system as described above, except:

• Exclude standby ground water wells in apportioning the population.

• When using pumpage data for a standby surface water intake, use average pumpage for the period during which the standby intake is used rather than average annual pumpage.

• For that portion of the total population that could be apportioned to a standby surface water intake, assign that portion of the population either to that standby intake or to the other surface water intake(s) and ground water well(s) that serve that population; do not assign that portion of the population both to the standby intake and to the other intake(s) and well(s) in the blended system. Use the apportioning that results in the highest population factor value. (Either include all standby intake(s) or exclude some or all of the standby intake(s) as appropriate to obtain this highest value.) Note that the specific standby intake(s) included or excluded and, thus, the specific apportioning may vary in evaluating different watersheds and in evaluating the ground water pathway.

4.1.2.3.2.1 *Level of contamination.* Evaluate the population factor based on three factors: Level I concentrations, Level II concentrations, and potential contamination. Determine which factor applies for an intake as specified in section 4.1.2.3. Evaluate intakes subject to Level I concentration as specified in section 4.1.2.3.2.2, intakes subject to Level II concentration as specified in section 4.1.2.3.2.3, and intakes subject to potential contamination as specified in section 4.1.2.3.2.4.

For the potential contamination factor, use population ranges in evaluating the factor as specified in section 4.1.2.3.2.4. For the Level I and Level II concentrations factors, use the population estimate, not population ranges, in evaluating both factors.

4.1.2.3.2.2 *Level I concentrations.* Sum the number of people served by drinking water from intakes subject to Level I concentrations. Multiply this sum by 10. Assign this product as the value for this factor. Enter this value in Table 4–1.

4.1.2.3.2.3 *Level II concentrations.* Sum the number of people served by drinking water from intakes subject to Level II concentrations. Do not include people already counted under the Level I concentrations factor. Assign this sum as the value for this factor. Enter this value in Table 4–1.

4.1.2.3.2.4 *Potential contamination.* For each applicable type of surface water body in Table 4–14, first determine the number of people served by drinking water from intakes subject to potential contamination in that type of surface water body. Do not include those people already counted under the Level I and Level II concentrations factors.

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TABLE 4-14
DILUTION-WEIGHTED POPULATION VALUES FOR POTENTIAL CONTAMINATION FACTOR FOR SURFACE WATER MIGRATION PATHWAY[a]

| Type of Surface Water Body[b] | Number of People | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 to 10 | 11 to 30 | 31 to 100 | 101 to 300 | 301 to 1,000 | 1,001 to 3,000 | 3,001 to 10,000 | 10,001 to 30,000 |
| Minimal stream (< 10 cfs) | 0 | 4 | 17 | 53 | 164 | 522 | 1,633 | 5,214 | 16,325 |
| Small to moderate stream (10 to 100 cfs) | 0 | 0.4 | 2 | 5 | 16 | 52 | 163 | 521 | 1,633 |
| Moderate to large stream (> 100 to 1,000 cfs) | 0 | 0.04 | 0.2 | 0.5 | 2 | 5 | 16 | 52 | 163 |
| Large stream to river (> 1,000 to 10,000 cfs) | 0 | 0.004 | 0.02 | 0.05 | 0.2 | 0.5 | 2 | 5 | 16 |
| Large river (> 10,000 to 100,000 cfs) | 0 | 0 | 0.002 | 0.005 | 0.02 | 0.05 | 0.2 | 0.5 | 2 |
| Very large river (> 100,000 cfs) | 0 | 0 | 0 | 0.001 | 0.002 | 0.005 | 0.02 | 0.05 | 0.2 |
| Shallow ocean zone or Great Lake (depth < 20 feet) | 0 | 0 | 0.002 | 0.005 | 0.02 | 0.05 | 0.2 | 0.5 | 2 |
| Moderate ocean zone or Great Lake (depth 20 to 200 feet) | 0 | 0 | 0 | 0.001 | 0.002 | 0.005 | 0.02 | 0.05 | 0.2 |
| Deep ocean zone or Great Lakes (depth > 200 feet) | 0 | 0 | 0 | 0 | 0.001 | 0.003 | 0.008 | 0.03 | 0.08 |
| 3-mile mixing zone in quiet flowing river (≥ 10 cfs) | 0 | 2 | 9 | 26 | 82 | 261 | 817 | 2,607 | 8,163 |

TABLE 4-14 (Concluded)

| Type of Surface Water Body[b] | Number of People | | | | |
|---|---|---|---|---|---|
| | 30,001 to 100,000 | 100,001 to 300,000 | 300,001 to 1,000,000 | 1,000,001 to 3,000,000 | 3,000,001 to 10,000,000 |
| Minimal stream (< 10 cfs) | 52,137 | 163,246 | 521,360 | 1,632,455 | 5,213,590 |
| Small to moderate stream (10 to 100 cfs) | 5,214 | 16,325 | 52,136 | 163,245 | 521,359 |
| Moderate to large stream (> 100 to 1,000 cfs) | 521 | 1,633 | 5,214 | 16,325 | 52,136 |
| Large stream to river (> 1,000 to 10,000 cfs) | 52 | 163 | 521 | 1,632 | 5,214 |
| Large river (> 10,000 to 100,000 cfs) | 5 | 16 | 52 | 163 | 521 |
| Very large river (> 100,000 cfs) | 0.5 | 2 | 5 | 16 | 52 |
| Shallow ocean zone or Great Lake (depth < 20 feet) | 5 | 16 | 52 | 163 | 521 |
| Moderate ocean zone or Great Lake (depth 20 to 200 feet) | 0.5 | 2 | 5 | 16 | 52 |
| Deep zone or Great Lake (depth > 200 feet) | 0.3 | 1 | 3 | 8 | 26 |
| 3-mile mixing zone in quiet flowing river (≥ 10 cfs) | 26,068 | 81,623 | 260,680 | 816,227 | 2,606,795 |

[a] Round the number of people to nearest integer. Do not round the assigned dilution-weighted population value to nearest integer.

[b] Treat each lake as a separate type of water body and assign it a dilution-weighted population value using the surface water body type with the same dilution weight from Table 4-13 as the lake. If drinking water is withdrawn from coastal tidal water or the ocean, assign a dilution-weighted population value to it using the surface water body type with the same dilution weight from Table 4-13 as the coastal tidal water or the ocean zone.

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For each type of surface water body, assign a dilution-weighted population value from Table 4–14, based on the number of people included for that type of surface water body. (Note that the dilution-weighted population values in Table 4–14 incorporate the dilution weights from Table 4–13. Do not multiply the values from Table 4–14 by these dilution weights.)

Calculate the value for the potential contamination factor (PC) for the watershed as follows:

$$PC = \frac{1}{10}\sum_{i=1}^{n} W_i$$

where:

$W_i$ = Dilution-weighted population from Table 4–14 for surface water body type i.

n = Number of different surface water body types in the watershed.

If PC is less than 1, do not round it to the nearest integer; if PC is 1 or more, round to the nearest integer. Enter this value for the potential contamination factor in Table 4–1.

4.1.2.3.2.5 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and potential contamination. Do not round this sum to the nearest integer. Assign this sum as the population factor value for the watershed. Enter this value in Table 4–1.

4.1.2.3.3 *Resources.* To evaluate the resources factor for the watershed, select the highest value below that applies to the watershed. Assign this value as the resources factor value for the watershed. Enter this value in Table 4–1.

Assign a value of 5 if, within the in-water segment of the hazardous substance migration path for the watershed, the surface water is used for one or more of the following purposes:

- Irrigation (5 acre minimum) of commercial food crops or commercial forage crops.
- Watering of commercial livestock.
- Ingredient in commercial food preparation.
- Major or designated water recreation area, excluding drinking water use.

Assign a value of 5 if, within the in-water segment of the hazardous substance migration path for the watershed, the surface water is not used for drinking water, but either of the following applies:

- Any portion of the surface water is designated by a State for drinking water use under section 305(a) of the Clean Water Act, as amended.
- Any portion of the surface water is usable for drinking water purposes.

Assign a value of 0 if none of the above applies.

4.1.2.3.4 *Calculation of drinking water threat-targets factor category value.* Sum the nearest intake, population, and resources factor values for the watershed. Do not round this sum to the nearest integer. Assign this sum as the drinking water threat-targets factor category value for the watershed. Enter this value in Table 4–1.

4.1.2.4 *Calculation of the drinking water threat score for a watershed.* Multiply the drinking water threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 100, as the drinking water threat score for the watershed. Enter this value in Table 4–1.

4.1.3 *Human food chain threat.* Evaluate the human food chain threat for each watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.1.3.1 *Human food chain threat-likelihood of release.* Assign the same likelihood of release factor category value for the human food chain threat for the watershed as would be assigned in section 4.1.2.1.3 for the drinking water threat. Enter this value in Table 4–1.

4.1.3.2 *Human food chain threat-waste characteristics.* Evaluate the waste characteristics factor category for each watershed based on two factors: toxicity/persistence/bioaccumulation and hazardous waste quantity.

4.1.3.2.1 *Toxicity/persistence/bioaccumulation.* Evaluate all those hazardous substances eligible to be evaluated for toxicity/persistence in the drinking water threat for the watershed (see section 4.1.2.2).

4.1.3.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

4.1.3.2.1.2 *Persistence.* Assign a persistence factor value to each hazardous substance as specified for the drinking water threat (see section 4.1.2.2.1.2), except: use the predominant water category (that is, lakes; or rivers, oceans, coastal tidal waters, or Great Lakes) between the probable point of entry and the nearest fishery (not the nearest drinking water or resources intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4–10 to use. Determine the predominant water category based on distance as specified in section 4.1.2.2.1.2. For contaminated sediments with no identified source, use the point where measurement begins rather than the probable point of entry.

4.1.3.2.1.3 *Bioaccumulation potential.* Use the following data hierarchy to assign a bioaccumulation potential factor value to each hazardous substance:

- Bioconcentration factor (BCF) data.
- Logarithm of the n-octanol-water partition coefficient (log $K_{ow}$) data.
- Water solubility data.

Assign a bioaccumulation potential factor value to each hazardous substance from Table 4–15.

If BCF data are available for any aquatic human food chain organism for the substance being evaluated, assign the bioaccumulation potential factor value to the hazardous substance as follows:

- If BCF data are available for both fresh water and salt water for the hazardous substance, use the BCF data that correspond to the type of water body (that is, fresh water or salt water) in which the fisheries are located to assign the bioaccumulation potential factor value to the hazardous substance.
- If, however, some of the fisheries being evaluated are in fresh water and some are in salt water, or if any are in brackish water, use the BCF data that yield the higher factor value to assign the bioaccumulation potential factor value to the hazardous substance.
- If BCF data are available for either fresh water or salt water, but not for both, use the available BCF data to assign the bioaccumulation potential factor value to the hazardous substance.

If BCF data are not available for the hazardous substance, use log $K_{ow}$ data to assign a bioaccumulation potential factor value to organic substances, but not to inorganic substances. If BCF data are not available, and if either log $K_{ow}$ data are not available, the log $K_{ow}$ is available but exceeds 6.0, or the substance is an inorganic substance, use water solubility data to assign a bioaccumulation potential factor value.

TABLE 4–15.—BIOACCUMULATION POTENTIAL FACTOR VALUES [a]

**If bioconcentration factor (BCF) data are available for any aquatic human food chain organism, assign a value as follows: [b]**

| BCF | Assigned value |
|---|---|
| Greater than or equal to 10,000 | 50,000 |
| 1,000 to less than 10,000 | 5,000 |
| 100 to less than 1,000 | 500 |
| 10 to less than 100 | 50 |
| 1 to less than 10 | 5 |
| Less than 1 | 0.5 |

**If BCF data are not available, and log $K_{ow}$ data are available and do not exceed 6.0, assign a value to an organic hazardous substance as follows (for inorganic hazardous substances, skip this step and proceed to the next):**

| Log $K_{ow}$ | Assigned value |
|---|---|
| 5.5 to 6.0 | 50,000 |
| 4.5 to less than 5.5 | 5,000 |
| 3.2 to less than 4.5 | 500 |
| 2.0 to less than 3.2 | 50 |
| 0.8 to less than 2.0 | 5 |
| Less than 0.8 | 0.5 |

**If BCF data are not available, and if either Log $K_{ow}$ data are not available, a log $K_{ow}$ is available but exceeds 6.0, or the substance is an inorganic substance, assign a value as follows:**

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TABLE 4-15.—BIOACCUMULATION POTENTIAL FACTOR VALUES [a]— Concluded

| Water solubility (mg/l) | Assigned value |
|---|---|
| Less than 25 | 50,000 |
| 25 to 500 | 5,000 |
| Greater than 500 to 1,500 | 500 |
| Greater than 1,500 | 0.5 |

If none of these data are available, assign a value of 0.5.

[a] Do not round to nearest integer.
[b] See text for use of freshwater and saltwater BCF data.

Do not distinguish between fresh water and salt water in assigning the bioaccumulation potential factor value based on log $K_{ow}$ or water solubility data.

If none of these data are available, assign the hazardous substance a bioaccumulation potential factor value of 0.5.

4.1.3.2.1.4 *Calculation of toxicity/persistence/bioaccumulation factor value.* Assign each hazardous substance a toxicity/persistence factor value from Table 4-12, based on the values assigned to the hazardous substance for the toxicity and persistence factors. Then assign each hazardous substance a toxicity/persistence/bioaccumulation factor value from Table 4-16, based on the values assigned for the toxicity/persistence and bioaccumulation potential factors. Use the hazardous substance with the highest toxicity/persistence/bioaccumulation factor value for the watershed to assign the value to this factor. Enter this value in Table 4-1.

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TABLE 4-16
TOXICITY/PERSISTENCE/BIOACCUMULATION FACTOR VALUES[a]

| Toxicity/ Persistence Factor Value | Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 10,000 | $5 \times 10^8$ | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 |
| 4,000 | $2 \times 10^8$ | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 |
| 1,000 | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 |
| 700 | $3.5 \times 10^7$ | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 |
| 400 | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 |
| 100 | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 |
| 70 | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 |
| 40 | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 |
| 10 | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 |
| 7 | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 |
| 4 | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 |
| 1 | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 | 0.5 |
| 0.7 | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 | 0.35 |
| 0.4 | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 | 0.2 |
| 0.07 | 3,500 | 350 | 35 | 3.5 | 0.35 | 0.035 |
| 0.007 | 350 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 |
| 0.0007 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 | 0.00035 |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[a] Do not round to nearest integer.
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4.1.3.2.2 *Hazardous waste quantity* — In addition, consider all other fisheries that

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4.1.3.2.2 *Hazardous waste quantity.* Assign the same factor value for hazardous waste quantity for the watershed as would be assigned in section 4.1.2.2.2 for the drinking water threat. Enter this value in Table 4–1.

4.1.3.2.3 *Calculation of human food chain threat-waste characteristics factor category value.* For the hazardous substance selected for the watershed in section 4.1.3.2.1.4, use its toxicity/persistence factor value and bioaccumulation potential factor value as follows to assign a value to the waste characteristics factor category. First, multiply the toxicity/persistence factor value and the hazardous waste quantity factor value for the watershed, subject to a maximum product of $1\times10^{8}$. Then multiply this product by the bioaccumulation potential factor value for this hazardous substance, subject to a maximum product of $1\times10^{12}$. Based on this second product, assign a value from Table 2–7 (section 2.4.3.1) to the human food chain threat-waste characteristics factor category for the watershed. Enter this value in Table 4–1.

4.1.3.3 *Human food chain threat-targets.* Evaluate two target factors for each watershed: food chain individual and population. For both factors, determine whether the target fisheries are subject to actual or potential human food chain contamination.

Consider a fishery (or portion of a fishery) within the target distance limit of the watershed to be subject to actual human food chain contamination if any of the following apply:

- A hazardous substance having a bioaccumulation potential factor value of 500 or greater is present either in an observed release by direct observation to the watershed or in a surface water or sediment sample from the watershed at a level that meets the criteria for an observed release to the watershed from the site, and at least a portion of the fishery is within the boundaries of the observed release (that is, it is located either at the point of direct observation or at or between the probable point of entry and the most distant sampling point establishing the observed release).
- The fishery is closed, and a hazardous substance for which the fishery has been closed has been documented in an observed release to the watershed from the site, and at least a portion of the fishery is within the boundaries of the observed release.
- A hazardous substance is present in a tissue sample from an essentially sessile, benthic, human food chain organism from the watershed at a level that meets the criteria for an observed release to the watershed from the site, and at least a portion of the fishery is within the boundaries of the observed release.

For a fishery that meets any of these three criteria, but that is not wholly within the boundaries of the observed release, consider only the portion of the fishery that is within the boundaries of the observed release to be subject to actual human food chain contamination. Consider the remainder of the fishery within the target distance limit to be subject to potential food chain contamination.

In addition, consider all other fisheries that are partially or wholly within the target distance limit for the watershed, including fisheries partially or wholly within the boundaries of an observed release for the watershed that do not meet any of the three criteria listed above, to be subject to potential human food chain contamination. If only a portion of the fishery is within the target distance limit for the watershed, include only that portion in evaluating the targets factor category.

When a fishery (or portion of a fishery) is subject to actual food chain contamination, determine the part of the fishery subject to Level I concentrations and the part subject to Level II concentrations. If the actual food chain contamination is based on direct observation, evaluate it using Level II concentrations. However, if the actual food chain contamination is based on samples from the watershed, use these samples and, if available, additional tissue samples from aquatic human food chain organisms as specified below, to determine the part subject to Level I concentrations and the part subject to Level II concentrations:

- Determine the level of actual contamination from samples (including tissue samples from essentially sessile, benthic organisms) that meet the criteria for actual food chain contamination by comparing the exposure concentrations (see section 4.1.2.3) from these samples (or comparable samples) to the health-based benchmarks from Table 4–17, as described in section 2.5.1 and 2.5.2. Use only the exposure concentrations for those hazardous substances in the sample (or comparable samples) that meet the criteria for actual contamination of the fishery.
- In addition, determine the level of actual contamination from other tissue samples by comparing the concentrations of hazardous substances in the tissue samples (or comparable tissue samples) to the health-based benchmarks from Table 4–17, as described in sections 2.5.1 and 2.5.2. Use only those additional tissue samples and only those hazardous substances in the tissue samples that meet all the following criteria:
  - –The tissue sample is from a location that is within the boundaries of the actual food chain contamination for the site (that is, either at the point of direct observation or at or between the probable point of entry and the most distant sample point meeting the criteria for actual food chain contamination).
  - –The tissue sample is from a species of aquatic human food chain organism that spends extended periods of time within the boundaries of the actual food chain contamination for the site and that is not an essentially sessile, benthic organism.
  - –The hazardous substance is a substance that is also present in a surface water, benthic, or sediment sample from within the target distance limit for the watershed and, for such a sample, meets the criteria for actual food chain contamination.

TABLE 4–17.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN HUMAN FOOD CHAIN

- Concentration corresponding to Food and Drug Administration Action Level (FDAAL) for fish or shellfish.
- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for oral exposures.
- Screening concentration for noncancer toxicological responses corresponding to the Reference Dose (RfD) for oral exposures.

4.1.3.3.1 *Food chain individual.* Evaluate the food chain individual factor based on the fisheries (or portions of fisheries) within the target distance limit for the watershed. Assign this factor a value as follows:

- If any fishery (or portion of a fishery) is subject to Level I concentrations, assign a value of 50.
- If not, but if any fishery (or portion of a fishery) is subject to Level II concentrations, assign a value of 45.
- If not, but if there is an observed release of a hazardous substance having a bioaccumulation potential factor value of 500 or greater to surface water in the watershed and there is a fishery (or portion of a fishery) present anywhere within the target distance limit, assign a value of 20.
- If there is no observed release to surface water in the watershed or there is no observed release of a hazardous substance having a bioaccumulation potential factor value of 500 or greater, but there is a fishery (or portion of a fishery) present anywhere within the target distance limit, assign a value as follows:
  - –Using Table 4–13, determine the highest dilution weight (that is, lowest amount of dilution) applicable to the fisheries (or portions of fisheries) within the target distance limit. Multiply this dilution weight by 20 and round to the nearest integer.
  - –Assign this calculated value as the factor value.
- If there are no fisheries (or portions of fisheries) within the target distance limit of the watershed, assign a value of 0.

Enter the value assigned in Table 4–1.

4.1.3.3.2 *Population.* Evaluate the population factor for the watershed based on three factors: Level I concentrations, Level II concentrations, and potential human food chain contamination. Determine which factor applies for a fishery (or portion of a fishery) as specified in section 4.1.3.3.

4.1.3.3.2.1 *Level I concentrations.* Determine those fisheries (or portions of fisheries) within the watershed that are subject to Level I concentrations.

Estimate the human food chain population value for each fishery (or portion of a fishery) as follows:

- Estimate human food chain production for the fishery based on the estimated annual production (in pounds) of human food chain organisms (for example, fish, shellfish) for that fishery, except: if the fishery is closed and a hazardous substance for which the fishery has been closed has been documented in an observed release to the fishery from a source at the site, use the estimated annual production for the period prior to closure of the fishery or use the estimated annual production from comparable fisheries that are not closed.
- Assign the fishery a value for human food chain population from Table 4–18, based on the estimated human food production for the fishery.
- Set boundaries between fisheries at those points where human food chain production changes or where the surface water dilution weight changes.

Sum the human food chain population value for each fishery (and portion of a fishery). Multiply this sum by 10. If the product is less than 1, do not round it to the nearest integer; if 1 or more, round to the nearest integer. Assign the resulting value as the Level I concentrations factor value. Enter this value in Table 4–1.

4.1.3.3.2.2 *Level II concentrations.* Determine those fisheries (or portions of fisheries) within the watershed that are subject to Level II concentrations. Do not include any fisheries (or portions of fisheries) already counted under the Level I concentrations factor.

Assign each fishery (or portion of a fishery) a value for human food chain population from Table 4–18, based on the estimated human food production for the fishery. Estimate the human food chain production for the fishery as specified in section 4.1.3.3.2.1.

Sum the human food chain population value for each fishery (and portion of a fishery). If this sum is less than 1, do not round it to the nearest integer; if 1 or more, round to the nearest integer. Assign the resulting value as the Level II concentrations factor value. Enter this value in Table 4–1.

TABLE 4–18.—HUMAN FOOD CHAIN POPULATION VALUES [a]

| Human food chain production (pounds per year) | Assigned human food chain population value |
|---|---|
| 0 | 0 |
| Greater than 0 to 100 | 0.03 |
| Greater than 100 to 1,000 | 0.3 |
| Greater than 1,000 to 10,000 | 3 |
| Greater than 10,000 to 100,000 | 31 |
| Greater than 100,000 to 1,000,000 | 310 |
| Greater than $10^6$ to $10^7$ | 3,100 |
| Greater than $10^7$ to $10^8$ | 31,000 |
| Greater than $10^8$ to $10^9$ | 310,000 |
| Greater than $10^9$ | 3,100,000 |

[a] Do not round to nearest integer.

4.1.3.3.2.3 *Potential human food chain contamination.* Determine those fisheries (or portions of fisheries) within the watershed that are subject to potential human food chain contamination. Do not include those fisheries (or portion of fisheries) already counted under the Level I or Level II concentrations factors.

Calculate the value for the potential human food chain contamination factor (PF) for the watershed as follows:

$$PF=\frac{1}{10}\sum_{i=1}^{n}P_iD_i$$

where:

$P_i$ = Human food chain population value for fishery $i$.

$D_i$ = Dilution weight from Table 4–13 for fishery $i$.

$n$ = Number of fisheries subject to potential human food chain contamination.

In calculating PF:

- Estimate the human food chain population value ($P_i$) for a fishery (or portion of a fishery) as specified in section 4.1.3.3.2.1.
- Assign the fishery (or portion of a fishery) a dilution weight as indicated in Table 4–13 (section 4.1.2.3.1), except: do not assign a dilution weight of 0.5 for a "3-mile mixing zone in quiet flowing river"; instead assign a dilution weight based on the average annual flow.

If PF is less than 1, do not round it to the nearest integer; if PF is 1 or more, round to the nearest integer. Enter the value assigned in Table 4–1.

4.1.3.3.2.4 *Calculation of population factor value.* Sum the values for the Level I concentrations, Level II concentrations, and potential human food chain contamination factors for the watershed. Do not round this sum to the nearest integer. Assign it as the population factor value for the watershed. Enter this value in Table 4–1.

4.1.3.3.3 *Calculation of human food chain threat-targets factor category value.* Sum the food chain individual and population factor values for the watershed. Do not round this sum to the nearest integer. Assign it as the human food chain threat-targets factor category value for the watershed. Enter this value in Table 4–1.

4.1.3.4 *Calculation of human food chain threat score for a watershed.* Multiply the human food chain threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 100, as the human food chain threat score for the watershed. Enter this score in Table 4–1.

4.1.4 *Environmental threat.* Evaluate the environmental threat for the watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.1.4.1 *Environmental threat-likelihood of release.* Assign the same likelihood of release factor category value for the environmental threat for the watershed as would be assigned in section 4.1.2.1.3 for the drinking water threat. Enter this value in Table 4–1.

4.1.4.2 *Environmental threat-waste characteristics.* Evaluate the waste characteristics factor category for each watershed based on two factors: ecosystem toxicity/persistence/bioaccumulation and hazardous waste quantity.

4.1.4.2.1 *Ecosystem toxicity/persistence/bioaccumulation.* Evaluate all those hazardous substances eligible to be evaluated for toxicity/persistence in the drinking water threat for the watershed (see section 4.1.2.2).

4.1.4.2.1.1 *Ecosystem toxicity.* Assign an ecosystem toxicity factor value from Table 4–19 to each hazardous substance on the basis of the following data hierarchy:

- EPA chronic Ambient Water Quality Criterion (AWQC) for the substance.
- EPA chronic Ambient Aquatic Life Advisory Concentrations (AALAC) for the substance.
- EPA acute AWQC for the substance.
- EPA acute AALAC for the substance.
- Lowest $LC_{50}$ value for the substance.

In assigning the ecosystem toxicity factor value to the hazardous substance:

- If either an EPA chronic AWQC or AALAC is available for the hazardous substance, use it to assign the ecosystem toxicity factor value. Use the chronic AWQC in preference to the chronic AALAC when both are available.
- If neither is available, use the EPA acute AWQC or AALAC to assign the ecosystem toxicity factor value. Use the acute AWQC in preference to the acute AALAC.
- If none of the chronic and acute AWQCs and AALACs is available, use the lowest $LC_{50}$ value to assign the ecosystem toxicity factor value.
- If an $LC_{50}$ value is also not available, assign an ecosystem toxicity factor value of 0 to the hazardous substance and use other hazardous substances for which data are available in evaluating the pathway.

If an ecosystem toxicity factor value of 0 is assigned to all hazardous substances eligible to be evaluated for the watershed (that is, insufficient data are available for evaluating all the substances), use a default value of 100 as the ecosystem toxicity factor value for all these hazardous substances.

With regard to the AWQC, AALAC, or $LC_{50}$ selected for assigning the ecosystem toxicity factor value to the hazardous substance:

- If values for the selected AWQC, AALAC, or $LC_{50}$ are available for both fresh water and marine water for the hazardous substance, use the value that corresponds to the type of water body (that is, fresh water or salt water) in which the sensitive environments are located to assign the ecosystem toxicity factor value to the hazardous substance.
- If, however, some of the sensitive environments being evaluated are in fresh water and some are in salt water, or if any are in brackish water, use the value (fresh water or marine) that yields the higher factor value to assign the ecosystem toxicity factor value to the hazardous substance.
- If a value for the selected AWQC, AALAC, or $LC_{50}$ is available for either fresh water or marine water, but not for both, use the available one to assign an ecosystem toxicity factor value to the hazardous substance.

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TABLE 4–19.—ECOSYSTEM TOXICITY FACTOR VALUES

If an EPA chronic AWQC[a] or AALAC[b] is available, assign a value as follows:[c]

| EPA chronic AWQC or AALAC | Assigned value |
|---|---|
| Less than 1 μg/l | 10,000 |
| 1 to 10 μg/l | 1,000 |
| Greater than 10 to 100 μg/l | 100 |
| Greater than 100 to 1,000 μg/l | 10 |
| Greater than 1,000 μg/l | 1 |

If neither an EPA chronic AWQC nor EPA chronic AALAC is available, assign a value based on the EPA acute AWQC or AALAC as follows:[c]

| EPA acute AWQC or AALAC | Assigned value |
|---|---|
| Less than 100 μg/l | 10,000 |
| 100 to 1,000 μg/l | 1,000 |
| Greater than 1,000 to 10,000 μg/l | 100 |
| Greater than 10,000 to 100,000 μg/l | 10 |
| Greater than 100,000 μg/l | 1 |

TABLE 4–19. ECOSYSTEM TOXICITY FACTOR VALUES—Concluded

If neither an EPA chronic or acute AWQC nor EPA chronic or acute AALAC is available, assign a value from the $LC_{50}$ as follows:

EPA acute AWQC or AALAC

| $LC_{50}$ | Assigned value |
|---|---|
| Less than 100 μg/l | 10,000 |
| 100 to 1,000 μg/l | 1,000 |
| Greater than 1,000 to 10,000 μg/l | 100 |
| Greater than 10,000 to 100,000 μg/l | 10 |
| Greater than 100,000 μg/l | 1 |

If none of the AWQCs and AALACs nor the $LC_{50}$ is available, assign a value of 0.

[a] AWQC—Ambient Water Quality Criteria.
[b] AALAC—Ambient Aquatic Life Advisory Concentrations.
[c] Use the AWQC value in preference to the AALAC when both are available. See text for use of freshwater and marine values.

4.1.4.2.1.2 *Persistence.* Assign a persistence factor value to each hazardous substance as specified in section 4.1.2.2.1.2, except: use the predominant water category (that is lakes; or rivers, oceans, coastal tidal waters, or Great Lakes) between the probable point of entry and the nearest sensitive environment (not the nearest drinking water or resources intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4–10 to use. Determine the predominant water category based on distance as specified in section 4.1.2.2.1.2. For contaminated sediments with no identified source, use the point where measurement begins rather than the probable point of entry.

4.1.4.2.1.3 *Ecosystem bioaccumulation potential.* Assign an ecosystem bioaccumulation potential factor value to each hazardous substance in the same manner specified for the bioaccumulation potential factor in section 4.1.3.2.1.3, except:

- Use BCF data for all aquatic organisms, not just for aquatic human food chain organisms.
- Use the BCF data that corresponds to the type of water body (that is, fresh water or salt water) in which the sensitive environments (not fisheries) are located.

4.1.4.2.1.4 *Calculation of ecosystem toxicity/persistence/bioaccumulation factor value.* Assign each hazardous substance an ecosystem toxicity/persistence factor value from Table 4–20, based on the values assigned to the hazardous substance for the ecosystem toxicity and persistence factors. Then assign each hazardous substance an ecosystem toxicity/persistence/bioaccumulation factor value from Table 4–21, based on the values assigned for the ecosystem toxicity/persistence and ecosystem bioaccumulation potential factors. Select the hazardous substance with the highest ecosystem toxicity/persistence/bioaccumulation factor value for the watershed and use it to assign the value to this factor. Enter this value in Table 4–1.

TABLE 4–20.—ECOSYSTEM TOXICITY/PERSISTENCE FACTOR VALUES [a]

| Persistence factor value | Ecosystem toxicity factor value | | | | | |
|---|---|---|---|---|---|---|
| | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 1.0 | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 0.4 | 4,000 | 400 | 40 | 4 | 0.4 | 0 |
| 0.07 | 700 | 70 | 7 | 0.7 | 0.07 | 0 |
| 0.0007 | 7 | 0.7 | 0.07 | 0.007 | 0.0007 | 0 |

[a] Do not round to nearest integer.

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TABLE 4-21
ECOSYSTEM TOXICITY/PERSISTENCE/BIOACCUMULATION FACTOR VALUES[a]

| Ecosystem Toxicity/ Persistence Factor Value | Ecosystem Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 10,000 | $5 \times 10^8$ | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 |
| 4,000 | $2 \times 10^8$ | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 |
| 1,000 | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 |
| 700 | $3.5 \times 10^7$ | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 |
| 400 | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 |
| 100 | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 |
| 70 | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 |
| 40 | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 |
| 10 | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 |
| 7 | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 |
| 4 | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 |
| 1 | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 | 0.5 |
| 0.7 | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 | 0.35 |
| 0.4 | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 | 0.2 |
| 0.07 | 3,500 | 350 | 35 | 3.5 | 0.35 | 0.035 |
| 0.007 | 350 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 |
| 0.0007 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 | 0.00035 |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[a] Do not round to nearest integer.

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4.1.4.2.2 *Hazardous waste quantity.* Assign the same factor value for hazardous waste quantity for the watershed as would be assigned in section 4.1.2.2.2 for the drinking water threat. Enter this value in Table 4–1.

4.1.4.2.3 *Calculation of environmental threat-waste characteristics factor category value.* For the hazardous substance selected for the watershed in section 4.1.4.2.1.4, use its ecosystem toxicity/persistence factor value and ecosystem bioaccumulation potential factor value as follows to assign a value to the waste characteristics factor category. First, multiply the ecosystem toxicity/persistence factor value and the hazardous waste quantity factor value for the watershed, subject to a maximum product of $1\times10^8$. Then multiply this product by the ecosystem bioaccumulation potential factor value for this hazardous substance, subject to a maximum product of $1\times10^{12}$. Based on this second product, assign a value from Table 2–7 (section 2.4.3.1) to the environmental threat-waste characteristics factor category for the watershed. Enter this value in Table 4–1.

TABLE 4–22.—ECOLOGICAL-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN SURFACE WATER

- Concentration corresponding to EPA Ambient Water Quality Criteria (AWQC) for protection of aquatic life (fresh water or marine).
- Concentration corresponding to EPA Ambient Aquatic Life Advisory Concentrations (AALAC).
- Select the appropriate AWQC and AALAC as follows:
  - –Use chronic value, if available; otherwise use acute value.
  - –If the sensitive environment being evaluated is in fresh water, use fresh water value, except: if no fresh water value is available, use marine value if available.
  - –If the sensitive environment being evaluated is in salt water, use marine value, except: if no marine value is available, use fresh water value if available.
  - –If the sensitive environment being evaluated is in both fresh water and salt water, or is in brackish water, use lower of fresh water or marine values.

TABLE 4–23.—SENSITIVE ENVIRONMENTS RATING VALUES

| Sensitive environment | Assigned value |
|---|---|
| Critical habitat [a] for Federal designated endangered or threatened species<br>Marine Sanctuary<br>National Park<br>Designated Federal Wilderness Area<br>Areas identified under Coastal Zone Management Act [b]<br>Sensitive areas identified under National Estuary Program [c] or Near Coastal Waters Program [d]<br>Critical areas identified under the Clean Lakes Program [e]<br>National Monument [f]<br>National Seashore Recreational Area<br>National Lakeshore Recreational Area | 100 |
| Habitat known to be used by Federal designated or proposed endangered or threatened species<br>National Preserve<br>National or State Wildlife Refuge<br>Unit of Coastal Barrier Resources System<br>Coastal Barrier (undeveloped)<br>Federal land designated for protection of natural ecosystems<br>Administratively Proposed Federal Wilderness Area<br>Spawning areas critical [g] for the maintenance of fish/shellfish species within river, lake, or coastal tidal waters<br>Migratory pathways and feeding areas critical for maintenance of anadromous fish species within river reaches or areas in lakes or coastal tidal waters in which the fish spend extended periods of time<br>Terrestrial areas utilized for breeding by large or dense aggregations of animals [h]<br>National river reach designated as Recreational | 75 |
| Habitat known to be used by State designated endangered or threatened species<br>Habitat known to be used by species under review as to its Federal endangered or threatened status<br>Coastal Barrier (partially developed)<br>Federal designated Scenic or Wild River | 50 |
| State land designated for wildlife or game management<br>State designated Scenic or Wild River<br>State designated Natural Areas<br>Particular areas, relatively small in size, important to maintenance of unique biotic communities | 25 |
| State designated areas for protection or maintenance of aquatic life [i] | 5 |

[a] Critical habitat as defined in 50 CFR 424.02.
[b] Areas identified in State Coastal Zone Management plans as requiring protection because of ecological value.
[c] National Estuary Program study areas (subareas within estuaries) identified in Comprehensive Conservation and Management Plans as requiring protection because they support critical life stages of key estuarine species (Section 320 of Clean Water Act, as amended).
[d] Near Coastal Waters as defined in Sections 104(b)(3), 304(1), 319, and 320 of Clean Water Act, as amended.
[e] Clean Lakes Program critical areas (subareas within lakes, or in some cases entire small lakes) identified by State Clean Lake Plans as critical habitat (Section 314 of Clean Water Act, as amended).
[f] Use only for air migration pathway.
[g] Limit to areas described as being used for intense or concentrated spawning by a given species.
[h] For the air migration pathway, limit to terrestrial vertebrate species. For the surface water migration pathway, limit to terrestrial vertebrate species with aquatic or semiaquatic foraging habits.
[i] Areas designated under Section 305(a) of Clean Water Act, as amended.



TABLE 4–24.—WETLANDS RATING VALUES FOR SURFACE WATER MIGRATION PATHWAY

| Total length of wetlands [a] (miles) | Assigned value |
|---|---|
| Less than 0.1 | 0 |
| 0.1 to 1 | 25 |
| Greater than 1 to 2 | 50 |
| Greater than 2 to 3 | 75 |
| Greater than 3 to 4 | 100 |
| Greater than 4 to 8 | 150 |
| Greater than 8 to 12 | 250 |
| Greater than 12 to 16 | 350 |
| Greater than 16 to 20 | 450 |
| Greater than 20 | 500 |

[a] Wetlands as defined in 40 CFR Section 230.3.

4.1.4.3 *Environmental threat-targets.* Evaluate the environmental threat-targets factor category for a watershed using one factor: sensitive environments.

4.1.4.3.1 *Sensitive environments.* Evaluate sensitive environments along the hazardous substance migration path for the watershed based on three factors: Level I concentrations, Level II concentrations, and potential contamination.

Determine which factor applies to each sensitive environment as specified in section 4.1.2.3, except: use ecological-based benchmarks (Table 4–22) rather than health-based benchmarks (Table 3–10) in determining the level of contamination from samples. In determining the level of actual contamination, use a point of direct observation anywhere within the sensitive environment or samples (that is, surface water, benthic, or sediment samples) taken anywhere within or beyond the sensitive environment (or anywhere adjacent to or beyond the sensitive environment if it is contiguous to the migration path).

4.1.4.3.1.1 *Level I concentrations.* Assign value(s) from Table 4–23 to each sensitive environment subject to Level I concentrations.

For those sensitive environments that are wetlands, assign an additional value from Table 4–24. In assigning a value from Table 4–24, include only those portions of wetlands located along the hazardous substance migration path in the area of Level I concentrations. If a wetland is located partially along the area of Level I concentrations and partially along the area of Level II concentrations and/or potential contamination, then solely for purposes of Table 4–24, count the portion(s) along the areas of Level II concentrations or potential contamination under the Level II concentrations factor (section 4.1.4.3.1.2) or potential contamination factor (section 4.1.4.3.1.3), as appropriate.

Estimate the total length of wetlands along the hazardous substance migration path (that is, wetland frontage) in the area of Level I concentrations and assign a value from Table 4–24 based on this total length. Estimate this length as follows:

- For an isolated wetland or for a wetland where the probable point of entry to surface water is in the wetland, use the perimeter of that portion of the wetland subject to Level I concentrations as the length.
- For rivers, use the length of the wetlands contiguous to the in-water segment of the hazardous substance migration path (that is, wetland frontage).
- For lakes, oceans, coastal tidal waters, and Great Lakes, use the length of the wetlands along the shoreline within the target distance limit (that is, wetland frontage along the shoreline).

Calculate the Level I concentrations factor value (SH) for the watershed as follows:

$$SH = 10(WH + \sum_{i=1}^{n} S_i)$$

where:

WH = Value assigned from Table 4–24 to wetlands along the area of Level I concentrations.
$S_i$ = Value(s) assigned from Table 4–23 to sensitive environment i.
n = Number of sensitive environments from Table 4–23 subject to Level I concentrations.

Enter the value assigned in Table 4–1.

4.1.4.3.1.2 *Level II concentrations.* Assign value(s) from Table 4–23 to each sensitive environment subject to Level II concentrations. Do not include sensitive environments already counted for Table 4–23 under the Level I concentrations factor for this watershed.

For those sensitive environments that are wetlands, assign an additional value from Table 4–24. In assigning a value from Table 4–24, include only those portions of wetlands located along the hazardous substance migration path in the area of Level II concentrations, as specified in section 4.1.4.3.1.1.

Estimate the total length of wetlands along the hazardous substance migration path (that is, wetland frontage) in the area of Level II concentrations and assign a value from Table 4–24 based on this total length. Estimate this length as specified in section 4.1.4.3.1.1, except: for an isolated wetland or for a wetland where the probable point of entry to surface water is in the wetland, use the perimeter of that portion of the wetland subject to Level II (not Level I) concentrations as the length.

Calculate the Level II concentrations value (SL) for the watershed as follows:

$$SL = WL + \sum_{i=1}^{n} S_i$$

where:

WL = Value assigned from Table 4–24 to wetlands along the area of Level II concentrations.
$S_i$ = Value(s) assigned from Table 4–23 to sensitive environment i.
n = Number of sensitive environments from Table 4–23 subject to Level II concentrations.

Enter the value assigned in Table 4–1.

4.1.4.3.1.3 *Potential contamination.* Assign value(s) from Table 4–23 to each sensitive environment subject to potential contamination. Do not include sensitive environments already counted for Table 4–23 under the Level I or Level II concentrations factors.

For each type of surface water body in Table 4–13 (section 4.1.2.3.1), sum the value(s) assigned from Table 4–23 to the sensitive environments along that type of surface water body, except: do not use the surface water body type "3-mile mixing zone in quiet flowing river." If a sensitive environment is along two or more types of surface water bodies (for example, Wildlife Refuge contiguous to both a moderate stream and a large river), assign the sensitive environment only to that surface water body type having the highest dilution weight value from Table 4–13.

For those sensitive environments that are wetlands, assign an additional value from Table 4–24. In assigning a value from Table 4–24, include only those portions of wetlands located along the hazardous substance migration path in the area of potential contamination, as specified in section 4.1.4.3.1.1. Aggregate these wetlands by type of surface water body, except: do not use the surface water body type "3-mile mixing zone in quiet flowing river." Treat the wetlands aggregated within each type of surface water body as separate sensitive environments solely for purposes of applying Table 4–24. Estimate the total length of the wetlands within each surface water body type as specified in section 4.1.4.3.1.1, except: for an isolated wetland or for a wetland where the probable point of entry to surface water is in the wetland, use the perimeter of that portion of the wetland subject to potential contamination (or the portion of that perimeter that is within the target distance limit) as the length. Assign a separate value from Table 4–24 for each type of surface water body in the watershed.

Calculate the potential contamination factor value (SP) for the watershed as follows:

$$SP = \frac{1}{10} \sum_{j=1}^{m} ([W_j + S_j]D_j)$$

where:

$$S_j = \sum_{i=1}^{n} S_{ij}$$

$S_{ij}$ = Value(s) assigned from Table 4–23 to sensitive environment i in surface water body type j.
n = Number of sensitive environments from Table 4–23 subject to potential contamination.
$W_j$ = Value assigned from Table 4–24 for wetlands along the area of potential contamination in surface water body type j.
$D_j$ = Dilution weight from Table 4–13 for surface water body type j.
m = Number of different surface water body types from Table 4–13 in the watershed.

If SP is less than 1, do not round it to the nearest integer; if SP is 1 or more, round to the nearest integer. Enter this value for the potential contamination factor in Table 4–1.

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4.1.4.3.1.4 *Calculation of environmental threat-targets factor category value.* Sum the values for the Level I concentrations, Level II concentrations, and potential contamination factors for the watershed. Do not round this sum to the nearest integer. Assign this sum as the environmental threat-targets factor category value for the watershed. Enter this value in Table 4–1.

4.1.4.4 *Calculation of environmental threat score for a watershed.* Multiply the environmental threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 60, as the environmental threat score for the watershed. Enter this score in Table 4–1.

4.1.5 *Calculation of overland/flood migration component score for a watershed.* Sum the scores for the three threats for the watershed (that is, drinking water, human food chain, and environmental threats). Assign the resulting score, subject to a maximum value of 100, as the surface water overland/flood migration component score for the watershed. Enter this score in Table 4–1.

4.1.6 *Calculation of overland/flood migration component score.* Select the highest surface water overland/flood migration component score from the watersheds evaluated. Assign this score as the surface water overland/flood migration component score for the site, subject to a maximum score of 100. Enter this score in Table 4–1.

4.2 *Ground water to surface water migration component.* Use the ground water to surface water migration component to evaluate surface water threats that result from migration of hazardous substances from a source at the site to surface water via ground water. Evaluate three types of threats for this component: drinking water threat, human food chain threat, and environmental threat.

4.2.1 *General considerations.*

4.2.1.1 *Eligible surface waters.* Calculate ground water to surface water migration component scores only for surface waters (see section 4.0.2) for which all the following conditions are met:

- A portion of the surface water is within 1 mile of one or more sources at the site having a containment factor value greater than 0 (see section 4.2.2.1.2).
- No aquifer discontinuity is established between the source and the portion of the surface water within 1 mile of the source (see section 3.0.1.2.2). However, if hazardous substances have migrated across an apparent discontinuity within this 1 mile distance, do not consider a discontinuity present in scoring the site.
- The top of the uppermost aquifer is at or above the bottom of the surface water.

Do not evaluate this component for sites consisting solely of contaminated sediments with no identified source.

4.2.1.2 *Definition of hazardous substance migration path for ground water to surface water migration component.* The hazardous substance migration path includes both the ground water segment and the surface water in-water segment that hazardous substances would take as they migrate away from sources at the site:

- Restrict the ground water segment to migration via the uppermost aquifer between a source and the surface water.
- Begin the surface water in-water segment at the probable point of entry from the uppermost aquifer to the surface water. Identify the probable point of entry as that point of the surface water that yields the shortest straight-line distance, within the aquifer boundary (see section 3.0.1.2), from the sources at the site with a containment factor value greater than 0 to the surface water.
  - –For rivers, continue the in-water segment in the direction of flow (including any tidal flows) for the distance established by the target distance limit (see section 4.2.1.4).
  - –For lakes, oceans, coastal tidal waters, or Great Lakes, do not consider flow direction. Instead apply the target distance limit as an arc.
  - –If the in-water segment includes both rivers and lakes (or oceans, coastal tidal waters, or Great Lakes), apply the target distance limit to their combined in-water segments.

Consider a site to be in two or more watersheds for this component if two or more hazardous substance migration paths from the sources at the site do not reach a common point within the target distance limit. If the site is in more than one watershed, define a separate hazardous substance migration path for each watershed. Evaluate the ground water to surface water migration component for each watershed separately as specified in section 4.2.1.5.

4.2.1.3 *Observed release of a specific hazardous substance to surface water in-water segment.* Section 4.2.2.1.1 specifies the criteria for assigning values to the observed release factor for the ground water to surface water migration component. With regard to an individual hazardous substance, consider an observed release of that hazardous substance to be established for the surface water in-water segment of the ground water to surface water migration component only when the hazardous substance meets the criteria both for an observed release both to ground water (see section 4.2.2.1.1) and for an observed release by chemical analysis to surface water (see section 4.1.2.1.1).

If the hazardous substance meets the section 4.1.2.1.1 criteria for an observed release by chemical analysis to surface water but does not also meet the criteria for an observed release to ground water, do not use any samples of that hazardous substance from the surface water in-water segment in evaluating the factors of this component (for example, do not use the hazardous substance in establishing targets subject to actual contamination or in determining the level of actual contamination for a target).

4.2.1.4 *Target distance limit.* Determine the target distance limit for each watershed as specified in section 4.1.1.2, except: do not extend the target distance limit to a sample location beyond 15 miles unless at least one hazardous substance in a sample from that location meets the criteria in section 4.2.1.3 for an observed release to the surface water in-water segment.

Determine the targets eligible to be evaluated for each watershed and establish whether these targets are subject to actual or potential contamination as specified in section 4.1.1.2, except: do not establish actual contamination based on a sample location unless at least one hazardous substance in a sample from that location meets the criteria in section 4.2.1.3 for an observed release to the surface water in-water segment.

4.2.1.5 *Evaluation of ground water to surface water migration component.* Evaluate the drinking water threat, human food chain threat, and environmental threat for each watershed for this component based on three factor categories: likelihood of release, waste characteristics, and targets. Figure 4–2 indicates the factors included within each factor category for each type of threat.

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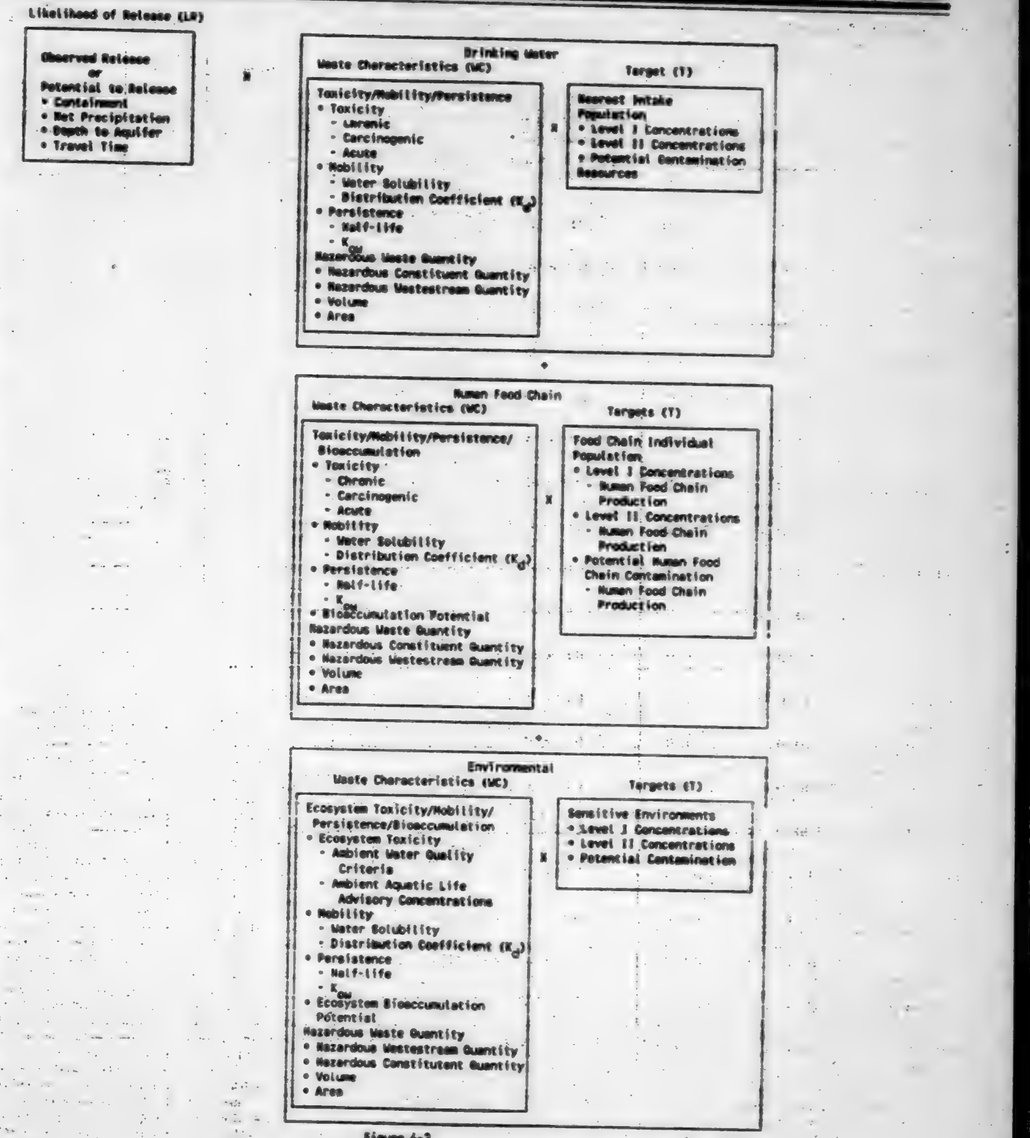



Figure 4–2
OVERVIEW OF GROUND WATER TO SURFACE WATER MIGRATION COMPONENT

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Determine the ground water to surface water migration component score ($S_{gm}$) for a watershed in terms of the factor category values as follows:

$$S_{gm} = \frac{\sum_{i=1}^{3} (LR_i)(WC_i)(T_i)}{SF}$$

where:

$LR_i$ = Likelihood of release factor category value for threat i (that is, drinking water, human food chain, or environmental threat).

$WC_i$ = Waste characteristics factor category value for threat i.

$T_i$ = Targets factor category value for threat i.

SF = Scaling factor.

Table 4–25 outlines the specific calculation procedure.

If the site is in only one watershed, assign the ground water to surface water migration component score for that watershed as the ground water to surface water migration component score for the site.

If the site is in more than one watershed:

- Calculate a separate ground water to surface water migration component score for each watershed, using likelihood of release, waste characteristics, and targets applicable to each watershed.
- Select the highest ground water to surface water migration component score from the watersheds evaluated and assign it as the ground water to surface water migration component score for the site.

TABLE 4–25.—GROUND WATER TO SURFACE WATER MIGRATION COMPONENT SCORESHEET

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Drinking Water Threat** | | |
| **Likelihood of Release to Aquifer:** | | |
| 1. Observed Release | 550 | |
| 2. Potential to Release: | | |
| 2a. Containment | 10 | |
| 2b. Net Precipitation | 10 | |
| 2c. Depth to Aquifer | 5 | |
| 2d. Travel Time | 35 | |
| 2e. Potential to Release (lines 2a[2b+2c+2d]) | 500 | |
| 3. Likelihood of Release (higher of lines 1 and 2e) | 550 | |
| **Waste Characteristics:** | | |
| 4. Toxicity/Mobility/Persistence | (a) | |
| 5. Hazardous Waste Quantity | (a) | |
| 6. Waste Characteristics | 100 | |
| **Targets:** | | |
| 7. Nearest Intake | 50 | |
| 8. Population | | |
| 8a. Level I Concentrations | (b) | |
| 8b. Level II Concentrations | (b) | |
| 8c. Potential Contamination | (b) | |
| 8d. Population (lines 8a + 8b + 8c) | (b) | |
| 9. Resources | 5 | |
| 10. Targets (lines 7 + 8d + 9) | (b) | |
| **Drinking Water Threat Score:** | | |
| 11. Drinking Water Threat Score ([lines 3 x 6 x 10]/82,500, subject to a maximum of 100) | 100 | |
| **Human Food Chain Threat** | | |
| **Likelihood of Release:** | | |
| 12. Likelihood of Release (same value as line 3) | 550 | |
| **Waste Characteristics:** | | |
| 13. Toxicity/Mobility/Persistence/Bioaccumulation | (a) | |
| 14. Hazardous Waste Quantity | (a) | |
| 15. Waste Characteristics | 1,000 | |
| **Targets:** | | |
| 16. Food Chain Individual | 50 | |
| 17. Population: | | |
| 17a. Level I Concentrations | (b) | |
| 17b. Level II Concentrations | (b) | |
| 17c. Potential Human Food Chain Contamination | (b) | |
| 17d. Population (lines 17a + 17b + 17c) | (b) | |
| 18. Targets (Lines 16 + 17d) | (b) | |
| **Human Food Chain Threat Score:** | | |
| 19. Human Food Chain Threat Score ([lines 12 x 15 x 18]/82,500, subject to a maximum of 100) | 100 | |
| **Environmental Threat** | | |
| **Likelihood of Release:** | | |
| 20. Likelihood of Release (same value as line 3) | 550 | |
| **Waste Characteristics:** | | |
| 21. Ecosystem Toxicity/Mobility/Persistence/Bioaccumulation | (a) | |
| 22. Hazardous Waste Quantity | (a) | |
| 23. Waste Characteristics | 1,000 | |
| **Targets:** | | |
| 24. Sensitive Environments: | | |
| 24a. Level I Concentrations | (b) | |
| 24b. Level II Concentrations | (b) | |
| 24c. Potential Contamination | (b) | |
| 24d. Sensitive Environments (lines 24a + 24b + 24c) | (b) | |
| 25. Targets (value from line 24d) | (b) | |



TABLE 4–25.—GROUND WATER TO SURFACE WATER MIGRATION COMPONENT SCORESHEET—Continued

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Environmental Threat Score:** | | |
| 26. Environmental Threat Score ([lines 20 x 23 x 25]/82,500, subject to a maximum of 60) | 60 | |
| **Ground Water to Surface Water Migration Component Score for a Watershed** | | |
| 27. Watershed Score [c] (lines 11 + 19 + 26, subject to a maximum of 100) | 100 | |
| 28. Component Score ($S_{gm}$) [c] (highest score from Line 27 for all watersheds evaluated, subject to a maximum of 100) | 100 | |

[a] Maximum value applies to waste characteristics category.
[b] Maximum value not applicable.
[c] Do not round to nearest integer.

4.2.2 *Drinking water threat.* Evaluate the drinking water threat for each watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.2.2.1 *Drinking water threat-likelihood of release.* Evaluate the likelihood of release factor category for each watershed in terms of an observed release factor or a potential to release factor.

4.2.2.1.1 *Observed release.* Establish an observed release to the uppermost aquifer as specified in section 3.1.1. If an observed release can be established for the uppermost aquifer, assign an observed release factor value of 550 to that watershed, enter this value in Table 4–25, and proceed to section 4.2.2.1.3. If no observed release can be established, assign an observed release factor value of 0, enter this value in Table 4–25, and proceed to section 4.2.2.1.2.

4.2.2.1.2 *Potential to release.* Evaluate potential to release only if an observed release cannot be established for the uppermost aquifer. Calculate a potential to release value for the uppermost aquifer as specified in section 3.1.2 and sections 3.1.2.1 through 3.1.2.5. Assign the potential to release value for the uppermost aquifer as the potential to release factor value for the watershed. Enter this value in Table 4–25.

4.2.2.1.3 *Calculation of drinking water threat-likelihood of release factor category value.* If an observed release is established for the uppermost aquifer, assign the observed release factor value of 550 as the likelihood of release factor category value for the watershed. Otherwise, assign the potential to release factor value as the likelihood of release factor category value for the watershed. Enter the value assigned in Table 4–25.

4.2.2.2 *Drinking water threat-waste characteristics.* Evaluate the waste characteristics factor category for each watershed based on two factors: toxicity/mobility/persistence and hazardous waste quantity. Evaluate only those hazardous substances available to migrate from the sources at the site to the uppermost aquifer (see section 3.2). Such hazardous substances include:

- Hazardous substances that meet the criteria for an observed release to ground water.
- All hazardous substances associated with a source that has a ground water containment factor value greater than 0 (see sections 2.2.2, 2.2.3, and 3.1.2.1).

4.2.2.2.1 *Toxicity/mobility/persistence.* For each hazardous substance, assign a toxicity factor value, a mobility factor value, a persistence factor value, and a combined toxicity/mobility/persistence factor value as specified in sections 4.2.2.2.1.1 through 4.2.2.2.1.4.

4.2.2.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

4.2.2.2.1.2 *Mobility.* Assign a ground water mobility factor value to each hazardous substance as specified in section 3.2.1.3.

4.2.2.2.1.3 *Persistence.* Assign a surface water persistence factor value to each hazardous substance as specified in section 4.1.3.2.1.2.

4.2.2.2.1.4 *Calculation of toxicity/mobility/persistence factor value.* First, assign each hazardous substance a toxicity/mobility factor value from Table 3–9 (section 3.2.1.3), based on the values assigned to the hazardous substance for the toxicity and mobility factors. Then assign each hazardous substance a toxicity/mobility/persistence factor value from Table 4–26, based on the values assigned for the toxicity/mobility and persistence factors. Use the substance with the highest toxicity/mobility/ persistence factor value for the watershed to assign the value to this factor. Enter this value in Table 4–25.

4.2.2.2.2 *Hazardous waste quantity.* Assign the same factor value for hazardous waste quantity for the watershed as would be assigned for the uppermost aquifer in section 3.2.2. Enter this value in Table 4–25.

4.2.2.2.3 *Calculation of drinking water threat-waste characteristics factor category value.* Multiply the toxicity/mobility/persistence and hazardous waste quantity factor values for the watershed, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 3–7 (section 2.4.3.1) to the drinking water threat-waste characteristics factor category for the watershed. Enter this value in Table 4–25.

4.2.2.3 *Drinking water threat-targets.* Evaluate the targets factor category for each watershed based on three factors: nearest intake, population, and resources.

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TABLE 4-26
TOXICITY/MOBILITY/PERSISTENCE FACTOR VALUES[a]

| Toxicity/Mobility Factor Value | Persistence Factor Value | | | |
|---|---|---|---|---|
| | 1.0 | 0.4 | 0.07 | 0.0007 |
| 10,000 | 10,000 | 4,000 | 700 | 7 |
| 2,000 | 2,000 | 800 | 140 | 1.4 |
| 1,000 | 1,000 | 400 | 70 | 0.7 |
| 200 | 200 | 80 | 14 | 0.14 |
| 100 | 100 | 40 | 7 | 0.07 |
| 20 | 20 | 8 | 1.4 | 0.014 |
| 10 | 10 | 4 | 0.7 | 0.007 |
| 2 | 2 | 0.8 | 0.14 | 0.0014 |
| 1 | 1 | 0.4 | 0.07 | $7 \times 10^{-4}$ |
| 0.2 | 0.2 | 0.08 | 0.014 | $1.4 \times 10^{-4}$ |
| 0.1 | 0.1 | 0.04 | 0.007 | $7 \times 10^{-5}$ |
| 0.02 | 0.02 | 0.008 | 0.0014 | $1.4 \times 10^{-5}$ |
| 0.01 | 0.01 | 0.004 | $7 \times 10^{-4}$ | $7 \times 10^{-6}$ |
| 0.002 | 0.002 | $8 \times 10^{-4}$ | $1.4 \times 10^{-4}$ | $1.4 \times 10^{-6}$ |
| 0.001 | 0.001 | $4 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-7}$ |
| $2 \times 10^{-4}$ | $2 \times 10^{-4}$ | $8 \times 10^{-5}$ | $1.4 \times 10^{-5}$ | $1.4 \times 10^{-7}$ |
| $1 \times 10^{-4}$ | $1 \times 10^{-4}$ | $4 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-8}$ |
| $2 \times 10^{-5}$ | $2 \times 10^{-5}$ | $8 \times 10^{-6}$ | $1.4 \times 10^{-6}$ | $1.4 \times 10^{-8}$ |
| $2 \times 10^{-6}$ | $2 \times 10^{-6}$ | $8 \times 10^{-7}$ | $1.4 \times 10^{-7}$ | $1.4 \times 10^{-9}$ |
| $2 \times 10^{-7}$ | $2 \times 10^{-7}$ | $8 \times 10^{-8}$ | $1.4 \times 10^{-8}$ | $1.4 \times 10^{-10}$ |
| $2 \times 10^{-8}$ | $2 \times 10^{-8}$ | $8 \times 10^{-9}$ | $1.4 \times 10^{-9}$ | $1.4 \times 10^{-11}$ |
| $2 \times 10^{-9}$ | $2 \times 10^{-9}$ | $8 \times 10^{-10}$ | $1.4 \times 10^{-10}$ | $1.4 \times 10^{-12}$ |
| 0 | 0 | 0 | 0 | 0 |

[a]Do not round to nearest integer.



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For the nearest intake and population factors, determine whether the target surface water intakes are subject to actual or potential contamination as specified in section 4.1.1.2, subject to the restrictions specified in sections 4.2.1.3 and 4.2.1.4.

When the intake is subject to actual contamination, evaluate it using Level I concentrations or Level II concentrations. Determine which level applies for the intake by comparing the exposure concentrations from a sample (or comparable samples) to health-based benchmarks as specified in section 4.1.2.3, except use only those samples from the surface water in-water segment and only those hazardous substances in such samples that meet the conditions in sections 4.2.1.3 and 4.2.1.4.

4.2.2.3.1 *Nearest intake.* Assign a value to the nearest intake factor as specified in section 4.1.2.3.1 with the following modification. For the intake being evaluated, multiply its dilution weight from Table 4-13 (section 4.1.2.3.1) by a value selected from Table 4-27. Use the resulting product, not the value from Table 4-13, as the dilution weight for the intake for the ground water to surface water component. Do not round this product to the nearest integer.

Select the value from Table 4-27 based on the angle Θ, the angle defined by the sources at the site and either the two points at the intersection of the surface water body and the 1-mile distance ring of any two other points of the surface water body within the 1-mile distance ring, whichever results in the largest angle. (See Figure 4-3 for an example of how to determine Θ.) If the surface water body does not extend to the 1-mile ring at one or both ends, define Θ using the surface water endpoint(s) within the 1-mile ring or any two other points of the surface water body within the 1-mile distance ring, whichever results in the largest angle.

TABLE 4-27.—DILUTION WEIGHT ADJUSTMENTS

| Angle Θ (degrees) | Assigned value[a] |
|---|---|
| 0 | 0 |
| Greater than 0 to 18 | 0.05 |
| Greater than 18 to 54 | 0.1 |
| Greater than 54 to 90 | 0.2 |
| Greater than 90 to 126 | 0.3 |
| Greater than 126 to 162 | 0.4 |
| Greater than 162 to 198 | 0.5 |
| Greater than 198 to 234 | 0.6 |
| Greater than 234 to 270 | 0.7 |
| Greater than 270 to 306 | 0.8 |
| Greater than 306 to 342 | 0.9 |
| Greater than 342 to 360 | 1.0 |

[a] Do not round to nearest integer.

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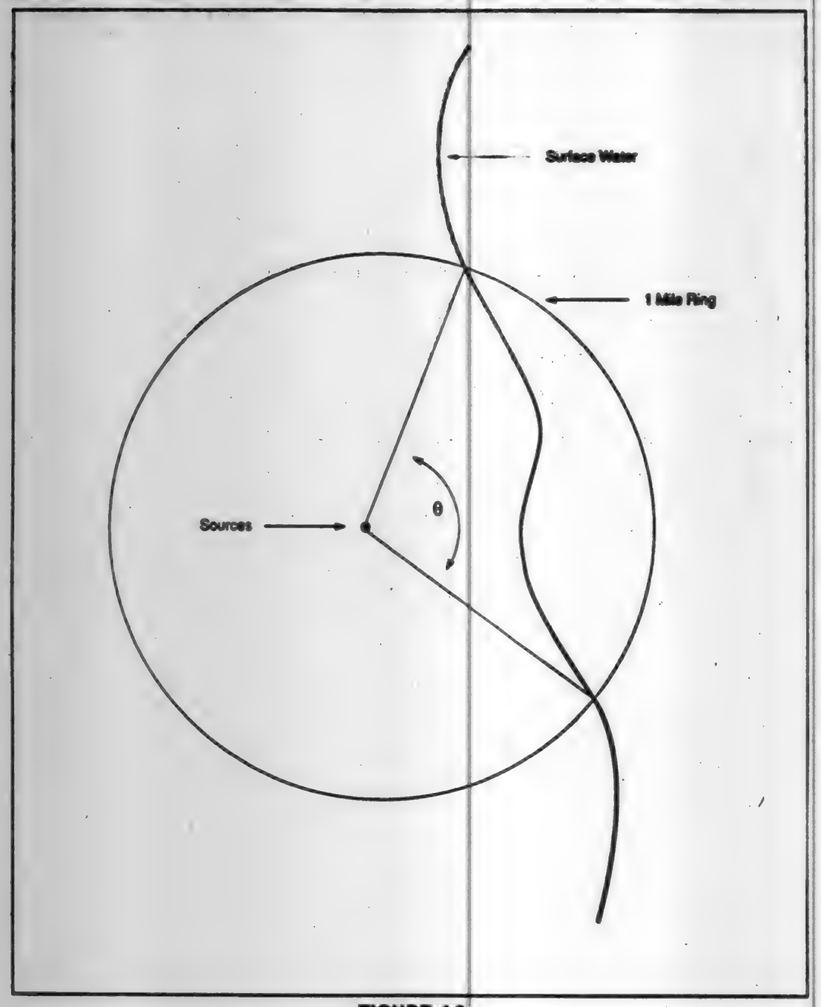



**FIGURE 4-3**
**SAMPLE DETERMINATION OF GROUND WATER TO SURFACE WATER ANGLE**



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TABLE 4-28
TOXICITY/MOBILITY/PERSISTENCE/BIOACCUMULATION FACTOR VALUES[a]

| Toxicity/ Mobility/ Persistence Factor Value | Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 10,000 | $5 \times 10^8$ | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 |
| 4,000 | $2 \times 10^8$ | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 |
| 2,000 | $1 \times 10^8$ | $1 \times 10^7$ | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 |
| 1,000 | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 |
| 800 | $4 \times 10^7$ | $4 \times 10^6$ | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 |
| 700 | $3.5 \times 10^7$ | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 |
| 400 | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 |
| 200 | $1 \times 10^7$ | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 |
| 140 | $7 \times 10^6$ | $7 \times 10^5$ | $7 \times 10^4$ | 7,000 | 700 | 70 |
| 100 | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 |
| 80 | $4 \times 10^6$ | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 | 40 |
| 70 | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 |
| 40 | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 |
| 20 | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 | 10 |
| 14 | $7 \times 10^5$ | $7 \times 10^4$ | 7,000 | 700 | 70 | 7 |
| 10 | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 |
| 8 | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 | 40 | 4 |
| 7 | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 |
| 4 | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 |
| 2 | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 | 10 | 1 |
| 1.4 | $7 \times 10^4$ | 7,000 | 700 | 70 | 7 | 0.7 |

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TABLE 4-28 (Continued)

| Toxicity/ Mobility/ Persistence Factor Value | Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 1.0 | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 | 0.5 |
| 0.8 | $4 \times 10^4$ | 4,000 | 400 | 40 | 4 | 0.4 |
| 0.7 | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 | 0.35 |
| 0.4 | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 | 0.2 |
| 0.2 | $1 \times 10^4$ | 1,000 | 100 | 10 | 1 | 0.1 |
| 0.14 | 7,000 | 700 | 70 | 7 | 0.7 | 0.07 |
| 0.1 | 5,000 | 500 | 50 | 5 | 0.5 | 0.05 |
| 0.08 | 4,000 | 400 | 40 | 4 | 0.4 | 0.04 |
| 0.07 | 3,500 | 350 | 35 | 3.5 | 0.35 | 0.035 |
| 0.04 | 2,000 | 200 | 20 | 2 | 0.2 | 0.02 |
| 0.02 | 1,000 | 100 | 10 | 1 | 0.1 | 0.01 |
| 0.014 | 700 | 70 | 7 | 0.7 | 0.07 | 0.007 |
| 0.01 | 500 | 50 | 5 | 0.5 | 0.05 | 0.005 |
| 0.008 | 400 | 40 | 4 | 0.4 | 0.04 | 0.004 |
| 0.007 | 350 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 |
| 0.004 | 200 | 20 | 2 | 0.2 | 0.02 | 0.002 |
| 0.002 | 100 | 10 | 1 | 0.1 | 0.01 | 0.001 |
| 0.0014 | 70 | 7 | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ |
| 0.001 | 50 | 5 | 0.5 | 0.05 | 0.005 | $5 \times 10^{-4}$ |
| $8 \times 10^{-4}$ | 40 | 4 | 0.4 | 0.04 | 0.004 | $4 \times 10^{-4}$ |
| $7 \times 10^{-4}$ | 35 | 3.5 | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ |
| $4 \times 10^{-4}$ | 20 | 2 | 0.2 | 0.02 | 0.002 | $2 \times 10^{-4}$ |





TABLE 4-28 (Continued)

| Toxicity/ Mobility/ Persistence Factor Value | Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| $2 \times 10^{-4}$ | 10 | 1 | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ |
| $1.4 \times 10^{-4}$ | 7 | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ |
| $1 \times 10^{-4}$ | 5 | 0.5 | 0.05 | 0.005 | $5 \times 10^{-4}$ | $5 \times 10^{-5}$ |
| $8 \times 10^{-5}$ | 4 | 0.4 | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ |
| $7 \times 10^{-5}$ | 3.5 | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ |
| $4 \times 10^{-5}$ | 2 | 0.2 | 0.02 | 0.002 | $2 \times 10^{-4}$ | $2 \times 10^{-5}$ |
| $2 \times 10^{-5}$ | 1 | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ |
| $1.4 \times 10^{-5}$ | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ |
| $8 \times 10^{-6}$ | 0.4 | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ |
| $7 \times 10^{-6}$ | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ |
| $2 \times 10^{-6}$ | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ |
| $1.4 \times 10^{-6}$ | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ |
| $8 \times 10^{-7}$ | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ |
| $7 \times 10^{-7}$ | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ | $3.5 \times 10^{-7}$ |
| $2 \times 10^{-7}$ | 0.01 | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ |
| $1.4 \times 10^{-7}$ | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ |
| $8 \times 10^{-8}$ | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ |
| $7 \times 10^{-8}$ | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ | $3.5 \times 10^{-7}$ | $3.5 \times 10^{-8}$ |
| $2 \times 10^{-8}$ | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ | $1 \times 10^{-8}$ |
| $1.4 \times 10^{-8}$ | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ |

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TABLE 4-28 (Concluded)

| Toxicity/ Mobility/ Persistence Factor Value | Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| $8 \times 10^{-9}$ | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ | $4 \times 10^{-9}$ |
| $2 \times 10^{-9}$ | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ | $1 \times 10^{-8}$ | $1 \times 10^{-9}$ |
| $1.4 \times 10^{-9}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ |
| $8 \times 10^{-10}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ | $4 \times 10^{-9}$ | $4 \times 10^{-10}$ |
| $1.4 \times 10^{-10}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $4 \times 10^{-11}$ |
| $1.4 \times 10^{-11}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $7 \times 10^{-11}$ | $7 \times 10^{-12}$ |
| $1.4 \times 10^{-12}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $7 \times 10^{-11}$ | $7 \times 10^{-12}$ | $7 \times 10^{-13}$ |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[a] Do not round to nearest integer.

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4.2.2.3.2 *Population.* Evaluate the population factor for the watershed based on three factors: Level I concentrations, Level II concentrations, and potential contamination. Determine which factor applies to an intake as specified in section 4.2.2.3. Determine the population to be counted for that intake as specified in section 4.1.2.3.2, using the target distance limits in section 4.2.1.4 and the hazardous substance migration path in section 4.2.1.2.

4.2.2.3.2.1 *Level I concentrations.* Assign a value to this factor as specified in section 4.1.2.3.2.2.

4.2.2.3.2.2 *Level II concentrations.* Assign a value to this factor as specified in section 4.1.2.3.2.3.

4.2.2.3.2.3 *Potential contamination.* For each applicable type of surface water body in Table 4-14, determine the dilution-weighted population value as specified in section 4.1.2.3.2.4. Select the appropriate dilution weight adjustment value from Table 4-27 as specified in section 4.2.2.3.1.

Calculate the value for the potential contamination factor (PC) for the watershed as follows:

$$PC = \frac{A}{10} \sum_{i=1}^{n} W_i$$

where:

A = Dilution weight adjustment value from Table 4-27.

$W_i$ = Dilution-weighted population from Table 4-14 for surface water body type i.

n = Number of different surface water body types in the watershed.

If PC is less than 1, do not round it to the nearest integer; if PC is 1 or more, round to the nearest integer. Enter the value in Table 4-25.

4.2.2.3.2.4 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and potential contamination. Do not round this sum to the nearest integer. Assign this sum as the population factor value for the watershed. Enter this value in Table 4-25.

4.2.2.3.3 *Resources.* Assign a value to the resources factor as specified in section 4.1.2.3.3.

4.2.2.3.4 *Calculation of drinking water threat-targets factor category value.* Sum the nearest intake, population, and resources factor values for the watershed. Do not round this sum to the nearest integer. Assign this sum as the drinking water threat-targets factor category value for the watershed. Enter this value in Table 4-25.

4.2.2.4 *Calculation of drinking water threat score for a watershed.* Multiply the drinking water threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 100, as the drinking water threat score for the watershed. Enter this score in Table 4-25.

4.2.3 *Human food chain threat.* Evaluate the human food chain threat for a watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.2.3.1 *Human food chain threat-likelihood of release.* Assign the same likelihood of release factor category value for the human food chain threat for the watershed as would be assigned in section 4.2.2.1.3 for the drinking water threat. Enter this value in Table 4-25.

4.2.3.2 *Human food chain threat-waste characteristics.* Evaluate the waste characteristics factor category for each watershed based on two factors: toxicity/mobility/persistence/bioaccumulation and hazardous waste quantity.

4.2.3.2.1 *Toxicity/mobility/persistence/bioaccumulation.* Evaluate all those hazardous substances eligible to be evaluated for toxicity/mobility/persistence in the drinking water threat for the watershed (see section 4.2.2.2.1).

4.2.3.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

4.2.3.2.1.2 *Mobility.* Assign a ground water mobility factor value to each hazardous substance as specified for the drinking water threat (see section 4.2.2.2.1.2).

4.2.3.2.1.3 *Persistence.* Assign a surface water persistence factor value to each hazardous substance as specified for the drinking water threat (see section 4.2.2.2.1.3), except: use the predominant water category (that is, lakes; or rivers, oceans, coastal tidal waters, or Great Lakes) between the probable point of entry and the nearest fishery (not the nearest drinking water or resources intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4-10 to use. Determine the predominant water category based on distance as specified in section 4.1.2.2.1.2.

4.2.3.2.1.4 *Bioaccumulation potential.* Assign a bioaccumulation potential factor value to each hazardous substance as specified in section 4.1.3.2.1.3.

4.2.3.2.1.5 *Calculation of toxicity/mobility/persistence/ bioaccumulation factor value.* Assign each hazardous substance a toxicity/mobility factor value from Table 3-9 (section 3.2.1.3), based on the values assigned to the hazardous substance for the toxicity and mobility factors. Then assign each hazardous substance a toxicity/mobility/persistence factor value from Table 4-26, based on the values assigned for the toxicity/mobility and persistence factors. Then assign each hazardous substance a toxicity/mobility/persistence/bioaccumulation factor value from Table 4-28. Use the substance with the highest toxicity/mobility/persistence/bioaccumulation factor value for the watershed to assign the value to this factor for the watershed. Enter this value in Table 4-25.

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4.2.3.2.2 *Hazardous waste quantity.* Assign the same factor value for hazardous waste quantity for the watershed as would be assigned in section 4.2.2.2.2 for the drinking water threat. Enter this value in Table 4–25.

4.2.3.2.3 *Calculation of human food chain threat-waste characteristics factor category value.* For the hazardous substances selected for the watershed in section 4.2.2.1.5, use its toxicity/mobility/ persistence factor value and bioaccumulation potential factor value as follows to assign a value to the waste characteristics factor category. First, multiply the toxicity/mobility/persistence factor value and the hazardous waste quantity factor value for the watershed, subject to a maximum product of $1\times10^8$. Then multiply this product by the bioaccumulation potential factor value for this hazardous substance, subject to a maximum product of $1\times10^{12}$. Based on this second product, assign a value from Table 2–7 (section 2.4.3.1) to the human food chain threat-waste characteristics factor category for the watershed. Enter this value in Table 4–25.

4.2.3.3 *Human food chain threat-targets.* Evaluate two target factors for the watershed: food chain individual and population.

For both factors, determine whether the target fisheries are subject to Level I concentrations, Level II concentrations, or potential human food chain contamination. Determine which applies to each fishery (or portion of a fishery) as specified in section 4.1.3.3, subject to the restrictions specified in sections 4.2.1.3 and 4.2.1.4.

4.2.3.3.1 *Food chain individual.* Assign a value to the food chain individual factor as specified in section 4.1.3.3.1 with the following modification. When a dilution weight is used, multiply the appropriate dilution weight from Table 4–13 by the adjustment value selected from Table 4–27, as specified in section 4.2.2.3.1. Use the resulting product, not the value from Table 4–13, as the dilution weight in assigning the factor value. Do not round this product to the nearest integer. Enter the value assigned in Table 4–25.

4.2.3.3.2 *Population.* Evaluate the population factor for the watershed based on three factors: Level I concentrations, Level II concentrations, and potential human food chain contamination. Determine which of these factors is to be applied to each fishery as specified in section 4.2.3.3.

4.2.3.3.2.1 *Level I concentrations.* Assign a value to this factor as specified in section 4.1.3.3.2.1. Enter this value in Table 4–25.

4.2.3.3.2.2 *Level II concentrations.* Assign a value to this factor as specified in section 4.1.3.3.2.2. Enter this value in Table 4–25.

4.2.3.3.2.3 *Potential human food chain contamination.* Assign a value to this factor as specified in section 4.1.3.3.2.3 with the following modification. For each fishery being evaluated, multiply the appropriate dilution weight for that fishery from Table 4–13 by the adjustment value selected from Table 4–27, as specified in section 4.2.2.3.1. Use the resulting product, not the value from Table 4–13, as the dilution weight for the fishery. Do not round this product to the nearest integer. Enter the value assigned in Table 4–25.

4.2.3.3.2.4 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and potential human food chain contamination for the watershed. Do not round this sum to the nearest integer. Assign this sum as the population factor value for the watershed. Enter this value in Table 4–25.

4.2.3.3.3 *Calculation of human food chain threat-targets factor category value.* Sum the food chain individual and population factor values for the watershed. Do not round this sum to the nearest integer. Assign this sum as the human food chain threat-targets factor category value for the watershed. Enter this value in Table 4–25.

4.2.3.4 *Calculation of human food chain threat score for a watershed.* Multiply the human food chain threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 100, as the human food chain threat score for the watershed. Enter this score in Table 4–25.

4.2.4 *Environmental threat.* Evaluate the environmental threat for the watershed based on three factor categories: likelihood of release, waste characteristics, and targets.

4.2.4.1 *Environmental threat-likelihood of release.* Assign the same likelihood of release factor category value for the environmental threat for the watershed as would be assigned in section 4.2.2.1.3 for the drinking water threat. Enter this value in Table 4–25.

4.2.4.2 *Environmental threat-waste characteristics.* Evaluate the waste characteristics factor category for each watershed based on two factors: ecosystem toxicity/mobility/persistence/ bioaccumulation and hazardous waste quantity.

4.2.4.2.1 *Ecosystem toxicity/mobility/ persistence/bioaccumulation.* Evaluate all those hazardous substances eligible to be evaluated for toxicity/mobility/persistence in the drinking water threat for the watershed (see section 4.2.2.2.1).

4.2.4.2.1.1 *Ecosystem toxicity.* Assign an ecosystem toxicity factor value to each hazardous substance as specified in section 4.1.4.2.1.1.

4.2.4.2.1.2 *Mobility.* Assign a ground water mobility factor value to each hazardous substance as specified in section 4.2.2.2.1.2 for the drinking water threat.

4.2.4.2.1.3 *Persistence.* Assign a surface water persistence factor value to each hazardous substance as specified in section 4.2.2.2.1.3 for the drinking water threat, except: use the predominant water category (that is, lakes; or rivers, oceans, coastal tidal waters, or Great Lakes) between the probable point of entry and the nearest sensitive environment (not the nearest drinking water or resources intake) along the hazardous substance migration path for the watershed to determine which portion of Table 4–10 to use. Determine the predominant water category based on distance as specified in section 4.1.2.2.1.2.

4.2.4.2.1.4 *Ecosystem bioaccumulation potential.* Assign an ecosystem bioaccumulation potential factor value to each hazardous substance as specified in section 4.1.4.2.1.3.

4.2.4.2.1.5 *Calculation of ecosystem toxicity/mobility/persistence/ bioaccumulation factor value.* Assign each hazardous substance an ecosystem toxicity/ mobility factor value from Table 3–9 (section 3.2.1.3), based on the values assigned to the hazardous substance for the ecosystem toxicity and mobility factors. Then assign each hazardous substance an ecosystem toxicity/mobility/persistence factor value from Table 4–29, based on the values assigned for the ecosystem toxicity/mobility and persistence factors. Then assign each hazardous substance an ecosystem toxicity/ mobility/persistence/bioaccumulation factor value from Table 4–30, based on the values assigned for the ecosystem toxicity/mobility/ persistence and ecosystem bioaccumulation potential factors. Select the substance with the highest ecosystem toxicity/mobility/ persistence/bioaccumulation factor value for the watershed and use it to assign the value to this factor for the watershed. Enter this value in Table 4–25.

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TABLE 4-29
ECOSYSTEM TOXICITY/MOBILITY/PERSISTENCE FACTOR VALUES[a]

| Ecosystem Toxicity/Mobility Factor Value | Persistence Factor Value | | | |
|---|---|---|---|---|
| | 1.0 | 0.4 | 0.07 | 0.0007 |
| 10,000 | 10,000 | 4,000 | 700 | 7 |
| 2,000 | 2,000 | 800 | 140 | 1.4 |
| 1,000 | 1,000 | 400 | 70 | 0.7 |
| 200 | 200 | 80 | 14 | 0.14 |
| 100 | 100 | 40 | 7 | 0.07 |
| 20 | 20 | 8 | 1.4 | 0.014 |
| 10 | 10 | 4 | 0.7 | 0.007 |
| 2 | 2 | 0.8 | 0.14 | 0.0014 |
| 1 | 1 | 0.4 | 0.07 | $7 \times 10^{-4}$ |
| 0.2 | 0.2 | 0.08 | 0.014 | $1.4 \times 10^{-4}$ |
| 0.1 | 0.1 | 0.04 | 0.007 | $7 \times 10^{-5}$ |
| 0.02 | 0.02 | 0.008 | 0.0014 | $1.4 \times 10^{-5}$ |
| 0.01 | 0.01 | 0.004 | $7 \times 10^{-4}$ | $7 \times 10^{-6}$ |
| 0.002 | 0.002 | $8 \times 10^{-4}$ | $1.4 \times 10^{-4}$ | $1.4 \times 10^{-6}$ |
| 0.001 | 0.001 | $4 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-7}$ |
| $2 \times 10^{-4}$ | $2 \times 10^{-4}$ | $8 \times 10^{-5}$ | $1.4 \times 10^{-5}$ | $1.4 \times 10^{-7}$ |
| $1 \times 10^{-4}$ | $1 \times 10^{-4}$ | $4 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-8}$ |
| $2 \times 10^{-5}$ | $2 \times 10^{-5}$ | $8 \times 10^{-6}$ | $1.4 \times 10^{-6}$ | $1.4 \times 10^{-8}$ |
| $2 \times 10^{-6}$ | $2 \times 10^{-6}$ | $8 \times 10^{-7}$ | $1.4 \times 10^{-7}$ | $1.4 \times 10^{-9}$ |
| $2 \times 10^{-7}$ | $2 \times 10^{-7}$ | $8 \times 10^{-8}$ | $1.4 \times 10^{-8}$ | $1.4 \times 10^{-10}$ |
| $2 \times 10^{-8}$ | $2 \times 10^{-8}$ | $8 \times 10^{-9}$ | $1.4 \times 10^{-9}$ | $1.4 \times 10^{-11}$ |
| $2 \times 10^{-9}$ | $2 \times 10^{-9}$ | $8 \times 10^{-10}$ | $1.4 \times 10^{-10}$ | $1.4 \times 10^{-12}$ |
| 0 | 0 | 0 | 0 | 0 |

[a]Do not round to nearest integer.

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TABLE 4-30
ECOSYSTEM TOXICITY/MOBILITY/PERSISTENCE/BIOACCUMULATION FACTOR VALUES[a]

| Ecosystem Toxicity/ Mobility/ Persistence Factor Value | Ecosystem Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 10,000 | $5 \times 10^8$ | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 |
| 4,000 | $2 \times 10^8$ | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 |
| 2,000 | $1 \times 10^8$ | $1 \times 10^7$ | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 |
| 1,000 | $5 \times 10^7$ | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 |
| 800 | $4 \times 10^7$ | $4 \times 10^6$ | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 |
| 700 | $3.5 \times 10^7$ | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 |
| 400 | $2 \times 10^7$ | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 |
| 200 | $1 \times 10^7$ | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 |
| 140 | $7 \times 10^6$ | $7 \times 10^5$ | $7 \times 10^4$ | 7,000 | 700 | 70 |
| 100 | $5 \times 10^6$ | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 |
| 80 | $4 \times 10^6$ | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 | 40 |
| 70 | $3.5 \times 10^6$ | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 |
| 40 | $2 \times 10^6$ | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 |
| 20 | $1 \times 10^6$ | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 | 10 |
| 14 | $7 \times 10^5$ | $7 \times 10^4$ | 7,000 | 700 | 70 | 7 |
| 10 | $5 \times 10^5$ | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 |
| 8 | $4 \times 10^5$ | $4 \times 10^4$ | 4,000 | 400 | 40 | 4 |
| 7 | $3.5 \times 10^5$ | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 |
| 4 | $2 \times 10^5$ | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 |
| 2 | $1 \times 10^5$ | $1 \times 10^4$ | 1,000 | 100 | 10 | 1 |
| 1.4 | $7 \times 10^4$ | 7,000 | 700 | 70 | 7 | 0.7 |





TABLE 4-30 (Continued)

| Ecosystem Toxicity/ Mobility/ Persistence Factor Value | Ecosystem Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| 1.0 | $5 \times 10^4$ | 5,000 | 500 | 50 | 5 | 0.5 |
| 0.8 | $4 \times 10^4$ | 4,000 | 400 | 40 | 4 | 0.4 |
| 0.7 | $3.5 \times 10^4$ | 3,500 | 350 | 35 | 3.5 | 0.35 |
| 0.4 | $2 \times 10^4$ | 2,000 | 200 | 20 | 2 | 0.2 |
| 0.2 | $1 \times 10^4$ | 1,000 | 100 | 10 | 1 | 0.1 |
| 0.14 | 7,000 | 700 | 70 | 7 | 0.7 | 0.07 |
| 0.1 | 5,000 | 500 | 50 | 5 | 0.5 | 0.05 |
| 0.08 | 4,000 | 400 | 40 | 4 | 0.4 | 0.04 |
| 0.07 | 3,500 | 350 | 35 | 3.5 | 0.35 | 0.035 |
| 0.04 | 2,000 | 200 | 20 | 2 | 0.2 | 0.02 |
| 0.02 | 1,000 | 100 | 10 | 1 | 0.1 | 0.01 |
| 0.014 | 700 | 70 | 7 | 0.7 | 0.07 | 0.007 |
| 0.01 | 500 | 50 | 5 | 0.5 | 0.05 | 0.005 |
| 0.008 | 400 | 40 | 4 | 0.4 | 0.04 | 0.004 |
| 0.007 | 350 | 35 | 3.5 | 0.35 | 0.035 | 0.0035 |
| 0.004 | 200 | 20 | 2 | 0.2 | 0.02 | 0.002 |
| 0.002 | 100 | 10 | 1 | 0.1 | 0.01 | 0.001 |
| 0.0014 | 70 | 7 | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ |
| 0.001 | 50 | 5 | 0.5 | 0.05 | 0.005 | $5 \times 10^{-4}$ |
| $8 \times 10^{-4}$ | 40 | 4 | 0.4 | 0.04 | 0.004 | $4 \times 10^{-4}$ |
| $7 \times 10^{-4}$ | 35 | 3.5 | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ |
| $4 \times 10^{-4}$ | 20 | 2 | 0.2 | 0.02 | 0.002 | $2 \times 10^{-4}$ |

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TABLE 4-30 (Continued)

| Ecosystem Toxicity/ Mobility/ Persistence Factor Value | Ecosystem Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| $2 \times 10^{-4}$ | 10 | 1 | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ |
| $1.4 \times 10^{-4}$ | 7 | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ |
| $1 \times 10^{-4}$ | 5 | 0.5 | 0.05 | 0.005 | $5 \times 10^{-4}$ | $5 \times 10^{-5}$ |
| $8 \times 10^{-5}$ | 4 | 0 4 | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ |
| $7 \times 10^{-5}$ | 3.5 | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ |
| $4 \times 10^{-5}$ | 2 | 0.2 | 0.02 | 0.002 | $2 \times 10^{-4}$ | $2 \times 10^{-5}$ |
| $2 \times 10^{-5}$ | 1 | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ |
| $1.4 \times 10^{-5}$ | 0.7 | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ |
| $8 \times 10^{-6}$ | 0.4 | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ |
| $7 \times 10^{-6}$ | 0.35 | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ |
| $2 \times 10^{-6}$ | 0.1 | 0.01 | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ |
| $1.4 \times 10^{-6}$ | 0.07 | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ |
| $8 \times 10^{-7}$ | 0.04 | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ |
| $7 \times 10^{-7}$ | 0.035 | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ | $3.5 \times 10^{-7}$ |
| $2 \times 10^{-7}$ | 0.01 | 0 001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ |
| $1 4 \times 10^{-7}$ | 0.007 | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ |
| $8 \times 10^{-8}$ | 0.004 | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ |
| $7 \times 10^{-8}$ | 0.0035 | $3.5 \times 10^{-4}$ | $3.5 \times 10^{-5}$ | $3.5 \times 10^{-6}$ | $3.5 \times 10^{-7}$ | $3.5 \times 10^{-8}$ |
| $2 \times 10^{-8}$ | 0.001 | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ | $1 \times 10^{-8}$ |
| $1.4 \times 10^{-8}$ | $7 \times 10^{-4}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ |





TABLE 4-30 (Concluded)

| Ecosystem Toxicity/ Mobility/ Persistence Factor Value | Ecosystem Bioaccumulation Potential Factor Value | | | | | |
|---|---|---|---|---|---|---|
| | 50,000 | 5,000 | 500 | 50 | 5 | 0.5 |
| $8 \times 10^{-9}$ | $4 \times 10^{-4}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ | $4 \times 10^{-9}$ |
| $2 \times 10^{-9}$ | $1 \times 10^{-4}$ | $1 \times 10^{-5}$ | $1 \times 10^{-6}$ | $1 \times 10^{-7}$ | $1 \times 10^{-8}$ | $1 \times 10^{-9}$ |
| $1.4 \times 10^{-9}$ | $7 \times 10^{-5}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ |
| $8 \times 10^{-10}$ | $4 \times 10^{-5}$ | $4 \times 10^{-6}$ | $4 \times 10^{-7}$ | $4 \times 10^{-8}$ | $4 \times 10^{-9}$ | $4 \times 10^{-10}$ |
| $1.4 \times 10^{-10}$ | $7 \times 10^{-6}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $4 \times 10^{-11}$ |
| $1.4 \times 10^{-11}$ | $7 \times 10^{-7}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $7 \times 10^{-11}$ | $7 \times 10^{-12}$ |
| $1.4 \times 10^{-12}$ | $7 \times 10^{-8}$ | $7 \times 10^{-9}$ | $7 \times 10^{-10}$ | $7 \times 10^{-11}$ | $7 \times 10^{-12}$ | $7 \times 10^{-13}$ |
| 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[a]Do not round to nearest integer.

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4.2.4.2.2 *Hazardous waste quantity.* Assign the same factor value for hazardous waste quantity for the watershed as would be assigned in section 4.2.2.2.2 for the drinking water threat. Enter this value in Table 4–25.

4.2.4.2.3 *Calculation of environmental threat-waste characteristics factor category value.* For the hazardous substance selected for the watershed in section 4.2.4.2.1.5, use its ecosystem toxicity/mobility/persistence factor value and ecosystem bioaccumulation potential factor value as follows to assign a value to the waste characteristics factor category. First, multiply the ecosystem toxicity/mobility/persistence factor value and the hazardous waste quantity factor value for the watershed, subject to a maximum product of $1 \times 10^8$. Then multiply this product by the ecosystem bioaccumulation potential factor value for this hazardous substance, subject to a maximum product of $1 \times 10^{12}$. Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the environmental threat-waste characteristics category for the watershed. Enter the value in Table 4–25.

4.2.4.3 *Environmental threat-targets.* Evaluate the environmental threat-targets factor category for a watershed using one factor: sensitive environments.

4.2.4.3.1 *Sensitive environments.* Evaluate sensitive environments for the watershed based on three factors: Level I concentrations, Level II concentrations, and potential contamination. Determine which applies to each sensitive environment as specified in section 4.1.4.3.1, except: use only those samples from the surface water in-water segment and only those hazardous substances in such samples that meet the conditions in sections 4.2.1.3 and 4.2.1.4.

4.2.4.3.1.1 *Level I concentrations.* Assign a value to this factor as specified in section 4.1.4.3.1.1. Enter this value in Table 4–25.

4.2.4.3.1.2 *Level II concentrations.* Assign a value to this factor as specified in section 4.1.4.3.1.2. Enter this value in Table 4–25.

4.2.4.3.1.3 *Potential contamination.* Assign a value to this factor as specified in section 4.1.4.3.1.3 with the following modification. Multiply the appropriate dilution weight from Table 4–13 for the sensitive environments in each type of surface water body by the adjustment value selected from Table 4–27, as specified in section 4.2.2.3.1. Use the resulting product, not the value from Table 4–13, as the dilution weight for the sensitive environments in that type of surface water body. Do not round this product to the nearest integer. Enter the value assigned in Table 4–25.

4.2.4.3.1.4 *Calculation of environmental threat-targets factor category value.* Sum the values for Level I concentrations, Level II concentrations, and potential contamination for the watershed. Do not round this sum to the nearest integer. Assign this sum as the environmental threat targets factor category value for the watershed. Enter this value in Table 4–25.

4.2.4.4 *Calculation of environmental threat score for a watershed.* Multiply the environmental threat factor category values for likelihood of release, waste characteristics, and targets for the watershed, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum of 60, as the environmental threat score for the watershed. Enter this score in Table 4–25.

4.2.5 *Calculation of ground water to surface water migration component score for a watershed.* Sum the scores for the three threats for the watershed (that is, drinking water, human food chain, and environmental threats). Assign the resulting score, subject to a maximum value of 100, as the ground water to surface water migration component score for the watershed. Enter this score in Table 4–25.

4.2.6 *Calculation of ground water to surface water migration component score.* Select the highest ground water to surface water migration component score from the watersheds evaluated. Assign this score as the ground water to surface water migration component score for the site, subject to a maximum score of 100. Enter this score in Table 4–25.

4.3 *Calculation of surface water migration pathway score.* Determine the surface water migration pathway score as follows:

- If only one of the two surface water migration components (overland/flood or ground water to surface water) is scored, assign the score of that component as the surface water migration pathway score.
- If both components are scored, select the higher of the two component scores from sections 4.1.6 and 4.2.6. Assign that score as the surface water migration pathway score.

### 5.0 Soil Exposure Pathway

Evaluate the soil exposure pathway based on two threats: Resident population threat and nearby population threat. Evaluate both threats based on three factor categories: Likelihood of exposure, waste characteristics, and targets. Figure 5–1 indicates the factors included within each factor category for each type of threat.

Determine the soil exposure pathway score ($S_s$) in terms of the factor category values as follows:

$$S_s = \frac{\sum_{i=1}^{2} (LE_i)(WC_i)(T_i)}{SF}$$

where:

$LE_i$ = Likelihood of exposure factor category value for threat i (that is, resident population threat or nearby population threat).

$WC_i$ = Waste characteristics factor category value for threat i.

$T_i$ = Targets factor category value for threat i.

SF = Scaling factor.

Table 5–1 outlines the specific calculation procedure.

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| | Likelihood of Exposure (LE) | | Waste Characteristics (WC) | | Targets (T) |
|---|---|---|---|---|---|
| Resident Population | Observed Contamination Area with Resident Targets | X | Toxicity<br>• Chronic<br>• Carcinogenic<br>• Acute<br>Hazardous Waste Quantity<br>• Hazardous Constituent Quantity<br>• Hazardous Wastestream Quantity<br>• Volume<br>• Area | X | Resident Individual<br>Resident Population<br>• Level I Concentrations<br>• Level II Concentrations<br>Workers<br>Resources<br>Terrestrial Sensitive Environments |

+

| | Likelihood of Exposure (LE) | | Waste Characteristics (WC) | | Targets (T) |
|---|---|---|---|---|---|
| Nearby Population | Attractiveness/ Accessibility Area of Contamination | X | Toxicity<br>• Chronic<br>• Carcinogenic<br>• Acute<br>Hazardous Waste Quantity<br>• Hazardous Constituent Quantity<br>• Hazardous Wastestream Quantity<br>• Volume<br>• Area | X | Nearby Individual<br>Population Within One Mile |

Figure 5-1
OVERVIEW OF SOIL EXPOSURE PATHWAY

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TABLE 5–1.—SOIL EXPOSURE PATHWAY SCORESHEET

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Resident Population Threat** | | |
| **Likelihood of Exposure** | | |
| 1. Likelihood of Exposure | 550 | |
| **Waste Characteristics** | | |
| 2. Toxicity | (a) | |
| 3. Hazardous Waste Quantity | (a) | |
| 4. Waste Characteristics | 100 | |
| **Targets** | | |
| 5. Resident Individual | 50 | |
| 6. Resident Population: | | |
| 6a. Level I Concentrations | (b) | |
| 6b. Level II Concentrations | (b) | |
| 6c. Resident Population (lines 6a + 6b) | (b) | |
| 7. Workers | 15 | |
| 8. Resources | 5 | |
| 9. Terrestrial Sensitive Environments | (c) | |
| 10. Targets (lines 5 + 6c + 7 + 8 + 9) | (b) | |
| **Resident Population Threat Score** | | |
| 11. Resident Population Threat (lines 1 × 4 × 10) | (b) | |
| **Nearby Population Threat** | | |
| **Likelihood of Exposure** | | |
| 12. Attractiveness/Accessibility | 100 | |
| 13. Area of Contamination | 100 | |
| 14. Likelihood of Exposure | 500 | |
| **Waste Characteristics** | | |
| 15. Toxicity | (a) | |
| 16. Hazardous Waste Quantity | (a) | |
| 17. Waste Characteristics | 100 | |
| **Targets** | | |
| 18. Nearby Individual | 1 | |
| 19. Population Within 1 Mile | (b) | |
| 20. Targets (lines 18 + 19) | (b) | |
| **Nearby Population Threat Score** | | |
| 21. Nearby Population Threat (lines 14 × 17 × 20) | (b) | |
| **Soil Exposure Pathway Score** | | |
| 22. Soil Exposure Pathway Score [c] (S$_s$) (lines [11+21] / 82,500, subject to a maximum of 100) | 100 | |

[a] Maximum value applies to waste characteristics category.
[b] Maximum value not applicable.
[c] No specific maximum value applies to factor. However, pathway score based solely on terrestrial sensitive environments is limited to maximum of 60.
[d] Do not round to nearest integer.

5.0.1 *General considerations.* Evaluate the soil exposure pathway based on areas of observed contamination:

- Consider observed contamination to be present at sampling locations where analytic evidence indicates that:
  - –A hazardous substance attributable to the site is present at a concentration significantly above background levels for the site (see Table 3–3 in section 2.3 for the criteria for determining analytical significance), *and*
  - –This hazardous substance, if not present at the surface, is covered by 2 feet or less of cover material (for example, soil).
- Establish areas of observed contamination based on sampling locations at which there is observed contamination as follows:
  - –For all sources except contaminated soil, if observed contamination from the site is present at any sampling location within the source, consider that entire source to be an area of observed contamination.
  - –For contaminated soil, consider both the sampling location(s) with observed contamination from the site and the area lying between such locations to be an area of observed contamination, unless available information indicates otherwise.
- If an area of observed contamination (or portion of such an area) is covered by a permanent, or otherwise maintained, essentially impenetrable material (for example, asphalt) that is not more than 2 feet thick, exclude that area (or portion of the area) in evaluating the soil exposure pathway.
- For an area of observed contamination, consider only those hazardous substances that meet the criteria for observed contamination for that area to be associated with that area in evaluating the soil exposure pathway (see section 2.2.2).

If there is observed contamination, assign scores for the resident population threat and the nearby population threat, as specified in sections 5.1 and 5.2. If there is no observed contamination, assign the soil exposure pathway a score of 0.

5.1 *Resident Population Threat.* Evaluate the resident population threat only if there is an area of observed contamination in one or more of the following locations:

- Within the property boundary of a residence, school, or day care center *and* within 200 feet of the respective residence, school, or day care center, or
- Within a workplace property boundary *and* within 200 feet of a workplace area, or
- Within the boundaries of a resource specified in section 5.1.3.4, or
- Within the boundaries of a terrestrial sensitive environment specified in section 5.1.3.5.

If not, assign the resident population threat a value of 0, enter this value in Table 5–1, and proceed to the nearby population threat (section 5.2).

5.1.1 *Likelihood of exposure.* Assign a value of 550 to the likelihood of exposure factor category for the resident population threat if there is an area of observed contamination in one or more locations listed in section 5.1. Enter this value in Table 5–1.

5.1.2 *Waste characteristics.* Evaluate waste characteristics based on two factors: toxicity and hazardous waste quantity. Evaluate only those hazardous substances that meet the criteria for observed contamination at the site (see section 5.0.1).

5.1.2.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1. Use the hazardous substance with the highest toxicity factor value to assign the value to the toxicity factor for the resident population threat. Enter this value in Table 5–1.

5.1.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value as specified in section 2.4.2. In estimating the hazardous waste quantity, use Table 5–2 and:



- Consider only the first 2 feet of depth of an area of observed contamination, except as specified for the volume measure.
- Use the volume measure (see section 2.4.2.1.3) only for those types of areas of observed contamination listed in Tier C of Table 5–2. In evaluating the volume measure for these listed areas of observed contamination, use the full volume, not just the volume within the top 2 feet.
- Use the area measure (see section 2.4.2.1.4), not the volume measure, for all other types of areas of observed contamination, even if their volume is known.

Enter the value assigned in Table 5–1.

TABLE 5–2.—HAZARDOUS WASTE QUANTITY EVALUATION EQUATIONS FOR SOIL EXPOSURE PATHWAY

| Tier | Measure | Units | Equation for assigning value [a] |
|---|---|---|---|
| A | Hazardous Constituent Quantity (C) | lb | C |
| B [b] | Hazardous Wastestream Quantity (W) | lb | W/5,000 |
| C [b] | Volume (V) | | |
| | Surface Impoundment [c] | yd$^3$ | V/2.5 |
| | Drums [d] | gallon | V/500 |
| | Tanks and Containers Other Than Drums | yd$^3$ | V/2.5 |
| D [b] | Area (A) | | |
| | Landfill | ft$^2$ | A/34,000 |
| | Surface Impoundment | ft$^2$ | A/13 |
| | Surface Impoundment (Buried/backfilled) | ft$^2$ | A/13 |
| | Land treatment | ft$^2$ | A/270 |
| | Pile [e] | ft$^2$ | A/34 |
| | Contaminated Soil | ft$^2$ | A/34,000 |

[a] Do not round nearest integer.
[b] Convert volume to mass when necessary: 1 ton=2,000 pounds=1 cubic yard=4 drums=200 gallons.
[c] Use volume measure only for surface impoundments containing hazardous substances present as liquids. Use area measures in Tier D for dry surface impoundments and for buried/backfilled surface impoundments.
[d] If actual volume of drums is unavailable, assume 1 drum=50 gallons.
[e] Use land surface area under pile, not surface area of pile.

5.1.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity and hazardous waste quantity factor values, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 5–7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 5–1.

5.1.3 *Targets.* Evaluate the targets factor category for the resident population threat based on five factors: resident individual, resident population, workers, resources, and terrestrial sensitive environments.

In evaluating the targets factor category for the resident population threat, count only the following as targets:

- Resident individual—a person living or attending school or day care on a property with an area of observed contamination *and* whose residence, school, or day care center, respectively, is on or within 200 feet of the area of observed contamination.
- Worker—a person working on a property with an area of observed contamination *and* whose workplace area is on or within 200 feet of the area of observed contamination.
- Resources located on an area of observed contamination, as specified in section 5.1.
- Terrestrial sensitive environments located on an area of observed contamination, as specified in section 5.1.

5.1.3.1 *Resident individual.* Evaluate this factor based on whether there is a resident individual, as specified in section 5.1.3, who is subject to Level I or Level II concentrations.

First, determine those areas of observed contamination subject to Level I concentrations and those subject to Level II concentrations as specified in sections 2.5.1 and 2.5.2. Use the health-based benchmarks from Table 5–3 in determining the level of contamination. Then assign a value to the resident individual factor as follows:

- Assign a value of 50 if there is at least one resident individual for one or more areas subject to Level I concentrations.
- Assign a value of 45 if there is no such resident individuals, but there is at least one resident individual for one or more areas subject to Level II concentrations.
- Assign a value of 0 if there is no resident individual.

Enter the value assigned in Table 5–1.

5.1.3.2 *Resident population.* Evaluate resident population based on two factors: Level I concentrations and Level II concentrations. Determine which factor applies as specified in sections 2.5.1 and 2.5.2, using the health-based benchmarks from Table 5–3. Evaluate populations subject to Level I concentrations as specified in section 5.1.3.2.1 and populations subject to Level II concentrations as specified in section 5.1.3.2.2.

TABLE 5–3.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN SOILS

- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for oral exposures.
- Screening concentration for noncancer toxicological responses corresponding to the Reference Dose (RfD) for oral exposures.

Count only those persons meeting the criteria for resident individual as specified in section 5.1.3. In estimating the number of people living on property with an area of observed contamination, when the estimate in based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

5.1.3.2.1 *Level I concentrations.* Sum the number of resident individuals subject to Level I concentrations and multiply this sum by 10. Assign the resulting product as the value for this factor. Enter this value in Table 5–1.

5.1.3.2.2 *Level II concentrations.* Sum the number of resident individuals subject to Level II concentrations. Do not include those people already counted under the Level I concentrations factor. Assign this sum as the value for this factor. Enter this value in Table 5–1.

5.1.3.2.3 *Calculation of resident population factor value.* Sum the factor values for Level I concentrations and Level II concentrations. Assign this sum as the resident population factor value. Enter this value in Table 5–1.

5.1.3.3 *Workers.* Evaluate this factor based on the number of workers that meet the section 5.1.3 criteria. Assign a value for these workers using Table 5–4. Enter this value in Table 5–1.

TABLE 5–4.—FACTOR VALUES FOR WORKERS

| Number of workers | Assigned value |
|---|---|
| 0 | 0 |
| 1 to 100 | 5 |
| 101 to 1,000 | 10 |
| Greater than 1,000 | 15 |

5.1.3.4 *Resources.* Evaluate the resources factor as follows:

- Assign a value of 5 to the resources factor if one or more of the following is present on an area of observed contamination at the site:
  - –Commercial agriculture.
  - –Commercial silviculture.
  - –Commercial livestock production or commercial livestock grazing.
- Assign a value of 0 if none of the above are present.

Enter the value assigned in Table 5–1.

5.1.3.5 *Terrestrial sensitive environments.* Assign value(s) from Table 5–5 to each terrestrial sensitive environment that meets the eligibility criteria of section 5.1.3.

Calculate a value (ES) for terrestrial sensitive environments as follows:

$$ES = \sum_{i=1}^{n} S_i$$

where:
$S_i$ = Value(s) assigned from Table 5–5 to terrestrial sensitive environment i.

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n = Number of terrestrial sensitive environments meeting section 5.1.3 criteria.

Because the pathway score based solely on terrestrial sensitive environments is limited to a maximum of 60, determine the value for the terrestrial sensitive environments factor as follows:

TABLE 5-5.—TERRESTRIAL SENSITIVE ENVIRONMENTS RATING VALUES

| Terrestrial sensitive environments | Assigned value |
|---|---|
| Terrestrial critical habitat [a] for Federal designated endangered or threatened species | 100 |
| National Park<br>Designated Federal Wilderness Area<br>National Monument | |
| Terrestrial habitat known to be used by Federal designated or proposed threatened or endangered species | 75 |
| National Preserve (terrestrial)<br>National or State Terrestrial Wildlife Refuge<br>Federal land designated for protection of natural ecosystems<br>Administratively proposed Federal Wilderness Area<br>Terrestrial areas utilized for breeding by large or dense aggregations of animals [b] | |
| Terrestrial habitat known to be used by State designated endangered or threatened species | 50 |
| Terrestrial habitat known to be used by species under review as to its Federal designated endangered or threatened status | |
| State lands designated for wildlife or game management | 25 |
| State designated Natural Areas<br>Particular areas, relatively small in size, important to maintenance of unique biotic communities | |

[a] Critical habitat as defined in 50 CFR 424.02.
[b] Limit to vertebrate species.

• Multiply the values assigned to the resident population threat for likelihood of exposure (LE), waste characteristics (WC), and ES. Divide the product by 82,500.

–If the result is 60 or less, assign the value ES as the terrestrial sensitive environments factor value.

–If the result exceeds 60, calculate a value EC as follows:

$$EC = \frac{(60)(82{,}500)}{(LE)(WC)}$$

Assign the value EC as the terrestrial sensitive environments factor value. Do not round this value to the nearest interger.

Enter the value assigned for the terrestrial sensitive environments factor in Table 5–1.

5.1.3.6 *Calculation of resident population targets factor category value.* Sum the values for the resident individual, resident population, workers, resources, and terrestrial sensitive environments factors. Do not round to the nearest integer. Assign this sum as the targets factor category value for the resident population threat. Enter this value in Table 5–1.

5.1.4 *Calculation of resident population threat score.* Multiply the values for likelihood of exposure, waste characteristics, and targets for the resident population threat, and round the product to the nearest integer. Assign this product as the resident population threat score. Enter this score in Table 5–1.

5.2 *Nearby population threat.* Include in the nearby population only those individuals who live or attend school within a 1-mile travel distance of an area of observed contamination at the site and who do not meet the criteria for resident individual as specified in section 5.1.3.

Do not consider areas of observed contamination that have an attractiveness/accessibility factor value of 0 (see section 5.2.1.1) in evaluating the nearby population threat.

5.2.1 *Likelihood of exposure.* Evaluate two factors for the likelihood of exposure factor category for the nearby population threat: attractiveness/accessibility and area of contamination.

5.2.1.1 *Attractiveness/accessibility.* Assign a value for attractiveness/accessibility from Table 5–6 to each area of observed contamination, excluding any land used for residences. Select the highest value assigned to the areas evaluated and use it as the value for the attractiveness/accessibility factor. Enter this value in Table 5–1.

5.2.1.2 *Area of contamination.* Evaluate area of contamination based on the total area of the areas of observed contamination at the site. Count only the area(s) that meet the criteria in section 5.0.1 and that receive an attractiveness/accessibility value greater than 0. Assign a value to this factor from Table 5–7. Enter this value in Table 5–1.

TABLE 5–7.—AREA OF CONTAMINATION FACTOR VALUES

| Total area of the areas of observed contamination (square feet) | Assigned value |
|---|---|
| Less than or equal to 5,000 | 5 |
| Greater than 5,000 to 125,000 | 20 |
| Greater than 125,000 to 250,000 | 40 |
| Greater than 250,000 to 375,000 | 60 |
| Greater than 375,000 to 500,000 | 80 |
| Greater than 500,000 | 100 |

5.2.1.3 *Likelihood of exposure factor category value.* Assign a value from Table 5–8 to the likelihood of exposure factor category, based on the values assigned to the attractiveness/accessibility and area of contamination factors. Enter this value in Table 5–1.

TABLE 5–6.—NEARBY POPULATION LIKELIHOOD OF EXPOSURE FACTOR VALUES

| Area of contamination factor value | Attractiveness/accessibility factor value | | | | | | |
|---|---|---|---|---|---|---|---|
| | 100 | 75 | 50 | 25 | 10 | 5 | 0 |
| 100 | 500 | 500 | 375 | 250 | 125 | 50 | 0 |
| 80 | 500 | 375 | 250 | 125 | 50 | 25 | 0 |
| 60 | 375 | 250 | 125 | 50 | 25 | 5 | 0 |
| 40 | 250 | 125 | 50 | 25 | 5 | 5 | 0 |
| 20 | 125 | 50 | 25 | 5 | 5 | 5 | 0 |
| 5 | 50 | 25 | 5 | 5 | 5 | 5 | 0 |

5.2.2 *Waste characteristics.* Evaluate waste characteristics based on two factors: toxicity and hazardous waste quantity. Evaluate only those hazardous substances that meet the criteria for observed contamination (see section 5.0.1) at areas that can be assigned an attractiveness/accessibility factor value greater than 0.

5.2.2.1 *Toxicity.* Assign a toxicity factor value as specified in section 2.4.1.1 to each hazardous substance meeting the criteria in section 5.2.2. Use the hazardous substance with the highest toxicity factor value to assign the value to the toxicity factor for the nearby population threat. Enter this value in Table 5–1.

5.2.2.2 *Hazardous waste quantity.* Assign a value to the hazardous waste quantity factor as specified in section 5.1.2.2, except: consider only those areas of observed contamination that can be assigned an attractiveness/accessibility factor value greater than 0. Enter the value assigned in Table 5–1.

5.2.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity and hazardous waste quantity factor values, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 2–7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 5–1.

5.2.3 *Targets.* Evaluate the targets factory category for the nearby population threat based on two factors: nearby individual and population within a 1-mile travel distance from the site.

5.2.3.1 *Nearby individual.* If one or more persons meet the section 5.1.3 criteria for a resident individual, assign this factor a value of 0. Enter this value in Table 5–1.

If no person meets the criteria for a resident individual, determine the shortest travel distance from the site to any residence or school. In determining the travel distance, measure the shortest overland distance an individual would travel from a residence or school to the nearest area of observed contamination for the site with an attractiveness/accessibility factor value greater than 0. If there are no natural barriers to travel, measure the travel distance as the shortest straight-line distance from the residence or school to the area of observed contamination. If natural barriers exist (for example, a river), measure the travel distance as the shortest straight-line distance from the residence or school to the nearest crossing point and from there as the shortest straight-line distance to the area of observed contamination. Based on the shortest travel distance, assign a value from Table 5–9 to the nearest individual factor. Enter this value in Table 5–1.

TABLE 5–8.—ATTRACTIVENESS/ACCESSIBILITY VALUES

| Area of observed contamination | Assigned value |
|---|---|
| Designated recreational area | 100 |
| Regularly used for public recreation (for example, fishing, hiking, softball) | 75 |
| Accessible and unique recreational area (for example, vacant lots in urban area) | 75 |
| Moderately accessible (may have some access improvements—for example, gravel road), with some public recreation use | 50 |
| Slightly accessible (for example, extremely rural area with no road improvement), with some public recreation use | 25 |
| Accessible, with no public recreation use | 10 |
| Surrounded by maintained fence or combination of maintained fence and natural barriers | 5 |
| Physically inaccessible to public, with no evidence of public recreation use | 0 |

TABLE 5–9.—NEARBY INDIVIDUAL FACTOR VALUES

| Travel distance for nearby individual (miles) | Assigned value |
|---|---|
| Greater than 0 to ¼ | 1[a] |
| Greater than ¼ to 1 | 0 |

[a] Assign a value of 0 if one or more persons meet the section 5.1.3 criteria for resident individual.

5.2.3.2 *Population within 1 mile.* Determine the population within each travel distance category of Table 5–10. Count residents and students who attend school within this travel distance. Do not include those people already counted in the resident population threat. Determine travel distances as specified in section 5.2.3.1.

In estimating residential population, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

Based on the number of people included within a travel distance category, assign a distance-weighted population value for that travel distance from Table 5–10.

Calculate the value for the population within 1 mile factor (PN) as follows:

$$PN = \frac{1}{10} \sum_{i=1}^{3} W_i$$

where:

$W_i$ = Distance-weighted population value from Table 5–10 for travel distance category i.

If PN is less than 1, do not round it to the nearest integer; if PN is 1 or more, round to the nearest integer. Enter this value in Table 5–1.

5.2.3.3 *Calculation of nearby population targets factor category value.* Sum the values for the nearby individual factor and the population within 1 mile factor. Do not round this sum to the nearest integer. Assign this sum as the targets factor category value for the nearby population threat. Enter this value in Table 5–1.

TABLE 5–10.—DISTANCE-WEIGHTED POPULATION VALUES FOR NEARBY POPULATION THREAT [a]

| Travel distance category (miles) | Number of people within the travel distance category | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 to 10 | 11 to 30 | 31 to 100 | 101 to 300 | 301 to 1,000 | 1,001 to 3,000 | 3,001 to 10,000 | 10,001 to 30,000 | 30,001 to 100,000 | 100,001 to 300,000 | 300,001 to 1,000,000 |
| Greater than 0 to ¼ | 0 | 0.1 | 0.4 | 1.0 | 4 | 13 | 41 | 130 | 408 | 1,303 | 4,081 | 13,034 |
| Greater than ¼ to ½ | 0 | 0.05 | 0.2 | 0.7 | 2 | 7 | 20 | 65 | 204 | 652 | 2,041 | 6,517 |
| Greater than ½ to 1 | 0 | 0.02 | 0.1 | 0.3 | 1 | 3 | 10 | 33 | 102 | 326 | 1,020 | 3,258 |

[a] Round the number of people present within a travel distance category to nearest integer. Do not round the assigned distance-weighted population value to nearest integer.

5.2.4 *Calculation of nearby population threat score.* Multiply the values for likelihood of exposure, waste characteristics, and targets for the nearby population threat, and round the product to the nearest integer. Assign this product as the nearby population threat score. Enter this score in Table 5–1.

5.3 *Calculation of soil exposure pathway score.* Sum the resident population threat score and the nearby population threat score, and divide the sum by 82,500. Assign the resulting value, subject to a maximum of 100, as the soil exposure pathway score ($S_s$). Enter this score in Table 5–1.

*6.0 Air Migration Pathway*

Evaluate the air migration pathway based on three factor categories: likelihood of release, waste characteristics, and targets. Figure 6–1 indicates the factors included within each factor category.

Determine the air migration pathway score ($S_a$) in terms of the factor category values as follows:

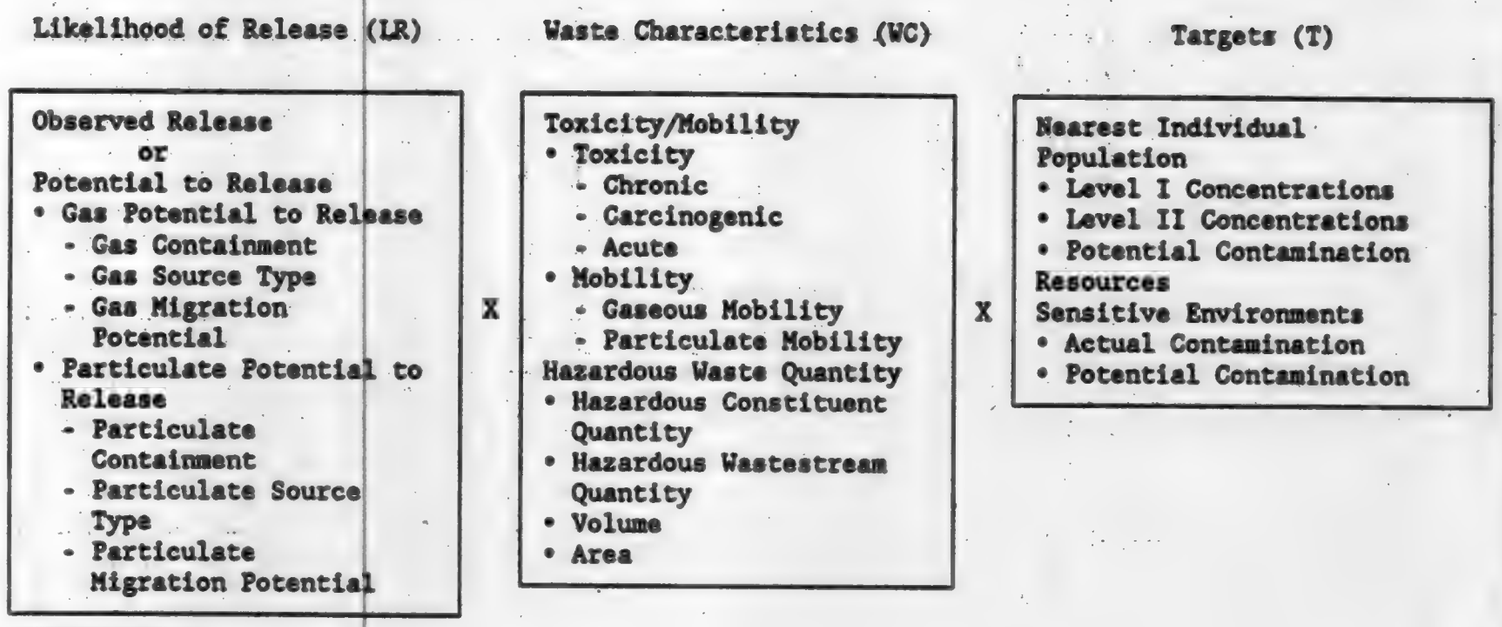
$$S_a = \frac{(LR)(WC)(T)}{SF}$$

where:

LR = Likelihood of release factor category value.
WC = Waste characteristics factor category value.
T = Targets factor category value.
SF = Scaling factor.

Table 6–1 outlines the specific calculation procedure.

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FIGURE 6-1
OVERVIEW OF AIR MIGRATION PATHWAY

TABLE 6-1.—AIR MIGRATION PATHWAY SCORESHEET

| Factor categories and factors | Maximum value | Value assigned |
|---|---|---|
| **Likelihood of Release** | | |
| 1. Observed Release | 550 | — |
| 2. Potential to Release: | | |
| 2a. Gas Potential to Release | 500 | — |
| 2b. Particulate Potential to Release | 500 | — |
| 2c. Potential to Release (higher of lines 2a and 2b) | 500 | — |
| 3. Likelihood of Release (higher of lines 1 and 2c) | 550 | — |
| **Waste Characteristics** | | |
| 4. Toxicity/Mobility | (a) | — |
| 5. Hazardous Waste Quantity | (a) | — |
| 6. Waste Characteristics | 100 | — |
| **Targets** | | |
| 7. Nearest Individual | 50 | — |
| 8. Population: | | |
| 8a. Level I Concentrations | (b) | — |
| 8b. Level II Concentrations | (b) | — |
| 8c. Potential Contamination | (b) | — |
| 8d. Population (lines 8a+8b+8c) | (b) | — |
| 9. Resources | 5 | — |
| 10. Sensitive Environments | | |
| 10a. Actual Contamination | (b) | — |
| 10b. Potential Contamination | (b) | — |
| 10c. Sensitive Environments (lines 10a+10b) | (b) | — |
| 11. Targets (lines 7+8d+9+10c) | (b) | — |
| **Air Migration Pathway Score** | | |
| 12. Pathway Score ($S_a$) [(lines 3×6×11)/82,500] [d] | 100 | — |

[a] Maximum value applies to waste characteristics category.
[b] Maximum value not applicable.
[c] No specific maximum value applies to factor. However, pathway score based solely on sensitive environments is limited to maximum of 60.
[d] Do not round to nearest integer.

6.1 *Likelihood of Release.* Evaluate the likelihood of release factor category in terms of an observed release factor or a potential to release factor.

6.1.1 *Observed release.* Establish an observed release to the atmosphere by demonstrating that the site has released a hazardous substance to the atmosphere. Base this demonstration on either:

- Direct observation—a material (for example, particulate matter) that contains one or more hazardous substances has been seen entering the atmosphere directly. When evidence supports the inference of a release of a material that contains one or more hazardous substances by the site to the atmosphere, demonstrated adverse effects accumulated with that release may be used to establish an observed release.
- Chemical analysis—an analysis of air samples indicates that the concentration of ambient hazardous substance(s) has increased significantly above the background concentration for the site (see section 2.3). Some portion of the significant increase must be attributable to the site to establish the observed release.

If an observed release can be established, assign an observed release factor value of 550, enter this value in Table 6-1, and proceed to section 6.1.3. If an observed release cannot be established, assign an observed release factor value of 0, enter this value in Table 6-1, and proceed to section 6.1.2.

6.1.2 *Potential to release.* Evaluate potential to release only if an observed release cannot be established. Determine the potential to release factor value for the site by separately evaluating the gas potential to release and the particulate potential to release for each source at the site. Select the highest potential to release value (either gas or particulate) calculated for the sources evaluated and assign that value as the site potential to release factor value as specified below.

6.1.2.1 *Gas potential to release.* Evaluate gas potential to release for those sources that contain gaseous hazardous substances—that is, those hazardous substances with a vapor pressure greater than or equal to $10^{-5}$ torr.

Evaluate gas potential to release for each source based on three factors: gas containment, gas source type, and gas migration potential. Calculate the gas potential to release value as illustrated in Table 6-2. Combine sources with similar characteristics into a single source in evaluating the gas potential to release factors.

TABLE 6-2.—GAS POTENTIAL TO RELEASE EVALUATION

| Source | Source type [a] | Gas containment factor value [b] | Gas source type factor value [c] | Gas migration potential factor value [d] | Sum | Gas source value |
|---|---|---|---|---|---|---|
| | | A | B | C | (B+C) | A(B+C) |
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | | | | | | |
| 7. | | | | | | |
| 8. | | | | | | |
| Gas Potential to Release Factor (Select the Highest Gas Source Value) | | | | | | |

[a] Enter a Source Type listed in Table 6-4.
[b] Enter Gas Containment Factor Value from section 6.1.2.1.1.
[c] Enter Gas Source Type Factor Value from section 6.1.2.1.2.
[d] Enter Gas Migration Potential Factor Value from section 6.1.2.1.3.

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6.1.2.1.1 *Gas containment.* Assign each source a value from Table 6–3 for gas containment. Use the lowest value from Table 6–3 that applies to the source, except: assign a value of 10 if there is evidence of biogas release or if there is an active fire within the source.

TABLE 6–3.—GAS CONTAINMENT FACTOR VALUES

| Gas containment description | Assigned value |
|---|---|
| All situations except those specifically listed below | 10 |
| Evidence of biogas release | 10 [a] |
| Active fire within source | 10 [a] |
| Gas collection/treatment system functioning, regularly inspected, maintained, and completely covering source | 0 |
| Source substantially surrounded by engineering windbreak and no other containment specifically described in this table applies | 7 |
| Source covered with essentially impermeable, regularly inspected, maintained cover | 0 |
| Uncontaminated soil cover ≥3 feet: | |
| • Source substantially vegetated with little exposed soil | 0 |
| • Source lightly vegetated with much exposed soil | 3 |
| • Source substantially devoid of vegetation | 7 |
| Uncontaminated soil cover ≥ 1 foot and ≥ 3 feet: | |
| • Source heavily vegetated with essentially no exposed soil: | |
| —Cover soil type resistant to gas migration [b] | 3 |
| —Cover soil type not resistant to gas migration [b] or unknown | 7 |
| • Source substantially vegetated with little exposed soil and cover soil type resistant to gas migration [b] | 7 |
| • Other | 10 |
| Uncontaminated soil cover <1 foot: | |
| • Source heavily vegetated with essentially no exposed soil and cover soil type resistant to gas migration [b] | 7 |
| • Other | 10 |
| Totally or partially enclosed within structurally intact building and no other containment specifically described in this table applies | 7 |
| Source consists solely of intact, sealed containers: | |
| • Totally protected from weather by regularly inspected, maintained cover | 0 |
| • Other | 3 |

[a] This value must be used if applicable.
[b] Consider moist fine-grained and saturated coarse-grained soils resistant to gas migration. Consider all other soils nonresistant.

6.1.2.1.2 *Gas source type.* Assign a value for gas source type to each source as follows:

• Determine if the source meets the minimum size requirement based on the source hazardous waste quantity value (see section 2.4.2.1.5). If the source receives a source hazardous waste quantity value of 0.5 or more, consider the source to meet the minimum size requirement.

• If the source meets the minimum size requirement, assign it a value from Table 6–4 for gas source type.

• If the source does not meet the minimum size requirement, assign it a value of 0 for gas source type.

If no source at the site meets the minimum size requirement, assign each source at the site a value from Table 6–4 for gas source type.

TABLE 6–4.—SOURCE TYPE FACTOR VALUES

| Source type | Assigned value: Gas | Assigned value: Particulate |
|---|---|---|
| Active fire area | 14 | 30 |
| Burn pit | 19 | 22 |
| Containers or tanks (buried/below-ground): | | |
| • Evidence of biogas release | 33 | 22 |
| • No evidence of biogas release | 11 | 22 |
| Containers or tanks, not elsewhere specified | 28 | 14 |
| Contaminated soil (excluding land treatment) | 19 | 22 |
| Landfarm/land treatment | 28 | 22 |

TABLE 6–4.—SOURCE TYPE FACTOR VALUES—Concluded

| Source type | Assigned value: Gas | Assigned value: Particulate |
|---|---|---|
| Landfill: | | |
| • Evidence of biogas release | 33 | 22 |
| • No evidence of biogas release | 11 | 22 |
| Pile: | | |
| • Tailings pile | 6 | 28 |
| • Scrap metal or junk pile | 6 | 17 |
| • Trash pile | 6 | 6 |
| • Chemical waste pile | 11 | 28 |
| • Other waste piles | 17 | 28 |
| Surface impoundments (buried/backfilled): | | |
| • Evidence of biogas release | 33 | 22 |
| • No evidence of biogas release | 11 | 22 |
| Surface impoundment (not buried/backfilled): | | |
| • Dry | 19 | 22 |
| • Other | 28 | 0 |
| Other types of sources, not elsewhere specified | 0 | 0 |

6.1.2.1.3 *Gas migration potential.* Evaluate this factor for each source as follows:

• Assign a value for gas migration potential to each of the gaseous hazardous substances associated with the source (see section 2.2.2) as follows:

–Assign values from Table 6–5 for vapor pressure and Henry's constant to each hazardous substance. If Henry's constant cannot be determined for a hazardous substance, assign that hazardous substance a value of 2 for the Henry's constant component.

–Sum the two values assigned to the hazardous substance.

–Based on this sum, assign the hazardous substance a value from Table 6–6 for gas migration potential.

• Assign a value for gas migration potential to each source as follows:

–Select three hazardous substances associated with the source:

– –If more than three gaseous hazardous substances can be associated with the source, select three that have the highest gas migration potential values.

– –If fewer than three gaseous hazardous substances can be associated with a source, select all of them.

–Average the gas migration potential values assigned to the selected hazardous substances.

–Based on this average value, assign the source a gas migration potential value from Table 6–7.

TABLE 6–5.—VALUES FOR VAPOR PRESSURE AND HENRY'S CONSTANT

| Vapor pressure (Torr) | Assigned value |
|---|---|
| Greater than 10 | 3 |
| Greater than $10^{-2}$ to 10 | 2 |
| $10^{-5}$ to $10^{-2}$ | 1 |
| Less than $10^{-5}$ | 0 |

| Henry's constant (atm-m³/mol) | Assigned value |
|---|---|
| Greater than $10^{-3}$ | 3 |
| Greater than $10^{-5}$ to $10^{-3}$ | 2 |
| $10^{-7}$ to $10^{-5}$ | 1 |
| Less than $10^{-7}$ | 0 |



TABLE 6–6.—GAS MIGRATION POTENTIAL VALUES FOR A HAZARDOUS SUBSTANCE

| Sum of values for vapor pressure and Henry's constant | Assigned value |
|---|---|
| 0 | 0 |
| 1 or 2 | 6 |
| 3 or 4 | 11 |
| 5 or 6 | 17 |

TABLE 6–7.—GAS MIGRATION POTENTIAL VALUES FOR THE SOURCE

| Average of gas migration potential values for three hazardous substances [a] | Assigned value |
|---|---|
| 0 to < 3 | 0 |
| 3 to < 8 | 6 |
| 8 to < 14 | 11 |
| 14 to 17 | 17 |

[a] If fewer than three hazardous substances can be associated with the source, compute the average based only on those hazardous substances that can be associated.

6.1.2.1.4 *Calculation of gas potential to release value.* Determine the gas potential to release value for each source as illustrated in Table 6–2. For each source, sum the gas source type factor value and gas migration potential factor value and multiply this sum by the gas containment factor value. Select the highest product calculated for the sources evaluated and assign it as the gas potential to release value for the site. Enter this value in Table 6–1.

6.1.2.2 *Particulate potential to release.* Evaluate particulate potential to release for those sources that contain particulate hazardous substances—that is, those hazardous substances with a vapor pressure less than or equal to $10^{-1}$ torr.

Evaluate particulate potential to release for each source based on three factors: particulate containment, particulate source type, and particulate migration potential. Calculate the particulate potential to release value as illustrated in Table 6–8. Combine sources with similar characteristics into a single source in evaluating the particulate potential to release factors.

6.1.2.2.1 *Particulate containment.* Assign each source a value from Table 6–9 for particulate containment. Use the lowest value from Table 6–9 that applies to the source.

6.1.2.2.2 *Particulate source type.* Assign a value for particulate source type to each source in the same manner as specified for gas sources in section 6.1.2.1.2.

6.1.2.2.3 *Particulate migration potential.* Based on the site location, assign a value from Figure 6–2 for particulate migration potential. Assign this same value to each source at the site.

TABLE 6–8.—PARTICULATE POTENTIAL TO RELEASE EVALUATION

| Source | Source type [a] | Particulate containment factor value [b] | Particulate type factor value [c] | Particulate migration potential factor value [d] | Sum | Particulate source value |
|---|---|---|---|---|---|---|
| | | A | B | C | (B+C) | A (B+C) |
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. | | | | | | |
| 6. | | | | | | |
| 7. | | | | | | |
| 8. | | | | | | |
| Particulate Potential to Release Factor Value (Select Highest Particulate Source Value) | | | | | | |

[a] Enter a Source Type listed in Table 6–4.
[b] Enter Particulate Containment Factor Value from section 6.1.2.2.1.
[c] Enter Particulate Source Type Factor Value from section 6.1.2.2.2.
[d] Enter Particulate Migration Potential Factor Value from section 6.1.2.2.3.

TABLE 6–9.—PARTICULATE CONTAINMENT FACTOR VALUES

| Particulate containment description | Assigned value |
|---|---|
| All situations except those specifically listed below | 10 |
| Source contains only particulate hazardous substances totally covered by liquids | 0 |
| Source substantially surrounded by engineered windbreak and no other containment specifically described in this table applies | 7 |
| Source covered with essentially impermeable, regularly inspected, maintained cover | 0 |
| Uncontaminated soil cover > 3 feet: | |
| • Source substantially vegetated with little or no exposed soil | 0 |
| • Source lightly vegetated with much exposed soil | 3 |
| • Source substantially devoid of vegetation | 7 |
| Uncontaminated soil cover ≥ 1 foot and ≤ 3 feet: | |
| • Source heavily vegetated with essentially no exposed soil: | |
| —Cover soil type resistant to gas migration [a] | 3 |
| —Cover soil type not resistant to gas migration [a] or unknown | 7 |
| • Source substantially vegetated with little exposed soil and cover soil type resistant to gas migration [a] | 7 |
| • Other | 10 |
| Uncontaminated soil cover < 1 foot: | |
| • Source heavily vegetated with essentially no exposed soil and cover soil type resistant to gas migration [a] | 7 |
| • Other | 10 |
| Totally or partially enclosed within structurally intact building and no other containment specifically described in this table applies | 7 |
| Source consists solely of containers: | |
| • All containers contain only liquids | 0 |
| • All containers intact, sealed, and totally protected from weather by regularly inspected, maintained cover | 0 |
| • All containers intact and sealed | 3 |
| • Other | 10 |

[a] Consider moist fine-grained and saturated coarse-grained soils resistant to gas migration. Consider all other soils nonresistant.

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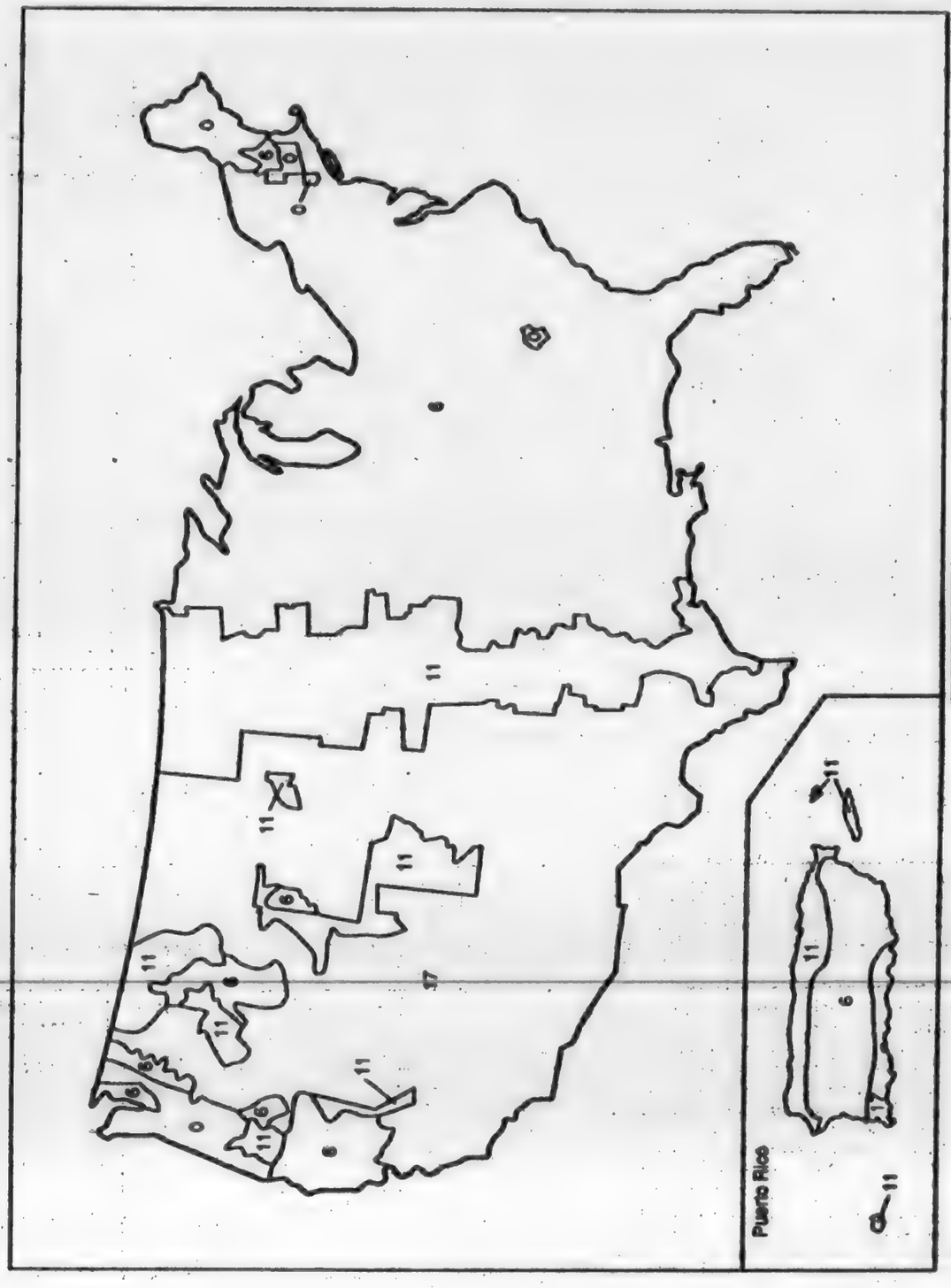



FIGURE 6-2
PARTICULATE MIGRATION POTENTIAL FACTOR VALUES

FIGURE 6-2.—PARTICULATE MIGRATION POTENTIAL FACTOR VALUES—CONCLUDED

| Location | Particulate migration potential assigned value |
|---|---|
| Hawaiian Islands | |
| Hilo, Hawaii | 0 |
| Honolulu, Oahu | 17 |
| Kahului, Maui | 17 |
| Lanai | 17 |
| Lihue, Kauai | 11 |
| Molokai | 17 |
| Pacific Islands | |
| Guam | 6 |
| Johnston Island | 17 |
| Koror Island | 0 |
| Kwajalein Island | 6 |
| Mujuro, Marshall Islands | 0 |
| Pago Pago, American Samoa | 0 |
| Ponape Island | 0 |
| Truk, Caroline Islands | 0 |
| Wake Island | 17 |
| Yap Island | 0 |
| Alaska | |
| Anchorage | 17 |
| Annette | 0 |
| Barrow | 17 |
| Barter Island | 17 |
| Bethel | 17 |
| Bettles | 17 |
| Big Delta | 17 |
| Cold Bay | 6 |
| Fairbanks | 17 |
| Gulkana | 17 |
| Homer | 11 |
| Juneau | 0 |
| King Salmon | 11 |
| Kodiak | 0 |
| Kotzebue | 17 |
| McGrath | 17 |
| Nome | 11 |
| St. Paul Island | 11 |
| Talkeetna | 6 |
| Unalakleet | 17 |
| Valdez | 0 |
| Yakutat | 0 |
| American Virgin Islands | |
| St. Croix | 17 |
| St. John | 11 |
| St. Thomas | 11 |
| Puerto Rico | |
| Arecibo | 6 |
| Coloso | 6 |
| Fajardo | 11 |
| Humacao | 6 |
| Isabela Station | 11 |
| Ponce | 17 |
| San Juan | 11 |

For site locations not on Figure 6-2, and for site locations near the boundary points on Figure 6-2, assign a value as follows. First, calculate a Thornthwaite P-E index using the following equation:

$$PE = \sum_{i=1}^{12} 115\,[P_i/(T_i-10)]^{10/9}$$

where:

PE = Thornthwaite P-E index.

$P_i$ = Mean monthly precipitation for month i, in inches.

$T_i$ = Mean monthly temperature for month i, in degrees Fahrenheit; for any month having a mean monthly temperature less than 28.4 °F, use 28.4 °F.

Based on the calculated Thornthwaite P-E index, assign a source particulate migration potential value to the site from Table 6-10. Assign this same value to each source at the site.

TABLE 6-10.—PARTICULATE MIGRATION POTENTIAL VALUES

| Thornthwaite P-E index | Assigned value |
|---|---|
| Greater than 150 | 0 |
| 85 to 150 | 6 |
| 50 to less than 85 | 11 |
| Less than 50 | 17 |

6.1.2.2.4 *Calculation of particulate potential to release value.* Determine the particulate potential to release value for each source as illustrated in Table 6-6. For each source, sum its particulate source type factor value and particulate migration potential factor value and multiply this sum by its particulate containment factor value. Select the highest product calculated for the sources evaluated and assign it as the particulate potential to release value for the site. Enter the value in Table 6-1.

6.1.2.3 *Calculation of potential to release factor value for the site.* Select the higher of the gas potential to release value assigned in section 6.1.2.1.4 and the particulate potential to release value assigned in section 6.1.2.2.4. Assign the value selected as the site potential to release factor value. Enter this value in Table 6-1.

6.1.3 *Calculation of likelihood of release factor category value.* If an observed release is established, assign the observed release factor value of 550 as the likelihood of release factor category value. Otherwise, assign the site potential to release factor value as the likelihood of release factor category value. Enter the value in Table 6-1.

6.2 *Waste characteristics.* Evaluate the waste characteristics factor category based on two factors: toxicity/mobility and hazardous waste quantity. Evaluate only those hazardous substances available to migrate from the sources at the site to the atmosphere. Such hazardous substances include:

- Hazardous substances that meet the criteria for an observed release to the atmosphere.
- All gaseous hazardous substances associated with a source that has a gas containment factor value greater than 0 (see section 2.2.2, 2.2.3, and 6.1.2.1.1).
- All particulate hazardous substances associated with a source that has a particulate containment factor value greater than 0 (see section 2.2.2, 2.2.3, and 6.1.2.2.1).

6.2.1 *Toxicity/mobility.* For each hazardous substance, assign a toxicity factor value, a mobility factor value, and a combined toxicity/mobility factor value as specified below. Select the toxicity/mobility factor value for the air migration pathway as specified in section 6.2.1.3.

6.2.1.1 *Toxicity.* Assign a toxicity factor value to each hazardous substance as specified in section 2.4.1.1.

6.2.1.2 *Mobility.* Assign a mobility factor value to each hazardous substance as follows:

- Gaseous hazardous substance.
  - –Assign a mobility factor value of 1 to each gaseous hazardous substance that meets the criteria for an observed release to the atmosphere.
  - –Assign a mobility factor value from Table 6-11, based on vapor pressure, to each gaseous hazardous substance that does not meet the criteria for an observed release.
- Particulate hazardous substance.
  - –Assign a mobility factor value of 0.02 to each particulate hazardous substance that meets the criteria for an observed release to the atmosphere.
  - –Assign a mobility factor value from Figure 6-3, based on the site's location, to each particulate hazardous substance that does not meet the criteria for an observed release. (Assign all such particulate hazardous substances this same value.)
  - –For site locations not on Figure 6-3 and for site locations near the boundary points on Figure 6-3, assign a mobility factor value to each particulate hazardous substance that does not meet the criteria for an observed release as follows:
    - –Calculate a value M:

$$M = 0.0182\,(U^3/[PE]^3)$$

where:

U = Mean average annual wind speed (meters per second).

PE = Thornthwaite P-E index from section 6.1.2.2.1.

    - –Based on the value M, assign a mobility factor value from Table 6-12 to each particulate hazardous substance.
- Gaseous and particulate hazardous substances.
  - –For a hazardous substance potentially present in both gaseous and particulate forms, select the higher of the factor values for gas mobility and particulate mobility for that substance and assign that value as the mobility factor value for the hazardous substance.

6.2.1.3 *Calculation of toxicity/mobility factor value.* Assign each hazardous substance a toxicity/mobility factor value from Table 6-13, based on the values assigned to the hazardous substance for the toxicity and mobility factors. Use the hazardous substance with the highest toxicity/mobility factor value to assign the value to the toxicity/mobility factor for the air migration pathway. Enter this value in Table 6-1.

TABLE 6-11.—GAS MOBILITY FACTOR VALUES

| Vapor pressure (Torr) | Assigned value [a] |
|---|---|
| Greater than $10^{-1}$ | 1.0 |
| Greater than $10^{-3}$ to $10^{-1}$ | 0.2 |
| Greater than $10^{-5}$ to $10^{-3}$ | 0.02 |

TABLE 6-11.—GAS MOBILITY FACTOR VALUES—Concluded

| Vapor pressure (Torr) | Assigned value [a] |
|---|---|
| Greater than $10^{-7}$ to $10^{-5}$ | 0.002 |
| Less than or equal to $10^{-7}$ | 0.0002 |

[a] Do not round to nearest integer.

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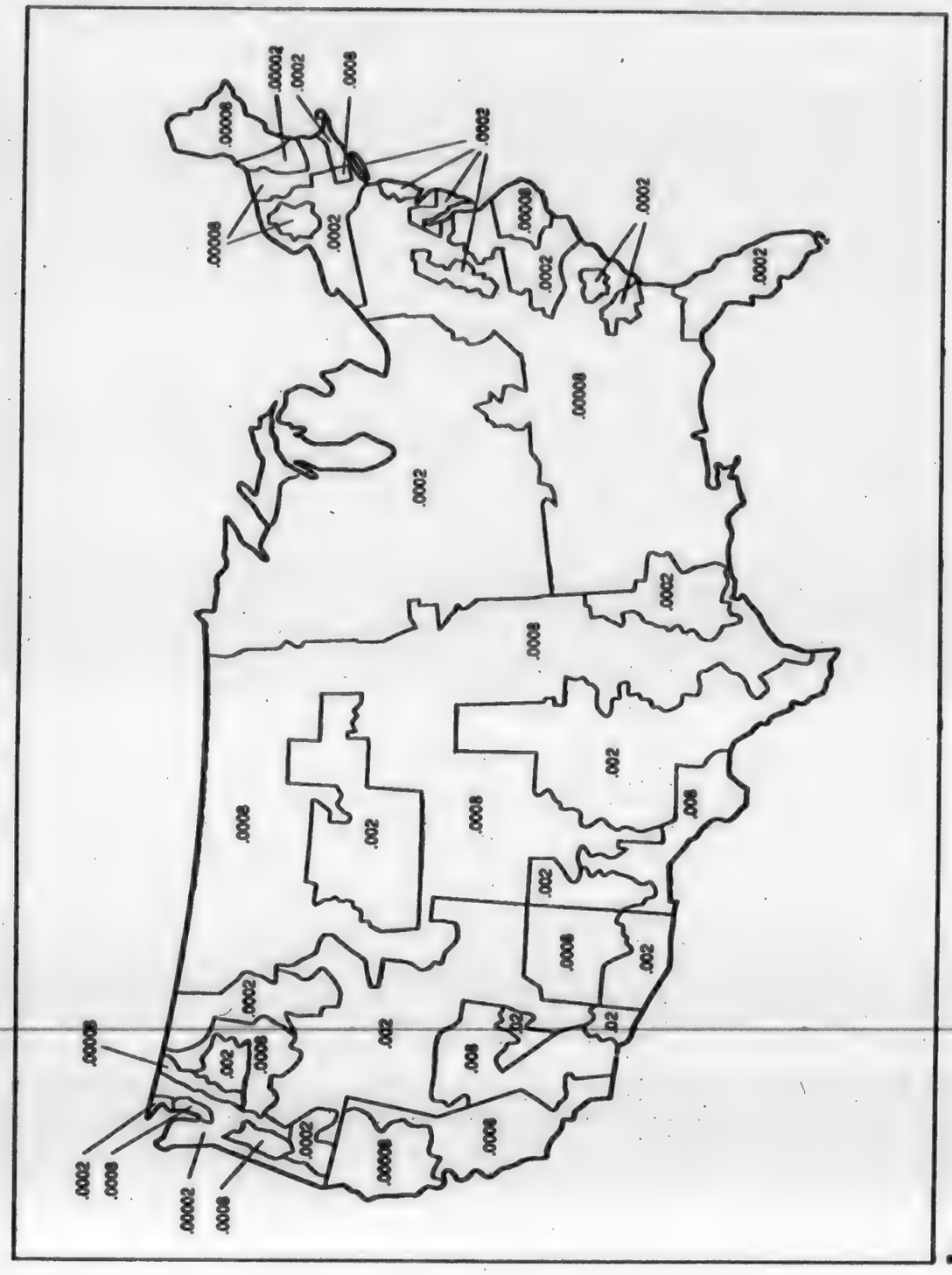



FIGURE 6-3
PARTICULATE MOBILITY FACTOR VALUES*

*Do not round to nearest integer.

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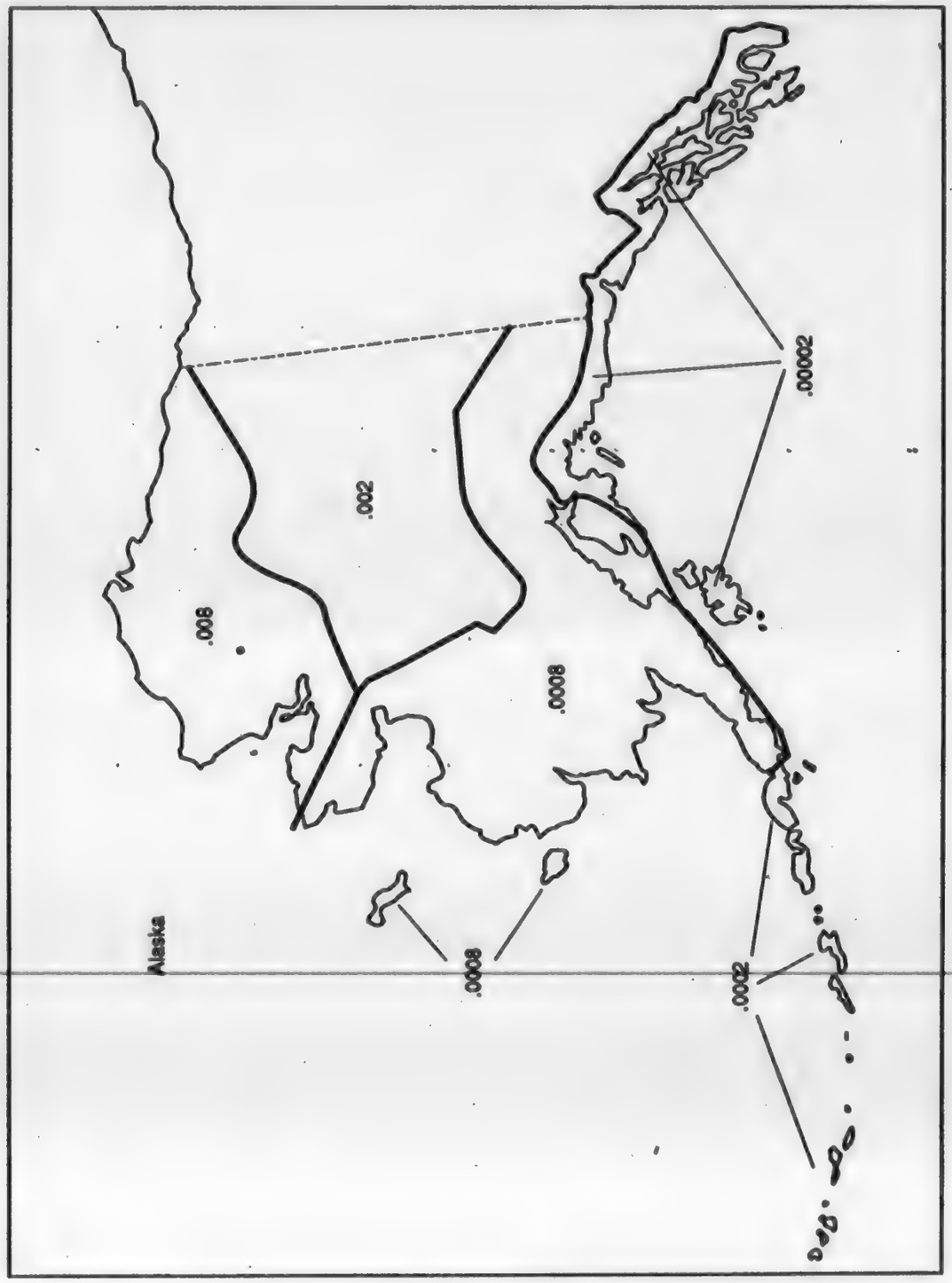
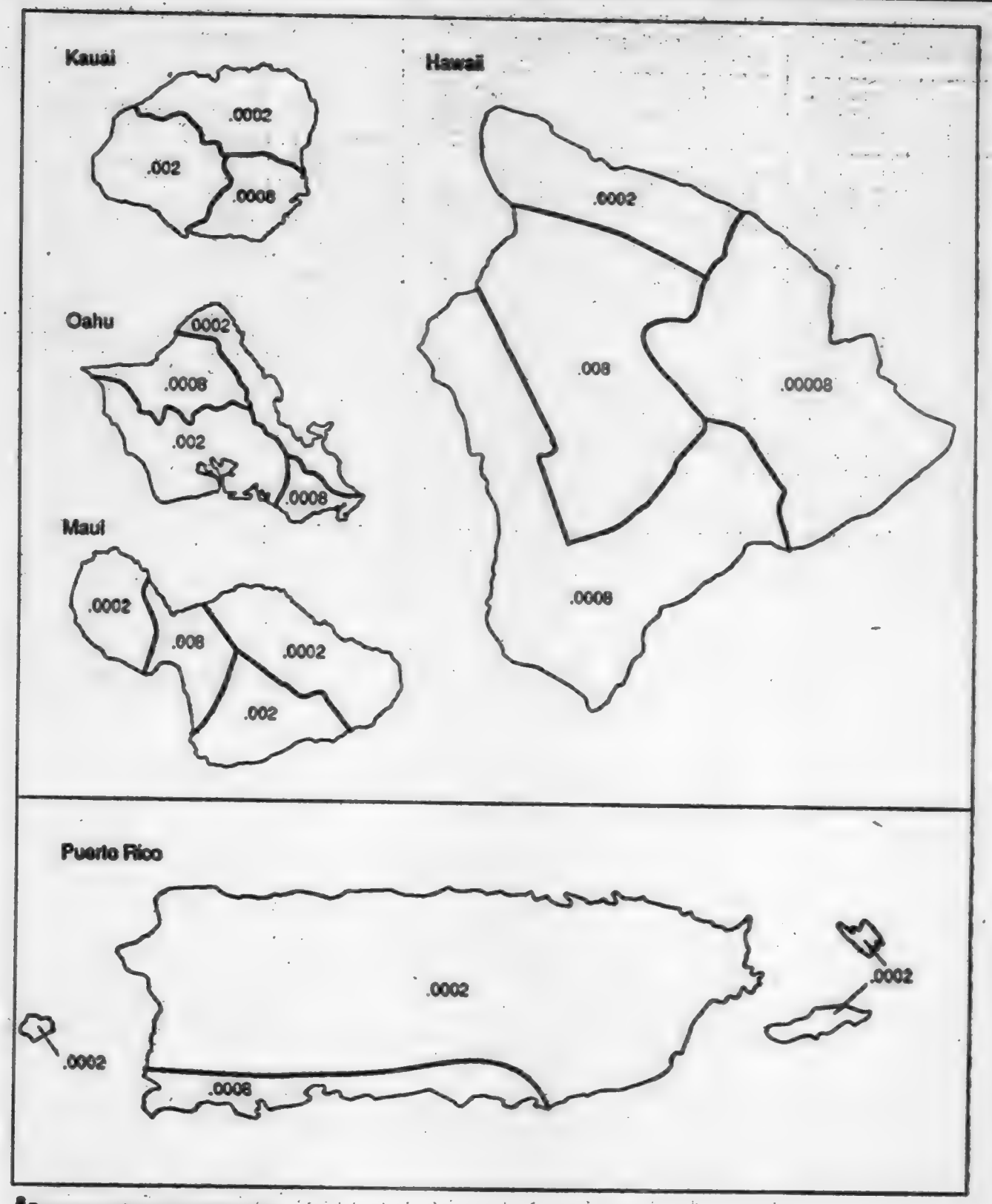



FIGURE 6-3
PARTICULATE MOBILITY FACTOR VALUES[a]
(CONTINUED)

[a] Do not round to nearest integer.




[a] Do not round to nearest integer.

**FIGURE 6-3**
**PARTICULATE MOBILITY FACTOR VALUES[a]**
**(CONTINUED)**

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FIGURE 6-3.PARTICULATE MOBILITY FACTOR VALUES—CONTINUED

| Location | Particulated mobility assigned value |
|---|---|
| Pacific Islands | |
| Guam | 0.0002 |
| Johnston Island | 0.002 |
| Koror Island | 0.00008 |
| Kwajalein Island | 0.0002 |
| Mujuro, Marshall Islands | 0.00008 |
| Pago Pago, American Samoa | 0.00008 |
| Ponape Island | 0.00002 |
| Truk, Caroline Islands | 0.00008 |
| Wake Island | 0.002 |
| Yap Island | 0.00008 |

FIGURE 6-3.—PARTICULATE MOBILITY FACTOR VALUES—CONCLUDED

| Location | Particulated mobility assigned value |
|---|---|
| American Virgin Islands | |
| St. Croix | 0.0008 |
| St. John | 0.0002 |
| St. Thomas | 0.0002 |

TABLE 6-12.—PARTICULATE MOBILITY FACTOR VALUES

| M | Assigned value [a] |
|---|---|
| Greater than $1.4 \times 10^{-3}$ | 0.02 |
| Greater than $4.4 \times 10^{-4}$ to $1.4 \times 10^{-3}$ | 0.008 |
| Greater than $1.4 \times 10^{-4}$ to $4.4 \times 10^{-4}$ | 0.002 |
| Greater than $4.4 \times 10^{-5}$ to $1.4 \times 10^{-4}$ | 0.0008 |
| Greater than $1.4 \times 10^{-5}$ to $4.4 \times 10^{-5}$ | 0.0002 |
| Greater than $4.4 \times 10^{-6}$ to $1.4 \times 10^{-5}$ | 0.00008 |
| Less than or equal to $4.4 \times 10^{-6}$ | 0.00002 |

[a] Do not round to nearest integer.

TABLE 6-13.—TOXICITY/MOBILITY FACTOR VALUES [a]

| Mobility factor value | Toxicity factor value | | | | | |
|---|---|---|---|---|---|---|
| | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 1.0 | 10,000 | 1,000 | 100 | 10 | 1 | 0 |
| 0.2 | 2,000 | 200 | 20 | 2 | 0.2 | 0 |
| 0.02 | 200 | 20 | 2 | 0.2 | 0.02 | 0 |
| 0.008 | 80 | 8 | 0.8 | 0.08 | 0.008 | 0 |
| 0.002 | 20 | 2 | 0.2 | 0.02 | 0.002 | 0 |
| 0.0008 | 8 | 0.8 | 0.08 | 0.008 | 0.0008 | 0 |
| 0.0002 | 2 | 0.2 | 0.02 | 0.002 | 0.0002 | 0 |
| 0.00008 | 0.8 | 0.08 | 0.008 | 0.0008 | 0.00008 | 0 |
| 0.00002 | 0.2 | 0.02 | 0.002 | 0.0002 | 0.00002 | 0 |

[a] Do not round to nearest integer.

6.2.2 *Hazardous waste quantity.* Assign a hazardous waste quantity factor value for the air migration pathway as specified in section 2.4.3. Enter this value in Table 6-1.

6.2.3 *Calculation of waste characteristics factor category value.* Multiply the toxicity/mobility factor value and the hazardous waste quantity factor value, subject to a maximum product of $1 \times 10^8$. Based on this product, assign a value from Table 3-7 (section 2.4.3.1) to the waste characteristics factor category. Enter this value in Table 6-1.

6.3 *Targets.*

Evaluate the targets factor category based on four factors: nearest individual, population, resources, and sensitive environments. Include only those targets (for example, individuals, sensitive environments) located within the 4-mile target distance limit, except: if an observed release is established beyond the 4-mile target distance limit, include those additional targets that are specified below in this section and in section 6.3.4.

Evaluate the nearest individual and population factors based on whether the target populations are subject to Level I concentrations, Level II concentrations, or potential contamination. Determine which applies to a target population as follows.

If no samples meet the criteria for an observed release to air and if there is no observed release by direct observation, consider the entire population within the 4-mile target distance limit to be subject to potential contamination.

If one or more samples meet the criteria for an observed release to air or if there is an observed release by direct observation, evaluate the population as follows:

- Determine the most distant sample location that meets the criteria for Level I concentrations as specified in sections 2.5.1 and 2.5.2 and the most distant location (that is, sample location or direct observation location) that meets the criteria for Level II concentrations. Use the health-based benchmarks from Table 6-14 in determining the level of contamination for sample locations. If the most distant Level II location is closer to a source than the most distant Level I sample location, do not consider the Level II location.
- Determine the single most distant location (sample location or direct observation location) that meets the criteria for Level I or Level II concentrations.
- If this single most distant location is within the 4-mile target distance limit, identify the distance categories from Table 6-15 in which the selected Level I concentrations sample and Level II concentrations sample (or direct observation location) are located:
  - –Consider the target population anywhere within this furthest Level I distance category, or anywhere within a distance category closer to a source at the site, as subject to Level I concentrations.
  - –Consider the target population located beyond any Level I distance categories, up to and including the population anywhere within the furthest Level II distance category, as subject to Level II concentrations.
  - –Consider the remainder of the target population within the 4-mile target distance limit as subject to potential contamination.
- If the single most distant location is beyond the 4-mile target distance limit, identify the distance at which the selected Level I concentrations sample and Level II concentrations sample (or direct observation location) are located:
  - –If the Level I sample location is within the 4-mile target distance limit, identify the target population subject to Level I concentrations as specified above.
  - –If the Level I sample location is beyond the 4-mile target distance limit, consider the target population located anywhere within a distance from the sources at the site equal to the distance to this sample location to be subject to Level I concentrations and include them in the evaluation.
  - –Consider the target population located beyond the Level I target population, but located anywhere within a distance from the sources at the site equal to the distance to the selected Level II location, to be subject to Level II concentrations and include them in the evaluation.



–Do not include any target population as subject to potential contamination.

TABLE 6-14.—HEALTH-BASED BENCHMARKS FOR HAZARDOUS SUBSTANCES IN AIR

- Concentration corresponding to National Ambient Air Quality Standard (NAAQS).
- Concentration corresponding to National Emission Standards for Hazardous Air Pollutants (NESHAPs).
- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for inhalation exposures.
- Screening concentration for noncancer toxicological responses corresponding to the Reference Dose (RfD) for inhalation exposures.

TABLE 6-15.—AIR MIGRATION PATHWAY DISTANCE WEIGHTS

| Distance category (miles) | Assigned distance weight [a] |
|---|---|
| 0 | 1.0 |
| Greater than 0 to ¼ | 0.25 |
| Greater than ¼ to ½ | 0.054 |
| Greater than ½ to 1 | 0.016 |
| Greater than 1 to 2 | 0.0051 |
| Greater than 2 to 3 | 0.0023 |
| Greater than 3 to 4 | 0.0014 |
| Greater than 4 | 0 |

[a] Do not round to nearest integer.

6.3.1 *Nearest individual.* Assign the nearest individual factor a value as follows:

- If one or more residences or regularly occupied buildings or areas is subject to Level I concentrations as specified in section 6.3, assign a value of 50.
- If not, but if one or more a residences or regularly occupied buildings or areas is subject to Level II concentrations, assign a value of 45.
- If none of the residences and regularly occupied buildings and areas is subject to Level I or Level II concentrations, assign a value to this factor based on the shortest distance to any residence or regularly occupied building or area, as measured from any source at the site with an air migration containment factor value greater than 0. Based on this shortest distance, assign a value from Table 6-16 to the nearest individual factor.

Enter the value assigned in Table 6-1.

TABLE 6-16.—NEAREST INDIVIDUAL FACTOR VALUES

| Distance to nearest individual (miles) | Assigned value |
|---|---|
| Level I concentrations [a] | 50 |
| Level II concentrations [a] | 45 |
| 0 to ⅛ | 20 |
| Greater than ⅛ to ¼ | 7 |
| Greater than ¼ to 1/2 | 2 |
| Greater than ½ to 1 | 1 |
| Greater than 1 | 0 |

[a] Distance does not apply.

6.3.2 *Population.* In evaluating the population factor, count residents, students, and workers regularly present within the target distance limit. Do not count transient populations such as customers and travelers passing through the area.

In estimating residential population, when the estimate is based on the number of residences, multiply each residence by the average number of persons per residence for the county in which the residence is located.

6.3.2.1 *Level of contamination.* Evaluate the population factor based on three factors: Level I concentrations, Level II concentrations, and potential contamination.

Evaluate the population subject to Level I concentrations (see section 6.3) as specified in section 6.3.2.2, the population subject to Level II concentrations as specified in section 6.3.2.3, and the population subject to potential contamination as specified in section 6.3.2.4.

For the potential contamination factor, use population ranges in evaluating the factor as specified in section 6.3.2.4. For the Level I and Level II concentrations factors, use the population estimate, not population ranges, in evaluating both factors.

6.3.2.2 *Level I concentrations.* Sum the number of people subject to Level I concentrations. Multiply this sum by 10. Assign the product as the value for this factor. Enter this value in Table 6-1.

6.3.2.3 *Level II concentrations.* Sum the number of people subject to Level II concentrations. Do not include those people already counted under the Level I concentrations factor. Assign this sum as the value for this factor. Enter this value in Table 6-1.

6.3.2.4 *Potential contamination.* Determine the number of people within each distance category of the target distance limit (see Table 6-15) who are subject to potential contamination. Do not include those people already counted under the Level I and Level II concentrations factors.

Based on the number of people present within a distance category, assign a distance-weighted population value for that distance category from Table 6-17. (Note that the distance-weighted population values in Table 6-17 incorporate the distance weights from Table 6-15. Do not multiply the values from Table 6-17 by these distance weights.)

Calculate the potential contamination factor value (PI) as follows:

$$PI = \frac{1}{10} \sum_{i=1}^{n} W_i$$

where:

$W_i$ = Distance-weighted population from Table 6-17 for distance category i.

n = Number of distance categories.

If PI is less than 1, do not round it to the nearest integer; if PI is 1 or more, round to the nearest integer. Enter this value in Table 6-1.

6.3.2.5 *Calculation of population factor value.* Sum the factor values for Level I concentrations, Level II concentrations, and potential contamination. Do not round this sum to the nearest integer. Assign this sum as the population factor value. Enter this value in Table 6-1.

TABLE 6-17.—DISTANCE-WEIGHTED POPULATION VALUES FOR POTENTIAL CONTAMINATION FACTOR FOR AIR PATHWAY [a]

| Distance category (miles) | Number of people within the distance category | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 0 | 1 to 10 | 11 to 30 | 31 to 100 | 101 to 300 | 301 to 1,000 | 1,001 to 3,000 | 3,001 to 10,000 | 10,001 to 30,000 | 30,001 to 100,000 | 100,001 to 300,000 | 300,001 to 1,000,000 | 1,000,001 to 3,000,000 |
| On a source | 0 | 4 | 17 | 53 | 164 | 522 | 1,633 | 5,214 | 16,325 | 52,137 | 163,246 | 521,360 | 1,632,455 |
| Greater than 0 to ¼ | 0 | 1 | 4 | 13 | 41 | 131 | 408 | 1,304 | 4,081 | 13,034 | 40,812 | 130,340 | 408,114 |
| Greater than ¼ to ½ | 0 | 0.2 | 0.9 | 3 | 9 | 28 | 88 | 282 | 882 | 2,815 | 8,815 | 28,153 | 88,153 |
| Greater than ½ to 1 | 0 | 0.06 | 0.3 | 0.9 | 3 | 8 | 26 | 83 | 261 | 834 | 2,612 | 8,342 | 26,119 |
| Greater than 1 to 2 | 0 | 0.02 | 0.09 | 0.3 | 0.8 | 2 | 8 | 27 | 83 | 266 | 833 | 2,659 | 8,326 |
| Greater than 2 to 3 | 0 | 0.009 | 0.04 | 0.1 | 0.4 | 1 | 4 | 12 | 38 | 120 | 378 | 1,198 | 3,755 |
| Greater than 3 to 4 | 0 | 0.005 | 0.02 | 0.07 | 0.2 | 0.7 | 2 | 7 | 23 | 73 | 229 | 730 | 2,295 |

[a] Round the number of people present within a distance category to nearest integer. Do not round the assigned distance-weighted population value to nearest integer.

6.3.3 *Resources.* Evaluate the resources factor as follows:

- Assign a value of 5 if one or more of the following resources are present within one-half mile of a source at the site having an air

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migration containment factor value greater than 0:

–Commercial agriculture.
–Commercial silviculture.
–Major or designated recreation area.

• **Assign a value of 0 if none of these resources is present.**

Enter the value assigned in Table 6–1.

6.3.4 *Sensitive environments.* Evaluate sensitive environments based on two factors: actual contamination and potential contamination. Determine which factor applies as follows.

**If no samples meet the criteria for an observed release to air and if there is no observed release by direct observation, consider all sensitive environments located, partially or wholly, within the target distance limit to be subject to potential contamination.**

*If* one or more samples meet the criteria for an observed release to air or if there is an observed release by direct observation, determine the most distant location (that is, sample location or direct observation location) that meets the criteria for an observed release:

• If the most distant location meeting the criteria for an observed release is within the 4-mile target distance limit, identify the distance category from Table 6–15 in which it is located:

–Consider sensitive environments located, partially or wholly, anywhere within this distance category or anywhere within a distance category closer to a source at the site as subject to actual contamination.
–Consider all other sensitive environments located, partially or wholly, within the target distance limit as subject to potential contamination.

• If the most distant location meeting the criteria for an observed release is beyond the 4-mile target distance limit, identify the distance at which it is located:

–Consider sensitive environments located, partially or wholly, anywhere within a distance from the sources at the site equal to the distance to this location to be subject to actual contamination and include all such sensitive environments in the evaluation.
–Do not include any sensitive environments as subject to potential contamination.

6.3.4.1 *Actual contamination.* Determine those sensitive environments subject to actual contamination (i.e., those located partially or wholly within a distance category subject to actual contamination). Assign value(s) from Table 4–23 (section 4.1.4.3.1.1) to each sensitive environment subject to actual contamination.

For those sensitive environments that are wetlands, assign an additional value from Table 6–18. In assigning a value from Table 6–18, include only those portions of wetlands located within distance categories subject to actual contamination. If a wetland is located partially in a distance category subject to actual contamination and partially in one subject to potential contamination, then solely for purposes of Table 6–18, count the portion in the distance category subject to potential contamination under the potential contamination factor in section 6.3.4.2. Determine the total acreage of wetlands within those distance categories subject to actual contamination and assign a value from Table 6–18 based on this total acreage.

Calculate the actual contamination factor value (EA) as follows:

$$EA = WA + \sum_{i=1}^{n} S_i$$

where:

WA = Value assigned from Table 6–18 for wetlands in distance categories subject to actual contamination.
$S_i$ = Value(s) assigned from Table 4–23 to sensitive environment i.
n = Number of sensitive environments subject to actual contamination.

Enter the value assigned in Table 6–1.

TABLE 6–18.—WETLANDS RATING VALUES FOR AIR MIGRATION PATHWAY [a]

| Wetland area (acres) | Assigned value |
|---|---|
| Less than 1 | 0 |
| 1 to 50 | 25 |
| Greater than 50 to 100 | 75 |
| Greater than 100 to 150 | 125 |
| Greater than 150 to 200 | 175 |
| Greater than 200 to 300 | 250 |
| Greater than 300 to 400 | 350 |
| Greater than 400 to 500 | 450 |
| Greater than 500 | 500 |

[a] Wetlands as defined in 40 CFR section 230.3.

6.3.4.2 *Potential contamination.* Determine those sensitive environments located, partially or wholly, within the target distance limit that are subject to potential contamination. Assign value(s) from Table 4–23 to each sensitive environment subject to potential contamination. Do not include those sensitive environments already counted for Table 4–23 under the actual contamination factor.

For each distance category subject to potential contamination, sum the value(s) assigned from Table 4–23 to the sensitive environments in that distance category. If a sensitive environment is located in more than one distance category, assign the sensitive environment only to that distance category having the highest distance weighting value from Table 6–15.

For those sensitive environments that are wetlands, assign an additional value from Table 6–18. In assigning a value from Table 6–18, include only those portions of wetlands located within distance categories subject to potential contamination, as specified in section 6.3.4.1. Treat the wetlands in each separate distance category as separate sensitive environments solely for purposes of applying Table 6–18. Determine the total acreage of wetlands within each of these distance categories and assign a separate value from Table 6–18 for each distance category.

Calculate the potential contamination factor value (EP) as follows:

$$EP = \frac{1}{10} \sum_{j=1}^{m} ([W_j + S_j](D_j)$$

Where:

$$S_j = \sum_{i=1}^{n} S_{ij}$$

$S_{ij}$ = Value(s) assigned from Table 4–23 to sensitive environment in distance category j.
n = Number of sensitive environments subject to potential contamination.
$W_j$ = Value assigned from Table 6–18 for wetland area in distance category j.
$D_j$ = Distance weight from Table 6–15 for distance category j.
m = Number of distance categories subject to potential contamination.

If EP is less than 1, do not round it to the nearest integer; if EP is 1 or more, round to the nearest integer. Enter the value assigned in Table 6–1.

6.3.4.3 *Calculation of sensitive environments factor value.* Sum the factor values for actual contamination and potential contamination. Do not round this sum, designated as EB, to the nearest integer.

Because the pathway score based solely on sensitive environments is limited to a maximum of 60, use the value EB to determine the value for the sensitive environments factor as follows:

• Multiply the values assigned to likelihood of release (LR), waste characteristics (WC), and EB. Divide the product by 82,500.

–If the result is 60 or less, assign the value EB as the sensitive environments factor value.
–If the result exceeds 60, calculate a value EC as follows:

$$EC = \frac{(60)(82{,}500)}{(LR)(WC)}$$

Assign the value EC as the sensitive environments factor value. Do not round this value to the nearest integer.

Enter the value assigned for the sensitive environments factor in Table 6–1.

6.3.5 *Calculation of targets factor category value.* Sum the nearest individual, population, resources, and sensitive environments factor values. Do not round this sum to the nearest integer. Assign this sum as the targets factor category value. Enter this value in Table 6–1.

6.4 *Calculation of air migration pathway score.* Multiply the values for likelihood of release, waste characteristics, and targets, and round the product to the nearest integer. Then divide by 82,500. Assign the resulting value, subject to a maximum value of 100, as the air migration pathway score ($S_a$). Enter this score in Table 6–1.



*7.0 Sites Containing Radioactive Substances.*

In general, radioactive substances are hazardous substances under CERCLA and should be considered in HRS scoring. Releases of certain radioactive substances are, however, excluded from the definition of "release" in section 101(22) of CERCLA, as amended, and should not be considered in HRS scoring.

Evaluate sites containing radioactive substances using the instructions specified in sections 2 through 6, supplemented by the instructions in this section. Those factors denoted with a "yes" in Table 7–1 are evaluated differently for sites containing radioactive substances than for sites containing only nonradioactive hazardous substances, while those denoted with a "no" are not evaluated differently and are not addressed in this section.

TABLE 7–1.—HRS FACTORS EVALUATED DIFFERENTLY FOR RADIONUCLIDES

| Ground water pathway | Status [a] | Surface water pathway | Status [a] | Soil exposure pathway | Status [a] | Air pathway | Status [a] |
|---|---|---|---|---|---|---|---|
| **Likelihood of Release** | | **Likelihood of Release** | | **Likelihood of Exposure** | | **Likelihood of Release** | |
| Observed Release | Yes | Observed Release | Yes | Observed Contamination | Yes | Observed Release | Yes |
| Potential to Release | No | Potential to Release | No | Attractiveness/Accessibility to Nearby Residents | No | Gas Potential to Release | No |
| Containment | No | Overland Flow Containment. | No | | | Gas Containment | No |
| Net Precipitation | No | Runoff | No | Area of Contamination | No | Gas Source Type | No |
| Depth to Aquifer | No | Distance to Surface Water | No | | | Gas Migration Potential | No |
| Travel Time | No | Flood Frequency | No | | | Particulate Potential to Release | No |
| | | Flood Containment | No | | | Particulate Containment | No |
| | | | | | | Particulate Source Type | No |
| | | | | | | Particulate Migration Potential. | No |
| **Waste Characteristics** | | **Waste Characteristics** | | **Waste Characteristics** | | **Waste Characteristics** | |
| Toxicity | Yes | Toxicity/Ecotoxicity | Yes/Yes | Toxicity | Yes | Toxicity | Yes |
| Mobility | No | Persistence/Mobility | Yes/No | | | Mobility | No |
| Hazardous Waste Quantity | Yes | Bioaccumulation Potential | No | Hazardous Waste Quantity | Yes | Hazardous Waste Quantity | Yes |
| | | Hazardous Waste Quantity | Yes | | | | |
| **Targets** | | **Targets** | | **Targets** | | **Targets** | |
| Nearest Well | Yes [b] | Nearest Intake | Yes [b] | Resident Individual | Yes [b] | Nearest Individual | Yes [b] |
| Population | Yes [b] | Drinking Water Population | Yes [b] | Resident Population | Yes [b] | Population | Yes [b] |
| Resources | No | Resources | No | Workers | No | Resources | No |
| Wellhead Protection Area | No | Sensitive Environments | Yes [b] | Resources | No | Sensitive Environments | No |
| | | Human Food Chain Individual | Yes [b] | Terrestrial Sensitive Environments. | No | | |
| | | Human Food Chain Population. | Yes [b] | | | | |
| | | | | Nearby Individual | No | | |
| | | | | Population Within 1 Mile | No | | |

[a] Factors evaluated differently are denoted by "yes"; factors not evaluated differently are denoted by "no."
[b] Difference is in the determination of Level I and Level II concentrations.

In general, sites containing mixed radioactive and other hazardous substances involve more evaluation than sites containing only radionuclides. For sites containing mixed radioactive and other hazardous substances, HRS factors are evaluated based on considerations of both the radioactive substances and the other hazardous substances in order to derive a single set of factor values for each factor category in each of the four pathways. Thus, the HRS score for these sites reflects the combined potential hazards posed by both the radioactive and other hazardous substances.

Section 7 is organized by factor category, similar to sections 3 through 6. Pathway-specific differences in evaluation criteria are specified under each factor category, as appropriate. These differences apply largely to the soil exposure pathway and to sites containing mixed radioactive and other hazardous substances. All evaluation criteria specified in sections 2 through 6 must be met, except where modified in section 7.

7.1 *Likelihood of release/likelihood of exposure.* Evaluate likelihood of release for the three migration pathways and likelihood of exposure for the soil exposure pathway as specified in sections 2 through 6, except: establish an observed release and observed contamination as specified in section 7.1.1. When an observed release cannot be established for a migration pathway, evaluate potential to release as specified in section 7.1.2. When observed contamination cannot be established, do not evaluate the soil exposure pathway.

7.1.1 *Observed release/observed contamination.* For radioactive substances, establish an observed release for each migration pathway by demonstrating that the site has released a radioactive substance to the pathway (or watershed or aquifer, as appropriate); establish observed contamination for the soil exposure pathway as indicated below. Base these demonstrations on one or more of the following, as appropriate to the pathway being evaluated:

• Direct observation:

–For each migration pathway, a material that contains one or more radionuclides has been seen entering the atmosphere, surface water, or ground water, as appropriate, or is known to have entered ground water or surface water through direct deposition, or
–For the surface water migration pathway, a source area containing radioactive substances has been flooded at a time that radioactive substances were present and one or more radioactive substances were in contact with the flood waters.

• Analysis of radionuclide concentrations in samples appropriate to the pathway (that is, ground water, soil, air, surface water, benthic, or sediment samples):

–For radionuclides that occur naturally and for radionuclides that are ubiquitous in the environment:
––Measured concentration (in units of activity, for example, pCi per kilogram [pCi/kg], pCi per liter [pCi/l], pCi per cubic meter [pCi/$m^3$]) of a given radionuclide in the sample are at a level that:
–––Equals or exceeds a value 2 standard deviations above the mean site-specific background concentration for that

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radionuclide in that type of sample, or

---Exceeds the upper-limit value of the range of regional background concentration values for that specific radionuclide in that type of sample.

--Some portion of the increase must be attributable to the site to establish the observed release (or observed contamination), and

--For the soil exposure pathway only, the radionuclide must also be present at the surface or covered by 2 feet or less of cover material (for example, soil) to establish observed contamination.

-For man-made radionuclides without ubiquitous background concentrations in the environment:

--Measured concentration (in units of activity) of a given radionuclide in a sample equals or exceeds the sample quantitation limit for that specific radionuclide in that type of media and is attributable to the site.

--However, if the radionuclide concentration equals or exceeds its sample quantitation limit, but its release can also be attributed to one or more neighboring sites, then the measured concentration of that radionuclide must also equal or exceed a value either 2 standard deviations above the mean concentration of that radionuclide contributed by those neighboring sites or 3 times its background concentration, whichever is lower.

--If the sample quantitation limit cannot be established:

---If the sample analysis was performed under the EPA Contract Laboratory Program, use the EPA contract-required quantitation limit (CRQL) in place of the sample quantitation limit in establishing an observed release (or observed contamination).

---If the sample analysis is not performed under the EPA Contract Labatory Program, use the detection limit in place of the sample quantitation limit.

--For the soil exposure pathway only, the radionuclide must also be present at the surface or covered by 2 feet or less of cover material (for example, soil) to establish observed contamination.

• Gamma radiation measurements (applies only to observed contamination for the soil exposure pathway):

-The gamma radiation exposure rate, as measured in microroentgens per hour (μR/hr) using a survey instrument held 1 meter above the ground surface (or 1 meter away from an aboveground source), equals or exceeds 2 times the site-specific background gamma radiation exposure rate.

-Some portion of the increase must be attributable to the site to establish observed contamination. The gamma-emitting radionuclides do not have to be within 2 feet of the surface of the source.

For the three migration pathways, if an observed release can be established for the pathway (or aquifer or watershed, as appropriate), assign the pathway (or aquifer or watershed) an observed release factor value of 550 and proceed to section 7.2. If an observed release cannot be established, assign an observed release factor value of 0 and proceed to section 7.1.2.

For the soil exposure pathway, if observed contamination can be established, assign the likelihood of exposure factor for resident population a value of 550 if there is an area of observed contamination in one or more locations listed in section 5.1; evaluate the likelihood of exposure factor for nearby population as specified in section 5.2.1; and proceed to section 7.2. If observed contamination cannot be established, do not evaluate the soil exposure pathway.

At sites containing mixed radioactive and other hazardous substances, evaluate observed release (or observed contamination) separately for radionuclides as described in this section and for other hazardous substances as described in sections 2 through 6.

For the three migration pathways, if an observed release can be established based on either radionuclides or other hazardous substances, or both, assign the pathway (or aquifer or watershed) an observed release factor value of 550 and proceed to section 7.2. If an observed release cannot be established based on either radionuclides or other hazardous substances, assign an observed release factor value of 0 and proceed to section 7.1.2.

For the soil exposure pathway, if observed contamination can be established based on either radionuclides or other hazardous substances, or both, assign the likelihood of exposure factor for resident population a value of 550 if there is an area of observed contamination in one or more locations listed in section 5.1; evaluate the likelihood of exposure factor for nearby population as specified in section 5.2.1; and proceed to section 7.2. If observed contamination cannot be established based on either radionuclides or other hazardous substances, do not evaluate the soil exposure pathway.

7.1.2 *Potential to release.* For the three migration pathways, evaluate potential to release for sites containing radionuclides in the same manner as specified for sites containing other hazardous substances. Base the evaluation on the physical and chemical properties of the radionuclides, not on their level of radioactivity.

For sites containing mixed radioactive and other hazardous substances, evaluate potential to release considering radionuclides and other hazardous substances together. Evaluate potential to release for each migration pathway as specified in sections 3, 4, or 6, as appropriate.

7.2 *Waste characteristics.* For radioactive substances, evaluate the human toxicity factor, the ecosystem toxicity factor, the surface water persistence factor, and the hazardous waste quantity factor as specified in the following sections. Evaluate all other waste characteristic factors as specified in sections 2 through 6.

7.2.1 *Human toxicity.* For radioactive substances, evaluate the human toxicity factor as specified below, not as specified in section 2.4.1.1.

Assign human toxicity factor values to those radionuclides available to the pathway based on quantitative dose-response parameters for cancer risks as follows:

• Evaluate radionuclides only on the basis of carcinogenicity and assign all radionuclides to weight-of-evidence category A.

• Assign a human toxicity factor value from Table 7-2 to each radionuclide based on its slope factor (also referred to as cancer potency factor).

-For each radionuclide, use the higher of the slope factors for inhalation and ingestion to assign the factor value.

-If only one slope factor is available for the radionuclide, use it to assign the toxicity factor value.

-If no slope factor is available for the radionuclide, assign that radionuclide a toxicity factor value of 0 and use other radionuclides for which a slope factor is available to evaluate the pathway.

• If all radionuclides available to a particular pathway are assigned a human toxicity factor value of 0 (that is, no slope factor is available for all the radionuclides), use a default human toxicity factor value of 1,000 as the human toxicity factor value for all radionuclides available to the pathway.

At sites containing mixed radioactive and other hazardous substances, evaluate the toxicity factor separately for the radioactive and other hazardous substances and assign each a separate toxicity factor value. This applies regardless of whether the radioactive and other hazardous substances are physically separated, combined chemically, or simply mixed together. Assign toxicity factor values to the radionuclides as specified above and to the other hazardous substances as specified in section 2.4.1.1.

At sites containing mixed radioactive and other hazardous substances, if all radionuclides available to a particular pathway are assigned a human toxicity factor value of 0, use a default human toxicity factor value of 1,000 for all those radionuclides even if nonradioactive hazardous substances available to the pathway are assigned human toxicity factor values greater than 0. Similarly, if all nonradioactive hazardous substances available to the pathway are assigned a human toxicity factor value of 0, use a default human toxicity factor value of 100 for all these nonradioactive hazardous substances even if radionuclides available to the pathway are assigned human toxicity factor values greater than 0.

7.2.2 *Ecosystem toxicity.* For the surface water environmental threat (see sections 4.1.4 and 4.2.4), assign an ecosystem toxicity factor value to radionuclides (alone or combined chemically or mixed with other hazardous substances) using the same slope factors and procedures specified for the human toxicity factor in section 7.2.1, except: use a default of 100, not 1,000, if all radionuclides eligible to be evaluated for ecosystem toxicity receive an ecosystem toxicity factor value of 0.

TABLE 7-2.—TOXICITY FACTOR VALUES FOR RADIONUCLIDES

| Cancer slope factor * (SF) (pCi)$^{-1}$ | Assigned value |
|---|---|
| $3\times10^{-11} \leq SF$ | 10,000 |
| $3\times10^{-12} \leq SF < 3\times10^{-11}$ | 1,000 |
| $SF < 3\times10^{-12}$ | 100 |
| SF not available for the radionuclide | 0 |

* Radionuclide slope factors are estimates of age-averaged, individual lifetime total excess cancer risk per picocurie of radionuclide inhaled or ingested.

At sites containing mixed radioactive and other hazardous substances, evaluate the ecosystem toxicity factor separately for the radioactive and other hazardous substances and assign each a separate ecosystem toxicity factor value. This applies regardless of whether the radioactive and other hazardous substances are physically separated, combined chemically, or simply mixed together. Assign ecosystem toxicity factor values to the radionuclides as specified above and to the other hazardous substances as specified in sections 4.1.4.2.1.1 and 4.2.4.2.1.1. If all radionuclides available to a particular pathway are assigned an ecosystem toxicity factor value of 0, use a default ecosystem toxicity factor value of 100 for all these radionuclides even if nonradioactive hazardous substances available to the pathway are assigned ecosystem toxicity factor values greater than 0. Similarly, if all nonradioactive hazardous substances available to the pathway are assigned an ecosystem toxicity factor value of 0, use a default ecosystem toxicity factor value of 100 for all these nonradioactive hazardous substances even if radionuclides available to the pathway are assigned ecosystem toxicity factor values greater than 0.

7.2.3 *Persistence.* For radionuclides, evaluate the surface water persistence factor based solely on half-life; do not include sorption to sediments in the evaluation as is done for nonradioactive hazardous substances. Assign a persistence factor value from Table 4-10 (section 4.1.2.2.1.2) to each radionuclide based on half-life ($t_{1/2}$) calculated as follows:

$$t_{1/2} = \frac{1}{\frac{1}{r}+\frac{1}{v}}$$

where:

r = Radioactive half-life.

v = Volatilization half-life.

If the volatilization half-life cannot be estimated for a radionuclide from available data, delete it from the equation. Select the portion of Table 4-10 to use in assigning the persistence factor value as specified in section 4.1.2.2.1.2.



At sites containing mixed radioactive and other hazardous substances, evaluate the persistence factor separately for each radionuclide and for each nonradioactive hazardous substance, even if the available data indicate that they are combined chemically. Assign a persistence factor value to each radionuclide as specified in this section and to each nonradioactive hazardous substance as specified in section 4.1.2.2.1.2. When combined chemically, assign a single persistence factor value based on the higher of the two values assigned (individually) to the radioactive and nonradioactive components.

7.2.4 *Selection of substance potentially posing greatest hazard.* For each migration pathway (threat, aquifer, or watershed, as appropriate), select the radioactive substance or nonradioactive hazardous substance that potentially poses the greatest hazard based on its toxicity factor value, combined with the applicable mobility, persistence, and/or bioaccumulation (or ecosystem bioaccumulation) potential factor values. Combine these factor values as specified in sections 2, 3, 4, and 6. For the soil exposure pathway, base the selection on the toxicity factor alone (see sections 2 and 5).

7.2.5 *Hazardous waste quantity.* To calculate the hazardous waste quantity factor value for sites containing radioactive substances, evaluate source hazardous waste quantity (see section 2.4.2.1) using only the following two measures in the following hierarchy (these measures are consistent with Tiers A and B for nonradioactive hazardous substances in sections 2.4.2.1.1 and 2.4.2.1.2):

• Radionuclide constituent quantity (Tier A).

• Radionuclide wastestream quantity (Tier B).

7.2.5.1 *Source hazardous waste quantity for radionuclides.* For each migration pathway, assign a source hazardous waste quantity value to each source having a containment factor value greater than 0 for the pathway being evaluated. For the soil exposure pathway, assign a source hazardous waste quantity value to each area of observed contamination, as applicable to the threat being evaluated. Allocate hazardous substances and hazardous wastestreams to specific sources (or areas of observed contamination) as specified in section 2.4.2.

7.2.5.1.3 *Radionuclide constituent quantity (Tier A).* Evaluate radionuclide constituent quantity for each source (or area of observed contamination) based on the activity content of the radionuclides allocated to the source (or area of observed contamination) as follows:

• Estimate the net activity content (in curies) for the source (or area of observed contamination) based on:

-Manifests, or

-Either of the following equations, as applicable:

$$N = 3.8\times10^{-7}(V)\sum_{i=1}^{n} AC_i$$

where:

N = Estimated net activity content (in curies) for the source (or area of observed contamination).

V = Total volume of material (in cubic yards) in a source (or area of observed contamination) containing radionuclides.

$AC_i$ = Activity concentration above the respective background concentration (in pCi/g) for each radionuclide i allocated to the source (or area of observed contamination).

n = Number of radionuclides allocated to the source (or area of observed contamination) above the respective background concentrations.

or,

$$N = 2.1\times10^{-9}(V)\sum_{i=1}^{n} AC_i$$

where:

N = Estimated net activity content (in curies) for the source (or area of observed contamination).

V = Total volume of material (in gallons) in a source (or area of observed contamination) containing radionuclides.

$AC_i$ = Activity concentration above the respective background concentration (in pCi/l) for each radionuclide i allocated to the source (or area of observed contamination).

n = Number of radionuclides allocated to the source (or area of observed contamination) above the respective background concentrations.

--Estimate volume for the source (or volume for the area of observed contamination) based on records or measurements.

--For the soil exposure pathway, in estimating the volume for areas of observed contamination, do not include more than the first 2 feet of depth, except: for those types of areas of observed contamination listed in Tier C of Table 5-2 (section 5.1.2.2), include the entire depth, not just that within 2 feet of the surface.

• Convert from curies of radionuclides to equivalent pounds of nonradioactive hazardous substances by multiplying the activity estimate for the source (or area of observed contamination) by 1,000.

• Assign this resulting product as the radionuclide constituent quantity value for the source (or area of observed contamination).

If the radionuclide constituent quantity for the source (or area of observed

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contamination) is adequately determined (that is, the total activity of all radionuclides in the source and releases from the source [or in the area of observed contamination] is known or is estimated with reasonable confidence), do not evaluate the radionuclide wastestream quantity measure in section 7.2.5.1.2. Instead, assign radionuclide wastestream quantity a value of 0 and proceed to section 7.2.5.1.3. If the radionuclide constituent quantity is not adequately determined, assign the source (or area of observed contamination) a value for radionuclide constituent quantity based on the available data and proceed to section 7.2.5.1.2.

7.2.5.1.2 *Radionuclide wastestream quantity (Tier B).* Evaluate radionuclide wastestream quantity for the source (or area of observed contamination) based on the activity content of radionuclide wastestreams allocated to the source (or area of observed contamination) as follows:

- Estimate the total volume (in cubic yards or in gallons) of wastestreams containing radionuclides allocated to the source (or area of observed contamination).
- Divide the volume in cubic yards by 0.55 (or the volume in gallons by 110) to convert to the activity content expressed in terms of equivalent pounds of nonradioactive hazardous substances.
- Assign the resulting value as the radionuclide wastestream quantity value for the source (or area of observed contamination).

7.2.5.1.3 *Calculation of source hazardous waste quantity value for radionuclides.* Select the higher of the values assigned to the source (or area of observed contamination) for radionuclide constituent quantity and radionuclide wastestream quantity. Assign this value as the source hazardous waste quantity value for the source (or area of observed contamination). Do not round to the nearest integer.

7.2.5.2 *Calculation of hazardous waste quantity factor value for radionuclides.* Sum the source hazardous waste quantity values assigned to all sources (or areas of observed contamination) for the pathway being evaluated and round this sum to the nearest integer, except: if the sum is greater than 0, but less than 1, round it to 1. Based on this value, select a hazardous waste quantity factor value for this pathway from Table 2–6 (section 2.4.2.2).

For a migration pathway, if the radionuclide constituent quantity is adequately determined (see section 7.2.5.1.1) for all sources (or all portions of sources and releases remaining after a removal action), assign the value from Table 2–6 as the hazardous waste quantity factor value for the pathway. If the radionuclide constituent quantity is not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action), assign a factor value as follows:

- If any target for that migration pathway is subject to Level I or Level II concentrations (see section 7.3), assign either the value from Table 2–6 or a value of 100, whichever is greater, as the hazardous waste quantity factor value for that pathway.
- If none of the targets for that pathway is subject to Level I or Level II concentrations, assign a factor value as follows:
  - If there has been no removal action, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value for that pathway.
  - If there has been a removal action:
    - Determine values from Table 2–6 with and without consideration of the removal action.
    - If the value that would be assigned from Table 2–6 without consideration of the removal action would be 100 or greater, assign either the value from Table 2–6 with consideration of the removal action or a value of 100, whichever is greater, as the hazardous waste quantity factor value for the pathway.
    - If the value that would be assigned from Table 2–6 without consideration of the removal action would be less than 100, assign a value of 10 as the hazardous waste quantity factor value for the pathway.

For the soil exposure pathway, if the radionuclide constituent quantity is adequately determined for all areas of observed contamination, assign the value from Table 2–6 as the hazardous waste quantity factor value. If the radionuclide constituent quantity is not adequately determined for one or more areas of observed contamination, assign either the value from Table 2–6 or a value of 10, whichever is greater, as the hazardous waste quantity factor value.

7.2.5.3 *Calculation of hazardous waste quantity factor value for sites containing mixed radioactive and other hazardous substances.* For each source (or area of observed contamination) containing mixed radioactive and other hazardous substances, calculate two source hazardous waste quantity values—one based on radionuclides as specified in sections 7.2.5.1 through 7.2.5.1.3 and the other based on the nonradioactive hazardous substances as specified in sections 2.4.2.1 through 2.4.2.1.5 (that is, determine each value as if the other type of substance was not present). Sum the two values to determine a combined source hazardous waste quantity value for the source (or area of observed contamination). Do not round this value to the nearest integer.

Use this combined source hazardous waste quantity value to calculate the hazardous waste quantity factor value for the pathway as specified in section 2.4.2.2, except: if either the hazardous constituent quantity or the radionuclide constituent quantity, or both, are not adequately determined for one or more sources (or one or more portions of sources or releases remaining after a removal action) or for one or more areas of observed contamination, as applicable, assign the value from Table 2–6 or the default value applicable for the pathway, whichever is greater, as the hazardous waste quantity factor value for the pathway.

7.3 *Targets.* For radioactive substances, evaluate the targets factor category as specified in section 2.5 and sections 3 through 6, except: establish Level I and Level II concentrations at sampling locations as specified in sections 7.3.1 and 7.3.2.

For all pathways (and threats), use the same target distance limits for sites containing radioactive substances as is specified in sections 3 through 6 for sites containing nonradioactive hazardous substances. At sites containing mixed radioactive and other hazardous substances, include all sources (or areas of observed contamination) at the site in identifying the applicable targets for the pathway.

7.3.1 *Level of contamination at a sampling location.* Determine whether Level I or Level II concentrations apply at a sampling location (and thus to the associated targets) as follows:

- Select the benchmarks from section 7.3.2 applicable to the pathway (or threat) being evaluated.
- Compare the concentrations of radionuclides in the sample (or comparable samples) to their benchmark concentrations for the pathway (or threat) as specified in section 7.3.2. Treat comparable samples as specified in section 2.5.1.
- Determine which level applies based on this comparison.
- If none of the radionuclides eligible to be evaluated for the sampling location have an applicable benchmark, assign Level II to the actual contamination at that sampling location for the pathway (or threat).
- In making the comparison, consider only those samples, and only those radionuclides in the sample, that meet the criteria for an observed release (or observed contamination) for the pathway, except: tissue samples from aquatic human food chain organisms may also be used for the human food chain threat of the surface water pathway as specified in sections 4.1.3.3 and 4.1.3.3.

7.3.2 *Comparison to benchmarks.* Use the following media specific benchmarks (expressed in activity units, for example, pCi/l for water, pCi/kg for soil and for aquatic human food chain organisms, and pCi/m³ for air) for making the comparisons for the indicated pathway (or threat):

- Maximum Contaminant Levels (MCLs)—ground water migration pathway and drinking water threat in surface water migration pathway.
- Uranium Mill Tailings Radiation Control Act (UMTRCA) standards—soil exposure pathway only.
- Screening concentration for cancer corresponding to that concentration that corresponds to the $10^{-6}$ individual cancer risk for inhalation exposures (air migration pathway) or for oral exposures (ground water migration pathway; drinking water or human food chain threats in surface water migration pathway; and soil exposure pathway).
  - For the soil exposure pathway, include two screening concentrations for cancer—one for ingestion of surface materials and one for external radiation exposures from gamma-emitting radionuclides in surface materials.



Select the benchmark(s) applicable to the pathway (or threat) being evaluated. Compare the concentration of each radionuclide from the sampling location to its benchmark concentration(s) for that pathway (or threat). Use only those samples and only those radionuclides in the sample that meet the criteria for an observed release (or observed contamination) for the pathway, except: tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of any applicable radionuclide from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations for that pathway (or threat). If more than one benchmark applies to the radionuclide, assign Level I if the radionuclide concentration equals or exceeds the lowest applicable benchmark concentration. In addition, for the soil exposure pathway, assign Level I concentrations at the sampling location if measured gamma radiation exposure rates equal or exceed 2 times the background level (see section 7.1.1).

If no radionuclide individually equals or exceeds its benchmark concentration, but more than one radionuclide either meets the criteria for an observed release (or observed contamination) for the sample or is eligible to be evaluated for a tissue sample (see sections 4.1.3.3 and 4.2.3.3), calculate a value for index I for these radionuclides as specified in section 2.5.2. If I equals or exceeds 1, assign Level I to the sampling location. If I is less than 1, assign Level II.

At sites containing mixed radioactive and other hazardous substances, establish the level of contamination for each sampling location considering radioactive substances and nonradioactive hazardous substances separately. Compare the concentration of each radionuclide and each nonradioactive hazardous substance from the sampling location to its respective benchmark concentration(s). Use only those samples and only those substances in the sample that meet the criteria for an observed release (or observed contamination) for the pathway except: tissue samples from aquatic human food chain organisms may be used as specified in sections 4.1.3.3 and 4.2.3.3. If the concentration of one or more applicable radionuclides or other hazardous substances from any sample equals or exceeds its benchmark concentration, consider the sampling location to be subject to Level I concentrations. If more than one benchmark applies to a radionuclide or other hazardous substance, assign Level I if the concentration of the radionuclide or other hazardous substance equals or exceeds its lowest applicable benchmark concentration.

If no radionuclide or other hazardous substance individually exceed a benchmark concentration, but more than one radionuclide or other hazardous substance either meets the criteria for an observed release (or observed contamination) for the sample or is eligible to be evaluated for a tissue sample, calculate an index I for both types of substances as specified in section 2.5.2. Sum the index I values for the two types of substances. If the value, individually or combined, equals or exceeds 1, assign Level I to the sample location. If it is less than 1, calculate an index J for the nonradioactive hazardous substances as specified in section 2.5.2. If J equals or exceeds 1, assign Level I to the sampling location. If J is less than 1, assign Level II.

[FR Doc. 90–27195 Filed 12–13–90; 8:45 am]
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federal register

Friday
December 14, 1990

Part III

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 121**

**Anti-Drug Program for Personnel Engaged in Specified Transportation Activities; Final Rule, Extension of Compliance Dates; Request for Comments**

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amdt. No. 121-231]

## Anti-Drug Program for Personnel Engaged in Specified Transportation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; extension of compliance dates; request for comments.

SUMMARY: The FAA announces an extension of the dates by which certain persons performing services as contractor employees for parts 121 and 135 certificate holders or other aviation employers subject to the requirements of appendix I of part 121 must be covered by an anti-drug program approved by the FAA. This rulemaking action is necessary to facilitate implementation and administration of the final rule and is intended to provide the FAA with sufficient time to review an anticipated late submission of anti-drug plans and to prevent a potential disruption in the provision of contract aviation services to parts 121 and 135 certificate holders.

DATES: This final rule is effective on December 11, 1990. Comments must be received not later than January 28, 1991.

FOR FURTHER INFORMATION CONTACT: Diane Wood, Acting Manager, Drug Abatement Branch (AAM-220), Office of Aviation Medicine, Federal Aviation Administration, 400 Seventh Street SW., room 2336, Washington, DC 20591, telephone (202) 366-6710.

ADDRESSES: Comments may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25148, 800 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

### Comments Invited

The amendments contained in this final rule extend certain compliance dates for drug testing contractor employees under the FAA anti-drug rule. It is needed immediately to delay the compliance deadlines, the first of which is imminent, previously specified in the final rule. Since the amendment imposes no additional burden on any person, it is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that to the maximum extent possible, operating administrations of the Department of Transportation (DOT) should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in the rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory document number of the amendment number identified in this final rule. Comments must also be submitted in duplicate to the address listed under the caption "Address" above. All comments received will be available for examination by interested persons in the Rules Docket. This amendment may be changed in light of the comments received on this final rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25148." The postcard will be date/time stamped and returned to the commenter. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the public docket.

### Background

On November 11, 1988, the FAA issued a final rule, "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities," requiring specified aviation employers and operators to submit and to implement anti-drug programs for personnel performing sensitive safety- and security-related functions (53 FR 47024; November 21, 1988). These "covered" functions are set forth in section III of appendix I of the final rule. After issuance of the rule, the Air Transport Association (ATA) and the Regional Airline Association (RAA) petitioned the FAA to, among other things, extend the effective date of the final rule as it applied to the required testing of contractor employees performing covered functions and to have the FAA and the aviation industry use the period of the extension to determine the most effective way to include such contractor employees in an anti-drug plan. In particular, the ATA and RAA requested that the FAA reconsider whether contractors performing covered functions for parts 121 and 135 certificate holders should be able to file their own drug testing plans directly with the FAA rather than having to be included under the plans of their part 121 or part 135 employers as required by the final rule.

The FAA considered the petitions and, on April 11, 1989, issued an amendment to the final rule which included an extension of the compliance dates for drug testing of contractor employees and permitted contractors and consortiums (which may be composed of a combustion of contractors, employers or operators) to submit drug testing plans directly to the FAA for approval (54 FR 15148; April 14, 1989). The compliance date extensions included in this amendment permitted parts 121 and 135 certificate holders with more than 50 employees to delay the testing of contractor employees for 360 days from the date which drug testing of the certificate holders' direct employees was initiated. The final compliance date for testing of contractor employees was delayed until no later than December 11, 1990. In addition, the compliance dates in the final rule for testing contractor employees performing covered functions for part 135 certificate holders with 11–50 covered employees, part 135 certificate holders with 10 or fewer covered employees, other operators as defined in § 135.1 (c) and air traffic control facilities not operated by, or under contract with the FAA or the U.S. military, were similarly extended by the April 1989 amendment for a period of 360 days from the compliance date indicated in the final rule.

### Discussion

The FAA has recently received letters from the ATA and the RAA expressing concern on behalf of their members regarding the ability of a substantial number of their members' contractors to have anti-drug plans approved by the FAA prior to December 11, 1990, the date on which drug testing of contractor employees under an FAA-approved anti-drug program must begin. Further, the ATA believes that because the FAA did not include a plan submission deadline for contractors in the amended anti-drug rule, a significant number of contractors will submit anti-drug plans to the FAA shortly before December 11. The ATA also suggests that few such plans will be adequate to receive immediate approval. The ATA feels that while such a situation would not be the fault of the airline industry or the FAA, the airline industry will suffer the consequences of a wide-spread service disruption precipitated by an inability to continue to use contractors performing key, covered functions for its members.

Both the ATA and the RAA have recommended that the FAA resolve what they feel to be a potentially disruptive situation by permitting parts 121 and 135 certificate holders with more than 50 covered employees to continue to use employees of contractors who have not implemented FAA-approved anti-drug plans by December 11, 1990, as long as those contractors have permitted plans to the FAA by December 11. The ATA suggests that an 8-week extension be given to aviation employers to permit them to use contractors who submitted plans to the FAA by the December 11, 1990, compliance date, but who have not yet received approval. The RAA similarly requested relief in circumstances where contractors' previously submitted plans are pending approval.

Although a significant number of contractors have submitted anti-drug plans to the FAA beginning in early 1990, other contractors have not submitted plans or have only recently submitted plans due to confusion over the applicability of the FAA anti-drug rule to their particular activities. This situation has developed despite efforts of certificate holders to educate contractors regarding the need to obtain coverage under an FAA-approved anti-drug plan or face the consequences of the certificate holder ceasing to do business with them. Many contractors have submitted plans to the FAA which have been so significantly deficient in their content as to require the FAA to disapprove the plans.

For those plans which have only recently been submitted or which were submitted earlier but require modification prior to approval, additional time is necessary in order for the FAA to review and process them. Based on this situation, the FAA shares the concern of the ATA and RAA that a significant disruption in the aviation industry may occur if part 121 certificate holders and part 135 certificate holders with more than 50 covered employees must cease using contractor employees who are not subject to drug testing under an approved anti-drug plan after December 11, 1990, where the contractors have attempted to obtain approval by submitting a plan prior to the compliance date for initiating drug testing under an approved anti-drug program.

The FAA further recognizes the potential for the development of a similar disruption when the remaining groups of part 135 certificate holders and other operators in the later phases of rule implementation must ensure that their contractor employees are covered by an FAA-approved anti-drug program. Therefore, the FAA is amending the rule to permit part 121, part 135, other operators as defined in § 135.1(c), and covered air traffic control facilities to continue to use contractor employees to perform covered functions for a period not to exceed 90 days after the compliance date specified in the final rule for employers to implement anti-drug programs for their contractor employees, provided the contractor employee or such contractor employee's company has submitted an anti-drug plan to the FAA for approval prior to such compliance date. Thus, a contractor whose employees perform covered functions for a part 121 or a larger part 135 certificate holder must submit its anti-drug program to the FAA by December 11, 1990, to be covered by the extension. The FAA believes the 90-day extensions will provide sufficient time for the FAA to process any additional plan submissions and provide the industry with adequate temporary relief from the anticipated disruption. It should be noted that this amendment does not affect the compliance dates for contractor employees who are included under the anti-drug plan of a covered employer (e.g., a part 121 certificate holder). Drug testing of such contractor employees included in the covered employer's program for the first phase of rule implementation must begin no later than December 11, 1990.

### Reason for No Notice and Immediate Adoption

This amendment merely extends the time period for compliance with the provisions of the existing rule and imposes no additional burden on any person. For this reason, notice and public comment procedures are impracticable, unnecessary, and contrary to public interest. Moreover, this amendment is needed immediately to delay the compliance deadlines previously specified in the final rule, the first of which is imminent. Under the implementation schedule published in the Federal Register on April 14, 1989, certain aviation employers would have been required to ensure that contractor employees performing specified functions were subject to drug testing under an FAA-approved anti-drug plan by December 11, 1990. To avoid disruption in the aviation industry and to facilitate the efficient implementation of the final anti-drug rule, the FAA has determined that good exists to make this final rule effective in less than 30 days.

### Economic Assessment

Holding to the December 11 deadline to begin drug testing for contractor employees under an FAA-approved anti-drug program could result in substantial dislocations to air carrier operations and to the economic viability of these contractors. Hence, this final rule to extend the compliance date by 90 days is cost relieving and does not impose any additional costs on aviation employees or their contractors whose employees perform convered functions. The foregone potential benefits of postponing the compliance date by 90 days would not have been realized due to the fact that plans are being submitted so close to the December 11 deadline by which testing must begin under an FAA-approved plan that the FAA does not have adequate time to review and approve these plans to permit testing in accordance with the rule.

A similar situation is anticipated for later phases of implementation. In view of the foregoing, a full regulatory evaluation is therefore unnecessary for this rule.

### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendment contained in this final rule only extends compliance date; consequently, the FAA has determined that this amendment to the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

### Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements, it is not necessary to amend the prior approval received from OMB.

### Federalism Determination

The amendment set forth herein would not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that such a preparation does not have federalism implications warranting the preparation of a Federalism Assessment.

### Conclusion

The adoption of this amendment serves to extend currently existing compliance dates. The amendment

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imposes no additional burden by any party. Therefore, the FAA has determined that this amendment is not a major rule under Executive Order 12291 but is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). In addition, it is certified that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant impact, positive or negative, on a substantial number of small entities, and the rule does not warrant preparation of a full regulatory evaluation as the overall impact on the aviation industry will be minimal.

**List of Subjects in 14 CFR Part 121**

Aircraft, Air Safety, Air transportations, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

**The Amendments**

Accordingly, the FAA amends part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

**Appendix I—[Amended]**

2. By revising paragraphs A(3), A(4)a, and A(4)b of section IX of appendix I to part 121 by adding the following sentence to the end of each paragraph:

* * * * *

However, notwithstanding the preceding sentence, an employer may continue to use contractor employees who are not subject to drug testing under an FAA-approved anti-drug program to perform a function listed in section III of this appendix for 90 days after the compliance date specified in this paragraph for implementation of the employer's anti-drug program for its contractor employees, provided that each such contractor employee or contractor employee's company has submitted, in accordance with the provisions of either paragraph A(6) or A(7) of this section IX, an anti-drug plan to the FAA for approval not later than such compliance date.

Issued in Washington, DC on December 11, 1990.

**James B. Busey,**

*Administrator.*

[FR Doc. 90–29296 Filed 12–11–90; 10:05 am]

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Part IV

# Office of Management and Budget

**Cumulative Report on Rescissions and Deferrals; Notice**

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**OFFICE OF MANAGEMENT AND BUDGET**

**Cumulative Report on Rescissions and Deferrals**

December 1, 1990.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of December 1, 1990, of 7 deferrals contained in the first special message for FY 1991. This message was transmitted to Congress on October 4, 1990.

**Rescissions**

As of the date of this report, no rescission proposals are pending before the Congress.

**Deferrals (Table A and Attachment A)**

As of December 1, 1990, $1,120.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1991.

**Information from Special Messages**

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990.

Richard G. Darman,

*Director.*

BILLING CODE 3110-01-M



TABLE A

STATUS OF FY 1991 DEFERRALS

| | Amounts (In millions of dollars) |
|---|---|
| Deferrals proposed by the President..... | 1,120.2 |
| Routine Executive releases through December 1, 1990 | 0 |
| Overturned by the Congress..... | 0 |
| Currently before the Congress..... | 1,120.2 |

Attachments

ATTACHMENT A
Status of FY 1991 Deferrals - As of December 1, 1990
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 12-1-90 |
|---|---|---|---|---|---|---|---|---|---|
| FUNDS APPROPRIATED TO THE PRESIDENT | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic support fund | D91-1 | 149,319 | | 10-04-90 | | | | | 149,319 |
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| Forest Service | | | | | | | | | |
| Expenses, brush disposal | D91-2 | 135,955 | | 10-04-90 | | | | | 135,955 |
| Cooperative work | D91-3 | 273,468 | | 10-04-90 | | | | | 273,468 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation, Defense | D91-4 | 1,186 | | 10-04-90 | | | | | 1,186 |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses (construction) | D91-5 | 7,127 | | 10-04-90 | | | | | 7,127 |

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ATTACHMENT A
Status of FY 1991 Deferrals - As of December 1, 1990
(Amounts in thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments (+) | Amount Deferred as of 12-1-90 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive.... | D91-6 | 14,529 | | 10-04-90 | | | | | 14,529 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Aviation Administration | | | | | | | | | |
| Facilities and equipment (Airport and airway trust fund)..... | D91-7 | 538,659 | | 10-04-90 | | | | | 538,659 |
| TOTAL, DEFERRALS..... | | 1,120,244 | 0 | | 0 | 0 | | 0 | 1,120,244 |

[FR Doc. 90-29371 Filed 12-13-90; 8:45 am]
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Part V

# The President

## Executive Order 12737—President's Commission on Environmental Quality

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# Presidential Documents

Title 3—

The President

## Executive Order 12737 of December 12, 1990

## President's Commission on Environmental Quality

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on environmental quality, it is hereby ordered as follows:

**Section 1.** *Establishment.* There is established the President's Commission on Environmental Quality ("Commission"). The Commission shall comprise not more than 25 members to be appointed by the President. One of the members shall be the Chairman of the Council on Environmental Quality. The remaining members shall be individuals from the private sector who have experience in various aspects of environmental and natural resources matters. The Chairman of the Council on Environmental Quality shall serve as Chairman of the Commission and shall report directly to the President.

**Sec. 2.** *Functions.* (a) The Commission, through the Chairman, shall advise the President on matters involving environmental quality.

(b) The Chairman may, from time to time, invite experts to submit information to the Commission and may direct the members to investigate and report to the Commission on specific environmental issues of national consequence.

**Sec. 3.** *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Commission such information with respect to environmental and natural resources matters as the Commission requires for the purpose of carrying out its functions.

(b) Members of the Commission shall serve without any compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) Any expenses of the Commission shall be paid from the funds available for the expenses of the Council on Environmental Quality.

(d) The Office of Administration shall, on a reimbursable basis, provide such administrative services as may be required.

**Sec. 4.** *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Council on Environmental Quality in accord with the guidelines and procedures established by the Administrator of General Services.

THE WHITE HOUSE,
*December 12, 1990.*

[FR Doc. 90-29541



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# Reader Aids

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**Note:** The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.


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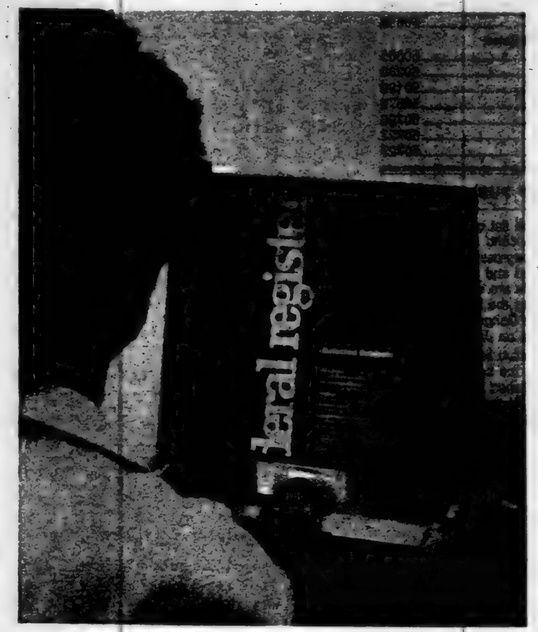
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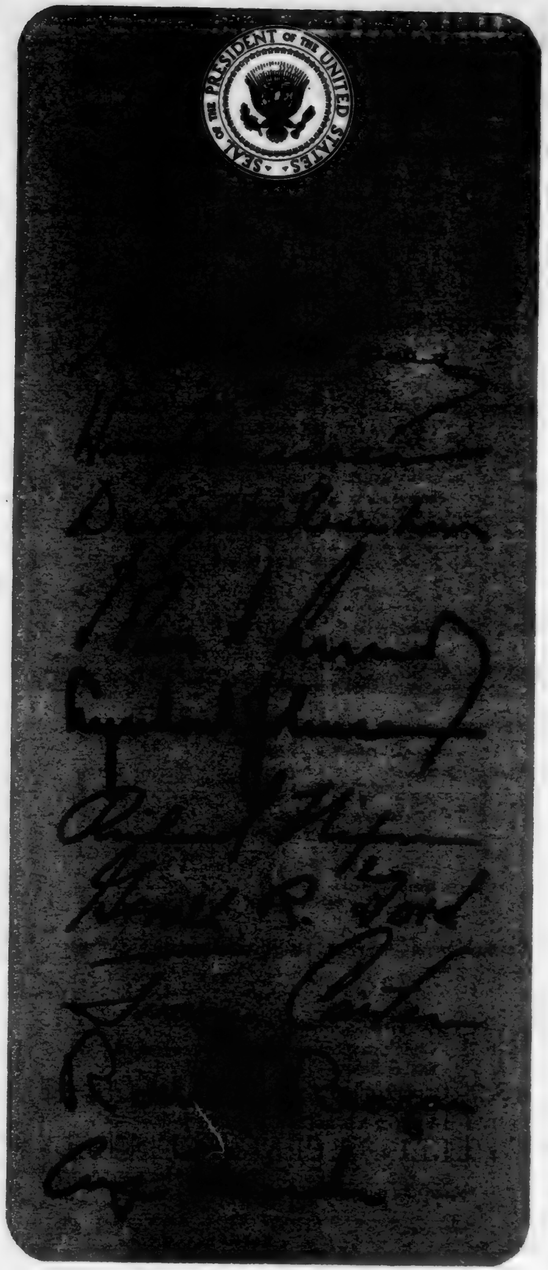
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For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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Atlanta, GA (Parking available)
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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 910**

**[Lemon Regulation 748]**

## Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from December 16 through December 22, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

**EFFECTIVE DATE:** Regulation 748 (7 CFR part 910) is effective for the period from December 16 through December 22, 1990.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,412 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37, 881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,800 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 11,112 cars compared to the 9,436 cars produced last year.

According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,412 cars, the Committee estimates that about 42.2 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.8 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other

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things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on December 11, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 310,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 20,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on December 8, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 297,000 cartons compared with 321,000 cartons shipped during the week ending on December 9, 1989. Export shipments totaled 116,000 cartons compared with 145,000 cartons shipped during the week ending on December 9, 1989. Processing and other uses accounted for 449,000 cartons compared with 374,000 cartons shipped during the week ending on December 9, 1989.

Fresh domestic shipments to date for the 1990–91 season total 5,723,000 cartons compared with 5,540,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,817,000 cartons compared with 2,977,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 5,432,000 cartons compared with 3,887,000 cartons shipped by this time during 1989–90.

For the week ending on December 8, 1990, regulated shipments of lemons to the fresh domestic market were 297,000 cartons on an adjusted allotment of 301,000 cartons, resulting in undershipments of 4,000 cartons. Regulated shipments for the current week (December 9 through December 15, 1990) are estimated at 320,000 cartons on an adjusted allotment of 316,000 cartons. Thus, overshipments of 4,000 cartons should be carried forward to the week ending on December 22, 1990.

The average f.o.b. shipping point price for the week ending on December 8, 1990, was $9.49 per carton based on a reported sales volume of 302,000 cartons compared with last week's average of $9.89 per carton on a reported sales volume of 286,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.24 per carton. The average f.o.b. shipping point price for the week ending on December 9, 1989, was $12.49 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.04 per carton.

The Department's Market News Service reported that, as of December 11, the demand for lemons is "moderate" and the market for lemons is "about steady." At the meeting, a Committee member indicated that demand is good. However, that member commented that the problem of inventory buildup of small-sized fruit (165's and smaller) will likely continue through the winter. One Committee member reported that current Japanese inventory levels are high, the highest level in five years. Several Committee members and an observer commented that the weak export market will ultimately have an adverse impact on the domestic market. The Committee unanimously recommended volume regulation for the week ending on December 22, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 100 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from December 16 through December 22, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 11, 1990, and this action needs to be effective for the regulatory week which begins on December 16, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1048 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

**§ 910.1048 Lemon Regulation 748.**

The quantity of lemons grown in California and Arizona which may be handled during the period from December 16 through December 22, 1990, is established at 310,000 cartons.



Dated: December 12, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-29488 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 1030**

**[DA-90-033]**

## Milk in the Chicago Regional Marketing Area; Revision of Supply Plant Shipping Percentages

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Revision of rules.

**SUMMARY:** This action revises certain provisions of the Chicago Regional milk order for the months of November 1990 through January 1991. The action reduces the shipping percentages for pooling individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and units of supply plants by 5 percentage points (from 10 to 5 percent of receipts) for the months of November and December 1990, and reduces the shipping percentage for individual supply plants by 2 percentage points (from 3 to 1 percent) and for units of supply plants by 3 percentage points (from 6 to 3 percent) for January 1991. The revision is made in response to a request by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages: Issued November 16, 1990; published November 23, 1990 (55 FR 48852).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action reduces the regulatory impact on milk handlers and tends to insure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1030.7(b)(5) of the Chicago Regional order.

**Statement of Consideration**

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that supply plant shipping percentages should be lowered by 3 percentage points (from 5 to 2 percent of receipt) for individual supply plants and by 5 percentage points (from 10 to 5 percent of receipts) for supply plants units during November and December 1990, and the supply plant shipping percentages should be lowered 2 percentage points (from 3 to 1 percent of receipts) from individual supply plants and by 3 percentage points (from 6 to 3 percent of receipts) for supply plant units during January 1991.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standard by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested and was granted a reduction of the supply plant shipping percentages for the months of August through October. CMPC indicates that these reductions permitted the use of nearby milk to satisfy fluid milk needs and saved substantial transportation costs because milk did not have to be shipped from distant supply plants.

Based on the most recent supply and demand estimates, CMPC indicates that a further reduction of the shipping percentages for November 1990 through January 1991 is necessary. CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the months of November and December, CMPC indicates that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively. In addition, CMPC indicates that the January 1991 shipping standards should be reduced to 1 and 3 percent of receipts for individual plants and units of supply plants, respectively, on the basis of supply and demand projections.

The current supply/demand relationship for the market indicates that the supply plant shipping percentages should be reduced for the months of November and December 1990, as proposed. Furthermore, a reduction for the month of January 1991 is also supported by projections of milk supplies and sales. These reductions of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order without making uneconomic shipments of milk.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of November 1990 through January 1991;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they

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were afforded the opportunity to file written data, views, or arguments concerning this issue. The action was supported by a number of interested parties and no opposing views were received.

Therefore, good cause exists for making this revision effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1030**

Milk marketing orders.

It is therefore ordered that the following provisions of § 1030.7(b) of the Chicago Regional milk order are hereby revised for the months of November 1990 through January 1991.

## PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority for 7 CFR part 1030 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

**§ 1030.7 [Amended]**

2. In the introductory text of § 1030.7(b) the provision "5 percent" is revised to "2 percent" and the provision "10 percent" is revised to "5 percent" for the months of November and December 1990, and the provision "3 percent" is revised to "1 percent" and the provision "6 percent" is revised to "3 percent" for the month of January 1991.

Signed at Washington, DC, on: December 10, 1990.

**Richard M. McKee,**

*Acting Director, Dairy Division.*

[FR Doc. 90-29409 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Social Security Administration**

**20 CFR Part 404**

**RIN 0960-AD01**

## Prohibition Against Termination of Coverage for American Citizens and Residents Working Abroad for a Foreign Affiliate of an American Employer and Extension of Disability Insurance Program Demonstration Project Authority

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** These final rules revise a reference in our regulations to section 3121(l) of the Internal Revenue Code (the Code) to reflect changes made by section 10201 of Public Law (Pub. L.) 101–239, the Omnibus Budget Reconciliation Act of 1989. Section 3121(l) of the Code governs the Social Security coverage agreements entered into by American employers with respect to their foreign affiliates. These final rules also reflect section 10103 of Public Law 101–239 which, among other things, extends to June 9, 1993, the date by which the Secretary of Health and Human Services must submit to Congress his final report on the demonstration projects conducted under section 505(a) of the Social Security Disability Amendments of 1980, Public Law 96–265. These demonstration projects, which under section 10103 of Public Law 101–239, may be initiated through June 9, 1993, are to test ways to encourage individuals entitled to disability insurance benefits to return to work.

**EFFECTIVE DATE:** This rule is effective on December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1762.

**SUPPLEMENTARY INFORMATION:**

### Termination of Social Security Coverage Agreements Entered Into by American Employers with Respect to Foreign Affiliates

United States citizens and residents employed abroad by a foreign affiliate of an American employer are covered by Social Security at the option of the employer through an agreement between the employer and the Secretary of the Treasury. Prior to the enactment of section 10201 of Public Law 101–239, the employer could terminate this coverage by giving a 2 years advance notice after the agreement had been in effect for at least 8 years. Section 10201 amended section 3121(l) of the Code to provide, among other things, that with respect to any such coverage agreement in effect on or after June 15, 1989, for which there is no notice of termination in effect on this date, American employers no longer have the option of terminating the coverage of United States citizens and residents employed abroad in their foreign affiliate. Section 10201 also amended section 3121(l) of the Code to provide that these coverage agreements would terminate at the end of any calendar quarter in which a foreign entity, at any time in such quarter, ceased to be a foreign affiliate of an American employer. It additionally redesignated the paragraph of section 3121(l) of the Code that defines a foreign affiliate from paragraph 8 to paragraph 6. To reflect this latter change in the Code, section 10201 of Public Law 101–239 made a conforming amendment to section 210(a) of the Social Security Act (the Act) by striking the reference to section 3121(l)(8) and inserting, in its place, a reference to section 3121(l)(6) of the Code. Section 210(a) of the Act defines the term "employment" for purposes of Social Security coverage and provides that it includes any service outside the United States by a citizen or resident of the United States as an employee of a foreign affiliate of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of the Code, with respect to the affiliate. We are, accordingly, amending § 404.1004(b)(5) of our regulations by removing the reference to section 3121(l)(8) of the Code and adding, in its place, a reference to section 3121(l)(6) of the Code.

We are also amending § 404.1004(a)(2)(ii) of our regulations to correct a typographical error. This amendment is not related to section 10201 of Public Law 101–239.

### Demonstration Project Authority

We published final regulations covering the rules on demonstration projects in the disability insurance program on February 23, 1983 (48 FR 7573) implementing section 505(a) of the Social Security Disability Amendments of 1980, Public Law 96–265. Section 505(a) directed the Secretary of Health and Human Services to develop and carry out experiments and demonstration projects to test the advantages of various ways to facilitate and encourage the return to employment of individuals entitled to disability insurance benefits who would otherwise remain dependent on disability insurance benefits.

Section 12101 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, among other things, extended the Secretary's authority to initiate disability insurance demonstration projects under section 505(a) of Public Law 96–265 and the time for the Secretary to submit to Congress a final report on these projects from June 9, 1985, to June 9, 1990. Regulations reflecting this change were published on October 8, 1987 (52 FR 37804). Section 10103 of Public Law 101–239, among other things, further extended the Secretary's demonstration authority under section 505(a) of Public Law 96–265 and the date for a final report to June 9, 1993. This final rule amends § 404.1599(e) of our regulations by removing the reference to "1990" and adding, in its place, a reference to "1993."

### Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) Notice of Proposed Rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of Notice of Proposed Rulemaking and public comment procedures on this regulation since opportunity for public comment is unnecessary in this case because the rules simply reflect self-executing statutory provisions involving no discretionary policy making and correct a typographical error in our regulations.

### Regulatory Procedures

*Executive Order 12291*

The Secretary has determined that these are not major rules under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they only reflect self-executing statutory provisions and correct a typographical error in our regulations. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

*Paperwork Reduction Act*

These regulations impose no reporting/recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13.802, Social Security-Disability Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.



Dated: August 27, 1990.

**Gwendolyn S. King,**

*Commissioner of Social Security.*

Approved: October 31, 1990.

**Louis W. Sullivan,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, subparts K and P, part 404, chapter III of title 20, Code of Federal Regulations are amended as set forth below.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

### Subpart K—[Amended]

1. The authority citation for 20 CFR part 404, subpart K continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 228, 228A, 228(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 428, 428A, 429(a), 430, 431, and 1302.

**§ 404.1004 [Amended]**

2. In § 404.1004 paragraph (a)(2)(ii) is amended by removing the word "than" and adding, in its place, the word "that" and paragraph (b)(5) is amended by removing the reference to "3121(l)(8)" and adding, in its place, a reference to "3121(l)(6)".

### Subpart P—[Amended]

3. The authority citation for 20 CFR part 404, subpart P is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (j), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265; 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808; sec. 10103 of Pub. L. 101–239, 103 Stat. 2472.

**§ 404.1599 [Amended]**

4. In § 404.1599, the third sentence of paragraph (e) is amended by removing the reference to "1990" and adding, in its place, "1993."

[FR. Doc. 90-29334 Filed 12-14-90; 8:45 am]

BILLING CODE 4160-11-M

## Food and Drug Administration

**21 CFR Part 5**

## Delegations of Authority and Organization; Center for Drug Evaluation and Research (CDER)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration is amending the regulations for delegations of authority in five sections of 21 CFR part 5 concerning approval of new drug applications. These authorities will be delegated to specified titles in the Pilot Drug Evaluation Staff (PDES), CDER.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4070.

**SUPPLEMENTARY INFORMATION:** On July 7, 1989, CDER established PDES for a trial period to facilitate improvements in the quality, efficiency, and speed of CDER's drug review process. PDES' responsibilities are to analyze barriers to innovation, develop new methods of review, and evaluate alternative methods of conducting the review process, all with effective management controls.

Inclusion in the delegations of authority listed below will provide the PDES director with signatory authority for drug evaluation and regulatory activities; it will also provide signatory authority on particular decisions to supervisory consumer safety officers, supervisory medical officers, and other supervisory reviewers in PDES.

The affected sections of 21 CFR Part 5 to which PDES titles will be added are as follows: § 5.31 Petitions under part 10 (21 CFR 5.31) is amended by adding paragraph (a)(2)(iv); § 5.56 Orphan products (21 CFR 5.56) is amended by adding paragraph (c)(l)(iv); § 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals (21 CFR 5.71) is amended by revising paragraphs (b)(2) and (c)(2); § 5.80 Approval of new drug applications and their supplements (21 CFR 5.80) is amended by adding paragraph (a)(l)(iii); and § 5.94 Extensions or stays of effective dates for compliance with certain labeling requirements for human prescription drugs (21 CFR 5.94) is amended by adding paragraph (b)(4).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such a position in an acting capacity or on a temporary basis.

**Lists of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies); Imports, Organization and functions (Government agencies).

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Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 904, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1708, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.31 is amended by adding new paragraph (a)(2)(iv) to read as follows:

**§ 5.31 Petitions under part 10.**

(a) * * *

(2) * * *

(iv) The Director and supervisory consumer safety officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.

* * * * *

3. Section 5.58 is amended by adding new paragraph (c)(1)(iv) to read as follows:

**§ 5.58 Orphan products.**

* * * * *

(c) * * *

(1) * * *

(iv) The Director and supervisory medical officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.

* * * * *

4. Section 5.71 is amended by revising paragraphs (b)(2) and (c)(2) to read as follows:

**§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.**

* * * * *

(b) * * *

(2) The Directors and Deputy Directors in the divisions in the Offices of Drug Evaluation I and Drug Evaluation II and the Director and supervisory medical officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.

* * * * *

(c) * * *

(2) The Directors and Deputy Directors in the divisions in the Offices of Drug Evaluation I and Drug Evaluation II and the Director and supervisory medical officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.

* * * * *

5. Section 5.80 is amended by adding new paragraph (a)(1)(iii) to read as follows:

**§ 5.80 Approval of new drug applications and their supplements.**

(a) * * *

(1) * * *

(iii) The Director, Pilot Drug Evaluation Staff, Office of the Center Director, CDER, plus at least one supervisory reviewer, selected by the Director, Pilot Drug Evaluation Staff, through their joint signatures, for drugs under their jurisdiction.

* * * * *

6. Section 5.94 is amended by adding new paragraph (b)(4) to read as follows:

**§ 5.94 Extensions of stays of effective dates for compliance with certain labeling requirements for human prescription drugs.**

* * * * *

(b) * * *

(4) The Director and supervisory consumer safety officers, Pilot Drug Evaluation Staff, Office of the Center Director, CDER.

Dated: December 11, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-29435 Filed 12-14-90; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[T.D. 8318]

RIN 1545-AO38

### Limitations on Passive Activity Losses and Credits; Developer Rule Amendments

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to amendments of temporary regulations.

**SUMMARY:** This document contains a correction to temporary regulations (T.D. 8318), which was published, Monday, November 19, 1990, (55 FR 48107). The temporary regulations relate to the limitations on passive activity losses and passive activity credits.

**FOR FURTHER INFORMATION CONTACT:** Dexter A. Johnson (202) 566–4751 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 1.469–2T(f)(5) reduces a taxpayer's passive activity gross income by the net income and gain from certain rental property. This rule applies to certain property that is not used in an activity involving the rental of the property for a period of at least 12 months between its development and its disposition.

**Need for Correction**

As published, the temporary regulations contain an error which may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the temporary regulations (T.D. 8318) which was the subject of FR Doc. 90-27122 is corrected as follows:

**§ 1.469–2T [Corrected]**

1. In § 1.469–2T, page 48108, column 2, paragraph (f)(5)(ii)(A), lines 5 and 6, remove the language "rental of the property commences on the first date on".

**Dale D. Goode,**

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 90-29361 Filed 12-14-90; 8:45 am]

BILLING CODE 4830-01-M

### 26 CFR Parts 1, 31, and 602

[T.D. 8324]

RIN 1545-AO06

### Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations concerning the taxation of and reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. These final and temporary regulations reflect changes to the law made by the Family Support Act of 1988. These final and temporary regulations will affect employees who receive payments and payors who make payments under reimbursement or other expense allowance arrangements.

**EFFECTIVE DATES:** The provisions of these temporary regulations under



§ 1.62–1T are effective for expenses paid or incurred in taxable years beginning before January 1, 1989. The income tax provisions of these final regulations under § 1.62–2 are effective for payments made under reimbursement or other expense allowance arrangements received by an employee in taxable years of the employee beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989. However, the provisions of § 1.62–2(h) of these regulations are effective for payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990, and the provisions of §§ 1.62–2(d)(3) and 1.62–2(h)(2)(i)(B) of these regulations are effective for payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991 with respect to expenses paid or incurred on or after January 1, 1991. The provisions of § 1.162–17(e)(3) of these regulations are effective for taxable years beginning on or after January 1, 1989. The reporting provisions of these final regulations under § 1.6041–3(i) are effective for payments made under reimbursement or other expense allowance arrangements that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989; however, a transition rule is provided under § 1.6041–3(i) effective for payments made prior to July 1, 1990. The provisions of these final regulations under §§ 31.3121(a)–1(h), 31.3121(a)–3, 31.3231(e)–1, 31.3231(e)–3, 31.3306(b)–1, 31.3306(b)–2, 31.3401(a)–(1)(b)(2) and 31.3401(a)–4 are effective for amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. The amendment to part 602 is effective December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Richard Pavel at 202–377–9372 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act**

The collection of information requirements contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1148. The estimated average annual burden per recordkeeper is one-half hour.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of these burden estimates and suggestions for reducing the burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

On December 12, 1989, the **Federal Register** published temporary regulations (54 FR 51021) on employee business expense reimbursements and allowances. Those regulations provided guidance concerning the taxation of and reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The text of those temporary regulations also served as the comment document for a notice of proposed rulemaking ("the proposed regulations") published in the **Federal Register** for the same day (54 FR 51038).

Written comments were received from the public on the proposed regulations. In addition, on June 11, 1990, the Internal Revenue Service held a public hearing concerning the regulations. After consideration of the comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision. This Treasury decision also supersedes and obsoletes Announcement 90–127, 1990–48 I.R.B. 8.

**Summary of Comments and Explanation of Provisions:**

*More Than One Expense Allowance Arrangement*

Commentators requested that the regulations provide guidance on what factors are considered in determining whether an employer has one arrangement or more than one arrangement with an employee. Commentators were especially concerned that small amounts of nonaccountable payments might be treated as part of an otherwise accountable plan, thereby "tainting" the accountable payments if clearly separate plans were not adopted. The final regulations clarify that if an arrangement provides advances, allowances, or reimbursements for deductible employee business expenses and for other bona fide expenses related to the employer's business that are not deductible, the payor will be treated as maintaining two arrangements. The portion of the arrangement that provides payments for the deductible employee business expenses will be treated as one arrangement that satisfies the business connection test and the portion of the arrangement that provides payments for the nondeductible employee business expenses will be treated as a second arrangement that does not satisfy the business connection test.

*Reimbursement Requirement*

Some practitioners have asked whether a portion of an employee's salary may be recharacterized as being paid under a reimbursement arrangement. The final regulations clarify that if a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) deductible business expenses or other bona fide expenses related to the employer's business that are not deductible, the arrangement does not meet the business connection requirement of § 1.62–2(d) of the regulations and all amounts paid under the arrangement are treated as paid under a nonaccountable plan. These amounts are subject to withholding and payment of employment taxes when paid. Thus, no part of an employee's salary may be recharacterized as being paid under a reimbursement arrangement or other expense allowance arrangement.

The final regulations also provide that an arrangement providing a per diem allowance for travel expenses (whether or not deductible) that is computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced) satisfies the business connection requirement of § 1.62–2(d) only if, as of December 12, 1989, (1) the per diem allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the per diem allowance, or (2) a per diem allowance computed on that basis was commonly used in the industry in which the employee is employed. A per diem allowance that satisfies this requirement may be adjusted in a manner that reasonably reflects actual increases in employee

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business expenses occurring after December 12, 1989.

*Special Withholding Rules for Per Diem or Mileage Allowances*

Some practitioners have suggested that the safe harbors provided for satisfying the reasonable period of time requirements can be used to avoid reporting and withholding on per diem or mileage allowances where the amount paid exceeds the amount of expenses deemed substantiated. The safe harbors were not intended to be used in that manner.

Accordingly, the final regulations provide that, if (under an arrangement that meets the business connection, substantiation, and return of excess requirements of the regulation) a payor pays a per diem or mileage allowance, the portion, if any, of the allowance paid that relates to days or miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated for those days or miles of travel is treated as paid under a nonaccountable plan. Because the employee is not required to return this excess portion, the reasonable period of time provisions (relating to the return of excess amounts) do not apply to this excess portion.

The final regulations also provide that in the case of a per diem or mileage allowance paid as a reimbursement at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel (e.g., the employer reimburses at a rate of 30 cents per mile when the amount deemed substantiated is 26 cents per mile), the excess portion is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days or miles of travel substantiated. The final regulations further provide that in the case of a per diem or mileage allowance paid as an advance at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. Of course, the expenses with respect to which the advance was paid must be substantiated within a reasonable period of time.

The final regulations also provide that the Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

*The Employer's Obligation to Report*

Commentators requested clarification as to whether amounts treated as paid under an accountable plan may, in certain circumstances, be reported by the employer on the employee's Form W-2. The proposed regulations provided that such amounts "are not required to be reported" on the employee's Form W-2. The final regulations clarify that amounts treated as paid under an accountable plan are not reported as wages or other compensation on the employee's Form W-2. Thus, if an employer operates an accountable plan and the employee meets all the requirements of the regulations in terms of timely substantiation and return of excess, the employer may not report such amounts as wages or other compensation on the employee's Form W-2. However, the regulations do not require the employer to provide an accountable plan. Thus, if the employer chooses to provide an expense allowance arrangement that does not meet the accountable plan requirements, the employer must report all amounts paid under the plan as wages or other compensation on the employee's Form W-2 even though an employee might voluntarily substantiate expenses to the employer and return any excess amounts to the employer.

*Pattern of Overreimbursements*

The safe harbors provided for satisfying the reasonable period of time requirements are designed to meet reasonable administrative needs of employers, not to permit avoidance of the rules regarding accountable plans. Accordingly, the final regulations clarify that if, under a reimbursement or other expense allowance arrangement, a payor has a plan or practice to provide amounts in excess of substantiated expenses to employees and to avoid reporting and withholding on such amounts, the payor may not use either of the safe harbors provided under the reasonable period of time requirement for any years during which such plans or practice exists.

*Anti-Abuse Rule*

The final regulations provide that if a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules under section 62(c) of the Code and the regulations thereunder, regarding reimbursement and other expense allowance arrangements, all payments made under the arrangement will be treated as made under a nonaccountable plan and the appropriate penalties will be imposed.

*Examples*

As a result of questions raised by commentators, examples have been added to the final regulations to illustrate the application of the regulations.

*Exempting State, County, and Local Governments*

Commentators from state, county, and local governments requested that they be exempted from the requirements of the regulations. There is no indication in the statute or the legislative history that Congress intended that there be an exemption for government employers. The final regulations therefore treat government employers and private sector employers in the same manner and do not exempt federal, state, county, and local governments.

*Country Club Dues*

Practitioners have requested that the final regulations provide special rules for country club dues because of special deduction limitations applicable to such dues. These rules would create a special reasonable period safe harbor for country club dues and would provide an exception to the return of excess requirement for country club dues that are reported as wages and subjected to withholding and payment of employment taxes. These suggestions have not been adopted because they would create needless complexity in the regulations and they are not supported by the statute or the legislative history.

*Deemed Substantiation Issues*

Commentators submitted several comments regarding issues raised by Revenue Procedures 89-66 and 89-67, 1989-2 C.B. 782, 795, and their progeny. Those issues are generally not addressed by these final regulations, but will instead be addressed in revenue procedures or other pronouncements of general applicability.

*Moving Expenses*

Some practitioners have asked whether the regulations are intended to apply to reimbursements for moving expenses. Section 62(a)(2)(A) of the Code and the regulations refer to advances, allowances, or reimbursements for business expenses that are allowable as deductions by part VI (section 161 and the following), subchapter B, chapter 1 of the Code. Therefore, neither the proposed regulations nor the final regulations deal with deductions, such as moving expense deductions under section 217, that are not found in part VI.

*Reporting Rules*

The final regulations generally retain the same reporting rules that were provided in the temporary regulations. However, in order to simplify reporting in 1990 and because of the July 1, 1990 effective date for withholding, the transitional reporting rule that was provided in the temporary regulations for payments received by an employee on or after January 1, 1989, and prior to January 1, 1990 has been extended to payments received by an employee prior to July 1, 1990 (rather than January 1, 1990, as provided in the proposed regulations).

*Special Analyses*

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

*Drafting Information*

The principal author of these regulations is Richard Pavel, Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

**List of Subjects**

*26 CFR 1.61-1 through 1.281-4*

Deductions, Exemptions, Income taxes, Taxable income.

*26 CFR Part 31*

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social Security, Unemployment tax, Withholding.

*26 CFR Part 602*

Reporting and recordkeeping requirements.



**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 602 are amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation for part 1 is amended in part by removing the citation "§ 1.62-1T and 1.62-2T also issued under 26 U.S.C. 62" and by adding the following citations:

Authority: 26 U.S.C. 7805 * * * secs. 1.62-1T and 1.62-2 also issued under 26 U.S.C. 62 * * * sec. 1.6041-3 also issued under 26 U.S.C. 62.

**Par. 2.** In § 1.62-1T, paragraph (c)(2) is revised to read as follows:

**§ 1.62-1T Adjusted gross income (temporary).**

* * * * *

(c) *Deductions allowable in computing adjusted gross income.* * * *

(2) Deductions allowable under part VI, subchapter B, chapter 1 of the Code, (section 161 and following) that consist of expenses paid or incurred by the taxpayer in connection with the performance of services as an employee under an express reimbursement or other expense allowance arrangement (as defined in paragraph (f) of this section or § 1.62-2, whichever is applicable) with his or her employer;

* * * * *

**Par. 3.** Section 1.62-2T is removed and § 1.62-2 is added in the appropriate place to read as follows:

**§ 1.62-2 Reimbursements and other expense allowance arrangements.**

(a) Table of contents.
(b) Scope.
(c) Reimbursement or other expense allowance arrangement.
(1) Defined.
(2) Accountable plans.
(i) In general.
(ii) Special rule for failure to return excess.
(3) Nonaccountable plans.
(i) In general.
(ii) Special rule for failure to return excess.
(4) Treatment of payments under accountable plans.
(5) Treatment of payments under nonaccountable plans.
(d) Business connection.
(1) In general.
(2) Other bona fide expenses.
(3) Reimbursement requirement.
(i) In general.
(ii) Per diem allowances.
(e) Substantiation.
(1) In general.
(2) Expenses governed by section 274(d).
(3) Expenses not governed by section 274(d).
(f) Returning amounts in excess of expenses.
(1) In general.
(2) Per diem or mileage allowances.
(g) Reasonable period.
(1) In general.
(2) Safe harbors.
(i) Fixed date method.
(ii) Periodic payment method.
(3) Pattern of overreimbursements.
(h) Withholding and payment of employment taxes.
(1) When excluded from wages.
(2) When included in wages.
(i) Accountable plans.
(A) General rule.
(B) Per diem or mileage allowances.
(1) In general.
(2) Reimbursements.
(3) Advances.
(4) Special rules.
(ii) Nonaccountable plans.
(i) Application.
(j) Examples.
(k) Anti-abuse provision.
(l) Cross references.
(m) Effective dates.

(b) *Scope.* For purposes of determining "adjusted gross income," section 62(a)(2)(A) allows an employee a deduction for expenses allowed by part VI (section 161 and following), subchapter B, chapter 1 of the Code, paid by the employee, in connection with the performance of services as an employee of the employer, under a reimbursement or other expense allowance arrangement with a payor (the employer, its agent, or a third party). Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) if—

(1) Such arrangement does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) Such arrangement provides the employee the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

This section prescribes rules relating to the requirements of section 62(c).

(c) *Reimbursement or other expense allowance arrangement*—(1) *Defined.* For purposes of §§ 1.62-1T and 1.62-2, the phrase "reimbursement or other expense allowance arrangement" means an arrangement that meets the requirements of paragraphs (d) (business connection, (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section. A payor may have more than one arrangement with respect to a particular employee, depending on the facts and circumstances. See paragraph (d)(2) of this section (payor treated as having two arrangements under certain circumstances).

(2) *Accountable plans*—(i) *In general.* Except as provided in paragraph

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(c)(2)(ii) of this section, if an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, all amounts paid under the arrangement are treated as paid under an "accountable plan."

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e) of this section, only the amounts paid under the arrangement that are not in excess of the substantiated expenses are treated as paid under an accountable plan.

(3) *Nonaccountable plans*—(i) *In general.* If an arrangement does not satisfy one or more of the requirements of paragraphs (d), (e), or (f) of this section, all amounts paid under the arrangement are treated as paid under a "nonaccountable plan." If a payor provides a nonaccountable plan, an employee who receives payments under the plan cannot compel the payor to treat the payments as paid under an accountable plan by voluntarily substantiating the expenses and returning any excess to the payor.

(ii) *Special rule for failure to return excess.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, but the employee fails to return, within a reasonable period of time, any amount in excess of the amount of the expenses substantiated in accordance with paragraph (e) of this section, the amounts paid under the arrangement that are in excess of the substantiated expenses are treated as paid under a nonaccountable plan.

(4) *Treatment of payments under accountable plans.* Amounts treated as paid under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), Railroad Retirement Tax Act (RRTA), Railroad Unemployment Repayment Tax (RURT), and income tax.) See paragraph (f) of this section for cross references.

(5) *Treatment of payments under nonaccountable plans.* Amounts treated as paid under a nonaccountable plan are included in the employee's gross income, must be reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes (FICA, FUTA, RRTA, RURT, and income tax). See paragraph (h) of this section. Expenses attributable to amounts included in the employee's gross income may be deducted, provided the employee can substantiate the full amount of his or her expenses (i.e., the amount of the expenses, if any, the reimbursement for which is treated as paid under an accountable plan as well as those for which the employee is claiming the deduction) in accordance with § 1.274-5T or § 1.162-17, but only as a miscellaneous itemized deduction subject to the limitations applicable to such expenses (e.g., the 80-percent limitation on meal and entertainment expenses provided in section 274(n) and the 2-percent floor provided in section 67).

(d) *Business connection*—(1) *In general.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, an arrangement meets the requirements of this paragraph (d) if it provides advances, allowances (including per diem allowances, allowances only for meals and incidental expenses, and mileage allowances), or reimbursements only for business expenses that are allowable as deductions by part VI (section 161 and the following), subchapter B, chapter 1 of the Code, and that are paid or incurred by the employee in connection with the performance of services as an employee of the employer. The payment may be actually received from the employer, its agent, or a third party for whom the employee performs a service as an employee of the employer, and may include amounts charged directly or indirectly to the payor through credit card systems or otherwise. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(2) *Other bona fide expenses.* If an arrangement provides advances, allowances, or reimbursements for business expenses described in paragraph (d)(1) of this section (i.e., deductible employee business expenses) and for other bona fide expenses related to the employer's business (e.g., travel that is not away from home) that are not deductible under part VI (section 161 and the following), subchapter B, chapter 1 of the Code, the payor is treated as maintaining two arrangements. The portion of the arrangement that provides payments for the deductible employee business expenses is treated as one arrangement that satisfies this paragraph (d). The portion of the arrangement that provides payments for the nondeductible employee expenses is treated as a second arrangement that does not satisfy this paragraph (d) and all amounts paid under this second arrangement will be treated as paid under a nonaccountable plan. See paragraphs (c)(5) and (h) of this section.

(3) *Reimbursement requirement*—(i) *In general.* If a payor arranges to pay an amount to an employee regardless of whether the employee incurs (or is reasonably expected to incur) business expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement does not satisfy this paragraph (d) and all amounts paid under the arrangement are treated as paid under a nonaccountable plan. See paragraphs (c)(5) and (h) of this section.

(ii) *Per diem allowances.* An arrangement providing a per diem allowance for travel expenses of a type described in paragraph (d)(1) or (d)(2) of this section that is computed on a basis similar to that used in computing the employee's wages or other compensation (e.g., the number of hours worked, miles traveled, or pieces produced) meets the requirements of this paragraph (d) only if, on December 12, 1989, the per diem allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the per diem allowance, or a per diem allowance computed on that basis was commonly used in the industry in which the employee is employed. See section 274(d) and § 1.274-5T(g). A per diem allowance described in this paragraph (d)(3)(ii) may be adjusted in a manner that reasonably reflects actual increases in employee business expenses occurring after December 12, 1989.

(e) *Substantiation*—(1) *In general.* An arrangement meets the requirements of this paragraph (e) if it requires each business expense to be substantiated to the payor in accordance with paragraph (e)(2) or (e)(3) of this section, whichever is applicable, within a reasonable period of time. See § 1.274-5T or § 1.162-17.

(2) *Expenses governed by section 274(d).* An arrangement that reimburses travel, entertainment, use of a passenger automobile or other listed property, or other business expenses governed by section 274(d) meets the requirements of this paragraph (e)(2) if information sufficient to satisfy the substantiation requirements of section 274(d) and the regulations thereunder is submitted to the payor. See § 1.274-5T. Under section 274(d), information sufficient to substantiate the requisite elements of each expenditure or use must be submitted to the payor. For example, with respect to travel away from home, § 1.274-5T(b)(2) requires that information sufficient to substantiate the amount, time, place, and business purpose of the expense must be submitted to the payor. Similarly, with respect to use of a passenger automobile or other listed property, § 1.274-5T(b)(6) requires that information sufficient to substantiate the amount, time, use, and business purpose of the expense must be submitted to the payor. See § 1.274-5T(g), however, which grants the Commissioner authority to prescribe rules permitting the amount of certain expenses to be deemed substantiated to the payor (in lieu of substantiating the actual amount of such expenses) where an arrangement provides for a reimbursement, a per diem allowance, or a mileage allowance for travel away from home or transportation expenses. See also § 1.274-5T(j), which grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for meals while traveling away from home in lieu of substantiating the actual cost of meals. Substantiation of the amount of a business expense in accordance with rules prescribed pursuant to the authority granted by § 1.274-5T(g) or § 1.274-5T(j) will be treated as substantiation of the amount of such expense for purposes of this section.

(3) *Expenses not governed by section 274(d).* An arrangement that reimburses business expenses not governed by section 274(d) meets the requirements of this paragraph (e)(3) if information is submitted to the payor sufficient to enable the payor to identify the specific nature of each expense and to conclude that the expense is attributable to the payor's business activities. Therefore, each of the elements of an expenditure or use must be substantiated to the payor. It is not sufficient if an employee merely aggregates expenses into broad categories (such as "travel") or reports individual expenses through the use of vague, nondescriptive terms (such as "miscellaneous business expenses"). See § 1.162-17(b).

(f) *Returning amounts in excess of expenses—(1) In general.* Except as provided in paragraph (f)(2) of this section, an arrangement meets the requirements of this paragraph (f) if it requires the employee to return to the payor within a reasonable period of time any amount paid under the arrangement in excess of the expenses substantiated in accordance with paragraph (e) of this section. The determination of whether an arrangement requires an employee to return amounts in excess of substantiated expenses will depend on the facts and circumstances. An arrangement whereby money is advanced to an employee to defray expenses will be treated as satisfying the requirements of this paragraph (f) only if the amount of money advanced is reasonably calculated not to exceed the amount of anticipated expenditures, the advance of money is made on a day within a reasonable period of the day that the anticipated expenditures are paid or incurred, and any amounts in excess of the expenses substantiated in accordance with paragraph (e) of this section are required to be returned to the payor within a reasonable period of time after the advance is received.

(2) *Per diem or mileage allowances.* The Commissioner may, in his discretion, prescribe rules in pronouncements of general applicability under which a reimbursement or other expense allowance arrangement that provides per diem allowances providing for ordinary and necessary expenses of traveling away from home (exclusive of transportation costs to and from destination) or mileage allowances providing for ordinary and necessary expenses of local travel and transportation while traveling away from home will be treated as satisfying the requirements of this paragraph (f), even though the arrangement does not require the employee to return the portion of such an allowance that relates to the days or miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under section 274(d), provided the allowance is paid at a rate for each day or mile of travel that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return to the payor within a reasonable period of time any portion of such allowance which relates to days or miles of travel not substantiated in accordance with paragraph (e) of this section.

(g) *Reasonable period*—(1) *In general.* The determination of a reasonable period of time will depend on the facts and circumstances.

(2) *Safe harbors*—(i) *Fixed date method.* An advance made within 30 days of when an expense is paid or incurred, an expense substantiated to the payor within 60 days after it is paid or incurred, or an amount returned to the payor within 120 days after an expense is paid or incurred will be treated as having occurred within a reasonable period of time.

(ii) *Periodic statement method.* If a payor provides employees with periodic statements (no less frequently than quarterly) stating the amount, if any, paid under the arrangement in excess of the expenses the employee has substantiated in accordance with paragraph (e) of this section, and requesting the employee to substantiate any additional business expenses that have not yet been substantiated (whether or not such expenses relate to the expenses with respect to which the original advance was paid) and/or to return any amounts remaining unsubstantiated within 120 days of the statement, an expense substantiated or an amount returned within that period will be treated as being substantiated or returned within a reasonable period of time.

(3) *Pattern of overreimbursements.* If, under a reimbursement or other expense allowance arrangement, a payor has a plan or practice to provide amounts to employees in excess of expenses substantiated in accordance with paragraph (e) of this section and to avoid reporting and withholding on such amounts, the payor may not use either of the safe harbors provided in paragraph (g)(2) of this section for any years during which such plan or practice exists.

(h) *Withholding and payment of employment taxes*—(1) *When excluded from wages.* If an arrangement meets the requirements of paragraphs (d), (e), and (f) of this section, the amounts paid under the arrangement that are not in excess of the expenses substantiated in accordance with paragraph (e) of this section (i.e., the amounts treated as paid under an accountable plan) are not wages and are not subject to withholding and payment of employment taxes.

(2) *When included in wages*—(i) *Accountable plans*—(A) *General rule.* Except as provided in paragraph (h)(2)(i)(B) of this section, if the expenses covered under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section are not substantiated to the payor in accordance with paragraph (e) of this section within a reasonable period of time or if any amounts in excess of the substantiated expenses are not returned to the payor in accordance with paragraph (f) of this section within a reasonable period of time, the amount which is treated as paid under a nonaccountable plan under paragraph (c)(3)(ii) of this section is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the

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reasonable period. A payor may treat any amount not substantiated or returned within the periods specified in paragraph (g)(2) of this section as not substantiated or returned within a reasonable period of time.

(B) *Per diem or mileage allowances—(1) In general.* If a payor pays a per diem or mileage allowance under an arrangement that meets the requirements of the paragraphs (d), (e), and (f) of this section, the portion, if any, of the allowance paid that relates to days or miles of travel substantiated in accordance with paragraph (e) of this section and that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under section 274(d) and § 1.274–5T (g) or (j) is treated as paid under a nonaccountable plan. See paragraph (c)(3)(ii) of this section. Because the employee is not required to return this excess portion, the reasonable period of time provisions of paragraph (g) of this section (relating to the return of excess amounts) do not apply to this excess portion.

(2) *Reimbursements.* Except as provided in paragraph (h)(2)(i)(B)(*4*) of this section, in the case of a per diem or mileage allowance paid as a reimbursement at a rate for each day or mile of travel that exceeds the amounts of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion described in paragraph (h)(2)(i) of this section is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days or miles of travel substantiated in accordance with paragraph (e) of this section.

(3) *Advances.* Except as provided in paragraph (h)(2)(i)(B)(*4*) of this section, in the case of a per diem or mileage allowance paid as an advance at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion described in paragraph (h)(2)(i) of this section is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated in accordance with paragraph (e) of this section. The expenses with respect to which the advance was paid must be substantiated within a reasonable period of time. See paragraph (g) of this section.

(*4*) *Special rules.* The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(ii) *Nonaccountable plans.* If an arrangement does not satisfy one or more of the requirements of paragraphs (d), (e), or (f) of this section, all amounts paid under the arrangement are wages and are subject to withholding and payment of employment taxes when paid.

(i) *Application.* The requirements of paragraphs (d) (business connection), (e) (substantiation), and (f) (returning amounts in excess of expenses) of this section will be applied on an employee-by-employee basis. Thus, for example, the failure by one employee to substantiate expenses under an arrangement in accordance with paragraph (e) of this section will not cause amounts paid to other employees to be treated as paid under a nonaccountable plan.

(j) *Examples.* The rules contained in this section may be illustrated by the following examples:

*Example* (1). *Reimbursement requirement.* Employer S pays its engineers $200 a day. On those days that an engineer travels away from home on business for Employer S, Employer S designates $50 of the $200 as paid to reimburse the engineer's travel expenses. Because Employer S would pay an engineer $200 a day regardless of whether the engineer was traveling away from home, the arrangement does not satisfy the reimbursement requirement of paragraph (d)(3)(i) of this section. Thus, no part of the $50 Employer S designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Employer S must report the entire $200 as wages or other compensation on the employees' Forms W–2 and must withhold and pay employment taxes on the entire $200 when paid.

*Example* (2). *Reimbursement requirement, multiple arrangements.* Airline T pays all its employees a salary. Airline T also pays an allowance under an arrangement that otherwise meets the requirements of paragraphs (d), (e), and (f) of this section to its pilots and flight attendants who travel away from their home base airports, whether or not they are "away from home." Because the allowance is paid only to those employees who incur (or are reasonably expected to incur) expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement satisfies the reimbursement requirement of paragraph (d)(3)(i) of this section. Under paragraph (d)(2) of this section, Airline T is treated as maintaining two arrangements. The portion of the arrangement providing the allowances for away from home travel is treated as an accountable plan. The portion of the arrangement providing the allowances for non-away from home travel is treated as a nonaccountable plan. Airline T must report the non-away from home allowances as wages or other compensation on the employees' Forms W–2 and must withhold and pay employment taxes on these payments when paid.

*Example* (3). *Reimbursement requirement.* Corporation R pays all its salespersons a salary. Corporation R also pays a travel allowance under an arrangement that otherwise meets the requirements of paragraphs (d), (e), and (f) of this section. This allowance is paid to all salespersons, including salespersons that Corporation R knows, or has reason to know, do not travel away from their offices on Corporation R business and would not be reasonably expected to incur travel expenses. Because the allowance is not paid only to those employees who incur (or are reasonably expected to incur) expenses of a type described in paragraph (d)(1) or (d)(2) of this section, the arrangement does not satisfy the reimbursement requirement of paragraph (d)(3)(i) of this section. Thus, no part of the allowance Corporation R designated as a reimbursement is treated as paid under an accountable plan. Rather, all payments under the arrangement are treated as paid under a nonaccountable plan. Corporation R must report all payments under the arrangement as wages or other compensation on the employees' Forms W–2 and must withhold and pay employment taxes on the payments when paid.

*Example* (4). *Separate arrangement, miscellaneous expenses.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, County U reimburses its employees for lodging and meal expenses incurred when they travel away from home on County U business. For its own convenience, County U also separately pays certain of its employees a $25 monthly allowance to cover the cost of small miscellaneous office expenses. County U does not require its employees to substantiate these miscellaneous expenses and does not require them to return the amounts by which the monthly allowance exceeds the miscellaneous expenses. The monthly allowance arrangement is a nonaccountable plan. County U must report the monthly allowances as wages or other compensation on the employees' Forms W–2 and must withhold and pay employment taxes on the monthly allowances when paid. The nonaccountable plan providing the monthly allowances is treated as separate from the accountable plan providing reimbursements for lodging and meal expenses incurred for travel away from home on County U business.

*Example* (5). *Excessive advances.* In anticipation of employee business expenses that Corporation V does not reasonably expect to exceed $400 in any quarter, Corporation V nonetheless advances $1,000 to Employee A for such expenses. Whenever Employee A substantiates an expense in accordance with paragraph (e) of this section, Corporation V provides an additional advance in an amount equal to the amount substantiated, thereby providing a continuing advance of $1,000. Because the amounts advanced under this arrangement are not reasonably calculated so as not to exceed the amount of anticipated expenditures and because the advance of money is not made on a day within a reasonable period of the day that the anticipated expenditures are paid or incurred, the arrangement is a nonaccountable plan. The arrangement fails to satisfy the requirements of paragraphs (d) (business connection) and (f) (reasonable calculation of advances) of this section. Thus, Corporation V must report the entire amount of each advance as wages or other compensation and must withhold and pay employment taxes on the entire amount of each advance when paid.



*Example* (6). *Excess mileage advance.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, Employer W pays its employees a mileage allowance at a rate of 30 cents per mile (when the amount deemed substantiated for each mile of travel substantiated is 28 cents per mile) to cover automobile business expenses. The allowance is paid at a rate for each mile of travel that is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses. Employer W does not require the return of the portion of the mileage allowance (4 cents) that exceeds the amount deemed substantiated for each mile of travel substantiated in accordance with paragraph (e) of this section. In June, Employer W advances Employee B $150 for 500 miles to be traveled by Employee B during the month. In July, Employee B substantiates 500 miles of business travel. The amount deemed substantiated by Employee B is $130. However, Employer W does not require Employee B to return the remaining $20 of the advance. No later than the first payroll period following the payroll period in which the business miles of travel are substantiated, Employer W must withhold and pay employment taxes on $20 (500 miles × 4 cents per mile).

*Example* (7). *Excess per diem reimbursement.* Under an arrangement that meets the requirements of paragraphs (d), (e), and (f) of this section, Employer X pays its employees a per diem allowance to cover lodging, meal, and incidental expenses incurred for travel away from home on Employer X business at a rate equal to 120 percent of the amount deemed substantiated for each day of travel to the localities to which the employees travel. Employer X does not require the employees to return the 20 percent by which the reimbursement for those expenses exceeds the amount deemed substantiated for each day of travel substantiated in accordance with paragraph (e) of this section. Employee C substantiates six days of business travel away from home: Two days in a locality for which the amount deemed substantiated is $100 a day and four days in a locality for which the amount deemed substantiated is $125 a day. Employer X reimburses Employee C $940 for the six days of travel away from home {2×(120%×$100)+4×(120%×$125)}, and does not require Employee C to return the excess portion ($140 excess portion = {2 days×$20 ($120−$100)+4 days×$25 ($150-$125)}. For the payroll period in which Employer X reimburses the expenses, Employer X must withhold and pay employment taxes on $140.

*Example* (8). *Return Requirement.* Employer Y provides expense allowances to certain of its employees to cover business expenses of a type described in paragraph (d)(1) of this section under an arrangement that requires the employees to substantiate their expenses within a reasonable period of time and to return any excess amounts within a reasonable period of time. Each time an employee returns an excess amount to Employer Y, however, Employer Y pays the employee a "bonus" equal to the amount returned by the employee. The arrangement fails to satisfy the requirements of paragraph (f) (returning amounts in excess of expenses) of this section. Thus, Employer Y must report the entire amount of the expense allowance payments as wages or other compensation and must withhold and pay employment taxes on the payments when paid. Compare example (6) (where the employee is not required to return the portion of the mileage allowance that exceeds the amount deemed substantiated for each mile of travel substantiated).

*Example* (9). *Timely substantiation.* Employer Z provides a $500 advance to Employee D for a trip away from home on Employer Z business. Employee D incurs $500 in business expenses on the trip. Employer Z uses the periodic statement method safe harbor. At the end of the quarter during which the trip occurred, Employer Z sends a quarterly statement to Employee D stating that $500 was advanced to Employee D during the quarter and that no expenses were substantiated and no excess amounts returned. The statement advises Employee D that Employee D must substantiate any additional business expenses within 120 days of the date of the statement, and must return any unsubstantiated excess within the 120-day period. Employee D fails to substantiate any expenses or to return the excess within the 120-day period. Employer Z treats the $500 as wages and withholds and pays employment taxes on the $500. After the 120-day period has expired, Employee D substantiates the $500 in travel expenses in accordance with paragraph (e) of this section. Employer Z properly reported and withheld and paid employment taxes on the $500 and no adjustments may be made. Employee D must include the $500 in gross income and may deduct the $500 of expenses as a miscellaneous itemized deduction subject to the 2-percent floor provided in section 67.

(k) *Anti-abuse provision.* If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of section 62(c) and this section, all payments made under the arrangement will be treated as made under a nonaccountable plan.

(l) *Cross references.* For employment tax regulations relating to reimbursement and expense allowance arrangements, see §§ 31.3121 (a)–3, 31.3231(e)–(3), 31.3306(b)–2, and 31.3401(a)–4, which generally apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. For reporting requirements, see § 1.6041–3(i), which generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1989 with respect to expenses paid or incurred on or after January 1, 1989.

(m) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee in taxable years of the employee beginning on or after January 1, 1989, with respect to expenses paid or incurred in taxable years beginning on or after January 1, 1989. Paragraph (h) of this section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990 with respect to expenses paid or incurred on or after July 1, 1990. Paragraphs (d)(3) and (h)(2)(i)(B) of this section apply to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991 with respect to expenses paid or incurred on or after January 1, 1991.

**Par. 4.** In § 1.162–17, paragraph (e)(3) is received to read as follows:

**§ 1.162–17 Reporting and substantiation of certain business expenses of employees.**

* * * * *

(e) *Applicability.* * * *

(3) For taxable years beginning on or after January 1, 1989, the provisions of this section are superseded by the regulations under section 62(c) to the extent this section is inconsistent with those regulations. See § 1.62–2.

**Par. 5.** In § 1.6041–3, paragraph (i) is revised to read as follows:

**§ 1.6041–3 Payments for which no return of information is required under section 6041.**

* * * * *

(i)(1) *In general.* Payments made under reimbursement or other expense allowance arrangements that meet the requirements of section 62(c) of the Code and § 1.62–2, that do not exceed the amount of the expenses substantiated (i.e., amounts which are treated as paid under an accountable plan), and that are received by an employee on or after January 1, 1989, with respect to expenses paid or incurred on or after January 1, 1989;

(2) *Transition rule.* Payments made under reimbursement or other expense allowance arrangements that are

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received by an employee on or after January 1, 1989, but prior to July 1, 1990, to the extent that the employee is required to account (within the meaning of the term "account" as set forth in § 1.162–17(b)(4) or 1.274–5T(f)(4), whichever is applicable) and does so account to the payor for such expenses, provided the payor has made a reasonable, good faith effort to comply with the requirements of section 62(c). In general, compliance with the provisions of this section, as in effect for payments made under reimbursement or other expense allowance arrangements that were received by an employee before January 1, 1989, with respect to expenses paid or incurred before January 1, 1989, will constitute such reasonable good faith compliance. In no event, however, will reasonable good faith compliance exist if a payor fails to report payments made under an arrangement (other than a per diem or mileage allowance type arrangement) under which an employee is not required to substantiate expenses paid or incurred or is not required to return amounts in excess of the substantiated expenses;

* * * * *

**PART 31—[AMENDED]**

**Par. 6.** The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Secs. 31.3121 (a)–1, 31.3231(e)–1, 31.3306(b)–1, and 31.3401(a)–1 also issued under 26 U.S.C. 62.

**Par. 7.** In § 31.3121(a)–1, the last sentence of paragraph (h) is revised to read as follows:

**§ 31.3121(a)–1 Wages.**

* * * * *

(h) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3121(a)–3.

* * * * *

**Par. 8.** Section 31.3121(a)–2T is redesignated as § 31.3121(a)–3 and revised to read as follows:

**§ 31.3121(a)–3 Reimbursement and other expense allowance amounts.**

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) and § 1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

**Par. 9.** In § 31.3231(e)–1, the last sentence of paragraph (a)(3)(iv) is revised to read as follows:

**§ 31.3231(e)–1 Compensation.**

(a) * * *

(3) * * *

(iv) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3231(e)–3.

* * * * *

**Par. 10.** Section 31.3231(e)–3T is redesignated as § 31.3231(e)–3 and revised to read as follows:

**§ 31.3231(e)–3 Reimbursement and other expense allowance amounts.**

(a) *When excluded from compensation.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not compensation. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in compensation*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) and § 1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of



time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in compensation, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in compensation. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

**Par. 11.** In § 31.3306(b)–1, the last sentence of paragraph (h) is revised to read as follows:

**§ 31.3306(b)–1 Wages.**

* * * * *

(h) * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3306(b)–2.

* * * * *

**Par. 12.** Section 31.3306(b)–2T is redesignated as § 31.3306(b)–2 and revised to read as follows:

**§ 31.3306(b)–2 Reimbursement and other expense allowance amounts.**

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfied the requirements of section 62(c) and § 1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

**Par. 13.** In § 31.3401 (a)–1, the last sentence of paragraph (b)(2) is revised to read as follows:

**§ 31.3401 (a)–1 Wages.**

* * * * *

(b) * * *

(2) *Traveling and other expenses.* * * * For amounts that are received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990, see § 31.3401 (a)–4.

* * * * *

**Par. 14.** Section 31.3401 (a)–2T is redesignated as § 31.3401 (a)–4 and revised to read as follows:

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§ 31.3401 (a)–4 Reimbursements and other expense allowance amounts.

(a) *When excluded from wages.* If a reimbursement or other expense allowance arrangement meets the requirements of section 62(c) of the Code and § 1.62–2 and the expenses are substantiated within a reasonable period of time, payments made under the arrangement that do not exceed the substantiated expenses are treated as paid under an accountable plan and are not wages. In addition, if both wages and the reimbursement or other expense allowance are combined in a single payment, the reimbursement or other expense allowance must be identified either by making a separate payment or by specifically identifying the amount of the reimbursement or other expense allowance.

(b) *When included in wages*—(1) *Accountable plans*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if a reimbursement or other expense allowance arrangement satisfies the requirements of section 62(c) and § 1.62–2, but the expenses are not substantiated within a reasonable period of time or amounts in excess of the substantiated expenses are not returned within a reasonable period of time, the amount paid under the arrangement in excess of the substantiated expenses is treated as paid under a nonaccountable plan, is included in wages, and is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period.

(ii) *Per diem or mileage allowances.* If a reimbursement or other expense allowance arrangement providing a per diem or mileage allowance satisfies the requirements of section 62(c) and § 1.62–2, but the allowance is paid at a rate for each day or mile of travel that exceeds the amount of the employee's expenses deemed substantiated for a day or mile of travel, the excess portion is treated as paid under a nonaccountable plan and is included in wages. In the case of a per diem or mileage allowance paid as a reimbursement, the excess portion is subject to withholding and payment of employment taxes when paid. In the case of a per diem or mileage allowance paid as an advance, the excess portion is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the expenses with respect to which the advance was paid (i.e., the days or miles of travel) are substantiated. The Commissioner may, in his discretion, prescribe special rules in pronouncements of general applicability regarding the timing of withholding and payment of employment taxes on per diem and mileage allowances.

(2) *Nonaccountable plans.* If a reimbursement or other expense allowance arrangement does not satisfy the requirements of section 62(c) and § 1.62–2 (e.g., the arrangement does not require expenses to be substantiated or require amounts in excess of the substantiated expenses to be returned), all amounts paid under the arrangement are treated as paid under a nonaccountable plan, are included in wages, and are subject to withholding and payment of employment taxes when paid.

(c) *Withholding rate.* Employers may add any payments made under reimbursement or other expense allowance arrangements that are subject to income tax withholding to the employee's regular wages for a payroll period and compute withholding taxes on the total. Alternatively, the employer may withhold income tax from the reimbursement or other expense allowance at the flat 20-percent rate applicable to supplemental wages, provided the employer withholds income tax from the employee's regular wages and provided the reimbursement or allowance is paid separately (or separately identified if wages and reimbursement amounts are combined in a single payment). See § 31.3401 (g)–1 regarding supplemental wage payments.

(d) *Effective dates.* This section generally applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after July 1, 1990, with respect to expenses paid or incurred on or after July 1, 1990. Paragraph (b)(1)(ii) of this section applies to payments made under reimbursement or other expense allowance arrangements received by an employee on or after January 1, 1991, with respect to expenses paid or incurred on or after January 1, 1991.

**PART 602—[AMENDED]**

Par. 15. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 16. The table of OMB control numbers in § 602.101 (c) is amended as follows: The entry reading: "1.62-2 * * * 1545–1148" is revised to read:

"1.62–2 ..... 1545–1148."

Dated: December 4, 1990.

Fred T. Goldberg, Jr.,

*Commissioner of Internal Revenue.*

Approved:

Kenneth W. Gideon,

*Assistant Secretary of the Treasury.*

[FR Doc. 90–29475 Filed 12–14–90; 8:45 am]

BILLING CODE 4830–01–M

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**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**RIN 1218–AA82**

**Occupational Exposure to Formaldehyde**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Extension of administrative stay.

**SUMMARY:** On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

The stay was subsequently extended until December 11, 1990 (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32816, August 10, 1990). OSHA is completing its re-evaluation of the need to stay these paragraphs. More time is needed to complete this evaluation. Consequently the stay is extended an additional 90 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

**EFFECTIVE DATE:** The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until March 11, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523–8151.

**Authority and Signature**

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

**List of Subjects in 29 CFR Part 1910**

Formaldehyde, Cancer, Chemicals, Health, Occupational safety and health, Risk assessment.

**§ 1910.1048 [Stayed in Part]**

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until March 11, 1991.

Signed at Washington, DC this 11th day of December, 1990.

Gerard F. Scannell,

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 90–29404 Filed 12–11–90; 4:49 pm]

BILLING CODE 4510–26–M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[COTP Jacksonville, FL Regulation 90–124]**

**Safety/Security Zone Regulations; St. Johns River, Jacksonville, FL**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Since 15 August 1990, the Coast Guard has been enforcing a concurrent safety and security zone around specified military supply vessels during their transit of the St. Johns River and while berthed at Blount Island Terminal. This zone was initiated to protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense operations. Entry into this zone has been strictly prohibited except for those with prior authorization from the Captain of the Port. The present regulation, 33 CFR 165.T0754, was established as an emergency rule and was published in the Federal Register on 19 October 1990. It expires on 11 December 1990, however, the DOD operations, now known as "Operation Desert Shield," are expected to continue with no foreseeable end. Rather than extending the time frame of the current regulation, making it a final rule appears to be more appropriate, particularly due to the uncertainties of the Iraq/Kuwait situation. The temporary regulation is also modified to include all waterfront facilities where a laden military vessel may be located (including Talleyrand Docks and Terminal, Crowley TMT docks, and the various shipyards in Jacksonville).

**DATES:** This regulation becomes effective on 11 December 1990. Comments on this regulation must be received on or before 28 January 1991.

**ADDRESSES:** Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, FL 32206–3497. The comments will be available for inspection and copying at MSO Jacksonville, room 222. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Maes, Tel: (904) 791–2648.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures was unnecessary in that little or no economic impact is envisioned and no adverse comments are expected concerning the terms of the regulation.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give their comments. Based upon comments received, the regulation may be changed.

**Drafting Information**

The drafters of this regulation are Lieutenant Christopher K. Lockwood, project officer for the Captain of the Port, and Lieutenant Genelle G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

**Discussion of Regulation**

The circumstances requiring this regulation is the continued need for the safe outload of military supply vessels, followed by their safe transit to sea. The protection of vital United States assets as well as the safety of unwary boaters and onlookers necessitates the establishment of both a safety and security zone. Only minor delays to mariners is foreseen, mainly during the transit of these vessels.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 and 50 U.S.C. 191 as set out in the authority citation for all of part 165.

**Economic Assessment and Certification**

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The safety/security zone established by 33 CFR 165.T0754 has been in effect since 15 August 1990; and although a few complaints have been received, those situations occurred early-on and were limited to minor delays incurred by a few commercial vessels prior to arrival or departure while waiting for laden military vessel movements to clear. Since then, better planning and coordination with the local pilots has virtually eliminated commercial vessel delays. Accordingly, the economic impact of this regulation is expected to be minimal, and the Coast Guard certifies that it will not have a significant economic impact on a substantial number of persons.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**FINAL REGULATION:** In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.720 is added to read as follows:

**§ 165.720 Safety/Security Zone: St. Johns River, Jacksonville, FL**

(a) *Location.* The water and the land within the following boundaries are established as a safety and security zone during specified conditions:

(1) All waters within 200 yards of Blount Island, Jacksonville, Florida and all adjacent land within 100 yards of the island shoreline during staging of Department of Defense equipment and during the loading/unloading of military supply vessels.

(2) All waters within 200 yards of "any" waterfront facility at which a laden military vessel is located and all land at the facility, including docks and piers, within 100 yards of the St. Johns River.

(3) All waters within 200 yards of any specified military supply vessel during its transit of the St. Johns River and out to three (3) nautical miles offshore.

(b) *Regulations.* (1) For public notice, the zone described in paragraph (a)(1) of this section is effective beginning 11 December 1990 and will remain in force until cancelled by the Captain of the Port Jacksonville, Florida.

(2) The COTP Jacksonville may activate, as necessary, any portion of the safety/security zone described in paragraphs (a)(2) and (a)(3) of this section by means of locally promulgated broadcast notice to mariners. Once implemented, neither overtaking nor meeting situations will be allowed during specified vessel transits.

(3) In accordance with the general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 of this part, entry into any portion of the described zone is prohibited unless authorized by the Captain of the Port Jacksonville, Florida.

(4) This regulation does not apply to authorized law enforcement agencies operating within the safety/security zone.

Dated: November 28, 1990.

R.J. O'Pezio,

*Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, FL.*

[FR Doc. 90-29009 Filed 12-14-90; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 228**

**RIN 0596-AA44**

**Disposal of Mineral Materials**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture hereby adopts final regulations setting forth classifications of mineral materials subject to disposal by the Secretary under the Materials Act of 1947. These mineral materials include petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders, clay, and other similar materials. The intended effect of this rule is to end the long standing confusion and misinterpretation of what is a common variety of mineral.

**EFFECTIVE DATE:** This rule is effective January 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Steve Marshall, Minerals and Geology Staff, Forest Service, USDA, (202) 453–8240.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Materials Act of July 31, 1947 (61 Stat. 681), as amended by the Multiple Use Mining Act of July 23, 1955 (69 Stat. 367), 30 U.S.C. 601 et seq., authorizes the Secretary of Agriculture, under such rules and regulations as he may prescribe, to dispose of mineral materials from National Forest System lands.

Over a period of years, several hundred administrative appeals and court cases have addressed which substances are considered common varieties of minerals; however, the regulations in 36 CFR part 228, subpart C, which cover the disposal of mineral materials, do not reflect these results. The lack of more specific classification in the regulation has made it difficult for prospective purchasers of mineral materials to know whether a particular deposit is available for purchase. Lacking the information, prospective purchasers have frequently located mining claims under the Mining Laws of the United States for mineral materials, believing them to be locatable minerals, creating title and economic problems, unnecessary litigation, and delays in completing sales.

Moreover, numerous administrative and court decisions that have evaluated specific minerals, their physical properties, and economic factors relevant to their use have resulted in a complex, and not always consistent, set of standards for determining whether or not a mineral is a common variety. One standard for an uncommon variety that has been regarded as definitive and that has provided a broad framework for numerous administrative decisions was set forth in *McClarty* v. *Secretary of the Interior*, 408 F.2d 907, 908 (9th Cir. 1969). That standard holds that:

(1) There must be a comparison of the mineral deposit in question with other deposits of such minerals generally; (2) the mineral deposit in question must have a unique property; (3) the unique property must give the deposit a distinct and special value; (4) if the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and, (5) the distinct and special value must be reflected by the higher price which the material commands in the market place.

The McClarty decision also provided that a finding of special economic value of a deposit due to a unique property might be based on reduced costs or overhead resulting in a greater margin of profit.

Use of the standards established in the McClarty decision leaves a number of unanswered questions for the operator and the Forest Service. For example, knowledge that a "property" is unique to a particular deposit requires familiarity with the properties of all other deposits of that mineral. For some minerals this potentially requires knowledge of the properties of hundreds of deposits. Also, the standards do not specify the degree of value sufficient to establish a distinct and special value. Identifying a common variety has been further complicated by a number of judicial decisions finding certain properties as not imparting distinct and special value for the purpose of determining whether a mineral is an uncommon variety.

To bring consistency to classification of mineral materials, the Forest Service issued a proposed rule on April 28, 1988 (53 FR 15236). That rule was designed to provide additional criteria on the classification and sale of mineral materials in view of the Act of July 23, 1955. It proposed six categories of mineral materials based on characteristics and uses of the minerals. It also recognized six categories of minerals considered to be uncommon varieties that are locatable under the Mining Laws. Although the rule was designed to deal with situations on National Forest System lands reserved from the public domain, it would, by analogy, also be used to determine which mineral materials are salable on other National Forest System lands as described at 36 CFR 228.42(a).



**Analysis of Public Comments**

A total of 57 responses were received during the public comment period. Of the 57 responses, 22 were from businesses, 19 were from individuals, 9 were from associations, six were from State and Federal agencies, and one was from a member of Congress.

Most of the responses expressed concern about a specific aspect of the rule; particularly about minerals and uses which might form the basis for a common variety classification. Comments received were categorized into subject matter areas as follows: Common Varieties; Uncommon Varieties; Intent; Scope of the Rule; Use-based Priority; Forest Service Communications; Deposits with both Common and Uncommon Varities; Patenting of Mining Claims; and, Incentives for Exploration and Development. Major comments and the Department's responses follow.

1. *Comments and responses on categories of common varieties. Agricultural supply and animal husbandry materials.* Nine reviewers addressed this category of mineral materials. The comments included general objections to the category, concerns about particular commodities within the category, and concerns about consistency with the findings in *U.S.* v. *Bunkowski*, 79 I.D. 43 (1972) that minerals which meet the test of a chemical soil amendment are locatable.

In response, this category has been revised in the final rule to eliminate the term "fertilizers" and to specify that this category includes soil conditioners or amendments that only physically, rather than chemically, alter soil properties. These changes make the regulation conform with the distinctions made in Bunkowski and other decisions.

Two of the reviewers were apparently under the impression that "trace elements" are locatable minerals when used as an agricultural additive. They have never been locatable for this purpose. (See *U.S.* v. *Bienick*, 14 IBLA 290, 297 (1974) (concurring opinion).) To avoid any confusion on this point, the final rule also specifies that "trace elements" are included in the agricultural supply and animal husbandry category.

*Building materials.* Fourteen respondents addressed building materials. Most of the comments dealt with various forms of building stone. The large amount of interest in this particular aspect of the proposed rule is consistent with the Forest Service's experience in dealing with common variety determinations; moreover, about 60 to 70 percent of the common variety cases heard by the Interior Board of Land Appeals have involved building stone.

The particular comments received included concerns about the disposition of existing mining claims and conformance with existing statutes and case law. How existing mining claims will be addressed is described later in this preamble under the topic "Comments and Responses on Patenting of Mining Claims."

At least one reviewer was of the impression that the Act of July 23, 1955, 30 U.S.C. 611–615, does not apply to building stone. This is not correct. Section 3 of this Act, 30 U.S.C. 611, declares that deposits of common varieties of stone, sand, gravel, and certain other minerals would no longer be deemed valuable mineral deposits under the Mining Laws. This statutory provision has been held applicable to common varieties of building stone by the U.S. Supreme Court. (See *United States* v. *Coleman*, 390 U.S. 599, 603–605 (1968).)

In the Coleman decision, the Court cited the legislative history of the Act of July 23, 1955, as making it clear that the Act was intended to limit the types of building stone that are locatable. The Court cited as an example, a statement made by the Chairman of the House Committee on Interior and Insular Affairs. In relevant part, that statement reads:

> The reason we have done that is because sand, stone, gravel * * * are really *building materials*, and are not the type of material contemplated to be handled under the mining laws * * *. (*Id.* at 604; emphasis in original.)

The court went on to cite the Senate Committee Report for the 1955 Act which specifically refers to the Congressional intent of providing that common varieties of building stone not be locatable under the Mining Laws.

The origin of the Act of August 4, 1892 (27 Stat. 348), 30 U.S.C. 161, also supports the manner in which the proposed rule addressed building materials. In 1891, a Department of the Interior decision found that building stone "being used for foundations of buildings, cellar walls, bridge abutments and other places where strong, rough, work is required * * *" was not locatable. (See *Conlin* v. *Kelly*, 12 I.D. 1 (1891).) However, on August 4, 1892, a statute was enacted which specifically provided that a person could enter lands chiefly valuable for building stone under the provisions of the Mining Laws relating to placer mining claims. It appears that the purpose of that Act was to provide for the location of building stone essential for structural purposes in the construction methods of that era.

Today, building stone is infrequently used to provide structural support because of the construction methods of our era. In modern construction, building stone is generally used for purposes such as decorative siding, fireplaces, patios, and the like. As the Rocky Mountain Mineral Law Foundation observed in its "American Law of Mining": "It has generally been held that ornamental building stone is a common variety, on the grounds that it has no special or distinct value not possessed by similar ornamental building stone." Rocky Mtn. Min. L. Found., "American Law of Mining" section 8.02(4)(b)(ii). This and similar interpretations, which greatly limit the types of minerals that may be locatable under the Mining Laws are consistent with the constraint of the Act of August 4, 1892, that limits its applicability to lands "chiefly valuable for building stone * * *" and support the inclusion of building stone as a common variety.

For all the above reasons, this category is retained in the final rule in an essentially unchanged form. A few examples have been added or modified for the purpose of clarification and amplification.

*Cleaning and abrasive mineral materials.* Five respondents challenged including certain cleaning materials as common variety minerals. Perlite, diatomite, and zeolites were specifically mentioned. These minerals are each clearly subject to location under the Mining Laws (although certain zeolites may be leasable under the Mineral Leasing Act of 1920). In order to avoid any confusion, "cleaning materials" have been removed in the final rule. Abrasive mineral materials remain in the rule as proposed.

*Construction materials.* Four respondents discussed issues related to construction materials. Two indicated that not enough recognition was given to minerals having a distinct and special economic advantage; one suggested that ballast, particularly ballast used for railroad purposes, should be considered a common variety; one provided a list of minerals that might be affected.

It should be recognized that even before the passage of the Act of July 31, 1947, and the Act of July 23, 1955, many of the minerals described in this category of the proposed rule were not locatable under the Mining Laws. This fact has been cited in various decisions over the years. For example, the Interior Board of Land Appeals held in 1978 that "material which is principally valuable

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for use as fill, sub-base, ballast, rip-rap, or barrow was *never* locatable." *U.S.* v. *Verdugo & Miller, Inc.*, 37 IBLA 277, 279 (1978) (emphasis in original).

Following the passage of the Act of July 31, 1947, as amended by the Act of July 23, 1955, additional minerals covered by this category of the proposed rule were no longer locatable. In *U.S.* v. *Bienick*, 14 IBLA 290, 298 (1974) (concurring opinion), the Interior Board of Land Appeals noted that:

> even where the material was previously regarded as a mineral subject to location because it met engineering requirements for compaction, hardness, soundness, stability, favorable gradation, non-reactivity, and non-hydrophilic qualities *in road building and similar work*, after July 23, 1955, these materials were treated as common varieties, and therefore not locatable, because materials which meet these standards are common, abundant and of widespread occurrence. (Emphasis added.)

Further, the legislative history of the Materials Act of July 31, 1947, reflects Congress' intent with regard to construction material. In commenting on the bill, the Under Secretary of the Interior indicated the bill would apply, among other things, to:

> 2. Sand, stone, and gravel not of such quality and quantity as to be subject to the mining laws but which are desired by local governments, railroads, local industries, ranchers, and farmers for the construction and maintenance of highways, secondary roads, railroads, structures of various kinds, and farm and ranch improvements.

This portion of the legislative history of the Materials Act of July 31, 1947 was quoted in part in *United States* v. *Mattey*, 67 I.D. 63 (1960).

The Act of July 23, 1955, expanded the scope of affected uses and removed considerations of local demand versus regional or national demand. The legislative history of this Act also reflects Congress' intent that construction materials were not subject to disposal under the Mining Laws. As noted earlier, during the considerations of this Act the Chairman of the House Committee on Interior and Insular Affairs stated, in part, that "sand, stone, (and) gravel * * * are really *building materials*, and are not the type of material contemplated to be handled under the mining laws * * *." (101 Cong. Rec. 8743; emphasis added.)

All of the foregoing considerations support the category "Construction Materials" as originally proposed. Except for the addition of supplemental wording to make it clear that all ballast for railroad purposes is deemed to be a mineral material, this category is essentially unchanged in the final rule.

*Decorative and ornamental arts materials.* Several reviewers raised issues related to decorative and ornamental arts materials. Some of these respondents described themselves as "rockhounds" concerned that the rule might impose new restrictions on their hobby. Others discussed some of the complexities inherent in distinguishing between "common" and "uncommon" varieties of these minerals.

The proposed rule was not intended to have any effect on rockhounding and related noncommercial collecting of minerals. Because of the concerns raised by these comments, and because of the analytical difficulties encountered in deriving a suitable distinction between common and uncommon varieties, the category of "Decorative and Ornamental Arts Materials" has not been retained in the final rule.

Two respondents on this section of the rule expressed concern about petrified wood being treated as a mineral material by the Forest Service.

The disposal of petrified wood under the Materials Act of 1947, is already provided for by the existing regulations at 36 CFR part 228, subpart C. The basis for this treatment of petrified wood is 30 U.S.C. 601, a portion of the Materials Act, which authorizes the Secretary of Agriculture to "dispose of mineral materials * * * and vegetative materials * * * if the disposal of such mineral or vegetative materials * * * is not otherwise authorized by law, including, but no limited to, subchapter I of chapter 8A of title 43, and the United States Mining Laws * * *." The Act of September 26, 1962 (76 Stat. 652), which amended the Act of July 23, 1955, and is codified at 30 U.S.C. 611, specifically removed petrified wood from the scope of the Mining Laws. No other law authorizes the disposal of petrified wood on National Forest Systems lands. Accordingly, the Secretary of Agriculture has the authority to include petrified wood in the categories of mineral and vegetative materials that are disposed of pursuant to the Materials Act of 1947. Petrified wood therefore is managed the same as mineral materials and remains in § 228.41(c) of the rule as proposed.

*Landscaping materials.* Five respondents addressed this category. Two mentioned it in connection with decorative stone; one mentioned it with regard to marble; one cited limestone used in landscaping, and one suggested that peat be added to the category.

It is recognized that many of the specific deposits and uses to which this category might apply are also addressed by the "Building Materials" and "Construction Materials" categories. The rationale for those categories also forms the basis for the treatment of landscaping materials in the rule. Thus, this category is retained as proposed, with the addition of "peat."

The suggestion to include peat in this rule raised several considerations. It is clearly not a locatable mineral and whether it should be regarded as a mineral resource at all is debatable. (See *U.S.* v. *Lawrence*, Civil No. 648–B, slip op. (D. Calif., March 13, 1941); *U.S.* v. *Toole*, 224 F. Supp. 440, 466–467 (D. Mont. 1963).) As either a vegetative material or a mineral material, peat is subject to disposal under the provisions of the Act of July 31, 1947, as amended by the Act of July 23, 1955. The question thus becomes a matter of determining what regulation should be used to implement the authority provided by those Acts.

The vast majority of the materials currently disposed of by the Forest Service under the Act of July 31, 1947, as amended by the Act of July 23, 1955, are disposed of through the regulations for Disposal of Mineral Materials at 36 CFR part 228, subpart C. The Act expressly authorizes the Secretary to dispose of both mineral and vegetative materials. Given this, and the fact that peat is removed by mining methods, it appears beneficial to operators and Forest Service personnel alike to include peat in this rule rather than in a separate rule for vegetative materials.

2. *Comments and responses on uncommon varieties.* Very few comments were received regarding the minerals classified as uncommon varieties other than as an integral part of comments on the minerals classified as common varieties.

Two respondents indicated that the category of uncommon "alumino-silicates or clays" should be expanded to include specification of refractory, structural, and specialty bricks. This suggestion has not been adopted. This category, as proposed, is consistent with a large body of judicial decisions and legislative history dealing with these minerals. (A detailed discussion of the body of precedent relevant to alumino-silicates or clays can be found in *U.S.* v. *Peck*, 84 I.D. 137 (1977).) One reviewer indicated that the requirement in this category that a mineral be used in a manner "for which there are no substitutes" was overly restrictive. We agree, and have made it clear "having exceptional qualities" which are used "for purposes for which common clays cannot be used." This better conforms with the findings of existing case law.

One respondent suggested that the final rule should specify that "block pumice" which is locatable under the Mining Laws is that which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions. The respondent noted that this was the holding contained in *U.S.* v. *U.S. Pumice*, A–17005, slip op. at 123–134 (September 29, 1983). Having examined that decision, we agree with this respondent. We also note that a similar discussion concerning the locatability of pumice appears in the earlier IBLA decision *U.S.* v. *Thomas*, 78 I.D. 5, 10 (1971). Therefore, we have modified the block pumice category accordingly and made a conforming change in the mineral material definition included in 36 CFR 228.43.



One respondent asked whether a mineral listed is the section "Materials not covered by this subpart" would be exempt from consideration as a common variety. The answer generally will be "yes." A use that qualifies a mineral as an uncommon variety overrides classification of that mineral as a common variety. This is made explicit in § 228.41(e) of the final rule. However, with respect to some of the listed categories, the rules on what is locatable are not precisely defined. To assure maximum flexibility in identification of those minerals not covered by this subpart, we have indicated that locatable minerals may include those listed.

One respondent raised a concern about the requirement that minerals must be actually used for the purposes stated and indicated that if a "[c]laimant can demonstrate the likelihood of profitability penetrating the market for (uncommon varieties), the deposit will support a valid mining claim despite (present) 'common variety' use." In support of this view, the respondent made an analogy to how the discovery test is employed in dealing with locatable minerals. We disagree. As discussed later, we believe the use of a mineral should play a determinative role in establishing whether or not it is considered to be a common variety. As many minerals may be suitable for both common and uncommon variety uses, actual use must be the basis of a classification, and this is confirmed by administrative and court decisions.

3. *Comments and responses on "Intent" of rule.* Eleven respondents raised issues related to the intent of the proposed rule. Most of these comments spoke to the need for the rule to conform with the intent of the Mining Laws and various judicial decisions. The proposed rule does conform to laws and judicial decisions as is explained in this document as well as in the proposed rule.

Four respondents suggested that the rule was designed to assert more control over the mining industry. This concern was apparently based on the greater discretionary authority the Forest Service holds with regard to disposals under the Act of July 31, 1947, as amended by the Act of July 23, 1955, than to disposals under the Mining Laws. We do not believe either the existing procedures for disposal of mineral materials or the amendments made by this rule encourage Forest Service officials to exercise their authority in manner that overly restricts availability of these materials.

Our reasons for concluding this include the provision in this amendment which allows for existing operations to continue by allowing claimants to receive a sale by negotiated contract for those materials. This opportunity is provided under 36 CFR 228.57(b)(2) which permits the disposal by negotiated contract of mineral materials located on mining claims on National Forest Systems Lands for which it is impracticable to obtain competition. Also, there is a provision in this amendment that decisions as to whether or not to grant disposals proposed under 36 CFR part 228, subpart C shall be made in writing and must specify their rationale.

In a related action, the Forest Service has already begun an evaluation of the need for a separate rule expanding the usage of prospecting permits and preference right sales. This would provide greater flexibility for operators seeking to produce common varieties of minerals from National Forest System lands. Similarly, as a part of routine program management, the Forest Service plans to conduct a review of the availability and demand for mineral materials in order to identify whether significant availability problems exist. If significant problems are found, measures may be taken to address them.

4. *Comments and responses on scope of the rule.* Three reviewers indicated that the Forest Service's categories of mineral materials were too expansive and should be constrained to the particular common varieties of minerals listed in section 3 of the Act of July 23, 1955, and codified at 30 U.S.C. 611. The minerals listed are common varieties of: "sand, stone, gravel, pumice, pumicite, (and) cinders * * *." The respondents contend that the only common varieties of minerals removed from the operation of the Mining Laws are the minerals listed in 30 U.S.C. 611.

We do not agree with this interpretation. It overlooks the fact that section 1 of the Act of July 23, 1955, also amended the Materials Act of 1947. As amended, the Materials Act provides the Secretary of Agriculture with far greater authority regarding the disposal of minerals on National Forest Service lands. Specifically, 30 U.S.C. 30 U.S.C. 601 provides that the Secretary of Agriculture "under such rules and regulations as he may prescribe, may dispose of mineral materials (*including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay*) * * *." (Emphasis added.) The emphasized language is noteworthy for several reasons. It expressly authorizes the Secretary of Agriculture to dispose of common varieties of all of the materials listed in 30 U.S.C. 611 as well as common varieties of clay. More significantly, the use of the phrase "including but not limited to" makes it clear that there are common varieties of minerals other than those listed which the Secretary of Agriculture may choose to dispose in accordance with the Materials Act of 1947, as amended. Thus, under 30 U.S.C. 601 the Secretary of Agriculture has both the authority to adopt regulations providing for the disposition of the listed common varieties of minerals and to adopt regulations providing for the disposition of other common varieties of minerals. An obvious corollary of the Secretary's authority to adopt regulations providing for the disposal of these common varieties is to adopt a rule which provides criteria for determining whether or not a mineral will be considered to be a common variety.

Some cases have relied on the narrow interpretation of 30 U.S.C. 611 advocated by the respondents and concluded that only the common varieties of the minerals listed in that section are not subject to disposition under the Mining Laws. However, these decisions disregard the plain language of 30 U.S.C. 601 which expressly provides that the Secretary of Agriculture is authorized to dispose of mineral materials "including but not limited to" all of the common varieties of minerals listed in 30 U.S.C. 611. Moreover, construing 30 U.S.C. 611 in this fashion would lead to an absurd result. If the only minerals not subject to disposition under the Mining Laws were the common varieties of minerals listed in 30 U.S.C. 611, it would stand to reason that common varieties of clay would be subject to disposition under the Mining Laws since clay is not mentioned in 30 U.S.C. 611. Yet 30 U.S.C. 601 specifically provides that common varieties of clay

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are subject to disposition as mineral materials. Obviously, it could not have been Congress' intent in enacting the Act of July 23, 1955, to provide for the disposal of common varieties of one mineral under two different statutory schemes. The interpretation advocated by the respondents also is not consistent with the legislative history of the Act of July 23, 1955.

5. *Comments and responses on use-based priority.* Several respondents raised objections to the "use priority" basis for the categories listed in the proposed rule. They suggested that this was a new concept in mineral material determinations. It was suggested by some that criteria based on physical properties and geographic location of the minerals be used instead. Others objected to the requirement of actual usage rather than "suitability for use."

The "use" of a mineral has frequently been relied upon the past to determine whether or not it should be classified as a common variety. Some of the appeals and litigation in which use played a determinative role were summarized in *U.S.* v. *Bienick*, 14 IBLA 290, 297–298 (1974). That decision cited the following usages among others, as indicating that a particular mineral is not locatable:

> • • • common or inferior limestone "for building of levees or railroad embankments or filling up low places," *Holman* v. *Utah*, 41 L.D. 314 (1912); *Gray Trust Co.* (On rehearing) 47 L.D. 18 (1919); stalactites, stalagmites, geodes, crystalline deposits and formations valuable as natural curiosities, *South Dakota Mining Co.* v. *McDonald*, 30 L.D. (1900); • • • soil containing "trace elements" of minerals for use as agricultural additive; *United States* v. *Toole*, supra; "blow-sand" used for agricultural and horticultural purposes, Solicitor's Opinion M–36295 (August 1, 1955); *United States* v. *Jaramillo*, A–28533 (February 6, 1961); common rock for "filling purposes" Solicitor's Opinion M–36295, supra; *Holman* v. *Utah*, supra; clay used as mud for facial cosmetics, *United States* v. *Springer*, 8 IBLA 123 (1972); • • • clay sold for use as an additive to cattle feed but not distinguishable from common clay, *United States* v. *O'Callaghan*, 8 IBLA 324[,] 79 I.D. 669 (1972); a "mine" deriving revenue only through paid admission of persons desiring to breathe radon gas released by decaying uranium and said to have therapeutic value, *United States* v. *Elkhorn Mining Co.*, 2 IBLA 363 (1971), *aff'd., Elkhorn Mining Co.* v. *Morton*, Civil No. 2111 (D. Mont., filed January 10, 1973); sandstone used as fill for roads, *United States* v. *Black*, 64 I.D. 93, 96 (1957), *Id.* at 297.

Similarly, in *U.S.* v. *Peck*, 84 I.D. 137 (1977), the Interior Board of Land Appeals examined in detail the relationship between use and locatability as it pertains to clay minerals. In that case, a company proposed to use the subject clay in blends combined with other clays and silica sand for manufacturing brick, floor tile, and similar products. The decision reached by the Board in that case hinged on the finding that "The *uses* to which appellants propose to sell these materials are not *uses* which have been recognizable under the mining laws." (*Id.* at 149; emphasis added.)

Several reviewers indicated concern about the flexibility of the rule and stated that it needs to be dynamic enough to allow for unforeseen uses of minerals in the future. We agree that unforeseen uses could prompt a change in the common variety categories described in this rule. The need to make such change can be identified and addressed in several ways. First, the Forest Service periodically reviews the rules set forth in 36 CFR chapter II to determine whether changes in them may be appropriate. Second, a question about the locatability of a particular mineral deposit may demonstrate that changes to the rule are warranted. Finally, 30 U.S.C. 553(e), a provision included in the Administrative Procedure Act, allows an interested person to petition an agency for issuance, repeal or amendment of a rule.

A related concern was raised with regard to situations where an operator may be evaluating a mineral deposit but is not certain as to the end-use of the products he may generate. This is actually quite a similar situation to the historic one where operators have had little means for determining whether a mineral deposit is of a common or uncommon variety. Because this rule would bring clarity to what constitutes a common variety, operators will have considerably more information at the outset of operations than they have previously had. Further, to the extent possible, that information is now consolidated into regulation rather than scattered through innumerable legal decisions and interpretations.

6. *Comments and responses on Forest Service Administration and Communication.* Several reviewers suggested that the Forest Service needs to strengthen its internal training and external dialogue with the public regarding common varieties of minerals. While these comments are beyond the scope of the proposed rule, we agree. In the last year, the Agency has markedly expanded the coverage given to common varieties of minerals in its national minerals training program and has increased its contact with affected operators, trade associations, and industry publications. The agency plans to continue these efforts.

7. *Comments and responses on deposits containing both common and uncommon varieties.* Several respondents questioned how situations with mixtures of end uses involving both common and uncommon varieties would be handled. The handling of this kind of situation would be much the same as in the past for many operations involving both common and uncommon varieties. In such cases, the Interior Board of Land Appeals has repeatedly held that profits from common and uncommon varities cannot be aggregated to show marketability and that, prior to patent of the mining claim, common variety mineral must be purchased by contract. (*See U.S.* v. *Charles Pfizer & Co.*, 76 I.D. 331, 348–349; *U.S.* v. *Lease*, 79 I.D. 379, 382–386 (1972); *U.S.* v. *Foresyth*, 15 IBLA 43, 60 (1974), and *U.S.* v. *Mansfield*, 35 IBLA 95, 101 (1978).)

Some respondents raised a similar concern about operational complexities that might arise when a deposit is partially on lands managed by the Bureau of Land Management and the remainder on lands managed by the Forest Service. Here again, handling of such situations is routine today. Operations involving mineral deposits "on both sides of the boundary" currently face a myriad of differences in how they might be managed. Differences include: If a mineral is locatable, whether a plan of operations is required; if the mineral is a common variety, how much is charged; whether a bond will be required and, if so, for what amount; variability in the means for compliance with other statutes; and differing on-the-ground performance requirements; etc. The current rulemaking does not materially alter the complexity of working with both agencies at once. We would also point out that many mineral operations entail working with a variety of State, private, and Federal land ownerships and that working with varying requirements is inherent in these situations.

8. *Comments and responses on patenting of mining claims.* Three respondents expressed concerns about how patenting procedures might be affected by this rule. Two of these respondents inquired about the effect on the outcome of patenting efforts currently under way. The third inquired about the effect on the patenting process as a whole.

In response to these comments, it should be noted that this final rule makes clear at § 228.41(e) that this rule will have no effect on patent applications for any mining claims for which a Mineral Entry Final Certificate was issued as of the effective date of this rule. This rule also will have no effect on the processing of patent applications for mining claims that were located on or before July 23, 1995, and that satisfy the marketability test for locatable minerals from on or before July 23, 1955, until the date that the Mineral Entry Final Certificate issues. All other patent applications for National Forest System lands will be processed in accordance with the provisions of this rule.

One reviewer expressed concern that mining claimants would not have a proper opportunity to dispute common variety classifications for particular minerals. Part of this concern relates to ensuring that claimants with a property interest are assured an opportunity for due process.

Under the final rule, various administrative avenues are available for resolving such disputes. First, the Forest Service may deem it appropriate to modify the rule due to new information such as newly established highly specialized use of a particular mineral.

Second, the claimant can trigger a determination as to whether the mineral for which a mining claim is located is locatable or a common variety by filing an application with the Department of the Interior for a patent to the mining claim. Patent application review procedures would prompt the Forest Service to conduct a validity examination to determine whether all the requirements of the Mining Laws have been met. Well established procedures for conducting such examinations and responding to the findings are specifically designed with the claimant's potential property interest in mind.

Third, the Forest Service can elect to conduct a validity examination of the mining claim even if the claimant has not filed a patent application. The validity examination could result in a decision to contest the mining claim. The mining claim contest procedure is designed to give proper accord to potential property interests.

Fourth, the Forest Service can conduct a mineral classification review for the sole purpose of determining whether the Mining Laws are the proper disposal authority for the mineral involved. The mineral classification review is not the same as a validity examination and is not necessarily the first step in contesting a mining claim. Conducting mineral classification reviews is an established practice on National Forest System lands. As the mining claim itself is not challenged under this process, the determination on the proper classification of the mineral is reached without threatening property interests in the claim.

Further, the provisions at § 228.43(e) of this rule give assurance to operators that proposals to purchase common varieties of mineral materials from National Forest Service lands will receive due consideration. Those provisions specify that decisions as to whether or not to grant a disposal will be made in writing and will specify their factual and legal basis. Having the rationale formally recorded should facilitate discussion by all parties about the merits of the decision.

9. *Comments and responses on incentives for exploration and development.* Two reviewers expressed concern that the existing rules for mineral materials are designed in such a manner that there is little incentive for exploration and development efforts. They indicated that current regulations encourage competitive sales and that operators may not want to invest in exploration if they subsequently must compete to purchase what they have discovered. They also indicated that the term provisions at 36 CFR 228.53 are too short to allow for reasonable periods of development and production. We recognize these concerns and will consider possible revisions to the existing rules in light of them.

## Conclusion

Having considered the comments made on the proposed rule, the Department is adopting a final rule that defines mineral materials subject to sale and disposal from National Forest Service lands through the provisions of 36 CFR part 228, subpart C. The minerals which are defined as common varieties and those which are defined as uncommon varieties are essentially the same as those originally proposed. Changes include: clarifications of an editorial nature, eliminating the term "fertilizers" from the "Agricultural Supply and Animal Husbandry" category; removing "cleaning materials" from another category;" eliminating the entire category of "Decorative and Ornamental Arts Materials;" adding peat to the "Landscaping Materials" category; and notifying mining claimants that they have a right to maintain that their mineral is locatable and to file a patent application for the claim and that they may be eligible to receive a sale by negotiated contract for mineral materials located on their mining claims.

## Regulatory Impact

This rule has been reviewed under Executive Order 12291 and Department of Agriculture procedures and it has been determined that this rule is not a major rule. The rule would not have an effect on the economy of $100 million, substantially increase prices or costs for consumers, or adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in foreign markets.

It has also been determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the rules are not subject to review under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property.

## Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and therefore imposes no paperwork burden on the public.

## Environmental Impact

This rule merely clarifies which of two statutes apply to the disposition of certain minerals on National Forest System lands. The rule does not authorize the disposition of such minerals or specify the procedures for such disposals. As such, the rule has no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of the effects of the rule in an environmental assessment or an environmental impact statement is not required.

## List of Subjects in 36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mines, National forests, Oil and gas leasing, Public lands—mineral resources, Public lands—Rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Therefore, for the reasons set forth in the preamble, subpart C of part 228 of title 36 of the Code of Federal Regulations is amended as follows:

## PART 228—MINERALS

1. The authority citation for part 228 is revised to read as follows:

> **Authority:** 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 8102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 681, as amended (30 U.S.C. 601); 61 Stat. 914, as amended (30 U.S.C. 352); 60

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Stat. 368, as amended (30 U.S.C. 611); and 94 Stat. 2400.

**Subpart C—Disposal of Mineral Materials**

2. Amend § 228.41 by adding new paragraphs (c), (d), and (e) to read as follows:

**§ 228.41 Scope.**

* * * * *

(c) *Mineral materials to which this subpart applies.* This subpart applies to mineral materials which consist of petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Such mineral materials include deposits which, although they have economic value, are used for agriculture, animal husbandry, building, abrasion, construction, landscaping, and similar uses. This subpart also applies to other materials which may not be minerals but are produced using mining methods, such as peat. The categories of these materials, including representative examples, are:

(1) *Agricultural supply and animal husbandry materials.* This category includes, but is not limited to, minerals and vegetative materials used as or for: Soil conditioners or amendments applied to physically alter soil properties such as direct applications to the soil of carbonate rocks, soil containing "trace elements" and peat; animal feed supplements; and other animal care products.

(2) *Building materials.* Except for minerals identified as *Uncommon Varieties*, this category includes, but is not limited to, minerals used as or for: Paint fillers or extenders; flagstone, ashlar, rubble, mortar, brick, tile, pipe, pottery, earthenware, stoneware, terrazzo, and other nonstructural components in floors, walls, roofs, fireplaces, and the like; and similar building uses.

(3) *Abrasive materials.* This category includes, but is not limited to, minerals used for: Filing; scouring; polishing; sanding; and sandblasting.

(4) *Construction materials.* This category includes, but is not limited to, minerals such as sand, gravel, clay, crushed rock and cinders used as or for fill; borrow; rip-rap; ballast (including all ballast for railroad use); road base; road surfacing; concrete aggregate; clay sealants; and similar construction uses.

(5) *Landscaping materials:* This category includes, but is not limited to minerals and peat used as or for: Chips, granules, sand, pebbles, scoria, cinders, cobbles, boulders, slabs, and other components in retaining walls, walkways, patios, yards, gardens, and the like; and similar landscaping uses.

(d) *Minerals not covered by this subpart.* Mineral materials do not include any mineral used in manufacturing, industrial processing, or chemical operations for which no other mineral can be substituted due to unique properties giving the particular mineral a distinct and special value; nor do they include block pumice which in nature occurs in pieces having one dimension of two inches or more which is valuable and used for some application that requires such dimensions. Disposal of minerals not covered by this subpart is subject to the terms of the United States Mining Laws, as amended (30 U.S.C. 22 *et seq.*), on those portions of the National Forest System where those laws apply. Such minerals may include:

(1) Mineral suitable and used as soil amendment because of a constituent element other than calcium or magnesium carbonate that chemically alters the soil;

(2) Limestone suitable and used, without substantial admixtures, for cement manufacture, metallurgy, production of quicklime, sugar refining, whiting, fillers, paper manufacture, and desulfurization of stack gases;

(3) Silica suitable and used for glass manufacture, production of metallic silicon, flux, and rock wool;

(4) Alumino-silicates or clays having exceptional qualities suitable and used for production of aluminum, ceramics, drilling mud, taconite binder, foundry castings, and other purposes for which common clays cannot be used;

(5) Gypsum suitable and used for wallboard, plaster, or cement.

(6) Block pumice which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions; and

(7) Stone recognized through marketing factors for its special and distinct properties of strength and durability making it suitable for structural support and used for that purpose.

(e) *Limitations on applicability.* (1) The provisions of paragraphs (c) and (d) of this section shall not apply to any mining claims for which a Mineral Entry Final Certificate was issued on or before January 16, 1991. Nor shall these provisions apply to any mining claim located on or before July 23, 1955, which has satisfied the marketability test for locatable minerals from on or before July 23, 1955, until the present date.

(2) A use which qualifies a mineral as an uncommon variety under paragraph (d) overrides classification of that mineral as a common variety under paragraph (c) of this section.

3. Amend § 228.42 by revising the definition of mineral materials to read as follows:

**§ 228.42 Definitions.**

* * * * *

*Mineral materials.* A collective term used throughout this subpart to describe petrified wood and common varieties of sand, gravel, stone, pumice, pumicite, cinders, clay, and other similar materials. Common varieties do not include deposits of those materials which are valuable because of some property giving them distinct and special value, nor do they include "so-called 'block pumice' " which occurs in nature in pieces having one dimension of two inches or more and which is valuable and used for some application that requires such dimensions.

4. Amend § 228.43 by adding new paragraphs (e) and (f) to read as follows:

**§ 228.43 Policy governing disposal.**

* * * * *

(e) *Decisions.* All decisions as to whether or not to grant disposals proposed under this subpart shall be made in writing by the authorized officer. Such decisions must specify their factual and legal basis.

(f) *Option for mining claimants.* All mining claimants holding mining claims which are located for a mineral classified in accordance with this subpart as a mineral material have the option of maintaining that the mineral is locatable and filing for patent. All mining claimants holding mining claims located in good faith on or before January 16, 1991, for a mineral classified in accordance with this subpart as a mineral material may accept the classification and, if appropriate, receive a sale by negotiated contract for that mineral material under 36 CFR 228.57(b)(2) of this subpart.

5. Revise § 228.67 to read as follows:

**§ 228.67 Information collection requirements.**

(a) The following sections of this subpart contain information collection requirements as defined in the Paperwork Reduction Act of 1980 (5 CFR part 1320): § 228.45, Qualifications of applicants; § 228.51, Bonding; § 228.52(b)(1), Requirements of assignee; § 228.53(b), Extension of time; § 228.56, Operating plans; § 228.57(c), Conduct of sales; § 228.60, Prospecting permits; § 228.61, Preference right negotiated sales; and § 228.62, Free use. These requirements have been approved by the Office of Management and Budget and assigned clearance number 0596–0081.

(b) The public reporting burden for this collection of information is estimated to vary from a few minutes to many hours per individual response, with an average of 2 hours per individual response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: December 5, 1990.

**Jack C. Parnell,**

*Deputy Secretary.*

[FR Doc. 90-29112 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-11-M



## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 261 and 302**

**[FRL-3869-4]**

**Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings; Correction**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) is correcting errors in the preamble, and amendments to the regulations which appeared in the **Federal Register** on November 2, 1990 (55 FR 46354).

EPA has promulgated regulations under the Resource Conservation and Recovery Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. The regulation contained errors which are discussed briefly below and are corrected by this notice.

Table E incorrectly states the water solubility of benzene. The solubility of benzene in water is $1.75 \times 10^{+3}$ ppm.

The text of the amendments to title 40 of the Code of Federal Regulations were inadvertently printed from a previous draft of the regulation and were inconsistent with the final wordings given in the preamble on pages 46358–46359.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Austin, (202) 382–4789.

Dated: December 10, 1990.

**Mary A. Gade,**

*Acting Assistant Administration for Solid Waste and Emergency Response.*

1. On page 46368, in the preamble, Table E, Benzene water solubility, change "$1.75 \times 10^{-3}$" to "$1.75 \times 10^{+3}$."

**§ 261.31 [Corrected]**

2. On page 46396, in the table in § 261.31, the listing description for F037, last line, change "exempted from this listing." to "not included in this listing."

**§ 261.31 [Corrected]**

3. On page 46396, in the table in § 261.31, the listing description for F038, last line, change "exempted from this listing." to "not included in this listing."

**§ 261.31 [Corrected]**

4. On page 46396, second column, in § 261.31(b)(2)(ii)(B), change "treated" to "generated."

**§ 302.4 [Corrected]**

5. On page 46397, in § 302.4, Table 302.4, the listing description for F037, last line, change "exempted from this listing." to "not included in this listing."

**§ 302.4 [Corrected]**

6. On page 46397, in § 302.4, Table 302.4, the listing description for F038, last line, change "exempted from this listing." to "not included in this listing."

[FR Doc. 90-29332 Filed 12-14-90; 11:36 am]

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## 40 CFR Part 271

**[FRL-3869-9]**

**Connecticut; Final Authorization of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on Connecticut's application for final authorization.

**SUMMARY:** The State of Connecticut has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (hereafter referred to as EPA or the Agency) has reviewed Connecticut's initial and revised applications and Connecticut's compliance with the conditions outlined in the Notice of Tentative Determination of September 28, 1990 (55 FR 39686). EPA has reached a final determination that Connecticut's hazardous waste program satisfies all of the requirements and the conditions necessary to qualify for final authorization. Thus, EPA is granting final authorization to Connecticut to operate its program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

**EFFECTIVE DATE:** Final authorization for Connecticut shall be effective at 1 p.m. on December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Stephen Yee, CT Waste Regulation Section (Mail Code: HEE–CAN6), Waste Management Division, U.S. EPA, Region I, J.F.K. Federal Building, Boston, MA 02203–2211, Phone: (617) 573–9644.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On August 1, 1990, Connecticut (CTDEP) submitted an official application to obtain final authorization to administer the RCRA program. On September 28, 1990, EPA published a tentative decision that Connecticut's hazardous waste program did not satisfy all of the requirements necessary to qualify for final authorization. However, the **Federal Register** Notice stated that EPA would revise its tentative decision if Connecticut could meet a set of conditions by November 15, 1990 requiring the State to make substantial improvements in its permits and enforcement programs and fill staff and management vacancies, thereby establishing a quality program. Also, the **Federal Register** Notice stated that if the State remedied the deficiencies identified and if no significant new issues were raised during the public comment period, EPA intended to grant the State final authorization without publishing another tentative decision in the **Federal Register**.

The full text of the conditions from the September 28, 1990 **Federal Register** Notice is as follows:

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*I. General Conditions*

1. All of the specific conditions must be met, as specified, to attain a positive final determination.

2. The specific conditions will not be subject to change or modification.

*II. Specific Conditions*

1. The two (2) vacant RCRA management positions, which represent all vacancies and departures through July 1, 1990, must be filled on a permanent basis on or before November 15, 1990.

2. Bona fide offers to fill nine (9) vacant RCRA staff positions that have been authorized per the FY '90 RCRA subtitle C Grant which represent all vacancies and departures through July 1, 1990, must be made. In addition, eight (8) of the nine (9) above-mentioned positions must be filled on a permanent basis by November 15, 1990. The overall staff levels must be maintained at a 90% level.

3. The following closure commitments will be accomplished by September 30, 1990: One (1) Land Disposal Facility approval, two (2) Land Disposal Facility Notices of Deficiency, and one (1) Incinerator approval. The facilities that these activities may be credited against are identified in the FY '90 RCRA program grant as amended.

4. The following permit commitments will be accomplished by September 30, 1990: Two (2) final permit decisions, two (2) draft permit decisions, and the initiation of closure for MacDermid—Freight Street, the facility that had withdrawn its application. The facilities that these activities may be credited against are identified in the FY '90 RCRA program grant as amended.

5. The permits and closure decisions must be technically sound and enforceable. The decisions will be subject to an analysis by EPA which will be based upon the review of NODs or related correspondence, draft decisions, and fulfillment of regulatory requirements. Additional criteria will include: Actions are timely, documents are technically sound, permits are enforceable, and public participation requirements are met.

6. To meet the inspection grant commitments for FY '90, CTDEP will conclude by September 30, 1990, one hundred sixty-eight (168) inspections, conducted by qualified inspectors. A qualified inspector shall be defined as a person who has sufficient training and/or experience to conduct a RCRA inspection to the satisfaction of EPA. Based upon the correspondence of July 23, 1990, from Pat Bowe of CTDEP to Stephen Yee of EPA, a copy of which can be found in the Administrative Record filed chronologically under July 1990, personnel who have not conducted independent RCRA inspections within the past six (6) months must be provided with training as specified in the correspondence. In addition, the personnel shall be given training on the classification of violations in the State's Enforcement Response Policy (ERP). The RCRA Inspection Manual (OSWER Directive 9938–2A, March 1988, as amended May 1989) should be used as a training reference.
EPA will conduct twelve (12) inspections which will result in a total of one hundred eighty (180) inspections.

7. All State enforcement actions initiated since June 1, 1990 must be consistent with the appropriateness criteria established by the State's Enforcement Response Policy.

Further background on the tentative decision appears at Vol. 55, No. 189, FR 39656–39663, Friday, September 28, 1990.

EPA conducted reviews of the CTDEP's activities and accomplishments on October 30, 1990 and November 20, 1990 to determine compliance with the above-mentioned specific conditions. The findings are as follows:

Condition 1: As of November 15, 1990, a new Director and a new Assistant Director of the Waste Engineering and Enforcement Division have been appointed on a permanent basis and have assumed the responsibilities of the positions.

Condition 2: As of November 15, 1990, bona fide offers were made to three (3) inspectors, five (5) engineers, and one (1) analyst and all have started in their positions. In addition, CTDEP has hired one (1) secretary and one (1) clerk to fill vacancies as well as one (1) engineer as a replacement for an engineering position which became vacant in early October. A review of the revised CTDEP organizational chart dated October 29, 1990, CTDEP letters dated October 30 and 31, 1990, and the FY '90 RCRA grant application indicated that all the vacancies in the enforcement and permitting sections of the Division of Waste Engineering and Enforcement have been filled. EPA believes that this provides minimally adequate staffing levels to implement a capable program. EPA encourages the State to seek increases in staffing levels to ensure that potentially disruptive problems, such as unanticipated staff turnover, will not significantly impact the State's RCRA program.

Condition 3: As of September 30, 1990, CTDEP approved one (1) land disposal facility closure and one (1) incinerator closure and issued three (3) land disposal notices of deficiency which met the revised commitments. In addition, CTDEP approved one (1) storage and treatment facility closure and issued two (2) storage and treatment notices of deficiency.

Condition 4: As of September 30, 1990, CTDEP issued two (2) final permits and two (2) draft permits and initiated closure for MacDermid—Freight Street by issuing a notice of deficiency on the closure plan, all of which met the revised commitments.

Condition 5: EPA met with the CTDEP permitting and closure staffs to provide oversight, advice and comments on permits and closure plans. EPA on a weekly basis provided on-site oversight and support in the review and development of the draft and final permits by CTDEP in order for the permitting staff to gain additional practical experience in permit reviews and developments. As a result, EPA believes that the permits are technically sound, enforceable and fulfill the public notice requirements. EPA provided oversight of the closure process by reviewing and commenting on all notices of deficiency and jointly approved the closure plans for which CTDEP was the lead agency for review and approval. The closure plans which were approved were consistent with the applicable regulations and guidance and were of high quality.

Condition 6: As of September 30, 1990, CTDEP conducted a total of 178 inspections for FY '90 and met the revised commitment of 168 inspections. The additional inspectors used by CTDEP to meet the inspection commitments were provided the additional training as specified in the condition. The additional inspectors were from other divisions of the Bureau of Waste Management who had a minimum of four (4) years of previous experience in the RCRA program. The former RCRA staff were given training to update them regarding the State's ERP, land disposal restrictions, compliance checklists, and other relevant areas.

Condition 7: All enforcement actions initiated since June 1, 1990, were reviewed by management staff and Counsel to the Commissioner for consistency with the appropriateness criteria established by the State's Enforcement Response Policy and correct classification. The State initiated enforcement actions between the period between June 1, 1990, and September 30, 1990, against seventeen (17) facilities. EPA's review of the summary documents indicated that all seventeen (17) enforcement actions taken were referrals to the Attorney General's office with requests for penalties and were determined to be appropriate. EPA reviewed eleven (11) files for a more detailed analysis of the timeliness and appropriateness of the enforcement responses and found five (5) of the eleven (11) actions to be timely and all eleven (11) to be appropriate.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing scheduled for November 1, 1990, was not held because EPA did not receive verbal or written requests for a hearing by the October 24, 1990, deadline as noted in the September 28, 1990, **Federal Register** Notice. This **Federal Register** also noted that EPA would have the right to cancel the public hearing if there were insufficient public interest.

EPA received two (2) written comments during the public comment period which closed on October 31, 1990. EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from the contact person listed previously. The significant issues raised by the commenters and EPA's responses are summarized below.

The first comment addressed was submitted by the State of Connecticut in which it provided an update of the efforts made to satisfy the conditions which were imposed in the September 28, 1990, **Federal Register** Notice and which are outlined again above. The State indicated that it would fill all of the known vacant management and staff positions by November 15, 1990; would meet the permit, closure and inspection commitments; and would take enforcement actions consistent with the State's ERP.

In response to this letter, EPA acknowledges the receipt of this comment letter and no response is necessary. EPA agrees that the State has met the general and specific conditions set forth in the September 28, 1990, **Federal Register**.

The second comment letter was from the Connecticut Fund for the Environment which supports Connecticut's application for final authorization. The letter contained the following general comments: (1) Connecticut's RCRA program should be managed by a single state agency; (2) EPA's conditions on the staffing levels will ensure that past problems will be corrected; (3) Public participation under the current CT RCRA program has been adequate, but could be improved through a better scheduling of the issuance of closure and permit decisions as well as allowing for a longer public comment period; and (4) Connecticut's restriction on land disposal and underground injection are consistent with Federal law.

In response to this letter, EPA will work through the annual RCRA grant process to maintain an effective staffing level at CTDEP and to provide a better scheduling of the closure and permit commitments. Grant sanctions will be applied if the program does not maintain the necessary staffing to operate an effective program.

The federal public participation requirements are the minimum requirements which the State must meet in order to obtain authorization for the hazardous waste management program. EPA cannot impose a condition requiring the State to adopt a more stringent requirement than existing Federal law. If on a case specific basis, a longer public comment period is necessary, a request for an extension to the comment period should be made to the CTDEP.

The State will review all hazardous waste permits which were issued under State law prior to the date of final authorization and will modify or revoke and reissue such permits as necessary to require compliance with the amended State Program under 22a–449(c)–100 through 110 of the Regulations of Connecticut State Agencies and chapter 54 of the Connecticut General Statutes (sections 4–166 *et seq.*). EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When the State either incorporates the terms or conditions of the Federal permits in the State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement. EPA and the State will be developing a transitional strategy for processing permit applications that are pending.

TABLE I.—FEDERAL RCRA REQUIREMENTS AND CORRESPONDING STATE AUTHORITY

| Federal requirement | State authority |
|---|---|
| I. *Base RCRA Requirements* | |
| ● 40 CFR part 260—Hazardous Waste Management System | CT. Gen. Stat. section 22a–449(c); RCSA: 22a–449(c)–100(b)(1). |
| 40 CFR 260.1(a) | RCSA: 22a–449(c)–100(b)(2)(A). |
| 40 CFR 260.10 | RCSA: 22a–449(c)–100(b)(1)(A); RCSA: 22a–449(c)–100(b)(1)(B); RCSA: 22a–449(c)–100(c). |
| 40 CFR 260.40 | RCSA: 22a–449(c)–101(c)(5). |
| 40 CFR 260.41 | RCSA: 22a–449(c)–101(c)(5). |
| ● 40 CFR part 261—Identification and Listing of Hazardous Waste. | CT. Gen. Stat. section 22a–449(c); RCSA: 22a–449(c)–101(a)(1) |
| 40 CFR 261.1(a) | RCSA: 22a–449(c)–101(a)(2)(A). |
| 40 CFR 261.2(c) Table 1 | RCSA: 22a–449(c)–101(a)(2)(B). |
| 40 CFR 261.3(c)(2)(i) | RCSA: 22a–449(c)–101(a)(2)(C). |
| 40 CFR 261.5(a) | RCSA: 22a–449(c)–101(a)(2)(D); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b). |
| 40 CFR 261.5(e)(2) | RCSA: 22a–449(c)–101(a)(2)(E); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b) |
| 40 CFR 261.5(f)(3)(iv) | RCSA: 22a–449(c)–101(a)(2)(F); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b). |
| 40 CFR 261.5(g)(3)(iv) | RCSA: 22a–449(c)–101(a)(2)(G); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b.). |
| 40 CFR 261.5(h) | RCSA: 22a–449(c)–101(a)(2)(H); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b). |
| 40 CFR 261.5(i) | RCSA: 22a–449(c)–101(a)(2)(I); RCSA: 22a–449(c)–101(a)(3); RCSA: 22a–449(c)–101(b). |
| 40 CFR 261.6(a)(3)(iv) | RCSA: 22a–449(c)–100(c); RCSA: 22a–449(c)–101(a)(2)(J); RCSA: 22a–449(c)–101(c). |
| ● 40 CFR part 262—Standards Applicable to Generators of Hazardous Waste. | CT. Gen. Stat. section 22a–449(c); RCSA: 22a–449(c)–102(a)(1). |
| 40 CFR 262.10(e) | RCSA: 22a–449(c)–102(a)(2)(A). |
| 40 CFR 262.22 | RCSA: 22a–449(c)–102(b)(3). |
| 40 CFR 262.23 | RCSA: 22a–449(c)–100(c); RCSA: 22a–449(c)–102(b)(3). |
| 40 CFR 262.34(a)(1) | RCSA: 22a–449(c)–102(a)(2)(B). |
| 40 CFR 262.34(a)(3) | RCSA: 22a–449(c)–102(a)(2)(C). |

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TABLE I.—FEDERAL RCRA REQUIREMENTS AND CORRESPONDING STATE AUTHORITY—Continued

| Federal requirement | State authority |
|---|---|
| 40 CFR 262.34(a)(4) | RCSA: 22a-449(c)-102(a)(2)(D). |
| 40 CFR 262.34(c)(1)(ii) | RCSA: 22a-449(c)-102(a)(2)(E). |
| 40 CFR 262.34(d)(1) | RCSA: 22a-449(c)-102(a)(2)(F). |
| 40 CFR 262.34(f) | RCSA: 22a-449(c)-102(a)(2)(G). |
| 40 CFR 262.41(a) | RCSA: 22a-449(c)-102(a)(2)(H). |
| 40 CFR 262.44 | RCSA: 22a-449(c)-102(a)(2)(I). |
| 40 CFR 262.70 | RCSA: 22a-449(c)-102(a)(2)(J). |
| 40 CFR 262 Appendix—Form 8700-22.2 | RCSA: 22a-449(c)-102(a)(2)(K). |
| 40 CFR 262 Appendix—Form 8700-22, Instructions, Item 20 | RCSA: 22a-449(c)-102(a)(2)(L). |
| ● 40 CFR part 263—Standards Applicable to Transporters of Hazardous Waste. | CT. Gen. Stat. section 22a-449(c); RCSA: 22a-449(c)-103(a) |
| 40 CFR 263.20(g)(4) | RCSA: 22a-449(c)-103(a)(2)(A) |
| 40 CFR 263.30(b) | RCSA: 22a-449(c)-103(a)(2)(B). |
| 40 CFR 263.30(c)(1) | RCSA: 22a-449(c)-103(a)(2)(C). |
| 40 CFR 263.31 | RCSA: 22a-449(c)-103(a)(2)(D). |
| ● 40 CFR part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. | CT.Gen. Stat. Section 22a-449(c); RCSA: 22a-449(c)-104(a)(1). |
| 40 CFR 264.13(a)(4) | RCSA: 22a-449(c)-104(a)(2)(A). |
| 40 CFR 264.71(a)(4) | RCSA: 22a-449(c)-104(a)(2)(B). |
| 40 CFR 264.71(b)(4) | RCSA: 22a-449(c)-104(a)(2)(C). |
| 40 CFR 264.75 | RCSA: 22a-449(c)-104(a)(2)(D). |
| 40 CFR 264.142 | RCSA: 22a-449(c)-104(b). |
| 40 CFR 264.144 | RCSA: 22a-449(c)-104(b). |
| 40 CFR 264.192(d) | RCSA: 22-449(c)-104(a)(2)(E). |
| 40 CFR 264.193(c) | RCSA: 22a-449(c)-104(a)(2)(F). |
| 40 CFR 264.196(b)(1) | RCSA: 22a-449(c)-104(a)(2)(G). |
| 40 CFR 264.196(d)(1) | RCSA: 22a-449(c)-104(a)(2)(H). |
| 40 CFR 264.272(a) | RCSA: 22a-449(c)-104(a)(2)(I). |
| 40 CFR 264.272(c)(3) | RCSA: 22a-449(c)-104(a)(2)(J). |
| ● 40 CFR part 265—Interim Status Standards for Owner and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. | CT. Gen. Stat. Section 22a-449(c); RCSA: 22a-449(c)-105(a)(1). |
| 40 CFR 265.13(a)(4) | RCSA: 22a-449(c)-105(a)(2)(A). |
| 40 CFR 265.71(a)(4) | RCSA: 22a-449(c)-105(a)(2)(B). |
| 40 CFR 265.71(b)(4) | RCSA: 22a-449(c)-105(a)(2)(C). |
| 40 CFR 265.75 | RCSA: 22a-449(c)-105(a)(2)(D). |
| 40 CFR 265.192(d) | RCSA: 22a-449(c)-105(a)(2)(E). |
| 40 CFR 265.193(c) | RCSA: 22a-449(c)-105(a)(2)(F). |
| 40 CFR 265.196(b)(1) | RCSA: 22a-449(c)-105(a)(2)(G). |
| 40 CFR 265.196(d)(1) | RCSA: 22a-449(c)-105(a)(2)(H). |
| 40 CFR 265.201(a) | RCSA: 22a-449(c)-105(a)(2)(I). |
| 40 CFR 265.222(b) | RCSA: 22a-449(c)-105(a)(2)(J). |
| 40 CFR 265.229(b)(2) | RCSA: 22a-449(c)-105(a)(2)(K). |
| 40 CFR 265.229(b)(2) | RCSA: 22a-449(c)-105(a)(2)(L). |
| 40 CFR 265.272(a) | RCSA: 22a-449(c)-105(a)(2)(M). |
| 40 CFR 265.375(c) | RCSA: 22a-449(c)-105(a)(2)(N). |
| ● 40 CFR part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. | CT. Gen. Stat. section 22a-449(c); RCSA: 22a-449(c)-106(a). |
| 40 CFR 266.43 | RCSA: 22a-449(c)-106(b). |
| 40 CFR 268.80(a) | RCSA: 22a-449(c)-108(a)(1). |
| ● 40 CFR part 268—Land Disposal Restrictions | CT. Gen. Stat. section 22a-449(c); RCSA: 22a-449(c)-108(a)(1). |
| ● 40 CFR part 270—EPA Administered Permits Program: The Hazardous Waste Permit Program. | CT. Gen. Stat. section 22a-449(c); RCSA: 22a-449(c)-110(a). |
| ● 40 CFR part 124—Procedures for Decisionmaking | CT. Gen. Stat. section 22a-449(c); RCSA: 22a-449(c)-110(a). |
| II. *Non-HSWA Requirements prior to non-HSWA Cluster I* | CT. Gen. Stat. section 22a-449(c). |
| ● Biennial Report, 48 FR 3977, January 28, 1983 | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA 22a-449(c)-104(a)(2)(D); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(D); RCSA: 22a-449(c)-110(a). |
| ● Permit Rules: Settlement Agreement, 48 FR 39611, September 1, 1983. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Interim Status Standards—Applicability, 48 FR 52718, November 22, 1983. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1); |
| ● Chlorinated Aliphatic Hydrocarbon Listing (F024), 49 FR 5308, February 10, 1984. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● National Uniform Manifest, 49 FR 10490, March 20, 1984 | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(A); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-102(a)(2)(L). |
| ● Permit Rules: Settlement Agreement, 49 FR 17716, April 24, 1984. | RCSA: 22a-449(c)-110(a). |
| ● Warfarin & Zinc Phosphide Listing, 49 FR 19922, May 10, 1984. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Lime Stabilized Pickle Liquor Sludge, 49 FR 23284, June 5, 1984. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); |
| III. *Non-HSWA Cluster I* | CT. Gen. Stat. §§ 1-19(b); 1-21(i); Public Act 90-307. |
| ● Section 3006(f), State Availability of Information, 40 CFR part 2, subpart A, 5 U.S.C. 552, November 8, 1984. | Attorney General's Statement dated July 27, 1990, Memorandum of Agreement dated July 30, 1990, CT Public Act 90-307 dated June 12, 1990. |
| ● Household Waste, 49 FR 44978, November 13, 1984 | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Interim Status Standards—Applicability, 49 FR 45094, November 21, 1984. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1). |
| ● Corrections to Test Methods Manual, 49 FR 47390, December 20, 1984. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(2). |



TABLE I.—FEDERAL RCRA REQUIREMENTS AND CORRESPONDING STATE AUTHORITY—Continued

| Federal requirement | State authority |
|---|---|
| ● Satellite Accumulation, 49 FR 49568, December 20, 1984 | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(E). |
| ● Definition of Solid Waste, 50 FR 614, January 4, 1985 [Definition of Solid Waste; Correction, 50 FR 14216, April 11, 1985, Definition of Solid Waste; Correction, 50 FR 33541, August 20, 1985]. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-100(a)(2); RCSA: 22a-449(c)-101(c)(5); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-106(a)(1). |
| ● Interim Status Standards for Treatment, Storage, and Disposal Facilities, 50 FR 18044, April 23, 1985. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(J); RCSA: 22a-449(c)-105(a)(2)(K); RCSA: 22a-449(c)-105(a)(2)(L); RCSA: 22a-449(c)-105(a)(2)(M). |
| IV. *Non-HSWA Cluster II* | CT. Gen. Stat. § 22a-449(c). |
| ● Financial Responsibility: Settlement Agreement, 51 FR 18422, May 2, 1986. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-100(a). |
| ● Listing of Spent Pickle Liquor (K062), 51 FR 19320, May 28, 1986. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a). |
| V. *Non-HSWA Cluster III* | CT. Gen. Stat. § 22a-449(c); |
| ● Radioactive Mixed Waste, 51 FR 24504, 51 FR 24504, July 3, 1986. | CT. Gen. Stat. § 22a-449(c); |
| ● Liability Coverage—Corporate Guarantee, 51 FR 25350, July 11, 1986. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(a)-105(c)(1). |
| ● Standards for Hazardous Waste Storage and Treatment Tank Systems (Certain sections superseded by 53 FR 34079), 51 FR 25422, July 14, 1986. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a). |
| ● Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents [Superseded by 53 FR 13382], 51 28296, August 8, 1986. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● (Standards for Hazardous Waste Storage and Treatment Tank Systems; Correction), 51 FR 29430, August 15, 1986. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a). |
| ● Listing of Spent Pickle Liquor; Correction), 51 FR 33612, September 22, 1986. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Revised Manual SW-846; Amended Incorporation by Reference, 52 FR 8072, March 16, 1987. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-446(c)-100(c). |
| ● Closure/Post-closure Care for Interim Status Surface Impoundments, 52 FR 8704, March 19, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-105(a)(1). |
| ● Definition of Solid Waste; Technical Correction, 52 FR 21306, June 5, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-106(a)(1). |
| ● Amendments to Part B Information Requirements for Land Disposal Facilities, 52 FR 23447, June 22, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a). |
| ● Technical Correction; Identification and Listing of Hazardous Waste [Supersedes 51 FR 28296, August 6, 1986], 53 FR 13382, April 22, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| VI. *Non-HSWA Cluster IV* | CT. Gen. Stat. § 22a-449(c). |
| List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, July 9, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(7). |
| ● Identification and Listing of Hazardous Waste, 52 FR 25942, July 10, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● (Listing of Spent Pickle Liquor; Clarification), 52 FR 26987, August 3, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● (Development of Corrective Action Programs After Permitting Hazardous Waste Land Disposal Facilities; Corrections), 52 FR 33936, September 9, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Liability Requirements for Hazardous Waste Facilities; Corporate Guarantees, 52 FR 44314, November 18, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1). |
| ● Hazardous Waste Miscellaneous Units, 52 FR 46946, December 10, 1987. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a); . |
| ● (Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements), 53 FR 7740, March 10, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a). |
| ● (Technical Correction; Identification and Listing of Hazardous Waste), 53 FR 13382, April 22, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators [correction to 52 FR 46946], 54 FR 615, January 9, 1989. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● VII. *Non-HSWA Cluster V* | CT. Gen. Stat. § 22a-449(c). |
| ● Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, July 19, 1988. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Hazardous Waste Management System; Standards for Hazardous Waste storage and Treatment Tank Systems, 53 FR 34079, September 2, 1988. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H). |
| ● Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification, 53 FR 35412, September 13, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Permit Modifications for Hazardous Waste Management Facilities, 53 FR 37912, September 28, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a). |
| ● Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, October 11, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1). |

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TABLE I.—FEDERAL RCRA REQUIREMENTS AND CORRESPONDING STATE AUTHORITY—Continued

| Federal requirement | State authority |
|---|---|
| ● Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, October 31, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Identification and Listing of Hazardous Waste; Removal of Strontium from the List of Hazardous Wastes, 53 FR 43881, October 31, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, January 30, 1989. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Wastes Management Permits; Procedures for Post-Closure Permitting, 54 FR 8595, March 7, 1989. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| VIII. *HSWA Cluster I*—52 FR 26702, July 15, 1985 | CT. Gen. Stat. § 22a-449(c). |
| ● Delisting, 54 FR 27114, November 8, 1984 | RCSA: 22a-449(c)-100(c) |
| ● Household Waste Exclusion | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1). |
| ● Waste Minimization | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(K); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-110(a). |
| ● Liquids in Landfills | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-110(a). |
| ● Double Liners | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1). |
| ● Ground-Water Monitoring | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1). |
| ● Pre-Construction Ban | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Interim Status | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Research and Development Permits | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Exposure Information | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164, November 29, 1985, amended by 51 FR 41900, November 19, 1986 and by 52 FR 11819, April 13, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-105(a)(1). |
| ● Generators of 100 to 1,000 kg Hazardous Waste; Technical Correction 53 FR 27162, July 19, 1988. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-101(a)(2)(A); RCSA: 22a-449(c)-101(a)(2)(D); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F); RCSA: 22a-449(c)-101(a)(2)(G); RCSA: 22a-449(c)-101(a)(2)(H); RCSA: 22a-449(c)-101(a)(2)(I); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-102(a)(2)(C); RCSA: 22a-449(c)-102(a)(2)(D); RCSA: 22a-449(c)-102(a)(2)(F); RCSA: 22a-449(c)-102(a)(2)(G). |
| ● Identification and Listing of Hazardous Waste; Technical Correction, 53 FR 27162, July 19, 1988. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(2)(E); RCSA: 22a-449(c)-101(a)(2)(F). |
| ● Standards for Hazardous Wastes Storage and Tank Systems, 51 FR 25422, July 14, 1986, amended by 53 FR 34079, September 2, 1988. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-101(a)(1); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(B); RCSA: 22a-449(c)-104(a)(1); RCSA: 22a-449(c)-104(a)(2)(E); RCSA: 22a-449(c)-104(a)(2)(F); RCSA: 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA: 22a-449(c)-105(a)(2)(E); RCSA: 22a-449(c)-105(a)(2)(F); RCSA: 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-110(a)(1). |
| IX. *HSWA Cluster II* | CT. Gen. Stat. § 22a-449(c). |
| ● Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, September 23, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-102(a)(1); RCSA: 22a-449(c)-102(a)(2)(I). |
| ● Post-Closure Permits, HSWA Codification Rule, 52 FR 45788, December 1, 1987. | RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-110(a). |
| ● Hazardous Waste Management; Standards for Hazardous Waste Storage and Treatment Tank Systems, 53 FR 34079, September 2, 1988. | RCSA: 22a-449(c)-100(b)(1); RCSA: 22a-449(c)-100(c); RCSA: 22a-449(c)-104(a)(1); RCSA 22a-449(c)-104(a)(2)(G); RCSA: 22a-449(c)-104(a)(2)(H); RCSA: 22a-449(c)-105(a)(1); RCSA. 22a-449(c)-105(a)(2)(G); RCSA: 22a-449(c)-105(a)(2)(H). |

Connecticut has not sought the authority to operate the RCRA program on any Indian lands and is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

**B. Decision**

After reviewing the public comments and the changes the State has made to its application and program since the tentative decision, I conclude that Connecticut's application for final authorization meets all of the statutory and regulatory requirements established by RCRA and the conditions that were specified in the September 28, 1990 Notice of Tentative Determination. Accordingly, Connecticut is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) otherwise known as HSWA. Connecticut now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to HSWA. Connecticut also has primary enforcement responsibility, although EPA retains the right to conduct inspections and take other actions under Section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

As stated above, Connecticut's authority to operate a hazardous waste program under subtitle C of RCRA is limited by the self-implementing provisions of HSWA that the State has not been authorized for. Prior to November 8, 1984, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Connecticut. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce these portions of the HSWA in Connecticut until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provisions remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable subtitle C requirements in Connecticut.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28755, July 15, 1985.

**Compliance with Executive Order 12291**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.



**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Connecticut's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 28, 1990.

**Julie Belaga,**

*Regional Administrator.*

[FR Doc. 90-29461 Filed 12-14-90; 8:45 am]

BILLING CODE 6560-50-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chapter 301

**[FTR Amdt. 13]**

**RIN 3090 AE22**

### Federal Travel Regulation; Maximum Per Diem Rates

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases the maximum lodging allowances in certain existing per diem localities and adds new per diem localities.

**EFFECTIVE DATE:** This final rule is effective January 1, 1991, and applies for travel (including travel incident to a change of official station) performed on or after January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Donna Cooke, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

**SUPPLEMENTARY INFORMATION:** The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

For the reasons set out in the preamble, under 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747) title 41, chapter 301 of the Code of Federal Regulations is amended by revising Appendix A to chapter 301 to read as follows:

**CHAPTER 301—TRAVEL ALLOWANCES**

APPENDIX A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under § 301-7.3 of this regulation for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301-7 for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

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| Per diem locality: Key city [1] | County and/or other defined location [2] [3] | Maximum lodging amount (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| CONUS, Standard rate | | $40 | | $26 | | $66 |
| (Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See parts 301-7, 302-2, 302-4, and 302-6 of this title.) | | | | | | |
| ALABAMA | | | | | | |
| Anniston | Calhoun | 41 | | 26 | | 67 |
| Birmingham | Jefferson | 50 | | 26 | | 76 |
| Gulf Shores | Baldwin | 53 | | 26 | | 79 |
| Huntsville | Madison | 51 | | 26 | | 77 |
| Mobile | Mobile | 49 | | 26 | | 75 |
| Montgomery | Montgomery | 45 | | 26 | | 71 |
| Sheffield | Colbert | 63 | | 26 | | 89 |
| ARIZONA | | | | | | |
| Chinle | Apache | 68 | | 26 | | 94 |
| Grand Canyon Nat'l Park/Flagstaff | Coconino | 74 | | 26 | | 100 |
| Kayenta | Navajo | 62 | | 26 | | 88 |
| Phoenix/Scottsdale | Maricopa | 72 | | 26 | | 98 |
| Prescott | Yavapai | 48 | | 26 | | 74 |
| Sierra Vista | Cochise | 45 | | 26 | | 74 |
| Tucson | Pima County; Davis-Monthan AFB | 56 | | 26 | | 82 |
| Yuma | Yuma | 52 | | 26 | | 78 |
| ARKANSAS | | | | | | |
| Fort Smith | Sebastian | 44 | | 26 | | 70 |
| Helena | Phillips | 47 | | 26 | | 73 |
| Hot Springs | Garland | 50 | | 26 | | 76 |
| Little Rock | Pulaski | 50 | | 26 | | 76 |
| CALIFORNIA | | | | | | |
| Bridgeport | Mono | 44 | | 26 | | 70 |
| Chico | Butte | 51 | | 26 | | 77 |
| Death Valley | Inyo | 89 | | 34 | | 123 |
| El Centro | Imperial | 48 | | 26 | | 74 |
| Eureka | Humboldt | 48 | | 26 | | 74 |
| Fresno | Fresno | 54 | | 26 | | 80 |
| Hartong | Lassen | 53 | | 26 | | 79 |
| Los Angeles | Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake. | 90 | | 34 | | 124 |
| Modesto | Stanislaus | 54 | | 26 | | 80 |
| Monterey | Monterey | 73 | | 26 | | 99 |
| Napa | Napa | 54 | | 26 | | 80 |
| Oakland | Alameda, Contra Costa and Marin | 66 | | 34 | | 100 |
| Ontario/Victorville/Barstow | San Bernardino | 53 | | 26 | | 79 |
| Palm Springs | Riverside | 72 | | 34 | | 106 |
| Redding | Shasta | 57 | | 26 | | 83 |
| Sacramento | Sacramento | 58 | | 34 | | 92 |
| San Diego | San Diego | 76 | | 34 | | 110 |
| San Francisco | San Francisco | 88 | | 34 | | 122 |
| San Jose | Santa Clara | 63 | | 34 | | 97 |
| San Luis Obispo | San Luis Obispo | 54 | | 34 | | 88 |
| San Mateo | San Mateo | 66 | | 34 | | 100 |
| Santa Barbara | Santa Barbara | 77 | | 34 | | 111 |
| Santa Cruz | Santa Cruz | 72 | | 34 | | 106 |
| Santa Rosa | Sonoma | 54 | | 26 | | 80 |
| South Lake Tahoe | El Dorado | 61 | | 34 | | 95 |
| Stockton | San Joaquin | 51 | | 26 | | 77 |
| Tahoe City | Placer | 50 | | 34 | | 84 |
| Vallejo | Solano | 54 | | 26 | | 80 |
| Visalia | Tulare | 60 | | 26 | | 86 |
| West Sacramento | Yolo | 50 | | 26 | | 76 |
| Yosemite Nat'l Park | Mariposa | 68 | | 34 | | 102 |
| COLORADO | | | | | | |
| Aspen | Pitkin | 85 | | 34 | | 119 |
| Boulder | Boulder | 61 | | 34 | | 95 |
| Colorado Springs | El Paso | 51 | | 26 | | 77 |
| Denver | Denver, Adams, Arapahoe and Jefferson | 68 | | 34 | | 103 |
| Durango | La Plata | 56 | | 26 | | 82 |
| Glenwood Springs | Garfield | 49 | | 26 | | 75 |
| Gunnison | Gunnison | 45 | | 26 | | 71 |
| Keystone/Silverthorne | Summit | 58 | | 34 | | 92 |
| Pagosa Springs | Archuleta | 48 | | 26 | | 74 |
| Pueblo | Pueblo | 46 | | 26 | | 72 |
| Steamboat Springs | Routt | 52 | | 26 | | 78 |
| Vail | Eagle | 90 | | 34 | | 124 |
| CONNECTICUT | | | | | | |
| Bridgeport/Danbury | Fairfield | 71 | | 26 | | 97 |
| Hartford | Hartford and Middlesex | 64 | | 34 | | 98 |
| New Haven | New Haven | 67 | | 26 | | 93 |
| New London/Groton | New London | 62 | | 26 | | 88 |



| Per diem locality: Key city [1] | County and/or other defined location [2] [3] | Maximum lodging amount (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Putnam/Danielson | Windham | 63 | | 26 | | 89 |
| Salisbury | Litchfield | 56 | | 34 | | 90 |
| DELAWARE | | | | | | |
| Dover | Kent | 49 | | 26 | | 75 |
| Lewes | Sussex | 50 | | 26 | | 76 |
| Wilmington | New Castle | 73 | | 26 | | 99 |
| DISTRICT OF COLUMBIA | | | | | | |
| Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (See also Maryland and Virginia.) | | 97 | | 34 | | 131 |
| FLORIDA | | | | | | |
| Altamonte Springs | Seminole | 62 | | 26 | | 88 |
| Bradenton | Manatee | 60 | | 26 | | 86 |
| Clewiston | Hendry | 54 | | 26 | | 80 |
| Cocoa Beach | Brevard | 54 | | 26 | | 80 |
| Daytona Beach | Volusia | 54 | | 26 | | 80 |
| Fort Lauderdale | Broward | 66 | | 26 | | 92 |
| Fort Myers | Lee | 67 | | 26 | | 93 |
| Fort Pierce | Saint Lucie | 54 | | 26 | | 80 |
| Fort Walton Beach | Okaloosa | 54 | | 26 | | 80 |
| Gainesville | Alachua | 51 | | 26 | | 77 |
| Jacksonville | Duval County; Naval Station Mayport | 48 | | 26 | | 74 |
| Key West | Monroe | 105 | | 34 | | 140 |
| Kissimmee | Osceola | 58 | | 26 | | 84 |
| Lakeland | Polk | 50 | | 26 | | 76 |
| Miami | Dade | 62 | | 34 | | 96 |
| Naples | Collier | 72 | | 26 | | 98 |
| Orlando | Orange | 58 | | 26 | | 84 |
| Panama City | Bay | 50 | | 26 | | 76 |
| Pensacola | Escambia | 53 | | 26 | | 79 |
| Punta Gorda | Charlotte | 62 | | 26 | | 88 |
| Saint Augustine | Saint Johns | 55 | | 26 | | 81 |
| Sarasota | Sarasota | 58 | | 26 | | 84 |
| Stuart | Martin | 68 | | 26 | | 94 |
| Tallahassee | Leon | 48 | | 26 | | 74 |
| Tampa/St. Petersburg | Hillsborough and Pinellas | 54 | | 26 | | 80 |
| Vero Beach | Indian River | 54 | | 26 | | 80 |
| West Palm Beach | Palm Beach | 68 | | 34 | | 102 |
| GEORGIA | | | | | | |
| Albany | Dougherty | 51 | | 26 | | 77 |
| Athens | Clarke | 44 | | 26 | | 70 |
| Atlanta | Clayton, De Kalb, Fulton and Cobb | 78 | | 34 | | 112 |
| Augusta | Richmond; Savannah River Plant, Aiken, SC | 47 | | 26 | | 73 |
| Brunswick | Glynn | 44 | | 26 | | 70 |
| Columbus | Muscogee | 47 | | 26 | | 73 |
| Lawrenceville | Gwinnett | 46 | | 26 | | 72 |
| Savannah | Chatham | 47 | | 26 | | 73 |
| St. Marys | Camden County; The Naval Submarine Base, Kings Bay. | 46 | | 26 | | 72 |
| Waycross | Ware | 43 | | 26 | | 69 |
| IDAHO | | | | | | |
| Boise | Ada | 47 | | 26 | | 73 |
| Coeur d'Alene | Kootenai | 43 | | 26 | | 69 |
| Ketchum/Sun Valley | Blaine | 60 | | 26 | | 86 |
| Lewiston | Nez Perce | 44 | | 26 | | 70 |
| McCall | Valley | 44 | | 26 | | 70 |
| Pocatello | Bannock | 45 | | 26 | | 71 |
| Stanley | Custer | 45 | | 26 | | 71 |
| ILLINOIS | | | | | | |
| Alton | Madison | 48 | | 26 | | 74 |
| Champaign/Urbana | Champaign | 49 | | 26 | | 75 |
| Chicago | Du Page, Cook and Lake | 93 | | 34 | | 127 |
| Danville | Vermillion | 46 | | 26 | | 72 |
| Dixon | Lee | 45 | | 26 | | 71 |
| East St. Louis | St. Clair | 44 | | 26 | | 70 |
| Joliet | Will | 52 | | 26 | | 78 |
| Macomb | McDonough | 42 | | 26 | | 68 |
| Mattoon | Coles | 46 | | 26 | | 72 |
| Peoria | Peoria | 60 | | 26 | | 86 |
| Rock Island/Moline | Rock Island | 51 | | 26 | | 77 |
| Rockford | Winnebago | 53 | | 26 | | 79 |
| Springfield | Sangamon | 51 | | 26 | | 77 |
| INDIANA | | | | | | |
| Anderson | Madison | 52 | | 26 | | 78 |
| Bloomington | Monroe | 48 | | 26 | | 74 |
| Charlestown/Jeffersonville | Clark County; Indiana Army Ammunition Plant | 54 | | 26 | | 80 |
| Columbus | Bartholomew | 42 | | 26 | | 68 |
| Elkhart | Elkhart | 55 | | 26 | | 81 |
| Evansville | Vanderburgh | 49 | | 26 | | 75 |

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| Per diem locality | | | | | |
|---|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2, 3] | Maximum lodging amount (a) | + M&IE rate (b) | = | Maximum per diem rate [4] (c) |
| Fort Wayne | Allen | 57 | 26 | | 83 |
| Gary | Lake | 46 | 26 | | 72 |
| Indianapolis | Marion County; Fort Benjamin Harrison | 66 | 26 | | 92 |
| Jasper | Dubois | 41 | 26 | | 67 |
| Lafayette | Tippecanoe | 50 | 26 | | 76 |
| Logansport | Cass | 46 | 26 | | 72 |
| Muncie | Delaware | 55 | 26 | | 81 |
| Nashville | Brown | 57 | 26 | | 83 |
| South Bend | St. Joseph | 59 | 26 | | 85 |
| Terre Haute | Vigo | 50 | 26 | | 76 |
| IOWA | | | | | |
| Bettendorf/Davenport | Scott | 49 | 26 | | 75 |
| Cedar Rapids | Linn | 45 | 26 | | 71 |
| Des Moines | Polk | 52 | 26 | | 78 |
| Iowa City | Johnson | 48 | 26 | | 74 |
| Sioux City | Woodbury | 41 | 26 | | 67 |
| KANSAS | | | | | |
| Kansas City | Johnson and Wyandotte (See also Kansas City, MO) | 64 | 26 | | 90 |
| Manhattan | Riley | 45 | 26 | | 71 |
| Topeka | Shawnee | 43 | 26 | | 69 |
| Wichita | Sedgwick | 59 | 26 | | 85 |
| KENTUCKY | | | | | |
| Bowling Green | Warren | 44 | 26 | | 70 |
| Covington | Kenton | 48 | 26 | | 74 |
| Frankfort | Franklin | 44 | 26 | | 70 |
| Florence | Boone | 48 | 26 | | 74 |
| Hopkinsville | Christian County; Fort Campbell | 45 | 26 | | 71 |
| Lexington | Fayette | 52 | 26 | | 78 |
| Louisville | Jefferson | 54 | 26 | | 80 |
| Owensboro | Daviess | 45 | 26 | | 71 |
| LOUISIANA | | | | | |
| Alexandria | Rapides Parish | 44 | 26 | | 70 |
| Baton Rouge | East Baton Rouge Parish | 50 | 26 | | 76 |
| Bossier City | Bossier Parish | 57 | 26 | | 83 |
| Gonzales | Ascension Parish | 51 | 26 | | 77 |
| Lafayette | Lafayette Parish | 45 | 26 | | 71 |
| Lake Charles | Calcasieu Parish | 42 | 26 | | 68 |
| Monroe | Ouachita Parish | 44 | 26 | | 70 |
| New Orleans | Parishes of Jefferson, Orleans, Plaquemines and St. Bernard. | 60 | 34 | | 94 |
| Shreveport | Caddo Parish | 51 | 26 | | 77 |
| Slidell | St. Tammany Parish | 42 | 26 | | 68 |
| MAINE | | | | | |
| Auburn | Androscoggin | 56 | 26 | | 82 |
| Augusta | Kennebec | 47 | 26 | | 73 |
| Bangor | Penobscot | 55 | 26 | | 81 |
| Bar Harbor | Hancock | 60 | 26 | | 86 |
| Bath | Sagadahoc | 64 | 26 | | 90 |
| Kittery | Portsmouth Naval Shipyard (See also Portsmouth, NH). | 60 | 26 | | 86 |
| Portland | Cumberland | 67 | 26 | | 93 |
| Rockport | Knox | 66 | 26 | | 92 |
| Kennebunk/Sanford | York | 53 | 26 | | 79 |
| Wiscasset | Lincoln | 46 | 26 | | 72 |
| MARYLAND | | | | | |
| (For the counties of Montgomery and Prince Georges, see District of Columbia.) | | | | | |
| Annapolis | Anne Arundel | 75 | 34 | | 109 |
| Baltimore | Baltimore and Harford | 71 | 34 | | 105 |
| Columbia | Howard | 87 | 34 | | 121 |
| Cumberland | Allegany | 49 | 26 | | 75 |
| Easton | Talbot | 52 | 26 | | 78 |
| Frederick | Frederick | 54 | 26 | | 80 |
| Hagerstown | Washington | 52 | 26 | | 78 |
| Lexington Park/St.Inigoes/Leonardtown | St. Marys | 54 | 26 | | 80 |
| Lusby | Calvert | 56 | 26 | | 82 |
| Ocean City | Worcester | 92 | 34 | | 126 |
| Salisbury | Wicomico | 53 | 26 | | 79 |
| Waldorf | Charles | 54 | 26 | | 80 |
| MASSACHUSETTS | | | | | |
| Andover | Essex | 81 | 34 | | 115 |
| Boston | Suffolk | 91 | 34 | | 125 |
| Greenfield | Franklin | 55 | 26 | | 81 |
| Hyannis | Barnstable | 65 | 26 | | 91 |
| Lowell | Middlesex | 81 | 34 | | 115 |
| Martha's Vineyard/Nantucket | Dukes and Nantucket | 106 | 34 | | 140 |
| Northampton | Hampshire | 56 | 26 | | 82 |
| Pittsfield | Berkshire | 56 | 26 | | 82 |
| Plymouth | Plymouth | 92 | 26 | | 118 |
| Quincy | Norfolk | 81 | 34 | | 115 |



| Per diem locality | | | | | |
|---|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2, 3] | Maximum lodging amount (a) | + M&IE rate (b) | = | Maximum per diem rate [4] (c) |
| Springfield | Hampden | 64 | 26 | | 90 |
| Taunton/New Bedford | Bristol | 55 | 26 | | 81 |
| Worcester | Worcester | 60 | 26 | | 86 |
| MICHIGAN | | | | | |
| Ann Arbor | Washtenaw | 65 | 26 | | 91 |
| Adrian | Lenawee | 44 | 26 | | 70 |
| Battle Creek | Calhoun | 47 | 26 | | 73 |
| Bay City | Bay | 48 | 26 | | 74 |
| Beltaire | Antrim | 51 | 26 | | 77 |
| Boyne City | Charlevoix | 62 | 26 | | 88 |
| Cadillac | Wexford | 51 | 26 | | 77 |
| Detroit | Wayne | 76 | 34 | | 110 |
| Drummond Island | Chippewa | 52 | 26 | | 78 |
| Escanaba | Delta | 44 | 26 | | 70 |
| Flint | Genesee | 45 | 26 | | 71 |
| Frankfort | Benzie | 49 | 26 | | 75 |
| Gaylord | Otsego | 54 | 26 | | 80 |
| Grand Rapids | Kent | 56 | 26 | | 82 |
| Grayling | Crawford | 54 | 26 | | 80 |
| Holland | Ottawa | 49 | 26 | | 75 |
| Houghton Lake | Roscommon | 54 | 26 | | 80 |
| Jackson | Jackson | 49 | 26 | | 75 |
| Kalamazoo | Kalamazoo | 57 | 26 | | 83 |
| Lansing/East Lansing | Ingham | 51 | 26 | | 77 |
| Leland | Leelanau | 54 | 26 | | 80 |
| Ludington | Mason | 53 | 26 | | 79 |
| Mackinac Island | Mackinac | 63 | 26 | | 89 |
| Manistee | Manistee | 51 | 26 | | 77 |
| Midland | Midland | 53 | 26 | | 79 |
| Mount Pleasant | Isabella | 43 | 26 | | 69 |
| Muskegon | Muskegon | 49 | 26 | | 75 |
| Pontiac | Oakland | 54 | 26 | | 80 |
| Port Huron | St. Clair | 43 | 26 | | 69 |
| Saginaw | Saginaw | 51 | 26 | | 77 |
| South Haven | Van Buren | 50 | 26 | | 76 |
| St. Joseph/Benton Harbor/Niles | Berrien | 45 | 26 | | 71 |
| Traverse City | Grand Traverse | 64 | 26 | | 90 |
| Warren | Macomb | 46 | 26 | | 72 |
| MINNESOTA | | | | | |
| Bemidji | Beltrami | 42 | 26 | | 68 |
| Brainerd | Crow Wing | 46 | 26 | | 72 |
| Duluth | St. Louis | 48 | 26 | | 74 |
| Fergus Falls | Otter Tail | 49 | 26 | | 75 |
| Grand Rapids | Itasca | 44 | 26 | | 70 |
| Mendota Heights | Dakota | 59 | 26 | | 85 |
| Minneapolis/St. Paul | Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount. | 59 | 26 | | 85 |
| Rochester | Olmsted | 55 | 26 | | 81 |
| MISSISSIPPI | | | | | |
| Gulfport/Pascagoula/Bay St. Louis | Harrison, Jackson, and Hancock | 49 | 26 | | 75 |
| Jackson | Hinds | 50 | 26 | | 76 |
| Natchez | Adams | 47 | 26 | | 73 |
| Vicksburg | Warren | 42 | 26 | | 68 |
| MISSOURI | | | | | |
| Branson | Taney | 51 | 26 | | 77 |
| Cape Girardeau | Cape Girardeau | 43 | 26 | | 69 |
| Columbia | Boone | 49 | 26 | | 75 |
| Hannibal | Marion | 44 | 26 | | 70 |
| Jefferson City | Cole | 49 | 26 | | 75 |
| Joplin | Jasper | 44 | 26 | | 70 |
| Lake Ozark | Miller | 52 | 26 | | 78 |
| Kansas City | Clay, Jackson and Platte (See also Kansas City, KS) | 64 | 26 | | 90 |
| Osage Beach | Camden | 54 | 26 | | 80 |
| Springfield | Greene | 53 | 26 | | 79 |
| St. Louis | St. Charles and St. Louis | 66 | 26 | | 92 |
| MONTANA | | | | | |
| Billings | Yellowstone | 45 | 26 | | 71 |
| Great Falls | Cascade | 45 | 26 | | 71 |
| NEBRASKA | | | | | |
| Lincoln | Lancaster | 45 | 26 | | 71 |
| Omaha | Douglas | 54 | 26 | | 80 |
| NEVADA | | | | | |
| Elko | Elko | 50 | 26 | | 76 |
| Las Vegas | Clark County; Nellis AFB | 69 | 34 | | 103 |
| Reno | Washoe | 48 | 26 | | 74 |
| NEW HAMPSHIRE | | | | | |
| Concord | Merrimack | 56 | 26 | | 82 |
| Conway | Carroll | 81 | 26 | | 107 |

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| Per diem locality | | Maximum lodging amount (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2] [3] | | | | | |
| Durham | Strafford | 73 | | 26 | | 99 |
| Laconia | Belknap | 66 | | 26 | | 92 |
| Manchester | Hillsborough | 68 | | 26 | | 94 |
| Plymouth | Grafton | 54 | | 26 | | 80 |
| Portsmouth/Newington | Rockingham County; Pease AFB (See also Kittery, ME). | 60 | | 26 | | 86 |
| NEW JERSEY | | | | | | |
| Atlantic City | Atlantic | 107 | | 34 | | 141 |
| Belle Mead | Somerset | 62 | | 26 | | 88 |
| Camden | Camden | 63 | | 26 | | 89 |
| Dover | Morris County; Picatinny Arsenal | 64 | | 26 | | 90 |
| Eatontown | Monmouth County; Fort Monmouth | 59 | | 34 | | 93 |
| Edison | Middlesex | 63 | | 34 | | 97 |
| Millville | Cumberland | 53 | | 26 | | 79 |
| Morristown | Burlington | 69 | | 26 | | 95 |
| Newark | Bergen, Essex, Hudson, Passaic and Union | 86 | | 34 | | 120 |
| Ocean City/Cape May | Cape May | 96 | | 34 | | 130 |
| Princeton/Trenton | Mercer | 80 | | 34 | | 114 |
| Salem | Salem | 61 | | 26 | | 87 |
| Tom's River | Ocean | 79 | | 26 | | 105 |
| NEW MEXICO | | | | | | |
| Albuquerque | Bernalillo | 59 | | 26 | | 85 |
| Artesia | Eddy | 45 | | 26 | | 71 |
| Cloudcroft | Otero | 64 | | 34 | | 98 |
| Farmington | San Juan | 51 | | 26 | | 77 |
| Gallup | McKinley | 49 | | 26 | | 75 |
| Grants | Cibola | 41 | | 26 | | 67 |
| Las Cruces/White Sands | Dona Ana | 43 | | 26 | | 69 |
| Las Vegas | San Miguel | 44 | | 26 | | 70 |
| Los Alamos | Los Alamos | 52 | | 26 | | 78 |
| Raton | Colfax | 57 | | 26 | | 83 |
| Santa Fe | Santa Fe | 67 | | 34 | | 101 |
| Taos | Taos | 49 | | 26 | | 75 |
| Tucumcari | Quay | 46 | | 26 | | 72 |
| NEW YORK | | | | | | |
| Albany | Albany | 63 | | 26 | | 89 |
| Auburn | Cayuga | 56 | | 26 | | 82 |
| Batavia | Genesee | 55 | | 26 | | 81 |
| Binghamton | Broom | 57 | | 26 | | 83 |
| Buffalo | Erie | 60 | | 26 | | 86 |
| Canton | St. Lawrence | 52 | | 26 | | 78 |
| Catskill | Greene | 48 | | 26 | | 74 |
| Corning | Steuben | 59 | | 26 | | 85 |
| Elmira | Chemung | 53 | | 26 | | 79 |
| Glens Falls | Warren | 56 | | 26 | | 82 |
| Ithaca | Tompkins | 60 | | 26 | | 86 |
| Jamestown | Chautauqua | 43 | | 26 | | 69 |
| Kingston | Ulster | 56 | | 26 | | 82 |
| Lake Placid | Essex | 78 | | 26 | | 104 |
| Monticello | Sullivan | 55 | | 34 | | 89 |
| New York City | The boroughs of Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties. | 117 | | 34 | | 151 |
| Niagara Falls | Niagara | 65 | | 26 | | 91 |
| Palisades | Rockland | 54 | | 26 | | 80 |
| Poughkeepsie | Dutchess | 68 | | 26 | | 94 |
| Rochester | Monroe | 63 | | 26 | | 89 |
| Romulus | Seneca | 60 | | 26 | | 86 |
| Saratoga Springs | Saratoga | 60 | | 34 | | 94 |
| Schenectady | Schenectady | 59 | | 26 | | 85 |
| Syracuse | Onondaga | 61 | | 26 | | 87 |
| Troy | Rensselaer | 62 | | 26 | | 88 |
| Utica | Oneida | 57 | | 26 | | 83 |
| Watertown | Jefferson | 55 | | 26 | | 81 |
| Watkins Glen | Schuyler | 72 | | 26 | | 98 |
| West Point | Orange | 48 | | 26 | | 74 |
| White Plains | Westchester | 93 | | 34 | | 127 |
| NORTH CAROLINA | | | | | | |
| Asheville | Buncombe | 51 | | 26 | | 77 |
| Charlotte | Mecklenburg | 60 | | 26 | | 86 |
| Duck | Dare | 61 | | 26 | | 87 |
| Elizabeth City | Pasquotank | 53 | | 26 | | 79 |
| Greensboro/High Point | Guilford | 54 | | 26 | | 80 |
| Greenville | Pitt | 59 | | 26 | | 85 |
| Havelock | Craven | 43 | | 26 | | 69 |
| Jacksonville | Onslow | 42 | | 26 | | 68 |
| Kinston | Lenoir | 47 | | 26 | | 73 |
| Morehead City | Carteret | 57 | | 26 | | 83 |
| Raleigh/Durham/ Chapel Hill | Wake, Durham and Orange | 56 | | 26 | | 82 |



| Per diem locality | | Maximum lodging amount (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2] [3] | | | | | |
| Wilmington | New Hanover | 48 | | 26 | | 74 |
| Winston-Salem | Forsyth | 51 | | 26 | | 77 |
| NORTH DAKOTA | | | | | | |
| Bismarck | Burleigh | 44 | | 26 | | 70 |
| Fargo | Cass | 52 | | 26 | | 78 |
| Grand Forks | Grand Forks | 46 | | 26 | | 72 |
| Minot | Ward | 48 | | 26 | | 74 |
| OHIO | | | | | | |
| Akron | Summit | 58 | | 26 | | 84 |
| Bellevue/Norwalk | Huron | 55 | | 26 | | 81 |
| Chillicothe | Ross | 44 | | 26 | | 70 |
| Cincinnati/Evendale | Hamilton and Warren | 54 | | 26 | | 80 |
| Cleveland | Cuyahoga | 68 | | 34 | | 102 |
| Columbus | Franklin | 63 | | 26 | | 89 |
| Dayton | Montgomery County; Wright-Patterson AFB | 63 | | 26 | | 89 |
| Defiance | Defiance | 46 | | 26 | | 72 |
| East Liverpool | Columbiana | 47 | | 26 | | 73 |
| Elyria | Lorain | 51 | | 26 | | 77 |
| Fairfield/Hamilton | Butler | 51 | | 26 | | 77 |
| Findlay | Hancock | 44 | | 26 | | 70 |
| Geneva | Ashtabula | 55 | | 26 | | 81 |
| Lancaster | Fairfield | 44 | | 26 | | 70 |
| Lima | Allen | 43 | | 26 | | 69 |
| Port Clinton/Oakharbor | Ottawa | 61 | | 26 | | 87 |
| Portsmouth | Scioto | 46 | | 26 | | 72 |
| Sandusky | Erie | 66 | | 26 | | 92 |
| Springfield | Clark | 47 | | 26 | | 73 |
| Tinney/Fremont | Sandusky | 47 | | 26 | | 73 |
| Toledo | Lucas | 53 | | 26 | | 79 |
| Wapakoneta | Auglaize | 46 | | 26 | | 72 |
| OKLAHOMA | | | | | | |
| Norman | Cleveland | 44 | | 26 | | 70 |
| Oklahoma City | Oklahoma | 47 | | 26 | | 73 |
| Stillwater | Payne | 44 | | 26 | | 70 |
| Tulsa/Bartlesville | Osage, Tulsa and Washington | 48 | | 26 | | 74 |
| OREGON | | | | | | |
| Beaverton | Washington | 50 | | 26 | | 76 |
| Bend | Deschutes | 47 | | 26 | | 73 |
| Clackamas | Clackamas | 50 | | 26 | | 76 |
| Coos Bay | Coos | 45 | | 26 | | 71 |
| Eugene | Lane | 52 | | 26 | | 78 |
| Gold Beach | Curry | 46 | | 26 | | 72 |
| Lincoln City/Newport | Lincoln | 53 | | 26 | | 79 |
| Portland | Multnomah | 60 | | 26 | | 86 |
| Salem | Marion | 47 | | 26 | | 73 |
| Seaside | Clatsop | 70 | | 26 | | 96 |
| PENNSYLVANIA | | | | | | |
| Allentown | Lehigh | 55 | | 26 | | 81 |
| Altoona | Blaire | 44 | | 26 | | 70 |
| Bloomsburg | Columbia | 45 | | 26 | | 71 |
| Du Bois | Clearfield | 51 | | 26 | | 77 |
| Easton | Northampton | 64 | | 26 | | 90 |
| Erie | Erie | 48 | | 26 | | 73 |
| Gettysburg | Adams | 57 | | 26 | | 83 |
| Harrisburg | Dauphin | 66 | | 26 | | 92 |
| Johnstown | Cambria | 55 | | 26 | | 81 |
| King of Prussia/Ft. Washington | Montgomery County, except Bala Cynwyd. (See also Philadelphia, PA). | 72 | | 34 | | 106 |
| Lancaster | Lancaster | 64 | | 26 | | 90 |
| Lebanon | Lebanon County; Indian Town Gap Military Reservation. | 51 | | 26 | | 77 |
| Mansfield | Tioga | 49 | | 26 | | 75 |
| Mechanicsburg | Cumberland | 53 | | 26 | | 77 |
| Mercer | Mercer | 54 | | 26 | | 80 |
| Philadelphia | Philadelphia County; city of Bala Cynwyd in Montgomery County. | 83 | | 34 | | 117 |
| Pittsburgh | Allegheny | 66 | | 26 | | 92 |
| Radnor/Chester | Delaware | 72 | | 34 | | 106 |
| Reading | Berks | 51 | | 26 | | 77 |
| Scranton | Lackawanna | 53 | | 26 | | 79 |
| Shippingport | Beaver | 45 | | 26 | | 71 |
| Somerset | Somerset | 58 | | 26 | | 84 |
| State College | Centre | 48 | | 26 | | 74 |
| Stroudsburg | Monroe | 51 | | 26 | | 77 |
| Uniontown | Fayette | 73 | | 26 | | 99 |
| Valley Forge | Chester | 72 | | 34 | | 106 |
| Warminster | Bucks County; Naval Air Development Center | 56 | | 26 | | 82 |
| Wilkes-Barre | Luzerne | 54 | | 26 | | 80 |
| Williamsport | Lycoming | 44 | | 26 | | 70 |

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| Per diem locality | | Maximum lodging amount (a) | + M&IE rate (b) | = Maximum per diem rate [4] (c) |
|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2] [3] | | | |
| York | York | 56 | 26 | 82 |
| RHODE ISLAND | | | | |
| East Greenwich | Kent County; Naval Construction Battalion Center, Davisville. | 65 | 26 | 91 |
| Newport | Newport | 93 | 34 | 127 |
| Providence | Providence | 78 | 26 | 104 |
| Quonset Point | Washington | 48 | 26 | 74 |
| SOUTH CAROLINA | | | | |
| Charleston | Charleston and Berkeley | 56 | 26 | 82 |
| Columbia | Richland | 53 | 26 | 79 |
| Greenville | Greenville | 43 | 26 | 69 |
| Hilton Head | Beaufort | 86 | 34 | 120 |
| Myrtle Beach | Horry County; Myrtle Beach AFB | 74 | 26 | 100 |
| Rock Hill | York | 46 | 26 | 72 |
| Spartanburg | Spartanburg | 48 | 26 | 74 |
| SOUTH DAKOTA | | | | |
| Custer | Custer | 50 | 26 | 76 |
| Hot Springs | Fall River | 64 | 26 | 90 |
| Rapid City | Pennington | 61 | 26 | 87 |
| Sioux Falls | Minnehaha | 51 | 26 | 77 |
| Spearfish | Lawrence | 51 | 26 | 77 |
| TENNESSEE | | | | |
| Chattanooga | Hamilton | 43 | 26 | 69 |
| Columbia | Maury | 49 | 26 | 75 |
| Gatlinburg | Sevier | 63 | 26 | 89 |
| Johnson City | Washington | 54 | 26 | 80 |
| Kingsport/Bristol | Sullivan | 45 | 26 | 71 |
| Knoxville | Knox County; city of Oak Ridge | 52 | 26 | 78 |
| Memphis | Shelby | 55 | 26 | 81 |
| Murfreesboro | Rutherford | 44 | 26 | 70 |
| Nashville | Davidson | 52 | 26 | 78 |
| Shelbyville | Bedford | 52 | 26 | 78 |
| TEXAS | | | | |
| Abilene | Taylor | 43 | 26 | 69 |
| Amarillo | Potter | 48 | 26 | 74 |
| Austin | Travis | 59 | 26 | 85 |
| Bay City | Matagorda | 41 | 26 | 67 |
| Beaumont | Jefferson | 44 | 26 | 70 |
| Brownsville | Cameron | 49 | 26 | 75 |
| Brownwood | Brown | 42 | 26 | 68 |
| College Station/Bryan | Brazos | 45 | 26 | 71 |
| Corpus Christi | Nueces | 58 | 26 | 84 |
| Dallas/Fort Worth | Dallas and Tarrant | 74 | 34 | 108 |
| Denton | Denton | 47 | 26 | 73 |
| El Paso | El Paso | 56 | 26 | 82 |
| Galveston | Galveston | 62 | 26 | 88 |
| Granbury | Hood | 59 | 26 | 85 |
| Houston | Harris County; L. B. Johnson Space Center and Ellington AFB. | 66 | 34 | 100 |
| Laijtas | Brewster | 56 | 26 | 82 |
| Laredo | Webb | 49 | 26 | 75 |
| Longview | Gregg | 43 | 26 | 69 |
| Lubbock | Lubbock | 53 | 26 | 79 |
| McAllen | Hidalgo | 52 | 26 | 78 |
| Midland/Odessa | Ector and Midland | 51 | 26 | 77 |
| Nacogdoches | Nacogdoches | 44 | 26 | 70 |
| Plainview | Hale | 45 | 26 | 71 |
| Plano | Collin | 74 | 26 | 100 |
| San Angelo | Tom Green | 45 | 26 | 71 |
| San Antonio | Bexar | 54 | 26 | 80 |
| Temple | Bell | 46 | 26 | 72 |
| Waco | McLennan | 47 | 26 | 73 |
| Wichita Falls | Wichita | 45 | 26 | 71 |
| UTAH | | | | |
| Bullfrog | Garfield | 69 | 26 | 95 |
| Cedar City | Iron | 48 | 26 | 74 |
| Salt Lake City/Ogden | Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot. | 60 | 26 | 86 |
| VERMONT | | | | |
| Burlington | Chittenden | 58 | 26 | 84 |
| Middlebury | Addison | 52 | 26 | 78 |
| Montpelier | Washington | 45 | 26 | 71 |
| Rutland | Rutland | 53 | 26 | 79 |
| White River Junction | Windsor | 56 | 26 | 82 |
| VIRGINIA | | | | |
| (See the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia.) | | | | |
| Blacksburg | Montgomery | 57 | 26 | 83 |
| Bristol [4] | | 46 | 26 | 72 |



| Per diem locality | | Maximum lodging amount (a) | + M&IE rate (b) | = Maximum per diem rate [4] (c) |
|---|---|---|---|---|
| Key city [1] | County and/or other defined location [2] [3] | | | |
| Charlottesville [4] | | 52 | 26 | 78 |
| Fredericksburg [4] | | 44 | 26 | 70 |
| Lexington [4] | | 48 | 26 | 74 |
| Lynchburg [4] | | 50 | 26 | 76 |
| Manassas/Manassas Park [4] | Prince William | 55 | 26 | 81 |
| Norfolk [4] (also Virginia Beach, Portsmouth, Hampton, Newport News, and Chesapeake)[4]. | York County; Naval Weapons Station, Yorktown | 66 | 26 | 92 |
| Petersburg [4] | Fort Lee | 44 | 26 | 70 |
| Richmond [4] | Chesterfield and Henrico Counties; also Defense Supply Center. | 57 | 26 | 83 |
| Roanoke [4] | Roanoke | 53 | 26 | 79 |
| Wallops Island | Accomack | 54 | 26 | 80 |
| Warrenton | Fauquier | 50 | 26 | 76 |
| Williamsburg [4] | | 68 | 34 | 102 |
| [4]Denotes independent cities. | | | | |
| WASHINGTON | | | | |
| Anacortes | Skagit | 51 | 26 | 77 |
| Everett | Snohomish | 55 | 26 | 81 |
| Kelso/Longview | Cowlitz | 46 | 26 | 72 |
| Port Angeles | Clallam | 49 | 26 | 75 |
| Seattle | King | 68 | 34 | 102 |
| Spokane | Spokane | 49 | 26 | 75 |
| Tacoma | Pierce | 49 | 26 | 75 |
| Tumwater/Olympia | Thurston | 56 | 26 | 82 |
| Vancouver | Clark | 52 | 26 | 78 |
| Whidbey Island | Island | 45 | 26 | 71 |
| WEST VIRGINIA | | | | |
| Beckley | Raleigh | 44 | 26 | 70 |
| Charleston | Kanawha | 51 | 26 | 77 |
| Harpers Ferry | Jefferson | 52 | 26 | 78 |
| Huntington | Cabell | 48 | 26 | 74 |
| Morgantown | Monongalia | 46 | 26 | 72 |
| Wheeling | Ohio | 43 | 26 | 69 |
| WISCONSIN | | | | |
| Brookfield | Waukesha | 54 | 26 | 80 |
| Eau Claire | Eau Claire | 48 | 26 | 74 |
| Green Bay | Brown | 49 | 26 | 75 |
| Kewaunee | Kewaunee | 58 | 26 | 84 |
| La Crosse | La Crosse | 52 | 26 | 78 |
| Lake Geneva | Walworth | 81 | 26 | 107 |
| Madison | Dane | 58 | 26 | 84 |
| Marinette | Marinette | 44 | 26 | 70 |
| Milwaukee | Milwaukee | 59 | 26 | 85 |
| Minocqua/Rhinelander | Oneida | 46 | 26 | 72 |
| Mishicot | Manitowoc | 55 | 26 | 81 |
| Oshkosh | Winnebago | 53 | 26 | 79 |
| Sturgeon Bay | Door | 54 | 26 | 80 |
| Wausau | Marathon | 48 | 26 | 74 |
| Wautoma | Waushara | 49 | 26 | 75 |
| Wisconsin Dells | Columbia | 53 | 26 | 79 |
| WYOMING | | | | |
| Berkeley Springs | Morgan | 49 | 26 | 75 |
| Cheyenne | Laramie | 44 | 26 | 70 |
| Cody | Park | 46 | 26 | 72 |
| Gillette | Campbell | 42 | 26 | 68 |
| Jackson | Teton | 50 | 26 | 76 |
| Martinsburg | Berkeley | 49 | 26 | 75 |
| Thermopolis | Hot Springs | 42 | 26 | 68 |

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

[3] Military installations or Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel Management Division (FBT), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

Dated: November 30, 1990.

**Rebekah T. Johnson,**

*Deputy Administrator of General Services.*

[FR Doc. 90-29481 Filed 12-14-90; 8:45am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 901215-0315]

## Reef Fish Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency rule and correction of a notice of closure.

**SUMMARY:** The Secretary of Commerce (Secretary) promulgates emergency regulations that temporarily amend the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) to remove speckled hind from the species managed as shallow-water groupers (all groupers other than jewfish and deep-water groupers) and add it to the species managed as deep-water groupers (currently, yellowedge, misty, warsaw, and snowy grouper). This transfer removes speckled hind from the species for which the commercial fishery in the exclusive economic zone in the Gulf of Mexico currently is closed, and thus allows for the retention of speckled hind (generally caught in deeper waters) until the quota for deep-water groupers is reached. Accordingly, this document also corrects the notice of closure for the commercial fishery for shallow-water groupers. The intended effect of this rule is to respond to an emergency in the reef fish fishery by allowing the continued harvest and retention of speckled hind, thereby preventing waste of a valuable resource.

**EFFECTIVE DATE:** December 11, 1990 through March 11, 1991.

**ADDRESSES:** Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Sadler, 813-893-3722.

**SUPPLEMENTARY INFORMATION:** The FMP was developed by the Gulf of Mexico Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), and is implemented by regulations at 50 CFR part 641. Those regulations include speckled hind (*Epinephelus drummondhayi*) as a shallow-water grouper and set the commercial quota for shallow-water groupers in the Gulf of Mexico at 9.2 million pounds for the current fishing year, January 1-December 31, 1990. The quota was reached on November 7, 1990, and the commercial shallow-water grouper fishery was closed effective November 8, 1990, through December 31, 1990 (55 FR 46955, November 8, 1990).

Upon closure of the commercial shallow-water grouper fishery, the fishing effort in the deep-water fishery increased. A significant increase has been noted in the catch of speckled hind by vessels targeting deep-water groupers. Speckled hind reportedly represent from 30 to 40 percent of the groupers being taken after the closure. Because these speckled hind are being taken from relatively deep water, there is a high rate of mortality when they are released. Thus, the resource is wasted.

The categories used in the FMP, as amended, reflect a bathymetric association for the shallow- and deep-water groupers. However, no specific depth zone was established to separate the two groups. The groups are principally distinguished by ecological distribution, with the deep-water groupers generally found farther offshore in deeper waters beyond reef areas. Speckled hind are found on the outer reefs, mainly at depths of 100 fathoms or greater, and occur as a significant component of the deep-water fishery.

The Council requested this emergency action for two reasons. First, the current rate of catch of speckled hind in a fishery that is not taking any appreciable amount of other shallow-water groupers strongly indicates that speckled hind are not properly included as shallow-water groupers. Second, the inclusion of speckled hind in the shallow-water group, and corresponding exclusion from the deep-water group, is currently causing a significant waste of the resource.

The Council found that the waste of speckled hind owing to its erroneous inclusion in the shallow-water grouper category constitutes an emergency. The Secretary concurs. Accordingly, the Secretary promulgates this emergency rule to be effective for 90 days, as authorized by section 305 (e)(2)(B) and (e)(3)(B) of the Magnuson Act. Upon agreement of the Secretary and the Council, the emergency may be extended for an additional period of not more than 90 days. During the period of effectiveness of this emergency rule, the Council is expected to submit an amendment to the FMP addressing speckled hind.

In FR Doc. 90-26360 appearing in the issue of November 8, 1990, make the following correction:

On page 46955, under the "SUMMARY" heading, column 1, commencing on line 3, the information in parentheses should read "(all groupers other than yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, speckled hind, and jewfish)".

### Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act for preparation of a regulatory flexibility analysis because no general notice of proposed rulemaking for this rule is required by law.

The Assistant Administrator for Fisheries, NOAA, prepared an environmental assessment (EA) for this action which concludes that there will be no significant impact on the human environment. A copy of the EA is available from the address above.

The Secretary determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Secretary finds for good cause (i.e., to prevent waste of a valuable fishery resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule, or to delay for 30 days its effective date, under the provisions of section 553 (b)(B) and (d)(3) of the Administrative Procedure Act.

### List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.



Dated: December 11, 1990.

**David S. Crestin,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

## PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 641.25 effective from [December 11, 1990], through [March 11, 1991], paragraph (b) is suspended and a new paragraph (l) is added to read as follows:

**§ 641.25 Commercial quotas.**

* * * * *

(l) Yellowedge, misty, warsaw, and snowy grouper and speckled hind (deep-water groupers), combined—1.8 million pounds.

* * * * *

[FR Doc. 90-29373 Filed 12-11-90; 4:24 pm]

BILLING CODE 3510-22-M

VOL 55 ISS 242 DE 17 1990 UMI



# Proposed Rules

Federal Register
Vol. 55, No. 242
Monday, December 17, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 959

[Docket No. FV-91-227]

### Onions Grown in South Texas; Proposed Budget and Rate of Assessment

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 959 for the 1990–91 fiscal period. Authorization of this budget would permit the South Texas Onion Committee to incure expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Comments must be received by December 27, 1990.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2431.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 143 and Order No. 959 (7 CFR Part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

Pursuant to the requirements set forth in the Regulatory Flexibility act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of South Texas onions subject to regulation under the marketing order, and approximately 80 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000.

The budget of expenses for the 1990–91 fiscal period was prepared by the South Texas Onion Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are producers and handlers of onions. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate would be applied to actual shipments, it must be established at a rate which would produce sufficient income to pay the committee's expected expenses.

The committee met on November 13, 1990, and unanimously recommended a 1990–91 budget of $298,000. This budget is $78,966 below last year's budget of $376,966. Major increases include $2,000 for insurance and bonds, and $2,250 for office salaries. Major decreases over last year include $23,922 for market development, $56,581 for production research, $3,500 for furniture and fixtures, and $5,500 for travel costs.

The committee also unanimously recommended an assessment rate of $0.00 (7 cents) per 50-pound container or equivalent. This rate, when applied to anticipated shipments of 4,000,000 50-pound containers, would yield $280,000 in assessment revenue. This amount, when added to $18,000 in interest on committee deposits, would be adequate to cover budgeted expenses. Reserve funds could be used to meet any shortfall in assessment revenue.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay it expenses which are incurred on a continuous basis. The 1990–91 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, it is proposed that 7 CFR part 959 be amended as follows:

## PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 959.231 is added to read as follows:

**§ 959.231 Expenses and assessment rate.**

Expenses of $298,000 by the South Texas Onion Committee are authorized and an assessment rate of $0.07 per 50-pound container or equivalent quantity of regulated onions is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: December 11, 1990.

Robert C. Keeney,
*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-29406 Filed 12-14-90; 8:45 am]
BILLING CODE 3410-02-M



### 7 CFR Part 1124

[DA-90-037]

### Milk in the Pacific Northwest Marketing Area; Notice of Proposed Temporary Revision of Supply Plant Delivery Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed temporary revision of rule.

**SUMMARY:** This notice invites public comments on a proposal to temporarily ease a supply plant shipping requirement that at least 30 percent of producer milk physically received be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Pacific Northwest order during the month of December 1990, and for the months of January through August 1991. This action was requested in order to prevent the uneconomic movement of milk by a cooperative association that represents producers regularly associated with the market.

**DATES:** Comments are due no later than December 24, 1990.

**ADDRESSES:** Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criterion contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1124.7(c) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Pacific Northwest marketing area is being considered for the month of December 1990, and the months of January through August 1991.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include December 1990 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The Tillamook County Creamery Association (TCCA), a cooperative association that represents a number of the market's producers, has requested a temporary easing of the total minimum quantity of milk that a supply plant must ship to a distributing plant in order for the supply plant to maintain pool plant status. Specifically, TCCA has asked the Director of the Dairy Division to consider reducing the total quantity of producer milk that is physically received at a supply plant and subsequently shipped to a distributing plant to 20 percent. TCCA has requested that this temporary revision be effective for the month of December 1990, and for the months of January through August 1991.

In order for a supply plant to maintain its pool plant status, the Pacific Northwest order currently requires such plants to ship to a pool distributing plant a minimum of 30 percent of the total quantity of milk physically received. The order also provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percent if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

TCCA maintains that changes in milk production during the past few months has made it uneconomical and unnecessary to move the quantities of milk needed to maintain the delivery percentage required. They say that a temporary reduction of the shipping standard will not affect their willingness to supply spot loads of milk to the Portland bottling market as they traditionally do. With market conditions continuing along the current trend, TCCA says that it does not appear that they would maintain their pool plant status at the present delivery without making uneconomic and quality deteriorating movements of milk between plants solely for the purpose of meeting this pooling requirements.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

The authority citation for 7 CFR part 1124 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Signed at Washington, DC, on:

Dated: December 11, 1990.

W.H. Blanchard,
*Director, Dairy Division.*

[FR Doc. 90-29410 Filed 12-14-90; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Part 1205

[CN-90-001]

## Amendment to the Regulations Governing the Cotton Research and Promotion Program; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This notice corrects a proposed rule document (CN-90-001) published in the Federal Register on November 20, 1990 (55 FR 48242), concerning amendments to the regulations governing the Cotton Research and Promotion program.

**FOR FURTHER INFORMATION CONTACT:** Craig Shackelford at (202) 447-2259.

**SUPPLEMENTARY INFORMATION:** On page 48242, in the second column, under "Supplementary Information", line 6, which reads "since it does meet the criteria" is revised to read "since it does not meet the criteria".

Dated: December 11, 1990.

Kenneth C. Clayton,

*Acting Administrator.*

[FR Doc. 90-29408 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 74

RIN 3150-AD56

## Material Control and Accounting Requirements for Uranium Enrichment Facilities Producing Special Nuclear Material of Low Strategic Significance

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing new performance-based material control and accounting requirements that would be applicable to uranium enrichment facility licensees who produce significant quantities of special nuclear material (SNM) of low strategic significance. The proposed requirements are similar to existing requirements which apply to licensees authorized to possess and use more than one effective kilogram of SNM of low strategic significance. The proposed rule would impose additional requirements to ensure that enrichment facilities would produce only enriched uranium of low strategic significance as authorized. The proposed requirements would also apply to all applicants who build or operate enrichment facilities.

**DATES:** Comment period expires March 4, 1991. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of the draft regulatory analysis, the environmental assessment and finding of no significant impact, the paperwork statement submitted to OMB, the draft regulatory guide, and comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3803 or Mr. Donald R. Joy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0352.

**SUPPLEMENTARY INFORMATION:**

### Background

An advanced notice of proposed rulemaking on regulation of uranium enrichment, which would have created a new 10 CFR part 76, was published in the Federal Register on April 21, 1988 (53 FR 13276). The initiative was abandoned because legislative efforts being considered in Congress at the time might have changed by law the way NRC is required to license uranium enrichment facilities. Also, the sole potential applicant, URENCO, Inc. did not file a license application.

In the Federal Register on February 15, 1989 (54 FR 6676), safeguards reporting requirements were changed. Specifically, the amendment to 10 CFR 74.17, which would also apply to enrichment facilities deleted the requirement for licensees located in Region II as indicated in Appendix A to part 73 of this chapter to submit Special Nuclear Material (SNM) Physical Inventory Summary Reports to Region II. This change required all licensees subject to this reporting requirement to submit the reports to the Director, Office of Nuclear Material Safety and Safeguards because all aspects of material control and accounting (MC&A) have been completely transferred to NRC headquarters.

From 1975 to 1984, NRC's MC&A requirements for all major fuel cycle facilities, including any potential commercial enrichment facilities and reprocessing plants, were contained in 10 CFR part 70 (primarily §§ 70.51, 70.57, and 70.58). Those requirements, for the most part, did not vary with respect to the type of facility or with respect to the SNM category (i.e., low enriched uranium, high enriched uranium, or plutonium). In 1985, a new 10 CFR part 75 as created to amend the MC&A requirements that (1) recognized the different levels of safeguards significance among the different types of SNM, and (2) converted MC&A requirements for a prescriptive-based to a performance-based format.

The existing provisions of part 75, specifically 10 CFR 74.31, pertained to licensees (and applicants) authorized to possess and use more than one effective kilogram of SNM of low strategic significance as defined in 10 CFR 74.4. Section 74.31 is a set of MC&A objectives and capabilities required of licensees to assure the NRC and the general public that proper stewardship of SNM is maintained. These requirements provide adequate protection for SNM of low strategic significance at existing licensed facilities. Enrichment facilities were specifically exempted from coverage by 10 CFR 74.31 because (1) NRC had not received an application for a uranium enrichment facility, and at that time, saw no prospects for receiving such an application, and (2) the NRC believed that the safeguards issues pertaining to enrichment facilities producing SNM of low strategic significance (i.e., enriched uranium with a $U^{235}$ concentration below 10 percent) were somewhat different and more complex than for other 10 CFR 74.31 type facilities.

An enrichment facility can be used clandestinely for production of high enriched uranium or unauthorized production of low enriched uranium. Thus, additional safeguards are needed for enrichment facilities to protect against such unauthorized activities. However, for centrifuge enrichment facilities, it is expected that during startup of each cascade the enrichment level in the cascade may temporarily exceed the regulatory limit during the first 24 hours of operation. This period of operation will allow time to resolve start-up problems and adjust equipment. The NRC staff expects that 24 hours is a sufficient period of adjustment without allowing an excessive amount of cascade operation outside of normal



controls. This is considered to be part of the start-up process and not an unauthorized activity. The NRC staff seeks specific comments from the public on the sufficiency of this 24 hour period of adjustment. Diffusion and atomic vapor laser isotope separation enrichment technologies do not experience this start-up phenomenon.

There is a possibility that applications for a license for the construction and operation of new enrichment facilities may be submitted to the NRC in the near future. There is also a possibility, over a longer term, that legislation will be enacted that would put all or part of the Department of Energy's (DOE) enrichment facilities under the jurisdiction of NRC regulations. It would thus be appropriate for the NRC to clarify and formalize its regulatory position with respect to MC&A requirements applicable to enrichment facilities producing uranium of low strategic significance.

This proposed rule on MC&A contains only a few of the requirements which need to be met prior to obtaining a license to operate an enrichment facility.

Because of enactment of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575) a single licensing process under 10 CFR parts 40 and 70 will be used which will involve the issuance of a single license authorizing construction and operation of an uranium enrichment facility and the receipt, possession, use, and transfer of source and SNM.

MC&A is only one part of the safeguards program required for uranium enrichment applicants and licensees. Failure to properly carry out certain safeguards activities at enrichment facilities could adversely affect the national common defense and security. Safeguards consists of physical protection, MC&A, and information security. The SNM of low strategic significance produced by enrichment facilities need to be protected from theft by having a physical security program which meets the requirements of 10 CFR 73.67. Classified or sensitive information and hardware have to be protected according to 10 CFR parts 25 and 95. In particular, centrifuges need to be protected from theft, unauthorized viewing, or unauthorized use. For centrifuge technology, the details of this protection program are currently under joint development by NRC, DOE, and Department of State. Enrichment technology, either currently used by or under development by the DOE, when subject to NRC license, would be protected by information security measures equivalent to those now used by DOE. In addition, Congress has addressed fitness-for-duty in section 5152 of the Drug-Free Workplace Act of 1988 (102 Stat. 4304) which requires persons awarded a contract for property or service of $25,000 or more from any Federal agency to certify that it will provide a drug-free workplace. Also, section 5153 of the Drug-Free Workplace Act of 1988 (102 Stat. 4306) requires persons receiving any grant from a Federal agency to certify that it will provide a drug-free workplace. Therefore, an uranium enrichment applicant or licensee obtaining a Federal agency grant or contract of $25,000 or more will be required to certify that it will provide a drug-free workplace.

If an enrichment facility is expended by adding additional modules after operation has begun, the new modules would be required to meet the requirements of the existing FNMC Plan, by addendum to the plan, prior to placing the modules in service. However, the NRC staff believes that it has addressed all major issues associated with MC&A for enrichment facilities, but if that is not the case, the staff expects to handle those issues as they arise on a case-by-case basis through license conditions.

The Commission is proposing new MC&A requirements for uranium enrichment facilities. Since the proposed 10 CFR 74.33 was developed by starting with the existing 10 CFR 74.31 requirements, most of the general performance objectives of 10 CFR 74.31 were incorporated. Notably, 10 CFR 74.31(a)(3), "Aid in the investigation and recovery of missing material," was not retained. Although this objective might be helpful following an actual theft of SNM, it is not logically part of an MC&A system, because it involves activities that can only begin after the material has left the licensee's control. Recovery of missing material is a responsibility of the U.S. Department of Justice, which has ample authority to compel any licensee's assistance in its investigatory and prosecutorial activities. The proposed 10 CFR 74.33 sets forth requirements for traditional MC&A measures and additional measures to protect against unauthorized activities at facilities producing SNM of low strategic significance. The proposed 10 CFR 74.33 does not depend on 10 CFR 74.31 but is intended to be a stand-alone provision.

A major new feature of this proposed rule is the requirement to account on a measured basis for all uranium and $U^{235}$ on site, whether it is natural, depleted, or enriched uranium. This is necessary because the enrichment process, in changing the $U^{235}$ concentration, consumes natural uranium and produces depleted and enriched uranium. If a material balance around the $U^{235}$ received, produced, shipped, and remaining in inventory is periodically verified by a physical inventory; then this process, in the absence of any safeguards alarms, provides high assurance that the MC&A system is operating properly.

The proposed rule contains other significant features which will be described in turn. Physical inventories taken on an annual basis have historically been sufficient for safeguarding low enriched uranium; i.e., less than 10 percent $U^{235}$, and thus, have been applied to enrichment facilities. Physical inventories are also expected to be sufficient for natural and depleted uranium because the material will be in a form which is easily and precisely measured.

The 2-month interval for dynamic inventories of the enrichment process area was selected because annual material balances represent a large quantity of uranium with an associated relatively large uncertainty. Since uncertainty has the effect of reducing the amount of material loss that can be detected, the 2-month interval improves our loss detection capability by reducing the amount of material in the material balance. Also, the 2-month period provides an opportunity to check the operation of the material tracking system so that proper tracking of all quantities of material can be demonstrated. Since process area inventories are based on indirect measurements, and not the traditional MC&A measurements based on assays of samples, and isotopic or $U^{235}$ determinations, the uncertainties are higher for indirect measurements. The iterative process of taking dynamic inventories every 2 months; i.e., predicting the amount of enriched uranium based on indirect measurements and comparing that to the actual amount produced in a finite amount of time, e.g., 24 hours, establishes a process which could lead to more accurate dynamic inventories. Finally, the 2-month period repeated over time will effectively monitor any long term growth of process holdup within the process piping and equipment.

A practice of exempting items each containing less than 500 grams $U^{235}$ up to a cumulative total of 50 kilograms $U^{235}$ from the item control program has historically been sufficient for low enriched licensees, and thus, has been applied to enrichment facilities. The NRC staff does not expect any adverse impact on the MC&A program because

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the total quantity exempted is small relative to the active inventory for an enrichment facility.

A practice of exempting from resolution shipper-receiver differences which are less than 500 grams $U^{235}$ has historically been sufficient for low enriched licensees, and thus, has been applied to enrichment facilities. The NRC staff does not expect any adverse impact on the MC&A program because shipper-receiver differences should average out to a near zero value over time due to some differences being positive and others negative.

**Draft Regulatory Guide**

The proposed rule is written in general, performance-based language to give the applicant flexibility in designing a cost-effective system to make best use of site-specific features. The purpose of the draft regulatory guide is to provide an acceptable method of meeting the performance-based system capabilities described in 10 CFR 74.33. It should be noted that the applicant is free to use any method that complies with the requirements of 10 CFR 74.33.

The Commission also requests public comment on the draft regulatory guide. Comments on the draft guide may be submitted to the NRC as indicated under the **ADDRESSES** heading.

**Finding of No Significant Environmental Impact: Availability**

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that these amendments are not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The rule is mainly administrative in nature and would not change any requirements that could have significant environmental impact. The proposed rule would provide assurance that only enriched uranium of low strategic significance as authorized by the license is produced at a licensed enrichment facility through material control and accounting measures and other appropriate requirements. There may be some increase in occupational exposure stemming from safeguard-related activities such as data recording, inspecting, or sample taking, but likely not enough to be measurable or identifiable.

**Paperwork Reduction Act Statement**

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The recordkeeping and reporting requirements in this rulemaking have been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Public reporting burden for this collection of information is estimated to average 437 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch MNBB-7714, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0123), Office of Management and Budget, Washington, DC 20503.

**Draft Regulatory Analysis**

The NRC has prepared a draft regulatory on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC.

The Commission requests public comments on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rulemaking will not have a significant economic impact on a substantial number of small entities. The proposed rule, when promulgated, would affect only persons who build or operate enrichment facilities producing enriched uranium of low strategic significance. The owners of enrichment facilities do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, thus, a backfit analysis is not required for these amendments because it does not involve any provisions that would impose backfits on licenses, approvals, or applications for any existing facilities described in 10 CFR 50.109(a)(1) (i)–(v).

**List of Subjects**

*10 CFR Part 2*

Administrative practice and procedures, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

*10 CFR Part 40*

Government contracts, Hazardous materials—Transportation, Nuclear materials, Criminal penalties, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 70*

Hazardous materials—Transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 74*

Accounting, Hazardous materials—Transportation, Material control and accounting, Nuclear materials, Packaging and containers, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 74, and conforming amendments to 10 CFR parts 2, 40, and 70.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231) sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); Sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.)

2. In appendix C, supplement III is amended by adding new paragraphs A.3 and B.4 to read as follows:

**Supplement III—Severity Categories**

*Safeguards*

A. * * *

3. Actual unauthorized production of a formula quantity of special nuclear material.

B. * * *

4. Actual unauthorized production of special nuclear material.

* * * * *

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950, as amended. (42 U.S.C. 2201(b), 2201(i), and 2201(o)). and §§ 40.5, 40.9, 40.24 (c), (d)(3), and (4), 40.25(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.1, paragraph (a) is revised to read as follows:

**§ 40.1 Purpose.**

(a) The regulations in this part establish procedures and criteria for the issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this part, and establish and provide for the terms and conditions upon which the Commission will issue these licenses. (Additional requirements applicable to natural and depleted uranium at enrichment facilities are set forth in § 70.22 of this chapter.) These regulations also provide for the disposal of byproduct material and for the long-term care and custody of byproduct material and residual radioactive material. The regulations in this part also establish certain requirements for the physical protection of import, export, and transient shipment of natural uranium. (Additional requirements applicable to the import and export of natural uranium are set forth in part 110 of this chapter.)

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

5. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); Secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under Secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under Sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b) (d)–(k), 70.24 (a), and (b), 70.32 (a)(3), (5) and (6), (d) and (i), 70.36,70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 161i, and 161o, 68 Stat. 948, and 950, as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57 (b) and (d), 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k) and (l), 70.59, and 70.60 (b) and (c) are issued sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o));

6. In § 70.22, paragraph (b) is revised and new paragraph (m) is added to read as follows:

**§ 70.22 Contents of applications.**

* * * * *

(b) Each application for a license to possess special nuclear material and equipment capable of enriching uranium, or to possess and use at any one time and location special nuclear material in a quantity exceeding one effective kilogram, except for applications for use as sealed sources and for those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, must contain a full description of the applicant's program for control and accounting of such special nuclear material or enrichment equipment that will be in the applicant's possession under license to show how compliance with the requirements of §§ 70.58, 74.31, 74.33, or 74.51 of this chapter, as applicable, will be accomplished.

* * * * *

(m) Each application for a license to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material at any site or contiguous sites subject to control by the applicant, must contain a full description of the applicant's security program to protect against theft, unauthorized viewing, and unauthorized disclosure of classified matter in accordance with the requirements of 10 CFR parts 25 and 95.

7. In § 70.32, paragraph (c)(1) is revised to read as follows:

**§ 70.32 Conditions of license.**

* * * * *

(c)(1) Each license authorizing the possession and use at any one time and location of uranium source material or special nuclear material in a quantity exceeding one effective kilogram, except for use as sealed sources and those uses involved in the operation of a nuclear reactor licensed pursuant to part 50 of this chapter and those involved in a waste disposal operation, shall contain

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and be subject to a condition requiring the licensee to maintain and follow:

(i) The program for control and accounting of uranium source material or special nuclear material and fundamental nuclear material controls implemented pursuant to §§ 70.22(b), 70.58(j), 74.31(b), 74.33(b), or 74.51(c)(1) of this chapter, as appropriate;

(ii) The measurement control program for uranium source material or special nuclear material control and accounting implemented pursuant to §§ 70.57(c), 74.31(b), 74.33(b), or 74.59(a) of this chapter, as appropriate; and

(iii) Such other material control procedures as the Commission determines to be essential for the safeguarding of uranium source material or of special nuclear material and providing that the licensee shall make no change that would decrease the effectiveness of the material control and accounting program implemented pursuant to §§ 70.22(b), 70.58(j), 70.51(g), 74.31(b), 74.33(b), or 74.51(c)(1) of this chapter and the measurement control program implemented pursuant to §§ 70.57(c), 74.31(b), 74.33(b), or 74.59(a) of this chapter without the prior approval of the Commission. A license desiring to make such changes shall submit an application for amendment to its license pursuant to § 70.34.

* * * * *

8. In § 70.51, paragraph (b), introductory text is revised to read as follows:

**§ 70.51 Material balance, inventory, and records requirements.**

* * * * *

(b) Licensees subject to the recordkeeping requirements of §§ 74.31, 74.33 and 74.59 of this chapter are exempt from the requirements of § 70.51(b)(1) through (5).

* * * * *

## PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68, Stat. 930, 932, 948, 953, 954, as amended, Sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.57, 74.33, 74.55, 74.57, 74.59, 74.61, and 74.62 are issued under secs. 161b and 161i, 68 Stat. 948, 948, as amended (42 U.S.C. 2201(b); and 2201(i)); and §§ 74.13, 74.13, 74.15, and 74.17, are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. Section 74.1 is revised to read as follows:

**§ 74.1 Purpose.**

(a) This part has been established to contain the requirements for the control and accounting of special nuclear material at fixed sites and for documenting the transfer of special nuclear materials. General reporting requirements as well as specific requirements for certain licensees possessing special nuclear material of low strategic significance and formula quantities of strategic special nuclear material are included. Requirements for the control and accounting of source material at enrichment facilities are also included. The specific control and accounting requirements for other licensees are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

(b) The general conditions and procedures for the submittal of a license application for the activities covered in this part are detailed in § 70.22 of this chapter.

11. In § 74.2, paragraphs (b) and (c) are revised to read as follows:

**§ 74.2 Scope.**

* * * * *

(b) In addition, specific control and accounting requirements are included for certain licensees who:

(1) Possess and use formula quantities of strategic special nuclear material,

(2) Possess and use special nuclear material of low strategic significance, or

(3) Possess uranium source material and equipment capable of producing enriched uranium.

(c) Special control and accounting requirements for special nuclear material of moderate strategic significance and for miscellaneous categories of licensees who possess special nuclear material are contained in §§ 70.51, 70.57, and 70.58 of this chapter.

12. In § 74.4, the term "batch" is added to read as follows:

**§ 74.4 Definitions.**

* * * * *

*Batch* means a portion of source material or special nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of measurements. The source material or special nuclear material may be in bulk form or contained in a number of separate items.

* * * * *

13. In § 74.5, paragraph (b) is revised to read as follows:

**§ 74.5 Information collection requirements; OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 74.11, 74.13, 74.31, 74.33, 74.51, 74.57, and 74.59.

* * * * *

14. In § 74.11, the section heading and paragraph (a) are revised to read as follows:

**§ 74.11 Reports of loss or theft or attempted theft or unauthorized production of special nuclear material.**

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within 1 hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. Each licensee who operates a uranium enrichment facility shall notify the NRC Operations Center within 1 hour of discovery of any production of uranium enriched to 10 percent or more in the isotope $U^{235}$ or unauthorized production of uranium of low strategic significance. For centrifuge enrichment facilities the requirement to report enrichment levels greater than that authorized by license within 1 hour does not apply to each cascade during its startup process, not to exceed the first 24 hours. The requirement does not pertain to measured discards or inventory difference quantities.

* * * * *

15. Section 74.17 is revised to read as follows:

**§ 74.17 Special nuclear material physical inventory summary report.**

(a) Each licensee subject to the requirements of § 74.31 or § 74.33 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calendar days from the start of the physical inventory required by § 74.31(c)(5) or § 74.33(c)(4) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(b) Each licensee subject to the requirements of § 70.51(e) of this chapter shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 30 calendar days from the start of the physical inventory required by § 70.51(e)(3) of this chapter. The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(c) Each licensee subject to the requirements of § 74.51 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 45 calendar days from the start of the physical inventory required by § 74.59(f). The licensee shall report the inventory results by plant and total facility to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

16. A new § 74.33 is added to read as follows:

**§ 74.33 Nuclear material control and accounting for uranium enrichment facilities authorized to produce special nuclear material of low strategic significance.**

(a) *General performance objectives.* Each licensee who is authorized by this chapter to possess equipment capable of enriching uranium or operate an enrichment facility, and produce, possess, or use more than one effective kilogram of special nuclear material of low strategic significance at any site or contiguous sites, subject to control by the licensee, shall establish, implement, and maintain a Commission-approved material control and accounting system that will achieve the following objectives:

(1) Maintain accurate, current, and reliable knowledge of source material and special nuclear material;

(2) Protect against and detect any production of uranium enriched to 10 percent or more in the isotope $U^{235}$;

(3) Protect against and detect unauthorized production or uranium of low strategic significance;

(4) Resolve indications of missing uranium;

(5) Resolve indications of any production or uranium enriched to 10 percent or more in the isotope $U^{235}$; and

(6) Resolve indications of unauthorized production or uranium of low strategic significance.

(b) *Implementation dates.* Each applicant for a license who would, upon issuance of a license pursuant to any part of this chapter, be subject to the requirements of paragraph (a) of this section shall:

(1) No later than 2 years prior to facility start up, submit a fundamental nuclear material control plan describing how the performance objectives of § 74.33(a) and the system features and capabilities of § 74.33(c) will be met; and

(2) Implement the NRC approved plan submitted pursuant to paragraph (b)(1) of this section prior to (i) receipt of more than a total of 5,000 grams of $U^{235}$ contained in natural, depleted, or enriched uranium or (ii) NRC's issuance of a license to test or operate the enrichment facility.

(c) *System features and capabilities.* To meet the general performance objectives of paragraph (a) of this section, the Material Control and Accounting (MC&A) system must include the features and capabilities described in paragraphs (c) (1) and (8) of this section. The licensee shall establish, document, and maintain:

(1) A management structure that ensures:

(i) Clear overall responsibility for MC&A functions;

(ii) Independence of MC&A management from production responsibilities;

(iii) Separation of key MC&A responsibilities from each other; and

(iv) Use of approved written MC&A procedures and periodic review of those procedures;

(2) A measurement program that ensures that all quantities of source material and special nuclear material in the accounting records are based on accurately measured values;

(3) A measurement control program that ensures that:

(i) Measurement bias is estimated and minimized through the measurement control program, and any significant biases are eliminated from inventory difference values of record;

(ii) All MC&A measurement systems are controlled so that twice the standard error of the inventory difference is less than the greater of 5,000 grams of $U^{235}$ or 0.25 percent of the active inventory for each total plant material balance; and

(iii) Any measurements performed under contract are controlled so that the licensee can satisfy these requirements;

(4) An inventory program that ensures that accurate, current, and reliable knowledge of source and special nuclear material is maintained, and that includes:

(i) Performing, unless otherwise required to satisfy part 75 of this chapter, a dynamic (nonshutdown) physical inventory of in-process uranium and $U^{235}$ at least every 65 days, and performing a static physical inventory of all other uranium and total $U^{235}$ contained in natural, depleted, and enriched uranium located outside of the enrichment processing equipment at least every 370 calendar days, with static physical inventories being conducted in conjunction with a dynamic inventory of in-process uranium and $U^{235}$ so as to provide a total plant material balance at least every 370 calendar days; and

(ii) Reconciling and adjusting the book inventory to the results of the static physical inventory and resolving, or reporting an inability to resolve, any inventory difference that is rejected by a statistical test which has a 90 percent power of detecting a discrepancy of a quantity of $U^{235}$ established by NRC on a site-specific basis within 60 days after the start of each static physical inventory;

(5) A detection program, independent of production, that provides high assurance of detection of any:

(i) Production of uranium enriched to 10 percent or more in the $U^{235}$ isotope in any product stream, and

(ii) Unauthorized production of uranium of low strategic significance;

(6) An item control program that ensures that:

(i) Current knowledge is maintained of items that exist for 14 or more calendar days with respect to identity, uranium and $U^{235}$ content, and stored location, and

(ii) Items are stored and handled, or subsequently measured, in a manner so that the amount of $U^{235}$ involved in any unauthorized removal of items or uranium from items greater than 500 grams will be detected. Exempted are licensee-identified items each containing less than 500 grams $U^{235}$ up to a cumulative total of 50 kilograms of $U^{235}$;

(7) A resolution program that ensures that any shipper-receiver differences are resolved that are statistically significant and exceed 500 grams $U^{235}$ on:

(i) An individual batch basis; and

(ii) A total shipment basis for all source material and special nuclear material; and

(8) An assessment program that:

(i) Independently assesses the effectiveness of the MC&A system at least every 24 months,

(ii) Documents the results of the above assessment,

(iii) Documents management's findings on whether the MC&A system is currently effective, and

(iv) Documents any actions taken on recommendations from prior assessments.

(d) *Recordkeeping.* (1) Each licensee shall establish records that will demonstrate that the performance objectives of paragraph (a) and the system features and capabilities of paragraph (c) of this section have been met and maintain these records in an auditable form, available for inspection,

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for at least 3 years, unless a longer retention time is required by part 75 of this chapter.

(2) Records that must be maintained pursuant to this part may be the original or a reproduced copy or a microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations. The record may also be stored in electronic media with the capability for producing, on demand, legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications must include all pertinent information such as stamps, initials, and signatures.

(3) The licensee shall maintain adequate safeguards against tampering with and loss of records.

Dated at Rockville, Maryland, this 11th day of December 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 90-29437 Filed 12-14-90; 8:45 am]

BILLING CODE 7590-01-M

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**10 CFR Part 60**

**[Docket No. PRM-60-4]**

**Definition of the Term "High-Level Radioactive Waste"**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking.

**SUMMARY:** The States of Washington and Oregon request that the Commission revise the definition of the term "high-level radioactive waste" so as to establish a procedural framework and substantive standards by which the Commission will determine whether reprocessing waste, including in particular certain waste stored at the U.S. Department of Energy's site at Hanford, Washington, is high-level radioactive waste and therefore subject to the Commission's licensing authority.

**DATES:** Submit comments by March 18, 1991. Comments received after this date will be considered if it is practical to do so, but consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301 492-7758 or Toll Free: 800-368-5642.

**SUPPLEMENTARY INFORMATION:**

**Petitioners' Request**

The petitioners request that the Commission amend 10 CFR 60.2 to clarify the definition of "high-level radioactive waste" (HLW) and the definition of "HLW facility." The petitioners request that the Commission—

1. Establish a process to evaluate the treatment of defense reprocessing wastes in tanks so that such wastes will not be considered HLW if, prior to disposal, each tank is treated to remove the largest technically achievable amount of radioactivity; and

2. Require that the heat produced by residual radionuclides, together with the heat of reaction during grout processing (if employed as a treatment technology), will be within limits established to ensure that grout meets temperature requirements for long-term stability for low-level waste forms.[1]

The petitioners seek clarification that the disposal of wastes treated to this standard is not disposal in a "HLW facility" as presently defined in 10 CFR 60.2. The petitioners state that should the Commission regard 10 CFR Part 50, Appendix F as the controlling regulation to determine whether a waste is HLW, that the Commission also modify that definition as proposed in the petition.

**Basis for the Petition**

The petitioners state that this rulemaking is based, in part, on section 202 of the 1974 Energy Reorganization Act, which defines Commission authority over retrievable surface storage facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by DOE which are not used for, or are part of, research and development activities. The petitioners further state that the Congressional definition of the term "high-level radioactive waste" in the Nuclear Waste Policy Act (NWPA) 42 U.S.C. 10101 (12) gives the Commission the authority to define whether wastes are "highly radioactive material" or "solids derived from [liquid reprocessing wastes] that contain fission products in sufficient concentrations."[2]

According to the petitioners, legislative history reveals that Congress intended the Commission to license defense reprocessing tank wastes at the point of long-term storage or disposal. The petitioners note that low fraction wastes resulting from pretreatment of tank wastes are scheduled to be grouted and disposed of in land-based grout vaults on the Hanford site in accordance with regulations developed under the Resource Conservation and Recovery Act (RCRA). The petitioners believe that if such wastes are HLW, they clearly fall under the Commission's licensing jurisdiction under section 202 (4) of the Energy Reorganization Act of 1974.[3]

**Reasons for Petition**

The petitioners point out that the present definition of HLW in the Commission's regulations is based upon the source of the waste. According to petitioners, while HLW may be differentiated from "incidental waste," the legal basis for doing so must derive from NWPA, specifically 42 U.S.C. 10101 (12) (A), which refers to a "sufficient concentrations" criterion for classification.[4] The petitioners claim that incidental waste source is impossible to ascertain due to mixing in defense tanks and the unavailability of accurate records. They point out, in particular, that over the last 45 years, mixing of wastes from different sources has complicated the classification of Hanford tank wastes, including double-shell tank wastes. Moreover, the petitioners state that radionuclide inventories are estimates and subject to substantial uncertainty. Variables contributing to the uncertainty include incomplete and inaccurate records, the lack of actual fuel and/or waste analyses, and an incomplete understanding of the chemistry and pathways in reprocessing and waste treatment processes. The petitioners assert that neither DOE, the Commission, nor the petitioners have adequate information regarding the radioactive portion of the double-shell tank waste. The petitioners believe that the Commission needs to establish both a procedure and a standard for making an evaluation as to whether waste are HLW on a tank-by-tank basis.

The petitioners assert that the proposed amendment is essential to provide protection of the future health and safety of the citizens of the Pacific Northwest.

**Petitioners' Proposal**

The petitioners suggest that the definitions of "High-Level Radioactive Waste" and "HLW Facility" in 10 CFR 60.2 be revised and a new appendix A be added to 10 CFR part 60. The specific language suggested by the petitioners reads as follows:

1. In § 60.2, the definitions of "High-Level Radioactive Waste" and "HLW Facility" are revised to read as follows:

*§ 60.2 Definitions.*

* * * * *

*High-level radioactive waste or HLW* means: (1) Irradiated reactor fuel, (2) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (3) Solids into which such liquid wastes have been converted; provided that if, prior to disposal, defense reprocessing tank wastes are treated to remove the largest technically achievable amount of radioactivity on a tank-by-tank basis (as provided in appendix A ), the treated residual fraction shall be considered an incidental waste and therefore not HLW.

*HLW facility* means a facility subject to the licensing and related regulatory authority of the Commission pursuant to sections 202(3) and 202(4) of the Energy Reorganization Act of 1974 (88 Stat 1244).[5]

* * * * *

2. A new Appendix—A is added to part 60 to read as follows:

*Appendix A—Procedures For Determining Largest Technically Achievable Treatment*

At least one year before a tank of defense reprocessing wastes containing high-level waste components is treated, pretreated or blended prior to permanent disposal, DOE shall submit the following to the Commission and the affected state and publish in the Federal Register:

1. Data on physical characteristics of the waste, including density and percent solids, inorganic and organic constituents, and radiochemistry (e.g., gamma energy analysis, total alpha, total beta);

2. Volumetric data on untreated waste, on volume changes expected as a result of treatment, pretreatment or blending activities and the expected volume of the final waste form (grout, saltcrete or vitrified waste);

3. A description of the treatment processes, including an estimated mass balance for each process, and estimated percent recovery for each separation, and concentrations of major waste components before and after treatment;

4. The proposed grout or saltcrete formulation, together with heat transfer calculations for the waste form; and

5. To the degree possible, treatment system models similar to the attached grout system model should be used to present data and describe processes.

At least six months before a tank of defense reprocessing tank wastes containing high-level waste components is pretreated, treated or blended prior to permanent disposal in near-surface or deep geologic facilities, the Commission shall require a license under section 202(4) of the Energy Reorganization Act, 42 U.S.C. 5842 (4) unless the Commission, on a tank-by-tank basis determines the following:

1. The DOE has demonstrated that the largest technically achievable amount of activity from the tank will be isolated for vitrification prior to permanent disposal; and

2. That use of permanent shallow land disposal for the tank waste will be limited to the incidental waste portion, which is the activity remaining after the largest technically achievable amount of activity has been removed; and

3. That the treatment, pretreatment and blending processes described in the DOE submittal will achieve the stated separation and/or recovery efficiencies; and

4. That the treatment, pretreatment and blending processes described in the DOE submittal are proven, cost effective, state-of-the art processes, which are capable of removing the largest technically achievable amount of activity.

**Petitioners' Conclusions**

The petitioners state that rulemaking procedures are necessary to determine the nature of the incidental, lesser radioactive fraction of wastes and that rulemaking is appropriate to establish a procedural framework and substantive standards by which particular wastes will be assessed. The petitioners contemplate that particular determinations of how specific wastes will be characterized under these general standards can be left to individual adjudicative proceedings.

The petitioners believe that the amendments suggested by their petition would protect human health and the environment, would facilitate meaningful Commission involvement in the ultimate disposal and/or long-term storage of Hanford double-shell tank waste, and would support implementation of the Hanford Federal Facility Agreement and Consent Order.

**Request for Comments**

Commenters are invited to address, among other things, the desirability and appropriateness of (1) The proposed substantive standard ("remove the largest technically achievable amount of radioactivity on a tank-by-tank basis"), (2) the proposed procedure for applying that standard, and (3) an amendment to 10 CFR part 60 (in view of the scope defined in 10 CFR 60.1) vis-a-vis the adoption of a new Part or amendment to some other existing Part of NRC regulations.

Dated at Rockville, Maryland, this 11th day of December 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 90-29438 Filed 12-14-90; 8:45 am]

BILLING CODE 7590-01-M

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**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

**15 CFR Part 400**

**[Docket No. 21222-0262]**

**RIN 0625-AA04**

**Foreign-Trade Zones in the United States**

**AGENCY:** Foreign-Trade Zones Board, International Trade Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** In response to requests from interested parties, the period for public comment on the further amendments to the proposed revisions to the regulations of the Foreign-Trade Zones Board regarding foreign-trade zones in the United States published in the Federal Register on November 20, 1990 (55 FR 48448), is extended to February 1, 1991.

**DATES:** Comments must be received on or before February 1, 1991.

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[1] Grout is a fluid mixture of cementitious materials and liquid waste that sets up as a solid mass and is used for waste fixation and immobilization.

[2] For an analysis of this provision, see "Definition of 'High-Level Radioactive Waste'" (advance notice of proposed rulemaking, 52 FR 5992, February 27, 1987) and subsequent rulemaking documents (proposed amendments to 10 CFR part 60, 53 FR 17709, May 18, 1988; final amendments to 10 CFR part 61, 54 FR 22578, May 25, 1989).

[3] It should be noted, however, that the Commission has jurisdiction only if the facilities are of the types described in section 202(4).

[4] Note, however, the Commission's statement, at 52 FR 5993, February 27, 1987, that classification under the cited provision "would be irrelevant in determining whether such wastes must be disposed of in licensed disposal facilities."

[5] These are DOE "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act (the Atomic Energy Act)" and "Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive wastes generated by (DOE), which are not used for, or are part of, research and development activities". Facilities for the long-term storage or disposal of incidental wastes resulting from treatment of defense reprocessing wastes are not HLW facilities.

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**ADDRESSES:** Comments (original and 6 copies) are to be addressed to John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., room 4213, Washington, DC 20230. (202) 377–2862.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell, Assistant General Counsel for Import Administration, Room 3622, U.S. Department of Commerce, Pennsylvania and 14th Street, NW., Washington, DC 20230. (202) 377–8916.

Dated: December 11, 1990.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 90–29469 Filed 12–14–90; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[EE–8–89]**

**RIN 1545–AF29**

### Employee Business Expenses—Reporting and Withholding on Employee Business Expense Reimbursements and Allowances

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portions of this issue of the **Federal Register**, the Internal Revenue Service is issuing a temporary regulation relating to deductions allowable in computing adjusted gross income that consist of expenses paid or incurred by an employee under a reimbursement or other expense allowance arrangement with his or her employer. The text of the temporary regulation also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed before February 19, 1991.

**ADDRESSES:** Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–8–89), room 4429, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Richard Pavel at telephone 202–377–9372 (Not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The text of the temporary regulation amends 26 CFR by amending paragraphs (c)(2) and (f) of § 1.62–1T with respect to deductions allowable in computing adjusted gross income that consist of expenses paid or incurred by an employee under a reimbursement or other expense allowance arrangement with his or her employer. For the text of the temporary regulation, see T.D. 8324 published in the Rules and Regulations portion of this issue of the **Federal Register**.

**Special Analyses**

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

**Drafting Information**

The principal author of these regulations is Richard Pavel of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

**Fred T. Goldberg,**

*Commissioner of Internal Revenue.*

[FR Doc. 90–29476 Filed 12–14–90; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 918

### Louisiana Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of comment period on proposed amendment.

**SUMMARY:** OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Louisiana permanent regulatory program (hereinafter, the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions pertain to an exemption for the extraction of coal incidental to the extraction of other minerals. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4 p.m., c.s.t. January 2, 1991.

**ADDRESSES:** Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Louisiana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P.O. Box 94275, Baton Route, LA 70804–9275, Telephone: (504) 342–5515.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, Director, Tulsa Field Office, on telephone number (918) 581–6430.



**SUPPLEMENTARY INFORMATION:**

**I. Background on the Louisiana Program**

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980 **Federal Register** (45 FR 67340). Subsequent actions concerning Louisiana's program and program amendments can be found at 30 CFR 918.16.

**II. Proposed Amendment**

By letter dated August 14, 1990, (Administrative Record No. LA–307) Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to a February 7, 1990 letter that OSM sent in accordance with 30 CFR 732.17(c). Louisiana proposes to add a new chapter 4, entitled "Exemption for Coal Extraction Incidental to the Extraction of Other Minerals."

OSM published a notice in the September 14, 1990, **Federal Register** (55 FR 37903) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. LA–311). The public comment period ended October 15, 1990.

During its review of the amendment, OSM identified concerns relating to sections: 1.07.C., applicability; 403.A.2. and 408.B., definitions; 405.A.1., 405.B., and 413.C., application requirements, conditions of exemptions, and right of inspection and entry; 405.D., application requirements and procedures; and 405.F.1. and F.2., and 417.C.2. and C.3., administrative review. OSM notified Louisiana of the concerns by letter dated November 14, 1990, (Administrative Record No. LA–313). Louisiana responded in a letter dated November 29, 1990, by submitting a revised amendment package (Administrative Record No. LA–312).

**III. Public Comment Procedures**

OSM is reopening the comment period on the proposed Louisiana program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Louisiana program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

**List of Subjects in 30 CFR Part 918**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1990.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 90–29428 Filed 12–14–90; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–3870–5]**

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** On November 14, 1990 (55 FR 47481), USEPA proposed to disapprove a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates. USEPA's action was based upon a revision request which was submitted by the State. The revision pertains to new particulate matter emission limitations for Boilers 5 and 6 at the Joseph E. Seagram and Sons, Inc., facility located in Lawrenceburg, Dearborn County, Indiana. At the request of Joseph E. Seagram and Sons, Inc., the public comment period is being extended until January 14, 1991, to allow additional time to develop comments on the issues presented in the proposed rulemaking.

**DATES:** Comments must be received on or before January 14, 1991.

**FOR FURTHER INFORMATION CONTACT:** E. Marie Phillips, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6034.

Dated: December 7, 1990.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 90–29462 Filed 12–14–90; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF HEALTH AND SERVICES

### Health Care Financing Administration

### 42 CFR Part 431

**[MB–30–P]**

**RIN 0938–AF39**

### Medicaid Program; Coordination of Medicaid with Special Supplemental Food Program for Women, Infants, and Children (WIC)

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would require State Medicaid agencies to coordinate the operation of the Medicaid program with the State's operation of the Special Supplemental Food Program for Women, Infants, and Children (WIC) under section 17 of the Child Nutrition Act of 1966. State Medicaid agencies would also be required to notify certain individuals of WIC benefits and refer them to the local WIC agency.

The rule would implement section 6406 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239.

**DATES:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 15, 1991.

**ADDRESSES:** Address comments in writing to Health Care Financing Administration, Department of Health and Human Services, Attention: MB–30–P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to Office of Information and Regulatory Affairs, Attention: Allison Herron, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your comments to one of the following locations:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Md.

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Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code MB–30–P. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publication, in room 309–G of the Departmental offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 am. to 5 pm., (202) 245–7890.

**FOR FURTHER INFORMATION CONTACT:** Marinos Svolos, 301–966–4451.

**SUPPLEMENTARY INFORMATION:**

**Background**

In recent years, Congress has made numerous amendments to title XIX (Medicaid) of the Social Security Act to ensure that low-income pregnant women, infants, and children receive necessary medical assistance as early as possible. These actions have been part of Congress' efforts to prevent infant mortality and low birth weight and to reduce the incidence of health problems among these low-income individuals.

States operate a Special Supplemental Food Program for Women, Infants, and Children (WIC) under section 17 of the Child Nutrition Act of 1966. WIC serves low-income pregnant, breastfeeding, and postpartum women and infants and children under age 5 who are determined by a medical professional to be at nutritional risk and who have incomes at or below 185 percent of the Federal poverty level. Women and children eligible for WIC receive nutrition assistance (including vouchers to purchase such items as iron-fortified cereals, infant formula or milk, eggs, juice, and peanut butter), nutrition education, and some health-related services. Many individuals who are eligible for WIC are also eligible for Medicaid.

**Legislative Change and Proposed Regulations**

To ensure that both the Medicaid and WIC programs better serve the health needs of low-income women, infants, and children under 5, Congress enacted section 6406 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239 (103 Stat. 2106), on December 19, 1989, to require State Medicaid agencies to coordinate operation of the Medicaid program with the WIC program. (The State's WIC program already must include a plan to coordinate operations with Medicaid.) In addition, section 6406 requires States to notify all Medicaid-eligible women who are pregnant, breastfeeding, or postpartum, and all children under age 5 who are eligible for Medicaid, of the availability of the WIC benefits. This notification must occur in a timely manner. States must also provide for the referral of these women and children to the State agency responsible for administering WIC.

Section 6406 of OBRA '89 added new sections 1902(a)(11)(C) and 1902(a)(53) to the Social Security Act to specify the State plan requirements for coordination of Medicaid with WIC. Section 6406 is effective July 1, 1990 without regard to whether regulations to carry out the provision have been promulgated. We propose to incorporate these State plan requirements in the Medicaid regulations at 42 CFR part 431, subpart M, § 431.635. In providing for the requirement that States notify Medicaid-eligible women who are pregnant, breastfeeding, or postpartum and infants and children under 5 of WIC benefits in a timely manner, we propose to require that this notification take place as soon as an individual comes to the attention of the State agency (e.g., at the time of a determination of Medicaid eligibility, including presumptive eligibility of pregnant women), or immediately thereafter (e.g., at the time of notice of eligibility). This interpretation is consistent with Congressional intent as indicated in a House Committee Report on provisions included in OBRA '89 (Subcommittee on Health and the Environment of the House Committee on Energy and Commerce, 101st Cong., 1st Sess., Report on Medicare and Medicaid Health Budget Reconciliation Amendments of 1989 (Comm. Print 101–M) (1989)). We propose to require that the notice be a written notification.

The State agency may not always be aware that a woman is pregnant, breastfeeding, or postpartum or that a child is under age 5. We solicit comments on whether these individuals can be identified and, if so, how they can be identified. We propose to require that the agency, no less frequently than annually, provide written notification concerning WIC to all Medicaid recipients who might be pregnant, breastfeeding, or postpartum or who are under age 5. This notification must be provided to a broad enough group(s) to ensure that all Medicaid-eligible individuals who might be eligible for WIC become aware of WIC benefits and how to obtain them. We solicit comments on how this group(s) can be identified and, alternatively, whether such notification should be provided annually to all Medicaid recipients. This notification must include information about the availability of WIC benefits and either the location and telephone number of the local WIC agency or instructions on how to obtain further information about WIC. Also, we would require State agencies to effectively inform those individuals who are blind or deaf or who cannot read or understand the English language.

In determining the women who must be notified of WIC benefits and referred to the WIC agency, we propose to use the definitions of postpartum and breastfeeding women, as specified in section 17 of the Child Nutrition Act of 1966 (as directed in the new section 1902(a)(53) of the Social Security Act). A woman is considered postpartum for 6 months after termination of pregnancy and a breastfeeding woman for one year after termination of pregnancy if she is breastfeeding her infant.

The House Committee Report cited earlier indicates that the costs incurred in carrying out the provisions of sections 1902(a)(11)(C) and 1902(a)(53) are to be considered by the Secretary as necessary for the proper and efficient administration of the State Medicaid plan. Since these provisions are required, the Secretary has a basis for determining that the costs are necessary. Under section 1903(a)(7) of the Act, costs for the proper and efficient administration of the State Medicaid plan are subject to 50 percent Federal matching.

**Response to Public Comments**

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "**DATES**" section of this preamble and respond to them in the preamble of the final rule for this proposed rule.

**Regulatory Impact Statement**

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.



In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of RFA, we do not consider States or individuals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would primarily conform the regulations to the legislative provisions of section 6406 of the Omnibus Budget Reconciliation Act of 1989. The proposed provisions affect only States and certain individuals. Although we expect that some States may experience increased costs as a result of preparing and distributing notices about the WIC program to certain Medicaid recipients, we believe the costs will be negligible. Federal matching of 50 percent will help offset these costs.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operation of a substantial number of small rural hospitals. We, therefore, have not prepared a regulatory flexibility analysis.

**Paperwork Burden**

Section 431.635 contains information collection requirements that are subject to review by the Office of Management and Budget under the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35). We have submitted these proposed regulations to OMB for review. We estimate a reporting burden of 1 hour per State for completion of the necessary State Medicaid plan amendments for this statutory requirement for submission to HCFA. A notice will be published in the **Federal Register** when approval is obtained. Comments regarding the burden estimate or any other aspect of information collection must be addressed to the specified office indicated under the "**ADDRESSES**" section of this preamble.

**List of Subjects in 42 CFR Part 431**

Grant Programs—health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

**PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION**

1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new section 431.635 is added under subpart M to read as follows:

**§ 431.635 Coordination of Medicaid with Special Supplemental Food Program for Women, Infants, and Children (WIC).**

(a) *Basis.* This section implements sections 1902(a)(11)(C) and 1902(a)(53) of the Act which provide for coordination of Medicaid with the Special Supplemental Food Program for Women, Infants, and Children (WIC) under section 17 of the Child Nutrition Act of 1966.

(b) *State plan requirements.* A State plan must provide for—

(1) Coordinating operation of the Medicaid program with the State's operation of the Special Supplemental Food Program for Women, Infants, and Children;

(2) Providing written notice of the availability of WIC benefits to all individuals in the State who are determined to be eligible for Medicaid and who are:

(i) Pregnant women;

(ii) Postpartum women during the 6 months after termination of pregnancy;

(iii) Women up to 1 year after termination of pregnancy who are breastfeeding their infants; and

(iv) Children under the age of 5.

(3) Referring individuals described under paragraphs (b)(2) (i) through (iv) of this section to the local agency responsible for administering the WIC program.

(c) *Notification requirements.* (1) The agency must give the written notice required under paragraph (b) of this section as soon as the agency identifies the individual (e.g., at the time of an eligibility determination for Medicaid (or immediately thereafter)).

(2) The agency, no less frequently than annually, must also provide written notice of the availability of WIC benefits, including the location and telephone number of the local WIC agency or instructions for obtaining further information about the WIC program, to all Medicaid recipients who are under age 5 and who are women who might be pregnant, postpartum, or breastfeeding as described in paragraphs (b)(2) (i) through (iii) of this section.

(3) The agency must effectively inform those individuals who are blind or deaf or who cannot read or understand the English language.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Programs)

Dated: July 16, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

Approved: September 13, 1990.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 90–29447 Filed 12–14–90; 8:45 am]

BILLING CODE 4120–01–M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. 73–20; Notice 15]**

**RIN 2127–AD48**

**Fuel System Integrity; Compressed Natural Gas (CNG) and Liquified Petroleum Gas (LPG)**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Grant of petitions; Notice reopening comment period.

**SUMMARY:** This notice grants petitions submitted jointly by the National Propane Gas Association (NPGA) and the LP-Gas Clean Fuels Coalition, and separately by Ford Motor Co., the Motor Vehicle Manufacturers Association, the Natural Gas Vehicle Coalition and the Compressed Gas Association, seeking additional time to respond to an advance notice of proposed rulemaking (ANPRM) requesting comments on potential safety issues associated with the use of CNG or LPG as a motor fuel. Even though the initial comment period has expired, NHTSA is granting the petitions because the agency believes it would be in the public interest to allow the petitioners additional time to develop and submit comments to the lengthy list of questions in the ANPRM, and in the case of the petitioning trade associations, coordinate the comments of their members. Accordingly, the agency has decided to reopen the comment period.

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**DATES:** Comments in response to the



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**DATES:** Comments in response to the October 12, 1990 advance notice of proposed rulemaking must be received by January 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, room 5320, 400 7th St., SW., Washington, DC 20590. Telephone: (202) 366–4804.

**SUPPLEMENTARY INFORMATION:** On October 12, 1990 (55 FR 41561), the agency published an ANPRM requesting public comments on potential safety issues associated with the use of CNG or LPG as a motor fuel, and soliciting ideas on whether NHTSA needs to, and if so, how it might address those issues through a possible new or amended fuel system integrity standard. That notice also announced that NHTSA would hold a public meeting on these issues.

The ANPRM contained 47 questions concerning the safety and usage of these fuels, and provided for a 60 day comment period. The comment period closed on December 11, 1990. NHTSA received a request from the NPGA and the LP-Gas Clean Fuels Coalition seeking an extension on November 16, 1990. Subsequently, the agency received additional requests seeking an extension of the comment period from Ford Motor Co. (Ford), the Motor Vehicle Manufacturers Association (MVMA), the Natural Gas Vehicle Coalition (NGVC), and the Compressed Gas Association (CGA). These petitions sought extensions ranging from 45 to 90 days.

All of the petitioners except for Ford are trade associations. The petitioners claim that the existing comment period did not enable their members to adequately analyze and respond to the ANPRM. In addition, Ford stated that its staff is already involved in responding to NHTSA's recent ANPRM on fuel system integrity for methanol and ethanol powered vehicles, and as a result, was unable to prepare appropriate comments in time to meet the December 11, 1990 deadline.

The agency notes that under 49 CFR 553.19, the filing of a petition for an extension of time to submit comments "does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petition shows good cause for the extension, and if the extension is consistent with the public interest." What constitutes "good cause" in a particular case depends upon a consideration of all relevant facts, including the extent to which the petitioner demonstrates that it will not be able to offer meaningful comments on the proposal without an extension, the reasons for that inability, the extent to which the petitioner demonstrates the need for the additional information in order to complete the rulemaking record, and the extent to which an extension is consistent with the public interest.

Applying these criteria to these petitions, the agency concludes that the petitioners showed good cause for providing additional time to prepare and submit comments. First, the ANPRM contains 47 questions, a number of which request detailed information. The agency did not anticipate the broad interest in the ANPRM, and the resulting need of the petitioners to coordinate a substantial number of complex responses from their memberships. Second, the agency believes that the public interest with respect to the ANPRM is best served by having the agency decide whether it is appropriate to proceed with rulemaking on these issues based upon the maximum amount of information it can obtain without unduly delaying the rulemaking process.

While the comment period expired before the agency was able to arrange for the publication of a notice extending the comment period, the agency continues to believe that additional time to prepare comments on the ANPRM would assist the agency in this rulemaking. After carefully considering these petitions, NHTSA concludes that they show good cause for permitting commenters additional time to prepare and file comments about the ANPRM on fuel system integrity for compressed natural gas and liquid petroleum gas, and that reopening the comment period is consistent with the public interest. It has therefore decided to reopen the comment period for an additional 45 days. The new comment period will end January 31, 1991.

**Authority:** 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued: December 12, 1990.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 90–29456 Filed 12–12–90; 1:28 pm]

BILLING CODE 4910–59–M



# Notices

Federal Register
Vol. 55, No. 242
Monday, December 17, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Rock Willow and Muddy Creek Timber Sales, Wallowa-Whitman National Forest, Baker County, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the USDA, Forest Service, will prepare an environmental impact statement (EIS) to analyze two timber sales and related activities, including possible road construction and reconstruction, within (essentially) unroaded areas on the east face of the Elkhorn Mountains.

The timber sale proposals are located within the Red Analysis Area, which includes the Dutch Flat Creek and Rock Creek drainages. The proposals are separated by the North Powder River. Activities for the Rock Willow proposal are planned for implementation in fiscal year 1992. The Muddy Creek proposal would be implemented in 1995. Both areas are located on the Baker Ranger District about 12 air miles from Baker City and 9 air miles from the community of North Powder.

The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments concerning the scope of the analysis should be received in writing by March 29, 1991.

**ADDRESSES:** Send written comments and suggestions concerning the management of this area to Kenneth B. Koon, District Ranger, 3165 10th Street, Baker City, OR 97814.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and EIS to Joanne Britton, NEPA Coordinator, 3165 10th Street, Baker City, OR 97814, telephone: (503) 523–4476.

**SUPPLEMENTARY INFORMATION:** The proposals include, but are not limited to, harvesting timber, constructing and closing roads on two timber sales, and associated activities such as reforestation, trail building, spring development, bridge building, and wildlife habitat enhancement activities.

This analysis will evaluate a range of alternatives, including the no action alternative, and will explore opportunities to harvest timber, build roads, and other activities within the Rock Willow and Muddy Creek project areas within the Red Analysis Area, which is approximately 35,000 acres.

This EIS will tier to the final EIS and the Wallowa-Whitman Land and Resource Management Plan (Forest Plan), which provides the overall guidance for management of this area for the next 10–15 years. The Forest Plan provides goals and objectives, Forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands and resources on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

Forest Plan direction for the Rock Willow project area is predominantly timber production emphasis, and for Muddy Creek it is primarily wildlife/timber. The remainder of the analysis area is designated backcountry and old growth. No timber sale projects are planned within backcountry and old growth.

The proposals fall within the Twin Mountain roadless area. Twin Mountain was considered for Wilderness status during the Roadless Area Reviews, but was not recommended for Wilderness or further study by the 1984 Oregon Wilderness Bill.

Tentative issues relevant to both areas include: impacts of harvest activities on the visual quality of the east face of the Elkhorns; impacts of human activities on big game habitat; impacts of human activities on heretofore unknown species of threatened, endangered, or sensitive status; impacts of harvest activities on water quality and peak flows; economic feasibility of timber values vs. costs to harvest; impacts of human activities on the integrity of the roadless character; and maintenance of ecological function (which includes forest health and biodiversity).

Public participation will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (direct, indirect, and cumulative effects, and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comment.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be completed about December 1991. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process.

First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th

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Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled for completion February 1992. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Robert M. Richmond, Forest Supervisor, Wallowa-Whitman National Forest is the Responsible Official. As the Responsible Official he will decide which, if any of the proposed activities will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: December 6, 1990.

R.M. Richmond,

*Forest Supervisor.*

[FR Doc. 90-29446 Filed 12-14-90; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Cooperation Agreements under the Fish and Seafood Promotion Act of 1986.

*Form Number:* None; OMB—0648–0199.

*Type of Request:* Request for extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Burden:* 20 respondents; 244 reporting hours; average hours per response—8.1 hours.

*Needs and Uses:* Any citizen of the United States may apply for a cooperative agreement. The information will be used by the National Fish and Seafood Promotional Council established by the Fish and Seafood Promotion Act of 1986.

*Affected Public:* Individuals, state or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

*Frequency:* On occasion, quarterly, annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 10, 1990.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90-29431 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-CW-M

## Bureau of Export Administration

[Docket No. 901221-0321]

### Guidelines for Export Transactions Involving Equipment, Materials, and Technical Data for Producing Biological Agents

December 11, 1990.

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice on exports of equipment, materials, and technical data for the production of biological agents.

**SUMMARY:** In support of U.S. foreign policy opposing the proliferation and use of biological weapons, the Department of Commerce controls the export of certain biological agents that can be used in the production of biological weapons. These controls demonstrate the commitment of the United States not only to control exports of these biological agents, but to urge multilateral control efforts and to support the international obligations agreed to in the 1972 Biological Disarmament convention Equipment, materials, and technical data that have diverse civil applications, and thus are not uniquely related to the production of biological agents for biological weapons purposes, are not subject to control. However, the Department of Commerce urges exporters of such equipment, materials, and technical data to be alert to suspicious transactions involving the potential for diversion to biological weapons purposes. This notice provides guidelines to enable suppliers of such equipment, materials, and technical data to identify suspicious transactions and to inform the appropriate authorities of these transactions. These guidelines are consistent with those developed by the 20-member Australia Group, a multilateral forum which seeks to curb chemical and biological weapons proliferation.

This is an advisory notice only—it does not impose new foreign policy controls and does not create new licensing or other requirements under the Export Administration Regulations.

**FOR FURTHER INFORMATION CONTACT:** For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on biological agents or on equipment, materials, and technical data for the production of these biological agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

**SUPPLEMENTARY INFORMATION:**

**Background**

The growing number of nations that have acquired the capability to produce biological weapons has caused considerable international concern. The United States encourages multilateral efforts to reduce the spread of biological agents that can be used for biological weapons purposes as well as the equipment, materials, and technical data that can be used for producing such agents. In particular, the United States participates in the 20-member Australia Group, which seeks ways to prevent the proliferation of chemical and biological weapons.



In support of U.S. policies opposing the proliferation of biological weapons, the Department of Commerce maintains export controls on certain viruses and viroids and certain bacteria, fungi, and protozoa described in ECCNs 4997B and 4998B, respectively, in the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations. A validated license is required to export these biological agents to all destinations except Canada. Equipment, materials, and technical data that have diverse civil applications, and thus are not uniquely related to the production of biological agents for biological weapons purposes, are not subject to control.

This notice provides guidelines concerning certain patterns of suspicious behavior that should alert exporters of equipment, materials, or technical data for producing biological agents to the potential for diversion to biological weapons activities. Suppliers should be particularly alert to this possibility when handling orders for (or requests to transfer) equipment, materials, or technical data to produce biological agents controlled by ECCNs 4997B and 4998B. This notice also provides guidelines for identifying equipment, materials, and technical data that may be of concern for biological weapons purposes.

The guidelines provided by this notice are being issued by the Department of Commerce, in consultation with the Department of State, to enable suppliers to evaluate their own transactions to determine whether there is a potential for diversion to biological weapons activities. These guidelines are consistent with the guidelines developed by the Australia Group to provide member governments with a basis for alerting suppliers of equipment, materials, or technical data for the production of biological agents to the potential for diversion to biological weapons activities.

U.S. suppliers are advised to contact the Office of Export Enforcement, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230 (telephone: (202) 377-8208), if they detect any suspicious circumstances during a transaction involving the export of equipment, materials, or technical data capable of producing biological agents, or if additional information or guidance is required.

**Guidelines for Identifying Equipment, Materials, and Technical Data That May Be of Concern for Biological Weapons Purposes and for Recognizing Suspicious Behavior in Transactions Involving Such Equipment, Materials, and Technical Data**

*I. Technical Data for Producing Biological Agents That May Be of Concern for Biological Weapons Purposes*

The following technical data are likely to be sought by entities engaged in biological weapons activities:

(1) Technical data concerning the culturing, handling, properties, and storage requirements of pathogenic organisms.

(2) Technical data concerning the production, handling, properties, and storage requirements of toxins.

Suppliers of technical data described in paragraphs (1) and (2) above should be alert to the following patterns of suspicious behavior:

(1) Approaches by nationals of countries of concern (e.g., Iran, Iraq, Syria, and Libya) to enroll as students or be engaged as research workers in courses or projects involving such technical data.

(2) A pattern of attendance by individuals from countries of concern at conferences and seminars involving such technical data.

(3) Approaches by unknown individuals, institutes, or companies seeking consultations or advice concerning such technical data. Particular caution is advised where unusually generous payments are offered and where those seeking such consultations or advice:

(i) Are evasive, unconvincing, or clearly untruthful when queried about the ultimate purposes for which the technical data will be used;

(ii) Ask for unusually strict confidentiality;

(iii) Have, or appear to have, military links; or

(iv) Are known to be, or may be, acting for organizations based in countries of concern.

*II. Equipment and Materials for Producing Biological Agents That May Be of Concern for Biological Weapons Purposes*

The following kinds of equipment and materials are likely to be sought by entities engaged in biological weapons activities:

(1) Equipment for containment at the P-3 or P-4 level, for example:

(i) High efficiency particulate air filters (HEPA-filters);

(ii) Double ended or large capacity autoclaves;

(iii) Air-supplied laboratory protective clothing;

(iv) Micro-biological containment safety cabinets.

(2) Fermentation equipment (especially where the fermentation vessels have a self-sterilizing capability).

(3) Fermentation media—large quantities (e.g., hundreds of kilograms).

(4) Large scale agent concentration or harvesting equipment, for example:

(i) Continuous flow centrifuges;

(ii) Extraction columns;

(iii) Filters suitable for concentrating biological agents.

(5) Equipment for preserving and stockpiling biological agents, for example:

(i) Freeze-drying equipment;

(ii) Microencapsulation equipment.

(6) Equipment for dispersing biological agents (e.g., aerosol generators).

*III. Guidelines for Identifying Suspicious Behavior in Business Transactions That Involve Equipment, Materials, or Technical Data for the Production of Biological Agents*

(1) Approach from previously unknown parties (including those who require technical assistance) whose identity is not clear, who appear evasive about their identity or connections, or whose references are not convincing.

(2) Transaction that is unusual in light of the customer's normal business activities.

(3) Customer's reluctance to provide an adequate explanation concerning the end-use of the equipment, materials, or technical data, or the customer's use of evasive responses concerning the end-use.

(4) Customer's reluctance to provide information on the location of the plant/place where the materials or technical data are to be used or where the equipment is to be installed.

(5) Customer's reluctance to provide answers to routine commercial or technical questions.

(6) Customer in military-related business (e.g., customer under the control of a defense ministry or the armed forces).

(7) Customer's explanation for needing the equipment, materials, or technical data is suspect in view of the customer's normal technical capabilities.

(8) Equipment to be installed (or materials or technical data to be utilized) in an area under strict security control (e.g., an area close to military-

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related facilities or an area to which access is severely restricted).

(9) Equipment to be installed in an area that is unusual in light of the character of the equipment.

(10) Unusual customer request concerning the shipment or labeling of goods.

(11) Unusually favorable payment terms (e.g., payment above market price, interest rate above prevailing market rate, or lump-sum cash payment).

(12) Unusual request by customer for excessive confidentiality concerning the final destination or the details of the equipment, materials, or technical data to be provided.

(13) Customer request for excessive safety/security measures in light of the stated end-use, or customer's lack of familiarity with appropriate safety/security measures.

(14) Customer request for spare parts or devices that are not normally associated with the equipment or the stated end-use (e.g., excessive advance orders for spare parts), or customer's failure to request spare parts or devices normally associated with the stated end-use, and the absence of a convincing explanation for the customer's unnecessary requests or failure to make necessary requests.

(15) No request for a performance guarantee, warranty, or service contract.

(16) No request for the assistance of a technical expert or for training normally in connection with the installation or operation of the equipment.

(17) Packaging or handling arrangements are inconsistent with the stated mode of shipment or with the stated destination.

(18) Customer requests completion of a partially finished project.

(19) Contractor is refused access to parts of the plant other than those involved in the contract.

(20) Contract for the construction or renovation of a plant is divided by the customer without furnishing adequate information about the complete scope of the project, including the proposed use of the plant.

Dated: December 11, 1990.

**Kenneth A. Cutshaw,**

*Deputy Assistant Secretary for Export Enforcement.*

[FR Doc. 90-29429 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulation, we are initiating those administrative reviews.

**EFFECTIVE DATES:** December 17, 1990.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

**Initiation of Reviews**

In accordance with § § 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 1991.

| | Periods to be Reviewed |
|---|---|
| Antidumping Duty Proceedings | |
| Argentina: | |
| Carbon Steel Wire Rod | |
| A-357-007, Acindar | 11/1/89-10/31/90 |
| Japan: | |
| Bicycle Speedometers | |
| A-588-038, Sanyo Electric Co | 11/1/89-10/31/90 |
| Titanium Sponge | |
| A-588-020, Osaka Titanium Co., Showa Denko K.K., Toho Titanium | 11/1/89-10/31/90 |
| West Germany: | |
| Drycleaning Machinery | |
| A-428-037, Seco, Bowe | 10/1/89-9/30/90 |
| Countervailing Duty Proceedings | |
| Argentina: | |
| Oil Country Tubular Goods | |
| C-357-403 | 1/1/89-12/31/89 |
| Singapore: | |
| Certain Refrigeration Compressors | |
| C-559-001 | 4/1/89-3/31/90 |

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: December 11, 1990.

**Holly A. Kuga,**

*Acting Deputy, Assistant Secretary for Compliance.*

[FR Doc. 90-29472 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-25-M

[A-580-807]

### Postponement of Final Antidumping Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from SKC Limited and SKC America, Inc., counsel for respondents in the antidumping duty investigation, to postpone the final determination, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act). (19 U.S.C. 1673d(a)(2). Based on this request, we are postponing our final determination as to whether sales of polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea have been made at less than fair value until not later than April 15, 1991.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward at (202) 377-5288, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

**SUPPLEMENTAL INFORMATION:** On December 4, 1990, counsel for the respondents requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act. Accordingly, we are postponing the date of the final determination until not later than April 15, 1991. In accordance with 19 C.F.R. 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than March 11, 1991, and rebuttal briefs no later than March 18, 1991. In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on March 20, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: December 10, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29470 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-804]

### Preliminary Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that imports of sparklers from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Michael Ready or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2613 or (202) 377-8922, respectively.

**SUPPLEMENTARY INFORMATION:**

We preliminarily determine that imports of sparklers from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673(b)) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since publication of the notice of initiation on July 31, 1990, (55 FR 31088), the following events have occurred. On August 16, 1990, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of sparklers (USITC Pub. No. 2308, August 1990).

On August 17, 1990, we presented an antidumping questionnaire to officials of the Embassy of the PRC.

On August 23, 1990, the China Chamber of Commerce of Imports and Exporters of Foodstuffs, Native Produce and Animal-By-Products requested an extension of time to respond to the questionnaire. On August 24, 1990, we granted an extension until September 25, 1990 to respond to section A of the questionnaire and until October 9, 1990 to respond to the remaining sections. Questionnaire responses were received on the above dates. We issued deficiency letters on October 16 and November 6, 1990. We received replies to the deficiency letters on November 9 and 16, 1990.

**Scope of Investigation**

The products covered by this investigation are sparklers from the People's Republic of China. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under HTS subheading 3604.10.00. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

**Period of Investigation**

The period of investigation (POI) is February 1, 1990 through July 31, 1990.

**Fair Value Comparisons**

To determine whether sales of sparklers from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

**United States Price**

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, because exporters knew that sparklers were destined for the United States. Purchase price was based on the CIF, packed price to unrelated purchasers in Hong Kong for sparklers destined for the United States. We made deductions discounts, and charges incurred for inland freight, ocean freight, and marine insurance.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the deduction for inland freight on freight rates in market economy countries.

Since the goods were transported from China to Hong Kong aboard PRC-owned carriers, we based the deduction for ocean freight on the charges of non-state-owned carriers in a market economy country.

**Foreign Market Value**

In past cases (*e.g.*, Tapered Roller Bearings from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 52 FR 19748 (May 27, 1987)), the Department has treated the PRC as a nonmarket economy country. The PRC government, on behalf of the PRC sparkler sellers, contests such treatment in this investigation. The PRC government's submission did not, however, contain any documents or evidence substantiating its claims. Moreover, documents submitted by the PRC sellers indicate that there is government control of sparkler producers at the local and provincial levels. The Department has, therefore, determined that nonmarket economy treatment is appropriate in this investigation.

As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), requires the Department to determine foreign market value on the basis of the market valuation of the factors of production utilized in producing the subject merchandise.

The 1988 Act further requires the Department to value the factors of production to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce sparklers, we have determined that India, Pakistan and the Philippines are comparable to the PRC in terms of per capita GNP, the national distribution of labor, and growth rate in per capita GNP. We calculated FMV based on

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factors of production reported by the Chinese exporters, Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation; Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch; and, Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company. We used information regarding values of various factors of production from India, Pakistan and the Philippines.

We chose India as the most comparable surrogate on the basis of per capita GNP, the national distribution of labor and growth rate in per capita GNP. Where possible, we obtained information for valuing factors of production from publicly available sources in India.

We first sought to base the values assigned to various factors on Indian prices. For those factors for which no Indian price was available, we assigned values based on data from the Philippines and Pakistan, the only other countries for which the Department had adequate data. For factors for which data were available from none of the three countries, we used prices of factors similar to the PRC factors. Where possible we made price adjustments to account for differences in the factors. We also based value for some factors on actual prices paid by the PRC manufacturers for inputs that were imported from countries with market economies. Where appropriate, the factor values were inflated to POI levels using wholesale price indices published by the International Monetary Fund.

The components required to produce sparklers were reduced to a factor representing the quantity needed to manufacture one carton of sparklers. The per carton factor was multiplied by the value for each component material. We than added an amount for labor cost. To the resulting sum, we added an amount for factory overhead based on information contained in the petition and information received from the Pakistan sparkler industry and relayed by our embassy in Pakistan. We than added statutory minimums of 10 percent for general expenses and 8 percent for profit. We added statutory minimums, pursuant to section 733(e)(1)(B) of the Act, because no adequate surrogate information was available. Finally, we added an amount for packing costs to arrive at a constructed foreign market value for a single carton of sparklers. We then compared this value to the exporters' U.S. price for a single carton of sparklers. We made currency conversions in accordance with 19 CFR 353.60(a).

**Preliminary Negative Determination of Critical Circumstances**

Petitioner alleged that imports of sparklers from the PRC present "critical circumstances." Under section 732(e)(1) of the Act, "critical circumstances" exist if we determine (1), there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) Recent trends to import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

For purposes of this finding, we analyzed monthly import data (both volume and value) for sparklers from the PRC reported by the respondents for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that import of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive when compared to recent import levels.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew of should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of sparklers from the PRC.

**Verification**

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of sparklers from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

| Manufacturer/Producer/Exporter | Weighted-Average Margin Percentage |
|---|---|
| All Manufacturers, Producers, and Exporters | 103.71 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations and findings. In addition, we are making available to the ITC all nonprivileged and nonproperietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later 120 days after the date of these preliminary determinations or 45 days after our final determinations.

**Public Comment**

The three PRC sparkler sellers have argued that the Department should assign each seller a separate dumping margin because they are separate, independent companies. However, the information submitted by the sellers does not sufficiently demonstrate their mutual independence. For example, the PRC sellers submitted as evidence of their separateness a description of the State Administration of Industry and Commerce (SAIC), the authority responsible for supervising industrial and commercial enterprises, published by the U.S.-China Business Council and submitted by the PRC sellers. The publication describes SAIC as "* * * responsible for implementing the government's economic policy, laws, and statutes and supervising industrial and commercial enterprises and market transactions." Among the duties of SAIC, the publication lists "overseeing and ensuring urban and rural market stability through monitoring controlled prices * * *" A March 1988 new report—also submitted by the sellers as evidence of their separateness—published by the official PRC news organ, Xinhua, states that "local branches of all national foreign trade corporations * * * will become independent traders subjected to centralized control of state policies."

The Department therefore preliminarily has determined that assigning separate margins is not appropriate. We will consider this issue further and we solicit comments from the public on this matter.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than January 14, 1991, and rebuttal briefs no later than January 22, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 9:30 a.m. on January 24, 1991, at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to argument raised in the briefs.

This determination is published pursuant to section 773(f) of the Act (19 U.S.C. section 1673(f)).

Dated: December 10, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29471 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DS-M



[A-401-603]

**Welded Stainless Steel Hollow Products From Sweden; Court Decision and Suspension of Liquidation**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On November 27, 1990, the United States Court of International Trade ("CIT") affirmed the International Trade Commission's ("ITC") amended determination upon remand that an industry in the United States is materially injured by reason of imports of welded stainless steel pipe and tube from Sweden. *Trent Tube* v. *United States*, No. 87-12-01189, Slip Op. 90-124 (CIT November 27, 1990). If the CIT's opinion in this case is not appealed, or is affirmed on appeal, then an antidumping duty order on welded stainless steel pipe and tube from Sweden will be issued.

In accordance with the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"), Commerce will order the suspension of liquidation of the subject merchandise.

**EFFECTIVE DATE:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Gary Taverman, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 377-0161.

**SUPPLEMENTARY INFORMATION:**

**Background**

In November 1987, the ITC published in its final determination that an industry in the United States was not materially injured by reason of imports of welded stainless steel pipe and tube from Sweden. *Stainless Steel Pipes and Tubes from Sweden*, Inv. No. 731-TA-354 (Final), USITC Pub. No. 2033 (Nov. 1987). The petitioners in the antidumping investigation instituted an action challenging the ITC's final determination. On June 20, 1990, the Court of International Trade issued *Trent Tube* v. *United States*, 14 CIT ___, 741 F. Supp. 921, Slip Op. 90-58 (June 20, 1990), *modified*, 14 ___, 741 F. Supp. 227 (1990), Slip Op. 90-66 (July 6, 1990), which remanded the determination to the ITC. Upon remand the ITC changed its determiantion and found that a U.S. industry is materially injured by reason of imports of welded stainless steel pipes and tube from Sweden. This remand was affirmed by th CIT on November 27, 1990. *Trent Tube* v. *United States*, No. 87-12-01189, Slip Op. 90-124 (CIT November 27, 1990).

Accordingly, absent an appeal, or, if appealed, upon a "conclusive" decision by the CAFC, affirming the CIT, an antidumping duty order on welded stainless steel pipes and tubes from Sweden will be published effective December 7, 1990.

**Suspension of Liquidation**

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that Commerce must publish notice of a decision of the CIT or the CAFC which is not in harmony with Commerce's or the ITC's respective determinations. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, Commerce must suspend liquidation until there is a "conclusive" decision in the action. Therefore, effective December 7, 1990, Commerce is suspending liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if *Trent Tube*, Slip Op. 90-124, is appealed.

Dated: December 7, 1990.

**Marjorie A. Chorlins,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29389 Filed 12-4-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-012]

**Carbon Black From Mexico; Final Results of Countervailing Duty Administrative Review**

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On April 27, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon black from Mexico. We have now completed that review and determine the total bounty or grant to be 0.06 percent *ad valorem* for Negromex and 2.88 percent *ad valorem* for all other firms during the period October 1, 1983 through December 31, 1983; 0.41 percent for Negromex and 4.20 percent *ad valorem* for all other firms during the period January 1, 1984 through December 31, 1984; and 4.53 percent *ad valorem* for all firms during the period

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inappropriate because any national average rate benchmark would distort the benefit from these loans. As with FOMEX pre-export loans, Humex asserts that there is no need to use a national average benchmark when there are only two respondents and advocates the use of company-specific benchmarks, contending that the reasons for using national average benchmarks cited by the Department in Ceramic Tile are equally inapplicable with respect to dollar-denominated loans.

*Department's position:* We disagree. Contrary to Humex' claims that the "enormous variety" of its FOMEX export loan amounts makes our use of a single weighted-average benchmark "particularly unreasonable," we consider this variety well suited to and a strong argument in favor of our policy of using a single benchmark. Of Humex' 49 dollar-denominated FOMEX export loans, only one was for an amount sufficiently large to include it in the Federal Reserve Bulletin size category which had an average interest rate 2.35 percentage points below our national average benchmark. Another 19 of these loans were in the loan category which had an average interest rate only 0.51 percentage points below our benchmark. The remaining 29 loans were in the three size categories where the interest differentials were as much as 1.44 percent higher than our benchmark.

We would have preferred to use a national average benchmark derived from lending experience in Mexico, rather than from U.S. experience, but no such national average dollar rate was available for the review period. Our rationale for using a national average benchmark for measuring the benefit from FOMEX dollar loans instead of a benchmark based on company-specific loans is the same as that we set forth with respect to peso-denominated loans in our response to Comment 1.

*Comment 3:* Negromex maintains that, due to material differences between individual company benefits, the Department should impose separate company-specific countervailing duty assessment rates for the 1985 review period. Negromex argues that the existing statutory presumption in favor of a weighted-average country-wide rate was intended only to limit the administrative burden of company-specific rates. Since there are only two producers of carbon black in Mexico, Negromex believes that the additional administrative burden imposed by the use of company-specific rates would be negligible and thus should not be a consideration in the Department's decision regarding the use of company-specific rates. Negromex also argues that, since the individual rate for Humex in 1985 is about three times as large as the individual rate for Negromex, Negromex is being unfairly penalized by the application of the country-wide rate while its only competitor in Mexico receives a windfall reduction of its duty.

Negromex concedes that section 706(a)(2) of the Tariff Act, as amended by section 607 of the Trade and Tariff Act of 1984 (19 U.S.C. 1671(a)), requires a "significant differential" and may have circumscribed the older rule that a "material" difference alone sufficed to require the Department to issue company-specific rates. However, Negromex insists that the differential between the two respondents' individual rates and the fact that the Government of Mexico owned a majority share of Humex obligates the Department to use company-specific rates under the current statutory requirements. In addition, Negromex argues that the issuance of a country-wide rate may compromise the basic purpose of the countervailing duty law contending that the catch-all rate encourages any company with above *de minimis* benefits to maximize its subsidies. Negromex reasons that a company paying more in countervailing duties than it receives in actual benefits would naturally seek to correct this balance with increased subsidies while companies receiving benefits in excess of the average rate are not motivated to reduce their subsidies.

In pointing out what it claims to be contradictory directives from the Congress, to discourage future subsidies and to ease the administrative burden of company-specific rates, Negromex advocates the use of a more flexible standard than the current policy for determining whether a significant differential exists sufficient to justify assessment of company-specific rates. By suggesting that the Department might apply a less stringent benchmark for company-specific rates in cases in which there are four or less respondents, one of the respondents is government-owned and the domestic petitioner does not oppose company-specific rates, Negromex argues that such measures would reflect a proper balancing of the factors necessary to carry out the intent of the law. Negromex further asserts that use of company-specific rates in this case would not compromise the Department's policy of presumptive county-wide rates, citing Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Portland Hydraulic Cement and Cement Clinker from Mexico (Cement) (48 FR 43063; September 21, 1983) as precedent.

Conversely, Humex argues that Negromex has not demonstrated the existence of a significant differential and maintains that the Department's calculation of a single country-wide countervailing duty rate is consistent with prior administrative practice and rulings by the courts.

*Department's Position:* We agree with Humex. Section 706(a)(2) of the Tariff Act establishes a statutory presumption in favor of country-wide countervailing duty rates without requiring any case-specific justification for the use of such rates. However, the statute provides for the possibility of company-specific rates if the Department determines that a significant differential exists. Because Negromex has not demonstrated that a significant differential exists between the net subsidy it received and the weighted-average country-wide rate, we have determined that a country-wide countervailing duty rate is applicable for the 1985 review period.

The Department's current policy for calculating a company-specific rate is outlined in 19 CFR 355.22(d). These regulations reflect the statute's presumption in favor of country-wide rates while defining the precise conditions under which company-specific rates are allowed. According to § 355.22(d)(1), the Department may review the individual companies' rates to determine whether a significant differential exists and, if such a differential exists, the Department will establish company-specific rates accordingly. Section 355.22(d)(3) defines a significant differential as either "[a] difference of the greater of at least five percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis"; or "[t]he difference between a net subsidy of zero (or *de minimus*) and any rate greater than *de minimis*." While Negromex qualifies for a company-specific rate for the 1985 review period even though the individual rate for Humex in 1985 is about three times as large as the individual rate for Negromex. This determination is consistent with Department's established practice (see, e.g., Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review (53 FR 9791; March 25, 1988)).

Negromex asserts that the primary intent of Congress in making a presumption in favor of country-wide rates was to limit the administrative burden of assessing countervailing



January 1, 1985 through December 31, 1985. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 27, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 15088) the preliminary results of its administrative review of the countervailing duty order on carbon black from Mexico (48 FR 29564; June 27, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

**Scope of Review**

Imports covered by the review are shipments of carbon black from Mexico. During the review period, such merchandise was classifiable under item number 473.0400 of the Tariff Schedules of the United States Annotated (TSUSA). The TSUSA item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period October 1, 1983 through December 31, 1985, and the following programs: (1) FOMEX, (2) NDP discounts, (3) CEPROFI, (4) FONEI, (5) preferential pricing of carbon black feedstock, (6) state tax incentives, (7) FOMIN, (8) Article 15 loans, (9) FOGAIN, (10) Bancomext loans, (11) delay of payments of loans, (12) delay of payments to PEMEX of fuel charges, (13) import duty reductions and exemptions, and (14) CEDI.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received comments from two respondents: Hules Mexicanos, S.A. de C.V. (Humex), and Negro de Humo Negromex, S.A. de C.V. (Negromex), and from the petitioner, Cabot Corporation.

*Comment 1:* Humex argues that the Department's use of national average effective interest rates from the Indicadores Economicos (I.E.) as benchmarks to calculate benefits from FOMEX pre-export loans is unreasonable and unnecessary in this review. In providing information to support its claim that it obtained commercial loans at rates significantly lower than the Department's national average benchmarks, Humex asserts that the use of national average rates grossly overstates the benefit. Humex maintains that the rates for its loans are fully comparable with the FOMEX rates because additional charges, such as fees for opening a line of credit, fees for credit renewal, commissions, compensating balances, etc., were simply not incurred. Consequently, the Department's rationale for using an effective rate benchmark, as discussed in Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (Ceramic Tile) (53 FR 15091; April 27, 1988), does not apply in this case. Humex further contends that company-specific benchmark rates would be more appropriate by arguing that the Department's position in Ceramic Tile in favor of national average benchmarks does not address the situation found with carbon black from Mexico. Because there are only two companies involved in the carbon black review, Humex argues that the use of company-specific benchmarks would not impose an administrative burden and, if both exporters provided information on their commercial interest rates, would not misrepresent the country-wide benefit.

*Department's position:* We disagree. The information that Humex provided (one sample loan for each year) concerning its short-term rates on peso loans during the review period involves nominal rates, "intereses ordinarios," not effective rates. Such rates are the basis for the I.E. nominal rates published by the Banco de Mexico, and Humex' rates on these loans closely match the I.E. average nominal rates. However, as we have previously stated many times, where we have information for an effective interest rate benchmark we will use it. (See, e.g., Final Results of Countervailing Duty Administrative Review; Fabricated Automotive Glass from Mexico (51 FR 44852; December 11, 1986).)

The I.E. effective rates that we used as our benchmark are based on the I.E. nominal rates plus various additional costs and charges bearing on a company's loans. Humex argues that it did not incur the additional charges reflected in the I.E. effective rates because of its size and the relationship with its banks. While it is possible that such charges were not specifically applied to each loan, Humex does not address the broader issue of costs not directly tied to specific loans and the consequences of its relationship with its banks in terms of the effective cost of any particular loan. As we noted in Ceramic Tile,

> The types and amounts of charges and costs that commercial banks impose vary widely from company to company and loan to loan; there is no method that can be considered standard practice. The basis for our national-average effective interest rate benchmark is a weighted average of effective rates reported to the Banco de Mexico by a sample of companies representing a cross-section of the Mexican economy. (53 FR 15092)

With respect to the difficulty of establishing company-specific benchmarks, Humex overstates the Department's reliance on the administrative burden of such an exercise as its reason for using national average benchmarks. While it is clear that two companies would be much less burdensome than the more than 40 companies involved in Ceramic Tile, Humex fails to take account of the basic difficulty of calculating any company's effective interest rate.

> The complexity of using numerous short-term loans to calculate a company-specific effective interest rate benchmark increases the probability of error, creates an incentive to underreport costs not directly tied to specific loans, and likely would require verification to establish its reliability. We are not required to conduct a verification in each review * * * (Ceramic Tile (53 FR 15091))

Our views on the applicability of using national average benchmarks to measure the benefit from preferential short-term loans with respect to FOMEX peso-denominated pre-export loans were fully discussed in Ceramic Tile. Humex has not provided any new arguments that would prompt us to change our practice.

*Comment 2:* Humex maintains that the Department's use of a dollar benchmark, based on average fixed commercial lending rates reported in the Federal Reserve Bulletin, overstates the benefits conferred by dollar-denominated FOMEX export loans. The benchmark is a weighted average of the effective weighted-average rates for five categories of loans, each representing a different size range of loans. Humex asserts that it would be more reasonable for the Department to use as benchmarks each of the Federal Reserve Bulletin rates for the five different loan categories, selecting as the appropriate benchmark the average lending rate that corresponds to the size of the FOMEX export loan for which a benefit is being measured. A single weighted average is "particularly unreasonable" given the "enormous variety" of FOMEX export loan amounts received by Humex during the review period.

Further, Humex argues that use of the Federal Reserve rates to measure the benefit from FOMEX export loans is

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duties in cases in which there are numerous companies. The Department believes that Congressional intent was not so narrowly focussed. While the consideration of administrative burden is an important factor, equal weight should be given to the consideration that the basic purpose of the countervailing duty law is better served by the use of country-wide rates. As we noted in the preamble to 19 CFR 355.20(d):

> Unlike the antidumping law, which is directed at company-specific activity, the countervailing duty law is directed at government or government-sponsored activity. Country-wide countervailing duty rates are well-suited to discourage such foreign subsidization. [53 FR 52325; December 27, 1988]

Negromex also assets that the issuance of country-wide rates counters the purpose of the countervailing duty law because it encourages all companies with above *de minimis* benefits to maximize their subsidies. The Department has recognized this possibility, but has reached a different conclusion:

> [A]ssigning the same rate to all companies encourages those that receive less than the maximum subsidies available to seek maximal subsidization, which would probably overburden the foreign government. In that event, the foreign government would be driven to lower the overall level of subsidization or eliminate the program. (Preamble to 19 CFR 355.20(d); (53 FR 52325))

With respect to Negromex' claim that government-ownership of Humex virtually requires us to use company-specific rates, the Department's regulations stats only that we will examine whether a significant differential existed for a government-owned producer and will establish a company-specific rate if we determine that a government-owned producer received a significantly different net subsidy. In applying the standards set by our regulations, we did not find a significant differential between the company rates in the 1985 review period.

Finally, Negromex cites Cement from Mexico as a precedent for using company-specific rates. However, Cement predated the current rules for determining whether a significant differential exists; we calculated company-specific rates in Cement on the basis that benefits received by different companies were "materially different." In the first review of Cement however, the Department imposed a country-wide rate despite strong arguments from the respondents that we should continue to calculate company-specific rates (Final Results of Countervailing Duty Administrative Review; Portland Hydraulic Cement and Cement Clinker from Mexico (50 FR 51732; December 19, 1985)). We determined in those final results that section 706 of the Tariff Act justified the Department's shift in the administrative review to a more restrictive approach regarding company-specific rates than that previously provided by the less stringent "materially different" standard.

*Comment 4:* Cabot, without addressing any particular program, requested that the Department reconsider its preliminary results to the extent that they are inconsistent with the Court of International Trade's decision in *Cabot Corp. v. United States*, 9 CIT 489, 620 F. Supp. 722 (1985), *appeal dismissed*, 788 F. 2d 1539 (Fed Cir. 1986), *vacated in part*, November 1, 1988 (unpublished order) [*Cabot I*], or are otherwise based on an improper application of the specificity test.

*Department's Position:* We believe that our preliminary results are based on a proper application of the specificity test and are consistent with court rulings in *Cabot I*, *Cabot v. United States*, 694 F. Supp. 949 (CIT 1988), *aff'd on remand*, June 7, 1989 (*Cabot II*), and *PPG Industries v. United States*, CIT , 662 F. Supp. 258 (1987), *appeal docketed*, No. 88-1175 (Fed. Cir., December 28, 1987).

*Comment 5:* Negromex argues that the Department should use the actual dollar value of its U.S. exports in calculating the FOMEX export loan benefit. Negromex asserts that, since the FOMEX export loans were originally issued in dollars, the U.S. sales figure over which the benefit is calculated should be in its original dollar denomination.

*Department's position:* We agree and have adjusted our calculations accordingly. We have also corrected some clerical errors in the application of our loan methodology as well as taking into account the fact that the weighted-average rates that we derived from the Federal Reserve Bulletin data represent effective interest rates and compared these commercial benchmarks to the effective rates on FOMEX export loans. As a result, the benefit from FOMEX loans is zero for Negromex and 0.28 percent *ad valorem* for all other firms during the period October 1, 1983 through December 31, 1983; 0.38 percent *ad valorem* for Negromex and 1.15 percent *ad valorem* for all other firms during the period January 1, 1984 through December 31, 1984; and, 1.90 percent *ad valorem* for all firms during the period January 1, 1985 through December 31, 1985.

*Comment 6:* Negromex argues that one of its FONEI loans is not countervailable because the funds from that loan were authorized and used solely for the purpose of purchasing pollution control equipment and, therefore, are not countervailable.

*Department's position:* We agree. We determined in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Portland Hydraulic Cement and Cement Clinker from Mexico (48 FR 43067; September 21, 1983) that FONEI loans for the acquisition of environmental control equipment to comply with national antipollution control requirements are not limited to exporters, to a specific enterprise or industry, or group of enterprises or industries and, therefore, such loans were not countervailable.

*Comment 7:* Negromex states that the CEPROFI certificate it received in 1984 was linked to the company's Altimira plant in the state of Tamaulipas, which produces synthetic rubber and resin, and various plastic products, but does not manufacture carbon black. Furthermore, Negromex claims none of its carbon black facilities are in the priority zones for which countervailable CEPROFI certificates are granted. Therefore, Negromex argues that the 1984 CEPROFI certificate did not provide a countervailable benefit to carbon black.

*Department's position:* We agree and have adjusted our calculations accordingly.

*Comment 8:* Humex argues that the Department lacks the statutory authority to impose countervailing duties on all merchandise covered by this review because such imposition would take place well after April 23, 1985, the effective date of the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties" (the Understanding). Pursuant to the Understanding, the United States Trade Representative designated Mexico a "country under the Agreement" as defined in section 701 of the Tariff Act. Humex argues that since Mexico is now a "country under the Agreement," section 701, rather than section 303, applies to this proceeding and entitles Mexico to a determination by the International Trade Commission (ITC) that the subject merchandise is materially injuring or threatening material injury to a United States industry producing a like product. In *Cementos Anahuac del Golfo, S.A., v. United States*, 12 CIT _____ Slip Op. 88-58 (May 12, 1988) (*Anahuac I*), the Court of International Trade (CIT) ruled that the Department's assessment of countervailing duties after the effective date of the Understanding would violate section 701, even if the entries were made before the effective date of the Understanding. Countervailing duties could only be imposed on Mexican merchandise following an affirmative ITC injury determination, regardless of whether the countervailing duty order was issued before or after the effective date of the Understanding.

Respondents further contend that the Department must revoke the countervailing duty order on carbon black from Mexico effective April 23, 1985. Since the ITC has indicated that it does not have the authority to conduct an injury investigation on merchandise already subject to an outstanding order, the Department must revoke this order.

In reply, Cabot Corporation argues that in *Cementos Guadalajara, S.A., et al. v. United States*, Slip Op. 88-48 (April 27, 1988) (*Guadalajara*) and subsequently in *Clementos Anahuac del Golfo, S.A., v. United States*, Slip Op. 88-75 (June 9, 1988) (*Anahuac II*), the CIT reached the opposite conclusion from that of *Anahuac I*. Consequently, *Anahuac I* provides no basis for revoking the countervailing duty order.

*Department's position:* We agree with Cabot. The CIT and the U.S. Court of Appeals for the Federal Circuit have sustained the Department's legal position that Mexican imports subject to an outstanding countervailing duty order already in effect when Mexico entered into the Understanding are not entitled to an injury test pursuant to section 701 of the Tariff Act and paragraph 5 of the Understanding (*Cementos Anahuac del Golfo, S.A. v. U.S.*, 689 F.Supp. 1192, 1210-1211 (CIT 1988) *aff'd sub nom. Cementos Guadalajara, S.A. v. U.S.* 879 F.2d 847 (Fed. Cir. 1989), *cert. denied* 110 S. Ct. 1316 (1990)). Because the Department published the countervailing duty order on carbon black from Mexico before Mexico entered into the Understanding, imports of the subject merchandise are not entitled to an injury test pursuant to section 701 of the Tariff Act.

### Final Results of Review

After reviewing all comments received, we determine the total bounty or grant to be 0.06 percent for Negromex and 2.88 percent *ad valorem* for all other firms during the period October 1, 1983 through December 31, 1983; 0.41 percent for Negromex and 4.20 percent *ad valorem* for all other firms during the period January 1, 1984 through December 31, 1984; and 4.53 percent *ad valorem* for all firms during the period January 1, 1985 through December 31, 1985. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Negromex exported on or after October 1, 1983 and on or before December 31, 1984. For all other firms, the Department will instruct the Customs Service to assess countervailing duties of 2.88 percent of the f.o.b. invoice price on shipments of this merchandise exported on or after October 1, 1983 and on or before December 31, 1983 and 4.20 percent of the f.o.b. invoice price on shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984. The Department will also instruct the Customs Service to assess countervailing duties of 4.53 percent of the f.o.b. invoice price on shipments of this merchandise from all firms exported on or after January 1, 1985 and on or before December 31, 1985.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22

Dated: December 10, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29473 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DS-M

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[A-428-807 and A-412-805]

## Final Determinations of Sales at Less Than Fair Value: Sodium Thiosulfate From the Federal Republic of Germany and the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that imports of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom are being, or are likely to be sold, in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determinations and have directed the Customs Service to continue to suspend liquidation of all entries of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom, as described in the "Suspension of Liquidation" section of this notice. The ITC will determine on or before February 8, 1991, whether these imports materially injure, or threaten material injury to, a U.S. industry.

**EFFECTIVE DATE:** December 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0630, or (202) 377-1766, respectively.

**SUPPLEMENTARY INFORMATION:**

### Final Determinations

We determine that imports of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(d)(a) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

### Case History

Since the notice of preliminary determinations (55 FR 42424, October 19, 1990), the following events have occurred. On October 22, 1990, William Blythe & Co., Ltd. ("Blythe"), respondent in the antidumping duty investigation of sodium thiosulfate from the United Kingdom, requested a public hearing. On October 23, 1990, the Calabrian Corporation, petitioner, requested to participate in any hearing requested by respondents. Petitioner and Blythe filed case briefs on November 5, 1990. On November 7, 1990, Blythe submitted United Kingdom export statistics for all thiosulfates for the month of September. Also on November 9, 1990, Blythe withdrew its request for a public hearing. Accordingly, no public hearing was held.

### Scope of Investigations

The products covered by these investigations are all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water. The chemical composition of sodium thiosulfate is $NA_2S_2O_3$. Sodium thiosulfate is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 2832.30.1000. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

### Period of Investigation

The period of investigation is February 1, 1990, through July 31, 1990.

### Standing

Prior to the issuance of our preliminary determinations, Blythe contested petitioner's standing. Blythe cited *Suromerica de Alexciones Leminadas, C.A. v. U.S.*, Slip. Op. 90-79

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at 32 (CIT Aug. 22, 1990), in which the Court of International Trade held that the Department cannot presume industry support for a petition. The Department is appealing Suramerica. And, as stated in our preliminary determinations, there is nothing in the statute, its legislative history, or our regulations which requires that petitions establish affirmatively that they have the support of a majority of their industries. In many cases, such a requirement would be so onerous as to preclude access to import relief under the countervailing and antidumping duty laws. In addition, no other party has expressed its opposition to these proceedings. Therefore, consistent with our past practice (*see*, for example, Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden (52 FR 5794, February 26, 1987); Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada (51 FR 10041, March 24, 1986); and Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less than Fair Value (52 FR 8324, March 17, 1987)), we have determined that the petitioner does not lack standing.

**Fair Value Comparisons**

To determine whether sales of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom to the United States were made at less than fair value, we used the best information available, as required by section 776(c) of the Act, because both Blythe (the respondent in the investigation of sodium thiosulfate from the Untied Kingdom) and Th. Goldschmidt AG (the respondent in the investigation of sodium thiosulfate from the Federal Republic of Germany), declined to respond to the Department's request for information. We determined that the best information available was information submitted by the petitioner.

For the United Kingdom, we used the highest margin listed in the petition for sodium thiosulfate for the period of investigation. We made adjustments to the U.S. price and foreign market value for this sale to correct for clerical errors.

For the Federal Republic of Germany, we used the only margin listed in the petition for sodium thiosulfate for the period of investigation.

**Critical Circumstances**

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the Federal Republic of Germany and the United Kingdom. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class of kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

For our preliminary determinations, we found that critical circumstances existed based on best information available because Blythe and Th. Goldschmidt AG (Goldschmidt) declined to participate in these investigations. As best information available, we assumed that imports of sodium thiosulfate were massive over a relatively short period of time.

Since the preliminary determinations, we have been able to obtain updated U.S. import statistics for sodium thiosulfate from the Federal Republic of Germany and the United Kingdom through September 1990.

Pursuant to § 353.16(g) of the Department's regulations, in making critical circumstances determinations the Department normally considers the period beginning on the date the proceeding begins and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of their knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties. (*See, e.g.*, Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552, April 15, 1988.) For purposes of these determinations, however, we are using as our comparison period the two months following the month of the filing of the petition (*i.e.*, August and September 1990) because (1) we recognize that, due to the lag between export and import, the import statistics for July reflect exports made prior to the date on which the proceeding began (*i.e.*, July 9, 1990) and (2) we only have available two months of import data.

The official U.S. import statistics for August and September indicate that there have been no imports of sodium thiosulfate from the Federal Republic of Germany and that there has been a significant decrease in imports of sodium thiosulfate from the United Kingdom.

Based on these import statistics, we determine that imports of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom have not been massive over relatively short period of time. Moreover, with respect to the United Kingdom, official export statistics from the United Kingdom confirm these findings.

Because we find that imports have not been massive over a relatively short period of time for both the Federal Republic of Germany and the Untied Kingdom, we do not need to determine whether there was a knowledge or history of dumping. Therefore, in accordance with section 733(e)(1)(B), we determine that critical circumstances do not exist with respect to both Blythe and Goldschmidt.

With respect to firms covered by the "All Other" rate, we have determined that imports of sodium thiosulfate have not been massive over a relatively short period of time. As such, we determine that critical circumstances do not exist for those firms.

**Verification**

No verification occurred because the respondents failed to respond to the Department's questionnaire.

**Interested Party Comments**

All comments raised by parties to the proceeding in the antidumping duty investigation of sodium thiosulfate from the United Kingdom are discussed below. There were no comments submitted in connection with the antidumping duty investigation of sodium thiosulfate from the Federal Republic of Germany.

**Comment 1**

Petitioner believes that, because Blythe has refused to answer the Department's questionnaire, the Department should use, as best information available for the United Kingdom, the highest margin found in the petition for the class or kind of merchandise instead of the average of margins found for each such or similar category.



Respondent argues that Blythe decline to respond to the Department's questionnaire because of its modest level of involvement in the U.S. market, not because it attempted to impede the Department's investigation. Therefore, respondent contends that the Department should continue to use the simple average of margins alleged in the petition for the final determination.

**DOC Position**

The Department has discretion in determining what information to use as best information available, and determines what to use based on the circumstances of each investigation. We agree that because Blythe failed to respond to our questionnaire, the appropriate best information available rate should be based on the petition. After further consideration, and consistent with our treatment of non-responding companies in past determinations, we agree with petitioner that the highest single margin for the such or similar category of sodium thiosulfate alleged in the petition should be used as best information available. (*See, e.g.*, Final Determination of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man Made Fiber from Hong Kong, 55 FR 30733, July 27, 1990; Final Determination of Sales at Less Than Fair Value; Certain Residential Door Locks and Parts Thereof From Taiwan, 54 FR 53153, December 27, 1989; and Final Determination of Sales at Less than Fair Value; Drafting Machines and Parts Thereof From Japan, 54 FR 46961, November 8, 1989.)

**Comment 2**

Petitioner asserts that the Department should compare the volume of imports entered for a period of 102 days after the filing of the petition to the volume of imports entered for a period of 102 days before the filing of the petition to determine whether critical circumstances exist with respect to Blythe. Moreover, petitioner states that the Department should rely on official United Kingdom export statistics only if official U.S. import statistics are unavailable.

Respondent urges the Department to use official United Kingdom export statistics or U.S. import statistics to compare the volume of imports/exports for a period of three months following the date the proceeding commences to the volume of imports/exports for a period of three months prior to the date the proceeding commences to determine whether critical circumstances exist with respect to Blythe.

**DOC Position**

See the "Critical Circumstances" section of this notice.

**Continuation of Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the final dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice and applies to all sodium thiosulfate from the Federal Republic of Germany, including entries from the former German Democratic Republic.

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| United Kingdom | |
| William Blythe & Co., Ltd. | 50.13 |
| All Others | 56.13 |
| Federal Republic of Germany | |
| Th. Goldschmidt AG | 100.40 |
| All Others | 100.40 |

Because we now determine that critical circumstances for both Blythe and Goldschmidt do not exist, the retroactive suspensions of liquidation ordered at the time of the preliminary determinations are terminated for entries of both companies. All cash deposits or bonds placed on entries made by Blythe and Goldschmidt prior to October 19, 1990, shall be refunded.

**ITC Notification**

In accordance with section 735(c) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine on or before February 8, 1991, whether these imports materially injure, or threaten material injury to, a U.S. industry. If the ITC determines that material injury, or the threat of material injury, does not exist, the proceedings will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an Antidumping Duty Order directing customs officials to assess antidumping duties on sodium thiosulfate from the Federal Republic of Germany and the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the margins shown above.

These determinations are published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: December 10, 1990.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29469 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DS-M

## Auto Parts Advisory Committee; Closed Meeting

**AGENCY:** International Trade Administration, Commerce.

**NOTICE:** Closed meeting.

**ACTION:** Notice of closed meeting of Auto Parts Advisory Committee.

**SUMMARY:** The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss

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specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

**DATE AND LOCATION:** The meeting will be held on Thursday, January 10, 1991 from 10:00 a.m. to 4:00 p.m. in Room 3407, Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, Room 4036, Washington, DC 20230, telephone: (202) 377–0689.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 14, 1989, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the act relating to open meeting and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b (c) (4) and (9)(B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, Room 4104, Main Commerce.

Dated: December 5, 1990.

**Henry Misisco,**

*Director, Office of Automotive Industry Affairs.*

[FR Doc. 90–29386 Filed 12–14–90; 8:45 am]

BILLING CODE 3510-DR-M

## Applications for Duty-Free Entry of Scientific Instruments; U.S. Naval Research Laboratory, et al

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90–207. *Applicant:* U.S. Naval Research Laboratory, 4555 Overlook Avenue, SW., Washington, DC 20375–5000. *Instrument:* Electron Microscope, Model CM30. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of the following:

(1) High temperature superconducting materials including bismuth, thallium and rare earth superconductors,

(2) Twins, grain boundaries and antiphase boundaries,

(3) Composites of superconductors and noble metals,

(4) Metallic single crystal superlattices of lattice-matched structures,

(5) Semiconductors and intermetallic compounds,

(6) Diamond thin films and

(7) Point, line, planar and three dimensional defects.

*Application Received by Commissioner of Customs:* November 16, 1990.

*Docket Number:* 90–208. *Applicant:* Yale University, New Haven, CT 06520. *Instrument:* Electron Paramagnetic Resonance Spectrometer System, Model ESP 300–10/12. *Manufacturer:* Brunker Analytische Messtechnik GmbH, West Germany. *Intended Use:* The instrument will be used to study such phenomena as spin exchange reactions between unpaired electrons on nitroxide free radicals and other paramagnetic species. Experiments will be conducted to record the electron paramagnetic resonance spectrum as a funtion of temperature, pressure, and concentration of free radical species for fundamental understanding of free-radical reactions in supercritical fluids. *Application Received by Commissioner of Customs:* November 16, 1990.

*Docket Number:* 90–209. *Applicant:* Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Microtherm Electrothermal Vaporization Inlet System. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* The instrument is an accessory to an existing inductively-coupled plasma mass spectrometer (ICPMS) which serves the function of introducing the sample into the ICPMS highly efficiently, thereby improving the detection limit for Ir by a factor of 50. *Application Received by Commissioner of Customs:* November 11, 1990.

*Docket Number:* 90–210. *Applicant:* University of Massachusetts Medical Center, 55 Lake Avenue North, Worcester, MA 01655. *Instrument:* Microvolume Rapid Kinetics Accessory, Model SFA–12M with Pneumatic Drive Attachment and Trigger Unit. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for the study of the interaction of sugars with the glucose transport protein purified from human erythrocyte membranes. *Application Received by Commissioner of Customs:* November 21, 1990.

*Docket Number:* 90–211. *Applicant:* University of California at Berkeley, Berkeley, CA 94720. *Instrument:* Imaging Plate X-ray Data Collector. *Manufacturer:* MAR Research, West Germany. *Intended Use:* The instrument will be used to determine the three-dimensional structure of proteins and nucleic acids. *Application Received by Commissioner of Customs:* November 21, 1990.

*Docket Number:* 90–212. *Applicant:* Food and Drug Administration, Center for Biologic Evaluation Research, 8800 Rockville Pike, Bethesda, MD 20892. *Instrument:* Microvolume Stopped-flow Spectrofluorimeter, SF–17MW. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used for the study of a variety of chemically modified hemoglobin solutions and intact red blood cells. *Application Received by Commissioner of Customs:* November 23, 1990.

*Docket Number:* 90–213. *Applicant:* Wright State University, Department of Chemistry, 3640 Colonel Glenn Hwy., Dayton, OH 45435. *Instrument:* Gas Chromatograph Mass Spectrometer System, Model MS 890. *Manufacturer:* Kratos Analytical, Inc., United Kingdom. *Intended Use:* The instrument will be used to obtain high-resolution mass spectral data for a wide variety of organic chemicals and to analyze polychlorinated dibenzodioxins, dibenzofurans, biphenyls and related toxic compounds. *Application Received by Commissioner of Customs: November 23, 1990.*

*Docket Number:* 90–214. *Applicant:* Argonne National Laboratory, Materials Science Division, Building 212, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Analytical Transmission Electron Microscope, Model HB603Z. *Manufacturer:* VG Instruments Inc., United Kingdom. *Intended Use:* The instrument will be used for basic research in the characterization of the morphology, crystallography, and composition of defects, interfaces and phases present in metal, alloys, ceramics and related materials. Investigations are conducted to further elucidate and understand the structure/property relationships of materials as they relate to programmatic research. *Application Received by Commissioner of Customs:* November 26, 1990.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 90–29390 Filed 12–14–90; 8:45 am]

BILLING CODE 3510-DS-M



## Decision of Application for Duty-Free Entry of Scientific Instrument; VA Medical Center

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 90–001.

*Applicant:* VA Medical Center, Kansas City, MO 64128.

*Instrument:* Photomultiplier Power Supply, Model PPS–60.

*Manufacturer:* Hi-Tech Scientific Ltd., United Kingdon.

*Intended Use:* See notice at 55 FR 3438, February 1, 1990.

*Comments:* None received.

*Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

*Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated June 26, 1990, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 90–29391 Filed 12–14–90; 8:45 am]

BILLING CODE 3510-DS-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 11, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6494. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Group II is being increased by application of swing, reducing the limit for Category 369pt. The sublimit for Category 369–S is being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53351, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 11, 1990

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of December 21, 1989, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 18, 1990 you are directed to adjust the limits for textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and India:

| Category | Adjusted 12-month limit [1] |
|---|---|
| Level in group I<br>369pt.[2] | 6,817,176 kilograms of which not more than 776,345 kilograms shall be in Category 369–D [3] and not more than 402,829 kilograms shall be in Category 369–S.[4] |
| Group II<br>200, 201, 220–229, 237, 239, 300/301, 317, 326, 330–334, 345, 349–352, 359–362, 600–607, 611–625, 635–652, 659, 665–O [5], 666–570 and 831–859, as a group. | 110,420,002 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369pt.: all HTS numbers except 5702.10.9020, 5702.49.1010 and 5702.99.1010 (rugs exempt from the Bilateral Agreement).

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs except from the Bilateral Agreement.

Also, you are directed to charge the following amounts to the categories indicated below for 1990. These changes are for hand-made handloom made-up articles exported and imported during the period January 1, 1990 through February 21, 1990.

| Category | Amount to be charged |
|---|---|
| In Group I | |
| 369pt. | 35,032 kilograms |
| 369–D | None. |
| 369–S | None. |
| In Group II | |
| 360 | 250 numbers. |
| 362 | 1 numbers. |
| 665–O | 9 kilograms. |
| 670 | 307 kilograms. |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

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Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29367 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DR-M

## Negotiated Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

December 11, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing and establishing limits.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of Korea have agreed to establish limits for Categories 239 and 651 for 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1706, published on January 18, 1990; and 55 FR 38831, published on September 21, 1990.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 11, 1990.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 18, 1990, you are directed to amend further the directive of January 11, 1990 to increase and establish limits for the following categories:

| Category | 12-month limit [1] |
|---|---|
| **Subinvols in Group II** | |
| 239 | 830,992 kilograms. |
| 651 | 58,407 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

Category 651 shall remain subject to the current Group II limit. Import charges already made to Category 651 in Group II shall be retained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29394 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

December 10, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bank Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6496. For information on embargoes and quote re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 638/639 is being increased for swing and carryover. The Fabric Group is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48292, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 10, 1990.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 10, 1990, you are directed to adjust the current limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Malaysia:

| Category | Adjusted 12-month limit [1] |
|---|---|
| **Fabric Group** | |
| 218, 219, 220, 225-227, 313-315, 317, 326, 613/614/615/617, as a group. | 61,965,237 square meters. |
| **Other specific limit** | |
| 638/639 | 339,031 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29395 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DR-M



## Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

December 11, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9481. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States establishes import limits for certain cotton, wool and man-made fiber textile products for 1991, including certain categories subject to the Special Regime. Sublimits and separate limits for Normal Regime categories are established for products which are not subject to the terms of the Special Regime.

A copy of the current bilateral textile agreement between the Governments of the United States and the United Mexican States is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Requirements for participation in the Special Regime Program are available in **Federal Register** notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 11, 1990

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 13, 1988, as amended, between the Governments of the United States and the United Mexican States; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels and sublevels of restraint:

| Category | 12-month limit |
|---|---|
| **Group I** | |
| 218-220, 225-227, 313-326, 611-617 and 625-629, as a group. | 47,700,000 square meters equivalent. |
| **Sublevels within the Group** | |
| 218 | 995,840 square meters. |
| 219 | 14,840,000 square meters. |
| 313 | 26,500,000 square meters. |
| 317 | 13,250,000 square meters. |
| 326 | 995,840 square meters. |
| **Individual Limits not in the Group** | |
| 300/301/607-Y [1] | 7,420,000 kilograms of which not more than 4,026,000 kilograms shall be in Category 300. |
| 334/634 | 150,000 dozen. |
| 335 (Special Regime) | 135,000 dozen. |
| 336/636 (Special Regime). | 424,000 dozen. |
| 338/339/638/639 (Special Regime). | 1,400,000 dozen. |
| 340/640 (Special Regime). | 428,766 dozen. |
| 341/641 | 822,436 dozen of which not more than 297,138 dozen shall be in blouses with two or more colors in the warp and/or filling in Categories 341-Y/641-Y. [2] |
| 342/642 (Special Regime). | 300,000 dozen. |
| 347/348/647/648 (Special Regime). | 4,500,000 dozen. |
| 351/651 (Special Regime). | 350,000 dozen. |
| 352/652 (Special Regime). | 2,900,000 dozen. |
| 359-C/659-C [3] (Special Regime). | 1,800,000 kilograms. |
| 363 | 5,500,000 numbers. |
| 410 | 397,160 square meters. |
| 433 | 11,000 dozen. |
| 435 | 12,000 dozen. |
| 443 | 116,150 numbers. |
| 604-A [4] | 1,853,633 kilograms. |
| 604-O/607-O [5] | 1,118,775 kilograms. |
| 633 (Special Regime) | 100,000 dozen. |
| 635 | 136,987 dozen. |
| 643 | 155,556 numbers. |
| 669-S [6] | 702,396 kilograms. |
| 670 | 3,000,000 kilograms. |
| **Normal Regime Category (Not Subject to the Special Regime)** | |
| 335 (sublimit) | 35,000 dozen. |
| 336/636 (sublimit) | 212,000 dozen. |
| 338/339/638/639 (sublimit). | 650,000 dozen. |
| 340/640 (sublimit) | 107,191 dozen. |
| 342/642 | 105,000 dozen. |
| 347/348/647/648 | 650,000 dozen. |
| 351/651 | 75,000 dozen. |
| 352/652 | 1,896,000 dozen. |
| 359-C/659-C (sublimit) | 250,000 kilograms. |
| 633 (sublimit) | 10,000 dozen. |

[1] Categories 300 and 301: Category 607-Y: only HTS numbers 5509.53.0030 and 5509.53.0060.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641-Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[3] Category 359-C: only HTS numbers 6103.42.2010, 6103.42.2025, 6103.49.3034, 6104.62.1010, 6104.62.1020, 6104.69.3010, 6114.20.0042, 6114.20.0048, 6114.20.0052, 6203.42.2005, 6203.42.2010, 6203.42.2090, 6204.62.2005, 6204.62.2010, 6211.32.0007, 6211.32.0010, 6211.32.0025, 6211.42.0007 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43. 2015, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2005, 6203.43.2010, 6203.43.2090, 6203.49.1005, 6203.49.1010, 6203.49.1090, 6204.63.1505, 6204.63.1510, 6204.69.1005, 6204.69.1010, 6210.10.4015, 6211.33.0007, 6211.33.0010, 6211.33.0017, 6211.43.0007 and 6211.43.0010.

[4] Category 604-A: only HTS number 5509.32.0000.

[5] Category 604-O: all HTS numbers except 5509.32.0000 (604-A); Category 607-O: all HTS numbers except 5509.53.0030 and 5509.53.0060 (607-Y).

[6] Category 669-S: only HTS numbers 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the periods January 1, 1990 through December 31, 1990 and July 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by

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previous entries, such goods shall be subject to the limits set forth in this directive.

The bilateral agreement establishes separate treatment for products in certain categories. Those products which are made of U.S. formed and cut fabric are subject to the Special Regime and to the category limits listed in this directive. Those products which are exported from Mexico to the United States under provisions of the Special Regime on and after January 1, 1991 must be accompanied by a properly certified Form ITA-370P.

Any shipment for entry under the Special Regime Program which is not accompanied by a valid and correct certification and Shippers Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of August 22, 1988, as amended, shall be denied entry. Invoices visaed for Special Regime shall include only products that are subject to the Special Regime or entry will be denied.

Shipments of products in categories covered by the Special Regime, but that are not subject to the Special Regime, are subject to the applicable limits and sublimits listed in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29303 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 10, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commission of Customs amending limits.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 28, 1990, the Governments of the United States and Singapore agreed, among other things, to increase the current designated consultation level for Categories 351/651 for 1990 only. Also, the two governments agreed to convert the current designated consultation level for Category 222 to a specific limit at an increased level.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 54 Fr 47548, published on November 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 10, 1990.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 18, 1990, the directive of November 9, 1989 is being amended further to increase the current limits for cotton and man-made fiber textile products in the following categories:

| Category | Adjusted 12-month limit [1] |
|---|---|
| **Sublevels in Group II** | |
| 222 | 300,000 kilograms. |
| 351/651 | 50,000 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29302 Filed 12-14-90; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 11, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the Memorandum of Understanding (MOU) dated November 28, 1990 between the Governments of the United States and the Republic of Singapore, agreement was reached to extend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, for five one-year periods, beginning on January 1, 1991 and extending through December 31, 1995. A formal exchange of notes will follow.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish limits for the period beginning January 1, 1991 and extending through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States [see Federal Register notice 55 FR 50756, published on December 10, 1990).



The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU, but are designed to assist only in the implementaiton of certain of their provisions.

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 11, 1990.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

| Category | 12-month restraint limit |
|---|---|
| **Levels in Group I** | |
| 239 | 380,690 kilograms. |
| 331 | 364,996 dozen pairs. |
| 334 | 59,294 dozen. |
| 335 | 178,358 dozen. |
| 336/339 | 942,827 dozen of which not more than 550,996 dozen shall be in Category 336 and not more than 612,036 dozen shall be in Category 339. |
| 340 | 659,836 dozen. |
| 341 | 165,917 dozen. |
| 342 | 102,103 dozen. |
| 347/348 | 834,677 dozen of which not more than 521,673 dozen shall be in Category 347 and not more than 405,748 dozen shall be in Category 348. |
| 435 | 6,358 dozen. |
| 604 | 746,689 kilograms. |
| 631 | 382,885 dozen pairs. |
| 634 | 226,375 dozen. |
| 635 | 231,658 dozen. |
| 638 | 831,438 dozen. |
| 639 | 3,038,472 dozen. |
| 640 | 140,671 dozen. |
| 641 | 223,450 dozen. |
| 645/646 | 127,520 dozen. |
| 647 | 451,194 dozen. |
| 648 | 1,434,308 dozen. |
| **Group II** | |
| 200-229, 237, 300/301, 313-330, 332, 333/633, 336, 345, 348, 350, 351/651, 352/652, 353/354/653/654, 359-369, 400-434, 436, 438, 439, 440-444, 445/446, 447, 448, 450-469, 600-603, 606, 607, 611-630, 632, 636, 642-644, 649, 650, 659-S [1], 659-V [2], 659-O [3] and 665-670, as a group. | 36,461,859 square meters equivalent. |
| **Sublevels within Group II** | |
| 200 | 251,996 kilograms. |
| 201 | 259,196 kilograms. |
| 218 | 1,672,255 square meters. |
| 219 | 1,672,255 square meters. |
| 220 | 1,672,255 square meters. |
| 222 | 316,000 kilograms. |
| 223 | 119,366 kilograms. |
| 224 | 1,672,255 square meters. |
| 225 | 1,672,255 square meters. |
| 226 | 1,672,255 square meters. |
| 227 | 1,672,255 square meters. |
| 229 | 122,582 kilograms. |
| 237 | 205,504 dozen. |
| 300/301 | 197,214 kilograms. |
| 313 | 1,672,255 square meters. |
| 314 | 1,672,255 square meters. |
| 315 | 1,672,255 square meters. |
| 317 | 1,672,255 square meters. |
| 326 | 1,672,255 square meters. |
| 330 | 1,176,471 dozen. |
| 332 | 434,783 dozen pairs. |
| 333/633 | 41,500 dozen. |
| 336 | 70,000 dozen. |
| 345 | 54,345 dozen. |
| 349 | 416,867 dozen. |
| 350 | 39,216 dozen. |
| 351/651 | 38,462 dozen. |
| 352/652 | 148,148 dozen. |
| 353/354/653/654 | 46,426 dozen. |
| 359 | 197,214 kilograms. |
| 360 | 1,818,182 numbers. |
| 361 | 322,581 numbers. |
| 362 | 289,855 numbers. |
| 363 | 4,000,000 numbers. |
| 369 | 197,214 kilograms. |
| 400 | 34,019 kilograms. |
| 410 | 125,419 square meters. |
| 414 | 45,359 kilograms. |
| 431 | 71,429 dozen pairs. |
| 432 | 53,571 dozen pairs. |
| 433 | 4,167 dozen. |
| 434 | 6,000 dozen. |
| 436 | 3,049 dozen. |
| 438 | 10,000 dozen. |
| 439 | 20,012 kilograms. |
| 440 | 8,250 dozen. |
| 442 | 10,000 dozen. |
| 443 | 33,336 numbers. |
| 444 | 33,396 numbers. |
| 445/446 | 20,000 dozen. |
| 447 | 6,333 dozen. |
| 448 | 6,333 dozen. |
| 450 | 34,019 kilograms. |
| 464 | 52,338 kilograms. |
| 465 | 139,955 square meters. |
| 469 | 34,019 kilograms. |
| 600 | 259,196 kilograms. |
| 603 | 266,519 kilograms. |
| 606 | 83,228 kilograms. |
| 607 | 259,196 kilograms. |
| 611 | 1,672,255 square meters. |
| 613 | 1,672,255 square meters. |
| 614 | 1,672,255 square meters. |
| 615 | 1,672,255 square meters. |
| 617 | 1,672,255 square meters. |
| 618 | 1,672,255 square meters. |
| 619 | 1,672,255 square meters. |
| 620 | 1,672,255 square meters. |
| 621 | 116,306 kilograms. |
| 622 | 1,672,255 square meters. |
| 624 | 1,672,255 square meters. |
| 625 | 1,672,255 square meters. |
| 626 | 1,672,255 square meters. |
| 627 | 1,672,255 square meters. |
| 628 | 1,672,255 square meters. |
| 629 | 1,672,255 square meters. |
| 630 | 1,176,471 dozen. |
| 632 | 434,782 dozen pairs. |
| 636 | 140,000 dozen. |
| 642 | 209,106 dozen. |
| 643 | 444,444 numbers. |
| 644 | 444,444 numbers. |
| 649 | 416,667 dozen. |
| 650 | 39,216 dozen. |
| 659-S | 145,150 kilograms. |
| 659-V | 145,150 kilograms. |
| 659-O | 145,150 kilograms. |
| 665 | 1,858,081 square meters. |
| 666 | 116,306 kilograms. |
| 669 | 116,306 kilograms. |
| 670 | 453,592 kilograms. |

[1] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[2] Category 659-V: only HTS numbers 6110.30.1030, 6110.30.1040, 6110.30.3035 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0060.

[3] Category 659-O: all HTS numbers except 6211.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659-S); 6110.30.1030, 6110.30.1040, 6110.30.2030, 6110.30.2040, 6110.30.3030, 6110.30.3035, 6110.90.0052, 6110.90.0054, 6201.93.2020, 6202.93.2020, 6211.33.0050 and 6211.43.0060 (Category 659-V).

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The conversion factor for Categories 352/652 is 11.3 square meters equivalent per dozen.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement, effected by exchange of notes dated May 31 and June 5, 1986, as amended, between the Governments of the United States and Singapore.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking prov sions of 5 U.S.C. 553(a)(1).

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Sincerely,
Auggie D. Tantillo,
*Chairman, Committee for the Implementation of Textile Agreements.*
[FR Doc. 90-29396 Filed 12-14-90; 8:45 am]
BILLING CODE 3510-DR-M

## Cancellation of the Automated Visa Verification System for Shipments of Textile and Apparel Products From China

December 12, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Announcement.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

**SUPPLEMENTARY INFORMATION:** As the result of an analysis conducted by the U.S. Customs Service, U.S. Customs has decided, effective on January 1, 1991, to cancel the Automated Visa Verification System (AVVS) for shipments of textile and apparel products, produced or manufactured in China and exported from China, regardless of the date of export.

The existing visa arrangement between the Governments of the United States and the People's Republic of China shall remain in effect. All shipments of textile and apparel products which are produced or manufactured in China and exported from China for consumption, or withdrawn from warehouse for consumption, in the United States will continue to require an appropriate export visa for entry as required by visa arrangement.

Interested persons are advised to take all necessary steps to ensure that the requirements of the existing visa arrangement between the Governments of the United States and the People's Republic of China are met.

Auggie D. Tantillo,
*Chairman, Committee for the Implementation of Textile Agreements.*
[FR Doc. 90-29430 Filed 12-14-90; 8:45 am]
BILLING CODE 3510-DR-M

## Announcement of a Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

December 10, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 29, 1990, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding Categories 334/634 (cotton and man-made fiber other coats), produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 334/634, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on November 29, 1990 and extends through November 28, 1991 at a level of not less than 95,690 dozen.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 334/634, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 334/634. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Ronald I. Levin,
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**United Arab Emirates**

November 1990.

Re: Market Statement, Category 334/634, Men's and Boys' Cotton, and Man-Made Fiber Other Coats

*Import Situation and Conclusion*

U.S. imports of men's and boy's cotton and man-made fiber other coats, Category 334/634, from the United Arab Emirates reached 95,690 dozen in the year ending August 1990, three and a half times the 27,011 dozen imported a year earlier. During the first eight months of 1990 imports from the United Arab Emirates were 67,539 dozen, nearly three times their January-August 1989 level and 28 percent above their total calendar year 1989 level. Imports of Category 334/634 from the United Arab Emirates were 52,782 dozen in 1989, 20 times their 1988 level.

The sharp and substantial increase in Category 334/634 imports from the United Arab Emirates is causing disruption in the U.S. market for men's and boys' cotton and man-made fiber other coats.

*U.S. Production and Market Share*

U.S. production of men's and boys' cotton and man-made fiber other coats, Category 334/634, fell from 5,380 thousand dozen in 1987 to 4,922 thousand dozen in 1989, a decline of 9 percent. The domestic



manufacturers' share of this market fell from 91 percent in 1987 to 89 percent in 1989.

*U.S. Imports and Import Penetration*

U.S. imports of men's and boys' cotton and man-made fiber other coats, Category 334/634, increased from 5,184 thousand dozen in 1987 to 5,302 thousand dozen in 1989. In the year ending August 1990 imports of Category 334/634 jumped 24 percent, reaching 5,910 thousand dozen, when compared with the same period in 1989. The ratio of imports to domestic production reached 106 percent in 1989, up to 10 percentage points from 96 percent in 1987.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 72 percent of Category 334/634 imports from the United Arab Emirates during the first eight months of 1990 entered under HTSUSA numbers 6101.20.0010—men's cotton knit overcoats, capes, cloaks, anoraks, windbreakers and similar articles; 6201.92.2050—men's cotton woven anoraks, windbreakers and similar articles other than of corduroy and blue denim; 6101.30.2010—men's man-made fiber knit overcoats, capes, cloaks, anoraks, windbreakers and similar articles, other than those containing 25 percent or more leather by weight, and other than those containing 23 percent by weight of wool; 6101.30.2020—boys' man-made fiber knit overcoats, capes, cloaks, anoraks, windbreakers and similar articles, other than those containing 25 percent or more leather and other than those containing 23 percent or more by weight of wool; 6210.20.1020—other man-made fiber woven overcoats, capes, cloaks, anoraks, windbreakers and similar articles, other than those having an outer surface, covered or laminated with rubber or plastic materials which completely obscures the underlying fabric. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

[FR Doc. 90-29398 Filed 12-14-90; 8:45 am]
BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 14-18 January 1991, from 8 a.m. to 5 p.m. at HQ USAFE, Ramstein AB, Hahn AB, Fraunhofer Institute, Berghausen, and Bayern Chemie, MBB (GmbH), Ottobrun, Germany.

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4648.

Patsy J. Conner,
*Air Force Federal Register Liaison Officer.*
[FR Doc. 90-29360 Filed 12-14-90; 8:45 am]
BILLING CODE 3910-01-M

## DEPARTMENT OF ENERGY

### Financial Assistance; Intent To Negotiate a Cooperative Agreement Entitled "Advanced Materials for Aluminum" With Massachusetts Institute of Technology

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office, intends to award on a noncompetitive basis, a cooperative agreement, as a result of an unsolicited proposal, submitted by the Massachusetts Institute of Technology, Cambridge, MA. This unsolicited proposal was submitted by MIT under its own initiative in April 1990, and is accepted for support pursuant to the provisions of 10 CFR 600.14. The purpose of this research and development is to prove the hypothesis that a nonconsumable anode consisting of an oxidized film on a metal monolith can be used as a nonconsumable anode in aluminum electrolysis cells. DOE funding for this project will amount to $145,742. MIT's unsolicited proposal has been accepted for DOE financial assistance based on its meeting the criteria outlined in the following paragraphs listed under 10 CFR Part 600.14: (a) The activity to be funded is an innovative approach relevant to a public purpose, and (d) the applicant possesses the facilities and techniques necessary to achieve the proposed project objectives.

**CONTACT:** U.S. Department of Energy, Idaho Operations Office, Attn: Scott D. Applonie, Contracts Management Division, 785 DOE Place, Idaho Falls, Idaho 83402-1129 (208) 526-8558.

**PROCUREMENT REQUEST NUMBER:** DE-FC07-91ID13053.

R. Jeffrey Hoyles,
*Acting Director, Contracts Management Division.*
[FR Doc. 90-29460 Filed 12-14-90; 8:45 am]
BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Project No. 9952-002]

### Warren Osborn; Availability of Environmental Assessment, Idaho

December 10, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Sixmile Creek Hydroelectric Project located on Sixmile Creek in Adams County, near New Meadows, Idaho, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,
*Acting Secretary.*
[FR Doc. 90-29423 Filed 12-14-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-501-000, et al.]

### Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

December 7, 1990.

Take notice that the following filings have been made with the Commission:

**1. Sabine Pipe Line Co.**

[Docket No. CP91-501-000]

Take notice that on November 23, 1990, Sabine Pipe Line Company (Sabine), 1111 Bagby Street, Houston, Texas 77002, filed in Docket No. CP91-501-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing certain existing Natural Gas Policy Act section 311 facilities which were acquired in place, leased, or constructed by Sabine and are currently used exclusively to perform section 311 transportation services, all

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as more fully set forth in the request which is on file with the Commission and open to public inspection.

Sabine states that the Commission's Interim Regulations issued on August 2, 1990, in Docket No. RM90–13–000 have prompted it to request authority to use its existing section 311 facilities to render jurisdictional transportation services. Specifically, Sabine is requesting section 7(c) authorization for (1) Two compressor stations and pipeline connections with seven interstate and three intrastate pipelines at the Henry Hub in Vermilion Parish, Louisiana; (2) a pipeline interconnect with Florida Gas Transmission Company in Vermilion Parish, Louisiana; (3) a pipeline interconnect with ANR Pipeline Company in Jefferson Davis Parish, Louisiana; and (4) one offshore lateral that connects a gas production platform with Sea Robin Pipeline Company in East Cameron Block 278, offshore Louisiana.

Sabine states that certain of the Henry Hub facilities are leased from Texaco Inc. (Texaco), who retains a portion of the capacity in such facilities in order to move gas under its own contracts. Sabine also states that the lease agreement with Texaco provides that Sabine is permitted to use the leased facilities solely to provide Section 311 transportation until such time as Sabine seeks and obtains a certificate of public convenience and necessity authorizing the use of such facilities for jurisdictional service. Sabine requests that the Commission declare in its order in this docket that Texaco's reservation and use of capacity in these facilities would not be subject to the Commission's jurisdiction.

Sabine proposes to charge its currently effective FT–1 and IT–1 rates for firm and interruptible transportation, respectively. Sabine states that the cost of the facilities that were constructed or purchased in place is $9,746,880. The cost of the leased facilities is $10,000 per month.

Sabine asserts that section 8(c) authorization for these facilities would allow it to provide transportation services under its blanket certificate through all of its facilities to all current and potential shippers.

*Comment date:* December 28, 1990, in accordance with Standard Paragraph F at the end of this notice.

**2. Gas Gathering Corp., Texas Eastern Transmission Corp., Texas Eastern Transmission Corp., Williston Basin Interstate Pipeline Co.**

[Docket Nos. CP91–491–000,[1] CP91–530–000, CP91–531–000, CP91–532–000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket Number (date filed) | Applicant | Shipper name | Peak day avg. annual [1] | Points of— Receipt | Points of— Delivery | Start up date, rate schedule | Related dockets [2] |
|---|---|---|---|---|---|---|---|
| CP91–491–000 (11–29–90) | Gas Gathering Corp. P.O. Box 519, Hammond, LA 70404. | Amoco Energy Trading Co. | 4,000<br>500<br>182,500 | LA | LA | 11–01–90 IT–1 | ST91–2710–000 |
| CP91–530–000 (11–29–90) | Texas Eastern Transmission Corp. P.O. Box 2521, Houston, TX 77252–2521. | Vesta Energy Co. | 10,000<br>10,000<br>3,650,000 | OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV | IL | 10–25–90 IT–1 | ST91–3050–000 |
| CP91–531–000 (11–29–90) | do | Transworld Oil U.S.A. Inc. | 20,000<br>20,000<br>7,300,000 | OLA, LA, Al, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV | PA, NJ, NY | 10–09–90 IT–1 | ST91–2960–000 |
| CP91–532–000 (11–29–90) | Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Ave, Bismarck, ND 58501. | Prairielands Energy Marketing, Inc. | 53,000<br>13,000<br>19,345,000 | WY, MT | ND, MT, SD, WY | 10–18–90 IT–1 | ST91–3568–000 |

[1] Quantities are shown in MMBtu except for Williston Basin Interstate Pipeline Company which is shown in dt.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**3. Northern Natural Gas Co., Division of Enron Corp.**

[Docket Nos. CP91–586–000, CP91–587–000, CP91–588–000, CP91–589–000, and CP91–590–000]

Take notice that on December 6, 1990, Northern Natural Gas Company, Division of Enron Corp. (Applicant), P.O. Box 1188, Houston, Texas 77251–1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

[2] These prior notice requests are not consolidated.



Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name | Peak day [1] Avg. annual | Points of— Receipt [2] | Points of— Delivery [2] | Start up date, rate schedule, service type | Related [3] docket, contract date |
|---|---|---|---|---|---|---|
| CP91–586–000 (12–6–90) | NGC Transportation, Inc. | 300,000<br>225,000<br>109,500,000 | IA, KS, MN, NE, NM, OK, SD, TX, WI | TX | 11–1–90, IT–1, Interruptible | ST91–4035–000, 11–1–90, |
| CP91–587–000 (12–6–90) | Richardson Products Co. | 50,000<br>37,500<br>18,250,000 | NM | TX | 11–1–90, IT–1, Interruptible | ST91–3039–000, 11–1–90 |
| CP91–588–000 (12–6–90) | NGC Transportation, Inc. | 50,000<br>37,500<br>16,250,000 | OLA, OTX | IA, TX, WI | 11–1–90, IT–1, Interruptible | ST91–3136–000, 11–1–90 |
| CP91–589–000 (12–6–90) | Williams Gas Marketing Co. | 100,000<br>75,000<br>36,500,000 | IA, KS, MN, NM, NE, OK, SD, TX, WI | IA, IL, KS, MI, MN, NE, OK, SD, TX, WI | 11–1–90, IT–1, Interruptible | ST91–4265–000, 11–10–90 |
| CP91–590–000 (12–6–90) | Mobil Natural Gas, Inc. | 100,000<br>75,000<br>36,500,000 | IA, KS, MN, NE, NM, OK, SD, TX, WI | KS, TX | 11–1–90, IT–1, Interruptible | ST91–4031–000, 11–1–90 |

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

**4. El Paso Natural Gas Co., El Paso Natural Gas Co., El Paso Natural Gas Co. El Paso Natural Gas Co.**

[Docket Nos. CP91–562–000, CP91–563–000, CP91–565–000, and CP91–566–000]

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–328–000 and Docket No. CP88–433–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91–562–000 (12–04–90) | Enron Gas Marketing, Inc. | 51,500<br>51,500<br>18,797,500 | Various | AZ, NM, TX | 9–24–90, T–1, Interruptible | ST91–3565, 11–1–90 |
| CP91–563–000 (12–04–90) | Wallace Oil & Gas, Inc. | 1,545<br>1,545<br>563,925 | OK | OK | 9–18–90, T–1, Interruptible | ST91–3153, 10–16–90 |
| CP91–565–000 (12–04–90) | Oryx Gas Marketing Limited Partnership (Producer) | 103,000<br>51,500<br>18,797,500 | Various | CO, NM, OK, TX | 9–24–90, T–1, Interruptible | ST91–3150, 10–13–90 |
| CP91–566–000 (12–04–90) | Phillips 66 Natural Gas Co. (Marketer) | 10,223<br>10,223<br>3,731,395 | NM, TX | NM, TX | 9–5–90, T–1, Interruptible | ST91–3152 11–1–90 |

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**5. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP91-553-000]

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-328-000 and Docket No. CP88-433-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-552-000 (12-03-90) | Fina Oil and Chemical Co. | 1,010,000<br>30,000<br>10,950,000 | Various | Various | 8-24-90, IT, Interruptible. | ST91-2760, 11-5-90 |

**6. Transcontinental Gas Pipe Line Corp.**

[Docket No. CP91-569-000]

Take notice that on December 4, 1990, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-569-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities in Offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that in recent years, it has been experiencing a decline in wellhead gas deliverability directly connected to its pipeline system in its traditional production supply area, particularly on the Southeast Louisiana Lateral. Transco further states that several new fields within economic reach of the existing Southeast Louisiana Lateral are currently being developed. Transco, therefore, requests authorization to construct and operate approximately 73 miles of pipeline that would extend its Southeast Louisiana Lateral, Offshore Louisiana. Transco states that the facilities would be constructed in two phases.

It is stated that the proposed facilities would have a design capacity of 225 MMcf per day and a maximum capacity of 300 MMcf per day. Transco states that such facilities are required in order to increase Transco's capability to move additional gas supplies from the Offshore Louisiana area to Transco's existing pipeline system. Transco further states that the new facilities would be utilized to make available additional receipt points and gas supplies for transportation service to its shippers and to purchase system supply gas for resale. Transco maintains that gaining access to new reserves through construction of the Southeast Louisiana extension would prolong the useful life of the existing Southeast Louisiana Lateral by enhancing system supply availability from the Louisiana sector of the Gulf, where Transco is currently experiencing a decline in deliverability.

Transco estimates the cost of constructing the facilities to be $59,061,239, which would be financed initially through short-term loans and funds on hand. Permanent financing would be undertaken as part of Transco's overall long-term financing program at a later date.

*Comment date:* December 28, 1990, in accordance with Standard Paragraph F at the end of this notice.

**7. Northwest Pipeline Corp.**

[Docket No. CP91-553-000]

Take notice that on December 3, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP91-553-000 a request pursuant to §§ 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to change and abandon delivery points under its blanket certificate issued in Docket No. CP82-433 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest requests authorization to: (1) Add a new delivery point off Pacific Gas Transmission Company's (PGT) mainline near LaPine, Oregon for delivery of natural gas to Cascade Natural Gas Company (Cascade) under Northwest's Rate Schedules ODL-1 and SGS-1; (2) add the existing Madras and Redmond, Oregon sales delivery points on PGT's system as storage delivery points to Cascade under Northwest's Rate Schedule SGS-1; (3) abandon existing Rate Schedules ODL-1 and SGS-1 service for Cascade to the Cresent, Oregon delivery point on PGT's system; and (4) reallocate Northwest's maximum daily delivery obligations (MDDO) for Rate Schedule ODL-1 sales gas and maximum delivery quantities (MDQ) for Rate Schedule SGS-1 storage gas among various delivery points to Cascade located on PGT's system.

Northwest states that pursuant to a letter agreement with PGT, dated June 12, 1990, Northwest agreed to reimburse PGT for the total cost of about $111,970 associated with the construction of the PGT's new LaPine Meter Station. Northwest further states that Cascade has agreed to reimburse Northwest for the payments made to PGT for the LaPine Meter Station.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**8. Columbia Gas Transmission Corp.**

[Docket Nos. CP91-546-000,[5] CP91-547-000, CP91-548-000, CP91-549-000, CP91-550-000, and CP91-551-000]

Take notice that on November 30, 1990, Columbia Gas Transmission Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the NGA, all as more fully set forth in the requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.



| Docket No. (date filed) | Applicant | Shipper name | Peak day,[1] avg. annual | Points of— Receipt | Points of— Delivery | Start up date; rate schedule | Related[2] dockets |
|---|---|---|---|---|---|---|---|
| CP91-546-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Anue, S.E., Charleston, WV 25314. | Unifield Natural Gas Group, Limited Partnership. | 5,000<br>4,000<br>1,825,000 | KY, OH, PA, WV | OH | 9-25-90, ITS | CP86-240-000, ST91-1447-000 |
| CP91-547-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, WV 25314. | NGC Transportation, Inc. | 7,000<br>5,800<br>2,555,000 | WV | PA | 10-2-90 FTS | CP86-240-000, ST91-1446-000 |
| CP91-548-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, WV 25314. | Tex/Con Gas Marketing Co. | 100,000<br>80,000<br>36,500,000 | KY, OH, PA, WV, MD, VA, NJ | AL, NC, NJ, NY, GA, SC, DC, DE, PA, OH, CT, VA, WV, MD | 10-3-90, ITS | CP86-240-000, ST91-2734-000 |
| CP91-549-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, WV 25314. | PSI, Inc | 2,150<br>1,720<br>784,750 | OH | OH | 10-1-90, FTS | CP86-240-000, ST91-1445-000 |
| CP91-550-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, WV 25314. | Gulf Ohio Corp | 210<br>168<br>76,650 | WV | OH | 10-16-90, FTS | CP86-240-000, ST91-1444-000 |
| CP91-551-000 (11-30-90) | Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, S.E., Charleston, WV 25314. | Gas Marketing, Inc. | 300<br>240<br>109,500 | KY, WV, OH | WV, OH | 10-2-90, ITS | CP86-240-000, ST91-1441-000 |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

**9. Northern Natural Gas Co., Division of Enron Corp., Stingray Pipeline Co., Williams Natural Gas Co.**

[Docket Nos. CP91-575-000, CP91-582-000, and CP91-585-000]

Take notice that Applicants filed prior notice requests in the above-referenced dockets with the Commission pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[6]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the initiation service dates; and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in appendix A. Applicants' addresses and transportation blanket certificates are shown in appendix B.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

APPENDIX A

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points[1] | Delivery points | Contract date, rate schedule, service type | Related Docket, start up date |
|---|---|---|---|---|---|---|
| CP91-575-000 (12-5-90) | American Central Gas Companies, Inc. (Marketer). | 200,000<br>150,000<br>73,000,000 | IA, KS,<br>MN, NE,<br>NM, OK,<br>SD, TX,<br>WI | IA, IL,<br>KS, MI,<br>MN, NE,<br>NM, OK,<br>SD, TX,<br>WI | 10-13-90, IT-1, Interruptible. | ST91-1711, 10-13-90 |
| CP91-582-000 (12-5-90) | Trans Marketing Houston, Inc. (Marketer). | 250,000<br>100,000<br>36,500,000 | LA, OLA,<br>OTX | LA, OTX | 09-18-89, IT-1, Interruptible. ST91-2708, 10-3-90 | |
| CP91-585-000 (12-5-90) | Associated Natural Gas, Inc. (Marketer). | [2] 110<br>110<br>40,150 | CO, KS,<br>MO, OK,<br>TX, WY | MO | 10-1-90, FTS, Firm | ST91-2927 10-1-90 |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Dekatherms.

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APPENDIX B

| Applicants' addresses | Blanket dockets |
|---|---|
| Northern Natural Gas Co., Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, TX 77251-1188. | CP86-435-000 |
| Stingray Pipeline Co., P.O. Box 1642, Houston, TX 77251-1642. | RP89-70-000[4] |
| Williams Natural Gas Co., P.O. Box 3288, Tulsa, OK 74101. | CP88-631-000 |

[4] Order No. 509 issued Stingray a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000.

**10. Tennessee Gas Pipeline Co.**

[Docket Nos. CP91-559-000 and CP91-560-000]

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

[7] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dt | Receipt[1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-559-000 (12-4-90) | Tejas Power Corporation (Marketer). | 35,000<br>35,000<br>12,775,000 | TX | LA | FT-A, Firm | ST91-3975, 10-1-90. |
| CP91-560-000 (12-4-90) | Enron Gas Marketing Company (Marketer). | 30,000<br>30,000<br>10,950,000 | TX | LA | FT-A, Firm | ST91-3804, 9-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

**11. Columbia Gulf Transmission Co.**

[Docket No. CP91-539-000]

Take notice that on November 30, 1990, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP91-539-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting an order permitting and approving abandonment of a transportation service for Sea Robin Pipeline Company (Sea Robin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that by Commission Order issued August 5, 1977 in Docket No. CP77-328-000, as amended by Commission Orders issued October 11, 1979 and November 4, 1983, Columbia Gulf was authorized to transport for Sea Robin, on a contract demand basis, 15,000 Mcf per day of Sea Robin's natural gas volumes from West Cameron Blocks 609 and 617, Offshore Louisiana, to a point near Egan, Louisiana.

Columbia Gulf states that its request for authority to abandon this transportation service is in response to a letter from Sea Robin cancelling the agreement under which the gas is transported, in accordance with the terms contained therein effective November 28, 1990.

*Comment date:* December 28, 1990, in accordance with Standard Paragraph F at the end of the notice.

**12. Superior Offshore Pipeline Co., U-T Offshore System, Midwestern Gas Transmission Co., Viking Gas Transmission Co.**

[Docket Nos. CP91-555-000, CP91-556-000, CP91-557-000, CP91-558-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt[1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-555-000 (11-30-90) | Kerr-McGee Corporation | 42,000<br>42,000<br>[3] 5,040,000 | OLA | LA | 10-25-90, T-1, Firm. | ST91-2711-000, 10-25-90. |
| CP91-556-000 (12-3-90) | Santa Fe International Corp. (Producer). | 135,000<br>135,000<br>[3] 49,275,000 | OLA | LA | 7-1-90, IT, Interruptible. | ST91-2922-000, 10-16-90. |
| CP91-557-000 (12-4-90) | Stellar Gas Company (Marketer). | 30,000<br>30,000<br>10,950,000 | IL, IN, TN, KY | IL, IN, KY | 10-22-90, IT, Interruptible. | ST91-3796-000, 11-1-90. |



| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Dth | Receipt[1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-558-000 (12-4-90) | U.S. Gas Marketing, Inc. (Marketer). | 50,000<br>50,000<br>18,250,000 | WI, MN, ND | WI, MN, ND | 10-10-90, IT-2, Interruptible. | ST91-4221-000, 10-20-90. |

[1] Offshore Louisiana is shown as OLA.
[2] SOPCO's quantities are in MMBtu.
[3] U-TOS' quantities are in Mcf.

| Applicant's address | Blanket docket |
|---|---|
| Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252. | CP90-174-000 |
| Superior Offshore Pipeline Co., 12450 Greenspoint Drive, Houston, Texas 77060. | CP86-367-000 |
| U-T Offshore System, P.O. Box 1396, Houston, Texas 77251. | RP89-99-000[4] |
| Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252. | CP90-273-000 |

[4] Order No. 509 issued U-TOS a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000.

**13. Panhandle Eastern Pipe Line Co.**

[Docket No. CP91-528-000]

Take notice that on November 29, 1990, Panhandle Eastern Pile Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed a request with the Commission in Docket No. CP91-528-000, pursuant to § 157.205 of the Commission's Regulations, for authorization to add an existing delivery point to Central Illinois Public Service Company's (CIPSCO) sales service agreement and to reassign volumes on Illinois Power Company's (Illinois Power) sales service agreement under the blanket certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act (NGA), all as more fully set forth in the request which is open to public inspection.

Panhandle proposes to add the existing Bourbon delivery meter to CIPSCO's sales service agreement dated October 27, 1990. Panhandle also requests the reassignment of volumes to Illinois Power's Decatur, Elmwood-Galesburg, Mt. Zion, and Savoy delivery points. It is stated that no increase in volumes is proposed, and that the aggregate volumes delivered on a single day would not exceed 150,000 Mcf for CIPSCO and 115,000 Mcf for Illinois Power.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**14. United Gas Pipe Line Co.**

[Docket No. CP91-533-000]

Take notice that on November 29, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-533-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Louisiana State Gas Corporation, an intrastate pipeline, under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that, pursuant to an agreement dated January 24, 1990, under its Rate Schedule ITS, it proposes to transport up to 39,655 MMBtu per day equivalent of natural gas. United indicates that the gas would be transported from Mississippi, and las, and would be redelivered in Louisiana. United further indicates that it would transport 39,655 MMBtu on an average day and 14,474,075 MMBtu annually.

United advises that service under § 284.223(a) commenced October 8, 1990, as reported in Docket No. ST91-2859.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**15. High Island Offshore System, High Island Offshore System, High Island Offshore System, Columbia Gulf Transmission Co.**

[Docket Nos. CP91-535-000, CP91-536-000, CP91-537-000, and CP91-538-000]

Take notice that High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243, and Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP88-62-000 and in Docket No. CP86-238-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

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| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual [2] | Receipt [1] points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-535-000 (11-30-90) | Sonat Marketing Company (Marketer). | 39,000<br>39,000<br>14,235,000 | OTX, OLA | OTX, OLA | 4-1-90, IT, Interruptible. | ST91-860, 10-9-90. |
| CP91-536-000 (11-30-90) | Pennzoil Gas Marketing Company (Marketer). | 102,400<br>102,400<br>37,376,000 | OTX, OLA | OTX, OLA | 4-1-90, IT, Interruptible. | ST91-858, 10-5-90. |
| CP91-537-000 (11-30-90) | V.H.C. Gas Systems, L.P. (Marketer). | 568,950<br>568,950<br>208,936,750 | OTX, OLA | OTX, OLA | 4-1-90, IT, Interruptible. | ST91-857, 10-5-90. |
| CP91-538-000 (11-30-90) | Mobil Natural Gas Inc. (Producer). | 30,000<br>10,000<br>3,650,000 [3] | OLA | LA | 8-24-90, ITS-2, Interruptible. | ST91-857, 9-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] HIOS uses Mcf and Columbia Gulf uses MMBtu as the unit of measurement for volumes of natural gas.
[3] Columbia states that this is the annual volume based on the average day figure and that the annual volume based on the peak day figure is 10,959,000 MMbtu.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**
*Secretary.*

[FR Doc. 90-29411 Filed 12-14-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. RP90-12-006 and CP89-1554-005]**

**Colorado Interstate Gas Co.; Tariff Filing**

December 10, 1990.

Take Notice that on December 6, 1990, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its Original Volume No. 3:

Original Volume No. 3 ("Base" Sheets)
Substitute Original Sheet No. 97A
Substitute Original Sheet No. 97B
First Revised Sheet No. 116
Original Sheet No. 117
Original Volume No. 3 ("Alternate" Sheets) [1]
Second Revised Sheet No. 97B
First Revised Sheet No. 97C
First Revised Sheet No. 116 [2]
Original Sheet No. 117 [2]

CIG states that the purpose of this filing is to comply with Ordering Paragraph (B) of the Commission's November 23, 1990, order in Docket Nos. RP90-12-005 and CP89-1554-004 requiring CIG to file tariff sheets within 15 days detailing the information it will provide on its electronic bulletin board regarding volumes and rates applicable to gas in the "waiting queue" awaiting service.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 90-29420 Filed 12-14-90; 8:45 am]
BILLING CODE 6717-01-M

[1] The "Alternate" sheets listed are built upon sheets currently pending Commission approval in Docket No. RP91-34-000.

[2] These sheets are included with both "Base" and "Alternate" sheets and will be required regardless of which set of Volume No. 3 sheets are finally accepted and made effective.



**[Docket No. RP91-41-000]**

**Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 10, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on December 6, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of December 17, 1990:

Four Revised Sheet Nos. 30A01-30A05
Original Sheet Nos. 30A06-30A12
Fifth Revised Sheet No. 30B01
First Revised Sheet No. 173
First Revised Sheet No. 174

Columbia states that the foregoing tariff sheets are being filed pursuant to Order No. 528 (i) To place tariff sheets into effect which establish the general procedures pursuant to Order No. 528 through which Columbia will recover from its customers the take-or-pay and contract reformation cost fixed charges which Columbia's pipeline suppliers bill to Columbia in accordance with Federal Energy Regulatory Commission orders on individual filings made or to be made by such suppliers; and (ii) to place tariff sheets into effect to flow through Transcontinental Gas Pipe Line Corporation's Order No. 500 billings to Columbia.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions and parties listed on the official service list in Columbia's various Order No. 500 flow through proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Captiol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 90-29412 Filed 12-14-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. TQ91-5-6-000]**

**Granite State Gas Transmission, Inc.; Proposed Changes in Rates**

December 10, 1990.

Take notice that on December 5, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 filed Third Revised First Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness of December 5, 1990.

According to the Granite State, this out-of-cycle purchased gas adjustment is necessary to reflect increases in its projected cost of gas purchases not reflected in its current rates. Granite State states that, since its last purchased gas cost adjustment in Docket No. TQ91-4-4-000, Tennessee Gas Pipeline Company (Tennesseee) filed an out-of-cycle purchased gas cost adjustment in Docket No. TQ91-2-9-000 for effectiveness on December 1, 1990. According to Granite State, Tennessee is Granite State's largest supplier of firm gas supplies during the winter season. Granite State further states its costs for gas purchased from Algonquin Gas Transmission Company and its projected costs for spot market purchases have also increased above the levels reflected in its current rates. It is stated that this out-of-cycle purchased gas cost adjustment is necessary to avoid undercollection in purchased gas costs.

According to Granite State the proposed rate changes are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 17, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**
*Acting Secretary.*

[FR Doc. 90-29419 Filed 12-14-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. RP91-45-000]**

**Natural Gas Pipeline Company of America; Change in FERC Gas Tariff**

December 10, 1990.

Take notice that on December 7, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing the tariff sheets listed below to be part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective January 1, 1991:

Second Revised Sheet No. 25
Sixth Revised Sheet No. 26
Second Revised Sheet Nos. 28 and 29
First Revised Sheet No. 32

Natural states that these sheets are being submitted to incorporate in Natural's Rate Schedule S-1 the definition of a Daily Withdrawal Maximum (DWM) for Rate Schedule S-1 customers. Natural states that the DWM would determine the peak amount of gas a Rate Schedule S-1 customer or buyer may withdraw from service, an amount which may vary by month from a high of 105% to a lower level set forth in the service agreement between Natural and the buyers of its Rate Schedule S-1 storage service (Section 8 of Natural's existing Rate Schedule S-1 permits deliveries in excess of the customer's or buyer's demand withdrawal quantity, subject to certain conditions). Natural further states that the purpose and effect of this change is to modify the profile of permitted withdrawals under Rate Schedule S-1 to mirror more closely its actual customer needs, but without changing the overall dedication to Rate Schedule S-1 service of the storage capacity or withdrawal capability of Natural's reservoirs. Natural also states that it is making this revision to its Rate Schedule S-1 as the result of the overall renegotiation of all of its service agreements.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective January 1, 1991.

Natural states that a copy of its filing is being mailed to Natural's jurisdictional sales customers and interested State commissions.

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Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before December 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parites to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29418 Filed 12-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-40-000]

## Raton Gas Transmission Co.; Filing of Quarterly Purchased Gas Adjustment

December 10, 1990.

Raton Gas Transmission Company (Raton) on December 7, 1990, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to implement its quarterly purchased gas adjustment under the provisions of Order Nos. 483 and 483A. The proposed tariff sheet is to be effective January 1, 1991.

Raton states that the revised tariff sheet reflects a Demand Rate increase of 5¢ per MCF and a Commodity Rate increase of 2.71¢ due to Colorado Interstate Gas Company (CIG) PGA filing in Docket No. TQ 91-1-32 filed on November 30, 1990 to become effective on January 1, 1991.

Raton states that copies of this filing have been served on Raton's two customers and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1988)). All such motions or protests should be filed on or before December 18, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29413 Filed 12-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-36-008 and CP90-273-005]

## Viking Gas Transmission Co.; Tariff Filing

December 10, 1990.

Take notice that on December 6, 1990, Viking Gas Transmission Company (Viking) filed its corrected Fourth Revised Sheet No. 11 to Original Volume No. 1 of its FERC Gas Tariff, to be effective November 1, 1990. Viking states that the purpose of this filing is to correct an inadvertent pagination error.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29422 Filed 12-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-021]

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 10, 1990.

Take notice that Williams Natural Gas Company (WNG) on December 6, 1990, tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

*Effective December 1, 1989*

Fourth Revised Third Revised Sheet No. 30
Substitute Original Sheet No. 30A
Second Substitute Fourth Revised Sheet No. 31

First Revised Volume No. 1

*Effective January 1, 1991*

First Revised Sheet Nos. 116-122

WNG states that this filing is being made in compliance with the Commission's November 21, 1990 Order in Docket No. RP89-183-019 directing WNG to refile its receipt point flexibility provisions for shippers under Rate Schedule FTS.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Regulations. All such protests should be filed on or before December 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29421 Filed 12-14-90; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 3820-4]

## Renewal for the Chesapeake Executive Council

The U.S. Environmental Protection Agency announces the renewal for the Chesapeake Executive Council following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for two years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.



FOR FURTHER INFORMATION CONTACT:
Harry Wells, EPA Chesapeake Bay Liaison Office, 410 Severn Avenue, Suite 109, Annapolis, Maryland 21403, 301-267-0061.

Dated: December 6, 1990.

Charles S. Spooner,

*Director Chesapeake Bay Program.*

[FR Doc. 90-29463 Filed 12-14-90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-011033-002.

*Title:* Second Amendment to Nippon Yusen Kaisha, Ltd. and Port of Seattle Terminal 37 Lease.

*Parties:*

Port of Seattle,
Nippon Yusen Kaisha.

*Synopsis:* The Agreement adjusts the premises and rental, pursuant to the renegotiation provisions of the basic agreement.

*Agreement No.:* 224-200429-001.

*Title:* First Amendment to Stevedoring Services of America and Port of Seattle Terminal 42 Lease.

*Parties:*

Port of Seattle,
Stevedoring Services of America ("SSA").

*Synopsis:* The Agreement provides that SSA may assign its interest in the basic agreement to Hyundai Merchant Marine Company at some future date.

By Order of the Federal Maritime Commission.

Dated: December 11, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29424 Filed 12-14-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

December 11, 1990

### Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

*Report title:* Applications for Membership in the Federal Reserve System.

*Agency form number:* FR 2063, 2063A-2063E.

*OMB Docket number: 7100-0046.*

*Frequency:* On occasion.

*Reporters:* Commercial banks and certain mutual savings banks.

*Annual reporting hours:* 1,388.

*Estimated average hours per response:* 37.5.

*Number of respondents:* 37.

Small businesses are not affected.

*General description of report:* This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The revisions would standardize the format of certain information and reflect reduced reporting requirements resulting from amendments to the Change in Bank Control Act.

This information collection is authorized by law (12 U.S.C. 321-328). Parts may be given confidential treatment at applicant's request (5 U.S.C. 552(b)(4)).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Monthly Survey of Eligibility Bankers Acceptances.
*Agency form number:* FR 2006.
*OMB Docket number:* 7100-0065.
*Frequency:* Monthly.
*Reporters:* U.S. commercial banks, U.S. branches and agencies of foreign banks and edge corporations.
*Annual reporting hours:* 2570.
*Estimated average hours per response:* 2.1.
*Number of respondents:* 1.2.
Small businesses are not affected.
*General description of report:*
This information collection is voluntary (12 U.S.C. 248(a), 625, and 3105(b)) and is given confidential treatment (5 U.S.C. § 552(b) (4) and (8)).
This report provides timely and detailed information on eligible dollar acceptances traded in the United States. The data are used for constructing a measure of short-and intermediate-term business credit and are relied upon to provide information to the Federal Reserve's trading desk.

2. *Report title:* Survey to Obtain Information on the Relevant Market in Individual Merger Cases.
*Agency form number:* FR 2060.
*OMB Docket number: 7100-0232.*
*Frequency:* On occasion.
*Reporters:* Small businesses and consumers.
*Annual reporting hours:* 55.
*Estimated average hours per response:* 10 minutes for small businesses, 6 minutes for consumers.
*Number of respondents:* 25 small businesses and 50 consumers per survey.
Small businesses are affected.
*General description of report:* This information collection is voluntary (12 U.S.C. 1828(c)) and is given confidential treatment (5 U.S.C. 552(b)(4) & (b)(6)).
This telephone survey is designed to determine from what sources small businesses and consumers obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

3. *Report title:* Report by Banks Proposing to Amortize Losses on Qualified Agricultural Loans.
*Agency form number:* FR 4020.
*OMB Docket number:* 7100-0231.
*Frequency:* On occasion for initial applications, annually for participating banks.
*Reporters:* State member banks.
*Annual Reporting hours:* 25.
*Estimated average hours per response:* 15 for initial applications, 2 for participating banks.

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*Number of respondents:* 4 currently, with 1 initial application expected. Small businesses are affected.

*General description of report:* This information collection is voluntary (12 U.S.C. 321 et seq.), and individual respondent data may be given confidential treatment (5 U.S.C. 552(b)(4) & (b)(6)).

The report documents an applicant state member bank's eligibility to amortize losses on qualified agricultural loans under the Competitive Equality Banking Act of 1987 and provides information needed by the Federal Reserve to fulfill its supervisory responsibilities in establishing the eligibility of the bank and in monitoring the bank's compliance with the conditions of the program.

4. *Report title:* Transfer Agent Registration and Amendment Form.
*Agency form number:* FR TA-1.
*OMB Docket number:* 7100-0069.
*Frequency:* On occasion.
*Reporters:* State member banks, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies.
*Annual reporting hours:* 23.
*Estimated average hours per response:* 1.25 for initial registrations, 10 minutes for amendments.
*Number of respondents:* 16 filing initial registrations and 18 filing amendments.
Small businesses are not affected.
*General description of report:* This information collection is mandatory (15 U.S.C. 78q-1(c)(1) & (2) and is not given confidential treatment.

This interagency form fulfills the statutory registration and amendment requirements for entities acting as transfer agents for securities registered under section 12 of the Securities Exchange Act of 1934. Such entities must register with the appropriate regulatory agency prior to performing the functions of a transfer agent.

5. *Report title:* Reports Related to Securities of State Member Banks as Required by Regulation H.
*Agency form number:* N.A.
*OMB Docket number:* 7100-0091.
*Frequency:* On occasion, quarterly, and annually.
*Reporters:* State member banks with more than 500 shareholders and more than $5 million in total assets.
*Annual reporting hours:* 7,324.
*Estimated average hours per response:* 8.75.
*Number of respondents:* 35.
Small businesses are not affected.
*General description of report:* This information collection is mandatory (15 U.S.C. 78(l)) and is not given confidential treatment.

Since December 1987 state member banks that meet the shareholder and total asset criteria have been required pursuant to Regulation H to file the same securities forms and reports that bank holding companies and non-bank entities use when they file directly with the Securities and Exchange Commission. Some examples of such reports are Form 10-Q quarterly reports, Form 10-K annual reports, and event-generated Form 3 and Form 4 reports.

Proposal to approve under OMB delegated authority the discontinuance of the following report:
*Report title:* Monthly Report of International Banking Facility (IBF) Accounts.
*Agency form number:* FR 2072.
*OMB Docket number:* 7100-0156.
*Frequency:* Monthly.
*Reporters:* Financial institutions.
*Annual reporting hours:* 1,167.
*Estimated average hours per response:* 2.3.
*Number of respondents:* 43.
Small businesses are not affected.
*General description of report:* This information collection is required by law (12 U.S.C. 248(a), 602, 625, and 3105(b). Individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects data on assets and liabilities of International Banking Facility (IBF) accounts. The Board no longer needs the data from this report to monitor the activities of IBFs or for interpretation of the monetary and credit aggregates because the data are available from another source.

Board of Governors of the Federal Reserve System, December 11, 1990.
**William W. Wiles,**
*Secretary of the Board.*
[FR Doc. 90-29434 Filed 12-14-90; 8:45 am]
BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

**[File No. 892 3212]**

**Lewis Galoob Toys, Inc. and Towne, Silverstein, Rotter, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.
**ACTION:** Proposed Consent Agreements.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the consent agreements, accepted subject to final Commission approval, would prohibit, among other things, a San Francisco, CA, based toy company ("Galoob") and a New York City based advertiser ("TSR") from making deceptive advertising claims in the future. In addition, Galoob would be prohibited from making misrepresentations, as to whether its toys must be purchased separately, or the toys' assembly requirements, in the labelling, packaging, sale or distribution, as well as the advertising, of its toys.

**DATES:** Comments must be received on or before February 15, 1991.

**ADDRESSES:** comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston, FTC/S-4002, Washington, DC 20580. (202) 326-3153.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Lewis Galoob Toys, Inc., a Corporation; Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Lewis Galoob Toys, Inc., ("Galoob"), a corporation, hereinafter sometimes referred to as proposed respondent and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated.

*It is hereby agreed* by a between counsel for the Federal Trade Commission and Galoob, by its duly authorized officer and its attorney, that:

1. Proposed respondent Galoob is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 500 Forbes Boulevard, in the City of San Francisco, State of California.



2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:
(a) Any further procedural steps; and
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
(d) All rights under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

For purposes of this order the required disclosures shall conform to the following requirements: (a) In television advertisements, a legible superscript in a manner to ensure clarity and prominence with a simultaneous voice-over recitation; except that any advertisement which, in view of its content and placement, is directed to adults need not contain a simultaneous voice-over recitation; (b) in printed advertisements and promotional materials, a disclosure printed in a typeface and color that are clear and prominent; (c) in radio advertisements, a statement included in a manner to ensure clarity and prominence. Any disclosure required by this order shall be in language understandable to children unless, in view of its content and placement, the advertisement is directed to adults. For purposes of this order adults are defined as individuals age thirteen (13) and older.

*I*

*It is ordered* That respondent Lewis Galoob Toys, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from depicting or describing in any advertisement or other promotional material two or more non-identical toys that are not available for purchase together as a set, unless respondent clearly and prominently discloses that the toys must be purchased separately.

*II*

*It is further ordered* That respondent Lewis Galoob Toys, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, or distribution of any toy that requires significant assembly prior to use in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from depicting or otherwise representing such toy as fully assembled unless respondent clearly and prominently discloses on the packaging that the toy must be assembled before it is ready for use.

*III*

*It is further ordered* that respondent Lewis Galoob Toys, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, that any such product can move by itself without human assistance, or any other movement capability, or the need for assembly; provided, however, that nothing in this order shall be deemed to preclude the use of stop-action photography in television commercials so long as the advertisement as a whole represents the toy in a non-deceptive manner, such as but not limited to, by means of a clear and prominent depiction of hands-on play showing the method of operation of the toy.

*IV*

*It is further ordered* That respondent Lewis Galoob Toys, Inc., and its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating any representation covered by this order;

B. All film footage used in connection with any advertisement that contains any representation covered by this order; and

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C. Any toy as well as the packaging for any toy involved in any representation covered by this order.

*V*

*It is further ordered* That respondent Lewis Galoob Toys, Inc., shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

*VI*

*It is further ordered* That respondent Lewis Galoob Toys, Inc. shall notify the Commission at least thirty (30) days prior to any proposed change such as the dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*VII*

*It is further ordered* That respondent Lewis Galoob Toys, Inc., shall, within sixty (60) days after service upon it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this order.

**Towne, Silverstein, Rotter, Inc., a Corporation; Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Towne, Silverstein, Rotter, Inc., ("TSR"), a corporation ("TSR"), hereinafter sometimes referred to as proposed respondent and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated.

*It is hereby agreed* by a between counsel for the Federal Trade Commission and TSR, by its duly authorized officer and its attorney, that:

1. Proposed respondent TSR is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 411 Lafayette Street, in the City of New York, State of New York.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps; and

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

For purposes of this order the required disclosures shall conform to the following requirements: (a) In television advertisements, a legible superscript in a manner to ensure clarity and prominence with a simultaneous voice-over recitation; except that any advertisement which, in view of its content and placement, is directed to adults need not contain a simultaneous voice-over recitation; (b) in printed advertisements and promotional materials, a disclosure printed in a typeface and color that are clear and prominent; (c) in radio advertisements, a statement included in a manner to ensure clarity and prominence. Any disclosure required by this order shall be in language understandable to children unless, in view of its content and placement, the advertisement is directed to adults. For purposes of this order adults are defined as individuals age thirteen (13) and older.

*I*

*It is ordered* That respondent Towne, Silverstein, Rotter, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from depicting or describing two or more non-identical toys that are not available for purchase together as a set, unless respondent clearly and prominently discloses that the toys must be purchased separately.

*II*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any toy manufactured or sold in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act by Lewis Galoob Toys, Inc., or its successors or assigns, that requires significant assembly prior to use, do forthwith cease and desist from depicting or otherwise representing such toy as fully assembled unless respondent has a reasonable basis to believe that there is a clear and prominent disclosure on the packaging that the toy must be assembled before it is ready for use.

*III*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., a corporation, its successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising of any toy in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or indirectly, that any such product moves by itself without human assistance or any other movement capability; provided, however, that nothing in this order shall be deemed to preclude the use of stop-action photography in television advertisements so long as the advertisement as a whole represents the toy in a non-deceptive manner, such as, but not limited to, by means of a clear and prominent depiction of hands-on play showing the method of operation of the toy.

*IV*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., and its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating any representation covered by this order;

B. All film footage used in connection with any advertisement that contains any representation covered by this order; and

C. Any toy as well as the packaging for any toy involved in any representation covered by this order.



*V*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., shall distribute a copy of this order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertising or other materials covered by this order and shall secure from each such person a signed statement acknowledging receipt of this order.

*VI*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., shall notify the Commission at least thirty (30) days prior to any proposed change such as the dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*VII*

*It is further ordered* That respondent Towne, Silverstein, Rotter, Inc., shall, within sixty (60) days after service on it of this order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the requirements of this order.

**Analysis of Proposed Consent Orders to Aid Public Comment**

The Federal Trade Commission has accepted consent agreements to proposed orders from Lewis Galoob Toys, Inc., (Galoob) and its advertising agency, Towne, Silverstein, Rotter, Inc., (TSR).

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the proposed orders.

The complaints against Galoob and TSR charge that the proposed respondents engaged in deceptive practices in the advertising the sale of various toys. The challenged practices fall into three general categories: Misrepresentations regarding toy performance and operation; Misrepresentations regarding the number of items purchasers receive when they buy the toy; and the failure to disclose the need for assembly of the toy.

Paragraphs Five and Six of the complaints concern proposed respondents' advertisements for the Bouncin' Kid Ballerina Kid doll. They allege that the ads represent that the Ballerina Kid doll can stand alone and twirl gracefully without human assistance, when in fact the doll cannot do so. Paragraphs Seven and Eight of the complaints concern proposed respondents' ads for the Xpanders Chopper/Assault Base toy. They allege that the ads falsely represent that the toy fires a missile that travels at a high speed for a considerable distance. Paragraphs Twelve and Thirteen of the complaints allege that the ads for Xpanders Chopper/Assault Base and for the Transport Chopper toy falsely claim that the rotors of these toy helicopters turn and move by themselves without human assistance.

Paragraphs Nine and Ten of the complaints allege that ads for Micro Machine playsets Transport Chopper, Aircraft Carrier and Air Cargo represent that the playsets include some or all of the toy cars and other accessory vehicles pictured in the ads, whereas the playsets do not include any accessory vehicles. The complaint against Galoob also alleges that the packaging for the playsets misrepresents that some or all of the pictured vehicles are sold with the playsets.

Paragraph Eleven of the complaints alleges that advertisements for Xpanders Chopper/Assault Base depict the toy as fully assembled and ready to use, but fail to disclose that significant assembly is required prior to use. The failure to disclose this fact, which is material to consumers in their purchase decisions, is alleged to be a deceptive practice.

The proposed orders against Galoob and TSR are substantially similar and are designed to prevent recurrence of the alleged violations. The order against Galoob prohibits certain misrepresentations in the advertising, labelling, packaging, sale or distribution of toys, while the order against TSR applies only to advertising.

Part I of the proposed orders prohibits proposed respondents from depicting two or more non-identical toys that are not available for purchase together as a set without clearly and prominently disclosing that the toys must be purchased separately. The order sets forth the requirements for a clear and prominent disclosure, depending on whether the ad is directed to a child or adult. All disclosures in ads directed to



children must be in language that is

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children must be in language that is understandable to children.

Part II of the orders addresses the assembly-required issue. Part II of the proposed Galoob order prohibits the depiction of a toy that requires significant assembly without a clear and prominent disclosure on the package that the toy must be assembled before it is ready for use. Part II of the order against TSR requires that TSR have a reasonable basis for believing that a disclosure about the need for assembly has been made on the packages of Galoob toys that require significant assembly.

Part III of the orders contains fencing-in provisions. Both orders prohibit any misrepresentations concerning the ability of a toy to move without human assistance or any other movement capability. In addition, Part III of the Galoob order prohibits misrepresentations about the need for assembly. Both orders contain a proviso permitting the use of stop-action photography in ads so long as the advertisement as a whole represents the toy in a non-deceptive manner, such as, but not limited to, by means of a clear and prominent depiction of hands-on play showing the operation of the toy.

The remainder of both proposed orders contains standard implementing provisions. Part IV requires the proposed respondents to maintain certain records for 3 years; Part V requires notice to relevant employees concerning the existence of the order; Part VI requires notice to the Commission of any corporate change affecting compliance obligations; and Part VII requires the filing of compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

Donald S. Clark,

*Secretary.*

[FR Doc. 90-29452 Filed 12-14-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9170]

## New England Motor Rate Bureau, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Modifying Order.

**SUMMARY:** This order reopens the proceeding and modifies the final order, that prohibits the respondent from agreeing to fix rates charged for interstate transportation in certain states, by deleting references to the state of Massachusetts, pursuant to the mandate of the First Circuit in the United States Court of Appeals.

**DATES:** Final Order issued August 18, 1989. Modifying Order issued November 5, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph Eckhaus, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

**SUPPLEMENTARY INFORMATION:** In the Matter of New England Motor Rate Bureau, Inc. The prohibited trade practices and/or corrective actions, as set forth at 54 FR 53187, remain unchanged.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

### Modified Order to Cease and Desist

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Andrew J. Strenio, Jr., and Deborah K. Owen.

Respondent New England Motor Rate Bureau ("NEMRB") having filed in the United States Court of Appeals for the First Circuit on October 11, 1989, a petition to review an order to cease and desist entered herein on August 18, 1989; the court of appeals having rendered its decision and judgment on July 20, 1990, affirming and enforcing the Commission's order with modifications; and the time in which to file a petition for certiorari having expired without either party having filed such a petition;

Now, therefore, it is hereby ordered, That the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the court of appeals to read as follows:

### Order

*I*

*It is ordered* That NEMRB, its successors and assigns, and its officers, agents, representatives, directors and employees directly or through any corporation, subsidiary, division or other device shall forthwith cease and desist from:

1. Entering into, adhering to, or maintaining, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy to fix, stabilize, raise, maintain, or otherwise interfere or tamper with the rates charged by carriers that compete for the intrastate transportation of property or related services, good or equipment within any of the states in which NEMRB operates.

2. Knowingly preparing, developing, disseminating, or filing a proposed or existing tariff provision that contains collective rates for the intrastate transportation of property or other related services, goods, or equipment.

3. Providing information to any carrier about rate changes ordered by any other carrier employing the publishing services of the respondent prior to the time at which such rate change becomes a matter of public record.

4. Inviting, coordinating, or providing a forum for (including by publication of an informational bulletin) any discussion or agreement between or among competing carriers concerning intrastate rates charged or proposed to be charged by carriers for the intrastate transportation of property or related services, goods, or equipment.

5. Suggesting, urging, encouraging, persuading, or influencing in any way members to charge, file, or adhere to any existing or proposed tariff provision that affects rates, or otherwise to charge or refrain from charging any particular price for any services rendered or goods or equipment provided.

6. Agreeing with any carrier to institute automatic changes to rates on file for that carrier.

Provided, however, that except as to the state of New Hampshire, nothing in this order shall prohibit NEMRB from jointly setting or adhering to rates charged for intrastate transportation of property in any state where such joint activity is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

*II*

*It is further ordered* That NEMRB shall, within six (6) months after service upon it of this order:

1. Take such action as may be necessary to effectuate cancellation and withdrawal of all tariffs and any supplements thereto on file with any state or commonwealth that it was involved in preparing, developing, or filing that establish rates for transportation of property or related services, goods or equipment by common carriers within such state or commonwealth.

2. Terminate all previously executed powers of attorney and rate and tariff service agreements, between it and any carrier utilizing its services, authorizing the publication and/or filing of intrastate collective rates within any state or commonwealth.

Provided, however, that except as to the state of New Hampshire, nothing in this order shall require NEMRB to cancel and withdraw tariff filings, powers of attorney, or rate and tariff service agreements in any state where joint setting of rates charged for intrastate transportation of property is engaged in pursuant to a policy, clearly articulated and affirmatively expressed by the state legislature, to displace competition with respect to those prices *and* where such joint activity is actively supervised by a state regulatory body.

*III*

*It is further ordered* That NEMRB shall within thirty (30) days after service upon it of this Order, mail or deliver a copy of this Order to each current member, and for a period of three (3) years from the date of service of this Order, to each new member within ten (10) days after the member's acceptance by NEMRB.

*IV*

*It is further ordered* That NEMRB notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergency of a successor corporation, or any other proposed change in the corporation which may affect compliance obligations arising out of the order.

*V*

*It is further ordered* That NEMRB shall file a written report within six (6) months after the date of service of this Order, and annually on the anniversary date of the original report for each of the five years thereafter, and at such other times as the Commission may require by written notice to respondent, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission.

Donald S. Clark,

*Secretary.*

[FR Doc. 90-29451 Filed 12-14-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3312]

## T&N PLC; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Manchester, England, manufacturer to divest within twelve months certain thinwall engine bearing assets and certain tri-metal heavywall engine bearing assets to a Commission-approved acquirer or acquirers; and if required by the acquirers, requires the respondent to supply certain input material to the acquirers for five years. If neither the respondent nor the trustee successfully divests either set of assets, the order requires the divestiture of J.P. Industries' McConnelsville, Ohio, facility, in addition to certain thinwall engine bearing assets.

**DATES:** Complaint and Order issued November 8, 1990.[1]

**FOR FURTHER INFORMATION CONTACT:** Allee A. Ramadhan, FTC/S–2105, Washington, DC 20580. (202) 326–2716.

**SUPPLEMENTARY INFORMATION:** On Friday, August 24, 1990, there was published in the **Federal Register**, 55 FR 34749, a proposed consent agreement with analysis In the Matter of T&N plc, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Section 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

*Secretary.*

[FR Doc. 90-29450 Filed 12-14-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, the Decision and Order, and the dissenting statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency For Toxic Substances and Disease Registry

[ATSDR-31]

## Availability of Final Versions of First 25 Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PH), Department of Health and Human Services (DHHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of all of the final versions of the toxicological profiles prepared by ATSDR on the first set of 25 Superfund priority substances.

The Comprehenive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99-499) requires that ATSDR compile a priority list of at least 100 hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL), and which are determined to pose the most significant potential threat to human health. The list identifying the first 100 hazardous substances was published in the **Federal Register** on April 17, 1987 (52 FR 12866), as required by CERCLA section 104(i)(2)(A). Section 104(i)(3) of CERCLA further requires that the Administrator of ATSDR prepare toxicological profiles for the hazardous substances included on the priority list.

Notice of the availability of the draft toxicological profiles on the first 25 priority substances for public review and comment was published in the **Federal Register** on October 15, 1987 (52 FR 38340), with notice that a 90-day public comment period would be provided for each profile, starting with the actual release date. Following the close of each comment period, chemical specific comments were addressed, and where appropriate, changes were incorporated into each profile. Generic comments were considered in revising the contractor guidance for subsequent sets of profiles. The public comments, the classification of and response to those comments, and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–2. This material in available for public inspection at ATSDR, Executive Park Drive, Building 33, Atlanta, Georgia, between 8 a.m. and 4:30 p.m. Monday through Friday, except legal holidays.

### Availability

This notice is to announce the availability of all of ATSDR's final toxicological profiles for the first 25 substances as mandated by CERCLA. Notice of the availability of 5 of the final toxicological profiles was published in the **Federal Register** on June 23, 1989 (54 FR 26417); a notice for an additional 5 was published in the **Federal Register** on December 1, 1989 (54 FR 49816). The following toxicological profiles are now available through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA

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22161, telephone (800) 336-4700 or (703) 487-4650. There is a charge for these profiles determined by NTIS. If you require further technical information, you may contact the Division of Toxicology, Toxicological Information Branch, ATSDR, telephone (404) 639-6043.

| Toxicological Profile | NTIS Order Number | CAS # |
|---|---|---|
| Aldrin/Dieldrin | PB/89/214514/AS | 60-57-1/309-00-2 |
| Arsenic | PB/89/185706/AS | 7440-38-2 |
| Benzene | PB/89/209484/AS | 71-43-2 |
| Benzo(a)anthracene | PB/90/247669/AS | 56-55-3 |
| Benzo(a)pyrene | PB/90/258245/AS | 50-32-8 |
| Benzo(b)fluoranthene | PB/90/247651/AS | 205-99-2 |
| Beryllium | PB/89/148223/AS | 7440-41-7 |
| Cadmium | PB/89/194476/AS | 7440-43-9 |
| Chloroform | PB/89/160360/AS | 67-66-3 |
| Chromium | PB/89/235865/AS | 7440-47-3 |
| Chrysene | PB/90/2477844/AS | 218-01-9 |
| Cyanide | PB/90/162059/AS | 57-12-5 |
| Dibenzo(a,h)anthracene | PB/90/247536/AS | 53-70-3 |
| 1,4-Dichlorobenzene | PB/89/160352/AS | 106-46-7 |
| Di(2-ethylhexyl)phthalate | PB/89/194484/AS | 117-81-7 |
| Heptachlor/Heptachlor epoxide | PB/89/194492/AS | 76-44-8/1024-57-3 |
| Lead | PB/90/257378/AS | 7439-92-1 |
| Methylene Chloride | PB/89/194468/AS | 75-09-2 |
| Nickel | PB/89/160378/AS | 7440-02-0 |
| N-Nitrosodiphenylamine | PB/89/154090/AS | 86-30-6 |
| Polychlorinated biphenyls (PCBs) | PB/89/225403/AS | |
| Aroclor-1260 | | 11096-82-5 |
| -1254 | | 11097-69-1 |
| -1248 | | 12672-29-6 |
| -1242 | | 53469-21-9 |
| -1232 | | 11141-16-5 |
| -1221 | | 11104-28-2 |
| -1016 | | 12674-11-2 |
| 2,3,7,8-Tetrachlorodibenzo-p-dioxin | PB/90/214522/AS | 1746-01-6 |
| Tetrachloroethylene | PB/90/247628/AS | 127-18-4 |
| Trichloroethylene | PB/90/127523/AS | 79-01-6 |
| Vinyl Chloride | PB/90/103870/AS | 75-01-4 |

Dated: December 10, 1990

**William L. Roper,**

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 90-29444 Filed 12-14-90; 8:45 am]

BILLING CODE 4160-70-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Proposed City of Santa Rosa PL 84-984 Loan Project, Santa Rosa, CA

**AGENCY:** Bureau of Reclamation (Reclamation), Interior.

**ACTION:** Notice of availability and notice of public hearings on Draft Environmental Impact Report/Draft Environmental Impact Statement, (DEIR/DEIS): INT DES 90-31.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Council of Environmental Quality Guidelines (40 CFR, part 1500), and section 21002 of the California Environmental Quality Act, Reclamation and the city of Santa Rosa have prepared a joint DEIR/DEIS. The city is in the process of applying for a Public Law 84-984 loan from Reclamation to finance construction of an irrigation distribution system and wetlands as part of a multipurpose wastewater reclamation and reuse project. A grant for wildlife enhancement is also being considered.

The purpose of the project are to provide: Irrigation for 7,500 acres of presently unirrigated land; enhancement of wildlife resources; and elimination of weather-dependent wastewater disposal. Its major features would include: Expansion of the city's existing tertiary wastewater treatment plant; installation of 6 miles of buried pipeline; construction of a 15,000-acre-foot reservoir, installation of a 32-mile pipeline irrigation distribution system; development of 670 acres of wetlands and upland habitat; and provision of tertiary treated water for enhancement of wildlife habitat.

A public hearing will be held to receive comments from interested organizations and individuals on the potential environmental impacts of the proposal.

**DATES:** A 60-day public review period commences with the publication of this notice. Within that review period, written comments on the DEIR/DEIS may be submitted to either the city of Santa Rosa or the Regional Director, Mid-Pacific Region, Bureau of Reclamation, at the addresses provided below.

A public hearing on the DEIR/DEIS will be held on the following date at the location indicated.

*Hearing:* January 15, 1991 at 2 p.m., Santa Rosa City Council Chambers, 100 Santa Rosa Avenue, Santa Rosa, CA 95402-1678.

**ADDRESSES:** Copies of the DEIR/DEIS may be requested at the following addresses:

Regional Director, Bureau of Reclamation (Code: MP-205), Mid-Pacific Region, 2800 Cottage Way, Sacramento, CA 95825-1898; or

Department of Community Development, City of Santa Rosa, 100 Santa Rosa Avenue, Santa Rosa, CA 95402-1678.

Copies of the DEIR/DEIS are available for inspection at the addresses above and at the following locations:

Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 18th and C Streets, NW., room 7456, Washington, DC 20240; telephone: (202) 208-4662.

Denver Office, Bureau of Reclamation, Library, Room 167, Building 67, Denver Federal Center, Denver, CO 80225; telephone: (303) 236-6963.



**Libraries**

California State University, 2000 Jed Smith Dr., Sacramento, CA 95819

Sacramento County Library, 536 Downtown Plaza, Sacramento, CA 95814

University of California, Water Resources Center, Berkeley Archives Collection, Berkeley, CA

Numerous local libraries in the immediate vicinity will receive copies for public review.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Richard Chelini, Regional Loan Engineer, Bureau of Reclamation (Code: MP-205), Mid-Pacific Region, telephone (916) 978-5002;

or

Ms. Marie Merdith, Associate Planner, Department of Community Development, city of Santa Rosa, telephone: (707) 576-5295.

**SUPPLEMENTARY INFORMATION:** The proposed project is located southwest of Santa Rosa, California, in the Americano Creek and Stemple Creek watersheds. The primary land use in these areas is dairy farming.

Tertiary treated wastewater would be pumped to the proposed reservoir and stored for use in irrigating 7,500 acres of land and for wetland development and riparian habitat enhancement. These improvements would be done in cooperation with the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Anyone interested in more information concerning this proposal or who has suggestions as to significant environmental issues should contact the people listed above.

Dated: December 7, 1990.

**Joe D. Hall,**

*Deputy Commissioner.*

[FR Doc. 90-29474 Filed 12-14-90; 8:45 am]

BILLING CODE 4310-09-M

### Change in Discount Rate for Water Resources Planning

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of change in discount rate for water resources planning.

**SUMMARY:** This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1991 is 8¾ percent.

**DATES:** This discount rate is to be used for the period October 1, 1990, through and including September 30, 1991.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kent Shuyler, Acting Chief, Economic Analysis Branch, U.S. Bureau of Reclamation, D-5440, Building 67, Denver Federal Center, Denver, CO 80225-0007. Telephone 303/236-6388.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8¾ percent for fiscal year 1991.

This rate has been computed in accordance with section 80(a), Public Law 93-251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 8.69 percent.

The rate of 8¾ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: December 7, 1990.

**Joe D. Hall,**

*Deputy Commissioner.*

[FR Doc. 90-29445 Filed 12-14-90; 8:45 am]

BILLING CODE 4310-09-M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

### Intent to Conduct a Public Scoping Meeting for Preparation of a Draft Environmental Impact Statement for Operations and Maintenance of the Lower Rio Grande Flood Control Project Hidalgo, Cameron, and Willacy Counties, TX

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of intent to conduct a public scoping meeting.

**SUMMARY:** The United States Section (U.S. Section) of the International Boundary and Water Commission (Commission) intends to conduct a public scoping meeting for preparation of a draft environmental impact statement (DEIS) for the operations and maintenance of the Lower Rio Grande Flood Control Project (LRGFCP) in Hidalgo, Cameron, and Willacy Counties, Texas.

**DATES:** The U.S. Section will conduct a public scoping meeting at the Hoblitzelle Auditorium at the Texas A&M University Research and Extension Center at 2415 East Highway 83, Weslaco, Texas, on January 8, 1991, at 7 p.m. CST.

**ADDRESSES:** All interested parties are invited to submit written comments and suggestions, for inclusion in the formal record, to the U.S. Section prior to, during, or after the public scoping meeting. Comments should be sent to Dr. Conrad, G. Keyes, Jr., Principal Engineer, Planning, U.S. Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C-310, El Paso, Texas 79902-1422. Telephone: 915/534-6703, FTS 570-6703.

**SUPPLEMENTARY INFORMATION:** On November 5, 1990, the U.S. Section of the Commission issued a notice in the **Federal Register** (55 FR 46176-46177) formally announcing plans to prepare the LRGFCP DEIS and invited public participation in the process. That notice indicated the scoping meeting was scheduled for January 29, 1991. The scoping meeting has been rescheduled for January 8, 1991, as announced by this notice.

The purpose of the scoping meeting is to bring interested agencies and parties together early in the process and seek their input prior to writing the LRGFCP DEIS. The meeting is for an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the U.S. Section operation and maintenance of the LRGFCP.

Dated: December 7, 1990.

**Suzette Zaboroski,**

*Staff Counsel.*

[FR Doc. 90-29427 Filed 12-14-90; 8:45 am]

BILLING CODE 4710-09-M

## INTERSTATE COMMERCE COMMISSION

### Agricultural Cooperative Notice to the Commission of Intent to Perform Interstate Transportation for Certain Nonmembers

Date: December 12, 1990.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form

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BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Agway Inc., 333 Butternut Drive, Dewitt, NY 13214
(2)
(3) Box 4933, Syracuse, NY 13221
(4) Margaret A. Vargo, Box 4853, Syracuse, NY 13221

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90-29453 Filed 12-14-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

**[Order No. 1456-90]**

### Changes to Repatriation Review Program For Mariel Cubans

**AGENCY:** Department of Justice.

**ACTION:** Public Notice.

**SUMMARY:** Notice is hereby given that the Attorney General, pursuant to his prosecutorial discretionary authority, has revised the Repatriation Review Program for Cubans who arrived in the United States during the 1980 Mariel Cuban boatlift. These revisions are minor modifications to the program. The purpose of this program has been to determine which of certain Mariel Cubans found to be excludable from the United States are to be returned to Cuba. This Notice is being published in order to give the public information on the Department's continuing activities with respect to the deportation of excludable Cuban boatlift participants.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Rex J. Ford, Associate Deputy Attorney General, Office of the Deputy Attorney General, Department of Justice, Room 4222, Washington, DC 20530. Telephone (202) 514-2707.

**SUPPLEMENTARY INFORMATION:** On December 28, 1987, a Notice was published in the **Federal Register** (52 FR 48884) which described the program established by Attorney General Edwin Meese III for the review of the cases of detained, excludable Mariel Cubans to determine which of these aliens are to be repatriated to Cuba. Attorney General Meese directed that this Repatriation Review Program, as well as a separate Departmental Parole Review Program, be supervised by the Associate Attorney General. As the result of experience gained in the day-to-day administration of the Programs, modifications to the repatriation review process were made pursuant to an additional Notice published on December 28, 1988 in the **Federal Register** (53 FR 52520). These modifications were made, in part, upon the determination that with only minor revisions to the repatriation review process the Department could save considerable resources and simultaneously eliminate potentially substantial delays in the release of certain detainees.

The Notice presented herein addresses the redelegation of the supervision of the Mariel Cuban review programs to the Deputy Attorney General's Office. In addition, the Department's continuing experience with the program indicates that the review of repatriation cases can be expedited and further resources conserved. Further, this Notice specifies by categories the groups of detainees to whom the Repatriation Review Process will extend henceforth, and provides a mechanism for bringing the program to a conclusion.

The modifications identified in this Notice will not affect any of the normal administrative and judicial remedies available to these individuals. Those remedies include a formal determination of excludability and opportunities for relief within the statutory framework of the Immigration and Nationality Act. The process includes review before an Immigration Judge, and, if appropriate appeals are pursued, review before the Board of Immigration Appeals, the United States District Courts, the United States Courts of Appeals, and the United States Supreme Court.

In keeping with the previously published Notices, the Department concludes that this revised Mariel Cuban Repatriation Review Program is not subject to notice and comment rulemaking under the Administrative Procedure Act because the program: (1) Is exempt as a "foreign affairs function of the United States," 5 U.S.C. 553(a)(1); (2) reflects a "general statement of policy," 5 U.S.C. 553(b)(A); (3) constitutes "rules of agency organization, procedure, or practice," 5 U.S.C. 553(b)(A); and (4) there is "good cause" why notice and comment would be "impracticable, unnecessary, or contrary to the public interest," 5 U.S.C. 553(b)(B).

The following modifications of the Departmental Mariel Cuban Repartriation Review Program are effective on the date the Notice is signed by the Attorney General, except for paragraph one below which was previously implemented.

1. In order to reflect the current assignment of oversight responsibility for this program, references to "the Associate Attorney General" in the Notice of December 28, 1988, are hereby changed to read "the Deputy Attorney General."

2. In an effort to bring the Repatriation Review Program to an orderly end, eligibility for future Departmental Repatriation Review will be limited as follows:

A Mariel Cuban detainee is eligible for review by a Departmental Repatriation Review Panel (hereinafter "panel") only if all of the following conditions are met: (1) The detainee is incarcerated on December 6, 1990, in federal custody by virtue of the Attorney General's civil immigration authority under the Immigration and Nationality Act; and (2) the detainee is among those the government of Cuba agreed in 1984 to accept back; and (3) the detainee has never elected in writing on Form I-809 to return to Cuba; and (4) the detainee has not escaped from Immigration custody on or after December 28, 1987; and (5) the detainee has not been paroled from Immigration detention subsequent to December 6, 1990.

The Deputy Attorney General shall further determine when the panels have completed or substantially completed the review of the cases of detainees eligible for Departmental Panel Review, and shall then bring the panel review process to a conclusion. In the event that there are any remaining cases of detainees eligible for Departmental Review after the panels have ceased functioning, the Deputy Attorney General, or his designee, shall decide those remaining cases and shall determine the procedures for any such review.

3. The review process is revised to eliminate the INS Questionnaire and case summary. For cases in which the detainee has previously been served a Notice of Intent to Repatriate, the Service may eliminate preparation of its case summary after the detainee has been given a DOJ questionnaire and written notice that no case summary will be prepared. The revised process will begin when the detainee is served with a DOJ Questionnaire, and a Notice that the government intends to repatriate him to Cuba. For cases commenced under earlier procedures, the revised process begins when the detainee is served with either an INS case summary, or a notice that no case summary will be prepared. The detainee will be given 30 days, if he desires, to prepare a written submission for consideration by a panel and to answer the questionnaire.

The Service may review any submission made by the detainee and respond thereto. Should the Service elect to make a response, a copy shall be provided to the detainee, who shall have 30 days in which to make a reply.

4. In order to permit greater flexibility in panel assignments, the requirement that a representative from the Community Relations Service, and the Civil Rights Division sit on every panel is changed as follows:

Each panel shall be composed of 3 members, and shall consist of the following: (1) The Deputy Attorney General, or his designee; and (2) an attorney from one of the Department's litigating divisions; and (3) the Assistant Attorney General for Civil Rights, or his designee, or the Director of the Community Relations Service, or his designee.

5. In the event a detainee has been granted parole by a panel, but has not been released, a panel may, preceded by appropriate notice to the detainee, reconsider the grant of parole and the question of repatriating the detainee to Cuba. The procedures for any such reconsideration shall be specified by the Deputy Attorney General, who may require the Service to explain what efforts have been made to obtain sponsorship for the detainee, and why the detainee has not been released from custody. Should the question of reconsidering any case arise after the Repatriation Panels have ceased reviewing cases, as specified in paragraph 2, above, the Deputy Attorney General, or his designee, shall decide the case.

Dated: December 6, 1990.

**William P. Barr,**

*Acting Attorney General.*

[FR Doc. 90-29387 Filed 12-14-90; 8:45 am]

BILLING CODE 4410-01-M



## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction or records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303(a).

**DATES:** Request for copies must be received in writing on or before January 31, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction or records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes in to account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

### Schedules Pending

1. Department of the Air Force (N1-AFU-90-52). Routine cost records.
2. Department of the Air Force (N1-AFU-91-6). Routine safety program administration records.
3. Department of the Army (N1-AU-90-21). Routine records relating to resources management.
4. Department of the Army (N1-AU-91-3). Unreadable magnetic tapes accumulated by the U.S. Military Assistance Command—Vietnam.
5. Department of the Army (N1-AU-91-4 and N1-AU-91-5). Routine records relating to tax matters.
6. Department of the Navy, Bureau of Medicine and Surgery (N1-52-90-1). Routine administrative files, reports, and Dental Officer treatment logs.
7. Department of the Navy, Bureau of Naval Personnel (N1-24-91-1). Routine administrative files and reports relating to personnel matters.
8. Defense Logistics Agency (N1-361-91-1). Routine and facilitative records of the Office of Telecommunications and the Office of Information Systems.
9. Defense Logistics Agency (N1-361-91-2). Files pertaining to personnel, contracts, workspace planning, and other routine administrative matters.
10. Department of Agriculture, Soil Conservation Service (N1-114-90-2). Reference collection of publications and background material related to reports of the Water Resources Council.
11. Central Intelligence Agency (N1-263-91-1). This CIA schedule is classified in the interests of national security pursuant to Executive Order

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12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

12. Department of Commerce, Bureau of Export Administration, Office of Enforcement Support (N1–476–90–9). Comprehensive records schedule.

13. Environmental Protection Agency, Office of Toxic Substances (N1–412–89–2). Application Review Files and Award Case Files covering grant and/or loan projects under the Asbestos School Hazard Abatement Act of 1984.

14. Environmental Protection Agency, Assistance and Interagency Agreement Office (N1–412–89–3). Asbestos School Hazard Abatement Assistance Program Agreements that document financial transactions concerning grant and/or loan projects under the Asbestos School Hazard Abatement Act of 1984.

15. Farm Credit Administration (N1–103–91–1). Case files of work papers and feeder reports created during evaluations of agency internal accounting and administrative control systems.

16. Federal Communications Commission, Common Carrier Division (N1–173–90–1). Updated comprehensive schedule.

17. Federal Communications Commission, Office of the General Counsel (N1–173–91–1). Project case files, reading files, and docket material.

18. Federal Deposit Insurance Corporation (N1–34–90–1). Corporation structure construction files determined to lack sufficient archival value to warrant permanent retention by the National Archives; routine management studies.

19. Department of Housing and Urban Development (N1–207–91–1). Contract and grant operations files maintained by Government Technical Monitors.

20. Department of Justice, Foreign Claims Settlement Commission (N1–298–90–3). Working papers, routine field office files, and facilitative background material.

21. Department of Labor, Occupational Health and Safety Administration (N1–100–90–1). Administrative records such as foreign trainee case files, code comparison records, accident reports, memorandums, correspondence and forms, 1944–1980.

22. Department of Labor, Labor Management Services Administration (N1–317–91–1). Labor Organization Registration Reports, 1958–59; routine issuances and organizational files, 1959–70.

23. National Archives and Records Administration, Office of Records Administration (N1–84–90–3). Working papers of the Department of Justice Litigation Case File Appraisal Project.

24. National Security Agency (N1–457–91–1). Routine records pertaining to telecommunications. This schedule is not releasable pursuant to provisions of P.L. 86–36.

25. Public Health Service, Health Resources and Services Administration and predecessor agencies (N1–90–89–5). Subject files, general correspondence, grant records, statistical reports and surveys, clinical files and records relating to research, 1921–74.

26. Railroad Retirement Board, Bureau of Retirement Claims (N1–184–91–1). Facilitative electronic system pertaining to annuitants.

27. Department of State, Deputy Under Secretary for Administration (N1–59–90–28). Routine and facilitative records.

28. Department of State, Bureau of Near Eastern and South Asian Affairs, Office of African Affairs (N1–59–90–28). Duplicative records.

29. Department of Transportation, Federal Highway Administration (N1–406–89–3). Routine and facilitative records of the Office of Motor carriers.

30. Department of the Treasury, Bureau of the Public Debt (N1–53–89–2). Office of the Commissioner, Finance Records and Files Section, subject files, 1913–1981, consisting chiefly of correspondence with the public and documentation relating to administrative and housekeeping matters.

31. Department of the Treasury, Office of the Secretary, Office of the Fiscal Assistant Secretary (N1–56–90–4). Subject files, working files, and correspondence from departmental offices of the Fiscal Assistant Secretary.

32. Department of the Treasury, Office of Law Enforcement, (N1–56–90–6). Administrative records relating to training and investigative coordination.

33. Department of the Treasury (N1–56–90–10). Grant in aid application forms (SF 240).

34. Department of the Treasury, United States Secret Service, (N1–87–89–1). Revisions to comprehensive records schedule for the Office of Protective Operations.

35. Department of the Treasury, Office of Thrift Supervision (N1–195–90–1). Federal Home Loan Bank Board correspondence and examination folders, 1932–74.

36. Department of the Treasury, Financial Management Service (N1–425–90–1). Three digit check issue information.

37. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–91–1). Files covering educational benefits under the Omnibus Diplomatic Security, Antiterrorism Act of 1986, and Executive Order 12598.

Dated: December 7, 1990.

**Don W. Wilson,**

*Archivist of the United States.*

[FR Doc. 90–29382 Filed 12–14–90; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL FOUNDATION THE ARTS AND THE HUMANITIES

### Meeting of the National Council on the Arts Amended

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice of a meeting of the National Council on the Arts printed in the **Federal Register** to be held on December 15, 1990 from 9 a.m.—5 p.m. at the Hay Adams Hotel, 1 Lafayette Square, Washington, DC. 20006, has been changed.

The meeting will now take place on December 14–15, 1990 from 9 a.m. to 5 p.m. on both days. The entire meeting will be open to the public on a space-available basis. Any interested persons may attend this meeting as observers.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90–29513 Filed 12–13–90; 9:47 am]

BILLING CODE 7537–01–M

## OFFICE OF THE U.S. TRADE REPRESENTATIVE

### Implementation of the Accelerated Tariff Elimination Provision of the United States—Canada Free-Trade Agreement

**AGENCY:** Office of the U.S. Trade Representative.

**ACTION:** Amendment to notice of, and request for comments on, articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

**SUMMARY:** This is an amendment to the **Federal Register** notice of October 5, 1990. Section 201(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). This notice is intended to inform the public of those articles that may be the subject of negotiations between the United States and Canada for accelerated tariff elimination which were inadvertently omitted from the list published on October 5, 1990.

**DATES:** Public comments are due January 11, 1991.

**ADDITIONAL INFORMATION:** Further information on this subject may be found in the **Federal Register** notices of February 8, 1990, Volume 55, Number 27, at pages 4501 through 4503; and October 5, 1990, Volume 55, Number 194, at pages 40964 through 40973. Inquiries regarding this notice or other aspects of the implementation of accelerated tariff elimination under the FTA should be directed to James H. Grossman, Director of Tariff Negotiations for Canada, Office of North American Affairs, Office of the U.S. Trade Representative, room 301, 600 17th Street, NW., Washington, DC 20506, telephone (202) 395–5883.

### Requests for Comments

Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles provided for in the tariff subheadings listed below will be accepted until January 11, 1991, if submitted in accordance with 15 CFR part 2006. Comments should be typewritten and submitted in twenty copies to Carolyn Frank, Secretary, Trade Policy Staff Committee, Room 517, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. All submissions must specify: (1) The United States and/or Canadian tariff subheading to which the comments refer, (2) the name, address, and telephone number of the person, firm, or organization making the comments, and (3) an indication as to whether the writer represents a:

—Producer in the United States
—Importer in the United States
—Exporter in the United States
—Consumer in the United States
—Other, in the United States (Specify)
—Producer in Canada
—Importer in Canada
—Exporter in Canada
—Consumer in Canada
—Other, in Canada (Specify)

### Advice of the United States International Trade Commission

The United States International Trade Commission is being furnished with the list of articles listed below for the purpose of securing from the Commission its judgment as to the probable economic effect of acceleration of elimination of United States duties on industries producing like or directly competitive articles and on consumers.

### Advice of the Private Sector Advisory Committees

Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees are being furnished with the list of articles listed below for the purpose of securing their advice.

### Articles That May Be Considered In Negotiations

The following articles provided for in the listed subheading of the Harmonized Tariff Schedule of the United States (HTS) and the Customs Tariff of Canada will be subject to negotiations with Canada on accelerated duty elimination:

| Article | U.S. HTS subheading | Canadian tariff subheading |
|---|---|---|
| Lingonberries (partridgeberries), frozen | 0811.90.80 (part) | 0811.90.90 (part). |
| Cottonseed oil, crude | 1512.21.00 | 1512.21.00. |
| Cottonseed oil, other than crude | 1512.29.00 | 1512.29.00. |
| Bitumen | | 2714.90.90 (part). |
| Sodium metasilicates, anhydrous | 2839.11.00 (part) | 2839.11.00 (part). |
| Hexamethylene diamine, not derived from adipic acid | 2921.22.50 (part) | 2921.22.00 (part) |
| Indomethacin pellets | 3003.90.00 (part) | 3003.90.99 (part). |
| Lignin | 3913.90.50 (part) | 3913.90.90 (part). |
| Polyvinyl chloride used to cover edgebanding exposed particleboard edges | 3919.10.20 (part) | 3919.10.99 (part). |
| Polyvinyl chloride edgebanding, used to cover exposed particleboard edges | 3920.410.00 (part) | 3920.41.90 (part). |
| Nonwovens, whether or not impregnated, coated, covered or laminated | 5603.00 | 5603.00. |
| Machine-tufted, rubber-backed floor mats | 5703.20.20 (part) | 5703.20.20 (part). |
| Cat litter | 6815.99.40 (part) | 6815.99.91 (part). |

In addition, please note the following typographical error in the document distributed upon request entitled "Supplement to Annex II In the **Federal Register** notice of October 5, 1990": HTS number 8418.90.40 should have read 8415.90.40.

**Charles E. Roh, Jr.,**

*Assistant U.S. Trade Representative of North American Affairs.*

[FR Doc. 90–29488 Filed 12–14–90; 8:45 am]

BILLING CODE 3190–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–28686; File No. SR–CBOE–90–31]**

### Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Time Period for a Declared Opening Delay in Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1990, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify Exchange Rule 24.13 to decrease from 15 minutes to 5 minutes the time period a delayed opening in index options will last.

The text of the proposed rule change is available at the Office of the

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Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange's current delayed opening procedure for index options requires that once such a delay is declared, the Exchange must wait 15 minutes to begin the opening rotation. If, during those 15 minutes, it is determined that another delay should be imposed, an additional 15 minutes must pass prior to the beginning of the opening rotation. The Exchange believes that these 15 minute intervals place the Exchange in a difficult competitive position because neither the futures markets nor the stock markets require that a declared delay be of a specified time duration. For example, if an opening imbalance is declared on a stock market, the stock in which the imbalance occurred will open as soon as the imbalance is resolved. Further, no such delay is imposed on index futures trading on the futures markets. Instead, if an opening limit is reached on an index future, trading continues in the future but the price cannot trade beyond the limit reached. The only opening time period halt or delay on the Chicago Mercantile Exchange ("CME") occurs at 8:40 a.m. Chicago time, for two minutes, and only if the market is at limit at the time the delay is imposed. However, if an opening delay is declared by the CBOE, the CBOE can only open at 8:45 a.m., 9 a.m., or any of the next succeeding 15 minute intervals. Thus, the Exchange believes that imposing a delay in 15 minute intervals disadvantages CBOE traders in the OEX and SPX index options because other markets are open during the delay, which markets are creating and/or responding to price fluctuations that CBOE traders cannot react to. Therefore, to limit unnecessary delays in opening of index options, the Exchange believes that reducing the time period for the delay from 15 minute intervals to 5 minute intervals is warranted. Further, the Exchange surveyed ten retail member firms and a overwhelming majority agreed that 5 minutes was a reasonable time delay and that the change from 15 minutes would not adversely impact retail customers.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to a free and open market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose an inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 7, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Dated: December 10, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29454 Filed 12-14-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28688; File No. SR-OCC-90-13]**

**Self-Regulatory Organizations; The Options Clearing Corporation; Filing of Proposed Rule Change Relating to an Electronic Mail Service to be Offered to Clearing Members and Fees to be Charged in Connection Therewith**

December 10, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 3, 1990, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-OCC-90-13) as described in Items I, II, and III below, which items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Proposed rule change relates to OCC's proposal to offer a new service to Clearing Members and to charge fees in connection therewith.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 17 CFR 200.30-3(a)(12) (1990).

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The proposed rule change would offer a new electronic mail service ("E-Mail") to OCC Clearing Members. The E-Mail service is proposed to be offered to clearing members in conjunction with OCC's Options News Network.[1] In connection therewith, OCC proposes to charge subscribing Clearing Members $15.00 per month per access code issued. Should a Clearing Member subscribe to five or more access codes, OCC will discount such fees to 12.00 per month per access code issued.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change, would impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission shall:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-90-13 and should be submitted by January 7, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29405 Filed 12-14-90; 8:45 am]

BILLING CODE 8010-01-M

[1] OCC's Option News Network was approved in Securities Exchange Act Release No. 28860 (December 3, 1990), 55 FR 49783. That Release approved use of the E-Mail service by exchange participants.

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## DEPARTMENT OF STATE

**Bureau of Oceans and International Environmental and Scientific Affairs**

**[Public Notice 1304]**

**Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources**

**AGENCY:** Bureau of Oceans and International Environmental and Scientific Affairs, State.

**ACTION:** Notice.

**SUMMARY:** At its Ninth Annual Meeting in Hobart, Tasmania, October 22 to November 2, 1990, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted the conservation measures listed below, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX, paragraph 6(A) of the Convention for the Conservation of Antartic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, and define reporting requirements. In addition, a conservation measure was adopted to delineate procedures for according protection to CCAMLR Ecosystem Monitoring Program (CEMP) sites.

**DATES:** Persons wishing to comment on the measures or desiring more information should submit written comments on or before January 16, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ray Arnaudo, Chief, Division of Polar Affairs, Office of Oceans Affairs (OES/OA), Room 5801, Department of State, Washington, DC 20520, (202) 647-3262.

**SUPPLEMENTARY INFORMATION:**

**Conservation Measures Adopted at the Ninth Meeting of CCAMLR**

At its Ninth Annual Meeting in Hobart, Tasmania, October 22 to November 2, 1990, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) adopted the following eleven conservation measures and one resolution. The conservation measures addressing catch limitations were adopted in accordance with Conservation measure 7/V and therefore enter into force immediately.

*Conservation Measure 19/IX*

Mesh Size for Champsocephalus Gunnari

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. The use of pelagic and bottom trawls having the mesh size in any part of a trawl less than 90 mm is prohibited for any directed fishery for *Champsocephalus gunnari*.

2. The mesh size specified above is defined in accordance with the regulations on mesh size measurement, Conservation Measure 4/V.

3. It is prohibited to use any means or device which would obstruct or diminishes the size of the meshes.

4. This Conservation Measure does not apply to fishing conducted for scientific research purposes.

5. This Measure will apply as of 1 November 1991.

6. Conservation Measure 2/III is amended accordingly.

*Conservation Measure 20/IX*

Limitation of the Total Catch of Champsocephalus Gunnari in Statistical Subarea 48.3 in the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. The total catch of *Champsocephalus guunnari* in the 1990/

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91 season shall not exceed 28,000 tonnes in Statistical Subarea 48.3.

2. In statistical Subarea 48.3, the by-catch of *Notothenia gibberifrons* shall not exceed 500 tonnes and the by-catch of any of the following species: *Notothenia rossii, Notothenia squamifrons, Chaenocephalus aceratus* and *Pseudochaenichthys georgianus* shall not exceed 300 tonnes.

3. The fishery in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in paragraph 2 above reaches their by-catch limit or if the total catch of *Champsocephalus gunnari* reaches 28,000 tonnes, whichever comes first.

4. If, in the course of the directed fishery for *Champsocephalus gunnari*, the by-catch of any one haul of any of the species named in paragraph 2 above exceeds 5%, the fishing vessel shall move to another fishing ground within the subarea.

5. The use of bottom trawls in the directed fishery for *Champsocephalus gunnari* in Statistical Subarea 48.3 is prohibited.

6. For the purpose of implementing paragraphs 1, 2 and 3 of this Conservation Measure, the Catch Reporting System set out in Conservation Measure 25/IX shall apply in 1990/91 season.

*Conservation Measure 21/IX*

Closed Seasons in the 1990/91 Season in Statistical Subarea 48.3

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing on *Champsocephalus gunnari* in Statistical Subarea 48.3 between 1 April and 4 November 1991 is prohibited.

*Conservation Measure 22/IX*

Prohibition of Directed Fishery on Notothenia Gibberifrons, Chaenocephalus Aceratus, Pseudochaenichthys Georgianus and Notothenia Squamifrons in Statistical Subarea 48.3 in the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing on *Notothenia gibberifrons, Chaeoncephalus aceratus, Pseudochaenichthys georgianus* and *Notothenia squamifrons* in Statistical Subarea 48.3 is prohibited in the 1990/91 season.

*Conservation Measure 23/IX*

Prohibition of Directed Fishery on Patagonotothen Brevicauda guntheri in Statistical Subarea 48.3 for the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing on *Patagonotothen brevicauda guntheri* in Statistical Subarea 48.3 is prohibited in the 1990/91 season.

*Conservation Measure 24/IX*

Catch Limit on Dissostichus Eleginoides in Statistical Subarea 48.3 for the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. The total catch of *Dissostichus eleginoides* in Statistical Subarea 48.3 caught in the 1990/91 season shall be limited to 2,500 tonnes.

2. For the purposes of the fishery for *Dissostichus eleginoides* in Statistical Subarea 48.3, the 1990/91 fishing season is defined as the period from 2 November 1990 to the end of the Commission meeting in 1991.

3. For the purpose of implementing this Conservation Measure:

(i) The catch reporting system set out in Conservation Measure 25/IX shall apply in the 1990/91 season, commencing on 2 November 1990.

(ii) The data reporting system set out in Conservation Measure 26/IX shall apply in the 1990/91 season, commencing on 2 November 1990.

*Conservation Measure 25/IX*

Catch and Effort Reporting System in Statistical Subarea 48.3 in the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. For the purposes of this Catch and Effort Reporting System the calendar month shall be divided into six reporting periods, viz: day 1 to day 5, day 6 to day 10, day 11 to day 15, day 16 to day 20, day 21 to day 25, and day 26 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B, C, D, E and F.

2. At the end of each reporting period, each Contracting Party shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, be cable or telex, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period.

3. Such reports shall specify the month and reporting period (A, B, C, D, E or F) to which each report refers.

4. Immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties of the total catch taken during the reporting period, the total aggregate catch for the season to that date, together with an estimate of the date upon which the total allowable catch is likely to be reached for that season. Each estimate shall be based on a projection forward of the average daily catch rate (calculated as the total catch by all contracting parties divided by the number of days in the period) for the most recent period based on the reports received for the period in question, to the point at which the total allowable catch will have been taken.

5. When the Executive Secretary has received reports which show that 80% of the total allowable catch has been taken, the Executive Secretary shall make a final estimate of the date upon which the total allowable catch will be reached. The fishery shall close at the end of the last day of the reporting period within which that date falls.

*Conservation Measure 26/IX*

Effort and Biological Data Reporting System for Dissostichus Eleginoides in Statistical Subarea 48.3 in the 1990/91 Season

The Commission, in accordance with Conservation Measure 7/V, hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

1. At the end of each month, each Contracting Party shall obtain from each of its vessels the haul-by-haul data required to complete the CCAMLR fine-scale catch and effort data form for longline fisheries (Form C2, Ver.1). It shall transmit these data to the Executive Secretary not later than the end of the month following.

2. Each month the length composition of a minimum of 500 fish will be measured and the information passed to the Executive Secretary not later than the end of the month following.



*Conservation Measure 27/IX*

Prohibition of Directed Fishing for Finish in Statistical Subarea 48.1 and 48.2 in the 1990/91 Season

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Taking of finfish, other than for scientific research purposes, in Statistical Subareas 48.1 and 48.2 is prohibited in the 1990/91 season.

*Conservation Measure 28/IX*

Limitation of the Total Catch Notothenia Squamifrons in Statistical Subarea 58.4 in the 1990/91 Season

The Commission hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

The total catch of *N. squamifrons* in the 1990/91 season on the Lena Bank and Ob Bank (Statistical Division 58.4.4) shall not exceed 305 tonnes and 267 tonnes respectively.

*Conservation Measure 18/IX*

Procedure for According Protection to CEMP Sites

The Commission adopted a Conservation Measure providing for the protection of sites where colonies of seabirds and seals are being monitored as part of the CCAMLR Ecosystem Monitoring Program. The measure provides for the introduction of management plans for sites, specifying in particular, conditions of access to the sites and activities that are prohibited within them. For more information on this Conservation Measure, contact address above.

*Resolution 7/IX*

Driftnet Fishing in the Convention Area

1. The Commission endorsed the goals of the UN General Assembly Resolution 44/225 on large-scale pelagic driftnet fishing, which calls, inter alia, for a cessation of any further expansion of large-scale pelagic driftnet fishing on the high seas. Recognizing the concentration of marine living resources present in Antarctic waters, it was noted that large-scale pelagic driftnet fishing can be a highly indiscriminate and wasteful fishing method that is widely considered to threaten the effective conservation of living marine resources. Although no Member is currently engaged in large-scale pelagic driftnet fishing in the Convention Area, the Commission expressed concern about the potential impact on marine living resources if large-scale pelagic driftnetting were to expand in to Convention Area.

2. To this end, the Commission agreed, in accordance with UN Resolution 44/225, that there will be no expansion of large-scale pelagic driftnet fishing into the Convention Area.

3. It was agreed that, in accordance with Article X, the Commission would draw this Resolution to the attention of any State that is not a Party to the Convention and whose nationals or vessels engage in large-scale pelagic driftnet fishing.

*Other Conservation Measures in Force*

The Commission agreed that Conservation Measures 3/IV, 4/V, and 7/V should remain in force as they stand. Conservation Measures 13/VIII, 14/VIII, 15/VIII, 16/VIII, and 17/VIII expired at the end of the 1989/90 season. Conservation Measure 2/III remains in force, but is amended by deleting the reference to *Champsocephalus gunnari*.

*Catch Reporting*

Catch and effort data for the fishery on *C. gunnari* in Subarea 48.3 should be reported to the Secretariat for each reporting period as described in Conservation Measure 25/IX.

Catches of *D. eleginoides* should be reported to the Secretariat according to the same system as described above for *C. gunnari* (Conservation Measure 25/IX). Effort and biological data, however, should be reported monthly according to the protocols set out in Conservation Measure 26/IX.

Data to be reported for each reporting period are:

(i) For the fishery targeted on *C. gunnari*, including data from this species and any by-catch of *C. aceratus, P. georgianus, N. rosii, N. gibberifrons*, and *N. squamifrons*:

a. Total catch (metric tons) of each species in the reporting period.

b. Total number of hours fished, as defined on the CCAMLR/CWP form for reporting catches and effort on STATLANT B format, paragraph 2.6.

c. Total number of days fished, as defined on the CCAMLR/CWP form for reporting catches and effort on STATLANT B format, paragraph 2.6.

(ii) For *D. eleginoides*: total catch in the reporting period.

**Raymond Arnaudo,**

*Chief, Division of Polar Affairs, Office of Oceans Affairs.*

[FR Doc. 90-29383 Filed 12-14-90; 8:45 am]

BILLING CODE 4710-09-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reestablishment of Grant Availability to the States for Projects Implementing School Bus Safety

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of a grant program.

**SUMMARY:** NHTSA announces the reestablishment of the availability of funds during fiscal year 1991 to assist the States in implementing school bus safety measures. NHTSA rescinded its earlier notice which would have set aside 402 funds in FY 1991 for a grant program designed to develop and implement improvements in school bus safety. This notice establishes a set-aside of $4,500,000 for FY 1991 and solicits applications from States that are interested in developing and implementing projects under the previously announced grant program.

**DATES:** Applications must be received by January 11, 1990.

**ADDRESSES:** A State must submit its application to the NHTSA Regional Administrator serving the Region in which the submitting State is located. All applications submitted should be labeled "School Bus Safety Implementation Project." Interested States are advised that no separate application package exists beyond the contents of the announcement in the **Federal Register** notice, dated August 9, 1990 (55 FR 32554).

**FOR FURTHER INFORMATION CONTACT:** States should direct all questions concerning the grant program and applications to the NHTSA Regional Administrator having responsibilities for the applicant State. More general inquiries on school bus safety may be directed to Ron Engle, Traffic Safety Programs (NTS-23), National Highway Traffic Safety Administration, room 5125, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2717.

**SUPPLEMENTARY INFORMATION:**

NHTSA has been actively pursuing school bus safety initiatives over the past few years, for both vehicle and operational improvements. As part of that effort, the agency set aside $4.5 million "Section 402" State grant funds in fiscal year 1990 for school bus safety programs as authorized by the 1987 highway bill. On August 9, 1990, NHTSA announced in the **Federal Register** the availability of a similar set aside during fiscal year 1991 to assist the States in

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completing their special bus safety initiatives. The deadline for the receipt of applications was November 1, 1990.

NHTSA was confronted with substantial budget uncertainty at the start of the new fiscal year, because Congress had not completed work on the Federal budget. As a result, the various "unprotected" domestic discretionary accounts, including the section 402 program, were threatened with 33% automatic budget cuts. A reduction of that size would have had serious adverse effects on a broad range of State and local traffic safety programs funded by NHTSA. Accordingly, on October 5, 1990, NHTSA published a notice in the Federal Register (55 FR 40975) which rescinded the set aside grant program to minimize those adverse impacts. In that notice, NHTSA clearly indicated the intent to restore the school bus set-aside funding, if and when Congress restored the agency's overall section 402 funding levels. As a result of the budget deficit-reduction agreement, Congress passed and the President signed the FY 1991 appropriation bill for the Department of Transportation, which includes the full amount requested for the Section 402 program.

Therefore, this notice announces the agency's intention to reestablish the grant program at $4,500,000 for FY 1991 as described in the original notice in the Federal Register on August 9, 1990, with a revised date for the receipt of applications of January 11, 1990.

Issued on: December 12, 1990.

Jerry Ralph Curry,

*Administrator.*

[FR Doc. 90-29457 Filed 12-12-90; 1:32 pm]

BILLING CODE 4910-59-M

## Rulemaking, Research, and Enforcement Programs; Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

This notice announces an additional meeting to be held on a possible consumer information program regarding side impact crash test performance.

**DATES:** The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on January 18, 1991, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by January 9, 1991. If sufficient time is available, questions received after the January 9, date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by January 9, 1991, and the issues to be discussed will be mailed to interested persons by January 14, 1991, and will be available at the meeting.

The meeting on consumer information on side impact crash test performance will also be held on January 18, 1991, beginning at approximately 1:30 p.m. Anyone interested in making a presentation at this session must submit a request in writing, stating the nature of the presentation, to the address shown below.

**ADDRESSES:** Questions for the January 18 meeting relating to the agency's rulemaking, research, and enforcement programs or requests to make presentations at the side impact meeting should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590. Both meetings will be held in room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on January 18, 1991. The meeting will be held in room 2230, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

To expedite its preparation and mailing of the agenda for the meeting, the agency requests that questions be labeled with the following headings:

I. Rulemaking
  A. Crashavoidance
  B. Crashworthiness
  C. Other
II. Research and Development
III. Enforcement
IV. Consumer Information
V. Miscellaneous

The agency also wishes to announce a meeting on a side impact new car assessment program. The purpose of this session is to provide a forum for the discussion of safety issues as they relate to consumer information on the crashworthiness of passenger cars in side impacts

In 1972, Congress enacted the "Motor Vehicle Information and Cost Savings Act" which requires the development and dissemination of comparative information on the safety of motor vehicles. To partially meet this requirement, frontal-impact testing of production motor vehicles into a rigid barrier at 35 mph was initiated in 1978 under the New Car Assessment Program (NCAP). NCAP has been very successful in providing comparative information to consumers and in encouraging manufacturers to improve the frontal impact safety of their vehicles.

On October 30th, 1990, the agency published its final rule (55 FR 45722) which set forth provisions for full scale side impact dynamic crash test of passenger cars. Based on the technical foundation for this rule, NHTSA is considering the expansion of the NCAP into side-impact testing.

At this meeting the discussion will focus on various options concerning the implementation of a New Car Assessment Side-Impact Program such as:

A. Test parameters.

B. Methods of consumer information dissemination.

C. Scheduling as related to the phased-in compliance requirements of FMVSS 214.

Agency representatives will review various options and provide responses to related questions that have been submitted in advance. The agency also encourages additional presentations from the public.

Issued on: December 11, 1990.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 90-29388 Filed 12-13-90; 8:45 am]

BILLING CODE 4910-59-M



## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

December 10, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms**

*OMB Number:* 1512-0206.

*Form Number:* ATF F 5110.41, ATF REC 5110/06.

*Type of Review:* Extension.

*Title:* Applications, Miscellaneous Requests and Notices for Distilled Spirits Plants.

*Description:* The information provided by applicants assists ATF in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plants operations. However, both statutes and regulations allow for variances from the regulations and this information provides data to permit a variance.

*Respondents:* Businesses or other for-profit, small businesses or organizations.

*Estimated Number of Respondents:* 320.

*Estimated Burden Hours Per Response:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1,756 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 90-29401 Filed 12-14-90; 8:45 am]

BILLING CODE 4810-31-M

### Public Information Collection Requirements Submitted to OMB for Review

December 10, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0049.

*Form Number:* Form 990-BL, Sch. A (Form 990-BL, Sch. A (Form 990-BL), Form 6069.

*Type of Review:* Extension.

*Title:* Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trust and Certain Related Persons; Schedule A (Form 990-BL), Computation of Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons; Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

*Description:* IRS uses Form 990-BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to the 990-BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

*Respondents:* Individuals or households, Businesses or other for-profit, Non-profit institutions.

*Estimated Number of Respondents:* 27.

Estimated Burden Hours Per Response/ Recordkeeping:

| Form | 1990-BL | Sch. A (Form 990-BL) |
|---|---|---|
| Recordkeeping. | 16 hrs., 44 mins. | 6 hrs., 56 mins. |
| Learning about the law or the form. | 6 hrs., 16 mins. | 18 mins. |
| Preparing and sending the forms to IRS. | 6 hrs., 49 mins. | 25 mins. |

Form 6069:

Recordkeeping—6 hrs., 42 mins.

Learning about the law or the form—2 hrs., 33 mins.

Preparing the form—3 hrs., 42 mins.

Copying, assembling, and sending the form to IRS—16 mins.

*Frequency of Response:* Annually.

*Estimated Total Recordkeeping/ Reporting Burden:* 3,853 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 90-29402 Filed 12-14-90; 8:45 am]

BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review

December 10, 1990.

The Department of Treasury has submitted the following public

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information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

*OMB Number:* 1545-0008.
*Form Number:* IRS Forms W-2, W-2P, W-2C, W-AS, W-2CM, W-2GU, W-2VI, W-3, W-3C, W-3PR, W-3SS.
*Type of Review:* Revision.
*Title:* Wage and Tax Statements.
*Description:* Employers report income and withholding information on Form W-2. Payers report pension, annuity, retirement, and IRA distributions on Form W-2P. Forms W-2AS, W-2GU, and W-2VI, are the U.S. Possessions versions for Form W-2. The Form W-3 series is used to transmit W-2's to the Social Security Administration. Individuals use Form W-2 to prepare their income tax return.
*Respondents:* Individuals or households, State or local governments, farms, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small business or organizations.
*Estimated Number of Respondents:* 200,859,535.
Estimated Burden Hours Per Respondent:
W-2—32 minutes
W-2C—40 minutes
W-2AS—23 minutes
W-2GU—22 minutes
W-2VI—20 minutes
W-3—27 minutes
W-3C—20 minutes
W-3PR—18 minutes
W-3CPR—19 minutes
W-3SS—22 minutes
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1 hour.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
*Departmental Reports, Management Officer.*
[FR Doc. 90-29460 Filed 12-14-90; 8:45 am]
BILLING CODE 4810-01-M

## Customs Service

[T.D. 90-97]

### Revocation of Commercial Gauger Approval and Commercial Laboratory Accreditations of Watson Gray (U.S.A.), Inc. of Marcus Hook, PA

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of revocation of approval and accreditations of a commercial gauger and commercial laboratory.

**SUMMARY:** Pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval and commercial laboratory accreditations granted to Watson Gray (U.S.A.), Inc., of Marcus Hook, Pennsylvania have been revoked in full for failure to meet bonding requirements.

**EFFECTIVE DATE:** November 30, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, Room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: December 11, 1990.

John B. O'Loughlin,
*Director, Office of Laboratories and Scientific Services.*
[FR Doc. 90-29458 Filed 12-14-90; 8:45 am]
BILLING CODE 4810-00-M

## Office of the Secretary

[Department Circular—Public Debt Series—No. 33-90]

### Treasury Notes of November 30, 1992, Series AG-1992

Washington, November 23, 1990.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,250,000,000 of United States securities, designated Treasury Notes of November 30, 1992, Series AG-1992 (CUSIP No. 912827 ZP 0), hereafter referred to as Notes. The Notes will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Notes will be dated November 30, 1990, and will accrue interest from that date, payable on a semiannual basis on May 31, 1991, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

**3. Sale Procedures**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, November 27, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, November 26, 1990, and received no later than Friday, November 30, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, November 30, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, November 28, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,
*Fiscal Assistant Secretary.*
[FR Doc. 90-29477 Filed 12-12-90; 2:25 pm]
BILLING CODE 4810-40-M

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[Department Circular—Public Debt Series—No. 34-90]

## Treasury Notes of February 15, 1996, Series J–1996

Washington, November 23, 1990.

### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of February 15, 1996, Series J–1996 (CUSIP No. 912827 ZQ 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

### 2. Description of Securities

2.1. The Notes will be dated December 3, 1990, and will accrue interest from that date, payable on a semiannual basis on August 15, 1991, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, November 28, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 27, 1990, and received no later than Monday, December 3, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show that yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may be not used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers; as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

### 5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, December 3, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 29, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchaser price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

### 6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 90-29478 Filed 12-12-90; 2:35 pm]

BILLING CODE 4810-40-M



## UNITED STATES INFORMATION AGENCY

### EFL Teacher-Trainers and ESP Teachers; Announcement to Solicit Interest From U.S. Professional, Not-for-Profit Institutions in Conducting Recruitment

**AGENCY:** United States Information Agency.

**ACTION:** Announcement to solicit interest from U.S. professional, not-for-profit institutions in conducting recruitment of EFL teacher-trainers and ESP teachers.

**SUMMARY:** The U.S. Information Agency (USIA) solicits interest from U.S. professional, not-for-profit institutions/organizations in conducting the recruitment of EFL teacher-trainers, and attendant administration, for a special Eastern European EFL Fellow program to provide EFL teacher-trainers for teachers of English, and ESP teachers in Poland, Hungary, Czechoslovakia, Romania, Bulgaria, and Yugoslavia inclusive. This program is subject to the availability of funds from Support for Eastern European Democracies II (SEED II) funding for Fiscal Year 1991. All interested institutions/organizations that wish to compete for an assistance award are invited to request detailed proposal guidelines by December 31, 1990, and to submit detailed proposals by January 31, 1991. The proposals will be evaluated by a panel and recommendations for the assistance award will be based on professional staff assessment of relevant qualifications and compliance with established criteria.

The institution/organization sought will receive an assistance award not to exceed a total of $226,000 from the U.S. Information Agency for the purpose of carrying out the following:

—Disseminate information through domestic and international meetings and other means about the Eastern European EFL Fellow program;

—Receive and process applications from condidates, screen for acceptable qualifications set forth by USIA (including U.S. citizenship, native speaker of American English, hold at least an MA degree in applied linguistics or in TESL/TEFL, with teacher-training experience, or English for Special Purposes [ESP] experience, preferably overseas), and select approximately 40 EFL Fellows for teacher training, and approximately 15 ESP/EFL Fellows, to receive a grant from USIA for one year—renewal of the fellowship contingent upon the availability of funds;

—Arrange for and carry out interviews of all candidates having acceptable qualifications at, but not limited to, the annual TESOL convention in New York City, March 24–28, 1991, in collaboration with USIA's English Language Programs Division;

—Conduct all correspondence necessary to compile professional dossiers of each EFL Fellow candidate to be interviewed; establish and define duties expected of each EFL Fellow at the institution assigned, through correspondence with that institution in Eastern Europe and in consultation with USIA's English Language Programs Division;

—Procure all transportation tickets for each EFL Fellow chosen and arrange travel from his/her home to his/her respective destination in Eastern Europe, to include a stop in Washington, D.C.;

—Arrange for and conduct a three-day orientation program for the chosen EFL Fellows, at USIA in Washington, D.C., utilizing both outside experts and USIA officers, in consultation with USIA's English Language Programs Division.

—Allowance will be made for a representative of the assistance award recipient institution/organization to visit Eastern European sites proposed for the EFL Fellows, so as to be familiar with conditions at the host institutions.

*Qualifications Required of the Responding Organization:* To carry out the above tasks the institution/organization must be incorporated in the U.S. as a 501(c)(3), not-for-profit organization as determined by IRS, and must possess a proven ability to network that provides and allows for

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the greatest dissemination of information to and among the profession of Teachers of English as a Second or Foreign Language; must be able to provide knowledgeable, TEFL-qualified, experienced staff capable of interviewing candidates and evaluating their qualifications for conducting teacher-training and for teaching ESP in the context of English as a foreign language, in accord with criteria established by USIA; must provide a summary report and comply with all U.S. Government regulations. The period covered by this assistance award is from nine to fifteen months from the time of issuance. Renewal is contingent upon the availability of funds. Interested institutions/organizations should respond to the address below by December 31, 1990, to receive the assistance award proposal guidelines, and should submit a detailed proposal based on these guidelines by January 31, 1991.

**DATE:** December 31, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Royer, English Language Programs Division, USIA, Room 304, SEED II, 301 Fourth Street, SW., Washington, DC 20547, Telephone (202) 619–5009

**William B. Royer, Jr.**

*Chief, English Language Program Division.*

[FR Doc. 90–29420 Filed 12–14–90; 8:45 am]

BILLING CODE 8230–01–M

## Fulbright Teacher Exchange Program

The United States Information Agency seeks applications from cooperating institutions of higher education and other organization to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. There will be a general orientation for all U.S. and foreign exchange teachers in August, 1991, workshops for foreign educators in the fall of 1991 and the spring of 1992, and meetings for newly selected U.S. educators in May, 1992. The Fulbright Teacher Exchange Program provides opportunities for U.S. educators at all levels to exchange teaching positions with foreign counterpart teachers from twenty-eight countries for one academic year. Universities or colleges on the west coast of the U.S. with schools or colleges of education or graduate programs in international studies, and located within reasonable proximity of international gateway airports, are invited to submit project proposals. Similarly, universities or colleges in metropolitan Washington, DC, located within reasonable proximity of Washington, DC's three international gateway airports, are invited to submit proposals. Other organizations within the previously described west coast or metropolitan Washington, DC locations, with at least four years of experience in administering exchange programs, and subcontracting and collaborating with colleges or universities, are also welcome to apply.

For application information, please contact Ms. Ilo-Mai Harding, no later than December 27, 1990 at the following address:

Teacher Exchange Branch (E/ASX), Office of Academic Programs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, Phone: (202) 619–4556.

Dated: December 3, 1990.

**William P. Glade,**

*Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 90–29465 Filed 12–14–90; 8:45 am]

BILLING CODE 8230–01–M

## United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on December 19, 1990 in room 600, 301 4th Street, SW., Washington, DC from 11 a.m. to 12:15 p.m.

The Commission will meet with Ambassador William Rugh, Director of USIA's Office of North African, Near Eastern, and South Asian Affairs, for a discussion of public diplomacy in the Middle East. The Commission will also meet with USIA Inspector General George F. Murphy, Jr. for a discussion of the role of inspections in USIA.

Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: December 12, 1990.

**Rose Royal,**

*Management Analyst, Federal Register Liaison.*

[FR Doc. 90–29466 Filed 12–14–90; 8:45 am]

BILLING CODE 8230–01–M

# DEPARTMENT OF VETERANS AFFAIRS

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744..

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by January 16, 1991.

Dated: December 11, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

### Reinstatement

1. Veterans Benefits Administration.
2. Title of the Information Collection.
   a. Application for Ordinary Life Insurance (Age 65).
   b. Information About Modified Life Insurance Reduction and Replacement Features (Age 65).
3. The Department Form Numbers.
   a. VA Form 29–8485.
   a. VA Form 29–8700.
4. These forms are used by the policyholder to apply for replacement insurance for modified life reduced at age 65. The information is used to determine eligibility for the insurance.
5. On occasion.
6. Individuals or households.
7. 4,200 responses.
8. ½ hour.
9. Not Applicable.

[FR Doc. 90–29437 Filed 12–14–90; 8:45 am]

BILLING CODE 8320–01–M



## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by January 16, 1991.

Dated: December 11, 1990.

By direction of the Secretary

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

### New Collection

1. Veterans Benefits Administration.
2. Income Verification.
3. VA Forms 21–0161 and 21–0161a.
4. The forms are used to verify a beneficiary's income-dependent benefits in connection with the administration of veterans benefits. The information is used by VA to accurately adjust pension benefits payments and avoid overpayments.
5. On occasion.
6. Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.
7. 228,000 responses.
8. ⅓ hour.
9. Not applicable.

[FR Doc. 90–29440 Filed 12–14–90; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by January 16, 1991.

Dated: December 11, 1990.

By direction of the Secretary:

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

### Reinstatement

1. Veterans Benefits Administration.
2. Application for Reinstatement (Non-Medical).
3. VA Form Letter 29–353.
4. The form is used by veterans to reinstate their Government life insurance and/or the Total Disability Income Provision within six months from the date of lapse. The information is used to determine eligibility for the purpose of reinstatement.
5. On occasion.
6. Individuals or households
7. 1,408 responses.
8. ¼ hour.
9. Not applicable.

[FR Doc. 90–29461 Filed 12–14–90; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by January 16, 1991.

Dated: December 11, 1990.

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By direction of the Secretary.

**Frank E. Lalley,**

*Director, Officer of Information Resources Policies.*

**Reinstatement**

1. Veterans Benefits Administration.
2. Wood Destroying Insect Information—Existing Construction.
3. VA Form 26–6850.
4. The form is completed by pest control operators to report the presence, if any, of wood destroying insects and any resulting damage to properties proposed for guaranteed financing. The information is used to determine whether the property is acceptable and the effect, if any, the damage may have on the reasonable value of the property.
5. On occasion.
6. Individuals and households; Businesses or other for-profit; Small businesses or organizations.
7. 228,427 responses.
8. ⅙ hour.
9. Not applicable.

[FR Doc. 90–29442 Filed 12–14–90; 8:45 am]

BILLING CODE 8320–01–M

## Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of the Public Law 96–511 applies.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by January 16, 1991.

Dated: December 11, 1990.

By direction of the Secretary.

**Frank E. Lalley,**

*Director, Office of Information Resources Policies.*

**Reinstatement**

1. Veterans Benefits Administration.
2. Information Collected from Developers of Condominium Projects.
3. Not applicable.
4. The information is furnished by developers of condominium projects to verify that the project has been established in accordance with local requirements and State laws. The information is used by VA to determine the reasonable value of individual condominium units and the legality of the project under State laws.
5. On occasion.
6. Businesses or other for-profit.
7. 2,100 responses.
8. Not applicable.
9. Not applicable.

[FR Doc. 90–29443 Filed 12–14–90; 8:45 am]

BILLING CODE 8320–01–M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 242
Monday, December 17, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**BOARD FOR INTERNATIONAL BROADCASTING**

**TIME AND PLACE:** 9:00 a.m., January 31, 1991.

**PLACE:** Forbes, Inc., 60 Fifth Avenue, New York, NY 10011.

**STATUS:** Closed, pursuant to 5 U.S.C. 552b(c) (1) and (9) and 22 CFR 1302.4 (a) and (h).

**MATTERS TO BE CONSIDERED:** Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

**Mark G. Pomar,**

*Executive Director.*

[FR Doc. 90–29532 Filed 12–13–90; 11:05 am]

BILLING CODE 6155–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, December 18, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Memorandum and resolution re: Lawsuits Brought By the Corporation, FSLIC, or Resolution Trust Corporation ("RTC") Against Firms Seeking to Provide Services to the Corporation or the RTC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: December 13, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90–29559 Filed 12–13–90; 8:45 am]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:05 p.m. on Tuesday, December 11, 1990, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Proposed amendment to the corporation's rules and regulations in the form of a new Part 334 entitled, "Contracts Adverse to Safety and Soundness of Insured Depository Institutions," which would implement section 225 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by prescribing regulations to prevent any depository institution insured by the Corporation from contracting for goods, products or services in a way that would adversely affect the safety and soundness of that institution.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: December 12, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90–29560 Filed 12–13–90; 12:49 pm]

BILLING CODE 6714–01–M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 3:12 p.m. on Tuesday, December 11, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of matters relating to the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(9)(B)).

Dated: December 12, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90–29561 Filed 12–13–90; 12:49 pm]

BILLING CODE 6714–01–M

**FEDERAL ENERGY REGULATORY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** December 11, 1990, 55 FR 50926.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** December 12, 1990, 10:00 a.m.

**CHANGE IN THE MEETING:** The following Docket Number has been added to Item CAG–53 on the Agenda scheduled for December 12, 1990:

*Item No., Docket No., and Company*

CAG–53—RP91–22–000, Natural Gas Pipeline Company of America

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 90–29617 Filed 12–13–90; 8:45 am]

BILLING CODE 6717–02–M

**RESOLUTION TRUST CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

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U.S.C. 552b), notice is hereby given that at 4:33 p.m. on Tuesday, December 11, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) Recommendations regarding the proposed program for the sale of mortgage-backed securities; (2) recommendations regarding the proposed sale of a collateralized bond obligation; (3) the resolution of a failed thrift institution; and (4) recommendations regarding the bulk sale of loans and real estate assets of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street NW., Washington, DC.

Dated: December 12, 1990.
Resolution Trust Corporation.
John M. Buckley, Jr.,
*Executive Secretary.*
[FR Doc. 90-29522 Filed 12-13-90; 10:11 am]
BILLING CODE 6714-01-M

**RESOLUTION TRUST CORPORATION**

Cancellation of Agency Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced open meeting of the Board of Directors of the Resolution Trust Corporation scheduled to be held on Tuesday, December 8, 1990 at 2:00 p.m. has been Cancelled.

No earlier notice of the cancellation was practicable.

Dated: December 13, 1990.
Resolution Trust Corporation.
John M. Buckley, Jr.,
*Executive Secretary.*
[FR Doc. 90-29578 Filed 12-13-90; 8:45 am]
BILLING CODE 6714-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [To be published, Friday, December 14, 1990]

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Tuesday, December 11, 1990.

**CHANGE IN THE MEETING:** Addition.

**The following item will be considered** at an open meeting on Thursday, December 20, 1990, at 10:00 a.m.

Consideration of whether to publish releases for comment on proposed amendments to Rule 10b-7 and proposed new Rule 3b-10, respectively. The proposed amendments to Rule 10b-7 would permit a stabilizing price to reflect the price of a security in a foreign market that is the principal market for such security if the stabilizing activity otherwise complies with the rule's provisions. In addition, the proposed amendments to Rule 10b-7 would permit adjustments of stabilizing bids based on exchange rate fluctuations between the currencies of the markets on which the security is being stabilized. Finally, the proposed amendments to Rule 10b-7 would permit stabilizing activities to be conducted in compliance with comparable foreign regulations where no stabilizing will take place in the United States.

Proposed Rule 3b-10 would define certain terms relevant to the increasing internationalization of world securities markets. For further information, please contact Ethan D. Corey at (202) 272-2848.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272-2000.

Dated: December 13, 1990.
Jonathan G. Katz,
*Secretary.*
[FR Doc. 90-29556 Filed 12-13-90; 12:35 pm]
BILLING CODE 8010-01-M



# Corrections

Federal Register
Vol. 55, No. 242
Monday, December 17, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 58**

**[DA-90-006]**

**Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Revision of United States Standards for Grades of Bulk American Cheese for Manufacturing**

*Correction*

In proposed rule document 90-27982 beginning on page 49526 in the issue of Thursday, November 29, 1990, make the following corrections:

**§ 58.2462 [Corrected]**

On pages 49528 and 49529, in § 58.2462, the tables should read as follows:

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

| Flavor characteristics | U.S. grade designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | | Cured or Aged | | |
| | Extra | | Standard | Commercial | Extra | Standard | Commercial |
| | [1] LH | SH | | | | | |
| Acid | VS | S | D | P | S | D | P |
| Barny | — | — | S | D | — | S | D |
| Bitter | — | VS | S | D | VS | S | D |
| Feed | S | S | D | P | S | D | P |
| Flat | — | — | S | D | — | S | D |
| Fruity | — | — | S | D | VS | S | D |
| Malty | — | — | S | D | — | S | D |
| Metallic | — | — | — | VS | — | — | VS |
| Old Milk | — | — | S | D | — | S | D |
| Onion | — | — | VS | S | — | VS | S |
| Rancid | — | — | S | D | — | S | D |
| Sour | — | — | — | VS | — | — | VS |
| Sulfide | — | — | S | D | VS | S | D |
| Utensil | — | — | S | D | — | S | D |
| Weedy | — | — | S | D | — | S | D |
| Whey Taint (Whey) | — | — | S | D | VS | S | D |
| Yeasty | — | — | S | D | — | S | D |

(—)—Not permitted; VS—Very Slight; S—Slight; D—Definite; P—Pronounced.
[1]—Long-hold—(LH); —Short-hold—(SH).

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TABLE II.—CLASSIFICATION OF BODY AND TEXTURE WITH CORRESPONDING U.S. GRADE

| Body and texture characteristics | U.S. Grade Designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | | Cured or Aged | | |
| | Extra | | Standard | Commercial | Extra | Standard | Commercial |
| | [1] LH | SH | | | | | |
| Coarse | S | S | D | P | S | D | P |
| Corky | — | — | S | P | — | S | P |
| Crumbly | — | S | D | P | S | D | P |
| Curdy | D | D | D | P | S | D | P |
| Gassy | — | — | S | P | — | S | D |
| Mealy | S | S | D | P | S | D | P |
| [2] Open | S | D | P | P | S | P | P |
| Pasty | — | — | D | P | — | D | P |
| Pinny | — | — | VS | S | — | VS | S |
| Short | S | S | D | P | S | D | P |
| Slitty | — | — | S | D | — | S | D |
| Sweet holes | — | S | D | P | — | D | P |
| Weak | S | S | D | P | S | D | P |

(—)—Not permitted; VS—Very Slight; S—Slight; D—Definite; P—Pronounced.
[2]—Not applicable for Colby cheese.
[1]—Long-hold—(LH); —Short-hold—(SH).

TABLE III.—CLASSIFICATION OF FINISH AND APPEARANCE WITH CORRESPONDING U.S. GRADE (AS DETERMINED BY EXAMINATION OF AT LEAST THE FILLING END)

| Finish and appearance characteristics | U.S. grade designation | | | | | | |
|---|---|---|---|---|---|---|---|
| | Fresh or Current | | | | Cured or Aged | | |
| | Extra | | Standard | Commercial | Extra | Standard | Commercial |
| | [1] LH | SH | | | | | |
| Free Whey | S | S | D | P | — | S | D |
| Mold | — | S | D | P | S | D | D |
| Rough Surface[3] | S | S | D | P | S | D | P |
| Rough Surface[4] | D | D | P | P | D | P | P |
| Soiled Surface | S | S | D | P | S | D | P |

(—)—Not permitted; S—Slight; D—Definite; P—Pronounced.
[1]—Long-hold—(LH); —Short-hold—(SH).
[3]—Unsealed primary container.
[4]—Sealed primary container or cheese surface treated with antimycotics.

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 997

[Docket No. FV-90-146FR]

### Inspection, Disposition and Minimum Quality Requirements Applicable to Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

*Correction*

In rule document 90-28246 beginning on page 49980, in the issue of Tuesday, December 4, 1990, make the following corrections:

**§ 997.20 [Corrected]**

1. On page 49985, in the first column, under paragraph (e) of § 997.20, in the 13th line, "purpose" should read "purposes".

**§ 997.30 [Corrected]**

2. On page 49987, in the first column, under paragraph (c)(5)(i) of § 997.30, in the 11th line, "Dothan," was misspelled.

3. On the same page, under paragraph (d) of § 997.30, in the third column, under in the seventh line, "bag" should read "bags".

**§ 997.40 [Corrected]**

4. On page 49988, in the first column, under § 997.40(a)(2), the sixth through eighth lines should read "consumption specified in § 997.30(a). Such peanuts".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 90-207]

### Mexican Fruit Fly

*Correction*

In rule document 90-24988 beginning on page 42698 in the issue of Tuesday, October 23, 1990, make the following correction:

**PART 301—[AMENDED]**

On page 42699, in the third column, in the first line of the authority citation to part 301 "U.S.C. 150bb," should read "7 U.S.C. 150bb,".

BILLING CODE 1505-01-D



## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Invitation to Serve on Federal Grain Inspection Service Advisory Committee

*Correction*

In notice document 90-28332 appearing on page 50049, in the issue of Tuesday, December 4, 1990, in the first column, in the sixth line from the bottom, "20-year terms" should read "2-year terms".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Short-Supply Review: Certain Manganese Steel Plate

*Correction*

In notice document 90-28831 beginning on page 50204 in the issue of Wednesday, December 5, 1990, make the following corrections:

1. On page 50204, in the third column, in the seventh line from the bottom "December 4, 1990" should read "December 14, 1990", and in the third line from the bottom "December 18, 1990" should read "December 12, 1990".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 630

[Docket No. 901197-0297]

### Atlantic Swordfish Fishery

*Correction*

In proposed rule document 90-28525 beginning on page 50199 in the issue of Wednesday, December 5, 1990, make the following correction:

On page 50200 in the first column, under DATES, "December 20, 1991" should read "December 20, 1990".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF TRANSPORTATION

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

### RIN 2900-AD81

### Reservists Education; State Approving Agencies and the Montgomery GI Bill; Selected Reserve

*Correction*

In rule document 90-27138 beginning on page 48843, in the issue of Friday, November 23, 1990, in the second column, the ACTION line should read "Final regulations."

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 312, 314, and 320

[Docket No. 89N-0367]

### Retention of Bioavailability and Bioequivalence Testing Samples

*Correction*

In interim rule document 90-28484 beginning on page 47034, in the issue of Thursday, November 8, 1990, on the cover page, in the next to last line, "Final" should read "Interim".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 886

[Docket No. 78N-2847 et al.]

### Medical Devices; Classification of 70 Electromedical Devices

*Correction*

In rule document 90-27219 beginning on page 48436, in the issue of Tuesday, November 20, 1990, make the following corrections:

**§ 886.1780 [Corrected]**

1. On page 48442, in the second column, under § 886.1780(a), in the last line, "emergency" should read "emergent".

**§ 886.1910 [Corrected]**

2. On the same page, in the third column, under § 886.1910(a), in the first line, "spectable" should read "spectacle".

**§ 886.4070 [Corrected]**

3. On page 48443, in the first column, under § 886.4070(a), in the third line, after "motor" insert "and".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Bureau of the Public Debt

### Privacy Act of 1974, as Amended; Proposed New System of Records

*Correction*

In notice document 90-28325 beginning on page 50075, in the issue of Tuesday, December 4, 1990, make the following correction:

On page 50077, in the first column, in the 23rd and 24th lines, "(a) The dates of records for correction should specify:" should be removed.

BILLING CODE 1505-01-D

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Part II

# Postal Service

**39 CFR Part 111**

**Proposed Domestic Mail Manual Changes To Implement the Rate, Fee, and Classification Changes Proposed in Docket R90-1; Proposed Rule**

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**POSTAL SERVICE**

**39 CFR Part 111**

**Proposed Domestic Mail Manual Changes To Implement the Rate, Fee, and Classification Changes Proposed in Docket R90-1**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** On March 6, 1990, pursuant to 39 U.S.C. 3622 and 3623, the Postal Service filed a request for a recommended decision by the Postal Rate Commission (PRC) on Proposed Rate and Fee Changes (see 55 FR 9792–9794). The PRC subsequently designated this filing as Docket No. R90–1 (hereafter referred to simply as R90–1).

This notice contains the implementing regulations the Postal Service proposes to adopt if the PRC's recommended decision in R90–1 is consistent with the Postal Service's request and the Governors of the Postal Service, acting pursuant to 39 U.S.C. 3625, approve that recommended decision.

These proposed regulations are designed to offer an opportunity for mailers to make the system changes and operational adjustments necessary to prepare to implement the rate and classification changes likely to result from R90–1. Publication of these regulations in no way seeks to prejudge the decision of the PRC or usurp the role of the Governors or their statutory authority. Readers and commenters are asked to remember that these regulations may have to be amended to reflect the recommended decision of the PRC and the decision of the Governors.

A final rule, to take into account the comments received and to incorporate the action of the Governors, is expected to be published in late January.

**DATES:** Comments must be received on or before January 8, 1991.

**ADDRESSES:** Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Leo F. Raymond, (202) 268–5199.

**SUPPLEMENTARY INFORMATION:** The Postal Service's submission in R90–1 included 15 major classification changes and increases in most existing rate and fee categories. The classification changes would (1) add reduced rates for nonpresorted ZIP+4 Barcoded First-Class Mail; (2) provide separate rates for ZIP+4 Barcoded First-Class Mail sorted to 3- and 5-digit ZIP Codes; (3) introduce Presorted Priority Mail; (4) extend pickup service to include not only Express Mail, but Priority Mail and parcel post as well; (5) provide volume discounts for Express Mail rates; (6) introduce a new "flat rate" envelope and an accompanying rate for both Express Mail and Priority Mail; (7) introduce reduced rates in both second- and third-class for high-density "saturation" mailings prepared in carrier walk sequence; (8) establish ZIP+4 and ZIP+4 Barcoded rates for second-class letter-size mail; (9) provide separate bulk third-class rates for letter-size pieces and for other mailpieces; (10) establish discounts for third-class mail that is deposited by the mailer at the destination BMC, SCF, or delivery unit; (11) extend ZIP+4 Barcoded third-class rates to pieces presorted to other than 5-digit destinations; (12) replace the existing "5-Digit" presort level for third-class with a new "3/5" presort level; (13) initiate reduced rates for parcel post deposited at the destination BMC; (14) remove the existing prohibition against using bound printed matter rates to mail books that are otherwise eligible for the special fourth-class rates; and (15) add two higher rate categories for post office box and caller service in expensive rental areas.

The proposed regulations that follow indicate the revisions to the Domestic Mail Manual necessary to implement these changes. Except where noted, these proposed regulations do not incorporate the changes in the Domestic Mail Manual proposed on October 3, 1990 (55 FR 40560) concerning eligibility requirements for automation based rates. The Postal Service plans to issue a final rule shortly on those proposed regulation changes.

### Mailing Statements

Mailing statements are the documents on which the mailer officially declares the volume, preparation, rate eligibility, and postage for a mailing. The proposals in R90–1 render existing mailing statements obsolete, both by the changes in prices and rate categories as well as by the expansion of discount types and combinations. For that reason, the Postal Service has produced eleven new mailing statements for domestic mail: Forms 3541R and 3541N for second-class mail; 3600R and 3600PC for First-Class Mail; 3602R, 3602N, and 3602PC for third-class mail; 3605R and 3605PC for Priority Mail and zone-rated fourth-class mail; 3606R and 3606PC for non-zone-rated fourth-class mail. (The R suffix indicates regular rate permit imprint mailings, the N suffix indicates nonprofit rate permit imprint mailings, and the PC suffix indicates postage-affixed mailings.)

The statements for other than second-class mail have a substantially identical format, facilitating their adaptation to automated or facsimile usage.

Existing regulations would be modified to remove references to specific mailing statements wherever possible in preference to more generic terminology that will require fewer revisions when mailing statements are modified or deleted.

### *Chapter 1*

*Postage for Enclosures or Attachments.* Section 136 would be amended to allow an attachment or enclosure to enjoy a discounted rate that is analogous to that paid by the host piece, provided the combined piece remains eligible for the discount claimed. In practice, this is consistent with existing language that allows the same presort level rate for an attachment or enclosure as is claimed for the host piece, and means that, for example, if a second-class publication is eligible for the destination delivery zone rate, the analogous destination delivery unit entry discount could be claimed for a third-class enclosure.

*Multicolor Preprinted Stamped Envelopes.* Section 141 would be amended to detail the rates for multicolor preprinted stamped envelopes. The introduction of these products would allow customers who order stamped envelopes from the Postal Service greater creative latitude in how the envelopes will represent them to the recipient. The new envelope would be available in #6¾ and #10 sizes, with or without a window, at both the regular and nonprofit rates.

*On-Site Meter Setting or Examination.* Section 144 would be amended to describe the on-site meter setting or examination program, and to apply fees to all occasions when postal personnel visit a meter holder's location either to set or examine a meter, or to remove a meter from service.

*Delivery Receipt Fees.* Section 149 would be amended to incorporate the increased fee for delivery receipts.

*Plant-Verified Drop Shipment.* The existing regulations in section 154 would be renamed and would continue to serve their original purpose under the name Expedited Plant Load Shipment. Their general provisions and the term Plant-Verified Drop Shipment would be extended to Chapters 4, 6, and 7 to allow mailers, where authorized by the Postal Service, to have destination entry mailings preverified at the mailer's plant (see proposed 765, 664, and 784). The amended Plant-Verified Drop Shipment regulations are designed for use when the mailer prepares mailings at any rate which includes a destination entry discount, and the Postal Service determines it is in its best interest to verify such mailings at an existing plant load site (having a postal-staffed detached mail unit (DMU)) rather than at the destination entry postal facility. To be eligible for any of the destination entry rates, the mailer must deposit the corresponding mailing at the appropriate facility serving the ZIP Codes or addresses on the mail. Eligibility for these rates is not determined by the point at which the Postal Service conducts its verification activities.Verification can be performed in advance of the deposit of the mailing and its acceptance as U.S. Mail. Since the destination rates include a destination delivery unit rate, and since these rates contemplate deposit of the mail at the facility at which the corresponding mail is cased for delivery, it is apparent that many facilities—notably stations and branches—would be unequipped to perform what is an essentially new function for them: verifying bulk mail. The Postal Service seeks to benefit from the services of existing DMUs—with equipment and trained staffs already in place—and use them to conduct the primary verification of destination entry Plant-Verified Drop Shipment mailings. Under the proposed Plant-Verified Drop Shipment rules, the Postal Service would centralize its verification functions at the mailings' origin and return the mailings to the mailer for transportation at the mailer's expense to the appropriate destination facility. Because mailings would be preverified and postage would be prepaid at the mailer's plant, authorized mailers would not be restricted in the number of Plant-Verified Drop Shipment mailings that could be deposited at one time for acceptance at a destination facility. By contrast, for purposes of workload management, the Postal Service is proposing to generally establish a limit of 4 destination rate mailings per day where those mailings need to be fully verified and accepted at that destination facility.

### Express Mail

*Pickup Fees.* Section 211 would be amended to note the increase in the pickup fee from $4.00 to $4.50. The Postal Service is also proposing pickup service for Priority Mail and parcel post, and payment of one fee will cover all mail (Express Mail, Priority Mail, and parcel post) picked up at one time.

*Volume Discounts.* Sections 216 and 282 would be amended to describe the new discounts proposed for Express Mail volume exceeding specified levels. Under the proposed method, the Postal Service would allow its Express Mail Corporate Account (EMCA) customers to take a 12% discount on pieces sent at other than the ½-pound rate once volume at the ½-pound rate (or at a combination of the ½-pound rate and other rates) exceeds $5,000 per four-week postal accounting period.

*Flat Rate Envelope.* Section 217 would be added to introduce a new flat rate envelope and a corresponding rate. Customers who purchase this mailing container would be charged a flat rate for its mailing regardless of the weight of the material they may place in it. This new option is designed to make use of Express Mail more convenient to customers by allowing them to anticipate a consistent postage cost whenever these containers are used, without the need to weigh individual pieces, monitor content, or affix a variable amount of postage to each.

### First-Class

*Rates.* The maximum weight to which regular First-Class Mail rates apply would be reduced from 11 to 10 ounces. Priority Mail rates would apply to all pieces weighing 10 ounces or more, although lighter pieces may be mailed at the minimum Priority Mail rate at the option of the mailer. The 4-cent reduction in the charge for pieces weighing over 2 ounces would apply to all presort rate categories. A weight limit of 2.5 ounces per piece would be added to the requirements for all ZIP+4 and ZIP+4 Barcoded rate categories. This limitation, which reflects the proposed limits in the October 3 rulemaking, also would apply to second- and third-class automation based rate categories.

*Priority Mail.* Exhibits 314.1 and 314.2 would be added (replacing exhibit 310, page 2) to illustrate the new rates for Priority Mail. The most significant change is that the unzoned rate structure, now in place only for pieces weighing not more than 2 pounds, is proposed to extend to include 3 additional rate elements: Pieces over 2 but not exceeding 3 pounds, over 3 but not exceeding 4 pounds, and over 4 but not exceeding 5 pounds.

*Flat Rate Envelope.* The Postal Service proposed a flat rate envelope and a corresponding rate for Priority Mail. This product and rate design are similar to those for Express Mail, as discussed above.

*Priority Mail Presort.* Sections 326.4 and 362.8 would be added, and sections 363 and 383 revised, to introduce a new Priority mail presort rate. Mailers would receive a discount of $0.10 per piece off the single-piece Priority Mail rates for qualifying pieces. Basic requirements would include a minimum of 300 pieces, presorted to 5-digit, 3-digit, and SCF destinations.

*Priority Mail Pickup Service.* Section 326.5 would be added to introduce pickup service for Priority Mail. For a single $4.50 fee, the customer can schedule pickup of an unlimited quantity of parcel post, Priority Mail, and Express Mail. Incidental amounts of other postage-affixed full-rate mail can also be collected at the same time. The proposed service would be available on a scheduled or "on-call" basis, during regular business hours, at all post office having city delivery service, and along the route of travel of rural or highway contract routes. For scheduled pickup service, mailers would be required to enter into a service agreement that specifies when pickup service is to be provided and the approximate volume that will be submitted. With at least 24 hours notice, scheduled pickups that are not needed can be canceled without penalty.

*Nonpresorted ZIP+4 Rate.* The proposed eligibility requirements for nonpresorted ZIP+4 mail would be relocated to new section 327. Those requirements would be further revised to allow up to 15% of the pieces in a nonpresorted ZIP+4 rate mailing to bear only a 5-digit ZIP Code.

*Nonpresorted ZIP+4 Barcoded Rate.* Section 328 would be added to introduce a nonpresorted rate for ZIP+4 barcoded mail.

*ZIP+4 Presort Rate.* Sections 324, 365, and 366 would be revised to describe only ZIP+4 Presort, with sections 365 and 366 relating solely to presort and documentation requirements. A new traying option would be added in section 366.3 to eliminate packaging for pieces sorted to trays that are at least ¾ full and labeled to one of the automated 3-digit or SCF facilities listed in Exhibits 122.63m and 122.63n. Commenters should note that new preparation (e.g., presort) requirements have not been proposed, so mailers who now use ZIP+4 Presort rates could continue to do so without major operational changes.

*ZIP+4 Barcoded Rate.* Sections 325 and 364 would be revised to describe several changes relating to ZIP+4 Barcoded rate mail. Two tiers of ZIP+4 Barcoded presort rates (3-digit and 5-digit) have been proposed and mail for each rate would be included within the same mailing, subject to a single 500-

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piece minimum. The 5-digit ZIP+4 Barcoded rate would apply to pieces in packages of 10 or more pieces, while the 3-digit ZIP+4 Barcoded rate would apply to pieces in packages of 50 or more. In each case, the packages would be placed in trays as described in 364. ZIP+4 barcoded pieces in the residual portion would be eligible for the nonpresorted ZIP+4 Barcoded rate. Presort requirements would remain unchanged, so mailers need not make operational changes to continue to use ZIP+4 Barcoded rates. However, an option would be added for 3-digit ZIP+4 Barcoded rate mailings destinating at automated sites, under which packages of 50 or more pieces would be prepared and trayed to the 3-digit and SCF destinations listed in Exhibits 122.63m–o. Remaining pieces would qualify for the nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, or single-piece First-Class rates. Options would also be added to allow physical separation in lieu of documentation for residual pieces in ZIP+4 Barcoded rate mailings. Mailings prepared solely for nonautomated sites, or for both automated and nonautomated sites, would be referred to as "national" mailings.

*Preparation Requirements.* As noted above, the required preparation for ZIP+4 Presort and ZIP+4 barcoded mail would not be altered. However, the Postal Service would begin to define new preparation requirements specifically for automated mail. These would be initially offered as options, some as described in new chapter 5 (see below), and some as described in the regulations for the particular class of mail. The ZIP+4 Barcoded rate sections of chapters 2, 4, 5, and 6 include a notice that the Postal Service intends to propose that all ZIP+4 Barcoded rate mailings contain 100% prebarcoded pieces by September 15, 1991. The Postal Service is not formally proposing this change for notice and comment at this time, but is giving all interested persons advance notice that it plans to publish such a proposed rule in early 1991 following the issuance of the final rule on rate implementation changes noted above.

**Second-Class**

Several sections of Chapter 4, especially 411, 424, 429, 441, 443, and 444, would be revised for organizational reasons, aside from the changes described below. Section 442 would be replaced with new section 424.8.

*Rates.* Section 411 would be revised extensively to present the new rates for second-class mail. The biggest single change would be the removal of the flat (unzoned) rate for the nonadvertising portion of a publication (which would be offset by the per-piece and per-pound nonadvertising adjustments, discussed below). Instead, in accordance with its R90–1 request, the Postal Service proposed to apply the zoned rates to the entire weight of the publication. Other major changes would be the new SCF and delivery office "zones," the automated (ZIP+4 and ZIP+4 Barcoded) rates, and the saturation rate. Although the Postal Service proposed these as discounts from base rates in its rate filing, the Domestic Mail Manual and mailing statements would simply show the net pound or piece rate that applies to a mailpiece having certain characteristics. Often, these characteristics would be used to designate the "rate" which is generated by combining a base rate with the earned discounts. For example, revised section 411.23 would show in table form the applicable piece rates for copies of a publication at various presort levels, and with various automation discounts included. The base rate would be $0.201, whereas the deduction of a discount for automation (ZIP+4 Barcoded) would yield a net rate of $0.177. This particular net rate might be called a "level A barcoded rate" although it would be actually made up of one base rate and one discount. Increasingly, the consequent reference to the charge applicable to a mailpiece would be derived from one or more of the rate components that would be applied to yield the net rate.

*SCF Zone.* Sections 411.123 and 424.9 would be added to describe the SCF zone which would be, in effect, the successor to the existing SCF discount. In R90–1, the Postal Service has proposed elimination of the "Intra-SCF" rate which functioned as a flat per-piece discount deducted from the piece rate portion of the postage computed for the mailing of a second-class publication. In its place, the SCF zone would be introduced to apply a separate rate per pound to all copies addressed for delivery in the SCF zone, and area equivalent to that to which the intra-SCF rate currently is applied. Customers would not see a change in the number of copies eligible for this discount, but would be able to report them and the applicable postage more easily on mailing statements.

*Delivery Office Zone.* Sections 411.124 and 424.4 would be added to describe the destination office zone. This rate would function similarly to the destination delivery unit rate in third-class, described later in this notice, and would be available only for pieces that also were prepared as carrier route or saturation rate mailings. The copies of the publication claimed at the destination office zone rate would be required to be physically deposited at the postal facility from which delivery to customers would be made (e.g., the station where the carrier cases the mail). Designation of this rate as a "zone" in second-class would both simplify reporting of copies and postage and maintain the zone structure that would be applied to other copies entered elsewhere.

*Automation Based Rates.* Sections 411.125, 411.126, 424.5, and 424.6 would be added to describe the automation based rates proposed in second-class mail for the first time. The Postal Service proposed in R90–1 that letter-size pieces of second-class mail be eligible for a ZIP+4 or ZIP+4 Barcoded discount off the otherwise applicable per-piece rates if they are prepared to comply with the corresponding requirements. Those requirements would be the same as apply to First-Class Mail, and would mandate standards for the size, OCR readability, barcode format, and other characteristics of the mail. Presort would be similar to the level A and B requirements, except that automation based rates would apply to pieces in packages of at least 6 pieces that are placed in sacks containing at least 4 packages. Without this minimum (which would not be in place for the level A rates) all pieces could theoretically qualify for rates which would not cover the required postal handling.

*Saturation Rates.* Sections 411.127 and 424.7 would be added to describe the new saturation rate being offered for second-class publications. It would be analogous to the saturation rate also proposed in third-class, and would apply only to mail that is prepared as walk-sequenced carrier route mail. For each carrier route to which saturation rate mail is sent, publishers would be required to distribute copies to at least 75% of the total number of addresses or 90% of the residential addresses, whichever is less. Saturation rate pieces would not have to be sent to every route in a 5-digit ZIP Code area. The Postal Service would require that mailers must report on the method used in determining the walk-sequence information used in preparation of saturation mailings, and would impose a 5% error limit on those mailings. Since the rate would not include coverage for additional sortation or rehandling of saturation rate pieces, excessive errors would result in additional postage being charged for the mailing. The mailer would be given the choice of paying the additional postage due or picking up the mailing for correction. To ensure that saturation rate mailers maintain their lists in correct walk sequence, the Postal Service would require that mailers update their lists on a quarterly basis using either the Postal Service's Computerized Delivery Sequencing (CDS) file products or the address card sequencing serviced in DMM section 946.

*Nonadvertising Adjustments.* Section 411.133 would be added, and sections 411.24, 411.334, 411.344, 411.354 would be amended to explain the nonadvertising adjustments that are available to reduce the postage for a second-class publication in proportion to its nonadvertising content. The nonadvertising adjustments proposed by the Postal Service are similar in purpose to the nonadvertising adjustment currently in place for second-class mail. However, while the current adjustment applied only to the piece rate portion of the postage, the Postal Service proposed two separate adjustments in R90–1, one applied to the piece rate, and another to the pound rate.

*Chapter 5*

Chapter 5, as presented below, would be the beginning of a new chapter designed to present requirements that apply to automated mail in general, without regard to the applicable class of mail or rate category, in an effort both to streamline the regulations contained in chapters 3, 4, and 6, as well as to ensure greater consistency in the characteristics of and the preparation requirements for automation based mail. The Postal Service plans to move most common automation requirements from the other chapters into chapter 5 in the near future, leaving in the respective chapters only those requirements which are class-specific.

The procedures proposed in chapter 5 would permit automation based rate mailers to present ZIP+4 and ZIP+4 Barcoded mailings entirely in trays without any packaging being required. Full trays (at least ¾ full when reasonably compressed) would be required to qualify for the 3- and 5-digit automation based rates. Mail presented in full trays for an SCF would qualify for 3-digit ZIP+4 Barcoded rates if it is batched for the 3-digit areas served by the SCF.

When revised automation eligibility rules are adopted as part of the final rule on the October 3, 1990, rulemaking discussed above, those rules would be incorporated in chapter 5 as well. Moreover, the Postal Service intends to propose expanded provisions for chapter 5 in a separate notice and comment rulemaking to be published in 1991. In that rulemaking, the Postal Service intends to propose that ZIP+4 Barcoded mailings must contain 100% prebarcoded pieces by September 15, 1991, and that all automation based rate mailings be presented under the procedures in chapter 5 by March 15, 1992.

**Third-Class**

*Rates.* The Postal Service proposed a major restructuring of third-class rates in R90–1. The rate structure for third-class has long made a fundamental distinction between pieces that weigh less than the "break point" (subject to a minimum flat rate per piece) and those that weigh more (subject to a two-part rate composed of per-piece and per-pound elements). In R90–1, the Postal Service proposed a further subdividing of the former group into "letter" and "non-letter" subgroups. As the names imply, the first subgroup would consist of letter-size pieces, as defined by existing regulations (section 128, Domestic Mail Manual), while the second sub-group would include all the remaining categories of mailpieces that can physically meet the maximum weight criteria represented by the "break point." The "letter" rates would include a base rate that is lower than the base rate for "non-letters," thus reflecting the generally more economical processing that may be used with letter-size mail. In addition, since being a letter-size piece would be one of the essential conditions of eligibility for automation based rates, the corresponding discounts ("rates") would be available only for "letters." The proposed third-class rates can be seen as the result of choosing from a "menu" of rate or discount options. Once a mailpiece has been assigned—by virtue of its essential qualities—as either a "letter" or "non-letter" and its weight has been determined, selections would be made—and discounts taken as applicable—from three "menus"—presort, automation, and destination entry.

*Presort.* Sections 624.1, 624.2, 641.1, and 641.2 would be revised, and 641.3 would be deleted based on the redesign of some levels of presorted mail. While the current presort hierarchy for third-class mail would remain unchanged (e.g., required 5-digit, 3-digit, state, mixed states packages and sacks), as would the existing 10-piece package and 125-piece/15 pound sack criteria, the available rates would be revised. Mailers would be able to continue to claim the base rate ("basic" presort) for the entire mailing or, rather than the "5-digit" rate, could claim the "3/5" presort rate. Under this rate, not only would 5-digit packages qualify, but so would city and 3-digit packages, provided all of these packages were sorted to 5-digit, city, or 3-digit sacks. The Postal Service estimates that over 40% of existing "basic" rate mail would be eligible for the new "3/5" presort rate without any change in presort or preparation.

*Automation Based Rates.* Sections 624.4, 624.5, and 624.6 would be deleted, and section 628 would be added to describe the automation based rates (discounts) that are proposed by the Postal Service. Although the existing requirements would be relocated, the provisions of sections 624.4–624.6 would remain unchanged. The OCR readability requirement for ZIP+4 coded pieces, the barcode format for ZIP+4 barcoded pieces, and similar existing rules would not be modified. The relocation would be necessary simply because the proposals in R90–1 would generate two types of ZIP+4 presorted rates and three types of ZIP+4 Barcoded rates, each sharing some common requirements while retaining some individual features. Most important from the standpoint of rate calculation, compliance with the appropriate requirements in 628 would not truly earn a "rate" as such, but rather a discount which, like presort, would be cumulatively subtracted from a base rate to yield a net postage. Automation based rates could be combined with the 3/5 presort rate, and with the BMC and SCF destination entry rates, but would not be available for other than "letter" mail. Commenters who are interested in automated rate mail should note the proposed sections on First-Class preparation requirements and chapter 5, above.

*Destination Rates.* Section 624.7 would be added to describe the requirements for rates (discounts) based on deposit of the mail at the facility serving the delivery address on the piece. The smallest discount would be for mail deposited at the BMC serving the destination, the next larger discount would be for mail brought to the destination SCF, and the largest would be for mail deposited at the delivery unit housing the carrier (or post office box) for the delivery address on the mailpiece. The Postal Service would amend its Plant-Verified Drop Shipment program (as described above) to provide centralized verification and postage payment at a mailer's plant for mailings subsequently transported by the mailer (under controlled circumstances) for acceptance into the mail at the facility appropriate to earn the discount.

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Existing requirements for plant load authorization, permits and licenses, or mailing statements and documentation would not be affected. The mailer would be required, however, to ensure that the delivery of the mail (commonly referred to as a "drop shipment") was in line with the operational needs of the destination facility. Therefore, the Postal Service would establish specific requirements (largely related to quantity of mail, scheduling of arrival, and vehicle compatibility) for each form of destination entry. Further, to confine use of the destination entry rates to deposit of destinating mail and prevent "jackpotting" of mail, the Postal Service would require that destination rate mail represent the majority of the mail deposited at a facility by one mailer in any 24-hour period. (The "mailer" would be defined as the party presenting the mail to the Postal Service. "Jackpotting" is the practice by which a mailer will consolidate a partial load of destinating mail with miscellaneous nondestinating mail for deposit at the same postal facility. This practice may require postal transportation of the non-destinating mail "upstream" from the facility at which it was deposited with a resultant additional handling cost. The proposal to restrict jackpotting with destination rates mailing is intended to reduce the occasions on which the Postal Service would encounter this situation.)

Destination BMC and destination SCF discounts would be available for all third-class mail that meets the applicable requirements; destination delivery unit mail would be restricted to carrier route and saturation mail. Like presort and automation, destination entry would be a "menu" whose offerings may be selected subject to the regulations' limitations—and combined with other discounts to yield the net postage for the mailpiece.

*Saturation Rate.* Section 624.8 would be added to describe the eligibility requirements for the saturation rate (discount). The requirements for this rate in third-class would be identical to those described above for the second-class saturation rate. The saturation rate would be considered a presort category for assignment to a "menu" and could be combined only with a destination entry rate; since saturation rate mail would be carrier route presorted or walk-sequenced, the placement of a ZIP+4 code or ZIP+4 barcode on the piece would not justify an automation based discount. The eligibility requirements described with regard to second-class saturation rate mailings would also apply to third-class saturation rate mailings.

*Traying.* Sections 628.19 and 647 would be added to describe the optional use of trays for mail preparation. The substitution of this type of mail transport equipment for the familiar canvas sack is intended for two situations: when the mail is originating and destinating in the same division service area, or when the mail placed in those trays is letter-size and eligible for an automation based rate. The regulations proposed by these two sections would not relieve the mailer's obligations to presort according to 641.1, to prepare packages, or to meet the requirements that may apply to any rates (discounts) claimed.

Fourth-Class

*Rates.* Exhibits 711.11 through 711.42 would be revised to illustrate the fourth-class rates requested by the Postal Service. The Postal Service did not propose changing the basic structure of these rates in R90–1, except for the addition of the destination BMC rate, explained below. The difference between the inter- and intra-BMC parcel post rates (the "intra-BMC discount") would be increased to $0.27, and the surcharge for nonmachinable items at parcel post rates (the "NMO surcharge") would be increased to $1.75. While the first-pound special fourth-class rate would increase approximately 14%, the comparable rate for a level A (5-digit presorted) piece would drop about 12%, illustrating the value to both the mailer and the Postal Service that is represented by this level of presortation. The increase in the first-pound level B (BMC presorted) rate would be less than 4%. The library rate would increase only one cent per pound for each of the first seven pounds.

*Destination BMC Rate.* The Postal Service proposed destination BMC rates to represent a worksharing discount for reduced postal transportation costs (see proposed Exhibit 711.14 and section 722.4). There would be three simple requirements associated with the proposed rate: (1) The mailing must include no less than 50 addressed pieces for the delivery area of the destination facility; (2) the parcels must be deposited at that facility; and (3) the parcel must not require air transportation to reach its destination. In most cases, the appropriate "facility" would be one of the 21 BMCs but, for purposes of this rate, the ASFs (auxiliary service facilities) would be considered equivalent, as would San Juan, PR (for Puerto Rico and the Virgin Islands), and several cities in Alaska and Hawaii for their respective vicinities. Mailers whose densities and transportation resources are sufficient could also benefit from the proposed destination BMC rate when mailings of 50 or more pieces of parcel post for a 5-digit ZIP Code delivery area were deposited at the corresponding facility. The existing requirements for BMC acceptance would remain in place, as would scheduling, payment procedures, and vehicle compatibility requirements like those proposed for the third-class DBMC rates explained above.

With the proposed introduction of rates specifically designed for mail entered at the BMC serving the mail's destination, the Postal Service would stop allowing parcel shippers to arrange with local post offices to drop mail at the BMC but receive rates based upon the local area and zone chart applicable to the local office. Parcels deposited at BMCs would now pay rates based on the rate chart applicable to the post office of the BMC city; these post offices would be listed in new Exhibit 722.44.

*Pickup Service.* As a service to its parcel customers, the Postal Service has proposed pickup service for parcel post (see new section 722.5). For a single fee, the customer could schedule pickup of an unlimited quantity of parcel post, Priority Mail, and Express Mail. Incidental amounts of other postage-affixed full-rate mail could also be collected at the same time. The proposed service would be available during regular business hours at all post offices having city delivery service and along the route of travel of rural or highway contract routes. Mailers would be required to enter into a service agreement that would specify when pickup service would be provided and the approximate volume that would be submitted. With at least 24 hours notice, scheduled pickups that are not needed could be canceled without penalty. On-call (unscheduled) pickup service would not be extended to parcel post at this time, but may be once mailer demand could be measured and the necessary logistic resources identified.

*Bound Printed Matter.* Section 723.1 would be revised to reflect the proposal of the Postal Service to eliminate Domestic Mail Classification Schedule language that makes eligibility for the bound printed matter and special fourth-class rates an either/or proposition. Items that are eligible for the special fourth-class rate would be allowed to be mailed at the bound printed matter rates if they meet the requirements for those rates.



Special Services

*Insured Mail.* Section 913 would be revised to reflect two significant changes for insured mail: (1) The second and third steps for "numbered" insured would be combined; and (2) the maximum value for insurance coverage would be increased to $600.

*Collect-on-Delivery (COD) Service.* Section 914 would be revised in a manner similar to that for insured mail: the first two steps in the amount to be collected would be combined, and the maximum amount of insurance coverage for a COD article would be increased to $600.

*Other Services.* Certified, special delivery, special handling, parcel air-lift, merchandise return, certificate of mailing, restricted delivery, return receipt, and mailing list services would not be revised except to reflect increased fees. There would be no change in registered mail fees.

*Business Reply Mail (BRM).* Section 917 would be revised to restore the fee structure that was in place prior to 1988, i.e., the annual BRM permit/renewal fee would be separate from the annual BRM accounting fee, and customers could once again add use of an advance deposit account to an existing BRM permit without payment of another fee. Further, the per-piece fee for BRMAS pieces would be reduced from $0.05 to $0.03 each, while the per-piece fee for non-BRMAS pieces would increase from $0.08 to $0.09 each.

*Money Orders.* Section 941 would be revised to implement two proposed changes in money order service: (1) An increase in the inquiry fee; and (2) most significantly, a reduced fee for money orders for amounts from $35.01 to $700, which would, in effect, establish a flat $0.75 fee for all money orders, regardless of their amount. Postal military money orders would be charged a flat fee of $0.25.

*Post Office Box and Caller Service Fees.* Sections 951 and 952 would be revised to describe not only increased fees for post office box and caller services, respectively, but, most significantly, to add two new and identical fee categories in each service to reflect the increased costs for the Postal Service in geographic areas where property rental costs are exceptionally high. Places assigned to existing groups 2 and 3 and to most of existing group 1, now called group 1C, would not be affected. The highest fees would apply to newly-established group 1A to which ZIP Codes 10001 through 10299 would be assigned, reflecting the high real estate costs in Manhattan. Newly-established group 1B would include other high-rent areas, such as the balance of New York City, parts of downtown Boston, Chicago, Philadelphia, Washington, Los Angeles, San Francisco, and Honolulu, and some suburban centers. ZIP Codes not listed among those in groups 1A or 1B would be in group 1C.

Pursuant to the requirements of 39 U.S.C. 3624, the Postal Rate Commission is expected to issue its recommended decision in R90–1 no later than Friday, January 4, 1991. Accordingly, the Postal Service believes there is good cause in this instance for shortening the usual thirty-day comment period to require the submission of all comments by close of business on Tuesday, January 8, 1991. This abbreviated comment period is necessary to ensure that the Postal Service has the opportunity to consider the comments at the time it undertakes any revisions to these proposed regulations that may be necessitated by the Commissions' recommended decision.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In chapter 1 of the Domestic Mail Manual, make the following revisions:

**CHAPTER 1—DOMESTIC MAIL SERVICES**

**110 General Information**

111 SCOPE

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**111.3 Mailer Responsibilities**

111.31 Compliance with Regulations. [Text of existing 111.3.]

111.32 Payment of Postage. All mailings are accepted based on an examination of the mailing and, where applicable, the accompanying mailing statement prepared by the mailer. The signature of a postal employee on the mailing statement, and the subsequent acceptance of the mailing, do not constitute a verification of the accuracy of that statement, and do not limit the Postal Service's ability to demand proper payment after acceptance when it becomes apparent such payment was not made.

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**120 Preparation for Mailing**

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122 DELIVERY ADDRESS

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**122.4 Alternative Addressing Formats**

122.41 Simplified Address Format.

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122.412 City Routes and Post Office Boxholders.

a. The addressee's name and street address or post office box number may be omitted from the address on pieces mailed as official matter by agencies of the federal government, any state, county, or municipal government, and the governments of the District of Columbia, the Commonwealth of Puerto Rico, and any United States territory or possession listed in 111.2a, when distribution is to be made to each stop or possible delivery on city carrier routes or to each post office boxholder at a post office which has city carrier service.

b. The following forms of address may be used:

(1) Postal Customer.

(2) Residential customer (delivery desired at residences only).

(3) Business Customer (delivery desired at business addresses only).

c. Mailpieces must be prepared as prescribed by 122.413, 624.8 (if applicable), and 640.

d. At least 10 days before the date of mailing, the mailer must furnish a sample mailpiece and the following information to the postmaster of the entry post office:

(1) Proposed date of mailing.

(2) Total number of pieces being mailed.

(3) Method of postage payment.

(4) Names of all city delivery post offices which will receive part of the mailing and the number of pieces for each.

e. The postmaster gives the mailer a mailing schedule which the mailer must follow.

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122.42 Occupant Address format.

122.421 Style of Address. [Text of existing 122.42.]

122.422 Prohibited Use. Copies of a second-class publication bearing an occupant form of address cannot be counted as subscriber or requester

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copies to meet the circulation requirements in 423.121 or 423.421.

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~~139 Mail Classification~~

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136 MIXED CLASSES OF MAIL

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**136.2 Attachments of Two Different Classes**

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136.23 Postage.

163.231 Computation and Payment. Postage for the host second-, third-, or fourth-class mailpiece must be paid as provided by 460, 660, or 760, respectively. Except for incidental First-Class attachments as described in 136.4, First- or third-class attachments must have postage affixed at the appropriate rate.

136.232 Discounts and Reduced Rates.

a. Presort. If a host piece qualifies for a presort discount, a First- or third-class attachment is eligible for the comparable First- or third-class presort rate. For example, if a host second-class mail-piece qualifies for the level CR (carrier route) rate, a third-class attachment would qualify for the third-class carrier route presort rate. The attachment need to meet the volume requirements that would apply if it were mailed separately.

b. Automation. If a host piece qualifies for an automated rate a First- or third-class attachment is eligible for the comparable First- or third-class rate. For example, if a host second-class mailpiece is eligible for a rate that includes a ZIP+4 discount, a third-class attachment would qualify for the corresponding third-class rate that includes a similar discount. The attachment need not meet the volume requirements that would apply if it were mailed separately. An automated rate may not be claimed for an attachment unless a similar automated rate is claimed for the host piece.

c. Saturation. If a host piece qualifies for a saturation rate, a third-class attachment is eligible for the comparable third-class rate provided every host piece for which the saturation rate is claimed as a third-class attachment. The attachment need not meet the volume requirements that would apply if it were mailed separately. A saturation rate cannot be claimed for an attachment unless a similar rate is claimed for the host piece.

d. Destination Entry. If a host piece qualifies for a rate that includes a destination entry reduction, a third-class attachment is eligible for the comparable third-class rate. For example, if a host second-class mailpiece is eligible for the SCF zone rate, a third-class attachment would qualify for the corresponding third-class rate that includes a similar destination entry reduction. The attachment need not meet the volume requirements that would apply if it were mailed separately. A rate including a destination entry discount cannot be claimed for an attachment unless a similarly reduced rate is claimed for the host piece.

136.233 Mailing Statements. Separate mailing statements using the appropriate Postal Service forms must be prepared for the host piece and the attachment. The statement for the attachment must be annotated to indicate it is for postage for a First- or third-class attachment. The statement for the attachment must be submitted with the statement for the host piece at the time of mailing.

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**136.3 Mailing Enclosures of Different Classes**

136.31 With Second-Class Publications.

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136.313 Computation of Postage

a. General Rule. The appropriate First- or third-class rate, based on the comparable second-class rate applicable to the addressed piece containing the enclosure, must be paid for the enclosed material.

b. Presort. If a host piece qualifies for a presort discount, a First- or third-class enclosure is eligible for the comparable First- or third-class presort rate. For example, if a host second-class mailpiece qualifies for the level CR (carrier route) rate, a third-class enclosure would qualify for the third-class carrier route presort rate. The enclosure need not meet the volume requirements that would otherwise apply if it were mailed separately.

c. Automation. If a host piece qualifies for an automated rate, a First- or third-class enclosure is eligible for the comparable First- or third-class rate. For example, if a host second-class mailpiece is eligible for a rate that includes a ZIP+4 discount, a third-class enclosure would qualify for the corresponding third-class rate that includes a similar discount. The enclosure need not meet the volume requirements that would apply if it were mailed separately. An automated rate may not be claimed for an enclosure unless a similar automated rate is claimed for the host piece. If the enclosure renders the host piece incompatible with automation requirements, neither the host piece nor the enclosure is eligible for an automation rate.

d. Saturation. If a host piece qualifies for a saturation rate, a third-class enclosure is eligible for the comparable third-class rate provided every host piece for which the saturation rate is claimed has a third-class enclosure. The enclosure need not meet the volume requirements that would apply if it were mailed separately. A saturation rate cannot be claimed for an enclosure unless a similar rate is claimed for the host piece.

e. Destination Entry. If a host piece qualifies for a rate that includes a destination entry reduction, a third-class enclosures is eligible for the comparable third-class rate. For example, if a host second-class mailpiece is eligible for the SCF zone rate, a third-class enclosure would qualify for the corresponding third-class rate that includes a similar destination entry reduction. The enclosure need not meet the volume requirements that would apply if it were mailed separately. A rate including a destination entry discount cannot be claimed for an enclosure unless a similarly reduced rate is claimed for the host piece.

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136.318 Documentation.

a. [Replace "Form 3541 or 3541–A, as appropriate" with "the appropriate mailing statement."]

b. [Replace "claimed on Form 3602–PC" with "reported on the appropriate mailing statement."]

c. [Replaced "declared on Form 3602" with "claimed on the appropriate mailing statement."]

[After the NOTE to 136.318c, add the following as new 136.318d:]

d. Mailing Statements. Separate mailing statements using the appropriate Postal Service forms must be prepared for the host piece and the enclosure. The statement for the enclosure must be annotated to indicate it is for postage for a First- or third-class enclosure. The statement for the enclosure must be submitted with the statement for the host piece at the time of mailing.

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136.32 With Third- and Fourth-Class Parcels.

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136.324 Postage.

a. Payment. [Text of existing 136.324.]

b. Mailing Statements. When required, separate mailing statements using the appropriate Postal Service forms must be prepared for the host piece and the enclosure. The statement for the



enclosure must be annotated to indicate it is for postage for a First- or third-class enclosure. The statement for the enclosure must be submitted with the statement for the host piece at the time of mailing.

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**136.7 Express Mail Drop Shipment**

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136.73 Rates.

136.731 Class of Mail Enclosed.

a. General Rule. [Text of existing 136.731.]

b. Discounted Rates. A reduced rate (based on presort, automation compatibility, saturation, or destination entry) may be claimed if the applicable requirements (including volume, preparation, and documentation) are met. See 136.751a, 136.753, and the specific sections of Chapters 3, 4, 6, and 7 that apply to the discounted rate claimed.

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136.75 Preparation Requirements.

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136.753 Additional Preparation Requirements for Enclosed Classes of Mail.

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c. [Add to the end of the section, after the EXAMPLE:]

**Note:** For purpose of this section, pieces paid at different level A rates need not be separated from each other within the group of sacks containing pieces eligible for level A. Similarly, pieces paid at different level B3 or B5 rates need not be separated from each other within the group of sacks containing pieces eligible for level B, and pieces paid at level CR and CS rates need not be separated within the group of sacks containing pieces eligible for level C. Any additional documentation required by 424 must be submitted with the corresponding mail.

d. Identical-Weight, Third-Class 3/5 Presort Rate Mailings That Include Basic Presort Rate Pieces. [Replace "5-digit presort level rate" and "5-digit rate" with "3/5 presort rate." Replace "basic third-class bulk rate" with "basic presort rate."]

e. Fourth-Class Parcel Post and Bound Printed Matter. [Add to the end of the section:] The DBMC entry rate may be claimed subject to the provisions of 722.4.

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**136.8 Combined Mailings of Special Fourth-Class and Bound Printed Matter**

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136.83 Postage.

a. Payment. [Test of existing 136.83.]

b. Mailing Statements. When required, separate mailing statements using the appropriate Postal Service forms must be prepared for the special fourth-class portion and the bound printed matter portion of the combined mailing. Both statements must be annotated to indicate they are for postage on part of a combined mailing, and must be submitted together at the time of mailing.

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**136.9 Priority Mail Drop Shipment**

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136.93 Rates.

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136.932 Enclosed Mail.

a. General Rule. [Text of existing 136.932.]

b. Discounted Rates. A reduced rate (based on presort, automation compatibility, saturation, or destination entry) may be claimed if the applicable requirements (including volume, preparation, and documentation) are met. See 136.951b, 136.953, and the specific sections of chapters 3, 4, 6, and 7 that apply to the discounted rate claimed.

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136.95 Preparation Requirements

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136.953 Additional Preparation Requirements for Enclosed Classes of Mail

* * * * *

b. [Add to the end of the section, after the EXAMPLE:]

**Note:** For purposes of this section, pieces paid at different level A rates need not be separated from each other within the group of sacks containing pieces eligible for level A. Similarly, pieces paid at different level B3 or B5 rates need not be separated from each other within the group of sacks containing pieces eligible for level B, and pieces paid at level CR and CS rates need not be separated within the group of sacks containing pieces eligible for level C. Any additional documentation required by 424 must be submitted with the corresponding mail.

c. Identical-Weight, Third-Class 3/5 Presort Rate Mailings That Include Basic Presort Rate Pieces. [Replace "5-digit presort level rate" and "5-digit rate" with "3/5 presort rate." Replace "basic third-class bulk rate" with "basic presort rate."]

d. Fourth-Class Parcel Post and Bound Printed Matter. [Add to the end of the section:] The DBMC entry rate may be claimed subject to the provisions of 722.4.

* * * * *

137 OFFICIAL MAIL

* * * * *

**137.2 Penalty Mail—Executive and Judicial Officers**

* * * * *

137.28 Services, Classes, Rates, and Preparation Requirements.

* * * * *

137.283 Mail Preparation

a. General.

* * * * *

(5) Endorsements. [In the second and sixth sentences, replace the number "11" with "10."]

* * * * *

b. Bulk Rate Mailings.

* * * * *

(3) Rate Eligibility and Presort. [Replace the first sentence with the following:] Mailings at any presort, bulk, or discounted First-, second-, third-, or fourth-class rate must meet the same eligibility and preparation requirements as mailings of other mailers. See 320, 360, 420, 440, 620, 640, 720, and 760.

(4) Mailing Statements. The appropriate Postal Service mailing statement must be submitted in duplicate with every mailing. A triplicate is required if a receipt is desired for a permit imprint mailing. Form 3606 is required if a receipt is desired for an identical-weight postage-affixed mailing. Mailings will be refused if they are not submitted with the necessary completed Postal Service mailing statements.

**Note:** GPO Form 712 (available from the Government Printing Office) is not a Postal Service mailing statement.

(5) Rate Documentation. Agencies or their contractors, just as other mailers, must provide any documentation required by regulation for the rate claimed for a mailing. See 320, 360, 420, 440, 620, 640, 720, and 760.

(6) Acceptance. [In the second sentence, replace the number "10" with "5."]

* * * * *

c. Special Procedures for Nonpresorted ZIP+4 Mail.

* * * * *

(3) [Replace "Form 3602 . . ." with "Form 3602R . . ."]

* * * * *

137.27 Penalty Indicia Format.

* * * * *

137.274 Penalty Permit Imprint Mail.

* * * * *

c. Mailings.

(1) General. [Replace the second and third sentences, as follows:] The appropriate Postal Service mailing statement must be submitted in duplicate with every mailing. (A triplicate is required if a receipt is desired.) Mailings will be refused if they are not submitted with the necessary

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completed Postal Service mailing statements.

[At the end of the fourth sentence, replace "in the upper right corner of the accompanying Forms 3602 or 3605" with "on the accompanying mailing statement."]

[Add to the end of the section:]

Note: GPO Form 712 (available from the Government Printing Office) is not a Postal Service mailing statement.

(2) Exception for GPO Contractor Mailings.

* * * * *

[Replace the NOTE at the end of the section, as follows:]

In addition to Form 3602G or GPO Form 712, GPO contractors must also submit the applicable Postal Service mailing statement.

* * * * *

137.275 Penalty Mail Stamps.

* * * * *

h. Mailings. [In the second sentence, replace the number "11" with "10."]

* * * * *

137.276 Penalty Reply Mail.

* * * * *

h. Penalty Merchandise Return.

* * * * *

(8) Payment of Postage and Fees.

(a) [Replace "$60" with "$75."]

(b) [Replace "$0.20" with "$0.25."]

* * * * *

137.28 Contractors.

* * * * *

137.283 Mailing Statements. The appropriate Postal Service mailing statement must be submitted in duplicate with every mailing. A triplicate is required if a receipt is desired for a permit imprint mailing. Form 3606 is required if a receipt is desired for an identical-weight postage-affixed mailing. Mailings will be refused if they are not submitted with the necessary completed Postal Service mailing statements. (A mailing statement must accompany all permit imprint mailings, all First-Class mailings other than at the single-piece rates, all second-class mailings, all third-class mailings at other than the single-piece rates, and all bulk or presorted fourth-class mailings.)

Note: GPO Form 712 (available from the Government Printing Office) is not a Postal Service mailing statement.

* * * * *

140 Postage

141 STAMPED ENVELOPES, POSTAL CARDS, AEROGRAMMES

**141.1 Plain Stamped Envelopes**

141.11 Envelopes Available at Post Offices.

| Kind | Size | Denomination (dollars) | Quantity and price (dollars) | | |
|---|---|---|---|---|---|
| | | | Each (less than 50) | 500 | 1000 |
| Regular | 6¾ | 0.30 | 0.35 | 157.40 | 314.80 |
| Single | 10 * | 0.30 | 0.35 | 161.00 | 322.00 |
| Window | 6¾ | 0.30 | ..... | 158.00 | 316.00 |
| Double | 10 * | 0.30 | ..... | 162.00 | 324.00 |
| Window | 10 * | 0.30 | ..... | 163.50 | 327.00 |
| Nonprofit | | | | | |
| Regular | 6¾ | 0.11 | ..... | 62.40 | 124.80 |
| Nonprofit | 10 * | 0.11 | ..... | 66.00 | 132.00 |
| Sngl. Wndw | 6¾ | 0.11 | ..... | 63.00 | 126.00 |
| | 10 * | 0.11 | ..... | 67.00 | 134.00 |

* Applies to all intermediate sizes through 10.

* * * * *

**141.2 Printed Stamped Envelopes (Special Request)**

141.21 Printed Stamped Envelopes Available by Mail Order.

141.211 Basic (Black Ink) Printing.

| Kind | Size | Denomination (dollars) | Quantity and price (dollars) | | |
|---|---|---|---|---|---|
| | | | 50 | 500 | 1000 |
| Regular | 6¾ | 0.30 | 17.70 | 161.40 | 322.80 |
| Single | 10 * | 0.30 | 17.90 | 165.00 | 330.00 |
| Window | 6¾ | 0.30 | 17.90 | 162.00 | 324.00 |
| Nonprofit | 10 * | 0.30 | 18.00 | 166.00 | 332.00 |
| Regular | 6¾ | 0.11 | ..... | 66.40 | 132.80 |
| Nonprofit | 10 * | 0.11 | ..... | 70.00 | 140.00 |
| Sngl. Wndw | 6¾ | 0.11 | ..... | 67.00 | 134.00 |
| | 10 * | 0.11 | ..... | 71.00 | 142.00 |

* Applies to all intermediate sizes through 10.

* * * * *

141.212 Multicolor Printing



| Kind | Size | Denomination | Quantity and price (dollars) | |
|---|---|---|---|---|
| | | | 500 | 1000 |
| Regular | 6¾ | 0.30 | 170.40 | 340.80 |
| | 10 * | 0.30 | 177.00 | 354.00 |
| Single | 6¾ | 0.30 | 171.00 | 342.00 |
| Window | 10 * | 0.30 | 178.00 | 356.00 |
| Nonprofit | 6¾ | 0.11 | 75.40 | 150.80 |
| Regular | 10 * | 0.11 | 82.00 | 164.00 |
| Nonprofit | 6¾ | 0.11 | 76.00 | 152.00 |
| Sngl. Wndw | 10 * | 0.11 | 83.00 | 166.00 |

* Applies to all intermediate sizes through 10.

* * * * *

**141.3 Postal Cards Available**

* * * * *

| Denomination | Description |
|---|---|
| $0.20 | Domestic regular or commemorative, cut single card. |
| 0.20 | Domestic regular, sheet of 40 (see note below). |
| 0.40 | Domestic regular, double reply-paid card. |
| 0.36 | International airmail, cut single card. |

Note: [Change "$6" to "$8."]

* * * * *

142 ADHESIVE STAMPS

**142.1 Availability and Use**

142.11 Types. See Exhibit 142.11.

Exhibit 142.11

| Purpose | Form | Denominations |
|---|---|---|
| Regular Postage. | Single or Sheet (panes of 100). | $0.01, .02, .03, .04, .05, .06, .07, .08, .09, .10, .15, .20, .22, .23, .25, .26, .28, .30, .35, .40, .50, .53, .65, .76. |
| | Panes of 20... | $1, $2, $2.75, $5, $9.75, $12. |
| | 10- or 20-Stamp Booklets. | $0.30 ($3. or $6. booklets) $0.20 ($4 booklets). |
| | Coils of 100... | $0.20, .25, .30 (Dispensers and stamp affixers for use with these coils are also available.) |
| | Coils of 500... | $0.01, .02, .03, .04, .05, .10, .15, .20, .23, .25, .30, $1. |
| | Coils of 3000. | $0.01, .02, .03, .04, .05, .10, .15, .20, .23, .25, .30. |
| | Coils of 10000. | $0.30. |
| Precanceled Postage. | Coils of 500, 3000, and 10000. | Various denominations available only to permit holders (see 143). |
| Commemorative. | Panes of up to 50. | $.30 or other denominations, including airmail, announced. |
| | 20-Stamp Booklets. | $0.30 ($6 booklets). |
| Airmail | Panes of 50... | For international airmail use; rates to be announced. |

144 POSTAGE METERS AND METER STAMPS

**144.1 Postage Meters**

144.11 Use of Meter Stamps.

* * * * *

144.112 [In the first sentence, replace the number "11" with "10."]

* * * * *

c. [Replace the number "11" with "10."]

* * * * *

**144.3 Setting Meters**

* * * * *

144.35 On-Site Meter Setting or Examination Program.

144.351 General.

a. This program allows Postal Service employees to set and examine postage meters at a customer's place of business within the area covered by the licensing post office.

b. [In the second sentence, insert "or examined" after "will be set."]

c. Fees for on-site meter setting or examination are:

| | First meter | Each additional meter | Each meter checked in or out of service |
|---|---|---|---|
| Scheduled basis | $35.00 | $2.75 | $6.50 |
| Unscheduled basis | 28.00 | 2.75 | 6.50 |

d. The fees in 144.351c apply to meters set or examined at a customer's place of business or at a meter company's offices.

e. [Replace "$5" with "$6.50."]

* * * * *

144.354 Setting or Examining Meters at Customer's Place of Business.

a. [In the fourth sentence, replace "meter fees" with "meter-setting or examination fees."]

b. [In the first sentence, replace "meter-setting fees" with "meter-setting or examination fees."]

c. [In each sentence, replace "meter-setting fees" with "meter-setting or examination fees."]

144.355 Setting or Examining Meters at Company Branch Offices.

* * * * *

d. Payment

* * * * *

(2) Payment for meter-setting or examination fees must be by check or through an advance deposit account.

* * * * *

(3) The Postal Service will collect meter-setting or examination fees through an advance deposit account as follows:

(a) The Postal Service employee will record each meter set, examined, or checked out of service on the meter-setting log-sheet, compute the applicable fees, and sign the log. The meter manufacturer's representative will also sign the log.

* * * * *

144.356 Reporting Revenue and Fees.

* * * * *

b. * * *

(1) [Replace "meter-setting fees" with "meter-setting or examination fees."]

* * * * *

(6) [Replace "Meter Setting Fees" with "Meter-Setting or Examination Fees."]

* * * * *

c. The accounting unit will do the following:

(1) [Replace "meter-setting charges" with "meter-setting or examination fees."]

* * * * *

145 PERMIT IMPRINTS

**145.1 General**

* * * * *

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145.12 Application. [Replace "$60" with "$75."]

* * * * *

**145.5 Mailings With Permit Imprints**

* * * * *

145.53 Preparation of Mailing. [Replace the third sentence, as follows:] Within each class of mail, each group of pieces prepared as a separate mailing must be presented with a completed mailing statement (see 145.55).

* * * * *

145.55 Mailing Statement. The mailing statement applicable to the class of mail (see 380, 460, 660, or 780) must be completed in ink, typewriter, or computer printer to provide all the information required on the form. The statement must be signed by the mailer and presented with the corresponding mailing. If a receipt is desired for a mailing paid by permit imprint, the mailer must submit the required mailing statement in duplicate. If approved by the entry office postmaster, a computerized facsimile of the applicable Postal Service mailing statement may be submitted provided it is in the same format and includes all information required by the Postal Service mailing statement, although portions may be omitted if they solely concern rates not being claimed for the mailing.

145.56 Prepayment of Postage Required. [Replace the last sentence with the following: Compute postage as required by 380, 460, 660, or 780, as appropriate to the class of mail.]

* * * * *

**145.7 Manifest Mailing System (MMS)**

* * * * *

145.72 General Qualification Requirements.

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145.723 Computerized Manifest.

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a. [In the second sentence, delete "(Form 3602)."]

b. [In the third sentence, delete "(Form 3602 or 3606)."]

* * * * *

145.728 Mailing Statement. The mailer must submit a complete and accurate mailing statement with each mailing (see 145.55). If approved by the entry office postmaster, a computerized facsimile of the applicable Postal Service mailing statement may be submitted provided it is in the same format and includes all information required by the Postal Service mailing statement, although portions may be omitted if they solely concern rates not being claimed for the mailing.

* * * * *

145.74 Markings.

* * * * *

145.742 Letter-Size Mail.

* * * * *

c. Rate Category Abbreviations. The only acceptable rate category abbreviations for letter-size mail keyline data are the following:

(1) First-Class Mail:
(a) ZB—5-Digit ZIP+4 Barcoded
(b) TB—3-Digit ZIP+4 Barcoded
(c) NB—Nonpresorted ZIP+4 Barcoded
(d) ZP—ZIP+4 Presort
(e) ZN—Nonpresorted ZIP+4
(f) FP—Presorted First-class
(g) CR—Carrier Route Presort
(h) FN—Nonpresorted First-class

(2) Bulk Third-Class Mail (Regular and Special Rates):
(a) ZB—5-Digit ZIP+4 Barcoded
(b) TB—3-Digit ZIP+4 Barcoded
(c) BB—Basic ZIP+4 Barcoded
(d) ZP—3/5 ZIP+4
(e) ZN—Basic ZIP+4
(f) CR—Carrier route
(g) FD—3/5 Presort
(h) BA—Basic Presort
(i) DB—Destination BMC
(j) DS—Destination SCF
(k) DD—Destination Delivery unit
(l) ST—Saturation

Note: All mailpieces that qualify for more than one rate of postage must indicate each rate category abbreviation, separated by a "/" (slash) in the keyline. For example, a mailpiece that qualifies for the % ZIP+4 rate of postage and is entered at the destination SCF will have a keyline that includes both the "ZIP" and "DS" rate abbreviations separated by a slash (e.g., ZP/DS).

* * * * *

145.75 Authorization Procedures.

* * * * *

145.752 Service Agreement and Support Documentation.

* * * * *

c. Sample mailing statement:

* * * * *

149 INDEMNITY CLAIMS

* * * * *

**149.2 General Instructions for Filing Claims on Insured, COD, and Registered Mail**

* * * * *

149.23 Copies of Delivery Records. [Change "$5" to "$6."]

149.24 Required Information.

149.241 Evidence of Insurance, COD, or Registration. [In the note, replace "$50" with "$100."]

* * * * *

**149.3 Insured and COD Claims**

149.31 How to File.

* * * * *

149.312 Evidence of Loss or Damage.

a. Complete Loss Claims Filed by the Mailer.

* * * * *

(2) [Change "$5" to "$6."]

* * * * *

**149.4 Registered Mail Claims**

149.41 Claim Filing Instructions.

* * * * *

149.412 Evidence of Loss or Damage.

a. Claims for Complete Loss Filed by the Mailer.

* * * * *

(2) [Change "$5" to "$6."]

* * * * *

**150 Collection and Delivery**

* * * * *

154 PLANT LOAD OPERATIONS

**154.1 Definitions**

* * * * *

154.12 Mailer's Plant and Mailings.

* * * * *

154.122 Plant Load Mailings. [Replace "a single Form 3541, 3541–A, 3602, 3602–G, 3602–PC, or 3605, mailing statement, is" with "a single mailing statement is."]

* * * * *

154.17 Expedited Plant Load Shipment. Under an expedited plant load shipment authorization, the Postal Service verified the mail for presort and postage at the mailer's plant, and postage is paid at the post office where the mailing is authorized plant load. The mailer then transports the expedited plant load shipment at the mailer's expense to destination postal facilities where the shipment is deposited and accepted into the mailstream. Only plant load mailers who have been authorized to do so may transport expedited plant load shipments at their own expense under the conditions specified in 154.732–154.737.

* * * * *

**154.4 Verification and Collection of Postage**

* * * * *

154.42 Verification of Intraservice Area Plant Loads.

* * * * *

154.423 Verification at Postal Facility.

* * * * *

e. [Replace the first sentence, as follows:] If a mailing statement must be completed, the original must accompany the corresponding mailing in the vehicle.

f. [Replace the first sentence, as follows:] If an alternative method of paying postage using permit imprint (e.g., manifesting) is used, an original of the appropriate mailing statement and a manifest must accompany each vehicle if there is only one mailing in the vehicle or one manifest for each mailing segment in the vehicle.

* * * * *

**154.7 Transportation**

* * * * *

154.72 Mailer Transportation. [In the second sentence, replace "a Plant-Verified Drop Shipment" with "an Expedited Plant Load Shipment" and, in the note, replace "a plant-verified drop shipment" with "an expedited plant load shipment."]

154.73 Expedited Plant Load Shipment.

154.731 Definition. Under an expedited plant load shipment authorization, the Postal Service verifies the mail for presort and proper preparation at the mailer's plant, and postage is paid at the post office where the mailer is authorized plant load. The mailer then transports the expedited plant load shipment at the mailer's expense to destination postal facilities where the shipment is deposited and accepted into the mail-stream. Only plant load mailers who have been authorized to do so may transport expedited plant load shipments at their own expense under the conditions specified in 154.732–154.737.

154.732 Authorization.

a. Request. An authorized plant load mailer may seek authorization to submit expedited plant load shipments by submitting a written request to the field division general manager/postmaster who authorized the plant load. The mailer's request must describe, for each destination to which mail will be transported, the material to be deposited as an expedited plant load shipment (e.g., the class, characteristics, and quantity), the frequency of mailing, and whether the request is for one or for a series of specific mailings. No form is provided for this purpose.

b. Action on Mailer's Request. The field division general manager/postmaster or designee reviews the mailer's request, obtains appropriate advice from the serving TMSC, ensures the availability of sufficient postal resources (e.g., DMU staff) to support the mailer's request, and provides the mailer with a written decision. If the request is approved, the authorization will be for a specific mailing or group of mailings, and for a time period not to exceed 2 years, after which a new request must be submitted. If the request is denied, the denial notice must explain the reasons for that decision. A denial is considered a classification decision and may be appealed as provided by 133.

c. General Conditions. The mailer's request for expedited plant load shipment authorization may be approved when such approval is in the best interest of the Postal Service and the following conditions exist:

(1) The mailer is in compliance with the requirements for a plant load operation;

(2) The mailer has complied with the additional requirements for expedited plant load drop shipment;

(3) The mailer has obtained the necessary permits, and has established the appropriate postage accounts at the post office administering the plant load (office of mailing); and

(4) The mailer has demonstrated the need for authorization because the nature of the mailings to be prepared as expedited plant load shipments requires a level of service or a timeframe for delivery (delivery window) that the normal mode of Postal Service transportation for that class of mail cannot provide or meet.

d. Plant Load Agreement. If the expedited plant load shipment request is approved for more than one-time use, the plant load agreement must be amended by attachment of a completed and signed Form 8026, *Expedited Plant Load Shipment Agreement*, and additional attachments to detail the material to be prepared as expedited plant load shipments.

154.733 Verification and Collection of Postage. [In the first sentence, replace "plant-verified drop shipment" with "expedited plant load shipment."]

154.734 Liability. [In the second sentence, replace "a plant-verified drop shipment" with "an expedited plant load shipment."]

154.735 Mailer Responsibilities. [In the first sentence, replace "plant-verified mailings" with "expedited plant load shipments."]

* * * * *

b. All of the mail pieces in each expedited plant load shipment must destinate within the service area of the postal facility where the shipment is deposited and accepted. For example, if an expedited plant load shipment is deposited at a BMC, all the pieces in the shipment must be for addresses within the service area of that BMC.

c. [Replace "plant-verified mail" with "the expedited plant load shipment."]

d. [Replace "plant-verified mailing or mailing segment" with "expedited plant load shipment;" replace "mailing or mailing segment" with "shipment."]

e. When the vehicle used for expedited plant load shipment will also contain other material carried as freight, the mailer must load all freight in the nose (front) of the vehicle, clearly marked and separated from the expedited plant load shipment, and must ensure that the method of separation prevents the freight and expedited plant load shipment from becoming mixed in transit.

f. When the vehicle is loaded to make multiple stops, the mailer must ensure that only the appropriate shipment removed at each stop, that no other material (mail or freight) is added, and that any remaining shipments are kept separate from any other freight remaining on the vehicle.

g. Before mailing, the mailer must present the required mailing statements and documentation for each mailing. At destination, the mailer must provide the necessary documentation (provided by the Postal Service) to prove the required postage was paid for the expedited plant load shipment.

h. The mailer must meet the additional requirements that may apply to any reduced rates claimed on the mailing being prepared as an expedited plant load shipment.

154.736 Detached Mail Unit (DMU) Responsibilities. [In the first sentence, replace "plant-verified mailings" with "expedited plant load shipments."]

a. Prior to Dispatch. [In the first sentence, replace "plant-verified mail" with "an expedited plant load shipment."]

(1) [Replace "plant-verified mail" with "an expedited plant load shipment."]

* * * * *

(4) Ensure that any material carried as freight on the same vehicle as an expedited plant load shipment is confined to the nose (front) of the vehicle, is separated by a clearly marked separation, and is loaded to avoid becoming mixed with the expedited plant load shipment in transit.

(5) [Text of existing 154.736a(4).]

b. After Dispatch. [Replace "plant-verified mail" with "an expedited plant load shipment."]

* * * * *

(2) Follow-up with any post office where an expedited plant load shipment was deposited but from which no Form 3607–C or Form 8017 was returned.

154.737 Destination Postal Facility Responsibilities.

a. [Text of existing 154.737; in the first sentence, replace "plant-verified drop shipment" with "expedited plant load shipment."]

b. Each destination postal facility receiving expedited plant load shipments must determine whether the

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mailer's vehicle has other expedited plant load shipments on-board for deposit at other postal facilities. If more shipments are found, the vehicle must be sealed by postal personnel prior to departure. If the vehicle is empty or found to contain only freight, no postal seal is required.

c. [Text of the existing "note" to 154.737; replace "plant-verified mail" with "an expedited plant load shipment."]

* * * * *

159 UNDELIVERABLE MAIL

**158.1 Mail Undeliverable as Addressed**

* * * * *

159.15 Treatment of Undeliverable-as-Addressed Mail.

159.151 [In Exhibits 159.151c-e, replace the first sentence of footnote 1 as follows:]

The weighted fee is the appropriate single-piece third-class rate, multiplied by a factor of 2.472, and rounded to the next (higher) whole cent (if the computation yields a fraction of a cent in the result). The weighted fee is computed (and rounded if necessary) for each mailpiece individually. Neither the applicable postage, the factor, nor any necessary rounding is applied cumulatively to multiple pieces.

* * * * *

3. In chapter 2 of the Domestic Mail Manual, make the following revisions:

**CHAPTER 2—EXPRESS MAIL**

**210 Rates and Fees**

**Exhibit 210—Express Mail Rates**

Note. Additional fees or discounts may apply:

| Weight not exceeding (pounds) | Same day airport service | Custom designed | Next day & second day PO to PO | Next day & second day PO to addressee |
|---|---|---|---|---|
| 1/2 | $9.35 | $9.35 | $9.50 | $9.75 |
| 1 | 10.85 | 12.75 | 11.05 | 13.75 |
| 2 | 10.85 | 12.75 | 11.05 | 13.75 |
| 3 | 12.40 | 14.60 | 12.80 | 15.60 |
| 4 | 13.50 | 15.70 | 13.90 | 16.70 |
| 5 | 14.60 | 16.85 | 15.05 | 17.85 |
| 6 | 15.65 | 18.00 | 16.20 | 19.00 |
| 7 | 16.75 | 19.15 | 17.35 | 20.15 |
| 8 | 17.80 | 20.30 | 18.50 | 21.30 |
| 9 | 18.90 | 21.45 | 19.65 | 22.45 |
| 10 | 20.00 | 22.60 | 20.80 | 23.60 |
| 11 | 21.05 | 23.75 | 23.10 | 25.90 |
| 12 | 22.15 | 24.90 | 21.95 | 24.75 |
| 13 | 23.25 | 26.05 | 24.25 | 27.05 |
| 14 | 24.30 | 27.20 | 25.40 | 28.20 |
| 15 | 25.40 | 28.35 | 26.55 | 29.35 |
| 16 | 26.35 | 29.50 | 27.70 | 30.50 |
| 17 | 27.25 | 30.65 | 28.85 | 31.65 |
| 18 | 28.10 | 31.80 | 30.00 | 32.80 |
| 19 | 26.95 | 32.95 | 31.15 | 33.95 |
| 20 | 25.85 | 34.10 | 32.30 | 35.10 |
| 21 | 30.70 | 35.25 | 33.45 | 36.25 |
| 22 | 31.55 | 36.40 | 34.60 | 37.40 |
| 23 | 32.45 | 37.55 | 35.75 | 38.55 |
| 24 | 33.30 | 38.70 | 36.90 | 39.70 |
| 25 | 34.15 | 39.85 | 38.05 | 40.85 |
| 26 | 35.05 | 41.00 | 39.20 | 42.00 |
| 27 | 35.90 | 42.15 | 40.35 | 43.15 |
| 28 | 36.75 | 43.30 | 41.50 | 44.30 |
| 29 | 37.65 | 44.45 | 42.65 | 45.45 |
| 30 | 38.50 | 45.60 | 43.80 | 46.60 |
| 31 | 39.35 | 46.75 | 44.95 | 47.75 |
| 32 | 40.25 | 48.00 | 46.20 | 49.00 |
| 33 | 41.10 | 49.40 | 47.60 | 50.40 |
| 34 | 41.95 | 50.90 | 49.10 | 51.90 |
| 35 | 42.85 | 52.30 | 50.50 | 53.30 |
| 36 | 43.70 | 53.70 | 51.90 | 54.70 |
| 37 | 44.55 | 55.20 | 53.40 | 56.20 |
| 38 | 45.45 | 56.60 | 54.80 | 57.60 |
| 39 | 46.30 | 58.00 | 56.20 | 59.00 |
| 40 | 47.15 | 59.40 | 57.60 | 60.40 |
| 41 | 48.05 | 60.90 | 59.10 | 61.90 |
| 42 | 48.90 | 62.30 | 60.50 | 63.30 |
| 43 | 49.75 | 63.70 | 61.90 | 64.70 |
| 44 | 50.65 | 65.20 | 63.40 | 66.20 |
| 45 | 51.50 | 66.60 | 64.80 | 67.60 |
| 46 | 52.35 | 68.00 | 66.20 | 69.00 |
| 47 | 53.25 | 69.50 | 67.70 | 70.50 |
| 48 | 54.10 | 70.90 | 69.10 | 71.90 |
| 49 | 54.95 | 72.30 | 70.50 | 73.30 |
| 50 | 55.85 | 73.70 | 71.90 | 74.70 |
| 51 | 56.70 | 75.20 | 73.40 | 76.20 |
| 52 | 57.55 | 76.60 | 74.80 | 77.60 |
| 53 | 58.45 | 78.00 | 76.20 | 79.00 |
| 54 | 59.30 | 79.50 | 77.70 | 80.50 |
| 55 | 60.20 | 80.90 | 79.10 | 81.90 |
| 56 | 61.05 | 82.30 | 80.50 | 83.30 |
| 57 | 61.90 | 83.80 | 82.00 | 84.80 |
| 58 | 62.80 | 85.20 | 83.40 | 86.20 |
| 59 | 63.65 | 86.60 | 84.80 | 87.60 |
| 60 | 64.50 | 88.00 | 86.20 | 89.00 |
| 61 | 65.40 | 89.50 | 87.70 | 90.50 |
| 62 | 66.25 | 90.90 | 89.10 | 91.90 |
| 63 | 67.10 | 92.30 | 90.50 | 93.30 |
| 64 | 68.00 | 93.80 | 92.00 | 94.80 |
| 65 | 68.85 | 95.20 | 93.40 | 96.20 |
| 66 | 69.70 | 96.60 | 94.80 | 97.60 |
| 67 | 70.60 | 98.10 | 96.30 | 99.10 |
| 68 | 71.45 | 99.50 | 97.70 | 100.50 |
| 69 | 72.30 | 100.90 | 99.10 | 101.90 |
| 70 | 73.20 | 102.30 | 100.50 | 103.30 |

211 GENERAL RATE INFORMATION

* * * * *

**211.4 [In the first sentence, replace "$4" with "$4.50."]**

212 EXPRESS MAIL SAME DAY AIRPORT SERVICE RATES

See Exhibit 210.

213 EXPRESS MAIL CUSTOM DESIGNED SERVICE RATES

The rates for Express Mail Custom Designed Service (see Exhibit 210) are subject to the following additional fees:

a. $4.50 for each delivery stop for items tendered for delivery to addressee.

b. $4.50 per occurrence for each pickup stop, regardless of the number of Express Mail pieces picked up.

214 EXPRESS MAIL NEXT DAY AND SECOND DAY SERVICES RATES

The rates for Express Mail Next Day and Second Day Services (see Exhibit 210) are subject to an additional fee of $4.50 per occurrence for each pickup stop, regardless of the number of Express Mail pieces picked up.

* * * * *

216 EXPRESS MAIL VOLUME DISCOUNT RATES

Express Mail volume discount rates are available for each customer paying postage through an Express Mail Corporate Account (EMCA) (see 282) when revenue from that customer for Express Mail pieces totals $5,000 or more in a 4-week Postal Service accounting period. After that amount has been exceeded, pieces sent at other than the 8-ounce rate during that period will be eligible for a 12% discount. The discount will be credited in the EMCA accounting period activity statement.

217 FLAT RATE ENVELOPE

Any amount of material that can be mailed in the special flat rate envelope available from the Postal Service is subject to the rate of postage that applies to a 2-pound piece at the level of service requested by the customer (see Exhibit 210), regardless of the weight of the material placed in the flat envelope.

* * * * *

**220 Classification**

* * * * *

227 EXPRESS MAIL RESHIPMENT

* * * * *

b. [Replace "$4" with "$4.50."]

* * * * *

**280 Payment of Postage**

281 EXPRESS MAIL

**281.1 General**

Mailers of Express Mail items may pay postage by adhesive stamps, meter stamps, or through the use of an Express Mail corporate account (see 282). The mailer is responsible for proper payment of postage. See 111.32.

* * * * *

282 CORPORATE ACCOUNT

* * * * *

e. Corporate accounts may be eligible for volume discounts as described in 216.

* * * * *

4. In chapter 3 of the Domestic Mail Manual, make the following revisions:



**CHAPTER 3—FIRST-CLASS MAIL**

**310 Rates and Fees**

311 SINGLE-PIECE RATES

**311.1 Card Rates (for Postal Cards and Postcards)**

311.11 Eligibility.

311.111 Definitions.

a. Postal Cards. Postal cards, sold by the USPS, are blank mailing cards with a printed or impressed postage stamp.

b. Postcards. Postcards are sold commercially and require the addition of postage.

311.112 Size Limits. To be eligible for the card rates, each postcard and each half of a double postcard must measure no more than 4¼ inches high, 6 inches long, or .0085 inch thick. Cards that exceed these dimensions must be paid at the rates for matter other than cards (see 311.2).

311.12 Rate Application. The single-piece card rates in 311.13 apply to each postcard or double postcard that meets the requirements in 311.11 and 322. The reply part of a double postcard does not have to bear postage when originally mailed; when returned, it must bear the correct postage at the applicable rate.

311.13 Rates.

Single.....$0.20 each
Double.....0.40 ($0.20 each part; see 311.12)

**311.2 Rates for Matter Other Than Cards**

311.21 Rate Application. The single-piece rates in 311.22 for matter other than cards apply to each piece weighing 10 ounces or less according to its weight. See 314 for the rates that apply to heavier pieces.

311.22 Rates.

First ounce or fraction of an ounce.....$0.30
Each additional ounce or fraction of an ounce.....$0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.30 |
| 2 | 0.53 |
| 3 | 0.76 |
| 4 | 0.99 |
| 5 | 1.22 |
| 6 | 1.45 |
| 7 | 1.68 |
| 8 | 1.91 |
| 9 | 2.14 |
| 10 | 2.37 |

312 NONPRESORTED BULK RATES

**312.1 Nonpresorted ZIP+4 Rate**

312.11 Card Rate.

312.111 Rate Application. The nonpresorted ZIP+4 rate in 312.112 apply to cards meeting the requirements of 311.11, 322, and 327.

312.112 Rate. The nonpresorted ZIP+4 rate for cards is $0.19 each.

**312.12 Rate for Matter Other Than Cards**

312.121 Rate Application. The nonpresorted ZIP+4 rates in 312.122 for matter other than cards apply to mailings prepared as required by 327.

312.122 Rates.

First ounce or fraction of an ounce.....$0.28
Each additional ounce or fraction of an ounce.....0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.28 |
| 2 | 0.51 |
| 2.5 | 0.74 |

**312.2 Nonpresorted ZIP+4 Barcoded Rate**

312.21 Card Rate.

312.211 Rate Application. The nonpresorted ZIP+4 Barcoded rate in 312.212 applies to cards meeting the requirements of 311.11, 322, and 328.

312.212 Rate. The nonpresorted ZIP+4 Barcoded rate for cards is $0.18 each.

312.22 Rate for Matter Other than Cards.

312.221 Rate Application. The nonpresorted ZIP+4 Barcoded rates in 312.222 for matter other than cards apply to mailings prepared as required by 328.

312.222 Rates.

First ounce or fraction of an ounce.....$0.27
Each additional ounce or fraction of an ounce.....0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.27 |
| 2 | 0.50 |
| 2.5 | 0.73 |

313 PRESORTED BULK FIRST-CLASS RATES

**313.1 General**

313.11 Cards. To be mailed at the presorted First-Class rates in Exhibit 313, each postal card or postcard must meet the requirements of 311.11 and 322 in addition to the requirements that apply to the particular rate.

313.12 Fee. The annual presort fee prescribed by 315.4 and 341 must be paid in order to mail at any of the presorted First-Class rates in Exhibit 313.

**313.2 Presorted First-Class Rates**

313.21 Rate Application. The Presorted First-Class rates in 313.22 apply to mailings prepared as required by 323.1, 361.4, 362.2, 367.1, 367.5, and 382.

313.22 Rates.

313.221 Cards. The Presorted First-Class rate for cards is $0.18 each.

313.222 Matter Other Than Cards.

First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces).....$0.26
(For pieces weighing more than 2 ounces).....0.22
Each additional ounce or fraction of an ounce.....0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.26 |
| 2 | 0.48 |
| 3 | 0.68 |
| 4 | 0.91 |
| 5 | 1.14 |
| 6 | 1.37 |
| 7 | 1.60 |
| 8 | 1.83 |
| 9 | 2.06 |
| 10 | 2.29 |

**313.3 Carrier Route Rates**

313.31 Rate Application. The carrier route rates in 313.32 apply to mailings prepared as required by 323.2, 361.4, 362.3, 367.3, 367.4 and 382.

313.32 Rates.

313.321 Cards. The carrier route First-Class rate for cards is $0.165 each.

313.322 Matter Other than Cards.

First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces).....$0.245
(For pieces weighing more than 2 ounces).....0.205
Each additional ounce or fraction of an ounce.....0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.245 |
| 2 | 0.475 |
| 3 | 0.685 |
| 4 | 0.895 |
| 5 | 1.125 |
| 6 | 1.355 |
| 7 | 1.585 |
| 8 | 1.815 |
| 9 | 2.045 |
| 10 | 2.275 |

**313.4 ZIP+4 Presort Rates**

313.41 Rate Application. The ZIP+4 Presort rates in 313.42 apply to pieces weighing not more than 2.5 ounces each that are prepared in mailings as required by 324, 361.5, 362.5, 365 or 366, 368.2, and 382.

313.42 Rates.

313.421 Cards. The ZIP+4 Presort rate for cards is $0.173 each.

313.422 Matter Other than Cards.



First ounce or fraction of an ounce:

313.62 Rate.



314.2 Single-Piece Priority Mail Rates:

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First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)..... $0.233
(For pieces weighing more than 2 ounces)..... 0.213
Each additional ounce or fraction of an ounce..... 0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.253 |
| 2 | 0.483 |
| 2.5 | 0.673 |

**313.5 3-Digit ZIP+4 Barcoded Rates**

313.51 Rate Application. The 3-digit ZIP+4 Barcoded rates in 313.52 apply to pieces weighing not more than 2.5 ounces each that are prepared in mailings as required by 325, 361.6, 362.6, 364, and 382.

313.52 Rates.

313.521 Cards. The 3-digit ZIP+4 Barcoded rate for cards is $0.168 each.

313.522 Matter Other than Cards.

First ounce or fraction of an ounce:
(For pieces weighing not more than 2 ounces)..... $0.248
(For pieces weighing more than 2 ounces)..... 0.208
Each additional ounce or fraction of an ounce..... 0.23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.248 |
| 2 | 0.478 |
| 2.5 | 0.668 |

**313.6 5-Digit ZIP+4 Barcoded Rates**

313.61 Rate Application. The 5-digit ZIP+4 Barcoded rates in 313.62 apply to pieces weighing not more than 2.5 ounces each that are prepared in mailings as required by 325, 361.6, 362.6, 364, and 382.

313.62 Rate.

313.621 Cards. The 5-digit ZIP+4 Barcoded rate for cards is $0.163 each.

313.622 Matter Other than Cards.

First ounce or fraction of an ounce
(For pieces weighing not more than 2 ounces)..... $0.243
(For pieces weighing more than 2 ounces)..... .203
Each additional ounce or fraction of an ounce..... .23

| Weight not exceeding ounces | Rate |
|---|---|
| 1 | $0.243 |
| 2 | .473 |
| 2.5 | .663 |

**313.7 Presorted Priority Mail**

See 314.

## 314 PRIORITY MAIL

**314.1 General**

314.11 Eligibility. Pieces of First-Class Mail weighing more than 10 ounces are subject to the Priority Mail rates. Pieces weighing 10 ounces or less may be mailed at the minimum Priority Mail rates. Priority Mail must meet the eligibility requirements in 326.

314.12 Oversize Items. Parcels weighing less than 15 pounds and that measure over 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

314.13 Flat Rate Envelope. Any amount of material that can be mailed in the special flat rate envelope available from the Postal Service is subject to the rate of postage that applies to a 2-pound piece at the single-piece Priority Mail rates (see Exhibit 314.1), regardless of the weight of the material placed in the flat rate envelope.

**314.2 Single-Piece Priority Mail Rates**

The single-piece Priority Mail rates in Exhibit 314.1 apply to pieces meeting the conditions of 326.1.

**314.3 Presorted Priority Mail Rates**

The presorted Priority Mail rates in Exhibit 314.2 apply to mailings prepared as required by 326.1, 326.4, 383.2, and 383.3. The annual presort fee prescribed by 315.4 and 341 must be paid in order to mail at the Presorted Priority Mail rates in Exhibit 314.2.

## 315 FEES AND SURCHARGES

**315.1 Nonstandard Surcharge**

315.11 Application. Each piece of First-Class Mail weighing 1 ounce or less that exceeds the size limits in 353.1 must pay the nonstandard surcharge.

315.12 Pieces Mailed at the Single-Piece Rates. The surcharge for each piece of nonstandard First-Class Mail that is mailed at the single-piece rates in 311 is $0.10.

315.13 Presorted Bulk First-Class Rates. The surcharge for each piece of non-standard First-Class Mail that is mailed at the Presorted First-Class or carrier route rates is $0.05. Pieces that would be subject to a surcharge under 315.11 are not eligible for the presorted bulk First-Class rates in 313.4–313.6.

**315.2 Address Correction Service Fee**

The fee for address correction service is $0.30 per notice issued.

**315.3 Priority Mail Pickup Service Fee**

A fee of $4.50 must be paid by the mailer every time pickup service is provided, regardless of the quantity picked up.

**315.4 Presort Fee**

As required by 341, the $75 presort fee must be paid before mailing at any of the rates described in 313 or 314.

EXHIBIT 314.1, SINGLE-PIECE PRIORITY MAIL RATES

| Weight not exceeding pound(s) | Zone/rate | | | | | |
|---|---|---|---|---|---|---|
| | 1, 2, and 3 | 4 | 5 | 6 | 7 | 8 |
| 2 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 |
| 3 | 3.60 | 3.60 | 3.60 | 3.60 | 3.60 | 3.60 |
| 4 | 4.15 | 4.15 | 4.15 | 4.15 | 4.15 | 4.15 |
| 5 | 5.15 | 5.15 | 5.15 | 5.15 | 5.15 | 5.15 |
| 6 | 5.15 | 5.60 | 5.90 | 6.70 | 7.60 | 8.60 |
| 7 | 5.15 | 6.25 | 6.65 | 7.60 | 8.60 | 9.80 |
| 8 | 5.15 | 6.95 | 7.35 | 8.45 | 9.60 | 11.00 |
| 9 | 5.50 | 7.60 | 8.05 | 9.30 | 10.65 | 12.20 |
| 10 | 5.90 | 8.25 | 8.75 | 10.15 | 11.65 | 13.45 |
| 11 | 6.30 | 8.90 | 9.50 | 11.00 | 12.65 | 14.65 |
| 12 | 6.75 | 9.55 | 10.20 | 11.90 | 13.70 | 15.85 |
| 13 | 7.15 | 10.25 | 10.90 | 12.75 | 14.70 | 17.05 |
| 14 | 7.55 | 10.90 | 11.65 | 13.60 | 15.70 | 18.25 |
| 15 | 7.95 | 11.55 | 12.35 | 14.45 | 16.75 | 19.45 |
| 16 | 8.40 | 12.20 | 13.05 | 15.35 | 17.75 | 20.65 |
| 17 | 8.80 | 12.85 | 13.80 | 16.20 | 18.80 | 21.85 |
| 18 | 9.20 | 13.55 | 14.50 | 17.05 | 19.90 | 23.05 |



EXHIBIT 314.1, SINGLE-PIECE PRIORITY MAIL RATES—Continued

| Weight not exceeding pound(s) | Zone/rate | | | | | |
|---|---|---|---|---|---|---|
| | 1, 2, and 3 | 4 | 5 | 6 | 7 | 8 |
| 19 | 9.60 | 14.20 | 15.20 | 17.95 | 20.80 | 24.25 |
| 20 | 10.05 | 14.85 | 15.90 | 18.75 | 21.85 | 25.50 |
| 21 | 10.45 | 15.50 | 16.65 | 19.65 | 22.85 | 26.70 |
| 22 | 10.85 | 16.15 | 17.35 | 20.50 | 23.86 | 27.90 |
| 23 | 11.25 | 16.85 | 18.05 | 21.35 | 24.90 | 29.10 |
| 24 | 11.70 | 17.50 | 18.80 | 22.20 | 25.90 | 30.30 |
| 25 | 12.10 | 18.15 | 19.50 | 23.05 | 26.90 | 31.50 |
| 26 | 12.50 | 18.80 | 20.20 | 23.95 | 27.85 | 32.70 |
| 27 | 12.90 | 19.45 | 20.95 | 24.80 | 28.95 | 33.90 |
| 28 | 13.35 | 20.15 | 21.65 | 25.65 | 30.00 | 35.10 |
| 29 | 13.75 | 20.80 | 22.35 | 26.50 | 31.00 | 36.30 |
| 30 | 14.15 | 21.45 | 23.05 | 27.40 | 32.00 | 37.55 |
| 31 | 14.60 | 22.10 | 23.80 | 28.25 | 33.05 | 38.75 |
| 32 | 15.00 | 22.75 | 24.50 | 29.10 | 34.06 | 39.95 |
| 33 | 15.40 | 23.45 | 25.20 | 29.95 | 35.05 | 41.15 |
| 34 | 15.80 | 24.10 | 25.95 | 30.80 | 36.10 | 42.35 |
| 35 | 16.25 | 24.75 | 26.65 | 31.70 | 37.10 | 43.55 |
| 36 | 16.65 | 25.40 | 27.35 | 32.55 | 38.10 | 44.75 |
| 37 | 17.05 | 26.05 | 28.10 | 33.40 | 39.15 | 45.95 |
| 38 | 17.45 | 26.75 | 28.80 | 34.25 | 40.15 | 47.15 |
| 39 | 17.90 | 27.40 | 29.50 | 35.15 | 41.15 | 48.35 |
| 40 | 18.30 | 28.05 | 30.20 | 36.00 | 42.20 | 49.60 |
| 41 | 18.70 | 28.70 | 30.85 | 36.85 | 43.20 | 50.80 |
| 42 | 19.10 | 29.35 | 31.65 | 37.70 | 44.25 | 52.00 |
| 43 | 19.55 | 30.05 | 32.35 | 38.55 | 45.25 | 53.20 |
| 44 | 19.95 | 30.70 | 33.10 | 39.45 | 46.25 | 54.40 |
| 45 | 20.35 | 31.35 | 33.80 | 40.30 | 47.30 | 55.60 |
| 46 | 20.75 | 32.00 | 34.50 | 41.15 | 48.30 | 56.80 |
| 47 | 21.20 | 32.65 | 35.25 | 42.00 | 49.30 | 58.00 |
| 48 | 21.60 | 33.35 | 35.95 | 42.90 | 50.35 | 59.20 |
| 49 | 22.00 | 34.00 | 36.65 | 43.75 | 51.35 | 60.40 |
| 50 | 22.40 | 34.65 | 37.35 | 44.60 | 52.35 | 61.65 |
| 51 | 22.85 | 35.30 | 38.10 | 45.45 | 53.40 | 62.85 |
| 52 | 23.25 | 35.95 | 38.80 | 46.30 | 54.40 | 64.05 |
| 53 | 23.65 | 36.65 | 39.55 | 47.20 | 55.45 | 65.25 |
| 54 | 24.10 | 37.30 | 40.25 | 48.05 | 56.45 | 66.45 |
| 55 | 24.50 | 37.95 | 40.95 | 48.90 | 57.45 | 67.65 |
| 56 | 24.90 | 38.60 | 41.65 | 49.75 | 58.50 | 68.85 |
| 57 | 25.30 | 39.25 | 42.40 | 50.65 | 59.50 | 70.05 |
| 58 | 25.75 | 39.95 | 43.10 | 51.50 | 60.50 | 71.25 |
| 59 | 26.15 | 40.60 | 43.80 | 52.35 | 61.55 | 72.45 |
| 60 | 26.55 | 41.25 | 44.50 | 53.20 | 62.55 | 73.70 |
| 61 | 26.95 | 41.90 | 45.25 | 54.05 | 63.55 | 74.90 |
| 62 | 27.40 | 42.55 | 45.95 | 54.95 | 64.60 | 76.10 |
| 63 | 27.80 | 43.25 | 46.65 | 55.80 | 65.60 | 77.30 |
| 64 | 28.20 | 43.90 | 47.40 | 56.65 | 66.60 | 78.50 |
| 65 | 28.60 | 44.55 | 48.10 | 57.50 | 67.65 | 79.70 |
| 66 | 29.05 | 45.20 | 48.80 | 58.40 | 68.65 | 80.90 |
| 67 | 29.45 | 45.85 | 49.55 | 59.25 | 69.65 | 82.10 |
| 68 | 29.85 | 46.55 | 50.25 | 60.10 | 70.70 | 83.30 |
| 69 | 30.25 | 47.20 | 50.95 | 60.95 | 71.70 | 84.50 |
| 70 | 30.70 | 47.85 | 51.65 | 61.80 | 72.75 | 85.75 |

Exception: Parcels weighing less than 15 pounds and that measure over 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

EXHIBIT 314.2, PRESORTED PRIORITY MAIL RATES

| Weight not exceeding pound(s) | Zone/rate | | | | | |
|---|---|---|---|---|---|---|
| | 1, 2, and 3 | 4 | 5 | 6 | 7 | 8 |
| 2 | 2.65 | 2.65 | 2.65 | 2.65 | 2.65 | 2.65 |
| 3 | 3.50 | 3.50 | 3.50 | 3.50 | 3.50 | 3.50 |
| 4 | 4.05 | 4.05 | 4.05 | 4.05 | 4.05 | 4.05 |
| 5 | 5.05 | 5.05 | 5.05 | 5.05 | 5.05 | 5.05 |
| 6 | 5.05 | 5.50 | 5.80 | 6.60 | 7.50 | 8.50 |
| 7 | 5.05 | 6.15 | 6.55 | 7.50 | 8.50 | 9.70 |
| 8 | 5.05 | 6.85 | 7.25 | 8.35 | 9.50 | 10.90 |
| 9 | 5.40 | 7.50 | 7.95 | 9.20 | 10.55 | 12.10 |
| 10 | 5.80 | 8.15 | 8.65 | 10.05 | 11.55 | 13.35 |
| 11 | 6.20 | 8.80 | 9.40 | 10.90 | 12.55 | 14.55 |
| 12 | 6.65 | 9.45 | 10.10 | 11.80 | 13.60 | 15.75 |

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EXHIBIT 314.2, PRESORTED PRIORITY MAIL RATES—Continued

| Weight not exceeding pound(s) | Zone/rate | | | | | |
|---|---|---|---|---|---|---|
| | 1, 2, and 3 | 4 | 5 | 6 | 7 | 8 |
| 13 | 7.05 | 10.15 | 10.80 | 12.65 | 14.60 | 16.95 |
| 14 | 7.45 | 10.80 | 11.55 | 13.50 | 15.60 | 18.15 |
| 15 | 7.85 | 11.45 | 12.25 | 14.35 | 16.65 | 19.35 |
| 16 | 8.30 | 12.10 | 12.95 | 15.25 | 17.65 | 20.50 |
| 17 | 8.70 | 12.75 | 13.70 | 16.10 | 18.70 | 21.75 |
| 18 | 9.10 | 13.45 | 14.40 | 16.95 | 19.80 | 22.95 |
| 19 | 9.50 | 14.10 | 15.10 | 17.80 | 20.70 | 24.15 |
| 20 | 9.95 | 14.75 | 15.80 | 18.65 | 21.75 | 25.40 |
| 21 | 10.35 | 15.40 | 16.56 | 19.55 | 22.75 | 26.60 |
| 22 | 10.75 | 16.05 | 17.25 | 20.40 | 23.75 | 27.80 |
| 23 | 11.15 | 16.75 | 17.95 | 21.25 | 24.80 | 29.00 |
| 24 | 11.60 | 17.40 | 18.70 | 22.10 | 25.80 | 30.20 |
| 25 | 12.00 | 18.05 | 19.40 | 22.95 | 26.80 | 31.40 |
| 26 | 12.40 | 18.70 | 20.10 | 23.85 | 27.85 | 32.60 |
| 27 | 12.80 | 19.35 | 20.85 | 24.70 | 28.85 | 33.80 |
| 28 | 13.25 | 20.05 | 21.55 | 25.55 | 29.90 | 35.00 |
| 29 | 13.65 | 20.70 | 22.25 | 26.40 | 30.90 | 36.20 |
| 30 | 14.05 | 21.35 | 22.95 | 27.30 | 31.90 | 37.45 |
| 31 | 14.50 | 22.00 | 23.70 | 28.15 | 32.95 | 38.65 |
| 32 | 14.90 | 22.65 | 24.40 | 29.00 | 33.95 | 39.85 |
| 33 | 15.30 | 23.25 | 25.10 | 29.85 | 34.95 | 41.05 |
| 34 | 15.70 | 24.00 | 25.85 | 30.70 | 36.00 | 42.25 |
| 35 | 16.15 | 24.65 | 26.55 | 31.60 | 37.00 | 43.45 |
| 36 | 16.55 | 25.30 | 27.25 | 32.45 | 38.00 | 44.65 |
| 37 | 16.95 | 25.95 | 28.00 | 33.30 | 39.05 | 45.85 |
| 38 | 17.35 | 26.65 | 28.70 | 34.15 | 40.05 | 47.05 |
| 39 | 17.80 | 27.30 | 29.40 | 35.05 | 41.10 | 48.25 |
| 40 | 18.20 | 27.95 | 30.10 | 35.90 | 42.10 | 49.50 |
| 41 | 18.60 | 28.60 | 30.75 | 36.75 | 43.10 | 50.70 |
| 42 | 19.00 | 29.25 | 31.55 | 37.60 | 44.15 | 51.90 |
| 43 | 19.45 | 29.95 | 32.25 | 38.45 | 45.15 | 53.10 |
| 44 | 19.85 | 30.60 | 33.00 | 39.35 | 46.15 | 54.30 |
| 45 | 20.25 | 31.25 | 33.70 | 40.20 | 47.20 | 55.50 |
| 46 | 20.65 | 31.90 | 34.40 | 41.05 | 48.20 | 56.70 |
| 47 | 21.10 | 32.55 | 35.15 | 41.90 | 49.20 | 57.90 |
| 48 | 21.50 | 33.25 | 35.85 | 42.80 | 50.25 | 59.10 |
| 49 | 21.90 | 33.90 | 36.55 | 43.65 | 51.25 | 60.30 |
| 50 | 22.30 | 34.55 | 37.25 | 44.50 | 52.25 | 61.55 |
| 51 | 22.75 | 35.20 | 38.00 | 45.35 | 53.30 | 62.75 |
| 52 | 23.15 | 35.85 | 38.70 | 46.20 | 54.30 | 63.95 |
| 53 | 23.55 | 36.55 | 39.45 | 47.10 | 55.35 | 65.15 |
| 54 | 24.00 | 37.20 | 40.15 | 47.95 | 56.35 | 66.35 |
| 55 | 24.40 | 37.85 | 40.85 | 48.80 | 57.35 | 67.55 |
| 56 | 24.80 | 38.50 | 41.55 | 49.65 | 58.40 | 68.75 |
| 57 | 25.20 | 39.15 | 42.30 | 50.55 | 59.40 | 69.95 |
| 58 | 25.65 | 39.85 | 43.00 | 51.40 | 60.40 | 71.15 |
| 59 | 26.05 | 40.50 | 43.70 | 52.25 | 61.45 | 72.35 |
| 60 | 26.45 | 41.15 | 44.40 | 53.10 | 62.45 | 73.60 |
| 61 | 26.85 | 41.80 | 45.15 | 53.95 | 63.45 | 74.80 |
| 62 | 27.30 | 42.45 | 45.85 | 54.85 | 64.50 | 76.00 |
| 63 | 27.70 | 43.15 | 46.55 | 55.70 | 65.50 | 77.20 |
| 64 | 28.10 | 43.80 | 47.30 | 56.55 | 66.50 | 78.40 |
| 65 | 28.50 | 44.45 | 48.00 | 57.40 | 67.55 | 79.60 |
| 66 | 28.95 | 45.10 | 48.70 | 58.30 | 68.55 | 80.80 |
| 67 | 29.35 | 45.75 | 49.45 | 59.15 | 69.55 | 82.00 |
| 68 | 29.75 | 46.45 | 50.15 | 60.00 | 70.60 | 83.20 |
| 69 | 30.15 | 47.10 | 50.85 | 60.85 | 71.60 | 84.40 |
| 70 | 30.60 | 47.75 | 51.55 | 61.70 | 72.65 | 85.65 |

Exception: Parcels weighing less than 15 pounds and that measure over 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel for the zone to which addressed.

**320 Classification**

* * * * *

323 PRESORTED FIRST-CLASS MAIL AND CARRIER ROUTE FIRST-CLASS MAIL

**323.1 Presorted First-Class Mail**

323.11 Eligibility. [In the second sentence, replace "11 ounces" with "10 ounces."]

* * * * *

**323.2 Carrier Route First-Class Mail**

[In the second sentence, replace "11 ounces" with "10 ounces."

* * * * *



324 ZIP+4 PRESORT FIRST-CLASS MAIL

**324.1 General**

324.11 Definitions.

324.111 National Mailing. A national mailing may contain pieces for addresses served by both automated and non-automated postal facilities.

324.112 Automated Site Mailing. An automated site mailing includes a qualifying portion in which all pieces are destined for addresses in the 3-digit ZIP Code areas served by the automated postal facilities listed in Exhibit 122.63m. Pieces in the residual portion can include those destined for addresses in other 3-digit ZIP Code areas.

324.12 Eligibility.

324.121 National Mailings Under 365.

a. Qualifying Portion. Pieces that are packaged and trayed as required by 367.1 and 367.2 are eligible for the ZIP+4 Presort rate (if they also meet the requirements of 324.2–324.8) or the Presorted First-Class rate.

b. Residual Portion. Pieces in the residual portion are eligible for the nonpresorted ZIP+4 rate (if they meet the requirements of 324.5-324.7) or the single-piece First-Class rates.

324.122 Automated Site Mailings Under 366.

a. Qualifying Portion. Pieces that are trayed to 3-digit destinations as required by 366.2 are eligible for the ZIP+4 Presort rate (if they meet the requirements of 324.2-324.8) or the Presorted First-Class rate.

b. Residual Portion. Pieces in the residual portion (see 366.221) may qualify for the nonpresorted ZIP+4 rate (if they meet the requirements of 324.5-324.7) or the single-piece First-Class rates.

**324.2 Volume Requirements**

324.21 Minimum Number of Pieces. Each ZIP+4 Presort mailing must contain at least 500 pieces.

324.22 85% Requirement. In each ZIP+4 Presort mailing, at least 85% of the total number of pieces (at all rates and presort levels) must bear the correct ZIP+4 code. Remaining pieces must bear the correct 5-digit ZIP Code. A correct ZIP+4 barcode prepared as described in 324.7 will satisfy the requirement for a correct ZIP+4 code, but pieces bearing a ZIP+4 barcode must also bear either the correct numeric 5-digit ZIP Code or the correct numeric ZIP+4 code in the address.

**324.3 Size and Weight Requirements**

324.31 Cards. To be eligible for the ZIP+4 Presort rates in 313.421, cards must meet the requirements in 311.11 and 322.

324.32 Matter Other than Cards. Each piece in a ZIP+4 Presort mailing must meet the following criteria:

* * * * *

e. Its weight must be 2.5 ounces or less.

**324.4 Presort**

All pieces in a ZIP+4 Presort mailing must be presorted either as required by 365 or, if all pieces in the mailing are destined for the 3-digit areas listed as automated sites in Exhibit 122.63m, by 366. An alternative method of preparation without packages is contained in Chapter 5.

* * * * *

**324.7 Prebarcoded Mail at ZIP+4 Rates**

324.71 General Requirements.

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b. Pieces Prepared with 5-Digit Barcodes.

(1) General. [Revise the first sentence to read: ZIP+4 Presort mailings presorted under 365 or 366 may include pieces prepared with 5-digit barcodes subject to the 85% requirement in 324.2.]

(2) 5-Digit Barcodes Printed Directly on Mailpieces. [Replace "the 85-percent ZIP+4 requirement in 365.22 or 366.11b" with "the 85% requirement in 324.2."]

(3) 5-Digit Barcodes Printed on Inserts. [Replace "the 85-percent ZIP+4 requirement in 365.22 or 366.11b" with "the 85% requirement in 324.2."]

**324.8 Documentation**

ZIP+4 Presort mailings must be accompanied by documentation as described in 365, 366, or Chapter 5, as applicable.

325 ZIP+4 BARCODED MAIL

**325.1 General**

325.11 Description.

325.111 Definitions.

a. National Mailing. A national mailing may contain pieces for addresses served by both automated and non-automated postal facilities.

b. Automated Site Mailing. An automated site mailing includes a qualifying portion in which all pieces are destined for addresses in the 3-digit ZIP Code areas served by the automated postal facilities listed in Exhibit 122.63m. Pieces in the residual portion can include those destined for addresses in other 3-digit ZIP Code areas.

325.112 Eligibility.

a. National Mailings. Pieces in a ZIP+4 Barcoded national mailing that bear the correct and properly prepared ZIP+4 barcode and meet the requirements of 325 qualify for the 5-digit ZIP+4 Barcoded rate, the 3-digit ZIP+4 Barcoded rate, or the nonpresorted ZIP+4 Barcoded rate depending upon their sortation (see 325.12). Pieces that are not ZIP+4 barcoded may be included in the mailing subject to the 85% requirement in 325.3.

b. Automated Site Mailings. Pieces in a ZIP+4 Barcoded automated site mailing that bear the correct and properly prepared ZIP+4 barcode and meet the requirements of 325 qualify for the 3-digit ZIP+4 Barcoded rate or the nonpresorted ZIP+4 Barcoded rate depending upon their sortation (see 325.13). Pieces that are not ZIP+4 barcoded may be included in the mailing subject to the 85% requirement in 325.3.

325.12 Applicable Rates by Sortation Category for National Mailings.

325.121 5-Digit Sortation. A piece in a ZIP+4 Barcoded rate national mailing that is contained in a 5-digit package in accordance with 364.12 can qualify for any of the following rates based upon its preparation.

a. 5-Digit Barcoded rate. A piece in a 5-digit package will qualify for the ZIP+4 Barcoded rate if it bears a ZIP+4 barcode prepared in accordance with 324.72 through 324.77, and 325.51.

* * * * *

325.122 3-Digit Sortation. A piece in a ZIP+4 Barcoded rate national mailing sorted in accordance with 364.13 (3-digit packages) can qualify for any of the following rates based upon its preparation:

a. 3-Digit ZIP+4 Barcoded Rate. A piece in a 3-digit package will qualify for the 3-digit ZIP+4 barcoded rate if it bears a ZIP+4 barcode prepared in accordance with 324.72 through 324.77, and 325.51.

b. ZIP+4 Presort Rate. A piece in a 3-digit package will qualify for the ZIP+4 Presort rate if it is prepared in either of the following two ways:

[Text of existing 325.122a (2) and (3).]

c. Presorted First-Class Rate. [Text of existing 325.122b.]

325.123 Residual Sortation. A piece in the residual portion of a ZIP+4 Barcoded rate national mailing (see 364.14) may qualify for one of the following rates based on its preparation:

a. Nonpresorted ZIP+4 Barcoded Rate. A piece in the residual portion of a ZIP+4 Barcoded rate mailing will qualify for the nonpresorted ZIP+4 Barcoded rate if it bears the correct ZIP+4 barcode prepared in accordance with 324.72 through 324.77, and 325.51.

b. Nonpresorted ZIP+4 Rate. A piece in the residual portion of a ZIP+4 Barcoded rate mailing will qualify for the nonpresorted ZIP+4 rate if it is prepared in either of the following two ways:

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[Text of existing 325.123a (2) and (3).]

c. Single-Piece First-Class Rate. [Text of existing 325.123b.]

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325.13 Applicable Rates by Sortation Category for Automated Site Mailings (364.3)

325.131 3-Digit Sortation. A piece in a ZIP+4 Barcoded rate automated site mailing sorted in accordance with 364.32 and 364.33 (3-digit packages in 3-digit or SCF trays) qualifies for the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate or the Presorted First-Class rate based upon its preparation (see 325.122a–c).

325.132 Residual Sortation. A piece in a ZIP+4 Barcoded rate automated site mailing prepared in accordance with 364.34 qualifies for the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the full single-piece First-Class rate based upon its preparation (see 325.123a–c).

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**325.3 85% Requirement**

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[In the EXCEPTION, change the reference from 364.44 to 364.24. Add the following note after 325.3.]

[The Postal Service intends to propose a revision to section 325.3, which currently requires that at least 85% of the pieces in a ZIP+4 Barcoded rate mailing bear a correctly prepared ZIP+4 barcode. By that revision, the 85% figure would be increased to 100%, effective September 15, 1990.]

**325.4 Requirements for All Pieces in the Mailing**

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325.44 Presort. [Change the references from 364.1, 364.2, and 364.3 to 364.12, 364.13, and 364.14, respectively.]

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328 PRIORITY MAIL

**328.1 Description**

[Replace "11 ounces" with "10 ounces."]

**328.2 Preparation**

328.21 Additions and Enclosures. [Text of existing 328.2.]

328.22 Sealing. [Text of existing 363.]

328.23 Marking. Priority Mail must be marked as required by 362.1.

**328.3 Reshipment of Mail**

[Replace the phrase "may be reshipped via Priority Mail," with "may be reshipped via Priority Mail at single-piece Priority Mail rates."]

**328.4 Presorted Priority Mail**

328.41 Minimum Quantity Requirements. Each mailing must contain at least 300 qualifying pieces.

328.42 Marking. Each piece in the mailing must bear the appropriate rate marking as described in 362.1.

328.43 Presort. Presorted Priority mail must be presorted as required by 363.

**328.5 Pickup Service**

328.51 General. Pickup service for single-piece rate Priority Mail is available at designated postal facilities, subject to the conditions in this section. Pickup service is not available for Presorted Priority Mail.

328.52 Fee.

328.521 General Terms. The fee prescribed in 715.3 must be paid by the mailer every time pickup service is provided, regardless of the number of pieces picked up. Only one fee will be charged if Express Mail or parcel post is also picked up at the same time.

328.522 Exception. The fee will not be charged when Express Mail, Priority Mail, or parcel post is collected during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee.

328.523 Method of Payment. The fee must be paid by meter, precanceled, or adhesive stamps affixed to Form 5641, *Express Mail Service Pickup Statement.* (At the top of side A, check "Other" and write "Priority Mail pickup fee," complete the blocks identifying the mailer and the date of mailing, and affix the postage to the bottom of the form under "Comments.")

328.53 Postage. The mailer must affix the full required postage to each mailpiece being picked up. Use of precanceled and meter stamps must be as provided by 143 and 144, respectively. Pieces paid by permit imprint cannot be mailed using pickup service.

328.54 Other Mail. As a service to the mailer, the Postal Service will concurrently collect incidental amounts of other fully prepaid, postage affixed, full-rate mail when picking up mail for which pickup service is provided (Express Mail, Priority Mail, and parcel post). Presort, bulk or reduced rate mail, and any mail paid by permit imprint must be deposited at the serving postal facility.

328.55 On-Call Pickup Service

328.551 When Available. On-call pickup service may be requested during the regular business hours of the serving postal facility. The pickup will be made within 2 hours after the request unless requested less than 2 hours before the end of any business day. Such pickups may be deferred until the next day when service is available.

328.552 Where Available. On-call pickup service is available only at post offices with city delivery (see Publication 65, *National Five Digit ZIP Code and Post Office Directory*).

328.553 Cancellation. The pickup fee is waived for a pickup canceled by the customer if the requested pickup is not performed. The Postal Service may refuse to provide on-call pickup service when weather or road conditions, facility emergencies at mailer or postal premises, unforeseen personnel or vehicle shortages, or other exceptional situations make it impossible or unsafe to provide pickup service.

328.554 Volume. When calling for a pickup, the mailer must advise the serving postal facility of the volume of mail to be picked up. The Postal Service reserves the right to defer pickup, or to make multiple pickups at no additional charge to the mailer, when the volume to be picked up exceeds available vehicle capacity.

328.56 Scheduled Pickup Service.

328.561 When Available. Scheduled pickup service may be requested during the regular business hours of the serving postal facility. Scheduled pickup service will begin the next day when service is available and continue until canceled by the mailer.

328.562 Where Available. Scheduled pickup service is available at post offices with city delivery (see Publication 65, *National Five Digit ZIP Code and Post Office Directory*), and at other post offices where the mailer's address is along the line of travel of a rural or highway contract route.

328.563 Service Agreement. Mailers who desire scheduled pickup service must enter into a service agreement with the Postal Service, specifying the time, place, day or date, and frequency of service, and the approximate volume per pickup. (For 5631, *Express Mail Service Agreement*, may be adapted for this use.) Mailers will be charged the pickup fee for a scheduled pickup regardless of volume collected.

328.564 Cancellation and Changes in Volume. The mailer must notify the serving post office at least 24 hours in advance of the scheduled pickup if the pickup is not needed (canceled) or if the volume of mail to be picked up exceeds the amount specified in the service agreement by more than 20%. Mailers are not charged the pickup fee for a scheduled pickup that is canceled as required. Mailers who do not notify the serving post office of exceptional volume will be charged the pickup fee for each additional trip required.

328.565 Volume. There are no minimum or maximum limitations on the number of pieces that can be mailed using pickup service. However, the Postal Service reserves the right to defer pickup or to make multiple pickups at no additional charge to the mailer when the volume to be picked up exceeds available vehicle capacity, and to establish plant load service where warranted based on mailer volume.

328.566 Changes in Service.

a. By the Mailer. Scheduled pickup service (the service agreement) may be changed by the mailer effective 5 business days from the receipt of the mailer's written notice to the serving postal facility.

b. By the Postal Service. Scheduled pickup service (the service agreement) may be changed by the Postal Service effective 5 days from the mailer's receipt of written notice from the serving post office. The mailer may appeal this notice as provided by 133, but must pay all pickup fees chargeable during the appeal period.

c. Disruptions in Service. The Postal Service may suspend scheduled pickup service when weather or road conditions, facility emergencies at mailer or postal premises, unforeseen personnel or vehicle shortages, or other exceptional situations make it impossible or unsafe to provide pickup service.

328.567 Termination of Service.

a. By the Mailer. Scheduled pickup service will be terminated within 24 hours of receipt of the mailer's written notice to the serving postal facility. The mailer will be liable for fees for pickup service provided prior to termination of service.

b. By the Postal Service. The Postal Service may terminate pickup service effective 24 hours from the mailer's receipt of written notice from the serving post office. Termination must be based on the mailer's failure to pay postage and fees or to meet the requirements that apply to pickup service or mailing at Priority Mail rates. The mailer may appeal this notice as provided by 133, but must pay all pickup fees chargeable during the appeal period.

328.57 Preparation Requirements.

328.571 Priority Mail Pieces. Each piece of Priority Mail must meet the applicable eligibility and preparation requirements in 326.1, 361.3, and 362.1.

328.572 Drop Shipment. Material prepared for Priority Mail Drop Shipment must meet the requirements in 136.9.

328.573 Refusal. The Postal Service may refuse to pick up Priority Mail not prepared as required by this section.

327 NONPRESORTED ZIP+4 MAIL

**327.1 Minimum Quantity**

Each mailing must contain at least 250 pieces.

**327.2 85% Requirement**

In each nonpresorted ZIP+4 mailing, at least 85% of the total number of pieces (at all rates) must bear the correct ZIP+4 code. Remaining pieces must bear the correct 5-digit ZIP code. A correct ZIP+4 barcode prepared as described in 324.7 will satisfy the requirement for a correct ZIP+4 code, but pieces bearing a ZIP+4 barcode must also bear either the correct numeric 5-digit ZIP Code or the correct numeric ZIP+4 code in the address.

**327.3 Physical Characteristics**

327.31 Size and Weight Requirements. Each piece in the mailing must meet the size and weight criteria in 324.3.

327.32 Barcode Clear Zone. Each piece in the mailing must meet the barcode clear zone requirements in 324.5.

327.33 OCR Readability. Each piece in the mailing must meet the OCR readability requirements in 324.6.

**327.4 Preparation**

327.41 Addressing. Each piece in the mailing must be addressed as required by 361.5.

327.42 Marking. Each piece in the mailing must be marked as required by 362.4.

327.43 Traying. Each piece in the mailing must be trayed in accordance with 368.1.

**327.5 Documentation**

Mailing containing 5-digit ZIP Coded pieces must be accompanied by documentation as required in 368.12.

328 NONPRESORTED ZIP+4 BARCODED MAIL

**328.1 Minimum Quantity**

Each mailing must contain at least 250 pieces.

**328.2 85% Requirement**

In each nonpresorted ZIP+4 Barcoded mailing, at least 85% of the total number of pieces (at all rates) must bear the correct ZIP+4 barcode. Each piece must also bear either the correct numeric ZIP+4 code or the correct numeric 5-digit ZIP Code.

**328.3 Physical Characteristics**

328.31 Size and Weight Requirements. Each piece in the mailing must meet the size and weight criteria in 324.3.

328.32 Barcode Requirements. ZIP+4 barcodes must meet the requirements of 325.51. 5-digit barcodes are permitted subject to the 85% requirement in 328.2. 5-digit barcodes must be prepared in accordance with 325.52.

328.33 OCR Readability Requirements. None.

**328.4 Preparation**

328.41 Addressing. Each piece in the mailing must be addressed as required by 361.6.

328.42 Marking. Each piece in the mailing must be marked as required by 362.7.

328.43 Traying Requirements. Each piece in the mailing must be trayed in accordance with 368.2.

**328.5 Documentation Requirements**

Mailings containing pieces prepared without ZIP+4 barcodes must be physically separated or accompanied by documentation as described in 368.22.

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341 ANNUAL PRESORT FEE

[In the first sentence, replace "and/or ZIP+4 Barcoded rates" with "3-digit ZIP+4 Barcoded, 5-digit ZIP+4 Barcoded and/or Presorted Priority Mail rates."]

• • • • •

361 ADDRESSING

• • • • •

**361.5 ZIP+4 First-Class Mail**

The address of at least 85 percent of the pieces in nonpresorted ZIP+4 mailings and in ZIP+4 Presort mailings must contain a correct ZIP+4 code. Pieces that do not bear the correct ZIP+4 code must bear the correct 5-digit ZIP Code.

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362 MARKING REQUIREMENTS

**362.1 Priority Mail**

362.11 Single-Piece Rate Priority Mail. The words "Priority" or "Priority Mail" must be placed prominently on the address side of each piece of single-piece rate Priority Mail.

362.12 Presorted Priority Mail.

362.121 Content. Each piece in a Presorted Priority Mail mailing must be marked "Priority," "Priority Mail," or "Presorted Priority Mail."

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362.122 Method and Location. The markings must be printed or rubber-stamped either as part of or immediately adjacent to the permit imprint, meter stamp, or precanceled stamp. One of the markings may be located in the address area either on the line immediately above the address or, preferably, 2 lines above the address. If the marking is located in the address area, no other information may appear on the line containing the rate marking information except for the carrier route information.

362.13 Use of Priority Mail Stationery. In order to permit easy recognition of Priority Mail pieces in the mailstream, customers are urged to use Priority Mail envelopes and identification stickers, available at all post offices.

* * * * *

**362.7 Nonpresorted ZIP+4 Barcoded Mail**

362.71 Content. Each piece in a nonpresorted ZIP+4 Barcoded mailing must be marked "First-Class." In addition, mailers are encouraged, but not required, to mark each piece in the mailing "ZIP+4 Barcoded."

362.72 Method and Location. The markings must be printed or rubber-stamped either as part of or immediately adjacent to the permit imprint, meter stamp, or precanceled stamp. One of the markings may be located in the address area either on the line immediately above the address or, preferably, 2 lines above the address. If the marking is located in the address area, no other information may appear on the line containing the rate marking information except for the carrier route information. Exception: A mailer authorized to mail letter-size pieces under the Manifest Mailing System (MMS) in 145.7 must place the rate category identification marking in a keyline as described in 145.742.

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363 PREPARATION REQUIREMENTS FOR PRESORTED PRIORITY MAIL

**363.1 Presort Requirements for Letters and Flats**

363.11 Packaging Requirements.

363.111 General. Each letter- or flat-size piece in the qualifying portion of a Presorted Priority Mail mailing must be presorted and packaged as required by 363.112–363.115.

363.112 5-Digit Packages. When there are 6 or more addressed pieces for the same 5-digit ZIP Code destination, they must be faced and secured together as a 5-digit package. Packages containing fewer than 6 pieces must not be prepared. A red label D must be affixed to the lower left corner of the address side of the top piece in each package, or the optional endorsement (package label) line described in 369 for 5-digit packages must be placed on each piece.

363.113 3-Digit Packages. After all possible 5-digit packages have been prepared, if there are 6 or more addressed pieces remaining for the same 3-digit ZIP Code area, they must be secured together as a 3-digit package. Packages containing fewer than 6 pieces must not be prepared. A green label 3 must be affixed to the lower left corner of the address side of the top piece in each package, or the optional endorsement (package label) line described in 369 for 3-digit packages must be placed on each piece.

363.114 SCF Packages. After all possible 5-digit and 3-digit packages have been prepared, if there are 6 or more addressed pieces remaining for one of the SCFs listed in Exhibit 122.63d, they must be secured together as an SCF package. Packages containing fewer than 6 pieces must not be prepared. Pieces within each package must be for the same zone. A green label 3 must be affixed to the lower left corner of the address side of the top piece in each package, or the optional endorsement (package label) line described in 369 for SCF packages must be placed on each piece.

363.115 Residual Pieces. Pieces that cannot be packaged as required by 363.112–363.114 are residual pieces. Residual pieces must be packaged in groups of 25 pieces, identified with a facing slip carrying the number of pieces in the package and the words "Residual Pieces," and sacked separately from qualifying mail as provided by 363.125.

363.12 Sacking Requirements

363.121 General. The packages prepared as required by 363.11 must be sacked as required by 363.122–363.125. The pieces in each sack must all be for the same zone.

363.122 5-Digit Sacks. When there are at least 15 pounds of mail packaged for the same 5-digit ZIP Code destination, the packages must be placed in a 5-digit sack. Sacks containing fewer than 15 pounds of mail may be prepared if there is at least one package of 6 pieces in each sack. 5-digit sacks must be labeled in the following manner:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: The words "PRIORITY MAIL", followed by the processing category (LETTERS or FLATS).

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.123 3-Digit Sacks. After all possible 5-digit sacks have been prepared, if there are at least 15 pounds of mail for the same 3-digit ZIP Code area, the packages must be placed in a 3-digit sack. Sacks containing fewer than 15 pounds of mail may be if provided there is at least one package of 6 pieces in each sack. 3-digit sacks must be labeled in the following manner:

a. Unique 3-Digit ZIP Code Prefixes.

Line 1: City, two-letter state abbreviation and unique 3-digit prefix as shown in Exhibit 122.63b.

Line 2: The words "PRIORITY MAIL," followed by the processing category (LETTERS or FLATS).

Line 3: City and two-letter abbreviation of the post office of mailing.

b. Other 3-Digit ZIP Code Prefixes.

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit ZIP Code prefix of the pieces in the sack (see Exhibit 122.63 c or d for the name of the SCF serving the 3-digit ZIP Code area.

Line 2: The words "PRIORITY MAIL," followed by the processing category (LETTERS or FLATS).

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.124 SCF Sacks. After preparing all possible 5-digit and 3-digit sacks, if there are at least 15 pounds of mail for the same zone and for the same SCF service area, the packages must be placed in an SCF sack. Sacks containing fewer than 15 pounds of mail may be prepared if there is at least one package of 6 pieces in each sack. SCF sacks must be labeled in the following manner:

Line 1: Letters "SCF" followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF as shown in Exhibit 122.63d.

Line 2: The words "PRIORITY MAIL," followed by the processing category (LETTERS or FLATS).

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.125 Residual. The packages of residual pieces prepared as required by 363.115 must be sacked according to zone if part of a mailing of identical-weight pieces prepared with permit imprints, or part of a mailing of identical-weight metered mail in which the entire mailing is metered at the Presorted Priority Mail rates. Sacks of residual mail must be sacked separately from the qualifying mail sacked as required by 363.122–363.124. Sacks of residual mail must be labeled as follows:



Line 1: Word "RESIDUAL," (followed by the zone if the zone is required).

Line 2: The words "PRIORITY MAIL," followed by the processing category (LETTERS or FLATS).

Line 3: City and two-letter state abbreviation of the post office of mailing.

**363.2 Presort Requirements for Parcels**

363.21 Packaging Requirements. None.

363.22 Sacking Requirements. Parcels must be sacked in accordance with the following requirements. Both machinable and nonmachinable parcels may be placed in the same sack. The pieces in each sack must all be for the same zone.

363.221 5-Digit Sacks. When there are at least 6 addressed pieces for the same 5-digit ZIP Code destination, the pieces must be placed in a 5-digit sack. Sacks containing fewer than 6 pieces of mail must not be prepared. 5-digit sacks must be labeled in the following manner:

Line 1: City, two-letter state abbreviation, and 5-digit ZIP Code.

Line 2: PRIORITY MAIL—PARCELS.

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.222 3-Digit Sacks. After all possible 5-digit sacks have been prepared, if there are at least 6 pieces remaining for the same 3-digit ZIP Code area, they must be placed in a 3-digit sack. Sacks containing fewer than 6 pieces must not be prepared. 3-digit sacks must be labeled in the following manner:

a. Unique 3-digit ZIP Code Prefixes

Line 1: City, two-letter state abbreviation and unique 3-digit prefix as shown in Exhibit 122.63b.

Line 2: PRIORITY MAIL—PARCELS

Line 3: City and two-letter abbreviation of the post office of mailing.

b. Other 3-Digit ZIP Code Prefixes

Line 1: Name of SCF and two-letter state abbreviation of the SCF, followed by the 3-digit ZIP Code prefix of the pieces in the sack (see Exhibit 122.63c or d for the name of the SCF serving the 3-digit ZIP Code area.

Line 2: PRIORITY MAIL—PARCELS

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.223 SCF Sacks. After all possible 5-digit and 3-digit sacks have been prepared, if there are at least 6 pieces remaining for the same zone and for the same SCF service area, they must be placed in the SCF sack. Sacks containing fewer than 6 pieces must not be prepared. SCF sacks must be labeled in the following manner:

Line 1: Letters "SCF" followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF as shown in Exhibit 122.63d.

Line 2: PRIORITY MAIL—PARCELS

Line 3: City and two-letter state abbreviation of the post office of mailing.

363.224 Residual Pieces.

a. Definition. Residual mail is those pieces that cannot be placed in a sack of 6 or more pieces as required by 363.221–363.223.

b. Preparation. Residual mail must be sacked according to zone if part of a mailing of identical-weight pieces prepared with permit imprints, or part of a mailing of identical-weight metered mail in which the entire mailing is metered at the Presorted Priority Mail rates. Sacks of residual mail must be labeled as follows:

Line 1: Word "RESIDUAL," (followed by the zone if the zone is required).

Line 2: PRIORITY MAIL—PARCELS

Line 3: City and two-letter state abbreviation of the post office of mailing.

**363.3 Physical Requirements for Sacks**

363.31 Maximum Weight. The total weight of any sack (including the weight of the sack) must not exceed 70 pounds.

363.32 Color and Size. Orange sacks must be used for Presorted Priority Mail. It is recommended that No. 2 sacks provided by the Postal Service be used.

363.33 Sack Labels.

363.331 Color. Sack labels must be white or manila.

363.332 Size.

a. Length (Parallel to the Printing). Minimum, 3 1/16 inches, maximum, 3 5/8 inches.

b. Height (Perpendicular to the Printing). Minimum 15/16 of an inch, maximum 2 3/8 of an inch.

363.333 Method of Preparation. The Postal Service prefers machine-printed labels to ensure legibility, although legible hand-printed labels are acceptable. Illegible labels are unacceptable. Machine-printed labels may be ordered from the Postal Service.

363.334 Trailing Zeros. Two zeros may follow 3-digit prefixes on sack labels.

363.335 Abbreviations. The destination and office of mailing lines may contain abbreviated information if such abbreviations are those shown in Publication 65, *National Five-Digit ZIP Code and Post Office Directory*. The following authorized abbreviations may be used on the contents line of sack labels.

| | |
|---|---|
| Letters | LTRS |
| Flats | FLTS |
| Priority Mail | PRIORITY |

363.336 Line 1. Line 1, the destination line, must be the first visible line on the label. It must be completely visible and legible when placed in the label holder or otherwise affixed for use. To ensure this, the Postal Service recommends that the top line is no less than 1/8 (.125) inch below the top of the label when the label is cut and prepared for use. The destination line must contain only the information described in 363.12 and 363.22.

363.337 Line 2. Line 2, the contents line, must be the second visible line on the label and must contain the information described in 363.12 or 363.22.

363.338 Line 3. Line 3, the office of mailing line, must be prepared as described in 363.12 and 363.22.

363.339 Extraneous Information. Extraneous information is prohibited from the destination and contents lines. The mailer may place it elsewhere as provided by 441.323a and 441.323d–f.

* * * * *

364 ZIP+4 BARCODED FIRST-CLASS MAIL

**364.1 National Mailings—Presort Requirements**

364.11 General. ZIP+4 Barcoded rate national mailings (as defined in 325.111(e), claimed at the rates described in 325.12, must be packaged and trayed in accordance with 364.11–364.16. An optional method of preparation (unpackage mail in trays that are at least ⅝ full) is described in Chapter 5.

364.12 5-Digit ZIP+4 Barcoded Rate Packaging Requirements.

364.121 General. When there are 10 or more pieces in a ZIP+4 Barcoded rate national mailing that are addressed to the same 5-digit ZIP Code, those pieces must be prepared in a 5-digit package to that destination. Those packages must then be trayed in accordance with 364.13.

364.122 Package Preparation. Pieces must be faced in the same direction and either secured with one or two rubber bands as prescribed in 367.112 or separated by visible index tabs or separator cards to delineate each package. A package must not be more than 4 inches thick.

364.123 Package Label. A red label D must be affixed to the lower left corner of the address side of the top piece in the package.

364.124 Packages in Trays. Pieces in 5-digit trays need not be prepared in packages.

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364.13 5-Digit ZIP + 4 Barcoded Rate Traying Requirements.

364.131 General. Packages prepared as required by 364.12 must be trayed as specified in 364.132–364.136. Pieces that are packaged under 364.12 and packaged as prescribed by 364.132–364.134 may qualify for the 5-digit ZIP+4 Barcoded rate if they also bear the correct ZIP+4 barcode and meet all other requirements of 325, or for the ZIP+4 Presort or Presorted First-Class rates. Pieces in packages trayed as prescribed in 364.135–364.136 may qualify for the Presorted First-Class rate.

364.132 5-Digit trays. [Text of existing 364.121.]

364.133 Unique 3-Digit Trays. [Text of existing 364.122.]

364.134 SCF Trays. [Text of existing 364.123; change the reference "364.121 and 364.122" to "364.132 and 364.133."]

364.135 ADC Trays. [Text of existing 364.124; change the reference "364.121 through 364.123" to "364.132–364.134."]

364.136 Mixed ADC Trays. [Text of existing 364.125; change the reference "364.121, 364.122, 363.123, and 364.124" to "364.132–364.135."]

364.14 3-Digit ZIP+4 Barcoded Rate Packaging Requirements.

364.141 General. After all possible 5-digit packages have been prepared, if there are 50 or more pieces remaining that are addressed to the same 3-digit ZIP Code area, those pieces must be prepared in 3-digit packages for that destination. Those packages must then be trayed in accordance with 364.15.

364.142 Package Preparation. Pieces must be faced in the same direction and either secured with one or two rubber bands as prescribed in 367.112 or separated by visible index tabs or separator cards to delineate each package. A package must not be more than 4 inches thick.

364.143 Package Label. A green label 3 must be affixed to the lower left corner of the address side of the top piece in each package.

364.144 Packages in Trays. Pieces in 3-digit trays need not be prepared in packages if all the pieces would have been prepared in 3-digit packages to the same destination.

364.145 Residual. Pieces that remain after all possible 5-digit and 3-digit packages have been prepared are residual pieces and must be prepared as prescribed by 364.16.

364.15 3-Digit ZIP+4 Barcoded Rate Traying Requirements

364.151 General. Packages prepared as required by 364.14 must be trayed as specified in 364.152–364.155. Pieces that are packaged under 364.14 and packaged as prescribed by 364.152 and 364.153 may qualify for the 3-digit ZIP+4 Barcoded rate if they also bear the correct ZIP+4 barcode and meet all other requirements of 325, or for the ZIP+4 Presort or Presorted First-Class rates. Pieces in packages trayed as prescribed in 364.154 and 364.155 may qualify for the Presorted First-Class rate. Trays of 3-digit packages must be separated from trays of 5-digit packages when the mailing is presented to the Postal Service.

364.152 Unique 3-Digit Trays. Prepare as prescribed in 364.133, except do not show "MXD 5–DG" on the second line of the tray label.

364.153 SCF Trays. Prepare as prescribed in 364.134, except do not show "MXD 5–DG" on the second line of the tray label.

364.154 ADC Trays. Prepare as prescribed in 364.135, except do not show "MXD 5–DG" on the second line of the tray label.

364.155 Mixed ADC Trays. Prepare as prescribed in 364.136, except do not show "MXD 5–DG" on the second line of the tray label.

364.16 Preparation Requirements for the Residual Portion. [Text of existing 364.3. Revise the first sentence to read: "Pieces remaining after all 5-digit packages have been prepared and trayed in accordance with 364.12 and 364.13, and all 3-digit packages have been prepared and trayed in accordance with 364.14 and 364.15, are residual pieces subject to either the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the full single-piece First-Class rate as described in 325.123."]

**364.2 National Mailings—Documentation and Postage Payment Requirements**

[Text of existing 364.4; renumber existing 364.41, 364.411, 364.412, 364.42, 364.43, 364.44, and 364.45 as 364.21, 364.211, 364.212, 364.22, 364.43, 364.5, and 364.6, respectively. Renumber existing Exhibits 364.412 and 364.42 as Exhibits 364.212 and 364.22, respectively.]

364.21 Required Documentation for Metered and Precanceled Stamp Mailings

364.211 Correct Postage Affixed to Each Piece. [Change the reference "364.3" to "364.16."]

364.212 Postage at ZIP+4 Barcoded Rate Affixed to All Pieces

a. General. [Change the references "364.412b through e" and "364.412" to "364.212b–e" and "364.212" respectively.]

b. 5-Digit Sortation. [Change the reference "364.1" to "364.12 and 364.13".]

(1) Number of ZIP+4 Barcoded Pieces Qualifying for the 5-Digit ZIP+4 Barcoded Rate.* * *

* * * * *

(4) Cumulative Total. [Revise the second sentence to read: "Total each of categories (1) through (3) to provide: (1) The total number of ZIP+4 barcoded pieces qualifying for the 5-digit ZIP+4 Barcoded rate; (2) the total number of non-ZIP+4 barcoded pieces qualifying for the ZIP+4 Presort rate; and (3) the total number of non-ZIP+4 barcoded pieces qualifying for the Pre-sorted First-Class rate."]

c. 3-Digit Sortation. [Change the reference "364.2" to "364.14 and 364.15."]

(1) Number of Pieces Qualifying for the 3-Digit ZIP+4 Barcoded Rate. [Delete the note under this section.]

* * * * *

(4) Cumulative Total. [Revise the second sentence to read: "Total each of categories (1) through (3) to provide: (1) the total number of ZIP+4 barcoded pieces qualifying for the 3-digit ZIP+4 Barcoded rate; (2) the total number of non-ZIP+4 barcoded pieces qualifying for the ZIP+4 Presort rate; (3) the total number of non-ZIP+4 barcoded pieces qualifying for Presorted First-Class rates."]

d. Documentation for Residual Pieces. [In the first sentence, change the reference "364.3" to "364.16."]

(1) Number of Pieces Qualifying for the Nonpresorted ZIP+4 Barcoded Rate. [Delete the note under this section.]

* * * * *

(4) Cumulative Total. [Revise the second sentence to read: "Total each of categories (1) through (3) to provide: (1) The total number of ZIP+4 barcoded pieces qualifying for the nonpresorted ZIP+4 Barcoded rate; (2) the total number of non-ZIP+4 barcoded pieces qualifying for the nonpresorted ZIP+4 rate; (3) the total number of non-ZIP+4 barcoded pieces subject to the single-piece First-Class rate."]

e. Totals. Summarize the total number of pieces in each rate category in the mailing. For each category other than pieces qualifying for the 5-digit ZIP+4 Barcoded rate, multiply the total number of pieces in the rate category by the additional postage due per piece for that rate category. For example, multiply the total number of pieces eligible for the ZIP+4 Presort rate by $0.01 (the difference between the 5-digit ZIP+4 Barcoded rate and the ZIP+4 Presort rate). This will show the total postage due for each rate category in the mailing. Add the total amounts of postage due for each rate category to show the total amount of postage due. Also summarize, for the entire mailing, the total number of pieces that bear a properly prepared ZIP+4 barcode and the total number of pieces that do not.



[Exhibit 364.212. In the 5-digit portion, replace the heading "ZIP+4 Barcoded Rate" with "5-digit ZIP+4 Barcoded Rate." In the 3-digit portion, replace the heading "ZIP+4 Presort Rate" for the second column from the left "3-Digit ZIP+4 Barcoded Rate." In the residual portion, replace the heading "Nonpresorted ZIP+4 Rate" for the second column from the left with "Nonpresorted ZIP+4 Barcoded Rate." In the summary, replace the words and numbers of the first line with "Total 5-digit ZIP+4 Barcoded Rate Pieces—1001–$0.00–$0.000" and add another line immediately below to read "Total 3-Digit ZIP+4 Barcoded Rate Pieces—330–0.005–1.65." Replace the "Additional Postage" and "Total Postage" figures for the existing second, third, and fifth lines with "0.01–12.35," "0.017–1.02," and "0.057–.513," respectively. Replace the figures for the existing fourth line with "40–0.037–1.48" and add another line immediately above the existing fourth line to read "Nonpresorted ZIP+4 Barcoded Rate Pieces—19–0.027–.513." Replace the figure shown for total additional postage due with "$17.53."]

364.22 Required Documentation for Permit Imprint Mailings.

[Text of existing 364.42.]

a. Documentation. [Change the references "364.412b–e," "364.44," and "364.42" to "364.212b–e," "364.24," and "364.22" respectively.]

* * * * *

(2) [Change the reference "364.42a(1)" to "364.22a(1)".]

* * * * *

(4) [Change the reference 364.412 b(1), c(1), and d(1)" to "364.212 b(1), c(1), and d(1)."]

* * * * *

b. Exception to Documentation. [Replace "each of the sortation levels (364.1, 364.2, and 364.3)" with "the 5-digit, 3-digit, and residual presort levels."]

Exhibit 364.22. In the 5-digit portion, replace the heading "ZIP+4 Barcoded Rate" with "5-Digit ZIP+4 Barcoded Rate." In the 3-digit portion, replace the heading "ZIP+4 Presort Rate" for the second column from the left "3-Digit ZIP+4 Barcoded Rate." In the residual portion, replace the heading "Nonpresorted ZIP+4 Rate" for the second column from the left with "Nonpresorted ZIP+4 Barcoded Rate." In the summary, replace the words and numbers of the first line with "Total 5-Digit ZIP+4 Barcoded Rate Pieces—1001–$0.243–$243.243" and add another line immediately below to read "Total 3-Digit ZIP + Barcoded Rate Pieces—330–0.248–61.84." Replace the "Additional Postage" and "Total Postage" figures for the existing second, third, and fifth lines with "0.253–312.455," "0.26–15.60," and "0.30–2.70," respectively. Replace the figures for the existing fourth line with "40–0.28–11.20" and add another line immediately above the existing fourth line to read "Nonpresorted ZIP+4 Barcoded Rate Pieces—19–0.27–5.13." [Replace the existing sixth line to read "TOTAL POSTAGE DUE FOR MAILING $672.17."]

364.23 Summary Listing Documentation Option

[Text of existing 364.43; renumber existing 364.431–364.437 as 364.231–364.237.]

364.231 General. [Change the reference "364.41 and 364.42" to "364.21 and 364.22".]

364.232 Required Information.

a. For each sortation level (5-digit, 3-digit, and residual), the summary listing must show:

* * * * *

364.233 Authorization. [Change the reference "364.434" to "364.234".]

364.234 Applications. [Change the reference "364.41 or 364.42" to "364.21 or 364.22".]

364.235 Approval Process. [Change the reference "364.431" to "364.231".]

364.24 Documentation Based on a Mailing List or Cycle. As an alternative to the requirements of 364.21–364.23, mailers may submit documentation based on a mailing list or cycle as prescribed by 364.5.

**364.3 Automated Site Mailings—Preparation Requirements**

364.31 General.

364.311 Optional Use. As an alternative to the preparation requirements described in 364.1 and 2 for national mailings, mailers may follow the requirements in 364.3 and 364.4 for mailings destinating at automated sites. ("Automated sites" refers to the 3-digit ZIP Code areas and postal facilities listed in Exhibits 122.63m–o.) Pieces for other destinations may be included in the residual portion of the mailing.

364.312 Rate Eligibility.

a. Qualifying Portion. Pieces placed in a group of 50 or more pieces destined for one of the 3-digit areas listed in Exhibit 122.63m qualify for the 3-digit ZIP+4 Barcoded rate if they bear a correct ZIP+4 barcode and meet the requirements of 325, or the ZIP+4 Presort or Presorted First-Class rate (see 325.123).

b. Residual Portion. Pieces that are not placed in a group of 50 or more pieces (as required to be in the qualifying portion) are residual pieces and qualify for the nonpresorted ZIP+4 Barcoded rate if they meet the requirements of 325, or the nonpresorted ZIP+4 or single-piece First-Class rates (see 325.123).

364.32 Grouping Requirements. Whenever there are 50 or more addressed pieces for one of the 3-digit ZIP Code areas listed in Exhibit 122.63m, they must be placed together in a tray labeled to that destination, as required by 364.33. Groups of pieces for the same 3-digit area may be placed in more than one tray only if the groups in each tray contain a minimum of 50 pieces for the same 3-digit destination. (This will facilitate verification by postal employees.) Mail for each 3-digit destination within a tray must be separated by visible index tabs or separator cards.

364.33 Traying Requirements.

364.331 3-Digit Trays. When there are enough pieces to the same 3-digit ZIP Code prefix to fill at least ¾ of a tray, a 3-digit tray must be prepared for that destination. 3-digit trays that are less than ¾ full may be prepared only if there is no corresponding SCF tray listed in Exhibits 122.63n into which lesser quantities may be placed. 3-digit trays must be labeled in the following manner:

Line 1: City, two letter state abbreviation, and 3-digit ZIP Code as shown in Exhibit 122.63m.

Line 2: FCM Z+4 BARCODED.

Line 3: Mailer Name, Mailer Location.

364.332 SCF Trays. After all possible 3-digit trays have been prepared, any remaining groups of 50 or more pieces each for the 3-digit areas served one of the SCFs listed in Exhibit 122.63n must be placed in a tray labeled to that SCF. SCF trays must be labeled in the following manner:

Line 1: "SCF" followed by the name of the SCF, the two-letter state abbreviation of the SCF, and the 3-digit ZIP Code prefix for the SCF shown in Exhibit 122.63n.

Line 2: FCM Z+4 BARCODED.

Line 3: Mailer Name, Mailer Location.

364.34 Residual Trays.

364.341 General Preparation. Residual mail must be presented with, but clearly separated from, the qualifying portion of the mailing to facilitate verification. Unless documentation is not required as described in 364.412, the pieces must either be

a. separated into trays by rate category or, if postage is affixed to each piece at the correct rate, separated by pieces with and without a ZIP + 4 barcode. If the pieces are not of identical weight, they must be further separated in each into groups of 100 pieces by separator tabs or rubber bands as described in 364.432a; or

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b. placed in trays in 5-digit or 3-digit ZIP Code sequence and accompanied by the documentation described in 364.432b.

364.343 Tray Labeling. Trays of residual pieces must be labeled as required by 364.343a-b.

a. Trays Containing Pieces with a ZIP+4 barcode.

Line 1: ZIP+4 BARCODED.

b. Trays Containing Only Pieces without a ZIP+4 barcode.

Line 1: Residual.

**364.4 Automated Site Mailings—Documentation Requirements**

364.41 General.

364.411 When Documentation is Required. Documentation described in 364.42 or 364.43, as appropriate for the postage payment method used, must be submitted with each mailing except when documentation is not required as described in 364.412, or when mailers are authorized to submit documentation based on a list or cycle as described in 364.5. The documentation is designed to show that the mailing meets the 85 percent requirement in 325.3, and, if the entire mailing is metered at the 3-digit ZIP+4 Barcoded rate, or paid by permit imprint, to show the amount of postage owed to the Postal Service.

364.412 When Documentation is Not Required. Documentation is not required if all pieces in the mailing bear a correct ZIP+4 barcode and

a. each piece bears meter or precanceled stamps in the exact amount of postage at the rate for which it qualifies; or

b. all pieces are of identical size and weight, are paid by permit imprint, and, when presented to the post office, the trays in the mailing are physically separated by the mailer into two groups—qualifying and residual—to allow postage verification by weighing.

364.42 When Exact Postage is Affixed to Each Piece in the Mailing

364.421 Qualifying Trays

a. Required Tray Listing. Documentation must be provided that lists by tray, and by 3-digit ZIP Code area within each tray:

(1) The number of pieces that bear a ZIP+4 barcode,

(2) The number of pieces that do not bear a ZIP+4 barcode,

(3) The number of pieces the tray, and

(4) A cumulative (running) total for each line (3-digit ZIP Code) entry in the qualifying portion of the listing; (this total must accumulate for each tray in the entire qualifying portion of the mailing).

b. Required Order of the Tray Listing. The documentation must list the trays in numeric order using one of the following methods.

(1) The exact top line of each tray label must be shown, and the tray listing sequenced in ascending order by the ZIP Code on the top line of the tray label.

(2) The trays labels must bear a number below Line 3 of the tray label, and the tray listing sequenced in ascending order by tray number. Under this option, it is preferred that the exact top line of the tray label also be shown.

c. Subtotals. Subtotals for the total number of pieces that bear a ZIP+4 barcode and that do not bear a ZIP+4 barcode must be shown at the end of the qualifying portion of the mailing.

364.422 Residual Trays. Residual pieces must be presented as specified in 364.422a or documented as prescribed in 364.422b.

a. Physical Separation. Residual pieces that bear a ZIP+4 barcode must be trayed separately from those that do not. If the pieces are not of identical weight, they must be further separated within each tray by tabs or rubber bands into groups of 100 pieces for postage verification. Trays must be labeled in accordance with 364.343a or b.

b. Listing. The pieces in the trays must be sequenced by 3-digit ZIP Code area and a listing prepared that shows, by 3-digit ZIP Code area, the number of pieces with a ZIP+4 barcode and the number of pieces without. A cumulative total must also be shown for each line (3-digit ZIP Code) entry in the residual portion. A summary of the total number of pieces in the residual portion with and without a ZIP+4 barcode must be shown.

364.43 When Postage is Paid by Permit Imprint, or when the 3-Digit Barcoded Rate is Affixed to Each Piece.

364.431 Qualifying Trays.

a. Required Tray Listing. Documentation must be provided that lists by tray, and by 3-digit ZIP Code area within each tray:

(1) The number of pieces that bear a ZIP+4 barcode and qualify for the 3-digit ZIP+4 Barcoded rate,

(2) The number of pieces that do not bear a ZIP+4 barcode and qualify for the ZIP+4 Presort rate (see 325.122b),

(3) The number of pieces that do not bear a ZIP+4 barcode and qualify for the Presorted First-Class rate (see 325.122c),

(4) The number of pieces in each tray, and

(5) A cumulative (running) total for each line (3-digit ZIP Code) entry in the qualifying portion of the listing (this total must accumulate for each tray in the entire qualifying portion of the mailing).

b. Required Order of the Tray Listing. The documentation must list the trays in numeric order using one of the following methods.

(1) The exact top line of each tray label must be shown, and the tray listing sequenced in ascending order by the ZIP Code on the top line of the tray label.

(2) The trays labels must bear a number below Line 3 of the tray label, and the tray listing sequenced in ascending order by tray number. Under this option, it is preferred that the exact top line of the tray label also be shown.

c. Subtotals. Totals for the number of pieces qualifying for the 3-digit ZIP+4 Barcoded rate, the ZIP+4 presort rate, and the Presorted First-Class rate must be shown at the end of the qualifying portion of the mailing.

364.432 Residual Trays. Residual pieces must be presented as specified in 364.432a or documented as prescribed in 364.432b.

a. Physical Separation. Pieces qualifying for each of the three rate categories (nonpresorted ZIP+4 barcoded, nonpresorted ZIP+4, and full single piece rates as described in 325.122a–c) must be placed in separate trays. If the pieces are not of identical weight, they must be further separated in each tray by tabs into groups of 100 pieces for postage verification. Trays must be labeled as required by 364.343.

b. Listing. The pieces in the trays must be sequenced by 3-digit ZIP Code area and a listing prepared that shows, by 3-digit ZIP Code area, the number of pieces with a ZIP+4 barcode that qualify for the nonpresorted ZIP+4 Barcoded rate, the number of pieces without a ZIP+4 barcode that qualify for the nonpresorted ZIP+4 rate, and the number of pieces without a ZIP+4 barcode that qualify for the single-piece First-Class rate (see 325.123a–c). A cumulative total must also be shown for each line (3-digit ZIP Code) entry in the residual portion. A total must also be shown for the number of pieces qualifying for each rate category. Trays must be labeled as required by 364.343.

364.433 General Summary.

a. Metered Mailings. A listing is required to show, for each rate category, the total number of pieces, the additional postage owed per piece, and the total additional postage due. For the entire mailing, the listing must also show the total additional postage due and the total number of pieces with and without a ZIP+4 barcode.

b. Permit Imprint Mailings. A listing is required to show, for each rate category, the total number of pieces, the postage rate per piece, and the total postage owed. For the entire mailing, the listing must also show the total postage owed and the total number of pieces with and without a ZIP+4 barcode.

**364.5 Submission of Documentation Based on a Mailing List or Cycle**

As an alternative to submitting documentation with each mailing as required by 364.2 and 364.4, mailers may submit documentation based on a mailing list or mailing cycle under the following conditions:

a. The mailing period for the list, or the duration of the mailing cycle, each as defined by the mailer, must be longer than 24 hours but not more than 1 week (7 consecutive days). The mailer must notify the post office where mailings are accepted of the first and last mailings, and the beginning and ending points of the time period, of the list or cycle.

b. More than one list or cycle may be active at one time, but mailings from each must be prepared and presented separately, clearly identified, and accompanied by mailing statements that clearly relate to specific mailings.

c. Compliance with the 85% requirement (see 325.3) may be based on the entire list or cycle.

d. The documentation must contain the information described in 364.21, 364.22, 364.42, and 364.43, as applicable.

e. Complete documentation for the entire mailing list or mailing cycle must be submitted with the first mailing from that list or cycle.

f. The appropriate mailing statements must be submitted with each mailing when presented for acceptance.

g. At the time the last mailing from a list or cycle is presented to the Postal Service, any discrepancies between the mail presented to and verified by the Postal Service, the mail described in the documentation, and the mail claimed on the corresponding mailing statements (in regard to quantity, rate eligibility, or postage) must be reconciled to the satisfaction of the Postal Service, and any additional postage that may be due must be paid by the mailer.

**364.6 Mailing Statements**

[Text of existing 364.45.]

365 ZIP+4 PRESORT FIRST-CLASS MAIL—NATIONAL MAILINGS

**365.1 General**

365.11 Preparation. All pieces, whether or not they bear a ZIP + 4 code, must be presorted together within the same packages and trays (or only to trays for residual pieces) as required by 367.1 and 367.2. The mailing must be documented as required in 365.3.

365.12 Rate Eligibility. See 324.12.



**365.2 Packaging and Traying Requirements**

365.21 Qualifying Portion.

365.211 Definition. The qualifying portion of the mailing includes pieces prepared in packages and trays as required by 367.1 and 367.2.

365.212 Preparation. Pieces in the qualifying portion must be packaged and trayed as required in 367.1 and 367.2, except that Line 2 of tray labels must identify the contents as ZIP + 4 Presort in the following manner:

a. For other than Mixed ADC trays; FCM ZIP+4 PRESORT.

b. For Mixed ADC trays only; MIXED ADC ZIP+4 PRESORT.

365.22 Residual Portion.

365.221 Definition. The residual portion includes those pieces that cannot be sorted into a package as required by 367.1 and 367.21–367.23. Residual pieces must be presented together with but clearly separated from the qualifying portion of the mailing to facilitate verification.

365.222 Preparation. Unless documentation is not required (see 365.32), mailers must either:

a. separately tray ZIP+4 coded residual pieces qualifying for the nonpresorted ZIP+4 rate and 5-digit ZIP Coded residual pieces qualifying for single-piece First-Class rates, and, if the pieces are not of identical weight, further separated in each tray by rubber bands into groups of 100 each to facilitate verification of postage and the 85 percent requirement; or

b. sort the residual pieces in trays by 3-digit ZIP Code sequence, and provide a listing that shows, for each 3-digit ZIP Code area, the number of pieces with and without a ZIP+4 code.

365.223 Tray Labels. Trays of residual pieces must be labeled as required by 365.223a–b.

a. Trays Containing ZIP+4 Coded Pieces; Line 1: ZIP+4 PRESORT.

b. Trays Containing Only 5-digit Coded pieces; Line 1: Residual.

* * * * *

368 ZIP+4 PRESORT FIRST-CLASS MAIL—AUTOMATED SITE MAILINGS

[Delete existing 368.1 and 368.11; renumber existing 368.12 as 368.22.]

**368.1 General**

368.11 Optional Use. As an alternative to the preparation requirements described in 365 for national mailings, mailers may follow the requirements in 366 for mailings destinating at automated sites. ("Automated sites" refers to the 3-digit ZIP Code areas and postal facilities listed in Exhibits 122.63m–o.) Pieces for other destinations may be included in the residual portion of the mailing.

368.12 Rate Eligibility. See 324.12.

**368.2 Grouping and Traying**

368.21 Qualifying Portion.

368.211 Definition. The qualifying portion of the mailing includes pieces that are grouped and trayed as required by 368.212 and 368.213.

368.212 Grouping Requirements. Whenever there are 50 or more addressed pieces for one of the 3-digit ZIP Code areas listed in Exhibit 122.63m, they must be placed together in a tray labeled to that destination. Groups of pieces for the same 3-digit area may be placed in more than one tray only if the groups in each tray contain a minimum of 50 pieces for the same 3-digit destination. (This will facilitate verification by postal employees.) Mail for each 3-digit destination within a tray must be separated by visible index tabs or separator cards.

368.22 Traying Requirements.

368.221 3-Digit Tray Preparation and Labeling. [Text of existing 368.2.]

368.222 SCF Tray Preparation and Labeling. [Text of existing 368.3.]

368.223 AADC Tray Preparation and Labeling. [Text of existing 368.4.]

368.23 Residual Portion.

368.231 Definition. The residual portion includes those pieces that cannot be grouped and trayed as required by 368.21 and 368.22. Residual pieces must be presented together with but clearly separated from the qualifying portion of the mailing to facilitate verification.

368.232 Preparation. Unless documentation is not required (see 365.32), mailers must either:

a. separately tray ZIP+4 coded residual pieces qualifying for the nonpresorted ZIP+4 rate and 5-digit ZIP Coded residual pieces qualifying for single-piece First-Class rates, and, if the pieces are not of identical weight, further separated in each tray by rubber bands into groups of 100 each to facilitate verification of postage and the 85 percent requirement; or

b. sort the residual pieces in trays by 3-digit ZIP Code sequence, and provide a listing that shows, for each 3-digit ZIP Code area, the number of pieces with and without a ZIP+4 code.

368.233 Tray Labels. Trays of residual pieces must be labeled as required by 368.223a–b.

a. Trays Containing ZIP+4 Coded Pieces; Line 1: ZIP+4 PRESORT.

Trays Containing Only 5-digit Coded pieces; Line 1: Residual.

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**368.3 Documentation and Postage Payment**

[Text of existing 368.3.]

**368.4 Mailing Statements**

[Text of existing 368.4.]

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**368 PREPARATION OF NONPRESORTED BULK RATE FIRST-CLASS MAIL**

**368.1 Nonpresorted ZIP+4 Mail**

368.11 Mailings Containing Only ZIP+4 Coded Pieces.

368.111 Traying Requirements. Pieces must be faced and placed in trays. The trays must be labeled in the following manner: Line 1: ZIP+4.

368.112 Documentation Requirements. None.

368.12 Mailings Containing Both ZIP+4 and 5-Digit ZIP Coded Pieces.

368.121 General. Mailers must prepare the mailing in accordance with either 368.122 or 368.123.

368.122 Traying Requirements—Physical Separation Option. Separately tray ZIP+4 coded pieces and 5-digit ZIP Coded pieces and, if the pieces are not of identical weight, separate the pieces within each tray into groups of 100 pieces by tabs or rubber bands to facilitate verification of postage and the 85 percent requirement (see 327.2).

368.123 Traying Requirements—Documentation Option. Pieces must be placed in trays in 3-digit ZIP Code sequence and each tray must be assigned a unique number. Documentation must be submitted which shows, for each tray, the tray number and, within each tray by 3-digit ZIP Code prefix, the number of pieces with a ZIP+4 code and the number of pieces with a 5-digit ZIP Code. For the entire mailing, the documentation must also show the total number of pieces with a ZIP+4 code and the total number of pieces with a 5-digit ZIP Code.

**368.2 Nonpresorted ZIP+4 Barcoded Mail**

368.21 Mailings Containing Only ZIP+4 Barcoded Pieces.

368.211 Traying Requirements. Pieces must be faced and placed in trays. The trays must be labeled in the following manner: Line 1: ZIP+4 BARCODED.

368.212 Documentation. Requirements. None.

368.22 Mailings Containing Pieces With and Without ZIP+4 Barcodes

368.221 General. Mailers must prepare the mailing in accordance with either 368.222 or 368.223.

368.222 Traying Requirements—Physical Separation Option. Separately tray ZIP+4 barcoded pieces and pieces that do not bear a ZIP+4 barcode and, if the pieces are not of identical weight, separate the pieces within each tray into groups of 100 pieces by tabs or rubber bands to facilitate verification of postage and the 85 percent requirement (see 328.2).

368.223 Traying Requirements—Documentation Option. Pieces must be placed in trays in 3-digit ZIP Code sequence and each tray must be assigned a unique number. Documentation must be submitted which shows, for each tray, the tray number and, within each tray by 3-digit ZIP Code prefix, the number of pieces with a ZIP+4 barcode and the number of pieces without. For the entire mailing, the documentation must also show the total number of pieces with a ZIP+4 barcode and the total number of pieces without.

**369 OPTIONAL ENDORSEMENT LINE IN ADDRESS BLOCK OR LABEL**

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**369.3 Examples**

[Add the following to the end of this section.]

SCF Packages.

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SCF 220

Note: This package label optional endorsement line is for use only with Presorted Priority Mail. The 3-digit ZIP Code used with this optional endorsement line must be the 3-digit code shown for the SCF in Exhibit 122.63d.

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**380 Payment of Postage**

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**382 CARRIER ROUTE FIRST-CLASS, PRESORTED FIRST-CLASS, NONPRESORTED ZIP+4, NONPRESORTED ZIP+4 BARCODED, ZIP+4 PRESORT, 5-DIGIT ZIP+4 BARCODED, AND 3-DIGIT ZIP+4 BARCODED RATES**

**382.1 Method of Payment**

[Delete the reference to 137.274c(2).]

**382.2 Exact Postage of Each Piece**

* * * * *

382.23 ZIP+4 Barcoded Presort Rates.

382.231 National Mailings Prepared Under 364.1. When precanceled postage or meter stamps are used, pieces in national mailings prepared in accordance with 364.1 must have postage affixed at the 5-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, on pieces in the 5-digit presort portion; and postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, on pieces in the 3-digit presort portion; and postage affixed at the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the single-piece rate, as appropriate, on pieces in the residual sortation portion.

382.232 National Mailings Prepared Under Chapter 5. When precanceled postage or meter stamps are used, pieces in national mailings prepared in accordance with Chapter 5 must have postage affixed at the 5-digit ZIP+4 Barcoded, ZIP+4 Presort, or Presorted First-Class rate if in a 5-digit tray, the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, or Presorted First-Class rate if in a 3-digit or SCF tray, or at the nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, or single-piece First-Class rate if in a residual tray.

382.233 Automated Site Mailings. When precanceled postage or meter stamps are used, pieces in automated site mailings prepared in packages and trays in accordance with 364.3 must have postage affixed at the 3-digit ZIP+4 Barcoded rate, the ZIP+4 Presort rate, or the Presorted First-Class rate, as appropriate, if in the qualifying portion of the mailing; and postage affixed at the nonpresorted ZIP+4 Barcoded rate, the nonpresorted ZIP+4 rate, or the single-piece rate on pieces in the residual portion of the mailing.

382.24 Nonpresorted ZIP+4 Rates. When precanceled postage or meter stamps are used, pieces in nonpresorted ZIP+4 rate mailings must have postage affixed at the nonpresorted ZIP+4 rates for qualifying pieces or at the single-piece First-Class rate for nonqualifying pieces.

382.25 Nonpresorted ZIP+4 Barcoded Rates. When precanceled postage or meter stamps are used, pieces in nonpresorted ZIP+4 barcoded rate mailings must have postage affixed at the nonpresorted ZIP+4 Barcoded rates for qualifying pieces or the single-piece First-Class rate for nonqualifying pieces.

**382.3 Postage at Lowest Rate in Mailing Affixed to All Pieces in the Mailing**

**382.31 Identical Pieces.**

* * * * *

d. ZIP+4 Barcoded Presort Rate Mailings.

(1) National Mailings Prepared Under 364.1. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with 364.1 are paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 364.212 are met. Additional postage in the amount documented in accordance with 364.212e for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

(2) National Mailings Prepared Under Chapter 5. When all pieces in a ZIP+4 Barcoded national mailing prepared in accordance with Chapter 5 are paid by meter stamps or precanceled postage are of identical size and weight, the entire mailing may have postage affixed at the 5-digit ZIP+4 Barcoded rate, provided the applicable documentation requirements in Chapter 5 are met. Additional postage in the amount documented in accordance with Chapter 5 for pieces subject other rates must be paid by means of meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

(3) Automated Site Mailings. When all pieces in an automated site ZIP+4 Barcoded mailing prepared in accordance with 364.3 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the 3-digit ZIP+4 Barcoded rate if the documentation requirements in 364.43 are met. Additional postage in the amount documented in accordance with 364.433a for pieces subject to the ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates, must be paid by means of a meter strip affixed to the back of the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

e. Nonpresorted ZIP+4 Mailings. When all pieces in a nonpresorted ZIP+4 mailing prepared in accordance with 327 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the nonpresorted ZIP+4 rates, provided the documentation requirements in 368.12 for mailings containing 5-digit ZIP Coded pieces are met. Additional postage in the amount documented in accordance with 368.12 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

f. Nonpresorted ZIP+4 Barcoded Mailings. When all pieces in a nonpresorted ZIP+4 Barcoded mailing prepared in accordance with 328 are paid by meter stamps or precanceled postage and are of identical size and weight, the entire mailing may have postage affixed at the nonpresorted ZIP+4 Barcoded rates, provided the documentation requirements in 368.22 for mailings containing pieces prepared without ZIP+4 Barcodes are met. Additional postage in the amount documented in accordance with 368.22 for pieces subject to the nonpresorted ZIP+4 or single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

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**382.33 Nonidentical Pieces at All ZIP+4 Presort and ZIP+4 Barcoded Rates**

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b. ZIP+4 Barcoded Presort Mailings

(1) National Mailings Prepared Under 364.1. ZIP+4 Barcoded mailings of nonidentical-weight pieces, prepared in accordance with 364.1, may have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate if the documentation requirements in 364.212 are met. Additional postage in the amount documented in accordance with 364.212e for pieces subject to the 3-digit ZIP+4 Barcoded, ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

(2) National Mailings Prepared Under Chapter 5. ZIP+4 Barcoded mailings of nonidentical-weight pieces, prepared in accordance with Chapter 5, may have postage affixed to each piece at the 5-digit ZIP+4 Barcoded rate if the applicable documentation requirements in Chapter 5 are met. Additional postage in the amount documented in accordance with Chapter 5 for pieces subject to other rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

(3) Automated Site Mailings. ZIP+4 barcoded mailings of nonidentical-weight pieces, prepared in accordance with the automated site requirements in 364.3, may have postage affixed to each piece at the 3-digit ZIP+4 Barcoded rate if the documentation requirements in 364.43 are met. Additional postage in the amount documented in accordance with 364.433a for pieces subject to the ZIP+4 Presort, Presorted First-Class, nonpresorted ZIP+4 Barcoded, nonpresorted ZIP+4, and single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

c. Nonpresorted ZIP+4 Mailings. Nonpresorted ZIP+4 mailings of nonidentical-weight pieces, prepared in accordance with 327, may have postage affixed to each piece at the nonpresorted ZIP+4 if the documentation requirements in 368.12 for mailings containing pieces prepared with 5-digit Zip Codes are met. Additional postage in the amount documented in accordance with 368.12 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

d. Nonpresorted ZIP+4 Barcoded Mailings. Nonpresorted ZIP+4 barcoded mailings of nonidentical-weight pieces, prepared in accordance with 326, may have postage affixed to each piece at the nonpresorted ZIP+4 Barcoded rate if the documentation requirements in 368.22 for mailings containing pieces prepared without ZIP+4 Barcoded are met. Additional postage in the amount documented in accordance with 368.22 for pieces subject to the single-piece First-Class rates must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F–1, *Post Office Accounting Procedures*, 524.

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383 PRIORITY MAIL RATES

**383.1 Single-Piece Rates**

383.11 Method of Payment. Single-piece rate Priority Mail postage may be paid by adhesive stamps (see 142 or 143), meter stamps (see 144), or permit imprint (see 145). If permit imprint is used, the pieces must be of identical weight and, unless all the pieces are in a weight category for which the rates do not vary by zone, the pieces must be separated by zone when presented to the post office. Exceptions to the identical-weight requirement are in 145.7 through 145.9, and 137.274c(2).

383.12 Mailing Statement. A mailing statement is required only if postage is paid by permit imprint.

**383.2 Presorted Priority Mail**

383.21 Methods of Payment. Presorted Priority Mail must be paid by means of meter postage (see 144) or permit imprint (see 145).

383.22 Identical-Weight Mailings. Mailings consisting of identical-weight pieces may be paid by any of the methods listed in 383.21.

383.221 Metered Mailings. Within metered mailings, postage may be:

a. affixed in the exact amount on each piece, or

b. affixed to all the pieces in the mailing, both qualifying and residual, at the Presorted Priority Mail rates. If this is done, residual pieces must be separated from the qualifying pieces when the mailing is presented to the post office. The additional postage for the residual pieces must be paid by means of a meter strip affixed to the mailing statement that is required to accompany the mailing, or through an advance deposit account as provided for in Handbook F-1, *Post Office Accounting Procedures*, 524.

383.222 Permit Imprint Mailings. Within permit imprint mailings of identical-weight pieces, the qualifying pieces must be separated from the residual pieces when the mailing is presented to the post office. Unless the pieces are in a weight category for which postage does not vary by zone, the sacks in the qualifying and residual portions must be further separated by zone.

383.23 Nonidentical Weight Mailings.

383.231 Postage Affixed Mailings. Each piece in a nonidentical weight mailing must have the exact postage affixed at the rate for which it qualifies.

383.232 Permit Imprint Mailings. Nonidentical-weight pieces may be paid by permit imprint only if authorized under 145.7, 145.8, or 145.9.

383.24 Mailing Statement. Mailers at the Priority Mail Presort rates must submit the appropriate mailing statement with each mailing, signed by the mailer or an authorized agent.

5. In chapter 4 of the Domestic Mail Manual, make the following revisions:

CHAPTER 4—SECOND-CLASS MAIL

410 Rates and Fees

411 RATES

**411.1 Characteristics Common to All Rates**

411.11 Rate Elements.

411.111 General. Postage for all second-class mail includes a pound-rate charge, a piece-rate charge and any reductions for which the mail may qualify. Each piece also must meet the specific eligibility and preparation requirements that apply to the presort level, rate, or discount claimed.

411.112 Pound Rates. Pound rates are applied to the weight of the mailpieces as described in 411.131. Outside-the-county pound rates are based on the postal zone for the address on the piece as computed from the office of entry (see 122.7, 411.123, and 411.124). In-county pound rates consist of a delivery office zone rate and a uniform (unzoned) rate for all other eligible mailpieces delivered within the county of publication (see 411.32).

411.113 Piece Rates. Piece rates are applied to each addressed piece based on the sortation performed by the publisher (see 440). An "addressed piece" can be a single individually addressed copy of a publication, a package of more than one unaddressed copy, or a firm package prepared in accordance with 441.21 that contains unaddressed or individually addressed copies for the same address.

411.114 Reductions. Subject to the corresponding conditions and requirements, reductions (discounts) may be taken from the per-pound and/or per-piece charges as provided by 411.2 and 411.3.

411.12 Eligibility.

411.121 Outside-the-County. Outside-the-county rates apply to pieces that do not qualify for any of the preferred rates in 411.3.

411.122 In-County. In-county rates apply to pieces that meet the requirements in 411.321 through 411.324.

411.123 SCF Zone. The SCF zone rate applies only to copies that are not eligible for in-county rates, and that are for delivery at an address in the same sectional center facility (SCF) service area as the post office of entry. See Exhibits 122.63c and 122.63d for a listing of the 3-digit ZIP Code prefixes assigned to each SCF.

411.124 Delivery Office Zone. The delivery office zone rate applies only to copies deposited at the facility (post office, station, branch, etc.) where carrier casing is performed for the carrier route serving the address on the mailpiece. Copies claimed at the delivery office zone rate must be eligible for and claimed at either the level CR/IR/KR (carrier route) or CS/IS/KS (saturation) rate. See 424.4, 424.7, and 444 for additional requirements.

411.125 ZIP+4 Rates. ZIP+4 rates include a discount applied to each addressed piece prepared in accordance with 424.5 and the applicable level A/G, B3/H3/J3, and B5/H5/J5 sortation requirements in 440. A ZIP+4 rate is not available for level CR/IR/KR (carrier route) or CS/IS/KS (saturation) pieces.

411.126 ZIP+4 Barcoded Rates. The ZIP+4 Barcoded rates include a discount applied to each addressed piece prepared in accordance with 424.6 and the applicable level A/G, B3/H3/J3, and B5/H5/J5 sortation requirements in 440. A ZIP+4 Barcoded rate (discount) is not available for level CR/IR/KR (carrier route) or CS/IS/KS (saturation) pieces.

411.127 Saturation Rates. The saturation rates include a discount applied to each eligible walk-sequenced addressed piece in a level CS, IS, or KS (carrier route) mailing meeting the volume and preparation requirements in 424.7 and 440.

411.13 Computation of Postage.

411.131 Pound Rates.

a. Outside-the-County. To determine the pound-rate charges for outside-the-county copies, multiply the number of copies to each zone by the per-copy weight, round off the total weight to the nearest whole pound (if necessary), and multiply it by the corresponding rate. EXCEPTION: If the product is more than 0 but less than .5 pound, round to 1 pound.

b. In-County. To determine the pound-rate charge for in-county copies, multiply the number of copies by the per-copy weight, round off the total weight to the nearest whole pound (if necessary), and multiply it by the corresponding rate. EXCEPTION: If the product is more than 0 but less than .5 pound, round to 1 pound.

411.132 Piece Rates.

a. Outside-the-County. To determine the piece-rate postage for outside-the-county copies, multiply the number of addressed pieces (not copies) by the appropriate rate, based on the presort of the piece as mailed (see 440).

b. In-County. To determine the piece-rate postage for in-county copies, multiply the number of addressed pieces (not copies) by the appropriate rate, based on the presort of the piece as mailed (see 440).

411.133 Nonadvertising Adjustments. To determine the nonadvertising adjustments:

a. Subtract the advertising percentage (see 463.22) from 100.

b. Convert the answer from a percentage to a decimal by dividing the percentage figure by 100 (i.e., move the decimal two places to the left).

c. Apply the result of b (nonadvertising factor) to the pound rate portion as follows:

(1) Multiply the nonadvertising factor by the total weight of the mailed copies claimed at the zone rates; if necessary, round off any fractions of a pound in the product to the nearest whole pound.

(2) Multiply the "nonadvertising pounds" (from above) by the applicable nonadvertising adjustment per pound (see 411.2 and 411.3).

(3) Enter the product on the appropriate line of the mailing statement.

d. Apply the result of b (nonadvertising factor) to the piece rate portion as follows:

(1) Multiply the nonadvertising factor by the number of addressed pieces.

(2) If necessary, round off the number of pieces to a whole number.

(3) Multiply the "nonadvertising pieces" by the applicable nonadvertising adjustment per piece (see 411.2 and 411.3).

411.134 Total Postage per Mailing. The total postage per mailing is determined by adding all pound and piece charges, subtracting any discounts, and rounding off the total to the nearest whole cent (if necessary).

411.14 Presort Levels.

411.141 General. Presort levels in second-class rates are identified by one- or two-letter designations, as explained below. Although different letters are used for regular and special rates, the corresponding presort levels have similar preparation and eligibility requirements. Not all presort levels may be claimed in combination with other automation or destination entry discounts.

411.142 Carrier Route Sortation (Level C Rates).

a. Level CR, IR, or KR rates apply to pieces in carrier route packages of 6 or more addressed pieces each that are correctly sorted to carrier route or carrier routes sacks (see 444).

b. Level CS, IS, or KS rates apply to pieces eligible for the level CR, IR, or KR rates that have been further prepared in carrier delivery walk sequence and in the density necessary to meet the requirements in 424.7.



411.143 3- and 5-Digit Sortation (Level B Rates).

a. Level B or H rates apply to pieces in 5-digit, optional city, and unique 3-digit packages of 6 or more addressed pieces each that are correctly sorted to 5-digit, optional city, or unique 3-digit sacks (see 443).

b. Level B5 or H5 rates apply to those pieces eligible for the level B and H rates that are both in 5-digit packages of 6 or more addressed pieces each and correctly sorted to 5-digit, optional city, or unique 3-digit sacks.

c. Level B3 or H3 rates apply to those pieces eligible for the level B or H rates that are both in optional city or unique 3-digit packages of 6 or more addressed pieces each and correctly sorted to optional city or unique 3-digit sacks.

411.144 Basic Sortation (Level A Rates). The level A and G rates apply to pieces not eligible for or claimed at the rates described in 411.142 and 411.143.

411.145 In-County Level J Rates.

a. The level J rates apply to all pieces eligible for the in-county rates that are not also eligible for the level KR or KS rates.

b. The level J5 rates apply to those pieces eligible for the level J rates that are both in 5-digit packages of 6 or more addressed pieces each and correctly sorted to 5-digit, optional city, or unique 3-digit sacks.

c. The level J3 rates apply to those pieces eligible for the level J rates that are both in optional city or unique 3-digit packages of 6 or more addressed pieces each and correctly sorted to optional city or unique 3-digit sacks.

d. The level J1 rates apply to those pieces eligible for the level J rates but not eligible for or claimed at the level J3 or J5 rates.

**411.2 Regular Rates**

411.21 Eligibility. All copies of authorized second-class publications mailed by publishers or news agents are subject to the regular rates in 411.22 through 411.24, except for qualified copies of publications that have been authorized for one of the preferred rates in 411.3, and nonrequester and nonsubscriber copies as required by 411.422. Mailings must also meet the specific requirements that apply to the rates or discounts claimed.

411.22 Pound Rates. Rates per pound or fraction:

| Zone | Rate |
|---|---|
| Delivery Office | $0.145 |
| SCF | 0.165 |
| 1 & 2 | 0.201 |
| 3 | 0.209 |
| 4 | 0.230 |
| 5 | 0.261 |
| 6 | 0.295 |
| 7 | 0.335 |
| 8 | 0.368 |

411.23 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and 440. Rates per addressed piece are:

| Level | Rate | Rate (ZIP + 4) | Rate (ZIP + 4 Barcoded) |
|---|---|---|---|
| A | $0.201 | $0.167 | $0.177 |
| B3 | 0.155 | 0.148 | 0.140 |
| B5 | 0.155 | 0.148 | 0.133 |
| CR | 0.119 | 0.115 | 0.119 |
| CS | 0.099 | 0.099 | 0.099 |

411.24 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-the-county pound- and piece-rate charges and is computed as shown in 411.133. For regular rate publications, the nonadvertising adjustments are $0.05 per piece and $0.075 per pound.

**411.3 Preferred Rates**

411.31 General. Requester publications are not eligible for the preferred rates. Copies of other authorized second-class publications mailed by publishers or news agents at any of the preferred rates (in-county, special nonprofit, classroom, and science of agriculture) must meet the corresponding eligibility requirements in 411.12, and 411.32 through 411.35. Nonsubscriber copies of second-class publications mailed at preferred rates are also subject to the limitations in 411.322, 411.413, and 411.414. Mailings must also meet the specific requirements that apply to the presort levels or other rates or discounts claimed.

411.32 In-County Rates.

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411.325 Pound Rates. Rates per pound or fraction:

| Zone | Rate |
|---|---|
| Delivery Office | $0.104 |
| All Others | 0.124 |

411.326 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, 441.12, and 440. Rates per addressed piece are:

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| Level | Rate | Rate (ZIP + 4) | Rate (ZIP +4 Barcoded) |
|---|---|---|---|
| J1 | $0.077 | $0.077 | $0.077 |
| J3 | 0.077 | 0.070 | 0.062 |
| J5 | 0.077 | 0.070 | 0.055 |
| KR | 0.039 | 0.039 | 0.039 |
| KS | 0.019 | 0.019 | 0.019 |

411.33 Special Nonprofit Rates.

411.331 Eligibility. Only second-class publications specifically authorized under 424.1 may be mailed at the special nonprofit rates, subject to the restrictions in 411.413, 411.414, and 411.42. Mailings must also meet the specific requirements that apply to the presort levels or other rates or discounts claimed.

411.332 Pound Rates. Rates per pound or fraction:

| Zone | Rate |
|---|---|
| Delivery Office | $0.071 |
| SCF | 0.091 |
| 1 & 2 | 0.126 |
| 3 | 0.133 |
| 4 | 0.152 |
| 5 | 0.180 |
| 6 | 0.209 |
| 7 | 0.245 |
| 8 | 0.275 |

411.333 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and 440. Rates per addressed piece are:

| Level | Rate | Rate (ZIP + 4) | Rate (ZIP + 4 Barcoded) |
|---|---|---|---|
| G | $0.168 | $0.154 | $0.144 |
| H3 | 0.122 | 0.115 | 0.107 |
| H5 | 0.122 | 0.115 | 0.100 |
| IR | 0.093 | 0.093 | 0.093 |
| IS | 0.073 | 0.073 | 0.073 |

411.334 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-the-county pound- and piece-rate charges and is computed as shown in 411.133. For special nonprofit rate publications, the nonadvertising adjustments are $0.035 per piece and $0.05 per pound.

411.335 Publications With 10% or Less Advertising. Publications with an advertising percentage that is 10% or less are considered 100% nonadvertising and may use "0" as the "advertising percentage" when computing the nonadvertising adjustment.

411.34 Classroom Rates.

411.341 Eligibility. Only second-class publications specifically authorized under 424.2 may be mailed at the classroom rates, subject to the restrictions in 411.413, 411.414, and 411.42. Mailings must also meet the specific requirements that apply to the presort levels or other rates or discounts claimed.

411.342 Pound Rates. Rates per pound or fraction:

| Zone | Rate |
|---|---|
| Delivery Office | $0.071 |
| SCF | 0.091 |
| 1 & 2 | 0.126 |
| 3 | 0.133 |
| 4 | 0.152 |
| 5 | 0.180 |
| 6 | 0.209 |
| 7 | 0.245 |
| 8 | 0.275 |

411.343 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and 440. Rates per addressed piece are:

| Level | Rate | Rate (ZIP + 4) | Rate (ZIP + 4 Barcoded) |
|---|---|---|---|
| G | $0.168 | $0.154 | $0.144 |
| H3 | 0.122 | 0.115 | 0.107 |
| H5 | 0.122 | 0.115 | 0.100 |
| IR | 0.093 | 0.093 | 0.093 |
| IS | 0.073 | 0.073 | 0.073 |

411.344 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-the-county pound- and piece-rate charges and is computed as shown in 411.133. For special nonprofit rate publications, the nonadvertising adjustments are $0.035 per piece and $0.05 per pound.

411.35 Science of Agriculture Rates.

411.351 Eligibility. Science of agriculture rates apply to outside-the-county copies of authorized second-class publications mailed by publishers or news agents when the total number of copies furnished during any 12-month period to subscribers residing in rural areas is at least 70 percent of the total number of copies distributed by any means for any purpose. Use of the science of agriculture rates is subject to the restrictions in 411.413, 411.414, and 411.422. Mailings must also meet the specific requirements that apply to the presort levels or other rates or discounts claimed.

411.352 Pound Rates. Rates per pound or fraction:

| Zone | Rate |
|---|---|
| Delivery Office | $0.071 |
| SCF | 0.091 |
| 1 & 2 | 0.126 |
| 3 | 0.209 |
| 4 | 0.230 |
| 5 | 0.261 |
| 6 | 0.295 |
| 7 | 0.335 |
| 8 | 0.369 |

411.353 Piece Rates. Each piece rate requires specific preparation as described in 411.113, 411.114, 411.12, and 440. Rates per addressed piece are:

| Level | Rate | Rate (ZIP + 4) | Rate (ZIP + 4 Barcoded) |
|---|---|---|---|
| A | $0.201 | $0.167 | $0.177 |
| B3 | 0.155 | 0.148 | 0.140 |
| B5 | 0.155 | 0.148 | 0.133 |
| CR | 0.119 | 0.119 | 0.119 |
| CS | 0.099 | 0.099 | 0.099 |

411.354 Nonadvertising Adjustment. The nonadvertising adjustment applies to outside-the-county pound- and piece-rate charges and is computed as shown in 411.133. For science of agriculture rate publications, the nonadvertising adjustments are $0.05 per piece and $0.075 per pound. [Delete 411.355 and 411.36.]

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412 FEES

**412.1 Application Fees**

412.11 General.

412.111 No Fee Applications. A fee is not charged for applications for reentry that only request authorization to use the preferred rates. The fee must be paid if the application includes any other request.

412.112 Refund of Fees. After an application has been filed with the Postal Service, no part of an accompanying fee is returned to the applicant, except as provided by 147.221b.

412.12 Original Entry. A fee of $275 must accompany an application for second-class mail privileges (original entry) (Form 3501, 3501A, 3502, or 3511).

412.13 News Agent Registry. A fee of $45 must accompany an application for news agent registry (Form 3501A).

412.14 Additional Entry. A fee of $75 must accompany an application for additional entry (Form 3510). One fee is chargeable for single complete application that requests establishment of more than one additional entry, and/or that modifies or cancels existing additional entries, if the effective dates for the requested actions span not more than 30 calendar days (see 428.142).



412.15 Reentry. A fee of $45 must accompany an application for reentry (Form 3510) to request a:

a. Change in title, frequency of issuance, or office of original entry (known office of publication) (see 427.1).

b. Change in qualification category (see 427.2).

c. Change in authorized rates from preferred to regular (see 427.2). (No fee is charged if reentry is only to change authorized rates from regular to preferred.)

d. Modification or cancellation of an additional entry (see 412.14, 428.46 and 428.47).

**412.2 Address Correction Fee**

A fee of $0.30 is charged for each address correction notice issued.

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**420 Classification**

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423 REQUIREMENTS FOR SPECIFIC CATEGORIES

**423.1 General Publications**

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423.12 Circulation Requirements.

423.121 List of Subscribers. [Replace the third sentence, as follows:] Persons whose subscriptions are obtained at a nominal rate (see 423.124) and persons whose copies bear an alternative form of address (see 122.414, 122.422, and 122.433d) must not be included as a part of the legitimate list of subscribers.

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423.14 How to Apply for Second-Class Privileges.

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423.142 Application Fee. The fee prescribed by 412.12 must accompany an application for second-class mail privileges (original entry).

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**423.2 Publications of Eligible Institutions and Societies**

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423.22 How to Apply for Second-Class Privileges.

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423.222 Application Fee. The fee prescribed by 412.12 must accompany an application for second-class mail privileges (original entry).

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**423.3 Publications of State Departments of Agriculture**

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423.32 How to Apply for Second-Class Privileges.

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423.322 Application Fee. The fee prescribed by 412.12 must accompany an application for second-class mail privileges (original entry).

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**423.4 Requester Publications**

423.41 Eligibility. [Change the reference from 411.21 to 411.2.]

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423.42 Circulation Requirements.

423.421 List of Requesters. [Replace the last sentence, as follows:] Persons will not be deemed to have requested the publication if the copies of the publication sent to those persons bear an alternative form of address (see 122.414, 122.422, and 122.433d).

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423.43 How to Apply for Second-Class Privileges.

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423.432 Application Fee. The fee prescribed by 412.12 must accompany an application for second-class mail privileges (original entry).

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**423.5 Foreign Publications**

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423.52 How to Apply for Second-Class Privileges.

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423.522 Application Fee. The fee prescribed by 412.12 must accompany an application for second-class mail privileges (original entry).

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**423.6 News Agent Registry**

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423.62 How to Apply for News Agent Registry.

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423.622 Application Fee. The fee prescribed by 412.13 must accompany an application for news agent registry.

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424 ADDITIONAL ELIGIBILITY REQUIREMENTS FOR SPECIFIC RATES

[Retitle 424 as shown above; existing text in 424.1, 424.2, and 424.3 is unchanged.]

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**424.4 Delivery Office Zone Rate**

424.41 Eligibility.

424.411 General. The delivery office zone rate applies only to copies that are available for entry at the facility (post office, station, branch, etc.) where the carrier cases mail for the carrier route serving the address on the mailpiece. (For purposes of this section, city carrier routes, rural routes, highway contract routes, and general delivery and post office box sections will be referred to collectively as "carrier routes.")

424.412 Preparation. Copies claimed at the delivery office zone rate must be eligible for and claimed at either the level CR/IR/KR (carrier route) or CS/IS/KS (saturation) rate (see 424.7 and 444 for additional requirements, as applicable). In either case, to be eligible for the delivery office zone rate, the copy must be part of a properly prepared and labeled carrier route package placed in a sack for the corresponding carrier route (see 444 for additional requirements). Copies that are in other than carrier route packages, or in carrier route packages that are not placed in corresponding carrier route sacks, are not be eligible for the delivery office zone rate. These copies must be presented in a separate mailing as provided by 424.45.

424.413 Volume.

a. Minimum Volume. Except for requirements for the carrier route or saturation rate that applies to the mail, there is no additional volume requirement for a mailing claimed at the delivery office zone rate. Regardless of volume, the number of copies in a delivery office zone mailing must represent more than half of the total number of copies of that publication presented to a delivery facility within any 24-hour period. When a single mailer presents delivery office zone rate mailings of more than one publication, the total number of delivery office zone rate copies in those mailings must represent more than half the mail (by number of copies or by weight, whichever is greater) presented by the same mailer within any 24-hour period. The mailer is the party presenting the material to the Postal Service (or for whom a transportation company has presented the material to the Postal Service).

b. Maximum Volume. The same mailer may not present for acceptance more than 4 delivery office zone rate mailings at the same destination postal facility (or another acting as its agent) in any 24-hour period. The destination or agent facility postmaster or BMC manager may waive this maximum if local conditions permit. There is no maximum for acceptance at the origin DMU, or for deposit of plant-verified drop shipments.

424.42 Authorized Entry. Publications must have an authorized additional entry at each post office where mail is deposited at the delivery office zone rate. For post offices with stations or branches, establishment of an entry at the main post office allows deposit of mail at any station or branch of that post office.

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424.43 Distribution Plan. Entry of publications at the delivery office zone rate must be in accordance with the distribution plan associated with the authorized post office of entry. Post offices will not accept copies not authorized entry at that post office as described in the approved distribution plan. See 426 for more information about additional entry.

424.44 Mailing. Publishers must deposit copies claimed at the delivery office zone rate at locations and times specified by the entry office postmaster. Copies are ineligible for the delivery office zone rate if not deposited by the mailer at the destination delivery office (see 424.411), regardless of circumstance.

424.45 Copies for Other Destinations or at Other Rates

424.451 General. A mailing which contains copies claimed at the delivery office zone rate may include other copies claimed at other zone rates subject to the limitations in 424.413.

424.452 Authorization. The copies presented at a delivery office by the publisher must be as specified in the authorized distribution plan for that entry post office (see 426.41).

424.453 Separation. When presented to the Postal Service, the sacks containing the delivery office zone rate copies must be separated from others in the same mailing or in other mailings. Any effective method of separation may be used.

424.46 CPP Publications. Publications authorized to use Centralized Postage Payment (CPP) procedures must also meet the requirements of 464 and the terms of their CPP authorization.

424.47 Documentation. Publishers who prepare mailings claimed at the delivery office zone rate must be prepared to substantiate compliance with the requirements in 424.41. If the carrier route (level CR/IR/KR) is claimed, the publisher must indicate the number of copies and the number of addressed pieces for each carrier route. This may be accomplished as provided by 424.84 or by submission of separate documentation. If the saturation rate (level CS/IS/KS) is claimed, the publisher must provide the documentation required by 424.77.

**424.5 ZIP + 4 Rates**

424.51 General. The ZIP + 4 rates, available only for letter-size second-class publications, include a discount applied to each addressed piece perpared in accordance with 424.52 through 424.54 and the applicable level A or B sortation requirements in 440. A ZIP + 4 rate (discount) is not available for level CR/IR/KR (carrier route) or CS/IS/KS (saturation) pieces.

424.52 Automation Compatibility Requirements. Each piece for which a ZIP + 4 rate is claimed must be prepared as required by 324.2, 324.3, and 324.5 through 324.7.

424.53 Minimum Quantity.

424.531 Per Mailing. Although there is no specific minimum number of pieces required for a ZIP + 4 rate second-class mailing, no less than 85% of the number of addressed pieces in such a mailing must be eligible for and claimed at a ZIP + 4 rate. Each remaining pieces must bear the correct 5-digit ZIP Code for the delivery address on the piece and must meet the applicable requirements in 324.2, 324.3, and 324.5 through 324.7.

424.532 Per Package, Sack, and Tray. Each package must contain a minimum of 6 addressed pieces. Each package must be placed in either a sack containing at least 4 packages or in a tray that is at least ¾ full when the contents are reasonably compressed.

424.54 Preparation.

424.541 Presort. All pieces in a ZIP + 4 rate mailing must be presorted together as required by 441 or 443 for the presort level claimed.

424.542 Packaging, Sacking, and Traying. ZIP + 4 rate rate mailings must be packaged, sacked, and trayed as required by 447.

424.543 Rate Eligibility.

a. General Rule. Subject to the requirements of 424.532, pieces presorted under 441 are eligible for the level A/G/J1 or level A/G/J1 ZIP + 4 rate, as applicable; those presorted under 443 are eligible for the level B/H/J3/J5 or level B/H/J3/J5 ZIP + 4 rate, as applicable.

b. Optional Sortation to Automated Sites. Subject to the requirements of 424.532, publishers may prepare mailings at the level B3/H3/J3 ZIP + 4 rate without making 5-digit packages or sacks when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m, and pieces destinating in other ZIP Code areas are prepared as a separate mailing. Pieces prepared under this optional sortation must be presorted in unique 3-digit, SCF, AADC and Mixed AADC packages which are correctly sorted in unique 3-digit, SCF, AADC, and Mixed AADC sacks or trays to the destinations listed in Exhibits 122.63m-o. Mixed AADC packages and trays may have fewer pieces or packages than prescribed in 424.532. Pieces in AADC and Mixed AADC packages, sacks, and trays are not eligible for the level B3/H3/J3 rates and must be claimed at the level A/H/J rates.

**424.6 ZIP+4 Barcoded Rates**

424.61 General. The ZIP + 4 Barcoded rates, available only for letter-size second-class publications, include a discount applied to each addressed piece prepared in accordance with 424.62 through 424.69 and the applicable level A/G/J or B/H sortation requirements in 440. A ZIP + 4 Barcoded rate (discount) is not available for level CR/IR/KR (carrier route) or CS/IS/KS (saturation) pieces.

424.62 Automation Compatibility Requirements. Each piece for which a ZIP + 4 Barcoded rate is claimed must meet the physical requirements in 324.3 and 324.5 and must bear a ZIP + 4 barcode prepared as required in 324.72–324.77 and 325.51.

424.63 Minimum Quantity.

[The Postal Service intends to propose a revision to section 424.63, which currently requires that at least 85% of the pieces in a ZIP + 4 Bardcoded rate mailing bear a correctly prepared ZIP + 4 barcode. By that revision, the 85% figure would be increased to 100%, effective September 15, 1990.]

424.631 Per Mailing. Although there is no specific minimum number of pieces required for a ZIP + 4 Barcoded rate second-class mailing, no less than 85% of the number of addressed pieces in such a mailing must be eligible for and claimed at a ZIP + 4 Barcoded rate. Each remaining piece must bear the correct ZIP + 4 code or 5-digit ZIP Code for the delivery address on the piece, and must meet the applicable requirements in 324.3–324.7.

424.632 Per Package, Sack, and Tray. Each package must contain a minimum of 6 addressed pieces. Each package must be placed in either a sack containing at least 4 packages or a tray that is at least ¾ full when the contents are reasonably compressed.

424.64 Preparation.

424.641 Presort. All pieces in a ZIP + 4 Barcoded rate mailing must be presorted together as required by 441 or 443 for the presort level claimed.

424.642 Packaging, Sacking, and Traying. ZIP + 4 Barcoded rate mailings must be packaged, sacked, and trayed as required by 447.

424.643 Rate Eligibility.

a. Level A/G/J1/J3. Subject to the requirements of 424.632, pieces presorted under 441 are eligible for either the level A/G/J1/J3 or level A/G/J1/J3 ZIP + 4 Barcoded rate, as applicable.

b. Level B/H/J5. Subject to the requirements of 424.632, pieces presorted under 443 are eligible for either



(1) The level B3/H3/J3 or level B3/H3/J3 ZIP+4 Barcoded rate, as applicable, if in an optional city or unique 3-digit package that is correctly sorted to an optional city or unique 3-digit sack; or

(2) The level B5/H5/J5 or level B5/H5/J5 ZIP+4 Barcoded rate, as applicable, if in a 5-digit package that is correctly sorted to a 5-digit, optional city, or unique 3-digit sack.

c. Optional Sortation to Automated Sites. Subject to the requirements of 424.632 and 447, publishers may prepare mailings at the level B3/H3/J3 ZIP+4 Barcoded rate without making 5-digit packages or sacks when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m, and pieces destinating in other ZIP Code areas are prepared as a separate mailing. Pieces prepared under this optional sortation must be presorted in unique 3-digit, SCF, AADC and Mixed AADC packages which are correctly sorted in unique 3-digit, SCF, AADC, and Mixed AADC sacks or trays to the destinations listed in Exhibits 122.63m–o. Mixed AADC packages and trays may have fewer pieces or packages than prescribed in 424.632. Pieces in AADC and Mixed AADC packages, sacks, and trays are not eligible for the level B3/H3/J3 rates and must be claimed at the level A/H/J rates.

**424.7 Saturation Rate**

424.71 General.

424.711 Eligibility. The saturation rate includes a discount applied to each eligible walk-sequenced addressed mailpiece in a carrier route (level CS/IS/KS) mailing prepared as required by 424.71–424.78 and 440. See 444 for additional requirements. For purposes of this section, city carrier routes, rural routes, highway contract routes, and general delivery and post office box sections will be referred to collectively as "carrier routes" unless specifically stated. Pieces prepared using simplified address must meet the requirements in 122.41.

424.712 Authorized Entry. Publications must have an authorized additional entry at each post office where mail is deposited at the saturation rate. For post offices with stations or branches, establishment of an entry of the main post office allows deposit of mail at any station or branch of that post office.

424.713 Distribution Plan. Entry of publications at the saturation rate must be in accordance with the distribution plan associated with the authorized post office of entry. Post offices must not accept copies not authorized entry at that post office as described in an approved distribution plan. See 426 for more information about additional entry.

424.714 Mailing. Publishers must deposit copies claimed at the saturation rate at locations and times specified by the entry office postmaster.

424.715 Copies for Other Destinations or at Other Rates.

a. General. A mailing which includes copies claimed at the saturation rate may include other copies claimed at other presort rates.

b. Separation. At the time when presented to the Postal Service, the sacks containing the saturation rate copies must be separated from other sacks in the same mailing or other mailings. Any effective method of separation may be used.

c. Other Rates. In addition to those copies prepared in walk sequence as required for the saturation rate (see 424.75), publishers are encouraged to prepare all other copies in the mailing in walk sequence.

424.716 CPP Publications. Publications authorized to use Centralized Postage Payment (CPP) procedures must also meet the requirements of 464 and the terms of their authorization for CPP.

424.72 Preparation. Mailpieces claimed at the saturation rate must be prepared as carrier route mailings, i.e., an addressed piece must be part of a properly prepared and labeled carrier route package placed in a sack for the corresponding carrier route (see 444 for additional requirements). Pieces that are in other than carrier route packages, or in carrier route packages that are not placed in corresponding carrier route sacks, are not be eligible for the saturation rate. These pieces may be included in the mailing only as provided by 424.75. Pieces prepared using simplified address must meet the requirements in 122.41.

424.73 Addressing.

424.731 Saturation Rate. Saturation rate mail must be addressed as follows:

a. Each piece addressed for delivery on a city carrier route must bear a complete delivery address or an alternative form of address as provided by 122.42 or 122.43.

b. Each piece addressed for deliver through a general delivery or post office box unit must bear a complete delivery address or an alternative form of address as provided by 122.4.

c. Each piece addressed for delivery on a rural or highway contract route must bear a simplified address (see 122.41).

424.732 Subscriber/Requester Copies. Copies bearing an alternative form of address (see 122.41) do not count as subscriber or requester copies (see 423.121 and 423.421).

424.74 Density.

424.741 Per 5-Digit ZIP Code. Once the minimum volume per carrier route has been met, there is no further minimum volume for the 5-digit ZIP Code delivery area. Saturation rate mail need not be sent to all carrier routes within a 5-digit delivery area.

424.742 Per Carrier Route.

a. Pieces eligible for and claimed at the saturation rate must be addressed to either 90% or more of the residential addresses or 75% or more of the total number of addresses, whichever is less, on each city carrier route receiving saturation mail, and in each general delivery unit or post office box section receiving saturation rate mail not addressed in the simplified format.

b. Pieces eligible for and claimed at the saturation rate must be addressed to 75% or more of the total number of addresses on each rural or highway contract route receiving saturation mail, and in each general delivery unit or post office box section receiving saturation rate mail addressed in the simplified format.

424.743 Multiple Copies or Pieces per Address. Regardless of the number of copies, only one addressed piece per delivery address may be counted toward the required density prescribed in 424.742.

424.75 Walk-Sequencing.

424.751 General. The pieces in a saturation rate mailing must be organized in the sequence in which they will be delivered as determined by the Postal Service. Pieces prepared with a simplified address must meet the requirements in 122.413.

424.752 Packages. Walk-sequenced letter-size pieces must be prepared in packages that are not more than 4 inches thick and secured by plastic or elastic bands. Walk-sequenced flats must be prepared in packages of not more than 50 pieces, 10 pounds, or 6 inches thick, whichever is less, secured by plastic or elastic bands or by shrink-wrap.

424.753 Labeling. Each package of walk-sequenced pieces must bear a facing slip that covers the front of the top piece in the package. That facing slip must contain the phrases "WALK-SEQUENCED MAIL;" "PACKAGE n OF nn" (where "n" is the sequential number of the package out of "nn," the total number of packages for the carrier route); "CARRIER ROUTE" (or "RURAL ROUTE," "HIGHWAY CONTRACT ROUTE," "POST OFFICE BOX SECTION," or "GENERAL DELIVERY SECTION," as appropriate), followed by

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the appropriate number; and the name and ZIP Code of the delivery post office. The ZIP Code may be that of the delivery unit (station or branch) where applicable. The facing slip must present the required information in approximately the following format:

WALK-SEQUENCED MAIL
PACKAGE 5 OF 10
CARRIER ROUTE 17
CENTREVILLE VA 22020

424.76 Accuracy.

424.761 Error Rate. For each carrier route receiving mail at the saturation rate, no more than 5 percent of the total pieces for the route may be found out-of-sequence or sorted to the wrong carrier route. (The total number of pieces for the route is shown on the documentation required by 424.78.)

424.762 Errors not Counted. An error will not be counted when pieces are not in sequence or not sorted to the correct carrier route because of Postal Service scheme changes not yet incorporated in the scheme the mailer is required to use in preparation of the mailing (see 424.77 and 424.78).

424.763 Pieces in Error. When a number of pieces is found that represents 5 percent or more of the total pieces for the route, the remaining pieces in the mailing for that route will be held and no further attempt made to distribute or deliver them. The delivery unit will notify the mailer or representative accordingly if the mailing was accompanied by the name and telephone number of the mailer or a local representative for the mailer. The mailer or representative may inform the delivery unit that it is abandoning the mailing, or, within 24 hours, either call for the mailing to correct the walk sequence errors or pay additional postage (the difference between the saturation and carrier route presort rates) for all the pieces in the mailing for that route.

424.764 Refunds. No refund of postage will be available for postage paid for abandoned mailings.

424.77 Delivery Sequence Information.

424.771 General. Mailings entered at the saturation rate may be based on delivery sequence information provided by the Postal Service using the methods in 424.772 or 424.773.

424.772 CDS File. The Computerized Delivery Sequence (CDS) file is updated quarterly. Saturation rate mailings presented for acceptance 45 days or more after the release of a quarterly CDS file update must incorporate the changes contained in that update. Mailings based on out-of-date information must not be accepted at the saturation rate.

424.773 Address Sequencing Service. Mailings entered at the saturation rate may be based on delivery sequence information provided by the Postal Service's address sequencing services (see 946). These services can be used to provide updated information as requested by the customer. Mailers who use address sequencing service must base saturation rate mailings on address sequence information that was updated not more than 45 days prior to the date of mailing. Mailings based on older information must not be accepted at the saturation rate.

424.78 Documentation.

424.781 General. Mailers who prepare mailings claimed at the saturation rate must be prepared to substantiate compliance with the requirements in 424.7.

424.782 Density.

a. Unless simplified address is used, for each carrier route to which saturation rate mail is addressed, the mailer must provide documentation to indicate the total number of addressed pieces, the total number of possible residential deliveries, the number and percentage to which mailpieces in the mailing are addressed, the total number of possible delivery stops, and the number and percentage to which mailpieces in the mailing are addressed.

b. If simplified address is used, for each carrier route to which saturation rate mail is addressed, the mailer must provide documentation to indicate the total number of addressed pieces, the total number of possible delivery stops, and the number and percentage to which mailpieces in the mailing are addressed.

424.783 Accuracy.

a. For each carrier route receiving saturation rate mail, the mailer who uses CDS must annotate the mailing statement to show the issue date of the Postal Service walk-sequence scheme (CDS) used in preparation of the mail (see 424.77).

b. For each carrier route receiving saturation rate mail, the mailer who used address sequencing service must annotate the mailing statement to show the date of the last update for the address sequence information used in preparation of the mail (see 424.77). The mailer must provide evidence of this date by copy of the *Delivery Unit Summary* that served as the mailer's bill for the address sequencing service charges (see 946.71).

424.784 Documentation Required to Accompany the Mail. In addition to the facing slip required by 424.753, the first package of mail for each carrier route must contain a summary for that route which indicates the total number of addressed pieces, the total number of possible residential deliveries and the number and percentage to which mailpieces are addressed (if applicable), the total number of possible delivery stops and the number and percentage to which mailpieces are addressed, and the issue date of the CDS scheme or the address sequence information used in preparation of the mail (as applicable).

**424.8 Additional Requirements for Presort Rates**

424.81 General.

424.811 Available Rates. Although all second-class mail must be presorted, reduced rates (levels B, C, H, I, and K) are available if publishers prepare second-class mailings to a finer level of presort than required for the highest rates (levels A, G, and J).

424.812 Separate Requirements. Compliance with the corresponding preparation, documentation, and other eligibility requirements may entitle a publisher to claim an optional presort rate, but does not lessen the obligation to meet any separate eligibility requirements under 411, 421, 422, 423, or 424 that may also apply.

424.813 Preparation Under 445. Pieces that are presented in bundles or packages outside sacks, as provided by 445.1 and 445.2, remain eligible for the presort level or other rate claimed if the corresponding requirements are met. For purposes of compliance with the requirements of 424.82, 424.83, and 424.84, a bundle or package, prepared as required by 445.1 or 445.2, is the equivalent of a sack, and, if placed on a pallet, will allow the pieces it contains to qualify for the appropriate presort level rate regardless of the destination of the pallet. Eligibility for destination entry or other zone-based rates remains dependent on the point of entry.

424.82 Five-Digit Presort (Level B and H) Rates. [Text of existing 442.2a; redesignate (1) through (3) as (a) through (c).]

424.83 Carrier Route Presort (Level C, I, and K) Rates.

424.831 General. [Text of existing 442.2b, except delete "The following provisions also apply:"]

424.832 Proper Makeup. [Text of existing 442.2b(1).]

424.833 Obtaining Schemes. See 624.362. [Delete existing 442.2c and 442.2d (replaced by new 424.9 and 424.813, respectively).]

424.84 Documentation.

424.841 General. The publisher must be prepared to document or otherwise confirm the information entered on the mailing statements that accompany mailings of a second-class publication. As applicable, the publisher must be able to substantiate the number of pieces or weight of copies addressed or sorted to specific destinations or zones, prepared at specific levels of presort, or prepared to qualify for a particular rate or discount. The publisher must use one of the methods described in 424.842 through 424.844, subject to the limitations stated therein, unless another method is prescribed by regulation or otherwise approved by the Postal Service.

424.842 Separation of Sacks. A publisher may meet the general requirement in 424.841 at the time of mailing by separating the sacks into groups based on the presort level for which their contents qualify. Sacks whose contents qualify for the level A, G, or J rates must be in one group, those at level B or H rates in another, and those at level C, I, or K rates in a third. This method may not be used for mailings containing pieces claimed at an automation rate (ZIP+4 or ZIP+4 Barcoded), a destination entry rate, or a saturation rate.

424.843 Documentation. A publisher may meet the general requirement in 424.841 by attaching documentation to the mailing statement accompanying the corresponding mailing. That documentation must describe, for each sack destination, the number of copies within each presort level qualifying for any applicable discounted rates, as detailed on the accompanying mailing statement. (For example, for a specified 3-digit sack, the applicable number of pieces would be shown that is included in lines 1, 2, and 18 through 23 of Form 3541.)

424.844 Maintaining Records.

a. General. As an alternative to submitting documentation with the mailing, a publisher may meet the general requirement in 424.841 by maintaining records supporting the information on the mailing statement accompanying the corresponding mailing. Those records must provide the same detailed information required by 424.843.

b. Approval. This alternative may be approved by the postmaster of the original entry post office if the publisher has demonstrated (by repeated submission of accurate documentation under 424.843) that the necessary records can be maintained in lieu of their submission with the mailing. The postmaster must notify the serving rates and classification center and all additional entry offices of any publications for which this alternative has been approved. Bulk mail acceptance units must maintain a list of these publications.

c. Retention. Records maintained under this alternative must be retained for at least 2 months or until any pending action regarding the recalculation of postage has been resolved to the satisfaction of the Postal Service (see 424.832).

d. Termination. Authority to use this alternative may be terminated by the postmaster of the original entry post office or the general manager of the serving rates and classification center if it has been determined that records are not properly maintained, that they are incomplete, or that they otherwise do not accurately document the preparation or rate eligibility of the corresponding mailing.

424.85 Combining More than One Second-Class Publication or Edition.

424.851 Definition. [Text of existing 442.41.]

424.852 Rate Qualification. [Text of existing 442.42.]

424.853 Presort Level. Documentation. [Text of existing 442.43; change reference from 442.3 to 424.84.]

424.854 Mailing Statements. [Text of existing 442.44.

424.86 Copalletizing More Than One Flat-Size Second-Class Publication or Edition of a Publication [Text of existing 442.5; renumber existing 442.51 through 442.56 as 424.861 through 424.866 respectively; in new 424.864, change "442.2d" and "442.2 a or b" to "424.813" and 442.82 or 442.83;" in new 424.865c(1), change "442.3 a and b" to "424.842 and 424.843;" in new 424.865c(2), change "442.3b" to "424.843."]

**424.9 SCF Zone Rate**

424.91 Eligibility.

424.911 General. The SCF zone rate applies only to pieces not eligible for in-county rates that are available for delivery at an address that is in the same sectional center facility (SCF) service area as the post office at which the pieces were entered. See Exhibits 122.63c–d for a listing of the 3-digit ZIP Code prefixes assigned to each SCF.

424.912 Preparation. Pieces claimed at the SCF zone rate must also be prepared as required by the presort rate claimed (see 441, 443, or 444, as applicable). Trayed ZIP + 4 or ZIP + 4 Barcoded rate pieces must also meet the requirements of 447. Pieces that are addressed and entered as required by 424.911 qualify for the SCF zone regardless of the type of package, sack, or tray in which they are placed (i.e., regardless of level of presort).

424.92 Authorized Entry. Publications must have an authorized additional entry at each post office where mail is deposited at the SCF zone rate. For post offices with stations or branches, establishment of an entry at the main post office allows deposit of mail at any station or branch of that post office. Post offices must not accept mail which is not authorized entry at that post office as described in an approved distribution plan (see 428).

424.93 Mailing. Publishers must deposit mail claimed at the SCF zone rate at locations and times specified by the entry office postmaster. Mail claimed at the SCF zone rate for a particular entry post office is ineligible for that rate if it is deposited and accepted at a postal facility in another SCF area, regardless of circumstance.

424.94 Documentation. Publishers who prepare mailings that contain pieces claimed at the SCF zone rate must be prepared to substantiate compliance with the requirements in 424.911. At a minimum, the publisher must indicate, by package, bundle, sack, tray, or pallet destination (as appropriate), the number of addressed pieces by presort level for each 5-digit ZIP Code destination eligible for the SCF zone rate. This may be accomplished as provided by 424.84 or by submission of separate documentation, subject to the approval of the entry office postmaster.

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**426 HOW TO MAIL AT MORE THAN ONE POST OFFICE**

**426.1 Additional Entry**

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426.15 Application Fee. The fee prescribed by 412.14 must accompany an application for additional entry.

**426.2 Restrictions**

426.21 Same County. One or more additional entries may be authorized in the same county as the office of original entry if the publisher claims the in-county rates at only one post office of entry. That entry office must be identified on any Form 3510 submitted to establish, delete, or modify any additional entry in that county or to relocate the original entry, and must be clearly identified in the distribution plan authorized by the Postal Service.

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**426.6 Exceptional Dispatch**

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426.62 Application. [In (c), delete "(Levels B, C, H, I, and K)."]

426.63 Approval or Denial.

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426.632 Notification. [In (d), delete "(Levels B, C, H, I, and K)."]



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426.64 Verification. [IN the second sentence, delete "(Levels B, C, H, I, and K)."]

426.65 Destination Entry Rates. Subject to the provisions of 424.9, copies of second-class publications deposited under exceptional dispatch may be eligible for and claimed at the SCF zone rate is eligible for those rates at both the entry office from which the zone rate postage for those copies is computed and the post office at which they are deposited by exceptional dispatch. Eligibility for the SCF zone rates must be incidental to the publisher's use of exceptional dispatch as a means to expedite a limited number of copies of a time-sensitive publication. Exceptional dispatch cannot be used to circumvent additional entry requirements.

**426.7 Acceptance of Air-Freighted Second-Class Publications at Airport Mail Facilities (AMFs)**

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426.75 Destination Entry Rates. Copies of second-class publications deposited at AMFs may be eligible for delivery unit, saturation, or SCF zone rates if the applicable requirements are met (see 424.4, 424.7, and 424.9, respectively).

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427 REENTRY

**427.1 Changing Title, Frequency, of Known Office of Publication**

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427.12 Application Procedure.

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427.124 Application Fee. The fee prescribed by 412.15 must accompany an application for reentry.

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**427.2 Changing Qualification Categories**

427.21 General.

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427.213 Application Fee. The fee prescribed by 412.15 must accompany an application for reentry.

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429 PUBLICATION PRODUCTION—MAILPIECE CHARACTERISTICS

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**429.3 Addressing**

429.31 General

429.311 Preparation and Content. [Text of existing 429.31a and 429.31b.]

429.312 Method of Addressing. [Text of existing 429.31c.]

429.313 Address Strips. [Text of existing 429.31d.] [Renumber existing 429.32 as 429.7; add new 429.32 as follows:]

429.32 Address Placement

429.321 Placement on the Publication. [Text of existing 429.31e and 429.31f.]

429.322 Placement of the Address on Other than the Publication. Addresses or address labels may be placed on label carriers (see 429.323); on subscription order, renewal, gift, or request forms or receipts; on incidental First-Class attachments (see 429.324); and on supplements (see 429.325) if those items and the host second-class publication are enclosed within a plastic wrapper (polybag) and prepared as required by 429.323 through 429.325.

429.323 Use of Label Carriers for Addressing.

a. Definition. A label carrier is a single, unfolded, uncreased sheet of card or paper stock.

b. Required Content. The label carrier must bear the:

(1) Second-class imprint or "Second-Class" endorsement in the upper right corner of the address side, unless "Second-Class" is printed on the address side of the polybag;

(2) Title of the second-class publication; and

(3) Address to which the package can be returned if undeliverable as addressed and endorsed "Return Postage Guaranteed."

c. Optional Content. If the address is surrounded by a clear area on the label carrier containing no other information, the label carrier may show the following information in addition to that listed in 429.323:

(1) A subscription or request form;

(2) Information about how to request or subscribe to the publication; and

(3) A request for address correction from the addressee.

d. Postage for Enclosures. In addition to the information permitted by 429.323b and 429.323c, the label carrier may bear the endorsement "First-Class Mail Enclosed" or "Third-Class Mail Enclosed," as appropriate, and the permit imprint used to pay postage for the First- or third-class enclosure, provided the imprint is below the second-class imprint or the endorsement "Second-Class."

e. Advertising. Advertising is permitted on the back of label carriers, if the appropriate postage is paid for the advertising. The bottom front of a label carrier may bear one line of text calling attention to printed material on the reverse of the label carrier. If the material on the reverse of the label carrier includes advertising, the line of text on the front is also considered and measured as advertising.

f. Placement of Address. The address may be positioned on the label carrier as shown in Exhibit 429.3.

g. Location of Label Carrier. The label carrier must be either securely affixed to the cover of the publication or, if not affixed, or sufficient size to prevent it from rotating inside the plastic wrapper or (if placed over the front cover) obscuring the publication's title.

429.324 Use of Enclosures for Addressing. [Text of existing 429.31g(4).]

429.325 Use of Supplements for Addressing. [Text of existing 429.31g(5).]

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**429.6 Identification Requirements**

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429.62 Identification Statement Required in Copies.

429.621 General. An identification statement must be included in all copies of publications authorized second-class mail privileges and all copies of publications mailed while approval of second-class mail privileges is pending.

429.622 Style of Type. The identification statement must appear in type which can be easily read. To assist postal personnel, publishers are urged to set change-of-address information (see 429.625i) in larger and bolder type than other elements of the identification statement.

429.622 Location—Unbound Publications. The identification statement must be shown conspicuously on one of the first five pages (preferably in the masthead) or in the masthead on the editorial page (if the location of the editorial page is shown on the front page of the publication in the table of contents).

429.623 Location—Bound Publications. For purposes of this section, a "bound publication" is one that is securely bound by two or more staples, spiral binding, glue, stitching, or other permanent fastening. In a bound publication, the identification statement must be shown conspicuously in one of the locations described in 429.622 or on one of the last three editorial pages inside the back cover page. If the publication is mailed with a nonincidental First- or third-class enclosure for which postage is paid by permit imprint under 429.186c, the identification statement must be located as specified in 429.622.

429.624 Change-of-Address Information. To assist postal personnel, publishers are urged to also show change-of-address information (required by 429.625i) on the label carrier or container of publications prepared in envelopes, closed wrappers or polybags.



429.625 Contents. The identification statement must contain all of the following elements:

[Text of existing 429.62a-j.]

[Renumber existing 429.32 as 429.7, and reformat as follows:]

**429.7 Detached Address Labels for Flats**

429.71 General.

429.711 Description. [Text of existing 429.32a.]

429.712 Prior Notification. [Text of existing 429.32b, with items (1) through (9) redesignated as (a) through (i).]

429.713 Rate. Saturation mailings must meet the applicable eligibility, presort, and preparation requirements to qualify for the rate claimed.

429.72 Address Cards

429.721 Requirements. [Text of existing 429.332.]

429.722 Labels. [Text of existing 429.331.]

429.723 Letter. [Text of existing 429.333; change the reference to 429.712.]

429.724 Numbering Cartons. [Text of existing 429.334.]

429.73 Preparation of Flats. [Text of existing 429.34.]

429.74 Postage. [Text of existing 429.35.]

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**440 Presorting**

441 PREPARATION REQUIREMENTS FOR THE BASIC (LEVEL A, C, AND J) RATES

**441.1 General**

All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. Publishers may perform additional preparation to meet the requirements for other presort rates or discounts.

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**441.4 "Residual" Mail**

All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. There is no provision for "residual" mail, or for payment of a single-piece rate for pieces not presorted as required by 441.2 and 441.3.

442 [RESERVED]

[Existing 442.2 is relocated to 424.8.]

**443 Preparation Requirements for the Five-Digit (Level B and H) Rates**

443.1 General. All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. Publishers may perform additional preparation to meet the requirements for other presort rates or discounts. Publishers who mail at the 5-digit (level B and H) presort rates must meet the requirements in 443.2 through 443.4.

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**443.4 "Residual" Mail**

All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. There is no provision for "residual" mail or for payment of a second-class single-piece rate for nonpresorted pieces. Mail that cannot meet the requirements for a presort rate (level B, C, H, I, or K) or other discount must be presorted as required by 441.2 and 441.3.

444 PREPARATION REQUIREMENTS FOR THE CARRIER ROUTE (LEVEL C, I, AND K) RATES

**444.1 General**

All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. Publishers may perform additional preparation to meet the requirements for other presort rates or discounts. Publishers who mail at the carrier route rates (level C, I, and K) must meet the requirements in 444.2 through 444.4.

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**444.4 "Residual" Mail**

All addressed pieces in a second-class mailing must be presorted, and that presort must, at a minimum, meet the requirements in 441.2 and 441.3. There is no provision for "residual" mail or for payment of a second-class single-piece rate for nonpresorted pieces. Mail that cannot meet the requirements for a presort (level B, C, H, I, or K) rate or other discount must be presorted as required by 441.2 and 441.3.

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447 SPECIAL PREPARATION REQUIREMENTS FOR ZIP+4 AND ZIP+4 BARCODED MAILINGS

**447.1 General**

Except as provided by this section, publications mailed at the ZIP+4 and ZIP+4 Barcoded rates must be presorted, packaged, and sacked as prescribed by 441 and 443. Publishers may avoid packaging, present mail in trays rather than in sacks, and palletize trayed mail only under the conditions described below.

**447.2 Basic Preparation Requirements**

447.21 Packaging. Pieces must be prepared in packages as specified in 441.21–441.24 (if claimed at level A, C, and J rates) or 443.21–443.25 (if claimed at level B and H rates) except that each package in a mailing at the ZIP+4 and ZIP+4 Barcoded rates must contain a minimum of 6 addressed pieces. The "last" mixed states package may contain fewer than 6 pieces.

447.22 Sacking. Packages must be sacked as specified in 441.31–441.33 (if claimed at level A, C, and J rates) or 443.31–443.34 (if claimed at level B and H rates) except that

a. the second (contents) line on labels for sacks must show the information specified in 441.32 and 443.3, followed by "ZIP+4" or "Z+4" (for ZIP+4 rate mailings) or "ZIP+4 BARCODED" or "Z+4 B/C" (for ZIP+4 Barcoded rate mailings); and

b. each sack in a mailing at the ZIP+4 and ZIP+4 Barcoded rates must contain a minimum of 4 packages, except for the "last" mixed states sack which may contain fewer than 4 packages.

**447.3 Trays**

447.31 Use. ZIP+4 and ZIP+4 Barcoded rate mailings of automation-compatible letter-size publications may be prepared in trays rather than in sacks. Trays are the preferred container for automation-compatible mail.

447.32 Packaging of Mail in Trays

447.321 General. Mailings prepared in trays must be packaged as required by 447.21, except as provided below.

447.322 5-Digit Trays. Pieces need not be prepared in 5-digit packages when all the mail in those packages will be placed in the same tray for the same 5-digit ZIP Code destination. 5-digit packages are required when the corresponding pieces are being placed in other than 5-digit trays.

447.323 Unique 3-Digit Trays. Pieces need not be prepared in unique 3-digit packages when all the mail in those packages would be placed in the same tray for the same unique 3-digit ZIP Code destination. 5-digit packages are required when the corresponding pieces are being placed in other than 5-digit trays. Unique 3-digit packages are required when the corresponding pieces are being placed in other than unique 3-digit trays.

447.324 SCF Trays. Pieces need not be prepared in SCF packages when all the mail in those packages would be placed in the same tray for the same SCF destination. 5-digit and unique 3-digit packages are required when the corresponding pieces are being placed in other than 5-digit or unique 3-digit trays, respectively. SCF packages are required when the corresponding pieces are being placed in other than SCF trays.

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447.325 Optional Sortation to Automated Sites. Subject to the requirements of 424.632 and 447, publishers may prepare mailings at the level B3/H3/J3 ZIP+4 Barcoded rate without making 5-digit packages or sacks when all pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m, and pieces destinating in other ZIP Code areas are prepared as a separate mailing. Pieces prepared under this optional sortation must be presorted in unique 3-digit, SCF, AADC and Mixed AADC packages which are correctly sorted in unique 3-digit, SCF, AADC, and Mixed AADC sacks or trays to the destinations listed in Exhibits 122.63m-o. Mixed AADC packages and trays may have fewer pieces or packages than prescribed in 424.632. Pieces in AADC and Mixed AADC packages, sacks, and trays are not eligible for the level B3/H3/J3 rates and must be claimed at the level A/H/J rates.

447.33 Presort. Unless prepared under the optional method described in 447.325, mail must be presorted to trays in the same sequence as specified for mail prepared in sacks. See 441.31–441.33 (if claimed at level A, G, and J rates) or 443.31–443.34 (if claimed at level B and H rates). A tray must be prepared to a required sortation whenever the mail for that destination fills ¾ of the tray when the contents are reasonably compressed. Trays with less mail may not be prepared to any required or optional sortation, except for the final tray in a mailing.

447.34 Sleeving and Banding. To ensure the integrity of the mail in transit, each tray must be enclosed in a sleeve and secured by a plastic strap placed tightly around the length of the tray. The postmaster of the office of entry may waive this requirement for local mail.

447.35 Tray Labels. A tray label must be securely affixed to the end of each tray. Tray labels are subject to the same requirements as specified for sack labels in 441.32 and 446, except that the second (contents) line on tray labels be followed by "ZIP+4" or "Z+4" (for ZIP+4 rate mailings) or "ZIP+4 BARCODED" or "Z+4B/C" (for ZIP+4 Barcoded rate mailings).

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**460 Postage Payment Procedures**

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462 PAYMENT OF POSTAGE

**462.1 In Advance of Dispatch**

Postage must be fully prepaid before second-class mailings are dispatched.

**462.2 Method of Payment**

462.21 Second-Class Matter. Payment for second-class mail must be through an advance deposit account established at the post office of mailing (i.e., at the original or additional entry post office where the copies are accepted), except as provided by 462.23 and 465. The post office will issue receipts for advance deposit account payments.

462.22 Third- or Fourth-Class Matter. Postage for third- or fourth-class matter must be paid as described in 136.23, 136.316, and 429.186.

462.23 Centralized Postage Payment. Publishers authorized to pay second-class postage under the Centralized Postage Payment (CPP) System (see 464) must pay postage through an advance deposit account at the designated post office (DPO) rather than at the post office of mailing.

462.3 Mailer Responsibility. The mailer is responsible for proper payment of postage. See 111.32.

463 MAILING STATEMENT

**463.1 General**

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463.17 Sequenced Statement Number. Mailers who submit more than one mailing statement per day must enter a sequenced statement number in the appropriate block on each mailing statement prepared that day. The content and length of the number, the cycle of the sequence (beyond one day), and the number of concurrently-active cycles are at the mailer's discretion, provided the same series of numbers is not active in two cycles at the same time. If the same mailing of one edition of one issue includes copies reported on two mailing statements (such as when additional postage is paid for nonsubscriber/nonrequester copies in excess of the 10% limit) the sequenced statement number of the second form must be included with the other information required on the primary mailing statement (on which the total postage for the mailing is reported).

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465 PLANT VERIFIED DROP SHIPMENT POSTAGE PAYMENT SYSTEM

**465.1 General**

465.11 Definition. The plant-verified drop shipment postage payment system is designed to allow destination acceptance of mailings prepared for entry at SCF and delivery office zone rates (see 424.4), while taking advantage of the greater postal efficiency associated with origin verification and postage payment. Approval for use of a plant-verified drop shipment postage payment system will be granted under the conditions specified in 465.2.

465.12 System Elements. Under this system

(a) The mailer's product is verified for proper classification, rate eligibility, preparation, and presort by postal personnel located at a mailer's plant (e.g., at a detached mail unit (DMU));

(b) Postage is prepaid at the post office serving the mailer's location (see 424.4);

(c) The shipment is released for dispatch under postal seal;

(d) The shipment is transported to destination postal facilities at the mailer's expense on the mailer's vehicle or on transportation procured by the mailer;

(e) The shipment is deposited at the destination postal facility by the mailer or the mailer's agent;

(f) The shipment is verified and accepted as mail by postal personnel at the destination postal facility and released for processing.

465.13 Participation. The plant-verified drop shipment postage payment system may be used only by mailers who have been authorized by the field division general manager/postmaster in whose service area the mailer is located (see 465.3).

465.14 Other Mailings. Other destination entry mailings that are not verified at the origin plant under a plant-verified drop shipment postage payment system must be verified, accepted and paid for at the destination post office.

**465.2 Program Participation Criteria for Mailers**

465.21 Request for Participation. The mailer must submit an application for participation in the plant-verified drop shipment postage payment system as prescribed in 465.3.

465.22 Facilities for Postal Personnel. At each plant at which mail is inspected pursuant to a plant-verified drop shipment agreement (see 465.3), the mailer must provide an enclosed work area for the DMU that can be locked, has a telephone, is separate from the mailer's activities, and provides a safe working environment, as determined by the Postal Service.

465.23 Postage Payment. The mailer must obtain and maintain an additional entry at each post office where SCF or delivery office zone rate mail will be deposited and accepted (see 424.42 and 424.92). Original or additional entry is not required at the post office serving the mailer's plant unless copies are deposited and accepted at that post



office. Unless authorized to pay postage under a CPP system, the mailer must pay postage for plant-verified drop shipments at the post office serving the mailer's plant. The mailer must ensure that sufficient funds are on deposit in the appropriate advance deposit accounts to pay for all plant-verified drop shipments prior to their release for dispatch. Mailers authorized to mail under a CPP system must pay postage for plant-verified drop shipments to the New York Rates and Classification Center. Postage payment must be in accordance with the requirements in the DMM, Handbook DM–102, *Bulk Mail Acceptance*, Handbook DM–103, *Penalty Mail*, and any applicable agreements between the mailer and the Postal Service.

465.24 Documentation.

a. The mailer must produce an individual mailing statement for each edition of each issue of each publication prepared for deposit at each destination entry post office, and submit the statement at the time the corresponding copies are presented to the DMU.

b. When required by the Postal Service, the mailer must submit consolidated mailing statements and a register of mailing statements to the Postal Service.

c. The mailer must produce and submit to the Postal Service the prescribed clearance documents, in duplicate, that must accompany each plant-verified drop shipment to the destination post office where the shipment will be deposited. Those documents must be presented in triplicate if the mailer wishes to have a signed and dated copy returned to its driver when mailings are unloaded at the destination entry postal facility.

465.25 Transportation.

465.251 Responsibility. The mailer is responsible for the transportation of plant-verified drop shipments from the origin plant to the destination postal facility.

465.252 Other Mailings. The mailer must not transport plant-verified drop shipment mailings on the same vehicle with other shipments that are not entered as plant-verified drop shipments.

465.253 Separation of Mailings. When a vehicle contains more than one plant-verified drop shipment for a single destination postal facility, the shipments must be separated, except that this requirement may be waived by the origin postmaster for copalletized or combined mailings provided the clearance document for that destination clearly identifies all of the mail for that facility. In addition, when a vehicle contains one or more shipments for more than one destination postal facility, the shipments must be separated by destination.

**465.3 Authorization**

465.31 Request.

465.311 General. The mailer must submit a written request to the mailer's local postmaster seeking assignment of postal personnel to the mailer's plant (e.g., establishment of a DMU) to support plant-verified drop shipment of destination entry rate mailings. No form is provided for this purpose.

465.312 Date of Filing. The mailer must submit the request at least 30 days prior to the date proposed for submission of the first plant-verified drop shipment using the system.

465.313 Content. The request must fully describe the characteristics of the mailings that will be prepared as plant-verified drop shipments. At a minimum, the request must include the following information for each publication:

a. The schedule of mailing, i.e., the frequency and time of mailings (e.g., at noon daily, every other Monday at 4 pm, etc.);

b. The number of pieces and mailing statements to be presented to postal personnel, both daily and in total;

c. The class of mail and processing category;

d. The level of sortation and rate(s) claimed;

e. The place and method of postage payment, as appropriate;

f. If postage is paid under Centralized Postage Payment (CPP) procedures, a copy of the authorization must accompany the request (separate authorization by the serving rates and classification center is required to mail under CPP);

g. The type and capacity of scales at the mailer's plant, if any;

h. The space available for postal personnel to use and the suitability of that space for verification of mail, record keeping, installation of computer equipment, and monitoring of vehicle loading;

i. The types of equipment used (trays, sacks, pallets, etc.) (authorizations must be obtained where required); and

j. The destination entry points to which shipments will be dispatched (e.g., a listing of the SCFs and DDUs).

465.32 Approving or Denying Authorization.

465.321 Local Post Office. The local postmaster will review the application for completeness and accuracy; evaluate the mailer's ability to meet the requirements in 465.2, the suitability of the mailer's plant to accommodate postal personnel (i.e., a DMU), and the capability of the local post office to support the requested activity; and prepare a written summary of the results. This report and a recommendation for approval or denial of the mailer's request will be forwarded through the MSC/division manager, mailing requirements, to the field division general manager/postmaster.

465.322 Field Division. The field division general manager/postmaster will consider the postmaster's report and recommendation, determine whether the local post office has sufficient employees who are trained and qualified in mail classification and verification to support the requested plant-verified drop shipment activity, and prepare a final written decision on the mailer's request.

465.323 Approval. If the mailer's request for participation in the plant-verified drop shipment postage payment system is approved, the field division general manager/postmaster will prepare a plant-verified drop shipment agreement that must be signed by the general manager/postmaster, the mailer, and the postmaster of the post office serving the mailer's plant before the approval can be made effective. The agreement will specify the terms and period of the authorization (not to exceed 2 years). Copies of the agreement will be provided to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center.

465.324 Denial. If the mailer's request for participation in the plant-verified drop shipment postage payment system is denied, the field division general manager/postmaster will notify the mailer in writing, stating the reasons for the decision, and provide copies of the decision to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center. The denial may be appealed as provided in 133.

465.33 Renewal, Termination, and Revocation

465.331 Renewal. The mailer must submit a new request for authorization at least 30 days prior to expiration of a plant-verified drop shipment agreement. The content of the request, and the procedures for its review, approval, or denial are as prescribed in 465.31 and 465.32.

465.332 Termination. A mailer may elect to terminate participation in a plant-verified drop shipment agreement by 10 calendar days' written notice to the authorizing field division general manager/postmaster.

465.333 Revocation. A plant-verified drop shipment agreement may be revoked by the authorizing field division

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general manager/postmaster by 10 calendar days' written notice to the mailer. Revocation must based on the mailer's failure to pay postage and fees or to meet the requirements that apply to plant-verified drop shipment or mailing at second-class rates. The revocation action may be appealed as provided by 133.

**465.4 DMU Functions**

465.41 General. Assignment of postal personnel to the mailer's plant to process plant-verified drop shipments may be in conjunction with the DMU staffing associated with a plant load authorization for that mailer's plant, but may be provided to a mailer's plant that is not authorized plant load, at the discretion of the division general manager/postmaster.

465.42 Inspection of Mailpieces. Postal personnel assigned to the mailer's plant must verify drop shipment mailing for classification, rate eligibility, preparation, presort, and postage in the same manner as plant load mailings.

465.43 Documents

465.431 Preparation. Before each plant-verified drop shipment is released for dispatch, postal personnel must ensure that all clearance documents are properly completed, signed, and dated, and that each includes the number of the postal seal to be used on the vehicle, if appropriate (see 465.5). The required documents must be provided for each mailing prepared for each destination entry postal facility. The DMU will retain one copy of each completed clearance document.

465.432 Enclosure. Postal personnel must ensure that all appropriate clearance documents are provided to the mailer who is responsible for placing them in each vehicle to accompany the corresponding plant-verified drop shipments. These documents must be placed on the left rear wall of the vehicle just inside the door of the vehicle. Affix the required Form 5111–R, *Revenue Protection Placard*, to the outside rear of the vehicle after the mailer has completed loading the vehicle.

465.44 Loading. Postal personnel must observe the loading of each vehicle used to transport plant-verified drop shipments to ensure the correct mailings are loaded into vehicles for the correct destinations and that shipments are not improperly commingled (see 465.254).

465.45 Security. Postal personnel must seal the vehicle containing the plant-verified drop shipments mailings with a USPS ball seal, USPS lock, or other postal security devices that prevents access to the shipments by other than authorized postal employees. Vehicles that make en route stops must be resealed after the corresponding mail is removed (see 465.5).

**465.5 Destination Postal Facility Functions**

465.51 Verification of Documents. The postal seal number on the clearance document for that destination post office must match the number on an unbroken seal securing the vehicle. Container identification codes on the clearance document must match the containers deposited. If these items match, the destination facility will sign and date the clearance documents accompanying the mailings and process the mail. These documents will be retained for one year in a chronological file, and receipted copies will be returned to the mailer's employee, if appropriate (see 465.24c and 465.431).

465.52 Verification of Contents. Each destination postal facility where plant-verified drop shipments are deposited must ensure that only the appropriate shipments are unloaded and accepted.

465.53 Vehicles Containing Mail for More Than One Destination Facility. When a mailer's vehicle contains mail for more than one destination entry facility, each intermediate postal facility will record the number of a new USPS ball seal on the clearance document for the next scheduled destination post office, and affix that seal to secure the vehicle. (If USPS locks are used, they must be removed and retained at the final postal facility where the vehicle stops.)

465.54 Loading of Mail Prohibited. Postal Service mail for downstream postal facilities must not be loaded onto the mailer's vehicle by any intermediate postal facility at which the mailer has stopped to deposit a plant-verified drop shipment.

**465.6 Liability**

The mailer assumes all liability and responsibility for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at destination entry postal facilities, regardless of whether a third party is used to transport those shipments. The Postal Service is not liable or responsible for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at a destination postal facility.

**465.7 Postage**

465.71 Method of Payment. Postage for a plant-verified drop shipment must be paid as provided by 465.23.

465.72 Computation. Postage for destination rate mailings prepared as plant-verified drop shipments is calculated (zoned) from the destination postal facility where mailings are deposited and accepted into the mailstream.

465.73 Refunds. The Postal Service will not refund postage for any failure to provide service that is caused in whole or in part by any event that occurs before the shipment is deposited and accepted into the mailstream and becomes mail at a destination postal facility, except in accordance with the provisions of 147.2.

6. Add new Domestic Mail Manual chapter 5 as follows:

**CHAPTER 5—AUTOMATION COMPATIBLE MAIL**

**510 General**

511 CONTENT

This chapter contains requirements for automation-compatible letter-size ZIP+4 and ZIP+4 barcoded First-, second-, and third-class mail.

512 APPLICABILITY

Mailers may use these instructions immediately rather than the corresponding requirements in chapters 3, 4, and 6.

513 CLASSIFICATION

Classification and rate eligibility for pieces prepared under this chapter are based on the requirements in chapters 3, 4, and 6, for First-, second-, and third-class mail respectively. Automation-compatible mailpieces prepared as described in this chapter and claimed at an automation-based rate must meet the eligibility requirements in 324, 325, 327, and 328 for First-Class Mail, 424.5 and 424.6 for second-class mail, and 628 for third-class mail.

514 DEFINITIONS

**514.1 Automation-Based Rates**

514.11 ZIP+4 Barcoded Rates. The ZIP+4 Barcoded rates include the 5-digit ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded, and nonpresorted ZIP+4 Barcoded First-Class rates; the level A, B, G, H, and J ZIP+4 Barcoded second-class rates; and the 5-digit ZIP+4 Barcoded, 3-digit ZIP+4 Barcoded and Basic ZIP+4 Barcoded third-class rates.

514.12 ZIP+4 Rates. The ZIP+4 rates include the ZIP+4 Presort and nonpresorted ZIP+4 First Class rates; and the 3/5 ZIP+4 and Basic ZIP+4 third-class rates.

**514.2 Presort Rates**

The presort rates include the Presorted First-Class rate; the level A, B, G, H and J second-class rates; and the basic presort and 3/5 presort third-class rates.



515 MAIL PREPARATION

**515.1 Packaging**

Packages are not allowed in ZIP+4 and ZIP+Barcoded rate mailings prepared under chapter 5. However, in SCF trays, all the pieces for the same 3-digit ZIP Code area must be grouped together.

**515.2 Trays**

515.21 General. All mailings prepared under chapter 5 must be prepared in trays.

515.22 Definition. For purposes of this section, a "full" tray is one that is at least ¾ full of mail when its contents are reasonable compressed.

515.23 Sleeving and Banding. To ensure the integrity of the mail in transit, each tray must be enclosed in a sleeve and secured by a plastic strap placed tightly around the length of the tray. The postmaster of the office of entry may waive this requirement for local mail.

515.24 Tray Labels. A tray label must be securely affixed to the end of each tray. Tray labels are subject to the same requirements as specified for sack labels in 441.32 and 446, except that the second (contents) line on tray labels bear the information specified in 561.3 and 562.3.

**520 [Reserved]**

**530 [Reserved]**

**540 [Reserved]**

**550 [Reserved]**

**560 Preparation**

561 ZIP+4 MAIL

**561.1 85% Requirement**

At least 85 percent of the total pieces in a ZIP+4 rate mailing must bear a ZIP+4 code. All remaining pieces must bear a 5-digit ZIP Code. If a ZIP+4 barcode is used to satisfy the requirement for a ZIP+4 code, a numeric ZIP+4 code or 5-digit ZIP Code must also appear in the address.

**561.2 Rate Eligibility**

561.21 First-Class Mail. In 5-digit, 3-digit and SCF trays, ZIP+4 coded pieces may qualify for the ZIP+4 Presort rate, other pieces for the Presorted First-Class rate. Residual pieces not sorted to these trays may be eligible for the nonpresorted ZIP+4 rate (if ZIP+4 coded) or the single-piece First-Class rate.

561.22 Second-Class Mail. In 5-digit and 3-digit trays, ZIP+4 coded pieces may qualify for the level B/H/J3 ZIP+4 rates, other pieces for the level B/H/J rates. Pieces in SCF trays may be eligible for the level A/G/J1 ZIP+4 rates (if ZIP+4 coded) or the level A/G/J rates. All pieces in ZIP+4 second-class mailings must be sorted to at least the SCF level.

561.23 Third-Class Mail. In 5-digit and 3-digit trays, ZIP+4 coded pieces may qualify for 3/5 ZIP+4 rates, other pieces for the 3/5 presort rate. In SCF trays, ZIP+4 coded pieces may be eligible for the Basic ZIP+4 rate, other pieces for the basic presort rate. Pieces not sorted to these trays must be prepared as a separate mailing.

**561.3 Contents Line**

The second (contents) line of tray labels must show the class of mail (FCM for First-Class, 2C or NEWS, as appropriate, for second-class, or 3C for third-class) followed by the type of mailing (ZIP+4 PRESORT).

**561.4 Sortation Requirements for ZIP+4 Presort Rate Eligibility**

561.41 Traying

561.411 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray must be prepared for that destination. Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: City, State, 5-digit ZIP Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
DETROIT, MI 48235
FCM ZIP+4 PRESORT
FR NB COMPANY UNION SC

561.412 3-Digit Trays. After preparing all possible 5-digit trays, if there are sufficient pieces to fill a tray for one of the 3-digit ZIP Code areas listed in Exhibits 122.63c–d, a 3-digit tray must be prepared for that destination. Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: City, State, 3-Digit Destination
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
DETROIT MI 482
FCM ZIP+4 PRESORT
FR NB COMPANY UNION SC

561.413 SCF Trays. After preparing all possible 5-digit and 3-digit trays, if there are sufficient pieces to fill a try for one of the SCF areas listed in Exhibit 122.63d, an SCF tray must be prepared for that destination. For second-class pieces, all remaining mail must be sorted to SCF trays. For first- and third-class mail, trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: SCF, Facility Name, State, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
DETROIT MI 481
FCM ZIP+4 PRESORT
FR NB COMPANY UNION SC

**561.5 Residual Mail**

561.51 General. Residual pieces are those that could not be trayed as required by 561.4.

561.52 First-Class Mail. Residual pieces must be placed in trays bearing the tray label "Residual Mail."

561.53 Second-Class Mail. Residual pieces are not allowed in ZIP+4 second-class mailings. All pieces must be sorted to SCF trays (see 561.413).

561.54 Third-Class Mail. Residual pieces are not allowed in ZIP+4 mailings and must be prepared as a separate mailing.

**561.6 Documentation Required**

Unless the mailing is 100% ZIP+4 coded and all pieces bear the correct postage at the rate for which they qualify, a listing must be prepared to show, for each tray, a unique tray number or the exact top line of the tray label, the number of pieces that qualifies for each rate category, the number of pieces prepared with a ZIP+4 code, and the total number of pieces in the tray. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 code, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing.

562 PRESORTED ZIP+4 BARCODED MAIL

[The Postal Service intends to propose a revision to section 562.1, which currently requires that at least 85% of the pieces in a ZIP+4 Barcoded rate mailing bear a correctly prepared ZIP+4 barcode. By that revision, the 85% figure would be increased to 100%, effective September 15, 1990.]

**562.1 85% Requirement**

At least 85% of the total number of pieces in a ZIP+4 Barcoded rate mailing must bear a ZIP+4 barcode prepared as required by 325. All pieces must bear a numeric ZIP+4 code or 5-digit ZIP Code in the address.

**562.2 Rate Eligibility**

562.21 First-Class Mail

562.211 5-Digit trays. In 5-digit trays, pieces may qualify for the 5-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the ZIP+4 Presort rate if they bear a



ZIP+4 code and meet the requirements

requirements of 325.5 and 324.6, or the

562.6 Documentation Required

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ZIP+4 code and meet the requirements of 324.5 and 324.6, or the Presorted First-Class rate.

562.212 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the 3-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the ZIP+4 Presort rate if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the Presorted First-Class rate.

562.213 Residual Trays. Residual pieces not sorted to these trays may be eligible for the nonpresorted ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the nonpresorted ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the single-piece First-Class rate.

562.22 Second-Class Mail

562.221 5-Digit Trays. In 5-digit trays, pieces may qualify for the level B5/H5/J5 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 325.51, the level B5/H5/J5 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the level B/H/J presort rates.

562.222 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the level B3/H3/J3 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 325.51, the level B3/H3/J3 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the level B/H/J presort rates.

562.223 Residual Trays. Residual pieces not sorted to these trays may be eligible for the level A/G/J1 ZIP+4 Barcoded rates if they bear a ZIP+4 barcode prepared as specified in 325.51, the level A/G/J1 ZIP+4 rates if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the level A/G/J presort rates.

562.23 Third-Class Mail.

562.231 5-Digit Trays. In 5-digit trays, pieces may qualify for the 5-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the 3/5 ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the 3/5 Presort rate.

562.232 3-Digit and SCF Trays. In 3-digit and SCF trays, pieces may qualify for the 3-digit ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the 3/5 ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the 3/5 Presort rate.

562.233 Residual Trays. Residual pieces may be eligible for the Basic ZIP+4 Barcoded rate if they bear a ZIP+4 barcode prepared as specified in 325.51, the Basic ZIP+4 rate if they bear a ZIP+4 code and meet the requirements of 324.5 and 324.6, or the Basic Presort rate.

**562.3 Contents Line**

The second (contents) line of tray labels must show the class of mail (FCM for First-Class, 2C or NEWS, as appropriate, for second-class, or 3C for third-class) followed by the type of mailing (ZIP+4 BARCODED).

**562.4 Sortation Requirements for ZIP+4 Barcoded Rate Eligibility**

562.41 Traying.

562.411 5-Digit Trays. When there are enough pieces to the same 5-digit destination to fill a tray, a 5-digit tray may be prepared for that destination. (5-digit trays are required only if the 5-digit ZIP+4 Barcoded or level B5/H5/J5 rates are being claimed.) Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: City, State, 5-digit ZIP Code.
Line 2: Class, Contents.
Line 3: Mailer, Mailer Location.
Sample:
DETROIT, MI 48235
FCM ZIP+4 BARCODED
FR NB COMPANY UNION SC

562.412 3-Digit Trays. After preparing 5-digit trays, if there are sufficient pieces to fill a tray for one of the 3-digit ZIP Code areas listed in Exhibits 122.63c–d, a 3-digit tray must be prepared for that destination. Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: City, State, 3-Digit Destination
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
DETROIT MI 482
FCM ZIP+4 BARCODED
FR NB COMPANY UNION SC

562.413 SCF Trays. After preparing 5-digit trays and all possible 3-digit trays, if there are sufficient pieces to fill a tray for one of the SCF areas listed in Exhibit 122.63d, an SCF tray must be prepared for that destination. Trays that are not full are prohibited. Trays must be labeled as follows:

Line 1: SCF, Facility Name, State, Code
Line 2: Class, Contents
Line 3: Mailer, Mailer Location
Sample:
SCF DETROIT MI 481
FCM ZIP+4 BARCODED
FR NB COMPANY UNION SC

**562.5 Residual Trays**

Residual pieces are those that could not be trayed as required by 562.4. Residual pieces must be placed in trays bearing the tray label "Residual Mail."

**562.6 Documentation Required**

Unless the mailing is 100% ZIP+4 barcoded and all pieces bear the correct postage at the rate for which they qualify, a listing must be prepared to show, for each tray, a unique tray number of the exact top line of the tray label, the number of pieces that qualifies for each rate category, the number of pieces prepared with a ZIP+4 barcode, and the total number of pieces in the tray. For the entire mailing, the listing must be summarized to show the total number of pieces in each rate category, the number prepared with a ZIP+4 barcode, the total number of pieces in the mailing, and the total postage (or additional postage due) for the mailing.

**570 Mailing**

Automation compatible mailings must be presented for acceptance by the Postal Service as provided for the specific class of mail by 370, 450, and 650.

**580 Postage Payment**

Postage for automated mail must be paid as provided for the specific class of mail by 380, 460, and 660.

**590 Ancillary Services**

Ancillary services are provided to automated mail as provided for the specific class of mail by 390, 470, and 690.

7. In chapter 6 of the Domestic Mail Manual, make the following revisions:

**CHAPTER 6—THIRD-CLASS MAIL**

**610 Rates and Fees**

611 RATES

**611.1 Single-Piece Rates**

611.11 General. The single-piece rates in Exhibit 611.11 are applied to each addressed piece based on its weight.

**Exhibit 611.11**

| Weight | Rate |
|---|---|
| Note exceeding 1 oz. | $0.30 |
| Over 1 oz., but not exceeding 2 ozs. | 0.53 |
| Over 2 ozs., but not exceeding 3 ozs. | 0.76 |
| Over 3 ozs., but not exceeding 4 ozs. | 0.99 |
| Over 4 ozs., but not exceeding 6 ozs. | 1.17 |
| Over 6 ozs., but not exceeding 8 ozs. | 1.29 |
| Over 8 ozs., but not exceeding 10 ozs. | 1.41 |
| Over 10 ozs., but not exceeding 12 ozs. | 1.53 |
| Over 12 ozs., but not exceeding 14 ozs. | 1.65 |
| Over 14 ozs., but less than 16 ozs. | 1.77 |

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611.13 Keys and Identification Devices

611.131 General. [Text of existing 611.31; delete the last sentence.]



611.132 Computation of Postage. [Text of existing 611.32; change the reference from "611.31" to "611.131."]

611.133 Rates. The rates applied to keys and identification devices are shown in Exhibit 611.13.

**Exhibit 611.13**

| Weight | Rate |
|---|---|
| Not exceeding 2 ozs. | $0.23 |
| Over 2 ozs., but not exceeding 4 ozs. | 1.44 |
| Over 4 ozs., but not exceeding 6 ozs. | 1.95 |
| Over 6 ozs., but not exceeding 8 ozs. | 2.46 |
| Over 8 ozs., but not exceeding 10 ozs. | 2.97 |
| Over 10 ozs., but not exceeding 12 ozs. | 3.48 |
| Over 12 ozs., but not exceeding 14 ozs. | 3.99 |
| Over 14 ozs., but less than 16 ozs. | 4.50 |

**611.2 Bulk Rates**

611.21 General. The bulk rates summarized in Exhibit 611.2 apply to mailings meeting the conditions 623 and 624. The special bulk rates may be used only by organizations that have been authorized by the Postal Service as provided by 625 and 626.

611.22 Rate Structure.

611.221 Piece and Pound Rates.

a. Minimum Per-Piece Rates. The minimum per-piece rates (the minimum postage amount that must be paid for each addressed piece) apply to pieces that weigh .2104 pound (3.3669 ounces) or less (.2115 pound (3.3837 ounces) or less at special rates). This base postage rate (see Exhibit 611.2) applies to pieces meeting only the minimum preparation requirements (e.g., basic presort rate). Pieces may be eligible for a lower minimum rate per piece if additional requirements are met to render the mailpiece eligible for a postage discount or reduction (see 611.222).

b. Piece/Pound Rates. Pieces that weigh more than .2104 pound (3.3669 ounces) (.2115 pound (3.3837 ounces) for special rates) are subject to a two-part piece/pound rate that includes a flat charge per addressed piece and a pound charge based on weight. This base postage rate (see Exhibit 611.2) applies to pieces meeting only the minimum preparation requirements (e.g., basic presort rate). If additional requirements are met to render the mailpiece eligible for a postage discount or reduction (see 611.222), pieces may then be subject to a lower piece charge, pound charge, or both.

611.222 Postage Discounts and Reductions. The correct rate for an addressed piece may be reduced from the base rate (see 611.221) if the mailer prepares the piece (and/or the mailing of which it is a part) to comply with the requirements prescribed for a postage discount or reduction. The available postage discounts or reductions may be summarized as follows (see the cited sections for complete requirements):

a. Presort. The following presort rates are available for all bulk third-class mail provided the corresponding requirements are met:

(1) 3/5 presort (see 624.2), for mail prepared in 5- and 3-digit packages and sacks.

(2) Carrier route presort (see 624.3), for mail prepared to carrier routes.

(3) Walk-sequenced saturation (see 624.8), for mail prepared in sufficient quantity per carrier route and in delivery sequence.

b. Automation. The following automation-based rates are available only for letter-size mailpieces that weigh .1563 pound (2.5 ounces) or less, that meet specific physical and preparation requirements, and that meet the requirements for basic presort or 3/5 presort:

(1) ZIP+4 (see 628.1, 628.2, and 628.3), for pieces bearing a ZIP+4 code.

(2) ZIP+4 Barcoded (see 628.1, 628.5, 628.6, and 628.7), for pieces bearing a ZIP+4 barcode.

c. Destination Entry. The following destination entry rates are available for bulk third-class mail that meets the applicable requirements and is deposited at the facility serving the delivery address on the mailpiece:

(1) Destination BMC (see 624.72), for mailings addressed for delivery within the area served by the BMC where the mailing is deposited.

(2) Destination SCF (see 624.73), for mailings addressed for delivery within the area served by the SCF where the mailing is deposited.

(3) Destination delivery unit (see 624.74), for carrier route and walk-sequence/saturation mailings addressed for delivery within the area served by the delivery unit where the mailing is deposited.

611.23 Net Postage. The net postage rate that must be paid is either the minimum per-piece rate, as reduced by any discounts or reductions for which the piece may be eligible, or the piece/pound rate, as reduced by any discounts or reductions for which the piece may be eligible. The net postage rate, which may include one or more forms of postage discount or reduction, may be described by a designation based on one of those discounts or reductions (e.g., carrier route rate, ZIP+4 Barcoded rate, DBMC rate, etc.)

611.24 Computation of Postage—Bulk Rates.

* * * * *

611.242 Individually Metered Pieces—Bulk Rate Postage. * * *

* * * * *

b. Add any applicable per-piece charge, and

* * * * *

**611.3**

[Delete—replaced by new 611.13.]

612 FEES

**612.1 Annual Bulk Mailing Fee**

The annual bulk mailing fee is $75, payable once each 12-month period.

* * * * *

**612.3 Permit Imprint Fee**

[In the first sentence, replace "$60" with "$75."]

613 NONSTANDARD SURCHARGE

[Replace "611.3" with "611.13."]

EXHIBIT 611.2, SUMMARY OF THIRD-CLASS RATES AND DISCOUNTS

| Rate or discount | Regular | | | Special | | |
|---|---|---|---|---|---|---|
| | .2104 lb. (3.3669 oz.) or less (per piece) | More than .2104 lb. (3.3669 oz.) (per piece + per pound) All pieces | | .2115 lb. (3.3837 oz.) or less (per piece) | More than .2115 lb. (3.3837 oz.) (per piece + per pound) All pieces | |
| | | Letters | Other than letters | | Letters | Other than letters |
| Base rate (basic presort) | $0.185 | $0.220 | $0.107 pc. + 0.537/lb. | $0.110 | $0.125 | $0.055/pc. + 0.331/lb. |
| DISCOUNTS | | | | | | |
| Presort: | | | | | | |
| 3/5 | $0.031 | $0.045 | $0.045/pc. | $0.013 | $0.014 | $0.014/pc. |
| Carrier Route | 0.062 | 0.086 | 0.066/pc. | 0.037 | 0.045 | 0.045/pc. |
| WS/Saturation | 0.072 | 0.107 | 0.107/pc. | 0.040 | 0.055 | 0.055/pc. |

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EXHIBIT 611.2, SUMMARY OF THIRD-CLASS RATES AND DISCOUNTS—Continued

| Rate of discount | Regular | | | Special | | |
|---|---|---|---|---|---|---|
| | .2104 lb. (3.3669 oz.) or less (per piece) | More than .2104 lb. (3.3669 oz.) (per piece + per pound) All pieces | | .2115 lb. (3.3837 oz.) or less (per piece) | More than .2115 lb. (3.3837 oz.) (per piece + per pound) All pieces | |
| | | Letters | Other than letters | | Letters | Other than letters |
| Dest. Entry: | | | | | | |
| BMC | $0.012 | $0.012 | $0.056/lb. | $0.012 | $0.012 | $0.056/lb. |
| SCF | 0.017 | 0.017 | 0.081/lb. | 0.017 | 0.017 | 0.081/lb |
| Delivery Unit | 0.022 | 0.022 | 0.104/lb. | 0.022 | 0.022 | 0.104/lb |
| Automation: | | | | | | |
| ZIP+4: | | | | | | |
| (Basic Presort) | $0.014 | (1) | (1) | $0.011 | (1) | (1) |
| (3/5 Presort) | 0.007 | (1) | (1) | 0.006 | (1) | (1) |
| ZIP+4 Barcoded | | | | | | |
| (Basic Presort) | $0.024 | (1) | (1) | $0.020 | (1) | (1) |
| (3-digit sort) | 0.015 | (1) | (1) | 0.014 | (1) | (1) |
| (5-digit sort) | 0.022 | (1) | (1) | 0.022 | (1) | (1) |

[1] Not available.

**Note:** The discounts shown are subtracted from the base rate to yield the net postage the must be paid. Each automation discount is in addition to a specific presort discount. Some addressed pieces may be eligible for more than one discount. Some combinations of discounts may be required or prohibited. See 624 for the eligibility requirements that apply to each discount.

**620 Classification**

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623 BULK RATES—CONDITIONS APPLICABLE TO ALL THIRD-CLASS BULK MAIL

* * * * *

**623.6 Presort**

* * * * *

**623.62 Merging Matter into Single Mailings.**

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**623.622 Nonidentical Weight or Postage Payment Methods.**

[In 623.622a and 623.622g, replace "bacic level rate" and "5-digit level rate" with "basic presort rate" and "3/5 presort rate."]

* * * * *

624 CONDITIONS FOR SPECIFIC BULK RATE PREPARATION LEVELS

**624.1 Basic Presort Rate Eligibility**

624.11 General. Each basic presort rate third-class bulk mailing must meet both the conditions in 623 and those in or referred to by this section.

624.12 Minimum Quantity. Each mailing at the basic presort rate must contain at least 200 pieces or 50 pounds of pieces eligible for and claimed at the basic presort rate.

* * * * *

**624.2 3/5 Presort Rate Eligibility**

624.21 General. Each 3/5 presort rate third-class bulk mailing must meet both the conditions in 623 and those in or referred to by this section.

624.22 Minimum Quantity Requirements.

624.221 3/5 Presort Rate. Each mailing at the 3/5 presort rate must contain at least 200 pieces or 50 pounds of pieces eligible for and claimed at the 3/5 presort rate.

624.222 Basic Presort Rate. A 3/5 presort rate mailing may include pieces claimed at the basic presort rate if the entire mailing contains at least 200 pieces or 50 pounds of pieces eligible for and claimed at the 3/5 presort rate. The basic rate pieces must be prepared as required for that rate, but they do not have to meet a separate 200-piece/50-pound minimum. A 3/5 presort rate mailing may not include pieces claimed at the carrier route presort or saturation rates.

624.223 Sortation. To count toward the minimum number required by 624.221 and 624.222, pieces must be:

a. Automation-compatible, letter-size, prepared in 5- or 3-digit packages of 10 or more pieces, and/or sorted to 5- or 3-digit trays as prescribed in 628.19 and 647;

In 5- or 3-digit packages of 10 or more pieces that are correctly sorted to 5- or 3-digit sacks each containing at least 125 pieces or 15 pounds of pieces in 5- or 3-digit packages;

c. In 5- or 3-digit packages of 10 or more pieces that are correctly sorted to the appropriate level of pallet under 644.1;

d. Machinable parcels, in a correctly-prepared sack containing at least 10 pounds of machinable parcels for the same 5-digit or BMC destination; or

e. Machinable parcels, on a 5-digit or BMC pallet prepared under 644.2.

624.23 Residual. Residual pieces in a 3/5 presort rate mailing are those not prepared in one of the ways described in 624.223a-e, and do not count toward the minimum quantity required by 624.221 or 624.222. Residual pieces must be claimed and paid for at the basic presort rate (see 624.222) and prepared as required either by 641.12 and 641.13, or by 641.22, as appropriate.

624.24 Listing.

624.241 Content. The listing must show the number of pieces at each presort and the total number of pieces in the mailing. In addition, the listing must detail, by tray, sack, or pallet, the number of pieces claimed at the 3/5 presort rate, the number claimed at the basic presort rate, and the total number of pieces in that tray, sack, or pallet. If the listing does not show the complete top line that appears on the label of each tray, sack, or pallet in the mailing, another code may be shown on the listing provided it is also clearly legible on the label for the corresponding tray, sack, or pallet.

624.242 Requirement for Listing

a. When Required. The listing described in 624.241 must be provided for all mailings of nonidentical-weight pieces and for all mailings in which pieces eligible for and claimed at the 3/5 presort rate are commingled in the same mailing with residual (basic presort rate) pieces.

b. When Not Required. The listing required by 624.241 is not required when, for a mailing of identical-weight pieces, the mailer has physically separated the trays, sacks, or pallets containing pieces eligible for and claimed at the 3/5 presort rate from those containing residual (basic presort rate) pieces.

624.25 Marking. Each piece in the mailing must bear the appropriate rate marking required by 620.62.

624.26 Presort. All pieces in the mailing, regardless of rate, must be presorted as required by 641.1, 641.2 (for machinable parcels), or 644 (for palletized mailings).



**624.3 Carrier Route Presort Rate Eligibility**

* * * * *

624.33 Residual.

[In 624.33c, replace "third-class 'basic' level bulk rate" with "basic presort rate."]

* * * * *

624.36 Current Scheme.

624.361 Proper Makeup. [In the last sentence, replace "'basic' level third-class bulk rate" with "basic presort rate."]

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**624.4–624.6 [Reserved]**

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**624.7 Destination Rates.**

624.71 General.

624.711 Eligibility. Bulk third-class regular and special rate mail may qualify for the destination rates described in 611.222c and Exhibit 611.2 if prepared in accordance with the applicable provisions of 624.72 through 624.74 and deposited at the corresponding destination postal facility.

624.712 Other Rates and Reductions. Mailings must separately qualify for destination rates and any other rates or reductions claimed by the mailer. Only one destination reduction may be claimed for each mailpiece.

624.713 Documentation. Other than the mailing statement, no specific documentation is required in support of a destination rate, although documentation must be submitted if required by another rate or discount claimed for the same mailing.

624.714 Minimum Volume. The destination entry rate pieces prepared for deposit at each destination BMC, SCF or delivery unit must be presented as mailings. Each such mailing must consist of at least 200 pieces or 50 pounds of pieces and must be accompanied by the appropriate mailing statement.

624.715 Payment of Postage and Fees.

a. General. The correct postage for each mailing eligible for a destination rate must be affixed to each piece or paid through an advance deposit account having sufficient funds on deposit at the time of mailing. While funds intended to pay postage through an advance deposit account may be presented with the corresponding mailing, that mailing will neither be released for dispatch nor accepted if the resulting balance is not adequate to cover the applicable total postage as verified by the Postal Service.

b. Meter Postage. Except as provided by 144.8, pieces paid by meter postage must be accepted at the licensing post office (including its stations and branches), or at the destination bulk mail center (DBMC) (see 624.721) serving that post office (see 624.716d). Under the latter alternative, only the DBMC rate is available (see 624.72).

c. Precanceled Stamps. Pieces paid by precanceled stamps must be accepted at the post office (including its stations and branches) that issued the precanceled stamp permit, or at the destination bulk mail center (DBMC) (see 624.721) serving that post office (see 624.716d). Under the latter alternative, only the DBMC rate is available (see 624.72).

d. Permit Imprint. Postage for permit imprint pieces must be paid at the post office (including its stations and branches) where the permit is held and the annual fee is paid for the current 12-month period, or at the destination bulk mail center (DBMC) (see 624.721) serving that post office (see 624.716d). Under the latter alternative, only the DBMC rate is available (see 624.72).

e. Annual Fee. The applicable bulk mailing fees must be paid for the current 12-month period at the postal facility where postage is paid for the mailing.

624.716 Verification and Acceptance of Destination Rate Mailings.

a. General. Destination entry rate mailings must be presented to postal personnel at the origin mailer's plant (e.g., the origin detached mail unit (DMU)) as provided by 664, at the destination post office or bulk mail acceptance unit, or at another postal facility authorized to act as agent for the destination facility, as provided below. Mailers must adhere to the scheduling requirements in 624.717 for destination rate mailings.

b. At Origin. Destination rate mailings may be verified and paid at the mailer's plant, transported at the mailer's expense, and deposited for acceptance as mail at the appropriate destination postal facility as a plant-verified drop shipment (see 664). Plant-loaded mailings transported on postal transportation are not eligible for destination rates.

c. At Destination. Destination rate mailings may be verified and paid at the destination bulk mail acceptance unit, transported at the mailer's expense, and deposited at the appropriate destination delivery unit (station or branch). Alternatively, as determined by the postmaster, verification, postage payment, and acceptance can be performed at the destination delivery unit. Verification and postage payment can occur at another facility as provided by 624.716 d–e.

d. At a BMC. For a mailing to be verified and postage paid at a BMC, that BMC must be authorized to act as agent for the post office where the mailer's account or license is held by completion and approval of Form 4410, *Authorization for BMC Acceptance.* (Also see the restrictions in 624.715 b–e.) If the mailer is claiming the destination SCF rate (see 624.73) or the destination delivery unit rate (see 624.74), the mailer must further transport the shipment for deposit and acceptance at the destination SCF or delivery unit, as appropriate.

e. Acceptance by Another Facility. Another postal facility (other than a BMC under 624.716d) may act as agent for the destination post office if written authorization is provided by the destination post office and procedures (similar to those for BMC acceptance) are implemented and maintained to ensure that all postage for permit imprint mailings is collected. If the mailer is claiming the destination SCF rate (see 624.73) or the destination delivery unit rate (see 624.74), the mailer must further transport the shipment for deposit and acceptance at the destination SCF or delivery unit, as appropriate. Destination entry rates must not be allowed for mailings that are not transported by the mailer for deposit and acceptance at the destination BMC, SCF, or delivery unit, as applicable.

f. Security. If a destination rate mailing is not accepted as mail by the Postal Service at the same postal facility where verified, and will be transported to destination on the mailer's vehicle, the post office where the mail was verified must ensure that the shipment is secured in such a manner, and accompanied by appropriate documentation, as to allow confirmation that the shipment was not altered in any way before it was deposited for acceptance at the destination postal facility. Postal facilities must use USPS ball seals, USPS locks, or other postal security devices that prevent access to the mail by other than authorized postal employees. Vehicles that make en route stops must be resealed after the corresponding mail is removed.

624.717 Deposit of Mail.

a. General Requirement. Each mailing for which a destination rate is claimed must be deposited ast the time and location specified by the destination facility postmaster or designee.

b. Scheduled Deposit. Mailers must schedule deposit of destination rate mailings by contacting the manager,

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logistics and distribution, or designee, at the field division office in whose service area the destination facility is located. Mailers must comply with the scheduled deposit time provided (which, based on the facility's workload, may be up to 10 business days later). Destination facilities may defer acceptance or deposit of unscheduled or untimely mailings.

624.718 Mail for Other Destinations.

a. General Exclusion. Destination rate mailings can include other pieces not eligible for the destination rate claimed subject to the limitations in 624.718b.

b. Minimum Volume. Each destination rate mailing must meet the volume requirements in 624.714 and those that may apply for other rates or discounts claimed. Regardless of volume, the mailpieces for which a destination rate is claimed must represent more than half the mail (by weight or pieces, whichever is greater) presented by the same mailer within any 24-hour period. For purposes of this section, the mailer is the party presenting the material to the Postal Service (or for whom a transportation company has presented the material to the Postal Service), not the owner of the mail for whom that party may be acting as mailing agent.

c. Maximum Volume. The same mailer may not present for verification and acceptance more than 4 destination rate mailings at the same destination postal facility (or another acting as its agent) in any 24-hour period. The destination or agent facility postmaster or BMC manager may waive this maximum if local conditions permit. There is no maximum for mailing presented for verification by the origin DMU, or for deposit of plant-verified drop shipments.

d. Other Mailings. Each destination rate mailing must be separated from other mailings when presented for verification or acceptance and, within the mailing, the sacks containing destination rate pieces must be separated from the sack containing pieces not eligible for the destination rate. In transit, plant-verified drop shipment destination rate mail for one destination postal facility must be separated from mailings for other facilities and any freight on the same vehicle.

624.719 Plant-Loaded Mailings. Plant-loaded mailings (see 154) are not eligible for the destination rates in 624.72 through 624.74.

**624.72 Destination Bulk Mail Center (DBMC) Rate**

624.721 Definition. For purposes of this section, the term "destination bulk mail center (DBMC)" includes all bulk mail centers (BMCs), auxiliary service facilities (ASFs), and the facilities listed in Exhibit 722.1. (Note: The designated facilities for Puerto Rico and the Virgin Islands, Alaska, and Hawaii are San Juan, PR, Anchorage, AK, and Honolulu, HI, respectively.)

624.722 Eligibility. Pieces in a mailing that meet the requirements of 624.71 and 624.72 are eligible for the DBMC rate when deposited at a DBMC (as defined in 624.721), addressed for delivery within that facility's service area (ZIP Code range) as described in Exhibit 722.1, and placed in other than an SDC, state, or mixed states tray, sack, or pallet (as permitted by the presort requirement for the rate claimed) that is correctly labeled to that DBMC or to a postal facility within its service area.

624.723 Requirements Related to BMC Acceptance.

a. General. Except as noted in 624.724b, mailings deposited at a DBMC must meet the requirements in Handbook DM–102, *Bulk Mail Acceptance*, 723.1 and 723.2.

b. Authorization. Prior to mailing at the DBMC, authorization must be provided to the DBMC to act as acceptance agent for the entry post office (i.e., for the post office where the meter license, precanceled stamp permit, or permit imprint authorization is held). Authorization for BMC acceptance is established as provided in Handbook DM–102, 725. Mailings cannot be entered at a DBMC (whether the DBMC rate is claimed or not) without this authorization.

c. BMC Responsibilities. DBMC facilities are required to operate as prescribed in Handbook DM–102, Chapter 7, when accepting mailings for which the DBMC rate is claimed.

624.73 Destination Sectional Center Facility (DSCF) Rate.

624.731 Definition. For purposes of this section, the term "destination sectional center facility (DSCF)" refers to the facilities listed in Exhibits 122.83b–d.

624.732 Eligibility. Pieces in a mailing that meet the requirements of 624.71 and 624.73 are eligible for the DSCF rate when deposited at a DSCF (as defined in 624.731), addressed for delivery within that facility's service area (ZIP Code range), and placed in other than an SDC, BMC, state, or mixed states tray, sack, or pallet (as permitted by the presort requirement for the rate claimed) that is correctly labeled to that DSCF or to a postal facility within its service area.

624.733 Requirements Related to SCF Acceptance.

a. General. Except as noted in 624.734b, mailings deposited at a DBMC must meet the requirements in Handbook DM–102, *Bulk Mail Acceptance*, 723.1 and 723.2.

b. Exception. Postage must be paid as specified in 624.715. DSCFs may not accept mail otherwise paid except as provided by 144.8.

624.74 Destination Delivery Unit (DDU) Rate.

624.741 Definition. For purposes of this section, the term "destination delivery unit (DDU)" refers to the facility (post office, branch, station, etc.) where the carrier cases mail for delivery to the addresses on pieces in the mailing, and the term "carrier routes" includes city carrier routes, rural routes, highway contract routes, and general delivery and post office box sections.

624.742 Eligibility. Pieces in a mailing that meet the requirements of 624.71 and 624.74 are eligible for the DDU rate when deposited at a DDU (as defined in 624.741), addressed for delivery within that facility's service area (carrier routes), and sorted to a carrier route or carrier routes tray, sack, or pallet (as permitted by the presort requirement for the rate claimed) that is correctly labeled to the corresponding destination. Mailings for which the DDU rate is claimed must also be eligible for and claimed at either the carrier route or saturation rate (see 624.3 and 624.8, respectively, for additional requirements, as applicable). Under no circumstances will the DDU rate be allowed for mail that requires any postal transportation other than from the carrier's case to the customer's mail receptacle.

**624.8 Saturation Reduction**

624.81 General.

624.811 Eligibility. The saturation reduction is available to mail sorted to carrier routes (see 641.4), arranged within each route in delivery sequence, and prepared as required by 624.82–624.88. (For purposes of this section, city carrier routes, rural routes, highway contract routes, and general delivery and post office box sections will be referred to collectively as "carrier routes" unless specifically stated.) Mailings prepared under 629.4 may qualify for the saturation rate when the detached label cards are prepared to meet the requirements of this section. Pieces prepared using simplified address must meet the requirements in 122.41.

624.812 Destination Rates. Mailings claimed at the saturation rate must separately qualify for any destination rate claimed.

624.813 Copies for Other Destinations or at Other Rates.



a. General. A mailing which includes pieces claimed at the saturation rate may include other pieces claimed at other presort rates.

b. Separation. At the time when presented to the Postal Service, the sacks containing the saturation rate pieces must be separated from other sacks in the same mailing or other mailings. Any effective method of separation may be used.

c. Other Rates. In addition to those pieces prepared in walk sequence as required for the saturation rate (see 624.85), publishers are encouraged to prepare all other pieces in the mailing in walk sequence.

624.82 Preparation. To be eligible for the saturation rate, an addressed piece must be placed in a properly labeled carrier route sack containing only pieces for the corresponding carrier route, or in a properly prepared and labeled carrier route package placed in either a sack labeled to the corresponding carrier route or in a 3- or 5-digit carrier routes sack. (Saturation rate pieces in 3- and 5-digit carrier routes sacks are not eligible for the destination delivery unit rate.) Other pieces will not be eligible for the saturation rate, and may not be included in the mailing. Pieces prepared using simplified address must meet the requirements in 122.41.

624.83 Addressing. Saturation rate mail must be addressed as follows:

a. each piece addressed for delivery on a city carrier route must bear a complete delivery address or an alternative form of address as provided by 122.42 or 122.43.

b. each piece addressed for delivery through a general delivery or post office box unit must bear a complete delivery address or an alternative form of address as provided by 122.4.

c. each piece addressed for delivery on a rural or highway contract route must bear a simplified address (see 122.41).

624.84 Density.

624.841 General. Each saturation rate mailing must contain 200 pieces or 50 pounds of pieces.

624.842 Per 5-Digit ZIP Code. There is no minimum volume per 5-digit ZIP Code delivery area. Saturation rate mail need not be sent to all carrier routes within a 5-digit delivery area.

624.843 Per Carrier Route.

a. Pieces eligible for and claimed at the saturation rate must be addressed to either 90% or more of the residential addresses or 75% or more of the total number of addresses, whichever is less, on each city carrier route receiving saturation mail, and in each general delivery unit or post office box section receiving saturation rate mail not addressed in the simplified format.

b. Pieces eligible for and claimed at the saturation rate must be addressed to 75% or more of the total number of addresses on each rural or highway contract route receiving saturation mail, and in each general delivery unit or post office box section receiving saturation rate mail addressed in the simplified format.

624.844 Multiple Copies or Pieces per Address. Only one addressed piece per delivery address may be counted toward the minimum density prescribed in 624.841 and 624.843.

624.85 Walk-Sequencing.

624.851 General. The pieces in a saturation rate mailing must be organized in the sequence in which they will be delivered as determined by the Postal Service. Pieces prepared with a simplified address must meet the requirements of 122.413.

624.852 Packages. Walk-sequenced letter-size pieces must be prepared in packages that are not more than 4 inches thick and secured by plastic or elastic bands. Walk-sequenced flats must be prepared in packages secured by plastic or elastic bands.

624.853 Labeling. Each package of walk-sequenced pieces must bear a facing slip that covers the front of the top piece in the package. That facing slip must contain the phrases "WALK-SEQUENCED MAIL," "PACKAGE n OF nn" (where "n" is the sequential number of the package out of "nn," the total number of packages for the carrier route); "CARRIER ROUTE" (or "RURAL ROUTE," "HIGHWAY CONTRACT ROUTE," "POST OFFICE BOX SECTION," or "GENERAL DELIVERY SECTION," as applicable), followed by the appropriate number; and the name and ZIP Code of the delivery post office. The ZIP Code may be that of the delivery unit (station or branch) where applicable. The facing slip must present the required information in approximately the following format:

WALK-SEQUENCED MAIL, PACKAGE 5 OF 10, CARRIER ROUTE 17, CENTREVILLE VA 22020

624.86 Accuracy.

642.861 Error Rate. For each carrier route receiving mail at the saturation rate, no more than 5 percent of the total pieces for the route may be found out of sequence or sorted to the wrong carrier route. (The total number of pieces for the route is shown on the documentation required by 624.88.)

624.862 Errors not Counted. An error will not be counted when pieces are not in sequence or not sorted to the correct carrier route because of Postal Service scheme changes not yet incorporated in the scheme the mailer is required to use in preparation of the mailing (see 624.87 and 624.86).

624.863 Pieces in Error. When a number of pieces is found that represents 5 percent or more of the total pieces for the route, the remaining pieces in the mailing for that route will be held and no further attempt made to distribute or deliver them. The delivery unit will notify the mailer or representative accordingly if the mailing was accompanied by the name and telephone number of the mailer or a local representative for the mailer. The mailer or representative may inform the delivery unit that it is abandoning the mailing, or, within 24 hours, either call for the mailing to correct the walk sequence errors or pay additional postage (the difference between the saturation and carrier route presort rates) for all the pieces in the mailing for that route.

624.864 Refunds. No refund of postage will be available for postage paid for abandoned mailings.

624.87 Delivery Sequence Information.

624.871 General. Mailings entered at the saturation rate may be based on delivery sequence information provided by the Postal Service using the methods in 624.872 or 624.873.

624.872 CDS File. The Computerized Delivery Sequence (CDS) file is updated quarterly. Saturation rate mailings presented for acceptance 45 days or more after the release of a quarterly CDS file update must incorporate the changes contained in that update. Mailings based on out-of-date information must not be accepted at the saturation rate.

624.873 Address Sequencing Service. Mailings entered at the saturation rate may be based on delivery sequence information provided by the Postal Service's address sequencing services (see 946). These services can be used to provide updated information as requested by the customer. Mailers who use address sequencing service must base saturation rate mailings on address sequence information that was updated not more than 45 days prior to the date of mailing. Mailings based on older information must not be accepted at the saturation rate.

624.88 Documentation.

624.881 General. Mailers who prepare mailings claimed at the saturation rate must be prepared to substantiate compliance with the requirements in 624.8.

624.882 Density.

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a. Unless simplified address is used, for each carrier route to which saturation rate mail is addressed, the mailer must provide documentation to indicate the total number of addressed pieces, the total number of possible residential deliveries, the number and percentage to which mailpieces in the mailing are addressed, the total number of possible delivery stops, and the number and percentage to which mailpieces in the mailing are addressed.

b. If simplified address is used, for each carrier route to which saturation rate mail is addressed, the mailer must provide documentation to indicate the total number of addressed pieces, the total number of possible delivery stops, and the number and percentage to which mailpieces in the mailing are addressed.

624.883 Accuracy.

a. For each carrier route receiving saturation rate mail, the mailer who uses CDS must annotate the mailing statement to show the issue date of the Postal Service walk-sequence scheme (CDS) used in preparation of the mail (see 624.87).

b. For each carrier route receiving saturation rate mail, the mailer who uses address sequencing service must annotate the mailing statement to show the date of the last update for the address sequence information used in preparation of the mail (see 624.87). The mailer must provide evidence of this date by copy of the *Delivery Unit Summary* that served as the mailer's bill for the address sequencing service charges (see 940.71).

624.884 Documentation Required to Accompany the Mail. In addition to the facing slip required by 624.853, the first package of mail for each carrier route must contain a summary for that route which indicates the total number of addressed pieces, the total number of possible residential deliveries and the number and percentage to which mailpieces are addressed (if applicable), the total number of possible delivery stops and the number and percentage to which mailpieces are addressed, and the issue date of the CDS scheme or the address sequence information used in preparation of the mail (as applicable).

* * * * *

## 628 ADDITIONAL CONDITIONS FOR AUTOMATED BULK THIRD-CLASS RATES

### 628.1 Conditions Applicable to Automated Bulk Third-Class Rates

628.11 General.

628.111 Definition. The automated bulk third-class rates (Basic ZIP+4, 3/5 ZIP+4, Basic ZIP+4 Barcoded, 3-Digit ZIP+4 Barcoded, and 5-Digit ZIP+4 Barcoded) apply only to letter-size mailpieces in mailings prepared as specified by this section and according to other requirements referred to in this section.

628.112 Marking. The address side of each piece in the mailing must show the marking required by 629.6 that is appropriate for the rate claimed for the mailing.

628.113 Postage. The mailer must pay all applicable postage before the corresponding mailing can be accepted by the Postal Service (see 661.3).

628.114 Physical Characteristics. Each piece in the mailing must meet the following standards:

a. Its length must be not less than 5 inches nor more than 11½ inches;

b. Its height must be not less than 3½ inches nor more than 6⅛ inches;

c. Its thickness must be not less than .007 inch nor more than ¼ inch;

d. Its length divided by its height must be not less than 1.3 nor more than 2.5; and

e. Its weight must not exceed .1563 pound (2.5 ounces).

628.115 ZIP Codes.

a. ZIP+4 Rates. The delivery address on pieces claimed at a ZIP+4 rate must contain either the correct ZIP+4 code or the correct 5-digit ZIP Code, provided the correct ZIP+4 barcode, prepared in accordance with 628.15, also appears on the piece. [The requirement for a ZIP+4 code may be satisfied either by the correct numeric ZIP+4 code in the delivery address or by the correct ZIP+4 barcode prepared as described in 628.15.]

b. ZIP+4 Barcoded Rates. The delivery address on pieces claimed at a ZIP+4 Barcoded rate must contain either the correct ZIP+4 code or the correct 5-digit ZIP Code.

628.116 Barcode Clear Zone.

a. General Requirement. The address side of each piece in an automated rate mailing must have a barcode clear zone that can contain no printing or markings except for a barcode properly prepared in accordance with 628.15. See 628.156 and 628.162, respectively, for additional conditions that apply to pieces with 5-digit barcodes and pieces with barcode windows through which no barcode appears.

b. Dimensions. The barcode clear zone is an imaginary rectangle on the address side of the mailpiece formed by:

(1) The bottom edge;

(2) A line parallel to and ⅝ inch above the bottom edge;

(3) The right edge; and

(4) A line parallel to and 4½ inches to the left of the right edge.

628.12 Minimums.

628.121 Per Mailing.

a. Quantity. Each mailing at an automated third-class rate must consist of not less than 200 pieces or 50 pounds of pieces that are eligible for and claimed at that rate, and that meet both the applicable general requirements specified in 628.1 and the specific requirements for the rate claimed. Other pieces that may be included in the same mailing and claimed at another rate for which they may qualify do not have to meet a separate minimum quantity.

b. 85% Requirement.

(1) ZIP+4 Rate Mailings. Regardless of the number of pieces in the mailing, or the rates claimed, no less than 85% of the number of addressed pieces in each mailing must bear the correct ZIP+4 code in the delivery address (see 628.115b). Regardless of the rate for which they may qualify, all remaining pieces must meet the requirements in 628.114, 628.115, and, as applicable, 628.16.

[The Postal Service intends to propose a revision to section 628.121b(2), which currently requires that at least 85% of the pieces in a ZIP+4 barcoded rate mailing bear a correctly prepared ZIP+4 barcode. By that revision, the 85% figure would be increased to 100%, effective September 15, 1990.]

(2) ZIP+4 Barcoded Rate Mailings. Regardless of the number of pieces in the mailing, or the rates claimed, no less than 85% of the number of addressed pieces in each mailing must bear the correct ZIP+4 barcode (see 628.15). Regardless of the rate for which they may qualify, all remaining pieces must meet the requirements in 628.114, 628.115, and, as applicable, 628.16.

628.122 Per Package, Tray, and Sack. Each package must contain a minimum of 10 addressed pieces, and must be placed in either a sack containing no less than 125 addressed pieces or 15 pounds of addressed pieces, or a tray that is at least ⅔ full when the contents are reasonably compressed.

628.13 OCR Readability (ZIP+4 Rates).

628.131 Requirements. [Text of existing 624.443a; redesignate 624.443a(1) and 624.443a(1)(a) through 624.443(1)(d) as 628.131a and 628.131a(1) through 628.131a(4), respectively; redesignate existing 624.443a (2) through (4) as 628.131b through 628.131d, respectively.]

628.132 Nonmandatory Guidelines. [Text of existing 624.443b; redesignate existing 624.443b (1) through (11) as 628.132a through 628.132k, respectively.]

628.133 Exceptions. Pieces prepared with ZIP+4 barcodes (under 628.115b(2) and 628.15) are exempt from the OCR readability requirements of this section, but remain eligible for the automated third-class rates if other applicable requirements are met. Pieces prepared with both a 5-digit ZIP Code and 5-digit barcode (under 628.161), or with a barcode window through which no barcode appears (under 628.162) are also exempt from the OCR readability requirements of this section, but do not qualify for any automated third-class rate.



628.14 [Reserved]

### 628.15 Preparation of ZIP+4 Barcodes

628.151 Correct ZIP+4 Barcode. [Text of existing 624.65a.]

628.152 General Preparation. [Text of existing 624.65b; in the fourth and fifth sentences, replace "Exhibit 624.65b" with "Exhibit 628.152"; redesignate Exhibit 624.65b as Exhibit 628.152.]

628.153 Barcode Location. [Text of existing 624.65c; in the fourth and fifth sentences, replace "Exhibit 624.65c" with "Exhibit 628.153"; redesignate Exhibit 624.65c as Exhibit 628.153.]

628.154 Technical Specifications. [Renumber existing 624.65 d–g as 628.154 a–d, respectively.]

628.155 Inserts. [Text of existing 624.65h; redesignate 624.65h(1) and 624.65h(1) (a) through (d) as 628.155a and 628.155a (1) through (4), respectively; redesignate 624.65h(2) and 624.65h(2) (a) through (d) as 628.155b and 628.155b (1) through (4), respectively.]

628.16 Other Mailpieces.

628.161 Pieces Bearing a 5-Digit Barcode.

a. In Automated Rate Mailings. Mailers may place 5-digit barcodes on pieces in automated rate mailings provided those pieces are prepared as required by 628.161b.

b. Preparation. All 5-digit barcodes must meet the requirements of 628.154 and 628.155 and the following:

(1) Barcode Format. The 5-digit barcode must be prepared as described in 628.152, except that there must be a single field of 32 bars consisting of a frame bar, a series of bars that represent the correct 5-digit ZIP Code for the delivery address on the piece (see Exhibit 628.152), a correction digit, and a final frame bar. The correction digit is the single-digit value that must be added to the sum of the numbers in the 5-digit ZIP Code to make the total a multiple of 10 (i.e., end in a zero).

(2) Barcodes Printed Directly on Mailpieces. The 5-digit barcode printed on mailpieces that do not have a window for a barcode insert must be located in a barcode read area as required by 628.153, except that, within that area, the first (left-most) bar of the barcode must be located no less than 3⅛ inches, nor more than 4 inches, from the right edge of the mailpiece. See Exhibit 628.161b(2).

[Renumber existing Exhibit 624.66b(3) as Exhibit 628.161b(2).]

(3) Barcodes Printed on Inserts. 5-digit barcodes printed on inserts and that will appear through a barcode window may meet either the requirements described in 628.153 or those in 628.161b(2).

c. Rate Eligibility.

(1) Pieces prepared with a 5-digit barcode appearing through a barcode window are not eligible for any automated rate and cannot be included among pieces counted toward the 85% requirements (see 628.121b).

(2) Pieces bearing a 5-digit barcode are not eligible for any ZIP+4 Barcoded rate and cannot be included among pieces counted toward the 85% requirements (see 628.121b).

(3) Pieces with a 5-digit barcode printed directly on them (as described in 628.161b(2)) may be eligible for a ZIP+4 rate and can be included among pieces counted toward the 85% requirement (see 628.121b) if each meets the other requirements for a 5-digit barcode (in 628.161b), the OCR readability requirements in 628.131, and bears a numeric ZIP+4 code in the delivery address.

628.162 Pieces Prepared With Barcode Windows Through Which No Barcode Appears.

Any piece prepared with a barcode window through which a barcode (printed on an insert) will not appear is not eligible for any automated rate and cannot be included among pieces counted toward the 85% requirement (see 628.121b). If placed in an automated rate mailing, such a mailpiece must meet the requirements of 628.11.

628.17 Documentation.

628.171 None Required. No documentation is required for automated rate mailings of identical-weight pieces when all pieces in the mailing are eligible for and claimed at the same rate and have the correct amount of postage affixed. Each piece must also bear either the correct ZIP+4 code corresponding to the delivery address on the piece (for mailings at the Basic or 3/5 ZIP+4 rates) or the correct 5-digit ZIP Code and the correctly-prepared ZIP+4 barcode corresponding to the delivery address on the piece (for mailings at any ZIP+4 Barcoded rate).

628.172 Submission With Each Mailing. Mailings that do not meet the requirements of 628.171 must be accompanied by documentation that:

a. Details the number of pieces for each 5-digit ZIP Code (or other sortation) that qualify for each rate in the mailing.

b. Provides cumulative totals after each line entry, subtotals by sortation (where required), and grant totals for the entire mailing by rate.

c. Shows the number of pieces prepared with a ZIP+4 code or a ZIP+4 barcode, as applicable to the particular rate claimed.

d. Proves the mailing has met or exceeded the "85% requirement" (see 628.121).

e. Details the number of pieces at each rate and increment, the postage (or additional postage) due, and the total postage for the mailing.

f. Provides the additional detail required for the rate claimed (see 628.2 through 628.7 for the specific documentation requirements that apply to each rate).

628.173 Submission Based on a Mailing List or Cycle. As an alternative to submitting documentation with each mailing, mailers may submit documentation based on a mailing list or mailing cycle under the following conditions:

a. The mailing period for the list, or the duration of the mailing cycle, each as defined by the mailer, must be longer than 24 hours but not more than 1 week (7 consecutive days). The mailer must notify the post office where mailings are accepted of the first and last mailings, and the beginning and ending points of the time period, of the list or cycle.

b. More than one list or cycle may be active at one time, but mailings from each must be prepared and presented separately, clearly identified, and accompanied by mailing statements that clearly relate to specific mailings.

c. Compliance with the 85% requirement (see 628.121) may be based on the entire list or cycle.

d. The documentation must contain the information described in 628.172.

e. Complete documentation for the entire mailing list or mailing cycle must be submitted with the first mailing from that list or cycle.

f. The appropriate mailing statements must be submitted with each mailing when presented for acceptance.

g. At the time the last mailing from a list or cycle is presented to the Postal Service, any discrepancies between the mail presented to and verified by the Postal Service, the mail described in the documentation, and the mail claimed on the corresponding mailing statements (in regard to quantity, rate eligibility, or postage) must be reconciled to the satisfaction of the Postal Service, and any additional postage that may be due must be paid by the mailer.

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628.174 Mailing Statements. When presented for acceptance, each mailing must be accompanied by the appropriate mailing statement, completed by the mailer. The statement must be attached or otherwise related by code or reference to specific supporting documentation. All mailing statements and supporting documents are subject to verification by the Postal Service.

628.18 Presort

628.181 General Requirement. All pieces in an automated rate bulk third-class mailing must be presorted together as required by 641.

628.182 Rate Eligibility

a. Basic ZIP+4 and Basic ZIP+4 Barcoded Rates. All pieces packaged and sacked under 641 are eligible for the Basic ZIP+4 and Basic ZIP+4 Barcoded rates if the other applicable requirements are met (see 628.2 and 628.5, respectively).

b. 3/5 ZIP+4 Rates. Pieces in 5-digit, optional city, and 3-digit packages that are correctly sorted to 5-digit, optional city, and 3-digit sacks are eligible for the 3/5 ZIP+4 rates if the other applicable requirements are met (see 628.3).

c. 3-Digit ZIP+4 Barcoded Rates. Pieces packaged in optional city and 3-digit packages that are correctly sorted to optional city and 3-digit sacks are eligible for the 3-digit ZIP+4 Barcoded rates if the other applicable requirements are met (see 628.6).

c. 5-Digit ZIP+4 Barcoded Rate. Only pieces in 5-digit packages correctly sorted to 5-digit, optional city, and 3-digit sacks are eligible for the 5-digit ZIP+4 Barcoded rate if the other applicable requirements are met (see 628.7).

628.19 Optional Use of Trays. Automated rate bulk third-class mailings may be prepared in trays rather than in sacks as provided by 647.

**628.2 Basic ZIP+4 Rate**

628.21 Minimum Quantity. As prescribed in 628.12, each Basic ZIP+4 mailing must contain at least 200 pieces or 50 pounds of pieces that are eligible for and claimed at the Basic ZIP+4 rate. In addition, regardless of the rate claimed for the pieces, no less than 85% of the number of addressed pieces in each Basic ZIP+4 rate mailing must bear the correct ZIP+4 code in the delivery address (as provided by 628.115b). All remaining pieces must meet the requirements in 628.11.

628.22 OCR Readability. Pieces intended for eligibility for the Basic ZIP+4 rate must meet the OCR readability requirements in 628.13, unless subject to the exception for ZIP+4 barcoded pieces (see 628.115b, 628.133, and 628.15).

628.23 Documentation. In addition to the general requirements of 628.17, documentation must be prepared with separate columns to list the number of pieces at the Basic ZIP+4 rate and, as applicable, the 3/5 presort rate (with a ZIP+4 code), the 3/5 presort rate (without a ZIP+4 code), the basic presort rate (with a ZIP+4 code), the basic presort rate (without a ZIP+4 code), and the cumulative total pieces in the mailing through each line entry. A separate line entry must be provided for each 5-digit ZIP Code for which pieces have been packaged in 5-digit or optional city packages, and for each 3-digit ZIP Code prefix for which pieces have been packaged otherwise.

628.24 Presort. See 628.18.

628.25 Additional Tray and Sack Labeling Requirements. The second (contents) line on labels for trays and sacks in Basic ZIP+4 rate mailings must show the information specified in 641.133 and 641.135 followed by either "BASIC ZIP+4" or "Z+4."

**628.3 3/5 ZIP+4 Rate**

628.31 Minimum Quantity. As prescribed in 628.12, each 3/5 ZIP+4 mailing must contain at least 200 pieces or 50 pounds of pieces that are eligible for and claimed at the 3/5 ZIP+4 rate. In addition, regardless of the rate claimed for the pieces, no less than 85% of the number of addressed pieces in each 3/5 ZIP+4 rate mailing must bear the correct ZIP+4 code in the delivery address (as provided by 628.115b). All remaining pieces must meet the requirements in 628.11.

628.32 OCR Readability. Pieces intended for eligibility for the 3/5 ZIP+4 rate must meet the OCR readability requirements in 628.13, unless subject to the exception for ZIP+4 barcoded pieces (see 628.115b, 628.133, and 628.15).

628.33 Documentation. In addition to the general requirements of 628.17, documentation must be prepared with separate columns to list the number of pieces at the 3/5 ZIP+4 rate and, as applicable, the Basic ZIP+4 rate, the 3/5 presort rate (with a ZIP+4 code), the 3/5 presort rate (without a ZIP+4 code), the basic presort rate (with a ZIP+4 code), the basic presort rate (without a ZIP+4 code), and the cumulative total pieces in the mailing through each line entry. A separate line entry must be provided for each 5-digit ZIP Code for which pieces have been packaged in 5-digit or optional city packages, and for each 3-digit ZIP Code prefix for which pieces have been packaged otherwise.

628.34 Presort. See 628.18.

628.35 Optional Sortation to Automated Sites. Mailers may prepare 3/5 ZIP+4 rate mailings without making 5-digit packages or sacks if:

a. All pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m;

b. All pieces are prepared in 3-digit packages and 3-digit sacks; and

c. Pieces destinating in other ZIP Code areas are prepared as a separate mailing.

628.36 Additional Tray and Sack Labeling Requirements. The second (contents) line on labels for trays and sacks in 3/5 ZIP+4 rate mailings must show the information specified in 641.133 and 641.135 followed by either "3/5 ZIP+4" or "3/5 Z+4."

**628.4 [Reserved]**

**628.5 Basic ZIP+4 Barcoded Rate**

628.51 Minimum Quantity. As prescribed in 628.12, each Basic ZIP+4 Barcoded mailing must contain at least 200 pieces or 50 pounds of pieces that are eligible for and claimed at the Basic ZIP+4 Barcoded rate. In addition, regardless of the rate claimed for the pieces, no less than 85% of the number of addressed pieces in each Basic ZIP+4 Barcoded rate mailing must bear a correctly prepared ZIP+4 barcode (as provided by 628.15). All remaining pieces must meet the requirements in 628.11.

628.52 ZIP+4 Barcode. Pieces intended for eligibility for the Basic ZIP+4 Barcoded rate must bear a ZIP+4 barcode prepared as required by 628.15.

628.53 Documentation. In addition to the general requirements of 628.17, documentation must be prepared with separate columns to list the number of pieces at the Basic ZIP+4 Barcoded rate, and, as applicable, the 3/5 ZIP+4 rate (with a ZIP+4 barcode), the 3/5 ZIP+4 rate (without a ZIP+4 barcode), the Basic ZIP+4 rate (with a ZIP+4 barcode), the Basic ZIP+4 rate (without a ZIP+4 barcode), the 3/5 presort rate (with a ZIP+4 barcode), the 3/5 presort rate (without a ZIP+4 barcode), the basic presort rate (with a ZIP+4 barcode), the basic presort rate (without a ZIP+4 barcode), and the cumulative total pieces in the mailing through each line entry. A separate line entry must be provided for each 5-digit ZIP Code for which pieces have been packaged in 5-digit or optional city packages, and for each 3-digit ZIP Code prefix for which pieces have been packaged otherwise.

628.54 Presort. See 628.18.

628.55 Additional Tray and Sack Labeling Requirements. The second (contents) line on labels for trays and sacks in Basic ZIP+4 Barcoded rate mailings must show the information specified in 641.133 and 641.135 followed by either " ZIP+4 Barcoded" or "Z+4 B/C."



**628.6 3-digit ZIP+4 Barcoded Rate**

628.61 Minimum Quantity. As prescribed in 628.12, each 3-Digit ZIP+4 Barcoded mailing must contain at least 200 pieces or 50 pounds of pieces that are eligible for and claimed at the 3-Digit ZIP+4 Barcoded rate. In addition, regardless of the rate claimed for the pieces, no less than 85% of the number of addressed pieces in each 3-Digit ZIP+4 Barcoded rate mailing must bear a correctly prepared ZIP+4 barcode (as provided by 628.15). All remaining pieces must meet the requirements in 628.11.

628.62 ZIP+4 Barcode. Pieces intended for eligibility for the 3-Digit ZIP+4 Barcoded rate must bear a ZIP+4 barcode prepared as required by 628.15.

628.63 Documentation. In addition to the general requirements of 628.17, documentation must be prepared with separate columns to list the number of pieces at the 3-Digit ZIP+4 Barcoded rate and, as applicable, the Basic ZIP+4 Barcoded rate, the 3/5 ZIP+4 rate (with a ZIP+4 barcode), the 3/5 ZIP+4 rate (without a ZIP+4 barcode), the Basic ZIP+4 rate (with a ZIP+4 barcode), the Basic ZIP+4 rate (without a ZIP+4 barcode), the 3/5 presort rate (with a ZIP+4 barcode), the 3/5 presort rate (without a ZIP+4 barcode), the basic presort rate (with a ZIP+4 barcode), the basic presort rate (without a ZIP+4 barcode), and the cumulative total pieces in the mailing through each line entry. A separate line entry must be provided for each 5-digit ZIP Code for which pieces have been packaged in 5-digit or optional city packages, and for each 3-digit ZIP Code prefix for which pieces have been packaged otherwise.

628.64 Presort. See 628.18.

628.65 Optional Sortation to Automated Sites. Mailers may prepare 3-Digit ZIP+4 Barcoded rate mailings without making 5-digit packages or sacks if:

a. All pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m;

b. All pieces are prepared in 3-digit packages and 3-digit sacks; and

c. Pieces destinating in other ZIP Code areas are prepared as a separate mailing.

628.66 Additional Tray and Sack Labeling Requirements. The second (contents) line on labels for trays and sacks in 3-Digit ZIP+4 Barcoded rate mailings must show the information specified in 641.133 and 641.135 followed by either "3-DIGIT ZIP+4 BARCODED" or "3D Z+4 B/C."

**628.7 5-Digit ZIP+4 Barcoded Rate**

628.71 Minimum Quantity. As prescribed in 628.12, each 5-Digit ZIP+4 Barcoded mailing must contain at least 200 pieces or 50 pounds of pieces that are eligible for and claimed at the 5-Digit ZIP+4 Barcoded rate. In addition, regardless of the rate claimed for the pieces, no less than 85% of the number of addressed pieces in each 5-Digit ZIP+4 Barcoded rate mailings must bear a correctly prepared ZIP+4 barcoded (as provided by 628.15). All remaining pieces must meet the requirements in 628.11.

628.72 ZIP+4 Barcoded. Pieces intended for eligibility for the 5-Digit ZIP+4 Barcoded rate must bear a ZIP+4 barcode prepared as required by 628.15.

628.73 Documentation. In addition to the general requirements of 628.17, documentation must be prepared with separate columns to list the number of pieces at the 5-Digit Barcoded rate and, as applicable, the 3-Digit ZIP+4 Barcoded rate, the Basic ZIP+4 Barcoded rate, the 3/5 ZIP+4 rate (with a ZIP+4 barcode), the 3/5 ZIP+4 rate (without a ZIP+4 barcode), the Basic ZIP+4 rate (with a ZIP+4 barcode), the Basic ZIP+4 rate (without a ZIP+4 barcode), the 3/5 presort rate (with a ZIP+4 barcode), the 3/5 presort rate (without a ZIP+4 barcode) the basic presort rate (with a ZIP+4 barcode) the basic presort rate (without a ZIP+4 barcode), and the cumulative total pieces in the mailing through each line entry. A separate line entry must be provided for each 5-digit ZIP Code for which pieces have been packaged in 5-digit or optional city packages, and for each 3-digit ZIP Code prefix which pieces have been packaged otherwise.

628.74 Presort. See 628.18.

628.75 Additional Tray and Sack Labeling Requirements. The second (contents) line on labels for trays and sacks in 3-Digit ZIP+4 Barcoded rate mailings must show the information specified in 641.133 and 641.135 followed by either "5-DIGIT ZIP+4 BARCODED" or "5D Z+4 B/C."

**628.8 [Reserved]**

**628.9 [Reserved]**

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629 MAILPIECE CHARACTERISTICS

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**629.2 Physical Limitations**

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629.22 Size, Shape, and Ratio (General Standards)

629.221 Maximum Size Standards

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b. Basic Presort and 3/5 Percent Rates. There is no maximum size for basic presort rate and 3/5 presort rate bulk third-class mail.

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**629.4 Optional Use of Detached Address Labels for Flats**

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629.47 Saturation Rate. Mailing prepared under 629.4 may qualify for the saturation rate if the detached cards are prepared to meet the requirements of 624.8.

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**629.6 Marking**

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629.62 Basis Presort and 3/5 Presort Rates. * * *

629.63 Carrier Route Presort Rate. [In the first sentence delete the word "level."]

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**640 Bulk Mail Presort Requirements**

641 STANDARD PACKING AND SACKING REQUIREMENTS

**641.1 Letter-Size, Flat-Size, and Irregular Parcel Mailings**

641.11 General. All basic presort and 3/5 presort rate bulk third-class-mailing must be prepared as specified in 641.1, subject to the exceptions contain in 641.124 and 641.136 for loose-packing, 643 for irregular parcels, 644 for palletization, and 647 for traying. All pieces presented in a single mailing must be presorted together as required by this section. The level of sortation (i.e., packing and trayng or sacking) determines eligibility for the 3/5 presort rate; pieces not claimed at or not eligible for the 3/5 presort rate must be claimed at the basic presort rate (see 624.1 and 624.2).

641.12 Packaging Requirements

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641.124 Loose Packing. [Add as the fourth sentence:] Pieces prepared in loose-packed 5-digit sacks may qualify for the 3/5 presort rate subject to the applicable requirements in 624.2.

641.125 Rate Eligibility. Packages prepared under 641.121b (5-digit), and 641.121d (3-digit) may be eligible for the 3/5 preport rate if correctly sacked or trayed to qualifying destinations as required by 624.2 and 641.13. Packages prepared under 641.121a and 641.121 e–h are not eligible for the 3/5 presort rate

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and must be claimed at the basic presort rate.

641.13 Sacking Requirements.

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641.136 Loose-Pack Sack. [Add as the fifth sentence:] Pieces prepared in loose-packed 5-digit sacks may qualify for the 3/5 presort rate subject to the applicable requirements in 624.2.

641.137 Rate Eligibility. Pieces correctly packaged under 641.121b (5-digit), 641.121c (optional city), and 641.121d (3-digit), and correctly sacked under 641.135a-c (5-digit), optional city, or 3-digit) may be eligible for the 3/5 presort rate if otherwise qualified under 624.2. Pieces in other packages, or packaged under 641.121 b–d but not sacked under 641.135 a–c, are not eligible for the 3/5 presort rate and must be claimed at the basic presort rate.

**641.2 Machinable Parcel Preparation Requirements**

641.21 General

641.211 Preparation. [Text of existing 641.21.]

641.212 Rate Eligibility. Subject to the provisions of 624.2, pieces may be eligible for the 3/5 presort rate when prepared under 641.221 and 641.222. Mailers wishing to claim the 3/5 presort rate *must* presort to 5-digit destinations [as required by 641.221] before presorting to destinating BMCs under 641.222. Pieces correctly presorted and labeled under 641.222 to the origin BMC will be eligible for the 3/5 presort rate.

641.22 Sacking Requirements.

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641.222 Bulk Mail Center (BMC) Sacks.

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641.223 Mixed MBC Sacks.

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[Delete existing 641.23 and 641.3.]

**641.4 Additional Presort Requirements for Carrier Route Presort Rate Mailings**

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644 PALLETIZATION REQUIREMENTS

**644.1 Packages and Bundles Presented on Pallets**

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644.17 Commingling Mixed Rate Level Mailings on Pallets.

644.171 General. [Replace "basic, 5-digit, or carrier route" with "basic presort, 3/5 presort, or carrier route presort."]

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644.173 Preparation Requirements.

a. Summary Listing. * * *

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(2) The number of pieces that qualify for the basic presort rate and for the 3/5 presort rate for each 5-digit ZIP Code.

(3) The number of pieces that qualify for the basic presort rate and for the 3/5 presort rate for each 3-digit ZIP Code prefix.

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644.18 Copalletizing Multiple Bulk Third-Class Flat-Size Mailings

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644.186 Preparation Requirements for Copalletized Flat-Size Mail

a. Summary List. * * *

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(2) If the 3/5 presort rate is claimed, the number of pieces that qualify for the 3/5 presort rate for each 5-digit ZIP Code, listed by individual mailing and a total for the pallet.

(3) If the basic presort rate is claimed, a detailed list by ZIP Code describing the number of pieces that qualify for the basic presort rate, by individual mailing, and a total for each pallet.

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**644.2 Palletizing Machinable Third-Class Parcels**

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644.22 Machinable Parcel Pallet Preparation

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644.225 Rate Eligibility. Subject to 624.2, pieces may be eligible for the 3/5 presort rate when prepared under 644.222. Pieces correctly presorted under 644.222b to the service area of the origin BMC will be eligible for the 3/5 presort rate.

644.23 Presentation of Mailings. [Replace "third-class carrier route presort level rate and the third-class 5-digit presort level rate" with "3/5 presort and carrier route presort bulk third-class rates."]

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645 BUNDLING INSTEAD OF SACKING (BEDLOADED BUNDLES)

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**645.3 Bundle Preparation**

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645.33 Labels. * * *

[In the NOTE, replace "Five-digit presort level rate packages and bundles and third-class carrier route packages and bundles" with "3/5 presort rate packages and bundles and carrier route presort rate packages and bundles."]

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647 TRAYS.

**647.1 General**

647.11 Automation-Compatible Mailpieces. ZIP+4 and ZIP+4 Barcoded rate mailings of automation-compatible letter-size mailpieces may be prepared in trays rather than in sacks subject to the requirements of this section. Trays are the preferred container for automation-compatible mail.

647.12 Other Mailpieces. The use of trays for other third-class mail is prescribed in 641.33 and 641.43.

**647.2 Preparation of Mail in Trays**

647.21 Packaging.

647.211 General. Mailings prepared in trays must be packaged as required by 641.12, except as provided below.

647.212 Carrier Route Trays. Pieces being claimed at the carrier route presort rate need not be prepared in packages only when all the mail in those packages would be placed in the same tray for the same carrier route. Carrier route packages are required when the corresponding pieces are being placed in 5-digit or 3-digit carrier routes trays.

647.213 5-Digit Trays. Pieces need not be prepared in 5-digit packages only when all the mail in those packages will be placed in the same tray for the same 5-digit ZIP Code destination. 5-digit packages are required when the corresponding pieces are being placed in other than 5-digit trays.

647.214 3-Digit Trays. Pieces need not be prepared in 3-digit packages only when all the mail in those packages would be placed in the same tray for the same 3-digit ZIP Code destination. 5-digit packages are required when there are 10 or more pieces to the same 5-digit destination and when those packages are being placed in other than 5-digit trays. 3-digit packages are required when the corresponding pieces are being placed in other than 3-digit trays.

647.22 Traying.

647.221 General. Trays must be prepared in the same sequence as required for sacks under 641.135.

647.222 Minimum Volume per Tray. A tray must be prepared for a required presort destination when the corresponding pieces (or packages of pieces), when reasonably compressed, fill ¾ or more of the tray. Trays that contain less may not be prepared unless a sack containing less than 125 pieces and 15 pounds of pieces to the same destination is permitted under 641.135, 641.421b, 641.426, or 641.427.

647.223 Tray Labels. A tray label must be securely affixed to the end of each tray. Tray labels are subject to the same requirements as specified for sack labels in 641.133, 641.135, 641.423, 641.425, and 646, except that additional information must be added to the second (contents) line as specified in 628.25, 628.36, 628.55, 628.66, and 628.75.



647.224 Sleeving and Banding. To ensure the integrity of the mail in transit, each tray must be enclosed in a sleeve and secured by a plastic strap placed tightly around the length of the tray. The postmaster of the office of where the mail is accepted may waive this requirement for local mail.

647.23 Optional Sortation to Automated Sites. Mailers may prepare 3/5 ZIP+4 rate and 3-digit ZIP+4 barcoded rate mailings without making 5-digit packages or trays if

a. All pieces in the mailing are for destinations within the 3-digit ZIP Code ranges listed in Exhibit 122.63m;

b. All pieces are prepared in 3-digit packages and 3-digit trays; and

c. Pieces destinating in other ZIP Code areas are prepared as a separate mailing.

**647.3 Rate Eligibility.**

647.31 Presort. Mailings prepared in trays remain eligibile for the basic presort, 3/5 presort, carrier route presort, and saturation rates if the applicable requirements in 624.1, 624.2, 624.3, and 624.8 are met, and sufficient volume of mail per tray (see 647.222) is generated for the applicable required destinations.

647.32 Automated Rates. Mailings prepared in trays remain eligible for the ZIP+4 and ZIP+4 Barcoded rates if the applicable requirements in 628 are met.

647.33 Destination Entry. Mailings prepared in trays remain eligible for the destination entry rates if the applicable requirements in 624.7 are met.

650 Mailing

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652 BULK RATES

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**652.2 Separation of Mailings.**

[Replace "third-class carrier route presort level rate" and "5-digit presort level rate" with "carrier route presort rate" and "3/5 presort rate" respectively.]

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**660 Payment of Postage**

661 METHOD OF PAYMENT

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**661.2 Bulk Mailings at the Basic Presort, 3/5 Presort, and Carrier Route Presort Rates**

661.21 Identical-Weight Pieces. * * *

a. Meter Stamps. See 144.

(1) Bulk rate mailings may be mailed with the correct metered postage affixed to each piece (i.e., pieces eligible for the carrier route presort rate are metered at that rate, while pieces eligible for the 3/5 presort rate are metered at the 3/5 presort rate, and pieces subject to the basic presort rate are metered at the basic presort rate).

(2) [In the first sentence, delete "level." In the second sentence replace "basic" with "basic presort;" in the NOTE, replace "basic-rate" with "basic presort rate."]

(3) [In the first sentence, replace both "Five-digit presort rate" and "5-digit presort level rate" with "3/5 presort rate." In the second sentence, replace "basic rate" with "basic presort rate."]

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661.22 Nonidentical-Weight Pieces.

661.221 Pound Rates.

a. Permit Imprint. [In both the first and second sentences, replace "basic or 5-digit rate" with "basic presort or 3/5 presort rate."]

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c. Precanceled Stamps. [In the fourth sentence, replace "basic or 5-digit rate" with "basic presort or 3/5 presort rate."]

d. Alternative Option. [In the first sentence, replace "5-digit or basic"with "basic presort or 3/5 presort."]

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**661.3 Bulk Mailings at Basic ZIP + 4, 3/5 ZIP+4, and ZIP+4 Barcoded Rates**

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661.32 Meter Stamps.

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661.322 Correct Postage Affixed to Each Piece.

a. Basic ZIP+4 Mailings. [Replace "basic presort level rate" with "basic presort rate."]

b. Five-Digit ZIP+4 Mailings. [Replace "5-digit presort level rate" with "3/5 presort rate" and replace "basic presort level rate" with "basic presort rate."]

c. ZIP+4 Barcoded Mailings. [Replace "5-digit presort level rate" with "3/5 presort rate" and replace "basic presort level rate" with "basic presort rate."]

661.323 Lowest Rate in the Mailing Affixed to Each Piece.

a. Basic ZIP+4 Mailings. [Replace "basic presort level rate" with "basic presort rate."]

b. Five-Digit ZIP+4 Mailings. [Replace "5-digit presort level rate" with "3/5 presort rate" and replace "basic presort level rate" with "basic presort rate."]

c. ZIP+4 Barcoded Mailings. [Replace "5-digit presort level rate" with "3/5 presort rate" and replace "basic presort level rate" with "basic presort rate."]

661.324 Neither Lowest Rate Nor Correct Postage Affixed to Each Piece.

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b. Adding Postage. [Replace "5-digit presort" with "3/5 presort rate."]

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662 MAILING STATEMENTS

**662.1 General**

The mailer must complete, sign, and present a mailing statement with each third-class mailing for which postage is paid using a permit imprint or claimed at any bulk rate. The mailer must use the appropriate Postal Service form or a facsimile approved by the postmaster of the office of mailing.

**662.2 Mailer Responsibility**

The mailer is responsible for proper payment of postage. See 111.22.

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664 PLANT VERIFIED DROP SHIPMENT POSTAGE PAYMENT SYSTEM

**664.1 General**

664.11 Definition. The plant-verified drop shipment postage payment system is designed to allow destination acceptance of mailings prepared for entry at destination rates (see 624.7), while taking advantage of the greater postal efficiency associated with origin verification and postage payment. Approval for use of a plant-verified drop shipment postage payment system will be granted under the conditions specified in 664.2.

664.12 System Elements. Under this system: (a) The mailer's product is verified for proper classification, rate eligibility, preparation, and presort by postal personnel located at a mailer's plant (e.g., at a detached mail unit (DMU));

(b) Postage is prepaid at the post office serving the mailer's location (see 624.7);

(c) The shipment is released for dispatch under postal seal;

(d) The shipment is transported to destination postal facilities at the mailer's expense on the mailer's vehicle or on transportation procured by the mailer;

(e) The shipment is deposited at the destination postal facility by the mailer or the mailer's agent;

(f) The shipment is verified and accepted as mail by postal personnel at the destination postal facility and released for processing.

664.13 Participation. The plant-verified drop shipment postage payment system may be used only by mailers who have been authorized by the field division general manager/postmaster in whose service area the mailer is located (see 664.3).

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664.14 Other Mailings. Other destination entry mailings that are not verified at the origin plant under a plant-verified drop shipment postage payment system must be verified, accepted and paid for at the destination post office in accordance with 624.716c–e.

**664.2 Program Participation Criteria for Mailers**

664.21 Request for Participation. The mailer must submit an application for participation in the plant-verified drop shipment postage payment system as prescribed in 664.3.

664.22 Facilities for Postal Personnel. At each plant at which mail is inspected pursuant to a plant-verified drop shipment agreement (see 664.3), the mailer must provide an enclosed work area for the DMU that can be locked, has a telephone, is separate from the mailer's activities, and provides a safe working environment, as determined by the Postal Service.

664.23 Postage Payment. The mailer must pay all applicable fees, and must obtain and maintain all applicable permits or authorizations at the local post office serving the mailer's plant. Unless authorized to pay postage under a CPP system, the mailer must pay postage for plant-verified drop shipments at the post office serving the mailer's plant. If permit imprints are used, the mailer must ensure that sufficient funds are on deposit in the appropriate advance deposit accounts to pay for all plant-verified drop shipments prior to their release for dispatch. Mailers authorized to mail under a CPP system must pay postage for plant-verified drop shipments to the New York Rates and Classification Center. Postage payment must be in accordance with the requirements in the DMM, Handbook DM–102, *Bulk Mail Acceptance*, Handbook DM–103, *Penalty Mail*, and any applicable agreements between the mailer and the Postal Service.

664.24 Documentation.

a. The mailer must produce and submit an individual mailing statement for each mailing destined for each destination entry post office, at the time the mail is presented for verification and postage payment.

b. When required by the local postmaster, the mailer must submit consolidated mailing statements and a register of mailing statements to the Postal Service.

c. The mailer must produce and submit to the Postal Service the prescribed clearance documents, in duplicate, that must accompany each plant-verified drop shipment to the destination post office where the shipment will be deposited. Those documents must be presented in triplicate if the mailer wishes to have a signed and dated copy returned to its driver when mailings are unloaded at the destination entry postal facility.

664.25 Transportation.

664.251 Responsibility. The mailer is responsible for the transportation of plant-verified drop shipments from the origin plant to the destination postal facility.

664.252 Other Mailings. The mailer must not transport plant-verified drop shipment mailings on the same vehicle with other shipments that are not entered as plant-verified drop shipments.

664.253 Scheduling. The mailer must meet the requirements in 624.717 in regard to the deposit of mail at destination entry postal facilities.

664.254 Separation of Mailings. When a vehicle contains more than one plant-verified drop shipment for a single destination postal facility, the shipments must be separated, except that this requirement may be waived by the origin postmaster for copalletized or combined mailings provided the clearance document for that destination clearly identifies all of the mail for that facility. In addition, when a vehicle contains one or more shipments for more than one destination postal facility, the shipments must be separated by destination.

**664.3 Authorization**

664.31 Request.

664.311 General. The mailer must submit a written request to the mailer's local postmaster seeking assignment of postal personnel to the mailer's plant (e.g., establishment of a DMU) to support plant-verified drop shipment of destination entry rate mailings. No form is provided for this purpose.

664.312 Date of Filing. The mailer must submit the request at least 30 days prior to the date proposed for submission of the first plant-verified drop shipment using the system.

664.313 Content. The request must fully describe the characteristics of the mailings that will be prepared as plant-verified drop shipments. At a minimum, the request must include the following information for each mailing or series of mailings of the same product, publication, or job:

a. The schedule of mailing, i.e., the number, frequency and time of mailings (e.g., at noon daily for two weeks, every other Monday at 4 pm, etc.);

b. The number of pieces and mailing statements to be presented to postal personnel, both daily and in total;

c. The class of mail and processing category;

d. The level of sortation and rate(s) claimed;

e. If postage is paid locally

(1) the method of postage payment and a listing of the precanceled stamp permits, postage meter numbers and licenses, and permit imprint (or company permit imprint) to be used; and

(2) the alternative mailing system used by the mailer, if any (see 145.7, 145.8, and 145.9);

f. If postage is paid under Centralized Postage Payment (CPP) procedures, a copy of the authorization must accompany the request (separate authorization by the serving rates and classification center is required to mail under CPP);

g. The type and capacity of scales at the mailer's plant, if any;

h. The space available for postal personnel to use and the suitability of that space for verification of mail, record keeping, installation of computer equipment, and monitoring of vehicle loading;

i. The types of equipment used (trays, sacks, pallets, etc.) (authorizations must be obtained where required); and

j. The destination entry points to which shipments will be dispatched (e.g., a listing of the BMCs, SCFs, DDUs).

664.32 Approving or Denying Authorization.

664.321 Local Post Office. The local postmaster will review the application for completeness and accuracy; evaluate the mailer's ability to meet the requirements in 664.2, the suitability of the mailer's plant to accommodate postal personnel (i.e., a DMU), and the capability of the local post office to support the requested activity; and prepare a written summary of the results. This report and a recommendation for approval or denial of the mailer's request will be forwarded through the MSC/division manager, mailing requirements, to the field division general manager/postmaster.

664.322 Field Division. The field division general manager/postmaster will consider the postmaster's report and recommendation, determine whether the local post office has sufficient employees who are trained and qualified in mail classification and verification to support the requested plant-verified drop shipment activity, and prepare a final written decision on the mailer's request.

664.323 Approval. If the mailer's request for participation in the plant-verified drop shipment postage payment system is approved, the field division general manager/postmaster will prepare a plant-verified drop shipment agreement that must be signed by the general manager/postmaster, the mailer, and the postmaster of the post office serving the mailer's plant before the approval can be made effective. The agreement will specify the terms and period of the authorization (not to exceed 2 years). Copies of the agreement will be provided to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center.

664.324 Denial. If the mailer's request for participation in the plant-verified drop shipment postage payment system is denied, the field division general manager/postmaster will notify the mailer in writing, stating the reasons for the decision, and provide copies of the decision to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center. The denial may be appealed as provided in 133.

664.33 Renewal, Termination, and Revocation.

664.331 Renewal. The mailer must submit a new request for authorization at least 30 days prior to the expiration of a plant-verified drop shipment agreement. The content of the request, and the procedures for its review, approval, or denial are as prescribed in 664.31 and 664.32.

664.332 Termination. A mailer may elect to terminate participation in a plant-verified drop shipment agreement by 10 calendar days' written notice to the authorizing field division general manager/postmaster.

664.333 Revocation. A plant-verified drop shipment agreement may be revoked by the authorizing field division general manager/postmaster by 10 calendar days' written notice to the mailer. Revocation must be based on the mailer's failure to pay postage and fees or to meet the requirements that apply to plant-verified drop shipment or mailing at third-class rates. The revocation action may be appealed as provided by 133.

**664.4 DMU Functions**

664.41 General. Assignment of postal personnel to the mailer's plant to process plant-verified drop shipments may be in conjunction with the DMU staffing associated with a plant load authorization for that mailer's plant, but may be provided to a mailer's plant that is not authorized plant load, at the discretion of the division general manager/postmaster.

664.42 Inspection of Mailpieces. Postal personnel assigned to the mailer's plant must verify drop shipment mailings for classification, rate eligibility, preparation, presort, and postage in the same manner as plant load mailings.

664.43 Documents.

664.431 Preparation. Before each plant-verified drop shipment is released for dispatch, postal personnel must ensure that all clearance documents are properly completed, signed, and dated, and that each includes the number of the postal seal to be used on the vehicle, if appropriate (see 664.5). The required documents must be provided for each mailing prepared for each destination entry postal facility. The DMU will retain one copy of each completed clearance document.

664.432 Enclosure. Postal personnel must ensure that all appropriate clearance documents are provided to the mailer who is responsible for placing them in each vehicle to accompany the corresponding plant-verified drop shipments. These documents must be placed on the left rear wall of the vehicle just inside the door of the vehicle. Affix the required Form 5111–R, *Revenue Protection Placard*, to the outside rear of the vehicle after the mailer has completed loading the vehicle.

664.44 Loading. Postal personnel must observe the loading of each vehicle used to transport plant-verified drop shipments to ensure the correct mailings are loaded into vehicles for the correct destinations and that shipments are not improperly commingled (see 664.254).

664.45 Security. Postal personnel must seal the vehicle containing the plant-verified drop shipments mailings with a USPS ball seal, USPS lock, or other postal security device that prevents access to the shipments by other than authorized postal employees. Vehicles that make en route stops must be resealed after the corresponding mail is removed (see 664.5).

**664.5 Destination Postal Facility Functions**

664.51 Verification of Documents. The postal seal number on the clearance document for that destination post office must match the number on an unbroken seal securing the vehicle. Container identification codes on the clearance document must match the containers deposited. If these items match, the destination facility will sign and date the clearance documents accompanying the mailings and process the mail. These documents will be retained for one year in a chronological file, and receipted copies will be returned to the mailer's employee, if appropriate (see 664.24c and 664.431).

664.52 Verification of Contents. Each destination postal facility where plant-verified drop shipments are deposited must ensure that only the appropriate shipments are unloaded and accepted.

664.53 Vehicles Containing Mail for More Than One Destination Facility. When a mailer's vehicle contains mail for more than one destination entry facility, each intermediate postal facility will record the number of a new USPS ball seal on the clearance document for the next scheduled destination post office, and affix that seal to secure the vehicle. (If USPS locks are used, they must be removed and retained at the final postal facility where the vehicle stops.)

664.54 Loading of Mail Prohibited. Postal Service mail for downstream postal facilities must not be loaded onto the mailer's vehicle by any intermediate postal facility at which the mailer has stopped to deposit a plant-verified drop shipment.

**664.6 Liability**

The mailer assumes all liability and responsibility for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at destination entry postal facilities, regardless of whether a third party is used to transport those shipments. The Postal Service is not liable or responsible for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at a destination postal facility.

**664.7 Postage**

664.71 Method of Payment. Postage for a plant-verified drop shipment must be paid by precanceled or meter stamps or by permit imprint using a precanceled stamp permit, meter license, or permit imprint advance deposit account, as applicable, maintained by the mailer at the post office serving the mailer's location.

664.72 Computation. Postage for destination rate mailings prepared as plant-verified drop shipments is calculated from the destination postal facility where mailings are deposited and accepted into the mailstream.

664.73 Refunds. The Postal Service will not refund postage for any failure to provide service that is caused in whole or in part by any event that occurs before the shipment is deposited and accepted into the mailstream and becomes mail at a destination postal facility, except in accordance with the provisions of 147.2.

8. In chapter 7 of the Domestic Mail Manual make the following revisions:



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**CHAPTER 7—FOURTH CLASS MAIL**

**710 Rates and Fees**

**711 RATES**

* * * * *

711.12 Inter-BMC Rates—Nonmachinable Parcels. [Replace "$1.15" with "$1.75".]

711.13 Intra-BMC Rates—All Parcels. [Replace "$0.20" with "$0.27" and add the following at the end of the section:] Parcel post mail that is deposited and accepted at the post office serving the delivery address may be eligible for the destination BMC rate (see 711.14 and 722.45).

711.14 Destination BMC Rate. (See Exhibit 711.14.) These rates apply to all parcel post mail that meets the eligibility and preparation requirements of 722.4, that is deposited at a BMC, ASF, or other designated facility (see 722.411), and that is addressed for delivery within the service area of that facility.

711.15 Bulk Parcel Post Rates. The rate applicable to each piece in a bulk parcel post rate mailing is the single-piece rate (see Exhibits 711.11–711.13) or destination BMC rate (see Exhibit 711.14) for that zone for an item equal to the average weight per piece for all parcels in the mailing to that zone, rounded up to the next whole pound.

* * * * *

**711.6 Zoned Rates**

711.61 General. Zone-rated fourth-class mail (e.g., parcel post and bound printed matter) must be mailed at the post office from which the zone rate postage was computed, except as provided by 711.62 and 711.63.

711.62 Redirected Mailings.

711.621 General Conditions. Mailers who present large volumes of zone-rated fourth-class mail may be allowed or directed to deposit such mailings at another postal facility when processing or logistic reasons make such an alternative desirable for the Postal Service, provided both the original post office of mailing and the alternative facility to which the mailing is redirected use the same zone chart for computing zone-rated postage, based on the 3-digit prefix of their ZIP Codes.

711.622 Recomputation of Postage. Postage must be recomputed on pieces in mailings redirected to a postal facility that uses a different zone chart for computing zone-rated postage.

711.623 Local Zone. Eligibility for the local zone rate is described in 122.71a. Postage for pieces in redirected mailings that were claimed at the local zone rates must be recomputed at the applicable zone rate for the post office to which the mailing was redirected. Postage may also be recomputed for other pieces which were ineligible for the local zone rates but which may become eligible at the post office to which the mailing was redirected.

711.624 Postage Payment. Use of postage meters or permit imprint advance deposit accounts for redirected mailings must be as provided by 144 and 145, respectively.

711.63 Use of BMC Acceptance. Mailers may present zone-rated fourth-class mail (parcel post and bound printed matter) at a BMC for acceptance subject to the following conditions:

a. Metered postage is paid by a postage meter licensed at the BMC parent post office (see Exhibit 722.44), except as provided by 144.8 and 711.62.

b. Postage paid by permit imprint is through an advance deposit account at the BMC parent post office (see Exhibit 722.44) or another post office in the BMC service area as provided by 711.62.

c. The BMC accepts the mailing based on an approved Form 4410, *Authorization for BMC Acceptance.*

d. Postage for the mail is computed (zoned) from the BMC parent post office 3-digit ZIP Code prefix.

e. Mailings not presented in accordance with 144.8, 711.62, and 711.63a–d cannot be presented for BMC acceptance.

**712 FEES**

* * * * *

**712.3 Destination BMC Rate Mailing Fee**

The fee for mailing at the destination BMC parcel post rates is $75 for each 12-month period.

**712.4 Pickup Service Fee**

A fee of $4.50 must be paid by the mailer every time pickup service is provided, regardless of the quantity picked up.

**Exhibit 711.11, Inter-BMC/ASF Single-Piece Parcel Post Rates** (Inter-BMC/ASF ZIP Codes Only, Machinable Parcels Only; for pieces weighing over 35 pounds, see Exhibit 711.12.)

| Weight not exceeding (pounds) | Zones | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 2 | $2.15 | $2.30 | $2.47 | $2.70 | $2.70 | $2.70 | $2.70 |
| 3 | 2.27 | 2.50 | 2.76 | 3.25 | 3.55 | 3.55 | 3.55 |
| 4 | 2.38 | 2.69 | 3.03 | 3.70 | 4.10 | 4.10 | 4.10 |
| 5 | 2.49 | 2.88 | 3.31 | 4.16 | 5.00 | 5.10 | 5.10 |
| 6 | 2.60 | 3.07 | 3.59 | 4.61 | 5.62 | 7.09 | 9.55 |
| 7 | 2.71 | 3.26 | 3.87 | 5.06 | 6.25 | 7.97 | 9.75 |
| 8 | 2.82 | 3.45 | 4.15 | 5.52 | 6.87 | 8.84 | 10.95 |
| 9 | 2.94 | 3.65 | 4.43 | 5.97 | 7.50 | 9.72 | 12.15 |
| 10 | 3.05 | 3.84 | 4.71 | 6.42 | 8.12 | 10.59 | 13.40 |
| 11 | 3.17 | 4.06 | 5.03 | 6.94 | 8.84 | 11.61 | 14.80 |
| 12 | 3.27 | 4.22 | 5.27 | 7.33 | 9.37 | 12.35 | 15.90 |
| 13 | 3.35 | 4.35 | 5.46 | 7.63 | 9.78 | 12.92 | 17.00 |
| 14 | 3.43 | 4.48 | 5.63 | 7.90 | 10.16 | 13.44 | 18.20 |
| 15 | 3.50 | 4.59 | 5.80 | 8.16 | 10.51 | 13.93 | 19.40 |
| 16 | 3.57 | 4.70 | 5.95 | 8.41 | 10.84 | 14.39 | 20.60 |
| 17 | 3.63 | 4.80 | 6.10 | 8.63 | 11.15 | 14.82 | 21.80 |
| 18 | 3.69 | 4.90 | 6.24 | 8.85 | 11.45 | 15.23 | 23.00 |
| 19 | 3.75 | 5.00 | 6.37 | 9.06 | 11.73 | 15.62 | 24.20 |
| 20 | 3.81 | 5.09 | 6.50 | 9.26 | 12.00 | 15.99 | 25.45 |
| 21 | 3.87 | 5.17 | 6.62 | 9.44 | 12.25 | 16.34 | 26.30 |
| 22 | 3.92 | 5.26 | 6.73 | 9.63 | 12.50 | 16.68 | 26.87 |
| 23 | 3.98 | 5.34 | 6.85 | 9.80 | 12.73 | 17.00 | 27.40 |
| 24 | 4.03 | 5.42 | 6.96 | 9.97 | 12.96 | 17.31 | 27.92 |
| 25 | 4.08 | 5.50 | 7.08 | 10.13 | 13.17 | 17.61 | 28.42 |
| 26 | 4.13 | 5.57 | 7.16 | 10.28 | 13.38 | 17.90 | 28.89 |
| 27 | 4.18 | 5.64 | 7.26 | 10.44 | 13.59 | 18.17 | 29.35 |
| 28 | 4.23 | 5.72 | 7.36 | 10.58 | 13.76 | 18.44 | 29.80 |
| 29 | 4.27 | 5.78 | 7.45 | 10.72 | 13.97 | 18.70 | 30.23 |



| Weight not exceeding (pounds) | Zones | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 30 | 4.32 | 5.85 | 7.55 | 10.86 | 14.16 | 18.95 | 30.64 |
| 31 | 4.37 | 5.92 | 7.63 | 11.00 | 14.33 | 19.20 | 31.04 |
| 32 | 4.41 | 5.98 | 7.72 | 11.13 | 14.51 | 19.43 | 31.43 |
| 33 | 4.45 | 6.05 | 7.81 | 11.25 | 14.66 | 19.66 | 31.81 |
| 34 | 4.50 | 6.11 | 7.89 | 11.38 | 14.84 | 19.89 | 32.18 |
| 35 | 4.54 | 6.17 | 7.97 | 11.50 | 15.00 | 20.11 | 32.54 |

**Exhibit 711.12, Inter-BMC/ASF Single-Piece Parcel Post Rates** (Inter-BMC/ASF ZIP Codes Only, Nonmachinable Parcels, Surcharge Included.)

| Weight not exceeding (pounds) | Zones | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 2 | $3.90 | $4.05 | $4.22 | $4.45 | $4.45 | $4.45 | $4.45 |
| 3 | 4.02 | 4.25 | 4.50 | 5.00 | 5.30 | 5.30 | 5.30 |
| 4 | 4.13 | 4.44 | 4.78 | 5.45 | 5.85 | 5.85 | 5.85 |
| 5 | 4.24 | 4.63 | 5.06 | 5.91 | 6.75 | 6.85 | 6.85 |
| 6 | 4.35 | 4.82 | 5.34 | 6.36 | 7.37 | 8.84 | 10.30 |
| 7 | 4.46 | 5.01 | 5.62 | 6.81 | 8.00 | 9.72 | 11.50 |
| 8 | 4.57 | 5.20 | 5.90 | 7.27 | 8.62 | 10.59 | 12.70 |
| 9 | 4.69 | 5.40 | 6.18 | 7.72 | 9.25 | 11.47 | 13.90 |
| 10 | 4.80 | 5.59 | 6.46 | 8.17 | 9.87 | 12.34 | 15.15 |
| 11 | 4.92 | 5.81 | 6.78 | 8.69 | 10.59 | 13.36 | 16.35 |
| 12 | 5.02 | 5.97 | 7.02 | 9.08 | 11.12 | 14.10 | 17.55 |
| 13 | 5.10 | 6.10 | 7.21 | 9.38 | 11.53 | 14.67 | 18.75 |
| 14 | 5.18 | 6.23 | 7.38 | 9.65 | 11.91 | 15.19 | 19.95 |
| 15 | 5.25 | 6.34 | 7.55 | 9.91 | 12.25 | 15.68 | 21.15 |
| 16 | 5.32 | 6.45 | 7.70 | 10.16 | 12.59 | 16.14 | 22.35 |
| 17 | 5.38 | 6.55 | 7.85 | 10.38 | 12.90 | 16.57 | 23.55 |
| 18 | 5.44 | 6.65 | 7.99 | 10.60 | 13.20 | 16.98 | 24.75 |
| 19 | 5.50 | 6.75 | 8.12 | 10.81 | 13.48 | 17.37 | 25.95 |
| 20 | 5.56 | 6.84 | 8.25 | 11.01 | 13.75 | 17.74 | 27.20 |
| 21 | 5.62 | 6.92 | 8.37 | 11.19 | 14.00 | 18.09 | 28.05 |
| 22 | 5.67 | 7.01 | 8.48 | 11.38 | 14.25 | 18.43 | 28.62 |
| 23 | 5.73 | 7.09 | 8.60 | 11.55 | 14.48 | 18.75 | 29.15 |
| 24 | 5.78 | 7.17 | 8.71 | 11.72 | 14.71 | 19.06 | 29.67 |
| 25 | 5.83 | 7.25 | 8.81 | 11.88 | 14.92 | 19.36 | 30.17 |
| 26 | 5.88 | 7.32 | 8.91 | 12.03 | 15.13 | 19.65 | 30.64 |
| 27 | 5.93 | 7.39 | 9.01 | 12.19 | 15.34 | 19.92 | 31.10 |
| 28 | 5.98 | 7.47 | 9.11 | 12.33 | 15.53 | 20.19 | 31.55 |
| 29 | 6.02 | 7.53 | 9.20 | 12.47 | 15.72 | 20.46 | 31.98 |
| 30 | 6.07 | 7.60 | 9.30 | 12.61 | 15.91 | 20.70 | 32.39 |
| 31 | 6.12 | 7.67 | 9.38 | 12.75 | 16.08 | 20.95 | 32.79 |
| 32 | 6.16 | 7.73 | 9.47 | 12.88 | 16.26 | 21.18 | 33.15 |
| 33 | 6.20 | 7.80 | 9.56 | 13.00 | 16.43 | 21.41 | 33.56 |
| 34 | 6.25 | 7.86 | 9.64 | 13.13 | 16.59 | 21.64 | 33.93 |
| 35 | 6.29 | 7.92 | 9.72 | 13.25 | 16.75 | 21.86 | 34.29 |
| 36 | 6.35 | 8.02 | 9.85 | 13.46 | 17.04 | 22.25 | 34.95 |
| 37 | 6.39 | 8.07 | 9.93 | 13.56 | 17.17 | 22.43 | 35.24 |
| 38 | 6.43 | 8.12 | 9.99 | 13.66 | 17.30 | 22.61 | 35.54 |
| 39 | 6.47 | 8.17 | 10.06 | 13.76 | 17.43 | 22.78 | 35.82 |
| 40 | 6.50 | 8.22 | 10.13 | 13.86 | 17.55 | 22.96 | 36.10 |
| 41 | 6.54 | 8.28 | 10.20 | 13.95 | 17.69 | 23.12 | 36.37 |
| 42 | 6.58 | 8.33 | 10.26 | 14.05 | 17.81 | 23.29 | 36.63 |
| 43 | 6.62 | 8.38 | 10.32 | 14.14 | 17.93 | 23.45 | 36.89 |
| 44 | 6.65 | 8.43 | 10.39 | 14.23 | 18.05 | 23.60 | 37.15 |
| 45 | 6.69 | 8.47 | 10.44 | 14.31 | 18.15 | 23.74 | 37.36 |
| 46 | 6.72 | 8.51 | 10.50 | 14.39 | 18.25 | 23.87 | 37.57 |
| 47 | 6.75 | 8.56 | 10.55 | 14.46 | 18.35 | 24.00 | 37.78 |
| 48 | 6.78 | 8.60 | 10.61 | 14.54 | 18.44 | 24.13 | 37.98 |
| 49 | 6.82 | 8.64 | 10.66 | 14.61 | 18.54 | 24.25 | 38.18 |
| 50 | 6.85 | 8.68 | 10.71 | 14.68 | 18.63 | 24.38 | 38.38 |
| 51 | 6.88 | 8.73 | 10.76 | 14.75 | 18.72 | 24.50 | 38.57 |
| 52 | 6.91 | 8.77 | 10.82 | 14.83 | 18.81 | 24.62 | 38.75 |
| 53 | 6.95 | 8.81 | 10.87 | 14.90 | 18.90 | 24.73 | 38.94 |
| 54 | 6.98 | 8.85 | 10.92 | 14.97 | 18.99 | 24.85 | 39.12 |
| 55 | 7.01 | 8.89 | 10.97 | 15.03 | 19.08 | 24.96 | 39.30 |
| 56 | 7.04 | 8.93 | 11.02 | 15.10 | 19.16 | 25.07 | 39.48 |
| 57 | 7.07 | 8.97 | 11.06 | 15.17 | 19.25 | 25.18 | 39.65 |
| 58 | 7.10 | 9.01 | 11.11 | 15.23 | 19.33 | 25.29 | 39.82 |
| 59 | 7.13 | 9.05 | 11.16 | 15.30 | 19.41 | 25.40 | 39.99 |
| 60 | 7.17 | 9.09 | 11.21 | 15.36 | 19.19 | 25.51 | 40.16 |
| 61 | 7.20 | 9.12 | 11.25 | 15.43 | 19.57 | 25.61 | 40.32 |
| 62 | 7.23 | 9.16 | 11.30 | 15.49 | 19.65 | 25.71 | 40.48 |

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| Weight not exceeding (pounds) | Zones 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| 63 | 7.26 | 9.20 | 11.35 | 15.55 | 19.73 | 25.82 | 40.64 |
| 64 | 7.29 | 9.24 | 11.39 | 15.61 | 19.81 | 25.92 | 40.80 |
| 65 | 7.32 | 9.27 | 11.44 | 15.68 | 19.88 | 26.01 | 40.95 |
| 66 | 7.35 | 9.31 | 11.48 | 15.74 | 19.96 | 26.11 | 41.10 |
| 67 | 7.38 | 9.35 | 11.53 | 15.80 | 20.04 | 26.21 | 41.25 |
| 68 | 7.41 | 9.39 | 11.57 | 15.86 | 20.11 | 26.31 | 41.40 |
| 69 | 7.44 | 9.42 | 11.62 | 15.91 | 20.18 | 26.40 | 41.55 |
| 70 | 7.47 | 9.46 | 11.66 | 15.97 | 20.26 | 26.49 | 41.70 |

**Exhibit 711.13, Intra-BMC/ASF Single-Piece Parcel Post Rates (Local and Intra-BMC/ASF Zip Codes Only, All Parcels, Discount Already Included)**

| Weight not exceeding (pounds) | Zones Local | 1 & 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| 2 | $1.71 | $1.88 | $2.03 | $2.20 | $2.53 |
| 3 | 1.74 | 2.00 | 2.23 | 2.48 | 2.98 |
| 4 | 1.76 | 2.11 | 2.42 | 2.76 | 3.43 |
| 5 | 1.78 | 2.22 | 2.61 | 3.04 | 3.89 |
| 6 | 1.73 | 2.33 | 2.80 | 3.32 | 4.34 |
| 7 | 1.82 | 2.44 | 2.99 | 3.60 | 4.79 |
| 8 | 1.85 | 2.55 | 3.18 | 3.88 | 5.25 |
| 9 | 1.87 | 2.67 | 3.38 | 4.16 | 5.70 |
| 10 | 1.89 | 2.78 | 3.57 | 4.44 | 6.15 |
| 11 | 1.91 | 2.90 | 3.79 | 4.76 | 6.67 |
| 12 | 1.93 | 3.00 | 3.95 | 5.00 | 7.06 |
| 13 | 1.96 | 3.08 | 4.08 | 5.19 | 7.36 |
| 14 | 1.98 | 3.16 | 4.21 | 5.36 | 7.63 |
| 15 | 2.00 | 3.23 | 4.32 | 5.53 | 7.89 |
| 16 | 2.02 | 3.30 | 4.43 | 5.68 | 8.14 |
| 17 | 2.04 | 3.36 | 4.53 | 5.83 | 8.36 |
| 18 | 2.07 | 3.42 | 4.63 | 5.97 | 8.58 |
| 19 | 2.09 | 3.48 | 4.73 | 6.10 | 8.79 |
| 20 | 2.11 | 3.54 | 4.82 | 6.23 | 8.99 |
| 21 | 2.13 | 3.60 | 4.90 | 6.35 | 9.17 |
| 22 | 2.15 | 3.65 | 4.99 | 6.46 | 9.36 |
| 23 | 2.18 | 3.71 | 5.07 | 6.58 | 9.53 |
| 24 | 2.20 | 3.76 | 5.15 | 6.69 | 9.70 |
| 25 | 2.22 | 3.81 | 5.23 | 6.79 | 9.86 |
| 26 | 2.24 | 3.86 | 5.30 | 6.89 | 10.01 |
| 27 | 2.26 | 3.91 | 5.37 | 6.99 | 10.17 |
| 28 | 2.28 | 3.96 | 5.45 | 7.09 | 10.31 |
| 29 | 2.31 | 4.00 | 5.51 | 7.18 | 10.45 |
| 30 | 2.33 | 4.05 | 5.58 | 7.28 | 10.59 |
| 31 | 2.35 | 4.10 | 5.65 | 7.36 | 10.73 |
| 32 | 2.37 | 4.14 | 5.71 | 7.45 | 10.86 |
| 33 | 2.39 | 4.18 | 5.78 | 7.54 | 10.98 |
| 34 | 2.42 | 4.23 | 5.84 | 7.62 | 11.11 |
| 35 | 2.44 | 4.27 | 5.90 | 7.70 | 11.23 |
| 36 | 2.46 | 4.33 | 6.00 | 7.83 | 11.44 |
| 37 | 2.48 | 4.37 | 6.05 | 7.91 | 11.54 |
| 38 | 2.50 | 4.41 | 6.10 | 7.97 | 11.64 |
| 39 | 2.53 | 4.45 | 6.15 | 8.04 | 11.74 |
| 40 | 2.55 | 4.48 | 6.21 | 8.11 | 11.84 |
| 41 | 2.57 | 4.52 | 6.26 | 8.18 | 11.93 |
| 42 | 2.59 | 4.56 | 6.31 | 8.24 | 12.03 |
| 43 | 2.61 | 4.60 | 6.36 | 8.30 | 12.12 |
| 44 | 2.64 | 4.63 | 6.41 | 8.37 | 12.21 |
| 45 | 2.66 | 4.67 | 6.45 | 8.42 | 12.29 |
| 46 | 2.68 | 4.70 | 6.49 | 8.48 | 12.37 |
| 47 | 2.70 | 4.73 | 6.54 | 8.53 | 12.44 |
| 48 | 2.72 | 4.76 | 6.58 | 8.59 | 12.52 |
| 49 | 2.75 | 4.80 | 6.62 | 8.64 | 12.59 |
| 50 | 2.77 | 4.83 | 6.66 | 8.69 | 12.66 |
| 51 | 2.79 | 4.86 | 6.71 | 8.74 | 12.74 |
| 52 | 2.81 | 4.89 | 6.75 | 8.80 | 12.81 |
| 53 | 2.83 | 4.93 | 6.79 | 8.85 | 12.88 |
| 54 | 2.86 | 4.96 | 6.83 | 8.90 | 12.95 |
| 55 | 2.88 | 4.99 | 6.87 | 8.95 | 13.01 |
| 56 | 2.90 | 5.02 | 6.91 | 9.00 | 13.08 |
| 57 | 2.92 | 5.05 | 6.95 | 9.04 | 13.15 |
| 58 | 2.94 | 5.08 | 6.99 | 9.09 | 13.21 |
| 59 | 2.97 | 5.11 | 7.03 | 9.14 | 13.28 |
| 60 | 2.99 | 5.15 | 7.07 | 9.19 | 13.34 |
| 61 | 3.01 | 5.18 | 7.10 | 9.23 | 13.41 |
| 62 | 3.03 | 5.21 | 7.14 | 9.28 | 13.47 |
| 63 | 3.05 | 5.24 | 7.18 | 9.33 | 13.53 |
| 64 | 3.07 | 5.27 | 7.22 | 9.37 | 13.59 |
| 65 | 3.10 | 5.30 | 7.25 | 9.42 | 13.66 |
| 66 | 3.12 | 5.33 | 7.29 | 9.48 | 13.72 |
| 67 | 3.14 | 5.36 | 7.33 | 9.51 | 13.78 |
| 68 | 3.16 | 5.39 | 7.37 | 9.55 | 13.84 |
| 69 | 3.18 | 5.42 | 7.40 | 9.60 | 13.89 |
| 70 | 3.21 | 5.45 | 7.44 | 9.64 | 13.95 |

**Exhibit 711.14, Destination BMC/ASF Bulk Parcel Post Rates (Destination Facility Codes Only, All Parcels, Discount Already Included)**

| Weight not exceeding (pounds) | Zones Local 1 & 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| 2 | $1.57 | $1.66 | $1.77 | $1.98 |
| 3 | 1.66 | 1.80 | 1.95 | 2.27 |
| 4 | 1.74 | 1.93 | 2.13 | 2.56 |
| 5 | 1.81 | 2.05 | 2.31 | 2.86 |
| 6 | 1.89 | 2.18 | 2.49 | 3.14 |
| 7 | 1.97 | 2.31 | 2.66 | 3.43 |
| 8 | 2.04 | 2.49 | 2.86 | 3.73 |
| 9 | 2.13 | 2.57 | 3.04 | 4.02 |
| 10 | 2.21 | 2.70 | 3.22 | 4.31 |
| 11 | 2.29 | 2.84 | 3.43 | 4.64 |
| 12 | 2.36 | 2.95 | 3.58 | 4.90 |
| 13 | 2.42 | 3.04 | 3.71 | 5.09 |
| 14 | 2.48 | 3.13 | 3.82 | 5.27 |
| 15 | 2.53 | 3.21 | 3.94 | 5.44 |
| 16 | 2.59 | 3.28 | 4.04 | 5.61 |
| 17 | 2.63 | 3.35 | 4.14 | 5.75 |
| 18 | 2.68 | 3.42 | 4.24 | 5.90 |
| 19 | 2.72 | 3.50 | 4.32 | 6.04 |
| 20 | 2.77 | 3.56 | 4.41 | 6.17 |
| 21 | 2.82 | 3.62 | 4.50 | 6.29 |
| 22 | 2.85 | 3.68 | 4.57 | 6.42 |
| 23 | 2.90 | 3.74 | 4.65 | 6.53 |
| 24 | 2.94 | 3.80 | 4.73 | 6.65 |
| 25 | 2.98 | 3.86 | 4.80 | 6.76 |
| 26 | 3.02 | 3.91 | 4.87 | 6.86 |
| 27 | 3.06 | 3.96 | 4.94 | 6.97 |
| 28 | 3.10 | 4.02 | 5.01 | 7.06 |
| 29 | 3.13 | 4.06 | 5.07 | 7.16 |
| 30 | 3.17 | 4.12 | 5.15 | 7.25 |
| 31 | 3.21 | 4.17 | 5.20 | 7.35 |
| 32 | 3.25 | 4.21 | 5.27 | 7.44 |
| 33 | 3.28 | 4.27 | 5.33 | 7.52 |
| 34 | 3.32 | 4.31 | 5.39 | 7.61 |
| 35 | 3.35 | 4.36 | 5.45 | 7.70 |
| 36 | 3.40 | 4.43 | 5.53 | 7.84 |
| 37 | 3.43 | 4.47 | 5.60 | 7.91 |
| 38 | 3.47 | 4.51 | 5.64 | 7.98 |
| 39 | 3.50 | 4.55 | 5.69 | 8.05 |
| 40 | 3.52 | 4.60 | 5.74 | 8.12 |
| 41 | 3.56 | 4.63 | 5.80 | 8.16 |
| 42 | 3.59 | 4.67 | 5.84 | 8.26 |
| 43 | 3.63 | 4.71 | 5.88 | 8.32 |
| 44 | 3.65 | 4.75 | 5.94 | 8.38 |
| 45 | 3.69 | 4.78 | 5.97 | 8.44 |
| 46 | 3.71 | 4.82 | 6.02 | 8.50 |
| 47 | 3.74 | 4.86 | 6.06 | 8.56 |
| 48 | 3.78 | 4.89 | 6.11 | 8.61 |
| 49 | 3.80 | 4.92 | 6.15 | 8.66 |
| 50 | 3.83 | 4.96 | 6.18 | 8.71 |
| 51 | 3.85 | 5.00 | 6.22 | 8.78 |
| 52 | 3.88 | 5.03 | 6.27 | 8.83 |
| 53 | 3.92 | 5.06 | 6.31 | 8.88 |
| 54 | 3.94 | 5.10 | 6.35 | 8.93 |
| 55 | 3.97 | 5.13 | 6.39 | 8.97 |
| 56 | 4.00 | 5.16 | 6.43 | 9.03 |
| 57 | 4.03 | 5.20 | 6.46 | 9.06 |
| 58 | 4.05 | 5.23 | 6.50 | 9.12 |
| 59 | 4.08 | 5.26 | 6.54 | 9.18 |
| 60 | 4.11 | 5.30 | 6.59 | 9.22 |
| 61 | 4.14 | 5.32 | 6.61 | 9.28 |
| 62 | 4.17 | 5.36 | 6.65 | 9.32 |
| 63 | 4.19 | 5.39 | 6.69 | 9.37 |
| 64 | 4.22 | 5.42 | 6.72 | 9.41 |
| 65 | 4.25 | 5.45 | 6.78 | 9.47 |
| 66 | 4.27 | 5.48 | 6.79 | 9.51 |
| 67 | 4.30 | 5.52 | 6.84 | 9.56 |
| 68 | 4.33 | 5.55 | 6.87 | 9.60 |
| 69 | 4.35 | 5.58 | 6.91 | 9.64 |
| 70 | 4.38 | 5.61 | 6.94 | 9.69 |

**Exhibit 711.22, Single-Piece Bound Printed Matter Rates**

| Weight not exceeding (lbs.) | Zones Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| 1.5 | $.86 | $1.21 | $1.25 | $1.32 | $1.43 | $1.54 | $1.66 | $1.80 |
| 2.0 | .88 | 1.24 | 1.29 | 1.36 | 1.53 | 1.69 | 1.87 | 2.03 |
| 2.5 | .89 | 1.28 | 1.34 | 1.46 | 1.64 | 1.84 | 2.07 | 2.26 |
| 3.0 | .91 | 1.31 | 1.39 | 1.53 | 1.75 | 1.98 | 2.28 | 2.49 |



| Weight not exceeding (lbs.) | Zones Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| 3.5 | .92 | 1.35 | 1.44 | 1.60 | 1.86 | 2.13 | 2.45 | 2.72 |
| 4.0 | .94 | 1.38 | 1.49 | 1.68 | 1.97 | 2.28 | 2.64 | 2.98 |
| 4.5 | .95 | 1.42 | 1.54 | 1.75 | 2.08 | 2.42 | 2.84 | 3.19 |
| 5.0 | .97 | 1.45 | 1.59 | 1.82 | 2.19 | 2.57 | 3.03 | 3.42 |
| 6.0 | .99 | 1.52 | 1.68 | 1.96 | 2.40 | 2.88 | 3.42 | 3.88 |
| 7.0 | 1.02 | 1.59 | 1.78 | 2.11 | 2.62 | 3.16 | 3.80 | 4.35 |
| 8.0 | 1.05 | 1.66 | 1.88 | 2.25 | 2.84 | 3.45 | 4.19 | 4.81 |
| 9.0 | 1.08 | 1.73 | 1.97 | 2.40 | 3.05 | 3.75 | 4.57 | 5.28 |
| 10.0 | 1.11 | 1.80 | 2.07 | 2.54 | 3.27 | 4.04 | 4.96 | 5.74 |

**Exhibit 711.23, Bulk Bound Printed Matter Rates**

| Rate | Zones Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| Per piece: | | | | | | | | |
| Basic | $.410 | $.550 | $.550 | $.550 | $.550 | $.550 | $.550 | $.550 |
| Car. Rt | .355 | .495 | .495 | .495 | .495 | .495 | .495 | .495 |
| Per pound | .015 | .050 | .078 | .125 | .198 | .274 | .366 | .444 |

**Exhibit 711.24, Bulk Bound Printed Matter Rates (Representative Computed Postage Amount—Pieces with Postage Affixed)**

**Note:** These amounts are correct for the corresponding weights. Compute postage exactly for items of intermediate weights as provided by 783.

| Weight | Zones Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| a. Basic Bulk Bound Printed Matter Rates | | | | | | | | |
| 1.0 | $.425 | $.600 | $.626 | $.676 | $.746 | $.824 | $.916 | $.994 |
| 1.5 | .433 | .625 | .667 | .729 | .847 | .961 | 1.099 | 1.216 |
| 2.0 | .440 | .650 | .706 | .802 | .946 | 1.098 | 1.282 | 1.436 |
| 2.5 | .448 | .675 | .745 | .865 | 1.045 | 1.235 | 1.465 | 1.660 |
| 3.0 | .455 | .700 | .784 | .928 | 1.144 | 1.372 | 1.648 | 1.882 |
| 3.5 | .463 | .725 | .823 | .991 | 1.243 | 1.509 | 1.831 | 2.104 |
| 4.0 | .470 | .750 | .862 | 1.054 | 1.342 | 1.646 | 2.014 | 2.326 |
| 4.5 | .478 | .775 | .901 | 1.117 | 1.441 | 1.783 | 2.197 | 2.548 |
| 5.0 | .485 | .800 | .940 | 1.180 | 1.540 | 1.920 | 2.380 | 2.770 |
| 6.0 | .500 | .850 | 1.018 | 1.306 | 1.738 | 2.194 | 2.746 | 3.214 |
| 7.0 | .515 | .900 | 1.096 | 1.432 | 1.936 | 2.468 | 3.112 | 3.658 |
| 8.0 | .530 | .950 | 1.174 | 1.558 | 2.134 | 2.742 | 3.478 | 4.102 |
| 9.0 | .545 | 1.000 | 1.252 | 1.684 | 2.332 | 3.016 | 3.844 | 4.546 |
| 10.0 | .560 | 1.050 | 1.330 | 1.810 | 2.530 | 3.290 | 4.210 | 4.990 |
| b. Carrier Route Bulk Bound Printed Matter Rates | | | | | | | | |
| 1.0 | $.370 | $.545 | $.573 | $.621 | $.693 | $.769 | $.861 | $.939 |
| 1.5 | .378 | .570 | .612 | .684 | .792 | .906 | 1.044 | 1.161 |
| 2.0 | .385 | .595 | .651 | .747 | .891 | 1.043 | 1.227 | 1.383 |
| 2.5 | .393 | .620 | .690 | .810 | .990 | 1.180 | 1.410 | 1.605 |
| 3.0 | .400 | .645 | .729 | .873 | 1.089 | 1.317 | 1.593 | 1.827 |
| 3.5 | .408 | .670 | .756 | .936 | 1.188 | 1.454 | 1.776 | 2.049 |
| 4.0 | .415 | .695 | .807 | .999 | 1.287 | 1.591 | 1.959 | 2.271 |
| 4.5 | .423 | .720 | .846 | 1.062 | 1.386 | 1.728 | 2.142 | 2.493 |
| 5.0 | .430 | .745 | .885 | 1.125 | 1.485 | 1.865 | 2.325 | 2.715 |
| 6.0 | .445 | .795 | .963 | 1.251 | 1.683 | 2.139 | 2.691 | 3.159 |
| 7.0 | .460 | .845 | 1.041 | 1.377 | 1.881 | 2.413 | 3.057 | 3.603 |
| 8.0 | .475 | .895 | 1.119 | 1.503 | 2.079 | 2.687 | 3.423 | 4.047 |
| 9.0 | .490 | .945 | 1.197 | 1.629 | 2.277 | 2.961 | 3.789 | 4.491 |
| 10.0 | .505 | .995 | 1.275 | 1.755 | 2.475 | 3.235 | 4.155 | 4.935 |

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**Exhibit 711.32, Special Fourth-Class Rates**

| Weight not exceeding (pounds) | Single piece rate | Level A presort | Level B presort |
|---|---|---|---|
| 1 | $1.03 | $.57 | $.66 |
| 2 | 1.44 | .98 | 1.27 |
| 3 | 1.85 | 1.39 | 1.68 |
| 4 | 2.26 | 1.80 | 2.09 |
| 5 | 2.67 | 2.21 | 2.50 |
| 6 | 3.08 | 2.62 | 2.91 |
| 7 | 3.49 | 3.03 | 3.32 |
| 8 | 3.72 | 3.26 | 3.55 |
| 9 | 3.95 | 3.49 | 3.78 |
| 10 | 4.18 | 3.72 | 4.01 |
| 11 | 4.41 | 3.95 | 4.24 |
| 12 | 4.64 | 4.18 | 4.47 |
| 13 | 4.87 | 4.41 | 4.70 |
| 14 | 5.10 | 4.64 | 4.93 |
| 15 | 5.33 | 4.87 | 5.16 |
| 16 | 5.56 | 5.10 | 5.39 |
| 17 | 5.79 | 5.33 | 5.62 |
| 18 | 6.02 | 5.56 | 5.85 |
| 19 | 6.25 | 5.79 | 6.08 |
| 20 | 6.48 | 6.02 | 6.31 |
| 21 | 6.71 | 6.25 | 6.54 |
| 22 | 6.94 | 6.48 | 6.77 |
| 23 | 7.17 | 6.71 | 7.00 |
| 24 | 7.40 | 6.94 | 7.23 |
| [illegible] | 7.63 | 7.17 | 7.46 |
| [illegible] | 7.86 | 7.40 | 7.69 |
| 27 | 8.09 | 7.63 | 7.92 |
| [illegible] | 8.32 | 7.86 | 8.15 |
| [illegible] | 8.55 | 8.09 | 8.38 |
| 30 | 8.78 | 8.32 | 8.61 |
| 31 | 9.01 | 8.55 | 8.84 |
| 32 | 9.24 | 8.78 | 9.07 |
| 33 | 9.47 | 9.01 | 9.30 |
| 34 | 9.70 | 9.24 | 9.53 |
| 35 | 9.93 | 9.47 | 9.76 |
| 36 | 10.16 | 9.70 | 9.99 |
| 37 | 10.39 | 9.93 | 10.22 |
| 38 | 10.62 | 10.16 | 10.45 |
| 39 | 10.85 | 10.39 | 10.68 |
| 40 | 11.08 | 10.62 | 10.91 |
| 41 | 11.31 | 10.85 | 11.14 |
| 42 | 11.54 | 11.08 | 11.37 |
| 43 | 11.77 | 11.31 | 11.60 |
| 44 | 12.00 | 11.54 | 11.83 |
| 45 | 12.23 | 11.77 | 12.06 |
| 46 | 12.46 | 12.00 | 12.29 |
| 47 | 12.69 | 12.23 | 12.52 |
| 48 | 12.92 | 12.46 | 12.75 |
| 49 | 13.15 | 12.69 | 12.98 |
| 50 | 13.38 | 12.92 | 13.21 |
| 51 | 13.61 | 13.15 | 13.44 |
| 52 | 13.84 | 13.38 | 13.67 |
| 53 | 14.07 | 13.61 | 13.90 |
| 54 | 14.30 | 13.84 | 14.13 |
| 55 | 14.53 | 14.07 | 14.36 |
| 56 | 14.76 | 14.30 | 14.59 |
| 57 | 14.99 | 14.53 | 14.82 |
| 58 | 15.22 | 14.76 | 15.05 |
| 59 | 15.45 | 14.99 | 15.28 |
| 60 | 15.68 | 15.22 | 15.51 |
| 61 | 15.91 | 15.45 | 15.74 |
| 62 | 16.14 | 15.68 | 15.97 |
| 63 | 16.37 | 15.91 | 16.20 |
| 64 | 16.60 | 16.14 | 16.43 |
| 65 | 16.83 | 16.37 | 16.66 |
| 66 | 17.06 | 16.60 | 16.89 |
| 67 | 17.29 | 16.83 | 17.12 |
| 68 | 17.52 | 17.06 | 17.35 |
| 69 | 17.75 | 17.29 | 17.58 |
| 70 | 17.98 | 17.52 | 17.81 |

**Exhibit 711.42, Library Rate**

| Weight not exceeding (pounds) | Single piece rate |
|---|---|
| 1 | $.65 |
| 2 | .89 |
| 3 | 1.13 |
| 4 | 1.37 |
| 5 | 1.61 |
| 6 | 1.85 |
| 7 | 2.09 |
| 8 | 2.21 |
| 9 | 2.33 |
| 10 | 2.45 |
| 11 | 2.57 |
| 12 | 2.69 |
| 13 | 2.81 |
| 14 | 2.93 |
| 15 | 3.05 |
| 16 | 3.17 |
| 17 | 3.29 |
| 18 | 3.41 |
| 19 | 3.53 |
| 20 | 3.65 |
| 21 | 3.77 |
| 22 | 3.89 |
| 23 | 4.01 |
| 24 | 4.13 |
| 25 | 4.25 |
| 26 | 4.37 |
| 27 | 4.49 |
| 28 | 4.61 |
| 29 | 4.73 |
| 30 | 4.85 |
| 31 | 4.97 |
| 32 | 5.09 |
| 33 | 5.21 |
| 34 | 5.33 |
| 35 | 5.45 |
| 36 | 5.57 |
| 37 | 5.69 |
| 38 | 5.81 |
| 39 | 5.93 |
| 40 | 6.05 |
| 41 | 6.17 |
| 42 | 6.29 |
| 43 | 6.41 |
| 44 | 6.53 |
| 45 | 6.65 |
| 46 | 6.77 |
| 47 | 6.89 |
| 48 | 7.01 |
| 49 | 7.13 |
| 50 | 7.25 |
| 51 | 7.37 |
| 52 | 7.49 |
| 53 | 7.61 |
| 54 | 7.73 |
| 55 | 7.85 |
| 56 | 7.97 |
| 57 | 8.09 |
| 58 | 8.21 |
| 59 | 8.33 |
| 60 | 8.45 |
| 61 | 8.57 |
| 62 | 8.69 |
| 63 | 8.81 |
| 64 | 8.93 |
| 65 | 9.05 |
| 66 | 9.17 |
| 67 | 9.29 |
| 68 | 9.41 |
| 69 | 9.53 |
| 70 | 9.65 |

720 Classification

* * * * *

722 PARCEL POST RATES

* * * * *

**722.2 Bulk Parcel Post**

722.21 General Requirements.

722.211 Volume. Bulk parcel post rates apply to mailings of at least 300 pieces or 2,000 pounds of pieces.

722.212 Eligibility. Each piece in a bulk parcel post rate mailing must be of identical weight but need not be of identical size or content. Mailing of nonidentical-weight pieces at the bulk parcel post rates must be authorized by the rates and classification center serving the post office of mailing in accordance with 145.7, 145.8, or 145.9.

722.213 Exclusion. The bulk fourth-class parcel post rates are not available for pieces that weigh less than 15 pounds and measure more than 84 inches in length and girth combined. Such pieces do not count toward the 300-piece or 2,000-pound minimum volume.

* * * * *

**722.4 Destination Bulk Mail Center (DBMC) Entry Rate**

722.41 General

722.411 Definition. For purposes of this section, the term "destination bulk mail center (DBMC)" includes:

a. All bulk mail centers (BMCs).

b. All auxiliary service facilities (ASFs).

c. San Juan, PR (for 006, 007, and 008 ZIP Codes only); Hanalei, Hilo, Honolulu, and Lahaina, HI (only for addresses on the islands of Kauai, Hawaii, Oahu, and Maui, respectively); Anchorage, AK (for 995 and 996 ZIP Codes only); Fairbanks, AK (for 997 ZIP Codes only); Juneau, AK (for 998 ZIP Codes only); and Ketchikan, AK (for 999 ZIP Codes only).

d. All 5-digit post offices subject to the conditions in 722.45.

722.412 Eligibility. A mailpiece that meets the applicable requirements of 722.41 through 722.45 may be eligible for the DBMC rate when

a. It is part of a single mailing of 50 or more pieces all of which are eligible for and claimed at one of the parcel post rate in Exhibits 711.11–711.14;

b. The mailing is deposited at a DBMC as defined in 722.411;

c. It is addressed for delivery within the entry facility's service area (ZIP Code range) as described in Exhibit 722.1;

d. All pieces are sorted to 5-digit or destination BMC sacks, pallets, or other authorized containers in compliance with the volume or other preparation requirements that may apply. Pieces eligible for the DBMC rate under 722.411d must be prepared in 5-digit containers that meet the applicable requirements; and

e. Air transportation is not required from the entry facility to the post office of address.

722.413 Payment of Postage and Fees.

a. General. The correct postage for mail eligible for the DBMC rate must be affixed to each piece by meter stamps or paid through an advance deposit account having sufficient funds on deposit at the time of mailing. While funds intended to pay postage through an advance deposit account may be presented with the corresponding mailing, the mailing will not be accepted if the resulting balance is not adequate to cover the applicable total postage as verified by the Postal Service.

b. Place of Payment. The mailer must have a meter license or permit imprint permit at the DBMC parent post office (see Exhibit 722.44) for mailings deposited at the DBMC, or at the 5-digit post office for mailings deposited under 722.411d. Metered mail may be deposited at other than the licensing post office only as provided by 144.8.

c. Agency. For acceptance of DBMC entry rate mailings, the BMC may not act as agent for any post office other than its parent post office (see Exhibit 722.44). In addition, for each mailer depositing DBMC entry rate mail, the BMC must be authorized to act as agent for that post office by completion and approval of Form 4410, *Authorization for BMC Acceptance*.

d. Annual Fee. The applicable bulk mailing fees must be paid for the current 12-month period at the parent post office (or post office of mailing for mailings presented under 722.411d).

e. Centralized Postage Payment (CPP) System. Mailings paid under CPP procedures must also meet the applicable requirements.

722.414 Volume.

a. Minimum DBMC Volume. Each mailing at the DBMC rate must contain at least 50 addressed pieces that are eligible for and claimed at one of the parcel post rates in Exhibits 711.11–711.14.

b. Maximum Volume. The same mailer may not present for verification and acceptance more than 4 DBMC rate mailings at the same destination postal facility in any 24-hour period. The destination facility postmaster or BMC manager may waive this maximum if local conditions permit. The mailer is the party presenting the material to the Postal Service (or for whom a transportation company has presented the material to the Postal Service). There is no maximum for acceptance at the origin DMU, or for deposit of plant-verified drop shipments.

722.415 Plant-Loaded Mailings. Plant-loaded mailings (see 154) are not eligible for the DBMC rate.

722.42 Preparation.

722.421 Container.

a. Machinable Parcels. Machinable parcels for which the DBMC rate is claimed must be placed in sacks unless use of pallets or other containers has been authorized in advance. Sacks must be prepared as required by 767.3; pallets and equivalent containers must be prepared as required by 767.62.

b. Nonmachinable Parcels. Nonmachinable parcels weighing less than 35 pounds each for which the DBMC rate is claimed must be placed in sacks prepared as required by 767.22. Nonmachinable parcels weighing 35 pounds or more must be transported as outside pieces (i.e., not sacked).

c. BMC Containers. Mailers may use BMC over-the-road containers instead of sacks for DBMC entry rate mailings if authorized by the BMC manager, and only for transportation of machinable parcels.

722.422 Separation.

a. By Zone. No sack, pallet, or other container may contain pieces for more than one zone, and the sacks, pallets, or other containers for each zone must be segregated, unless the mailer has met the requirements of 767.623 to commingle pieces for different zones.

b. From Other Mailings. Each DBMC rate mailing must be separated from other mailings when presented for acceptance. The DBMC rate mail for a destination postal facility must be separated from mailings for other facilities and any freight on the same vehicle.

722.43 Mailing.

722.431 Verification and Acceptance of DBMC Rate Mailings.

a. General. DBMC rate mailings must be presented to postal personnel at the origin mailer's plant (e.g., the origin detached mail unit (DMU)) as provided by 784 or at the DBMC bulk mail acceptance unit, as provided below. Mailers must adhere to the scheduling requirements in 722.432d for DBMC rate mailings.

b. At Origin DMU. Destination rate mailings may be verified and paid at the mailer's plant, transported at the mailer's expense, and deposited for acceptance as mail by the Postal Service at the DBMC facility as a plant-verified drop shipment (see 784). Plant-loaded mailings transported on postal transportation are not eligible for destination rates.

c. At Destination BMAU. Destination rate mailings may be accepted at the DBMC bulk mail acceptance unit (BMAU) if the BMC is authorized to act as agent for the parent post office (see Exhibit 722.44) where the mailer's account or license is held. Mailings presented under 722.411d may be accepted at the destination 5-digit facility.

d. Acceptance by Another Facility. Another postal facility may act as agent for the destination 5-digit facility for mailings presented under 722.411d if written authorization is provided by the destination post office and procedures (similar to those for BMC acceptance) are implemented and maintained to ensure that all postage for permit imprint mailings is collected. The mailer must further transport the shipment for deposit and acceptance at the destination 5-digit facility. The DBMC rate must not be allowed for mailings that are not transported by the mailer for deposit and acceptance at a DBMC as defined in 722.411.

e. Security. If a DBMC rate mailing is not accepted as mail by the Postal Service at the time of verification, but instead will be transported to destination on the mailer's vehicle, the accepting post office must ensure that the mail is secured in such a manner, and accompanied by appropriate documentation, as to allow confirmation that the mailing as verified, accepted, and paid for has not been altered in any way when deposited at the destination postal facility. Postal facilities must use USPS ball seals, USPS locks, or other postal security devices that prevent access to the mail by other than authorized postal employees. Vehicles that make en route stops must be resealed after the corresponding mail is removed.

722.432 Deposit of Mail.

a. General Requirement. Each DBMC rate mailing must be deposited at the time and location specified by the destination facility postmaster or designee.

b. Scheduling of Deposit. Mailers must schedule deposit of DBMC rate mailings by contacting the manager, logistics and distribution, or designee, at the field division office in whose service area the DBMC is located. Mailers must comply with the scheduled deposit time provided (which, based on the facility's workload, may be up to 10 business days later). DBMC facilities may defer acceptance of unscheduled or untimely mailings.

722.433 Documentation. Mailings on which the DBMC rate is claimed must be accompanied by documentation that supports the number of pieces subject to that rate and to any other rate or





discount claimed. The documentation



charged the pickup fee for each

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discount claimed. The documentation must list the destination of each sack, pallet, or other container; the mailer's sack, pallet, or other container number if used; and the quantity of pieces in each. The required documentation may be provided as part of other documentation. No specific format is required. Other than the applicable mailing statement, documentation is not required in support of the DBMC rate when the corresponding mailing is separated by zone and consists of pieces that either all bear the correct postage affixed or are all of identical weight and paid by permit imprint.

722.44 Requirements Related to BMC Acceptance.

722.441 General. Except as otherwise provided by 722.4, mailings deposited at a DBMC must meet the requirements in Handbook DM–102, *Bulk Mail Acceptance*, 723.1 and 723.2.

722.442 Exception. Mailings at any zoned fourth-class rate (including the DBMC entry rate) may be accepted by the DBMC only as provided by 711.62 and 711.63.

722.443 Authorization. Prior to mailing at the DBMC, authorization must be provided to the DBMC to act as acceptance agent for the post office where the meter license or permit imprint authorization is held. Authorization for BMC acceptance is established as provided in Handbook DM–102, 725. Mailings cannot be deposited at a DBMC (whether the DBMC rate is claimed or not) without this authorization.

722.444 DBMC Responsibilities. DBMC facilities are required to operate as prescribed in Handbook DM–102, Chapter 7, when accepting mailings for which the DBMC rate is claimed.

| Facility | Parent post office | Zone chart |
|---|---|---|
| Albuquerque ASF | Albuquerque NM 87101–9998. | 670 |
| Atlanta BMC | Atlanta GA 30304–9998. | 300 |
| Billings ASF | Billings MT 59101–9998. | 590 |
| Buffalo ASF | Buffalo NY 14240–9998. | 140 |
| Chicago BMC | Chicago IL 60607–9998. | 603 |
| Cincinnati BMC | Cincinnati OH 45234–9998. | 450 |
| Dallas BMC | Dallas TX 75260–9998. | 750 |
| Denver BMC | Denver CO 80202–9998. | 800 |
| Des Moines BMC | Des Moines IA 50318–9998. | 500 |
| Detroit BMC | Detroit MI 48233–9998. | 480 |
| Fargo ASF | Fargo ND 58102–9998. | 580 |
| Greensboro BMC | Greensboro NC 27420–9998. | 272 |
| Jacksonville BMC | Jacksonville FL 32203–9998. | 320 |
| Kansas City BMC | Kansas City KS 66106–9998. | 660 |
| Los Angeles BMC | Long Beach CA 90809–9998. | 902 |
| Memphis BMC | Memphis TN 38101–9998. | 380 |
| Minneapolis BMC | Minneapolis MN 55401–9998. | 550 |
| New Jersey Int'l & BMC | Newark NJ 07102–9998. | 070 |
| Oklahoma City ASF | Oklahoma City OK 73125–9998. | 730 |
| Philadelphia BMC | Philadelphia PA 19104–9998. | 190 |
| Phoenix ASF | Phoenix AZ 85026–9998. | 850 |
| Pittsburgh BMC | Pittsburgh PA 15290–9998. | 150 |
| Saint Louis BMC | Saint Louis MO 63155–9998. | 630 |
| Salt Lake City ASF | Salt Lake City UT 84199–9998. | 840 |
| San Francisco BMC | San Francisco CA 94188–9998. | 940 |
| Seattle BMC | Seattle WA 98109–9998. | 980 |
| Sioux Falls ASF | Sioux Falls SD 57101–9998. | 570 |
| Springfield BMC | Springfield MA 01101–9998. | 010 |
| Washington BMC | Southern MD 20790–9998. | 206 |

**Exhibit 722.44, BMC/ASF Parent Post Offices**

722.45 Acceptance at Five-Digit Facilities. A mailing that is otherwise eligible for the DBMC rate may be deposited and accepted at a 5-digit facility rather than at the serving DBMC provided all pieces in the mailing are for that facility's service area, and are presented in 5-digit sacks, pallets, or other authorized containers. For purposes of this section, a "5-digit facility" means the postal facility to which the serving BMC distributes parcels for that 5-digit destination.

**722.5 Pickup Service**

722.51 General. Pickup service for parcel post is available at designated postal facilities, subject to the conditions in this section.

722.52 Fee.

722.521 General Terms. The fee prescribed in 712.4 must be paid by the mailer every time pickup service is provided, regardless of the number of pieces picked up. Only one fee will be charged if Express Mail or Priority Mail is also picked up at the same time. No fee will be charged when Express Mail, Priority Mail, or parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee.

722.522 Method of Payment. The fee must be paid by meter, precanceled, or adhesive stamps affixed to Form 5541, or by check payable to the postmaster of the serving post office.

722.53 Postage. The mailer must affix the full required postage to each piece mailed using pickup service. Use of precanceled and meter stamps must be as provided by 143 and 144, respectively. Pieces paid by permit imprint, claimed at a bulk or presorted rate, or claimed at the DBMC rate cannot be mailed using pickup service.

722.54 Other Mail. As a service to the mailer, the Postal Service will concurrently collect incidental amounts of other fully-prepaid, postage affixed, full-rate mail when picking up mail for which pickup service is provided (Express Mail, Priority Mail, and parcel post). Presorted, bulk, or reduced rate mail, any other fourth-class mail, and any mail paid by permit imprint must be deposited at the serving postal facility.

722.55 Scheduled Pickup Service.

722.551 When Available. Scheduled pickup service may be requested during the regular business hours of the serving postal facility. Scheduled pickup service will begin the next day when service is available and continue until canceled by the mailer.

722.552 Where Available. Scheduled pickup service is available at post offices with city delivery service (see Publication 65, *National Five-Digit ZIP Code and Post Office Directory*), and at other post offices where the mailer's address is along the route of travel of a rural or highway contract route.

722.553 Service Agreement. Mailers who desire scheduled pickup service must enter into a service agreement with the Postal Service, specifying the time, place, day or date, and frequency of service, and the approximate volume per pickup. (Form 5631, *Express Mail Service Agreement*, may be adapted for this use.) Mailers will be charged the pickup fee for a scheduled pickup regardless of volume collected.

722.554 Cancellation and Changes in Volume. The mailer must notify the serving post office no less than 24 hours in advance of the scheduled pickup if the pickup is not needed (canceled) or if the volume of mail to be picked up exceeds the amount specified in the service agreement by more than 20%. Mailers will not be charged the pickup fee for a scheduled pickup that is canceled as required (i.e., at least 24 hours prior to the scheduled pickup). Mailers who do not notify the serving post office of exceptional volume will be charged the pickup fee for each additional trip required.

722.555 Volume. There are no minimum or maximum limitations on the amount of volume that can be mailed using pickup service. However, the Postal Service reserves the right to defer pickup or to make multiple pickups at no additional charge to the mailer when the volume to be picked up exceeds available vehicle capacity, and to initiate action to establish plant load service where warranted based on mailer volume.

722.556 Changes in Service.

a. By the Mailer. Scheduled pickup service (the service agreement) may be changed by the mailer effective 5 business days from the receipt of the mailer's written notice to the serving postal facility.

b. By the Postal Service. Scheduled pickup service (the service agreement) may be changed by the Postal Service effective 5 days from the mailer's receipt of written notice from the serving post office. The mailer may appeal this notice as provided by 133, but must pay all pickup fees chargeable during the appeal period.

c. Disruptions in Service. The Postal Service may suspend scheduled pickup service when weather or road conditions, facility emergencies at mailer or postal premises, unforeseen personnel or vehicle shortages, or other exceptional situations make it impossible or unsafe to provide pickup service.

722.557 Termination of Service.

a. By the Mailer. Scheduled pickup service will be terminated within 24 hours of receipt of the mailer's written notice to the serving postal facility. The mailer will be liable for fees for pickup service provided prior to termination of service.

b. By the Postal Service. The Postal Service may terminate pickup service effective 24 hours from the mailer's receipt of written notice from the serving post office. Termination must be based on the mailer's failure to pay postage and fees or to meet the requirements that apply to pickup service or mailing at parcel post rates. The mailer may appeal this notice as provided by 133, but must pay all pickup fees chargeable during the appeal period.

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723 BOUND PRINTED MATTER RATES

**723.1 Description**

[Delete existing 723.1 e and f, and renumber existing 723.1g as new 723.1e.]

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724 SPECIAL FOURTH-CLASS RATES

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725 LIBRARY RATE

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**740 Authorizations and Permits**

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743 DESTINATION BMC ENTRY RATE MAILING FEE

The destination BMC entry rate mailing fee (see 712.3) must be paid once each 12-month period at each office of mailing by or for any person or organization who mails at the destination BMC entry rates (see Exhibit 711.14 and 722.4).

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**760 Preparation Requirements**

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762 PREPARATION OF PARCEL POST

**762.1 Marking**

762.11 General.

a. Location. The marking required by 762.12–762.14 must be placed on the address side of each piece, adjacent to or below the postage and above the name of the addressee.

b. Method. The marking required by 762.12–762.14 may be printed or rubber-stamped, included as part of the permit imprint, or printed by postage meter slug or ad plate.

c. Other Content. Any marking which includes or is included in a decorative design or advertisement will not satisfy the requirements of this section.

d. Unmarked Pieces. Pieces lacking the endorsement required by 762.12–762.14, or not clearly marked as required by 762.11a–c, will be treated as single-piece rate parcel post and subject to additional postage as necessary.

e. Single-Piece Rate Pieces. Pieces mailed at the single-piece parcel post rates do not require a marking, although mailers are encouraged to mark those pieces "Parcel Post."

762.12 Bulk Parcel Post. Each piece mailed at the bulk parcel post rates must be marked "Fourth-Class Bulk Rates" or Fourth-Class Blk.Rt."

762.14 DBMC Rate Parcel Post. Each piece mailed at the DBMC parcel post rates must be marked "DBMC Parcel Post" or "4C DBMC." If postage for the piece is paid by permit imprint and the office of mailing is in a different 3-digit ZIP Code area than the post office in the return address (see 761.14), the 5-digit ZIP Code or the 3-digit ZIP Code prefix of the office of mailing must be included in the indicia or, alternatively, incorporated in the required marking (e.g., "4C DBMC 011" or "DBMC Parcel Post Mailed From 01101").

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**770 Mailing**

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774 ZONED RATES

Pieces paid at rates which are based on zones (e.g., parcel post and bound printed matter rates) must be presented for acceptance at the post office from which the applicable zoned rate postage is computed, except as provided by 711.62 and 711.63.

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**780 Payment of Postage**

781 SINGLE-PIECE MAILINGS

[Add to the end of the section:] The mailer is responsible for proper payment of postage. See 111.32.

782 BULK RATE MAILINGS

Mailers of fourth-class matter at bulk rates must pay postage by permit imprint or meter stamps and must complete and submit the appropriate Postal Service mailing statement with each mailing. The mailer is responsible for proper payment of postage. See 111.32.

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784 PLANT VERIFIED DROP SHIPMENT POSTAGE PAYMENT SYSTEM

**784.1 General**

784.11 Definition. The plant-verified drop shipment postage payment system is designed to allow destination acceptance of mailings prepared for entry at DBMC rates (see 722.4), while taking advantage of the greater postal efficiency associated with origin verification and postage payment. Approval for use of a plant-verified drop shipment postage payment system will be granted under the conditions specified in 784.2.

784.12 System Elements. Under this system:

(a) The mailer's product is verified for proper classification, rate eligibility, preparation, and presort by postal personnel located at a mailer's plant (e.g., at a detached mail unit (DMU));

(b) Postage is prepaid at the post office serving the mailer's location;

(c) The shipment is released for dispatch under postal seal;

(d) The shipment is transported to destination postal facilities at the mailer's expense on the mailer's vehicle or on transportation procured by the mailer;



(e) The shipment is deposited at the

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(e) The shipment is deposited at the destination postal facility by the mailer or the mailer's agent;

(f) The shipment is verified and accepted as mail by postal personnel at the destination postal facility and released for processing.

784.13 Participation. The plant-verified drop shipment postage payment system may be used only by mailers who have been authorized by the field division general manager/postmaster in whose service area the mailer is located (see 784.3).

784.14 Other Mailings. Other destination entry mailings that are not verified at the origin plant under a plant-verified drop shipment postage payment system must be verified, accepted and paid for at the destination post office in accordance with 722.431 c and d.

**784.2 Program Participation Criteria for Mailers**

784.21 Request for Participation. The mailer must submit an application for participation in the plant-verified drop shipment postage payment system as prescribed in 784.3.

784.22 Facilities for Postal Personnel. At each plant at which mail is inspected pursuant to a plant-verified drop shipment agreement (see 784.3), the mailer must provide an enclosed work area for the DMU that can be locked, has a telephone, is separate from the mailer's activities, and provides a safe working environment, as determined by the Postal Service.

784.23 Postage Payment. The mailer must pay all applicable fees, and must obtain and maintain all applicable permits or authorizations at the local post office serving the mailer's plant. Unless authorized to pay postage under a CPP system, the mailer must pay postage for plant-verified drop shipments at the post office serving the mailer's plant. If permit imprints are used, the mailer must ensure that sufficient funds are on deposit in the appropriate advance deposit accounts to pay for all plant-verified drop shipments prior to their release for dispatch. Postage payment must be in accordance with the requirements in the DMM, Handbook DM–102, *Bulk Mail Acceptance*, Handbook DM–103, *Penalty Mail*, and any applicable agreements between the mailer and the Postal Service.

784.24 Documentation.

a. The mailer must produce and submit an individual mailing statement for each mailing destined for each destination entry post office, at the time the mail is presented for verification and postage payment.

b. When required by the local postmaster, the mailer must submit consolidated mailing statements and a register of mailing statements to the Postal Service.

c. The mailer must produce and submit to the Postal Service the prescribed clearance documents, in duplicate, that must accompany each plant-verified drop shipment to the destination post office where the shipment will be deposited. Those documents must be presented in triplicate if the mailer wishes to have a signed and dated copy returned to its driver when mailings are unloaded at the destination entry postal facility.

784.25 Transportation.

784.251 Responsibility. The mailer is responsible for the transportation of plant-verified drop shipments from the origin plant to the destination postal facility.

784.252 Other Mailings. The mailer must not transport plant-verified drop shipment mailings on the same vehicle with other shipments that are not entered as plant-verified drop shipments.

784.253 Scheduling. The mailer must meet the requirements in 722.432 in regard to the deposit of mail at destination entry postal facilities.

784.254 Separation of Mailings. When a vehicle contains more than one plant-verified drop shipment for a single destination postal facility, the shipments must be separated, except that this requirement may be waived by the origin postmaster for copalletized or combined mailings provided the clearance document for that destination clearly identifies all of the mail for that facility. In addition, when a vehicle contains one or more shipments for more than one destination postal facility, the shipments must be separated by destination.

**784.3 Authorization.**

784.31 Request.

784.311 General. The mailer must submit a written request to the mailer's local postmaster seeking assignment of postal personnel to the mailer's plant (e.g., establishment of a DMU) to support plant-verified drop shipment of destination entry rate mailings. No form is provided for this purpose.

784.312 Date of Filing. The mailer must submit the request at least 30 days prior to the date proposed for submission of the first plant-verified drop shipment using the system.

784.313 Content. The request must fully describe the characteristics of the mailings that will be prepared as plant-verified drop shipments. At a minimum, the request must include the following information for each mailing or series of mailings of the same product, publication, or job:

a. The schedule of mailing, i.e., the number, frequency and time of mailings (e.g., at noon daily for two weeks, every other Monday at 4pm, etc.);

b. The number of pieces and mailing statements to be presented to postal personnel, both daily and in total;

c. The class of mail and processing category;

d. The level of sortation and rate(s) claimed, as applicable;

e. If postage is paid locally;

(1) The method of postage payment and a listing of the postage meter numbers and licenses, and permit imprint (or company permit imprint) to be used; and

(2) The alternative mailing system used by the mailer, if any (see 145.7, 145.8, and 145.9);

f. If postage is paid under Centralized Postage Payment (CPP) procedures, a copy of the authorization must accompany the request (separate authorization by the serving rates and classification center is required to mail under CPP);

g. The type and capacity of scales at the mailer's plant, if any;

h. The space available for postal personnel to use and the suitability of that space for verification of mail, record keeping, installation of computer equipment, and monitoring of vehicle loading;

i. The types of equipment used (trays, sacks, pallets, etc.) (authorizations must be obtained where required); and

j. The destination entry points to which shipments will be dispatched (e.g., a listing of the BMCs and 5-digit facilities).

784.32 Approving or Denying Authorization.

784.321 Local Post Office. The local postmaster will review the application for completeness and accuracy; evaluate the mailer's ability to meet the requirements in 784.2, the suitability of the mailer's plant to accommodate postal personnel (i.e., a DMU), and the capability of the local post office to support the requested activity; and prepare a written summary of the results. This report and a recommendation for approval or denial of the mailer's request will be forwarded through the MSC/division manager, mailing requirements, to the field division general manager/postmaster.

784.322 Field Division. The field division general manager/postmaster will consider the postmaster's report and recommendation, determine whether the local post office has sufficient employees who are trained and qualified in mail classification and verification to support the request plant-verified drop shipment activity, and prepare a final written decision on the mailer's request.

784.323 Approval. If the mailer's request for participation in the plant-verified drop shipment postage payment systgem is approved, the field division general manager/postmaster will prepare a plant-verified drop shipment agreement that must be signed by the general manager/postmaster, the mailer, and the postmaster of the post office serving the mailer's plant before the approval can be made effective. The agreement will specify the terms and period of the authorization (not to exceed 2 years). Copies of the agreement will be provided to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center.

784.324 Denial. If the mailer's request for participation in the plant-verified drop shipment postage payment system is denied, the field division general manager/postmaster will notify the mailer in writing, stating the reasons for the decision, and provide copies of the decision to the local postmaster, the MSC/division manager, mailing requirements, and the rates and classification center. The denial may be appealed as provided in 133.

784.33 Renewal, Termination, and Revocation.

784.331 Renewal. The mailer must submit a new request for authorization at least 30 days prior to the expiration of a plant-verified drop shipment agreement. The content of the request, and the procedures for its review, approval, or denial are as prescribed in 784.31 and 784.32.

784.332 Termination. A mailer may elect to terminate participation in a plant-verified drop shipment agreement by 10 calendar days' written notice to the authorizing field division general manager/postmaster.

784.333 Revocation. A plant-verified drop shipment agreement may be revoked by the authorizing field division general manager/postmaster by 10 calendar days' written notice to the mailer. Revocation must be based on the mailer's failure to pay postage and fees or to meet the requirements that apply to plant-verified drop shipment or mailing at parcel post rates. The revocation action may be appealed as provided by 133.

**784.4 DMU Functions**

784.41 General. Assignment of postal personnel to the mailer's plant to process plant-verified drop shipments may be in conjunction with the DMU staffing associated with a plant load authorization for that mailer's plant, but may be provided to a mailer's plant that is not authorized plant load, at the discretion of the division general manager/postmaster.

784.42 Inspection of Mailpieces. Postal personnel assigned to the mailer's plant must verify drop shipment mailings for classification, rate eligibility, preparation, presort, and postage in the same manner as plant load mailings.

784.43 Documents.

784.431 Preparation. Before each plant-verified drop shipment is released for dispatch, postal personnel must ensure that all clearance documents are properly completed, signed, and dated, and that each includes the number of the postal seal to be used on the vehicle, if appropriate (see 784.5). The required documents must be provided for each mailing prepared for each destination entry postal facility. The DMU will retain one copy of each completed clearance document.

784.432 Enclosure. Postal personnel must ensure that all appropriate clearance documents are provided to the mailer who is responsible for placing them in each vehicle to accompany the corresponding plant-verified drop shipments. These documents must be placed on the left rear wall of the vehicle just inside the door of the vehicle. Affix the required Form 5111–R, *Revenue Protection Placard*, to the outside rear of the vehicle after the mailer has completed loading the vehicle.

784.44 Loading. Postal personnel must observe the loading of each vehicle used to transport plant-verified drop shipments to ensure the correct mailings are loaded into vehicles for the correct destinations and that shipments are not improperly commingled (see 784.254).

784.45 Security. Postal personnel must seal the vehicle containing the plant-verified drop shipments mailings with a USPS ball seal, USPS lock, or other postal security device that prevents access to the shipments by other than authorized postal employees. Vehicles that make en route stops must be resealed after the corresponding mail is removed (see 784.5).

**784.5 Destination Postal Facility Functions**

784.51 Verification of Documents. The postal seal number on the clearance document for that destination post office must match the number on an unbroken seal securing the vehicle. Container identification codes on the clearance document must match the containers deposited. If these items match, the destination facility will sign and date the clearance documents accompanying the mailings and process the mail. These documents will be retained for one year in a chronological file, and receipted copies will be returned to the mailer's employee, if appropriate (see 784.24c and 784.431).

784.52 Verification of Contents. Each destination postal facility where plant-verified drop shipments are deposited must ensure that only the appropriate shipments are unloaded and accepted.

784.53 Vehicles Containing Mail for More Than One Destination Facility. When a mailer's vehicle contains mail for more than one destination entry facility, each intermediate postal facility will record the number of a new USPS ball seal on the clearance document for the next schedule destination post office, and affix that seal to secure the vehicle. (If USPS locks are used, they must be removed and retained at the final postal facility where the vehicle stops.)

784.54 Loading of Mail Prohibited. Postal Service mail for downstream postal facilities must not be loaded onto the mailer's vehicle by any intermediate postal facility at which the mailer has stopped to deposit a plant-verified drop shipment.

784.6 Liability. The mailer assumes all liability and responsibility for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at destination entry postal facilities, regardless of whether a third party is used to transport those shipments. The Postal Service is not liable or responsible for any loss or damage to plant-verified drop shipments before they are deposited and accepted as mail at a destination postal facility.

**784.7 Postage**

784.71 Method of Payment. Postage for a plant-verified drop shipment must be paid by meter stamps or by permit imprint using a meter license or permit imprint advance deposit account, as applicable, maintained by the mailer at the post office serving the mailer's location.

784.72 Computation. Postage for DBMC rate mailings prepared as plant-verified drop shipments is calculated (zoned) from the destination postal facility where mailings are deposited and accepted into the mailstream.

784.73 Refunds. The Postal Service will not refund postage for any failure to provide service that is caused in whole or in part by any event that occurs before the shipment is deposited and accepted into the mailstream and

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becomes mail at a destination postal facility, except in accordance with the provisions of 147.2.

9. In chapter 9 of the Domestic Mail Manual, make the following revisions:

**CHAPTER 9—SPECIAL SERVICES**

**910 Special Mail Services**

911 REGISTERED MAIL

* * * * *

**911.2 Fees and Liability**

911.21 **Fees in Addition to Postage. See Exhibit 911.21.**

Exhibit 911.21, Registry Fees. [No change in fees in addition to postage.]

* * * * *

| Additional services | Extra fee |
|---|---|
| COD collection charge (maximum amount collectible is $600) | $2.50 |
| Restricted delivery | 2.50 |
| Return receipts: | |
| Requested at time of mailing: | |
| Showing to whom (signature) and date delivered | 1.00 |
| Showing to whom (signature), date, and address where delivered | 1.35 |
| Requested after mailing: Showing to whom (signature) and date delivered | 6.00 |

* * * * *

912 CERTIFIED MAIL

* * * * *

**912.3 Fees in Addition to Postage**

The fees for certified mail are:

| | |
|---|---|
| Fee | $0.90 |
| Restricted delivery | 2.50 |
| Return receipts: | |
| Requested at time of mailing: | |
| Showing to whom (signature) and date delivered | 1.00 |
| Showing to whom (signature), date, and address where delivered | 1.35 |
| Requested after mailing: Showing to whom (signature) and date delivered | 6.00 |

* * * * *

913 INSURED MAIL

* * * * *

**913.2 Fees and Liability**

913.21 **Fees in Addition to Postage. The fees for insured mail are:**

| Liability | Fee |
|---|---|
| $0.01 to $50 | $3.75 |
| 50.01 to 100 | 1.60 |
| 100.01 to 200 | 2.40 |
| 200.01 to 300 | 3.20 |
| 300.01 to 400 | 4.00 |
| 400.01 to 500 | 5.40 |
| 500.01 to 600 | 6.00 |

**Maximum liability for insured mail is $600.**

* * * * *

**913.3 Additional Services**

913.31 **Restricted Delivery. Restricted delivery may be obtained for parcels that are insured for more than $50. See 913.33 and 933 for the applicable fees and conditions. See 933.4 for circumstances under which restricted delivery may be made by delivery to a person other than the addressee.**

913.32 Return Receipt. Upon payment of the fee specified in 913.33, Form 3811, *Domestic Return Receipt*, **may be obtained for parcels insured for more than $50, as provided by 932.2.**

913.33 **Fees. In addition to the postage and insured fee that is applicable to the mailpiece, the following fees must be paid for the corresponding additional services:**

| | |
|---|---|
| Restricted delivery | $2.50 |
| Return receipts: | |
| Requested at time of mailing: | |
| Showing to whom (signature) and date delivered | 1.00 |
| Showing to whom (signature), date, and address where delivered | 1.35 |
| Requested after mailing: Showing to whom (signature) and date delivered | 6.00 |

913.34 **Other Services. Other additional services that can be requested for insured mail are special delivery, special handling, parcel airlift, and merchandise return (by shippers only); see 915, 916, 918, and 919, respectively for more information.**

* * * * *

914 COLLECT ON DELIVERY (COD) MAIL

**914.1 Description**

* * * * *

914.13 Conditions.

* * * * *

914.132 **Maximum Amount. The amount collected from the addressee cannot exceed $600.**

* * * * *

914.174 **Registered COD Mail. Sealed domestic mail of any class bearing postage at the First-Class rate may be sent as registered COD mail. Such mail is handled in the same manner as other registered mail. The maximum amount collectible from the recipient on an individual parcel is $600. Indemnity may be purchased up to the registry limit of $25,000, by payment of the registry fee from Column A, Exhibit 911.21, corresponding to the value declared. Payment of a registry fee from Column B, Exhibit 911.21, will not provide any indemnity coverage. The total fees charged for registered COD service will include the appropriate registry fee for the value declared, plus the registered COD fee (see 914.21). The mailer must declare the full value of the article being mailed, regardless of the amount to be collected from the recipient.**

914.175 Express Mail COD. Any article sent COD may also be sent by Express Mail. Such mail is handled in the same manner as other Express Mail. The maximum amount collectible from the addressee on an individual article is $600, and indemnity for failure to collect or issue payment will be limited to $600. See 292–296 for indemnity for loss, damage, or rifling of Express Mail COD articles. Express Mail postage (see Exhibit 210) and the appropriate COD fees (see 914.2) must be paid. Both the Express Mail label and COD tag must be affixed to each article. Enter the Express Mail number as the COD number on the COD tag.

* * * * *

**914.2 Fees**

914.21 **Fees in Addition to Postage. Collect-on-delivery (COD) fees are:**

| Amount to be collected or insurance coverage desired [1] | COD fees |
|---|---|
| $0.01 to $50 | $2.50 |
| 50.01 to 100 | 3.25 |
| 100.01 to 200 | 4.00 |
| 200.01 to 300 | 4.75 |
| 300.01 to 400 | 5.50 |
| 400.01 to 500 | 6.50 |
| 500.01 to 600 | 7.00 |
| Restricted delivery | 2.50 |
| Notice of nondelivery | 2.10 |
| Alteration of COD charges or designation of new addressee | 2.10 |
| Registered COD | 2.50 |

[1] For Express Mail COD shipments, collect the fee for the amount to be paid the sender only. Express Mail insurance covers up to $500 merchandise insurance.

914.22 Payment of Fees and Postage.

* * * * *

Example:

| | |
|---|---|
| Cost of Contents | $45.63 |
| Postage | 4.03 |
| Subtotal | $49.63 |
| COD Fee* | 3.25 |
| Total Amount Due Sender | $52.88 |

* In the example cited, the COD fee for articles valued at up to $50 is $2.50. Since the $2.50 fee raises the amount to be collected to over $50, the next higher COD fee ($3.25 in this case) must be charged.

* * * * *

915 SPECIAL DELIVERY

* * * * *

**915.3 Fees in Addition to Postage**

**The special delivery fees are:**



| Class of mail | 2 lbs. or less | Over 2 lbs. but not more than 10 lbs. | Over 10 lbs. |
|---|---|---|---|
| First-class and priority mail | $5.60 | $6.00 | $7.50 |
| All other classes | 5.90 | 6.75 | 8.35 |

* * * * *

916 SPECIAL HANDLING

* * * * *

**916.4 Fees in Addition to Postage**

The fees for special handling are:

| Weight | Fee |
|---|---|
| Not more than 10 pounds | $1.80 |
| More than 10 pounds | 2.50 |

* * * * *

917 BUSINESS REPLY MAIL (BRM)

* * * * *

**917.3 Postage and Fees**

* * * * *

917.33 Fees.

917.331 **Annual BRM Permit Fee. The annual BRM permit and renewal fee is $75.**

917.332 **Annual BRM Accounting Fee. The annual BRM accounting fee is $185.**

917.333 **Per Piece. The applicable business reply mail fee must be collected for each piece of business reply mail in addition to the single-piece rate First-Class postage that applies to the mailpiece:**

With business reply mail advance deposit account:

| | |
|---|---|
| Regular | $0.09 |
| BRMAS | 0.03 |
| Without business reply mail advance deposit account | 0.40 |

917.334 Schedule of Payment. The applicable annual BRM fees must be paid once each 12-month period, commencing on the anniversary date of the permit's issuance or previous fee payment, whichever is later.

917.34 Payment of Postage and Fees.

* * * * *

917.342 Cash or Postage-Due Account.

* * * * *

a. Amount Collected. The fee prescribed in 917.333 must be collected when the mailer pays by cash or postage-due account.

* * * * *

917.343 Business Reply Account.

* * * * *

a. Amount Collected. The fee prescribed in 917.333 must be collected when the mailer pays by business reply account.

* *

Exception: Business reply cards and letters returned under BRMAS that are rejected by USPS barcode sorters and found not to meet the machinability, barcode, or other preparation requirements for BRMAS will be charged the appropriate First-Class postage plus $0.09 per piece. In addition, if improper barcodes appear on BRM pieces returned under BRMAS (for example, if a barcode representing the card rate appears on a letter-size piece) the pieces will be subject to the appropriate First-Class postage plus $0.09 per piece.

b. Permit and Accounting Fee.

* * * * *

[Delete the "Note" and "Example".]

c. Other Applicable Conditions. [No change in text.]

d. Insufficient Funds. When a business reply account contains insufficient funds to cover the amount due for postage and fees, the BRM is held and the permit holder notified by certified mail. If funds are not deposited within 3 days, the BRM is treated as a cash or postage-due account transaction, and the permit holder is charged the corresponding fee (see 917.333). If funds are deposited within 3 days, all BRM held during the 3 days will be charged the applicable fee for a BRM account transaction (see 917.333).

* * * * *

917.35 BRM Bearing Stamps.

* * * * *

917.352 Refunds.

* * * * *

b. The per-piece charges in 917.333 are not refundable. * * *

* * * * *

918 PARCEL AIRLIFT

* * * * *

**918.4 Fees**

In addition to the regular surface rate of postage, the fees for parcel airlift are:

| Weight | Fee |
|---|---|
| Not more than 2 pounds | $0.35 |
| Over 2 but not more than 3 pounds | 0.70 |
| Over 3 but not more than 4 pounds | 1.05 |
| Over 4 pounds | 1.40 |

* * * * *

919 MERCHANDISE RETURN

* * * * *

**919.3 Postage and Fees**

919.31 **Permit Fee. A fee of $75 will be charged once each 12-month period on the anniversary date for each permit issued.**

919.32 **Transaction Fee. The fee for each item returned is $0.25 per parcel, in addition to the postage and other applicable fees.**

* * * * *

**930 Supplemental Mail Services**

931 CERTIFICATES OF MAILING

* * * * *

**931.2 Fees**

931.21 **Basic Fee.**

a. **The fee for certificates of mailing for all classes of mail is $0.50 per article listed individually on Form 3817, *Certificate of Mailing*.**

b. Additional copies of either Form 3817 or firm mailing bills are available for $0.50 per page.

931.22 Firm Mailing Books.

* * * * *

b. The fee is $0.20 per article listed.

931.23 **Bulk Mailings. Identical pieces of First-Class and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps, are subject to the following fees:**

| | |
|---|---|
| Up to 1,000 pieces (1 certificate for total number) | $2.50 |
| Each additional 1,000 pieces or fraction thereof | 0.30 |
| Duplicate copy | 0.50 |

* * * * *

932 RETURN RECEIPTS

**932.1 Description**

* * * * *

932.12 **Return Receipt for Merchandise Service. Return receipt for merchandise service is available for merchandise sent as First-Class, Priority Mail, third-class, parcel post, bound printed matter, special fourth-class rate, and library rate mail (see 934).**

**Note:** For information about international return receipt service, see *International Mail Manual*, 340.

**932.2 Fees**

In addition to the postage and other fees, the fees for return receipts are:

| | |
|---|---|
| REQUESTED AT TIME OF MAILING: | |
| Showing to whom (signature) and date delivered | $1.00 |
| Showing to whom (signature), date, and address where delivered | 1.35 |
| REQUESTED AFTER MAILING: | |
| Showing to whom (signature) and date delivered | 6.00 |
| RETURN RECEIPT FOR MERCHANDISE (see 934) | |

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Showing to whom (signature) and date delivered.....1.10
Showing to whom (signature), date, and address where delivered.....1.50

933 RESTRICTED DELIVERY

• • • • •

933.2 Fees

In addition to postage and other fees, the fee for restricted delivery is $2.50.

• • • • •

934 RETURN RECEIPT FOR MERCHANDISE

934.1 Description

• • • • •

934.2 What May Be Sent With Return Receipt For Merchandise Service

Return receipt for merchandise service is available for merchandise sent at the First-Class, Priority, third-class, parcel post, bound printed matter, special fourth-class and library rates of postage. All articles must be mailable in accordance with postal regulations. Special delivery service is available for other than bulk third-class upon payment of the prescribed fees (see 915.3). Special handling is available for single-piece rate third-class and fourth-class pieces.

934.3 Fees

Showing to whom (signature) and date of delivery.....$1.10
Showing to whom (signature), date, and address where delivered.....1.50

• • • • •

934.4 Acceptance Procedures

• • • • •

934.43 Verification of Delivery. Mailers may obtain a copy of the delivery record by sending a written request to the post office of address. The fee is $6 for each copy requested and must be sent with the request. Mailers may not obtain a return receipt after mailing.

948 Nonmail Services

941 MONEY ORDERS

941.1 Issuance

• • • • • •

941.12 Purchase Amounts, Fees, and Payments.

• • • • • •

941.124 Fees.

a. Postal military money order (issued by military facilities authorized by the Department of Defense).....$0.25
b. Domestic money order (issued at other post offices, including those with branches or stations on military installations).....0.75
c. Inquiry fee (includes the issuance of copy of a paid money order).....2.50

• • • • • •

941.4 Inquiries

• • • • • •

941.43 Fee.

941.431 Amount. The customer must pay the fee prescribed in 941.124c for each money order inquiry submitted on a Form 6401. Each Form 6401 covers only one money order.

941.432 Exception. The fee required by 941.431 does not have to be paid by banks, other financial institutions, and the Government agencies that process money orders directly with the Federal Reserve Bank, and for official post office business.

• • • • •

945 MAILING LIST SERVICES

945.1 General

• • • • • •

945.16 Fees.

945.161 Correction of Name and Address or Occupant Lists.

a. The fee is $0.15 for each name or street address on the list, with a minimum fee of $5.00 for each list corrected. (The minimum applies for lists with fewer than 35 names or addresses.)

• • • • • •

945.162 Sortation of Mailing Lists on Cards by Five-Digit ZIP Code. The fee for this service is $54.00 per 1,000 addresses or fraction thereof. • • •

950 Alternative Delivery Services

951 POST OFFICE BOX (P.O. BOX) SERVICE

• • • • • •

951.2 Fees

• • • • • •

951.22 Fee Groups.

• • • • • •

951.222 Group 1 Fees.

a. General Application. [Text of existing 951.222a(1).]

b. Independent Facilities. [Text of existing 951.222a(2).]

c. Group 1 Categories. Group 1 fees are divided into three categories as listed below. Customers must pay the category of Group 1 fee that corresponds to the post office where the box is rented.

| Category | Post office | ZIP code(s) |
|---|---|---|
| 1A | New York, NY | 10001–10299. |
| 1B | Staten Island, NY | 10301–10399. |
| | Boston, MA | 02110–02111, 02113, 02115, 02128, 02134–02135, 02136–02140, 02142, 02146, 02158–02162, 02164–02168, 02178–02179, 02181, 02210, 02214–02216, 02218. |
| | Long Island City, NY | 11101–11199. |
| | Brooklyn, NY | 11201–11299. |
| | Queens (Flushing), NY | 11301–11399. |
| | Queens (Jamaica), NY | 11401–11499. |
| | Queens (Far Rockaway), NY | 11501–11699. |
| | Philadelphia, PA | 19101–19104, 19107. |
| | Washington, DC | 20004–20008, 20013, 20026, 20036–20037, 20050, 20301, 20505. |
| | Bethesda, MD | 20814 |
| | Arlington, VA | 22201–22202, 22209, 22211. |
| | McLean, VA | 22103. |
| | Chicago, IL | 60601–60607, 60610–60611, 60654, 60680, 60690. |
| | Los Angeles, CA | 90018, 90024–90025, 90034–90035, 90048–90049, 90064, 90067, 90069, 90077. |
| | Beverly Hills, CA | 90210–90212. |
| | Santa Monica, CA | 90401–90405. |
| | San Francisco, CA | 94101–94105, 94107–94109, 94111, 94118, 94123, 94126, 94133. |
| | Honolulu, HI | 96813–96815. |
| 1C | All post offices that have city delivery by postal carrier and are not listed in Group 1A or 1B. | |



951.223 Group 2 Fees. [Text of existing 951.222b.]

951.224 Group 3 Fees. [Text of existing 951.222c.]

• • • • • •

951.25 Facilities Primarily Serving Academic Institutions.

• • • • • •

951.252 Adjustment of Fees to Meet Semester Schedules.

[In the note, replace the first sentence as follows:] Round charges to the next (higher) multiple of $0.10. • • •

951.26 Fee Schedule.

951.261 Fees. Fees for post office box rental are as follows:

| Box Size | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| | Per Semi-Annual Period | | | | |
| Group 1A | $25.00 | $33.00 | $58.00 | $96.00 | $160.00 |
| Group 1B | 22.00 | 28.00 | 50.00 | 84.00 | 140.00 |
| Group 1C | 19.00 | 25.00 | 45.00 | 72.00 | 120.00 |
| Group 2 | 4.00 | 6.00 | 11.00 | 17.00 | 28.00 |
| | Per Annual Period | | | | |
| Group 3 | 1.20 | 1.20 | 1.20 | 1.20 | 1.20 |

• • • • • •

952 CALLER SERVICE

• • • • • •

952.2 Fees

952.21 Reserved Number Fee. The fee for each number reserved by a customer is $25 per postal calendar year or any part of such a calender year.

952.22 Caller Service Fees.

• • • • • •

952.222 Basic Caller Service Fee

a. General Rule. The applicable fee for caller service shown in 952.222c must be paid semiannually for each caller number or separation used. A separate basic fee must be paid for each facility where Accelerated Reply Mail (origin caller service) is provided.

b. Fee Categories. Caller service fees are divided into three categories as listed below. Customers must pay the category of fee that corresponds to the post office where caller service is used.

| Category | Post Office | Zip Code(s) |
|---|---|---|
| 1A | New York, NY | 10001–10299. |
| 1B | Staten Island, NY | 10301–10399. |
| | Boston, MA | 02110–02111, 02113, 02115, 02128, 02134–02135, 02136–02140, 02142, 02146, 02158–02162, 02164–02168, 02178–02179, 02181, 02210, 02214–02216, 02218. |
| | Long Island City, NY | 11101–11199. |
| | Brooklyn, NY | 11201–11299. |
| | Queens (Flushing), NY | 11301–11399. |
| | Queens (Jamaica), NY | 11401–11499. |
| | Queens (Far Rockaway), NY | 11501–11699. |
| | Philadelphia, PA | 19101–19104, 19107. |
| | Washington, DC | 20004–20008, 20013, 20026, 20036–20037, 20050, 20301, 20505. |
| | Bethesda, MD | 20814 |
| | Arlington, VA | 22201–22202, 22209, 22211. |
| | McLean, VA | 22103. |
| | Chicago, IL | 60601–60607, 60610–60611, 60654, 60680, 60690. |
| | Los Angeles, CA | 90018, 90024–90025, 90034–90035, 90048–90049, 90064, 90067, 90069, 90077. |
| | Beverly Hills, CA | 90210–90212. |
| | Santa Monica, CA | 90401–90405. |
| | San Francisco, CA | 94101–94105, 94107–94108, 94111, 94118, 94123, 94126, 94133. |
| | Honolulu, HI | 96813–96815. |
| 1C | All post offices not listed in Group 1A or 1B. | |

| Category | Fee |
|---|---|
| c. Fee. | |
| 1A | $225.00 |
| 1B | 215.00 |
| 1C | 200.00 |

[Redesignate existing 952.222b and 952.222c as 952.222d and 952.222e, respectively.]

10. The revised mailing statements the Postal Service proposes to adopt are set forth on the following pages as exhibits.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

**Stanley F. Mires,**
*Assistant General Counsel, Legislative Division.*

BILLING CODE 7710-12-M

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## Statement of Mailing Second-Class Regular & Science of Agriculture Rates

*Regular publications, and all commingled nonsubscriber copies in excess of the 10% allowance, must claim only regular rates. Noncommingled nonsubscriber/nonrequester copies in excess of the 10% allowance are not mailable at Second-Class rates.

☐ Check if Requester Publication

| Name of Publication or News Agent | | | Publication No. | Date of Mailing |
|---|---|---|---|---|
| Post Office (POI) and State of Mailing | PO ZIP + 4 | PO Finance Number | Frequency of Issue | Date of Issue |
| | Sequenced Statement No. (Required) | Freight Bill No. | Edition Code/Key | Incidental First-Enclosed ☐ |

**Complete ONE of the Boxes Below**

Complete this section if this statement is for ONE ISSUE or EDITION.

Average Weight per Copy for the Issue (DMM 483.34)
____ . ____ lbs.
(Round off to 6 decimal places if necessary)

Percent of Advertising in This Issue %

Post Office Computed Average of Combined Weight per Copy
____ . ____ lbs.
(Round off to 6 decimal places if necessary)

Complete this section when this statement is for ALL ISSUES of a calendar month. Enter total pounds either in items 1 through 9, or in item 11, as appropriate, and in item 13. To compute per piece charges, multiply the number of addressed pieces per issue by the number of issues and put the result in the appropriate blocks of items 15 through 25 as appropriate.

Number of Issues This Month

Weight of One Sheet (DMM 483.34) ____ . ____ lbs.
(Round off to 6 decimal places if necessary)

Combined Weight of One Copy from Each Issue ____ . ____ lbs.
(Round off to 6 decimal places if necessary)

Percent of Advertising in Total Month's Issue %

**Pound Rate**

| Zone | *Subscriber Copies | Non-Sub./Requester Copies w/i 10% Limit | Non-Sub./Requester Copies Over 10% Com. | Total Copies | Total Pounds | Rate per Lb. or Fraction ☐ Regular | ☐ Sol./Ag. | Postage | Totals |
|---|---|---|---|---|---|---|---|---|---|
| 1. Del. Unit | | | | | | 0.145 | 0.071 | | |
| 2. SCF | | | | | | .185 | .091 | | |
| 3. 1 & 2 | | | | | | .201 | .126 | | |
| 4. 3 | | | | | | .208 | | | |
| 5. 4 | | | | | | .230 | | | |
| 6. 5 | | | | | | .261 | | | |
| 7. 6 | | | | | | .295 | | | |
| 8. 7 | | | | | | .335 | | | |
| 9. 8 | | | | | | .369 | | | |
| 10. Totals | | | | | | | | | |

11. KEY RATE Computation (If used, do not complete items 1-10; see DMM 483.4) Total Lbs. ____ × Key Rate ____ = ____

12. Subtotal (1-10 or 11) ____ +

13. Nonadv. Adj. (100% − ____ % of Adv.) = ____ Nonadv. % ÷ 100 = ____ Nonadv. Factor × ____ Total Lbs. = ____ Nonadv. Lbs. × 0.075 = ____ −

Total Pound Rate Postage (12-13) → 14.

**Piece Rate**

| Level | Description | | Number of Copies | Number Qualified Addressed Pieces | Rate | Postage |
|---|---|---|---|---|---|---|
| 15. A | Pcs. packaged and sacked under DMM 441 | Not ZIP + 4/ZIP + 4 Barcoded | | | .201 | |
| 16. A | | ZIP + 4 | | | .187 | |
| 17. A | | ZIP + 4 Barcoded | | | .177 | |
| 18. B3 | Pcs. packaged and sacked under DMM 443 | Not ZIP + 4/ZIP + 4 Barcoded | | | .155 | |
| 19. B3 | | ZIP + 4 | | | .148 | |
| 20. B3 | | ZIP + 4 Barcoded | | | .140 | |
| 21. B5 | Pcs. in SD pkgs. placed in SD city, & unique 3D sacks (DMM 443) | Not ZIP + 4/ZIP + 4 Barcoded | | | .155 | |
| 22. B5 | | ZIP + 4 | | | .148 | |
| 23. B5 | | ZIP + 4 Barcoded | | | .133 | |
| 24. CR | Pcs. packaged and sacked under DMM 444 | Carrier Route Rate | | | .119 | |
| 25. CS | | Saturation Rate | | | .099 | |
| 26. Total | | | | | | + |

27. Nonadvertising Adjustment Nonad. Factor (from line 13) ____ × no. Qual. Pcs. = ____ × .05 = −

Total Piece Rate Postage (26-27) → 28.

Total Postage – side 1 (14 + 28) – Carry to side 2, line 30 → 29.

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Go to Reverse of This Form



## In-County and Foreign Rates

*Requester publications, and all commingled nonsubscriber copies in excess of the 10% limit are not eligible for in-county rates.

Total Postage From Side One (Line 29) → 30.

**In-County**

**Pound Rate**

| | | *Subscriber Copies | *Nonsubscriber Copies | Total Copies | Total Pounds | Rate | Postage |
|---|---|---|---|---|---|---|---|
| 31. | Delivery Unit Entry | | | | | $0.104 | |
| 32. | All Other Entry | | | | | $0.134 | |

Total In-County Pound Rate Postage → 33.

**Piece Rate (in Addition to the Pound Rate)**

| Level | Description | | Number of Copies | No. of Qualifying Addressed Pieces | Rate | Postage |
|---|---|---|---|---|---|---|
| J1 | Pcs. Packaged and sacked under DMM 441 | 34. Not ZIP + 4 or ZIP + 4 Barcoded | | | $.077 | |
| J1 | | 35. ZIP + 4 | | | .077 | |
| J1 | | 36. ZIP + 4 Barcoded | | | .077 | |
| J3 | Pcs. in city or unique 3D pkgs. placed in city or unique 3D sacks (DMM 441) | 37. Not ZIP + 4 or ZIP + 4 Barcoded | | | .077 | |
| J3 | | 38. ZIP + 4 | | | .070 | |
| J3 | | 39. ZIP + 4 Barcoded | | | .062 | |
| J5 | Pcs. in SD pkgs. placed in SD city, & unique 3D sacks (DMM 441) | 40. Not ZIP + 4 or ZIP + 4 Barcoded | | | .077 | |
| J5 | | 41. ZIP + 4 | | | .070 | |
| J5 | | 42. ZIP + 4 Barcoded | | | .055 | |
| KR | Pcs. packaged and sacked under DMM 444 | 43. Carrier Route Rate | | | .039 | |
| KS | | 44. Saturation Rate | | | .019 | |

Total In-County Piece Rate Postage → 45.

**Foreign (IMM 242.2)**

46a. Average Weight per Copy for the Issue (DMM 483.34) (Include all wrappings) ____ . ____ lbs. (Round off to 6 decimal places if necessary)

46b. Post Office Computed Average of Combined Weight per Copy (Include all wrappings) ____ . ____ lbs. (Round off to 6 decimal places if necessary)

| Rate Category | Subscriber/ Requester Copies | Nonsubscriber/ Nonrequester Copies | Total Copies | Rate | Postage |
|---|---|---|---|---|---|
| 47. Surface | | | | | |

Total Foreign Postage → 48.

49. Additional Postage for Nonsubscriber/Nonrequester Copies in excess of the 10% limit (Compute on side 1 of a separate 3541-R; carry forward to this entry the figure on line 29 of that form; attach that form to this form.)

Sequence number of attached form ____.

| Total Copies | Total Pounds | Postage | |
|---|---|---|---|
| | | | → 49. |

Total Postage (Add items 30, 33, 45, 48 and 49) → 50.

The submission of a false, fictitious, or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000. (18 USC 1001).

In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates postage claimed.

| 51a. Name (Printed), Telephone Number, and Signature of Mailer | 51b. Printed Name and Telephone No. of Publisher (If not same as mailer) | 52. Computed by USPS (Signature Required) | 53. Date (USPS Round Stamp) |
|---|---|---|---|
| | | | |

PS Form 3541-R, January 1991, (Reverse)

VOL 55 ISS 242 DEC 17 1990 UMI



## Statement of Mailing Second-Class Special and Classroom Rates

*Requester publications, and all commingled nonsubscriber copies in excess of the 10% allowance, must claim regular rates and use Form 3541-R. Noncommingled nonsubscriber copies in excess of the 10% allowance are not mailable at Second-Class rates.

| Name of Publication or News Agent | | Publication No. | Date of Mailing |
|---|---|---|---|
| Post Office (PO) and State of Mailing | PO ZIP + 4 / PS Finance Number / Frequency of Issue / Date of Issue | | |
| | Sequenced Statement No. (Required) / Freight Bill No. / Edition Code/Key / Incidental First-Enclosed ☐ | | |

**Complete ONE of the Boxes Below**

Complete this section if this statement is for ONE ISSUE or EDITION.

- Average Weight per Copy for this Issue (DMM 463.34) _____ . _____ lbs. (Round off to 6 decimal places if necessary)
- Percent of Advertising in This Issue %
- Post Office Computed Average of Combined Weight per Copy _____ . _____ lbs. (Round off to 6 decimal places if necessary)

Complete this section when the statement is for ALL ISSUES of a calendar month. Enter total pounds either in items 1 through 9, or in item 11, as appropriate, and in item 13. To compute per piece charges, multiply the number of addressed pieces per issue by the number of issues and put the result in the appropriate blocks of items 15 through 25 as appropriate.

- Number of Issues This Month
- Weight of One Sheet (DMM 463.34) _____ . _____ lbs. (Round off to 6 decimal places if necessary)
- Combined Weight of One Copy from Each Issue _____ . _____ lbs. (Round off to 6 decimal places if necessary)
- Percent of Advertising in Total Month's Issue %

**Pound Rate**

| | Zone | *Subscriber Copies | *Non-subscriber Copies | Total Copies | Total Pounds | Rate per Lb. or Fraction ☐ Special ☐ Classroom | Postage | Totals |
|---|---|---|---|---|---|---|---|---|
| 1. | Del. Unit | | | | | $.071 | | |
| 2. | SCF | | | | | .091 | | |
| 3. | 1 & 2 | | | | | .126 | | |
| 4. | 3 | | | | | .133 | | |
| 5. | 4 | | | | | .153 | | |
| 6. | 5 | | | | | .180 | | |
| 7. | 6 | | | | | .209 | | |
| 8. | 7 | | | | | .245 | | |
| 9. | 8 | | | | | .275 | | |
| 10. | Totals | | | | | | | |
| 11. | KEY RATE Computation (If used, do not complete items 1-10, see DMM 463.4) | | | Total Lbs. _____ | | × Key Rate _____ = | | |
| 12. | Subtotal (1-10 or 11) | | | | | | | = |
| 13. | Nonadv. Adj. (100% − _____ % of Adv.) = _____ Nonadv. % ÷ 100 = _____ Nonadv. Factor × _____ Total Lbs. = _____ Nonadv. Lbs. × 0.05 = | | | | | | | − |
| | Total Pound Rate Postage (12-13) → | | | | | | | 14. |

**Piece Rate**

| | Level | Description | | Number of Copies | Number qualified Addressed Pieces | Rate | Postage |
|---|---|---|---|---|---|---|---|
| 15. | | Pcs. packaged and sacked under DMM 441 | Not ZIP + 4/ZIP + 4 Barcoded | | | .188 | |
| 16. | C | | ZIP + 4 | | | .154 | |
| 17. | | | ZIP + 4 Barcoded | | | .144 | |
| 18. | | Pcs. packaged and sacked under DMM 443 | Not ZIP + 4/ZIP + 4 Barcoded | | | .122 | |
| 19. | H3 | | ZIP + 4 | | | .115 | |
| 20. | | | ZIP + 4 Barcoded | | | .107 | |
| 21. | | Pcs. in SD pkgs. placed in SD city, & unique 3D sacks (DMM 443) | Not ZIP + 4/ZIP + 4 Barcoded | | | .122 | |
| 22. | H5 | | ZIP + 4 | | | .115 | |
| 23. | | | ZIP + 4 Barcoded | | | .100 | |
| 24. | IR | Pcs. packaged and sacked under DMM 444 | Carrier Route Rate | | | .093 | |
| 25. | IS | | Saturation Rate | | | .073 | |
| 26. | Total → | | | | | | + |
| 27. | Nonadvertising Adjustment | Nonad. Factor (from line 13) _____ × no. Qual. Pcs. = _____ × .035 = | | | | | − |
| | Total Piece Rate Postage (26-27) → | | | | | | 28. |
| | Total Postage – side 1 (14 + 28) – Carry to side 2, line 30 → | | | | | | 29. |

PS Form 3541-N, January, 1991

Go to Reverse of This Form



## In-County and Foreign Rates

*Requester publications, and all commingled nonsubscriber copies in excess of the 10% limit are not eligible for in-county rates.

Total Postage From Side One (Line 29) → 30.

***In-County**

| | | *Subscriber Copies | *Nonsubscriber Copies | Total Copies | Total Pounds | Rate | Postage |
|---|---|---|---|---|---|---|---|
| Pound Rate | 31. Delivery Unit Entry | | | | | $0.104 | |
| | 32. All Other Entry | | | | | 0.126 | |

Total In-County Pound Rate Postage → 33.

Piece Rate (In Addition to the Pound Rate)

| | Level | Description | | Number of Copies | No. of Qualifying Addressed Pieces | Rate | Postage |
|---|---|---|---|---|---|---|---|
| | J1 | Pcs. Packaged and sacked under DMM 441 | 34. Not ZIP + 4 or ZIP + 4 Barcoded | | | $.077 | |
| | | | 35. ZIP + 4 | | | .077 | |
| | | | 36. ZIP + 4 Barcoded | | | .077 | |
| | J3 | Pcs. in city or unique 3D pkgs. placed in city or unique 3D sacks (DMM 441) | 37. Not ZIP + 4 or ZIP + 4 Barcoded | | | .077 | |
| | | | 38. ZIP + 4 | | | .070 | |
| | | | 39. ZIP + 4 Barcoded | | | .062 | |
| | J5 | Pcs. in SD pkgs. placed in SD, city, & unique 3D sacks (DMM 441) | 40. Not ZIP + 4 or ZIP + 4 Barcoded | | | .077 | |
| | | | 41. ZIP + 4 | | | .070 | |
| | | | 42. ZIP + 4 Barcoded | | | .065 | |
| | KR | Pcs. packaged and sacked under DMM 444 | 43. Carrier Route Rate | | | .039 | |
| | KS | | 44. Saturation Rate | | | .018 | |

Total In-County Piece Rate Postage → 45.

**Foreign (IMM 242.2)**

| 46a. Average Weight per Copy for the Issue (DMM 463.34) (Include all wrappings) _____ . _____ lbs. (Round off to 6 decimal places if necessary) | 46b. Post Office Computed Average of Combined Weight per Copy (Include all wrappings) _____ . _____ lbs. (Round off to 6 decimal places if necessary) |
|---|---|

| Rate Category | Subscriber/ Requester Copies | Nonsubscriber/ Nonrequester Copies | Total Copies | Rate | Postage |
|---|---|---|---|---|---|
| 47. Surface | | | | | |

Total Foreign Postage → 48.

| 49. Additional Postage for Nonsubscriber/Nonrequester Copies in excess of the 10% limit (Compute on side 1 of a separate 3541-R, carry forward to this entry the figure on line 29 of that form, attach that form to this form.) | Total Copies | Total Pounds | Postage | |
|---|---|---|---|---|
| Sequence number of attached form _____ | | | → | 49. |

Total Postage (Add items 30, 33, 45, 48 and 49) → 50.

The submission of a false, fictitious, or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000. (18 USC 1001).

In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on the form is accurate and truthful, and that this material presented qualifies for the rates postage claimed.

| 51a. Name (Printed), Telephone Number, and Signature of Mailer | 51b. Printed Name and Telephone No. of Publisher (If not same as mailer) | 52. Computed by USPS (Signature Required) | 53. Date (USPS Round Stamp) |
|---|---|---|---|
| | | | |

PS Form 3541-N, January 1991, (Reverse)

VOL 55 ISS 242 DEC 17 1990 UMI



## Statement of Mailing with Permit Imprints
## First-Class Mail (For Priority Mail Use Form 3605-R)

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

| | | | | |
|---|---|---|---|---|
| Post Office of Mailing | | Date | Processing Category (DMM 128)<br>☐ Letters<br>☐ Flats<br>☐ Irregular Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Federal Agency Cost Code | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No. | | |
| | | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | | Weight of a Single Piece — — — — — — pounds | | |
| | | Total Pieces in Mailing | Total Weight of Mailing | |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only)<br>☐ Centralized Postage Payment<br>☐ Plant-Loaded to<br>☐ Drop Ship Entered at<br>☐ Orig. ☐ Dest. A/O ZIP ____<br>☐ Orig. ☐ Dest. SCF 3D ZIP ____<br>☐ Orig. ☐ Dest. ADC ____ |

**Postage Computation**

- For mailings of letter-size pieces (DMM 128) other than cards weighing .1563 pound (2.5 ounces) or less, go to Part A on the reverse of this form.
- For mailings of letter-size pieces (DMM 128) other than cards weighing more than .1563 pound (2.5 ounces) but not more than .625 pound (10 ounces), go to Part B on the reverse of this form.
- For mailings of non letter-size pieces (DMM 128) other than cards weighing not more than .625 pound (10 ounces), go to Part C on the reverse of this form.
- For mailings of postal cards and postcards (DMM 322), go to Part D on the reverse of this form.

| | | |
|---|---|---|
| Postage (From Reverse Side) ▼ | Part A | $ |
| | Part B | $ |
| | Part C | $ |
| | Part D | $ |
| Additional Postage Payment (State reasons for Additional Postage) | No. Pieces | Rate/Piece $ . — = $ |
| | Total Postage ⟶ | $ |

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.)

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) | Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight — . — — — — — pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No<br>If "Yes" Reason | | |
| Total Pieces | Total Weight | | |
| Total Postage | | | |
| Check One<br>☐ Verif. Not Scheduled ☐ Present Verification Performed as Scheduled | Date Mailer Notified | Contact | By (Initials) |

I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee.

Signature of Weigher | Time AM PM | Round Stamp (Required)

PS Form 3600-R, January 1991 — Financial Document – Forward to Finance Office



## Form 3600-R — First-Class Other than Priority Mail — Permit Imprint

### Postage Computation

| Presort Automation Discounts | Net Rate | Count (Pcs) | Charge |
|---|---|---|---|
| **Letter – .1563 lb. (2.5 Oz.) or Less** | | | |
| ZIP + 4 Barcoded (5-Digit) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (3-Digit) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (Nonpresorted) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Presort | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 (Nonpresorted) | ____ | x ____ pcs. | = $ ____ |
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |
| Nonstandard Surcharge (If Applicable) | | | |
| Presorted and Carrier Route | .05 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .10 | x ____ pcs. | = $ ____ |
| **Total – Part A (Carry to front of form)** | | | $ ____ |

| Presort/Automation Discounts | Net Rate | Count (Pcs) | Charge |
|---|---|---|---|
| **Letter – More than .1563 lb. (2.5 Oz.) But not more than .625 lb. (10 Oz.)** | | | |
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |
| **Total – Part B (Carry to front of form)** | | | $ ____ |

| | | | |
|---|---|---|---|
| **Nonletter – .625 lb. (10 Oz.) or Less** | | | |
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |
| Nonstandard Surcharge (If Applicable) | | | |
| Presorted and Carrier Route | .05 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .10 | x ____ pcs. | = $ ____ |
| **Total – Part C (Carry to front of form)** | | | $ ____ |

| | | | |
|---|---|---|---|
| **Postal Cards and Post Cards** | | | |
| ZIP + 4 Barcoded (5-Digit) | .163 | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (3-Digit) | .168 | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (Nonpresorted) | .180 | x ____ pcs. | = $ ____ |
| ZIP + 4 Presort | .173 | x ____ pcs. | = $ ____ |
| ZIP + 4 (Nonpresorted) | .190 | x ____ pcs. | = $ ____ |
| Carrier Route | .165 | x ____ pcs. | = $ ____ |
| Presorted First-Class | .180 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .238 | x ____ pcs. | = $ ____ |
| **Total – Part D (Carry to front of form)** | | | $ ____ |

PS Form 3600-R, January 1991 (Reverse)

BEST COPY AVAILABLE

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## Statement of Mailing with Meter or Precanceled Postage Affixed First-Class Mail (For Priority Mail Use Form 3605-PC)

Method of Payment
☐ Meter Postage
☐ Precanceled Stamp

MAILER: Complete all items by typewriter, pen, or indelible pencil. Use Form 3606 if you need a receipt.

**Mailer's Information**

| | | | |
|---|---|---|---|
| Post Office of Mailing | Date | Processing Category (DMM 128) ☐ Letters ☐ Flats ☐ Irregular Parcels | USPS Authorized Mailing ID Code |
| Permit No. | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) / Telephone Number | Receipt No. | | |
| | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | Weight of a Single Piece — . — — — — pounds | | |
| | Total Pieces in Mailing | Total Weight of Mailing | |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | Name and Address of Mailing Agent (If other than the permit holder) | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ☐ Orig. ☐ Dest. SCF 3D ZIP ☐ Orig. ☐ Dest. ADC | |

**Postage Computation**

- For mailings of letter-size pieces (DMM 128) other than cards weighing .1563 pound (2.5 ounces) or less, go to Part A on the reverse of this form.
- For mailings of letter-size pieces (DMM 128) other than cards weighing more than .1563 pound (2.5 ounces) but not more than .625 pound (10 ounces), go to Part B on the reverse of this form.
- For mailings of non letter-size pieces (DMM 128) other than cards weighing not more than .625 pound (10 ounces), go to Part C on the reverse of this form.
- For mailings of postal cards and postcards (DMM 128), go to Part D on the reverse of this form.

Postage (From Reverse Side) ▼

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |

Additional Postage Payment (State reasons for Additional Postage) — No. Pieces — Rate/Piece $ — = $

Postage Affixed at (Check one) (DMM 362.4) ☐ Correct Rate ☐ Lowest Rate (Affix balance to this form) ☐ Neither

**Total Postage** → $

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiences.)

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that *all* information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) — Telephone Number

**USPS Use Only**

Single Piece Weight — . — — — — pounds — Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason

Check One: ☐ Verif. Not Scheduled ☐ Present Verification Performed as Scheduled — Date Mailer Notified — Contact — By (Initials)

I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. — Round Stamp (Required)

Signature of Weigher — Time AM PM

PS Form 3600-PC, January 1991 — Financial Document – Forward to Finance Office



## Form 3600-PC — First-Class Other than Priority Mail — Postage Affixed

### Postage Computation

**Presort/Automation Discounts** | Net Rate | Count (Pcs) | Charge

**Letter – .1563 lb. (2.5 Oz.) or Less**

| | | | |
|---|---|---|---|
| ZIP + 4 Barcoded (5-Digit) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (3-Digit) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (Nonpresorted) | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 Presort | ____ | x ____ pcs. | = $ ____ |
| ZIP + 4 (Nonpresorted) | ____ | x ____ pcs. | = $ ____ |
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |
| Nonstandard Surcharge (If Applicable) | | | |
| Presorted and Carrier Route | .05 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .10 | x ____ pcs. | = $ ____ |

Total – Part A (Carry to front of form) $ ____

**Presort/Automation Discounts** | Net Rate | Count (Pcs) | Charge

**Letter – More than .1563 lb. (2.5 Oz.) But not more than .625 lb. (10 Oz.)**

| | | | |
|---|---|---|---|
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |

Total – Part B (Carry to front of form) $ ____

**Nonletter – .625 lb. (10 Oz.) or Less**

| | | | |
|---|---|---|---|
| Carrier Route | ____ | x ____ pcs. | = $ ____ |
| Presorted First-Class | ____ | x ____ pcs. | = $ ____ |
| Single-Piece Rate | ____ | x ____ pcs. | = $ ____ |
| Nonstandard Surcharge (If Applicable) | | | |
| Presorted and Carrier Route | .05 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .10 | x ____ pcs. | = $ ____ |

Total – Part C (Carry to front of form) $ ____

**Postal Cards and Post Cards**

| | | | |
|---|---|---|---|
| ZIP + 4 Barcoded (5-Digit) | .152 | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (3-Digit) | .158 | x ____ pcs. | = $ ____ |
| ZIP + 4 Barcoded (Nonpresorted) | .160 | x ____ pcs. | = $ ____ |
| ZIP + 4 Presort | .173 | x ____ pcs. | = $ ____ |
| ZIP + 4 (Nonpresorted) | .180 | x ____ pcs. | = $ ____ |
| Carrier Route | .165 | x ____ pcs. | = $ ____ |
| Presorted First-Class | .180 | x ____ pcs. | = $ ____ |
| Single-Piece Rate | .200 | x ____ pcs. | = $ ____ |

Total – Part D (Carry to front of form) $ ____

PS Form 3600-PC, January 1991 (Reverse)

VOL 55 ISS 242 DE 17 1990 UMI



## Statement of Mailing with Permit Imprints
## Third-Class Mail (Regular Rates Only)

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

| | | | | |
|---|---|---|---|---|
| Post Office of Mailing | | Date | Processing Category (DMM 128) ☐ Letters ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Federal Agency Cost Code | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No. | | |
| | | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | | Weight of a Single Piece — . — — — — pounds | | |
| | | Total Pieces in Mailing | Total Weight of Mailing | Sacking Based on ☐ 125 pcs. ☐ 15 lbs. ☐ Both (DMM 841) |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | | Name and Address of Mailing Agent* (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded at ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ☐ Orig. ☐ Dest. SCF 3D ZIP ☐ Orig. ☐ Dest. BMC |

**Postage Computation**

- For bulk mailings of letter-size pieces (see DMM 128) weighing .1563 lb. (2.5 oz.) or less, go to Part A on the reverse of this form.
- For bulk mailings of letter-size pieces (see DMM 128) weighing more than .1563 lb. (2.5 oz.) but not more than .2104 lb. (3.3669 oz.) go to Part B on the reverse of this form.
- For bulk mailings of non letter-size pieces (see DMM 128) weighing not more than .2104 lb. (3.3669 oz.), go to Part C on the reverse of this form.
- For bulk mailings of all pieces (see DMM 128) weighing more than .2104 lb. (3.3669 oz.) but less than 1 lb. (16 oz.), go to Part D on the reverse of this form.

Postage (From Reverse Side)

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |

Single-Piece Rate ☐ or Additional Postage Payment (State reasons for Additional Postage) — No. Pieces — Rate/Piece $ . — = $

Is applicable bulk per piece rate affixed to each piece? (Form 3602-PC required) ☐ Yes ☐ No

**Total Postage** → $

**Certification**

The signature of a mailer certifies that it will be liable for and agree to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) — Telephone Number

**USPS Use Only**

Single Piece Weight — . — — — — pounds — Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No — If "Yes" Reason

Total Pieces — Total Weight

Total Postage

Check One ☐ Vent. Not Scheduled ☐ Present Verification Performed as Scheduled — Date Mailer Notified — Contact — By (Initials)

I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the necessary annual fee.

Round Stamp (If required)

Signature of Weigher — Time AM PM

PS Form 3602-R, January 1991 — Financial Document – Forward to Finance Office



## Form 3602-R — Third-Class Regular Rate — Permit Imprint

### Postage Computation — Bulk Rates

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – .1563 lb. (2.5 Oz.) or Less** | | | | |
| None | Saturation | .113 | ____ pcs. | $ ____ |
| | Carrier Route | .123 | ____ pcs. | $ ____ |
| | 5-Digit Barcoded | .132 | ____ pcs. | $ ____ |
| | 3-Digit Barcoded | .139 | ____ pcs. | $ ____ |
| | 3/5-Digit ZIP + 4 | .147 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .154 | ____ pcs. | $ ____ |
| | Basic Barcoded | .161 | ____ pcs. | $ ____ |
| | Basic ZIP + 4 | .171 | ____ pcs. | $ ____ |
| | Basic | .185 | ____ pcs. | $ ____ |
| BMC Entry | Saturation | .101 | ____ pcs. | $ ____ |
| | Carrier Route | .111 | ____ pcs. | $ ____ |
| | 5-Digit Barcoded | .120 | ____ pcs. | $ ____ |
| | 3-Digit Barcoded | .127 | ____ pcs. | $ ____ |
| | 3/5-Digit ZIP + 4 | .135 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .142 | ____ pcs. | $ ____ |
| | Basic Barcoded | .149 | ____ pcs. | $ ____ |
| | Basic ZIP + 4 | .159 | ____ pcs. | $ ____ |
| | Basic | .173 | ____ pcs. | $ ____ |
| SCF Entry | Saturation | .096 | ____ pcs. | $ ____ |
| | Carrier Route | .106 | ____ pcs. | $ ____ |
| | 5-Digit Barcoded | .116 | ____ pcs. | $ ____ |
| | 3-Digit Barcoded | .122 | ____ pcs. | $ ____ |
| | 3/5-Digit ZIP + 4 | .130 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .137 | ____ pcs. | $ ____ |
| | Basic Barcoded | .144 | ____ pcs. | $ ____ |
| | Basic ZIP + 4 | .154 | ____ pcs. | $ ____ |
| | Basic | .168 | ____ pcs. | $ ____ |
| DDU Entry | Saturation | .091 | ____ pcs. | $ ____ |
| | Carrier Route | .101 | ____ pcs. | $ ____ |
| **Total – Part A (Carry to front of form)** | | | | $ ____ |

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – More than .1563 lb. (2.5 Oz.) But not more than .2104 lb. (3.3669 Oz.)** | | | | |
| None | Saturation | .113 | ____ pcs. | $ ____ |
| | Carrier Route | .123 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .154 | ____ pcs. | $ ____ |
| | Basic | .185 | ____ pcs. | $ ____ |
| BMC Entry | Saturation | .101 | ____ pcs. | $ ____ |
| | Carrier Route | .111 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .142 | ____ pcs. | $ ____ |
| | Basic | .173 | ____ pcs. | $ ____ |
| SCF Entry | Saturation | .096 | ____ pcs. | $ ____ |
| | Carrier Route | .106 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .137 | ____ pcs. | $ ____ |
| | Basic | .168 | ____ pcs. | $ ____ |
| DDU Entry | Saturation | .091 | ____ pcs. | $ ____ |
| | Carrier Route | .101 | ____ pcs. | $ ____ |
| **Total – Part B (Carry to front of form)** | | | | $ ____ |

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Nonletter – .2104 lb. (3.3669 Oz.bs.) or Less** | | | | |
| None | Saturation | .113 | ____ pcs. | $ ____ |
| | Carrier Route | .134 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .175 | ____ pcs. | $ ____ |
| | Basic | .220 | ____ pcs. | $ ____ |
| BMC Entry | Saturation | .101 | ____ pcs. | $ ____ |
| | Carrier Route | .122 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .163 | ____ pcs. | $ ____ |
| | Basic | .206 | ____ pcs. | $ ____ |
| SCF Entry | Saturation | .096 | ____ pcs. | $ ____ |
| | Carrier Route | .117 | ____ pcs. | $ ____ |
| | 3/5-Digit Presort | .158 | ____ pcs. | $ ____ |
| | Basic | .203 | ____ pcs. | $ ____ |
| DDU Entry | Saturation | .091 | ____ pcs. | $ ____ |
| | Carrier Route | .112 | ____ pcs. | $ ____ |
| **Total – Part C (Carry to front of form)** | | | | $ ____ |

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **All Mail – More than .2104 lb. (3.3669 Oz.) But less than 1.0 lb. (16 Oz.)** | | | | |
| None | Saturation | .000 | ____ pcs. | $ ____ |
| | plus | .537 | ____ lbs. | $ ____ |
| | Carrier Route | .021 | ____ pcs. | $ ____ |
| | plus | .537 | ____ lbs. | $ ____ |
| | 3/5-Digit Presort | .062 | ____ pcs. | $ ____ |
| | plus | .537 | ____ lbs. | $ ____ |
| | Basic | .107 | ____ pcs. | $ ____ |
| | plus | .537 | ____ lbs. | $ ____ |
| BMC Entry | Saturation | .000 | ____ pcs. | $ ____ |
| | plus | .478 | ____ lbs. | $ ____ |
| | Carrier Route | .021 | ____ pcs. | $ ____ |
| | plus | .478 | ____ lbs. | $ ____ |
| | 3/5-Digit Presort | .062 | ____ pcs. | $ ____ |
| | plus | .478 | ____ lbs. | $ ____ |
| | Basic | .107 | ____ pcs. | $ ____ |
| | plus | .478 | ____ lbs. | $ ____ |
| SCF Entry | Saturation | .000 | ____ pcs. | $ ____ |
| | plus | .456 | ____ lbs. | $ ____ |
| | Carrier Route | .021 | ____ pcs. | $ ____ |
| | plus | .456 | ____ lbs. | $ ____ |
| | 3/5-Digit Presort | .062 | ____ pcs. | $ ____ |
| | plus | .456 | ____ lbs. | $ ____ |
| | Basic | .107 | ____ pcs. | $ ____ |
| | plus | .456 | ____ lbs. | $ ____ |
| DDU Entry | Saturation | .000 | ____ pcs. | $ ____ |
| | plus | .433 | ____ lbs. | $ ____ |
| | Carrier Route | .021 | ____ pcs. | $ ____ |
| | plus | .433 | ____ lbs. | $ ____ |
| **Total – Part D (Carry to front of form)** | | | | $ ____ |

PS Form 3602-R, January 1991 (Reverse)

VOL 55 ISS 242 DE 17 1990 UMI



## Statement of Mailing with Permit Imprints
## Third-Class Mail (Nonprofit Rates Only)

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

Post Office of Mailing | Date | Processing Category (DMM 128) ☐ Letters ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s)

Permit No. | Mailing Statement Seq. No.

Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No.

No. Sacks | No. Trays | No. Pallets | No. Other

Weight of a Single Piece — . — — — — pounds

Authorized to use nonprofit rates? (DMM 625)* ☐ Yes ☐ No

Total Pieces in Mailing | Total Weight of Mailing | Sacking Based on ☐ 125 pcs. ☐ 15 lbs. ☐ Both (DMM 541)

Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder)

Name and Address of Mailing Agent* (If other than the permit holder)

Authorized to use nonprofit rates? (DMM 625)* ☐ Yes ☐ No

*Check All That Apply (USPS Only)
☐ Centralized Postage Payment
☐ Plant Loaded at
☐ Drop Ship Entered at
☐ Orig. ☐ Dest. A/O ZIP
☐ Orig. ☐ Dest. SCF 3D ZIP
☐ Orig. ☐ Dest. BMC

**Postage Computation**

- For bulk mailings of letter-size pieces (see DMM 128) weighing .1563 lb. (2.5 oz.) or less, go to Part A on the reverse of this form.
- For bulk mailings of letter-size pieces (see DMM 128) weighing more than .1563 lb. (2.5 oz.) but not more than .2115 lb. (3.3837 oz.), go to Part B on the reverse of this form.
- For bulk mailings of non letter-size pieces (see DMM 128) weighing not more than .2115 lb. (3.3837 oz.), go to Part C on the reverse of this form.
- For bulk mailings of all pieces (see DMM 128) weighing more than .2115 lb. (3.3837 oz.) but less than 1 lb. (16 oz.), go to Part D on the reverse of this form.

Postage (From Reverse Side)

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |

Single Piece Rate ☐ or Additional Postage Payment (Write reasons for Additional Postage) | No. Pieces | Rate/Piece $ — = $

Is applicable bulk per piece rate affixed to each piece? (Form 3602-PC required) ☐ Yes ☐ No

**Total Postage** → $

**Certification**

*The signature of a mailer certifies that: (1) the mailing does not violate DMM 625; (2) only the mailer's matter is being mailed; (3) this is not a cooperative mailing with other persons or organizations that are not authorized to mail at special bulk third-class rates at this office; (4) this mailing has not been undertaken by the mailer on behalf of or produced for another person or organization not authorized to mail at special bulk third-class rates at this office; and (5) it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing, whether due to a finding that the mailing is cooperative or for other reasons. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the nonprofit mailer, and that both the nonprofit mailer and the agent will be liable for and agree to pay any deficiencies.)

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) | Telephone Number

**USPS Use Only**

Single Piece Weight — . — — — — pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No

If "Yes" Reason

Total Pieces | Total Weight

Total Postage

Check One ☐ Verif. Not Scheduled ☐ Performed as Scheduled | Present Verification For- | Date Mailer Notified | Contact | By (Initials)

I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and (4) payment of the required annual fee.

Round Stamp (Required)

Signature of Weigher | Time AM PM

PS Form 3602-N, January 1991 — Financial Document – Forward to Finance Office



## Form 3602-N — Third-Class Nonprofit Rate — Permit Imprint

### Postage Computation — Bulk Rates

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – .1563 lb. (2.5 Oz.) or Less** | | | | |
| None | Saturation | .070 | × ____ pcs. | = $ ____ |
| | Carrier Route | .073 | × ____ pcs. | = $ ____ |
| | 5-Digit Barcoded | .075 | × ____ pcs. | = $ ____ |
| | 3-Digit Barcoded | .083 | × ____ pcs. | = $ ____ |
| | 3/5-Digit ZIP + 4 | .091 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .097 | × ____ pcs. | = $ ____ |
| | Basic Barcoded | .090 | × ____ pcs. | = $ ____ |
| | Basic ZIP + 4 | .099 | × ____ pcs. | = $ ____ |
| | Basic | .110 | × ____ pcs. | = $ ____ |
| BMC Entry | Saturation | .058 | × ____ pcs. | = $ ____ |
| | Carrier Route | .061 | × ____ pcs. | = $ ____ |
| | 5-Digit Barcoded | .063 | × ____ pcs. | = $ ____ |
| | 3-Digit Barcoded | .071 | × ____ pcs. | = $ ____ |
| | 3/5-Digit ZIP + 4 | .079 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .085 | × ____ pcs. | = $ ____ |
| | Basic Barcoded | .078 | × ____ pcs. | = $ ____ |
| | Basic ZIP + 4 | .087 | × ____ pcs. | = $ ____ |
| | Basic | .098 | × ____ pcs. | = $ ____ |
| SCF Entry | Saturation | .053 | × ____ pcs. | = $ ____ |
| | Carrier Route | .056 | × ____ pcs. | = $ ____ |
| | 5-Digit Barcoded | .058 | × ____ pcs. | = $ ____ |
| | 3-Digit Barcoded | .066 | × ____ pcs. | = $ ____ |
| | 3/5-Digit ZIP + 4 | .074 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .080 | × ____ pcs. | = $ ____ |
| | Basic Barcoded | .073 | × ____ pcs. | = $ ____ |
| | Basic ZIP + 4 | .082 | × ____ pcs. | = $ ____ |
| | Basic | .093 | × ____ pcs. | = $ ____ |
| DDU Entry | Saturation | .048 | × ____ pcs. | = $ ____ |
| | Carrier Route | .051 | × ____ pcs. | = $ ____ |
| **Total – Part A (Carry to front of form)** | | | | $ ____ |

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – More than .1563 lb. (2.5 Oz.) But not more than .2115 lb. (3.3837 Oz.)** | | | | |
| None | Saturation | .070 | × ____ pcs. | = $ ____ |
| | Carrier Route | .073 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .087 | × ____ pcs. | = $ ____ |
| | Basic | .110 | × ____ pcs. | = $ ____ |
| BMC Entry | Saturation | .058 | × ____ pcs. | = $ ____ |
| | Carrier Route | .061 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .085 | × ____ pcs. | = $ ____ |
| | Basic | .098 | × ____ pcs. | = $ ____ |
| SCF Entry | Saturation | .053 | × ____ pcs. | = $ ____ |
| | Carrier Route | .056 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .080 | × ____ pcs. | = $ ____ |
| | Basic | .093 | × ____ pcs. | = $ ____ |
| DDU Entry | Saturation | .048 | × ____ pcs. | = $ ____ |
| | Carrier Route | .051 | × ____ pcs. | = $ ____ |
| **Total – Part B (Carry to front of form)** | | | | $ ____ |

| | | | | |
|---|---|---|---|---|
| **Nonletter – .2115 lb. (3.3837 Oz.) or Less** | | | | |
| None | Saturation | .070 | × ____ pcs. | = $ ____ |
| | Carrier Route | .080 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .111 | × ____ pcs. | = $ ____ |
| | Basic | .125 | × ____ pcs. | = $ ____ |
| BMC Entry | Saturation | .058 | × ____ pcs. | = $ ____ |
| | Carrier Route | .068 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .099 | × ____ pcs. | = $ ____ |
| | Basic | .113 | × ____ pcs. | = $ ____ |
| SCF Entry | Saturation | .053 | × ____ pcs. | = $ ____ |
| | Carrier Route | .063 | × ____ pcs. | = $ ____ |
| | 3/5-Digit Presort | .094 | × ____ pcs. | = $ ____ |
| | Basic | .108 | × ____ pcs. | = $ ____ |
| DDU Entry | Saturation | .048 | × ____ pcs. | = $ ____ |
| | Carrier Route | .058 | × ____ pcs. | = $ ____ |
| **Total – Part C (Carry to front of form)** | | | | $ ____ |

| | | | | |
|---|---|---|---|---|
| **All Mail – More than .2115 lb. (3.3837 Oz.) But less than 1.0 lb. (16 Oz.)** | | | | |
| None | Saturation | .000 | × ____ pcs. | = $ ____ |
| | plus | .331 | × ____ lbs. | = $ ____ |
| | Carrier Route | .010 | × ____ pcs. | = $ ____ |
| | plus | .331 | × ____ lbs. | = $ ____ |
| | 3/5-Digit Presort | .041 | × ____ pcs. | = $ ____ |
| | plus | .331 | × ____ lbs. | = $ ____ |
| | Basic | .088 | × ____ pcs. | = $ ____ |
| | plus | .331 | × ____ lbs. | = $ ____ |
| BMC Entry | Saturation | .000 | × ____ pcs. | = $ ____ |
| | plus | .273 | × ____ lbs. | = $ ____ |
| | Carrier Route | .010 | × ____ pcs. | = $ ____ |
| | plus | .273 | × ____ lbs. | = $ ____ |
| | 3/5-Digit Presort | .041 | × ____ pcs. | = $ ____ |
| | plus | .273 | × ____ lbs. | = $ ____ |
| | Basic | .056 | × ____ pcs. | = $ ____ |
| | plus | .273 | × ____ lbs. | = $ ____ |
| SCF Entry | Saturation | .000 | × ____ pcs. | = $ ____ |
| | plus | .250 | × ____ lbs. | = $ ____ |
| | Carrier Route | .010 | × ____ pcs. | = $ ____ |
| | plus | .250 | × ____ lbs. | = $ ____ |
| | 3/5-Digit Presort | .041 | × ____ pcs. | = $ ____ |
| | plus | .250 | × ____ lbs. | = $ ____ |
| | Basic | .055 | × ____ pcs. | = $ ____ |
| | plus | .250 | × ____ lbs. | = $ ____ |
| DDU Entry | Saturation | .000 | × ____ pcs. | = $ ____ |
| | plus | .227 | × ____ lbs. | = $ ____ |
| | Carrier Route | .010 | × ____ pcs. | = $ ____ |
| | plus | .227 | × ____ lbs. | = $ ____ |
| **Total – Part D (Carry to front of form)** | | | | $ ____ |

PS Form 3602-N, January 1991 (Reverse)

**Statement of Mailing with Meter or Precanceled Postage Affixed**
**Bulk Third-Class Mail (Regular or Nonprofit Rates)**

Method of Payment
☐ Meter Postage
☐ Precanceled Stamps

MAILER: Complete all items by typewriter, pen, or indelible pencil. Use Form 3606 if you need a receipt.

**Mailer's Information**

| | | |
|---|---|---|
| Post Office of Mailing | Date | Processing Category (DMM 128) ☐ Letters ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels |
| Permit No. | Mailing Statement Seq. No. | USPS Authorized Mailing ID Code(s) |
| Permit Holder's Name & Address (Include ZIP Code) / Telephone Number | Receipt No. | |
| | No. Sacks / No. Trays | No. Pallets / No. Other |
| | Weight of a Single Piece — . — — — — pounds | |
| Authorized to use nonprofit rates? (DMM 623)* ☐ Yes ☐ No | Total Pieces in Mailing | Total Weight of Mailing |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | Name and Address of Mailing Agent* (If other than the permit holder) | Sacking Based on ☐ 125 pcs. ☐ 15 lbs. ☐ Bulk (DMM 541) |
| Authorized to use nonprofit rates? (DMM 623)* ☐ Yes ☐ No | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded at ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ☐ Orig. ☐ Dest. SCF 3D ZIP ☐ Orig. ☐ Dest. BMC |

**Postage Computation**

- For bulk mailings of letter-size pieces (see DMM 128) weighing .1563 lb. (2.5 oz.) or less, go to Part A on the reverse of the form.
- For bulk mailings of letter-size pieces (see DMM 128) weighing more than .1563 lb. (2.5 oz.) but not more than .2104 lb. (3.3689 oz.) (or .2115 lb. (3.3837 oz.) for nonprofit) go to Part B on the reverse of this form.
- For bulk mailings of non letter-size pieces (see DMM 128) weighing not more than .2104 lb. (3.3689 oz.) (or .2115 lb. (3.3837 oz.) for nonprofit), go to Part C on the reverse of this form.
- For bulk mailings of all pieces (see DMM 128) weighing more than .2104 lb. (3.3689 oz.) (or .2115 lb. (3.3837 oz.) for nonprofit) but less than 1 lb. (16 oz.), go to Part D on the reverse of this form.

Postage (From Reverse Side)

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |

Single-Piece Rate ☐ or Additional Postage Payment (State reasons for Additional Postage) — No. Pieces — Rate/Piece $ — = $

Is additional bulk pound rate paid by permit imprint? (3602-R or N required) ☐ Y ☐ N

Postage affixed at (Check one) ☐ Correct Rate ☐ Lowest Rate ☐ Neither (DMM 661.334) — **Total Postage** → $

**Certification**

*The signature of a mailer certifies that: (1) the mailing does not violate DMM 626; (2) only the mailer's matter is being mailed; (3) this is not a cooperative mailing with other persons or organizations that are not authorized to mail at special bulk third-class rates at this office; (4) the mailing has not been undertaken by the mailer on behalf of or produced for another person or organization not authorized to mail at special bulk third-class rates at this office; and (5) it and its agents for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on the mailing, whether due to a finding that the mailing is nonconforming or for other reasons. (If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the combination binds the agent and the nonprofit mailer, and that both the nonprofit mailer and the agent will be liable for and agree to pay any deficiencies.)

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount (clause claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) — Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight — . — — — — pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | | |
| Check One ☐ Verif. Not Scheduled ☐ Verified as Scheduled — Present Verification For: | Date Mailer Notified | Contact | By (Initials) |
| I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | | Time AM PM | |

PS Form 3602-PC, January 1991 — Financial Document – Forward to Finance Office



## Form 3602-PC — Third-Class Regular or Nonprofit Rates — Postage Affixed

### Postage Computation — Bulk Rates

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – .1563 lb. (2.5 Oz.) or less** | | | | |
| None | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 5-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3/5-Digit ZIP + 4 | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic Barcoded | | x ____ pcs. = $ | ____ |
| | Basic ZIP + 4 | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| BMC Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 5-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3/5-Digit ZIP + 4 | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic Barcoded | | x ____ pcs. = $ | ____ |
| | Basic ZIP + 4 | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| SCF Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 5-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3-Digit Barcoded | | x ____ pcs. = $ | ____ |
| | 3/5-Digit ZIP + 4 | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic Barcoded | | x ____ pcs. = $ | ____ |
| | Basic ZIP + 4 | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| DDU Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |

**Total – Part A (Carry to front of form)** $ ____

| Entry Discount (If Any) | Presort/Automation Discounts | Net Rate | Count (Pcs/Lbs) | Charge |
|---|---|---|---|---|
| **Letter – More than .1563 lb. (2.5 Oz.) but not more than .2104 lb. (3.3689 Oz.) (.2115 lb. (3.3837 Oz.) for nonprofit)** | | | | |
| None | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| BMC Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| SCF Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| DDU Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |

**Total – Part B (Carry to front of form)** $ ____

**Nonletter – .2104 lb. (3.3689 Oz.) or less (.2115 lb. (3.3837 Oz.) or less for nonprofit)**

| | | | | |
|---|---|---|---|---|
| None | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| BMC Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| SCF Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| DDU Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |

**Total – Part C (Carry to front of form)** $ ____

**All Mail – More than .2104 lb. (3.3689 Oz.) (.2115 lb. (3.3837 Oz.) for nonprofit) but less than 1.0 lb. (16 Oz.)**
Enter the applicable rate applied to each piece computed as described in [DMM 911.242 ____] $

| | | | | |
|---|---|---|---|---|
| None | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| BMC Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| SCF Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |
| | 3/5-Digit Presort | | x ____ pcs. = $ | ____ |
| | Basic | | x ____ pcs. = $ | ____ |
| DDU Entry | Saturation | | x ____ pcs. = $ | ____ |
| | Carrier Route | | x ____ pcs. = $ | ____ |

**Total – Part D (Carry to front of form)** $ ____

PS Form 3602-PC, January 1991 (Reverse)

VOL 55 ISS 242 DE 17 1990 UMI

VOL 55 ISS 242 DE 17 1990 UMI



## Statement of Mailing with Permit Imprints
## Priority Mail and Zone-Rated Fourth-Class Mail

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

| | | | | |
|---|---|---|---|---|
| Post Office of Mailing | | Date | Processing Category (DMM 129) ☐ Letters ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Federal Agency Cost Code | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No. | | |
| | | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | | Weight of a Single Piece — — — . — — — — pounds | | |
| | | Total Pieces in Mailing | Total Weight of Mailing | If BPM, sacking based on ☐ 10 pcs. ☐ 20 lbs. ☐ 1000 cu. in. (DMM 767) |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ☐ Orig. ☐ Dest. SCF 3D ZIP ☐ Orig. ☐ Dest. BMC |

**Postage Computation**

- For bound printed matter go to **Part A** on the reverse of this form.
- For parcel post go to **Part B** on the reverse of this form. (Check if bulk parcel post) ⟹ ☐
- For destination BMC/ASF mail go to **Part C** on the reverse of this form
- For Priority Mail go to **Part D** on the reverse of this form.

Postage (From Reverse Side)

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |

Parcel Post Nonmachinable Surcharge (Inter-BMC Parcel Post Only) — No. Pieces — $ 1.75 = $

**Total Postage** → $

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) — Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight — — — . — — — — pounds | | Are the figures at left adopted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | |
| Tared Pieces | Total Weight | | |
| Total Postage | | | |
| Check One ☐ Verif. Not Scheduled ☐ Present Verification Performed as Scheduled | Date Mailer Notified | Contact | By (Initials) |
| I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | | Time AM PM | |

PS Form 3605-R, January 1991 — Financial Document – Forward to Finance Office



## Form 3605-R — Statement of Mailing with Permit Imprints
## Priority Mail and Zone-Rated Fourth-Class Mail

### Bound Printed Matter

| ZONES | SINGLE-PIECE RATE: Number of Pieces | x Rate = | Single-Piece Rate Postage | BASIC BULK PIECE RATE: Number of Pieces | x Rate = | Basic Piece Rate Charge | CARRIER ROUTE BULK PC RT: Number of Pieces | x Rate = | Carrier Route Piece Rate Charge | BULK BPM POUND RATE: Number of Pounds | Pound Rate | BPM Pound Rate Charge | Total Postage – Part A |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Local | | | | | $0.41 | | | $0.355 | | | $0.035 | | |
| 1 & 2 | | | | | $0.55 | | | $0.495 | | | $0.050 | | |
| 3 | | | | | $0.55 | | | $0.495 | | | $0.078 | | |
| 4 | | | | | $0.55 | | | $0.495 | | | $0.126 | | |
| 5 | | | | | $0.55 | | | $0.495 | | | $0.198 | | |
| 6 | | | | | $0.55 | | | $0.495 | | | $0.274 | | |
| 7 | | | | | $0.55 | | | $0.495 | | | $0.368 | | |
| 8 | | | | | $0.55 | | | $0.495 | | | $0.444 | | |
| TOTALS | | | | | | | | | | | | | |

☐ Bulk

### Parcel Post

| ZONES | INTER BMC PARCEL POST: Number of Pieces | x Inter BMC Rate = | Inter BMC Postage | INTRA BMC PARCEL POST: Number of Pieces | x Intra BMC Rate = | Intra BMC Postage | Total Postage – Part B |
|---|---|---|---|---|---|---|---|
| Local | | | | | | | |
| 1 & 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |
| 6 | | | | | | | |
| 7 | | | | | | | |
| 8 | | | | | | | |
| TOTALS | | | | | | | |

### Destination BMC/ASF Mail

| ZONES | Number of Pieces | x Destination BMC/ASF Rate = | Total Postage Part C |
|---|---|---|---|
| 1 & 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| TOTALS | | | |

### Priority Mail

| ZONES | PRESORTED PRIORITY MAIL: Number of Pieces | x Presorted Priority Rate = | Presorted Priority Postage | RESIDUAL SINGLE PIECE PRIORITY MAIL: Number of Pieces | x Priority Rate = | Single-Piece Priority Postage | Total Postage – Part D |
|---|---|---|---|---|---|---|---|
| Local | | | | | | | |
| 1 & 2 | | | | | | | |
| 3 | | | | | | | |
| 4 | | | | | | | |
| 5 | | | | | | | |
| 6 | | | | | | | |
| 7 | | | | | | | |
| 8 | | | | | | | |
| TOTALS | | | | | | | |

PS Form 3605-R, January 1991 (Reverse)

## Statement of Mailing with Meter Postage Affixed
## Priority Mail and Zone-Rated Fourth-Class Mail

MAILER: Complete all items by typewriter, pen, or indelible pencil. Use Form 3606 if you need a receipt.

**Mailer's Information**

| | | | |
|---|---|---|---|
| Post Office of Mailing | Date | Processing Category (DMM 128) ☐ Letters ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) / Telephone Number | Receipt No. | | |
| | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | Weight of a Single Piece ___ . ___ ___ ___ pounds | | |
| | Total Pieces in Mailing | Total Weight of Mailing | If BPM, sacking based on (DMM 767) ☐ 10 lbs. ☐ 20 lbs. ☐ 1000 cu. in. |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ☐ Orig. ☐ Dest. SCF 3D ZIP ☐ Orig. ☐ Dest. BMC |

**Postage Computation**

- For bound printed matter go to **Part A** on the reverse of this form.
- For bulk parcel post go to **Part B** on the reverse of this form.
- For destination BMC/ASF mail go to **Part C** on the reverse of this form.
- For Presorted Priority Mail go to **Part D** on the reverse of this form.

| | Postage From Reverse Side | |
|---|---|---|
| | Part A | $ |
| | Part B | $ |
| | Part C | $ |
| | Part D | $ |
| Parcel Post Nonmachinable Surcharge (Inter-BMC Parcel Post Only) | No. Pieces | $ 1.75 = $ |
| **Total Postage** → | | $ |

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) / Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight ___ ___ . ___ ___ ___ ___ pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | | |
| Check One ☐ Verification Performed ☐ Not Scheduled ☐ Performed as Scheduled | Date Mailer Notified | Contact | By Initials |
| I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | | Time AM PM | |

PS Form **3605-PC** January 1991

Financial Document – Forward to Finance Office



## Form 3605-PC — Statement of Mailing with Meter Postage Affixed — Priority Mail and Zone-Rated Fourth-Class Mail

### Bulk Bound Printed Matter

| ZONES | BASIC BULK RATE: Number of Pieces | x | Rate | = | Basic Rate Charge | CARRIER ROUTE BULK RATE: Number of Pieces | x | Rate | = | Carrier Route Rate Charge | Total Postage – Part A |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Local | | | | | | | | | | | |
| 1 & 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
| 4 | | | | | | | | | | | |
| 5 | | | | | | | | | | | |
| 6 | | | | | | | | | | | |
| 7 | | | | | | | | | | | |
| 8 | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | |

### Bulk Parcel Post

| ZONES | INTER BMC PARCEL POST: Number of Pieces | x | Inter BMC Rate | = | Inter BMC Postage | INTRA BMC PARCEL POST: Number of Pieces | x | Intra BMC Rate | = | Intra BMC Postage | Total Postage – Part B |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Local | | | | | | | | | | | |
| 1 & 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
| 4 | | | | | | | | | | | |
| 5 | | | | | | | | | | | |
| 6 | | | | | | | | | | | |
| 7 | | | | | | | | | | | |
| 8 | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | |

### Destination BMC/ASF Mail

| ZONES | Number of Pieces | x | Destination BMC/ASF Rate | = | Total Postage – Part C |
|---|---|---|---|---|---|
| 1 & 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| TOTALS | | | | | |

### Presorted Priority Mail

| ZONES | PRESORTED PIECES: Number of Pieces | x | Presorted Priority Rate | = | Presorted Priority Postage | RESIDUAL PIECES: Number of Pieces | x | Single-Piece Priority Rate (or Additional Postage per piece) | = | Single-Piece Priority (or Additional) Postage | Total Postage – Part D |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Local | | | | | | | | | | | |
| 1 & 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
| 4 | | | | | | | | | | | |
| 5 | | | | | | | | | | | |
| 6 | | | | | | | | | | | |
| 7 | | | | | | | | | | | |
| 8 | | | | | | | | | | | |
| TOTALS | | | | | | | | | | | |

PS Form **3605-PC**, January 1991 *(Reverse)*





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## Statement of Mailing with Permit Imprints
## Special Fourth-Class and Library Rate Fourth-Class Mail

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

| | | | | |
|---|---|---|---|---|
| Post Office of Mailing | | Date | Processing Category (DMM 126) ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Federal Agency Cost Code | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No. | | |
| | | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | | Weight of a Single Piece ___ ___ . ___ ___ ___ ___ pounds | | |
| | | Total Pieces in Mailing | Total Weight of Mailing | Sacking Based on (DMM 767) ☐ 10 pcs. ☐ 20 lbs. ☐ 1000 cu. in. |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ___ ☐ Orig. ☐ Dest. SCF 3D ZIP ___ ☐ Orig. ☐ Dest. BMC ___ |

**Postage Computation**

| | | |
|---|---|---|
| • For special fourth-class mail go to **Part A** on the reverse of this form. | Postage (From Reverse Side) ▶ | Part A $ |
| • For library rate mail go to **Part B** on the reverse of this form. | | Part B $ |
| **Total Postage** ▶ | | |

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) | Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight ___ ___ . ___ ___ ___ ___ pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | | |
| Total Pieces / Total Weight | | | |
| Total Postage | | | |
| Check One ☐ Verif. Not Scheduled ☐ Present Verification Performed as Scheduled | Date Mailer Notified | Contact | By (Initials) |
| I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | Time AM / PM | | |

PS Form 3608-R, January 1991 — Financial Document – Forward to Finance Office



### Form 3608-R — Special Fourth-Class and Library Rate Fourth-Class Mail Permit Imprint

| A. Special Fourth-Class | Net Rate | Piece Count | Charge |
|---|---|---|---|
| Nonpresorted | $ | x | = $ |
| Level A (5-digit) Presort | | x | = |
| Level B (BMC) Presort | | x | = |
| Total Part A (Carry to Front of Form) | | | $ |

| B. Library Rate | Net Rate | Piece Count | Charge |
|---|---|---|---|
| Total Part B | $ | x | = $ (Carry to Front of Form) |

PS Form 3608-R, January 1991 (Reverse)

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## Statement of Mailing with Meter Postage Affixed
## Presorted Special Fourth-Class Rate Mail

MAILER: Complete all items by typewriter, pen, or indelible pencil. Use Form 3606 if you need a receipt.

**Mailer's Information**

| | | | |
|---|---|---|---|
| Post Office of Mailing | Date | Processing Category (DMM 128) ☐ Machinable Parcels ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) / Telephone Number | Receipt No. | | |
| | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | Weight of a Single Piece ___ . ___ ___ ___ pounds | | |
| | Total Pieces in Mailing | Total Weight of Mailing | Sacking Based on (DMM 767) ☐ 10 pcs. ☐ 30 lbs. ☐ 1000 cu. in. |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ___ ☐ Orig. ☐ Dest. SCF 3D ZIP ___ ☐ Orig. ☐ Dest. BMC ___ |

**Postage Computation**

| | Net Rate | Piece Count | Charge |
|---|---|---|---|
| Level A (5-digit) Presort | | x | = |
| Level B (BMC) Presort | | x | = |
| Total Postage → | | | $ |

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) / Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight ___ ___ . ___ ___ ___ pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | | |
| Check One ☐ Verif. Not Scheduled ☐ Present Verification Performed as Scheduled | Date Mailer Notified | Contact | By (Initials) |
| I CERTIFY that this mailing has been inspected concerning: (1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | | Time AM PM | |

PS Form 3606-PC, January 1991 — Financial Document – Forward to Finance Office



## Statement of Mailing with Permit Imprints
## International Mail

Publishers Periodicals Must Be Reported on Form 3541-R or Form 3541-N

MAILER: Complete all items by typewriter, pen, or indelible pencil. Prepare in duplicate if you need a receipt.

**Mailer's Information**

| | | | | |
|---|---|---|---|---|
| Post Office of Mailing | | Date | Processing Category ☐ Letters ☐ Flats ☐ Irregular Parcels ☐ Outside Parcels ☐ Machinable Parcels | USPS Authorized Mailing ID Code(s) |
| Permit No. | Federal Agency Cost Code | Mailing Statement Seq. No. | | |
| Permit Holder's Name & Address (Include ZIP Code) | Telephone Number | Receipt No. | | |
| | | No. Sacks / No. Trays | No. Pallets / No. Other | |
| | | Weight of a Single Piece ___ . ___ ___ ___ pounds | | |
| | | Total Pieces in Mailing | Total Weight of Mailing | |
| Name & Address of Individual or Organization for Which Mailing is Prepared (If other than the permit holder) | | Name and Address of Mailing Agent (If other than the permit holder) | | Check All That Apply (USPS Only) ☐ Centralized Postage Payment ☐ Plant Loaded to ☐ Drop Ship Entered at ☐ Orig. ☐ Dest. A/O ZIP ___ ☐ Orig. ☐ Dest. SCF 3D ZIP ___ ☐ Orig. ☐ Dest. ADC ___ |

**Postage Computation**

- For mailings of postal cards, postcards, or aerogrammes (IMM 233), go to Part A on the reverse of this form.
- For mailings of letters or letter packages (IMM 233), go to Part B on the reverse of this form.
- For surface mailings of printed matter, books and sheet music (IMM 240), and small packets (IMM 263), go to Part C on the reverse of this form.
- For airmail mailings of printed matter (IMM 240), matter for the blind (IMM 250), and small packets (IMM 263), go to Part D on the reverse of this form.
- For mailings of M-Bags (IMM 245), go to Part E on the reverse of this form.

Postage (From Reverse Side) ▶

| | |
|---|---|
| Part A | $ |
| Part B | $ |
| Part C | $ |
| Part D | $ |
| Part E | $ |
| Total Postage → | $ |

**Certification**

The signature of a mailer or its agent certifies that it will be liable for and agrees to pay, subject to appeals prescribed by postal laws and regulations, any revenue deficiencies assessed on this mailing. If this form is signed by an agent, the agent certifies that it is authorized to sign this statement, that the certification binds the agent and the mailer and both the mailer and the agent will be liable for and agree to pay any deficiencies.)

The submission of a false, fictitious or fraudulent statement may result in imprisonment of up to 5 years and a fine of up to $10,000 (18 USC 1001). In addition, a civil penalty of up to $5,000 and an additional assessment of twice the amount falsely claimed may be imposed (31 USC 3802).

I hereby certify that all information furnished on this form is accurate and truthful, and that this material presented qualifies for the rates of postage claimed.

Signature of Permit Holder or Agent (Both principal and agent are liable for any postage deficiency incurred) / Telephone Number

**USPS Use Only**

| | | | |
|---|---|---|---|
| Single Piece Weight ___ ___ . ___ ___ ___ pounds | Are the figures at left adjusted from mailer's entries? ☐ Yes ☐ No If "Yes" Reason | | |
| Total Pieces / Total Weight | | | |
| Total Postage | Date Mailer Notified | Contact | By (Initials) |
| I CERTIFY that this mailing has been inspected concerning: 1) eligibility for the rate of postage claimed; 2) proper preparation (and presort where required); 3) proper completion of the statement of mailing; and 4) payment of the required annual fee. | | | Round Stamp (Required) |
| Signature of Weigher | | Time AM PM | |

PS Form 3651, January 1991 — Financial Document – Forward to Finance Office

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## Form 3651 — Statement of Mailing with Permit Imprints — International Mail

| | Category | Destination | Mode (Air/Surface) | Pcs./Lbs. | × | Rate | = | Postage | |
|---|---|---|---|---|---|---|---|---|---|
| A | Post Cards and Postal Cards | Mexico | A/S | | × | $0.15 | = | | |
| | | Canada | A/S | | × | 0.21 | = | | |
| | | All Others | S | | × | 0.20 | = | | |
| | | All Others | A | | × | 0.36 | = | | |
| | Aerogrammes | All | A | | × | 0.39 | = | | |
| | Total Part A – Carry to front of form. | | | | | | | | |
| B | Letters and Letter Packages | Mexico | A/S | | × | | = | | |
| | | Canada | A/S | | × | | = | | |
| | | All Others | A | | × | | = | | |
| | | All Others | S | | × | | = | | |
| | Total Part B – Carry to front of form. | | | | | | | | |
| C | Printed Matter & Small Packets | Mexico | S | | × | | = | | |
| | | Canada | S | | × | | = | | |
| | | All Others | S | | × | | = | | |
| | Books and Sheet Music | All | S | | × | | = | | |
| | Total Part C – Carry to front of form. | | | | | | | | |
| D | Printed Matter & Small Packets | Mexico | A | | × | | = | | |
| | | Canada | A | | × | | = | | |
| | | Group 1* | A | | × | | = | | |
| | | Group 2* | A | | × | | = | | |
| | | Group 3* | A | | × | | = | | |
| | Matter for the Blind | Group 1* | A | | × | | = | | |
| | | Group 2* | A | | × | | = | | |
| | | Group 3* | A | | × | | = | | |
| | Total Part D – Carry to front of form. | | | | | | | | |
| E | M-Bag – Printed Matter | Canada | S | | × | $0.95 | = | | |
| | | All Others | S | | × | 1.20 | = | | |
| | M-Bag – Books, Sheet Music | Canada | S | | × | 0.72 | = | | |
| | | All Others | S | | × | 0.72 | = | | |
| | M-Bag – Printed Matter, Books, Sheet Music. | Canada | A | | × | 0.99 | = | | |
| | | Mexico | A | | × | 1.28 | = | | |
| | | Group 1* | A | | × | 2.24 | = | | |
| | | Group 2* | A | | × | 4.00 | = | | |
| | | Group 3* | A | | × | 5.68 | = | | |
| | Total Part E – Carry to front of form. | | | | | | | | |

*Group 1 – Colombia, Venezuela, Central America, Caribbean Islands, Bahamas, Bermuda, St. Pierre and Miquelon. Also, from American Samoa to Western Samoa, and from Guam to Philippines.

*Group 2 – South America (ex. Colombia and Venezuela) Europe (ex. Estonia, Latvia, Lithuania, and USSR), North Africa (Morocco, Algeria, Tunisia, Libya, and Egypt)

*Group 3 – Estonia, Latvia, Lithuania, USSR, Asia, Australia, New Zealand, Pacific Ocean Islands, Africa (ex. North Africa), Indian Ocean Islands, the Middle East.

PS Form **3651**, January 1991 *(Reverse)*

[FR Doc. 90-29249 Filed 12-14-90; 8:45 am]
BILLING CODE 7710-12-C



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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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Atlanta, GA (Parking available)
**RESERVATIONS:** 1-800-347-1997.



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# Rules and Regulations

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90-NM-148-AD; Amdt. 39-6845]**

## Airworthiness Directives; Airbus Industrie Model A320-111, -211, and -231 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320-111, -211, and -231 series airplanes, which requires replacing the existing standby generator control unit (GCU) with a new improved standby GCU. This amendment is prompted by reports of improper functioning of the standby GCU. This condition, if not corrected, could result in loss of the standby emergency generation system, which provides necessary back-up capability when both main generators fail.

**EFFECTIVE DATE:** January 28, 1991.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A320-111, -211 and -231 series airplanes, which requires replacing the existing standby generator control unit (GCU) with a new improved standby GCU, was published in the **Federal Register** on September 19, 1990 (55 FR 38555).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Air Transport Association (ATA) of America suggested that all of the suspect GCUs may have already have been modified; therefore, ATA requested that the proposed rule be withdrawn. The FAA does not concur. The FAA has received no documentation that all operators have accomplished the actions required by this rule. Furthermore, should additional Airbus Industrie Model A320 series airplanes be added to the U.S. registry in the future, an AD is necessary to ensure the accomplishment of these actions on all affected airplanes. The AD is the means by which the FAA ensures that the addressed unsafe condition is corrected. Therefore, the issuance of this AD is necessary.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $450. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A320-111, -211, and -231 series airplanes; Serial Numbers 003 through 058, 060 through 067, 069 through 072, 074 through 083, and 085; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of the emergency electrical generation system, accomplish the following:

A. Within 150 days after the effective date of this AD, in Zone 125 of the avionics compartment, remove one GCU identified as 1XE part number (P/N) 520754, and install a modified GCU identified as 1XE P/N 520915, in accordance with Airbus Industrie Service Bulletin A320-24-1035, Revision 1, dated February 27, 1990. Following installation, perform an operational test of the Emergency Generation System, the Emergency Generator Control Unit from Centralized Fault Display System, and the Static Inverter, in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

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Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 28, 1991.

Issued in Renton, Washington, on December 10, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 90-29568 Filed 12-17-90; 8:45 am]

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**14 CFR Part 97**

**[Docket No. 26407; Amdt. No. 1441]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impractical, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.



**List of Subjects in 14 CFR Part 97**

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on December 7, 1990.

**Thomas C. Accardi,**

*Acting Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*Effective February 7, 1991*

Tuscaloosa, AL—Tuscaloosa Muni, VOR or TACAN, RWY 4, Amdt. 10
Tuscaloosa, AL—Tuscaloosa Muni, VOR or TACAN, RWY 22, Amdt. 12
Tuscaloosa, AL—Tuscaloosa Muni, NDB RWY 4, Amdt. 9
Tuscaloosa, AL—Tuscaloosa Muni, ILS RWY 4, Amdt. 12
Ozark, AR—Ozark-Franklin County, VOR/DME-A, Amdt. 3
Columbus-West Point-Starkville, MS—Golden Triangle Regional, VOR-D Amdt. 5
Columbus-West Point-Starkville, MS—Golden Triangle Regional, VOR/DME-E Amdt. 5
Columbus-West Point-Starkville, MS—Golden Triangle Regional, LOC/DME BC RWY 36, Amdt. 5
Columbus-West Point-Starkville, MS—Golden Triangle Regional, ILS RWY 18, Amdt. 5
Roswell, NM—Roswell Industrial Air Center, VOR-A, Amdt. 6
Roswell, NM—Roswell Industrial Air Center, LOC BC RWY 3, Amdt. 7
Roswell, NM—Roswell Industrial Air Center, NDB RWY 21, Amdt. 13
Roswell, NM—Roswell Industrial Air Center, ILS RWY 21, Amdt. 14
Roswell, NM—Roswell Industrial Air Center, RNAV RWY 35, Amdt. 2
Greensboro, NC—Piedmont Triad International, VOR/DME RWY 32, Amdt. 3
Greensboro, NC—Piedmont Triad International, NDB RWY 14, Amdt. 15
Greensboro, NC—Piedmont Triad International, ILS RWY 5, Amdt. 4
Greensboro, NC—Piedmont Triad International, ILS RWY 14, Amdt. 16
Greensboro, NC—Piedmont Triad International, ILS RWY 23, Amdt. 7
Roxboro, NC—Person County, LOC RWY 6, Amdt. 1
Duncan, OK—Halliburton Field, VOR RWY 35, Amdt. 9
Duncan, OK—Halliburton Field, LOC BC RWY 17, Amdt. 3
Duncan, OK—Halliburton Field, LOC RWY 35, Amdt. 3
Houston, TX—David Wayne Hooks Memorial, LOC/DME RWY 17R, Amdt. 1
Houston, TX—David Wayne Hooks Memorial, NDB RWY 17R, Amdt. 10
Houston, TX—David Wayne Hooks Memorial, RNAV RWY 17R, Amdt. 3
Houston, TX—David Wayne Hooks Memorial, RNAV RWY 35L, Amdt. 2
Midland, TX—Midland International, VOR/DME or TACAN RWY 34L, Amdt. 9
Midland, TX—Midland International, ILS RWY 10, Amdt. 14
Richmond, VA—Chesterfield County, LOC RWY 33, Amdt. 1
Richmond, VA—Chesterfield County, NDB RWY 33, Amdt. 7

*Effective January 24, 1991*

Dumas, TX—Dumas Muni, VOR/DME-A, Amdt. 4
Dumas, TX—Dumas Muni, NDB RWY 1, Amdt. 2
Dumas, TX—Dumas Muni, RNAV RWY 19, Amdt. 2

*Effective January 10, 1991*

Carlisle, PA—Carlisle, NDB RWY 26, Orig.
Madison, WI—Dane County Regional-Traux FLD, VOR or TACAN RWY 13, Amdt. 23
Madison, WI—Dane County Regional-Traux FLD, VOR or TACAN RWY 18, Amdt. 20
Madison, WI—Dane County Regional-Traux FLD, VOR or TACAN RWY 31, Amdt. 24
Madison, WI—Dane County Regional-Traux FLD, NDB RWY 36, Amdt. 28
Madison, WI—Dane County Regional-Traux FLD, ILS RWY 18, Amdt. 7
Madison, WI—Dane County Regional-Traux FLD, ILS RWY 36, Amdt. 29
Madison, WI—Dane County Regional-Traux FLD, RADAR-1, Amdt. 15

*Effective November 28, 1990*

Orlando, FL—Orlando Intl, ILS RWY 35, Amdt. 2

[FR Doc. 90-29589 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

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**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1700**

## Requirements for Child-Resistant Packaging; Requirements for Household Glue Removers Containing Acetonitrile and Home Cold Wave Permanent Neutralizers Containing Sodium Bromate or Potassium Bromate

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rules.

**SUMMARY:** Under the Poison Prevention Packaging Act of 1970, the Commission is issuing rules to require child-resistant packaging for (1) household glue removers, in liquid form, containing more than 500 mg of acetonitrile in a single container and (2) home permanent wave neutralizer, in liquid form, containing in a single container (a) more than 600 mg of sodium bromate or (b) more than 50 mg of potassium bromate. These requirements are issued because the Commission has determined that child-resistant packaging is required to protect children under five years of age from serious personal injury and serious illness resulting from ingesting such substances.

**DATE:** These rules shall become effective June 18, 1991.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Jacobson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6400.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special

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packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14).

By letter dated June 27, 1988, the American Association of Poison Control Centers (AAPCC) petitioned the Commission to require child-resistant packaging for household glue removers containing acetonitrile and home cold wave permanent neutralizers containing sodium bromate or potassium bromate. [1] * As justification for establishing special packaging standards for these products, the petitioner cited the high toxicity of acetonitrile and the bromates and cited cases of severe permanent disability and death to young children following accidental ingestion of these products. These requests were docketed as a petition for rulemaking, no. PP 88-2.

On January 25, 1989, the Commission received a similar request from the Cosmetic, Toiletry and Fragrance Association ("CTFA") to require child-resistant packaging for glue removers containing acetonitrile. [3] Since these glue removers were already addressed under petition PP 88-2, CTFA's request was considered a submission in support of that petition.

After considering the available information, the Commission proposed to require special packaging for (1) household glue removers, in liquid form, containing more than 500 mg of acetonitrile in a single container and (2) home permanent neutralizers, in liquid form, containing in a single container (a) more than 600 mg of sodium bromate or (b) more than 50 mg of potassium bromate. 55 FR 1456 (January 16, 1990). The Commission received one comment on the proposal, which is discussed below.

* Numbers in brackets indicate the number of a relevant document as listed in Appendix 1 to this notice.

### B. Glue Removers Containing Acetonitrile

#### *1. Toxicity*

The statements in this section are based on reference [2], except where noted otherwise. Acetonitrile is used as a glue remover, often for sculptured nails, and the Commission's Directorate for Health Sciences reports that the acute oral toxicity of acetonitrile has been demonstrated in animals and humans. The mean lethal dose in humans is such that one ounce (24 grams) can be lethal to a 10 kilogram (kg) child. Acetonitrile is also toxic by inhalation and skin absorption. The toxic effects following exposure to the chemical are extremely serious and include respiratory distress, cardiac arrest, convulsions, coma, and possibly death. The toxicity of acetonitrile is most likely related to its metabolism to cyanide.

Medical treatment for acetonitrile poisoning is a lengthy procedure and may be complicated by the delayed onset of toxic effects following exposure. Toxic effects usually do not appear until several hours after exposure; this could cause a delay in seeking medical attention.

The petition contained information on two cases of accidental ingestion by young children of sculptured nail removers containing acetonitrile. The ingested products contained 98 percent acetonitrile. One case was a 16-month-old child weighing 12 kg., who may have ingested up to two tablespoons of the product (approximately 1.9 gram/kg.). The child vomited, later experienced respiratory difficulty, was put to bed, and was found dead the next morning. The second case involved a two-year-old child weighing 12.4 kg., who may have ingested as much as one ounce of the product (approximately 2 grams/kg.). This child became seriously ill but recovered after receiving intensive medical treatment.

At least two additional cases of injury to young children following accidental ingestion of acetonitrile glue remover products have been reported to poison centers since the petition was received. In-depth investigations of these cases by the Commission's staff showed that one case was a three-year-old boy who ingested less than a tablespoon of acetonitrile-containing glue remover which the mother had poured into an open dish. [11(d)] This child recovered after being hospitalized under intensive care for five days. The second case involved an 18-month-old boy who ingested approximately one ounce of the product. [11(e)] This child was hospitalized for two days and recovered.

A case reported in the literature of intentional ingestion of 40 grams of acetonitrile (approximately 0.5 gram/kg) by an adult male demonstrates further the severe toxicity of the chemical (at a dose less than that reported for the two cases above involving children). [2] This man experienced severe toxic effects, required extensive medical treatment, and took six months to recover.

The Directorate for Health Sciences concluded that the acute oral toxicity of acetonitrile has been demonstrated in animals and humans and that a one-ounce bottle of acetonitrile can be lethal to a child. Available medical data indicate that treatment of acetonitrile ingestion is complicated by delayed onset of toxicity, the severity of the effects, the complex emergency first aid required, and the protracted, difficult recovery. Thus, it appears that the accidental ingestion of acetonitrile-containing glue remover products by children can cause serious injury, serious illness, and death.

The limited available clinical data for acetonitrile indicate that serious injury or serious illness can occur in young children after ingestion of 0.5 gram/kg. Information is not available on a level of acetonitrile that will not produce serious injury or illness. In lieu of such data, the staff recommended that the known lowest-effect level of acetonitrile in humans be reduced by a factor of 10 (referred to as an "uncertainty factor"). [5] When this is done, using a weight of 10 kg (22.2 lb) for an average 2-year-old child, the Commission concludes that glue removers containing more than 500 mg of acetonitrile in a single container should be subject to child-resistant packaging standards.

#### *2. Comment on the Proposal*

The Commission received one comment on the proposal, from the Cosmetic, Toiletry and Fragrance Association ("CFTA"), which is the national trade association representing the personal-care products industry. [14] The CFTA agrees with the proposed special packaging regulation for household glue removers containing acetonitrile because of their extreme toxicity.

#### *3. Economic Information* [4]

Acetonitrile is used mainly as a solvent and as a chemical intermediate in industrial applications. Its other applications include use as a solvent in artificial fingernail glue removers and removers for cyanoacrylate or "super glues" for household use, and for use by hobbyists in model building. These glue removers are marketed in liquid form. Alternative consumer products are available for these applications.

Artificial fingernail glue removers can be purchased in supermarkets, drug stores, and mass merchandise stores. In addition, products labeled "For Professional Use Only" are readily available for purchase by the general public in retail and "wholesale" beauty supply establishments. Both of the acetonitrile ingestion incidents reported by the petitioner were attributed to artificial fingernail glue removers labeled "For Professional Use Only" that had been purchased by the consumers in beauty supply establishments.

The estimated annual sales of glue removers for cosmetic use is one to two million units, with a market value of approximately $2.5–$5 million. The estimated hobby industry sales of glue removers is one million units annually, with a market value of approximately $3 million.

Although the number of accidental ingestions involving acetonitrile glue removers is low to date, the cost per incident and the potential for death are relatively high. The wide availability of acetonitrile-containing products and their accessibility to young children in the home provide the opportunity for continued accidental ingestions with the potential for serious consequences. At a minimum, all such ingestions require extensive medical treatment, and some may be fatal. The Commission's Directorate for Economic Analysis concludes that, although it is not possible to estimate the future annual costs of acetonitrile ingestions, it seems reasonable that avoiding even a small number of ingestions, and the possibility of death, by requiring child-resistant closures has the potential for large benefits to consumers.

Costs to industry to comply with a special packaging regulation are also difficult to estimate, since the Commission does not have information on the market share of acetonitrile-containing products targeted for cosmetic and hobby use. If manufacturers elect to use substitute chemicals, increased costs are unlikely, because the substitutes may cost even less. The subsequent effect on market share, however, is unknown. Manufacturers who do not reformulate their products may experience increased costs for child-resistant packaging.

#### *4. Technical Feasibility, Practicability, and Appropriateness*

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate."

##### a. Technical Feasibility [7]

Household glue removers containing acetonitrile that are sold for use in removing or debonding glues for artificial, or sculptured, fingernails are marketed in small bottles of a liquid that consists almost entirely of acetonitrile. These bottles are supplied with screw-on caps, and these packages could be made child-resistant by substituting a readily available child-resistant closure for the non-child-resistant closures currently supplied. The glue removers should not be adversely affected by the materials that make up the child-resistant closures, and the glue removers should not affect the materials of the child-resistant closures. Since the closure design does not affect the use of storage of these glue removers, the Commission concludes that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the form of this product.

##### b. Practicability

Because many existing designs suitable for use with the glue removers that are the subject of the proposed regulation are currently being used in the packaging of other products, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these glue removers or the manufacturers of child-resistant closures and capping equipment. In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines.

##### c. Appropriateness

As shown by the discussion above, and by the use of many existing suitable designs with other products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission finds that special packaging for household glue removers containing acetonitrile is technically feasible, practicable, and appropriate.

### C. Permanent Wave Neutralizers Containing Bromates

#### *1. Toxicity*

The statements in this section are based on reference [2], except where noted otherwise. The toxic effects of sodium and potassium bromates are similar; however, sodium bromate has been reported to be less toxic than potassium bromate. Based on cases reported in the literature, the possible lethal oral dose of sodium and potassium bromates ranges from 0.005 gram/kg. to 0.05 gram/kg.

The most devastating non-lethal effects of bromate poisoning are on renal function and hearing. Impaired kidney function can progress to complete renal failure requiring dialysis for the remainder of a person's life. Renal failure in young children is associated with decreased body growth, delayed maturation, bone fracture, learning disabilities, and decreased life expectancy. The alternative to chronic dialysis is kidney transplantation, which may be needed more than once. Hearing loss, which can occur as early as the day of ingestion, is irreversible. When impairment occurs early in childhood, the ability to learn to speak, write, and read are severely affected. In a child so compromised, psychological problems can also be expected. Other toxic effects of bromate ingestion include nausea and vomiting accompanied by abdominal pain and diarrhea, anemia, destruction of red blood cells, decreased blood pressure, convulsions, coma, respiratory depression, and possibly death.

During the 1960s and 1950s, when sodium and potassium bromates were commonly used as neutralizers, nine cases of accidental ingestion of neutralizers by children under age five were reported in the medical literature. Because of the severity of the bromate intoxication in these incidents, manufacturers reformulated their products and replaced the bromates with less toxic substances. However, bromates are again being used in some currently-available liquid home permanent wave neutralizer solutions.

The staff has reviewed 17 cases of accidental ingestion of bromate neutralizer solutions by children under age five. One case, which resulted in permanent hearing loss and kidney damage in a 16-month-old child, was reported by the petitioner. Sixteen cases were reported in the literature. There were no cases of accidental ingestion of bromate neutralizer solutions reported in the CPSC CAP data base. Eight of the 17 cases have been reported since 1984. One case was the death of a 17-month-

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old child who ingested an unknown amount of a potassium bromate neutralizer solution. These incidents underscore the hazard to young children who may be exposed to these products.

The Commission concludes that accidental ingestion of bromate neutralizer solutions presents a risk of serious injury, serious illness, or death to young children. Based on the clinical reports reviewed, the lowest doses of the bromates that caused kidney damage and hearing loss were 0.05 gram/kg for potassium bromate and 0.59 gram/kg for sodium bromate. The levels of potassium and sodium bromates at which no effects can be observed are not known. In lieu of such data, the Directorate for Health Sciences reduced the known lowest effect levels of the bromates in humans by a factor of 10 (referred to as an "uncertainty factor"). When this is done, using a weight of 10 kg (22.2 lb) for an average 2-year-old child, the Commission concludes that permanent wave products containing more than 50 mg of potassium bromate or 600 mg of sodium bromate should be subject to child-resistant packaging standards. [5]

*2. Comment on the Proposal*

As noted above, the Commission received one comment on the proposal, from the Cosmetic, Toiletry and Fragrance Association ("CFTA"), which is the national trade association representing the personal-care products industry. [14] The CFTA agrees with the proposed special packaging regulation for household glue removers containing acetonitrile because of their extreme toxicity. CFTA also states, however, that the extreme hazards reported for acetonitrile are not shared by permanent wave neutralizers containing the bromates. CFTA argued that these neutralizers should not have to be in child-resistant packaging if they are formulated with a bittering agent that would make the product taste very bitter and prevent the ingestion of toxic amounts by children. CFTA supported the proposed child-resistant packaging standard for permanent wave neutralizers that do not contain a bittering agent.

The Commission disagrees with this comment. [16] As noted above, the hazards associated with the ingestion of potassium or sodium bromates are extremely serious, and the Commission has concluded that home permanent wave products containing more than 50 mg of potassium bromate or 600 mg of sodium bromate present an unacceptable risk to children. Fifty (50) mg of potassium bromate would be contained in approximately ½ teaspoon of a two-percent potassium bromate neutralizer solution, and 600 mg of sodium bromate would be contained in approximately one teaspoon of a ten-percent sodium bromate neutralizer solution. The estimated volume of a child's swallow is one teaspoonful. Thus, a child could swallow a harmful amount of either of these solutions in one swallow, which may not be prevented by a bittering agent.

Research with liquid detergents to which a bittering agent has been added has shown that while the presence of the bittering agent does reduce the amount swallowed and deters a second swallow, it does not necessarily deter the initial swallowing of small amounts that could be hazardous with these bromate solutions.

In addition, there is some question about the stability of denatonium benzoate, which is commonly used as a bittering agent, in alkaline-oxidizing solutions such as sodium and potassium bromates. Thus, while bittering agents may provide an added measure of deterrence, the Commission concludes that the presently available evidence does not show that they should be used as an alternative to child-resistant packaging, at least for the extremely toxic substances subject to the proposed rules.

*3. Economic Information [4]*

Sodium bromate is used as a laboratory analytical reagent, a food additive, and a maturing agent in flour, and in several industrial processes. Both sodium and potassium bromate were marketed in permanent wave neutralizers in the 1940s and 1950s. Following reports of bromate poisonings involving these products, manufacturers substituted less toxic neutralizing agents, such as perborate and hydrogen peroxide. Recent ingestion incidents involving bromate-containing neutralizers indicate, however, that new products containing bromates have become available. Five different brands of permanent wave neutralizers are implicated in these recent incidents.

Permanent wave products, including those containing bromates, can be purchased at supermarkets, drug stores, and mass merchandise stores. In addition, some beauty supply outlets sell permanent wave kits, labeled "For Professional Use Only", to the general public. Products designed for professional use tend to be stronger and faster acting than products intended for home use. At least three of the ingestion incidents involved products labeled "Professional Use Only."

The home permanent market has a "general" segment that includes all populations and a "targeted" segment that includes ethnic groups. Sales in the general segment amounted to $107.6 million in 1987. Market information on the targeted segment is not available but is believed to be substantially less than the general market segment.

All ingestions of products containing potassium or sodium bromate will require medical treatment, some of which may be prolonged, and bromate poisoning may have both acute and chronic effects. In addition to the immediate costs of hospitalization, medical costs for a bromate victim may include various combinations of auditory assistance, kidney transplantation, and dialysis treatments. Although it is not possible to estimate the cost savings of bromate poisonings averted, the relative severity of each case suggests that the savings would be considerable. The Commission preliminarily concludes that bromate ingestions can result in a reduced quality of life and that even one ingestion can result in large total costs to society. The potential benefit to consumers of avoiding accidental ingestions that have severe and permanent consequences probably outweighs the potential costs.

Effective alternative neutralizers—hydrogen peroxide and sodium perborate—are available for both home and professional permanents. A reformulation of neutralizing solutions to safer ingredients by manufacturers that currently use sodium or potassium bromate will cause virtually no major disruption to the industry and may actually result in a net savings due to the cost differential between hydrogen peroxide and the bromates. Requiring the use of child-resistant closures may lead to the use of safer ingredients (to avoid the need for child-resistant closures) or at most increase manufacturers' costs by $.02 per unit.

*4. Technical Feasibility, Practicability, and Appropriateness*

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate."

a. Technical Feasibility [7]

Home permanent neutralizers containing sodium bromate or potassium bromate are marketed in liquid form. The containers of this product are intended for "one-time use," so that all of the contents of the package is used at once, and there is no need to store



leftover neutralizer. The types of packages in which this product is currently sold include: (1) A plastic bottle with an applicator that cannot be separated from the container and requires the user to cut off the applicator tip to gain access to the solution, (2) a plastic bottle with a non-child-resistant screw-type closure and a separate applicator tip, and (3) a plastic bottle with a flip-up spout in the cap. Design 1 above is already child-resistant. Designs 2 and 3 are readily adaptable to child resistance, either by replacing the present closure with a child-resistant one or by using an outer child-resistant cap. Neither change would affect the use of the product. Therefore, the Commission concludes that there are numerous package designs that meet the requirements of 16 CFR 1700.15(b) that are suitable for use with the form of this product.

b. Practicability

Because many existing designs suitable for use with these neutralizers that are the subject of the proposed regulation are currently being used in the packaging of other products, special packaging for this product seems practicable in that it is adaptable to modern mass production and assembly line techniques. The Commission anticipates no major supply or procurement problems for the packagers of these neutralizers or the manufacturers of child-resistant closure and capping equipment. In addition, there should be no serious problems experienced by manufacturers of the products in incorporating the child-resistant packaging features into their existing packaging lines.

c. Appropriateness

As shown by the discussion above, and by the use of many existing suitable designs with other products, special packaging is appropriate since it is available in forms that are not detrimental to the integrity of the substance and that do not interfere with its storage or use.

Accordingly, the Commission finds that special packaging of home permanent wave neutralizers containing sodium and potassium bromates is technically feasible, practicable, and appropriate.

**D. Effective Date**

The PPPA provides that, except for good cause, no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued. Based on all available information, the Commission believes that six months (approximately 180 days) will provide an adequate period of time for manufacturers to obtain suitable child-resistant packaging and incorporate its use into their packaging lines. [9] Therefore, the special packaging requirement shall become effective June 18, 1991, which is 180 days after publication of the final rule, and will apply to all products subject to the rule that are packaged after that date.

**E. Regulatory Flexibility Act Certification**

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a Final Regulatory Flexibility Act Analysis to examine the effect of the rule on small entities. [17] The findings of that analysis are repeated below.

The requirements of the rule have been explained previously. There appear to be no reasonable alternatives to the rule requiring child-resistant packaging for glue removers containing acetonitrile and home permanent wave neutralizers containing sodium or potassium bromates that would adequately reduce the risk of serious personal injury or serious illness to children.

Costs to manufacturers of glue removers containing acetonitrile who do not reformulate their products to use substitute chemicals may increase by two to seven cents per child-resistant closure. On an annual basis, this may amount to $15,000 for glue removers used for cosmetic purposes and $35,000 for glue removers used by hobbyists. Some informed sources believe that substitute chemicals may cost even less than acetonitrile. During the last few months, at least one manufacturer of a glue remover for cosmetic purposes has voluntarily reformulated from acetonitrile to a safer substitute chemical with no increase in retail price.

According to available information, about 93% of the marketers of home permanent wave neutralizers targeted to the general population do not use bromates. Definitive market information on products targeted to ethnic markets was unavailable, but a brief market survey revealed that products with and without bromates are available for sale. Costs to manufacturers of home permanent wave neutralizers who continue to use either sodium or potassium bromate may increase by two cents per child-resistant closure.

In addition, based on previous experience with products requiring child-resistant packaging, the Commission believes an effective date of 180 days from the date the regulation is issued will provide an adequate period of time for manufacturers who do not choose to reformulate their products to obtain suitable child-resistant packaging and incorporate its use into their packaging lines.

For the reasons mentioned above, the Commission concludes that the rule to require special packaging for household glue removers containing acetonitrile and for home permanent wave neutralizers containing sodium bromate or potassium bromate will not have any significant economic effect on a substantial number of small entities.

**F. Environmental Considerations**

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with Poison Prevention Packaging Act ("PPPA") packaging requirements for glue removers containing acetonitrile and permanent wave neutralizers containing bromates.

The Commission's regulations, at 16 CFR 1021.5(c)(3), state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this rule indicates that child-resistant packaging requirements for these consumer products containing acetonitrile or either sodium or potassium bromates will have no significant effects on the environment. This is because manufacturers of affected products either will replace present closures with a child-resistant closure or will use substitute chemicals. If child-resistant packaging is used, non-child-resistant closure inventories will

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be depleted by the time the rule becomes effective and will not need to be disposed of in bulk. The rule will not significantly increase the number of child-resistant closures in use, and, in any event, the manufacture, use, and disposal of the child-resistant closures present the same potential environmental effects as do the currently used non-child-resistant closures. If products are reformulated, the market for the bromates and acetonitrile will not be materially affected, because there is a ready market for these chemicals that would be unaffected by the rule issued below. Moreover, the available chemical substitutes have no known adverse effects on the environment. Therefore, because this rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 16 CFR Part 1700**

Consumer protection, Drug, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

**G. Conclusion**

For the reasons given above, the Commission amends 16 CFR 1700.14 as follows:

**PART 1700—[AMENDED]**

1. The authority citation for part 1700 continues to read as follows:

**Authority:** Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 86 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14(a) is amended by adding new paragraphs (a)(18) and (a)(19), reading as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

**§ 1700.14 Substances requiring special packaging.**

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(18) *Glue removers containing acetonitrile.* Household glue removers in a liquid form containing more than 500 mg of acetonitrile in a single container.

(19) *Permanent wave neutralizers containing sodium bromate or potassium bromate.* Home permanent wave neutralizers, in a liquid form, containing in single container more than 600 mg of sodium bromate or more than 50 mg of potassium bromate.

* * * * *

Dated: December 12, 1990.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

**Appendix 1—List of References**

[This appendix will not be printed in the Code of Federal Regulations.]

1. Petition (PP 88–2) from American Association of Poison Control Centers, dated June 27, 1988.
2. Memorandum from CPSC's Directorate for Health Sciences, dated December 5, 1988.
3. Letter from the Cosmetic, Toiletry and Fragrance Association, dated January 25, 1989.
4. Memorandum from CPSC's Directorate for Economic Analysis, dated March 24, 1989.
5. Memorandum from CPSC's Directorate for Health Sciences, dated July 24, 1989.
6. Letter from Department of California Health Services, dated August 3, 1989.
7. Memorandum from CPSC's Directorate for Economic Analysis, dated August 23, 1989.
8. Memorandum from CPSC's Directorate for Economic Analysis, dated October 12, 1989.
9. Memorandum from CPSC's Directorate for Economic Analysis, dated October 23, 1989.
10. Memorandum from CPSC's Office of Program Management and Budget, dated December 11, 1989, with attached briefing package.
11. In-Depth Investigations:
a. 880929HCC2014
b. 880929HBC3017
c. 880929HBC3018
d. 881207HBC3050
e. 890517HCC1315
12. Memorandum to the Commission from the Office of General Counsel, with substitute page for **Federal Register** notice, dated December 22, 1989.
13. Proposed rule, 55 FR 1456 (January 16, 1990).
14. Comment on the proposal from the Cosmetic, Toiletry and Fragrance Association, dated April 2, 1990.
15. Briefing Package on Draft Final Rule, dated October 10, 1990.
16. Memorandum from the Directorate for Health Sciences, "Staff Response to Public Comments," July 10, 1990.
17. Final Regulatory Flexibility Analysis, Directorate for Economic Analysis, September 12, 1990.

[FR Doc. 90–29567 Filed 12–17–90; 8:45 am]

BILLING CODE 6355–01–M

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 936**

**Oklahoma Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** The Director of OSM is approving a proposed amendment submitted by the State of Oklahoma as a modification to its permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Oklahoma rules to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Oklahoma program was published in the January 19, 1981, **Federal Register** (46 FR 4910). Subsequent actions on program amendments are identified at 30 CFR 936.15, 936.16, and 936.30.

**II. Submission of Program Amendment**

In accordance with the provisions of 30 CFR 732.17(d), OSM notified Oklahoma by letter dated February 12, 1990 (administrative record No. OK–910), of the changes that were necessary to ensure that the approved regulatory program was no less effective than the Federal regulations promulgated between September 8, 1988, and August 30, 1989 (commonly referred to as Regulatory Reform III).

Consistent with this February 12, 1990, notification, the Director in his decision on an Oklahoma program amendment



submitted prior to the notification (see 55 FR 11169, March 27, 1990), required Oklahoma respectively at 30 CFR 936.16 (b), (c), (e), and (f) to amend its approved program to (1) remove the authorization for land surveyors to prepare and/or certify plans for siltation structures, impoundments, and roads; (2) ensure that any person with an interest in bond release will at Oklahoma's discretion on a case-by-case basis be given access to areas under consideration for bond release; (3) ensure that any husbandry practices will be approved by the Director of OSM in accordance with 30 CFR 732.17 prior to being approved by the Director of the Oklahoma program; and (4) ensure that, in those instances where an operator is not required to separately salvage and store the topsoil of a prime farmland soil, the productive capacity of the reclaimed substituted prime farmland soil will exceed, rather than equal or exceed, the productive capacity of the prime farmland soil that existed prior to mining.

In response to the February 12, 1990, 30 CFR part 732 letter and to the required amendments at 30 CFR 936.16 (b) and (e), Oklahoma, by letter dated March 30, 1990 (administrative record No. OK–913), submitted a proposed amendment to its approved program. OSM announced receipt of the proposed amendment in the April 13, 1990, publication of the **Federal Register** (55 FR 13915). OSM opened a 30-day public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on May 14, 1990.

The regulations that Oklahoma proposed to amend concerned (1) selective husbandry practices that would not extend the period of responsibility for revegetation success and bond liability; (2) submission of plans to Oklahoma for impoundments meeting the size or other criteria of the Mine Safety Health Administration (MSHA); (3) design and certification of primary roads by qualified, registered professional land surveyors; and (4) incremental bonding.

During the review of the March 30, 1990, proposed amendment OSM identified concerns relating to normal husbandry practices, permanent and temporary impoundments, certification of primary roads, and bonding. In response to OSM's June 14, 1990, letter (administrative record No. OK–927) notifying Oklahoma of these concerns, Oklahoma submitted revisions to the proposed amendment on July 13, 1990 (administrative record No. OK–930).

In addition to addressing concerns raised in OSM's June 14, 1990, letter, Oklahoma's July 13, 1990, proposed amendment included:

(1) A revision to Oklahoma's Coal Reclamation Act, at 45 O.S. Supp. 1981, section 742.2(49)(a), concerning the definition of "surface coal mining operations," submitted in response to a previously unaddressed requirement of OSM's February 12, 1990, 30 CFR part 732 letter;

(2) Revisions to sections 784.20 and 817.121 of Oklahoma's rules, concerning damage caused by subsidence from underground mines, submitted in response to a letter from OSM, dated June 22, 1990 (administrative record No. OK–931), sent pursuant to 30 CFR 732.17(d), notifying Oklahoma of additional changes necessary to make the Oklahoma program no less effective than the Federal regulations;

(3) Revisions to section 800.40, concerning bond release inspections and section 823.12, concerning prime farmland soil substitution, submitted in response to previously unaddressed required amendments at 30 CFR 936.16 (c) and (f); and (4) a withdrawal of the proposed revision at § 800.11(b), concerning incremental bonding.

OSM announced receipt of the revisions to the proposed amendment in a notice in the August 6, 1990, publication of the **Federal Register** (55 FR 31844). In this notice, OSM reopened and extended the public comment period. The reopened public comment period closed on September 5, 1990.

**III. Director's Findings**

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment as submitted on March 30, 1990, and revised on July 13, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

*1. Revisions to Oklahoma's Rules That Are Substantially Identical to the Counterpart Federal Regulations*

Oklahoma proposes revisions to the following rules that either contain language that is the same or similar to the corresponding Federal regulations and are nonsubstantive in nature, or add specificity without adversely affecting other aspects of the program. The respective counterpart Federal regulations are shown in parentheses.

Sections 780.25(a)(2), 780.25(c)(2) and 784.16(c)(2), concerning the submission of plans for MSHA impoundments for surface and underground mines (30 CFR 780.25(a)(2), 780.25(c)(2), and 784.16(c)(2));

Sections 784.20(g)(2) and 817.121(c)(2), concerning damage caused by subsidence from underground mines (30 CFR 784.20(g)(2) and 817.121(c)(2));

Section 800.40(b)(1), concerning bond release inspections (30 CFR 800.40(b)(1));

Sections 816.116(c)(4) and 817.116(c)(4), concerning the approval of selective husbandry practices for surface and for underground mines (30 CFR 816.116(c)(4) and 817.116(c)(4)); and

Section 823.12(a)(1), concerning prime farmland soil substitution (30 CFR 823.12(a)(1)).

Oklahoma also proposes a revision to Oklahoma's Coal Reclamation Act, at 45 O.S. Supp. 1981, Section 742.2(49)(a), that contains language that is the same as the corresponding section 701(28)(A) of SMCRA, concerning the definition of "surface coal mining operations" as it applies to operations where the extraction of coal is incidental to the extraction of other minerals.

Because the proposed revisions to these Oklahoma rules and statute contain language that is the same as or similar to the corresponding section of the Federal regulations and statute, or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to the Oklahoma program are no less effective than the corresponding Federal regulations and no less stringent than SMCRA. The Director approves the proposed revisions and removes the required amendments at (1) 30 CFR 936.16(c) regarding section 800.40(b)(1); (2) 30 CFR 936.16(e) regarding sections 816.116(c)(4) and 817.116(c)(4); and (3) 30 CFR 936.16(f) regarding section 823.12(a)(1).

*2. Certification of Ponds and Impoundments, Siltation Structures, and Roads by Qualified, Registered Professional Land Surveyors*

For an amendment previously submitted by Oklahoma on May 16, 1989, the Director found that the by-laws of the State Board of Registration for Professional Engineers and Surveyors did not authorize registered land surveyors in Oklahoma to prepare and/or certify engineered designs for impoundments, siltation structures, and roads (see 55 FR 11169, 11172, finding No. 9, March 27, 1990). He required at 30 CFR 936.16(b) that Oklahoma revise its rules to delete the authorization for land surveyors to prepare and/or certify plans for impoundments, siltation structures, and roads.

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In response to the required amendment, Oklahoma proposes revisions to the following rules:

Sections 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(3)(i), concerning certification of ponds and impoundments by qualified, registered professional land surveyors;

Sections 816.46(b)(3) and 817.46(b)(3), concerning the certification of siltation structures by qualified, registered professional land surveyors; and

Sections 780.37(b), 784.24(b), 816.151(a), and 817.151(a), concerning the certification of primary roads for surface and for underground mines by qualified, registered professional land surveyors.

Oklahoma proposes rules that would allow qualified, registered professional land surveyors to provide "as-built" certifications for ponds, impoundments, siltation structures, and primary roads. "As-built" certifications specify that structures are constructed according to the design plans. Oklahoma has removed language that would have allowed qualified, registered professional land surveyors to prepare and/or certify engineered designs for ponds, impoundments, siltation structures, and roads. Oklahoma's proposed revisions are consistent with the by-laws of the Oklahoma State Board of Registration for Professional Engineers and Surveyors, which do not authorize registered land surveyors to prepare or certify engineered designs for siltation structures, impoundments, and roads, and satisfy the Director's required amendment at 30 CFR 936.16(b).

The Director finds that proposed sections 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(3)(i), 816.46(b)(3), 817.46(b)(3), 780.37(b), 784.24(b), 816.151(a), and 817.151(a) are no less effective than the corresponding Federal regulations at 30 CFR 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(3)(i), 816.46(b)(3), 817.46(b)(3), 780.37(b), 784.24(b), 816.151(a), and 817.151(a). The Director approves the proposed revisions and removes the required amendment at 30 CFR 936.16(b) regarding sections 780.25 (a)(1) and (a)(3)(i), 784.16 (a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 780.37(b), 784.24(b), 816.151(a) and 817.151(a).

## IV. Public and Agency Comments

### *1. Public Comments*

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No public comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

### *2. Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Oklahoma program. Comments were also solicited from various State agencies. The Bureau of Land Management (BLM) and Soil Conservation Service (SCS) responded to OSM's solicitation.

By letter dated May 2, 1990, BLM responded that it had no objections to the proposed amendment (administrative record No. OK–823).

By letter dated April 20, 1990, SCS responded that it had no comments (administrative record No. OK–821).

### *3. Environmental Protection Agency (EPA) Concurrence*

Pursuant to 30 CFR 732.17(h)(11)(ii), concurrence was solicited and received from the EPA (administrative record No. OK–816) for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

By letter dated May 22, 1990, EPA stated that it had no comments and concurred with the proposed amendment (administrative record No. OK–825).

### *4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation Comments (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. Comments were solicited from these offices. By letter dated April 30, 1990, the SHPO responded that he had no comments on the proposed amendment (administrative record No. OK–820). No comments were received from ACHP.

## V. Director's Decision

Based on the above findings, the Director approves the proposed amendment submitted by Oklahoma on March 30, 1990, as revised on July 13, 1990, and removes the required amendments at 30 CFR 936.16 (b), (c), (e) and (f).

The Federal regulations at 30 CFR part 936 codifying decisions concerning the Oklahoma program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Requirements

### *1. Compliance with the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

### *2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of a State regulatory program. Accordingly, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

### *3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1990.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

## PART 936—OKLAHOMA

1. The authority citation for part 936 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (k) as follows:

**§ 936.15 Approval of regulatory program amendments.**

* * * * *

(k) The revisions to the following sections of Oklahoma's statute and permanent regulatory program rules submitted to OSM on March 30, 1990, as revised by Oklahoma on July 13, 1990, are approved effective December 18, 1990:

(1) A revision to Oklahoma statute at 45 O.S. Supp. 1981, Section 742.2(40)(a), concerning the definition of "surface coal mining operations" as it applies to operations where the extraction of coal is incidental to the extraction of other minerals;

(2) Revisions to Oklahoma's rules at sections 780.25(a)(1)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(3)(i), 816.46(b)(3), 817.46(b)(3), 780.37(b), 784.24(b), 816.151(a), and 817.151(a) concerning the authorization of qualified, registered professional land surveyors to prepare and/or certify engineered designs for ponds, impoundments, siltation structures, and roads;

(3) Revisions to Oklahoma's rules at sections 780.25(a)(2), 780.25(c)(2) and 784.16(c)(2), concerning the submission of plans for Mine Safety and Health Administration-regulated impoundments for surface and underground mines;

(4) Revisions to Oklahoma's rules at section 780.37(b), concerning the design of primary roads for surface mines;

(5) Revisions to Oklahoma's rules at sections 784.20(g)(2) and 817.121(c)(2), concerning damage caused by subsidence from underground mines;

(6) Revisions to Oklahoma's rules at section 800.40(b)(1), concerning bond release inspections;

(7) Revisions to Oklahoma's rules at sections 816.116(c)(4) and 817.116(c)(4), concerning the approval of selective husbandry practices for surface and for underground mines; and

(8) Revisions to Oklahoma's rules at section 823.12(a)(1), concerning prime farmland soil substitution.

**§ 936.16 [Amended]**

3. Section 936.16 is amended by removing and reserving paragraphs (b) and (c), and removing paragraphs (e) and (f).

[FR Doc. 90–29517 Filed 12–17–90; 8:45 am]

BILLING CODE 4310–05–M



## Bureau of Land Management

## 43 CFR Public Land Order 6823

## [CO–930–4214–10; COC–49185]

## Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws approximately 7,454 acres of National Forest System land from mining for a period of 20 years for the protection of existing and planned recreational facilities at the Copper Mountain Ski Resort. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), to protect existing and planned recreational values which are a part of the Copper Mountain Ski Resort:

Beginning at Angle Point 1 of Tract 37, T. 6 S., R. 78 W. Sixth Principal Meridian, Colorado

By metes and bounds;

S. 0°06'E., 3,963.30 feet to Angle Point 10, Tract 37;
West 660.00 feet to Angle Point 9, Tract 37;
S. 89°24'W., 661.98 feet to Angle Point 8, Tract 37;
N. 0°36'W., 660.00 feet to Angle Point 7, Track 37;
S. 89°24'W., 661.32 feet to Angle Point 6, Tract 37, identical with Angle Point 14, Tract 38;
S. 89°24'W., 3,153.48 feet, approximate west boundary of T. 6 S., R. 78 W.,
S. 89°24'W., 785.40 feet, to Angle Point 13, Tract 38 in T. 6 S., R. 79 W.;
West, 1,320.00 feet to Angle Point 12, Tract 38;
North, 660.00 feet to Angle Point 11, Tract 38;
North, 371.00 feet;
West, 535.00 feet;
North, 660.00 feet;
West, 2,640.00 feet;
North, 660.00 feet;
West, 660.00 feet;
North, 660.00 feet;
West, 3,300.00 feet;
South, 660.00 feet;
West, 660.00 feet;
North, 660.00 feet;
West, 1,320.00 feet;
South, 1,320.00 feet;
East, 660.00 feet;
South, 660.00 feet;
West, 660.00 feet;
South, 1,320.00 feet;
West, 1,320.00 feet;
South, 660.00 feet;
West, 660.00 feet;
South, 660.00 feet;
East, 660.00 feet;
South, 660.00 feet;
East, 660.00 feet;
South, 3,960.00 feet, approximate south boundary of T. 6 S., R. 79 W.,
South, 1,850.00 feet;
West, 660.00 feet;
South, 1,960.00 feet;
East, 660.00 feet;
South, 660.00 feet;
East, 660.00 feet;
South, 660.00 feet;
East, 660.00 feet;
South, 1,320.00 feet;
East, 660.00 feet;
South, 660.00 feet;
East, 1,980.00 feet;
South, 660.00 feet;
East, 9,240.00 feet, approximate east boundary of T. 7 S., R. 79 W.;
East, 2,788.00 feet;
North, 660.00 feet;
East, 660.00 feet;
North, 660.00 feet;
East, 660.00 feet;
North, 660.00 feet;
East, 660.00 feet;
North, 660.00 feet;
East, 660.00 feet;
North, 1,320.00 feet;
East, 660.00 feet;
North, 660.00 feet;
East, 660.00 feet;
North, 1,320.00 feet;
East, 660.00 feet;
North, 2,197.00 feet, approximate north boundary of T. 7 S., R. 78 W.,
North, 5,808.00 feet;
West, 660.00 feet;
North, 2,640.00 feet;
West, 660.00 feet;
North, 1,612.00 feet;
West, 1,731.84 feet to Angle Point 1 of Tract 37, T. 6 S., R. 78 W., the point of beginning, exclusive of patented lands within the perimeter above-described.

The area described contains approximately 7,454 acres of National Forest System land in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary

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determines that the withdrawal shall be extended.

Dated: December 11, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-29555 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-JB-M

**43 CFR Public Land Order 6824**

**[AK-923-00-4214-10; AA-367]**

**Partial Revocation of Executive Order No. 1919 1/2 for Selection of Land by the State of Alaska**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes an Executive Order insofar as it affects approximately 9.76 acres of public land withdrawn for railroad townsite purposes at Talkeetna, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1)(1988), it is ordered as follows:

1. Executive Order No. 1919 1/2 which withdrew public land for railroad townsite purposes is hereby revoked insofar as it affects the following described land:

Lots 1 and 2, Block 31 of U.S. Survey No. 1260, Alaska, Talkeetna Townsite.

The area described contains approximately 9.76 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b)(1988).

3. The State of Alaska selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: December 12, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-29554 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-JA-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 89-257; RM-6934]**

**Radio Broadcasting Services; Waukon, IA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of David H. Hogendorn, substitutes Channel 278C2 for Channel 280A at Waukon, Iowa, and modifies the license of Station KNEI-FM to specify operation on the higher powered channel. See 54 FR 26220, June 22, 1989. Channel 278C2 can be allotted to Waukon in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) north to avoid a short-spacing to unoccupied and unapplied-for Channel 277C3 at Asbury, Iowa. The coordinates for Channel 278C2 at Waukon are North Latitude 43-21-55 and West Longitude 91-29-27. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-257, adopted November 19, 1990, and released December 13, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 280A and adding Channel 278C2 at Waukon.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29573 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 89-394; RM-6864]**

**Radio Broadcasting Services; North Mankato, MN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 244C3 for Channel 244A at North Mankato, Minnesota, in response to a petition filed by Minnesota Valley Broadcasting Company. See 54 FR 40140, September 29, 1989. We shall also modify the license for Station KDOG(FM) to specify operation on Channel 244C3. The coordinates for Channel 244C3 are 44-06-38 and 94-07-49. There is a site restriction 10.4 kilometers (6.5 miles) southwest of the community.

**EFFECTIVE DATES:** January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-394, adopted November 19, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.



**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 244A and adding Channel 244C3 at North Mankato.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29575 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 90-391; RM-7216]**

**Radio Broadcasting Services; La Monte, MO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 246C3 for Channel 246A at La Monte, Missouri, and modifies the construction permit for Station KOSY to specify the new channel, in response to a petition filed by Valkyrie Broadcasting, Inc. See 55 FR 36298, September 5, 1990. The coordinates for Channel 246C3 are 38-45-09 and 93-18-09.

**EFFECTIVE DATES:** January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-391, adopted November 14, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 246A and adding Channel 246C3.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29574 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 89-226; RM-6937]**

**Radio Broadcasting Services; La Grande, OR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Grande Ronde Broadcasting, Inc., substitutes Channel 260C1 for Channel 261A at La Grande, Oregon, and modifies the license of Station KWRL(FM) to specify operation on the higher powered channel. Channel 260C1 can be allotted to La Grande in compliance with the Commission's minimum distance separation requirements and can be used at Station KWRL(FM)'s licensed transmitter site. The coordinates for Channel 260C1 at La Grande are North Latitude 45-20-54 and West Longitude 118-07-04. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-226, adopted November 19, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 261A and adding Channel 260C1 at La Grande.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29572 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 88-145; RM-6281, RM-6408, RM-6409]**

**Radio Broadcasting Services; Bowman, Summerton, and Summerville, SC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Millennium Communications of Charleston, Inc., substitutes Channel 227C2 for Channel 228A at Summerville, South Carolina, and modifies its license for Station WWWZ-FM to specify operation on the higher powered channel. At the request of Robert C. Rickenbacker, Jr., the Commission allots Channel 233A to Bowman, South Carolina, as its first local service. At the request of Savannah Radio Partnership, the Commission allots Channel 238A to Summerton, South Carolina, as its first local service. Channel 227C2 can be allotted to Summerville with a site restriction of 23.7 kilometers (14.7 miles) northeast, to avoid a short-spacing to Station WEAS-FM, Channel 226C1, Savannah, Georgia, at coordinates North Latitude 33-11-17 and West Longitude 80-01-27. Channel 233A can be allotted to Bowman with a site restriction of 5.4 kilometers (3.4 miles) northwest, avoid a short-spacing to the construction permit of Station WSSX-FM, Channel 236C, Charleston, South Carolina, at coordinates 33-22-14 and 80-44-02. Channel 238A can be allotted to Summerton with a site restriction of 9.7 kilometers (6.1 miles) northwest, to avoid a short-spacing to the construction permit of Station WAVF, Channel 241C,

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Hanahan, South Carolina, at coordinates 33-40-43 and 80-23-55. With this action, this proceeding is terminated.

**DATES:** Effective January 15, 1991. The window period for filing applications for Channel 233A at Bowman, South Carolina, will open on January 28, 1991, and close on February 28, 1991. A Public Notice will be issued announcing the opening of the application filing window period for Channel 238A at Summerton, South Carolina, after the effective date of the pending appeal in *Chester County Broadcasting Co.* v. *FCC*, Nos. 90-1498 *et al.* (DC Cir. Oct. 19, 1990). Millennium may submit an application for Channel 227C2 at Summerville within 90 days of the effective date of the appeal in *Chester County Broadcasting Co.* v. *FCC*.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88-145, adopted November 27, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments under South Carolina, is amended by removing Channel 228A and adding Channel 227C2 at Summerville, by adding Channel 233A at Bowman, and by adding Channel 238A at Summerton.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29876 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 95**

**[DA 90-1776]**

**Editorial Amendment of the Commission's Rules Regarding the General Mobile Radio Service (GMRS)**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action conforms two conflicting GMRS rules that prohibit employees of individual GMRS system licensees from operating GMRS stations and communicating messages. The GMRS rules are also amended to conform them to the provisions of the new statutory fee schedule. In both instances, the rule changes are necessary so that GMRS licensees will have access to current operational practices and to procedures relating to submission of fees. The effect of the rule changes is to provide GMRS licensees with correct and accurate information.

**EFFECTIVE DATE:** February 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:**

**Order**

Adopted: December 5, 1990.
Released: December 12, 1990.

By the Chief, Private Radio Bureau:

1. By *Report and Order* [1] of October 13, 1988, the Commission amended the General Mobile Radio Service (GMRS) Rules to increase the flexibility of the service for personal communications. At that time, § 95.179 of the Commission's Rules, 47 CFR 95.179, was amended to prohibit employees of individual GMRS system licensees from being operators of GMRS stations. Section 95.181(b) of the Commission's Rules, 47 CFR 95.181(b), however, was not amended to prohibit such employees from communicating two-way voice messages while acting within the scope of their employment. This action removes § 95.181(b) from the GMRS Rules in order to conform these rule sections.

2. By this action, we are also amending various other GMRS Rules to conform them to the new fee schedule adopted by the Congress in section 3001 of the Omnibus Budget Reconciliation Act of 1989, which was signed into law on December 19, 1989.[2] In addition, certain rules have been changed to reflect the correct address of the Bureau's Licensing Division in Gettysburg, Pennsylvania.

3. Because the rule amendments adopted herein are nonsubstantive in nature, the notice and comment provisions of section 553 of the Administrative Procedure Act, 5 U.S.C. 553, need not be complied with. Authority for this action is contained in § 0.331(a)(1) of the Commission's Rules, 47 CFR 0.331(a)(1).

4. Accordingly, part 95, subpart A, is amended, effective February 1, 1991.

**List of Subjects in 47 CFR Part 95**

Communications, Fees, Operators, Radio.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

**Rule Changes**

**PART 95—[AMENDED]**

Part 95 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 95 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.71 is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (f) to read as follows:

**§ 95.71 Applying for a new or modified license.**

(a) * * * Individuals should submit their applications, together with the filing fee, to the address specified in the Private Radio Services Fee Filing Guide.

* * * * *

(f) A GMRS system licensee may notify the FCC of a change of name or a change of mailing address by sending a letter to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245. * * *

3. Section 95.72 is added to read as follows:

**§ 95.72 Applying for an STA or waiver of the rules.**

Applicants requesting an STA or waiver of the rules should submit their requests, together with the filing fee, to the address specified in the Private Radio Services Fee Filing Guide.

4. Section 95.89 is amended by revising paragraph (a) to read as follows:

[1] 3 FCC Rcd 6554 (1988).

[2] Public Law No. 101-239, 103 Stat. 2106 (1989).



**§ 95.89 Renewing a license.**

(a) The licensee of a GMRS system may apply to the FCC to renew the license for another term (*see* § 95.105) by filling out FCC Form 574-R (or FCC Form 405-A when the licensee has not gotten FCC Form 574-R within 30 days of the expiration of the license), and sending it, together with the filing fee, to the address specified in the Private Radio Services Fee Filing Guide (unless the licensee is a governmental entity, in which case the renewal application should be sent to the Federal Communications Commission, 1270 Fairfield Road, Gettysburg, PA 17325-7245).

* * * * *

5. Section 95.107 is amended by revising paragraph (d) to read as follows:

**§ 95.107 Keeping the license.**

* * * * *

(d) If the license is lost, the licensee must request a duplicate document from the FCC. The request for a duplicate license, together with the filing fee, should be sent to the address specified in the Private Radio Services Fee Filing Guide.

* * * * *

6. Section 95.111 is revised to read as follows:

**§ 95.111 Transfer of control of a corporation.**

If the licensee of a GMRS system is a corporation, and there is a change in the control of the corporation, the licensee must request consent for the change of control from the FCC by filling out Form 703 and sending it, together with the filing fee, to the address specified in the Private Radio Services Fee Filing Guide. The FCC document granting such consent must be kept as part of the GMRS system records (*see* § 95.113).

7. Section 95.117 is amended by revising paragraph (b) to read as follows:

**§ 95.117 Where to contact the FCC.**

* * * * *

(b) Write to: Federal Communications Commission, Attention: GMRS, 1270 Fairfield Road, Gettysburg, PA 17325-7245.

(1) To ask a question about an application or about these Rules;

(2) [Reserved]

(3) [Reserved]

(4) To notify the FCC of a new name or mailing address (*see* § 95.103);

(5) [Reserved]

(6) To return a license to the FCC for cancellation (*see* §§ 95.103 and 95.107).

(7) [Reserved]

* * * * *

**§ 97.181 [Amended]**

8. Section 97.181 is amended by removing and reserving paragraph (b).

[FR Doc. 90-29483 Filed 12-17-90; 8:45 am]

BILLING CODE 6712-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

**Pacific Coast Groundfish Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure and request for comments.

**SUMMARY:** NMFS announces closure of the commercial fishery for widow rockfish caught off the coast of Washington, Oregon, and California, and requests public comment on this action. This closure is authorized under the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which prohibits further retention or landings of widow rockfish after the 1990 quota is reached. The Director, Northwest Region, NMFS (Regional Director), has determined that the 1990 quota for widow rockfish of 9,800-10,000 metric tons was reached on November 30, 1990. This closure is intended to avoid overfishing widow rockfish.

**DATES:** Effective from 0001 hours, December 12, 1990, until 2400 hours, December 31, 1990 (local times), unless modified, superseded, or rescinded. Comments will be accepted until January 2, 1991.

**ADDRESSES:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526-6140; or Rodney R. McInnis at (213) 514-6202.

**SUPPLEMENTARY INFORMATION:** The regulations implementing the FMP at 50 CFR 663.21(b) require that when a species quota is reached, retention or landings of that species be prohibited. The 1990 quota for widow rockfish is 9,800-10,000 mt (55 FR 1036). Management measures in 1990 were intended to achieve landings of 9,800 mt, but the fishery was not to close unless 10,000 mt had been landed. The best available information as of December 3, 1990, indicated that 9,836 mt had been landed by November 24, 1990.

After consultation with the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Pacific Fishery Management Council (Council), the Regional Director decided, based on the latest catch projection, to close the fishery for widow rockfish at the beginning of the next fishing week, December 12, 1990. The closure will continue until January 1, 1991, when the 1991 fishing season begins. Retention or landing widow rockfish before January 1, 1991, is prohibited. The States of Washington, Oregon, and California will close state ocean waters during the same period.

**Secretarial Action**

For the reasons stated above, the Secretary of Commerce announces that:

(1) From 0001 hours, December 12, 1990, through 2400 hours, December 31, 1990 (local times), it is unlawful to retain or land widow rockfish.

(2) This restriction applies to all widow rockfish taken between 0 and 200 nautical miles offshore of Washington, Oregon, and California. All widow rockfish possessed between 0 and 200 nautical miles offshore of, or landed in, Washington, Oregon, or California are presumed to have been taken and retained between 3 and 200 nautical miles offshore of Washington, Oregon, or California unless otherwise demonstrated by the person in possession of those fish.

**Classification**

The determination to prohibit further retention or landings of widow rockfish is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

Because of the immediate need to prevent the quota from being exceeded, the Secretary finds that advance notice and public comment on this closure are impracticable and not in the public interest, and that no delay should occur in its effective date. Public comments also will be accepted for 15 days after publication of this notice in the **Federal Register**. The Secretary therefore finds good cause to waive the 30-day delayed effectiveness provision of 50 CFR 663.23(c).

This action is taken under the authority of 50 CFR 663.21(b),

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663.22(a)(3), and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedure, Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 12, 1990.

Joe P. Clem,

*Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-29514 Filed 12-12-90; 3:08 pm]

BILLING CODE 3510-22-M



# Proposed Rules

Federal Register
Vol. 55, No. 243
Tuesday, December 18, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

[FV-91-213 PR]

### Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1991-92 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1991-92 marketing year, which begins on June 1, 1991. This action is taken under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

**DATES:** Comments must be received by February 1, 1991.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. Young, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5992.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement and Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. production of spearmint oil annually.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base, and 136 producers hold "Class 3" (Native) oil allotment base.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose average gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

This proposed rule would establish salable quantities of 1,010,943 pounds and 1,117,648 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and an allotments percentage of 59 percent both for Scotch and Native spearmint oils produced in the Far West. This action would limit the amount of spearmint oil that may be purchased from or handled for producers by handlers, during the 1991-92 marketing year, which begins on June 1, 1991. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The amounts recommended for sale reflect moderate and steady increases in trade demand for both Scotch and Native spearmint oil over the past four years. Information available to the Committee indicates that additional increases in trade demand are likely in the 1991-92 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs up to 150,000 pounds which may develop for Native spearmint oil can be satisfied by an increase in the salable quantity which producers can fill with reserve stocks. For Scotch oil, reserve stocks are depleted. However, both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1991-92 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from improved returns.

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The salable quantities and allotment percentages were unanimously recommended by the Committee at its October 16, 1990, meeting.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1991–92 marketing year, which begins on June 1, 1991, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carrying on June 1, 1991—0 pounds.

(B) Estimated trade demand (domestic and export) for the 1991–92 marketing year—1,000,000 pounds.

(C) Recommended desirable carryout on May 31, 1992)—0 pounds.

(D) Salable quantity required from 1991 regulated production—1,060,000 pounds.

(E) Total allotment bases for Scotch oil for the 1991–92 marketing year—1,713,463 pounds.

(F) Computed allotment percentage—58.4 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,010,943 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1991—57,210 pounds.

(B) Estimated trade demand (domestic and export) for the 1991–92 marketing year—1,150,000 pounds.

(C) Recommended desirable carryout on May 31, 1992—0 pounds.

(D) Salable quantity required from 1991 production—1,092,790 pounds.

(E) Total allotment bases for Native oil—1,894,319 pounds.

(F) Computed allotment percentage—57.7 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,117,648 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

## PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 985.211 under Subpart—Salable Quantities and Allotment Percentages is added to read as follows:

### Subpart—Salable Quantities and Allotment Percentages

§ 985.211 Salable quantities and allotment percentages—1991–92 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins on June 1, 1991, shall be as follows:

(a) "Class 1" (Scotch) oil—a salable quantity of 1,010,943 pounds and an allotment percentage of 59 percent.

(b) "Class 3" (Native) oil—a salable quantity of 1,117,648 pounds and an allotment percentage of 59 percent.

Dated: December 11, 1990.

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90-29407 Filed 12-17-90; 8:45 am]

BILLING CODE 3410-02-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 107

### Small Business Investment Companies; Government Auditing Standards

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposal rule; deferral of final action.

**SUMMARY:** This Notice announces the deferral of final action on the proposed rule, published August 23, 1990, (55 FR 34650), requiring that audits of small business investment companies (SBICs) be performed in accordance with government auditing standards (GAS) for financial audits issued by the Comptroller General of the United States. Final action on the proposed rule will not be taken until an audit guide has been published and an opportunity for review and comment has been afforded the public.

**DATES:** This Notice is effective on December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kulik, Associate Administrator for Investment, U.S. Small Business Administration, 1441 L Street, N.W., Washington, DC 20016, (202) 653-6879.

**SUPPLEMENTARY INFORMATION:** On August 23, 1990, the Small Business Administration published a proposed rule which, if adopted in final form, would require that audits of SBICs be conducted pursuant to GAS. Comments on the proposed rule were received and reviewed by the Agency. Many commenters argued that, without audit guidelines established by the Agency, the regulatory compliance audit required under GAS would be extremely difficult to perform and could be prohibitively costly.

The Small Business Administration agrees that the magnitude of the impact of the adoption of GAS on the SBIC industry can not be fully ascertained by the industry without a set of guidelines which define SBA's expectations regarding the parameters of a regulatory compliance audit. Consequently, the Agency is publishing this notice to inform all interested parties that final action on the proposed rule adoption GAS is being deferred until an audit guide containing the Agency's audit guidelines has been published and an opportunity for review and comment has been afforded the public. It is expected that the audit guide will be published shortly.

(Authority: Title III of the Small Business Investment Act, 15 U.S.C. 661 et seq., as amended, Pub. L. 100-590 and Pub. L. 101-162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162; 15 U.S.C. 687(d); 15 U.S.C. 687g; 15 U.S.C. 687h; 15 U.S.C. 687m, as amended by Pub. L. 100-590)

Dated: December 4, 1990.

Susan Engeleiter,

*Administrator.*

[FR Doc. 90-29106 Filed 12-17-90; 8:45 am]

BILLING CODE 8025-01-M



### 13 CFR Part 121

### Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to issue a waiver of the "Nonmanufacturer Rule".

**SUMMARY:** This notice advises the public that the Small Business Administration (SBA) is considering a waiver of the "Nonmanufacturer Rule" for the following product lines:

| PSC | Product line |
|---|---|
| 3805 | Loaders. |
| 3820 | Drill Rigs. |
| 4710 | Pipe and Tubing, High Nickel Alloy. |
| 5805 | Digital EPBX Equipment. |
| 6810 | Soda Ash, Ethyl Acetate, Propylene Glycol, Caustic Soda, Methylene Chloride, Acetone, 1,1,1,-Trichloroethane, Sulfuric Acid, Heptane HPLC, Methanol, Nitric Acid, Toluene, Hydrochloric Acid, NN-Dimethyl Formamide, Ammonium Sulfate, Benzene. |
| 7220 | Vinyl Surface, Tile and Roll; Carpet Tile; Woven Carpet, 6-Foot Vinyl Back Broadloom. |
| 8905 | Poultry. |
| 9510 | Bars and Rods, High Nickel Alloy. |
| 9515 | Plate, Sheet, Strip and Foil; Stainless Steel and High Nickel Alloy. |
| 9520 | Structural Shapes, High Nickel Alloy. |
| 9525 | Wire, Nonelectrical, High Nickel Alloy. |
| 9530 | Bars and Rods, High Nickel Alloy, Titanium, Aluminum, Nickel-Copper, Nickel-Copper-Aluminum, Copper, Copper-Nickel, Aluminum-Bronze and Naval Brass. |
| 9535 | Plate, Sheet and Strip; Titanium, Aluminum, Nickel-Copper, Nickel-Copper-Aluminum, Copper-Nickel and Copper. |
| 9540 | Structural Shapes, Angles, Channels, Tees and Zees, Aluminum and High Nickel Alloy. |
| 9545 | Plate, Sheet, Strip, Foil and Wire; High Nickel Alloy. |

After an initial survey of these product lines, SBA proposes a waiver of the Nonmanufacturer Rule for each. The basis for a waiver is that no small business manufacturer or processor is supplying a specific product line to the Federal Government. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer or processor on a Federal contract set aside for small business or awarded through the SBA 8(a) program. This notice is to solicit comments or additional information from interested parties.

**DATES:** Comments must be submitted on or before January 17, 1991. If granted, the waiver will become effective immediately upon publication of the Final Notice.

**ADDRESSES:** Comments to: Mr. Robert J. Moffitt, Chairman, Size Policy Board, Small Business Administration, 1441 L Street, NW., room 600, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** James Fairbairn, Industrial Specialist, phone (202) 653-6537.

**SUPPLEMENTARY INFORMATION:** On November 15, 1988, Public Law 100-656 incorporated into the Small Business Act the existing policy that recipients of contracts set aside for small business or SBA 8(a) Program shall provide the products of small business manufacturers or processors. The requirement to provide the products of small businesses in contracts set aside for small business or for 8(a) contracts is already in SBA regulations. This requirement is commonly referred to as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b).

Section 303(h) of the law provided for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered in the Federal market, a small business must have been awarded a contract by the Federal government to supply that particular class of products within the past three years. SBA has been requested to issue a waiver for the subject product lines due to a lack of any small business manufacturers or processors within the Federal market. SBA has searched the Procurement Automated Source System (PASS) for small business manufacturers or processors that have sold to the Federal government. No small business manufacturers or processors were identified within the Federal market.

This notice proposes to waive the Nonmanufacturer Rule for the subject product lines. The public is invited to submit comments or supply information which would identify any small business manufacturers or processors within the Federal market for these product lines.

Dated: December 4, 1990.

Susan S. Engeleiter,

*Administrator.*

[FR Doc. 90-29105 Filed 12-17-90; 8:45 am]

BILLING CODE 8025-01-M

### 13 CFR Part 121

RIN 3245-AC17

### Nonmanufacturer Rule Waiver Procedures; Small Business Size Regulations

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to amend its regulations to provide for the granting of waivers of the so-called "nonmanufacturer rule," pursuant to the Business Opportunity Development Reform Act of 1988 (Pub. L. 100-656). That Act establishes in law the previously existing regulation which required that recipients of small business set-asides and 8(a) contracts be themselves small businesses and that they also provide the product of a small business manufacturer or processor. The new legislation also authorizes SBA to grant waivers for classes of products for which there are no small business manufacturing or processing concerns in the Federal market. Under the proposed rule, a small business would be permitted to supply a product manufactured or produced by a domestic manufacturing or processing concern which is other than a small business if such a product is among a class of products for which there are no small business manufacturing or processing concerns in the Federal market, as determined under the conditions established by SBA in these regulations.

**DATES:** Comments will be accepted until January 17, 1991.

**ADDRESSES:** Written comments should be addressed to: Mr. Robert J. Moffitt, Chairperson, Size Policy Board, Small Business Administration, 1441 L Street, NW, room 600, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** James Fairbairn, Procurement Analyst, Office of Procurement Policy and Liaison, 202/653-6537.

**SUPPLEMENTARY INFORMATION:** On November 15, 1988, the enactment of Public Law 100-656 incorporated into

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the Small Business Act the previously existing regulation that recipients of small business set-asides and 8(a) contracts be themselves small businesses and that they also provide the product of a small business manufacturing or processing concern.

Section 303(h) of the Act provided for waiver of this requirement by SBA for any class of products for which there are no small business manufacturing or processing concerns in the Federal market. The requirement that a small business supplier provide a product manufactured or produced by a domestic small business concern in a contract set-aside for small business or under an 8(a) contract is already in SBA regulations, 13 CFR 121.906(b) and 121.1106(b). These proposed regulations would implement the statutory provisions for waivers of those requirements. Under the proposed rule, a small business would be permitted to supply a product manufactured or produced by a domestic manufacturing or processing concern which is other than a small business if such a product is among a class of products for which there are no small business manufacturing or processing concerns in the Federal market, as determined under the conditions established by SBA in these regulations.

This proposed rule follows a proposal on the same subject published in the Federal Register on May 17, 1990 (55 FR 20467). SBA has considered the first proposal in the light of the comments received, as summarized below, and offers this new proposed rule for further comment.

**Overview of Public Comments**

While the number of comments was not large, the focus of most of them was an objection to two principal parts of the proposal: The timeframes involved (approximately 90 days to grant a waiver); and, the organizational level for approvals. SBA has modified the proposed regulations in response to those comments. Time requirements have been reduced from 90 days to 45 days, and as part of that effort, the approval level has been changed from the Deputy Administrator of the Small Business Administration to the Chairman of the Size Policy Board. We have also established an expedited procedure for use in emergency situations which would take only 5 days. SBA has not accepted the suggestion that approval be issued by Regional Administrators, since the criteria for issuance or denial are basically national in scope.

A third concern was related to those already mentioned: Commentors believed that waivers should be available for individual contracts rather than issued on a "class" basis. Although SBA is precluded by statute from issuing waivers on a contract-by-contract basis, the revised description of a product line will allow for the issuance of a waiver for a specific item requested in a solicitation. Another objection was to the exclusion from the definition of "Federal market" those small business manufacturers/processors which supply the Government through dealers. The definition has been revised to include such small businesses in this proposed rule.

Comments on other areas were also received. One commentor suggested that SBA specifically address various international trade agreements by including a provision which would apply the waiver to permit small businesses to provide products of foreign manufacturers which have been granted equal status with U.S. manufacturers. This change has not been incorporated in the new proposal because the language of the underlying statute specifically establishes the requirement for provision of the products of "domestic small business manufacturers or processors" and provides for a waiver in the absence of small manufacturers or processors without reference to the question of "domestic" production. SBA infers that the domestic requirement was intended not to be waived. Another comment suggested that the nonmanufacturer rule was newly-established. The rule is, in fact, a long-standing one which was given greater visibility by being incorporated into statute. However, the authority to grant a waiver to the non-manufacturer rule was established in section 303(h) of Public Law 100-656.

**Section by Section Review**

Section 121.2101 would describe the underlying policy of the statute that the SBA may waive the nonmanufacturer rule for any class of products for which there are no small manufacturing or processing concerns in the Federal market.

Section 121.2102 would provide definitions of the pertinent terms: "class of products", "Federal market", and "nonmanufacturer rule."

A "class of products" is defined as a Product and Service Code (PSC) established for use by the Federal Procurement Data System, or a product line within a PSC. SBA will consider products named in solicitations by contracting officers as being a product line within a PSC.

The experience of processing waiver requests has resulted in a decision to relax the more restrictive description of product line published in the original proposed rule on May 17, 1990. This broader interpretation of product lines is pragmatically necessary and is consistent with the intent of Congress.

SBA will presume that the United States is the relevant Federal market area for a product, unless it is demonstrated that a class of products is not procured on a national basis. If the practical aspects of providing an item create a geographic limitation on competition, SBA will consider waivers on that basis.

Section 121.2103 would set forth the single statutory standard which must be met to justify issuance of a waiver. Specifically, a waiver would be granted when there are no small business manufacturing or processing concerns of the class of products in the Federal market. Section 121.2103 would also identify the principal data, and set forth examples of situations in which geographic waivers would be appropriate.

Section 121.2104 would describe the procedures to be followed in granting waivers. Any person or concern wishing to suggest a waiver for a specific class of products would submit a request to SBA along with supporting evidence that a waiver is justified under the criterion established by Public Law 100-656. SBA will promptly conduct a preliminary analysis of the class of products. If no small business manufacturing or processing concerns are identified within the Federal market, SBA will publish notices in the Commerce Business Daily and the Federal Register stating that the Agency is trying to identify small business manufacturing or processing concerns for the class of products, and giving a 15-day public comment period. If any small business manufacturing or processing concerns are identified within the Federal market, the waiver will be denied. If, as a result of our preliminary analysis and the notices, no small business manufacturing or processing concerns are identified in the Federal market, a waiver would be published by the Chairman of the Size Policy board in the Federal Register as a Notice. This revised procedure would take a maximum of 45 days from SBA's receipt of the waiver request. The party requesting a waiver would be notified promptly if SBA is identified any small business manufacturing or processing concerns in our preliminary analysis of the class of products. If notices are published for public comment, a waiver would be issued or denied within 45 days from receipt of the request. An expedited procedure is provided that will take only five days. Under the expedited procedure, if a small business manufacturer is not identified in the preliminary analysis, SBA will publish a notice in the federal Register that a waiver has been granted, and solicit public comment at that time. The expedited procedure will be used only when a contracting officer submits to the chairman of the size Policy Board a written statement that either the procurement is proceeding under the authority of FAR 6.302-2 for "unusual and compelling urgency", or the facts would justify such action.

Section 121.2105 would contain a list of the classes of products for which waivers have been granted.

**Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) and the Paperwork Reduction Act (44 U.S.C. ch. 35)**

Based on the inquiries received to date, SBA anticipates that requests for waivers will not exceed 50 annually. Since there are literally millions of procurement actions each year, SBA considers that these few waivers are not significant in number, and are not expected even to approach the threshold of $100 million. Therefore, SBA has determined that this proposed rule would not constitute a major rule for the purposes of Executive Order 12291.

SBA certifies that this proposed rule does not warrant the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this proposed rule, if promulgated in final form, would not have a significant economic effect on a substantial number of small entities since SBA estimates requests will not exceed 50 annually.

For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, § 121.2103 will require reporting of information to SBA because it sets forth specific information needed in a request for a waiver. SBA is currently seeking approval of this requirement by the Office of Management and Budget.

**List of Subjects in 13 CFR Part 121**

Small businesses, Size Standards.

For the reasons set forth above, subpart B of part 121 of title 13, Code of Federal Regulations (CFR), is proposed to be amended as follows:

**PART 121—[AMENDED]**

1. The authority citation for part 121 would continue to read as follows:



Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, as amended (15 U.S.C. 632(a), 634(b)(6)), and Public Law 100-656 (102 Stat. 3853 (1988)).

2. Subpart B of part 121 would be amended by adding a new center heading consisting of §§ 121.2101 through 121.2104 to read as follows:

**Waiver of the Nonmanufacturer Rule**

**§ 121.2101 Policy.**

(a) The Small Business Act (15 U.S.C. 630(f), as amended by Public Law 100-656), provides that suppliers of products under small business set-asides or 8(a) contracts shall not only themselves be small businesses but shall also supply the products of domestic small business manufacturing or processing concerns. This requirement is known as the "nonmanufacturer rule." (See 13 CFR 121.906 and 121.1106.)

(b) Recognizing that this requirement may be impossible for some qualified dealers to meet, Congress authorized SBA in Public Law 100-656 to waive the requirement for any class of products for which there are no small business manufacturing or processing concerns in the Federal market. Federal market is defined in § 121.2102(b).

**§ 121.2102 Definitions.**

(a) *Class of products* means a Product and Service Code (PSC) established for use by the Federal Procurement Data System, or a product line or similar breakout within a Product and Service Code. SBA will consider products named in solicitations by contracting officers as being a product line within a PSC.

(b) *Federal market* means acquisition by the Federal Government from offerors located in the entire geographic United States, except as provided in paragraph (b)(3) of this section.

(1) For this purpose, participants in the Federal market are firms who have been awarded or have performed on a contract to supply this class of products to the Federal government within the last calendar year, either directly or through a dealer;

(2) Potential contractors within the geographic United States who have not supplied this class of product on a contract within the last year, either directly or through a dealer, are not included in the definition of the Federal market; and

(3) More narrowly defined geographic market areas may be considered for purposes of evaluating a waiver request if it is demonstrated that a class of products is not supplied on a national basis, e.g., if the practical aspects of providing an item create a geographic limitation on competition, SBA will consider waivers on that basis. See § 121.2103(c).

(c) *Nonmanufacturer rule* means the requirement set forth in 13 CFR 121.906 that a contractor under a small business set-aside or 8(a) contract be a small business under the applicable size standard and provide its own product or that of another domestic small business manufacturing or processing concern.

(d) *Person* means an individual, partnership, corporation, association, or other business entity.

(e) *United States* includes the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

**§ 121.2103 Conditions justifying waiver.**

(a) The only condition which justifies waiver of the nonmanufacturer rule is the absence from the Federal market of any small concern which manufactures or processes the class of products at issue.

(b) The following sources will be used to evaluate whether small manufacturing or processing concerns are in the Federal market:

(1) Procurement Automated Source System (PASS), U.S. Small Business Administration;

(2) Responses to notices published in the Commerce Business Daily and the Federal Register seeking identification of small business manufacturing or processing concerns that exist in the Federal market, as defined by § 121.2102(b).

(c) In considering the market area for a product, SBA will presume that the entire geographic United States is the relevant Federal market area, unless it is demonstrated that a class of products is not procured on a national basis. This presumption will be particularly difficult to overcome in the case of manufactured products, as typically such items have a very large market area, generally encompassing the entire United States.

(d) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius or political or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. As appropriate, SBA may examine the following factors, among others, for a class of products in cases where geographic segmentation is urged:

(1) Whether perishability effects the area in which the product can, practically, be sold.

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-(2) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product.

(3) Whether there are legal barriers to transportation of the item.

(4) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time.

(5) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

**§ 121.2104 Procedures for requesting and granting waivers.**

(a) SBA may, at its own initiative, institute examination of a class of products for possible waiver of the nonmanufacturer rule.

(b) Any interested person may submit a request for a waiver of the nonmanufacturer rule for a particular class of products. Requests should be addressed to the Chairman, Size Policy Board, Small Business Administration, Washington, DC 20416.

(c) Waiver requests need not be in any particular form but shall, at a minimum, include:

(1) Identification of the specific class of products for which the waiver is sought;

(2) A description of attempts made to locate a small business source;

(3) Identification of one or more procuring agencies responsible for acquisition of products from the named class;

(4) Any available documentation of information which supports the view that there are no small business manufacturing or processing concerns in the Federal market for the specified class of products; and,

(5) Name, address, and telephone number of any individual(s) who may provide further information or explanation of the request.

(d)(1) SBA shall examine the information provided and such other preliminary data as it deems relevant and shall search the Procuremeat Automated Source System (PASS) for small business manufacturers within the named class of products. If small business manufacturers in that class of products are identified through PASS, they will be contacted to determine whether or not they have been awarded a contract or have performed on a contract for that class of products, either directly or through a dealer, within the past year.

(2) If the PASS search and follow-up telephone calls reveal a small business manufacturing or processing concern in the Federal market for that class of products, the waiver request will be denied, and the requestor will be notified promptly.

(3) If the PASS search and follow-up telephone calls do not identify a small business manufacturing or processing concern in the Federal market for that class of products, notices will be published in the **Federal Register** and the Commerce Business Daily. The notices will state that SBA is trying to determine if any small business manufacturing or processing concern exists within the Federal market in that class of products and will solicit public comment for 15 days. Any small business manufacturing or processing concern for that class of products that has been awarded or has performed on a contract within the past year, either directly or through a dealer, will be requested to respond to the notice. SBA will require such information as it deems necessary to verify the accuracy of such response.

(4) If the responses to the notices identify a small business manufacturing or processing concern within that class of products in the Federal market, the waiver will be denied, and the requestor will be promptly notified.

(5) If the responses to the notices do not identify a small business manufacturing or processing concern within the Federal market, a notice will be published in the **Federal Register** that a waiver to the nonmanufacturer rule is granted for that class of products, and the waived class of products will be added to the list contained in § 121.2105 of this part. Waivers will be issued within 45 days of receipt of the request unless the expedited procedure described in § 121.2104(d)(6) is invoked.

(6) An expedited procedure for issuing a waiver will be used for emergency situations. Under the expedited procedure, if a small business manufacturer is not identified in the PASS search, SBA will publish a notice in the **Federal Register** that a waiver has been granted, and solicit public comment at that time. The expedited procedure will be used only when a contracting officer advises the Chairperson of the Size Policy Board in writing that, although the procurement may not be proceeding under the authority of FAR 6.302-2 for "unusual and compelling urgency", the facts justify such action.

(7) The determination to grant or deny a waiver by the Chairperson of the Size Policy Board shall be the final administrative ruling by the SBA.

(8) Waivers shall be issued for an indefinite period; however, SBA will publish a "sources sought" notice in the Commerce Business Daily on an annual basis for every waiver granted.

(9) If the Chairperson of the Size Policy Board receives evidence that a small business manufacturing or processing concern exists in the Federal market after a waiver is granted, the waiver shall be terminated by the Chairperson by publishing a notice in the **Federal Register**. Termination of a waiver will be effective 90 days after publication of the notice. This decision shall be the final administrative action of the SBA.

**§ 121.2105 Classes of products for which waivers have been previously granted by SBA.**

Backhoes (PSC 3805)
Cranes, Construction (PSC 3810)
Graders, Road (Construction Machinery) (PSC 3805)
Scrapers, Construction (PSC 3805)
Dictionaries and Thesauruses (PSC 7610)
Warehouse Sweepers (PSC 3930)
Street Sweepers (PSC 3825)
Aluminum Sheet (PSC 9535)
Copper Cathodes (PSC 9650)
Nickel Cathodes (PSC 9650)
Nickel Brickettes (PSC 9650)

Dated: October 23, 1990.

**Susan S. Engeletter,**
*Administrator.*

[FR Doc. 90-29106 Filed 12-17-90; 8:45 am]
BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-206-AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes on the airplane were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.



**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-206-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-206-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analysis were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Boeing Commercial Airplane Group has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on the Model 767 series airplanes. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for the Model 767 series airplanes are not properly defined or incorporated into the FAA-approved maintenance inspection program. The FAA has determined that the following criteria for the Model 767 brakes, specifically the manufacturer's currently recommended wear limits indicated in the last column, are necessary:

| Series airplane | Brake part no. | Type of brake | Total no. of airplanes | Planes of U.S. registry | Maximum wear limit (inches) |
|---|---|---|---|---|---|
| 767 | 2607092-1 | Steel | Unknown | Unknown | * 2.15 |
| | 2607092-2 | | | | |
| | 2607092-3 | Steel | 53 | 10 | * 2.15 |
| | 2606092-4 | Steel | 164 | 90 | * 2.15 |
| | 2606812-4 | Carbon | 100 | 15 | 2.97 |
| | 2606812-6 | | | | |

* Dynamometer tests to be conducted shortly to validate this wear limit.

Since this condition is likely to exist on other airplanes of the same type design, an AD is proposed which would require incorporation of specified maximum wear limits for certain Model 767 brake part numbers into the FAA-approved maintenance inspection program.

This is one of several rulemaking actions on this subject. A future action will address additional brake part numbers used on Model 767 series airplanes and propose to implement new maximum brake wear limits, based on dynamometer test and analyses provided to the FAA by the manufacturer. Separate rulemaking actions will similarly address brake part numbers used on other Boeing models.

There are approximately 317 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 115 Model 767 airplanes of U.S. registry and 7 operators would be affected by this AD. Although the proposed rule would require the

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incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, it would not impose new or reduced limits different from those currently recommended; it would merely mandate the brake wear limits currently used by operators. Therefore, no actual additional inspection or part replacement costs are involved. However, it is estimated that it will require 20 manhours, at an average labor cost of $40 per manhour to incorporate the requirement in an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 767 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

| Brake part no. | Maximum wear limit |
|---|---|
| 2607002-1 | 2.15 in. |
| 2607002-2 | 2.15 in. |
| 2607002-3 | 2.15 in. |
| 2607002-4 | 2.15 in. |
| 2606812-4 | 2.97 in. |
| 2606812-6 | 2.97 in. |

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 29, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-28565 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-255-AD]**

**Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which would require high frequency eddy current inspections to detect cracks in the webs of main Frame 25 and Frame 27 between Stringer 6 and Stringer 7, and repair, if necessary. This proposal is prompted by reports of cracks found on blank forgings used for the manufacture of Frames 25 and 27. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

**DATES:** Comments must be received no later than February 11, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-255-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-255-AD." The post card will be date/time stamped and returned to the commenter.



**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Aerospatiale Model ATR42-300 and ATR42-320 series airplanes. There have been reports of cracks found on blank forgings used for the manufacture of main Frame 25 and Frame 27. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

Aerospatiale has issued Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990, which describes procedures for a high frequency eddy current (HFEC) inspection to detect cracks in the webs of main Frame 25 and Frame 27 between Stringer 6 and Stringer 7, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-109-029(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an HFEC inspection to detect cracks in the webs of main Frame 25 and Frame 27 between Stringer 6 and Stringer 7, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 56 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,720.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Aerospatiale:** Applies to all Model ATR42-300 and ATR42-320 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Within 250 hours time-in-service after the effective date of this AD, perform a high frequency eddy current (HFEC) inspection of the webs of main Frame 25 and Frame 27 (right and left sides) between Stringer 6 and Stringer 7, in accordance with Aerospatiale Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990.

B. If no crack is found, the airplane may be returned to service.

C. If the crack length is less than 50.8 mm (2 inches), prior to further flight, stop drill holes at the ends of the crack, in accordance with Aerospatiale Service Bulletin ATR42-53-0057, Revision 2, dated November 9, 1990; and

1. Perform a detailed visual inspection of the cracked ends within 250 hours time-in-service following repair. If the crack length is more than 50.8 mm (2 inches), proceed to paragraph D. of this AD.

2. Within 425 hours time-in-service following repair, accomplish modification 15 S 535 R 00 38, in accordance with the service bulletin.

D. If the crack length is more than 50.8 mm (2 inches), prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 10, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29561 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-203-AD]**

**Airworthiness Directives; Boeing Model 727 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this amendment are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes on the airplane were near the maximum allowable wear limits before the RTO and were unable to absorb the

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required RTO energy, thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-203-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-203-AD." The post card will be date/time stamped and returned to the commenter.

## Discussion

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analysis were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Boeing Commercial Airplane Group has submitted, and the FAA has evaluate, a series of dynamometer test data and analyses concerning brakes installed on the Model 727 series airplanes. The FAA also witnessed some of the dynamometer tests, which were conducted in August 1990. Based on this data, the FAA has determined that the brake wear limits currently recommended in the Component Maintenance Manuals for the Model 727 series airplanes are not acceptable as they related to the effectiveness of the brakes during a high energy RTO. Further, these limits are only recommended values. The FAA has determined that the following criteria for the Model 727 brakes, specifically the *new* maximum brake wear limits indicated in the last column, are necessary:

| Series airplane | Brake part No. | Type of brake | Total No. of airplanes | Planes of U.S. registry | Maximum wear limit (inches) |
|---|---|---|---|---|---|
| 727 | 2601182-6 | Steel | 407 | 301 | 1.70 |
| | 2-1147 | Steel | 1140 | 626 | 1.60 |
| | 2-1147-1 | | | | |
| | 2-1147-3 | | | | |
| | 2-1147-4 | | | | |
| | 2-1147- | | | | |

Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is proposed which would require (1) inspection of certain Model 727 landing gear brake part numbers for wear, and replacement if the new wear limits are not met, and (2) incorporation of specified maximum wear limits into the FAA-approved maintenance inspection program.

This is one of several rulemaking actions on this subject. A future action will address additional brake part numbers used on Model 727 series airplanes and propose to implement new maximum brake wear limits, based on dynamometer test and analyses provided to the FAA by the manufacturer. Separate rulemaking actions will similarly address brake part numbers used on other Boeing models.

There are approximately 1,547 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 927 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish the change (cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) is estimated to be $2,048 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,454,696.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 727 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, inspect the brake part numbers shown below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

| Brake part No. | Maximum wear limit (inches) |
|---|---|
| 2601182-6 | 1.7 |
| 2-1147 | 1.6 |
| 2-1147-1 | 1.6 |
| 2-1147-3 | 1.6 |
| 2-1147-4 | 1.6 |
| 2-1190 | 1.6 |

B. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph A. of this AD into the FAA-approved maintenance inspection program.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 29, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29582 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 90-NM-204-AD]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes on the airplane were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-204-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-204-AD." The post card will be date/time stamped and returned to the commenter.

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**Discussion**

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight of the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analysis were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of the separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Boeing Commercial Airplane Group has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on the Model 747 series airplanes. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals for the Model 747 series airplanes are not properly defined or incorporated into the FAA-approved maintenance inspection program. The FAA has determined that the following criteria for the Model 747 brakes, specifically the manufacturer's currently recommended wear limits indicated in the last column, are necessary:

| Series airplane | Brake part No. | Type of brake | Total No. of airplanes | Planes of U.S. registry | Maximum wear limit (inches) |
|---|---|---|---|---|---|
| 747 | 2603703-13-14 | Hybrid | 5 | 0 | 1.55 |
| | 2605662-1-3 | Steel | 248 | 39 | 2.50 |
| | | | | | 2.70 |
| | 2-1515-1-2 | Carbon | 72 | 8 | 2.16 |

Since this condition is likely to exist on other airplanes of the same type design, an AD is proposed which would require incorporation of specified maximum wear limits for certain Model 747 brake part numbers into the FAA-approved maintenance inspection program.

This is one of several rulemaking actions on this subject. A future action will address additional brake part numbers used on Model 747 series airplanes and propose to implement new maximum brake wear limits, based on dynamometer test and analyses provided to the FAA by the manufacturer. Separate rulemaking actions will similarly address brake part numbers used on other Boeing models.

There are approximately 300 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 48 Model 747 airplanes of U.S. registry and 11 operators would be affected by this AD. Although the proposed rule would require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, it would not impose new or reduced limits different from those currently recommended; it would merely mandate the brake wear limits currently used by operators. Therefore, no actual additional inspection or part replacement costs are involved. However, it is estimated that it will require 20 manhours, at an average labor cost of $40 per manhour, to incorporate the requirement into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $8,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.



**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 747 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

| Brake part No. | Maximum wear limit |
|---|---|
| 2603703-13 | 1.55 inches. |
| 2603703-14 | 1.55 inches. |
| 2605662-1 | 2.50 inches. |
| 2605662-3 | 2.70 inches. |
| 2-1515-1 | 2.16 inches. |
| 2-1515-2 | 2.16 inches. |

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 29, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29853 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M



**14 CFR Part 39**

**[Docket No. 90-NM-205-AD]**

**Airworthiness Directives: Boeing Model 757; Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This proposal is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway. An investigation revealed that eight out of ten brakes on the airplane were near the maximum allowable wear limits before the RTO and were unable to absorb the required RTO energy thus contributing to the accident. This condition, if not corrected, could result in loss of brake effectiveness during a high energy RTO and cause further incidents/accidents.

**DATES:** Comments must be received no later than February 1, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-205-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-205-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

In 1988, a McDonnell Douglas Model DC-10 series airplane was involved in an aborted takeoff accident in which eight off the ten brakes failed, and the airplane ran off the end of the runway. Investigation revealed that there were failed pistons on each of the eight brakes, with O-rings damaged by over-extension due to extensive wear. Fluid leaking from the damaged pistons caused the hydraulic fuses to close, releasing all brake pressure.

This accident prompted a review of the methodology used in the determination of the allowable wear limits for all transport category airplane brakes. Worn brake rejected takeoff (RTO) dynamometer testing and analysis were conducted for the Model DC-10 series brakes and a new set of reduced allowable wear limits were established; the use of these limits for the Model DC-10 is required by AD 90-01-01, Amendment 39-6431 (54 FR 53048, December 27, 1989).

The FAA and the Aerospace Industries Association (AIA) worked together to develop a set of dynamometer test guidelines that could be used to validate appropriate wear limits for all airplane brakes. The final test guidelines were sent from the FAA to the AIA on March 2, 1990. It should be noted that this worn-brake accountability determination validates brake wear limits with respect to brake energy capacity only, and is not meant to account for any reduction in brake force due solely to the wear state of the brake. Any reduction in brake force (or torque) that may develop over time as a result of brake wear is to be evaluated and accounted for as part of a separate rulemaking project. The guidelines for validating brake wear limits allow credit for use of reverse thrust to determine energy level absorbed by the brake during the dynamometer test.

The FAA has requested that U.S. airframe manufacturers (1) Determine required adjustments in allowable wear limits for all of its brakes in use, (2) schedule dynamometer testing to validate wear limits as necessary, and (3) submit information from items (1) and (2) to the FAA so that appropriate rulemaking action(s) can be initiated.

Boeing Commercial Airplane Group has submitted, and the FAA has evaluated, a series of dynamometer test data and analyses concerning brakes installed on the Model 757 series airplanes. Based on this data, the FAA has determined that the maximum brake wear limits currently recommended in the Component Maintenance Manuals

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for the Model 757 series airplanes are not properly defined or incorporated into the FAA-approved maintenance inspection program. The FAA has determined that the following criteria for the Model 757 brakes, specifically the manufacturer's currently recommended wear limits indicated in the last column, are necessary:

| Series airplane | Brake part No. | Type of brake | Total No. of airplanes | Planes of U.S. registry | Maximum wear limit (inches) |
|---|---|---|---|---|---|
| 757 | AHA 1301<br>AHA 1637<br>AHA 1676<br>AHA 1693<br>AHA 1884 | Carbon | 129 | 96 | 2.46 |
| | 2-1510 | Carbon | 22 | 15 | 2.8<br>2.4 |

Since this condition is likely to exist on other airplanes of the same type design, an AD is proposed which would required incorporation of specified maximum wear limits for certain Model 757 brake part numbers into the FAA-approved maintenance inspection program.

This is one of several rulemaking actions on this subject. A future action will address additional brake part numbers used on Model 757 series airplanes and propose to implement new maximum brake wear limits, based on dynamometer test and analyses provided to the FAA by the manufacturer. Separate rulemaking actions will similarly address brake part numbers used on other Boeing models.

There are approximately 151 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 model 757 airplanes of U.S. registry and 8 operators would be affected by this AD. Although the proposed rule would require the incorporation of maximum brake wear limits into the FAA-approved maintenance inspection program, it would not impose new or reduced limits different from those currently recommended; it would merely mandate the brake wear limits currently used by operator. Therefore, no actual additional inspection or part replacement costs are involved. However, it is estimated that it will require 20 manhours, at an average labor cost of $40 per manhour, to incorporate the requirement into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 757 series airplanes equipped with brake part numbers identified in paragraph A. of this AD, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

A. Within 180 days after the effective date of this Ad, incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

| Brake part Number | Maximum wear limit |
|---|---|
| AHA 1301 | 2.46 inches |
| AHA 1637 | 2.46 inches |
| AHA 1676 | 2.46 inches |
| AHA 1693 | 2.46 inches |
| AHA 1884 | 2.8 inches |
| 2-1510 | 2.4 inches |

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

**Note:** The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 29, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29584 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 90-ASO-25]**

**Proposed Amendment to Control Zone, Eglin AF Aux No. 9, Hurlburt Field, FL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Hurlburt Field, FL Control Zone. This action would eliminate the arrival area extension southeast of the airport which was designed to provide airspace protection for instrument flight rules (IFR) aircraft executing the standard instrument approach procedure (SIAP) utilizing the Eglin VOR. The Eglin VOR was destroyed by a tornado in 1989 and will not be rebuilt at the original location. Additionally, a minor correction would be made in the latitude/longitude position of Hurlburt Field Airport.

**DATES:** Comments must be received on or before January 28, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 90-ASO-25, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-25." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.



**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Eglin AF Aux No. 9, Hurlburt Field, FL control zone. This proposed action would eliminate the arrival area extension the southeast of the airport. This extension is no longer required for protection of (IFR) aircraft executing the SIAP based on the Eglin VOR was destroyed by tornado in 1989 and will not be rebuilt at the original location. Additionally, a minor correction would be made to the latitude/longitude coordinate position of Hurlburt Field Airport. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

**PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Eglin AF Aux No. 9 Hurlburt Field, FL [Revised]**

Within a 5-mile radius of Eglin AF Aux No. 9 Hurlburt Field (lat., 30° 25' 43" N., long. 86° 41' 20" W.).

Issued in East Point, GA, on December 5, 1990.

**Don Case,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 90-28686 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR part 71**

**[Airspace Docket No. 90-ASO-26]**

**Proposed Revision of Control Zone and Transition Area, Beaufort, SC**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Beaufort, SC Control Zone and Transition Area. Arrival area extensions would be added to the control zone southwest and northwest of the airport. The extensions would provide additional airspace protection for instrument flight rules (IFR) aircraft executing standard instrument approach procedures (SIAPs) to runway 5 and 14 at Beaufort MCAS. The transition area would be revised to eliminate the arrival area extension northeast of MCAS Beaufort. Additionally, minor corrections would be made in the latitude/longitude coordinate position of Beaufort MCAS and Beaufort County Airports.

**DATES:** Comments must be received on or before: January 30, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 90-ASO-26, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief

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Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before an dafter the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 and § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Beaufort, SC Control Zone and Transition Area. The proposed action would add arrival area extensions southwest and northwest of MCAS Beaufort. The extensions are needed for airspace protection for IFR aircraft executing instrument approach procedures to Runways 5 and 14. The transition area extension northeast of MCAS Beaufort is no longer required and would be eliminated. Additionally, minor corrections would be made to the latitude/longitude coordinate positions of Beaufort MCAS and Beaufort County Airports. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, control zones.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Beaufort, SC [Revised]**

Within a 5-minute radius of Beaufort MCAS (lat. 32°28'36" N., long. 80°43'24" W.); within 2 miles each side of Beaufort TACAN (lat. 32°28'44" N., long. 80°43'05" W.) 030°, 229° and 302° radials extending from the 5-mile radius zone to 7 miles NE, SW and NW of the TACAN.

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Beaufort, SC [Revised]**

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Beaufort MCAS (lat. 32°28'36" N., long. 80°43'24" W.); within a 6-mile radius of Beaufort County Airport (lat. 32°24'43" N., long. 80°38'05" W.); excluding that portion that coincides with the Hilton Head Island, SC Transition Area.

Issued in East Point, GA, on December 5, 1990.

Don Case,

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 90–29587 Filed 12–17–90; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 347

[Docket No. 78N–021D]

RIN 0905–AA06

### Skin Protectant Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Diaper Rash Drug Products; Limited Extension of Time for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; limited extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submission of comments to March 18, 1991, on issues relating to the use of vitamins A and D (cholecalciferol) included in the proposed rulemaking to establish conditions under which over-the counter (OTC) skin protectant drug products for the treatment or prevention of diaper rash are generally recognized as safe and effective and not misbranded. FDA is taking this action in response to two requests to extend the comment period for an additional 90 days to allow time



to develop adequate documentation for comments related to the use of vitamins A and D in OTC skin protectant diaper rash drug products. FDA is limiting the extension of the comment period to comments related to these specific ingredients only.

DATES: Written comments by March 18, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1990 (55 FR 25204), FDA issued a notice of proposed rulemaking to establish conditions under which OTC skin protectant drug products for the treatment or prevention of diaper rash are generally recognized as safe and effective and not misbranded. This notice of proposed rulemaking is part of the ongoing review of OTC drug products being conducted by the agency. Interested persons were given until December 17, 1990, to submit comments on the proposal.

One manufacturer requested a 90-day extension of the comment period for the limited purpose of providing adequate time to develop documentation for comments related to the use of vitamins A and D in OTC skin protectant diaper rash drug products. The company expressed concern that the proposed FDA dosage limitations and related proposals are unsupported, not applicable, and impractical for diaper rash drug products containing vitamins A and D. The company noted that FDA's proposals were based on an evaluation of hemorrhoidal drug products and not diaper rash drug products. A drug manufacturers association also requested an extension of time to address FDA's proposed maximum dosage limitation for vitamins A and D content of cod liver oil. The association noted that additional time is needed to address these limitations, e.g., validation methods for assaying ingredient concentrations and stability testing. Both requests indicated that the extra time for these comments will enable them to present FDA with a full and timely record for its review of the use of these ingredients for the treatment or prevention of diaper rash.

FDA has carefully considered the requests and believes that additional time for comment on these ingredients is in the public interest. The agency also believes that such additional information may be of assistance in establishing conditions under which over-the-counter (OTC) skin protectant drug products for the treatment or prevention of diaper rash are generally recognized as safe and effective and not misbranded. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before March 18, 1991, submit to the Dockets Management Branch (address above) written comments related to the use of vitamins A and D in OTC skin protectant diaper rash drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 11, 1990.

Alan L. Hoeting,

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90–29482 Filed 12–17–90; 8:45 am]

BILLING CODE 4160–01–M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[PS–107–88]

RIN 1545–AM80

### Normalization; Inconsistent Procedures and Adjustments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (PS–107–88), which was published on Tuesday, November 27, 1990, (55 FR 49294). The proposed regulations relate to the application of the normalization requirements of sections 167(l) and 168(i)(9) of the Internal Revenue Code to utility companies that file consolidated federal income tax returns.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, (202) 566–3553 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

The notice of proposed rulemaking that is the subject of this correction proposes to add new §§ 1.167(l)–1(h)(7) and 1.168(i)–1 to part 1 of title 26 of the Code of Federal Regulations (CFR). The final regulations will be added to part 1 of title 26 of the CFR in accordance with the Internal Revenue Service's specific regulatory authority under 26 U.S.C. 167(l) and 26 U.S.C. 168(i)(9)(B)(iii), as well as its general regulatory authority under 26 U.S.C. 7805.

**Need for Correction**

As published, the proposed regulations contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

**Correction of Publication**

Accordingly, the publication of the proposed regulations (PS–107–88) which was subject of FR Doc. 90–27702, is corrected as follows:

1. On page 49300, third column, in § 1.168(i)–1(d)(2), under the example for 1992, the line immediately preceding the caption "(D) Cumulative Consolidated Tax Savings." which reads "section is 3.88 for 1991." should be removed and the language "section 3.88 for 1992." added in its place.

Dale D. Goode,

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 90–29566 Filed 12–17–90; 8:45 am]

BILLING CODE 4830–01–M

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

RIN 1840–AB39

### Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: On October 1, 1990 at 55 FR 40148, the Secretary published in the **Federal Register** a Notice of Proposed Rulemaking for the Student Assistance General Provisions that contain requirements relating to clock hour/credit hour conversion. The proposed rules provided for a comment period ending October 31, 1990.

In accordance with the Excellence in Mathematics, Science, and Engineering Education Act of 1990 (Pub. L. 101–589, enacted November 16, 1990), the Secretary extends the comment period for these regulations. The Act requires the Secretary to extend the comment period through January 1, 1991. However, since January 1 is a Federal

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holiday, the Secretary extends the comment period to January 2, 1991.

**DATES:** Comments must be received on or before January 2, 1991.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Ms. Carney M. McCullough, Chief, Pell Grant Policy Section, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (ROB-3, rm. 4318), Washington, DC 20202-5346.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey R. Andrade, Program Specialist, Pell Grant Section, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-5346. Telephone (202) 708-7888.

Dated: December 12, 1990.

**Leonard L. Haynes III,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 90-29511 Filed 12-17-90; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-3875-7]

### National Oil and Hazardous Substances Pollution Contingency Plan, National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Intent to Delete the M&T DeLisa Landfill Site from the National Priorities List: Request for Comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II announces its intent to delete the M&T DeLisa Landfill site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning this Site may be submitted on or before February 7, 1991.

**ADDRESSES:** Comments may be mailed to: Richard L. Caspe, P.E., Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 737, New York, New York 10278.

Comprehensive information on this site is available through the EPA Region II public docket, which is located at EPA's Region II office and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. Requests for appointments to view this information in the Regional public docket should be directed to: Mr. Lance R. Richman, P.G., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 13100, New York, New York 10278, (212) 264-6695.

Background information from the Regional public docket is also available for viewing at the Site's Administrative Record depository located at: Neptune Township Public Library, 25 Neptune Boulevard, Neptune Township, New Jersey.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lance R. Richman, P.G., Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 13100, New York, New York 10278, (212) 264-6695.

**SUPPLEMENTARY INFORMATION:**

Table of Contents:

I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletions.

### I. Introduction

The Environmental Protection Agency (EPA) Region II announces its intent to delete the Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the Site warrant such action.

The EPA will accept comments concerning this Site for thirty (30) days (or until February 7, 1991) after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

### III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the state in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. On September 30, 1990, EPA Region II executed a Record of Decision (ROD) which states that the Site should be addressed under the authorities designated to close and monitor solid waste landfills. The State concurred with the ROD and indicated that they would address potential problems associated with solid waste disposal "for the Site pursuant to the New Jersey Solid Waste Management Act and the regulations promulgated pursuant thereto, once the Site has been de-listed from the National Priorities List (NPL)."

2. EPA Region II has subsequently recommended deletion and has prepared the relevant documents. The Region has also made all relevant documents available in the Regional office and local site information repository.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local comment announces a thirty (30) day public comment period on the deletion package starting on January 7, 1991, and concluding on February 7, 1991.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

The deletion process will be completed upon the EPA Region II Regional Administrator placing a notice in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

### IV. Basis for Intended Site Deletion

The Site is located in the southeastern corner of Monmouth County, northwest of the City of Asbury Park in Ocean Township, New Jersey. The 132-acre Site contains three major building complexes, the Seaview Square Mall complex (Mall), the Seaview Movie Theater complex, and the Acme Supermarket, each of which is surrounded by a paved parking area.

The landfill was in operation from 1941 until 1974 under a New Jersey Department of Environmental Protection (NJDEP) permit. There is no documented evidence which demonstrates that the landfill was used for the disposal of hazardous wastes. The landfill was closed in 1974 in accordance with NJDEP requirements of the time. After closure an investigation of the landfill area was undertaken by Woodward-Gardner and Associates, Inc., for the Goodman Company. Subsequently the Goodman Company constructed the Mall on 30 acres of the 39-acre former landfill for Equitable Real Estate Investment Management, Inc., the present owner of the Mall property. The report recommended control measures to protect against the possible impact of gas and/or leachate generation from the landfill and described other measures that would be needed to provide a stable soil for the construction of the proposed buildings. These recommendations were incorporated into the design and construction of the Mall which was completed in 1977.

Subsequent to the listing of the Site on the NPL, on September 6, 1983, Fred C. Hart and Associates under contract by the owners of the Mall (the Equitable Life Assurance Society of the United States) conducted two environmental investigations, one in 1984 and more recently in 1988, both under EPA oversight. An endangerment assessment was completed by EPA in June of 1990 to determine the baseline risk (an evaluation of the potential threat to human health and the environment in the absence of any remedial action) due to the release of hazardous substances that may be attributable to the Site. Upon completion of these investigations, the following conclusions were reached.

- Groundwater quality in the local shallow Kirkwood aquifer immediately underlying the Site and in direct physical contact with landfill materials, does not appear to have been significantly impacted by hazardous substances. Due to the absence of any significant water quality degradation in the shallow Kirkwood aquifer, together with the laterally extensive presence of the Shark River Marl which locally serves as a confining layer below the Kirkwood aquifer, groundwater quality in the deeper Vincentown aquifer is not anticipated to be at risk as a result of past disposal practices at the Site.
- No volatile organic compounds (VOCs) or pesticide/polychlorinated biphenyl (PCB) compounds were detected above laboratory method detection limits during either sampling round in groundwater samples from private potable wells. Only one semi-volatile compound, di-n-octylphthalate, was detected during the 1988 round of sampling, and it was below levels of concern. Several metals, including copper, lead, nickel, and zinc, were also present below Safe Drinking Water Act (SDWA) standards in potable water samples collected during the 1984 sampling effort.
- Surface water and sediment samples collected did not find any significant environmental quality degradation due to the presence of hazardous substances at the down-gradient surface water locations.
- Although landfill gas is being generated at the Site, and there is evidence of slightly elevated levels of VOC accumulation along the unventilated northern edge of the mall, the sampling and analysis of specific VOC target compounds, such as benzene, toluene, and xylene, did not indicate a definitive pattern of gas infiltration. Therefore, it was determined that the landfill is not the source of detectable levels of VOCs in the Mall. In addition, concentrations of VOCs in the Mall are not outside the range of VOC concentrations typically found in other public and private indoor spaces.

Upon the completion of the remedial investigations and the endangerment assessment, it became evident that this Site should be handled under the authorities designated for closure and post-closure activities at solid waste landfills. Contaminants found at the Site are indicative of solid waste landfills. Unlike typical CERCLA sites, the landfill is not releasing significant concentrations of CERCLA hazardous substances.

Although remedial action under CERCLA is not warranted, EPA has recommended to the New Jersey Department of Environmental Protection's (NJDEP) Division of Solid Waste Management that a number of environmental controls be implemented and maintained at the Site to address potential problems associated with solid waste disposal. NJDEP's Division of Solid Waste Management regulates solid waste landfill activities in the State of New Jersey.

Dated: November 20, 1990.

**Constantine Sidamon-Eristoff,**

*Regional Administrator, USEPA, Region II.*

[FR Doc. 90-29549 Filed 12-17-90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 32

[CC Docket No. 81-893, FCC 90-398]

### Common Carrier Services; Procedures for Implementing The Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; Tentative Decision on Remand.

**SUMMARY:** This action initiates proceedings in response to *AT&T*

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*Information Systems, Inc.* v. *FCC*, 854 F.2d 1442 (D.C. Cir. 1988)(*ATTIS* v. *FCC*). The FCC tentatively concludes that the American Telephone and Telegraph Company (AT&T) should pay the Bell Operating Companies (BOCs) net book value for the refurbished inventory customer premises equipment (CPE) the BOCs transferred to AT&T Information Systems, Inc. ("ATTIS") on January 1, 1984.

**DATES:** Comments on the FCC's proposal may be filed on or before January 18, 1991. Reply comments may be filed on or before February 4, 1991.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** William A. Kehoe III, (202) 632–7500.

**SUPPLEMENTARY INFORMATION:**

**Summary of Tentative Decision on Remand**

This is a summary of the FCC's *Tentative Decision on Remand*, Procedures for Implementing The Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), CC Docket No. 81–893, adopted November 21, 1990, and released December ——, 1990. The full text of the FCC's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision will be published in the FCC Record and may also be purchased from the FCC's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

In *ATTIS* v. *FCC*, the United States Court of Appeals for the District of Columbia Circuit reviewed in order in which the FCC required AT&T to pay the BOCs net book value plus refurbishment costs for the refurbished inventory CPE the BOCs transferred to ATTIS when AT&T divested the BOCs on January 1, 1984. This CPE has been removed from service and refurbished, but not returned to service, prior to the transfer. The Court concluded that the FCC had not explained how a transfer price of net book value plus refurbishment costs properly balanced investor and ratepayer interests. The Court remanded the case to the FCC for further proceedings.

The *Tentative Decision on Remand* initiates those proceedings. It determines that the transfer price for refurbished inventory CPE should equal its economic value as of the January 1, 1984, transfer date. The *Tentative Decision* states, however, that the FCC believes that there is no workable method for exactly measuring that economic value and that a reasonable surrogate for that value must be used to set the transfer price. The *Tentative Decision* tentatively concludes that in view of the risks and opportunities the transfer created for AT&T, the most acceptable and reasonable surrogate is the CPE's net book value.

The FCC certified in the *Tentative Decision on Remand* that the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1982), is not applicable to the changes being proposed in this proceeding. Those changes would apply to BOCs that have dominant positions in their local service areas and to AT&T which is a dominant interexchange carrier. These companies are not "small entit[ies]" within the meaning of the Regulatory Flexibility Act, which incorporates the definition of a "small business" in section 3 of the Small Business Act as a definition of "small entity." 15 U.S.C. 633. In accordance with section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, a copy of the certification is being sent to the Chief Counsel for Advocacy of the Small Business Administration.

The proposal made in the *Tenative Decision on Remand* was analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–20, and was found to propose no new or modified information collection requirement on the public.

**Ordering Clauses**

1. Accordingly, *It is ordered*, That pursuant to sections 1, 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–05, 213, 218, 220, and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, notice is hereby given of the proposals set forth in this Tentative Decision. We hereby give notice that in reaching our decision in this proceeding we will not necessarily be limited to the comments and reply comments that may be filed, and that we may utilize other information, analyses, and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

2. *It is further ordered*, That interested persons may file comments on the specific proposals discussed in this Tentative Decision on or before January 18, 1991. Reply comments shall be filed on or before February 4, 1991. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, NW., Washington, DC.

3. *It is further ordered*, That the Secretary shall serve a copy of this Tentative Decision on state regulatory commissions.

**List of Subjects in 47 CFR Part 32**

Station apparatus, Communications common carriers.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90–29484 Filed 12–17–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 90–601, RM–7531]**

**Radio Broadcasting Services; Lenwood, CA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Desert Broadcasting seeking the allotment of Channel 245A to Lenwood, California, as that community's third local FM broadcast service. Coordinates for this proposal are 34–52–30 and 117–06–48. Mexican concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before February 1, 1991, and reply comments on or before February 19, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036–5339.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–601, adopted November 21, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29577 Filed 12–17–90; 8:45 am]

BILLING CODE 6712–01–M



**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–ABA2**

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Idaho Aquatic Snails**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list the Idaho springsnail (also called the Homedale Creek springsnail) (*Fontelicella idahoensis*). The Utah valvata snail (*Valvata utahensis*), the Snake River Physa snail (*Physa natricina*), an undescribed limpet species (Banbury Springs limpet) in the genus *Lanx* and the Bliss Rapids snail (an undescribed monotypic genus in the family Hydrobiidae) as endangered. With the exception of the Utah valvata snail which has a population in the American Falls Dam tailwaters near the Eagle Rock damsite, all of the populations of these snails are found only in Snake River environments from the Indian Cove Bridge near Hamett, upstream to the Banbury Springs area in South Central Idaho. The Bliss Rapids snail, Utah valvata snail, and the Banbury Springs limpet extend into one of the larger Snake River Plain Aquifer Spring tributaries (Box Canyon Springs) to the Snake River. The Banbury Springs limpet is also found in nearby Banbury Springs. The free-flowing, well oxygenated Snake River habitats required by these species are threatened by proposed large hydroelectric dam developments, current peak-loading operation of existing hydroelectric water projects, water pollution, reduction in oxygen concentration, and possibly competition from a recently introduced hydrobiid snail, *Potamapyrgus antipodarum* (= *P. jenkinsi*). The two large Snake River Plain Aquifer Spring tributaries, Box Canyon Springs and Banbury Springs, are threatened by diversion of water for aquaculture, and small hydroelectric development. This proposal, if made final, would implement the protections provided by the Endangered Species Act (Act) of 1973, as amended. The Service requests comments and data from the public on this proposal.

**DATES:** Comments from all interested parties must be received by February 19, 1991. Public hearing requests must be received by February 1, 1991.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Boise Field Station, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles Lobdell at the above address, 208/334–1931 or FTS 554–1931.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bliss Rapids snail (Family Hydrobiidae n. sp.), Snake River Physa snail (*Physa natricina*), and Idaho springsnail (*Fontelicella idahoensis*) are "living fossils," in that they are relicts from ancient lakes. The Bliss Rapids snail and Idaho springsnail are survivors of the late Pliocene (Blancan) Lake Idaho (Taylor 1986). Fossil material of the Pliocene *Lanx* is needed to confirm the identity of the newly discovered species as being conspecific with the Lake Idaho *Lanx*, though this is a new species in any case. Fossils of these species have been found in Lake Idaho deposits 3.5 million years old, where they lived in the surf zone. The Snake River Physa snail is a relict from Pleistocene lakes in the area (Taylor 1988).

The Bliss Rapids snail is pale tan to amber in color, 2–2.5mm long, with three whorls, and is roughly ovoid in shape. This snail has not been described in the literature. This snail lives only on cobbles and boulders in swift current. In the Snake River, it is found only in and just below the canyon segments in rapids or on boulder bars just below rapids. The Bliss Rapids snail historically was found from boulder bars above King Hill, approximately river mile 546, to lower Salmon Falls Dam, river mile 573 (27 total river miles), and in Box Canyon Springs. The species is currently found throughout its historic range at five sites that are on boulders in swift "white water" rapid areas, and in Box Canyon Springs (Taylor 1982a).

The Utah valvata snail (*Valvata utahensis*) is 4.5mm long, the shell is turbinate (about equally high and wide) with up to four whorls. Call (1884, as cited by Taylor 1982b) described the species from Utah Lake, Utah, as *Valvata Sincera* var. *utahensis*. Walker (1902, as cited by Taylor 1982b) revised the genus *Valvata* and determined *V. utahensis* to be a species. In the Snake River, *V. utahensis* lives on a substratum of fine silt among beds of submergent aquatic plants or among the marginal sedges. Water current is steady, providing continuous oxygen, and fluctuation of river levels is slight. The Utah valvata snail historically was discontinuously distributed in the Snake River. It primarily occurred from river mile 492 (near Grandview) to river mile 585 just above Thousand Springs; a disjunct isolated site is in the American Falls Dam tailwater near Eagle Rock damsite at river mile 709. The Utah valvata snail has been collected at seven locales: Four populations of this species are found at four locales along a 3.5 mile stretch of the mainstem Snake River, below Thousand Springs. The fifth population is located between Thousand Springs and Box Canyon, the sixth population is in Box Canyon, and the seventh population occurs upstream near Eagle Rock damsite.

The amber to brown Snake River Physa snail is about 5–7mm long with 3–3.5 whorls. The Snake River Physa snail was named *Physa natricina* and described by Taylor in 1988. Fossil records of the species were collected from southeastern Idaho and northern Utah. The type locality is the Snake River, Gooding County, Idaho (SW¼ SE¼ Sec. 21, T6S, R13E). Modern collections have been made in the Snake River from the vicinity of Bliss to Hammett, Idaho (Taylor 1982c). The species is restricted to the mainstem of the Snake River on gravel to boulder substratum in steady current. Living specimens have been found on boulders

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in the deepest accessible part of the river, at the margins of rapids. The Snake River Physa snail historically occurred from river mile 524 (Indian Cove) to river mile 573 (lower Salmon Falls Dam). Presently it is known from two locales between river mile 553 and river mile 570, a reduction in range from 49 river miles to 17 miles.

The Idaho springsnail has a narrowly elongate shell reaching a length of 5–7mm, with up to 5.5–6 whorls. Using material collected near Homedale, Idaho by H.M. Tucker in 1930, H.A. Pilsbry described this species as *Amnicola idahoensis* (Pilsbry 1933, as cited by Taylor 1982d) Gregg and Taylor (1965) established the new genus *Fontelicella* and placed *F. idahoensis* in the proposed new subgenus *Natricola*. This species is found only in the free flowing mainstem of the Snake River; the snail is not found in any of the Snake River tributaries or in marginal springs (Taylor 1982d). Historically, the Idaho springsnail was found from river mile 415 (Homedale) to river mile 553 and has been collected at 10 locales. It is currently known from river mile 524 (Indian Cove) to river mile 553 (Bancroft Springs) in three sites, a reduction of nearly 80 percent from its historic range. The status of this species at Alkali Creek (river mile 533) and Three Island Crossing (river mile 536) has not been verified recently.

The Banbury Springs limpet (*Lanx* n. sp.) has a subcentral apex, with its length and height exceeding its width. The species requires unpolluted, clear and well oxygenated water. This limpet was newly discovered in 1988 at Banbury Springs (river mile 589). A second population was found in nearby Box Canyon Springs in 1989 (river mile 588). According to Frest (1989a), Dr. Dwight Taylor, Dr. Peter Bowler, and Dr. Frest " " " "have surveyed nearly all of the available habitat in the Snake River system in the past 25 years and it is very unlikely that many more additional populations will be found, or that any will be substantial in size." Today the Banbury Springs limpet exists only at the above two locations.

These five species require clean, well-oxygenated water, and a rapid, free-flowing river or large spring habitat for survival. The Utah valvata snail is able to exist in slower flowing micro-environments in these settings, but none can tolerate true impoundment or reservoir (dammed) conditions (Frest 1989b). The free-flowing river habitat for these species has been reduced. Adjacent reaches of the Snake River in southern Idaho have been impounded for large hydroelectric facilities and for irrigation. The Swan Falls, C. J. Strike, Bliss, Lower Salmon Falls, and Upper Salmon Falls Dams on the mainstem Snake River inundated free-flowing habitat and have extirpated populations of these species. These species remain in the isolated free-flowing segments between the dams and for some species in a few spring tributaries of the Snake River (Taylor 1982a, b, c, and d, Frest 1989a).

The bed of the Snake River is held in Public Trust by the State of Idaho. Snake River water flowing over the bed is subject to State and Federal water law and water can be appropriated for beneficial uses. Water in Box Canyon Springs Creek is also subject to appropriation. Land in the upper half of Box Canyon Springs Creek is privately owned and developed by Earl M Hardy. Land in the lower end of Box Canyon Springs Creek is managed by the Bureau of Land Management (Taylor 1985).

Listing the subject species would result in increased protection of free-flowing river and large spring habitat needed by other candidate species such as the giant Columbia River limpet (*Fisherola nuttalli*) (Taylor 1982a, b, c and d) and the Shoshone sculpin (*Cottus greenei*). These sites are the last mainstem Snake River habitats with the full range of molluscan species present, and thus represent a unique aquatic community.

Federal action on these five molluscs began as a result of several petitions submitted under section 4(B)(3) of the Act. Dr. Peter Bowler submitted a petition to list the Snake River Physa snail and the undescribed Bliss Rapids snail as endangered on February 7, 1980. A finding that this petition presented substantial information that the requested action may be warranted was published on April 23, 1980 (45 FR 27723). The Idaho springsnail was the subject of a petition submitted on November 12, 1987, by Dr. Bowler. The Service published on December 29, 1988, a finding that the petition to list the Idaho springsnail presented substantial information supporting the listing of the snail as endangered. Following the positive substantiality (90-day) findings, the Service initiated a status review on these species.

Section 4(b)(3)(B) of the Act requires the Service to make a finding within 1-year of the date a petition is received as to whether or not the requested action is warranted. If the Service finds that the requested action is warranted, but precluded by other pending proposals of higher priority, the Service must reevaluate the petition annually and make findings on whether or not the requested action is warranted. In the case of the Snake River Physa and Bliss Rapids snails, the first 12-month finding was published in the Federal Register on January 20, 1984 (49 FR 2485). Annual warranted, but precluded, findings have been made since 1984. This proposed rule constitutes the next 1-year finding that the listing of the Snake River Physa snail and Bliss Rapids snail is warranted. This proposed rule also constitutes the notice of the first 1-year finding that the listing of the Idaho springsnail as an endangered species is warranted.

Randall Morgan and others petitioned the Service to list an undescribed species in the genus *Lanx*, the Banbury Springs limpet, as endangered using the emergency provisions of the Act on November 13, 1989. Whereas the Service's status review does not disclose the existence of an emergency within the meaning of section 4(b)(7) of the Act, it does indicate that proposing the *Lanx* for listing under the normal procedures of section 4 is warranted. This constitutes the required petition findings, and this species is, therefore, included in this proposed rule.

Acting on its own information and volition the Service also proposes endangered status for the Utah valvata snail. This proposed rule is based upon status surveys conducted by Taylor (1982a, c and d and 1988) and Frest (1989b) on the Bliss Rapids, Idaho spring, and Snake River Physa snails, by Taylor (1982b) for the Utah valvata snail, and by Frest (1989a) and the Service for the Banbury Springs limpet. These surveys document the threats facing these species and support this proposed rule.

The petitions and accompanying data described these five snail species as threatened because the reach of the upper Snake River where these species are found is the last remaining free-flowing portion of the river within their historic range (Taylor 1982a, b, c, and d). With the exception of a small population of *Valvata utahensis* at a gently flowing site in the upper Salmon Falls impoundment, none of these species are able to survive in local impoundment habitats which segment their current distributions (Taylor 1982a, b, c, and d).

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act (16 U.S.C 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Idaho springsnail (*Fontelicella idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), Bliss Rapids snail (Family Hydrobiidae, n. sp.), and the Banbury Springs limpet (*Lanx* n. sp ) are as follows:



A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Eleven sites support populations of one or more of the snails proposed for listing. Nine of these sites occur in free-flowing Snake River waters between river mile 524 (Indian Cove) and river mile 585 (Thousand Springs). The other two sites occur upriver in tributary springs at Box Canyon Springs (river mile 588) and at Banbury Springs (river mile 589). Box Canyon Springs and free-flowing Snake River waters at Bancroft Springs support the greatest diversity of snails (three species each). Parts of Box Canyon Springs are located on Federal lands that have been designated by the Bureau of Land Management (Bureau) as an area of critical environmental concern. Lands adjacent to the Snake River are patented lands or public lands administered by the Bureau. Activities that could further threaten the continued existence of the Bliss Rapids snail, Utah valvata snail, Idaho springsnail, Banbury Springs limpet, or Snake River Physa snail include proposed large hydroelectric dam developments, peak-loading operations of existing hydroelectric water projects, water pollution, diversion of water for irrigation and aquaculture and small hydroelectric development.

The combined threats would substantially impact all but three of the known snail localities within the main stem Snake River and one of the two tributary spring localities. All known populations of the Bliss Rapids and Snake River Physa snails would most likely be extirpated. The *Lanx* and Idaho springsnail would be confined to a single locality, and the Utah valvata snail to only two sites.

Two proposed hydroelectric dams would damage or destroy two free flowing river reaches inhabited by these snails. The Idaho Power Company studied the area in the early 1980's, and the Federal Energy Regulatory Commission (Commission) denied their license requests when a mid-1980's power supply needs study revealed that the Northwest United States would have a power surplus into the early 1990's. Since Idaho Power's denial, there have been other preliminary permit filings on the free-flowing river reaches along the upper Snake River gradient from King Hill to Shoshone Falls. Idaho Power continues to review the possibility of constructing dams in this area.

Recently, the City of Tacoma, Washington, revived its interest in constructing a hydropower project (A.J. Wiley, Federal Energy Regulatory Commission No. 9106) on the lower Salmon Falls Dam tailwater (approximately river mile 585). This impoundment would inundate a population of Snake River Physa and three populations of the Bliss Rapids snail. Dike Hydroelectric Company (Federal Energy Regulatory Commission No. 8168) has considered another location, the Bliss Dam tailwaters (river mile 552), for a potential large hydropower development. This development would inundate populations of the Idaho springsnail, the Bliss Rapids snail, and the Snake River Physa snail that occur at Bancroft Springs. Construction of these two proposed dams would inundate four out of six known sites that are currently supporting populations of the Bliss Rapid snail; both of the two known sites that are currently supporting populations of the Snake River Physa snail, and one out of the three known sites in 1989 supporting a population of the Idaho springsnail. These two proposed dams would not inundate habitat for the Utah valvata snail since this snail is well upstream. The Banbury Springs limpet occurs in two tributary springs that flow into the Snake River and these would not be inundated by the two dams.

Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also may threaten these species. The Bliss Rapids Dam is approximately 6 miles above Bancroft Springs and may adversely affect the three known populations (as of 1989) of the Idaho springsnail, two populations of the Bliss Rapids snail, and a population of the Snake River Physa snail, by restricting littoral habitat during the late summer peak-loading operation. Peak-loading operation of the lower Salmon Falls Power Plant may harm three down river populations of the Bliss Rapids snail, and a population of the Snake River Physa snail. The combined peak-loading effects from the two proposed dams would damage all three populations of the Idaho springsnail, five populations of the Bliss Rapids snail, and both of the Physa snail populations.

These species of snails have not been found between Milner Dam (river mile 639.1) and Shoshone Falls (river mile 614.8) because this river section is essentially dewatered during the irrigation season; the remaining low flows have poor water quality. It is unlikely that these species could exist in this river stretch. During the irrigation season water quality and quantity below Shoshone Falls is poor, but both are gradually improved by inflow from Snake River Plain Spring tributaries.

The quality of water in these habitats has a direct effect on the species' survival. The species require cold, well-oxyenated unpolluted water for survival. Any factor that leads to a deterioration in water quality would likely extirpate these taxa. For example, the Banbury Springs limpet lacks either lungs or gills and respires through unusually heavy vascularized mantles. This species cannot withstand temporary episodes of poor water quality conditions. Because of its stringent oxygen requirements, any factor that reduces dissolved oxygen contact for even a few days would very likely prove fatal to most or all of the populations. Factors that would degrade water quality include reduction in flow rate, warming, and increases in the concentration of fertilizers, herbicides or pesticides from irrigation waste water return. Irrigation runoff and waste water return do not as yet affect the Hagerman Valley Reach of the Snake River (where the snails occur) as severely as upstream and downstream stretches. This canyon reach receives massive unpolluted cold water recharge from the Thousand Springs aquifer complex.

Only two tributary springs of the upper Snake River, Banbury Springs and Box Canyon Springs, contain populations of the species proposed in this rule. The Banbury Springs limpet is found only in the two tributary springs. The Utah valvata and Bliss Rapids snail occur in Box Canyon Springs and the mainstem Snake River. Banbury Springs has no known threats, but Box Canyon Springs is threatened by a small hydroelectric project at the upper end of Box Canyon and a water diversion dam at the lower end of Box Canyon.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable. However, some species have become vulnerable to over-collection following listing under the Act.

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* The Federal Energy Regulatory Commission

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(Commission) is the agency responsible for issuing licenses for hydroelectric projects. The Commission solicits input from the Service regarding environmental impacts that may result from proposed projects. The Service's comments regarding impacts to candidate species, such as the five invertebrates proposed herein, are advisory in nature. The Commission relies upon the developer and the Service to resolve issues with respect to candidate species. Unless the developer is willing to mitigate voluntarily for impacts to these species, it is unlikely that the Commission would require mitigation by a project proponent. Consequently, the Commission's review of projects does not provide protection to the snails and limpet addressed in this proposed rule.

The U.S. Army Corps of Engineers (Corps) is also involved in the permitting of projects on the Snake River through their authority under section 404 of the Clean Water Act. The Corps issues individual and nationwide permits for projects that would result in the fill of navigable waters of the United States. Nationwide permits are issued for relatively small projects (hydroelectric projects producing less than 5 megawatts and some bridge crossings) that presumably have minimal environmental impacts. Projects requiring individual permits undergo more extensive environmental review and the permits often include conditions that mitigate for environmental impacts. Virtually any project within the range of these mollusks would require a permit as described in section 404 of the Clean Water Act. The Corps does solicit input from the Service regarding impacts to wildlife resources. Although the Corps gives full consideration to the Service's comments on permits, these comments regarding candidate species are advisory. In practice, the Corps' actions under the Clean Water Act do not adequately protect the five invertebrates considered herein.

If these species were federally listed as endangered, the Corps and the Commission would be required to initiate formal consultation pursuant to section 7 of the Act on any project that may affect one or more of these species. Such consultation would result in a Biological Opinion on whether or not the project proposed to be authorized is likely to jeopardize the continued existence of the species. If these species were listed, both the Commission and Corps would be required to insure that any project they authorize would not be likely to jeopardize the continued existence of these species. Conditions that would provide protection to the species could be incorporated into permits or licenses issued. The provisions of section 7 of the Act are more fully discussed later in this proposed rule.

E. *Other natural or manmade factors affecting their continued existence.* Although not fully understood, an introduced hydrobiid snail (*Potamopyrgus antipodarum* (= *P. jenkinsi*)) may complicate survival for these native species. This non-native species occurs throughout the range of these invertebrates (Bowler 1989a; 1989b). This exotic species may have been introduced by the trout aquaculture industry in this area. This hydrobiid snail is native to New Zealand and has also spread to Europe and Australia. By December, 1988, *P. antipodarum* was the dominant species in the riffle-rapid habitat of the Hagerman Reach and the Bliss Dam tailwater (Bowler 1989a). It formed dark mats of hundreds of individuals in habitat formerly preferred by native species. Subsequent observations during the summer of 1989 indicate that it may be more tolerant to the effects of hydroelectric peak-loading (which results in rapid water level fluctuation) than the native snail fauna. *Potomapyrgus antipodarum* may reproduce without fertilization and can build large populations rapidly.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Idaho springsnail (*Fontelicella idahoensis*), Utah valvata snail (*Valvata utahensis*), Snake River Physa snail (*Physa natricina*), Bliss Rapids snail (undescribed), and the Banbury Springs limpet (*Lanx* n. sp.) as endangered because these species have very restricted ranges and are vulnerable to adverse habitat modification and to water quality changes from dams, hydroelectric projects, and irrigation associated with agriculture. These species may also be vulnerable to competition from an exotic snail. For reasons discussed below, critical habitat is not being proposed at this time.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. The Service determines that critical habitat designation for these species is not prudent. Some populations are in localized springs and over-collecting by malacologists or vandalism could occur if their whereabouts were widely known. Regulations implementing section 4 of the Act provide that a designation of critical habitat is not prudent when a species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat (50 CFR 424.12).

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protections required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may be affected by this proposal are the granting of licenses by the Commission for hydroelectric/power dam development and the issuing of permits under Section 404 of the Clean Water Act by the Corps. The Commission would be required to consult with the Service on the previously mentioned hydroelectric/power dam proposals (A.J. Wiley, Idaho Power Company and Dike Hydroelectric Company). The Corps would be required to consult with the Service on the Box Canyon water diversion dam. In addition, joint consultation by the Corps and the Commission with the Service would be necessary if any of the projects under licensing consideration by the Commission include plans for filling.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt to engage in any such conduct), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed animal species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor at the Boise Field Station address referred to in the **ADDRESSES** section.

### National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited


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### Author

The primary author of this proposed rule is James F. Gore, Boise Field Station (See address section).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Proposed Regulation Promulgation.

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Snails to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
| Snails | | | | | | | |
| Limpet, Banbury Springs | *Lanx* n. sp. | USA (ID) | NA | E | | NA | NA |

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| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Snail, Bliss Rapids | Family Hydrobiidae n. sp. | USA (ID) | NA | E | | NA | NA |
| Snail, Snake River Physa | *Physa natricina* | USA (ID) | NA | E | | NA | NA |
| Snail, Utah valvata | *Valvata utahensis* | USA (ID) | NA | E | | NA | NA |
| Springsnail, Idaho | *Fontelicella idahoensis* | USA (ID) | NA | E | | NA | NA |

Dated: December 3, 1990.

Richard N. Smith,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 90-29344 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-55-M

**50 CFR Part 17**

**RIN 1018-AB52**

## Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Three Florida Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list three plants from the Florida panhandle as threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. They are: *Euphorbia telephioides* (Telephus spurge, spurge family), *Macbridea alba* (white birds-in-a-nest, mint family), and *Scutellaria floridana* (Florida skullcap, mint family). The plants occur in four counties in the Florida panhandle. All three species are threatened by habitat degradation due to forestry practices, including shading by planted pine trees, mechanical site preparation for tree planting, and drainage improvement. *Euphorbia telephioides* is also threatened by destruction of its habitat by real estate development. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for the three plants. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by February 19, 1991. Public hearing requests must be received by February 1, 1990.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Field Supervisor, at the above address (telephone: 904-791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:**

### Background

These three plant species were described by A.W. Chapman (1860), a physician and distinguished botanist of Apalachicola, Florida.

*Euphorbia telephioides* is a member of the spurge family (Euphorbiaceae). Small (1933) split the huge genus *Euphorbia* into smaller genera, renaming this species *Galarhoeus telephioides*. Webster (1967) established a new subsection of the genus *Euphorbia*, Inundatae, that includes *Euphorbia telephioides* and two other species native to the Florida panhandle: *Euphorbia floridana* and *E. inundata*.

*Euphorbia telephioides* is a perennial herb with a stout storage root. Stems are numerous, giving the plant a bushy appearance, up to 30 centimeters (1 foot) tall. Stems and leaves are smooth and have latex (milky sap). The largest leaves are 3-6 centimeters (1-2 inches) long, elliptic or oblanceolate, with the midrib and margins usually maroon. The inflorescence is a cyathium (a structure resembling a flower, containing several male flowers, each reduced to a single stamen, plus a single stalked female flower). Flowering is from April through July (Kral 1983). Clewell (1985) and Kral (1983) provide guidance for distinguishing this species from the most similar species, *Euphorbia inundata*, a taller plant of moister habitats.

*Euphorbia telephioides* is known from only 22 sites (Florida Natural Areas Inventory (FNAI) 1986; D. White, FNAI, pers. comm. 1990), all within 4 miles of the Gulf of Mexico (FNAI 1989; D. White, *in litt.* 1990). The plant occurs in Bay, Gulf, and Franklin Counties from Panama City Beach to east of Apalachicola.

The genus *Macbridea* belongs to the mint family (Lamiaceae or Labiatae). The earliest specimens were collected about 1860 by A.W. Chapman and a friend named Gausman (Roger Sanders, Fairchild Tropical Garden, *in litt.* 1977). The genus consists of two species, *Macbridea alba* and *Macbridea caroliniana* (Kral 1983, Godfrey and Wooten 1981). *Macbridea alba* is an upright, usually single-stemmed, odorless perennial herb with fleshy rhizomes. It is about 30-40 centimeters (1 foot) tall with opposite leaves up to 10 centimeters (4 inches) long, 1-2 centimeters (0.5-1 inches) broad, with winged petioles. With one exception, all the plants at a site are either smooth or hairy (L. Anderson, Florida State University, pers. comm. 1990; Anderson *in* FNAI 1989). The flowers are clustered at the top of the plant in a short spike with bracts. Each flower has a green calyx about 1 centimeter (0.5 inch) long and a brilliant white corolla 3 centimeters (1 inch) long. The corolla is two-lipped, the upper lip hoodlike. Flowering is from May into July (Kral 1983, Godfrey and Wooten 1981). In flower, *Macbridea alba* is conspicuous and unmistakable. The other species of *Macbridea*, *M. caroliniana*, has rose-purple flowers (Kral 1983) and is a candidate for Federal listing (55 FR 6184).

*Macbridea alba* occurs in Bay, Gulf, Franklin, and Liberty counties, Florida. The Apalachicola National Forest has 41 of the 63 known sites for this species, including the sites with the largest numbers of individuals (FNAI 1989; D. White, *in litt.* 1990).

*Scutellaria floridana* is a member of the mint family. Chapman's (1860) treatment of this plant was upheld by Epling (1942). It is a perennial herb, with swollen storage roots. Its stems are quadrangular and sparingly branched, solitary or in small groups. The leaves are opposite, 2-4 centimeters (1-1.5 inches) long, linear, with the margins strongly inrolled and a blunt, purplish tip. The flowers are solitary in the axils of short leafy bracts. Flower stalks are 5 mm (.20 inches) or less long. The flower has a bell shaped calyx with a cap or "scutellum" on its upper side. The corolla is bright lavender-blue, at least 2.5 cm (1 inch) long, with a throat and an upper and lower lip. The lower lip is white in the middle. Flowering is in May and June (Kral 1983). The Florida panhandle has eight other species of *Scutellaria* (Clewell 1985).



*Scutellaria floridana* is presently known to occur at 11 sites in Gulf, Franklin, and Liberty counties, Florida, including 5 sites in Apalachicola National Forest (FNAI 1989; D. White, *in litt.* 1990). The plant is not nearly as widespread in Apalachicola National Forest as *Macbridea alba* (J. Walker, USDA Forest Service, Tallahassee, pers. comm. 1990).

These three plant species are restricted to the Gulf coastal lowlands near the mouth of the Apalachicola River, roughly from the southwestern part of Apalachicola National Forest west to the vicinity of Panama City. The three plant species inhabit grassy vegetation on poorly drained, infertile sandy soils. The wettest sites occupied by these plants are grassy seepage bogs on gentle slopes at the edges of forested or shrubby wetlands. Less permanently wet sites are savannahs (also spelled savanna; also called grass-sedge bogs or wet prairies) (Frost et al. 1986), which are nearly treeless and shrubless but have rich floras of grasses, sedges, and herbs. All three species occur in seepage bogs and savannahs. *Macbridea alba* also occurs sparingly on drier sites with longleaf pine and runner oaks (mesic flatwoods) (J. Walker, USDA Forest Service, pers. comm. 1990). *Euphorbia telephioides* also occurs in scrubby oak vegetation near the shoreline of the Gulf of Mexico (FNAI 1989).

The grassy understory of flatwoods (largely wiregrass, *Aristida stricta*) and the grassy vegetation of savannahs and seepage bogs is maintained by frequent fires. Lightning fires tend to occur during the growing season, but the region has a long and complex history of fire-setting by humans, and in the twentieth century, there has also been fire suppression. The frequency and season of fire is very important to the plant species that make up the vegetation, but fire effects can be subtle and considerably more research is needed if fire management is to be applied scientifically to conserving the native flora (Robbins and Myers in preparation, Clewell 1986). Growing season fire can serve to stimulate and/or synchronize flowering in many species (Platt et al. 1988), including *Macbridea alba* (J. Walker, pers. comm. 1990).

The Apalachicola region has many endemic (locally distributed) plant species including *Liatris provincialis*, whose coastal distribution parallels that of *Euphorbia telephioides*. Savannah plants include *Cuphea aspera*, *Justicia crassifolia*, *Verbesina chapmanii* and *Lythrum curtissii* (Anderson 1989); and *Pinguicula lonantha* (violet butterwort) inhabits wet areas. Other areas in the Southeast have savannahs with rich floras, including the Cape Fear region of North Carolina (Walker and Peet 1985) and coastal Mississippi (Norquist 1964).

Savannahs in this area are economically valueless unless they are planted to pine trees or converted to pasture. Before pines are planted, sites are typically prepared by bedding and other mechanical methods, which is destructive to these plants (Kral 1983). After site preparation, and for the first few years after a new crop of pines is planted, surviving native herbs often prosper. For example, all six sites where *Scutellaria floridana* was found in 1988 are in recently cutover or replanted pine plantations. Understory grasses and herbs on such sites are usually adversely affected by shading as pines grow taller (Kral 1983). Savannah plants often persist on road rights-of-way (for example, the endangered *Harperocallis flava*), power line rights-of-way (*Euphorbia telephioides*), or other areas where infrequent mowing or bush-hogging substitutes for fire.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Euphorbia telephioides* and *Scutellaria floridana* were included in these documents as threatened species; *Macbridea alba* was considered endangered. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report (including *Macbridea alba*) to be endangered species pursuant to section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382).

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Euphorbia telephioides*, *Macbridea alba*, and *Scutellaria floridana*, as category 1 candidates (taxa for which the Service currently has on file substantial data on biological vulnerability and threats to support proposing to list them as endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed all three species to category 2 candidates (taxa for which data in the Service's possession indicate listing is possibly appropriate); the three species retained category 2 status in a notice of review published September 27, 1985 (50 FR 39526). The notice of review published on February 21, 1990 (55 FR 6184) made all three species category 1 candidates, based on field work conducted by Loran Anderson, Wilson Baker, and Angus Gholson in the Apalachicola National Forest in 1987 (D. White, *in litt.* 1990) and outside the National Forest in 1988 (FNAI 1989).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for these three species because the Service had accepted the 1975 Smithsonian report as a petition. In each October of 1983 through 1989, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of this proposal constitutes the final petition finding.

### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Euphorbia telephioides* Chapman (Telephus spurge), *Macbridea alba* Chapman (white birds-in-a-nest), and *Scutellaria floridana* Chapman (Florida skullcap) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Destruction of habitat is most important for *Euphorbia telephioides*, which is being affected by road construction and real estate development near Panama City Beach. Because its entire distribution is within four miles of the Gulf coast, this species is highly vulnerable to coastal

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residential and resort development in Franklin and Gulf Counties. A coastal golf resort community for Franklin County was proposed in 1989.

All three species occur adjacent to the town of Port St. Joe, so expansion of the town would affect them as well as the endangered Chapman rhododendron, *Rhododendron chapmanii*, which occurs in the same vicinity. Development of improved cattle pasture probably has destroyed habitat of these species (Kral 1983), but documentation of the extent of such habitat loss is not available.

All three species are affected by habitat modification by the forest products industry to plant and harvest slash pine. Site preparation that precedes tree planting may destroy these plants (Kral 1983, FNAI 1989), although populations of these species may recover in the sunny conditions that prevail for several years in young pine stands. Shading of these plants by neighboring grasses and by pine trees after canopy closure probably affects these plants seriously (Kral 1983, FNAI 1989), although long-term data on these species are not available.

Lack of prescribed fire or prescribed fire in the dormant season is detrimental for much of the pineland flora (Robbins and Myers in prep.; Platt et al. 1988). Landowner liability for prescribed fire has recently discouraged prescribed burning of pinelands in Florida, but the problem was addressed by the Florida legislature in 1990.

Power line rights-of-way provide valuable habitat for these three species, especially for *Euphorbia telephioides* in Franklin County (FNAI 1989). On such right-of-way, use of herbicides to control the vegetation, rather than bush-hogging or mowing, could adversely affect *Euphorbia telephioides* and the other species.

The recorded occurrences of *Macbridea alba* (FNAI 1989; D. White, *in litt*, 1990) provide evidence that this species has declined in most of its range. Although the plant occurs in 4 counties, 41 of its 63 known localities are in the Post Office Bay area of Apalachicola National Forest, within 15 miles of each other. Ten of the 13 sites with at least 100 *Macbridea alba* plants are in the National Forest, including the largest site with an estimated 1500 plants. The distribution data for this plant are relatively complete and very reliable because the species is conspicuous and nearly all of the locality data were gathered by the same botanists whose 1988 field work outside the Forest provided reports on 171 sites with endemic plant species in 4 counties. Their data show that Gulf County has a richer flora of endemic plants than the National Forest, and that the National Forest is at the edge of the distribution of *Macbridea alba*. It is unlikely that the land that was included in the National Forest originally had the most, or the largest populations of *Macbridea alba*. The present distribution and abundance of *Macbridea alba* is consistent with Godfrey's (1979 assertion that "modern forestry practices are destroying this species," and Kral's (1983) opinion that drainage, lack of fire, and mechanical site preparation for tree planting reduces or eliminates this and other species, such as *Verbesina chapmanii, Justicia crassifolia, Scutellaria floridana,* and *Cuphea aspera. Scutellaria floridana* is a rarer plant than *Macbridea alba*, so forestry activities would seem to affect it more seriously.

The Forest Service conducts some prescribed burns during the growing season to reduce the incidence of brown-spot infection of longleaf pine seedlings (Robbins and Myers in preparation). This practice may favor *Macbridea alba* and other herbs. Most private land is planted with slash pine. Forest Service management practices are intended to benefit *Macbridea alba, Scutellaria floridana,* and other sensitive species including the endangered *Harperocallis flava*, but management to date has been based on casual observation rather than scientific monitoring to observe whether practices actually benefit the plants (J. Walker and D. White, pers. comm. 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known. *Macbridea alba* has handsome flowers, but it is apparently not cultivated, nor is it known to be taken in the Apalachicola National Forest (where taking of spider lilies has recently been observed in the same habitat) (J. Walker, Forest Service, pers. comm. 1990).

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* All three species are listed as endangered species under the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, and through recovery planning.

E. *Other natural or manmade factors affecting its continued existence.* The limited geographic distributions of these plants, and the consistent habitat alteration through most of the ranges of these plants exacerbate the risks posed to the three species by the preceding four factors, making it possible that unless conservation measures are taken, each species might become extinct in a significant portion of its range in the foreseeable future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose the rule. Based on this evaluation, the preferred action is to list *Euphorbia telephioides, Macbridea alba,* and *Scutellaria floridana* as threatened. As discussed under Factor E., each of these species is likely to become extinct in a significant portion of its range within the foreseeable future, fitting the Act's definition of a threatened species. Endangered classification would not be appropriate, as none of the species are in imminent danger of extinction, having at least short-term security due to the number of populations and their distribution over several counties. Additionally, two of the species receive some protection by their occurrence in the Apalachicola National Forest.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Most of the populations of these species are small and localized. Although none of the plants is presently known to be affected by take (as discussed for *Macbridea alba* under Factor B in the Summary of Factors Affecting the Species), the proposal to list these species as threatened could lead to collecting or deliberate destruction of populations. Listing as threatened would protect *Euphorbia telephioides, Macbridea alba* and *Scutellaria floridana* from removal and reduction to possession from lands under Federal jurisdiction; however, since the Act does not otherwise protect threatened plants on either Federal or private lands, publication of critical habitat descriptions and maps would only add to the threats faced by these species. Furthermore, although the removal and possession of listed plants from Federal lands is prohibited, such provisions are difficult to enforce. The Forest Service is aware of the locations of all populations of *Macbridea alba* and *Scutellaria floridana* on its lands, and other involved parties and principal landowners can be notified of the location and importance of protecting this species' habitat through several



mechanism, including Florida's system for protecting endangered and threatened species from pesticide application, as well as Florida's regional and local planning procedures. Protection of these species' habitat will be addressed through the recovery process and through the Section 7 consultation process. For these reasons, it would not be prudent to determine critical habitat for *Euphorbia telephioides, Macbridea alba,* or *Scutellaria floridana.*

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or advesely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The populations of *Macbridea alba* and *Scutellaria floridana* in Apalachicola National Forest are already managed with the intention of benefitting these and other sensitive plant species. Listing will encourage further research and management efforts by the Forest Service. On private lands, listing of these species will probably result in measures to ensure that they are not adversely affected by pesticide (especially herbicide) use under a state program approved by the Environmental Protection Agency. Listing of these plants will also encourage their conservation through Florida's planning procedures, supervised by the Florida Department of Community Affairs.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plants, set forth a series of general trade prohibitions and exceptions for all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the three species are not cultivated. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203 (703/358–2104).

### Public Comments Solicited

The Service intends that any final rule resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Jacksonville, Florida, Field Office (see "ADDRESSES" section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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## Author

The primary author of this proposed rule is Mr. David Martin (see **"ADDRESSES"** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

## Proposed Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | | | | | | |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | Historic range | Status | When listed | Critical habitat | Special rules |
| Euphorbiaceae—Spurge family: | | | | | | |
| *Euphorbia telephioides* | Telephus spurge | U.S.A. (FL) | T | | NA | NA |
| Lamiaceae—Mint family: | | | | | | |
| Macbridea alba | White birds-in-a-nest | U.S.A. (FL) | T | | NA | NA |
| *Scutellaria floridana* | Florida skullcap | U.S.A. (FL) | T | | NA | NA |

Dated: November 21, 1990.
**Richard N. Smith,**
*Acting Director, Fish and Wildlife Service.*
[FR Doc. 90–29545 Filed 12–17–90; 8:45 am]
BILLING CODE 4310-55-M



# Notices

Federal Register
Vol. 55, No. 243
Tuesday, December 18, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Science and Education, National Research Initiative Advisory Committee

Notice is hereby given that the Secretary of Agriculture intends to reestablish the Science and Education Competitive Research Grants Office Advisory Committee, and rename it the Science and Education National Research Initiative Advisory Committee. This Committee will advise the Secretary of Agriculture with respect to areas of agricultural research to be supported, priorities to be adopted, and procedures to be followed in implementing programs of research grants to be awarded competitively.

This Committee will meet annually in Washington, DC. The duties of this Committee are to advise the Secretary on Grant policies for the Agencies, examine needs as related to ongoing programs, provide an overview of research needs in areas considered for U.S. Department of Agriculture grants, assess program progress and recommend resource shifts, and advise on ways to improve guidelines and evaluation procedures.

It has been determined that the reestablishment of this Advisory Committee is in the public interest in connection with the work of the U.S. Department of Agriculture.

Interested parties are invited to submit written comments, views, or data concerning this proposal to John Patrick Jordan, Administrator, Cooperative State Research Service U.S. Department of Agriculture, Washington, DC 20250–2200, by January 2, 1991.

Done at Washington, DC, this 11th day of December, 1990.
**Adis M. Vila,**
*Assistant Secretary for Administration.*
[FR Doc. 90–29502 Filed 12–17–90; 8:45 am]
BILLING CODE 3410-22-M

### Cooperative State Research Service

### Competitive Research Grants Program (National Research Initiative Competitive Grants Program) for Fiscal Year 1991; Solicitation of Applications

### Correction

In the Notice of Solicitation of Applications for the Competitive Research Grants Program (National Research Initiative Competitive Grants Program) for Fiscal Year 1991, appearing in FR Vol. 55, No. 228, part II, November 27, 1990, make the following correction:

On page 49380, in the second column, in the eighth line, "Plant Systems ($33.960M)" should read "Plant Systems ($3.180M)".

Done at Washington, DC, this 4th day of December, 1990.
**William D. Carlson,**
*Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service.*
[FR Doc. 90–29501 Filed 12–17–90; 8:45 am]
BILLING CODE 3410-22-M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Business Development Center Applications: Los Angeles, CA

December 10, 1990.

**AGENCY:** Minority Business Development Agency.

**ACTION:** Cancellation of notice.

**SUMMARY:** This cancels the advertisement as it appears in the issue of September 12, 1989 for the Minority Business Development Agency (MBDA) announcing that it was soliciting competitive applications under its Los Angeles, California Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period.

*Closing Date:* The closing date was October 31, 1989. Applications were to be postmarked on or before October 31, 1989.

**ADDRESS:** Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6723, Washington, DC 20230, 202-377-8275.

**FOR FURTHER INFORMATION CONTACT:** Gina A. Sanchez, Regional Director, Washington Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)
Dated: December 10, 1990.
**Gina A. Sanchez,**
*Regional Director, Washington Regional Office.*
[FR Doc. 90–29524 Filed 12–17–90; 8:45 am]
BILLING CODE 3510-21-M

### National Institute of Standards and Technology

**[Docket No. 900101–0219]**

**RIN 0693–AA59**

### Approval of Revisions to Federal Information Processing Standards (FIPS) Family of Input/Output Interface Standards

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** The purpose of this notice is to announce that the Secretary of Commerce has approved revisions to the Federal Information Processing Standards (FIPS) family of input/output interface standards, and has approved discontinuation of the exclusion and verification lists for these standards.

**SUMMARY:** On March 20, 1990, notice was published in the **Federal Register** (55 FR 10272) proposing revision of Federal Information Processing Standards (FIPS) 60–2, 61–1, 62, 63–1, 97, 111, 130, and 131 to make them non-mandatory, and discontinue the exclusion and verification lists for these standards. This proposal superseded the proposal for revision of these standards announced in the **Federal Register** (52 FR 44462) of November 19, 1987. Procedures for the Exclusion List for FIPS 60, 61, 62, 63, and 97 were published in the **Federal Register** on

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September 3, 1982 (47 FR 38959–38960). Procedures for the Verification List for FIPS 60, 61, 62, 63, and 97 were published in the **Federal Register** on December 11, 1979 (44 FR 71444–71445) and on April 7, 1981 (46 FR 20719–20720).

The written comments submitted by interested parties and other material available to the Department relevant to these proposed revisions were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve revisions to the input/output family of standards and approve discontinuation of the exclusion and verification lists for these standards. NIST prepared a detailed justification document for the Secretary's review in support of those recommendations.

This notice provides only the changes to the revised standards.

**EFFECTIVE DATE:** These revisions are effective December 18, 1990.

**ADDRESSES:** Interested parties may obtain copies of FIPS PUBS 60–2, 61–1, 62, 63–1, 97, 111, 130, and 131 from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161.

**FOR FURTHER INFORMATION CONTACT:** Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

**SUPPLEMENTARY INFORMATION:** Under the provisions of 40 U.S.C. 759(d), the Secretary of Commerce is authorized to promulgate standards and guidelines for Federal computer systems, and to make such standards compulsory and binding to the extent to which the Secretary determines necessary to improve the efficiency of operation, or security and privacy of Federal computer systems.

The family of I/O interface standards currently includes:

a. FIPS 60–2, I/O Channel Interface, revised July 29, 1983.

b. FIPS 61–1, Channel Level Power Control Interface, revised July 13, 1982.

c. FIPS 62, Operational Specifications for Magnetic Tape Subsystems, revised December 30, 1980.

d. FIPS 63–1, Operational Specifications for Variable Block Rotating Mass Storage Subsystems, revised April 14, 1983; Supplement to FIPS PUB. 63–1, Additional Operational Specifications for Variable Block Rotating Mass Storage Subsystems, April 14, 1983.

e. FIPS 97, Operational Specifications for Fixed Block Rotating Mass Storage Subsystems, February 4, 1983.

f. FIPS 111, Storage Module Interfaces (with extensions for enhanced storage module interfaces), April 18, 1985.

g. FIPS 130, Intelligent Peripheral Interface (IPI), July 16, 1987.

h. FIPS 131, Small Computer System Interface (SCSI) July 16, 1987.

The following revisions are being made effective immediately upon publication. A delayed effective date is not required because these standards are exempt from the Administrative Procedure Act by U.S.C. 553(a)(2).

Revisions to Federal Information Processing Standards 60–2, 61–1, 62, 63–1, 97, 111, 130, and 131.

FIPS 60–2, I/O Channel Interface, is revised as follows:

Applicability. This standard addresses the interconnection of computer peripheral equipment as a part of ADP systems for the following types of peripherals: (1) Magnetic tape equipment employing open reel-to-reel magnetic tape storage devices, specifically excluding magnetic tape cassette and tape cartridge storage devices, (2) magnetic disk storage equipment employing disk drives each having a capacity greater than 7 megabytes per storage module, excluding flexible disk and disk cartridge devices having a smaller storage capacity per device, and (3) other peripheral equipment employing peripheral device types for which operational specifications standards have been issued as Federal Information Processing Standards. This standard is recommended for use in the acquisition of peripheral equipment for ADP systems with input/output channel interfaces as specified in the technical specifications, when it is determined that interchange of equipment between different systems is likely.

Implementation. The original version of this standard became effective December 13, 1979. The first revision became effective June 23, 1980, and the second revision became effective July 29, 1983. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 61–1, Channel Level Power Control Interface, is revised as follows:

Applicability. This standard addresses the power control interface in connecting computer peripheral equipment to ADP systems. It is recommended for use then FIPS 60–2 is used, when it is determined that interchange of equipment between different systems is likely.

Implementation. The original version of this standard became effective June 23, 1980, and the first revision became effective July 13, 1982. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 62, Operational Specifications for Magnetic Tape Subsystems, is revised as follows:

Applicability. This standard addresses magnetic tape equipment connected to ADP systems through FIPS 60 interfaces. It is recommended for use in the acquisition of such equipment, when it is determined that interchange of equipment between different systems is likely.

Implementation. The original version of this standard became effective June 23, 1980. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 63–1, Operational Specifications for Variable Block Rotating Mass Storage Subsystems, is revised as follows:

Applicability. This standard addresses peripheral device dependent operational interfaces for connecting variable block rotating mass storage equipment to ADP systems through FIPS 60 interfaces. It is recommended for use in the acquisition of such variable block rotating mass storage equipment for connection to ADP systems, when it is determined that interchange of equipment between different systems is likely.

Implementation. This standard became effective June 23, 1980, and the first revision became effective April 14, 1983. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 97, Operational Specifications for Fixed Block Rotating Mass Storage Subsystems, is revised as follows:

Applicability. This standard addresses the peripheral device dependent operational interface specifications for connecting fixed block rotating mass storage equipment to ADP systems through FIPS 60 interfaces. It is recommended for use in the acquisition of such fixed block rotating mass storage equipment for connection to ADP systems, when it is determined that interchange of equipment between different systems is likely.

Implementation. The original version of this standard became effective February 4, 1983. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 111, Storage Module Interfaces, is revised as follows:

Applicability. This standard addresses connection of a disk drive to a controller as part of an ADP system. This standard is recommended for use in the acquisition of disk systems that are connected to small and medium sized computer systems, when it is determined that interchange of equipment between different systems is likely.

Implementation. This standard became effective May 18, 1985. This revision becomes effective December 18, 1990.

Waivers. This standard is non-mandatory. No waivers are required.

FIPS 130, Intelligent Peripheral Interface (IPI), is revised as follows:

Section 8, Applicability. This standard applies to the connection of computers to storage peripheral device controllers. This standard is recommended for use in the acquisition of magnetic disk drives, optical disk drives, and tape drives to be connected to minicomputer systems, when it is determined that interchange of equipment between different systems is likely.

Section 10, Implementation. This standard became effective December 16, 1987. This revision becomes effective December 18, 1990.

Section 11, Waivers. This standard is non-mandatory. No waivers are required.

FIPS 131, Small Computer System Interface (SCSI) is revised as follows:

Section 8, Applicability. This standard addresses the connection of small computers to peripheral devices with integral controllers. This standard is recommended for use in the acquisition of storage peripherals and small computer systems for office or laboratory use, when it is determined that interchange of equipment between different systems is likely.

Section 10, Implementation. This standard became effective December 16, 1987. This revision becomes effective December 18, 1990.

Section 11, Waivers. This standard is non-mandatory. No waivers are required.

Dated: December 12, 1990.

**John W. Lyons,**

*Director.*

[FR Doc. 90–29563 Filed 12–17–90; 8:45 am]

BILLING CODE 3510–CN–M

## National Oceanic and Atmospheric Administration

### Atlantic Swordfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of withdrawal of an amendment to a fishery management plan from Secretarial review under the Magnuson Fishery Conservation and Management Act.



**SUMMARY:** The South Atlantic Fishery Management Council (Council) submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (Amendment 1 to the FMP) on November 1, 1990, for Secretarial review, approval, and implementation under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act); Secretarial review began on November 7, 1990. On November 28, 1990, the President signed into law Public Law 101–627 (Pub. L. 101–627), which transfers full responsibility for management of swordfish, including preparation of fishery management plans and amendments, to the Secretary of Commerce (Secretary). Consequently, NOAA is withdrawing Amendment 1 from Secretarial review. The Secretary will undertake any necessary and appropriate management actions for the future management of Atlantic swordfish. The existing management measures in the FMP will continue in effect until superseded by the Secretary.

**DATES:** Amendment 1 is withdrawn from Secretarial review on December 12, 1990.

**ADDRESSES:** Inquiries regarding this action should be addressed to Mr. Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910; telephone 301–427–2334.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, National Marine Fisheries Service, telephone 301–427–2347.

**SUPPLEMENTARY INFORMATION:** The Council submitted Amendment 1 to the FMP on November 1, 1990, for Secretarial review, approval, and implementation under the Magnuson Act; a notice of availability of Amendment 1 for public review and comment was published on November 13, 1990 (55 FR 47372). On November 28, 1990, the President signed into law Public Law 101–627, which gives the Secretary authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following fishery management councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council; "highly migratory" is defined by Public Law 101–627 to include swordfish (species *Xiphias gladius*). Public Law 101–627 instructs that any fishery management plan that addresses a highly migratory species (as defined by Pub. L. 101–627), that was prepared by one or more Regional Fishery Management Councils, and that was in force and effect on January 1, 1990, shall remain in effect until superseded by a fishery management plan and implementing regulations prepared by the Secretary. Since Amendment 1 was not in force and effect on January 1, 1990, and since the Secretary not has the responsibility for preparing any future amendments to the FMP, Amendment 1 is withdrawn from Secretarial review. The Secretary will follow the requirements of the Magnuson Act, as amended by Public Law 101–627, in preparing any future amendments to the FMP.

**Authority:** 16 U.S.C. 1801, *et seq.*

Dated: December 12, 1990.

**Joe P. Clem,**

*Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–29485 Filed 12–12–90; 4:07 pm]

BILLING CODE 3510–22–M

## South Atlantic Fishery Management Council; Snapper-Grouper Amendment 4 Public Hearings and Wreckfish Public Scoping Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of public hearings and scoping meetings and request for comments.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a series of public hearings and provide a comment period to solicit public input for proposed Amendment 4 to the Snapper-Grouper Fishery Management Plan (FMP). Proposed minimum sizes, gear restrictions, recreational bag limits, commercial quotas, and spawning season/area closures will be discussed during the public hearings for Amendment 4. During the wreckfish public scoping meetings, input will be received on options for the proposed limited entry program for the wreckfish fishery.

**DATES:** See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings and public scoping meetings. All public hearings for Amendment 4 will begin at 6 p.m. Written comments for Amendment 4 must be received by February 8, 1991. The wreckfish public scoping meetings will be held from 1 p.m., to 4 p.m.

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**ADDRESSES:** All written comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, South Carolina 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4366.

**SUPPLEMENTARY INFORMATION:** Amendment 4 to the FMP was prepared by the Council. The intended effect of this amendment is to increase the spawning stock for the different species of snapper-grouper above 30 percent. (This would be an increase in the number of adult fish which are able to reproduce to a level of 30 percent of what it would be if there were no fishing occurring for that species.) These proposed management measures also would standardize regulations, where feasible, with the Gulf of Mexico Fishery Management Council.

The dates and locations of the snapper-grouper public hearings are scheduled as follows:

1. Monday, January 7, 1991—Holiday Inn—Beachside, N. Roosevelt Boulevard, Duval room, Key West, Florida.
2. Tuesday, January 8, 1991—Royce Hotel, 1601 Belvedere Road, West Palm Beach, Florida.
3. Wednesday, January 9, 1991—Holiday Inn Ocean Front, 1617 First Street, N., Jacksonville Beach, Florida.
4. Thursday, January 10, 1991—Holiday Inn Mid-Town, 7100 Abercorn Street, Savannah, Georgia.
5. Friday, January 11, 1991—South Carolina Wildlife and Marine Resources Department, 240 Fort Johnson Road, Charleston, South Carolina.
6. Monday, January 14, 1991—Quality Royale Beach Cove Inn, 4800 S. Ocean Boulevard, North Myrtle Beach, South Carolina.
7. Tuesday, January 15, 1991—Hilton Inn, 301 N. Water Street, Wilmington, North Carolina.
8. Wednesday, January 16, 1991—Carteret Community College, 3505 Arendell Street, Morehead City, North Carolina.

The dates and locations of the public scoping meetings are scheduled as follows:

1. Wednesday, January 9, 1991—Holiday Inn Ocean Front, 1617 First Street, N., Jacksonville Beach, Florida.
2. Friday, January 11, 1991—South Carolina Wildlife and Marine Resources Department, 240 Fort Johnson Road, Charleston, South Carolina.
3. Tuesday, January 15, 1991—Hilton Inn, 301 N. Water Street, Wilmington, North Carolina.

Dated: December 12, 1990.

**Joe P. Clem,**

*Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90–29486 Filed 12–17–90; 8:45 am]

BILLING CODE 3510–22–M

## New England Fishery Management Council; Statement of Organization, Practices and Procedures

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its function under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604 and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 99–659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-mentioned final rule, the New England Fishery Management Council (New England Council) has prepared its revised SOPP. Interested parties may obtain a copy of the New England Council's revised SOPP by contacting Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906; telephone (617) 231–0422.

Dated: December 13, 1990.

**Joe P. Clem,**

*Acting Director, Office of Fisheries Conservation and Management.*

[FR Doc. 90–29542 Filed 12–17–90; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 12, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Macau met November 26–28, 1990 and reached agreement on the issue of circumvention. Therefore, the United States has withdrawn its letter of intent to terminate the bilateral agreement.

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau establishes limits for the period January 1, 1991 through December 31, 1991. The aggregate and Group I limits and limits for Categories 345, 445/446, 645/646 and 845/846 have been reduced.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 41573, published on October 12, 1990.



The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 12, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated December 28, 1983 and January 9, 1984, as amended and extended, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraint limits:

| Category | Twelve-month restraint limit |
|---|---|
| 200–239, 300–369, 400–469, 600–670 and 800–899, as a group. | 61,155,694 square meters equivalent. |
| Group I: | |
| 200–239, 300–369, 600–670 and 800–899, as a group. | 77,952,613 square meters equivalent. |
| Sublevels Within Group I: | |
| 237 | 61,000 dozen. |
| 239 | 99,387 kilograms. |
| 331/831 | 300,000 dozen pairs. |
| 333/334/335/833/834/835. | 175,871 dozen of which are not more than 92,542 dozen shall be in Categories 333/335/833/835. |
| 336/836 | 23,000 dozen. |
| 338 | 226,406 dozen. |
| 339 | 948,335 dozen. |
| 340 | 214,294 dozen. |
| 341 | 138,215 dozen. |
| 342 | 39,326 dozen. |
| 345 | 19,000 dozen. |
| 347/348/847 | 535,897 dozen. |
| 349 | 145,833 dozen. |
| 350/850 | 18,000 dozen. |
| 351/851 | 27,000 dozen. |
| 352 | 66,836 dozen. |
| 359/859 | 137,862 kilograms. |
| 631 | 231,386 dozen pairs. |
| 633/634/635 | 372,422 dozen. |
| 636 | 15,453 dozen. |
| 638/639/638 | 1,156,731 dozen. |
| 640 | 82,457 dozen. |
| 641/840 | 141,723 dozen. |
| 642/842 | 82,569 dozen. |
| 645/646 | 90,958 dozen. |
| 647/848 | 389,923 dozen. |
| 649 | 145,833 dozen. |
| 651 | 13,462 dozen. |
| 652/852 | 160,000 dozen. |
| 859 | 88,762 kilograms. |
| 870 | 340,184 kilograms. |
| 845/846 | 20,452 dozen. |
| Group II: | |
| 400–469, as a group | 1,405,436 square meters equivalent. |
| Sublevels Within Group II: | |
| 434 | 1,852 dozen. |
| 438 | 6,667 dozen. |
| 442 | 5,556 dozen. |
| 445/446 | 37,510 dozen. |

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Macau.

The conversion factors are listed below:

| Category | Conversion factor |
|---|---|
| 333/334/335/833/834/835. | 34.2 |
| 359/859 | 8.5 |
| 633/634/635 | 34.5 |
| 638/639/638 | 12.5 |
| 641/840 | 12.1 |
| 652/852 | 13.4 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29539 Filed 12–17–90; 8:45 am]

BILLING CODE 3510–DR–M

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 12, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212, for information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the harmonized Tariff Schedule in the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 12, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or

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manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 19, 1990, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 226/313 | 76,056,711 square meters. |
| 315 | 50,853,757 square meters. |
| 331/631 | 1,430,901 dozen pairs. |
| 334 | 46,960 dozen. |
| 335 | 46,275 dozen. |
| 336 | 171,816 dozen. |
| 340 | 168,533 dozen. |
| 341 | 317,885 dozen. |
| 342 | 108,793 dozen. |
| 347/348 | 415,171 dozen. |
| 351 | 53,610 dozen. |
| 352 | 262,160 dozen. |
| 363 | 29,803,779 numbers. |
| 369-D [2] | 1,250,548 kilograms of which not more than 416,753 kilograms shall be in piled dish towels—HTS number 6302.60.0010. |
| 613/614 | 2,424,370 square meters. |
| 615 | 18,379,506 square meters. |
| 636 | 45,482 dozen. |
| 638/639 | 112,252 dozen. |
| 641 | 112,725 dozen. |
| 647/648 | 381,063 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 11, 1989.
[2] Category 369-O: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29527 Filed 12-17-90; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

December 12, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

**EFFECTIVE DATES:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines establishes import limits for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 12, 1990

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

| Category | 12-month restraint limit |
|---|---|
| *Group I* | |
| 237, 239, 331, 333/334, 335, 336, 338/339, 340/640, 341/641, 342/642, 345, 347/348, 351/651, 352/652, 359-S/659-S [1], 361, 363, 369-S [2], 431, 433, 443, 445/446, 447, 604, 631, 633, 634, 635, 636, 638/639, 643, 645/646, 647/648, 649, 650, 659-H [3] and 847, as a group. | 346,686,495 square meters equivalent. |
| *Sublevels in Group I* | |
| 237 | 1,262,477 dozen. |
| 239 | 6,774,556 kilograms. |
| 231 | 946,853 dozen pairs. |
| 333/334 | 175,886 dozen of which not more than 25,250 dozen shall be in Category 333. |
| 335 | 114,484 dozen. |
| 336 | 416,617 dozen. |
| 338/339 | 1,368,725 dozen. |
| 340/640 | 732,316 dozen of which not more than 402,774 dozen shall be in shirts made with two or more colors in the warp and/or filling in Categories 340-Y/640-Y. [4] |
| 341/641 | 648,115 dozen. |
| 342/642 | 347,250 dozen. |
| 345 | 107,311 dozen. |
| 347/348 | 1,262,477 dozen. |
| 351/651 | 378,743 dozen. |
| 352/652 | 1,514,972 dozen. |
| 363 | 10,600,000 numbers. |
| 359-S/659-S | 859,925 kilograms. |
| 369-S | 544,018 kilograms. |
| 431 | 157,652 dozen pairs. |
| 433 | 4,178 dozen. |
| 443 | 24,653 numbers. |
| 445/446 | 25,631 dozen. |
| 447 | 8,202 dozen. |
| 604 | 1,272,227 kilograms. |
| 631 | 3,093,069 dozen pairs. |
| 633 | 23,219 dozen. |
| 634 | 277,612 dozen. |
| 635 | 265,664 dozen. |
| 636 | 1,085,730 dozen. |
| 638/639 | 1,425,599 dozen. |
| 643 | 554,609 numbers. |
| 645/646 | 513,253 dozen. |
| 647/648 | 761,768 dozen. |
| 649 | 5,179,716 dozen. |
| 650 | 65,523 dozen. |
| 659-H | 824,614 kilograms. |
| 847 | 593,390 dozen. |



| Category | 12-month restraint limit |
|---|---|
| *Group II* | |
| 200, 201, 218-228, 300-326, 330, 332, 349, 350, 353, 354, 359-O [5], 360, 362, 369-O [6], 400, 410, 414, 432, 434-442, 444, 448, 459, 464-469, 600-603, 606-629, 630, 632, 644, 653, 654, 659-O [7], 665-670, 831-846 and 850-859, as a group. | 91,735,669 square meters equivalent. |

[1] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060 and 6505.90.8060.

[4] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[5] Category 359-O: all HTS numbers except 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359-S).

[6] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[7] Category 659-O: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

Imports charged to these category limits for the period beginning on January 1, 1990, June 1, 1990 and July 1, 1990 and extending through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Philippines.

The conversion factors are as follows:

| Category | Conversion factor |
|---|---|
| 333/334 | 34.50 |
| 352/652 | 11.3 |
| 359-S/659-S | 11.6 |
| 638/639 | 12.96 |

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29528 Filed 12-17-90; 8:45 am]

BILLING CODE 3510-DR-M

## Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States: Changes to the 1991 Correlation

December 12, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1991 Correlation.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

The Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (1991) presents the Harmonized Tariff Schedule numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The attached list of Harmonized Tariff Schedule numbers are currently in effect and will be published in the next supplement to the Harmonized Tariff Schedule of the United States (1991). The Correlation should be amended to reflect the changes indicated below:

| Category | Changes in the 1991 correlation |
|---|---|
| 331 | Change 6116.10.1520 to 6116.10.1820. |
| | Change 6116.10.2520 to 6116.10.4565. |
| | Change 6116.10.3510 to 6116.10.7010. |
| | Change 6116.10.8010 to 6116.10.9010. |
| | Change 6116.92.2010 to 6116.92.6010. |
| | Change 6116.92.2020 to 6116.92.6020. |
| | Change 6116.92.2030 to 6116.92.6030. |
| | Change 6116.92.2040 to 6116.92.6040. |
| | Change 6116.92.2050 to 6116.92.6050. |
| | Change 6116.92.2060 to 6116.92.6060. |
| | Change 6116.92.2070 to 6116.92.6070. |
| | Change 6116.92.3000 to 6116.92.9000. |
| | Change 6116.99.9010 to 6116.99.9510. |
| | Change 6216.00.1520 to 6216.00.1220. |
| | Change 6216.00.3020 to 6216.00.1820. |
| | Change 6216.00.2710 to 6216.00.2810. |
| | Change 6216.00.3110 to 6216.00.3210. |
| | Change 6216.00.3811 to 6216.00.3910. |
| | Change 6216.00.3821 to 6216.00.3920. |
| 410 | Change 5111.20.6001 to 5111.20.9000. |
| | Change 5111.30.6001 to 5111.30.9000. |
| | Change 5111.90.7000 to 5111.90.9000. |
| | Change 5112.19.6011 to 5112.19.9010. |
| | Change 5112.19.6021 to 5112.19.9020. |
| | Change 5112.19.6041 to 5112.19.9040. |
| | Change 5112.19.6051 to 5112.19.9050. |
| | Change 5112.90.6011 to 5112.90.9010. |
| | Change 5112.90.6091 to 5112.90.9090. |
| 414 | Change 5112.19.1001 to 5112.19.2000. |
| 431 | Change 6116.93.1510 to 6116.93.6010. |
| | Change 6116.93.1520 to 6116.99.6060. |
| | Change 6116.99.9030 to 6116.99.8520. |
| | Change 6216.00.4910 to 6216.00.5210. |
| | Change 6216.00.4920 to 6216.00.5220. |
| | Change 6216.00.5909 to 6216.00.6000. |
| 631 | Change 6116.10.1530 to 6116.10.1830. |
| | Change 6116.10.2530 to 6116.10.4575. |
| | Change 6116.10.3520 to 6116.10.7020. |
| | Change 6116.10.8025 to 6116.10.9025. |
| | Change 6116.92.2011 to 6116.93.9010. |
| | Change 6116.93.2021 to 6116.93.9020. |
| | Change 6116.99.6021 to 6116.99.5020. |
| | Change 6116.99.6041 to 6116.99.5040. |
| | Change 6116.99.9030 to 6116.99.8090. |
| | Change 6216.00.1530 to 6216.00.1230. |
| | Change 6216.00.2030 to 6216.00.1830. |
| | Change 6216.00.2725 to 6216.00.2825. |
| | Change 6216.00.3125 to 6216.00.3225. |
| | Change 6216.00.4895 to 6216.00.5235. |
| | Change 6216.00.4945 to 6216.00.5245. |
| 631 | Change 6116.10.1540 to 6116.10.1840. |
| | Change 6116.10.2540 to 6116.10.4585. |
| | Change 6116.10.3530 to 6116.10.7030. |
| | Change 6116.10.8030 to 6116.10.9030. |
| | Change 6116.99.9050 to 6116.99.8050. |
| | Change 6116.99.9060 to 6116.99.8060. |
| | Change 6216.00.1540 to 6216.00.1240. |
| | Change 6216.00.2040 to 6216.00.1840. |
| | Change 6216.00.2730 to 6216.00.2830. |
| | Change 6216.00.3130 to 6216.00.3230. |
| | Change 6216.00.9000 to 6216.00.9000. |

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90-29529 Filed 12-17-90; 8:45 am]

BILLING CODE 3510-DR-M

## Amending the Coverage of Certain Part-Categories for Wool Textile Products Produced or Manufactured in Various Countries

December 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

**EFFECTIVE DATES:** December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate the implementation of bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after

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November 5, 1990, regardless of the date of export, coverage of part-Categories 410–A and 410–B is being amended on all visa and certification arrangements and all import controls for countries with part-Categories 410–A and 410–B.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989; and FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 13, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 28, 1990 which amends all import control and counting directives issued to you by the Chairman of CITA, which include part-Categories 410–A and 410–B, produced or manufactured in various countries and entered into the United States for consumption or withdrawn from warehouse for consumption on and after October 1, 1990, regardless of the date of export.

This directive amends, but does not cancel, all directives issued to you which establish visa requirements for all countries for which visa arrangements are in place with the United States Government.

Effective on December 20, 1990, you are directed to make the changes shown below for all countries with part-Categories 410–A and 410–B. These changes are effective for goods entered into the United States for consumption or withdrawn from warehouse for consumption on and after November 5, 1990, regardless of the date of export.

| Category | Obsolete No. | New No. |
|---|---|---|
| 410–A | 5111.20.6001 | 5111.20.9000 |
| | 5111.30.6001 | 5111.30.9000 |
| | 5111.90.7000 | 5111.90.9000 |
| 410–B | 5112.19.6011 | 5112.19.9010 |
| | 5112.19.6021 | 5112.19.9020 |
| | 5112.19.6030 | 5112.19.9030 |
| | 5112.19.6041 | 5112.19.9040 |
| | 5112.19.6051 | 5112.19.9050 |
| | 5112.19.6060 | 5112.19.9060 |
| | 5112.90.6011 | 5112.90.9010 |
| | 5112.90.6091 | 5112.90.9090 |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29530 Filed 12–17–90; 8:45 am]

BILLING CODE 3510–DR–M

## COMMISSION OF FINE ARTS

### Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 17 January 1991 at 10 am in the Commission's offices in the Pension building, Suite 312, Judiciary Square 441F Street, NW., Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 13 December 1990.

**Charles H. Atherton**

*Secretary.*

[FR Doc. 90–29490 Filed 12–17–90; 8:45 am]

BILLING CODE 6330–01–M

## COMMISSION ON INTERSTATE CHILD SUPPORT

### Public Hearing

The Commission on Interstate Child Support will hold a public hearing on January 23, 1991, in Los Angeles, CA. The public hearing includes two sessions. The first will be from 10 a.m. until 1 p.m. and the second will be from 6 p.m. until 8:00 p.m. Both sessions will be at the Hyatt at Los Angeles Airport, 6225 Century Blvd, Los Angeles, CA.

The Commission has identified specific issues on which it is most interested in receiving testimony. Individuals and organizations interested in presenting testimony are requested to address one or more of the following issues:

**Legal Remedies Available in Interstate Cases**

When there is no existing order or when no party resides in the original rendering state, would it be beneficial to authorize jurisdiction in the child's state of residence for purposes of establishing and modifying a child support award against a non-resident defendant? What are ideas/suggestions for federal and state statutes and procedures that would improve interstate child support? Are there existing federal and state statutes that facilitate or impede the process? What specific changes are needed in the Uniform Reciprocal Enforcement of Support Act? Which state's law should govern the establishment of paternity, the establishment of support, enforcement, and modification? How are long arm statutes now used and would a federally imposed long arm statute improve the interstate process? Should the Congress mandate "minimum" or "qualified" standards for recognition of child support orders in other states? Has the prohibition against retroactive modification of arrears improved interstate enforcement or created problems?

**Policy and Procedural Factors That Affect Processing of Interstate Cases**

What has been the experience of states and families in the implementation of interstate income withholding? what are the expected impacts on interstate cases of the recent federally regulated performance standards, the provisions for periodic updating of awards, and the planned automated interstate network? How well do the child support functions of locate, paternity and support establishment, monitoring, and enforcement work in interstate cases and what can be done to improve them? What improvements are needed regarding the establishment and enforcement of support orders against military obligors? Should the responding or initiating jurisdiction be responsible for the selection of appropriate remedy, on-going monitoring, and initiation of enforcement actions for interstate cases? Do states receive adequate direction and program support from the federal Office of Child Support Enforcement? Are units composed of staff who process interstate cases exclusively more effective than other staffing configurations? Should service of process for interstate cases be performed by mail or personal service? Does the present funding and financial incentive structure foster action on interstate cases?

**Communication and Education Concern**

What has been the experience of both custodial and noncustodial parents in obtaining information about interstate child support enforcement and actually being able to access services at the state and local level? Are states able to obtain information on the processes used in sister states to initiate and enforce interstate cases? Do the regional offices of the federal Office of Child Support Enforcement assist states and parents in securing information required to process interstate cases? Are the rights and responsibilities of all parties to an interstate action fully explained and understood? Is there adequate training for attorneys (public and private), child support staff, decision makers, and court administrators involved in the processing of interstate cases? What techniques have been most successful in communication between jurisdictions?

**Details on Submissions of Requests To Be Heard**

Individuals and organizations interested in presenting oral testimony before the Commission at either hearing should submit their requests and a copy of their prepared statement to Vernon Drew, Commission on Interstate Child Support, 1120 Vermont Ave. NW., suite 680, Washington, DC 20005, on or before January 14, 1991. Requests should specify whether the testimony will be given for an organization or individual, what topic(s) will be addressed, and whether the morning or evening session is preferred. Individuals scheduled to testify will be contacted by the Commission staff as soon after the closing date as possible. Any questions concerning the scheduled appearance should be directed to Vernon Drew.

It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Commission to hear as many points of view as possible. Time for oral presentations will be strictly limited to five minutes with the understanding that a more detailed statement may be presented to the Commission. This process will afford more time for members to question witnesses. In addition, witnesses may be grouped as panelists with strict time limitations for each panelist.

**Written Statements In Lieu of Personal Appearance**

Persons wishing to submit a written statement should do so by close of business on January 21, 1991. Statements should be addressed to Vernon Drew, Executive Director, Commission on Interstate Child Support, 1120 Vermont Avenue, NW., suite 680, Washington, DC, 20005.

**Margaret Campbell Haynes,**

*Chair.*

[FR Doc. 90–29546 Filed 12–17–90; 8:45 am]

BILLING CODE 6820–64–M



## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### State Student Incentive Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice of Closing Date for Receipt of State Applications for Fiscal Year 1991.

**SUMMARY:** The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1991 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system of grants for students with substantial financial need.

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law and must submit an application through the State agency that administered its SSIG Program on July 1, 1985.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 415A through 415E of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1070c–1070c–4).

**CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS:** An application for fiscal year 1991 SSIG Program funds must be mailed or hand-delivered by February 1, 1991.

**APPLICATIONS DELIVERED BY MAIL:** An application sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202–5447, Attention: Mr. Fred Sellers, Chief, State Student Incentive Grant Section, room 4018, ROB #3.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. The Department of Education encourages applicants to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1991 funding.

**APPLICATIONS DELIVERED BY HAND:** An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

**PROGRAM INFORMATION:** The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined by the statutorily mandated formula and are not subject to negotiation. The States may also request a share of reallotments, in addition to their basic allotments, contingent upon the availability of those funds from allotments. In FY 1990, all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands participated in the SSIG assistance delivery network.

**APPLICATION FORMS:** The required application form for receiving SSIG Program funds will be mailed to officials of appropriate State agencies at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

**APPLICABLE REGULATIONS:** The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations (34 CFR part 692).

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(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) and Part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Regulationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Mr. Fred Sellers, Chief, State Student Incentive Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202–5447; telephone (202) 708–4607. (20 U.S.C. 1070c–1070c–4).

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: December 12, 1990.

**Leonard L. Haynes III,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 90–29510 Filed 12–17–90; 8:45 am]

BILLING CODE 4000–01–M

## Paul Douglas Teacher Scholarship Program

**AGENCY:** Department of Education.

**ACTION:** Notice of Closing Date for Receipt of State Applications for Fiscal Year 1991.

**SUMMARY:** The Secretary gives notice of the closing date for receipt of State applications for fiscal year 1991 State allotments under the Paul Douglas Teacher Scholarship Program for scholarships for academic year 1991–92. This program is a federally funded program to provide college scholarships to outstanding high school graduates to enable and encourage them to pursue teaching careers at the preschool, elementary school, or secondary school level.

Authority for this program is contained in title V, part D, subpart 1 of the Higher Education Act of 1965, as amended (HEA).

A State that desires to receive fiscal year 1991 Paul Douglas Teacher Scholarship Program funds must submit an application as provided for under the authorizing law. The State must provide the information requested in section 553 of the HEA and should be guided by the program regulations (34 CFR 653.20). The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau, provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) However, a State that has submitted an application for Douglas funds in a previous fiscal year and had its application approved by the Secretary, need not submit an application to receive its fiscal year 1991 program allotment. Unless a State notifies the Secretary in writing that it does not wish to continue participation, the Secretary will issue a Paul Douglas fiscal year 1991 allotment to each State for which he has an approved Paul Douglas Program application.

**CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS:** An application for fiscal year 1991 Paul Douglas Teacher Scholarship Program funds must be mailed or hand-delivered by February 1, 1991.

**APPLICATIONS DELIVERED BY MAIL:** An application sent by mail must be addressed to Mr. Fred Sellers, Chief, State Student Incentive Grant Section, Room 4018, ROB #3, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202–5447.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encourged to use registered or at least first-class mail.

Each late applicant will be notified that it cannot be assured that its application will be considered for fiscal year 1991 funding.

**APPLICATIONS DELIVERED BY HAND:** An application that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4018, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

**PROGRAM INFORMATION:** The Secretary requires the submission of an application followed by the approval of that application by the Secretary for a State to receive Paul Douglas Teacher Scholarship Program funds. State allotments are determined by the statutorily mandated population formula and are not subject to negotiation.

**APPLICATION INFORMATION:** There is no required application form for receiving Paul Douglas Teacher Scholarship Program funds. Applications must be prepared and submitted in accordance with the authorizing law and the program regulations cited in this notice. The Secretary strongly urges that applicants not submit information that is not requested.

**APPLICABLE REGULATIONS:** The following regulations are applicable to the Paul Douglas Teacher Scholarship Program:

(1) The Paul Douglas Teacher Scholarship Program final regulations (34 CFR part 653).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restritions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocuremen.), and Governmentwide Requirements for Drug-Free Workplace (Grants)) and part 86 (Drug-Free Schools and Campuses).

**INTERGOVERNMENTAL REVIEW:** This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and



local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A listing containing the single point of contact for each State is included in the appendix to the "Notice Inviting Applications for New Awards for Fiscal Year 1991," published in the **Federal Register** on Monday, September 17, 1990.

In States that have not established a process for or chosen this program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, area-wide, regional, and local entities must be mailed or hand delivered by February 19, 1991 to the following address: The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.176), 400 Maryland Avenue, SW., Washington, DC 20202–0101.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send application to the above address.*

**FOR FURTHER INFORMATION:** For further information contact Mr. Fred Sellers, Chief, State Student Incentive Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202–5447; telephone (202) 708–4607.

(Catalog of Federal Domestic Assistance Number 84.176, Paul Douglas Teacher Scholarship Program)

Dated: December 12, 1990.

**Leonard L. Haynes III,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 90–29509 Filed 12–17–90; 8:45 am]

BILLING CODE 4000–01–M

## Office of Vocational and Adult Education

## Retraining Services for Dislocated Workers; Notice of Availability

**AGENCY:** Department of Education.

**ACTION:** Availability of retraining services for dislocated workers.

**SUMMARY:** The Department of Education (Department) has conducted a Fiscal Year 1991 competition to provide vocational education and placement services for dislocated workers. This competition was announced in the April 16, 1990 **Federal Register** (55 FR 14182–14205). This competition is completed, and the Department is in the process of awarding one grant in the amount of $493,000.

The Department has received an increasing number of inquiries on availability of funds for this purpose. Therefore, we wish to advise individuals, organizations, and prospective applicants that funding is available under a separate program for similar purposes.

The Department of Labor provides retraining services for dislocated workers under Title III of the Job Training Partnership Act (JTPA) as amended by the Economic Dislocation and Workers Adjustment Assistance Act. For more information on the Title III JTPA training program, contact Robert N. Colombo, Office of Employment and Training Programs, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0577.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Geib, Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4512 Mary E. Switzer Building), Washington, DC 20202–7247. Telephone (202) 732–2364.

Dated: December 7, 1990.

**Betsy Brand,**

*Assistant Secretary, Office of Vocational and Adult Education.*

[FR Doc. 90–29512 Filed 12–17–90; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Department of Energy Metric Transition Plan

**AGENCY:** Office of Administration and Human Resource Management, DOE.

**ACTION:** Notice.

**SUMMARY:** This notice provides a metric transition plan that describes a comprehensive and integrated program to convert to the metric system of measurement in compliance with the law. The Omnibus Trade and Competitiveness Act of 1988, which amended the Metric Conversion Act of 1975, requires that each agency of the Federal Government establish guidelines to carry out the policy set forth in the law. Department of Energy Order 5900.2, Use of the Metric System of Measurement, which will be revised and this plan will meet those requirements within the Department of Energy.

**DATES:** Comments or suggestions may be submitted in writing on or before February 1, 1991.

**ADDRESSES:** Comments or suggestions should be addressed to the DOE Metric Transition Committee, Office of Administration and Human Resource Management, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Boettner, DOE Office of Administration and Human Resource Management, (202) 586–4551.

**SUPPLEMENTARY INFORMATION:**

### A. Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. The law requires Federal agencies to use the metric system in procurement, grants, and other business-related activities by a date certain and to the extent economically feasible by the end of fiscal year 1992. The law also requires Federal agencies to establish guidelines to implement fully the metric system of measurement.

### B. Purpose

The purpose of this notice is to inform the public (particularly commercial firms doing business with DOE), and other government entities of DOE intent to use the metric system of measurement in its procurement, grants, and other business-related activities to the extent feasible by the end of fiscal year 1992. DOE commitment stems from the fact that the United States is the only industrially developed nation in the world that has not converted, or taken steps to convert, to the metric system. In connection with this fact, Congress found, in section 5164 of Public Law 100–418, that:

- World trade is increasingly geared towards the metric system of measurement.
- Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.
- The inherent simplicity of the metric system of measurement and standardization of weights and measures have led to major

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cost savings in certain industries which have converted to that system.

• The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

• The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.

DOE recognizes the importance of U.S. industries' need to convert to the metric system, particularly for export purposes. The need becomes more important as EC 92 approaches, where the goal of the European Community is to form a single, common market in 1992, and where the metric system will be the standard measurement system.

The DOE metric transition plan is an internal agency document that is published with this notice to give the public, commercial firms doing business with DOE, and other government entities maximum opportunity to become aware of what DOE is doing with the metric system, why, and how DOE plans to do it. Although the purpose of this notice is not to solicit comments regarding the plan, DOE will consider positive suggestions or information that may help implementation of section 5164 of Public Law 100-418 by DOE and firms doing business with DOE.

DOE recommends that commercial firms doing business with DOE become familiar with the law and actively pursue the use of the metric system in their product and service lines and in their other business-related activities.

**C. Paperwork Reduction Act**

The metric transition plan does not contain a collection of information for purposes of the Paperwork Reduction Act.

Dated: December 12, 1990.

**John J. Nettles, Jr.,**

*Director of Administration and Human Resource Management.*

**Introduction**

The United States must operate in a global and increasingly metric marketplace. The conversion to metric by the automotive industry, farm equipment manufacturers, and, to some extent other industries, plus the move to the metric system by virtually all other countries make it inevitable that the United States become a metric-based Nation. Regional economic blocks consisting of metric countries may restrict the acceptance of nonmetric products. A new trade agreement with metric Canada will expand the number of potential customers in that country. Our technical leadership is being challenged by many countries throughout the world. Domestic firms wishing to meet their international customers' desires or requirements will need to change to metric or produce their items in foreign plants.

Additionally, the metric system, specifically the International System of Units (or SI from the French "Le System International d'Unites"), is inherently simpler to use than the inch-pound system (often referred to as the English system). The potential benefits to the United States of using metric become more and more apparent as metrication progresses.

Therefore, section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. It requires that:

> • • • Each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurement, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in nonmetric units.

The law also requires each agency to issue implementing guidelines, and to report annually to Congress on actions taken or planned to implement the metric system. Together with this Plan, Department of Energy (DOE) Order 5900.2, Use of the Metric System of Measurement, will provide implementing guidelines required by the 1988 Act. These guidelines will be revised in the future to include the specific requirements of the 1988 Act and to reflect the strategy described in this Metric Transition Plan.

This plan describes a comprehensive and integrated program to comply with section 5164. The plan is intended as a practical approach to metric transition. Many of the transition tasks to be accomplished under this plan will, as they progress, make it easier to acquire metric supplies and services. Recognizing our dependence upon the transition efforts of our suppliers, our actions will be closely coordinated with the private sector and should act as stimulants to U.S. industries to increase their competitiveness in the world's metric marketplace.

This plan discusses our overall strategy for metrication, defines general requirements and procedures for transition efforts, and details the tasks to be accomplished by designated DOE organizations. Each task description includes a background section on current status and needs, a list of required actions, goals (milestones), and responsibility assignments. The plan will be dynamic through periodic updating to redefine the tasks when needed, add actions and goals, and to include new tasks as necessitated by the transition activities of other agencies or the private sector. The plan, however, is not intended to be an implementation plan; each program and field office is expected to develop an implementation plan after approval of the individual task plans. These implementation plans will encompass the policies, strategies, and objectives of the Metric Transition Plan, but will be tailored to the specific mission of the DOE element.

**Metrication Strategy**

DOE has supported use of the metric system of measurement in its program since the passage of the Metric Conversion Act of 1975. Because of the emphasis on voluntary transition efforts in the act, our actions were primarily limited to monitoring industry and procuring metric products meeting our needs if and when they became available.

The new national policy on metric usage, however, necessitates a significant broadening of the scope of our transition efforts. All procurement, grants, and business-related activities are now affected. DOE's efforts will be fully integrated with the efforts of the entire Government. We must complete our transition by a date to be established and if feasible by the end of fiscal year 1992. Therefore, rather than each DOE component implementing metric policy according to its particular needs and resources, an integrated approach is necessary.

Our basic strategy will consist of several different approaches to achieving metric transition which will represent the most effective overall strategy for DOE. One component of the strategy, which recognizes the commercial marketplace in which we deal, will be to procure in metric when metric is the accepted industry measurement system. However, where metric is not yet the accepted industry system, DOE will actively promote the use of metric, soft metric, hybrid, or dual systems during transition. As soon as practical, soft, dual, and hybrid measurements will be replaced with hard metric measurements. This policy should encourage our suppliers to learn to use the metric system if they have not already done so.

Part of DOE's active promotion of metrication will be that DOE will require that significant projects (such as Major System Acquisitions, Major Projects, large-scale capital equipment) shall be metric, with waivers (or partial waivers) to be obtained at appropriately high decision-making levels. These waivers will be issued only upon the submission of documentation demonstrating the economic or technical infeasibility of metrication based on evaluation criteria that include initial life cycle costs and other factors. The primary factor affecting the waiver decision would be, per section 5164, economic feasibility over the life of the project. Significant "high visibility" projects, such as the Superconducting Super Collider, would be subject to special emphasis because of their potential impact on the nation's industry. Repair and replacement of parts for existing facilities would not require metrication, unless demonstrably more efficient. DOE will conduct an annual review cycle to determine the current progress of metrication and how far to expand metric requirements.

Another part of the strategy will be to develop an education and training program to include training sessions, the development of brochures and briefings for DOE personnel and contractors, and the publication of a Metrication Handbook. This approach will be supplemented by an internal and public affairs program designed to inform both the public and DOE employees of the impact, content, and need for the metrication program.

The tasks defined below address metric transition issues affecting all of DOE. Successful completion of the tasks will facilitate DOE's transition to the metric system. The use of a management information system, regular reviews and periodic reports, and a well planned public affairs program will enable DOE to define objectives and track accomplishments while obtaining needed support by keeping DOE personnel and the public aware of what we are doing and where we are going.

The Director of Administration and Human Resource Management (AD-1) is responsible for managing the implementation of this plan. The DOE Metric Transition Committee (MTC) will review transition efforts and provide assistance and coordination as appropriate. A Secretarial Program Office is designated as Office of Primary Responsibility (OPR) for each task. Supporting the task OPR will be other components, i.e., Offices of Collateral Responsibility (OCR), having adequate authority and expertise for the actions needed. Ad hoc panels and groups will be established by the task OPR as needed.

The DOE MTC will, based on its review of the task plans, develop an implementation plan with proposed measurable DOE-wide objectives and schedules for completion of the tasks. The proposed objectives and dates will be coordinated with the Secretarial Program Offices and forwarded by AD-1 to the Secretary by December 15, 1991, in a status report.

DOE and other Federal agencies must each establish a date, per section 5164, by which they will use the metric system of measurement in procurement, grants, and other business-related activities. Significant progress must be made under the tasks before such a date can be determined. Additionally, our transition is dependent to an extent on the transition efforts of other agencies. The selection of a date must be coordinated with them even if the same date is not used by all agencies. The DOE MTC will, by April 1, 1992, recommend a date or, if not possible at that time, will identify when the date can be established. Once the date has been established, appropriate changes will be made to existing policies, directives, and procedures to reduce or eliminate barriers to use of the metric system.

**General Requirements and Procedures**

The general metric transition initiatives and efforts needed to comply with the law are addressed in the next section as tasks. Each task description includes major milestones or goals. Unless otherwise indicated, each task OPR will prepare a task plan detailing specific efforts, approaches to preparing DOE directives, initiation and completion milestones, team membership, other Government and non-Government organizations to be involved, and methods to measure accomplishments. Draft task plans will be submitted through the MTC to AD-1 by March 30, 1991, for review. Final task plans will be submitted through the DOE MTC to AD-1 by September 30, 1991, for approval. The task descriptions will be updated to include the major goals cited in the approved task plans.

Tasks will be added, revised, or closed by AD-1 as recommended by the MTC. The MTC may authorize minor revisions to the approved task plans, and will review the progress under each task quarterly or more often when necessary. Each MTC member will ensure that task OPRs within his or her organization are adequately supported.

AD-1 will provide management support to the DOE MTC as detailed under Task 1. Task OPRs will provide brief quarterly progress reports in letter format to AD-1 (August 1, November 1, February 1, and May 1). Quarterly meetings of the MTC will be held shortly after the submission of the quarterly reports. The annual report to the Congress will be prepared by AD-1 based on input from the MTC, task OPRs, and field offices. The report will be coordinated with the MTC and approved by the Secretary. Most of the tasks will require close cooperation with other agencies and the private sector. OPRs should contact the Office of Metric Programs within the Department of Commerce (202-377-3036), the U.S. Metric Association (USMA) (818-715-2382), or the American National Metric Council (ANMC) (202-857-0474) for information on transition activities outside of DOE. Recognizing that transition is inevitable, it is imperative that actions be planned and executed to ensure the transition is as efficient and economical as possible.

A common requirement under all tasks will be the identification and elimination of barriers to the procurement and/or use of metric products. Recommendations for change will be submitted to the MTC (via AD-1) for review and concurrence, after which the task OPR will forward the recommendation to the cognizant organization for appropriate action. The task OPR will inform AD-1 if any approved recommendation is not being implemented expeditiously.

**I. Task 1. Transition Management**

*A. Background*

Implementation of this plan will require the involvement of organizations throughout DOE. The various tasks must be integrated and activities closely monitored. A central source of information is required to avoid duplicating efforts. An annual report to Congress is required. A small group of dedicated individuals is needed to assist the DOE Metric Transition Committee (MTC) and to provide a focal point for transition activities.

*B. Action Required*

Establish an Energy Metric Transition Management Office (EMTMO) under AD-1 to:

• Provide management support to the DOE MTC.

• Assist task OPRs.

• Maintain a reference library of metric transition publications, metric standards, and related items.

• Prepare necessary reports, including the Annual Report to Congress.

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• Create and operate a management information system to monitor and report on all tasks.
• Be a point of contact for external organizations.
• Receive all correspondence from the task groups for the MTC.
• Provide guidance in the form of suggested policies, procedures, and information to the OPRs of individual task committees.

*C. Goals*

• Activate DOE Metric Transition Committee: 11/24/89 (Accomplished).
• Name Metric Transition Committee. (Accomplished).
• Designate DOE coordinator. (Accomplished)
• Define space, personnel, and equipment requirements (for EMTMO).
• Revise DOE Order 5900.2: 3/1/91

**II. Task 2. Operations and Safety**

*A. Background*

It is the policy of the Department of Energy (DOE), as expressed in DOE Order 5900.2 (revised), that operational and safety considerations shall be taken into account when implementing the use of the metric system in DOE activities. The effect of use and nonuse of the metric system must be monitored to ensure that mission capabilities and operational safety are not degraded during the transition and that changeover actions are well planned and coordinated. Users must receive adequate education and training prior to any transition that will effect safety or personnel or equipment, with periodic refresher training after the transition occurs.

*B. Action Required*

Establish a central activity/function to coordinate and integrate metric transition efforts related to operations and safety. Identify opportunities to use the metric system to enhance capabilities and simplify operations. Interface with other agencies and the private sector as needed to resolve safety or operational issues. Evaluate the use of differing measurement systems on operations and safety and develop a plan to minimize detrimental effects. Address such important areas of operations and safety as personnel and equipment aspects of maintenance, reporting, M&O contractors, design changes, and training. Safety should have the highest priority in metrication decisions.

*C. Goals*

Submit task plan to the Energy Metric Transition Management Office no later than September 30, 1991.

**III. Task 3. Education and Training**

*A. Background*

Because the law requires agencies to use the metric system in procurement, grants, and other business-related activities, a comprehensive program to educate personnel throughout the Department of Energy (DOE) is needed. Many personnel who use or maintain metric-based systems will require specific training. Experience in the private sector indicates that 1 or 2 days may be sufficient for a basic education program. Rather than have each component or subordinate organization develop education courses, a single package can be developed and used by all appropriate program areas. A shorter program should be developed for managers with responsibility for program policies and objectives as well as issues to be addressed in managing the transition. To the extent necessary, supplemental training requirements as identified by particular Task Committees and the Metrication Handbook (see Task 12) should be coordinated through the education and training group. It may also be appropriate to provide brochures and briefings to all personnel, explaining the metric system and why and how DOE is going to use it.

*B. Action Required*

Develop and implement a comprehensive metric education program including brochures and briefings for DOE personnel and contractors. Identify specific metric education and training requirements for different personnel categories. Develop guidance for including appropriate metric proficiency requirements in job standards.

*C. Goals*

• Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
• (Others per task plan.)

**IV. Task 4. Specifications and Standards**

*A. Background*

Specifications and standards currently used by the Department of Energy (DOE) may be inch-pound, metric, or nonmeasurement sensitive. Only a small percentage of the documents used by DOE to specify procurement requirements are metric. This lack of appropriate metric documentation can be used to justify not specifying metric measurements for use in DOE systems. Priority should be given to the identification and conversion of measurement-sensitive documents to metric. Ideally, the new documents should be "hard" metric rather than just "soft" (converting inch-pound units to metric equivalents). However, because DOE acquires commercial supplies and services which constitute a large enough market to be invulnerable to Federal market pressure in the short run, or in such cases as process or test specifications and standards, it may be appropriate to "soft convert" or use dual English/metric measurements. In the latter situation, it may be appropriate to "soft" convert. In these cases, the preparing activities should be able to publish documents quickly, with limited (if any) coordination.

The transition to metric should be used as an opportunity to use non-Government standards in lieu of preparing new documents (in accordance with OMB Circular A–119, "Use of Voluntary Standards," and DOE Order 1300.2, Department of Energy Standards Program, dated December 18, 1980). DOE should attempt to avoid the proliferation of part sizes, and to combine similar documents whenever possible. Also, DOE can utilize existing foreign metric standards as a basis for new DOE standards. When, as in the area of radiation measurements and health physics, possible instrumentation issues are involved, they should be investigated and analyzed with the TMDE task committee (Task 5).

*B. Action Required*

Develop a master list of needed metric and measurement and nonmeasurement sensitive documents that require revisions or fundamental changes because of the metrication process. Establish a joint program with industrial and non-Government standards organizations to expedite the development and coordination of the documents in accordance with OMB Circular A–119 and DOE Order 1300.2. Evaluate the feasibility of providing seed money for the development of needed documents in the near term and propose such a program, if appropriate.

*C. Goals*

• Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
• (Others per task plan.)

**V. Task 5. Test, Measurement, and Diagnostic Equipment (TMDE)**

*A. Background*

The majority of existing TMDE was designated for use on equipment built to inch-pound standards. Measurements should be traceable to legal national standards maintained by the National Institute of Standards and Technology (NIST) of the Department of Commerce, or to accepted values of fundamental physical constants. New or modified TMDE and new calibration standards must be available to support the development and production of new metric products and services.

*B. Action Required*

Coordinate with other agencies who use TMDE to establish a joint group of metrology experts and TMDE developers to work with NIST and industry in planning and implementing a metric TMDE and calibration standards program. Survey vendors for availability of metric specifications and standards, in concert with DOD and others who are developing data bases on such availability.

*C. Goals*

Submit task plan to Energy Metric Transition Management Office no later than September 30, 1991.

**VI. Task 6. Construction**

*A. Background*

Construction in the United States is almost totally in inch-pounds and will probably be one of the last industries to transition fully to metric. The long life of buildings, dams, factories, etc., means that inch-pound repair parts may be needed for decades after transition. However, as products to be installed in buildings, etc., transition to metric, the construction industry will have to accommodate them. Construction projects overseas by U.S. firms are based on the measurement system required by the customers. Industry already has experience adapting to metric in the design of construction projects at oversees locations. The export of metric building material by U.S. companies is very limited, but growing. To satisfy the requirements of the law, the Department of Energy (DOE) must work closely with the construction industry in the development of short- and long-range transition plans.

*B. Action Required*

Establish a DOE metric transition working group responsible for developing and implementing plans in coordination with appropriate industry associations (construction, architecture, building materials and supplies, etc.). This group may identify projects which should be metric. The working group should, however, identify bulk materials and such items as heating, plumbing, and electrical equipment, door and window sizes, floor coverings, etc., which can be procured in metric quantities and measurements. The working group will develop a phased schedule for transitioning such items as heating, plumbing, and electrical equipment.

*C. Goals*

• Submit task plan to Energy Metric Transition Management Office no later than September 30, 1991.
• (Others per task plan.)

**VII. Task 7. Electronics**

*A. Background*

Electronic devices were designed for years throughout the world using the inch-pound system. Currently, electronic devices are also designed in metric, particularly by foreign manufacturers, or with dual or hybrid systems. Some domestic manufacturers are reported to have voluntarily adopted the metric system. DOE will continue to use the inch-standard until a sufficiently important conversion to metric has occurred. However, the Department of Energy (DOE) needs to establish a long-term comprehensive transition program while avoiding the proliferation of electronic parts.

*B. Action Required*

Determine the extent to which the metric system is currently used in the electronics industry, both domestic and foreign. In concert with the Department of Defense (DOD) and others, survey vendors, etc., for information on the availability of electronic devices in metric specifications and who are developing corresponding data bases on the availability of such products. Develop a plan to encourage the electronics industry to transition fully to the metric system. Participate in joint General Services Administration/DOD industry groups to coordinate transition efforts in electronics. Develop DOE metric design guidelines for electronic parts and associated wire and cables.

*C. Goals*

• Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
• (Others per task plan.)

**VIII. Task 8. Small Business**

*A. Background*

Public Law 100–418 specifies that the Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small businesses, as they voluntarily convert to the metric system. The Department of Energy (DOE) must work with other Federal agencies and State governments to encourage essential small businesses to transition to the metric system.

*B. Action Required*

Develop and implement a plan to inform small businesses of the intent of Public Law 100–418 and to assist them in adopting the metric system.

*C. Goals*

• Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
• (Others per task plan.)

**IX. Task 9. Internal and Public Affairs**

*A. Background*

Even though Congress established the metric system as the preferred system of measurement, many individuals lack interest in or feel threatened by transition efforts. Some people believe their businesses will be hurt or their jobs put in turmoil. Most opposition is caused by lack of understanding of the metric system and how it will be used in and by the Government.

An integrated public affairs program is needed to ensure consistent and sufficiently detailed information is provided to the public and to internal DOE audiences.

DOE's metric transition efforts are likely to succeed with DOE employees and the private sector in proportion to how well DOE informs them of what the agency is doing, and why. This, in turn, hinges on cooperation between the DOE services and staff offices introducing new uses of the metric system and the Office of Public Affairs.

Each DOE Program Secretarial Office has the responsibility of consulting with Public Affairs at an early stage in introducing a new use of metric standards or a new metric program. At the initial consultation, a program office should provide factual written explanations of the metric transition change; how DOE is introducing the change; what it will mean to client agencies, supplier businesses, the general public, and/or DOE employees; the types of reference materials the audience will need or want and where to get them; and contact points for telephone or written inquiries.

The Office of Public Affairs has the responsibility of wording metric transition information effectively, shaping it for internal or external audiences, finding appropriate modes of presentation (news releases, posters, pamphlets, speakers, audiovisuals), supervising production of print or visual items, and targeting distribution.

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*B. Action Required*

Each service and staff office with primary responsibility for a task in the transition plan should contact the Office of Public Affairs once tasks outlined in the metric transition plan are moving into action and program changes are underway.

*C. Goals*

- Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
- (Others per task plan.)

**X. Task 10. Interface With Metric Countries**

*A. Background*

In recent years many countries have converted to metric systems of measurement. To avoid duplication of effort and to take advantage of what has been learned from the experiences of others, the Department of Energy (DOE) needs to review these experiences, particularly in the energy area. Also, some of the efforts under other tasks may require contact or coordination with other countries.

There may be many metric specifications and standards in use in foreign countries which could be applied here without compromising our technology. Points of contact with other countries and international standards organizations need to be identified and publicized. It may be well to coordinate this effort with other interested Federal agencies; in some cases it may be required.

*B. Action Required*

Establish an activity plan and coordinate contacts with other nations and international organizations regarding metrication. Collect and maintain records of international contacts and experiences in the area of metrication.

*C. Goals*

- Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
- (Others per task plan.)

**XI. Task 11. Metrication Handbook**

*A. Background*

During the transition period many new management challenges will arise. Some systems may be a mix of metric and nonmetric. The effective control of interfaces among the metric and nonmetric parts requires special management procedures. Program offices must determine how much of the system will be hard metric, soft metric, dual English/metric, hybrid, or nonmetric. Should exceptions be included in the contract or should each require specific approval? What units should be used in technical data, drawings, reports, briefings, etc.? How were sources of metric parts identified? The lessons learned by organizations experienced in the development and acquisition of metric products should be shared. The creation or adaptation of handbook materials describing potential metrication issues and suggested solutions would be a valuable guide for acquisition offices and provide consistency in the way they approach metrication. The handbook content should initially be provided by the acquisition organizations currently managing metric programs. Additions could then be provided by acquisition offices to keep the handbook current.

*B. Action Required*

Develop or adapt a metrication handbook for acquisition offices based on experiences of organizations currently acquiring metric supplies and services. Issue revisions to the handbook in the future.

*C. Goals*

- Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
- (Others per task plan.)

**XII. Task 12. Procurement and Assistance**

*A. Background*

Implementation of this task will require the cooperation of both Department of Energy (DOE) program and procurement personnel as well as their counterparts in DOE's management and operating contractor community. Approximately 76 percent of DOE's contracting budget goes directly to its M&O contractors. Approximately 30 percent of DOE's contracting budget goes to subcontracts issued by the M&O contractors.

An employee and contractor awareness program is essential to the success of this effort. Employee awareness is covered at Task 3, Education and Training, of this plan. Awareness on the part of contractor personnel is covered, in part, by Task 8, Small Business, and Task 9, Internal and Public Affairs, but will need augmentation by this specialized task.

*B. Action Required*

1. *General.* Determine whether generic solicitation provisions and contract clauses can be expected to be developed for Government-wide application in the Federal Acquisition Regulation (FAR) and whether they will accommodate DOE's needs. To the extent feasible, DOE will adopt and adapt FAR coverage to fit our plans. To the extent that metric implementation may be driven by a project-by-project implementation in its early stages, DOE will probably develop specialized provisions to fit these projects. Later, DOE may need to conduct a rulemaking to adopt DOE unique provisions if it becomes apparent that this is necessary.

Develop a specialized series of detailed training sessions for DOE personnel. This will be necessary to ensure preparation of adequate specifications and procurement requests by program personnel and adequate solicitation and award documents by procurement personnel.

Similar actions will be required for grants and other business-related activities. Determine the extent to which the above procedures and training activities can be equally applied to grants and other business instruments and adapt them as necessary.

2. *Management and Operating Contractors.* Develop the necessary outreach program to ensure that management and operating contractor's purchasing activities move through the metric transition in tandem with DOE and other Federal agencies' own purchasing activities. Ensure that steps are taken to amend M&O contractor's purchasing systems to reflect the evolving metric transition. The M&O contractors will be tasked to review the items they procure so they can plan an orderly metric transition. As a part of this review, each M&O contractor will be required to study the commodities they purchase (electricity, gasoline, etc.) or sell (isotopes, uranium) and evaluate alternatives which would lead to a timely metric transition. Each M&O contractor with significant purchasing responsibility will be required to furnish reports of their progress in implementing their metric transition plans, which would include the results of the studies cited above. Consider the inclusion of progress in metrication as part of the performance appraisal plan in new contract awards and modifications to current contracts.

*C. Goals*

- Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
- (Others per task plan.)



**XIII. Task 13. Cost Evaluation Guidelines**

*A. Background*

Many companies who have made the conversion to metric have discovered minimal incremental costs in doing so. A rationalization process, in which companies take advantage of the opportunity to reduce the variety of part sizes and types utilized, with a consequent reduction in the need for storage space, can result in significant savings over time. Having made a decision to convert to metric standards, companies often see no requirement for expending funds in tracking conversion costs, since the decision had been made.

Added costs will frequently be used to justify the nonuse of metric standards on new projects (Major System Acquisitions, Major Projects, and Large-Scale Capital Equipment). According to some data, however, the costs associated with metrication projects may be less than 5 percent, while in some cases it may be cheaper to use metric standards. Any decision concerning the metrication of any project should take into account the overall life-cycle cost of a particular project, as well as initial costs associated with design, start-up, and other key decisions.

*B. Action Required*

Develop and issue cost evaluation guidelines to be used throughout DOE in making and evaluating cost estimates for metrication of DOE projects. These guidelines should focus on the life-cycle costs associated with a project, and will be incorporated into future DOE orders concerning metrication.

*C. Goals*

- Submit task plan to DOE Energy Metric Transition Management Office no later than September 30, 1991.
- (Others per task plan.)

[FR Doc. 90-29569 Filed 12-17-90; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Cases Filed During Week of October 5 Through October 12, 1990

During the week of October 5 through October 12, 1990, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 12, 1990.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 5 through October 12, 1990]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 9/18/90 | ARCO/Kelly Williamson Co., Washington, DC | RR304-9 | Request for modification/rescission in the Atlantic Richfield Company Refund Proceeding. If granted: The August 31, 1990 Decision and Order (Case No. RF304-2152) issued to Kelly Williamson Co. would be modified regarding the firm's Application for Refund submitted in the Atlantic Richfield Company special refund proceeding. |
| 9/18/90 | ARCO/Watkins Oil., Washington, DC | RR304-10 | Request for modification/rescission in the Atlantic Richfield Company Refund Proceeding. If granted: The August 31, 1990 Decision and Order (Case No. RF304-2154) issued to Watkins Oil Co., Inc. would be modified regarding the firm's Application for Refund submitted in the Atlantic Richfield Company special refund proceeding. |

REFUND APPLICATIONS RECEIVED

[Week of October 5 through October 12, 1990]

| Received | Name of firm | Case No. |
|---|---|---|
| 10/5/90 thru 10/12/90 | Crude oil refund applications received | RF272-82409 thru RF272-82525. |
| 10/5/90 thru 10/12/90 | Gulf oil refund applications received | RF300-12620 thru RF300-12732. |
| 10/5/90 thru 10/12/90 | Texaco refund applications received | RF321-9989 thru RF321-10073. |
| 10/9/90 | PVM/New York | RC30-565. |
| 10/9/90 | Daughters of Jacob Geriatric | RC272-89. |
| 10/9/90 | Tires Unlimited #2 | RF309-1416. |
| 10/9/90 | Trahan's Station, Inc. | RF304-12031. |
| 10/10/90 | Pacer Oil Company | RF304-12032. |
| 10/10/90 | Reverman Shell | RF315-10058. |
| 10/10/90 | Dwight Estby EMT | RF315-10059. |
| 10/12/90 | Earnsworth Shell | RF315-10061. |
| 10/12/90 | Elmwood Shell | RF315-10060. |
| 10/12/90 | Beasley Spur | RF309-1417. |
| 10/12/90 | Bellemore Heating Oil | RF323-26. |

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[FR Doc. 90-29570 Filed 12-17-90; 8:45 am]
BILLING CODE 6560-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3865-1]

### Science Advisory Board; Nonionizing Electric and Magnetic Fields Subcommittee, Open Meeting

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Nonionizing Electric and Magnetic Fields Subcommittee of the Science Advisory Board's Radiation Advisory Committee will meet January 14-16, 1991, at the National Museum for Women in the Arts, 1250 New York Avenue, NW., Washington, DC, in the Auditorium. The meeting will begin at 9 a.m. Monday and adjourn on Wednesday no later than 5 p.m.

**SUMMARY:** On January 14, 1991, the Subcommittee will begin its review of a draft document prepared by the EPA's Office of Health and Environmental Assessment entitled "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields" (EPA/600/6-90-005B). The draft document on EM fields reviews and evaluates published information pertaining to the potential carcinogenicity of EM fields. The information includes epidemiology studies, chronic lifetime animal tests, and laboratory studies of biological phenomena related to carcinogenesis. **While there are epidemiological studies that indicate an association between EM fields or their surrogates and certain types of cancer, other epidemiological studies do not substantiate this association. There are insufficient data to determine whether or not a cause and effect relationship exists.** The document clearly reveals the need for further research.

**DATES:** The meeting will be held January 14, 15, and 16, 1991. In accordance with Public Law 92-463, the meeting is open to the public, and members of the public may provide comments to the SAB Subcommittee. However, seating is limited and is on a first-come basis.

**ADDRESSES:** To obtain a single copy of the draft document on EM fields, interested parties should contact the ORD Publications Office, CERI-FRN, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268, telephone (513) 569-7562 or FTS/684-7562. FAX: (513) 569-7566 or FTS/684-7566. Please provide your name and mailing address and request the document by title and EPA number. A copy of the document will be sent to those individuals who have previously requested it.

The draft document will be available for public inspection and copying in the Public Information Reference Unit of the EPA Library, U.S. Environmental Protection Agency Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

A limited number of copies will be available at the meeting. The document is not available from the SAB.

**FOR FURTHER INFORMATION CONTACT:** Members of the public wishing to provide written comments or to present oral comments at the meeting should contact Mrs. Kathleen Conway, Designated Federal Official, at (202) 382-2552 by 3:00 p.m., January 2, 1991. Written comments to be mailed to the Subcommittee in advance of the meeting must be given to Mrs. Conway by noon Friday, January 4, 1991. Written comments may also be submitted at the Subcommittee meeting. If possible, please provide at least 20 copies for distribution to the Subcommittee. Oral comments should not duplicate written materials and opportunity for oral comment is limited.

**SUPPLEMENTARY INFORMATION:** The draft document on EM fields has been reviewed previously by scientists within EPA's Office of Research and Development and several federal agencies, and, at a June 1990 workshop, by a panel of scientists from outside the Agency. These reviewers' comments have been addressed and many incorporated into the current draft. There are no changes in the conclusions between the workshop review draft and the current draft. There is, however, disagreement among the reviewers from various Agencies about the weight of evidence and the conclusions presented in the Executive Summary. This report is now being submitted to the Agency's SAB for review. In addition, the Agency is requesting comments from the Federal Coordinating Council for Science, Engineering and Technology's (FCCSET) Committee on Interagency Radiation Research and Policy Coordination (CIRRPC). Based on these reviews, the draft report will be revised as necessary and EPA will provide an opportunity for public review and comment before developing the final version of the document.

The scientific issues concerning the relationship between electromagnetic (EM) fields and adverse health effects are very complex and difficult to interpret. **The final document stating the Agency's findings and conclusions will consider and address comments made by the groups mentioned above. Given the controversial and uncertain nature of the scientific findings of this report and other reviews of this subject, the external review draft should not be construed as representing Agency policy or position.**

Dated: December 13, 1990.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

Dated: December 13, 1990.

**Erich Bretthauer,**

*Assistant Administrator for Research and Development.*

[FR Doc. 90-29067 Filed 12-17-90; 8:45 am]
BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing; Hutchison Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Charlotte Hutchison TR/as Hutchison Broadcasting Company; Knoxville, TN. | BPH-880823MB | 90-520 |
| B. Frazier Broadcasting Company; Knoxville, TN. | BPH-880823MC | |
| C. Knoxville FM, Inc.; Knoxville, TN. | BPH-880824MA | |
| D. Knox County Broadcasters, Inc.; Knoxville, TN. | BPH-880824MO | |
| E. McDonald Communications, Inc.; Knoxville, TN. | BPH-880824MP | |
| F. Glen Allen Powers; Knoxville, TN. | BPH-880824MT | |
| G. Reeves Communications Corporation; Knoxville, TN. | BPH-880824MV | |
| H. Specscom, Inc.; Knoxville, TN. | BPH-880825MD | |
| I. CAB Communication LTD Partnership; Knoxville, TN. | BPH-880825MP | |
| J. TLD Communications, Inc.; Knoxville, TN. | BPH-880825NC | |
| K. Barden Radio, Inc.; Knoxville, TN. | BPH-880825NM | |
| L. Thomas M. Ellen; Knoxville, TN. | BPH-880825NP | |
| M. The Scott Media Group LTD Partnership; Knoxville, TN. | BPH-880825NQ | |



| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| N. Kerman Radio Corporation; Knoxville, TN. | BPH-880825OE | |
| O. Frederick C. Jacob; Knoxville, TN. | BPH-880825OF | |
| P. Patrick D. McDonnell; Knoxville, TN. | BPH-880825OI | |
| Q. Valentine Broadcasting Company c/o James M. Valentine; Knoxville, TN. | BPH-880825OM | |
| R. Anne L. Moss Knoxville, TN. | BPH-880825OP | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding heading at 51 F.R. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and applicant(s)*

1. (See Appendix), J
2. (See Appendix), J
3. (See Appendix), J
4. Air hazard, N,Q
5. Comparative, A-R
6. Ultimate, A-R

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800)

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

**Appendix**

1. To determine whether Sonrise Management Services, Inc. was an undisclosed party-in-interest in the applicantion of J (TLD).
2. To determine whether J's (TLD's) organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether J (TLD) possesse the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-29500 Filed 12-17-90; 8:45am]
BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) is Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203-011141-015
*Title:* Gulfway.
*Parties:*
South Atlantic Cargo Shipping, N.V.
Lykes Bros. Steamship Co., Inc.
Hapag Lloyd AG
Sea-Land Service, Inc.
P&O Containers Limited
Deppe Linie GmbH & Co.
Compagnie Generale Maritime
Nedlloyd Lijnen, BV
Euro-Gulf International, Inc.
Atlantic Container Line AB
Transportation Maritime Mexicana

*Synopsis:* The proposed amendment would delete South Atlantic Cargo Shipping, N.V. as a party to the Agreement. It would also make other nonsubstantive changes.

*Agreement No.:* 207-011310.
*Title:* DSR/Stinnes West Indies Services.
*Parties:*
Hugo Stinnes Schiffahrt GmbH
Deutsche Seereederei Rostock GmbH

*Synopsis:* The proposes Agreement would establish a joint service in the trade between parts ports and points in Mexico and ports and points in Puerto Rico.

Dated: December 13, 1990.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
*Secretary.*
[FR Doc. 90-29551 Filed 12-17-90; 8:am 45]
BILLING CODE 6730-01-M

### Request for Additional Information; Asia North American Eastbound Rate Agreements

*Agreement No.:* 202-010776-057
*Title:* Asia North America Eastbound Rate Agreement
*Parties:*
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705) ("the Act"), has requested additional information from the parties of the Agreement in order to complete the statutory review of Agreement No. 202-010776-057 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.
Dated: December 13, 1990.
Joseph C. Polking,
*Secretary.*
[FR Doc. 90-29552 Filed 12-17-90; 8:45 am]
BILLING CODE 6730-01-M

### Request for Additional Information; Transpacific Westbound Rate Agreement

*Agreement No.:* 202-010689-040
*Title:* Transpacific Westbound Rate Agreement
*Parties:*
American President Lines, Ltd.
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

*Synopsis:* Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705) ("the Act"), has requested additional information from the parties of the Agreement in order to complete the

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statutory review of Agreement No. 202–010689–040 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: December 13, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90–29553 Filed 12–17–90; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Agency Forms under Review

December 12, 1990.

### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATES:** Comments must be submitted on or before January 2, 1991.

**ADDRESSES:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3629).

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. *Report title:* Quarterly and Annual Reports of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders.
*Agency form number:* FR 2090a, FR 2090q.
*OMB Docket number:* 7100–0205.
*Frequency:* Annually and quarterly.
*Reporters: Commercial banks, S&Ls, MSBs, FSBs and U.S. agencies and branches of foreign banks.*
*Annual reporting hours:* 2221.
*Estimated average hours per response:* .5.
*Number of respondents:* 2840.
Small businesses are not affected.
*General description of report:* This information collection is voluntary (12 U.S.C. 248(a) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

These reports provide data on wholesale overnight RPs, wholesale term RPs, and retail RPs which are used in the computation of the repurchase agreement (RP) component of the monetary aggregates.

Proposal to approve under OMB delegated authority to extension, with revisions, of the following reports:

1. *Report title:* Report of Selected Deposits in Foreign Branches Held by U.S. Addressees.
*Agency form number:* FR 2050.
*OMB Docket number:* 7100–0008.
*Frequency:* Weekly.
*Reporters:* Foreign branches of U.S. banks and of Edge and Agreement corporations.
*Annual reporting hours:* 7,020.
*Estimated average hours per response:* 2.25.
*Number of respondents:* 60.
Small businesses are not affected.
*General description of report:* This information collection is authorized by law (12 U.S.C. 248(a), 355, 461). Individual respondent data are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)(4), (b)(8)).

This report collects data from a selection of foreign branches of U.S. banks on overnight Eurodollar deposits held by U.S. nonbank residents. Data are used in construction of the monetary aggregates and analysis of liability management. A revision in the panel selection criteria will reduce the size of the panel by approximately 13 percent.

2. *Report title:* Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets.
*Agency form number:* FR 2416 and 2644, respectively.
*OMB Docket number:* 7100–0075.
*Frequency:* Weekly.
*Reporters:* U.S. commercial banks.
*Annual reporting hours:* 47,975.
*Estimated average hours per response:* 2.3 (FR 2416), 0.5 (FR 2644).
*Number of respondents:* 162 (FR 2416), 1,100 (FR 2644).
Small businesses are not affected.
*General description of report:* This information collection is authorized by law (12 U.S.C. 225(a), and 248(a)) and is given confidential treatment (5 U.S.C. 552(b) (4) and (8)).

These reports provide basic data from U.S. commercial banks for estimating bank credit and nondeposit funds and for analyzing banking and monetary developments. The proposed revisions affect the FR 2416 report, including minimal changes to the current reporting panel. The proposal includes the elimination of two data items previously required on the FR 2416 (Memorandum items 2 and 3 on nontransaction savings deposits and Treasury securities holdings). The proposal also adds an item, Memorandum item 4, "Loans defined as highly leveraged transactions to commercial and industrial firms (nonfinancial) domiciled in the U.S." This item, which is to be reported beginning April 3, 1991, is needed to prevent distortions in the analysis of business borrowing.

Proposal to approve under OMB delegated authority the discontinuance of the following report:

*Report title:* Ownership of Demand Deposit Accounts of Individuals, Partnerships, and Corporations.
*Agency form number:* FR 2501.
*OMB Docket number:* 7100–0082.
*Frequency:* Quarterly.



*Reporters:* Commercial banks.
*Annual reporting hours:* 783.
*Estimated average hours per response:* 1.23.
*Number of respondents:* 155.
Small businesses are affected.
*General description of report:* This information collection is voluntary (12 U.S.C. 248 (a) and (i) and is given confidential treatment (5 U.S.C. 552(b)(4).

This report collects data from a sample of 155 commercial banks on demand deposit balances held by individuals, partnerships, and corporations (IPC). The data are reported for five ownership categories of the IPC customer group: U.S. financial businesses, U.S. nonfinancial businesses, U.S. individuals, foreign holders, and all other. The sample data are used by the Federal Reserve to construct estimates of IPC demand deposits held by the five ownership categories at all "weekly reporting" banks (banks that file the FR 2416, Weekly Report of Assets and Liabilities for Large Banks) and at all insured commercial banks.

Because of the very small sample size, the standard errors of the share estimates for all commercial banks are so large that quarter-to-quarter changes in ownership are no longer statistically meaningful. However, given the cost of reporting DDOS data, it is unlikely that the panel could be enlarged appreciably. Indeed, the burden of reporting on current respondents is heavy. At the same time, the use of DDOS data by the Federal Reserve has waned in recent years. In light of these factors, the Federal Reserve proposes that the survey be discontinued.

Board of Governors of the Federal Reserve System, December 12, 1990.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 90–29523 Filed 12–17–90; 8:45 am]

BILLING CODE 6210–01–M

### Firstar Corporation of Arizona; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1991.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstar Corporation of Arizona,* Milwaukee, Wisconsin; to engage *de novo* in providing portfolio investment advisory services pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governor of the Federal Reserve System, December 12, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90–29519 Filed 12–17–90; 8:45 am]

BILLING CODE 6210–01–M

### Fleet/Norstar Financial Group, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 8, 1991.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Fleet/Norstar Financial Group, Inc.,* Providence, Rhode Island; to acquire Robinson Securities Division of John Dawson & Associates, Inc., Chicago, Illinois, and thereby engage in providing retail securities brokerage service solely to as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by December 31, 1990.

**B. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. The Summit Bancorporation,* Chatham, New Jersey; to acquire O & T Interim Federal Savings Bank, Chatham, New Jersey, and thereby engage in the acquisition and assumption of certain assets and liabilities of two branches of Anchor Savings Bank FSB and transfer of those branches (one each) to The Trust Company of Princeton, Princeton, New Jersey, and Ocean National Bank,

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Point Pleasant, New Jersey, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Community Bancshares, Inc.*, Noblesville, Indiana; to acquire The Lapel, Indiana branch of Colonial Central Savings Bank, F.S.B., Mt. Clemens, Michigan, and thereby engage in owning and operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Lapel, Indian, and the surrounding area.

*2. MetroBancorp*, Indianapolis, Indiana; to form a subsidiary, Metro Federal Savings Bank, Indianapolis, Indiana, with the purpose of assuming certain deposit liabilities and purchasing certain assets of Colonial Central Savings Bank, F.S.B., Mt. Clemens, Michigan, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**D. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

*1. The Kyowa Bank, Ltd.*, Tokyo, Japan; to acquire Saitama Bank Trust Company of New York, New York, New York, and thereby engage in trust activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29629 Filed 12-17-90; 8:45 am]

BILLING CODE 6210-01-M

## John D. O'Brien, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 31, 1990.

**A. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. John D. O'Brien and JDOB, Inc.*, Sandston, Minnesota; to acquire 25 percent of the voting shares of First Security Bank of Missoula, Missoula, Montana.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Martha Steed Lyne Management Trust*, Dallas, Texas, to acquire 80.38 percent, and Gunn Oil Company, Wichita Falls, Texas, to acquire an additional 4.31 percent for a total of 84.69 percent of the voting shares of Heritage Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Turtle Creek National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, December 12, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29618 Filed 12-17-90; 8:45 am]

BILLING CODE 6210-01-M

## Investors Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1991.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

*1. Investors Financial Corporation*, Bainbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Bainbridge National Bank, Bainbridge, Georgia.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First Midwest Corporation of Delaware*, Elmwood Park, Illinois; to acquire 100 percent of the voting shares of Oquawka Bancshares, Inc., Oquawka, Illinois, and thereby indirectly acquire Bank of Oquawka, Oquawka, Illinois.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Pinnacle Banc Group, Inc.*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of The Henry County Bank, Green Rock, Illinois.

*2. Royal American Corporation*, Inverness, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Royal American Bank, Inverness, Illinois, a *de novo* bank.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. CBX Corporation*, Carrollton, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Carrollton Bank and Trust Company, Carrollton, Illinois.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Ellsworth Bancshares, Inc.*, Ellsworth, Minnesota; to become a bank holding company by acquiring 81.17 percent of the voting shares of Ellsworth State Bank, Ellsworth, Minnesota.

**F. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Midwest Banco Bancorporation*, Cozad, Nebraska; to acquire 100 percent of the voting shares of Enders Company, Enders, Nebraska, and thereby indirectly acquire First State Bank, Enders, Nebraska.



Board of Governors of the Federal Reserve System, December 12, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-29621 Filed 12-17-90; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 112690 AND 120790

| Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity | PMN Number | Date terminated |
|---|---|---|
| R & B Investment Partnership, L.P., Reading & Bates Corporation, Reading & Bates Corporation | 91-0220 | 11/27/90 |
| S. A. Louis Dreyfus et Cie, Enron Corp., Enron GasBank, Inc | 91-0224 | 11/27/90 |
| Michigan Mutual Insurance Company, The American Fire Insu. Co. of Charleston, S.C., The American Fire Insu. Co. of Charleston, S.C | 91-0244 | 11/27/90 |
| CS Holding, CS First Boston, Inc., CS First Boston, Inc | 91-0133 | 11/28/90 |
| Chas. Kurz & Co., Inc., San Company, Inc., 667 Leasing Company | 91-0229 | 11/28/90 |
| Norman N. Green, Howard L. Baldwin, North Stars Hockey Club, Inc | 91-0230 | 11/28/90 |
| Oshkosh Truck Corporation, Trillium Management, Inc., Miller Trailers, Inc | 91-0234 | 11/28/90 |
| Pacific Gas and Electric Company, Corpus Christi Exploration Company, Corpus Christi Exploration Company | 91-0248 | 11/28/90 |
| Hudson Energy Resources Corporation, Baruch-Foster Corporation, Baruch-Foster Corporation | 91-0196 | 11/29/90 |
| Burlington Northern Inc., IP Partners II, INB Corp | 91-0257 | 11/30/90 |
| W.R. Grace & Co., Outline Trust, Hokes Shipping Ltd. & Seneca Shipping Ltd | 91-0181 | 12/03/90 |
| BTR plc, Peter Kiewit Sons', Inc., Continental PET Technologies, Inc | 91-0225 | 12/03/90 |
| N.V. Gemeenschappelijk Bezit Van Aandeelen Philips GN, N.V. Gemeenschappelijk Bezit Van Aandeelen Philips GN, Philips and du Pont Optical Company | 91-0254 | 12/03/90 |
| Sealright Co., Inc., Jaite Packaging, Inc., Jaite Packaging, Inc | 91-0265 | 12/03/90 |
| Jack W. Milton, Charles S. Forseman, Southworth Machinery, Inc | 91-0270 | 12/03/90 |
| Corporate Property Investors, Corporate Property Investors, Livingston Mall Ventures | 91-0272 | 12/03/90 |
| Qual-Med, Inc., Heals Individual Practice Association, Inc., Heals, The Personal Care Physician Health Plan | 91-0277 | 12/03/90 |
| Capercaillie Holdings, Inc., Reading & Bates Corporation, Reading & Bates Corporation | 91-0214 | 12/04/90 |
| AMAX Inc., General Electric Company, Ladd Petroleum Corporation | 91-0286 | 12/04/90 |
| Mr. Yoshinobu Aizawa, Itoman & Co., Ltd., Summitpointe Golf Club Corporation | 91-0273 | 12/04/90 |
| Loews Corporation, R. H. Macy & Co., Inc., R. H. Macy & Co., Inc | 91-0285 | 12/04/90 |
| Mutual Series Fund Inc., R. H. Macy & Co., Inc., R. H. Macy & Co., Inc | 91-0286 | 12/04/90 |
| Santa Fe Pacific Corporation, Mission Resources Partners, L.P., Mission Operating Partnership, L.P | 91-0200 | 12/05/90 |
| ITT Corporation, John Hancock Mutual Life Insurance, Sheraton Bal Harbour Joint Venture (Partnership) | 91-0231 | 12/05/90 |
| Dover Corporation, T.E. Jernigan, Marathon Corporation | 91-0280 | 12/05/90 |
| A. Alfred Taubman, R. H. Macy & Co., Inc., R. H. Macy & Co., Inc | 91-0284 | 12/05/90 |
| Carl C. Icahn, USX Corporation, USX Corporation | 91-0250 | 12/06/90 |
| Syntex Corporation, E. I. du Pont de Nemours and Company, Vista Immunoassay System | 91-0258 | 12/07/90 |
| Ford Motor Company, Xerox Corporation, LMV Leasing, Inc. and XRX Fleet Management Corporation | 91-0245 | 12/07/90 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 90-29564 Filed 12-17-90; 8:45 am]

BILLING CODE 6750-01-M

**[Dkt. C-3314]**

## Atlantic Richfield Co., et al., Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, ARCO Chemical Company, a subsidiary of Atlantic Richfield Company and a producer of urethane polyether polyols and propylene glycol, to divest, within twelve months of this order, to a Commission-approved acquirer: the propylene glycol assets and businesses of Union Carbide; and the urethane polyether polyol assets and businesses in the United States and Canada which ARCO acquired from Texas Chemical Company in 1987. The consent order also requires ARCO, for ten years, to secure prior Commission approval before making certain acquisitions.

**DATES:** Complaint and Order issued November 26, 1990.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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**FOR FURTHER INFORMATION CONTACT:** Rhett Krulla, FTC/S–3302, Washington, DC 20580. (202) 326–2606.

**SUPPLEMENTARY INFORMATION:** On Thursday, September 13, 1990, there was published in the **Federal Register**, 55 FR 37750, a proposed consent agreement with analysis In the Matter of Atlantic Richfield Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 90–29565 Filed 12–17–90; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, End-Stage Renal Disease Data Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the first meeting of the End-Stage Renal Disease Data Advisory Committee on February 1, 1991. The meeting will begin at 8 a.m. to approximately 5 p.m. in Confernce room 9, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting, which will be open to the public, is being held to review data collection and analysis efforts on End-Stage Renal Disease. This review will focus on biomedical research studies funded by the National Institute of Diabetes and Digestive and Kidney Diseases, including the outcomes of experimental therapies for ESRD, and relevant studies funded by the Health Care Financing Administration on economic/cost-effectiveness/reimbursement issues related to ESRD. Attendance by the public will be limited to space available.

Dr. John Kusek, Executive Director, End-Stage Renal Disease Data Advisory Committee, Westwood Building, room 619, Bethesda, Maryland 20892, (301) 496–7133, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: December 10, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90–29505 Filed 12–17–90; 8:45 am]

BILLING CODE 4140–01–M

### National Institute on Aging; Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging, on January 10 and 11, 1991 in Conference room A, #1, third floor at the Good Samaritan Hospital & Medical Center, 1015 NW., Twenty-Second Avenue, Portland, Oregon. For additional information please call Bobby Heagerty at 503–229–7348.

The meeting will be open to the public from 9 a.m. to 4:30 p.m. on January 10th, and from 8:30 a.m. to 11:30 a.m. on January 11th. On January 10th, the Commission will accept testimony on Sleep and Sleep Disorders from patients, health professionals, and interested persons. January 11th will be a working meeting which will include review of the public testimony and development of the National Plan. Attendance by the public will be limited to space available.

Interested persons and those who desire to present testimony should contact Ms. Gladys Bohler, Secretary, DHHS/NIH/NIA, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, 301–496–9350, for further details of the meeting.

Andrew A. Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, National Institute on Aging, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, 301–496–9350, will provide substantive program information.

Dated: December 11, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90–29506 Filed 12–17–90; 8:45 am]

BILLING CODE 4140–01–M

### National Institute on Aging; Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging, on January 8 and 9, 1991, at the Andrus Gerontology Center, University of Southern California, Main Campus—University Park, Los Angeles, California. The Commission will meet on Tuesday, January 8 in the Auditorium and in room 224 on Wednesday, January 9. For additional information please call Gitta Morris at 213–740–1354.

The meeting will be open to the public from 9 a.m. to 4:30 p.m. on January 8th, and from 8:30 a.m. to 11:30 a.m. on January 9th. On January 8th, the Commission will accept testimony on Sleep and Sleep Disorders from patients, health professionals, and interested persons. January 9th will be a working meeting which will include review of the public testimony and development of the National Plan. Attendance by the public will be limited to space available.

Interested persons and those who desire to present testimony should contact Ms. Gladys Bohler, Secretary, DHHS/NIH/NIA, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, 301–496–9350, for further details of the meeting.

Andrew A. Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, National Institute on Aging, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, 301–496–9350, will provide substantive program information.

Dated: December 11, 1990.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 90–29507 Filed 12–17–90; 8:45 am]

BILLING CODE 4140–01–M

## Public Health Service

### Centers for Disease Control; Delegation of Authority

Notice is hereby given that in furtherance of the September 17, 1990, delegation of authority (55 FR 39211) from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Centers for Disease Control, with authority to redelegate, section 6507 of the Omnibus Budget Reconciliation Act of 1989, as amended hereafter (Pub. L. 101–239), as it pertains to the functions assigned to the Centers for Disease Control. The authority is to be exercised only after consultation and in cooperation with the Health Care Financing Administration. This delegation excluded the authority to promulgate regulations and to submit reports to the Congress.

This delegation became effective on December 6, 1990. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of this authority prior to the effective date of the delegation.

Dated: December 6, 1990.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 90–29503 Filed 12–17–90; 8:45 am]

BILLING CODE 4160–16–M

### Office of the Assistant Secretary for Health; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on September 17, 1990, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, certain authorities under the Omnibus Budget Reconciliation Act of 1989, as amended hereafter, as follows:

Section 6506(a), Development of Model Application for Maternal and Child Assistance Programs (42 USC 701 note).
Section 6508, Health Insurance for Medically Uninsurable Children (42 USC 701 note).
Section 6509, Maternal and Child Health Handbook (42 USC 701 note).

These authorities are to be exercised only after consultation and in cooperation with the Health Care Financing Administration.

This delegation excluded the authority to promulgate regulations and to submit reports to the Congress.

**Redelegation**

This authority may be redelegated.

**Prior Delegations**

None.

**Effective Date**

This delegation was effective on December 6, 1990.

In addition, I hereby affirm and ratify any actions taken by the Administrator or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: December 6, 1990.

**James O. Mason,**

*Assistant Secretary for Health.*

[FR Doc. 90–29502 Filed 12–17–90; 8:45 am]

BILLING CODE 4160–16–M



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA–060–01–4410–08]

### Rescission of Pilot Knob Plan Decision; Notice of Intent to Reconsider Changes in Pilot Knob Allotment in a Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of rescission/notice of intent.

**SUMMARY:** Notice is hereby given that, based on public comments regarding procedural concerns, the Bureau of Land Management (BLM) is rescinding its California Desert Conservation Area (CDCA) Plan amendment decision to reclassify the Pilot Knob grazing allotment from an ephemeral allotment to a perennial allotment. The referenced decision was identified as Amendment 20 of the 1988 Amendment to the CDCA Plan of 1980. The record of decision (ROD) on the amendment was approved on January 11, 1990.

Notice is further given that the BLM intends to reconsider the reclassification of the Pilot Knob grazing allotment from an ephemeral allotment to a perennial allotment through an amendment to the CDCA Plan. The public is invited to comment on this proposed amendment. Comments will be accepted for thirty (30) days following publication of this notice. Individuals or organizations who commented previously on this action do not need to resubmit their comments. Earlier comments will be automatically considered along with any new comments.

**SUPPLEMENTARY INFORMATION:** Amendment Nine of the 1983 Amendments to the CDCA Plan addressed whether or not to change the grazing class of the Pilot Knob allotment. At that time BLM deferred a decision on Amendment Nine pending preparation of an allotment management plan (AMP). The draft AMP was prepared in 1988–89 and mailed out for public review in May, 1989. Public comments were incorporated into the AMP and environmental assessment (EA).

BLM informally consulted with the U.S. Fish and Wildlife Service (USFWS) on the AMP and EA in October, 1989, and expected to complete formal consultation shortly thereafter. Amendment 20 of the 1988 Amendments to the CDCA Plan was initiated to complete deferred Amendment Nine of the 1983 Amendments. It was anticipated that the AMP would be completed before the ROD for the 1988 Amendments was signed. However, due to unforseen circumstances, consultation with the USFWS was not completed. Thus the ROD in regards to the Pilot Knob Amendment was signed prematurely.

Furthermore, due to changes in circumstances since the 1983 analysis of the proposed Pilot Knob Amendment, it is necessary to update the environmental analysis of proposed allotment changes before reissuing the proposed amendment. This will allow opportunity for public comment and protest in accordance with the BLM's planning regulations (43 CFR 1610.5–2).

**DATES:** Comments will be accepted until January 22, 1991.

**WHERE:** Please send your comments to Gerald E. Hillier, District Manager, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507.

**FOR FURTHER INFORMATION:** Please contact Lee Delaney, Area Manager, Ridgecrest Resource Area at (619) 375–7125, if you have any questions regarding the proposed Pilot Knob Amendment.

Dated: December 12, 1990.

**Lee Delaney,**

*Acting District Manager.*

[FR Doc. 90–29535 Filed 12–17–90; 8:45 am]

BILLING CODE 4310–40–M

[AZ–050–7122–14–X216; AZA 23896]

### Temporary Closure of Selected Public Lands in La Paz County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Temporary Closure of Selected Public Lands in La Paz County, Arizona (East of Parker, North of Bouse) During the Operation of the 1991 SCORE Parker 400 Off-Road Vehicle Race.

**SUMMARY:** The District Managers of the Yuma District and the Phoenix District jointly announce the temporary closure of selected public lands under their respective administration. This action is being taken to provide for public safety and prevent unnecessary environmental degradation during the official permitted running of the 1991 SCORE Parker 400 off-road vehicle race.

**DATES:** January 23, 1991, through January 27, 1991.

**FURTHER INFORMATION CONTACT:** James Green, Natural Resource Specialist, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017; Rich Hanson or John Reid, Natural Resource

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Specialists, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, 602-863-4711.

**SUPPLEMENTARY INFORMATION:** Specific restrictions and closure periods are as follows:

Arizona Course

1. The portion of the course comprised of Bureau of Land Management (BLM) roads and ways is closed to public vehicle use from noon Wednesday, January 23, 1991, to noon Sunday, January 27, 1991 (MST).

2. Vehicles are prohibited from the following three wildernesses and one wilderness study area:

a. Gibraltar Mountain Wilderness.
b. Swansea Wilderness.
c. East Cactus Plain Wilderness.
d. Cactus Plain Wilderness Study Area.

3. The entire area encompassed by the Arizona course and all areas within 2 miles outside the Arizona course are closed to vehicles unless otherwise posted. Access routes leading to the course are closed to vehicles. All closed routes will be posted throughout the closure period.

4. Spectator viewing is limited to two designated spectator areas located at:

a. Arizona Start/Finish Area (along Shea Road east of Parker Arizona).
b. Bouse Road (about 1½ miles north of Bouse, Arizona).

Camping is allowed only in the two designated spectator areas. Vehicle travel or parking outside these designated locations is prohibited. All vehicles operated within these two locations shall be legally registered for street and highway operation. No off-highway vehicle (OHV) play areas are present in the race area. Spectators should not bring their OHVs to the race as this activity is prohibited.

5. Spectators and vehicle parking along Bouse Road, Shea Road, and Swansea Road are prohibited except for the two designated spectator areas.

6. All vehicles operated within designated pit areas shall be legally registered for street and highway operation.

Signs and maps directing the public to the Arizona spectator areas will be provided by the BLM and the event sponsor.

7. An airspace closure over the race course will be in effect from 6 a.m. to 6 p.m. on race day, January 26, 1991. This closure will restrict unauthorized private aircraft from flying within ½ mile of the race course centerline with a ceiling of 1,200 feet above ground surface. These limits will not interfere with existing airways, airports, or landing strips in the area.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona, or to La Paz County. Vehicles and aircraft under permit for operation by event promoter and participants must follow race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 30 mph on all BLM roads and ways. This speed limit shall not apply to vehicles entered in the race during the race day, Saturday, January 26, 1991.

Authority for closure of public lands is found in 43 CFR part 8340, subpart 8341; 43 CFR part 8360, subpart 8364.1; and 43 CFR part 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Dated: December 11, 1990.

**Marvin G. Boyd,**

*Acting Yuma District Manager.*

Dated: December 12, 1990.

**Henri Bisson,**

*Phoenix District Manager.*

[FR Doc. 90-29534 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-01-4212-13; IDI-26430]

## Order Providing for Opening of Public Land, Correction; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Opening Order.

**SUMMARY:** This order will correct an error in paragraph 3 and add a new paragraph 5 in an order providing for opening of public lands received in a private exchange.

**EFFECTIVE DATE:** April 16, 1990.

**FOR FURTHER INFORMATION CONTACT:** Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706 (208) 334-1720.

The opening order published on March 22, 1990, on pages 10698 and 10697 contained language opening lands to the mineral leasing laws. Part of the lands received in the exchange is not open to oil and gas leasing, since those minerals were reserved by the exchange proponent.

The first sentence of paragraph 3 is corrected to read: "At 9 a.m. on April 16, 1990, the lands described in paragraph 1, except for the lands described in paragraph 4, will be opened to locate and entry under the United States mining laws and to applications and offers under the mineral leasing laws, except those lands described in paragraph 5, which are closed to applications for oil and gas leasing."

A new paragraph 5 is added at the end of the order to read as follows:

"5. The following-described lands will remain closed to applications for oil and gas leasing:

Boise Meridian

T. 16 S., R. 21 E.,
Sec. 25, SW¼NW¼, N½SW¼, SE¼SW¼, and S½SE¼;
Sec. 26, SE¼NE¼.
T. 18 S., R. 22 E.,
Sec. 31, lot 1, W½NE¼, and NE¼NW¼.
The area described contains 446.24 acres in Cassia County."

Dated: December 7, 1990.

**William E. Ireland,**

*Chief, Realty Operations Section.*

[FR Doc. 90-29533 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-010-00-4750-10; IDI-5872, IDI-27435]

## Public Land in Canyon County, Idaho, Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Amended Notice of Realty Action, Direct Sale of Public Land in Canyon County, Idaho.

**SUMMARY:** A Notice of Realty Action was published September 28, 1990 (55 FR 38755) and corrected October 02, 1990 (55 FR 40260) terminating a Bureau of Land Management classification near Pickles Butte and making the land involved available for disposal by sale. This amendment corrects the previous Notice of Realty Action to change the date which the land must be purchased by from December 31, 1990 to June 30, 1991. All other terms of the previous Notice of Realty Action remain in effect.

**ADDRESSES:** The sale offering will be held at the Boise District Office, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning the sale can be obtained by contacting Effie Schultsmeier, Realty Specialist, at (208) 384-3357 or at the above address.

**SUPPLEMENTARY INFORMATION:** All other terms and conditions of the original Notice of Realty Action dated September 20, 1990 (55 FR 38755) and corrected October 02, 1990 (55 FR 40260) remain unchanged.

Dated: December 7, 1990.

**Barry C. Cushing,**

*Acting District Manager.*

[FR Doc. 90-29531 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-GG-M



[ID-060-01-4212-13; I-25297]

## Coeur d'Alene District, Idaho; Exchange of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action; Exchange of Public Lands in Shoshone County, Idaho.

**SUMMARY:** This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District, of the Bureau of Land Management and Bunker Limited Partnership are proposing a land exchange. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Boise Meridian, Idaho**

T. 48 N., R. 2 E.,
Sec. 12: Lot 19.
T. 48 N., R. 3 E.,
Sec. 7: Lot 4 (a portion), NE¼NE¼, S½NE¼ (a portion), E½SW¼ (a portion), SE¼ (a portion);
Sec. 8: S½ (a portion);
Sec. 17: Lots 1-8, inclusive (portions thereof);
Sec. 18: Lot 1 (a portion), Lots 21, 22.

The area described above aggregates approximately 634(±) acres in Shoshone County, Idaho. The specific legal descriptions will be subject to an approved resurvey.

In exchange for these lands, the United States will acquire the following described lands from Bunker Limited Partnership:

**Boise Meridian, Idaho**

T. 47 N., R. 1 E.,
Sec. 2: S½SW¼, SW¼SE¼.
T. 48 N., R. 1 E.,
Sec. 24: that portion of patent 1102665 which falls within the section.
T. 48 N., R. 2 E.,
Sec. 19: that portion of patent 1102665 which falls within that section;
Sec. 29: E½NW¼, N½SW¼;
Sec. 30: That portion of patent 1102665 which falls within that section.

The area described above aggregates approximately 315(±) acres in Shoshone County, Idaho.

The purpose of the land exchange is to facilitate the construction and maintenance of the "Kellogg Gondola" project which was authorized by the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203. The public lands to be exchanged are isolated parcels. The private lands being offered have very important values for timber, watershed and wildlife habitat that merit acquisition into public ownership. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the value upon completion of the final appraisal.

Lands to be conveyed from the United States will be subject to the following reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

**ADDRESSES:** Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this reality action. In the absence of any objections, this reality action will become the final determination of the Department of the Interior.

Date of Issue: December 10, 1990.

**John B. O'Brien III,**

*Acting District Manager.*

[FR Doc. 90-29402 Filed 12-17-90; 8:45 am]

BILLING CODE 90-29402

## Fish and Wildlife Service

## Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* Florida Museum of Natural History, Gainesville, FL; PRT-740483.

The applicant requests amendment of their current permit to allow the import of up to 300 male and female reproductive tracts, up to 50 carapaces and associated skeletal elements, and up to 5 whole Central American river turtles (*Dermatemys mawii*) for the purpose of scientific research. These materials will be salvaged from turtles already slaughtered for consumptive purposes in Belize. Previous permit authorized the import of skeletal material and up to 96 male reproductive tracts of the Central American river turtle.

*Applicant:* Staten Island Zoological Society, Staten Island, NY; PRT-753354.

The applicant requests a permit to purchase one captive born female ocelot (*Felis pardalis*) from the Woodland Park Zoological Gardens, Seattle, Washington, for captive breeding and zoological display purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 12, 1990.

**Karen Willson,**

*Acting Chief, Branch of Permits, U.S. Office of Management Authority.*

[FR Doc. 90-29603 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

## Information Collection Submitted by the Minerals Management Service Subpart O—Training of 30 CFR Part 250

The collection of information contained in this rule has been submitted to the Office of Management and Budget as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Copies of the proposed

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information collection may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be made directly to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817, telephone (703) 787-1239 or to the Office of Management and Budget; Paperwork Reduction Project 1010-0078; Washington, DC 20503. Information collection requirements contained in existing rules and approved under existing number 1010-0078 will be collected until approval of collection under this amended rule has been approved.

*Title:* Subpart O—Training, 30 CFR part 250.

*OMB approval number:* 1010-0078.

*Abstract:* The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, provides to the Secretary of the Interior (Secretary) the responsibility for ensuring the safety of operations and protection of the environment during oil and gas and sulphur operations in the Outer Continental Shelf (OCS). To carry out these responsibilities, the Secretary has authorized the Director of Minerals Management Service (MMS) to issue regulations governing operations on OCS oil and gas and sulphur leases. To carry out these responsibilities, the Director of MMS has issued rules governing training requirements for lessees and contractor personnel working in the OCS.

*Bureau form number:* None.

*Frequency:* On occasion.

*Estimated completion time:* 5 hours.

*Description of respondents:* Oil and gas and sulphur lessees and operators and training institutions.

*Annual responses:* 330.

*Annual burden hours:* 3,944.

*Bureau clearance officer:* Dorothy Christopher, (703) 787-1239.

Dated: November 20, 1990.

**Thomas Gernhofer,**

*Associate Director for Offshore Minerals Management.*

[FR Doc. 90-29493 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-MR-M

## Outer Continental Shelf (OCS); Advisory Board Scientific Committee (SC); Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., Appendix 1, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board SC will meet from Tuesday, January 15 through Thursday, January 17, 1991, at the Holiday Inn, 555 McMurray Road, Buellton, California, telephone (805-688-1000). Below is a schedule of meetings that will occur.

An Information Management Workshop will be held from 8 a.m. to 5 p.m. on Tuesday, January 15. The agenda for the Workshop will cover the following subjects:

- A demonstration of the new Environmental Studies Database.
- Presentations on information management systems in other Federal agencies.
- Discussion of the MMS Environmental Studies information management needs for the future.

The Scientific Committee will meet in subcommittees on Wednesday, January 16, from 8 a.m. to 5 p.m.

The agenda for the plenary session scheduled for Thursday, January 17, from 8 a.m. to 5 p.m., will include the following subjects:

- Committee business and resolutions
- Environmental Studies Program Status Review

A detailed agenda is not yet available but may be requested from the MMS.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first served basis at the plenary session.

All inquiries concerning the Information Management Workshop should be addressed to Mr. Norman Hurwitz, Branch of Environmental Studies. All inquiries concerning the Scientific Committee meeting and Subcommittee meetings should be addressed to Dr. Don Aurand, Chief, Branch of Environmental Studies. Their address is the Minerals Management Service, Offshore Environmental Assessment Division, Mail Stop 4310, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787-1717.

Dated: December 11, 1990.

**Thomas Gernhofer,**

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 90-29525 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 8, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by January 2, 1991.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

**Tallapoosa County**

*Coley, A. J. and Emma E. Thomas, House*, 416 Hillabee St., Alexander City, 90002108

**ARIZONA**

**Maricopa County**

*Willo Historic District*, Roughly bounded by Central Ave., McDowell Rd., 7th Ave. and Thomas Rd., Phoenix, 90002099

**CALIFORNIA**

**San Bernardino County**

*Redlands Central Railway Company Car Barn*, 748 E. Citrus Ave., Redlands, 90002119

**CONNECTICUT**

**Hartford County**

*Darling, Robert and Julia, House*, 720 Hopmeadow St., Simsbury, 90002117

**FLORIDA**

**Charlotte County**

*Punta Gorda Residential District (Punta Gorda MPS)*, Roughly bounded by W. Retta Esplanade, Berry St., West Virginia Ave. and Taylor St., Punta Gorda, 90002106

**GEORGIA**

**Fulton County**

*Howell, Mrs. George Asthur, Jr., House (West Paces Ferry Road MPS)*, 400 W. Paces Ferry Rd. NW., Atlanta, 90002101

**Greene County**

*Union Point Historic District*, Roughly bounded by Lamb Ave., Washington, Rd., Old Crawfordville Rd. and Hendry St., Union Point, 90002100

**MINNESOTA**

**Douglas County**

*Alexandria Residential Historic District*, Roughly bounded by Cedar and Douglas Sts. and Lincoln and Twelfth Aves., Alexandria, 90002120

**MISSISSIPPI**

**Leflore County**

*Block Site*, Address Restricted, Sidon vicinity, 90002107

*Rebecca Site*, Address Restricted, Sidon vicinity, 90002165

*Stratton Site*, Address Restricted, Sidon vicinity, 90002106

**Noxubee County**

*Old Noxubee County Jail of 1870*, 503 S. Washington St., Macon, 90002102

**Oktibbeha County**

*Gay, C. E., House*, 110 E. Gillespie St., Starkville, 90002108

**Washington County**

*Arcola Mounds*, Address Restricted, Arcola vicinity, 90002118

**NEW YORK**

**Rockland County**

*Rockland County Courthouse and Dutch Gardens*, Jct. of S. Main St. and New Hempstead Rd., New City, 90002104

**VERMONT**

**Windsor County**

*Norwich Village Historic District*, Main St. from S. of Elm St. to Turnpike Rd. and adjacent portions of Elm, Church, Mechanic, Hazen and CLIFF Sts., Norwich, 90002116

**VIRGINIA**

**Buckingham County**

*Bryn Arvon and Gwyn Arvon*, VA 675, Arvonia, 90002111

**Fairfax County**

*Herndon Historic District*, Roughly bounded by Locust, Spring, Pearl, Monroe, Station and Vine Sts., Herndon, 90002121

**Montgomery County**

*Miller—Southside Residential Historic District (Montgomery County MPS)*, Roughly bounded by Miller St., S. Main St., Airport Rd. and Preston Ave., Blacksburg, 90002110

**Northampton County**

*Cape Charles Historic District*, Roughly bounded by Washington, Bay and Mason Aves. and Fig. St., Cape Charles, 90002122

**Orange County**

*Madison—Barbour Rural Historic District*, Roughly bounded by US 15, the Rapidan Rd. and the Albermarle and Greene County lines, Barboursville vicinity, 90002115

**Stafford County**

*White Oak Church*, 8 Caisson Rd., Falmouth, 90002112

**Alexandria Independent City**

*Fairfax—Moore House*, 207 Prince St., Alexandria 90002113

**Petersburg Independent City**

*Second Presbyterian Church*, 419 W. Washington St., Petersburg, 90002114

**Richmond Independent City**

*Monument Avenue Historic District (Boundary Increase)*, Roughly, Franklin St. from Rosemeath Rd. to Cleveland St., Richmond, 90002098

*St. John's Church Historic District (Boundary Increase)*, Roughly bounded by 21st, E. Marshall, 22nd and E. Franklin Sts., Richmond, 90002097

[FR Doc. 90-29515 Filed 12-17-90; 8:45 am]

BILLING CODE 4310-70-M



## DEPARTMENT OF JUSTICE

## Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on December 4, 1990, a proposed consent decree and consent decree modification in *United States* v. *American Cyanamid Company*, was lodged with the United States District Court for the Western District of Virginia. The decree pertains to the U.S. Titanium Superfund Site in Nelson County, Virginia.

The proposed consent decree and consent decree modification require American Cyanamid Company to perform the remedy for the Site selected by the Regional Administrator of the United States Environmental Protection Agency (Region III) and the Executive Director of the Virginia Department of Waste Management in the November 1989 Record of Decision and September 1990 Explanation of Significant Differences for the Site. In addition, the proposed consent decree requires American Cyanamid Company to pay the United States $338,152 in past response costs, to pay the Commonwealth of Virginia $66,930 in past response costs, and to reimburse the United States and the Commonwealth for all Oversight Response Costs and Further Response Costs for the Site.

The Department of Justice will receive comments relating to the proposed consent decree and consent decree modification for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *American Cyanamid Company* (W.D. Va.) and DOJ Ref. No. 90-11-2-562. The proposed consent decree and consent decree modification may be examined at the office of the United States Attorney, Western District of Virginia, Poff Federal Building, 210 Franklin Road, SW., Roanoke, Virginia, or at the office of the Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania. A copy of the proposed consent decree and consent decree modification may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree and consent decree modification may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $67.50 (25 cents per page reproduction costs) payable to "Consent Decree Library".

**George Van Cleve,**

*Acting Assistant Attorney General, Environmental and Natural Resources Division.*

[FR Doc. 90-29494 Filed 12-17-90; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 14, 1990, a proposed consent decree in *United States* v. *Cerro Copper Products Company*, Civil Action No. C89-5083, was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 307 of the Clean Water Act, 33 U.S.C. 1307, at Cerro's copper forming facility in Sauget, Illinois. The complaint alleges that Cerro violated National Categorical Pretreatment Standards by exceeding pretreatment discharge limitations for certain of its processes, and for failure to comply with reporting requirements of general pretreatment regulations promulgated under the Clean Water Act. The complaint seeks injunctive relief to require Cerro to comply with applicable pretreatment standards and to pay civil penalties for past violations.

The consent decree requires Cerro to come into compliance with National Categorical Pretreatment Standards and the Clean Water Act. Cerro is also required to pay a civil penalty of $1.4 million in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cerro Copper Products Company*, D.J. Ref. No. 90-5-1-1-3037.

The proposed consent decree may be examined at the Region V Office of the United States Environmental Protection

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Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600 Washington, DC 20004, 202–347–7829. A copy of the proposed decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to "Consent Decree Library." In requesting a copy, please refer to the referenced case name and the D.J. Ref. number

**Richard B. Stewart,**

*Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-29495 Filed 12-17-90; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 5, 1990, a proposed Consent Decree in *United States* v. *GSX Chemical Services, Inc.*, Civil Action No. C86–4815, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree concerns the GSX facility located at 7415 Bessemer Avenue in Cleveland, Ohio. The proposed Consent Decree requires the defendant to close certain waste files at its facility and to pay the United States $350,000 in a civil penalty for defendant's violations of the Resource Conservation and Recovery Act, 42 U.S.C. 9601 *et seq.*

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *GSX Chemical Services, Inc.*, D. J. Ref. 90–7–1–370.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, suite 500, Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

**George Van Cleve,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-29498 Filed 12-17-90; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 6, 1990, a proposed Consent Decree in *United States* v. *The Town of Oyster Bay*, Civil No. 90-4183, was lodged with the United States District Court for the Eastern District of New York resolving the matter. The proposed Consent Decree concerns the response to the existence of hazardous substances at the Syosset Landfill Site located in the hamlet of Syosset in the Town of Oyster Bay, Nassau County, New York pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Consent Decree, the defendant will implement the remedy selected for the first operable unit at the Site, reimburse the United States for its future oversight costs related to the first operable unit at the Site and reimburse the United States for a portion of its past costs related to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Central Maine Power*, D.J. Ref. 90–11–2–491.

The proposed Consent Decree may be examined at the Region 2 Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20044, (202) 347–7829. A copy of the proposed Consent Decree (including Appendices) may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $22.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

**George Van Cleve,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-29497 Filed 12-17-90; 8:45 am]

BILLING CODE 4410-01-M

### Consent Judgment in Action To Enjoin Violation of the Clean Water Act ("CWA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR. 19029, notice is hereby given that a Consent Decree in *United States* v. *Robesonia-Wernersville Municipal Authority*, Civil Action No. 88–5703 (E.D. Pa.), was lodged with the United States District Court for the Eastern District of Pennsylvania on December 5, 1990. The Consent Decree requires defendant to pay civil penalties for violations of its National Pollutant Discharge Elimination System ("NPDES") permit, issued pursuant to section 402 of the CWA, 33 U.S.C. 1342. The Decree enjoins further violations of the CWA and establishes a timetable for defendant's compliance with the conditions of its NPDES permit, including construction of a treatment works upgrade.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Robesonia-Wernersville Municipal Authority*, D.O.J. Ref. No. 90–5–1–1–3138.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, Suite 1300, Philadelphia Life Building, 615 Chestnut Street, Philadelphia, Pennsylvania 19106, at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, Telephone Number (202) 347–2072. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center at the address listed above. In requesting a copy, please tender a check in the amount of $7.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

**George Van Cleve,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-29497 Filed 12-17-90; 8:45 am]

BILLING CODE 4410-01-M



## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[Docket No. M-90-178-C]

### Lonesome Pine Mining Co., Inc., Petition for Modification of Application of Mandatory Safety Standard

Lonesome Pine Mining Company, Inc., P.O. Box 2560, Wise, Virginia 24293 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 1 Mine (I.D. No. 15–16495) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment.

2. Due to the uneven bottom and dips in the mine, petitioner states that the installation of canopies on the mine's electric face equipment would dislodge roof support and create a hazardous condition for the miners.

3. For this reason, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 17, 1991. Copies of the petition are available for inspection at that address.

Dated: December 10, 1990.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 90-29547 Filed 12-17-90; 8:45 am]

BILLING CODE 4510-43-M

### Occupational Safety and Health Administration

[Docket No. NRTL-1-89]

### ETL Testing Laboratories, Inc.

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of expansion of current recognition as a nationally recognized testing laboratory.

**SUMMARY:** This notice announces the Agency's final decision on the ETL Testing Laboratories, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:**

### Notice of Final Decision

ETL Testing Laboratories, Inc. (ETL), previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35763), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and was so recognized (see 54 FR 37845, 9/13/89).

ETL subsequently applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory pursuant to 29 CFR 1910.7. (See Exhibits 13 A and 13 B.) A notice of ETL's application together with a positive preliminary finding was published in the **Federal Register** on October 26, 1990 (55 FR 43229–30). (See Exhibit 14.)

There was one response to this **Federal Register** notice of application and preliminary finding. (See Exhibit 15–1.) The respondent questioned the recognition of ETL as an NRTL for ANSI/UL 1069, *Hospital Signaling and Nurse Call Equipment.*

The respondent contended that the listing of products under ANSI/UL 1069 in the *Directory of ETL Listed Products* was inadequate and, furthermore, did not meet the intent of the term "Listed" as defined in Article 100 of the 1990 edition of ANSI/NFPA 70, National Electrical Code, and quoted the definition of "Listed" to support its contention. However, upon review of this definition and the incorporated "Fine Print Note" (FPN), OSHA concluded that the respondents claim was not substantiated and that the listing information supplied by ETL met the requirements and the intent of the definition of "Listed" as found in Article 100, ANSI/NFPA 70, 1990.

The respondent also protested that information concerning a listed piece of equipment was not supplied to them by ETL, upon request. It is OSHA's contention that ETL supplied sufficient information to the respondent who was, in fact, a competitor of the manufacturer of the listed product. However, according to the respondent, ETL did state that additional information would be supplied to an authority having jurisdiction if such were requested.

The NRTL program does not require accredited laboratories to compromise their technical information and provide potentially sensitive information to a client's competitor. The program does require the NRTL to have a system to address field complaints.

ETL notified the respondent that one issue raised appeared to be the result of a discrepancy and that appropriate action would be taken after an investigation. The respondent complained that they had not subsequently been informed by ETL of any resolution relating to the discrepancy. This is in keeping with the requirements of the NRTL program since it is not the respondent's prerogative to partake in the investigation nor evaluate the appropriate action.

It is OSHA's determination that the respondent's concerns have been resolved to it's (OSHA's) satisfaction and that ETL Testing Laboratories, Inc. has demonstrated that it can adequately test and certify products under the ANSI/UL 1069 standard.

Notice is hereby given that ETL's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–89), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210.

The addresses of the concerned laboratories are:

ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045

ETL Testing Laboratories, Inc., 5855–P Oakbrook Parkway, Norcross, Georgia 30093

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FTL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080.

**Final Decision and Order**

Based upon the facts found as part of the ETL Testing Laboratories, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application(s) and documentation submitted by the applicant (see Exhibits 13 A and 13 B); the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request (see Exhibit 13 C), OSHA finds that ETL Testing Laboratories, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the ETL Testing Laboratories, Inc. recognition is hereby expanded to include the 29 additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following 29 additional test standards for the testing and certification of equipment or materials included within the scope of these standards. ETL has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 5—Surface Metal Electrical Raceways and Fittings
ANSI/UL 44—Rubber-Insulated Wires and Cables
UL 181—Factory Made Air Ducts and Connectors
UL 378—Draft Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 561—Floor-Finishing Machines
ANSI/UL 651—Schedule 40 and 80 PVC Conduit
ANSI/UL 674 [1]—Electric Motors and Generators for Use in Hazardous Locations, Class I, Groups C and D, Class II, Groups E, F, and G
ANSI/UL 698 [2]—Industrial Control Equipment for Use in Hazardous (Classified) Locations
UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 750—Coin and Currency Changers and Actuators
ANSI/UL 823 [1]—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 844 [1]—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 894 [1]—Switches for Use in Hazardous (Classified) Locations
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables Used in Air Handling Spaces
ANSI/UL 916—Energy Management Equipment
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 1002 [1]—Electrically Operated Valves for Use in Hazardous Locations, Class I, Groups A, B, C, and D, and Class II, Groups E, F, and G
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
UL 1459—Telephone Equipment
UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
UL 1604—Electrical Equipment for Use in Class I and II, Division 2, and Class III Hazardous (Classified) Locations
UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1950—Information Technology Equipment Including Electrical Business Equipment
ANSI Z21.64 [2]—Direct Vent General Furnaces
ANSI Z83.18 [2]—Direct Gas-Fired Industrial Air Heaters

Note: The use of ANSI/UL 913—*"Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous Locations"*, for which ETL has previously received recognition for the testing and certification of products, is hereby also limited to Class I, Division I locations.

ETL Testing Laboratories, Inc. must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to ETL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ETL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ETL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ETL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ETL shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ETL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ETL will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on *(December 18, 1990)*, and will be valid for a period of five years from the date of the original recognition, September 13, 1989, until September 13, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 11th day of December, 1990.

**Gerard F. Scannell,**

*Assistant Secretary.*

[FR Doc. 90-29548 Filed 12-17-90; 8:45 am]

BILLING CODE 4510-26-M

[1]—Testing and certification is limited to Class I, Division I locations.

[2]—Testing and certification is limited to equipment designed for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Establishment of Education Advisory Committee

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of Establishment of Education Advisory Committee.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act the National Endowment for the Humanities hereby gives notice that it has established an Education Advisory Committee to receive advice with respect to broad range of issues confronting education. This committee was established on December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Catherine Wolhowe, Alternate Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786-0322.

**Catherine Wolhowe,**

*Alternate, Advisory Committee Management Officer.*

[FR Doc. 90-29543 Filed 12-17-90; 8:45 am]

BILLING CODE 7536-01-M



## NUCLEAR REGULATORY COMMISSION

### Final Subagreement Pertaining to State Resident Engineers Between NRC and the State of Illinois

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Publication of Subagreement No. 3 between NRC and the State of Illinois.

**SUMMARY:** Section 274i of the Atomic Energy Act of 1954, as amended, allows the Nuclear Regulatory Commission (NRC or Commission) to enter into an agreement with a State "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." This section 274i agreement typically in the form of a Memorandum of Understanding (MOU), differs from an agreement between NRC and a State under the "Agreement State" program; the latter is accomplished only by entering into an agreement under section 274b. of the Atomic Energy Act. A State can enter into a section 274i MOU whether or not it has a section 274b agreement.

In April of 1984, NRC and the State of Illinois signed an "umbrella" MOU, providing principles of cooperation between the State and NRC in areas of concern to both.

In June of 1984, NRC and the State of Illinois signed Subagreement No. 1 which provided the basis for mutually agreeable procedures whereby the State may perform inspection functions for and on behalf of the Commission at certain reactor and materials licensees' facilities which generate low-level radioactive waste.

On June 7, 1990, following signature by NRC and the Illinois Department of Nuclear Safety, NRC published Subagreement No. 2 (55 FR 23317) regarding ASME Code inspections with the State of Illinois.

In Subagreement No. 3, NRC and the Illinois Department of Nuclear Safety (IDNS) seek to allow Illinois Resident Engineers to participate in NRC inspections at nuclear power plants in Illinois. This Subagreement is one of the first to be signed under the NRC's policy regarding "Cooperation With States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530; 2/22/89). As stated in the policy, "The NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC."

Analysis: On March 27, 1990, the proposed Subagreement Pertaining to State Resident Engineers Between NRC and the State of Illinois was published in the **Federal Register** for public comment, at 55 FR 11275. One set of comments was received from Commonwealth Edison Co. (CECo). The comments are addressed individually, as follows:

*Comment:* CECo should be allowed to express its views formally on whether a particular meeting or inspection will involve sensitive matters. Sections VI.C.8 and VI. D.3 establish the NRC's discretion to determine whether the Senior Resident Engineer may attend certain meetings with CECo or participate in certain inspections of its activities. One factor in the exercise of that discretion is the potentially sensitive nature of the subject, meeting or inspection. To ensure that the potential for sensitivity is fully appreciated, CECo should be given a formal opportunity to express its views on whether a particular meeting or inspection will involve sensitive matters.

*Response:* The Subagreement provides that the State recognize that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for the NRC, at its discretion, to conduct such activities privately and separately. The Subagreement does not preclude the license from communicating its opinion on these matters to the NRC.

*Correction to Section VI.C.13*—CECo states that the last sentence of section VI.C.13. should read, "NRC will forward the report to the licenses with a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee." The words "the report to the licensee with" were inadvertently omitted from the **Federal Register** Notice. The comment is accepted, and the text of the Subagreement has been changed.

*Comment:* NRC, IDNS and CECo should work together to agree on which IDNS issues warrant CECo action. Section VI.C.13 would require IDNS to submit all written communications concerning CECo inspection activity to the NRC. The NRC will review those communications and inform CECo as to which issues the NRC believes warrant action by CECo. CECo believes that a more efficient process would result if the NRC, IDNS and CECo would work together to agree on which IDNS issues warranted CECo action.

*Response:* The Subagreement specifically indicates that State activities will be performed in accordance with Federal standards and requirements and NRC practices. Also consistent with NRC's Policy Statement on Cooperation With States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities, the Subagreement specifically states that nothing in this agreement confers upon the State or the State Resident Engineer authority to: (1) Interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC. Clearly there is no option for a collaborative process in interpreting or imposing NRC requirements on a licensee.

*Comment:* Differences in Freedom of Information Acts. Sections VI.D.5 and VI.D.6 imply that IDNS will apply the Illinois Freedom of Information Act (IFOIA) to the fullest extent possible to protect sensitive and proprietary information just as the NRC applies the Federal Freedom of Information Act (FOIA). It is not clear that IFOIA provides the same level of protection as FOIA. There are far fewer judicial interpretations of IFOIA than of FOIA; Illinois judges may take a broader view of the public's right to know than have federal judges. Therefore, greater protection would be provided if IDNS had unlimited access to information covered by the Subagreement but did not physically retain any information which IFOIA could not clearly protect from unwarranted public disclosure.

*Response:* In practice, CECo must identify any proprietary or sensitive information submitted to the NRC which it wishes to have withheld from public disclosure (10 CFR 2.790(b)(1)). Any information so submitted and determined to be protected from public disclosure under the criteria in 10 CFR 2.790 is accorded protection from disclosure to the full extent of FOIA and NRC regulations. If such information is shared with the State under Illinois Subagreement No. 3, it should still be protected from disclosure to the same

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extent as it would be at the NRC. Therefore, if the IFOIA provided less protection than FOIA, the NRC would be concerned regarding a method of providing an equal level of protection for the documents provided to the State under this Subagreement.

However, CECo does not specifically contend that IFOIA provides less protection to sensitive or proprietary information than FOIA. Indeed, a facial comparison shows that IFOIA seems to provide a similar level of protection to that afforded by FOIA. Additionally, in paragraph VI.D.5. of proposed Illinois Subagreement No. 3, the State agrees to conform its practices regarding information disclosure to those of the NRC. In paragraph VI.D.6., the State and NRC agree to consult with each other before releasing sensitive or proprietary information related to this Subagreement. IFOIA and these provisions would appear likely to provide protection. At this time it is impossible to predict with complete confidence how Illinois will interpret and implement this Subagreement and the relevant IFOIA provisions. However, the NRC-State consultations pursuant to paragraph VI.D.6. should insure that the NRC is aware of Illinois practices and procedures in releasing information. If additional protective measures are required, they can be tailored to address the specific requirements of the situation.

*Comment:* Consultation. Section VI.D.6 also would require IDNS and the NRC to consult with each other before releasing sensitive or proprietary information related to this Subagreement. To ensure that the sensitivity of particular information is fully appreciated, CECo should have an opportunity to participate in the consultation before a final decision to release information is made. Moreover, any disagreements over release should be resolved in accordance with the dispute resolution provisions set forth in section VIII.

*Response:* The release of sensitive or proprietary information in this situation is governed by the FOIA, NRC related regulations, and IFOIA. If CECo is concerned about the release of sensitive or proprietary information, CECo must first be certain that any such information is submitted pursuant to the regulations contained in 10 CFR 2.790. This information, if it has been properly submitted to the NRC and determined to be properly withheld from disclosure, should be protected by operation of these statutes and regulations, and also by the consultation process between the State and NRC (pursuant to paragraph VI.D.6.). CECo's participation in the process would be unworkable and inconsistent with the NRC's and the State's conduct of their own procedures, which are governed by the applicable statutes and regulations.

*Comment:* Regulatory Confusion. CECo expressed concern that the addition of another regulatory observer may create confusion and administrative burdens for plant management.

*Response:* Both the Subagreement and the Commission's Policy Statement on Cooperation With States reflect that State activities must be conducted in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

*Comment:* Recommendation to Monitor Implementation. CECo strongly recommends that NRC monitor implementation of the Subagreement.

*Response:* The NRC has provided a number of controls in the Subagreement so that it can be confident in the State Resident Inspector's ability to perform inspections, is aware of and has accounted for the inspections planned by the State, and communicates with the licensee on all follow-up actions and enforcement. It is intended that there will be communication between NRC and State staff members on day-to-day activities. Further, the Subagreement requires a formal review, not less than six months after the effective date, to be performed by the NRC to evaluate implementation of the Subagreement and resolve any problems identified. In addition, periodic reviews are called for thereafter.

*Conclusion:* After careful consideration of the comments submitted, the Commission has determined to approve Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois. Certain minor editorial changes to the text of the Subagreement have been made, including the change to section VI.C.13 discussed in the NRC response to comments.

**FOR FURTHER INFORMATION CONTACT:** Frederick C. Combs, Assistant Director of State, Local and Indian Relations, State Programs, Office of Governmental and Public Affairs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0325.

Dated at Rockville, MD this 10th day of December 1990.

For the Nuclear Regulatory Commission.

**Carlton Kammerer,**

*Director, State Programs, Office of Governmental and Public Affairs.*

## Subagreement No. 3 Pertaining to State Resident Engineers Between the U.S. Nuclear Regulatory Commission and the State of Illinois

### I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Illinois (State) enter into this Subagreement under the authority of the Memorandum of Understanding (MOU) dated April 27, 1989, between NRC and the State, section 274i of the Atomic Energy Act of 1954, as amended, and section 4 of the Illinois Nuclear Facility Safety Act.

The State recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

### II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the NRC to license and regulate, among other activities, the manufacture, construction, and operation of utilization facilities (nuclear power plants) in order to assure the common defense and security and to protect the public health and safety. Under these statutes, NRC is the responsible agency regulating nuclear power plant safety.

B. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for State participation in NRC inspection activities when these programs have provisions to ensure close cooperation with NRC. NRC will only consider State proposals for instruments of cooperation to conduct inspection programs of NRC-regulated activities that provide for close cooperation with, and oversight by, the NRC.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, conducting safety inspections of nuclear power plants to assure that the plants are designed, constructed, tested, maintained, operated, and decommissioned in accordance with NRC regulatory requirements.

The NRC operating reactor inspection program is conducted by Headquarters personnel, region-based inspectors, and Resident Inspectors. NRC Resident Inspectors are located at each nuclear power plant site. Resident inspectors provide the major onsite NRC presence for direct observation and verification of licensee activities. The NRC Resident inspector also acts as the primary onsite evaluator for the NRC inspection effort related to such items as Licensee Event Reports, events, and incidents. NRC Resident Inspectors also interact with local officials, the press, and the public.

D. This Subagreement is intended to be consistent with and implement the provisions of the NRC's policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities" (54 FR 7530, February 22, 1989) which relates to State proposals to enter into instruments of cooperation with the NRC concerning State participation in NRC inspections at operating commercial nuclear power plants.

### III. Scope

A. This Subagreement defines the way in which NRC and the State, with the assistance of State Resident Engineers, will cooperate in planning and conducting inspections of nuclear power plants in the State to ensure compliance with NRC regulations. This Subagreement does not apply to investigations or inquiries conducted by NRC.

B. For the purpose of this Subagreement, inspection is defined as the examination, review, or evaluation of any program or activity of a licensee to determine the effectiveness of the program or activity in ensuring that the health and safety of the public and plant personnel are adequately protected and that the facility is operated safely; and to determine compliance with any applicable NRC rule, order, regulation, or license condition pursuant to the Atomic Energy Act of 1954, as amended, and commitments made to NRC.

C. Nothing in this Subagreement is intended to restrict or expand the statutory authority of NRC or the State or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Subagreement intended to restrict or expand the authority of the State on matters not within the scope of this Subagreement.

D. Nothing in this Subagreement confers upon the State or State Resident Engineers authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify, or revoke a license issued by NRC; and (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

E. Under this Subagreement, one State Resident Engineer may be assigned to each nuclear power plant site in the State.

### IV. NRC's General Responsibilities

NRC is responsible for conducting safety inspections of nuclear power plants to ensure that the plants are designed, constructed, tested, operated, maintained, and decommissioned in accordance with NRC regulatory requirements. These inspections are conducted in accordance with the NRC Inspection Manual using personnel appropriately qualified and trained to perform the necessary tasks. Only the NRC may take appropriate enforcement actions for all inspections conducted under this Subagreement.

### V. The State's General Responsibilities

A. The State, through its State Resident Engineer, will cooperate with NRC in performing safety inspections. Such inspections shall be conducted in accordance with NRC regulatory requirements and procedures governing operating nuclear power plants in the State and under the oversight of an authorized NRC representative.

B. The State will cooperate with the NRC in such inspections as necessary for the NRC to ensure that power reactors in the State continue to be operated without undue risk to the public health and safety and the environment.

C. State activities will be performed in accordance with Federal standards and requirements and NRC practices, with no undue burden on the NRC or its licensees.

### VI. Implementation

The State and NRC agree to work in concert to assure that the following staffing, training, inspection and enforcement, communications and information exchange, and conflict resolution protocol regarding the State Resident Engineer Program are followed.

#### *A. Staffing*

1. The State will select its State Resident Engineers in accordance with its own procedures and qualifications, patterned after those for NRC Resident Inspectors.

2. State Resident Engineers will have education and experience equivalent to that required for an NRC Resident Inspector.

3. The State is responsible for obtaining security clearances for State Resident Engineers that are acceptable to the nuclear power plant licensee.

4. The State is responsible for ensuring that State Resident Engineers comply with all requirements established by the nuclear power plant licensee, including fitness for duty, site access, and onsite space and support. NRC is not responsible for ensuring access or space for State personnel.

5. The State will certify to NRC that each State Resident Engineer has no financial or other interests that may call into question his or her objectivity or that create a conflict of interest or the appearance of a conflict of interest.

#### *B. Training*

1. State Resident Engineers performing inspection functions will be qualified and certified by the State in accordance with the NRC Inspection Manual or its equivalent. Such qualification and certification will be made for each inspection activity in which a State Resident Engineer will participate, such as:

Reactor operations (boiling-water reactor (BWR))
Reactor operations (pressurized-water reactor (PWR))
Reactor engineering—electrical
Reactor engineering—instrumentation

2. NRC will use its best efforts to make space available to its inspector training courses and special orientation programs to accommodate the training needs of State Resident Engineers.

3. The State will pay the travel and per diem expenses of State Resident Engineers attending training courses. Where NRC establishes special training classes, the State agrees to reimburse NRC for its costs of training State Resident Engineers, if requested.

4. NRC will provide one week of on-the-job training and orientation for the State Resident Engineer at each site.

5. Information acquired by NRC relating to the ability of a State Resident Engineer to perform inspections satisfactorily in accordance with NRC regulations, requirements, standards, and procedures will be provided to the State for appropriate action.

#### *C. Inspections and Enforcement*

1. The State Resident Engineer's activities are intended to assist NRC in the conduct of its regulatory activities.

2. The State Resident Engineers are responsible for meeting all requirements imposed by a licensee related to personal safety, radiological protection, and access at the plant site.

3. To the extent practicable, it is intended that the State Resident Engineers will arrange their schedules of inspection activities in coordination with NRC personnel in order to provide the widest possible coverage of the plant and its operations.

4. If the State intends to participate in the inspection process, the State will provide recommendations for the NRC inspection plan, consistent with NRC Inspection Manual chapter 2515, generally describing proposed inspection activities for the upcoming month. These recommendations will include a schedule of the inspections and a listing of NRC procedures to be used by the State Resident Engineer. In accordance with section VI.C.1 above, such recommendations shall be designed to assist NRC site inspection activities. NRC shall take such recommendations into account in formulating its Master Inspection Plans.

5. The State will submit the monthly inspection recommendations to the NRC Resident Inspector in sufficient time to allow NRC review before preparation of the inspection plan. NRC will review the State's inspection recommendations and will inform the State of any activities that appear inappropriate, untimely, or impose an undue burden on NRC or the licensee, such as schedular conflicts with NRC special inspections, management meetings, or Institute for Nuclear Power Operations (INPO) visits. The State will make adjustments to the State inspection recommendations, as necessary, to address NRC comments. Taking into account recommendations made by the State, NRC will be responsible for developing a single site inspection plan. NRC staff inspection activity will not be reduced for a facility below minimum program requirements on the

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basis of the availability of State's inspection resources.

5. NRC will coordinate with the State Resident Engineers, to the extent practicable, unscheduled inspections conducted in response to events, issues, and allegations.

7. An NRC Resident Inspector will initially accompany each State Resident Engineer on at least two inspections to review the performance of the State Resident Engineer. On the basis of these reviews, the NRC Resident Inspector will make recommendations to the State Resident Engineer regarding the preparation, conduct, and technical adequacy of the inspections. On a monthly basis, the NRC Senior Resident Inspector shall determine and authorize which, if any, inspections may be conducted by the State Resident Engineer on an unaccompanied basis. Such inspections shall be conducted in accordance with sections VI.C.4 and VI.C.5. State Resident Engineers may perform as members of NRC inspection teams, provided State Resident Engineers are qualified in the activity to be examined by the NRC inspection team and the NRC inspection team leader authorizes the State Resident Engineer's participation. All inspections performed by State Resident Engineers shall be in accordance with the NRC site inspection plans and NRC inspection practices.

8. The NRC Resident Inspectors may accompany the State Resident Engineers on any inspection. The State Resident Engineers may, at the NRC's discretion, accompany the NRC Resident Inspectors on inspections, at inspection entrance and exit interviews, and at enforcement meetings. The State recognizes that there may be occasions when, because of the sensitive nature of certain inspections and meetings, it will be necessary for NRC, at its discretion, to conduct such activities privately and separately.

9. NRC will provide the State with a copy and current updates of the NRC Inspection Manual and Master Inspection Plan (MIP) for each reactor site in the State at which a State Resident Engineer is stationed. The State will hold the MIP in confidence and will not release it to the public or licensees except in accordance with section VI.D.6 of this Subagreement.

10. Allegations received by the State Resident Engineers will be provided to the NRC Resident Inspections and processed in accordance with NRC procedures. Upon request by NRC, the State Resident Engineers will be made available to assist the NRC in addressing allegations.

11. The results of all State Resident Engineers' inspections will be discussed in a timely manner with the NRC Resident Inspectors. Matters that may require action by the licensee will be discussed with licensee management by the NRC Resident Inspectors, or by the State Resident Engineers in the presence of the NRC Resident Inspectors, except as may be necessary under section VI.C.12.

12. If a State Resident Engineer identifies situations with immediate safety significance, he or she will immediately communicate this information to the licensee and the NRC Resident Inspectors. It is essential that this information be discussed with an NRC representative immediately upon discovery so that NRC may take prompt action as dictated by the situation. If the NRC Resident Inspectors are unavailable, a State Resident Engineer will transmit this information immediately to NRC, Region III (the Regional Duty Officer during non-business hours).

13. All written communications with the licensee will be made through NRC. If a State Resident Engineer prepares a written report of the results of an inspection activity covered by this Subagreement, the report will not be sent directly to the licensee, but will be sent to the NRC Region III office and to the NRC Resident Inspectors. The State is responsible for the technical adequacy of State Resident Engineers' inspection reports. NRC will forward the report to the licensee with a cover letter discussing the issues, if any, that the NRC believes warrant action by the licensee.

14. If NRC identifies potential violations of NRC regulatory requirements as a result of the State's inspection activities, NRC may take appropriate enforcement action as set forth in appendix C of 10 CFR part 2. The State Resident Engineers will assist NRC in the preparation of enforcement actions and during any enforcement conferences or hearings for those matters that were identified as a result of the State's inspection activities. Enforcement action, if any, will be taken only by NRC.

*D. Communications and Information Exchange*

1. The State and NRC agree in good faith to make available to each other information within the intent and scope of this Subagreement.

2. NRC and the State agree to meet periodically, at least annually, at mutually agreeable times to exchange information on matters of common concern pertinent to this Subagreement. Unless otherwise agreed, such meetings will be held in the NRC Region III Office or at the NRC Resident Inspector's Office.

3. NRC will inform the State of formal meetings with licensee management involving a site to which a State Resident Engineer is assigned and provide the State the opportunity to attend, with the exception of those meetings that NRC determines should be closed as provided in section VI.C.8 of this Subagreement.

4. The State and NRC agree to consider each other's identified information needs and concerns when developing inspection plans.

5. The State will conform to NRC practices regarding information disclosure. For instance, the State must abide by NRC protocol not to publicly disclose inspection findings prior to the release of the NRC inspection report.

6. To preclude the premature public release of sensitive information, the State and NRC shall protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Illinois Freedom of Information Act and other applicable authority. The State and NRC shall consult with each other before releasing sensitive or proprietary information related to this Subagreement.

7. Press releases regarding State's activities or NRC inspections in which the State has been involved under this Subagreement which are prepared by one party will be provided to the other party before issuance. Press releases are to conform to information disclosure restraints of sections VI.D.5 and VI.D.6.

8. The State will provide NRC with written notice at least 60 days before the stationing of a State Resident Engineer at a site.

**VII. Contacts**

A. The principal senior management contacts for this Subagreement will be the Director, Division of Reactor Projects, Region III, NRC, and the Manager, Office of Nuclear Facility Safety, Illinois Department of Nuclear Safety. These individuals may designate appropriate staff representatives for the purpose of administering this Subagreement.

B. Identification of these contacts is not intended to restrict communication between NRC and State staff members on technical and other day-to-day activities.

**VIII. Resolution of Conflicts**

A. If disagreements or conflicts arise about matters within the scope of this Subagreement, NRC and the State will work together to resolve these differences.

B. Resolution of differences between the State and NRC staff over the significance of findings will be the initial responsibility of the Director, Division of Reactor Projects, Region III, NRC.

C. Differences that cannot be resolved in accordance with sections VIII.A and VIII.B will be reviewed and resolved by the Regional Administrator, Region III, NRC and the Director, Illinois Department of Nuclear Safety. The decision of the Regional Administrator will be final.

D. The NRC's general Counsel has the final authority to interpret the NRC's regulations.

**IX. Effective Date**

This Subagreement shall become effective upon signing by the Director, Illinois Department of Nuclear Safety, and the Executive Director for Operations, NRC, and shall remain in effect permanently unless terminated by either party on 30 days written notice.

**X. Duration, Termination, and Modification**

A formal review, not less than six months after the effective date, will be performed by the NRC to evaluate implementation of the Subagreement and resolve any problems identified. This Subagreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon 30 days written notice by either party.

**XI. Separability**

If any provision(s) of this Subagreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.



Dated: November 14, 1990.

**James M. Taylor,**

*Executive Director for Operations.*

For the State of Illinois.

Dated: November 20, 1990.

**Thomas W. Ortciger,**

*Illinois Department of Nuclear Safety.*

[FR Doc. 90-29562 Filed 12-17-90; 8:45 am]

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## OFFICE OF PERSONNEL MANAGEMENT

### Request for Expedited Review for Clearance of RI 92-22 Submitted to OMB

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the clearance of an information collection, RI 92-22, 1990 Annuity Supplement Earnings Report. The information collected via the RI 92-22 is required to determine the amount of an annuity supplement accurately, and will allow the Office of Personnel Management, Federal Employees' Retirement System, to determine if the earnings from work performed while entitled to the annuity supplement have exceeded the earnings limitation established by the Social Security Administration.

It is estimated that approximately 4,600 RI 92-22, 1990 Annuity Supplement Earnings Reports, will be processed annually. We estimate that the form requires approximately 15 minutes to complete, including the time required for reviewing instructions, obtaining the necessary data, and reviewing the completed form. An average annual burden of 1,150 hours is estimated.

For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

**DATES:** Comments on this proposal should be received by December 28, 1990.

**ADDRESSES:** Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mary Beth Smith-Toomey, (202) 606-0623.

U.S. Office of Personnel Management.

**Constance Berry Newman,**

*Director.*

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# DRAFT

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
RETIREMENT AND INSURANCE GROUP
WASHINGTON, D.C. 20415

Form Approved:
OMB No. 3205-

## 1990 ANNUITY SUPPLEMENT EARNINGS REPORT

Dear Annuitant:

The annuity supplement part of your FERS benefit is subject to an earnings test similar to the one applied to social security benefits and using the same exempt amount, as required by law in 5 U.S.C.§8421a. If you exceeded the exempt amount ($6,840.00 for 1990), your annuity supplement will be reduced by $1.00 for each $2.00 by which you exceeded it, effective January 1, 1991.

You must complete the earnings report on the reverse side and return it in the enclosed envelope. Your report must be received in OPM within 30 days from the date of this notice. After we receive your earnings report, we will determine if any adjustment is required to your annuity supplement. By law, all adjustments will be effective January 1, 1991.

If we do not receive your earnings report within 30 days, we will suspend the annuity supplement part of your benefit and begin recovery of any annuity supplement payments you may receive after January 1, 1991. The earnings test will not result in any reduction in the basic annuity part of your FERS benefit.

### HOW TO DETERMINE AMOUNT OF EARNINGS YOU SHOULD REPORT

If your FERS Annuity Supplement began after January 1, 1990, you must report earnings you received from the day your FERS Annuity Supplement began through December 31, 1990. (If you retired at age 55 or older, your FERS Annuity Supplement began on the same date as your FERS Basic Annuity benefit.) If your FERS Annuity Supplement began before January 2, 1990, you must report the earnings you received during the entire year of 1990.

If you retired under one of the special provisions for law enforcement officers, firefighters, air traffic controllers, or military reserve technicians separated for loss of military membership, report only earnings received after the date you became age 55.

***INCLUDE AS YOUR EARNINGS YOUR INCOME FROM:***

- All wages from employment covered by social security.
- All cash pay for: agriculture work, domestic work in a private home, service not in the course of your employer's trade or business.
- All pay, cash or non-cash, for work as a homeworker for a nonprofit organization, no matter the amount. (The social security $100.00 tax test does not apply.)
- All net earnings from self-employment.
- Cash tips in excess of $20.00 per month.
- All pay for work not covered by social security, if the work is done in the U.S., including pay for:
  - Family employment
  - Work as a student, student nurse, intern, newspaper and magazine vendor
  - Work for State or foreign governments or instrumentalities
  - Work covered by the Railroad Retirement Act.



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***DO NOT INCLUDE AS EARNINGS ANY INCOME FROM THE FOLLOWING SOURCES:***

- Gifts
- Pensions or annuities
- Social Security Benefits
- Insurance proceeds
- Unemployment compensation
- Rents or royalties not involved or resulting from personal service
- Interest or dividends not resulting from your own trade or business
- Monies which you earned before retirement
- Capital gains
- Fellowships or scholarships
- Net business losses

### BEFORE COMPLETING YOUR REPORT, PLEASE CAREFULLY READ THE INSTRUCTIONS

1. First, read the section on the front entitled: *HOW TO DETERMINE AMOUNT OF EARNINGS YOU SHOULD REPORT.*
2. All information you provide must be clear and legible.
3. Be sure to fill in, sign, and mail this report in the envelope we have provided. If you have misplaced the envelope, mail the report to:
   Office of Personnel Management
   FERS Annuity Supplement Survey
   Room 4429
   1900 E Street, N.W.
   Washington, D.C. 20415
4. You may be required to furnish evidence supporting your claimed earnings level. Retain copies of such evidence for this purpose.

Do not include your annuity payments from OPM. Include as earnings all income from wages and self-employment that you actually received plus deferred income you actually earned.

| Enter your FERS claim number<br>CSA | Did you have earnings in 1990?<br>☐ Yes ☐ No |
|---|---|
| If you answered yes above, write in the full amount of those earnings. If your annuity supplement began in 1990, write only the earnings for the period during which you received the supplement.<br>Enter your earnings<br>$ | |
| WARNING - Any intentional false statement or willful misrepresentation is punishable by fine, imprisonment, or both (18 USC 1001).<br>Notice: If you do not complete and return this report, the annuity supplement portion of your annuity will be suspended. | |
| Signature | Daytime telephone number, including area code / Date |

**PRIVACY ACT STATEMENT**

Solicitation of this information is authorized by the Federal Employees' Retirement law (Chapter 84, title 5, U.S. Code). The information you furnish will be used to identify records properly associated with your application for Federal benefits, to obtain additional information if necessary, to determine and allow present or future benefits, and to maintain an uniquely identifiable claim file. The information may be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national, state, local or other charitable or social security administrative agencies in order to determine benefits under their programs, to obtain information necessary for determination or continuation of benefits under this program, or to report income for tax purposes. It may also be shared and verified, as noted above, with law enforcement agencies when they are investigating a violation or potential violation of the civil or criminal law. Executive Order 9397 (November 22, 1943) authorizes use of the social security number. Furnishing the social security number, as well as other data, is voluntary, but failure to do so may delay or make it impossible for us to determine your eligibility to receive benefits.

**PUBLIC BURDEN STATEMENT**

We think this form takes an average 15 minutes per response to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project, (3206-XXXX), Washington, D.C. 20503.

[FR Doc. 90-29539 Filed 12-17-90; 8:45 am]
BILLING CODE 6325-01-C

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-28687; File No. SR-Amex-90-28]**

**Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Equity Index Participations**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to amend Exchange Rules 900F *et seq.* relating to Equity Index Participations ("EIPs") to provide for daily exercise based on the liquidating index value at the close of trading on the date of exercise.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

In Securities Exchange Act Release No. 26709 (April 11, 1989), 54 FR 15280, the Commission approved Amex Rules 900F *et seq.* to accommodate trading of EIPs based on the Standard & Poors 500 Stock Index ("S&P 500") and the Amex Major Market Index ("MMI") (File No. SR-Amex-88-10). As approved by the Commission, EIPs provided for (1) a quarterly cash-out privilege under which an EIP holder could exercise an EIP position to receive cash payment of the "liquidating index value" derived from the opening prices of the stocks in the S&P 500 or MMI Indexes, as applicable, on the third Friday of March, June, September and December ("Expiration Friday"); and (2) a "physical delivery privilege" under which a holder of one or more "delivery units"—50,000 EIPs per unit for the S&P 500 Index, and 25,000 EIPs per unit for the MMI—could request actual physical delivery of shares of the component index stocks based on their opening value on Expiration Friday.

On August 18, 1989, the United States Court of Appeals for the Seventh Circuit set aside the Commission's order approving Amex's EIPs rules, as well as rules accommodating the Philadelphia Stock Exchange's ("Phlx") Cash Index Participations ("CIPs"), the Chicago Board Options Exchange's ("CBOE") Value of Index Participations ("VIPs"), and applicable rules of the Options Clearing Corporation ("OCC") (*Chicago Mercantile Exchange et al.* v. *Securities and Exchange Commission*, 883 F.2d 537 (7th Cir. 1989).

While the court found that index participations ("IPs") could not be neatly classified as securities or futures contracts, the court determined that IPs have characteristics of futures contracts and are therefore under the exclusive jurisdiction of the Commodity Futures Trading Commission. The court's determination was based in part on a comparison of the obligations of long and short positions in IPs and futures contracts in view of the quarterly cash-out dates for EIPs and CIPs (semi-annual cash-out for VIPs) and the quarterly settlement date for futures contracts. The Court specifically did not address the daily cash-out (with penalty) feature proposed by the Phlx, the physical delivery privilege proposed by the Amex, or the ability of the short to exercise proposed by the CBOE.

The Exchange, with a view to eliminating any vestige of a futures contract from its version of index participations and thus assure retention of jurisdiction thereof by the Commission, is proposing to amend its EIPs rules to provide that an EIP holder may exercise the cash-out privilege on any business day instead of quarterly. An exercising holding would have the right to obtain the liquidating index value derived from closing prices in the S&P 500 [1] or MMI on the day of exercise. For any component stock that does not open for trading, the closing price on the last preceding day on which such stock traded on the primary market would be used for purposes of determining the liquidating index value. The quarterly physical delivery privilege of EIPs, as originally approved by the Commission, would be retained. Procedures relating to the physical delivery privilege and the role of the physical delivery facilitator, as described in Amendment No. 2 to SR-Amex-88-10 (Securities Exchange Act Release No. 34-26243, (November 2, 1988), 53 FR 45407, would remain unchanged.

Rule 910F, paragraph (a) would provide that, with respect to exercise of the cash-out privilege, the Exchange will specify the time by which the clearing member in whose account with OCC the EIP position is carried must tender an exercise notice to OCC in order for the holder to receive the liquidating index value calculated that day. The Exchange anticipates that this time will be 3 p.m. Eastern time.

The proposed amendments are intended to provide for trading of EIPs as securities under the jurisdiction of the Commission in a manner not inconsistent with the Seventh Circuit's decision. The purpose of permitting exercise of the cash-out privilege on any business day, with receipt by the holder of the liquidating index value based on closing prices on date of exercise, is to eliminate any element of futurity. In addition, the proposed amendment will assure that the index price will track the spot index value of the underlying index.

The proposed procedures relating to daily exercise are comparable to exercise provisions applicable to a number of currently-traded Amex securities, including foreign index warrants, which provide for daily exercise and receipt by holders of a cash settlement value based on index valuation determined after exercise day consistent with the specific characteristics of the security and index.

In addition, the Exchange believes that the quarterly physical delivery privilege can provide an additional convenient mechanism for institutional investors to acquire market baskets of index securities, or for persons having large EIP short positions and who also hold the underlying index stocks to make convenient physical delivery. The Exchange continues to view the physical delivery feature as adding to product

[1] The Exchange currently is discussing with Standard & Poor's Corporation the applicability of the Exchange's existing license relating the EIPs based on the S&P 500 Index to the revised EIPs described herein.



flexibility and market utility, consistent with the recommendations of various commentators, including the Commission following the October 1987 market break, that new market basket products and basket trading mechanisms may help reduce market volatility.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-28 and should be submitted by January 8, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 10, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29504 Filed 12-17-90; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-28690; File No. NASD-90-01]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving a Proposed Rule Change Requiring Certain Members to Utilize Reconfirmation and Repricing Services**

December 11, 1990.

**I. Introduction**

On January 4, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed a proposed rule change (SR-NASD-90-01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 28, 1990, to solicit comments from interested persons.[2] No comments were received.[3] As discussed below, the Commission is approving the NASD's proposal.

**II. Description**

The NASD's proposal requires those NASD members that are participants in a registered clearing agency to participate in the reconfirmation and repricing services offered by such clearing agency. Currently, the National Securities Clearing Corporation ("NSCC") is the only registered clearing agency that offers a reconfirmation and repricing service ("RECAPS") to its members.[4] NSCC's RECAPS is a facility through which NSCC members submit data to NSCC's main office or one of the NSCC's branch offices regarding transactions in RECAPS-eligible securities which have previously been compared but have failed to settle. NSCC advises members of transactions eligible for RECAPS no less than three months prior to the next RECAPS cycle and of the age of fails eligible for submission no less than six weeks prior to such cycle. NSCC runs RECAPS cycles quarterly or more frequently as circumstances may require.

Currently, NSCC members input RECAPS fail information ("RECAPS Input") on Friday. NSCC distributes RECAPS contract sheets and settlement information on Sunday for compared RECAPS Input. The compared transactions then settle on Tuesday. Members submit deletes of RECAPS Input, advisories, and as-of trades ("Supplemental RECAPS Input") on Monday.[5] On Tuesday, NSCC distributes RECAPS contract sheets and settlement information for compared Supplemental RECAPS Input. These compared transactions settle on Wednesday. [6]

To permit NASD members to receive the full benefits of RECAPS, the NASD's proposal also provides for the cancellation of buy-in notices [7] that are

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Securities Exchange Act Release No. 28447 (September 17, 1990), 55 FR 38340.

[3] The Commission notes that the NASD received seven comment letters on its proposal. Five commentators endorsed the NASD's proposal. Two commentators, while expressing no opinion on the proposal, sought further clarification of the costs and benefits of the proposal. The NASD obtained such information and forwarded it to these commentators.

[4] Securities Exchange Act Release No. 28447 (September 17, 1990), 55 FR 38340. *See also* Securities Exchange Act Release No. 28339 (August 13, 1990), 55 FR 34109 (Order approving NSCC's RECAPS) ("RECAPS Order").

[5] A "delete" is a process used to delete trades mistakenly compared through NSCC. An "Advisory" is a procedure by which one firm's version of a trade is accepted by the firm named by the first firm as the counterparty to the trade. The term "as-of" is used to describe a trade that is submitted for processing after the actual trade date but relates back to the trade date.

[6] NSCC's rule describes the time frames for RECAPS Input, distribution of contract sheets and settlement information, and settlement days in general terms to allow NSCC to vary the RECAPS processing schedule according to its members' needs. The time frames discussed herein are those NSCC currently uses.

[7] Under the NASD's rules, a contract for sale of securities which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the day delivery of the security was due. The buyer must deliver written notice of a proposed buy-in to the seller two business days preceding the execution of the proposed buy-in. NASD Uniform Practice Code, section 59.

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pending during a RECAPS processing cycle and prohibits entry of a new notice of buy-in until the first day after the last RECAPS settlement date.

### III. NASD's Rationale

The NASD believes that the proposed rule change is consistent with section 15A of the Act because it will foster cooperation and coordination with persons engaged in clearing, settling, and facilitating transactions in securities and will assist the NASD in enforcing compliance by its members with the provisions of the Act and the rules and regulations thereunder.

### IV. Discussion

As discussed below, the Commission believes that the NASD's proposal is consistent with the Act. In particular, the Commission believes that the NASD's proposal is consistent with section 15A(b)(2) and (b)(6) of the Act. Section 15A(b)(2) of the Act provides that the rules of a national securities association must be designed to enforce compliance by its members with the provisions of the Act and the rules and regulations promulgated thereunder.[8] Section 15A(b)(6) of the Act provides that the rules of a national securities association must be designed to foster cooperation and coordination with persons engaged in clearing and settling securities transactions.[9]

The Commission believes the proposal will foster compliance by NASD members that participate in a registered clearing agency with the broker-dealer financial responsibility requirements of the Act. As registered broker-dealers, NASD members must generally maintain the level of capital prescribed by the Commission's uniform net capital rule.[10] As the Commission has previously stated, a significant rise in a clearing agency member's failed transactions can be the cause of significant losses to that member and can threaten a member's financial viability.[11] NSCC's RECAPS program, as modified to track recycling RECAPS submissions, provides a mechanism for reducing member fails and for adding discipline to clearing up outstanding fails. Thus, assuming RECAPS is successful in reducing outstanding fails, participation in RECAPS can foster compliance with the Commission's financial responsibility requirements by reducing the potential for member financial difficulties.[12] In this regard, the Commission urges the NASD to monitor independently the extent to which RECAPS promotes resolution of member fails and to work with NSCC to maximize RECAPS' effectiveness.[13]

The NASD's proposal also will enhance member compliance with section 17 of the Act. For example, under Rule 17a–3 of the Act, registered broker-dealers must maintain and keep current books and records reflecting all of their securities failed to receive and failed to deliver obligations.[14] As discussed in more detail in the RECAPS Order,[15] Mandatory participation in RECAPS may increase the likelihood that a member's fails will be settled against members on the other side of those fails during a RECAPS cycle. This, in turn, may simplify the member's operations by reducing its recordkeeping obligations unde Rule 17a–3.

Finally, the Commission believes that the NASD's proposal to modify its buy-procedures is appropriate. One of the benefits RECAPS provides is to streamline the process of resolving outstanding fails. However, to achieve the full benefits of RECAPS, the Commission believes that it is necessary to consolidate as many outstanding fails as possible through mandatory RECAPS participation requirements. Permitting members to resolve open fails through the buy-in procedure outside the RECAPS system would fragment the fails resolution process and would decrease the potential for RECAPS to benefit members to the maximum extent possible. Accordingly, the Commission believes the NASD's proposal to modify its buy-in procedures so that members can receive the full benefits of RECAPS participation is consistent with the Act.

### V. Conclusion

For the reasons described above, the Commission finds that NASD's proposal is consistent with section 15A of the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–90–01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90–29556 Filed 12–17–90; 8:45 am]

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[8] 15 U.S.C. 78o–3(b) (2) (1982).

[9] 15 U.S.C. 78o–3(b)(6) (1982).

[10] 17 CFR 240.15c3–1 (1990).

[11] RECAPS Order, *supra* note 4.

[12] The Commission notes that NSCC recently added a settlement reporting mechanism to RECAPS which will permit NSCC to analyze the efficacy of RECAPS on an objective basis. More specifically, commencing December, 1990, NSCC will provide the Commission with the following information after each RECAPS cycle: (1) The total number of fails submitted to RECAPS; (2) the extent to which such fails were recompared in a previous RECAPS cycle but did not settle; and (3) the ratio of previously compared items to the number of total fails submitted on an individual and aggregate member basis.

[13] The Commission also believes that the NASD's proposal will assist its members in complying with the uniform net capital rule in other respects. Under the uniform net capital rule, broker-dealers must make certain deductions from their net worth for failed to deliver contracts and failed to receive contracts which are outstanding for more than prescribed periods of time. 17 CFR 240.15c3–1(c)(2)(iv)(E) and (c)(2)(ix)(1990). However, because RECAPS permits member fails to be made current through reconfirmation and market-to-market, participation in RECAPS will assist members in satisfying their net capital requirements by providing them with a more accurate assessment of their capital positions. *See* letter from Michael Macchiaroli, Assistant Director, Division of Market Regulation, Commission, to Michael J. Simon, Associate General Counsel, NSCC, dated June 11, 1987.

[14] 17 CFR 240.17a–3(a)(4)(v) (1990).

[15] RECAPS Order, *supra* note 4.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Receipt of Noise Compatibility Program and Request for Review, Oakland International Airport (OAK), Oakland, CA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program that was submitted by the Port of Oakland for Oakland International Airport (OAK), Oakland, California under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150. This program was submitted subsequent to a determination by the FAA that associated Noise Exposure Maps submitted under 14 CFR part 150 for were in compliance with applicable requirements effective May 3, 1990. The proposed Noise Compatibility Program will be approved or disapproved on or before June 6, 1991.

**EFFECTIVE DATE:** The effective date of the start of the FAA's review of the Noise Compatibility Program is December 6, 1990. The public comment period ends February 6, 1991.

**FOR FURTHER INFORMATION CONTACT:** David L. Cross, FAA San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: 415–876–2779. Comments on the proposed Noise Compatibility Program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for which will be approved or disapproved on or before June 6, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a Noise Compatibility Program for the FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the Noise Compatibility Program for Oakland International Airport (OAK), effective on December 6, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 6, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, room 6E25, Hawthorne, California

Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

Port of Oakland, 530 Water Street, Jack London's Waterfront, Oakland, California 94604–2064.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 6, 1990.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 90–29560 Filed 12–17–90; 8:45 am]

BILLING CODE 4910–13–M

### Receipt of Noise Compatibility Program and Request for Review; San Diego International Airport-Lindbergh Field (SAN), San Diego, CA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for San Diego International Airport-Lindbergh Field (SAN) under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the San Diego Unified Port District. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for San Diego International Airport-Lindbergh Field were in compliance with applicable requirements effective on January 30, 1989. The proposed noise compatibility program will be approved or disapproved on or before June 5, 1991.

**EFFECTIVE DATE:** The effective date of the start of FAA's review of the noise compatibility program is December 5, 1990. The public comment period ends February 5, 1991.

**FOR FURTHER INFORMATION CONTACT:** David B. Kessler, Airport Planner, Planning Section, AWP–611.2, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone 213/297–1534. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program for San Diego International Airport-Lindbergh Field which will be approved or disapproved on or before June 5, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for San Diego International Airport-Lindbergh Field, effective on December 5, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 5, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

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Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 Aviation Boulevard, room 6E25, Hawthorne, California

Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007

Mr. Don L. Nay, Port Director, San Diego Unified Port District, 3165 Pacific Highway, San Diego, California 92112.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 5, 1990.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 90-29591 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary No. PE-90-52]

## Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before January 9, 1991.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 10, 1990.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

### Petitions for Exemption

*Docket No.:* 24446.
*Petitioner:* Air Transport Association of America.
*Sections of the FAR Affected:* 14 CFR 121.485(b).
*Description of Relief Sought:* To extend Exemption No. 4317, as amended, which allows petitioner's member carriers to conduct flights of less than 12 hours duration with an airplane having an additional crew of three or more pilots and an additional flight crewmember without requiring the rest period to be twice the hours flown since the last at-home-base rest period. Exemption No. 4317, as amended, will expire on April 30, 1991.

*Docket No.:* 28042.
*Petitioner:* Ameriflight, Inc.
*Sections of the FAR Affected:* 14 CFR 135.285.
*Description of Relief Sought:* To allow petitioner to extend its pilot duty time limits following a major earthquake or other natural disaster that disrupts processing of financial data in the San Francisco Bay or Los Angeles metropolitan areas.

*Docket No.:* 26378.
*Petitioner:* MTU Maintenance GmbH.
*Sections of the FAR Affected:* 14 CFR 145.47(c).
*Description of Relief Sought:* To allow petitioner to contract, on behalf of International Aero Engines Incorporated, maintenance and alteration of components of the V2500 engine to a noncertified source.

### Dispositions of Petitions

*Docket No.:* 24934.
*Petitioner:* American Airlines.
*Section of the FAR Affected:* 14 CFR part 121, appendix H, phase II, par. 2(a)(i).
*Description of Relief Sought/Disposition:* To allow petitioner to administer the airline transport pilot certificate (ATPC) check in a phase II simulator to airmen who do not meet the experience qualifications of part 121, appendix H. These airmen would exercise the ATPC only during the en route cruise portion of transoceanic flights as described in § 121.543(b)(3). *Denial, November 27, 1990, Exemption No. 5253.*

*Docket No.:* 28054.
*Petitioner:* Eastern Air Lines, Inc.
*Sections of the FAR Affected:* 14 CFR 121.683 and 121.685.
*Description of Relief Sought/Disposition:* To allow petitioner's pilots and dispatchers to use a computerized system to enter a discrete secret code to issue, accept, and store dispatch releases. The computer system would allow the dispatch releases to be stored and retrieved for 14 days and thereafter to be stored on microfiche. *Grant, November 23, 1990, Exemption No. 5250.*

*Docket No.:* 26205.
*Petitioner:* North American Airline Training Group.
*Sections of the FAR Affected:* 14 CFR 141.91(a).
*Description of Relief Sought/Disposition:* To allow petitioner to conduct ground school training at a site or sites more than 25 nautical miles from the main base of operations. *Grant, December 6, 1990, Exemption No. 5255.*

*Docket No.:* 26214.
*Petitioner:* Epps Air Service, Inc.
*Sections of the FAR Affected:* 14 CFR 135.165 (b)(5), (b)(6), and (b)(7).
*Description of Relief Sought/Disposition:* To allow petitioner to operate certain airplanes equipped with one long-range navigation system (LRNS) and one high-frequency (HF) communication system in extended overwater operations. *Grant, November 29, 1990, Exemption No. 5252.*

*Docket No.:* 26222.
*Petitioner:* Airborne Express.
*Sections of the FAR Affected:* 14 CFR 121.547(c) and 121.583(a).
*Description of Relief Sought/Disposition:* To allow petitioner to carry selected candidates for potential employment aboard its aircraft without complying with certain passenger-carrying requirements. The exemption would permit these applicants to be transported on the flight deck of these airplanes without seats being available for their use in the passenger



compartment. *Denial, November 23, 1990, Exemption No. 5251.*

*Docket No.:* 28337.
*Petitioner:* Embraer Empresa Brasileira de Aeronautica S.A.
*Sections of the FAR Affected:* 14 CFR 121.312(a)(2).
*Description of Relief Sought/Disposition:* To amend Exemption No. 5236, which allows the operation of 35 airplanes, whose dates of manufacture are after August 20, 1990, with certain specified interior components that do not comply with the heat release and smoke emissions requirements of § 121.312(a)(2). The amendment would add two additional airplanes originally scheduled for delivery to a Canadian operator and now scheduled for delivery to a U.S. operater. *Grant, November 21, 1990, Exemption No. 5236A.*

*Docket No.:* 26375.
*Petitioner:* Sea Air Shuttle Corporation dba Virgin Islands Seaplane Shuttle.
*Sections of the FAR Affected:* 14 CFR 135.175(a).
*Description of Relief Sought/Disposition:* To allow petitioner to conduct flights under visual flight rules with large multiengine airplanes without airborne radar installed. *Grant, December 3, 1990, Exemption No. 5254.*

[FR Doc. 90-29579 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

## Air Traffic Procedures Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Air Traffic Procedures Advisory Committee Meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held from January 14, at 9 a.m., through January 17, 1991, at 4 p.m.

**ADDRESSES:** The meeting will be held at the Parc Corniche, 6300 Parc Corniche Drive, Orlando, Florida.

**FOR FURTHER INFORMATION CONTACT:** Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from January 14, at 9 a.m. through January 17, 1991, at 4 p.m., at the Parc Corniche, 6300 Parc Corniche Drive, Orlando, Florida. The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 11, 1991. The next quarterly meeting of the FAA ATPAC is planned to be held from April 8-11, 1991, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on December 10, 1990.

**Theodore H. Davies,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 90-29580 Filed 12-17-90; 8:45 am]

BILLING CODE 4910-13-M

Date: December 11, 1990.

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-1041.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Cooperative Housing Corporations.
*Description:* This regulation provides an elective alternative to the proportionate share rule for allocating interest and taxes to the tenant-stockholders of cooperative housing corporations.
*Respondents:* Individuals or households, Businesses or other for-profit.
*Estimated Number of Respondents:* 2,500.
*Estimated Burden Hours Per Response:* 15 minutes.
*Frequency of Response:* One-time election.
*Estimated Total Reporting Burden:* 625 hours.
*Clearance Officer:* Garrick Shear (202) 535-4297 Internal Revenue Service, Room 5571 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 90-29536 Filed 12-17-90; 8:45 am]

BILLING CODE 4830-01-M

Date: December 11, 1990.

## Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0619.
*Form Number:* IRS Form 6765.
*Type of Review:* Revision.

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*Title:* Credit for Increasing Research Activities (or for claiming the orphan drug credit).

*Description:* Internal Revenue Code section 38 allows a credit against income tax (determined under IRS section 41) for an increase in research activities of a trade or business. Section 28 allows a credit for clinical testing expenses in connection with drugs for certain rare diseases. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Respondents:* Businesses or other for-profit, Small business or organizations.

*Estimated Number of Respondents:* 13,500.

*Estimated Burden Hours Per Respondent:*

Recordkeeping—7 hours, 53 minutes.
Learning about the law or the form—47 minutes.
Preparing and sending the form to IRS—38 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 135,135 hours.

*OMB Number:* 1545–1076.
*Form Number:* IRS Form 6765.
*Type of Review:* Revision.

*Title:* Computation of Certain Manufacturers and Retailers Excise Taxes.

*Description:* Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, trucks and trailer chassis and bodies and tractors and the luxury tax on aircraft, boats, passenger vehicles, furs, and jewelry. This form enables IRS to monitor the excise tax liability on these articles. (IRS sections 4161, 4051, 4003, 4002, 4001, 4007, and 4006.)

*Respondents:* Individual or households, Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Recordkeepers:* 1,029.

*Estimated Burden Hours Per Respondent:*

| | 8807 Part I | 8807 Part II |
|---|---|---|
| Recordkeeping. | 4 hrs., 18 mins. | 2 hrs., 52 mins. |
| Learning about the law or the form. | 8 mins | 18 mins. |
| Preparing and sending the form to IRS. | 10 mins | 21 mins. |

*Frequency of Response:* Quarterly.
*Estimated Total Reporting Burden:* 688,190 hours.

*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*

[FR Doc. 90–29537 Filed 12–17–90; 8:45 am]
BILLING CODE 4830–01–M

## Public Information Collection Requirements Submitted to OMB for Review

Date December 11, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Bureau of Alcohol, Tobacco and Firearms**

*OMB Number:* 1512–0357.
*Form Number:* ATF REC 5170/6.
*Type of Review:* Extension.
*Title:* Wholesale Dealers Applications, Letterheads and Notices Relating to Operations (Variations in Format or Preparation of Records)

*Description:* To ascertain that the revenue is not placed in jeopardy and protection of the revenue. Affects wholesale liquor dealers.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Recordkeepers:* 1,029.

*Estimated Burden Hours Per Recordkeeper:* 30 minutes.

*Frequency of Response:* Other (Recordkeeping).

*Estimated Total Recordkeeping Burden:* 515 hours.

*Clearance Officer:* Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*

[FR Doc. 90–29538 Filed 12–18–90; 8:45 am]
BILLING CODE 4810–31–M

## DEPARTMENT OF VETERANS AFFAIRS

### Veterans' Advisory Committee on Rehabilitation, Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C. 1521, will be held on January 8, 1991, from 9 a.m. to 4:30 p.m. and on January 9, 1991 from 9 a.m. to 12 noon in room 1010 of the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Theresa Boyd, Executive Secretary, Veterans' Advisory Committee on Rehabilitation at (202) 233–6493 prior to December 31, 1991.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3:30 p.m. on January 8, 1991.

Dated: December 12, 1990.

By direction of the Secretary:

**Sylvia Chavez Long,**
*Committee Management Officer.*

[FR Doc. 90–29487 Filed 12–17–90; 8:45 am]
BILLING CODE 8320–01–M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 243
Tuesday, December 18, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, December 20, 1990.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTERS TO BE CONSIDERED:**
Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

**Sheldon D. Butts,**
*Deputy Secretary.*

[FR Doc. 90–29691 Filed 12–14–90; 1:34 pm]
BILLING CODE 6355–01–M

### FEDERAL HOUSING FINANCE BOARD

**TIME AND DATE:** 1:30 p.m., Tuesday, December 18, 1990.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** Closed Meeting.

**MATTERS TO BE CONSIDERED:** The Board will consider the following.

(1) Initial organizational matters;
(2) Matters related to the calendar year 1991 budgets of the Federal Home Loan Banks;
(3) Special examination;
(4) Investment funds management policy;
(5) Matters related to appointment of directors.

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

**CONTACT PERSON FOR MORE INFORMATION:** Leonard H.O. Spearman, Jr., Executive Secretary to the Board, (202) 408–2574.

**J. Stephen Britt,**
*Executive Director.*

[FR Doc. 90–29728 Filed 12–14–90; 3:36 pm]
BILLING CODE 6725–01–M

### FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 10 a.m., Friday, December 14, 1990.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

Federal Reserve Bank and Branch director appointments. (This matter was originally announced for a closed meeting on December 17, 1990.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 14, 1990.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR Doc. 90–29727 Filed 12–14–90; 3:35 pm]
BILLING CODE 6210–01–M

### INTERNATIONAL TRADE COMMISSION

**TIME AND DATE:** Thursday, December 27, 1990 at 10:30 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731–TA–485 (P) (Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof from the United Kingdom)—briefing and vote.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: December 13, 1990.

**Kenneth R. Mason,**
*Secretary.*

[FR Doc. 90–29690 Filed 12–14–90; 1:36 pm]
BILLING CODE 7020–02–M

### NATIONAL COUNCIL ON DISABILITY

Hearings on the Reauthorization of the Rehabilitation Act of 1973, as Amended, and Personal Assistance Services

**AGENCY:** National Council on Disability.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the forthcoming hearings on the reauthorization of the Rehabilitation Act of 1973, as amended, and personal assistance services of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this meeting is required under section 552(b)(10) of the "Government in the Sunshine Act" (Pub. L. 94–409).

**DATES FOR HEARINGS ON THE REAUTHORIZATION OF THE REHABILITATION ACT OF 1973:**

January 7, 1991, 8:30 a.m. to 5:00 p.m.
January 8, 1991, 8:30 a.m. to 5:00 p.m.

**DATES FOR HEARINGS ON PERSONAL ASSISTANCE SERVICES:**

January 9, 1991, 8:30 a.m. to 5:00 p.m.
January 10, 1991, 8:30 a.m. to 5:00 p.m.

**LOCATION:** San Francisco Hilton Hotel, 1 Hilton Square, San Francisco, California.

**FOR FURTHER INFORMATION CONTACT:** National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into

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an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, and the Secretary of the Department of Education, the Commissioner of Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The hearings of the National Council shall be open to the Public. The proposed agenda for the hearing on the reauthorization of the Rehabilitation Act of 1973, as amended includes:

Overview of the Act
Basic state grant
Client assistance
Research and training
Title V and ADA
Supported employment

The proposed agenda for the hearing on personal assistance services includes:

Financing
Aging needs
Physical disabilities
Mental/Cognitive
Employment
Readers/Interpreters

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC, on December 13, 1990.

Ethel D. Briggs,
*Executive Director.*

[FR Doc. 90-29627 Filed 12-14-90; 8:45 am]

BILLING CODE 6820-MA-M

## NUCLEAR REGULATORY COMMISSION

**DATE:** Weeks of December 17, 24, 31, 1990 and January 7, 1991.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of December 17**

*Monday, December 17*

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
10:00 a.m.
Briefing on EEO Program (Public Meeting)

*Tuesday, December 18*

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

*Wednesday, December 19*

9:00 a.m.
Briefing by NUMARC on Level of Design Detail for part 52 (Public Meeting)
10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of December 24—Tentative**

There are NO meetings scheduled for the Week of December 24.

**Week of December 31—Tentative**

*Thursday, January 3*

1:30 p.m.
Briefing on NRC Technical Training Center (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of January 7—Tentative**

*Thursday, January 10*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.**

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492-1661.

Dated: December 13, 1990.

William M. Hill, Jr.,
*Office of the Secretary.*

[FR Doc. 90-29693 Filed 12-14-90; 1:35 pm]

BILLING CODE 7590-01-M

## POSTAL RATE COMMISSION

**Meeting**

**TIME AND DATE:** 10:00 a.m. on December 17, 18, 19, 20, 21, 1990.

**PLACE:** Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** A series of closed meetings to discuss and decide issues in Docket No. R90-1.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001. Telephone (202) 789-6840.

Charles L. Clapp,
*Secretary.*

[FR Doc. 90-29845 Filed 12-14-90; 10:01 am]

BILLING CODE 7710-FW-M

federal register

Tuesday
December 18, 1990

Part II

# Department of Labor

**Mine Safety and Health Administration**

**Fee Adjustments for Testing, Evaluation, and Approval of Mining Products; Notice**

BEST COPY AVAILABLE

VOL 55 ISS 243 DEC 18 1990 UMI



**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

## Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of fee adjustments.

**SUMMARY:** This notice revises the Mine Safety and Health Administration's (MSHA) user fees for testing, evaluation, and approval of certain products manufactured for use in underground mines. These fees are based on Fiscal Year 1990 data and reflect changes in approval processing operations as well as costs incurred to process approval actions.

**DATES:** These fee schedules are effective from January 1, 1991 through December 31, 1991. Approval applications postmarked on or after January 1, 1991, will be charged under this fee schedule.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Dalzell, Chief, Approval and Certification Center, R.R. 1, Box 251, Triadelphia, West Virginia 26059.

**SUPPLEMENTARY INFORMATION:** In general, MSHA has computed the revised fees based on the cost to the government to provide testing, evaluation, and approval of products manufactured for use in underground mines. On May 8, 1987 (52 FR 17508), MSHA published a final rule, 30 CFR part 5—Fees for Testing, Evaluation, and Approval of Mining Products, which established the specific procedures for fee calculation, administration, and revisions. This revised fee schedule is established in accordance with the procedures of that rule.

**Machine Approvals and Shearer Approvals** (Part 18, Action 12) have been separated into two fee schedules to reflect the difference in expended time and cost.

Dated: December 11, 1990.

**John B. Howerton,**

*Deputy Assistant Secretary for Mine Safety and Health.*

FEE SCHEDULE EFFECTIVE January 1, 1991 (BASED ON FY 1990 DATA)

| 30 CFR Part No. and part and action title | Hourly rate | Flat rate | Application fee |
|---|---|---|---|
| 7 Product Testing by Third Party | | | |
| 12 Approval Evaluation—Battery Assemblies | $41 | | $100 |
| 12 Approval Evaluation—Brattice and Ventilation Tubing | 47 | | 100 |
| 12 Approval Evaluation—Multiple-Shot Blasting Units [4] | 37 | | 100 |
| 14 Approval Extension—Battery Assemblies | 37 | | 100 |
| 14 Approval Extension—Brattice and Ventilation Tubing | 44 | | 100 |
| 14 Approval Extension—Multiple-Shot Blasting Units [4] | 37 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | $237 | |
| 15 Explosives | | | |
| 12 Approval Evaluation [1] | 43 | | 100 |
| Permissibility Tests for Explosives: | | | |
| Weigh-In | | 420 | |
| Physical Exam: First-Size | | 295 | |
| Chemical Analysis | | 1,797 | |
| Air-Gap—Minimum Product Firing Temperature | | 418 | |
| Air Gap—Room Temperature | | 320 | |
| Pendulum Friction Test | | 148 | |
| Detonation Rate | | 320 | |
| Gallery Test 7 | | 4,917 | |
| Gallery Test 8 | | 3,537 | |
| Tox Gases (Larger Chamber) | | 732 | |
| Permissibility Tests for Sheathed Explosives: | | | |
| Physical Examination | | 126 | |
| Chemical Analysis | | 1,044 | |
| Gallery Test 9 | | 1,944 | |
| Gallery Test 10 | | 1,944 | |
| Gallery Test 11 | | 1,944 | |
| Gallery Test 12 | | 1,944 | |
| Drop Test | | 649 | |
| Temperature Effects/Detonation | | 672 | |
| Toxic Gases | | 580 | |
| 14 Approval Extension | 42 | | 100 |
| 18 Electric Motor Driven Equipment and Accessories | | | |
| Approval—Machine Evaluation [1] | 44 | | 100 |
| Approval—Machine Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 12 Approval—Instruments (testing included) | 42 | | 100 |
| 12 Approval—Shearer Evaluation | 42 | | 100 |
| 14 Approval Extension—Machine Evaluation [1] | 44 | | 100 |
| Approval Extension—Machine Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 14 Approval Extension—Instruments (testing included) | 40 | | 100 |
| 14 Approval Extension—Shearer Evaluation | 41 | | 100 |
| 15 Acceptance Evaluation [1] | 40 | | 100 |



FEE SCHEDULE EFFECTIVE January 1, 1991 (BASED ON FY 1990 DATA)—Continued

| 30 CFR Part No. and part and action title | Hourly rate | Flat rate | Application fee |
|---|---|---|---|
| Acceptance Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| Cable/Splice Test | 43 | | |
| Cable Flame Test | 43 | | |
| Compressibility Test (asbestos substitutes) | 44 | | |
| 18 Certification Evaluation [1] | 37 | | 100 |
| Certification Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 17 Acceptance Extension | 40 | | 100 |
| 18 Certification Extension [1] | 37 | | 100 |
| Certification Extension Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 21 Field Modification | 47 | | 100 |
| 23 Field Approval | | 86 | |
| 26 Permit—Machines [2] | 42 | | 100 |
| Permit Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 28 Permit—Instruments (testing included) | 42 | | 100 |
| 30 Intrinsic Safety Determination (testing included) | 44 | | 100 |
| 31 Instrinsic Safety Determination Extension (testing included) | 44 | | 100 |
| 32 Simplified Certification [1] | 38 | | 100 |
| Simplified Certification Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 34 Simplified Certification Extension [1] | 37 | | 100 |
| Simplified Certification Extension Testing: | | | |
| Explosion Test | 34 | | |
| Surface/Temperature Test | 34 | | |
| Impact Test | 34 | | |
| Thermal Shock Test | 34 | | |
| Product Flame Test | 42 | | |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 41 Longwall Approval | 42 | | 100 |
| 42 Longwall Approval Extension | 42 | | 100 |
| 19 Electric Cap Lamps | | | |
| 12 Approval (testing included) | 40 | | 100 |
| 14 Approval Extension (testing included) | 40 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 20 Electric Mine Lamps | | | |
| 12 Approval (testing included) | 46 | | 100 |
| 14 Approval Extension (testing included) | 40 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 21 Flame Safety Lamps | | | |
| 12 Approval (testing included) | 40 | | 100 |
| 14 Approval Extension (testing included) | 40 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 22 Portable Methane Detectors | | | |
| 12 Approval (testing included) | 38 | | 100 |
| 14 Approval Extension (testing included) | 38 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 23 Telephones and Signaling Devices | | | |
| 12 Approval (testing included) | 41 | | 100 |
| 14 Approval Extension (testing included) | 41 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 24 Single-Shot Blasting Units | | | |
| 12 Approval (testing included) | 44 | | 100 |
| 14 Approval Extension (testing included) | 44 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |

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FEE SCHEDULE EFFECTIVE January 1, 1991 (BASED ON FY 1990 DATA)—Continued

| 30 CFR Part No. and part and action title | Hourly rate | Flat rate | Application fee |
|---|---|---|---|
| 25 Multiple-Shot Blasting Units | | | |
| 12 Approval (testing included) [4] | 44 | | 100 |
| 14 Approval Extension (testing included) [4] | 43 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) [4] | | 237 | |
| 26 Lighting Equipment for Illumination | | | |
| 12 Approval (testing included) | 43 | | 100 |
| 14 Approval Extension (testing included) | 43 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 27 Methane Monitoring Systems | | | |
| 16 Certification (testing included) | 43 | | 100 |
| 18 Certification Extension (testing included) | 38 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 28 D.C. Current Fuses | | | |
| 12 Approval (testing included) | 45 | | 100 |
| 14 Approval Extension (testing included) | 45 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 29 Portable Dust Analyzers and Methane Monitors | | | |
| 12 Approval (testing included) | 40 | | 100 |
| 14 Approval Extension (testing included) | 40 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 31 Diesel Mine Locomotives | | | |
| 12 Approval | 41 | | 100 |
| 14 Approval Extension | 41 | | 100 |
| 32 Mobile Diesel-Powered Equipment for Noncoal Mines | | | |
| 12 Approval | 41 | | 100 |
| 14 Approval Extension | 41 | | 100 |
| 16 Certification Evaluation [1] | 40 | | 100 |
| Certification Testing: | | | |
| Emissions Test | 42 | | |
| Pre/post Test Preparation | 42 | | |
| 18 Certification Extension Evaluation [1] | 40 | | 100 |
| Certification Extension Testing: | | | |
| Emissions Test | 42 | | |
| Pre/post Test Preparation | 42 | | |
| 33 Dust Collectors | | | |
| Approval Evaluation without Certification of Performance [1] | 43 | | 100 |
| Approval testing: | | | |
| Dust Collector Test | 49 | | |
| 14 Approval Extension Evaluation [1] | 43 | | 100 |
| Approval Extension Testing: | | | |
| Dust Collector Test | 49 | | |
| 16 Certification Evaluation [1] | 44 | | 100 |
| Certification Testing: | | | |
| Dust Collector Test | 49 | | |
| 18 Certification Extension [1] | 43 | | 100 |
| Certification Extension Testing: | | | |
| Dust Collector Test | 49 | | |
| 21 Field Modification | 43 | | 100 |
| 29 Dust Collector Approval with Certification of Performance | 44 | | 100 |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 35 Fire-Resistant Hydraulic Fluids | | | |
| 12 Approval (testing included) [1] | 41 | | 100 |
| 14 Approval Extension (testing included) | 39 | | 100 |
| 36 Mobile Diesel-Powered Equipment | | | |
| 12 Approval | 45 | | 100 |
| 14 Approval Extension | 45 | | 100 |
| 16 Certification—Engine Evaluation [1] | 40 | | 100 |
| Certification—Engine Testing: | | | |
| Emissions Test | 41 | | |
| Explosion Test | 43 | | |
| Surface Temperature/Safety Controls Test | 41 | | |
| Pre/post Test Preparation | 41 | | |
| 18 Certification Extension—Engine Evaluation [1] | 40 | | 100 |
| Certification Extension—Engine Testing: | | | |
| Emissions Test | 41 | | |
| Explosion Test | 43 | | |
| Surface Temperature/Safety Controls Test | 41 | | |
| Pre/post Test Preparation | 41 | | |
| 21 Field Modification | 43 | | 100 |
| 27 Certification—Diesel Components Evaluation [1] | 43 | | 100 |
| Certification—Diesel Components Testing: | | | |
| Emissions Test | 41 | | |
| Explosion Test | 43 | | |
| Water Consumption/Cooling Efficiency Test | 43 | | |
| Surface Temperature/Safety Controls Test | 41 | | |
| Pre/post Test Preparation | 41 | | |
| 29 Certification Extension—Diesel Components Evaluation [1] | 43 | | 100 |



FEE SCHEDULE EFFECTIVE January 1, 1991 (BASED ON FY 1990 DATA)—Continued

| 30 CFR Part No. and part and action title | Hourly rate | Flat rate | Application fee |
|---|---|---|---|
| Certification Extension—Diesel Components Testing: | | | |
| Emissions Test | 41 | | |
| Explosion Test | 43 | | |
| Water Consumption/Cooling Efficiency Test | 43 | | |
| Surface Temperature/Safety Controls Test | 41 | | |
| Pre/post Test Preparation | 41 | | |
| 40 Stamped Notification Acceptance Program (SNAP) | | 237 | |
| 74 Coal Mine Dust Personal Sampler Units | | | |
| 12 Approval | 40 | | 100 |
| Other A&CC Services | | | |
| 15 Acceptance—Overcurrent Relays (testing included) | 41 | | 100 |
| 15 Statement of Test and Evaluation on (ST&E) | | 36 | |
| 15 Acceptance—Ground Check Monitor/Ground Wire Devices (testing included) | 41 | | 100 |
| 17 Acceptance Extension—Overcurrent Relays | 41 | | 100 |
| 17 Acceptance Extension—Interim Criteria | 40 | | 100 |
| 17 Statement of Test and Evaluation (ST&E) Extension | | 13 | |
| 17 Acceptance Extension—Ground Check Monitor/Ground Wire Devices | 40 | | 100 |
| 20 Stamped Revision Acceptance (SRA) [2] | | 189 | |
| 24 Acceptance—Panic Bar | 40 | | 100 |
| 33 Generic Statement of Test and Evaluation (ST&E) | 41 | | 100 |
| 37 Acceptance—Interim Criteria [3] | 40 | | 100 |
| Interim Criteria Testing: | | | |
| Product Flame Test | 42 | | |
| 40 Stamped Notification Acceptance Program (SNAP)/Ground Check Monitor and Ground Wire Device | | 237 | |
| 40 Stamped Notification Acceptance Program (SNAP) ST&E | | 21 | |
| 41 Approval—Longwall Area Lighting | 43 | | 100 |
| 42 Approval Extension—Longwall Area Lighting | 41 | | 100 |
| 50 Mine Wide Monitoring System (MWMS) Evaluation | | 429 | |
| 52 Mine Wide Monitoring System (MWMS) Barrier Classification | | 123 | |
| 54 Mine Wide Monitoring System (MWMS) Sensor Classification | | 166 | |
| 00 Retesting for approval as a result of post-product audit [3] | | | |

[1] Note: Full approval fee consists of evaluation cost plus applicable test costs.
[2] Note: Fee covers SRA application accompanied by up to 5 documents.
[3] Note: Fee based upon the approval schedule in effect at the time of retest.
[4] Note: Applications for multiple-shot blasting postmarked after January 22, 1991, must be submitted under 30 CFR, part 7—third party testing. Applicable fees are listed under 30 CFR part 7 fees schedule.

Note: When testing and evaluation is required at locations other than MSHA's premises, the applicant shall reimburse MSHA for traveling, subsistence, and incidental expenses of MSHA's representation in accordance with standardized government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

[FR Doc. 90-29540 Filed 12-17-90; 8:45 am]
BILLING CODE 4510-43-M

VOL
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federal register

Tuesday
December 18, 1990

Part III

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 888**

**Section 8 Housing Assistance Payments Program; Notice of Revised Contract Rent Annual Adjustment Factors**

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 888**

**[Docket No. N-90-3169; FR-2922-N-01]**

## Section 8 Housing Assistance Payments Program; Contract Rent Annual Adjustment Factors

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of Revised Contract Rent Annual Adjustment Factors.

**SUMMARY:** The United States Housing Act of 1937 (1937 Act) requires that the assistance contract signed by owners participating in the Department's Section 8 Housing Payments Programs provide for annual or more frequent adjustment in the maximum monthly rentals for units covered by the contract to reflect changes based on fair market rents prevailing in a particular market area, or on a reasonable formula. This Notice announces revised Annual Adjustment Factors, which are based on a formula using rent and utility data from the Consumer Price Index and using the Bureau of the Census American Housing Surveys. The revised Factors are to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs.

**EFFECTIVE DATE:** December 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Stone, Existing Housing Division, Office of Elderly and Assisted Housing (202) 708–3887; James Tahash, Program Planning Division, Office of Multifamily Housing Management (202) 708–3944; for technical information regarding the development of the schedules for specific areas or the method used for calculating the Adjustment Factors, Michael R. Allard, Economic and Market Analysis Division, Office of Policy Development and Research (302) 708–0577. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) requires the Department to provide for adjustments in the maximum monthly rents for units covered by the Section 8 Housing Assistance Payments (HAP) Contracts. Adjustments must reflect changes in the fair market rents (FMRs) prevailing in particular market areas or be based on a reasonable formula.

This Notice establishes revised Annual Adjustment Factors (AAFs) based on a formula using rent and utility data from the Consumer Price Index (CPI) and using the Bureau of the Census American Housing Surveys (AHS). The revised AAFs are to be used to adjust Contract Rents under the Section 8 Housing Assistance Payments Programs. HUD regulations provide that the AAFs will be published annually in the Federal Register (24 CFR 888.202). The annual anniversary date for publication of the AAFs is November 8. These revised AAFs apply (subject to the limitations on applicability discussed below) to adjust Contract Rents on or after November 8, 1990.

### Applicability of AAFs to Various Section 8 Programs

In general, AAFs established by this Notice are used to adjust Contract Rents for Section 8 units. The following provides a general description of how AAFs apply under the several Section 8 Housing Assistance Payments Programs. The application of the AAFs should be determined by reference to the HAP Contract and to appropriate program regulations.

In certain cases, AAFs are not used to adjust Contract Rents. AAFs are not used for Section 8 Certificate Program units subject to 24 CFR 882.110(d), which applies to units in certain otherwise subsidized projects that are rented to Section 8 Certificate Program families. (The housing assistance payment for such a unit is equal to the difference between the subsidized rent and the rent payable by the eligible family. Adjustments to the subsidized rents are made in accordance with rules and procedures governing the particular subsidized housing program involved.) In addition, AAFs are not used for units places under HAP contract in recent years under the Section 202/Section 8 Program. Instead, those rents are based on a HUD-approved budget for the project.

Contract Rents for many projects receiving Section 8 subsidies under the Loan Management provisions of 24 CFR part 886, subpart A, and projects receiving Section 8 subsidies under the Property Disposition provisions of 24 CFR part 886, subpart C, are adjusted, at HUD's option, either by applying the AAFs or by adjusting rents in accordance with 24 CFR 207.19 (e)(2) and (e)(4).

The AAFs developed by the formula apply to rental units of all bedroom sizes in each rent interval. Under the Section 8 Moderate Rehabilitation Program, the public housing agency (PHA) should use the base rent, not the Contract Rent, to select the correct AAF to apply to the base rent.

Each AAF applies to specified geographical areas, as indicated in the Table at the end of this document. Program participants should refer to the Table that provides the list of states included in each of the four Census Regions and the metropolitan areas with separate local CPI surveys (defined by counties or New England towns) to make certain that they are using the correct factor. Units located in metropolitan areas with separate local CPI surveys must use the corresponding AAFs for that metropolitan area. Units that are located outside those metropolitan areas with separate local CPI surveys must use the AAFs for the respective Census Region within which the state is located.

Owners of Section 8 units (other than units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and FmHA Programs) who have HAP Contracts with anniversary dates falling on November 8, 1990 through [insert date of publication] may request that the AAFs be applied retroactively to the anniversary date of their HAP Contracts. Retroactivity is permitted to avoid any detriment to owners because of HUD's delay in the annual publication of the factors as required by 24 CFR 888.202. For units assisted under the Section 8 Certificate, Moderate Rehabilitation (both regular and SRO), Project-based Assistance Certificates, and the FmHA Programs, the factors are not applied retroactively; the annual adjustments, as of any anniversary date, are determined using the AAFs most recently published in the Federal Register (see 24 CFR 882.106(a)(1)(i) and 884.109(b)(2)).

### Calculation of Annual Adjustment Factors

AAFs are provided for the four Census Regions, for 73 metropolitan areas and for the State of Hawaii. The formula for calculating the AAFs for each area was developed as follows: (1) The changes in the shelter rent and utilities components were based on the most recent CPI annual average change data; (2) the shelter rent factor was calculated by eliminating the effect of heating costs that are included in the rent of some of the surveyed units; (3) the gross rent factors were calculated by weighing the rent and utility components of rent with the updated 1980 Census Regional and state



components; and (4) the AAFs were then adjusted to reflect rent change variations by rent range determined from 1987 national AHS data.

For the past four years, the Department has been using the Anchorage CPI to determine the AAFs for all areas in the State of Alaska. Based on recent information received from the Seattle HUD Office and from public comments to the proposed FY–1991 Fair Market Rents, the Department has concluded that the AAFs for the West Census Region are now more appropriate for the nonmetropolitan areas in Alaska. The Anchorage CPI will continue to be used for that metropolitan area. The Department has also decided to continue using the CPI survey for the Honolulu metropolitan area for all areas in Hawaii.

Reflecting a continued decrease in the local CPI surveys, AAFs that are less than 1.00 are being published for the Denver and Boulder, CO PMSAs. However, section 8(c)(2)(C) of the 1937 Act prohibits the reduction of contract rents for newly constructed and substantially or moderately rehabilitated projects (including projects assisted under section 8 as in effect prior to November 30, 1983), unless the project has been refinanced in a manner that reduces the periodic payments of the owner. Therefore, contract rents for units in such projects will not be reduced as a result of the reduction in the factors.

### Section 8 Certificate Program AAFs for Manufactured Home Spaces

This Notice contains a separate set of AAFs for adjusting Contract Rents for manufactured home spaces. There is one factor for each area, which represents the change in the median rent for the area. These factors were derived by following steps one and two in the formula described above.

### Other Matters

An environmental assessment is unnecessary, since revising Annual Adjustment Factors is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(*l*).

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that this Notice does not have potential significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under the Order. The Notice merely announces the adjustment factors to be used to adjust contract rents in the Section 8 Housing Assistance Payment Programs, as required by the United States Housing Act of 1937.

The Catalog of Federal Domestic Assistance program number for Lower Income Housing Assistance Programs (Section 8) is 14.156.

Accordingly, the Department publishes these Contract Rent Annual Adjustment Factors for the Section 8 Housing Assistance Payments Program as set forth in the following tables:

Dated: November 30, 1990.

Arthur J. Hill,

*Acting Assistant Secretary for Housing—Federal Housing Commissioner.*

BILLING CODE 4210-27-M

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 110290

NORTH EAST CENSUS REGION

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 290 | 1.084 | 1.088 |
| $ 290 TO 349 | 1.080 | 1.084 |
| $ 350 TO 409 | 1.076 | 1.071 |
| $ 410 TO 469 | 1.072 | 1.068 |
| $ 470 TO 529 | 1.068 | 1.058 |
| $ 530 TO 589 | 1.064 | 1.048 |
| $ 590 TO 699 | 1.056 | 1.037 |
| $ 700 TO 819 | 1.048 | 1.026 |
| $ 820 TO 939 | 1.040 | 1.026 |
| $ 940 PLUS | 1.031 | 1.026 |

WEST CENSUS REGION

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 300 | 1.052 | 1.056 |
| $ 300 TO 359 | 1.050 | 1.052 |
| $ 360 TO 419 | 1.047 | 1.049 |
| $ 420 TO 489 | 1.045 | 1.048 |
| $ 490 TO 549 | 1.042 | 1.037 |
| $ 550 TO 609 | 1.039 | 1.037 |
| $ 610 TO 729 | 1.034 | 1.031 |
| $ 730 TO 849 | 1.029 | 1.025 |
| $ 850 TO 969 | 1.024 | 1.020 |
| $ 970 PLUS | 1.019 | 1.019 |

PMSA ANAHEIM-SANTA ANA, CA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 410 | 1.069 | 1.071 |
| $ 410 TO 499 | 1.066 | 1.068 |
| $ 500 TO 579 | 1.062 | 1.063 |
| $ 580 TO 659 | 1.059 | 1.060 |
| $ 660 TO 749 | 1.056 | 1.048 |
| $ 750 TO 829 | 1.052 | 1.048 |
| $ 830 TO 989 | 1.046 | 1.041 |
| $ 990 TO 1159 | 1.039 | 1.033 |
| $1160 TO 1329 | 1.032 | 1.025 |
| $1330 PLUS | 1.026 | 1.025 |

MSA ATLANTA, GA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 270 | 1.028 | 1.025 |
| $ 270 TO 329 | 1.026 | 1.023 |
| $ 330 TO 379 | 1.025 | 1.020 |
| $ 380 TO 429 | 1.024 | 1.020 |
| $ 430 TO 489 | 1.022 | 1.015 |
| $ 490 TO 539 | 1.021 | 1.012 |
| $ 540 TO 649 | 1.018 | 1.008 |
| $ 650 TO 759 | 1.016 | 1.004 |
| $ 760 TO 869 | 1.013 | 1.004 |
| $ 870 PLUS | 1.010 | 1.004 |

MIDWEST CENSUS REGION

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.049 | 1.056 |
| $ 220 TO 269 | 1.047 | 1.049 |
| $ 270 TO 309 | 1.044 | 1.045 |
| $ 310 TO 359 | 1.042 | 1.033 |
| $ 360 TO 399 | 1.040 | 1.033 |
| $ 400 TO 449 | 1.037 | 1.028 |
| $ 450 TO 529 | 1.032 | 1.022 |
| $ 530 TO 619 | 1.028 | 1.016 |
| $ 620 TO 709 | 1.023 | 1.015 |
| $ 710 PLUS | 1.018 | 1.015 |

STATE HAWAII

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 330 | 1.110 | 1.113 |
| $ 330 TO 389 | 1.105 | 1.108 |
| $ 390 TO 459 | 1.100 | 1.101 |
| $ 460 TO 519 | 1.094 | 1.096 |
| $ 520 TO 589 | 1.089 | 1.088 |
| $ 590 TO 649 | 1.084 | 1.077 |
| $ 650 TO 779 | 1.073 | 1.066 |
| $ 780 TO 909 | 1.062 | 1.053 |
| $ 910 TO 1039 | 1.052 | 1.041 |
| $1040 PLUS | 1.041 | 1.041 |

MSA ANCHORAGE, AK

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 270 | 1.002 | 1.000 |
| $ 270 TO 329 | 1.001 | 1.000 |
| $ 330 TO 379 | 1.001 | 1.000 |
| $ 380 TO 439 | 1.001 | 1.000 |
| $ 440 TO 489 | 1.001 | 1.000 |
| $ 490 TO 549 | 1.001 | 1.000 |
| $ 550 TO 659 | 1.001 | 1.000 |
| $ 660 TO 769 | 1.001 | 1.000 |
| $ 770 TO 879 | 1.001 | 1.000 |
| $ 880 PLUS | 1.001 | 1.000 |

PMSA AURORA-ELGIN, IL

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 310 | 1.080 | 1.075 |
| $ 310 TO 369 | 1.076 | 1.071 |
| $ 370 TO 429 | 1.072 | 1.060 |
| $ 430 TO 499 | 1.068 | 1.049 |
| $ 500 TO 559 | 1.064 | 1.038 |
| $ 560 TO 619 | 1.060 | 1.038 |
| $ 620 TO 739 | 1.053 | 1.026 |
| $ 740 TO 869 | 1.045 | 1.016 |
| $ 870 TO 989 | 1.037 | 1.016 |
| $ 990 PLUS | 1.030 | 1.016 |

SOUTH CENSUS REGION

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 210 | 1.041 | 1.043 |
| $ 210 TO 259 | 1.039 | 1.038 |
| $ 260 TO 299 | 1.037 | 1.036 |
| $ 300 TO 339 | 1.035 | 1.031 |
| $ 340 TO 389 | 1.033 | 1.027 |
| $ 390 TO 429 | 1.031 | 1.020 |
| $ 430 TO 509 | 1.027 | 1.017 |
| $ 510 TO 599 | 1.023 | 1.011 |
| $ 600 TO 679 | 1.019 | 1.011 |
| $ 680 PLUS | 1.015 | 1.010 |

PMSA AKRON, OH

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 210 | 1.050 | 1.043 |
| $ 210 TO 259 | 1.048 | 1.038 |
| $ 260 TO 299 | 1.046 | 1.032 |
| $ 300 TO 339 | 1.043 | 1.025 |
| $ 340 TO 389 | 1.041 | 1.019 |
| $ 390 TO 429 | 1.038 | 1.017 |
| $ 430 TO 519 | 1.033 | 1.011 |
| $ 520 TO 599 | 1.029 | 1.004 |
| $ 600 TO 689 | 1.024 | 1.003 |
| $ 690 PLUS | 1.019 | 1.003 |

PMSA ANN ARBOR, MI

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 290 | 1.054 | 1.050 |
| $ 290 TO 349 | 1.051 | 1.047 |
| $ 350 TO 399 | 1.048 | 1.040 |
| $ 400 TO 459 | 1.046 | 1.030 |
| $ 460 TO 519 | 1.043 | 1.030 |
| $ 520 TO 579 | 1.041 | 1.024 |
| $ 580 TO 689 | 1.035 | 1.017 |
| $ 690 TO 809 | 1.030 | 1.011 |
| $ 810 TO 919 | 1.025 | 1.009 |
| $ 920 PLUS | 1.020 | 1.009 |

MSA BALTIMORE, MD

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 260 | 1.060 | 1.065 |
| $ 260 TO 319 | 1.057 | 1.062 |
| $ 320 TO 369 | 1.054 | 1.052 |
| $ 370 TO 419 | 1.051 | 1.051 |
| $ 420 TO 479 | 1.048 | 1.044 |
| $ 480 TO 529 | 1.045 | 1.042 |
| $ 530 TO 629 | 1.040 | 1.036 |
| $ 630 TO 739 | 1.034 | 1.028 |
| $ 740 TO 849 | 1.028 | 1.020 |
| $ 850 PLUS | 1.022 | 1.020 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 110290

PMSA BEAVER COUNTY, PA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 190 | 1.055 | 1.047 |
| $ 190 TO 229 | 1.052 | 1.033 |
| $ 230 TO 259 | 1.050 | 1.029 |
| $ 260 TO 299 | 1.047 | 1.021 |
| $ 300 TO 339 | 1.044 | 1.018 |
| $ 340 TO 379 | 1.042 | 1.016 |
| $ 380 TO 449 | 1.037 | 1.007 |
| $ 450 TO 529 | 1.031 | 1.000 |
| $ 530 TO 599 | 1.026 | 1.000 |
| $ 600 PLUS | 1.021 | 1.000 |

PMSA BOULDER-LONGMONT, CO

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 190 | .996 | .989 |
| $ 190 TO 229 | .996 | .989 |
| $ 230 TO 259 | .996 | .989 |
| $ 260 TO 299 | 996 | .989 |
| $ 300 TO 339 | .996 | .989 |
| $ 340 TO 379 | .996 | .989 |
| $ 380 TO 449 | .996 | .989 |
| $ 450 TO 529 | .996 | .989 |
| $ 530 TO 599 | .996 | .989 |
| $ 600 PLUS | .996 | .989 |

PMSA BROCKTON, MA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 330 | 1.113 | 1.115 |
| $ 330 TO 399 | 1.108 | 1.107 |
| $ 400 TO 469 | 1.102 | 1.094 |
| $ 470 TO 529 | 1.097 | 1.088 |
| $ 530 TO 599 | 1.091 | 1.074 |
| $ 600 TO 669 | 1.086 | 1.074 |
| $ 670 TO 799 | 1.075 | 1.060 |
| $ 800 TO 939 | 1.064 | 1.033 |
| $ 940 TO 1069 | 1.053 | 1.033 |
| $1070 PLUS | 1.042 | 1.033 |

PMSA CINCINNATI, OH KY-IN

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.057 | 1.057 |
| $ 220 TO 269 | 1.054 | 1.057 |
| $ 270 TO 309 | 1.051 | 1.052 |
| $ 310 TO 349 | 1.048 | 1.045 |
| $ 350 TO 399 | 1.046 | 1.043 |
| $ 400 TO 439 | 1.043 | 1.036 |
| $ 440 TO 529 | 1.038 | 1.027 |
| $ 530 TO 619 | 1.032 | 1.021 |
| $ 620 TO 709 | 1.027 | 1.021 |
| $ 710 PLUS | 1.021 | 1.021 |

PMSA BERGEN-PASSAIC, NJ

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 400 | 1.084 | 1.087 |
| $ 400 TO 489 | 1.080 | 1.083 |
| $ 490 TO 569 | 1.076 | 1.077 |
| $ 570 TO 649 | 1.072 | 1.067 |
| $ 650 TO 729 | 1.068 | 1.057 |
| $ 730 TO 809 | 1.064 | 1.057 |
| $ 810 TO 989 | 1.056 | 1.047 |
| $ 970 TO 1129 | 1.048 | 1.037 |
| $1130 TO 1299 | 1.040 | 1.028 |
| $1300 PLUS | 1.031 | 1.028 |

PMSA BRAZORIA, TX

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.050 | 1.050 |
| $ 220 TO 259 | 1.048 | 1.046 |
| $ 260 TO 299 | 1.046 | 1.043 |
| $ 300 TO 349 | 1.043 | 1.034 |
| $ 350 TO 389 | 1.041 | 1.034 |
| $ 390 TO 429 | 1.038 | 1.027 |
| $ 430 TO 519 | 1.033 | 1.019 |
| $ 520 TO 609 | 1.029 | 1.012 |
| $ 610 TO 689 | 1.024 | 1.012 |
| $ 690 PLUS | 1.019 | 1.012 |

PMSA BUFFALO, NY

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.063 | 1.072 |
| $ 220 TO 269 | 1.060 | 1.065 |
| $ 270 TO 309 | 1.057 | 1.062 |
| $ 310 TO 359 | 1.054 | 1.057 |
| $ 360 TO 399 | 1.051 | 1.047 |
| $ 400 TO 449 | 1.048 | 1.040 |
| $ 450 TO 529 | 1.042 | 1.033 |
| $ 530 TO 619 | 1.036 | 1.024 |
| $ 620 TO 709 | 1.029 | 1.024 |
| $ 710 PLUS | 1.023 | 1.024 |

PMSA CLEVELAND, OH

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 200 | 1.050 | 1.039 |
| $ 200 TO 239 | 1.048 | 1.036 |
| $ 240 TO 289 | 1.046 | 1.030 |
| $ 290 TO 329 | 1.043 | 1.023 |
| $ 330 TO 369 | 1.041 | 1.017 |
| $ 370 TO 409 | 1.038 | 1.017 |
| $ 410 TO 489 | 1.033 | 1.011 |
| $ 490 TO 569 | 1.029 | 1.004 |
| $ 570 TO 649 | 1.024 | 1.003 |
| $ 650 PLUS | 1.019 | 1.003 |

PMSA BOSTON, MA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 410 | 1.113 | 1.114 |
| $ 410 TO 489 | 1.108 | 1.109 |
| $ 490 TO 569 | 1.102 | 1.094 |
| $ 570 TO 649 | 1.097 | 1.089 |
| $ 650 TO 729 | 1.091 | 1.074 |
| $ 730 TO 809 | 1.086 | 1.074 |
| $ 810 TO 979 | 1.075 | 1.060 |
| $ 980 TO 1139 | 1.064 | 1.034 |
| $1140 TO 1299 | 1.053 | 1.034 |
| $1300 PLUS | 1.042 | 1.033 |

PMSA BRIDGEPORT-MILFORD, CT

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 320 | 1.084 | 1.090 |
| $ 320 TO 379 | 1.080 | 1.080 |
| $ 380 TO 449 | 1.076 | 1.075 |
| $ 450 TO 509 | 1.072 | 1.069 |
| $ 510 TO 569 | 1.068 | 1.067 |
| $ 570 TO 639 | 1.064 | 1.048 |
| $ 640 TO 769 | 1.056 | 1.037 |
| $ 770 TO 889 | 1.048 | 1.027 |
| $ 890 TO 1019 | 1.040 | 1.026 |
| $1020 PLUS | 1.031 | 1.026 |

PMSA CHICAGO, IL

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 300 | 1.080 | 1.081 |
| $ 300 TO 359 | 1.076 | 1.070 |
| $ 360 TO 419 | 1.072 | 1.064 |
| $ 420 TO 479 | 1.068 | 1.060 |
| $ 480 TO 549 | 1.064 | 1.050 |
| $ 550 TO 609 | 1.060 | 1.040 |
| $ 610 TO 729 | 1.053 | 1.030 |
| $ 730 TO 849 | 1.045 | 1.020 |
| $ 850 TO 969 | 1.037 | 1.020 |
| $ 970 PLUS | 1.030 | 1.020 |

PMSA DALLAS, TX

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 260 | 1.008 | 1.000 |
| $ 260 TO 319 | 1.007 | 1.000 |
| $ 320 TO 369 | 1.007 | 1.000 |
| $ 370 TO 419 | 1.007 | 1.000 |
| $ 420 TO 479 | 1.006 | 1.000 |
| $ 480 TO 529 | 1.006 | 1.000 |
| $ 530 TO 629 | 1.005 | 1.000 |
| $ 630 TO 739 | 1.004 | 1.000 |
| $ 740 TO 849 | 1.004 | 1.000 |
| $ 850 PLUS | 1.003 | 1.000 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 110290

PMSA DANBURY, CT

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 350 | 1.084 | 1.084 |
| $ 350 TO 409 | 1.080 | 1.079 |
| $ 410 TO 479 | 1.076 | 1.074 |
| $ 480 TO 549 | 1.072 | 1.068 |
| $ 550 TO 619 | 1.068 | 1.058 |
| $ 620 TO 689 | 1.064 | 1.047 |
| $ 690 TO 829 | 1.056 | 1.037 |
| $ 830 TO 969 | 1.048 | 1.027 |
| $ 970 TO 1099 | 1.040 | 1.027 |
| $1100 PLUS | 1.031 | 1.026 |

PMSA DENVER, CO

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 200 | .996 | .989 |
| $ 200 TO 239 | .996 | .989 |
| $ 240 TO 289 | .996 | .989 |
| $ 290 TO 329 | .996 | .989 |
| $ 330 TO 369 | .996 | .989 |
| $ 370 TO 409 | .996 | .989 |
| $ 410 TO 489 | .996 | .989 |
| $ 490 TO 569 | .996 | .989 |
| $ 570 TO 649 | .996 | .989 |
| $ 650 PLUS | .996 | .989 |

PMSA DETROIT, MI

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 240 | 1.054 | 1.047 |
| $ 240 TO 289 | 1.051 | 1.047 |
| $ 290 TO 339 | 1.048 | 1.041 |
| $ 340 TO 389 | 1.046 | 1.033 |
| $ 390 TO 439 | 1.043 | 1.024 |
| $ 440 TO 479 | 1.041 | 1.024 |
| $ 480 TO 579 | 1.035 | 1.017 |
| $ 580 TO 679 | 1.030 | 1.010 |
| $ 680 TO 779 | 1.025 | 1.010 |
| $ 780 PLUS | 1.020 | 1.010 |

PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 300 | 1.029 | 1.041 |
| $ 300 TO 359 | 1.028 | 1.039 |
| $ 360 TO 419 | 1.026 | 1.036 |
| $ 420 TO 479 | 1.025 | 1.036 |
| $ 480 TO 539 | 1.023 | 1.031 |
| $ 540 TO 589 | 1.022 | 1.030 |
| $ 590 TO 709 | 1.019 | 1.028 |
| $ 710 TO 829 | 1.016 | 1.021 |
| $ 830 TO 949 | 1.014 | 1.021 |
| $ 950 PLUS | 1.011 | 1.020 |

PMSA FORT WORTH-ARLINGTON, TX

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 230 | 1.008 | 1.000 |
| $ 230 TO 279 | 1.007 | 1.000 |
| $ 280 TO 329 | 1.007 | 1.000 |
| $ 330 TO 369 | 1.007 | 1.000 |
| $ 370 TO 419 | 1.006 | 1.000 |
| $ 420 TO 469 | 1.006 | 1.000 |
| $ 470 TO 559 | 1.005 | 1.000 |
| $ 560 TO 649 | 1.004 | 1.000 |
| $ 650 TO 739 | 1.004 | 1.000 |
| $ 740 PLUS | 1.003 | 1.000 |

PMSA GALVESTON-TEXAS CITY, TX

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 200 | 1.050 | 1.050 |
| $ 200 TO 239 | 1.048 | 1.050 |
| $ 240 TO 279 | 1.046 | 1.038 |
| $ 280 TO 319 | 1.043 | 1.033 |
| $ 320 TO 359 | 1.041 | 1.032 |
| $ 360 TO 409 | 1.038 | 1.029 |
| $ 410 TO 489 | 1.033 | 1.020 |
| $ 490 TO 569 | 1.029 | 1.013 |
| $ 570 TO 649 | 1.024 | 1.013 |
| $ 650 PLUS | 1.019 | 1.013 |

PMSA GARY-HAMMOND, IN

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 250 | 1.080 | 1.076 |
| $ 250 TO 299 | 1.076 | 1.073 |
| $ 300 TO 339 | 1.072 | 1.063 |
| $ 340 TO 389 | 1.068 | 1.049 |
| $ 390 TO 439 | 1.064 | 1.048 |
| $ 440 TO 489 | 1.060 | 1.039 |
| $ 490 TO 589 | 1.053 | 1.028 |
| $ 590 TO 689 | 1.045 | 1.016 |
| $ 690 TO 789 | 1.037 | 1.016 |
| $ 790 PLUS | 1.030 | 1.016 |

PMSA HAMILTON-MIDDLETOWN, OH

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 230 | 1.057 | 1.062 |
| $ 230 TO 269 | 1.054 | 1.056 |
| $ 270 TO 319 | 1.051 | 1.054 |
| $ 320 TO 359 | 1.048 | 1.044 |
| $ 360 TO 409 | 1.046 | 1.042 |
| $ 410 TO 449 | 1.043 | 1.037 |
| $ 450 TO 539 | 1.038 | 1.028 |
| $ 540 TO 629 | 1.032 | 1.022 |
| $ 630 TO 719 | 1.027 | 1.021 |
| $ 720 PLUS | 1.021 | 1.021 |

PMSA HOUSTON, TX

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 200 | 1.050 | 1.050 |
| $ 200 TO 239 | 1.048 | 1.050 |
| $ 240 TO 279 | 1.046 | 1.038 |
| $ 280 TO 319 | 1.043 | 1.033 |
| $ 320 TO 359 | 1.041 | 1.032 |
| $ 360 TO 399 | 1.038 | 1.029 |
| $ 400 TO 479 | 1.033 | 1.020 |
| $ 480 TO 559 | 1.029 | 1.013 |
| $ 560 TO 639 | 1.024 | 1.013 |
| $ 640 PLUS | 1.019 | 1.013 |

PMSA JERSEY CITY, NJ

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 280 | 1.084 | 1.088 |
| $ 280 TO 339 | 1.080 | 1.084 |
| $ 340 TO 399 | 1.076 | 1.076 |
| $ 400 TO 459 | 1.072 | 1.067 |
| $ 460 TO 509 | 1.068 | 1.058 |
| $ 510 TO 569 | 1.064 | 1.057 |
| $ 570 TO 679 | 1.056 | 1.046 |
| $ 680 TO 799 | 1.048 | 1.027 |
| $ 800 TO 909 | 1.040 | 1.027 |
| $ 910 PLUS | 1.031 | 1.027 |

PMSA JOLIET, IL

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 310 | 1.080 | 1.080 |
| $ 310 TO 379 | 1.076 | 1.070 |
| $ 380 TO 439 | 1.072 | 1.066 |
| $ 440 TO 499 | 1.068 | 1.060 |
| $ 500 TO 559 | 1.064 | 1.051 |
| $ 560 TO 629 | 1.060 | 1.040 |
| $ 630 TO 749 | 1.053 | 1.030 |
| $ 750 TO 879 | 1.045 | 1.020 |
| $ 880 TO 999 | 1.037 | 1.020 |
| $1000 PLUS | 1.030 | 1.020 |

MSA KANSAS CITY, MO-KS

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.014 | 1.010 |
| $ 220 TO 269 | 1.013 | 1.008 |
| $ 270 TO 309 | 1.012 | 1.007 |
| $ 310 TO 349 | 1.012 | 1.006 |
| $ 350 TO 399 | 1.011 | 1.005 |
| $ 400 TO 439 | 1.010 | 1.002 |
| $ 440 TO 529 | 1.009 | 1.002 |
| $ 530 TO 619 | 1.008 | 1.000 |
| $ 620 TO 709 | 1.006 | 1.000 |
| $ 710 PLUS | 1.005 | 1.000 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 110290

PMSA KENOSHA, WI

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 240 | 1 080 | 1.079 |
| $ 240 TO 289 | 1.076 | 1.072 |
| $ 290 TO 339 | 1.072 | 1.063 |
| $ 340 TO 389 | 1.068 | 1.049 |
| $ 390 TO 429 | 1.064 | 1.049 |
| $ 430 TO 479 | 1.060 | 1.040 |
| $ 480 TO 579 | 1.053 | 1.030 |
| $ 580 TO 669 | 1.045 | 1.019 |
| $ 670 TO 769 | 1.037 | 1.019 |
| $ 770 PLUS | 1.030 | 1.019 |

PMSA LORAIN-ELYRIA, OH

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 210 | 1.050 | 1.042 |
| $ 210 TO 249 | 1.048 | 1.039 |
| $ 250 TO 299 | 1.046 | 1.033 |
| $ 300 TO 339 | 1.043 | 1.025 |
| $ 340 TO 379 | 1.041 | 1.017 |
| $ 380 TO 419 | 1.038 | 1.017 |
| $ 420 TO 509 | 1.033 | 1.009 |
| $ 510 TO 589 | 1.029 | 1.002 |
| $ 590 TO 679 | 1.024 | 1.002 |
| $ 680 PLUS | 1 019 | 1.002 |

PMSA MIAMI-HIALEAH, FL

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 280 | 1.029 | 1.040 |
| $ 280 TO 339 | 1.028 | 1.040 |
| $ 340 TO 399 | 1.026 | 1.035 |
| $ 400 TO 459 | 1.025 | 1.033 |
| $ 460 TO 509 | 1.023 | 1.031 |
| $ 510 TO 569 | 1.022 | 1.030 |
| $ 570 TO 679 | 1.019 | 1.027 |
| $ 680 TO 799 | 1 016 | 1.022 |
| $ 800 TO 909 | 1.014 | 1.020 |
| $ 910 PLUS | 1.011 | 1.020 |

MSA MINNEAPOLIS-ST PAUL, MN-WI

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 270 | 1.031 | 1.037 |
| $ 270 TO 329 | 1.029 | 1.037 |
| $ 330 TO 379 | 1.028 | 1.034 |
| $ 380 TO 429 | 1.026 | 1.032 |
| $ 430 TO 489 | 1.025 | 1.026 |
| $ 490 TO 539 | 1.023 | 1.023 |
| $ 540 TO 649 | 1.020 | 1.023 |
| $ 650 TO 759 | 1.017 | 1.016 |
| $ 760 TO 869 | 1.014 | 1.015 |
| $ 870 PLUS | 1.011 | 1.015 |

PMSA LAKE COUNTY, IL

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 320 | 1.080 | 1.079 |
| $ 320 TO 379 | 1.076 | 1.069 |
| $ 380 TO 449 | 1.072 | 1.065 |
| $ 450 TO 509 | 1.068 | 1.060 |
| $ 510 TO 569 | 1.064 | 1.052 |
| $ 570 TO 639 | 1.060 | 1.040 |
| $ 640 TO 759 | 1.053 | 1.031 |
| $ 760 TO 889 | 1.045 | 1.019 |
| $ 890 TO 1019 | 1.037 | 1.019 |
| $1020 PLUS | 1.030 | 1.019 |

PMSA LOS ANGELES-LONG BEACH, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 360 | 1.069 | 1.074 |
| $ 360 TO 429 | 1.066 | 1.068 |
| $ 430 TO 499 | 1.062 | 1.065 |
| $ 500 TO 569 | 1.059 | 1.060 |
| $ 570 TO 649 | 1.056 | 1.049 |
| $ 650 TO 719 | 1.052 | 1.048 |
| $ 720 TO 859 | 1.046 | 1.041 |
| $ 860 TO 999 | 1.039 | 1.032 |
| $1000 TO 1149 | 1.032 | 1.024 |
| $1150 PLUS | 1.026 | 1.024 |

PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 370 | 1.084 | 1.088 |
| $ 370 TO 449 | 1.080 | 1.083 |
| $ 450 TO 519 | 1.076 | 1.078 |
| $ 520 TO 599 | 1.072 | 1.068 |
| $ 600 TO 669 | 1.068 | 1.057 |
| $ 670 TO 739 | 1.064 | 1.057 |
| $ 740 TO 889 | 1.056 | 1.047 |
| $ 890 TO 1039 | 1.048 | 1.027 |
| $1040 TO 1189 | 1.040 | 1.027 |
| $1190 PLUS | 1.031 | 1.027 |

PMSA MONMOUTH-OCEAN, NJ

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 330 | 1.084 | 1.088 |
| $ 330 TO 399 | 1.080 | 1.083 |
| $ 400 TO 469 | 1.076 | 1.078 |
| $ 470 TO 539 | 1.072 | 1.067 |
| $ 540 TO 599 | 1.068 | 1.058 |
| $ 600 TO 669 | 1.064 | 1.057 |
| $ 670 TO 799 | 1.056 | 1.048 |
| $ 800 TO 939 | 1.048 | 1.028 |
| $ 940 TO 1069 | 1.040 | 1.027 |
| $1070 PLUS | 1.031 | 1.027 |

PMSA LAWRENCE-HAVERHILL, MA-NH

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 340 | 1.113 | 1.118 |
| $ 340 TO 409 | 1.108 | 1.107 |
| $ 410 TO 479 | 1.102 | 1.094 |
| $ 480 TO 549 | 1.097 | 1.087 |
| $ 550 TO 619 | 1.091 | 1.074 |
| $ 620 TO 689 | 1.086 | 1.074 |
| $ 690 TO 829 | 1.075 | 1.061 |
| $ 830 TO 959 | 1.064 | 1.034 |
| $ 960 TO 1099 | 1.053 | 1.033 |
| $1100 PLUS | 1.042 | 1.033 |

PMSA LOWELL, MA-NH

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 320 | 1.113 | 1.116 |
| $ 320 TO 389 | 1.108 | 1.110 |
| $ 390 TO 449 | 1.102 | 1.093 |
| $ 450 TO 519 | 1.097 | 1.089 |
| $ 520 TO 579 | 1.091 | 1.075 |
| $ 580 TO 639 | 1.086 | 1.075 |
| $ 640 TO 769 | 1.075 | 1.061 |
| $ 770 TO 899 | 1.064 | 1.034 |
| $ 900 TO 1029 | 1.053 | 1.034 |
| $1030 PLUS | 1.042 | 1.033 |

PMSA MILWAUKEE, WI

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 240 | 1.040 | 1.050 |
| $ 240 TO 279 | 1.038 | 1.046 |
| $ 280 TO 329 | 1.036 | 1.046 |
| $ 330 TO 379 | 1.034 | 1.037 |
| $ 380 TO 419 | 1.032 | 1.037 |
| $ 420 TO 469 | 1.030 | 1.031 |
| $ 470 TO 569 | 1.026 | 1.027 |
| $ 570 TO 659 | 1.023 | 1.021 |
| $ 660 TO 749 | 1.019 | 1.021 |
| $ 750 PLUS | 1.015 | 1.021 |

PMSA NASHUA, NH

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 340 | 1.113 | 1.115 |
| $ 340 TO 409 | 1.108 | 1.104 |
| $ 410 TO 469 | 1.102 | 1.093 |
| $ 470 TO 539 | 1.097 | 1.087 |
| $ 540 TO 609 | 1.091 | 1.075 |
| $ 610 TO 679 | 1.086 | 1.060 |
| $ 680 TO 809 | 1.075 | 1.060 |
| $ 810 TO 949 | 1.064 | 1.033 |
| $ 950 TO 1089 | 1.053 | 1.032 |
| $1090 PLUS | 1.042 | 1.032 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 110290

PMSA NASSAU-SUFFOLK, NY

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 400 | 1.084 | 1.088 |
| $ 400 TO 469 | 1.080 | 1.083 |
| $ 470 TO 549 | 1.076 | 1.076 |
| $ 550 TO 629 | 1.072 | 1.066 |
| $ 630 TO 709 | 1.068 | 1.057 |
| $ 710 TO 789 | 1.064 | 1.057 |
| $ 790 TO 949 | 1.056 | 1.047 |
| $ 950 TO 1109 | 1.048 | 1.038 |
| $1110 TO 1269 | 1.040 | 1.028 |
| $1270 PLUS | 1.031 | 1.028 |

PMSA NIAGARA FALLS, NY

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 210 | 1.063 | 1.070 |
| $ 210 TO 259 | 1.060 | 1.064 |
| $ 260 TO 299 | 1.057 | 1.061 |
| $ 300 TO 339 | 1.054 | 1.056 |
| $ 340 TO 389 | 1.051 | 1.047 |
| $ 390 TO 429 | 1.048 | 1.039 |
| $ 430 TO 509 | 1.042 | 1.032 |
| $ 510 TO 599 | 1.036 | 1.023 |
| $ 600 TO 689 | 1.029 | 1.023 |
| $ 690 PLUS | 1.023 | 1.023 |

PMSA ORANGE COUNTY, NY

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 310 | 1.084 | 1.089 |
| $ 310 TO 369 | 1.080 | 1.082 |
| $ 370 TO 429 | 1.076 | 1.075 |
| $ 430 TO 489 | 1.072 | 1.067 |
| $ 490 TO 549 | 1.068 | 1.058 |
| $ 550 TO 609 | 1.064 | 1.057 |
| $ 610 TO 729 | 1.056 | 1.046 |
| $ 730 TO 859 | 1.048 | 1.038 |
| $ 860 TO 979 | 1.040 | 1.028 |
| $ 980 PLUS | 1.031 | 1.028 |

PMSA PITTSBURGH, PA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 200 | 1.055 | 1.039 |
| $ 200 TO 239 | 1.052 | 1.036 |
| $ 240 TO 279 | 1.050 | 1.031 |
| $ 280 TO 319 | 1.047 | 1.023 |
| $ 320 TO 359 | 1.044 | 1.018 |
| $ 360 TO 399 | 1.042 | 1.013 |
| $ 400 TO 479 | 1.037 | 1.000 |
| $ 480 TO 549 | 1.031 | 1.000 |
| $ 550 TO 629 | 1.026 | 1.000 |
| $ 630 PLUS | 1.021 | 1.000 |

PMSA NEW YORK, NY

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 300 | 1.084 | 1.089 |
| $ 300 TO 359 | 1.080 | 1.082 |
| $ 360 TO 419 | 1.076 | 1.077 |
| $ 420 TO 479 | 1.072 | 1.067 |
| $ 480 TO 539 | 1.068 | 1.057 |
| $ 540 TO 589 | 1.064 | 1.057 |
| $ 590 TO 709 | 1.056 | 1.048 |
| $ 710 TO 829 | 1.048 | 1.038 |
| $ 830 TO 949 | 1.040 | 1.027 |
| $ 950 PLUS | 1.031 | 1.027 |

PMSA NORWALK, CT

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 370 | 1.084 | 1.090 |
| $ 370 TO 439 | 1.080 | 1.079 |
| $ 440 TO 509 | 1.076 | 1.074 |
| $ 510 TO 589 | 1.072 | 1.069 |
| $ 590 TO 659 | 1.068 | 1.059 |
| $ 660 TO 729 | 1.064 | 1.047 |
| $ 730 TO 879 | 1.056 | 1.037 |
| $ 880 TO 1029 | 1.048 | 1.026 |
| $1030 TO 1169 | 1.040 | 1.026 |
| $1170 PLUS | 1.031 | 1.026 |

PMSA OXNARD-VENTURA, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 350 | 1.069 | 1.073 |
| $ 350 TO 419 | 1.066 | 1.068 |
| $ 420 TO 499 | 1.062 | 1.065 |
| $ 500 TO 569 | 1.059 | 1.060 |
| $ 570 TO 639 | 1.056 | 1.048 |
| $ 640 TO 709 | 1.052 | 1.048 |
| $ 710 TO 849 | 1.046 | 1.041 |
| $ 850 TO 989 | 1.039 | 1.033 |
| $ 990 TO 1129 | 1.032 | 1.025 |
| $1130 PLUS | 1.026 | 1.024 |

PMSA PORTLAND, OR

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 240 | 1.058 | 1.065 |
| $ 240 TO 289 | 1.055 | 1.060 |
| $ 290 TO 329 | 1.053 | 1.058 |
| $ 330 TO 379 | 1.050 | 1.054 |
| $ 380 TO 429 | 1.047 | 1.044 |
| $ 430 TO 479 | 1.044 | 1.044 |
| $ 480 TO 569 | 1.039 | 1.038 |
| $ 570 TO 669 | 1.033 | 1.032 |
| $ 670 TO 759 | 1.027 | 1.025 |
| $ 760 PLUS | 1.022 | 1.025 |

PMSA NEWARK, NJ

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 330 | 1.084 | 1.088 |
| $ 330 TO 399 | 1.080 | 1.082 |
| $ 400 TO 469 | 1.076 | 1.074 |
| $ 470 TO 529 | 1.072 | 1.068 |
| $ 530 TO 599 | 1.068 | 1.057 |
| $ 600 TO 669 | 1.064 | 1.057 |
| $ 670 TO 799 | 1.056 | 1.048 |
| $ 800 TO 929 | 1.048 | 1.038 |
| $ 930 TO 1069 | 1.040 | 1.027 |
| $1070 PLUS | 1.031 | 1.027 |

PMSA OAKLAND, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 370 | 1.057 | 1.060 |
| $ 370 TO 439 | 1.054 | 1.054 |
| $ 440 TO 519 | 1.051 | 1.052 |
| $ 520 TO 589 | 1.048 | 1.047 |
| $ 590 TO 659 | 1.046 | 1.038 |
| $ 660 TO 739 | 1.043 | 1.038 |
| $ 740 TO 889 | 1.038 | 1.031 |
| $ 890 TO 1029 | 1.032 | 1.027 |
| $1030 TO 1179 | 1.027 | 1.020 |
| $1180 PLUS | 1.021 | 1.020 |

PMSA PHILADELPHIA, PA-NJ

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 280 | 1.080 | 1.078 |
| $ 280 TO 329 | 1.076 | 1.072 |
| $ 330 TO 389 | 1.072 | 1.067 |
| $ 390 TO 449 | 1.068 | 1.062 |
| $ 450 TO 499 | 1.064 | 1.062 |
| $ 500 TO 559 | 1.060 | 1.042 |
| $ 560 TO 669 | 1.053 | 1.031 |
| $ 670 TO 779 | 1.045 | 1.021 |
| $ 780 TO 889 | 1.037 | 1.021 |
| $ 890 PLUS | 1.030 | 1.021 |

PMSA RACINE, WI

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.040 | 1.051 |
| $ 220 TO 269 | 1.038 | 1.049 |
| $ 270 TO 309 | 1.036 | 1.045 |
| $ 310 TO 359 | 1.034 | 1.036 |
| $ 360 TO 399 | 1.032 | 1.036 |
| $ 400 TO 449 | 1.030 | 1.031 |
| $ 450 TO 539 | 1.026 | 1.026 |
| $ 540 TO 629 | 1.023 | 1.021 |
| $ 630 TO 709 | 1.019 | 1.021 |
| $ 710 PLUS | 1.015 | 1.021 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE
PREPARED ON 110290

PMSA RIVERSIDE-SAN BERNARDINO, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 290 | 1.069 | 1.073 |
| $ 290 TO 349 | 1.066 | 1.069 |
| $ 350 TO 409 | 1.062 | 1.063 |
| $ 410 TO 459 | 1.059 | 1.060 |
| $ 460 TO 519 | 1.056 | 1.049 |
| $ 520 TO 579 | 1.052 | 1.047 |
| $ 580 TO 689 | 1.046 | 1.041 |
| $ 690 TO 809 | 1.039 | 1.032 |
| $ 810 TO 929 | 1.032 | 1.024 |
| $ 930 PLUS | 1.026 | 1.024 |

MSA SAN DIEGO, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 330 | 1.043 | 1.054 |
| $ 330 TO 399 | 1.041 | 1.049 |
| $ 400 TO 469 | 1.039 | 1.048 |
| $ 470 TO 529 | 1.037 | 1.046 |
| $ 530 TO 599 | 1.035 | 1.042 |
| $ 600 TO 669 | 1.033 | 1.039 |
| $ 670 TO 799 | 1.028 | 1.033 |
| $ 800 TO 939 | 1.024 | 1.029 |
| $ 940 TO 1069 | 1.020 | 1.023 |
| $1070 PLUS | 1.016 | 1.023 |

PMSA SANTA CRUZ, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 400 | 1.057 | 1.061 |
| $ 400 TO 479 | 1.054 | 1.055 |
| $ 480 TO 549 | 1.051 | 1.052 |
| $ 550 TO 629 | 1.048 | 1.049 |
| $ 630 TO 709 | 1.046 | 1.039 |
| $ 710 TO 789 | 1.043 | 1.039 |
| $ 790 TO 949 | 1.038 | 1.033 |
| $ 950 TO 1109 | 1.032 | 1.026 |
| $1110 TO 1269 | 1.027 | 1.019 |
| $1270 PLUS | 1.021 | 1.019 |

PMSA STAMFORD, CT

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 440 | 1.084 | 1.089 |
| $ 440 TO 529 | 1.080 | 1.080 |
| $ 530 TO 619 | 1.076 | 1.073 |
| $ 620 TO 709 | 1.072 | 1.068 |
| $ 710 TO 799 | 1.068 | 1.058 |
| $ 800 TO 879 | 1.064 | 1.046 |
| $ 880 TO 1059 | 1.056 | 1.037 |
| $1060 TO 1239 | 1.048 | 1.026 |
| $1240 TO 1419 | 1.040 | 1.026 |
| $1420 PLUS | 1.031 | 1.026 |

PMSA ST. LOUIS, MO-IL

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 230 | 1.049 | 1.043 |
| $ 230 TO 269 | 1.047 | 1.040 |
| $ 270 TO 319 | 1.044 | 1.034 |
| $ 320 TO 359 | 1.042 | 1.024 |
| $ 360 TO 409 | 1.040 | 1.024 |
| $ 410 TO 449 | 1.037 | 1.021 |
| $ 450 TO 539 | 1.032 | 1.012 |
| $ 540 TO 629 | 1.028 | 1.007 |
| $ 630 TO 729 | 1.023 | 1.006 |
| $ 730 PLUS | 1.018 | 1.006 |

PMSA SAN FRANCISCO, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 440 | 1.057 | 1.058 |
| $ 440 TO 529 | 1.054 | 1.056 |
| $ 530 TO 619 | 1.051 | 1.054 |
| $ 620 TO 709 | 1.048 | 1.050 |
| $ 710 TO 799 | 1.046 | 1.040 |
| $ 800 TO 889 | 1.043 | 1.039 |
| $ 890 TO 1069 | 1.038 | 1.033 |
| $1070 TO 1249 | 1.032 | 1.027 |
| $1250 TO 1419 | 1.027 | 1.020 |
| $1420 PLUS | 1.021 | 1.020 |

PMSA SANTA ROSA-PETALUMA, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 350 | 1.057 | 1.060 |
| $ 350 TO 419 | 1.054 | 1.057 |
| $ 420 TO 489 | 1.051 | 1.053 |
| $ 490 TO 559 | 1.048 | 1.050 |
| $ 560 TO 629 | 1.046 | 1.039 |
| $ 630 TO 699 | 1.043 | 1.039 |
| $ 700 TO 839 | 1.038 | 1.034 |
| $ 840 TO 979 | 1.032 | 1.026 |
| $ 980 TO 1119 | 1.027 | 1.020 |
| $1120 PLUS | 1.021 | 1.019 |

PMSA TACOMA, WA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.050 | 1.055 |
| $ 220 TO 259 | 1.048 | 1.054 |
| $ 260 TO 299 | 1.046 | 1.050 |
| $ 300 TO 349 | 1.043 | 1.046 |
| $ 350 TO 389 | 1.041 | 1.041 |
| $ 390 TO 429 | 1.038 | 1.039 |
| $ 430 TO 519 | 1.033 | 1.034 |
| $ 520 TO 609 | 1.029 | 1.028 |
| $ 610 TO 689 | 1.024 | 1.022 |
| $ 690 PLUS | 1.019 | 1.022 |

PMSA SALEM-GLOUCESTER, MA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 360 | 1.113 | 1.114 |
| $ 360 TO 429 | 1.108 | 1.109 |
| $ 430 TO 499 | 1.102 | 1.095 |
| $ 500 TO 569 | 1.097 | 1.088 |
| $ 570 TO 639 | 1.091 | 1.074 |
| $ 640 TO 719 | 1.086 | 1.074 |
| $ 720 TO 859 | 1.075 | 1.061 |
| $ 860 TO 999 | 1.064 | 1.033 |
| $1000 TO 1139 | 1.053 | 1.033 |
| $1140 PLUS | 1.042 | 1.033 |

PMSA SAN JOSE, CA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 440 | 1.057 | 1.058 |
| $ 440 TO 529 | 1.054 | 1.056 |
| $ 530 TO 619 | 1.051 | 1.054 |
| $ 620 TO 699 | 1.048 | 1.048 |
| $ 700 TO 789 | 1.046 | 1.040 |
| $ 790 TO 879 | 1.043 | 1.040 |
| $ 880 TO 1059 | 1.038 | 1.034 |
| $1060 TO 1229 | 1.032 | 1.027 |
| $1230 TO 1409 | 1.027 | 1.020 |
| $1410 PLUS | 1.021 | 1.020 |

PMSA SEATTLE, WA

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 260 | 1.050 | 1.055 |
| $ 260 TO 309 | 1.048 | 1.053 |
| $ 310 TO 359 | 1.046 | 1.051 |
| $ 360 TO 409 | 1.043 | 1.044 |
| $ 410 TO 459 | 1.041 | 1.039 |
| $ 460 TO 509 | 1.038 | 1.039 |
| $ 510 TO 609 | 1.033 | 1.034 |
| $ 610 TO 719 | 1.029 | 1.029 |
| $ 720 TO 819 | 1.024 | 1.022 |
| $ 820 PLUS | 1.019 | 1.021 |

PMSA TRENTON, NJ

| | HIGHEST COST UTILITY INCLUDED | EXCLUDED |
|---|---|---|
| UNDER $ 340 | 1.080 | 1.082 |
| $ 340 TO 409 | 1.076 | 1.072 |
| $ 410 TO 479 | 1.072 | 1.065 |
| $ 480 TO 549 | 1.068 | 1.062 |
| $ 550 TO 609 | 1.064 | 1.052 |
| $ 610 TO 679 | 1.060 | 1.042 |
| $ 680 TO 819 | 1.053 | 1.032 |
| $ 820 TO 959 | 1.045 | 1.022 |
| $ 960 TO 1089 | 1.037 | 1.022 |
| $1090 PLUS | 1.030 | 1.022 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - BY RENT RANGE

PREPARED ON 110290

PMSA VALLEJO-FAIRFIELD-NAPA, CA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 300 | 1.057 | 1.059 |
| $ 300 TO 359 | 1.054 | 1.058 |
| $ 360 TO 429 | 1.051 | 1.051 |
| $ 430 TO 489 | 1.048 | 1.050 |
| $ 490 TO 549 | 1.046 | 1.040 |
| $ 550 TO 609 | 1.043 | 1.040 |
| $ 610 TO 729 | 1.038 | 1.033 |
| $ 730 TO 849 | 1.032 | 1.027 |
| $ 850 TO 969 | 1.027 | 1.020 |
| $ 970 PLUS | 1.021 | 1.019 |

MSA WASHINGTON, DC MD-VA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 350 | 1.080 | 1.079 |
| $ 350 TO 419 | 1.076 | 1.075 |
| $ 420 TO 489 | 1.072 | 1.070 |
| $ 490 TO 559 | 1.068 | 1.061 |
| $ 560 TO 629 | 1.064 | 1.052 |
| $ 630 TO 699 | 1.060 | 1.052 |
| $ 700 TO 839 | 1.053 | 1.042 |
| $ 840 TO 979 | 1.045 | 1.034 |
| $ 980 TO 1119 | 1.037 | 1.024 |
| $1120 PLUS | 1.030 | 1.024 |

PMSA VANCOUVER, WA

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 220 | 1.058 | 1.065 |
| $ 220 TO 259 | 1.055 | 1.063 |
| $ 260 TO 309 | 1.053 | 1.060 |
| $ 310 TO 349 | 1.050 | 1.052 |
| $ 350 TO 389 | 1.047 | 1.046 |
| $ 390 TO 439 | 1.044 | 1.046 |
| $ 440 TO 519 | 1.039 | 1.040 |
| $ 520 TO 609 | 1.033 | 1.032 |
| $ 610 TO 699 | 1.027 | 1.026 |
| $ 700 PLUS | 1.022 | 1.026 |

COUNTY WESTCHESTER, NY

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 350 | 1.084 | 1.087 |
| $ 350 TO 429 | 1.080 | 1.082 |
| $ 430 TO 499 | 1.076 | 1.077 |
| $ 500 TO 569 | 1.072 | 1.067 |
| $ 570 TO 639 | 1.068 | 1.058 |
| $ 640 TO 709 | 1.064 | 1.056 |
| $ 710 TO 849 | 1.056 | 1.047 |
| $ 850 TO 989 | 1.048 | 1.038 |
| $ 990 TO 1129 | 1.040 | 1.027 |
| $1130 PLUS | 1.031 | 1.027 |

PMSA VINELAND-MILLVILLE-BRIDGETON, NJ

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 270 | 1.080 | 1.083 |
| $ 270 TO 329 | 1.076 | 1.073 |
| $ 330 TO 379 | 1.072 | 1.068 |
| $ 380 TO 439 | 1.068 | 1.061 |
| $ 440 TO 489 | 1.064 | 1.052 |
| $ 490 TO 549 | 1.060 | 1.042 |
| $ 550 TO 659 | 1.053 | 1.033 |
| $ 660 TO 769 | 1.045 | 1.022 |
| $ 770 TO 869 | 1.037 | 1.022 |
| $ 870 PLUS | 1.030 | 1.022 |

PMSA WILMINGTON, DE-NJ-MD

| | HIGHEST COST UTILITY INCLUDED | HIGHEST COST UTILITY EXCLUDED |
|---|---|---|
| UNDER $ 280 | 1.080 | 1.080 |
| $ 280 TO 339 | 1.076 | 1.074 |
| $ 340 TO 399 | 1.072 | 1.062 |
| $ 400 TO 449 | 1.068 | 1.052 |
| $ 450 TO 509 | 1.064 | 1.040 |
| $ 510 TO 569 | 1.060 | 1.040 |
| $ 570 TO 679 | 1.053 | 1.030 |
| $ 680 TO 789 | 1.045 | 1.019 |
| $ 790 TO 909 | 1.037 | 1.019 |
| $ 910 PLUS | 1.030 | 1.019 |

SCHEDULE C - ANNUAL ADJUSTMENT FACTORS, SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS - FOR MANUFACTURED HOME SPACE

PREPARED ON 110290

| AREA | FACTOR |
|---|---|
| NORTH EAST CENSUS REGION | 1.056 |
| SOUTH CENSUS REGION | 1.026 |
| STATE HAWAII | 1.077 |
| PMSA ANAHEIM-SANTA ANA, CA | 1.047 |
| PMSA ANN ARBOR, MI | 1.030 |
| PMSA AURORA-ELGIN, IL | 1.049 |
| PMSA BEAVER COUNTY, PA | 1.022 |
| PMSA BOSTON, MA | 1.073 |
| PMSA BRAZORIA, TX | 1.034 |
| PMSA BROCKTON, MA | 1.073 |
| PMSA CHICAGO, IL | 1.049 |
| PMSA CLEVELAND, OH | 1.023 |
| PMSA DANBURY, CT | 1.057 |
| PMSA DETROIT, MI | 1.030 |
| PMSA FORT WORTH-ARLINGTON, TX | .997 |
| PMSA GARY-HAMMOND, IN | 1.049 |
| PMSA HOUSTON, TX | 1.034 |
| PMSA JOLIET, IL | 1.049 |
| PMSA KENOSHA, WI | 1.049 |
| PMSA LAWRENCE-HAVERHILL, MA-NH | 1.073 |
| PMSA LOS ANGELES-LONG BEACH, CA | 1.047 |
| PMSA MIAMI-HIALEAH, FL | 1.030 |
| PMSA MILWAUKEE, WI | 1.037 |
| PMSA MONMOUTH-OCEAN, NJ | 1.057 |
| PMSA NASSAU-SUFFOLK, NY | 1.056 |
| PMSA NEWARK, NJ | 1.057 |
| PMSA NORWALK, CT | 1.057 |
| PMSA ORANGE COUNTY, NY | 1.056 |
| PMSA PHILADELPHIA, PA-NJ | 1.051 |
| PMSA PORTLAND, OR | 1.045 |
| PMSA RIVERSIDE-SAN BERNARDINO, CA | 1.047 |
| PMSA SALEM-GLOUCESTER, MA | 1.073 |
| PMSA SAN FRANCISCO, CA | 1.039 |
| PMSA SANTA CRUZ, CA | 1.039 |
| PMSA SEATTLE, WA | 1.039 |
| PMSA TACOMA, WA | 1.039 |
| PMSA VALLEJO-FAIRFIELD-NAPA, CA | 1.039 |
| PMSA VINELAND-MILLVILLE-BRIDGETON, NJ | 1.051 |
| COUNTY WESTCHESTER, NY | 1.057 |

| AREA | FACTOR |
|---|---|
| MIDWEST CENSUS REGION | 1.034 |
| WEST CENSUS REGION | 1.037 |
| PMSA AKRON, OH | 1.023 |
| MSA ANCHORAGE, AK | .987 |
| MSA ATLANTA, GA | 1.015 |
| MSA BALTIMORE, MD | 1.042 |
| PMSA BERGEN-PASSAIC, NJ | 1.056 |
| PMSA BOULDER-LONGMONT, CO | .989 |
| PMSA BRIDGEPORT-MILFORD, CT | 1.057 |
| PMSA BUFFALO, NY | 1.048 |
| PMSA CINCINNATI, OH-KY-IN | 1.043 |
| PMSA DALLAS, TX | .997 |
| PMSA DENVER, CO | .989 |
| PMSA FORT LAUDERDALE-HOLLYWOOD-POMPANO BEAC | 1.030 |
| PMSA GALVESTON-TEXAS CITY, TX | 1.034 |
| PMSA HAMILTON-MIDDLETOWN, OH | 1.043 |
| PMSA JERSEY CITY, NJ | 1.057 |
| MSA KANSAS CITY, MO-KS | 1.005 |
| PMSA LAKE COUNTY, IL | 1.049 |
| PMSA LORAIN-ELYRIA, OH | 1.023 |
| PMSA LOWELL, MA-NH | 1.073 |
| PMSA MIDDLESEX-SOMERSET-HUNTERDON, NJ | 1.057 |
| MSA MINNEAPOLIS-ST. PAUL, MN-WI | 1.027 |
| PMSA NASHUA, NH | 1.073 |
| PMSA NEW YORK, NY | 1.056 |
| PMSA NIAGARA FALLS, NY | 1.048 |
| PMSA OAKLAND, CA | 1.039 |
| PMSA OXNARD-VENTURA, CA | 1.047 |
| PMSA PITTSBURGH, PA | 1.022 |
| PMSA RACINE, WI | 1.037 |
| PMSA ST. LOUIS, MO-IL | 1.025 |
| MSA SAN DIEGO, CA | 1.037 |
| PMSA SAN JOSE, CA | 1.039 |
| PMSA SANTA ROSA-PETALUMA, CA | 1.039 |
| PMSA STAMFORD, CT | 1.057 |
| PMSA TRENTON, NJ | 1.061 |
| PMSA VANCOUVER, WA | 1.045 |
| MSA WASHINGTON, DC-MD-VA | 1.051 |
| PMSA WILMINGTON, DE-NJ-MD | 1.051 |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS -- DEFINITIONS OF REGIONS

| --AREA TITLE | DEFINITION |
|---|---|
| NORTHEAST CENSUS REGION | Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont |
| MIDWEST CENSUS REGION | Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin |
| SOUTH CENSUS REGION | Alabama, Arkansas, Delaware, Dist. Of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, Puerto Rico, Virgin Islands |
| WEST CENSUS REGION | Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Guam, Trust Territories |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

| MSA/PMSA | DEFINITION |
|---|---|
| Akron, Oh | COUNTY(IES) Portage, Summit Oh |
| Anaheim-Santa Ana, Ca | COUNTY(IES) Orange Ca |
| Anchorage, Ak | BOROUGH(IES) Anchorage Ak |
| Ann Arbor, Mi | COUNTY(IES) Washtenaw Mi |
| Atlanta, Ga | COUNTY(IES) Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Rockdale, Spalding, Walton Ga |
| Aurora-Elgin, Il | COUNTY(IES) Kane, Kendall Il |
| Baltimore, Md | COUNTY(IES) Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Annes, Baltimore Ct Md |
| Beaver County, PA | COUNTY(IES) Beaver Pa |
| Bergen-Passaic, Nj | COUNTY(IES) Bergen, Passaic Nj |
| Boston, Ma | COUNTY Bristol, Ma (PART): TOWNS OF Mansfield, Norton, Raynham<br>COUNTY Essex, Ma (PART): TOWNS OF Lynn, Lynnfield, Nahant, Saugus<br>COUNTY Middlesex, Ma (PART): TOWNS OF Acton, Arlington, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Groton, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Readin, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury; Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn<br>COUNTY Norfolk, Ma (PART): TOWNS OF Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham<br>COUNTY Plymouth, Ma (PART): TOWNS OF Carver, Duxbury, Hanover, Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield, Middleboroug, Norwell, Pembroke, Plymouth, Plympton, Rockland, Scituate<br>COUNTY Suffolk, Ma (PART): TOWNS OF Boston, Chelsea, Revere, Winthrop<br>COUNTY Worcester, Ma (PART): TOWNS OF Berlin, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Southborough, Upton |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

| MSA/PMSA | DEFINITION |
|---|---|
| Boulder-Longmont, Co | COUNTY(IES) Boulder Co |
| Brazoria, Tx | COUNTY(IES) Brazoria Tx |
| Bridgeport-Milford, Ct | COUNTY Fairfield, Ct (PART): TOWNS OF Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull<br>COUNTY New Haven, Ct (PART): TOWNS OF Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour |
| Brockton, Ma | COUNTY Bristol, Ma (PART): TOWNS OF Easton<br>COUNTY Norfolk, Ma (PART): TOWNS OF Avon<br>COUNTY Plymouth, Ma (PART): TOWNS OF Abington, Bridgewater, Brockton, East Bridgew, Halifax, West Bridgew, Whitman |
| Buffalo, Ny | COUNTY(IES) Erie Ny |
| Chicago, Il | COUNTY(IES) Cook, Du Page, Mchenry Il |
| Cincinnati, Oh-Ky-In | COUNTY(IES) Dearborn In; Boone, Campbell, Kenton Ky; Clermont, Hamilton, Warren Oh |
| Cleveland, Oh | COUNTY(IES) Cuyahoga, Geauga, Lake, Medina Oh |
| Dallas, Tx | COUNTY(IES) Collin, Dallas, Denton, Ellis, Kaufman, Rockwall Tx |
| Danbury, Ct | COUNTY Fairfield, Ct (PART): TOWNS OF Bethel, Brookfield, Danbury, New Fairfiel, Newtown, Redding, Ridgefield, Sherman<br>COUNTY Litchfield, Ct (PART): TOWNS OF Bridgewater, New Milford |
| Denver, Co | COUNTY(IES) Adams, Arapahoe, Denver, Douglas, Jefferson Co |
| Detroit, Mi | COUNTY(IES) Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair, Wayne Mi |
| Fort Lauderdale-Hollywood-Pompano Beach, Fl | COUNTY(IES) Broward Fl |
| Fort Worth-Arlington, Tx | COUNTY(IES) Johnson, Parker, Tarrant Tx |
| Galveston-Texas City, Tx | COUNTY(IES) Galveston Tx |
| Gary-Hammond, In | COUNTY(IES) Lake, Porter In |
| Hamilton-Middletown, Oh | COUNTY(IES) Butler Oh |
| Houston, Tx | COUNTY(IES) Fort Bend, Harris, Liberty, Montgomery, Waller Tx |
| Jersey City, Nj | COUNTY(IES) Hudson Nj |
| Joliet, Il | COUNTY(IES) Grundy, Will Il |
| Kansas City, Mo-Ks | COUNTY(IES) Johnson, Leavenworth, Miami, Wyandotte Ks; Cass, Clay, Jackson, Lafayette, Platte, Ray Mo |
| Kenosha, Wi | COUNTY(IES) Kenosha Wi |
| Lake County, Il | COUNTY(IES) Lake Il |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

| MSA/PMSA | DEFINITION |
|---|---|
| Lawrence-Haverhill, Ma-Nh | COUNTY Essex, Ma (PART): TOWNS OF Amesbury, Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury, Newburyport, North Andove, Salisbury, West Newbury<br>COUNTY Rockingham, Nh (PART): TOWNS OF Atkinson, Brentwood, Danville, Derry, East Kingsto, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham |
| Lorain-Elyria, Oh | COUNTY(IES) Lorain Oh |
| Los Angeles-Long Beach, Ca | COUNTY(IES) Los Angeles Ca |
| Lowell, Ma Nh | COUNTY Middlesex, Ma (PART): TOWNS OF Billerica, Chelmsford, Dracut, Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford<br>COUNTY Hillsborough, Nh (PART): TOWNS OF Pelham |
| Miami-Hialeah, Fl | COUNTY(IES) Dade Fl |
| Middlesex-Somerset Hunterdon, Nj | COUNTY(IES) Hunterdon, Middlesex, Somerset Nj |
| Milwaukee, Wi | COUNTY(IES) Milwaukee, Ozaukee, Washington, Waukesha Wi |
| Minneapolis-St. Paul, Mn-Wi | COUNTY(IES) Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Washington, Wright Mn; St Croix Wi |
| Monmouth-Ocean, Nj | COUNTY(IES) Monmouth, Ocean Nj |
| Nashua, Nh | COUNTY Hillsborough, Nh (PART): TOWNS OF Amherst, Brookline, Hollis, Hudson, Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton<br>COUNTY Rockingham, Nh (PART): TOWNS OF Londonderry |
| Nassau-Suffolk, Ny | COUNTY(IES) Nassau, Suffolk Ny |
| New York, Ny | COUNTY(IES) Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland Ny |
| Newark, Nj | COUNTY(IES) Essex, Morris, Sussex, Union Nj |
| Niagara Falls, Ny | COUNTY(IES) Niagara Ny |
| Norwalk, Ct | COUNTY Fairfield, Ct (PART): TOWNS OF Norwalk, Weston, Westport, Wilton |
| Oakland, Ca | COUNTY(IES) Alameda, Contra Costa Ca |
| Orange County, Ny | COUNTY(IES) Orange Ny |
| Oxnard-Ventura, Ca | COUNTY(IES) Ventura Ca |
| Philadelphia, Pa-Nj | COUNTY(IES) Burlington, Camden, Gloucester Nj; Bucks, Chester, Delaware, Montgomery, Philadelphia Pa |
| Pittsburgh, Pa | COUNTY(IES) Alleghany, Fayette, Washington, Westmoreland Pa |
| Portland, Or | COUNTY(IES) Clackamas, Multnomah, Washington, Yamhill Or |
| Racine, Wi | COUNTY(IES) Racine Wi |

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - DEFINITIONS OF METROPOLITAN AREAS

| MSA/PMSA | DEFINITION |
|---|---|
| Riverside-San Bernardino, Ca | COUNTY(IES) Riverside, San Bernadin Ca |
| St Louis, Mo-Il | COUNTY(IES) Clinton, Jersey, Madison, Monroe, St Clair Il; Franklin, Jefferson, St Charles, St Louis, St Louiscity Mo |
| Salem-Gloucester, Ma | COUNTY Essex, Ma (PART): TOWNS OF Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield, Wenham |
| San Diego, Ca | COUNTY(IES) San Diego Ca |
| San Francisco, Ca | COUNTY(IES) Marin, San Francisc, San Mateo Ca |
| San Jose, Ca | COUNTY(IES) Santa Clara Ca |
| Santa Cruz, Ca | COUNTY(IES) Santa Cruz Ca |
| Santa Rosa-Petaluma, Ca | COUNTY(IES) Sonoma Ca |
| Seattle, Wa | COUNTY(IES) King, Snohomish Wa |
| Stamford, Ct | COUNTY Fairfield, Ct (PART): TOWNS OF Darien, Greenwich, New Canaan, Stamford |
| Tacoma, Wa | COUNTY(IES) Pierce Wa |
| Trenton, Nj | COUNTY(IES) Mercer Nj |
| Vallejo-Fairfield-Napa, Ca | COUNTY(IES) Napa, Solano Ca |
| Vancouver, Wa | COUNTY(IES) Clark Wa |
| Vineland-Millville-Bridgeton, Nj | COUNTY(IES) Cumberland Nj |
| Washington, Dc-Md-Va | COUNTY(IES) Washington Dc; Calvert, Charles, Frederick, -columbia(u), Montgomery, Prince Georg Md; Arlington, Fairfax, Loudoun, Princewillia, Stafford, Alexandria, Fairfax City, Falls Church, Manassas, Manassas Prk Va |
| Wilmington, De-Nj-Md | COUNTY(IES) New Castle De; Cecil Md; Salem Nj |

[FR Doc. 90-29657 Filed 12-17-90; 8:45 am]
BILLING CODE 4210-27-C

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federal register

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Part IV

# Environmental Protection Agency

## Financial Assistance Program Eligible for Review; Notice of Availability and Review

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## ENVIRONMENTAL PROTECTION AGENCY

[OIRM-FR-3670-8]

### Financial Assistance Program Eligible for Review

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability and review.

**SUMMARY:** The Environmental Protection Agency's (EPA) Office of Information Resources Management (OIRM) is announcing the availability of a new financial assistance program (66.925), "State/EPA Data Management Financial Assistance Program," to support the development of innovative projects for the State/EPA Data Management Program. The intent of this assistance is to improve State and local environmental data management programs. The grants and cooperative agreements are authorized under the authority of the Clean Water Act (CWA), section 104(b)(3), the Safe Drinking Water Act (SDWA), section 1442, the Clean Air Act (CAA), section 103(b)(3), the Toxic Substances Control Act (TSCA), section 10, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 20, the Solid Waste Disposal Act (SWDA), section 8001, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), section 311. Funds are available beginning in fiscal year 1991 for projects in States (including eligible United States territories and possessions), local governments, Federally recognized Indian Tribes, universities and colleges.

**DATES:** For fiscal year 1991 funding, completed application packages are due at the appropriate EPA Regional Office by April 30, 1991. For funding of new awards in fiscal years beyond fiscal year 1991, applications must be submitted according to the dates established by the EPA Regional Offices. Consult the appropriate EPA Regional Office for details.

**FOR FURTHER INFORMATION CONTACT:** Michele Zenon, National State/EPA Data Management Program Manager, Information Management and Services Division, Office of Information Resources Management (PM-211D), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5913, or the EPA Regional Contacts listed below in "**SUPPLEMENTARY INFORMATION.**"

**SUPPLEMENTARY INFORMATION:** Environmental protection depends on effectively managing, interpreting and presenting vast amounts of data. To meet these challenges, EPA recognizes that it must be responsive to State and local governments that collect most environmental data and make most environmental protection decisions. The Agency's State/EPA Data Management (SEDM) Program, with its associated financial assistance program, represents one of EPA's responses to this challenge. The SEDM Program is implemented through the EPA Regional Offices under the guidance of the Office of Information Resources Management (OIRM) in EPA Headquarters. It is divided into two phases—Phase I: Data Sharing; and Phase II: Data Integration. Phase I seeks to establish a reliable flow of regulatory and compliance data between EPA and the delegated States. Phase II focuses on assisting States and Regions in integrating data across programs and media to maximize environmental results.

The goals of Phase I are to:

- Provide a direct communication link to the States and to the EPA data network;
- Provide States with direct access to data in EPA's national data systems, and
- Establish policy statements on data integrity and protocols.

The goals of Phase II are to:

- Provide the States and EPA with the data, methods and technology required to conduct integrated environmental analyses and to plan and manage cross-media programs, and
- Build effective, long lasting arrangements for sharing data and technology between environmental agencies at all levels of government.

The specific benefits of the SEDM Program include:

- Efficiencies in data collection which will result in significant gains in data handling and routine program operations;
- Enhanced data quality to guide programmatic decisions and support program oversight;
- Improved data integration to more effectively target regulatory and compliance activities on risk reduction, and to enhance the capability to manage for environmental results, and
- A more productive working relationship between EPA and the States to focus on environmental management and minimize data disputes.

This program is of strategic importance to EPA's overall efforts to enhance vital data resources and move toward more productive State and Federal roles in environmental protection.

Beginning in fiscal year 1991, EPA will initiate a "State/EPA Data Management Financial Assistance Program" to support the development of innovative projects for the State/EPA Data Management Program. The main program objectives for these projects are: (1) To build and maintain the infrastructure needed for effective State/EPA data management and sharing; and (2) to integrate data across media and programs so environmental managers can target their efforts on environmental results. Eligible applicants include States (including eligible U.S. territories and possessions), local governments, Federally recognized Indian Tribes, universities and colleges. If an eligible applicant plans to contract with other State and local agencies, counties, universities, and organizations to carry out elements of the work, this fact must be indicated in the application.

It is EPA's intention to consider funding both small data management projects (less than $25,000) as well as larger projects ($50,000 to $100,000). Organizations will be required to contribute at least 5% of the total cost of their project in dollars or in-kind goods/services. The grants and cooperative agreements will be selected and funded by EPA Regional offices. EPA Regional staff will act as project officers on projects awarded within their Region.

Funds that are awarded under this assistance program must be used to support innovative data management activities that address the data and related activities needed in making informed environmental decisions. Projects should reflect comprehensive and coordinated planning, data sharing, data integration, and the necessary steps to implement the project plans. Projects in all stages of development—from established programs to those needing start-up funds—will be eligible for support.

To apply for funds, eligible applicants must submit a complete application package to the appropriate EPA Regional grants management office:

**EPA Region I (CT, MA, ME, NH, RI, VT)**

Planning Analysis and Grants Branch, Grants Information and Analysis Section, U.S. EPA—Region I (Room 2203), JFK Federal Building, Boston, MA 02203

**EPA Region II (NJ, NY, PR, VI)**

Grants Administration Branch, U.S. EPA—Region II (2GRA), Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, NY 10278



**EPA Region III (DC, DE, MD, PA, VA, WV)**

Grants Management and Audit Branch, Grants Management Section, U.S. EPA—Region III (3PM70), 841 Chestnut Building, Philadelphia, PA 19107

**EPA Region IV (AL, FL, GA, KY, MS, NC, SC, TN)**

Resources Management Branch, Grants and Contracts Administration Section, U.S. EPA—Region IV, 345 Courtland Street N.E., Atlanta, GA 30365

**EPA Region V (IL, IN, MI, OH, MN, WI)**

Contracts and Grants Branch (5MF), Grants Management Section, U.S. EPA—Region V, 230 South Dearborn Street, Chicago, IL 60604

**EPA Region VI (AR, LA, OK, NM, TX)**

Assistance Branch (6M-AG), Grants and Audit Section, U.S. EPA—Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue (Suite 1200), Dallas, TX 75202-2733

**EPA Region VII (IA, KS, MO, NE)**

Program Integration Branch, Grants Administration Section, U.S. EPA—Region VII (PLMG/PINT), 726 Minnesota Avenue, Kansas City, KS 66101

**EPA Region VIII (CO, MT, ND, SD, UT, WY)**

Grants Management Branch, U.S. EPA—Region VIII (8PM-ARA), 999 18th Street, Denver, CO 80202-2405

**EPA Region IX (AS, AZ, CA, GU, HI, NV)**

Policy and Grants Branch, Grants Management Section, U.S. EPA—Region IX, 75 Hawthorne Street, San Francisco, CA 94105

**Region X (AK, ID, OR, WA)**

Comptroller Branch, Grants Management Section, U.S. EPA—Region X (MD-100), 1200 Sixth Avenue, Seattle, WA 98101

An application kit is available upon request from these offices. The application kit contains all appropriate forms and instructions needed to submit a formal application and an additional guidance document titled "State/EPA Data Management Financial Assistance Program: Guidance for Applicants." The Guidance contains information on the general criteria against which all applications will be evaluated. These general technical evaluation criteria include: appropriateness to the SEDM Program; integrated/multimedia approach; potential benefit; technical soundness; and technology transfer plans. The Regional SEDM Coordinators will act as the point of contact to discuss applicants' proposals and to help them develop a clear and viable project proposal for their formal application. For further information, please contact the EPA Regional SEDM Coordinator in the appropriate Region. Their names and phone numbers are listed below:

**EPA Region I (CT, MA, ME, NH, RI, VT)**

Chris Diehl, Information Management Branch (PIM-01), U.S. EPA—Region I (Room 2203), JFK Federal Building, Boston, MA 02203, (617) 565-3361

**EPA Region II (NJ, NY, PA, VI)**

George Nossa, Information Systems Branch, U.S. EPA—Region II, Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, NY 10278, (212) 264-9850

**EPA Region III (DC, DE, MD, PA, VA, WV)**

Wendy Bartel, Information Resources Management Branch (3PM50), U.S. EPA—Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-7839

**EPA Region IV (AL, FL, GA, KY, MS, NC, SC, TN)**

Richard Ferrazzuolo, Information Management Branch, U.S. EPA—Region IV, 345 Courtland Street N.E., Atlanta, GA 30365, (404) 347-2316

**EPA Region V (IL, IN, MI, OH, MN, WI)**

Dan Werbie, Information Management Branch, U.S. EPA—Region V, 230 South Dearborn Street, Chicago, IL, 60604, (312) 353-1306

**EPA Region VI (AR, LA, OK, NM, TX)**

Dick Watkins, Information Resources Branch, U.S. EPA—Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue (Suite 1200), Dallas, TX 75202, (214) 655-8540

**EPA Region VII (IA, KS, MO, NE)**

Gordon Gregory, Information Management Branch, U.S. EPA—Region VII (PLMG/INFO), 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551-7520

**EPA Region VIII (CO, MT, ND, SD, UT, WY)**

Marcella Osterholt, U.S. EPA—Region VIII (8PM-ARA), 999 18th Street, Denver, CO 80202-2405, (303) 293-1505

**EPA Region IX (AS, AZ, CA, GU, HI, NV)**

Mark Hemry, Information Resources Management Branch, U.S. EPA—Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1804

**Region X (AK, ID, OR, WA)**

Jim Peterson, Information Management Branch, U.S. EPA—Region X (MD-103), 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-2977

The State/EPA Data Management Financial Assistance Program is eligible for intergovernmental review under Executive Order 12372. States' Single Point of Contact (SPOC) must notify the following office in writing within thirty days of this publication whether their State's official E.O. 12372 process will review applications in this program: Grants Policy and Procedures Branch, Grants Administration Division (PM-216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if their applications for this program are subject to the State's official E.O. 12372 process. If subject to their State's E.O. 12372 review process, then the applicant must submit their application or any other materials required by their State to their SPOC for review.

SPOCs should send their official intergovernmental comments on a application to the appropriate EPA Regional grants management office noted above, no later than sixty days after receipt of an application/other required materials for review.

Dated: December 11, 1990.

**Charles L. Grizzle,**

*Assistant Administrator for Administration and Resources Management.*

[FR Doc. 90-29550 Filed 12-17-90; 8:45 am]

BILLING CODE 6560-50-M

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federal register

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Part V

# Department of Energy

Office of Fossil Energy

List of Electric and Gas Utilities Covered in 1991; Notice

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**DEPARTMENT OF ENERGY**

**Office of Fossil Energy**

**[Docket No. FE-R-79-43B]**

## Electric and Gas Utilities Covered in 1991 and Requirements for State Regulatory Authorities to Notify the Department of Energy

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice.

**SUMMARY:** Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which titles I and III of PURPA apply during such calendar year. The 1991 list is published here as two separate tabulations. Appendix A lists the covered utilities by State and appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

**DATES:** Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1991.

**ADDRESSES:** Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE-52, 1000 Independence Avenue, SW., room 3F-070, Docket No. FE-R-79-43B, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Room 3F-070, FE-52, Washington, DC 20585 Telephone, 202/586-9506.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Public Law 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), hereinafter referred to as the "Act," the Department of Energy (DOE) is required to publish a list of utilities to which titles I and III of PURPA apply in 1991.

State regulatory authorities are required by the Act cited above to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by title I for any calendar year if it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1991 if it exceeded the threshold in any year from 1976 through 1989.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which title III applies during such calendar year. A gas utility is defined as any person, State agency, or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year begining after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1991 if it exceeded the threshold in any year from 1976 through 1989.

In compiling the list published today, the DOE revised the 1990 list (54 FR 53802, December 29, 1989) upon the assumption that all entities included on the 1990 list are properly included on the 1991 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceeded the PURPA thresholds for the first time in 1989. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

### II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1991, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be submitted to the address indicated in the "**ADDRESSES**" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1991, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "**ADDRESSES**" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE-R-79-43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection in the Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.



### III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 29, 1989, Federal Register notice (54 FR 53802) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has rulemaking authority.

In appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1990 list of electric and gas utilities are as follows:

**Additions**

Athens Utilities (AL)
Energy North Natural Gas, Inc. (NH)
Hawaii Electric Light Company (HA)
Holston Electric Cooperatives (TN)
Kissimmee Utility Authority (FL)
Maui Electric Company (HA)
Midwest Gas, Division of Iowa Public Service Company (MN)
Morristown Power Systems (TN)
Sequachee Valley Electric Cooperative (TN)
Tupelo Water & Light Department (MS)
United Cities Gas Company (GA)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*)).

Issued in Washington, DC, on December 12, 1990.

Clifford P. Tomaszewski,
*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

**Appendix A**

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1989.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976–1989.

**State: Alabama**

Regulatory Authority: Alabama Public Service Commission.

*Gas Utilities*

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

*Electric Utilities*

Investor-Owned:
Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

*Electric Utilities*

Publicly-Owned:
Decatur Electric Department
Dothan Electric Department
Florence Electric Department
Huntsville Utilities
Rural Electric Cooperatives:
Joe Wheeler Electric Membership Corporation
Rural Electric System

**State: Alaska**

Regulatory Authority: Alaska Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Enstar Natural Gas Company

*Electric Utilities*

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
Anchorage Municipal Light & Power Department

**State: Arizona**

Regulatory Authority: Arizona Corporation Commission.

*Gas Utilities*

Investor-Owned:
Southern Union Gas Company
Southwest Gas Corporation

*Electric Utilities*

Investor-Owned:
Arizona Public Service Company
Tucson Electric Power Company
Publicly-Owned:
Trico Electric Cooperative, Inc.
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

*Electric Utilities*

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

**State: Arkansas**

Regulatory Authority: Arkansas Public Service Commission.

*Gas Utilities*

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company, Division of Arkansas Western Gas Company

*Electric Utilities*

Investor-Owned:
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas And Electric Company
Southwestern Electric Power Company
Rural Electric Cooperative:
First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:

Publicly-Owned:
North Little Rock Electric Department

**State: California**

Regulatory Authority: California Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

*Electric Utilities*

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated

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by the California Public Utilities Commission:

*Electric Utilities*

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

*Gas Utilities*

Publicly-Owned:
Long Beach Gas Department

**State: Colorado**

Regulatory Authority: Colorado Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
People's Natural Gas Company, Division of Utilicorp United, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

*Electric Utilities*

Investor-Owned:
Public Service Company of Colorado
Southern Colorado Power Division of Centel

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

*Gas Utilities*

Publicly-Owned:
Colorado Springs Department of Utilities (except sales to another gas utility)

*Electric Utilities*

Publicly-Owned:
Colorado Springs Department of Utilities
Rural Electric Cooperatives:
Intermountain Rural Association
Moon Lakes Electric Association

**State: Connecticut**

Regulatory Authority: Connecticut Department of Public Utility Control.

*Gas Utilities*

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

*Electric Utilities*

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities

**State: Delaware**

Regulatory Authority: Delaware Public Service Commission.

*Gas Utilities*

Investor-Owned:
Delmarva Power and Light Company

*Electric Utilities*

Investor-Owned:
Delmarva Power and Light Company

**State: District of Columbia**

Regulatory Authority: Public Service Commission of the District of Columbia.

*Gas Utilities*

Investor-Owned:
Washington Gas Light Company

*Electric Utilities*

Investor-Owned:
Potomac Electric Power Company

**State: Florida**

Regulatory Authority: Florida Public Service Commission.

*Gas Utilities*

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

*Electric Utilities*

Investor-Owned:
Florida Power and Light Company
Florida Power Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Gainesville Regional Utilities
Jacksonville Electric Company
Kissimmee Utility Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperative: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

**State: Georgia**

Regulatory Authority: Georgia Public Service Commission.

*Gas Utilities*

Investor-Owned:
Atlanta Gas Light Company
United Cities Gas Company

*Electric Utilities*

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

*Electric Utilities*

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink
Rural Electric Cooperatives:
Douglas County Electric Membership Corporation
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Swanee Electric Membership Corporation
Walton Electric Membership Corporation

**State: Hawaii**

Regulatory Authority: Hawaii Public Utilities Commission.

*Gas Utilities*

None.

*Electric Utilities*

Investor-Owned:
Hawaii Electric Light Company
Hawaiian Electric Company, Inc.
Maui Electric Company

**State: Idaho**

Regulatory Authority: Idaho Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

*Electric Utilities*

Investor-Owned:



Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

**State: Illinois**

Regulatory Authority: Illinois Commerce Commission.

*Gas Utilities*

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Easter Pipeline Company
Peoples Gas, Light and Coke Company

*Electric Utilities*

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Gas Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission.

*Electric Utilities*

Publicly-Owned:
Springfield Water, Light and Power Department

**State: Indiana**

Regulatory Authority: Indiana Public Service Commission.

*Gas Utilities*

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Publicly-Owned:
Citizens Gas and Coke Utility

*Electric Utilities*

Investor-Owned:
Indiana and Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
Richmond Power and Light

**State: Iowa**

Regulatory Authority: Iowa Commerce Commission.

*Gas Utilities*

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Midwest Gas, Division of Iowa Public Service Company
Midwest Gas, Division of Iowa Southern Utilities Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.

*Electric Utilities*

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
IPS Electric, Division of Iowa Southern Utilities Company
IPS Electric, Division of Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
Muscatine Power and Water
Omaha Public Power District

**State: Kansas**

Regulatory Authority: Kansas State Corporation Commission.

*Gas Utilities*

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.
Union Gas System Inc.

*Electric Utilities*

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Electric Company
Southwestern Public Service Company
Western Power Division of Centel
Rural Electric Cooperatives:
Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

*Electric Utilities*

Publicly-Owned:
Kansas City Board of Public Utilities

**State: Kentucky**

Regulatory Authority: Kentucky Energy Regulatory Commission.

*Gas Utilities*

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

*Electric Utilities*

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:
Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

**State: Louisiana**

Regulatory Authority: Louisiana Public Service Commission.

*Gas Utilities*

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)
Trans Louisiana Gas Company

*Electric Utilities*

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company

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Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)
Southwestern Electric Power Company
Rural Electric Cooperatives:
Dixie Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

*Electric Utilities*

Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

**State: Maine**

Regulatory Authority: Maine Public Utilities Commission.

*Gas Utilities*

None.

*Electric Utilities*

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company

**State: Maryland**

Regulatory Authority: Maryland Public Service Commission.

*Gas Utilities*

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

*Electric Utilities*

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light-Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

**State: Massachusetts**

Regulatory Authority: Massachusetts Department of Public Utilities.

*Gas Utilities*

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company

*Electric Utilities*

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Electric Company
Western Massachusetts Electric Company

**State: Michigan**

Regulatory Authority: Michigan Public Service Commission.

*Gas Utilities*

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

*Electric Utilities*

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Lake Superior District Power Company
Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

*Gas Utilities*

Investor-Owned:
Battle Creek Gas Company

*Electric Utilities*

Publicly-Owned:
Lansing Board of Water and Light

**State: Minnesota**

Regulatory Authority: Minnesota Public Utility Commission.

*Gas Utilities*

Investor-Owned:
Interstate Power Company
Midwest Gas, division of Iowa Public Service Company
Minnegasco, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

*Electric Utilities*

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company
Rural Electric Cooperative:
Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Service Commission.

*Electric Utilities*

Publicly-Owned:
Rochester Department of Public Utilities
Rural Electric Cooperatives:
Anoka Electric Cooperative

**State: Mississippi**

Regulatory Authority: Mississippi Public Service Commission.

*Gas Utilities*

Investor-Owned:
Entex, Incl.
Mississippi Valley Gas Company

*Electric Utilities*

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

*Electric Utilities*

Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

**State: Missouri**

Regulatory Authority: Missouri Public Service Commission.

*Gas Utilities*

Investor-Owned:
Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of Inter-North, Inc.

*Electric Utilities*

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission.

*Gas Utilities*

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities



*Electric Utilities*

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

**State: Montana**

Regulatory Authority: Montana Public Service Commission.

*Gas Facilities*

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

*Electric Utilities*

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

**State: Nebraska**

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

*Electric Utilities*

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

*Gas Utilities*

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Midwest Gas, division of Iowa Public Service Company
Midwest Gas, division of KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company Division of Utilicorp United, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

**State: Nevada**

Regulatory Authority: Nevada Public Service Commission.

*Gas Utilities*

Investor-Owned:
Southwest Gas Corporation

*Electric Utilities*

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

**State: New Hampshire**

Regulatory Authority: New Hampshire Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
EneregyNorth Natural Gas, Inc.

*Electric Utilities*

Investor-Owned:
Public Service Company of New Hampshire
Rural Electric Cooperatives:
New Hampshire Electric Cooperative, Inc.

**State: New Jersey**

Regulatory Authority: New Jersey Board of Public Utilities.

*Gas Utilities*

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

*Electric Utilities*

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

**State: New Mexico**

Regulatory Authority: New Mexico Public Service Commission.

*Gas Utilities*

Gas Company of New Mexico

*Electric Utilities*

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company
Rural Electric Cooperative:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

**State: New York**

Regulatory Authority: New York Public Service Commission.

*Gas Utilities*

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

*Electric Utilities*

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

*Electric Utilities*

Publicly-Owned:
Power Authority of New York

**State: North Carolina**

Regulatory Authority: North Carolina Utilities Commission.

*Gas Utilities*

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

*Electric Utilities*

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

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*Electric Utilities*

Publicly-Owned:
Fayetteville Public Works Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department
Rural Electric Cooperatives:
Blue Ridge Electric Membership Corp.
Rutherford Electric Membership Corporation

**State: North Dakota**

Regulatory Authority: North Dakota Public Service Commission.

*Gas Utilities*

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

*Electric Utilities*

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

**State: Ohio**

Regulatory Authority: Ohio Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

*Electric Utilities*

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

*Electric Utilities*

Publicly-Owned:
Cleveland Division of Light and Power
Rural Electric Cooperative:
South Central Power Company

**State: Oklahoma**

Regulatory Authority: Oklahoma Corporation Commission

*Gas Utilities*

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

*Electric Utilities*

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company
Rural Electric Cooperative:
Cotton Electric Cooperative

*Gas Utilities*

Investor-Owned:
Cities Service Gas Company

**State: Oregon**

Regulatory Authority: Public Utility Commissioner of Oregon.

*Gas Utilities*

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

*Electric Utilities*

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commission of Oregon:

*Electric Utilities*

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board
Rural Electric Cooperatives: Utility
Umatilla Electric Cooperative Association

**State: Pennsylvania**

Regulatory Authority: Pennsylvania Public Utility Commission.

*Gas Utilities*

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

*Electric Utilities*

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

*Gas Utilities*

Publicly-Owned:
Philadelphia Gas Works

**State: Puerto Rico**

Regulatory Authority: Puerto Rico Public Service Commission.

*Gas Utilities*

None.

*Electric Utilities*

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

*Electric Utilities*

Publicly-Owned:
Puerto Rico Electric Power Authority

**State: Rhode Island**

Regulatory Authority: Rhode Island Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Providence Gas Company

*Electric Utilities*

Investor-Owned
Blackstone Valley Electric Company
Narragansett Electric Company

**State: South Carolina**

Regulatory Authority: South Carolina Public Service Commission.

*Gas Utilities*

Investor-Owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

*Electric Utilities*

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company



The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission.

*Electric Utilities*

Publicly-Owned:
South Carolina Public Service Authority
Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperatives, Inc.

**State: South Dakota**

Regulatory Authority: South Dakota Public Utilities Commission.

*Gas Utilities*

Investor-Owned:
Midwest Gas, division of Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

*Electric Utilities*

Investor-Owned:
Black Hills Power and Light Company
IPS Electric, division of Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission.

*Electric Utilities*

Publicly-Owned:
Nebraska Public Power District

**State: Tennessee**

Regulatory Authority: Tennessee Public Service Commission.

*Gas Utilities*

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

*Electric Utilities*

Investor-Owned:
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

*Electric Utilities*

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light Gas and Water Division
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

*Gas Utilities*

Publicly-Owned:
Memphis Light, Gas and Water Division

**State: Tennessee**

Regulatory Authority: Tennessee Valley Authority.

*Gas Utilities*

None.

*Electric Utilities*

Publicly-Owned:
Athens Utilities
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Decatur Electric Department
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Morristown Power System
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System
Tupelo Water & Light Department
Rural Electric Cooperatives:
Alcorn County Electric Company Association
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Holston Electric Cooperative
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Sequachee Valley Electric Cooperative
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

**State: Texas**

Regulatory Authority: Texas Public Utility Commission.

*Gas Utilities*

Investor-Owned:
None.

*Electric Utilities*

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company
Publicly-Owned:
Lower Colorado River Authority
Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.

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The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

*Electric Utilities*

Publicly-Owned:
Austin Electric Department
Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

**State: Texas**

Regulatory Authority: Railroad Commission of Texas.

*Gas Utilities*

Investor-Owned:
Atmos Energy Corporation
Enterx, Inc.
Lone Star Gas Company, a division of ENSERCH Corp.
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. [The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

*Gas Utilities*

Public-Owned:
City Public Service Board (San Antonio)

**State: Utah**

Regulatory Authority: Utah Public Service Commission.

*Gas Utilities*

Investor-Owned:
Mountain Fuel Supply Company

*Electric Utilities*

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
Atmos Energy Corporation
Moon Lake Electric Association

**State: Vermont**

Regulatory Authority: Vermont Public Service Board.

*Gas Utilities*

None.

*Electric Utilities*

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire.

**State: Virginia**

Regulatory Authority: Virginia State Corporation Commission.

*Gas Utilities*

Investor-Owned:
Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Northern Virginia Natural Gas
Virginia Natural Gas

*Electric Utilities*

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Old Dominion Power Company
Potomac Edison Company
Virginia Electric and Power Company

*Rural Electric Cooperatives*

Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

*Gas Utilities*

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

*Electric Utilities*

Publicly-Owned:
Danville Water, Gas & Electric

**State: Washington**

Regulatory Authority: Washington Utilities and Transportation Commission.

*Gas Utilities*

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

*Electric Utilities*

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

*Electric Utilities*

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

**State: West Virginia**

Regulatory Authority: West Virginia Public Service Commission.

*Gas Utilities*

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

*Electric Utilities*

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Wheeling Electric Company

**State: Wisconsin**

Regulatory Authority: Wisconsin Public Service Commission.



*Gas Utilities*

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

*Electric Utilities*

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

**State: Wyoming**

Regulatory Authority: Wyoming Public Service Commission.

*Gas Utilities*

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

*Electric Utilities*

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
Tri-County Electric Association, Inc.

**Appendix B**

*Electric Utilities*

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1978–1989. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Electric Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaii Electric Light Company
Hawaiian Electric Company Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Power Company (IN)
Indiana & Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Southern Utilities Company
IPS Electric, division of Iowa Public Service Co. (IA)
IPS Electric, division of Iowa Public Service Co. (SD)
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
Lake Superior District Power Company (MI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Maui Electric Company
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana-Dakota Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company

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Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WT)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:
Albany Water Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Athens Utilities (AL)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
Dalton Water Light & Sink (CA)
Danville Water Gas & Electric (VA)
Decatur Electric Department (AL)
Dothan Electric Department (AL)
Eugene Walter & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greenville Light & Power System (TN)
Greenville Utilities Commission (NC)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Kissimmee Utility Authority (FL)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Morristown Power System (TN)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (LA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Power Authority of New York (NY)
Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)



Public Utility District No. 1 of Cowlitz County (WA)
Public Utility District No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)
Springfield Water, Lights & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Tupelo Water & Light Department (MS)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wilson Utilities Department (NC)

*Rural Electric Cooperatives*

Alcorn County Electric Power Association (MS)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperatives, Inc., (TX)
Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (MN)
Douglas County Electric Membership Corporation (GA)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)
First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4—County Electric Power Association (MS)
Gibson County Electric Membership (TN)
Green River Electric Corporation (KY)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation
Holston Electric Cooperative (TN)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lee County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Sequachee Valley Electric Cooperative (TN)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association Inc. (WY)
Tri-County Electric Membership Corporation (TN)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

*Federal Agencies*

Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

*Gas Utilities*

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1989. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Atmos Energy Corporation
Baltimore Gas Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)

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Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company
City Gas Company of Florida
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
EnergyNorth Natural Gas, Inc.
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Nexico
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (LA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (LA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Midwest Gas, division of Iowa Public Service Company (IA)
Midwest Gas, division of Iowa Public Service Company (MN)
Midwest Gas, division of Iowa Public Service Company (NE)
Midwest Gas, division of Iowa Public Service Company (SD)
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities—Division of Utilicorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (CO)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (IA)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (KS)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (MN)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southwestern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
United Cities Gas Company (GA)
Virginia Natural Gas
Washington Gas Light Company (DC)



Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned:
Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

[FR Doc. 90-29568 Filed 12-17-90; 8:45 am]
BILLING CODE 6450-01-M

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# federal register

Part VI

## The President

Executive Order 12738—Administration of Foreign Assistance and Related Functions and Arms Export Controls

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# Presidential Documents

Title 3—

The President

## Executive Order 12738 of December 14, 1990

## Administration of Foreign Assistance and Related Functions and Arms Export Controls

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2381), and section 301 of title 3 of the United States Code, and in order to delegate certain functions to the Secretary of State, the Secretary of Defense, and the Administrator of the Agency for International Development, it is hereby ordered as follows:

**Section 1.** Section 1-102(a) of Executive Order No. 12163, as amended, is further amended by:

(1) amending paragraph (1) to read as follows:

"(1) the Foreign Assistance Act of 1961 (22 U.S.C. 2151 *et seq.*) (hereinafter referred to as the "Act"), except that the delegated functions under sections 116(e), 491(b), 491(c), 607, 627, 628, 630(3), and 666 of the Act shall be exercised in consultation with the Secretary of State;"

(2) striking out paragraphs (5), (6), and (7) and redesignating paragraphs "(8)", "(9)", "(10)", and "(11)" as paragraphs "(5)", "(6)", "(7)", and "(8)", respectively;

(3) amending paragraph (5), as redesignated by this Executive order, to read as follows:

"(5) section 1205(b) of the International Security and Development Cooperation Act of 1985 (hereinafter referred to as the "ISDCA of 1985");"

(4) amending paragraph (6), as redesignated by this Executive order, to read as follows:

"(6) section 535 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167), to be exercised by the Administrator of the Agency for International Development within IDCA;"

(5) amending paragraph (7), as redesignated by this Executive order, to read as follows:

"(7) the first proviso under the heading "Population Development Assistance" contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167), to be exercised by the Administrator of the Agency for International Development within IDCA;" and

(6) inserting the following new paragraph:

"(9) section 514 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101-167), insofar as they relate to the authority contained in section 109 of the Act, to be exercised by the Administrator of the Agency for International Development within IDCA."

**Sec. 2.** Section 1-102 of Executive Order No. 12163, as amended, is further amended by striking out subsections (b) and (c) and redesignating subsections "(d)", "(e)", "(f)", and "(g)" as "(b)", "(c)", "(d)", and "(e)", respectively.

**Sec. 3.** Section 1-201(a) of Executive Order No. 12163, as amended, is further amended by:

(1) redesignating paragraphs (2) through (6) as paragraphs (3) through (9), respectively;

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(2) redesignating paragraphs (9) through (31) as paragraphs (11) through (33), respectively; and

(3) inserting, in the appropriate place, the following new paragraphs:

"(2) section 451 of the Act;" and

"(10) section 604(a) of the Act, insofar as they related to procurement under chapter 1 of part I and chapter 4 of part II of the Act;".

**Sec. 4.** Section 1–201(a) of Executive Order No. 12163, as amended, is further amended by:

(1) amending paragraphs (28), (29), (30), (31), and (32), as redesignated by this Executive order, to read as follows:

"(28) sections 513, 536, 554, 559, 560, 561, 562, 564(a), 599C, and 599G(a)(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167);

"(29) the second and third provisos under the subheading "Contribution to the International Development Association" under the heading "Annual Contributions to International Financial Institutions" contained in title I of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), and section 548 of such Act, each of which shall be exercised in consultation with the Secretary of the Treasury;

"(30) the proviso relating to certain expropriation claims of U.S. citizens in El Salvador under the heading "Economic Support Fund" contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167);

"(31) the proviso relating to tied aid credits under the heading "Economic Support Fund" contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), which shall be exercised in consultation with the Administrator of the Agency for International Development within IDCA;

"(32) subsection (c)(2) under the heading "Foreign Military Sales Debt Reforms" contained in title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (Public Law 100–202), which shall be exercised in consultation with the Secretary of Defense;"

(2) striking out the period at the end of paragraph (33), as redesignated by this Executive order, and inserting in lieu thereof a semicolon; and

(3) adding the following new paragraphs:

"(34) section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), which shall be exercised in consultation with the President of the Export-Import Bank of the United States;

"(35) section 581(a) and 581(c) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167), which shall be exercised in consultation with the Secretary of Defense; and

"(36) section 12 of the International Narcotics Control Act of 1989 (Public Law 101–231)."

**Sec. 5.** Section 1–301 of Executive Order No. 12163, as amended, is further amended by:

(1) amending subsection (f) to read as follows:

"(f) The functions conferred upon the President under section 573 and section 581(b)(2) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167).": and

(2) adding the following new subsection:

"(g) The functions conferred upon the President under section 3 of the International Narcotics Control Act of 1989 (Public Law 101–231), which shall be exercised in consultation with the Secretary of State."



**Sec. 6.** Section 1–701 of Executive Order No. 12163, as amended, is further amended—

(1) in subsection (a), by striking out "451,"; and

(2) by amending subsection (d) to read as follows:

"(d) The functions conferred upon the President with respect to determinations, certifications, directives, or transfers of funds, as the case may be, by sections 303, 465(b), 481(h), 505(d)(2)(A), 505(d)(3), 506(a), 552(c), 552(e), 610, 614(c), 620E, 632(b), 633A, 663(a), 669(b)(1), 670(a), 670(b)(2), and 670(b)(3) of the Act; those under section 604(a) of the Act except insofar as they relate to procurement under chapter 1 of part I and chapter 4 of part II."

**Sec. 7.** Section 1(e) of Executive Order No. 11958, as amended, is further amended by striking out "and section 580 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461)", and inserting in lieu thereof "and section 571 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167)".

THE WHITE HOUSE,
*December 14, 1990.*

[FR Doc. 90–29780
Filed 12–17–90; 11:33 am]
Billing code 3195–01–M

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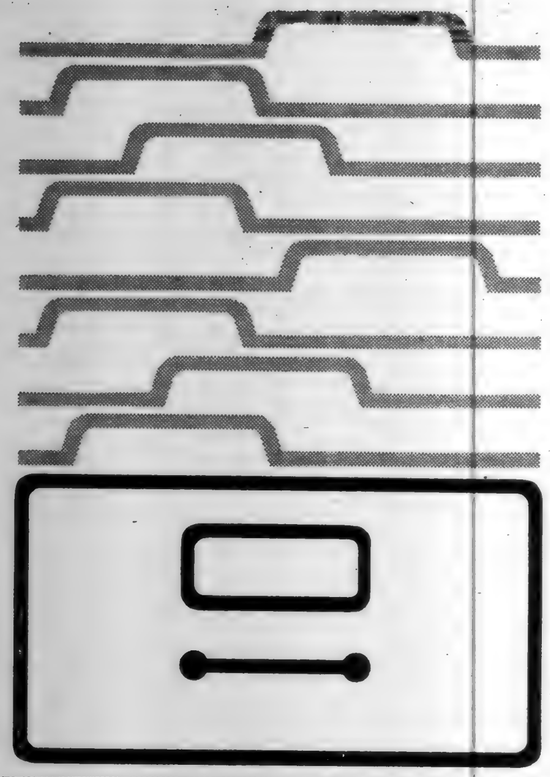
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Auditorium A
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**RESERVATIONS:** 1-800-347-1997.



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# Rules and Regulations

Federal Register
Vol. 55, No. 244
Wednesday, December 19, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1951

### Internal Revenue Service Offset

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its Internal Revenue Service (IRS) offset regulation to clarify the descriptions of several categories of accounts ineligible for IRS offset and to add a new form letter used in the IRS offset process. The intended effect of this action is to correct deficiencies in the current IRS offset regulation and to change a form to reflect recent revisions to this regulation.

**EFFECTIVE DATE:** December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Hudec, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, Room 5503, South Agriculture Building, Washington, DC 20250, telephone (202) 382–8356.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only rules of agency procedure and internal agency management.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only rules of agency procedure and internal agency management, making publication for comment unnecessary.

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

The programs to which this regulation may apply are listed in the Catalog of Federal Domestic Assistance under the following:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411 Rural Housing Site Loans (Sections 523 and 524 Site Loans)
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10.422 Business and Industrial Loans
10.423 Community Facility Loans
10.428 Economic Emergency Loans
10.433 Housing Preservation Grants
10.434 Nonprofit Corporations Loan and Grant Program
10.435 Agricultural Loan Mediation Program

Programs listed under numbers 10.404, 10.406, 10.407, 10.410, 10.417, 10.421, 10.428, and 10.435 are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3015, subpart V, 48 FR 29115, June 24, 1983.)

Programs listed under numbers 10.405, 10.411, 10.414, 10.415, 10.416, 10.418, 10.419, 10.420, 10.422, 10.423, 10.427, 10.433, and 10.434 are subject to the provisions of Executive Order 12372 (7 CFR 3015, subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

### List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs—Agriculture, Accounting, Credit, Low and moderate income housing loans—Servicing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

### Subpart C—Offsets of Federal Payments to FmHA Borrowers

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1951.122 is amended by removing the last sentence of paragraph (a)(4), removing paragraph (b)(3), redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively, adding paragraph (a)(6) and revising paragraph (d)(1) to read as follows:

**§ 1951.122 Finance Office screening.**

* * * * *

(a) * * *

(6) Account is current under a subject to approved adjustment (SAA).

* * * * *

(d) * * *

(1) Borrower has received any combination of Attachments 3 through 10 of Exhibit A of subpart S of this part; and the borrower did not request an appeal of the decision; any appeal has been concluded; or

* * * * *

3. Section 1951.125 is amended by revising the last sentence to read as follows:

**§ 1951.125 Processing borrower's requests not to exercise IRS offset.**

* * * After such determination, the County Supervisor will send the borrower FmHA Form Letter 1951–C–9 advising the borrower if offset will be exercised.

4. Section 1951.126 is amended by revising the fourth sentence to read as follows:

**§ 1951.126 Final referral to IRS.**

* * * If any of the events listed under § 1951.122 of this subpart occurs, immediately submit Form FmHA 1951–

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43, "Adjustment of Accounts Referred for IRS Offset," in accordance with the FMI for that form. * * *

Dated: October 24, 1990.

**La Verne Ausman,**

*Administrator, Farmers Home Administration.*

[FR Doc. 90-29680 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-07-M

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**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 90-235]**

**Llamas and Alpacas Imported From Chile and Certain Other Countries Declared Free of Rinderpest and Foot-and-Mouth Disease**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** We are correcting an error that appeared in a final rule published September 28, 1990 (55 FR 39601–39608, Docket Number 89–216) and effective on October 29, 1990. The final rule amended the animal import regulations by adding health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, and from certain other countries declared free of rinderpest and foot-and-mouth disease.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8590.

In FR Doc. 90–22998, page 39606, second column, amendment number 3 is corrected to read as follows:

Done in Washington, DC, this 13th day of December 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

**§ 92.411 [Corrected]**

"3. In the first sentence of paragraph (b)(1) of § 92.411, the phrase 'other than llamas and alpacas from countries listed in § 94.1(d) of this chapter, and' is inserted immediately after 'Ruminants'."

[FR Doc. 90-29679 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-34-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 90-NM-168-AD; Amdt 39-6846]**

**Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary. This amendment is prompted by a report of inadvertent operation of the stick shaker and stick pusher shortly after takeoff due to a faulty static inverter. This condition, if not corrected, could result in erroneous stick shake and stick push occurrences, which could adversely affect the controllability of the airplane.

**EFFECTIVE DATE:** January 28, 1991.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, which requires a one-time measurement of the voltage and frequency outputs from Static Inverters No. 1 and No. 2, and recalibration, if necessary, was published in the **Federal Register** on October 2, 1990 (55 FR 40195).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,200.

The regulations adopted herein will not have substantive direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Applies to all Model BAC 1–11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure stall warning protection, accomplish the following:



A. Within 600 hours time-in-service or within 120 days after the effective date of this AD, whichever occurs first, measure the voltage and frequency outputs of Static Inverters No. 1 and No. 2, in accordance with the Accomplishment Instructions in British Aerospace Alert Service Bulletin 27-A-PM6005, Issue 1, dated March 28, 1990. If the measured voltage and/or frequency do not conform with the tolerances as detailed in the Maintenance Manual, Paragraph E, "Stall Protection—Simulated Flight Condition Check," prior to further flight, remove the inverter from the airplane and recalibrate it in accordance with the service bulletin.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective January 28, 1991.

Issued in Renton, Washington, on December 10, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29657 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-13-M

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**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Part 1500**

**Test Methods for Simulating Use and Abuse of Toys, Games, and Other Articles Intended for Use by Children**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Provisions of the Federal Hazardous Substances Act authorize the Commission to issue rules banning toys and other articles intended for children which present an electrical, mechanical, or thermal hazard in normal use or when subjected to reasonably foreseeable abuse. In 1975, the Commission issued a regulation to prescribe tests to simulate use and abuse of toys and other articles intended for children 18 months of age or younger. The **Federal Register** notice published by the Commission in 1975 to issue the regulation on a final basis contained an error in its description of the equipment to be used for one of the tests prescribed by the regulation. The Commission corrected that error by publishing a second notice in the **Federal Register** the same year. However, when codified in title 16 of the Code of Federal Regulations in 1976, the regulation contained the uncorrected description of the item of test equipment. That error has been included in each subsequent edition of title 16 of the Code of Federal Regulations. The Commission is issuing this technical amendment to correct the description of the test equipment in title 16 of the Code of Federal Regulations.

**EFFECTIVE DATE:** This amendment is effective on December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Poth, Director, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6400.

**SUPPLEMENTARY INFORMATION:** Provisions of the Federal Hazardous Substances Act (FHSA) authorize the Commission to issue regulations to ban any toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard "in normal use or when subjected to reasonably foreseeable damage or abuse." See sections 2(r), (s), and (t), and 3(e) of the FHSA (15 U.S.C. 1261(r), (s), and (t) and 1262(e)). Section 10(a) of the FHSA (15 U.S.C. 1269(a)) authorizes the Commission to issue regulations for the efficient enforcement of the FHSA.

In the **Federal Register** of January 7, 1975 (40 FR 1480) the Commission issued final regulations to prescribe tests for simulating use and abuse of toys and other articles intended for three age groups: 18 months of age and younger; older than 18 months but not more than 36 months of age; and older than 36 months but not more than 96 months of age.

Among the tests prescribed for toys and other articles intended for children 18 months of age and younger is a torque test, which is intended to simulate the action a child would use to detach a part or component from a toy.

The equipment used for the torque test for toys and articles intended for use by children 18 months of age and younger includes a "loading device" which was described in the regulation as "a torque gauge, torque wrench, or other appropriate device having an accuracy of ±2 inch pound (±0.23 kilogram-centimeter"). See § 1500.51(e)(2)(i) on page 1484 of the **Federal Register** of January 7, 1975.

The notice of January 7, 1975, contained several errors, including the value given for the tolerance for accuracy of the loading device specified in § 1500.51(e)(2). That value should have been "±0.2 inch-pound (±0.23 kilogram-centimeter)."

In the **Federal Register** of April 10, 1975 (40 FR 16191), the Commission published a notice to correct errors in the notice of January 7, 1975. That notice included a correction of § 1500.51(e)(2) by changing "±2 inch pound" to read "±0.2 inch-pound."

However, when § 1500.51 was codified in the 1976 edition of title 16, the correction of § 1500.51(e)(2) made by the **Federal Register** notice of April 10, 1975, was not included. The error has not been corrected in any subsequent edition of title 16.

For this reason, the Commission is issuing this technical amendment of 16 CFR 1500.51(e)(2) to specify that the tolerance for the accuracy of the loading device described in that section is ±0.2 inch-pound.

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires that agencies must give notice of proposed rulemaking and provide opportunity for interested parties to submit written comments on the proposal before a rule can be issued or amended. However, 5 U.S.C. 553(b)(B) provides that notice of proposed rulemaking and public participation are not required when the agency makes a finding for good cause that such notice and opportunity for comment are "impracticable, unnecessary, or contrary to the public interest."

The Commission finds for good cause that notice of proposed rulemaking and opportunity for written comment are not necessary for issuance of the technical amendment published below because its only purpose is to incorporate a correction of § 1500.51(e)(2) made on April 10, 1975, into that rule as codified in title 16 of the Code of Federal Regulations. In this instance, providing notice of proposed rulemaking and

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opportunity for comment is not necessary because this change does not raise any issue for public comment.

The APA also requires at 5 U.S.C. 553 that a "substantive rule" must be published at least 30 days before its effective date, unless the agency finds otherwise, for good cause shown, and publishes that finding with the rule. The technical amendment issued below changes the text of the rule codified at 16 CFR 1500.51(e)(2) to reflect the correction of that section published by the Commission in the Federal Register of April 10, 1975 at 40 FR 16191. For this reason, the Commission finds for good cause that the amendment issued below shall become effective on the date of its publication in the Federal Register.

**List of Subjects in 16 CFR Part 1500**

Consumer protection, Infants and children, Toys.

Therefore, pursuant to the authority of section 30(a) of the Consumer Product Safety Act (15 U.S.C. § 2079(a)) and section 10(a) of the Federal Hazardous Substances Act (15 U.S.C. 1269(a)), the Commission amends title 16 of the Code of Federal Regulations, chapter II, subchapter C, part 1500 as follows:

## PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

2. Section 1500.51(e)(2)(i) is revised to read as follows:

**§ 1500.51 Test methods for simulating use and abuse of toys and other articles intended for use by children 18 months of age or less.**

* * * * *

(e) *Torque test*—* * *

(2) *Test equipment*—(i) *Loading device.* The loading device shall be a torque gauge, torque wrench, or other appropriate device having an accuracy of ±inch-pound (±0.23 kilogram-centimeter).

* * * * *

Dated: December 13, 1990.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 90-29571 Filed 12-18-90; 8:45 am]

BILLING CODE 6355-01-M

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 133**

**[T.D. 90-98]**

**RIN 1515-AA92**

**Gray Market Goods**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** A United States Supreme Court decision invalidated § 133.21(c)(3) of the Customs Regulations (19 CFR 133.21(c)(3)), which denies protection against imported gray market goods where the trademark or trade name on foreign-made merchandise was applied under authorization received from the U.S. owner, insofar as it interpreted 19 U.S.C. 1526(a). Because this regulatory provision interpreted and applied two statutory provisions, and to resolve any remaining ambiguity and maintain Customs longstanding practice of interpreting both underlying statutory provisions in tandem, Customs proposed revising its regulations to eliminate the provision in its entirety. Elimination of the provision will accord import protection to U.S. trademark and trade name owners from certain goods bearing recorded trademarks and trade names applied under authorization of the U.S. owner. Customs has determined to adopt the proposal as the final rule.

**EFFECTIVE DATES:** January 18, 1991.

**FOR FURTHER INFORMATION CONTACT:** Barry P. Miller, Intellectual Property Rights Task Force, U.S. Customs Service (202) 566–8956.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Supreme Court issued a decision May 31, 1988, invalidating § 133.21(c)(3) of the Customs Regulations (19 CFR 133.21(c)(3)), relating to the importation of gray market goods, insofar as it implements section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526(a)). A gray market good bears a genuine trademark and is imported into the United States without the authorization of the owner of the U.S. trademark. The Court's decision, cited as K Mart Corporation versus Cartier, et al., 47th Street Photo, Inc. versus Coalition to Preserve the Integrity of American Trademarks, et al., United States et al., versus Coalition to Preserve the Integrity of American Trademarks, et al., 486 U.S. 281 (1988), is also referred to as the COPIAT decision.

Section 526(a) makes it unlawful (with certain exceptions) to import merchandise bearing a registered trademark "owned by a citizen of, or by a corporation or association created or organized within, the United States" if a copy of the trademark registration is filed with the Secretary of the Treasury. The enforcement of this provision has been delegated to the U.S. Customs Service. The Customs Service, by regulation, implemented the statute under an interpretation that excepted from seizure articles bearing genuine trademarks applied abroad with the authorization of the owner of the U.S. trademark registration. This position was based on the Government's view of the statute's legislative history, Customs long-standing practice, and express Congressional recognition of that practice. Accordingly, § 133.21(c)(1) of the Customs Regulations denies protection against the importation of gray markets goods where "[b]oth the foreign and the U.S. trademark or name are owned by the same person or business entity". Section 133.21(c)(2) similarly denies protection where "[t]he foreign and domestic trademark or trade name owners are parent and subsidiary companies or are otherwise subject to common ownership and control". Both §§ 133.21(c)(2) were upheld by the Supreme Court, and Customs will continue its administration of these sections as in the past.

Section 133.21(c)(3) of the Customs Regulations denies protection against imports where "the articles of foreign manufacture bear a recorded trademark or trade name applied under authorization of the U.S. owner". This section deals with authorized users or licensees. The Court's opinion concluded that § 133.21(c)(3) was not a permissible construction of 19 U.S.C. 1526(a). However, the Court did not rule on whether the regulation is consistent with 15 U.S.C. 1124 (section 42 of the Lanham Act). Accordingly, although § 133.21(c)(3) was clearly invalidated as to 19 U.S.C. 1526(a), it was not so clear that the regulation is invalidated as to 15 U.S.C. 1124. To resolve any remaining ambiguity, and maintain its longstanding practice of interpreting both statutory provisions in tandem, Customs solicited comments on its position that § 133.21(c)(3) is invalid as to 15 U.S.C. 1124 as well, and on the proposal to eliminate § 133.21(c)(3) from the Customs Regulations. Import protection would thus be accorded to U.S. trademark and trade name owners from goods of foreign manufacture bearing recorded trademarks and trade names applied under authorization of the U.S. owner. In response to this request for comments on the proposal, Customs received more than 30 responses. Many of the comments received expressed similar viewpoints on the proposal.



**Analysis of Comments**

*Comment:* Several commentors voiced support for the Customs proposal without providing additional support for their position. Others, in expressing support, stated that because the Court ruled that § 133.21(c)(3) unlawfully exempted merchandise which violated 19 U.S.C. 1526 from seizure and forfeiture, the question of whether § 133.21(c)(3) was also violative of 15 U.S.C. 1124 was no longer relevant, and that the provision should be removed.

*Response:* Customs agrees that § 133.21(c)(3) should be removed without regard to its validity under 15 U.S.C. 1124.

*Comment:* Several comments, while supporting the Customs decision to eliminate § 133.21(c)(3), stated that the proposal did not go far enough. These commentors urged elimination of §§ 133.21(c)(1) and 133.21(c)(2) in addition to § 133.21(c)(3) as proposed.

*Response:* Elimination of § 133.21(c)(1) and (2) is beyond the scope of this rulemaking.

*Comment:* Some commentors opposed the proposed removal of paragraph (c)(3). They argue that removal of § 133.21(c)(3) is premature because Customs has made no attempt to identify how removal of the section will affect enforcement of § 133.21 (c)(1) and (c)(2). The commentors also contend that Customs must ensure that the deletion of § 133.21(c)(3) will not be read as an invitation to evade § 133.21 (c)(1) and (c)(2).

*Response:* Removal of § 133.21(c)(3) does not require Customs to anticipate whether this change will be interpreted as an "invitation" to evade the separately valid and enforceable provisions of § 133.21 (c)(1) and (c)(2).

*Comment:* A commentor argues that any deletion of § 133.21(c)(3) should be based on section 526 of the Tariff Act only, and not 15 U.S.C. 1124. Only entities fully qualifying under section 526 of the Tariff Act should be eligible to restrict the entry of their genuine "authorized use" goods. The commentor recommends that Customs promulgate procedures to ensure that entities seeking to bar goods under § 133.21 (c)(1) and (c)(2) are not under common ownership or control with the foreign manufacturer. The commentor further states that Customs should refrain from removing § 133.21(c)(3) until such procedures are in place.

*Response:* Section 133.2 of the Customs Regulations already is specifically designed to elicit information about common ownership or control to determine whether gray market protection is available. Owners of trademarks currently recorded with Customs who have authorized independent parties to apply the mark to articles of foreign manufacture may now be eligible for protection against parallel imports ("gray market goods"). In keeping with past practice, Customs will accept notification of the circumstances believed to warrant amendment of a particular recordation. Eligible recordants should follow procedures outlined below.

*Comment:* Customs proposed deletion of § 133.21(c)(3) would impermissibly broaden the Supreme Court's ruling in COPIAT.

*Response:* It is because the Court did not reach the Lanham Act question in its decision and place any restrictions on Customs interpretation of section 42 of that Act that comments were solicited on this issue. In this rulemaking, Customs is exercising its authority to implement both the Tariff and Lanham Acts. The fact that the Court did not address the validity of § 133.21(c)(3) with regard to one of those acts, while holding it invalid with regard to the other, does not create a right to import goods which would be barred under the provision which was addressed.

**Determination**

After consideration of all the comments received in response to publication of the notice of proposed rulemaking, and after further review of the matter, it has been determined to adopt the regulations in final form as proposed.

**Amendment of Recordations**

Owners of trademarks currently recorded with Customs who have authorized independent parties to apply the mark to articles of foreign manufacture may now be eligible for protection against parallel imports ("gray market goods"). In keeping with past practice, Customs will accept notification of the circumstances believed to warrant amendment of a particular recordation. Notice should be in writing addressed to: U.S. Customs, Intellectual Property Rights Task Force (ORR), room 2137, 1301 Constitution Avenue, NW, Washington, DC 20229. Parties without independent foreign licensees need not take any action as a result of the deletion of § 133.21(c)(3) since the deletion will not affect the level of gray market protection afforded these parties.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O.12291. Accordingly, no regulatory impact analysis has been prepared.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 133**

Trademarks, Trade names, Importations.

**Amendments to the Regulations**

Part 133, Customs Regulations (19 CFR part 133) is amended as set forth below:

## PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The authority citation for part 133 is revised to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

**§ 133.21 [Amended]**

2. Section 133.21(c) is amended by removing paragraph (c)(3) and marking it "Reserved."

**Carol Hallett,**

*Commissioner of Customs.*

Approved: November 9, 1990.

**John P. Simpson,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 90-29619 Filed 12-18-90; 8:45 am]

BILLING CODE 4820-02-M

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**DEPARTMENT OF TREASURY**
**Internal Revenue Service**

**26 CFR Part 301**

**[T.D. 8325]**

**RIN 1545-AP25**

## Determination of Rate of Interest—Increase in Rate of Interest Payable on Large Corporate Underpayments

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations under section 6621(c), regarding an increase in the rate of interest payable on large corporate underpayments. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990. The temporary regulations affect certain corporations and are necessary to provide them with guidance needed to comply with these changes. The text to the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

**EFFECTIVE DATE:** The temporary regulations contained in § 301.6621–3T are effective January 1, 1991.

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) that provide rules under section 6621(c) of the Internal Revenue Code of 1986, as amended (the "Code") relating to the increase in the rate of interest payable on large corporate underpayments of tax. Section 6621(c) of the Code was enacted as part of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–503, 104 Stat. 1388) and is effective for purposes of determining interest for periods after December 31, 1990, regardless of the taxable period to which the underpayment of tax may relate. The temporary regulations contain a special transition rule for taxpayers that receive certain letters or notices that are sent prior to January 1, 1991, and that may trigger the increase in the rate of interest imposed under section 6621(c).

### Explanation of Provisions

Section 6601(a) provides that if any amount of tax imposed by the Code (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid. Section 6621(a)(2) provides that the underpayment rate is the sum of the Federal short-term rate (determined under section 6621(b)) plus 3 percentage points. This standard underpayment rate is referred to hereinafter as the "section 6621(a)(2) rate." Section 6621(c), however, provides that the underpayment rate on any large corporate underpayment for periods after the applicable date is the sum of the Federal short-term rate (determined under section 6621(b)) plus 5 percentage points. This higher underpayment rate is referred to hereinafter as the "section 6621(c) rate."

### Large Corporate Underpayment

As used in section 6621(c), the term "underpayment of a tax" means the excess of a tax imposed by the Code over the amount of such tax paid on or before the last date prescribed for payment. The term "tax" for such purposes generally includes interest, penalties, additional amounts, and additions to tax. *See* sections 6601(e)(1), 6665(a), and 6671(a). Accordingly, once section 6621(c) becomes applicable, the section 6621(c) rate generally applies to any interest, penalties, additional amounts, and additions to tax, as well as to the underlying tax with respect to which such amounts are imposed.

The legislative history of section 6621(c) clearly indicates that the amount of the underpayment (as opposed to the amount of a proposed deficiency, for example) determines whether or not there is a large corporate underpayment. Accordingly, the temporary regulations provide that the existence and amount of a large corporate underpayment is determined only when an assessment is made with respect to the taxable period. Payments made after the last date prescribed for payment (for example, by way of an amended return) will not prevent the occurrence of a large corporate underpayment, although such a payment will reduce the amount of interest that the taxpayer will ultimately owe.

Whether section 6621(c) is applicable depends, in part, on whether the amount of an underpayment of a tax exceeds $100,000. If the general definition of underpayment of a tax (i.e., including interest, penalties, additional amounts, and additions to tax) were used to determine whether this threshold is satisfied, the amount of an underpayment would depend in part upon how much time passes between the last date prescribed for payment and the assessment date. An underpayment that totals less than $100,000 as of the last date prescribed for payment may exceed $100,000 at the time of assessment (*e.g.*, as a result of the imposition of interest). Thus, in many instances a taxpayer would not be able to know prior to the time of an assessment whether section 6621(c) applied. In an effort to reduce the number of such cases, the temporary regulations adopt the concept of a "threshold underpayment" that will be used solely for purposes of determining whether an underpayment is a large corporate underpayment, and will have no application for any other purpose under section 6621(c) or elsewhere in the interpretation or administration of the federal tax laws.

Specifically, a large corporate underpayment is defined in the temporary regulations as any underpayment of a tax by a C corporation for any taxable period if the amount of the threshold underpayment of the tax for the taxable period exceeds $100,000. A threshold underpayment is the excess of the tax imposed by the Code (exclusive of interest, penalties, additional amounts, and additions to tax) for the taxable period over the amount of such tax paid on or before the last date prescribed for payment. In determining whether there is a threshold underpayment, different types of taxes (such as income tax and FICA tax) and amounts that relate to different taxable periods are not aggregated.

### Applicable Date—General Rules

The section 6621(c) rate applies only for periods after the applicable date. The applicable date, in the case of any underpayment to which the deficiency procedures of subchapter B of chapter 63 of the Code apply, is the 30th day after the earlier of: (1) The date on which the Service sends the taxpayer the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Service's Office of Appeals (commonly called a "30-day letter"); or (2) the date on which the Service sends a deficiency notice under section 6212 of the Code (commonly called a "90-day letter"). The Service is not required by section 6621 (c) or any other provision of law to issue a 30-day letter to any taxpayer. Thus, in the case of any underpayment to which the deficiency procedures apply and with respect to which no 30-day letter is issued, the applicable date will be the 30th day after the Service sends the taxpayer a 90-day letter.

Current designations of 30-day letters include Letters 950 (DO or P), 915 (DO), 569 (SC, DO or P), 953 (DO), and 955 (DO or P). Current designations of 90-day letters include Letters 531 (C, SC, DO or P), 902 (DO or P), 895 (C, DO or P), and 896 (DO or P) and Forms 5601 and 5564.

In the case of any underpayment to which the deficiency procedures do not apply, the applicable date is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of the assessment or proposed assessment of the tax. In the case of income taxes, for example, the deficiency procedures do not apply to amounts shown as due on the taxpayer's return if the taxpayer fails to remit the full amount on or before the last date prescribed for payment and to certain amounts attributable to mathematical or clerical errors on a return. Because no 30-day letter or 90-day letter is issued to the taxpayer in such cases, the applicable date is the 30th day after the date on which any letter or notice is sent that notifies the taxpayer of the assessment or proposed assessment of the tax. Often the applicable date is the 30th day after the date on which an assessment notice under section 6303 is sent. Current designations of section 6303 assessment notices include CP220, CP161, CP101, CP111, and CP121.

### Applicable Date—Exception for Payment of Amount Shown as Due

Section 6621 (c)(2)(B)(ii) provides that a letter or notice shall be disregarded for purposes of determining the applicable date if the taxpayer makes a payment equal to the amount shown as due in the letter or notice within 30 days from the date that the Service sends the letter or notice. Taxpayers may find this useful in certain situations. For example, a taxpayer might receive an assessment notice resulting from a mathematical error on an income tax return. Subsequently, that return may be examined by the Service and a 30-day letter issued. If the taxpayer pays the full amount shown as due on the math error assessment notice within 30 days of the date on which the notice is sent, the applicable date will be the 30th day after the date on which the 30-day letter is sent. In the absence of such a payment, the applicable date will be the 30th day after the date on which the math error assessment notice is sent.

### Applicable Date—Special Transition Rule

A special transition rule allows taxpayers that were sent a letter or notice prior to January 1, 1991, to avoid having such letter or notice trigger the section 6621(c) rate. Such a letter or notice will be disregarded by the Service for purposes of determining the applicable date if the taxpayer has made a payment on or before January 31, 1991, equal to the amount shown as due in the letter or notice plus a reasonable estimate of the interest payable on such amount (computed by applying the section 6621(a)(2) rate). In the case of an assessment notice, the payment of the amount of interest shown as due on the last assessment notice sent to the taxpayer prior to December 19, 1990, will be treated as a payment of a reasonable estimate of the interest payable on the amount shown in that assessment notice or in any prior assessment notice sent with respect to the same tax for the same taxable period. This special transition rule applies even if the payment is not made within 30 days of the date on which the Service sent the letter or notice.

A taxpayer that is sent a letter or notice after December 1, 1990, and before January 1, 1990, can make a payment under either the exception for a payment of the amount shown as due (*i.e.*, a payment of the amount shown as due within 30 days of when the letter or notice is sent) or under the special transition rule (*i.e.*, a payment of the amount shown as due plus a reasonable estimate of interest on or before January 31, 1991.

### Applicable Date—Amount Shown As Due

For purposes of the exception for a payment of the amount shown as due and the special transition rule, the "amount shown as due" in any letter or notice is the total amount of tax, as well as any interest, penalties, additional amounts, and additions to tax that are set forth in the notice or letter. A deposit in the nature of a cash bond will not be considered a payment of the amount shown as due for such purposes, although such a deposit may reduce the amount of interest that the taxpayer ultimately owes.

### Procedures for Making Cash Deposits

Rev. Proc. 84–58, 1984–2 C.B. 501, sets forth procedures pursuant to which a taxpayer may make a deposit in the nature of a cash bond that will operate to stop the running of interest on an equal amount of tax liability from the date that the Service receives the deposit. The Service anticipates that the enactment of section 6621(c) will result in an increase in the number of corporate taxpayers that consider making deposits in the nature of a cash bond. Interested taxpayers should consult Rev. Proc. 84–58.

### Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

### Drafting Information

The principal authors of these regulations are P. Val Strehlow and David Schneider of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these temporary regulations.

### List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Disclosure of information, Employment taxes, Estate tax, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes.

### Amendments to the Regulations

The amendments to 26 CFR, part 301, are as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority for part 301 continues to read in part:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 301.6621–3T is added to read as follows:

**§ 301.6621–3T. Higher interest rate payable on large corporate underpayments (Temporary).**

(a) *In general.* Section 6621 establishes the interest rate for purposes of computing the amount of interest that must be paid under section 6601, relating to interest on underpayments of tax. Section 6621(a)(2) provides that the underpayment rate is the sum of the Federal short-term rate (determined under section 6621(b)) plus 3 percentage points. That underpayment rate is referred to hereinafter as the "section 6621(a)(2) rate." Section 6621(c) and this section, however, provide that the underpayment rate on any large corporate underpayment is the sum of

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the Federal short-term rate (determined under section 6621(b)) plus 5 percentage points. This higher underpayment rate is referred to hereinafter as the "section 6621(c) rate." The section 6621(c) rate applies only for periods after the applicable date (as determined in paragraph (c) of this section).

(b) *Large corporate underpayment*—(1) *Defined.* For purposes of section 6621(c) and this section, "large corporate underpayment" means any underpayment of a tax by a C corporation for any taxable period if the amount of the threshold underpayment of the tax (as defined in paragraph (b)(2)(ii) of this section) for that taxable period exceeds $100,000.

(2) *Underpayment of a tax*—(i) *In general.* As used in section 6621(c) and this section, "underpayment of a tax" means the excess of a tax imposed by the Code over the amount of such tax paid on or before the last date prescribed for payment. Except as provided in paragraph (b)(2)(ii) of this section, "tax" for such purposes includes interest, penalties, additional amounts, and additions to tax. *See* sections 6601(e)(1), 6665(a), and 6671(a). Thus, the section 6621(c) rate generally applies to any interest, penalties, additional amounts, and additions to tax, as well as to the underlying tax with respect to which such amounts are imposed.

(ii) *Threshold underpayment of a tax.* Solely for purposes of this section and not for any other purpose under section 6621(c) or elsewhere in the interpretation or administration of the federal tax laws, a "threshold underpyanent of a tax" is the excess of a tax imposed by the Code (exclusive of interest, penalties, additional amounts, and additions to tax) for the taxable period over the amount of such tax paid on or before the last date prescribed for payment. Thus, any payments made after the last date prescribed for payment (for example, by way of an amended return) will not affect the existence of a threshold underpayment. In determining whether there is a threshold underpayment, different types of taxes (such as income tax and FICA tax) and amounts that relate to different taxable periods are not added together.

(iii) *When determined.* The existence of a threshold underpayment of a tax and the amount of a large corporate underpayment are determined only when an assessment is made with respect to the taxable period. Thus, the amount of a deficiency or proposed deficiency set forth in a letter or notice pursuant to which the applicable date is determined (under paragraph (c) of this section) does not determine whether there is a large corporate underpayment.

(iv) *Special rule.* The section 6621(c) rate is not used to compute the interest charges that a taxpayer timely assesses against itself in return for using a method of tax accounting or reporting that defers the payment of tax, such as the interest charges relating to passive foreign investment companies under section 1291(c) and installment obligations of nondealers under section 453A(c). However, to the extent such charges are not paid on or before the last date prescribed for payment and therefore become part of an underpayment of a tax, the section 6621(c) rate will apply to such amounts for periods after the applicable date (as determined in paragraph (c) of this section).

(3) *C corporation defined.* For purposes of section 6621(c)(3)(A) and this section, "C corporation" means, with respect to any taxable period, a corporation that is a C corporation during any part of the taxable period. Interest on a large corporate underpayment for a taxable period continues to be imposed at the section 6621(c) rate even if during or after the taxable period (i) the taxpayer ceases to be a C corporation, or (ii) the underpayment becomes the liability of a successor or transferee that is not a C corporation.

(4) *Taxable period.* For purposes of section 6621(c) and this section, the "taxable period" is the taxable year in the case of any tax imposed by subtitle A of the Code. In the case of any other tax, the "taxable period" is the period to which the underpayment relates. For example, the taxable period for an underpayment of FICA taxes is the calendar quarter. If the underpayment does not relate to a particular period (for example, in the case of certain transactional excise taxes), the "taxable period" is the period covered by a return on which the tax is required to be shown.

(5) *Last date prescribed for payment.* For purposes of this section, the "last date prescribed for payment" means the last date prescribed for payment as determined, without regard to any extension of time, under section 6601(b).

(c) *Applicable date*—(1) *In general.* The section 6621(c) rate only applies to periods after the applicable date. Pursuant to the effective date of section 6621(c) and paragraph (e) of this section, however, the section 6621(c) rate will not apply prior to January 1, 1991, even if the applicable date is prior to December 31, 1990.

(2) *When deficiency procedures apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures of subchapter B of chapter 63 to the Code apply, is the 30th day after the earlier of—

(i) The date on which the Service sends the taxpayer the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Service's Office of Appeals (commonly called a "30-day letter"); or

(ii) The date on which the Service sends a deficiency notice under section 6212 of the Code (commonly called a "90-day letter").

(3) *When deficiency procedures do not apply.* The applicable date, in the case of any underpayment of a tax to which the deficiency procedures do not apply, is the 30th day after the date on which the Service sends the first letter or notice that notifies the taxpayer of an assessment or proposed assessment of the tax. In the case of income taxes, for example, the deficiency procedures do not apply to amounts shown as due on the taxpayer's return if the taxpayer fails to remit the full amount on or before the last date prescribed for payment, to amounts attributable to mathematical or clerical errors on a return (unless a request for abatement is filed by the taxpayer under section 6213(b)), and in some cases to amounts attributable to interests in passthrough entities (*see* subchapters C and D of chapter 63 of the Code). Because no 30-day letter or 90-day letter is issued to the taxpayer in such cases, the applicable date often will be the 30th day after the day on which an assessment notice under section 6303 of the Code is sent.

(4) *Exception of payment of amount shown as due*—(i) *In general.* A letter or notice shall be disregarded for purposes of determining the applicable date if the taxpayer makes a payment equal to the amount shown as due in the letter or notice within 30 days from the date that the Service sends the letter or notice.

(ii) *Special transition rule.* A letter or notice sent by the Service prior to January 1, 1991, will be disregarded by the Service for purposes of determining the applicable date if the taxpayer makes a payment on or before January 31, 1991, equal to the amount shown as due in the letter or notice plus a reasonable estimate of the interest payable on such amount computed by applying the section 6621(a)(2) rate. In the case of an assessment notice, payment of the amount of interest shown as due on the last assessment notice sent to the taxpayer prior to



December 19, 1990, will be treated as a payment of a reasonable estimate of the interest payable on the amount shown in that assessment notice or in any prior assessment notice sent with respect to the same tax for the same taxable period. This special transition rule applies even if the payment is not made within 30 days of the date on which the Service sent the letter or notice.

(iii) *Amount shown as due.* For purposes of section 6621 (c)(2)(B)(ii) and paragraph (c)(4) of this section, the "amount shown as due" in any letter or notice means the total amount of tax, as well as any interest, penalties, additional amounts, and additions to tax that are set forth in the letter or notice. A deposit in the nature of a cash bond will not be considered a payment of the amount shown as due.

(d) *Examples.* The application of this section may be illustrated by the following examples.

*Example 1.* V, a C corporation, timely files Form 941 on January 31, 1991, for the fourth quarter of 1990. On September 1, 1992, the Service sends V a section 6303 notice and demand reflecting an additional FICA tax liability for that quarter of $90,000. Interest computed at the section 6621 (a)(2) rate totals $15,000 as of September 1, 1992. Accordingly, V's underpayment of FICA tax for the fourth quarter of 1990 exceeds $100,000. However, V's $90,000 threshold underpayment of FICA tax for that taxable period is less than $100,000, so that the section 6621 (c) rate will not apply to the underpayment for that taxable period.

*Example 2.* (i) W, a C corporation, timely files its 1990 income tax return on March 15, 1991, showing a liability of $95,000, of which W pays only $35,000 with the return. On June 1, 1991, the Service sends W an assessment notice reflecting the balance due of $60,000 plus interest computed at the section 6621 (a)(2) rate. W pays all amounts due on August 1, 1991. On July 1, 1993, the Service sends W a 90-day letter (without having sent a 30-day letter) reflecting an additional income tax deficiency of $85,000 for the taxable year 1990. W files a petition in the Tax Court within 90 days. In 1995, the Tax Court determines a $50,000 income tax deficiency (exclusive of interest, penalties, additional amounts, and additions to tax) for 1990, which the Service promptly assesses against W.

(ii) As a result of the combination of the failure to timely pay the $60,000 of income tax reported as due on the return and the Tax Court's determination of an additional deficiency of $50,000, W's threshold underpayment of income tax for 1990 is $110,000. Because W is a C corporation and the threshold underpayment for 1990 exceeds $100,000, the section 6621 (c) rate applies to W's 1990 large corporate underpayment for periods after the applicable date.

(iii) The applicable date is July 1, 1991, the 30th day after the date on which the Service sent W the first assessment notice.

(iv) From March 16, 1991, through July 1, 1991, interest on W's 1990 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621 (a)(2) rate. From July 2, 1991, such interest is computed at the section 6621 (c) rate.

(v) If W had paid the amount shown as due on the June 1, 1991, assessment notice on or before June 30, 1991, instead of on August 1, 1991, the applicable date would have been July 31, 1993.

*Example 3.* (i) X, a C corporation, filed its 1989 income tax return on September 17, 1990, pursuant to an automatic extension. W enclosed payment of the $7,500 balance reported on the return as due (plus interest). On January 1, 1992, the Service sends X a written notification that X's 1989 income tax return is being examined. This written notification also contains a request that X provide supplemental information with respect to particular deductions totalling $1.5 million. On July 1, 1993, the Service sends X a 30-day letter proposing a $450,000 deficiency (excluding penalties, additional amounts, additions to tax, and interest) with respect to 1989. On December 15, 1993, the Service sends X a 90-day letter asserting a deficiency of $300,000 (excluding penalties, additional amounts, additions to tax, and other interest). X does not file a Tax Court petition and the Service assesses the $300,000 (plus interest and penalties) on April 1, 1994. On April 5, 1994, X pays the full amount assessed. Thereafter, X timely files an administrative claim for refund and a refund suit in federal district court for refund of the amounts assessed on April 1, 1994.

(ii) The April 1, 1994, assessment establishes that X's threshold underpayment of income tax for 1989 is $300,000. Because X is a C corporation and the threshold underpayment for 1989 exceeds $100,000, X's underpayment of income tax for 1989 is a large corporate underpayment to which the section 6621 (c) rate applies for periods after the applicable date. X's decision to file a refund claim does not affect either the existence of a threshold underpayment or the amount of X's large corporate underpayment.

(iii) The applicable date is July 31, 1993, the 30th day after the date on which the Service sent X a 30-day letter. The January 1, 1992, notice of examination and request for additional information has no effect on the applicable date.

(iv) From March 16, 1990, through July 31, 1993, interest on X's 1989 underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) is computed at the section 6621 (a)(2) rate. From August 1, 1993, through April 5, 1994, such interest is computed at the section 6621 (c) rate.

*Example 4.* (i) Y, a C corporation, timely filed its 1989 income tax return on March 15, 1990, and enclosed payment of the amount reported on the return as due. On May 1, 1990, the Service sent to Y an assessment notice for $1,000 resulting from a math error on Y's return. Y did not request an abatement of the assessment pursuant to section 6213 (b). Instead, Y paid the $1,000, plus interest, on July 31, 1990. On March 31, 1992, the Service sends Y a 90-day letter showing an income tax deficiency for 1989 of $125,000 (exclusive of interest, penalties, additional amounts, and additions to tax). No 30-day letter had been issued previously to Y in connection with its 1989 taxable year. Y does not file a petition with the Tax Court, but files an amended return for 1989 on April 15, 1992, showing $30,000 of tax due. Y pays this amount (plus interest from March 15, 1990, computed at the section 6621(a)(2) rate) with the amended return. Shortly thereafter, the Service assesses the $125,000 deficiency (plus interest) and credits the April 15, 1992, payment against the assessment.

(ii) Y's threshold underpayment for 1989 is $125,000 notwithstanding Y's April 15, 1992, payment of $30,000. Because Y is a C corporation and the threshold underpayment for 1989 exceeds $100,000, Y has a large corporate underpayment of income tax for the taxable period 1989 to which the section 6621 (c) rate applies for periods after the applicable date.

(iii) Because Y paid the $1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date is April 30, 1992, the 30th day after the 90-day letter is sent.

(iv) From March 16, 1990, through April 30, 1992, interest is computed on Y's underpayment of income tax (including any interest, penalties, additional amounts, and additions to tax) at the section 6621 (a)(2) rate. From May 1, 1992, such interest is computed at the section 6621 (c) rate.

(v) If Y had not paid the $1,000 amount shown as due on the math error assessment notice (plus interest) on or before January 31, 1991, the applicable date would have been June 1, 1990, and interest would be computed at the section 6621(c) rate beginning on January 1, 1991.

*Example 5.* (i) Effective January 1, 1993, Y converts from a C corporation to an S corporation. On February 1, 1993, Y files its 1992 FUTA tax return and encloses a payment equal to the amount reported as due on the return. On March 15, 1993, Y files its 1992 income tax return and encloses a payment equal to the amount reported as due on the return. On August 1, 1993, the Service sends to Y an assessment notice for $150,000 of FUTA tax, plus interest, with respect to calendar year 1992. Y pays the full amount shown as due in the assessment notice on August 7, 1993. On January 1, 1995, Y files an amended income tax return for 1992 showing $15,000, of tax due. Y pays this amount with the amended return. On February 10, 1995, the Service sends Y an assessment notice for the interest payable on the $15,000. Y pays this interest on February 13, 1995.

(ii) Y's threshold underpayment of FUTA tax for 1992 is $150,000. Because Y was a C corporation in 1992 and the threshold underpayment of FUTA tax for 1992 exceeds $100,000, Y has a large corporate underpayment of FUTA tax. However, Y's threshold underpayment of income tax for the same taxable period (*i.e.*, calendar 1992) is $15,000, so that Y does not have a large corporate underpayment of income tax for that year.

(iii) Because Y pays within 30 days the amount shown as due on the August 1, 1993, assessment notice, there is no applicable date

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with respect to the large corporate underpayment of FUTA tax for 1992.

(iv) All of the interest payable with respect to the 1992 underpayments of FUTA and income taxes is computed at the section 6621 (a)(2) rate.

(v) If Y had not paid the amount shown as due on the August 1, 1993, FUTA tax assessment notice within 30 days, the applicable date would have been August 31, 1993 (the 30th day after the assessment notice is sent). Thus, interest would have been computed at the section 6621(c) rate after that date, even though Y is not at that time a C corporation.

(vi) If the amended 1992 income tax return Y files on January 1, 1995, had shown $115,000 of tax due instead of $15,000, Y's threshold underpayment of income tax for 1992 would have been $115,000. Because Y was a C corporation in 1992 and the threshold underpayment on income tax for that year would have exceeded $100,000, Y would have a large corporate underpayment of income tax for that year. However, because Y would have paid the amount shown as due in the February 10, 1995, assessment notice within 30 days of when that assessment notice was sent, there would have been no applicable date with respect to that large corporate underpayment and the section 6621(c) rate would have not applied.

*Example 6.* (i) On August 1, 1990, the Service sent to Z, a C corporation, an assessment notice for $200,000 of income tax, plus $30,000 in interest and penalties, with respect to calendar year 1986. Subsequent assessment notices were sent to Z on September 12, 1990, October 10, 1990, and November 14, 1990, each including additional interest. The November 14, 1990, assessment notice provided that the total amount of tax, interest and penalties due was $242,000. On December 31, 1990, Z pays $230,000. On February 13, 1991, the Service sends Z an assessment notice for the remaining balance (plus additional interest thereon). On December 31, 1991, Z pays all amounts owed as of that date in connection with its 1986 income tax liability.

(ii) Z's threshold underpayment of income tax for 1985 is $200,000. Because Z is a C corporation and its threshold underpayment of income tax for 1985 exceeds $100,000, Z has a large corporate underpayment for 1985 to which the section 6621(c) rate applies for periods after the applicable date.

(iii) Notwithstanding Z's payment of $230,000 on December 31, 1990, the applicable date with respect to the large corporate underpayment of 1986 income tax is August 31, 1990, the 30th day after the date on which the Service sent the first assessment notice.

(iv) From March 15, 1990, to December 31, 1990, interest is computed on Z's underpayment of income tax (including any interest, penalties, additional amounts and additions to tax) at the section 6621(a)(2) rate. From January 1, 1991, through December 31, 1991, interest is computed on that underpayment at the section 6621(c) rate.

(v) If Z had paid on or before January 31, 1991, the full $242,000 shown as due on the November 14, 1990, assessment notice, the applicable date with respect to any remaining unpaid interest would have been March 15, 1991, the 30th day after the service sent the February 13, 1991, assessment notice.

(e) *Effective Date.*. Section 6621(c) and this section are effective for determining interest for periods after December 31, 1990, regardless of the taxable period to which the underlying tax may relate and regardless of whether the applicable date is prior to December 31, 1990.

**Michael J. Murphy,**

*Acting Commissioner of Internal Revenue.*

Approved: December 7, 1990.

**Kenneth W. Gideon,**

*Assistant Secretary of the Treasury.*

[FR Doc. 90-29703 Filed 12-14-90; 2:06 pm]

BILLING CODE 4830-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 3

**[CGD 90-063]**

**RIN 2115-AD65**

## Realignment of Marine Inspection Zones and Captain of the Port Zones for Western Alaska and Prince William Sound Alaska

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule realigns the Marine Inspection and Captain of the Port Zones for the Coast Guard Marine Safety Offices in Anchorage and Valdez, Alaska. These changes are being made to improve the Coast Guard's command and control of marine safety activities occurring within the Gulf of Alaska. They will not adversely affect any Coast Guard services to the public.

**EFFECTIVE DATE:** December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

### Background and Purpose

No notice of proposed rulemaking was prepared for this final rule, which covers "agency organization" and is therefore exempt from the requirements of 5 U.S.C. 553(b) for notice and comment. Since the rule has no substantive effect, good cause exists under 5 U.S.C. 553(d) to give it effect less than 30 days after publication. It merely realigns two Marine Inspection Zones and two Captain of the Port Zones to reduce the administrative burden and to enhance the current alignment. It will work no adverse impact on the public, since Marine Safety Units in Anchorage and Valdez, Alaska, will continue to perform all functions affecting the public that they previously performed.

### Discussion

The boundaries of the Marine Inspection Zones and Captain of the Port Zones for Coast Guard Marine Safety Offices, Anchorage and Valdez, Alaska, are being adjusted to enable more efficient internal management and to enhance performance of missions. This adjustment will not impair any services by the Coast Guard to the public.

### Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 because it pertains to matters of "agency organization" as provided for in section 1(a)(3) of the Order. It is "nonsignificant" under DOT regulatory policies and procedures (44 FR 11040; February 26, 1979). Its economic impact has been found to be so minimal that further evaluation is unnecessary. It places no requirements on any sector of the public. It will not impair any services by the Coast Guard to the public. It streamlines and enhances internal logistics and support. As its impact is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

### Collection of Information

This final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. The rule is an administrative matter within the meaning of subsection 2.B.2.1. of Commandant Instruction M16475.1B that "clearly" has no environmental impact.

### List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

## PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. The authority citation for part 3 continues to read as follows:

**Authority:** 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.85-15, paragraph (b), is revised to read as follows:

**§ 3.85-15 Western Alaska Marine Inspection Zone and Captain of the Port Zone.**

* * * * *

(b) The Western Alaska Marine Inspection Zone and the Western Alaska Captain of the Port Zone comprise the State of Alaska, except those sections of Alaska covered in §§ 3.85-10(b) and 3.85-20(b).

3. Section 3.85-20, paragraph (b), is revised to read as follows:

**§ 3.85-20 Prince William Sound Marine Inspection Zone and Captain of the Port Zone.**

* * * * *

(b) The Prince William Sound Marine Inspection Zone and the Prince William Sound Captain of the Port Zone comprise the State of Alaska that falls within the following boundary line: A line that starts at Cape Puget; and that runs thence northerly to latitude 61x-30'N, thence easterly to the international boundary between the United States and Canada, thence southerly along the international boundary to latitude 60°-18.7', and thence southwesterly to the sea at latitude 60°-01.3'N, longitude 142°W, including those islands of the State of Alaska south of the described area located between longitudes 142°W and 148°-26'W.

Dated: December 5, 1990.

**J.D. Sipes,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 90-29637 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 100

**[CGD7 90-122]**

## Special Local Regulations; City of Fort Lauderdale, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** Special Local Regulations are being adopted for the Fort Lauderdale Jaycees New River Holiday Boat Parade. The event will be held on December 22, 1990, from 6 p.m. e.s.t. until 9 p.m. e.s.t. The regulations are needed to promote the safety of life on navigable waters during the event.

**EFFECTIVE DATE:** These regulations will become effective on December 22, 1990, at 5:30 p.m. e.s.t. and terminate on December 22, 1990, at 9:30 p.m. e.s.t.

**FOR FURTHER INFORMATION CONTACT:** ESN A. M. Palermo (305) 535-4304.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish a proposed rule in advance of the event or to provide for a delayed effective date.

### Drafting Information

The drafters of this regulation are LT Genelle G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office, and ENS Andrea Palermo, Project Officer, USCG Group Miami.

### Discussion of Regulations

The Fort Lauderdale Jaycees New River Holiday Boat Parade is a nighttime parade of approximately one hundred (100) boats ranging in various lengths from under thirty-five (35) feet decorated with holiday lights. The parade will form in the staging area in the New River at the Intracoastal (ICW), proceed west along the New River to the Marina Bay where the parade will disband. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet north and south along the east-west axis of the regulated area as the participating vessels navigate down the New River.

### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

## PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T07122 is added to read as follows:

**§ 100.35-T07122 City of Fort Lauderdale, FL.**

(a) *Regulated area.* (1) A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the east-west axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits west in the New River from the Intracoastal Waterway (ICW), the staging area of the parade, to the Marina Bay where the parade will disband.

(b) *Special local regulations.* (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) *Effective date.* These regulations become effective on December 22, 1990, from 5:30 p.m. e.s.t. and terminate on December 22, 1990, at 9:30 p.m. e.s.t.

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Dated: December 6, 1990

**Robert E. Kramek,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 90-29636 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 90-390; RM-7176]**

### Radio Broadcasting Services; Larned, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 295C1 for Channel 295A at Larned, Kansas, and modifies the construction permit for Station KYSG to specify the new channel, in response to a petition filed by Nancy J. Puopolo. See 55 FR 38297, September 5, 1990. The coordinates for Channel 295C1 are 38-13-07 and 98-59-14.

**EFFECTIVE DATE:** January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-390, adopted November 14, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the table of FM Allotments under Kansas, is amended by removing Channel 295A and adding Channel 295C1.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29641 Filed 12-18-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-164]**

### Radio Broadcasting Services; Ruidoso, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission at the request of Walton Stations—New Mexico, Inc., substitutes Channel 228C3 for Channel 228A at Ruidoso, New Mexico, and modifies its license for Station KBUY-FM to specify operation on the higher powered channel. Channel 228C3 can be allotted to Ruidoso in compliance with the Commission's minimum distance separation requirements and can be used at Station KBUY-FM's licensed transmitter site. The coordinates for Channel 228C3 at Ruidoso are North Latitude 33-23-12 and West Longitude 105-40-14. Mexican concurrence has been received since Ruidoso is located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89-164, adopted November 14, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 228A and adding Channel 228C3 at Ruidoso.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29642 Filed 12-18-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-456; RM-6399; 6598; 6599]**

### Radio Broadcasting Services; Durango and Telluride, CO; Kirtland, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 259C2 to Durango, Colorado, as that community's third local FM service, at the request of Durango Broadcasting Company. *See* 53 FR 39615, October 11, 1988. Additionally Channel 285C1 is allotted to Telluride, Colorado, as that community's first local commercial FM service, in response to a petition filed by Jerrell K. Davis. A proposal to allot Channel 275C to Telluride, as requested by Charles Fabrikant and Judith Brenner, is dismissed. Also, Channel 275C is allotted to Kirtland, New Mexico, as that community's first local broadcast service in response to a petition filed by Jeff and Joella Thomas. Coordinates for Channel 259C2 at Durango, Colorado, are 37-16-30 and 107-52-42; for Channel 285C1 at Telluride, Colorado, 37-56-06 and 107-48-36; and for Channel 275C at Kirtland, New Mexico, 37-01-45 and 108-10-36. (See Supplementary Information, *infra.*) With this action, the proceeding is terminated.

**DATES:** Effective January 25, 1991; the window period for filing applications on Channel 259C2 at Durango, Colorado, Channel 285C1 at Telluride, Colorado, and Channel 275C at Kirtland, New Mexico, will open on January 28, 1991, and close on February 27, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530, concerning the allotment proceeding. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.



**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88-456 adopted November 16, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making and the counterproposals in this proceeding were filed prior to October 2, 1989, and, therefore, the applicants may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. See 47 CFR 73.213(c).

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 259C2 at Durango and by adding Channel 285C1 at Telluride.

**§ 73.202 [Amended]**

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 275C at Kirtland.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29643 Filed 12-18-90; 8:45 am]

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### 47 CFR Part 73

**[MM Docket No. 90-367; RM-7252]**

### Radio Broadcasting Services; Rainelle, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** At the request of R-B Company, Inc., the Commission substitutes Channel 237A for Channel 244A at Rainelle, West Virginia, and modifies the Class A license issued to petitioner for Station WRRL-FM to specify operation on Channel 237A. *See* 55 FR 35909, September 4, 1990. Coordinates for Channel 237A at Rainelle are 37-57-28 and 80-45-45. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 25, 1991.

**FOR FURTHER INFORMATION CONTACT:** Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-367, adopted November 21, 1990, and released December 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 244A and adding Channel 237A at Rainelle.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29644 Filed 12-18-90; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 55, No. 244
Wednesday, December 19, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 246

### Special Supplemental Food Program for Women, Infants and Children (WIC); Reviews of Nutritional Risk Criteria and Food Packages

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rules; extension and reopening of public comment periods.

**SUMMARY:** The Department announces the reopening of the comment period on issues related to the review of nutritional risk criteria used to determine eligibility for the Special Supplemental Food Program for Women, Infants and Children (WIC) previously announced in the **Federal Register** on September 14, 1990 (55 FR 37882). The deadline for comments pertaining to the review of WIC food packages (October 24, 1990, 55 FR 42856) is also extended. Comments relative to both reviews will be accepted through February 1, 1991. This action is taken in order to maximize the opportunity for public input on these two reviews, which were mandated by Public Law 101–147.

**DATES:** To be assured of consideration, comments must be received on or before February 1, 1991.

**ADDRESSES:** Comments should be sent to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3746. Comments should be clearly labeled "Nutritional Risk Criteria Review" or "Review of WIC Food Packages," as appropriate, and should identify each issue addressed. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the office of the Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Hines, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3730.

**SUPPLEMENTARY INFORMATION:** This Notice has been reviewed under Executive Order 12291 and has been classified not major. This notice will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

### Background

Congress mandated, in section 123(b) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), that the Department, in consultation with State and local agency directors and other nutrition experts, conduct a review of the relationship between nutritional risk criteria and the participant priority system in the WIC Program. A final report of the review findings is due to Congress by June 30, 1991. The Department was further directed, in section 123(c) of Public Law 101–147, to conduct a review of the appropriateness of WIC food packages, and to provide a final report to Congress by June 30, 1992. Notices announcing the Department's intent to conduct such reviews were published in the **Federal Register** on September 14, 1990 (55 FR 37882, "Review of Nutritional Risk Criteria") and October 24, 1990 (55 FR 42856, "Review of Food Packages") respectively. Sixty-day comment periods were stipulated in each notice. Although the solicitation of comments through the **Federal Register** was not required by either legislative mandate, the Department believes that this procedure is essential to ensure broadly based, unrestricted public input on these important WIC Program issues.

The Department plans to enlist the technical and scientific expertise of graduate schools of public health or nutrition to review comments submitted in response to the Notices, and to develop technical papers summarizing comments and addressing the issues relative to each review from the scientific perspective. As indicated in the previous **Federal Register** notices, these papers will be presented for consideration by the National Advisory Council on Maternal, Infant and Fetal Nutrition (NAC) at its 1991 meeting. Section 17(k)(1) of the Child Nutrition Act of 1966 (CNA) directs the NAC to consider issues relevant to the WIC Program and to make recommendations to the President and Congress. The Council's consideration of these issues will contribute to the Department's reports to Congress on the two reviews. This report, in turn, may influence future Federal legislation with regard to the WIC program and/or regulatory action by the Department. Any program regulations issued by the Department as a result of this review would be proposed for public comment prior to promulgation in final rulemaking.

When the Notices announcing the Department's intent to conduct reviews of WIC nutritional risk criteria and the WIC food packages were published, the Department clearly stated its belief that the consideration of these important and complex issues will benefit greatly from public participation and stressed the need to obtain input from all segments of the WIC community, as well as other informed, concerned members of the public. Further, the Department wished to ensure that the reviews provide for the open and equitable consideration of these issues. The Department believes that the procedure which has been established for conducting these reviews will provide the broadest possible base

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for public input, include access to technical expertise from independent, credible entities, and permit consideration of pertinent issues by a knowledgeable forum which is broadly representative of the WIC community.

However, timeframes for final reports imposed by these Congressional mandates, combined with the review procedure deemed necessary by the Department to produce optimal results, restricted the amount of time available for each step in the procedure. Therefore, the Department allowed only 60 days for public comment on review issues. The comment period for the nutritional risk criteria review closed on November 13, 1990. A significant number of commenters indicated that 60 days afforded inadequate time for them to develop comments at the desired level of detail. Although the comment period for the food package review does not expire until December 24, 1990, the Department has already received requests to extend this comment period as well.

### Extension and Reopening of Comment Periods

In response to the above concerns, the Department has reorganized the review procedure to the maximum extent possible in order to accommodate longer comment periods on both **Federal Register** proposed rules. Thus the comment period on nutritional risk criteria is reopened and will end on February 1, 1991, and the comment period on WIC food packages is extended to that same date.

Dated: December 13, 1990.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 90–29690 Filed 12–18–90; 8:45 am]

BILLING CODE 3410-30-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-250-AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped with Pratt and Whitney JT9D–7R4 and PW4000 Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Model 767 series airplanes that would require replacement of the engine oil filter differential pressure switches and modification of the switch on certain engines. This proposal is prompted by numerous reports of either false indication of an oil filter bypass or loss of oil quantity due to a leak in high-time pressure switches. This condition, if not corrected, could result in unnecessary engine inflight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane.

**DATES:** Comments must be received no later than February 11, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, attention: Airworthiness Rules Docket No. 90–NM–250–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lanny Pinkstaff, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2684. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–250–AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

The FAA has received numerous reports of engine oil filter differential pressure switch leaks on Boeing Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 engines. Many of these leaks, both internal and external to the switch, have resulted in engine inflight shutdowns due to false Engine Indication and Crew Alerting System (EICAS) indication of oil filter bypass or loss of oil quantity. The FAA has determined that the cause of these leaks is a cracked or separated vent port weld at the fluid port to body joint which allowed oil leakages either into the electrical microswitch housing or external to the pressure switch. Service records have indicated that these events occurred on high-time pressure switch units. False oil filter bypass indications or loss of oil quantity from failed pressure switches, if not corrected, could result in unnecessary engine inflight shutdowns and airplane diversions that unduly jeopardize continued safe operation of the airplane.

The JT9D–7R4 engines may contain engine oil filter differential pressure switch, P/N S332T004–2, –25, or –29. The P/N S332T004–2 and –25 oil filter differential pressure switches have similar physical features to the low oil pressure switch and can be installed at either location. Installation of the incorrect oil pressure switch could itself result in false oil filter bypass indications and unnecessary engine inflight shutdowns.

The FAA has reviewed and approved Boeing Service Bulletin 767–79–0008, dated August 11, 1988, which describes procedures for modifying the physical features and revising the electrical connection of certain JT9D–7R4 oil filter differential pressure switch configurations to prevent inadvertent installation of a low oil pressure switch in place of an oil filter differential pressure switch. The manufacturer recommends the accomplishment of this modification, if required, when replacement of the switch is accomplished every 10,000 total service hours on JT9D–7R4 engines. PW4000 engine installations, which currently possess a switch configuration that contains the described modifications,

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necessitate replacement with an identical switch every 10,000 total service hours.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the engine oil filter differential pressure switch prior to the accumulation of 10,000 service hours, and modification of certain switches in accordance with the service bulletin previously described. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

There are approximately 102 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 31 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Replacement parts would be provided by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,960.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) it not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Model 767 series airplanes, as listed in Boeing Service Bulletin 767-79-0008, dated August 11, 1988, equipped with engine oil filter differential pressure switches on JT9D-7R4 engines and all Model 767 series airplanes equipped with engine oil filter differential pressure switches on PW4000 engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent false oil filter bypass indication or loss of oil quantity from failed pressure switches, accomplish the following:

A. Within the next 60 days after the effective date of this AD, or prior to the accumulation of 10,000 total service hours, whichever occurs later, and thereafter at intervals not to exceed 10,000 total service hours, replace the engine oil filter differential pressure switch, as follows:

1. For Pratt & Whitney PW4000 engines: replace part number (P/N) 8332T004-23 with a new -23 switch.

2. For Pratt & Whitney JT9D-7R4 engines: replace P/N's 8332T004-2, -25, or -29, with a new -29 switch. If a -2 or -25 switch is currently installed, modification in accordance with Boeing Service Bulletin 767-79-0008, dated August 11, 1988, is required in order to install a -29 switch configuration.

Note: Reworking, modifying, or overhauling a used switch does not zero time the switch.

B. Pressure switches removed following the accumulation of 10,000 total service hours shall not be re-installed on any airplane.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 10, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29658 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 90-NM-251-AD]**

**Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 737-300 and -400 series airplanes, which currently requires the inspection of the left and right outboard flap inboard track forward support fitting attach nuts and bolts and the replacement, if necessary, of titanium bolts and aluminum nuts with steel parts. This condition, if not corrected, could result in separation of the outboard flap from the airplane, which could adversely affect controllability. This action would add eight airplanes to the applicability of the rule. This proposal is prompted by information from the manufacturer which indicated that additional airplanes were not inspected for the proper nuts before they left the factory.

**DATES:** Comments must be received no later than February 11, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 90-NM-251-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.



**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-251-AD." The post card will be date/time stamped and returned to the commenter.

**Discussion**

On June 19, 1990, the FAA issued AD 90-14-04, Amendment 39-6643 (55 FR 28425, June 28, 1990), to require inspection of the left and right outboard flap inboard track forward support fitting attach nuts and bolts and the replacement, if necessary, of titanium bolts and aluminum nuts with steel parts. That action was prompted by a report that aluminum nuts and titanium bolts, instead of steel nuts and bolts, may have been used to attach the outboard flap inboard track forward support fitting to the wing structure. This condition, if not corrected, could result in separation of the outboard flap from the airplane, which could adversely affect controllability.

Since issuance of that AD, the manufacturer has advised the FAA that eight airplanes left the factory before inspection of the nuts could be accomplished. Therefore, the addressed unsafe condition could exist relative to these eight airplanes.

The FAA has reviewed the approved Boeing Alert Service Bulletin 737-57A1202, Revision 1, dated April 26, 1990, which describes acceptable nuts and bolts that must be installed and procedures to inspect for steel attach nuts using eddy current techniques.

Since this condition is likely to exist on other airplanes of this same type design, and AD is proposed which would supersede AD 90-14-04 with a new airworthiness directive that would revise the applicability to include eight additional airplanes. These airplanes would be required to be inspected in accordance with the service bulletin previously described; any discrepancies found would be required to be corrected prior to further flight.

There are approximately 770 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 347 airplanes of U.S. registery, including an additional 4 airplanes addressed in this action, would be affected by this AD. It would take approximately 57 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $791,160; the total cost impact of this AD relative to the 4 airplanes added to the applicability of the rule is estimated to be $9,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [AMENDED]**

2. Section 39.13 is amended by superseding Amendment 39-6643 (55 FR 28425, June 28, 1990), AD 90-14-04, with the following new airworthiness directive:

**Boeing:** Applies to Model 737-300 and -400 series airplanes, line numbers 1001 through 1769 and 1771, as listed in Boeing Alert Service Bulletin 737-57A1202, Revision 1, dated April 26, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of the outboard flap from the airplane, accomplish the following:

A. For airplanes line numbers 1001 through 1762: Within the next 30 days after August 25, 1989 (the issuance date of Telegraphic AD T89-18-51), inspect the bolts used to secure the track forward support fitting of the inbord tracks to determine the bolt head designation.

B. If a bolt other than A286 CRES steel, Boeing part number BACB30LE8, BACB30LE7, BACB30US6, or BACB30US7, is found installed as a result of the inspection required by paragraph A. of this AD, replace it with a proper bolt and nut prior to next flight, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

C. For airplanes line numbers 1001 through 1762, within the next 1,500 cycles or 6 months after August 6, 1990 (the effective date of Amendment 39-6643), whichever occurs first, visually or eddy current inspect the nuts used to secure the track forward support fitting of the inboard track to determine nut material, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

Note: Inspection of the nuts must be accomplished even if the part numbers of the bolts were previously determined to be correct.

D. If a nut other than A286 CRES steel, Boeing part number BACN10HR, is found installed as a result of the inspection required by paragraph C. of this AD, replace it with a proper nut, prior to further flight, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

E. For airplanes line numbers 1763 through 1769 and 1771: Within the next 1,500 cycles or 6 months after the effective date of this AD,

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whichever occurs first, visually or eddy current inspect the nuts used to secure the track forward support fitting of the inboard track to determine the nut material, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

F. If a nut other than A286 CRES steel, Boeing part number BACN10HR, is found installed as a result of the inspection required by paragraph E. of this AD, replace it with a proper nut, prior to further flight, in accordance with Boeing Alert Service Bulletin 737-57A1202, dated August 24, 1989, or Revision 1, dated April 26, 1990.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 10, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29689 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TREASURY

### Internal Revenue Service

### 26 CFR Part 301

[IA-110-90]

RIN 1545-AP27

### Determination of Rate of Interest—Increase in Rate of Interest Payable on Large Corporate Underpayments

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations providing guidance with respect to section 6621(c) of the Internal Revenue Code (regarding an increase in the rate of interest payable on large corporate underpayments). The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered by February 19, 1991.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Washington, DC 20044 (Attn: CC:CORP:T:R (IA-110-90)).

**FOR FURTHER INFORMATION CONTACT:** P. Val Strehlow, 202-377-9586, or David Schneider, 202-566-6438 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains proposed Procedure and Administration Regulations (26 CFR part 301) providing guidance with respect to section 6621(c) of the Internal Revenue Code (regarding an increase in the rate of interest payable on large corporate underpayments). The preamble of the temporary regulations that appear in the Rules and Regulations portion of this issue of the Federal Register explains the reasons underlying the issuance of these proposed regulations.

#### Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

#### Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner of Internal Revenue by any person who has submitted timely written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

#### Drafting Information

The principal authors of these regulations are P. Val Strehlow and David Schneider of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these proposed regulations.

**Michael J. Murphy,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 90-29704 Filed 12-14-90; 2:08 pm]

BILLING CODE 4830-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[DA 90-1623; (GEN Docket No. 90-357)]

### Establishment and Regulation of New Digital Audio Radio Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of reply comment period.

**SUMMARY:** At the request of the National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Hispanic Media Coalition, and the National Black Media Coalition (Civil Rights Organizations), the Commission is extending the reply comment period to January 7, 1991. The Civil Rights Organizations state that they have developed a mathematical model to identify minority needs for new radio service in each of the 260 rated markets for the next 20 years. However, as their resources are limited, they state that these calculations must be performed by hand, and that this task cannot be completed by the current reply comment due date of December 14, 1990. As the Commission desires as complete a record as possible to assist in formulating its proposals, and the material to be submitted by the Civil Rights Organizations may be beneficial in that regard, this request for additional time is warranted.

**DATES:** The reply comment period is extended to January 7, 1991.



**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Damon C. Ladson, Frequency Allocations Branch, Office of Engineering and Technology (202) 653-8106.

**SUPPLEMENTARY INFORMATION:** The notice of inquiry was published at 55 FR 34940 August 27, 1990.

#### Order Granting Extension of Time

In the matter of amendment of the Commission's rules with regard to establishment and regulation of new digital audio radio services.

Adopted: December 11, 1990; Released: December 12, 1990.

By the Office of Engineering and Technology:

1. The National Association for the Advancement of Colored People, the League of United Latin American Citizens, the National Hispanic Media Coalition, and the National Black Media Coalition (Civil Rights Organizations), have jointly requested an extension of the reply comment period in the above proceeding to December 28, 1990. Reply comments are currently due December 14, 1990. See Order Granting Extension of Time, GEN Docket No. 90-357, 5 FCC Rcd 5951 (1990).

2. The Civil Rights Organizations state that they have developed a mathematical model to identify minority needs for new radio service over the next 20 years, and that they are currently developing estimates of need for each of the 260 rated radio markets. However, the Civil Rights Organizations claim that as their resources are limited, calculations of the estimates must be performed by hand and cannot be completed by the current December 14, 1990, reply comment deadline. They also state that this brief extension of time will allow them to provide material that will assist the Commission in determining how much spectrum should be set aside for growth.

3. We believe that additional time for filing reply comments is warranted. The Commission desires as complete a record as possible to assist in formulating its digital audio radio service proposals. The material to be provided by the Civil Rights Organizations may assist us in that regard. Further, due to the large number of comments filed in this proceeding, we believe that an extension of time will allow other parties to formulate more meaningful replies as well. However, as the requested extension falls in the middle of the holiday season, we will extend the reply comment period by 24 days to January 7, 1991. Accordingly, pursuant to authority found in section 4(i), 302, and 303 of the Communications Act of 1934, as amended, *it is ordered*, that the reply comment period is extended to January 7, 1991.

Federal Communications Commission.

**Bruce Franca,**

*Acting Chief Engineer.*

[FR Doc. 90-29640 Filed 12-18-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 663

[Docket No. 901225-0325]

RIN 0648-AD73

### Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to designate certain management measures as "routine" for certain species and fishing gears, as authorized under Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP), and to propose an April 1 opening date for the target fishery for sablefish caught with nontrawl gear. This action is intended to allow for timely management of the groundfish resource while providing for public comment and review of the management decisions, as required under the Administrative Procedure Act.

**DATES:** Comments on the proposed rule must be received on or before December 26, 1990.

**ADDRESSES:** Comments on the proposed rule should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415.

Copies of relevant reports and information, Amendment 4 to the FMP, and the environmental assessment for the delayed opening of the nontrawl sablefish fishery are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, Oregon 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140, Rodney R. McInnis at 213-514-6199, or the Pacific Fishery Management Council at 503-326-6352.

**SUPPLEMENTARY INFORMATION:**

#### Background

Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on behalf of the Secretary of Commerce under the Magnuson Fishery Conservation and Management Act (Magnuson Act) on November 15, 1990. It is expected to be implemented on January 1, 1991, the beginning of the next fishing year. The regulations implementing Amendment 4 were proposed at 55 FR 38105 (September 17, 1990). The actions proposed in this notice are expected to be authorized by the final regulations to implement Amendment 4. Publication at this time of the actions proposed is necessary to provide for orderly progress of the Pacific groundfish fishery at the beginning of the next fishing year. If proposing these actions were delayed until after Amendment 4 is fully implemented, not enough time would remain to finalize these actions before the fishing season begins. Therefore, NOAA is proposing these actions at this time in order to prevent the potential for overfishing and the disruptions to management of the fishery that could occur if final management measures for the 1991 fishing year are not published on time.

Amendment 4 to the FMP authorizes the designation of certain management measures as "routine," which means that, for those specific species, gear types, and management measures, implementation and further adjustment of those management measures may occur after consideration at a single meeting of the Pacific Fishery Management Council (Council), and after publication in the Federal Register, but only if for the same purpose, and within the scope of the analysis conducted, when the action first was designated as routine.

In order for a measure to be classified as routine, the Council is required to determine that the measure is of the type normally used to address the issue at hand and may require further adjustment to achieve its purpose. As in the case of all proposed management measures, prior to initial implementation of routine measures, the Council must determine the need for the measures, analyze their impacts and provide a rationale for their use.

At its September meeting, the Council recommended routine designations for two types of actions: (1) Trip landing and frequency limits for bocaccio, Dover

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sole, and thornyheads taken with commercial gear; and (2) trip landing and frequency limits for sablefish caught with nontrawl gear to be implemented from the beginning of the fishing year until the target (unrestricted) nontrawl fishery is scheduled to begin. The second part of this rule proposes an opening date of April 1 for the target nontrawl sablefish fishery. The purposes of the proposed management measures (trip landing and trip frequency limits) are described below with a summary of the analyses prepared by the Council in support of its recommendations to designate these actions as routine.

*I. Trip landing and trip frequency limits for bocaccio, Dover sole and thornyheads taken with all commercial gear.* A trip limit specifies the amount of groundfish that may be taken and retained, possessed or landed from a single fishing trip. Trip landing limits (limits on the weight, or percent by weight, of fish that may be landed) and trip frequency limits (limits on the number of landings in a specified time period) are used to restrict landings to delay achievement of a quota or harvest guideline and extend the fishery, to the extent practical, over the entire year. Trip landing limits also can be used to minimize targeting on a species or species group while allowing landings of some level of incidental catch of that species. In a multispecies fishery, trip limits can discourage targeting and, at the same time, provide for landings of incidental catches of species that need a greater degree of protection than other species in the catch. Conversely, a trip limit may be needed to restrict the overall multispecies complex catch in order to provide adequate protection for a component of the catch.

The Council recommended designating trip landing and frequency limits as routine management actions for bocaccio, Dover sole, and thornyheads taken with any legal commercial groundfish gear off the coasts of Washington, Oregon, and California. Harvest guidelines have been recommended for bocaccio, Dover sole, and thornyheads in 1991 for the first time, and the management measures proposed herein are intended to keep landings within the designated harvest guidelines. All three species are caught in multispecies fisheries, bocaccio predominantly with the *Sebastes* complex in trawl, set net and recreational fisheries, and Dover sole and thornyheads with sablefish in the trawl fishery.

*Bocaccio.* A recent stock assessment for bocaccio indicates that the potential yield is 800 metric tons (mt) in the Eureka, Monterey, and Conception International North Pacific Fisheries Commission (INPFC) areas. The final acceptable biological catch (ABC) recommended by the Council's Groundfish Management Team also is 800 mt. Commercial and recreational landings in 1990 are projected to be about 2,000 mt. Because of the currently low spawning biomass and what appears to be relatively poor recruitment over the past decade, the bocaccio stock may be especially vulnerable to overfishing. Fishing capacity and current markets clearly encourage harvest of bocaccio in excess of the ABC. Therefore, landings of bocaccio need to be restricted so that the proposed 1991 harvest guideline for the commercial fishery will not be exceeded and the fishery can extend throughout the year.

Bocaccio is taken predominantly in trawl, set net, and recreational fisheries in the Eureka, Monterey, and Conception areas. In 1988, 70 percent of the landed catch was taken in the trawl fishery (predominantly in the Monterey area, and lesser landings in the Conception area), 20 percent in the set net fishery (with approximately equal landings in the Monterey and Conception areas), and 10 percent in the recreational fishery (predominantly in the Conception area). A similar distribution of landings occurred in 1989: Two-thirds trawl, one-sixth set net, and one-sixth recreational. In the early 1980's, commercial trawl landings peaked at 4,500 mt, falling to about 1,000 mt in 1985 where they have remained. Landings of bocaccio also have declined as a percentage of total rockfish landings in the Eureka, Monterey, and Conception areas.

Bocaccio is part of the multispecies *Sebastes* complex caught by the trawl fishery off California. Therefore, even if landings of bocaccio were prohibited once its harvest guideline is reached, bocaccio would continue to be caught and discarded in fisheries for other species in the *Sebastes* complex. Thus, it is necessary to extend the harvest of bocaccio for as long as the *Sebastes* complex fishery lasts, which is normally the entire year.

The Council has recommended that trip landing and frequency limits be designated as routine only for the commercial bocaccio fishery because the commercial fishery harvests 80 to 90 percent of the total bocaccio catch. Insufficient information is available to warrant reductions in the recreational bag limit, or differentiation between commercial gears at this time, but may be considered in the future.

Because bocaccio previously has not been managed individually with trip landing and frequency limits, such limits undoubtedly will need adjustment during the season to keep landings within the harvest guideline, discourage discards, and extend the harvest.

*Impacts.* If annual landings were to continue at the levels experienced in 1989 and 1990, bocaccio would be fished above the desired level of fishing mortality, delaying recovery of the stock to the level that can produce the maximum sustainable yield (MSY), and reducing potential income to the commercial fleet in the years ahead. In 1989, bocaccio was worth approximately $524,000 ($0.292 per pound) exvessel to commercial fishers.

Trip landing limits, especially if on the *Sebastes* complex as a whole, would have the greatest impact on the trawl fishery landing in the Monterey area, which accounts for the majority of bocaccio landings by weight. Because set net landings of bocaccio generally are much smaller than landings in the trawl fishery, a trip poundage limit in itself would affect the trawl fishery more than the set net fishery. A percentage limit based on the amount of the *Sebastes* complex on board is likely to affect both gear groups more equitably. A restriction on the number of landings that may be made in a specified period (trip frequency restriction) is most likely to affect the set net fleet, which conducts shorter and more frequent trips than the trawl fleet. Trip landing options (biweekly or twice weekly, for example) could reduce the differential impacts on vessels. The Council is expected to recommend a minimum level below which landings are unrestricted. This will allow some unavoidable incidental catches to be landed, and will benefit smaller vessels capable of targeting on small amounts of bocaccio or the *Sebastes* complex.

*Dover sole and thornyheads.* Dover sole normally are taken in combination with sablefish and thornyheads in the deepwater trawl fisheries. The 1991 stock assessment for Dover sole indicates that it has been heavily exploited in the Columbia area, and the preliminary ABC for that area is recommended to drop to 6,100 mt, 28 percent below the 1989 catch of 8,200 mt. Continued harvest of 8,000 mt annually for the next three years in the Columbia area would reduce that area's stock below the level that produces MSY.

Similarly, a new stock assessment on thronyheads supports a preliminary ABC of 5,900 mt in the Columbia, Eureka and Monterey areas, similar to landings in 1988 but much below landings in 1989.



The stock assessment also indicates that thornyheads have been heavily exploited in the Eureka and possibly Monterey areas. Fishing capacity and markets could easily accommodate landings of thornyheads in excess of the harvest guideline.

Because Dover sole, thornyheads, and sablefish are caught in combination in the trawl fishery targeting on any of those species, trip landing and frequency limits are necessary to restrict the landings of all three of these species either separately or in the aggregate. These species in the aggregate are called the "deepwater complex."

Trip landing and/or frequency limits on both the deepwater complex or one or more of the individual species making up the complex are necessary to prevent annual landings from exceeding the individual harvest guidelines for all three species. This goal is complicated by the need to reduce Dover sole and sablefish landings in the Columbia area and thornyhead landings in the Eureka and Monterey areas. Trip landing and frequency limits for trawl landings of sablefish are already designated as routine by Amendment 4. Because actual catch rates for Dover sole, thornyhead, and sablefish will likely differ from those expected, trip landing and frequency limits undoubtedly will need adjustment during the season to keep landings within the harvest guidelines.

*Impacts.* If annual landings were to continue at the levels experienced in 1990, Dover sole in the Columbia area and thornyheads in the Eureka and Monterey areas could be fished above an acceptable level of fishing mortality, ultimately resulting in lower ABCs and reduced income to the commercial fleet. In 1989, Dover sole was worth approximately $11.4 million ($0.275 per pound) exvessel to commercial fishers, and thornyheads were worth approximately $6,400 ($0.37 per pound) exvessel to commercial fishers.

As described in the supplemental environmental impact statement for Amendment 4, trip landing restrictions that set an upper limit per landing favor smaller vessels that are minimally restricted by the upper limit. Vessels often are able to compensate for landing limits by increasing the number of landings made. Trip frequency limits counteract this increase in effort, but favor larger vessels that traditionally conduct fewer, but longer, trips than the rest of the fleet.

Trip landing options (biweekly or twice weekly, for example) can balance, to some extent, differential impacts on different size vessels. The Council is expected to recommend a minimum level below which landings are unrestricted. This will allow unavoidable incidental catches to be landed, and will benefit smaller vessels that harvest small amounts of Dover sole, thornyheads, and sablefish.

II. *Sablefish—nontrawl gear.* This notice also proposes a delay until April 1 of the regular nontrawl sablefish season, which is unrestricted except for trip limits to protect juvenile fish. NMFS also is proposing to designate trip limits before the opening of the regular season as routine management measures. The specific date such trip limits are removed and the regular season opens is not being designated as routine, and is the subject of proposed and final rulemaking, because this action would affect fleets differently and is the subject of considerable public interest. A trip landing limit for sablefish caught with nontrawl gear will be imposed prior to April 1 to allow for a limited harvest by small vessels and to prevent discards and waste. The trip limit also would allow very small vessels that normally catch only limited quantities of sablefish to begin operating early in the year. This is especially important in some areas off California where weather is good and early fishing is not dangerous. Trip landing and frequency limits for sablefish, imposed later in the year to allow for incidental catches, to extend the season, and to reduce waste and discards as the nontrawl sablefish allocation is being reached, are designated as routine in Amendment 4.

*Background.* The nontrawl sablefish fishery is attracting additional fishing effort, particularly from larger vessels capable of fishing early in the year during stormy winter months. Landings data show that during 1986–1988 only 6.7 percent of the total nontrawl catch occurred during January through March, whereas during 1989, 24 percent of the total catch was landed during the same period. During 1990, 19 percent was landed during this period even though unrestricted fishing did not begin until January 31. As sablefish fisheries in Alaska have become more competitive, effort off Washington, Oregon, and California has begun to increase during the January through March period before the sablefish seasons in Alaska open. The Council is concerned that greater amounts of sablefish will be taken during the first 3 months of the year when many smaller vessels that only fish locally are unable or unwilling to fish. The Council is seeking to maintain the historical share of the nontrawl sablefish harvest and traditional fishing opportunities for small and medium-sized pot and longline vessels that have fished traditionally off Washington, Oregon, and California. Maintaining this opportunity will avoid economic disruption of local coastal communities. If the target fishery for sablefish opens on April 1 off both the west coast and Alaska, larger vessels will be forced to choose between the two areas. The Council expects many vessels will choose to start the season in Alaska.

The Council also has expressed concern over the increased safety risk to smaller vessels off Oregon and Washington if they start to fish in winter months, when they traditionally have not felt compelled to operate, in order to compete with the larger vessels.

This action is being proposed in accordance with the socio-economic framework procedures established in Amendment 4. These procedures require preparation of a report containing the proposed management measure and the reasons it is preferred, a description of other viable alternatives considered, and an analysis that addresses how the proposed action will achieve the goals and objectives of the FMP, likely impacts on other management measures and other fisheries, biological and economic impacts, and the ability of the preferred option to achieve 1 or more of 15 factors listed in the Amendment. The environmental assessment serves as this report. Any interested member of the public may obtain the environmental assessment from the Council at the address listed at the beginning of this notice. The contents of this report are summarized below.

*Options.* Four main options including the status quo were considered.

Option 1. Status quo. The target fishery opens on January 1 with no trip limit except on sablefish smaller than 22 inches total length.

Option 2. Proposed. Delay initiation of the target fishery until April 1 by imposing a 1,500-pound trip limit during January through March.

Option 3. The same as option 2 except a 500-pound trip limit would be imposed January through March.

Option 4. Same as option 2 except the 1,500-pound trip limit is extended through June.

*Impacts—Biological impacts.* The differences in biological impacts of the options are negligible.

1. None of the options would have more than a negligible impact on recruitment of sablefish. An intense nontrawl fishery just prior to spawning (in December-January off California and February off Washington) could reduce the effective spawning biomass by about 3.1 percent. Assuming a reasonable relationship between the number of spawning fish and the

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number of progeny that eventually become available to the fishery, only a 1.2 percent reduction in expected recruitment, which would be undetectable, would occur.

2. If the nontrawl fishery were allowed to concentrate in the first quarter, and the seasonal changes in mean fish size continued, then the number of sablefish harvested to attain the quota would increase by 3–10 percent. However, eventually this quota would decline by about this percentage so that the harvest in numbers would remain near the optimal level.

3. Non-landed catch (which includes sablefish that are discarded because they are unmarketable or exceed trip limits, and sablefish killed due to ghost fishing by lost gear) is not expected to change significantly under any of the options. There may be some increase if the trip limit is set at 1,500 pounds and if this limit attracts a target fishery that catches more than 1,500 pounds to achieve the limit. However, since sablefish caught by pot or longline probably have a high chance of survival when returned to the sea, discarded fish should not be assumed to be dead.

*Economic impacts.* The status quo provides additional opportunities for larger vessels capable of fishing in the winter. The alternate options seek to maintain fishing opportunities available to current participants who do not, for the most part, rely on a winter fishery.

1. During 1986–88, a restrictive trip limit prior to April would have had little impact on the attainment date of the nontrawl quota, extending it only about 9 days. Such a trip limit in 1989 would have delayed quota attainment about 1 month, and in 1990 attainment would have been delayed about 2 weeks.

2. The size of the trip limit prior to April will have only a trivial impact on the duration of the [fully] open season. Only 6 mt would have been landed during the first 3 months of 1986–88 under a 500-pound trip limit (option 3), and 22–59 mt under a 1,500-pound trip limit (option 2). If the trip limit were extended through June (option 4) and the level of small vessel participation remained the same as in 1986–88, about 82–272 mt would be landed.

3. No firm conclusion can be drawn about the effects of the delayed opening on product quality. One report indicated best quality in early autumn, but factors other than season were more important in determining product quality.

4. If the increase in early-season sablefish effort continues (as assumed in option 1, the status quo), the entire quota could be taken in the first 3 months, effectively eliminating sablefish as a target species for many small and medium-sized longline and pot vessels currently operating in the fishery. Most of these displaced vessels are to small to operate safely in the winter months.

5. Under any of the delayed season options (options 2, 3, and 4), at least 90 percent of the quota would remain when the main season opened.

6. Longline vessels capable of fishing both in Alaska and on the Pacific coast would benefit from options that provide for different openings in each area (options 1 and 4). Pot and local longline vessels would benefit from options that lengthen the season or cause it to coincide with season openings in Alaska (options 2 and 3). Benefits to small vessels increase or are maintained under all options as long as the trip limit remains at 500 pounds or more. Some medium-size vessels could operate, probably with reduced profits, under a 1,500-pound trip limit (option 2), but not under a 500-pound trip limit (option 3).

7. Implementation of a trip limit during the first 3 months would effectively eliminate large-scale directed fishing during that period (options 2, 3, and 4). The greatest effect would be on large vessels, some of which operate in Alaska fisheries, and medium-sized vessels operating in central California where weather conditions during that period are suitable for fishing.

Although both longline (188 vessels) and pot (35 vessels) fleets contributed to the recent increases in landings during the first quarter of the year, a delay in the opening of the target fishery for sablefish would affect the two fleets differently.

The longline fleet appears more able to pursue alternate fisheries: sablefish (Alaska), halibut (Alaska, WOC), rockfish (WOC), and some switch to pot gear to fish for Dungeness crab during the winter (WOC). However, these fisheries also are fully utilized and may involve significant transit time or "gearing up" costs, and vessels probably cannot participate in all alternate fisheries in a single a year. That portion of the longline fleet that fishes along the west coast before going to Alaska would be less likely to do so if both Alaska and west coast sablefish fisheries open April 1. Therefore, because of the alternatives available to the longline fleet, the delayed season should not have a significant impact on that fleet.

Larger pot vessels appear to have fewer options. Pot gear is prohibited for sablefish in most of Alaska; few alternatives are available off WOC, although a new fishery for hagfish is developing. From 1988–1988, more than 90 percent of the revenue from the west coast groundfish fishery received by large pot vessels (over 61 feet) was derived from sablefish; vessels smaller than 61 feet derived about half their groundfish income from sablefish. Consequently, the six pot vessels longer than 61 feet (which generally make the largest landings of sablefish) are expected to experience the most severe impact of the delayed opening. Because the 1,500-pound trip limit effectively precludes operations by vessels that currently land more than that amount, and because a 3-month delay in opening the regular season would extend the season by only a month (because catch rates during the regular season would be much greater than during the first quarter), these vessels likely would have lost up to 2 months of the 6-month season in 1989. It is not known if or how these large pot vessels will compensate for the delayed opening, or if the delayed opening would shorten the regular season more than it would otherwise be shortened if effort continues to accelerate unchecked between January and March.

*Impacts on vessel safety.* Under the status quo (option 1), large vessels begin fishing in January, and some smaller vessels in the central California area also begin at this time. Most small and medium-size vessels in northern areas would be restricted by weather conditions and could operate only during calm periods. Increased effort by large vessels during the early period (assumed by option 1) might compel some small and medium-sized vessels to attempt to fish during marginal conditions, increasing the risk to vessels and fishers. Trip limits during January–March reduce the pressure on small and medium-sized vessels to fish during marginal and bad weather conditions (options 2, 3, and 4).

The issue is whether to discourage future expansion by large vessels capable of fishing in the winter or to substantially reduce opportunities for the smaller vessels that traditionally have harvested sablefish off Washington, Oregon, and California. The Council believes that disruption of the local fleet and economies is minimized by option 2, in large part because it forces the larger vessels to choose between concurrent openings on April 1 of the target fishery off Alaska or off Washington, Oregon, and California. This choice minimizes the possibility of large and sudden effort shifts from one area to the other.

A delayed season opening date will not deny access to the nontrawl sablefish fishery off Washington, Oregon, and California. However, assuming a concurrent season opening date in Alaska, the larger vessels will be forced to make a choice between the two areas. To date, few large vessels have chosen to operate in both areas in April. It should be noted that if seasons or quotas for sablefish fisheries in Alaska are reduced significantly, vessels that operated in those fisheries may nonetheless be displaced into the traditional Washington, Oregon, and California fisheries for sablefish.

Trip landing or frequency limits to be imposed at the beginning of the year are expected to be announced in the **Federal Register** notice announcing the final specifications and management measures for 1991. The information and analyses that the Council used in making its final recommendations were available before and during the Council's November 13–16, 1990, meeting. Furthermore, the Council announced its consideration of adjustments to these management measures and consideration of new measures in its newsletter. Persons interested in being informed of the issues should contact the Council and request to be put on its mailing list.

**Classification**

This proposed rule is published under authority of section 305(g) of the Magnuson Act, 16 U.S.C. 1855(g), and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law. The Assistant Administrator, before publishing a final rule, will take into account the data and comments received during the comment period and during the November Council meeting.

The portion of this proposed rule that designates certain management measures as routine, if adopted, is not expected to alter the nature or intensity of environmental effects as considered in the supplemental environmental impact statement (SEIS) prepared for Amendment 4 or for the current FMP, and thus is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10. The proposed rule provides for timely, inseason adjustment of trip landing and frequency limits so that landings do not exceed the harvest guidelines or quotas (which are designed to prevent overfishing), while minimizing the impacts on the fishing industry.

The rule also provides for delaying the opening of the nontrawl sablefish target fishery until April 1, but does not change the amount of sablefish that may be landed during the year. The Council prepared an environmental assessment (EA) for this portion of the rule. You may obtain a copy of the EA from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 603 *et seq.* This conclusion, as it applies to the designation of management measures as routine, is based on the regulatory impact review and the analysis contained in Amendment 4 and the preamble to this proposed rule. The trip landing and frequency limits are imposed to avoid exceeding the harvest guidelines for bocaccio, Dover sole, thornyheads, and sablefish, and may need rapid adjustment inseason to minimize discards and economic impacts on the industry. Although there will be short-term economic costs from reduced harvest guidelines and reduced landings (which were proposed in a separate **Federal Register** notice (November 7, 1990, 55 FR 46841), long-term economic benefits are expected due to increased flexibility to establish management measures that will reduce discards and wastage and which are designed to extract maximum economic benefits from the fishery while maintaining the maximum sustainable yield from the resource.

The same conclusion also is reached for the delay in the opening of the nontrawl target fishery for sablefish, based on the analysis in the environmental assessment and in the preamble to this proposed rule. While six large pot vessels may experience a significant economic impact, this is not a substantial number of the 224 nontrawl sablefish vessels. The Assistant Administrator for Fisheries initially determined that this proposed action would not have a significant impact on a substantial number of small entities and therefore a regulatory flexibility analysis for this action was not prepared.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The Council determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**List of Subjects in 50 CFR Part 663**

Administrative practice and procedure, Fish, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 14, 1990.

**David S. Crestin,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 663 (as proposed in the **Federal Register** at 55 FR 38105, September 17, 1990) is proposed to be amended as follows:

## PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 663.23, the period at the end of paragraph (c)(1)(v) is changed to a comma, and paragraphs (b)(2), (c)(1) (vi), (vii), and (viii) are added, as follows:

**§ 663.23 Catch restrictions.**

* * * * *

(b) * * *

(2) *Nontrawl sablefish.* The regular season for the nontrawl sablefish fishery will begin on April 1. Prior to April 1, trip landing or frequency limits will be imposed under paragraph (c) of this section to allow for bycatch of sablefish in other fisheries, and to allow very small directed fisheries with nontrawl gear. Trip landing and frequency limits may be reimposed later in the year under paragraph (c). Trip limits to protect juvenile sablefish also may be imposed, at any time of year, under paragraph (c).

(c) * * *

(1) * * *

(vi) Dover sole—all gear;

(vii) Thornyheads—all gear;

(viii) Bocaccio—all gear.

* * * * *

[FR Doc. 90-29761 Filed 12-14-90; 4:53 pm]
BILLING CODE 3510-22-M

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# Notices

Federal Register
Vol. 55, No. 244
Wednesday, December 19, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 90-230]

### Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Soybean Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Upjohn Company, to allow the field testing in Isabela, Puerto Rico, of soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

**ADDRESSES:** Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Catherine Joyce, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-274-05.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The Upjohn Company, of Kalamazoo, Michigan, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a gene for tolerance to the phosphinothricin class of herbicides. The field trial will take place in Isabela, Puerto Rico.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Upjohn Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Upjohn Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene for herbicide tolerance, the *bar* gene, has been inserted into a soybean chromosome. The expression of this gene provides the soybean plants with tolerance to the phosphinothricin-class of herbicides. The *bar* gene was isolated from *Streptomyces hydroscopicus*, which is not a plant pest.

2. A gene encoding the enzyme beta-glucurnidase (GUS) has also been inserted into the soybean chromosome. The GUS gene, which acts as a marker for transformation, is derived from *Escerichia coli* which is not a plant pest.

3. In nature, chromosomal genetic material of soybeans can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because soybean is a predominantly self-pollinating plant and the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

4. Neither of the introduced genes nor their gene products confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

5. Neither of the introduced genes provide the transformed soybean plants with any apparent selective advantage over nontransformed soybean in the ability to be disseminated or to become established in the environment.

6. The vector used to transfer the introduced genes to the soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk. Although the vector contains select noncoding regions of regulatory DNA sequence that were derived from plant pests, they do not confer on soybean any plant pest characteristics.

7. Horizontal movement of the introduced genes is not possible. The foreign DNA is stably integrated into the plant genome.

8. The field test site is small (less than 3.5 acres) and is located on a private research farm that is completely surrounded by a fence.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 13th day of December 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-29678 Filed 12-18-90; 8:45 am]

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[Docket No. 90-222]

### Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that five applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**FOR FURTHER INFORMATION CONTACT:** Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment.

| Application No. | Applicant | Date received | Organism | Field test location |
|---|---|---|---|---|
| 90-297-01 | Calgene, Inc. | 10-24-90 | Cotton plants genetically engineered to express both a delta-endotoxin protein from *Bacillus thuringiensis* which is toxic to the larvae of some lepidopteran insects, and an enzyme that confers tolerance to the herbicide bromoxynil; and cotton plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil. | Mississippi. |
| 90-303-02 | Calgene, Inc. | 10-30-90 | Cotton plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil. | Alabama, Arkansas, Arizona, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas. |
| 90-310-01 | United States Department of Agriculture, Agricultural Research Service. | 11-06-90 | Potato plants genetically engineered to express a modified *Galleria mellonella* larval serum protein. | Idaho, Maine, Minnesota, and North Dakota. |
| 90-310-02 | Calgene, Inc. | 11-06-90 | Tomato plants genetically engineered to express the Tmr developmental gene, which codes for an enzyme involved in the production of cytokinin. | California. |
| 90-311-01 | Frito-Lay, Inc. | 11-07-90 | Potato plants genetically engineered to express a metabolic enzyme. | Wisconsin. |

Done in Washington, DC on this 13th day of December 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-29677 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-200]

### U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses and veterinary biological product permits by the Animal and Plant Health Inspection Service during the month of July 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

**FOR FURTHER INFORMATION CONTACT:** Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plan Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8674.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be

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issued, and the form of the license.

Pursuant to the regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of July 1990:

| Product license code | Date issued | Product | Establishment | Establishment license No. |
|---|---|---|---|---|
| 1515.21 | 07-12-90 | Equine Rhinopneumonitis-Influenza Vaccine, Killed Virus | American Home Products Corporation | 112 |
| 1771.17 | 07-03-90 | Newcastle-Bronchitis Vaccine, B, Type, LaSota Strain, Mass. and Conn. Types, Live Virus. | Immunogenetics, Inc. | 196 |
| 2648.56 | 07-09-90 | Escherichia Coli Bacterin | Bio Vac Laboratories, Inc. | 307 |
| 4915.20 | 07-09-90 | Parvovirus Vaccine-Erysipelothrix-Rhusiopathiae-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona-Pasteurella Multocida Bacterin, Killed Virus. | Rhone Merieux, Inc. | 298 |
| 5017.00 | 07-09-90 | Canine Borrelia Burgdorferi Antibody Test Kit | IDEXX Corp. | 313 |
| E260.00 | 07-13-90 | Reovirus Type 3 Antiserum, Murine Origin | Laborotory Animal Breeders and Services, Inc. | 378 |
| E260.00 | 07-13-90 | Sendai Virus Antiserum, Murine Origin | Laborotory Animal Breeders and Services, Inc. | 378 |
| E260.01 | 07-13-90 | Sendai Virus Antiserum, Murine Origin | Laborotory Animal Breeders and Services, Inc. | 378 |
| G054.00 | 07-20-90 | Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin-Toxoid. | Beecham, Inc. | 225 |

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No. U.S. Veterinary Biologics Establishment Licenses were issued during the month of July 1990.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

Pursuant to the regulations, APHIS issued the following U.S. Veterinary Biological Product Permits during the month of July 1990:

| Product Code | Date issued | Product | Permittee | Permit No. |
|---|---|---|---|---|
| 2035.00 | 07-05-90 | Aeromonas salmonicida bacterin | Mr. Jerry Zinn | 335 |
| 2958.03 | 07-05-90 | Vibrio angullarum-ordalli bacterin | Mr. Jerry Zinn | 335 |

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product and Establishment Licenses, and U.S. Veterinary Biological Product Permits. Pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product Licenses during July 1990:

| Product license code | Date terminated | Product | Establishment | Establishment Licenses No. |
|---|---|---|---|---|
| 1301.09 | 07-09-90 | Canine distemper vaccine, modified live virus | Solvay Animal Health, Inc | 195-A |
| 1311.30 | 07-09-90 | Canine distemper-hepatitis vaccine, modified live virus | Solvay Animal Health, Inc | 195-A |
| 1965.20 | 07-09-90 | Parvovirus vaccine, killed virus | Solvay Animal Health, Inc | 195-A |
| 1971.01 | 07-09-90 | Pasteurella Multocida vaccine, avirulent live culture, avian isolate. | Solvay Animal Health, Inc | 195-A |
| 2965.00 | 07-09-90 | Leptospira canicola-grippotyphosa-hardjo-icterohaemorrhagiae-pomona Bacterin. | Solvay Animal Health, Inc | 195-A |
| 4839.30 | 07-09-90 | Canine distemper-adenovirus type 2-parainfluenza-parvovirus vaccine—leptospira bacterin, modified live and killed virus. | Solvay Animal Health, Inc | 195-A |
| 4969.30 | 07-09-90 | Canine distemper-hepatitis vaccine—leptospira bacterin, modified live virus. | Solvay Animal Health, Inc. | 195-A |
| 4975.00 | 07-09-90 | Parvovirus vaccine—leptospira canicola-grippotyphosa-hardjo-icterohaemorrhagiae-pomona bacterin, killed virus. | Solvay Animal Health, Inc | 195-A |
| 16M1.20 | 07-09-90 | Parvovirus vaccine, modified live virus | A M Bio Techniques, Inc. | 292 |
| 5029.00 | 07-12-90 | Feline leukemia virus test kit | Microbiological Associates, Inc. | 299 |



No establishment licenses were suspended, revoked, or terminated during July 1990; and no product licenses or product permits were suspended or revoked during July 1990.

Done in Washington, DC, this 13th day of December 1990.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-29676 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Feather Falls Timber Sale, Plumas National Forest, California

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Feather Falls Timber Sale located on the LaPorte Ranger District, Plumas National Forest, Butte County, California. The Feather Falls Timber Sale is approximately 9 air miles north of the town of Challenge, California in T.20 and 21 N. and Range 6 and 7 E., Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in July 1991 and the Final Environmental Impact Statement (FEIS) will be available for review in December 1991.

**DATES:** Comments concerning the scope of analysis should be received in writing by January 4, 1991.

**ADDRESSES:** Submit written comments and suggestions to Charles W. Smay, District Ranger, P.O. Drawer 369, Challenge, CA 95925.

**FOR FURTHER INFORMATION CONTACT:** Jerry Bertagna, Program Accomplishment Forester, phone 916-675-2462 (person who can answer most of the questions on the project).

**SUPPLEMENTARY INFORMATION:** The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area located within Management Area 10, Feather Falls. The Forest Plan has designated the proposed timber sale area to be managed under the Timber Emphasis and Visual Partial Retention Prescriptions. The proposed action would use a variety of logging systems to harvest approximately 5.5 million board feet of timber. A range of alternatives for his project will be considered, one of which would be a no action alternative.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives to the proposed project.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1991. At that time EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the Federal Register. It is very important that those interested in the management of the Feather Falls Timber Sale participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by December 1991. The Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: December 5, 1990.

Mary J. Coulombe,

*Forest Supervisor.*

[FR Doc. 90-29667 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Survey of Income And Program Participation—1990 Panel Wave 5.

*Form Number(s):* SIPP-10500, SIPP-10503, SIPP-10506(L).

*Agency Approval Number:* 0607-0670.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 22,575 hours.

*Number of Respondents:* 45,150.

*Avg Hours per Response:* 30 minutes.

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*Needs and Uses:* The Bureau of the Census uses the Survey of Income and Program Participation (SIPP) to gather data concerning the distribution of income received directly as money or indirectly as in-kind benefits. The SIPP is designed as a continuing series of national panels of households which are interviewed about every four months. The SIPP Wave 5 contains the following supplemental topics: (1) Annual Income and Retirement Accounts, (2) Taxes, and (3) School Enrollment Financing. Data provided by SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs such as the Department of Health and Human Services and the Department of Agriculture.

*Affected Public:* Individuals or households.

*Frequency:* Once during the life of the panel.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 14, 1990.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 90–29708 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–07–M

## Bureau of Export Administration

### Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held January 10, 1991, 10:30 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

*AGENDA: General Session*

1. Opening Remarks by the Chairman & Commerce Representative.

2. Introduction of Members and Visitors.

3. Presentation of Papers or Comments by the Public.

4. Discussion of Prospective Controls on Chemicals and Process Equipment for Chemical and Biological Warfare.

*Executive Session*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Wasington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: December 12, 1990.

**Betty A. Ferrell,**

*Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.*

[FR Doc. 90–29709 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–07–M

## International Trade Administration

**[A–580–008]**

### Color Television Receivers From Korea; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioners, a domestic interested party, and certain respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers from Korea. The review covers four manufacturers and/or exporters of this merchandise for the period April 1, 1987 through March 31, 1988. As a result of the review, the Department has preliminarily determined the dumping margins to range between *de minimis* and 1.47 percent.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 27, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 26225) the final results of its last administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). In April 1988, the petitioners, a domestic interested party, and certain respondents requested, in accordance with § 353.53a(a) (1988) of the Commerce Regulations, that we conduct an administrative review. We published a notice of initiation of the review on May 23, 1988 (53 FR 18324). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedule ("HTS"). During the review period this merchandise was classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated ("TSUSA"). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers and/or exporters for the period April 1, 1987 through March 31, 1988.

**United States Price**

In calculating United States price, we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. Purchase price and ESP were were based on the packed f.o.b., c.i.f. or delivered prices to the first unrelated purchasers in the United States.

For sales of printed circuit boards ("PCBs") and color picture tubes ("CPTs") subsequently assembled into complete color television receivers in the United States, we used the U.S. price net of all costs associated with the U.S. assembly operation, including the value of all U.S. labor, materials, selling, general and administrative expenses, and allocated profit, in order to avoid application of antidumping duties to the value added in the United States.

For sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Tariff Act. We also used purchase price as the basis for determining United States price in those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation. For the latter sales, we preliminarily determine that purchase price is the most appropriate determinant of United States price because:

1. The merchandise in question was shipped directly from the manufacturers to the unrelated buyers, without being introduced into the inventory of the related selling agent;

2. Direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves.

For those sales to the first unrelated purchaser that took place after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Tariff Act.

We made deductions, where applicable, for foreign inland freight, Electronics Industry Association of Korea export fees, ocean freight, marine insurance, U.S. and Korean brokerage and handling charges, Korean customs clearing fees, wharfage, export license fees, U.S. duties, U.S. forwarding and handling charges, U.S. inland freight, insurance, discounts, royalties, rebates, commissions to unrelated parties, warranty, return loss, advertising and sales promotion, after-sales warehousing, credit, and the U.S. subsidiary's selling expenses. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used in merchandise exported to the United States.

We accounted for taxes imposed in Korea, but rebated or not collected by reason of exportation of the merchandise to the United States. We added to the U.S. price the amount of commodity tax that the Korean government would have assessed against the exported merchandise had such merchandise been subject to the tax. In Korea, the taxes in question are assessed on the net dealer delivered price. Since the net dealer delivered price in Korea is the price to the first unrelated party, we used the price to the first unrelated party in the United States as the U.S. tax base. We determined that this tax base is most comparable to the tax base used by Korean tax authorities. We used the commodity tax rate in effect in Korea during the review period.

No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value, we used home market price or constructed value, as defined in section 773 of the Tariff Act. Home market prices were used where sufficient quantities of such or similar merchandise were sold in the home market. Based upon available information the Department had reason to believe that Daewoo's sales were likely to have been made at prices less than the cost of production. Therefore, we requested information to determine whether Daewoo's sales were, in fact, made at prices less than the cost of production.

Subsequently, petitioners alleged that Gold Star was making home market sales at prices that were less than the cost of production during the 1987/88 period. We determined that petitioners' allegation provided insufficient grounds to initiate an investigation of possible sales below the cost of production.

Therefore, for this review, we compared home market sale prices to the cost of production only for Daewoo. Because we found that, for each model sold in the home market, more than ninety percent of sales were made at prices at or above the cost of production we considered all home market sales to provide a reliable basis for comparison with U.S. price.

Home market prices were based on the packed, delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions, and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences, where appropriate.

We disallowed a claim made by Gold Star for a level of trade adjustment. In the final results for the last administrative review, we stated that Gold Star's home market sales were made at a level of trade directly comparable to that of its U.S. sales. (*See* 55 FR 26225, June 27, 1990.) Gold Star has not presented any information for this review period which would serve to distinguish the level of trade situation for this period from that in effect during earlier review periods.

No other adjustments were claimed or allowed.





We used constructed value for Gold

consisted of the sum of the costs of

amount. Since actual profit was less

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We used constructed value for Gold Star, Samsung, and Quantronics where we could not match sales of such or similar merchandise between the U.S. market and the home market. We also used constructed value as the basis of FMV for U.S. sales of PCBs and CPTs subsequently assembled in the United States, because there were no similar type sales of PCBs and CPTs in the home market. Constructed value consisted of the sum of the costs of materials, fabrication, and general expenses; profit; and the cost of packing. Where the actual amount of general expenses was below the statutory minimum of ten percent of the cost of manufacture, we added the statutory minimum amount, in accordance with section 773(e) of the Tariff Act. Where the actual amount was above the statutory minimum, we added the actual amount. Since actual profit was less than the statutory minimum of eight percent of the sum of general expenses and cost of manufacture, we added the statutory minimum.

**Preliminary Results of Review**

As a result of our comparison of United States price with foreign market value, we preliminarily determine the dumping margins to be:

| Manufacturer/exporter | Period | Margin (percent) |
|---|---|---|
| Daewoo Electronics Co., Ltd. | 04/01/87-03/31/88 | 0.27 |
| Gold Star Co., Ltd. | 04/01/87-03/31/88 | 0.34 |
| Quantronics Manufacturing Korea, Ltd. | 04/01/87-03/31/88 | 0.26 |
| Samsung Electronics Co., Ltd. | 04/01/87-03/31/88 | 1.47 |

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter.

Case briefs and/or written comments from interested parties may be sumitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of this Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all firms except Daewoo and Quantronics. Since the dumping margins for Daewoo, Gold Star, and Quantronics are less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for those firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1988 and who is unrelated to any reviewed firm, or any previously reviewed firm, a cash deposit of 2.24 percent shall be required. This rate, which is the highest rate among all firms for which a review was conducted for the period April 1, 1987 through March 31, 1988, was published in the previous final results of antidumping administrative review for this order (55 FR 26225, June 27, 1990). These deposit requirements and waivers are effective for all shipments of Korean color television receivers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22) (1990).

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 90-29710 Filed 12-18-90; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-122-065, A-559-601, A-580-605, A-588-609]**

## Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore; Negative Preliminary Determinations of Circumvention of Antidumping Duty Orders

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of negative preliminary determinations of circumvention of antidumping duty orders.

**SUMMARY:** On August 27, 1990, the Department of Commerce initiated four inquiries into the possible circumvention of the antidumping duty orders on color picture tubes (CPTs) from Canada, Japan, the Republic of Korea, and Singapore. The anti-circumvention inquiries cover certain exporters of color television receivers (CTVs) from Mexico and their related and unrelated suppliers of CPTs. The period for each inquiry is July 1, 1989 through June 30, 1990.

We preliminarily determine that the companies investigated are not circumventing the antidumping duty orders on CPTs from Canada, Japan, the Republic of Korea, or Singapore. Interested parties are invited to comment on these preliminary determinations.

**EFFECTIVE DATE:** December 12, 1990.

**FOR FURTHER INFORMATION CONTACT:** Laurie A. Lucksinger, Office of Antidumping Compliance, or Richard Moreland, Director, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone (202) 377-5253.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 7, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 429-32) antidumping duty orders on CPTs from Canada, Japan, the Republic of Korea, and Singapore. On August 15, 1990, the petitioners in those investigations (International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America) alleged that



the antidumping duty orders on CPTs from Canada, Japan, the Republic of Korea, and Singapore are being circumvented and requested that the Department investigate the matter.

The petitioners alleged that CPT producers from the four countries are circumventing, within the meaning of section 781(b) of the Tariff Act of 1930, as amended (the Tariff Act), the antidumping duty orders on CPTs by diverting the CPTs into Mexico for incorporation into CTVs subsequently imported into the United States.

The petitioners requested in accordance with 19 CFR 353.29(b) that we conduct these anti-circumvention inquiries. On August 27, 1990, pursuant to petitioners' allegations and in accordance with 19 CFR 353.29(c), the Department published in the **Federal Register** (55 FR 34950) an initiation of anti-circumvention inquiries of antidumping duty orders on CPTs from Canada, Japan, the Republic of Korea, and Singapore.

On August 28, 1990, the Department issued an initial request for information to the fourteen known CPT manufacturers in Canada, Japan, the Republic of Korea, and Singapore in order to identify those companies subject to the anti-circumvention inquiries. Based on response submitted on September 4, 1990, the Department presented anti-circumvention questionnaires to twenty-one companies on September 12, 1990. The following companies are respondents in these four anti-circumvention inquiries: Daewoo Corporation, Goldstar Company Ltd., Hitachi Ltd., Hitachi Electronic Devices (Singapore) Ltd., Matsushita Electric Industrial Company, Mitsubishi Electric Corporation, Mitsubishi Electronics Industries Canada Inc., Philips Consumer Electronics Company, Samsung Electron Devices Company Ltd., Sanyo Manufacturing Corporation, Sony Corporation, TECMA, Toshiba Corporation, and Zenith Electronics Corporation. On October 15, 1990, we received responses to our anti-circumvention questionnaires from all respondents except TECMA. Subsequently, we requested and received supplementary information from the replying respondents.

Based upon information presented in response to the Department's questionnaire, the following companies either do not ship CTVs to the United States or do not purchase CPTs from producers or exporters located in countries subject to the orders and are therfore no longer part of this inquiry: Almacenes Coppel, S.A. de C.V., Comercios Electra, S.A. de C.V., Manufacturera Electronica Sim, S.A. de C.V., Mizrachi Y Cia de Mexico, S.A. de C.V., Sears Corporacion Mexicana, TCE Electronica de Mexico, S.A. de C.V., and Television del Distrito Federal, S.A. de C.V.

Based on suppliers' information, we have determined, as best information otherwise available, that TECMA shipped CTVs containing CPTs from one of four subject countries to the United States during the period.

Throughout the course of these inquiries, the petitioners and several respondents have provided the Department with comments regarding various aspects of the proceedings.

**Scope of the Antidumping Duty Orders**

Products covered by the antidumping duty orders are CPTs. CPTs are defined as cathode ray tubes suitable for use in the manufacture of CTVs or other color entertainment display devices intended for television viewing (Canada: 52 FR 44161, Japan: 52 FR 44171, Republic of Korea: 52 FR 44186, Singapore: 52 FR 44191). CPTs are classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50, and 8540.11.00.60. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**Scope of the Anti-circumvention Inquiries**

CPTS subject to these anti-circumvention inquiries are cathode ray tubes suitable for use in the manufacture of CTVs or other color entertainment display devices intended for television viewing. Parts or components attached to or shipped with the CPT are excluded from the scope of these inquiries. Our evaluations or anti-circumvention criteria such as relationship, changes in levels of CPT imports, and our calculations of value are based on data for the period July 1, 1989 through June 30, 1990. The pattern of trade analysis is based on data for the period January 1988 through June 1990.

**Nature of the Anti-circumvention Inquiry**

Section 781(b)(1) of the Tariff Act, as amended, provides that if:

(A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of any antidumping duty order,

(B) Before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which (i) is subject to such order, or (ii) is produced in the foreign country with respect to which such order applies,

(C) The difference between the value of such imported merchandise and the value of the merchandise [completed in another foreign country] is small, and

(D) The administering authority determines that action is appropriate under this paragraph to prevent evasion of such order, the administering authority, after taking into account any advice provided by the U.S. International Trade Commission, may include such imported merchandise within the scope of such order.

Thus, there are two criteria, both of which must be satisfied, for the Department to find circumvention through third country assembly: (1) The merchandise imported into the United States must be of the same class or kind as the merchandise already subject to the order; and (2) the difference in value between the product imported into the third country and the completed product imported into the United States must be small. The analysis which follows addresses both of these criteria.

**Class or Kind**

Section 781(b)(1)(A) of the Tariff Act provides that the merchandise subject to an anti-circumvention proceeding be of the same class or kind as merchandise already subject to the order before including the merchandise subject to the proceeding within the scope of the order.

The phrase "class or kind of merchandise" appears throughout the Tariff Act. Where the same phrase is used throughout the statute, it must be given the same interpretation. Thus, when examining this issue in these inquiries, we have looked to earlier class or kind decisions by the Department in the CPT and television (TV) orders.

In the original petition requesting the application of antidumping duties to CPT imports, the class or kind of merchandise was defined as "all CPTs not incorporated in complete, fully assembled CTVs upon importation" (Petition Requesting Investigation, November 26, 1986). Thus, petitioners envisioned that CPTs which were incorporated into CTVs (as is the case with respect to the importations into the United States under inquiry here) would be addressed within the context of a TV order. The Department adopted petitioners' reasoning during the investigations. For example, in CPTs from Canada, the Department stated that:

We have determined that where a CPT is shipped and imported together with all parts necessary for assembly into a complete television receiver (i.e., as a "kit"), the CPT is excluded from the scope of this investigation. The Department has previously determined in

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the Japanese and Korean television receiver cases that kits are to be treated for purposes of the antidumping statute as television receivers, not as a collection of individual parts. Stated differently, *a kit and a fully assembled television are a separate class or kind of merchandise from the CPT. Accordingly, we have determined that when CPTs are shipped together with other parts as television kits, they are excluded from the scope of this investigation* (emphasis added).

(52 FR 44181, November 18, 1987) (see also Color Picture Tubes from Singapore, 52 FR 44191, November 18, 1987)

In Color Picture Tubes from Japan (52 FR 44171 (1987)), the Department denied petitioners' request that the CPT order should include CPTs which are shipped and imported together with other parts as television receiver kits or as incomplete television receiver assemblies that contain a CPT as well as additional components. The Department determined that kits shipped to the United States from Japan were already covered by the antidumping finding on television receivers from Japan. Also included within the scope of the Japanese television finding were incomplete television receiver assemblies containing a CPT as well as additional components. What the Department did include within the CPT scope, however, were CPTs entered for customs purposes as kits and assemblies from Mexico. Among the factors contributing to the conclusion that these kits and assemblies were Japanese CPTs transshipped through Mexico were the facts that "the CPTs are not physically integrated with any other component, nor is there any value added to the CPT prior to importation into the United States" (52 FR at 44172). Significantly, the Department determined that these CPTs never entered the commerce of Mexico, thereby making it only logical that they be considered within the scope of the Japanese CPT order.

The existing CPT orders state that CPTs which are imported as incomplete television assemblies that contain a CPT as well as additional components are included within the CPT order unless (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam, and (2) the CPT does not constitute a significant portion of the cost or value of the items being imported. The completed CTVs being imported into the United States from Mexico are not the incomplete television receivers envisioned by the CPT orders.

The CPTs imported into Mexico are joined with parts sourced from various countries and incorporated into CTVs. The result is a Mexican CTV. Both the CPT industry and the CTV industry have successfully petitioned to have antidumping duties imposed on imports of their respective products. Prior to their request for this circumvention inquiry, petitioners carefuly distinguished CPTs from CTVs. Nothing the Department has reviewed during this inquiry suggests that this distinction should be eliminated.

Thus, we preliminarily find that the mandate of section 781(b) of the Tariff Act—that the product imported into the third country must be the same class or kind of merchandise as the product imported into the United States—has not been satisfied.

### Difference in Value

As noted above, in addition to the class or kind issue, the statute requires that the Department determine if the difference between the value of the imported article and the value of the completed article exported to the United States is small. Unlike the term "class or kind" which is used elsewhere in the statute, the term "small" does not appear outside the provisions of section 781. Our examination of the legislative history indicates that the circumvention provisions are intended to address "loopholes" in the antidumping and countervailing duty laws whereby "parties subject to these orders have been able to evade the order by making slight changes in their method of production or shipment of merchandise destined for consumption in the United States" (S. Rep. No. 71, 100th Cong., 1st Sess., p. 101). In accordance with section 781(b), we calculated the difference in value between the CTVs exported to the United States and the value of the CPTs imported into Mexico for incorporation into CTVs destined for sale in the United States.

In order to determine the value of the CTVs exported to the United States, we calculated a weighted-average, monthly selling price of the CTVs on a model-specific basis for each company. Where applicable, we deducted U.S. movement expenses, U.S. profits, U.S. selling expenses and further U.S. processing in order to derive the CTV border values used in each company's final difference in value calculation.

For purposes of valuing CPTs, we used the price from the respondents' related and unrelated CPT suppliers to represent the value of Canadian, Japanese, Korean, and Singapore CPTs. We conducted market price validity tests to determine whether the selling prices represented appropriate prices for comparison purposes in the inquiries. Where necessary, we adjusted CPT prices to reflect market prices. We included in our calculation of CPT value all movement expenses that the respondents incurred on CPT purchases which were not included in the selling price of the CPT. In addition, we allocated a share of the general, selling, and administrative expenses (GS&A) and profit of the Mexican facilities to the value of CPTs using the ratio of the value of the CPTs to the cost of manufacture for the CTVs. This final CPT value was then subtracted from the CTV border value to determine the difference in value. Difference in value percentages were then calculated by dividing the difference in value by the CTV border value in order to determine the percent value produced in Mexico.

We preliminarily determine that the differences in value for each inquiry range as follows: 40% to 60% for the inquiry on Canada, 55% to 70% for the inquiry on Japan, 55% to 65% for the inquiry on the Republic of Korea, and 70% for the inquiry on Singapore. (Since the precise figures are business proprietary, each of the stated percentages is approximated within a range of plus or minus 10%.) For TECMA, we used as best information otherwise available that percentage which represents the lowest difference in value, as provided by petitioners.

### Factors

Given our preliminary conclusions that the difference in value is not small and that the CTVs imported into the United States are not the same class or kind as the CPTs imported into Mexico, the statute compels the Department to determine preliminarily that circumvention is not occurring in each of the four inquiries. However, since these negative determinations are preliminary, the Department is publishing the results of its examination of the factors set forth in section 781(b)(2) of the Tariff Act. These factors are: (1) The pattern of trade; (2) the relationship between the manufacturer or exporter of CPTs and the entity that assembled or completed the merchandise in the foreign country; and (3) any increase in imports of CTVs assembled with CPTs from the country to which the order applies after issuance of the antidumping duty order.

*Pattern of Trade*

To measure pattern of trade, the Department examined shipments of CPTs from the four countries to the United States and to Mexico, and shipments of CTVs from Mexico to the United States, for the period January 1986 through June 1990.



During the period, CPT shipments to the United States fell from 2 million units in 1986 to 190,000 units in 1989. At the same time, CPT shipments to Mexico increased from 700,000 units in 1986 to 1.8 million units in 1989. Concurrently, CTV shipments from Mexico to the United States increased from 20,000 units in 1986 to 2 million units in 1989.

Furthermore, in conjunction with the above changes in the CPT pattern of trade, a shift in the pattern of trade for Mexican CTVs has also occurred over the past four years. The percentage of CPTs imported into Mexico and then incorporated into CTVs exported to the United States has increased. Although the exact number of CPTs from the four countries which are incorporated into Mexican CTVs and sold in the United States cannot be determined from the information provided to the Department, the ratio of Mexican CTV shipments to the United States to imports of CPTs into Mexico from the four countries increased from 3 percent to almost 100 percent during those four years.

This trade pattern was similar for most companies on an individual basis, as well. For some companies, however, the Mexican facility predated the orders on CPTs and, in some cases, the filing of the petition for CPT antidumping duty investigations.

*Relationship*

Generally, we consider circumvention to be more likely when a producer of covered merchandise is related to a third country assembler. In this inquiry, less than 40 percent of the CPTs purchased from the subject countries were from related CPT producers. In order to conduct complete and thorough inquiries, we examined both CTV exports containing CPTs from related suppliers and those from unrelated companies.

*Increase in Imports*

Imports of CPTs into Mexico from the four subject countries increased during the four year period, from 700,000 units in 1986 to 1.8 million units in 1989. This represents an increase of almost 160 percent.

The Department cannot find circumvention based on these factors alone. Rather, the factors are intended to assist the Department in determining whether to include the merchandise within the scope of an existing antidumping duty order in those situations where the merchandise is of the same class or kind and the difference in value is small.

### Negative Preliminary Determinations of Anti-circumvention Inquiries

After consideration of the criteria of section 781(b) of the Tariff Act, we preliminarily determine that no circumvention of the antidumping duty orders on CPTs is occurring. We base this determination on our conclusions that CTVs imported from Mexico into the United States are not of the same class or kind as the CPTs incorporated in those CTVs and that the difference between the value of CTVs containing CPTs originating in the order countries and the value of the CPTs is not small.

Interested parties may request disclosure by December 21, 1990 and may request a hearing by December 24, 1990. Any hearing, if requested, will be held on January 29, 1991. Case briefs and/or written comments from interested parties may be submitted not later than January 16, 1991. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than January 23, 1991. The Department will publish the final determinations of the anti-circumvention inquiries, including the results of its analysis of any written comments. If, consistent with section 781(e) of the Tariff Act, we refer this matter to the U.S. International Trade Commission (ITC), we will issue our final determinations within 15 days of receiving advice from the ITC. If referral to the ITC is not necessary, we expect to issue our final determinations by March 1, 1991.

These negative determinations of circumvention are in accordance with section 781(b) of the Tariff Act (19 U.S.C. 1677[) and 19 CFR 353.29.

Dated: December 12, 1990.

**Eric L. Garfinkel,**

*Assistant Secretary for Import Administration.*

[FR Doc. 90-29664 Filed 12-18-90; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Intent to Evaluate; Coastal Resource Management Programs

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate from January 1 through March 31, 1991, the performance of several state coastal management programs (CMP). The following lists the states to be evaluated and the dates of the site visit: Hawaii, January 28–February 2, 1991; the Virgin Islands, February 11–15, 1991, and the North Carolina, March 11–14, 1991. Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings regarding the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2) (A) through (K) of the CZMA, and adhered to the terms of any grant, loan or cooperative agreement funded under the CZMA. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and with members of the public. Public meetings will be held as part of the site visits.

Notice is hereby given on the date, time and location of a public meeting for each of the site visits.

- (1) The public meeting for the Hawaii evaluation will be January 28, 1991, at 7 p.m. at the Central Intermediate School cafeteria, 1302 Queen Emma Street, Honolulu, Hawaii;
- (2) The Virgin Islands public meeting will be February 11, 1991, at 7 p.m. at the Virgin Islands Legislature Building, Senate Meeting Room, Waterfront Highway, St. Thomas, Virgin Islands; and
- (3) The North Carolina public meeting will be March 13, 1991, at 7 p.m. at the Auditorium, Duke University Marine Laboratory, Beaufort, North Carolina.

The respective state also will issue notice of these meetings 15 days prior to the site visit in local newspapers. Copies of each state's most recent performance report, as well as OCRM's notification letter and supplemental information request letter to the state, are available upon request from the OCRM. Written comments from all interested parties on each of these programs are encouraged at this time. Public comment will be accepted until seven days after the site visit. Please direct comments to Edward Lindelof (see further information contact below). OCRM will place a subsequent notice in the **Federal Register**

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announcing the availability of the Final Findings based on each evaluation.

**FOR FURTHER INFORMATION CONTACT:** Edward Lindelof, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202/673–5104).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: December 12, 1990.

**Virginia K. Tippie,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 90–29662 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–08–M

### Evaluation of State Coastal Management Programs and National Estuarine Research Reserve

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

**ACTION:** Notice of availability of evaluation findings.

**SUMMARY:** Notice is hereby given of the availability of the evaluation findings for: (1) The Guam, Mississippi, Connecticut, Oregon and New Hampshire Coastal Management Programs, and the Rookery Bay National Estuarine Research Reserve (Florida). Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state (defined to include the Territory of Guam) with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Evaluations of the National Estuarine Research Reserves are conducted pursuant to section 315(f) of the CZMA, which requires the periodic review of the performance of each reserve with respect to its operation and management. The states evaluated were found to be adhering to the programmatic terms of their financial assistance awards and to their approved coastal management programs; and they were found to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing the coastal management programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the CZMA. The State of Florida is making progress operating and managing the Rookery Bay National Estuarine Research Reserve. A copy of these findings may be obtained upon request from: Edward Lindelof, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235. (202/673–5104).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: December 12, 1990.

**Virginia K. Tippie,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 90–29663 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–08–M

## National Marine Fisheries Service

### Application for Modification No. 2 to Permit No. 696; Gulf Specimen Marine Laboratories, Inc.

Notice is hereby given that the Applicant has applied in due form for a modification to permit No. 696 to extend the expiration date of the permit from April 30, 1991, to August 30, 1991, as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

*1. Applicant:* Dr. Anne Rudloe, Gulf Specimen Marine Laboratories, Inc., P.O. Box 237, Panacea, Florida 32346.

*2. Type of Permit:* Scientific Purposes.

*3. Name and Number of Species:* Kemp's ridley sea turtles (*Lepidochelys kempi*).

The current permit allows one hundred individuals to be taken.

*4. Type of Take:* The applicant is conducting scientific studies on Kemp's ridleys to provide fishery independent data on their occurrence, seasonality and population structure in the shallow, inshore waters of the northeastern Gulf of Mexico. The study is designed to collect population data necessary to develop sampling procedures adequate for later efforts to calculate an accurate population estimate for this species.

*5. Location and Duration of Activity:* The collection sites are adjacent to Piney Island and Shell Point Reef, Wakulla County, Florida; Alligator Point and off the Carrabella River, Franklin County, Florida. The current permit expires on April 30, 1991. This modification request proposes to suspend the net sampling for 3 months (December, 1990–February, 1991) and add an additional 3 months of sampling in May–July, 1991. The applicant requests an extension of the permit until August 30, 1991, to allow extra time for additional sampling.

Written data or views, or requests for a public hearing on this permit modification, should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular permit modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NOAA, NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910; and

Director, Southeast Region, NOAA, NMFS, 9450 Koger Blvd., St. Petersburg, Florida 33702.

Dated: December 13, 1990.

**David S. Crestin,**

*Acting Assistant Administrator for Fisheries.*

[FR Doc. 90–29626 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Soliciting Public Comment on Bilateral Negotiations During 1991

December 14, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Announcement.

**SUPPLEMENTARY INFORMATION:** The U.S. Government anticipates holding negotiations during 1991 concerning expiring bilateral agreements covering certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and apparel from Bangladesh (January 31, 1992, except Categories 336/636, 338/339, 342/642, 351/651, 638/639, 645/646 and 847), China (December 31, 1991), Egypt (December 31, 1991), Hong Kong (December 31, 1991), Hungary (December 31, 1991), India (December 31, 1991), Korea (December 31, 1991), Malaysia (December 31, 1991), Mexico (December 31, 1991), Pakistan (December 31, 1991), Peru (December 31, 1991), the Philippines (December 31, 1991) and Uruguay (June 30, 1991). (The dates noted in parenthesis are the expiration dates of the agreements.

Anyone who wishes to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, is invited to submit such comments or information in 10 copies to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC. Futher comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29660 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–DR–M

### Extension of an Import Limit for Certain Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

December 13, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

**SUPPLEMENTARY INFORMATION:**

**Authority.** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has decided to continue the restraint on Category 847 for an additional twelve-month period, beginning November 27, 1990 and extending through November 26, 1991.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 18370, published on May 2, 1990.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 13, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 20, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of silk blend and other vegetable fiber textile products in Category 847, produced or manufactured in the United Arab Emirates and exported during the period beginning November 27, 1990 and extending through November 26, 1991, in excess of 74,312 dozen.

Imports charged to the limit for Category 847 for the period November 27, 1989 through November 26, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29661 Filed 12–18–90; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER:** 1992 Post Election Survey; OMB No. 0704–0125.

**TYPE OF REQUEST:** Extension.

**AVERAGE BURDEN HOURS/MINUTES PER RESPONSE:** .166 hours per response.

**RESPONSES PER RESPONDENT:** 1.

**NUMBER OF RESPONDENTS:** 10,500.

**ANNUAL BURDEN HOURS:** 1743.

**ANNUAL RESPONSES:** 10,500.

**NEEDS AND USES:** Information collected will be used by the Federal Voting Assistance Program to prepare the report to the President and Congress required by 42 U.S.C. 1973ff.

**AFFECTED PUBLIC:** Individuals or households; state or local governments.

**FREQUENCY:** Biennially (Form D), Quadrennially (Form B).

**RESPONDENT'S OBLIGATION:** Voluntary.

**OMB DESK OFFICER:** Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

**DOD CLEARANCE OFFICER:** Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

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Dated: December 13, 1990.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29012 Filed 12-18-90; 8:45 am]
BILLING CODE 3810-01-M

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER:** Request for Reference; DD Form 370; and OMB Control Number 0704-0167.

**TYPE OF REQUEST:** Reinstatement.

**AVERAGE BURDEN HOURS/MINUTES PER RESPONSE:** .167 hours.

**RESPONSES PER RESPONDENT:** 1.

**NUMBER OF RESPONDENTS:** 191,000.

**ANNUAL BURDEN HOURS:** 31,897.

**ANNUAL RESPONSES:** 191,000.

**NEEDS AND USES:** Per sections 503, 504, 505, 506, and 510, title 10, U.S.C., applicants must meet minimum standards for enlistment into the Armed Forces. DD 370 is used by recruiters to request reference reports on applicants for enlistment in the Armed Forces. Information requested is necessary to determine eligibility for enlistment.

**AFFECTED PUBLIC:** Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees.

**FREQUENCY:** On occasion.

**RESPONDENT'S OBLIGATION:** Voluntary.

**OMB DESK OFFICE:** Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20305.

**DOD CLEARANCE OFFICER:** Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: December 13, 1990.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29013 filed 12-18-90; 8:45 am]
BILLING CODE 3810-01-M

## Department of the Air Force

## Privacy Act of 1974; Amend Privacy Act Record Systems

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Amend Privacy Act Record Systems.

**SUMMARY:** The Department of the Air Force proposes to amend five record systems in its inventory of records systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

**DATES:** These systems will be effective January 18, 1991, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330-1000. Telephone (202) 697-3491 or Autovon 227-3491.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force record systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register**, as follows:

50 FR 22332, May 29, 1985 (DoD Complication, changes follow)
50 FR 24672, Jun. 12, 1985
50 FR 25737, Jun. 21, 1985
50 FR 46477, Nov. 8, 1985
50 FR 50337, Dec. 10, 1985
50 FR 4531, Feb. 5, 1986
51 FR 7317, Mar. 5, 1986
51 FR 16735, May. 6, 1986
51 FR 18927, May. 23, 1986
51 FR 41382, Nov. 14, 1986
51 FR 44332, Dec. 9, 1986
52 FR 11845, Apr. 13, 1987
53 FR 24354, Jun. 28, 1988
53 FR 45300, Nov. 14, 1988
53 FR 50072, Dec. 13, 1988
53 FR 51301, Dec. 21, 1988
54 FR 10034, Mar. 9, 1989
54 FR 43450, Oct. 25, 1989
54 FR 47560, Nov. 15, 1989
55 FR 21770, May 29, 1990
55 FR 21900, May 30, 1990 (Air Force Address Directory)
55 FR 27868, Jul. 6, 1990
55 FR 28427, Jul. 11, 1990
55 FR 34310, Aug. 22, 1990
55 FR 38128, Sep. 17, 1990
55 FR 42370, Oct. 19, 1990
55 FR 42825, Oct. 22, 1990
55 FR 42829, Oct. 22, 1990

The amended systems are not within the purview of subsection (r) of the Privacy Act, as amended (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the records systems being amended are set forth below, followed by the systems notices, as amended, published in their entirety.

Dated: December 13, 1990.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### Deletion

**F034 ATC A**

*System name:*

F034 ATC A—Kindergarten Student File (50 FR 22371, May 29, 1990).

*Reason:*

System no longer needed. This system was incorporated into an Air Force wide system, F215 AF DP A, Child Development/Youth Activities Records. There are no plans to reinstate the system in the future.

### Amendments

**F011 AF A**

*System name:*

F011 AF A Locator, Registration and Postal Directory Files (53 FR 45801, Nov 14, 1988).

*Changes:*

* * * * *

*System location:*

Delete entry and replace with "Headquarters, US Air Force; Air Force installations to include bases, units, offices, and functions; Headquarters, United States Space and United States Special Operations Commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

*Categories of indiviudals covered by the system:*

Delete entry and replace with "Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; Civilian employees assigned to, or on duty with, Air Force organizations; United States Armed Forces military and civilian personnel assigned to Headquarters, United States Space and United States Special Operations Commands, and contractor personnel. Dependents may also be included in this system."

* * * * *

*System manager(s) and address:*

Delete entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000; or the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation or record systems notices."

*Notification procedures:*

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000 or to the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

**F011 AF A**

**SYSTEM NAME:**

F011 AF A—Locator, Registration and Postal Directory Files.

**SYSTEM LOCATION:**

Headquarters, U.S. Air Force; Air Force installations to include bases, units, offices, and functions; Headquarters, United States Space and United States Special Operations Commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; Civilian employees assigned to, or on duty with, Air Force organizations; United States Armed Forces military and civilian personnel assigned to headquarters, United States Space and United States Special Operations Commands, and contractor personnel. Dependents may also be included in this system.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by the local authority.

**AUTHORITY FOR MAINTAINING THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by.

**PURPOSE(S):**

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used to directorize and forward individual personal mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information or membership or user listings.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on paper records in card or form media in visible file binders/cabinets, card files or on computer and computer products.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000 or the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000 or the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to the Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000 or the Records Custodian at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information obtained from automated system interfaces; the individuals, or from personnel records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 AF MP M**

*System name:*

F035 AF MP M—Officer Promotion and Appointment, (51 FR 44343, December 9, 1986).

*Changes:*

* * * * *

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*Categories of records in the system:*

Delete fourth sentence and substitute with "An updated selection brief is produced for actual board use."

* * * * *

*Purpose(s):*

Delete the second sentence.

* * * * *

*Contesting record procedures:*

Delete entry and replace with "The Air Force rule for access to records and for contesting and appealing initial determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

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**F035 AF MP M**

**SYSTEM NAME:**

F035 AF MP M—Officer Promotion and Appointment.

**SYSTEM LOCATION:**

Air Force Military Personnel Center, Randolph Air Force Base, TX 78150–6001 and headquarters of major commands and separate operating agencies. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Air Force officers selected/nonselected for active duty promotion or appointment; officers projected as eligible for promotion or appointment consideration.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may consist of (1) *Officer Selection Brief File.* This file contains information extracted from the mechanized USAF Master Personnel File to include basic personnel, flying, and education data for each officer to be considered by a selection board for promotion or Regular Air Force appointment. The preselection brief is provided to each eligible officer in advance of presentation to the selection board. An updated selection brief is produced for actual board use. Copies of selection briefs are retained on microfilm. Additionally, a record copy of documentation accepted for manual posting of updates/corrections to the officer selection brief processed for board consideration is retained.

(2) *Officer Promotions and Appointments Administrative Files.* At the Air Force Military Personnel Center (AFMPC), this file includes copies of staff advisories provided to Secretary of the Air Force Board for Correction of Military Records containing promotion and appointment related information in response to specific points in an application, and background information and proposed responses to Congressional and high-level inquiries in the officer promotions and appointments area. At all levels, the file will include information and background relative to any propriety of promotion or appointment action (not qualified recommendation, removal action, delaying action, etc.) processed, and listings of officers eligible for promotion or appointment consideration.

(3) *Regular Officer History Card File.* This file contains a history card on each Regular Air Force Officer who was on active duty, Temporary Disability Retired List or missing in action as of January 1973. It contains name, Social Security Number, Promotion List Service Date (10 U.S.C. 8287), Adjusted Promotion List Service Date (PLSD) (10 U.S.C. 8303 or any other provision if applicable), source of commission, date of Regular Air Force acceptance, date of birth, promotion, category (Line, Medical Corps, etc.) (10 U.S.C. 8296), base retirement date (10 U.S.C. 8927), permanent grade history, temporary grade history to include dates of rank, effective dates and special orders announcing the promotion. Total Active Federal Commissioned Service Date, date officer was placed on or recalled from the Temporary Disability Retired List (if applicable). Regular Air Force-Lineal Position Number, Presidential nomination date, Total Active Federal Service as of date of Presidential nomination, any commissioned service held prior to Regular Air Force appointment (if applicable), former service number if member of other than the Air Force, Public Law under which officer was appointed in the Air Force, remarks on correction to records from the Secretary of the Air Force Board for the Correction of Military Records, any adjustments to officer's record and reasons therefor.

(4) *Air Force Confirmed Nomination Lists.* This file includes all Senate confirmation nomination lists for officer appointments and promotions through the grade of colonel. This file contains the only existing official signed document reflecting Senate confirmation.

(5) *Regular Air Force Officer Promotion List.* The Regular Officer Promotion List (Lineal List) is a historical computer-generated product maintained at AFMPC displaying the names of all active duty Regular Air Force in lineal order (descending) by promotion category by permanent grade.

(6) *Regular Air Force Appointment Management File.* This file includes individual locator cards reflecting a Regular officer selectee's progress from selection by a board of officers to either acceptance or declination; Regular Air Force declination statements, and Regular Appoint Board work rosters.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 35 and 837, Appointments as Reserve Officers; 10 U.S.C. 835, Appointment in the Regular Air Force; and 10 U.S.C. 839, Temporary Appointments. 37 U.S.C. 3, Basic Pay and Allowances of the Uniformed Services. 10 U.S.C. 79, Correction of Military Records; Section 628, Public Law 96–513, The Defense Officer Personnel Management Act, December 12, 1980, as implemented by Air Force Regulation 36–89, Promotion of Active Duty List Officers, and Executive Order 9397.

**PURPOSE(S):**

The Air Force operates basically a central selection process for active duty promotion of officers to grades 03–06, and all Regular Air Force appointments. Selection briefs are retained as a historical record of data presented to an officer selection board and, as such are used to validate completeness, accuracy, or omission of data reviewed by boards. Administrative files are used for research, precedence, and reference purposes.

Promotion/appointment propriety files are used to monitor completeness, legality, and processing timeliness of the actions. Generally, this records system contains information necessary to manage a diverse promotion and appointment program in a centralized environment. Board results to include names of selectees and statistical analysis of those results are made a matter of public record after appropriate approval of board proceedings. Results of the board are updated to the individual subject record in the Personnel Data System (PDS) after public release of the board proceedings.

Benchmark records are five records of officers from the lowest score category selected by each board and five records of officers from the highest score category not selected by each board captured on microfilm. For boards held prior to October 20, 1975, the benchmark records will consist of only the record for five officers from the lowest score category selected by the board. Benchmark records are used as directed by the Assistant Secretary to the DCS/Personnel for Special Review Board considerations and for Special Selection Boards.



**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The names and Social Security Numbers of officers selected by central selection board for an active duty promotion, to grades above Captain, and Regular Air Force Appointment as well as officers to receive appointments in the Air Force requiring confirmation of such appointments by the Senate of the United States, are provided to the Office of the President of the United States for nomination and to the United States Senate for confirmation. This information will be published in the Congressional Record.

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/cabinets, card files, on computer and computer output products.

**RETRIEVABILITY:**

Retrieved by name or Social Security Number.

**SAFEGUARDS:**

Records are accessed by authorized personnel in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Retained in office files until superseded, obsolete, or no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records will be destroyed by degaussing or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Deputy Chief or Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001 or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**RECORD ACCESS PROCEDURE:**

Individuals seeking to access records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001 or directly to agency officials at the respective system location. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for accessing records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system Manager.

**RECORD SOURCE CATEGORIES:**

All data contained on the Officer Selection and Preselection Briefs and various selection board computer products is directly extracted from the Headquarters Air Force Master Personnel File. Selection brief documentation backup files in the form of official correspondence, letters, or messages, properly authenticated by an appropriate personnel official, are generated, normally at the officer's request from the servicing Consolidated Base Personnel office. Information is obtained from HQ USAF and major command officer selection folders from special orders, oath of office signed by data subject, memorandums from the Secretary of the Air Force Board for Correction of Military Records, selection board reports. Data is obtained from appointment applications from data subject and from the Master Record Group of the applicable Service Department as concerns data subject.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 AF MP L**

*System name:*

F035 AF MP L—Unfavorable Information Files (UIF), (51 FR 44343, December 9, 1986).

*Changes:*

* * * * *

*Categories of records in the system:*

In the fifth line, delete "drug abuse correspondence".

*Authority for maintenance of the system:*

Change "10 U.S.C. 8012" to "10 U.S.C. 8013".

*Retention and disposal:*

Delete entry and replace with "UIFs are maintained for one year form the date of the most recent correspondence, except when the file contains documentation pertaining to Articles 15, Courts-Martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. Files are automatically destroyed upon separation or retirement, and on an individual basis when the individual's commander so determines. Destroy by tearing into places, shredding, pulping, macerating, or burning."

* * * * *

*Notification procedure:*

Add to entry, "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager or to the servicing Consolidated Base Personnel Office (CBPO). Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

*Record access procedures:*

Delete entire entry and replace with, "Individuals seeking to access records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief or Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001 or to the servicing CBPO. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

* * * * *

**F035 AF MP L**

**SYSTEM NAME:**

F035 AF MP L—Unfavorable Information Files (UIF).

**SYSTEM LOCATION:**

Complete UIFs are maintained at Consolidated Base Personnel Offices (CBPO) only. However, UIF summary sheets, a part of the UIF, are also maintained at: Individual's unit of assignment (commander's copy); geographically separated units not co-located with a servicing CBPO; major commands of assignment for officers only, and at Headquarters Air Force Military Personnel Center (DPMOC), Randolph Air Force Base, TX 78150–

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6001, for colonels and colonel selectees. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty military personnel who are the subject of an UIF.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 35–32, The Air Force Unfavorable Information File Program

**PURPOSE(S):**

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/cabinets.

**RETRIEVABILITY:**

Retrieved by name.

**SAFEGUARDS:**

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

UIFs are maintained for one year from the date of the most recent correspondence, except when the file contains documentation pertaining to Articles 15, Court-Martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. Files are automatically destroyed upon separation or retirement, and on an individual basis when the individual's commander so determines. Destroy by tearing into pieces, shredding, pulping, macerating, or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001.

**NOTIFICATION PROCEDURE:**

Personnel for whom optional UIFs exist are routinely notified of the existence of a file. In all cases personnel have had the opportunity or are authorized to rebut the correspondence in the file. Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001 or to the servicing Consolidated Base Personnel Office (CBPO). Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph AFB, TX 78150–6001 or to the servicing CBPO. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**CONTESTING RECORD PROCEDURES:**

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Supervisory reports or censures and documented records of poor performance or conduct.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 AF MP K**

*System name:*

F035 AF MP K—Relocation Preparation Project Folders, (50 FR 22379, May 29, 1985).

*Changes:*

* * * * *

*Authority for maintenance of the system:*

Change "10 U.S.C. 8012" to "10 U.S.C. 8013."

*Purpose(s):*

Delete entry and replace with "To maintain a consolidated file on specific actions required for relocation of Air Force Personnel, and to document compliance with all relocation requirements."

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Delete entry and replace with "The Department of the Air Force 'Blanket Routine Uses' published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

*Retention and disposal:*

Delete entry and replace with "Records are maintained for a period of three months after member's report not later than date, separation date or retirement date, then removed and destroyed by tearing into small pieces, macerating, burning, shredding or pulping."

* * * * *

*Notification procedure:*

Add to entry, "Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

*Record access procedures:*

Add to entry "Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices."

*Contesting record procedures:*

Delete entire entry and replace with, "The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the System Manager."

* * * * *

**F035 AF MP K**

**SYSTEM NAME:**

F035 AF MP K—Relocation Preparation Project Folders.



**SYSTEM LOCATION:**

At Consolidated Base Personnel Offices (CBPO) only. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Maintained on all active duty Air Force personnel selected for relocation as the result of retirement, separation, release from extended active duty, Permanent Change of Station (PCS), or Temporary Duty (TDY).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Relocation records may consist of checklist, orders and amendments, letters from agencies outside CBPO regarding the member's relocation, record of emergency data, Records Transmittal/Request, servicemen's request for compensation from the Veterans Administration, PCS or TDY Levy Notification Letter/Brief, duplicates of correspondence directing/authorizing the relocation, Assignment Instruction Worksheet, Basic Assignment Eligibility Checklist, Assignment Preference Statement, Medical/Dental Clearance for Assignment to Short-Tour Area, Medical and Educational Clearance for Dependent Overseas Travel, Overseas Tour Election Statement, Cancellation/Diversion of Assignment or change of reporting month and components of the Field Records Group for consolidation and forwarding to new location.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force: Powers and Duties; delegation by, and 10 U.S.C. 8032, General Duties; as implemented by Air Force Regulation 35–17, Preparation of Personnel Selected for Relocation-Base Level Procedures.

**PURPOSE(S):**

To maintain a consolidated file on specific actions required for relocation of Air Force Personnel, and to document compliance with all relocation requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record systems apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in visible file binders/cabinets.

**RETRIEVABILITY:**

Retrieved by name within departure month.

**SAFEGUARDS:**

Records are accessed by authorized personnel in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

**RETENTION AND DISPOSAL:**

Records are maintained for a period of three months after member's report not later than date, separation date or retirement date, then removed and destroyed by tearing into small pieces, macerating, burning, shredding or pulping.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001 or directly to the CBPO at base of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Manpower and Personnel, Randolph Air Force Base, TX 78150–6001 or directly to the CBPO at base of assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

**CONTESTING RECORD PROCEDURES:**

The Department of the Air Force rules for accessing records, and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the System Manager.

**RECORD SOURCE CATEGORIES:**

Computer print-outs, information obtained from the unit personnel records, unit commander, supervisor, and from subject of the record.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**F035 MPC I**

*System name:*

F035 MPC I—Office File (50 FR 22414, May 29, 1985).

*Changes:*

* * * * *

*Categories of individuals covered by the system:*

In the last line, delete "12 months" and replace with "90 days".

* * * * *

*Authority for maintenance of the system:*

Change "10 U.S.C. 8012" to "10 U.S.C. 8013".

* * * * *

*System manager(s) and address:*

Delete entry and replace with "Assistant Deputy Chief of Staff/Assistant for Colonels' Assignments, Randolph AFB, TX 78150–6001."

* * * * *

*Contesting record procedures:*

Delete entry and replace with "The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

**F035 MPC I**

**SYSTEM NAME:**

F035 MPC I—Office File.

**SYSTEM LOCATION:**

Headquarters, Air Force Military Personnel Center, Assistant for Colonels' Assignments (HQ AFMPC/MPCO), Randolph Air Force Base, TX 78150–6001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All active duty colonels (grade 06) and former active duty colonels (grade 06), who have retired, and who have been retired for 90 days or less.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Official photograph; Air Force Form 620, Colonel Resume; copies of correspondence generated by HQ AFMPC/MPCO pertaining to the subject of the file; correspondence received by HQ AFMPC/MPCO pertaining to the subject of the file; memoranda of assignment, and related personnel actions contemplated/completed on the subject of the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by; as implemented by Air Force Regulation 36-10, Officer Evaluations.

PURPOSE(S):

Assignment considerations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and rotary file bins (lectriever).

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retain until first anniversary of effective date of retirement/separation from the USAF of the subject of the file, at which point the office file is destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff/Assistant for Colonels' Assignments, Randolph AFB, TX 78150-6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Assistant for Colonels' Assignments, Randolph AFB, TX 78150-6001.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written inquiries to the Assistant Deputy Chief of Staff/Assistant for Colonels' Assignments, Randolph AFB, TX 78150-6001.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12-35; 32 CFR part 806b; or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Subject of the file; AFMPC/MPCO personnel; other Air Force and outside agency originators of correspondence relating to subject of the file, and any additional information which has/could have bearing on assignability of the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-29611 Filed 12-18-90; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Request

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection request.

**SUMMARY:** The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

**DATES:** An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 13, 1990.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Office of management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: December 13, 1990.

**Wallace R. McPherson, Jr.,**

*Acting Director for Office of Information Resources Management.*

### Office of Postsecondary Education

*Type of review:* New.

*Title:* Ability-to-Benefit Testing.

*Abstract:* The Secretary will publish an initial list of tests which are approved as measures of a student's ability-to-benefit from a postsecondary educational program. Students who do not have a high school diploma or its equivalent must submit scores from these approved tests to establish their individual ability to benefit from the postsecondary program of study. Test developers may follow the Secretary's procedures for submitting their tests for consideration on the Secretary's approved list.

*Additional information:* An emergency review is requested due to the President's approval of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, which requires all students admitted on the basis of their ability to benefit to pass an independently administered examination approved by the Secretary of Education for periods of enrollment beginning on or after January 1, 1991. Due to these time restraints, the Secretary must publish an initial list of approved tests and establish a mechanism for test developers to submit their tests for review and inclusion on the approved list. Test developers will need to submit to the Secretary: (1) A Copy of the test; (2) Test documentation; (3) Technical manual that contains recommended procedures for security, administration and scoring of the test; and (4) History of use of the test.

The Secretary is also establishing a procedure whereby students who have already successfully taken one of the approved tests within the past twelve months can submit that score as their proof of ability-to-benefit.

*Frequency:* One-time only.

*Affected public:* Individuals or households, Businesses or other for-profit, Non-profit institutions.

*Reporting burden:*

*Responses:* 2,100.

*Burden hours:* 250.

*Recordkeeping burden:*

*Recordkeepers:* 0.

*Burden hours:* 0.

[FR Doc. 90-29288 Filed 12-18-90; 8:45 am]

BILLING CODE 4000-01-M

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information requests as requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before January 18, 1991.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** James O'Donnell (202) 708-5174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: December 13, 1990.

**James O'Donnell,**

*Acting Director, for Office of Information Resources Management.*

### Office of Educational Research and Improvement

*Type of review:* New.

*Title:* Application for Grants Under the Foreign Language Materials Acquisition Program, LSCA Title V.

*Frequency:* Annually.

*Affected Public:* State or local governments.

*Reporting burden:*

*Responses:* 200.

*Burden hours:* 3,2000.

*Recordkeeping burden:*

*Recordkeepers:* 0.

*Burden hours:* 0.

*Abstract:* This form will be used by state agencies to apply for funding under the Foreign Language Materials Acquisition Program. The Department uses the information to make grant awards.

### Office of Postsecondary Education

*Type of review:* Reinstatement.

*Title:* Application for Grants for the Patricia Roberts Harris Fellowships for Public Service Education Fellowships.

*Frequency:* Annually.

*Affected Public:* Non-profit Institutions.

*Reporting burden:*

*Responses:* 111.

*Burden hours:* 2,3000.

*Recordkeepers:* 0.

*Burden hours:* 0.

*Abstract:* This form will be used by Non-profit Institutions to apply for funding under the Patricia Roberts Harris Fellowship Program. The Department uses the information to make grant awards.

### Office of Postsecondary Education

*Type of review:* Extension.

*Title:* Feedback on Training Activity Title IV Student Financial Assistance Program.

*Frequency:* One-time.

*Affected Public:* Individuals or households.

*Reporting burden:*

*Responses:* 18,100.

*Burden hours:* 2,715.

*Recordkeeping burden:*

*Recordkeepers:* 0.

*Burden hours:* 0.

*Abstract:* This form will be used as an evaluation vehicle reflecting the effectiveness of the training under the Title IV Student Financial Assistance Program. The Department uses the information to assess the effectiveness of training activities.

[FR Doc. 90-29629 Filed 12-18-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. ER90-559-000 et al.]

### Arkansas Power and Light Co., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Arkansas Power and Light Co.**

[Docket No. ER90-559-000]

December 10, 1990.

Take notice that on November 20, 1990, Arkansas Power and Light Company tendered for filing its response to staff's deficiency letter for additional information in the above-referenced docket.

*Comment date:* December 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

**2. Richard G. Hickson**

[Docket No. ID-2516-000]

Take notice that on December 4, 1990, Richard G. Hickson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

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CEO and Chairman: Texas Commerce Bank, N.A.—El Paso
Director: El Paso Electric Company

*Comment date:* December 24, 1990, in accordance with Standard Paragraph E at the end of this notice.

**3. Nantahala Power and Light Co.**

[Docket No. ER83-774-018]

December 10, 1990.

Take notice that on December 3, 1990, Nantahala Power and Light Company (Nantahala) tendered for filing its refund report in this docket in compliance with Opinion No. 277 and 277-A issued in this docket.

*Comment date:* December 21, 1990, in accordance with Standard Paragraph E end of this notice.

**4. Wisconsin Public Service Corp.**

[Docket No. ER91-141-000]

December 10, 1990.

Take notice that on December 5, 1990, Wisconsin Public Service Corporation (WPS) tendered for filing an executed Supplement to the Service Agreement between WPS and Citizens Power and Light Corporation. The Supplement provides for firm transmission service under the T-1 Transmission Tariff filed by WPS April 5, 1990, in Docket No. ER90-314-000.

WPS requests that the Commission grant waiver of its notice requirements in order to allow the supplement to become effective on December 1, 1990, the date on which Citizens requested that service begin.

*Comment date:* December 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

**5. Transmission Agency of Northern California v. Pacific Gas and Electric Co.**

[Docket No. EL91-8-000]

December 10, 1990.

Take notice that on December 5, 1990, the Transmission Agency of Northern California ("TANC") tendered for filing a complaint against Pacific Gas and Electric Company ("PG&E") pursuant to sections 205, 206 and 306 of the Federal Power Act and rules 203, 206 and 212 of the Commission's Rules of Practice and Procedure. In its complaint TANC alleges that PG&E has failed to provide transmission service to TANC as required by, and in accordance with, the Principles for Tesla-Midway Transmission Service. TANC also filed, in the same docket, a motion for summary disposition. On December 7, 1990, PG&E filed a motion for an extension of time to make PG&E's response to the motion for summary disposition due at the same time as PG&E's answer to the complaint. PG&E states in its motion that TANC has consented to the extension requested by PG&E. The Commission hereby finds good cause to grant PG&E's motion, so that the response to TANC's motion for summary disposition shall be due on the same day that the answer to the complaint is due.

*Comment date:* January 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

**6. Niagara Mohawk Power Corp.**

[Docket No. ER91-145-000]

December 11, 1990.

Take notice that on December 7, 1990, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Northeast Utilities Service Company dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of up to 112 MW of peaking capacity and related energy to Northeast Utilities Service Company. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon Northeast Utilities Service Company and the New York State Public Service Commission.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

**7. PSI Energy, Inc.**

[Docket No. ER91-144-000]

December 11, 1990.

Take notice that PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc. on December 7, 1990, tendered for filing pursuant to the Service Agreement between the Town of Pittsboro and PSI a revised Exhibit "A" (Service Specifications).

Said Exhibit "A" provides for revised service characteristics at the Municipal's delivery point(s).

Copies of the filing were served on the Town of Pittsboro and the Indiana Utility Regulatory Commission.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

**8. Arkansas Power and Light Co.**

[Docket No. ER91-148-000]

December 11, 1990.

Take notice that on December 7, 1990 Arkansas Power and Light Company (AP&L) submitted for filing the Third Amendment to the Power Coordination, Interchange and Transmission Agreement between the City of Conway, Arkansas (City) and AP&L. The Amendment provides for the addition of one point of delivery to enable the City to provide service to a new industrial customer.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

*Comment date:* December 26, 1990, in accordance with Standard Paragrph E at the end of this notice.

**9. Southern California Edison Co.**

[Docket No. ER91-146-000]

December 11, 1990.

Take notice that on December 7, 1990, Southern California Edison Company (Edison) tendered for filing supplemental agreements to Edison Rate Schedules 246 and 250: (1) Supplemental Agreement Between Southern California Edison Company and City of Anaheim for the Integration of the Bonneville Power Administration-Anaheim Firm Peaking Sale/Exchange Agreement; (2) Supplemental Agreement Between Southern California Edison Company and City of Riverside for the Integration of the Bonneville Power Administration-Riverside Firm Peaking Sale/Exchange Agreement.

Included in the filing is a change in rates for transmission service for Rate Schedules 241 and 245 and scheduling and dispatching rates for Rate Schedules 241 through 245.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

**10. Commonwealth Edison Co.**

[Docket No. ER91-142-000]

December 11, 1990.

Take notice that on December 6, 1990, Commonwealth Edison Company (Edison) tendered for filing a letter agreement dated November 9, 1990, between Edison and the City of Rochelle, Illinois (Rochelle). The letter agreement reflects the rates, terms and conditions pursuant to which Edison will supply Rochelle with Limited Term Power and Interruptible Short Term Power for the ten-year period January 1, 1991 through December 31, 2000.

Edison requests expedited consideration of the filing and an effective date of December 30, 1990. Accordingly, Edison requests waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon the Illinois Commerce Commission and Rochelle.



*Comment date:* December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

**11. Wisconsin Power and Light Co.**

[Docket No. ER91-147-000]

December 11, 1990.

Take notice that on December 7, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated November 15, 1990, between the City of Wisconsin Rapids and WPL. WPL states that this now Wholesale Power Agreement revises the previous agreement between the two parties which was dated October 10, 1978, and designated Rate Schedule No. 122 by the Commission.

The purpose of this new agreement is to revise the terms of service. Terms of service for this customer will be on a similar basis to the terms of service for other W-3 wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Wisconsin Rapids and the Wisconsin Public Service Commission.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

**12. Boston Edison Co.**

[Docket No. ER91-149-000]

December 11, 1990.

Take notice that Boston Edison Company (Boston Edison) on December 7, 1990, tendered for filing revised Exhibit B's, designated as Rate S-10, to its rate schedules for its two customers served under its partial requirements wholesale rate. Those customers and their FERC rate schedules are as follows:

| | FERC rate schedule No. |
|---|---|
| Town of Concord | 47 |
| Town of Wellesley | 51 |

Edison also tendered for filing a revised Exhibit B to its Contract Demand tariff under which partial requirements service is furnished to the Town of Reading.

Boston Edison requests that the proposed S-10 increase be granted a February 5, 1991 effective date. In accordance with a settlement agreement with the Contract Demand customer, Reading, Edison has asked that the Reading Contract Demand increase be granted an effective date of February 5, 1991 and that it be suspended and phased with Step 1 to become effective on February 6, 1991 and Step 2 to become effective on July 1, 1991.

The amounts by which the increases respectively exceed the presently effective rates based on the calendar year 1991 year are:

| | Increase | Percent |
|---|---|---|
| Town of Concord | $2,580,000 | 26.5 |
| Town of Wellesley | 3,287,000 | 29.5 |
| Town of Reading (Step 1) | 1,020,000 | 8.0 |
| Town of Reading (Steps 1 & 2 Combined | 3,771,000 | 29.5 |

According to Boston Edison, it has filed the rate increases in order to recover its increased costs of providing electric service and to earn a fair return on its investment dedicated to the public service.

Boston Edison further states that a copy of the filing has been posed as required by the Commission's regulations, and a copy has been mailed to each of the customers affected by the proposed changes and to the Massachusetts Department of Public Utilities. All of the affected customers are located in the Commonwealth of Massachusetts.

*Comment date:* December 26, 1990, in accordance with Standard Paragraph E end of this notice.

**13. Public Service Co. of New Hampshire**

[Docket No. ER91-143-000]

December 11, 1990.

Take notice that Public Service Company of New Hampshire (the Company) on December 7, 1990, tendered for filing proposed changes in its rate schedules pursuant to which the Company provides wholesale electric service to four wholesale customers: New Hampshire Electric Cooperative, Inc., Town of Ashland, New Hampshire, Town of Wolfeboro, New Hampshire, and New Hampton Village Precinct.

The Company proposes two-phase increases for its rate changes. The Company states that the proposed Phase 1 increases in charges are intended to recover a portion of its increased costs resulting from inclusion in rate base of a portion of the Company's investment in the Seabrook No. 1 nuclear unit, as well as increases resulting from the Company's generally higher costs of service, and that the additional increases reflected in the Phase 2 rates are intended to recover an additional portion of costs related to inclusion of Seabrook No. 1 in rate bases.

The Company has requested waiver of the Commission's customary notice requirements in order to make the proposed Phase 1 rate change for the New Hampshire Electric Cooperative, Inc. effective as of July 1, 1990 and the Phase 2 changes effective as of July 2, 1990. In the event that the Commission denies such request for waiver, the Company proposes that Phase 1 of the rate change by made effective on February 6, 1991, and Phase 2 of the rate change be made effective on February 7, 1991. The Company has requested that Phase 1 of the rate schedule changes to the Town of Ashland, New Hampshire Village Precinct and the Town of Wolfeboro be made effective on February 6, 1991, and that Phase 2 be made effective on February 7, 1991.

The Company states that copies of its filing were served upon the affected customers and the New Hampshire Public Utilities Commission.

*Comment date:* December 26, 1991, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-29622 Filed 12-18-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. JD90-13465]

**Maryland Co. No. 11 Well; Well Determination Following Remand**

December 10, 1990.

In the matter of NGPA section 108 Determination; State of Louisiana Department of Natural Resources Docket No. NGPA 90-0121

Take notice that on December 7, 1990, the Louisiana Department of Natural Resources, Office of Conservation (Louisiana), submitted to the Commission its notice of determination pursuant to 18 CFR 274.104 that the Quintana Petroleum Corporation

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Maryland Company No. 11 well qualifies as a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA). This notice of determination follows the Commission's December 21, 1989 order (in Docket No. GP88-27-000) reopening Louisiana's previous well category determination for the Maryland Company No. 11 well (49 FERC ¶ 61,367 (1989)) and the Commission's May 18, 1990 order remanding such determination to Louisiana (51 FERC ¶ 61,189 (1990)).

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to this determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 90-29622 Filed 12-18-90; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP91-571-000, et al.]**

**Williston Basin Interstate Pipeline Co., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Williston Basin Interstate Pipeline Co.**

[Docket No. CP91-571-000]

December 7, 1990.

Take notice that on December 4, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismark, North Dakota 58501, filed in Docket No. CP91-571-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a sales tap and appurtenant facilities and related service under its blanket certificate issued in Docket Nos. CP82-487-000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that it proposes to abandon a Richland County, Montana sales tap and appurtenant facilities located on its natural gas gathering system. It is further stated that the customer, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., no longer requires service through the tap. Williston Basin indicates that this sales tap would be abandoned on its existing gathering line right-of-way.

*Comment date:* January 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

**2. Southern Natural Gas Co., Southern Natural Gas Co., ANR Pipeline Co.**

[Docket Nos. CP91-567-00, CP91-568-000, and CP91-570-000]

December 10, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests[1] which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* January 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

| Docket no. (date filed) | Applicant | Shipper name | Peak day,[1] average, annual | Points of Receipt | Points of Delivery | Start up date, rate schedule | Related[2] dockets |
|---|---|---|---|---|---|---|---|
| CP91-567-000 12-4-90 | Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202-2563. | Municipal Gas Authority of Georgia. | 100,000 1,000 365,000 | Offshore TX, LA, MS, AL. | GA, AL | IT, Interruptible, 10/2/90. | CP88-316-000, ST91-2332-000. |
| CP91-568-000 12-4-90 | Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202-2563. | Air Products & Chemicals, Inc. | 15,000 15,000 5,475,000 | Offshore TX, MS, MS, AL. | LA, AL | FT, Firm, 10/1/90 | CP88-316-000, ST91-4308-000. |
| CP91-570-000 12-4-90 | ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243. | NGC Transportation, Inc. | 10,000 10,000 3,650,000 | Offshore Federal LA. | Offshore Federal LA. | FT, Interruptible, 10/1/90. | CP88-316-000, ST91-3042-000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.



**3. Panhandle Eastern Pipe Line Co., Trunkline Gas Co.**

[Docket Nos. CP91-596-000 and CP91-597-000]

December 10, 1990.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, and Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicants) filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-585-000 and Docket No. CP86-586-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are open to public inspection.[2]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation dates; and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual Mcf | Receipt points[1] | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-596-000 (12-6-90) | Entrade Corporation (Marketer). | [3] 100,000 100,000 36,500,000 | CO, KS, IL, OK, TX | OH | 12-13-89, PT, Interruptible. | ST91-4230, 10-1-90. |
| CP91-597-000 (12-6-90) | Bishop Pipeline Corporation (Shipper). | 5,000 5,000 1,825,000 | IL, LA, OLA, TN, TX, OTX. | TN | 09-24-90, PT, Interruptible. | ST91-2962, 10-1-90. |

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] Dekatherms.

**4. CNG Transmission Corp., Consolidated Gas Supply Corp., CNG Transmission Corp.**

[Docket Nos. CP91-554-000, CP86-311-003, CP88-574-002, CP88-779-002, CP80-292-002, and CP86-311-002]

December 10, 1990.

Take notice that on December 3, 1990, CNG Transmission Corporation, 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket Nos. CP91-554-000, CP86-311-003, CP88-574-002, CP88-779-002, CP80-292-002, and CP86-311-002, an application pursuant to section 7 of the Natural Gas Act, and the Commission's Rules and Regulations thereunder, for authorization to restructure its services as part of a Settlement in Docket No. RP88-211, *et al.*, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

More specifically, CNG Transmission requests authorization to provide the services referenced in precedent agreements with its customers and in its Settlement as follows:

(1) A certificate of public convenience and necessity authorizing CNG to establish a new Rate Schedule ACD;

(2) Authorization to abandon sales service under Rate Schedule RQ, including standby service, to Niagara Mohawk Power Corporation, New York State Electric and Gas Corporation, The East Ohio Gas Company, The River Gas Company, The Peoples Natural Gas Company, Hope Gas, Inc. and Corning Natural Gas Corporation;

(3) Authorization to abandon sales service under Rate Schedule SCR to Corning;

(4) A certificate of public convenience and necessity authorizing CNG to provide Rate Schedule ACD sales service to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, New York State Electric and Gas Corporation, the East Ohio Gas Company, The River Gas Company, The Peoples Natural Gas Company, Hope Gas, Inc. and Corning Natural Gas Corporation, at the levels and under the terms described in the Application and the precedent agreements;

(5) Authorization for CNG to renew its Rate Schedule RQ service agreement with National Fuel Gas Supply Corporation for a term of three years and to add a new delivery point under this agreement;

(6) An amendment of the certificates authorizing CNG to provide standby service under Rate Schedules RQ, CD, and RQT, allowing CNG to alter the terms under which standby services are provided so that standby service customers may use CNG's system supply receipt points as receipt points under standby transportation agreements only if such customers have agreed that CNG's other firm services have priority; and so that CNG shall provide standby services at the levels specified in each customer's service agreement, as more fully described in the Application;

(7) Authorization to provide standby service as a part of Rate Schedule ACD on the same terms and conditions as under Rate Schedules RQ, CD and RQT, and at the levels specified in each customer's service agreement, as more fully described in the Application;

(8) Authorization to abandon part of the Rate Schedule CD service CNG currently provides to Baltimore Gas and Electric Company, Washington Gas Light Company and Cincinnati Gas and Electric Company and authorization for abandonment for any reductions or conversions by Cincinnati Gas and Electric Company pursuant to new Rate Schedule CD and TF service agreements executed pursuant to its precedent agreement;

(9) A certificate of public convenience and necessity authorizing CNG to provide Rate Schedule GSS Storage services to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, New York State Electric and Gas Corporation, The East Ohio Gas Company, The River Gas Company, The Peoples Natural Gas Company, Hope Gas Inc., Corning Natural Gas Corporation, Baltimore Gas and Electric Company and Wastington Gas Light Company, at the levels and on the terms described in the Application and the precedent agreements.

(10) A certificate of public convenience and necessity authorizing

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CNG to provide Rate Schedule GSS–II storage services to Niagara Mohawk Power Corporation, The Peoples Natural Gas Company and New York State Electric and Gas Corporation at the levels and on the terms described in the Application and the precedent agreements;

(11) An amendment of the certificate issued in Docket No. CP80–292, authorizing CNG to continue storage services to New York State Electric and Gas Corporation;

(12) A certificate of public convenience and necessity authorizing CNG to reclassify certain gathering facilities to jurisdictional, transmission-function plant;

(13) Authorization to abandon certain transmission and gathering facilities that CNG will reclassify to its distribution plant accounts, and at its discretion in the future, authorization for CNG to transfer to another entity or take out of service;

(14) An amendment to CNG's blanket transportation certificate originally issued in Docket No. CP86–311–000 authorizing CNG to implement a capacity assignment program on CNG's system; and

(15) Authorization for CNG to withdraw its pending certificate application seeking authorization for an experimental transportation program in Docket No. CP86–311–002.

CNG states that the purpose of this Application is to implement a Stipulation and Agreement entered into by CNG, its customers and interested parties and filed October 9, 1990, in Docket No. RP88–211, *et al.* CNG states that the Settlement seeks to restructure CNG's service offerings to permit customers to abandon the service historically rendered by CNG under requirements contracts and Rate Schedule CD contracts in favor of services under transportation, storage and sales agreements. CNG states that because it will render the proposed sales, transportation and storage services currently offered, CNG will be able to implement these conversions with limited or no additional investments in facilities.

CNG further states that CNG's capacity assignment proposal would advance the public convenience and necessity for the same reasons that similar programs have been approved by the Commission for other pipeline companies.

*Comment date:* December 31, 1990, in accordance with Standard Paragraph F at the end of this notice.

**5. Natural Gas Pipeline Co. of America**

[Docket Nos. CP91–576–000,[3] CP91–577–000, CP91–578–000, CP91–579–000, CP91–580–000, and CP91–581–000]

December 10, 1990.

Take notice that Natural Gas Pipeline Company of America (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

*Comment date:* January 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

| Docket No. (date filed) | Applicant | Shipper name | Peak day [1] avg., annual | Points of Receipt | Points of Delivery | Start up date rate schedule | Related [2] dockets |
|---|---|---|---|---|---|---|---|
| CP91–576–000 12–5–90 | Natural Gas Pipeline Co. of America. | Santanna Natural Gas Corporation. | 100,000 40,000 14,600,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, IL, IA, OK, CO, MO, AR. | 10–1–90, IT | CP86–582–000, ST91–1411–000. |
| CP91–577–000 12–5–90 | Natural Gas Pipeline Co. of America. | Transco Energy Marketing Co. | 400,000 150,000 54,750,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, IL, IA, OK, CO, AR, KS, NM. | 10–1–90, IT | CP86–582–000, ST91–1412–000. |
| CP91–578–000 12–5–90 | Natural Gas Pipeline Co. of America. | Marathon Oil Company. | 80,000 40,000 14,600,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, OK, CO, NM, IL. | 10–1–90, IT | CP86–582–000, ST91–864–000. |
| CP91–579–000 12–5–90 | Natural Gas Pipeline Co. of America. | Seagull Marketing Services, Inc. | 50,000 30,000 10,950,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, IL, IA, OK, CO, NM. | 10–3–90, IT | CP86–582–000, ST91–1415–000. |
| CP91–580–000 12–5–90 | Natural Gas Pipeline Co. of America. | Transco Energy Marketing Co. | 900,000 350,000 127,750,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, IL, IA, OK, CO, NM. | 10–1–90, IT | CP86–582–000, ST91–1414–000. |
| CP91–581–000 12–5–90 | Natural Gas Pipeline Co. of America. | Enron Gas Marketing Inc., | 100,000 75,000 27,375,000 | AR, CO, IA, IL, KS, LA, Off LA, MO, NE, NM, OK, TX, Off TX. | LA, TX, Off LA, Off TX, IL, IA, OK, CO, NM. | 10–1–90, IT | CP86–582–000, ST91–1413–000. |

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.



**6. Gas Gathering Corp.**

[Docket No. CP91–600–000]

December 11, 1990.

Take notice that on December 7, 1990, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP91–600–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Transco Energy Marketing Company, a marketer, under the blanket certificate issued in Docket No. CP86–129–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GGC states, that, pursuant to an agreement dated November 1, 1990, under its Rate Schedule IT–1, it proposes to transport up to 500 MMBtu per day equivalent of natural gas. GGC indicates that the gas would be transported from Louisiana, and would be redelivered in Louisiana. GGC further indicates that it would transport 200 MMBtu on an average day and 73,000 MMBtu annually.

GGC advises that service under § 284.223(a) commenced November 1, 1990, as reported in Docket No. ST91–3302.

*Comment date:* January 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

**7. Panhandle Eastern Pipe Line Co.**

[Docket Nos. CP91–617–000, CP91–618–000, CP91–619–000, CP91–620–000, CP91–621–000, CP91–622–000, CP91–623–000, and CP91–624–000]

December 11, 1990.

Take notice that on December 10, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Panhandle and is summarized in the attached appendix.

*Comment date:* January 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

| Docket number (date filed) | Shipper name (type) | Peak day average day annual Dth | Receipt points | Delivery points | Contract date rate schedule service type | Related docket start up date |
|---|---|---|---|---|---|---|
| CP91–617–000 (12–10–90) | Panhandle Trading Company (Marketer). | 200 200 73,000 | Various | Kingfisher County, Oklahoma. | 5–23–90, PT, Interruptible. | ST91–3130–000, 10–11–90. |
| CP91–618–000 (12–10–90) | Sinclair Oil Corporation (Producer). | 100 100 36,500 | Sweetwater County, Wyoming. | Sweetwater County, Wyoming. | 7–20–90, PT, Interruptible. | ST91–5375–000, 10–1–90. |
| CP91–619–000 (12–10–90) | Anadarko Trading Company (Marketer). | 267 267 97,455 | Reno County, Kansas | Wayne County, Michigan. | 11–1–90, PT, Firm | ST91–4013–000, 11–1–90. |
| CP91–620–000 (12–10–90) | National Steel Corp.—American Steel Division (End-user). | 500 500 182,500 | Various | Wayne County, Michigan. | 12–7–88, PT, Interruptible. | ST91–3126–000, 10–25–90. |
| CP91–621–000 (12–10–90) | BP Gas, Inc. (Marketer) | 50,000 50,000 18,250,000 | Various | Grant County, Indiana | 6–13–90, PT, Interruptible. | ST91–3046–000, 10–9–90. |
| CP91–622–000 (12–10–90) | Panhandle Trading Company (Marketer). | 15,000 50,000 36,500,000 | Various | Douglas County, Illinois | 10–9–90, PT, Interruptible. | ST91–3129–000, 10–13–90. |
| CP91–623–000 (12–10–90) | Amgas, Inc. (Marketer) | 30 15 5,475 | Various | Tazewell County, Illinois | 9–13–90, PT, Interruptible. | ST91–3045–000, 10–12–90. |
| CP91–624–000 (12–10–90) | Rangeline Corporation (Marketer). | 30,000 30,000 10,950,000 | Various | Reno County, Kansas | 3–20–90, PT, Interruptible. | ST91–5468–000, 10–1–90. |

**8. Trunkline Gas Co.**

[Docket No. CP91–625–000]

December 11, 1990.

Take notice that on December 10, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP91–625–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas on an interruptible basis for North Atlantic Utilities (North Atlantic). Trunkline explains that service initially commenced October 1, 1990, under § 284.223 of the Commission's Regulations, as reported in Docket No. CP91–4349.

Trunkline further explains that the peak day quantity would be 30,000 dekatherms, the average daily quantity would be 5,000 dekatherms, and that the annual quantity would be 2,000,000 dekatherms. Trunkline explains that it would receive natural gas for North Atlantic's account at existing points of receipt in Illinois, Louisiana, Tennessee, Offshore Louisiana, Texas, and from the Panhandle Eastern Pipe Line Company

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receipt in Douglas County, Illinois. Trunkline states that it would transport and redeliver the natural gas to Texas Eastern Transmission Corporation in Williamson County, Illinois.

*Comment date:* January 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

**9. Northwest Pipeline Corp.**

[Docket Nos. CP91-612-000, CP91-613-000, CP91-614-000, and CP91-615-000]

December 11, 1990.

Take notice that Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108, and Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-578-000 and Docket No. CP88-686-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

*Comment date:* January 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

| Docket number (date filed) | Shipper name (type) | Peak day average day annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP91-612-000 (12-7-90) | North Pacific Paper Corporation (End-user). | 2,200<br>2,200<br>766,500 | Whatcom County, Washington. | Cowlitz County, Washington. | 10-1-90, TF-1, Firm. | ST91-5330-000, 11-13-90. |
| CP91-613-000 (12-10-90) | Mobil Natural Gas Inc. | 68,450<br>68,450<br>24,984,250 | Offshore Texas | Offshore Texas | 4-3-90, IT, Interruptible. | ST91-2958-000, 11-1-90. |
| CP91-614-000 (12-10-90) | Total Minatome Corporation. | 80,000<br>10,000<br>5,475,000 | Offshore Texas | Offshore Louisiana | 12-15-89, IT, Interruptible. | ST91-4266-000, 11-2-90. |
| CP91-615-000 (12-10-90) | Hadson Gas Systems, Inc. | 100,000<br>10,000<br>3,650,000 | Various | Acadia Parish, Louisiana. | 10-30-90, IT, Interruptible. | ST91-4267-000, 11-2-90. |

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-29624 Filed 12-18-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket Nos. TM91-4-22-001, TQ91-2-22-001]**

**CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff**

December 11, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on December 6, 1990, pursuant to section 4 of the Natural Gas Act ("NGA"), part 154 and § 2.104 of the Commission's regulations, the provisions of the Settlement in CNG's Docket No. RP88-217, *et al.*, approved by the Commission by order issued October 6, 1989, and § 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, files (6) copies of the following revised tariff sheet to Volume No. 1 of CNG's FERC Gas Tariff:



**Sub. 5th Revised First Revised Sheet No. 31**

The proposed effective date for this tariff sheet is January 1, 1991.

The purpose of this filing is to correct the tariff sheet and supporting workpapers originally filed November 30, 1990, in Docket No. TM91-22-000 as "5th Revised First Revised Sheet No. 31."

CNG in the filing also withdraws a version of "5th Revised First Revised Sheet No. 31" that was inadvertently included in collating CNG's out-of-cycle PGA filing made November 29, 1990.

CNG states that copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 18, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
*Acting Secretary.*

[FR Doc. 90-29621 Filed 12-18-90; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. EC91-2-000]**

**Kansas Power and Light Company and Kansas Gas and Electric Co; Filing**

December 12, 1990.

Take notice that on December 11, 1990, The Kansas Power and Light Company (KPL) and Kansas Gas and Electric Company (KG&E) (collectively referred to as Joint Applicants), pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1988), and part 33 of the Commission's regulations, 18 CFR part 33 (1990), tendered for filing a Joint Application for Expedited Authorization and Approval of a Merger. Under the Merger Agreement between KPL and KG&E, upon receipt of required regulatory and shareholder approval, KPL will acquire all outstanding shares of common stock and each class of preferred stock of KG&E and KG&E will be merged into KCA Corporation (KCA), a wholly-owned subsidiary of KPL.

KPL is a combination electric and natural gas utility operating in the States of Kansas, Missouri and Oklahoma. KPL generates, transmits, distributes and sells electric power in central and eastern portions of the State of Kansas. Currently, KPL provides retail electric service to approximately 300,000 industrial, commercial and residential customers in 323 Kansas communities. It also transports and sells natural gas in Kansas, western Missouri, and northeastern Oklahoma to approximately 1,100,000 retail customers. KPL's electric retail operations are subject to regulation by the Kansas State Corporation Commission. Its retail gas activities are regulated by the utility regulatory commissions of the States of Kansas, Missouri, and Oklahoma. Subject to the jurisdiction of this Commission, KPL also provides wholesale electric generation and transmission services to numerous municipal customers and electric cooperatives located in Kansas and, through interchange agreements, to surrounding integrated systems.

KG&E is an electric utility that generates, transmits distributes and sells electricity in the southeastern quarter of the State of Kansas. KG&E sells electricity at retail to approximately 229,000 residential customers, more than 20,000 commercial customers and in excess of 4,000 industrial customers. KG&E's retail operations are subject to the jurisdiction of the Kansas State Corporation Commission. Subject to the jurisdiction of this Commission, KG&E also provides wholesale electric generation and transmission services to several municipal customers and electric cooperatives located in Kansas and, through interchange agreements, to surrounding integrated systems.

The Joint Applicants state that the merger of KG&E into a wholly-owned subsidiary of KPL will be consistent with the public interest and the long-term best interests of the public and the customers and shareholders of both companies. The Joint Applicants submit that the combination of the two companies will result in significant savings and efficiencies that would be difficult or impossible to achieve through continued operations as separate entities. The Joint Applicants state that these benefits, especially in the areas of distribution operations, corporate management and administrative functions, integration of dispatching and certain corporate and administrative functions, and streamlining of inventories and purchasing economies will result in significant long-term savings for the customers of both companies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
*Secretary.*

[FR Doc. 90-29618 Filed 12-18-90; 8:45 am]
BILLING CODE 6717-01-M

**Office of Fossil Energy**

**[FE Docket No. 90-101-NG]**

**ICG Energy Marketing, Inc.; Application for Blanket Authorization To Import Natural Gas**

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to import natural gas.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 28, 1990, of an application filed by ICG Energy Marketing, Inc. ("ICG Energy Marketing") for blanket authorization to import up to 72 Bcf of Canadian natural gas for a two-year term, from April 1, 1991, the date the applicant's existing authority expires, through March 31, 1993. ICG Energy Marketing intends to use existing facilities of U.S. pipelines for the transportation of the imported gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 18, 1991.

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**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7249

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** ICG Energy Marketing, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is a wholly owned subsidiary of Canadian Hydrocarbons Marketing, Inc., which in turn is a subsidiary of ICG Utilities (Canada) Ltd. Its ultimate parent corporation is Westcoast Energy Inc.

ICG Energy Marketing was formed for the purpose of marketing natural gas in Canada and the United States. ICG Energy Marketing received blanket authorization to import up to 25.6 Bcf per year of Canadian natural gas over a two-year term in DOE/ERA Opinion and Order No. 130 (June 12, 1986). The company intends to continue to import natural gas for its own account or as agent for Canadian suppliers for short-term sales to U.S. purchasers including, but not limited to, commercial and industrial end-users and local distribution companies. The terms of each transaction, including price and volume, will depend on the market demand for natural gas and will be structured to meet competition in the market place.

The decision on this import applicant will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The application asserts that the extension of its import authorization will allow ICG Energy Marketing to continue to sell a stable supply of competitively-priced natural gas. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price in order to facilitate monitoring of the operation of DOE's natural gas import program.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of ICG Energy Marketing's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 13, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–29711 Filed 12–18–90; 8:45 am]

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**[FE Docket No. 90–99–NG]**

## ProGas Ltd.; Application for Blanket Authorization To Import and Export Natural Gas

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to import and export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of November 19, 1990, of an application filed by ProGas Limited (ProGas) for blanket authorization to import from Canada, and/or to export to Canada, up to 200 Bcf per year of natural gas over a two-year term beginning on the date of first delivery. ProGas requests authority to import and export the natural gas through any point on the U.S.-Canadian border where transportation facilities exist. ProGas states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–1111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, notices of intervention, as applicable, requests for additional procedur written comments are to be filed at the address listed below no late than 4:30 p.m., e.s.t., January 18, 1991.



**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7294.

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

**SUPPLEMENTARY INFORMATION:** ProGas, a Canadian corporation, has its principal place of business in Calgary, Alberta. ProGas is engaged in the buying, selling, and exportation of natural gas produced in Canada to purchasers located in the United States. The company intends to import and export natural gas on a short-term or spot basis for its own account and for the accounts of other purchasers or sellers of gas during the two-year period.

The gas proposed to be imported by ProGas would be produced within Canada by Canadian producers with whom ProGas, ProGas U.S.A. (which ProGas owns), or an intermediary company may contract, and would be exported to the United States by ProGas or other marketers, aggregators, or pipelines pursuant to orders issued by the National Energy Board of Canada.

Similarly, ProGas would export natural gas for its own account or for the account of others on a short-term or spot market basis under market-responsive contracts to Canadian purchasers. The gas also may be exported as part of transactions involving the initial importation of Canadian gas to the United States and the subsequent exportation of such gas to Canada for redelivery by Canadian pipelines to the U.S.-Canadian border for ultimate consumption within the United States.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed import/export authority would be in the public interest because the short-term, spot nature of any import arrangement will ensure that gas will not be purchased unless it is competitively priced. Further, the company states that there is no current need for the domestic gas proposed to be exported and that the export proposal will advance U.S. goals to reduce trade barriers and to encourage the operation of market forces to achieve a more competitive and efficient distribution of goods between the United States and Canada. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that DOE, in order to maximize the flexibility of any authorization issued, may grant an aggregate amount for the requested two-year period of 400 Bcf, and not impose a yearly limit.

**NEPA Compliance**

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ProGas' application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 13, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–29712 Filed 12–18–90; 8:45 am]

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[FE Docket No. 90-100-NG]

## PSI Gas Marketing, Inc.; Application To Export Natural Gas to Canada and Mexico

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application for blanket authorization to export natural gas to Canada and Mexico.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on November 19, 1990, of an application filed by PSI Gas Marketing, Inc. (PGM), requesting blanket authorization to export up to 146 Bcf of natural gas from the United States to Canada and Mexico over a two-year period commencing with the date of first delivery. PGM intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported natural gas. PGM states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 18, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**
Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094–I, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7751.
Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0503.

**SUPPLEMENTARY INFORMATION:** PGM is a Delaware corporation with its principal place of business in Omaha, Nebraska. PGM is a wholly owned subsidiary of PSI, Inc., which, in turn, is a wholly owned subsidiary of UtiliCorp United Inc. PGM requests authorization to export for its own account as well as for the accounts of its U.S. suppliers and Canadian and Mexican purchasers.

PGM expects that most of the transactions with Canadian and Mexican purchasers will be on spot-market or short-term basis; however, some arrangements could be for terms of up to two years. The applicant states that the contractual arrangements will be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, a total two-year term volume may be authorized without imposing a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC on December 13, 1990.

Clifford L. Tomaszewski,
*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90–29713 Filed 12–18–90; 8:45 am]
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## Office of Hearings and Appeals

### Cases Filed During Week of October 12 Through October 19, 1990

During the Week of October 12 through October 19, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 13, 1990.

George B. Breznay,
*Director, Office of Hearings and Appeals.*

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 10/15/90 | Gannett News Service, Arlington, Virginia | LFA-0073 | Appeal of an information request denial. If granted: The September 26, 1990 Freedom of Information Request Denial issued by the Office of Waste Operations, Environmental Restoration and Waste Management, would be rescinded, and Gannett News Service would receive access to certain requested information relating to the generalization and disposal of low-level radioactive waste. |
| 10/16/90 | Texaco/Allen's Texaco, Bessemer City, North Carolina. | RR321-23 | Request for modification/rescission in the Texaco refund proceeding. If granted: The September 28, 1990 Decision and Order (Case Nos. RF321-745 and FR321-6268) issued to Allen's Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco Inc. special refund proceeding. |
| 10/17/90 | Carol A. Terry, Washington, DC | LFA-0074 | Appeal of an information request denial. If granted: The September 19, 1990 Freedom of Information Request Denial issued by the Office of Appeals would be rescinded, and Carol A. Terry would receive access to customer lists of companies subject to special refund proceedings. |
| 10/18/90 | Natural Resources Defense Council, Washington, DC. | LFA-0075 | Appeal of an information request denial. If granted: The October 3, 1990 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs, Albuquerque Operations Office, would be rescinded, and the Natural Resources Defense Council would receive access to "DOE, Rockwell Corporation, Rocky Flats Division, "Nuclear Materials Control Procedure Manual, Volumes I and II, NMC-C,' CD73-2903." |
| 10/18/90 | Belridge/Minnesota, Vickers/Minnesota, Pennzoil/Minnesota, Amoco II/Minnesota, St. Paul, Minnesota. | RM8-234<br>RM1-235<br>RM10-236<br>RQ251-686 | Request for modification/rescission in the Belridge, Vickers, Pennzoil second stage refund proceeding. If granted: The March 26, 1986 Decision and Order (Case Nos. RQ8-269 RQ1-267 and RQ10-268) issued to Minnesota would be modified regarding the State's Application for Refund submitted in the Belridge, Vickers, and Pennzoil second stage refund proceedings. Minnesota's refund application submitted in the Amoco II second stage refund proceeding would be approved. |

### Refund Applications Received

Week of October 12 through October 19, 1990

| Received | Name of Firm | Case No. |
|---|---|---|
| 10/12/90 thru 10/19/90 | Crude Oil Refund, applications received | RF272-62626 thru RF272-63208 |
| 10/12/90 thru 10/19/90 | Gulf Oil Refund, applications received | RF300-12793 thru RF300-12903 |
| 10/12/90 thru 10/19/90 | Texaco Refund, applications received | RF321-10074 thru RF321-10268 |
| 10/12/90 thru 10/19/90 | Atlantic Richfield, applications received | RF304-12093 thru RF304-12091 |
| 10/14/90 | Beard Oil Co. | RF307-10153 |
| 10/17/90 | De Pinto Fuel Oil Corp. | RF323-29 |
| 10/17/90 | Arrow Petroleum Co. | RF326-1 |
| 10/18/90 | B & O Shell SVC | RF315-10062 |
| 10/18/90 | Outrider Truck Stop | RF326-2 |
| 10/18/90 | Texas Crushed Stone Company | RF326-3 |
| 10/18/90 | Samedan Oil Corporation | RF326-4 |
| 10/18/90 | Mattews Oil Company, Inc. | RF326-5 |
| 10/18/90 | Quarles Petroleum, Inc. | RF326-6 |
| 10/18/90 | C.B. Jr.'S | RF326-7 |
| 10/18/90 | RF326-8 | RF326-8 |

[FR Doc. 90–29714 Filed 12–18–90; 8:45 am]
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## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the implementation of procedures for the disbursement of $788,566.45, plus accrued interest, obtained by the DOE under the terms of five consent orders. The DOE received $101,000 pursuant to a consent order with Benton Pruet d/b/a P & R Trading Company (Case No. LEF–0018) and a total of $687,566.45 pursuant to four separate consent orders with

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Trigon Exploration Company, Inc. *et al.* The four Trigon Exploration Company, Inc. (Trigon) consent orders are with Trigon and C. William Rogers, Trigon and Omni Drilling Partnership No. 1978–2, Trigon and D. Bryan Ferguson, and Trigon and Entex, Inc. (Case No. LEF–0019). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

**DATES AND ADDRESSES:** Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than March 31, 1991, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings should not file another application; that application will be deemed filed in all crude oil proceedings as the procedures are finalized.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2390.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $788,586.45 that has been remitted to the DOE pursuant to the terms of five consent orders. The DOE received $101,000 pursuant to a consent order with Benton Pruet a/b/a P & R Trading Company. The DOE also received $687,586.45 pursuant to four separate Trigon Exploration Company, Inc. (Trigon and Omni Drilling Partnership No. 1978–2, Trigon and D. Bryan Ferguson, and Trigon and Entex, Inc. The DOE is currently holding the funds in an interest bearing account pending distribution.

The DOE has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, federal government, and injured purchases of refined products. Refunds to the states would be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate policy.

As the Decision and Order indicates, Applications for refund may now be filed by injured purchases of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than March 31, 1991. The specific information required in an Application for Refund is indicated in the Decision and Order. Any party that has previously submitted an Application for Refund in any crude oil refund proceeding should not file in all crude oil proceedings as the procedures are finalized.

Dated: December 13, 1990.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

**DECISION AND ORDER OF THE DEPARTMENT OF ENERGY**

**Implementation of Special Refund Procedures**

*Names of firms:* Benton Pruet d/b/a P&R Trading Company; Trigon Exploration Company, Inc., *et al.*

*Date of filing:* July 17, 1990

*Case numbers:* LEF–0016, LEF–0019

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On July 17, 1990, the ERA filed two Petitions for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Benton Pruet d/b/a P&R Trading Company (Pruet) (Case No. LEF–0016) and Trigon Exploration Company, Inc. (Trigon), *et al.*, (Case No. LEF–0019). This Office issued a Remedial Order against Pruet for violations of the crude oil resale regulations during the period from September 1979 through November 1980. *P&R Trading Company*, 13 DOE ¶ 83,023 (1985). Pruet subsequently appealed to the Federal Energy Regulatory Commission. Pruet and the DOE then entered into a consent order (No. 8A0X00335) under which Pruet remitted $101,000 in settlement of the DOE's claims.[1] On August 30, 1985 the ERA issued a Proposed Remedial Order to Trigon alleging violations of the regulations regarding the sale of crude oil during the period June 1979 through December 1980. The DOE has subsequently entered into four consent orders with Trigon and four working interest owners who have remitted a total amount of $687,586.45 in settlement of any potential violations arising out of the sale of crude oil from June 1979 through January 21, 1981 (all four consent orders are subsumed under one consent order number: 850C00374). 52 FR 27574 (July 22, 1987). Trigon and Omni Drilling Partnership No. 1978–2, Trigon and D. Bryan Ferguson, Trigon and Entex, Inc. (hereinafter collectively referred to as Trigon, *et al.*). In sum, Pruet and Trigon, *et al.*, remitted $788,586.45 to the DOE. This Decision and Order establishes the OHA's procedures for distributing those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Pruet and Trigon, *et al.*, and have determined that such procedures are appropriate.

*I. Background*

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986) (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, i.e., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*NYP*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Ermest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the temporary Emergency Court of Appeals (TECA). In the case *In re: The Department of Energy Stripper Well Exemption Litigation*, various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds, based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

*II. The Proposed Decision and Order*

On October 18, 1990, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from Pruet and Trigon, *et al.* 55 FR 42888 (October 24, 1990). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Pruet and Trigon, *et al.*, settlement fund. Consequently, the procedures will be adopted as proposed.

*III. The Refund Procedures*

A. Refund Claims

The OHA has concluded that the $788,586.45 remitted by Pruet and Trigon, *et al.*, plus the interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $157,717.29, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *E.g., Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g., A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). However, the end-user presumption of injury can be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g., Berry Holding Co.*, 16 DOE ¶ 85,495 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g., NYP*, 18 DOE at 88,701–03. The United States District Court for the District of Kansas recently upheld the OHA's position that generalized evidence does not suffice to rebut the end-user presumption. If an interested party wishes to rebut the end-user

[1] The Remedial Order found that Pruet committed violations of the regulations concerning the resale of crude oil during the period from September 1979 through November 1980. The consent order settles Pruet's liability with regard to any potential violation of the federal petroleum price and allocation regulations during the period from September 1, 1979 through January 27, 1981. Consent Order at ¶ 101 & 501. The OHA has contacted Pruet's attorney and has determined that Pruet never engaged in any refined product related activities. See Record of Telephone Conversation between Raymond P. Rayner Jr., OHA Attorney Adviser, and William F. Cockrell, Jr., Attorney for Pruet (September 21, 1990). Accordingly, the OHA believes that the entire settlement was for potential crude oil violations.

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presumption it must present evidence relevant to the specific factual situation of the applicant. *In re: The Department of Energy Stripper Well Exemption Litigation*, 746 F. Supp. 1448 (D. Kan. 1990).

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc.* v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($788,588.45) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000039 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. A deadline of June 30, 1988 was established for the first pool of crude oil funds. The first pool was funded by crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell*. A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). The deadline for filing an application for refund from the third pool of funds was established as March 31, 1991 by *Bi-Petro, Inc.*, 20 DOE ¶ 85,071 (1990). The volumetric refund amount for the third pool of funds will be increased as additional crude oil violation amounts are received in the future. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to: Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Each crude oil Application for Refund should contain the type of information specified by the OHA in past decisions. *See Texaco Inc.*, 9 DOE ¶ 85,200 at 88,374, *corrected*, 9 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 16 DOE ¶ 85,902 at 89,477–78 (1988); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,061–62 (1989).

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $630,869.16, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $630,869.16, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $315,434.58, plus interest, into an interest-bearing subaccount for the states, and one-half, or $315,434.58, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

*It is therefore ordered that:*

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Benton Pruet d/b/a P&R Trading Company and Trigon Exploration Company, Inc., *et al.*, may now be filed.

(2) All Applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $788,586.45 (plus interest) from the Benton Pruet d/b/a P&R Trading Company and Trigon Exploration Company, Inc., *et al.*, subaccounts, Account Numbers 6AOX00335W and 650C00374W, pursuant to Paragraphs (4), (5), and (6) of this decision.

(4) The Director of Special Accounts and Payroll shall transfer $315,434.58 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $315,434.58 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $157,717.29 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 3," Number 999DOE009Z.

Dated: December 13, 1990.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 90-29715 Filed 12-18-90; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3871-1]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before January 18, 1991.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 382–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* National School Radon Survey (EPA ICR #1576.01). This ICR requests approval of a new collection.

*Abstract:* As required under section 307 of the Indoor Radon Abatement Act of 1988, EPA has designed this survey to determine the extent of radon contamination in the Nation's school buildings. The survey design requires a random sample of 270 school districts and a subsample of approximately 4 schools from each district. For each of the selected schools, EPA will ask an appropriate official to complete a questionnaire reporting the type of construction used in the school building and the heating and ventiliation characteristics. EPA will then use this building-specific data to select survey-eligible rooms for deployment of radon monitors. Radon measurement will begin early in 1991 and continue through June.

Based on this survey, EPA will be able to estimate the distribution of radon levels in schools nationwide, and to examine the relationships between radon levels and type of construction and location of rooms. EPA will use these results to develop guidance for addressing school radon problems.

*Burden Statement:* Public reporting burden for this collection of information to average 13.9 hours per school.

*Respondents:* Public school officials at the district and school levels.

*Estimated No. of Respondents:* 1576.

*Estimated Total Annual Burden on Respondents:* 21,916 hours.

*Frequency of Collection:* One-time survey.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460, and Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

**OMB Responses to Agency PRA Clearance Requests**

EPA ICR #1536.01; Search for Environmental Information Resources; was approved 10/23/90; OMB #2040–0149; expires 10/31/91.

EPA ICR #0002.06; Pretreatment Reporting Requirements; was approved 10/19/90; OMB #2040-0009; expires 10/31/93.

EPA ICR #0277.04; Registration of Pesticides Under Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) as amended; was approved 11/06/90; OMB #2070–0060; expires 11/30/93.

EPA ICR #0276.04; Application for an Experimental Use Permit (EUP) to Ship and Use Pesticide for Experimental Purposes Only; was approved 11/16/90; OMB #2070–0040; expires 11/30/93.

EPA ICR #0909.03; Information Requirements for Construction Grants Delegation to States; was approved 11/09/90; OMB #2040–0095; expires 11/30/93.

EPA ICR #1560.01; National Water Quality Inventory Reports; was approved 11/14/90; OMB #2040–0071; expires 11/30/92.

**Notice of Non-Renewal**

EPA will not renew the clearance for ICR #1129; NSPS for Secondary Brass and Bronze Ingot Production Plant—Recordkeeping and Reporting Requirements (Subpart M); OMB #2060–0110. The Agency now submits the collection of information associated with this ICR to nine or fewer persons, and therefore the activity is no longer subject to OMB review under the Paperwork Reduction Act (PRA).

Dated: December 12, 1990.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 90-29688 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-M

**[ECAO-RTP-0204; FRL-3871-4]**

### Inhalation Reference Concentrations Methodology Draft

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** This notice announces the extension of the public comment period for the external review draft of "Interim Methods for Development of Inhalation Reference Concentrations," prepared by EPA's Environmental Criteria and Assessment Office of the Office of Health and Environmental Assessment.

**DATES:** In the September 26, 1990 **Federal Register** (55 FR 39321), EPA announced that the public comment period for the external review draft of this document would be from October 5 through December 12, 1990. The Agency is now extending the public comment period through January 18, 1991. Comments must be in writing and postmarked by January 18.

**ADDRESSES:** To obtain a copy of the external review draft, interested parties should write the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, or telephone (513) 569–7562 [FTS 684–7562] and request the external review draft of the "Interim Methods for Development of Inhalation Reference Concentrations." Please provide your name, mailing address, and the EPA document number, EPA/600/8–90/066A.

The external review draft is also available for public inspection and copying at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

Comments on the external review draft should be sent in writing to the Project Manager for Inhalation Rfc Methodology, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:** Ms. Annie Jarabek, Environmental Criteria and Assessment Office (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–4847, (FTS) 629–4847, [FAX] (919) 541–5078, [FAX] (FTS) 629–5078.

Dated: December 13, 1990.

**Erich Bretthauer,**

*Assistant Administrator for Research and Development.*

[FR Doc. 90-29684 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-M

**[FRL-3871-5]**

### Ecological Processes and Effects Committee of the Science Advisory Board; Fate and Effects Subcommittee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting on the Fate and Effects Subcommittee of the Ecological Processes and Effects Committee (EPEC) of the Science Advisory Board (SAB) will be held on January 9–11, 1991. This meeting will be held at the EPA Environmental Research Laboratory, College Station Road, Athens, Georgia 30613.

The meeting will start at 1 p.m. on January 9 and will adjourn no later than 5 p.m. On January 11, and is open to the public. The main purpose of this meeting is to review three expert systems that

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are being developed by EPA to predict chemical properties and the environmental fate and effects of chemicals. The research on expert systems is intended to assist EPA in evaluating applications for manufacture and release of new chemicals. The systems use or calculate basic information on the structure and physical properties of the chemicals to predict chemical activity and partitioning. Copies of background documents are available from Dr. John Rogers at the Athens Laboratory (Phone: (404) 546-3134).

For additional information concerning this meeting or to obtain an agenda, please contact Dr. Edward Bender, Designated Federal Official, Ecological Processes and Effects Committee (EPEC), Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (Phone (202) 382-2552; Fax: (202) 475-9693). Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender no later than December 20, 1990. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on a first come basis.

Dated: December 12, 1990.

**Donald Barnes,**

*Director, Science Advisory Board.*

[FR Doc. 90-29685 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL 3871-9]**

### Science Advisory Board; Drinking Water Committee; Open Conference Call Meetings—January 2, 15 and 25, 1991

Under Public Law 92-463, notice is hereby given that three telephone conference call meetings of the Drinking Water Committee of the Science Advisory Board will be held January 2, 15 and 25, 1991 at the U.S. Environmental Protection Agency, 401 M Street SW., Administrator's Conference Room 1103WT, Washington, DC 20460. These conference calls will be from 2-4 p.m. The meeting is open to the public at the above location where telephone conference equipment is available, however seating is limited and is on a first come basis.

The purpose of the meetings is to consider issues related to the proposed Office of Research program for the health effects of ingested arsenic.

Documentation for this meeting is available from Dr. Jack Fowle, Health Effects Research Laboratory, MD-51, RTP, NC, 27711 telephone, 919-541-2479.

Any member of the public wishing to make a presentation at the meeting should forward a written statement two weeks prior to the call to Dr. C. Richard Cothern, Designated Federal Official, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460, telephone 202-382-2552 or telefax 202-475-9693.

The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: December 13, 1990.

**Donald G. Barnes,**

*Director, Science Advisory Board.*

[FR Doc. 90-29634 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-M

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**[OPP-00296; FRL-3802-7]**

### Studies/Chronic Data Formats for Chronic/Carcinogenicity Rodent Bioassays; Notice of Availability and Request for Comments On the Formats

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a report entitled "STUDIES/CHRONIC Data Formats for Chronic/Carcinogenicity Rodent Bioassays", which presents file formats for the electronic transfer of individual animal toxicological data (i.e., tumor incidence, body weight, food consumption, organ weights, clinical chemistry, hematology, and urinalysis) generated from long-term animal studies. The report contains: descriptions of computer file structure, the parameters necessary for data evaluation, and a description of how the various files relate to each other. Copies of this report are now available from the National Technical Information Service (NTIS PB90-213886). EPA and the Food and Drug Administration (FDA) are interested in identifying companies willing to participate in a case study using the STUDIES format. For the purposes of the case study, the immediate interest is restricted to long-term rodent chronic/carcinogenicity data.

**DATES:** Persons interested in participating in a case study or submitting written comments should contact EPA by February 19, 1991.

**ADDRESSES:** Copies of the report may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk.

**FOR FURTHER INFORMATION CONTACT:** By mail: Reto Engler, Health Effects Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 816G, CM #2, 1921 Jefferson Davis Highway, VA, (703)557-2193.

**SUPPLEMENTARY INFORMATION:** Through the cooperation and participation in an Interagency Electronic Data Transfer Workgroup sponsored by EPA's Office of Pesticide Programs, and represented by EPA, the Department of Health and Human Services' (DHHS) Food and Drug Administration (FDA) and National Center for Toxicological Research (NCTR), and the Consumer Product Safety Commission (CPSC), data formats for long-term rodent chronic/carcinogenicity studies have been developed. It is intended that these formats be available for the electronic transfer of toxicological data between industry and government; within and between industry; and within and between government agencies. Since a large amount of data are generated for animal bioassays, the evaluation process can be very complex and time-consuming. The STUDIES electronic format will facilitate the storage of toxicological data on electronic media such as tape or floppy disk, and the electronic transmission of data via modem. Data provided in electronic form would allow for faster evaluation and improved quality with respect to readability and ensuring completeness of reported data. The STUDIES format would allow for customized tabulation and summarization, more efficient use of computers, and the reduction of human error associated with hand counts and data transcription. The STUDIES format could eventually be extended to include acute toxicity studies, subchronic studies, developmental toxicity and reproduction studies, not only for rodents but other animal species as well. Since EPA's Office of Pesticide Programs is currently investigating methods of electronic data transfer as part of the new FIFRA amendments, the development of data formats such as STUDIES will be considered in that effort.

Dated: December 1, 1990.

**Victor J. Kimm,**

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

[FR Doc. 90-29464 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-F



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**[OPTS-140141; FRL-3842-9]**

### Access to Confidential Business Information by Battelle Columbus Division and Westat, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Battelle Columbus Division (BCD), of Columbus, Ohio, and its subcontractor Westat, Incorporated (WES), of Rockville, Maryland, for access to information which has been submitted to EPA under sections 4, 6, 8, and 11 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than January 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under contract number 68-D0-0126, contractor BCD, of 505 King St., Columbus, OH and 2101 Wilson Boulevard, Arlington, VA, and its subcontractor WES, of 1650 Research Boulevard, Rockville, MD, will assist the Office of Toxic Substances (OTS) in assessing design, data collection, and analysis methods used to determine potential human exposures to toxic substances.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D0-0126, BCD and WES will require access to CBI submitted to EPA under sections 4, 6, 8, and 11 of TSCA to perform successfully the duties specified under the contract. BCD and WES personnel will be given access to information submitted to EPA under sections 4, 6, 8, and 11 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 6, 8, and 11 of TSCA that EPA may provide BCD and WES access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and BCD's facilities only.

BCD and WES have been authorized access to TSCA CBI at BCD's Columbus, OH and Arlington, VA facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved BCD's security plans and has performed the required inspections of its facilities and has found the facilities to be in compliance with the manual. Upon completing review of the CBI materials, BCD will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1993.

BCD and WES personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 12, 1990.

**Steve Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-29682 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-F

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**[OPTS-140140; FRL-3842-7]**

### Access to Confidential Business Information by David C. Cox and Associates

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, David C. Cox and Associates (DCA), of Washington, DC, for access to information which has been submitted to EPA under sections 4, 6, 8, and 11 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA will occur no sooner than January 4, 1991.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Under contract number 68-D0-0099, contractor DCA, of 1620 22nd St., NW., Washington, DC, will assist the Office of Toxic Substances (OTS) in assessing design, data collection, and analysis methods used to determine potential human exposures to toxic substances.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68-D0-0099, DCA will require access to CBI submitted to EPA under sections 4, 6, 8, and 11 of TSCA to perform successfully the duties specified under the contract. DCA personnel will be given access to information submitted under sections 4, 6, 8, and 11 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 6, 8, and 11 of TSCA that EPA may provide DCA access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1993.

DCA personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: December 12, 1990.

**Steve Newburg-Rinn,**

*Acting Director, Information Management Division, Office of Toxic Substances.*

[FR Doc. 90-29683 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-F

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**[WH-FRL-3871-3]**

### Availability of Water Quality Criteria and Standards Guidance Documents

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** EPA announces the availability of two national guidance documents relating to the water quality standards program: "Biological Criteria National Program Guidance for Surface Waters" published pursuant to section 304(a) of the Clean Water Act and "National Guidance: Water Quality Standards for Wetlands."

**ADDRESSES:** Copies of these documents are available from the Criteria and Standards Division, Office of Water Regulations and Standards (WH-585), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

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FOR FURTHER INFORMATION CONTACT: Dr. George R. Gibson, Jr., Criteria Branch, regarding biological criteria or Jill Minter, Standards Branch, regarding water quality standards for wetlands. Telephone 202-475-7315.

SUPPLEMENTARY INFORMATION: EPA announces the availability of program guidance to assist States in developing narrative biological criteria for surface waters. The document supports an Office of Water priority included in the "FY 1991 Agency Operating Guidance" for State adoption of narrative biological criteria as part of State water quality standards during the FY 1991-1993 triennium.

Biological criteria will assist States in achieving the objective of the Clean Water Act, "* * * to restore and maintain the chemical, physical, and biological integrity of the nation's waters * * *", set forth in Section 101. Biological criteria guidance will help EPA comply with statutory requirements under section 304. Section 304(a) directs EPA to develop and publish water quality criteria and information on methods for measuring water quality and to establish water quality criteria for toxic pollutants on bases other than pollutant-by-pollutant, including biological monitoring and assessment methods.

EPA also announces the availability of program guidance to assist States in extending water quality standards to wetlands. This guidance is jointly issued by the Office of Water Regulations and Standards and the Office of Wetlands Protection. The document supports an Office of Water priority included in the "FY 1991 Agency Operating Guidance" for State adoption of water quality standards for wetlands during the FY 1991-1993 triennium.

Water quality standards for wetlands are necessary to ensure that the provisions of the Clean Water Act applied to other surface waters also are applied to wetlands. Although Federal regulations implementing the Clean Water Act include wetlands in the definition of "waters of the U.S." and therefore require water quality standards, a number of States have not developed water quality standards for wetlands and have not included wetlands in their definitions of "State waters." Applying water quality standards to wetlands is part of an overall effort to protect and enhance the Nation's wetland resources and provides a regulatory basis to meet this goal.

Copies of these guidance documents were sent to all State agencies responsible for water quality standards. A limited number of copies of these documents are available free of charge to interested persons by writing to the Criteria and Standards Division at the address shown above.

Dated: December 7, 1990.

Martha G. Prothro,

*Director, Office of Water Regulations and Standards.*

[FR Doc. 90-29389 Filed 12-18-90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

December 11, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

*OMB Number:* 3060-0119.

*Title:* Section 90.145, Special Temporary Authority.

*Action:* Extension.

*Respondents:* Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 6,000 responses; 30 minutes average burden per response; 3,000 hours total annual burden.

*Needs and Uses:* Under certain circumstances specified in § 90.145, the Commission will consider Special Temporary Authorizations (STA). A STA permits an applicant to conduct operations for up to 180 days without going through the normal application forms and procedures set out in part 90. In order to process a request for a STA, the FCC requires certain minimum information set out in writing, including need for special action, type and purpose of operation, station location, equipment type, frequencies and emissions. The data is used by FCC staff to determine if a grant of a STA is warranted and to allow the FCC to have certain minimum information about the station's characteristics should interference problems arise.

*OMB Number:* 3060-0274.

*Title:* Section 94.45, Modification of License.

*Action:* Extension.

*Respondents:* Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 40 responses; 10 minutes average burden per response; 7 hours total annual burden.

*Needs and Uses:* Section 94.45(b) requires the licensee changing its name and/or address to notify the Commission by letter of such a change. This requirement is necessary for maintaining an accurate data base. This notification requirement permits the FCC to quickly contact the licensee when necessary. The resolution of destructive interference cases would be needlessly hampered without this notification requirement because of inability to quickly contact licensees.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 90-29638 Filed 12-18-90; 8:45 am]

BILLING CODE 6712-01-M

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 12, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for reviewed and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

*OMB Number:* 3060-0339.



*Title:* Section 78.11, Permissible Service.

*Action:* Revision.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting and recordkeeping requirement.

*Estimated Annual Burden:* 228 responses, .25 hours average burden per response; 2,270 recordkeepers, .5 hours average burden per recordkeeper, 1,102 hours total annual burden.

*Needs and Uses:* Records kept by CARS licensees in accordance with Section 78.11 are used by FCC staff to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis. On October 11, 1990 the FCC adopted a Report and Order in Gen. Dockets No. 90-54 and 80-113 (55 FR 46006, 10/31/90) which amended rules of three separate microwave services that can be collectively used for the provision of "wireless cable". Among other things, CARS frequencies will now be available to other eligible systems (as defined in 47 CFR 78.5(j)). Section 78.11 was amended to the same recordkeeping and reporting requirements as current CARS licensees. The data is use by FCC staff in field investigations to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis. The reporting requirement (notifications) will be used by FCC staff to provide information regarding alleged interference.

Federal Communications Commission.

Donna R. Searcy,

*Secretary.*

[FR Doc. 90-29639 Filed 12-18-90; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Injury Research Grant Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

*Name:* Injury Research Grant Review Committee.

*Time and date:* 7 p.m.-9:30 p.m., January 13, 1991; 8 a.m.-5 p.m., January 14, 1991; 8 a.m.-4:30 p.m., January 15, 1991.

*Place:* The Atlanta Hilton, 255 Courtland Street, NE, Atlanta, Georgia 30303.

*Status:* Open 7 p.m.-9:30 p.m., January 13, 1991 Closed January 14-15, 1991.

*Purpose:* This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

*Matters to be Discussed:* Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 8 a.m., January 14, through 4:30 p.m., January 15, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, CDC, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

*Contact person for more information:* Thomas Bartenfeld, Grants Manager, Division of Injury Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE, Mailstop F36, Atlanta, Georgia 30333, telephone 404/488-4265 or FTS 236-4265.

Dated: December 12, 1990.

Elvin Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 90-29654 Filed 12-18-90; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

[Docket No. 90C-0406]

### Bausch & Lomb Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bausch & Lomb, Inc., has filed a petition proposing that the color additive regulations for medical devices be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylaminojanthraquinone (C. I. Reactive Blue 246) copolymerized with hydroxyethyl methacrylate/N-vinyl pyrrolidone copolymer to color contact lenses.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0229), has been filed by Bausch & Lomb, Inc., 1400 North Goodman St., Rochester, NY 14692-0450, proposing that § 73.3106 *1,4-Bis[4-(2-methacryloxyethyl) phenylaminojanthraquinone* (21 CFR 73.3106) of the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl) phenylaminojanthraquinone (C. I. Reactive Blue 246) copolymerized with hydroxyethyl methacrylate/N-vinyl pyrrolidone copolymer to color contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: December 12, 1990.

Fred R. Shank,

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90-29646 Filed 12-18-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0413]

### Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive, prior to the sheet forming operation, to prevent scale buildup in the manufacture of paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.



SUPPLEMENTARY INFORMATION: Under

NY 10532-2169. The petition proposes to

(FAP 2212) has been filed by E.I. du Pont

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**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4234) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in *§ 178.170 Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 178.170) to provide for the safe use of the ammonium, potassium, and sodium salts of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive, prior to the sheet forming operation, to prevent scale buildup in the manufacture of paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 12, 1990.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90–29649 Filed 12–18–90; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 90F–0411]**

## Ciba-Geigy Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine as a stabilizer in copolymers and polymers used in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4237) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in *§ 178.2010 Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 1,2-bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamoyl)hydrazine as a stabilizer in acrylonitrile-butadiene styrene copolymers and in polymers complying with *§ 177.2470 Polyoxymethylene copolymer* (21 CFR 177.2470) and *§ 177.2480 Polyoxymethylene homopolymer* (21 CFR 177.2480).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 12, 1990.

**Fred R. Shank,**

*Director, Center for Food and Safety and Applied Nutrition.*

[FR Doc. 90–29647 Filed 12–18–90; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 90F–0399]**

## E.I. du Pont de Nemours; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-vinyl acetate copolymer as a binding agent in crustacean feeds.

**DATES:** Written comments by February 19, 1991.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Woodrow M. Knight, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2212) has been filed by E.I. du Pont de Nemours & Co., Polymer Products Department, Wilmington, DE 19898, proposing that the food additive regulations in 21 CFR part 573 be amended to provide for the safe use of ethylene-vinyl acetate copolymer at a level not to exceed 15 percent, as a binding agent in crustacean feeds.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Those comments received by February 19, 1991 will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c). If the agency finds that an environmental impact statement is necessary, the final regulation, the final environmental impact statement, and the record of decision will be made available as prescribed in 40 CFR 1506.10.

Dated: December 12, 1990.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 90–29650 Filed 12–18–90; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 89F–0079]**

## National Starch and Chemical Corp.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 9A4138) proposing that the food additive regulations be amended to provide for the safe use of sodium salts of sulfonated styrene and maleic anhydride copolymers as boiler water additives.

**FOR FURTHER INFORMATION CONTACT:** John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 6, 1989 (54 FR 13951), FDA published a notice that it had filed a petition (FAP 9A4138) from the National Starch and Chemical Corp., Bridgewater, NJ 08807, that proposed to amend the food additive regulations to provide for the safe use of the sodium salts of sulfonated styrene and maleic copolymers as boiler water additives. National Starch and Chemical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 12, 1990.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 90–29648 Filed 12–18–90; 8:45 am]

BILLING CODE 4160–01–M



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## Health Resources Services Administration

## Rural Health Outreach Grant Program

**AGENCY:** Health Resources and Services Administration HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), is pleased to announce the establishment of a new grant program: Rural Health Outreach Grant Program. In connection with this new program, a public meeting is scheduled as shown below:

*Date and Time:* January 11, 1991, 9 a.m.

*Place:* Health Resources and Services Administration, Conference room E, Parklawn Building, Third floor, 5600 Fishers Lane, Rockville, Maryland 20857.

**PURPOSE:** The purpose of this meeting is to discuss HRSA's plans for implementing this new program.

Anyone interested in receiving additional information, should contact Mr. Jake Culp, Associate Administrator, Office of Rural Health Policy, room 14–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Because of the interest in this grant program and limited space, we must limit attendance to one individual per organization. Anyone interested in attending the meeting should contact Ms. Cheryl Roberts at (301) 443–0835 to register. Attendees will be responsible for their own expenses.

Dated: December 13, 1990.

**Robert G. Harmon,**

*Administrator.*

[FR Doc. 90–29651 Filed 12–18–90; 8:45 am]

BILLING CODE 4160–15–M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–920–01–4120–14; COC 51651]**

## Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report and Fair Market Value; Application for Competitive Coal Lease CO; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Western Fuels-Utah, Inc. requesting the Bureau of Land Management offer for competitive lease 1280 acres of Federal coal in Rio Blanco County, Colorado. An additional 80 acres of coal has been added in order to lease all of the recoverable coal in the area.

**DATES:** The public hearing will be held at 7 p.m., January 15, 1991. Written comments should be received no later than January 22, 1991.

**ADDRESSES:** The public hearing will be held in the Rangely Town Hall, 209 E. Main, Rangely, Colorado. Written comments should be addressed to the Bureau of Land Management, White River Resource Area Office, 73544 Highway 64, P.O. Box 928, Meeker, Colorado 81641.

**FOR FURTHER INFORMATION CONTACT:** Alan Schroeder, Surface Reclamation Specialist, White River Resource Area Office at the address above, or telephone (303) 878–3601.

**SUPPLEMENTARY INFORMATION:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on January 15, 1991, at 7 p.m., in the Rangely Town Hall, 209 E. Main, Rangely, Colorado.

An application for coal lease was filed by Western Fuels-Utah, Inc., requesting the Bureau of Land Management offer for competitive lease the Federal coal in the lands outside established coal production regions hereinafter described:

T. 3 N., R. 101 W., 6th P.M.
Sec. 25, S½;
Sec. 26, SE¼SE¼;
Sec. 34, S½NE¼, and N½SE¼;
Sec. 35, NE¼NE¼, S½N½, and N½S½;
Sec. 36, N½, and N½S½.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) Methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the January 15, 1991, public hearing should be received at the White River Resource Area Office prior to the close of business January 15, 1991. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discussed.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and started in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the White River Resource Area Office at the above address prior to close of business on January 22, 1991.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by underground mining methods

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The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the White River Resource Area office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado.

Dated: December 12, 1990.

**Richard D. Tate,**

*Chief, Mining Law and Solid Minerals, Adjudication Section.*

[FR Doc. 90-29695 Filed 12-18-90; 8:45 am]

BILLING CODE 4310-JB-M

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**[AZA-2409-A001]**

## Pima County, AZ; Conveyance of Mineral Interest Application

**ACTION:** Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Judson A. and Betty D. Davison has applied for conveyance of the mineral estate described as follows:

**Gila and Salt River Base and Meridian, Pima County AZ**

T. 8 N., R. 1 W.
Sec. 6: Lots 1–7, S½NE¼SE¼NW¼, E½SW¼, SE¼.
Sec. 20: NE¼.
Sec. 21: N½, SE¼.
Sec. 22: SW¼.
T. 8 N., R. 2 W.
Sec. 10: S½, NE¼, S½NW¼.
Sec. 15: NE¼NW¼, NW¼NE¼.
T. 9 N., R. 2 W.
Sec. 23: S½NE¼, SE¼.
Sec. 24: S½NW¼, SW¼.
Sec. 25: N½NW¼.
Sec. 26: N½NE¼.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface ownership for instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85025.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of application, August 13, 1990, whichever occurs first.

Dated: December 10, 1990.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 90-29656 Filed 12-18-90; 8:45 am]

BILLING CODE 4310-32-M

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**[NV-010-91-4111-08]**

## Resource Management Plan; Elko, Eureka, and Lander Counties, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a fluid minerals amendment to the Elko resource management plan/environmental impact statement; Elko, Eureka and Lander Counties, Nevada; and notice of scoping period and public meetings.

**SUMMARY:** The Bureau of Land Management will be preparing a Fluids Minerals Amendment to update the Elko Resource Management Plan/Environmental Impact Statement (RMP/EIS) and to specifically address, in greater detail, how fluid minerals exploration and leasing will be accomplished in the Elko Resource Area and what impacts are expected to result. The Bureau invites comments and suggestions on the scope of the analysis.

**EFFECTIVE DATES:** The public scoping period is initiated with publication of this Notice of Intent, and ends on February 8, 1991. Scoping meetings will be held January 29, 1991, at the Bureau of Land Management, Elko District Office, 3900 E. Idaho, Elko, NV, and on January 30, 1991, at the Holiday Inn, 1000 E. 6th St., Reno, NV, to identify issues and concerns to be addressed in the Fluid Minerals Amendment to the Elko RMP/EIS and to encourage public participation in the planning process. Both meetings are scheduled from 7 p.m.–9 p.m. Bureau representatives will be available to answer questions about the Amendment. Written comments on the scope of the Amendment must be postmarked by February 8, 1991.

A Draft Fluids Amendment is scheduled to be completed by October 1991 and made available for public review and comment. At that time a Notice of Availability on the Draft Amendment will be published in the **Federal Register**. The comment period on the Draft Amendment will end 90 days from the date the Notice of Availability is published

**FOR FURTHER INFORMATION CONTACT:** Tom Schmidt, Elko RMP Coordinator, Bureau of Land Management, P.O. Box 831, Elko, NV 89801, or telephone (702) 738–4071.

**SUPPLEMENTARY INFORMATION:** The Elko RMP/EIS encompasses all of the Elko Resource Area of the Elko District, and is within portions of Elko, Eureka and Lander Counties in Nevada. Over 3.1 million acres are public lands administered by the BLM. This Resource Area administers lands which are identified as having potential for oil, gas and geothermal resources. The existing Elko RMP, approved in 1987, identified areas in the Resource Area that are currently open to oil and gas leasing, open with restrictions, or closed to leasing. Additionally, the Resource Management Plan identified areas of high, moderate, and low leasable minerals fluids potential. The Fluids Amendment for the Elko Resource Management Plan will analyze: (a) Conditions, stipulations or other special considerations that could apply to fluid mineral exploration and/or leasing in the Elko Resource Area (ERA) to protect, maintain, and enhance other resources, (b) cumulative effects of fluid mineral exploration and/or leasing in the ERA, (c) reasonable foreseeable development for fluid minerals exploration and leasing in the ERA, and (d) decisions implemented in the existing Elko RMP and Record of Decision concerning fluid mineral resources as a result of new analysis described in (a), (b), and (c) above.

A range of alternatives, stipulations and mitigation measures, including but not limited to the no-action alternative, will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands. Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the Amendment to the Elko RMP/EIS are invited to participate in the scoping process for this environmental analysis. To be most



helpful, comments should be as specific as possible.

The Bureau of Land Management's scoping process for the RMP/EIS Amendment will include: (1) Identification of issues to be addressed; (2) identification of viable alternatives; (3) notification of interested groups, individuals and agencies so that additional information concerning these issues or other additional issues can be obtained.

Dated: December 13, 1990.

**Fred Wolf,**

*Acting State Director, Nevada.*

[FR Doc. 90-29655 Filed 12-18-90; 8:45 am]

BILLING CODE 4310-HC-M

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## Fish and Wildlife Service

## Finding of No Significant Impact for Proposed Establishment of Captive Florida Panther Population

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public that the Fish and Wildlife Service has determined that issuing Endangered Species Permits for removing a limited number of select Florida Panthers (*Felis concolor coryi*) from the wild population for the establishment and management of a captive population will not have a significant effect on the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. This Finding Of Significant Impact (FONSI) is based on information presented or contained in the Final Environmental Assessment titled: A Proposal To Issue Endangered Species Permits To Capture Select Florida Panthers And Establish A Captive Population dated December 1990, the approved Florida Panther Recovery Plan, the Florida Panther Viability Analysis and Species Survival Plan, other pertinent scientific and technical data, and public comments received on the proposal and draft Environmental Assessment.

**DATES:** Endangered Species Permits applicable for the proposed activity will not be issued by the Fish and Wildlife Service until a minimum of 30 days after the publication of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Dennis B. Jordan, Florida Panther Recovery Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

**SUPPLEMENTARY INFORMATION:** The Florida panther (*Felis concolor coryi*) represents one of this Nation's most critically endangered animals. One population located in south Florida, represented by 30 to 50 individuals (excluding kittens), is all that remains. Recent population viability analysis conclusions indicate that the existing single population situation provides no security against extinction and under prevailing demographic and genetic conditions the Florida panther will likely be extinct in 25 to 40 years. A catastrophic event, such as a disease outbreak, could result in extinction in a much shorter period of time.

Existing data indicate that genetic diversity in the Florida panther is extremely limited and inbreeding conditions are likely compromising population viability. The present loss of genetic diversity has been estimated at 3 to 7 percent per generation. This loss would be expected to accelerate with a declining population. The Florida Panther Interagency Committee has concluded that security against extinction for the Florida panther can only be provided with actions to immediately preserve existing genetic diversity and significantly increase the population level (increase in panther numbers and populations). The Interagency Committee has determined that genetic preservation and significant population increases can best be accomplished through the establishment and management of a captive population.

The U.S. Fish and Wildlife Service developed seven alternatives for consideration in exploring possible avenues to provide security against extinction for the Florida panther (Final Environmental Assessment—A Proposal To Issue Endangered Species Permits To Capture Select Florida Panthers And Establish A Captive Population, December 1990. The alternatives were: Alternative 1—Intensify protection and enhancement of existing population. Alternative 2—Use animal translocations to address genetic problems and expand the population. Alternative 3—Establish a captive population to preserve existing genetic material and use captive propagation and reintroductions for population expansion. The captive population would be established over a 3- to 6-year period with emphasis on using kittens from the wild population (no more than six per year). Select older panthers could be used to achieve genetic representation that could not be met through the use of kittens (older animals would be limited to four the first year and one pair per year for following years). Alternative 4—Same basic concept as Alternative 3 except only kittens would be used to establish a captive population. Alternative 5—Same basic concept as Alternative 3 except only older panthers would be used to establish a captive population. Alternative 6—Same basic concept as Alternative 3 except all available panthers would be used to establish a captive population. Alternative 7—Introduce other cougar subspecies into the Florida panther population.

The U.S. Fish and Wildlife Service has concluded that Alternative 3 provides the best overall opportunity to achieve security against extinction and offer recovery opportunities for the Florida panther. The Service believes that this alternative provides the opportunity to achieve preservation of all existing genetic material represented in the wild population and provides avenues for significant population expansion in the wild, while having only minimal impacts on the wild population.

Dated: December 12, 1990.

**James W. Pulliam, Jr.,**

*Regional Director.*

[FR Doc. 90-29653 Filed 12-18-90; 8:45 am]

BILLING CODE 4310-55-M

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## INTERNATIONAL TRADE COMMISSION

**[332-296]**

## Ethyl Alcohol for Fuel Use; Determination of the Base Quality of Imports

**AGENCY:** International Trade Commission.

**ACTION:** Notice of determination.

**SUMMARY:** Section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note), enacted in December 1989, concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The U.S. International Trade Commission's role as outlined in this Act is to determine annually for 2 years the U.S. domestic market for ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and

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mixtures from the CBI-beneficiary countries.

For purposes of making determinations of the U.S. market for ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332-288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

For the 12-month period ending September 30, 1990, the Commission has preliminarily determined the level of U.S. consumption of ethyl alcohol to be 1.21 billion gallons. Seven percent of this amount is 84.5 million gallons. Because the law specifies that the base quantity to be used by Customs in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission, the base quantity for 1991 should be 84.5 million gallons. It should be noted that certain of the data required to make the determination is being estimated by the Commission pending finalization of Treasury statistics through September 1990 for alcohol fuel producers. In the event that the finalized data change the base quantity estimate to be used in 1991, the Commission will notify the Customs Service and issue an amended **Federal Register** notice.

Section 225 of the Customs and Trade Act of 1990 (Pub. L. 101-382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. In the amendment, a determination of the U.S. domestic market for ethanol will be made for each year after 1989.

**EFFECTIVE DATE:** December 11, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. David G. Michels (202-252-1352) or Mr. James A. Emanuel (202-252-1367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202-252-1091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810.

Issued: December 13, 1990.
By order of the Commission.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 90-29701 Filed 12-18-90; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 22-52]

## Peanuts; Supplemental Investigation and Hearing

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a supplemental investigation and scheduling of a hearing.

**SUMMARY:** The Commission instituted this supplemental investigation under section 22(d) of the Agricultural Adjustment Act, as amended (7 U.S.C. 624(d)), to determine whether the quota on imports of peanuts, shelled or not shelled, blanched, or otherwise prepared or preserved (except peanut butter), as set forth in subheading 9904.20.20 [1] of the Harmonized Tariff Schedule of the United States (HTS), may be suspended or terminated by the President because the circumstances requiring the current quota no longer exist, or whether the quota may be modified by the President due to changed circumstances. The current quota was imposed after it was determined that imports of peanuts were being or were practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, a program or operation of the U.S. Department of Agriculture with respect to peanuts, or to reduce substantially the amount of any product processed in the United States from peanuts. The Commission expects to transmit its report to the President together with its findings and recommendations, not later than March 22, 1991.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E, and part 204 (19 CFR parts 201, 204).

**EFFECTIVE DATE:** December 3, 1990.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202-252-1190), Office of Investigations, or Stephen Burket (202-252-1318), Agriculture Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

*Background.*—On October 12, 1990, the Commission received a request for an expedited hearing and investigation under section 22(d) of the Agricultural Adjustment Act of 1933 to remove entirely the restriction currently in effect on the importation of peanuts. In addition, an immediate suspension of the quota and an authorization of imports of 400 million pounds of peanuts (shelled basis) was requested pending the outcome of the investigation by the Commission. The request was filed by the Peanut Butter and Nut Processors Association, Potomac, MD, a national trade association of manufacturers of peanut butter, roasted and salted peanuts, peanut butter cracker sandwiches, and peanut bakery products.

On October 29, 1990, the Commission published in the **Federal Register** (55 FR 43418) a notice requesting comments concerning the Association's request for a supplemental investigation. Comments were to be filed by November 12, 1990. After reviewing the comments as well as the November 1990 crop report for peanuts, the Commission determined that there was sufficient basis for conducting a supplemental investigation.

*Participation in the investigation.*—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

*Service list.*—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

*Hearing.*—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 22, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 7, 1991. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on January 14, 1991, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 15, 1991.

Testimony at the public hearing should be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Posthearing briefs must not exceed ten (10) pages of textual material, double spaced, on stationary measuring 8½ x 11 inches, and must be submitted not later than the close of business on January 29, 1991. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary will not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

*Written submissions.*—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 29, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This supplemental investigation is being conducted pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

Issued: December 12, 1990.
By order of the Commission.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 90-29700 Filed 12-18-90; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-458 and 459 (Final)]

## Polyethylene Terephthalate Film, Sheet, and Strip From Japan and the Republic of Korea

**AGENCY:** International Trade Commission.

**ACTION:** Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-458 and 459 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and the Republic of Korea (Korea) of polyethylene terephthalate (PET) film, sheet, and strip,[1] provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before February 6, 1991, and the Commission will make its final injury determinations by March 27, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** November 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of PET film, sheet, and strip from Japan and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigations were requested in a petition filed on April 27, 1990, by E.I. du Pont de Nemours & Co., Wilmington, DE; Hoechst Celanese Corp., Charlotte, NC; and ICI Americas, Inc., Wilmington, DE. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 25181, June 20, 1990).

*Participation in the investigations.*—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

*Public service list.*—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will

[1] Subheading 9904.20.20 provides that whenever, in any 12-month period beginning August 1 in any year, an aggregate quantity of 775,180 kilograms (shelled basis) of peanuts, shelled or not shelled, blanched, or otherwise prepared or preserved (except peanut butter) provided for in HTS subheadings 1202.10, 1202.20, and 2008.11, has been entered, no such products may be entered during the remainder of such period. Peanuts in the shell are charged against the quota on the basis of 75 kilograms for each 100 kilograms of peanuts in the shell.

[1] The product covered by these investigations is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of these investigations are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

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prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

*Limited disclosure of business proprietary information under a protective order and business proprietary information service list.*—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

*Staff report.*—The prehearing staff report in these investigations will be placed in the nonpublic record on February 4, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

*Hearing.*—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on February 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 7, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 15, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is February 14, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 15, 1991.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

*Written submissions.*—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 27, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 28, 1991. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 27, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than March 4, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due March 5, 1991.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 11, 1990.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 90-29698 Filed 12-18-90; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 731-TA-52 (Final)]**

## Sheet Piling From Canada; Antidumping Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Continuation of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** the Commission hereby gives notice of the continuation of final antidumping investigation No. 731-TA-52 (Final) under section 732(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of sheet piling, provided for in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, the Commission will make its final injury determination by March 28, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** November 29, 1990.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

*Background.*—The Department of Commerce published notice in the **Federal Register** on November 29, 1990 (55 FR 49551), that the suspension agreement concerning sheet piling from Canada (which was published in the **Federal Register** on September 15, 1982 (47 FR 40683) has been cancelled because sales at less than fair value were found during the period of review. As a consequence, Commerce has resumed its antidumping investigation as if its affirmative preliminary determination were made on the date of the publication of its notice to resume the investigation.

The investigation was originally initiated by the Department of Commerce on November 24, 1981, pursuant to section 732(a) of the Tariff Act of 1930 (19 U.S.C. 1673a(a)). Accordingly, the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (47 FR 2947, Jan. 20, 1982).

*Participation in the investigation.*—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.



*Public service list.*—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will appear a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

*Limited disclosure of business proprietary information under a protective order and business proprietary information service list.*—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

*Staff report.*—The prehearing staff report in this investigation will be placed in the nonpublic record on January 28, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

*Hearing.*—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on February 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 4, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 7, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is February 7, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 8, 1991.

Testimony at the public hearing is governing by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

*Written submissions.*—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 19, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 20, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 19, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business

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proprietary treatment must conform with the requirements of § § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 28, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due February 27, 1991.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 14, 1990.

By order of the Commission.

Kenneth R. Mason,

*Secretary*

[FR Doc. 90-29097 Filed 12-18-90; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigations Nos. 701-TA-305 and 306, and 731-TA-476 through 482 (Preliminary)]**

**Steel Wire Rope From Argentina, Chile, India, Israel, Mexico, The People's Republic of China, Taiwan, and Thailand**

**AGENCY:** United States International Trade Commission.

**AMENDMENTS:** FR Doc. 90-26714, published in the **Federal Register** beginning on page 47145 in the issue of Friday, November 9, 1990, is hereby amended to delete all references to investigation No. 303-TA-21 (Preliminary), steel wire rope from Thailand. Such references were unnecessary because Thailand currently is not entitled to an injury test with regard to a countervailing duty investigation that has been initiated on steel wire rope. Specifically, the following amendments to FR Doc. 90-26714 are in order: (1) "303-TA-21," which appears in the list of investigation numbers in the first column on page 47145, is hereby deleted; (2) "and investigation No. 303-TA-21 (Preliminary) under section 303 of the Tariff Act (19 U.S.C. 1303)," which begins at the end of the first column on page 47145, is deleted; (3) "India, Israel and Thailand", which begins on the ninth line of the second column on page 47145 and also on the twelfth line of the second column on page 47145, is replaced by "India and Israel"; and (4) "703(a), 733(a) and 303," which begins on the thirty-fourth line of the second column on page 47145, is replaced by "703(a) and 733(a),".

Issued: December 11, 1990.

By order of the Commission.

Kenneth R. Mason,

*Secretary*

[FR Doc. 90-29702 Filed 12-18-90; 8:45 am]

BILLING CODE 7020-02-M

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## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 409]**

**Railroad Revenue Adequacy—1989 Determination**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file Petitions for Reconsideration of Commission's decision.

**SUMMARY:** On November 16, 1990, the Commission served the decision in this proceeding, (7 ICC 2d 158 (1990)). The Association of American Railroads (AAR) has requested an extension of time until January 30, 1991, to file a Petition for Reconsideration. The request shall be granted. Additional time is necessary for AAR to prepare its comments. Any other party wishing to submit a similar motion will also have until January 30, 1991, in which to respond.

**DATES:** Petitions for Reconsideration of the Commission's final decision are due January 30, 1991.

**ADDRESSES:** Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275-7489. (TDD for the hearing impaired: (202) 275-1721).

Dated: December 13, 1990.

By the Commission, Edward J. Philbin, Chairman.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29705 Filed 12-18-90; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB-6 (Sub-No. 324X)]**

**Burlington Northern Railroad Co.; Abandonment Exemption in Jasper County, MO**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Burlington Northern Railroad Company of 4.37 miles of rail line between milepost 330.20, at Joplin, and milepost 325.83, at Webb City, in Jasper County, MO, subject to standard labor protective conditions and a trail use/rail banking condition.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 18, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 29, 1990, petitions to stay must be filed by January 7, 1991, and petitions for reconsideration must be filed by January 17, 1991. Requests for a public use condition must be filed by December 31, 1990.

**ADDRESSES:** Send pleading referring to Docket No. AB-6 (Sub-No. 324X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(1) Petitioner's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

**FOR FURTHER INFORMATION CONTACT:** Joseph H.Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1271].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pickup in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 287-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721].

Decided: December 12, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 90-29706 Filed 12-18-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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## JUDICIAL CONFERENCE OF THE UNITED STATES

**Meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure**

**AGENCY:** Judicial Conference of the United States.

**SUBAGENCY:** Committee on Rules of Practice and Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** There will be a one-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure. The meeting will be open to public observation but not participation. The meeting will commence at 8:30 a.m.

**DATES:** February 4, 1991.

**ADDRESSES:** Administrative Office of the United States Courts, 811 Vermont Avenue NW., room 638, Washington, DC 20544.

**FOR FURTHER INFORMATION CONTACT:** James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 633-6021.

Dated: December 10, 1990.

James E. Macklin, Jr.,

*Secretary, Committee on Rules of Practice and Procedure.*

[FR Doc. 90-29694 Filed 12-18-90; 8:45 am]

BILLING CODE 2210-01-M

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## NATIONAL CREDIT UNION ADMINISTRATION

**Release of Automated Data Processing Files**

**AGENCY:** National Credit Union Administration.

**ACTION:** Notice.

**SUMMARY:** The National Credit Union Administration (NCUA) Board on October 29, 1990, approved release of automated data processing files to the United States Department of Commerce, National Technical Information Service (NTIS) for dissemination of nonrestricted credit union data to the public in response to requests made under the provisions of the Freedom of Information Act (FOIA).

**EFFECTIVE DATE:** January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Wilmer Theard or Patricia Slye, Administrative Office, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456, (202) 682-9700.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Act [5 U.S.C. 552] and fee guidance thereunder issued by the Office of Management and Budget provide that agencies may elect to have frequently releasable information disseminated through the United States Department of Commerce, National Technical Information Service (NTIS). Nonrestricted credit union data will be released to NTIS on a semiannual basis beginning with the December 31, 1990, reporting cycle. Requests for current credit union financial and statistical data, historical financial and statistical data tapes, mailing labels, listings of credit unions, credit union director tapes may be obtained directly from NTIS. NCUA will refer FOIA requesters to NTIS to purchase the information instead of filling the request under FOIA. NTIS operates a statutory-based fee schedule for particular types of records.

NTIS informational services include telephone requests, subscription service, FAX of telex, on-line through commercial information companies and direct access into NTIS order systems using a personal computer. Requesters may pay for information products and services by major credit cards, NTIS deposit account, billing through a purchase order in addition to check or money order.

Becky Baker,

*Secretary to the NCUA Board.*

[FR Doc. 90-29695 Filed 12-18-90; 8:45 am]

BILLING CODE 7535-01-M

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## NUCLEAR REGULATORY COMMISSION

**Advisory Committee on the Medical Uses of Isotopes; Meeting Notice**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will convene a meeting of the Advisory Commission on the Medical Uses of Isotopes (ACMUI) to provide the ACMUI with status reports on medical use rulemakings, and request ACMUI guidance on certain regulatory and administrative issues. The NRC staff will provide the ACMUI with status reports on a petition for rulemaking about the practice of medicine and pharmacy and on basic quality assurance in medical use, and on the development of a Visiting Fellows Program. The ACMUI will provide comments and guidance on how to proceed with these projects.

**DATES:** The meeting will begin at 8:30 a.m. on January 14 and 15, 1991.

**ADDRESSES:** Meeting: Marriott Suites Hotel, 801 N. St. Asaph St., Alexandria, VA.

Comments: Submit comments regarding the agenda items to Larry Camper, Medical and Academic Section, 6H3, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Larry W. Camper, Office of Nuclear Material Safety and Safeguards, (301) 492-3417, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**SUPPLEMENTARY INFORMATION:**

**Status Reports**

*Basic quality assurance in medical use.* The NRC published proposed amendments to 10 CFR part 35 that would require medical use licensees to establish and implement a basic quality assurance (QA) program (see 55 FR 1488). The NRC also proposed certain modifications to the definition of "misadministration" and to the related reporting and recordkeeping requirements. Approximately 72 NRC and Agreement State licensees participated in a Pilot Program to develop and implement QA programs meeting the proposed rule. The staff will report on the progress to date on this project, including reports on pilot program participant workshops, that were held after the Pilot Program, and meetings with the medical community on the rule. Members of ACMUI who observed the workshops will report their observations. The staff will review its plans for completing the final rulemaking by March 1991.

*Practice of medicine and pharmacy.* The American College of Nuclear Physicians and the Society of Nuclear Medicine (ACNP-SNM) submitted a petition for rulemaking (see 54 FR 38229) requesting that the Commission revise its regulations to give cognizance to the appropriate scope of their practice of medicine and pharmacy and thereby allow nuclear physicians and nuclear pharmacists to reconstitute non-radioactive kits differently from the method recommended by the manufacturers; allow nuclear physicians and nuclear pharmacists to prepare radiopharmaceuticals whose manufacture and distribution are not regulated by the Food and Drug Administration (FDA); and permit nuclear physicians to determine appropriate diagnostic and therapeutic applications of radiopharmaceuticals. The NRC published an interim final rule (see 55 FR 34613) that responded to a portion of the petition. The staff will report on the progress to date on this project as well as its plan for addressing

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the remaining issues in the petition through future rulemaking.

*Visiting fellows program.* The Commission has initiated a Visiting Fellows Program. The staff will provide a status report on the first nomination review process.

*Supervision.* The issue of adequate supervision as required in 10 CFR part 35, relative to the appropriate level of supervision for physicians in training to be listed on NRC licenses as physician authorized users, and for all individuals performing tasks delegated by authorized users will be addressed by the NRC staff. ACMUI members will be requested to provide comments.

*Expansion of the ACMUI.* The NRC is expanding the membership of the ACMUI to include members such as those representing patients' rights and care, the U.S. Public Health Service, the Food and Drug Administration, and the States in order to obtain balanced input on medical policy issues. The staff will provide a status report on the expansion process including a discussion of the future composition of the ACMUI.

*Agenda items for future ACMUI meetings.* The staff will provide ACMUI members with alternative topics for future meetings and will solicit input from members on items for future consideration.

**Conduct of the Meeting**

Barry Siegel, M.D., will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting.

1. Persons may submit written comments regarding the agenda items by sending a reproducible copy to Mr. Camper (see "ADDRESSES" heading). Comments must be received by January 3, 1991, to ensure consideration at the meeting. The transcript of the meeting will be kept open until January 31, 1991, for the inclusion of written comments.

2. Persons who want to make oral statements should inform Mr. Camper in writing by January 3, 1991. Statements must pertain to the topics at hand. The Chairman will rule on requests to make oral statements. Opportunity for members of the public to make oral statements, within the time available, will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements may be supplemented by detailed written statements for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper at (301) 492-3417 between 9 a.m. and 5 p.m. EST on January 4, 1991.

3. At the meeting, questions from attendees other than the committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., lower level, Washington, DC 20555 on or about February 4, 1991.

5. Seating for the public will be on a first-come/first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), the Federal Advisory Committee Act (5 U.S.C. App) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

Dated at Rockville, MD, this 13th day of December, 1990.

For the Nuclear Regulatory Commission.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 90-29605 Filed 12-18-90; 8:45 am]

BILLING CODE 7590-01-M

**Advisory Committee on Reactor Safeguards (ACRS), and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings**

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittee and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 21, 1990 (55 FR 48711). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

**ACRS Subcommittee Meetings**

*Materials and Metallurgy,* January 9, 1991, Bethesda, MD. The Subcommittees will review and discuss the proposed resolution of Generic Safety Issue-29, "Bolting Degradation or Failures in Nuclear Power Plants."

*Auxiliary and Secondary Systems,* January 17, 1991, Bethesda, MD. The Subcommittee will discuss matters concerning fire protection and mitigation in nuclear power plants.

*TVA Plant Licensing and Restart,* January 24, 1991, Huntsville, AL. The Subcommittee will review the planned restart of Browns Ferry Unit 2.

*Defueling/Fuel Pool Storage,* January 29, 1991, Bethesda, MD. The Subcommittee will discuss the proposed standard review plan for reviewing safety analysis reports for dry metallic spent fuel storage casks.

*Reliability Assurance,* February 5, 1991, Bethesda, MD. The Subcommittee will discuss the reliability of safety-related solid state devices used in nuclear power plants.

*Joint Computers in Nuclear Power Plant Operations and Instrumentation and Control Systems,* February 6, 1991, Bethesda, MD. The Subcommittee will discuss the use of computers and solid-state control logic in nuclear power plant operations.

*Advanced Pressurized Water Reactors,* March 6, 1991 (tentative), Bethesda, MD. The Subcommittee will discuss the use of the NUPLEX 80+ Computerized Control System in the CE System 80+ standard plant.

*Improved Light Water Reactors,* Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the EPRI ALWR Requirements Document (Roll-up) for the Evolutionary Designs.

*Joint Thermal Hydraulic Phenomena and Severe Accidents,* Date to be determined (February/March), Bethesda, MD. The Subcommittee will discuss the issue of computer codes and their documentation.

*Joint Plant Operations and Probabilistic Risk Assessment,* Date to be determined (March, tentative), Bethesda, MD. The Subcommittees will



begin review of the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

*Joint Thermal Hydraulic Phenomena and Core Performance,* Date to be determined (March/April, tentative), Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

*Joint Regulatory Activities and Containment Systems,* Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," and an associated Regulatory Guide.

*Severe Accidents,* Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program (SARP).

*Joint Advanced Boiling Water Reactors and Advanced Pressurized Water Reactors,* Date to be determined, Bethesda, MD. The Subcommittee will perform a comparison between the Licensing Review Basis documents for the GE/ABWR and CE/Systems 80+ designs.

**ACRS Full Committee Meetings**

*369th ACRS Meeting,* January 10-12, 1991, Bethesda, MD. Items are tentatively scheduled.

**A. Reactor Operating Experience (Open/Closed)*—Briefing and discussion regarding lessons learned from nuclear power plant operating experience, including an event that occurred at Quad Cities Unit 2, on October 27, 1990, when the reactor scrammed automatically on "high-high" intermediate flux during the performance of a special test (turbine torsional resonance test). Portions of this session will be closed as necessary to discuss proprietary and safeguards information applicable to this plant.

**B. ACRS Bylaws (Open)*—Discuss proposed revisions to the ACRS bylaws.

**C. Final Rulemaking 10 CFR part 55, Fitness for Duty Requirements for Licensed Operators (Open)*—Review and report on the NRC staff's proposed final version of the Rule related to fitness for duty requirements for licensed operators.

**D. Proposed Resolution of Generic Safety Issue-29, Bolting Degradation or Failures in Nuclear Power Plants (Open)*—Review and report on the NRC staff's proposed resolution of Generic Safety Issue-29, "Bolting Degradation or Failures in Nuclear Power Plants."

**E. Annual ACRS Report to the Congress on the NRC Safety Research Program (Open)*—Discuss the proposed annual ACRS report to the Congress on the NRC Safety Research Program and budget.

**F. Containment Design Criteria (Open)*—Discuss the proposed ACRS report to NRC on containment design criteria for future nuclear plants.

**G. Meeting with the Director of the Office of Nuclear Regulatory Research (Open/Closed)*—Discuss matters of mutual interest with the Director of the Office of Nuclear Regulatory Research. Portions of this session will be closed as required under exemption 9(B) to discuss potential elimination or curtailment of specific elements of the NRC research program. Premature disclosure of the possible curtailment or elimination of any research contract could result in an inability to retain key personnel and thereby frustrate the Commission's ability to continue/complete affected programs effectively.

**H. ACRS Subcommittee Activities (Open)*—Hear and discuss report of assigned ACRS subcommittee activities, as appropriate.

**I. Revised 10 CFR part 20 Rule (Secy-90-387) (Open)*—Briefing by the NRC staff on revised part 20 Rule governing protection against radiation to provide for a substantial increase in the overall protection of the public health and safety.

**J. Licensing and Radiation Safety Requirements for Large Irradiators (Open)*—Briefing by the NRC staff regarding radiation safety and licensing requirements for the use of licensed radioactive materials in large irradiators.

**K. ACRS Management/Administration (Open/Closed)*—Discuss anticipated subcommittee activities, items proposed for consideration by the full Committee, and qualifications of candidates for appointment to the Committee. Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

**L. Miscellaneous (Open)*—Discuss matters that were not completed during previous meetings as time and availability of information permit.

*370th ACRS Meeting,* February 7-9, 1991—Agenda to be announced.

*371st ACRS Meeting,* March 7-9, 1991—Agenda to be announced.

**ACNW Full Committee and Working Group Meetings**

*27th ACNW Meeting,* January 23-24, 1991, Bethesda, MD. Items are tentatively scheduled:

**A. The Committee will continue discussions on 10 CFR part 60, high-level waste repository subsystem performance requirements and their conformance with the EPA high-level waste standards.

**B. The Committee will continue deliberations concerning the NRC and EPA regulations governing the disposal of mixed waste.

**C. The Committee will be briefed by Louisiana Energy Systems on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility (tentative).

**D. The Committee will finalize preparations for its presentation at the Waste Management 1991 Symposium, Tucson, Arizona, on February 26, 1991.

**E. The Committee intends to evaluate 10 CFR part 61 as it relates to low-level waste disposal facilities that utilize methods other than shallow land burial. Questions to be addressed include whether part 61 can be applied, in its existing form, to engineered facilities, such as below and above ground vaults.

**F. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

*ACNW Working Group Meeting on the Role of Expert Judgment,* January 25, 1991, Bethesda, MD. The Working Group will discuss the role and the extent of expert judgment in the site characterization and licensing process with respect to the disposal of nuclear waste. Discussions will include the results of studies supported by the Department of Energy and the Nuclear Regulatory Commission relating to the performance assessment for high-level waste repositories. Participants will present information and results on the role of expert judgment in the regulatory decision process, the clear identification of the extent to which such judgment is issued, the minimization of reliance on such judgment, and strategies to deal with cascading effect (propagation of uncertainty) associated with the use of subjective judgment. In addition to the manner in which expert judgment is used, the discussion will also involve how such experts are identified and selected. Although the focus will be primarily directed to the assessment of performance for a high-level waste repository, use of experts in other areas may factor in discussions.

*28th ACNW Meeting,* February 20-22, 1991—Agenda to be announced.

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*20th ACNW Meeting*, March 20–22, 1991—Agenda to be announced.

Dated: December 13, 1990.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 90-29094 Filed 12-18-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

**GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment of Provisional Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specification Table 4.1.1 to include surveillance intervals which are correct for analog instruments and to extend a digital surveillance interval based on switch performance data. The existing intervals describe acceptable time limits for the previous digital switch sensors which have been replaced.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 18, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 19, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 12th day of December, 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

*Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-29096 Filed 12-18-90; 8:45 am]

BILLING CODE 7590-01-M



[Docket No. 30-29085-SC; ASLBP No. 91-625-01-SC]

**Atomic Safety and Licensing Board Hearing; Rhodes-Sayre & Associates, Inc.**

In the Matter of Rhodes-Sayre & Associates, Inc., (Byproduct Material License 24-18959-02) Order to Show Cause

Before Administrative Judges:

Charles Bechhoefer, Chairman

Dr. Richard F. Cole

Dr. Charles N. Kelber

December 13, 1990.

Notice is hereby given that, by Memorandum and Order dated December 13, 1990, the Atomic Safety and Licensing Board has granted the request for Rhodes-Sayre & Associates, Inc., (Licensee) for a hearing in the above-titled proceeding. The hearing concerns the Order to Show Cause issued by the NRC Staff on September 20, 1990. The parties to the proceeding are the Licensee and the NRC Staff. The issues to be considered at the hearing are (1) whether the Licensee violated the Commission's regulations, as specified in section II of the Order to Show Cause, and (2) whether License 24–18959–02 should be permanently revoked.

Materials concerning this proceeding are on file at the Commission's Public Document room, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Region III Office, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board Orders. Members of the public will be invited to attend such sessions.

Bethesda, Maryland, December 13, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

*Chairman, Administrative Judge.*

[FR Doc. 90-29092 Filed 12-18-90; 8:45 am]

BILLING CODE 7590-01-M

**RAILROAD RETIREMENT BOARD**

**1991 Monthly Compensation Base and Other Determinations**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice of correction of 1991 monthly compensation base and other determinations.

**SUMMARY:** Pursuant to section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)), the Board gives notice of the following:

1. The monthly compensation base under section 1(i) of the Act is $765 for months in calendar year 1991;

2. The amount described in section 1(k) of the Act as "2.5 times the monthly compensation base" is $1,912.50 for base year (calendar year) 1991;

3. The amount described in section 2(c) of the Act as "an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600" is $988 for months in calendar year 1991;

4. The amount described in section 3 of the Act as "2.5 times the monthly compensation base" is $1,912.50 for base year (calendar year) 1991;

5. The amount described in section 4(a–2)(i)(A) of the Act as "2.5 times the monthly compensation base" is $1,912.50 with respect to disqualifications ending in calendar year 1991;

6. The maximum daily benefit rate under section 2(a)(e) of the Act is $31 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 1991.

As a result of section 10208 of Public Law 101–239, the 1991 tier 1 tax base has been revised from $51,300 to $53,400. This notice corrects the 1991 monthly compensation base and all other determinations under the Act which are based on the tier 1 tax base. This notice supersedes the original notice which was previously published in the Federal Register on February 20, 1990 [55 FR 7075].

**DATES:** The determinations made in notices (1) through (5) are effective January 1, 1991. The determination made in notice (6) is effective for registration periods beginning after June 30, 1991.

**ADDRESSES:** Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Timothy H. Hogueisson, Bureau of Research and Employment Accounts, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4890. (FTS) 386–4890.

**SUPPLEMENTARY INFORMATION:** The RRB is required by section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 362(r)(3)) as amended by Public Law 100–647, to publish by December 11, 1990, the computation of the calendar year 1991 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 1991, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 1991.

**Monthly Compensation Base**

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the growth in average national wages. The monthly compensation base for months in calendar year 1991 shall be equal to the greater of (a) $600 and (b) $600 [1+{(A−37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 1991 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 1991 tier 1 tax base is $53,400. subtracting $37,800 from $53,400 produces $15,600. Dividing $15,600 by $56,700 yields a ratio of 0.27513228. Adding one gives 1.27513228. Multiplying $600 by the amount 1.27513228 produces the amount of $765.08, which must then be rounded to $765. Accordingly, the monthly compensation base is determined to be $765 for months in calendar year 1991.

**Amounts Related to Changes in Monthly Compensation Base**

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base

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year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1991 monthly compensation base of $765 produces $1,912.50. Accordingly, the amount determined under section 1(k) is $1,912.50 for calendar year 1991.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 1991 monthly compensation base is $765. The ratio of $765 to $600 is 1.275. Multiplying 1.275 by $775 produces $988. Accordingly, the amount determined under section 2(c) is $988 for months in calendar year 1991.

Under section 3, an employee shall be a "qualified employee" if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 1991 monthly compensation base of $765 produces $1,912.50. Accordingly, the amount determined under section 3 is $1,912.50 for calendar year 1991.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 1991 monthly compensation base of $765 produces $1,912.50. Accordingly, the amount determined under section 4(a–2)(i)(A) is $1,912.50 for calendar year 1991.

**Maximum Daily Benefit Rate**

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the growth in average national wages. The maximum daily benefit rate for registration periods beginning after June 30, 1991, shall be equal to the greater of (a) $30 and (b) $25 [1 + ([A − 600]/900)], where A equals the applicable base with respect to tier 1 taxes under section 3231(e)(2) of the Internal Revenue Code of 1986 divided by 60, with the quotient rounded down to the nearest multiple of $100. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

The calendar year 1991 tier 1 tax base is $53,400. Dividing $53,400 by 60 yields $890. This amount is rounded down to $800, the nearest multiple of $100. Subtracting $600 from $800 produces $200. The ratio of $200 to $900 is 0.22222222. Adding 1 produces 1.22222222. Multiplying $25 by 1.22222222 produces $30.56, which must then be rounded to $31. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning is registration periods after June 30, 1991, is determined to be $31.

Dated: December 13, 1990.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 90-29707 Filed 12-18-90; 8:45 am]

BILLING CODE 7905-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-28892; File No. SR-AMEX-90-26]**

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Permanent Approval of the Pilot Program for Hedge Exemptions From Equity Option Position Limits**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 28, 1990, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

On May 24, 1988, the Commission approved a two-year pilot program by the AMEX that provided a limited exemption from applicable equity option position limits.[1] Position limits for equity options are determined in accordance with a three-tiered system (*i.e.*, 3,000, 5,500, or 8,000 contracts) based on the number of shares of the underlying security outstanding and/or the underlying security's trading volume. The AMEX pilot program provides an exemption from applicable equity option position limits for accounts which have established one of the four commonly used hedged positions on a limited one-for-one basis, *i.e.*, long stock and short call, long stock and long put, short stock and long call, and short stock and short put. However, the maximum position established pursuant to the exemption may not exceed twice the present position limit. The pilot program was extended by the Commission in August 1990 in order to provide the Exchange with an opportunity to evaluate its effectiveness prior to seeking permanent approval.[2]

Since the inception of the pilot program, the AMEX has found hedge exemptions from position limits to be a very useful tool for customers. The Exchange believes that such exemptions offset the risk attendant to large stock positions and increase the liquidity of the equity options markets. In addition, the Exchange has not experienced any problems with the pilot program's implementation. Therefore, the Exchange hereby requests permanent approval of the hedge exemption as provided for in Commentary .09 to Exchange Rule 904.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

During the pilot's initial two year period the Exchange has been monitoring various aspects of the program including: (1) The types of investors using the exemption; (2) the size of the options positions held pursuant to the exemption and; (3) any customer complaints or disciplinary actions pertaining to the exemption. Throughout the pilot's duration the Exchange has not experienced any problems with the program's implementation and the Exchange believes that the exemptions have increased the depth and liquidity of the options markets. Moreover, the Exchange in monitoring increased customer positions resulting from the pilot program has not detected any intermarket manipulations or disruptions to either the options market or the underlying stock markets.

The Exchange indicates that twenty-four entities have used equity hedge exemptions for nineteen options and their underlying equities. As the Exchange anticipated, approximately 99% of such entities are institutional customers seeking to protect large stock portfolios from market declines by hedging with stock options. In the approximately 160 times that equity hedge exemptions have been used, rarely have customers actually doubled their existing position limit. While the size of the option position held pursuant to the exemption has varied, in most cases, customers have increased their positions by approximately 20% through the exemption. The Exchange notes that there have not been any customer complaints associated with the exemptions during the pilot program.

The Exchange proposes to continue the special reporting requirements that it has been using in connection with the exemption during the pilot program. Specifically, all member organizations will continue to report hedged options positions to the Exchange on a special "Hedge Exemption Reporting Form" together with the stock positions which qualify the options position for an exemption.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to the Exchange since it is designed to give investors with large equity positions the ability to hedge such positions while increasing the depth and liquidity of options trading without increasing the risk of market manipulation or disruption. In particular, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 9, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 12, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29671 Filed 12-18-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28893; International Series Release No. 207; File No. SR-AMEX-90-25]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Options on the EURO TOP-100 Index**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1990, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The AMEX proposes to trade options on the EURO TOP-100 Index, a broad-based market index based on the performance of 100 leading European companies.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The AMEX proposes to trade options contracts based on the EURO TOP-100 Index ("E1100 Index" or "Index"), an index developed and maintained by the European Options Exchange ("EOE"). The E100 Index is a weighted index that

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[1] See Securities Exchange Act Release No. 25736 (May 24, 1988), 53 FR 20221.

[2] See Securities Exchange Act Release No. 28306 (August 2, 1990), 55 FR 32512.

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is denominated in European currency units ("ECUs") and is based on the value of the shares of 100 European companies. The E100 Index was designed to measure the collective performance of the most actively traded stocks on the major European stock exchanges in the United Kingdom, France, Germany, Italy, Spain, Belgium, The Netherlands, Switzerland and Sweden. Each country is represented in the E100 Index based on a weighting proportional to its gross national product ("GNP"), both with respect to the number of stocks and the weights of the stocks of each country in the Index. As of December 31, 1989 the weightings for each country were: United Kingdom, 22%; Germany, 15%; France, 15%; Switzerland, 10%; Italy, 10%; The Netherlands, 8%; Sweden, 8%; Spain, 8% and Belgium, 4%.

The Index was initially formatted in April 1990 based on the prior three calendar year averages of the GNPs of the component countries and the relative monetary trading values of the component stocks. The Index will be reformatted each April based on a newly calculated three year average of GNPs and monetary trading values of component stocks as of the previous December 31.

To qualify for inclusion in the Index, a country must have a total stock market capitalization of at least 50 billion ECU. Based on the relative weights of the GNPs of the qualifying countries, each country is assigned a specific number of the 100 Index stocks to be included in the Index. The selection of the specific stocks for a country is then based on the relative monetary trading volumes of stocks trading on the home country Exchange during the previous three years. The number of shares assigned to each component stock is determined at a level intended to preserve each country's relative weighting in the Index and be proportional to the monetary trading value of each stock. The current component stocks are listed in Exhibit A.

Through the course of the year, adjustments are made to the number of shares assigned to each component stock to take account of stock splits, recapitalizations and other corporate actions which would otherwise affect price continuity. If a component stock is removed from the Index prior to the annual review due to merger, bankruptcy, or similar actions, a replacement stock will be selected in accordance with the Index criteria. The number of shares of that country's component stocks will be adjusted to maintain the previously established country weighting.

Index Calculation

The E100 Index value calculation is based on the last sale price of each component stock in its own currency, reported by the principal stock exchanges in its home country, converted into ECUs at the then current exchange rate. Thus, the Index responds continuously and independently to changes in the component stock prices and in exchange rates between the respective home country currencies and the ECU. The E100 Index is currently calculated and disseminated by the EOE on a continuous basis from 10:30 a.m. to 4:30 p.m. Central European Time (ordinarily 4:30 a.m. to 10:30 a.m. New York Time).

For the U.S. options market, the Exchange will apply a divisor to the EOE Index calculation and disseminate the reduced Index number via the vendor network during U.S. trading hours. Because of the time zone differences, the Exchange disseminated Index value will be continuously changing during the first hour of Exchange trading and then remain unchanged until the EOE resumes calculation and dissemination of the Index value on the following business day.

Although the EOE will ordinarily commence calculation of the Index at 10:30 a.m. Central European Time, calculation of the Index will not occur if trading in 40 or more component stocks has not commenced on the primary home country exchanges. Since the Index will be calculated and broadcast when at least 61 component stocks are trading, the Index may be claculated on days on a day on which the Index is being calculated will be valued at its last sale price, and that price will be continuously updated to reflect changes in the home country currency/ECU cross rate.

The Exchange proposes to trade E100 options on each day it is open for trading, whether or not the Index is being calculated. The Exchange will publish the last calculated dollarized version of the Index at those times when the EOE Index is not being calculated. There will be no trading on any holiday on which the Amex is closed, whether or not the EOE Index is being calculated and published.

Index Options Trading

As of the close of business on November 9, 1990, the E100 had a value of 751.75. The Exchange believes that this recent value would be at too high a level to successfully sustain options trading in the U.S. market. Accordingly, the Exchange proposes to base trading in its options on a reduced level of the EOE Index. The amount of the reduction would be determined prior to the initiation of options trading. Based on the current EOE Index level, the Exchange anticipates that a U.S. Index level at ¼ of the EOE value would be appropriate. However, the Exchange proposes to make this decision just prior to initiation of trading in the options to best relate to the then EOE Index level.

Each point of the Exchange's reduced Index value will be assigned one U.S. dollar for option valuation purposes. This will, in effect, dollarize the Index value. As the Index level follows changes in ECU prices of the component stocks, the option premium values will accordingly change in U.S. dollar terms, without regard to fluctuations in the ECU/U.S. dollar exchange rate. As a result, E100 options will be trade in U.S. dollar denominated accounts and will be eligible for the current trading, clearance, and settlement systems without modification.

The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. ("Expiration Friday"). They will be European style, exercisable only at expiration, and cash settled. Standard U.S. index options trading hours (9:30 a.m. 4:15 p.m. NY time) would apply. On the last trading day prior to expiration, trading in expiring options will continue until the time fixed by the EOE for determination of a settlement value, anticipated to be 4:00 p.m. Central European Time 10:00 Eastern Standard Time. Once a final settlement price is announced, the Exchange will conduct a closing rotation.

Settlement Value

On each Expiration Friday, the EOE will calculate and disseminate an Index settlement value. That value will be based on the average of the prices quoted for the Index at five minute intervals between 3:30 and 4 p.m. Central European Time on Expiration Friday. Thus, the EOE will average the Index values quoted at 3:30, 3:35, 3:40, 3:45, 3:50, 3:55 and 4, and shortly after 4 p.m. announce a settlement value. The Exchange settlement value will represent an amount in U.S. dollars equal to the scaled down Index value.

Exchange Rules Applicable to Stock Index Options

Amex Rules 900C through 980C will apply to option contracts based on the Index. The Index is deemed to be a broad Stock Index Group under Rule 900C(B)(1). Under Rule 983C, the Exchange intends to list up to three near calendar months and five additional long-term option series, with consecutive June and December expirations extending into successive years.

Exercise price intervals for near-term options will be fixed at 5 point intervals, while exercise price intervals for long-term options will be fixed at either 25 or 50 point intervals depending on the then current volatility of the Index. Under rule 904C(B), the Exchange proposes to establish a position limit of 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month.

Surveillance Agreements

The Exchange has market surveillance agreements in effect with several of the marketplaces where Index component stocks trade. Agreements with additional countries whose stocks are included in the Index are being sought, as is expansion of certain of the existing agreements.

The Exchange currently is a party to a broad information sharing agreement with The Securities Association in the United Kingdom ("TSA"). That agreement enables the Exchange, for purposes of carrying out its regulatory responsibilities, to obtain from the records of the TSA and TSA members, information relating to securities traded on the Amex or securities underlying derivative instruments traded on the Amex. This would provide the Exchange with an effective means of surveilling the U.K. Index components which currently constitute 22% of the Index.

The Exchange has in place a similar information sharing agreement with the Societe des Bourses Francaises ("SBF"). That agreement provides for the sharing of surveillance information relating to, among other things, securities which are traded on French stock exchanges and underlie derivative instruments traded on the Amex. This agreement would enable the Exchange to obtain surveillance information on the French components which currently constitute 15 percent of the Index.

The Exchange is also a party to an information sharing agreement with the Frankfurt Stock Exchange. However, that agreement focuses on the exchange of market surveillance information regarding the trading of warrants on the DAX Index. The Exchange has undertaken to discuss with the Frankfurt Stock Exchange the expansion of the existing agreement to enable the Exchange to obtain data for use in connection with its surveillance of the E100 German components, all of which are components of the DAX, and represent 15% of the Index.

The Exchange is also engaging in discussions with other foreign exchanges and hopes to establish information sharing agreements with marketplaces on which other E100 components trade.

Notwithstanding these efforts, the Exchange believes that because of the method of fixing the E100 settlement value, the commencement of trading of E100 options should not be dependent on the existence of additional information sharing agreements. As discussed above, the settlement value is based on an average of separate Index values over the course of a specified time period. This method of computation of the settlement value minimizes the opportunity for price manipulation and therefore should decrease the need for information sharing agreements with marketplaces on which a significant portion of the components trade.

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 5(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The AMEX believes that the proposed rule change will not impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or



(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 12, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Exhibit A**

The composition of the index is as follows (situation as on October 1st, 1990):

| Country | Symbol |
|---|---|
| United Kingdom: | |
| Allied-Lyons | ALLD |
| Barclays | BCS |
| BAT | BTI |
| British Aerospace | BAEL |
| British Gas | BRG |
| British Petroleum | BP |
| British Telecom | BTY |
| BTR | BRTX |
| Cable and Wireless | CWP |
| Cadbury Schweppes | CADB |
| GEC | GECL |
| Glaxo | GLX |
| Grand Metropolitan | GMHL |
| Guinness | GUIN |
| Hanson | HAN |
| ICI | ICI |
| Lonrho | LRHO |
| Nat. Westminster Bank | NW |
| Racal Electronics | RCAL |
| RTZ | RTZL |
| Shell Transport | SC |
| Storehouse | STHL |

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| Country | Symbol |
|---|---|
| Germany: | |
| Allianz | ALVG |
| BASF | BASF |
| Bayer | BAYG |
| BMW | BMWG |
| Commerzbank | CBKG |
| Continental | CONG |
| Daimler Benz | DAIG |
| Deutsche Bank | DBKG |
| Dresdner Bank | DRSD |
| Hoechst | HFAG |
| Mannesmann | MMWG |
| Siemens | SIEG |
| Thyssen | THYH |
| VEBA | VEBG |
| Volkswagen | VOWG |
| France: | |
| BSN | BSNP |
| Cie. du Midi | MIDP |
| CGE | CGEP |
| Elf-Aquitaine | ELFP |
| Générale des Eaux | EAUG |
| Lafarge | LAFP |
| LVMH | LVMH |
| Michelin | MICP |
| Navigation Mixte | NAVP |
| Paribas | PARI |
| Peugeot | PEUP |
| Saint Gobain | SGOB |
| Soc. Générale | SOGN |
| Suez | SUZF |
| Thomson C.S.F. | TCFP |
| Switzerland: | |
| Alusuisse | ALUS |
| BBC Brown Boveri | BBCZ |
| Ciba-Geigy | CIGZ |
| Credit Suisse Holding | CSHZ |
| Nestlé | NESZ |
| Roche | ROGZ |
| Sandoz | SANZ |
| Swiss Bank Corp | SBVZ |
| Swiss Reinsurance | RUKZ |
| Union Bank of Switzerland | SBGZ |
| Italy: | |
| Assicurazioni Generali | GASI |
| Banca Commerciale | BCMI |
| CIR | CIRX |
| Fiat | FIA |
| Gemina | GEMI |
| IFI | IFPI |
| Mediobanca | MDBI |
| Montedison | MNT |
| Olivetti | OLIV |
| RAS | RASI |
| The Netherlands: | |
| ABN Amro Bank | AAH |
| AKZO | AKZO |
| Hoogovens | OVEN |
| KLM | KLM |
| Nat. Nederlanden | NTNN |
| Philips | PHG |
| Royal Dutch Petroleum | RD |
| Unilever | UN |
| Sweden: | |
| Asea | ASEA |
| Astra | ASTZ |
| Electrolux | ELUX |
| Ericsson | ERIC |
| Saab-Scania | SABS |
| Skandia | SKDS |
| Stora | STOR |
| Volvo | VOLV |
| Spain: | |
| Asland | ASL |
| Banco Bilbao | BBV |
| Banco Hispano Am. | HIS |
| Banco Popular | POP |
| Banco Santander | SAN |
| Iberduero | IBE |
| Repsol | REP |
| Telefonica | TEF |

| Country | Symbol |
|---|---|
| Belgium: | |
| Ebes | EBES |
| Petrofina S.A. | PETB |
| Société Générale de Belgique | GDEB |
| Solvay and Cie. | SOLB |

[FR Doc. 90-29672 Filed 12-18-90; 8:45 am]
BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.**

December 13, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Allied Irish Banks, Plc.
American Depository Shares, representing 6 Ordinary Shares IR 25p (File No. 7-6402).
Chesire Financial Corp.,
Common Stock, $1.00 Par Value (File No. 7-6403).
Conner Peripherals, Inc.,
Common Stock, No Par Value (File No. 7-6404).
Environmental Tectonics Corp.,
Common Stock, $.10 Par Value (File No. 7-6405).
Micron Technology, Inc.,
Common Stock, $.10 Par Value (File No. 7-6406).
Paine Webber Group, Inc.,
Put Warrants on the CAC-40 Index expiring 11/9/93 (File No. 7-6407).
Societe Generale Warrants Limited N.V.,
Put Warrants on the CAC-40 Paris Stock Exchange Index expiring 11/4/92 (File No. 7-6408).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 90-29673 Filed 12-18-90; 8:45 am]
BILLING CODE 8010-01-M

**[Release No. 34-28702; File No. SR-NASD-90-64]**

**Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Addition of Consolidated Quotation Service Securities to the Automated Confirmation Transaction Service**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 26, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing an amendment to the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") adding Consolidated Quotation Service ("CQS") issues to the securities eligible for ACT processing.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below,

[1] 15 U.S.C. 78s(b)(1).



of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The ACT service is designed to facilitate comparison and clearing of inter-dealer, negotiated trades by requiring input of trade reports within specific time frames, comparing that trade data, and submitting matched, "locked-in" trades for clearing. ACT has been operating since September, 1989, when the Commission approved the service for self-clearing firms.[2] Transactions in NASDAQ securities have been eligible for ACT processing. The ACT service has recently been approved for clearing firms and is now mandatory for all members.[3] The NASD is currently in the process of phasing in clearing firms and their executing correspondents, as the risk management functions of ACT became operational on October 29, 1990.

The Association is proposing to add Consolidated Quotation Service ("CQS" or "listed") issues to those eligible for ACT processing and to bring the listed issues onto the system alphabetically, as operational considerations permit. The NASD will begin phasing in CQS securities on November 26, 1990, and members will be expected to begin submitting trade reports in CQS transactions at that time. In its approval order for the ACT service, the Commission requested that the NASD submit filings when additional phases for ACT-eligible securities are to be undertaken.[4]

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, setting, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." The ACT service is designed to facilitate comparison and clearing of negotiated trades in NASDAQ, NASDAQ National Market System and listed securities in the over-the-counter market.

[3] See Securities Exchange Act Release No. 27229, September 7, 1989, 54 FR 38454.

[3] See Securities Exchange Act Release No. 28565, October 26, 1990, 55 FR 46120.

[4] *Id.* at p. 13.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Rule 19b-4 because it constitutes a stated practice with respect to the administration of an existing rule change of the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 9, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 13, 1990.
Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 90-29689 Filed 12-18-90; 8:45 am]
BILLING CODE 8010-01-M

**[Release No. 34-28694; File No. SR-NASD-90-60]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change Relating To Market Circuit Breaker Proposals**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the National Association of Securities Dealers, Inc. ("NASD"), on November 1, 1990, filed with the Securities and Exchange Commission ("Commission") a proposed rule change to extend until December 31, 1991, the effectiveness of its Policy Statement on Market Closings ("Policy Statement") regarding certain procedures that will be activated during volatile market conditions.[3]

In October 1988, the Commission approved proposals submitted by the American Stock Exchange ("Amex"), Boston Stock Exchange ("BSE"), Chicago Board Options Exchange ("CBOE"), Cincinnati Stock Exchange ("CSE"), Midwest Stock Exchange ("MSE"), New York Stock Exchange ("NYSE"), Philadelphia Stock Exchange ("PHLX") and Pacific Stock Exchange ("PSE") (collectively, "the Exchanges") as well as the NASD that provided for uniform circuit breaker procedures during volatile market conditions.[4] Specifically, the circuit breaker rules provide that trading in all markets would halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close.[5] The circuit

[1] U.S.C. 78s(b)(1) (1982)

[2] 17 CFR 240.19b-4 (1988).

[3] The proposal originally was filed under section 19(b)(3)(A) of the Act. On December 11, 1990, the NASD, by letter, amended the proposal so that it is now filed under section 19(b)(2) of the Act.

[4] *See* Securities Exchange Act Release Nos. 26440 (January 10, 1989) 54 FR 1830 (CSE); 26366 (December 22, 1988) 53 FR 52804 (PHLX); 26508 (December 16, 1988) 53 FR 51042 (PSE); 26367 (December 14, 1988) 53 FR 51182 (BSE); 26216 (October 26, 1988) 53 FR 44127 (MSE); 26198 (October 19, 1988) 53 FR 41037 (Amex, CBOE, NASD and NYSE).

[5] If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if

Continued



breaker mechanism was an important

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breaker mechanism was an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break.

In 1989, the Exchanges and the NASD filed, and the Commission approved, proposals to extend their respective circuit breaker pilot programs for an additional year.[6] Accordingly, since the NASD proposal is nearing its December 31, 1990 expiration date, the NASD has filed with the Commission a proposal to extend further its Policy Statement until December 31, 1991. The circuit breaker proposals of the CBOE, PSE and CSE were proposed by these exchanges, and approved by the Commission, on a permanent basis rather than as a pilot program.[7]

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report") and the Working Group's Interim Report [8] recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large rapid market declines.[9] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakers that were approved by the Commodity Futures Trading Commission on a permanent basis.

Since the Commission approved these proposals in October 1988, the DJIA has not experienced a one day 250 point decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended.[10] The Commission also believes that circuit breakers represent a reasonable means to retard a rapid, one day market decline that can have a destabilizing effect on the nation's financial markets and participants.

Accordingly, the Commission finds that the proposed rule change filed by the NASD is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable the Policy Statement to continue on an uninterrupted basis. Due to the importance of circuit breakers for market confidence, soundness, and integrity, it is necessary and appropriate that these procedures continue on an uninterrupted basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-NASD-90-60, and should be submitted by January 9, 1991.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR-NASD-90-60) is approved until December 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: December 12, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-29670 Filed 12-18-90; 8:45 am]

BILLING CODE 8010-01-M

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### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

December 13, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Paine Webber Group, Inc.,
Call Warrants on the CAC 40 Index expiring November 9, 1993 (File No. 7-6460).
Paine Webber Group, Inc.,
Put Warrants on the CAC 40 Index expiring November 9, 1993 (File No. 7-6461).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-29675 Filed 12-18-90; 8:45 am]

BILLING CODE 8010-01-M

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### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

December 13, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Micron Technology, Inc.,
Common Stock, $.10 Par Value (File No. 7-6458).
Conner Peripherals, Inc.,
Common Stock, No Par Value (File No. 7-6459).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 7, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-29674 Filed 12-18-90; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGDS 90-29]**

### Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463; 5 U.S.C. app I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, January 15, 1991, in the 29th floor Boardroom of the World Trade Center, 2 Canal Street, New Orleans, Louisiana at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the October 16, 1990 meeting.
3. Update on past resolutions.
4. Report from the VTS Subcommittee.
5. New Business.
   a. Presentation on Marine Spill Response Corporation.
6. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: December 5, 1990.

**J. M. Loy,**

*Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.*

[FR Doc. 90-29635 Filed 12-18-90; 8:45 am]

BILLING CODE 4910-14-M

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## National Highway Traffic Safety Administration

**[Docket No. EX88-1; Notice 5]**

### General Motors Corp.; Grant of Petition for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

This notice grants the petition by General Motors Corporation of Warren, Michigan ("GM"), for a 2-year renewal of NHTSA Exemption No. 88-1. The exemption excuses four Cadillac models from compliance with certain aspects of Motor Vehicle Safety Standards Nos. 108 and 111.

Notice of receipt of the petition was published on August 23, 1990 (55 FR 34639) and an opportunity afforded for comment.

By way of background, on August 18, 1988, NHTSA granted GM's petition for temporary exemption of two Cadillac models for certain Federal requirements for lighting and rear view mirrors (53 FR 31411). Subsequently, on January 26, 1989, the exemption was extended to cover two additional Cadillac models (54 FR 3897). The basis of the grant and extension was the Administrator's finding that, in the absence of an exemption, GM would otherwise be prevented from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles (15 U.S.C. 1410(a)(1)(D), implemented by 49 CFR 555.5 and 555.6(d)). Specifically, GM wished to institute a factory delivery program similar to programs established by European manufacturers where Americans take delivery of vehicles abroad which conform to the U.S. Federal motor vehicle safety standards. However, with respect to two standards, Nos. 108 and 111, GM wished to provide lighting equipment and rear view mirrors meeting European specifications, which do not conform to those to the United States.

In the summer of 1990, GM petitioned for a renewal of that exemption. As before, the exemption would cover up to 2500 vehicles for any 12-month period that the exemption is in effect. Although GM declined to state the volume of vehicles it had delivered under the exemption, it stated that sales did not meet its expectations, and the agency understands that to mean that the exemption limit has not been exceeded. However, it intends to extend the program in 1991 to Japan and Taiwan.

The company's requests for exemption and rationale remained the



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the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hours before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the Exchanges would retain the power to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

[6] *See* Securities Exchange Act Release No. 27370 (October 23, 1989) 54 FR 43861 (Order approving extension of Amex, BSE, MSE, NASD, NYSE and PHLX circuit breaker rules).

[7] The BSE pilot program does not expire until October 31, 1991. Therefore, the BSE has not filed to extend its pilot program.

[8] The Working Group on Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the chairmen of the Commission, Board of Governors of the Federal Reserve System and the Commodity Futures Trading System, and the Under Secretary for Finance of the Department of the Treasury.

[9] In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures after these halts, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

[10] The Commission already has extended the dates of the pilot programs for the Amex, MSE, NYSE, and PHLX until October 31, 1991. *See* Securities Exchange Act Release No. 28380 (October 23, 1990), 55 FR 45095.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30-3(a)(12) (1989).

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same as in 1988, and for a more complete discussion, the August 1990 notice directed the reader to the Federal Register notices cited above.

No comments were received on the petition.

In granting GM's original petition on August 16, 1988 (53 FR 31411), NHTSA set forth extensive reasons for its findings. It has reviewed those findings and their rationales, and has determined that they substantiate an extension of the exemption for the additional period requested. Accordingly, they are incorporated by reference in this notice. Briefly, NHTSA noted that with the increasing international harmonization of safety standards, some of the differences that exist in standards could be viewed as differences more in degree than in kind. NHTSA also noted that U.S. citizens who wished to travel abroad and purchase cars in the country of their manufacture were not required to meet local standards, but could specify their conformance to the Federal motor vehicle safety standards. However, the converse was not true; in the absence of an exemption such as that requested by GM, foreigners could not purchase cars in the United States that conformed to non-U.S. standards.

In the absence of extension of the grant, GM will be unable to sell its vehicles to their intended purchasers for temporary use in the United States. In consideration of the foregoing, including the materials incorporated in this notice, it is hereby found that GM is otherwise unable to sell a motor vehicle whose overall level of safety equals or exceeds that of a nonexempted motor vehicle, and that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Accordingly, NHTSA Exemption 88–1, as granted on August 18, 1988, and as amended on January 20, 1989, is extended to apply to no more than 2500 of the subject passenger cars manufactured between August 1, 1990 and August 1, 1991, and to no more than 2500 such passenger cars manufactured between August 1, 1991 and August 1, 1992.

**Authority:** 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on: December 13, 1990.

**Jerry Ralph Curry,**

*Administrator.*

[FR Doc. 90–29610 Filed 12–18–90; 8:45 am]

BILLING CODE 4910–59–M

## Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Messrs. Russell J. Shew and Denis G. Cremin of Center for Auto Safety (CAS) submitted a petition dated August 14, 1990, requesting the agency to investigate more than 5 million 1987 through 1990 General Motors (GM) vehicles equipped with an automatic 3-point safety belt system to remedy a safety-related defect which allegedly fails to prevent front-seat occupant ejections if the front door opens during a crash. Specifically, the petitioner requests NHTSA to investigate the "* * * (1) Defective design, (2) physical failure of these automatic safety belts, and (3) integrity of the door latch mechanism."

NHTSA is denying petition. The agency has concluded that there is no reasonable possibility that further investigation would lead to the issuance of an order determining the existence of a safety-related defect with respect to any of the allegations raised in the petition and that it would be inappropriate to expend further agency investigative resources on these allegations. In addition, the agency has already granted a separate petition for rulemaking concerning these systems that will address their effectiveness and possible future changes to the applicable vehicle safety standard.

Door-mounted automatic safety belts have been in use in various makes and models of cars sold in the United States since 1975, when Volkswagen first introduced a 2-point version (without a lap belt) for the purpose of complying with the automatic crash protection provisions (which were then optional) of Federal Motor Vehicle Safety Standard (FMVSS) 208. During the 1980's, many different types of automatic belt systems have been produced, including motorized automatic safety belts which attach to the vehicle roof rail, rather to the door itself. GM and several other manufacturers have chosen to comply with FMVSS 208 with door-mounted automatic safety belts on many of their model lines. Still other models have been equipped with air bags. In the 1984 decision requiring automatic crash protection, the department specifically sought to encourage a wide variety of systems available to consumers (49 FR 28962 of July 17, 1984).

The agency has conducted a number of analyses of the effectiveness of various types of automatic crash protection in preventing injuries and death. A comprehensive Regulatory Impact Analysis (RIA) was conducted by the agency in 1984, for example, to support the decision to require automatic crash protection. That analysis, and others conducted by the agency, have concluded consistently that all automatic crash protection systems, including door-mounted 3-point automatic safety belt systems, would be effective in preventing death and injury in motor vehicle crashes. The 1984 rule has become fully effective and all new passenger cars sold in the United States must now be equipped with automatic crash protection.

The agency has also recognized that no occupant protection system is fully protective in all crash environments. The 1984 RIA supporting the FMVSS 208 rule, for example, acknowledged a Canadian study which found that door-mounted, 2-point automatic safety belts may "* * * have little capability of protecting an occupant in the event of an accidental door opening in a collision." The RIA also concluded that even a 3-point automatic belt will not prevent all fatalities involving ejection.

Although the CAS petition asks the agency to investigate whether ejections in vehicles equipped with GM door-mounted, 3-point automatic safety belts are excessive, any evaluation of the system must address the overall performance of the system, not just one facet of it. The advantages and disadvantages of the various types of automatic restraints were discussed in detail in the 1984 RIA supporting the amendment to FMVSS 208 requiring automatic crash protection. The RIA showed, for example, that air bags would provide little protection in side and rear collisions unless supplemental manual restraints were used. It also discussed the possibility that ejections with automatic belt systems would be more likely than with manual belts when used. However, the expected advantages in increased belt usage and overall performance of automatic belt systems were deemed sufficient to overcome potential shortcomings in specific crash situations. (See the 1984 RIA, NHTSA Docket No. 74–14–N35–152, at pages IV–23 to IV–36.)

Moreover, it would be inappropriate to determine that the design of an automatic occupant protection system is defective if the system was in fact anticipated by the agency in the 1984 rule making, it complies with the requirements of FMVSS 208, and the system does not malfunction. Door-mounted automatic safety belts were clearly anticipated in the 1984 rule (49 FR 28962), at 28965 and 28985; July 17, 1984). There is no evidence suggesting that the GM system either fails to meet FMVSS 208 or otherwise fails to perform as designed.



The agency is in the process of conducting a comprehensive evaluation of FMVSS 208. See 55 FR 1586 (January 17, 1990). The results of the first phase of that evaluation will be available in 1991. That evaluation will address the overall performance of the various types of automatic crash protection systems, including the 3-point automatic belt system utilized by GM. On August 4, 1989, the agency granted a petition for rule making to examine automatic belts, and will use the results of the upcoming evaluation to determine whether further rulemaking would be appropriate.

The CAS petition also encompasses the question of whether the systems are properly functioning in these GM vehicles. NHTSA's Office of Defects Investigation has prepared a full report that describes in detail the agency's analysis of the allegations presented in the petition related to these allegations. Interested persons may obtain copies of that report by contacting the Technical Reference Division, NAD–52, room 5108B, 400 7th Street SW., Washington, DC 20590, (202) 366–2768. A brief summary of this report is presented below.

### Description of Systems

*(1) Automatic 3-point Safety Belt System*

The automatic 3-point safety belt system in these GM vehicles is similar in many aspects to the manual 3-point safety belt system that has been installed in light-duty motor vehicles for many years. However, there are some differences between the two systems. In the automatic 3-point system, two of the three attachment points are on the door, rather than on the "B" pillar and outboard floor of the vehicle body. Also, the automatic safety belt system has two separate emergency-locking retractors located in the door for the lap belt and shoulder safety belt. The retractors are mounted near the rear edge of the front door. The shoulder belt goes through a D-ring which is attached to the upper rear edge of the door. The inboard buckle mechanism is substantially identical to the manual buckle. When the automatic belt is properly attached and the door is opened, both the shoulder belt and the lap belt extend with the door, allowing occupant entry and exit from the vehicle behind the extended lap and shoulder belts. When the door is closed, the retractors for the lap and shoulder belts re-spool the belt that was released when the door was open, in order to allow the belt to protect the occupant. The system is thus "automatic" in that the belts can be left in the attached mode, and no further action is needed by the occupant after entering the vehicle.

*(2) Front-Door Latch and Lock Assembly*

The front-door latch and lock assembly in these vehicles provides three major functions: A. It provides a means of keeping the door closed under static and prescribed dynamic conditions. B. It provides a means to unlatch the door from inside and outside the vehicle. C. It provides a means to lock and unlock the door.

### Analysis of Information

Analysis of the available information revealed the following:

1. Data available to the agency indicate that GM vehicles equipped with the 3-point automatic door-mounted safety belt system have consistently passed compliance tests for the automatic protection provisions of FMVSS 208, Occupant Crash Protection.

2. No type of safety belt, including the automatic belts in the subject vehicles or manual belts, can guarantee that user injuries or ejections will be avoided under all vehicle crash conditions, including high-speed impacts or rollovers. There are many variables and factors which affect the degree of safety belt protection including, but not limited to, the seat design, the lap belt angle (off horizontal), the type of belt restraints, the vehicle size and design, the door latch and lock design, the impact speed and angle, and the adjustment of the safety belt.

3. The complaint reports available to the agency concerning alleged defective front safety belt systems and front-door latch mechanisms do not indicate that consumers have greater problems with GM vehicles equipped with door-mounted automatic safety belts than other vehicles equipped with different types of automatic safety belt systems.

4. Compliance data available to the agency indicate that GM vehicles equipped with 3-point automatic safety belts have consistently passed compliance tests for FMVSS 208, Door Locks and Door Retention Components. The agency also compared unrestrained occupant ejection rates in GM vehicles equipped with manual safety belts with those of other peer vehicles equipped with manual safety belts in order to assess hinge and latch performance. The latches and hinges on the GM vehicles were the same as on those later equipped with 3-point automatic safety belts. No statistically significant difference was found in the two groups.

Based on the information available at the present time, no defect trend has been identified for the automatic safety belt systems or the front-door latch mechanisms in 1987 through 1990 GM vehicles equipped with 3-point door-mounted automatic safety belt systems.

For the foregoing reasons and for the reasons stated in the ODI report, further expenditure of the agency's investigative resources on the allegations in the petition does not appear to be warranted. Therefore, the petition is denied.

**Authority:** Sec. 124, Pub. L. 89–492; 80 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on December 12, 1990.

**Michael B. Brownlee,**

*Acting Associate Administrator for Enforcement.*

[FR Doc. 90–29716 Filed 12–18–90; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

December 12, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Office of Thrift Supervision

*OMB Number:* 1550–0004.

*Form Number:* 248.

*Type of Review:* Extension.

*Title:* Annual Report of Savings Association Insurance Fund (SAIF)-Insured Institutions: Special Section L—Deposit Balances by Office.

*Description:* Provides only data by institutional office essential for analysis of market share of deposits required to evaluate competitive impact of mergers, acquisitions, and branching applications on which the OTS must act. Used by other agencies (FRB, FDIC, OCC, and Justice) for similar purposes.

*Respondents:* Businesses or other for-profit.

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*Estimated Number of Respondents:* 2,400.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 2,400 hours.
*Clearance Officer:* John Turner, (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd floor, Washington, DC 20552.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*

[FR Doc. 90-29614 Filed 12-18-90; 8:45 am]
BILLING CODE 4810-25-M

## Public Information Collection Requirements Submitted to OMB for Review

December 12, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Bureau of Alcohol, Tobacco and Firearms

*OMB Number:* 1512-0504.
*Form Number:* ATF F 5000.28.
*Type of Review:* Extension.
*Title:* Floor Stocks Tax Return (90F-269P) Recordkeeping and Reporting Requirements.
*Description:* The Omnibus Budget Reconciliation Act of 1990 raises the excise tax on alcoholic beverages, tobacco products, and perfume containing ethyl alcohol. The Act also imposes a floor stocks tax affecting wholesale and retail dealers in these commodities as well as proprietors of producing/warehouse facilities. ATF F 5000.28 and these regulations implement the law and are necessary to protect the revenue.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 500,000
*Estimated Burden Hours Per Respondent/Recordkeeper:* 5 hrs., 18 mins.
*Frequency of Response:* Taken Jan. 91 and Jan. 93 (Cigarettes).
*Estimated Total Recordkeeping/Reporting Burden:* 2,650,000 hours.
*Clearance Officer:* Robert Masaraky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*

[FR Doc. 90-29615 Filed 12-18-90; 8:45 am]
BILLING CODE 4810-31-M

[No. 150-02]

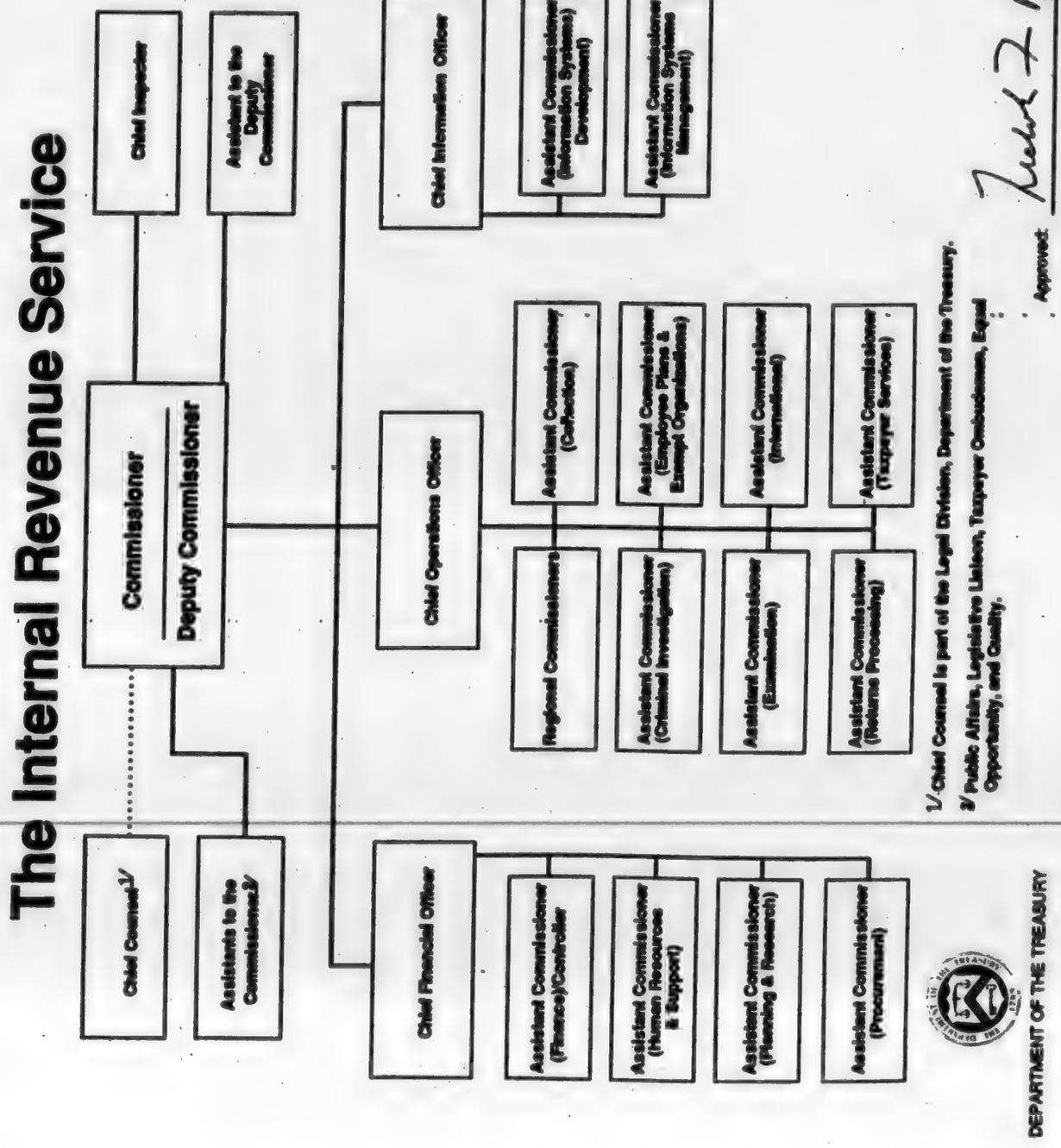
## Establishment of Certain Offices in the National Office of the Internal Revenue Service

December 10, 1990.

1. By the authority vested in me as Secretary of the Treasury by 31 U.S.C. 321(b); sections 7801(a), 7802 and 7803 of the Internal Revenue Code of 1986; and Reorganization Plan No. 1 of 1952, pursuant to section 7804(a) of the Internal Revenue Code, all offices in the National Office of the Internal Revenue Service (IRS) continue uninterrupted, except as follows:
a. The Senior Deputy Commissioner is retitled Deputy Commissioner;
b. The Deputy Commissioner (Operations) is retitled Chief Operations Officer;
c. The Deputy Commissioner (Planning and Resources)/Chief Financial Officer is retitled Chief Financial Officer; and
d. The two Assistant Chief Information officers are retitled Assistant Commissioner (Information Systems Development) and Assistant Commissioner (Information Systems Management), respectively.
2. Except for the specific poisitions and titles in paragraphs 1. through 8. of this Order, the Commissioner may create, abolish, or modify offices and positions within the Internal Revenue Service as may be necessary to effectively and efficiently administer the tax laws or other responsibilities assigned to the Internal Revenue Service. The authority of the Commissioner to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations.
3. *Office of Commissioner of Internal Revenue.* The Office of the Commissioner shall consist of the Commissioner, Deputy Commissioner, Chief Operations Officer, Chief Financial Officer, Chief Information Officer, Chief Inspector, and Assistants to the Commissioner and Deputy Commissioner.
4. *Deputy Commissioner.* The Deputy Commissioner is the highest career official in the Service and has line authority over all IRS officials and operations, except the Chief Inspector. The Deputy Commissioner is responsible for the following activities.
a. Assists and acts for the Commissioner in planning, directing, coordinating and controlling the policies, programs and other activities of the Internal Revenue Service.
b. Assists the Commissioner in establishing tax administration policy and developing strategic issues and objectives as a basis for strategic management of the Service.
c. Supervises the Chief Financial Officer, Chief Operations Officer, Chief Information Officer, and Assistants to the Commissioner and Deputy Commissioner.
5. *Chief Operations Officer.* The Chief Operations Officer is the principal advisor to the Commissioner and Deputy Commissioner on policy and operational matters affecting field functions. The Chief Operations Officer is responsible for the following activities.
a. Serves as national spokesperson for the field operations functions, which include:
(1) Assisting taxpayers in complying with the tax laws;
(2) Processing tax returns and information documents;
(3) Accounting for revenue collected by the Service;
(4) Collecting delinquent accounts;
(5) Investigating delinquent taxpayers;
(6) Investigating criminal tax fraud;
(7) Examining tax returns;
(8) Approving and examining employee plans and exempt organizations;
(9) Tax treaty administration; and
(10) Foreign tax administration assistance and disclosure.
b. Supervises the Regional Commissioners and the following Assistant Commissioners: Collection, Criminal Investigation, Employee Plans and Exempt Organizations, Examination, International, Returns Processing, and Taxpayer Services.
c. As designated by the Commissioner or Deputy Commissioner, represents the Service to other executive branch agencies, the Congress, other tax authorities and the public on field operations and major cross-functional issues.
6. *Chief Financial Officer.* The Chief Financial Officer is the principal advisor to the Commissioner and Deputy Commissioner on Servicewide planning and the management of human and financial resources. The Chief Financial Officer is responsible for the following activities.
a. Serves as national spokesperson for the planning and management of resources functions, which include:
(1) Administering the Strategic Management System;
(2) Conducting research;
(3) Formulating budgets and controlling their execution;
(4) Adminstering human resource policies, facilities and logistical support; and
(5) Contracting.
b. Serves as the Service's Chief Financial Officer, and in that capacity establishes practices, procedures, standards, and controls for the Service's financial systems.
c. Supervises the following Assistant Commissioners: Finance/Controller, Planning and Research, Procurement, and Human Resources and Support.
d. As designated by the Commissioner or Deputy Commissioner, represents the Service to other executive branch agencies, the Congress, other tax authorities, and the public on Servicewide planning, management of resources, and major cross-functional issues.
7. *Chief Information Officer.* The Chief Information Officer is the principal advisor to the Commissioner and Deputy Commissioner on Servicewide information resources and technology management. The Chief Information Officer is responsible for the following activities.
a. Serves as the Service's main spokesperson on the planning and management of information resources, including:
(1) Strategic technology planning;
(2) Data administration;
(3) Technology standards; and
(4) Telecommunications.
b. Establishes policies and standards affecting these functions and the development and acquisition of computer hardware and software.
c. Provides the focus for technology management within the Service and plays an essential role in shaping technology goals and programs and fostering a shared commitment to them.
d. Supervises the Assistant Commissioner (Information System Development) and the Assistant Commissioner (Information Systems Management).
e. As designated by the Commissioner or Deputy Commissioner, represents the Service to other executive branch agencies, the Congress, other tax authorities, and the public on Servicewide information resources and technology management and major cross-functional issues.
8. *Chief inspector.* The Chief Inspector shall, to ensure objectivity and integrity, report directly to the Commissioner.
9. The above changes shall be implemented at a date determined by the Commissioner of Internal Revenue. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this Order.
10. *Chief counsel.* The Office of Chief Counsel is an office within the Department of the Treasury Legal Division. The Chief Counsel, pursuant to delegated authority from the General Counsel, is authorized to take necessary action on all personnel and administrative matters pertaining to the Office of Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or Performance Management Recognition System employees in the Offices of Associate Chief Counsels (International) and (Technical) whose primary duties do not involve litigation, and the Office of the National Director of Appeals, shall be approved by the Commissioner of Internal Revenue prior to implementation.
a. The National Director of Appeals is supervised by the Chief Counsel. The Commissioner of Internal Revenue exercises line supervision over the Chief Counsel for this function.
b. The Commissioner of Internal Revenue will exercise the Service's final authority concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.
11. *Cancellation.* This Order supersedes Treasury Order 150-02, "Establishment of Certain Offices in the National Office of the International Revenue Service," dated September 28, 1990.

**Nicholas F. Brady,**
*Secretary of the Treasury.*

BILLING CODE 4830-01-M




Approved: Richard Z. Hurley

DEC 10 1990

TO 150-02
12-10-90

Attachment

[FR Doc. 29016 Filed 12-18-90; 8:45 am]
BILLING CODE 4830-01-C

## Office of Thrift Supervision

### Andrews Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Andrews Savings and Loan Association, F.A., Andrews, Texas, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29601 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Central Federal Savings Bank, Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Central Federal Savings Bank, Long Beach, New York on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29602 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings Association of Raleigh, Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Raleigh, Raleigh, North Carolina, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29603 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Texarkana Federal Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Texarkana Federal Savings and Loan Association, F.A., Texarkana, Arkansas, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29604 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Andrews Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Andrews Savings and Loan Association, Andrews, Texas, Docket No. 6315, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29605 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Central Federal Savings, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Central Federal Savings, F.S.B., Long Beach, New York OTS No. 4153, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29606 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Commonwealth Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Commonwealth Savings and Loan Association, Osceola, Arkansas with the Resolution Trust Corporation as sole Receiver for the Association on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Executive Secretary.*

[FR Doc. 90-29598 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Deposit Trust Federal Savings Bank, et al.; Replacement of Conservator with a Receiver

Notice is hereby given that, on December 7, 1990 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

| Name | Location | Docket No. |
|---|---|---|
| 1. Deposit Trust Federal Savings Bank. | Monroe, Louisiana | 6722 |
| 2. First Federal Savings and Loan Association. | Shreveport, Louisiana. | 6025 |
| 3. Security Federal Savings Association. | Texarkana, Texas | 6571 |
| 4. Karnes County Federal Savings and Loan Association. | Karnes City, Texas | 6736 |

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| Name | Location | Docket No. |
|---|---|---|
| 5. Vision Banc Savings Association. | Kingsville, Texas | 7592 |
| 6. Charter Savings Bank, FSB. | Newport Beach, California | 8581 |

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29600 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### First America Savings Bank, F.S.B.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First America Savings Bank, F.S.B., Fort Smith, Arkansas with the Resolution Trust Corporation as sole Receiver for the Association on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29600 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### First Federal Savings and Loan Association of Raleigh; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association, of Raleigh, Raleigh, North Carolina, Docket No. 4426, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29607 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Haven Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Haven Savings and Loan Association, F.A. Winter Haven, Florida with the Resolution Trust Corporation as sole Receiver for the Association on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29597 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Terrebonne Savings and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Terrebonne Savings and Loan Association, F.A., Houma, Louisiana with the Resolution Trust Corporation as sole Receiver for the Association on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29598 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M

### Texarkana Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Texarkana Federal Savings and Loan Association, Texarkana, Arkansas, Docket No. 0137, on December 7, 1990.

Dated: December 13, 1990.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Executive Secretary.*

[FR Doc. 90-29606 Filed 12-18-90; 8:45 am]

BILLING CODE 6720-01-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 244
Wednesday, December 19, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

**MEETING NOTICE**

**TIME AND DATE:** 8:00 a.m., January 7, 1991.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:** 8:00 a.m., Meeting—Board of Regents.

Reconstitution of Board Procedures and Organization—New Business.

**CONTACT PERSON FOR MORE INFORMATION:** Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295-3028.

Dated: December 14, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29619 Filed 12-17-90; 1:55 pm]

BILLING CODE 3810-01-M

**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

Meeting Notice

**TIME AND DATE:** Subcommittee meetings 8:00 a.m., February 11, 1991, Full Board 10:00 a.m., February 11, 1991.

**PLACE:** Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

**STATUS:** Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

**MATTERS TO BE CONSIDERED:**

8:00 a.m., Subcommittee Meetings—

Reports on Planning and Oversight

10:00 a.m., Meeting—Board of Regents

(1) Approval of Minutes—October 29, 1990 and January 1, 1991; (2) Faculty Matters; (3) Report—Admissions; (4) Financial Report; (5) Report—Dean, Military Medicine Education Institute; (6) Report—Oversight and Planning Committees; (7) Report—Deputy Dean, USUHS; (8) Comments—Members, Board of Regents; (9) Comments—Chairman, Board of Regents—New Business

**CONTACT PERSON FOR MORE INFORMATION:** Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295-3028.

Dated: December 14, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29620 Filed 12-17-90; 1:55 pm]

BILLING CODE 3810-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:05 p.m. on Thursday, December 13, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain financial institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(A)(i), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(9)(A)(i), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 14, 1990.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 90-29763 Filed 12-17-90; 11:56 am]

BILLING CODE 6714-01-M

**NATIONAL MEDIATION BOARD**

Meeting

**TIME AND DATE:** 2:00 p.m., Wednesday, January 9, 1991.

**PLACE:** Board Hearing Room, 8th Floor, 1425 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during the month of December, 1990.

2. Other priority matters which may come before the Board which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. William A. Gill, Jr., Executive Director, Tel: (202) 523-5920.

Date of Notice: December 14, 1990.

**William A. Gill, Jr.,**

*Executive Director, National Mediation Board.*

[FR Doc. 90-29763 Filed 12-17-90; 11:19 am]

BILLING CODE 7550-01-M

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# Corrections

Federal Register
Vol. 55, No. 244
Wednesday, December 19, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

**7 CFR Part 433**

**[Amdt. No. 3; Doc. No. 7899S]**

**Dry Bean Crop Insurance Regulations**

*Correction*

In rule document 90-28904 beginning on page 50615 in the issue of Tuesday, December 11, 1990, in the second column, under **EFFECTIVE DATE**, "January 10, 1990" should read "January 10, 1991".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Part 669**

**[Docket No. 900766-0263]**

**RIN 0648-AD47**

**Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S.Virgin Islands**

*Correction*

In rule document 90-25995 beginning on page 46214 in the issue of Friday, November 2, 1990, make the following corrections:

**§ 669.21 [Corrected]**

1. On page 46216, in the second column in the table in § 669.21, the last entry was ommited and, the point, latitude, and longitude should read, "A 18°13.2'N. 65°06.0'W." respectively.

**§ 669.23 [Corrected]**

2. On the same page, in the third column, in § 669.23(b), in the fourth line "ERA" should read "EEZ".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Part 52**

**[Federal Acquisition Circular 84-60]**

**RIN 9000-AD01**

**Federal Acquisition Regulation (FAR); Procurement Integrity**

*Correction*

In rule document 90-21008 beginning on page 36782 in the issue of Thursday, September 6, 1990, make the following correction:

**§ 52.203-6 [Corrected]**

On page 36796, in § 52.203-6, in paragraph (b)(1) of the provision, in the middle column, in the fifth line, "subsection 27(a), (d), or (f)" should read "subsection 27(a), (b), (d), or (f)".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**42 CFR Parts 433, 435, 436, 440, and 447**

**[MB-014-F]**

**RIN 0938-AD16**

**Medicaid Program; Eligibility Groups, Coverage and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA**

*Correction*

In rule document 90-27393 beginning on page 48601 in the issue of Wednesday, November 21, 1990, make the following corrections:

1. On page 48602, in the third column, in the third paragraph, in the fourth line, "30" should read "20".

2. On page 48604, in the third column, in the first line, "SSI" should read "SSP".

3. On page 48606, in the first column, the ninth line should read "42 CFR Part 440".

**§ 433.137 [Corrected]**

4. In the same column, under § 433.137, in paragraph (b)(1), in the fifth line, "of" should read "or".

**§ 436.604 [Corrected]**

5. On page 48610, in § 436.604(c), in the third column, in the last line, "are" should be "is".

**§ 447.53 [Corrected]**

6. On page 48611, in § 447.53(b)(2), in the third column, in the ninth line, after "care" add a comma.

BILLING CODE 1505-01-D

federal register

Wednesday
December 19, 1990

Part II

# Department of Agriculture

**Cooperative State Research Service**

**Special Research Grants Program for Fiscal Year 1991; Solicitation of Applications**

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

## Special Research Grants Program for Fiscal Year 1991; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program for fiscal year 1991.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89-106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101-624 (7 U.S.C. 450i). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below. Proposals may be submitted by State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals. Proposals from scientists at non-United States organizations will not be considered for support.

### Applicable Regulations

Regulations applicable to this program include the following: (a) The Administrative Provisions governing the Special Research Grants Program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988) which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; and (d) New Restrictions on Lobbying, 7 CFR part 3018.

### Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program area, its subareas and guidelines are thus provided as a base from which proposals may be developed:

### Program Area

1.0 *Aquaculture Research*
1.1 *Disease and Parasite Control.*
(1) Infectious and noninfectious diseases.
(2) Parasitic diseases.
1.2 *Integrated Aquatic Animal Health Management.*

*CSRS Contact:* Dr. Meryl Broussard; Telephone: (202) 401-4061

Funds will be awarded to support research seeking solutions to health problems of major aquacultural species. A total of approximately $300,000 will be available for this program area for fiscal year 1991. Please note that section 639 of the FY 91 Appropriations Act (Pub. L. No. 101-506) states:

> None of the funds in this Act shall be available to pay indirect costs on research grants awarded competitively by the Cooperative State Research Service that exceed 14 percent of total direct costs under each award.

Up to $60,000 will be awarded for the support of any one project under this program area. Investigators and co-investigators who have received Special Research Grant awards in the Animal Health or Aquaculture area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

The objective of this research area is to enhance the knowledge and technology base necessary for the continued growth of the domestic aquaculture industry as a form of production agriculture. Emphasis is placed on research leading to improved production efficiency and increased competitiveness of private sector aquaculture in the United States. Because of the limited funds for this program area, only proposals focused on commercially important aquacultural species in the specific subareas of Disease and Parasite Control (1.1) and Integrated Aquatic Animal Health Management (1.2) will be considered.

The specific objective of this research is to develop and/or refine methodologies for reducing losses of major aquacultural species due to infectious and noninfectious diseaes, internal and external parasites, and the effects of the production environment.

### Research Should Be Directed Toward:

1.1 *Disease and Parasite Control.* Basic studies to clarify high-priority infectious and noninfectious diseases and parasites and their interactive effects on aquatic animal health; development of improved methods of detecting disease agents or antibodies in aquatic animals; clarification of disease pathogenesis; determination of methods of disease transmission; development of improved methods of immunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative disease eradication methods so as to limit the use and dependence on biotoxic substances; development of other disease prevention, control and eradication technology; and epidemiology and the evaluation of the economics of disease and disease prevention or control.

1.2 *Integrated Aquatic Animal Health Management.* Interdisciplinary studies aimed at reducing acute and chronic losses related to aquatic animal health in aquacultural production systems through an integrated holistic approach including studies in the following areas; physiological stress related to the quality of the aquatic production system; genetic, environmental and nutritional components of aquatic health management.

Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

### How To Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3400 (50 FR 5498, February 8, 1985), as amended (53 FR 49640, December 8, 1988), may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250-2200, Telephone: (202) 401-5048.

### What To Submit

An original and nine copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS-661, "Grant Application." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS-661 and the other required forms and certifications are contained in the Grant Application Kit.) It should be noted that the November 1990 version of the Grant Application Kit must be used, as previous versions are obsolete.

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) exclusive of required forms, the summary of progress for any prior Animal Health and Aquaculture Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of a proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. Do not Bind. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Special Research Grants Program, 7 CFR part 3400, as amended.

### Where and When To Submit Grant Applications

Each research grant application must be submitted by the date set forth below to:

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, Room 303, Aerospace Center, Washington, DC 20250-2200.

**Please Note:** Hand delivered proposals or those delivered by overnight express service should be brought to: Room 303, Aerospace Center, 901 D Street SW., Washington, DC 20024.

To be considered for funding during fiscal year 1991, proposals must be postmarked by February 25, 1991, for the Aquaculture Research Program area.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

### Special Instructions

On Form CSRS-661 provided in the Grant Application Kit, the Special Research Grants Program should be indicated in Block 7, and "Aquaculture Research 1.0" should be indicated in Block 8.

### Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524-0022.

The award of any grants under the Special Research Grants Program during Fiscal Year 1991 is subject to the availability of funds.

Done at Washington, DC, this 13th day of December 1990.

**Clare I. Harris,**

*Associate Administrator, Cooperative State Research Service.*

[FR Doc. 90-29620 Filed 12-18-90; 8:45 am]

BILLING CODE 3410-22-M

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federal register

Wednesday
December 19, 1990

Part III

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs; Final Rule

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Department of Energy
Department of Health and Human Services
Department of State
Department of Veterans Affairs
ACTION
Environmental Protection Agency
International Development Cooperation Agency
Agency for International Development
National Aeronautics and Space Administration
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
National Science Foundation
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DEPARTMENT OF AGRICULTURE

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1151

National Endowment for the Humanities

45 CFR Part 1170

ACTION

45 CFR Part 1232

## Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

**AGENCIES:** ACTION, Departments of Agriculture, Education, Energy, Health and Human Services, State, and Veterans Affairs; Environmental Protection Agency, International Development Cooperation Agency, National Aeronautics and Space Administration, National Foundation on the Arts and the Humanities, National Endowment for the Arts and National Endowment for the Humanities, National Science Foundation, Nuclear Regulatory Commission, Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This common rule amends the regulations issued by the agencies listed above for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

**EFFECTIVE DATE:** January 18, 1991.

**ADDRESSES:** Copies of this final regulation are available on tape for persons with impaired vision. They may be obtained from the Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530; (202) 724–2222 (voice) or 724–7678 (TDD).

**FOR FURTHER INFORMATION CONTACT:** See individual agencies below.

**SUPPLEMENTARY INFORMATION:** On March 8, 1989 (54 FR 9966), fifteen agencies jointly published a Notice of Proposed Rulemaking (NPRM) that would amend their existing regulations for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. The agencies received several comments from States, architects, interest groups, and individuals. Virtually all commenters supported the governmentwide reference to UFAS for new construction and alterations subject to section 504. As the New York State Office of Advocate for the Disabled put it, the use of UFAS by all the Federal funding agencies "will greatly help to reduce confusion for architects, developers and building officials."

The Federal agencies individually analyzed the comments. On the basis of their analysis, they decided to adopt the common rule. They, therefore, are able to publish it jointly, and are doing so in order to minimize costs and expedite its issuance. The rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations, as indicated in the information provided for the individual agencies below.

### Background

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that:

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

The above listed agencies' existing section 504 regulations for federally assisted programs or activities require that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. Except as otherwise noted in the additional supplementary information, the regulations state that new construction or alteration accomplished in accordance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute, Inc. (ANSI A117.1–1961 (R1971) (ANSI)) meets the requirements of section 504. Three agencies (the Department of Agriculture, the Environmental Protection Agency, and the Small Business Administration) reference the 1980 edition, ANSI A117.1–1980. The revision set forth in this document will reference UFAS in place of the current standard.

On August 7, 1984, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31528 (*see* discussion *infra*)). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies



amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

### Background of Accessibility Standards

The Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157, requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and Housing and Urban Development, and the United States Postal Service) to prescribe the accessibility standards. Section 502(b)(7) of the Rehabilitation Act of 1973, as amended, directed the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines and requirements for these standards. 29 U.S.C. 792(b)(7). The guidelines [1] now in effect are found at 36 CFR part 1190.[2]

In 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (*see* 41 CFR subpart 101–19.6 (GSA) and 24 CFR part 40 (HUD)). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1–1980. ANSI is a private, national organization that publishes recommended standards on a wide variety of subjects. The original ANSI A117.1 was adopted in 1961 and reaffirmed in 1971. The current edition, issued in 1986, is ANSI A117.1–1986. The 1961, 1980, and 1986 ANSI standards are frequently used in private practice and by State and local governments.

The final rule amends the agencies' current section 504 regulations for federally assisted programs or activities to refer to UFAS.

The agencies have determined that they will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Some facilities may be covered by both section 504 and the Architectural Barriers Act. Nothing in this rule relieves recipients whose facilities are covered by the Barriers Act and that Act's implementing regulations from complying with the requirements of UFAS or any other Barriers Act standard or requirements that may be in effect.

### Effect of Amendment

Except as otherwise noted in the additional supplementary information for individual agencies, the agencies' current section 504 rules require that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment does not affect these requirements but merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (*see, e.g.*, UFAS sections 4.1.6(1)(b), 4.1.6.(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," the agencies anticipate that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially" equivalent or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, by 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principle entrance at

[1] The minimum guidelines were established on August 4, 1982 (47 FR 33864), and amended on September 14, 1988 (53 FR 35310), February 3, 1989 (54 FR 5444), and August 23, 1989 (54 FR 34077).

[2] The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is: U.S. ATBCB, Office of Technical Services, 1111 18th Street, NW., Suite 800, Washington, DC 20036. The telephone number is (202) 653-7834 (voice/TDD). This is not a toll free number.



each grade floor level of a building (see ... and does not mention additions ...

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each grade floor level of a building (see UFAS section 4.1.2(8)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principle entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS' requirement that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(9)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The result is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to such a great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations.[3] Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

UFAS contains specific requirements for additions to existing buildings (see UFAS section 4.1.5). The amendment references UFAS for "design, new construction, or alteration of buildings," and does not mention additions specifically. For purposes of section 504, an addition is considered "new construction" or "alteration." Thus, the lack of reference to additions in the rule should not be read to exempt additions from the accessibility requirements.

Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Architectural Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101–19.6.

The revision includes language modifying the effect of UFAS section 4.1.6(1)(g), which provides an exception to UFAS 4.1.6, *Accessible buildings: Alterations*. Section 4.1.6(1)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(1)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

This exception does not apply to a room merely because it contains mechanical equipment. For instance, the exception shall not be read to exempt from the requirements of UFAS a "mechanical room" with a photocopier, control mechanisms and operating equipment for a large heating and air conditioning system, and controls for a security system. Since the room would be frequented by employees, it is not excepted from UFAS. In this case, the control mechanisms, including switches, thermostats, and alarms, used by employees should be on an accessible path and mounted at the proper height.

The revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

Several agencies' section 504 regulations for federally assisted programs are contained in parts entitled "Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance." This document deletes the phrase "or benefiting from" from those titles. The phrase is being deleted pursuant to *Department of Transportation* v. *Paralyzed Veterans of America*, 477 U.S. 597 (1986), which held that air transportation services provided by airlines were not part of the covered program or activity because the airlines were not the intended recipient of the Federal financial assistance to airports, even if the airlines benefited from that assistance. The passage of the Civil Rights Restoration Act of 1987, 20 U.S.C. 1687 note (1988), does not overrule or alter this result. S. Rep. No. 64, 100th Cong., 1st Sess. 29 (1987).

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

The regulation is not a major rule within the meaning of Executive order 12291 of February 17, 1981, and, therefore, a regulatory impact analysis has not been prepared. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

### Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

§ ——

* * * * *

(——) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (Appendix A to 41 CFR Subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[3] This will be the case even if UFAS is revised to be consistent with a 1988 amendment to the ATBCB minimum guidelines to provide minimum guidelines and requirements for accessible leased facilities. On September 14, 1988 (53 FR at 35510), the ATBCB amended its minimum guidelines to establish requirements for standards for buildings leased by the Federal Government. 36 CFR 1190.34 (1989). The requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. These requirements will be incorporated into UFAS and will apply to buildings covered by the Architectural Barriers Act. However, existing buildings, leased by recipients are not covered by the Act unless the buildings are to be altered.



### Adoption of the Common Rule

The agency specific preambles adopting the text of the common rule appear below.

## DEPARTMENT OF AGRICULTURE

### 7 CFR Part 15b

**FOR FURTHER INFORMATION CONTACT:** M. Farook Sait at (202) 447–7327 (voice) and (TDD) or Judy Demont at (202) 382–9200 (voice).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** This final rule is to be published as part of the Joint Rule intended to apply the Uniform Federal Accessibility Standards (USFAS) to the construction and alteration requirements of buildings in Federal assisted programs. This final rule revises the title of the part, and certain sections, to make clear, for reasons set out in the common preamble, that the coverage of the part applies only to recipients of Federal financial assistance extended by the Department of Agriculture, and does not apply to entities which only incidentally benefit from, but do not actually receive, such assistance. This final rule also revises the definition of "historic properties" in section 15b.3(q) in order to conform it to UFAS section 4.1.7(1)(a). Historic properties under the current definition are limited to those listed or eligible for listing in the National Register of Historic Places. The special historic preservation section UFAS applies additionally to buildings and facilities designated as historic under State and local law. The provision should not be interpreted to broaden the categories of buildings that can be designated as national historic properties, or to affect the process that is followed for buildings that are on the National Register. Rather, it is intended to provide some flexibility with respect to those properties that States and localities have designated as historic.

**List of Subjects in 7 CFR Part 15b**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Historic preservation, Loan Programs.

For the reasons set forth in the preamble, 7 CFR Part 15b is amended as follows:

### PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 15b is revised to read as set forth above.

2. The authority citation for part 15b is revised to read as follows:

**Authority:** 29 U.S.C. 794.

3. Sections 15b.2, 15b.11, 15b.16, 15b.20 in two places, 15b.29 and 15b.36 are amended by removing the words "or benefit from" from their texts.

4. Section 15b.3 paragraph (q) is revised to read as follows:

**§ 15b.3 Definitions.**

* * * * *

(q) For purposes of § 15b.18(e), "Historic properties" means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

* * * * *

**§ 15b.9 [Amended]**

5. Section 15b.19, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Clayton Yeutter,**
*Secretary of Agriculture.*

## NUCLEAR REGULATORY COMMISSION

### RIN 3150–AD56

### 10 CFR Part 4

**FOR FURTHER INFORMATION CONTACT:** Edward E. Tucker at (301) 492–7100 (voice) or (800) 638–8282 (TDD).

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0053

**List of Subjects in 10 CFR Part 4**

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal aid programs, Grant programs, Handicapped, Loan programs, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set forth in the preamble, 10 CFR part 4 is amended as follows:

### PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. The authority citation for part 4 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 207, Pub. L. 95–604, 92 Stat. 3033.

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891). Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)). Subpart C also issued under title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101). Subpart E also issued under 29 U.S.C. 794.

**§ 4.128 [Amended]**

2. Section 4.128 is amended by adding the heading *"Design, construction, and alteration."* to the beginning of paragraph (a).

3. Section 4.128, paragraph (b) is revised to read as set forth at the end of the common preamble.

**James M. Taylor,**
*Executive Director for Operations.*

## DEPARTMENT OF ENERGY

### 10 CFR Part 1040

**FOR FURTHER INFORMATION CONTACT:** Tyrone K. Levi at (202) 586–2230 (voice) or 252–9777 (TDD).

**List of Subjects in 10 CFR Part 1040**

Aged, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs.

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Handicapped, Loan programs, Sex discrimination.

For the reasons set forth in the preamble, 10 CFR part 1040 is amended as follows:

## PART 1040—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

1. The authority citation for part 1040 is revised to read as follows:

**Authority:** 20 U.S.C. 1681–1688; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d–4a, 3601–3631, 5891, 6101–6107, 6870, 7101 *et seq.*

**§ 1040.73 [Amended]**

2. Section 1040.73, paragraph (c) is revised to read as set forth at the end of the common preamble.

**John Nettles,**

*Deputy Director of Administration and Human Resource Management.*

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 113

**FOR FURTHER INFORMATION CONTACT:** J. Arnold Feldman at (202) 653–6054 (voice) or 653–6579 (TDD). These are not toll-free numbers.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Small Business Administration currently requires compliance with a particular standard (the 1980 edition of the ANSI). Under this amendment, compliance with a particular standard is no longer mandated. Rather, recipients are encouraged to follow UFAS for new construction and alterations subject to the regulation.

**List of Subjects in 13 CFR Part 113**

Blind, Buildings, Civil rights, Discrimination based on race, color, religion, sex, marital status, age, handicap or national origin, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 13 CFR part 113 is amended as follows:

## PART 113—NONDISCRIMINATION IN FINANCIAL ASSISTANCE PROGRAMS OF SBA—EFFECTUATION OF POLICIES OF FEDERAL GOVERNMENT AND SBA ADMINISTRATOR

1. The authority citation for part 113 is revised to read as follows:

**Authority:** Secs. 5, 308, 72 Stat. 385, 694, as amended; 15 U.S.C. 633, 634, 667, 1691; 20 U.S.C. 1681–1686; 29 U.S.C. 794.

**§ 113.3–3 [Amended]**

2. Section 113.3–3 is amended by adding the heading *"Existing facilities."* at the beginning of paragraph (a).

3. Section 113.3–3 is further amended by adding the heading *"Design, construction, and alteration."* at the beginning of paragraph (b) and by adding a new sentence after the heading to read as follows: "New facilities shall be designed and constructed to be readily accessible to and usable by persons with handicaps."

4. Section 113.3–3, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Susan Engeleiter,**

*Administrator.*

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1251

**FOR FURTHER INFORMATION CONTACT:** Lynda Sampson at (202) 453–2177 (voice) or (202) 453–8132 (TDD).

**List of Subjects in 14 CFR Part 1251**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 14 CFR part 1251 is amended as follows:

## PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

1. The authority citation for part 1251 continues to read as follows:

**Authority:** 29 U.S.C. 794

**§ 1251.302 [Amended]**

2. Section 1251.302, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Richard H. Truly,**

*Administrator.*

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## DEPARTMENT OF STATE

### 22 CFR Part 142

**FOR FURTHER INFORMATION CONTACT:** Paul Coran at (202) 647–9251 (voice or TDD).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of State's existing section 504 requirement for alterations, contained at 22 CFR 142.17(b), mandates compliance with the standards set forth in 41 CFR subpart 101–19.6 (*i.e.*, UFAS). Under this amendment, compliance with UFAS is no longer mandated, but is merely encouraged. This notice also amends paragraph (a), which incorrectly implies that all federally funded construction since 1968 is subject to the Architectural Barriers Act. In fact, only certain federally funded construction triggers Architectural Barriers Act coverage.

**List of Subjects in 22 CFR Part 142**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 22 CFR part 142 is amended as follows:

## PART 142—NONDISCRIMINATING ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 142 is revised to read as set forth above.

2. The authority citation for part 142 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

3. Section 142.17, paragraphs (a) and (b) are revised to read as follows:

**§ 142.17 New construction.**

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed, constructed, and operated in a manner so that the facility or part of the facility is accessible to and usable by persons with handicaps, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that effects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by persons with handicaps.

* * * * * *

3. Section 142.17, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Audrey F. Morton,**

*Deputy Assistant Secretary, Equal Employment Opportunity and Civil Rights*



## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 217

**FOR FURTHER INFORMATION CONTACT:** Sandra Winston at (202) 663–1340 (voice) or 663–1337 (TDD).

**List of Subjects in 22 CFR Part 217**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 22 CFR part 217 is amended as follows:

## PART 217—NONDISCRIMINATING ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 217 is revised to read as set forth above.

2. The authority citation for part 217 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 217.23 [Amended]**

3. Section 217.23, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Jessalyn L. Pendarvis,**

*Director.*

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## DEPARTMENT OF EDUCATION

### 34 CFR Part 104

**FOR FURTHER INFORMATION CONTACT:** Frederick T. Cioffi at (202) 732–1635 (voice) or 708–9300 or (800) 877–8339 (TDD).

**List of Subjects in 34 CFR Part 104**

Blind, Buildings, Civil rights, Education, Educational facilities, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Loan programs, School construction.

For the reasons stated in the preamble, 34 CFR part 104 is amended as follows:

## PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 104 is revised to read as set forth above.

2. The authority citation for part 104 is revised to read as follows:

**Authority:** 20 U.S.C. 1405; 29 U.S.C. 794.

**§ 104.23 [Amended]**

3. Section 104.23(c) is revised to read as set forth at the end of the common preamble.

**Appendix A—[Amended]**

4. In Appendix A to part 104, No. 21, third paragraph beginning "As proposed, § 104.23(c) required compliance", is removed.

**Lauro F. Cavazos,**

*Secretary of Education.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 18

**FOR FURTHER INFORMATION CONTACT:** Tony Jackson at (202) 233–4140 (voice) or 233–3710 (TDD).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs has determined that this regulation is not a "major rule" within the meaning of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers or individual industries, and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the regulation does not impact on small entities.

The Catalog of Federal Domestic Assistance program numbers affected by this regulation are 64.005, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.020, 64.021, 64.121, 64.124, and 64.203. Other financial assistance to which the requirement applies is listed in Appendix A of 38 CFR part 18, subpart D.

**List of Subjects in 38 CFR Part 18**

Administrative practice and procedure, Aged, Authority delegations, Blind, Buildings, Civil rights, Employment, Equal educational opportunity, Equal employment opportunity, Grant programs, Handicapped, Investigations.

38 CFR Part 18, Nondiscrimination in Federally-Assisted Programs of the Department of Veterans Affairs—Effectuation of Title VI of the Civil Rights Act of 1964, is amended as follows:

## PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The heading and authority citation for subpart D are revised to read as follows:

**Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance**

**Authority:** 29 U.S.C. 794; 42 U.S.C. 2000d–1 To 2000d–4, 6101–6107.

**§ 18.423 [Amended]**

2. Section 18.423, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 7

**FOR FURTHER INFORMATION CONTACT:** Nereid Maxey at (202) 382–4567 (voice) or 382–4585 (TDD).

**List of Subjects in 40 CFR Part 7**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs, Sex discrimination.

For the reasons stated in the preamble, 40 CFR part 7 is amended as follows:

## PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

1. The authority citation for part 7 is revised to read as follows:

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**Authority:** 42 U.S.C. 2000d to 2000d–4; 29 U.S.C. 794; 33 U.S.C. 1251 nt.

**§ 7.70 [Amended]**

2. Section 7.70, paragraphs (c) and (d) are removed and paragraph (b) is revised to read as set forth at the end of the common preamble.

**Nathaniel Scurry,**
*Director, Office of Civil Rights.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 84

**FOR FURTHER INFORMATION CONTACT:** Marcella Haynes or Frank Weil at (202) 619–0671 (voice) or 863–0101 (TDD).

**List of Subjects in 45 CFR Part 84**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Health facilities, Hospitals, Loan programs.

For the reasons set forth in the preamble, 45 CFR part 84 is amended as follows:

### PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 84 is revised to read as set forth above.

2. The authority citation for part 84 is revised to read as follows:

**Authority:** 20 U.S.C. 1406; 29 U.S.C. 794; 42 U.S.C. 290dd–2; 21 U.S.C. 1174.

**§ 84.23 [Amended]**

3. Section 84.23, paragraph (c) is revised to read as set forth at the end of the common preamble.

Dated: May 4, 1990.

**Louis Sullivan,**
*Secretary.*

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## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 605

**FOR FURTHER INFORMATION CONTACT:** Brenda M. Brush at (202) 357–9619 (voice) or 357–9667 (TDD).

**List of Subjects in 45 CFR Part 605**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 45 CFR part 605 is amended as follows:

### PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

1. The title for part 605 is revised to read as set forth above.

2. The authority citation for part 605 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 605.23 [Amended]**

3. Section 605.23, paragraph (c) is revised to read as set forth at the end of the common preamble.

**Erich Bloch,**
*Director, NSF.*

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## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### 45 CFR Part 1151

**FOR FURTHER INFORMATION CONTACT:** Paula Terry at (202) 682–5532 (voice) or 682–5496 (TDD).

**List of Subjects in 45 CFR Part 1151**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 45 CFR part 1151 is amended as follows:

### PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

1. The authority citation for part 1151 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1151.23 [Amended]**

2. Section 1151.23 is amended by adding the heading *"Design, construction, and alteration."* to the beginning of paragraph (a).

3. Section 1151.23, paragraph (b) is revised to read as set forth at the end of the common preamble.

**John E. Frohnmayer,**
*Chairman, National Endowment for the Arts.*

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### National Endowment for the Humanities

### 45 CFR Part 1170

**FOR FURTHER INFORMATION CONTACT:** Kathy Wolhoe at (202) 786–0322 (voice) or 786–0282 (TDD).

**List of Subjects in 45 CFR Part 1170**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 45 CFR part 1170 is amended as follows:

### PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

1. The authority citation for part 1170 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1170.33 [Amended]**

2. Section 1170.33, paragraph (a) is amended by adding the heading *"Design, construction, and alteration."* to the beginning of the paragraph.

3. Section 1170.33, paragraph (b) is revised to read as set forth at the end of the common preamble.

**Lynne V. Cheney,**
*Chairman.*

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## ACTION

### 45 CFR Part 1232

**FOR FURTHER INFORMATION CONTACT:** Jeanne D. McCamley at (202) 634–9312 (voice) or 708–9300 or (800) 877–8339 (TDD).

**List of Subjects in 45 CFR Part 1232**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Grant programs, Handicapped, Loan programs.

For the reasons set forth in the preamble, 45 CFR part 1232 is amended as follows:

### PART 1232—NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

1. The authority citation for part 1232 is revised to read as follows:

**Authority:** 29 U.S.C. 794.

**§ 1232.15 [Amended]**

2. Section 1232.15, paragraph (a) is amended by adding the heading *"Design, construction, and alteration."* to the beginning of the paragraph.



3. Section 1232.15, paragraph (b) is revised to read as set forth at the end of the common preamble.

**Jane A. Kenny,**
*Director.*

[FR Doc. 90–27544 Filed 12–18–90; 8:45 am]

BILLING CODE 3410–01–M; 7590–01–M; 6460–01–M; 6025–01–M; 7510–01–M; 4710–29–M; 8116–71–M; 4000–01–M; 6320–01–M; 6560–50–M; 4150–04–M; 7555–01–M; 7537–01–M; 7536–01–M; 6050–28–M

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federal register

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Part IV

# Department of Education

34 CFR Parts 231, et al.
Drug-Free Schools and Communities Demonstration Grants Program; Final Regulations and Notices

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 231, 232, 233, 234, 235, 764, 765, 766**

**RIN 1810-AA56**

## Drug-Free Schools and Communities Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations to implement the Emergency Grants Program authorized by the Drug-Free Schools and Communities Act of 1986 (Act), as amended by the Drug-Free Schools and Communities Act Amendments of 1989 (1989 Amendments) (Pub. L. 101-226), and the School Personnel Training Grants Program authorized by the Anti-Drug Abuse Act of 1988 (1988 Amendments) (Pub. L. 100-690), as amended by the 1989 Amendments and the Crime Control Act of 1990 (1990 Amendments) (Pub. L. 101-647). The Secretary also amends and renumbers the regulations governing the Demonstration Grants Program and the Federal Activities Grants Program.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Allen King, U.S. Department of Education, Division of Drug-Free Schools and Communities, 400 Maryland Avenue, SW., Washington, DC 20202-6439, Telephone number: (202) 401-1599.

**SUPPLEMENTARY INFORMATION:**

### Background

The 1989 Amendments authorized a new Emergency Grants Program under section 5138 of the Act to provide additional financial assistance to local educational agencies (LEAs) experiencing a significant drug and alcohol abuse problem. The 1988 Amendments created an additional authority for the training of teachers in part C of the Act. The 1989 Amendments repealed the teacher training authority in section 5131(b) of the Act, and broadened the training authority in part C to include all school personnel. The 1990 Amendments deleted certain coordination requirements and made a change in the types of entities eligible to receive a grant. As amended, part C now authorizes grants to institutions of higher education (IHEs), State educational agencies (SEAs), and LEAs, or consortia thereof, for the training of teachers and other school personnel. "School personnel" is defined in section 5143(b)(10) of the Act as teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians, and other support staff who are employed by a school or who perform services for the school on a contractual basis. These regulations govern the administration of the new Emergency Grants Program and the amended School Personnel Training Grants Program.

These regulations also revise and renumber existing regulations in 34 CFR parts 764, 765, and 766. These parts govern the administration of the Drug-Free Schools and Communities Training and Demonstration Grants to Institutions of Higher Education (part 764 and part 765) and the Federal Activities Grants Program (part 764 and part 766). The revision is necessary because all references to training in part 765 must be deleted, in accordance with the 1989 Amendments. Renumbering is being done because administration of the programs in these parts is related to administration of the Emergency Grants Program and the School Personnel Training Program and, therefore, the four programs can be grouped together with a common General Provisions part.

On August 16, 1990 the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (55 FR 33616). In response to the 1990 Amendments, § 233.30 has been deleted, and § 233.2 has been revised to reflect that only SEAs, LEAs, IHEs, or consortia thereof are eligible to receive a grant under the Drug-Free Schools and Communities School Personnel Training Grants Program. Except for these changes and minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

### Waiver of Proposed Rulemaking

These regulations include amendments to 34 CFR part 233 required by the 1990 Amendments, enacted November 29, 1990, that were not published with the notice of proposed rulemaking.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these amendments merely incorporate statutory changes, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

### Public Comment

In the NPRM, the Secretary invited comments on the proposed regulations. The Secretary did not receive any comments.

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

### Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Parts 231, 232, 233, 234 and 235

Drug abuse, Drug-Free Schools and Communities, Education Department, Elementary and secondary education, Grant Programs—Education, Local educational agencies, Reporting and recordkeeping, State educational agencies.

(Catalog of Federal Domestic Assistance Numbers: 84.233A, Emergency Grants, 84.207A School Personnel Training Grants; 84.184A Demonstration Grants; and 84.184B Federal Activities Grants)



Dated: December 11, 1990.

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary amends title 34 of the Code of Federal Regulations by removing parts 764, 765, and 766, redesignating part 235 as part 236, and by adding parts 231, 232, 233, 234, and 235 as follows:

1. A new part 231 is added to read as follows:

## PART 231—DRUG-FREE SCHOOLS AND COMMUNITIES—GENERAL PROVISIONS

### Subpart A—General

Sec.

231.1 What are the Drug-Free Schools and Communities Programs?
231.2 What types of awards does the Secretary make under these programs?
231.3 What regulations apply to these programs?
231.4 What definitions apply to these programs?

### Subpart B—[Reserved]

### Subpart C—How Does the Secretary Make an Award?

231.20 How does the Secretary evaluate applications?
231.21 How does the Secretary evaluate unsolicited applications?
231.22 What selection criteria does the Secretary use?
231.23 How does the Secretary ensure distribution and diversity of projects?
231.24 May the Secretary restrict the use of funds for a particular purpose?

### Subpart D—What Conditions Must Be Met by a Grantee?

231.30 What must project materials state regarding illicit drug use?

**Authority:** 20 U.S.C. 3216, 3201, 3211, and 3212, unless otherwise noted.

### Subpart A—General

#### § 231.1 What are the Drug-Free Schools and Communities Programs?

The programs described in 34 CFR parts 232, 233, 234, and 235 provide assistance for drug and alcohol abuse education and prevention projects.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

#### § 231.2 What types of awards does the Secretary make under these programs?

The Secretary awards grants and cooperative agreements under these programs.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

#### § 231.3 What regulations apply to these programs?

The following regulations apply to the Drug-Free Schools and Communities Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses).

(b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR Part 98.

(c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

(d) The regulations in 34 CFR parts 231, 232, 233, 234, and 235.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

#### § 231.4 What definitions apply to these programs?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part and 34 CFR parts 232-235 are defined in section 5141 of the Drug-Free Schools and Communities Act:

Drug abuse education and prevention
Consortium (except as used in part 233)
Illicit Drug use
Institution of higher education (IHE)
Nonprofit
School personnel
State

(b) *Definitions in EDGAR.* The following terms used in this Part and in Parts 232-235 are defined in 34 CFR part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Equipment
Facilities
Fiscal Year
Grant
Local educational agency (LEA)
Private
Project
Public
Secretary
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this Part and parts 232-235:

*Act means* the Drug-Free Schools and Communities Act of 1986, as amended.

*High-Risk Youth* means an individual who is under 21 years of age and is at high risk of becoming, or has been a drug or alcohol abuser, and who—

(1) Is a school dropout;

(2) Has experienced repeated failure in school;

(3) Has become pregnant;

(4) Is economically disadvantaged;

(5) Is the child of a drug or alcohol abuser;

(6) Is a victim of physical, sexual, or psychological abuse;

(7) Has committed a violent or delinquent act;

(8) Has experienced mental health problems;

(9) Has attempted suicide;

(10) Has experienced long-term physical pain due to injury; or

(11) Is a juvenile in a detention facility within the State;

*Regional Center* means a Regional Center for Drug-Free Schools and Communities authorized by section 5135 of the Act.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212, 3221)

### Subpart B—[Reserved]

### Subpart C—How Does the Secretary Make an Award?

#### § 231.20 How does the Secretary evaluate applications?

(a) For each competition, the Secretary evaluates an application submitted under these programs on the basis of the selection criteria in § 231.22.

(b) The Secretary awards up to 100 points for these criteria, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 231.22.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

#### § 231.21 How does the Secretary evaluate unsolicited applications?

(a) The Secretary may fund an application that was not solicited under an application notice (referred to in this section as an unsolicited application) if—

(1) The application furthers the purposes and objectives of the program;





§ 231.24 May the Secretary restrict the use of funds for a particular purpose?

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(2) The applicant meets all requirements for funding under the program;

(3) The application rates high enough to deserve selection based on the selection criteria and any other statutory or regulatory requirements that apply to the program; and

(4) Selection of the application will not deplete to an insufficient level the amount of funds available under the regular award process.

(b) The Secretary may refuse to consider an unsolicited application that meets a priority established for that fiscal year.

(c) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the Federal Register.

(d) In evaluating an unsolicited application, the Secretary assigns the 15 points reserved under § 231.20(b) to the selection criterion in § 231.22(a) (Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities) so that the maximum number of possible points for this criterion is 35.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

**§ 231.22 What selection criteria does the Secretary use?**

The Secretary uses the following criteria in evaluating each application:

(a) *Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities.* (20 points) The Secretary reviews each application to determine the extent to which the project will contribute to improving the quality of drug and alcohol abuse education and prevention activities. The Secretary considers—

(1) The appropriateness of the means by which the applicant identified the needs to be addressed by the project and, if appropriate, the extent to which the applicant involved school officials, parents, law enforcement officials, and other community leaders in identifying these needs;

(2) The extent to which the project's objectives apply to these needs and incorporate research findings likely to improve the quality of drug and alcohol abuse education and prevention programs;

(3) The extent to which the project's objectives form the basis of the proposed activities and the extent to which those activities are designed to demonstrate successful techniques for improving the quality of drug and alcohol abuse education and prevention programs;

(4) The extent and magnitude of the benefits likely to be gained by the applicant or by the recipients of services from meeting the project's objectives;

(5) The degree to which the project meets any priorities announced by the Secretary under 34 CFR 232.6, for the Emergency Grants Program; 34 CFR 233.5, for the School Personnel Grants Program; 34 CFR 234.4, for the Demonstration Grants Program; or 34 CFR 235.5, for the Federal Activities Grants Program, whichever is appropriate;

(6) The likelihood that the project will result in a model, or the provision of other information, including evidence of effectiveness, that could be used by others to solve drug and alcohol abuse problems; and

(7) The extent of the applicant's plans for disseminating this model or information to others.

(b) *Relationship to drug prevention programs implemented to comply with the Drug-Free Schools and Campuses regulations.* (10 points) The Secretary reviews each application to determine the extent to which the applicant relates the objectives of the proposed project to developing, implementing, and improving the prevention programs and policies for students adopted and implemented to comply with the requirements of the Drug-Free Schools and Campuses regulations in 34 CFR part 86, § 86.200.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How well the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(4) The extent to which the budget is adequate to support the project;

(5) The extent to which costs are reasonable in relation to the objectives of the project; and

(6) For an applicant proposing training, the extent to which the applicant demonstrates familiarity with available training materials.

(d) *Quality of key personnel.* (10 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (c)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project, as well as other qualifications that relate to the quality of the project.

(e) *Evaluation plan.* (20 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Relates to the objectives for the project referred to under the selection criterion in paragraph (a) of this section. The design and implementation of evaluation activities must be consistent with and appropriate to the stated objectives;

(3) To the extent possible, are objective and produce data that are quantifiable; and

(4) Enhance the potential for effectively disseminating information and replicating the project.

Cross-reference. See 34 CFR 75.590 Evaluation by the grantee.

(f) *Applicant's commitment and capacity.* (10 Points) The Secretary considers the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that will continue the project or similar activities when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1810-0551)

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

**§ 231.23 How does the Secretary ensure distribution and diversity of projects?**

The Secretary may select applications other than those most highly rated for funding if doing so would improve—

(a) The geographic distribution of projects funded;

(b) The diversity of activities or projects funded;

(c) Under part 234, the equitable participation of private and public institutions of higher education, including community and junior colleges; or

(d) Under part 234, the participation of colleges and universities of limited enrollment.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)



**§ 231.24 May the Secretary restrict the use of funds for a particular purpose?**

The Secretary may restrict the amount of funds made available through a grant under these programs that may be used—

(a) To purchase equipment;

(b) To purchase commercially available curricula; or

(c) To pay for inservice or preservice training associated with commercially available curricula.

(Authority: 20 U.S.C. 3216, 3201, 3211, 3212)

**Subpart D—What Conditions Must Be Met by a Grantee?**

**§ 231.30 What must project materials state regarding illicit drug use?**

Any materials produced or distributed with funds made available under the Act must reflect the message that illicit drug use is wrong and harmful.

(Approved by the Office of Management and Budget under control number 1810-0551)

(Authority: 20 U.S.C. 3224)

2. A new part 232 is added to read as follows:

## PART 232—DRUG-FREE SCHOOLS AND COMMUNITIES EMERGENCY GRANTS PROGRAM

Sec.

232.1 What is the Drug-Free Schools and Communities Emergency Grants Program?
232.2 What parties are eligible for a grant under this program?
232.3 What are the minimum and maximum grant awards under this program?
232.4 What must an application include?
232.5 What types of projects may the Secretary assist under this program?
232.6 How does the Secretary establish priorities for this program?
232.7 What regulations apply to this program?
232.8 What definitions apply to this program?

Authority: 20 U.S.C. 3216, unless otherwise noted.

**§ 232.1 What is the Drug-Free Schools and Communities Emergency Grants Program?**

The Drug-Free Schools and Communities Emergency Grants Program provides assistance to eligible local educational agencies that demonstrate significant need for additional assistance for purposes of combating drug and alcohol abuse by students served by those agencies.

(Authority: 20 U.S.C. 3216)

**§ 232.2 What parties are eligible for a grant under this program?**

A local educational agency is eligible to receive a grant if it receives, or is eligible to receive, assistance under Section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2712) and serves an area—

(a) In which there is a large number of high percentage of—

(1) Arrests for, or while under the influence of, drugs or alcohol; or

(2) Convictions of youth for drug-or alcohol-related crimes;

(b) In which there is a large number of high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(c) That has a significant drug and alcohol abuse problem.

(Authority: 20 U.S.C. 3216)

**§ 232.3 What are the minimum and maximum grant awards under this program?**

The minimum grant award is $100,000; the maximum is $1,000,000.

(Authority: 20 U.S.C. 3216)

**§ 232.4 What must an application include?**

In addition to describing the activities and programs to be carried out with funds made available under this part, an application must include, at a minimum—

(a) An assessment of the current drug and alcohol abuse problem in the school or schools on which the project is to focus, including—

(1) The number or percentage of arrests for, or while under the influence of drugs, or alcohol;

(2) The number or percentage of convictions of youths for drug- or alcohol-related crimes;

(3) The number or percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(4) Other data indicating a significant drug and alcohol abuse problem; and

(b) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools.

(Approved by the Office of Management and Budget under control number 1810-0551)

(Authority: 20 U.S.C. 3216)

**§ 232.5 What types of projects may the Secretary assist under this program?**

The Secretary may fund projects that—

(a) Support the development and implementation of comprehensive, community-wide drug and alcohol abuse education and prevention programs that involve school personnel, law enforcement officials, judicial officials, local government officials, the clergy, community leaders, and parents;

(b) Provide technical assistance to schools in the prevention of unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as a part of any school activities;

(c) Present an innovative approach to combating drug and alcohol abuse in the LEA that is consistent with the purposes of the Act; or

(d) Involve parents, teachers, and school administrators in preventing drug and alcohol use by students through such activities as educating those parents, teachers, and school administrators about the causes, symptoms, and effects of alcohol and drug use.

(Authority: 20 U.S.C. 3216)

**§ 232.6 How does the Secretary establish priorities for this program?**

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 232.5. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(Authority: 20 U.S.C. 3216)

**§ 232.7 What regulations apply to this program?**

The following regulations apply to the Drug-Free Schools and Communities Emergency Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 232.

(Authority: 20 U.S.C. 3216)

**§ 232.8 What definitions apply to this program?**

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3216, 3221)

3. A new part 233 is added to read as follows:

## PART 233—DRUG-FREE SCHOOLS AND COMMUNITIES SCHOOL PERSONNEL TRAINING GRANTS PROGRAM

**Subpart A—General**

Sec.

233.1 What is the Drug-Free Schools and Communities School Personnel Training Grants Program?
233.2 What parties are eligible for a grant under this program?
233.3 What must an application include?
233.4 What types of projects may the Secretary assist under this program?
233.5 How does the Secretary establish priorities for this program?
233.6 What regulations apply to this program?
233.7 What definitions apply to this program?

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**Subpart B—[Reserved]**

**Subpart C—[Reserved]**

**Subpart D—[Reserved]**

**Authority:** 20 U.S.C. 3201, unless otherwise noted.

**Subpart A—General**

**§ 233.1 What is the Drug-Free Schools and Communities School Personnel Training Grants Program?**

The Drug-Free Schools and Communities School Personnel Training Grants Program provides assistance to establish, expand, or enhance programs and activities for the training of elementary and secondary school teachers and administrators, and other elementary and secondary school personnel concerning drug and alcohol abuse education and prevention.

(Authority: 20 U.S.C. 3201)

**§ 233.2 What parties are eligible for a grant under this program?**

The Secretary may award grants under this program to SEAs, LEAs, IHEs, or a consortium of these organizations.

(Authority: 20 U.S.C. 3201, 3203)

**§ 233.3 What must an application include?**

Each application must—

(a) Describe the activities and programs to be carried out with funds made available;

(b) Contain an estimate of the cost for the establishment and operation of such programs;

(c) Provide assurances that the Federal funds made available shall be used to supplement and, to the extent practical, increases the level of funds that would, in the absence of such Federal funds, be made available by the applicant for the purpose described in this part, and in no case to supplant such funds; and

(d) Provide assurances of compliance with the provisions of this part.

(Approved by the Office of Management and Budget under control number 1810-0551)

(Authority: 20 U.S.C. 3203)

**§ 233.4 What types of projects may the Secretary assist under this program?**

The Secretary may fund projects that—

(a) Establish, expand, or enhance programs and activities for the training of school personnel (including programs designed exclusively for school personnel other than teachers and administrators), concerning drug and alcohol abuse education and prevention;

(b) Train teachers, administrators, guidance counselors, social workers, psychologists, nurses, librarians and other support staff who work with high-risk youth in the area of drug and alcohol abuse education and prevention.

(c) Train teachers, administrators, guidance counselors, and other school personnel in the implementation of innovative programs for drug and alcohol abuse education and prevention, including programs that focus on the children of alcoholics; or

(d) Train teachers, administrators, guidance counselors, and other school personnel in how to involve the family and community in drug and alcohol abuse prevention, education, and intervention programs, particularly programs that use innovative approaches to help students, who have been suspended or otherwise removed from school because of their alcohol or other drug use, return to school and complete graduation requirements.

(Authority: 20 U.S.C. 3201)

**§ 233.5 How does the Secretary establish priorities for this program?**

(a) The Secretary selects priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(b) The Secretary may select as a priority one or more, or a combination, of the types of projects listed in § 233.4. The Secretary may limit any priority to a particular educational level, type of substance abuse, type of personnel to be trained including teachers, school administrators, or other school personnel, or any combination thereof.

(Authority: 20 U.S.C. 3201)

**§ 233.6 What regulations apply to this program?**

The following regulations apply to the Drug-Free Schools and Communities School Personnel Training Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 233.

(Authority: 20 U.S.C. 3201)

**§ 233.7 What definitions apply to this program?**

(a) The definitions in 34 CFR 231.4 apply to this program.

(b) As used in this part, "consortium" is defined in section 5128(c) of the Drug-Free Schools and Communities Act.

(Authority: 20 U.S.C. 3201, 3221)

**Subpart B—[Reserved]**

**Subpart C—[Reserved]**

**Subpart D—[Reserved]**

4. A new part 234 is added to read as follows:

## PART 234—DRUG-FREE SCHOOLS AND COMMUNITIES DEMONSTRATION GRANTS PROGRAM

Sec.
- 234.1 What is the Drug-Free Schools and Communities Demonstration Grants Programs?
- 234.2 What parties are eligible for a grant under this program?
- 234.3 What types of projects does the Secretary assist under this program?
- 234.4 How does the Secretary establish priorities for this program?
- 234.5 What regulations apply to this program?
- 234.6 What definitions apply to this program?

**Authority:** 20 U.S.C. 3211, unless otherwise noted?

**§ 234.1 What is the Drug-Free Schools and Communities Demonstration Grants Program?**

The Drug-Free Schools and Communities Demonstration Grants Program supports grants to IHEs for model demonstration programs coordinated with local elementary and secondary schools for the development and implementation of quality drug and alcohol abuse education and prevention programs.

(Authority: 20 U.S.C. 3211)

**§ 234.2 What parties are eligible for a grant under this program?**

The Secretary may award grants under this program to IHEs and consortia of IHEs.

(Authority: 20 U.S.C. 3211)

**§ 234.3 What types of projects does the Secretary assist under this program?**

The Secretary may fund projects that—

(a) Demonstrate the effectiveness of drug and alcohol prevention strategies. These demonstration projects would test the theories of prevention, assess techniques to improve program delivery, and modify effective strategies to serve the needs of other populations, such as high-risk youth;

(b) Demonstrate research-based strategies that focus on the specific knowledge, skills, attitudes, and other factors that protect individuals from drug and alcohol use and abuse;

(c) Demonstrate the results of innovative teacher preparatory programs or model certification requirements that enhance drug and alcohol abuse education and prevention teaching practices; or

(d) Utilize research findings in the development and assessment of innovative methods and models for drug and alcohol abuse education and prevention.



(Authority: 20 U.S.C. 3211)

**§ 234.4 How does the Secretary establish priorities for this program?**

(a) In making awards for the types of projects described in § 234.3, the Secretary gives priority to joint projects involving faculty of IHEs, teachers in elementary and secondary schools, and community representatives in the practical application of the findings of educational research and evaluation and the integration of research into drug and alcohol abuse education and prevention programs.

(b) In addition to the priority in paragraph (a), the Secretary may select as a priority one or more of the types of projects listed in § 234.3. The Secretary selects these priorities by taking into consideration unmet national needs for drug and alcohol abuse education and prevention.

(c) The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination thereof.

(Authority: 20 U.S.C. 3211)

**§ 234.5 What regulations apply to this program?**

The following regulations apply to the Drug-Free Schools and Communities Demonstration Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 234.

(Authority: 20 U.S.C. 3211)

**§ 234.6 What definitions apply to this program?**

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3211, 3221)

**PART 235—[REDESIGNATED AS PART 236]**

5. The authority citation for part 235 is revised to read as follows:

**Authority:** 20 U.S.C. 3215, unless otherwise noted.

6. Part 235 is redesignated as part 236.

7. A new part 235 is added to read as follows:

## PART 235—DRUG-FREE SCHOOLS AND COMMUNITIES FEDERAL ACTIVITIES GRANTS PROGRAM

Sec.
- 235.1 What is the Drug-Free Schools and Communities Federal Activities Grants Program?
- 235.2 What parties are eligible for a grant under this program?
- 235.3 What must an application include?
- 235.4 What types of projects may the Secretary assist under this program?
- 235.5 How does the Secretary establish priorities for this program?
- 235.6 What regulations apply to this program?
- 235.7 What definitions apply to this program?

**Authority:** 20 U.S.C. 3212, unless otherwise noted.

**§ 235.1 What is the Drug-Free Schools and Communities Federal Activities Grants Program?**

The Drug-Free Schools and Communities Federal Activities Grants Program supports the development and implementation, dissemination, and evaluation of educational strategies and programs that are designed to prevent the abuse of alcohol and other drugs.

(Authority: 20 U.S.C. 3212)

**§ 235.2 What parties are eligible for a grant under this program?**

The Secretary may award grants under this program to SEAs, LEAs, IHEs, and other nonprofit agencies, organizations, and institutions.

(Authority: 20 U.S.C. 3212)

**§ 235.3 What must an application include?**

Each application must include—

(a) An initial assessment of the current drug and alcohol problem in the school or schools on which the project is to focus, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students; and

(b) Procedures for monitoring throughout the project the drug and alcohol problem in that school or schools, including the number of students who use drugs, the grade level of students who use drugs, and the type of drugs used by the students.

(Approved by the Office of Management and Budget under control number 1810-0551)

(Authority: 20 U.S.C. 3212)

**§ 235.4 What types of projects may the Secretary assist under this program?**

The Secretary may fund projects that—

(a) Develop and implement, disseminate information about, or evaluate comprehensive alcohol and drug abuse education and prevention approaches and programs that meet the needs of elementary and secondary school students;

(b) Develop and implement, disseminate information about, or evaluate community-based alcohol and drug abuse education and prevention approaches and programs, such as educational after-school programs designed for students who are at high risk of becoming drug users;

(c) Develop, implement, or evaluate innovative strategies to communicate age-appropriate anti-drug messages to youths;

(d) Expand and evaluate existing alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements;

(e) Develop materials for dissemination that describe the implementation of successful alternative programs—particularly programs that involve parents, local law enforcement officials, judicial officials, and community leaders—that have proven to be effective in returning to traditional school settings students who have been suspended or removed because of their use of alcohol or other drugs;

(f) Develop, disseminate information about, or evaluate successful alternative programs that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements;

(g) Develop, disseminate information about, or evaluate exemplary programs for special target groups such as children of alcoholics, or for special purposes such as preventing use by students of "gateway drugs" such as tobacco and alcohol; or

(h) Present an innovative approach to combating drug and alcohol abuse that is consistent with the purposes of the Act.

(Authority: 20 U.S.C. 3212)

**§ 235.5 How does the Secretary establish priorities for this program?**

(a) The Secretary selects priorities by taking into account unmet national needs for drug and alcohol abuse education and prevention programs.

(b) The Secretary may select as a priority one or more, or a combination of, the types of projects listed in § 235.4. The Secretary may limit any priority to a particular educational level, type of substance abuse, or any combination of these levels or types.

(Authority: 20 U.S.C. 3212)

**§ 235.6 What regulations apply to this program?**

The following regulations apply to the Drug-Free Schools and Communities Federal Activities Grants Program:

(a) The regulations in 34 CFR part 231.

(b) The regulations in 34 CFR part 235.

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(Authority: 20 U.S.C. 3212)

**§ 235.7 What definitions apply to this program?**

The definitions in 34 CFR 231.4 apply to this program.

(Authority: 20 U.S.C. 3212, 3221)

**PART 764—[REMOVED]**

8. Part 764 is removed.

**PART 765—[REMOVED]**

9. Part 765 is removed.

**PART 766—[REMOVED]**

10. Part 766 is removed.

[FR Doc. 90-29630 Filed 12-18-90; 8:45 am]

BILLING CODE 4000-01-M



## DEPARTMENT OF EDUCATION

[CFDA NO: 84.184A]

### Drug-Free Schools and Communities Demonstration Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

*Purpose of Program:* To award grants to institutions of higher education (IHEs), and consortia of IHEs, for model demonstration programs coordinated with local elementary and secondary schools for the development and implementation of quality drug and alcohol abuse education and prevention programs.

*Deadline for Transmittal of Applications:* March 15, 1991.

*Deadline for Intergovernmental Review:* May 14, 1991.

*Applications Available:* February 4, 1991.

*Available Funds:* $3,200,000.

*Estimated Range of Awards:* $100,000–$500,000.

*Estimated Average Size of Awards:* $320,000.

*Estimated Number of Awards:* 10.

**Note:** The Department if not bound by any estimates in this notice.

*Project Period:* Up to 3 years.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 (published at 55 FR 33580, August 16, 1990); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99; and (d) The regulations for this program in 34 CFR parts 231 and 234 (as published in this issue of the **Federal Register**).

**Absolute Priority**

Under 34 CFR 75.105(c)(3) and 34 CFR 234.4(a), the Secretary gives absolute preference to joint projects involving faculty of IHEs, teachers, in elementary and secondary schools, and community representatives in the practical application of the findings of educational research and evaluation and the integration of research into drug and alcohol abuse education and prevention programs.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet this absolute priority.

**Invitational Priority**

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Projects that demonstrate research-based strategies that focus on the specific knowledge, skills, attitudes, and other factors that protect individuals from drug and alcohol use and abuse.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

**Selection Criteria**

In accordance with 34 CFR 231.20, the Secretary distributes an additional 15 points among the criteria described at 231.22 to bring the total a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

**Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities:** (§ 231.22(a)) Ten (10) additional points will be added for a possible total of 30 points for this criterion; and

**Evaluation plan.** (§ 231.22(e)) Five (5) additional points will be added for a possible total of 25 points for the criterion.

**FOR APPLICATION OR INFORMATION CONTACT:** Seledia Shephard, Drug-Free Schools and Communities Division, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2135, Washington, DC 20202–6430. Telephone (202) 401–3463.

**Authority:** 20 U.S.C. 3211.

Dated: December 12, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90-29631 Filed 12-18-90; 8:45 am]

BILLING CODE 4000-01-M

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[CFDA No. 84.184B]

### Drug-Free Schools and Communities Federal Activities Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

*Purpose:* To award grants to State educational agencies, local educational agencies, institutions of higher education and other nonprofit agencies, organizations and institutions to support drug and alcohol abuse education and prevention activities.

*Deadline for Transmittal of Applications:* March 15, 1991.

*Deadline for Intergovernmental Review:* May 14, 1991.

*Applications Available:* February 4, 1991.

*Available Funds:* $5,000,000.

*Estimated Range of Awards:* $100,000–$400,000.

*Estimated Average Size of Awards:* $250,000.

*Estimated Number of Awards:* 20.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 2 years.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 (published at 55 FR 33580, August 16, 1990); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99; and (d) The regulations for this program in 34 CFR parts 231 and 235 (as published in this issue of the **Federal Register**).

**SUPPLEMENTARY INFORMATION:** Research indicates that a firm and fair school policy pertaining to the use, possession, and distribution of alcohol and other drugs (AOD) contributes to reductions in student alcohol and drug use. While the purpose of these policies is to keep students in school and drug-free, students who violate the policies are often suspended. Schools are responding to this problem by supporting alternative education programs. These programs serve students who have been suspended for violating AOD policies or who have otherwise experienced problems in school because of involvement with alcohol and other drugs. Alternative education programs are conducted both on-campus (in-school suspension, return to the classroom, and participation in support groups, counseling, and community service) and off-campus (combining academic and prevention programs with student and family support and counseling services). Consistent with the National Drug Control Strategy, the Department of Education is interested in projects that will develop, implement, and evaluate new alternative education programs, as well as in projects that evaluate and expand existing successful alternative education programs.

**Invitational Priorities**

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities:

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• Applications for projects to develop, implement and evaluate new programs, or expand and evaluate existing successful alternative programs, that are innovative approaches to help students, particularly those who are residents of public housing, who have been suspended or otherwise removed from school because of their alcohol or other drug use return to school and complete graduation requirements.

• Projects that demonstrate the use of counseling and outreach services in deterring youth, particularly high-risk youth, from using alcohol and other drugs.

• Projects centered at school locations that emphasize prevention and intervention through student assistance programs, professional counseling, and community outreach services, particularly projects that address the needs of urban neighborhoods plagued with a high concentration of drug abuse and trafficking, and projects that focus on prevention and counseling services at the elementary school level.

• Projects that provide technical assistance to SEAs, LEAs, or IEAs in implementing prevention activities targeted to benefit children of alcoholics.

However, under 34 CFR 75.105(c)(1), an application that meets any of these invitational priorities does not receive competitive or absolute preference over other applications.

**Selection Criteria**

In accordance with 34 CFR 231.20, the Secretary distributes an additional 15 points among the criteria described in the regulations at 231.22 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

**Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities:** (§ 231.22(a)) Ten (10) additional points will be added for a possible total of 30 points for this criterion.

**Evaluation plan:** (§ 231.22(e)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Gail Beaumont, Drug-Free Schools and Communities Staff, U.S. Department of Education, 400 Maryland Avenue, SW., room 2135, Washington, DC 20202–6439; Telephone: (202) 401–3463.

**Authority:** 20 U.S.C. 3212.

Dated: December 11, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90–29632 Filed 12–18–90; 8:45 am]

BILLING CODE 4000–01–M

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**[CFDA No: 84.207A]**

## Drug-Free Schools and Communities School Personnel Training Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

*Purpose of Program:* To provide financial assistance to State educational agencies, local educational agencies, institutions of higher education, or a consortia of these organizations, to establish, expand, or enhance programs and activities for the training of elementary and secondary school teachers and administrators, and other elementary and secondary school personnel, concerning drug and alcohol abuse education and prevention.

*Deadline for Transmittal of Applications:* February 22, 1991.

*Deadline for Intergovernmental Review:* April 23, 1991.

*Applications Available:* January 4, 1991.

*Available Funds:* $20,000,000.

*Estimated Range of Awards:* $100,000–$300,000.

*Estimated Average Size of Awards:* $200,000.

*Estimated Number of Awards:* 100.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 2 years.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86 (published at 55 FR 33580, August 16, 1990); and (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99; and (d) The regulations for this program at 34 CFR parts 231 and 233 (as published in this issue of the **Federal Register**).

**Invitational Priorities**

The Secretary is particularly interested in applications that address one or more of the following invitational priorities:

• Training programs for teachers or other school personnel that address the dangers of anabolic steroids and gateway drugs such as tobacco and alcohol products.

• Training programs for teachers, administrators, and other school personnel on how to involve the family and community in drug and alcohol abuse prevention, education, and intervention programs, particularly programs that use innovative approaches to help students who have been suspended or otherwise removed from school because of their alcohol or other drug use to return to school and complete graduation requirements.

However, under 34 CFR 75.105(c)(1), an application that meets any of these invitational priorities does not receive competitive or absolute preference over other applications.

**Weighting for Selection Criteria**

In accordance with 34 CFR 231.20 the Secretary distributes an additional 15 points among the criteria described at 231.22 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

**Concept design and contribution to improving the quality of drug and alcohol abuse education and prevention activities:** (§ 231.22(a)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

**Plan of Operation:** (§ 231.22(c)). Five (5) additional points will be added for a possible total of 20 points for this criterion.

**Evaluation plan:** (§ 231.22(e)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

**FOR APPLICATION OR INFORMATION CONTACT:** Ethel F. Jackson, Division of Drug-Free Schools and Communities, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2135, Washington, DC 20202–6439. Telephone (202) 401–3463.

**Authority:** 20 U.S.C. 3201.

Dated: December 11, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90–29633 Filed 12–18–90; 8:45 am]

BILLING CODE 4000–01–M

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**[CFDA No. 84.233A]**

## Drug-Free Schools and Communities Emergency Grants Program; Inviting Applications for New Awards for Fiscal Year (FY) 1991

*Purpose of Program:* To assist eligible local educational agencies (LEAs) that



demonstrate a significant need for additional funds to combat drug and alcohol abuse by students. To be eligible for an Emergency Grant an LEA must: (1) Be receiving, or eligible to receive, a concentration grant under section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended; and (2) serve an area: (a) In which there is a large number or high percentage of arrests for, or while under the influence of, drugs or alcohol or convictions of youth for drug- or alcohol-related crimes; (b) in which there is a large number or high percentage of referrals of youth to drug and alcohol abuse treatment and rehabilitation programs; and (c) that has a significant drug and alcohol abuse problem.

*Deadline for Transmittal of Applications:* April 5, 1991.

*Deadline for Intergovernmental Review:* June 4, 1991.

*Applications Available:* February 22, 1991.

*Available Funds:* $24,331,000.

*Estimated Range of Awards:* $100,000–$1,000,000.

*Estimated Average Size of Awards:* $500,000.

*Estimated Numbers of Awards:* 50.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 2 years.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86 (published at 55 FR 33580, August 16, 1990); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99; and (d) The regulations for this program in 34 CFR parts 231 and 232 (as published in this issue of the **Federal Register**).

**Invitational Priorities**

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities:

• Applications for projects that support the development and implementation of comprehensive community-wide drug and alcohol abuse education and prevention programs that involve school personnel, law enforcement officials, judicial officials, local government officials, the clergy, community leaders, and parents.

• Applications for projects that present an innovative approach to combating drug and alcohol abuse in the LEA that is consistent with the purposes of the Act.

However, under 34 CFR 75.105(c)(1) an application that meets any of these invitational priorities does not receive competitive or absolute preference over other applications.

**Selection Criteria**

In accordance with 34 CFR 231.20, the Secretary distributes an additional 15 points among the criteria described in the regulations at 231.22 to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

**Relationship to drug prevention programs implemented to comply with the Drug-Free Schools and Campuses regulations:** (§ 231.22(b)) Fifteen (15) additional points will be added for a possible total of 25 points for this criterion.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Ruth Tringo, Drug-Free Schools and Communities Staff, U.S. Department of Education, 400 Maryland Avenue, SW., room 2135, Washington, DC 20202–6439; Telephone: (202) 401–3463.

**Authority:** 20 U.S.C. 3216.

Dated: December 11, 1990.

**John T. MacDonald,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 90–29634 Filed 12–18–90; 8:45 am]

BILLING CODE 4000–01–M

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Part V

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation (FAR); Inspection of Services—Fixed-Price; Proposed Rule



DEPARTMENT OF DEFENSE Acquisition Policy Panel 4041-CS C Paperwork Reduction Act

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 52**

**Federal Acquisition Regulation (FAR); Inspection of Services—Fixed-Price**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) to amend the clause at 52.246–4, Inspection of Services—Fixed-Price. The proposed changes revise the clause by adding a new paragraph (d), which will allow the Government to inspect or test at the contractor's or subcontractor's facility and require the contractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties; and redesignating existing paragraphs (d) and (e) as (e) and (f). The coverage will be useful in contracts for services such as storage, ship repair, and operation and maintenance of Government-owned facilities.

**DATES:** Comments should be submitted to the FAR Secretariat at the address shown below on or before February 19, 1991, to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 90–58 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Office of Federal Acquisition Policy, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 90–58.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The proposed rule is a result of recommendations made by the Defense Management Review Regulatory Relief Task Force after its review of the DoD Federal Acquisition Regulation Supplement (DFARS) and DoD agency, service, and component-level regulations. It reflects language which is being deleted from a component-level clause for more appropriate insertion in the FAR.

The rule incorporates a new paragraph (d) in the clause at 52.246–4, similar to that currently contained in paragraph (d) of the clause at 52.246–2, Inspection of Supplies—Fixed Price. This language allows the Government to inspect or test at the contractor's or subcontractor's facility and requires the contractor or subcontractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. The coverage is considered useful in contracts for services such as storage, ship repair, and operation and maintenance of Government-owned facilities.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the existing language in the clause at 52.246–4 is being clarified to be consistent with coverage in the clause at 52.246–2. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–58) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Part 52**

Government procurement.

Dated: December 10, 1990.

**Albert A Vicchiolla,**

*Director, Office of Federal Acquisition Policy.*

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); U.S.C. Chapter 137; and 42 U.S.C. 2473(C).

2. Section 52.246–4 is amended in the introductory text by inserting a colon following the word "clause" in the first sentence and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(DEC 1990)"; by redesignating existing paragraphs (d) and (e) of the clause as paragraphs (e) and (f) respectively; by adding new paragraph (d); and by removing the derivation line following "(End of clause)" to read as follows:

**52.246–4 Inspection of Services—Fixed-Price.**

* * * * *

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

* * * * *

[FR Doc. 90–29866 Filed 12–18–90; 8:45 am]

**BILLING CODE 6820–34–M**

federal register

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Part VI

# Department of Education

**Institutional Eligibility Under the Higher Education Act of 1965, as Amended (Ability to Benefit); Notice**

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## DEPARTMENT OF EDUCATION

### Institutional Eligibility Under the Higher Education Act of 1965, as Amended (Ability to Benefit)

**AGENCY:** Department of Education.

**ACTION:** Notice of an initial list of approved ability-to-benefit examinations and policies and procedures for approval of additional examinations.

**SUMMARY:** The Secretary provides notice of an initial list of approved ability-to-benefit examinations and policies and procedures for approval of additional ability-to-benefit examinations. The Secretary takes this action to implement the Student Loan Default Prevention Initiative Act of 1990, subtitle A of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted November 5, 1990), which amended section 484(d) of the Higher Education Act of 1965 (HEA). A postsecondary institution may admit as a regular student, in an eligible program (degree or certificate), a student who does not have a high school diploma or its equivalent, but does have the ability to benefit from the education or training offered. In order for a student who is admitted on the basis of ability to benefit from the education or training offered to be eligible for any grant, loan, or work assistance under title IV of the HEA, the amended act requires the student, prior to enrollment, to pass an independently administered examination approved by the Secretary.

**DATES:** This notice applies to periods of enrollment beginning on or after January 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Ann S. Clough or Virginia G. Re, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue SW., (room 3030, ROB–3), Washington, DC 20202–5242. Telephone (202) 708–4906.

**SUPPLEMENTARY INFORMATION:** Section 484(d) of the HEA, as amended, requires students who are admitted to eligible institutions on the basis of their ability to benefit from the education or training offered to have passed independently administered examinations that have been approved by the Secretary of Education in order to be eligible for any grant, loan, or work assistance under title IV of the HEA.

Section 484(d) also affects the eligibility of institutions: all but one of the definitions of eligible institution (an institution of higher education, as defined in section 435(b)) refer to section 484(d) of the HEA. See sections 435(c) (Vocational School), 481(b) (Proprietary Institution of Higher Education), 481(c) (Postsecondary Vocational Institution), and 1201(a) (Institution of Higher Education). To be considered an eligible postsecondary institution, an institution that admits, as regular students in eligible programs, students who do not have a high school diploma or the recognized equivalent may do so only if the students have passed an independently administered test approved by the Secretary of Education.

Generally, an institution may not determine a student's ability to benefit based on the student's prior postsecondary educational experience. However, a student who does not have a high school diploma but who has successfully completed a two-year program that is acceptable for full credit toward a bachelor's degree may be admitted on the basis that he or she has the recognized equivalent of a high school diploma. The Secretary considers that student's academic transcript to be the recognized equivalent of a high school diploma for this purpose. Therefore, these kinds of students do not need to take an ability-to-benefit test.

If an institution does not comply with the statutory requirement with respect to ability-to-benefit students, not only are the individual students ineligible for title IV student financial aid funds but the institution itself, except for an institution of higher education under section 435(b) of the HEA, that participates only in the Guaranteed Student Loan Program, is not eligible to participate in most programs funded under the HEA.

Any expense that a student incurs related to taking an ability-to-benefit test may not be included in the student's cost of attendance.

### Periods of Enrollment

The Secretary interprets the statute to apply to the enrollment of students who begin their periods of enrollment for a program on or after January 1, 1991. Students who were enrolled as regular students at the same institution in the immediately preceding academic period and students who were on official leave of absence from their institution during the previous academic period are not affected by this provision. An enrollment period is considered to have begun on the first official day of the academic period, that is, on the first day of the academic period as published in the institution's catalog.

### Independently Administered

The Secretary considers an examination to be independently administered if it is administered in accordance with the procedures specified by the test publisher and by an individual or organization that has no current or prior fiscal interest in the institution other than an arms-length arrangement to administer the examination, except that the Secretary considers degree-granting institutions that, as of the date of this notice, have in existence established testing or assessment centers that are independent of the admissions process, to be able to independently administer examinations. Without limiting the foregoing, a test administrator, proctor or scorer may not be a current or former employee, consultant or student of the institution, may not be on the board of directors of, an owner of, or have a financial interest in the institution, and may not be a relative of any of the above. With the exception of employees of such testing or assessment centers at degree-granting institutions, the Secretary does not consider an employee of one postsecondary institution to be sufficiently independent to administer tests to prospective students at another postsecondary institution. The Secretary considers that a testing or assessment center that is owned, controlled and/or operated by a current or former owner of an institution, except an established testing or assessment center at a degree-granting institution, cannot independently administer ability-to-benefit examinations to prospective students of the institution within the context of this notice. To insure that a record of an independently administered test is maintained, the institution is advised to keep a record of the test taken, the date of the test and the test scores. It is also recommended that the individual who administers the test and the president or chief executive officer of the institution sign a statement, that may be kept on file at the institution, certifying that the test administrator has no direct or indirect relationship with the institution. The Secretary will develop a form to meet this certification standard.

The Secretary encourages institutions to draw test administrators and proctors from any of the following sources, provided they meet the tests of independence listed above:

- High school guidance counselors.
- Qualified professional educators.
- Staff of regional and area Armed Forces commands who are expert in education/training/human resources development.
- Staff of established offices of testing or assessment that are independent of the admissions process at degree-granting institutions.
- Test and measurement experts.
- Human resource development professionals.

The Secretary also considers public or non-profit centers that offer assessment or testing services and that operate independently of institutions that are eligible to participate in HEA programs to be independent.



### Approved Examinations

The Secretary approves, for an initial list of examinations to use in making ability-to-benefit determinations, until such time as final regulations are issued, nationally standardized examinations of secondary-school-level basic skills and/or general learned abilities that also meet the policies and procedures for the Secretary's approval of an examination. Those policies and procedures are listed at the end of this notice. The Secretary thus initially hereby approves the following for use in determining the ability to benefit:

- ACT Assessment
- Adult Basic Learning Examination (ABLE)—Level 3
- Armed Services Vocational Aptitude Battery (ASVAB)—Forms 8, 9 or 10
- ASSET—Forms B or C
- Career Program Assessment Test (CPAT)—Forms A or B
- Comprehensive Tests of Basic Skills—Level I
- Descriptive Tests of Language Skills (DTLS)
- Descriptive Tests of Mathematical Skills (DTMS)
- Differential Aptitude Test—Forms V or W
- General Education Diploma Tests (GED)
- Nelson-Denny Reading Test—Forms E or F
- Preliminary Scholastic Aptitude Test (PSAT)
- Scholastic Aptitude Test (SAT)
- Tests used by States for assessing the basic skills of entering postsecondary students

A student who has taken one of the tests listed above within the twelve months immediately preceding his or her application for admission may submit an official notification of his or her test score (subject to verification by the institution) to the institution to which he or she is applying for admission, instead of taking another test, provided the test was independently administered in accordance with the discussion above and using test administration procedures prescribed by the test publisher, the student took the test and the results of the test are provided to the institution prior to the student's admission to the institution.

In addition, an institution that provides instruction in English may use the Test of English as a Foreign Language (TOEFL) to determine the ability of a student whose native language is not English to benefit from instruction in English.

### Standards for Passing Scores (Cut-Scores)

The Secretary considers that, for an institution to make a valid ability-to-benefit determination, the institution must use a passing score (cut-score) on the examination, that is, at a minimum, one full Standard Deviation below the mean for that examination. In setting the cut-score on a test that has been normed on different populations, the institution must use the normed distribution for the population most comparable to the population being admitted. The one exception to this is the TOEFL, for which the cut-score must be at least 450.

### Guidelines for Selecting Examinations From the Secretary's List of Examinations Approved for Testing Ability-to-Benefit Students

Institutions may use more than one examination on the Secretary's list in identifying students who have the ability to benefit from the education or training offered by the institution. The skills and abilities assessed by all of the examinations listed above assume secondary-school-level education or, in the case of the TOEFL, functional literacy for non-native speakers of English. Institutions are encouraged to consider the following in selecting examinations:

1. Whether the skills and abilities assessed are among those considered important for successful completion of a student's proposed program of study.
2. Whether the overall level of difficulty of the examination is appropriate to the population of prospective students being assessed.
3. Students whose native language is not English should be allowed to take an examination on the Secretary's list that is offered in their native language or the TOEFL that measures the abilities of non-English speakers. This examination should be appropriate for students who would be receiving supplementary instruction in English as a second language.
4. Students with physical handicaps should be provided with appropriate assistance in test-taking in accordance with guidelines developed jointly by the American Educational Research Association, the American Psychological Association and the National Council of Measurement in Education.

### Policies and Procedures for the Secretary's Initial Approval Additional Examinations

The Secretary hereby invites test publishers to submit examinations for review. In evaluating for approval examinations submitted in response to this notice, the Secretary looks favorably upon examinations that–

1. Meet the primary standards developed jointly by the American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council of Measurement in Education (NCME), as promulgated in Standards for Educational and Psychological Testing (1985) and that are germane to the testing of ability-to-benefit students as defined by section 484(d) of the HEA;
2. The test publishers have established the validity for use in accessing ability-to-benefit students seeking admission to postsecondary institutions;
3. The test publishers have provided evidence that the examinations are reliable enough to permit consistent judgments of individual ability, skill and/or knowledge;
4. The test publishers have provided norms indicating levels of ability that are equal to those needed to complete successfully postsecondary educational or occupational training programs; and
5. The samples used by the test publishers in test validation and norming were of adequate size and sufficiently representative of the post-compulsory school-age population in the United States to support conclusions regarding the use of the examinations in selecting ability-to-benefit students seeking admission to postsecondary institutions.

### Request for Review of Tests

Test developers and publishers who wish to have their examinations approved by the Secretary should submit, by March 31, 1991, the following documents to the Director, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue (room 3030, ROB–3), SW., Washington, DC 20202–5242.

- Copy of the test
- Test documentation
- Technical manual that contains recommended procedures for security, administration, and scoring of the test
- History of use of the test

Notice of any additional tests that may be approved by the Secretary will be published in the Federal Register.



**Paperwork Reduction Act of 1980**

public reporting for the collection of

Information and Regulatory Affairs

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**Paperwork Reduction Act of 1980**

This notice contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

This notice affects postsecondary institutions and students admitted to postsecondary institutions on the basis of their ability to benefit from the education or training offered. Annual public reporting for the collection of information is estimated to average 7 minutes per response for 2100 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

(Approved by the Office of Management and Budget under Control number 1840-0627.)

**Authority:** 20 U.S.C. 1091(d).

Dated: December 17, 1990.

**Ted Sanders,**

*Acting Secretary of Education.*

[FR Doc. 90-29844 Filed 12-18-90; 8:45 am]

BILLING CODE 4000-01-M

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Wednesday
December 19, 1991

Part VII

## The President

Executive Order 12739—Half-Day Closing of Government Departments and Agencies on Monday, December 24, 1990

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Federal Register
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# Presidential Documents

Title 3—

The President

## Executive Order 12739 of December 17, 1990

## Half-Day Closing of Government Departments and Agencies on Monday, December 24, 1990

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered:

**Section 1.** All executive departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Christmas Eve, December 24, 1990, except as provided in Section 2 below.

**Sec. 2.** The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must remain on duty for the full scheduled workday on December 24, 1990, for reasons of national security or defense or for other essential public reasons.

**Sec. 3.** Monday, December 24, 1990, shall be considered as falling within the scope of Executive Order No. 11582 and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

**Sec. 4.** This order shall apply to Federal departments and agencies only and is not intended to direct or otherwise implicate departments or agencies of State or local governments.

George Bush

THE WHITE HOUSE,
*December 17, 1990.*

[FR Doc. 90-29894
Filed 12-18-90; 11:10 am]
Billing code 3195-01-M

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# Reader Aids

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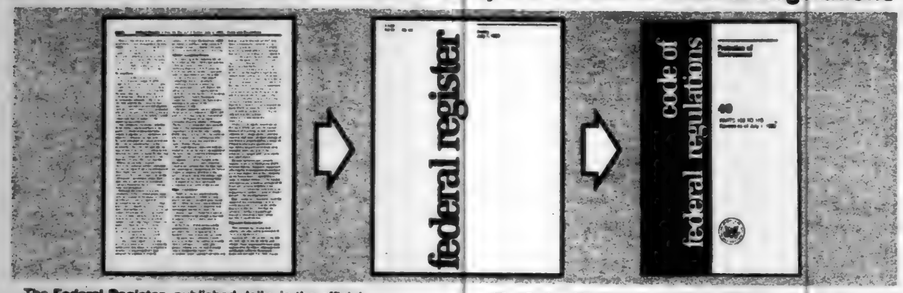


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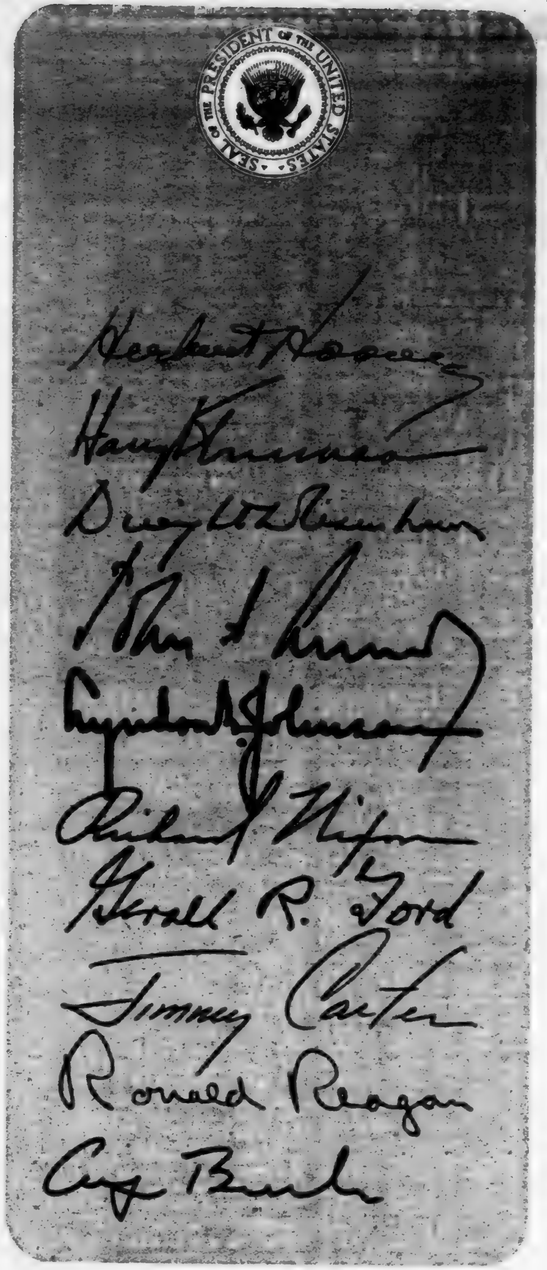
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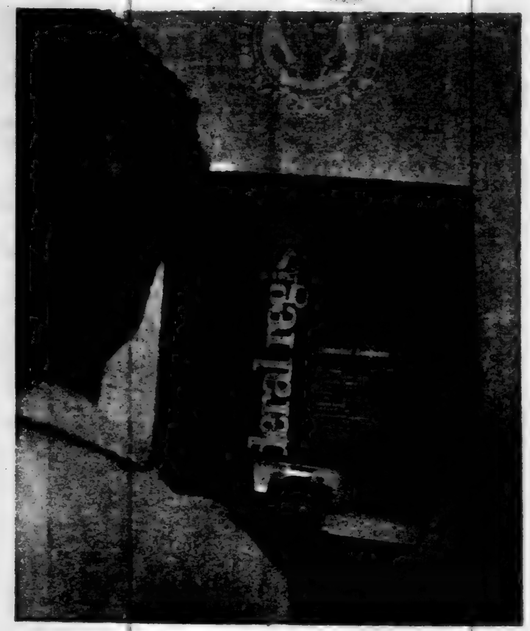
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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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# Rules and Regulations

Federal Register
Vol. 55, No. 245
Thursday, December 20, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

[Docket No. 90-228]

### Tuberculosis in Cattle and Bison; State Designation; Idaho

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Idaho from a modified accredited State to an accredited-free State.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the **Federal Register** and effective September 25, 1990 [55 FR 39134-39135, Docket Number 90-173], we amended the tuberculosis regulations contained in 9 CFR part 77 by removing Idaho from the list of modified accredited States and adding it to the list of accredited-free States.

Comments on the interim rule were required to be received on or before November 26, 1990. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Idaho may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

#### PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 77.1 that was published at 55 FR 39134-39135 on September 25, 1990.

**Authority:** 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 14th day of December 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-29737 Filed 12-19-90; 8:45 am]

BILLING CODE 3410-34-M

### 9 CFR Part 77

[Docket No. 90-227]

### Tuberculosis in Cattle and Bison; State Designation; Ohio

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of Ohio from a modified accredited State to an accredited-free State.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the **Federal Register** and effective September 25, 1990 [55 FR 38534-38535, Docket Number 90-181], we amended the tuberculosis regulations contained in 9 CFR part 77 by removing Ohio from the list of modified accredited States and adding it to the list of accredited-free States.

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Comments on the interim rule were required to be received on or before November 28, 1990. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Ohio may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**List of Subjects in 9 CFR Part 77**

Animals diseases, Bison, Cattle, Transportation, Tuberculosis.

**PART 77—TUBERCULOSIS**

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 77.1 that was published at 55 FR 38534–38535 on September 25, 1990.

**Authority:** 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 14th day of December 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90–29736 Filed 12–19–90; 8:45 am]

BILLING CODE 3410–34–M

## DELAWARE RIVER BASIN COMMISSION

**18 CFR Part 401**

**Amendments to Administrative Manual; Rules of Practice and Procedure**

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** At its December 12, 1990 business meeting the Delaware River Basin Commission amended its Administrative Manual, Rules of Practice and Procedure, in relation to Commission review of landfill projects. The amendments codify the policy originally adopted by the Commission on June 25, 1969 in Resolution No. 69–7 that landfill projects containing organic or liquid wastes that might have a substantial effect on water resources of the Basin would be referred to the Commission for review only in those cases where no state-level review and permit system is in effect; where broad regional consequences are anticipated; or where the standards or criteria used in state-level review are not adequate to protect the waters of the Basin for the purposes prescribed in the Comprehensive Plan.

**EFFECTIVE DATE:** December 12, 1990.

**ADDRESSES:** Copies of the Commission's Administrative Manual—Rules of Practice and Procedure, are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

**SUPPLEMENTARY INFORMATION:** The Commission held a public hearing on these amendments on December 12, 1990 as noticed in the October 18, 1990 and December 5, 1990 issues of the **Federal Register** (55 FR 42206 and 55 FR 50206). Based upon testimony received and further deliberation, the Commission has amended its Administrative Manual, Rules of Practice and Procedure, and reaffirmed the policies established in Resolution No. 69–7 concerning the review of sanitary landfill projects by the Commission.

**List of Subjects in 18 CFR Part 401**

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

The Commission's Administrative Manual, 18 CFR subpart C, part 401, Rules of Practice and Procedure, is amended as follows:

**PART 401—[AMENDED]**

1. The authority citation for part 401 continues to read as follows:

**Authority:** Delaware River Basin Compact (75 Stat. 688).

**§ 401.35 [Amended]**

2. Section 401.35(a)(15) is redesignated as § 401.35(a)(16).

3. New § 401.35(a)(15) is added to read as follows:

(a) * * *

(15) Landfill projects which may contain organic or liquid wastes that have a substantial effect on water resources of the Basin, unless, no state-level review and permit system is in effect; broad regional consequences are anticipated; or the standards or criteria used in state-level review are not adequate to protect the waters of the Basin for the purposes prescribed in the Comprehensive Plan.

* * * * *

4. Section 401.35(b)(15) is redesignated as § 401.35(b)(16).

5. New § 401.35(b)(15) is added to read as follows:

* * * * *

(b) * * *

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin.

* * * * *

Dated: December 14, 1990.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 90–29782 Filed 12–19–90; 8:45 am]

BILLING CODE 6360–01–M



## DEPARTMENT OF DEFENSE

**Office of the Secretary**

**32 CFR Part 360**

**[DoD Directive 5105.40]**

**Organization Functions and Authority Delegations; Defense Mapping Agency**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This revision of 32 CFR part 360 updates the responsibilities, functions, relationships, and authorities of the Director, Defense Mapping Agency (DMA), a Combat Support Agency of the Department of Defense with the mission of providing mapping, charting, and geodesy support to the Department of Defense and other Federal Departments and Agencies. It also replaces the Director, DMA under the direction, authority, and control of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence.

**EFFECTIVE DATE:** December 6, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of the Director, Organizational and Management Planning, The Pentagon, Washington, DC 20301, telephone (703) 695–4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 360**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 360 is revised to read as follows:

**PART 360—DEFENSE MAPPING AGENCY (DMA)**

Sec.

360.1 Purpose
360.2 Mission.
360.3 Organization and management
360.4 Responsibilities and functions
360.5 Relationships
360.6 Authority
360.7 Administration

**Appendix to Part 360—Delegations of Authority.**

**Authority:** 10 U S C 191–193

**§ 360.1 Purpose.**

Under the authority vested in the Secretary of Defense by title 10, United States Code, this part updates the responsibilities, functions, relationships, and authorities of the Defense Mapping Agency (DMA).

**§ 360.2 Mission.**

The DMA shall provide support to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; and the Defense Agencies (hereafter referred to collectively as "DoD Components") and other Federal Government Departments and Agencies on matters concerning mapping, charting, and geodesy (MC&G).

**§ 360.3 Organization and management.**

The DMA is established as a Combat Support Agency of the Department of Defense and shall be under the direction, authority, and control of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

**§ 360.4 Responsibilities and functions.**

The Director, Defense Mapping Agency (DMA), shall:

(a) Organize, direct, and manage the DMA and all assigned resources.

(b) Ensure responsive MC&G support to DoD Components.

(c) Serve as Program Manager and coordinator of DoD MC&G resources and activities, to include reviewing the execution of DoD plans, programs, and policies for MC&G activities not assigned to the DMA.

(d) Provide staff advice and assistance on MC&G matters to all DoD Components and other Federal Government Agencies, as appropriate.

(e) Develop MC&G guidance for the Department of Defense, review DoD Component programs and fiscal documents related to MC&G matters, and recommend appropriate actions to the ASD(C3I).

(f) In support of the CJCS, review and validate the MC&G requirements and priorities of the DoD Components and other Federal Government Agencies, and develop and submit to the ASD(C3I) a consolidated statement of MC&G production requirements and priorities in accordance with the National Military Strategy Document [1]

(g) Prepare, coordinate and issue standards for MC&G products in accordance with DoD 4120.3–M,[2] and represent the Department of Defense in national and international MC&G standardization activities.

(h) Develop policies and provide DoD participation in national and international MC&G activities, in coordination with appropriate DoD officials, and execute DoD responsibilities under interagency and international MC&G agreements.

(i) Establish and/or consolidate DoD MC&G data collection requirements and collect or task other DoD Components to collect and provide necessary data.

(j) Develop a DoD MC&G research, development, test, and evaluate (RDT&E) requirements plan, in coordination with appropriate DoD officials, and, as appropriate, task DoD Components or private contractors to satisfy the requirements.

(k) Carry out the statutory responsibilities assigned to the Department of Defense under chapter 167 of 10 U.S.C. for providing nautical charts and marine navigation data for the use of all vessels of the United States and of navigators generally, and the responsibilities assigned under chapter 13 of 44 U.S.C. for printing notices to mariners and other publications.

(l) Establish and maintain a Joint Manpower Program that will be reviewed annually by the CJCS under JCS MOP 173 [3].

(m) Provide technical guidance to all DoD components to ensure standardization and interoperability of systems requiring MC&G support.

(n) Advise the Defense Acquisition Board on MC&G issues, as appropriate, through the ASD(C3I).

(o) Serve as the primary DoD action office for all purchases of Land Remote Sensing Satellite (LANDSAT) and Systems Probatoire d'Observation de la Terra (SPOT) remote sensing data by the Military Departments and Defense Agencies

(p) Assist in unique MC&G product definition and development.

(q) Perform such other functions as may be assigned by the ASD(C3I).

**§ 360.5 Relationships.**

(a) In performing assigned functions, the Director, DMA, shall:

(1) Subject to the direction, authority, and control of the ASD(C3I), be

[1] Copies may be obtained, from the office of the Joint Secretariat, Joint Staff room 2E929, The Pentagon, Washington, DC 20318.

[2] Copies may be obtained, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161

[3] See footnote 1 to § 360.4(f)

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responsible to the CJCS for operational matters as well as requirements associated with the joint planning process. For these purposes, the CJCS is authorized to communicate directly with the Director, DMA, and may task the Director, DMA, to the extent authorized by the ASD(C3I).

(2) Maintain appropriate liaison with other DoD Components and other Agencies of the Executive branch for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Make use of established facilities and services in the Department of Defense or other governmental agencies, whenever practicable, to achieve maximum efficiency and economy.

(4) Ensure that the Secretary of Defense, the Secretaries of the Military Departments, the CJCS, and the heads of other DoD Components are kept fully informed concerning DMA activities with which they have substantive concern.

(b) The Secretaries of the Military Departments, Commanders of Unified and Specified Commands, and Heads of Other DoD Components shall:

(1) Use DMA standard products unless an exception is authorized by the ASD(C3I).

(2) Develop and submit to the DMA their MC&G requirements and priorities in accordance with the National Military Strategy Document.

(3) Provide support, within their respective fields of responsibilities, to the Director, DMA, as required, to carry out the responsibilities and functions assigned to the DMA.

(4) Assess the responsiveness of the DMA to their operational, developmental, and training needs.

(5) Obtain DMA technical assistance for systems that require MC&G products and services.

(6) Submit all requirements and provide funding to the DMA for LANDSAT and SPOT remote sensing data.

(7) Submit all requirements and provide funding to the DMA for unique MC&G products.

(8) Coordinate with the Director, DMA, on all programs and activities that include or are related to MC&G.

(c) The Chairman, Joint Chiefs of Staff (CJCS), shall:

(1) Review DMA planning and programming documents, and assess their responsiveness to operational, developmental, and training requirements.

(2) Periodically (not less than every 2 years), submit to the Secretary of Defense a report on DMA's responsiveness and readiness to support operating forces in the event of war or threat to national security, and other recommendations as appropriate.

(3) Advise the Secretary of Defense on MC&G requirements and priorities.

(4) Develop and issue jointly with the ASD(C3I) guidance to the DMA and the Unified and Specified Commands that will serve as the basis for interrelationships between these organizations.

(5) Provide for the participation of the DMA in joint training exercises and monitor performance.

**§ 360.6 Authority.**

The Director, DMA, is specifically delegated authority to:

(a) Task and issue necessary instructions and guidance to DoD Components directly to accomplish the MC&G RDT&E and data collection requirements established by the DMA.

(b) Communicate directly with heads of DoD Components and other Executive Departments and Agencies, as necessary, in carrying out assigned responsibilities and functions. Communications to the Commanders in Chief of the Unified and Specified Commands shall be coordinated with the CJCS.

(c) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5 [4], as necessary, in carrying out assigned responsibilities and functions.

(d) Establish facilities necessary to accomplish the DMA mission in the most efficient and economical manner.

(e) Exercise the administrative authorities contained in the Appendix to this part.

**§ 360.7 Administration.**

(a) The Director and Deputy Director, DMA, shall be appointed by the Secretary of Defense.

(b) The DMA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign military personnel to the DMA in accordance with approved authorizations and procedures for assignment to joint duty. The CJCS shall review and provide recommendations on the DMA joint manpower program to the ASD(C3I), as appropriate, for those functions where DMA is responsive to the CJCS.

**Appendix to Part 360—Delegations of Authority**

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DMA, or in the absence of the Director, the person acting for the Director, is hereby delegated authority as required in the administration and operation of the DMA to:

1. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), and 3101 pertaining to the employment, direction, and general administration of DMA civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Coordinated Federal Wage System. In fixing such rates, the Director, DMA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ part-time advisors, as approved by the Secretary of Defense, for the performance of DMA functions consistent with the 10 U.S.C. 173, 5 U.S.C. 3109(b), DoD Directive 5105.4,[1] "DoD Federal Advisory Committee Management Program," September 5, 1969, and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DMA to perform this function.

5. Establish a DMA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DMA or its subordinate activities, in accordance with 5 U.S.C. 4503 and applicable OPM regulations.

6. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2,[2] "DoD Personnel Security Program," December 20, 1979; as appropriate:

a. Designate any position in the DMA as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DMA for a limited period of time for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of an employee in the interest of national security in positions within the DMA.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned or detailed to, or employed by the DMA. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R,[3] "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by chapter 21 of the Internal Revenue Code of 1954, as amended; and, as such agent, make all determinations and certifications required or provided for under section 3122 of the Internal Revenue Code of 1954, as amended, and section 205(p)(1) and (2) of the Social Security Act, as amended (42 U.S.C. 405(p)(1) and (2)) and with respect to DMA employees.

8. Authorize and approve overtime work for DMA civilian officers and employees in accordance with 5 U.S.C. chapter 55, subchapter V, and applicable OPM regulations.

9. Authorize and approve:

a. Temporary duty travel for military personnel assigned or detailed to the DMA in accordance with Joint Travel Regulations, Volume 1,[4] "Members of Uniformed Services."

b. Travel for DMA civilian officers and employees in accordance with Joint Travel Regulations, Volume 2,[5] "DoD Civilian Personnel."

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DMA activities, pursuant to 5 U.S.C. 5703.

10. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DMA for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by law (37 U.S.C. 412 and 5 U.S.C. 4110 and 4111). This authority cannot be redelegated.

11. Develop, establish, and maintain an active and continuing Records Management Program pursuant to Section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

12. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DMA, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10,[6] "Disbursing Policies," January 17, 1989.

13. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DMA consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts for the DMA, and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DMA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DMA, pursuant to DoD Directive 5200.8,[7] "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M,[8] "Department of Defense Directives System Procedures," April 1981.

17. Enter into support and service agreements with the Military Departments, other DoD components, or other Government Agencies, as required for the effective performance of DMA functions and responsibilities.

18. Exercise the authority delegated to the Secretary of Defense by the Administrator of the General Services Administration (GSA) for the disposal of surplus personal property.

19. Enter into and administer contracts, directly or through a Military Department, DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DMA. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

20. Sell maps, charts, and related products to the public as governed by OMB Circular A-25 and 10 U.S.C. 2794.

21. Authorize the release of classified DoD MC&G products to foreign nationals within DoD disclosure policies.

22. Lease property under the control of the DMA, under terms that will promote the national defense or that will be in the public interest, pursuant to 10 U.S.C. 2667.

23. Execute responsibilities of 10 U.S.C. 2795 relating to international agreements.

The Director, DMA, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective December 6, 1990.

Dated: December 14, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-29821 Filed 12-19-90; 8:45 am]

BILLING CODE 3810-01-M

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[1] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1. to paragraph 3. of this Appendix.

[3] See footnote 1. to paragraph 3. of this Appendix.

[4] Copies may be obtained from the Government Printing Office, Attention: Superintendent of Documents, Washington, DC 20402.

[5] See footnote 4. to paragraph 9.a. of this Appendix.

[6] See footnote 1. to paragraph 3. of this Appendix.

[7] See footnote 1. to paragraph 3. of this Appendix.

[8] See footnote 1. to paragraph 3. of this Appendix.

[4] See footnote 2. to § 360.4(g).



**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Public Land Order 6825**

**[UT-942-4214-10; U-42993]**

## Partial Revocation of Departmental Order Dated April 10, 1946; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes Departmental Order dated April 10, 1946, insofar as it affects 60 acres of public land withdrawn for Power Site Classification 377. The land is no longer needed for the purpose for which it was withdrawn. The revocation action is needed to permit disposal of the land through land exchange. This action will open 60 acres of surface entry to permit consummation of a Bureau of Land Management land exchange. The land has been and will remain open to mining and mineral leasing.

**EFFECTIVE DATE:** January 22, 1991.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Barnes, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Departmental Order dated April 10, 1946, which withdrew public land for Powersite Classification No. 377, is hereby revoked insofar as it affects the following described lands:

**Salt Lake Meridian, Utah**

T. 24 S., R. 22 E.,
Sec. 35, N½S½NE¼, N½S½S½NE¼.
The area described contains 60 acres in Grand County.

2. The State of Utah has waived its preference right for public highway rights-of-way or material sites as provided in the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 8 a.m. on January 22, 1991, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to the provisions of section 24 of the Federal Power Act, valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Dated: December 11, 1990.

**Dave O'Neal,**

*Assistant Secretary of the Interior.*

[FR Doc. 90-29773 Filed 12-19-90; 8:45 am]

BILLING CODE 4310-DQ-M

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 206

### Disaster Assistance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document corrects a clerical error in the rule of the Hazard Mitigation Grant Program, published in the Federal Register on August 30, 1990 (55 FR 35539) at 44 CFR 206.437.

**EFFECTIVE DATE:** December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patricia K. Stahlschmidt, Program Officer, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street, SW., Washington, DC 20472, Telephone: (202) 646-3678.

**SUPPLEMENTARY INFORMATION:** This technical amendment corrects a clerical error. It is not a substantive rule, and it makes no substantial changes in the existing rule. Hence, notice and public comment have been omitted and the rule has been made effective immediately upon publication in the Federal Register.

This rule has no effect on the economy, competition or similar matters, nor does it impact on small entities. Hence no regulatory impact analyses will be prepared under E.O. 12291 or the Regulatory Flexibility Act.

Further, this document is an administrative action and thus is categorically excluded from the requirement for environmental assessments under part 10 of 44 CFR.

**List of Subjects in 44 CFR Part 206**

Administrative practices and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, National resources, Penalties, Reporting and recordkeeping requirements.

Accordingly, FEMA is amending part 206, subpart N of chapter I, subchapter D, of title 44 CFR as follows:

### PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

1. The authority citation for part 206 continues to read as follows:

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707; 42 U.S.C. 5121, *et seq.*; Reorganization Plan No. 3 of 1978 (3 CFR, 1979, p. 329); E.O. 12148 (3 CFR, 1980, p. 412) as amended by E.O. 12673 (3 CFR, 1990, p. 214).

**§ 206.437 [Amended]**

2. Section 206.437 is amended by redesignating paragraph (c) as paragraph (d) and by redesignating the second paragraph (b) as paragraph (c).

Dated: December 13, 1990.

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support.*

[FR Doc. 90-29704 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

**[GEN Docket No. 87-389; FCC 90-405]**

### Revision of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License—American Radio Relay League Petition for Reconsideration

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This action dismisses a petition for reconsideration filed on May 25, 1989, by the American Radio Relay League, Incorporated (the League). The petition requested that the Commission reconsider and reverse certain portions of the First Report and Order in GEN Docket No. 87-389 (54 FR 17710), April 25, 1989. Therein, the Commission revised part 15 of the regulations governing the non-licensed operation of radio frequency (RF) devices. The League was concerned that such devices have the potential to both cause interference to, and receive interference from, stations operating in the amateur radio service. The Commission finds that the League presents no new information in its petition that would justify a further change in the part 15 rules.

**EFFECTIVE DATE:** December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** Karen Rackley, Office of Engineering and Technology, (202) 653-7316.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum, Opinion and Order in GEN Docket No. 87-389, FCC 90-405, adopted November 28, 1990, and released December 7, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. It may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**Summary of the Memorandum, Opinion and Order**

1. In the First Report and Order in this proceeding, 4 FCC Rcd 3493 (1989), the Commission adopted technical standards and other policies intended to balance the competing goals of minimizing the potential for Part 15 devices to cause interference to authorized services and providing reasonable opportunity for operation of a broad range of non-licensed RF equipment that would have significant benefits for the public. The new rules allow manufacturers to produce non-licensed equipment for use on almost any frequency subject to emissions limits and other restrictions intended to minimize their potential for causing interference to the authorized services, such as the amateur radio service.

2. In adopting the new part 15 rules, the Commission considered several requests presented by the League including special protection for the amateur services, more restrictive emission limits for part 15 devices, and requirements for manufacturers of part 15 devices to provide interference resolution materials to consumers. The Commission found that the newly established emission limits and other general provisions of the Part 15 rules would be adequate to protect the amateur radio and other authorized services from interference by part 15 devices and declined to adopt the measures proposed by the League.

3. In its petition, the League contends that the Commission did not correctly evaluate the impact of the new Part 15 rules on both the amateur radio service and consumers of Part 15 devices. The League argues that as a result of these errors, the Commission has adopted field strength limits that are too high to provide authorized services adequate protection from interference. To support this argument, the League presents a new study based on an "advanced" engineering model. The League also asserts that the Commission failed to take into account the RF interference susceptibility of Part 15 devices from nearby amateur radio transmitters.

4. To remedy this situation, the League requests that the Commission limit the emissions of Part 15 intentional and unintentional radiators on amateur



frequencies to the levels specified under the former rules. The League also asks the Commission to prohibit the operation of Part 15 devices (intentional radiators) on amateur frequencies and to require manufacturers of interference susceptible Part 15 equipment to incorporate interference resolution information in the owner's or user's manual of that equipment.

5. Upon examining the League's petition, we continue to believe that the rules set forth in the First Report and Order afford adequate and appropriate interference protection to the amateur service from the operation of Part 15 devices. We find that the additional restrictions and requirements the League seeks are unnecessary. We have carefully examined the League's submissions, which are essentially the same as those presented in its earlier comments in this proceeding, and conclude that our assessments and decisions in the first Report and Order are correct.

6. Accordingly, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and § 1.106 of the Commission's rules, *It is ordered* that the Joint Petition for Reconsideration filed by the American Radio Relay League, Incorporated is dismissed.

**List of Subjects in 47 CFR Part 15**

Communications equipment.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90-29824 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 89-332; RM-6720, RM-7156]**

### Radio Broadcasting Services; Defuniak Springs and Freeport, FL

**AGENCY:** Federal Communicating Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 276C2 for Channel 276A at Defuniak Springs, Florida, and modifies the license for Station WQUH(FM) to specify operation on the higher powered channel at the request of Kudzu Broadcasting Partnership (formerly Defuniak Communication, Inc.). See 54 FR 32672, August 9, 1989. Channel 276C2 can be substituted for Channel 276A at Defuniak Springs, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 kilometers (5.1 miles) west of the city, in order to avoid short spacings to a Station WSYA(FM), Channel 277C, Montgomery, Alabama, and a proposal to substitute Channel 276C2 for Channel 276A at Tallahassee, Florida. The coordinates for this allotment are North Latitude 30-42-27 and West Longitude 86-11-46. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopis of the Commission's Report and Order, MM Docket No. 89-332, adopted November 30, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 276A and adding Channel 276C2 at Defuniak Springs.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division Mass Media Bureau.*

[FR Doc. 90-29718 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 90-407 RM-7333]**

### Radio Broadcasting Services; Traverse City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 283A to Traverse City, Michigan, as that community's fourth FM broadcast service, in response to a petition filed by Contemporary Communications. *See* 55 FR 38339, September 18, 1990. There is a site restriction 3.2 kilometers (2 miles) northwest of the community. Canadian concurrence has been obtained for this allotment at coordinates 44-46-59 and 85-39-00. With this action, this proceeding is terminated.

**DATES:** Effective January 28, 1991; The window period for filing for applications for Channel 283A at Traverse City, Michigan will open on January 29, 1991, and close on February 27, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90-407, adopted November 30, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 283A at Traverse City.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division Mass Media Bureau.*

[FR Doc. 90-29719 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 90-404; RM-7277]**

### Radio Broadcasting Services; Park Falls, WI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 254C2 for Channel 252A at Park Falls, Wisconsin, in response to a petition filed by Northland

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Broadcasting, Inc. *See* 55 FR 36841, September 7, 1990. We shall also modify the license for Station WNBI–FM, Park Falls, to specify operation on Channel 254C2. Canadian concurrence has been obtained for this allotment at coordinates 45–50–52 and 90–24–59.

**EFFECTIVE DATE:** January 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–404, adopted November 29, 1990, and released December 17, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 252A and adding Channel 254C2 at Park Falls.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29625 Filed 12–19–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 88–493; RM–5525; RM–5829]**

**Television Broadcasting Services; Anchorage, AK, et al.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document reallots VHF television Channel 9 from Seward to Anchorage, Alaska, and reserves it for noncommercial educational use, in response to a proposal filed by the University of Alaska. A competing proposal for use of the channel on a commercial basis at Palmer, Alaska, as its first local television service, is denied. Reference coordinates used for Channel *9 at Anchorage are 61–13–06 and 149–53–30.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** January 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 88–493, adopted November 29, 1990, and released December 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of TV Allotments under Alaska, is amended by adding Channel *9 at Anchorage and by removing Channel 9- at Seward.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29620 Filed 12–19–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 90–411; RM–7238]**

**Radio Broadcasting Services; Birch Tree, MO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 296C3 for Channel 296A at Birch Tree, Missouri, in response to a petition filed by Jack G. Hunt. *See* 55 FR 38572, September 19, 1990. We shall also modify the license for Station KBMV–FM, Channel 296A, Birch Tree, to specify operation on Channel 296C3. The coordinates for Channel 296C3 are at 37–03–26 and 91–32–33. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 90–411, adopted November 30, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 296A and adding Channel 296C3 at Birch Tree.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90–29720 Filed 12–19–90; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–19, RM–6575; RM–6734]**

**Radio Broadcasting Services; South Congaree and Bateeburg, SC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Mills Communications and Ridgely Communications, Inc., allots Channel 237A to South Congaree, South Carolina, as its first local FM service. Channel 237A can be allotted to South Congaree in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) southwest, at coordinates North Latitude 33–50–23 and West Longitude 81–13–18. The Commission also substitutes Channel 226A for Channel 237A at Batesburg, South Carolina, and modifies the license of Columbia Christian Radio, Inc. for Station WKWQ to specify operation on the alternate Class A channel. Channel 226A can be allotted to Batesburg in compliance with the Commission's minimum distance separation requirements and can be used at the station's presently licensed transmitter site, at coordinates North Latitude 33–54–02 and West Longitude 81–24–25. With this action, this proceeding is terminated.



**DATES:** Effective January 28, 1991. The window period for filing applications for Channel 237A at South Congaree will open on January 29, 1991, and close on February 28, 1991.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 89–19, adopted November 19, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments under South Carolina, is amended by adding Channel 237A and adding Channel 226A at Batesburg and by adding Channel 237A at South Congaree.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division Mass Media Bureau.*

[FR Doc. 90–29721 Filed 12–19–90; 8:45 am]

BILLING CODE 6712–01–M

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# Proposed Rules

Federal Register
Vol. 55, No. 245
Thursday, December 20, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-NM-227-AD]**

### Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310-200 series airplanes, which would require repetitive visual inspections to detect cracks in the cabin floor structure between Frame 40 and Frame 46, and replacement of the affected part of modification of the corresponding area, if necessary; and eventual reinforcement of the cabin floor structure in this area. This proposal is prompted by full-scale fatigue testing by the manufacturer, which identified cracks in the attachment angles on longitudinal beams and shear plates in the area of Frame 45 and Frame 46, and rivet head failures at the floor cross beams attached to the longitudinal beams in the area of Frame 43 and Frame 44. This condition, if not corrected, could result in reduced structural integrity of the cabin floor structure.

**DATES:** Comments must be received no later than February 7, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-227-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-227-AD." The post card will be date/time stamped and returned to the commenter.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A310-200 series airplanes. Full-scale fatigue testing by the manufacturer has revealed cracks in the attachment angles on longitudinal floor beams and shear plates in the area of Frame 45 and Frame 46, and rivet head failures at the floor cross beams attached to the longitudinal floor beams in the area of Frame 43 and Frame 44. These cracks initiated between approximately 13,236 and 37,100 simulated flights. This condition, if not corrected could result in reduced structural integrity of the cabin floor structure.

Airbus Industrie has issued Service Bulletin A310-53-2056, dated April 18, 1990, which describes procedures for repetitive visual inspections to detect cracks in the cabin floor structure between Frame 40 and Frame 46, and replacement of the affected part or modification of the corresponding area, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-097-111(B) addressing this subject.

Airbus Industrie has also issued Service Bulletin A310-43-2013, Revision 1, dated April 17, 1986, which describes procedures for reinforcing the cabin floor structure between Frame 40 and Frame 46. This modification consists of replacement of certain shear plates with split shear plates, installation of reinforcement angles to shear plates and longitudinal beams, and installation of modified floor cross beams with new titanium angles. The French DGAC has not classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect cracks in the cabin floor structure between Frame 40 and Frame 46, and replacement of the affected part or modification of the corresponding area, if necessary; and eventual modification of the cabin floor structure, which will terminate the requirement for the repetitive inspections; in accordance with the service bulletins previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $3,160. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.



**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A310-200 series airplanes, serial numbers 001 through 278, inclusive, which have not incorporated Modification 4942 (reference Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986) certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 6 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, perform a visual inspection of the cabin floor structure between Frame 40 and Frame 46, in accordance with Airbus Industrie Service Bulletin A310-53-2056, dated April 18, 1990.

B. If cracks are found, prior to further flight, replace the affected part or modify the corresponding area in accordance with Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986. The modified area no longer needs to be inspected in accordance with paragraph A. of this AD. Unmodified areas must be inspected at intervals not to exceed 3,000 landings.

C. Within 2 years after the effective date of this AD, modify the cabin floor structure between Frame 40 and Frame 46, in accordance with Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986. Accomplishment of this modification constitutes terminating action for the repetitive visual inspections required by paragraphs A. and B. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 6, 1990

Darrell M. Pederson,
*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29751 Filed 12-19-90; 8:45 am]
BILLING CODE 4910-13-M

### 14 CFR Part 39

**[Docket No. 90-NM-217-AD]**

### Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 series airplanes, which would require repetitive visual inspections to detect cracks in a certain frame reinforcement angle runout; repair, if necessary; and reinforcement of the angle runout. This proposal is prompted by full scale fatigue testing by the manufacturer which revealed cracks in Frame 46 between Stringer 21 and Stringer 22. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

**DATES:** Comments must be received no later than February 7, 1991.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-217-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications



should identify the regulatory docket



C. An alternate means of compliance or

Comments may be inspected at this

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should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following is made: "Comments to Docket Number 90-NM-217-AD." This post card will be date/time stamped and returned to the commenter.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A310-200 series airplanes. During full-scale fatigue testing, the manufacturer discovered cracks in Frame 46 between Stringer 21 and Stringer 22, on both the left and right sides. The cracks initiated at the end fastener hole of the frame reinforcement angle runout and ran horizontally inboard through the frame inboard chord and outboard through the frame web toward the outboard chord. The possible cause of this cracking is high load transfer in the end attachment fastener of the non-tapered frame reinforcement angle runout. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

Airbus Industrie has issued Service Bulletin A310-53-2054, Revision 2, dated May 22, 1990, which describes procedures for repetitive visual inspections to detect cracks in the frame reinforcement angle runout of Frame 46 (left and right) between Stringer 21 and Stringer 22, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-025-104(B) addressing this subject.

Airbus Industrie has also issued Service Bulletin A310-53-2019, Revision 2, dated May 22, 1990, which describes procedures to reinforce the angle runout at Frame 46 (left and right) between Stringer 21 and Stringer 22. This procedure consists of tapering the angle and reducing the thickness. The French DGAC has not classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is like to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect cracks in Frame 46 between Stringer 21 and Stringer 22, and repair, if necessary; and reinforcement of the angle runout at Frame 46, in accordance with the service bulletins previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement (reinforcement of the angle runout at Frame 46) is in consonance with that policy decision.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $1,475. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,485.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to all Model A310-200 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, perform a visual inspection of Frame 46 at the level of the frame reinforcement angle runout between Stringer 21 and Stringer 22 (left and right), in accordance with Airbus Industrie Service Bulletin A310-53-2054, Revision 2, dated May 22, 1990. If cracks are found, prior to further flight, repair in accordance with the service bulletin.

B. Within 2 years after the effective date of this AD, modify the reinforcement angle runout by tapering the angle and reducing the thickness, in accordance with Airbus Industrie Service Bulletin A310-53-2019, Revision 2, dated May 22, 1990. This modification constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.



C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

**Note:** The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on December 6, 1990.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29752 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-CE-58-AD]**

**Airworthiness Directives; Cessna 210, T210, P210 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The FAA has received reports that certain Cessna 210, T210, and P210 series airplanes equipped with integral fuel tanks may be experiencing loss of fuel or problems in fueling. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to be taken in order to correct this problem. All comments and ideas will be evaluated by the FAA and the FAA will research the situation to decide whether rulemaking is needed.

**DATES:** Comments must be received on or before February 1, 1991.

**ADDRESSES:** Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-58-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Information related to this notice can be examined at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4427.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before any other action is taken. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. After consideration of the available data and comments, a notice of proposed rulemaking (NPRM) will be issued if it is determined that it is in the public interest to proceed with regulatory action.

**Availability of ANPRMs**

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, attention: Rules Docket No. 90-CE-58-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

The FAA is currently investigating a possible unsafe condition on Cessna 210, T210, and P210 series airplanes that were manufactured with cantilever wing integral fuel tanks. Cessna produced 7,064 of these airplanes between 1967 and 1986. Within a recent five-year period, over 100 of these airplanes were involved in fuel exhaustion incidents. The problem was initially thought to be caused by the inability to fuel the tanks to total capacity.

Recent investigations have led the FAA to believe that tank capacity is obtainable under normal conditions, but that certain fuel cap and fuel filler port configurations could constrain the normal flow rate of the last several gallons to the fuel tanks while refueling. In addition, recent tests conducted by the Cessna Pilots Association revealed the possibility of fuel siphoning because of fuel cap and/or vent valve failure, which may cause undetected in-flight fuel loss.

The fuel cap and filler port configurations on these airplanes have been changed several times and the FAA is aware that at least 6 different designs are currently being utilized. In addition, Cessna changed the fuel vent valve design and location beginning with the 1985 models. Cessna has also provided retrofit kits that some operators have voluntarily installed. These actions may have decreased the probability of reduced fuel capacity and in-flight siphoning, but fuel exhaustion incidents are still being reported. The FAA has determined that specific fueling procedures and limitations and cautionary information regarding the possibility of fuel siphoning may be necessary for Cessna 210, T210, and P210 series airplanes that were manufactured with cantilever wing integral fuel tanks.

Accordingly, the FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct this problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. Do the fuel gauges register one level that appeared incorrect upon visual inspections? I.e.,

a. Do the fuel gauge indicate full with less than the certificated fuel capacity onboard?

b. Do the fuel gauges register fuel onboard when the fuel tanks are empty?

c. Do fuel gauges register empty or at a unusable quantity when several gallons of fuel are still available?

2. Do you have to use special procedures to completely fill the fuel tanks?

3. Is the airplane normally refueled on level ground?

4. Have you seen evidence of fuel siphoning from the fuel tank caps or tank vents that occurred while the airplane was in flight. If so, did you believe it to be a significant amount?

5. Have fueling stops been more frequent than usual?

6. Would it be effective to:

a. Limit the fuel that would be available under certain conditions through operational, AFM restrictions,

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mechanical means, or similar means or methods?

b. Modify existing or install different fuel tank caps, filler ports, and vents?

c. Require an Airplane Flight Manual Supplement with special fuel system operating procedures and limitations?

d. Take any other actions or implement other airplane modifications to solve the problem?

7. Have you obtained any information relating to this topic through safety seminars, public information classes or any other general information programs? If so, please share the views and ideas you received and what you think to be the most important.

8. Are there suggestions other than those addressed above for reducing the possibility of fuel exhaustion accidents or incidents on these airplanes?

Issued in Kansas City, Missouri, on November 27, 1990.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-29754 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-ANE-35]**

## Airworthiness Directives; General Electric Company (GE) CF6-80A and CF6-80C2 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NRPM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CF6-80A and CF6-80C2 series turbofan engines, which would require ultrasonic inspection of the high pressure compressor rotor (HPCR) stages 11-14 spool-shaft inertia weld for cracks or voids. This proposal is prompted by two HPCR stages 11-14 spool-shaft failures at the inertia weld. This condition, if not corrected, could result in aborted takeoff and uncontained engine failure.

**DATES:** Comments must be received no later than February 4, 1991.

**ADDRESSES:** Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-35, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable engine manufacturer's service bulletins may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7096.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule submitting such written data, view, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ANE-35." The postcard will be date/time stamped and returned to the commenter.

### Discussion

There have been two aborted takeoffs attributed to failure of the HPCR stages 11-14 spool-shaft at the intertia weld joint. Subsequent metallurgical investigations revealed that weld contaminants were introduced during the inertia weld process. Cracks associated with the contaminants propagated in service until the spool-shaft separated. This condition, if not corrected, could result in aborted takeoff and uncontained engine failure.

The FAA has reviewed and approved GE CF6-80A Service Bulletin (SB) 72-531, Revision 2, dated May 18, 1990, and CF6-80C2 SB 72-315, Revision 2, dated June 20, 1990, which described an ultrasonic inspection procedure to detect cracks and voids in the HPCR stages 11-14 spool-shaft inertia weld.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require ultrasonic inspection of the HPCR stages 11-14 spool-shafts inertia weld for cracks and voids, in accordance with the service bulletins previously described.

There are approximately 850 GE CF6-80A and CF6-80C2 series engines of the affected design in the worldwide fleet. It is estimated that 244 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 37 workhours per engine to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $361,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:



**PART 39—[AMENDED]**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

**General Electric Company:** Applies to General Electric Company (GE) CF6-80A and CF6-80C2 series engines installed on, but not limited to, Airbus A300 and A310 and Boeing 747 and 767 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent aborted takeoffs and uncontained engine failure, accomplish the following:

(a) Ultrasonic inspect the inertia weld of affected high pressure compressor rotor (HPCR) stages 11-14 spool-shafts at the next engine shop visit after the effective date of this AD but no later than 5,000 cycles in service (CIS) after the effective date of this AD, according to the following:

(1) Inspect CF6-80A HPCR stages 11-14 spool-shafts, Part Numbers (P/N) 9225M37G11, 9225M37G14, 9225M37G16, 9225M37G18, 9225M37G19, 9225M37G20, 9225M37G21, and 1509M37G01, in accordance with the Accomplishment Instructions in GE CF6-80A Service Bulletin (SB) 72-531, Revision 2, dated May 18, 1990.

(2) Inspect CF6-80C2 HPCR stages 11-14 spool-shafts, P/N 9380M30G07, 9380M30G08, 9380M30G09, 9380M30G10, 1531M21G01, 1509M71G02, 1509M71G03, 1509M71G04, 1509M71G05, and 1509M71G06, in accordance with the Accomplishment Instructions in GE CF6-80C2 SB 72-314, Revision 2, dated June 20, 1990.

(3) Remove from service prior to further flight and replace with serviceable parts, HPCR stages 11-14 spool-shafts with ultrasonic indications greater than or equal to 50 percent full-screen height.

(4) For the purpose of this AD, an engine shop visit is defined as the induction of the engine into a shop where the subsequent maintenance entails removal of the high pressure turbine module.

(5) For the purpose of this AD, definition of ultrasonic indication is provided in GE CF6-80A SB 72-531, Revision 2, dated May 18, 1990, and GE CF6-80C2 SB 72-314, Revision 2, dated June 20, 1990, for the CF6-80A and CF6-80C2 engine models, respectively.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Electric Aircraft Engines CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on December 11, 1990.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 90-29750 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 90-NM-120-AD]**

## Airworthiness Directives; McDonnell Douglas Model DC-9 -10, -20 -30, -40, -50, and C-9 (Military) Series Airplanes; and Model DC-9 -81 and -82 (MD-81 and -82) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This action withdraws a Notice of Proposed Rulemaking (NPRM) which proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which would have required the installation of fill/over-pressure relief valve assemblies on the nose gear wheel and tire assembly. Since the issuance of the NPRM, the FAA has reviewed its position on this safety issue and has concluded that the proposed relief valve assembly is unnecessary to provide an acceptable level of safety, since normal maintenance procedures will preclude wheel and tire assembly over-inflation. Accordingly, the NPRM is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90808; telephone (213) 988-5336.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive, applicable to certain McDonnell Douglas Model DC-9 series airplanes, was published in the **Federal Register** on July 10, 1990 (55 FR 28225). The proposal would have required the installation of fill/over-pressure relief valve assemblies on the nose gear wheel and tire assemblies. That action was prompted by reports of over-inflation of nose landing gear tires, and instances of injury to two maintenance personnel due to the explosion of an over-inflated nose landing gear tire/wheel assembly.

Interested persons have been afforded an opportunity to comment on the proposal. Due consideration has been given to the comments received.

All of the commenters objected to the issuance of the proposed rule.

The commenters suggested that the cause of the incident on which the proposal was based was improper inflation procedures. All commenters agreed that if proper normal maintenance procedures had been followed, the incident of over-inflation and subsequent explosion of the tire/wheel assembly would not have occurred. Proper procedures include the use of proper equipment, namely, a tire inflation tool that incorporates an over-pressure relief valve which prevents over servicing of a wheel and tire assembly. Moreover, one commenter expressed concern that the proposed pressure relief valve installation would be used as an alternative to safe inflation practices.

Other commenters suggested that the proposed AD should not address the pressure relief valves, but should address instead the use of pressure regulators on all servicing bottles used for aircraft tires. This would ensure that the full tank pressure never reaches the tire. A subsequent review of the procedures followed by the airline that experienced the over-inflation incident indicated that the tire was inflated with the use of a high-powered filler tank that was not monitored. The airline has since modified the high-pressure fitting assembly so that such an occurrence cannot be repeated.

One commenter indicated that the over-pressure relief valve has not been adequately field tested and its reliability is unknown. Other commenters were concerned that these relief valves would add three potential leak points to the wheel/tire assembly, which could result in an under-inflated tire. Another commenter pointed out that the installation of the relief valve could not be accomplished without eliminating the fill valve/pressure gauge combination installation; this installation is a useful feature in assuring correct tire inflation.

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Finally, the commenters pointed out that the estimated cost specified in the preamble to the Notice was incorrect. New information provided by the commenters and the manufacturer supported the fact that costs would be substantially higher than previously believed. Specifically, according to the manufacturer, the material costs are now estimated to be $1,300 per airplane, rather than $119 as stated in the proposal. One commenter also stated that the manufacturer has advised that it would have difficulty in meeting the one-year compliance time requirement of the proposed AD due to a 26-week or longer lead time necessary to acquire the valves.

After further consideration, the FAA concurs with the commenters. The FAA has reviewed the data presented by the commenters and has determined that proper maintenance procedures, currently in effect at the affected airlines, provide an acceptable level of safety during tire inflation. Although the proposed over-pressure relief valve may enhance safety in some respects, it would not provide a significant improvement in safety in light of the fact that its installation may compromise other system on the airplane.

Although ADs may be issued to specify maintenance procedures well beyond normal good maintenance practices, ADs are not issued to assure the use of normal maintenance practices on a product where individual cases of maintenance problems have contributed to an unsafe condition. Upon further review of the available data related to the incidents which prompted this proposal, the FAA cannot conclusively state that the addressed unsafe condition is likely to exist on other airplanes of the same type design. Accordingly, the FAA has determined that it is appropriate to withdraw this proposed rule.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking, it is neither a proposed nor final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Withdrawal**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 Federal Aviation Regulations as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By withdrawing the notice of proposed rulemaking, Docket 90-NM-120-AD, published in the **Federal Register** on July 10, 1990 (55 FR 28225), FR Doc. 90-16010.

Issued in Renton, Washington, on December 11, 1990.

Leroy A. Keith,

*Manager, Transport Airplane Directorate Aircraft Certification Service.*

[FR Doc. 90-29753 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 935

### Ohio Permanent Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** OSM is reopening the public comment period on Revised Program Amendment No. 41 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to three rules which are intended to make those rules as effective as the corresponding Federal regulations concerning ownership and control of mining operations and the identification and rescission of improvidently issued mining permits.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on January 22, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on January 14, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 4, 1991.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the addresses listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Filed Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H, Columbus, Ohio 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated May 11, 1989 (Administration Record No. OH-1322), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) that OSM had recently promulgated three new Federal rules that define ownership and control, that specify the effect of ownership and control information on the issuance of permits and the



reporting of violations, and that provide criteria and procedures for the identification and rescission of improvidently issued mining permits. The Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated October 2, 1989 (Administrative Record No. OH-1288), Ohio submitted informal Program Amendment Number 41 in response to the Director's notification. OSM provided comments to Ohio on the informal amendment by letter dated March 1, 1990 (Administrative Record No. OH-1287).

By letter dated June 25, 1990 (Administrative Record No. OH-1322), Ohio submitted responses to OSM's comments on the informal amendment and also submitted formal Program Amendment No. 41. The amendment proposed changes to four Ohio administrative rules and one section of the Ohio Revised Code regarding ownership and control of mining operations and the identification and rescission of improvidently issued mining permits. Ohio also proposed other rule revisions concerning enforcement of notices and orders and public inspection of permit applications.

OSM announced receipt of proposed Program Amendment No. 41 in the July 13, 1990 **Federal Register** (55 FR 28779), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 13, 1990. The public hearing scheduled for August 7, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 11, 1990 (Ohio Administrative Record No. OH-1382), OSM provided Ohio with its questions and comments about proposed Program Amendment No. 41. By letter dated November 15, 1990 (Ohio Administrative Record No. OH-1411), Ohio responded to those OSM questions and formally submitted Revised Program Amendment No. 41. This revised amendment proposes further revisions to three rules which are in addition to or which replace those revisions proposed in the previous version of the amendment. The remaining revisions previously proposed by Ohio in Program Amendment No. 41 to one other rule and to one section of the Ohio Revised Code are unchanged.

All of the revisions are intended to make the proposed rules and the Ohio Revised Code consistent with or as effective as the corresponding Federal law and regulations concerning ownership and control of mining operations and the identification and rescission of improvidently issued mining permits.

The new revisions proposed in Revised Program Amendment No. 41 are briefly discussed below.

*1. Ohio Administrative Code (OAC) Section 1501:13-4-03*

Ohio is revising paragraph (A)(1)(b) to substitute the word "instruments" for "instrument."

Ohio is revising paragraph (B)(7) to substitute the word "operation's" for "operator's."

Ohio is revising paragraph (C)(3)(a) to require that applicants must provide a listing of each notice received by the applicant in the three preceding years for violations of Ohio Revised Code chapter 1513 or of the corresponding portions of the Ohio Administrative Code in connection with a coal mining and reclamation operation.

Ohio is revising paragraph (C)(4)(e) to require that applications must list the actions taken, if any, by the applicant or by any person who owns or controls the applicant to abate past violations or cessation orders.

*2. OAC Section 1501:13-5-01*

Ohio is revising paragraph (D)(3) to require that, in his determination that an applicant is not currently in violation of any law or rule, the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) must consider available information on any notices, orders, or penalties issued pursuant to section 518 of the Surface Mining Control and Reclamation Act of 1977.

Previously proposed paragraph (G)(5) requires that, within thirty days after a cessation order is issued, the permittee shall notify the Chief in writing that there has been no change in the information previously submitted under OAC 1501:13-4-03(B)(5) concerning persons who own or control the permit applicant or shall submit new information to the Chief to correct or update the previously submitted information. Ohio is revising this paragraph to clarify that the provisions of this paragraph apply to cessation orders issued under OAC 1501:13-14-02 or under 30 CFR 843.11.

*3. OAC Section 1501:13-5-02*

Ohio is revising paragraph (B)(2)(b) to require that the Chief shall find that a permit was improvidently issued if a violation, penalty, or fee remains unabated or delinquent and is not the subject of a good faith appeal or of an abatement plan which satisfies the regulatory authority, department, or agency which has jurisdiction over the violation. The previous version of this paragraph stipulated a good faith appeal or abatement plan which satisfies the Chief.

Ohio is adding a new paragraph (E) to specify that any person having an interest that is or may be adversely affected by a decision of the Chief made pursuant to this rule may appeal by filing a notice of appeal with the Ohio Reclamation Board of Review pursuant to § 1513.13 of the Ohio Revised Code.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria or 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on January 4, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to

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discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 10, 1990.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 90-29606 Filed 12-19-90; 8:45 am]

BILLING CODE 4310-05-M

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**30 CFR Part 935**

**Ohio Permanent Regulatory Program; Revision of Administrative Rule**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of proposed Program Amendment Number 47 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise one Ohio administrative rule to be consistent with other State regulations. The revised rule concerns the certification by surveyors of the design and construction of primary roads.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on January 22, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on January 14, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 4, 1991.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

**II. Discussion of the Proposed Amendments**

By letter dated December 7, 1990 (Administrative Record No. OH-1415), Ohio submitted proposed Program Amendment Number 47. The amendment proposes changes to Ohio Administrative Code (OAC) section 1501:13-10-01(G)(1) to allow land surveyors to certify or to assist an engineer in the certification of primary road designs and construction. Ohio is revising the first sentence of this paragraph to read as follows: "The design and construction or reconstruction of primary roads shall be certified by an engineer or a surveyor or jointly by an engineer and a surveyor to the extent such joint certification is required by State law * * *." The amendment is intended to provide consistency between OAC sections 1501:13-10-01(G)(1), 1501:13-4-04(J) and (K)(2), and 1501:13-9-04(B)(5)(b). OSM approved revisions to OAC 1501:13-4-04(J) and (K)(2) and 1501:13-9-04(B)(5)(b) under Ohio Program Amendment Number 25 (July 17, 1987, 52 FR 26959). These revised regulations allow surveyors to perform or to participate, to the extent required by State law, in the certification of permit application maps, supplementary maps, cross sections, and the construction of sediment control structures.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on January 4, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

**List of Subjects in 30 CFR Part 935**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 13, 1990.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 90-29607 Filed 12-19-90; 8:45 am]

BILLING CODE 4310-05-M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[MM Docket No. 90-609; RM-7542]**

**Radio Broadcasting Services; Nephi, UT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition for rule making filed on behalf of Charles D. Hall, permittee of Station KCDH(FM), Channel 224A, Nephi, Utah, seeking substitution of Channel 228C for Channel 224A and modification of its construction permit accordingly. Coordinates for this proposal are 39-42-38 and 111-50-00. Petitioner seeks authorization to upgrade to a non-adjacent channel pursuant to § 1.420 of the Commission's Rules, which permits such action provided at least one additional equivalent channel is available to accommodate other parties expressing interest in the new channel. Petitioner states that Channel 260C is available for allotment as an additional equivalent class channel. Channel 260C can be allotted to Nephi with a site restriction of 17.5 kilometers (10.9 miles) west to avoid short spacings to Stations KLVV, Channel 258C, Bountiful, Utah, and KEKB, Channel 260C, Fruita, Colorado. The coordinates for Channel 260C at Nephi are 39-39-53 and 112-01-44.

**DATES:** Comments must be filed on or before February 4, 1991, and reply comments on or before February 19, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Troy F. Tanner, Esq., Reddy, Begley & Martin, 2033 M Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-609, adopted November 30, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29723 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 90-612; RM-7550]**

**Radio Broadcasting Services; Fox Farm, WY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Farm Broadcasting seeking the allotment of Channel 280C1 to Fox Farm, Wyoming, as that community's first local FM service. Coordinates for this proposal are 41-05-45 and 104-41-13.

**DATES:** Comments must be filed on or before February 4, 1991, and reply comments on or before February 28, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036-5339.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-612 adopted November 29, 1990 and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29724 Filed 12-19-90; 8:45 am]

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47 CFR Part 73

[MM Docket No. 90-613 RM-7559]

**Radio Broadcasting Services; Britt, IA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Hancock County Radio seeking the allotment of Channel 258A to Britt, Iowa, as the community's first local FM service. Channel 258A can be allotted to Britt in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.3 kilometers (4.5 miles) west to avoid short-spacings to the construction permit for a new station of Channel 258A at Eldora, Iowa, and to Station WLOL, Channel 258C, Minneapolis, Minnesota. Coordinates for Channel 258A are 43-08-04 and 93-53-27.

**DATES:** Comments must be filed on or before February 4, 1991, and reply comments on or before February 19, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follow: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901—15th Street, NW., suite 1100, Washington, DC 20005 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-613, adopted November 29, 1990, and released December 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29722 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-610, RM-7547]

**Radio Broadcasting Services; Stamford, NY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Carmine M. Iannace seeking the allotment of Channel 250A to Stamford, New York, as the community's first local FM service. Channel 250A can be allotted to Stamford in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 42-24-42 and West Longitude 74-37-24. Canadian concurrence is required since Stamford is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before February 7, 1991, and reply comments on or before February 22, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Carmine M. Iannace, 239 St. John's Avenue, Yonkers, New York 10704 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-610 adopted November 29, 1990, and released December 17, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29827 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-614, RM-7439]

**Radio Broadcasting Services; Big Spring, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Ballard Broadcasting Company of Oklahoma, Inc., requesting the Commission to allot Channel 243C3 to Big Spring, Texas. The coordinates for the proposed allotment are 32-15-00 and 101-28-24. Since Big Spring is located within 320 kilometers (199 miles) of the Mexican border, we have requested the concurrence of the Mexican government in this allotment.

**DATES:** Comments must be filed on or before February 7, 1991, and reply comments on or before February 22, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph E. Dunne, III, Esq., May & Dunne, Chartered, Suite 520, 1000 Thomas Jefferson Street, NW., Washington, DC 20007 (Counsel for petitioner).



**FOR FURTHER INFORMATION CONTACT:** Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-614, adopted November 29, 1990, and released December 17, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29828 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-611, RM-7533]

**Television Broadcasting Services; Alamosa, CO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Mountain Valley Television, Inc., requesting allotment of UHF Television Channel 47 to Alamosa, Colorado, as that community's first local television service.

Alamosa is located within the prohibited co-channel minimum distance (separation of 174.5 miles (280.8 kilometers) from Denver, Colorado, one of the designated television markets affected by the Commission's current freeze on allotments and applications pending the outcome of an inquiry into the use of advanced television systems in broadcasting. (*See Order, Advanced Television Systems and Their Impact on Existing Television Broadcast Service,* 52 FR 28346, July 29, 1987). However, Channel 47 can be allotted to Alamosa in compliance with the terms of the freeze *Order* at a restricted site. Coordinates used for Channel 47 at Alamosa are 37-19-04 and 105-52-38.

**DATES:** Comments must be filed on or before February 7, 1991, and reply comments must be filed on or before February 22, 1991.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing with the FCC, interested parties should serve the petitioner's counsel, as follows: James S. Finerfrock, Esq., Becker & Finerfrock, P.C., 1915 Eye Street, NW., Washington, DC 20006-2107.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-611, adopted November 29, 1990, and released December 17, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29830 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-548, RM-7017]

**Radio Broadcasting Services; Clintonville, New Holstein and Wautoma, WI**

**AGENCY:** Federal Communication Commission.

**ACTION:** Proposed rule; dismissal of proposal.

**SUMMARY:** This document dismisses a petition for rule making filed by Sail Communication Corporation proposing the substitution of FM Channel 222C3 for Channel 221A at Clintonville, Wisconsin, and modification of the license for Station WJMQ(FM), the substitution of Channel 225A for Channel 226A at New Holstein, Wisconsin, and modification of the permit for Station KFKQ(FM), and the substitution of Channel 226A for Channel 222A at Wautoma, Wisconsin. *See* 54 FR 50777, December 11, 1989. The petition is dismissed because petitioner failed to state its intention to reimburse to Station KFKQ(FM), New Holstein.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order MM Docket No. 89-548, adopted November 29, 1990, and released December 17, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Beverly McKittrick,**

*Assistant Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 90-29829 Filed 12-19-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-118; Notice 1]

RIN 2137-AB97

## Excess Flow Valve Installation on Service Lines

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Gas service lines are frequently severed or damaged by excavation causing loss of life, injury and property damage by fire and explosion. OPS seeks public participation in determining whether operators should be required to install excess flow valves on service lines to improve safety and reduce the frequency of incidents. Excess flow valves are designed to shut off the flow of gas in the service line by closing automatically when a line is broken. A questionnaire is included in this notice to gather information based on gas distribution company knowledge and experience.

DATES: Interested persons are invited to submit written comments on this notice by March 20, 1991; however, late filed comments will be considered to the extent practicable. All persons must submit as part of their written comments all of the material that they consider relevant to any statement of fact made by them.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docketed material will be available for inspection and copying in room 8419 between the hours of 8:30 a.m. and 5 p.m. each working day.

FOR FURTHER INFORMATION CONTACT: Jack Willock, (202) 366-4571, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-4453, regarding copies of this notice or other material in the docket that is referenced in this notice.

SUPPLEMENTARY INFORMATION

### The Problem

Service line incidents, which are primarily caused by excavation, continue to be a serious problem on natural gas distribution service lines. A service line is defined in 49 CFR part 192 as "a distribution line that transports gas from a common source of supply to (a) A customer meter or the connection to a customer's piping, whichever is farther downstream, or (b) the connection to a customer's piping if there is no customer meter." In a typical incident a worker, while excavating, damages a service line, and natural gas escapes unrestricted from the damaged pipe. The escaping gas may explode, burn, or asphyxiate the worker, local residents, and bystanders and cause damage to excavation equipment and nearby houses and buildings.

The problem is of sufficient importance that RSPA attempted to address the problem by issuing regulations, 49 CFR 192.614, on April 1, 1982, effective April 1, 1983, requiring pipeline operators to conduct a damage prevention program, similar to a one-call system public service program, to prevent pipeline damage by excavation activities. The one-call system is a communication system where a pipeline operator, together with other underground utility operators, provides one telephone number for excavation contractors and the general public to call for notification and recording of their intent to engage in excavation activities. This information is relayed to members of the one-call system giving them the opportunity to communicate with excavators, to identify their facilities by temporary markings, and witness or inspect the excavation. In addition, OPS published an NPRM (53 FR 24747, June 30, 1988) proposing to broaden protection against excavation damage by extending the one-call rules to cover rural areas and hazardous liquid pipelines. Also, RSPA recently issued final regulations (55 FR 38388, September 20, 1990) requiring each State to adopt a one-call damage prevention program as a condition to receiving a full grant-in-aid for the State's pipeline safety compliance program.

In a study mandated by Congress in the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 102-561) regarding the feasibility of the RSPA regulating excavators, OPS found that the number of annual injuries from outside force incidents on pipelines has leveled off at 1/5 of the level of a decade ago. Despite the apparent success of these initiatives, 298 service line incidents, mostly excavation related, have been reported since July, 1984, when the current RSPA incident reporting form became effective. In accordance with 49 CFR 191.3, RSPA requires reports when gas is released from a pipeline resulting in death, personal injury, property damage of $50,000 or more, or other "significant event" in the judgment of the operator. A total of 44 fatalities and 178 injuries resulted from the 298 incidents. Despite the improvement, OPS feels that the current incident rate is too high and seeks to lower it by taking supplementary actions, e.g., one-call, damage prevention.

### A Possible Solution to the Problem

One means of reducing or preventing injury or death and loss of equipment from service line incidents resulting from line breaks or ruptures may be to require the installation of excess flow valves (EFVs) in service lines. EFVs have been installed in service lines voluntarily by a few gas distributors for at least 20 years. Their purposes is to limit flow from the main distribution line if a service line is ruptured to the extent that the gas flow escaping from the rupture exceeds a threshold level. When the threshold is reached, the valve closes automatically and the escape of gas from the rupture is virtually eliminated. The existing Federal gas pipeline safety rules, which are set out in 49 CFR part 192, do not require that an EFV be installed for limiting the discharge of gas in the event a service line is damaged.

EFVs are intended to prevent the adverse effects of major leaks (that result from line breaks due to excavation damage or other sudden breaks in a pipeline), but not to prevent incidents caused by slow leaks (as might be caused by corrosion pitting). Also, EFVs are not 100% effective in preventing incidents but may minimize their overall impact. For example, in two incidents reported to OPS, EFVs closed, but did not completely prevent fire or damage. In one incident, a service line to a trailer in a trailer court was damaged by construction in an adjacent lot. The EFV closed, but allowed a reduced amount of gas to escape and ignite. No fatalities or injuries were reported, but $7,000 damage was experienced. In the other incident, an electric utility employee, while repairing an electric service line, burned through the ¾ inch gas service line and caused a flash fire. The electric utility employee was injured by the fire, even though the EFV closed immediately and shut off the gas source.

Based on a review of the 298 incident reports received by this office since July, 1984, OPS estimates that a majority of the fatalities, injuries and incidents might have been avoided or mitigated if EFVs had been installed in service lines. These conclusions were reached from an analysis of our reports considering only those incidents where EFVs would logically be installed and expected to operate satisfactorily. Consideration was limited to those incidents with service line pressure in excess of 5 psig where reports indicated threshold flow was exceeded. Five psig is the minimum operating pressure that manufacturers' literature indicate EFVs will close effectively, and laboratory test data in the Gas Research Institute (GRI) report (GRI-85/0150) confirm the manufacturers' literature. The GRI report is discussed later under the Prior Studies section of this ANPRM.



### National Transportation Safety Board Recommendations

The National Transportation Safety Board (NTSB), since 1971, has issued six recommendations regarding the use of EFVs in service flow lines. The first of these, Recommendation P-71-01, was issued as a result of a special NTSB study and called for further study by OPS "to develop standards for the rapid shutdown of failed natural gas pipelines * * *." In its accident report (PAR-73-1) of a ruptured service line in Lake City, Minnesota, NTSB noted that an EFV might have stopped the flow of gas after the service line rupture and avoided the loss of live and property. In safety recommendation P-73-02, NTSB called for OPS to undertake a study of fail-safe devices to stop gas flow from ruptured lines and to consider amending 49 CFR part 192 to require the installation of such devices in gas distribution systems.

Following an accident involving explosions and loss of life and property in New York City on April 22, 1974, (PAR-76-2) NTSB called for OPS to "Determine the availability, the practicability, and the state-of-the-art in the manufacture of excess flow valves for use on low-pressure gas distribution systems, (and) based upon the results of these findings, amend 49 CFR part 192 to incorporate the use of these valves in commercial buildings." (Recommendation P-76-9A).

The NTSB, in its accident report concerning an explosion and fire in Standardsville, Virginia on October 24, 1979 (PAR-80-3), concluded that, if an excess flow valve had been installed in the service line, gas flow would have been shut off when the service line ruptured and that the accident would have been prevented. The subsequent NTSB recommendation called for RSPA to "Expedite rulemaking to require the installation of excess flow valves on all newly installed or renewed high-pressure gas distribution system fiwo lines " (Recommendation P-80-55).

In its accident report on two explosions and fires that occurred at Simon Kenton High School, Independence, Kentucky on October 9, 1980 (PAR-81-1), NTSB found that had an EFV been installed on the service line, the severity of the first explosion may have been lessened and the second explosion may have been avoided. Because of this accident and other service line accidents which may have been avoided by the use of automatic shut off devices, NTSB conducted a special study to better define the potential uses of these values and called of RSPA to "Initiate rulemaking to require the installation of excess flow valves on all newly installed or renewed high-pressure gas distribution service lines with priority given to service lines supplying schools, churches, and the places of public assembly." (Recommendation P-81-9). Based on the study findings, the NTSB recommended that the GRI "Plan and conduct a test and evaluation of existing excess flow valves to determine and document, on a comparable basis, their operating and design characteristics, such as reliability, service pipe size and length, operating pressure range, maximum service load, and susceptibility to contamination." (Recommendation P-81-35). NTSB further recommended that GRI "Determine the conditions and locations * * * for which excess flow valves can be effective in preventing or minimizing the potential for various types of accidents resulting from leaks on high pressure service lines. Among the conditions which should be evaluated are gas demand variations, minimum operation pressure, service line size, length and configuration, major leaks on house piping, cleanliness of gas, and effect on peak shaving operations." (Recommendation P-81-36). NTSB also recommended that RSPA initiate rulemaking to require installation of EFVs on new and renewed single-family, residential high pressure services. (Recommendation P-81-38).

NTSB investigated 5 accidents in 1988 and 1989 involving gas distribution systems in Kansas and Missouri operated by Kansas Power and Light Company. (PAR-90-01) In a letter of April 20, 1990 to the RSPA, the NTSB stated "The accidents involving gas leaking from service lines at Kansas City, Missouri, and Oak Grove, Missouri, and possibly the accident at Overland Park, Kansas, could have been prevented or at a minimum, the consequences could have been substantially reduced had an excess flow valve been installed at the service line connection to the gas main." Three fatalities and 10 injuries resulted from these accidents. NTSB recommended that RSPA "Require the installation of excess flow valves on new and renewed single-family, residential high pressure service lines which have operating conditions compatible with the rated performance parameters of at least on model of commercially available excess flow valve." (Recommendation P-90-12).

### RSPA Actions

In the past, RSPA has questioned the potential benefits and effectiveness of the universal installation of EFVs. During the 1970s and early 1980s, several gas distribution companies installed EFVs only to remove them from service later. The most common reasons cited to justify removal were lack of dependability including false closure and problems with proper resetting. Other companies have continued to install EFVs and have concluded that they close reliably and automatically reset after the line has been repaired.

Despite the damage prevention programs undertaken by the Department, the incident frequency has persisted at a significant level, and the use of EFVs may be a reasonable initiative for reducing the incident rate further. Accordingly, RSPA has decided to conduct additional study. Personnel from the RSPA Office of Pipeline Safety met with representatives of the American Gas Association (AGA), GRI, Gas Safety Action Council (GASAC) and NTSB to obtain current information on EFVs. The AGA is a gas utility industry trade association. GASAC is an organization concerned with user and consumer safety in the natural gas distribution industry. GRI's mission and responsibilities are described in the next paragraph. Meetings were held on two occasions during June and July, 1990 and a questionnaire was developed by GASAC. The questionnaire was reviewed by those in attendance at the second meeting and forms the basis for the questionnaire that accompanies this ANPRM.

### Prior Studies

After receiving requests from the NTSB and AGA, GRI conducted two studies from 1982-1985. GRI is a private, not-for-profit organization of natural gas pipeline and distribution companies that conducts gas-related research and development programs on behalf of its members. Most of the GRI funding is derived from gas transportation tariffs authorized and regulated by the Federal Energy Regulatory Commission (FERC)

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and collected from interstate pipeline companies. GRI issued the following reports: "Assessment of Excess Flow Valves in Gas Distribution Service" (GRI-85/0150), and "Costs and Benefits of Excess Flow Values in Gas Distribution Services" (GRI-86/0022).

The two GRI studies included (1) a questionnaire to gas distribution companies on their experience with EFVs, (2) laboratory performance tests of EFVs and (3) a cost/benefit analysis of EFVs. The questionnaire was mailed to 153 gas distribution companies. Its purposes was to obtain operating data, costs, and results of laboratory and field testing of EFVs by the operating companies. Ninety-three companies responded. The responding companies had 176,427 EFVs in service and 32.7 million service lines (79 percent) of the total 41.4 million residential, commercial and industrial service lines existing in the U.S. during 1982.

GRI analyzed the survey data and value costs and determined that 12.2 million services (operating at pressures at or above 10 psig) of the universe of 41.4 million services were potentially suitable for EFVs. The average cost of an EFV was reported as $16.25. Installation costs were $405 for paved areas and $240 for unpaved areas (in 1982 dollars). This includes costs of excavating and exposing the service line for the sole purpose of installing an EFV. GRI's assessment report noted that approximately 331,000 (2.8%) of the 12.2 million total service lines operating above 10 psig were new or renewed during 1981, and that if EFVs were installed at this rate, a minimum of 37 years would be required to install EFVs on all such service lines. Both the value study and the cost/benefit study concluded that the cost of installation of EFVs in service lines could not be justified by potential benefits.

GRI conducted laboratory tests to determine the operating characteristics of those EFVs commercially available at that time. The devices were tested for performance, and the effects of pressure surges, volume surges, temperature, service line length and diameter and solid particle contamination. The GRI assessment report concluded that EFVs operate when distribution line pressure is 10 psig or greater, but did not specify the minimum operating pressure for those valves available at the time.

The findings of the GRI studies have not been universally accepted. NTSB disagreed with GRI regarding the use and installation of EFVs and objected to the cost/benefit conclusions and states that the conclusions are deficient and biased. (Letter of October 26, 1987 and September 27, 1988 from NTSB to GRI are available in the docket).

In view of the persistently high service line incident rate, the NTSB recommendations, and the lack of unanimity from the GRI studies, OPS has concluded that additional information is needed to determine the appropriate course of action in an effort to reduce the frequency of service line incidents.

### Request for Information

Based on the information received, OPS will consider at least the 3 following courses of action: (1) Amend 49 CFR part 192 to require the installation of EFVs in all new and existing service lines over an appropriate period of time; (2) Amend 49 CFR part 192 to require the installation of EFVs in all new and replaced service lines operation at 5 psig or above; or (3) Make no changes to the existing regulations. Under (2) above, the installation of the EFV would be required if the service line connection to the main distribution line is uncovered.

OPS seeks to obtain current information regarding EFVs through the following questionnaire. The comprehensive questionnaire developed by GASAC was valuable in preparing the final questionnaire included in this ANPRM. The number of questions in the final questionnaire has been reduced from the one developed by GASAC because we believe more gas distributors will respond and more accurate replies will be received from a brief questionnaire. Interested parties are invited to complete the accompanying questionnaire or address other facts and issues relating to service line safety.

GASAC has agreed to provide information gathered from newspaper reports of natural gas incidents that have occurred throughout the United States. This data will be included in the docket and will be considered in conjunction with the incident reports received in this office under 49 CFR part 191. Such data will supplement OPS data in the preparation of cost/benefit analysis calculations regarding the installation of EFVs in service lines.

Issued in Washington, DC, on December 14, 1990.

**George W. Tenley, Jr.,**

*Associate Administrator for Pipeline Safety.*

**Collection & Evaluation of Current Operational Data and Use of Excess Flow Valves (EFV) by Natural Gas Distributors**

1. Check one of the following:

(1a) ——— never used EFVs on service lines at any time

(1b) ——— have used EFVs in the past but no longer use them

(1c) ——— currently using and/or installing EFVs on service lines

If you checked 1a, please provide your company's rationale for not using EFVs on service lines and complete questions 2 and 3.

If you checked 1b, please provide your company's rationale for no longer using EFVs and answer all questions.

If you checked 1c, please answer all questions.

2. Please list the approximate total number of service lines in your system that operate within the following minimum service line pressure ranges on peak usage days.

| Operating pressure range | Number of services |
|---|---|
| 1 psig or less (28" wc or less) | |
| 1 psig to 5 psig | |
| 5 psig to 60 psig | |
| 60 psig and over | |
| Total no. services in your system | |

3. Please list the approximate number of new and renewed gas service lines that were installed by your company in the years noted.

| | New | Renewed |
|---|---|---|
| 1985 | | |
| 1986 | | |
| 1987 | | |
| 1988 | | |
| 1989 | | |

4. Under what situations do you or did you install EFVs?

On new services ———

On renewed services ———

On both new and renewed services ———

Other (Please elaborate) ———

5. Please provide for EFVs installed by your company between 1980–1984:

a. The total number of EFVs installed. ———

b. The approximate number of events (incidents), 1980 to the present, where these EFVs were installed and should have closed. ———

c. The approximate number of these EFVs that closed as a result of these events, 1980 to the present. ———

d. The approximate number of these EFVs that failed to close as a result of these events, 1980 to the present. ———

e. The approximate number of these EFVs that closed improperly, 1980 to the present. —

f. For d. and e., indicate the reason(s) or cause(s), if known. ———

6. Please provide for EFVs installed by your company from 1985 to the present:

a. The total number of EFVs installed. ———

b. The approximate number of events (incidents), 1985 to the present, where these EFVs were installed and should have closed. ———

c. The approximate number of these EFVs which closed as a result of these events, 1985 to the present. ———

d. The approximate number of these EFVs that failed to close as a result of these events, 1985 to the present. ———

e. The approximate number of these EFVs that closed improperly, 1985 to the present. —

f. For d. and e., indicate the reason(s) or cause(s), if known. ———

For questions 7 & 8, please provide a cost breakout for the total costs shown; for example, itemize costs for labor, parts, equipment use, removal and restoration of pavement, rock excavation, frost removal or other considerations. Do not include overhead charges.

7. What is the difference in cost of installing a service line with an EFV compared to installing a service line without an EFV? ———

8. What is your unit cost to remove and replace an existing EFV? ———

9. Please list the benefits associated with use of EFVs on service lines. ———

10. Please list the drawbacks associated with use of EFVs on service lines. ———

11. What is the minimum inlet service line pressure at which EFVs open and close properly? ———

12. Under what service line conditions should EFVs be installed? ———

13. Under what service line conditions should EFVs not be installed? ———

14. What is the upper capacity limit for EFVs currently available? ———

[FR Doc. 90-29740 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-60-M



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018-AB52**

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Sisyrinchium dichotomum (White Irisette)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list *Sisyrinchium dichotomum* (white irisette), a perennial herb limited to three populations in North Carolina, as an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Sisyrinchium dichotomum* is endangered by suppression of natural disturbance, conversion of habitat for industrial/residential development, encroachment by exotic species, and highway construction and improvements. This proposal, if made final, would implement Federal protection provided by the Act for *Sisyrinchium dichotomum*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by February 19, 1991. Public hearing requests must be received by February 4, 1991.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nora Murdock at the above address (telephone 704/259-0321; FTS 672-0321).

**SUPPLEMENTARY INFORMATION:**

### Background

*Sisyrinchium dichotomum*, described by Eugene P. Bicknell (1899) from material collected in North Carolina, is a perennial herb. The dichotomously branching stems grow approximately 11 to 20 centimeters tall. The basal leaves, usually pale to bluish green, are from one-third to one-half the height of the plant. The tiny (7.5 millimeters long) white flowers appear from late May through July in clusters of four to six at the ends of winged stems. The fruit of this species is a round, pale to medium brown capsule containing three to six round or elliptical black seeds (Bicknell 1899, Hornberger 1987).

*Sisyrinchium dichotomum* is endemic to the upper piedmont of North Carolina, where it is currently known from three locations in Polk, Henderson, and Rutherford Counties. The species occurs on rich, basic soils probably weathered from amphibolite. It grows in clearings and the edges of upland woods where the canopy is thin and often where down-slope runoff has removed much of the deep litter layer ordinarily present on these sites.

White irisette is dependent upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbances, such as power line and road right-of-way maintenance (where they are accomplished without herbicides and at a season that does not interfere with the reproductive cycle of this species), are maintaining some of the openings that may have been provided historically by native grazing animals and naturally occurring periodic fires.

*Sisyrinchium dichotomum* has always been known as a narrow endemic, limited to an area in North Carolina bounded by White Oak Mountain, Sugarloaf Mountain, and Chimney Rock. Two of the remaining populations are within highway rights-of-way—one maintained by the North Carolina Department of Transportation, and one inside a commercial recreation area where roads are privately maintained. The third population is within an area recently subdivided for residential development; most of the plants in this latter population are also along private road rights-of-way, with some also being underneath power lines. Colonies within these populations have been observed to be adversely impacted by road maintenance operations, erosion of steep roadbanks, natural succession due to suppression of disturbance, bulldozing as part of residential/industrial development, complete removal of the tree canopy (this species appears to prefer thin shade rather than complete sun), and trampling by tourists and sightseers. The continued existence of *Sisyrinchium dichotomum* is threatened by these activities, as well as by herbicide use, highway expansion and improvements, and by encroachment of exotic species. Kudzu (*Pueraria lobata*), Japanese honeysuckle (*Lonicera japonica*), and *Microstegium vimineum* are aggressive exotic weeds which threaten populations at all three sites.

Federal government actions on this species began with the publication of the February 21, 1990, revised Notice of Review for Native Plants in the **Federal Register** (55 FR 6184), in which this species appeared as a category 2 candidate for listing. Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threats are not currently available to support proposes rules. Additional surveys recently have been conducted by Service and State personnel, and the Service now believes sufficient information exits to proceed with the proposal to list *Sisyrinchium dichotomum* as endangered.

### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sisyrinchium dichotomum* Bicknell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Sisyrinchium dichotomum* has been and continues to

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be endangered by destruction or adverse alteration of its habitat. The species is a narrow endemic, known from only three populations, each of which has been partially impacted by residential development, road maintenance activities, and trampling by tourists and sightseers. Suppression of natural disturbance appears to be a problem for this species and will be discussed in detail under Factor E below. Most of the colonies in the three remaining populations are on roadsides. One site recently has been subdivided for residential development; another is a commercial recreation area visited by hundreds of thousands of tourists annually. The Chimney Rock population currently has less than 100 individuals remaining; approximately 200 plants remain at the Sugarloaf Mountain location. The White Oak Mountain population is the largest surviving population, with approximately 1,000 plants. These populations have apparently undergone considerable decline over the past 50 years, since Walker (North Carolina Natural Heritage Program 1990) described the species as "fairly common" here in 1942. Because of the proximity of this species' populations to existing roads, it is extremely vulnerable to accidental destruction from road maintenance and improvement activities.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Sisyrinchium dichotomum* is not currently a significant component of the commercial trade in native plants; however, with its attractive growth habit and unusual white flowers, the species has potential for horticultural use, and publicity could generate an increased demand. Because of the species' small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased specific publicity.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Sisyrinchium dichotomum* is afforded legal protection in North Carolina by North Carolina General Statutes, sections 106–202.122, 106–202.19 (Cum. Sup. 1985), which provide for protection from interstate trade (without a permit) and for monitoring and management of State-listed species; taking of plants without written permission of landowners is also prohibited. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as exclusion of fire and other forms of natural disturbance. Although one site is registered with the North Carolina Natural Heritage Program as a State Natural Area, this designation is voluntary and not legally binding. The Endangered Species Act would provide additional protection and encouragement of active management for *Sisyrinchium dichotomum.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in Factor A, many of the remaining populations are small in numbers of individuals stems and in area covered by the plants. Of the three remaining populations, two have a combined total of less than 300 plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Another threat to this species is the encroachment of aggressive exotics such as kudzu, Japanese honeysuckle, and *Microstegium vimineum.* All three populations are threatened by the invasion of these aggressive weeds.

Much remains unknown about the demographics and reproductive requirements of this species. Fire, or some other suitable form of disturbance, seems to be essential for maintaining the open habitat preferred by *Sisyrinchium dichotomum.* Without such periodic disturbance, the canopy over these habitats becomes too thick, shading out the *Sisyrinchium* and its shade-intolerant associates. Removal of the litter layer by fire, flooding, or other means also seems to be essential to germination and survival of seedlings of this species. The current distribution of this species is ample evidence of its dependence on disturbance, with all three remaining populations' being located in close proximity to roads, utility line rights-of-way, or trails.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Sisyrinchium dichotomum* as endangered. With only three small populations remaining, all located in areas where they are vulnerable to extirpation from road maintenance/improvement activities or residential development, and, based upon its dependence on some form of active management, the species warrants protection under the Act. Endangered species seems appropriate because of imminent serious threats facing all three populations. According to Hornberger (1987), *Sisyrinchium dichotomum* has the most restricted range of all species of the genus found within the Southeastern United States, with only 11 collections having been made from 1902 through 1985. Critical habitat is not being designated for the reasons discussed below.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Sisyrinchium dichotomum* at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Sisyrinchium dichotomum* is vulnerable to taking,, an activity difficult to enforce against and only regulated by the Act with respect to endangered plants in cases of (1) Removal and reduction to possession from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, damaging, or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions would make *Sisyrinchium dichotomum* more vulnerable, increasing enforcement problems for the State of North Carolina. All populations are located on private lands and therefore would be susceptible to collection and vandalism. The species could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation. The Federal and State agencies and landowners involved in protecting and managing the habitat of this species have been informed of the plant's locations and the importance of its protection.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies an the prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Sisyrinchium dichotomum* and its habitat in the future include, but are not limited to, the following: Power line construction and certain types of maintenance/improvements, highway construction and certain types of maintenance/improvements, and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Sisyrinchium dichotomum* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Sisyrinchium dichotomum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export the species, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of such plants on Federal lands and their removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is expected that few trade permits would ever be sought or issued, since *Sisyrinchium dichotomum* is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Field Office (see "ADDRESSES" section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

### References Cited

Bicknell, E. 1899. Studies in *Sisyrinchium*—VI: additional new species from the Southern States. Bulletin of the Torrey Botanical Club, 26:605–616.

Hornberger, K. 1987. Systematics of the genus *Sisyrinchium* (Iridaceae) in the Southeastern United States. Unpublished Ph.D. dissertation, University of Arkansas. 328 pp.

North Carolina Natural Heritage Program. 1990. Element occurrence records for *Sisyrinchium dichotomum.* Raleigh, NC. 66 pp.

### Author

The primary author of this proposed rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801 (704/259–0321; FTS 672–0321).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Iridaceae to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

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| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| Iridaceae—Iris family: | | | | | | |
| Sisyrinchium dichotomum | White irisette | U.S.A. (NC) | E | | NA | NA |

Dated: November 9, 1990.
**Bruce Blanchard,**
*Acting Director, Fish and Wildlife Service.*
[FR Doc. 90-29613 Filed 12-19-90; 8:45 am]
BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

**[Docket No. 901156-0296]**

**RIN 0648-AD71**

## Disposition of Tissues From Stranded Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.
**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to clarify the procedures for salvage of materials from dead stranded marine mammals and the procedures for subsequent transfer of such materials for scientific and educational purposes. Comments are requested from the public.

**DATES:** Comments on the proposed rule must be postmarked on or before January 22, 1991.

**ADDRESSES:** Comments should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Dean Wilkinson, Permits Division, Office of Protected Resources, Silver Spring, MD, 301-427-2322.

**SUPPLEMENTARY INFORMATION:**

### Background

Under the provisions of the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (the Act), the Department of Commerce has responsibility for administering the Act as it applies to marine mammals of the order Cetacea and the order Pinnipedia (except walruses). Authority for administering these species has been delegated to NMFS.

Excluding some limited exceptions, the Act places a moratorium on the taking of marine mammals, including parts therefrom. As defined in the Act, the term "take" means to "harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal." The current regulations further define "take" to include "the collection of dead animals, or parts thereof." Section 102 of the Act provides that, with the exception of specific activities authorized elsewhere in the statute, it is illegal to possess any marine mammal or marine mammal product taken in violation of the Act or to transport any marine mammal or marine mammal product.

One of the exceptions to the moratorium on taking is provided in section 109(h) of the Act:

> (1) Nothing in this title shall prevent a Federal, State, or local government official or employee or a person designated under section 112(c) of this title from taking, in the course of his or her duties as an official, employee or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for
> (A) the protection of the mammal,
> (B) the protection of the public health and welfare, or
> (C) the nonlethal removal of nuisance animals.

Section 112(c) of the Act authorizes the Secretary of Commerce to:

> * * * enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this title and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

In order to rescue live stranded marine mammals and to collect basic biological data to increase the knowledge of the population dynamics of marine mammal populations and their role in marine ecosystems, NMFS has set up marine mammal stranding networks in each of its regions. A large number of network participants are private institutions and individuals who have volunteered to respond to reports of strandings. Such participants receive letters of authorization under section 112(c) of the Act.

The letters of the authorization contain a requirement that the participant record basic biological data, such as the species of marine mammal, the length and sex of the animal, and the date and location of the stranding. Scientific participants in the networks have also been given authority to collect tissues from dead animals for utilization in scientific research. They must report the retention of such parts in the portion of the stranding report dealing with the disposition of the carcass.

Salvage of tissues from dead stranded animals has increased the level of scientific knowledge of marine mammals. For species such as some of the beaked whales (*Mesoplodon* spp.) or pygmy sperm whales (*Kogia breviceps*), virtually all of the extant scientific information has been gained from stranded animals. Salvage of tissues can provide information on such things as causes of mortality, the genetic diversity of a population, prey utilization, and impacts of environmental contaminants and other human activities on marine mammal populations.

Strandings of marine mammals are inherently unpredictable, and the research resulting from access to tissues is often opportunistic. Applications for permits for scientific research on marine mammals must specify the species and the type of research contemplated. Without knowing what species will strand or what tissues might be available for analysis, NMFS cannot reasonably expect researchers to provide the details necessary for such a permit. It would be impossible to process permits within the timeframe necessary if permits were to be issued on a case-by-case basis when a specimen strands.

The proposed rule would clarify existing procedures for retention of dead stranded marine mammals or parts therefrom and set out procedures for transferring such tissues for scientific or educational purposes.

### Summary of Proposed Regulation

The proposed addition would provide for the salvage of dead stranded marine mammals, for utilization in scientific research or for maintenance in a properly curated, professionally accredited scientific collection. The standards of the American Society of Mammalogists are an example of acceptable curation and accreditation standards. An authorized person would be required to register the salvage of the specimen with the appropriate NMFS Regional Office within 30 days after the taking. It is not intended that every single tissue be identified if the salvage is of an entire animal. Under such circumstances, a registration listing "carcass" would be sufficient. Similarly, when appropriate, "skeleton" or "head" would satisfy the requirement for a description of parts. The Regional Director would assign a single number to all parts from a carcass. Such a number could be the field identification number or museum acquisition number that is currently reported on marine mammal stranding forms. All parts of an individual animal would have that number affixed permanently, and the number would remain with the part, including after any subsequent transfer, so that all parts could be traced back to the original animal. This is commonly accepted as a minimum curation standard.

The proposed regulations also would prescribe procedures for the subsequent transfer of any parts, prohibit the sale or trade for commercial purposes, and allow the transfer of specimen materials without prior authorization to individuals who are themselves authorized to salvage materials. In such an instance, the only requirement would be to notify NMFS of the transfer within 30 days. The proposed regulations would also allow the transfer of materials for scientific research, maintenance in properly curated, professionally accredited scientific collection, or for educational purposes to other persons with the prior authorization of the Regional Director of the appropriate NMFS Regional Office.

### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this regulation, if adopted, will not significantly affect the quality of the human environment. Therefore, no environmental assessment or draft or final environmental impact statement was or will be prepared. The proposed rule would be a minor revision of reporting requirements and existing practice.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The proposed rule, if adopted, is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) an increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule contains a collection of information subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. Public reporting burden for this collection of information is estimated to average 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Dean Wilkinson, National Marine Fisheries Service, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attn: PRA Project 0648-0178).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule would have no effect on private property. Therefore, no Takings Implication Assessment was prepared under E.O. 12630.

### List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Marine mammals, Reporting and recordkeeping requirements.

Dated: December 13, 1990.
**David S. Crestin,**
*Acting Assistant Administrator for Fisheries.*

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

## PART 216—[AMENDED]

1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.3 is amended by adding new defintions for "hard part", "soft part", and "stranded or stranded marine mammal", in alphabetical order, to read as follows:

**§ 216.3 Definitions**

* * * * *

*Hard part* means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

* * * * *

*Soft part* means any tissue, organ, or other part of a marine mammal that is not relatively solid or durable.

* * * * *

*Stranded* or *stranded marine mammal* means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore or is in the water within the territorial waters of the United States; or

(2) If the specimen is alive, and is on a beach or shore and unable to return to the water or is in the water within the territorial waters of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

* * * * *

3. In § 216.22, a new paragraph (c) is added to read as follows:

**§ 216.22 Taking by State or local government officials.**

* * * * *

(c) Salvage of tissues from stranded marine mammals and transfer of tissues.

(1) *Salvage.* A State or local government employee; an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or a person authorized under 16 U.S.C. 1382(c) may take and salvage a marine mammal specimen if it is stranded and dead or it was stranded or rescued and died during treatment, transport, captivity or other rehabilitation subsequent to that stranding or distress if salvage is for the purpose of utilization in scientific research or for the purpose of maintenance in a properly curated, professionally accredited scientific collection.

(2) *Registration.* A person salvaging a dead marine mammal specimen under this section must register the salvage of the specimen with the appropriate Regional Office of the National Marine Fisheries Service within 30 days after the taking or death occurs. The registration must include:

(i) The name, address, and any official position of the individual engaged in the taking and salvage;

(ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;

(iii) A description of the parts salvaged;

(iv) The date and the location of the taking;

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(v) Such other information as deemed necessary by the Assistant Administrator.

(3) *Identification and curation.* The Regional Director will assign a single unique number to each carcass, and the parts thereof, that are salvaged under the provisions of this section. After this number is assigned, the person who salvaged the specimen must permanently mark that number on each separate hard part of that specimen and must affix that number with tags or labels to each soft part of that specimen or the containers in which that soft part is kept. Each specimen salvaged under this section must be curated in accordance with professional standards.

(4) *No sale or commercial trade.* No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.

(5) *Transfer without prior authorization.* A person who salvages a marine mammal specimen under this section may transfer that specimen to another person if:

(i) The person transferring the marine mammal specimen does not receive remuneration for the specimen;

(ii) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas or is a person authorized under 16 U.S.C. 1382(c);

(iii) The marine mammal specimen is transferred for the purpose of scientific research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on or affixed to the marine mammal specimen or container; and

(v) The person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) *Other transfers within the United States.* Except as provided under paragraph (c)(5) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (iii), and (iv) of this section are met.

(7) *Transfers outside of the United States.* A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5) (i), (iii), and (iv) of this section are met.

[FR Doc. 90-29625 Filed 12-19-90; 8:45 am]

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**50 CFR Part 640**

**[Docket No. 901224-0324]**

**RIN 0648-AD22**

## Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NOAA issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would (1) impose a fee of $26 per application to cover the administrative costs of issuing commercial, seasonal vessel permits, and (2) specify who must meet the earned income from fishing requirement for a commercial, seasonal vessel permit. The intended effects of this rule are to recover the cost to the Government for the services provided in reviewing applications and issuing commercial, seasonal vessel permits and to ensure that commercial permits are not obtained by persons for whom the spiny lobster bag limit is intended to apply.

**DATES:** Written comments must be received on or before February 4, 1991.

**ADDRESSES:** Copies of Amendment 3, which includes a Regulatory Impact Review (RIR) and an Environmental Assessment (EA), may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609. Comments on the proposed rule should be sent to Michael E. Justen, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3161.

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 3 to the FMP proposes that NMFS charge a fee for reviewing and processing applications and issuing the Federal seasonal vessel permits that are required for the commercial spiny lobster fishery in the exclusive economic zone. In 1990, approximately 700 Federal permits were issued for that fishery. The Magnuson Act authorizes the Secretary of Commerce (Secretary) to establish the level of fees that are authorized by a fishery management plan. The level of fees may not exceed the administrative costs incurred in issuing the permits. In Amendment 3, the Councils reference an administrative cost of $23. Based on a more current, detailed analysis of the direct and indirect costs of reviewing and processing applications and issuing permits, NOAA proposes to charge $26 for each application.

In addition to the proposals presented in Amendment 3, NOAA proposes to change the qualifications to obtain an annual vessel permit to specify that the ten-percent earned income from fishing requirement must be met by a shareholder or officer of a corporate-owned vessel, a general partner of a partnership-owned vessel, or the vessel operator. This change is intended to ensure that a person otherwise not eligible for a permit is not able to obtain one by incorporating his vessel and, thus, exceed the bag limits.

Amendment 3 contains a definition of overfishing for spiny lobster, as required by 50 CFR 602.11(c), and specifies actions to be taking if overfishing occurs. Additional information on the proposed definition and actions is contained in Amendment 3, the availability of which was announced in the **Federal Register** on November 30, 1990 (55 FR 49659).

### Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the Secretary of Commerce to publish regulations proposed by a regional fishery management council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 3, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a RIR that concludes that Amendment 3, if adopted, would have minimal economic effects. The annual total of fees is not expected to exceed $21,000.

The Council concluded that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Council prepared an EA that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule involves a collection-of-information requirement subject to the Paperwork Reduction Act. This collection has been approved by the Office of Management and Budget under Control Number 0648-0205.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

### List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 14, 1990.

**David S. Crestin,**

*Acting Assistant Administrator for Fisheries.*

For the reasons set forth in the preamble, 50 CFR part 640 is proposed to be amended as follows:



## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 640.4, the heading is revised, paragraphs (c) through (i) are redesignated as paragraphs (d) through (j), and new paragraphs (a)(4) and (c) are added to read as follows:

**§ 640.4 Permits and fees.**

(a) * * *

(4) For a corporation or partnership to be eligible for a seasonal vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(viii) of this section must be met by, and the statement required by that paragraph must be submitted by, a shareholder or officer of the corporation, a general partner of the partnership, or the vessel operator.

* * * * *

(c) *Fees.* A fee of $26 will be charged for each permit application submitted under paragraph (b) of this section, beginning with applications for the season that commences August 6, 1991. The appropriate fee must accompany each permit application.

* * * * *

**§ 640.7 [Amended]**

3. In § 640.7, in paragraph (i), the reference to "§ 640.4(f)" is revised to read "640.4(g)".

[FR Doc. 90-29744 Filed 12-17-90; 11:08 am]

BILLING CODE 3510-22-M

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# Notices



United States, the District of Columbia

VOL 55 ISS 245 DEC 20 1990 UMI



# Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

Federal Register
Vol. 55, No. 245
Thursday, December 20, 1990

## ACTION

### Student Community Service Projects; Availability of Funds

**AGENCY:** Action.

**ACTION:** Notice of Availability of funds; Student Community Service Projects.

Student Community Service Program, ACTION, announces the availability of funds for Fiscal Year 1991 for new VISTA/Student Community Service grants authorized by section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, title I, part B, 42 U.S.C. 4974).

Application kits and technical assistance on grant application preparation are available from the ACTION State Office. One completed application form and two copies, with original signatures on all the documents, must be received in the appropriate ACTION State Office no later than 5 p.m. local standard time on March 12, 1991. Any application received after than date will not be considered for Fiscal Year 1991 funding. However, applications post-marked 5 days before the deadline date will be accepted for consideration.

*Background on Student Community Service Program:* The following information sets out the final guidelines under which Student Community Service Projects operate. The Guidelines are divided into seven parts which deal with the overall program philosophy as well as responsibilities of the sponsor staff, volunteers, and volunteer placement sites It also includes basic data on the administration of a Student Community Service Project.

**DATES:** These guidelines took effect January 11, 1988.

These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005

### Notice of Upcoming Change

ACTION is currently in the process of proposing certain minor changes to the guidelines discussed below. These changes include:

(1) Section 4(a) Scope of Grant—references to the dollar amount of grants awarded will be deleted. In addition, the specific dollar amount of the match will be deleted.

(2) Section 4(b)—Reporting Requirement—the current guidelines state the frequency of project progress reports and their content. This material will be deleted.

(3) Section 5(a)—Local Support Contributions—specific reference to the dollar amount of the match will be deleted.

(4) Section 5(b)—Project Progress Reports must be submitted to ACTION state offices in conformance with guidelines that will be specified in the Notice of Grant Award.

(5) Certain other minor clerical changes are made.

These changes should be effective and thus apply to this Notice of Availability unless unforeseen circumstances result in the changes not becoming final. The impact of these changes upon this Notice of Availability would be as follows:

(1) Grant awards will be for $20,000 in year one, $15,000 in year two, and $5,000 in year three.

(2) Reporting requirements are substantially reduced.

Should these changes not take effect in conformance with Section 420 of the Domestic Volunteer Service Act of 1973, as amended, or the Administrative Procedure Act, the guidelines, as discussed below, will remain in effect unchanged and govern this Notice of Availability Applications for this notice must be submitted for no more than $15,000. For further information on this subject, please contact your local ACTION state office

### I. Introduction

Student Community Service Project guidelines are contained in seven parts

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines were published in their final form in the **Federal Register** of November 10, 1987, and became effective on January 11, 1988.

### II. Purpose

Student Community Service Projects are authorized under Title I, part B, section 111 and section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4971, 4974). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experience, through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve part-time and without a stipend.

Service opportunities must result in student volunteers gaining learning experiences through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management fundraising, and recruiting will be provided by ACTION as required

### III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects

A The applicant must be a Federal, State, or local agency or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of student volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in part VI.

J. The grantee must ensure compliance with the restrictions outlined in part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicants' accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

### IV. Grant Application Procedures

*A. Scope of Grant*

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. Maximum federal awards over a period of three years are up to $15,000 for the first year, up to $10,000 for the second, and up to $5,000 for the third. The grantee is required to contribute a local share of at least $3,000 each year. Final determination of the actual amount of grant awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs" as set forth in 45 CFR part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

*B. Procedures for New Grantees*

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2850.2, "Grants Management Handbook for Grantees", which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

*C. Procedures for Renewal Grantees*

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR part 1206. This regulation is available from ACTION State or Regional Offices.

### V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2850.2, "Grants Management Handbook for Grantees", which will be furnished to the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

*A. Local Support Contributions*

The Student Community Service project sponsor shall be responsible for providing at least $3,000 in non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

*B. Reporting Requirements*

Sponsors must comply with fiscal reporting requirements as outlined in



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ACTION Handbook 2850.2 and must maintain records in accordance with generally accepted accounting principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

A project progress report shall also be submitted to the ACTION State Office no later than 30 days after the end of each project quarter. The report shall include, but is not limited to, the following items:

1. A comparison of actual accomplishments with the goals and objectives established for the period.
2. The number of volunteers participating in the project during the reporting period.
3. The number of volunteers hours generated during the reporting period.
4. Problems, delays, or adverse conditions that have affected or will affect the attainment of project objectives.

*C. Insurance*

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

*D. Transportation*

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

*E. Project Staff*

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of the project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

*F. Community Relations*

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representations of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

**VI. Student Volunteer Assignments**

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

**VII. Restrictions**

*A. Special Restrictions on Student Community Service Project Grantees*

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and to communicate to staff and volunteers, the prohibitions included therein.



3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant for ACTION is a State or local government agency, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the past preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to ACTION, Office of General Counsel, 1100 Vermont Avenue, NW., room 9200, Washington, DC 20525.

4. Non-Discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-Displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-Compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

(42 U.S.C. 4974)

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

*Region I*

ACTION Regional Office, 10 Causeway Street, room 473, Boston, MA 02222-1039, 617/565-7001.

ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., rm 524, Hartford, CT 06103-3002, 203/240-327

ACTION State Office, U.S. Court House, rm 305, 76 Pearl Street, Portland, ME 04101-4168, 207/780-3414.

ACTION State Office, 10 Causeway Street, room 473, Boston MA 02222-1039, 617/565-7018.

(New Hampshire/Vermont)

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, rm 223, Concord, NH 03301-3939, 603/225-1450.

ACTION State Office, John O. Pastore Federal Building, Two Exchange Terrace, room 232, Providence, RI 02903-1758, 401/528-5424.

*Region II*

ACTION Regional Office, 6 World Trade Center, room 758, New York, NY 10048-0206, 212/466-3461.

ACTION State Office, 402 East State St., room 426, Trenton, NJ 08608-1507, 609/989-2243.

(Metropolitan New York)

ACTION State Office, 6 World Trade Center, room 758, New York, NY 10048-0206, 212/466-4471.

(Upstate New York)

ACTION State Office, U.S. Courthouse & Federal Bldg., 445 Broadway, room 103, Albany, NY 12207-2023, 518/472-3664.

(Puerto Rico/Virgin Islands

ACTION State Office, Frederico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, suite G49, Hato Rey, PR 00917-2241, 809/766-5314.

*Region III*

ACTION Regional Office, U.S. Customs House, 2nd & Chestnut St., rm 106, Philadelphia, PA 19106-2912, 215/597-9972.

ACTION State Office, Federal Building, room 372-D, 600 Federal Place, Louisville, KY 40202-2230, 502/582-6384.

(Delaware/Maryland)

ACTION State Office, Federal Building, 31 Hopkins Plaza, room 1125, Baltimore, MD 21201-2814, 301/962-4443.

ACTION State Office, Leveque Tower, room 304A, 50 W. Broad Street, Columbus, OH 43215, 614/469-7441.

ACTION State Office, U.S. House Customs House, room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106-2998, 215/597-3543.

(Virginia/Dist. of Columbia)

ACTION State Office, 400 North 8th St., rm 1119, P.O. Box 10066, Richmond, VA 23240-1832, 804/771-2197

ACTION State Office, 603 Morris Street, 2nd floor, Charleston, WV 25301-1409, 304/347-5246.

*Region IV*

ACTION Regional Office, 101 Marietta St., NW., suite 1003, Atlanta, GA 30323-2301, 404/331-2859

ACTION State Office, Beacon Ridge Tower, room 770, 600 Beacon Parkway West, Birmingham, AL 35209-3120, 205/731-1908.

ACTION State Office, 3165 McCrory Street, suite 115, Orlando, FL 32803-3750, 407/648-6117.

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ACTION State Office, 75 Piedmont Ave., NE., suite 412, Atlanta, GA 30303–2567, 404/331–4646.

ACTION State Office, Federal Building, rm 1005–A, 100 West Capital Street, Jackson, MS 39269–1092, 601/965–5664.

ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, rm 131, Raleigh, NC 27601–1739, 919/856–4731.

ACTION State Office, Federal Building, room 872, 1835 Assembly Street, Columbia, SC 29201–2430, 803/765–765–5771.

ACTION State Office, 285 Cumberland Bend Drive, Nashville, TN 27228, 615/736–5561.

*Region V*

ACTION Regional Office, 175 West Jackson Blvd., suite 1207, Chicago, IL 60604–3984, 312/353–5107.

ACTION State Office, 175 West Jackson Blvd., suite 1207, Chicago, IL 60604–3964, 312/353–3622.

ACTION State Office, 46 East Ohio Street, room 457, Indianapolis, IN 46204–1922, 317/226–6724.

ACTION State Office, Federal Building, room 722, 210 Walnut, Des Moines, IA 50309–2195, 515/284–4616.

ACTION State Office, Federal Bldg., room 658, 231 West Lafayette Blvd., Detroit, MI 48226–2799, 313/226–7848.

ACTION State Office, 431 South 7th Street, room 2480, Minneapolis, MN 55415, 612/334–4063.

ACTION State Office, 517 East Wisconsin Ave., room 601, Milwaukee, WI 53202–4507, 414/291–1118.

*Region VI*

ACTION Regional Office, 1100 Commerce, room 6B11, Dallas, TX 75242–0696, 214/767–9494.

ACTION State Office, Federal Building, room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, 501/378–5294.

ACTION State Office, Federal Building, room 248, 444 SE. Quincy, Topeka, KS 66603–3501, 913/295–2540.

ACTION State Office, 626 Main Street, suite 102, Baton Rouge, LA 70801–1910, 504/389–0471.

ACTION State Office, Federal Office Building, 911 Walnut, room 1701, Kansas City, MO 64106–2009, 816/426–5250.

ACTION State Office, First Interstate Plaza, 125 Lincoln Avenue, suite 214–B, Santa Fe, NM 87501, 505/988–6577.

ACTION State Office, 200 NW. 5th, suite 912, Oklahoma City, OK 73102–6093, 405/231–5201.

ACTION State Office, 611 East Sixth Street, suite 404 Austin, TX 78701–3747, 512/482–5671.

*Region VIII (No Region VII)*

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, suite 2930, Denver, CO 80202–2349, 303/844–2671.

ACTION State Office, Columbine Bldg., room 301, 1845 Sherman Street, Denver, CO 80203–1167, 303/866–1070.

ACTION State Office, Federal Building, room 8009, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, 307/772–2385.

ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, rm 192, Helena, MT 59626–0101, 406/449–5404.

ACTION State Office, Federal Bldg., room 293, 100 Centennial Mall North, Lincoln, NE 68508–3886, 402/437–5493.

(North & South Dakota)

ACTION State Office, Federal Bldg., room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, 605/224–5996.

ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., room 484, Salt Lake City, UT 84101–2198, 801/524–5411.

*Region IX*

ACTION Regional Office, 211 Main Street, rm 530, San Francisco, CA 94105–1914, 415/744–3013.

ACTION State Office, 522 North Central, room 205–A, Phoenix, AZ 85004–2190, 602/379–4825.

ACTION State Office, 211 Main Street, room 534, San Francisco, CA 94105–1914, 415/744–3015.

ACTION State Office, Federal Bldg., room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, 213/575–7421.

(Hawaii/Guan/American Samoa)

ACTION State Office, Federal Building, room 6328, 300 Ala Moana Boulevard, P.O. Box 50024, Honolulu, HI 96850–0001, 808/541–2832.

ACTION State Office, 4600 Kietzke Lane, suite E–141, Reno, NV 89502–5033, 702/784–5314.

*Region X*

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103, 260/442–4520.

ACTION State Office, 304 North 8th Street, room 344, Boise, ID 83702, 208/334–1707.

(Alaska)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 908174–1103, 206/442–1558.

ACTION State Office, Federal Bldg., room 647, 511 NW. Broadway, Portland, OR 97209–3416, 503/326–2261.

(Washington)

ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, 206/442–4975.

(42 U.S.C. 4974)

Dated in Washington, DC on December 14, 1990.

**Jane A. Kenny,**

*Director, ACTION.*

[FR Doc. 90–29742 Filed 12–19–90; 8:45 am]

BILLING CODE 6050–28–M

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

December 14, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC. 20250, (202) 447–2118.

**Extension**

• *Agricultural Stabilization and Conservation Service*

7 CFR part 1474 Farm Storage and Drying Equipment Loan Program—Loan Application and Approval

CCC–185

On occasion

Farms; Businesses; Small businesses or organizations; 250 responses; 250 hours

David Wolf (202) 447–4704

• *Agricultural Stabilization and Conservation Service*

7 CFR part 1430, Dairy Products—Dairy Termination Program

ASCS–309

Annually

Farms; 15,800 responses; 2,633 hours

Clarence Domire (202) 447–7673

**Reinstatement**

• *Agricultural Stabilization and Conservation Service*

7 CFR part 760, Indemnity Payment Programs—Dairy Indemnity Payment Program

ASCS–373

Monthly

Farms; Businesses or other for-profit; 480 responses; 240 hours

Clarence Domire (202) 447–7673

**Donald E. Hulcher,**

*Acting Departmental Clearance Officer.*

[FR Doc. 90–29738 Filed 12–19–90; 8:45 am]

BILLING CODE 3410–01–M



## Animal and Plant Health Inspection Service

**[Docket 90–220]**

### U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of August and September 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

**FOR FURTHER INFORMATION CONTACT:** Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8674.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be used, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of August and September 1990.

| Product License Code | Date Issued | Product | Establishment | Establishment License No. |
|---|---|---|---|---|
| 1015.20 | 08–30–90 | Autogenous Vaccine, Killed Virus | United Vaccines | 245 |
| 1189.22 | 08–06–90 | Bovine Rhino-tracheitis-Virus Diarrhea-Parainfluenza, Respiratory Syncytial Virus Vaccine, Modified Live and Killed Virus. | SmithKline Beckman Corporation | 189 |
| 1652.00 | 08–02–90 | Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus | Tri Bio Laboratories, Inc | 275 |
| 1652.02 | 08–20–90 | Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus | Tri Bio Laboratories, Inc | 275 |
| 1431.56 | 08–22–90 | Newcastle Disease Vaccine, Killed Virus | Sterwin Laboratories, Inc | 236 |
| 1MM1.20 | 08–20–90 | Parvovirus Vaccine, Modified Live Virus | AM BioTechniques, Inc | 292 |
| 2051.00 | 08–15–90 | Autogenous Bacterin | Intervet America, Inc | 266 |
| 2774.00 | 08–21–90 | Mycoplasma, Gallisepticum, Bacterin | Intervet America, Inc | 266 |
| 2775.00 | 08–02–90 | Mycoplasma, Hyopneumoniae, Bacterin | Solvay Animal Health, Inc | 195 |
| 3863.00 | 08–22–90 | Campylobacter Fetus-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin. | Coopers Animal Health, Inc | 107 |
| 4469.23 | 08–06–90 | Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza, Respiratory Syncytial Virus Vaccine-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae Pomona Bacterin, Modified Live and Killed Virus. | SmithKline Beckman Corporation | 189 |
| 7840.00 | 08–30–90 | Clostridium Perfringens, Type D Bacterin-Toxoid | Grand Laboratories, Inc | 303 |
| 8863.00 | 09–22–90 | Campylobacter Fetus-Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin, For Further Manufacture. | Grant Laboratories, Inc | 303 |
| 1300.00 | 08–25–90 | Mycobacterium Cell Wall Fraction, For Further Manufacture | Vetrepharm Research, Inc | 289 |
| 1555.21 | 08–18–90 | Feline Leukemia Vaccine, Killed Virus | American Home Products Corporation | 112 |
| 1651.01 | 08–10–90 | Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus | Immunogenetics, Inc | 196 |
| 1651.01 | 08–11–90 | Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus | Intervet America, Inc | 266 |
| 4475.20 | 09–25–90 | Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza, Respiratory Syncytial Virus Vaccine—Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona-Pasteurella Haemolytica Bacterin, Killed Virus. | American Home Products Corporation | 112 |
| 5066.00 | 09–12–90 | Mycobacterium Paratuberculosis DNA Test Kit | IDEXX Corporation | 313 |
| 7870.00 | 08–05–90 | Clostridium Perfringens Type C&D Bacterin-Toxoid | Grand Laboratories, Inc | 303 |
| 9000.01 | 09–25–90 | Mycobacterium Cell Wall Fraction Immunostimulant | Vetrepharm Research, Inc | 289 |

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedure for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No. U.S. Veterinary Biologics Establishment Licenses were issued during the months of August and September 1990.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological

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Product Licenses and U.S. Veterinary Biologics Establishment Licenses. The following product license was terminated in September 1990:

| Product License Code | Date Terminated | Product | Establishment | Establishment License No. |
|---|---|---|---|---|
| 3545.45 | 08-07-90 | Escherichia Coli Bacterin | Beecham, Inc | 225 |

Done in Washington, DC, this day of December 14, 1990.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 90-29735 Filed 12-19-90; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Kamas Valley Cattle Allotment Analysis; Kamas Ranger District of the Wasatch-Cache National Forest, Summit County, UT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement for implementing Land and Resource Management Plan objectives (for the Wasatch-Cache National Forest) on the Kamas Valley Cattle Allotment.

**DATES:** Written comments and suggestions concerning the analysis should be received by March 1, 1991.

**ADDRESSES:** Send written comments to Melissa Blackwell, District Ranger, Kamas Ranger District, Wasatch-Cache National Forest, P.O. Box 68, Kamas, UT 84036.

**FOR FURTHER INFORMATION CONTACT:** Clare Chalkley, Range conservationist, (801) 783-4338.

**SUPPLEMENTARY INFORMATION:** Current management of permitted livestock on the Kamas Valley Allotment is under analysis. It is the purpose of this analysis to determine whether management of the allotment is in concert with the stated goals and objectives of the Land and Resource Management Plan for the Wasatch-Cache National Forest.

The decision to be made will examine suitability of the land for livestock grazing, conflicts between livestock grazing and increasing recreation demands, the safety aspect of allowing livestock grazing along the Mirror Lake Highway in the fall and domestic grazing impacts to other resource values such as watershed, riparian waterways, fisheries, water quality, and big game and non-game wildlife species.

Preliminary scoping for this analysis began in March of 1989 when a scoping letter was sent out to the public outlining the initial issues and soliciting public comment. The scoping process has also included public meetings and personal telephone conversations. Federal, State, and local government agencies and other individuals or organizations have participated in the scoping process. Comments already received will be included in the preparation of the Environmental Impact Statement; duplicate copies need not be sent.

Issues have been identified and include the deteriorated condition of the watershed, water and riparian resources, conflicts between recreation and livestock grazing, the competition by game and non-game species for available forage and the limited amount of critical winter/spring range for big game, the declining or poor condition of some rangelands within the allotment, the direct social and economic impacts to the permitholders and indirectly on the local community, and highway safety, specifically, livestock grazing along the highway after Labor Day.

A range of alternatives has been developed by the interdisciplinary team including no action (or no change from current management) and no livestock grazing. Other various alternatives have been developed that address the issues identified by the interdisciplinary team.

The lead agency is the Forest Service; and the Division of Wildlife Resources, State of Utah has participated as a cooperating agency in proposing various management strategies of the allotment. The Division of Wildlife Resources owns land adjoining the National Forest which the Forest Service permitholders graze in conjunction with this allotment.

Susan Giannettino, Forest Supervisor, Wasatch-Cache National Forest, is the responsible official.

The draft environmental impact statement should be available for public review by March 1, 1991. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in this proposed action participate at this time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final environmental impact statement is scheduled to be completed by April 30, 1991.



Dated: December 11, 1991.

**Frank L. McElwain,**

*Acting Forest Supervisor.*

[FR Doc. 90-29729 Filed 12-19-90; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

### Town Creek Watershed, AL; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Town Creek Watershed, Marshall and DeKalb Counties, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, Telephone (205) 821-8070.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection to improve water quality by reducing excess nutrients and sediment in streams and in Lake Guntersville.

The planned works of improvement include the installation of 205 animal waste management systems and accelerated conservation land treatment of 4,850 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 190.904 Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 3, 1990.

**Ernest V. Todd,**

*State Conservationist.*

[FR Doc. 90-29797 Filed 12-19-90; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket No. 901110-0310]**

### Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies

**AGENCY:** Bureau of the Census, Commerce.

**ACTION:** Notice of determination for surveys.

**SUMMARY:** In conformity with title 13, United States Code, sections 182, 224, and 225, I have determined that a 1990 Company Organization Survey is needed to update the multiestablishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

**ADDRESSES:** Director, Bureau of the Census, Washington, DC 20233.

**FOR FURTHER INFORMATION CONTACT:** W Joel Richardson on (301) 763-7735.

**SUPPLEMENTARY INFORMATION:** The proposed survey has been approved by the Office of Management and Budget under Control No. 0607-0444 in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended. Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: December 14, 1990.

**Barbara Everitt Bryant,**

*Director, Bureau of the Census.*

[FR Doc. 90-29787 Filed 12-19-90; 8:45 am]

BILLING CODE 3510-07-M

## Bureau of Export Administration

### Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held January 11, 1991, 10 a.m., in the Herbert C. Hoover Building, room 1620, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to biotechnology and related equipment or technology.

**Agenda**

*General Session*

1. Opening Remarks by the Chairman and the Department of Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Prospective Controls on Process Equipment for Biological Warfare.

*Executive Session*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, BXA room 1600, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 14, 1990, pursuant to section 10(d) of the Federal

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Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377–2583.

Dated: December 16, 1990.

**Betty Anne Ferrell,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 90–29612 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–DT–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Peru; Correction

December 17, 1990.

On page 50862 of the notice published on December 11, 1990, add the following 1991 restraint limits and footnote which were omitted:

| Category | Twelve-month limit |
|---|---|
| Limits not in a group: | |
| 300/607–K [2] | 1,814,369 kilograms. |
| 301 | 1,133,981 kilograms. |
| 410 | 1,337,804 square meters. |

[2] Category 300; Category 607–K: all HTS numbers except 5509.52.0000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29608 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–DR–M

### Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

December 17, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** December 19, 1990.

**FOR FURTHER INFORMATION CONTACT:** Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6735. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 635 and 643 are being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 47546, published on November 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 17, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 19, 1990, the directive of November 9, 1989 is being amended further to adjust the limits for the following categories, under the terms of the current bilateral textile agreement between the Governments of the United States and the Philippines:

| Category | Adjusted 12-month limit [1] |
|---|---|
| Sublevels in Group I: | |
| 635 | 318,953 dozen. |
| 643 | 476,130 numbers. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–28809 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–DR–M

### Announcement of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 14, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing a limit.

**EFFECTIVE DATE:** December 21, 1990.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated January 16, 1990 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia establishes, among other things, specific limits for Categories 611 and 618 for the period January 1, 1990 through December 31, 1990.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to control imports in Category 611 at a level of 10,578,878 square meters for the January 1, 1990 through December 31, 1990 period. The 1990 level for Category 618 will be zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 5051, published on February 13, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 14, 1990.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 6, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 21, 1990, you are directed to amend the February 6, 1990 directive to include levels for the following categories

| Category | Twelve-month limits [1] |
|---|---|
| 611 | 10,578,878 square meters. |
| 618 | 0. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

Textile products in Categories 611 and 618 which have been exported to the United States prior to January 1, 1990 shall not be subject to this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29610 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–DR–M



### Rescission of a Request To Consult on Cotton Carded Yarn Produced or Manufactured in Thailand

December 14, 1990.

**AGENCY:** Committee for the Implementation of Textile Agreement (CITA).

**ACTION:** Announcing the rescission of a request to consult.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to cancel the request made on December 29, 1989 to consult on imports of cotton carded yarn in Category 300–W. Should it become necessary to discuss this category with the Government of Thailand at a later date, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 2544, published on January 25, 1990.

**Auggie D. Tantillo,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 90–29611 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning OMB Report Control Number 9000–0028, Change Order Accounting.

**ADDRESSES:** Send comments to Ms. Myra Bernstein, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein, Office of Federal Acquisition Policy, (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

a. *Purpose:* FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 6,750; responses per respondent, 18; total reporting hours, 13,230. The annual recordkeeping burden is estimated as follows: recordkeepers 6,750; hours per recordkeeper 1.5; total recordkeeping hours, 13,125. Total burden hours 26,355.

**OBTAINING COPIES OF PROPOSALS:** Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0028, Change Order Accounting.

Dated: December 13, 1990.

**Laurie A. Frazier,**

*FAR Secretariat.*

[FR Doc. 90–29762 Filed 12–19–90; 8:45 am]

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## Office of the Secretary

### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1991 Updates

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of updated mental health per diem rates.

**SUMMARY:** This notice revises the updated FY 1991 mental health per diem rates of the CHAMPUS Mental Health Per Diem Payment System that were established in a previous notice which was published on October 18, 1990.

**EFFECTIVE DATE:** The rates contained in this notice are effective for services occurring on or after October 1, 1990.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900. For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S., Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Stan Regensberg, Office of Program Development, OCHAMPUS, telephone (303) 361-3572.

To obtain copies of this document, see the "ADDRESSES" section above. Questions regarding payment of specific claims under the CHAMPUS Mental Health Per Diem Payment System should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:** The final rule published in the Federal Register on pages 34285 through 34294 on September 6, 1988, set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. Included in this final rule were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rule, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. In the Federal Register of September 4, 1990, on page 36078, Medicare recommended to Congress an update factor of 5.3 percent for federal fiscal year 1991 for hospitals and units excluded from the prospective payment system. In a notice published in the Federal Register on October 18, 1990, on pages 42241 and 42242, CHAMPUS stated that the Medicare recommended update factor of 5.3 percent would be adopted unless a different percent was finally adopted in the Federal budget for fiscal year 1991. The approved FY 1991 budget has caused the Medicare update factor to be reduced to 4.2545 percent. Therefore, as previously stated in the notice of October 18, 1990, the update factor of 4.2545 percent is the one which will be used by CHAMPUS. This means, that for all days of care rendered under the mental health per diem payment system on or after October 1, 1990, reimbursement is to be made on per diems updated from FY 1990 by the update factor of 4.2545 percent. Hospitals and units with hospital-specific rates (hospitals and units with high CHAMPUS volume) will have their FY 1990 CHAMPUS per diem rates updated by 4.2545 percent for FY 1991.

The following reflect an update of 4.2545 percent. Regional Specific Rates for Psychiatric Hospitals and Units with Low Champus Volume.

| United States census region | Rate |
|---|---|
| Northeast: | |
| New England | $434 |
| Mid-Atlantic | 415 |
| Midwest: | |
| East North Central | 360 |
| West North Central | 340 |
| South: | |
| South Atlantic | 429 |
| East South Central | 465 |
| West South Central | 390 |
| West: | |
| Mountain | 389 |
| Pacific | 460 |

[1] The wage portion of the rate, subject to the area wage adjustment, is 71.40 percent.

**Beneficiary Cost-Share:** Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $114 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1990.

**Cap Amount:** Cap amount for hospitals and units with high CHAMPUS volume is $641 per day.

The CHAMPUS contractors were previously instructed to update FY 1990 per diem rates using the 5.3 percent factor for services rendered on or after October 1, 1990. They have now been advised of the revised update factor and the revised per diem rates. They have been instructed to begin processing claims at the revised rates immediately, and to identify all claims that were paid based on the update factor of 5.3 percent for reprocessing and/or recoupment.

Dated: December 14, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

TABLE 1.—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost-Share Per Diem

Effective for admissions occurring on or after January 1, 1991.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

| | |
|---|---|
| National Large Urban Adjusted | |
| Standardized Amount | $3,006.20 |
| Labor portion | 2,130.41 |
| Nonlabor portion | 877.79 |
| National Other Urban Adjusted | |
| Standardized Amount | $2,939.95 |
| Labor portion | 2,082.07 |
| Nonlabor portion | 857.88 |
| National Rural Adjusted Standardized | |
| Amount | $2,936.60 |
| Labor portion | 2,222.46 |
| Nonlabor portion | 716.14 |
| Cost-Share per diem for beneficiaries Other than dependents of active-duty members | $262.00 |

[FR Doc. 90-29822 Filed 12-19-90; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Special Research Grant Program Notice 91-5; Energy Biosciences

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant preapplications.

**SUMMARY:** The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in reviewing an excesive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated under a formal application to the Energy Biosciences program. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication is an informal inquiry about the technical suitability of submitting a formal application for support of a research idea. A response indicating appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in a timely manner to allow for an adequate preparation period for a formal proposal. The deadline for receipt of formal applications is June 12, 1991.

**DATES:** For timely consideration, all preapplications should be received by February 15, 1991. However, earlier submissions will be gladly accepted.

**ADDRESSES:** Preapplications referencing Program Notice 91-5 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER-17, Division of Energy Biosciences, Washington, DC 20585, ATTN: Program Notice 91-5.

**PREAPPLICATIONS AND FURTHER INFORMATION:** Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10(d)(2) which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. For timely consideration, all preapplications should be received by February 15, 1991. A response to timely preapplications will be communicated by April 1, 1991. For further information contact: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER-17, Washington, DC 20585 (301) 353-2873.

**SUPPLEMENTARY INFORMATION:** Funds are expected to be available for new grant awards in FY 1992. The magnitude of these funds will depend on the budget process. The principal purpose in using preapplications at this time is to reduce the expenditures of time and effort of all parties. Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in 10 CFR part 605. Application kits for formal submissions and copies of 10 CFR part 605 are available from the same office listed under "Address" section of this Notice. Telephone requests may be made by calling (301) 353-2873. Instructions for preparaption of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC on December 7, 1990.

**D.D. Mayhew,**

*Deputy Director for Management, Office of Energy Research.*

[FR Doc. 90-29801 Filed 12-19-90; 8:45 am]

BILLING CODE 6450-01-M



## Federal Energy Regulatory Commission

[Docket No. CP90-2294-000]

### Transwestern Pipeline Co., Intent To Prepare Environmental Assessment for the San Juan Lateral and Mainline Expansion Project and Request for Comments on Environmental Issues

December 14, 1990.

**Summary**

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced docket for the San Juan Lateral and Mainline Expansion Project filed on September 25, 1990.

Transwestern Pipeline Company (Transwestern), pursuant to section 7(c) of the Natural Gas Act, is seeking a certificate of public convenience and necessity to construct, own, and operate a total of approximately 304.5 miles of new 6-, 24-, and 30-inch-diameter natural gas pipeline, a compressor station with 7,950 horsepower of compression, 2 new meter stations, and appurtenant facilities.

The purpose of the facilities proposed in Docket No. CP90-2294-000 is to: (1) Provide 520 million cubic feet per day (MMcf/d) of capacity for the transportation of natural gas produced in the San Juan Basin to the existing Transwestern system via the proposed San Juan Lateral; and (2) add 340 MMcf/d of capacity to Transwestern's mainline with the proposed Mainline Expansion. Transwestern contends that benefits resulting from this project include increased public access to proven gas reserves, the fostering of competition in the San Juan Basin area, and an increase in supply of gas to southern and northern California.

By this notice, the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EPA. All comments will be reviewed prior to preparation of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, measures to mitigate adverse environmental impact, and should include any suggestions of alternatives to the proposal (including alternative routes).

Written comments must be submitted no later than 30 days from the date of the notice, in accordance with the instructions provided at the end of this notice.

**Proposed Action**

The general location of the facilities proposed in Docket No. CP90-2294-000 are shown on Figure 1.[1] A listing of the facilities is provided in Table 1. The proposed San Juan Lateral consists of approximately 96.8 miles of 30-inch-diameter pipeline in northwestern New Mexico. Approximately 85.0 miles of this lateral would be adjacent to an existing pipeline corridor currently shared by two or more pipelines. The proposed Mainline Expansion includes a total of 199.0 miles of 30-inch-diameter pipeline comprised of five pipeline loop segments all adjacent to the existing Transwestern mainline in Arizona and western New Mexico.[2]

The proposed Bloomfield Compressor Station would be located near Bloomfield, New Mexico. It should include 7,950 horsepower of compression and metering facilities to interconnect with Meridian Oil Inc.'s Val Verde Plant, Williams Field Services Company's Manzaneres Gathering System, Conoco Inc. and Amoco Production Company's jointly owned Blanco Plant, Northwest Pipeline Company, and TransColorado Gas Transmission Company.

Three pipeline laterals totaling approximately 8.7 miles would be constructed to interconnect the Transwestern system to other gas pipeline systems. Two of these laterals would be construction in conjunction with the proposed Flagstaff and Kingman Meter Stations in order to deliver natural gas to Southern Union Gas Company. The third interconnecting pipeline, the Fort Mojave Lateral, would be constructed to join at the California-Arizona border with a 19-mile-long nonjurisdictional pipeline facility which would be constructed in California.

Modifications would be made at the existing Needles Meter Station and at existing compressor stations to increase the stations capacities in order to handle the additional volumes.

[1] Figure 1 is not being printed in the Federal Register, but copies are available from the Commission's Public Reference Branch at (202) 208-1371. A copy of Figure 1 is attached to each mailed copy of the notice.

[2] Pipeline Loop—New Pipeline would be installed parallel and adjacent to existing Transwestern pipeline.

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Facilities would be located in five counties in Arizona and two counties in New Mexico. The proposed facilities would traverse Navajo Indian Reservation and other Navajo Nation lands, the Fort Mojave Indian Reservation, the Coconino National Forest, the Kaibab National Forest, and lands managed by the Bureau of Land Management.

The proposed Mainline Expansion loops have been previously analyzed by the staff and have undergone public scoping as part of the Mojave-Kern River-El Dorado Natural Gas Pipeline Projects, Final Environmental Impact Report/Statement, FERC/FEIS–0045 (Mojave-Kern River FEIS), issued December 18, 1987, and they will not be reviewed again. The Mojave-Kern River FEIS included a review of Transwestern's proposal made in Docket No. CP86–212–000, *et al.*, that consisted of an expansion of its existing pipeline system between Pyote, Texas, and Needles, Arizona. Therefore, the environmental analysis in the Mojave-Kern River FEIS of the proposed Mainline Expansion will be incorporated by reference in the EA. If any other Federal, state, or local environmental analysis of these facilities becomes available, the FERC staff will also utilize such analysis in order to avoid duplication. The EA will, however, further assess the potential effects of the project by considering information that was not available to the Commission during its prior review of these facilities in the Mojave-Kern River FEIS.

**Construction, Operation, and Maintenance Procedures**

The proposed facilities would be designed, constructed, tested, operated, and maintained to conform with or exceed the requirements of 40 CFR part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards"; with 18 CFR 2.69, "Guidelines to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way and the Construction of Aboveground Facilities;" and with all other appropriate Federal, state, and local regulations and codes.

A 100-foot-wide construction right-of-way would generally be required and a 50-foot-wide permanent right-of-way would be maintained, including the Mainline Expansion where loops would be placed approximately 30 feet from the existing pipeline. Additional temporary work areas would be required on each side of road, railroad, river, and stream crossings. In special areas, such as the Navajo Irrigation Project, the construction right-of-way would be kept within the existing pipeline right-of-way or would be reduced in width.

The proposed Bloomfield Compressor Station would require approximately 33 acres of land. Each new meter station would require an area approximately 0.3 acre. Transwestern would purchase or otherwise secure right-of-way easements from private landowners and land managing agencies whose lands would be crossed by the proposed pipeline project.

Construction of the proposed pipelines would follow standard pipeline construction methods. The right-of-way would be cleared and graded where necessary. A ditching machine would proceed along the right-of-way to cut the trench to receive the pipe. The ditch would be typically excavated to a minimum depth of 36 inches greater than the diameter of the pipe to provide suitable depth of cover material. The trench width would be at least 12 inches greater than the pipe diameter. Topsoil, if any, would be removed to a depth of up to 18 inches and stored separately from the remaining trench material in areas of annually cultivated cropland and in other areas as requested by the landowner or land managing agency. Blasting, if required, would be carried out in accordance with applicable regulations.

Depending on local conditions and contractor preference, the pipe would be strung either prior to or after ditching. The pipe would be then lined up, welded together along the open trench, coated, and lowered into the trench. Excavated material would be used to backfill the trench. Where segregated, topsoil would be restored to its original horizon. Construction would be scheduled such that the time period between clearing and backfilling operations would be approximately 8 weeks or less, wherever possible. The right-of-way would be restored to its original contours to maintain natural drainage. Where terraces and diversion dams would have to be cut, the ground condition would be restored to its original state. Restoration would include the installation of permanent erosion control devices and reseedng of the disturbed area.

At all stream crossings, the pipeline would be buried below the estimated scour depth and, at a minimum, the trench would be deep enough to meet normal cover requirements. Construction across intermittent streams and dry washes would be carried out using conventional dryland pipeline construction methods. For flowing streams, an open-cut trench would be constructed across the bottom with conventional backhoe-type equipment or draglines. On the San Juan River, conventional bucket-type equipment operating from the bank or from floating barges would be employed to open the trench. Stream flow would be maintained during construction.

In areas of solid or fractured rock, blasting could be required. Care would be exercised to avoid damage to nearby wells, springs, wetlands, and existing pipelines and other aboveground and underground facilities.

Pipeline crossings of lightly traveled and unimproved roads would be open-cut, with construction operations normally completed in one day. At paved roads, the crossing would be by boring, with a casing installed where needed.

Where fences are encountered along the right-of-way, adequate bracing and temporary fencing and gates would be installed. The opening would be controlled during construction to prevent the escape of livestock. Upon completion of construction, any damaged cattle guards would be repaired to their original condition or replaced.

Following installation, the pipelines would be hydrostatically tested to ensure structural integrity. Hydrostatic test water would be disposed of in accordance with Federal, state, and local regulatory reqirements.

Construction of the proposed facilities would require a maximum of 8 months. A total construction workforce of approximately 1,000 workers would be required.

**Environmental Issues**

Based on preliminary analyses of the applications for the proposed facilities and the environmental information provided by Transwestern, the FERC staff has identified a number of issues which will be specifically addressed in the EA. These issues include, but are not limited to:

Land Use—Impact on homes and future development.
—Impact on the Coconino National Forest and Kaibab National Forest
Aesthetics—Effect of the appearance of right-of-way and aboveground facilities on neighborhoods and scenic areas
Pipeline Safety—Possibility of pipeline failure.
Cultural Resources—Effect of the project on properties listed on or eligible for the National Register of Historic Places.



—Effect of the project on properties of cultural significance to Native Americans.
Water Resources—Effect of construction on potable water supplies.
Wildlife/Fisheries—Impact on wildlife/fisheries.
—Impact on threatened and endangered species.
Vegetation—Short- and long-term effects on vegetation from clearing, seeding, and right-of-way management.
—Impact on riparian vegetation.
—Impact on rare or sensitive native plant species.
Soils and Geology—Erosion control and revegetation.
—Effect on crop production.
—Effects of blasting.
Alternatives—Route variations to avoid specific resources.
—Alternative pipeline system designs.

Comments are solicited on any additional topics of environmental concern to residents and others in the project area. After comments in response to this notice are received and analyzed and the various issues investigated, the staff will prepare an EA for the Transwestern Pipeline Project. The EA will be based on the FERC staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

**Cooperating Agencies**

Any Federal or state agencies desiring cooperating agency status should send a request describing how they would like to be involved and designating one contact per agency to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. The request should reference Docket No. CP90–2294–000, and should be received within 30 days of the date the notice is issued. An addition copy of the request should be sent to the FERC project manager identified at the end of this notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agency. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EA; however, the lead agency will decide what modifications will be adopted in light of production constraints. To date, the Arizona State Office of the U.S. Department of Interior, Bureau of Land Management, has requested cooperating agency status.

**Comment Procedure**

A copy of this notice and request for comments on environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, public interest groups, libraries, newspapers and other interested individuals.

Comments on the scope of the EA should be filed as soon as possible but no later than 30 days after the notice is issued. All written comments must reference Docket No. CP90–2294–000 and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Michael Boyle, Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. The FERC staff expects to complete the EA in March 1991 and circulate it to the public for a limited comment period. The EA will be sent automatically to the appropriate Federal agencies for comment. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, state and local agencies, and individuals for comment who return the attached appendix to this notice within 30 days.

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Michael Boyle, Project Manager, telephone (202) 208–1003.

**Lois D. Cashell,**
*Secretary.*

TABLE 1.—PROPOSED SAN JUAN LATERAL AND MAINLINE EXPENSION PROJECT FACILITIES

| Proposed facility | Pipe diameter (in) | Approximate length (mi)[1] | Horsepower | State | County |
|---|---|---|---|---|---|
| **Pipeline Facilities** | | | | | |
| San Juan Lateral | 30 | 96.8 | | NM | San Juan, McKinley. |
| Flagstaff Lateral | 8 | 3.0 | | AZ | Coconino. |
| Kingman Lateral | 6 | 2.2 | | AZ | Mohave. |
| Fort Mojave Lateral | 24 | 3.3 | | AZ | Mohave. |
| E. Loop[2] | 30 | 0.2 | | AZ | Mohave. |
| | 30 | 37.5 | | NM | McKinley, Apache. |
| F Loop[2] | 30 | 42.5 | | AZ | Navajo, Coconino. |
| G Loop[2] | 30 | 36.5 | | AZ | Coconino. |
| H Loop[2] | 30 | 50.5 | | AZ | Yavapai, Mohave. |
| I Loop[2] | 30 | 32.5 | | AZ | Mohave. |
| **Aboveground Facilities** | | | | | |
| Bloomfield Compressor Station (new) | | | 7,950 | NM | San Juan. |
| Flagstaff Meter Station | | | | AZ | Coconino. |
| Kingman Meter Station (new) | | | | AZ | Mohave. |
| Needless Meter Station (modification) | | | | AZ | Mohave. |

[1] Exact length will very somewhat with topography
[2] Previous analyzed in the Mojave-Kern River-El Dorado Natural Gas Projects, FEIS.

[FR Doc. 90–29733 Filed 12–19–90; 8:45 am]
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[Docket No. RE90-31-000]

**Western Area Power Administration; Application for Exemption**

December 12, 1990.

Take notice that Western Area Power Administration filed an application on November 30, 1990, for exemption from requirements of part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1992, information on the costs of providing electric service as specified in subparts B, C, D, and E of part 290.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within the 45 day period, such person must also serve a copy of such comments on:

Ms. Marlene A. Moody, Assistant Administrator for Power Management, Operations, and Maintenance, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-29734 Filed 12-19-90; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

[FE Docket No. 90-103-NG]

**NMU Gas Purchasing Inc.; Application for Blanket Authorization To Import and Export Natural Gas**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application for blanket authorization to import and export natural gas.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 3, 1990, of an application filed by NMU Gas Purchasing Inc. (NMU) for blanket authorization to import up to 110 Bcf of Canadian natural gas and to export up to 110 Bcf of natural gas to Canada for a two-year term beginning on the date of first import or export. NMU requests authority to import/export the natural gas at any point on the U.S./Canadian border where existing pipeline facilities are located. No new construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., January 22, 1991.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9394

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 100 Independence Avenue SW., Washington, DC 20585, (202) 586-0503

**SUPPLEMENTARY INFORMATION:** NMU is a corporation organized in the State of Delaware with its principal place of business in Cloquet, Minnesota. NMU is a wholly owned subsidiary of Utilicorp United, Inc., incorporated in the State of Delaware, with its principal place of business also in Cloquet, Minnesota.

NMU proposes to market imported or exported natural gas on a short-term or spot-market basis for its own account or as an agent for others. The specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices. NMU also proposes to use existing facilities for the import and/or export of natural gas. NMU asserts that its market-based approach for negotiating short-term imports and exports will enhance competition in the North American gas market.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that there is no current need for the domestic gas proposed to be exported, that the proposed import/export arrangement will be competitive and therefore is in the public interest. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that any authorization granted would be conditioned on the filing of quarterly reports indicating the details of each import or export sales transaction.

### NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) requires DOE to give appropriate consideration to the environmental effects on its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NMU's application is available for inspection and copying in the office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 13, 1990.

**Clifford P. Tomaszewski,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 90-29802 Filed 12-19-90; 8:45 am]

BILLING CODE 6450-01-M



## Office of Hearings and Appeals

**Cases Filed During the Week of October 19 Through October 26, 1990**

During the Week of October 19 through October 26, 1990, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: December 13, 1990.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### List of Cases Received by, the Office of Hearings and Appeals

[Week of October 19 through October 26, 1990]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Oct. 25, 1990 | Standard Oil Company (Indiana)/North Caroline, Raleigh, North Carolina. | RM251-237 | Modification/rescission second stage. If granted: The March 2, 1988 and September 27, 1988 Decisions and Orders (Case Nos. RQ251-416, RM251-123 issued to North Carolina would be modified regarding the state's application for refund submitted in the Standard Oil Company (Indiana) second stage refund proceeding. |
| Oct. 25, 1990 | Texaco/Freeway Texaco, Minneapolis, Minnesota | RR321-24 | Modification/rescission. If granted: The October 5, 1990 Decision and Order (Case No. RF321-4706) issued to Freeway would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding by Robert A. Williams. |
| Oct. 26, 1990 | Akin, Gump, Strauss, Hauer & Feld Washington, DC. | LFA-0076 | Appeal of an information request denial. If granted: The September 28, 1990, Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Akin, Gump, Strauss, Hauer & Feld would receive access to documents relating to issues involving the use of cesium capsules by IOTECH, Inc. |
| Oct. 26, 1990 | Pennzoil, OKC Corp, Coline Gas & National Helium/Arkansas, Little Rock, Arkansas. | RM10-238, RM13-239, RM2-240, RM3-241 | Modification/rescission second stage. If granted: The November 17, 1989 Decision and Order (Case Nos. RQ10-532, RQ13-533, RQ2-534, RQ3-535) issued to Arkansas would be modified regarding the state's application for refund submitted in the Pennzoil, OKC Corp, Coline Gas and National Helium second stage refund proceeding. |

### Refund Applications Received

| Date received | Name of refund proceeding/name of refund application | Case No. |
|---|---|---|
| 10/23/90 | Newport Electric Corp. | RF323-30. |
| 10/23/90 | Mercer Island Shell | RF315-10063. |
| 10/23/90 | Ponsilico Brothers Asphalt | RF272-68. |
| 10/24/90 | Hilltop Exxon | RF307-10154. |
| 10/24/90 | Shelby Petroleum Corp. | RF313-327. |
| 10/23/90 | Traveler's Exxon | RF307-10155. |

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REFUND APPLICATIONS RECEIVED—Continued

| Date received | Name of refund proceeding/name of refund application | Case No. |
|---|---|---|
| 10/25/90 | Dave Starmer Exxon | RF307-10156. |
| 10/24/90 | State Escrow Distribution | RF302-9. |
| 10/22/90 | Anderson's Exxon Service | RF307-10157. |
| 10/22/90 | Jo-Ed Exxon | RF307-10158. |
| 10/26/90 | Charles Ashley | RC272-100. |
| 10/25/90 | Dow Chemical Company | RF315-10064. |
| 10/26/90 | Inland Partners | RF315-10065. |
| 10/19/90 THRU 10/26/90 | Crude Oil Refund Applications Received | RF272-83209 THRU RF272-83813. |
| 10/19/90 THRU 10/26/90 | Gulf Refund Applications Received | RF300-12904 THRU RF300-13117. |
| 10/19/90 THRU 10/26/90 | Texaco Refund Applications Received | RF321-10269 THRU RF321-10541. |
| 10/19/90 THRU 10/26/90 | Atlantic Richfield Applications Received | RF304-12092 THRU RF304-12119. |
| 10/19/90 THRU 10/26/90 | Tesoro Refund Applications Received | RF326-1 THRU RF326-72. |

[FR Doc. 90-29600 Filed 12-19-90; 8:45 am]
BILLING CODE 6450-01-M

## Western Area Power Administration

### Firm Power Allocations Pick-Sloan Missouri Basin Program, Eastern Division

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of final firm power allocations to the towns of Fort Peck, Montana; Pickstown, South Dakota; and Riverdale, North Dakota; and opportunity for public comment.

**SUMMARY:** In an April 18, 1988, Federal Register notice (53 FR 12727), the Western Area Power Administration (Western) announced that it would allocate firm power to the former Corps of Engineers (Corps) towns of Fort Peck, Montana; Pickstown, South Dakota; and Riverdale, North Dakota. The Act of August 15, 1985, 99 Stat. 293, 317–318 (Pub. L. 99–88) and the Act of November 17, 1988, 100 Stat. 4242 (Pub. L. 99–662) provided the authorization for the allocations to those three towns. Initial allocation amounts were determined from available data and were, as discussed in the April 18th Federal Register notice, subject to later revision. A time period described as the Test Period was established to allow for the collection of actual metered demand data, which would be utilized to reevaluate the basis for, and amounts of, the initial allocation and subsequently determine the final allocations. That Test Period ended on October 31, 1989; all data has been collected and analyzed by Western; and the final allocation amounts have been determined.

**DATES:** Written comments on this notice are due in the office of the Area Manager, at the address given below, no later than January 22, 1991. The allocations in this notice will become effective February 4, 1991 unless amended by any further Federal Register notice warranted by public comments.

**ADDRESSES:** Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 657–6532.

**SUPPLEMENTARY INFORMATION:**

#### Allocations

The final firm power allocations for the summer and winter seasons to each of the three towns are as follows:

| Town | Summer season | Winter season |
|---|---|---|
| Fort Peck, Montana | 488 kW | 778 kW |
| Pickstown, South Dakota | 311 kW | 325 kW |
| Riverdale, North Dakota | 342 kW | 507 kW |

#### Discussion of Issues-Public Comments

During the 30-day public comment period that was announced in a March 11, 1988, Federal Register notice (51 FR 8360), comments were received as follows.

*Issue:* It was suggested by the town of Fort Peck that Western select the 1984–85 winter season rather than the 1985–86 winter season to determine the amount of power to be allocated to Fort Peck during the winter season.

*Response:* Western chose an historical reference period proximate to the date of the enabling legislation as being consistent with the congressional directive to have Western make an allocation of Federal power. The issue arose out of some concern that the 1984–85 winter season was a more typical winter. Because of that concern and because of the fact that there was only metered energy (no demand) data available, demand meters were installed before the 1986–87 winter season, and a Test Period was established as a means to evaluate the initial allocation or interim contract rates of delivery (CROD) for Fort Peck. The Test Period was similarly used in evaluation of the interim CROD's for Pickstown, South Dakota, and Riverdale, North Dakota.

*Issue:* The Valley Electric Cooperative, Inc., Glasgow, Montana, made a request to receive the Fort Peck allocation.

*Response:* The town of Fort Peck has made arrangements to transfer its allocation to the Central Montana Electric Power Cooperative, Inc., Billings, Montana, a generation and transmission cooperative. The Valley Electric Cooperative, Inc., is a member system of the Central Montana Electric Power Cooperative, Inc., and will serve Fort Peck. That transfer has been approved by Western.

*Issue:* A request was received from the law offices of Crosby, Guenzel, Davis, Kessner, and Kuester of Lincoln, Nebraska, representing the cities of South Sioux City, Madison, Wakefield, and Randolph, Nebraska, for information concerning the amounts of power that would be available for allocation and the criteria under which that power might be allocated to other entities.

*Response:* Western responded by letter of April 10, 1988, that the power referred to in the Federal Register notice was the amount of power that had been supplied to the towns while they were under the control of the Corps. The power to be allocated was only that amount and would specifically serve only the three former Corps towns. Western would begin to provide service to the three former Corps towns with the amount of power that had been previously supplied on behalf of the Corps, and any requirements above the final CROD's would be served by a supplemental supplier.

*Issue:* The Mid-West Electric Consumers Association, Inc., Denver, Colorado, and the Central Montana Electric Power Cooperative, Inc., requested that they be allowed to comment before any final CROD's were established for any of the towns.



*Response:* This notice is being issued with an opportunity to comment.

#### Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

#### Environmental Compliance

Western has conducted an environmental analysis of this allocation of power pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality Regulation, and Department of Energy guidelines (45 FR 20694–20701, as amended). Western's allocation of power will be in the same amounts and generated from the same resource as the project-use power that has been supplied by the Corps. The power will be made available to Western by the Corps to be allocated to the three towns as firm power. The change is essentially administrative in nature with Western assuming the former Corps responsibilities for supplying power to the three towns. Since there clearly would be no significant environmental impact, the proposed action does not require the preparation of an environmental assessment or an environmental impact statement. Documentation supporting this determination is on file in Western's Billings Area Office.

Pursuant to the authority of Public Law 99–88 and Public Law 99–662, and unless further amended by any Federal Register notice, I hereby approve and place into effect, upon completion of a 45-day period that commences upon the date of publication of this notice, the final allocation of firm power as specified herein.

William H. Clagett,
*Administrator.*

[FR Doc. 90-29803 Filed 12-19-90; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3871-6]

### Fuels and Fuel Additives; Waiver Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On May 9, 1990, the Ethyl Corporation (Ethyl) submitted an application for a waiver under section 211(f)(4) of the Clean Air Act (Act) for the gasoline additive, methylcyclopentadienyl manganese tricarbonyl (MMT), an octane enhancer, commercially labeled by Ethyl as HITEC 3000. On June 5, 1990, a notice was published in the Federal Register (55 FR 22947) acknowledging receipt of the application and requesting comments on it. Ethyl withdrew the application on November 1, 1990. The Administrator of EPA has therefore terminated consideration of the application without making a decision on whether to grant or deny the waiver request.

**ADDRESSES:** Copies of the information relative to this application are available for inspection in public docket A–90–16 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street, SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** David J. Kortum, Environmental Engineer, or James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–2635.

**SUPPLEMENTARY INFORMATION:** Section 211(f)(1)(A) of the Act makes it unlawful, effective March 31, 1977, for any manufacturer of a fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act.[1] EPA has interpreted the phrase "substantially similar" at 46 FR 38582 (July 28, 1981).

Section 211(f)(4) of the Act provides that upon application by any fuel or fuel additive manufacturer, the Administrator of EPA may waive the prohibitions of section 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emissions standards to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny a waiver within 180 days of receipt of the application, the statute provides that the waiver shall be treated as granted.

The application submitted by Ethyl sought a waiver for MMT, to be blended in unleaded gasoline resulting in a level of 0.03125 (1/32) gram per gallon manganese (gpg Mn). The Administrator of EPA had until November 5, 1990 (180 days from the date of receipt of the application) to grant or deny this application.

The Ethyl Corporation withdrew the application in a letter to the Deputy Administrator of EPA on November 1, 1990, before the deadline for the Administrator to make a determination on the application. Because no determination had been made at the time the applicant withdrew the application, EPA accepted the withdrawal and immediately terminated this proceeding without action on the application.

Michael Shapiro,
*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 90-29790 Filed 12-19-90; 8:45 am]
BILLING CODE 6560-50-M

[1] Section 214(a) of the Clean Air Act Amendments of 1990 (effective November 15, 1990) adds subparagraph B to section 211(f)(1) of the Act. This subparagraph expands these prohibitions beyond fuels for general use in light duty vehicles by removing the reference to "light duty."

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 13, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

*OMB Number:* 3060–0420.

*Title:* Amendment of part 22 of the Commission's Rules to Revise Certain

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Filing Procedures for Mobile Services Division Applications.

*Action:* Revision.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting.

*Estimated Annual Burden:* 16,110 responses, 2 hours average burden per response, 32,220 hours total annual burden.

*Needs and Uses:* Section 22.6(d)(2) of the Commission's rules is amended to require slightly modified labeling of microfiche copies filed by part 22 applicants to assist FCC staff in filing and handling microfiche copies. Part 22 applicants will be required to file microfiche copies of the the FCC Form 405 to conserve Commission resources. The information will be used by FCC staff to facilitate the filing and retrieval of microfiche copies for public use. The additional labeling data will enhance handling of microfiche copies.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 90-29748 Filed 12-19-90; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-886-DR]

### Federated States of Micronesia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the Federated States of Micronesia (FEMA-886-DR), dated December 14, 1990, and related determinations.

**DATES:** December 14, 1990.

**FOR FURTHER INFORMATION CONTACT:** Patricia S. Bowman, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2661.

**NOTICE:** Notice is hereby given that, in a letter dated December 14, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the Federated States of Micronesia, resulting from Typhoon Owen on November 28-December 1, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Federated States of Micronesia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Albert Roy Kite, of the Federal Emergency Management Agency, to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Federated States of Micronesia to have been affected adversely by this declared major disaster:

The States of Chuuk (Truk) and Yap for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90-29795 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

### Washington; Amendment To Notice of Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATES:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

San Juan County for Individual Assistance and Public Assistance;

Kitsap County for Individual Assistance; and

The counties of Grays Harbor, Pacific, and Wahkiakum for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90-29791 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

### Washington; Amendment To Notice of Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATES:** December 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

The counties of Chelan, Island, Jefferson, and Kittitas for Individual Assistance and Public Assistance;

Yakima County for Individual Assistance only; and

The counties of Thurston and Pierce for Public Assistance (previously designated for Individual Assistance).



(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Grant C. Peterson,**

*Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 90-29792 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-883-DR]

### Washington; Amendment To Notice of Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Washington (FEMA-883-DR), dated November 26, 1990, and related determinations.

**DATES:** December 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

**NOTICE:** The notice of a major disaster for the State of Washington, dated November 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 26, 1990:

Clallam County for Individual Assistance and Public Assistance; and

The counties of Lewis and Mason for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Grant C. Peterson,**

*Associate Director, State and Local Programs Support, Federal Emergency Management Agency.*

[FR Doc. 90-29793 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-02-M

### Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP); Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. app.), announcement is made of the following committee meeting:

*Name:* National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee.

*Dates of Meeting:* January 7-8, 1991.

*Place:* Marriott Suites, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

*Time:* January 7—1 p.m. to 5 p.m.; January 8—8 a.m. to 5 p.m.

*Proposed Agenda:* The Committee will be briefed on the National Earthquake Hazards Reduction Program and the requirements of Pub. L. 101-614, 42 U.S.C. 7701 et seq.; the NEHRP Advisory Committee will discuss areas of emphasis to be reflected in the revision to the NEHRP Five-Year Plan.

The meeting will be open to the public with approximately ten seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Deborah O'Rourke at 202-646-2803.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing at the Federal Emergency Management Agency, Earthquakes and Natural Hazards Programs Division, 500 "C" Street, SW., room 625, Washington, DC. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 13, 1990.

**Wallace E. Stickney,**

*Director, Federal Emergency Management Agency.*

[FR Doc. 90-29796 Filed 12-19-90; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Costa Cruise Lines N.V., et al.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Costa Cruise Lines N.V. and Costa Crociere S.P.A., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130-3097.

*Vessel:* Costa Classica.

Dated: December 14, 1990.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29758 Filed 12-19-90; 8:45 am]

BILLING CODE 6730-01-M

### Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance); Starlite Cruises, Inc.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR 540, as amended:

Starlite Cruises, Inc., 1355 N. Harbor Drive, San Diego, CA 92101.

*Vessel:* Pacific Star.

Dated: December 17, 1990.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90-29757 Filed 12-19-90; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement no.:* 224-010774-010.

*Title:* Georgia Port Authority Terminal Agreement.

*Parties:* Georgia Ports Authority, Evergreen Marine Corporation (Taiwan), Ltd., Italia De Navigazione (Italia) Compagnie Generale Maritime

*Synopsis:* The Agreement amends the parties' basic agreement to revise the rate schedule for certain terminal services applicable to Italia.

*Agreement no.:* 224-200312-001.

*Title:* The Port of Oakland Terminal Agreement.

*Parties:* The Port of Oakland (Port) Hapag Lloyd A.G., Compagnie generale Maritime, Atlantic Container Line AB, Sea-Land Service, Inc., P. & O. Containers Limited.



*Synopsis:* The Agreement amends the basic agreement to expand the

managing or controlling banks as to be a

This application may be inspected at



Westover Library, 1800 N. Lexington ST,

(construction near the intersection of

ADDRESSES: Written comments and

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*Synopsis:* The Agreement amends the basic agreement to expand the designation of assigned premises to include other Port public container terminals to which carrier parties may transfer their operations. The Agreement also sets forth name and address changes of certain carrier parties.

By Order of the Federal Maritime Commission.

Dated: December 14, 1990.

Joseph C. Polking,

*Secretary.*

[FR Doc. 90-29726 Filed 12-19-90; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### The Mitsubishi Bank, Limited; Application To Act as an Intermediary, Principal, and Broker in Interest Rate and Currency Swaps, and Provide Related Advisory Services

The Mitsubishi Bank, Limited, Tokyo, Japan ("Mitsubishi"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through Mitsubishi Capital Markets Services, Inc., New York, New York ("Company"), to be formed as a wholly owned subsidiary, to engage in the following activities:

(1) Acting as an originator and principal, including in intermediary and market-making capacities, in interest rate swap and currency swap transactions;

(2) Acting as an originator and principal, including in intermediary and market-making capacities, with respect to certain risk-management products such as caps, floors and collars, as well as options on swaps, caps, floors and collars ("swap derivative products");

(3) Acting as a broker or agent with respect to swaps and swap derivative products; and

(4) Acting as adviser to institutional customers regarding financial strategies involving swap and swap derivative products.

These activities would be conducted domestically and internationally.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Mitsubishi believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved intermediating in the international swap markets by acting as an originator and principal in interest rate swap and currency swap transactions, acting as an originator and principal with respect to swap derivative products, acting as a broker or agent with respect to the foregoing transactions and instruments, and acting as an advisor to institutional customers regarding financial strategies involving the foregoing transactions and instruments. *See* The Fuji Bank, Limited, 76 Federal Reserve Bulletin 768 (1990); The Sumitomo Bank, Limited, 75 Federal Reserve Bulletin 582 (1989). Mitsubishi proposes that Company comply with substantially all of the prudential limitations previously relied upon by the Board in approving these activities. *See id.* As a market maker, the Company typically would be willing, at the request of a customer, to price and enter into a transaction involving swaps or swap derivative products either as purchaser or seller.

Mitsubishi states that the proposed activities will benefit the public. It believes that they will promote competition and provide added convenience to customers, gains in efficiency, and promote innovation in the financial markets. Moreover, Mitsubishi believes that the proposed activities will not result in any unsound banking practices.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20552, not later than January 16, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 14, 1990.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 90-29745 Filed 12-19-90; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Public Hearings for the Draft Environmental Impact Statement for Proposed Construction and Occupation of Large Scale Office Complex in Northern Virginia for Use by the Navy

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the General Services Administration (GSA) has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed construction and occupation of a large scale office complex in northern Virginia for use by the Navy.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. In addition, a copy of the DEIS has been placed in the following public libraries:

George Mason Library, 7001 Little River TP, Annandale, VA
John Marshal Library, 6209 Rose Hill DR, Alexandria, VA
Martha Washington Library, 6614 Fort Hunt RD, Alexandria, VA
Sherwood Library, 2501 Sherwood Hall LN, Alexandria, VA
Alexandria City Library, 717 Queen ST, Alexandria, VA
James Duncan Library, 2501 Commonwealth AV, Alexandria, VA
Columbia Pike Library, 816 S. Walter Reed DR, Arlington, VA
Cherrydale Library, 2190 N. Military RD, Arlington, VA
Shirlington Library, 2700 S. Arlington Mill DR, Arlington, VA
Fairfax City Library, 3915 Chain Bridge RD, Fairfax, VA.
Ellen Coolidge Library, 4701 Seminary RD, Alexandria, VA
Central Library, 1015 North Quincy ST, Arlington, VA
Aurora Hills Library, 735 18th ST, Arlington, VA
Glencarlyn Library, 300 S. Kensington ST, Arlington, VA
Westover Library, 1600 N. Lexington ST, Arlington, VA

A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on January 8, 1991, from 7 p.m. to 10 p.m. in the Oak Ridge Elementary School Multipurpose Room, 1414 South 24th Street, Arlington, Virginia; and, on January 10, 1991, from 7 p.m. to 10 p.m. in the Lee Center Auditorium, 1108 Jefferson Street, Alexandria, Virginia.

The public hearings will be jointly conducted by GSA and the Navy. Federal, State, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by February 7, 1991, to become part of the official record.

As discussed in the DEIS, GSA proposes to construct for use by the Navy a large scale office complex in northern Virginia (Arlington County, Cities of Alexandria and Falls Church, and that portion of Fairfax County encompassed by I–495 and I–95, and one and half miles to the west of I–495 and one and half miles south of I–495 and I–95). Alternatives examined in the DEIS included no action, construction/rehabilitation of office space on government owned land, and construction/rehabilitation of office space on developer proposed sites. Criteria evaluating government owned sites identified Cameron Station (near the intersection of Duke Street and South Picket Road) as the only suitable government land for the project. In response to a Solicitation For Offers, six proposals were presented to GSA, and they are: Eisenhower Avenue (construction near the intersection of Eisenhower Avenue and Mill Road); Van Dorn Street (construction near the intersection of Clermont Drive and Eisenhower Avenue); Seminary Road (construction near the intersection of Seminary Road and I–395); Port Potomac (construction near the intersection of Jefferson Davis Highway and South Glebe Road); Crystal City One (rehabilitation of National Center 2 & 2, Crystal Mall 2, 3 & 4, Crystal Gateway 1, 2, 3, & North, and Jefferson Plaza 1 & 2); and Crystal City Two (construction near the intersection of Hayes Street and 15th Street and rehabilitation of Crystal Gateway 1, 2, 3& North).

Development of any of these sites as proposed could result in significant traffic impacts. In addition, significant community services impacts could occur with development at the Cameron Station, Eisenhower Avenue, Van Dorn, Seminary Road, Port Potomac, and Crystal City Two sites since a new fire station near the new complex would be needed. Other significant impacts include wetlands loss at the Van Dorn site; land use impacts at the Cameron Station, Eisenhower Avenue, Van Dorn, and Crystal City Two sites; and parking shortfall impacts at the Eisenhower Avenue, Van Dorn, Port Potomac, and Crystal City One sites.

Additional information concerning this notice may be obtained by contacting Mr. George Chandler (Code WPL, telephone (202) 708–5334, fax (202) 708–7671), National Capitol Region, General Services Administration, 7th & D Streets SW., Washington, DC 20407.

Dated: December 11, 1990.

Linda L. Eastman,

*Director, Facilities Planning Staff.*

[FR Doc. 90-29730 Filed 12-19-90; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 90E-0362]

### Determination of Regulatory Review Period for Purposes of Patent Extension; Synanthic®

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Synanthic® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the test phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Synanthic® (oxfendazole). Synanthic® is indicated for the removal and control of worms in horses and beef cattle. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Synanthic® (U.S. Patent No. 4,080,461) from Syntex (U.S.A.) Inc., and requested FDA's assistance is determining the patent's eligibility for patent term restoration. FDA, in a letter

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dated October 29, 1990, advised the Patent and Trademark Office that the animal drug product had undergone a regulatory review period. The letter also stated that the active ingredient, oxfendazole, represented the first permitted commercial marketing for use in a food animal. Shortly thereafter, the PTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Synanthic® is 6,022 days. Of this time, 4,812 days occurred during the testing phase of the regulatory review period, while 1,210 days occurred during the approval phase. These periods of time were derived from the following dates:

*1. The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective:* March 25, 1974. The applicant claims August 8, 1975 as the date the investigational new animal drug (INAD) application became effective. However, FDA records indicate that the date of FDA's official acknowledgment letter assigning a number to the INAD was March 25, 1974, which is considered to be the effective date for the INAD.

*2. The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act:* May 27, 1987. The applicant claims May 22, 1987, as the date the new animal drug application (NADA) was filed. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to the NADA was May 27, 1987, which is considered to be the submission date for the NADA.

*3. The date the application was approved:* September 17, 1990. FDA has verified the applicant's claim that NADA 140–854 was approved on September 17, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 3 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 19, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 18, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 11, 1990.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 90–29749 Filed 12–19–90; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 90N–0438]**

## Drug Export; Macrobid® (Nitrofurantoin Modified-Release/Nepi) Capsules

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Norwich Eaton Pharmaceuticals, Inc. has filed an application requesting approval for the export of the human drug Macrobid® (nitrofurantoin modified-release/nepi) Capsules to Canada.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Frank R. Fazzari, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Norwich Eaton Pharmaceuticals, A Procter & Gamble Co., P.O. Box 191, Norwich, NY 13815–0191, has filed an application requesting approval for the export of the drug Macrobid® (nitrofurantoin modified-release/NEPI) Capsules, to Canada. The application was received and filed in the Center for Drug Evaluation and Research on November 9, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 31, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: December 6, 1990.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 90–29831 Filed 12–19–90; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 90E–0343]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; Exosurf® Neonatal™

**AGENCY:** Food and Drug Administration HHS.



**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Exosurf® Neonatal™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nancy Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Exosurf® Neonatal™. Exosurf® Neonatal™ (colfosceril palmitate, cetyl alcohol, tyloxapol) is indicated for: (1) Prophylactic treatment of infants with birth weights of less than 1,350 grams (g) who are at risk of developing respiratory distress syndrome; (2) prophylactic treatment of infants with birth weights greater than 1,350 g who have evidence of pulmonary immaturity; and, (3) rescue treatment of infants who have developed respiratory distress syndrome. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Exosurf® Neonatal™ (U.S. Patent No. 4,312,680) from Burroughs Wellcome Co., and requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated November 2, 1990, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period. The letter also stated that the active ingredient, colfosceril palmitate, represented the first permitted commercial marketing or use, but it was not the first commercial marketing or use of the active ingredients cetyl alcohol or tyloxapol. Shortly thereafter, the patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Exosurf® Neonatal™ is 1,801 days. Of this time, 1,723 days occurred during the testing phase of the regulatory review period, while 168 days occurred during the approval phase. These periods of time were derived from the following dates:

*1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 31, 1985. FDA has verified the applicant's claim that the date the investigational new drug application became effective was May 31, 1985.

*2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* February 16, 1990. FDA has verified the applicant's claim that the new drug application (NDA) for Exosurf® Neonatal™ (NDA 20–044) was filed on February 16, 1990.

*3. The date the application was approved:* August 2, 1990. FDA has verified the applicant's claim that NDA 20–044 was approved on August 2, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,029 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 19, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before June 18, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the forma specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 11, 1990.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 90–29748 Filed 12–19–90; 8:45 am]

BILLING CODE 4160–01–M

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## Health Resources and Services Administration

### Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on the National Health Service Corps

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Law Library, HHS North Building, room G–619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245–6791. Copies may be obtained from: Anna Mae Voigt, National Advisory Council on the National Health Service

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Corps, room 7A–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Dated: December 17, 1990.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 90–29747 Filed 12–19–90; 8:45 am]

BILLING CODE 4160–15–M

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 14–15, 1991, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. on January 14, to adjournment on January 15. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; Room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistant Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: December 13, 1990.

**Betty J. Beveridge,**

*Committee Management Office, NIH.*

[FR Doc. 90–29618 Filed 12–19–90; 8:45 am]

BILLING CODE 4140–01–M

## Office of the Assistant Secretary for Health

### Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Wednesday, January 23, 1991 from 8:30 a.m. to 5:30 p.m. and Thursday, January 24, 1991 from 8:30 a.m. to 1 p.m. The meeting is open to the public and will be held in the Gold Rush Room of the Holiday Inn Golden Gateway located at 1500 Van Ness Avenue, San Francisco, CA 94109. Public registration will begin one half hour prior to the beginning of the meeting on each day.

The purpose of this meeting is to conduct, further review and analysis of the findings of the Committee's three subcommittees and to begin the process of outlining important cross-cutting issues for inclusion in the Committee's final report.

**FOR FURTHER INFORMATION CONTACT:** Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740–C Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Telephone number (202) 245–7305.

Dated: December 14, 1990.

**Eric M. Katz,**

*Executive Secretary, Advisory Committee on the FDA.*

[FR Doc. 90–29776 Filed 12–19–90; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1076–0091), Washington, DC 20503, telephone (202) 395–7340.

*Title: General Contract Requirements, 25 CFR part 271.*

*Abstract:* Indian tribes contracting under Public Law 93–638 are required to establish and maintain a recordkeeping system as well as provide financial status and program progress reports, the proper administration, monitoring, and evaluation of contracts awarded by the Bureau of Indian Affairs.

*Frequency:* Quarterly reports.

*Description of Respondents:* Indian tribes contracting Bureau Programs.

*Annual Responses:* 4,535.

*Annual Burden Hours:* 2,443.

*Bureau Clearance Officer:* Gail Sheridan, (202) 208–2685.

Dated: November 9, 1990.

**Carol A. Bacon,**

*Deputy to the Assistant Secretary, Indian Affairs (Tribal Service).*

[FR Doc. 90–29770 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–02–M

### Information Collection Submitted for Review

The proposal for the collection of information listed has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirements and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the OMB Interior Desk Officer at (202) 395–7340 and the Bureau Clearance Office at (202) 208–2685.

*Title:* Applications for Admission to Haskell Indian Junior College and Southwestern Indian Polytechnic Institute.

*Abstract:* This information is needed to determine eligibility of Native American Indian College students for admission to the two postsecondary institutions operated by the Bureau. If this information is not provided or if eligibility criteria are not met then the student will be denied admission. The respondents are Native Americans and Alaskan Natives who need to attend Federal postsecondary schools.

*Frequency:* Annually.

*Description of respondents:* Indian/Alaskan Native students applying for admission to postsecondary schools.

*Annual response: 3,000.*

*Annual burden hours:* 750 hours.

*Bureau clearance officer:* Gail Sheridan, (202) 208–2685.



Dated: September 10, 1990.

**Goodwin K. Cobb,**

*Acting Deputy to the Assistant Secretary, Indian Affairs/Director (Indian Education Programs).*

[FR Doc. 90–29771 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

[CA–940–01–5410–10–B007; CACA 27691]

### Conveyance of Mineral Interests in California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Segregation.

**SUMMARY:** The private lands described in this notice, aggregating 65.22 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E–2845, Sacramento, California 95825, (916) 978–4820. Serial No. CACA 27691.

T. 11 N., R. 13 W., San Bernardino Meridian
Sec. 4, E½NW¼W½ lot 2 NW¼, NW¼W½ lot 1 NE¼, W½SW¼W½ lot 1 NE¼, NW¼E½ lot 1 NE¼, W½SW¼E½ lot 1 NE¼, W½NW¼SW¼, SW¼NE¼SW¼, W½NW¼NE¼SW¼, SW¼SW¼SE¼, E½NW¼SW¼SE¼.

County—Kern.

Minerals Reservation—All coal and other minerals.

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: December 12, 1990.

**Nancy J. Alex,**

*Chief, Lands Section.*

[FR Doc. 90–29779 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–40–M

[UT–060–01–4333–12; UTU–65546]

### Realty Actions; Sales, Leases, Etc.; Utah

**AGENCY:** Bureau of Land Management, Moab.

**ACTION:** Notice of realty action; exchange of public lands in Emery, Grand, San Juan and Wayne counties, Utah.

**SUMMARY:** The BLM proposes to exchange land with the State of Utah in order to achieve more efficient management of public and State lands. The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

| | Acres |
|---|---|
| T. 22 S., R. 14 E. SLM, UT (Emery County): | |
| Section 4, SE¼ | 160.00 |
| Section 10, S½NW¼, SW¼ | 240.00 |
| | 400.00 |
| T. 23 S., R. 6 E., SLM, UT (Emery County): | |
| Section 14, NE¼, N½ N½ SE¼ | 200.00 |
| T. 24 S., R. 22 E., SLM, UT (Grand Co.): | |
| Section 36, Lots 1,2 | 71.49 |
| T. 24 S., R. 23 E., SLM, UT (Grand Co.): | |
| Section 19, Lot 3 | 2.01 |
| Section 20, Lot 13 | 23.36 |
| Section 29, W½NW¼ | 80.00 |
| Section 30, Lots 1,2,9,SE¼NE¼ | 130.12 |
| | 235.49 |
| T. 26 S., R. 22 E., SLM, UT (Grand Co.): | |
| Section 5, Lot 11, W½SE¼ | 116.56 |
| Section 8, Lots 1–3,5, SW¼NE¼, SE¼NW¼ | 178.21 |
| Section 9, Lots 1–3, E½NE¼, NE¼ SE¼, N½SE¼SE¼, E½S½SE¼, SE¼SE¼SE¼ | 270.96 |
| Section 27, W½SW½ | 80.00 |
| | 647.83 |
| T. 26 S., R. 23 E., SLM, UT (Grand County): | |
| Section 19, Lots 1,2, E½W½, E½ | 549.97 |
| Section 29, All | 640.00 |
| | 1189.97 |
| T. 27 S., R. 23 E., SLM, UT (San Juan County): | |
| Section 5, Lots, 1,3–7, SW¼NE¼, S½NW¼, SW¼, W½SE¼ | 603.76 |
| Section 6, SE¼, E½SW¼ | 240.00 |
| | 843.76 |
| Total | 5,255.46 |

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws, including the mineral laws, but not the mineral leasing laws.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a Notice of Termination of the segregation, or the expiration of two years from the date of publication, whichever occurs first.

This notice will cancel and replace the segregative effects of all previously published notices on the public lands described herein.

Dated: December 5, 1990.

**Gene Nodine,**

*District Manager, Moab Distict.*

Dated: December 13, 1990.

**Jerry W. Goodman,**

*District Manager, Richfield District.*

[FR Doc. 90–29781 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–DQ–M

[NM–940–01–4730–12]

### Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

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New Mexico Principal Meridian, New Mexico

T. 20 S., R. 25 E., Accepted November 29, 1990, for Group 861 NM.
T. 20 S., R. 25 E., Accepted November 29, 1990, for Group 861 NM.
T. 12 S., R. 25 E., Accepted November 29, 1990, for Group 886 NM.
T. 7 S., R. 10 E., Accepted November 29, 1990, for Group 885 NM.

Indian Meridian, Oklahoma

T. 22 N., R. 4 E., Accepted November 2, 1990, for Group 56 OK.

If a protest against a survey, as shown on any of the above plats are received prior to the date of official filing, the filing will be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: December 12, 1990.

**John P. Bennett,**

*Chief, Cadastral Survey.*

[FR Doc. 90–29775 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–FB–M

**[AZ–930–4214–10; AR–031306, A–4728, A–6087, A–6264, A–6593, and A–9580]**

## Withdrawal and Cancellation of Withdrawal Applications; Arizona

December 10, 1990.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation, U.S. Department of the Interior has requested cancellation of several pending withdrawal applications. These applications were filed pending final location and construction of the Central Arizona Project. With the project essentially completed, certain lands, either necessary or not necessary can be specifically identified and the subject applications either amended or cancelled. No lands in the above identified applications are required for the Central Arizona Project. The subject files will be closed on the public records upon publication in the **Federal Register**. This notice terminates the segregation imposed by the filing of the applications on lands as identified below and opens them to disposal under the appropriate public land laws, and the mining and mineral leasing laws.

**EFFECTIVE DATES:** December 20, 1990.

**FOR FURTHER INFORMATION CONTACT:** John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85014 (602) 640–5509.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation, U.S. Department of the Interior, filed the following withdrawal applications: AR–031306 on February 19, 1962; A–4728 on August 23, 1970; A–6087 on February 8, 1971; A–6264 on May 19, 1971; A–6593 on October 21, 1971, and A–9580 on May 24, 1976 in support of the Central Arizona Project. The Bureau of Land Management has reported that the subject lands are not within the area required for the Central Arizona Project and that construction of the canal in the affected areas has been completed. A right-of-way has been issued authorizing the improvements. As a result, the Bureau of Reclamation has requested cancellation of the subject applications. Withdrawal applications AR–031306, A–4728, A–6087, A–6264, A–6593, and A–9580 are hereby cancelled in their entirety and the segregations imposed on the following described lands are hereby terminated. The BLM records will be so noted upon publication in the **Federal Register.**

Gila and Salt River Meridian

T. 4 S., R. 13 E.,
Sec. 4 NW¼SW¼, NW¼SE¼;
Sec. 10 N½NW¼, NW¼NE¼; (A–02824—200.00 acres)
T. 4 S., R. 9 E.,
Sec. 9 W½; (AR–031306—320.00 acres)
T. 1 N., R. 8 E.,
Sec. 31 Lots 2, 3, and 4, E½SW¼, SW¼SW¼; (AR–031306—239.73 acres)
T. 2 N., R. 7 E.,
Sec. 4 S½ of lot 9, lots 10, 11, 12, E½SW¼, W½NW¼SE¼, SW¼SE¼;
Sec. 5 Lot 9, E½SW¼, SE¼; (A–6087—368.94 acres)
Sec. 19 Lots 3 and 4, E½SW¼, SW¼; (A–9580–308.05 acres)
T. 3 N., R. 7 E.,
Sec. 25 W¼NW¼, W½SE¼NW¼;
Sec. 27 NW¼SW¼, E½NW¼, NE¼; (A–9580—380.00 acres)
(E½, E½NW¼, SW¼ excluding those lands within 1 mile of the Salt River withdrawn for Reclamation purposes by Departmental Order of March 2, 1903).
T. 4 N., R. 7 E.,
Sec. 27 Lot 14, S½SE¼;
Sec. 34 Lots 8, 9, 10 and 11, E½W½, N½NW¼NE¼; (A–9580—383.43 acres)
T. 5 N., R. 3 E.,
Sec. 31 Lot 4; (A–6593—40.04 acres)
T. 5 N., R. 2 E.,
Sec. 31 SE¼, (AR–031306—160.00 acres)
Sec. 33 NE¼SW¼, S½SW¼, SE¼;
Sec. 34 SE¼NW¼, NW¼SW¼, S½SW¼, SW¼SE¼; (A–4728—480.00 acres)
T. 5 N., R. 1 E.,
Sec. 25 E½NE¼; (AR–031306–80.00 acres)
T. 5 N., R. 1 W.,
Sec. 30 Lot 1; (AR–031306–41.38 acres)
T. 4 N., R. 4 W.,
Sec. 13 SW¼;
Sec. 23 N½, (AR–031306–480.00 acres)
T. 3 N., R. 5 W.,
Sec. 2 Lots 3 and 4, S½NW¼, (AR–031306–161.07 acres)
T. 4 N., R. 5 W.,
Sec. 35 All; (AR–031306–640.00 acres)

The areas described aggregate 4,282.64 acres in Maricopa, Pinal and La Paz Counties.

**Beaumont C. McClure,**

*Deputy State Director, Lands and Renewable Resources.*

[FR Doc. 90–29774 Filed 12–19–90; 8:45 am]

BILLING CODE 4310–32–M

## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 491]**

## Railroad Cost of Capital; 1990

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision instituting a proceeding to determine the railroads' 1990 cost of capital.

**SUMMARY:** The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1990. The decision solicits comments on: (1) The railroads' 1990 cost of debt capital; (2) the railroads' 1990 current cost of preferred stock equity capital; (3) the railroads' 1990 cost of common stock equity capital; and (4) the 1990 capital structure mix of the railroad industry on a market value basis. With respect to the cost of common equity capital, the decision seeks the use of Institutional Brokers Estimate System (IBES) data to estimate the growth rate component of the discounted cash flow methodology.

**DATES:** Notices of intent to participate are due December 26, 1990. Statements of railroads are due February 8, 1991 Statements of other interested parties are due March 8, 1991. Rebuttal statements by railroads are due March 22, 1991.

**ADDRESSES:** Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.



**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr., (202) 275–7489. (TDD for hearing impaired: (202) 275–1721)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Interstate Commerce Commission, room 2215, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.).

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 11, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–29815 Filed 12–19–90; 8:45 am]

BILLING CODE 7035–01–M

**[Docket No. AB–55 (Sub-No. 347X)]**

## CSX Transportation, Inc.; Abandonment Exemption; Richmond County, NC

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of a line of railroad between valuation station 25+25 and valuation station 47+70 (approximately 0.6 mile) in Rockingham, Richmond County, NC, subject to standard labor protective conditions.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on January 13, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by December 26, 1990, petitions to stay must be filed by December 31, 1990, and petitions for reconsideration must be filed by January 8, 1991. Requests for a public use condition must be filed by December 26, 1990.

**ADDRESSES:** Send pleadings, referring to Docket No. AB–55 (Sub-No. 347X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Patricia Vail—J150, 500 Water Street, Jacksonville, FL 32202

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245, [TDD for hearing impaired: (202) 275–1721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services at (202) 275–1721.)

Decided: December 12, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–29817 Filed 12–19–90; 8:45 am]

BILLING CODE 7035–01–M

**[Finance Docket No. 31799]**

## SPCSL CORP.; Trackage Rights Exemption; the Belt Railway Co. of Chicago

The Belt Railway Company of Chicago (BRC) has agreed to grant overhead trackage rights to SPCSL Corp., between the points known as: (1) The BRC connection to the Burlington Northern Railroad Company, located approximately 1,000 feet north of the BRC mainline switch located at Hawthorne Interlocking Plant, at 31st Street in Chicago, IL, and the BRC connection to: (a) the CSL Intermodal Terminal located in Bedford Park, IL; (b) the Grand Trunk Western Railroad Company connection at Hayford Interlocking Plant or the BRC East Yard, located in Chicago; (c) the CSXT Intermodal Terminal at Forest Hill, located in Chicago; (d) the Norfolk Southern Corporation Intermodal Terminal at Landers Yard, located in Chicago; and (e) the Consolidated Rail Corporation connection at Rock Island Junction, located in Chicago; and (2) the BRC connection with the Indiana Harbor Belt Railroad, located at Argo, IL, and the BRC connection to the CSL Intermodal Terminal, located in Bedford Park.

The trackage rights were to become effective on or after December 15, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Gary A. Laakso, SPCSL Corp., One Market Plaza, room 846, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: December 14, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 90–29816 Filed 12–19–90; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

## Lodging of Consent Decree; Central Maine Power

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 7, 1990, a proposed Consent Decree in *United States* v. *Central Maine Power*, Civil No. 90–0302B, was lodged with the United States District Court for the District of Maine resolving the matter. The proposed Consent Decree concerns the response to the existence of hazardous substances, such as polychlorinated biphenyls and lead, at the O'Connor Superfund Site near Augusta, Maine pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Consent Decree, the defendant will implement the remedy selected for the Site and reimburse the United States for its future oversight costs related to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Central Maine Power*, D.J. Ref. 90–11–2–544.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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Congress Street, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW, suite 600, Washington, DC 20044, (202) 347-7829. A copy of the proposed Consent Decree (including Appendices) may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $84.75 (25 cents per page reproduction cost) made payable to Consent Decree Library. To obtain a copy of the Consent Decree, excluding the Appendices, enclose a check in the amount of $19.50.

**George Van Cleve,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 90-29731 Filed 12-19-90; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

[Docket No. 90-40]

### Henry J. Winsauer, M.D., San Diego, CA; Hearing

Notice is hereby given that on May 4, 1990, the Drug Enforcement Administration, Department of Justice, issued to Henry J. Winsauer, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AW8632235, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on January 24, 1991, commencing at 9:30 a.m., at the U.S. Tax Court, 4-S-19 Federal Building, 880 Front Street, San Diego, California.

Dated: December 12, 1990.

**Robert C. Bonner,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 90-29788 Filed 12-19-90; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

*Date, time and place:* January 8, 1991, 9:30 a.m.-12:00 noon, room S-2217, PHBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

*Purpose:* To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

*For further information, contact:* Fernand Lavallee, Director, Trade Advisory Group. Phone: (202) 523-2752.

Signed at Washington, DC this 13th day of December 1990.

**Shellyn G. McCaffrey,**

*Deputy Under Secretary, International Affairs.*

[FR Doc. 90-29798 Filed 12-19-90; 8:45 am]

BILLING CODE 4510-28-M

### Office of the Assistant Secretary for Veterans' Employment and Training

### Secretary of Labor's Committee on Veterans' Employment Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, title III, Public Law 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, January 15, 1991, at 10 a.m. in the Secretary's Conference room S-2508 of the Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The primary item on the agenda is a report by the Subcommittee on Veterans' Employment and Training Policy.

The public is invited.

Signed at Washington, DC this 14th day of December, 1990.

**Thomas E. Collins,**

*Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 90-29799 Filed 12-19-90; 8:45 am]

BILLING CODE 4510-79-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (SAEG Section) to the National Council on the Arts will be held on January 7 and 9, 1991 from 9 a.m.-7 p.m. and January 8 and 10 from 9:30 a.m.-3 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on January 8 and 10 from 1 p.m.-2 p.m. The topic will be policy discussion.

The remaining portions of this meeting on January 7 and 9 from 9 a.m.-7 p.m. and January 8 and 10 from 9:30 a.m.-1 p.m. and 2 p.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TTY 202/682/5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.



Dated: December 12, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-29767 Filed 12-19-90; 8:45 am]

BILLING CODE 7537-01-M

### Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Advancement Section) to the National Council on the Arts will be held on January 7, 1991 from 9 a.m.-2 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 12, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-29768 Filed 12-19-90; 8:45 am]

BILLING CODE 7537-01-M

### Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artist Communities Section) to the National Council on the Arts will be held on January 9, 1991 from 9 a.m.-5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m.-5 p.m. The topics will be policy discussion and guidelines review.

The remaining portion of this meeting from 9 a.m.-3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: December 12, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90-29769 Filed 12-19-90; 8:45 am]

BILLING CODE 7537-01-M

### Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts advisory Panel (Advancement Section) to the National Council on the Arts will be held on January 8, 1991 from 9 a.m.-5 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

### Meeting; Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening Section) to the National Council on the Arts will be held on January 8-9, 1991 from 9 a.m.-6:30 p.m. and January 10 from 9 a.m.-5 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

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Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90–29786 Filed 12–19–90; 8:45 am]

BILLING CODE 7537–01–M

**Meeting; Musical Advisory Panel**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music/New Music Ensembles Section) to the National Council on the Arts will be held on January 8–10, 1991 from 9 a.m.–5:30 p.m. and January 11 from 9 a.m.–4 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 11 from 2 p.m.–4 p.m. The topics will be policy discussion and guideline revisions.

The remaining portions of this meeting on January 8–10 from 9 a.m.–5:30 p.m. and January 11 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: December 12, 1990.

**Yvonne M. Sabine,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 90–29785 Filed 12–19–90; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**Documents Containing Reporting or Record Keeping Requirements, Office of Management and Budget Review**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget (OMB) review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of Submission—new, revision, or extension: Revision
2. The title of the information collection: Certificate of Medical Examination by Facility Licensee
3. The form number if applicable: NRC Form 396
4. How often the collection is required: Upon application for an initial operator license, and every six years for the renewal of operator or senior operator licenses
5. Who will be required or asked to report: Facility employers of applicants for operators licenses
6. An estimate of the number of responses: 1350 annually
7. An estimate of the total number of hours needed to complete the requirement or request: Reporting: 338 hours (.25 hours per response), Recordkeeping: 500 hours (.10 hours per response)
8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable
9. Abstract: NRC Forms 396 establishes the procedure for transmitting information to the NRC regarding the medical condition of applicants for initial or renewal operator licenses and for the maintenance of medical records for all licensed operators.

**ADDRESSES:** Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150–0024), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 11th day of December, 1990.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 90–29780 Filed 12–19–90; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–423]**

**Northeast Nuclear Energy; Co. Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to Northeast Nuclear Energy Company, et al. (the licensee) for the Millstone Nuclear Power Station, Unit No 3, located at the licensee's site in New London County, Connecticut.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would modify the Technical Specifications (TS) to allow an increase in the normal containment pressure range; the proposed range is 10.6 psia to 14.0 psia. The current containment pressure range has a lower value of 8.9 psia with a variable upper value, depending upon service water temperature, up to approximately 10.6 psia.

*The Need for the Proposed Action*

The license amendment is needed to eliminate the need for supplemental oxygen for workers, to reduce the potential for personnel injury when entering containment due to pressure changes and to permit more expedient entry into the containment for inspection and problem resolution.



*Assessment*

The Licensee addressed the environmental impacts of the proposed action in the application dated February 28, 1990 and a supplement dated April 30, 1990.

The NRC staff has evaluated the effect of the proposed increase in normal containment pressure on post-Loss of Coolant Accident (LOCA), offsite doses.

Using the proposed containment leak rates with full credit allowed for iodine removal by the containment spray and the assumptions and parameters in Table 15.2 of Millstone Unit 3 Safety Evaluation Report (NUREG–1031 dated July 1984), the staff computed the offsite doses for the Millstone Unit 3 Exclusion Area (EAB) and Low Population Zone (LPZ) boundaries. The computed offsite doses are within the acceptance criteria given in section 15.7.5 of the Standard Review Plan (SRP) and the exposure guidelines of 10 CFR Part 100.

With regard to normal station effluents, the Millstone Unit No. 3 containment would still be maintained at a negative pressure of approximately 1 psig. Hence, there will be no leakage of airborne radioactivity from the containment during normal power operations. The only potential effect of the changes will be a reduction in the amount of radioactivity released during containment drawdowns (containment pressure reduction). This results from the reduced time required to draw a 1 psig negative pressure compared to the time required for the current, more negative containment pressure, and the reduced probability of requiring additional drawdowns. This benefit is expected to be negligible as containment drawdowns currently represent a small percent of normal station effluents.

Based upon the above, the licensee concluded, and the NRC staff concurs, that the proposed changes result in a decrease in normal station effluents and computed offsite doses within the acceptance criteria of SRP 15.7.5 and the exposure guidelines of 10 CFR part 100. The proposed changes would not affect any other evaluations as presented in the Final Environmental Statement (NUREG–1064 dated December 1984). Therefore, the proposed changes have no negative environmental impact.

*Alternative to the Proposed Action*

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption would have either essentially the same or greater environmental impact.

*Alternative Use of Resources*

This action does not involve the use of any resources different from or beyond the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statement relating to plant operation.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for license amendment dated February 28, 1990 and the supplement dated April 30, 1990. A copy is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland this 13th day of December 1990.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 90–29785 Filed 12–19–90; 8:45 am]

BILLING CODE 7590–01–M

**[Docket Nos. 40–8958 and 40–8961]**

**Uranerz U.S.A., Inc.; Final Finding of No Significant Impact Regarding the Issuance of Two Source Material Licenses to Uranerz U.S.A., Inc. for Commercial Operation of the Ruth In-Situ Leach Project in Johnson County, WY and the North Butte In-Situ Leach Project Located in Campbell County, WY**

December 19, 1990.

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of final finding of no significant impact.

**1. Proposed Action**

The proposed administrative action is to issue two commercial Source and Byproduct Material Licenses. These licenses would allow in-situ leach uranium recovery at the Ruth operation located in Johnson County, Wyoming and the North Butte operation located in Campbell County, Wyoming.

**2. Reasons for Final Finding of No Significant Impact**

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Ruth Research and Development in-situ leach operation and the licensee's revised applications dated October 3, 1988 and March 7, 1989. Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action.

The following statements support the final finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Uranerz, U.S.A., Inc. is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing and geological borings indicate that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the various well fields and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operations.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR part 51.33(a), the Director of the Uranium Recovery Field Office, issued a draft finding of no significant impact in the

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Federal Register on November 20, 1990. The 30-day comment period expired on December 19, 1990 with no comments being received. In consideration of this situation, the Director of the Uranium Recovery Field Office, in accordance with 10 CFR part 51.35 is issuing a final finding of no significant impact. Concurrent with the publication of this finding the Commission's Uranium Recovery Field Office will issue Source Material License SUA–1530 authorizing commercial operation of the Ruth site and Source Material SUA–1540 authorizing similar operations at the North Butte side.

Dated at Denver, Colorado, this 19th day of December, 1990.

For the Nuclear Regulatory Commission.

**Ramon E. Hall,**

*Director, Uranium Recovery Field Office, Region IV.*

[FR Doc. 90–29948 Filed 12–19–90; 8:45 am]

BILLING CODE 7590–01–M

## Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would modify the Palisades Plant Technical Specifications (TS) as follows:

In TS section 1.1, the definition of "Interior Fuel Rod" is deleted since it is no longer used. Accordingly, all references to "interior" are deleted from the definition of "Total Interior Rod Radial Peaking Factor". Total Rod Radial Peaking Factor "$F_r^A$" is renamed "$F_r^T$" and a "local peaking" definition is added to $F^q$, for clarification.

In TS section 2.1, basis and references, a sentence is added stating that the analysis is performed in accordance with the added reference 6. This change is necessary since Cycle 9 has a mixed core arrangement and a new Minimum Departure from Nucleate Boiling Ratio (MDNBR) analysis is required.

The "$P_{nw}$" equation in TS section 2.3 is revised to reflect the update to the constants for the Thermal Margin/Low Pressure (TM/LP) equation for Cycle 9. In the basis, the Variable High Power Trip (VHPT) setpoint is changed from "112%" to "115%" as a result of the uncertainty on the VHPT setpoint being increased from 5.5% to 8.5% for Cycle 9. The references 1, 4, 8 and 11 are replaced with an updated Cycle 8 basis report and the reference 12 is deleted.

TS section 3.1, and its associated basis and references, is changed to incorporate a new primary coolant pump measured flowrate in order to reflect the associated lower assumed tube plugging ration of the replacement steam generators. The $T_{inlet}$ equation, and the associated basis, is changed to reflect this increased margin. Also, Figure 3–O, "ASI LCO for $T_{inlet}$ Function", is replaced with an updated Figure due not an expanded Axial Shape Index (ASI) Limiting Condition for Operation (LCO) operating window between 70% and 25% power. Finally, references 4 and 5 are replaced with new Cycle 9 specific references.

TS Section 3.10, basis and references, and TS section 3.12, references, have been revised with the appropriate references to reflect the changes in the Cycle 9 analysis.

TS Table 3.23–2, TS section 3.32.2 and its associated basis, and TS section 4.19.2.1, similarly replaced $F_r^{\Delta H}$ with $F_r^T$ for the reasons listed above. Also, in TS Table 3.23–2, the radical peaking factor limits are revised with values consistent with the cycle 9 analysis. Finally, a paragraph is added in the basis of Section 3.23–2 explaining the Loss of Coolant Accident Analysis Limits.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

(1) The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because the effect of these changes on previously evaluated events (Standard Review Plan Chapter 15 events) has been thoroughly evaluated, classified (ANF–90–041) and, where appropriate, reanalyzed (ANF–90–078). The conclusion of this classification, evaluation, and reanalysis is that the effect of these changes on accidents previously evaluated are bound by existing analyses; or, new analyses demonstrate that acceptance criteria are met for each of the reanalyzed events. Therefore, there is no increase in the consequences of previously evaluated accidents. Since hardware must meet design criteria and no operating limits have been changed above analyzed values, there is no increase in the probability of an accident previously evaluated.

(2) The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated because the changes do not permit a different method of operation, but only allow operation to be modified to take advantage of improved equipment and fuel design while meeting analyzed acceptance criteria.

(3) The proposed changes would not involve a significant reduction in the margin of safety because the existing margin of safety is provided by existing acceptance criteria. The effects of the proposed changes have been thoroughly analyzed and do not cause the existing acceptance criteria to be exceeded.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Writtend comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.



By January 22, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Van Zoeren Library, Hope College, Michigan. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As a required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioners shall provide a brief explanation of the bases of the contention and a concise statement of the alleged fact or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petition who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will have a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that amendment request involves no signficant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commissioin will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attentioin: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gleman Building, 2120 L Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to L.B. Marsh: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 19, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

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Dated at Rockville, Maryland, this 13th day of December 1990.

**L.B. Marsh,**

*Director, Project Directorate III-1, Division of Reactor Projts III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 90-29784 Filed 12-19-90; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Issuance of Proposed Federal Procurement Policy on the Application of Rules of Origin

**AGENCY:** Office of Federal of Procurement Policy.

**ACTION:** Notice of issuance of proposed federal procurement policy letter on the application of rules of origin under part 25 of the federal acquisition regulation (FAR).

Background: The Office of Federal Procurement Policy (OFPP) has completed study of the Buy American Act (BAA) 41 U.S.C. 10a, *et seq.*, rule of origin and alternatives thereto, required by section 7002 of the Omnibus Trade And Competitiveness Act of 1988, (Pub. L. 100-418). The BAA, which establishes a statutory preference for United States domestic end products uses a rule of origin to determine the status of articles offered to the United States Government as either "foreign" or "domestic." Under the BAA rule of origin, an article is considered a foreign end product if it is not produced in the United States and 50 percent or more of the cost of its components originate from foreign sources. Depending upon the Federal agency involved, such products offered to the Government are subjected to a price preference of 6, 12, or 50 percent in favor of a competing domestic end product.

On July 21, 1989, OFPP conducted a public hearing and received comments on alternatives to the BAA rule of origin. In response to the notice of the public hearing and request for comments published in the **Federal Register** on June 14, 1989 (54 FR 24394-5), 23 entities provided comments. Subsequently, by **Federal Register** notice on April 12, 1990, (55 FR 13871) additional public comments were invited regarding alternative rules of origin that had been suggested as result of comments received for the record of the public hearing.

The study evaluated several alternatives to the BAA rule of origin including the "substantial transformation" rule of origin that is authorized for use by the Trade Agreement Act of 1979 (TAA), 19 U.S.C. 2511 *et seq.* The TAA implements the International Agreement on Government Procurement. Under this rule, an article is a product of a country if: (1) It is wholly produced or manufactured in that country or (2) in the case of a product that consists in whole or in part of materials from another country, the product has been "* * * substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article from which it was transformed." The TAA provisions apply to those procurements where the total amount is expected to exceed $172,000.

The study did not recommend changes in the rule of origin used to implement the BAA. The study concluded, however, that the implementation of the BAA and the TAA in part 25 and the clause set forth at 52.225-9 of the Federal Acquisition Regulation (FAR) entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program (May 1986)" places United States products at a disadvantage when competing with certain foreign products for United States procurements that are subject to the TAA. That disadvantage stems from the FAR requirement that United States products comply with the 50 percent component test authorized by the BAA while foreign firms—from the "designated countries" under the TAA—are permitted to take advantage of the "substantial transformation test" authorized under the TAA. Under the current FAR provision, United States products that fail to meet the 50 percent component test are excluded from TAA procurements.

In a recent protest of a General Services Administration procurement for automated data processing equipment, the General Services Board of Contract Appeals (GSBCA) held that the cited FAR clause is invalid to the extent that it does not treat certain products made in the United States, as defined by the TAA's rule of origin, as exempt from the "purchasing prohibition" of the TAA. The Board did not rule on the application of the administrative requirements of the BAA in acquisitions subject to the TAA.

The proposed Policy Letter would eliminate this disparity created by the FAR clause, provide guidance to agencies on compliance with the GSBCA opinion, and establish a policy with regard to application of the BAA rule of origin in procurements subject to the TAA. The proposed Policy Letter requires that for procurements covered by the TAA, neither the TAA's procurement prohibition on products from nondesignated countries nor the BAA's evaluation penalties shall be applied to products which are manufactured in the United States within the meaning of the TAA's "substantial transformation" rule.

Comment Date: Comments on the proposed Policy Letter must be received on or before February 19, 1991.

**ADDRESSES:** Comments should be submitted to the Office of Federal Procurement Policy, room 9110, New Executive Office Building, 725 17th. Street, NW., Washington, DC 20503.

**INFORMATION CONTACT:** William S. Coleman, Jr., Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395-3501.

**Allan V. Burman,**

*Administrator.*

**Policy Letter 90-X**

**To the Heads of Executive Agencies and Departments**

**Subject: Application of Rules of Origin Under Part 25 of the Federal Acquisition Regulation (FAR)**

1. *Purpose.* This Policy Letter establishes policy for the procurement of products under the provisions of part 25 of the Federal Acquisition Regulation (FAR). It provides that United States products in competition for contracts with the Federal Government that are subject to title III of the Trade Agreements Act of 1979, 19 U.S.C. 2501 *et seq.* (TAA) shall be permitted to qualify under the "substantial transformation" rule of origin. It further provides that the administrative requirements of the Buy American Act (BAA), 41 U.S.C. 10a *et seq.* shall not apply.

2. *Background.* The Office of Federal Procurement Policy (OFPP) conducted a study of the alternatives to the rule of origin used to implement the BAA. The study was required by section 7002 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418). Among other things, the study concluded that the implementation of the BAA and the TAA in part 25 and the clause set forth at 52.225-9 results in offers of certain products manufactured in the United States being rejected in acquisitions subject to the TAA. The cited FAR clause requires an offeror to supply either a "domestic end product" (i.e., a product manufactured in the United States where more than fifty percent of the cost of components is attributed to components of U.S. origin) or a "designated country end product" (i.e., a product "substantially transformed" in a designated country). Consequently, offered products that are "substantially transformed" in the United States, but which fail the fifty percent component cost test, cannot be considered to be domestic products under the clause and, accordingly, must be rejected. Additionally, an offer of such product cannot be considered a product of a designated country because the United States is not a designated country. As a result an offer of such U.S. made products is at a disadvantage when competing with an offer of either a domestic or designated country end product.

In a recent protest of a General Services Administration procurement for automated data processing equipment, the General Services Board of Contract Appeals held that the cited FAR clause is invalid to the extent that it does not treat certain products made in the United States, as defined by the TAA's rule of origin, as exempt from the "purchasing prohibition" of the TAA. [1]

The Board did not rule on the application of the administrative requirements of the BAA in acquisitions subject to the TAA.

5. *Policy.* This Policy Letter sets forth policy on the consideration to be given to products substantially transformed in the United States where the fifty percent component cost test is not met. It also addresses the administrative implementation of the BAA in acquisitions subject to the TAA. Therefore, the FAR should be amended as follows:

A. Section 25.401 "Definitions" should be amended to include a definition of "U.S. made end product" that would apply to procurements under the TAA. The following definition is suggested:

"U.S. made end product" as used in this Subpart, means an article which is (a) wholly the growth, product, or manufacture of the United States, or (b) in the case of an article which consists in whole or in part of materials from another country, has been substantially transformed into a new and distinct article of commerce with a name, character, or use different from the article or articles from which it was so transformed."

B. Section 25.402 "Policy." Revise subparagraph (a)(1) to provide that offers of "U.S. made end products" shall be evaluated without the restrictions of the BAA or the Balance of Payments Program (BPP).

C. The FAR clause at 52.225-9 entitled "Buy American Act—Trade Agreements Act—Balance of Payments Program (May 1986)" shall be deleted. A new clause and certification requirement shall be developed to cover procurements subject to the TAA that allows offers of "U.S. made end products" to be considered for award without the application of the BAA or BPP administrative requirements.

6. *Responsibilities of the Federal Acquisition Regulatory Council.* The Federal Acquisition Regulatory Council shall ensure that Government-wide regulations to conform to the policy regarding TAA procurements established herein are promulgated within 120 days after the effective date of this Policy Letter.

7. *Information contact.* For information regarding this Policy Letter contact William S. Coleman, Jr., Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395-3501.

8. *Effective date.* This Policy Letter is effective 30 days after the date of issuance.

**Allan V. Burman,**

*Administrator,*

[FR Doc. 90-29739 Filed 12-19-90; 8:45 am]

BILLING CODE 3110-01-M

[1] *International Business Machines Incorporated.* GSBCA No. 10532-P, 90 BPD 125. (May 18, 1990).



## DEPARTMENT OF STATE

**[Public Notice No. 1311]**

### Organization For the International Telegraph and Telephone Consultative Committee (CCITT), Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 9, 1991 in room 1205 from 10 a.m. to 5 p.m., Department of State, 2201 C Street, NW., Washington, DC 20520.

The purpose of the meeting will be to review results of the November meeting of Study Group VII, prepare US contributions for the meeting of Study Group VIII, March 18-27, 1991, and consider contributions for Study Group XVII, April 30, 1991. Nominations for delegations to Study Group VIII, and report of the outcome of the MHS MD Group will be considered. Any other business within the scope of Study Group D may also be raised and considered.

Members of the general public may attend the meeting and join in the discussions, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Gary Fereno, Department of State, 202-647-2592 (fax 202-647-7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: December 4, 1990

**Earl S. Barbely,**

*Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee..*

[FR Doc. 90-29760 Filed 12-19-90; 8:45 am]

BILLING CODE 4710-07-M

**[Public Notice No. 1309]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on December 20, 1990, at 1 p.m. in room 6244 at the Department of Transportation, NASSIF Building, 400 Seventh Street SW., Washington, DC 20590.

The purpose of this meeting is to discuss the results of the International Maritime Organization (IMO) Forty-second Session of the Sub-Committee on the Carriage of Dangerous Goods (CDG 42).

Members of the public may attend up to the seating capacity of the room. For information contact Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 267-1577.

Dated: December 7, 1990.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 90-29761 Filed 12-19-90; 8:45 am]

BILLING CODE 4710-07-M

**[Public Notice No. 1310]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: January 17, 1991; February 21, 1991; March 21, 1991; April 18, 1991; May 16, 1991; June 20, 1991; and July 18, 1991. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 37th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications being held in July 1991.

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Agenda items include preparation for the 37th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTS–3), 2100 Second Street SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: December 11, 1990.

Joseph Richardson,
*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 90–29759 Filed 12–19–90; 8:45 am]
BILLING CODE 4710–07–M

## Bureau of Intelligence and Research

[Public Notice No. 1307]

## Discretionary Grant Programs; Application Notice Establishing Closing Date for Transmittal of Certain Fiscal Year 1991 Applications

**AGENCY:** The Department of State invites applications from national organizations with interest and expertise in conducting research and training concerning the USSR and Eastern Europe to serve as intermediaries administering national competitive programs under the Soviet-Eastern European Research and Training Act. Due to increased funding in FY 1991, the Department of State is issuing this supplemental Call for Applications. The grants will be based on an open, national competition among applying organizations.

Authority for this program is contained in the Soviet-Eastern European Research and Training Act of 1983.

**SUMMARY:** The purpose of this application notice is to inform potential applicant organizations of fiscal and programmatic information and closing dates for transmittal of applications for awards in Fiscal Year 1991 under a program administered by the Department of State.

**ORGANIZATION OF NOTICE:** This notice contains three parts. Part I lists the closing date covered by this notice. Part II consists of a statement of purpose and priorities of the program. Part III provides the fiscal data for the program.

**Part I**

*Closing Date for Transmittal of Applications*

An application for an award must be mailed or hand-delivered by February 15, 1990.

*Applications Delivered by Mail*

An application sent by mail must be addressed to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC 20006.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial center.

(4) Any other proof of mailing acceptable to the Department of State.

If an application is sent through the U.S. Postal Service, the Department of State does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Late applications will not be considered and will be returned to the applicant.

*Applications Delivered by Hand*

An application that is hand-delivered must be taken to Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, Suite 233, 1730 K Street, NW., Washington, DC.

The Soviet-Eastern European Studies Advisory Committee will accept hand-delivered applications between 9 a.m. and 4 p.m. (Washington, DC time) daily, except Saturdays, Sunday, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:00 p.m. on the closing date.

**Part II**

*Program Information*

In the Soviet-Eastern European Research and Training Act of 1983 the Congress declared that independently verified factual knowledge about the countries of that area is "of utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs." Congress also declared that the development and maintenance of such knowledge and expertise "depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government." The Act authorizes the Secretary of State to provide financial support for advanced research, training and other related functions.

The full purpose of the Act and the eligibility requirements are set forth in Public Law 98–164, title VIII, 97 Stat. 1047–50. Under Title VIII, the countries include Albania, Bulgaria, Czechoslovakia, German Democratic Republic, Hungary, Poland, Romania, USSR, and Yugoslavia.

The Act establishes an Advisory Committee to recommend grant policies and recipients. The Secretary of State, after consultation with the Advisory Committee, approves policies and makes final determination on awards.

Applications for funding under the Act are invited from organizations prepared to conduct competitive programs in the fields of Soviet and Eastern European and related studies. Applying organizations or institutions should have the capability to conduct competitive award programs that are national in scope. Programs of this nature are those that make awards which are based upon an open, nationwide competition, incorporating peer group review mechanisms. Applications sought are those that would contribute to the development of a stable, long-term, national program of unclassified, advanced research and training on the Soviet Union and countries of Eastern Europe by proposing:

(1) National programs which award contracts or grants to American institutions of higher education or not-for-profit corporations in support of postdoctoral or equivalent level research projects, such contracts or grants to contain shared-cost provisions;

(2) National programs which offer graduate, postdoctoral and teaching fellowships for advanced training in Soviet and Eastern European and related studies, including training in the languages of the Soviet Union and Eastern Europe, such training to be conducted, on a shared-cost basis, at American institutions of higher education;

(3) National programs which provide fellowships and other support for



American specialists enabling them to conduct advanced research in the field of Soviet, Eastern European and related studies; and those which facilitate research collaboration between Government and private specialists in these fields:

(4) National programs which provide advanced training and research on a reciprocal basis in the Soviet Union and in the countries of Eastern Europe by facilitating access for American specialists to research facilities and resources in those countries;

(5) National programs which facilitate public dissemination of research methods, data and findings; and those which propose to strengthen the national capability for advanced research or training on the Soviet Union and Eastern Europe in ways not specified above.

**Note:** The Advisory Committee will not consider applications from individuals to further their own training or research, or from institutions or organizations whose proposals are not for competitive award programs that are national in scope as defined above. Support for specific activities will be guided by the following policies:

—*Publications.* Title VIII funds should not be used to subsidize journals, newsletters and other periodical publications except in unique or special circumstances, in which cases the funds should be supplied by peer-review organizations with national competitive programs.

—*Conferences.* Proposals for conferences, like those for research projects and training programs, should be assessed according to their relative contribution to the advancement of knowledge and to the professional development of cadres in the fields. Therefore, Title VIII grants generally should not be made solely to support a particular conference or series of conferences. Rather conference funding should come from one or more of the national peer-review organizations receiving title VIII funds, with proposed conferences being evaluated competitively against research, fellowship or other proposals for achieving the purposes of the grant.

—*Library activities.* Title VIII funds may be used for certain library activities which clearly strengthen research and training in Soviet and East European studies and benefit the field as a whole. Such programs must make awards based upon open, nationwide competition, incorporating peer group review mechanisms. Title VIII funds may not be used for activities such as modernization or preservation. Modest, cost-effective proposals to facilitate research, by eliminating serious cataloging backlogs or otherwise improving access to research materials, will be considered for funding.

—*Language support.* The Advisory Committee encourages attention to the non-Russian languages of the Soviet Union and the less commonly taught languages of the East European countries. Support provided to Russian language instruction normally will be only at the advanced level.

—*German Democratic Republic.* Support for research on the former German Democratic Republic is limited to the study of historical issues related to its communist experience.

—*Soviet Republics.* The Advisory Committee will consider applications for national programs which advance knowledge and understanding of the Soviet republics, as well as those which focus on the broader aspects of Soviet and East European research and training.

In making its recommendations, the Committee will seek to encourage a coherent, long-term, and stable effort directed toward developing and maintaining a national capability in Soviet and Eastern European studies. Program proposals can be for the conduct of any of the functions enumerated, but in making its recommendations, the Committee will be concerned to develop a balanced national effort which, over the life of the Act, will ensure attention to all the countries of the area. While title VIII legislation requires that in certain cases grantee organizations include shared-cost provisions in their arrangements with end-users, cost-sharing in all forms is encouraged whenever feasible in all programs.

**Part III**

*Available Funds*

The Congress has appropriated $10.0 million for the FY 1991 title VIII program. The Advisory Committee has recommended to the Secretary of State funding for awards totalling approximately $7.0 million for the competition which ended September 28, 1990. The purpose of this supplemental Call for Applications is to announce a competition for the award of the uncommitted funds totalling approximately $3.0 million.

The Department legally cannot commit funds that may be appropriated in subsequent fiscal years Thus multi-year projects cannot receive assured funding unless such funding is supplied out of a single year's appropriation. Generally, grant agreements will permit the expenditure from a particular year's grant to be made up to three years from the grant's effective date.

*Applications*

Applications must be prepared and submitted in 20 copies in the form of a statement, the narrative part of which should not exceed 20 double-spaced pages. This must be accompanied by a one page executive summary, a budget, and vitae of professional staff. Proposers may append other information they consider essential, though bulky submissions are discouraged.

Applicants who have received a title VIII grant in the previous fiscal year competition should provide detailed information on the peer evaluation and review procedures followed, and awards made, including, where applicable, names/affiliations of recipients, and amounts and types of awards. If an applicant also received title VIII support prior to last year, a summary of those awards would be helpful.

Descriptions of competitive fellowships and other award programs should specify the applicant-to-award ratios.

Procedures for evaluating and selecting applicants to receive awards should be described in detail. For proposals including language instruction programs, criteria for evaluation should address levels of instruction, degrees of intensiveness, facilities, methods for measuring language proficiency (including pre- and post-testing), instructors' qualifications, and budget information showing estimated costs per student.

A description of affirmative action policies and practices should be included in the application.

Applicants should include certifications of compliance with the provisions of: (1) The Drug-Free Workplace Act (Pub. L. 100–690), in accordance with appendix C of 22 CFR part 137, subpart F; and (2) section 319 of the Department of the Interior and Related Agencies Appropriations Act (Pub. L. 101–121), in accordance with appendix A of 22 CFR part 138, New Restrictions on Lobbying Activities.

*Budget*

Applicants should familiarize themselves with OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education * * * Uniform Administrative Requirements," and OMB Circular A–133, "Audits of

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Institutions of Higher Learning and Other Non-Profit Institutions" and indicate or provide the following information:

(1) Whether the organization falls under OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations;"

(2) A budget request containing total amount, a detailed program budget indicating direct expenses by program element, and indirect costs. NB: Indirect costs are limited to 10 percent of total direct program costs. Applicants who are requesting Title VIII funds to supplement a program having other sources of support should submit a current budget for the total program and an estimated future budget for it showing how specific lines in the budget would be affected by the allocation of requested Title VIII grant funds. Other funding sources, when known, should be identified;

(3) The applicant's cost-sharing proposal, if applicable, containing appropriate details and cross references to the requested budget;

(4) Whether payment is requested on a reimbursable basis or by advance methods; re the latter for grants above $120,000, advance funds will be made through a letter of credit, but if less than $120,000 advance of funds will be made by Treasury checks through wire transfers;

(5) The organization's most recent audit report (the most recent U.S. Government audit report if available) and the name, address and point of contact of the audit agency.

*Technical Review*

The Soviet-Eastern European Studies Advisory Committee will evaluate applications on the basis of the following criteria:

(1) Responsiveness to the substantive provisions set forth above in *Part II, Program Information* (40 points);

(2) The professional qualifications of the applicant's key personnel and their experience conducting national competitive award programs of the type the applicant proposes in the Soviet and East European fields (40 points); and

(3) Budget and cost effectiveness (20 points).

*Further Information*

For further information, contact Kenneth E. Roberts, Executive Director, Soviet-Eastern European Studies Advisory Committee, INR/RES, Department of State, suite 233, 1730 K Street, NW., Washington, DC 20006. Telephone: (202) 632-2025 or 632-6060.

Dated: December 10, 1990.

**Kenneth E. Roberts,**

*Executive Director, Soviet-Eastern European Studies Advisory Committee.*

[FR Doc. 90-29732 Filed 12-19-90; 8:45 am]

BILLING CODE 4710-32-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences

In the matter of System of Preferences (GSP): I. Invitation to submit comments regarding the USITC Report to the President on Investigation Nos. TA-503 (a)-21 and 332-295; "President's List of Articles which may be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences"; II. Notice of Cancellation of Public Hearings Scheduled for Case 12-CP-90.

I. As indicated in a previous notice of August 24, 1990 (55 FR 34878), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the U.S. International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the 1990 Annual Review of the GSP. The report is available from the USITC by calling Cindy Payne at the Office of Industries at (202) 252-1451. The USITC is located at 500 E Street, SW., Washington, DC. The report is also available for review by appointment with the USTR Public Reading Room in Washington, DC. Appointments may be scheduled by calling (202) 395-6186.

All comments concerning the USITC report must be submitted in 12 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 414, Washington, DC 20506. Comments must be received no later than 5 p.m. on Thursday, January 10, 1991.

Comments submitted regarding the USITC Report will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twelve copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

II. A previous **Federal Register** notice published on November 19, 1990 (55 FR 48196) announced that a petition filed by the American International Group (AIG) concerning the GSP eligibility of Peru had been accepted for review. This notice also provided the schedule for submitting written comments and requests to appear at a public hearing on January 8, 1991. Such requests were due on December 13, 1990. No requests to appear at the public hearing were received by this date; as a result, the hearings scheduled for January 8 have been cancelled. Rebuttal briefs on this case will still be accepted until January 23, 1991. Additional information on this case is provided in the prior **Federal Register** notice.

**FOR FURTHER INFORMATION CONTACT:** GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 414, Washington, DC 20506. The telephone number is (202) 395-6971. Appointments may be made to read public versions of all documents related to this review by calling the USTR Public Reading Room at (202) 395-6186.

**Daniel F. Leahy,**

*Acting Chairman, Trade Policy Staff Committee.*

[FR Doc. 90-29717 Filed 12-19-90; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD9-90-17]

### Ninth Coast Guard District Industry Day; Meeting

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** On 30 January 1991, the Commander, Ninth Coast Guard District, will sponsor an Industry Day program to provide for an open exchange on matters of mutual interest or concern to the Great Lakes marine community and the Coast Guard. The Industry Day activities will be held at the Sheraton Cleveland City Centre Hotel, 777 St. Clair Avenue, Cleveland, Ohio. The schedule of events for Industry Day is:

8 a.m., Registration.

9 a.m., Industry Day Presentation.

11:30 a.m., "No Host" Buffet Luncheon.

1 p.m., Industry Day Presentations continue.



4:30 p.m., Industry Day concludes.

Advance registration and payment of the $20.00 conference fee (which includes the cost of the luncheon) is required. Persons desiring registration forms or additional information on the Industry Day activities should contact the personnel named below. Recommendations for discussion topics will be considered in developing the final agenda. Such recommendations must be submitted in writing to the address listed below. All registration forms and recommendations must be received by 18 January 1991.

**FOR FURTHER INFORMATION CONTACT:** Commander, Robert Arnett or Rosemary Burrows, Marine Safety Division, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2050, telephone: Commercial (216) 522-3907, FTS 942-3907.

Dated: December 5, 1990.

**G.A. Penington,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 90-29778 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

[Proposed Advisory Circular 20-XX]

### Airworthiness Approval of Aeronautical Telecommunications Network Compatible Airborne Data Link Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of proposed Advisory Circular 20-XX and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) pertaining to airworthiness approval of Aeronautical telecommunications Network (ATN) Compatible Airborne Data Link Systems. Data Link refers to a digitized voice and data air-to-ground communication capability which provides air traffic and airline operations services. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before April 20, 1991.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standard Staff, ANM-110, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jan Thor, Transport Standards Staff, at the address above, telephone (206) 227-2127.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views or arguments as they desire. Commenters should identify AC 20-XX and submit comments, in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

**Background**

The material provided in this AC addresses system design aspects, mechanization, testing and the criticality of system failure conditions for installed airborne data link systems which meet the requirements of the ATN. Although the characteristics of various data link elements outside the airplane are considered, this AC is limited to providing airworthiness approval criteria for the installed airborne data link system.

Issue in Renton, Washington, on December 10, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.*

[FR Doc. 90-29755 Filed 12-19-90; 8:45 am]

BILLING CODE 4910-13-M

### Programmatic Environmental Impact Statement; Terminal Doppler Weather Radar (TDWR) Site Determination Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Aviation Administration intends to prepare a Programmatic Environmental Impact Statement to address environmental and related impacts expected to be associated with the siting of Terminal Doppler Weather Radars, a wind-shear detection radar, at a number of not-as-yet determined airport sites in the United States.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

**SUPPLEMENTARY INFORMATION:** The proposed project will involve the construction and operation of Terminal Doppler Weather Radar (TDWR) stations at up to 100 designated airports in the United States and Puerto Rico. The TDWR system is designed to provide improved weather radar information to air traffic controllers and pilots, enabling them to detect hazardous low altitude wind shear conditions. Wind shear has been identified as the cause of more U.S. air carrier fatalities than any other weather hazard. The TDWR system represents a major improvement over the capability of existing weather radars, primarily through the application of the Doppler principle, the use of solid state technology, and the improved data processing, communication, and display devices. TDWR installations would consist of a TDWR antenna and radome mounted on an antenna tower structure. Towers range from 5 to 30 meters in height, and require a plot of land approximately 110 feet by 100 feet (0.3 acre), which may be located within ten miles of the airport. The primary alternative to the proposed action is no development.

A set of siting criteria has been identified by the Federal Aviation Administration (FAA) for the process of selecting candidate TDWR sites. The FAA plans to coordinate with Federal, State, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project.

All interested persons are invited to provide input and comment for refining the scope of the Programmatic Environmental Impact Statement (PEIS). A formal scoping meeting is not planned. Comments should be directed to Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, no later than 30 days after publication in the **Federal Register**.

Issued in Washington, DC on January 14, 1990.

**Donald H. Turnbull,**

*Weather Radar Program Manager.*

[FR Doc. 90-29756 Filed 12-19-90; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**[T.D. 91-2]**

**Revocation of Commercial Gauger Approval and Commercial Laboratory Accreditation of Charles V. Bacon, Inc. of Harvey, LA**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of revocation of approval and accreditation of a commercial gauger and commercial laboratory.

**SUMMARY:** Charles V. Bacon, Inc., of Harvey, Louisiana has notified the U.S. Customs Service that they will be ceasing all gauging and laboratory operations. Therefore, pursuant to § 151.13, Customs Regulations (19 CFR 151.13), the commercial gauger approval and commercial laboratory accreditation granted to Charles V. Bacon have been revoked in full.

**EFFECTIVE DATE:** December 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs service, Room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: December 17, 1990.

John B. O'Loughlin,
*Director, Office of Laboratories and Scientific Services.*

[FR Doc. 90-29805 Filed 12-19-90; 8:45 am]
BILLING CODE 4820-02-M

**[T.D. 91-1]**

**Approval of Francisco J. Rovira, d/b/a International Marine Consultants as an Approved Commercial Gauger**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of Approval of Francisco J. Rovira, d/b/a International Marine Consultants, as a Commercial Gauger.

**SUMMARY:** Pursuant to § 151.13 of the Customs Regulations (19 CFR 151.13), Francisco J. Rovira, d/b/a International Marine Consultants, of Hato Rey, Puerto Rico applied to Customs and received conditional approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils in bulk and liquid form. Customs has determined that Mr. Rovira meets the requirements for unconditional approval.

Therefore, in accordance with § 151.13(c), Francisco J. Rovira, d/b/a/ International Marine Consultants, 429 Padre Rufo Street—Floral Park, Hato Rey, Puerto Rico 00917 (P.O. Box 6085, Old San Juan, Puerto Rico 00903) is unconditionally approved to gauge the products named above in all Customs districts.

**EFFECTIVE DATE:** December 10, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, room 7113, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: December 17, 1990

John B. O'Loughlin,
*Director, Office of Laboratories and Scientific Services.*

[FR Doc. 90-29804 Filed 12-19-90; 8:45 am]
BILLING CODE 4820-02-M



# Sunshine Act Meetings

Federal Register
Vol. 55, No. 245
Thursday, December, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**RESOLUTION TRUST CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:40 p.m. on Thursday, December 13, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of institutions in the Accelerated Resolutions Program and (2) recommendations regarding the proposed sale of a collateralized bond obligation.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: December 17, 1990.

Resolution Trust Corporation.
John M. Buckley, Jr.,
*Executive Secretary.*

[FR Doc. 90-29865 Filed 12-18-90; 8:46 am]
BILLING CODE 6714-01-M

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Part II

# Department of Commerce

National Institute of Standards and Technology

## Metric System of Measurement; Interpretation of the International System of Units for the United States; Notice

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**DEPARTMENT OF COMMERCE**

**National Institute of Standards and Technology**

**[Docket No. 900663-0163]**

**Metric System of Measurement; Interpretation of the International System of Units for the United States**

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice restates the interpretation of the Department of Commerce as to the International System of Units ("SI") for the United States. This interpretation was last published by the Department of Commerce in the **Federal Register** on February 26, 1982 (47 FR 8399–8400). Although the contents of the tables have not been changed in any significant way since 1982, in view of the amendment of the Metric Conversion Act of 1975 by the Omnibus Trade and Competitiveness Act of 1988, and because over eight years have elapsed since the above **Federal Register** notice was published, it is deemed appropriate to once again issue tables and associated text setting forth the interpretation of the SI for the United States.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the International System of Units, Dr. Barry N. Taylor, Building 221, Room B160, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–4220. For more information regarding the Federal Government's program for use of the International System of Units, Mr. James B. McCracken, Metric Program Office, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–0944.

**SUPPLEMENTARY INFORMATION:** Section 5164 of Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988, amends Public Law 94–168, the Metric Conversion Act of 1975. In particular, section 3 of the latter act is amended to read as follows:

"Sec. 3. It is therefore the declared policy of the United States—

"(1) to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce:

"(2) to require that each Federal agency, by a date certain and to the extent economically feasible by the end of the fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units;

"(3) to seek ways to increase understanding of the metric system of measurement through educational information and guidance and in Government publications; and

"(4) to permit the continued use of traditional systems of weights and measures in nonbusiness activities."

Section 403 of Public Law 93–380, the Education Amendments of 1974, states that it is the policy of the United States to encourage educational agencies and institutions to prepare students to use the metric system of measurement as part of the regular education program. Under both this act and the Metric Conversion Act of 1975, the "metric system of measurement" is defined as the International System of Units as established in 1960 by the General Conference on Weights and Measures and interpreted or modified for the United States by the Secretary of Commerce (sec. 4(4), Pub. L. 94–168; sec. 403(a)(3), Pub. L. 93–380). The Secretary has delegated his authority under these subsections to the Director of the National Institute of Standards and Technology.

In implementation of this authority, tables and associated materials were published in the **Federal Register** of February 26, 1982 (47 FR 8399–8400), setting forth the interpretation and modification of the International System of Units (hereinafter "SI") for the United States.

Although the contents of the tables have not been changed in any significant way since 1982, in view of the amendment of the Metric Conversion Act of 1975 by the Omnibus Trade and Competitiveness Act of 1988, and because over eight years have elapsed since the above **Federal Register** notice was published, it is deemed appropriate to once again issue tables and associated text setting forth the interpretation of the SI for the United States.

The SI is constructed from seven base units for independent quantities plus two supplementary derived dimensionless units for the dimensionless derived quantities plane angle and solid angle, as listed in Tables 1a and 1b.

TABLE 1a.—SI BASE UNITS

| Quantity | SI unit | |
|---|---|---|
| | Name | Symbol |
| length | meter | m |
| mass[1] | kilogram | kg |
| time | second | s |
| electric current | ampere | A |
| thermodynamic temperature | kelvin | K |
| amount of substance | mole | mol |
| luminous intensity | candela | cd |

[1] "Weight" in common parlance is often used to mean "mass."

TABLE 1b.—SI SUPPLEMENTARY UNITS

| Quantity | SI unit | | |
|---|---|---|---|
| | Name | Symbol | Expression in terms of SI base units |
| plane angle | radian | rad | $m \cdot m^{-1} = 1$ |
| solid angle | steradian | sr | $m^2 \cdot m^{-2} = 1$ |



Units for all other quantities are derived from these nine units. For example, in Table 2 are listed a number of SI derived units obtained from the base units in a coherent manner, which means, in brief, that they are expressed as products and quotients of the seven base units without numerical factors.

TABLE 2.—EXAMPLES OF SI DERIVED UNITS EXPRESSED IN TERMS OF BASE UNITS

| Quantity | SI unit | |
|---|---|---|
| | Name | Symbol |
| area | square meter | $m^2$ |
| volume | cubic meter | $m^3$ |
| speed, velocity | meter per second | m/s |
| acceleration | meter per second squared | $m/s^2$ |
| wave number | reciprocal meter | $m^{-1}$ |
| density, mass density | kilogram per cubic meter | $kg/m^3$ |
| specific volume | cubic meter per kilogram | $m^3/kg$ |
| current density | ampere per square meter | $A/m^2$ |
| magnetic field strength | ampere per meter | A/m |
| concentration (of amount of substance) | mole per cubic meter | $mol/m^3$ |
| luminance | candela per square meter | $cd/m^2$ |

Certain derived units that have been given special names and symbols are listed in Table 3. They may themselves be used to express other derived units, as is shown in Table 4. All the derived units given in Tables 3 and 4 have been obtained from the base and supplementary units in the same coherent manner indicated above.

TABLE 3.—SI DERIVED UNITS WITH SPECIAL NAMES

| Quantity | SI unit | | |
|---|---|---|---|
| | Name | Symbol | Expression in terms of other units |
| frequency | hertz | Hz | $s^{-1}$ |
| force | newton | N | $m \cdot kg/s^2$ |
| pressure, stress | pascal | Pa | $N/m^2$ |
| energy, work, quantity of heat | joule | J | N·m |
| power, radiant flux | watt | W | J/s |
| electric charge, quantity of electricity | coulomb | C | s·A |
| electric potential, potential difference, electromotive force | volt | V | W/A |
| capacitance | farad | F | C/V |
| electric resistance | ohm | Ω | V/A |
| electric conductance | siemens | S | A/V |
| magnetic flux | weber | Wb | V·s |
| magnetic flux density | tesla | T | $Wb/m^2$ |
| inductance | henry | H | Wb/A |
| Celsius temperature [1] | degree Celsius | °C | K |
| luminous flux | lumen | lm | cd·sr |
| illuminance | lux | lx | $lm/m^2$ |
| activity (of a radionuclide) | becquerel | Bq | $s^{-1}$ |
| absorbed dose, specific energy imparted, kerma, absorbed dose index | gray | Gy | J/kg |
| dose equivalent, dose equivalent index | sievert | Sv | J/kg |

[1] In addition to the thermodynamic temperature (symbol $T$) expressed in kelvins (see Table 1a), use is also made of Celsius temperature (symbol $t$) defined by the equation

$t = T - T_0$

where $T_0 = 273.15$ K by definition. To express Celsius temperature, the unit "degree Celsius" which is equal to the unit "kelvin" is used; in this case, "degree Celsius" is a special name used in place of "kelvin." An interval or difference of Celsius temperature can, however, be expressed in kelvins as well as in degrees Celsius.

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TABLE 4.—EXAMPLES OF SI DERIVED UNITS EXPRESSED BY MEANS OF SPECIAL NAMES

| Quantity | SI unit | |
|---|---|---|
| | Name | Symbol |
| dynamic viscosity | pascal second | Pa·s |
| moment of force | newton meter | N·m |
| surface tension | newton per meter | N/m |
| heat flux density, irradiance | watt per square meter | W/m² |
| heat capacity, entropy | joule per kelvin | J/K |
| specific heat capacity, specific entropy | joule per kilogram kelvin | J/(kg·K) |
| specific energy | joule per kilogram | J/kg |
| thermal conductivity | watt per meter kelvin | W/(m·K) |
| energy density | joule per cubic meter | J/m³ |
| electric field strength | volt per meter | V/m |
| electric charge density | coulomb per cubic meter | C/m³ |
| electric flux density | coulomb per square meter | C/m² |
| permittivity | farad per meter | F/m |
| permeability | henry per meter | H/m |
| molar energy | joule per mole | J/mol |
| molar entropy, molar heat capacity | joule per mole kelvin | J/(mol·K) |
| exposure (x and γ rays) | coulomb per kilogram | C/kg |
| absorbed dose rate | gray per second | Gy/s |

The supplementary units of Table 1b may be used in the expression of derived units as for the lumen in Table 3. Some additional examples are given in Table 5.

TABLE 5.—EXAMPLES OF SI DERIVED UNITS FORMED BY USING SUPPLEMENTARY UNITS

| Quantity | SI unit | |
|---|---|---|
| | Name | Symbol |
| angular velocity | radian per second | rad/s |
| angular acceleration | radian per second squared | rad/s² |
| radiant intensity | watt per steradian | W/sr |
| radiance | watt per square meter steradian | W/(m²·sr) |

Table 6 gives the 16 prefixes used to form multiples and submultiples of the SI units. It is important to note that the kilogram is the only SI unit with a prefix as part of its name and symbol. Because double prefixes may not be used, in the case of mass the prefixes of Table 6 are to be used with gram (symbol g) and not with kilogram (symbol kg).

TABLE 6.—SI PREFIXES

| Factor | Prefix | Symbol |
|---|---|---|
| $10^{18}$ | exa | E |
| $10^{15}$ | peta | P |
| $10^{12}$ | tera | T |
| $10^{9}$ | giga | G |
| $10^{6}$ | mega | M |
| $10^{3}$ | kilo | k |
| $10^{2}$ | hecto | h |
| $10^{1}$ | deka | da |
| $10^{-1}$ | deci | d |
| $10^{-2}$ | centi | c |
| $10^{-3}$ | milli | m |
| $10^{-6}$ | micro | μ |
| $10^{-9}$ | nano | n |
| $10^{-12}$ | pico | p |
| $10^{-15}$ | femto | f |
| $10^{-18}$ | atto | a |



Certain units are not part of the SI, but are important and widely used. The units in this category that are accepted for use in the United States with the International System are listed in Table 7.

TABLE 7.—UNITS IN USE WITH THE INTERNATIONAL SYSTEM

| Name | Symbol | Value in SI unit |
|---|---|---|
| minute (time) | min | 1 min = 60 s |
| hour | h | 1 h = 60 min = 3 600 s |
| day | d | 1 d = 24 h = 86 400 s |
| degree (angle) | ° | 1° = (π/180) rad |
| minute (angle) | ′ | 1′ = (1/60)° = (π/10 800) rad |
| second (angle) | ″ | 1″ = (1/60)′ = (π/648 000) rad |
| *liter | L, l | 1 L = 1 dm³ = $10^{-3}$ m³ |
| **metric ton | t | 1 t = $10^{3}$ kg |
| hectare (land area) | ha | 1 ha = 1 hm² = $10^{4}$ m² |
| ***electronvolt | eV | 1 eV = 1.602 18 × $10^{-19}$ J, approximately |
| ***unified atomic mass unit | u | 1 u = 1.660 54 × $10^{-27}$ kg, approximately |

* Both L and l are internationally accepted symbols for liter. Because "l" can easily be confused with the numeral "1," the symbol "L" is recommended for United States use.
** In many countries, this unit is called "tonne."
*** The values of these units expressed in terms of SI units must be obtained by experiment, and are therefore not known exactly. The electron volt is the kinetic energy acquired by an electron passing through a potential difference of 1 volt in vacuum. The unified atomic mass unit is equal to (1/12) of the mass of the atom of the nuclide $^{12}C$.

In those fields where their usage is already well established, the use of the units in Table 8 for a limited time is accepted, subject to future review.

TABLE 8.—UNITS IN USE TEMPORARILY WITH THE INTERNATIONAL SYSTEM

| | | |
|---|---|---|
| nautical mile | barn | roentgen |
| knot | bar | rad [4] |
| ångström | gal [2] | rem [4] |
| are [1] | curie | |

[1] Unit of land area.
[2] Unit of acceleration.
[3] Unit of absorbed dose.
[4] Unit of dose equivalent.

As stated in the 1982 notice, metric units, symbols, and terms that are not in accordance with the foregoing interpretation are no longer accepted for continued use in the United States with the International System of Units. Accordingly, the following units and terms listed in the table of metric units in section 2 of the Act of July 28, 1866 that legalized the metric system of weights and measures in the United States are no longer accepted for use in the United States:

myriameter
stere
millier or tonneau
quintal
myriagram
kilo (for kilogram).

Although there is no formal comment period, public comments are welcome on a continuing basis. Comments should be submitted to Dr. Barry N. Taylor at the above address.

**John W. Lyons,**
*Director.*

[FR Doc. 90-21913 Filed 12-19-90; 8:45 am]
BILLING CODE 3510-13-M

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federal register

Thursday
December 20, 1990

Part III

# Department of Commerce

**Economic Development Administration**

**Economic Development Assistance Programs; Availability of Funds; Notice**

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**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**[Docket No. 900852-0252]**

**Economic Development Assistance Programs as Described in Public Law 101-515, Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations, 1991; Availability of Funds**

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Economic Development Administration (EDA) announces its policies and application procedures for funds available in FY 1991 to support projects designed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions of the Nation and to address economic dislocations resulting from sudden, major job losses. The purpose of this announcement is to communicate to potential applicants for EDA funds the policies and procedures that will be used to administer the Agency's programs during FY 1991.

**I. General Policies**

Because of the existing statutory criteria and a Congressional prohibition against terminating eligibility, areas containing approximately 90 percent of the U.S. population are eligible for EDA assistance, which in FY 1991 totals less than $209 million. Priority consideration for funding will be given only to those projects having the best potential to benefit areas experiencing or threatened with the most severe economic distress. EDA is particularly interested in projects located in Federally authorized and designated enterprise zones. Distress may exist in a variety of forms, including exceptionally high unemployment rates, extremely low income levels, abnormally large concentrations of low income families, particularly low labor force participation rates, unusually large numbers (or high rates) of business failures or farm loan foreclosures, high farm credit delinquencies, sudden major layoffs and/or plant closures, and drastically reduced tax bases. Potential applicants are responsible for demonstrating to EDA, through the provision of statistics and other appropriate information, the nature and level of the distress their efforts are intended to alleviate. In the absence of evidence of exceptionally high levels of distress, EDA funding is unlikely. In considering proposals to benefit severely distressed areas, EDA will give special consideration to those that address the needs of rural communities, particularly aid directed toward the economic diversification of such areas.

EDA recognizes that small communities experience impediments to economic development other than the traditional inadequacies of existing water, sewer and roadway systems; therefore, in FY 1991, EDA will give consideration to atypical EDA projects that would assist an area to overcome a special development or infrastructure problem that is preventing real growth and economic development from taking place. Such projects include, but are not limited to, activities designed to enhance the expansion of the service sector of the economy when that sector is deemed more growth oriented than the traditional industrial sector, or innovative projects designed for the development of solid waste disposal recycling facilities. Such proposals must be appropriately scaled and provide substantial and direct benefit to the local economy or otherwise enhance the economic prosperity of the area. EDA will consider providing assistance to demonstration type projects that are especially creative from an economic development standpoint and that leverage the maximum amount of nonfederal resources. EDA expects substantial state and local support for proposed projects. Proposals that do not provide evidence of strong state and local leadership and financing are unlikely to receive EDA aid.

In the case of projects involving construction, EDA expects construction to be initiated and completed in a timely manner. Applicants are expected to anticipate predictable delays such as those caused by normal weather conditions, legal complications, community disputes, land acquisition, etc., and account for them in developing project schedules. Projects which are likely to encounter significant delays will normally not be given favorable consideration. Projects that experience unreasonable delays following EDA approval may be terminated and the funds deobligated. These policies are consistent with EDA's objective of supporting activities that can begin to benefit local economics as soon as possible, thereby meeting the pressing development needs identified by project applicants. EDA expects those responsible for developing and managing projects to maximize the impact of the public funds by preparing and implementing projects as thoroughly and expeditiously as possible. EDA funding will not be used directly or indirectly to assist employers who transfer one or more jobs from one commuting area to another. EDA nonrelocation requirements (13 CFR 309.3) apply to grants involving construction, rehabilitation or repair, and to all loan guarantees and grants, under titles I, IV, IX, and section 301(f) of the Public Works and Economic Development Act of 1965 (Pub. L. 89-136, 42 U.S.C. 3121-3246h), as amended, PWEDA, (including grants for Revolving Loan Funds, under title IX). Applicants who have delinquent accounts receivable with the Federal Government may not be considered for future awards until these debts have been paid or arrangements to pay them have been approved by the agency to whom the debt is owed. Applicants may be subject to a pre-award accounting system survey by the Department of Commerce's Office of Inspector General, and fund recipients may be subject to audits or other inspections by the same office.

Applicants eligible for assistance because of membership in an economic development district must be active participants in the district economic development planning process. EDA will evaluate applications for conformance with published statutory, regulatory, and policy requirements. Applications proposed for funding under these programs are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

An invitation to submit a formal application does not assure EDA funding. Factors that will be taken into account in considering projects eligible and competitive include whether and to what extent the project meets the selection criteria. Unsuccessful applicants will be notified of the status of their applications when all of EDA's funds for the program to which they have applied have been awarded. Processing time for project proposals will depend on the completeness of information provided in the application form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

EDA will avoid projects that involve actual or potential conflict-of-interest situations. If EDA identifies or suspects a possible conflict-of-interest situation, or an appearance of such, application processing and/or grant award may be suspended and the burden will be on the applicant/grantee to take appropriate steps to eliminate the perception of a conflict of interest before application processing and/or the grant is resumed.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with the application.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Applicants should be mindful that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Awards under these programs shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The following material describes other policies and procedures associated with each of EDA's programs.

**II. Program: Public Works and Development Facilities Assistance**

(Catalog of Federal Domestic Assistance: 11.300 Economic Development Grants and Loans for Public Works and Development Facilities. 11.304 Economic Development Public Works Impact Program (PWIP))

*Summary*

Funds available under the Public Works Program are used to finance public works and development facilities that contribute to the economic development of distressed areas. EDA's public works expenditures are authorized by titles I and IV of the Public Works and Economic Development Act of 1965, as amended (PWEDA), 42 U.S.C. 3131 and 42 U.S.C. 3171(a)(3).

*Eligibility*

Eligibility applicants under this program include any state, or political subdivision thereof, Indian tribe, the Federated States of Micronesia, the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, or private or public nonprofit organization or association representing any redevelopment area or part thereof, if the project is located within an EDA-designated redevelopment area. Redevelopment areas, other than those designated under the Public Works Impact Program, must have a current EDA-approved Overall Economic Development Program (OEDP).

Political entities claiming eligibility under OEDPs developed by multicounty economic development organizations are expected to continue to participate actively in the organization. Further information on areas eligible for this program is available from EDA's Regional Offices. Nonprofit applicants are urged to seek the cooperation and support of units of local government and, when deemed appropriate by EDA, to have the local government serve as co-applicant for EDA assistance. This serves the purposes of ensuring the financial stability and continuity of the project after its construction and during its useful life, in the event the nonprofit entity finds itself in a position of not having the financial resources to properly and efficiently administer, operate and maintain the EDA-assisted facility consistent with the provisions of 13 CFR part 314-Property Management Standards.

*Program Objective*

The purpose of the Public Works Program is to assist communities with the funding of public works and development facilities that contribute to the creation or retention of private sector jobs and to the alleviation of unemployment and underemployment. Such assistance is designed to help communities achieve lasting improvement by stabilizing and diversifying local economies, and improving local living conditions and the economic environment of the area. EDA emphasizes the alleviation of unemployment and underemployment among residents of the project area as a primary focus of this program. In view of the current rural distress, applications from rural communities will be reviewed with particular interest.

*Funding Availability*

Funds in the amount of $140.825 million are available for this program.

*Funding Instrument*

EDA may provide grants with maximum EDA participation of 80 percent of project costs. On an average, EDA grants cover approximately 50 percent of project costs. Applicants will be required to provide the local share from acceptable sources including, but not limited to, cash, local government general obligation or revenue bonds; Community Development Block Grant (CDBG) entitlement funds or balance of state awards; Farmers Home Administration loans; and other public and private financing, including donations. The local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified sources, and the funds must be readily available.

The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant agreement. Priority will be given to applications which maximize the local share's percentage of the project cost. Supplementary grant assistance to finance more than 50 percent of project costs will only be approved by EDA for projects in areas of high distress. Decisions on such assistance will be based on the nature of the project, the amount of fair user charges or other revenues the project may reasonably be expected to generate, the ability of the applicant to fund the project costs, and the relative needs of the project (see 13 CFR 305.5).

*Selection Criteria*

For both regular Public Works projects and Public Works Impact Program (PWIP) projects, priority consideration will be given to those which are the most competitive based upon the project selection criteria set forth below, that best meet the needs of eligible areas, and that are located in areas of severe economic distress.

A. Public Works Projects

Factors that will be taken into account in considering projects eligible under section 101(a)(1)(A)—(C) of PWEDA, 42 U.S.C. 3131(a)(1)(A)—(C), include whether and to what extent the project:

1. Improves opportunities for the successful establishment or expansion of industrial or commercial facilities in the area where such project will be located;

2. Assists in creating or retaining private sector jobs in the near term and assists in the creation of additional long-term employment opportunities, provided the jobs are not transferred from any other area of the United States, and will result in a low cost per job in relation to total EDA cost;

3. Benefits the long-term unemployed and members of low-income families who are residents of the area to be served by the project;

4. Fulfills a pressing need of the area or part thereof, in which it will be located;

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5. Is consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which it is, or will be, located, and has broad community support;

6. Is supported by significant private sector investment;

7. Has adequate local share of funds with evidence of firm commitment and availability;

8. Supports developments taking place in designated enterprise zones, particularly in rural areas;

9. Demonstrates that necessary permits, land acquisitions, or options on land and rights-of-way have been obtained and that all other legal requirements of the application process have been satisfied;

10. Includes a larger local share than the minimum required; and maximizes the amount of local and/or State funding possible; and

11. Gives evidence of the ability to begin and complete construction in a timely manner in accordance with a schedule to be agreed upon by EDA and the applicant and included in the grant award. EDA discourages the start of construction prior to grant award and cautions that financial hardship may be experienced by applicants whose projects are not ultimately approved because of compliance deficiencies or lack of competitiveness with other proposals. EDA will require all applicants that request approval to proceed with construction prior to grant award to acknowledge that they are proceeding at their own risk without recourse to EDA should the grant not be awarded and/or EDA requirements not be met. Furthermore, EDA may view the start of construction prior to grant award as an indication that the grant funds are not essential for the successful development of the project.

B. Public Works Impact Program

Factors that will be taken into account in considering projects under the Public Works Impact Program (PWIP) authorized by section 101(a)(1)(D) of PWEDA, 42 U.S.C. 3131(a)(1)(D), include whether and to what extent the project:

1. Directly assists in creating immediate useful work (i.e., construction jobs) for the unemployed and underemployed residents in the project area;

2. Improves the economic or community environment in areas of severe economic distress;

3. Includes a specific plan (i.e., PWIP Employment Strategy) for hiring the unemployed and underemployed persons from the project area to work on the construction of the project; EDA will evaluate all plans to ensure that they contain a logical explanation of how the employment objectives will be met;

4. Assists in providing long-term employment opportunities or other economic benefits for the unemployed and underemployed in the project area;

5. Primarily benefits low-income families by providing essential community services, or satisfying a pressing public need;

6. In addition to the requirement for regular public works projects, as contained in paragraph A.11, can begin construction quickly (normally within 120 days after acceptance of the grant by the applicant); and

7. Has substantial labor intensity, where labor intensity is the proportion of labor costs to the total project costs.

C. Industrial Park Projects

Projects which will primarily serve an industrial park or site will be evaluated on such additional factors as:

1. A detailed analysis of existing industrial park capacity and utilization; occupancy rates for existing developed industrial acres currently available within a 25-mile radius of the project site. For cities with populations over 50,000, the prescribed area may be determined by an analysis of industrial sites within an established industrial area, which may be less than a 25-mile radius. Contact the economic development representative (EDR) for the area or the appropriate EDA regional office for guidance.

2. Commitments in writing from identified tenants to expand existing operations or to locate in the industrial park or site. Commitments must include a description of the industry, the number of jobs created or saved, and an implementation schedule, and the relationship of the commitment to the requested grant assistance.

3. The existence of a concrete marketing strategy and demonstrated financial ability to market space in the industrial park or site. Strong emphasis will be placed upon this requirement.

D. Tourism Projects

EDA will support tourism or recreational projects, where it can be demonstrated to EDA's satisfaction that tourism is a major industry in the area or that the project will assist in creating a significant number of jobs, in which case, the project must directly assist in providing job opportunities for unemployed and underemployed persons of the area and otherwise support the long-term growth of the area.

E. Favorable Consideration Is Not Likely for Projects Which

1. Are in areas with unemployment rates below the national average, unless it can be demonstrated to EDA's satisfaction by other more appropriate measures that the area is suffering substantial distress and economic hardship;

2. Are in pockets of economic distress surrounded by economically affluent areas;

3. Are in Economic Development Centers that have stable economies with little distress, unless the application includes an Employment Strategy that contains a logical explanation of how new job opportunities will be created for and filled by residents of nearby highly distressed redevelopment areas;

4. Do not benefit the long-term unemployed or members of low-income families or otherwise substantially further the objectives of the Economic Opportunity Act of 1964;

5. Cannot be implemented within a reasonable period of time;

6. Involve substantial land purchase, or land purchases involving exorbitant costs; EDA prefers not being involved with land purchases;

7. Do not have the applicant's share of project funding readily available;

8. Involve industrial parks where there is evidence of excessive vacancies in existing developed industrial parks or sites in close proximity to the proposed project, unless there is significant evidence the proposed project is targeted to types of firms not readily accommodated or served by the existing industrial parks and firm commitments to locate in the industrial park exist;

9. Involve industrial parks that are owned and operated by individuals or for-profit entities as opposed to publicly owned facilities;

10. Involve vocational-technical schools unless a direct link has been established between the training curriculum and the needs of existing local employers or those committed to locate in the labor market area;

11. Require a mortgage to be placed on the real property or the facility to be constructed/improved with EDA funds;

12. Request additional financial assistance from EDA to finance cost overruns;

13. Involve nonindustrial street/road construction or repair that is normally the responsibility of local government, county, or Federal highway programs;

14. Involve public buildings including, but not limited to judicial buildings, courthouses, jails, fire stations, hospitals, medical clinics, social service buildings, civic auditoriums, convention centers, museums, and theaters;

15. Involve parking garages and pedestrian walkways (elevated or ground level);

16. Involve land reclamation that primarily involves subsurface demolition and site cleanup activities; or

17. Involve beautification projects.

*Construction Project Implementation*

As indicated in the first section of this Notice, EDA expects construction projects to be initiated and completed in a timely manner and in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The recipient must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA's approval of changes in the schedule prior to proceeding with project implementation. EDA expects recipients to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, normal weather conditions in the area, acquisition of state permits and approvals, and public objections to the project), and to take them into account in preparing the project schedule. Recipients who fail to comply with project schedules shall be subject to grant suspension and/or termination.

Under most circumstances, EDA will not provide additional funds to finance overruns that occur during project implementation.

*Proposal Submission Procedures*

To establish the merits of project proposals, interested parties should first contact the economic development representative for the area. The EDA regional office can provide the name, address and telephone number of the economic development representative for the area who will provide a preapplication form (ED–101P, OMB Approval No. 0610–0011) and arrange for conferences to discuss the proposal. EDA will screen proposals before inviting the submission of a formal application. Proposals will be evaluated based upon:

1. Conformance with statutory and other legal requirements and with the selection criteria mentioned above;

2. The merits of the proposal in addressing the relative economic development needs of the eligible area; and

3. The availability of funds as allocated to the regional offices.

Processing time for project proposals will depend on the completeness of information provided in the preapplication form and supporting documents at the time of submission. Project proposals that require additional information from applicants or other sources will be returned to correct deficiencies and the official application receipt dates will be adjusted accordingly.

*Formal Application Procedures*

Following a review of project proposals, EDA will invite entities whose projects are selected for consideration to submit formal applications. The formal application will include a form ED–101A, as approved by the Office of Management and Budget Control No. 0610–0011.

*Previous Applications*

Project applications invited, but not funded in FY 1990, remain eligible for funding consideration. Those applications which were received prior to the date of this Notice, will be processed and evaluated in accordance with the project selection criteria published for FY 1990 and current legal requirements. Those applications received on or after the date of this Notice, must be consistent with the project selection criteria and requirements published in this Notice. Applicants whose projects were invited but not submitted to EDA in FY 1990 should contact the appropriate EDA regional office regarding forms to be used for FY 1991.

*Further Information*

For further information contact the appropriate EDA regional office (see section XI of this Notice).

**III. Program: Guaranteed Loans**

(Catalog of Federal Domestic Assistance: 11.301 Economic Development—Business Development Assistance)

*Summary*

Authority is available to guarantee up to eighty percent (80%) of the principal and interest of loans made by eligible commercial lending institutions to private borrowers for the purchase of fixed assets and/or for working capital purposes for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help business expand, establish, or maintain operations in both rural and urban eligible areas throughout the Nation. Guarantees offered under this program are made at the discretion of the Assistant Secretary for Economic Development based upon data from the borrower and lender current at the time the guarantee is offered, under the authority of Public Law 89–136, (42 U.S.C. 3142–3246 (h)).

*Preapplication Procedures*

Applicants should contact either the Austin or Philadelphia Regional Office Business Loans Division to discuss their proposals. EDA staff will screen proposals before inviting a formal application. Proposals will be evaluated based upon conformance with the following:

1. Statutory requirements contained in the Act;

2. Regulatory requirements contained in 13 CFR part 306 and 309; and restated in this Notice; and

3. Provisions of Office of Management and Budget (OMB) Revised Circulars A–70 and A–129.

*Revised OMB Circulars A–70 and A–129 Requirements*

All loan guarantees must conform to the requirements of A–70 and A–129, without exception. The most significant requirements are as follows:

1. Loans must be secured by first priority, unsubordinated liens on collateral having value in excess of the full amount of the loan.

2. A guarantee fee will be charged.

3. Not more than eighty percent (80%) of the principal and the interest on a loan may be guaranteed.

4. The lender must bear a significant portion of the risk of loss on the loan. No other security, guarantees, or any other arrangement that would not insure ratably to EDA for that portion of the loan not guaranteed by EDA will be permitted.

5. No loan directly involved with tax-exempt obligations, such as industrial revenue bonds, will be guaranteed.

*Supplementary Information*

A. Amount of Funding Available

EDA is authorized to commit up to $150 million to guarantee contingent liability for loan principal in FY 1991.

B. Type of Financial Assistance

EDA staff will consider proposals for the guarantee of loans made by private lending institutions to private borrowers to finance fixed assets or for working capital purposes. EDA staff will not accept applications for projects which involve real estate development for either investment or speculation, or for the refinancing of current debt.

C. Who May Apply

Formal applications will be invited by EDA staff only after review and acceptance of satisfactory project proposals. Applications will be accepted

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only from private lending institutions (the applicant) for the guarantee of loans to private business enterprises. EDA's relationship is essentially with the lender applicant, not the borrower.

D. Long-Term Employment

EDA staff will seek to assist in the creation or retention of permanent private-sector jobs in EDA eligible areas. Accordingly, the project for which the applicant seeks financial assistance must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where the project is or will be located.

E. Repayment Ability

The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. EDA Guarantee Required

No loan will be guaranteed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower from either private lenders without a guarantee or from other Federal agencies on terms which, in the opinion of EDA, will permit accomplishing the project. In the event the borrower is a large corporation, which would normally have funds available to finance the project, such corporation must certify that it would not locate the proposed project within the EDA-designated area without the benefits of EDA's financial assistance.

G. Relocation

Nonrelocation requirements apply to guaranteed loans under section 202, title II of PWEDA. EDA's regulations at 13 CFR 309.3 prohibit transferring jobs from one commuting area to another. Certificates of nonrelocation will be required.

*General Conditions of Assistance*

A. Term of Loan

The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) to seven (7) years, and the loan should be fully amortized during its term. EDA will not ordinarily guarantee revolving-type or open-end working capital loans.

B. Guarantee Percentage and Interest Rate

Pursuant to A–70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, applicants requesting an eighty percent (80%) guarantee will be required to justify why a lesser guarantee percentage would not be acceptable. As a general rule, EDA will not offer to guarantee a loan in excess of the following percentages and interest rates:

1. 80% guarantee—Lender prime rate plus 1.25%
2. 75% guarantee—Lender prime rate plus 1.50%
3. 70% guarantee—Lender prime rate plus 2.0%
4. 65% guarantee—Lender prime rate plus 2.5%

C. Guarantee Fee

Pursuant to OMB Circulars A–70 and A–129, EDA will charge the lender a guarantee fee.

D. Application Fee

EDA may charge an application processing fee to cover the costs of application processing and review.

E. Lender's Risk

That portion of the loan not guaranteed by EDA must be at risk to the recipient throughout the term of the loan. This precludes the recipient from obtaining any additional security, guarantee, or compensating balances to separately secure the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the lender, provided that any such participation is acceptable to EDA. EDA staff will be obligated to deal only with the recipient, and all participants must be eligible as recipients.

F. Other Lender-Borrower Relationships

When recipient has other creditor/debtor relationships with the prospective borrower, EDA staff will seek assurances that these relationships will not create conflicts with EDA's interest in the recipient's servicing of the loan for which a guarantee is sought. Ordinarily, EDA staff will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

G. EDA Investment Per Job

EDA staff normally will consider only those projects that have an EDA investment exposure of $20,000 or less per permanent job to be created or saved.

H. Repayment Ability

Only projects that demonstrate reasonable assurance of repayment are eligible to receive EDA financial assistance. The applicant must demonstrate why it is reasonably certain the borrower will be able to repay the loan. As a minimum, the application must include:

1. Applicant's normal detailed credit analysis, including a narrative discussion of company history, management, product, production capability, market conditions, finances, collateral, and repayment ability (with ratio analyses compared to industry standards);

2. Three (3) years' financial statements, audited and certified by a public accountant, if available, or certified by a responsible officer of the prospective borrower; if in operation less than three years, financial statements since inception;

3. Financial statements of the prospective borrower, current within ninety (90) days of the date of the application;

4. Pro forma balance sheets, income and cash flow statements of the prospective borrower on a month-by-month basis for the first year after the loan is made and on a quarterly basis for the next two (2) years;

5. One copy of the proposed note and loan agreement between the applicant and the prospective borrower with attachments; and

6. For loans involving real estate collateral, a certification from the lender/borrower that it is satisfied that there are no hazardous substances problems (Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)).

I. Adequate Collateral

The lender must maintain perfected liens against and security interests in collateral adequate to permit full recovery of the loan in the case of default by the borrower. Collateral must be of such nature that repayment of the loan is reasonably assured when considered along with the integrity and ability of project management, soundness of the project and borrower's prospective earnings. The applicant must document why it is reasonably certain that adequate collateral coverage exists. Only projects that demonstrate that the full amount of the loan is covered exclusively by an unsubordinated first priority security interest on collateral offered by the borrower will be considered. There will be no exceptions to this requirement.



Proof and documentation of collateral coverage shall include but not be limited to current appraisals as to the fair market and liquidation value of the collateral that will support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownership must be included with appraisals acceptable to EDA. All real property appraisals shall include appropriate recognition of environmental risks.

J. Guarantees

Unconditional personal/corporate guarantees (of full and timely payment and performance by the borrower) will be required from all persons or entities which hold or control ten percent or more of the ownership interests in a borrower unless:

1. The borrower has a profitable historical performance of no less than three out of the most recent five years, abundant collateral, adequate cash flow, and meets key industry standards (i.e., Robert Morris Associates);

2. Borrower's stock is so widely held that no one individual/family/entity can exercise control;

3. Borrower's parent, subsidiary, or affiliate that is required to guarantee is legally restricted from guaranteeing, or such guarantee would conflict with other existing contractual obligations of the prospective guarantor.

Cross guarantees may also be required from related corporate entities.

EDA will require current (not over ninety days old at the time the application is filed) personal or corporate financial statements signed by the prospective guarantor, and, where appropriate and necessary to support the guarantee, by the guarantor's spouse, and disclosing community and individual assets and indebtedness when applicable.

K. Equity Requirements

All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. The following minimum equity will be required:

1. For guaranteed working capital loans, the prospective borrower must have existing, or must provide, net working capital equal to not less than fifteen percent (15%) of its total working capital needs.

2. For guaranteed fixed asset loans, the prospective borrower must provide an equity investment in the loan project of at least fifteen percent (15%) of the aggregate loan project cost.

3. The prospective borrower must provide twenty-five percent (25%) of the aggregate loan project cost for:

a. New businesses with no operating history;

b. Loans without full personal and/or corporate guarantee of stockholders owning ten percent (10%) or more of the borrower;

c. Energy-related businesses;

d. Ventures which EDA determines to have above-average risk.

L. Feasibility Report

An independent technical, financial, and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more and for projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Independent feasibility studies may also be required for other applications, as deemed necessary by EDA.

M. Tax-Exempt Obligations

The EDA project cannot share collateral with or include elements financed with tax-exempt obligations, such as industrial revenue bonds.

N. Other Requirements

1. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required in an amount at least equal to the lesser of the depreciated replacement value of the property being insured or the amount of the loan.

2. Keyman life insurance, which may be decreasing term insurance, normally will be required for principals and key employees of the borrower, pledged or assigned to the lender.

*Applicant Servicing Responsibilities*

A. Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to, executing such care and diligence in the disbursement, servicing, collection, and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of subsequent default on the loan, unless EDA elects otherwise, the applicant will have full responsibility for servicing and liquidating the loan prior to making demand on EDA for payment under the EDA guarantee. EDA shall be obligated to pay that portion of the loan guaranteed after the deduction of all proceeds of the liquidation less reasonable expenses directly attributable to the liquidation. Failure to perform these responsibilities satisfactorily may preclude EDA from honoring its guarantee. EDA staff will examine the applicant's records before honoring any guarantee.

*Application Requirements*

A. The application shall include the following:

1. A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate jobs from one area to another or to close facilities involved in the EDA-guaranteed project;

2. Approval of the application by the appropriate agency or instrumentality of the state or political subdivision in which the project is located, together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

3. Full disclosure of the amount and nature of all fees charged to the borrower by the lender, attorneys, agents or other persons to expedite the application. Appropriate fees and charges may include services such as accounting, legal, engineering and appraisals. Packaging and lobbying expenses are not allowable project costs and no proceeds of the loan may be used directly or indirectly for attorneys' or consultants' fees in connection with securing EDA's guarantee. EDA may permit reasonable fees and charges as allowable project costs. EDA will not permit any fees or charges that are contingent upon project approval;

4. An agreement that neither the borrower nor the applicant will employ or retain for professional services any person who on behalf of EDA occupied a position or engaged in activities which EDA determines involves discretion with respect to the granting of the assistance under the Act. This agreement shall remain in effect for two years after EDA grants assistance to the applicant;

5. An application for character/integrity investigation (Name Check Form CD–346, OMB No. 0605–0001) for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower;

6. Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of section 702 of the Act. Section 702 unfair competition results if

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the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises. Applicants are encouraged to submit borrower's data for this requirement prior to or within thirty (30) days of receiving authorization to apply for EDA financial assistance to expedite processing of the loan guarantee. Applicants and borrowers should understand that expenses incurred prior to formal offering of a loan guarantee are made solely at the applicant's or borrower's expense.

7. A description of state or local government assistance to the project; and

8. A signed statement by the borrower assuring that: (a) Real estate provided as collateral is not under notice of environmental violations from local, state or Federal agencies, (b) the real property is not the subject of an environmental impact study, and (c) there are no known violations of Federal, state or local environmental laws or requirements, including, but not limited to, 42 U.S.C. 9601–9657.

B. Loan guarantees are also subject but not limited to the following statutes:

1. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251–1376;
2. Davis-Bacon Act, as amended, 40 U.S.C. 276a–276a–5; 13 CFR 309.6;
3. The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151–4157; 13 CFR 309.14;
4. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4370; CFR 309.12;
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470–470W–6;
6. The Wild and Scenic River Act, as amended, 16 U.S.C. 1271–1287;
7. The Clean Air Act, as amended, 42 U.S.C. 7401–7626;
8. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001–4128; and
9. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9675.
10. Resource Conservation and Recovery Act, 42 U.S.C. 6901–6991.

*Application Submission*

Proposals should be submitted to the appropriate EDA regional office at the earliest possible date. Proposal received after June 29, 1991, may not be considered during FY 1991. The formal application will include an ED–201, as approved by the Office of Management and Budget Control No. 0610–0024. Completed applications for authorized projects should be submitted no later than July 31, 1991.

Incomplete applications or applications that do not conform to program requirements will be rejected by EDA. The EDA Headquarters will review all loans recommended for approval by a regional office. Headquarters review will encompass credit as well as program objectives, priorities and interest. All guarantees require approval by the Assistant Secretary of Commerce for Economic Development.

*For Further Information Contact*

Only two EDA regional offices have been designated to administer the Loan Guaranty Program and accept Loan Guaranty applications. For further information on that program, contact the Chief of the Business Loans Division at either the Austin or Philadelphia Regional Office (see section XI of this Notice).

## IV. Program: Technical Assistance

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)

*Summary*

Funds under the Technical Assistance Program are awarded to eligible applicants to provide assistance intended to assure the successful initiation and implementation of area, state, regional, and national development efforts designed to alleviate economic distress. This program is authorized under the authority of section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

*Eligibility*

Eligible applicants for technical assistance grants or cooperative agreements include public or private nonprofit national, state, area, district, or local organizations; public and private colleges and universities; Indian tribes, local governments, and state agencies. Other eligible applicants are private individuals, partnerships, firms, and corporations.

*Program Objective*

The Technical Assistance Program is designed to provide technical assistance useful in alleviating or preventing conditions of excessive unemployment or underemployment and problems of economically distressed populations in rural and urban areas.

*Funding Availability*

Funds in the amount of $1.889 million are available for the Technical Assistance Program. It is expected that these funds will be made available for projects serving specific local or substate areas and also for projects whose impacts will cross EDA regional office boundaries.

*Funding Instrument*

EDA will provide grants and cooperative agreements not to exceed 75 percent of proposed project costs. Applicants are expected to provide the remaining share, preferably in cash. In cases when EDA issues a Solicitation of Applications, an applicant's share may not be required.

*Project Duration*

Assistance will be for the period of time required to complete the scope of the work. Generally, this will not exceed twelve months.

*Selection Criteria*

Preference will be given to those technical assistance proposals which:

1. Produce strong evidence that the proposed project will lead to the near-term (between one and five years) generation and/or retention of private sector jobs.
2. Do not depend upon further EDA or other Federal funding assistance to achieve results.
3. Strengthen the capability of state and local organizations and institutions, including nonprofit development groups, to undertake and promote effective economic development programs targeted to people and areas in distress.
4. Stimulate significant private and nonfederal public investment for economic development purposes, including funds from commercial lenders, public and private pension funds and other nontraditional sources.
5. Benefit severely distressed areas, particularly rural counties and communities.
6. Diversify distressed rural economies by means of enterprise zones and other strategies.
7. Demonstrate innovative approaches to stimulating economic development in depressed areas. EDA is particularly interested in receiving innovative proposals in the following areas:
   a. Export development used as an economic development strategy;
   b. Assistance to business in uses of technology; and
   c. Minority business developed in distressed areas.
8. Are consistent with the EDA approved Overall Economic Development Program (OEDP) for the area in which the projects are located and have been recommended by the OEDP Committee (if appropriate to the nature of the project).
9. Present an appropriate and clear project design.
10. Are proposed by organizations or individuals with the capacity, qualifications and staff necessary to undertake the intended activities.
11. Present a reasonable, itemized budget for the proposed activities.
12. Involve a significant (preferably cash) contribution in excess of minimum required from applicant or other nonfederal sources.

*Pre-Application Procedures*

Parties seeking support for local technical assistance projects—those that will primarily benefit a substate or intra-regional area—must contact the economic development representative (EDR) for the area to obtain a proposal package. This package may contain additional information on procedures and selection criteria. The EDA regional office will provide the name, address and telephone number of the EDR for the applicant's area (see section XI of this Notice). EDA will evaluate all proposals as they are received and invite applications for those which best satisfy the selection criteria.

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages. Vita and capability information may be appended.

*Proposal Submission Procedures*

Potential applicants should submit proposals that include:

1. A cover page giving a short descriptive project title, the name and address of the performing organization, the name and telephone number of the project director, the project duration, the amount of EDA funds requested, and the program (Technical Assistance) that would provide the funds;
2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;
3. A more detailed description of the project and its methodology;
4. A work plan showing different phases of the project and their timing;
5. A detailed budget showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;
6. Resumes for the project director and principal staff; and
7. A corporate or institutional capability statement, where appropriate.

Parties seeking support for local technical assistance should submit proposals to the EDR who supplied the proposal package.

Parties seeking support for projects whose impacts will cross EDA regional boundaries should submit proposals to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7319, U.S. Department of Commerce, Washington, DC 20230. Individuals or organizations located outside the Washington, DC, metropolitan area should submit a copy of the letter transmitting their proposal to Washington to the EDR for the area in which they are located.

*Formal Application Procedures*

The appropriate EDA regional office will invite entities whose proposals for technical assistance projects are selected for further consideration to complete formal application packages. The formal application for applicants will include a Standard Form-424 (OMB Approval No. 038–0043).

*Eligibility for Specific Solicitations*

EDA may, during the course of the year, identify specific economic development technical assistance activities it wishes to have conducted. Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such work should submit information on their capabilities and experience to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7319, U.S. Department of Commerce, Washington, DC 20230.

*Further Information*

For further information about local technical assistance projects—those that will benefit substate or intra-regional areas—contact the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA regional office) or the appropriate EDA regional office (see section XI of this Notice). For further information about submitting projects whose impact will cross EDA regional office boundaries, contact the National Technical Assistance Coordinator, telephone (202) 377–2127.

## V. Program: University Center Projects

(Catalog of Federal Domestic Assistance: 11.303 Economic Development—Technical Assistance)



*Summary*

Funds for basic university center projects are used as seed money to help selected colleges and universities mobilize their own and other resources to assist in the economic development of distressed areas. The efforts of university centers should focus on helping public bodies, nonprofit organizations and businesses plan and implement activities designed to generate jobs and income. In addition, funds may be used for projects which promote the goals of the University Center Program in other ways. Support for these types of projects is authorized under section 301(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(a).

*Eligibility*

Eligible applicants for university center grants and cooperative agreements are public and private colleges and universities, associations representing such institutions, and other organizations with expertise in University Center Program issues

*Program Objective*

The objective of these projects is to enable colleges and universities to contribute to overall economic development by using their resources to provide technical assistance that will alleviate or prevent conditions of excessive unemployment or underemployment and problems of distressed populations in individual states or substate areas.

*Funding Availability*

Funds in the amount of $4.724 million are available for university center projects. Continuation grants for existing centers will use all of this amount.

*Funding Instrument*

University center project funds will be awarded through grants and cooperative agreements to cover a portion of project costs. The amount covered will not exceed 75 percent of proposed project costs.

*Project Duration*

Grants and cooperative agreements will be for the period of time required to complete the scope of work. Generally, this will not exceed twelve months.

*Selection Criteria*

In judging proposals from existing and potential university centers for basic grants, EDA will consider whether the proposed center programs:

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1. Serve areas of significant economic distress;

2. Address the development needs of the service area;

3. Complement the activities of other organizations in the proposed service area that are engaged in economic and business development. Where applicable, the proposal must identify how it differs from the services provided by a local Small Business Development Center (SBDC), Trade Adjustment Assistance Center (TAAC) or a Minority Business Development Center (MBDC);

4. Possess the commitment, as evidenced by financial support and other resources, of the university leadership at the highest levels to the mission and purpose of the university center;

5. Possess the capacity to provide the proposed technical and other types of assistance to jurisdictions and organizations within the service area; and

6. Complement and support the local, regional or state economic development strategies in the service area. EDA will also consider the following factors in evaluating proposals for basic grants from potential centers:

a. The extent to which the center proposes to serve the economic development needs of economically distressed jurisdictions and community-based organizations.

b. The presence of other EDA-funded center(s) in the state.

c. The presence of an SBDC, MBDC or a TAAC in the service area.

Proposals will also be judged on the quality of the proposed work program and the qualifications of the applicant to carry out that work program.

Proposals for other projects that meet the goals of the University Center Program will be judged on similar factors. These include the potential impact of the project on distressed areas, the quality of the proposed work program, and the qualifications of the applicant to carry it out. Depending on the availability of funds, EDA may hold a competition for short-term (one to three year) incentive grants. This competition will be open to all currently and previously funded centers, except those whose funding was discontinued because of poor performance.

*Funding Policy*

Approximately 30 University Centers[6] were scheduled to receive funding in FY 1991 below the amount they received in FY 1990. Public Law 101-515, the Department of Commerce FY 1991 Appropriations Act, requires maintaining individual University Center grants for FY 1991 at FY 1990 funding levels.

Colleges and universities participating in the program are required to provide a nonfederal match. For FY 1991, EDA will maintain the nonfederal match for each University Center at the level required during FY 1990. The appropriate regional office will inform each University Center of the nonfederal match required for its FY 1991 grant. Under this policy, EDA will have no funds to establish new University Centers during FY 1991.

*Proposal Submission Procedures*

*Basic Grants for Existing University Centers.* Existing centers that have been selected to receive consideration for continued basic funding will be notified of all application procedures by the EDA regional offices. Any existing centers not selected to receive consideration for continued support will be so notified.

*Further Information*

For further information, contact the appropriate EDA regional office (see section XI of this Notice), the appropriate EDR (whose name, address, and telephone number may be obtained from the EDA Regional Office), or the University Center Coordinator, Technical Assistance and Research Division, Economic Development Administration, room 7319, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-2127.

**VI. Program: Planning Assistance for Economic Development Districts, Indian Tribes, and Redevelopment Areas**

(Catalog of Federal Domestic Assistance: 11.302 Economic Development—Support for Planning Organizations)

*Summary*

Funds under the District, Indian and Area Planning Program are awarded to defray administrative expenses in support of the economic development planning efforts of Economic Development Districts (Districts), Redevelopment Areas (Areas) and Indian Tribes. This program is authorized under section 301(b) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(b).

*Eligibility*

Eligible applicants are Economic Development Districts, Redevelopment Areas, organizations representing Redevelopment Areas (or parts of such Areas), Indian Tribes, organizations representing multiple Indian Tribes, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Program Objective*

The primary objective of planning assistance for administrative expenses under section 301(b) is to support the formulation and implementation of economic development programs designed to create or retain full-time permanent jobs and income, particularly for the unemployed and underemployed in the most distressed areas served by the applicant. Planning activities supported with this aid must be part of a process involving significant leadership by public officials and private citizens.

*Funding Availability*

Funds in the amount of $18.378 million are available in two categories: Districts/Areas (Category A)—$15.543 million; and Indian Tribes (Category B)—$2.835 million.

*Funding Instrument*

Grant assistance can be provided for up to 75 percent of project costs for Category A grants with the applicant required to provide the remainig share. Category B grant assistance may be provided for up to 100 percent of project costs.

*Project Duration*

Assistance will normally be for a period of twelve months.

*Selection Criteria*

EDA will consider the following factors, among other things, in evaluating proposals:

1. The responsiveness of the proposed work program to the program regulations contained in 13 CFR 307.22;

2. The economic distress of the area served by the applicant;

3. Past performance for any currently funded grantee (including information in scheduled progress reports);

4. The local leaders' involvement in applicants' economic development activities; and

5. The amount of local participation provided as matching dollars to the Federal funds.

*Proposal Submission Procedures*

Application procedures may be obtained from EDA's regional offices for the following:

a. Currently funded planning grantees and proposals from applicants not currently funded under Categories A or B; and

b. Special economic development activities that benefit one or more 301(b)



grantees and cannot be financed with other resources.

Eligible applicants under both Categories A and B should submit proposals which include:

1. A letter signed by the chief elected official (Chairman of the Board, Tribal Chairman) or another authorized official of the applicant stating the organization's desire to receive funds to carry out the types of planning and administrative activities eligible under the 301(b) program.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

3. A work program outlining the specific development activities that will be carried out under the grant and explaining how they relate to the problems identified in the area OEDP, annual report, or other documents.

New applicants should submit proposals to the appropriate EDA regional office.

*Formal Application Procedures*

EDA regional offices will contact currently funded grantees to inform them of the procedures for submitting applications for continuation funding.

Following review of the proposals submitted, EDA will invite those selected for funding consideration to submit formal applications. Funding levels will be determined by the economic distress of the area served by the applicants, and availability of program funds. The formal application will include a SF-424, as approved by the Office of Management and Budget Control No. 0348-0043.

*Further Information*

For further information contact the appropriate EDA regional office (see section XI of this Notice) or the Director, Planning Division, Economic Development Administration, room 7023, U.S. Department of Commerce, Washington, DC 20230; telephone, 202-377-3027.

**VII. Program: Planning Assistance for States and Urban Areas**

(Catalog of Federal Domestic Assistance: 11.305 Economic Development—State and Urban Area Economic Development Planning)

*Summary*

Funds under the State and Urban Planning Program are awarded to defray administrative expenses in support of economic development planning efforts of urban areas, cities, counties and states. This program is authorized under section 302(a) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151a.

*Eligibility*

Eligible applicants under this program are states, cities urban counties, and combinations of these entities.

*Program Objective*

The primary objective of planning assistance under section 302(a) is to start or strengthen the economic development planning and policy-making capabilities of eligible areas to ensure a more effective use of available resources in addressing economic problems, particularly those resulting in high unemployment and low incomes. Planning activities conducted under this assistance must be part of a process involving significant local leadership from public officials and private citizens.

*Funding Availability*

Funds in the amount of $4.724 million are available for providing grant assistance under this program.

*Funding Instrument*

Grant assistance may be provided for up to 75 percent of project costs. Applicants will be required to provide the remaining share, preferably in cash. Individual grant amounts under this program have not exceeded $200,000 in the past three years. EDA will consider proposals for smaller grants to support appropriate activities.

*Project Duration*

Assistance will be for the period of time required to complete the work. This period will normally not exceed 15 months. If Congress makes funds available for this program in subsequent years, renewals may be considered for appropriate projects for up to two additional awards.

*Selection Criteria*

The content of the proposal and the economic distress of the area will be the principal factors considered in evaluating proposals from eligible entities. In assessing the distressed factor, priority consideration will be given to proposals from states and urban areas experiencing substantial economic distress. In the case of urban areas, high priority will be given to those with unemployment rates two or more percentage points higher than the U.S. average and per capita income levels 80 percent or less of the U.S. average. For states, high priority will be given to those that meet both of the above criteria, as well as those that meet one of the above criteria and have distress equal to or greater than the national level for the other criterion. The most recent per capita income and 12-month unemployment data available will be used to measure economic distress. Proposals from states or urban areas which do not exhibit significant distress on the basis of unemployment or income data will not be considered unless other acceptable evidence of substantial distress is provided by the applicant (e.g., large numbers of agricultural and business failures, large numbers of low-income families, drastically reduced tax bases, etc.).

Proposals from states and urban areas which are both below the U.S. national unemployment rate and above the national per capita income are unlikely to be funded.

Proposals will be judged on the basis of:

1. Appropriateness of the work program to the section 302(a) program objectives;

2. The economic distress of the area served by the applicant;

3. Extent to which the proposed planning activities are expected to impact upon the service area's economic development needs, and the extent to which the proposal addresses the problems of the unemployed and under-employed of the area, including the farm families, minorities, workers displaced by plant closings, etc.;

4. Past performance of currently or formerly funded grantees, if applicable; and

5. The amount of local participation provided as matching dollars to the Federal funds.

*Proposal Submission Procedures*

Potential applicants should submit proposals that include:

1. A letter, signed by the chief executive of the applicant organization, indicating a desire to receive funds to carry out the planning activities outlined in the proposal; where the funded planning program will be placed in the organization, including the name and title of the person to be responsible for program implementation; the amount and for what period funding is being requested; and the anticipated funding arrangement if the planning activity is to continue beyond the period of EDA support.

2. Significant, verifiable information on the level of economic distress in the area, including unemployment and income data. Any major changes in distress levels during the past year should be described.

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3. Information indicating the applicant's commitment to the proposed work program as demonstrated by amount of local funding and the degree of interest displayed by the chief executive.

4. A time chart showing all major work program elements, projected element start and completion dates, and the related financial expenditures programmed for each work element.

5. A work program of no more than 10 pages which outlines the specific planning activities that will be carried out under the grant and specifies which activities will be handled by in-house staff, consultants, etc. The work program should also explain the need for the proposed activities, expected impacts and their timing, target population(s), and involvement of the private sector in the proposed activities.

Current grantees seeking additional funding under this announcement should comply with the instructions of this notice and include a 3–5 page progress report for the current grant.

One copy of the proposal should be sent to the appropriate economic development representative, and an original and one copy to the appropriate EDA regional office. The EDA regional office will provide the name, address and telephone number of the economic development representative for the applicant's area (see section XI of this Notice).

*Formal Application Procedures*

EDA will evaluate proposals using the selection criteria cited above. Once the merits of the proposal are established, EDA will initiate discussions with the prospective applicant to clarify and improve elements of the proposal, if necessary, and will invite those whose proposals are selected for funding consideration to submit formal applications, which will include an SF–424 (OMB Approval No. 0348–0043) and other application materials. Proposals and Applications will be processed as they are received. Applications received after FY 1991 funds are exhausted will be retained by EDA for consideration for funding the following fiscal year, if funds are made available by Congress.

*Further Information*

For further information contact the appropriate economic development representative, EDA regional office (see section XI of this Notice), or the Director, Planning Division, Economic Development Administration, room 7023, U.S. Department of Commerce, Washington, DC 20230; telephone 202–377–3027.

**VIII. Program: Research and Evaluation Projects**

(Catalog of Federal Domestic Assistance: 11.312 Economic Development—Research and Evaluation Program)

*Summary*

Funds under the Research and Evaluation Program are used to support studies that will increase knowledge about the causes of economic distress and approaches to alleviating such problems. This program is authorized under section 301(c) of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3151(c).

*Eligible Applicants*

Eligible applicants for Research and Evaluation grants or cooperative grants include private individuals, partnerships, corporations, associations, colleges and universities, and other suitable organizations.

*Program Objective*

The objectives of section 301(c) grants and cooperative agreements are the following:

1. To determine the causes of unemployment, underemployment, underdevelopment, and chronic depression in various areas and regions of the Nation.

2. To assist in the formulation and implementation of national, state, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions.

3. To evaluate the effectiveness of programs, projects, and techniques used to (a) alleviate economic distress; and (b) promote economic development.

*Funding Availability*

Funds in the amount of $1.193 million are available for this program. Funds will be used for projects selected through the application procedures described below and for EDA-initiated solicitations.

*Funding Instrument*

EDA will provide grants and cooperative agreement awards covering up to 100 percent of project costs.

*Project Duration*

Assistance under the program will normally be for a period not exceeding 15 months.

*Selection Criteria*

EDA will use the following criteria to evaluate research and evaluation proposals:

1. Suitability of the subject.
2. Potential usefulness of the research to state and local economic development specialists.
3. General quality and clarity of the proposal.
4. Soundness and completeness of the research methodology.
5. Qualifications of principal investigator(s) and, where appropriate, performing organizations(s).
6. Previous performance of principal investigator and/or performing organizations on EDA-funded projects.
7. Cost and value of product in relation to cost.

EDA is interested in receiving proposals dealing with:

1. Employment and unemployment;
2. Income and poverty;
3. Rural and other nonmetropolitan economic development;
4. Regional and local growth;
5. Industrial location;
6. Job creation methods;
7. State and local economic development efforts;
8. Private sector economic development efforts;
9. Development effects of public works and other infrastructure;
10. Capital markets and development finance, particularly nonfederal sources of economic development financing;
11. Industrial competitiveness;
12. Minority business and minority jobs; and
13. Productivity and technology.

Requested grants and awards should be for specific, well-defined, onetime research projects. EDA research grants are not intended for support of continuing programs (permanent research programs, publication and information programs, periodic forecasts, etc.) or for non-research activities. Some research proposals deal with or involve samples drawn from only one part of the United States. EDA normally prefers research of broad geographic scope, that at least covers a large multistate region, as opposed to research covering (in declining order of preference) a small region, a state, a multicounty area, or a single city or county. EDA strongly prefers cause-and-effect research and descriptive analyses, and funding for such will receive much higher priority and likelihood of approval as compared to theoretical studies, modeling (other than for hypothesis testing), and the like. Economic development planning and technical assistance for specific places will not be funded under the Research and Evaluation Program; the Planning and Technical Assistance Programs are for those purposes.



*Proposal Submission Procedures*

Potential applicants should submit one original and two (2) copies of a brief and concise proposal which should not exceed 20 pages, not counting vita and capability information. Proposals should avoid long background discussions and literature surveys, but should be reasonably detailed, particularly in explaining methodology. Each proposal should include:

1. A cover page giving a short descriptive project title, the name and address of the performing organization, the names and telephone numbers of the project director and principal investigators, the project duration, the amount of EDA funds requested, and the program (Research and Evaluation) that would provide the funds;

2. A brief scope-and-objectives section indicating why the project is needed, giving its objectives, and providing a capsule description of the project;

3. A more detailed description of the project and its methodology;

4. A work plan showing different phases of the project and their timing;

5. A detailed budget showing cost breakdowns, with EDA-funded and non-EDA-funded costs presented in separate columns and with the EDA-funded costs adding to the total shown on the cover page;

6. Resumes for the project director and principal investigators; and

7. A corporate or institutional capability statement, where appropriate.

The cover letter accompanying the proposal should inform EDA of whether any other organization(s) or Federal agency(ies) is or will be considering the proposal. Any non-EDA contributions to the project, whether by the performing organization or third parties, should be identified. Proposals should be submitted to the Director, Technical Assistance and Research Division, Economic Development Administration, room 7319, U.S. Department of Commerce, Washington, DC 20230.

*Formal Application Procedures*

EDA will evaluate the proposals as they are received using the selection criteria described above. Organizations and individuals whose proposals are selected for further consideration will be invited to submit additional materials required for formal application. The formal application will include an ED–424 (OMB Approval No. 038–0043).

*Eligibility for Specific Solicitations*

In addition to using research and evaluation funds to support proposals submitted under the procedures described above, EDA may during the fiscal year identify other studies, including program evaluations, for funding consideration.

Organizations and individuals interested in being invited to respond to Solicitations of Applications (SOAs) to conduct such studies should submit information on their capabilities and experience to the address listed above. This information will be used to determine eligibility to compete for projects under specific SOAs.

*Further Information*

For further information, contact the Director, Technical Assistance and Research Division, at the above address; telephone, 202–377–4085.

**IX. Program: Economic Adjustment Assistance (Title IX)**

(Catalog of Federal Domestic Assistance No: 11.307 Special Economic Development and Adjustment Assistance Program—Long-Term Economic Deterioration (LTED) and Sudden and Severe Economic Dislocation (SSED))

*Summary*

Funds under the Economic Adjustment Program are used to assist areas experiencing long-term economic deterioration (LTED) and areas threatened or impacted by sudden and severe economic dislocation (SSED). This program is authorized under title IX of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3241–3245.

*Program Objective*

The LTED Program assists eligible applicants to develop and/or implement strategies designed to halt and reverse the long-term decline of their economies. The most common type of activity funded under the LTED Program is Revolving Loan Funds (RLFs), although other types of eligible title IX activity may be funded.

The SSED Program assist eligible applicants to respond to actual or threatened major job losses (dislocations) and other severe economic adjustment problems. It is designed to help communities prevent a sudden, major job loss; to reestablish employment opportunities and facilitate community adjustment as quickly as possible after one occurs; or to meet special needs resulting from severe changes in economic conditions. SSED assistance is intended to respond to permanent rather than temporary job losses. Assistance may be in the form of a grant to develop a strategy to respond to the dislocation (Strategy Grant) or a grant to implement an EDA approved strategy (Implementation Grant).

In light of the current high level of economic distress in rural areas, EDA is particularly interested in title IX projects designed to mitigate serious rural economic adjustment problems. EDA is also interested in proposals to help severely distressed areas with large minority populations.

*Funding Availability*

Funds in the amount of $24.317 million are available for the Economic Adjustment Program in FY 1991. Of the amount, $12.282 million will be available for the SSED Program and $12.035 million will be available for the LTED Program.

*Funding Instrument*

Title IX fund are awarded through grants not to exceed 75 percent of the project cost. Acceptable sources of the local share include, but are not limited to, local government general revenue funds; Community Development Block Grant (CDGB) entitlement funds or balance of state awards; and other public and private donations. The full amount of the local share need not be in hand at the time of application; however, the applicant must have a firm commitment from identified source(s), and the funds must be readily available. The local share must not be encumbered in any way that would preclude its use as required by the grant agreement. The local share for the RLF Program must be in cash, and while the local share for the SSED Program may be cash and/or in-kind, priority consideration will be given to proposals with a cash local share.

*Eligible Applicants*

Eligible applicants within areas meeting the EDA eligibility criteria described below include a redevelopment area or economic development district established under title IV of this Act, 42 U.S.C. 3161; an Indian tribe; a state; a city or other political subdivision of a state, or a consortium of such political subdivisions; a Community Development Corporation defined in the Community Economic Development Act, 42 U.S.C. 9801; a nonprofit organization determined by EDA to be the representative of a redevelopment area; the Federated States of Micronesia; and the Republic of the Marshall Islands, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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*Eligible Areas*

A. LTED

In order to receive priority consideration for funding under the LTED/RLF Program, an area must be experiencing at least one of three economic problems: Very high unemployment; low per capita income; or chronic distress (i.e., failure to keep pace with national economic growth trends over the last five years). Priority will be given to those areas with two or more of these indicators. Eligibility is determined statistically. Further information is available from EDA's regional offices (see section XI of this Notice).

B. SSED

In order to receive priority consideration for funding under the SSED Program, an area must show actual or threatened permanent job losses that exceed the following threshold criteria, unless otherwise determined by the Assistant Secretary:

1. For areas not in Metropolitan Statistical Areas:

a. If the unemployment rate of the Labor Market Area exceeds the national average, the dislocation must amount to the lesser of two (2.0) percent of the employed population, or 500 direct jobs.

b. If the unemployment rate of the Labor Market Area is equal to or less than the national average, the dislocation must amount to the lesser of four (4.0) percent of the employed population, or 1,000 direct jobs.

2. For areas within Metropolitan Statistical Areas:

a. If the unemployment rate of the Metropolitan Statistical Area exceeds the national average, the dislocation must amount to the lesser of one-half (0.5) percent of the employed population, or 4,000 direct jobs.

b. If the unemployment rate of the Metropolitan Statistical Area is equal to or less than the national average, the dislocation must amount to the lesser of one (1.0) percent of the employed population, or 8,000 direct jobs.

In addition, fifty (50) percent of the job loss threshold must result from the action of a single employer, or eighty (80) percent of the job loss threshold must occur in a single standard industry classification (i.e., two digit SIC code).

In the case of a Presidentially declared natural disaster, the area eligibility criteria are waived. In other similarly exceptional circumstances, the criteria may be partially waived at the discretion of the Assistant Secretary.

Actual dislocations must have occurred within one year and threatened dislocations must be anticipated to occur within two years of the date EDA is contacted.

*Selection Criteria*

Proposals will be evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs and the potential applicant's ability to manage the grant effectively.

A. LTED/RLF Selection Criteria

Key factors in EDA's selection of proposed LTED/RLF projects include:

1. *Economic and Financial Needs of the Project Area.* a. Areas with the highest levels of economic distress (high unemployment, low per capita income, vacant plants, deteriorating infrastructure, and declining farm economy, etc.) will receive priority consideration.

b. Need for RLF financing will be evaluated based on the local capital market and the applicant's analysis of it, and how clearly this analysis defines the financial problems to be addressed by the RLF project.

c. Applicant's need for grant funds to carry out the project will be based on an assessment of its financial resources.

2. *Objectives and Benefits of Proposed Projects.* Priority will be given to projects which can:

a. Stimulate private sector employment. The number and types of jobs to be created/retained will be key factors in project selection along with the job/cost ratio established for the RLF portfolio as a whole.

b. Target assistance to meet program objectives and to support specific economic adjustment activities planned or underway in the area, particularly those identified in the CEDP, title XI strategy, or other plans developed to deal with specific economic adjustment problems affecting the area. This may include target areas, industries, types of employers or other criteria that maximize the impact of assistance on specific needs within the area.

c. Leverage higher ratios of private investment than the required minimum ratio of two private sector investment dollars to one RLF dollar. (Note: The local share or other funds provided by the RLF to finance loans cannot be counted as leveraged dollars.)

d. Direct new job opportunities to the long-term unemployed and underemployed.

e. Provide technical and management assistance for RLF borrowers, in addition to loan funds.

f. Use creative financing techniques to overcome specific gaps in the local capital market.

g. Make loans on a timely basis. The implementation schedule for RLF projects will normally require that RLF loans in the initial round be closed (and all EDA funds disbursed) within three years of grant approval with no less than 50 percent disbursed within eighteen months and 80 percent within two years.

h. Include a larger local share than the required 25 percent or secure commitments for future funding from other private or nonfederal public sources.

i. Coordinate activities with other economic development organizations, loan programs, employment training programs and private lenders in the area.

j. Are established to fill capital gaps as opposed to providing subsidized credit (i.e., below market interest rates).

3. *Effective Management of the RLF.* EDA will also evaluate proposed projects to determine that the RLF will be properly managed. Key factors include:

a. A strong and effective Loan Administration Board with broad community representation, including appropriate public and private sector representation.

b. Staff capacity in program and policy development, finance, law, marketing, credit analysis, loan packaging, processing and servicing.

c. Efficient procedures for loan selection, approval, and servicing which emphasize the economic development potential of loans as well as sound management and financing practices.

d. A strategy for relending loan repayments which will ensure that the RLF revolves continously and thus fulfills its purpose of creating jobs and stimulating economic activity on an ongoing basis.

e. Adequate resources to cover administrative costs of the RLF.

f. The potential applicant's experience and capacity for administering economic and business loan programs. If the potential applicant has designated another organization to administer the project, EDA will evaluate the experience and capacity of that organization, rather than the potential applicant.

Nongovernmental (excluding Economic Development Districts) organizations seeking funds must be sponsored by the local or state government having jurisdiction over the project area, and the sponsor must be willing to assume responsibility for operating the RLF should the nongovernmental entity no longer be able to administer the project.



B. SSED Evaluation Criteria

Key factors in EDA's selection of proposed SSED projects include:

1. The severity of the dislocation as measured by, but not limited to, the following factors:

a. The degree to which the number of dislocated workers exceeds the eligibility threshold.

b. The proportion of the total job loss represented by a single employer.

c. The proportion of employment in a single standard industry classification represented by the firm(s) closing.

d. The applicant's need for grant funds to carry out the project based on an assessment of its financial resources.

2. The objectives and benefits of proposed activities as measured by the extent to which:

a. *For Implementation Grants.* (1) Job creation or retention and restoration of the community's economic base in the near term are emphasized versus more long-term, general economic development. Projects likely to encounter delays, particularly in initiating or completing construction, will normally not be given favorable consideration.

(2) The jobs to be created and/or retained are permanent, will directly benefit the dislocated workers and/or will directly facilitate community adjustment, and are new employment opportunities and not transferred from one area of the United States to another.

(3) The response to the problem is timely.

(4) EDA assistance will be complemented by, or will complement, appropriate state and local efforts; for example, training and job placement services, other Federal investments, and private sector support.

(5) The adjustment strategy and implementation activities proposed demonstrate an appropriately creative approach to addressing the dislocation.

(6) The cost per job created or retained is minimized.

(7) In the case of a Revolving Loan Fund, the recycled loan proceeds generate economic development benefits.

(8) The local share exceeds the required 25 percent.

b. *For Strategy Grants.* (1) The applicant has demonstrated the capacity to manage the planning process and subsequent implementation activities.

(2) The proposed scope of work is responsive to the problem.

(3) The focus of the planning effort is on the generation of practical and implementable solutions.

(4) The local share exceeds the required 25 percent.

*Project Implementation*

As indicated in the first section of this Notice, EDA expects all grant funded projects to be initiated and completed in a timely manner in accordance with the schedule agreed upon in the grant documentation. The recipient will be responsible for promptly notifying EDA of any events that prevent adherence to the approved schedule. The grantee must also provide an explanation of why the events were beyond its ability to predict or control and obtain EDA approval of changes in the schedule prior to proceeding with project implementation.

EDA expects grantees to anticipate predictable delays (such as those caused by land acquisition problems, local financing requirements, acquisition of state permits and approvals, normal weather conditions in area, and public objections to the project), and take them into account in preparing the project schedule. Grantees who fail to comply with project schedules may be subject to grant suspension and/or termination.

EDA will not provide additional funds to finance overruns that occur during project implementation.

*Proposal Submission Procedures*

Interested parties should contact the Economic Development Representative for the area or the appropriate EDA Regional Office (see section XI of this Notice) for a proposal package. Project proposals, submitted by eligible entities, will be evaluated by EDA staff on the basis of:

1. Conformance with the evaluation criteria mentioned above and statutory, regulatory, and policy requirements.

2. The availability of funds.

*Formal Application Procedures*

Following a review of project proposals, EDA will invite those projects selected for funding consideration to submit formal applications. The formal application will include an ED–540, as approved by the Office of Management and Budget Control No. 0610–0058.

*Further Information*

For further information about this program, contact the appropriate EDA regional office or the Director, Economic Adjustment Division, Economic Development Administration, room 7327, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–2859.

**X. Program: Trade Adjustment Assistance**

(Catalog of Federal Domestic Assistance: 11.313 Economic Development—Trade Adjustment Assistance)

*Summary*

Funds under the Trade Adjustment Assistance Program are awarded to a network of Trade Adjustment Assistance Centers, located around the Nation, which provide technical assistance to certified firms adversely affected by increased imports. Funds are also awarded under this program to organizations representing trade-injured industries. This program is authorized under the Trade Act of 1974, title II, Public Law 93–618, as amended, 88 Stat. 1978, 19 U.S.C. 2101–2487. This program was formerly under the International Trade Administration, U.S. Department of Commerce.

*Funding Availability*

Funds in the amount of $12.4 million are available for trade adjustment assistance to firms. In accordance with the Senate Report accompanying Public Law 101–515, these funds will be provided to the nationwide network of twelve (12) Trade Adjustment Assistance Centers (TAACs) through cooperative agreements which will utilize all of the available funds for trade adjustment assistance.

Therefore, no new centers will be funded in FY 1991. The report accompanying the Senate version of the FY 1991 Department of Commerce Appropriations Act advises that "TAAC's should not reserve any portion of these grants for closeout." Accordingly, full utilization of FY 1991 funds will be a factor in determining eligibility. Funds in the amount of $550,000 are available for industry technical assistance.

*Program Objective*

The Trade Adjustment Assistance Program is designed to provide technical assistance to certified firms and industries hurt by the impact of increased imports. The TAACs help firms submit certification petitions to the Trade Adjustment Assistance Division (TAAD) of EDA, and if the firm is certified, provides technical assistance. A firm should work closely with the appropriate TAAC in petitioning for certification. Certified firms should also work closely with the appropriate TAAC in diagnosing their problems and

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developing an adjustment proposal, and in applying for technical assistance.

An industry association or other organization interested in receiving an industry assistance cooperative agreement must meet with a TAAD representative to discuss the industry's problems, opportunities, and assistance needs.

*Criteria for Selecting Industry Assistance Proposals*

Industry associations and other organizations seeking trade adjustment industry assistance must demonstrate that the industry is injured by foreign trade and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority. It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

*Application Procedures*

Industry associations or other organizations seeking industry assistance must submit an application identified as Standard Form 424 (OMB Control No. 0348–0043), if encouraged to do so as a result of the meeting with a TAAD representative.

Acceptable industry applications will be processed as funds are available; normally one to three months is required for agency approval.

*Formula and Matching Requirements*

Generally, a minimum of 50 percent share is required for industry assistance cooperative agreements.

*Length and Time Phasing of Assistance*

Industry assistance cooperative agreements are generally 12 months, but may be longer for tasks requiring more time to complete.

*Further Information*

For further information, contact Daniel F. Harrington, Director, Trade Adjustment Assistance Division, Economic Development Administration, room 4009, U.S. Department of Commerce, Washington, DC 20230; telephone, 202–377–3373.

**XI. EDA Regional Offices**

The EDA Regional Offices and the states they cover are:

Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, First Floor, Philadelphia, Pennsylvania 19106, telephone (215) 597–4603; serving Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, and West Virginia.

Atlanta Regional Office, suite 1820, 401 West Peachtree Street, NW., Atlanta, Georgia 30308–3510, telephone: (404) 730–3002; serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Denver Regional Office, 1244 Speer Boulevard, room 670, Denver, Colorado 80204, telephone: (303) 844–4717; serving Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Chicago Regional Office, suite A–1630, 175 West Jackson Boulevard, Chicago, Illinois 60604, telephone: (312) 353–7706; serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Seattle Regional Office, suite 1856, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, telephone: (206) 442–0596; serving Alaska, American Samoa, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Austin Regional Office, suite 201, Grant Building, 611 East Sixth Street, Austin, Texas 78701, telephone: (512) 482–5461; serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Dated: December 14, 1990.

L. Joyce Hampers,

*Assistant Secretary for Economic Development.*

[FR Doc. 90–29614 Filed 12–19–90; 8:45 am]

BILLING CODE 3510–24–M

federal register

Thursday
December 20, 1990

Part IV

# Department of the Interior

**Bureau of Indian Affairs**

**25 CFR Part 244**

**Wind River Reservation Game Code; Proposed Rule**

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 244**

**RIN 1076-AB43**

## Wind River Reservation Game Code

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs (BIA) is proposing to delete regulations contained in 25 CFR part 244 governing the game code on the Wind River Reservation. The Shoshone-Arapahoe Tribes of the Reservation have developed and adopted a tribal Fish and Game Code to replace 25 CFR part 244. The BIA is proposing to delete 25 CFR part 244 so that the new tribal Fish and Game Code can govern the hunting activities of the Shoshone-Arapahoe Tribes.

**DATES:** Comments must be received on or before January 22, 1991.

**ADDRESSES:** Written comments should be directed to the Branch of Fish, Wildlife and Recreation, Bureau of Indian Affairs, Mail Stop 4559 MIB, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Gary Rankel, Chief, Branch of Fish, Wildlife and Recreation, Bureau of Indian Affairs, Mail Stop 4559 MIB, 1849 C Street, NW., Washington, DC 20240, telephone number: (202) 208-4004 (FTS 268-4004).

**SUPPLEMENTAL INFORMATION:** This deletion of a regulation is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM8.

The Wind River Reservation is shared by two Indian tribes—Shoshone and Arapahoe. In response to tribal requests in the early 1980's, to protect, conserve, and provide rehabilitation of big game animals on the reservation, the Bureau of Indian Affairs (BIA) promulgated and implemented a Wind River Reservation Game Code (25 CFR part 244) in 1984.

Hunting on the reservation is limited only to enrolled members of the Shoshone and Arapahoe Tribes. Since 1984, there has been a controlled hunting program on the reservation, resulting in increased wildlife populations which were depleted prior to that time.

This action, deleting the Wind River Reservation game code developed by BIA, is a result of the Shoshone-Arapaho Tribes jointly developing a tribal Fish and Game Code which specifies rules and procedures allowing for the exercise of certain fishing and hunting rights on the Wind River Reservation. The tribal Fish and Game Code replaces the game code in the Federal Regulations.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule deletion to the location identified in the Addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department of the Interior has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Information collection requirements contained in 25 CFR part 244 will be deleted from the Office of Management and Budget inventory. With the deletion of this rule, the collection of this information will no longer be required.

The primary author of this document is Robert Gartner, Fish and Wildlife Resource Specialist, in the Branch of Fish, Wildlife and Recreation.

**List of Subjects in 25 CFR Part 244**

Hunting, Indians—lands, Wildlife, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of USC 25, 2, and 9, part 244 of title 25, Chapter I of the Code of Federal Regulations is proposed to be removed.

**Stan Speaks,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 90-29772 Filed 12-19-90; 8:45 am]

BILLING CODE 4312-02-M



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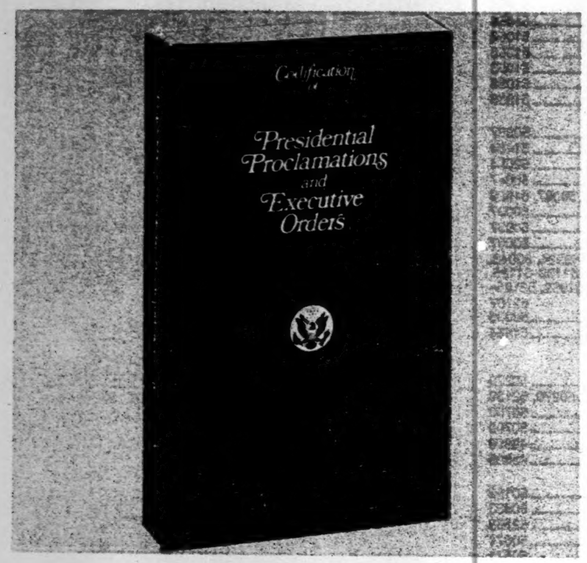
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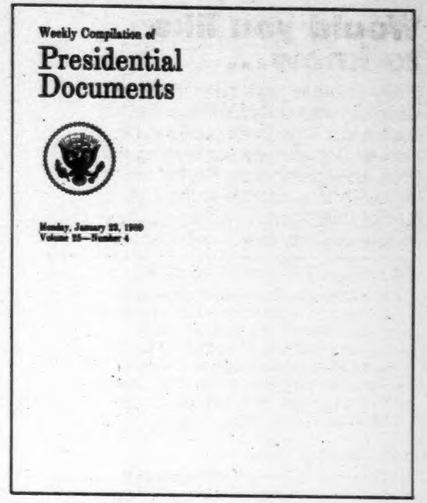
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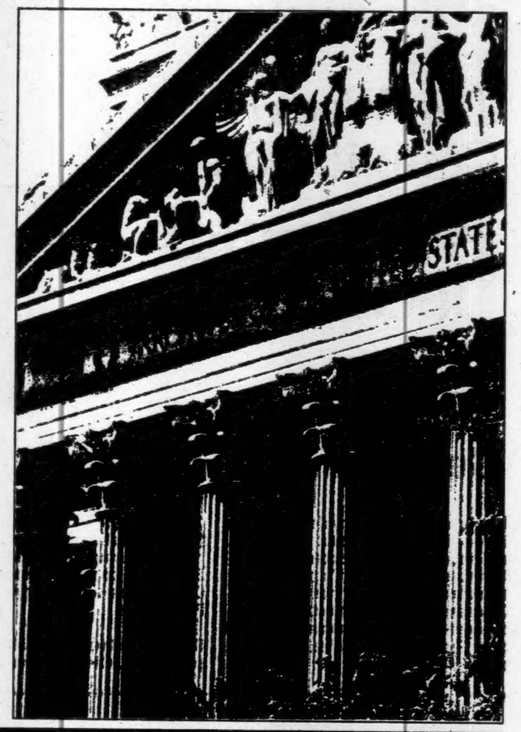
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